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URBIS

CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD: HEIGHT OF BUILDINGS

110-122 Walker Street, North Sydney

Prepared for

STOCKLAND DEVELOPMENT PTY LTD

19 January 2022

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1. INTRODUCTION

This Revised Clause 4.6 Variation Request (**the request**) has been prepared by Urbis on behalf of Stockland (**the Applicant**) to support the amended development application (**DA**) DA19/21 for the construction of a 53-storey (including plant and lift overruns) commercial office tower located at 110-122 Walker Street, North Sydney (**the site**).

This request seeks to vary the maximum height of buildings development standard prescribed for the site under clause 4.3 of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*. NSLEP 2013 prescribes a maximum building height of RL 260 for the site. The amended proposal has a maximum height of RL 270.3 (210.3 metres measured from the ground floor lobby), constituting a height exceedance of 10.3m or approximately 3.9% of the height control. This variation request is made pursuant to clause 4.6 of NSLEP 2013. For a request to meet the requirements of clause 4.6(3) of the NSLEP 2013, it must adequately demonstrate:

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

This request contains justified reasoning for the proposed variation to the height development standard and demonstrates that:

- The objectives of the development standard will be achieved, notwithstanding that the development standard will be exceeded, and in doing so, establishes that compliance with the standard is unreasonable or unnecessary (Initial Action at [17]) – Refer to **Section 7.2** of this Request.
- The proposal is consistent with the objectives of the zone in which the proposed development is proposed to be carried out, being the B3 Commercial Core zone - Refer to **Section 7.2.4** of this Request.
- Whilst the height development standard will be exceeded, there are sufficient environmental planning grounds to support the proposed development – Refer to **Section 7.2.2** of this Request.

This revised request has been prepared in response to the requests for further information (**RFI**) issued by Council as they relate to DA19/21. Specifically, this report responds to the following (where relevant):

- Preliminary Council RFI letter dated 5 February 2021,
- Internal and external referrals RFI letter dated 8 March 2021,
- Design Excellence Panel (**DEP**) meeting minutes dated 9 March 2021 and 9 November 2021,
- Workshops held with Council on 29 April 2021 and 18 June 2021,
- Public submissions received during the public notification period, and
- Sydney North Planning Panel (SNPP) Briefing on 8 December 2021.

The primary design amendments made to the proposal since lodgement of the original DA and which relate to this request, include:

- Reduction in overall building height from RL 283.85 (55-storeys) to RL 270.3 (53-storeys), comprising an overall reduction in maximum height of 13.55 metres. No habitable space (GFA) is proposed above the LEP height control of RL 260, only 'roof feature' elements (to screen plant) and plant equipment / lift overruns.

This request should be read in conjunction with the Statement of Environmental Effects prepared by Urbis, Revised Architectural Drawings and the Addendum Design Report prepared by Hassell, and other supporting documentation submitted with the DA, as well as the RFI Response Report and supporting documentation dated 6 August 2021 and 19 January 2022.

2. SITE CONTEXT

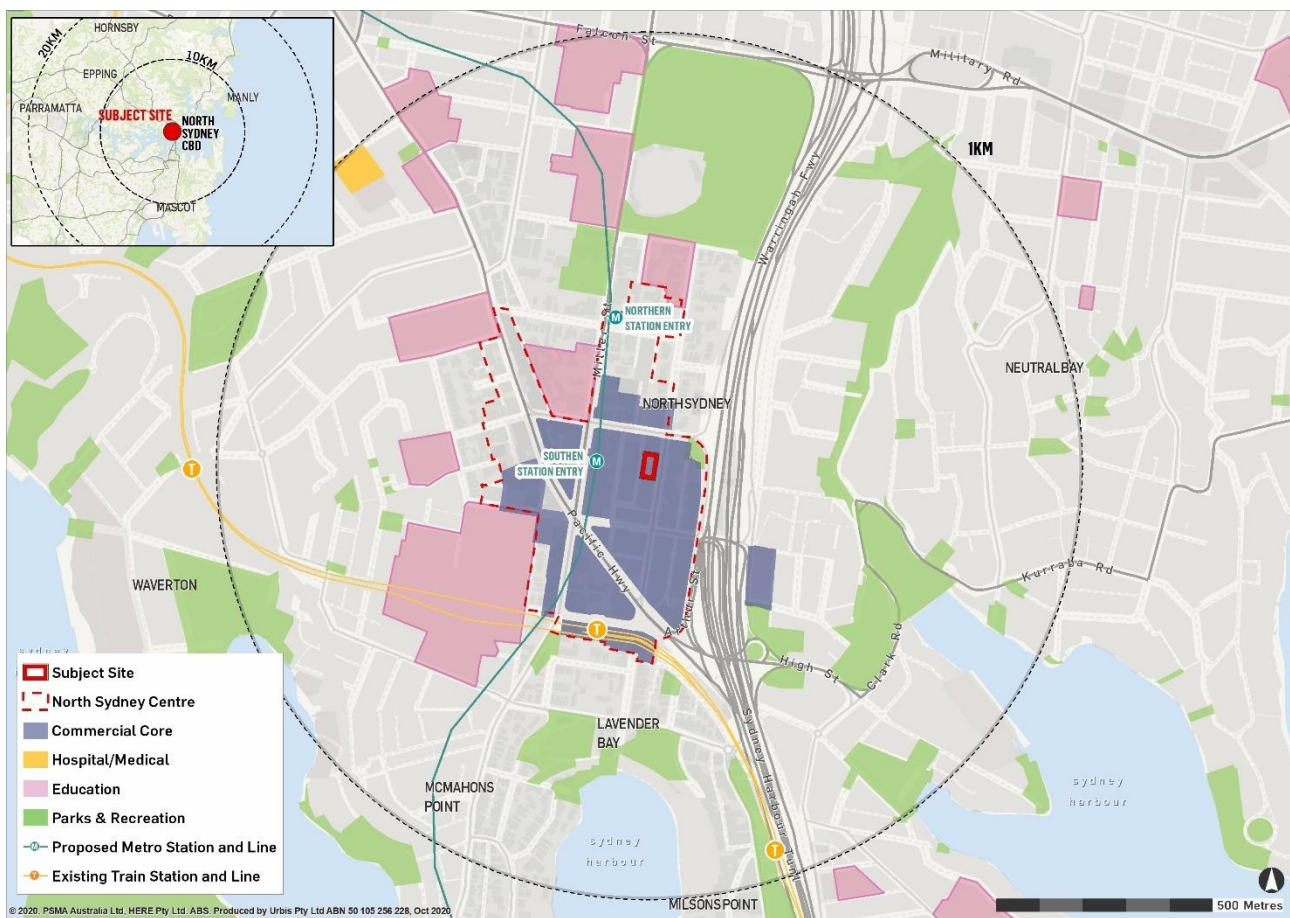
2.1. SITE CONTEXT

The site is situated centrally within the North Sydney CBD and approximately 2 kilometres north of the Sydney CBD.

The site is well connected to the local and regional road network through connections to the M1 Pacific Motorway and the Pacific Highway via Berry and Walker Street. The site is also serviced by the North Sydney Train Station and ferry terminals in Lavender Bay and adjacent Luna Park, all of which connect to the Sydney CBD and Sydney Airport. The site will be serviced by the future Victoria Cross Metro Station (south entry) once complete.

The site is in close proximity to various educational and medical land uses including the Mater Hospital, Monte Sant Angelo Mercy College, Shore School and Australian Catholic University as well as public open space and parks including North Sydney Oval, Ted Mack Civic Park and Wendy Whiteley's Secret Garden. Figure 1 below illustrates the site's location with regards to the local and regional context.

Figure 1 Site Location Context Map



Source: URBIS

2.2. SITE DESCRIPTION

The land to which this DA relates is known as 110-122 Walker Street, North Sydney. The site occupies three land allotments and is legally described as Lot 1 DP777779, Lot 101 DP730995, and Lot 8 DP304. The site is situated on the western side of Walker Street.

The site comprises a regular rectangular shaped allotment with a frontage to Walker Street of approximately 63 metres and a maximum overall depth of approximately 36.6 metres, yielding a total site area of approximately 2,305sqm.

The topography of the site has a fall of approximately 5.25 metres from the north-west to the south-east and the site is devoid of any significant vegetation. There are no easements affecting the site. An aerial image of the site is provided in Figure 2 below.

Figure 2 Aerial view of the site



Source: Nearmap

The site is currently occupied by three low-scale commercial office buildings approximately seven-storeys in height. Primarily, vehicle access to the site is provided via Little Spring Street.

2.3. SURROUNDING DEVELOPMENT

The site is located on the eastern edge of the North Sydney Centre which is characterised by a mix of commercial towers with ground floor retail uses including restaurants, cafes and bars. The site is well serviced by public transport and an extensive road network. Greenwood Shopping Plaza and North Sydney Train Station are located approximately 400m south west of the site. The site is surrounded by:

- **North** – a medium-high rise mixed use commercial office building, approximately 20 storeys, with basement access off Walker Street. Further north is Berry Street and additional commercial buildings.
- **South** – a medium rise mixed use commercial office building, approximately 14 storeys, with basement access off Walker Street. Further south is Spring Street and Mount Street.

- **East** – Immediately east of the site is Walker Street and additional low to high rise mixed use commercial buildings. Further east is the M1 Pacific Motorway.
- **West** – Immediately west of the site is Little Spring Street. On the other side of Little Spring Street is the high-rise commercial office building at 1 Denison Street (recently completed) and the Alexander Apartments located at 79-81 Berry Street. Further west is the future Victoria Cross Metro Station (with associated Over Station Development) which is currently under construction. Shore School is situated further to the south-west of the site just outside the commercial core.

Recently completed or approved developments of a similar scale in close proximity to the site include:

- Victoria Cross Over Station Development (RL 230) – 42-storey A-grade commercial over station development above the new Victoria Cross Sydney metro Station. State Significant Development (SSD) approved 6 July 2020.
- 1 Denison Street (RL 213) – A-grade commercial tower DA approved 7 February 2019 (completed). The development includes a ground floor through-site link with links to the site at 110-122 Walker Street.
- 88 Walker Street (RL 232.6 incl. roof feature) – 48 storey commercial office and hotel building and additions to the existing Firehouse Hotel. Approved 12 February 2019 by the Sydney North Planning Panel.
- 100 Mount Street (RL 200) – A-grade commercial tower DA approved and recently completed;
- 177 Pacific Highway (RL 195) – A-grade commercial tower completed 2016;

Extracts of photomontages of the above developments are provided in **Figure 3** below and over the following page.

Figure 3 Recent development approvals in the vicinity of the site



Picture 1 Victoria Cross OSD (under construction)



Picture 2 1 Denison Street (complete)



Picture 3 88 Walker Street (under construction)



Picture 4 100 Mount Street (complete)

2.3.1. Future North Sydney CBD Context

The below map identifies the development forecast for North Sydney CBD and includes both development applications and Planning Proposals that are either under assessment, approved, in construction or completed. This map clearly articulates a rapidly changing CBD with development and anticipated development of varying scales, many of which are consistent in scale to the proposed development.

Figure 4 North Sydney CBD Future Context Map



Source: Urbis

3. PROPOSED DEVELOPMENT

3.1. OVERVIEW

This application seeks consent for the construction of a new multi-storey mixed use commercial office development with ground level retail and a rooftop garden with retail food and beverage. The proposed development will deliver economic benefits and generate employment for the North Sydney Centre and Northern District.

The proposed development is illustrated in the accompanying Revised Architectural Drawings (**Appendix B**) and Addendum Architectural Design Report (**Appendix C**) prepared by Hassell and submitted with the RFI Response Report prepared by Urbis, dated 6 August 2021. The key numerical aspects of the proposed development are summarised below in **Table 1**.

Table 1 Numeric overview of proposed development

Component	Proposed
Site Area	2,305sqm
Gross Floor Area (GFA)	Total commercial (office and retail uses) – 68,276 sqm
Height of Building	<ul style="list-style-type: none"> ▪ RL 270.3 (210.3 metres measured from ground floor lobby) ▪ 51 storeys (excluding equivalent of 2 storeys of rooftop plant)
Setbacks	<ul style="list-style-type: none"> ▪ Nil ground level podium setback to Walker Street (eastern boundary) ▪ 4.5m average weighted tower setback to Walker Street ▪ Nil core setback and 3 metre podium and tower setback to Little Spring Street (western boundary) ▪ 1.2 metre podium setback and 3 metre tower setback to northern boundary ▪ 3 metre podium and tower setback to southern boundary
Parking and Loading	<ul style="list-style-type: none"> ▪ Vehicular Parking: 163 spaces (including 4 accessible spaces) ▪ Loading: 2 x MRV, 2 x SRV spaces (in loading dock mezzanine level) and 9 courier spaces (in Basement Level 2) ▪ Bicycle Parking – total of 506 spaces comprising: <ul style="list-style-type: none"> – 448 commercial tenant spaces – 58 commercial and retail tenant visitor spaces (38 spaces at Basement Level 1 and 20 spaces in the public domain) ▪ Motorcycle Parking: 18 spaces
End of Trip Facilities	<ul style="list-style-type: none"> ▪ Lockers – 448 ▪ Showers – 46
Through Site Link	3 metres wide on-site (7.2 metres width in total)

3.2. SUMMARY OF KEY DESIGN AMENDMENTS

The key design amendments that have occurred in response to the feedback received from Council and the DEP include:

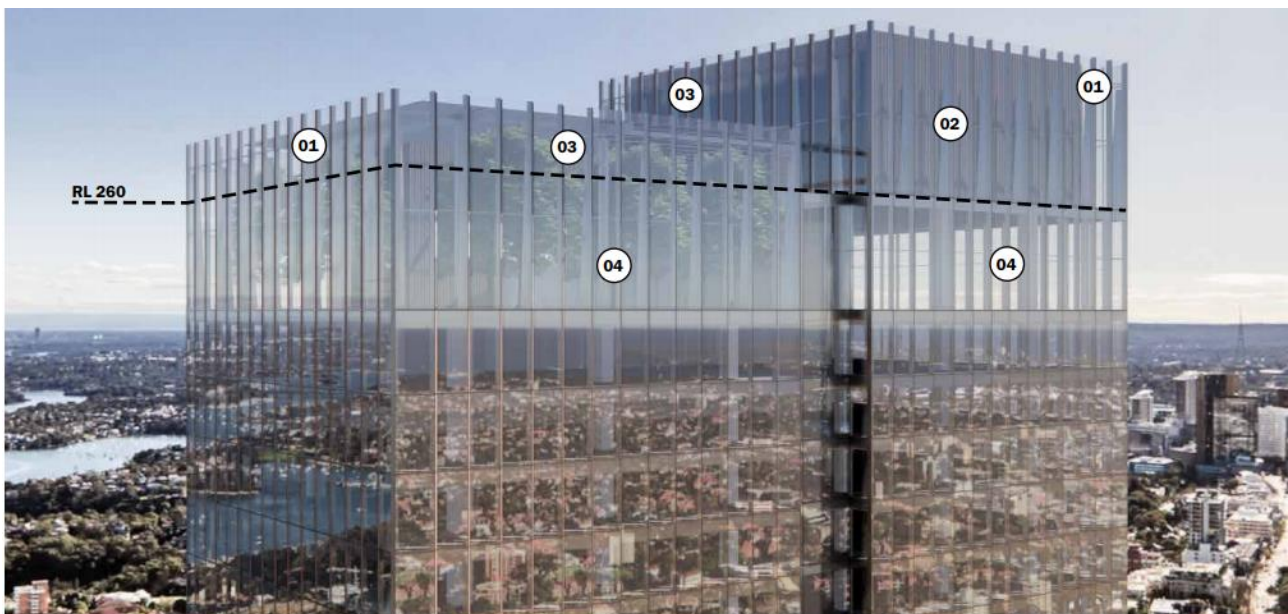
- Relocating basement driveway access from Walker Street to Little Spring Street.
- Redesigning the entire ground plane and basement including bringing the podium forward to the street edge.
- Significantly reducing the overall height of the tower to ensure all habitable space is below the LEP height, equating to a reduction of 13.55m. the maximum overall building height now sits at RL 270.3.
- Increased eastern tower setback to Walker Street with a 4.5m average weighted setback (**AWS**).

These changes are described in further detail in the RFI Response Report accompanying the re-submission package to Council.

3.3. ROOFTOP PLANT AND LIFT CORES

The additional built form located above the base building height (RL 260) is occupied solely by rooftop plant equipment and lift motor rooms screened by an architectural roof feature designed to complement and complete the tower form. There is no habitable floorspace (GFA) proposed above the maximum building height of RL 260. This is illustrated in **Figure 5** over the page.

Figure 5 Proposed Top of Building Components



- 01. Glazed screen
- 02. Plant rooms (behind glazed screen)
- 03. Lift motor rooms (behind glazed screen)
- 04. Garden + F&B venue

Source: Hassell

4. PLANNING FRAMEWORK

The NSLEP 2013 is the primary environmental planning instrument applying to the site and prescribes the height of buildings standard of RL 260 under clause 4.3. The NSLEP 2013 includes additional clauses which permit variations to the height of buildings standard subject to demonstrating compliance with the relevant provisions and performance criteria. These are discussed in further detail below.

Clause 5.6 – ‘Architectural Roof Features’ of NSLEP 2013 allows for development consent to be granted for development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height of buildings standard prescribed by clause 4.3, subject to satisfying the specified criteria. The objectives of clause 5.6 are:

- (a) to permit variations to maximum building height standards for roof features of visual interest,*
- (b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard,*
- (c) to maintain solar access to new and existing buildings, public reserves and streets,*
- (d) to promote the retention and, if appropriate, sharing of existing views.*

As per clause 5.6(3), development consent must not be granted unless the consent authority is satisfied that:

- (a) the architectural roof feature—*
 - (i) comprises a decorative element on the uppermost portion of a building, and*
 - (ii) is not an advertising structure, and*
 - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
 - (iv) will cause minimal overshadowing, and*
- (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

The amended proposal utilises clause 5.6 to permit the architectural roof feature which extends beyond the RL 260 height of buildings standard under clause 4.3. An assessment of the proposals compliance with the above provisions is provided in Section 4.1 below.

Clause 6.3 – ‘Building Heights and Massing’ of NSLEP 2013 allows development consent to be granted for development on land in the North Sydney Centre that would exceed the maximum height of buildings standard subject to satisfying certain criteria. The objectives of clause 6.3 are:

- (a) (Repealed)*
- (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*
- (c) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*
- (d) to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*
- (e) to encourage the consolidation of sites for the provision of high grade commercial space.*

As per clause 6.3 (2), development consent must not be granted if:

- (a) the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or*

(b) the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or

(c) the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.

As per clause 6.3 (3) consent may be granted for development that exceeds the height of buildings standard if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—

(a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or

(b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.

It is noted that the original DA proposal sought to utilise clause 6.3 to permit the portion of the building which extended beyond the RL 260 height of buildings standard under clause 4.3. However, this is no longer relied upon given the amended proposal utilises clause 5.6 to permit the integrated architectural roof feature beyond RL 260.

Notwithstanding this, clause 6.3 is a relevant consideration under the NSLEP and for consistency, an assessment of the proposals compliance with the above provisions is provided in Section 4.2 below to demonstrate the amended proposal achieves the relevant overshadowing provisions.

Revised Overshadowing Plans have been prepared by Hassell and are submitted at **Appendix B** of the RFI Response Report prepared by Urbis, dated 6 August 2021.

4.1. COMPLIANCE WITH CLAUSE 5.6

Compliance with clause 5.6 includes a number of provisions which are required to be satisfied. The assessment of the amended proposal against these provisions is provided below.

Table 2 Compliance with Clause 5.6

Clause	Response
Clause 5.6(a)(i) – Decorative element	<p>Clause 5.6(a)(i) requires the architectural roof feature to comprise a decorative element on the uppermost portion of a building.</p> <p>As illustrated previously in Figure 5, the proposed architectural roof feature is inherently an integrated decorative element at the top of the built form which conceals rooftop plant equipment and resolves the architectural design of the building. The architectural design of the façade extends up to a height of RL 270.3 and comprises a contrasting glazed screen of consistent materiality which continues the overall façade expression of the building. In accordance with clause 5.6(b), the proposal seeks to deliver a fully integrated design response to the architectural roof feature that delivers a distinguished crowning element to the top of the tower.</p>
Clause 5.6(a)(ii) – Is not an advertising structure	<p>Clause 5.6(a)(ii) states that the architectural roof feature must not be an advertising structure. Under the NSLEP an ‘<i>advertising structure</i>’ and ‘<i>advertising</i>’ is defined as follows:</p> <p><i>advertisement</i> has the same meaning as in the Act.</p> <p><i>Note—</i></p>

Clause	Response
	<p><i>The term is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.</i></p> <p>advertising structure has the same meaning as in the Act.</p> <p>Note—</p> <p><i>The term is defined as a structure used or to be used principally for the display of an advertisement.</i></p> <p>Under the NSLEP a ‘<i>building identification sign</i>’ and ‘<i>business identification sign</i>’ are defined as follows:</p> <p>building identification sign means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services</p> <p>business identification sign means a sign—</p> <p>(a) that indicates—</p> <p>(i) the name of the person or business, and</p> <p>(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and</p> <p>(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,</p> <p>but that does not contain any advertising relating to a person who does not carry on business at the premises or place</p> <p>There are two building identification signage zones at the north and south elevations of the roof feature. These signage zones are for the sole purpose of ‘business identification’ or ‘building identification’ and will not support any future ‘advertising structure’ or ‘advertisement’ as defined under the NSLEP. The architectural roof feature is an integrated architectural expression at the top of the built form which conceals plant and is not a standalone ‘advertising structure’ or ‘advertisement’.</p>
<p>Clause 5.6(a)(iii) – Does not include floor space area</p>	<p>Clause 5.6(a)(iii) requires that an architectural roof feature does not include floor space area and is not reasonably capable of modification to include floor space area.</p> <p>The amended proposal includes an architectural roof feature which is solely designed to conceal plant equipment and lift overruns and complete the architectural design of the building. The rooftop garden and food and beverage tenancy are below the RL 260 height of buildings standard and no usable floor space area (or GFA) is proposed above the height control.</p>
<p>Clause 5.6(a)(iv) – Will cause minimal overshadowing</p>	<p>Clause 5.6(a)(iii) requires that an architectural roof feature will cause minimal overshadowing.</p>

Clause	Response
	<p>Whilst the amended proposal results in some overshadowing to properties within and outside the North Sydney Centre, it is consistent with clause 6.3 of NSLEP in that it does not result in a net increase in overshadowing to RE1 Public Recreation zones or Special Areas within the North Sydney Centre (clause 6.3(2) of NSLEP), nor, does it reduce the direct sunlight to any private open space, or window to a habitable room, located outside the North Sydney Centre to less than 2 hours of direct sunlight (clause 6.3(3) of NSLEP). This is assessed in further detail in Section 4.2 below.</p>
Clause 5.6(b) – Fully integrating the design of the roof top feature with any signage or plant equipment	<p>Clause 5.6(b) requires that any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.</p> <p>The proposed architectural roof feature has been specifically designed to conceal the rooftop plant equipment and lift overruns in the architectural design to provide an appropriate resolution at the uppermost portion of the building.</p> <p>The proposal only seeks consent for building/business identification signage zones. The signage zones on the north and south elevations have been strategically located and designed to be incorporated into the overall architectural expression of the building. No erection of signage is proposed as part of DA19/21 and all future DA's seeking approval for the detailed design and erection of signage will be required to be contained within these signage zone areas and must be integrated into the architectural design.</p>

4.2. COMPLIANCE WITH CLAUSE 6.3

Compliance with clause 6.3 has a number of aspects all of which are required to be satisfied. The assessment is outlined below. To clearly demonstrate compliance with this clause, the shadow analysis considers the shadows cast by the proposed building only and not those of existing surrounding developments.

Table 3 Compliance with Clause 6.3

Clause	Response
Clause 6.3 (2)(a) – RE1 Public Recreation Zones and Special Areas	<p>Clause 6.3 (2)(a) requires development with a height exceedance beyond clause 4.3 of NSLEP, to not result in a net increase in overshadowing between 12pm and 2pm from the March equinox to the September equinox (inclusive) on land that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map.</p> <p>Figure 6 below clearly illustrates that the proposed shadows do not create any additional overshadowing to designated Special Areas or land zoned RE1 Public Recreation within the North Sydney Centre between 12pm and 2pm. As such, the proposal satisfies this aspect of clause 6.3 (2) (a).</p>
Clause 6.3 (2)(b) – Don Bank Museum	<p>The development does not result in a net increase in overshadowing between 10am and 2pm from the March equinox to the September equinox of the Don Bank Museum. Therefore, the proposal satisfies this aspect of Clause 6.3.</p>

Clause	Response
Clause 6.3 (2)(c) – Sites less than 1,000sqm	The site has an area of 2,305sqm and therefore this aspect of the Clause does not apply.
Clause 6.3 (3)(a) and (b) – Impacts on land outside North Sydney Centre	<p>Clause 6.3 (a) and (b) considers impacts on private open space, windows or habitable rooms of land in areas located outside of the North Sydney Centre. As demonstrated in Figure 7 and Figure 8, the proposed additional height has minimal overshadowing impact to residential areas located outside North Sydney Centre and complies with the requirements of clause 6.3(a) and (b). This is discussed in detail below.</p> <p>With regards to the amended proposal, the following is noted during the Winter Solstice and September Equinox:</p> <p><u>Properties to the south-east:</u></p> <p>The areas located to the south-east of the M1 Motorway currently receive at least 5 hours of sunlight during mid-winter between 9am and 2pm.</p> <p><u>During the Winter Solstice</u>, these areas to the south-east of the M1 Motorway are overshadowed by a minor portion of fast moving shadow from 2pm to 3pm only as a result of the proposed development (as illustrated in Figure 7, Picture 6 below). However, these affected areas receive at least 5 hours of direct sunlight between 9am and 2pm which is well above the required two hours under clause 6.3(a) of the NSLEP.</p> <p><u>During the September Equinox</u>, there are some other areas to the south-east of the M1 Motorway which are overshadowed by a minor portion of fast moving shadow from 2pm to 3pm only as a result of the proposed development (as illustrated in Figure 7, Picture 5 below). However, these affected areas receive at least 5 hours of direct sunlight between 9am and 2.20pm which is well above the required two hours under clause 6.3(a) of the NSLEP.</p> <p><u>Property to the south-west:</u></p> <p><u>During the Winter Solstice</u>, there is a property to the south-west is overshadowed by a minor portion of fast moving shadow from 9am to 9.30am (30 minutes only) as a result of the proposed development (as illustrated in Figure 8, Picture 7 below). However, after 9.30am, the shadows cast by the proposed development fall within other existing shadows throughout the day. The proposed development therefore does not reduce the affected property to less than two hours in accordance with clause 6.3(a) of the NSLEP.</p> <p><u>During the September Equinox</u>, the same property located to the south-west of the site is overshadowed by a minor portion of fast moving shadow from 9am to 9.30am (30 minutes only) as a result of the proposed development (as illustrated in Figure 8, Picture 8 below). However, after 9.30am, the shadows cast by the proposed development fall within other existing shadows throughout the day. The proposed development therefore does not reduce the affected property to less than two hours in accordance with clause 6.3(a) of the NSLEP.</p>

Clause	Response
	<p><u>During the March Equinox</u>, the proposed development does not result in any overshadowing to any private open space, windows or habitable rooms located outside the North Sydney Centre.</p> <p>Whilst not a specific provision of Clause 6.3, the proposal complies with the objective of Clause 6.3 which seeks to minimise overshadowing of, and loss of solar access to, land in Zone RE1 Public Recreation located outside the North Sydney Centre.</p> <p>The above analysis demonstrates that the proposal complies with clause 6.3(3)(a) and (b) of the NSLEP as it does not reduce direct solar access to the affected areas outside the North Sydney Centre to less than two hours.</p>
<p>Clause 6.4 – Development on land at 105-153 Miller Street, North Sydney</p>	<p>Clause 6.4 states consent may be granted to development on land at 105–153 Miller Street, North Sydney, known as the MLC Building, that would result in a net increase in overshadowing of the land known as Brett Whiteley Plaza that is within Zone RE1 Public Recreation from the March equinox to the September equinox (inclusive).</p> <p>The proposed development is not on land know as 105–153 Miller Street, North Sydney. This clause therefore does not apply.</p>
<p>Clause 6.5 – Considerations for granting development consent on land to which this division applies</p>	<p>Clause 6.3(5) establishes three considerations that the consent authority must take into account when granting consent. The amended proposal does not seek to utilise clause 6.3 for the additional height which extends beyond the RL 260 control, but rather clause 5.6, therefore, this clause does not apply.</p> <p>Notwithstanding this, for consistency it is noted that the amended proposal responds to these considerations in that it:</p> <ul style="list-style-type: none"> ▪ Is compatible with the existing and future (emerging) scale, form and massing in the North Sydney Centre area. ▪ Poses no adverse impacts on the surrounding natural environment which have not been addressed; ▪ Poses no unmanageable impacts on the neighbouring development or development outside the North Sydney Centre noting that the minimum required two hours of direct sunlight to the subject areas are maintained (refer to assessment provided above); ▪ Would not unreasonably impact upon significant views and vistas from key public domain areas. An increased tower setback of 4.5m AWS to the Walker Street is now proposed to improve view corridors from adjacent development and provide greater amenity at the street. ▪ Enhances the Walker and Little Spring Streets active frontages and streetscapes in relation to scale, materials and external treatments.

Figure 6 Shadow impacts to Special Areas and RE1 Zone Land



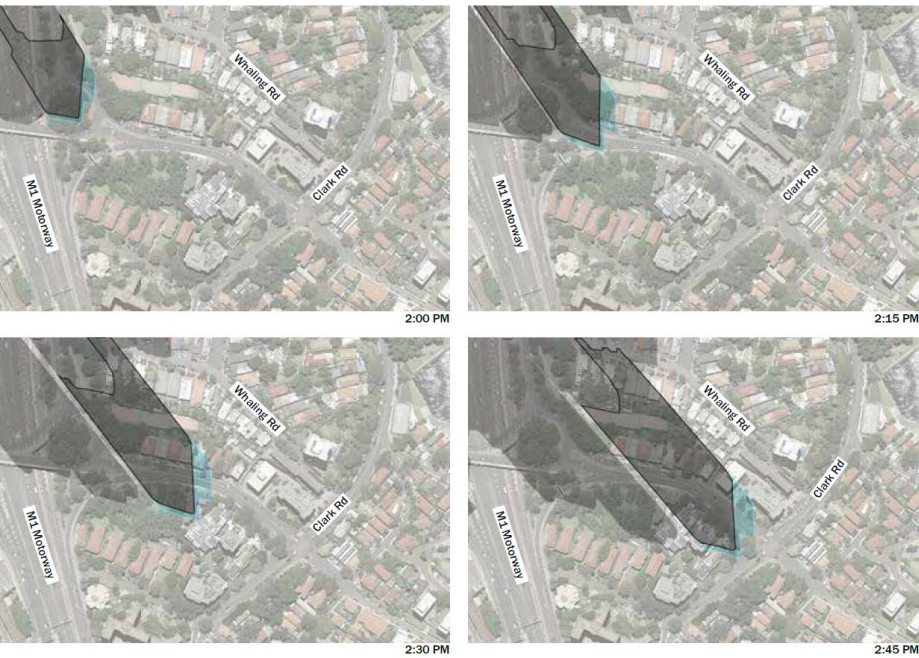
Source: Hassell

Figure 7 Overshadowing impacts to land outside North Sydney Centre



Picture 5 Detailed Analysis of September Equinox south-east of the M1 Motorway

- Shadow of Roof Feature (including lift overruns and plant)
- Shadow of existing buildings
- Shadow of approved LEP envelope height RL 260.00

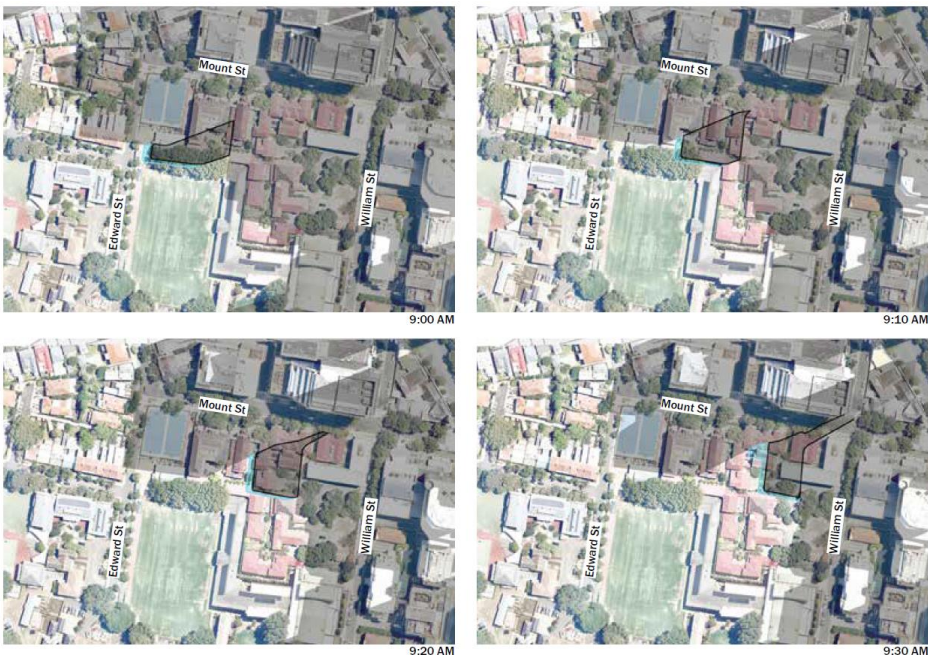


Picture 6 Detailed Analysis of Winter Solstice to the south-east of M1 Motorway




Figure 8 Overshadowing impacts to land outside North Sydney Centre



Picture 7 Detailed Analysis of Winter Solstice to the Southwest



Picture 8 Detailed Analysis of September Equinox to the Southwest

-  Shadow of Roof Feature (including lift overruns and plant)
-  Shadow of existing buildings
-  Shadow of approved LEP envelope height RL 260.00

5. VARIATION TO HEIGHT OF BUILDINGS STANDARD

5.1. DEFINITION OF BUILDING HEIGHT

Clause 4.3 of NSLEP 2013 defines building height as:

building height (or **height of building**) means—

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

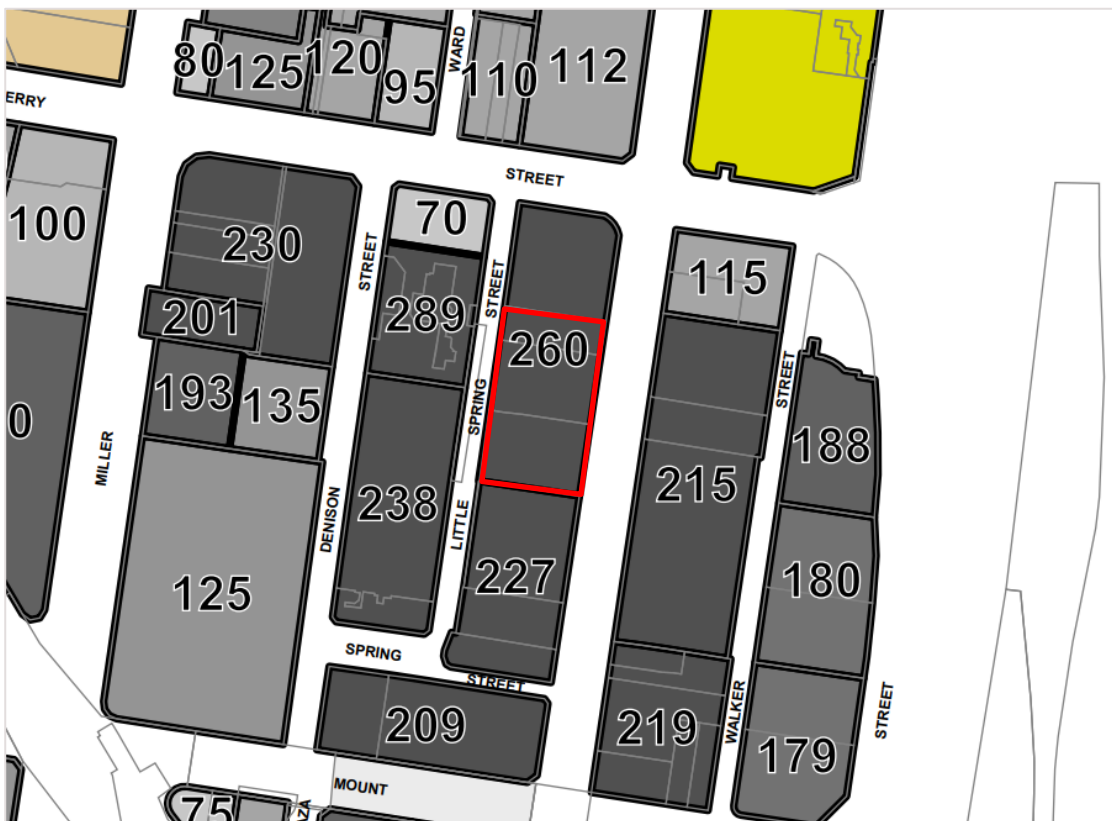
(b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

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

5.2. HEIGHT OF BUILDINGS STANDARD

As prescribed in clause 4.3 and illustrated in the Height of Buildings Map within NSLEP 2013, the site is subject to a maximum building height of RL 260 (see **Figure 9**).

Figure 9 Height of Buildings Map



Source: NSLEP 2013

5.3. PROPOSED VARIATION TO HEIGHT OF BUILDINGS STANDARD

The development proposes a 13.55m reduced maximum building height across the site of RL 270.3 or 210.3m measured from the ground level lobby. The proposed development exceeds the RL 260 metre maximum building height control by a total of 10.3m for the northern tower portion (RL 270.3m) and 3.1m for southern tower portion (RL 263.1).

Notwithstanding this, the site is located in North Sydney Centre. North Sydney Centre can exceed the height of buildings development standard subject to complying with the architectural roof feature provisions stipulated in clause 5.6 and the solar access provisions stipulated within clause 6.3.

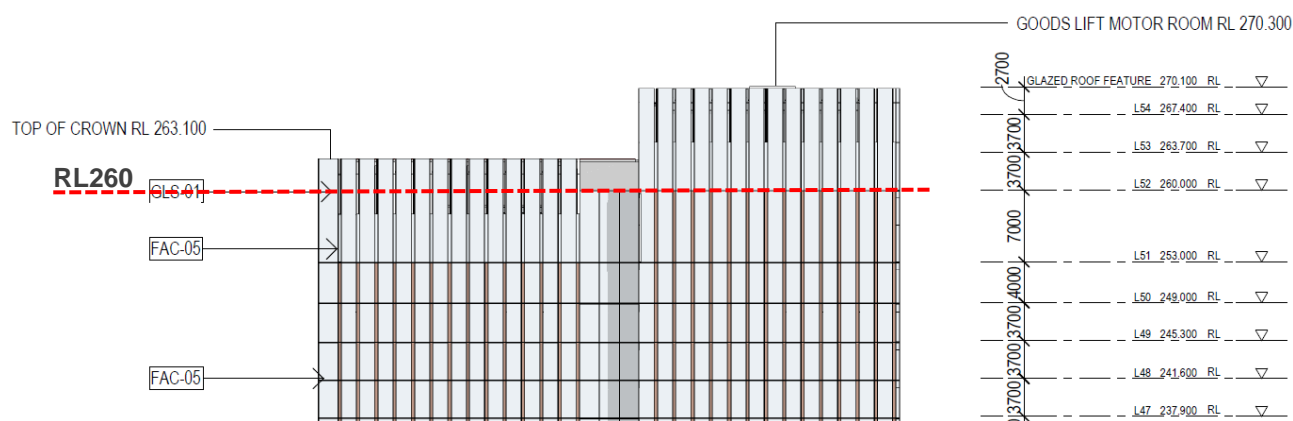
The variations to the height controls are outlined in the table below.

Table 4 Proposed height variations

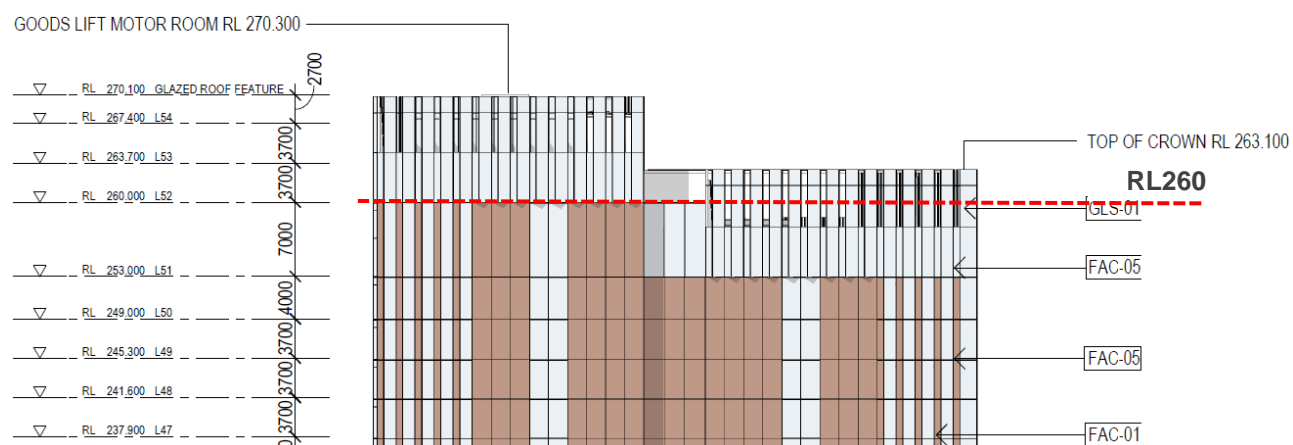
Building Component	Proposed Height (RL)	Proposed Variation
North – top of roof plant (lift motor room)	RL 270.3	10.1m (approx. 3.9%)
South – top of roof feature	RL 263.1	3.1m (approx. 1.2%)

The following figures illustrate both the nature of use and the physical extent of building height variation on plan view.

Figure 10 Proposed Elevations – Top of Tower



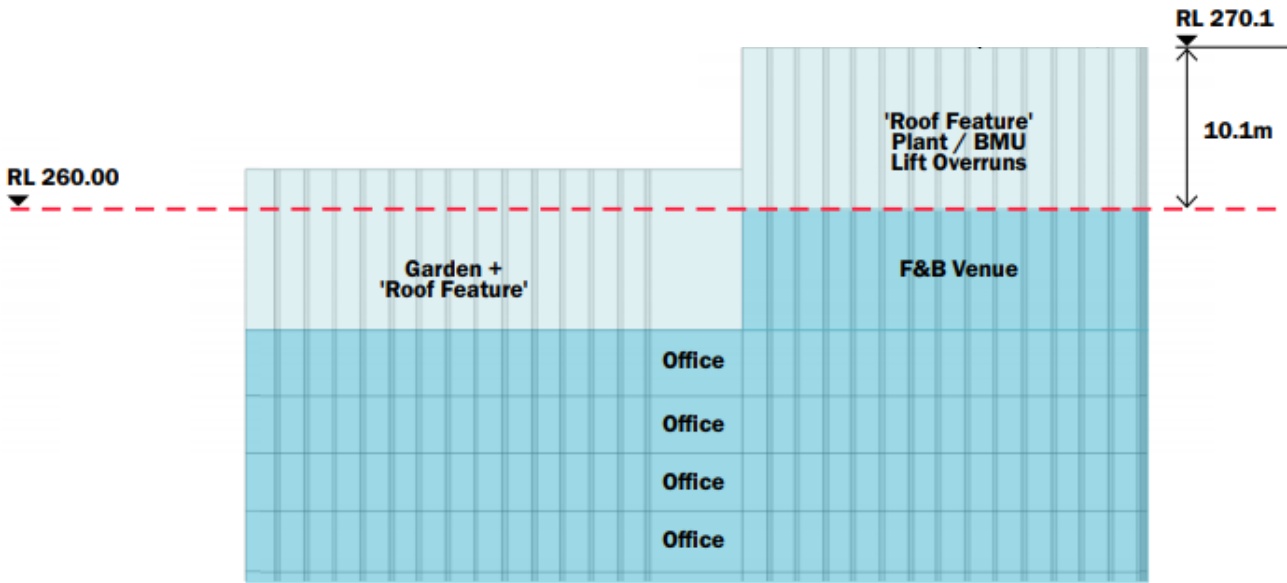
Picture 9 Eastern Elevation



Picture 10 Western Elevation

Source: Hassell

Figure 11 Areas of proposed building exceeding RL 260



Amended DA Proposal

Note: Goods Lift over to RL 270.3

Source: Hassell

6. RELEVANT ASSESSMENT FRAMEWORK

6.1. CLAUSE 4.6 OF NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Clause 4.6 of NSLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

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

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

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

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

Furthermore, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

This document forms a clause 4.6 written request to justify the contravention of the height of building development standard in clause 4.3 of NSLEP 2013. The assessment of the proposed variation has been undertaken in accordance with the requirements of the NSLEP 2013, Clause 4.6 Exceptions to development standards.

6.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (**NSW LEC**) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under Clause 4.6 is neatly summarised by *Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018]* NSWLEC 118, duplicated for ease of consent authority reference as follows:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

*[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd (2004)* 61 NSWLR 707; *[2004]* NSWCA 442 at [25]. The formation of the opinions of satisfaction*

as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

[15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is 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 cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

[16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

[17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].

[18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].

[19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].

[20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].

[21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

[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 of 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.

[23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

[24] The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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. 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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

[25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].

[26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).

[27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

[28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

[29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

7. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.3 of NSLEP 2013. Detailed consideration has been given to the following matters within this assessment:

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

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

7.1. KEY QUESTIONS

Is the Planning Control a Development Standard?

The height of buildings control prescribed under clause 4.3 of the NSLEP 2013 is a numeric development standard capable of being varied under clause 4.6 of NSLEP 2013.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of NSLEP 2013.

What is the Underlying Object or Purpose of the Standard?

The objectives of clause 4.3 as set out in NSLEP 2013 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.*

As assessment of the proposed development against the above objectives is provided in Table 5 below.

7.2. CONSIDERATION

7.2.1. Clause 4.6 (3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The common way in which an Applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary is detailed in the 'five-part test' outlined in the *Wehbe v Pittwater* [2007] NSWLEC 827. These tests and case law are outlined in **Section 6.2** of this report.

It is not considered necessary for an application to establish all of the tests or 'ways' a development standard is unreasonable or unnecessary. 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. The development is justified against two of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The specific objectives of the height of buildings development standard as specified in clause 4.3 of NSLEP 2013 are detailed in **Table 5** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 5 Assessment of consistency with the objectives of the standard

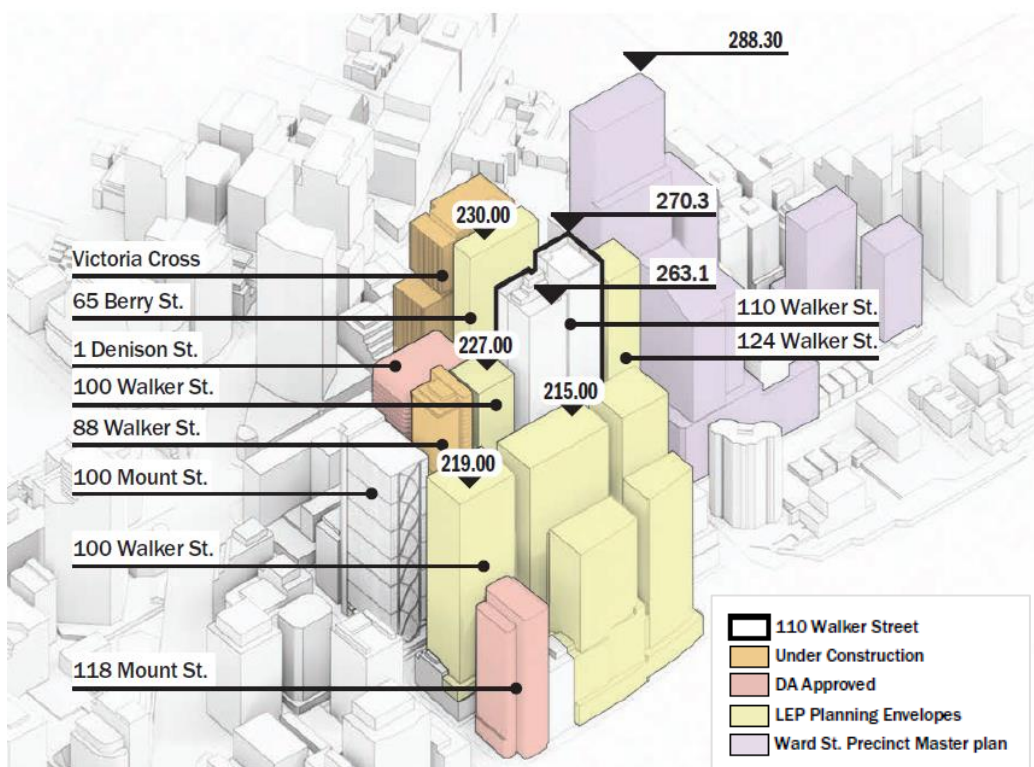
Objective	Compliance
<i>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</i>	<p>Walker Street slopes down from north to south, and therefore buildings along Walker Street also step down from north to south.</p> <p>The proposed development responds to the existing topography of the site by providing level building access at the eastern boundary, and a continuous through site link off Walker Street towards Little Spring Street at the southern end. In between the northern and southern ends of the site, the design either steps or creates podium forms which follow the topography of Walker Street. The eastern podium to Walker Street is built to the boundary and sits flush with the footpath level, following the natural sloping topography of the street.</p> <p>In terms of the tower profile, the design comprises a stepped top of tower form, with the greatest height at the northern portion of the site and the lowest building height at the southern portion of the site reflecting the slope across the site.</p> <p>Overall, from the ground level to the tower form profile, the design of the site positively reflects and responds to the natural slope of the site.</p>
<i>(b) to promote the retention and, if appropriate, sharing of existing views,</i>	<p>The amended proposal provides an increase eastern tower setback to the Walker Street frontage equating to a 4.5m AWS. This promotes improved view sharing to existing properties situated to the north and south.</p> <p>It is considered that the proposed development preserves the following views identified for the 'Central Business District' in Part C, Section 2.1.1 (Significant Elements), control P7 of the <i>North Sydney Development Control Plan 2013</i>:</p> <ul style="list-style-type: none"> ▪ <i>(a) From the plaza at No.5 Blue Street and located over North Sydney Rail Station to the Sydney Harbour Bridge.</i> ▪ <i>(b) From Doris Fitton Park (160-166 Arthur Street) to Sydney Harbour and Neutral Bay district.</i> ▪ <i>(c) Views along the Pacific Highway to the Post Office on Mount Street from the south-east.</i> ▪ <i>(d) Views along the Pacific Highway to Sydney Harbour from the intersection with Mount Street.</i> <p>A comprehensive Visual Impact Assessment Report (VIA) has been prepared by Urbis and submitted at Appendix G of the original DA (Report Ref: 01 RPT_Walker Street_Visual Assessment). The VIA considers the likely views available from the upper floor of east-facing</p>

Objective	Compliance
	<p>apartments at 79-81 Berry Street (Alexander Apartments) and the likely view sharing outcomes as a result of the proposed built form. Alexander Apartments is a mixed-use residential development of 36 storeys and is approximately 115m in height. It is the only residential building in North Sydney Centre and was approved under old planning laws that overrode Council's LEP controls.</p> <p>The VIA concludes that potential view loss for low-level and mid-level apartments in relation to south-easterly and easterly views at the Alexander Apartments is likely to be minor to negligible as access to scenic views is not currently available and views to the built form proposed will replace views of existing buildings. The nature and composition of views that would be lost would not be considered as scenic or of high value.</p> <p>The nature and composition of views modelled from high level apartments at the Alexander Apartments show that highly scenic features exist and would be lost as a result of the proposed development.</p> <p>Views from high level apartments to the south-east and east are blocked by part of the proposed development that fully complies with the height control. The VIA confirms that the additional height sought by this Clause 4.6 Request does not cause view loss which includes scenic or highly valued items as defined in <i>Tenacity</i>.</p> <p>It would therefore be considered impractical and unreasonable in the current urban visual context to reduce the height of the proposed building to below RL 260 to mitigate this view impact. As view loss of scenic or highly valued items is associated with a compliant building envelope it is therefore reasonable to expect high-rise development at this site seeking to optimise the sites strategic location in the CBD, and fulfil a key zone objective to encourage employment opportunities in accessible locations.</p>
<p><i>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</i></p>	<p>The proposed development maintains solar access to nearby existing dwellings, public reserves, and streets. As discussed in Section 4 and illustrated in the Shadow Diagrams submitted at Appendix B of the RFI Response Report prepared by Urbis (dated 6 August 2021), notwithstanding the fact that the proposal does not utilise clause 6.3 of NSLEP to permit the height variation, the development complies with the provisions of clause 6.3 of NSLEP 2013 and the additional height has no adverse solar impact on land in the RE1 Public Recreation zone, or to land identified as a "Special Area" in the North Sydney Centre between 12pm and 2pm from the March equinox to the September equinox. The development also does not cause any private open space, or window to a habitable room, located outside the North Sydney Centre to receive less than 2 hours or more of direct sunlight or less sunlight if it currently receives less than 2 hours of direct sunlight.</p>

Objective	Compliance
<i>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</i>	<p>The site is located in a B3 Commercial Core, surrounded by predominantly commercial buildings. Notwithstanding this, the Alexander Apartments at 79-81 Berry Street is located directly to the west of the site on the opposite side of Little Spring Street. Careful consideration has been given to the design of the western façade to ensure visual privacy is retained to adjoining residences.</p> <p>The proposed design has strategically located the tower core and green wall along the western façade to mitigate potential privacy impacts to the adjacent Alexander Apartments. Views to the adjoining apartments will only be accessible for a very narrow portion of the western building frontage. These views will be partly obscured by the design of solid external building elements that orientate views away from the Alexander Apartments.</p>
<i>(e) to ensure compatibility between development, particularly at zone boundaries,</i>	<p>The visual context and character of the North Sydney Centre is changing in line with the strategic and existing planning controls where significant uplift is occurring on sites within and close to the North Sydney CBD. The height of the proposal is compatible with the existing and emerging character of development within the B3 Commercial Core zone particularly when considering the built form that is present within the sites immediate visual context including (see Figure 12):</p> <ul style="list-style-type: none"> ▪ 1 Denison Street (37 storeys) ▪ 100 Mount Street (34 storeys) ▪ 88 Walker Street (48 storeys) – <i>under construction</i> ▪ Victoria Cross Over Station Development (42 storeys) – <i>under construction</i> <p>The building will therefore be ‘visually read’ in the context of a cluster of new tall tower forms that will become visual markers to the new geographic centre and ‘activity heart’ of the CBD clustered around the new metro station. Indeed, the height control framework for the North Sydney CBD identifies the site as one of the premier tower sites within the precinct to define the new city tower scape.</p> <p>The site at 110-122 Walker Street is not located at a zone boundary.</p>
<i>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.</i>	<p>North Sydney City Centre is undergoing significant change as it embarks on the next generation of transition to a high-density commercial zone with commercial, retail and business activities comparable to Central Sydney (as identified previously in Figure 4). The character of the area as supported through the development standards of the NSLEP 2013, is encouraging the transformation to tall tower forms in the core of the centre around the metro station and in close proximity to existing public transport connections. The statutory policy framework allows for a degree of flexibility on building envelopes in that there are no statutory FSR density controls and the building</p>

Objective	Compliance
	<p>height control enables (via clauses 5.6 and 6.3) variations subject to meeting certain criteria.</p> <p>As evident in Figure 12, the proposal is contextually responsive to the existing and emerging character of the area as envisaged by the planning framework to ensure the development is situated appropriately within the future tower cluster.</p> <p>Consistent with the subject site, it is noted that the site immediately to the north of the site is permitted to be built to a height of RL 260, subject to meeting relevant performance criteria under the NSLEP. In addition, the finalised Ward Street Precinct Masterplan (situated to the north of the site on Berry Street) was endorsed by Council in 2019 and permits commercial office building heights ranging from 28 to 57 storeys. These recent developments together with recent LEP amendments which increased permissible building heights facilitate a shift in the emerging character of the North Sydney Centre skyline.</p> <p>At the ground level the proposal sets back from the southern boundary to provide an enhanced pedestrian connection to Little Spring Street and ultimately toward the metro station entry. This is a positive contribution to Council's vision for the immediate precinct to encourage more pedestrian activity and improved connectivity. The development is also setback 1.2m from the eastern boundary to create a more generous footpath and public domain experience along Walker Street.</p>

Figure 12 Proposed Development in the context of existing and future development



Source: Hassell

In summary, achieving compliance with the standard is unreasonable and unnecessary (clause 4.6(3)(a)) as notwithstanding the non-compliance, the development is consistent with the objectives of the standard.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

Not relied upon.

Test 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

Not relied upon.

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

7.2.2. Clause 4.6 (3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The additional height is capable of being approved with no variation to the development standard under clause 4.6 by virtue of clause 5.6 (Architectural Roof Feature) whereby variations to the maximum of buildings can be permitted provided the consent authority is satisfied it achieves the provisions of clause 5.6(3) and (4). With regards to clause 5.6(3) and (4), the proposed architectural roof feature:
 - Comprises a decorative element at the uppermost portion of the built form which conceals and integrates rooftop plant, lift overruns, and the rooftop signage zones into the design of the roof feature,
 - Is not an 'advertising structure' as defined under the NSLEP,
 - Has been redesigned so that the rooftop garden and food and beverage tenancy are contained under the RL 260 height control and the commercial office space previously above RL 260 has been removed, and
 - Results in minimal overshadowing to sensitive areas within and outside the North Sydney Centre as demonstrated by the assessment against clause 6.3 of the NSLEP discussed further below.
- Despite not being relied upon to permit the height variation, clause 6.3 also allows for variations to the height standard whereby development on land in North Sydney Centre may exceed the maximum height of buildings if the consent authority is satisfied that any increase in overshadowing between 9am and 3pm from the March equinox to the September equinox will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving less than 2 hours of direct sunlight, or less direct sunlight if it receives less than 2 hours. The assessment in Section 4.2 of this request and the overshadowing diagrams submitted at **Appendix B** of the RFI Response Report (dated 6 August 2021), demonstrate the proposal complies with the requirements of Clause 6.3 (2), (3) and (5).
- The proposed height will not be out of character with the height of development in the vicinity of the site where height controls vary from RL 200 to RL 289, as the building would effectively be viewed as part of a cluster of tall buildings in the core of the CBD. The proposed maximum building height of RL 270.3 allows for an appropriate transition in built form to adjoining sites including 1 Denison Street and 88 Walker Street and is considered in keeping with the existing and emerging streetscape character.

- The proposal is consistent with the objectives of the development standard (clause 4.3) as demonstrated above and the objectives of the B3 Commercial Core Zone. The proposal will deliver employment, retail and business activities in a highly accessible location within proximity to the future Victoria Cross Metro Station and existing rail and bus transport infrastructure, supported by an attractive public domain.
- The proposal promotes the retention and sharing of existing views from surrounding buildings. Whilst there will be some view impacts from the upper levels of Alexander Apartments located at 79-81 Berry Street, the view assessment confirms that the view loss is not associated with the additional height sought by this Clause 4.6 Variation Request and any view impacts identified do not include scenic or highly valued items as defined in *Tenacity*.
- The proposed variation to the height of building control contributes to the achievement of the building's design excellence and further accentuates its verticality. The additional height contributes to the skyline with a stepped building form that follows the sloped natural topography at ground level, whilst delivering a building of slender proportions, particularly in comparison to other built forms.
- As evident in the submitted overshadowing plans, the proposed building height will have negligible material impacts compared to a scheme that does not exceed RL 260 in terms of overshadowing. The additional height complies with the provisions of clause 5.6, the solar access provisions of clause 6.3 and does not have any adverse impacts or inhibit use or enjoyment of adjoining properties and the public domain between the specified time periods.
- The visual impacts associated with the additional height are considered negligible in the context of North Sydney Centre where tall tower buildings are emerging in the streetscape. The impacts of additional height have been appropriately managed through the articulation of the building as two forms and introduction of glass materials to minimise the perception of building bulk at the upper levels.
- The additional height allows for the provision of an architectural roof feature which conceals rooftop plant equipment and lift overruns. These features are important design elements that will contribute to the high quality offering of the development in the context of the North Sydney skyline.
- The additional height above RL 260 would not in itself cause additional wind impacts for the pedestrian environment which has been confirmed by the wind report submitted alongside the development application.

In conclusion, there are sufficient environmental planning grounds to justify contravening the development standard.

7.2.3. Clause 4.6 (4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

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

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

7.2.4. Clause 4.6 (4)(a)(ii) - Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

The proposed development is consistent with the objectives of the development standard as outlined within **Section 7.2.1** of this Request.

An assessment of the proposal against the objectives of Clause 6.3 – Building heights and massing is provided below.

Table 6 Consistency of proposal with objectives of Clause 6.3

Objectives	Compliance
(a) (Repealed)	No response required.
(b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,	<p>As discussed in Section 4.1 and 4.2, the proposed development complies with the solar access requirements stipulated in clause 6.3 (2) (a) and (b) of NSLEP 2013, notwithstanding that this clause is not relied upon for the proposed height variation but rather clause 5.6. In this regard, it is noted that the proposal will cause minimal overshadowing given it complies with clause 6.3 (2) (a) and (b).</p> <p>The proposed building height and massing has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney between the specified time periods.</p>
(c) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,	<p>As discussed in Section 4.1 and 4.2, the proposed development complies with the solar access requirements stipulated in Clause 6.3 (3) (a) and (b) of NSLEP 2013, notwithstanding that this clause is not relied upon for the proposed height variation but rather clause 5.6. In this regard, it is noted that the proposal will cause minimal overshadowing given it complies with clause 6.3 (3)(a).</p> <p>The proposal minimises overshadowing to nearby residential areas by retaining at least 5 hours of sunlight between 9am and 3pm to residential areas located to the south-east of the M1 and at least 2 hours of direct sunlight to residential areas to the south-west.</p> <p>The impacted areas on the south-eastern side of the motorway currently receive at least 5 hours of sunlight during mid-winter and would continue to receive well above the minimum required two hours. Importantly, the proposal does not cause additional overshadowing during the specific time periods within clause 6.3.</p>
(d) to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,	The proposal promotes a scale and massing that provides for pedestrian comfort by delivering a connected and permeable ground plane, an activated through-site link, an articulated podium which is built to the boundary on Walker Street, a wide block frontage articulated as two forms to

Objectives	Compliance
	<p>reflect the proportions of adjacent street blocks, awnings for pedestrian amenity and a memorable commercial lobby experience.</p> <p>As discussed earlier in this report, the additional height does not give rise to significant overshadowing when compared to a building height of RL 260 and complies with the solar access provisions contained within NSLEP 2013.</p>
(e) to encourage the consolidation of sites for the provision of high grade commercial space.	<p>The proposal consolidates three land allotments which allows for the creation of high-grade commercial floor plates. As discussed, the additional height is largely driven by the incorporation of mechanical plant and amenities at roof level to allow for the provision of a high-grade commercial floorspace offering below.</p> <p>The provision of high-grade commercial office space with associated retail uses is increasingly important following the recent disruptions to workplaces as a result of COVID-19. The proposal responds to the need for building owners to provide a range of commercial offerings to attract tenants as well as the public throughout the day and outside business hours.</p> <p>High grade commercial developments such as the proposal are critical in delivering a diversity of building size and typology to cater to a growing global Harbour City and to attract top tier tenants who have specific requirements and expectations to the North Sydney CBD.</p>

The proposal is also consistent with the land use objective that applies to the site under NSLEP 2013 as demonstrated within Table 7 below. The site is located within the B3 Commercial Core zone.

Table 7 Assessment of Compliance with Land Use Zone Objectives

Objectives	Compliance
<i>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.</i>	<p>The proposed development serves the needs of the local and wider community by providing a range of retail, business and office uses within the commercial core of North Sydney Centre. The proposal also provides a significant public benefit through the delivery of a through site link along the southern property boundary which links to 1 Denison Street and the future Victoria Cross metro station. The ground plane also provides a highly permeable pedestrian environment which enables</p>

Objectives	Compliance
	clear and legible public access through the site to nearby streets and public transport.
<i>To encourage appropriate employment opportunities in accessible locations.</i>	The site is arguably one of the most important sites to optimise employment opportunities given its located proximity to the metro station and ability to offer enhanced public domain contributions to supports Council's vision for a pedestrian friendly CBD environment.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposed development encourages public transport and active transport use by minimising private vehicle parking (163 spaces) below the maximum permitted vehicle parking rate under the NSLEP and maximising bicycle parking (506 spaces). The proposed through-site link will also facilitate direct access from Walker Street to the new metro station and contribute to the broader pedestrian environment. This is further supported by the permeable ground floor plane providing improved pedestrian connectivity through the site.
<i>To prohibit further residential development in the core of the North Sydney Centre.</i>	The proposed development comprises retail and commercial land uses only. No residential development is proposed.
<i>To minimise the adverse effects of development on residents and occupiers of existing and new development.</i>	<p>The site is located in a B3 Commercial Core zone and therefore surrounded by predominantly commercial land uses. Notwithstanding this, consideration has been given to the adjoining Alexander Apartments located at 79-81 Berry Street. As discussed in Section 7.2.1, a comprehensive Visual Impact Assessment has been undertaken by Urbis and included at Appendix G of the original DA submission package (Report Ref: 01 RPT_Walker Street_Visual Assessment).</p> <p>The proposal will have a minor impact on scenic views currently available from high level apartments at the Alexander Apartments. Notwithstanding this, the VIA confirms that the additional height sought by this Clause 4.6 Variation Request (and which meets the provisions of clause 6.3) does not cause view loss which includes scenic or highly valued items as defined in <i>Tenacity</i>. Furthermore, it is entirely reasonable to expect view impacts arising from a development that seeks to deliver the Council's desired character for a tall commercial tower building on such a strategically located site.</p>

7.2.5. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the height of building development standard will not raise any matter of significance for State or regional environmental planning.

7.2.6. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the height of building development standard and the land use zoning objectives. The additional height proposed has been demonstrated to be appropriate and supportable in the circumstances of the case. As such, there is no public benefit in maintaining the development standard in the circumstances of this case.

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

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

8. CONCLUSION

This variation request is made pursuant to clause 4.6 of the NSLEP 2013. For a request to meet the requirements of clause 4.6(3) of NSLEP 2013, it must adequately demonstrate:

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

This request contains justified reasoning in respect of the above two matters, specifically that:

- The objectives of the development standard, specifically to promote development that conforms to and reflects natural landforms, promotes the retention and sharing of existing views, maintains solar access to existing dwellings, public reserves and streets, maintains privacy for residents of existing dwellings and encourages an appropriate scale and density of development that is in accordance with the character of an area are achieved notwithstanding the additional height.

Furthermore, by virtue of clause 5.6 of NSLEP 2013, development with a height greater than the height of buildings standard is permissible with consent subject to complying with clause 5.6(3)(a) and (b). As discussed in Section 4.1, the proposal complies with the specific criteria and is therefore eligible for additional height above RL 260. In addition, despite not relied upon for the height variation sought, the proposal complies with the solar access provisions of clause 6.3(2), (3) and (5).

- There are sufficient environmental planning grounds to support the proposed development, in that the proposal does not result in any non-complying overshadowing to public recreation areas or Special Areas and does not have any unacceptable impacts to highly scenic views and privacy of adjoining residential development when compared to a fully **compliant** building envelope.

In view of the above, we submit that the proposal is in the public interest and that the proposed Clause 4.6 variation request to vary the RL 260 height of building development standard prescribed by clause 4.3 of NSLEP be supported.

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