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CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD: HEIGHT OF BUILDINGS

110-122 Walker Street, North Sydney

Prepared for

STOCKLAND DEVELOPMENT PTY LTD

23 February 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 57-storey (including plant and lift overruns) commercial office tower located at 110-122 Walker Street, North Sydney (**the site**). This revised request specifically responds to the Sydney North Planning Panel (**Planning Panel**) resolution of deferral, dated 17 February 2022 (reference PPSSNH-191).

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.

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. VARIATION TO HEIGHT OF BUILDINGS STANDARD

2.1. PROVISION IS A "*DEVELOPMENT STANDARD*"

Clause 4.6 of the NSLEP 2013 applies to "*development standards*". The relevant building height control at clause 4.3(2) of the NSLEP 2013 requires that the "*height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*"

The Dictionary of the NSLEP 2013 defines building height as:

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

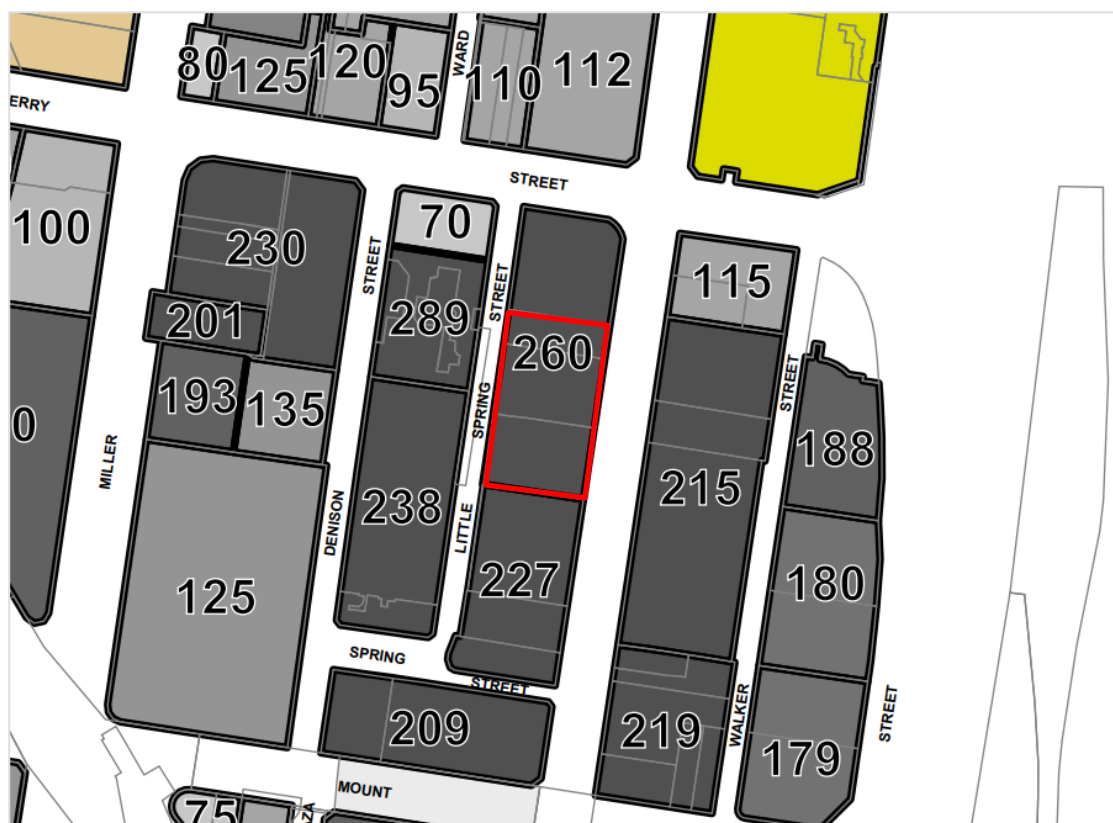
(a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

(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.

The map identifies a development standard of RL 260 that applies to the site (see **Figure 1**).

Figure 1 Height of Buildings Map



Source: NSLEP 2013

2.2. THE VARIATION

The proposed development exceeds the RL 260 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 provisions of clause 4.6 as well as 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 1 Proposed height variations

Building Component	Proposed Height (RL)	Proposed Variation
North – top of roof plant (lift motor room)	RL 270.3	10.3m (Approx. 3.9%)
South – top of roof feature	RL 263.1	3.1m (Approx. 1.2%)

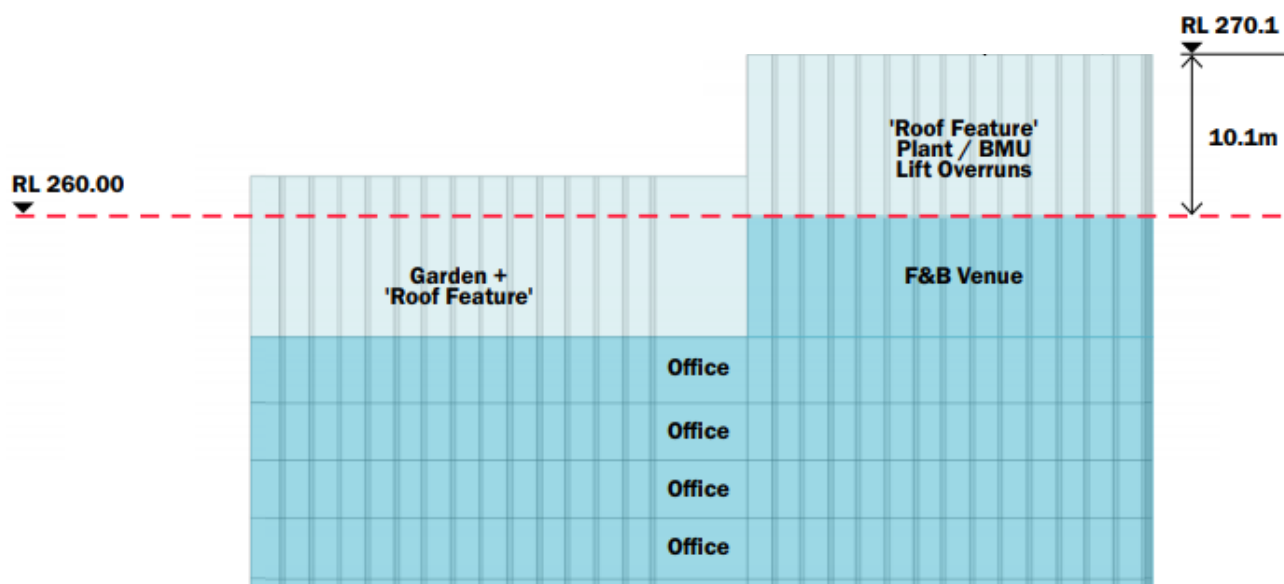
The following figures illustrate both the nature of use and the physical extent of building height variation on plan view.

The elevation drawing shows the side profile of the Goods Lift Motor Room. Key features include:

- Top Level:** TOP OF CROWN RL 263.100
- Roof Structure:** GLAZED ROOF FEATURE 270.100 RL
- Internal Levels (from top to bottom):**
 - L54 267.400 RL
 - L53 263.700 RL
 - L52 260.000 RL
 - L51 253.000 RL
 - L50 249.000 RL
 - L49 245.300 RL
 - L48 241.600 RL
 - L47 237.900 RL
- Structural Elements:** FAC-05 (Facing) and SLS-01 (Slab) are indicated.
- Reference Line:** A red dashed line labeled RL260 is shown at the level of L53.

Source: Hassell

Figure 3 Areas of proposed building exceeding RL 260



Amended DA Proposal

Note: Goods Lift over to RL 270.3

Source: Hassell

2.3. CLAUSE 4.6

There are two critical provisions of clause 4.6 in the NSLEP 2013.

First, clause 4.6(3), referred to in this request as the “document clause” provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Secondly, clause 4.6(4) referred to in this request as the “satisfaction clause” provides that development consent must not be granted for development that contravenes a development standard unless:

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

2.4. DEMONSTRATING "*UNREASONABLE OR UNNECESSARY*"

For the purposes of clause 4.6(3)(a), the ways in which compliance with a development standard can be shown to be unnecessary (in that it is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. Under this approach development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.
3. To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.
4. To establish that the underlying objective or purpose of the standard would be defeated if compliance was required, and hence compliance with the standard is unreasonable.
5. To establish that the development standard has been virtually abandoned or destroyed by Council's own decisions departing from the standard, and hence compliance with the standard is unnecessary or unreasonable.
6. To establish that the zoning of the particular land was an anomaly or inappropriate, and as a result the development standard applying to zoning are also an anomaly or inappropriate, and hence compliance with the standard is unnecessary or unreasonable. (*Wehbe v Pittwater Council* (2007) 156 LGERA 446)

This request focuses on the first method of showing that compliance is unreasonable or unnecessary.

2.5. STANDARD OF SATISFACTION

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 ("*Rebel*"), the Court of Appeal held that a consent authority has to be satisfied that an applicant's written request has "*in fact*" or "*directly*" demonstrated both of the matters in clause 4.6(3) and clause 4.6(4). This request is prepared on that basis.

3. OBJECTIVES OF THE DEVELOPMENT STANDARD

The development standard to be varied is clause 4.3(2) Height of Buildings of NSLEP 2013.

For the purposes of clause 4.6(3) and 4.6(4), it is necessary to address the relevant objectives of the development standard. The objectives are dealt with in turn below in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 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 (approximately 7 metre fall), and therefore buildings along Walker Street also step down the slope towards Sydney Harbour.</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 a 4m tower setback to the south as well as a 4.0 AWS tower setback along the eastern frontage.</p> <p>The increased tower setback from the south will slightly improve views from 1 Denison Street (looking east) and 141 Walker Street tower, looking west.</p> <p>Furthermore, 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>

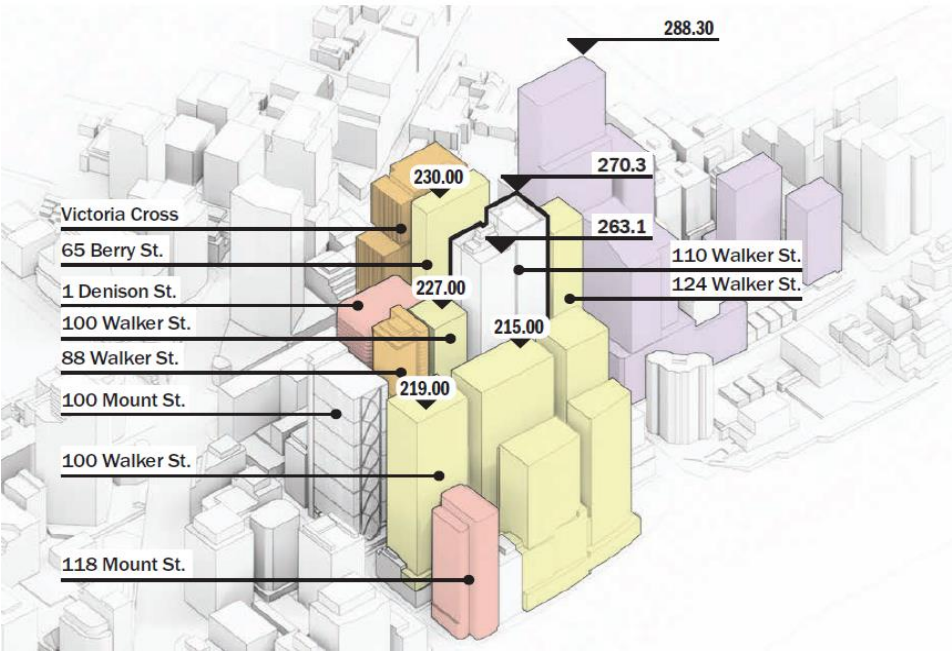
Objective	Compliance
	<p>A comprehensive Visual Impact Assessment Report (VIA) has been prepared by Urbis and submitted at Appendix G of the original DA (Report Ref: 01 RPT_Walker Street_Visual Assessment). The VIA considers the likely views available from the upper floor of east-facing apartments at 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</p>

Objective	Compliance
	<p>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>
<p><i>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</i></p>	<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>
<p><i>(e) to ensure compatibility between development, particularly at zone boundaries,</i></p>	<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 site's immediate visual context, including the following (also shown in Figure 9):</p> <ul style="list-style-type: none"> ▪ 1 Denison Street (37 storeys) (RL 213) ▪ 100 Mount Street (34 storeys) (RL 200) ▪ 88 Walker Street (48 storeys) – under construction (RL 233) ▪ Victoria Cross Over Station Development (42 storeys) – under construction (RL 230) <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. The site at 110-122 Walker Street is not located at a zone boundary.</p>
<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>	<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</p>

Objective	Compliance
	<p>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 height control enables (via clauses 5.6 and 6.3) variations subject to meeting certain criteria.</p> <p>As evident in Figure 4, 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> <p>Overall, the magnitude of change which ranges from 3.1m-10.3m is considered extremely minor in the context of the emerging character and cluster of large scale commercial developments in the CBD area which range in height from RL 200 to RL 289.</p>

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.

Figure 4 Proposed Development in the context of existing and future development



Source: Hassell

4. ENVIRONMENTAL PLANNING GROUNDS

Under cl 4.6(3)(b) of the NSLEP 2013, the grounds relied on by the applicant in the written request under clause 4.6 must be “*environmental planning grounds*” by their nature. The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 assists in considering the sufficient environmental planning grounds. In that case, Preston J observed (at [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]."

There are sufficient environmental planning grounds to justify the proposed variation to the development standard in clause 4.3(2) of the NSLEP 2013 because the variation:

- Promotes or is consistent with the objectives of the EP&A Act, to the extent those objectives are applicable;
- Proposes a relatively minor quantum of the contravention, being 3.9%;
- Satisfies clause 5.6 of the NSLEP 2013, which acts to permit architectural roof features that exceed heights set in clause 4.3;
- Satisfies clause 6.3 of the NSLEP 2013, which 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 in clause 6.3(3) (discussed below);
- Does not result in any significant view impacts;
- Does not compromise the development's consistency with the objectives for the North Sydney Centre division contained within clause 6.1 of NSLEP 2013; and
- Would not in itself result in additional wind impacts for the pedestrian environment at ground level which has been confirmed by the wind report submitted alongside the development application.

4.1. CONSISTENCY WITH THE OBJECTS OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act.

While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 3** we consider how the proposed development is consistent with each object, as and if relevant, notwithstanding the proposed variation of the building height development standard.

Table 3 Objects of the EP&A Act

Object	Comment
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposal promotes the social and economic welfare of the community and a better environment through the delivery of a mixed use commercial and retail development which features an integrated through-site pedestrian link along the southern boundary that provides greater pedestrian

Object	Comment
	<p>accessibility to the new Victoria Cross metro station and laneways throughout the North Sydney CBD.</p> <p>In addition, the proposal includes a rooftop garden and future food and beverage tenancy that is public accessible and provides district views to the surrounding natural assets (including Sydney Harbour).</p> <p>The proposed development will support new jobs during the construction and operational phases of the project in close proximity to existing and future transport opportunities (such as the Victoria Cross metro station).</p>
<p><i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i></p>	<p>The proposal is committed to achieving high standards of ecologically sustainable development including various initiatives addressing alternative transport, minimising waste from demolition, construction and operations, water conservation and quality of stormwater, passive design and natural ventilation and energy efficiency, and the health and wellbeing of the building's occupants. Further, the proposed minor height variation will have no significant negative impact on environmental and social considerations.</p>
<p><i>(c) to promote the orderly and economic use and development of land,</i></p>	<p>The proposed development promotes the orderly and economic use and development of the site by demolishing the existing buildings and delivering a new commercial development which provides a significant increase in employment generating floorspace in proximity to the future Victoria Cross metro station (under construction) and other existing transport opportunities and surrounding amenity (surrounding public parks and special areas).</p> <p>The proposed minor height variation is considered an orderly design outcome that responds to the sloping topography of the site and comprises a distinguishable roof feature which screens plant and lift overruns, thus ensuring, the top of building contributes to the aesthetic to the skyline of the CBD.</p>
<p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p>	<p>This Object is not relevant to this proposed development.</p>
<p><i>(e) to protect the environment, including the conservation of threatened and other species of</i></p>	<p>The proposed development including the minor height variation will have no impact on threatened</p>

Object	Comment
<i>native animals and plants, ecological communities and their habitats,</i>	species or ecological communities and their habitats.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The proposed development is not adjacent to any heritage items or conservation areas and is substantially distanced from the nearest local heritage item being the Former Fire Station at 86 Walker Street (Item I0983).</p> <p>Given the distance between this heritage item and the multiple buildings which sit between the proposed development (including height variation) providing screening, there will be no adverse impacts upon the heritage fabric or significance of the building.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	<p>The proposed development has been designed by award winning architects Hassell and the scheme was the subject of a formal landowner-initiated design competition process.</p> <p>Furthermore, this scheme has been subject to a rigorous design review process with Council's Design Excellence Advisory Panel on three separate occasions and Council's Strategic Planning Department. Consequently, the design scheme has been including a reduction in overall building height.</p> <p>The proposed minor variation in height comprises a distinct glazed roof feature element which screens the unsightliness of plant and lift overruns and provides a resolved design at the top of the built form which presents as an architectural landmark to the surrounding visual catchment. As previously outlined in Section 3 (Table 2 and Figure 4), the proposal is compatible with the scale of the emerging development character in the North Sydney CBD</p>
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development is capable of complying with relevant BCA requirements. Furthermore, the minor variation in building height does not compromise the development from complying with the BCA. Potential construction related impacts will be managed
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This Object is not relevant to the proposed development.

Object	Comment
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development has been publicly notified on two separate occasions. The proposed development also went to the Planning Panel for determination on 16 February 2022, where a number the community were presented with an opportunity to comment on the proposal. These views have been considered by both Council and the Planning Panel.

4.2. SATISFIES CLAUSE 6.3 OF NSLEP 2013

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 in clause 6.3(3).

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.

While not solely relied upon to support the building height variation, It’s a relevant consideration on environmental grounds. The assessment is outlined below in **Table 4**. 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 4 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 5 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 6 and Figure 7, 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 6, Picture 4 Detailed Analysis of Winter Solstice to the south-east of M1 Motorway 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 6, Picture 3 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 7, Picture 5 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 7, Picture 6 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 5 Shadow impacts to Special Areas and RE1 Zone Land

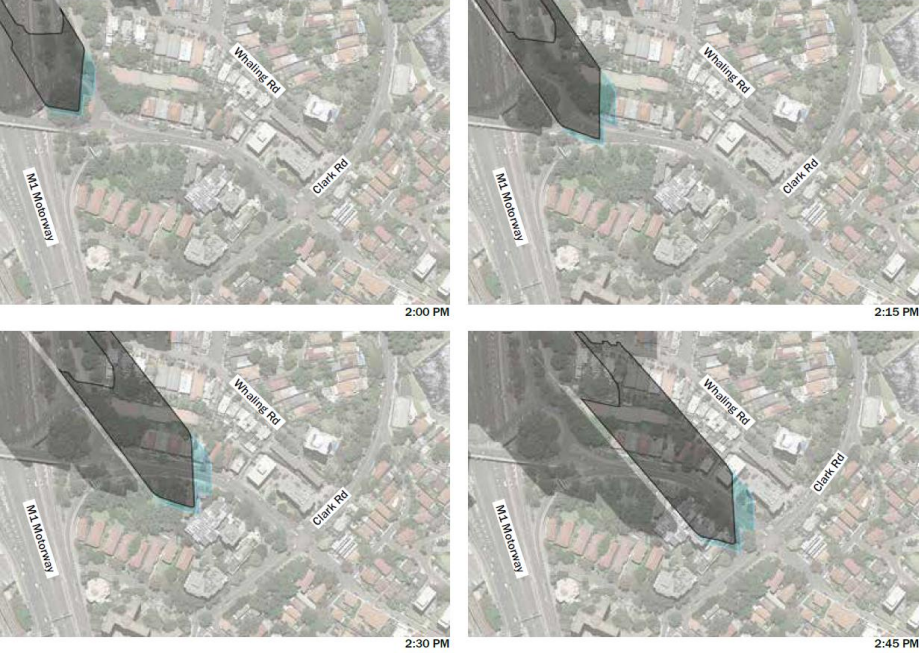


Source: Hassell

Figure 6 Overshadowing impacts to land outside North Sydney Centre



Picture 3 Detailed Analysis of September Equinox south-east of the M1 Motorway

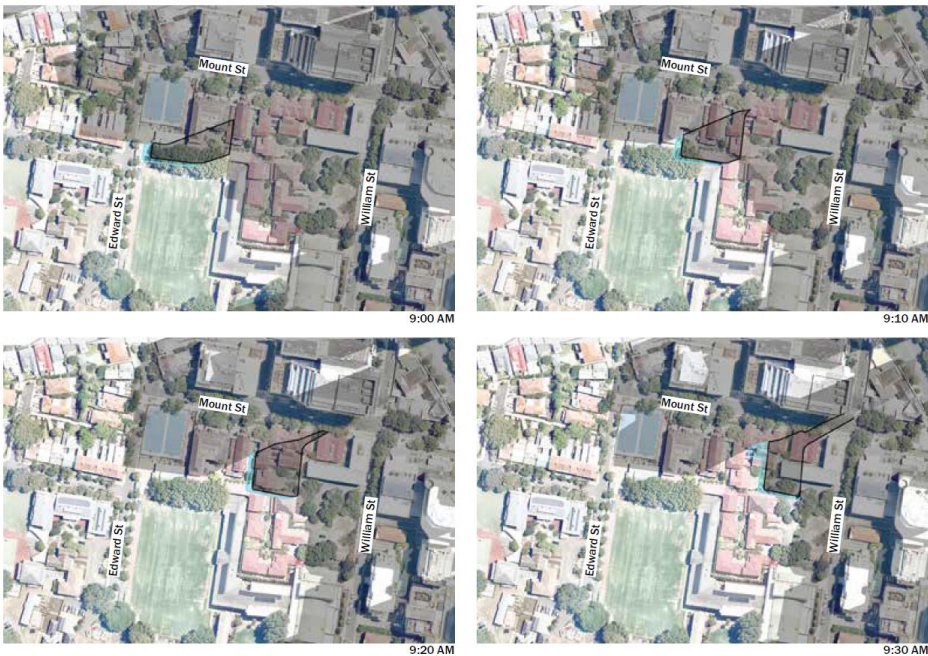


Picture 4 Detailed Analysis of Winter Solstice to the south-east of M1 Motorway

Figure 7 Overshadowing impacts to land outside North Sydney Centre



Picture 5 Detailed Analysis of Winter Solstice to the Southwest



Picture 6 Detailed Analysis of September Equinox to the Southwest

4.3. SATISFIES CLAUSE 5.6 OF NSLEP 2013

Clause 5.6 acts to permit architectural roof features that exceed heights set in clause 4.3. While not solely relied upon to support the building height variation, It's a relevant consideration on environmental grounds. 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.

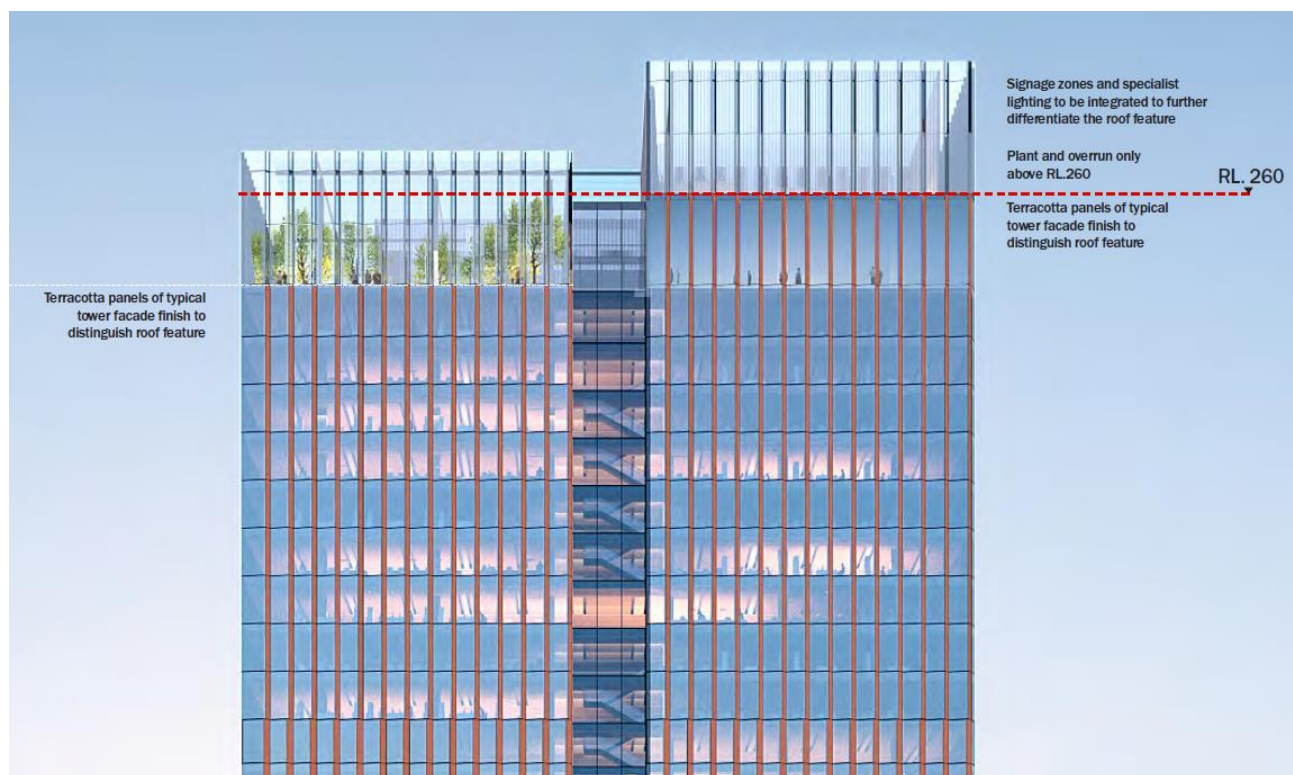
Table 5 Compliance with Clause 5.6

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 8 below, 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 roof feature also provides mitigation to win to the publicly accessible rooftop garden on the southern tower portion. The architectural design of the roof feature façade extends up to a height of RL 270.3 and comprises a glazed screen element which is clearly delineated from, and reads differently to, the glazing of the tower form whilst maintaining the overall design intent. The terracotta finish integrated with the tower façade terminates at the top of the tower to ensure clear delineation between the tower and architectural roof feature. The dynamic nature of the façade means that there will always be a distinction between the tower and roof feature.</p> <p>This roof feature is an important design element that will contribute to the high quality visual offering of the development in the context of the North Sydney skyline.</p> <p>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 'advertising structure' and 'advertising' is defined as follows:</p> <p>advertisement has the same meaning as in the Act.</p> <p><i>Note—</i></p> <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><i>Note—</i></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 'building identification sign' and 'business identification sign' are defined as follows:</p>

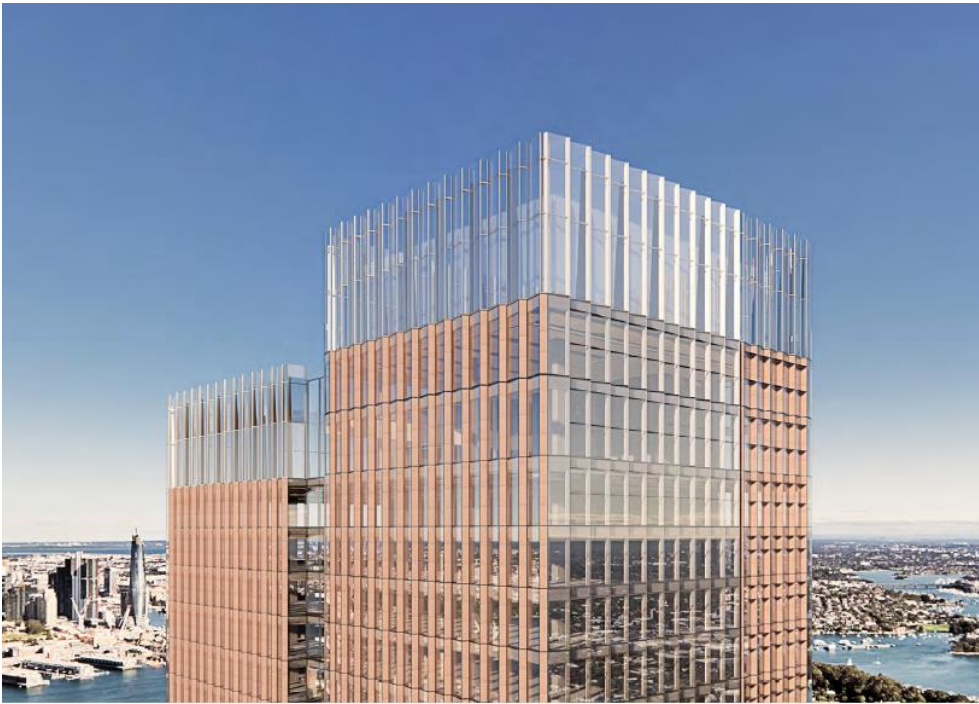
Clause	Response
	<p><i>building identification sign</i> means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services</p> <p><i>business identification sign</i> 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 proposed for 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’. Building and business identification signage will be subject to separate approvals.</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 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> <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 above.</p>
<p>Clause 5.6(b) – Fully integrating the</p>	<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)</p>

Clause	Response
design of the roof top feature with any signage or plant equipment	<p>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 intention is to include building/business identification signage on the north and south elevations. These signage zones have been strategically located 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>

Figure 8 Images demonstrating the proposed Architectural Roof Feature



Picture 7 Top of Eastern Façade Elevation



Picture 8 View of the top of tower and roof feature facing south-west

Source: Hassell

4.4. VISUAL IMPACTS ARE ACCEPTABLE

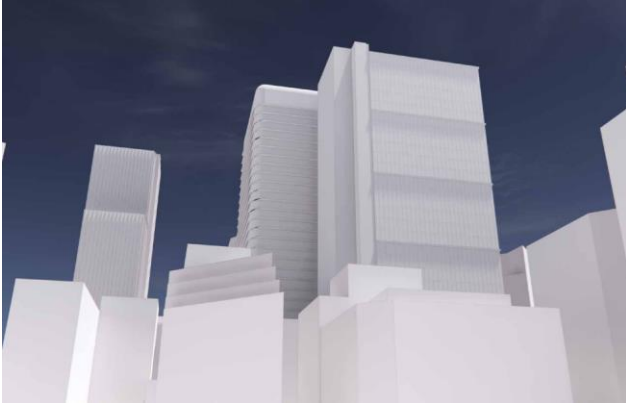
The portion of the building which sits above the RL 260 height control does not result in any significant view impacts.

The Visual Assessment Report prepared by Urbis (December 2020) outlines that the minor height variation does not block private domain views to scenic or highly valued items from the neighbouring residential development at 79-81 Berry Street (Alexander Apartments) towards the east and south-east. The highest point of the Alexander Apartments building is RL 179.95. The neighbouring residential apartments in this building are situated well below the portion of the building the subject of this clause 4.6 which sits between RL 260 and RL 270.3.

Similarly, the additional height variation has minimal impacts on views from neighbouring commercial developments situated to the west such as 1 Denison Street (RL 213) and the Victoria Cross Over Station Development (RL 230). Considering the highest point of these two buildings are situated at RL 213 and RL 230 respectively, and the portion of the proposal above the height control sits between RL 260 and RL 270.3, there will be no perceivable impacts from these two neighbouring and nearby developments towards the east and south-east.

The proposed variation to the building height will have negligible view impacts when viewed from key public domain areas such as Greenwood Plaza and Brett Whiteley Place, two “Special Areas” within the North Sydney CBD as identified under the NSLEP. As illustrated in the view analysis previously prepared by Hassell (Addendum Design Report, dated August 2021) the proposed development and variation in building height will not be visible when viewed from these two locations (refer **Figure 9**).

Figure 9 View Analysis from Key Public Domain Areas within CBD



Picture 9 View from Greenwood Plaza

Source: Hassell



Picture 10 View from Brett Whiteley Plaza

4.5. CBD BUILT FORM CHARACTER

Clause 6.1 of NSELP contains specific objectives for North Sydney Centre as a whole. The proposed variation in building height does not undermine the development's consistency with the objectives for the North Sydney Centre division contained within clause 6.1 of NSLEP 2013. To this point it is noted that:

- The proposed development, including the building height variation, seeks to maintain the status of the North Sydney Centre as a major commercial centre and contributes towards promoting North Sydney as a competitive commercial centre alternative to other CBD locations such as Sydney and Parramatta. The variation in height allows for a distinct roof feature element commensurate with the site's strategic location within a growing CBD context.
- The minor height variation of architecturally screened rooftop plant equipment and lift overruns allows for the provision of approximately 68,000sqm of commercial employment generating floorspace to sit below the RL 260 height control. This new premium grade floorspace will contribute towards employment growth within a highly constrained CBD.
- The height variation does not compromise the provision of high-grade commercial floor plates in excess of 1,000sqm.
- As outlined in **Section 4.2**, the proposed variation in height does not result in a net increase in overshadowing during the winter months to any RE1 zoned land or "Special Areas" within the North Sydney Centre and ensures residential areas outside the Centre are afforded a reasonable amount of solar access (in accordance with clause 6.3).

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 visually as part of a cluster of tall commercial towers in the core of the North Sydney 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 (RL 213) and 88 Walker Street (RL 233), as well as other recently approved or constructed developments within the vicinity including Victoria Cross Over Station Development (RL 230) and 100 Mount Street (RL 200).

The proposed variation to the height of building control contributes to the achievement of the building's design excellence and further accentuates its verticality with a stepped form that follows the natural sloping topography of the site. The additional height would have an imperceptible change to the emerging character of the CBD skyline when viewed from surrounding suburbs and public domain areas outside the CBD.

4.6. NO ADDITIONAL WIND IMPACTS

The additional height above RL 260 would not in itself result in additional wind impacts, beyond a height compliant building, for the pedestrian environment at ground level 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.

5. OBJECTIVES OF THE ZONE

For the purposes of clause 4.6(4), the consent authority needs to be satisfied that the development is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

5.1. MEANING OF "*CONSISTENT*"

A development that is consistent with zone objectives does not need to promote the objective concerned strictly, but it encompasses development which may be complementary or ancillary to development which promotes the objective concerned. A development is not consistent with zone objectives if it is antipathetic development to those objectives: *Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* (1991) 74 LGRA 185. It follows that the test of consistency is low.

5.2. CONSISTENCY WITH THE STANDARD

Table 2 above demonstrates that the development achieves the objectives of the building height development standard. As the development achieves the objectives (as applicable) it is plainly consistent with those objectives.

Consistency with the objectives of the B3 zone are dealt with in turn below.

5.3. CONSISTENCY WITH B3 – COMMERCIAL CORE ZONE

The proposal is also consistent with the land use objective that applies to the site under NSLEP 2013 as demonstrated within **Table 6** below. The site is located within the B3 Commercial Core zone.

Table 6 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>	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 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

Objectives	Compliance
	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>

6. SECRETARY'S CONCURRENCE

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

6.1. **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 of between 1.2-3.9% will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

6.2. **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.

Therefore, there is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

6.3. **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.

DISCLAIMER

This report is dated 23 February 2022 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of STOCKLAND DEVELOPMENT PTY LTD (**Instructing Party**) for the purpose of Clause 4.6 Variation (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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