

Prepared for
Romanous Developments Pty Ltd

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301-305 Kent Street and 35-39 Erskine Street, Sydney

Clause 4.6 Variation Request

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This report is considered a draft unless signed by a Director of Principal.



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Michael Harrison
Principal

Revision history

Issue Reference	Issue Date	Issue Status
Issue A	11/04/2019	Draft for Internal Review
Issue B	14/05/2019	Final

1. Introduction

This Clause 4.6 Variation Request relates to the State Significant Development Application (SSDA) for a proposed new hotel located at 301 and 305 Kent Street and 35–39 Erskine Street, Sydney.

The Concept SSDA seeks development consent for a building envelope, use of the site as a hotel, pedestrian and vehicular access arrangements, and for the provision of on-site car parking. The Concept SSDA will seek to facilitate a future Stage 2 SSDA for the hotel development, following the undertaking of a competitive design process.

This written request seeks to vary the development standard for maximum height of buildings under Clause 4.3 of the *Sydney Local Environmental Plan 2012* (LEP 2012). The request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of this particular case. The variation allows for a development that represents the orderly and economic uses of the land, in a manner that is appropriate when considering the site's context, and therefore provides a better outcome on environmental planning grounds. A building envelope with a maximum building height of 84.5m is proposed at the western elevation only (the eastern elevation is proposed to be 79.66m), resulting in a non-compliance with the 80m maximum building height control of 5.6%. The non-compliance results from the site's sloping topography, which falls from east to west, having a high point of RL 16.5m at the Kent Street frontage and falling to RL 12m adjacent the western boundary of the site.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Is consistent with and achieves the objectives of the development standard in Clause 4.3 of the Sydney LEP 2012 (Wehbe Test 1);
- Ensures the objectives of the development standard in Clause 4.3 won't be thwarted (Wehbe Test 3);
- Provides sufficient environmental planning grounds to justify the contravention;
- Is consistent with the objectives of the B8 Metropolitan Centre zone objectives under the Sydney LEP 2012;
- Remains consistent with the applicable State and regional planning policies;
- Provides a better planning outcome; and
- Is in the public interest.

Accordingly, the SSDA can be approved as proposed in accordance with the flexibility of Clause 4.6 of the Sydney LEP 2012.

2. Clause 4.6 exceptions to development standards

Clause 4.6 of the Sydney LEP 2012 permits the consent authority to grant development consent for a development even though the development would contravene a development standard imposed by the LEP. The objectives in Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The Clause goes on to provide the following:

- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 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*
- 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*
- 5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matters 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.*

This document constitutes the written request required by Clause 4.6 (3) in relation to the proposal's breach of the height of building development standard.

The written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (CI 4.6 (3)(a)), and that there are sufficient environmental planning grounds to justify contravening the development standard (CI 4.6(3)(b)). This written request also demonstrates that the proposal is in the public interest (CI 4.6 (4)(a)(ii)), that there are no matters of State or regional planning significance (CI 4.6 (5)(a)) and there is no public benefit in maintaining the development standard (CI 4.6 (5)(b)).

3. The development standard to be varied

As noted earlier, this Clause 4.6 Variation has been prepared as a written request seeking to vary Clause 4.3 Height of Buildings under the Sydney LEP 2012.

Clause 4.3 states the following:

4.3 Height of Buildings

1) The objectives of this clause are as follows:

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

The Sydney LEP 2012 Height of Buildings Map identifies that the subject development site has a maximum building height of 80m (refer to **Figure 1** overleaf).



Figure 1 Sydney LEP 2012 Height of Buildings Map

Site outlined in red. Building heights step down from a maximum of 235m to the east of the site, through the western corridor (80m) towards King Street Wharf to the west of the site and the western edge of Central Sydney (15-45m). The topography also generally falls in the same direction.

Source: Sydney Local Environmental Plan 2012, Map HOB_014

The current height of building controls under the Sydney LEP 2012 applying to Central Sydney have been translated from the earlier 1996 LEP. The 1996 controls formalised the values expressed by the 1971 and 1988 strategic plans for the City of Sydney, before a maximum height of building control applied to Central Sydney. The 1971 Strategic Plan recognised and supported an already existing trend in building heights in Central Sydney, and was updated in the 1974-77 Statement of Objectives, Policies and Action Priorities, which included for example:

14A *Preserve and enhance harbour views, emphasise the City's natural topography, and protect and enhance the drama of the City's skylines, by encouraging the erection of the tallest building along ridges, and restricting the heights of buildings on slopes and valleys leading to the harbour.*

4. Extent of variation to the development standard

This Concept SSDA seeks to vary the 80m height control by proposing a maximum height of 84.5m at the western elevation of the proposed building envelope, resulting in a non-compliance with the maximum building height control of 4.5m. The percentage of variation against the height control is 5.6%.

The non-compliance with the building height control results from the site's topography, which falls from the eastern boundary of the site at the frontage to Kent Street, towards the western site boundary, with a fall of approximately 4.5m across the width of the site. There is also a fall in topography from the south-eastern boundary of the site to the north-eastern boundary along the Kent Street frontage. This presents a design constraint when seeking to comply with the height control.

As a result of the varying topography of the site, the proposed building envelope's non-compliance with the building height standard of 80m is not equal across the site. The proposed envelope is compliant with the control at the site's south-east corner (79.66m) and the Kent Street frontage (80m), however, adjacent the western the proposed building envelope has a height of 84.5m above ground level (existing).

Refer to the proposed north (Erskine Street) and west (Kent Street) elevation building envelope plans at **Figure 2** below and **Figure 3** overleaf which illustrate the extent of non-compliance as it relates to the changing topography of the site.

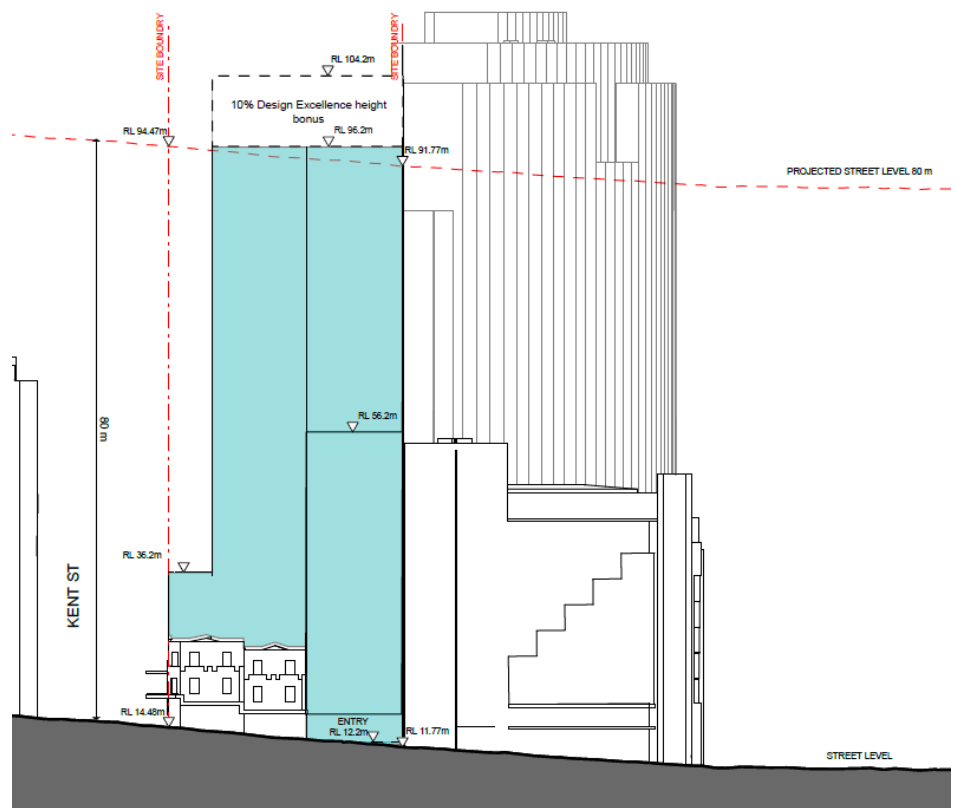


Figure 2 Proposed Building Envelope North (Erskine Street) Elevation
Source: DBI Architects

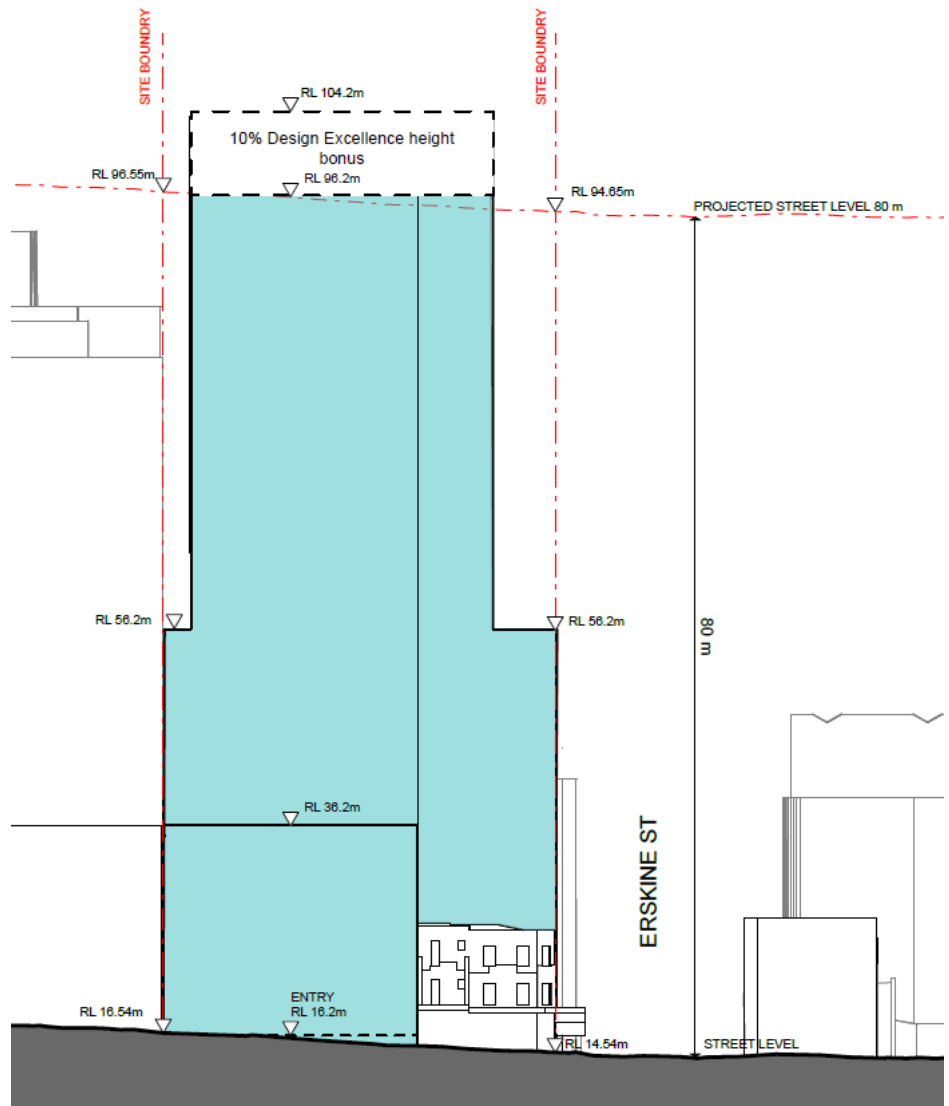


Figure 3 Proposed Building Envelope East (Kent Street) Elevation
Source: DBI Architects

The proposed height is consistent with surrounding building heights and provides a more regular flat top envelope, allowing for greater flexibility in design response through the future competitive design process and Stage 2 SSDA. Further, the extent of the non-compliance as a proportion of the overall building height is minor, with the maximum non-compliance of 5.6% occurring only in a small portion of the north-western corner of the site where the level of ground (existing) is significantly lower than at the Kent Street frontage.

5. Assessment

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

The commonly practiced way of establishing that compliance with a standard is unreasonable or unnecessary is to establish that the objectives of the relevant development standard are met, even though the standard is not to be complied with. In the cases *Wehbe v Pittwater Council* [2007] NSWLEC 827 and *Williams v Kuring-gai Municipal Council* [2017] NSWLEC 1098, a number of approaches can be used. Wehbe Tests 1 and 3, as described in *Williams*, are relevant to the proposed variation to the height development standard:

- Wehbe Test 1: the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- Wehbe Test 3: the objectives would be thwarted if compliance was required.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, it was determined that a development does not have to demonstrate that the non-compliant aspect should have a neutral or beneficial effect, relative to a compliant development.

Wehbe Test 1 – Objectives of the Height Control

An assessment against the objectives of the height of building development standard is provided below:

1) The objectives of this clause are as follows:

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

The proposed development, despite the non-compliance with the height of building control, will facilitate a future building that is appropriate for the site and its context. The site is located within the western corridor of Central Sydney, where building heights step down from taller buildings to the east, toward the Darling Harbour waterfront area to the west (refer **Figure 1**). Within the western corridor are buildings ranging in height, from taller, modern commercial development such as Westpac Place to the north of the site (building height 166m) and 321 Kent Street, which adjoins the site to the south (103m), and recent developments at 161 Clarence Street (ARC by Crown) with a building height of 88m and 151 Clarence Street (Barrack Place) at 83m, to lower scale heritage-listed terraces and warehouse buildings which are characteristic of the western corridor. The proposed building height of 84.5m is appropriate in this context, noting the surrounding pattern of taller buildings, and will enable greater flexibility in the future design of a building by providing a flat top to the building envelope and not an irregular shaped one.

The proposed building height non-compliance also allows for the displacement of building mass from adjacent the southern site boundary. The adjoining commercial office building at 309 Kent Street has been built with windows either on, or close to, the boundary which is shared between it and the subject site (because of the irregular, angled boundary line). It is proposed to provide a 2.5m separation to the adjoining building to the south above RL 56.2m, which is achieved by providing a setback to the

boundary of between 0m and 2.5m (because of the irregular, angled side boundary). The southern extent of the proposed building envelope has been designed to be parallel with the existing building at 309 Kent, not the site boundary. Refer **Figure 4** below.

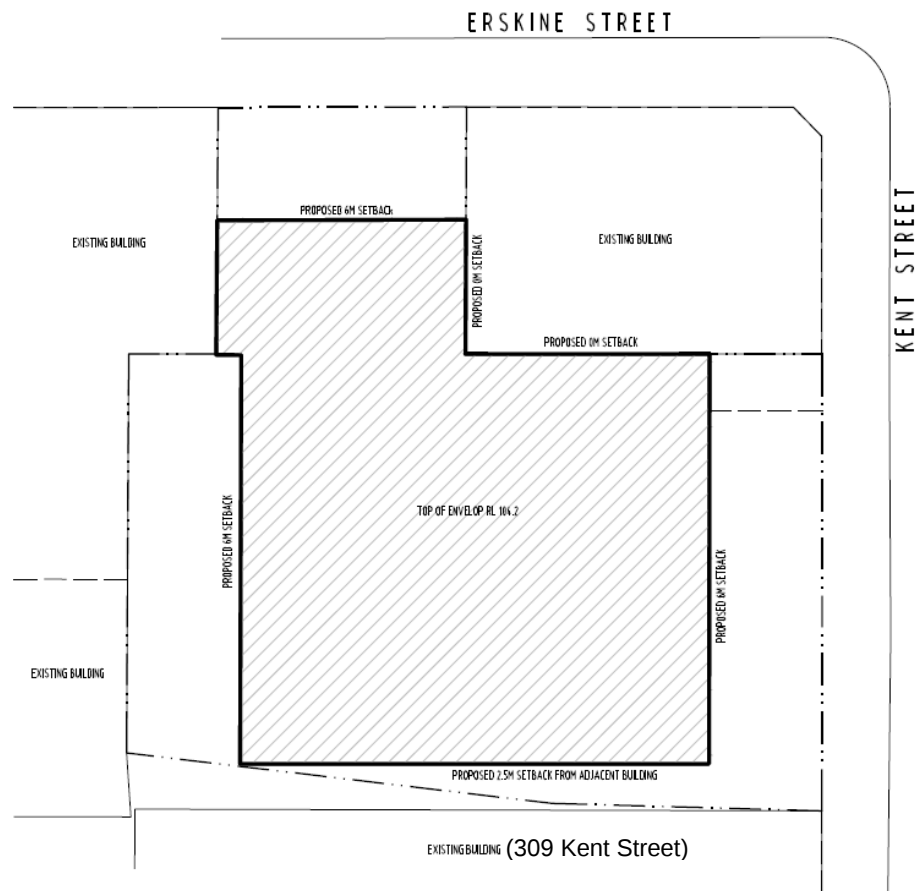


Figure 4 Proposed Tower Envelope Plan
Source: DBI Architects

There is no requirement under the Sydney Development Control Plan (DCP) 2012 for the proposed building envelope to provide a setback to the southern boundary where no windows are proposed. The architectural reference scheme for the proposed building envelope does not provide any windows adjacent the southern boundary. A setback has been proposed for the purposes of providing improved amenity for the occupants of the adjoining building by allowing for the retention of outlook, visual privacy, and solar access. The proposal is an improved planning outcome compared with a building envelope which provides no boundary setback to the south, despite both being considered 'compliant'. If the additional building height were to not be granted, then it is likely that the proposed envelope would need to be revised and the southern setback reduced or removed, in order to achieve the maximum FSR within the proposed building envelope.

It is additionally noted that the proposed building envelope, despite the non-compliance with the height of building control, will not overshadow any public open space, publicly accessible open space, or residential dwelling between 9am and 3pm at any time of year – as demonstrated in the shadow diagrams at Appendix B of the EIS.

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

The site is not adjoined by any heritage items or buildings in heritage conservation areas, nor is it adjoining any special character area. The proposed maximum building height of 84.5m is not inconsistent with the height of surrounding and nearby buildings in the western corridor. As noted above, the area is generally characterised by varying building heights, with modern commercial office and residential buildings such as Westpac Place to the north of the site (building height 166m) and 321 Kent Street to the south (103m), interspersed amongst heritage-listed terraces and warehouse buildings including the terraces at 62-66A Erskine Street to the north of the site and immediately adjoining Westpac Place, and the Former Edwards Dunlop & Co Warehouses at 123-129 Clarence Street (opposite the site to the east).

(c) to promote the sharing of views,

This objective is achieved, notwithstanding the height non-compliance because the proposed development will not have an unsatisfactory impact on any views. An analysis of the site context did not identify any known residential uses in the vicinity which would be impacted by the proposed development. In any case, the more important views surrounding the site are towards the west. The proposed variation to the building height occurs at the western elevation of the site, meaning the proposed development will have no greater an impact than a complying envelope for views towards the west from buildings to the east of the site. Further, the Visual Impact Assessment (VIA) at Appendix E of the EIS considers the impact of the proposed development on the view of sky above the existing sandstone buildings at the western end of Marin Place, when viewed from the eastern end of Martin Place at the intersection with Macquarie Street. The proposed development will partially obstruct the view of sky in this view, however, that impact is caused by the Kent Street elevation of the proposed building envelope, which complies with the height of building control. The proposed non-compliance at the western boundary will cause no additional impact.

The proposal provides a 2.5m boundary setback for the tower at the southern-eastern corner of the site, which is not required by the applicable planning controls. This will allow for the retention of some existing views from 309 Kent Street toward the north-east which would not otherwise be provided by a building with a zero-metre boundary setback on the subject site.

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

The proposed maximum building envelope height of 84.5m remains consistent with the intent of the 80m height control to provide a stepping down in building height towards the western edge of Central Sydney, being Darling Harbour/King Street Wharf.

(e) in respect of Green Square:

- i. to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and**
- ii. to ensure the built form contributes to the physical definition of the street network and public spaces.**

Not applicable. The site is not located in Green Square.

In accordance with Wehbe Test 1, it is clearly demonstrated that the proposed development achieves the objectives of the height of building control, notwithstanding the minor non-compliance with the numerical control.

Wehbe Test 3 – Objectives would be thwarted if compliance was required

It is considered that the objectives (1)(a) and (1)(c) of the height of building development standard would be thwarted if compliance was required under the circumstances. This is further discussed in relation to each of these objectives below.

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

- (a) to ensure the height of development is appropriate to the condition of the site and its context,**

The proposed building envelope responds to the condition of the site and its context by providing a setback to the southern boundary, despite there being no planning requirement to do so. A building envelope that complied with the building height control would require the width of the tower to be increased, by providing a blank wall to the southern boundary, in order to accommodate the maximum FSR available to the site under the Sydney LEP 2012. Indeed, it is noted that this has been characteristic of the built form outcome of recent nearby developments at 151 Clarence Street and 161 Clarence Street, both of which are built with blank walls to their side boundaries. To do the same eventually on this site would be to not consider the condition of the site and its context, given the adjoining building to the south at 309 Kent Street has been built with windows either on, or close to, the site boundary. The proposed building envelope, which achieves a minor non-compliance with building height but a setback to the southern boundary which is greater than the requirement, will achieve a better future built form outcome for the site and for the neighbouring property than a compliant building envelope.

- (c) to promote the sharing of views**

A building envelope which does not provide a setback to the southern boundary would permit a future building to be constructed on the southern boundary which would result in a complete loss of north-west views from 309 Kent Street. Displacing the proposed building mass to the top of the building envelope therefore enables the sharing of views, where a complaint building envelope would not, thwarting the objective of the height of building development standard.

5.2 Clause 4.6 (3) (b) Are there sufficient environmental planning grounds to justify contravening the development standard?

In the case *Four2Five vs Ashfield Council* [2015] NSW LEC 90, Pain J held that a Clause 4.6 must also demonstrate that there are environmental planning grounds to justify contravening the development standard, in addition to meeting the objectives of the standard and zone. Further, in the Initial Action Class 1 appeal *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill emphasised that the environmental planning grounds relied upon are to focus on the aspect of the development that

contravenes the development standard, not the development as a whole. Further, the Court has said that it must also justify contravening the development standard and not simply promote the benefits of carrying out the development as a whole.

Noting the achievement of the height objectives (above) and zone objectives (refer to Section 4.3 below), it is considered that there are sufficient environmental planning grounds to justify contravening the development standard because the height non-compliance results in no adverse impacts and is a better urban design and planning outcome, as detailed below:

- The proposal responds to the site topography by relocating height, providing for a regular shaped top to the building envelope compared to that of an angled form with a complying scheme. At its highest point, adjacent Kent Street, ground level (existing) is RL 16.5m, which falls to RL 12m adjacent the western boundary of the site. The proposed maximum building height non-compliance allows for greater flexibility in design and promotes design excellence through the future competitive design process and Stage 2 SSDA.
- It is not considered an ideal outcome from an urban design perspective for roof forms to follow the topography of the western corridor as it slopes down toward Cockle Bay. There are certain areas within Central Sydney where building heights are defined by sun access planes and characterised by either sloping or angular roof forms. The site and its surrounds are not affected by a sun access plane and accordingly, such a form is not characteristic of this part of Central Sydney. Despite the non-compliance with the height of buildings development standard, the proposal will maintain and enhance the visual effect of building heights stepping down toward the western edge Central Sydney at Darling Harbour/King Street Wharf recognised in and supported by, strategic planning for Central Sydney since 1971. Refer **Figure 5** below and **Figure 6** overleaf.



Figure 5 Photomontage of the proposed building envelope.

The proposed building envelope viewed from Pyrmont Bridge. Surrounding building heights gradually step down towards Darling Harbour/King Street Wharf. The proposed building envelope can be seen to sit appropriately within this context. Proposed building height shown darker grey and future 10% height as a result of demonstrating design excellence shown white.



Figure 6 Photomontage of the proposed building envelope.

The proposed building envelope viewed from Everton Park, Balmain. With the exception of the Barangaroo International Towers, surrounding building heights gradually step down towards Darling Harbour/King Street Wharf. The proposed building envelope can be seen to sit appropriately within this context. Proposed building height shown darker grey and future 10% height as a result of demonstrating design excellence shown white.

- The proposal will not result in significant loss of views from surrounding development or vantage points. The VIA at Appendix E of the EIS considers the visual impact of the proposed building envelope from a variety of vantage points and includes consideration of the additional 10% building height, which will be sought through the competitive design process and future Stage 2 SSDA. The VIA finds the proposal results in negligible, low or low-moderate change in all views assessed and that the proposal generally sits comfortably within the existing pattern of development in Central Sydney.
- The proposal will not result in further unreasonable overshadowing of adjoining properties or the public domain. Overshadowing diagrams for the summer and winter solstice and spring and autumn equinox are provided in the Architectural Design Report (Appendix B to the EIS) which demonstrate that despite the non-compliance with the maximum building height development standard, the proposed building envelope (inclusive of future 10% additional height subject of demonstrating design excellence) will not result in any overshadowing of public open space, publicly accessible open space, or residential dwelling between 9am and 3pm at any time of the year and therefore is no requirement within the relevant planning instruments, policies or guidelines requiring the retention of solar access to commercial buildings.
- The proposal will provide for future development that is consistent with the scale of adjoining and nearby buildings, as discussed in Section 5.1 of this request, and also the planned scale and form within the western corridor of Central Sydney - noting that the area of the western corridor within which the site is located and which is bound by Kent Street to the east and Clarence Street to the west, is identified for an increase in maximum building height from 80m to 110m to accommodate additional floor space

capacity in Central Sydney under the draft *Central Sydney Planning Strategy* and associated Planning Proposal (refer **Figure 7** below).



Figure 7 Proposed 110m building height on Central Sydney's western edge

Source: *Central Sydney Planning Proposal*, City of Sydney

- The proposal will provide for future development that maintains visual privacy and amenity of adjoining properties to the south and also west, which are built to their boundaries. Of particular reference is 309 Kent Street, which is built with windows either on, or close to the boundary between it and the southern boundary of the subject site. A complying height scheme would increase the impact on the adjoining building by requiring building mass to be moved to adjacent the southern boundary. As no windows are proposed at that location in the architectural reference scheme, the Sydney DCP permits a zero setback. However, the proposal provides for a varied setback of 0m to 2.5m along the southern boundary to provide separation to 309 Kent Street. This results in a better planning outcome to the adjoining property with respect to privacy and amenity.

The proposal will provide for a future development which exhibits design excellence and provides a high level of amenity, and which is responsive to site and context. It represents the orderly and economic use of land and good design and amenity of the built environment, as identified by Section 1.3 of the *Environmental Planning and Assessment (EP&A) Act 1979 (As Amended)*.

5.3 Clause 4.6 (4)(a)(ii) Is the proposal in the public interest because it is consistent with the objectives of the particular standard and the objectives of the development within the zone in which the development is proposed to be carried out?

The proposed development incorporating the height variation will be in the public interest as it will remain consistent with both the objectives of Clause 4.3 Height of Buildings development standard and the B8 Metropolitan Centre zone objectives.

The objectives of Clause 4.3 Height of Buildings

As noted in Section 4.1 of this written request, the development achieves the objectives of the height of buildings control under the Sydney LEP 2012, notwithstanding the non-compliance with the 80 metre numerical control. Therefore, it is consistent with the height control objectives.

The objectives of the B8 Metropolitan Centre zone

The site is located within the B8 Metropolitan Centre zone of the Sydney LEP 2012. As outlined below, the proposal is in the public interest because it is consistent with the zone objectives:

1 Objectives of zone

- ***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 will facilitate a future hotel building which will contribute to Australia's participation in the global economy by providing additional tourist accommodation, for which there is considerable unmet demand in Central Sydney, as noted in the City of Sydney's *Tourism Action Plan* (2013) and *Visitor Accommodation Action Plan (Hotels and Serviced Apartments)* (2015), in a highly accessible location to major tourist and commercial destinations, including King Street Wharf (250m) and Barangaroo South (350m).

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

The proposed development will facilitate a future hotel on the site of a height and scale consistent with the built form character of the western corridor of Central Sydney. Although consent is not sought for gross floor area through this Concept SSDA, it is noted that the architectural reference scheme complies with the maximum floor space ratio (FSR) applicable to the site under Clause 4.4 of the Sydney LEP 2012 of 11:1, despite the building height non-compliance.

- ***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 will facilitate the future redevelopment of the site for a hotel, with ancillary uses including bars and restaurants, which will be accessible to the public and serve the workforce, visitors and wider community and provide improved public domain through an active frontage to Kent Street, as well as providing indicatively 360 hotel rooms. The proposed development will support the growth of the tourism economy, identified as an industry sector targeted for success in 'Objective 24' of the Greater Sydney Commission's *Eastern City District Plan*. The proposed building envelope has considered the

site context and responded appropriately, to ensure the proposed development is compatible with, and considerate of, adjoining commercial buildings.

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

Due to the site's highly accessible location within Central Sydney, the vast majority of trips to and from the site will be by means other than private motor vehicle. Wynyard Station is located within approximately 200 metres of the site, providing high-frequency rail services throughout Greater Sydney, including the Sydney Airport. The new Sydney Light Rail, which is currently under construction also services the site, with the nearest stop being also located at Wynyard. Barangaroo Wharf is located within approximately 600 metres of the site, providing ferry services on the F3 Parramatta River Line and the F4 Cross Harbour Line. There is also an extensive range of bus services that pass-through Clarence Street and York Street within a short walk from the site. The site is also easily accessible by bicycle, with the Kent Street separated cycleway running along Kent Street at the front of the site. It is anticipated that end of trip facilities and bicycle parking will be provided in the future development, encouraging access to the site by bicycle.

The quantum of car parking spaces to be provided will be in accordance with the prescribed maximums under the Sydney LEP 2012 and will be confirmed in the future Stage 2 SSDA. This is a constrained car parking rate to disincentivise the use of private motor vehicles to access the site.

- ***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 future hotel development will be the subject of a competitive design process and Stage 2 SSDA, however, it is envisaged that the Kent Street frontage of the development will be provided as an active frontage with the hotel lobby and opportunities for a bar/restaurant addressing Kent Street and a laneway (the existing right-of-way).

6. Secretary's concurrence

Clause 4.6(4)(b) stipulates that consent must not be granted for development that contravenes a development standard unless the concurrence of the Secretary has been obtained. Planning Circular PS 18-003 provides that Consent authorities for State significant development (SSD) may assume the Secretary's concurrence.

Notwithstanding, the matters to be considered by the Secretary in deciding whether to grant concurrence are provided by Clause 4.6(5) and addressed below.

(a) *whether contravention of the development standard raises any matters of significance for State or regional environmental planning, and*

Contravention of the maximum height of building development standard under Clause 4.3 of the Sydney LEP 2012 does not raise any matter of significance for State or regional environmental planning.

(b) *the public benefit of maintaining the development standard, and*

As outlined in Section 4.3 of this request, the proposal is in the public interest as it maintains consistency with the objectives of the Height of Buildings development standard (further explained under Section 4.1) and also the B8 Metropolitan Centre zone of the Sydney LEP 2012. It is therefore concluded that there is no public benefit in maintaining the height of buildings development standard under the circumstances.

(c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

There are no other matters needing to be considered.

7. Conclusion

This written request under Clause 4.6 of the Sydney LEP 2012 seeks to vary the permitted maximum height of building control of 80 metres applicable to the site, to the proposed height of 84.5 metres. This comprises a 5.6% variation to the control. The proposal will provide a better planning outcome with no significant adverse environmental impacts.

The written request demonstrates:

- The proposed development is consistent with and achieves the objectives of the height of buildings control under Clause 4.3 of the Sydney LEP 2012 (Wehbe Test 1);
- The objectives of the height of buildings control would be thwarted if strict compliance was required (Wehbe Test 3). The proposed non-compliance allows building mass to be displaced from adjacent the southern site boundary where it would have a detrimental impact on the adjoining building to the south at 309 Kent Street. The proposed height of building non-compliance therefore allows the building envelope to respond to the condition of the site and its context (Objective (1)(a)) and promotes the sharing of views (Objective (1)(c)) where a strictly complying scheme would not;
- There are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard, including:
 - The proposed building envelope provides an appropriate response to the site topography, which falls by approximately 4.5m from east to west, and providing for a regular shaped building envelope compared to that of an angled enveloped under a complying scheme – a better planning outcome;
 - The additional height allows for an increased setback and therefore privacy and amenity to the adjoining commercial property on the southern boundary to 309 Kent Street - a better planning outcome;
 - No significant adverse amenity impacts with respect to overshadowing and views with the proposed building height;
 - Providing height in accordance with the scale of buildings that surround, and responsive to the planned height of development in the western corridor of Central Sydney, as per the Sydney LEP 2012;
- Provides for a development that is in the public interest, as it is consistent with both the objectives of the height of buildings development standard and the objectives of the B8 Metropolitan Centre zone;
- The concurrence of the Secretary can be assumed, as per Planning Circular PS 18-003; and
- The proposal remains consistent with Section 1.3 of the EP&A Act 1979, particularly to promote and coordinate the orderly and economic use and development of land, and to promote good design and amenity of the built environment.

It is therefore requested that the Department of Planning and Environment accept this written request and grant consent to the Concept SSDA.