



February 2019

Clause 4.6 Variation Request

Floor Space Ratio Development Standard

Concept State Significant Development Application SSD 8875:

Mixed Use Residential Option

Sydney Metro City & Southwest

Pitt Street North Over Station Development

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1. Introduction

This clause 4.6 variation request (clause 4.6) is submitted as part of the Submissions Report for concept State Significant Development Application (concept SSD Application) to the Department of Planning and Environment (DPE), on behalf of Sydney Metro. The concept proposal provides for two different land use options, and this clause 4.6 variation request relates to the **mixed use residential option**.

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP 2012) enables the consent authority to grant development consent for development even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

This report requests and justifies a variation to clauses 4.4 and 6.4, which relate to the maximum floor space ratio (FSR), as permitted under clause 4.6 of SLEP 2012. It should be read in conjunction with the Environmental Impact Statement (EIS), Submissions Report and Final Urban Design Report.

2. Development Standard to be Varied

2.1. Is the Planning Control in Question a Development Standard

'Development Standards' are defined under section 4(1) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) as follows:

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

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

The FSR controls under clauses 4.4 and 6.4 of SLEP 2012 are clearly and unambiguously a development standard.

2.2. Relevant Development Standard the Subject of this Variation Request

As part of the concept proposal, this Clause 4.6 Variation Request seeks to vary clauses 4.4 and 6.4 of the SLEP 2012. Each of these clauses has been further discussed below.

2.2.1. Clause 4.4 of the SLEP 2012

Clause 4.4 of the SLEP 2012 works to detail the objectives and the base FSR for land within the City of Sydney Local Government Area (LGA), and is to be read in conjunction with the mapping excerpt (as relevant to the site) at Figure 1. Clause 4.4 has been further detailed below.

4.4 Floor Space Ratio

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

(a) to provide for sufficient floor space to meet anticipated development needs for the foreseeable future,

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The maximum FSR for the land shown on the Floor Space Ratio Map is 8:1.

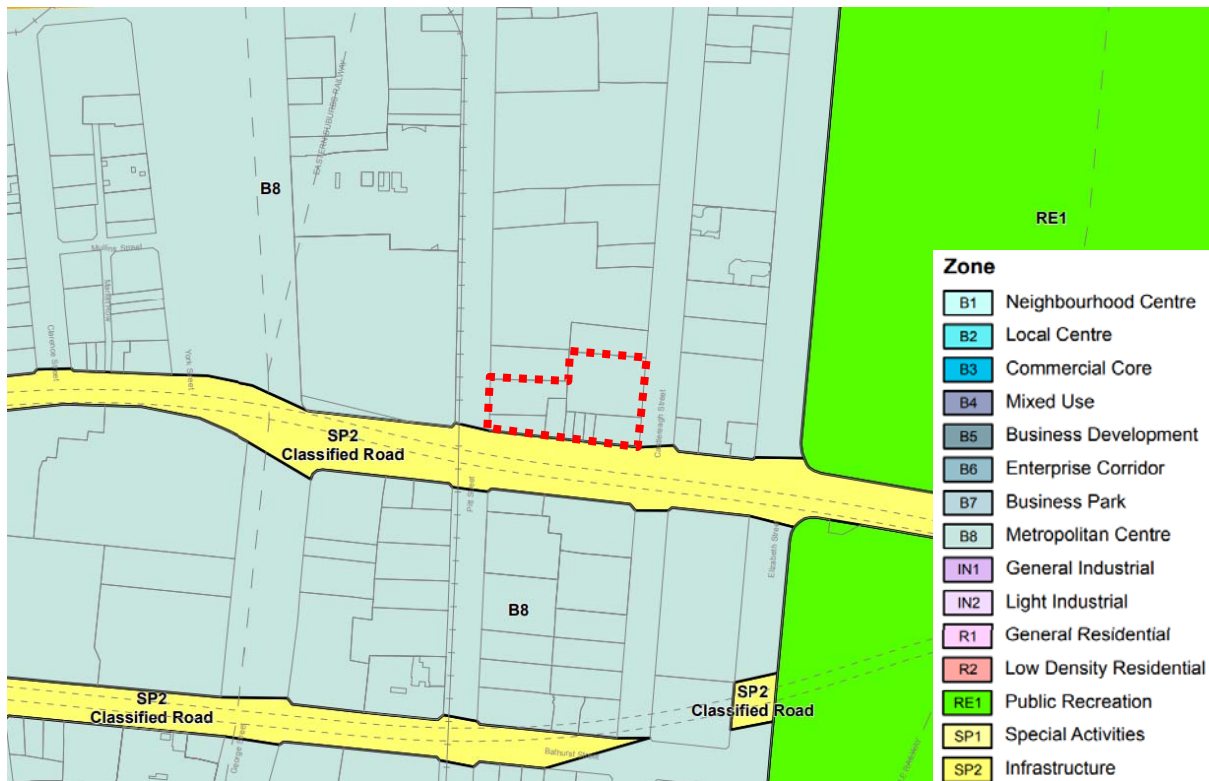


Figure 1 – Land use zone map excerpt (site boundary in red dash)

2.2.2. Clause 6.4 of the SLEP 2012

In addition to the 'base' FSR provided under clause 4.4, an additional quantum of floorspace is unlocked for the site by virtue of the use proposed in accordance with land covered by 'Area 2' of the FSR mapping. This is detailed at clause 6.4 of the SLEP 2012, and the relevant parts of the clause have been reproduced below for reference.

6.4 Accommodation Floor Space

- (1) A building that is in an Area, and is used for a purpose specified in relation to the Area in paragraph (a), (b), (c), (d), (e), (f) or (g), is eligible for an amount of additional floor space (accommodation floor space) equivalent to that which may be achieved by applying to the building the floor space ratio specified in the relevant paragraph:

...

(c) Area 2, office premises, business premises or retail premises – 4.5:1,

(d) Area 2, residential accommodation, serviced apartments, hotel or motel accommodation, community facilities or centre-based child care facilities – 6:1,

...

- (2) The amount of additional floor space that can be achieved under a paragraph is to be reduced proportionally if only part of a building is used for a purpose specified in that paragraph.

- (3) More than one amount under subclause (1) may apply in respect of a building that use used for more than one purpose.

2.3. Extent of Proposed Variation

2.3.1. Proposed Land Use Mix and Maximum Gross Floor Area

The concept SSD Application seeks consent for a maximum Gross Floor Area (GFA) of 49,120 square metres for the over station development (OSD) component, comprising a maximum GFA of 33,416 square metres for residential use, 769 square metres of OSD storage for residential dwellings, 13,453 square metres for visitor accommodation use, and 1,482 square metres for commercial use. This equates to a FSR of 15.59:1, resulting in a total maximum GFA at the site (including station floorspace of 1,189 square metres) of 50,310 square metres and a total maximum FSR of 15.966:1.

2.3.2. Extent of Proposed Variation

In accordance with the SLEP 2012, and based on the scheme proposed as part of this concept SSD Application, the maximum FSR permissible for the mixed use outcome comprises the sum of the following:

- The 'base' FSR for the site of 8:1 (clause 4.4 of the SLEP 2012)
- Accommodation floor space FSR of up to 4.5:1 for office premises, business premises or retail premises and up to 6:1 for residential accommodation, serviced apartments, hotel or motel accommodation, community facilities or centre-based child care facilities (clause 6.4 of the SLEP 2012), calculated based on the maximum accommodation floor space allowance
- Up to 1.4:1 (10 per cent above the sum of the base and accommodation FSRs) which is awarded when design excellence is achieved (noting that this clause is not applicable in the current proposal)

Based on the mix of land uses described in Section 2.3.1, the proposal would have a maximum FSR of 13.814:1 (43,528 square metres of GFA), in accordance with clauses 4.4 and 6.4 of the SLEP 2012. The proposed development therefore exceeds the maximum FSR development standard by 6,782m² (2.15:1 or 15.6% of the development standard).

3. Background and Context

3.1. Project background

On 9 January 2017, the Minister for Planning approved the Sydney Metro City & Southwest – Chatswood to Sydenham application lodged by Transport for NSW (TfNSW) as a Critical State Significant Infrastructure (CSSI) project with reference SSI 15_7400 (CSSI Approval).

The NSW Government identified that stations on the Sydney Metro City & Southwest project could be better integrated with the communities and public spaces around them. This included the construction of buildings on top of these stations and commercial, residential, community and retail opportunities.

The concept proposal capitalises on the Sydney Metro improvements by providing for additional residential capacity in locations which are immediately proximate to new high-capacity public transport. Additional residential capacity in this location will align with the fifth Planning Priority in the Eastern City District Plan by providing housing supply in a location which has access to a level of jobs and services which is near unmatched anywhere across Australia.

The concept proposal also includes the provision of additional visitor accommodation and commercial capacity, which will further contribute to the creation of a high quality integrated station development outcome at the site.

However, the ability for the proposed project to contribute to the legacy of the Sydney Metro project in a meaningful manner is limited in this case by an overly prescriptive floor space control. This is seen as an unreasonable and unnecessary outcome at the site, given that the development does not result in any unacceptable adverse impacts, and the substantial economic, social and legacy benefits to be gained from the site. This has been further discussed throughout this statement.

The concept proposal was publicly exhibited between 16 August 2018 and 12 September 2018. Sydney Metro has responded to the submissions made by the public and government agencies in the Submissions Report. An issue identified in the submissions was the flexibility of land uses within the proposed building envelope, and the relationship between this flexibility and the maximum gross floor area for which consent is sought in relation to the provisions of the SLEP 2012.

3.2. The land subject to this variation

This clause 4.6 relates to the following allotments which, together, are referred to as 175-183 Castlereagh Street, Sydney and outlined in Figure 2:

- Lot 1 in DP596474
- Lot 17 in DP1095869
- Lot 2 in DP509677
- Lot 2 in DP982663
- Lot 1 in DP982663
- Lot 3 in DP61187
- Lot 1 in DP74367
- Lot 3 in DP74952
- Lot 2 in DP900055
- Lot 1 in DP229365

The site has an area of 3,150 square metres. A full description of the site is included in Section 4.0 of the EIS submitted for this application.



Figure 2 – Site aerial photograph

3.3. Site context

It is relevant to consider the context of the site when evaluating the merits of a proposal which seeks to exceed a development standard through clause 4.6 of the SLEP 2012. Specifically, this site comprises a significant consolidated site in the Sydney Central Business District, which forms part of a transformative precinct within the south-eastern portion of the City.

In effect, the development above the Pitt Street Station portals comprises a centrepiece of this wider precinct which will work to reinforce the primacy and legacy of the Sydney Metro project. Sydney Metro will provide a substantial boost to transport accessibility into and through the Sydney CBD, with Pitt Street Station comprising part of the Chatswood to Sydenham stage of the overall future network. On the basis of this boost to public transport capacity, a future OSD at the site will be uniquely positioned to take advantage of the Pitt Street station development. This has been reiterated through the design development of the station, which has made detailed provision for a future OSD element above. On this basis, it is necessary to deliver a building form which delivers on this opportunity, enabling the delivery of a world class integrated station development at the site whereby the station and OSD elements work together to provide a seamless user experience.

4. Justification for contravention of the development standard

Clause 4.6 of the SLEP 2012 provides that:

4.6 Exceptions to Development Standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, clause 4.6(4)(a) of SLEP 2012 provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Additionally, the tests that are relevant to assessing a request to vary a development standard are contained in the following NSW Land and Environment Court cases:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
4. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.

The relevant matters contained in clause 4.6 of SLEP 2012, with respect to the maximum FSR development standard, are each addressed below, including with regard to these decisions.

4.1. **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 identified five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard was unreasonable or unnecessary in the circumstances of the case, was not limited to the five ways identified in *Wehbe*.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis is applicable 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 SLEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are applicable to this clause 4.6 variation request.

The five ways outlined in *Wehbe* include:

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

This clause 4.6 variation request establishes that primarily compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because objectives of the standard are achieved notwithstanding the non-compliance with the standard (First Way).

The environmental planning grounds relied on in the written request under clause 4.6 must be sufficient to justify contravening the development standard. 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 v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

4.1.1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way)

Clause 4.4 of SLEP 2012 sets out the following objectives in relation to the FSR development standard:

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future.*
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.*

The concept SSD Application to which this clause 4.6 variation request relates seeks consent for a FSR which exceeds the specified rate under the SLEP 2012. As part of any such request, it must be demonstrated whether the development achieves the objectives of the development standard, despite a numerical non-compliance. On this basis, the proposed development has been assessed against each objective contained at clause 4.4 of the SLEP 2012.

(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future.

The NSW Government has identified Sydney as Australia's finance and economic capital, containing half of Australia's globally competitive service sector jobs. It accounts for approximately 70 per cent of total NSW's economic output and over 20 percent of Australia's Gross Domestic Product (SGS Economics, from CSSI Project Application Report p21). Sydney's population is forecast to increase from 4.3 million to 6.2 million people by 2036, and employment is expected to increase from 2.1 million to 3.1 million by 2036.

The proposal provides additional housing to meet the requirements of the future community, additional visitor accommodation to support the tourism economy and additional office floor space to support the growth of jobs in the knowledge economy within the Sydney CBD. The subject site is ideally situated to provide capacity to support anticipated development needs across the employment, housing and visitor accommodation sectors based upon the significant increase in public transport services immediately available at the site.

Strict compliance with the development standard would result in a reduction in the floorspace provided for housing, employment and tourist and visitor accommodation, which is contrary to this objective of the development standard. This is exacerbated because it is not possible nor desirable to reduce the gross floor area occupied by the new Sydney Metro station itself or the above-ground residential storage provided within the station podium, which are being constructed pursuant to the CSSI Approval, despite these features being a unique aspect of the site which contribute to the cause of the variation of the development standard.

Accordingly, this objective is satisfied notwithstanding the variation to the development standard.

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.

The subject site, by virtue of the delivery of Pitt Street Station in accordance with the CSSI Approval, will provide a significant boost to the public transport capacity of the broader Sydney CBD, and deliver a unique level of convenience, service and accessibility for the future OSD that is unprecedented in Sydney or NSW. Accordingly, the subject site has a unique ability to accommodate a density and intensity of land use that partially exceeds the FSR controls under SLEP 2012 that apply across the entire Area 2 precinct of the Sydney CBD without resulting in any adverse environmental impacts.

It is also noted that the station floorspace consists entirely of the ground floor and below ground station areas, while the residential storage is located within the volumetric podium space which has already been approved under the CSSI Approval.

The built form impacts of the proposed envelope are considered in detail in Section 8 of the EIS, the Design Report provided at Appendix I of the EIS and are supplemented by further consideration in the Submissions Report. This assessment concludes that, subject to detailed design, future development within the proposed building envelope will not result in any unacceptable adverse impacts on the surrounding urban environment in terms of urban design, built form, overshadowing, residential amenity, wind impacts or impacts on utilities infrastructure. Additionally, the proposed GFA is able to comfortably be accommodated within the building envelope, which complies with the provisions of the SLEP 2012.

The transport and traffic impacts of the proposed development are considered at Section 8.10 of the EIS and Appendix T of the EIS. The site is located within a busy CBD environment, with substantial pedestrian and vehicular traffic in the immediate vicinity of the site. The delivery of the metro station will significantly enhance public transit capacity within the Sydney CBD, providing increased opportunities for public transit utilisation and reducing the need for driving. Future occupants of the OSD will benefit from an unprecedented level of accessibility. This is in addition to the high level of walkability and direct access to employment, services and leisure that comes with a CBD-location. This will control the extent of pedestrian generation in the surrounding area to a level commensurate or less than would otherwise occur under a compliant scheme where the integrated station development did not occur. On-site parking provision for the future OSD is not increased by the proposed variation, and is well below the maximum car parking rates prescribed in Part 7 Division 1 of SLEP 2012. Accordingly, the variation continues to achieve the objective of the development standard by controlling car parking (and resultant vehicular generation) to a level that is below that which could otherwise result from a compliant scheme.

Further to the above, it is noted that the proposed development of the site would have an FSR of 15.35:1 if the station and residential storage space was excluded from the calculation of FSR, which is a reasonable proposition given that it adds to, rather than detracts from, the infrastructure capacity of the Sydney CBD. This FSR is less than the maximum development capacity of the site (15.4:1) under a fully compliant scheme with the maximum accommodation floor space and design excellence bonus (absent the metro station) in accordance with the SLEP 2012 provisions but does not provide any new infrastructure capacity. The proposed development is therefore considered to be entirely compatible with the capacity of the site from a development intensity perspective.

Accordingly, it is considered that the OSD will continue to regulate the density, built form and land use intensity, and to control vehicle or pedestrian generation on the site, at a level that is appropriate for the circumstances of the site and which achieves this objective of the development standard notwithstanding the non-compliance.

(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

Transport Infrastructure

The proposed development has been proposed within the context of the wider Sydney Metro Chatswood to Sydenham CSSI project, which comprises a step-change public transport project which aims to improve accessibility through the Sydney Central Business District. This is one of the key planned infrastructure projects in Sydney in the coming years and will have a direct positive impact on the public transport capacity of the Sydney CBD. It is noted that the NSW Government's commitment to delivering the Sydney Metro City & Southwest Chatswood to Sydenham project was only made subsequent to the drafting and public exhibition of SLEP 2012, and that this significant planned infrastructure was not contemplated at the time that the provisions relevant to the development standard were formulated.

The proposed development will directly facilitate the creation of the Pitt Street Station precinct, which will enable the NSW Government and Council to regulate private vehicle use in the city over the coming years, by providing better transport infrastructure and raising the public transport capacity of Central Sydney.

The benefits of the Sydney Metro City & Southwest Chatswood to Sydenham project are twofold. Initially, the Sydney Metro line will operate with a significantly increased capacity, in two directions on dedicated tracks through the Sydney CBD, with Figure 3 providing a comparison of the metro capacity, when compared to current Sydney Trains suburban lines.

Additionally, in repurposing existing rail lines for metro, Sydney Metro will also work to free up additional spaces within the existing network for the growth of other suburban lines. Effectively, this is caused by a reduced requirement for lines to merge as they approach the CBD. This has been demonstrated visually at Figure 4.

The existing FSR provisions of SLEP 2012 for the site were established prior to the designation of the site as the location of the northern portal for the new Pitt Street Station. Accordingly, the underlying FSR controls do not account for the significant increase in transport infrastructure capacity which is to be delivered on the site as a result of the CSSI Approval (as well as the GFA required to be attributed for transport infrastructure purposes). Accordingly, the proposed variation to the development standard is considered to be minor in the context of the substantive increase in transport infrastructure capacity being provided on the site.

It is also noted that the intensity of the development is not increased under this application in and of itself, with the additional floorspace sought due to the floorspace requirements of the metro station in the form of the residential storage space, offset for the (largely underground) Pitt Street Station concourse, and a reduction in the maximum floorspace bonus afforded to the site due to the metro station. The only other component under which additional FSR is being sought is due to the proposed alternate avenue of achieving design excellence, which has been pursued so as to align with the broader approach for achieving design excellence across the Sydney Metro project as outlined in the CSSI Approval. This alternate measure (alternate Design Excellence Strategy combined with Clause 4.6 Variation Request to account for the 10% bonus) is considered to achieve the same outcome as Council's Design Excellence Strategy, and has been discussed extensively in the submitted EIS and Submissions Report.

On this basis, it can be considered that the development, which has been proposed in conjunction with this program of wider public transport development, has been aligned with a substantial infrastructure capacity increase at the site in the coming years. In this manner, the proposal directly assists the facilitation of this objective, and has been planned in an integrated manner alongside the future Sydney Metro station.



Figure 3 – Capacity of Sydney Metro by comparison to current suburban train lines

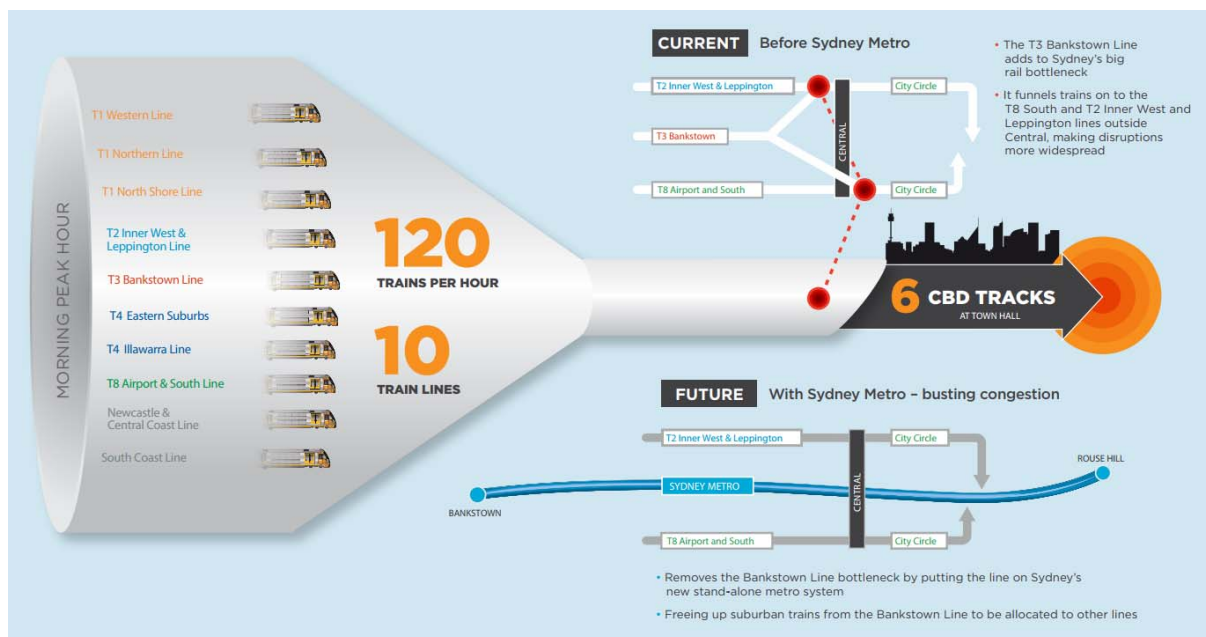


Figure 4 – Capacity unlocked by the Sydney Metro project

Utilities and Services Infrastructure

Additionally, an assessment of the utilities and services infrastructure at the site has been undertaken as Appendix AA of the exhibited EIS. This assessment has determined that the proposed development is well serviced for all utilities in the context of available surrounding infrastructure, and if needed these facilities can be supplemented on an as required basis.

Having regard to the above, it is considered that this objective of the development standard is achieved notwithstanding the variation as the intensity of development will be commensurate with the capacity of existing and planned infrastructure, and is specifically intended to operate and support the capacity of the Sydney Metro.

(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The OSD concept proposal provides for new housing, visitor accommodation and employment capacity within the Sydney CBD, which has been identified through the *Greater Sydney Region Plan 2018*, the *Eastern City District Plan 2018* and local planning policies as the focal point for metropolitan Sydney's growth within the Eastern City. The delivery of high density development on this site is entirely compatible with this desired future character. The Sydney Metro City & Southwest metro provides for a step-change in the nature and capacity of public transport infrastructure within the Sydney CBD, and the OSD is compatible with the

significantly increased public transport capacity available at the site whilst remaining generally consistent and compatible with the scale and density of development within the locality. The proposed envelope importantly has been designed to maximise solar access to surrounding public open spaces, including Hyde Park.

As outlined in detail in Sections 8.2 to 8.7 of the exhibited EIS, the Design Report provided at Appendix I of the exhibited EIS and supplemented by the Submissions Report, the proposed building envelope will minimise environmental impacts on the amenity of the locality, with specific key impacts further discuss below.

Overshadowing

A key component to the development of the proposed envelope has been to ensure that the overshadowing impacts of the development are acceptable in nature, which has resulted in the proposed envelope design. The building envelope exceeds the Sun Access Plane in accordance with clause 6.17 due to the exception to the Sun Access Plane enabled at clause 6.18 of the SLEP 2012.

A detailed assessment of the overshadowing impacts of the development throughout the year has been provided at Appendix F of the exhibited EIS, with a detailed analysis undertaken at Section 8.2 of the exhibited EIS. Additional discussion in relation to overshadowing has been provided at Chapters 6 and 8 of the Submissions Report. The following key findings are noted in this regard:

- the proposed additional shadows cast by the development are minimal in nature, as for large parts of the year the shadow of the proposal falls partially or fully within the existing shadow of the building at 201 Elizabeth Street
- the proposed envelope, in light of the above, complies with the building height related provisions under the SLEP 2012, and the proposal complies with all 'No Additional Overshadowing' controls
- over and above that required under the SLEP 2012, the concept proposal also results in an appropriate overshadowing impact on Hyde Park when the approved envelope of 201 Elizabeth Street is factored in, including continued compliance with Clauses 6.17 and 6.18 of the SLEP 2012
- the proposal does not overshadow Hyde Park at any time during the year prior to 1.30pm, with the majority of overshadowing occurring during the late afternoon 2.30pm to 3.00pm period
- in the periods of the year where the proposal does overshadow Hyde Park, this impact will generally be limited to a small portion of the park and not adversely affect the potential enjoyment of the public open space
- the proposal comprises a concept SSD Application, which will be subject to further design refinement during future detailed applications and has been assessed on a 'worst case' scenario
- the proposal generally doesn't result in any adverse overshadowing impacts on residential properties, with a specific assessment of residential overshadowing undertaken at Section 8.7 of the EIS

Views

The proposed development does not interrupt any key public view corridors across the Sydney CBD. However, perspectives demonstrating the envelope from the context of a number of key surrounding points have been provided by Virtual Ideas at Appendix V of the EIS. Additionally, the impact of the proposal on views from surrounding apartments has been

assessed at Appendix U of the EIS. Following this, a detailed View and Visual Impact Analysis has been undertaken at Appendix W of the EIS, which determines that the proposed envelope is acceptable from a private view and visual impact perspective.

Additional assessment in relation to the view impact of residential apartments has been provided at Section 6.4.1 of the Submissions Report and **Section 4.2.7** of this Clause 4.6 Variation Request.

Heritage

Given the context of the site in relation to a number of surrounding heritage items, including The National Building and Masonic Club located adjacent to the site's northern boundary, heritage impact has been a central consideration in the development of this proposal. A detailed assessment of the envelope, provided at Appendix R of the exhibited EIS, has demonstrated that there will be no adverse impacts on the heritage significance of surrounding items from the proposal.

Wind

A Qualitative Wind Assessment has been undertaken as part of this assessment at Appendix M of the exhibited EIS, supported by Wind Tunnel Testing Results at Appendix N of the exhibited EIS. The wind assessment undertaken in relation to the proposed envelope demonstrated that the proposed envelope would not result in any adverse environmental impacts, with wind conditions around the development likely to be classified as acceptable for pedestrian walking under the Lawson criterion, and also pass the distress / safety criterion.

Concluding remarks

Having regard to the above, it is considered that the proposed development will, notwithstanding the variation to the development standard, be consistent with the existing and desired future character of the locality by delivering a high-quality built form outcome that supports additional housing, employment and tourist and visitor accommodation in a location that is well-served by public transport. This is consistent with the vision for the area outlined in the *Greater Sydney Region Plan 2018*, *Eastern City District Plan 2018* and local planning strategies and SLEP 2012. Furthermore, the integration of the future OSD with the Sydney Metro station presents a unique opportunity to deliver a development that is closely aligned with infrastructure provision in order to reduce vehicle congestion and increase public transport utilisation.

The proposed development, and specifically the proposed variation to the development standard, does not give rise to any adverse impacts on the amenity of the locality for the key reasons outlined above and as described in further detail in the exhibited Environmental Impact Statement and Submissions Report. Rather, by providing for additional new residential, visitor accommodation and office space above the future Sydney Metro station the OSD will enhance the vibrancy and amenity of the locality throughout the day and evening and result in a number of significant environmental, social and economic benefits.

Accordingly, the proposal is considered to achieve the objectives of this development standard notwithstanding the non-compliance with the FSR development standard.

Conclusion

The preceding sections have demonstrated that the proposed development continues to achieve each of the objectives of the FSR development standard notwithstanding the variation to this control. Accordingly, the consent authority may be satisfied that compliance with the development standard is unreasonable and unnecessary as required by clause 4.6(3)(a) of SLEP 2012.

4.1.2. The objectives of Clause 6.4 are achieved by the proposal

Clause 6.4, being the other standard varied by the proposal, does not have any direct objectives for the development standard. However, clause 6.1 prescribes broad objectives of Division 1 (Floor space in Central Sydney) which clause 6.4 is contained within. These objectives have been discussed below.

(a) to provide for additional floor space to be granted as an incentive for certain development in Central Sydney.

The concept proposal is consistent with this objective, for the reasons outlined throughout this Clause 4.6 Variation Request. This objective generally relates to the provision of additional floor space in appropriate circumstances, where such floor space is warranted.

In this case, the proposed development comprises a key integrated station precinct, comprising the Pitt Street Station northern portal with OSD above. Through this concept SSD Application process, including this Clause 4.6 Variation Request it has been demonstrated that the proposed mixed use of the site would be appropriate in the context of the Sydney CBD. The envelope would be able to cater to a number of different uses, which are demonstrated to be commensurate to the central CBD status of the site. Additionally, it has been demonstrated that a mixed use land use outcome would not result in any adverse impacts on the surrounding area.

The proposal provides additional housing to meet the requirements of the future community, additional visitor accommodation to support the tourism economy and additional office floor space to support the growth of jobs in the knowledge economy within the Sydney CBD. The subject site is ideally situated to provide capacity to support these various development needs, and adherence to the development standard would unnecessarily penalise the floor space potential of the site.

Due to the unique and specific circumstances of this concept proposal including the location of the development above Sydney Metro (City & Southwest), the proposed floor space variation is an acceptable outcome.

(b) to establish a framework for the transfer of development potential from the site of a heritage building to another site in Central Sydney.

This objective is not applicable to the concept proposal or the proposed floor space variation. This objective has been prescribed in relation to Part 3 Division 1 Subdivision 3, which relates to Council's Heritage Floor Space scheme.

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

In accordance with clause 4.6(3)(b), as part of any clause 4.6 variation request it must be demonstrated that there are sufficient environmental planning grounds to justify a contravention to the development standard. Accordingly, Sections 3.2.1 to 3.2.5 below provide a breakdown of the key environmental planning grounds which support the proposed variation request, including:

- a variety of unique circumstances at the site which warrant the provision of a higher FSR
- the proposed building form does not result in any significant adverse impacts and achieves a good urban development outcome for the site

- the maintenance of design excellence through the proposed alternate strategy, which has been designed to be a core element of the delivery of the integrated station development outcome
- the unreasonable nature of a floor space penalty over the site resulting from the provision of railway infrastructure
- the ability of the development to exhibit design excellence, and for the development to contribute to the legacy of the Sydney Metro project
- the delivery of a development outcome which does not result in any adverse environmental impacts

4.2.1. Floor space 'penalty' from railway infrastructure

GFA is legally considered in accordance with the following definition contained under the SLEP 2012:

the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

This definition has been typically designed to provide a clear delineation of what should and should not be counted in regard to floor space, with floor space then calculated through the FSR control to determine an acceptable level of density at a given site. However, this definition becomes illogical in parts, when considered in the context of Sydney Metro's OSD proposal.

Specifically, the inclusion of basement habitable rooms in calculations results in the station concourse being counted towards the overall GFA, in a manner which reduces the maximum

amount of floorspace which can be provided for an otherwise FSR compliant envelope. This is despite the below ground floor space being used for a public use of substantial benefit to the City of Sydney, as well as Sydney and NSW as a whole.

Additionally, necessary elements of the development such as residential unit storage are unable to be provided in a basement, meaning that storage must also be counted towards the overall GFA figures at the site.

Finally, clause 6.4(2) states that *“the amount of additional floor space that can be achieved under a paragraph [referred to in clause 6.4(1)] is to be reduced proportionally if only part of a building is used for a purpose specified in that paragraph.”* In the case of the subject OSD, given that use of floor space for a public transport concourse or interchange is not contemplated by the various floor space bonus areas, the proportion of floor space used for the railway purpose above the base 8:1 accordingly results in a proportionate reduction in the bonus floor space available. This effectively means that the public transport infrastructure being provided results in a penalty on the accommodation floor space which could otherwise have been provided for the development.

In effect, the overall impact of this is that the development is penalised three-fold for the station space occupying the below ground portion of the site. This seems unreasonable in the case of the development, given that this floor space is being used for a separately approved, substantially beneficial use which will benefit all of Sydney. On this basis, it is considered that the development standard is unreasonable in the context of the unique circumstances of the site.

4.2.2. Unique circumstances of the site influence the proposed development

Along with the proposed OSD at Pitt Street North and Martin Place, the proposed development is unique within the Sydney CBD in the high level of direct integration between new high-capacity public transport infrastructure and urban development. The coordinated delivery of an integrated station development at the site delivers a significant number of benefits, as well as its own unique challenges. These challenges include the need to consider portions of the metro station infrastructure as GFA when assessing the level of compliance with the FSR development standard under SLEP 2012 (discussed at Section 4.2.1) and the need to construct the OSD in a certain manner.

As has been detailed in the analysis of alternatives undertaken at Section 1.7 of the exhibited EIS, it would be a substantial missed opportunity for the proposal to not incorporate an over station building element. Due to the CBD context of the site, and the consolidated nature of the metro station portal, there is a unique opportunity for OSD to be provided in this location. The site is able to accommodate a taller building form comfortably, and therefore to not take advantage of this would fail to make use of the opportunity provided by the CSSI Approval.

It has also been detailed within the accompanying EIS that areas were made available in the above ground station box for limited uses associated with the OSD. This comprises a number of spaces between the ground level and the transfer slab which were identified for OSD use. This space has been proposed to be used for the components of the development which would have otherwise been located underground, including car parking, servicing spaces, vertical vehicle transport and the provision of additional storage. This is a direct consequence of the location of the rail line beneath the building, which prevents the provision of a traditional basement area for these uses, and in accordance with Section 4.2.1, this space must accordingly be considered as GFA. Given the relatively small number of sites within Sydney which have a railway station entrance immediately beneath them, this is a very unique situation which is unlikely to be replicated in more than a handful of significant station sites.

Finally, the vast majority of the floorplate at the ground floor is occupied by the station entrance, as well as the associated plant, loading and other design requirements. The consequence of this is that limited space within the ground floor plane is available for OSD uses, which needs to be used for the vertical transportation of people into the OSD component of the development. In this case, a mixed residential use is an appropriate use in the context of the site, which provides residential, commercial and visitor accommodation opportunities to the surrounding site whilst simultaneously not affecting station operations.

The 1,189 square metres of GFA which is attributed to the station and included for the purpose of calculating the maximum FSR which applies to this site results in both the loss of development capacity on the site due to the provision of public transport infrastructure, whilst simultaneously resulting in a lowering of the maximum FSR permitted under clause 6.4 of SLEP 2012 due to the exclusion of this GFA from uses which benefit from accommodation floor space bonuses. This exacerbates the extent of the variation to the development standard, and if strictly enforced would penalise the capacity of the site for the provision of significant new public transport infrastructure.

In addition to the above, approximately 12 per cent of the residential GFA, and approximately nine per cent of the total OSD GFA, arises from the enclosure of residential balconies (4,211 square metres) which is necessary in order to provide a suitable level of residential amenity, acknowledging the wind and acoustic conditions of the site within the CBD context. This GFA represents over half of the total FSR variation proposed.

4.2.3. Compliant tower envelope results in no adverse impacts

A substantial analysis has been undertaken at Chapter 8.0 of the submitted EIS, as well as within the Design Report at Appendix I, of the various factors which have contributed to the ultimate proposed building form at the site. As a result of the proposed building envelope, the future development is able to minimise any adverse impacts whilst also maintaining the maximum building height of the development in accordance with clauses 4.3, 6.17 and 6.18 of the SLEP 2012. This dual-tower form would regularly result in a compliant FSR, except for the previous floorspace penalties noted throughout this section of the variation request.

Additionally, given that the development complies with the maximum height of buildings control applicable to the site, and provides setbacks which are considered reasonable, it is noted that numerical compliance with the FSR control would not result in any additional material benefit. Rather, strict application of the FSR would result in the same building envelope, which could still be developed to the maximum extents proposed under this application, only comprising an underdevelopment of the potential density of the site, and minimising the benefits enabled through the proposed development. On this basis, it is considered that strict adherence of the maximum FSR control would not result in any additional benefit over the option proposed, given that an FSR compliance would not result any change to the potential building envelope of the site.

As outlined in the exhibited EIS, particularly Sections 8.2 to 8.7, in the Design Report provided at Appendix I and in the Submissions Report, the proposed building envelope will not result in any significant adverse impacts. Accordingly the envelope is supported on environmental planning grounds irrespective of the proposed variation to the FSR development standard.

4.2.4. Design excellence maintained

As outlined in Section 4.11 and Appendix H of the EIS, the future development of the site will achieve design excellence in accordance with the Design Excellence Strategy (June 2018). The Design Excellence Strategy has been developed to be implemented across the various Sydney Metro City and Southwest integrated station developments, which include:

- Crows Nest

- Victoria Cross (North Sydney)
- Pitt Street North
- Pitt Street South
- Waterloo

The key rationale and components of the strategy have been described further below, in the context of the proposed development.

Strategy rationale

The key rationale of the Design Excellence Strategy, which has helped to shape the overall document and the format in which development would be demonstrated as exhibiting design excellence, comprise the following:

- **A complex and unique project** – Principally, it is considered that the Sydney Metro project is of a level of uniqueness and complexity which warrants the use of a tailor made process of demonstrating design excellence, combined with the accelerated construction timeframes of the Sydney Metro project. In addition the integrated station developments need to maximise the public value of the infrastructure investment, and the assessment criteria reflect the public significance of the Sydney Metro station precincts.

Building on this, the design and construction of the station portal and the OSD above is envisaged to occur simultaneously, which requires the design excellence measures to be imbedded throughout the design and procurement processes to ensure that the station portal and OSD components are truly integrated.

- **A proud track record** – Sydney Metro has a long-standing commitment, and evidence of the importance of delivering design excellence as an organisation. Sydney Metro has engaged highly experienced, multi-disciplinary design practices to inform reference documents and has been at the forefront of using Design Excellence Panels, and it is considered that this Design Excellence Strategy would be a continuation of this commitment to design excellence in major public sector projects. Specifically, the strategy would assist in the delivery of robust, independent and objective consideration of design. The new measures and enhancements of the existing Sydney Metro processes and systems are described below, and have been developed in conjunction with the Government Architect NSW.
- **A robust competition** – A key level of importance is placed on the provision of high quality of design through a highly competitive process, which encourages diversity, enables the comparative evaluation of design responses and communicates a commitment to design excellence. Despite a requirement for Authorised Engineering Organisations (AEOs) leading Station Design Teams, Sydney Metro is actively working with industry to encourage partnering between AEOs and non-AEO organisations to ensure robust competition. It is noted that the competition process must occur within the *NSW Procurement Framework Policy for NSW Government Agencies*.
- **Consistency** - Providing for a consistent and rigorous design excellence approach across all OSD projects across multiple local government jurisdictions ensures that design excellence is achieved throughout the project to meet community expectations for the Sydney Metro project. By establishing a process which covers each of the OSD projects, the design excellence approach will ensure that a similar high level of design excellence is achieved throughout this city-shaping transport project.

- **Benchmarks** – Sydney Metro commits to working with the Government Architect NSW and Council to determine the appropriate benchmark projects for each integrated station development site, including Pitt Street North. This will involve selecting high quality examples that demonstrate particular aspirations for each site including integrated station and building design outcomes, building / skyline responses, response to place, public domain and materials / finishes. These benchmark examples are expected to be different between sites, and will follow a documented rationale for site selection, with benchmarks used to ensure that the designs submitted meet minimum performance requirements of comparable quality.
- **Design Excellence Evaluation Panel** – A Design Excellence Evaluation Panel (DEEP) has been included in this Strategy, which seeks to ensure that Sydney Metro's competitive tender selection process benefits from expert, independent and objective design expertise and advice. The role of the DEEP will be to review and advise on tender designs submitted through a competitive tender process, and will sit in place of the Sydney Metro Design Review Panel (DRP) for the purposes of review of design excellence for tender designs. The DEEP will contribute to the design excellence process by:
 - o participating in the procurement process to provide expert feedback on design ideas
 - o providing an independent evaluation report on the submitted tenders to Sydney Metro

The DEEP members will be design experts that are recognised as advocates for design excellence by drawing from members of the Sydney Metro DRP. The Panel would also include a member nominated by Council.

Key strategy components

In light of the above, the delivery of design excellence through the Pitt Street North integrated station development process would comprise three key phases:

- Phase 1 – Defining quality expectations
- Phase 2 – Competitive selection
- Phase 3 – Design integrity

Each of these phases comprises a number of key steps which work together to ensure the delivery of design excellence. The manner in which this process has been formed ensures that these key actions are required as part of the process right through the selection and evolution of the detailed design of the Pitt Street North site, and in conjunction with the considered rationale above works to ensure that design excellence will be delivered right through the procurement process.

Relevance to variation of development standard

Clause 6.21(7) of SLEP 2012 provides that a building demonstrating design excellence is eligible for an amount of additional floor space of up to 10% of the permitted FSR on the site, which in the instance of this proposed development would equate to an additional 4,352 square metres (or more than 64% of the total variation). Because the proposed development has not followed the competitive design process in accordance with the City of Sydney Competitive Design Policy, the proposed development is not strictly eligible for this additional floor space. Due to the complex nature of the proposed development and the requirement to deliver an integrated station development outcome that aligns design with the delivery of a new Sydney Metro station, it is not possible in the circumstances to provide for a competitive

design process in accordance with the *City of Sydney Competitive Design Policy*. However, as outlined in the preceding sections the proposed development has and will nonetheless follow a rigorous design excellence process that is considered to be commensurate to the requirements of the *City of Sydney Competitive Design Policy*. This process will ensure that design excellence is achieved, supporting the objectives of clause 6.21 of SLEP 2012 and Section 1.3(g) of the EP&A Act which seeks to “to promote good design and amenity of the built environment”. Having regard to this, it is considered that the attainment of design excellence through an appropriate alternative process is, in the unique circumstances of this site, a justifiable environmental planning ground which supports a variation to the development standard.

Concluding remarks

Given the unique nature of the OSD projects, as well as the robust and considered manner in which the Design Excellence Strategy will deliver design excellence in the future development, it is considered that the proposed competitive design process will deliver a high quality design outcome at the site, whilst taking into account the various constraints associated with the OSD projects.

Further detail regarding the Design Excellence Strategy is available at Section 4.11 and Appendix H of the EIS, as well as Sections 5.12.1 and 8.1.3 of the Submissions Report. Detailed information regarding the role of the DEEP and outlining the Strategy Elements have been provided as appendices to the Design Excellence Strategy.

4.2.5. [Sydney Metro contribution and legacy](#)

Two of the fundamental principles which have underpinned the OSD at the Pitt Street North site have been the maximisation of benefits associated with the high level of public transport accessibility provided by the Sydney Metro project, as well as the provision of a lasting contribution to the legacy of the Sydney Metro project.

By virtue of the use analysis previously detailed, it has been demonstrated that the proposed mixed use land use is suitable in the context of the site. Given the demonstration of mixed use and commercial land uses as being the most appropriate in the context of the site, it is therefore appropriate that a proposal be provided of a density which is commensurate with the CBD location, the building height limit at the site, and the various constraints applicable to the site. The Clause 4.6 Variation Request for a commercial scheme has been provided separately. In this context, it is considered appropriate that the development provide additional residential, visitor accommodation and commercial capacity in a location which is located immediately above world class public transportation.

Similarly, it is noted that the development works towards the overarching intention of the Greater Sydney Commission by providing development which contributes positively towards the provision of a 30-minute city, which is reiterated in the *Greater Sydney Region Plan 2018*. This concept has been further discussed in Section 6.0 of the submitted EIS, however in effect, just like there needs to be additional jobs growth in Western Sydney to minimise commute times and congestion, there also needs to be additional dwellings growth in Eastern Sydney as part of this rebalancing. In providing additional residential capacity in a location which demonstrates and exhibits these principles, whilst also providing future residents with an unmatched level of public transport and jobs accessibility, the proposal is strongly aligned with the future strategic objectives of the Sydney CBD.

Likewise, the proposal directly provides employment in the Sydney CBD through the visitor accommodation and commercial floor space. The visitor accommodation floor space would respond to a shortage of visitor accommodation in Central Sydney, by providing for substantial hotel capacity which would contribute to the overall visitor accommodation capacity in Sydney. The commercial component would also provide for a unique commercial

floorspace area, in a highly sought-after location which could be used for innovative business needs such as co-working spaces.

It is undeniable that the development of this site will play a key role in the transformation of the precinct, and the concept proposal has been proposed in a manner which reflects the legacy nature of this project. Within the Sydney Metro project, the OSD of this site (amongst others) will work to reinforce the legacy of the wider project, resulting in an ultimate building form which is memorable and reflective of the transformative nature of the wider project. It is due to this that Sydney Metro have provided a concept design framework which favours the provision of such an ultimate building design. This includes the provision of a design framework which will result in the provision of a building which achieves design excellence.

4.2.6. Objectives achieved notwithstanding the non-compliance

As outlined in Section 4.1.1, the proposed variation is supported on environmental planning grounds because the environmental planning matters raised in the objectives of the FSR development standard are achieved notwithstanding the non-compliance.

4.2.7. No adverse environmental impacts

Finally, as discussed previously in this clause 4.6 variation request, as well as at detail in the submitted EIS and Submissions Report, notwithstanding the proposed variation, the environmental impacts of the proposed envelope can be appropriately managed or mitigated and do not represent an overdevelopment of the site.

Specifically, the proposed development would result in the following impacts:

- **Overshadowing** – the proposed envelope has been specifically designed to minimise public domain overshadowing, with particular attention paid to the impact of the proposed envelope on Hyde Park
- **Visual and view impacts** – the proposal will not result in any adverse visual or view impacts from either the public domain or nearby private residences
- **Traffic** – the proposed development comprises the provision of minimal car parking, and when considered in the context of the development at the site before the construction of the Sydney Metro commenced, will result in a reduction of traffic generation at the site
- **Infrastructure capacity** – the planned infrastructure capacity being delivered by Sydney Metro and other projects will provide substantial additional transport capacity, which the development will be well positioned to benefit from
- **Wind** – the proposed development will not result in any adverse wind impacts

The environmental impacts of the concept proposal have been further analysed within the Submissions Report following exhibition of the concept SSD Application. This included further environmental assessment of the following key impacts:

- **Land use impacts** – the proposal has been further assessed in relation to a range of different potential impacts to confirm that a mixed use land use strategy would not result in any adverse environmental impacts. This includes confirmation that the building envelope would not result in any adverse impacts, assessment of streetscape impacts, traffic impacts, waste management, social and economic impacts, site suitability and public interest of a mixed use land use at the site
- **View impacts** – the Submissions Report includes additional assessment of view impacts to 27 Park Street and 197 Castlereagh Street, in order to confirm the level of

view impacts of the proposal. This assessment is provided at Section 6.4.1 of the Submissions Report, and particularly relates to view loss of the city skyline (including Sydney Tower) to the north.

The assessment undertaken for this application was undertaken in accordance with the principles outlined under *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC 140 (Tenacity). Regarding 27 Park Street, view loss from the proposed envelope has been determined to be acceptable in nature, given that views to the north-east (including to St Marys Cathedral, the Botanical Gardens and Sydney Harbour) would not be affected by the proposed development.

Regarding 197 Castlereagh Street, the view loss in question relates to the secondary northern aspect of these apartments, with these apartments also privy to views towards the east and north-east by virtue of apartment orientation. As part of the submissions response process, a cumulative analysis was undertaken of the concept proposal and 201 Elizabeth Street, and it was determined that the proposal would not result in any adverse view impacts. Similarly to 27 Park Street, views to the north-east were retained through the concept proposal.

Finally, the central city context of the site and the compliant nature of the proposed development was noted as a relevant factor in determining view loss of the site. Overall, the view impacts of the proposal were considered to be acceptable in nature, including when considered cumulatively alongside the approved envelope of 201 Elizabeth Street.

- **Solar access** – the Submissions Report includes additional assessment of the overshadowing impacts of the concept envelope on neighbouring residential apartment buildings. Specifically, it is confirmed that the cumulative development of the concept proposal and 201 Elizabeth Street would result in 26% of units at 27 Park Street no longer meeting the minimum solar access levels under the Apartment Design Guide, meaning that the proposal would result in a non-compliance of 6%.

Notwithstanding this non-compliance, the proposal is considered appropriate on the basis of the following:

- o the concept proposal comprises a compliant building envelope with the SLEP 2012 building height provisions, and the street frontage controls under the SDCP 2012
- o the concept proposal comprises a 'loose fitting' envelope, within which the final detailed design will be refined
- o the solar impact of the concept proposal during mid-winter comprises the largest impact throughout the year. At other times of year, this impact is lessened, given the substantial distance between the concept proposal and the properties to the south
- o the concept proposal is located in a high density CBD environment, where it can be expected that new buildings would inevitably impact on the solar access of adjacent buildings

As part of the assessment undertaken at Appendix C of the Submissions Report, it is also concluded that there would be negligible overshadowing impact on 197 Castlereagh Street, primarily due to the proximity of 27 Park Street to 197 Castlereagh Street. In this context, the proposal was considered acceptable, subject to adherence to the proposed envelope and the identified mitigation measures.

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- **Public domain overshadowing** – further assessment of the concept proposal has demonstrated that the envelope will not overshadow any of the nominated public spaces under the SLEP 2012 in the nominated periods
 - **Built form impacts** – the Submissions Report has demonstrated that the proposed podium is appropriate in the context of the station plant requirements, the impacts of the podium, the character of the surrounding area and the visual context of the envelope
 - **Residential amenity impacts** – the EIS and Submissions Report have included assessment of the residential component of the mixed use scheme, to the level required for a concept SSD Application. The indicative design demonstrates that a residential component of a mixed use scheme could meet the key controls of the ADG, including in relation to solar access, ventilation and apartment sizes.

A minor variation to the maximum number of south facing apartments (less than ten per cent) is considered appropriate in the Submissions Report. This is seen as an appropriate outcome at the site given that:

- o the proposal continues to comply with the 70 per cent control for solar access, which is a key numerical control under the ADG
- o the proposal comprises only a numerically small non-compliance
- o the concept reference design status of the application will be subject to future refinement and further design work during the detailed design stage. The use of a flexible envelope such as this would enable further design refinements during the detailed design stage
- o the site comprises a full southern block end and features the longest street frontage to the south, meaning that any development at the site would face difficulty in minimising south facing apartments
- o the site is located in the Sydney CBD, being a highly urbanised context where there will always be difficulty in achieving compliance with solar access controls
- o the proposed envelope has been specifically designed to minimise overshadowing to Hyde Park, which has been achieved by locating the mass of the building in the existing shadows cast by other buildings. This in turn limits the potential solar access which can be provided to the building at Pitt Street North
- o the proposed building height has been reduced below the maximum, in order to fall within the shadows of other development. Naturally, this impacts on the level of solar access to the concept proposal
- o the proposed envelope complies with the street setback requirements of the SDCP 2012, resulting in a substantial area of the envelope above the podium being shadowed by 161 Castlereagh Street. The most sunlight at the site is available beyond the street setback to the east, however this has not been pursued due to potential amenity and public domain overshadowing impacts

Additionally, a minor non-compliance (0.5 metres) of the separation controls at the site is appropriate, given that:

- o a 'two building' design has been proposed in order to maximise solar access to apartments at the west of the site, which has been achieved
- o the proposed separation comprises only a very small numerical non-compliance
- o given the concept proposal status of the application, and the nature of separation distance controls, there is substantial possibility for the use of privacy measures during the detailed design stage of the development to assist in ameliorating potential privacy impacts

Both variations are also to be considered in the context of being indicative reference designs only, and subject to further detailed assessment during the detailed design stage. The indicative design provided comprises only one potential solution at the site, and would be subject to further refinement and development.

- **Heritage impacts** – additional measures have been provided to ensure an appropriate relationship results between the site and the heritage items to the north
- **Design guidelines** – further consideration and design guidelines have been provided to ensure an appropriate relationship between the station, the OSD, and the surrounding environment. This extends to matters such as the future station design, activation at the site, preservation of high amenity public domain and potential vehicular conflict, landscaping, solar access and signage
- **Design excellence** – further assessment has been provided in relation to the ability for design excellence to be achieved by the proposal

Further assessment has also been provided in the Submissions Report in relation to the potential amenity achievable by the concept proposal, including further assessment in relation to the Apartment Design Guide where necessary. Detailed consideration in relation to the non-compliances with the guide by the indicative mixed use design has been provided in the Submissions Report, where it is determined that the concept proposal remains acceptable on merit.

The Submissions Report also provides revised mitigation measures, where necessary. Changes to the mitigation measures generally relate to the Design Guidelines, heritage, ESD, CPTED, signage and waste.

Overall, it is open to the consent authority to consider that the concept proposal does not result in any significant environmental impacts that could be avoided through a compliant form.

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

4.3.1. **Consistency with objectives of the development standard**

The proposed development is consistent with the objectives of the FSR development standard, for the reasons previously discussed at **Section 4.1.1**.

4.3.2. **Consistency with the objectives of the zone**

The proposed development is also consistent with the objectives of the B8 Metropolitan Centre land use zone as detailed in the following sections. The objectives of the B8 land use zone are as follows:

- *To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*
- *To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*
- *To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*
- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking and cycling.*
- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

The ways in which the development is consistent with the objectives of the zone are set out in the following sections:

To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.

The proposed development provides for a mix of uses including housing, office premises and tourist and visitor accommodation which support the efficient functioning of the Sydney CBD as a key contributor to the global economy. The proposed development will support economic activity within the CBD, and also facilitate the exchange of people for business and personal tourism through the accommodation component. The concept proposal provides for a high quality built form that attains design excellence, thereby supporting Sydney's positioning as a pre-eminent centre within the Australian, Asia-Pacific and global economies. The proposed development is consistent with this objective.

To provide opportunities for an intensity of land uses commensurate with Sydney's global status.

The proposed development will provide for an intensity of land uses which is commensurate with Sydney's status as a global city, whilst remaining within the infrastructure capacity of the site and not giving rise to any adverse environmental impacts. The site is uniquely positioned to benefit from and support the successful delivery of Sydney Metro – Australia's biggest public transport project – to deliver a world-class station precincts. The intensity of land uses proposed is consistent with this objective.

To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.

The proposed development provides for a mix of housing, employment and visitor accommodation which are compatible with each other and the delivery of the future Sydney Metro station. Furthermore, these land uses are compatible with the use of surrounding land and are permitted with development consent within the B8 Metropolitan Centre zone. Notwithstanding the proposed variation to the FSR development standard, the proposed development would not give rise to any amenity impacts that would be incompatible with surrounding existing land uses. The proposed land uses directly serve the needs of Sydney's workforce, visitors and wider community, and is therefore consistent with this objective.

To encourage the use of alternatives to private motor vehicles, such as public transport, walking and cycling.

The proposed development is directly consistent with this objective by promoting increased development for residential, office and tourist accommodation purposes in a location that is directly integrated with the future Sydney Metro station which will encourage public transport usage. Car parking provided for these land uses is limited and less than that permitted under the provisions of SLEP 2012, which will further promote increased public transport usage, walking and cycling. The proposed development is therefore consistent with this objective.

To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.

The proposed development is largely constrained at the ground level by the approved Pitt Street station portal, with the station occupying the majority of the building footprint along with the associated loading area. On this basis, the proposal will seek to activate the available space as much as practicable, ensuring the use of station and OSD lobbies provides for an active, vibrant ground plane. By providing for a range of land uses within the OSD component, the proposed development will contribute to increased pedestrian interaction and activity within the site and the broader precinct, which is consistent with this objective.

Overall, it is open to the consent authority to consider that the variation is in the public interest because it is consistent with the objectives of the development standard and the B8 Zone.

4.4. Other matters for consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary 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 have been further discussed below.

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

As part of this clause 4.6 variation request, it has been determined that the proposed development will not raise any matter of significance for State or regional environmental planning.

Rather, the proposal is considered to be highly consistent with the *Greater Sydney Region Plan 2018* and *Eastern City District Plan 2018*. It is noted that a full assessment against all strategic plans and policies has been undertaken as part of the submitted EIS.

The proposal, despite non-compliance with the applicable FSR controls, is consistent with the abovementioned plans by virtue of the following:

- The proposed development will contribute directly towards the ongoing requirements for the provision of new housing in Sydney, providing capacity within the proposed building envelope and maximum FSR for the delivery of approximately 300 dwellings (subject to future detailed SSD Application) within the context of the Sydney CBD.

- The proposal will directly contribute in a positive manner to the creation of a '30-minute city', which is listed as a priority under both the *Greater Sydney Region Plan 2018* and the *Eastern City District Plan 2018*. This concept, which proposes to co-locate residential capacity and employment growth such that commutes are shortened across Greater Sydney, is applicable to the site in that the proposed additional residential dwellings are located in an area which benefits from a near unmatched level of employment accessibility. The proposed employment generating uses (visitor accommodation and commercial floor space), combined with the benefits of the Sydney Metro project, will further increase the provision of jobs in close proximity to residential capacity.
- The proposed development will enable the provision of a range of dwelling typologies, including the provision of one, two and three-bedroom dwellings, as well as the provision of dwellings both with and without car spaces. This approach enables the provision of housing for a range of different household types.
- The proposal enables the delivery of additional housing in a location which has been aligned with the location of government public transport infrastructure investment, and which will experience substantial growth in transport connectivity and capacity following completion of the CBD portion of the Sydney Metro City & Southwest (Chatswood to Sydenham) project.
- The proposed employment generating uses (visitor accommodation and commercial) are consistent with the strengthening of Sydney's Eastern Economic Corridor, as well as contributing to the ongoing growth of the Sydney CBD. This includes growth of the target tourism sector, with both uses working to improve the competitiveness of the Sydney CBD economy.
- The proposed development has been designed such that it works with, and does not compromise the operations of, the future Pitt Street Station northern portal. Rather, the proposal will enable the delivery of an integrated station and OSD solution at the site, which will ensure the efficient operations of both elements.

4.4.2. [Clause 4.6\(5\)\(b\): The public benefit of maintaining the development standard](#)

In the case of clause 4.6 variations, there are cases wherein the strict maintenance of a development standard is required, such as when it would create an undesirable precedent, or would result in substantial and adverse environmental impacts. However, in this case, the maintenance of the standard is considered unreasonable as the proposed development achieves the objectives of the zone and development standard notwithstanding the non-compliance, and accordingly strict compliance would prevent the orderly and economic development of land.

In the case of the proposal, the site and development characteristics are very unique in nature, and would not result in any precedent being set that would undermine the nature of the development control. Rather, this variation request would enable the delivery of a development which is consistent with the broader built form controls applicable at the site, including with respect to building height, and would result in the delivery of a unique OSD outcome in the context of the Sydney CBD. Given that this non-compliance is largely generated by the location of the Pitt Street Station northern portal beneath the site, and the unique nature of design excellence delivery through the Sydney Metro project, it is unlikely that this development will set an undesirable precedent. Rather, the OSD will work with the metro station portal component to provide an integrated design outcome at the Pitt Street North site.

On this basis, it is considered that maintenance of the development standard in this instance would not result in any identifiable public benefit.

4.4.3. [Clause 4.6\(5\)\(c\): Any other matters required to be taken into consideration by the Secretary before granting concurrence](#)

There are no other matters which the Secretary is required to take into consideration when granting concurrence to this clause 4.6 variation request.

5. Summary and conclusion

This clause 4.6 variation request is well founded as it demonstrates that compliance with the FSR standards contained at clauses 4.4 and 6.4 of the SLEP 2012 is unreasonable and unnecessary in the circumstances of the proposal, and on this basis the proposed variation to the standard is considered an acceptable outcome. In this case, the proposed variation acknowledges the unique circumstances of the proposal, and enables the delivery of development which will provide a better planning outcome in the context of the site.

In summary, the variation is justified because:

- Compliance with the FSR standards is unreasonable and unnecessary in the circumstances of the proposed development because the proposed development achieves the objectives of the development standard notwithstanding the non-compliance.
- There are sufficient environmental planning grounds to justify the contravention, including that the site has unique circumstances arising from the relationship between the OSD component and broader Sydney Metro integrated station development approach, the provision of an appropriate design excellence process for Sydney Metro projects, and the absence of any environmental impacts arising from the proposed variation.
- The proposed development is in the public interest because it is consistent with the objectives of the FSR development standard and the B8 Metropolitan Centre zone pursuant to SLEP 2012.
- The proposed non-compliance with the FSR standard will not result in any matter of significance for State or regional environmental planning, but rather would result in development which achieves the strategic objectives of the NSW State Government.
- There is no public benefit in maintaining the development standard given the unique circumstances of the project, the absence of any unacceptable environmental impacts arising from the non-compliance, and the benefits of the proposed development proceeding.

The concept proposal will make a significant contribution to the delivery of a vibrant transit-oriented precinct which delivers mixed residential, visitor accommodation and office commensurate with the significant new public transport capacity provided on the site as part of the Sydney Metro CSSI Approval. Given the unique and particular circumstances of the subject site (being located above a Sydney Metro station), and of the proposed integrated station development, the proposed variation to the FSR development standard is considered to be reasonable and acceptable and will support the delivery of a positive development outcome for the site, and should therefore be supported.

The consent authority is therefore able to grant development consent for the application notwithstanding the non-compliance with the FSR development standard.