

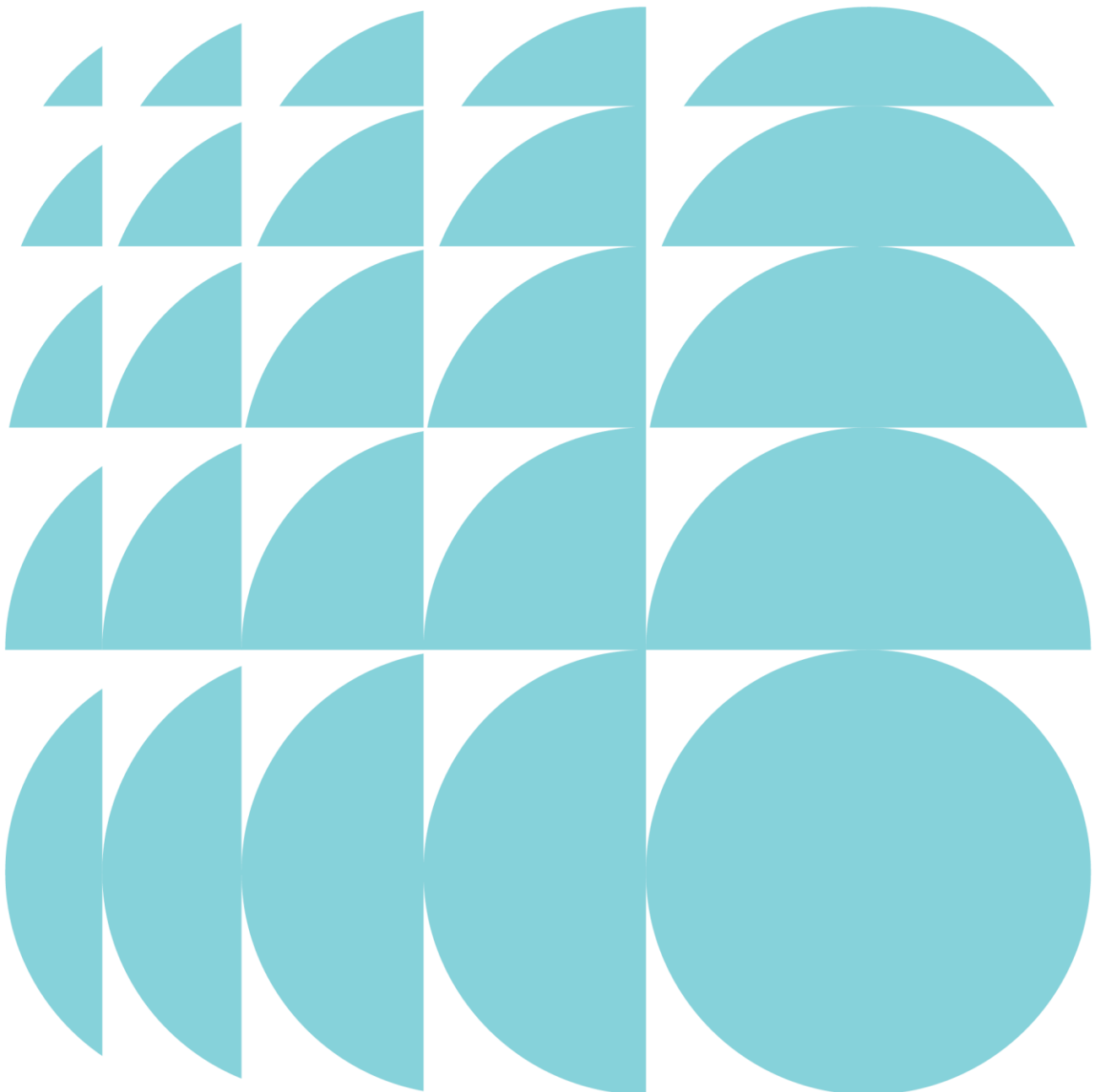
ETHOS URBAN

4 - 12 McGill Street, Lewisham
Request to Vary a Development Standard

Clause 4.6 Request
Floor Space Ratio

Submitted to Inner West Council
On behalf of McGill Advance Pty Ltd

30 January 2018 | 15355



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1.0	Introduction	2
2.0	Request to Vary a Development Standard	3
2.1	Development Standard to be varied	3
2.2	Is the Planning Control in Question a Development Standard	3
2.3	Site Context	3
3.0	Justification for Contravention of the Development Standard	5
3.1	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	5
3.2	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	16
4.0	The Public Interest	18
5.0	Director-General's Concurrence	20
4.0	Summary	21

1.0 Introduction

This report is submitted to the Inner West Council in support of a development application for a mixed-use development at 4-12 McGill Street, Lewisham. It forms a request under Clause 4.6 of the *Marrickville Local Environmental Plan* 2011 (MLEP 2011) to vary the floor space ratio (FSR) development standard.

Clause 4.6 of the MLEP 2011 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- That 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 consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

This report requests and justifies a variation to the floor space ratio in MLEP 2011, as permitted under Clause 4.6 of that MLEP. It has been prepared by Ethos Urban on behalf of McGill Advance Pty Ltd, applicant of the proposed development. It is based on the architectural plans prepared by PTW and should be read in conjunction with the Statement of Environmental Effects (SEE) dated June 2017 and the response letter to Council's request for information dated 10th November 2017.

2.0 Request to Vary a Development Standard

2.1 Development Standard to be varied

The development standard that is sought to be varied as part of this application is Clause 4.4 Floor Space Ratio of the Marrickville LEP 2011, which establishes the maximum floor space ratio (FSR) permitted for all development. Under the MLEP 2011, the site is afforded a maximum FSR of 2.3:1 for the site as shown in **Figure 1** below (indicated as within the T5 designation).

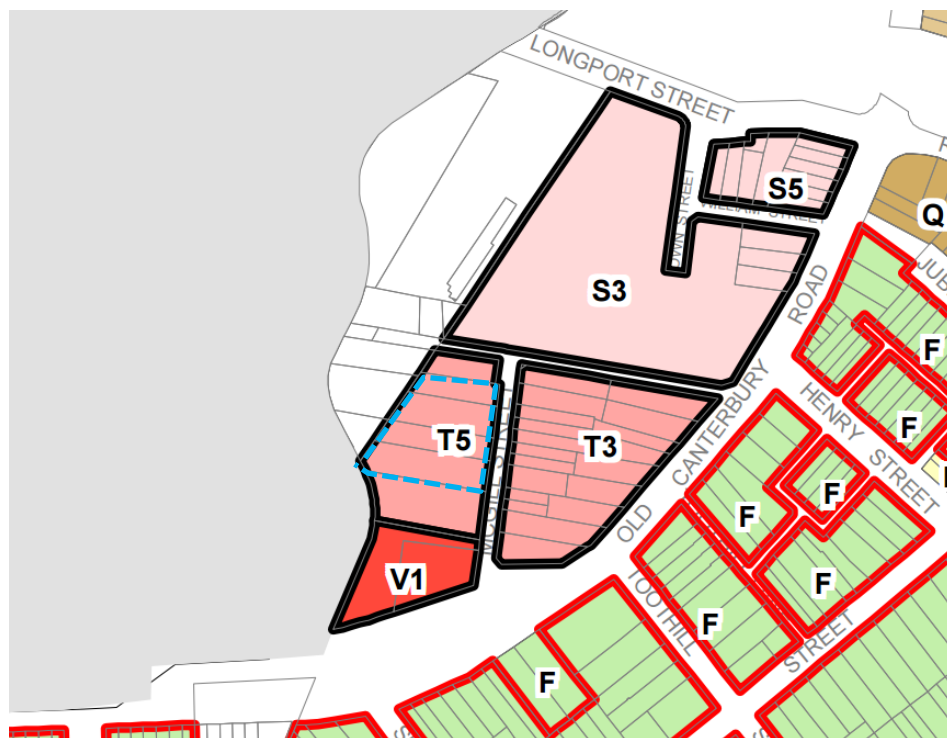


Figure 1 – Floor Space Ratio Map

Source: Marrickville LEP 2011

The site has a combined area of 2,659.9m², providing for an allowable GFA of 6,117.77m². This application proposes a Gross Floor Area (GFA) of 7,175.7m², with a resultant FSR of 2.70:1. This represents a variation of 0.40:1 (17%), or 1,057.93m².

Additionally, it is noted that the variation represents an increase in floor space of 737m² or 0.28:1 when compared with the approved DA for the site.

2.2 Is the Planning Control in Question a Development Standard

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

The FSR control under Clause 4.4 of the LEP is clearly and unambiguously a development standard.

2.3 Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. Specifically, the building is located within the McGill Street precinct within Lewisham, which is currently undergoing a rapid transformation from low density commercial/industrial through to high density residential. Opposite this precinct, the Summer Hill Flour Mill precinct is being developed concurrently to the McGill Street precinct. This can be directly attributed to these sites proximity to the relatively new Lewisham West light rail station as well as Lewisham Railway Station and a number of other key public transport facilities.

A number of adjacent sites have recently been approved and constructed as part of this redevelopment. The site that directly adjoins this proposal to the south, being 14 McGill Street, received approval from the Land and Environment Court on 8th April 2016. This site received approval for a development with a FSR of 4.14:1, being a variation of 1.84:1 or 80%.

To the east, across McGill Street, a number of variations have been granted to the FSR standard, including:

- 17 McGill Street – Approved with a FSR of 2.83:1 (35%);
- 1 – 3 McGill Street – Approved with a FSR of 2.66:1 (26%); and
- 7 McGill Street – Approved with a FSR of 2.54:1 (21%)

These variations demonstrate that the precinct is developing in a manner that is in excess of the compliant FSR control. See precinct wide approvals map in **Figure 2** for a summary of development in the immediate vicinity of the Site.

3.0 Justification for Contravention of the Development Standard

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

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case.

The five ways outlined in *Wehbe* include:

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

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the development standard has been virtually abandoned or destroyed by Council's own actions in granting consents that depart from the standard (Fourth Way). Furthermore, the objectives of the standard are achieved notwithstanding the non-compliance (First Way).

Sections 3.1.1 and 3.1.2 of this document address the matters in Clause 4.6(3)(a). In particular, the Fourth Way proves that strict compliance is unreasonable whilst the First Way demonstrates that compliance is unnecessary.

3.1.1 Fourth Way: Has the standard been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard?

Yes.

Council have consistently permitted variations to the floor space ratio development standard throughout the McGill Street Precinct (Precinct 45 in the Marrickville DCP). These variations are illustrated on the aerial map shown at **Figure 2**.

In total, the FSR development standard has been abandoned on six (6) separate occasions on land within the immediate vicinity of the subject site. These variations have ranged from 17% all the way up to an 80% variation, with the latter being determined by the Land & Environment Court. It is therefore clearly evident that the FSR control has been consistently abandoned by approved development within the McGill Street Precinct. The proposed development seeks consent for a variation of 17% to the FSR standard, being the equal lowest within the precinct.

It is considered that the abandonment of this development standard is the direct result of a clear discrepancy between the controls listed within the Marrickville DCP 2011 and the height and FSR development standards contained in the Marrickville LEP 2011. This section will outline the differences between the Marrickville LEP and DCP controls and discuss how this has resulted in technical non-compliances with the Council's LEP FSR development standard.

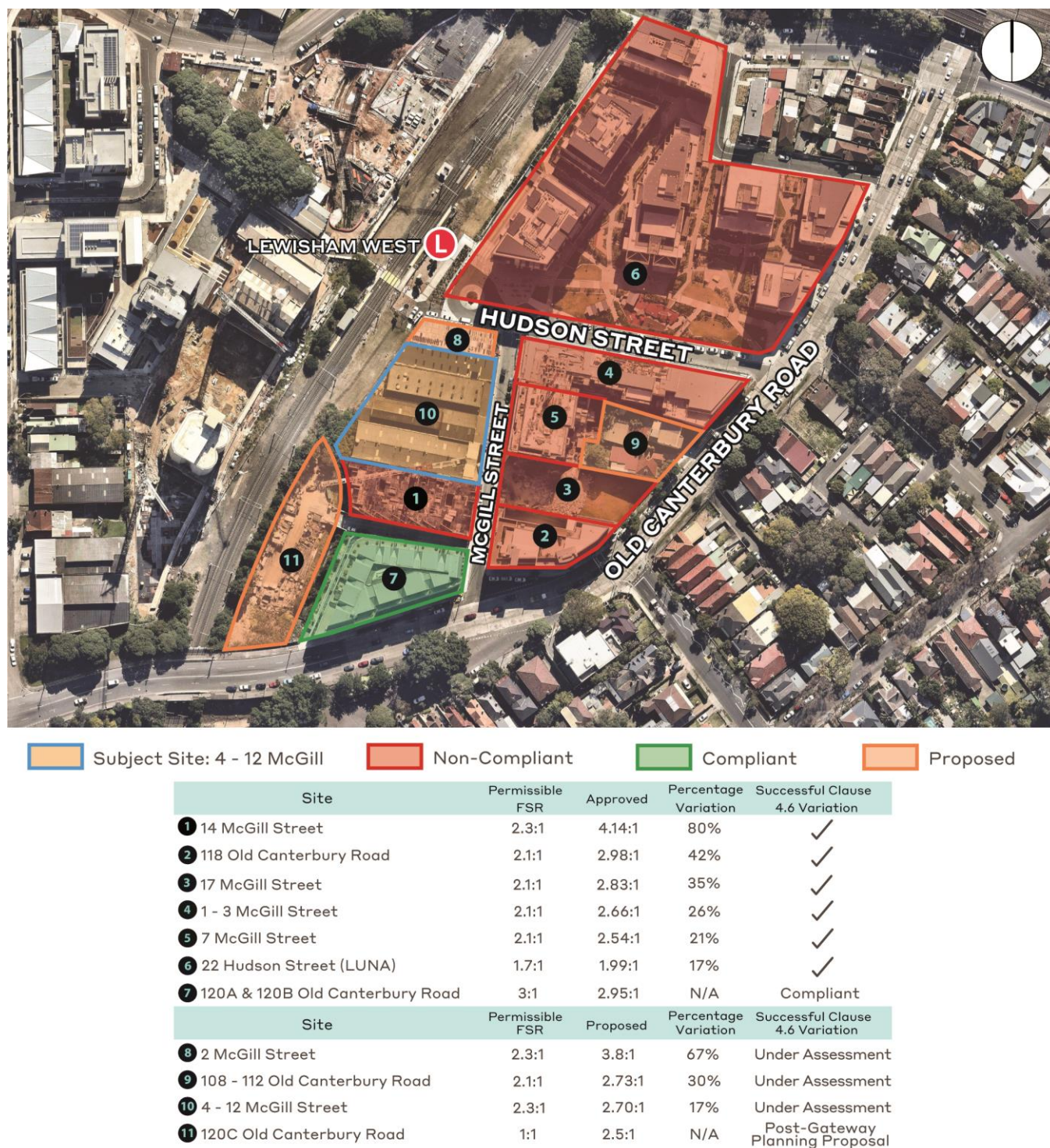


Figure 2 – Surrounding Approvals and Variations Map

Source: Ethos Urban

Height Limit & Anticipated Built Form

The Marrickville LEP contains standards which permit a built form to a maximum height of 29 metres with a floor space ratio of 2.3:1 (see **Figure 3**). Land to the north permits buildings up to 32 metres. This height limit falls away to the south and east in the areas bordering the nearby low density residential neighbourhood. Through this height limit map, it can be interpreted that the Council sought to develop taller buildings adjacent to the Greenway, away from nearby low-density residential areas.

Development within the McGill Street Precinct (Precinct 45) is also guided by the McGill Street Masterplan (the Masterplan) contained within Part 9.45 of the Marrickville DCP. This masterplan contrasts with the LEP in recommending buildings of 4 and 2 storeys across the subject site, being significantly below the LEP height limit. Taller buildings are otherwise permitted on sites to the north and south of our site. Once again, shorter buildings of four storeys in height are envisaged by the DCP on sites adjacent to the low density areas to the south and east.

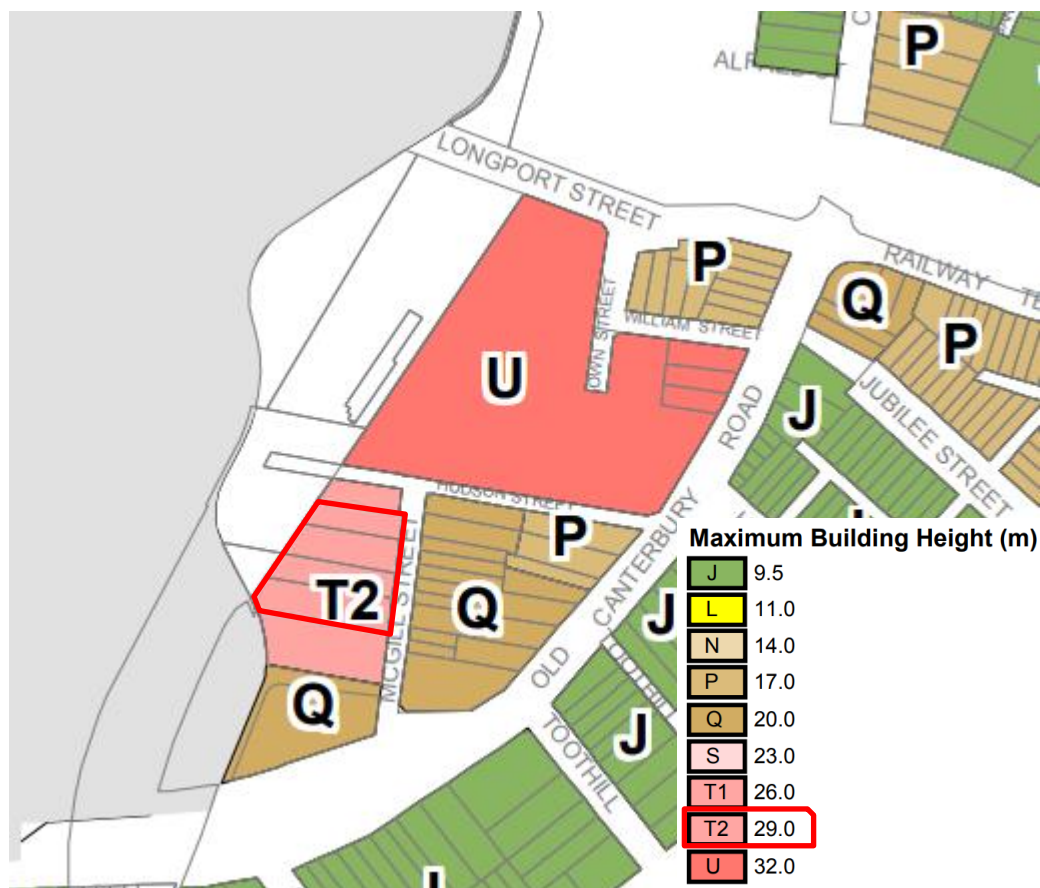


Figure 3 – Height of Building Development Standard
Source: Marrickville LEP 2011

The Greenway section (shown in **Figure 4**), taken from the location of the Luna building, provides a street section illustrating how the tallest buildings within the precinct will benefit from the views and amenity offered by the Greenway. The desired future character reinforces this development outcome, through a desire for taller, denser development facing the Greenway in an area that will have minimal impact on the residential amenity of surrounding properties.



Figure 4 – Development along the Greenway

Source: Marrickville DCP (Part 9.45)

These built form controls were written in such a manner so as to allow for the development of 5 separate sites. These sites, as identified within the site amalgamation diagram, were to be amalgamated so as to “encourage redevelopment and increased densities within the precinct”.

Therefore, it can be assumed that the desired built form outcome was for taller buildings within the middle of the precinct, adjacent to the Greenway. The highest densities were to be delivered on two separate development sites, subject to the amalgamation of sites. This outcome is reflected within the objectives for the desired future character of the precinct, with a specific desire to protect the amenity of adjoining residential properties by locating higher density development in areas with minimal impact.

Actual Built Form

The development pattern that has occurred in reality differs from that envisaged in the DCP Masterplan. Site amalgamation has occurred differently to the masterplan and this has resulted in the precinct being developed in a manner that is denser than the FSR development standard and taller than the DCP masterplan. Recent approvals granted by the Council vary or differ from the following development standards and DCP controls:

- Floor Space Ratio (as illustrated in **Figure 2**);
- Site Amalgamation (refer to **Figure 5**);
- Traffic and access strategy (including street network); and
- Height controls (in storeys) (refer to **Figure 5**).



Figure 5 – Height of Building (Storeys) & Site Amalgamation Diagram

Source: Marrickville DCP (Part 9.45)

In granting these previous approvals, Council has largely abandoned the height of building (storeys) and site amalgamation DCP controls. **Table 1** summarises the compliance of all approvals against these two DCP controls.

Table 1 - DCP Compliance

Site	Compliance with the Amalgamation Pattern	DCP Storeys	Approved Storeys	Compliance with DCP storeys
4 – 12 McGill Street (previous approval)	X	2 + 4	5 + 6	X
14 McGill Street	X	8	8	✓
118 Old Canterbury Road	X	4/5	5	X
1 – 3 McGill Street	X	4	5	X
7 McGill Street	X	4	6	X
17 McGill Street	X	4/5	5/6	X
22 Hudson Street	✓	3-9 (Varying)	4 - 10	X
8 William Street	X	4	5	X

The impact of moving away from this amalgamation pattern is that it exacerbated the fact that there is a clear discrepancy between the LEP height and the floor space ratio standards. The FSR standard did not allow buildings to be developed to the heights envisaged by the LEP. Council have addressed this discrepancy through the granting of consents that depart from the FSR standard, but that otherwise allow for a development that is in accordance with the LEP height control and which continues to respond to the precinct desired future character.

From these approvals, it can be interpreted that the Council has taken a merit based approach to these sites, recognising that whilst they do not strictly meet the numerical FSR control, the approved developments still meet the desired future character objectives for this precinct.

This has resulted in a change to the development envisaged within the masterplan. A taller, denser precinct has emerged adjoining the Greenway and the Lewisham West light rail station. The approved developments have demonstrated consistency with the objectives of the desired future character and compliance with the LEP height standard despite being above the floor space ratio development standard and DCP height control.

Unreasonable to require strict compliance

What has emerged within the McGill Street precinct differs from what was originally anticipated. Having largely abandoned the site amalgamation pattern, and being a precinct that benefits from excellent public transport access, the Council have consistently allowed for development that exceeds the floor space ratio standard (in the Marrickville LEP) and the height of building control (in the Marrickville DCP). This is particularly evident through the continued desire for higher densities to be located away from neighbouring low density areas.

The development of 4 – 12 McGill Street emerges as one of the smallest proportional variations to the FSR. Yet, despite exceeding the development standard, the design will provide a more consistent approach to the architectural and urban design outcomes within the emerging precinct and will facilitate an outcome consistent with the desired future character of the precinct. Approval of the FSR variation would ensure that the proposed development of 4 – 12 McGill Street is assessed and determined in a manner that is consistent with all other previous applications in the precinct. Indeed, given the clear precedent set by other approvals, it would be unreasonable to require strict compliance with the development standard.

3.1.2 First Way: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives as set out by clause 4.4(1) of the MLEP 2011 are as follows

- (a) *to establish the maximum floor space ratio*
- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different area*
- (c) *to minimise adverse environmental impacts on adjoining properties and the public domain*

The following sections demonstrate that the proposed variation to the floor space ratio development standard will still result in a development that achieves the relevant objectives of the clause.

(a) to establish the maximum floor space ratio

Whilst we note the primary intention of the standard is to establish a maximum floor space ratio for buildings, the purpose of the clause 4.6 mechanism is to deal with numerical variations to the standard within the mapping under clause 4.4(2). Notwithstanding, the following subclauses, as discussed below, provide tangible means of assessing and justifying the proposed variation to the maximum floor space ration control in the merits of this particular application.

Considering the sites context and location it is considered that the maximum FSR is inadequate in providing for development that meets the land use zone objectives and the permissible height limit on site. This has been reflected in the level of flexibility applied to the FSR development standard on all sites throughout the precinct, with the only site achieving a compliant FSR still achieving a FSR of 2.95:1 (see **Figure 2**). This plan, seen in Figure 2, illustrates that the McGill Street Precinct has developed in a manner separate to the FSR control, with an average FSR of 2.87:1 approved on nearby sites.

(b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas

The desired future character for the precinct has been set by the Marrickville LEP controls, the McGill Street precinct masterplan and through the precedent set by the ongoing redevelopment of adjoining sites. The precinct masterplan imagines a village type locality accommodating mixed use development of medium to high densities and scales. Subsequently, a precinct has begun to develop with high density residential and mixed use developments of between 5 and 10 storeys.

The proposed development has evolved since the original development approval to provide an architectural and urban design outcome that is superior in its appearance and design, and which responds more appropriately to the desired and emerging character of the precinct. The proposal achieves this outcome through a built form that works within the identified site constraints and which supports the creation of a mixed use precinct together with a public domain that will connect with, and compliment, other nearby public spaces.

The bulk and density of the precinct has emerged following the approval of several nearby developments. **Figure 3**, below, illustrates the approved design for 14 McGill Street next to the building envelope for 4-12 McGill Street. This envelope was set by the precinct masterplan which was then used to inform the FSR control for the site. Despite

this, the building form and mass of the adjoining site to the south has been informed by the permissible height limit rather than the density and bulk.

As shown in **Figure 6**, the building envelope envisaged by the DCP would be significantly below that of the adjacent site, resulting in a building density and bulk that significantly out of character with the surrounding area. The height of the proposed development provides a density and bulk that is much more aligned with the emerging character of the McGill Street precinct.



Figure 6 - Approved 14 McGill Street Architectural Plans illustrating masterplan massing for 4-12 McGill

Source: Level Architectural

Within this design, the additional density and bulk has predominantly been located adjoining the Greenway within Building B; and above the through site link within Building A, as part of the residential bridge. This allows for a consistent six storey streetscape to be maintained along the majority of McGill Street and locates additional bulk in the location with the least impact on adjoining amenity. Based on an overshadowing analysis undertaken by PTW and Steve King (**Appendix X** of the SEE), these areas were determined to be locations in which additional building mass could be located whilst having minimal adverse impacts on surrounding areas.

The potential for higher density adjacent to the Greenway is identified within the precinct masterplan. Building B has been provided with additional density that has been setback at higher levels to minimise visual bulk and reduce overshadowing. Once complete, Building B will help define the greenway and provide a pleasant outlook and increased amenity to future residents.

Within Building A, the development of the residential bridge is considered an integral part to the overall design of the architectural scheme. It maintains a different materiality to the rest of the site and is considered likely to form a landmark entry point to the through site link and public domain. The provision of a double storey entry point and a greater street setback ensures that the residential bridge is of a lower bulk and scale than the rest of Building A. The treatment of its external façade will ensure that it is visually distinguished from the remainder of the building, thus helping to breakdown the bulk of the building.

Building A has been reduced in height to six storeys. This is consistent with the majority of adjoining approvals and provides for a built form outcome that is consistent with the density and mass of the surrounding approvals. It also allows for the built form to step down from 14 McGill Street.



Figure 7 – Proposed Design shown amongst adjoining developments

Source: PTW

In light of the above, it is evident that the architectural design has evolved to provide a built form that better responds to the emerging character of the McGill Street precinct. The proposed development is considered to meet the desired future character of the area as:

- It provides for a diversity of land uses, through the provision of residential apartments, an art space to be used as a gallery, education and performance space as well as a café;
- Areas of additional bulk and scale have been proposed in locations identified for building mass and potentially additional floor space, whilst ensuring this density has minimal adverse amenity impacts on surrounding sites;
- The proposed density can be comfortably accommodated within the height limit which is the predominant development control that has been used to inform the emerging character of adjoining sites and the McGill Street precinct;
- The proposed bulk and FSR are below the precinct wide average and are therefore considered to provide for an acceptable level of density;
- The predominant six storey streetscape that has emerged in adjacent sites has been included in Building A facing McGill Street;
- The design of a built form of high quality that will complement adjoining properties whilst being distinct in its own right; and
- It provides for an optimal pedestrian link and public domain that forms an extension of the art space on site and will be a valuable addition to the cultural landscape of the precinct (see **Figure 8**). The building form atop this space serves to shelter it and is architecturally distinguished from the remainder of the built form so that the thoroughfare is readily identifiable in the streetscape.

Therefore, despite the variation to the numerical FSR standard, the proposed development will deliver a building bulk and density that can be accommodated on site in a manner that is consistent with the emerging character of the McGill Street precinct.



Figure 8 – Above Ground view of the Through Site Link

Source: PTW

(c) to minimise adverse environmental impacts on adjoining properties and the public domain

Following the original development approval on site, the land owners sought to further advance their design for the site to deliver a built form outcome that better responds to the emerging character of the precinct whilst avoiding adverse environmental impacts on adjoining sites, particularly overshadowing, privacy and separation and the enclosure of the public domain.

Steve King was engaged to provide preliminary design advice with respect to establishing a building envelope which the site could comfortably work within whilst ensuring acceptable overshadowing impacts to the adjoining sites. Through this overshadowing analysis, a building envelope was established that determined the extent to which the site could be developed whilst minimising adverse impacts on the surrounding area. Essentially, the architectural design was reverse engineered following a thorough analysis of the potential impacts on adjoining sites.

As a result, the additional floor space has been located in less sensitive locations that were pre-determined to provide a high standard of amenity for future occupants, surrounding sites and public domain. The proposed variation to the floor space ratio control, is contained within the envisaged built form envelopes for the site and would not give rise to any new or expanded environmental impacts given it is in conjunction with the overall redevelopment of the site for high-density purposes.

The shadow analysis undertaken by PTW shows the extent of the shadows cast on an hourly basis. This was provided as a comparative analysis against the previous approval for the site. **Figure 9** demonstrates the additional level of overshadowing cast by the proposal, which is mainly confined to the roof of 14 McGill Street. The level of overshadowing generated by this development is also lower than those generated by 14 McGill Street. Through an

analysis of these shadow diagrams, Steve King (in the attachment at **Appendix X** of the SEE) has provided confirmation that the proposal conforms to the envelope limits recommended within his preliminary analysis.

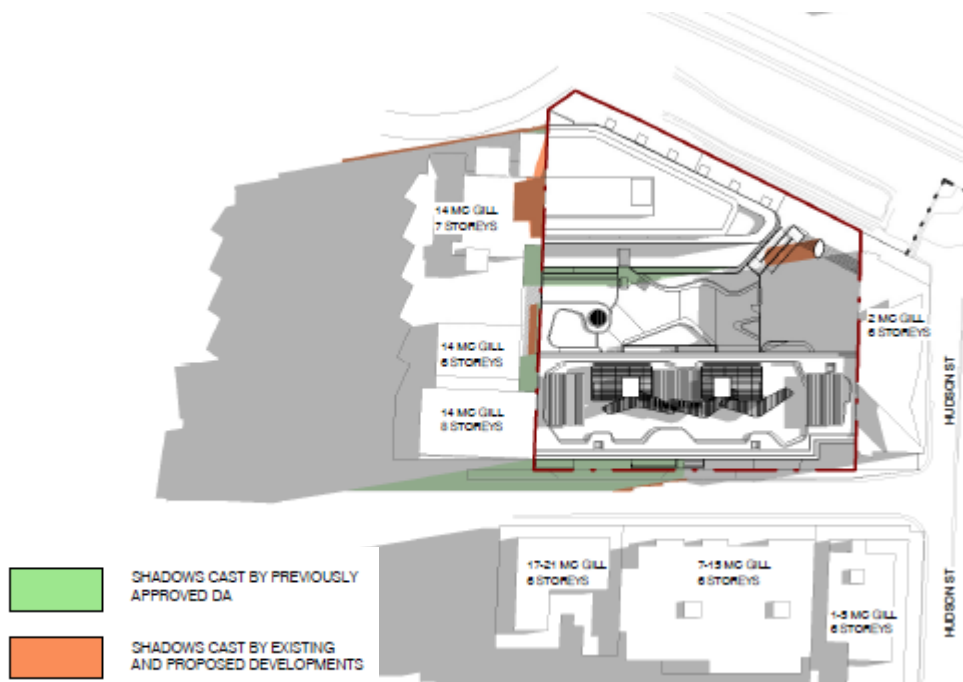


Figure 9 – Shadow Diagrams 21st June 12:00

Source: PTW

The proposal for this site continues to have minimal impact on the redevelopment potential of 2 McGill Street. Submitted with the architectural plans is a concept scheme for the redevelopment of 2 McGill Street, to ensure that it will avoid any potential site isolation issues. Steve King determined that all apartments within any future building at 2 McGill Street, which relies on the northern sun, will all retain a minimum two hours of solar access, regardless of the heights of the buildings at 4-12 McGill Street.

The concept design for 2 McGill Street envisages further ground floor retail uses, which could directly open up onto the public domain and through site link (see **Figure 10**). The single level public domain allows for future commercial uses to 'spill' out onto this area, allowing for an activated space and avoiding site isolation issues for 2 McGill Street. The development of an activated public domain, with various commercial premises opening onto the area, will contribute to the vitality of the McGill Street Precinct, as it continues to develop in association with the Mills Precinct to the west of the Dulwich Hill light rail line.

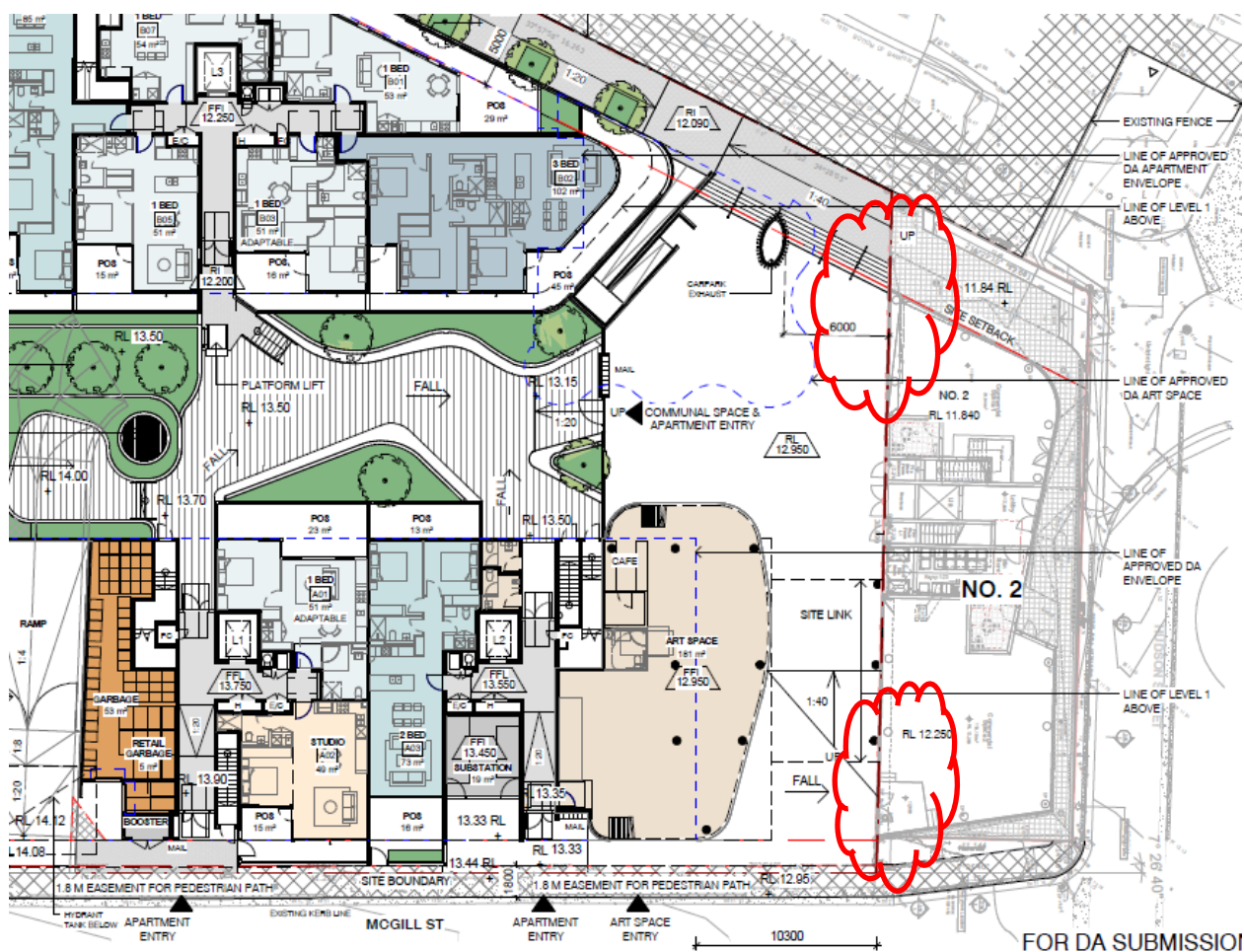


Figure 10 – Ground Floor Plan illustrating 2 McGill Street Commercial Connection

Source: PTW

The residential bridge forms a key component of the overall design. The architectural treatment provides a mesh cladding that differentiates the building materially from the rest of the structure and marks a landmark entry point to the public domain and through site link. It has been lifted to allow for a double storey opening and has been setback from the street frontage, which avoids any sense of enclosure (see **Figure 11**). The provision of a glass exterior for the art space, external lighting on the undercarriage of the bridge as well as through routine maintenance will further reinforce the link as a safe space to use, ensuring that it is a key aspect to activating the public domain.



Figure 11 – Photomontage of the through site link; as viewed from McGill Street

Source: PTW

Notwithstanding the numerical FSR variation, the proposal ensures an overall development outcome for the site that is of a high quality and which accords with the majority of LEP and DCP controls as well as the precinct masterplan. Throughout the design there was a focus on building an appropriate mixed-use development that takes into account the sites constraints and potential impacts on adjoining properties and public domain. The design of the proposed development ensures that there are no unacceptable impacts on neighbouring development, particularly regarding overshadowing, overlooking and privacy.

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

The SEE and previous sections of this report demonstrates that the environmental impacts of the development are acceptable and in many aspects provide a significant improvement on the objectives of the MLEP 2011. The development is considered to result in a number of significant benefits to the current and future local community.

In summary, there are sufficient environmental planning grounds to justify contravening the development standard. They are:

- The development is the result of a thorough site analysis that sought to determine the extent of built form that can be accommodated on site whilst minimising impacts on the surrounding area.
- The proposed FSR variation will result in a bulk and scale that is consistent with the emerging character of the area, with it designed to provide a transition in height and bulk down from 14 McGill Street.

- Full compliance with the development standard would provide a similar level of amenity to surrounding sites whilst failing to meet the objectives of the zone in providing for the housing needs of the community within a high density residential environment.
- The McGill Street Precinct Masterplan contains no requirement for a through site link, and the built form could otherwise be built for the length of the McGill Street frontage. The provision of a through site link opening up into high quality public domain and commercial premises is considered to be an improved outcome.
- The proposal will not result in any significant adverse impacts in terms of visual impact, overshadowing, acoustic or visual privacy or any other built form-related impacts, whereas a compliant built form would potentially limit the ability of the site to meet the desired future character through the provision of a smaller commercial space and a less engaging built form.
- The proposed design does not result in any non-compliance with other development standards.
- The proposed FSR variation does not result in a built form that exceeds or even meets the permissible height limit on site.
- The proposal provides a through site link which is a public benefit not required by any planning instrument.
- The residential bridge has been determined, by a public art consultant, to be a distinctive architectural feature that will serve as a landmark to the entry of a public facility and the precinct. Compliance with the floor space ratio control would result in the removal of this unique structure that will enhance the experience of those using the area.
- The development will allow for significant public domain improvements through the development of an art space that creates an opportunity to bring significant, interesting and international works of art to the neighbourhood, enhancing the experience of those passing or visiting the site. The incorporation of art installations into the public domain will encourage the use of the site and be a valuable addition to the cultural landscape of the Inner West.
- The development's traffic and parking impacts are acceptable and in line with Council's expectations under the DCP.
- The proposed development is consistent with the objectives of the FSR control as highlighted above.

Overall, in light of the above, the proposed variation with the site's FSR control does not result in unacceptable impacts on adjoining sites. Direct compliance with the standard would result in an inferior architectural and urban design outcome and provide less in terms of the housing needs of the community. As such, there are sufficient environment planning grounds to justify varying the development standard.

4.0 The Public Interest

Clause 4.6 (4)(a) (ii) requires that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 development is consistent with the objectives of the particular standard for the reasons set out in **Section 3.1** above, and therefore satisfies this component of the public benefit test in clause 4.6(4)(a)(i).

The subject site is split across two zones, being the B4 Mixed Use zone and R4 High Density Residential zone under MLEP 2011. The proposed development is consistent with the zone objectives as follows:

B4 Mixed Use

Objective 1: To provide a mixture of compatible land uses.

The proposal provides a compatible mixture of compatible land uses that contribute to providing services to meet the day to day needs of residents and to enhance the cultural diversity and enrichment of the surrounding area. The art space will be used as a gallery, education and performance space as well as for the purposes of a small café. This will allow for the addition of a unique cultural venue and the creation of significant public domain for the Inner West and Lewisham that will enrich and activate the area.

Objective 2: To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposal benefits from excellent public transport linkages being within walking distance of Lewisham West light rail station, Lewisham Railway Station, Summer Hill Railway Station as well as various bus routes. This proposal will allow for an art space, which will be used for an array of purposes, to be located in an area which people will access via these different public transport modes.

Objective 3: To support the renewal of specific areas by providing for a broad range of services and employment uses in development which display good design.

The McGill Street precinct and the adjacent Summer Hill Flour Mill precinct are undergoing major renewal as old industrial land uses are replaced with high density residential and mixed commercial uses. The provision of additional housing, a new commercial premises and public domain will provide for a significant and interesting development that displays high quality architectural and urban design, delivers a valuable cultural asset and makes a positive contribution to the character of the precinct.

Objective 4: To promote commercial uses by limiting housing.

The proposal provides limited housing within the B4 zoned land with a maximisation of non-residential land uses and public infrastructure. The only housing located within the B4 zone is located within the residential bridge. This is considered an important design feature in providing for an art intervention that encourages the use of the commercial space and public domain.

Objective 5: To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.

Not applicable

Objective 6: To constrain parking and restrict car use.

The proposal provides a compliant level of car parking facilities. Public and active transport will be used by people accessing the art space.

R4 High Density Residential

Objective 1: To provide for the housing needs of the community within a high density residential environment.

The proposal recognises the need to provide additional housing within the Inner West LGA. The development has been proposed to provide for additional housing needs within a precinct that is currently undergoing rapid change to a high density residential precinct. The proposed scheme has been designed in such a way so as to avoid adverse amenity

impacts on the surrounding high density sites. This will assist in meeting the needs for housing within the Inner West LGA.

Objective 2: To provide a variety of housing types within a high density residential environment.

The proposal provides for a unit typology that is largely consistent with the Marrickville DCP requirements and has been designed specifically to meet the market demands of the locality.

Objective 3: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal provides a compatible mixture of land uses that contribute to providing a valuable cultural addition to the precinct and LGA whilst also meeting the needs of residents. This art space will encourage cultural exchange and understanding between residents through education, art and performances.

Objective 4: To provide for office premises only as part of the conversion of existing industrial and warehouse buildings.

Not applicable.

Objective 5: To provide for office premises and retail premises in existing buildings designed and constructed for commercial purposes.

Not applicable.

Objective 6: To provide for well-connected neighbourhoods that support the use of public transport, walking and cycling.

The proposal increases the interconnected nature of the precinct through the addition of a through site link and activated public domain. This is complemented through the excellent public transport linkages being within walking distance of Lewisham West light rail station, Lewisham Railway Station, Summer Hill Railway Station as well as various bus routes.

Therefore, despite the variation to the numerical FSR development standard, it is considered that the proposed development is consistent with the objectives of both the B4 Mixed Use and R4 High Density Residential zones under the MLEP 2012. Strict compliance with the development standard would likely result in a development that is inconsistent with many of these objectives and inconsistent with the emerging character of the McGill Street Precinct.

5.0 Director-General's Concurrence

It is understood that the Director-General's (now Secretary's) concurrence under clause 4.6(5) of MLEP 2011 has been delegated to Council. The following section provides a response to those matters sets out in clause 4.6(5) which must be considered by Council under its delegated authority:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The proposal demonstrates that the variation to the existing numerical control is acceptable in terms of significance for State and regional environmental planning matters. The proposal provides for a variation to the floor space to provide for an activated and high quality development that will not result in any additional amenity impacts on surrounding properties and will support the State's clear objectives of delivering housing in well located areas that maximise use of public transport infrastructure.

The public benefit of maintaining the development standard.

Maintaining the development standard would be unlikely to result in any public benefit. If the development standard were to be strictly enforced it would presumably limit the site from realising its potential. In particular it is noted that maintenance of the development standard would not deliver additional public benefits as:

- The proposed flexibility in development controls provides a more consistent approach to the architectural and urban design outcomes within the emerging precinct;
- The entire area surrounding Lewisham West light rail station is currently being redeveloped into a high density residential and commercial precinct and there is considered to be a public benefit in facilitating development in close proximity to this transport infrastructure;
- The built form has been designed to an extent to which can be comfortably accommodated on the site whilst ensuring minimal impacts on surrounding areas;
- Maintaining the standard would result in an architectural and urban design outcome that is inferior in its appearance and design.
- The through site link presents an opportunity to provide an engaging, landmark entry to the high quality public domain and commercial premises rather than the presentation of two blank walls that would otherwise be proposed by this site and 2 McGill Street.
- The residential bridge represents a key design feature that ensures the building forms an extension of, and contributes to, the art interventions within the public domain. The maintenance of the development standard would result in the removal of this feature which will be considered a landmark within the local precinct; and
- The site will also contribute to the provision of high quality non-residential land uses on the site in the form of an art space, together with a café. Not only will these uses activate a publicly accessible through-site envisaged by the DCP but will contribute in supporting the McGill Street urban renewal precinct, with minimal adverse environmental impacts expected.
- Given nearby approvals, maintaining the development standard would result in a built form out of context with adjoining sites (see nearby approvals map at **Figure X**).

Any other matters required to be taken into consideration by the Director-General before granting concurrence.

No other matters require consideration by the Director-General.

4.0 Summary

This Clause 4.6 request has been prepared to support a proposal for the redevelopment of land at 4-12 McGill Street, Lewisham into a mixed-use high density development.

This variation request is the result of a thorough site analysis which determined an appropriate building envelope in which to develop a scheme. The architectural plans have proposed a scheme that is considered to be a superior architectural and urban design outcome for the site that complements and integrates with the emerging character for the area. These plans have been further refined to address Councils concerns, ensuring a six storey streetscape is provided along McGill Street and reducing the overall GFA to a level that is consistent with the precinct wide density and in some circumstances less than development in the immediate vicinity.

The assessment contained in this report and the accompanying documents has demonstrated that the proposed scheme will provide high quality residential accommodation for future occupants and well-located non-residential facilities for the benefit of the Lewisham community. These components have been integrated in accordance with the relevant standards and requirements, and will have minimal adverse environmental effects on both future occupiers and the surrounding area.

Overall, this floor space ratio variation request demonstrates Council can be satisfied that:

- The proposal is still entirely consistent with the objectives of the FSR control;
- The proposed density can be accommodated comfortably within the LEP height limit;
- The proposed flexibility in development controls will provide a more consistent approach to the architectural and urban design outcomes within the emerging precinct;
- That there are sufficient environmental planning grounds to justify contravening the development standards, as the additional FSR does not result in a building mass that causes adverse impacts on surrounding areas;
- That the Council have virtually destroyed or abandoned the floor space ratio development standard through their own actions in granting consents on the majority of surrounding sites that depart from the development standard;
- All other requirements relating to height and land use are consistent;
- The development results in public benefits, through significant public domain improvements, provides suitable sustainability measures and is considered to be a better architectural and urban design outcome for the site; and
- The proposal provides for a significant improvement on housing choice together with non-residential support facilities which will offer diversity and will cater for current and future residents of the Inner West.

Overall, the proposal results in the opportunity to develop a site in a way that will have an acceptable impact on adjoining sites whilst allowing for consistent architectural and urban design approach across the emerging precinct.

It is therefore requested that Council recommend approval for the proposed development even though it contravenes the FSR development standard imposed by Marrickville LEP 2011.