

6.0 Variation to Development Standard

Clause 4.6 of the North Sydney Local Environmental Plan 2013 enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6(3)-(5) of the North Sydney LEP provides that:

4.6 Exceptions to development standards

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

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

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

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

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

6.1 Consistency with Common Law Guidance

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

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
5. *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

In accordance with the above requirements, this written clause 4.6 request;

- identifies the development standard to be varied (Section 5.1);
- identifies the variation sought (Section 5.2);
- establishes and justifies that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 5.3);
- demonstrates that there are sufficient environmental planning grounds to justify the contravention (Section 5.4);
- demonstrates that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B3 – Commercial Core zone (Section 1.5); and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence (Section 5.6) namely:
 - whether the contravention of the development standard raises any matter of significance for State or regional environmental planning; and
 - the public benefit of maintaining the development standard; and
 - any other matters require to be taken into consideration by the Secretary before granting concurrence.

Accordingly, development consent can be granted to the proposal despite the proposed contravention of the development standard because pursuant to clause 4.6(4)(a), the consent authority can be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- 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.

6.2 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is clause 4.3 of the North Sydney LEP 2013, relating to the maximum building height.

Clause 4.3 of the LEP is reproduced below in its entirety and an extract of the Height of Buildings Map, to which that clause applies, is reproduced in **Figure 38**.

4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

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

(2A) Despite subclause (2), the height of the street elevation of any building on land in Zone R2 Low Density Residential that is also within a heritage conservation area must not exceed 5.5 metres unless any adjoining buildings with the same street frontage are at least 2 storeys high.

(2B) Despite subclauses (2) and (2A), the maximum height of a building on land in the following zones with a site area of less than 230 square metres (excluding the area of any access handle, access way or right of carriageway) must not exceed 5.5 metres:

- (a) Zone R2 Low Density Residential,*
- (b) Zone R3 Medium Density Residential,*
- (c) Zone R4 High Density Residential.*

(2C) (Repealed)



Figure 38 – Extract of Height of Buildings Map
Source: North Sydney LEP 2013

A maximum building height of 130RL applies to the site (zoned B3 Commercial Core).

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the North Sydney LEP. Clause 4.6 provides that the maximum height shown on the Height of Buildings Map (sheet 002A) for the Site is 130RL m].

As outlined in Section 3 of this report and illustrated on the Architectural Drawings prepared by FJMT Architects (Appendix A), the proposed development comprises the construction, use and fit-out of a 23 storey (excluding plant) commercial office building to a maximum height of RL 139.90, resulting in a 7.1% exceedance of the 130 RL height standard (9.90 metres).

The principle reason for the contravention of the maximum Height of Buildings development standard is the need to respond to the site area of 1,146m² yet provide a functional commercial floor plate and to accommodate an A-Grade commercial building.

6.3 Justification for Contravention of the Development Standard

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

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

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2FivePty Ltd v Ashfield Council* at [61] and [62]).

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

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 Method**).
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 Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method outlined in *Wehbe*.

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

Sections 5.1 to 5.4 address the matters in clause 4.6(3)(a), in particular how the objectives of the maximum height development standard are achieved notwithstanding the non-compliance with the numerical control.

The underlying objectives or purposes of the development standard
The objectives of the development standard contained in clause 4.3 of the North Sydney LEP are:

- a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- b) To promote the retention and, if appropriate, sharing of existing views,
- c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- e) To ensure compatibility between development, particularly at zone boundaries,
- f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of an area.

The proposed optimised DA scheme satisfies the objectives of the height of buildings development standard, notwithstanding the non-compliance with the height control, as set out below in Table 8.

Table 8 – Assessment against the objectives of the height development standard

Objective	Proposal
a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient.	A carefully considered urban form is proposed that enhances the streetscape and public spaces while creating an innovative and refined landmark tower unique to North Sydney. The site has a 2 metre fall from west to east and proposed design responds to the natural gradient accordingly.
b) To promote the retention and, if appropriate, sharing of existing views.	View impact is fully considered in the View Impact Analysis within Section 4.5. The view analysis that has been undertaken has informed this amendment to the Clause 4.6 Variation request. The analysis demonstrates that the impact on views that would be caused by the non-compliance with the height control will be acceptable.
c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development.	Shadow diagrams for the proposed development are included within the architectural drawings provided at Appendix A. The diagrams illustrate that there will be no additional overshadowing to the Mount Street Public Domain (as the nearest specified locations) as a result of the proposed development in accordance with LEP requirements. As detailed within Section 4.5 of this report, it is acknowledged that the proposal will result in a increase in shadow impact, notwithstanding, the shadow impacts are limited in duration and are considered to be acceptable. The resulting shadow will largely fall over the Warringah Freeway with shadow impact on more sensitive land uses (public recreation and residential) limited to between 2.15pm and 3pm. Further, the shadow impact on the residential dwellings at 1-15 Whaling Road, North Sydney will be limited to between 2.55pm and 3pm in mid-winter. It is considered the extent of the shadow impacts on the land zoned RE1 and the residential dwellings fronting Whaling Road has been minimised, with a small number of developments impacted for a limited duration to the later afternoon. Impact on adjoining buildings in terms of solar access results largely from the compliant elements of the building. Additional impact from the height variation is limited.
d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.	The privacy of the adjoining buildings is not to be detrimentally impacted by the component of the building which varies from the height control as only 3.4 metres (of the proposed 9.9 metre height exceedance) is habitable floorspace (equivalent to one floors) and the proposed commercial office building is surrounded by similar commercial buildings, reducing the privacy sensitivities. The proposed exceedance to the height standard relates will not cause any loss of privacy to surrounding residents.
e) To ensure compatibility between development, particularly at zone boundaries.	The proposed development will provide a compatible use to those in the surrounding area. All of the buildings in the immediate vicinity are commercial office buildings with ground floor retail activation. The commercial use will be entirely in keeping with the existing development, and it will also be consistent with the uses appropriate to the location of the site in the centre of North Sydney and in close proximity to public transport and employment. The height of the building has been designed in order to provide visual compatibility with the adjoining buildings, allowing an appropriate stepped transition in height of buildings as required by the North Sydney Centre controls. As such it provides an appropriate scale and density of development in accordance with the existing and desired future character of the area. The proposed building height does not alter the visual compatibility of the design.

- f) To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of an area.
- It is considered that the proposed height results in a scale and density of development that is in accordance with, and promotes the character of the area. The proposal is situated in a B3 Commercial Core zone and is subject to a height limit of 130 RL. As such, the locality is earmarked for higher density commercial development. The proposed height variation to the development standard of 7.1% is considered appropriate for the site in light of the surrounding context and given the site is identified for future increase in height under the LEP (see **Figure 28**).
- The surrounding developments are generally of a larger scale with a number of recently approved developments with similar heights located in proximity to the site. These include 177-199 Pacific Highway, North Sydney that has a maximum height of 32 storeys (195 RL); 96-108 Arthur Street that reaches 25 storeys in height, and 80 Arthur Street that accommodates a 29 storey (130 RL) building.
- In accordance with the North Sydney LEP Height of Buildings map the central core of the North Sydney CBD is to accommodate denser development with developments reaching a maximum height of 195 RL. Reduced building heights are to be located towards the edges of the CBD to create an appropriate height transition. Consistent with this desired built form, existing buildings to the north and south of the site have permissible heights ranging from 120 RL to 145 RL.
- The proposal provides a height of 139.9 RL and therefore achieves an appropriate height transition line consistent with the built form in the locality.
- The proposal comprises two components; a taller component to the north and a shorter component to the south that combined create a stepped built form. The stepped built form helps to reduce the perceived bulk and scale of the development and assists with achieving the appearance of a fine grained built form at the perimeters of the North Sydney CBD.
- The future character of the area is envisaged to promote appropriate employment opportunities through the delivery of medium to high rise commercial development. The promotion of employment opportunities is integral to achieving North Sydney's status as a Global Strategic Centre. The additional height will permit the development that achieves an A-Grade Commercial rating and provides workers with a high standard of amenity and attracts A-Grade tenants. Therefore, the proposal will contribute to promoting North Sydney's status as a Global Strategic Centre.

6.3.2 Other reasons why compliance is unreasonable or unnecessary

Compliance with the maximum building height standard is also unnecessary in these circumstances because a better planning outcome for the site as a whole and the community generally can be achieved as a result of the non-compliance. As outlined below.

The development is an integrated proposal that will deliver high quality commercial floor space to meet the existing and future demands of the North Sydney City Centre. It is appropriate that these benefits be maximised within the environmental opportunities and constraints of the site.

The objectives of the maximum height development standard are achieved notwithstanding non-compliance with the standard. The amended height has been reduced to 139.97 RL (with no NLA above the permissible height 130 RL) and further contributes to the achievement of the objectives of the height control regarding amenity impacts and the sites locational characteristics. Furthermore, the strategic intent of Council for this site, is to consider a building of far greater height. Whilst we recognize that this intent has yet to formally be considered in a Planning Proposal, significant works have been undertaken by Council to analysis the impacts of greater height. It is therefore unnecessary to be strictly bound to the current LEP height control considering the strategic intent of Council for this, and other, CBD sites. This is discussed in greater detail below.

An updated view analysis prepared by FJMT demonstrates that the impact on views that would be caused by the proposed non-compliance are largely comparable to a compliant building height.

North Sydney Council's Draft North Sydney Centre Capacity and Land Use Study

North Sydney Council has prepared a draft Capacity and Land Use Study for the North Sydney Centre, which makes recommendations to facilitate the future growth of the Centre while protecting sunlight to key public spaces (currently on public exhibition until mid-December 2016).

The 'Capacity and Land Use Study' forms part of the North Sydney Centre Review which was launched in 2014 to help the Centre maintain and improve its status as a major employment and commercial core within the Sydney Metro as part of the 'Sydney Global Economic Corridor'.

Two key factors that have contributed to the desire to facilitate growth in the Centre include:

- The NSW Government's 'A Plan for Growing Sydney' has forecast 190,000 new office jobs in Sydney within the next 15 years, a significant proportion of which will derive from North Sydney.
- The new Victoria Cross Metro station will be located within the North Sydney Centre and will be in walking distance of the site.

In review of the Draft Study, four (4) key recommendations have been presented as the optimal means to facilitate growth whilst protecting sunlight to key public spaces :

1. Increase height controls on certain sites;
2. Amend Special Areas controls;
3. Prohibit serviced apartments in the B3 Commercial Core Zone; and
4. Review the North Sydney DCP.

These recommendations were partly informed by a Floor Space Capacity Study which ascertained that, under existing controls, there is capacity for a 42% increase in commercial floor space above existing floor space, and a 92% increase if the height controls were amended to restrict additional overshadowing of residential land outside the Centre between 10am to 2pm (as opposed to the current controls which restrict additional overshadowing between 9am to 3pm).

Recommendation 1 and 4 are of particular relevance to the proposed development and the proposed building height.

Recommendation 1: Changes to height controls

Currently, building height in the North Sydney Centre is controlled by:

- maximum reduced levels (RLs) for individual sites based on a composite shadow study for the North Sydney CBD;
- a prohibition on a net increase in overshadowing between 12pm and 2pm on land within the RE1 Public Recreation Zone and land identified as a Special Area;
- a prohibition on a net increase in overshadowing between 10am and 2pm of the Don Bank Museum; and
- allowing development to exceed the maximum RL, provided any increase in overshadowing between 9am and 3pm is not likely to reduce the amenity of any dwelling located outside of the North Sydney Centre.

The Study recommends the following changes to the height controls to facilitate growth:

- increases to the maximum RLs on certain sites (see **Figure 39** below); and
- a slightly reduced timeframe of protection to residential land outside of the North Sydney Centre – i.e. 10am to 2pm instead of 9am to 3pm (a 33% reduction).

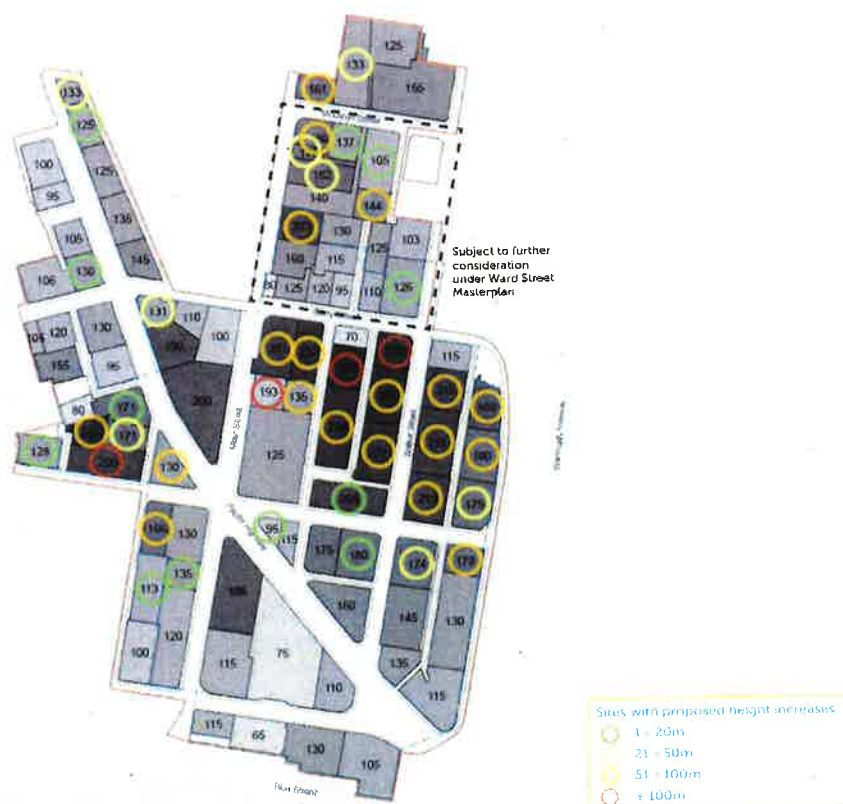
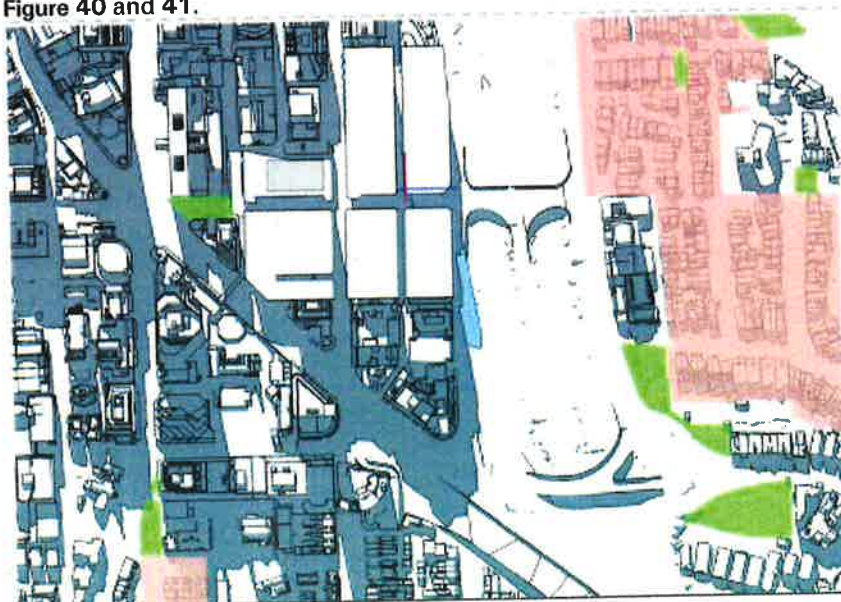


Figure 39 – Indicative Future Building Height Controls (RLs)
Source: North Sydney Council

As outlined within Section 4.5 of this report, the proposal has been assessed in terms of solar impact on land zoned RE1 Public Recreation and is found to not result on any impact on RE1 zoned land between 12pm and 2pm as shown on Figure 40 and 41.



Shadow Study Jun 21st 12:00

NO SHADOW IMPACT ON RE1 ZONES

Figure 40 – Shadow Impact at 12pm on June 21st
Source: FJMT



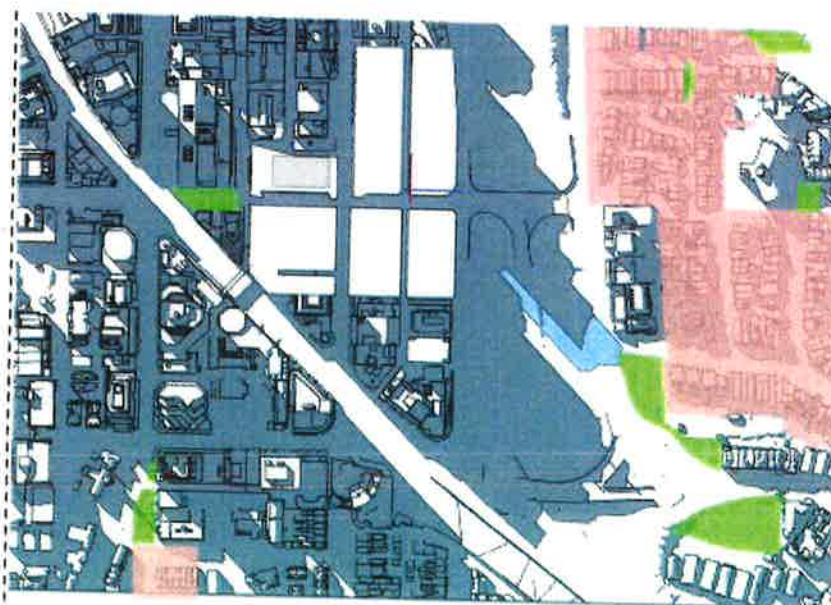
Shadow Study Jun 21st 14:00

NO SHADOW IMPACT ON RE1 ZONES

Figure 41 – Shadow Impact at 2pm on June 21st

Source: FJMT

It is acknowledged that the proposal will result in an increase in shadow impact, notwithstanding, the shadow impacts are limited in duration and are considered to be acceptable. The resulting shadow will largely fall over the Warringah Freeway with shadow impact on more sensitive land uses (public recreation and residential) limited to between 2.15pm and 3pm (as demonstrated in Figure 42 and 43).



Shadow Study Jun 21st 14:15

Figure 42 – Shadow impact to land zoned RE1 and R2 at 2.15pm on June 21st

Source: FJMT



Shadow Study Jun 21st 15:00

Figure 43 – Shadow impact to land zoned RE1 and R2 at 3pm on June 21st
Source: FJMT

The proposal is entirely consistent with the Draft Study which recommends a slightly reduced timeframe of protection to residential land outside of the North Sydney Centre (i.e. 10am to 2pm instead of 9am to 3pm). The proposal will not result in any solar impact on residential land outside of the North Sydney Centre between 10am and 2pm.

Recommendation 4: Review the North Sydney DCP

Whilst the Draft Study does not seek to address detailed built form controls for the Centre it does recommend that a detailed review of the commercial development controls and North Sydney-specific planning controls in the North Sydney DCP.

This would involve the consideration of existing built form objectives, and the assessment of current controls in delivering on those objectives, including the following built form elements:

- podium and tower controls;
- tower separations controls;
- street and laneway frontage activation;
- awnings;
- small sites;
- providing spaces for specific land uses; and
- incentivising / requiring specific land uses.

In light of the proposed departure from the DCP setback controls sought as part of this application, Council's consideration of the existing built form objectives and assessment of the current controls is timely. As detailed within Section 4.4, the proposed setbacks do not detrimentally impact the neighbouring properties, with no additional loss of solar access and an improved ground amenity through expansion of the publicly accessible area and an activated podium.

The recommendations of the Draft Study to be adopted by Council we are of the opinion that consideration of the existing setbacks controls would clearly show that proposed zero setback treatment to both Mount Street and Little Walker Street are appropriate design responses and align with the existing built form on both streets.

Given the subject site at 118 Mount Street, North Sydney has been specifically identified by North Sydney Council's Draft North Sydney Centre Capacity and Land Use Study for a proposed height increase to 179RL, it is considered that the proposed height of 139.9RL is entirely consistent with the Capacity and Land Use Study and an appropriate location for an uplift in building height. Compliance with the existing maximum building height of 130RL is therefore considered to be unreasonable and unnecessary in this instance and the proposed building height of 139.9RL a more appropriate design outcome consistent with the desired future character of the North Sydney CBD.

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

There are sufficient environmental planning grounds to justify a flexible approach to the application of the building height control as it applies to the site. The non-compliance with the building height control results from the opportunity to provide additional commercial floor space and offer significant activation of the site and public domain at ground level, whilst recognising the site's contextual relationship and future desired character.

Clause 4.6(3)(b) of the North Sydney LEP 2013 requires that a proposed variation to a development standard demonstrates *that there are sufficient environmental planning grounds to justify contravening the development standard*. As discussed previously in this report, it is considered that there is adequate planning justification to support the non-compliance of the proposed building:

- The proposed development is consistent with the objectives of the Zone and also with the objectives of the Height of Building development standard in the North Sydney LEP;
- The non-compliant element does not add to the visual bulk and scale of the building to that of a compliant scheme;
- 118 Mount Street along with 100 Arthur Street combine to form the 'gateway to Mount Street, which is a highly visible environmental cue to the pedestrian link between North Sydney and Kirribilli along the Mount Street overpass.
- Tower height is consistent with skyline and reflective of natural ground lines and landforms.
- No significant ground level public amenity within the shadow profile of the proposal.
- No additional overshadowing to Mount Street relative to a fully compliant envelope.
- Stepped roof from calibrated to optimise solar access.

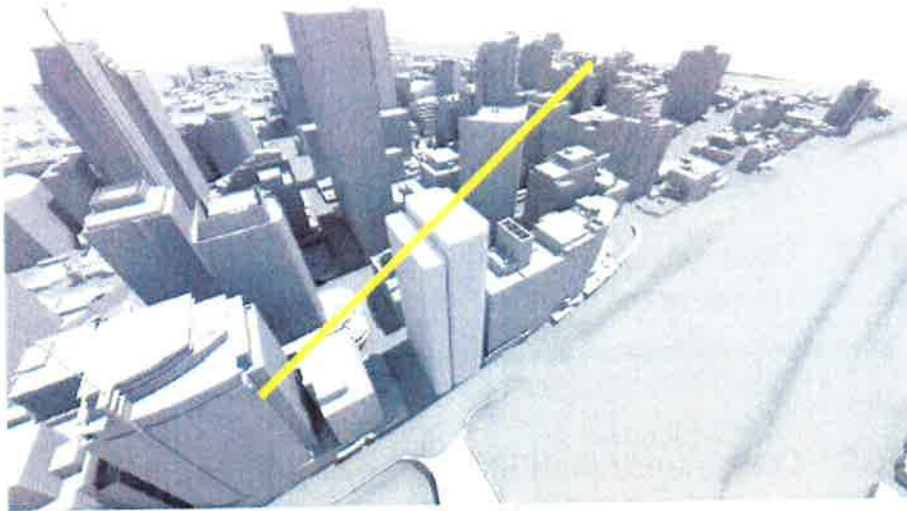


Figure 44 – Stepped form to the north working with sun access
Source: FJMT

- Marginal late afternoon 3pm June 21 impacts for densely vegetated dwellings to the south east.
- Solar analysis submitted at **Appendix A** illustrates overshadowing from existing evergreen landscape to be significant.
- Maintains privacy to residents of existing dwellings, namely the 88 Walker Street development to the north east which includes a hotel component.
- The proposed building design and massing will result in a positive contribution to the streetscape and broader precinct.
- The overall height of the development is appropriate for the site and its context.
- The proposed height variation will not result in a building form that is inconsistent with the desired character with the surrounding area and does not result in a non-compliance with other development standards.

In light of the above it is considered that there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical building height standard in this instance. Rather, there are clear and justifiable environmental planning merits which justify the application of flexibility allowed by clause 4.6.

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

6.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum building height development standard, for the reasons discussed in Section 5.2.1 of this report.

6.5.2 Consistency with objectives of the zone

The proposed development exceeds the maximum height standard in the B3 Commercial Core zone. The objectives of the B3 zone are required to be considered in determining whether the variation to exceed the applicable height standards is supportable.

B3 Commercial Core Zone

The objectives of the B3 Commercial Core Zone are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To prohibit further residential development in the core of the North Sydney Centre.*
- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

The proposal in its entirety satisfies the B3 zone objectives as it:

- Provides for a range of retail (at ground floor) and office land uses that will service the needs of the local and wider community.
- Will directly encourage employment both during construction and throughout the life of the building.
- Limits the provision of car parking and offers 159 bicycle spaces for tenants and an additional 59 bicycle spaces for visitors to directly encourage cycling within the North Sydney CBD.
- Improves streetscape amenity at the corner of Arthur Street and Mount Street to strengthen the pedestrian link between North Sydney and Kirribilli along the Mount Street overpass.
- The proposal does not incorporate any residential component and as such prohibits further residential development in the core of the North Sydney Centre.
- As detailed within Section 5.3, the proposal will not result in any undue environmental impact.

Despite non-compliance with the numerical maximum building height control, it is considered that the proposed building height is consistent with the objectives of the B3 Commercial Core Zones of the North Sydney LEP 2013.

6.6 Other Matters for Consideration

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

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

These matters are addressed in detail below.

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

The variation of the building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney.

The NSW Government's 'A Plan for Growing Sydney' has forecast 190,000 new office jobs in Sydney within the next 15 years, a significant proportion of which will derive from North Sydney. The draft Capacity and Land Use Study for the North Sydney Centre has identified a need for an uplift in building heights to accommodate an increase in floor space with the North Sydney CBD and aid in achieving the new office jobs target identified within the metropolitan plan for Sydney.

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

There is no public benefit in maintaining the numerical building height development standard in this instance. In fact strictly adhering to the maximum height development standard would result in a worse public outcome for the site. Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this underutilised site.

6.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

In addition to the matters already mentioned, it is worth noting that the proposed variation to the maximum height development standard will not set an undesirable precedent in the area and the maximum height controls are specific only to this site.

The height variation has limited detrimental impact on the amenity of surrounding properties or future users of the site when compared to a compliant scheme.

If the current development standard was maintained, it would limit the site from realising its full development potential and inhibit the orderly and economic use of the land and achievement of commercial floor space targets within the North Sydney CBD.

6.7 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 4.3 of the North Sydney LEP is ~~unreasonable and unnecessary in the circumstances of the case and that the~~ justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum building height development standard, the proposal achieves the following:

- the objectives of the maximum height development standard are achieved notwithstanding the variation to the numerical control;
- the proposed flexible application of controls that better achieves planning outcomes than would be attained by strict adherence to the controls across the development site;
- is in the public interest as the proposal remains consistent with the applicable land use zones and development standards;
- is compatible with the scale and character of the area and will not have adverse amenity impacts on surrounding land;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance;
- there is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site; and
- legal precedent has been taken into account and addressed as part of this clause 4.6 variation request.

This clause 4.6 request demonstrates that the proposed development will deliver a holistically better outcome for Council and the North Sydney CBD. Overall, the proposal results in the opportunity to establish a high quality development that positively contributes to the precinct and provides significant public benefits. For the reasons set out in this written request the development should be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the North Sydney LEP.

If this clause 4.6 variation request is not upheld, realistically the applicant can pursue a compliant development application to reduce the overall building height in accordance with the existing maximum 130RL however the compliant outcome would result in a less desirable design outcome and would not be consistent with Council desired future character for the North Sydney CBD as detailed in the recent Draft North Sydney Centre Capacity and Land Use Study.

7.0 Conclusion

Approval is sought for:

- demolition of the existing building that occupies the future development site;
- excavation of the site;
- provision of a 3 level basement car park, accessed from Arthur Street comprising 38 car parking spaces, 1 share car space, 5 motorcycle bays, and 215 bicycle spaces.
- construction, use and fit-out of a 29 storey (including plant) commercial office building comprising 19,040m² of GFA;
- construction of podium to include a retail component, commercial tower lobby, car park entry, loading dock and end of trip facilities;
- a new median to Arthur Street;
- signage locations, and
- provision of landscaping and stormwater infrastructure.

The proposed development will contribute towards strengthening Sydney's role as a globally competitive City, by supporting business activities and ensuring adequate capacity for new and upgraded office accommodation in the North Sydney CBD.

Upon completion, the final project will deliver, amongst many other benefits:

- replacing existing building with poor ESD performance, with a new building that will achieve a 5 Star Green Star rating and 5 Star NABERS energy rating;
- enhancing the physical appearance of the site by providing a new building which achieves design excellence, in place of out dated building;
- enhancing the building's relationship with the ground plane and surrounding public domain; and
- providing PCA Premium Grade commercial office space, commensurate with the prime North Sydney CBD location.

The proposed development is also consistent with *A Plan for Growing Sydney* and will reinforce Sydney's global competitiveness through the provision of high quality office space and increased employment opportunities.

Further, the proposed development is the result of a proponent led competitive design process to ensure design excellence was achieved. The scheme does not result in any adverse environmental impacts with respect to overshadowing, heritage, streetscape impacts, traffic generation, views and sightlines, wind, noise or reflectivity.

In view of the above, the proposed development is acceptable in terms of the matters for consideration under section 79C(1) of the Act. Accordingly, the DA is considered worthy of Council's support and we have no hesitation in recommending that the application be approved.

