



**URBIS**

# **CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD: HEIGHT OF BUILDINGS**

100-102 Walker Street, North Sydney

Prepared for  
**PRO-INVEST COMMERCIAL ASSET MANAGEMENT  
PTY LTD**  
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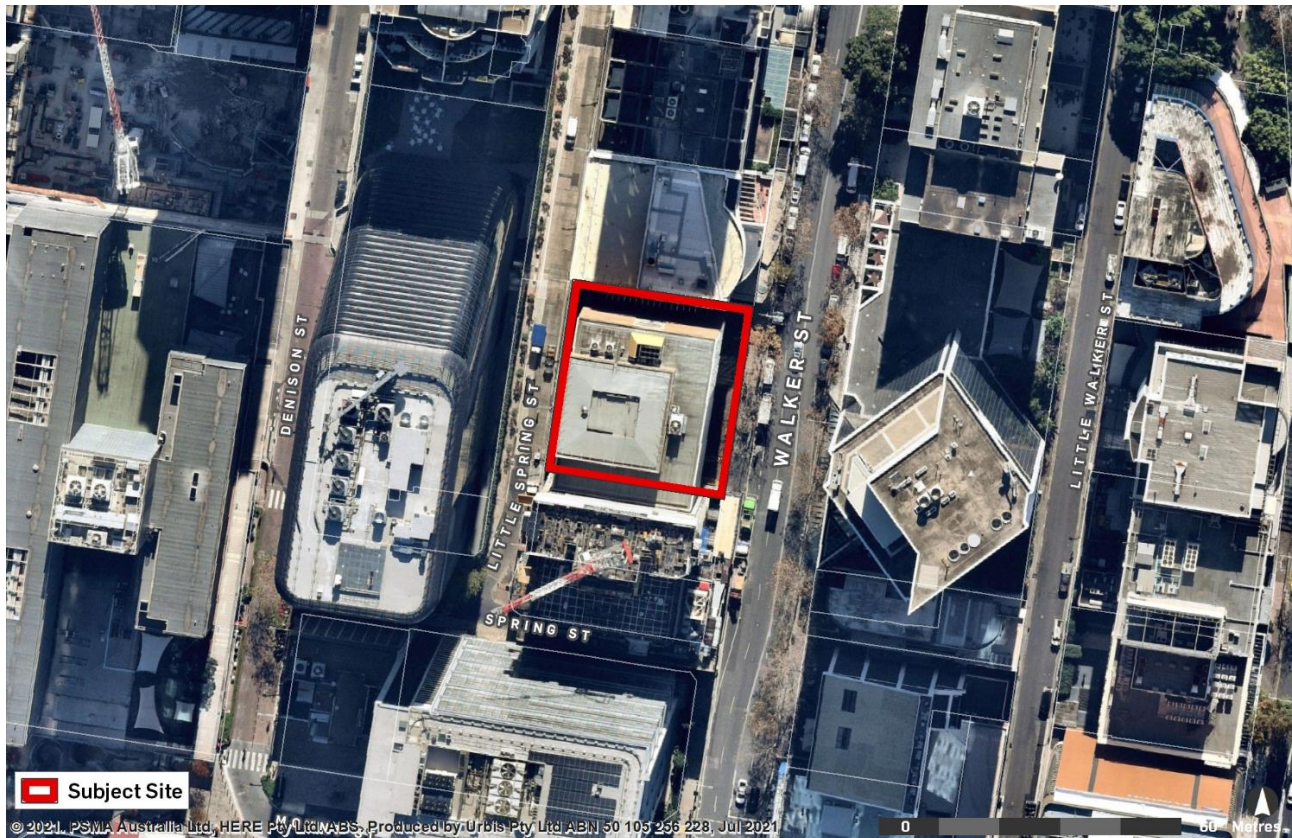
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# 1. INTRODUCTION

## 1.1. REPORT PURPOSE

This Clause 4.6 Variation Request (**Variation Request**) has been prepared on behalf of Pro-Invest Commercial Asset Management Pty Ltd (**the proponent**) to support a detailed Development Application (**DA**) submitted to North Sydney Council (**Council**) for the proposed commercial redevelopment of the site at 100 - 102 Walker Street, North Sydney (**the site**) (herein referred to as 100 Walker Street). An aerial image of the site is provided in **Figure 1**.

Figure 1 The site



Source: Urbis

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 227. The proposed development has a maximum height of RL239 (to top of building envelope) and RL227.9 (to top of habitable floor space provision). 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 NSLEP 2013, it must:

1. “adequately” demonstrate “that compliance with the Height of Building standard is unreasonable or unnecessary in the circumstances” of the project on the site; and
2. “adequately” demonstrate “that there are sufficient environmental planning grounds” to justify contravening the maximum building height 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 4 of this Request.**

- There are sufficient environmental planning grounds to support the proposed development, in that there is an absence of environmental harm arising from the contravention and positive planning benefits arise from the proposed development – **Refer to Section 5 of this Request.**

This report should be read in conjunction with the Statement of Environmental Effects (**SEE**) prepared by Urbis Pty Ltd and dated December 2021 and the architectural drawings prepared by Bates Smart and other documentation appended to the SEE. Those documents form part of this request.

## 1.2. THE SITE

### 1.2.1. Site Description

The land to which this Request relates is known as 100 - 102 Walker Street, North Sydney comprising a single allotment legally identified as Lot 1 in Deposited Plan 542915. The site is rectangular in shape with an area of approximately 1,392 sqm, a primary frontage to Walker Street of 38.66m to the east and a secondary frontage to Little Spring Street of 38.45m to the west. It has an approximate topography fall of about 5.55m from north-west to south-east.

A Survey Plan prepared by Land Air Surveys is appended to the Statement of Environmental Effects.

### 1.2.2. Urban Character

This site is situated in the North Sydney CBD. The North Sydney CBD is currently undergoing a period of accelerating change, with significant developments underway in transport and infrastructure, civic sites and public spaces, commercial and residential construction.

The strategic direction of the North Sydney LGA is to increase development for commercial and retail floorspace within the commercial core of North Sydney CBD, which will be catalysed by the future opening of the Victoria Cross Metro station on the new western Metro line that will connect North Sydney to Parramatta. The new Metro station brings a once in a generation opportunity for Council to create activated cross-block pedestrian connections to this new transport infrastructure.

A number of approvals have recently been constructed, granted or are under determination as listed below:

- **Victoria Cross Over Station Development (RL 230)** – 42-storey premium grade commercial over station development (SSD-8874) above the new Victoria Cross Metro Station approved on 6 July 2020 (Bates Smart);
- **1 Denison Street (RL 213)** – A-grade commercial tower DA approved 7 February 2019 (MP 08\_0238) (Bates Smart). 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)** – 49 storey commercial office and hotel building and additions to the existing Firehouse Hotel (DA 368/18) (Fitzpatrick + Partners). Approved 12 February 2019 by the Sydney North Planning Panel and subsequently modified to introduce an additional level (DA 368/18) approved by the Sydney North Planning Panel on 7 December 2021. The approved setbacks are nil to the North, 3m to the south, 5m to the east and 3.7m to the west. The highest occupied floor level of 88 Walker is at RL 228.9 (top of rooftop bar on level 48); and
- **110 – 122 Walker Street (RL. 270.3)** – A-grade commercial mixed-use tower directly north of the site, DA19/21 is currently under assessment (Hassell). The proposed maximum building height is RL270.3 to the top of the roof plant (a 10.3m variation to the building height control of RL260) and RL263.1 to the top of the roof feature (a 3.1m variation to the building height control of RL260).

## 1.3. DEVELOPMENT PROPOSAL

This Variation Request has been prepared to accompany a DA for the 46-storey plus rooftop plant and architectural feature (RL239m) commercial building, comprising office and retail land uses with public domain works including provision of an east-west laneway connection between Walker Street and Little Spring Street. A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd.

In summary, the DA seeks consent for:

- Demolition of existing site improvements and excavation to a depth of approximately RL35 metres.
- The design, construction and operation of a 46-storey commercial building plus rooftop plant and architectural feature (RL239m) with a total gross floor area provision of 42,573sqm. The building will accommodate:
  - 46-storeys of commercial office space including terraces on the eastern elevation and building plant at the Low-rise Deck (Level 17), Mid-rise Deck (Level 31) and rooftop (Level 45 and 46).
  - Retail premises (including food and beverage premises and shops) accommodated on the lower ground, upper ground and basement level 1.
  - Pedestrian access to the site from several entries on Lower Ground and Upper Ground from the Walker Street, Little Spring Street and laneway frontages.
  - Repurposing existing vehicular access on Walker Street and construction of six (6) storey basement to accommodate a total of 74 car parking spaces, 2 loading bays, 397 bicycle parking spaces, as well as associated end of trip facilities (**EOTF**), storage, back of house, services and retention of the existing site substation.
  - Provision of a rooftop architectural feature.
- Removal of 2 x trees and landscaping provision on Walker Street, ground plane and upper-level terraces.
- Public domain improvements to facilitate an improved pedestrian experience at ground plane, including activation of street frontages, provision of a 3m-wide open to the sky public east-west laneway connection along the full extent of the northern site boundary between Walker Street and Little Spring Street, and pedestrian awnings along Walker Street and the laneway.
- The addition of a public lift providing accessible access between basement level 1, Little Spring Street, the laneway and Walker Street.

The application proposes a height of building of RL239 to the top of the building roof feature and RL227 to the top of the habitable floor space provision.

## 2. PROPOSED VARIATION

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention.

### 2.1. DEVELOPMENT STANDARD

#### 2.1.1. Clause 4.3 of the NSLEP 2013 – Height of Building Control

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 maximum building height permitted on the site under clause 4.3 of the NSLEP is RL227 as illustrated in Figure 2.

The dictionary 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.

Clause 4.3 of the NSLEP is in the form of a simple development standard (as defined in section 1.4(1) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*). The height of buildings control is a numeric development standard capable of being varied under Clause 4.6 of NSLEP 2013.

Figure 2 Height of Buildings Map



Source: NSLEP 2013



## 2.2. EXTENT OF VARIATION

The development proposes a total building height of RL239 (inclusive of rooftop plant and the architectural roof feature). Whilst RL 239 represents the highest point of the building envelope, level 45 and partial level 46 do not contain habitable floor space and accommodate plant, services, cooling towers, lift overrun and non-trafficable roof areas. Accordingly, the tallest point of the building envelope which contains floor space is RL227, at level 44,

The site is located in North Sydney Centre. Development in North Sydney Centre can exceed the height of buildings development standard subject to complying with the solar access provisions stipulated within Clause 6.3. This Variation Request has therefore been prepared for abundant caution.

The variations to the height controls are outlined in **Table 1**.

Table 1 Proposed height variations

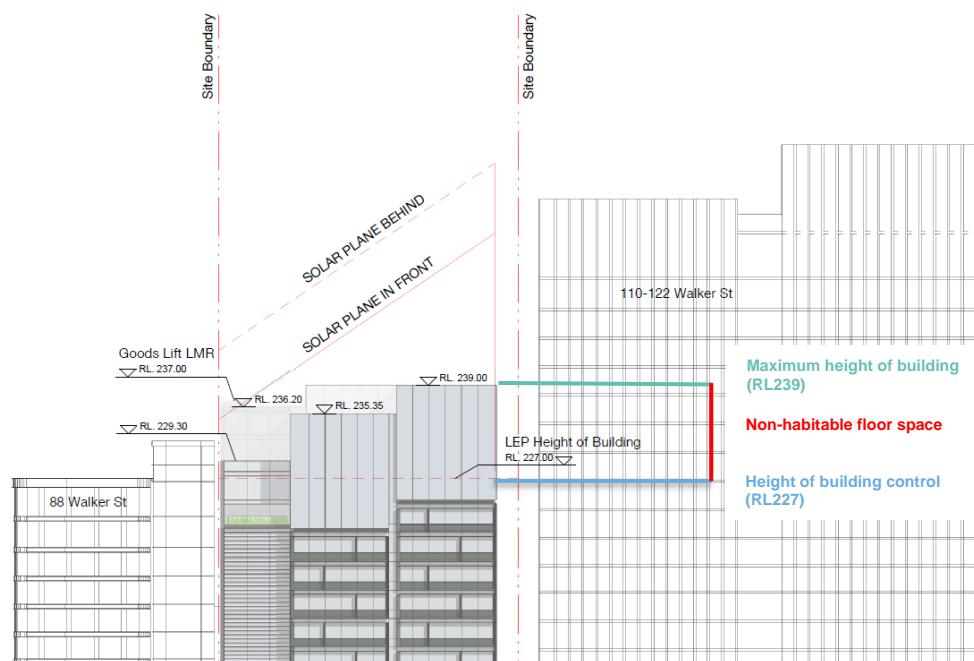
Building Component	Proposed Height (RL)	Proposed Variation
Top of building roof feature (roof level)	RL 239	12m
Top of habitable floor space provision (ceiling height of Level 44)	RL 227.9	0.9m

The proposed maximum building height (to top of building roof feature) exceeds the RL227 maximum building height control by 12m. Of this, the full extent of the variation is permissible by way of clause 6.3 which permits an exceedance of the height of buildings development standard subject to complying with the solar access provisions.

The extent of the variation is considered minor – 12m, or 5% of the total permitted building height.

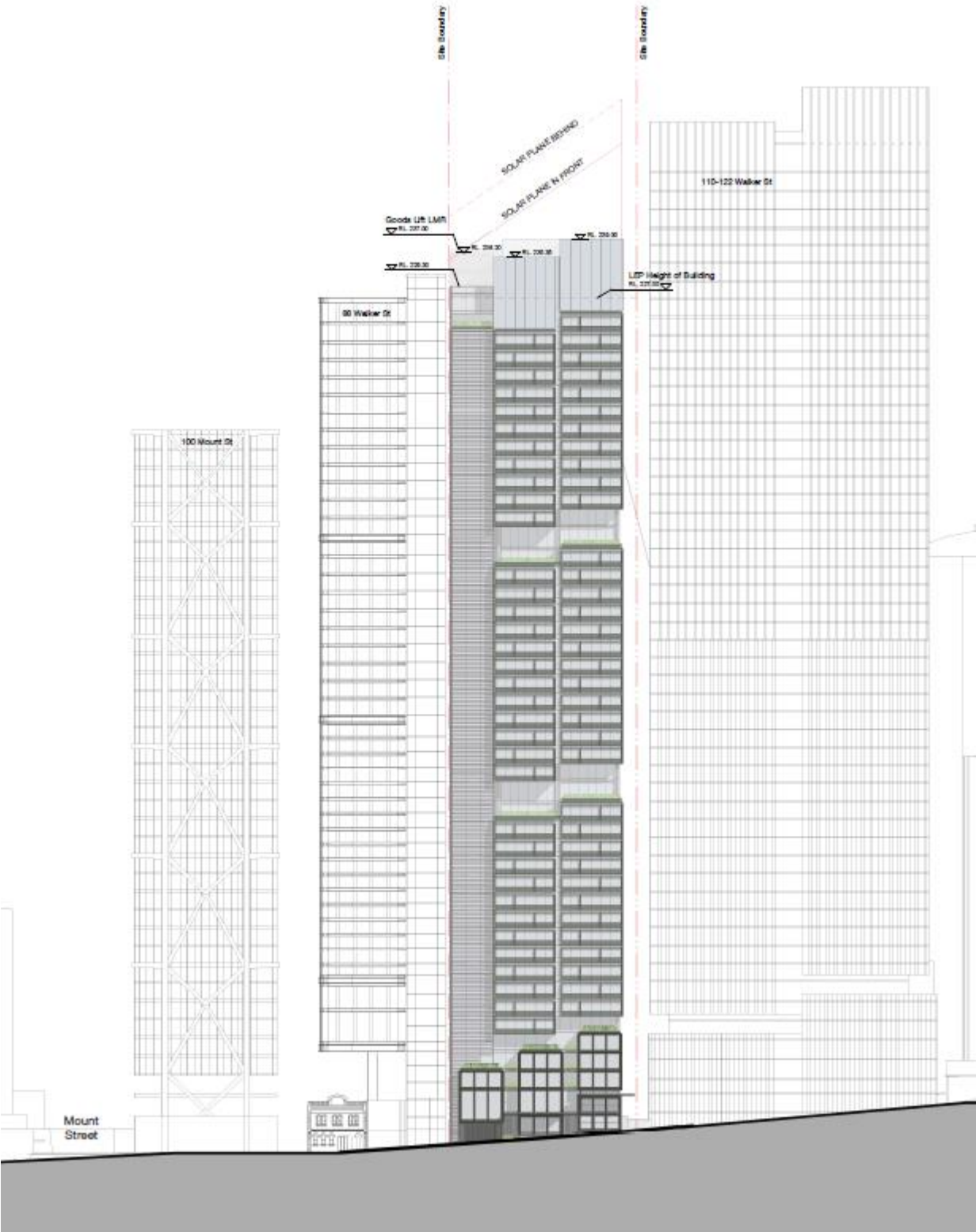
**Figure 4** and **Figure 3** illustrate the nature of and the physical extent of building height variation on plan view.

Figure 3 Eastern Elevation Plan extract



Source: Bates Smart

Figure 4 Eastern Elevation Plan



Source: Bates Smart

## 3. ASSESSMENT FRAMEWORK

### 3.1. 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."*

### 3.2. DEMONSTRATING ‘UNREASONABLE AND 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.

### 3.3. 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.

## 4. COMPLIANCE IS UNREASONABLE AND UNNECESSARY

Clause 4.6(3)(a) requires the consent authority to consider if compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This Variation Request demonstrates compliance is unreasonable and necessary based on the following:

1. **The objectives of the standard are achieved despite the non-compliance with the standard.** This is the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and is sufficient to satisfy the 'unreasonable and unnecessary' requirement.
2. **The burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development.** This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

### 4.1. OBJECTIVES OF THE DEVELOPMENT STANDARD

An assessment of the consistency of the proposed development with the specific objectives of the height of buildings development standard as specified in Clause 4.3 of NSLEP 2013 is detailed in **Table 2** below.

Table 2 Assessment of consistency with the objectives of the standard

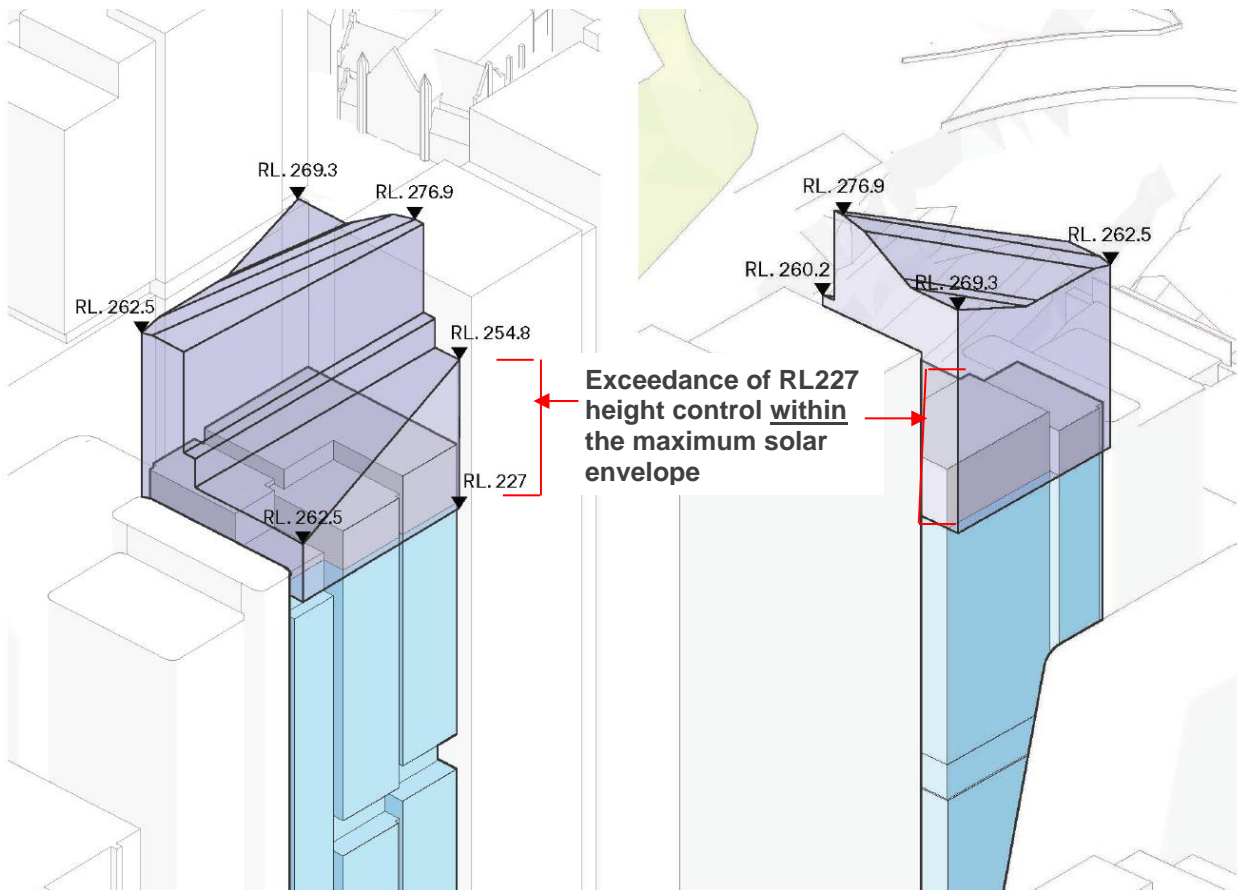
Consideration	Response	Compliance
Clause 4.3 – Height of buildings		
<i>(1) The objectives of this clause are as follows—</i>		
<i>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</i>	<p>The topography of the site has an approximate topography fall of about 5.55m from north-west to south-east.</p> <p>The proposed building height contravention seeks to respond to the topography of the site through the provision of a stepped tower crown. The greatest height is accommodated the northern portion of the site and the lowest building height at the southern portion of the site reflecting the slope across the site. Level 45 and a partial level 46 reflects the tapered transition of the tower crown. The design echoes the stepped form of the land topography, podium and the village decks and will step both horizontally and vertically to create a distinctive presence on the North Sydney skyline.</p> <p>In all respects, the design of the proposed development positively reflects and responds to the natural slope of the site.</p>	Yes
<i>(b) to promote the retention and, if appropriate, sharing of existing views,</i>	<p>The 12m exceedance of the height of building control will not disrupt view sharing in the North Sydney CBD.</p> <p>The site is within a metropolitan CBD location, and 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. Further, the proposal and the 12m exceedance will preserve the following views identified for the 'Central Business District' in Part C, Section 2.1.1 (Significant Elements), control P7 of the North Sydney Development Control Plan 2013:</p>	Yes

Consideration	Response	Compliance
	<p>(a) From the plaza at No.5 Blue Street and located over North Sydney Rail Station to the Sydney Harbour Bridge.</p> <p>(b) From Doris Fitton Park (160-166 Arthur Street) to Sydney Harbour and Neutral Bay district.</p> <p>(c) Views along the Pacific Highway to the Post Office on Mount Street from the south-east.</p> <p>(d) Views along the Pacific Highway to Sydney Harbour from the intersection with Mount Street.</p>	
<i>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</i>	<p>The 12m exceedance of the height of building control will not block solar access to existing dwellings, public reserves and streets.</p> <p>The shadow diagrams prepared by Bates Smart and appended to the Statement of Environmental Effects demonstrates that the proposed development, including the 12m exceedance, will have 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 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> <p>The proposed exceedance of the height plane up to RL239 sits within the maximum solar envelope as illustrated in Figure 5 and as such does not impact residential dwellings, Special Areas or public recreation areas.</p>	Yes
<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. As such the proposed 12m exceedance of the height of building control will not impact the amenity of adjacent residents.</p> <p>It is noted the Alexander Apartments at 79-81 Berry Street is located to the north-west of the site on the opposite side of Little Spring Street. The 12m exceedance of the building height will not be the sole disruptor of private residential views from this property, noting that the site is located within a cluster of tall, high-density tower buildings including 110 Walker Street and 1 Denison Street.</p>	Yes
<i>(e) to ensure compatibility between development, particularly at zone boundaries,</i>	<p>The proposed exceedance seeks to create an appropriate transition between adjacent buildings through a tapered, stepped building height whilst also maximising the available commercial floor space, in accordance with the objectives of the North Sydney Centre identified in clause 6.1 of the NSLEP 2013.</p> <p>The full extent of the exceedance is caused by the objective to provide a stepped transition between 88 Walker Street and the proposed 110 Walker Street. Whilst the maximum extent of the</p>	Yes

Consideration	Response	Compliance
	<p>exceedance of 12m, this height is required to provide a legible 'step' up to the proposed building height of RL270.3 at 110 Walker Street. The proposed height of the development will align with the built form language of the adjacent buildings and provide a consistent and cohesive skyline in the North Sydney Centre. The maximum extent of the building envelope up to RL239 is compatible with the existing and emerging character of development within the B3 Commercial Core.</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>The proposed building height aligns with the emerging character within the North Sydney CBD in accordance with Council's strategic objectives which seek to strengthen North Sydney CBD as a competitive economic centre in metropolitan Sydney. Notably, the wider evolving future character as illustrated in</p> <p><b>Figure 6</b> includes the Victoria Cross Over Station Development (RL 230), 1 Denison Street (RL 213), 88 Walker Street (RL 232.6 incl. roof feature) and 110 – 122 Walker Street (RL. 270.3). The character of the area as supported through the development standards of the NSLEP 2013, which is encouraging the transformation to tall tower forms in the core of the centre around the metro station. This demonstrates a shift in the urban form and character of the North Sydney CBD, which the proposed building height of RL239 is consistent with.</p> <p>The proposed building height (including the extent of contravention) is contextually responsive to this emerging character and will sit within a tower cluster along the western edge of the North Sydney CBD, creating a strong framing to the centre. This is illustrated in <b>Figure 7</b>.</p> <p>Overall, the magnitude of the exceedance of 12m (5% of the building height) 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>	Yes

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this Variation Request.

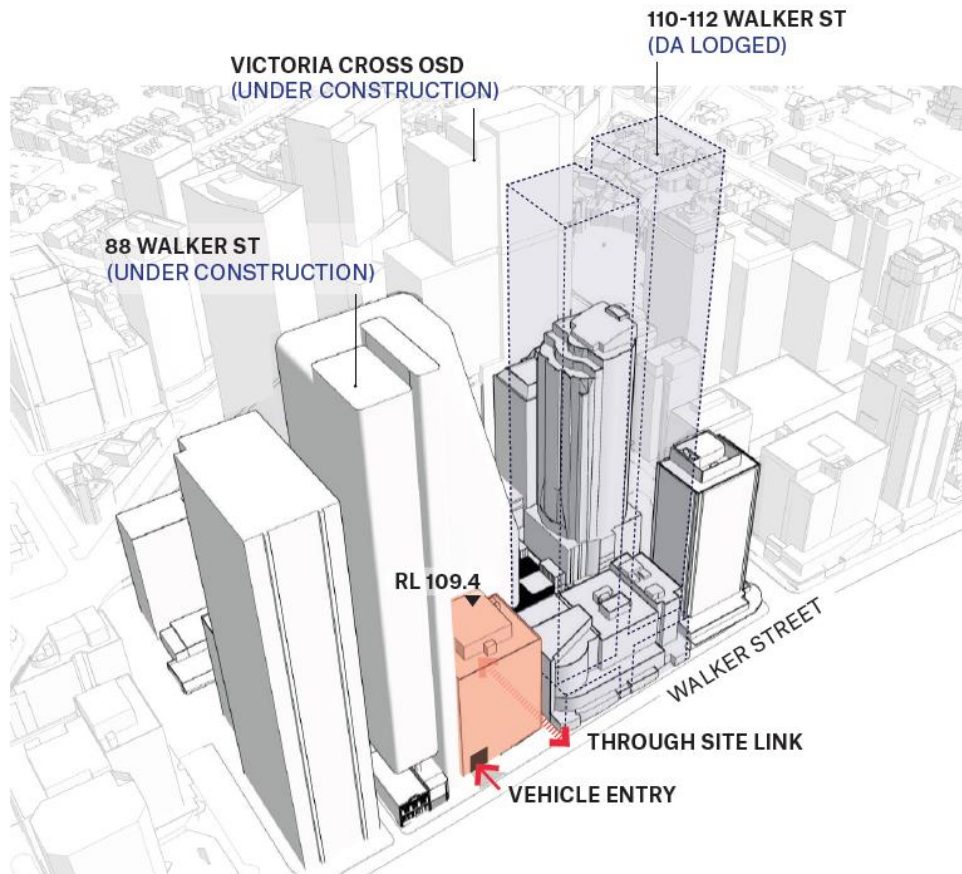
Figure 5 Compliance with maximum solar envelope



Source: Bates Smart



Figure 6 Proposed Development in the context of existing and future development



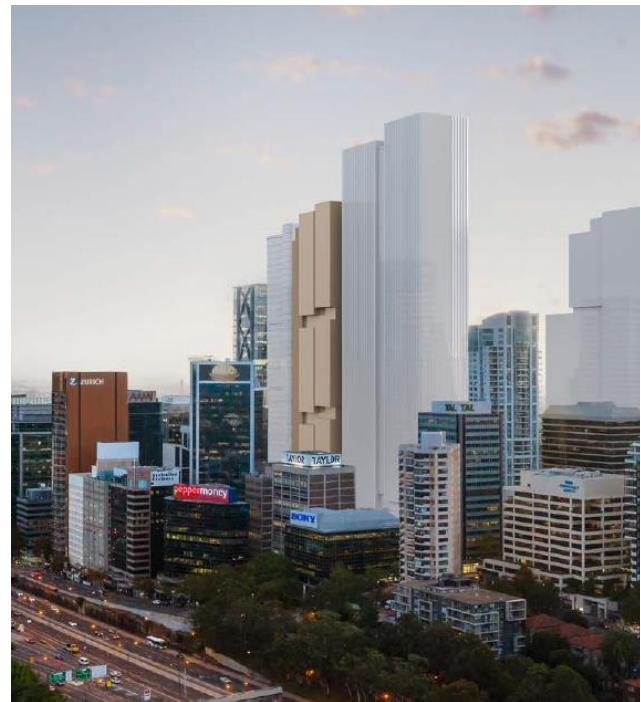
Source: Bates Smart

Figure 7 Alignment with North Sydney CBD character



Picture 1 View from Forsyth park

Source: Bates Smart



Picture 2 Render of view in North Sydney Centre

Source: Bates Smart

## 4.2. BURDEN ON THE COMMUNITY

The burden placed on the community (by requiring strict compliance with the maximum building height standard would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed building height non-compliance (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The proposed contravention will, in itself, deliver positive environmental planning benefits to the community that would not be possible if this request is not upheld.

The extent of the variation is negligible and relates to 12m of building height – all of which contains non-habitable floor space and an architectural roof feature. This is 5% of the total permitted building height. The proposed building height is entirely within the maximum solar envelope (Figure 5) and does not impact solar access to land in the RE1 zone, Special Area, Don Bank Museum or in residential zones.

Due to the proposed articulation and façade design, the 12m variation will have a lightweight, transparent character that will read as a series of light glazed volumes that define the building form. This will conceal the plant spaces and integrate the two uppermost habitable floors, creating a distinct and separate architectural roof feature that will contribute to the overall building identity and visual presence.

In comparison, compliance with the control would result in the loss of high-quality and in-demand commercial floor space due to the relocation of plant area into the below habitable floors that would be required for the sake of numerical compliance. It would also result in the loss of this architectural feature, and removal of the tower crown and skyline definition. This is disproportionate to the inconsequential adverse impacts associated with the non-compliant building height provision.

Figure 8 Lightweight character of building crown



Source: Bates Smart

## 5. ENVIRONMENTAL PLANNING GROUNDS

Clause 4.6(3)(b) requires a consent authority to consider whether there are sufficient environmental planning grounds to justify contravening the development standard.

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and ...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

This Variation Request demonstrates there are sufficient environmental planning grounds to justify the proposed variation to the maximum building height provision as:

1. **The variation relates a relatively minor quantum of the contravention.** The proposed contravention of the maximum building height (to top of building roof feature) exceeds the RL227 maximum building height control by 12m. Of this, the full extent of the variation is permissible by way of clause 6.3 which permits an exceedance of the height of buildings development standard subject to complying with the solar access provisions. The extent of the variation is considered minor – 12m, or 5% of the total permitted building height.
2. **There is an absence of environmental harm arising from the contravention.** As outlined in the Statement of Environmental Effects, there are no significant environmental impacts associated with the 12m portion of the proposed building height which exceeds the RL227 height plane. This is further discussed in **Section 5.1**.
3. **The proposed development better achieves the objects of the EP&A Act than a development which complies wholly with the building height control.** As guided by the judgement in *Initial Action Pty Ltd v Woollahra Council* [2018], this relates to the portion of building height above the RL227 height plane. This is further discussed in **Section 5.2**.
4. **The proposed development satisfies clause 5.6 of the NSLEP 2013.** The intent of this clause is to permit architectural roof features that exceed heights set in clause 4.3. This is further discussed in **Section 5.3**.
5. **The proposed development satisfies clause 6.3 of the NSLEP 2013.** The intent of this clause is to allow 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). It is noted that the additional height is capable of being approved with no variation to the development standard by virtue of Clause 6.3. This clause states that 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. This is further discussed in **Section 5.4**.

### 5.1. ABSENCE OF ENVIRONMENTAL HARM

#### 5.1.1. Solar Impacts

The SEE demonstrates there are no significant solar access impacts on land in the RE1 zone, Special Area, Don Bank Museum, residential buildings or the public domain as a result of the building height variation. A detailed shadow analysis has been prepared by Bates Smart and is appended to the Statement of Environmental Effects. Due to the site's location within a dense urban environment and the high-density form in the surrounding area, particularly the adjacent 110 Walker Street, the extent of additional shadow caused by the 12m building exceedance is minimal and considered acceptable in recognition of the site's context.

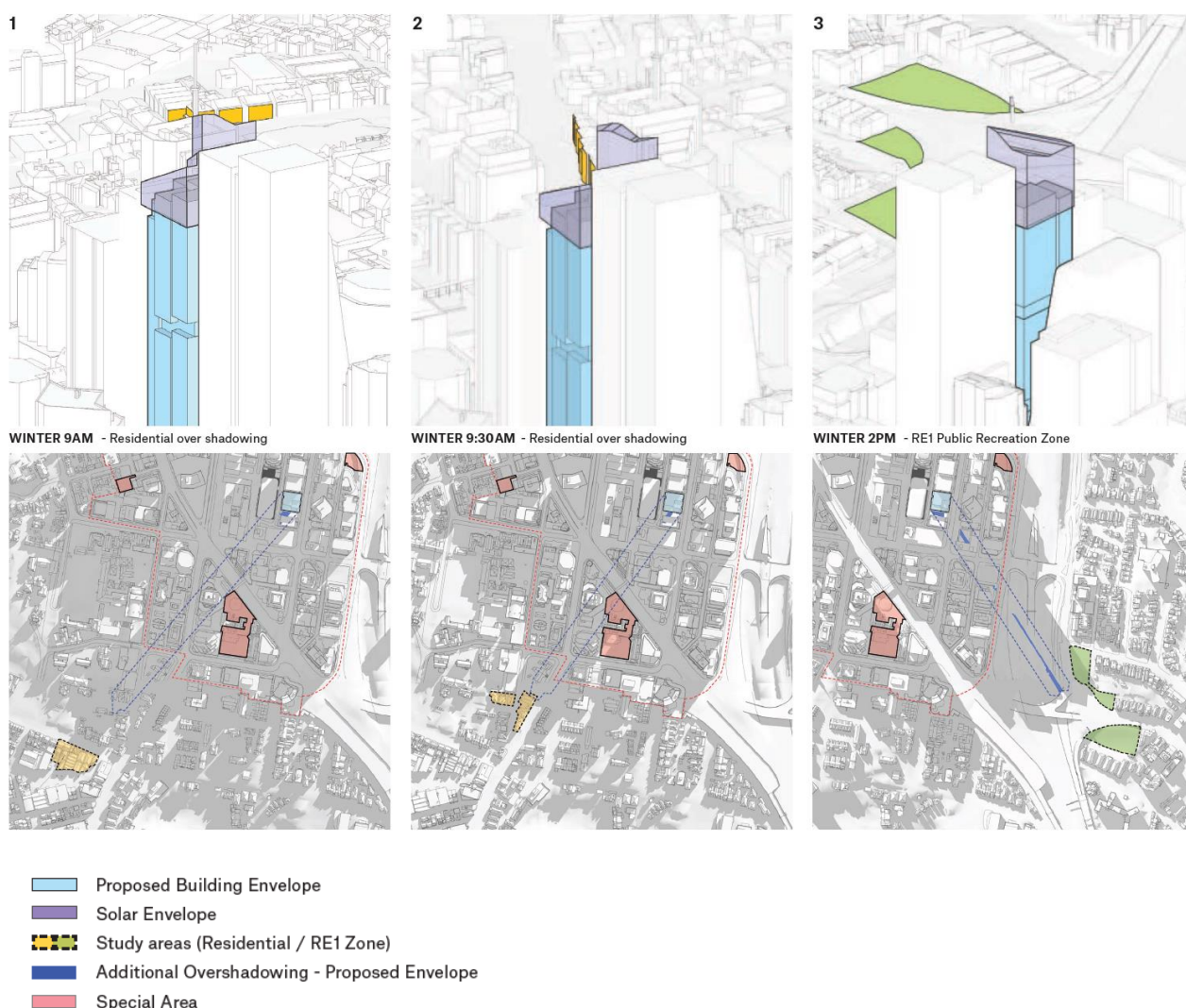


The proposed exceedance to the height plane will have minimal overshadowing impact to residential areas located outside North Sydney Centre. Specifically, it is noted the entire building envelope will cause a minor increase in shadow as follows:

- Additional shadow at 2pm that falls on the existing road corridor zoned SP2 (the M1 Motorway and a portion of High Street).
- At 3pm, the development causes additional shadow on land zoned R3 and R4 located to the east of the Motorway. This is illustrated in **Figure 11**. However, it is noted that throughout the earlier parts of the day (9am – 1pm) and at all other times of the year (summer solstice and equinox) these areas are in full sun and there is no loss of solar access at these times due to the proposed envelope.

As these minimal impacts are caused by the entire building envelope, the proposed 12m exceedance to the height plane (5% of the envelope) will have an even lesser solar impact than that outlined in **Figure 9**.

Figure 9 Shadow analysis at 9am, 9:30am and 2pm on winter solstice



Source: Bates Smart

### 5.1.2. Heritage Impact

The 12m building height exceedance will not impact the Former Fire Station at 86 Walker Street (Item I0983) local heritage item located to the south of the site. The building height exceedance is not within the immediate visual sightline of the heritage item. Further, the significance of the item is already modified due to the approved vertical tower addition above the item approved under DA/368/18.

### 5.1.3. Visual Impacts

The 12m exceedance of the height of building control will not cause any significant view impacts.

The minor height variation does not block private domain views to scenic or highly valued items from the residential property located in the North Sydney Centre, the Alexander Apartments. The Alexander Apartment building is located to the north-west of the site and the highest point of the Alexander Apartments building is RL 179.95. The neighbouring residential apartments in this building are situated well below the 12m height exceedance which is the subject of this clause 4.6 that sits between RL 227 and RL 239. It is further noted the site sits within a cluster of tall, high-density tower buildings including 110 Walker Street (proposed, to the north) and 1 Denison Street (operational, to the west).

Similarly, the additional height variation will have a minimal impact on views from the neighbouring commercial development to the immediate west of the site at 1 Denison Street. As the highest point of this building is RL213, and the portion of the proposal above the height control sits between RL 227 and RL 239, there will be no perceivable impacts of the height exceedance on this property.

### 5.1.4. Wind Impacts

The additional height above RL 239 would not in itself result in additional wind impacts, beyond a height compliant building, for the pedestrian environment at ground level. This is discussed further in the Pedestrian Wind Tunnel Assessment prepared by CPP and appended to the Statement of Environmental Effects. The wind environment at ground level near the development site was found generally to be suitable for either pedestrian standing or walking and wind conditions on Walker Street and Little Spring Street.

In conclusion, there is an absence of environmental harm associated with the proposed 12m exceedance of the RL227 height of building control.

## 5.2. OBJECTS OF EP&A ACT

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, the following consider how the proposed development is consistent with each object, as and if relevant, notwithstanding the proposed variation of the building height development standard.

The proposed development better achieves the following (relevant) objects of the EP&A Act than a development which complies wholly with clause 4.3 as:

- Section 1.3(a):

*“to promote the social and economic welfare of the community and a better environment by the proper management ...[and] development ... of the State’s ... resources”*

The development will more efficiently use the land (part of the State’s resources) in a way that creates no material adverse impacts for neighbours or the wider community. The more efficient use of the land will create an opportunity to provide high-quality commercial floor space within the North Sydney Centre, which will contribute to achieving Council’s strategic priorities for the North Sydney Centre to increase employment generation in order to strengthen the diversity, capacity and resilience of the Metropolitan Centre. The consolidation of plant and services on level 44 and level 45, which sit above the height plane, will optimise the floor plate design and enable the delivery of additional habitable floor space within the maximum height of building plane.

- Section 1.3(b):

*“to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment”*

The non-habitable floor space that is proposed to be accommodated above the RL227 height plane (plant, services and an architectural roof feature) are unlikely to be accommodated in a ground level or podium level location due to the inability of these activities to compete directly with the proposed retail tenancies, lobby space and commercial office space in a locality of this kind. The consolidation of these

services at the top of the building represents the most efficient location for this floor space, whilst also providing a social benefit in the contribution of a visual architectural roof feature to mitigate the change in height between 110 Walker and 88 Walker.

Upholding the clause 4.6 request involves a better integration of integrating relevant economic, environmental and social considerations in decision-making.

- Section 1.3(c):

*“to promote the orderly and economic use and development of land”*

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, cooling towers and lift overruns, thus ensuring, the top of building contributes to the aesthetic to the skyline of the CBD.

- Section 1.3(g):

*“to promote good design and amenity of the built environment”*

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 will enable the delivery of a tapered tower crown to contribute 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. It will also mitigate the height difference between 110 Walker and 88 Walker. This is discussed further in **Section 4.2**.

In regard to amenity, 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, and the additional height above RL 227 would not in itself cause additional wind impacts for the pedestrian environment.

The proposed development better achieves the following aims of the NSLEP 2013 contained in clause 1.2 than a compliant development:

- Clause 1.2 (2) (aa):

*to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*

Not applicable.

- Clause 1.2 (2) (a):

*to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*

For reasons explained above, the contribution of the proposed architectural roof feature will add to the vibrancy and diversity of the locality. The accommodation of plant and services above the height plane will have no impact on the amenity of the North Sydney Centre and will enable the optimisation of commercial floor space within the permitted height plane. This will support the role of the North Sydney as part of the 'Harbour CBD' and Metropolitan Sydney's primary centre.

- Clause 1.2 (2) (b):

*in relation to the character of North Sydney's neighbourhoods—*

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

*(ii) to maintain a diversity of activities while protecting residential accommodation and local amenity, and*

*(iii) to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*

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 portion of the building height that sits above the

permitted height plane between RL227 - RL 239 allows for an appropriate transition in built form to adjoining sites including 110 Walker Street (RL270.3) and 88 Walker Street (RL232.6) and is considered in keeping with the existing and emerging streetscape character.

As per the commentary for section 1.3(g) above, the proposal will maintain local amenity and will not generate adverse visual impacts.

- Clause 1.2 (2) (c):

*in relation to residential development—*

*(i) to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*

*(ii) to maintain and provide for an increase in dwelling stock, where appropriate,*

Not applicable.

- Clause 1.2 (2) (d):

*in relation to non-residential development—*

*(i) to maintain a diversity of employment, services, cultural and recreational activities, and*

*(ii) to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*

*(iii) to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*

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. This will add to the vibrancy and diversity of the locality.

As evident in the overshadowing plans prepared by Bates Smart, the proposed building height will have negligible material impacts compared to a scheme that does not exceed RL 227 in terms of overshadowing. The additional height complies with 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. Refer to further discussion in **Section 5.1**.

As discussed in the Statement of Environmental Effects and the appended Acoustic Report prepared by Resonate, the acoustic impacts associated with the non-compliant portion of the development (which will accommodate plant, cooling towers and services) can be managed through mitigation measures incorporated in the detailed design phase. Detailed calculations of the specific plant items will be conducted at the Construction Certificate stage to ensure compliance will be achieved once plant selections are confirmed and detailed design is complete.

The proposal promotes the retention and sharing of existing views from surrounding buildings and the building height contravention will not impact scenic or highly valued items.

- Clause 1.2 (2) (e):

*in relation to environmental quality—*

*(i) to maintain and protect natural landscapes, topographic features and existing ground levels, and*

*(ii) to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*

The site is located within an existing urban centre with minimal natural environmental considerations. The height contravention will provide a tapered tower crown, in response to the site topography and existing sloped ground level. Stormwater considerations are considered in the Statement of Environmental Effects, with no adverse impact on local waterways identified.

- Clause 1.2 (2) (f):

*to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*

The proposed building envelope provides an appropriate degree of physical and visual separation between the approved tower at 88 Walker Street, which will integrate with the heritage listed Firehouse building. Specifically, the site will be physically separated from the heritage building (which sits to the southern portion of the 88 Walker Street site) by the approved tower form (which is concentrated to the northern portion of the 88 Walker Street). The proposed contravention will therefore have no impact on the heritage item.

- Clause 1.2 (2) (g):

*to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

Not applicable.

### 5.3. COMPLIANCE WITH CLAUSE 5.6

Clause 5.6 of the NSLEP 2013 permits the exceedance of the maximum height of building control set by clause 4.3 due to an architectural feature, where development consent has been granted and 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*

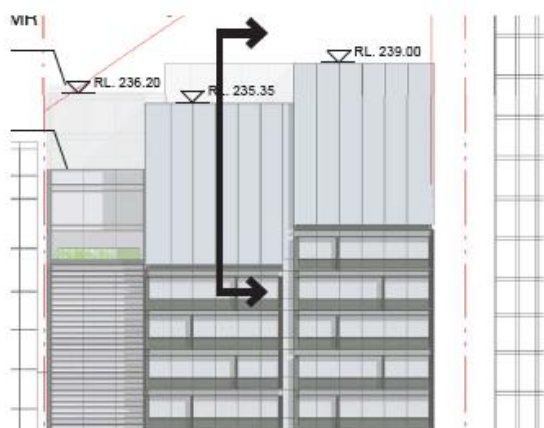
(b) *any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

The height approach for the proposed development has been informed by clause 5.6 of the NSLEP 2013 which permits development of an architectural roof feature (which comprises a decorative element, is not an advertising structure, does not include floor space area, and will cause minimal overshadowing) that exceeds RL227.

The proposed tower crown (and the resulting height exceedance) is a distinct and separate architectural feature to the remainder of the tower, achieved through a unique façade design that will distinguish the architectural roof feature. As illustrated in **Figure 10** and **Figure 11**, the roof feature will have a stronger vertical definition compared to the tower and will incorporate insulated spandrel and performance glazing to provide the light-weight transparent quality to the tower crown.

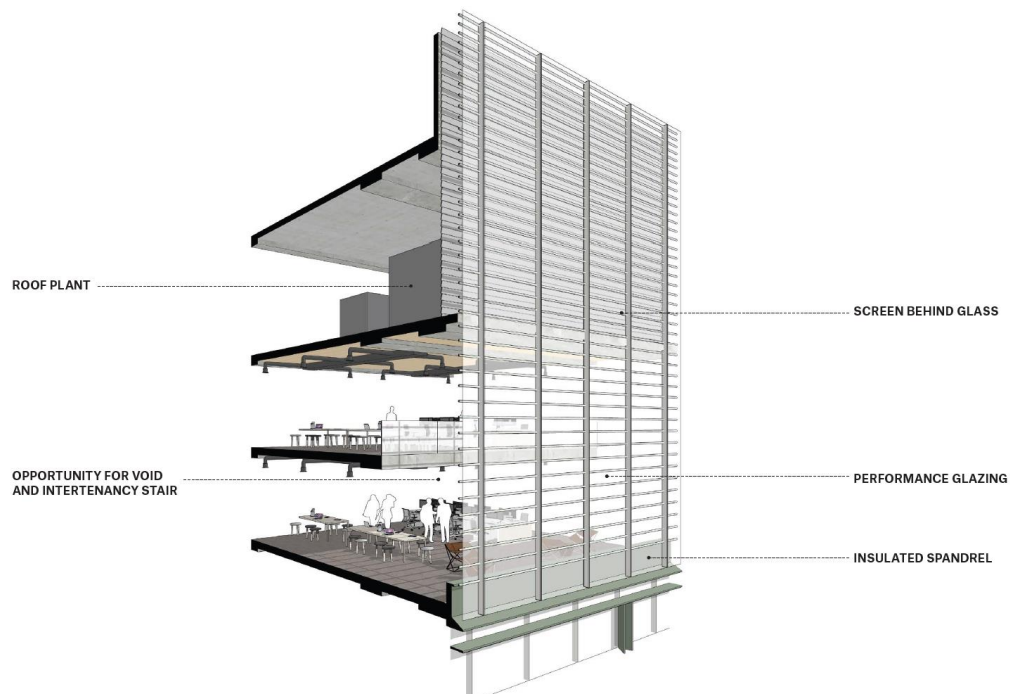


Figure 10 Variation in façade design of the architectural roof feature



Source: Bates Smart

Figure 11 Façade design and materiality of the architectural roof feature



Source: Bates Smart

An assessment of the proposed architectural roof feature against the relevant sub-clauses of clause 5.6 are outlined in **Table 3**.

Table 3 Assessment against clause 5.6

Consideration	Response	Compliance
Clause 5.6 - Architectural roof features		
(1) Objectives  (a) to permit variations to maximum building height standards for roof features of visual interest,	(a) The proposed development seeks to provide a rooftop feature above the maximum height plane of RL227 to contribute visual interest to the tower crown. The rooftop feature will contain non-	Yes

Consideration	Response	Compliance
<p>(b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard,</p> <p>(c) to maintain solar access to new and existing buildings, public reserves and streets,</p> <p>(d) to promote the retention and, if appropriate, sharing of existing views.</p>	<p>habitable floor space, specifically for plant, services, cooling towers and lift overrun.</p> <p>(b) The roof feature has a maximum height of RL239m and will exceed the height plane control by 12m.</p> <p>(c) The roof feature is contained within the maximum solar envelope (<b>Figure 5</b>).</p> <p>(d) The architectural roof feature responds to its context and is compatible with the existing and future (expected) scale, form and massing in the North Sydney Centre area, and as such view impacts are considered acceptable.</p>	
<p>(2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.</p>	<p>The DA seeks development consent to exceed the height control of RL227 as discussed in this Variation Request.</p>	Yes
<p>(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—</p> <p>(a) the architectural roof feature—</p> <p>(i) comprises a decorative element on the uppermost portion of a building, and</p> <p>(ii) is not an advertising structure, and</p> <p>(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and</p> <p>(iv) will cause minimal overshadowing, and</p> <p>(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.</p>	<p>(a) The architectural roof feature proposed is:</p> <p>i. Located on the tower crown of the building and comprises a tapered transition of the roofline, which echoes the stepped form of the podium and the village decks and will step both horizontally and vertically to create a distinctive presence on the North Sydney skyline. The 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. It is a distinct and separate architectural feature to the remainder of the tower, achieved through a variation in façade design and materiality.</p> <p>ii. Not an advertising structure. There is no signage or structure proposed on the architectural roof feature.</p> <p>iii. Does not include floor space. Whilst the proposal incorporates plant and lift overrun, this does not constitute floor space as defined under the Standard Instrument.</p> <p>iv. The architectural roof feature is comfortably contained within the maximum</p>	Yes

Consideration	Response	Compliance
	<p>solar envelope. 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).</p> <p>(b) No signage is proposed in the application.</p>	

## 5.4. COMPLIANCE WITH CLAUSE 6.3

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

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.

Overshadowing plans have been prepared by Bates Smart and are submitted in the Urban Design Report which is appended to the Statement of Environmental Effects. Compliance of the proposed development with the relevant sub-clauses of clause 6.3 are outlined in **Table 4**.

Table 4 Assessment against clause 6.3

Consideration	Response	Compliance
Clause 6.3 – Building heights and massing		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) (Repealed)</p> <p>(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> <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</p>	<p>The proposed development complies with the objectives of clause 6.3 as follows:</p> <p>(a) N/A</p> <p>(b) The massing of the building envelope has been designed to reduce impact on land in the RE1 zone, Special Area and Don Bank Museum. As discussed in this table and illustrated in <b>Figure 9</b>, the proposal will not overshadow these areas.</p> <p>(c) The massing of the building envelope has been designed to reduce impact on residential land. As discussed in this table, the proposal will not overshadow residential areas and these properties will maintain</p>	Yes

Consideration	Response	Compliance
<p>Public Recreation or land that is located outside the North Sydney Centre,</p> <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,</p> <p>(e) to encourage the consolidation of sites for the provision of high grade commercial space.</p>	<p>more than 2 hours of direct sunlight in accordance with the provisions of the ADG.</p> <p>(d) The proposed tower crown will provide definition to the top of the building that is clearly legible for pedestrians in the surrounding public domain, and for observers in the surrounding suburbs that have a direct line of sight to the North Sydney skyline (such as from Forsyth Park, as illustrated in <b>Figure 6</b>).</p> <p>(e) The proposal seeks to optimise the site's constrained lot area to accommodate high-grade commercial floor space, achieved through the accommodation of plant above the permitted height plane (whilst having no impact on solar access to residential, Special Areas or recreational areas consistent with clause 6.3(3). 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. The proposal will attract top tier tenants who have specific requirements and expectations to the North Sydney CBD.</p>	
<p>(2) Development consent must not be granted for the erection of a building on land to which this Division applies if—</p> <p>(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</p> <p>(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</p> <p>(c) the site area of the development is less than 1,000 square metres and any building resulting from the development</p>	<p>The site is located within the North Sydney Centre and as such Division 1 of Part 6 of the NSLEP 2013 applies to the development. The maximum solar envelope permitted on the site that would not cause an increase in overshadowing to Zone RE1, Special Area, Don Bank Museum land is illustrated in <b>Figure 6</b>. As illustrated in this figure, the height of the proposed building envelope sits comfortably within this maximum solar envelope.</p> <p>The proposed works:</p> <p>(a) 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.</p>	Yes

Consideration	Response	Compliance
would have a building height greater than 45 metres.	<p>(b) 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.</p> <p>(c) The site area is 1,392sqm and as such this sub-clause does not apply.</p>	
<p>(3) The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map 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 <b>outside the North Sydney Centre</b> receiving—</p> <p>(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</p> <p>(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.</p>	<p>For land outside the North Sydney Centre, the proposed development, including the extent of contravention, results in the following:</p> <p>Shadow at 2pm that falls on the existing road corridor zoned SP2 (the M1 Motorway and a portion of High Street).</p> <p>Shadow at 3pm that causes additional shadow on land zoned R3 and R4 located to the east of the Motorway. However, it is noted that throughout the earlier parts of the day (9am – 1pm) and at all other times of the year (summer solstice and equinox) these areas are in full sun and there is no loss of solar access at these times due to the proposed envelope. Accordingly, these properties will continue to receive more than 2 hours of direct sunlight throughout the day in accordance with the principles of the Apartment Design Guide.</p> <p>Refer to <b>Figure 9</b> for an extract of the Shadow Plans and further discussion in <b>Section 5.1.1</b>.</p>	Yes
(4) Brett Whiteley Plaza Development 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).	N/A	N/A
(5) In determining whether to grant development consent for development on land to which this Division applies, the	<p>The proposed development responds positively to these considerations in that it:</p> <p>(a) Will not have a significant adverse impact on the amenity or urban scale of the</p>	Yes

Consideration	Response	Compliance
<p>consent authority must consider the following—</p> <p>(a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,</p> <p>(b) whether the proposed development preserves significant view lines and vistas,</p> <p>(c) whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.</p>	<p>North Sydney Centre. Specifically, the proposed building height of RL239 is compatible with the existing and future (expected) scale, form and massing in the North Sydney Centre area; Poses no unmanageable impacts on the neighbouring development or development outside the North Sydney Centre;</p> <p>(b) Would not unreasonably impact upon significant views and vistas from key public domain areas. The proposed height and the 12m exceedance will contribute positively to the strong framing of the North Sydney CBD along its western edge.</p> <p>(c) Enhances the Walker and Little Spring Streets active frontages and streetscapes in relation to scale, materials and external treatments. Specifically, the proposed glass curtain wall façade balances desires to optimise external views, daylight penetration and natural ventilation and provide internal wind protection. The profile terracotta will be expressed in dark green glaze with matt and glossed finish and will complement terracotta-cladded soffits expressed in a warm sandy/ olive colour with a matt finish. This will provide a high-quality and engaging podium and tower façade to contribute to the North Sydney streetscape.</p>	

## 6. PUBLIC INTEREST

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 2**. This assessment demonstrates that despite the contravention of the building height standard, the proposed development (including the portion of non-compliant building height) is consistent with the objectives of the height of building control. As the development achieves the objectives (as applicable) it is plainly consistent with those objectives.

The proposal is also consistent with the B3 Commercial Core land use objectives that apply to the site under NSLEP 2013, as outlined in **Table 5**.

It is noted that 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.

Table 5 Assessment of Compliance with Land Use Zone Objectives

Consideration	Response	Compliance
Zone B3 - Commercial Core		
<i>Objectives of zone</i>		
<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 will provide an increase in premium grade commercial floor space including retail and offices premises to improve the quality and quantity of commercial floor space within the North Sydney Centre.</p> <p>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.</p>	Yes
<i>To encourage appropriate employment opportunities in accessible locations.</i>	<p>The site is located in proximity to the Victoria Cross metro station and ability to offer enhanced public domain contributions to supports Council's vision for a pedestrian friendly CBD environment. The proposed 3m-wide open to the sky public east-west laneway connection will enhance permeability within the North Sydney CBD. The laneway will draw pedestrians through the site and into the building, as well as improve east-west connections and align with the laneway on 1 Denison Street, providing a clear linkage through to the Victoria Cross metro</p>	Yes

Consideration	Response	Compliance
	station. The accommodation of retail tenancies along the laneway will further provide employment opportunities.	
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The proposed development encourages public transport and active transport use by reducing car parking on the site compared to the existing condition (an overall reduction of 28 spaces) and maximising bicycle parking through provision of 397 bicycle spaces. The complementary EOTF will further encourage commuting via walking and cycling and support an overall reduction in the use of private vehicles.	Yes
<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.	N/A
<i>To minimise the adverse effects of development on residents and occupiers of existing and new development.</i>	The proposed development minimises adverse effects on residents of existing development in relation to overshadowing and privacy. In particular, the proposal is consistent with the overshadowing provisions identified in clause 6.3 of the NSLEP 2013. The site is surrounded by predominately commercial land uses due to its location in the B3 Commercial Core zone. Notwithstanding this, it is considered 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. The proposed envelope responds to its context and is compatible with the existing and future (expected) scale, form and massing in the North Sydney Centre area.	Yes

The assessment in **Table 5** demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of building development standard as 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.



## 7. CONCURRENCE OF SECRETARY

Clause 4.6(4)(b) requires the consent authority to consider whether the concurrence of the planning secretary has been granted.

Clause 4.6(5) states that in deciding whether to grant concurrence, the Secretary must consider:

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

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 20–002 ‘Variations to development standards’, dated 5 May 2020. 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 for this request under the terms of the notice. Notwithstanding this, the application is consistent with the matters for consideration under clause 4.6(5) as:

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental 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. 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.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

Maintaining the development standard will not result in any additional public benefit on this site (and will result in a relative disbenefit). As detailed within the SEE, the height and bulk of the proposed development responds to the surrounding urban context and is consistent with the requirements of the North Sydney DCP 2013. The proposed development achieves the objectives of the height of building development standard and the land use zoning objectives despite the non-compliance, and the contravention has been demonstrated to be appropriate and supportable in the circumstances of the case.

The site is in need of revitalisation and the strict numerical compliance could encumber the social and economic benefits the proposed works will deliver. The proposed development will benefit the public in that it will provide significant public benefits for the local and wider community by creating an exceptional experience for future site users and a landmark destination for the public and future workers. Specifically, the proposed development will:

- Support the ‘30-minute’ city envisioned within State and regional strategic planning policy by locating a commercial premise in proximity to public transport infrastructure, maximising integration with the future Victoria Cross metro station.
- Provide a significant enhancement to the quality, activation and usability of the public domain surrounding the building by revitalising the existing east-west through site link and providing for the allocation of retail floor space along the laneway to activate the linkage. The laneway and DDA lift will provide increased permeability and accessibility within the centre, whilst the provision of canopy awnings along Walker Street and the laneway will provide weather protection and extension of the public domain.
- Deliver much needed premium grade commercial office space in North Sydney, positively contributing to its current economic resurgence triggered by the NSW government’s investment in the Victoria Cross. The delivery of this floor space in proximity to existing and future planned public transport opportunities, encouraging public transport patronage and usability further aligns with State and Council planning policy.
- Maintains solar access to nearby Special Areas including Shore School, Miller Street and Greenwood Plaza and Brett Whiteley Plaza. Further, the proposal does not pose any unreasonable impacts to the solar amenity of residential properties outside of the CBD.

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.

- **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, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 8. CONCLUSION

For the reasons set out in this Variation Request, strict compliance with the height of building development standard contained within clause 4.3 of the NSLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

By virtue of Clause 6.3 of NSLEP 2013, development with a height greater than the height of buildings standard is permissible with consent subject to complying with Clause 6.3 (2) and (3). Notwithstanding this, this Variation Request has been prepared in regard to clause 4.3 for abundant caution.

It is reasonable and appropriate to vary the height of building development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The development as proposed (in particular, with the proposed contravention) will deliver a superior built-form outcome in consideration of the site's existing condition, location and the surrounding buildings.
- The development as proposed (in particular, with the proposed contravention) complies with 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.
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the building height development standard.
- The proposed variation of the height of building development standard does not result in an over development of the site or any adverse impacts on the public domain or neighbouring properties. The proposed building envelope is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other contemporary commercial buildings within the immediate vicinity.
- The proposal will provide environmental benefits particular to the site through the provision of improved amenity for future tenants of the commercial premises and provision of retail services for surrounding residents and pedestrians.

A departure from the height of building development standard is considered appropriate in these circumstances. For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building standard should be applied.

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