

**WOOLLAHRA LEP 2012
Clause 4.6 Exceptions
to Development
Standards – Floor Space
Ratio (FSR)**

Proposed Demolition of Existing Buildings and
Construction of a New Mixed-Use Development at

**No. 33 Cross Street,
Double Bay**

Prepared for:

**Cross St Double Bay Pty Ltd ATF Cross Street Double
Bay Unit Trust**

Prepared by:

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WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2012

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Cross St Double Bay Pty Ltd ATF Cross Street Double Bay Unit Trust

SITE ADDRESS: No. 33 Cross Street, Double Bay

PROPOSAL: Proposed demolition of existing building and construction of a new mixed-use development

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

Woollahra Local Environmental Plan (LEP) 2012

(ii) The land is zoned:

E1 Local Centre Zone. The objectives of the E1 Zone are as stated:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*
- *To ensure development is of a height and scale that achieves the desired future character of the local centre.*
- *To encourage development that is compatible with the local centre's position in the centres hierarchy.*
- *To ensure development provides diverse and active ground floor uses to contribute to vibrant and functional streets and public spaces.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage the retention and planting of trees and other vegetation as part of development to minimise the urban heat island effect and to improve microclimates.*

(iii) The number of the relevant clause therein:

Clause 4.4 – Floor Space Ratio which is stated as follows:

4.4 Floor space ratio

(1) *The objectives of this clause are as follows—*

(a) *for development in Zone R3 Medium Density Residential—*

(i) *to ensure the bulk and scale of new development is compatible with the desired future character of the area, and*

(ii) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and*

(iii) *to ensure that development allows adequate provision on the land for deep soil planting, tree canopy cover and areas of private open space,*

(b) *for buildings in Zone E1 Local Centre and Zone MU1 Mixed Use—to ensure that buildings are*

compatible with the desired future character of the area in terms of bulk and scale.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) (Repealed)

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 achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

2.1 Existing & Approved Building Envelope within Subject Site

- **Existing Building**

The site is currently occupied by the InterContinental Hotel Double Bay, a six-storey mixed-use development comprising two levels of basement parking. The site comprises retail uses at the ground floor level, hotel and a function space. The building has a maximum height of 28.65m (measured from the lift overrun at RL 32.67 to the natural ground level immediately below at RL 4.02) and a GFA of 19,545m², equivalent to a floor space ratio (FSR) of 5.32:1. It is noted that the figure regarding the gross floor area is derived from previously approved documents, based on the LEP and definitions at that time, which differ from the current LEP and calculation methods.

- **Approved Building (DA 671/2010)**

This Development Application (DA 671/2010) and subsequent Section 96 Modification were approved for an eight-storey built form (seven effectively with mezzanine floor and eight-storey volume), with a maximum height of 26.13m (measured from the lift overrun at RL 30.15 to the natural ground level immediately below at RL 4.02) and an FSR of 5.04:1. However, this approval has not been implemented. It is noted that the figure regarding the gross floor area is derived from previously approved documents, based on the LEP and definitions at that time, which differ from the current LEP and calculation methods.

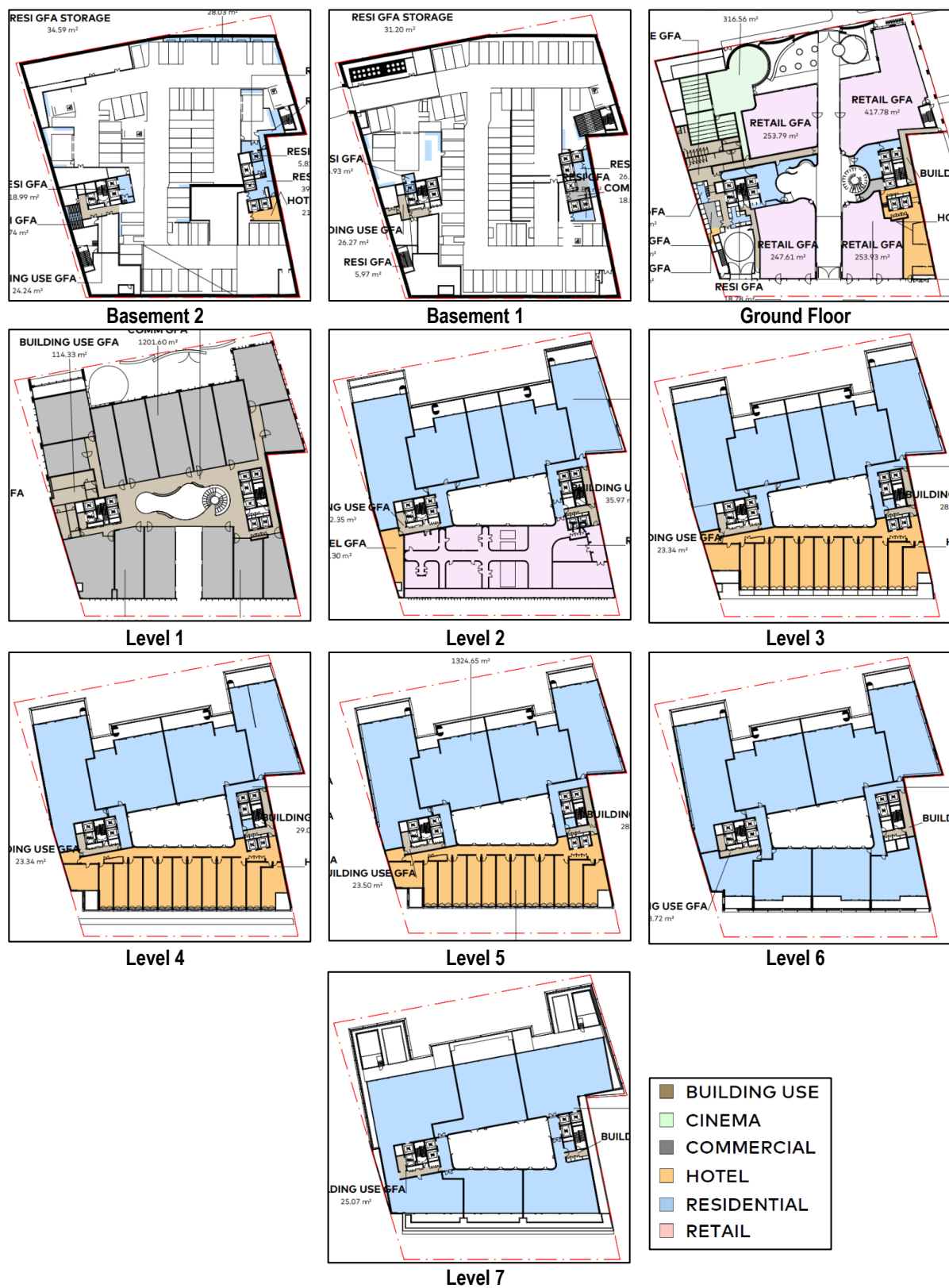
3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the FSR Map which indicates a maximum 2.5:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The subject site has a total site area of 3,674m² and the proposed eight storey mixed-use development will have a gross floor area (GFA) of 17,009.24m², with an FSR of 4.63:1 (see **Table 1** and **Figure 1** on the following page). This result in a departure of 85.13% from the development standard.

TABLE 1: DETAILS OF THE PROPOSAL		
Floor Level	Details by Level	GFA
Basement 2 (RL -2.90 AHD)	66 vehicular parking spaces (35 residents + 9 hotel + 20 retail + 2 car wash), a hot water plant room, a domestic hot water room, bulky waste room, substation room, SCADA room, main switch room, car park exhaust fan room, residential and hotel lobbies, private penthouse garage and lobby, storages, a ramp to Basement 1 Level, and a main communications room	220.91m ²
Basement 1 (RL 0.30 AHD)	76 vehicular parking spaces (2 residents + 6 hotel + 37 retail + 29 commercial + 2 car share), bicycle storage, rainwater tank and rainwater pumps rooms, storages, fire pump room, cold water room, and lobbies.	126.31m ²
Ground Floor (RL 3.85 AHD)	A through-site pedestrian pathway, a courtyard garden; an atrium surrounded by two circulation zones (including two staircases and 10 lifts) and architectural staircases leading to Level 1; four retail tenancies, three cinemas, a hotel lobby/entrance; waste rooms; and a loading bay with a vehicle turntable.	2,083.41m ²
Level 1 (RL 7.65 AHD)	14 commercial (office) spaces, restroom spaces, two circulation zones, and a communal space surround the atrium void	2,466.95m ²
Level 2 (RL 11.35 AHD)	A wellness centre, 5 x residential units, and two circulation zones.	2,266.09m ²
Level 3 (RL 14.65 AHD)	13 x hotel rooms, five residential units, and two circulation zones.	2,103.74m ²
Level 4 (RL 17.95 AHD)	13 x hotel rooms, 4 x 3-bedroom units and two circulation zones.	2,101.79m ²
Level 5 (RL 21.25 AHD)	13 x hotel rooms, 4 x 3-bedroom units and two circulation zones.	2,102.68m ²
Level 6 (RL 24.55 AHD)	8 units (1 x 1-bedroom unit, 2 x 2-bedroom (+) units and 1 x 2-bedroom unit and 4 x 3-bedroom units); two circulation zones	1,991.89m ²
Level 7 (RL 27.85 AHD)	3 x 4-bedroom penthouse units and two circulation zones.	1,545.44m ²
TOTAL	4 retail tenancies and 3 cinemas; 14 office spaces; A wellness centre; A hotel with 39 rooms; 29 residential units and 142 car spaces	Retail GFA: 2,018.04m² Commercial/Office GFA: 2,000.61m²; Hotel GFA: 2,389.25m²; Cinema GFA: 316.56m², Building Use GFA: 1,118.53m², Residential GFA: 9,166.24m²
	17,009.24m²	

Of the total GFA of 17,009.24m², the non-residential component will occupy 7,843m², which equates to 46.11% of the total GFA. This includes 2,018.04m² dedicated to retail, 2,389.25m² for the hotel, 316.56m² for cinemas, 2,000.61m² for office use and 1,118.53m² for building use.



Source: COX Architecture

Figure 1: Diagram Showing GFA Calculations

The proposal aims to replace the existing aged hotel with a thoughtfully designed mixed-use development. This new development will feature 4 retail tenancies and 3 cinemas on the ground floor, office spaces on Level 1, a wellness centre on Level 2, a hotel spanning Levels 3 to 5 and residential apartments from Levels 2 to 7.

The proposed FSR exceedance is mainly due to the provision of non-residential floor space on the lower levels, in response to the LEP zoning objectives, Double Bay and Cross Street precinct desired characters under the DCP, as well as principles and strategies outlined in the Double Bay Centre Planning and Urban Design Strategy 2023. If the proposal is for a shop-top housing development, same as the nearby approvals, the proposed gross floor space will be 11,184.28m² (only including the ground floor space for retail and the residential floor space on upper levels), resulting in an FSR of 3.04:1 that is closer to the LEP standard and lower than the nearby approved FSRs.

Unlike nearby approved six-storey shop-top housing developments, which offer limited non-residential use on the ground floor, the proposed additional floor spaces allow to feature a diverse range of non-residential options that enhance the vibrancy of the locality. By offering high-end retail and lifestyle options, this proposal will create a new landmark and anchor, enriching the community and attract visitors, creating a significant opportunity to elevate the area's appeal and contribute to its dynamic character.

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:

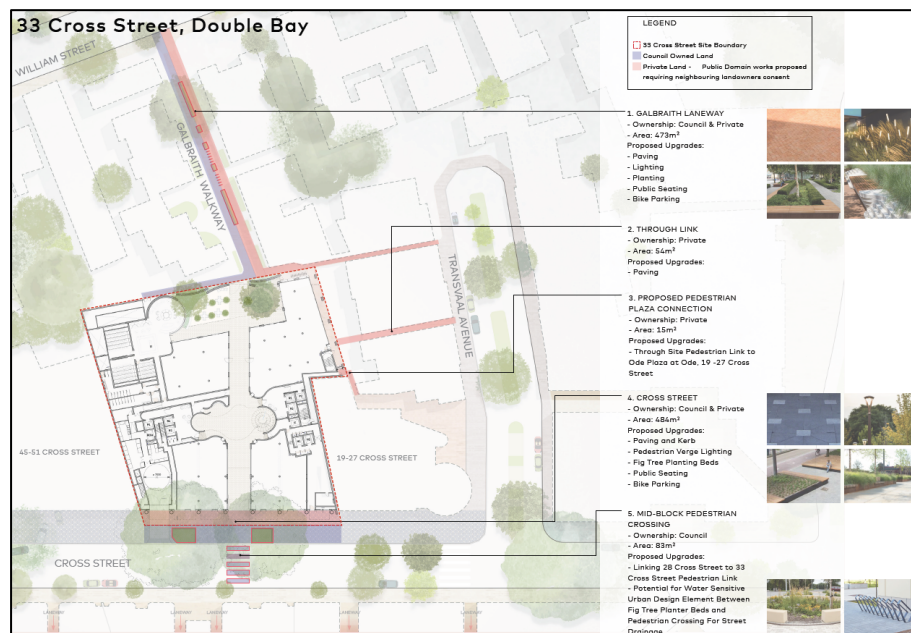
Objective (a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development,
Objective (b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The additional FSR will allow a well-designed building that will be consistent with, and contribute to, the evolving character of the Double Bay Centre. The proposed mixed-use development includes a variety of non-residential uses on the lower levels, such as retail, office spaces, cinemas, a wellness centre, and a hotel. This diverse mix will significantly enhance the area's economic viability and serve the public interest. The outcomes of the proposal will be summarised below:

- The proposed redevelopment of the subject site is a unique opportunity to transform an outdated hotel into a world-class, sustainable mixed-use lifestyle destination;
- The surrounding development in Double Bay Centre has been subject to various development approvals that reflect the evolving nature of the centre precinct, with an increase in building heights up to six storeys and FSR breaching the council's development standards;
- The proposed development, while it will be one storey higher than the approved development on

the subject site (DA 671/2010), aligns with the recently approved character of development located along Cross Street and wider Double Bay Centre.

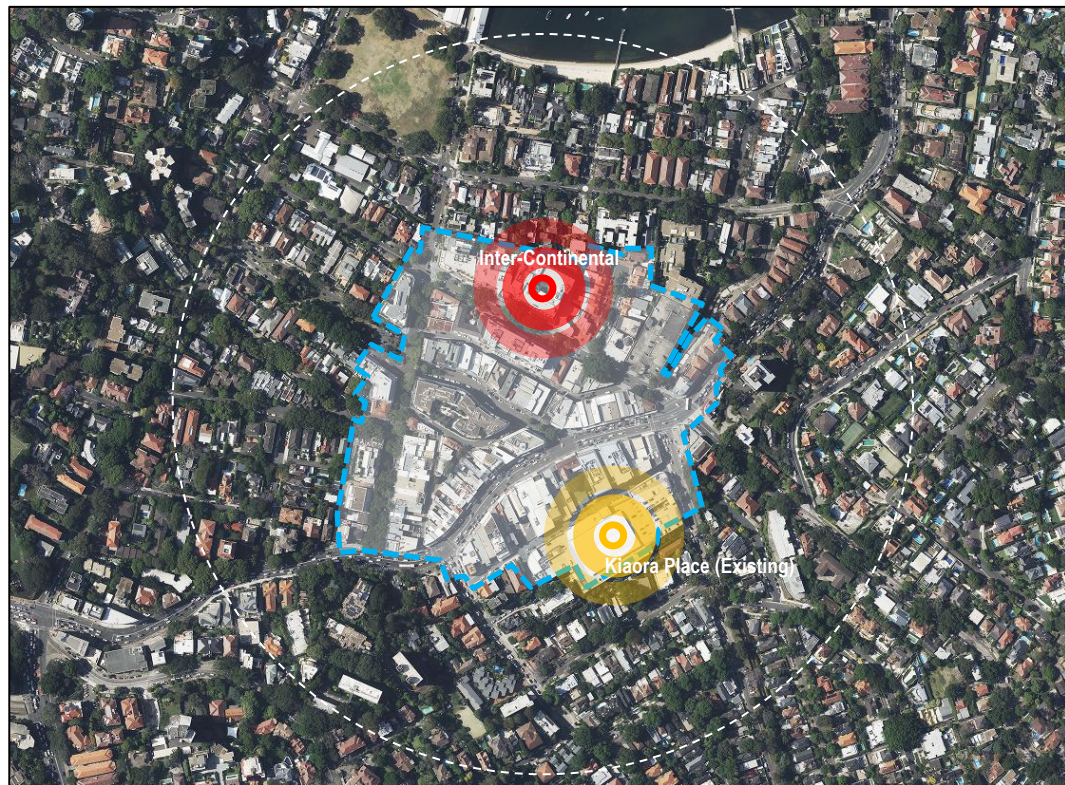
- The proposed building height aligns with the existing building as the highest point of the proposed roof matches the level of the existing lift overrun at RL 32.67 while providing additional non-residential and residential uses.
- The proposed building envelope has been carefully minimised, which achieved by adequate setbacks and other urban design measures. The topmost three levels have further recessed from the main building edges. This design ensures minimal impact on the surrounding residential areas, maintaining solar access, visual and acoustic privacy, and preserving views.
- The proposed street wall height has been carefully designed with additional setbacks on the upper levels to consistency with the street wall height along Cross Street and the recently approved building envelope at Nos. 19-27 Cross Street (DA 321/2010).
- The proposed development will encompass a mixed-use approach by incorporating 46% of the GFA dedicated to non-residential uses which include retail, cinema, office and hotel/wellness with the remainder of the development comprising residential units.
- The proposed mixed-use development at No. 33 Cross Street, unlike nearby six-storey shop-top housing projects, will offer a variety of non-residential uses, creating a new landmark destination similar to Kiaora Place in the southeast, with high-end retail and lifestyle options that enhance the area's vibrancy and appeal for both residents and visitors.
- A range of public domain upgrades will be implemented to improve connectivity between the subject site and surrounding properties, enhancing community amenities. These upgrades include, but are not limited to, the following (see **Figure 2**):
 - Improvements to Galbraith Laneway, including paving, lighting, planting, public seating and bike parking.
 - Upgrade paving for the existing through link to Transvaal Avenue.
 - New through-site pedestrian connection link to Ode Plaza at No. 19-27 Cross Street.
 - Improvements to Cross Street, including paving and kerb, pedestrian verge lighting, fig tree planting beds, public seating and bike parking.
 - A new mid-block pedestrian crossing on Cross Street, connecting No. 28 Cross Street and the subject site at No. 33 Cross Street, and other potential works for Water Sensitive Urban Design (WSUD) element between fig planter beds and the pedestrian crossing for street drainage.



Source: COX Architecture

Figure 2: Proposed Public Domain Upgrades

It is noted that a number of buildings in the surrounding area are subject to development applications to construct developments up to six storeys with non-compliant FSRs, many with approvals from the Council or Court. However, unlike these nearby approvals for shop-top housing developments with non-residential uses limited to the ground floor, the proposed additional FSR allows to feature a diverse range of non-residential options that enhance the vibrancy of the locality. This project will create a new anchor in the northwest of Double Bay, complementing Kiaora Place in the southeast, which offers retail, dining, and entertainment. Together, these two anchors will transform the area into a more dynamic destination, attracting both residents and visitors while preserving and enhancing the site's historical significance (see Figure 3).



Source: SIX Maps

Figure 3: New Anchor within Double Bay Centre

Enforcing strict compliance with the FSR development standard would necessitate the removal of the majority of the non-residential levels, such as the offices on Level 1, the wellness centre on Level 2, and the hotel component from Levels 3 to 5. If the proposal is for a shop-top housing development, same as the nearby approvals, the proposed gross floor space will be 11,185.06m² (only including the ground floor space for retail and the residential floor space on upper levels), resulting in an FSR of 3.04:1 that is closer to the LEP standard and lower than the nearby approved FSRs. However, removing these non-residential components would not result in a better planning outcome and would represent a missed opportunity to establish a new landmark, enhance the area's economic vitality and foster a vibrant mixed-use precinct that benefits both the local community and visitors.

To refuse this application would prevent orderly and economic use and development of the land. Accordingly, in our opinion, as the proposal is consistent with the objectives of Clause 4.6, the variation is acceptable 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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the 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 or 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 Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test 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 achieves the desired density character of the area. The proposal provides a bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the FSR standard are explained below.

(a) for development in Zone R3 Medium Density Residential

N/A. The subject site is located in E1 Local Centre zone.

(b) for buildings in Zone E1 Local Centre and Zone MU1 Mixed Use – to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

The proposal for a new development which includes a mix of retail and residential uses will contribute to the eclectic mix of permissible uses in the E1 Local Centre Zone. The proposal also meets the zone objectives in Part 2 of the LEP by providing a range of retail and business uses in an area accessible by active and public transport; encouraging new business opportunities and employment; and enabling residential development that contributes to a vibrant and active local centre. The proposal maintains

the surrounding residential neighbourhood's amenity with a development of a bulk, scale and type compatible with the desired future character.

The proposed FSR is consistent with the built form in the Double Bay Centre area. Surrounding developments are an eclectic mix of residential flat buildings, and mixed use developments that vary between two to six storeys. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), which also related to a development in the Double Bay Centre, Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the LEP provisions and approved development in the neighbourhood or area. This includes development that contravenes the development standard, as confirmed in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] above.

There are two ways in which the neighbourhood could be identified for this site. The first is the Double Bay Centre in its entirety; and the second is a more localised area based on the Precincts (or neighbourhood areas) of the DCP. As the neighbourhood could be defined as either of these two scenarios, we have considered both in our response to Objective (a), as follows:

Double Bay Centre

Consideration of the desired future character of a neighbourhood is necessary at least by reference to the area to which the height standard and zone applies, namely the Double Bay Centre. The Double Bay Centre neighbourhood area is demonstrated in **Figure 4**, and comprises the area zoned as E1 Local Centre, with FSR standards predominantly ranging from 2.5:1 to 3:1.



Source: SIX Maps

 Subject Site

Figure 4: Double Bay Centre Area in Purple (E1 Zone)

As the desired character of a neighbourhood is evidenced by the controls and provisions, the neighbourhood cannot be solely limited to the 'visual catchment' of a particular site in that neighbourhood. Otherwise, the enquiry would not be as to the desired future character of a neighbourhood, but of a much more limited area.

Furthermore, there is nowhere in the LEP or DCP that states that the desired future character is defined by way of a 'visual catchment'. It would be incorrect to portray Objective (a) of the standard as being so limited. Therefore, we provide analysis of the desired future character of the Double Bay Centre by way of approvals in **Table 2**:

Table 2: Nearby Approved Height Breaches				
DA No.	Location	Development Standard	DA/s4.55 Consent	Final Variation
Existing	33 Cross Street (Existing building on the subject site)	-	5.32:1	-
671/2010	33 Cross Street (Approved DA on the subject site)	-	5.04:1	-
321/2020	19-27 Cross Street	2.5:1	3.49:1	39.6%
452/2020	10 Cross Street	2.5:1	3.07:1	22.4%
476/2022	12 Cross Street	2.5:1	3.02:1	20.85%
355/2019	14 Cross Street	2.5:1	2.64:1	5.6%
571/2014	16-18 Cross Street	2.5:1	3.29:1	32%
390/2015	20-26 Cross Street	2.5:1	3.51:1	40%
617/2017	28-34 Cross Street	2.5:1	3.54:1	42%
58/2021	53 Cross Street	3:1	3.9:1	30%
453/2022	55 Bay Street	3:1	3.85:1	39.93%
371/2022	49-53 Bay Street	2.5:1 & 3:1	3.53:1	30.51%
14/2021	21-27 Bay Street	2.5:1	3.25:1	30%
245/2023	19-27 Bay Street	2.5:1	2.72:1	9%
289/2019	30-36 Bay Street	3:1	20.84m	15%
68/2021	24 Bay Street	3:1	21.32m	45%
280/2022	294-298 New South Head Road & Nos. 2-10 Bay Street	2.5:1 & 3:1	2.66:1 & 3.13:1	Varies
279/2022	356-366 New South Head Road	2.5:1	3.01:1	20.4%
489/2016	434-440 New South Head Road	2.5:1	3.02:1	20.8%
450/2020	426-432 New South Head Road	2.5:1	2.97:1	18.8%

It is evidenced in the above table that there is a high number of DA approvals in breach of the applicable FSR standards within the Double Bay Centre, some in breach of up to 42% with the same 2.5:1 standard as the subject site, which contributes to the neighbourhood's desired future character.

The proposed mixed-use development is sympathetic to that of nearby approved and constructed six storey buildings within the Double Bay Centre (E1 Zone) outlined in Table 3, particularly along Cross Street. **Figure 5 to 9** on the following page include a selection of nearby approvals along Cross Street and Bay Street, with further examples along New South Head Road included in **Figure 10 to 14** on the following page. These approvals with heights and FSRs demonstrate that the consent authority has approved a number of developments exceeding the FSR (and height) development standards, which form the desired future character.



Source: Bates Smart Architecture

Figure 5: Photomontage of Approved Development at No. 53 Cross Street (6-storey and 23.27m)



Source: Luigi Rosselli Architects

Figure 6: Photomontage of Approved Development at No. 19-27 Cross Street (6-storey and 21.5m)



Source: JPR Architects

Figure 7: Photomontage of Approved Development at No. 16-18 Cross Street (6-storey and 20.7m)



Source: Bates Smart Architects

Figure 8: Photomontage of Approved Development at No. 20-26 Cross Street (6-storey and 21.21m)



Source: Bates Smart Architects

Figure 9: Photomontage of Approved Development at No. 28-34 Cross Street (6-storey and 21.21m)



Source: Fortis

Figure 10: Photomontage of Approved Development at Nos. 19-27 Bay Street (5-storey and 18.13m)



Source: Bates Smart Architects

Figure 11: Photomontage of Approved Development at No. 55 Bay Street (5-storey and 18.7m)



Source: SJB Architects

Figure 12: Photomontage of Commercial Development at Nos. 356-366 New South Head Road (5 Storeys with Mezzanine and 20.075m)



Source: Stafford Architects

Figure 13: Photomontage of Commercial Development at Nos. 357-359 New South Head Road (5 Storeys and 18.22m)



Source: Lawton Hurley

Figure 14: Photomontage of Approved Development at Nos. 294-298 New South Head Road & 2-10 Bay Street (5-storey and 19.5m)

Unlike the above-mentioned shop-top housing or mixed-use developments, which offer limited non-residential use (primarily retail) on the ground floor, the proposed mixed-use development at No. 33 Cross Street will feature a diverse range of non-residential uses from the ground floor to Level 5, along with public open space and a through-site pedestrian pathway on the ground floor. These additional non-residential floor spaces, although resulting in a higher FSR compared to the nearby approvals, will make a positive contribution to public benefit. These non-residential uses also well aligns with the LEP zoning objectives, the desired character for the Double Bay and Cross Street precinct as outlined in the DCP, and the principles and strategies in the Double Bay Centre Planning and Urban Design Strategy 2023.

It is noted that Kiaora Place currently serves as the primary attraction within the Double Bay Centre, offering retail, dining, a library, and entertainment facilities in the southeast corner of the area. The proposed development at No. 33 Cross Street will complement Kiaora Place by establishing a new anchor in the northwest, bringing high-end retail, office spaces, and lifestyle amenities to the community.

While Kiaora Place caters to the southeastern part of Double Bay, the new mixed-use development at No. 33 Cross Street is designed to balance and enhance the Centre by providing an additional destination in the northwest. This development will not only attract visitors but also contribute to the area's dynamic character, making it a key focal point for residents and tourists. It represents a significant opportunity to further elevate the overall appeal and vitality of Double Bay Centre.

Precincts

When defining the meaning of the 'desired future character of the area', we note that an alternative way the interchangeable 'neighbourhood' or 'area' can be defined is through the precinct or area a site is located within, as per Chapter D5 of the DCP. This is in accordance with *Pallas Development Management Pty Limited trading as Fortis Development Group v Woollahra Municipal Council* [2023] NSWLEC 1005, where Commissioner Gray states, inter alia:

The WDCP sets a clearly defined desired future character for the Bay Street south area, which is one way to understand "the desired future character of the neighbourhood"

In *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 115, Preston CJ said (at [56] to [59]):

... the desired future character of the neighbourhood or area exists before and informs the establishment of the maximum height and FSR for buildings, and the height and scale of developments, in the neighbourhood or area. This necessarily means that the desired future character of the neighbourhood or area can be evaluated by reference to matters other than only the provisions of WLEP establishing the zoning, the permitted and prohibited development, and the development standards for permitted development in the zone. In this case, this means that the desired future character of the neighbourhood or area can be evaluated by reference to matters other than the building height and FSR established by the height and FSR development standards in cl 4.3 and cl 4.4 and the zoning and Land Use Table for the B2 zone.

The Cross Street precinct is therefore relevant in considering the neighbourhood area as outlined in the DCP maps in **Figure 15** below.



Cross Street Precinct Map (Black and Grey) ■ Subject Site

Source: Woollahra DCP

Figure 15: Double Bay Precincts Applicable to the Subject Site

Accordingly, we refer more specifically to the following 11 approvals in the Cross Street precinct (as shaded in grey/black in Figure 16) which contravene the FSR standards and have a maximum FSR of 3.9:1. These developments can be defined as being within the neighbourhood of the subject site (see **Table 3** and **Figure 16** on the following page).

Table 3: Nearby Approvals in the Double Bay Centre

No.	Address	DA No.	Status	Approved FSR	Variation
01	33 Cross Street	Subject Site	Existing	5.32:1	-
			Approved (671/2010)	5.04:1	-
02	13 Cross Street	Proposed	Pending	-	7 levels
03	19-27 Cross Street	321/2020	Approved	3.49:1	39.6%
04	10 Cross Street	452/2020	Approved	3.07:1	22.4%
05	12 Cross Street	476/2022	Approved	3.02:1	20.85%
06	14 Cross Street	355/2019	Approved	2.64:1	5.6%
07	16-18 Cross Street	571/2014	Approved	3.29:1	32%
08	20-26 Cross Street	390/2015	Approved	3.51:1	40%
09	28-34 Cross Street	617/2017	Approved	3.54:1	42%
10	55 Bay Street	453/2022	Approved	3.85:1	39.93%
11	49-53 Bay Street	371/2022	Approved	3.53:1	30.51%
12	53 Cross Street	58/2021	Approved	3.9:1	30%



Source: Metis Group

Figure 16: Aerial View Showing Approvals in Cross Street Precinct

This interpretation of the neighbourhood and acknowledgement of the changing character along Cross Street is also confirmed by Horton C in *Symond Family Investments Pty Ltd v Woollahra Municipal Council* [2023] NSWLEC 1789 at [107], as follows:

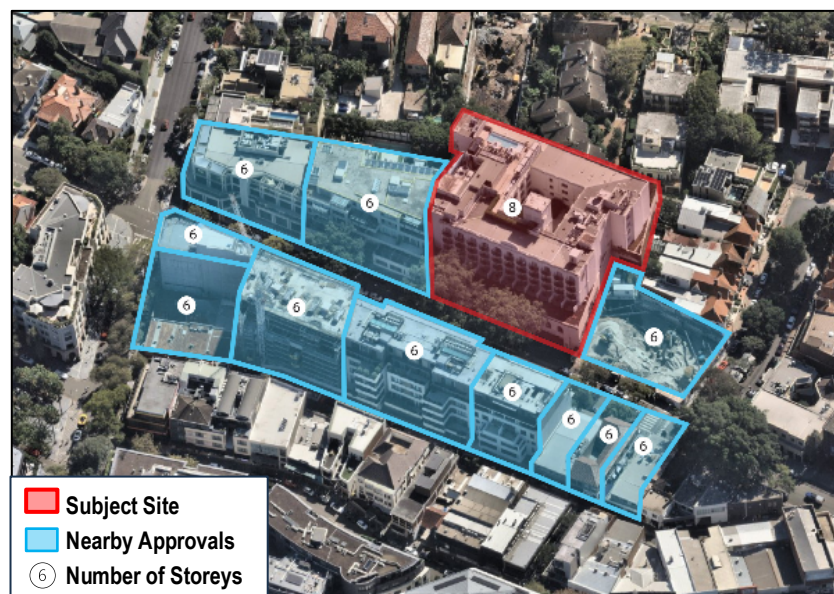
*I am satisfied the Height Request adequately addresses that the height proposed on the subject site is consistent with the desired future character of the neighbourhood. **The emerging character is one that exceeds the controls for height and FSR within the New South Head Road and Short Street character areas**, and the proposal conforms to, or does not offend, any of the aspects of the four character area statements that apply to the site. (emphasis added)*

The abovementioned approvals with heights of the five to six storeys and FSRs over 3:1 shown above, demonstrate an emerging higher density built form character in the neighbourhood area along Cross Street and within the Double Bay Centre area.

Double Bay is evolving towards an increased intensity of mixed use development within a central, accessible and well connected location (see **Figure 17**). However, the existing building height and FSR standards under the Council's LEP limit the possibility of the area's development and expose a clear disconnect between the planning controls and existing/approved built form and scale of buildings in the immediate vicinity of the site.



DA 671/2010 - Approved 8 storeys including mezzanine level
Surrounding development between 2-6 storeys

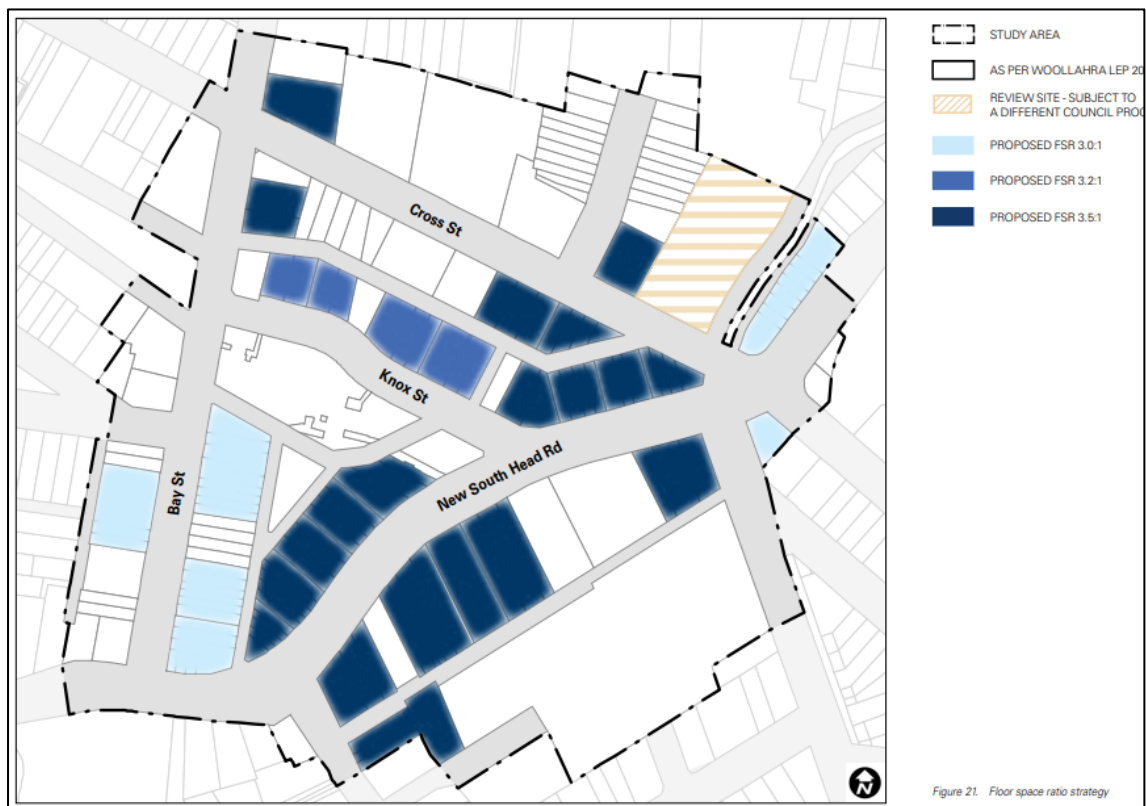


Proposal - 8 storeys (Surrounding development 6 storeys)

Source: Metis Group

Figure 17: Changing Urban Context along Cross Street

With consideration of the above, recommendations are provided by the endorsed Double Bay Planning and Urban Design Strategy (the Strategy) for uplift in the area, including along Cross Street. The strategy recommends a maximum FSR of 3.5:1 along Cross Street (see **Figure 18**).



Source: Double Bay Planning and Urban Design Strategy

Figure 18: FSR Strategy

Although the subject site was not included as a review site under the Strategy due to the site being considered as a developed site, as a prominent location within the Double Bay Centre area, the proposal has been carefully designed to respond to the principles set out in the strategy:

- The proposal provides additional non-residential floor spaces on the lower levels, including retail tenancies and cinemas on the ground floor, office spaces on Level 1, a wellness centre on Level 2, and a hotel from Levels 3 to 5, which will provide a number of long-term benefits, including providing local employment opportunities and enhancing the area's viability.
- The design proposes a four-storey street wall facing Cross Street, with upper levels set back from the building's edges. This aligns with the Strategy's street wall guidelines for the southern side of Cross Street and provides a height transition to the northern side.
- The facades facing both Cross Street and Galbraith Walkway will feature soft landscaping and architectural elements like balconies and window openings.
- The eastern façade, currently a solid concrete wall visible from Transvaal Avenue, will be transformed into a more articulated and visually appealing façade to reduce the perceived height and bulk of the development when viewed from the street and nearby properties.

In addition, given that a similar building envelope was approved previously, which was granted when the surrounding buildings were characterised by 2-storey buildings, and that the current building envelope context has increased significantly, contributing to the desired future character of the

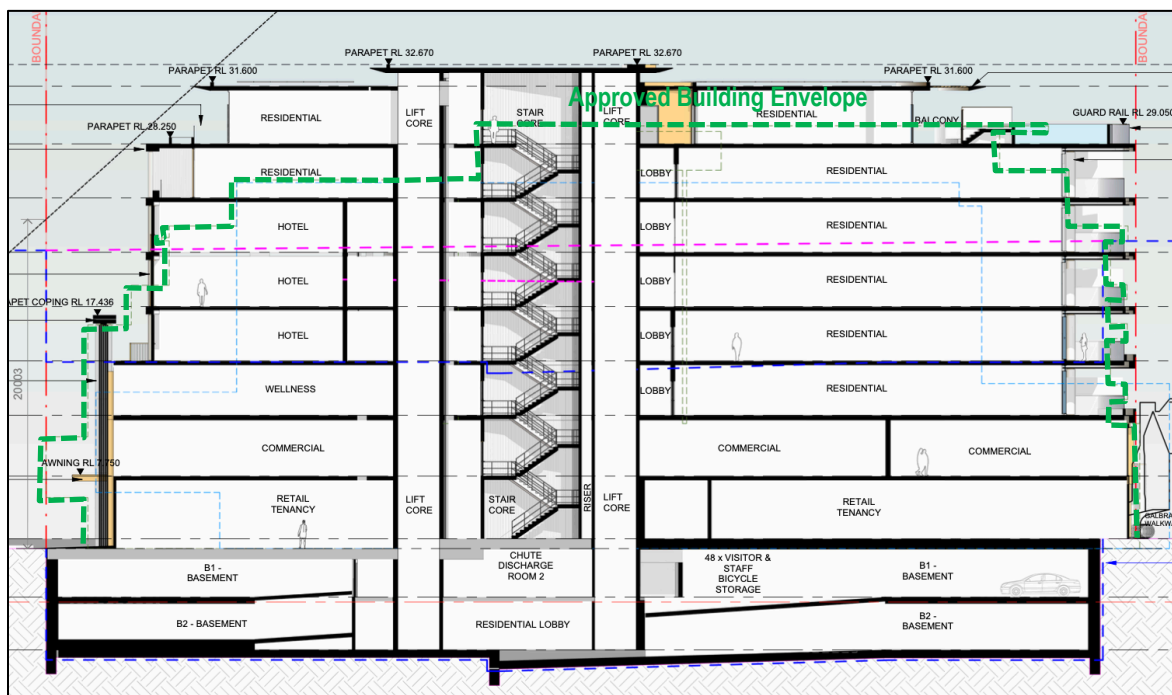
precinct, the proposed FSR, being more in line with the existing context, should also be considered "consistent with the desired future character" of the Cross Street Precinct.

Accordingly, the existing buildings on site and the current LEP FSR standard is dated and disconnected with the desired future character of both Cross Street and the Double Bay Centre more broadly, and does not utilise the full potential of the site. As was set forth by Preston CJ in *SJD DB2* (at [53]-[54]):

The desired future character for a neighbourhood or area can evolve over time, responding not only to the provisions of WLEP but also to developments carried out in accordance with development consents granted under WLEP and the EPA Act.

... There is no limitation found in the subject matter, scope and purpose of WLEP which would preclude consideration of developments that have been approved and constructed in the neighbourhood or area.

The proposed FSR of the mixed-use development is sympathetic to various approved and constructed buildings in the Cross Street precinct, and the previously approved building with an eight storey volume within the subject site (DA 671/2010) (see **Figure 19**), as well as the recommended FSR outlined in the Strategy, which inform the desired future character of the neighbourhood.



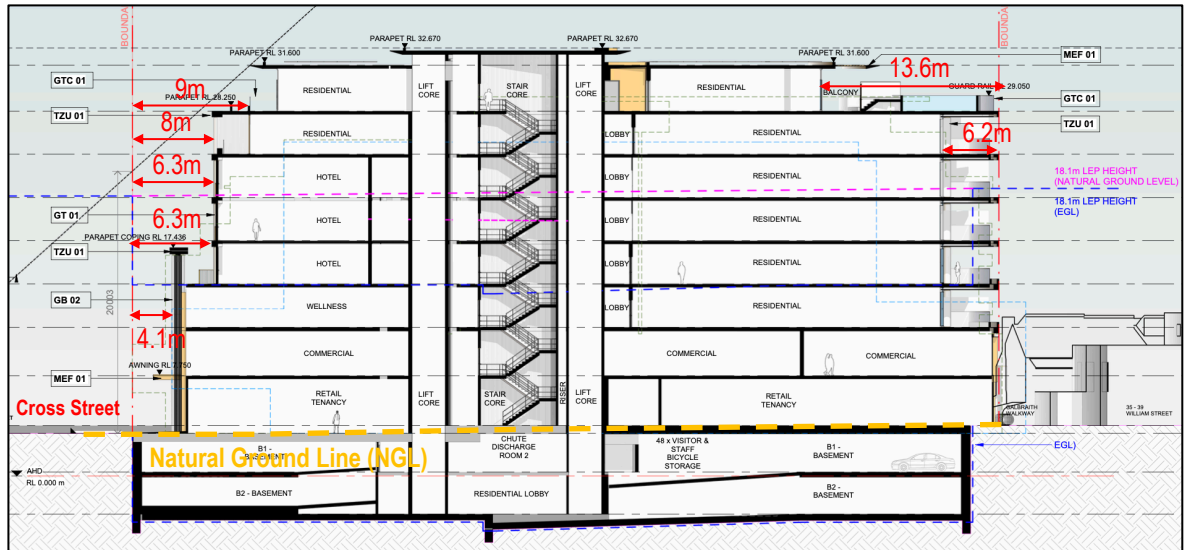
Source: COX Architecture

Figure 19: Section - 5 Demonstrating Building Envelope (vs Approved DA 671/2010)

As discussed above, the proposed mixed-use development at No. 33 Cross Street will provide a diverse range of non-residential spaces from the ground floor to Level 5, along with public open space and a pedestrian pathway, in contrast to nearby developments that offer limited retail use on the ground floor. While this may result in a higher FSR than nearby approvals, it will positively contribute to public benefit and align with LEP zoning objectives and the character of the Double Bay precinct. Currently, Kiaora Place is the only significant complex in the area, and the new development aims to establish a landmark destination at the northwest of the Double Bay Centre, offering high-end retail, office, and lifestyle options to enrich the community and attract visitors.

Other measures to improve consistency

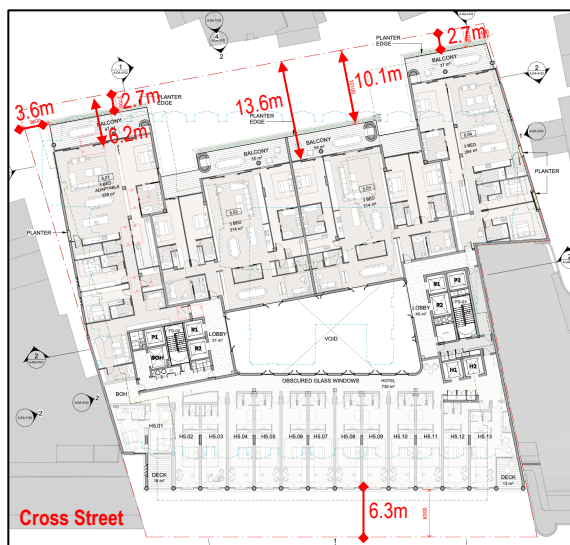
Adequate setbacks have been incorporated at each level of the proposal, creating a stepped built form that reduces bulk and scale, while enhancing its compatibility with nearby buildings. On the ground floor, as illustrated in Figure 20, the proposal is set back 4.1 meters from the street front boundary to the main glazing line on the ground floor and 4.1m on Levels 1 and 2. Levels 3 to 5 feature front setbacks ranging from 5.1 meters to 6.3 meters, with the top two levels further recessed from the building's edges (see **Figure 20**). At the rear, the main building line is set back at least 9.9 meters to accommodate a courtyard and two sides are set back 6.2m from the rear glazing line above the ground level, and the upper levels are further recessed from the rear boundary to accommodate planter boxes and balconies.



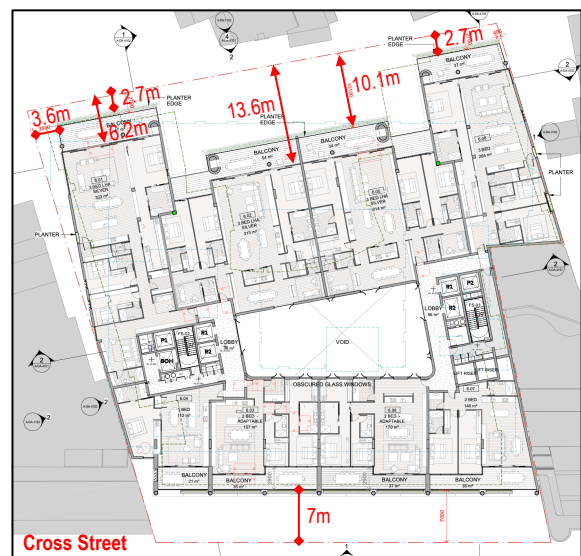
Source: COX Architecture

Figure 20: Section Demonstrating Recessed Upper Levels

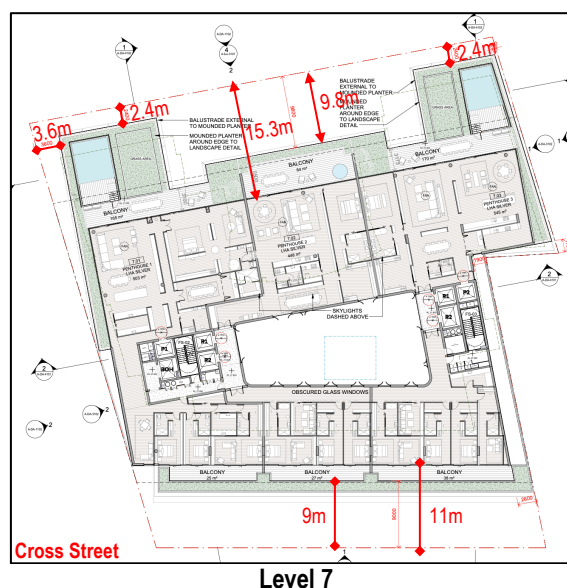
Specially, Level 5 is set back 6.3m from the front boundary and the rear setback ranges from 2.7m to 13.6m. On Level 6 is set back 7 metres from the balcony to the street facing balcony. Furthermore, the topmost Level 7 is further set back 11 metres from the street frontage and has a maximum of 15.3m rear setback to the rear glazing line (see **Figure 21**).



Level 5



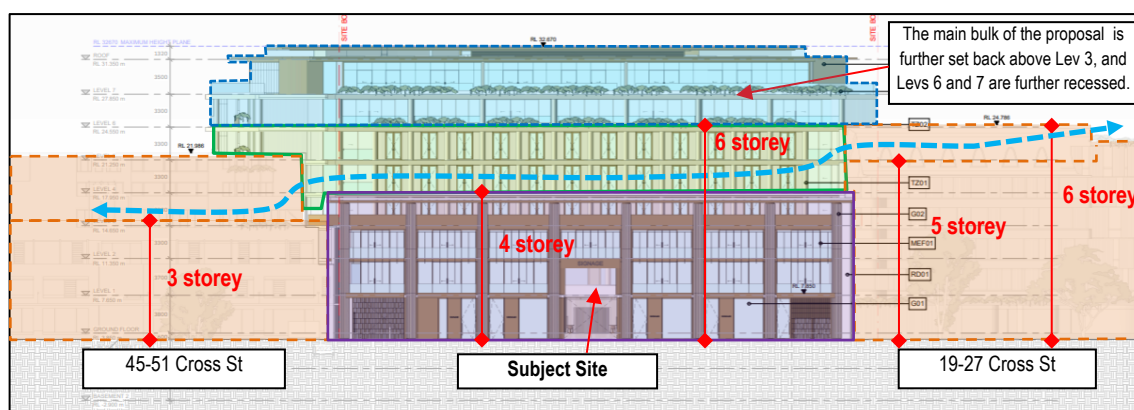
Level 6



Source: COX Architecture

Figure 21: Floor Plans Showing Upper Levels' Setbacks

The proposal features a four-storey street height along Cross Street, aligning with the four-storey street wall strategy outlined in the Double Bay Centre Planning and Urban Design Strategy 2023. It also provides an appropriate transition in the street wall height and architectural style along the northern side of Cross Street (see **Figure 22**).



Source: COX Architecture

Figure 22: Street Wall Heights to Surrounding Developments on Cross Street

It is noted that the further recessed front glazing line is started from Level 6, while Level 5's front setback is same as Levels 3 and 4. This aims to create a building height of 6 storeys to maintain consistency with the approved six storey built form at Nos. 19-27 Cross Street (see **Figure 22**). Above this level, the front glazing lines of the top two levels are recessed further from the main building edges and site boundaries to reduce bulk and scale.

Thus, in our opinion, despite the variation in the FSR development standard, the proposal is consistent with the desired future character of the neighbourhood, as well as the existing building and previous approval within the subject site. In addition, adequate measures, including setbacks and street wall heights, have been incorporated to harmonise the building's bulk and street appearance with the surrounding structures.

While the proposed FSR is higher than nearby approvals, given the historical significance of the site and its prominent role within Double Bay, the proposed building envelope aligns with the vision for creating a new landmark and anchor for the Double Bay Centre. If the additional non-residential components on Levels 1 to 5 were excluded—most of which generate minimal income compared to residential use—the Floor Space Ratio (FSR) would be 3.04:1. This figure is in close proximity to the Local Environmental Plan (LEP) standard of 2.5:1, falls below the strategic FSR of 3.5:1, and is significantly lower than recent approvals, which exceed 3.5:1. Strict enforcement of this standard would require removing these key non-residential floors, however, this approach would significantly diminish the site's strategic potential and, more importantly, the broader potential of the Double Bay Centre. It would forgo the opportunity to create a new landmark and anchor that enhances the area's economic vitality and establishes a vibrant mixed-use precinct benefiting both the local community and visitors.

Thus, in our opinion, despite the variation to the height development standard, the proposal is consistent with the desired future character of the neighbourhood.

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 FSR in this particular circumstance. In addition to compliance with the objectives of the zone and development standard; environmental planning grounds including the consistency with context, public benefit from the provision of non-residential use, public domain upgrades, creation of a new landmark and anchor, and urban design benefits will now be addressed:

Response to Historical Significance and Community Desires

The subject site of No.33 Cross Street, Double Bay, stands as a landmark of both architectural and cultural significance, embodying the area's rich social history and prestige. Over the years, this iconic site has played a pivotal role in Double Bay's development, not only as a luxurious accommodation but also as a venue that has attracted global attention due to its connection with high-profile public figures. Its status as a prominent hotel has cemented its place in the social fabric of Double Bay, making it one of the most historically important buildings in the area. The site's significance is further underscored by the following key events:

- **1991: The Ritz Carlton Hotel opens** – The opening of the Ritz Carlton marked a new era for Double Bay, enhancing the area's reputation as a premier destination. The hotel's elegant architecture and design quickly became a symbol of refinement, drawing guests from across the globe and contributing to Double Bay's growing prestige.
- **1991: U.S. President George Bush stays at the hotel** – This visit by a U.S. president highlighted the hotel's international reputation and its ability to host world leaders. It also placed Double Bay on the global map, showcasing the area's capacity to cater to such prominent figures.
- **1995: Prime Minister Bob Hawke stays at the hotel** – The hotel's connection to Australia's own leaders, including former Prime Minister Bob Hawke, emphasised its role as a significant venue for political and social gatherings.
- **1996: Princess Diana stays at the hotel during her charity tour** – Princess Diana's stay during her charity visit added a layer of glamour and global attention to the hotel. Her presence at the site contributed to its allure as a destination for royalty and the global elite.
- **1999: The hotel is sold and rebranded as the Sir Stamford Hotel** – The sale and rebranding to the Sir Stamford Hotel reflected the evolving identity of the site while preserving its status as a key landmark in the area, continuing its tradition as an important part of the area's history and character.
- **2001: U.S. President Bill Clinton stays at the hotel** – Yet another U.S. president's visit further cemented the hotel's international acclaim and affirmed its status as a premier destination for distinguished guests.
- **2009–2013: The Sir Stamford Hotel closes and remains abandoned** – Though closed and abandoned, the building remained a lasting symbol of Double Bay's rich history.
- **2014: The site is sold, and the hotel rebranded as Intercontinental Double Bay** – The revitalization and reopening of the hotel under the Intercontinental brand marked a new chapter for the property, continuing its legacy as a vital part of Double Bay's cultural and social landscape.

No. 33 Cross Street has evolved through many transformations, symbolizing Double Bay's rich history while maintaining its relevance. This proposal for a mixed-use development provides an opportunity to preserve the site's historical significance while shaping its future. A key feature of this project is reinforcing the building's height, ensuring it remains the tallest within the Double Bay Centre and solidifying its role as a landmark. By blending modern architecture with heritage elements, the development will honour the site's legacy while offering residential, commercial, and public spaces, transforming it into a vibrant anchor that strengthens its position within the broader Sydney area.

When the original hotel on this site opened in the 1990s, Sydney had only 6 to 8 five-star hotels, offering roughly 1,500 to 2,000 five-star rooms. At the time, there was a clear demand for high-end accommodations, which made a large hotel necessary. However, decades of urban development have drastically changed this landscape. Currently, Sydney has 41 five-star hotels, with approximately 8,500 to 9,000 rooms, meaning that luxury hotels are no longer a scarce resource. Given this abundance, the need for a large hotel on this site has significantly diminished. As such, the proposed development reduces the hotel size to 39 hotel rooms, which is more appropriate for both the current needs of Double Bay and the broader Sydney market.

The decision to reduce the hotel size also allows the development to better meet the community's needs, which were identified through extensive community engagement. In September 2024, Urbis conducted three field surveys within Double Bay Village, engaging 101 people, of whom 61 provided completed responses. The top four community desires for the redevelopment are:

- Activating the street frontage with retail and entertainment offerings, and relaxed seating spaces
- Creating a premium destination precinct for socialisation
- Contributing to Double Bay's street character with a through-site link
- Providing a boutique premium hotel offering in Double Bay

Additionally, the survey highlighted a desire for more public seating, community spaces, a boutique cinema, and higher-quality retail and hospitality offerings. In response to this feedback, the proposal shifts the focus from a large hotel to providing non-residential floor spaces that address these community desires. The development will feature street-facing retail, three boutique cinemas, a well-designed through-site link with outdoor seating and public open spaces, and a wellness centre on Level 2. These elements create a lively, engaging environment while the right-sized luxury hotel provides a boutique experience that complements the broader vision for the Double Bay Centre.

Accordingly, the proposal and its FSR have been thoughtfully designed to reflect the site's historical significance while addressing the community's needs and preferences.

Consistency with Context

- ***Consistency with the changing urban context***

The proposal includes setback upper levels, highly articulated facades, and recessive materials to minimise the perceived bulk and scale of development when viewed from the main road and rear laneway. This design presents a built form that is consistent in the context.

A number of recently approved and constructed developments in the vicinity also exceed the FSR development standard, or have a similar overall bulk and scale to the proposed, as demonstrated in Section 5.1 of this report. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that creating a consistent scale with neighbouring development is an environmental planning ground:

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 FSR exceedance, the proposed building envelope is sympathetic to that of nearby approved and constructed six storey buildings within the Double Bay Centre (many with departures from the FSR standard and setback controls) along Cross Street.

- ***Consistency with the street appearance of the adjacent buildings***

Furthermore, the proposed four level street wall height is consistent with the recommended street wall height along the southern side of Cross Street as outlined in the endorsed Strategy and provides a seamless height transition along the northern side of the street (see **Figure 22** on Page 20). They are also relevant in the sense of being an 'environmental planning ground' which is particular to the site and its own context. They are therefore undoubtedly relevant factors to be considered in the context of a clause 4.6 request.

In addition, the height non-compliant levels have been carefully designed with additional front setbacks to minimise its bulk and scale (see **Figure 20** on Page 19 and **Figure 21** on Page 20). It is noted that the further recessed front glazing line is started from Level 6, while Level 5's front setback is same as Levels 3 and 4. This aims to create a building height of 6 storeys to maintain consistency with the approved six storey built form at Nos. 19-27 Cross Street. Above this level, the front glazing lines of the top two levels are recessed further from the main building edges and site boundaries to reduce bulk and scale.

Accordingly, the approvals in the immediate vicinity of the subject site inform the context, scale, and desired future character of this precinct of Double Bay. The proposal also offers positive planning benefits that would not be available if the contravention were not allowed.

Public Benefit from the Provision of Non-residential Use

The proposal responds to a recognised demand for non-residential floorspace within the Woollahra Local Government Area (LGA) generally and the Double Bay Centre specially. It has been designed to create a significant landmark for the city's eastern suburbs retail and dining culture, with a design and building scale that responds to the evolving commercial character of the Double Bay Centre and the Cross Street precinct in particular. This is achieved through providing non-residential uses on the lower levels, including four retails and three cinemas on the ground floor, office use on Level 1, a wellness centre on Level 2, and a hotel on Levels 3 to 5.

The retail tenancies fronting Cross Street will transform the streetscape by replacing the existing vehicle-dominated porte-cochere and recessed building entrance with well-designed pedestrian access. This change will enhance street-level activity and create a more inviting and accessible environment. The additional two retail spaces at the rear are envisioned for outdoor dining, offering appealing alfresco experiences.

The proposed three cinemas will feature a pavilion-style foyer, providing a versatile space for community gatherings and events. The wellness centre on Level 2 will further contribute to the local community by offering a range of wellness and fitness services. In addition, the proposed five-star boutique hotel will provide 39 rooms across three levels, offering a variety of room sizes.

Additionally, the development includes a 6-metre wide through-site pathway that connects Cross Street to Galbraith Walkway. This pathway, along with an integrated atrium and courtyard garden on the ground floor, will create an engaging public space with seating areas and a large-scale public art installation, enhancing the overall public amenity.

As discussed, the additional area above the FSR standard is a consequence of providing the exclusively non-residential use and public open space on the lower levels, rather than a predominantly residential use. Enforcing strict compliance with the LEP FSR standard would require the removal of some or all non-residential levels, including the offices on Level 1, the wellness centre on Level 2, and the ground-level cinemas, in order to relocate the hotel component to the lower levels, to reduce the whole building height.

However, this approach would significantly diminish the site's strategic potential and, more importantly, the broader potential of the Double Bay Centre. It would forgo the opportunity to create a new landmark that enhances the area's economic vitality and establishes a vibrant mixed-use precinct benefiting both the local community and visitors.

It is only with the introduction of a new building that necessary cultural facilities can be brought to the town centre and the desired commercial and residential reinvigoration be made to happen. Requiring the outdated, poorly designed existing building to remain or requiring the removal of non-residential floor spaces on the lower levels to comply with the LEP FSR standard would hinder the promotion of social and economic welfare and prevent the orderly and efficient use of the land.

Public Domain Upgrades

In addition to the above-mentioned public benefit from the provision of non-residential floorspace and public open space, a range of public domain upgrades will be implemented to improve connectivity between the subject site and surrounding properties, enhancing community amenities. These upgrades include, but are not limited to the following (see **Figure 2** on Page 7):

- *Improvements to Galbraith Laneway, including paving, lighting, planting, public seating and bike parking.*
- *Upgrade paving for the existing through link to Transvaal Avenue.*
- *New through-site pedestrian connection link to Ode Plaza at No. 19-27 Cross Street.*
- *Improvements to Cross Street, including paving and kerb, pedestrian verge lighting, fig tree planting beds, public seating and bike parking.*
- *A new mid-block pedestrian crossing on Cross Street, connecting No. 28 Cross Street and the subject site at No. 33 Cross Street, and other potential works for Water Sensitive Urban Design (WSUD) element between fig planter beds and the pedestrian crossing for street drainage.*

Creation of a New Landmark and Anchor

Currently, within the Double Bay Centre, Kiaora Place is the main attraction for this area. The new proposal will complement this by providing an additional anchor for this part of the centre.

Unlike nearby approved six-storey shop-top housing developments, which offer limited non-residential use on the ground floor, our proposal will feature a diverse range of non-residential options that enhance the vibrancy of the locality. While Kiaora Place, located at the southeast corner of Double Bay, already provides retail, dining, a library, and various entertainment facilities, the new development aims to establish a landmark destination in the northwest area (see **Figure 3** on Page 8). By offering high-end retail and lifestyle options, this project will enrich the community and attract visitors, creating a significant opportunity to elevate the area's appeal and contribute to its dynamic character.

Together, Kiaora Place and the proposed new mixed-use development at No. 33 Cross Street will serve as dual anchors, drawing residents and visitors alike to this vibrant part of Double Bay, while also enhancing the site's historical significance.

Urban Design Benefit

The proposal provides a high level of urban design which minimises potential impacts from non-compliance. The facades will be articulated, and the massing setback at the uppermost level when viewed from Cross Street, Galbraith Walkway and Transvaal Avenue. The upper levels of glazed materiality will also reduce its visual impact, which is a factor relevant to the consideration of height non-compliance. Soft landscaping to the balconies and a mix of materials and fenestration will break up the built form and reduce the perceived height and scale.

In addition, an architectural green roof will be provided, aligned with solar panels, which will provide a clean appearance when viewed from further up the hill towards Edgecliff. In addition, the proposed continuous through-site pedestrian pathway with an atrium, public art and courtyard garden will provide a high-quality public space which benefits both the community and future occupants.

Development Feasibility

An Economic Impact Assessment prepared by Hill PDA (separately submitted) demonstrates that the proposed building height is also necessary for the project's economic feasibility. The costs of land acquisition, demolition, loss of income during construction, and the inclusion of non-residential floor spaces significantly reduce the overall sale value compared to a development with retail on the ground floor and all residential levels above. As a result, limiting the proposal to six levels would lead to an insufficient development margin. In other words, the uppermost level of residential apartments, which exceeds the LEP building height standard, is therefore essential to offset the opportunity cost of incorporating non-residential uses, enabling the provision of additional employment opportunities on-site and ensuring the project remains economically viable.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. 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 achieves the objectives of the standard and the development objectives of the E1 Local Centre Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 5: 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 4.4: FSR	
12	What is the control	1 & 2	2.5:1	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – 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	First Aspect is Clause 4.6(3)(a) – 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 of <i>Wehbe</i> : The objectives of the standard are achieved notwithstanding the non-compliance with the standard.	YES
23-24	Second Aspect is Clause 4.6(3)(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 that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) 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. b) 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.	5.2	Sufficient environmental planning grounds include, inter alia: - The proposed FSR has been carefully designed in response to the site's historical significance and community feedback; - The proposed FSR is consistent with the context of the neighbourhood (specially the desired future character of the neighbourhood); - The proposed FSR allows for the accommodation of a diverse mix of non-residential spaces, including retail, office, wellness centre, a hotel, and thoughtfully designed public spaces, along with a through-site connection. These features will create a landmark that benefits future occupants, visitors, and the local community; and - Other considerations including an improved urban design outcome justify the proposed FSR and Economic Feasibility.	YES