



Sydney Metro City & South West: Crows Nest Over Station Development

Clause 4.6 Variation Request – Non-Residential FSR

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Table of Contents

1.0	Introduction	4
2.0	Development Standard to be Varied	6
2.1	Existing Development Standard.....	6
3.0	Nature of the Variation Sought.....	8
4.0	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	10
4.1	The objectives of the development standard are achieved notwithstanding the non-compliance with the standard (First Method).....	11
4.1.1	Objective (a): to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure.....	11
4.1.2	Objective (b): to encourage an appropriate mix of residential and non-residential use	11
4.1.3	Objective (c): to provide a level of flexibility in the mix of land uses to cater for market demands.....	12
4.1.4	Objective (d): to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.....	12
4.2	The existing development standards are no longer relevant and therefore compliance with these standards is unreasonable and unnecessary.	12
5.0	Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard	14
5.1	Design excellence and redistribution of non-residential floor space	14
5.2	Provision of critical station infrastructure.....	14
5.3	Delivery of transit-oriented development.....	15
5.4	Social and economic benefits	15
6.0	Clause 4.6(4)(a)(ii) It is in the public interest because it is consistent with the objectives of the particular standard and zone.....	17
6.1	Consistency with objectives of the development standard	17
6.2	Consistency with the objectives of the land use zone	17
6.3	Overall public interest	19
7.0	Clause 4.6(5) Secretary’s Concurrence	21
7.1	Whether contravention of the development standard raises any matter of significance for State or regional environmental planning	21
7.2	The public benefit of maintaining the development standard.....	21
7.3	Any other matters required to be taken into consideration by the Secretary before granting concurrence	21
8.0	Conclusion.....	23

1.0 Introduction

This request to vary a development standard has been prepared under clause 4.6 of the *North Sydney Local Environmental Plan 2013* (NSLEP 2013) and is submitted to the Department of Planning and Environment (DP&E) in support of a concept State Significant Development Application (SSDA 18_9579) for the over station development (OSD) above the new Crows Nest Metro Station. This request seeks to vary the development standard specified under clause 4.4A of the NSLEP 2013 relating to non-residential floor space ratios (FSR).

Clause 4.6 of the NSLEP 2013 allows consent for development to be granted even though the development contravenes a development standard imposed by the NSLEP 2013. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard as detailed below:

- 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; and
- 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 to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court provides assistance on the approach to justifying a contravention to a development standard under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89*. The test was later rephrased by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827* (Webbe). These judgements are also of assistance to the assessment of variations under clause 4.6 of an LEP.

Additional assistance can be found in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (Four2Five); *Micaul Holdings Pty Ltd v Randwick City Council [2015] NSWLEC 1386* and *Moskovich v Waverley Council [2016] NSWLEC 1015* which was upheld by Pain J on appeal.

In accordance with the above requirements, this clause 4.6 variation request:

- identifies the development standard to be varied (Section 2);
- identifies the variation sought (Section 3);

- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (Section 5);
- demonstrates that the development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone (Section 6); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (Section 7).

This clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) dated 9 November 2018 in relation to the proposed development of the Crows Nest OSD.

2.0 Development Standard to be Varied

2.1 Existing Development Standard

This development standard to be varied as part of this application is 'Clause 4.4A Non-Residential Floor Space Ratios' relating to minimum non-residential floor space requirements. Clause 4.4A(2) provides that the non-residential floor space ratio for all buildings within a site on any land must not be less than the ratio shown for the land on the Non-Residential Floor Space Ratio Map.

The relevant minimum non-residential FSR applying to each Site is shown at Figure 1. The required non-residential GFA for each site under clause 4.4A is set out at **Table 1**.

Table 1 – Minimum non-residential FSR/GFA

Site	Site Area	Minimum Non-residential FSR	Minimum Non-residential GFA
Site A	3,877m ²	1.5:1	5,815.5m ²
Site B	1,871m ²	0.5:1	935.6m ²
Site C	608m ²	0.5:1	304m ²
Total	6,356m ²		7,055m ²



Figure 1 – Existing non-residential floor space ratio development standard under NSLEP 2013

In October 2018, the NSW State Government released a Rezoning Proposal which seeks to increase the minimum non-residential FSR required on the site under NSLEP 2013. The site, and the proposed minimum non-residential FSR requirements, are shown at **Figure 2**. The required non-residential GFA for each site under the proposed development standards are set out at **Table 2**.

It is noted that the proposed controls allow for 'The proposed minimum non-residential FSR controls are indicative and may be redistributed between Sydney Metro sites as part of the design excellence process'. The Design Excellence Strategy submitted at Appendix N of the EIS establishes the framework for the design excellence process on the site. It is anticipated that this process will result in the redistribution of non-residential GFA across the site.

Table 2 – Proposed minimum non-residential FSR/GFA

Site	Site Area	Minimum Non-residential FSR	Minimum Non-residential GFA
Site A	3,877m ²	3:1	11,631m ² (3:1)
Site B	1,871m ²	2:1	3,742m ² (2:1)
Site C	608m ²	2:1	1,216m ² (2:1)
Total	6,356m ²		16,589m ²



Figure 2 – Proposed amendments to the non-residential floor space ratios development standards within the NSLEP 2013.

3.0 Nature of the Variation Sought

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The OSD component is to include a total of between 17,900-20,600m² of non-residential floor space, distributed across the three development sites as follows:

- 2,700m² of social infrastructure floor space (on Site A or Site C);
- 15,200m² of hotel / visitor or commercial floor space (on Site B); and
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space as described below).

The final location of the social infrastructure floor space will be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or alternatively, to be located on the podium rooftop of Site A. If the social infrastructure space is located on Site C, this will be in place of proposed commercial office space. Location of the social infrastructure space within Site C would result in no non-residential floor space in Site A as part of the OSD.

However, clause 4.4A relates to the minimum non-residential FSR of all development on a site. It is noted that the GFA attributed to the station and station retail (i.e. entirely non-residential floorspace) that has been conceptually approved under the CSSI Approval in the integrated station design has a combined GFA total of 4,280m². Given that the final design for the station is subject to further refinement, an extra 15% has been added to the GFA for this component of the development to allow for design tolerance and refinement of the station design, totalling 5,000m². The exact distribution of the GFA attributed to the station remains uncertain at this time.

A summary of the nature of the variation sought as part of the concept SSD Application for the Crows Nest OSD is presented in **Table 3**. This demonstrates that although Site A departs from the development standard, the overall quantity of non-residential floor space of the OSD component exceeds the minimum requirement. The non-compliance with clause 4.4A of the NSLEP 2013 is due to the redistribution of land uses within the site and the final distribution and mix will be the subject of a competitive design process and further SSD Application(s) for the detailed design of the buildings. When considered in addition to the total non-residential GFA of the approved CSSI, the total development is well in excess of the minimum non-residential requirement under both the existing and proposed controls.

Table 2 – Summary of variation sought

Site	Proposed non-residential	Minimum non-residential	Departure from existing	Minimum non-residential	Departure from proposed

	GFA (FSR)	GFA (FSR) required under existing controls	development standard	GFA (FSR) required under proposed controls	development standard
Site A	2,700m ² (0.7:1)	5,815.5m ² (1.5:1)	-3,115.5m ² (-0.8:1)	11,631m ² (3:1)	-8,931m ² (-2.3:1)
Site B	15,200m ² (8.12:1)	935.6m ² (0.5:1)	+14,264.4m ² (+7.26:1)	3,742m ² (2:1)	+11,458m ² (+6.12:1)
Site C	2,700m ² (4.44:1)	304m ² (0.5:1)	+2,392m ² (+3.94:1)	1,216m ² (2:1)	+1,484m ² (+2.44:1)
Total OSD	20,600m²	7,055.1m²	+13,554.9m²	16,589m²	+4,011m²
Approved CSSI	5,000m ²				
Total development	25,600m²		+18,554.9m²		+9,011m²

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

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary. Accordingly, Section 4 sets out how, in the specifics of this development, strict compliance with Clause 4.3 of the NSLEP 2013 is unreasonable or unnecessary.

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

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

As the language used in subclause 4.6(3)(a) of the NSLEP 2013 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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

Section 4.1 of this clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed

development because the objectives of the standard are achieved and accordingly justifies the variation to the non-residential floor space ratios control pursuant to the First Method outlined in Wehbe.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance with the standard (First Method)

The objectives of the non-residential floor space ratios development standard are prescribed at clause 4.4A(1) of the NSLEP 2013, providing:

The objectives of this clause are as follows:

- (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
- (b) to encourage an appropriate mix of residential and non-residential use,*
- (c) to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The proposed building envelope achieves each of these objectives notwithstanding the departure from the numerical control identified on the Non-Residential Floor Space Ratio Map. Each objective is addressed below.

4.1.1 Objective (a): to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure

The CSSI Approval for station infrastructure includes all ground level works and land uses. These works do not form part of the concept SSD Application relating to the OSD. Nothing within this concept SSD Application, including the departure from clause 4.4A of NSLEP 2013, prevents the achievement of active street frontages on the site. The proposed minor departure from the non-residential FSR development standard of clause 4.4A is due to a redistribution of land uses and the final distribution, layout and land use mix will be subject of a separate future SSD Application(s) for the detailed design of the buildings.

4.1.2 Objective (b): to encourage an appropriate mix of residential and non-residential use

The proposed land use mix across all three development sites exceeds the total minimum non-residential floor space requirement by 18,554.9m² under the existing controls and 9,011m² under the proposed controls. This demonstrates that overall, the land use mix is considered appropriate in the site's context. In the case where no non-residential floor space is provided on Site A as part of the OSD, the building will still include non-residential floor

space associated with the station (forming part of the CSSI Approval). The redistribution of non-residential floor space within the OSD will be the subject of further engagement with stakeholders to determine the location of social infrastructure floor space within the site.

4.1.3 Objective (c): to provide a level of flexibility in the mix of land uses to cater for market demands

The proposed departure from the development standard of clause 4.4A of the NSLEP 2013 is in direct response to the need for flexibility in land use mix within the development to cater for the future requirements of social infrastructure on the site. The exact land use mix and distribution remains the subject of stakeholder engagement to determine the location and detailed requirements of the facilities. The departure from the non-residential floor space requirement on Site A is offset by increased provision elsewhere on the site, mainly Site B, which allows for the delivery of a hotel component commensurate to market demand for tourist and visitor accommodation within the area.

4.1.4 Objective (d): to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

The proposed OSD is expected to result in 725 jobs (Full Time Equivalent or FTE) during the construction phase (subject to detailed design and planning approvals) and provide for 730 - 1,230 ongoing jobs (FTE) on-site during the operational phase, depending on the final land use mix. This will significantly contribute to employment targets listed in the 2036 Draft Plan, which target 3,020 new jobs in Crows Nest by 2036.

Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

Cumulatively, the background population of the precinct is projected to reach 21,000 persons by 2024, when the Crows Nest station and its OSD become operational, and to grow to over 23,000 by 2034. This will have a significant positive impact on local expenditure which can, among other things, ensure the ongoing economic sustainability of areas such as Willoughby Road.

It is therefore considered that the land use mix proposed, notwithstanding the departure from clause 4.4A, will ensure that sufficient non-residential floor space is provided within the development to encourage employment opportunities within the precinct.

4.2 The existing development standards are no longer relevant and therefore compliance with these standards is unreasonable and unnecessary.

The development standards within the NSLEP 2013 were adopted prior to any commitment by the NSW Government to deliver the Sydney Metro project, including a new station at Crows Nest. Consequently, the existing controls do not reflect opportunities for transit oriented development at the Crows Nest Sydney Metro station.

In October 2018, DP&E released a draft Rezoning Proposal for the Crows Nest Sydney Metro site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application following the culmination of a number of strategic planning studies for the precinct by both DP&E and North Sydney Council. The release of the Rezoning Proposal was simultaneous with the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback following its exhibition.

The proposed concept development is largely consistent with the future development standards that will apply to the site, as described within the Rezoning Proposal. The flexibility for the distribution of non-residential floor space across the site, afforded in the proposed development standards, will help to deliver on the vision of the draft St Leonards and Crows Nest 2036 Plan as summarised below:

- **An employment hub** – the proposed development will protect and strengthen the area’s commercial role with additional commercial and complementary uses to capitalise on renewed confidence in the commercial market as well as retail, creative, health and education sectors.
- **Transit-oriented development** - the proposed development will create future employment opportunities that leverage the increased transport capacity of the new Metro station.
- **Vibrant community** – the proposed development will encourage community uses on the Sydney Metro sites and improvements to the public domain to create a new community focal point in this accessible location.
- **Accessible place** – the proposed development will ensure the site is an attractive and easy place to visit, with improved pedestrian and cyclist connections.
- **A well-designed place** – the proposed development will provide new buildings to demonstrate the highest quality design that respects and enhances the diverse local character of the area.

5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2013 requires the departure from the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

5.1 Design excellence and redistribution of non-residential floor space

The Rezoning Proposal which seeks to increase the minimum non-residential floor space requirements also seeks to introduce flexibility as to the distribution of non-residential floor space within the Crows Nest Metro site through a competitive design process. Although these controls have not been implemented yet, they provide a sound environmental planning ground for the non-compliance with the minimum non-residential FSR on Site A.

A Design Excellence Strategy (the Strategy) (Appendix CC of the EIS) has been prepared to establish a consistent framework for how Sydney Metro will deliver design excellence to all its integrated station developments. The Strategy provides an objective and structured design process that will ensure high quality architectural, urban and landscape designs are achieved in SSD applications. The process is tailored to respond to the complexity of integrated station development projects and assures that design excellence expectations are upheld in each stage of the design process. The Strategy provides three phases to support high quality design of integrated station developments:

- Phase 1 – the establishment of design quality expectations
- Phase 2 – competitive selection involving an open Expression of Interest (EOI) process and Request for Tender (RFT) process
- Phase 3 – design integrity during the detailed SSD Application stage through to construction

Accordingly, the exact distribution and quantity of non-residential floor space on the site will be the subject of a competitive design process and future SSD Application(s). This approach, whilst representing a minor departure from the development standard of clause 4.4.A of the NSLEP 2013, is considered appropriate given the complexity of the design integration with station infrastructure and will also allow for additional stakeholder engagement on the optimum location and requirement for social infrastructure floor space within the site.

5.2 Provision of critical station infrastructure

The CSSI Approval contributes approximately 5,000m² of additional non-residential GFA above that contained within the proposed concept SSD Application for the OSD component (this application). Ongoing design development occurring for the CSSI components, as required through the CSSI process specified in the conditions of that approval, will seek to

deliver the best-possible outcome for the station and therefore the exact distribution of the total non-residential GFA on each development site cannot be determined at this time.

5.3 Delivery of transit-oriented development

The Crows Nest station presents an excellent opportunity to develop a transit-oriented development (TOD) neighbourhood. A TOD neighbourhood typically has a centre with a transit station or stop (train station, metro station, tram stop, or bus stop), surrounded by relatively high-density development with progressively lower density development spreading outward from the centre. TODs generally are located within a radius of 400m to 800m from a transit stop, as this is considered to be an appropriate walking distance for pedestrians.

Locating density above a metro corridor benefits the community by generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage) and improving the connectivity of local communities. Development above the metro corridor further provides an opportunity to meet housing targets, in line with those outlined in the North District Plan and the 2036 Draft Plan.

Further to the above, the provision of a metro station within such close proximity of an existing heavy rail station at St Leonards makes the site highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

5.4 Social and economic benefits

As discussed in Section 4.1.4 above, the proposed development is expected to result in 725 jobs during the construction phase and provide for 730 - 1,230 ongoing jobs on-site during the operational phase, depending on the final land use mix. Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

The OSD would have a positive social impact on the St Leonards / Crows Nest Strategic Centre by creating an integrated station development that provides residential dwellings, tourist / visitor accommodation, community uses and office floor space above the Crows Nest Station. It will create a focal point for community activity and a vibrant place for the community to gather, work and reside. In conjunction with the public domain upgrades and retail activated street frontages to be delivered under the terms of the CSSI Approval, the OSD will add to the civic qualities of the precinct and encourage healthy sustainable modes of transport such as walking and cycling, in addition to the use of the Metro.

The provision of a mixed-use scheme accommodating residential apartments, tourist / visitor accommodation and commercial floor space responds to a wide range of community needs. Additional housing would create opportunities for people to live close to where they work, whether within the St Leonards / Crows Nest Strategic Centre or via the new Sydney Metro,

aligning with the concept of the '30-minute city'. New tourist / visitor accommodation would provide increased capacity for Sydney to grow its national and international profile as a destination for travel and would complement the health precinct anchored around Royal North Shore Hospital. By supporting a wide range of land uses, the OSD would support a range of activities and occupancy throughout the day and evening. This would contribute towards a vibrant transport precinct that is safe, well-utilised and which acts as a focal point for the North Shore in regard to both transport and land use.

The concept SSD Application also includes opportunities for social infrastructure floor space on Site A or Site C. Provision for this space has been made in response to work undertaken by North Sydney Council in the Sydney Metro Planning Study 2016, which identified the need for a community use on site. This facility will be used by the community to encourage social interaction and community development in a highly accessible location.

The employment generated by the development during the construction and operational has further social benefits associated with the ability for workers to provide for their families and spend money in the local community.

6.0 Clause 4.6(4)(a)(ii) It is in the public interest because it is consistent with the objectives of the particular standard and zone

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the non-residential floor space ratios development standard, for the reasons discussed in section 4.1 of this report.

6.2 Consistency with the objectives of the land use zone

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

6.2.1.1 Objective: To provide a mixture of compatible land uses

The concept SSD Application, as provided at Section 4.5 of the EIS, seeks approval for the following land uses:

- residential accommodation;
- tourist and visitor accommodation;
- commercial premises; and
- social infrastructure including but not limited to opportunities for community facilities / child care centre / recreation areas / co-working space / library

These land uses respond to both the housing and employment targets identified in the North District Plan and will complement and support existing businesses in Crows Nest and St Leonards. The social infrastructure (i.e. community facilities / child care centre / recreation area / library / co-working space) provides floorspace to meet an identified need for such facilities in North Sydney Council's Sydney Metro Planning Study 2016 and the Draft St Leonards & Crows Nest 2036 Plan. Cumulatively, the concept proposal provides more non-residential floor space than required under NSLEP 2013, however it seeks flexibility to locate this social infrastructure either on Site A or Site C.

The proposed development, notwithstanding the departure from clause 4.4A of the NSLEP 2013, facilitates a compatible mix of land uses on the site. Additionally, the delivery of station infrastructure (subject to the CSSI Approval) warrants additional flexibility regarding the distribution of land uses within the site.

6.2.1.2 Objective: to integrate suitable business, office, residential, retail and other development in accessible locations as to maximise public transport patronage and encourage walking and cycling.

As demonstrated at **Section 5.2** of this variation request, this project represents a unique opportunity to deliver a transit-oriented development. Located directly above the Crows Nest Metro Station, the range of land uses described above will have direct access to transport infrastructure. This connectivity and integration of development will actively facilitate a greater patronage of public transport. The proposed building will act as a landmark to clearly

identify public transport infrastructure and thereby promoting public transport usage within the community surrounding the development.

The provision of community infrastructure within the development will provide not only to the residents and workers of the future buildings but will provide services within walking or cycling distance of existing residences and workplaces.

6.2.1.3 Objective: To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity

The proposed concept SSD Application relates to building envelopes that will facilitate the delivery of an OSD design with an indicative land use mix comprising approximately 350 residential apartments on Site A, 250 hotel rooms on Site B and up to 2,700 square metres of commercial floor space on Site C. In addition, the indicative OSD design for Site A incorporates up to 2,700 square metres of social infrastructure GFA (child care centre, community centre and recreation area) equivalent to one level of the podium of the building.

The exact quantity and distribution of land uses within the site will be determined through this competitive process. The Design Excellence Strategy (Appendix N of the EIS) will ensure that a high quality urban outcome is achieved for the development and ensure that an overall quantity of non-residential floor space is maintained across the site.

Further, a SEPP 65 Analysis Report is submitted at Appendix G of the EIS demonstrating that the proposed residential building envelope is capable of delivering a design that achieves:

- at least 2 hours direct sunlight to living rooms and private open space of 75% of indicative apartments (exceeding the design criteria of 70%);
- provides natural cross ventilation to 67% of indicative apartments within the first nine levels (exceeding the design criteria of 60%);
- minimises the impact of shadowing to the private open space and living areas of existing residential dwellings in the vicinity of the site; and
- achieves the minimum building separation distances, ensuring that visual and acoustic privacy is maximised.

6.2.1.4 Objective: To maintain existing commercial space and allow for residential development in mixed use buildings, within non-residential uses concentrated on the lower levels and residential uses predominately on the higher levels

The total GFA for the integrated station development, including the station GFA (i.e. station retail, station circulation and associated facilities) and the OSD GFA is 60,400 square metres. This is to include the following non-residential floor space:

- 2,700m² of social infrastructure floor space (on Site A or Site C);
- 15,200m² of hotel / visitor or commercial floor space (on Site B); and
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space).

The final location of social infrastructure floor space is to be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or

alternatively, to be located on the podium rooftop of Site A. However, across all three sites, non-residential components are located at lower levels with residential uses above.

6.3 Overall public interest

In addition to achieving the objectives of clause 4.4A of the NSLEP 2013 and the objectives of the B4 Mixed Use land use zone, the Crows Nest OSD is considered to be in the public interest as:

- it would provide additional employment and residential capacity in the context of the St Leonards / Crows Nest Strategic Centre as targeted in the North District Plan, ensuring that jobs and dwellings are co-located in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space.
- it includes a substantial tourist / visitor accommodation component, providing additional capacity and continuing to grow Sydney's tourism economy which is currently experiencing a shortage of accommodation supply. This would have flow on positive economic impacts within the context Greater Sydney and NSW economies more broadly and meet the needs of the health and education precinct more locally.
- it provides sufficient spaces to accommodate social infrastructure including child care facilities to support the local population, which is in alignment with direction provided by North Sydney Council in the Sydney Metro Planning Study 2016 and 2036 Draft Plan.
- as part of the integrated station development, it would contribute to the delivery of major improvements to the public domain and activation of the streetscape, providing for a higher quality pedestrian environment around the site which would link the various civic, open space and entertainment precincts in proximity to the site
- a commercial component would be provided, enabling the provision of further employment generation at the site which is located in a context with excellent access to both the Sydney CBD as well as the Greater Sydney region. In this regard, the proposal would:
 - directly contribute to the provision of 280 additional jobs during the construction period
 - indirect contribution of 445 jobs during the construction period
 - accommodate approximately 730-1,230 jobs on an ongoing basis, generated by the visitor accommodation and commercial components of the development (variation due to flexibility in land use proposed on Site B)
- it would result in additional economic benefits to surrounding services and business following the completion of the development, which is estimated at a \$30 million per annum increase in local expenditure
- it would work alongside the Crows Nest Station development under the CSSI Approval in order to create an overall station precinct which is integrated, high quality, enjoyable and safe for future public transport users

- it would provide a variety of different uses above the station, which would work to activate the station precinct, both within traditional business hours as well as during the evening, late night and weekend periods
- it would enable the delivery of a future OSD form which is memorable, reinforcing the legacy of the Sydney Metro project and its mark on the broader Sydney skyline
- the assessment in this EIS has demonstrated that the building envelope is capable of achieving high amenity and a high quality future development that could achieve design excellence
- it provides a framework which would ensure that future development at the site exhibits design excellence, working alongside the future railway station to deliver a very high design quality building form outcome. The ESD strategy will ensure that recognised sustainability targets are achieved or exceeded in the future design of the development
- it includes provision for future public art, which would contribute to the vibrancy and interest generated by the surrounding built environment
- it is a premier example of a transit oriented development, which includes minimal car parking to reduce the impact on the local road network.

7.0 Clause 4.6(5) Secretary's Concurrence

Under Clause 4.6(5) of NSLEP 2013, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP 2013, which must be considered by the Secretary.

7.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed development results in a minor variation to the existing and proposed minimum non-residential floor space ratios development standard nominated by the NSLEP 2013, in respect of Site A. However, as noted above, the proposed development has redistributed non-residential GFA within the development and the development as a whole complies with the requirements of the development standard if it were to have applied to the entire site.

It is therefore considered that the variation to this development standard will not raise any matter which could be deemed to have State or regional significance.

7.2 The public benefit of maintaining the development standard

As demonstrated in Section 6 above, the proposed development is considered to be in the public interest. Additionally, the ability to redistribute non-residential floor space within the Crows Nest Metro Site as proposed in the Rezoning Proposal demonstrates that a better planning outcome can be facilitated through a competitive design process even if that results in a departure from clause 4.4A. It is therefore considered that there is no public benefit of strict compliance with the development standard of clause 4.4A in this case – this will also allow for future flexibility through the competitive design process and detailed SSD Application(s).

7.3 Any other matters required to be taken into consideration by the Secretary before granting concurrence

The proposed development will deliver the following objectives for both the North Sydney LGA and the State of NSW:

- support the NSW Government's planning strategies and objectives, including the Greater Sydney Region Plan (2018) and the North District Plan (2018)
- enable the development of mixed-use buildings at the site which cater to various uses and work to create a fully integrated station precinct within the heart of Sydney's North Shore
- enable building forms which responds to the emerging character of St Leonards while providing a mediating transition in built form between St Leonards and Crows Nest, and in doing so, aligns with the 2036 Draft Plan and the Rezoning Proposal

- minimise, to the fullest extent possible, overshadowing impacts on public open spaces including Hume Street Park, Ernest Place and the Willoughby Road restaurant precinct
- enhance the customer experience and urban amenity through the development of an integrated design concept that ensures delivery of a quality public domain experience with strong connections to the surrounding area
- create an urban environment that drives the high usage of the Sydney Metro network, responding directly to the principles of transit-oriented development
- provide the opportunity to deliver the OSD as early as possible with the aim of opening concurrently or shortly following completion of the Crows Nest Metro Station
- enable a design that responds sensitively to surrounding heritage items
- create a framework which works to achieve design excellence in the final integrated station development.

8.0 Conclusion

Clause 4.4A of the NSLEP 2013 currently applies a minimum ratio of non-residential floor space to sites in North Sydney to ensure that:

- continuous and active street frontages are provided;
- appropriate mix of residential and non-residential uses are encouraged;
- flexibility in the mix of land uses is provided to cater for market demands; and
- a suitable level of non-residential floor space is provided

The Crows Nest Rezoning Proposal will significantly increase the minimum non-residential floor space ratios that apply to the site, but also introduces the idea that non-residential floor space can be redistributed around the Crows Nest Station Over Station Development site.

This variation to the applicable development standard applies only to Site A, on which it is proposed to provide 0.7:1 of non-residential FSR. This does not comply with the 1.5:1 required by the current controls, nor the 3:1 envisaged within the Crows Nest Rezoning Proposal.

The proposed development seeks to redistribute the non-residential FSR from Site A to Site B and Site C. Although Site A does not comply with either the existing or the future development standards that apply to that part of the site, the site as a whole will deliver an appropriate quantity of non-residential FSR.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the minimum non-residential floor space ratios development standard is considered appropriate in these circumstances.