

**URBIS**

# **CLAUSE 4.6 VARIATION REQUEST**

45 McLaren Street, North  
Sydney

Prepared for  
**CASA**  
20 May 2024

**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

Director	Stephen White
Associate Director	Sophy Purton
Consultant	Sam McGough
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# REQUEST TO VARY CLAUSE 4.4A – NON-RESIDENTIAL FLOOR SPACE RATIO IN NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

**Address:** 45 McLaren Street, North Sydney

**Date:** 20 May 2024

## SITE AND PROPOSED DEVELOPMENT

### 1. Site Description

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	45 McLaren Street, North Sydney
Legal Description	Lots 1-18 in Strata Plan 14598
Site Area	1,792m <sup>2</sup>
Site Dimensions	North: 29.23m – 37.72m (inc. corner truncations)  East: 47.39m  South: 35.67m  West: 48.23m
Easements and Restrictions	Stormwater easement
Site Topography	8.7m fall from the north western corner of the site (RL68.7) to the south eastern corner of the site (RL60).  8m fall from the north eastern corner (RL68) to the south eastern corner (RL60) along the Walker Street frontage.  3.5m fall from the north western corner (RL68.7) to the southwestern corner (RL63.24) along the frontage of Harnett Street
Vegetation	Several mature trees are established along the site's northern, southern and western boundaries, including some street trees. Two street trees are located adjacent to the site's southeastern boundary.
Existing Development	The site is currently established with a part 4, part 5-storey residential flat building containing 18 strata title units. The existing building is an outdated 1960s building that requires substantial upgrades and improvements.  Vehicular access is currently obtained from Walker Street. Harnett Street and Walker Street provide pedestrian access points.
Local Context	The site is located to the north-west of the North Sydney CBD and within the northern end of the Ward Street Precinct. The area is undergoing a period of urban renewal, which is set to transform the CBD and surrounds into a world-class commercial destination, supported by a range of retail and residential uses.
Adjacent Development North	The northern side of McLaren Street, at 168 Walker Street, is a 28-storey mixed-use tower, referred to as "Aura" by Aqualand, which is currently under construction. Further north of this is the Wenona School Campus, which consists of a cluster of low to medium-rise buildings extending to Ridge and Elliot Streets to the north and west, respectively.

Feature	Description
<b>Adjacent Development East</b>	To the east of the site is a heritage-listed retaining wall dissecting the roadway at Walker Street. Across the street are a row of two-storey heritage-listed terrace houses as well as a single-storey heritage-listed stone cottage located adjacent to these to the north. Further to the east is the Warringah Freeway, which segregates the site and city centre from lower-density residential land uses. A SEARs has been submitted for the site at 173-179 Walker Street which seeks the construction of three residential apartment building comprising approximately 263 dwellings.
<b>Adjacent Development South</b>	To the south of the site is a through-site link connecting Walker Street to the east and Harnett Street to the west. South of this is a set of four heritage-listed terrace-style dwelling houses and a ten-storey residential building, referred to as 'The Heritage.'
<b>Adjacent Development West</b>	The western boundary of the site fronts Harnett Street, separating this site from 41 McLaren Street and otherwise referred to as Simsmetal House a heritage-listed terraced building of up to eight storeys. A State Significant Development Concept Application (SSD-46014456) was approved in November 2023, for the adaptive reuse of this building as a new independent school accommodating up to 1560 students. Further west at 39 McLaren Street is The Harvard residential flat building, which is 18 storeys high.
<b>Access Network</b>	<p>The site is located to the west of the Warringah Freeway and to the north of the Pacific Highway with access to the on-ramp approximately 200m and 550m south of the site, respectively.</p> <p>Regarding public transport, the site is located 650m north of North Sydney Train Station and several bus stops are located along Miller Street, approximately 180m west of the site. Additionally, the Victoria Cross Metro Station is expected to be operational in 2024 which will provide express connections between North Sydney and the CBD.</p>

Figure 1 Aerial Photograph of Site



Source: Urbis



Figure 2 Site Photos



Picture 1 Site as viewed from the east illustrating existing vehicular access



Picture 2 Site as viewed from the north-east, illustrating the sloping topography



Picture 3 South-eastern extent of the site illustrating the existing street trees

Source: Bates Smart



Picture 4 Site as viewed from the north-west, illustrating the relationship to Harnett Street

## 2. Proposed Development

The proposal seeks development consent for the demolition of the existing building and associated structures on the site and the construction of a new 10-14 storey mixed-use building.

A summary of the key features and details of the proposed development (including land use and works) is provided in the table below:

Table 2 Development Description

Key Element	Description
Demolition	Demolition of existing buildings and excavation to a depth of RL 60.4m.
Tree removal/replacement	Removal of thirty-four (34) trees within the site and removal and replacement of two (2) street trees.
New Mixed-Use Building	<p>Construction of 10-14 storey mixed-use retail/commercial and residential apartment development with a maximum building height of RL 114 (including rooftop and plant) and a total gross floor area provision of 10,521m<sup>2</sup>.</p> <p>The proposed building accommodates 71 apartments.</p>
Through-Site Link	Widening of the existing through-site link (from 1.5m to 5.2m) in accordance with the Voluntary Planning Agreement ( <b>VPA</b> )
Vehicle access	Relocation of the existing vehicle crossover to the south-east corner of the site
Parking	<p>Parking is to be accommodated in the basement levels as follows:</p> <ul style="list-style-type: none"><li>▪ 58 car parking spaces</li><li>▪ 1 car wash bay</li><li>▪ 6 motorcycle space</li><li>▪ 71 residential bicycle parks and 8 residential visitor bicycle parks</li></ul> <p>Commercial bicycle parking accommodated at the Lower Ground level –</p> <ul style="list-style-type: none"><li>▪ 22 staff and customer bicycle parks</li></ul>

# PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

## 3. What is the planning instrument you are seeking to vary?

North Sydney Local Environmental Plan 2013.

## 4. What is the site's zoning?

MU1: Mixed Use.

## 5. What is the development standard to be varied?

Clause 4.4A - Non-residential floor space ratios of the North Sydney Local Environmental Plan 2013.

The objectives of the clause are to:

- a) *to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MU1 Mixed Use and Zone SP2 Infrastructure,*
- b) *to encourage an appropriate mix of residential and non-residential uses,*
- c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

## 6. Type of development standard?

Numerical.

## 7. What is the numeric value of the development standard in the environmental planning instrument?

Non-residential floor space ratio of 1:1 (minimum).

## 8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The total site area is 1,792m<sup>2</sup>.

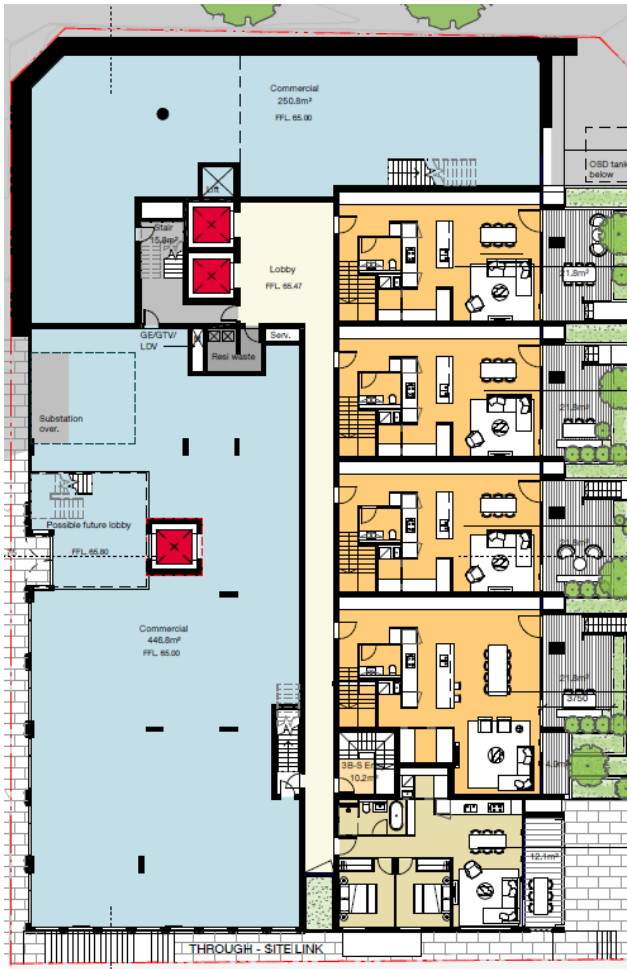
Pursuant to clause 4.4A, the development is required to deliver 1,792m<sup>2</sup> (FSR 1:1) of non-residential floor space.

The proposed development delivers 1,285m<sup>2</sup> (FSR 0.71:1) of non-residential floor space, resulting in a variation of 507 m<sup>2</sup> or 28%.

## 9. Visual representation of the proposed variation

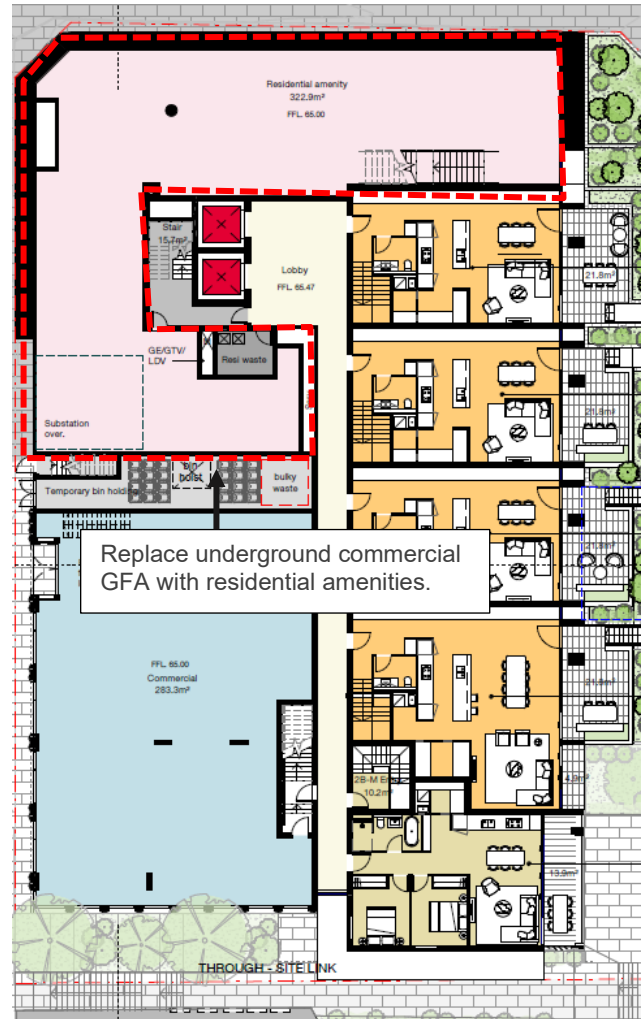
**Figure 3** and **Figure 4** below provide a comparison of the Original DA submission and Amended Design Floor Plans at the Ground Level and Upper Ground Level. **Figure 3** shows the removal of a commercial tenancy at the northern portion of the site on the Ground Level, which is now proposed as an internal amenity space.

Figure 3 DA Submission and Amended Design Ground Floor Plans



Picture 5 Original DA Submission – Ground Level Floor Plan

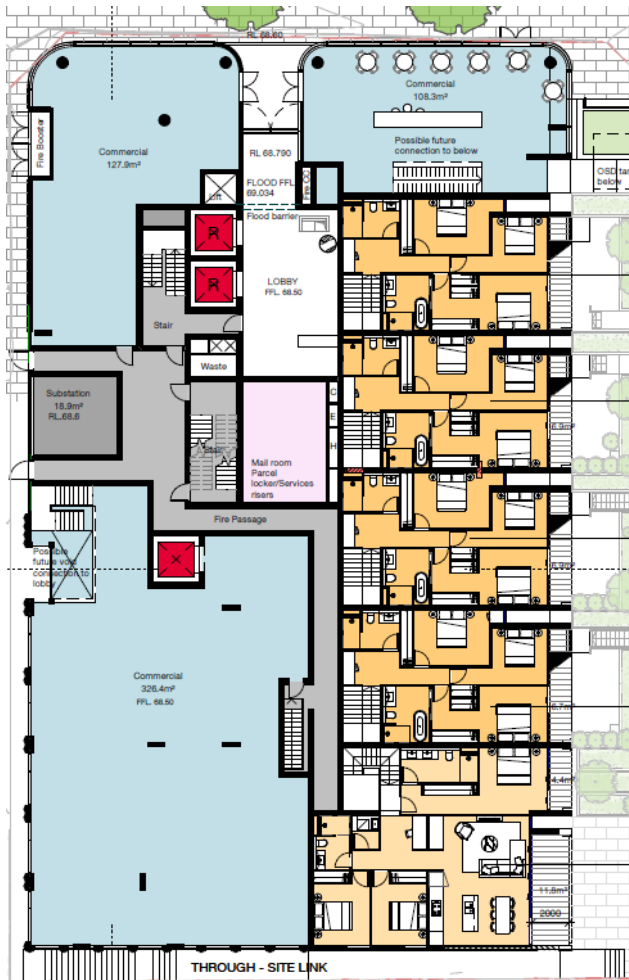
Source: Bates Smart



Picture 6 Amended DA – Ground Level Floor Plan

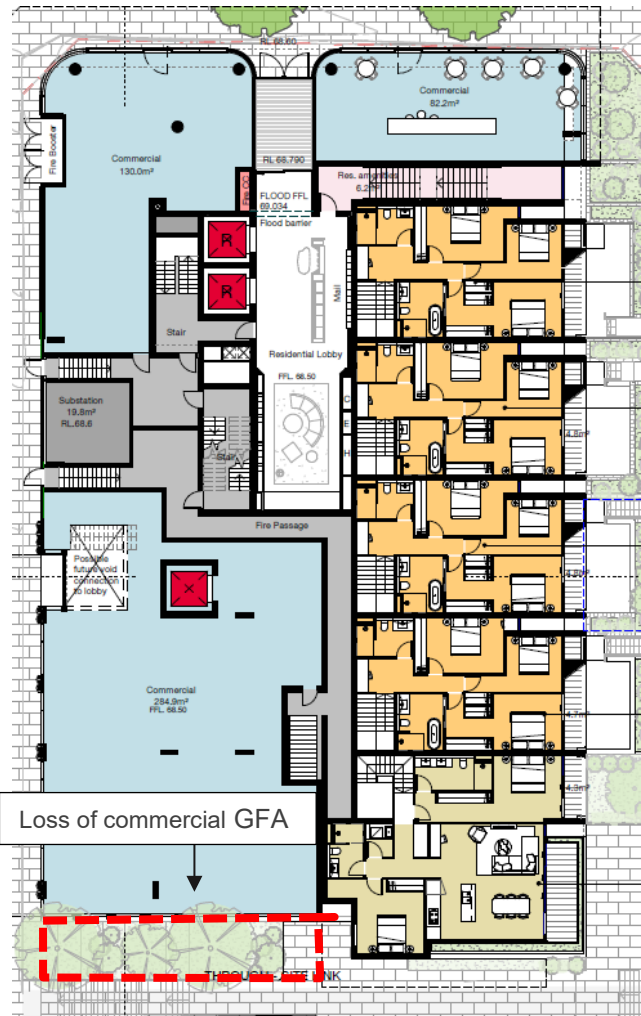


Figure 4 DA Submission and Amended Design Upper Ground Floor Plans



Picture 7 Original DA Submission – Upper Ground Level Floor Plan

Source: Bates Smart



Picture 8 Amended DA – Upper Ground Level Floor Plan

# JUSTIFICATION FOR THE PROPOSED VARIATION

## 10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p>The relevant objectives of this development standard are:</p> <ul style="list-style-type: none"> <li>(a) <i>to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MU1 Mixed Use and Zone SP2 Infrastructure,</i></li> <li>(b) <i>to encourage an appropriate mix of residential and non-residential uses,</i></li> <li>(c) <i>to provide a level of flexibility in the mix of land uses to cater for market demands,</i></li> <li>(d) <i>to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.</i></li> </ul> <p>The proposal complies with each of the listed objectives as outlined below:</p> <ul style="list-style-type: none"> <li>(a) The proposal maintains active street frontages on McLaren Street and Harnett Street, in accordance with the <i>North Sydney Development Control Plan 2013</i>. The McLaren and Harnett Street frontages are dedicated to commercial tenancies, including a commercial entry lobby, food and beverage offerings, and a new canopy to provide continuous shade and shelter. The widened and landscaped through-site link acts will support the desire to create a safe and attractive pedestrian passage connecting through to Harnett Street, with a subtle degree of activation along Harnett Street by way of the lower ground entrance to the commercial tenancy.</li> <li>(b) The site provides an appropriate balance of residential and commercial uses. The development application was the subject of a site-specific rezoning of the land which introduced LEP controls, including a non-residential FSR of 1:1 (1,792m<sup>2</sup> or 16% of the total GFA) and a residential FSR of 5.25:1 (9,408m<sup>2</sup> or 84% of the total GFA). The achievement of the FSR was based upon a concept reference scheme. Upon lodging the development application, and through further design testing with Council to achieve the best urban design and public amenity outcomes, a reduction in the FSR for both non-residential and residential accommodation was required. The amended development application delivers an FSR of 0.7:1 (1,285m<sup>2</sup> or 12% of the total GFA) as non-residential and an FSR of 5.15:1 as residential, which includes 8,874m<sup>2</sup> (84%) as residential accommodation and 362m<sup>2</sup> (3.4%) as residential amenities. When compared to other mixed-use developments within the immediate area, the predominant non-residential FSR for the MU1 zone is 0.5:1. The site is a small site and the proposed 0.7:1 FSR, is greater than what is typically required for mixed-use developments in the LGA. The site has a substantial slope, and the urban design outcome skilfully responds to this by wrapping the commercial along McLaren Street, Harnett Street and down the laneway, providing almost one and half full levels of good quality commercial space with decent street frontage. The quantum of below-ground commercial space with no street presence presented a genuine risk of not attracting tenants. The reduced commercial space reduces the tenancy risk to provide with ability to be seen from Harnett Street to improve operational success whilst allowing enhanced amenities for residents in the original proposed commercial space. Five terrace houses are located on the Ground Floor fronting Walker Street, reflecting the heritage terraces to the south, with the remaining 66 apartments located in the tower above. The apartments are complemented by exclusive residential amenities spaces at Level 8 (outdoor and indoor) and the Ground Floor (internal). The development appropriately balances the two land uses seeking to foster a vibrant atmosphere and a sense of community.</li> <li>(c) An Apartment Demand Study has been prepared by Charter Keck Cramer which confirms the proposed development is considered to meet current</li> </ul>

Key Questions	Response
	<p>and future premium residential apartment market requirements. Additionally, the proposal provides a significant quantum of commercial floor space in a variety of locations and configurations that is suitable to a range of local serving retail and or commercial businesses. The mixed-use surrounding area provides a diverse offering of commercial businesses.</p> <p>(d) Despite the non-compliance with Clause 4.4A, the development still offers an abundance of high-quality, flexible commercial floor space to service future residents of the building and the local community. The site is located in a mixed-use zone, within the North Sydney business centre located south of the site. The proposal reflects the hierarchy of commercial centres and seeks to provide day-to-day commercial offerings to people living and working in the area. The proposed development outcome exceeds the commercial floor space typically required in North Sydney, being 0.5:1, demonstrating that an appropriate balance is delivered.</p>
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	<i>N/A. Refer above</i>
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	<i>N/A. Refer above</i>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>N/A. Refer above</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>N/A. Refer above</i>

## 11. Are there sufficient environmental planning grounds to justify contravening the development standard?

**Yes.**

There are sufficient environmental planning grounds to justify contravening the development standard:

- Notwithstanding the non-compliance, the proposed development achieves the objectives of Clause 4.4A as outlined earlier.
- The proposed development is consistent with the objectives of the MU1: Mixed Use Zone in that it will continue to provide a mix of non-residential and residential uses.
- The proposal provides a range of high-quality commercial spaces that activate all required site frontages and will facilitate a mix of future tenancies.

The original development application that was submitted to Council demonstrated compliance with the minimum non-residential FSR (1.01:1). The proposed non-compliance is a direct result of a reduction in built form, in response to other matters raised by Council during its assessment in order to provide greater public amenity outcomes in the form of landscaping, a widening of the through-site link.

The key moves which result in the reduction in commercial floor space were triggered by:

- The widening of the through site link at the southern western end from 3m to 5.2m results in a loss of commercial GFA across three levels, however improving activate, key sight lights and daylight through the laneway;

- The requirement for on-street bin collection and the introduction of a temporary holding area at street level;
- The requirement for increased landscaping to increase the lush, green landscape appeal and reduce the extent and exposure of the sandstone; The concern about the quantum of subterranean (lower ground) commercial space that was considered to pose a significant risk of attracting tenants, with the revised quantum and configuration presenting a superior lettable space from the original proposal; and
- The Local Planning Panel raised concern around the viability and quality of the subterranean commercial areas.

As identified in **Figure 3** the residential amenity has been relocated to the Ground Level (previously at the Basement Level in the DA submission), replacing the northern commercial tenancy. Due to the sloping nature of the site, the northern portion of the ground level is below street level. Therefore, street activation and external access are limited as the commercial tenancy would not be visible from the street, posing a poor commercial tenancy outcome. This outcome is considered to have not environmental impact but will deliver a benefit in terms of the amenity offering to residents.

**Figure 4** illustrates that McLaren Street is activated by the Upper Ground Level commercial tenancies. As such, there is no impact on the character and streetscape as a result of this design amendment. The removal of the Northern Ground Level commercial tenancy results in a better outcome for residential amenities and the viability of commercial tenancies and reduces risk of the space not being lettable to businesses. Overall, the proposed amendments do not result in any loss of streetscape activation, nor does it undermine the intent of the development standard as the proposal will still deliver 1,285sqm of commercial space in various tenancy configurations which is considered a significant area of non-residential space that will ensure that the site will positively contribute to Council's wider aspirations of the adjoining future active mixed use Ward Street precinct.

While the revised design results in a reduced commercial FSR, the commercial tenancies are of a higher quality and design amendments are seen to improve the design quality and functionality of the wider development.

The loss of non-residential GFA is balanced with delivering better public amenities and urban design outcomes whilst retaining the intent of the control, which is to provide for genuine active frontages and a mix of land uses. The amended development application demonstrates achieves an acceptable balance of the meeting the objectives of the development standard while also positively responding to other important site design and context considerations and for these reasons there are sufficient environmental planning grounds to justify the contravention of the development standard.

Ultimately, the non-residential FSR was established on the site as part of the former planning proposal. The non-residential FSR was provided at a rate greater than that typically within the MU1 zone, which is 0.5:1 comparatively. During the detailed design and development of the DA scheme, it became evident from the feedback received from Council and the LPP, that greater design integration was required; there was a need for improved site services and that the location of the non-residential commercial space resulted in a sub-optimal outcome. It was only through the detailed design that these matters were uncovered and it was determined that the non-residential commercial space at the rate originally envision, could not be achieved whilst balancing the need to retain the fundamental design elements and balance the best urban design outcome for the site.

The result design outcome and mix of land uses is considered to provide for the optimal outcome and solution for the site, whilst still maintaining the integral elements and delivery the intent for the site, particularly from a streetscape activation and public domain perspective.

## 12. Public interest

The proposed development will be in the public interest because it is consistent with the objectives of clause 4.4A, notwithstanding the variation of the development standard as identified in **Section 10**.

In addition to maintaining compliance with the objectives of clause 4.4A, the proposal is also consistent with the zone objectives and does not undermine the intent of the MU1 zone. Compliance with the zone objectives is provided below:

Objectives of the MU1 Zone	Assessment
To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.	<p>The building has been strategically designed to provide 1,285sqm of flexible commercial floor space that can be adapted for a range of commercial / retail land uses.</p> <p>The commercial space will help activate the Ward Street Precinct and enhance residents' and workers' choice through providing greater breadth and depth of potential retail, food and beverage and entertainment facilities.</p> <p>The proposal will increase the long-term employment capacity of the area once the building is operable.</p>
To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.	<p>The proposal contributes to activation of the streetscape with three of the four frontages providing access to commercial tenancies. It was always the intent the McLaren Street would be designed with terrace style residential accommodation which reflects the heritage listed terrace housing to the south. This was specifically included as a provision within the LEP.</p> <p>The landscaped through site link provides daylight, access, and identity for the commercial tenancies facing Harnett Street.</p> <p>Harnett Street is suitably activated with the majority of the frontage dedicated to commercial tenancies, including a commercial entry lobby, and new canopy to provide continuous shade and shelter.</p> <p>The main residential lobby is provided at the McLaren Street frontage adjacent to two commercial tenancies, contributing to a diverse streetscape. The canopy also extends along the McLaren Street frontage for pedestrian comfort.</p>
To minimise conflict between land uses within this zone and land uses within adjoining zones.	<p>The commercial and residential land entrances are separated, minimising conflict between the two land uses. During the operational phase, the residential entry will be a controlled access, accessible only to residents via a swipe card or the like.</p> <p>The through site provides an appropriate transition between the proposed development and the adjacent residential land uses to the south. The landscaped through site link softens the buildings edge, offers passive surveillance, and provides a widened passage of natural light and air. The amended design seeks to minimise windows facing south to minimise overlooking privacy concerns. Bedroom windows have been relocated to look towards the western frontage instead of directly facing south. Only one bedroom window remains on the southern façade. Additionally, the south-eastern corner of the building has been redesigned to appropriately integrate with the heritage dwellings to the south.</p> <p>R3 and R4 residential zoning is located across Walker Street to the east, comprising medium and high-density residential development. This residential development is well separated from the site by Walker Street.</p> <p>The commercial tenancies will provide daily service offerings to benefit residents in the surrounding area.</p>
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	<p>The proposal provides for high quality and usable commercial spaces at the ground floor of the building, at a rate that is greater than that required within the adjacent MU1 Mixed Use zones (0.5:1 is the standard non-residential FSR for adjacent MU1 land). The design seeks to activate the site and the through site link, contributing to a sense of place and activity through the day and night.</p>
To create interesting and vibrant mixed-use centres with safe, high quality urban environments with residential amenity.	<p>The mixed-use nature of the development, incorporating retail and commercial uses on the podium levels, increases the activation of the Harnett and McLaren Street frontages and passive surveillance from both visitors to the site and residents.</p>



Objectives of the MU1 Zone	Assessment
	<p>The proposal is of high-quality design and will positively contribute to the streetscape and reinvigorate an underutilised block within the Ward Street Precinct.</p> <p>The apartments are complemented by exclusive residential amenity spaces to ensure an appropriate balance of the two land uses.</p>
To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.	<p>The site is currently occupied by a residential flat building containing 18 strata title units. The proposed development seeks to introduce commercial land uses to the site concentrated on the lower levels of the development with residential uses above.</p> <p>Harnett Street currently has no street activation and therefore minimal community activity. The proposed development will open up this frontage with retail at the ground level.</p>

## 13. Conclusion

This report requests a variation, under clause 4.4A of the North Sydney Local Environmental Plan 2013, to the non-residential floor space ratio development standard and demonstrates that -

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development,
- The development achieves the objectives of the development standard and is consistent with the objectives of the MU1 zone and,
- There are sufficient environmental planning grounds to justify the contravention.

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