



URBIS

CLAUSE 16A VARIATION REQUEST - BUILDING HEIGHT

104-116 Regent Street
(SSD-12618001)

Prepared for

**THE TRUST COMPANY (AUSTRALIA) LIMITED ATF
WEE HUR REGENT TRUST**

17 December 2021

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1. INTRODUCTION

This report has been prepared on behalf of The Trust Company (Australia) Limited ATF Wee Hur Regent Trust (**Wee Hur**) to request a variation to the maximum height development standard in clause 21 of Appendix 4 of *State Environmental Planning Policy (State Significant Precincts) 2005 (the SSP SEPP)*. The request has been prepared in accordance with clause 16A of Appendix 4 the SSP SEPP.

The Request accompanies a State Significant Development Application (**SSDA**) for a mixed use development comprising retail premises and student accommodation with ancillary facilities and works at 104-116 Regent Street, Redfern. It should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Pty Ltd and dated 17 December 2021.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the EIS and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention and the relevant assessment framework for the variation.
- **Section 5:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 6:** summary and conclusion.

2. SITE CONTEXT

The street address is 104-116 Regent Street, Redfern. The legal description of the site is Lot 10 in Deposited Plan 1026349.

The site is located on the corner of Regent and Margaret Streets, with secondary vehicle and service access provided from William Lane. The site is connected to all necessary services including electricity, gas, water, communications, drainage and sewerage. A site location map is provided below.

Figure 1 Site Location Map



Source: Urbis

The site is currently vacant. It was previously occupied by a service station development. In October 2020, development consent (D/2020/1095) was granted for the demolition of the existing service station equipment and retention of the two storey shop building, excavation and remediation. The site is connected to all necessary services including electricity, gas, water, communications, drainage and sewerage.

The site is located within Redfern, approximately three kilometres south of the Sydney CBD. The immediate locality is undergoing significant redevelopment and gentrification, with a mixture of land uses, building typologies and housing stock.

The site is located along the primary north-south commercial spine which extends along Regent Street parallel to the adjacent railway line. Surrounding land uses include:

- **North:** the development immediately to the north currently comprises two to four storey buildings which are approved for demolition in association with a recent approval for an 18 storey retail and student accommodation development at 90-102 Regent Street (SSD-10382 dated 24 June 2021). Further north comprises recently completed and approved mixed-use development, including student accommodation. Redfern railway station is located to the north-east along Gibbons Street.
- **East:** Development to the east primarily consists of attached buildings between two to four storeys in height, with commercial uses on the ground floor.
- **South:** South of Margaret Street is the heritage-listed St Luke's Presbyterian Church and two-storey mixed use terraces with commercial uses along the ground floor.

- **West:** The site on the corner of Margaret Street and Gibbons Street is currently vacant, with construction of an 18 storey mixed use student accommodation building due to commence shortly at 13-23 Gibbons Street (SSD-9194).

The site is well-serviced by public transport, due to the proximity to Redfern Station, the future Sydney Metro station at Waterloo and multiple bus stops located along Regent Street, Gibbons Street and Redfern Street.

Figure 2 Site Photograph



Source: The Trust Company (Australia) Limited ATF WH Redfern Trust

3. PROPOSED DEVELOPMENT

This Variation Request has been prepared to accompany a SSDA for a mixed use development comprising retail premises and student accommodation with ancillary facilities and works.

A detailed description of the proposed development is provided in the EIS prepared by Urbis Pty Ltd and dated 17 December 2021. The proposal is also detailed within the architectural, engineering and accompanying design statement that form part of the documentation lodged with the SSDA.

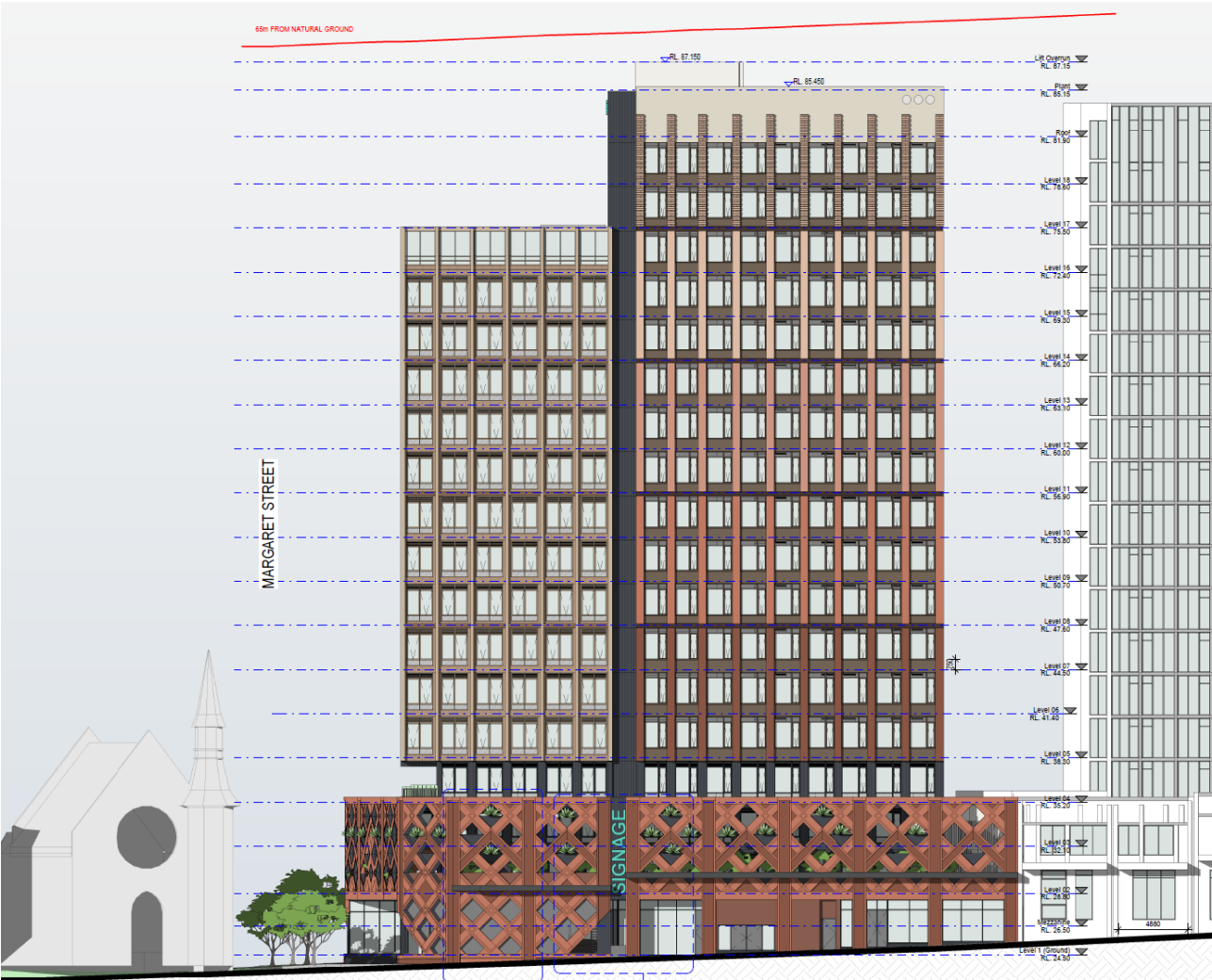
A summary of the key features of the proposed development is provided below:

- Construction of a part 3 storey, part 17 storey and part 18-storey building comprising a total of 9,562m² gross floor area with a mix of land use activities including:
 - Ground (Level 1): 72m² of retail floorspace, 490m² of communal area for the student accommodation, 102 bicycle parking spaces, waste management facilities and ancillary services and facilities.
 - Upper levels: student accommodation providing a total of 411 beds, including en-suite rooms, studios and two-bedroom configurations, outdoor communal spaces on Levels 2, 4 and 16 and additional indoor communal areas on Levels 2 and 4.
- Hard and soft landscaping within the outdoor communal terraces on the roof-top of the podium level and Levels 4 and 16.
- Public domain improvements including provision of a landscaped through-site link connecting William Lane to Margaret Street and associated improvements to the Regent Street and Margaret Street frontages, including awnings and footpath upgrades.

The proposed student accommodation will operate 24 hours per day, seven days per week. The retail component will operate 7am-10pm, seven days per week.

The development will generate 220 jobs during construction and five jobs during the operational phase. The proposed Regent Street elevation is extracted in the figure below.

Figure 3 Regent Street Elevation



Source: Antoniades Architects

4. VARIATION OF BUILDING HEIGHT STANDARD

This section of the report identifies the development standard proposed to be varied, including the extent of the contravention and the relevant assessment framework. A detailed justification for the proposed variation is provided in **Section 5** of the report.

4.1. DEVELOPMENT STANDARD

Clause 21(1) in Appendix 4 of the SSP SEPP prescribes the maximum building height for the site in accordance with the Height of Buildings Map:

- 21 *Height, floor space ratio and gross floor area restrictions*
- (1) *The height of a building on any land that is the subject of the Height of Buildings Map is not to exceed the maximum height shown for the land on that map.*

An extract of the Height of Buildings Map is provided as **Figure 4** below. The maximum building height controls for the site are as follows:

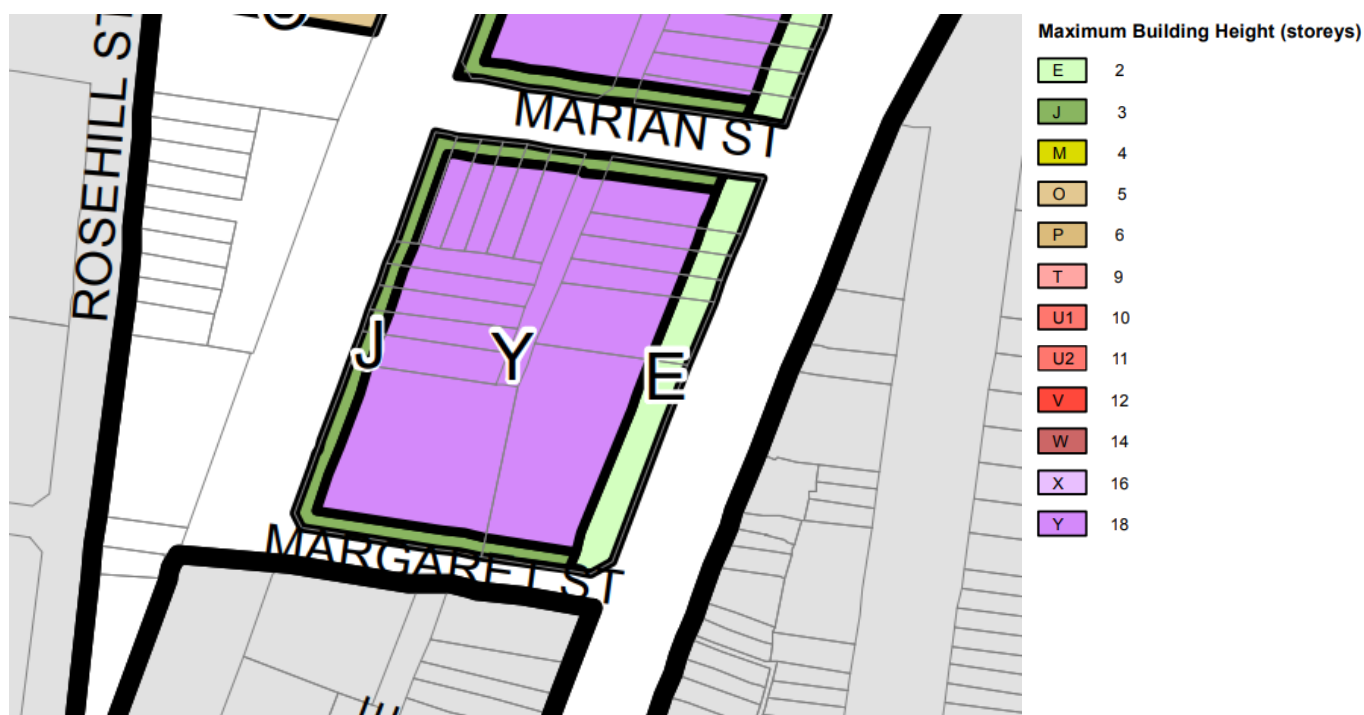
- Maximum two storeys along Regent Street from the property boundary to a depth of 8 metres.
- Maximum three storeys along Margaret Street from the property boundary to a depth of 4 metres.
- Maximum 18 storeys across the balance of the site.

A 'storey' is defined in *Standard Instrument - Principal Local Environmental Plan* as follows:

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

- (a) *a space that contains only a lift shaft, stairway or meter room, or*
- (b) *a mezzanine, or*
- (c) *an attic.*

Figure 4 Extract of Height of Buildings Map (SSP SEPP)



Source: NSW Legislation, downloaded 16 December 2021

4.2. PROPOSED VARIATION TO THE DEVELOPMENT STANDARD

The Margaret Street podium is three storeys which complies with the SSP SEPP. The tower component along the Margaret Street frontage is setback more than 4 metres from the boundary, also complying with the relevant requirements.

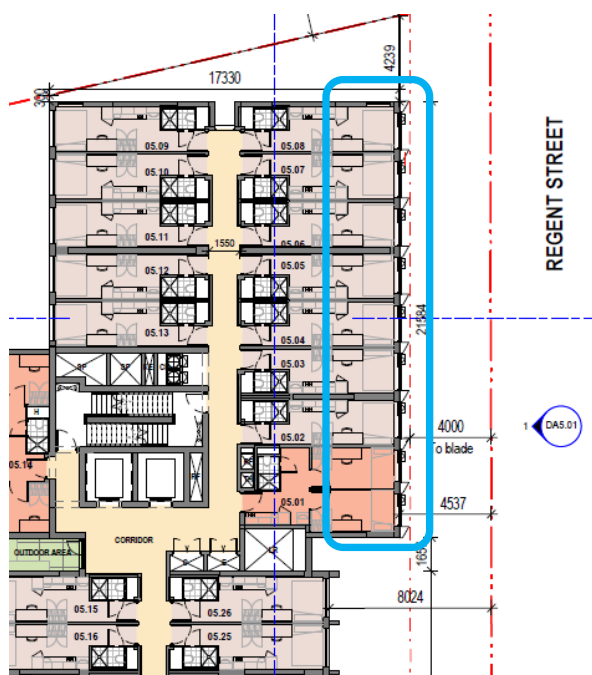
The proposed variations are along the Regent Street frontage and as described below.

- **Regent Street Podium:** the proposed podium is three storeys along Regent Street which is one storey above the maximum two storey height limit for the first 8 metres along Regent Street.
- **Regent Street Tower:** the 18 storey tower component is setback between 4 metres and 8.5 metres from the Regent Street boundary. This means the tower component also seeks to vary from the maximum two storey height limit for the first 8 metres along the Regent Street frontage.

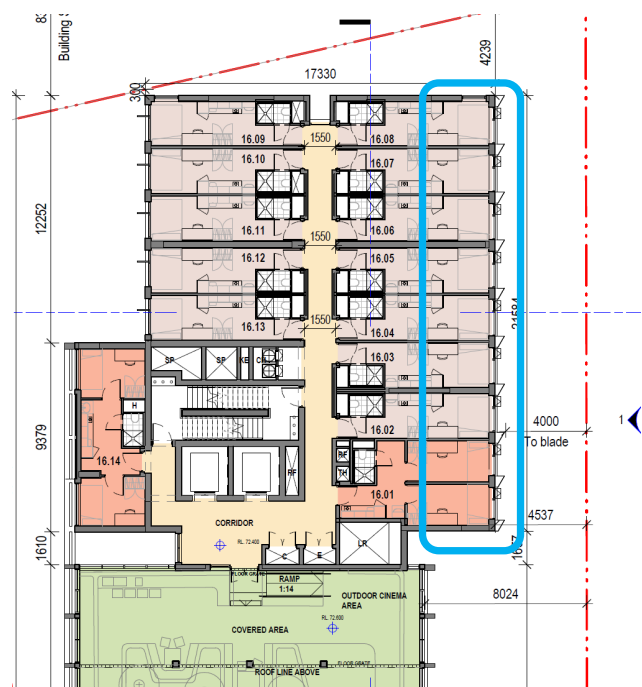
The proposed setbacks are detailed in the Architectural Drawings attached as **Appendix G** and the Design Report attached as **Appendix H** to the EIS and lodged with the SSDA. Detailed consideration is given to the emerging urban context, including the recent approvals to the north and west. A comprehensive description of the design input from the SDRP is also provided, including the rationale underpinning the podium design along Regent Street, increasing the setbacks along Margaret Street and to the nearby church building

The proposed variations to the maximum building heights within the context of the existing, approved and likely future locality are assessed in detail within **Section 5** of this report. Extracts of the proposed floor plans with non-compliant areas circled blue are below.

Figure 5 Proposed Floor Plans (with non-compliant built form circled blue)



Picture 1 Level 5-8 Floor Plan



Picture 2 Level 16 Floor Plan

Source: Antoniades Architects

4.3. RELEVANT ASSESSMENT FRAMEWORK

This request for an exception to the maximum building height development standard has been prepared in accordance with Clause 16A in Appendix 4 of the SSP SEPP which states:

- 16A *Exceptions to development standards*
- (1) *The objectives of this clause are as follows -*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *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.*
- (4) *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.*
- (5) *In deciding whether to grant concurrence, the Planning 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.*
- (6) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (7) *This clause does not allow development consent to be granted for development that would contravene any of the following -*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated.*

The above clause is generally consistent with the provisions of Clause 4.6 in *Standard Instrument - Principal Local Environmental Plan* and replaces the former assessment framework under the repealed *State Environmental Planning Policy No 1 – Development Standards*.

5. ASSESSMENT OF VARIATION REQUEST

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the maximum building height control as prescribed by clause 21 in Appendix 4 of the SSP SEPP.

Detailed consideration has been given to the following matters within this assessment:

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

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 16A of the SSP SEPP.

5.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 16A(2)

Development standards are defined within the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The definition includes (our emphasis in bold):

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -

- (c) *the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,*

Based on the above, the maximum building height prescribed by clause 21 in Appendix 4 of the SSP SEPP is a development standard capable of being varied under clause 16A(2) of the SSP SEPP. The proposed variation is not excluded from the operation of clause 16A as it does not comprise any of the matters listed within clause 16A(7) of the SSP SEPP.

5.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 16A(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

5.2.1. Objectives of the standard

The SSP SEPP does not list any specific objectives for the maximum building height control in clause 21. However, the *Redfern-Waterloo Built Environment Plan (BEP)* dated August 2006 and *Urban Design Principles: Redfern Centre (UDP)* dated May 2011 provide the background to the relevant controls, including the objectives for the height controls.

The BEP includes background information regarding the development of the site specific and contextual analysis of the urban structure, existing building form and massing and the character of places and buildings on the strategic sites. It outlines the land use and design concepts including the underlying principles for the Redfern Railway Station, Gibbons and Regent Streets precinct, including:

- *Creating a consistent block edge along all streets to a height of five storeys and tower development towards the centre of the blocks*
- *Retaining the two storey height of existing shopfronts along the length of Regent Street*
- *Ensuring all new development is built to the street boundary and in alignment with the street*
- *Creating a scale and architectural proportions that are consistent with existing shopfronts*

The UDP provides a further detailed understanding of the built form controls, including the podium design principles for new high-rise development above six storeys:

Character

- *New development is to respond to the fine grain traditional lot pattern and shopfront width in the design of the building form, particularly the podium base through the expression of structure, fenestration and shopfronts.*
- *The massing of new development is to create a consistent street edge and scale to existing streets, laneways, links and to new civic spaces.*
- *The architectural character of the buildings should respond to their use and function.*

Continuity

- *The podiums of new buildings (within the maximum heights allowed) should:*
- *Create a perimeter block development form with abutting street walls creating a continuous street wall.*
- *This requirement may be varied to allow the occasional grounding of towers at strategic locations such as termination of view axis/corridors to provide a dramatic or a gateway effect.*
- *Respond to the parapets / RLs of existing buildings to create symmetry/consistency across streets and laneways.*

Based on the above, the objectives of the maximum building heights are summarised as follows:

- Create a consistent block edge and scale to existing streets by building to the street boundary.
- Provide podiums that create a perimeter block development form and a continuous street wall with tower development towards the centre of the blocks.
- Retain the existing height along Regent Street and create a scale and architectural proportions consistent with existing shopfronts.
- Respond to the existing built form to create symmetry/consistency across streets and laneways.

The way in which these objectives have been addressed within the proposed development is outlined in **Table 1** below.

Table 1 Assessment of consistency with assumed objectives

Assumed Objectives	Assessment
<p>Create a consistent block edge and scale to existing streets by building to the street boundary.</p>	<p>The podium has a nil setback to Regent Street which aligns with the approved 90-102 Regent Street podium to the north and the urban design principles for the precinct.</p> <p>A setback of 4.6m is provided along Margaret Street to deliver public domain improvements and provide appropriate separation from St Luke's Presbyterian Church. This was a key factor in achieving design excellence, incorporating the input from the SDRP which sought to improve the pedestrian amenity and connections from Regent Street to William Lane and beyond to Redfern railway station..</p> <p>The built form is consistent with the existing and approved developments within the locality which are also built to the street boundary.</p>
<p>Provide podiums that create a perimeter block development form and a continuous street wall with tower development towards the centre of the blocks.</p>	<p>The proposed development will create a three-storey perimeter block form and a continuous street wall with activated uses along the Regent Street, Margaret Street and William Lane frontages (refer Figure 7).</p> <p>The proposed variation to the maximum two-storey podium along Regent Street is considered appropriate and acceptable, noting the overall height is compatible and consistent with the height of the podium at 90-102 Regent Street (refer Figure 3 and Figure 8). The proposal will achieve a continuous street wall and respond to the feedback from the SDRP regarding the design excellence of the proposal.</p> <p>The 4 metre setback along Regent Street for the northern part of the tower component is consistent with the upper level setbacks approved at 90-102 Regent Street, which directly adjoins the site. The 8 metre setback for the southern part of the tower component is consistent with the SEPP control and provides for appropriate sightlines to the heritage item to the south.</p> <p>The proposed setback of both the podium and tower components along the Margaret Street frontage complies with the SSP SEPP and is considered appropriate to respond to the heritage listed church building to the south.</p>
<p>Retain the existing height along Regent Street and create a scale and architectural proportions consistent with existing shopfronts.</p>	<p>The proposed development responds to the existing and approved building heights along the Regent Street frontage, including the podium of the approved development immediately to the north at 90-102 Regent Street and the heights established by the heritage listed church building and traditional shopfronts further to the south.</p>

Assumed Objectives	Assessment
	The architectural design responds to the existing and emerging streetscape. The fine-grain architecture is consistent with the existing and approved shopfronts along Regent Street as shown in Figure 6 .
Respond to the existing built form to create symmetry/consistency across streets and laneways.	The proposed building envelope has been specifically designed to respond to the approved developments at 90-102 Regent Street to the north and 13-23 Gibbons Street to the west. The proposed podium heights and tower setbacks are consistent with the general street alignment established via these approvals.

Figure 6 Regent Street Frontage



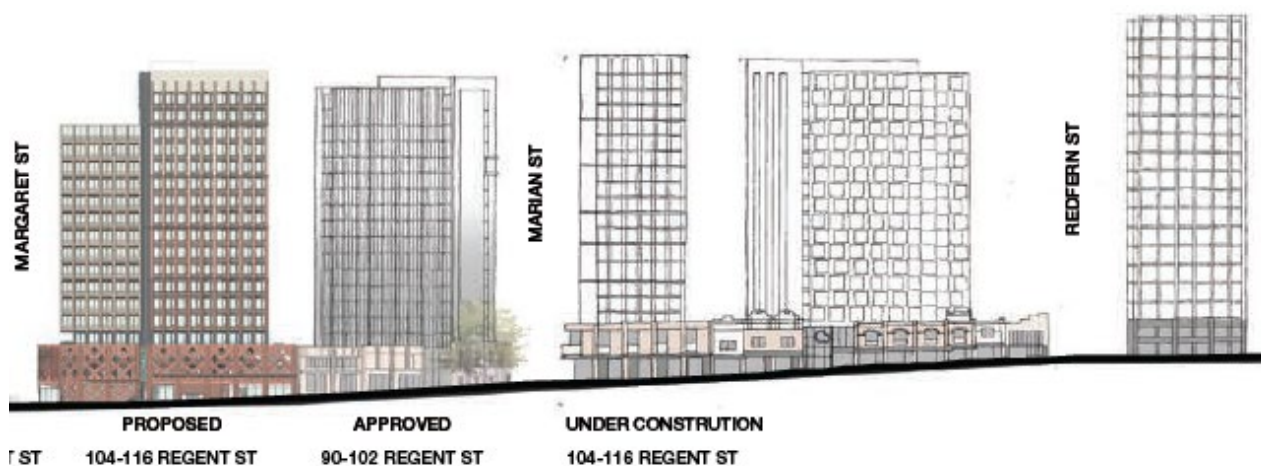
Source: Antoniades Architects

Figure 7 Margaret Street Elevation



Source: Antoniades Architects

Figure 8 Streetscape Analysis



Source: Antoniades Architects

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

5.2.2. Underlying object or purpose would be undermined

Detailed consideration was given to the appropriateness of the proposed setbacks from the property boundaries to the tower component during the preparation and refinement of the architectural drawings.

The presentations to the SDRP included a comprehensive assessment of multiple development options, including an option which fully complied with the setbacks and height controls SSP SEPP. This assessment reviewed the potential visual impacts of the proposal and its consistency with the approved development along Regent Street.

The Visual Impact Assessment prepared by Urbis concluded the proposed variation to the building heights within the Regent Street setbacks was acceptable. The proposed variation was considered acceptable for the following reasons:

- The proposed variation to the maximum two-storey podium along Regent Street is required to achieve the continuous street wall established within the adjoining development and to respond to the feedback from the SDRP regarding the design excellence of the proposal.

- The 4 metre setback along Regent Street for the northern part of the tower component is consistent with the upper level setbacks approved at 90-102 Regent Street, which directly adjoins the site. The 8 metre setback for the southern component is consistent with the SEPP and provides for appropriate sightlines to the heritage item to the south.
- Potential overshadowing associated with the proposed development has been minimised by providing additional floorspace at the podium level in response to the SDRP feedback and providing for a more slender tower form.
- The proposed variation does not block access to scenic features or resources. The proposed built form does not create any significant view blocking effects or visual impacts on baseline factors including existing visual character.
- The envelope provides an appropriate transition between the approved development at 90-102 Regent Street to the north and the heritage listed St Luke's Presbyterian Church to the south. The podium height and tower setbacks provide for a human-scale along the Regent Street frontage.

It is considered that strict compliance with the relevant standards would compromise the potential building envelope and the delivery of the permitted floorspace in accordance with the SSP SEPP. This would impact on the compliance of the proposal with the relevant objects of the *Environmental Planning and Assessment Act 1979* including 'to promote the orderly and economic use and development of the land'.

5.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 16A(3)(B)

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail in **Section 5.2** above. These include:

- The proposed built form is compatible and consistent with the approved development to the north along Regent Street. The three-storey podium component provides a fine-grain architectural outcome and a human-scale pedestrian environment. The proposed setbacks to the tower component will provide an attractive streetscape with an appropriate rhythm and a continuous built form along Regent Street and Marian Street.
- Antoniades Architects redistributed the GFA in response to contextual and urban considerations, including feedback from the Government Architect NSW (GANSW) following the SDRP meetings. This included increasing the height of the podium level along Regent Street to be consistent with the Margaret Street podium and increasing the setback to Margaret Street and St Luke's Presbyterian Church. When this design option was presented to the SDRP at the following meeting, the feedback was '*three storey street wall developed creates a strong corner response*'.
- The proposed setbacks are consistent with the variations to the relevant building height standards for other similar approved developments within the locality, including the provision of 18 storey tower elements within the 8 metre along Regent Street. This was most recently approved for the development immediately to the north at 90-102 Regent Street but also extends further north along Regent Street to the north of Marion Street.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed building height variation in this instance.

5.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 16A(4)(A)(I)

Clause 16A(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

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

5.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 16A(4)(B)(II)

Clause 16A(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 proposal is also consistent with the land use objectives that apply to the site under the SSP SEPP. The site is located within the Business Zone – Commercial Core zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 2** below.

Table 2 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>(a) to support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities</i>	The proposal will provide a high-quality mixed-use building that is compatible and consistent with existing, approved and likely future developments and provides active frontages and public domain improvements that will contribute to the revitalisation and vibrancy of the locality.
<i>(b) to encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone</i>	Employment opportunities will be generated within both the retail and student housing components.
<i>(c) to permit residential development that is compatible with non-residential development,</i>	The proposal is compatible with the surrounding non-residential development and will add to the vitality and vibrancy of the main street.
<i>(d) to maximise public transport patronage and encourage walking and cycling,</i>	The proposed development maximises public transport patronage and encourages walking and cycling. 102 on-site bicycle parking spaces will be provided in lieu of on-site car parking. The site is close to Redfern railway station and the active and vibrant centres of Redfern, Surry Hills and Chippendale.
<i>(e) to ensure the vitality and safety of the community and public domain,</i>	The public domain improvements will enhance the appearance and functionality of the public domain, including new street planting, paving and seating. The active ground floor uses will complement the public domain and improve natural surveillance of the surrounding local road network.
<i>(f) to ensure buildings achieve design excellence,</i>	A series of design briefings were held with the State Design Review Panel with the feedback incorporated into the final design to achieve design excellence. This included a comprehensive assessment of the proposed variations including detailed comparison of the 'control envelope' with the proposed development from a visual and amenity perspective.

Objective	Assessment
<i>(g) to promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area.</i>	The proposed on-site and public domain landscaping will improve the streetscape and the amenity of the public and private spaces. The landscaped treatment of the terraces above the podiums will create high levels of amenity.

Table 1 and **Table 2** demonstrate the proposed development will be in the public interest notwithstanding the proposed variation to the maximum building height control 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.

5.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 16A(4)(B) AND CLAUSE 16A(5)

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. Consent authorities for State significant development (SSD) may assume the Secretary’s concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The matters for consideration under clause 16A(5) are considered below.

- **Clause 16A(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 maximum building height control 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. Further, the development standard has been abandoned by the approvals which have been issued within the immediate vicinity for building heights within the front setbacks similar to the current proposal, including 90-102 Regent Street.

- **Clause 16A(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the underlying objectives of the maximum building height control and the land use zone objectives despite the technical non-compliance.

The environmental planning benefits associated with the proposed variation includes the delivery of a consistent streetscape outcome along Regent Street and reducing bulk and scale impacts to St Luke’s Presbyterian Church. 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 16A(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 16A variation request prior to granting concurrence, should it be required.

6. CONCLUSION

For the reasons set out in this written request, strict compliance with the maximum building height control contained within clause 21 of the SSP SEPP 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.

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

- The objectives of the maximum building height control are achieved, including:
 - A podium which provides a consistent block edge and scale along Regent Street and Margaret Street, with the overall height of the podium being consistent with the podium height for the adjoining development to the north at 90-102 Regent Street.
 - A tower component that is appropriately setback to provide for a built form which is compatible and consistent with the approved development to the north at 90-102 Regent Street, while also providing for a transition to the heritage church building to the south.
- The proposed variation will deliver positive amenity impacts, including increased solar access and visual privacy for the existing and likely future developments on the surrounding land.
- The proposal is in the public interest as it complies with the underlying objectives for the maximum height control and will deliver a development that complies with the relevant land-use objectives.

For the reasons outlined above, the clause 16A 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 maximum building height control should be applied.

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