

## Clause 4.6 Variation Request Floor Space Ratio Development Standard



### Sydney Metro Martin Place Station Precinct

Submitted to Department of Planning and Environment

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# Contents

<b>1.0</b>	<b>Clause 4.6 Variation Request</b>	<b>1</b>
1.1	Overview of Justification for FSR Variation Request	1
1.2	Clause 4.6 Variations	3
<b>2.0</b>	<b>Development Standard to be Varied</b>	<b>5</b>
2.1	The Land Subject to this Variation	6
2.2	Site Context	7
2.3	Nature of the Variation	8
<b>3.0</b>	<b>Justification for Contravention of the Development Standard</b>	<b>9</b>
3.1	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	9
3.2	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	22
3.3	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	25
3.4	Other Matters for Consideration	26
<b>4.0</b>	<b>Summary &amp; Conclusion</b>	<b>28</b>

## Figures

<b>1</b>	Sydney LEP 2012 Floor Space Ratio Map Extract	<b>5</b>
<b>2</b>	The Site subject to this Clause 4.6 request to vary a development standard	<b>7</b>
<b>3</b>	Employment and transport capacity growth	<b>11</b>
<b>4</b>	3D representation of additional height capacity of Central Sydney	<b>12</b>
<b>5</b>	Strategic Density Areas/Tower Clusters	<b>13</b>
<b>6</b>	Potential site amalgamations and floor space investigation sites	<b>14</b>
<b>7</b>	Diagram of Station and OSD interface	<b>22</b>

## Tables

<b>1</b>	Commercial development capacity of identified blocks	<b>14</b>
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## Submitted Under Separate Cover

Design Report

*Grimshaw + JPW*

Statement of Heritage Impact

*Tanner Kibble Denton Architects*

Wind Tunnel Test for Martin Place OSD

*Cermak Peterka Petersen (CPP)*



## 1.0 Clause 4.6 Variation Request

### 1.1 Overview of Justification for FSR Variation Request

The proposed variation to the Floor Space Ratio (FSR) development standard, as permitted under Clause 4.6 of the *Sydney Local Environment Plan 2012* (Sydney LEP), is founded in the unique context of the Sydney Metro Martin Place Station Precinct DA and the characteristics of the Site on which it is located.

This request to vary the FSR to allow additional floor space within the proposed North Tower of the over station development (OSD) is considered fully justified in the context of the exceptional set of circumstances surrounding the project, and in terms of it satisfying the established tests associated with clause 4.6 variations. The principal arguments in favour of this variation have been detailed in this request prepared by JBA, on behalf of the proponent Macquarie Corporate Holdings Pty Limited (Macquarie). Flexibility in the application of the FSR standard is considered to be fully justified and warranted.

#### Project Background

Sydney Metro received approval as Critical State Significant Infrastructure (CSSI) in January 2017. It is fully funded and scheduled to open in 2024. The Sydney Metro CSSI approval includes consent to demolish most of the buildings on the North Site and South Site, as described in the EIS for Macquarie's State Significant Development (SSD) proposal. Excavation of the land beneath these demolished buildings was also approved, to enable the construction of rail lines and the station. This major intervention in the City fabric has effectively created a very large and vacant site that would otherwise not have occurred.

A development and place making opportunity of this magnitude is extremely rare in any metropolitan centre, and is unprecedented in Sydney since the construction of the heavy rail network in the 1970s. It arises from the introduction of the new Sydney Metro rail line and Station to Martin Place.

The Macquarie proposal seeks to redevelop the last remaining parcels of land in this city block between Martin Place and Hunter Street, and enable new underground connections for the entire length of the Precinct to significantly improving connectivity.

The unique opportunity afforded by the Metro-created development sites, however, pale in significance when considering additional transport capacity created by the project. The ability of the City to accommodate large numbers of additional workers, and therefore to grow in the longer term, is currently constrained by its public transport infrastructure. Whilst the new City and Eastern Suburbs Light Rail will provide some additional capacity, the main 'game changer' is the Metro network and Stations. This new Metro line, and the new Martin Place Station in particular, will unlock considerable growth opportunities for the commercial heart of the Sydney CBD and enable it to proposer as Australia's leading global financial centre. This will have broader and long term impacts.

In light of this, the immediate opportunity and responsibility of the governing agencies, is to ensure the Station sites are not under-developed while this limited construction window is open. The proposal maximises this opportunity in a responsible manner. In particular, the preservation of the City's heritage assets and the sanctity of the solar access planes have been recognised and fully supported by the proposal. It fully respects the reasonable and enduring constraints of the Precinct and the locality.

#### Summary of Arguments

The current FSR statutory control unnecessarily and unreasonably constrains the development potential of the Site, contrary to strategic planning for the responsible growth of Metropolitan Sydney and the Sydney CBD.

1. **Transformational opportunity of the Sydney Metro Station** – The SSD proposal will see the redevelopment of an entire precinct, delivering significant office accommodation in buildings with far greater environmental performance and of a far greater design quality, than the present buildings. Located immediately above the integrated Martin Place Station, the proposed OSD will appropriately, and responsibly, maximise those opportunities delivered by the new Metro infrastructure. Investment in Martin Place infrastructure will be increased through a new station related concourse, upgraded entries (portals to the City), and other improvements that the Macquarie proposal brings. Varying the FSR control, as proposed in this SSD application, will enable an optimal landmark, fully integrated OSD solution for the Precinct (subject to approval of detailed design), that fully capitalises on the additional transport capacity created by the Metro Station. Maximising the ‘return’ on such a large government and private investment, within sound planning and environmental parameters, is therefore considered to be clearly in the public interest.
2. **CSSI Floor Space burden a perverse disincentive** – A perverse outcome of the approved CSSI development is that the GFA generated by the Station must be included as part of the FSR calculations for the building envelope, to the extent that it overlaps the North Site. This places a significant and unique burden on the development proposal, whereby the already approved critical infrastructure unreasonably diminishes the development potential of the above-ground Site. As the majority of this CSSI floor space is largely located below ground, it does not affect the apparent or visible above ground floor space or building envelope.
3. **Redistribution of GFA** – The integrated scheme over a larger North Site allows for the redistribution of floor space away from the heritage building at 50 Martin Place, and towards the more contextually appropriate northern end of the Precinct. This leaves the heritage building and the setting of Martin Place intact, and enables a contemporary tower to be developed in the northern portion where solar access to Martin Place is also not adversely affected.
4. **Dated FSR Controls** - The maximum FSR standard for commercial floor space, that this request seeks to vary, has largely unchanged since the 1970’s. Even the most recent LEP review in 2012 (which essentially maintained the historic FSR) did not anticipate or plan for additional floor space capacity released by recent investments in public transport infrastructure. The rigid application of this standard would prevent a far superior outcome from being achieved, and is considered to be a negligent planning response to this unique, strategic, and ‘city-making’ opportunity. The current FSR limit, which is generic across most of Central Sydney, fails to adequately allow for such unanticipated changes in circumstances.
5. **Suitable Heritage & Environmental Outcomes** - The opportunities for growth in office accommodation in the commercial heart of the City is heavily constrained by the large number of heritage buildings that are of National, State or Local significance as specified in the Sydney LEP, including on the North Site through the nationally significant 50 Martin Place building. These buildings cannot be demolished, and most can only accommodate minor increases in floor space, at best. Vertical growth of the City’s office infrastructure is also constrained in many places by the solar access planes or other height constraints. In the case of the Macquarie Proposal the OSD envelope is effectively limited in height by the Martin Place and Hyde Park solar access planes. The subject proposal, however, can comfortably accommodate the amount of additional GFA requested without adversely impacting heritage items in the locality and without breaching the solar access planes. It is ideally suited, therefore, to an increase in FSR in terms of such critical impacts.

## 1.2 Clause 4.6 Variations

Clause 4.6 of the Sydney LEP 2012 is the statutory mechanism that allows the consent authority to grant consent to development that departs from a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including the FSR control, to achieve better outcomes that are in the public interest.

Clause 4.6(3)-(5) of the Sydney LEP 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.*
- (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 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.*

...

### Consistency with Common Law Guidance

Assistance on the approach to justifying a development standard variation is found in certain defining decisions of the NSW Land and Environment Court, in particular in the judgements for:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
5. *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

In accordance with the statutory requirements, and as guided by the above case law, this clause 4.6 request:

- identifies the development standard to be varied (**Section 2**);
- identifies the extent of the variation sought (**Section 2**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances (**Section 3.1**);
- demonstrates that there are sufficient environmental planning grounds to justify the variation (**Section 3.2**);
- demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B8 zone (**Section 3.1**); and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence (**Section 3.4**) namely:
  - whether the contravention of the development standard raises any matter of significance for State or regional environmental planning; and
  - the public benefit of maintaining the development standard; and
  - any other matters required to be taken into consideration by the Secretary before granting concurrence.

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

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone. Refer to **Section 3.3**.

This report should be read in conjunction with the Stage 1 SSD Environmental Impact Statement prepared by JBA and dated May 2017 in relation to the Sydney Metro Martin Place Station Precinct.



## 2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.4 and Clause 6.4 of the Sydney LEP, which together set the maximum permissible FSR for applicable to the subject development proposal.

Clause 4.4 of the Sydney LEP is reproduced below in its entirety and an extract of the Floor Space Ratio Map, to which that clause applies, is reproduced in **Figure 1**.

### 4.4 Floor space ratio

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

- (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.

(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.



**Figure 1** – Sydney LEP 2012 Floor Space Ratio Map Extract  
Source: Sydney LEP 2012 & JBA

The relevant sections of Clause 6.4 of the Sydney LEP that pertain to the Site have also been reproduced below.

#### 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:*
  - (a) *Area 1, hotel or motel accommodation, community facilities or child care centres—6:1,*
  - (b) *Area 1, office premises, business premises, retail premises, residential accommodation or serviced apartments—4.5:1,*
  - ...
- (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 is used for more than one purpose.*

## 2.1 The Land Subject to this Variation

This Clause 4.6 request to vary a development standard pertains land at 50 Martin Place, 9-19 Elizabeth Street, 8-12 Castlereagh Street, 7 Elizabeth Street, 5 Elizabeth Street, and 55 Hunter Street, Sydney. This land encompasses an entire city block bounded by Hunter Street, Elizabeth Street, Castlereagh Street, and Martin Place, and is known as the 'North Site' in the Sydney Metro Martin Place Station Precinct (the Precinct).

It is rectangular in shape, approximately 6,022m<sup>2</sup> in area, and includes the heritage listed 50 Martin Place building, which is to be retained.

The North Site fits within the broader development Precinct extending south to 39-49 Martin Place, and a portion of Martin Place located between Castlereagh Street and Elizabeth Street, as illustrated in **Figure 2** below.



**Figure 2** – The Site subject to this Clause 4.6 request to vary a development standard

## 2.2 Site Context

Site context is an important consideration when determining the appropriateness and necessity of a development standard. This particular Site is strategically significant and presents a unique opportunity to influence the growth and evolution of Sydney as a major global business centre into the future.

The Precinct encompasses the new Martin Place Metro Station and associated Over Station Development (OSD), and will become a critical transport portal for the City generally and the wider Sydney Metro City & Southwest project in particular. The Sydney Metro City & Southwest project is a NSW Government priority infrastructure project. It forms Stage 2 of the Government's planned improvements for transforming Sydney's rail network, with the first stage being the Sydney Metro Northwest project (formerly the North West Rail Link). Together they are the first major components of a much longer term and extensive standalone 'Metro' rail network. The Metro will support and increase the capacity of Sydney's existing heavy rail network to help meet the transport needs of the Metropolitan area, and inevitable future growth in the Metropolitan area.

The new Metro stations are being designed to take into account, and make physical provision for, the likely requirements associated with possible future OSD. The OSD is therefore a critical consideration in the detailed design and delivery of the Stations, such that together they can provide a fully integrated and world-class transport experience. The subject proposal acknowledges this challenge and responds appropriately to the particular circumstances of the Martin Place Station. The Precinct's characteristics are defined and assessed in detail in the Urban Design Report prepared by Tzannes in Association with Howard Tanner and TKD architects, (included in the EIS documentation as **Appendix A**).

## 2.3 Nature of the Variation

Under the provisions of the Sydney LEP, the maximum FSR permitted for commercial development of the type proposed, is the sum of the following:

1. The 'base' FSR for the Site is 8.0:1 (refer Clause 4.4 of the Sydney LEP); plus
2. 4.5:1 when undertaking office/retail development (refer Clause 6.4(1)(b)); plus
3. 1.25:1 (10% of the above total of 12.5:1) when design excellence is achieved by way of a design completion, however this clause is not applicable in the current proposal (refer Clause 6.21); plus
4. 0.3:1 when providing end-of-trip facilities as part of a commercial development (refer Clause 6.6).

In the case of the subject proposal the maximum permissible FSR is 12.8:1, being the sum of 1, 2 and 4 above.

As the Design Excellence Framework (refer **Appendix I** of the EIS) includes an alternative to a design competition as a means of achieving design excellence, the 'bonus' FSR to cover the cost of undertaking a design competition (as provided for under Clause 6.21 of the Sydney LEP) does not apply.

The Stage 1 SSD application seeks approval for an OSD building envelope on the North Site that will be 40+storeys of predominantly commercial floor space, and will integrate with the existing 50 Martin Place building and the Martin Place Metro Station. Whilst the Metro Station is already approved as a different class of development, being CSSI, the floor space it occupies under the North Site must legally be included in the GFA for the purposes of calculating FSR. There is no scope to differentiate between buildings on a site based on the type of planning approval under which they were authorised<sup>1</sup>, meaning that the CSSI floor space cannot be excluded for compliance purposes.

Hence, the GFA of the approved CSSI Metro Station, to the extent that it overlaps the SSD development sites (North and South), must be included as part of the FSR calculations. This places a significant and unique burden on the project, whereby the approved development of critical infrastructure, primarily occurring underground, has perversely diminished the development potential of the land and reduced the size of the building above, precisely at a location that is best suited to accommodate additional floor space.

The planning, urban design and architectural studies have concluded that a new premium grade office building of approximately 80,000 m<sup>2</sup> of commercial GFA, can be comfortably accommodated within the proposed building envelope for the North Site. Taking into account the floor space in the existing 50 Martin Place building, which contains a further 24,422m<sup>2</sup> of GFA, the proposed total GFA on the North Site, excluding the Metro Station development, rises to approximately 104,270 m<sup>2</sup>. This equates to an FSR for the North Site of 17.315:1.

However, with the addition of the Station components that are located on the North Site, the combined total GFA increases by another approximately 6,500m<sup>2</sup> (approximately) to around 110,800 m<sup>2</sup>, (or by 6.25%).

This means the total FSR proposed for the North Site equates to 18.4:1

<sup>1</sup> The approval for SSI 15\_7400 never had to consider FSR or any other development standard under the Sydney LEP 2012, because as Critical State Significant Infrastructure the project was not bound by any Local Environment Plans.



## 3.0 Justification for Contravention of the Development Standard

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ of the Land and Environment Court identified five ways in which an applicant might establish that compliance with a development standard is unreasonable **or** unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary. Nor does the development need to demonstrate satisfaction of more than one of five ways outlined.

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]).

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 or 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 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 FSR control pursuant to the First Way outlined in *Wehbe*.

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.

**Sections 3.1 and 3.2** of this document address the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control.

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

The objectives of the FSR development standard (under clause 4.4 of the Sydney LEP 2012) are:

- (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 Stage 1 SSD application has sought consent for a quantum of floor space (and hence increased FSR) that has been thoroughly tested with various architectural schemes to fit comfortably within the maximum envelope proposed. The indicative scheme, and the quantum of GFA proposed satisfies the objectives of the FSR development standard, notwithstanding the numerical non-compliance, as set out below.

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

There is a recognised need to provide considerably more employment floor space in the Sydney CBD to meet forecast demand, even in the short to medium term (5 to 20 years). This need is identified under various State and Local planning strategies (discussed further below), which highlight the strategic merit in providing additional employment floor space in-line with forecast jobs growth and infrastructure capacity.

#### Central Sydney Planning Strategy (CSPS)

The CSPS is the guiding strategic document for the development of Central Sydney over the next 20 years, with an overall emphasis on positioning and strengthening Sydney as Australia's leading global city.

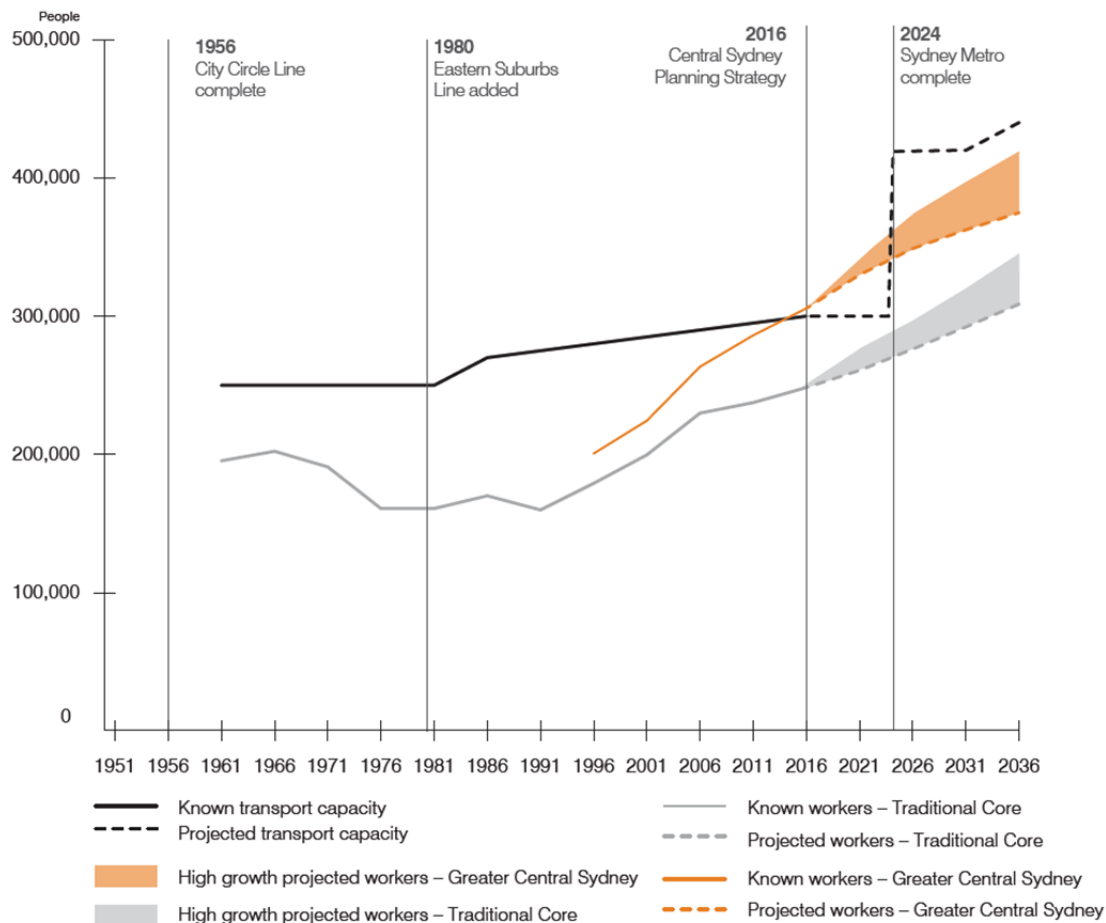
A key initiative of this strategy is to address a shortfall of some 40,000 – 85,000 jobs, equating to some 800,000sqm to 1.7million sqm of floor space, that is estimated by the City Council to be achievable under the current planning controls. In order to meet the shortfall, the CSPS seeks to prioritise employment growth and increase capacity for commercial purposes, noting that:

*“Without intervention to stabilise employment floor space losses and increase the amount of employment floor space, there will be significant constraints on the number of jobs that can be accommodated.” – p.37*

The CSPS highlights that a key driver of the desired longer-term economic and employment growth in Central Sydney will be the major step-change infrastructure projects occurring, such as the SMCS project. This major infrastructure project, along with the CBD and South East Light Rail, represents:

*“The largest commitment to new public transport infrastructure since the 1980s set to boost public transport capacity in 2024, which will likely lead to an increase in demand for employment floor space. Central Sydney must be positioned to accommodate this growth” – p. 33*

As demonstrated in **Figure 3**, this increase in transport capacity will actually outpace forecast jobs growth in 2024, identifying a unique opportunity to grow employment based uses that are drawn to the productivity that comes from locating them in areas well serviced by public transport. The delivery of increased commercial floor space can thereby capitalise on significant infrastructure investment and the opportunities created by forecast increased transport capacity, whilst also responding to historic growth pressures and a transport deficit that are already stretching capacity.



**Figure 3 – Employment and transport capacity growth**  
Source: Central Sydney Planning Strategy & JBA

The Strategy outlines the concept that particular areas of Central Sydney may be capable of achieving a greater height and floor space than the planning controls permit. This is one of the key moves identified within the Strategy to combat the identified jobs gap and ensure Sydney retains its place on the world stage as a global economic leader.

These areas are broadly defined (refer to **Figure 5** below), but are not exclusively limited to these 'zones'. The Strategy provides that land within these zones will be eligible to 'unlock' additional height and floor space by submitting a site-specific Planning Proposal. Whilst this request to vary a development standard does not constitute a site-specific Planning Proposal, the variation aligns with the intent of this concept in capturing additional floor space for employment-generating uses and not residential accommodation or serviced apartments.

A rigorous opportunities and constraints exercise to understand which areas of Central Sydney have the capacity to support additional building height (and consequently GFA), without offending, utilised the below:

- Solar Access Planes;
- No additional Overshadowing areas;
- Public View corridors;
- Special character areas;
- Heritage/conservation precincts;
- PANS-OPS restrictions; and
- Historic skyline city form/profile.

The output from this exercise is represented graphically in **Figure 4**.



**Figure 4** – 3D representation of additional height capacity of Central Sydney  
Source: City of Sydney Council

In understanding these constraints/opportunities, a high level capacity study was undertaken by Council as part of developing the Strategy, to test the development potential of sites. This determined the maximum floor space potential of these sites, aligning with building heights limited by sun access planes and airport controls and other built form outcomes. This work was then compared against the site yields under the existing controls. It is worth noting that the study identified a number of limitations, including a lack of any feasibility study.

The work was developed in order to understand potential floor space that could be unlocked if sites reached their full theoretical development potential.

Both the North and South Sites were identified as potential capacity sites within the study (site code 56 and 69 - refer to **Figure 6**). However, these sites were not carried forward and further investigated to understand their potential maximum capacity.

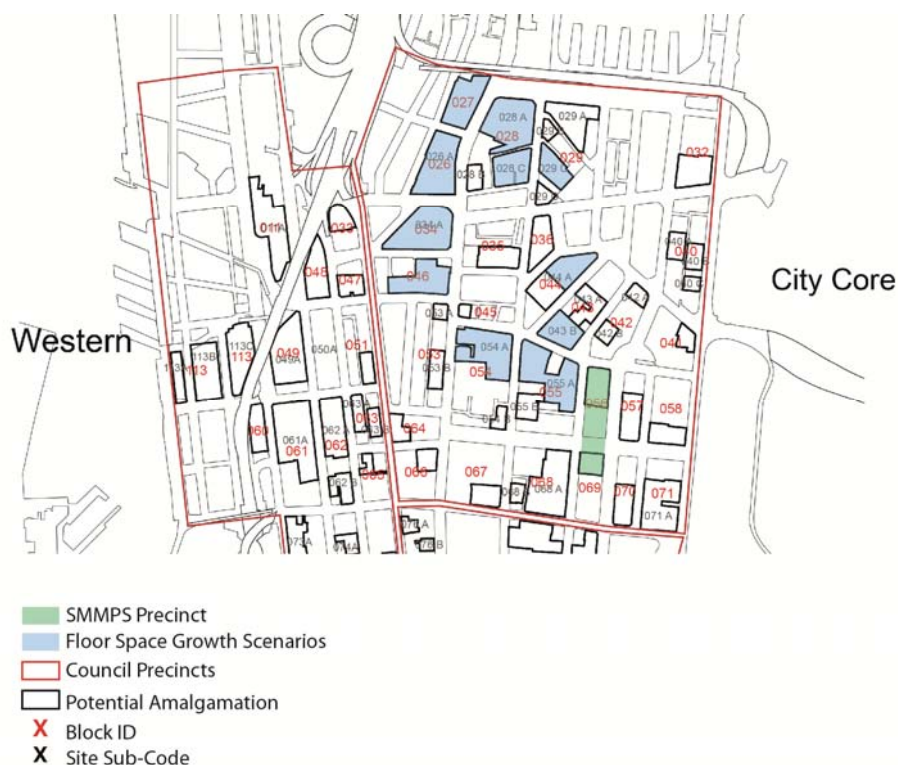
The key conclusion to draw from the capacity study is that the historic barrier to development within Central Sydney (being FSR) is being removed (on a site by site basis subject to meeting a range of threshold requirements), with FSR now being simply a by-product of an employment generating tower that reaches the theoretical maximum height applying to the site (be that PA-OPS, Sun access Plane etc).

Under this framework, and as illustrated within **Table 1** (an extract from the Built Form Capacity Study), sites within Central Sydney are capable of achieving FSR's consistent with (and exceeding) those FSRs being proposed under this planning proposal.





**Figure 5 – Strategic Density Areas/Tower Clusters**  
Source: *Central Sydney Planning Strategy & JBA*



**Figure 6 – Potential site amalgamations and floor space investigation sites**

Source: Central Sydney Planning Strategy & JBA

**Table 1 – Commercial development capacity of identified blocks**

Source: Central Sydney Planning Strategy – Appendix B Built Form Capacity Study

Block Ref	Prevailing Height Control	Maximum Potential Height (RL)	Maximum Potential Height (m)	Total Floor Space sqm (moderate)	FSR (moderate) (x:1)	Total Floor Space sqm (High)	FSR (high) (x:1)
26A1	No Additional Overshadowing – Australia Square	215	200	51,723	14.2	59,712	16.4
26A2	No Additional Overshadowing – Australia Square	189	172	51,644	12.7	59,265	14.5
27	No Additional Overshadowing – Australia Square	330	217	84,232	15.2	97,537	17.6
28A	No Additional Overshadowing – Macquarie Place	217	211	116,054	13.9	133,838	16.1
28C	PANS OPS	330	326	99,972	22.9	117,502	26.9
29C	PANS OPS	330	327	59,561	19.3	69,624	22.6
34A	Sun Access Plane – Wynyard Park	216	196	108,377	13.0	124,549	14.9
43B	No Additional Overshadowing - Pitt Street	271	253	67,609	18.3	78,882	21.4
44A	No Additional Overshadowing - Pitt Street	315	302	155,050	22.9	182,246	27.0
46	Sun Access Plane – Wynyard Park	193	184	75,038	13.3	86,322	15.3
55A1	Sun Access Plane – Martin Place	203	190	57,349	13.3	65,994	15.4

Block Ref	Prevailing Height Control	Maximum Potential Height (RL)	Maximum Potential Height (m)	Total Floor Space sqm (moderate)	FSR (moderate) (x:1)	Total Floor Space sqm (High)	FSR (high) (x:1)
54A	No Additional Overshadowing – Martin Place	200	187	98,436	14.2	113,622	16.4
55A2	No Additional Overshadowing – Martin Place	170	151	45,614	10.3	51,702	11.7

The CSPS also identifies a future mechanism for additional floor space, termed 'Strategic Floor Space', which may be achieved for office premises, business premises, retail premises, hotel accommodation and community and cultural facilities on strategic sites. A number of objectives accompany this Strategic Floor Space, which have been addressed where relevant by the proposed development:

- *To provide opportunities for Strategic Floor Space on appropriate sites that serve the workforce, visitors and wider community*

The Site is an appropriate location to serve the workforce, visitors and wider community, being strategically located in the heart of the Sydney CBD with immediate access to both the future Metro and the heavy rail networks. It will support jobs with superior connections to public transport, and reinforce Martin Place as a lively business precinct.

- *To limit Strategic Floor Space to identified strategic uses*

The proposed variation will deliver additional floor space exclusively for the purposes of office, business, and retail premises to support the nominated strategic uses in the Sydney CBD.

- *To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure, particularly public transport, open space and pedestrian infrastructure*

The Stage 1 SSD application and the concept proposal acknowledges the unique strategic value of the Site that is already earmarked to deliver an integrated OSD and Martin Place Metro Station. The Sydney Metro is approved and committed, with land acquisitions largely completed. It is therefore more than just 'planned' public transport infrastructure. It also includes additional pedestrian infrastructure in the form of a new below ground unpaid concourse, that is open to the public and not only for the Metro or heavy rail customers. The subject development proposal will deliver increased intensity in-hand with a significant increase in the public infrastructure capacity of the City.

- *To require sharing of planning gain resulting from changes to planning controls to fund public infrastructure delivery with consideration given to development feasibility*

The proposal responds to the delivery of public transport infrastructure in the form of a Metro station. The benefits from planning gain will be effectively passed onto TfNSW as the owner of the bulk of the land, and in the commercial proposal between TfNSW and the proponent (as part of the Unsolicited Proposal). We understand that this gain is contributing towards the delivery of the Metro.

- *To ensure no overshadowing of protected places at key times*

The proposed building envelope for the North Site will not result in any additional overshadowing of protected places at the key times nominated in the Sydney LEP for Martin Place or Hyde Park.

Furthermore, one priority action identified by the CSPA in allowing Strategic Floor Space, is to determine the validity of such floor space through design testing that yields equal or better environmental performance than a complying envelope. The proposed building envelope has been tested from a design and environmental performance perspective, as discussed further in **Section 5** of the EIS. This has included the exploration of alternative building envelopes by Grimshaw and JPW (at **Appendix A** of the EIS) through the design development stage of the proposal, which were found to have an inappropriate relationship with the Site context or provided for inadequate floor space to meet anticipated development needs. Further testing and design development will occur through the detailed design phase of the project prior to finalisation of the Stage 2 applications.

### **A Plan for Growing Sydney**

An overarching goal of *A Plan for Growing Sydney* is to reinforce a competitive economy with world class services and transport. It seeks to support Sydney as a premier location for global commerce, business, and investment by expanding Sydney so that it can continue to compete on the world stage. It specifically recognises the significance of certain industries in the Sydney CBD, nominating support for the land use requirements of the financial services knowledge hub within the CBD. It is evident therefore that there is a desire for the planning system to accommodate development that supports employment growth, capitalises on infrastructure and increases high-skilled employment opportunities in the Sydney CBD in the services sector, and financial services in particular.

This goal is achieved by the subject proposal, in keeping with the directions of this Plan, as follows:

- The proposal represents a unique and innovative opportunity to grow Sydney CBD office space in the right location. The proposed increase to employment floor space will assist in meeting demand for office stock in the heart of the Sydney CBD with immediate access to both the future Metro and the heavy rail networks.
- The additional floor space supports the delivery of high-skilled financial services jobs associated with the international bank proponent (Macquarie) who will occupy the building.
- The additional floor space promotes the long-term viability of financial services within the Sydney CBD in a location that was historically the heart of the finance and banking sector in Sydney, and has since been identified as a specialist financial services knowledge hub. This in turn helps to stimulate economic activity and innovation through the co-location of other businesses in this sector or servicing this sector.
- The proposal supports and benefits from major transport infrastructure investment being made by the NSW State Government (in the form of the Metro project), and recognises the opportunity to maximise the delivery of accessible jobs.

### **Draft Central District Plan (the draft District Plan)**

A primary focus area of the draft District Plan is the 'Productive City', centred around the Sydney CBD as the epicentre of the Eastern City. It recognises that this area is undergoing a once-in-a-generation transformation spurred by investment in infrastructure that will benefit business and attract national and global investment.

*"Our ambition is for this draft District Plan to leverage these investments, drive the District's productivity and solidify the strength of the Eastern City." – p.31*

Sydney City is identified as the epicentre of Australia's finance sector, which generates up to 30% of Greater Sydney's Gross Domestic Product, and will continue to contribute to significant growth in Sydney's knowledge intensive industries that are fundamental to Australia's global competitiveness. It recognises that this industry generates more economic activity on average per worker, and that if NSW wants to maximise productivity then we need to increase the capacity for productive business.

In light of this, and through a study of age profiles, broad economic conditions and trends, sector and industry outlooks and Greater Sydney's planned investments, the District Plan projects demand in the order of 662,000 - 732,000 jobs for Sydney City over the next two decades. These estimates guide the likely and potential scale of employment growth and inform land use planning, recognising that there is a need to provide sufficient floor space for commercial uses and specifically productive knowledge intensive industries.

*"We do, however, need to plan for how Greater Sydney attracts and accommodates these jobs in the right locations — the kind of places that we know are well connected, supported by land use and infrastructure investment, and are attractive from a commercial perspective" – p.55.*

The Site is the right location to support and take advantage of significant existing and future transport connections, providing for accessible jobs in-line with the '30-minute-city'. It is likewise supported by being located in the commercial core of the Sydney CBD, to support the growth of economic activity and innovation through the co-location of inter-related individuals, companies and service providers, sufficient in scale to create a sustainable knowledge hub.

#### **Conclusion on Objective (a) – to provide sufficient floor space to meet anticipated development needs for the foreseeable future**

There is a clear and recognised need to provide additional employment floor space generally, and in conjunction with transport infrastructure investment in particular. The subject application and Concept Proposal facilitates floor space growth in association with the Martin Place Metro Station.

This growth in both transport and office accommodation infrastructure supports the status of Sydney as a world city, the viability of key industries contributing to the productivity of NSW and Australia, and assists in meeting forecast jobs growth and demand for office stock in an appropriate location. There is thereby strategic merit in the proposed FSR variation. Without the FSR variation the subject proposal would be unnecessarily diminished in terms of satisfying this objective.

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

The Concept Proposal facilitated by the proposed FSR variation minimizes vehicle or pedestrian traffic numbers, due to the co-location of the commercial office space and the Metro and heavy rail Stations. The majority of people working on or visiting the Site are expected to gain access direct via the Martin Place Station, with the next largest groups accessing the Site via other modes of public transport, most notably buses, ferries (at Circular Quay), the heavy rail station at Wynyard, and light rail along George Street. These people are expected to travel between the other transport services and the subject Site on foot. A large number of these pedestrians are expected to avail themselves of the high amenity and high capacity pedestrian spine of Martin Place, which is ideally suited for this purpose and with which the Site intersects. Whilst the additional floor space arising as a result of the additional FSR will generate some additional pedestrians using the off-site network, this number is compensated for by the reduced number of workers needing to walk beyond the Site, because they are instead working in the Over Station Development.

#### **Vehicle traffic**

No new on-Site vehicle parking is proposed as part of this development, rather basement parking presently available in the existing older commercial buildings will be removed in the redevelopment of the Site. Removing vehicle parking is consistent with the strategic value of the Site as a transport interchange, which favours sustainable modes of transport over private vehicle and thereby mitigates the generation of vehicle traffic. Additional vehicle related drop-offs and pick-ups are also expected to be marginal.

Accordingly, the proposed variation will not intensify vehicle traffic in compliance with this objective. The sought-after land use intensity cannot be precluded on these grounds.



### **Pedestrian traffic**

Macquarie and the project team's vision is to create a world class integrated transport facility, located above and integrated with the approved Martin Place Metro Station, which also functions as an interchange station with the existing heavy rail network (existing Martin Place Train Station). In addition to the on-site workforce, the redevelopment of the combined Stations will attract both local and international visitors to a brand new and exciting portal or 'Gateway' to the City. Notwithstanding the proposed variation, the redevelopment of the Site through the SMCS project is expected to attract some 30,000 passengers during the AM peak period by 2026. The additional number of pedestrians generated by the additional FSR in the subject proposal would be imperceptible compared to this number.

Modelling of pedestrian traffic completed for the SMCS confirmed that the surrounding pedestrian network would continue to operate at a good level of service except for some level of congestion experienced at the intersection of Hunter, Castlereagh and Bligh Streets; Hunter Street west of Castlereagh Street; and the mid-block crossing at Martin Place and Castlereagh Street. These areas will operate at a C level of service during the peak AM period, and B to C levels of service in the PM peak period in 2026.

However, this can be effectively mitigated through public domain upgrades, as confirmed in the SMCS project application. The proposal presents a unique opportunity to revitalise this area of the CBD and provide new and improved public domain areas and pedestrianised connections. As part of the integrated transport facility it is proposed to deliver a multi-use pedestrian concourse linking Martin Place, the Metro and Train Stations and under Hunter Street to Richard Johnson Squares, as well as general public domain improvements to improve the capacity and permeability of these major thoroughfares and the accessibility of Martin Place.

Further dynamic modelling is also expected to occur as part of the design development and planning for the Sydney Metro project, which will also take into account the OSD and consider how future connections and measures can aid the pedestrian Precinct performance.

### **Conclusion on Objective (c)**

The proposed variation in FSR will have a negligible impact in terms of vehicle and pedestrian traffic generation. Given the CBD context of the Precinct, and that Martin Place acts as an important spine for pedestrian movement in this part of the CBD, Arup advise that it is expected that there will continue to be a high level of pedestrian amenity provided for access to and from the Precinct. Therefore the proposal is consistent with Objective (b) of the FSR standard.

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

### **Transport Infrastructure**

The SMCS project is the new tier for Sydney's rail network, supporting high demand with a high-capacity turn-up-and-go service, credited as being a 'step-change' project for the growth and development of Sydney. The Metro can specifically cater for 30 trains an hour (one every two minutes) through the CBD in each direction, providing capacity for an extra 100,000 customers per hour across the Sydney CBD rail lines.

This increase in capacity, in conjunction with other existing and planned transport services, enables an increase in the intensity of development, and on this Site in particular. This relationship between transport capacity and density for the Sydney CBD is recognised in the CSPA and **Figure 3** above, which demonstrates that planned infrastructure improvements will have outpaced forecast jobs growth when it opens in 2024. The delivery of increased commercial floor space can thereby capitalise on significant infrastructure investment and the opportunities created by forecast transport capacity, and easily meet the terms of this objective.

### Utilities and Services Infrastructure

A preliminary assessment has been completed by Arup of the existing utilities in the vicinity of the development; the likely points of future connection to the utilities; and potential upgrades or augmentation that may be required as a result of the proposal. This report shows that the Site is well serviced by a variety of providers, and those services can be altered or supplemented as required.

### Conclusion on Objective (c)

The proposal is commensurate with the capacity of existing and planned infrastructure in the surrounding area, and therefore it is in compliance with this objective. Notably, the development responds to a step change in the public transport infrastructure at Martin Place, and immediately beneath the Site. The new Metro Station represents a significant public investment in transport infrastructure. The additional commercial floor space capitalises off this opportunity and also, in this case, contributes financially to the cost of providing that infrastructure through the Unsolicited Proposal bid.

Objective (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 the locality

### Desired Future Character of the Area

The proposed building envelope ensures that a tower on the North Site will reflect the current and evolving future character of the urban context. The envelope is set by zero lot setbacks and the building height development standard and sun access plane for Martin Place, which define the maximum extent of building lines although the quantum of floor space (including the additional FSR) is a deliberate 'loose fit' for future development. These envelope controls respond to the locality through continuing strong building edges and locating development within the existing height limits and solar access plane profiles, and resulting in a less-than-envelope building mass that will be proportionate to the surrounding existing buildings. This envelope will be further tested, shaped, and refined through the detailed design process leading up to the final Stage 2 detailed design DA/s. At this point the design will need to demonstrate that it complies with the approved FSR and envelopes, and also demonstrates design excellence.

The approved CSSI Metro Station, and to a lesser extent the OSD, will be an important catalyst for changing the future character of the area. The transformational effect of the Martin Place Station Precinct will enhance the locality as one of Sydney's preferred locations for global commerce. It has the capacity to transform what exists today as an under-utilised Site into a precinct that is a destination in itself. There is therefore a great opportunity and responsibility to maximise the capacity of the Site commensurate with its strategic significance, whilst still respecting the overall well defined character of the area.

### Overshadowing

The building envelope complies with the existing Sun Access Plane applying to the North Site, being the Martin Place Sun Access Plane, which plays a critical role in protecting the amenity of the CBD. With the building envelope complying with the Sun access Plane, the objectives of Clause 6.17 (Sun Access Planes) of Sydney LEP are also deemed to have been satisfied. Those objectives are:

- (a) to ensure that buildings maximise sunlight access to the public places set out in this clause, and*
- (b) to ensure sunlight access to the facades of sandstone buildings in special character areas to assist the conservation of the sandstone and to maintain the amenity of those areas.*

Further, detailed modelling of the shadow study analysis prepared by Grimshaw and JPW, confirms the following in relation to the proposed building envelope:

- the additional shadows cast are generated by envelopes that comply with Sydney LEP 2012 'Sun Access Planes' and 'No Additional Overshadowing' controls;
- the additional shadows cast by the proposal are on balance when considering the overall public benefit to be delivered by the project acceptable;
- the Precinct is isolated from residential properties; and
- opportunities to minimise/mitigate additional shadows will be investigated as part of the Stage 2 DA phase, as the shadow impacts created by the unarticulated building envelope is representative of the 'worst case' scenario.

### Views

A View Impact Analysis has been prepared by Tzannes (included as **Appendix L** to the EIS) to examine the appropriateness of the proposed building envelope sought. This assessment demonstrates the following:

- the increase in area potentially occupied by the future buildings is considered acceptable in the CBD context as this will not encroach or interrupt any significant views;
- low, medium and high level views of the sky along streets and from public domain places (parks etc.) have been retained in a variety of contexts;
- street views are maintained, however it is noted that long views to the north, east and west are limited by the topographic, non-orthogonal arrangement of the street network;
- views of heritage buildings within the wider Precinct are maintained;
- the protected views considered under the CSPS, which encompass the view corridor along Martin Place, will be protected by the proposed envelope that does not come into the field of view;
- the key urban design Principles adopted for the towers will help create a strong identifiable form when viewed within the city skyline and at the local pedestrian level;
- the proposal responds to the significant heritage character of 50 Martin Place and the Sun Access Plane controls, with the towers carefully positioned having regard to a range of constraints and opportunities; and
- the proposal supports the continued evolution of and change to the City skyline and defines a new density and scale of development that supports the Precinct's role as a major transport hub.

### Heritage

A key element of the character of the locality is its unique heritage context. A Statement of Heritage Impact has been prepared by Tanner Kibble Denton Architects (TKD) (included as **Appendix D** to the EIS) to assess the potential heritage impacts associated with the proposed tower envelope, its heritage significance.

A thorough assessment of the North Tower confirms that the redevelopment of the Site will not impact on the heritage significance of surrounding heritage items, rather it has the potential to better relate the built form to the scale and architectural expression of surrounding buildings and reinforce the spatial enclosure of Chifley Square.

The proposed redevelopment of the Site can therefore positively relate to its unique heritage context. This desired outcome will be directed by TKD's heritage principles, which will shape the design development to make certain the North Tower relates in scale and architectural merit to 50 Martin Place and surrounding heritage items, without any of those details, such as the connections between the North Tower and 50 Martin Place, adversely affecting heritage significance. The intent is to form complementary



rather than similar architectural forms and materials, to ensure the building does not diminish the unique identity of heritage items and contribute to the diversity of the streetscape.

The proposed connections to 50 Martin Place, also need to be designed to mitigate heritage impacts. Connections will clearly delineate between the historic and contemporary building areas, and avoid alterations to significant original elements of the banking building. These connections will also broadly serve Martin Place as a business location commensurate with the special character of this area.

Accordingly, the tower form does not preclude the proposal from being compatible with the Site's heritage context, and can deliver a positive outcome that better relates to surrounding buildings and the desired future character of the area. The proposal is therefore consistent with the likely future character of the area and can effectively mitigate any potential impacts through site-specific heritage principles, consistent with this objective.

### Wind

The relative comfort of the pedestrian environment is another key consideration when addressing the amenity of an area. Cermak Peterka Petersen (CPP) have prepared a Wind Tunnel Test to assess pedestrian wind comfort in and around the proposed development (refer **Appendix P** of the EIS). The proposed tower on the North Site was tested, and in the context of the locality, was found to effect suitable wind conditions at ground level for standing, walking and sitting in specific locations. Overall, the general wind amenity remains similar to existing conditions and is suitable for the CBD context. Furthermore, it is emphasised that this wind tunnel testing has been conducted on the unarticulated building envelope and as such there is the potential to improve the amenity of pedestrians through the detailed design process. This is also one of the Urban Design principles (as set out in the Urban Design Report at **Appendix G** of the EIS) adopted by the proponent to guide the detailed design of the OSD.

### Conclusion on Objective (c)

It is apparent that notwithstanding the proposed variation, the building envelope will not result in any adverse impacts on the amenity of the locality. The proposed building envelope for the North Tower has been assessed for its potential impacts on the desired future character of the area, overshadowing, views, heritage and wind environment, and has been found to be acceptable in each of these cases. Further, to a certain extent, the building envelope represents the 'worst case' scenario for the Site meaning that potential impacts will be better addressed and mitigated through further design development as part of the Stage 2 DA.

## 3.1.2 Other reasons why compliance is unreasonable or unnecessary

Compliance with the FSR development standard is also unnecessary in these circumstances because a better planning outcome for the Site as a whole, and the community generally, can be achieved as a result of the non-compliance. This is outlined in **Section 3.3** below.

The development is an integrated proposal that supports the realisation of the NSW State Government's vision for OSD in relation to the Martin Place Sydney Metro Site. It provides for a strong and connected Sydney by delivering employment growth in association with critical transport infrastructure. The proposed development will support the long-term viability of the finance and banking sector in Sydney, improve access to jobs, and provide for a new landmark and environmentally sustainable development that strengthens 'Global Sydney' as a centre for economic and cultural activity.

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

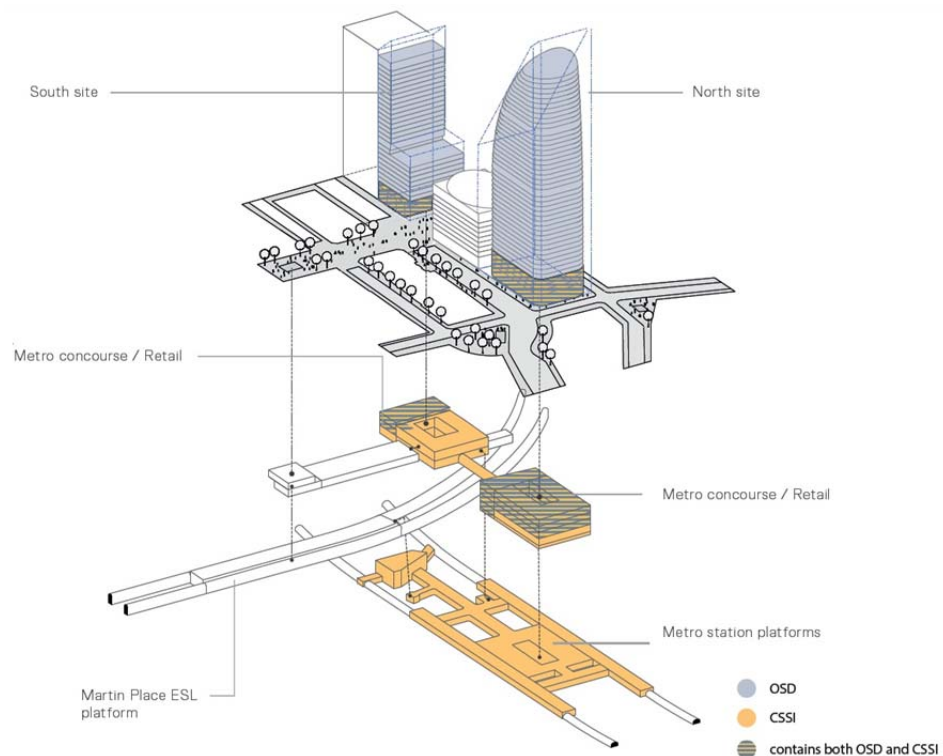
There are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR control as it applies to the Site. The non-compliance with the FSR control results from the opportunity to create an enhanced integrated OSD and Martin Place Metro Station that is better assimilated with the Site, whilst also recognising the Site's contextual relationship and future desired character. Locating employment uses at highly connected stations for mass transit infrastructure is a well recognised sustainability outcome in its own right. This is due to the increased modal split towards public transport and the lower carbon footprint of mass transit compared to cars.

Furthermore, the proposed development is expected to achieve, as a minimum, a 5 Star NABERS / 6 Star Green Star rating, which is superior to many other commercial office buildings in Sydney, and far superior to the existing buildings on the Site except for the recently refurbished heritage building at 50 Martin Place (which will remain).

#### Perverse Floor Space Penalty from Metro

Under the definition of Gross Floor Area (GFA) in the Sydney LEP the floor space within the approved CSSI Metro Station, to the extent that it overlaps the North Site, must be included in the FSR calculations. This places a significant burden on the project. The development of the transport infrastructure, which is primarily located underground, has effectively diminished, rather than enhanced, the potential of the above-ground commercial development. Perversely the statutory planning regime (in the form of the FSR controls) means that without varying the FSR, this land would yield less floor space, and in a smaller envelope, than an adjoining site without a Station.

Furthermore, as the majority of the CSSI floor space is largely located below ground, it does not affect the apparent, or visible above ground, floor space or building envelope.



**Figure 7 – Diagram of Station and OSD interface**  
Source: Grimshaw & JPW

The inclusion of the CSSI floor space in the FSR calculations has exacerbated the non-compliance of the North Site with the FSR standard. The proposed total GFA (including in 50 Martin Place) is approximately 110,800 m<sup>2</sup>. At approximately 6,500m<sup>2</sup> the CSSI floor space constitutes approximately 6.25% of the total GFA on the North Site, and adds to the FSR non-compliance by 1.07:1.

Furthermore, whilst the CSSI contributes to the GFA on the Site and burdens the SSD proposal, as Critical State Significant Infrastructure it is not, itself, bound by any Local Environmental Plan controls including the FSR standard. This anomaly in the statutory planning system places an inequitable and unreasonable burden on the project and, with the FSR variation would further work against achieving the objectives of the standard and be contrary to the public interest in maximising the capacity of and financial investment in the transport infrastructure.

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 its integration with the OSD. This design development may result in further increases in GFA associated with the Station and further restrict the OSD on the North Site.

### Redistributed GFA

Whilst the North Site offers a very rare opportunity to redevelop almost an entire City block, the scale of the proposed envelope has been designed to integrate comfortably with its environment and to restrict the building envelope from encroaching above the heritage item at 50 Martin Place.

The integrated scheme over a larger North Site allows redistribution of the floor space away from the heritage building at 50 Martin Place, towards the more contextually appropriate northern end of the Precinct. This leaves intact the heritage building and the setting of Martin Place, enables a superior urban design outcome and enables a contemporary landmark tower to be developed on the northern portion, where solar access to Martin Place is not adversely affected.

### Transport Orientated Development

A development of this calibre and nature as part of a major new transport infrastructure initiative is extremely rare in the history of any city. The North Tower will be positioned over, and directly integrated with, two rail stations with immediate access to both the future Metro and the existing heavy rail networks. There is therefore a once in a life time opportunity to deliver a maximum employment floor space return on, with associated benefits. The proposed variation is justified in view of the unique transport-oriented context of the Site and the opportunity to create an inspiring and transformative transport hub.

### Design Excellence

The proposed building envelope sets the maximum vertical and horizontal parameters for a future landmark tower. The proposed envelope, and the quantum of GFA, does not represent the final built form for the North Site. The envelope, but not the GFA within the envelope, has been maximised to allow a reasonable degree of flexibility within which detailed design testing can occur. This allows the Design Team and the independent Design Review Panel (DRP) to explore a range of outcomes for the amount of floor space proposed and thereby ensure the development achieves design excellence. The 'loose fit' nature of the envelopes compared to the amount of GFA means that the ultimate design will occupy a lesser envelope than the maximum illustrated in the Stage 1 SSD application.

It also means that the amount of GFA (and FSR) applied for is not excessive for the envelope and in fact provides considerable scope for a variety of design solutions.

Innovative ideas, options testing, and design efficiencies will be explored as part of the usual design development process to lock in the final design. That design will ultimately be the subject of the second round of approvals (the Stage 2 application/s).

To ensure the Stage 2 detailed design of the OSD achieves design excellence the proponent has prepared and is committed to a Design Excellence Framework (refer to **Appendix I** of the EIS).

### Sydney's Economy

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 the total NSW economic output and 20 per cent of Australia's gross domestic product (SGS Economics, 2014)<sup>2</sup>. The finance sector itself also generates up to 30% of Greater Sydney's Gross Domestic Product, and has been credited as growing Sydney's knowledge intensive industries that are fundamental to Australia's global competitiveness. Accordingly, the continued economic growth of Sydney, and the finance sector more specifically, is fundamental to the continued strength of NSW and more broadly Australia.

The proposal seeks to deliver a landmark transport and employment precinct within the Sydney CBD, commensurate with the strategic intent for this centre. The proposed variation will enable the development of a major financial services campus on the Site that specially promotes the growth of banking services within Sydney. In doing so, the proposal supports the growth of this industry, accommodates and attracts high-skilled service sector jobs, and provides for increased commercial floor space in a highly accessible location. The proposal will contribute to Sydney's competitive edge and reinforce its status as a global city.

### Minimal Environmental Impacts

Notwithstanding the proposed variation, the environmental impacts of the proposed building envelope can be appropriately managed or mitigated and do not represent an over development of the Site. As has been discussed above (or within the EIS), the proposed building envelope, which is a 'worst case' in terms of its size, would result in the following impacts:

- **Heritage** – the redevelopment of the Site will not impact on the heritage significance of surrounding heritage items, rather it has the potential to better relate the built form to the scale and architectural expression of surrounding buildings and reinforce the spatial enclosure of Chifley Square.
- **Traffic** – the proposed variation does not contribute to considerable vehicle or pedestrian traffic and does not constitute an over-development of the Site in this respect.
- **Infrastructure Capacity** – planned infrastructure improvements will outpace forecast jobs growth in the Sydney CBD, and as such the delivery of increased commercial floor space can capitalise on significant infrastructure investment and the opportunities created by forecast transport capacity.
- **Views** – the proposed building envelope sits comfortably in its context and will not impact views of heritage items, the sky from public domain areas, streetscapes and protected views considered under the CSPS.
- **Overshadowing** – the building envelope does not breach the relevant sun access plane, and the additional shadows cast by the proposal are on balance when considering the overall public benefit to be delivered by the project acceptable.
- **Wind** – the general wind amenity remains similar to existing conditions and is suitable for the CBD context.

<sup>2</sup> Reference from CSSI Project Application Report, pg. 21

### 3.2.1 Conclusion on clause 4.6(3)(b)

In light of the above, there are no environmental planning grounds that warrant maintaining and/or enforcing the numerical FSR standard in this instance. Rather, there are clear and justifiable environmental planning merits which validate the flexible application of the FSR control allowed by clause 4.6 of the Sydney LEP 2012.

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

### 3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in **Section 3.1** of this report.

### 3.3.2 Consistency with 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 or 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 proposal in its entirety satisfies the B8 zone objectives as:

- It recognises the pre-eminent role of and provides for a mix of office and retail premises in the Sydney CBD. It will become a new landmark destination commensurate with the strategic direction for 'Global Sydney' as a centre of economic and cultural activity.
- The Concept Proposal represents a unique opportunity to increase the capacity of employment based uses in the Sydney CBD and provide for a fully integrated and world-class transport experience. It directly responds to this objective by seeking to capitalise on better land development opportunities resulting from significant infrastructure investment, and provide a landmark development that is commensurate with Sydney's global status.
- The proposal delivers additional capacity for business and retail uses that are compatible with, and will support the viability of, the Sydney CBD as the epicentre for high-skilled employment opportunities in Australia. This will serve the workforce, as well as creating a new centre of activity for tourists, business visitors, and residents.
- The proposal encourages the use of alternatives to private vehicles in being part of an integrated transport facility that will increase the current capacity of the Site on top of two rail stations. Its desirable location within the commercial core of the

Sydney CBD also capitalises on existing and planned pedestrian and cycling connections. The accessibility of the Site will improve public transport patronage and the modal split of travel away from private car usage. A full complement of end of trip facilities will be provided for workers on the Site as well as bike parking facilities for Metro customers.

- The Concept Proposal will improve activity on the Site through the delivery of a fully integrated and world-class transport experience that will activate Martin Place, Hunter Street, Castlereagh Street and Elizabeth Street. Integrating Martin Place Station and civic spaces into the unified precinct will contribute to an activated and connected CBD and transform a rather uninspiring part of the City into a destination, active seven days a week.

### 3.3.3 Overall public interest

In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone.

### 3.3.4 Conclusion on clause 4.6(4)(a)(ii) and overall in relation to clause 4.6(4)

Despite the proposed variation to the numerical FSR control, it has been demonstrated that the proposed FSR (and indeed the building envelope) is consistent with the objectives of the B8 Metropolitan Centre land use zone and the FSR development standard under the Sydney LEP 2012.

Accordingly, the consent authority can be reasonably satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposed development would be in the public interest because it provides a number of benefits, and 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.

## 3.4 Other Matters for Consideration

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

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

These matters are addressed in detail below.

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

The variation of the maximum FSR development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan strategy *A Plan for Growing Sydney*, and the draft Central District Plan that gives effect to the metropolitan goals and planning priorities, as:

- The proposal represents a unique and innovative opportunity to grow Sydney CBD office space in the right location. The proposed increase to employment floor space



will assist in meeting demand for offices in the heart of the Sydney CBD with immediate access to both the future Metro and the heavy rail networks.

- The additional floor space supports the delivery of high-skilled jobs in the financial services and associated sectors, and to expand employment opportunities in the pre-eminent centre within the Global Economic Corridor.
- The additional floor space promotes the long-term viability of financial services within the Sydney CBD in a location that has historically been the heart of the finance and banking sector in Sydney, and has since been identified as a specialist knowledge hub. This in turn helps to stimulate economic activity and innovation through the co-location of associated industries.
- The proposal supports and benefits from major transport infrastructure investment by the NSW State Government (in the form of the Metro project), and recognises the opportunity to maximise the delivery of accessible jobs and create a '30-minute city'.
- It recognises and supports the proposition that to maximise productivity, the District Plan needs to increase the capacity for productive businesses.
- It enhances the role of the Eastern City as a global leader by creating opportunities for the growth of commercial floor space, and thereby assists in helping to meet the demand for an additional 732,000 jobs in Sydney City over the next two decades.

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

There is no public benefit in maintaining the numerical FSR development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably constrain the orderly and economic development of this strategically significant site, and unnecessarily reduce the various community benefits this development brings.

In some circumstances, it may be in the public benefit for development controls to be strictly applied, for example if an undesirable precedent could be set. This Site and the development project, is however unique and therefore unable to create an undesirable precedent for varying the FSR standard on other land in Central Sydney.

The proposed variation arises principally because the project involves the integration of the new office development on the North Site with an existing State significant heritage building to be retained, the new Martin Place Metro Station, the existing Martin Place Train Station and the OSD on the South Site to create a whole new Precinct solution in what is effectively one building; and to deliver that single building in a very constrained timeline, or window of opportunity, fixed by other parties (TfNSW and construction contractors for example) for the delivery of the Metro infrastructure. These site-specific and project-specific circumstances cannot be replicated, and could not have been foreseen by the Council when setting the generic FSR current controls that apply across the bulk of Central Sydney.

This Site and the proposed building envelope represent an exceptional circumstance that warrants a variation of the FSR control to allow a better outcome to be delivered. It is therefore considered to be in the public interest that a variation to the development standard is supported in this case.

### 3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

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

## 4.0 Summary & Conclusion

Compliance with the FSR development standard contained in Clauses 4.4 and 6.4 of the Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case, and the justification to vary that standard is well founded. The proposed variation allows for a better planning outcome for the Site and recognises the unique circumstances of the proposal.

This clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the FSR development standard, that:

- the objectives of the FSR development standard are achieved notwithstanding the variation to the numerical control;
- the proposed flexible application of controls achieves better planning outcomes than would be achievable by strict adherence to the controls across the development site;
- it is in the public interest as the proposal is consistent with the applicable land use zones and development standards;
- the additional floor space can readily be accommodated within the proposed envelope, which the EIS has found is compatible with the scale and character of the area. Nor will it result in additional adverse amenity or environmental impacts;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance;
- there is no public benefit in maintaining the FSR development standard adopted by the environmental planning instrument for this site; and
- legal precedent has been addressed as part of this clause 4.6 variation request, and concludes the unique circumstances of this Site and the development proposal are such that they and this justification cannot be replicated.

The clause 4.6 request demonstrates that the proposed development will deliver a holistically better outcome for the Site, and the broader community. Overall, the proposal optimises the extraordinary opportunity to establish a high quality development that creates a revitalised Precinct and provides significant public benefits.

For the reasons set out in this written request, the Concept Proposal should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Sydney LEP 2012.