

175-177 Cleveland Street, 1-5 & 6-8 Woodburn Street, Redfern

Mixed Use Co-Living Housing Development

Clause 16A Variation Request – Height of Buildings,
Residential FSR and Total FSR Development Standards

On behalf of
EG Funds Management Pty Ltd

October 2022



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* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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1 Introduction

This Clause 16A Variation Request has been prepared by Mecone on behalf of EG Funds Management Pty Ltd (the Proponent) in support of a State Significant Development Application (SSDA) for proposed mixed use co-living housing development at 175-177 Cleveland Street, 1-5 & 6-8 Woodburn Street, Redfern (the site).

This Variation Request has been prepared pursuant to Clause 16A in Appendix 3 of the *State Environmental Planning Policy Precincts – Eastern Harbour City) 2021* (the Eastern Harbour City SEPP).

This Variation Request seeks a variation to the total maximum floor space ratio (FSR); maximum residential accommodation FSR; and height of buildings development standards under Clause 21 of the Eastern Harbour City SEPP.

The objective of Clause 16A is to allow flexibility in the application of numerical development standards. It enables the consent authority to vary a development standard within an environmental planning instrument (EPI) and requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,
- That there are sufficient environmental planning grounds to justify contravening the development standard, and
- 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.

This Variation Request applies the principles arising from the following decisions of the NSW Land and Environment Court (LEC) set out in:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSW LEC 1511; and
- *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552.

In applying the principles established in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the Clause 16A Exceptions to Development Standards demonstrate that the proposed development standard variations meet the following key tests:

- *Wehbe Test 1* – The objectives of the standard are achieved notwithstanding non-compliance with the standard; and
- *Wehbe Test 4* – The development standard has been virtually abandoned or destroyed by the previous granting of consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

For the reasons addressed in this report, the consent authority can be satisfied that compliance with these development standards is unreasonable and unnecessary since the objectives of the standards and the zone are achieved notwithstanding the non-compliance.

As required by subclause 16A(5)(c), concurrence of the Planning Secretary of the Department of Planning and Environment (DPE) is also required before the consent authority can grant development consent. The matters required to be considered by the Planning Secretary are addressed in **Sections 2.8** and **3.5**.

This Variation Request should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Mecone dated September 2022 and the Architectural Plans prepared by Mark Shapiro Architects.

1.1 Summary of Development Standard Variations

The proposed variation to the development standards under Clause 21 of the Eastern Harbour City SEPP is summarised in **Table 1** below.

Table 1 Eastern Harbour City SEPP Clause 21 Variation Summary		
Development Standard	Proposed	Proposed variation
Maximum <u>total</u> FSR of 3.3:1 (inclusive of 10% bonus under Housing SEPP)	3.47:1 (6,955.9m ²)	Variation of 0.17:1, representing a 5.15% variation.
Maximum <u>residential</u> FSR of 1.3:1 (inclusive of 10% bonus under Housing SEPP)	3.01:1 (6,078.7m ²)	Variation of 1.71:1, representing a 131.5% variation.
Maximum height of five storeys	Five to seven storeys	Variation of up to two storeys, representing a 40% variation.

It is important to note that notwithstanding the proposed variations to the FSR and building height development standards, the development has been designed to present predominately as being five storeys when viewed from the public domain. In this respect, while the proposal does not strictly comply with these developments, the variations sought do not adversely contribute to the bulk and scale of the building and thus, remains compatible with the prevailing character of the area.

The proposed development exhibits a maximum building height of RL 43.6 (approximately 24m) when measured to its highest point at the lift overrun.

It is noted that Levels 5 and 6 are recessed from the building parapet by increased upper-level setbacks in order to present a human scale development when viewed from the public domain.

The proposed building height variation is predominantly due to the uneven and sloping topography of the site. The proposed massing has been designed to be sympathetic to the topography of the site by stepping down the massing in height to align with the height of the parapets of the existing development at 2-8 Eveleigh Street to the west and 13-31 Eveleigh Street to the south. In this respect, in location where

the site level is higher (such as the corner of Cleveland and Woodburn Streets), the perceived building height is reduced – at this location up to 1 full storey.

It is also important to note that the proposed variation to the total FSR is largely contributed to by the desire to deliver meaningful amenity for residents through communal internal living areas on the upper levels.

The proposed variations to FSR and building height development standards are further discussed in subsequent sections.

1.2 Background and Context to the Variation

Historically, the Land and Environment Court (LEC) and the State Government has supported a variation to the residential FSR, total FSR and height of building development standards for the site at 175-177 Cleveland Street and 1-5 Woodburn Street. The relevant approvals are addressed below.

SSD 6371

On 28 January 2015, the Minister granted consent to SSD 6371 relating to a mixed use development with student and residential accommodation for the northern and western portion of the site at 175 – 177 Cleveland Street. The proposal included student accommodation with **a residential FSR of 1.27:1** and **a total FSR of 1.71:1**. The proposal was accompanied by a SEPP 1 Objection to vary the maximum residential FSR development standard of 1:1. The consent authority determined that the variation was reasonable, noting the following:

*'Further, the Department is satisfied the current market demand for retail and commercial floor space is limited and the proposal will provide student accommodation currently in demand in the area. In addition, while student accommodation are defined as a residential use, **student accommodation are not purely residential and operate more similarly to serviced apartments (being a commercial use)** and will provide for approximately 5 full time employment jobs when operational'. – DPIE SSD Assessment Report January 2015.*

The above example demonstrate that historically the consent authority has recognised that a co-living housing (formerly boarding house) has the potential to support employment generation and is a viable and suitable use for the site notwithstanding its designation as residential accommodation under the standard instrument.

SSD 7064

SSD 7064 was recommended for approval by the former Department of Planning, Industry and Environment (DPIE) on 6 December 2016 and approved by the LEC on the 22 March 2018, after receiving a refusal from the Independent Planning and Assessment Commission (IPC) on the 20 February 2017.

The SSD was approved with **a residential FSR of 1.2:1** and **a total FSR of 3.25:1** for a **part five and part six storey** mixed use development comprising a hotel, residential flat building and two retail/commercial tenancies. This scheme was later modified under SSD 7064 (MOD 1) to increase the retail/commercial GFA, resulting in **a total FSR of 3.51:1**.

It is also noted that the approved development reaches a maximum height of RL 43.3 when measured to the lift core and RL 40.1 when measured from the parapet fronting Cleveland Street.

Surrounding Development

The nature of the surrounding development, which includes a number of student accommodation developments, is integral to assessing the appropriateness of the proposed variation to the residential and total FSR development standards. The prevalence of student accommodation as a form of co-living housing in the surrounding area confirms that historically consent authorities have recognised that residential uses are a viable use and suitable for the locality.

Examples include the following:

- **Scape Student Accommodation (SSD 4949-2011)** - Located to the direct west (40m) at 142 Abercrombie Street, Redfern at the intersection of Cleveland and Abercrombie Streets.
- **Iglu Student Accommodation (SSD 6724)** – Located to the south (550m) at 60 – 78 Regent Street, Redfern.
- **Iglu Student Accommodation (SSD 9275)** – Located to the south (600m) at 70 – 88 Regent Street.
- **Scape Student Accommodation (Pemulwuy Precinct) (SSD 8135)** – Located to the south (263m) at 77-123 Eveleigh Street, Redfern at the corner of Eveleigh and Lawson Streets.

SSD 4949

It is noted that the site located at 157-163 Cleveland Street, Redfern, which accommodates the Scape Student accommodation facility approved under SSD 4949-2011, is subject to the same 1:1 residential FSR development standard nominated under the former *State Environmental Planning Policy (Major Development) 2005*. Notwithstanding, the former **DPIE granted consent for a residential development with an FSR of 3:1**.

The variation was supported by the consent authority on the grounds that compliance with the development standard would preclude the achievement of the objectives of the Business-Mixed Use zone to which it and the subject site relates. An objective for the Business Zone – Mixed Use is to 'permit residential development that is compatible with the non-residential development'. The provision of student accommodation in the zone was considered to better provide a compatible use to the surrounding non-residential development and appropriate for the location given its proximity to a range of educational establishments.

SSD 8135

In addition, SSD 8135 was approved by the IPC in 2019 for a 3 to 24 storey student accommodation development within the Precinct 3 of Pemulwuy Precinct at 77-123 Eveleigh Street. While the SSD was subject to the Concept Approval granted in 2009, the IPC assessment report concluded that the following (as relevant to the proposed variation):

- *The increase in height of the Precinct 3 building envelope by 16 storeys (from 8 to 24 storeys) would have acceptable built form and heritage impacts, is consistent with similar developments around Redfern Station and the strategic vision for the area;*
- *The increase in density within Precinct 3 is supported as it provides additional student accommodation, is served by public transport, close to educational institutions and will increase the vibrancy of the Pemulwuy Precinct;*
- *The provision of student accommodation has strategic merit and is consistent with directions and actions in the Greater Sydney Region Plan, Eastern District Plan and Central to Eveleigh Urban Transformation Strategy;*
- *The development would not have an adverse impact on amenity in terms of overshadowing, overlooking, impact on views;*
- *The proposal would not result in adverse traffic or car parking impacts and would not generate additional pedestrian movements that would exceed footpath capacity surrounding the site;*

It is noted that the proposed development has been designed to exhibit a similar building envelope with a maximum height at RL 43.6. While the proposal is 0.3m taller than the approved development under SSD 7064, the design minimises further height increase from the approved building envelope under SSD 7064 whilst providing a five to seven storey built form.

In light of the above, it is clear there are precedents for granting consent with substantial variations relating to these development standards when delivering a range of diverse and affordable housing in the area.

2 Floor Space Ratio

2.1 Is the Planning Control in Question a Development Standard

The residential FSR prescribed by Clause 21(2) of the Eastern Harbour City SEPP is a development standard.

2.2 Development Standards to be Varied

Clause 21(2) *Height, Floor Space Ratio and Gross Floor Area Restrictions* states that 'The floor space ratio of a building on any land that is the subject of the Floor Space Ratio Map is not to exceed the floor space ratio shown for the land on that map'.

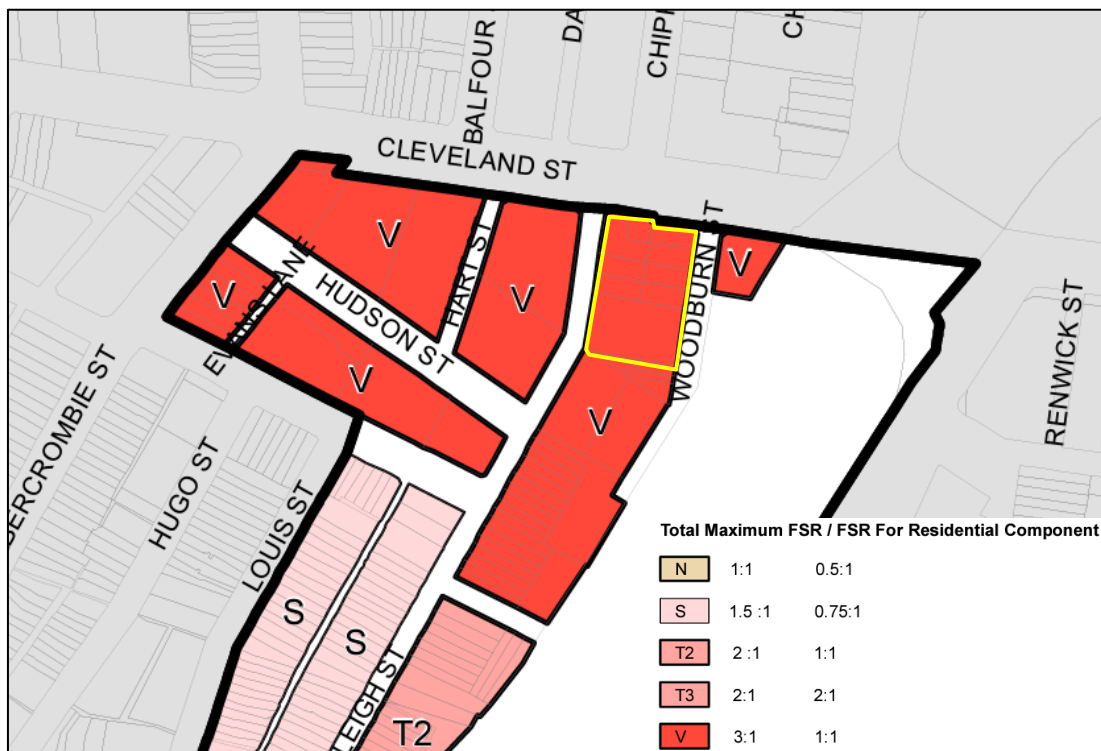


Figure 1 Site Location and Applicable Maximum Total and Residential FSR

Source: NSW Legislation

As shown in the figure above, the Floor Space Ratio Map prescribes a residential FSR of 1:1 and a maximum overall FSR of 3:1 for the site. In addition to the base FSR standards, the site is eligible for a 10% FSR bonus for the purposes of co-living housing pursuant to Clause 68(2)(ii) of the Housing SEPP which provides:

(a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than—

(i) the maximum permissible floor space ratio for residential accommodation on the land, **and**

(ii) an **additional 10% of the maximum permissible floor space ratio** if the additional floor space is used only for the purposes of co-living housing,

(emphasis added)

Under the Housing SEPP, the 'maximum permissible floor space ratio' means:

*the maximum floor space ratio **permitted on the land under an environmental planning instrument**, other than this Policy, or a development control plan.*

(emphasis added)

Given the maximum FSR permitted on the land under the Eastern Harbour City SEPP is 3:1, the maximum permissible FSR for the site for co-living housing is **3.3:1** (and **1.3:1** for co-living housing) under the Housing SEPP.

Based on a site area of 2,016.9m² and a maximum proposed gross floor area (GFA) of 6,955.9m², the proposed development has a total FSR of **3.47:1**, exceeding the maximum permissible FSR of 3.3:1 and representing a variation of **5.15%**. Moreover, the residential component of the development has a GFA of 6,078.7m², amounting to a residential FSR of **3.01:1** and a variation of **131.5%**.

The table below sets out the proposed distribution of FSR and non-compliances with the residential FSR and total FSR.

Table 2 Proposed FSR Distribution				
FSR Type	Provision	Control	Proposed	Variation
Residential FSR	Eastern Harbour City SEPP	1:1	3.01:1 GFA: 6,078.7m ²	131.5%
	Housing SEPP	0.3:1 (10%)		
	Total	1.3:1		
Total FSR	Eastern Harbour City SEPP	3:1	3.47:1 GFA: 6,955.9m ²	5.15%
	Housing SEPP	0.3:1 (10%)		
	Total	3.3:1		

2.3 Justification for the Contravention to the Development Standard

Clause 16A Exceptions to Development Standards in Appendix 3 of the Eastern Harbour City SEPP provides that:

- (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 that –
- 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.

In justifying the development standard assistance has been taken from the decisions of the LEC and the NSW Court of Appeal in the following:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118;
- *Turland v Wingecaribee Shire Council* [2018] NSW LEC 1511; and
- *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552.

The matters contained in clause 16(A) Exceptions to Development Standards in Appendix 3 of the Eastern Harbour City SEPP with regards to the maximum residential FSR and total FSR are addressed below.

2.4 Clause 16A(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary. The approaches are as follows:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (*Wehbe #1*).
- The underlying object or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (*Wehbe#2*)
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (*Wehbe#3*).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (*Wehbe#4*).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (*Wehbe#5*).

With respect to the subject variation request for residential FSR and total FSR, Wehbe Test #1 and Wehbe Test #4 as described in *Williams* are of relevance and are addressed in the sections below.

2.4.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe #1)

The Eastern Harbour City SEPP does not detail objectives for the FSR development standards. Notwithstanding this, strategic planning documents highlight the impetus for the FSR development standards. Specifically, the *Redfern-Waterloo Built Environment Plan (Stage One)* (August 2006) (the Plan) prepared by the Redfern-Waterloo Authority sets out the strategic planning framework for the precinct. It identifies the rationale for the amendments to the planning control and from this the implicit objectives of the FSR development standards can be interpreted.

The Plan designates the site as occupying the northern portion of the Eveleigh Street precinct. The objectives for the precinct are taken to be:

- Ensure development responds to the scale, form and design of surrounding development;
- To provide sufficient floor space to meet anticipated development for the foreseeable future;
- To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic;
- To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure;
- To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality; and
- To promote a balance between commercial and residential development in the Redfern precinct and to limit residential development in areas of limited amenity.

Objective 1: Ensure development responds to the scale, form and design of surrounding development.

The development has been designed to present predominantly as being five storeys when viewed from the public domain with the top two storeys (Levels 5 and 6) being recessed from the building parapet by increased upper-level setbacks. This has been further achieved through providing an appropriate transition in built form to the adjacent residential development to the west by stepping down the building and following the natural topography of the site.

The proposed envelope has been scaled to sit largely within the envelope approved under (SSD 7064 MOD 1). In particular, the portion of the envelope where it fronts Cleveland Street reaches a maximum of six (6) storeys (reducing to 5 storeys at the Woodburn Street corner) as per the approved envelope and decreases in scale towards the south where it interfaces with the development sited along Eveleigh Street and Woodburn Street.

As detailed in the Urban Design Strategy accompanying the EIS, an extensive urban design and massing analysis has been undertaken by AE Design Studio to inform the proposed built form and massing with consideration of the prevailing and desired future character of the area.

Figures 2 – 4 below illustrate the urban design strategy along the Eveleigh, Cleveland and Woodburn Street frontages. In particular, the Eveleigh Street frontage provides a five-storey street wall height which is consistent with the established street wall of 13-31 Eveleigh Street to the south and does not protrude the existing top of the parapet.

The Cleveland Street frontage is also identified with a five-storey street wall height, with upper levels set back above the street wall height. A street wall height of seven storeys is identified for the Woodburn Street frontage with the seventh storey appearing as light or as a roof form to reduce the visual bulk and scale.

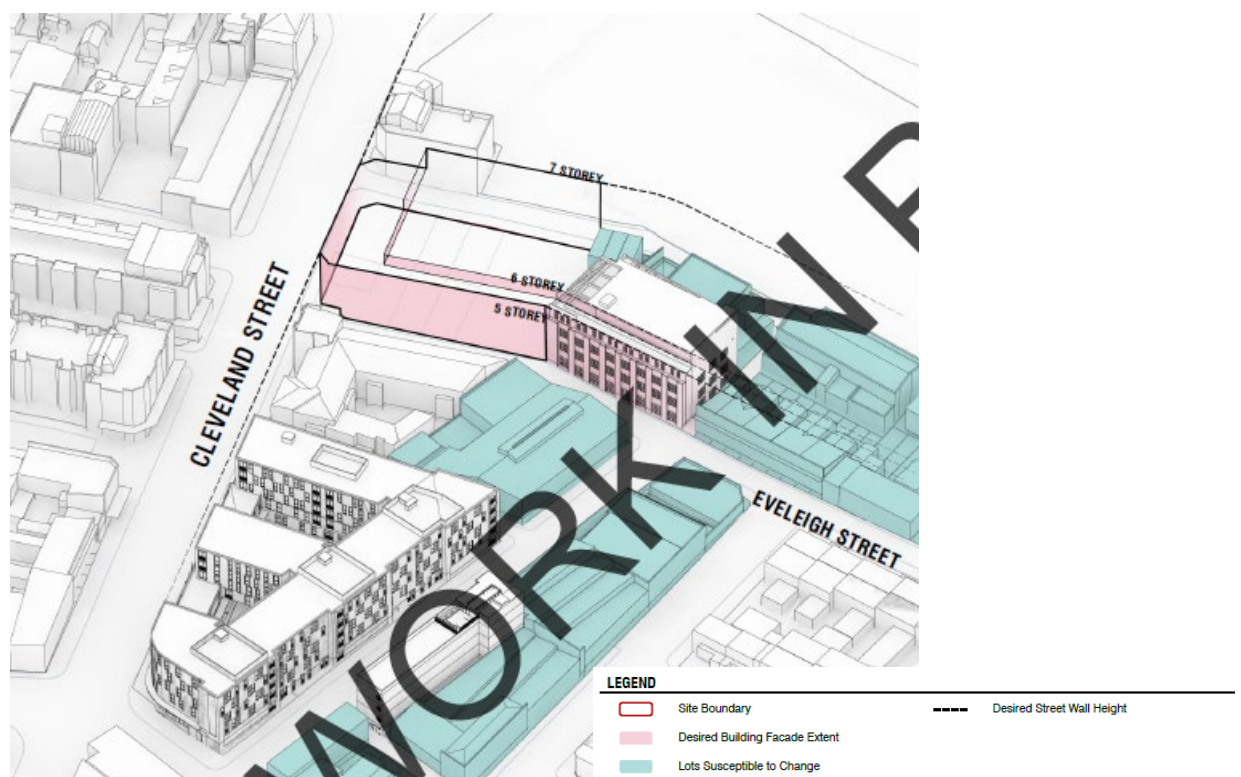


Figure 2 Urban design strategy - Eveleigh Street

Source: AE Design Partnership 2022

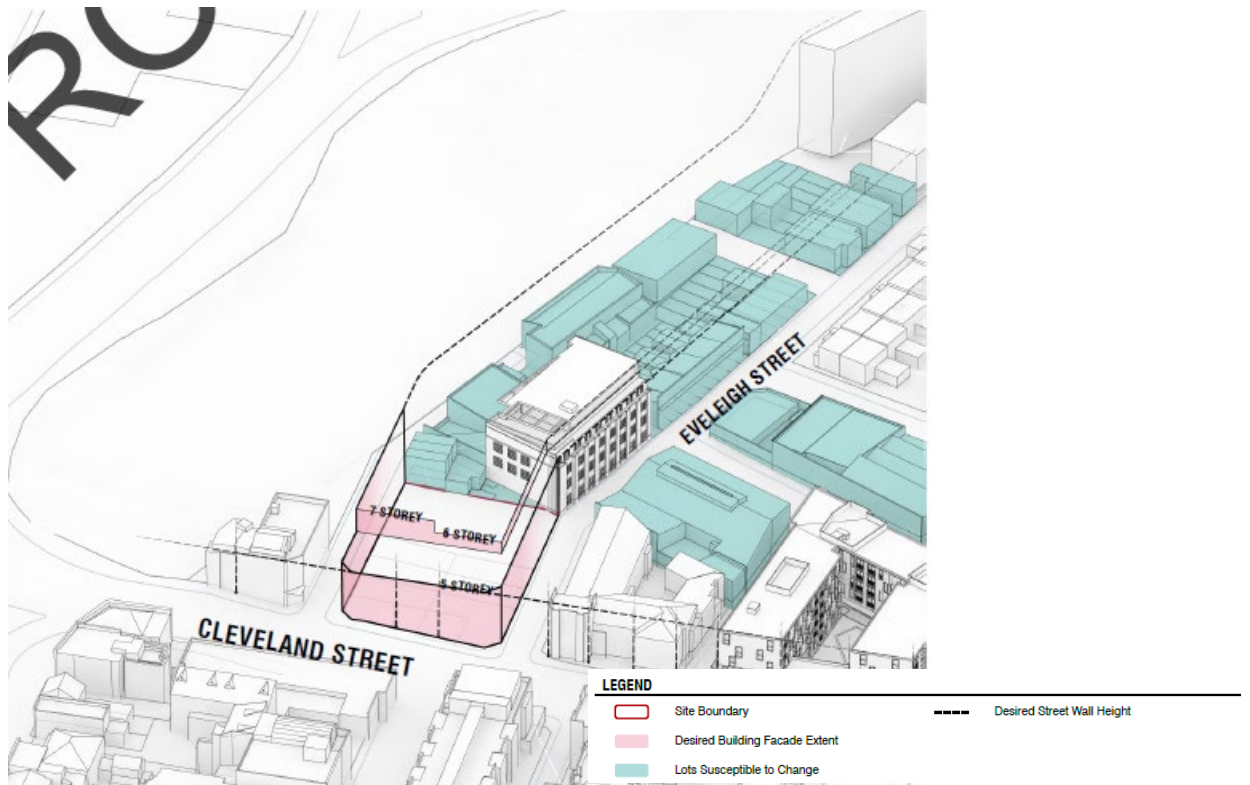


Figure 3 Urban design strategy - Cleveland Street

Source: AE Design Partnership 2022

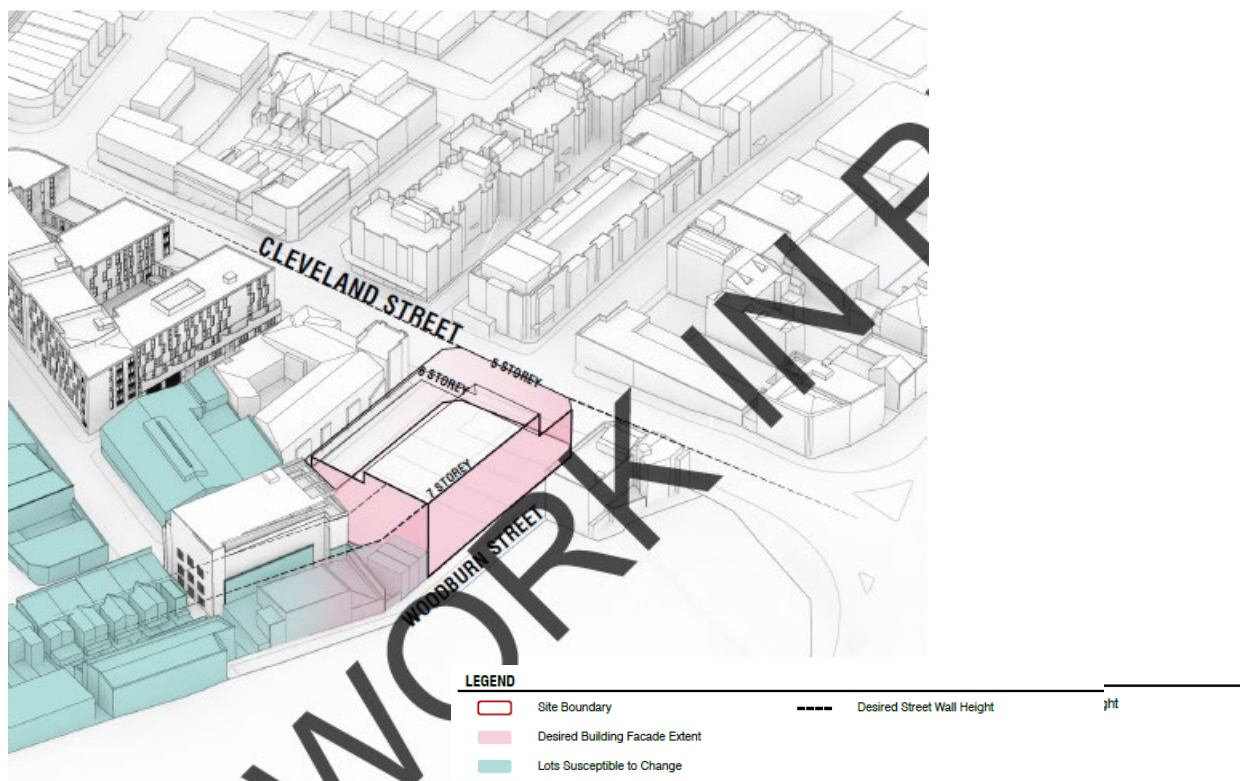


Figure 4 Urban design strategy - Woodburn Street

Source: AE Design Partnership 2022

As a result of the urban design study, the proposed development has been designed to locate the higher density elements of the development including the Indigenous rooftop farm, common lounge and dining area in order to facilitate a gradual decline and transition in scale as well as provide a buffer between the lower density development to the west and the railway corridor to the east.

This is consistent with the design concept identified under the *Redfern-Waterloo Built Environment Plan 2006* relating to “increased height and floor space ratio along the railway corridor to provide a buffer to the lower scale development to the west”. Active uses comprising commercial and retail tenancies are also provided on all street frontage to facilitate street activation and passive surveillance. For reference, the elevation of each street frontage is provided below.

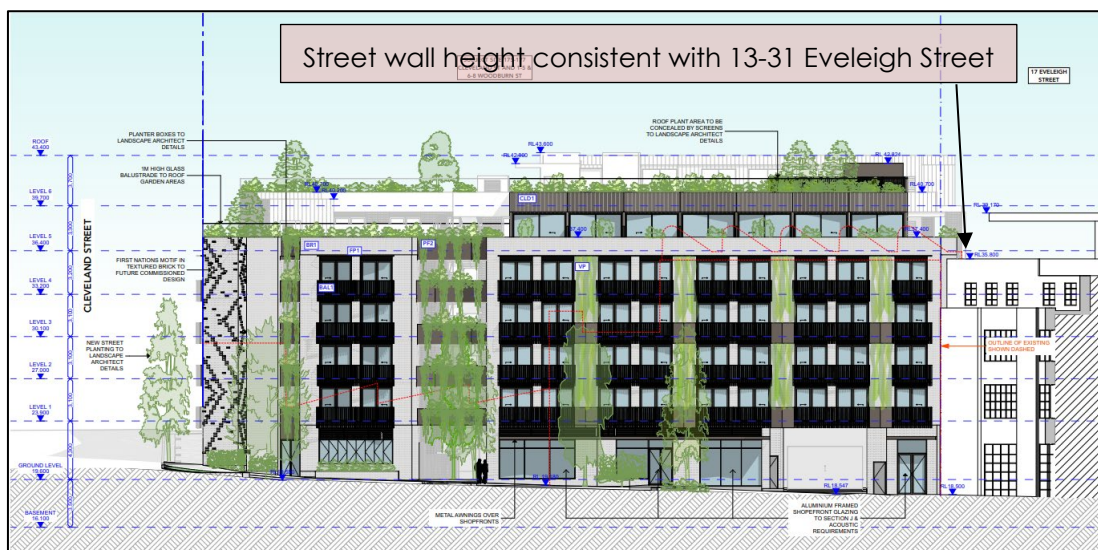


Figure 5 Eveleigh Street elevation

Source: Mark Shapiro Architects 2022

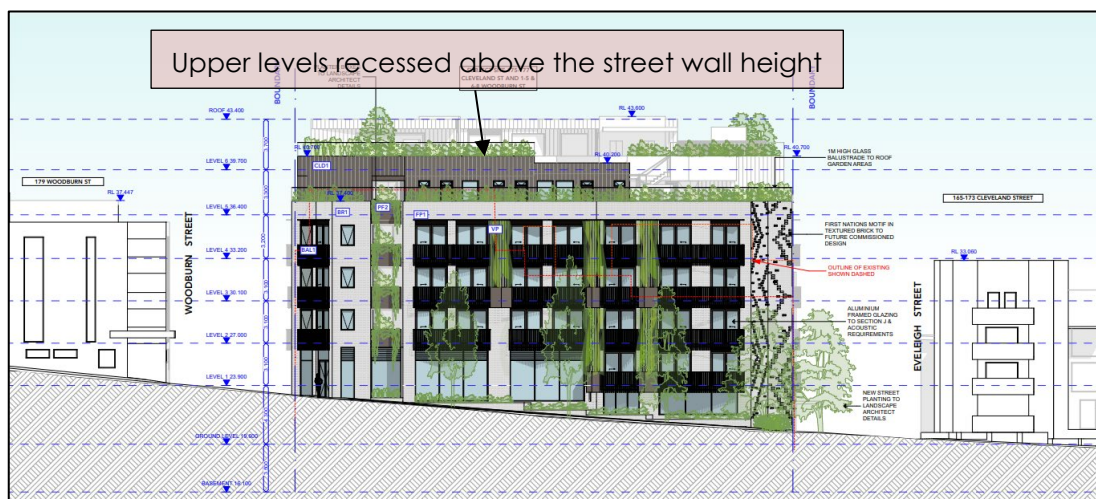


Figure 6 Cleveland Street elevation

Source: Mark Shapiro Architects 2022

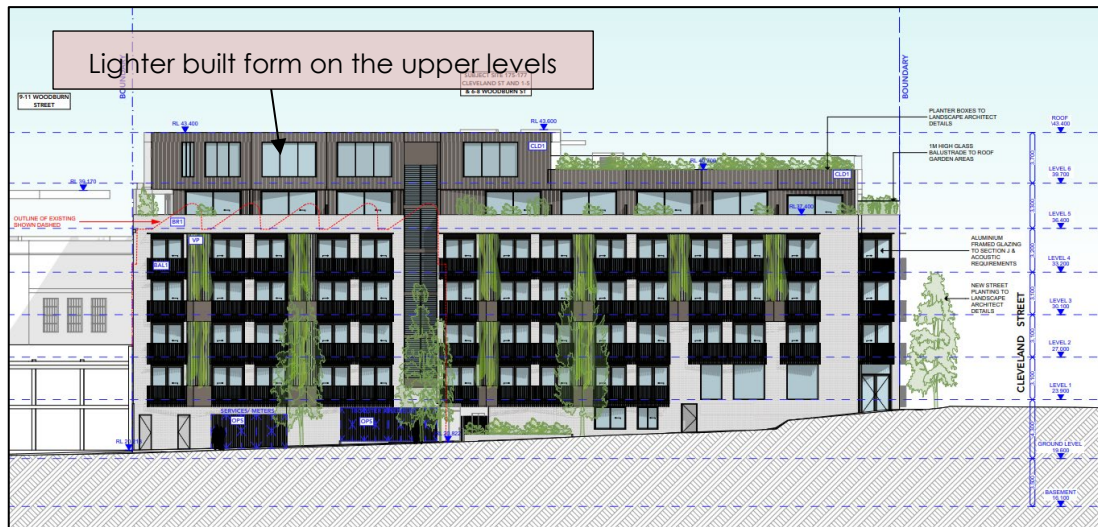


Figure 7 Woodburn Steet elevation
Source: Mark Shapiro Architects 2022

Objective 2: To provide sufficient floor space to meet anticipated development for the foreseeable future.

Residential FSR response: The additional residential floor space and associated variation to the residential FSR development standard will meet the anticipated demand for co-living housing accommodation which is exacerbated by housing shortages and affordability constraints.

Sydney remains critically unaffordable with the average rental household in Greater Sydney spending 24 per cent of its total income on rent and with the average rental household generally required to travel at least 15 – 49km to access the CBD office market.¹ As identified in the Social Impact Assessment (SIA) that accompanies the EIS, co-living housing as a form of affordable housing plays an integral role in housing key workers. In light of this, the proposal represents an opportunity to diversify the availability of housing options in a locality that is well serviced by public transport and in proximity to the CBD office market.

In addition, the SIA identifies that there is a growing spatial mismatch between where key workers live and work, noting the long-term decline in affordability for key workers in the Sydney LGA. In 2016, the main resident group was people of Chinese descent and a large proportion of the population have both parents born overseas. However, the 2021 Census indicates the people of Australian Aboriginal descent was the main resident group in the locality. This was likely the result of pandemic restrictions on overseas student populations.

Further, the SIA identifies that the current market conditions have been unusual due to the pandemic, as evidenced by recent increase in rental vacancy rates since March 2020. This is an anomalous event and once borders open again it is likely that places like Redfern will likely resume to, and likely exceed their norm, which is a competitive market for renters. The proposed development therefore contributes to

¹ Rental Affordability Housing Index (December 2020 Key Findings)
https://www.sgsep.com.au/assets/main/Projects/SGS-Economics-and-Planning_RAI-2020-FINAL.pdf

the supply of diverse and affordable housing stock and offers the capacity to provide additional housing for the key worker and student population.

The site is also located in proximity to Central Precinct which is earmarked to emerge as Sydney's technology and innovation precinct. The precinct is located a short distance from the site (800m) and will support the creation of 25,000 new jobs. Any reduction in employment on the site will be more than offset by the additional employment being created at the Central Precinct. The innovation precinct will foster collaboration with universities which lie in proximity to the site.

The proposed mixed-use development will provide a state-of-the-art co-living housing with commercial/retail uses which will increase the supply of short-stay housing for the growing office market and the existing and expanding education sector.

Total FSR response: The proposed additional FSR responds to not only the current, but the anticipated demand for diverse and affordable rental accommodation in the area as identified within the relevant strategic plans including the District Plan and Sydney LSPS.

While it may not be entirely suitable to deliver this quantum of floor space in other locations of the precinct, there are areas where such opportunities to deliver this type of floor space exist and should be considered. In this respect, as detailed in the Urban Design Strategy, the site is identified as one along the rail corridor that has a high susceptibility to change. This due to the site's characteristics; limited environmental constraints; and natural progression of development currently being experienced within close proximity to Redfern station.

Accordingly, the site presents an opportunity to respond to the strategic directions of the District Plan and LSPS and contribute to the current and anticipated demand for this type of housing in the area. This is further supported through the detailed site analysis undertaken with the Urban Design Strategy which identifies the suitability of a higher density (up to 7 storeys) along the rail corridor which sensitively locates massing and density to minimise impacts on adjoining or nearby properties. This further provides an appropriate built form transition from east to west, responding to the existing character of the area.

Objective 3: To regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.

The density and built form have been designed to present as being five storeys when viewed from the surrounding streetscape. The top two storeys, being Levels 5 and 6, are recessed from the building parapet by increased upper-level setbacks. Further, the proposed built form has been designed with respect to the natural sloping topography of the site by stepping down towards the west to facilitate a transition in scale to the adjoining residential development to the west.

The proposed envelope has been designed and scaled to sit largely within the parameters of the envelope approved under (SSD 7064 MOD 1). In particular, the portion of the envelope where it fronts Cleveland Street reaches a maximum of six (6) storeys (reducing to 5 storeys at the Woodburn Street corner) as per the approved envelope and decreases in scale towards the south where it interfaces with the development sited along Eveleigh Street and Woodburn Street.

Conversely, the proposed development decreases in height to five storeys along each street frontage with Levels 5 and 6 recessed from the building parapet to respond to the height of the adjacent developments located at 9-11 Woodburn Street and 13-31 Eveleigh Street to the south and 2-8 Eveleigh Street to the west.

The proposed development has also been designed to step down to the west to respond to the uneven and sloping topography of the site. The envelope massing therefore provides a continuous building height alignment along both street frontages.

The form and design respond to the character of the adjoining development to the south. The development at 13-31 Eveleigh Street consists of a mixed-use development comprising apartment units and commercial/retail uses with red brick façade and dark grey and white cladding on the upper levels.

Similarly, the development at 2-8 Eveleigh Street consists of a residential flat building with a red brick façade comprising windows and balconies. The proposed architectural expression is characterised by masonry brickwork and windows featuring fixed vertical louvres which are sized to reflect proportions of the windows associated with the abovementioned neighbouring developments.

To enhance residential amenity and soften the built form, a ground level courtyard; Indigenous roof top farm; external terrace area; tree planting; vertical planting; and planter boxes are incorporated into the design. For reference, **Figures 8 - 9** below illustrate the proposed landscape design for ground level and Level 6.



Figure 8 Ground Level Courtyard Landscaping

Source: Wallman Partners 2022

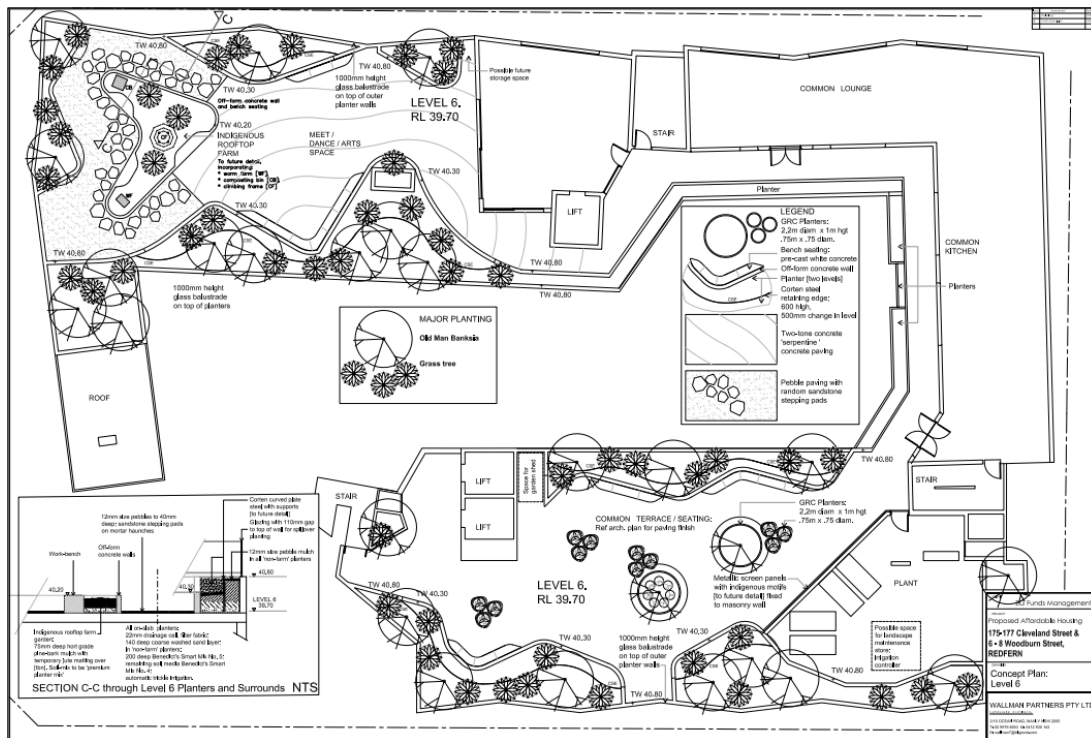


Figure 9 Level 6 Landscaping

Source: Wallman Partners 2022

In relation to the residential accommodation FSR exceedance, the development has been designed to incorporate a range of non-residential uses including commercial and retail tenancies and a co-working space, activating all street frontages. There will also be opportunities to create spaces for face-to-face education and other types of learning (such as digital) to ensure ongoing and public awareness for Aboriginal cultural practices.

In addition, the north-eastern portion of Level 1 has been designated for commercial use in order to maximise the provision of active street frontage along Cleveland and Woodburn Street. Due to the site's uneven topography, the ground level is partially sunken below the street level. As such, providing a commercial tenancy on Level 1 at the north-east corner would ensure an active frontage is provided to address the Cleveland and Woodburn Street frontages.

Regarding land use intensity and traffic, the Housing SEPP requires the provision of 44 off-street car parking spaces. However, consistent with Council's approach to limit the reliance on private vehicles, the proposal makes provision for 19 off-street car parking spaces.

The proposed parking arrangements result in approximately 2-3 vehicles per hour during the weekday AM and PM peak periods. In contrast, the development approved under SSD 064 (MOD 1) was projected to generate 17 vehicle trips per hour during peak periods, therefore representing a significant increase from the proposal. The Traffic & Parking Assessment Report that accompanies the EIS concludes that the traffic generation resulting from the proposal will have an imperceptible impact on the surrounding road network and intersections and will result in a net reduction in

traffic generation potential when compared to the existing and previously approved development on the site.

In light of the above, the findings of the traffic assessment demonstrate that notwithstanding the variation to the residential and total FSR control, the proposed off-street parking arrangements do not provide an intensity of use that results in unacceptable vehicle and pedestrian movements.

The proposal has the capacity to accommodate 365 lodgers when occupied at maximum capacity. It is not envisaged that the proposed intensity of use will give rise to unreasonable pedestrian traffic given the sites proximity to public transport as well as the type of the accommodations being provided.

Objective 4: To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

Being located within walking distance of Redfern and Central Railway Stations, the site receives ample access to public transport infrastructure. It will also benefit from the nearby Waterloo Metro Station once this becomes operational in 2024.

Given the site's proximity to employment hubs including the CBD and nearby universities and access to public transport, the proposed variation to the total and residential FSR development standard will not place additional pressure on the surrounding road network beyond that of a complying scheme. The Traffic and Parking Assessment prepared by Varga Traffic Planning that accompanies the EIS confirms that the proposal will generate approximately two to three vehicle trips per hour only during the weekday AM and PM peak commuter periods. The traffic assessment also confirms that the level of traffic activity associated with the proposed development is statistically insignificant and will not have any unacceptable traffic implications in terms of road network capacity.

Whilst the proposed variation seeks to increase the provision of additional residential floor space (in the form of co-living housing floor space), it should be recognised that commercial floor space typically results in higher levels of traffic generation relative to residential floor space. This is exemplified by the traffic generation rates prescribed by the RMS Guide to Traffic Generating Developments. The guide nominates a rate of 2 trips per 100m² of GFA for commercial premises. Whilst the RMS Guide to Traffic Generating Developments does not specify a rate for boarding houses or co-living housing, it specifies a rate of 0.5 – 0.65 trips per dwelling for medium density flat buildings.

The exceedance of the residential FSR development standard will therefore result in less traffic generation than a scheme that complied with the standard and provided a greater proportion of commercial floor space.

In light of the above, it can reasonably be concluded that the provision of residential floor space in lieu of the commercial floor space envisaged by the FSR development standard will not result in an intensity of development that cannot be supported by infrastructure in the form of the surrounding road network or public transport.

Objective 5: to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The desired future character for the area is established by the *Redfern – Waterloo Built Environment Plan (Stage One) August 2006* Plan. Under this Plan, the site forms part of the Eveleigh Street Strategic Site. The proposal's consistency with the relevant built form and land use objectives is addressed in the table below.

Implied Objective	Comment
Ensuring appropriate business development opportunities are provided within the site.	<p>The proposal will provide business development opportunities and employment activity through the dedication of commercial/retail and co-working space, activating all street frontages.</p> <p>The proposed co-living housing will necessitate the employment of on-site staff such as clerical staff, café staff, a co-living housing manager, security personnel, and cleaners. Therefore, both uses will provide opportunities for ongoing employment opportunities.</p>
Encouraging employment activity.	
Providing for residential development.	The proposal relates to a co-living housing which is type of residential development as defined by the Standard Instrument.
<p>Facilitate the development of quality housing for existing and new residents that:</p> <ul style="list-style-type: none"> - provides a range of housing types that respond to the social mix of the area. - Provides cultural appropriate and sustainable housing for Aboriginal residents; - Is designing and located to respond to external factors including the railway corridor and Cleveland Street, to maximise amenity. 	<p>The proposal relates to a co-living housing development. It responds to the social mix of the area in that it will cater to the locality's large student population that benefits from the proximity to a range of tertiary educational institutions.</p> <p>The proposal has sought to respond to external factors such as the nearby railway corridor. The proposed use relates to co-living housing on built-to-rent tenure that are not required to meet the residential amenity standards that apply to residential flat buildings. Notwithstanding this, design measures have been incorporated in order to minimise amenity impacts that may arise due to the site's proximity to the railway corridor. Specifically, non-habitable areas such as lobby areas, plant / storage, communal areas and roof top plant have been strategically located along the</p>

Implied Objective	Comment
	building's eastern aspect where it orientates towards the railway corridor.
Ensuring development responds to the scale, form and design of surrounding development.	<p>The proposed distribution of mass has sought to respond to the scale of the surrounding development as detailed in this request.</p> <p>The proposal has a five storey presentation when viewed from Cleveland Street. The upper storey is recessed from the building parapet to minimise its visibility when viewed from the ground plane. In consequence, the envelope at this aspect aligns with the height of the neighbouring buildings on Cleveland Street and sits comfortably in the streetscape.</p>
Increased height and floor space ratio along the railway corridor to provide a buffer to the lower scale development to the west.	The development concentrates its bulk along the railway corridor and informed by the urban design massing study and thereby provides an appropriate transition to the west.
Ensuring active uses adjoining and overlook existing and new open space to provide passive surveillance.	Active uses are proposed at ground level fronting Cleveland, Woodburn and Eveleigh Streets.
Encouraging active non-residential uses at street level and along pedestrian paths to improve pedestrian safety and amenity.	
Ensuring landscaping, tree planting, lighting and good design of civic spaces, streets and pedestrian paths.	Street tree planting is proposed along Cleveland Street. Landscaping is proposed at the upper levels of the development and will contribute greenery to the locality.
Ensuring development fronts and overlooks public streets to facilitate passive surveillance.	The proposed commercial uses are orientated towards Cleveland, Woodburn and Eveleigh Streets and incorporates glazed fenestration and will maximise sightlines to and from the development. The primary entry / lobby area occupies the corner of Woodburn and Eveleigh streets and will facilitate passive surveillance over both streets.
Limiting blank facades and extensive car entry / parking and servicing areas along public streets.	Each elevation is highly articulated due to the inclusion of windows, vertical louvres and privacy screening devices. The vehicular access point is located on the far

Implied Objective	Comment
	southern end of the façade fronting Eveleigh Street to maximise the extent of the active frontage.

Further to the above, it must be reiterated that the area's future character is likely to change with a number of properties in the locality identified as highly susceptible to change, many of which have the potential to amalgamate with neighbouring lots for higher density. There are instances of 5+ storey developments in the area that exist in harmony with lower scale development in the locality.

In this respect, the development has been designed to maximum residential amenity both within the development itself as well as to those existing developments surrounding.

Objective 6: To promote a balance between commercial and residential development in the Redfern precinct and to limit residential development in areas of limited amenity.

The surrounding development predominantly consists of residential flat buildings. Examples include the residential flat building at 2-8 Eveleigh Street and the Scape student accommodation development at 142 Abercrombie Street to the west of the site, respectively. These precedents confirm that from an approvals perspective, residential development is considered to be acceptable for the locality.

The proposal relates to a mixed-use co-living housing which is not subject to the same amenity requirements as other residential development such as apartment buildings. Notwithstanding this, the assessment included in the EIS demonstrates that the proposal is capable of meeting a range of amenity requirements prescribed by the Apartment Design Guide (ADG).

While it is acknowledged that Cleveland Street provides certain amenity challenges, it has been demonstrated through technical studies accompanying this proposal, as well as through previous approvals, that residential accommodation in this location can be delivered with an acceptable level of amenity.

In light of the reasons set out above, the proposed development achieves the objectives of the implied objectives for the residential and total FSR development standards under the Redfern-Waterloo Built Environment Plan 2006. Therefore, pursuant to the First limb of the Wehbe test, compliance with the residential and total FSR development standards under Clause 21 in Appendix 3 of the Eastern Harbour City SEPP is unreasonable or unnecessary.

2.4.2 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Wehbe#4)

Ground 4: Precedents for varying the residential and total FSR development standards.

As outlined in **Section 1.2**, there are existing precedents for varying the residential and total FSR development standards to facilitate the delivery of co-living housing (formerly boarding house) accommodation.

SSD 7064

The development relates to the subject site and includes a part five and part six storey mixed-use development comprising a hotel, residential flat building and two retail / commercial tenancies.

On 22 March 2018, the LEC granted consent to the proposal which has an FSR of 3.25:1 and therefore contravened the permissible 3:1 FSR nominated by the SPP SEPP. Further, the residential component was approved with an FSR of 1.35:1 representing a non-compliance with the permissible 1:1 residential FSR nominated by the SPP SEPP.

As illustrated in **Figure 10** below, the previously approved building extent (in blue) reaches a density similar to that proposed, particularly towards Cleveland Street.



Figure 10 Building envelope comparison with SSD 7064

Source: AE Design Studio 2022

SSD 4949

The site located at 142 Abercrombie Street, Redfern, which accommodates the current Scape Student Accommodation facility, is subject to the same 1:1 residential FSR development standard nominated under the former Major Development SEPP. Notwithstanding, the approved student boarding house development for the site (SSD 4949) has a maximum residential FSR of 3:1.

The former DPE in their assessment of the application considered that compliance with the residential FSR Development Standard was both unreasonable and unnecessary in the circumstances of the case due to the following:

- Compliance with the FSR development standard would hinder several objectives of the Business – Mixed Use zone which seeks to provide a mix of residential opportunities and to permit residential development compatible with non-residential development; and
- The proposed boarding house use would generate job creation.

As with the site at 142 Abercrombie Street, the surrounding development comprises a mix of residential flat buildings, student accommodation, shop top housing with ground level retail and short stay accommodation.

As seen from the previous approvals on the subject site and the surrounding area, it is evident that there have been multiple precedents where variations to the residential and total FSR development standards were granted to student accommodation/boarding house development by DPE, in which these developments are of similar nature to the subject proposal. Importantly, as noted in the assessment reports of these historic approvals, residential uses have been recognised that they are a viable use and suitable for the locality. Similar to student accommodation developments, the proposed co-living housing development is not purely residential and operate more similar to serviced apartments, which is a commercial use.

An appropriate mix of non-residential uses will also be incorporated to the street frontages, including commercial/retail tenancies and co-working space. It is noted that the proposed commercial uses on site amounts a non-residential floor space to approximately 0.46:1 and accounts for approximately 13% of the total proposed GFA, which is greater than the non-residential FSR of 0.44:1 approved under SSD 6371 and the nil non-residential floor space at the existing student accommodation at 157-163 Abercrombie Street approved under SSD 4949.

Further, as demonstrated in **Section 2.4.1**, there is an emerging demand for student and key worker accommodation (as a form of co-living housing) in the locality. The proposed co-living housing will contribute to the provision of purpose-built rental housing in a highly accessible location and enable the development of diverse housing types, specifically co-living housing as new generation boarding houses.

In light of the above, given that DPE has historically granted consent to boarding house developments departing from the residential and total FSR standards, it is considered such standards have been virtually abandoned or destroyed by DPE, to achieve better outcomes for the wider locality by allowing flexibility for these developments.

Accordingly, pursuant to the Fourth limb of the *Wehbe* test, compliance with the residential and total FSR development standards pursuant to Clause 21 in Appendix 3 of the Eastern Harbour City SEPP is unreasonable or unnecessary.

2.5 Clause 16A(3)(b): That there are sufficient environmental planning grounds to justify contravening the development standard

The environmental planning grounds to justify the contravention of the development standard are addressed below.

Ground 1: There are no resultant amenity impacts.

The proposed development does not result in any additional or adverse environmental planning impacts. Specifically, there will be no visual impacts, privacy, overshadowing or traffic impacts.

Visual Impacts and Height Transition

A Visual Impact Assessment has been prepared by Urbaine Architecture and accompanies the EIS. It demonstrates that the proposal will provide acceptable visual impacts.

The proposal will be most visible when viewed looking south from Cleveland Street. When viewed looking from this vantage point, the proposal visually integrates with the Cleveland Street streetscape and is sympathetic to the height plane established by the adjoining buildings which largely consist of residential flat buildings and hotel development (refer to **Figures 11 - 12**).

The Visual Impact Assessment identifies that the proposed building design will integrate into the existing urban fabric and the upper levels are only impacting on the sky view. The proposed built form helps to define a sense of rhythmic scale, very much in keeping with the neighbourhood, which was traditionally a mix of residential and warehouse-style architecture.



Figure 11 Existing Site Development looking south west from northern side of Cleveland Street
Source: Urbaine 2022



Figure 12 Proposed Development looking south west from northern side of Cleveland Street
Source: Urbaine 2022

Due to the westward sloping topography of Cleveland Street, the proposed envelope will provide a gradual transition from the development to the immediate east by stepping down the building from seven storeys to five to six storeys and will continue the building alignment along Cleveland Street, which as shown in **Figure 13** below is currently disrupted by the absence of a building of a comparable.



Figure 13 Existing Site Development looking south west down Cleveland Street

Source: Urbaine 2022

Figure 14 below illustrates the photomontage of the proposed development from the same vantage point. As seen from the figure, the adjoining buildings on Cleveland Street provide an existing level of height and massing consistent with the area and with that of the new development. The Visual Impact Assessment notes that this view angle clearly demonstrate the proposal's positive impact upon the continuity of rooflines along Cleveland Street.



Figure 14 Proposed Development looking south west down Cleveland Street

Source: Urbaine 2022

The Visual Impact Assessment describes the extent of visual impact associated with the proposal ranging from minor to high. Notwithstanding, the visual impact is identified to be the greatest in areas of low visual quality and areas where most observations will be from vehicles on Cleveland Street and other arterial roads connecting the site. In areas where the visual impact is more sensitive, particularly the well-established residential lots to the west of the site, the heights of the adjoining buildings largely obscure much of the proposed built form. The visual impact associated with the proposed development does not create any material view loss, rather the visual impact is the most apparent upon the sky for the most part. This is due to the site's lower position, relative to its surroundings on all sides.

It is concluded that the proposal would facilitate the unification of the streetscape in an area of mixed architectural quality and scale. The associated visual impact is deemed a positive feature of the proposal where it is observed from main arterial routes, whilst the scale of existing buildings in the surrounding neighbourhood minimises the visual impact on the more local and personal scale.

Accordingly, the proposed development with variation to the residential and total FSR development standards, is not anticipated to result in adverse visual impacts. Rather, the proposed design aligns with the massing and building height of the surrounding development and enhances the continuity of form along major arterial roads.

Amenity

The proposal has been designed to satisfy the amenity requirements of the Housing SEPP. The proposal is entirely consistent with the provisions of the Housing SEPP and achieves a high degree of amenity. In particular, the scheme achieves the following:

- All rooms comply with the minimum and maximum room size requirements prescribed in Clause 69(1)(a) of the Housing SEPP;
- Every room within the development will be furnished with a bed, desk, wardrobe, kitchenette, stove, fridge and storage space;
- The proposal provides adequate bicycle and motorcycle parking in accordance with Clause 69(1)(h) of the Housing SEPP;
- The communal living areas and the outdoor common areas located at Level 6 receive a minimum of 3 hours direct sunlight between 9am and 3pm during mid-winter in accordance with Clause 69(2)(c) of the Housing SEPP;
- The proposal greatly exceeds the minimum communal open space requirement nominated by Clause 68(d) of the Housing SEPP which requires the provision of at least 20% of the site area with minimum dimensions of 3m. Cumulatively, the proposal provides 1,458.8m² of external common area, which equates to approximately 72% of the site area;
- The proposal also provides a total of 549.4m² of communal living areas, which is in excess of the requirement under Clause 68(c) of the Housing SEPP, requiring at least 450m² of communal living area for the proposed development;
- An appropriate workspace is provided for the building manager on Level 6 in accordance with Clause 69(1)(d) of the Housing SEPP, with the manager's residence provided on Level 5; and

- The proposed development achieves compliance with the building separation requirements with the adjacent properties under the Apartment Design Guide (ADG), as required under Clause 69(2)(b) of the Housing SEPP.

A comprehensive assessment of the proposal's compliance with the Housing SEPP is provided within the EIS.

Further to the proposal compliance with the Housing SEPP, it has also been demonstrated that the co-working housing rooms will achieve the industry standard requirements for noise impacts. While it is acknowledged that Cleveland Street is a noise generating road, the proposal has been designed and incorporated measures to mitigate any adverse noise impacts on residents. These findings are detailed in the Acoustic Assessment Report that accompanies the EIS.

In light of the above, it is reasonable to conclude that given the proposal largely complies with the relevant amenity developments standards and industry requirements, the proposed quantum of residential FSR in this located is deemed acceptable on amenity grounds.

Traffic

Varga Traffic Planning have assessed the traffic generation associated with the proposal. Based on the provision of 19 car parking spaces, the proposal, notwithstanding the variation to the residential and total FSR development standards, will generate only 2-3 vehicle trips per hour during the morning and evening peak commuter periods.

The proposed development will result in a net reduction in traffic generation potential when compared to the existing and previously approved development on the site. The traffic assessment also confirms that the level of traffic activity associated with the proposed development is statistically insignificant and will not have any unacceptable traffic implications in terms of road network capacity.

Overshadowing

Mark Shapiro Architects have prepared an overshadowing analysis which demonstrates that the proposal will provide minor and acceptable shadow impacts. The analysis provides a comparison between the shadow cast by the approved development and the proposed.

The analysis demonstrates that the proposed development will result in minimal additional overshadowing when compared to the existing shadow cast and the approved development under SSD 7064 throughout the year (during winter solstice, equinox and summer solstice).

Specifically, during winter solstice, where the proposal results in additional overshadowing, the additional shadow cast is predominantly limited to the existing commercial building at 16 Eveleigh Street to the south west, mixed use development at 13-31 Eveleigh Street and commercial building at 13 Woodburn Street to the south and the hotel building at 179 Cleveland Street to the east. As illustrated in **Figures 15-18** below, the aforementioned buildings are already affected by existing shadow cast and the additional shadow cast on these buildings are relatively minor in nature.



Figure 15 Shadow diagrams on winter solstice 9am-10am

Source: Mark Shapiro Architects 2022

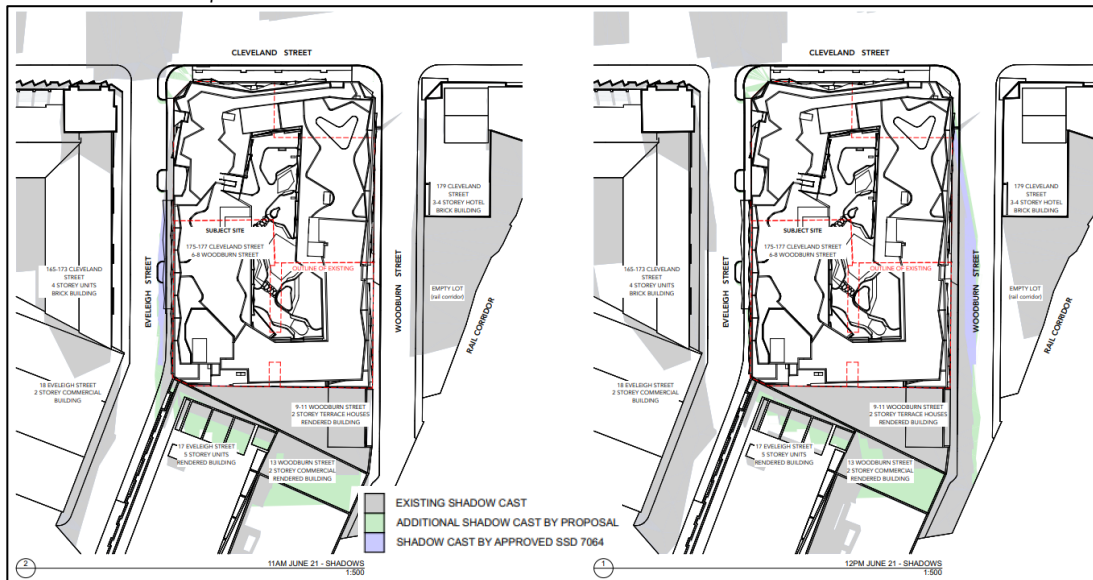


Figure 16 Shadow diagrams on winter solstice 11am-12pm

Source: Mark Shapiro Architects 2022

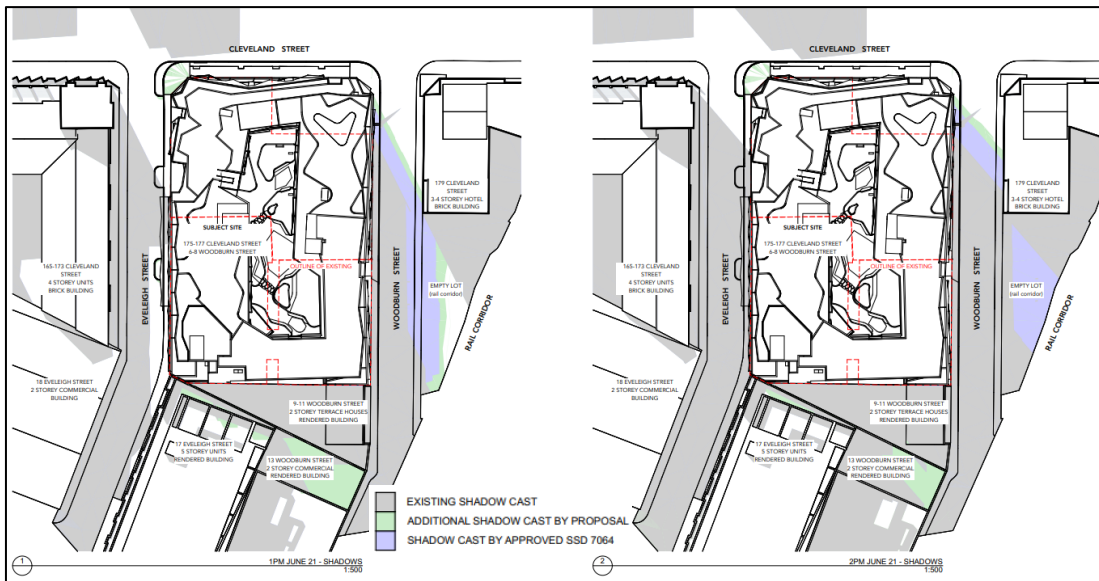


Figure 17 Shadow diagrams on winter solstice 1pm-2pm
Source: Mark Shapiro Architects 2022

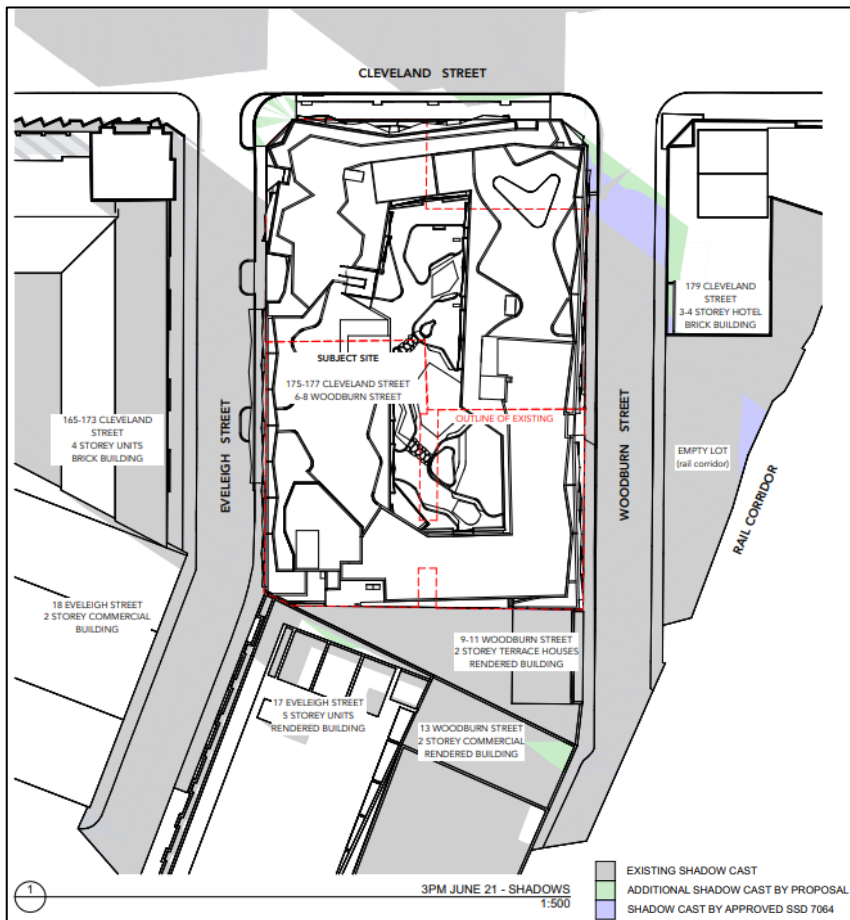


Figure 18 Shadow diagram on winter solstice 3pm
Source: Mark Shapiro Architects 2022

The proposed development has been designed to optimise solar access for the adjacent properties by limiting the extent of additional shadow cast. It should be noted that the additional shadow cast depicted in **Figures 15-18** represent the worst-case scenario within a year. As illustrated in the shadow diagrams for equinox and summer solstice within the Architectural Plans, the additional shadow cast on these days is insignificant in that the additional shadows are not considered to result in material changes in terms of the levels of solar access for the surrounding properties.

Privacy

Due consideration has been given to visual privacy impacts. The only residential use in immediate proximity to the site relates to the residential flat building to the direct west and the existing terraces and residential units to the south. The proposal provides a 12m building separation distance to this residential flat building located at 2-8 Eveleigh Street and a blank wall on the southern elevation fronting the existing properties at 13-31 Eveleigh Street and 9-11 Woodburn Street (refer to **Figure 19**). The proposed building separation is reasonable due to the following:

- The Acoustic Report prepared by Acoustic Logic confirms that the proposal will not provide unacceptable acoustic impacts;
- The proposed 12m separation distance to the west and provision of a blank wall with nil separation is compliant with the building separation requirements under the ADG as required under Clause 69(2)(b) of the Hosing SEPP;
- The western elevation incorporates Juliette Balconies up to Level 4 that do not afford occupants the opportunity to position themselves directly looking into the adjacent residential flat building to the west;
- Balconies fronting Eveleigh Street with usable space are only provided on Level 5, which will be above the height of the adjacent residential flat building and hence the proposed balconies are not anticipated to result in direct overlooking into the adjacent residential units;
- In relation to the separation distances within the building, it is noted that the ADG building separation requirements typically do not apply to internal separation within one building. It is considered that the proposed building has been architecturally designed to provide adequate visual privacy and amenity for the residents through use of Juliette balconies and privacy screens where necessary.



Figure 19 ADG separation distance diagram
Source: Mark Shapiro Architects 2022

In light of the above, the proposed development is considered to be satisfy Ground 1 and will provide an acceptable level of amenity for the site and the surrounding properties.

Ground 2: The proportion of residential floor space is appropriate for the zoning.

The Eastern Harbour City SEPP designates the site as forming part of the Business Zone – Mixed Use. Key relevant objectives for the zone are to:

- *Support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities'; and*
- *To permit residential development that is compatible with non-residential development.*

The proposed quantity of residential uses will allow the development as a whole to better meet the aforementioned objectives. The residential uses proposed relate to a co-living housing development that will provide a genuine mixed-use outcome.

The co-living housing will facilitate employment opportunities whilst addressing the demand for high-quality rental accommodation. This provision of high-quality rental accommodation will encourage a greater number of visitors to occupy the site who will benefit from nearby retail, cultural and educational uses and will support local businesses in the community.

It is intended that the proposed development will operate as a purpose-built rental housing development with an appropriate mix of non-residential floor space including commercial/retail tenancies and co-working space, which exhibits high standards of architectural design and high levels of visual amenity. This use will introduce a unique residential housing option to the locality and its communal spaces and non-residential will foster a sustainable community with employment and residential opportunities.

The non-residential development in the surrounds largely consists of shop top housing that provides retail uses at street level and residential above. Consistent with these developments, the proposal will provide an active ground floor commercial/retail uses and residential floor space above. Although being a residential use, the proposed co-living housing development will continue to provide employment generating floor space and will contribute to the commercial objectives of the zone.

As demonstrated in the Economic Impact Assessment (EIA) prepared by Atlas Economics, the proposed development is projected to result in a net increase in economic activities during both construction and operation phases. Specifically, the proposed development is estimated to deliver 110 Full-Time Equivalent (FTE) construction jobs (including 56 FTE directly employed in construction activity) and 92 FTE jobs (including 45 FTE directly related to activity on the site) once operational.

It has long been demonstrated through previous approvals across the site that a predominantly non-residential development outcome is unviable for the site due to it being unable to attract the type of commercial interest that the existing planning controls attempt to impose. This situation is now exacerbated in a post-COVID world where commercial office tenants demand higher levels of amenity from workplaces. In these instances, accommodating land uses that are productive (i.e. generate economic activity) but that do not necessarily accommodate a large number of direct jobs would achieve a better economic outcome than retaining a scarce, inner city site underutilised in its economic potential.

The EIA identifies that co-living housing, boarding houses, hotels and short-term accommodation are examples of land uses that do not necessarily accommodate a large quantum of employment directly on site but these land uses accommodate resident cohorts (students, tourists and visitors) that themselves are generators of economic activity.

Accordingly, the proposed proportion of residential floor space is considered to be appropriate for the site within the Business Zone – Mixed Use in that it responds to the site's context as well as the broader economic/market context. While the site does not meet the amenity expectations of the commercial office sector, the proposal astutely co-locates smaller scale commercial spaces within the development to play a local service role, and facilitating a net positive economic impact.

Ground 3: Consistency with the Objects of the EP&A Act

In decision of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it was recognised that the phrase 'environmental planning grounds' are not defined but nonetheless relates to the Objects set out in section 1.3 of the EP&A Act. It is considered the proposal is entirely consistent with the Objects of the EP&A Act for the reasons set out in the table below.

Object	Comment
a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The existing building stock contained within the site is outdated and contributes poorly to the appearance of the area. The proposed development will promote the economic and social welfare of the community by improving the built form in

Object	Comment
	the area and contributing to its revitalisation. It will improve housing diversity and access to temporary accommodation at an affordable price.
b) To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The development will promote ecologically sustainable development by incorporating best practice sustainability measures.
c) To promote the orderly and economic use and development of land,	<p>The proposal is consistent with the Object as it will deliver a building that:</p> <ul style="list-style-type: none"> • Sits largely within the envelope approved for the site and does not result in additional environmental impacts; • Is compatible with the surrounding uses which include a mix of retail/commercial, student accommodation / boarding houses and residential development; • The proposal will generate employment opportunities which is consistent with the objectives for the Business Zone – Mixed Use; and • The ground floor café fronting the corner of Cleveland Street and Eveleigh Street will facilitate street activation and will contribute to the revitalisation of the streetscape.
d) To promote the delivery and maintenance of affordable housing,	The proposed development will provide a co-Living housing as a form of purpose-built rental housing, promoting the diversity of housing types and contributing to the provision of affordable rental accommodation for students and key workers in the Redfern locality.
e) To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	As stipulated in the BDAR waiver, the proposed development will have no impact on threatened species or ecological communities.
f) To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposal is not located in a heritage conservation area and is not known to contain any items of Aboriginal cultural

Object	Comment
	heritage. Further discussions are provided in the Aboriginal Archaeology Report prepared by Extent Heritage.
g) To promote good design and amenity of the built environment,	<p>The proposal is of high quality design. It incorporates a diversity of high quality durable materials and has been subject to review by the State Design Review Panel.</p> <p>The proposal complies with the amenity provisions established by the Housing SEPP and is therefore considered to achieve a high standard of amenity appropriate for its use as a co-living housing.</p>
h) To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal complies with the relevant provisions of the BCA and will promote the health and safety of occupants.
i) To promote the sharing for the responsibility for environmental planning and assessment between the different levels of government in the State,	The Object is not directly relevant to the proposal. Nonetheless, input from both local and State planning authorities will be provided to facilitate the assessment of the application.
j) To provide increased opportunity for community participation in environmental planning and assessment,	The proposed development will be publicly exhibited for 28 days in accordance with Schedule 1 Section 9 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act).

Conclusions on clause 16A(3)(b)

It is considered that there are sufficient environmental planning grounds to justify the contravention to the residential and total FSR development standards. In summary, the planning grounds are as follows:

- The proposed residential and total floor space associated with the proposed co-living housing use does not result in additional visual or amenity impacts.
- The additional floor space is largely contributed to by additional communal living areas and amenities for residents.
- The proposal residential floor space largely satisfied the planning controls and industry standards relating to amenity and thus, demonstrates that a predominately residential development in this location is acceptable on amenity grounds.
- While not delivering the required quantum of non-residential floor space, the proposal has achieved street activation on all three street frontages, providing

for a true mixed-use development and thus, satisfying this objective of the zone.

- The proposed residential and total FSR variations are consistent with the Objects of the EP&A Act.
- The strategic planning framework for the site envisages that the northern portion of the Eveleigh Precinct, to which the site is located, will accommodate a mixed use residential development.
- Existing approvals demonstrate a strong precedent for varying the residential FSR in the instance the development relates to a co-living housing.
- Existing approvals demonstrate that an amount of non-residential floor space required by the existing planning controls is not a viable development outcome for the area.

2.6 Clause 16A(4)(i): The written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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).

This Variation Request provides a comprehensive assessment of each of the matters addressed in sub-clause (3), including a detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This Variation Request also demonstrates that there are sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

2.7 Clause 16A(4)(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

Clause 16A(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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's consistency with the implied objectives of the development standard is outlined in **Section 2.4.1**.

The proposal's consistency with the objectives of the Business Zone – Mixed Use as outlined in the Appendix 3 of the Eastern Harbour City SEPP is addressed in the table below.

Object	Comment
To support the development of sustainable communities with a mix of employment, educational, cultural and residential opportunities.	<p>The proposal will revitalise an underutilised site by replacing its outdated building stock with a high-quality development that exhibits design excellence. The additional residential and overall floor space will promote housing diversity by facilitating the delivery of a co-living housing which will diversify the housing options in the locality and cater to the growing office market associated with Central Precinct.</p> <p>The proposed development includes a range of non-residential uses comprising retail/commercial tenancies and co-working space and a multipurpose room, which will facilitate a mixed use development in a highly accessible location.</p> <p>Further, there will be opportunities for the multipurpose room to be used for Indigenous cultural activities and practices. This will ensure public awareness of the Aboriginal cultural practices through providing spaces for face-to-face education and/or other types of learning (such as digital).</p> <p>The co-living housing combined with the non-residential use across ground level and Level 1 will provide ongoing employment opportunities in the order of 10 operational jobs per annum. Accordingly, the proposal will support the creation of a sustainable community with a mix of employment, cultural and residential opportunities.</p>
To encourage employment generating activities by providing a range of office, business, educational, cultural and community activities in the Zone.	<p>As noted above, the uses proposed will facilitate an employment-generating development. Further, the proposal supports a range of uses in the zone, including purpose-built rental accommodation, retail and commercial uses and potential cultural spaces. The co-living housing development is suitable for students and therefore will indirectly support the educational activities in the zone.</p>
To permit residential development that is compatible with non-residential development.	<p>The proposal relates to a mixed-use development comprising co-living housing and commercial uses.</p> <p>The proposed development provides an appropriate mix of residential and non-residential uses. As addressed in Sections 2.4.1 and 2.5, the site will continue to provide ongoing employment opportunities for both the non-residential and residential components. The proposed development also incorporates a variety of non-residential uses including retail and commercial tenancies and co-working space and a multipurpose room across ground level and Level 1. The provision of the</p>

Object	Comment
	<p>non-residential uses will facilitate activation of all street frontages and provide passive surveillance to the surrounding area.</p> <p>The proposal therefore co-locates compatible land uses which balances the need for residential accommodation close to the CBD and retail uses that provide needed services and activation. The proposed uses are consistent with the uses accommodated in the immediate vicinity of the site.</p>
To maximise public transport patronage and encourage walking and cycling.	<p>The proposed development has capitalised on its proximity to the surrounding public and active transport infrastructure including the Redfern railway station, bus services, the future Waterloo Metro Station and the walking and cycling routes near the site.</p> <p>The site is also in close proximity to key employment hubs, shops and services, which will promote the usage of public and active transport options and reduce reliance on private vehicles.</p> <p>Whilst the Housing SEPP requires the provision of 44 car parking spaces, the proposal accommodates 19 parking spaces with the intent to reduce the reliance on private vehicles and encourage public transport patronage.</p>
To ensure the vitality and safety of the community and public domain.	<p>Relative to the existing building stock contained in the site, the proposal represents a substantial opportunity to revitalise local community connections and the public domain.</p> <p>The proposal includes public art treatment at the corner of Eveleigh and Cleveland Street as well as street tree planting along all frontages, which will improve the visual interest of the public domain. Due to the location of the retail premises and entrance points, the proposal will also enhance the activation of the ground plane at all frontages and maximise opportunities for surveillance.</p>
To ensure buildings achieve design excellence.	<p>The proposed design has been informed by the feedback provided by the State Design Review Panel (SDRP) and provides a high-quality development that reflects design excellence.</p>
To promote landscaped areas with strong visual and aesthetic values to enhance the amenity of the area.	<p>As demonstrated in Section 2.4.1, comprehensive landscaping is provided throughout the development. Specifically, the ground level courtyard will be provided with planters and water feature. Perimeter landscaping and external terrace with outdoor seating are provided at the upper levels. An Indigenous roof farm will also be</p>

Object	Comment
	provided on the roof level. The proposed landscaping design will enhance the visual quality of the development and the amenity of the surrounding area.

2.8 Secretary's Concurrence

Under Clause 16A(5) the consent authority 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.*

These matters are addressed in detail below.

Clause 16A(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the residential and total FSR development standards of the Housing SEPP will not raise any matter in which could be deemed to have State or Regional significance. Additionally, the proposed variation will not contravene any overarching State or regional objectives or standards.

Clause 16A(5)(b): The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. The variation of the residential and total FSR development standards facilitates the delivery of a state-of-the-art co-living housing development that better allows the proposal to meet the objectives of the Business Zone – Mixed Use which seeks to encourage a mix of residential type developments and to permit residential development where it is compatible with non-residential development.

Furthermore, while the proposal relates to a residential use in the form of a co-living housing, the exceedance of the residential and total FSR development standards does not preclude the proposal from providing a sufficient quantum of employment generating floor space.

In addition to the above, strict numerical compliance would encumber the various community and commercial benefits the proposed works would provide. The proposed variations will facilitate the following public benefits:

- The delivery of a unique rental product that offers high quality affordable accommodation with significant communal open spaces areas;
- The provision of co-living rental accommodation that will cater to a broader audience, including those who demand housing at a more affordable market price, key workers, students and individuals seeking short-stay accommodation;

- The provision of residential accommodation in a locality well serviced by public transport, local services and educational establishments;
- The delivery of expansive external communal areas that provide the opportunity for the provision of comprehensive landscaping across the site which will contribute positively to the visual amenity of the streetscape;
- The provision of a co-living housing development that is of appropriate density in that it would provide a buffer between the railway corridor and the adjacent properties to the west. The proposed built form has also been designed to be sympathetic to the surrounding development and would facilitate a transition in scale to mitigate the associated visual impacts;
- A use that results in lower traffic generation relative to a commercial use that would thus have a greater impact on the surrounding road network; and
- A high quality mixed use development that will provide active uses at street level, improved safety conditions across the site and will generally contribute to the urban renewal of the Redfern-Waterloo Authority Sites.

Accordingly, the public benefits delivered by the proposed variations are considered to outweigh that delivered by maintaining strict compliance with the residential and total FSR development standards.

Clause 16A(5)(c): Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Under clause 55 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6 (or any other provision of an environmental planning instrument to the same effect), subject to the conditions in the table in the notice.

The Planning Circular PS 20-0002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (with some exceptions). Appendix 3 Clause 16A of the Eastern Harbour City SEPP contains provisions similar and of the same effect as Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006*. Accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 16A in Appendix 3 of the Eastern Harbour City SEPP. This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular, this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of Council unless the Council has requested it. The variation to the residential and total FSR development standards under Clause 21 exceeds 10% and accordingly the Secretary's concurrence cannot be assumed.

2.9 Conclusion

The assessment above confirms that compliance with the maximum residential and total FSR development standards contained in Appendix 3 Clause 16A of the Eastern Harbour City SEPP is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This Variation Request demonstrates that notwithstanding the non-compliance with the residential and total FSR development standards, the proposal:

- Achieves the implied objectives of the development standard as set out in *Redfern-Waterloo Built Environment Plan (Stage One)*;
- Achieves the objectives of the Business Zone – Mixed Use Zone under the Eastern Harbour City SEPP;
- Is in the public interest as it is consistent with the implied objectives of the development standards nominated under Clause 21 (2) as well as the Business Zone – Mixed Use Zone under the Eastern Harbour City SEPP;
- There is nominal public benefit in maintaining the residential and total FSR development standards;
- Provides employment generating uses on the site in the form of co-living housing and retail/commercial uses;
- Largely satisfies the relevant amenity development standards and industry requirements for residential accommodation;
- Facilitates the urban renewal of the Redfern-Waterloo Authority Sites planning area;
- Facilitates the delivery of residential development that is compatible with the surrounding student accommodation and shop top housing developments whilst contributing to the commercial character of the Business Zone – Mixed Use;
- Provides an appropriate mix of residential and commercial uses that are compatible and appropriate for the mixed use zoning;
- Maximises amenity by prioritising high quality communal areas and landscaping that will improve the amenity of the streetscape;
- Delivers a unique purpose-built rental housing product that will address the growing demand for the co-living housing typology in a locality well serviced by transport and services; and
- A use that results in lower traffic generation relative to a full commercial use that would thus have a greater impact on the surrounding road network.

3 Building Height

3.1 Is the Planning Control in Question a Development Standard

The maximum storey height prescribed by Clause 21(1) of the Eastern Harbour City SEPP is a development standard.

3.2 Development Standard to be Varied

Clause 21(1) *Height, Floor Space Ratio and Gross Floor Area Restrictions* states that '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'.

As shown in **Figure 20** below, the Height of Buildings Map prescribes a maximum height of five storeys. The proposal reaches a maximum of seven storeys in height (in limited locations) and therefore varies the development standard.

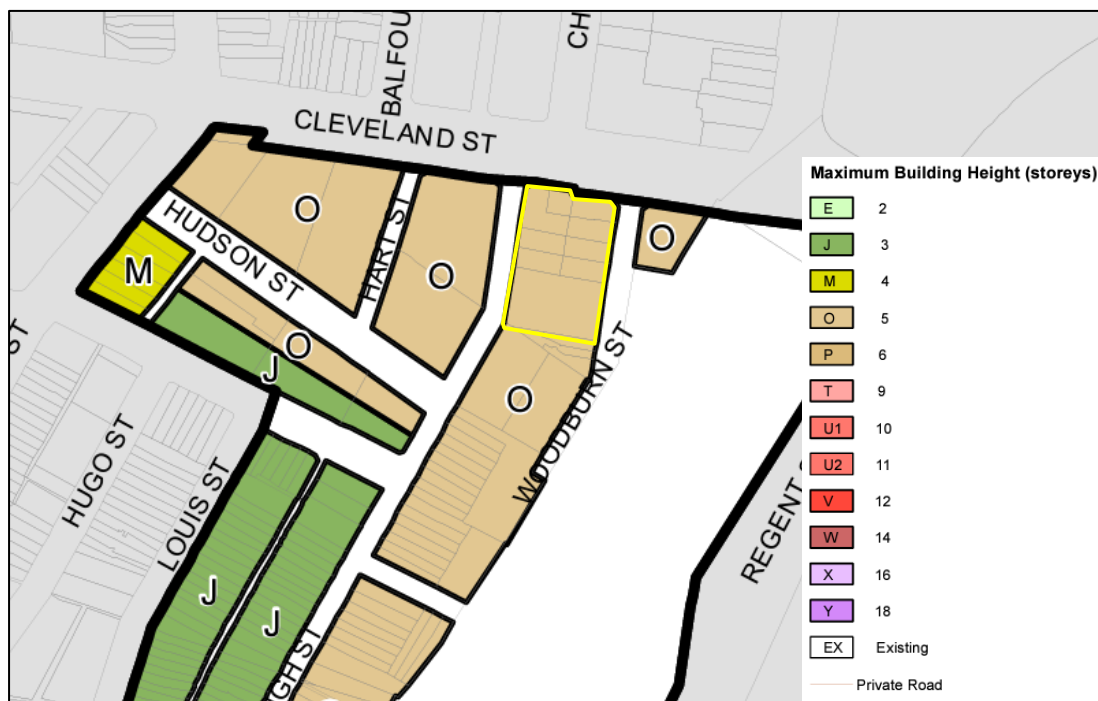


Figure 20 Height of Buildings Map
Source: NSW Legislation

3.3 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

3.3.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe #1)

The implied objectives informed by the *Redfern-Waterloo Built Environment Plan (Stage 1)* 2006 and the IPC's assessment report dated 20 February 2017 associated with SSD 7064 are as follows:

- Ensure that development is of a similar size and scale to existing development so that it is compatible with the streetscape; and
- To promote the sharing of views.

Objective 1: Ensure that development is of a similar size and scale to existing development so that it is compatible with the streetscape.

Development along the southern side of Cleveland Street, in which the proposal is scaled, is as follows:

- 187 Cleveland Street – Reaches six (6) storeys in height;
- 179 Cleveland Street – Consists of a part five (5) and six (6) storey building;
- 165 – 173 Cleveland Street – Consists of a part three (3) and five (5) storey building; and
- 142 Abercrombie Street (corner of Cleveland Street and Abercrombie Street) – Reaches five (5) storeys.

Figure 21 identifies the streetscape context in which the proposal will be viewed.

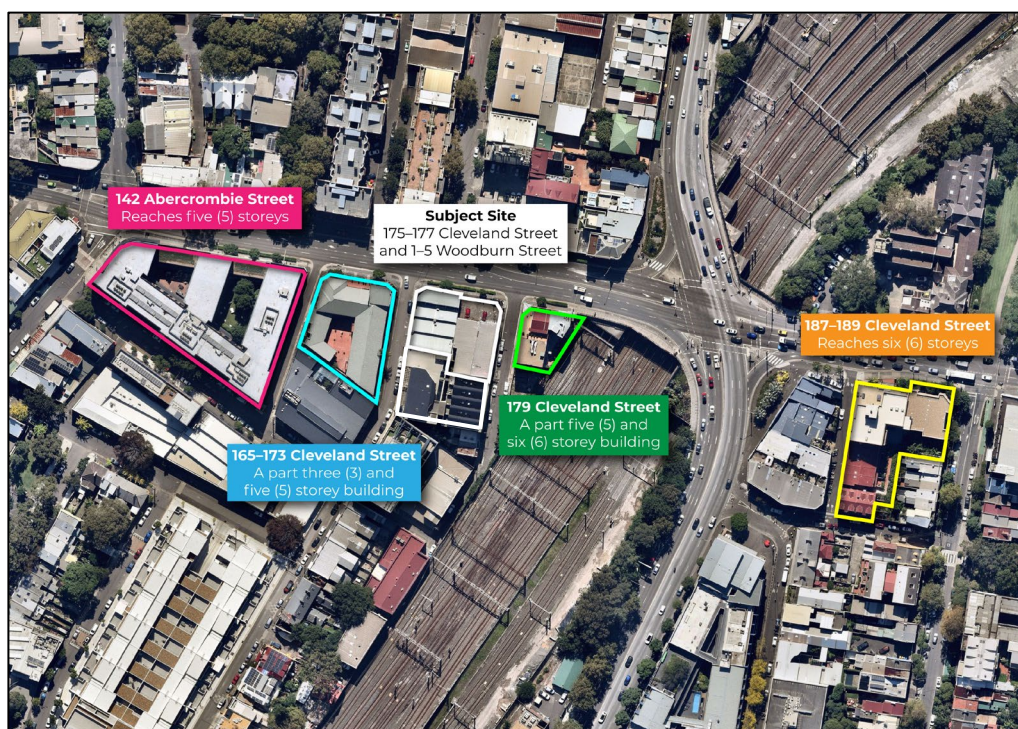


Figure 21 Height Context Surrounding the Site on the Southern Side of Cleveland Street
Source: Mecone / Nearmap

In relation to the size and scale of the proposal, the proposal satisfies the compatibility planning principle in *Project Venture Development v Pittwater Council* [2005] NSWLEC 191 (Project Venture). In Project Venture, Roseth SC states at paragraph [22]:

“There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve”.

The reasons for how this planning principle is achieved are discussed further below.

As shown in **Figures 22** and **23** below, the sixth and seventh storeys have been recessed from the building parapet above the street wall height with increased upper-level setbacks. Therefore, the development will present predominately as five-storeys built form when viewed from Cleveland Street.

The proposed height variation is predominantly due to the site's uneven and sloping topography. The non-compliant sixth and seventh storeys are visible only from limited locations including the southern end of Woodburn Street where the site's topography is uneven and Eveleigh Street where the non-compliant storey is setback from the building line and has minimal visibility. To maintain a consistent building height plane in the context of this uneven topography, an additional part storey is required.

When viewed in the broader context of Cleveland Street, the proposal facilitates an improved transition in scale relative to the existing development contained within the site and is compatible with the development in the streetscape. Specifically, the proposed communal living area on Level 6 has been designed to be situated in the south-eastern portion of the roof top in order to preserve the visual amenity of the adjacent residential development to the west at 2-8 Eveleigh Street (refer to **Figure 23**).

This is consistent with the design concept identified for the Eveleigh Street precinct under the *Redfern-Waterloo Built Environment Plan*, being *"increased height and floor space ratio along the railway corridor to provide a buffer to the lower scale development to the west"*.

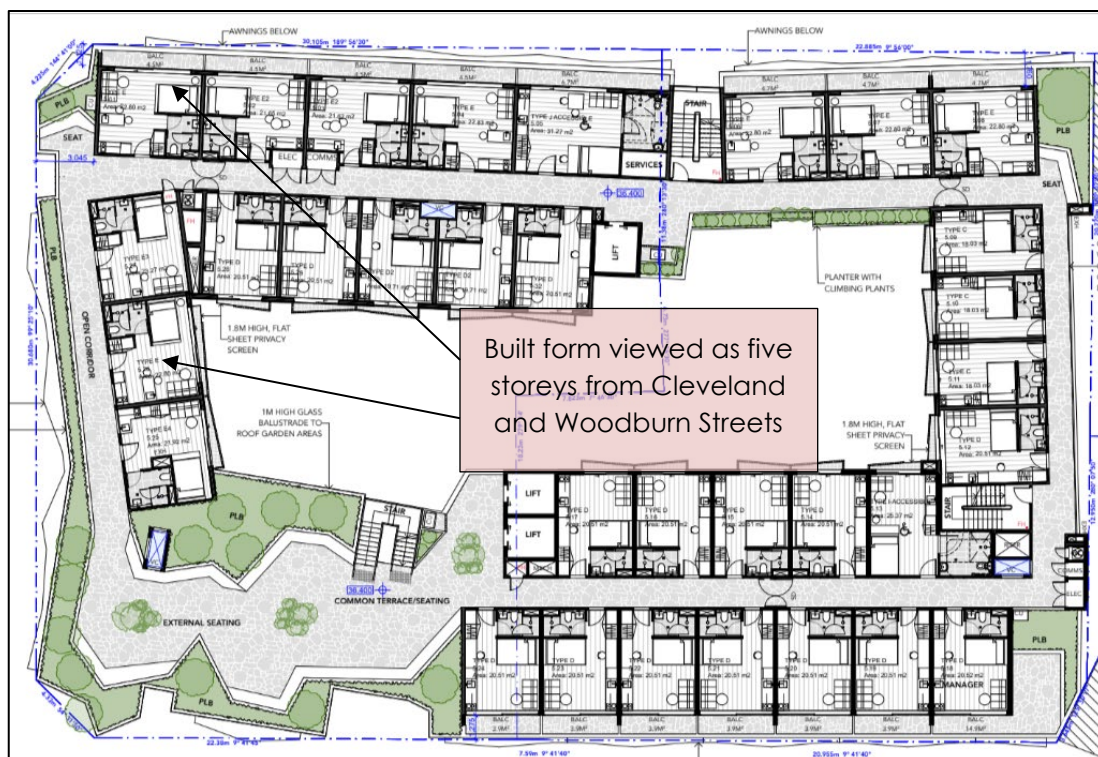


Figure 22 Level 5 Floor Plan
Source: Mark Shapiro Architects 2022

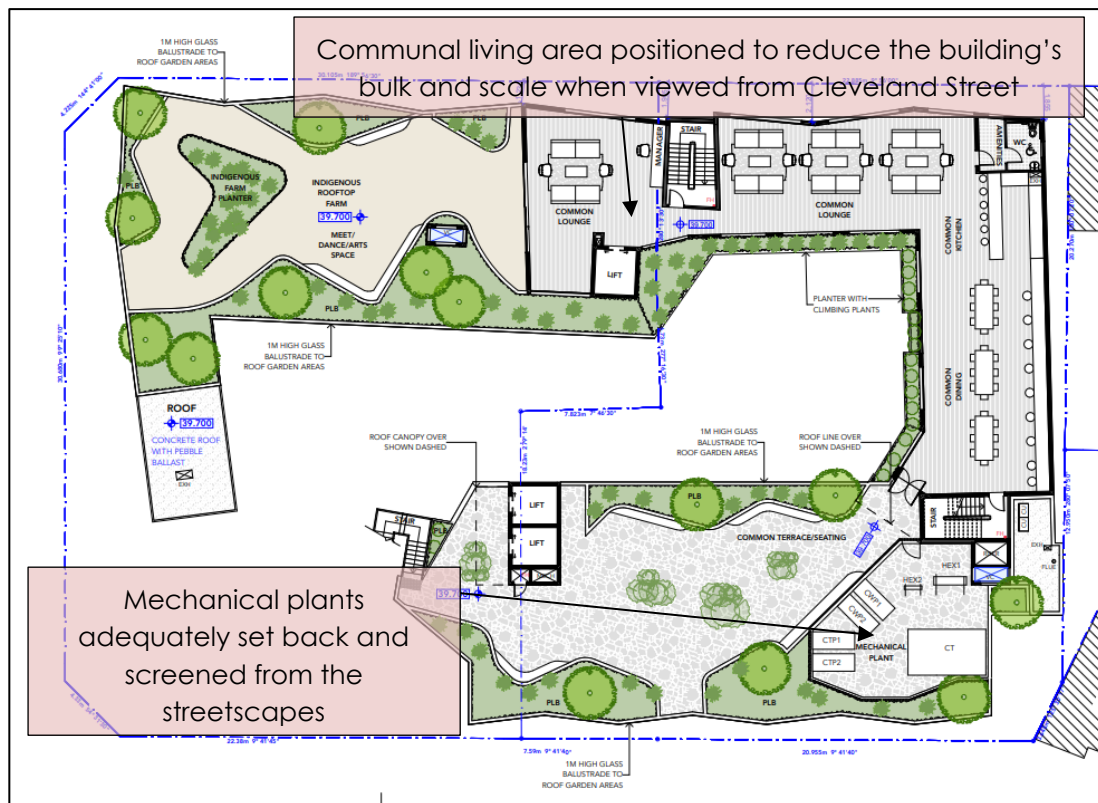


Figure 23 Level 6 Floor Plan
Source: Mark Shapiro Architects 2022

In addition, the proposed mechanical plant has been adequately setback from the building parapet fronting Eveleigh Street will be screened by high quality landscaping.

As provided in the Visual Impact Assessment summary in **Section 2.5** of this request, the proposal will provide acceptable visual impacts. When viewed from Cleveland Street, the proposal sits comfortably within the streetscape and aligns with the height plane established by the adjoining buildings which largely consist of residential flat buildings and hotel development.

Due to the westward sloping topography of Cleveland Street, the proposed envelope will provide a gradual transition from the development to the immediate east by stepping down the building from seven storeys to five to six storeys and will continue the building alignment along Cleveland Street, which is currently disrupted by the absence of a building of a comparable scale.

Given the outcomes of the Visual Impact Assessment, the proposed building height variation will not give rise to any unacceptable visual impacts and does not preclude the delivery of a development that sits cohesively within the prevailing streetscape.

The sixth and seventh storeys have been designed to be visually integrated with the overall design of the building and are not visually obtrusive when viewed from the public domain. In this respect, removing these building elements (above 5 storeys) would not provide any measurable benefit to views from the public domain or streetscape.

In light of the above, while the building height marginally protrudes above existing building heights in some locations, the proposed built form remains compatible with the surrounding existing development, satisfying the planning principle (Project Venture) for compatibility.

Objective 2: To promote the sharing of views.

The proposed variation will not result in unreasonable impacts to views from surrounding buildings or public spaces. As noted above, the proposal a maximum height of RL 43.6, which is only 0.3m higher than the approved building envelope under SSD 7064, noting the proposal includes a five to seven storey built form while the approved development comprises a five to six storey built form only. In this respect, the view impacts associated with the proposal are therefore no greater than that envisaged by the planning controls or previous approvals for the site.

The proposed development is not anticipated to result in any adverse impacts on the view corridors to any surrounding key vistas including the Princes Alfred Park to the east and Victoria Park to the west.

3.3.2 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Wehbe#4).

The proposed contravention to the height development standard needs to be assessed with respect to previous approvals for the site which have contravened the five (5) storey height limit. Previous approvals confirm that there is a clear pattern of abandonment with respect to the application of the maximum height development standard. Exemplary of this is the approved mixed-use hotel, residential and retail development (SSD 7064) for the site which provides a part 5 and part 6 storey envelope, as well as the 3 to 24 storey student accommodation development at the Pemulwuy Precinct (77-123 Eveleigh Street).

The proposal has been designed to sit predominately within the parameters of the previously approved envelope. As shown in the figures below, the proposal generally adopts the same envelope configuration as the development approved under SSD 7064 and in many locations provides a reduced bulk.

The envelope reaches a maximum height of RL 43.6 when measured to the lift core which represents its highest point. Despite being 0.3m higher than the approved building envelope under SSD 7064, the proposed massing steps down in height to RL 37.4 in the western portion to complement the parapet of the building located at 2-8 Eveleigh Street.

At the eastern elevation fronting Woodburn Street, the envelope decreases in height to RL 40.7 on Level 6 and RL 37.4 on Level 5 to align with the height of the parapet of the neighbouring building which represents a smaller massing relative to the approved envelope.

The non-compliant sixth and seventh storeys are setback from the street frontages in accordance with the approved development. The following setbacks are provided:

- Northern setback to Cleveland Street: approximately 2.7m to 20m
- Eastern setback to Woodburn Street: approximately 0.85m
- Western setback to Eveleigh Street: 1.2m to 1.86m

It is also important to highlight that the envelope approved under SSD 6371, which provides a compliant height of five storeys and exhibits a height of RL 40.10 at the building parapet fronting Cleveland Street, has a greater height when compared to the proposed development's parapet height of RL 37.40 to RL 40.70 on the Cleveland Street elevation.

Whilst the proposal departs from the height development standard, the scale of the envelope, including its siting, remains largely consistent with the development approved under SSD 7064. In light of this, existing approvals confirm that the development standard has been virtually abandoned by previous consents or where they did comply provided a commensurate height when measured in metres.

3.4 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

Clause 16A(3) of the Eastern Harbour City SEPP requires that the contravention of the development standard be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. Consistent with the approach taken in *Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42], the focus is on the aspect of the development that contravenes the development standard, and not the development as a whole.

In this instance, the relevant aspect of the development is the additional building height that exceeds the development standard. In light of this, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole.

- Responds to the character of the streetscape;
- Provides acceptable amenity impacts; and
- Provides acceptable solar access and overshadowing impact.

These environmental planning grounds are discussed below.

Ground 1: Responds to the character of the streetscape

The proposal, inclusive of the variation, provides a built form outcome that is not only sympathetic to the character of the streetscape, but provides a meaningful contribution to it. The non-compliant sixth storey relates to the envelope fronting Eveleigh Street and responds to the fall of the site in this location. The sixth and seventh storeys are generously setback and will have minimal visibility when viewed from the streetscape, resulting in the proposal presenting as a five storey building as intended under the standard.

Ground 2: Provides acceptable amenity impacts

The positioning of the non-compliant storeys are restricted to selected portions of the site and are largely to accommodate communal facilities, contributing to the amenity for residents.

The additional storeys only register as six to seven storeys in limited locations, including the far south eastern elevation and the western elevation where there is a change in ground level. Specifically, the non-compliance is attributed to the change in ground level where the site slopes by 2.24m from the north eastern corner to the north western corner, and 2.61m from the north eastern corner to the south eastern corner. In addition, the sixth storey is recessed behind the building parapet by a 2.7m to 20m setback to northern frontage and 1.2m to 1.86m to the western frontage.



Figure 24 Proposed Development with a perceived five storey height

Source: Mark Shapiro Architects 2022

As shown in the figure above, the building presents as being five storeys when viewed from the Cleveland Street and is sympathetic to the building height line established by the neighbouring buildings along all three street frontages. As such, the proposed building inclusive of the variation will continue to maintain the amenity of the public domain as the proposal will contribute to a continuous building height line of five storeys when viewed from Cleveland Street.

Ground 3: Provides acceptable overshadowing and solar access impacts.

The overshadowing impacts associated with the proposal are addressed **Section 2.5**.

3.5 Secretary's Concurrence

Under Clause 16A(5) the consent authority 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.*

These matters are addressed in detail below.

Clause 16A(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the storey height development standard nominated by clause 21(1) of the Eastern Harbour City SEPP will not raise any matter in which could be deemed to have State or Regional significance. Additionally, the proposed variation will not contravene any overarching State or regional objectives or standards.

Clause 16A(5)(b): The public benefit of maintaining the development standard.

There is no public benefit in maintaining the storey height development standard in this instance. As outlined in **Section 3.4** above, there are sufficient environmental planning grounds to warrant the contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

Clause 16A(5)(c): Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

None.

3.6 Conclusion

The assessment detailed above demonstrates that compliance with the maximum storey height development standard contained in Clause 21(1) of the Eastern Harbour City SEPP is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.

It is considered that the height variation allows for the orderly and economic use of the land. This request demonstrates that notwithstanding the non-compliance with the storey height development standard, the height variation facilitates the orderly economic use of land, whilst also providing for an improved planning outcome.

This request demonstrates that notwithstanding the non-compliance with the storey height development standard:

- That the implied objectives of the development standard are achieved, particularly in that the proposal responds to the scale of the development in the immediate vicinity of the site;

- There are sufficient environmental planning grounds to justify the variation, as:
 - The proposed height is commensurate with the developments approved for the site under SSD 7064;
 - The site has an uneven topography which contributes to the variation to the development standard;
 - The additional storey is recessed behind the building's parapet and has minimal visibility when viewed from the surrounding streetscape;
 - The variation does give rise to any unacceptable amenity impacts to the future residents of the site development or existing surrounding developments;
- The proposal is consistent with the objectives of the Business Zone – Mixed Use under the Eastern Harbour City SEPP;
- Provides acceptable solar access and overshadowing impacts and will not impact sensitive residential uses; and
- The proposal provides a public benefit in that it will replace the existing outdated building stock contained within the site with a high quality co-living housing development that will promote housing diversity and increase the supply of short-stay accommodation in a suitable location close to Sydney's CBD, educational institutions and transport infrastructure.



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