

Appendix W

Clause 4.6 Variation Request



Clause 4.6 Variation Request Height of Buildings

Powerhouse Ultimo Renewal

500 Harris Street, Ultimo

Contents

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country.
Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

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Attachments

A Height Diagrams

JWA

The following documents are reproductions of the appendices submitted with the Environmental Impact Statement dated May 2022, and are relevant to this variation request:

- Plans and Urban Design Report – JWA and Aspect Studios
- Heritage Impact Statement – Curio
- Draft Conservation Management Plan – Curio
- Visual Impact Assessment – Ethos Urban
- Social Impact Assessment – Ethos Urban
- ESD Report – Steensen Varming
- Infrastructure Management Strategy – Steensen Varming
- Noise and Vibration Assessment – RWDI
- Civil Report – TTW
- Environmental Wind Assessment – Arup
- Transport Assessment – JMT Consulting

1. Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of the Department of Enterprise, Investment and Trade (Create NSW). It is submitted to the Department of Planning and Environment (DPIE) in support of a Concept Proposal State Significant Development ('Concept SSDA', SSD-32927319) application for the Powerhouse Ultimo Renewal project. The Concept SSDA is made pursuant to Section 4.22 of the EP&A Act and to fulfil the requirements of Clause 7.20 of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

Clause 4.6 of SLEP 2012 enables granting consent to a development even though that development would contravene a development standard, including a development standard relating to the height of a building under Clause 4.3 of the LEP. Clause 4.6 of the LEP aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from particular development.

This Clause 4.6 variation request relates to the development standard for the height of buildings under Clause 4.3 of the SLEP 2012 and should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban date May 2022.

1.1 Nature of the variation

This request does not seek to increase the height of buildings when adopting the long-held approach of measuring height from the existing ground levels and the natural fall of a site. Rather, this Clause 4.6 variation request has been prepared in the alternative to specifically respond to the decision in NSW Land and Environment Court Case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 which adopted a different approach in determining that the existing ground level of a site should be taken to include any existing excavated basement levels (despite the fact that "basement" is defined in the LEP to mean "the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)", which suggests that a basement is in fact below "ground level (existing)"). The approach taken in *Merman* differs significantly from the practice taken by City of Sydney Council and other consent authorities, including the NSW Land and Environment Court in *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189, in measuring building height from where natural ground level has been disturbed by building and excavation. The approach taken by the City of Sydney Council and *Stamford* is considered to result in more appropriate built form outcomes that are more closely aligned with the intention of the maximum building height development standard.

This Clause 4.6 variation request has, therefore, been prepared for an abundance of caution should the approach to measuring building height be taken in *Merman* (which is not binding court authority for the purposes of the Minister's determination of the Concept SSDA), rather than the approach previously adopted by the City of Sydney Council and other consent authorities as outlined in *Stamford*. It is our view that the latter approach should be applied in the assessment of this development notwithstanding this Clause 4.6 variation request, as it represents an approach that is more closely aligned with the intent of the building height development standard under SLEP 2012. The potential for a variation in this instance arises due to the presence of several basements located within the Powerhouse Ultimo site.

Measuring the height of buildings from the complex existing basement levels (in the context of a State Heritage-listed site) would result in a complex and unnatural height plane which does not relate to the existing natural ground levels at the site, existing buildings on the site or the intended height of buildings in the streetscape in accordance with the height standard. Accordingly, on the assumption that the approach followed in *Merman* is applicable to this Concept SSDA, this Clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and/or unnecessary in the circumstances of this Concept SSDA and that there are sufficient environmental planning grounds to justify a contravention of the standard.

Therefore, the Concept SSDA may be approved in accordance with the flexibility allowed under Clause 4.6 of the SLEP 2012.

1.2 Planning process

The Concept SSDA sets out the concept proposal for the Powerhouse Ultimo Renewal project. It establishes the overarching vision, principles, guidelines and development controls for the site, while the detailed design, construction and operation of buildings and public domain areas will be detailed and assessed at the next stage of the project (Stage 2).

The Concept SSDA seeks consent for the following:

- A maximum building envelope for any new buildings and alterations or additions to existing buildings retained on the site.
- Use of the site as an 'information and education facility' including museum exhibition and learning spaces that are supported by a range of ancillary and related uses contributing to the operation of Powerhouse Ultimo.
- A Design Excellence Strategy and Urban Design Guidelines to guide the next stages of the project.
- A new draft Conservation Management Plan to ensure that future development occurs in a manner that is compatible with, and facilitates the conservation of, the heritage values of the site.
- General functional parameters for the future design and operation of the site including principles and strategies for the management of heritage, transport and access, noise and vibration, utilities and services, and the like.

It is emphasised that no physical works are proposed as part of this Concept SSDA, which will be detailed in a separate and future Stage 2 DA and informed by a competitive design alternatives process.

Accordingly, this variation request relates only to the maximum building envelope that establishes the envisaged maximum height and horizontal massing of buildings on the site (discussed further in **Section 1.3** below). However, it is noted that the future detailed design of buildings will be subject to a competitive design alternatives process and Stage 2 SSDA.

Any future buildings or alternations and additions will not utilise the totality of the proposed building envelope, and will be required to demonstrate design excellence through the competitive design alternatives process and Stage 2 SSDA.

Figure 1 below summarises the planning process for the Powerhouse Ultimo Renewal project.

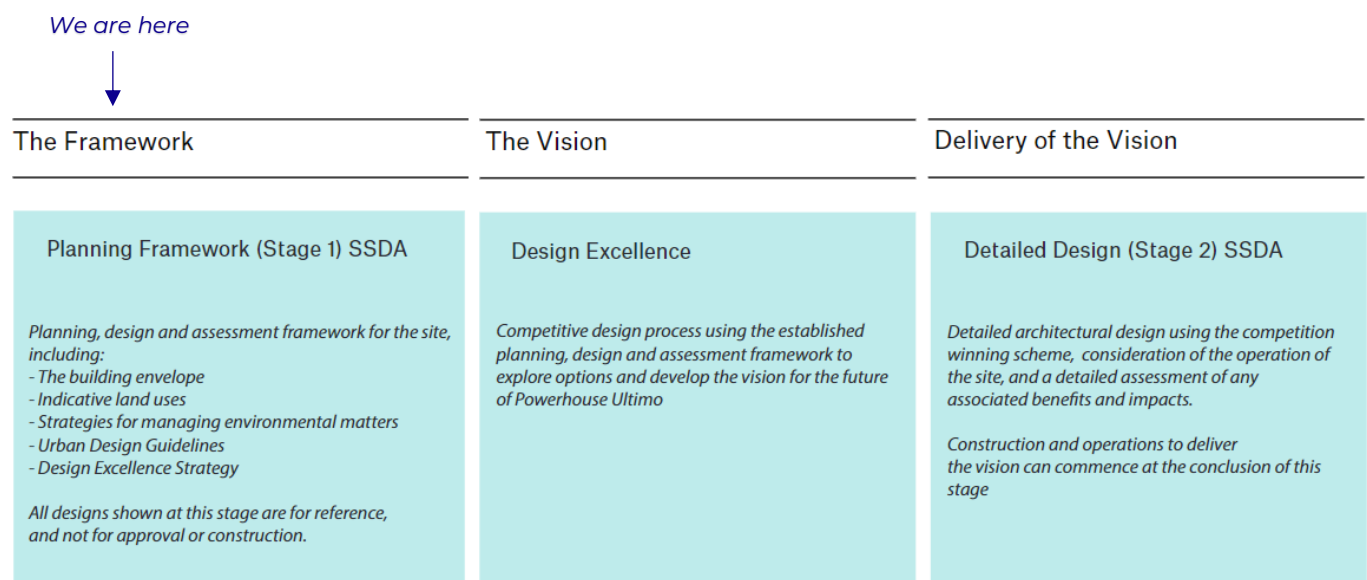


Figure 1 Planning process summary

1.3 Proposed building envelope

The proposed maximum building envelope is detailed in the Envelope Plans prepared by JWA and submitted at **Appendix C** of the EIS. The building envelope has been measured from the natural slope of the site (utilising the *Stamford* approach), taken from the existing public domain levels, and adopts a maximum height limit of between 6m and 28m aligning with the relevant SLEP 2012 height of buildings standard applying to that part of the site. The building envelope also indicates an additional 10% bonus to the 6m and 28m envelope heights which may be achieved in accordance with Clause 6.21D of SLEP 2012, subject to the demonstration of design excellence at the Stage 2 DA (see **Figure 2** below).

JWA and Aspect Studios have also prepared a 'reference scheme' for the site which shows one possible solution for how a new building and public domain areas can be delivered on the site (see **Figure 3** below). The reference scheme is only a point of reference for assessing the potential environmental impacts or benefits of a project and does not form part of the documents that are sought for approval as part of this Concept SSDA. The final design of built form and public spaces within the proposed maximum building envelope will be the subject of a competitive design alternatives process and future Stage 2 SSDA.

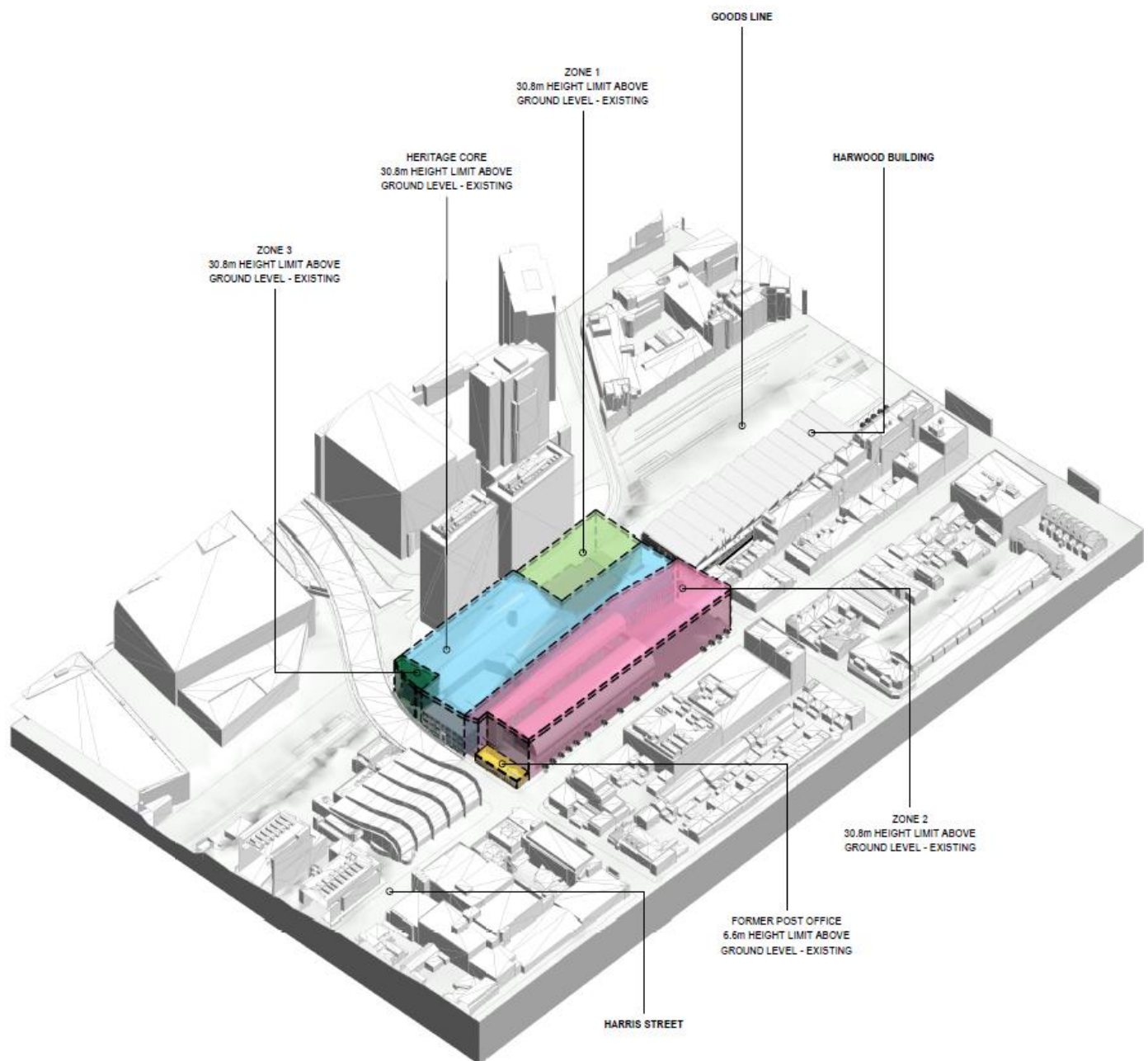


Figure 2 3D view of the proposed maximum building envelope

Source: JWA

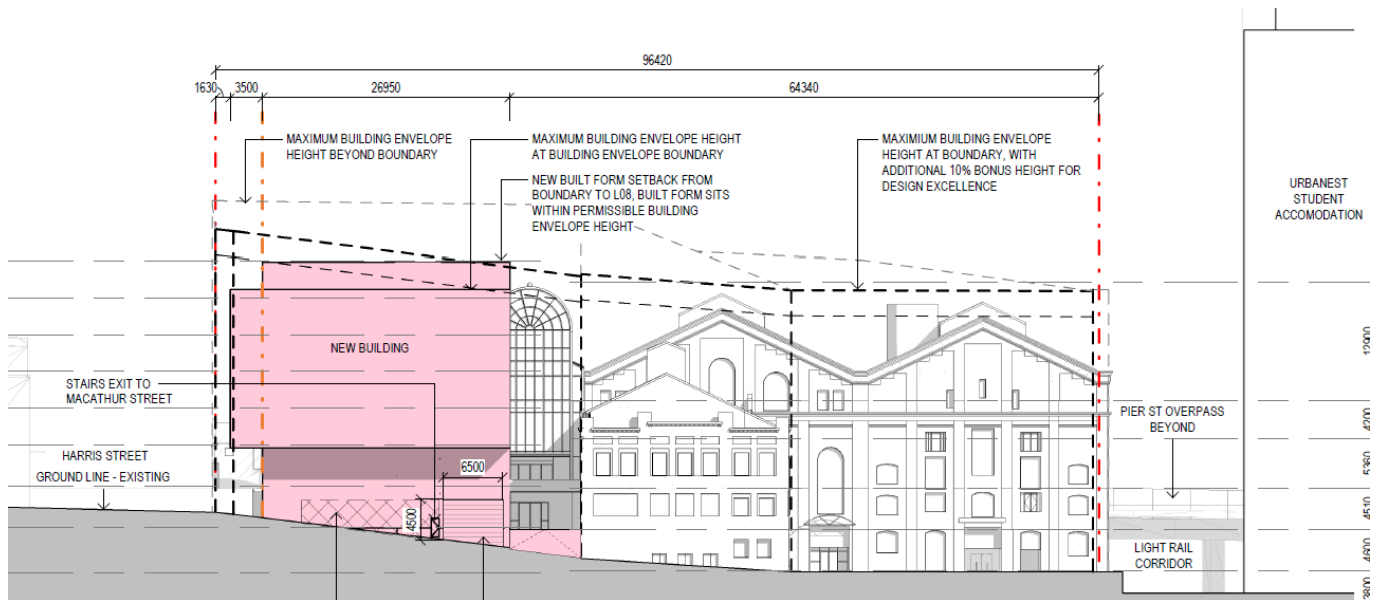


Figure 3 Elevation of the reference scheme as viewed from Macarthur Street

Source: JWA

2. Clause 4.6 variation requests

Assistance on the approach to considering a contravention to a development standard has been taken from the applicable decisions of the NSW Land and Environment Court in:

- 1) *Wehbe v Pittwater Council* [2007] NSW LEC 827;
- 2) *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- 3) *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- 4) *Moskovich v Waverley Council* [2016] NSWLEC 1015.
- 5) *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- 6) *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130,

Accordingly, development consent can be granted to the proposal despite the proposed variation of the development standard because, pursuant to clause 4.6(4)(a), the consent authority may be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

3. Development standard to be varied

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.3 of the SLEP 2012. Clause 4.3 provides that the height of buildings on land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Clause 4.3 of SLEP 2012 is reproduced below in its entirety and an extract of the Height of Buildings Map, to which that clause applies, is reproduced in **Figure 4** below. In this respect, it is noted that the site is not located within 'Area 1', 'Area 2', or 'Area 3'.

(1) The objectives of this clause are as follows—

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views outside Central Sydney,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square—*
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Note: No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17

(2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.

The Powerhouse Ultimo Renewal project will also be the subject of a competitive design alternatives process and as such will be targeting up to 10% bonus building height from that shown on the height of buildings map (**Figure 4** below) in accordance with Clause 6.21D of SLEP 2012.

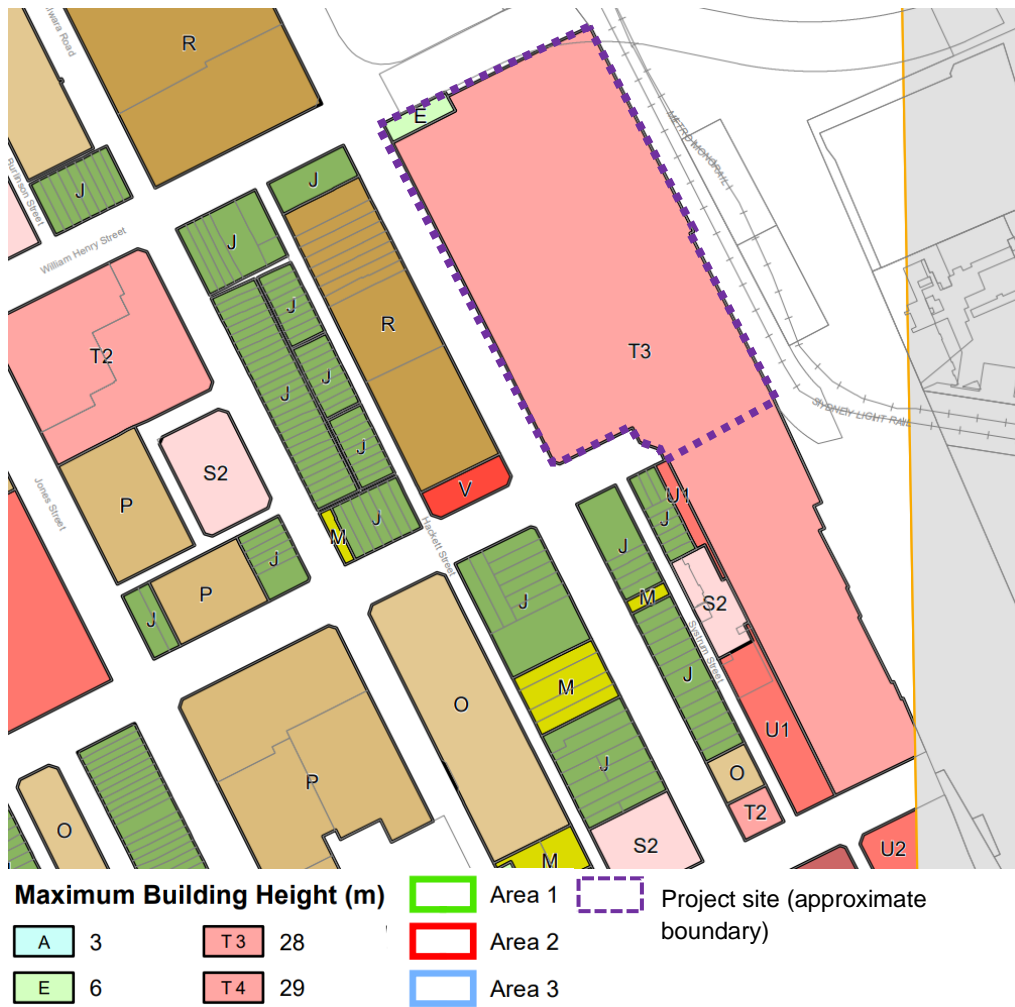


Figure 4 Height of Buildings Map – Powerhouse Ultimo site (approximate) outlined in dashed-purple

Source: SLEP 2012

4. Nature and extent of the variation

4.1 Background

The Powerhouse Ultimo Renewal is a transformative \$480-\$500 million investment by the NSW Government to establish a world-class museum that will significantly contribute to an important and developing part of Sydney. The renewal will see Powerhouse Ultimo deliver a programming focus on design and fashion, presenting exhibitions that showcase the Powerhouse Collection, international exclusive exhibitions and programs that support the creative industries. The preliminary objectives of the development are to:

- Deliver an international standard museum that is complementary to Powerhouse Parramatta, Powerhouse Castle Hill and Sydney Observatory.
- Provide new and refurbished international standard spaces for museum operations, exhibitions, programs and associated industry and creative uses that will activate and engage audiences
- Facilitate a design excellence process that encourages a wide range of creative and innovative architectural responses to the site and functional brief.
- Integrate a vibrant creative industries precinct, that connects with its surrounds, responds to the changed urban environment and provides concurrent original and distinctive contemporary cultural experiences.
- Enable and support the development of the NSW creative industries and improve productivity through sustainable, flexible and affordable infrastructure that supports co-location and collaboration.
- Deliver a highly operational precinct that contributes to the NSW visitor and night time economies
- Ensure effective and efficient coordination with other government initiatives and represent value for money.
- Provide a connected and integrated interface with surrounding precinct developments, including the Ultimo Goods Line, Harwood Building, Darling Square and Tech Central.

4.2 Land subject to this Clause 4.6 variation request

Locational context

Powerhouse Ultimo (shown in **Figure 5**) is an important and recognisable cultural landmark and destination located on the edge of Sydney's city centre.

It is located at the interface between the suburbs of Ultimo, Pyrmont, Haymarket and Darling Harbour, at the northern terminus of the Ultimo Goods Line from Central Station and close to the southern end of Tumbalong Boulevard. Macarthur Street serves as a pedestrian-friendly east-west connection between Ultimo and the southern CBD. The Paddy's Markets and Exhibition Centre Light Rail Stations are also both located in close proximity to the site, and bus stops at Harris Street provide access to Central as well as centres including Ryde and Parramatta via Victoria Road.

The urban context of the site is characterised by a wide array of land uses, development typologies and architectural styles. There is no consistent street wall height along Harris Street or intersecting local streets, with 2-storey historic terraces sitting in close proximity to more modern 6-8 storey commercial and mixed-use buildings. The recent urban renewal of Darling Square provides a rapid transition in density and building heights immediately to the east of the site, with a range of 20+ storey buildings within a modern setting.

Consistent with much of inner Sydney, the visual context is complex and layered, with different periods, styles and scales of development readily apparent.

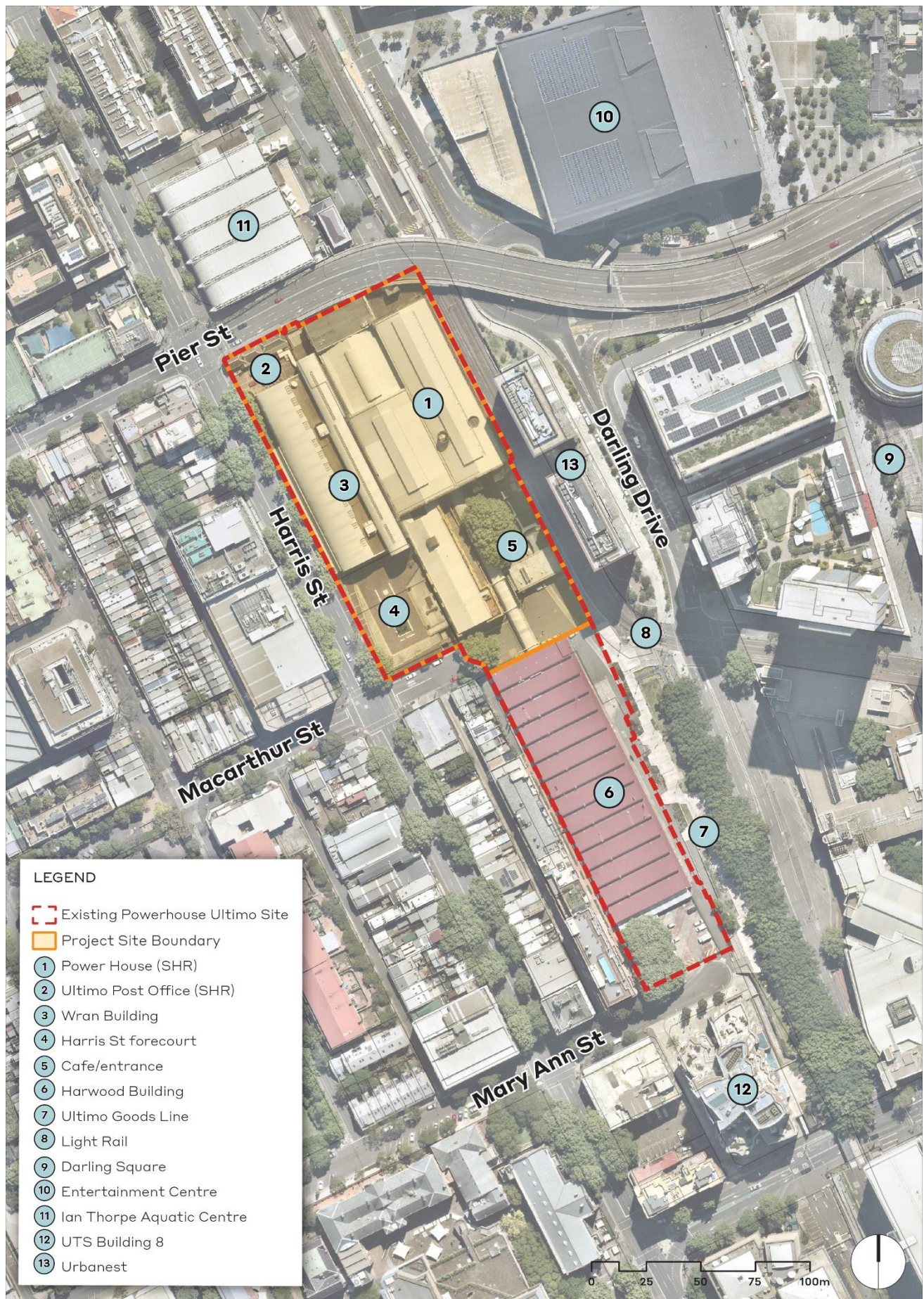


Figure 6 *Site plan*

4.3 Extent of the proposed variation

We wish to make clear that this request does not seek to increase the height of buildings when adopting the long-held approach of measuring height from the existing ground level and natural fall of a site. Rather, this Clause 4.6 variation request has been prepared in the alternative to specifically respond to the NSW Land and Environment Court Case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, in which a different approach was taken that involved measuring the existing ground level of a site to include existing basement levels within a site (despite the fact that “basement” is defined in the LEP to mean “the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)”, which suggests that a basement is in fact below “ground level (existing)”). Accordingly, this variation request has been prepared for an abundance of caution should this approach to measurement be applied in the case of the current development.

This Clause 4.6 variation request to the height of buildings development standard, therefore, has occurred in response to the interpretation of ‘existing ground level’ in *Merman* (which is not binding court authority for the purposes of the Minister’s determination of the Concept SSDA) and addresses the presence of existing basement levels across parts of the Powerhouse Ultimo site. It is our view that the approach of measuring building height from natural ground level in *Stamford* remains appropriate and more closely aligned with the intent of the building height development standard under SLEP 2012. The potential for a variation in this instance arises due to the presence of a number of basement spaces located within the Powerhouse Ultimo site.

There are between one (1) and two (2) basement levels that exist beneath parts of the Power House, Switch House, Wran Building, and public domain areas on the site including the existing civic space and museum entrance fronting Harris Street. The existing basement levels are detailed in plan ‘SK0002’ prepared by JWA (**Attachment A** of this report) replicated at **Figure 7** below.

This plan demonstrates that there are various depths of basement areas in specific footprints beneath the existing buildings and public domain areas on the site. Utilising these basement levels as the ‘existing ground level’ for the purposes of measuring the maximum height of buildings, results in a highly complex and irregular height plane across the site as detailed in **Figure 8** and **Figure 9** below, particularly these levels sit substantially lower than the heights of immediately adjoining existing ground levels towards the edge of the site or in the adjacent public domain.

Any technical non-compliance with the height of building development standard (on application of the *Merman* approach) as a result of these basement levels is highly variable, and ranges from between 0.05m to 12.11m (excluding the design excellence bonus) depending on the location and depth of the basement levels.

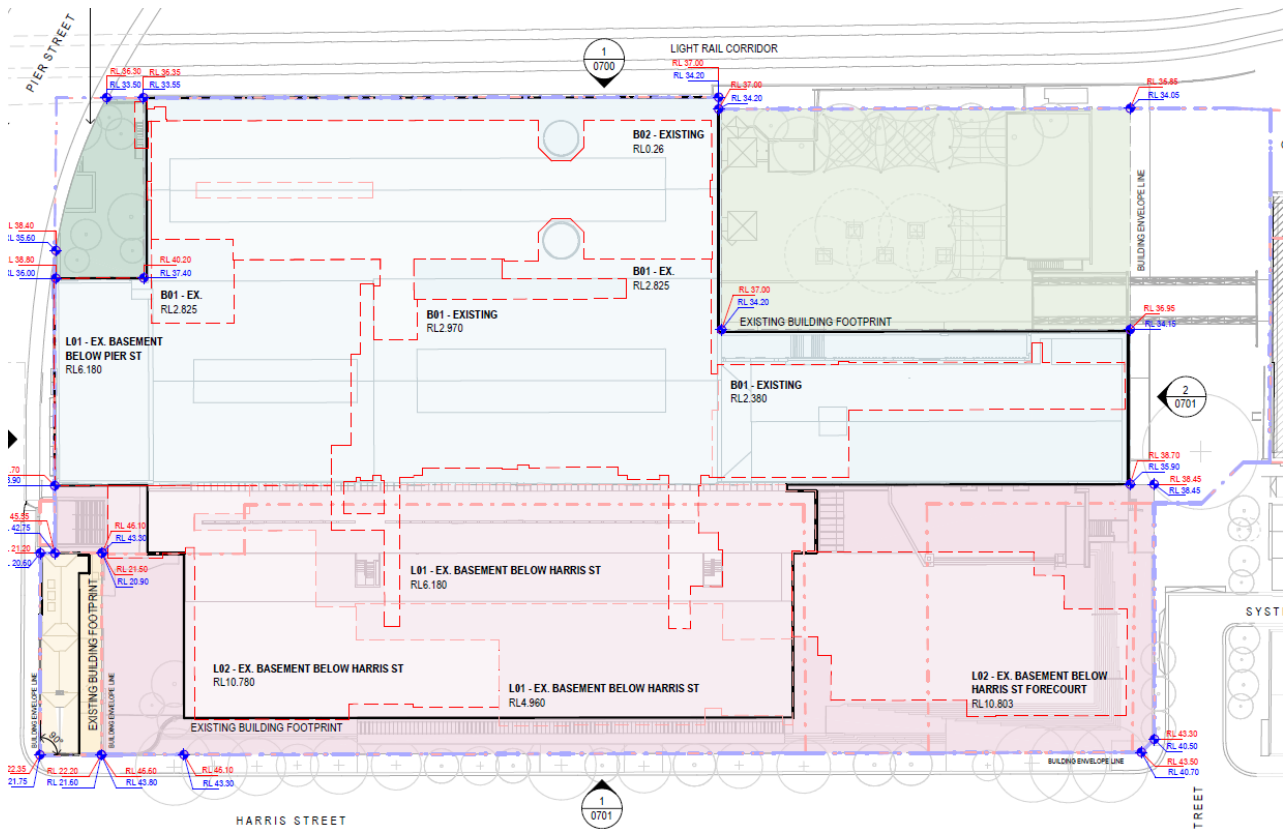


Figure 7 Overlay of existing basement levels across the Powerhouse Ultimo Renewal site

Source: JWA

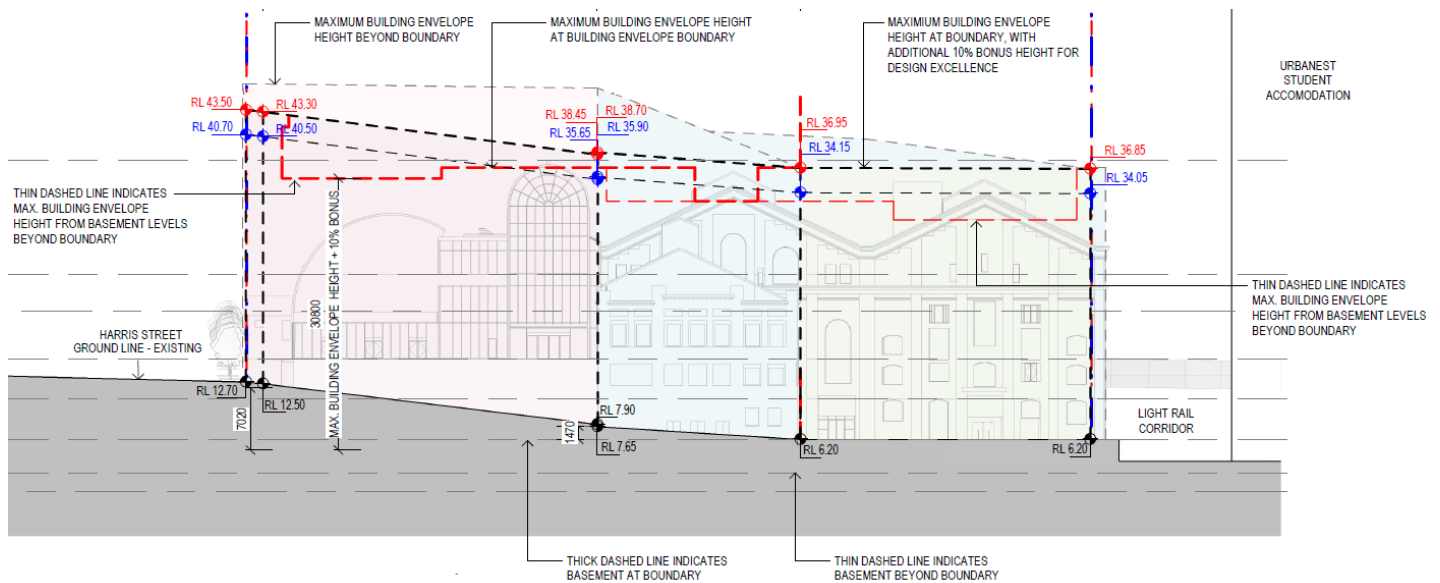


Figure 8 South eastern elevation – maximum height plane as taken from the basement dashed red

Source: JWA

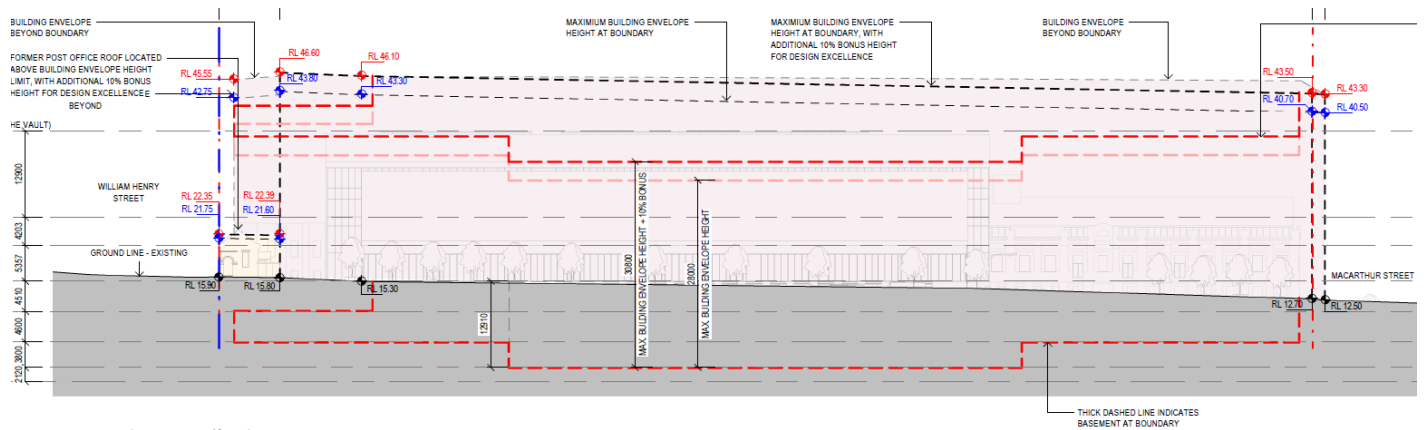


Figure 9 South western elevation – maximum height plane as taken from the basement dashed red

Source: JWA

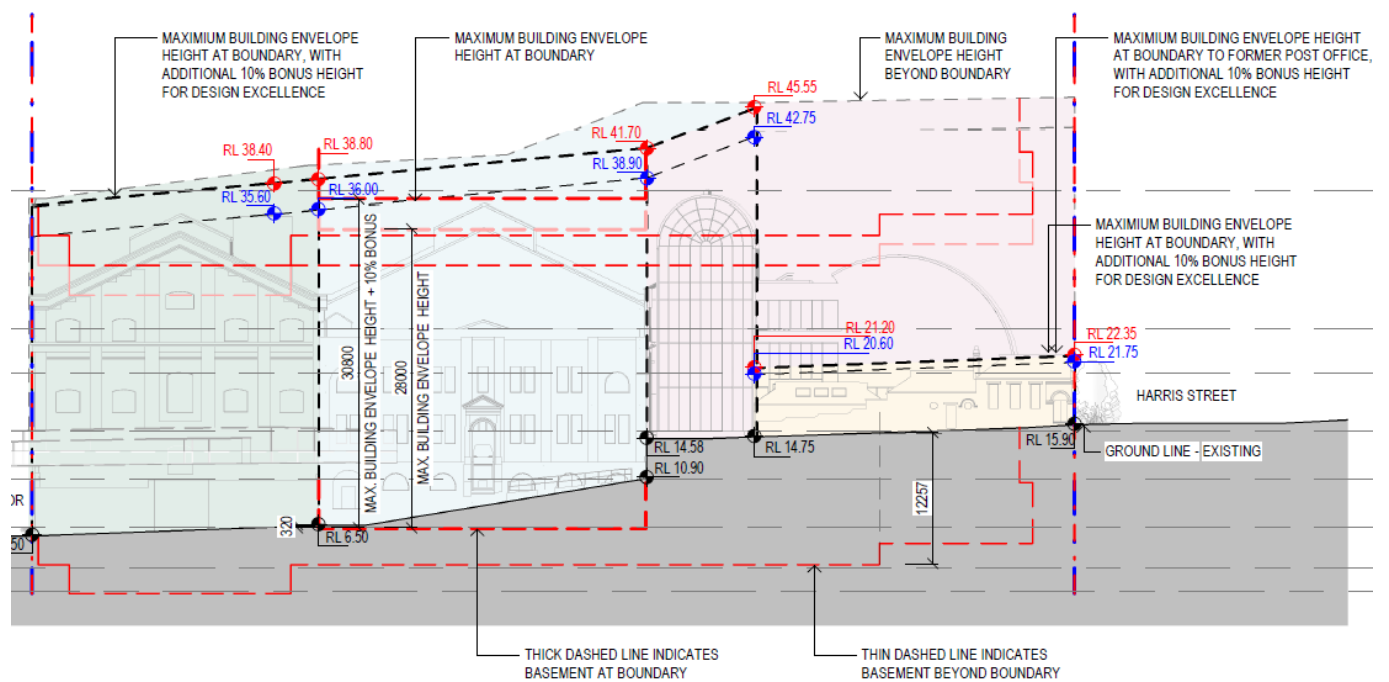


Figure 10 North western elevation – maximum height plane as taken from the basement dashed red

Source: JWA

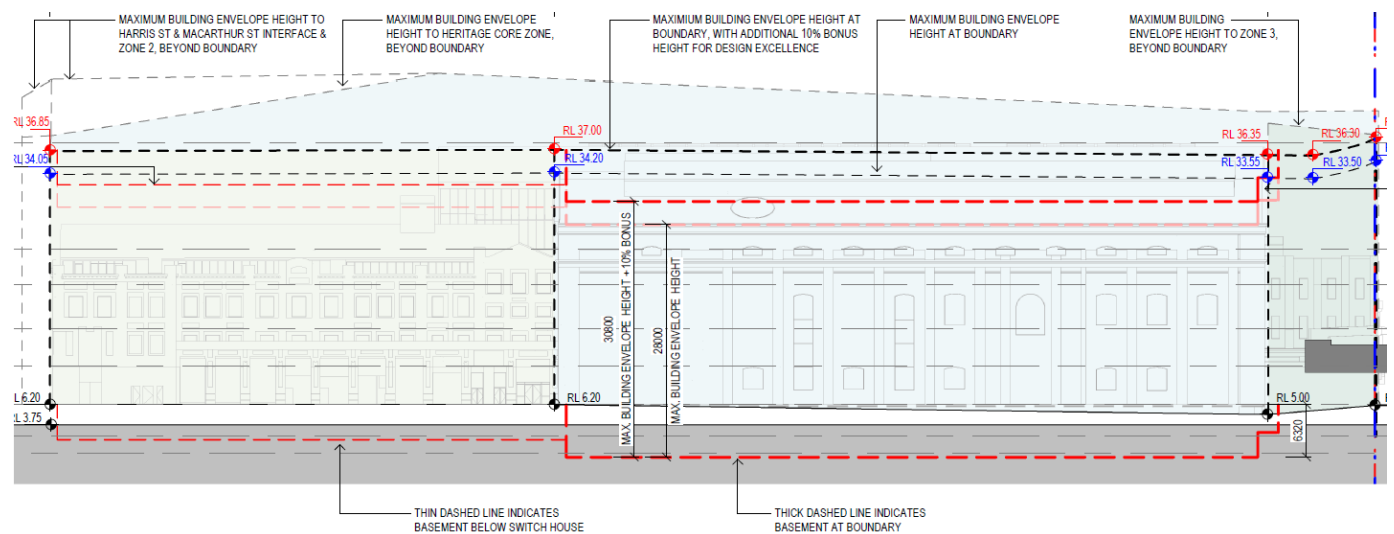


Figure 11 North eastern elevation – maximum height plane as taken from the basement dashed red

5. Justification for the contravention of the development standard

5.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five methods in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the methods were an exhaustive list of the ways in which a variation to a development standard may be shown to be unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the SLEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 (**Fourth Method**).
- 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 (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method and the Third Method.

5.1.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in Clause 4.3 of SLEP 2012 are:

- (a) *to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) *to promote the sharing of views outside Central Sydney,*
- (d) *to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) *in respect of Green Square—*
 - (i) *to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) *to ensure the built form contributes to the physical definition of the street network and public spaces.*

As discussed in the sections below, the proposed development will achieve these objectives of the development standard notwithstanding the proposed numerical variation to the height of buildings.

5.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

5.1.2.1 Objective (a): to ensure the height of development is appropriate to the condition of the site and its context

The proposed maximum building envelope has been designed to respond to the natural slope of the site as opposed to the existing basement levels. In this way, the proposed building envelope has been designed to reference the visible conditions of the site and its context rather than the basement levels.

As detailed in the Design Report prepared by JWA and Aspect (**Appendix B** of the EIS), the Heritage Impact Statement (**Appendix I** of the EIS), and the Visual Impact Assessment (**Appendix N** of the EIS) the proposed scale of built form on the site is appropriate condition of the site and its context, and accordingly is consistent with this objective of SLEP 2012 for the following reasons:

- The *Pymont Peninsula Place Strategy* and draft sub-precinct plans prepared by the Department of Planning and Environment following detailed analysis and community and stakeholder engagement indicate that there is capacity (having regard to urban design and environmental planning considerations) for an increase in building heights above the existing provisions of the SLEP 2012 both in respect of this site and surrounding sites within the Ultimo sub-precinct, such that the future context of the site is likely to be characterised by taller buildings than those that are currently present.
- Located at the confluence of the Ultimo and Darling Harbour localities, the site's surrounding visual context is complex and layered. It includes larger, warehouse buildings and newer towers such as the Urbanest to the east, 375 Harris Street to the west and taller towers in Darling Park and Haymarket (e.g., The Peak Apartments) further to the east and south-east. Development of the proposed scale is, therefore, not unusual or significant in this context. Further, while built form on the existing site is complex and layered, the existing development on the site includes large Federation Warehouse style buildings that are of a considerable scale. The proposed building envelope would, therefore, be more readily integrate with the existing buildings without compromising the ability of these buildings to be seen and appreciated as distinct built elements.
- In several locations the variable height plane created by the basement levels would result in a lesser height than the existing buildings on the site. Noting that while the height of buildings in the context of the site are highly variable, this would nonetheless represent a significant missed opportunity and poor urban outcome to adopt the reduced and highly complex height plane created by the building's basement levels. **Figure 12** and **Figure 13** below details how the maximum building height as measured from existing basement levels would apply to the reference scheme and the existing buildings on site. This illustrates that 1-2 floors of a potential new building would not be able to be delivered, and that the existing buildings on the site would extend above this height plane. Accordingly, this would restrict the potential for future refurbishment and renewal works on the site and undermine achieving the project objectives. In particular, providing a wide range of new and refurbished spaces to support an international standard museum, delivering a highly operational precinct, and delivering an appropriate return on investment for this cultural institution.
- The site is, therefore, an important and recognisable cultural landmark and destination within Sydney. With respect to the above, the proposed development will enhance this existing condition of the site as a significant cultural institution and deliver an international standard museum with new and refurbished spaces to enhance museum operations, exhibitions, programs and associated industry and creative uses that will activate and engage audiences. The additional height in this context will support the enhancement of the existing use and functions of the site.

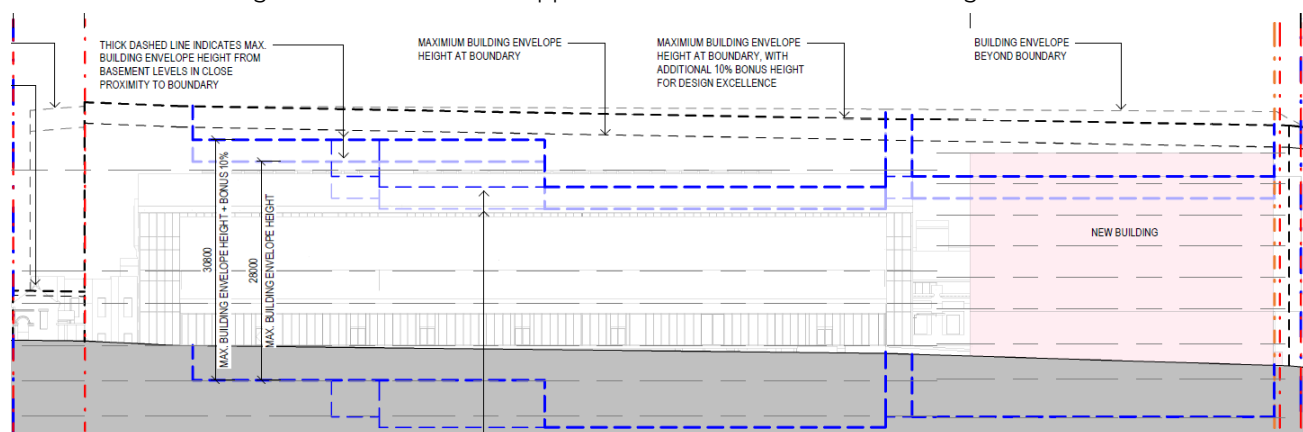


Figure 12 Height plane as impacting reference scheme – south west elevation

Source: JWA

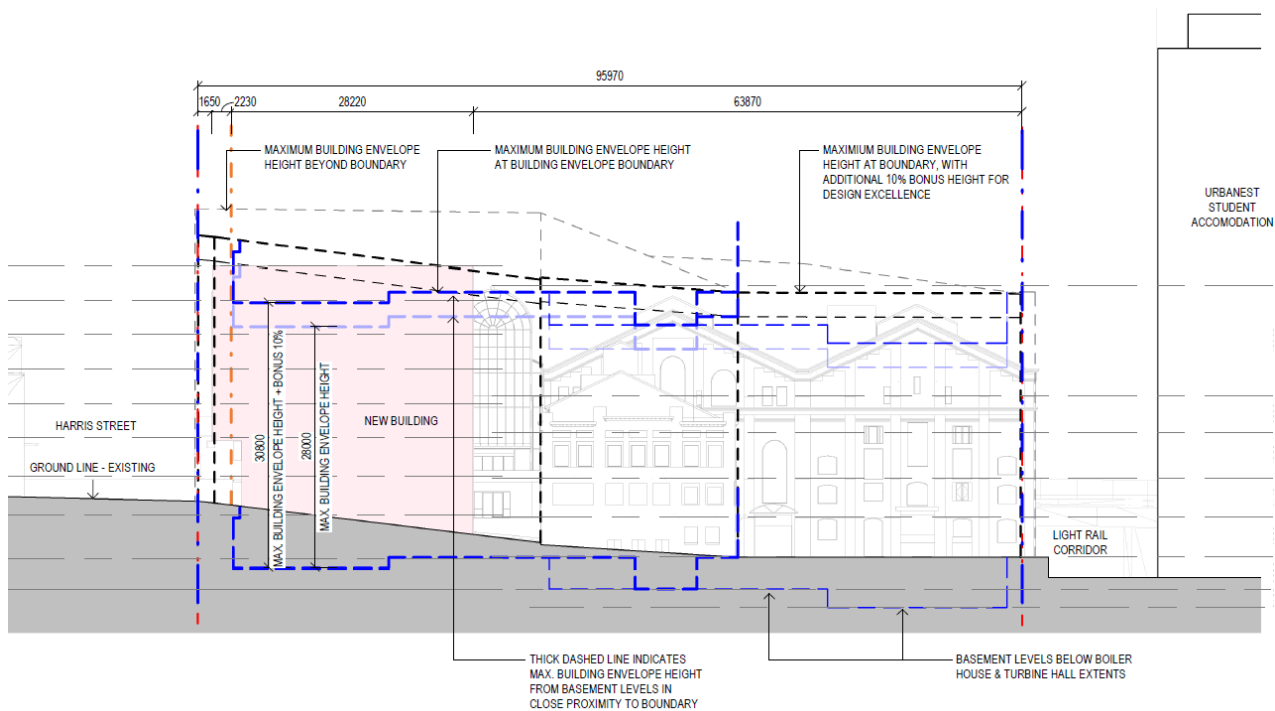


Figure 13 Height plane as impacting reference scheme – south east elevation

Source: JWA

Furthermore, the proposed building envelope will result in a built form that is appropriate for the conditions and capacity of the site. The Powerhouse Ultimo Renewal project will comply with the Floor Space Ratio (FSR) applying to the site under SLEP 2012, inclusive of existing buildings, ensuring that the proposed development remains consistent with the planned capacity for this site. In this way, the proposed building envelope does not represent and will not result in the over-development of this land.

The environmental assessments analysing the site, the building envelope, and the reference scheme further demonstrate that the development is capable of being appropriately serviced.

- **Access and parking** – the Transport Assessment prepared by JMT Consulting (**Appendix J** of the EIS) confirms that the existing transport and road network has the ability and capacity to comfortably accommodate future travel requirements for the Powerhouse Ultimo. A range of travel demand management measures have been proposed as part of a preliminary Green Travel Plan to promote travel to the site by non-car modes and take advantage of this high quality public transport infrastructure.
- **Loading and servicing** – the Transport Assessment prepared by JMT Consulting (**Appendix J** of the EIS) further confirms that loading can be provided on the site as part of the detailed design of the building at Stage 2 to service the existing and potential future buildings on the site, including providing for both a Heavy Rigid Vehicle (HRV) and Medium Rigid Vehicle (MRV) that could park in the loading dock side by side and enter/exit independently of one another. This will accommodate for Powerhouse Ultimo deliveries and servicing.
- **Infrastructure and utilities** – based upon the analysis of existing services and consultation with the relevant infrastructure providers, Steensen Varming (**Appendix U** of the EIS) confirm that there are existing services benefiting the site, and that the site can be serviced subject to further consultation and assessment at Stage 2.

The environmental assessments analysing the site, building envelope and reference scheme also illustrate that the proposed development will not adversely impact the amenity of surrounding land. These assessments address the reference scheme as a whole or the cumulative impacts of the renewed Powerhouse Ultimo site, and as such the 1-2 floors of a potential new building above the height limit has been considered in these assessments. This is detailed in the EIS and summarised as follows:

- **Overshadowing** – the overshadowing plans prepared by JWA (**Appendix C** of the EIS) demonstrate that a building located within the proposed maximum building envelope can be designed to not significantly or adversely impact the solar access of residential dwellings. Further, owing to the location of the existing basement levels, any technical non-compliance is located within the centre of the site and not at the elevations to the street and, therefore, would not significantly contribute to the extent of overshadowing on surrounding properties as detailed in the EIS.

- Wind – the Environmental Wind Assessment prepared by Arup (**Appendix Q** of the EIS) confirms that all locations around both the envelope and reference designs would be expected to pass the safety criterion, and that while the development would have a slight impact on the wind conditions in and around the site causing windier conditions around the southern corners, wind conditions at the majority of locations around the site would be classified as suitable for pedestrian standing or pedestrian walking.
- Views and visual impact – the Visual Impact Assessment (**Appendix N** of the EIS) confirms that on the balance of relevant visual impact considerations, the proposal has an acceptable visual impact and can be supported on visual impact grounds. Further, consistent with the assessment of overshadowing, because of the location of the existing basement levels any technical non-compliance is located within the centre of the site and not at the elevations to the street, and therefore would not significantly contribute to visual and view impacts from surrounding properties.
- Noise and vibration – the Noise and Vibration Assessment prepared by RWDI (**Appendix P** of the EIS) confirms that while the detailed design and intended operation of new areas to support the information and education facility are not known, and will be confirmed at Stage 2, the proposal remains capable of complying with the noise criteria. Further, the project complies with the FSR development standard for this site and as such any potential future noise generating activities remain within the planned capacity for this site.
- Stormwater and flooding – the Civil Report prepared by TTW (**Appendix V** of the EIS) further identifies that the proposed development can be suitably serviced with respect to stormwater infrastructure, and can be constructed with appropriate water quality measures to achieve City of Sydney Council's nominated targets. The detailed design of a future building on the site also remains capable of achieving the flood planning levels nominated by TTW with reference to the City of Sydney Interim Floodplain Management Policy and the NSW Floodplain Development Manual. No additional flooding will be created external to the site, ensuring that future development will not impact surrounding land.

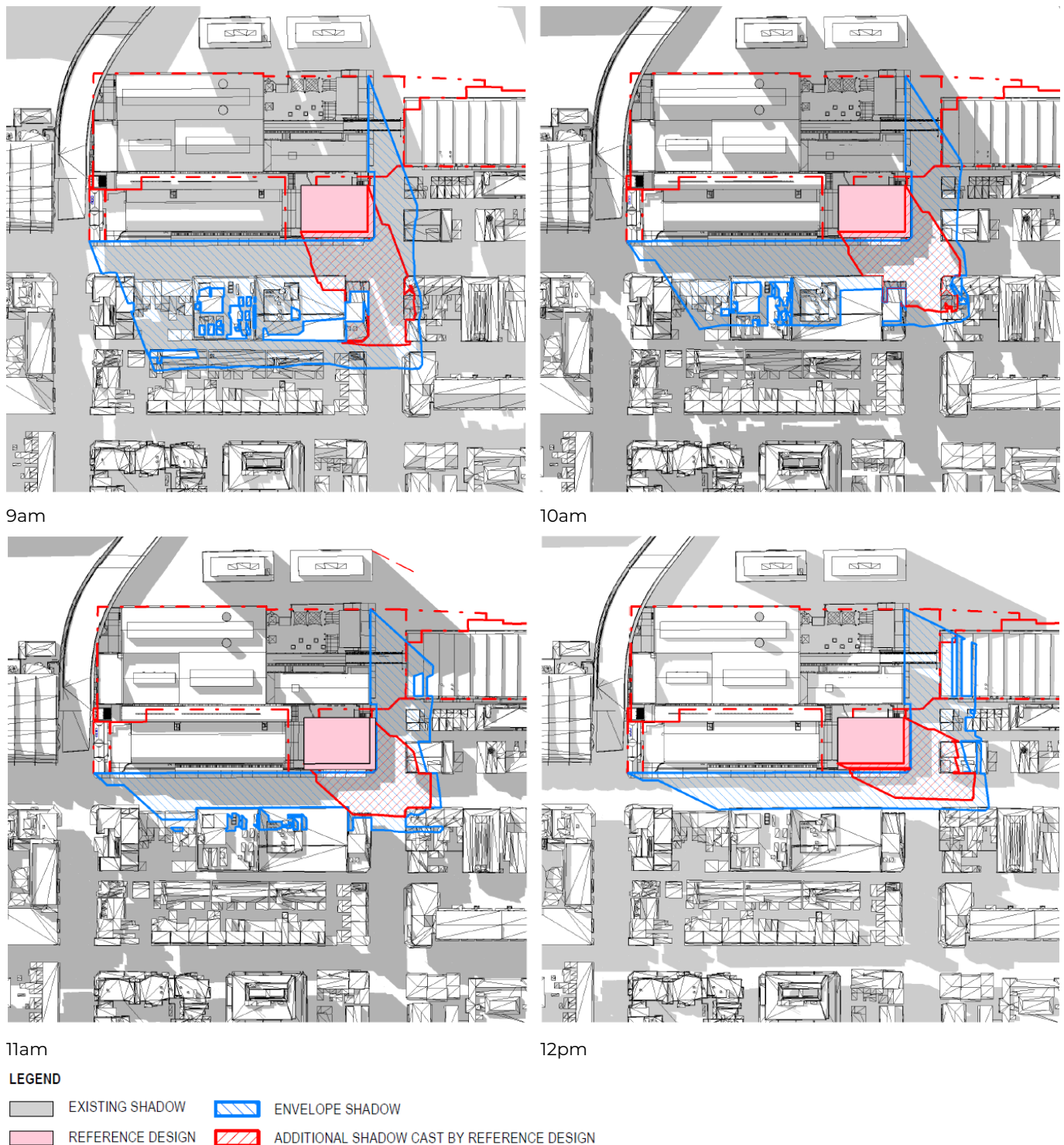


Figure 14 Overshadowing plans

5.1.2.2 Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas

The Powerhouse Ultimo site contains two heritage-listed buildings, being the 'Ultimo Power House' (c.1899-1905) and the 'Former Ultimo Post Office including interior' (c.1901), both of which are listed on the State Heritage Register under the *Heritage Act 1997*. There is also the former tram shed (Harwood Building) and the 1988 museum building fronting Harris Street (Wran Building), which are not heritage listed items under either SLEP 2012 or the *Heritage Act 1977*.

The proposed building envelope has been developed and scaled to provide appropriate flexibility noting that the principles and guidelines for the detailed design stage of the project respond to the draft CMP, and the recommendations of this Plan for protecting and celebrating the heritage of this site. Overall, the Heritage Impact Statement submitted at **Appendix I** of the EIS confirms that the Concept SSDA and reference scheme show that the

project can appropriately minimise impacts to items of heritage significance and the values of the site by avoiding physical impacts to State heritage items or significant fabric. The key elements of the reference scheme that are able to be accommodated within the proposed building envelope will allow for the sympathetic renewal of Powerhouse Ultimo, with an overall neutral to positive impact to the heritage values and significance of the site. With respect to bulk and scale, Curio confirm that the reference scheme would be consistent in height, scale and bulk of the Wran Building and other wider buildings across the site. Whilst the new built form would obstruct existing views from Harris Street east to the heritage core buildings, namely the Switch House, historically, the former Ultimo Power House did not have a frontage to Harris Street. This direct view from Harris Street to the heritage items was only established as part of the 1980s museum redevelopment of the site. Therefore, the reference scheme has the ability to have a neutral visual impact on the heritage values of the site.

External to the Powerhouse Ultimo site, there are also a number of locally-listed heritage items mapped in the SLEP 2012 in proximity including the Glasgow Arms Hotel, terrace-house groups along Harris St and Macarthur St, the former Millinery House building, former National Cash Register building and the former Technological Museum/Sydney Technical College building in Harris Street. There is also the existing Sewage Pumping Station 1 located to the north of the site and is a State Heritage Item. The site is adjacent to, and in the vicinity of, the Harris Street Ultimo Conservation Area. The project's relationship to these heritage items will be driven by the detailed design and location of built form the site at Stage 2, however, noting that the project will retain the existing heritage buildings within the Powerhouse Ultimo site and as such the magnitude of change on the site will be significantly decreased.

5.1.2.3 Objective (c): to promote the sharing of views outside Central Sydney

A Visual Impact Assessment (VIA) has been prepared by Ethos Urban and provided at **Appendix N** of the EIS assessing the proposed building envelope and the reference scheme within this envelope with respect to both private public views. Recognising that the site is located outside of Central Sydney, the VIA demonstrates that the proposed building envelope and reference scheme will not significantly or adversely impact view sharing including with respect to existing views of the CBD skyline from residential dwellings to the north and west of the site.

The VIA has considered the established principles for view sharing in accordance with *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 and confirms the following:

- Views are available from the Urbanest building over and through the existing Powerhouse Ultimo site. However, the Urbanest development is for the purposes of short term accommodation and is classified as 'tourist and visitor accommodation' and not residential accommodation. Further, the scale and nature of the proposal will be similar in scale to the existing development on the site and, unlike properties to the west of the Powerhouse, views obtained from the western elevation of Urbanest are district level and do not include valued landscape features such as the Sydney CBD skyline or include iconic landscape features such as the Opera House or Harbour Bridge.
- There are rows of residential terraces located at the northern end of the site on Harris Street that are impacted by established mature street trees and a modest scale (generally limited to 2 storeys in height) ensuring that, what views are available from these locations, are unlikely to significantly change in scope or depth. These views also do not contain any water, land and water interface or iconic elements or features in the meaning of Tenacity that would be impacted by the proposed development. The proposed development will not fundamentally alter the components or composition of views (see **Figure 15** below).
- There is an apartment block located approximately 100m to the south-west of the central part of the site at 349-355 Bulwara Road, which owing to its scale, benefits from views of and over the Powerhouse Ultimo site towards the CBD. The existing Powerhouse Ultimo buildings partially obscure areas of sky and/or lower parts of buildings within the Sydney CBD skyline in views from this location. The proposed building envelope, and reference scheme, will therefore build upon this existing context and obscure parts of the sky and lower parts of buildings in the background of views. As detailed in the VIA, the apartments in this location will retain the ability to see and perceive the skyline and there will be no loss of visibility to highly valuable or iconic features (such as Centre Point Tower). The VIA concludes that the proposed development will not fundamentally alter the components or composition of views (refer to **Figure 18** and **Figure 19** below).
- There is an apartment block behind Harris Street at 333 Bulwara Road which, owing to its scale, also benefits from views of and over the Powerhouse Ultimo site towards the CBD. The VIA concludes the same findings as the above, determining that the proposed development will not fundamentally alter the components or composition of views (see **Figure 16** and **Figure 17** below).

Fundamentally, the proposed development does not introduce a new element that is uncharacteristic or discordant in the existing views. The Powerhouse Renewal Project will contribute to the existing layered built form on this site which, like its context, comprises buildings of different periods, styles, and scales of development. Any future building and public domain areas on this site will be the subject of a competitive design alternatives process ensuring the achievement of design excellence. In this respect the detailed design (Stage 2) proposal will be more refined from the proposed maximum building envelope and will result in a high quality and visually interesting proposal than the building envelope and the 'test-case' reference scheme that is shown at this Concept SSDA stage.

The VIA concludes that the proposal has an acceptable visual impact and can be supported on the visual impact grounds. Further, it confirms that the proposed minor and variable non-compliance with the height of buildings development standard to account for existing basement levels will not significantly improve or reduce the visual impact of the proposed development. The extent of variation is minor considering the substantial scale of built form already present on the site.

Further to the above, owing to the location of the existing basement levels, any technical non-compliance is located within the centre of the site and not at the elevations to the street and therefore would not significantly contribute to visual and view impacts from surrounding properties.

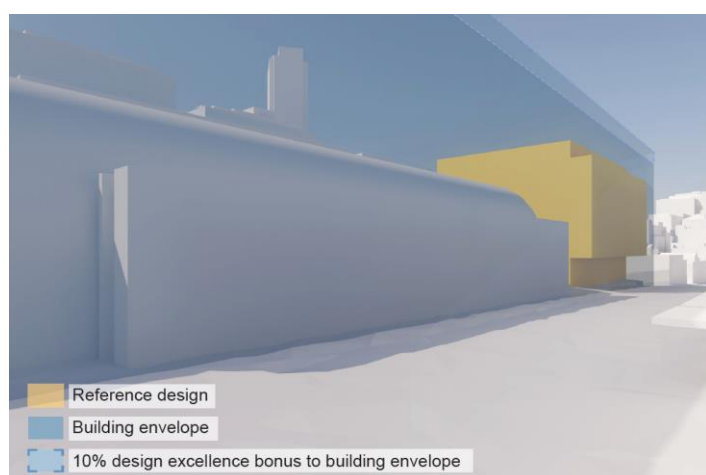


Figure 15 Modelled view from terraces at the northern end of Harris Street

Source: Virtual Ideas

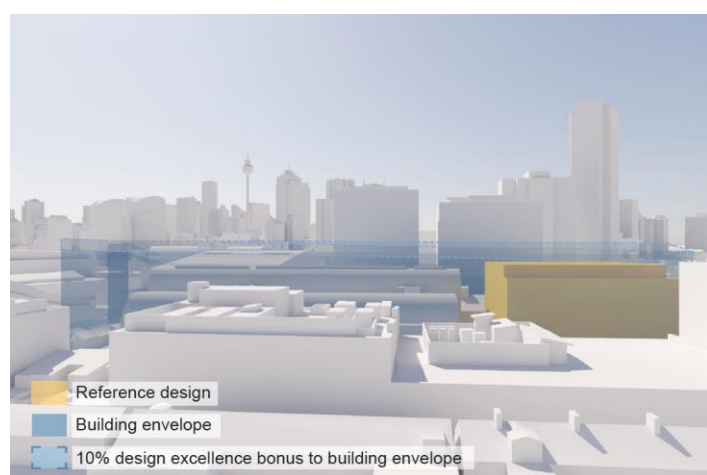


Figure 16 Modelled high level view (lvl 5) from 355 Bulwara Road

Source: Virtual Ideas

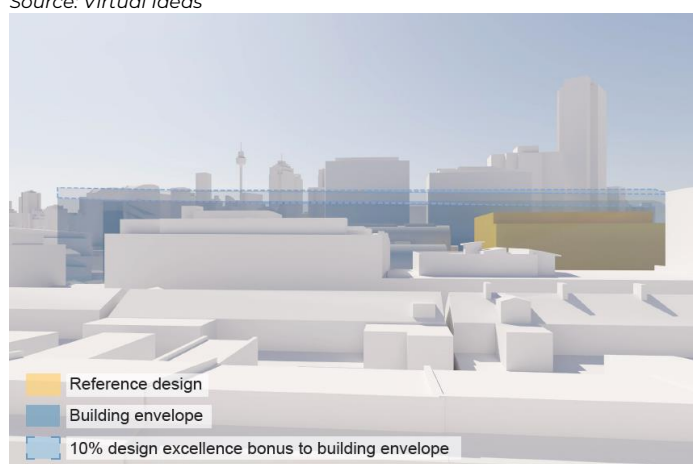


Figure 17 Modelled low level view (lvl 3) from 355 Bulwara Road

Source: Virtual Ideas

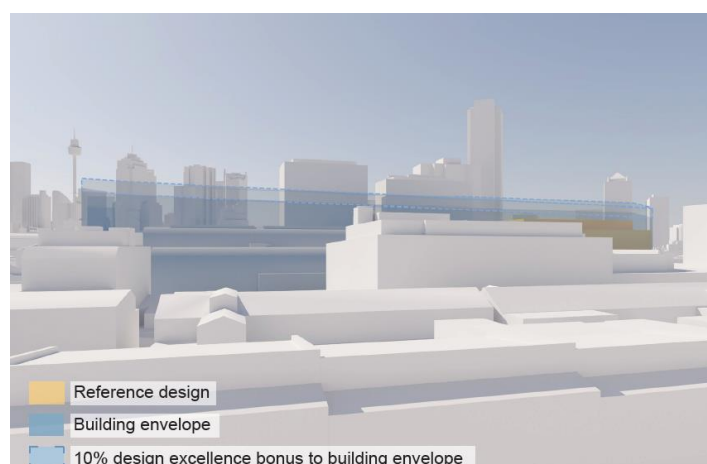


Figure 18 Modelled high level view (lvl 4) from 333 Bulwara Road

Source: Virtual Ideas

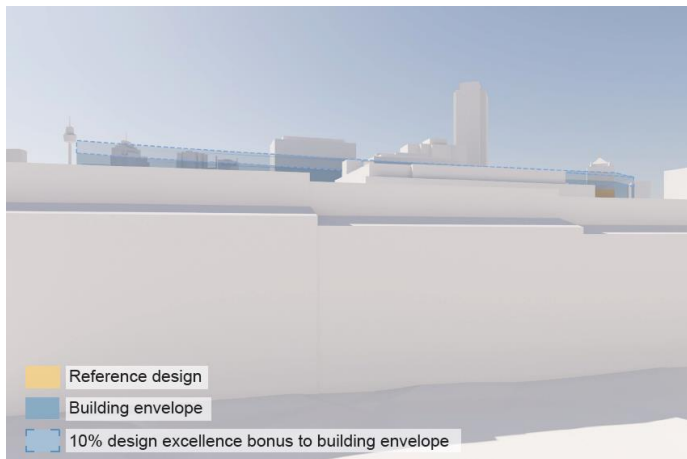


Figure 19 *Modelled low level view (lvl 2) from 333 Bulwara Road*

Source: Virtual Ideas

5.1.2.4 Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas

The Powerhouse Ultimo site exists in a highly varied, urbanised setting on the south western edge of the Central Sydney core. While the height profile of buildings from the CBD to the site vary considerably, the buildings to the east of the site remain taller including the neighbouring Urbanest student accommodation and buildings within the Darling Quarter precinct (see **Figure 20** and **Figure 21** below). The proposed maximum building envelope is therefore considerably lower in height than existing development in its context and remains consistent with the existing height transition of taller buildings in the CBD that step down to surrounding areas.

Future buildings on the site will be the subject of a competitive design alternatives process and would be expected to positively contribute to the changing Sydney skyline. In this respect, the visibility of the Powerhouse Ultimo site could benefit the civic nature of the development and support intuitive wayfinding from the CBD. The proposed scale provides for a robustness of character which is more readily able to accommodate new development without compromising its ability to be seen and appreciated as a distinct built element.

Overall, the variations proposed to the maximum building height will have no impact on the height transitions, as the proposed building envelope complies with the maximum permitted building height at all relevant site boundaries to ensure that height transitions are consistent with the requirements of the LEP building height development standard.



Figure 20 *Change in built form scale as viewed from Harris Street*

Source: JWA

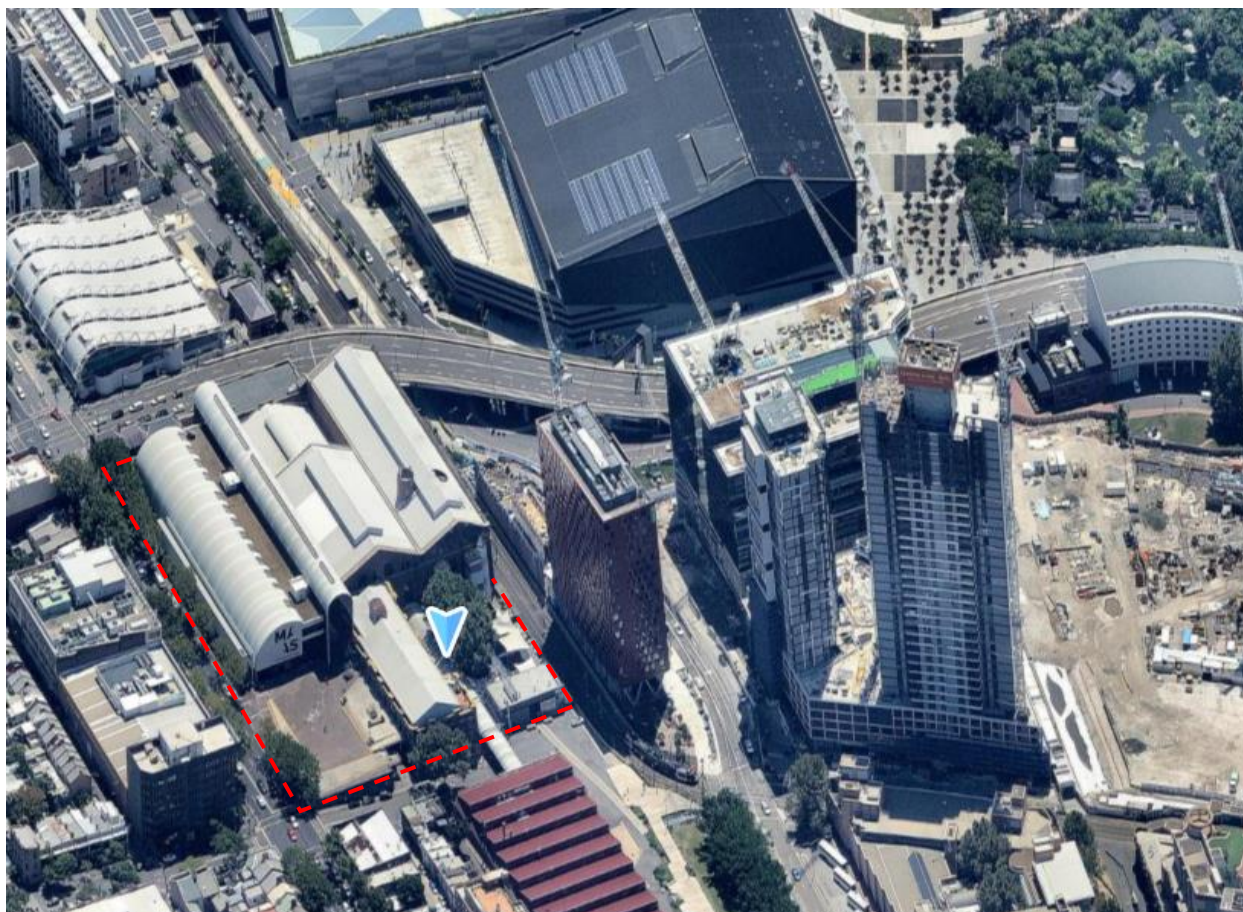


Figure 21 *Change in built form scale from the site (outlined) to the CBD to the east (right)*

Source: Nearmap + Ethos Urban

5.1.2.5 Objective (e): in respect of Green Square

The site is not located within Green Square, and as such this objective does not apply to the project.

5.1.3 The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Strict application of the maximum height of buildings control as measured from existing basement levels on the site would thwart the underlying objectives of the height of buildings development standard under Clause 4.3 of SLEP 2012. As detailed in the preceding sections, the proposed building envelope that has been developed with reference to the existing ground levels and natural slope of the site appropriately responds to its heritage consent, streetscape, environmental conditions, and the overall height profile and transition of buildings from Central Sydney to surrounding areas and is consistent with the objectives in Clause 4.3 of SLEP 2012.

5.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the SLEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, 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 (Initial Action at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that Site at [60]. In this instance the proposed variation to the building height development standard is founded in the existing environmental conditions of the site and specifically the presence of the various basement levels.

As detailed in **Section 4** above, there are between one (1) and two (2) basement levels that exist beneath parts of the Power House, Switch House, Wran Building, and public domain areas on the site including the existing civic space and museum entrance fronting Harris Street. These various depths of basement areas in specific footprints beneath the existing buildings and public domain areas on the site create a highly complex and varied height plane across the site. It is unknown at this time whether these existing basement levels will be retained, removed, or modified as part of the detailed design of the buildings subject to the competitive design alternatives process and Stage 2.

Further, because of this slope of the site and the State Heritage listing of the Ultimo Powerhouse and the Former Ultimo Post Office, a number of these interconnecting basement levels have been constructed on the site to provide essential back and house and exhibition spaces with minimal intrusion to the heritage fabric of the site and these buildings. The existing environmental planning constraints in these context are a direct response to the heritage significance of the site and the slope of the land.

Accordingly, this variation request seeks to enable the proposed maximum building envelope to adhere to the existing levels and natural slope of the site, responding to the visible context and conditions of the site rather than complex subterranean levels.

5.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

5.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard contained in Clause 4.3 of SLEP 2012 for the reasons detailed in **Section 5.1** of this report.

5.3.2 Consistency with objectives of the zone

The proposed development is also consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

- The purpose of the development supported by the proposed building envelope is to provide for the renewal of Powerhouse Ultimo, which is defined as an 'information and education facility'. It is expected that the development will also comprise a range of related and ancillary uses such as office and co-working spaces, creative industry studios, retail facilities, temporary student accommodation, and public domain. These land uses are compatible with the existing and long-term functions of the site and positively contribute to the entertainment and tourism functions of Sydney. The range of ancillary and related uses will contribute to the operation of Powerhouse Ultimo as a renewed day-to-night cultural and arts destination.
- The Powerhouse Ultimo site is located in close proximity of existing public transport infrastructure, and will support sustainable and active transport options. A key design outcome for the project is to better connect the site with The Goods Line to promote pedestrian and cycle movements as well as intuitive wayfinding to the light rail network. The Green Travel Plan prepared by JMT and provided at **Appendix J** of the EIS identifies measures that may be implemented to reduce dependency on private vehicles and promote other modes of transport. The additional capacity on the site remains compliant with the FSR and is confirmed by JMT Consulting to be capable of being accommodated on the site.
- Powerhouse Ultimo is Australia's contemporary museum for excellence and innovation in applied arts and sciences. It is an important and recognisable cultural landmark and destination located within close proximity of Sydney's city centre. Accordingly, the renewal of the Powerhouse Ultimo precinct represents an important investment in the creative industries of NSW, and the attractiveness of Sydney as a destination. As detailed in the Social Impact Assessment (**Appendix M** of the EIS), this renewal will increase Sydney's national and global competitiveness as a tourist destination, and Ultimo's positioning as a hub of creativity and learning. It will contribute to approximately 1,710 (direct and indirect) job-years and an estimated total direct value-add to the economy of \$225.2 million during the construction phase, and approximately 340 jobs supported and an estimated total direct value-add to the economy of \$34.4 million per annum, based on total direct and indirect employment during the operational phase of the project.

5.3.3 Overall public interest

In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone. As discussed further in **Section 5.4.2** below, there would be a significant impact to public benefits and therefore the public interest if the development complied with the mapped height limits.

5.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

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

These matters are addressed in detail below.

5.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation to the mapped maximum building height development standards does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, the Greater Sydney Region Plan, and other relevant strategic plans as detailed below:

Table 1 Strategic planning context

Instrument/Strategy	Comments
NSW State and Premier's Priorities	<p>The proposal will deliver on key state priorities, including 'building infrastructure'.</p> <p>The proposal will also support providing 'jobs closer to home' through creating jobs on a site that is well connected to transport, and is accessible within the Sydney CBD. The proposal will create job opportunities in construction during the project's construction phase of works, and job opportunities project related land uses at the project's completion following Stage 2.</p>
Greater Sydney Region Plan Eastern City District Plan	<p>The Powerhouse Ultimo Renewal is strongly aligned with the key strategic principles and vision outlined for the Eastern City in the Region and District Plans. Powerhouse Ultimo sits at the heart of a planned 'Innovation Corridor' spanning from the Bays Precinct through Pyrmont-Central and up to Circular Quay, with creative, cultural and digital industries identified as being critical to supporting the innovation ecosystem. The site also sits at the edge of the Camperdown-Ultimo Collaboration Area, which highlights the need to create a walkable precinct with a vibrant cultural and night-time economy.</p> <p>More generally, the project will closely align with the key priorities identified for the Eastern City by:</p> <ul style="list-style-type: none">• Contributing towards a more liveable city with high-quality cultural infrastructure to meet the needs of the community, support culturally rich and socially connected communities and support urban renewal to create a place that respects local heritage.• Supports a stronger and more competitive Harbour CBD by contributing towards the development of a strong Innovation Corridor that can support innovation and economic growth and supporting the growth of the cultural and tourism sectors.• Supports key sustainability principles including the reduction of energy/resource consumption, delivering high quality and resilient public buildings and protecting the health and water quality of Sydney Harbour
Pyrmont Peninsula Place Strategy	<p>The Powerhouse Ultimo Renewal is a key government investment that will support the strategic directions and 'big moves' identified in the Pyrmont Peninsula Place</p>

	<p>Strategy (PPPS). The site is identified under the PPPS as being capable of change, and the Powerhouse is identified as a significant contributor to the growth of knowledge-based jobs, innovation and creative, cultural and community uses within the Peninsula.</p> <p>The reuse of heritage buildings, enhancement of pedestrian connections and rejuvenation of Harris Street will all be directly supported through the delivery of the project. Subject to further transport, heritage and design advice, the project has the potential to contribute towards the enhancement of The Goods Line as an active transport loop with potential new pedestrian connections.</p>
Draft Ultimo Sub-Precinct Master Plan	<p>The Draft Pyrmont Peninsula Sub-Precinct Master Plans were publicly exhibited between November 2021 and February 2022. The Draft Ultimo Sub Precinct Master Plan supports the urban renewal of the Ultimo precinct and identifies the important contribution the Powerhouse renewal will make to creating an innovative, entrepreneurial, and knowledge-based 24 hour precinct.</p>
Cultural Infrastructure Plan 2025+ (NSW Government)	<p>The <i>Cultural Infrastructure Plan 2025+</i> (the Plan) is the NSW Government's guide for the planning and delivery of cultural infrastructure that will support a thriving and dynamic cultural sector. The Plan will deliver contemporary, relevant world-class infrastructure to strengthen the depth and quality of NSW's cultural sector and provide digital infrastructure and technology that enables all forms of culture to reach wider audiences and create across new mediums.</p> <p>The Cultural Infrastructure Investment Framework within the Plan ensures a strategic, coordinated approach to cultural infrastructure investment in NSW.. By making sustainable and fit-for-purpose cultural infrastructure available to all residents, visitors and workers across the state, the NSW Government will contribute to the social, economic, civic, and individual wellbeing of the state and the people in its communities. The delivery of cultural infrastructure is a key part of creating places that bring people together to live, work, visit and do business.</p> <p>The Plan recognises that well-designed cultural infrastructure can have a catalytic effect on places, and when supported by other uses and transport links, it anchors urban renewal and regeneration processes, attracting business and investment. It can transform the functionality and relevance of a place and foster a new and historic identity and character that attracts people and activates the city. The Powerhouse renewal transformative investment will develop a wider Ultimo creative industries precinct that unites existing creative industries workspaces and institutions, including the Tech Central, University of Technology and the ABC. This investment directly supports and aligns with the broader strategic opportunity to transform the Pyrmont Peninsula as identified in the <i>Pyrmont Peninsula Place Strategy</i>.</p>
Local Strategic Planning Statement – City Plan 2036 (City of Sydney)	<p>The Powerhouse Ultimo Renewal will directly support the vision and key planning priorities outlined in the City of Sydney's LSPS by supporting excellence in design, contributing to Sydney's profile as Australia's most significant global city with world-renowned cultural infrastructure, and a well-connected city with a facility that supports the desired future character of the Pyrmont/Ultimo village as a highly walkable place.</p> <p>The LSPS identified the Harris Street corridor as making the largest contribution to employment growth outside of the CBD, with 22,000 new jobs over the next 15 years. The LSPS highlights the role that the Innovation Corridor (including Ultimo) will play in delivering the knowledge intensive jobs that will be vital to Sydney's ongoing economic success and global competitiveness. The Powerhouse Ultimo Renewal will support this by prioritising space for knowledge-based creative industries and developing relationships with surrounding creative sector stakeholders.</p> <p>The project will make significant positive contributions by improving walkability within and around the site, better activating Harris Street and supporting the creation of great places that are vibrant and support activity throughout the day and evening. Ongoing adaptive reuse and conservation of heritage fabric and better articulation of First Nations culture will play an important role in creating a more connected and culturally aware community.</p>

5.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

Strict compliance with the mapped height of buildings development standards as measured from the existing basement levels would negatively impede the delivery of appropriately scaled and high-quality spaces to support the Powerhouse Ultimo revitalisation. The following public benefits are realised by this project:

- The establishment of a world class museum that will provide significant public access to Powerhouse Collections and present international exhibitions alongside engaging communities with local histories.
- Delivering a highly operational precinct that contributes to delivery of strategic State and Local Government directives for activation of visitor and night-time economies, while creating publicly accessible and open spaces to encourage the local community to engage with the precinct.
- The activation of enhanced spaces for creative, research and education programs, providing opportunities to collaborate with schools, universities and industry, assisting in improvements of life-long education outcomes for students, supporting long term social and economic wellbeing.
- Supporting the sustainability and transformation of Ultimo, Darling Square, Tech Central and Darling Harbour as an internationally renowned commercial and cultural destination, by adaptively renewing the existing Powerhouse buildings.
- Enhancing the cultural significance and characteristics of the south-eastern CBD through its design, provision of public open space, and improvements to streetscape and pedestrian amenity and wayfinding.
- The project will strengthen key academic relationships with UTS, Sydney University, Sydney Institute of Technology TAFE bringing about a range of opportunities including creative industries, research, innovation and enterprise development in meeting NSW Government objectives in delivery of the Pyrmont Peninsula Place Strategy, NSW Government's Connecting with the Camperdown-Ultimo Collaboration Area and Sydney's Innovation and Technology Precinct.
- Drawing upon Powerhouse Ultimo its rich, heritage and architectural fabric as well as the museums expanded program provides a strong foundation for the creation of a thriving public domain that can be a vital component to the ongoing cultural life of Sydney.

As outlined in the previous sections, the building envelope has been developed having regard to the existing natural ground levels within the site and at the relevant site edges. This approach is consistent with the manner in which the maximum building height development standard has generally been assessed within the City of Sydney and other areas where natural ground level has been disturbed by prior excavation and structures. This approach is summarised in the NSW Land and Environment Court decision in *Stamford*, and involves an extent of projection from existing natural ground levels. This avoids the situation outlined in this Clause 4.6 variation request whereby the maximum building heights are artificially lowered within (typically) the centre of a site where basement excavation has occurred. There is considered to be significant public benefit in maintaining this approach to building height as it ensures that buildings are able to be constructed to heights that are rational and efficient, and having regard to the intent of the building height development standard to control the impacts of development which is not aided by the addition of complex inversions within the inner areas of a site.

The application of the building height control as measured from the existing basement levels would, therefore, result in a development that is unable to achieve the primary objectives for the project and ultimately represents a lost opportunity to provide a revitalised international standard museum. Further, as noted in the preceding sections, the additional height proposed would not give rise to any adverse environmental impacts. It is considered that there would not be any public benefit for the height of the existing building to be reduced, particularly where key planning issues deriving from the building height, such as its relationship to heritage, overshadowing, and its contribution to the skyline and streetscape, can be resolved through architectural design at the design competition and Stage 2 SSDA phases.

5.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

To our knowledge there are no other matters that the Secretary is required to take into consideration when granting concurrence to this Clause 4.6 variation request.

6. Conclusion

This Clause 4.6 variation request has been prepared for an abundance of caution should the approach to measuring building height taken in *Merman* (which is not binding court authority for the purposes of the Minister's determination of the Concept SSDA), rather than the approach previously adopted by the City of Sydney Council and other consent authorities as outlined in *Stamford*. It is our view that the latter approach should be applied in the assessment of this development notwithstanding this Clause 4.6 variation request, as it represents an approach that is more closely aligned with the intent of the building height development standard under SLEP 2012.

The assessment above demonstrates that compliance with the maximum building height development standard contained in Clause 4.3 of SLEP 2012 is unreasonable and/or unnecessary in the circumstances of the case, and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

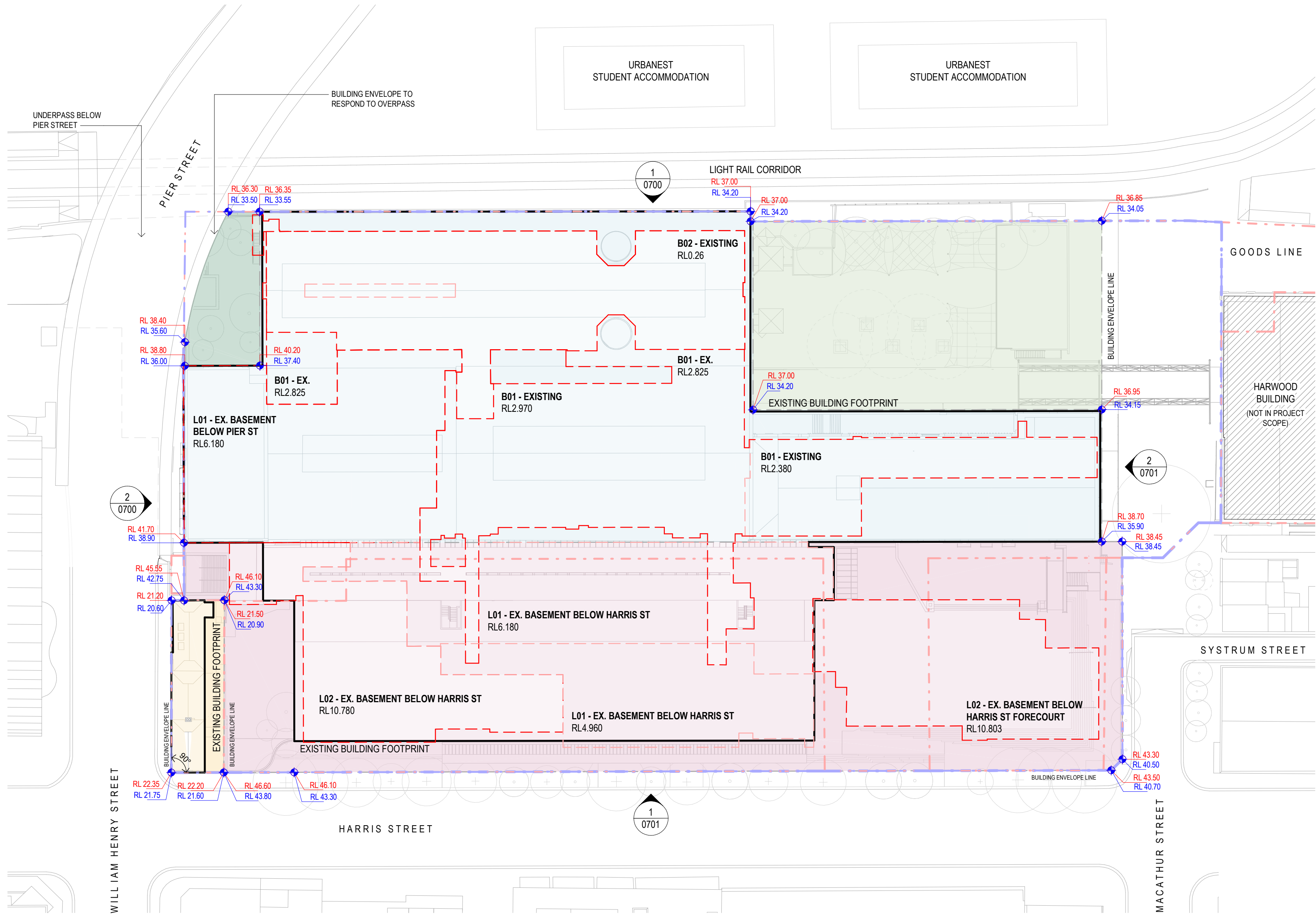
It is emphasised that this variation is administrative in nature, and does not introduce any changes to the built form controls when measuring the height of buildings from existing ground levels and the natural topographical slope of the site.

This clause 4.6 variation demonstrates that, notwithstanding any technical non-compliance with the height of buildings development standard (if the *Merman* approach is adopted, contrary to the applicant's position in this request), the proposed development:

- It is consistent with the objectives of the B4 mixed use zone and also the height of buildings development standard in SLEP 2012.
- It is compatible with the scale envisaged for the site through compliance with the FSR development standard, and the proposed capacity can be accommodated on the site in terms of infrastructure, services, and transport.
- It will not adversely impact on the amenity of surrounding land uses or development.
- It is in the public interest as it remains consistent with the objectives of the applicable land use zone and development standard and will provide additional information and education uses in close proximity to an area that is well served by existing and emerging public transport and other services and facilities.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the SLEP 2012.

Attachment A. Height Diagrams



THIS DRAWING IS AN UNCONTROLLED COPY UNLESS STAMPED OTHERWISE

General Notes

NOTES:

1. BUILDING ENVELOPE HEIGHT AS PER SYDNEY LEP 2012 WITH 10% BONUS APPLIED FOR DESIGN EXCELLENCE.
 2. INTERNAL ENVELOPE THRESHOLDS ARE INDICATIVE AND MAY BE SUBJECT TO CHANGE.
 3. ARTWORK, SIGNAGE & PUBLIC DOMAIN WORKS MAY EXTEND BEYOND THE BUILDING ENVELOPE.
- * ANY PROPOSED DEVELOPMENT OR INTERVENTION WITHIN THE PERMITTED BUILDING ENVELOPE IS SUBJECT TO CONDITIONS DEFINED IN THE GUIDELINES OF THE POWERHOUSE URBAN RENEWAL DESIGN REPORT.

LEGEND

- LOT BOUNDARY
- SITE WIDE BOUNDARY

- GROUND LEVEL - EXISTING
- ENVELOPE HEIGHT
- ENVELOPE HEIGHT WITH 10% BONUS

BUILDING ENVELOPE LEGEND

- HERITAGE CORE*
- FORMER POST OFFICE*
- ZONE 1*
- ZONE 2*
- ZONE 3*

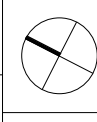
Rev.	Issue	Revision Description
1	FOR INFORMATION	
2	FOR INFORMATION	
3	FOR INFORMATION	

Date	Appr by
23.03.2022 MB	
01.04.2022 MB	
23.05.2022 MB	

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Client: Create Infrastructure
Create NSW, Department of Enterprise, Investment & Trade
Project: Powerhouse Ultimo Renewal
500 Harris Street, Ultimo, 2007 NSW

Title: BUILDING ENVELOPE PLAN WITH BASEMENT OVERLAYS



Drawing Status

SKETCH

Drawing No.

SK0002

Project No.

2138

Date

MAR 2022

Drawn

MB

Check

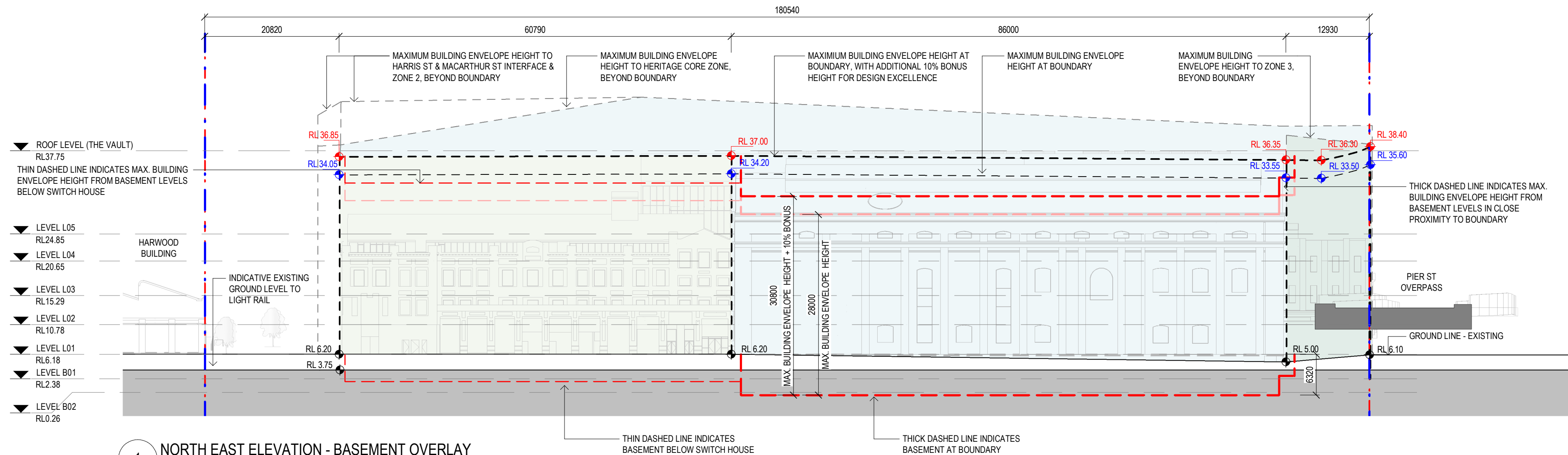
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Revision

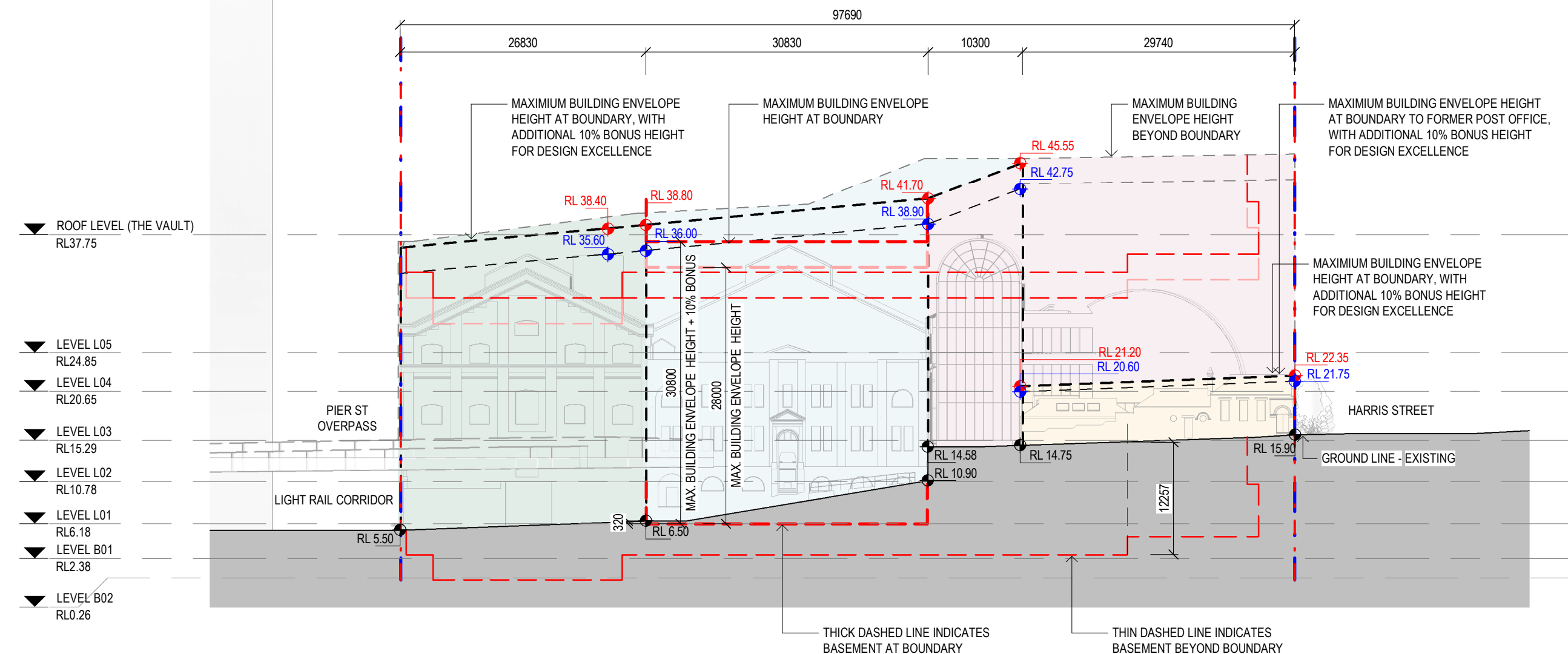
3

Scale @ A2

1 : 500



1 NORTH EAST ELEVATION - BASEMENT OVERLAY
Scale 1 : 500



2 NORTH WEST ELEVATION - BASEMENT OVERLAY
Scale 1 : 500

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General Notes

NOTES:

- BUILDING ENVELOPE HEIGHT AS PER SYDNEY LEP 2012 WITH 10% BONUS APPLIED FOR DESIGN EXCELLENCE.
 - INTERNAL ENVELOPE THRESHOLDS ARE INDICATIVE AND MAY BE SUBJECT TO CHANGE.
 - ARTWORK, SIGNAGE & PUBLIC DOMAIN WORKS MAY EXTEND BEYOND THE BUILDING ENVELOPE.
- * ANY PROPOSED DEVELOPMENT OR INTERVENTION WITHIN THE PERMITTED BUILDING ENVELOPE IS SUBJECT TO CONDITIONS DEFINED IN THE GUIDELINES OF THE POWERHOUSE URBAN RENEWAL DESIGN REPORT.

LEGEND

- LOT BOUNDARY
- SITE WIDE BOUNDARY

- RL XX.XX GROUND LEVEL - EXISTING
- RL XX.XX ENVELOPE HEIGHT
- RL XX.XX ENVELOPE HEIGHT WITH 10% BONUS

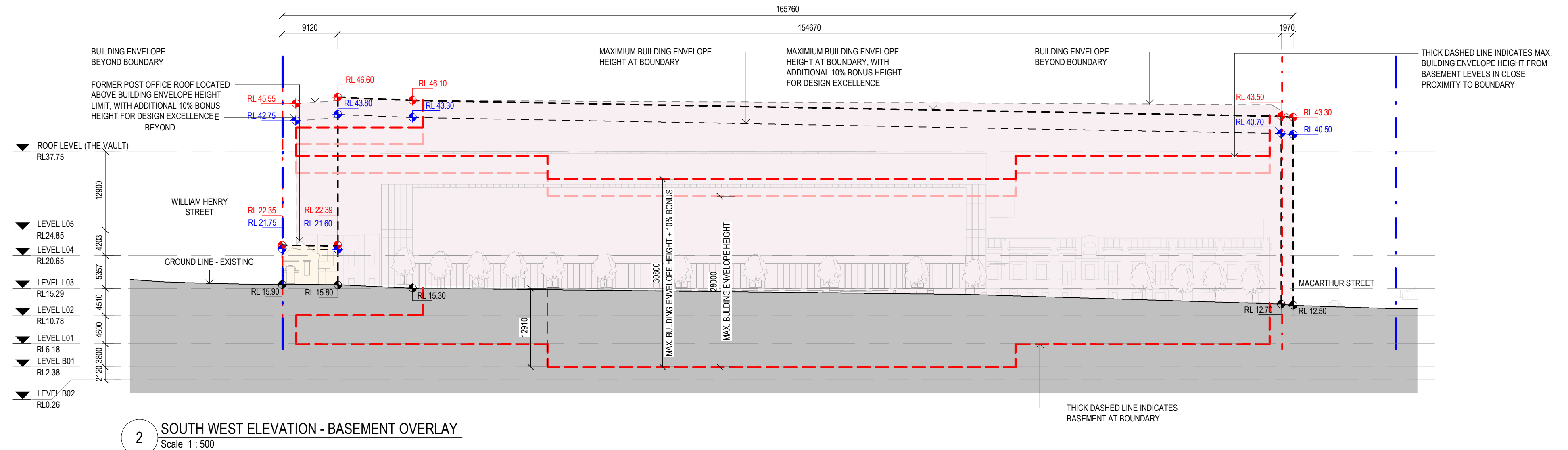
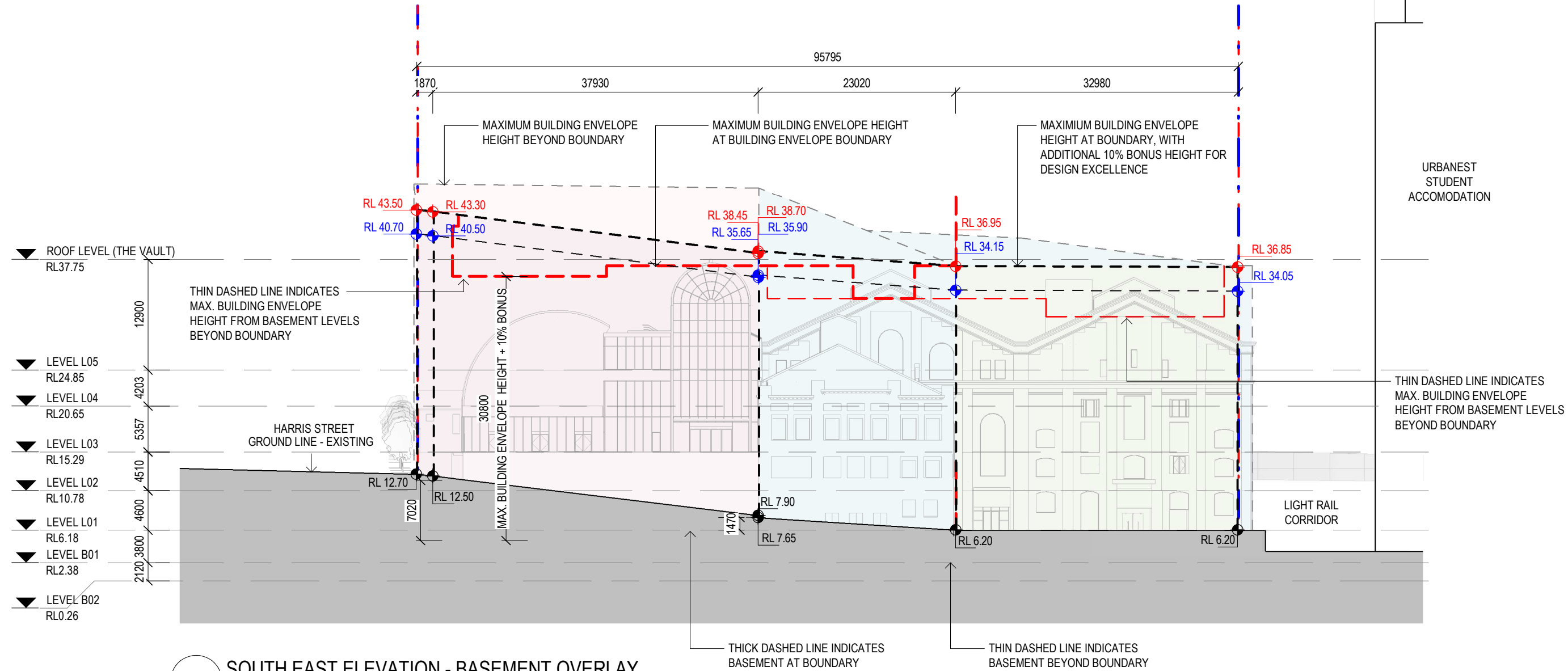
BUILDING ENVELOPE LEGEND

- HERITAGE CORE*
- FORMER POST OFFICE*
- ZONE 1*
- ZONE 2*
- ZONE 3*

Rev.	Issue	Revision Description	Date	Appr by
1	FOR INFORMATION		23.03.2022	MB
2	FOR INFORMATION		01.04.2022	MB
3	FOR INFORMATION		23.05.2022	MB

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Client	Create Infrastructure Create NSW, Department of Enterprise, Investment & Trade	Project No.	2138	Scale @ A2	1 : 500
Project	Powerhouse Ultimo Renewal 500 Harris Street, Ultimo, 2007 NSW	Date	MAR 2022	Co-Ord	Designer
		Drawn	MB	Check	AL
Drawing Status	SKETCH				
Title	BUILDING ENVELOPE ELEVATIONS WITH BASEMENT OVERLAYS 1				
Drawing No.	SK0003			Revision	3



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General Notes

NOTES:

- BUILDING ENVELOPE HEIGHT AS PER SYDNEY LEP 2012 WITH 10% BONUS APPLIED FOR DESIGN EXCELLENCE.
- INTERNAL ENVELOPE THRESHOLDS ARE INDICATIVE AND MAY BE SUBJECT TO CHANGE.
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LEGEND

- LOT BOUNDARY
- SITE WIDE BOUNDARY

- RL XX.XX GROUND LEVEL - EXISTING
- RL XX.XX ENVELOPE HEIGHT
- RL XX.XX ENVELOPE HEIGHT WITH 10% BONUS

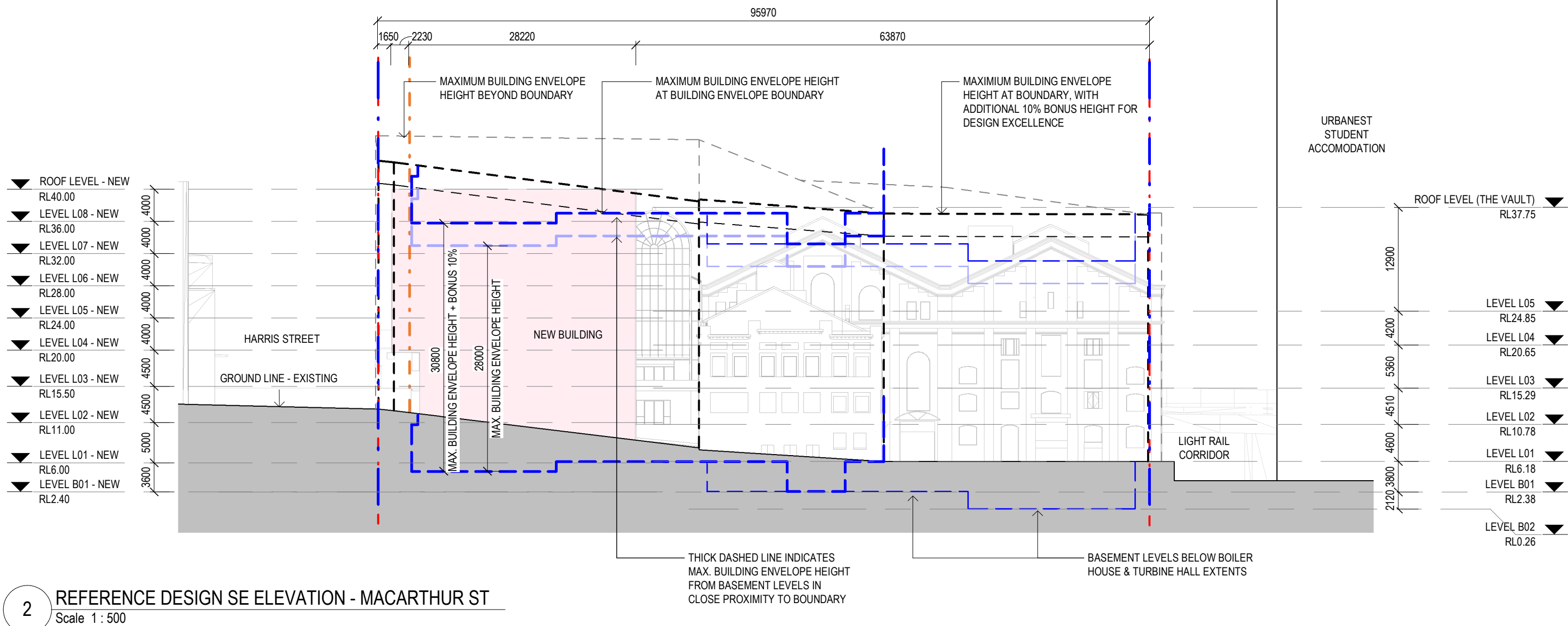
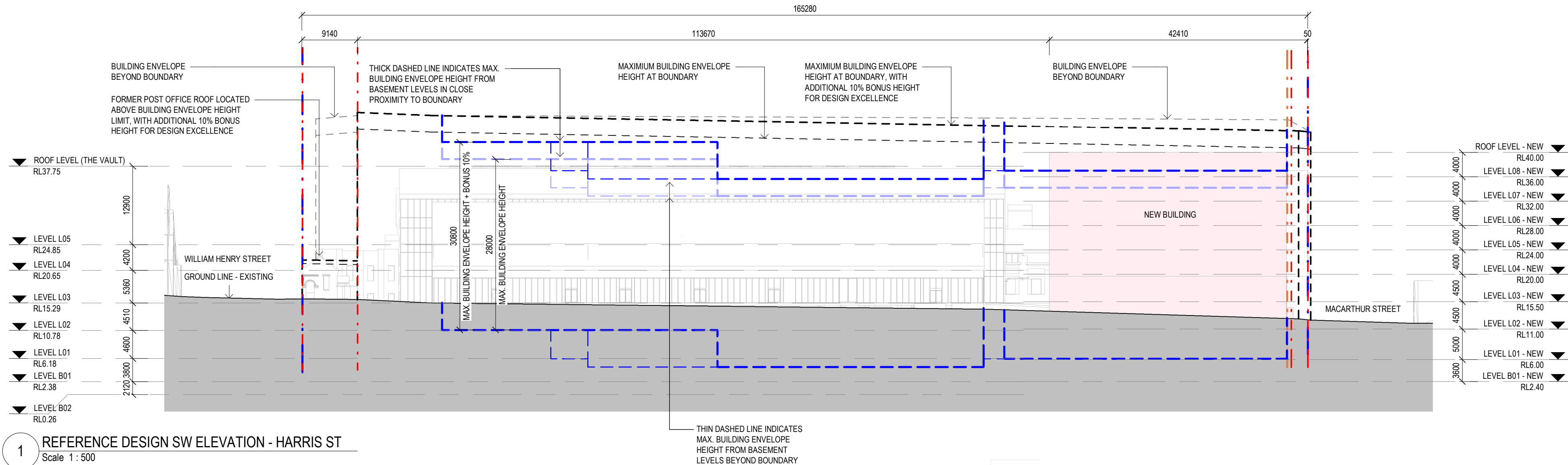
BUILDING ENVELOPE LEGEND

- HERITAGE CORE*
- FORMER POST OFFICE*
- ZONE 1*
- ZONE 2*
- ZONE 3*

Rev.	Issue	Revision Description	Date	Appr by
1	FOR INFORMATION	FOR INFORMATION	23.03.2022 MB	
2	FOR INFORMATION	FOR INFORMATION	01.04.2022 MB	
3	FOR INFORMATION	FOR INFORMATION	23.05.2022 MB	

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Client	Create Infrastructure Create NSW, Department of Enterprise, Investment & Trade	Project No.	2138	Scale @ A2	1 : 500
Project	Powerhouse Ultimo Renewal 500 Harris Street, Ultimo, 2007 NSW	Date	MAR 2022	Co-Ord	Designer
Drawn	MB	Check	AL		
Title	BUILDING ENVELOPE ELEVATIONS WITH BASEMENT OVERLAYS 2	Drawing Status	SKETCH	Drawing No.	SK0004
		Revision			3



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NOTES:

1 BUILDING ENVELOPE HEIGHT AS PER SYDNEY LEP 2012 GUIDELINE WITH 10% BONUS APPLIED FOR DESIGN EXCELLENCE.

LEGEND

CORE & BOH

PRESENTATION SPACE, FOH, RETAIL, F&B

NEW BUILD - BOH

NEW BUILD

WCS, BOH, RISER DEDICATED ZONE

NOT IN PROJECT SCOPE

SITE BOUNDARY

PROPOSED SETBACK TO MACARTHUR STREET & HARRIS STREET

Rev.	Issue	Revision Description	Date	Appr. by
1	FOR INFORMATION	FOR INFORMATION	23.03.2022 MB	
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Client Create Infrastructure
Create NSW, Department of Enterprise, Investment & Trade

Project Powerhouse Ultimo Renewal
500 Harris Street, Ultimo, 2007 NSW

Title REFERENCE DESIGN ELEVATIONS
WITH BASEMENT OVERLAYS



Drawing Status SKETCH

Drawing No.

Project No. 2138 Scale @ A2 1 : 500

Date MAR 2022 Co-Ord Designer

Drawn MB Check Checker

Revision 2