

Clause 4.6 Variation Request

*45-53 Macleay Street, Potts
Point*

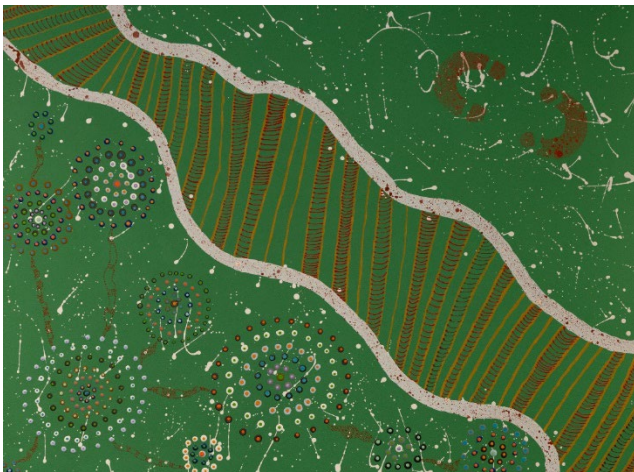
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Acknowledgment of Country

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Urbis is committed to incorporating our respect for First Nations cultures, peoples and storytelling in our work across the Country. We are proud to have partnered with Darug Nation artist, **Hayley Pigram**, and to profile her artwork – **Sacred River Dreaming**.



The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

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Request to vary Clause 16(3) in State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

Address: 45–53 Macleay Street, Potts Point

Date: December 2025

Executive Summary

This Clause 4.6 request seeks a minor variation to the maximum building height permitted under Clause 16(3) of the Housing SEPP. The proposed exceedance of 5.96 metres (11.9%) is limited to the upper levels and essential building elements and does not result in any additional floor space or development intensity.

The variation facilitates a slimmer tower form through the redistribution of approved floor space, concentrating bulk where it causes less impact. This approach delivers improved solar access, better view sharing and reduced visual bulk when compared to a fully compliant scheme. Independent solar and view analysis confirm that all view impacts are attributable to compliant built form and that the additional height does not generate new adverse impacts. From the public domain, the exceedance is visually immaterial.

The proposal has been selected through a competitive design process and has received endorsement from the Design Competition Jury and Design Integrity Panel as demonstrating design excellence. The refined height strategy is integral to achieving the endorsed design outcome and could not be realised under strict compliance without undermining amenity and affordable housing delivery.

Accordingly, strict compliance with the height standard is unreasonable and unnecessary in this instance. The proposed variation is supported by sound environmental planning grounds and is consistent with the objectives of the Housing SEPP and the applicable height controls.

Site and Proposed Development

Site Description

The site is known as 45–53 Macleay Street, Potts Point and is legally described as SP934. The key features of the site are summarised in the following table.

Table 1 Site Description

Characteristic	Description
Country	Gadigal Country
Address	45–53 Macleay Street, Potts Point NSW 2011. It is legally described as SP934
Zoning	MU1 Mixed Use (Sydney LEP 2012)
Site Area	Approximately 1,289 sqm
Site Frontage	The site has a primary frontage to Macleay Street (which accommodates pedestrian access to the building), a secondary frontage to McDonald Street (which provides vehicular access) and a laneway frontage to McDonald Lane.
Existing Use / Structures	The existing building was constructed in the 1960s and comprises a 12–storey residential flat building. The existing building is positioned in the north–east corner of the site, with parking situated on the remainder of the ground floor and Level 1.

Characteristic	Description
	Consent for the demolition of these existing structures has been granted under the Concept SSDA for the site (SSD-79316759).
Topography	The site is situated on relatively flat topography.
Adjacent land uses North	On the opposite side of McDonald Street are 3 and 4-storey residential flat buildings.
Adjacent land uses East	On the opposite side of Macleay Street are several residential flat buildings, including the 10 level Macleay Regis apartment building.
Adjacent land uses South	Directly adjacent is a 4-storey hotel known as the "Whitehouse", "The Yellow House" heritage building at 57-59 Macleay Street, and further south, various 3-storey residential buildings with retail on the ground floor.
Adjacent land uses West	On the opposite side of McDonald Lane are a series of predominantly 2-4 level Victorian era terrace housing and small apartment buildings.
Heritage	The site is not listed as a local or State heritage item, however it is within the C51 Potts Point Heritage Conservation Area (HCA). The existing building on the site is listed as a 'detracting building' in accordance with the Sydney DCP 2012. The concept approval provided consent for the demolition of the existing building on the site. The site also adjoins several heritage items, listed below: ▪ Item 1139 – Terrace house "Santa Fe" including interior. ▪ Item 1140 – Former artists' studio "The Yellow House" including interior. ▪ Item 1141 – Flat building "Wirrawa" including interior. ▪ Item 591 – Flat building "Macleay Regis" including interior. ▪ Item 1198 – Flat building including interior.

Figure 1 Aerial Photograph



Source: Urbis, 2025

Figure 2 Regional Context



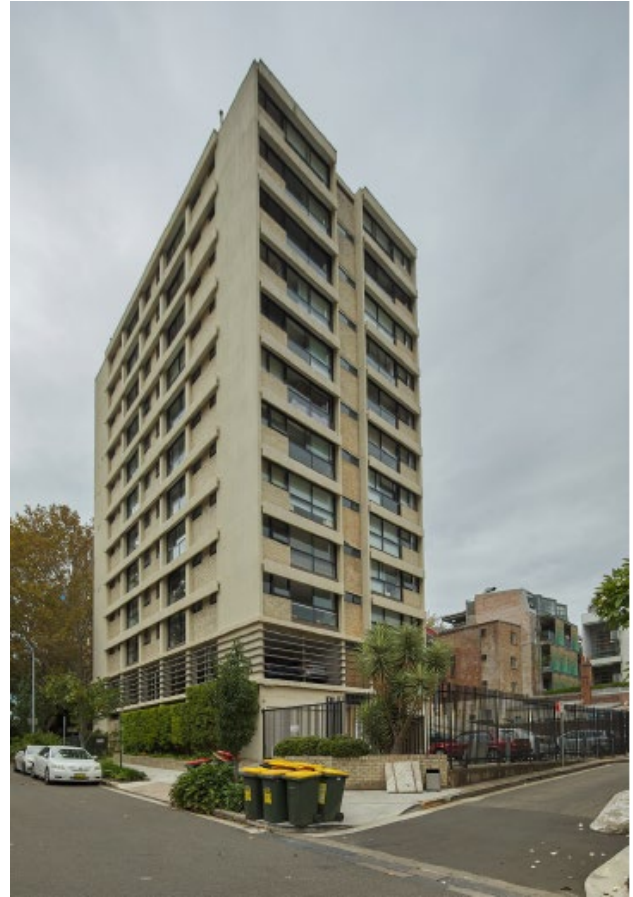
Source: Urbis, 2025

Figure 3 Site Photos



Picture 1 View from North (Macleay Street)

Source: Urbis, 2025



Picture 2 View from North West (McDonald Street)

Source: Urbis, 2025

Figure 4 Height context surrounding the site



Source: KHA

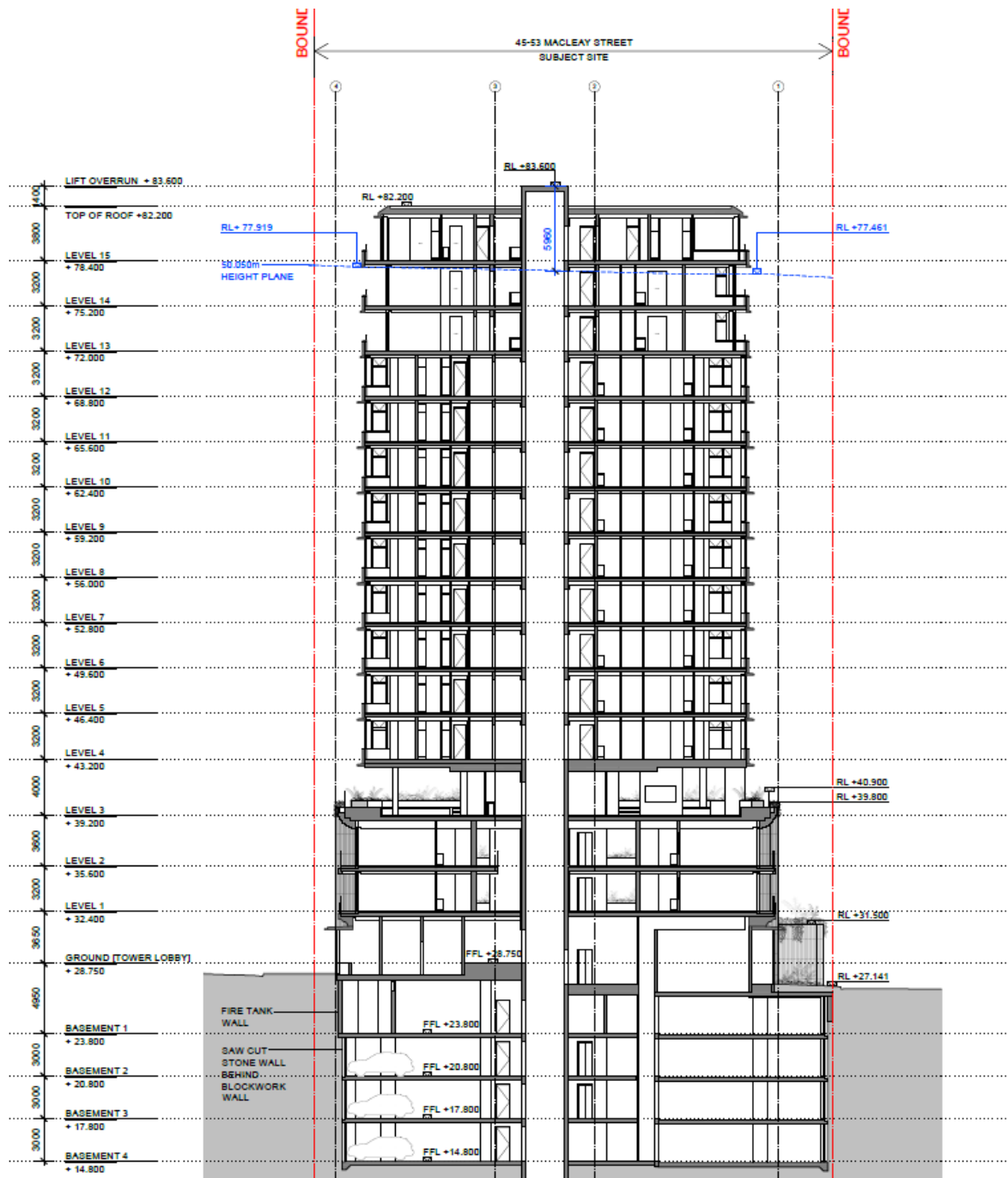
Proposed Development

A summary of the key features and details of the proposed development (including land use and works) is provided in Section 3 of the EIS.

As discussed below, this clause 4.6 seeks to vary the height of building development standard in the Housing SEPP. The permitted height control (given the bonuses afforded to the development) is 50.05m. The proposed development seeks a maximum building height of 56.01m (an increase of 5.96m).

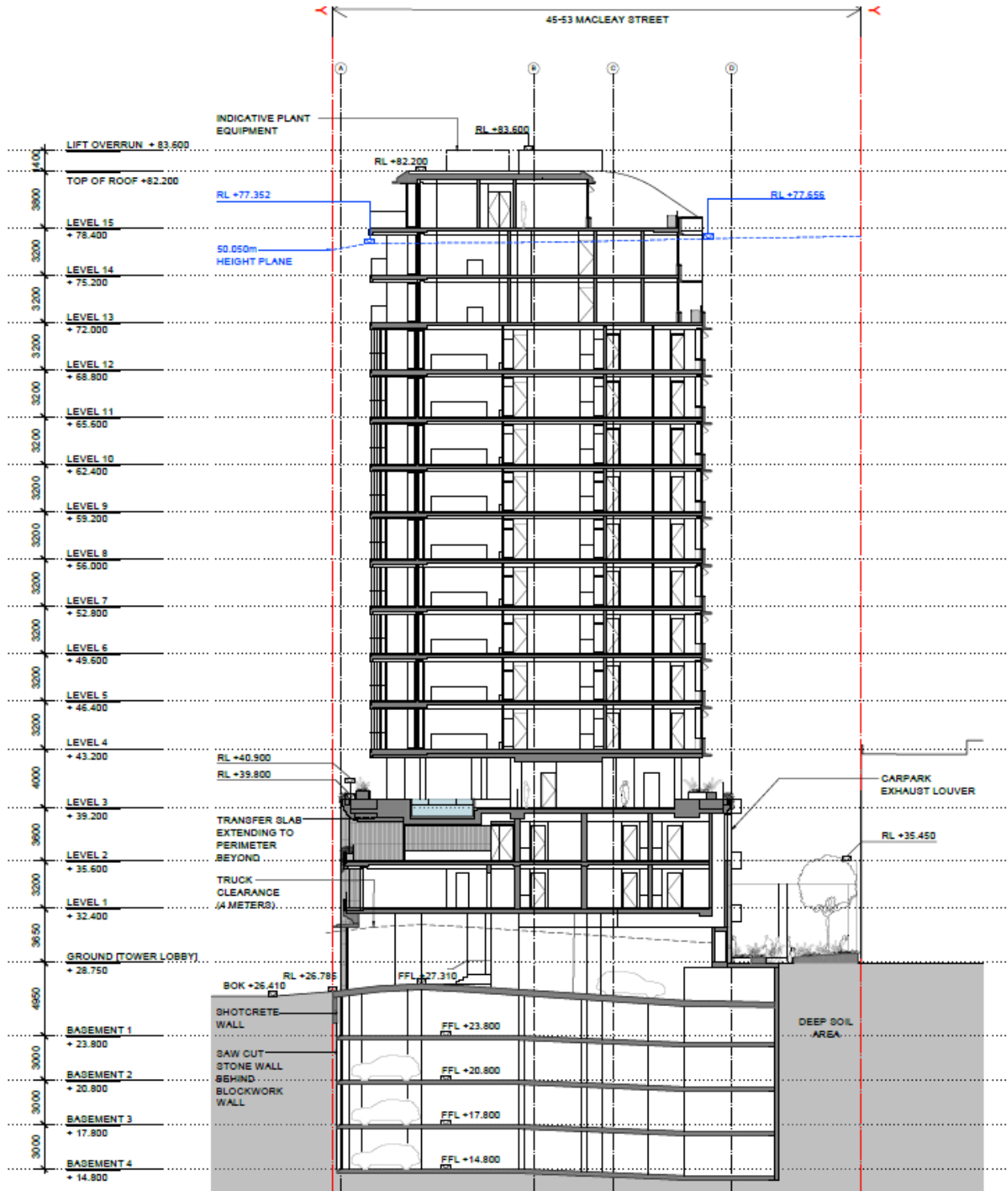
The part of the building (as shown by Figure 5 and Figure 6) that this clause 4.6 (and the height exceedance) relates to is part of the Level 14 sub-penthouse, the Level 15 penthouse apartment, lift overrun and plant and equipment required to service the building.

Figure 5 Section A – Height Exceedance of Proposed Development



Source: KHA

Figure 6 Section B – Height Exceedance of Proposed Development



Source: KHA

Planning instrument, development standard and proposed variation

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

This Clause 4.6 Variation Request seeks to vary Clause 16(3) of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*.

2. What is the site's zoning?

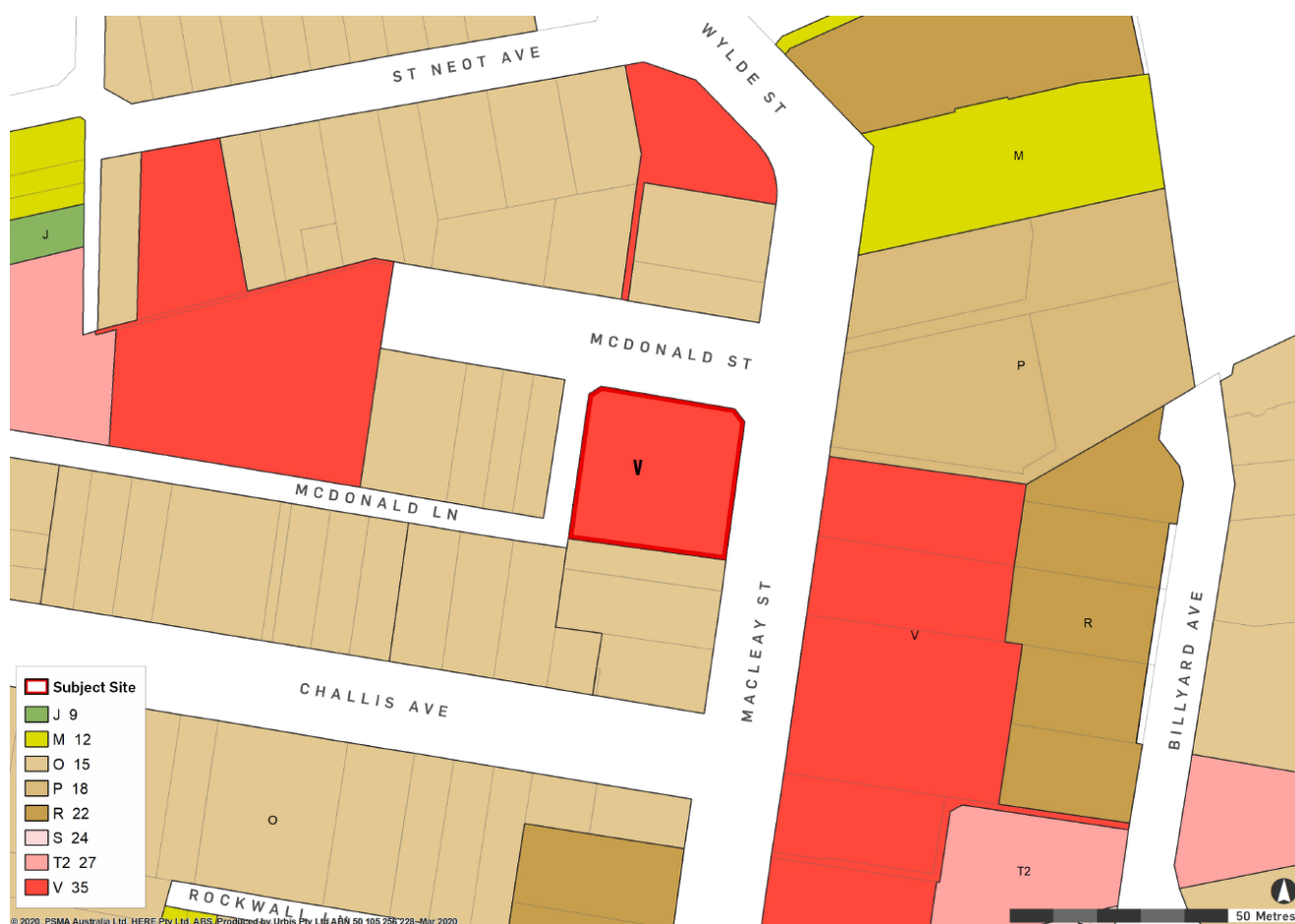
The site is zoned MU1 Mixed Use in accordance with the Sydney Local Environmental Plan (LEP) 2012 (SLEP).

3. What is the development standard to be varied?

The development standard being varied is Clause 16(3) of the Housing SEPP which permits an additional 20–30% building height on top of that prescribed on the site under clause 4.3 of the SLEP 2012, if 10–15% of the total development gross floor area (GFA) is provided as affordable housing for a minimum period of 15 years.

Clause 4.3 of the SLEP specifies that the height of building control for the site is 35m (Figure 7). The proposed development will provide 15% of its GFA as affordable housing and is therefore granted an additional 30% bonus building height.

Figure 7 SLEP Height of Buildings Map



The objectives of the development standard in the SLEP are as follows:

4.3 Height of buildings

(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.

The SLEP also includes a provision under Section 6.21D(3) which permits a building that has undergone a competitive design process and to which the consent authority is satisfied demonstrates design excellence to access a 10% bonus to the maximum permissible building height or floor space ratio as shown on the relevant maps within the SLEP. The proposed development has undergone a competitive design process, was unanimously selected as the winner against five invited architectural teams and has been determined by the Design Competition Jury and Design Integrity Panel as capable of demonstrating design excellence.

Planning Proposal PP-2024-709, which is in its finalisation stage, seeks to allow this bonus to apply to both height and FSR. This Clause 4.6 assumes that PP-2024-709 will be gazetted before determination. At the time of lodgement of this application, the relevant LEP amendment has been through public exhibition, supported by Council (post-exhibition), and is currently awaiting gazettal and has appropriate legal weight.

Therefore, this Clause 4.6 assumes that PP-2024-709 will be gazetted and the maximum height of building control applying to the site under the SLEP is 38.5m.

The proposed height has been established through the incentives provided by the infill affordable housing provisions in Chapter 2, Part 2, Division 1 of the Housing SEPP. Section 16(3) of the Housing SEPP permits an additional 20-30% building height if 10-15% of the total development GFA is provided as affordable housing for a minimum period of 15 years. The proposal includes 860sqm (comprising 15% of the total GFA) of affordable housing to be managed by a register community housing Provider for a 15 year period and is therefore eligible for an additional 30% bonus building height.

The provisions of Clause 16 of the Housing SEPP are provided below:

16 Affordable housing requirements for additional floor space ratio

- (1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).
- (2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

- (3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

The height incentive results in a maximum height of building development standard of **50.05m** (being the 38.5m LEP height control +30%).

The objective of the infill affordable housing provisions of the Housing SEPP is as follows:

15A Objective of division

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

4. Type of development standard?

The request is seeking to vary the numeric height of buildings standard.

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

Under the SLEP, the maximum height of buildings is 38.5m (including the design excellence bonus). With the Housing SEPP incentive provisions, the maximum height of buildings is 50.05m.

The proposal seeks to exceed the maximum building height of 50.05m.

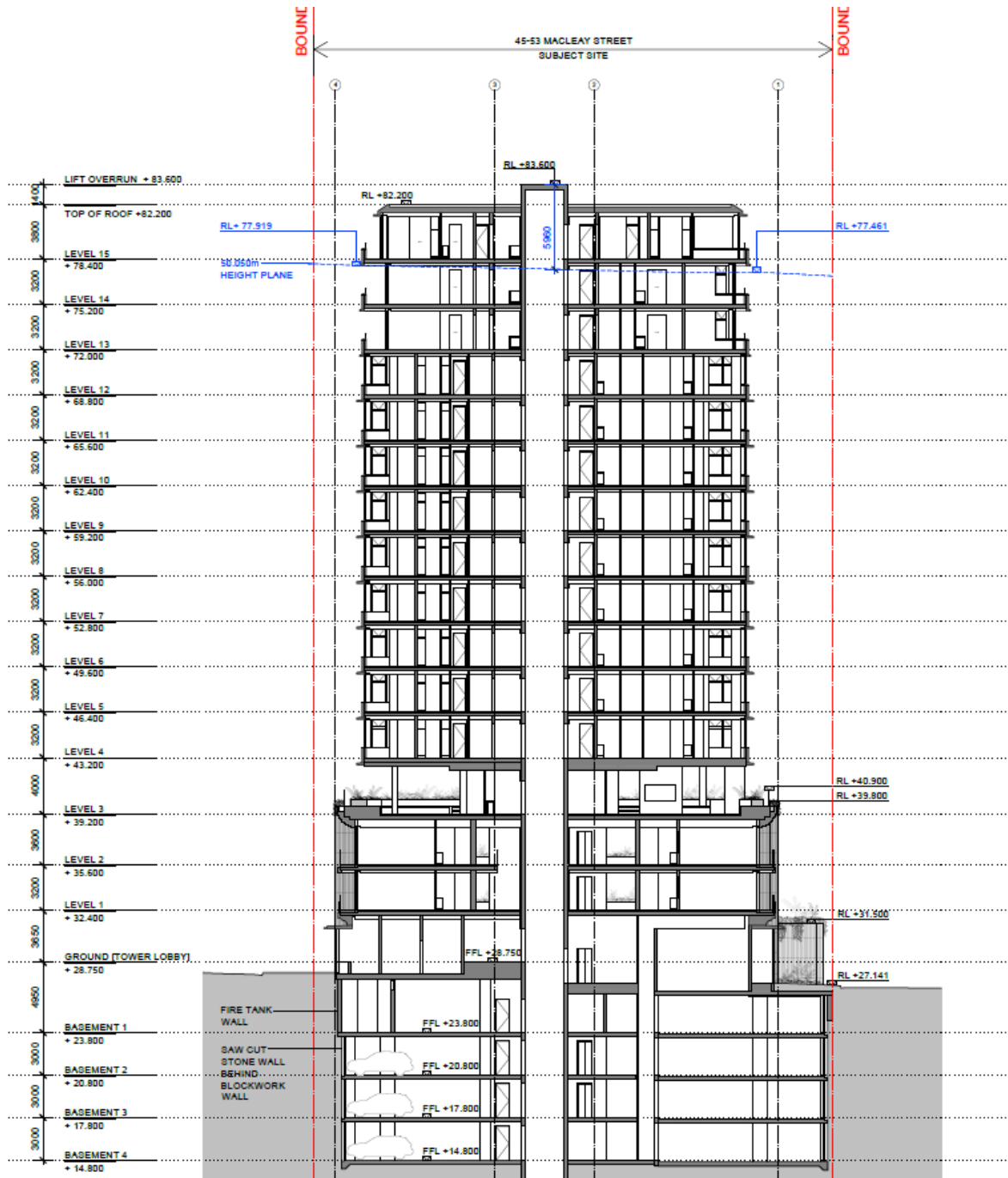
6. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The maximum permissible building height is 50.05m (inclusive of the design excellence bonus). The proposal will have a maximum building height of RL83.6 (or 56.01m) to the top of plant. The majority of the building is limited to RL82.2 (with a maximum building height of 54.61m). The proposal (to the top of plant) exceeds the maximum building height control by 5.96m, which is a percentage variation of 11.9% (see Figure 5 and Figure 6).

7. Visual representation of the proposed variation

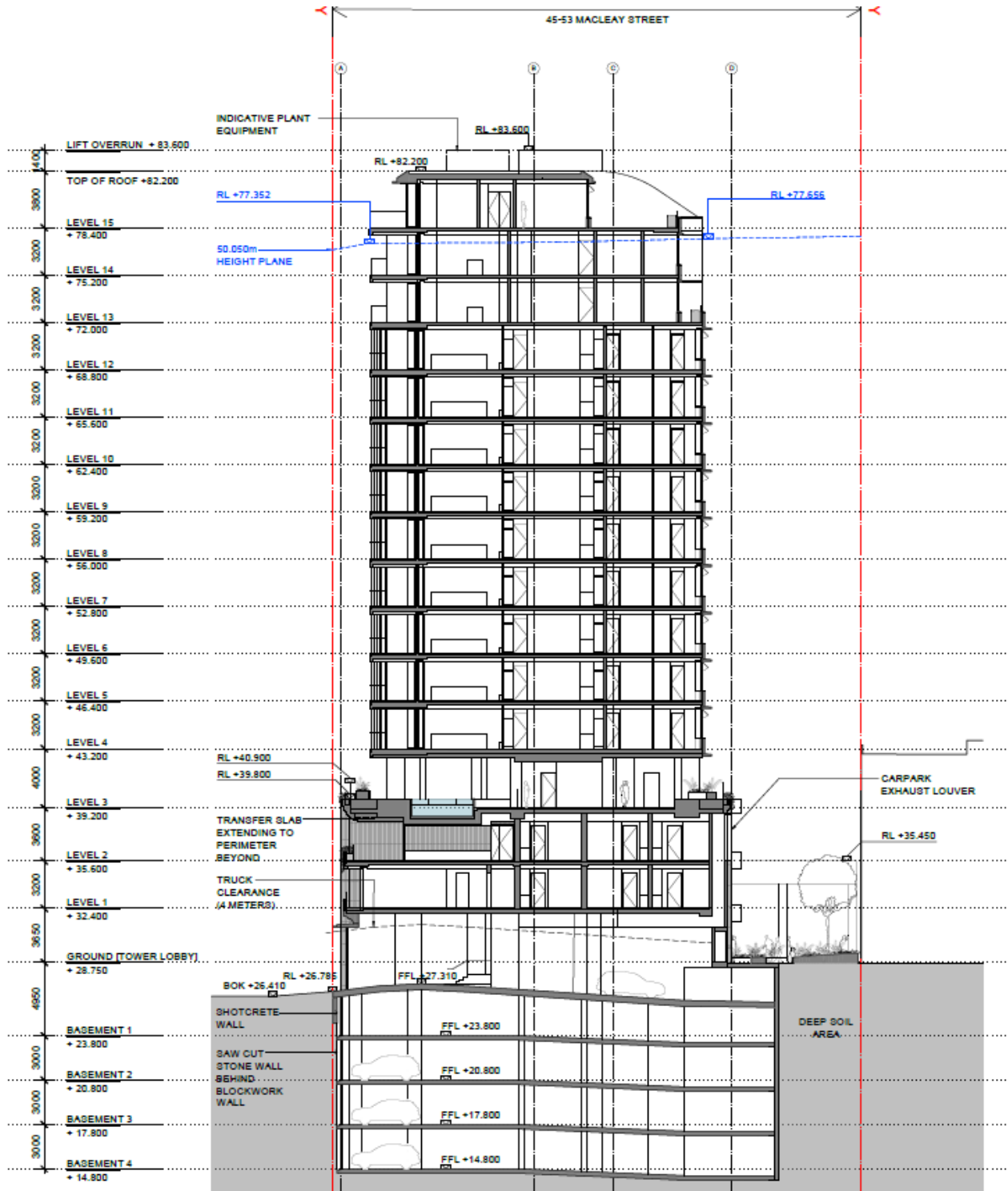
The figures below provide a visual representation of the proposed variation to the height of building development standard. The part of the building that this clause 4.6 (and the height exceedance) relates to is part of the Level 14 sub-penthouse, the Level 15 penthouse apartment, lift overrun and plant and equipment required to service the building.

Figure 8 Section A – Height Exceedance of Proposed Development



Source: KHA

Figure 9 Section B – Height Exceedance of Proposed Development



Source: KHA

Justification for the proposed variation

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

Table 2 Justification for the variation

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<i>For completeness, this section addresses both the objective of the infill affordable housing provisions of the Housing SEPP and the objectives of the height of buildings development standards within the SLEP.</i> <u>Objective Part 2, Division 1 of the Housing SEPP</u> <i>15A The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.</i> The proposal directly achieves the objective of Part 2, Division 1 of the Housing SEPP by delivering 860 sqm (15% of its total GFA) as affordable housing to be managed by a registered Community Housing Provider (CHP) for a 15-year period and be available for very low, low and moderate income households. The affordable housing will be delivered in the form of 23 studio apartments across two-storeys of podium, providing residents with high amenity dwellings in close proximity to services, retail, employment opportunities and public transport. The apartments are supported by dedicated communal facilities, including a 96sqm open space on level two and a shared laundry. The Competition Jury commended the quality of the affordable housing component, noting its thoughtful planning, access to natural light and ventilation and the provision of private and communal open spaces. <u>Relevant objectives of SLEP Clause 4.3</u> <i>(a) to ensure the height of development is appropriate to the condition of the site and its context,</i> The architects specifically designed a taller and more slender tower form to reduce environmental impacts, respond to the site context and the desired future character of Potts Point. The proposal was selected through a competitive design process, with the Design Jury unanimously selecting the current scheme over compliant alternatives for its superior ability to respond to the site's context. The Competition Jury particularly commended the proposal's slender tower form for improving solar access, reducing overshadowing, and enhancing vistas and spaciousness for future residents. The proposed height is appropriate to the site's conditions and its Potts Point context, where the built form is varied and not defined by a single predominant height. The locality contains buildings ranging from 3-4 storey townhouses to mid-rise apartments and towers up to 21 storeys (see Figure 4). At 16 storeys, the proposal sits comfortably within the range of heights in the vicinity of the proposal and maintains a slender profile that reduces the perceived bulk from the public domain. The minor height exceedance is confined to part of the Level 14 sub-penthouse, the Level 15 penthouse apartment, lift overrun and plant and equipment required to service the building. The Level 15 penthouse is set back from the southern façade whilst the plant is located centrally on the rooftop. These rooftop elements were shaped in accordance with the sun angle to minimise overshadowing and are not readily visible from street level or key public viewpoints

Key Questions

Response

demonstrating that regard has been had to 'the condition of the site and its context', in a dense urban environment (refer **Figure 10** and **Figure 11**). The height strategy has been informed by detailed solar and view impact analysis that considers the site's context.

Figure 10 View north-east towards site from southern entry of The Domain carpark



Source: Urbis

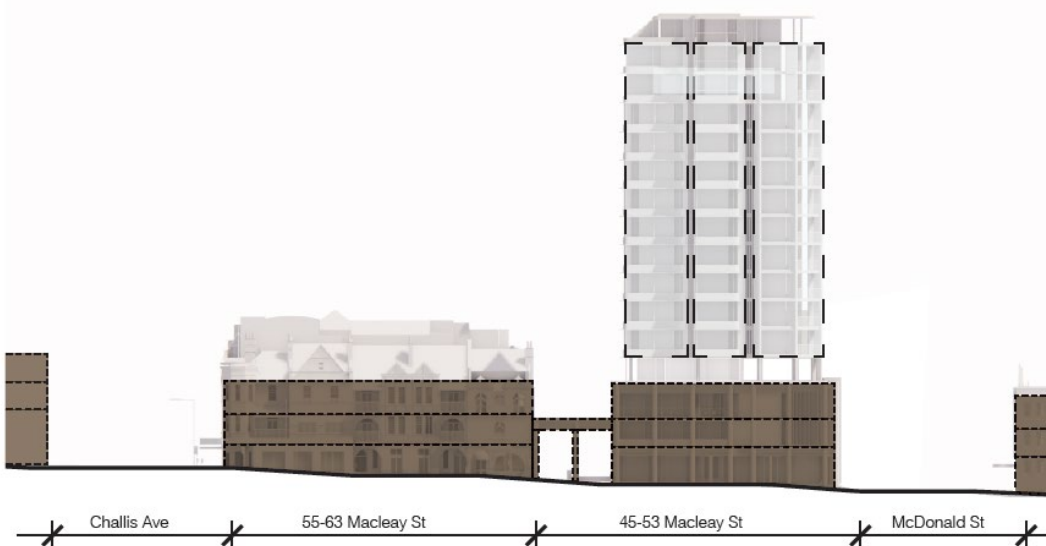
Figure 11 View east towards the site from Sydney Modern Museum



Source: Urbis

Detailed solar analysis has been prepared by KHA which confirms that the proposal improves solar access to neighbouring properties in comparison to a compliant built form, providing a cumulative increase of 14 hours direct solar access to living areas and private open spaces of surrounding properties.

The Visual Impact Assessment and View Sharing Report prepared by Urbis confirms that all view loss to surrounding receivers is caused by compliant built form within the approved concept envelope, meaning the additional height does not create new view

Key Questions	Response
	impacts. Instead, the taller slimmer building profile improves view sharing for surrounding residences, opens oblique view corridors for neighbouring properties and reveals more of the Sydney CBD skyline compared to a compliant built form. Therefore, the proposed height of the development is appropriate to the condition of the site and its context and results in improved outcomes in comparison to a compliant built form. <i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i> The height of the proposal has been carefully designed to achieve an appropriate transition to adjoining heritage items and the Potts Point Heritage Conservation Area (HCA). The Heritage Impact Statement (HIS) prepared by John Oultram Heritage & Design confirms that the proposal respects and enhances the established significant of the HCA and surrounding heritage items, with the height strategy informed by the local heritage context. The three-storey podium aligns with the prevailing street wall height of the adjoining heritage items at 61-63, 57-59 and 55 Macleay Street (Figure 12) Above the podium, the tower is setback and adopts a slender profile, with vertical volumes and indents that reduce perceived height and bulk from key public viewpoints. The additional southern setback, in comparison to the concept approval, and concentration of height towards the Macleay and McDonald Street corner enables clear visual separation between the heritage buildings to the south of the proposal. <i>Figure 12 Proposed podium massing strategy and alignment with neighbouring buildings</i>  <i>Source: SJB</i> Compared to the approved concept envelope, the refined tower form is slimmer and more articulated, which lessens the visual impact of the building's overall height and preserves important view lines to and from heritage items. While the HIS acknowledges some impact from the building's contemporary style and scale, these are limited and consistent with the established pattern of post-war high-rise development in Potts Point, where taller buildings coexist with heritage fabric without diminishing its significance.

Key Questions	Response
	Therefore, it is considered the proposed height exceedance will have a limited and acceptable impact on the setting and significance of the surrounding heritage items, contributory items in the vicinity and the Potts Point Heritage Conservation Area. (b) to promote the sharing of views outside Central Sydney, The proposal has been designed to promote the sharing of views outside of Central Sydney, with the minor height exceedance above the height control for the site having no adverse impact on public or private view outcomes. The Visual Impact Assessment (VIA) prepared by Urbis confirms that, from public domain viewpoints, the building presents a height, bulk and scale that is consistent with surrounding development, and the small portion of built form above the height control is visually immaterial and largely imperceptible. From private domain viewpoints, the View Sharing Report (VSR) concludes that all view loss to surrounding residences is attributable to compliant built form, meaning the additional height does not generate any new view impacts. Importantly, the modest height increase has enabled a more slender tower profile, which opens up oblique view corridors and reveals more of the Sydney CBD skyline compared to a fully compliant scheme. In this way, the proposal not only avoids any detrimental effect on view sharing but delivers a net improvement for certain affected dwellings, meeting the objective of promoting equitable access to valued views outside Central Sydney. (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas, Not applicable. The site is not located in Central Sydney or Green Square Town Centre. (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. Not applicable. The site is not located in Green Square.
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	<i>Not applicable. Not relied upon.</i>
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	<i>Not applicable. Not relied upon.</i>

Key Questions	Response
details if applicable)	
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>Not applicable. Not relied upon.</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>Not applicable. Not relied upon.</i>

As demonstrated above, the objectives of the infill affordable housing provisions of the Housing SEPP and the SLEP height of buildings development standard are achieved notwithstanding the proposed contravention.

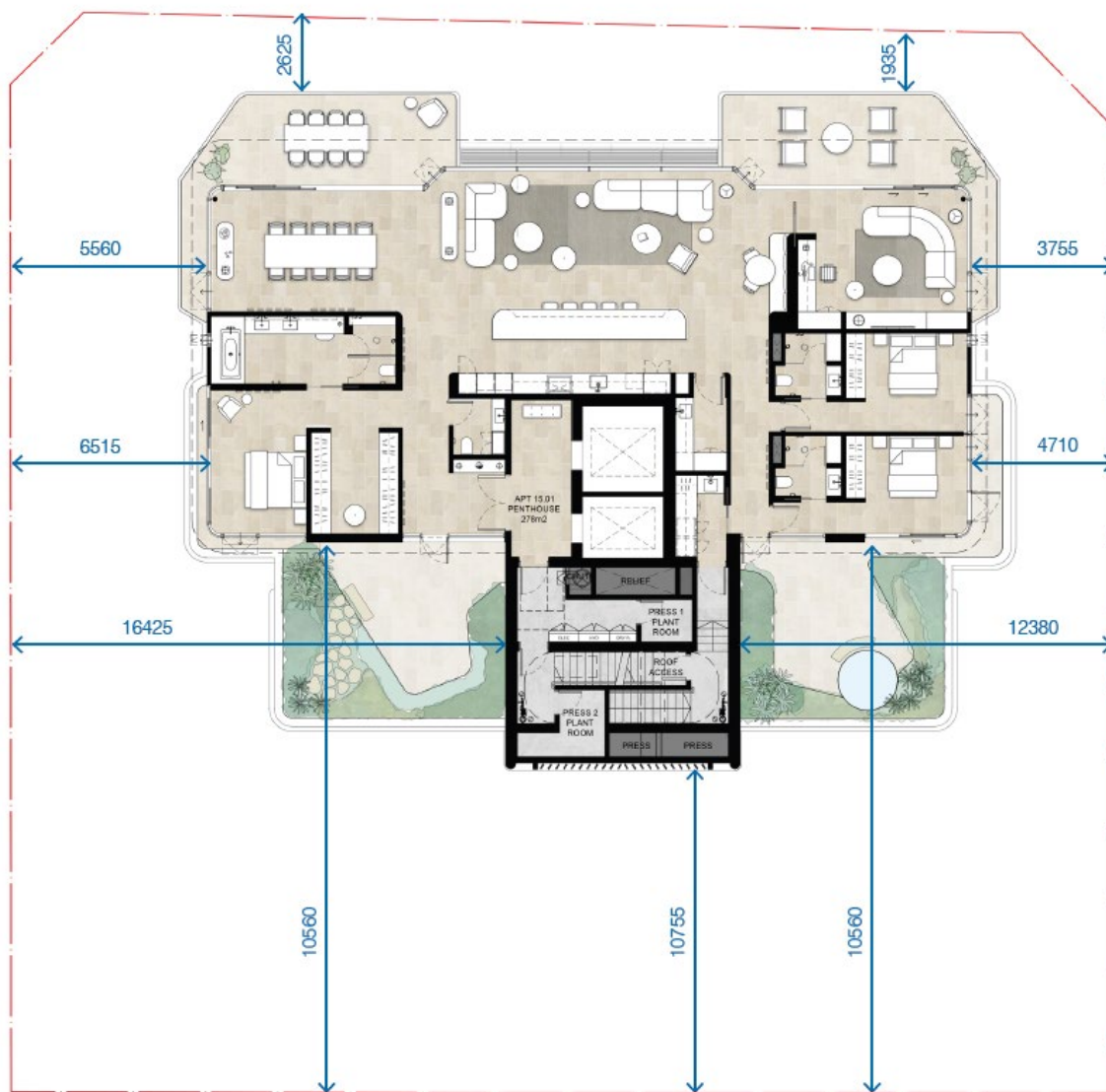
2. Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard. The height exceedance delivers a superior planning and design outcome that could not be achieved under a compliant scheme.

The proposed height variation does not result in any increase in the intensity of land use on the site. The development, with an FSR of 4.286:1, remains below the maximum permitted under the Housing SEPP density bonus provisions (4.29:1), demonstrating that the variation is not being used to achieve additional yield, but rather to enable the efficient and functional resolution of the building form in accordance with the outcomes of the design competition for the site.

The proposal was selected through a competitive design process, with the Design Jury unanimously selecting the current scheme over compliant alternatives for its ability to achieve design excellence. The Competition Jury particularly commended the proposal's slender tower form for improving solar access, reducing overshadowing, and enhancing vistas and spaciousness for future residents. The additional height has been carefully designed by the architects by being setback from the southern façade, angled in response to the sun path and only using a portion of the Level 15 floorplate to minimise overshadowing and ensure it is not readily perceptible from street level (**Figure 13** and **Figure 14**).

Figure 13 Floorplate of the Level 15 penthouse showing setback of the built form to the south



Source: KHA

Figure 14 Artist impression of the penthouse showing setback of the built form from the southern facade



Source: KHA

The Visual Impact Assessment and View Sharing Report prepared by Urbis confirms that all view loss to surrounding receivers is caused by compliant built form within the approved concept envelope, meaning the additional height does not create new view impacts. Instead, the taller slimmer building profile improves view sharing for surrounding residences, opens oblique view corridors for neighbouring properties and reveals more of the Sydney CBD skyline compared to a compliant built form.

The proposal improves solar access to neighbouring properties by concentrating floor space vertically, resulting in a narrower, faster-moving shadow than a broader compliant form. Solar access analysis by KHA shows that, compared to the concept approval, the proposal improves sunlight access for 33 apartments in surrounding buildings during the most constrained mid-winter conditions, providing a cumulative increase of 14 hours direct solar access to living areas and private open spaces of surrounding properties.

Strict compliance with the height control would prevent the proposed building from being delivered as intended. The plant and lift overruns are essential components of the building's operations and have been carefully consolidated and centrally located on the roof, positioned away from key public domain interfaces.

The mechanical plant equipment is required to ensure the building functions appropriately and complies with BCA requirements. It will be fully enclosed behind screening, ensuring it remains obscured from public view. Additionally, the lifts are necessary to provide equitable access to all floors, and the associated overruns represent only minor breaches. Due to their central placement within the site, these elements will not be visible or perceptible from the public domain, resulting in no adverse visual impact.

A compliant scheme could not deliver these benefits without reducing overall GFA, which would directly reduce the supply of affordable housing and undermine the Housing SEPP's objective to facilitate well-located, high-amenity affordable housing. As outlined in the DPHI 'In-fill affordable housing Practice note' (December 2023), applicants and consent authorities *"should be flexible in the design response of the development"*, having regard to both the need for affordable housing and the impact of the proposal on the amenity of the site and adjoining land. While the in-fill affordable housing bonuses do not override

local development standards, the Practice Note emphasises that these standards *“should be applied flexibly and need to be balanced against the need to realise more affordable housing”*.

The height exceedance is therefore justified on environmental planning grounds as it enables a design that better meets the desired future character of Potts Point, optimises solar and view outcomes, reduces bulk, and sustains affordable housing provision.

For the reasons detailed in this request, the variation to building height standard of the Housing SEPP is well-founded and justified and there are sufficient environmental planning grounds to warrant contravention.

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