

Attachment C

Clause 4.6 Variation Request - Height of Buildings
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planning consultants

Clause 4.6 Variation Request to the Height of Buildings Development Standard under Clause 4.3 of Sydney LEP 2012

Proposed Alterations and Additions to a Commercial Building
Reserve Bank of Australia – 65 Martin Place, Sydney

Prepared for: Reserve Bank of Australia
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1 Introduction

1.1 Commission

DFP has been commissioned by Reserve Bank of Australia (RBA) to prepare a written request (Variation Request) pursuant to Clause 4.6 of *Sydney Local Environmental Plan 2012* (the LEP) for the proposed alterations and additions to the existing commercial building (the Proposal) at 65 Martin Place, Sydney (the site).

The Proposal is described in detail in Section 4 of the Statement of Environmental Effects (SEE) report prepared DFP dated 14 November 2025 and generally entails:

- Demolition and remediation of hazardous building materials (asbestos) across most parts of the building, including deconstructing the tower façade and concrete back to the original steel frame (to be retained); and
- Reconstruction of the building include a new façade, altered roof pavilion and new vertical services core on the southern side of the building.

Parts of the reconstructed building and parts of the new vertical services core will exceed the 55m height of buildings development standard under cl4.3 of the LEP. The reconstructed roof pavilion will be only 917mm higher than the existing roof level and 2.183m less than the existing roof top plant, although this is at a height of up to 85.47m above existing ground level. In addition, the new vertical core will extend to a maximum height of 89.7m (see **Section 2**).

Notwithstanding the contravention of the development standard, the Proposal complies with all other relevant provisions of the LEP including the floor space ratio (FSR) development standard, is consistent with the relevant objectives of the height of buildings development standard and there are sufficient environmental planning grounds to justify the contravention in this instance including:

- The need to remediate the building and reconstruct it generally with a volume similar to the existing building, to enable its ongoing occupation for the purpose for which it was constructed (i.e. the Head Office of the RBA), a key reason why the building is listed as a heritage item at Commonwealth and local levels;
- The need to comply with current building construction, fire safety and accessibility standards;
- The minimal change from the existing building height, which already exceeds the height of buildings development standard; and
- The lack of significant adverse amenity impacts arising from the areas of non-compliance.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the height of buildings development standard.

1.2 Material Relied Upon

This Variation Request has been prepared by DFP based on the Architectural Drawings prepared by Architectus and other supporting drawings and reports which accompany the DA, including the SEE prepared by DFP.

This Variation Request should be read in conjunction with the detailed environmental planning assessment contained in the SEE.

2 The Nature of the Variation

The site comprises three lots as follows:

- Lot 1 in DP 444499 – fronting Martin Place and extending from Macquarie Street through to Philip Street;
- Lot 1 DP 32720 – having frontage to Macquarie Street; and
- Lot 1 DP 33919 – having frontage to Philip Street.

For Lot 1 in DP 444499 and Lot 1 DP 32720, cl4.3 and the Height of Buildings Map of the LEP designate a maximum height of buildings of 55m as shown in purple colour **Figure 1** below.

Lot 1 DP 33919 is within “Area 3” and in this regard the LEP states:

Note.

No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.

The height of any building on Lot 1 DP 33919 is limited by “Additional Controls” being two different sun access planes defined by s6.17 and Schedule 6A of the LEP. The proposal complies with the provisions of s6.17.

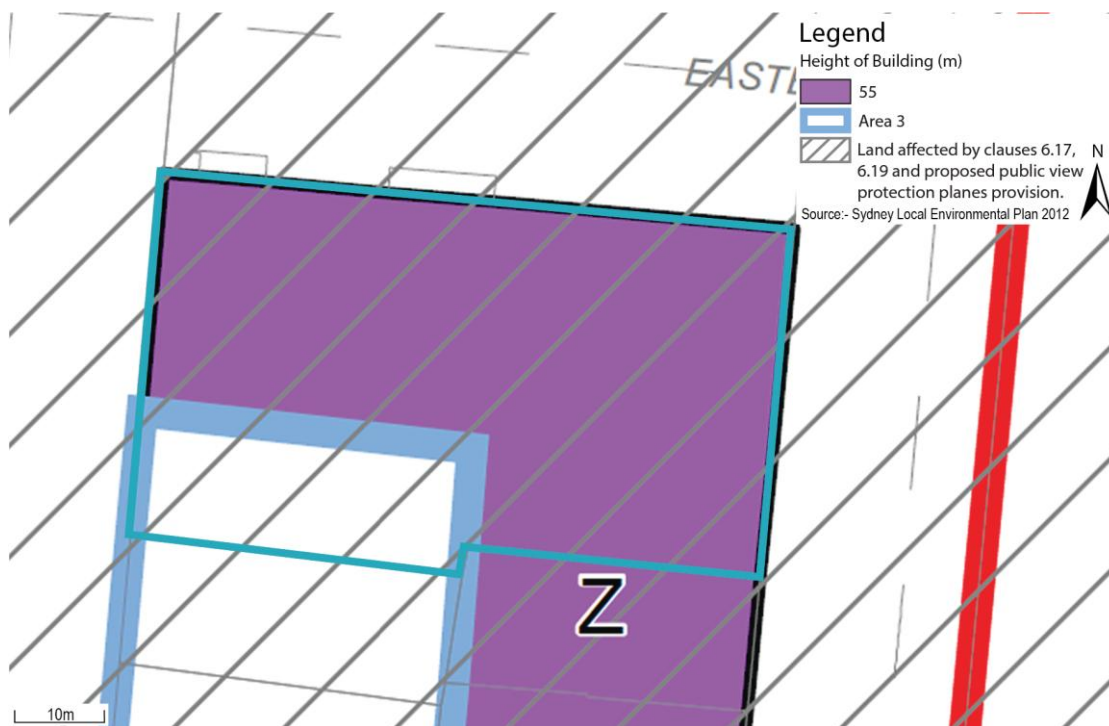


Figure 1 Extract of Height of Buildings (Sydney LEP 2012)

The LEP defines building height as:

building height (or height of building) means—

- in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

2 The Nature of the Variation

The proposed development does not comply with the 55m height of buildings development standard and the extent of the non-compliance is shown in the extract of the architectural drawings at **Figure 2** and can be described as follows:

- **Point A in Figure 2** – the eastern side of the new vertical core (within Lot 1 DP 32720) will be at RL 121.415m, less existing ground level (interpolated) at RL 31.695m = 89.7m (i.e. an exceedance of 34.72m or 63.1%) (NB: the western side of the new vertical core is not subject to the 55m height of buildings limit);
- **Point B in Figure 2** - the eastern side of the Level 20 Roof Pavilion will be at RL 115.467m, less existing ground level (interpolated) at RL 32.387m = 83.08m (i.e. an exceedance of 28.08m or 51.1%) (NB: the overall height of this part of the building will be lower than the existing rooftop plant); and
- **Point C in Figure 2** - the western side of the Level 20 Roof Pavilion at RL 115.467m less existing ground level (interpolated) at RL 29.997m = 85.47m (i.e. an exceedance of 30.47m or 55.4%) (NB: the overall height of this part of the building will be lower than the existing rooftop plant).

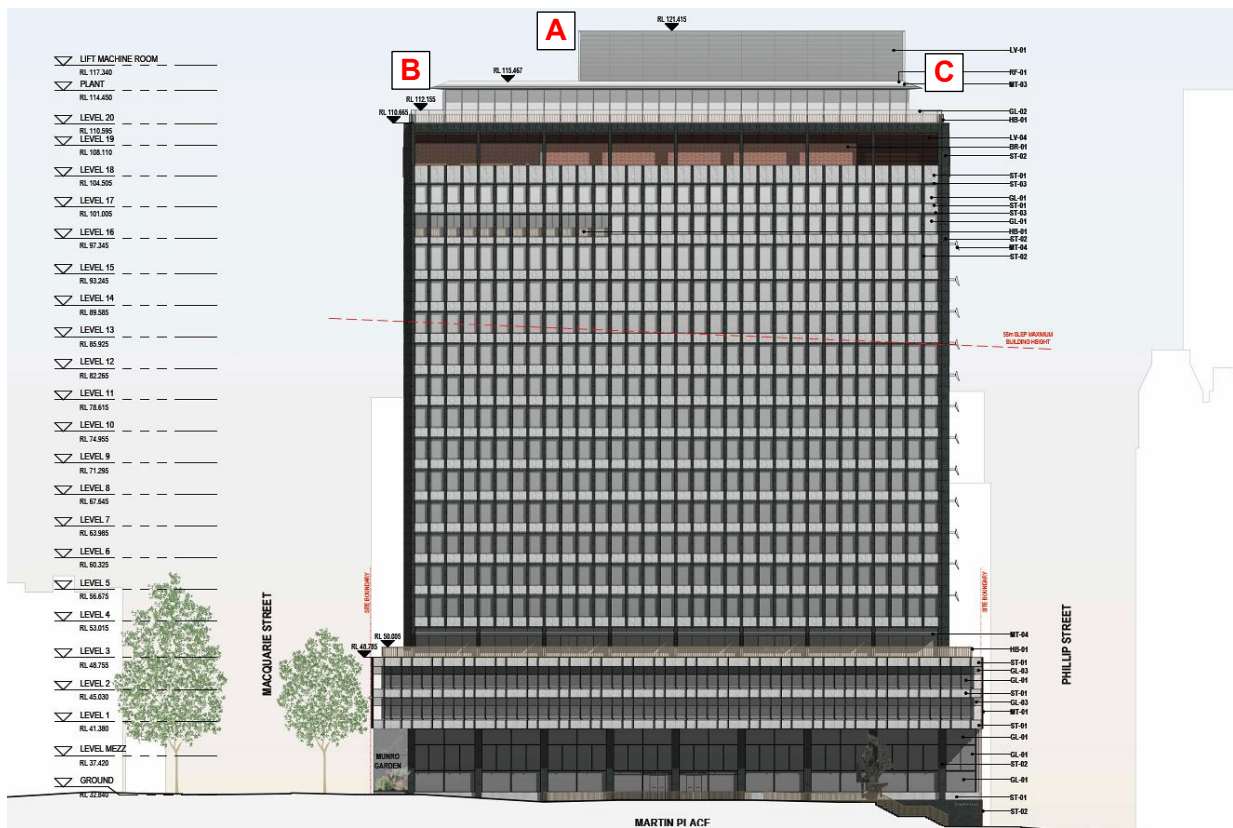


Figure 2 Extract of north elevation with height exceedance reference points (Source: Architectus, 2025)

3 Clause 4.6 Assessment

3.1 Clause 4.6(1) - Objectives

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives or that the consent authority be satisfied that the development achieves these objectives. Furthermore, cl4.6(3) does not impliedly require that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of cl4.6 provide the preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument. These preconditions are discussed hereunder.

3.2 Clause 4.6(2) – Consent May be Granted

Clause 4.6(2) provides that:

- (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.*

The height of buildings control in cl4.3 of the LEP is a development standard, defined in Section 1.4 of the EP&A Act as follows:

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

...

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

The height of buildings development standard is not expressly excluded from the operation of cl4.6 (see **Section 3.5** and **Section 3.6**).

3.3 Clause 4.6(3) – Consent Authority Considerations

Clause 4.6(3) outlines the matters that a consent authority must be satisfied of, when considering a development that seeks to contravene a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant has demonstrated that–*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This report constitutes a written request for the purposes of s35B of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) and the following subsections address the justifications required under subclause 4.6(3) of the LEP.

3 Clause 4.6 Assessment

3.3.1 Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

It is considered that the environmental impacts of the proposed development, and specifically the component/s of the proposal that contravene the development standard, are appropriately avoided, minimised or mitigated as described in **Table 1**.

Table 1 Environmental Impact Avoidance, Minimisation and/or Mitigation	
Issue	Discussion
Views	The proposed horizontal and vertical alignment of the tower façade and roof pavilion will be very similar to the existing building and accordingly, will have negligible impact on any views across the site. In addition, impacts to views of the sky from surrounding buildings and places as a result of the upper parts of the new vertical core will be minor, as detailed in the View Impact assessment within the Appendix of the Architectural Design Report prepared by Architectus lodged with the DA.
Solar Access	The proposed building height will not exceed the solar access planes for Hyde Park or The Domain and the minimal additional shadows cast by the new vertical core will be primarily over rooftops and some areas of public domain, distant from the site. These shadows dissipate quickly at such distances and will not result in significant adverse impacts. In addition, the analysis of shadows over parts of Hyde Park Barracks demonstrates that the impacts will be minor and a letter of support has been provided by NSW Living Museums in this respect.
Visual Privacy	There are no residential premises proximate to the site and in any event, the proposal does not introduce significant areas of new glazing to parts of the building which did not previously have glazed elements. The new core will comprise glazing to the fire stairs on the eastern and western elevations and to some lobby areas to the southern elevation, although given the absence of sensitive land uses proximate to the site, there are not considered to be any significant adverse visual privacy impacts.
Acoustic Privacy	As detailed in the Operational Acoustic Impact Assessment submitted with the DA, the parts of the reconstructed building that exceed the height of buildings limit do not contain any areas likely to generate significant acoustic impacts on neighbouring or nearby properties. The plant and equipment located within the upper levels of the tower (Levels 18 and 19) has been consolidated from the existing positions in Levels 17-19 and where ventilation is required, facades will be treated with screening and the plant is unlikely to give rise to adverse impacts. In addition, the lift overruns and plant in the top of the new vertical core will be well above surrounding buildings and have been assessed as capable of complying with the noise criteria specified in the Operational Acoustic Impact Assessment.
Heritage and Streetscape	The proposed design seeks to reconstruct the building in a manner that will be visually very similar to the existing building and the overall volume of the building will not be altered such that this would be easily perceptible to passers-by or to the extent that it would cause adverse visual impacts in the streetscape.

Furthermore, the proposed development is considered to be consistent with the objectives of the height of buildings development standard as described in **Table 2**.

Table 2 Assessment against the objectives of the height of buildings development standard	
Objective	Assessment
(a) to ensure the height of development is appropriate to the condition of the site and its context,	The proposal will closely resemble the overall form of the existing building with only minor changes in building height associated with the roof pavilion and new vertical core. The height of the proposed roof pavilion (at RL 115.467m) is only slightly greater than the height of the existing roof pavilion (at RL 114.55 and less than the height of the existing rooftop plant and machinery (at RL 117.65m).

3 Clause 4.6 Assessment

Table 2 Assessment against the objectives of the height of buildings development standard

Objective	Assessment
	The new lift core will extend higher than the existing building to RL 121.415m although this is necessary to provide for vertical transportation and fire egress that is compliant with current building standards. Notwithstanding, the new structures are well within the solar access planes that apply to the site and the southern adjoining land, and the altered building will continue to provide for an appropriate transition to development on that land to the south, both in its current form and with respect to the future development potential of that adjoining land.
(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,	As indicated above, the proposal will result in an overall built form which closely resembles that of the existing building and accordingly, result in minimal change to the building's relationship with nearby heritage items. The new vertical core is located toward the south-western corner of the site, set well back from Macquarie Street and also set back from the Phillip Street frontage. This minimises potential impacts on the heritage significance of the main building façade within the site, as well as potential impacts on surrounding heritage buildings.
(c) to promote the sharing of views outside Central Sydney,	The proposed reconstruction of the main tower façade and roof pavilion will have negligible impact on any views across the site because the horizontal and vertical alignment remains relatively unchanged from the existing situation. In addition, the new vertical core has been located on the southern side of the building, away from the primary northern, eastern and southern facades and will not impact on any significant views along Martin Place from the east or west or views from the Domain. As detailed in the View Impact assessment within the Appendix of the Architectural Design Report prepared by Architectus lodged with the DA, impacts to lesser views to the sky from surrounding buildings will be minor.
(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,	The site is not proximate to the edge of the Central Sydney area (as defined by the LEP) and is not within Green Square. Notwithstanding, the site is on the edge of the main CBD commercial area and proximate to smaller scale buildings to the east. As the proposal results in minimal change to the height of the tower and roof top pavilion and due to the positioning of the new core to the south-western corner of the site, there is considered to be no adverse impact on the site's transitional role on the eastern edge of the commercial centre.
(e) in respect of Green Square— (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.	The site is not within Green Square and therefore this objective is not relevant to the Proposal.

Accordingly, for the reasons identified above, it is considered that strict compliance with the height of buildings development standard is unreasonable or unnecessary as the non-compliance will not cause environmental harm and the proposed development is consistent with the objectives of the height of buildings development standard, notwithstanding the non-compliance.

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3.3.2 Clause 4.6(3)(b) – Sufficient Environmental Planning Grounds

In the Judgment of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (“Four2Five”) Pearson C indicated there is an onus on the applicant to demonstrate, through the written request, that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

In Initial Action, Preston CJ indicated that it is reasonable to infer that “*environmental planning grounds*” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including the objects in s1.3 of the EP&A Act.

The site-specific environmental planning grounds that support the proposed variation to the height of buildings development standard in this circumstance are detailed in the SEE, supported by the Architectural Drawings and specialist consultant reports which accompany the DA and are summarised in **Table 3**.

Table 3 Environmental planning grounds supporting the proposed variation

Environmental Planning Ground	Discussion
Remediation of Contamination	As detailed in the SEE and contamination reports submitted with the DA, the existing building has significant quantities of bonded and friable asbestos containing material (ACM) embedded within the building fabric and structure. Accordingly, the RBA has had to vacate the building as it is unfit for occupation. Given the Commonwealth and Local Heritage listings applicable to the site, the only viable remediation strategy for the building is to deconstruct the façade and slabs back to the original steel frame, retaining and salvaging heritage significant fabric where possible, and to then reconstruct the building in a manner that closely resembles the original building in overall form and materials. In doing so, the new design must meet current building standards and there are also opportunities to improve the environmental performance and operational characteristics of the building. Accordingly, the rebuilding of the building close to the height of the existing building means that the 55m height limit (considerably lower than the existing building) will be breached, although in doing so, the proposed development will: - “<i>protect the environment</i>” (s1.3(e) EP&A Act); - “<i>promote the sustainable management of built and cultural heritage</i>” (s1.3(f) EP&A Act); and - “<i>promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>” (s1.3(h) EP&A Act).
Building Code of Australia Compliance	The original building constructed in the 1960s had a vertical core which was located toward the centre of the building yet also projected beyond the main southern façade. However, this core only extended as far as Level 17 and the later 1970s southern extension did not change this, providing additional vertical access up to Level 6 only. Accordingly, notwithstanding the extensive contamination within the building that needs remediation, the existing building does not provide vertical transport that meets today's BCA requirements with respect to construction standards, fire safety or accessibility. The proposed new southern vertical core will enable the altered building to meet current BCA requirements and provide equitable access to all floors of the building, although in doing so, the new core must extend slightly higher than the uppermost parts of the existing building. Even so, the new core is primarily located in the south-western corner of the site (Lot 1 DP 33919) where the 55m height limit does not apply and this new core is well within the solar access plane. Only a small portion of the new core, comprising the eastern fire stair and Lifts 1 and 2 will be located on that part of the site to which the 55m height limit applies. Accordingly, the proposed development will “<i>promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>” (s1.3(h) EP&A Act).

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Table 3 Environmental planning grounds supporting the proposed variation

Environmental Planning Ground	Discussion																
Existing height exceedance	The existing building exceeds the 55m height of buildings limit and other than the new vertical services core, the majority of the building as proposed to be altered will be very similar in height to the existing building or even lower as set out below:																
	<table><tr><th>Location</th><th>Existing</th><th>Proposed</th><th>Difference (+/-)</th></tr><tr><td>Tower corners (balustrade)</td><td>RL 111.43m</td><td>RL 112.155m</td><td>+0.725m</td></tr><tr><td>Roof Pavilion</td><td>RL 114.55m</td><td>RL 115.467m</td><td>+0.917m</td></tr><tr><td>Rooftop plant</td><td>RL 117.65m</td><td>RL 115.467m</td><td>-2.183m</td></tr></table>	Location	Existing	Proposed	Difference (+/-)	Tower corners (balustrade)	RL 111.43m	RL 112.155m	+0.725m	Roof Pavilion	RL 114.55m	RL 115.467m	+0.917m	Rooftop plant	RL 117.65m	RL 115.467m	-2.183m
	Location	Existing	Proposed	Difference (+/-)													
	Tower corners (balustrade)	RL 111.43m	RL 112.155m	+0.725m													
	Roof Pavilion	RL 114.55m	RL 115.467m	+0.917m													
	Rooftop plant	RL 117.65m	RL 115.467m	-2.183m													
The increase in height of the tower balustrade is minimal and is due to the inclusion of a glazed screen behind the heritage balustrade to meet building code safety requirements.																	
The increase in height of the roof pavilion is minimal and is due to the incorporation of rooftop solar panels and internal services.																	
The reduction in height of the roof plant is due to the incorporation of plant within the building envelope, which will have positive visual impacts.																	
Lack of adverse amenity impacts	In Micaul and Initial Action, Preston CJ clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. As summarised in Table 1 , the proposal satisfactorily avoids, manages or mitigates adverse amenity impacts (s1.3(g) EP&A Act)).																

Accordingly, it is considered that there are sufficient environmental planning grounds to justify the contravention of the height of buildings development standard in this instance.

3.4 Clause 4.6(4) – Consent authority must keep a record

Clause 4.6(6) requires is the consent authority to keep a record of its assessment carried out under cl4.6(3). This will be a matter for Council should consent be granted to the subject DA.

3.5 Clause 4.6(6) – Subdivision on Certain Land

Clause 4.6(6) is not relevant to the proposed development as it does not relate to subdivision of land.

3.6 Clause 4.6(8) – Restrictions on use of cl4.6

Clause 4.6(8) of the LEP states as follows:

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following–*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*
 - (caa) *clause 5.5.*
 - (ca) *clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map,*
 - (cab) *clause 4.5A (Balconies on certain residential flat buildings),*
 - (cb) *clause 5.3A (Development below ground level in Zone RE1),*
 - (cc) *clause 6.10 (Heritage floor space),*
 - (cd) *clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),*

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- (cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),
- (cdb) clause 6.16 (Erection of tall buildings in Central Sydney),
- (ce) clause 6.17 (Sun access planes),
- (cf) clause 6.18 (Overshadowing of certain public places), unless the additional overshadowing is caused by playground equipment, a shade structure, an awning, a sculpture or artwork, a community notice or a public information sign,
- (cg) clause 6.19 (View planes), except in relation to the Martin Place View of western sky view protection plane,
- (cga) clause 6.26 (AMP Circular Quay precinct),
- (cgb) clause 6.29 (58–60 Martin Place, Sydney),
- (cgc) clause 6.33 (230–238 Sussex Street, Sydney),
- (cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,
- (cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),
- (cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),
- (cgg) clause 6.41 (7–15 Randle Street, Surry Hills),
- (cgh) clause 6.42 (102–106 Dunning Avenue, Rosebery),
- (cgi) clause 6.40 (2–32 Junction Street, Forest Lodge),
- (cgj) clause 6.43 (Danks Street South Precinct),
- (cgk) clause 6.52 (1–11 Oxford Street, Paddington),
- (cgl) clause 6.55—4–22 Wentworth Avenue, Surry Hills,
- (cgm) clause 6.56—24–40 Wentworth Avenue, Surry Hills,
- (cgn) clause 6.58—187–189 Thomas Street, Haymarket,
- (ch) Division 1 of Part 7 (Car parking ancillary to other development),
- (ci) clause 6.19A (Views of Sydney Harbour),
- (cj) clause 6.21E(2) and (5) (Tower cluster areas),
- (ck) clause 6.60C—2 Chifley Square, Sydney,
- (cl) clause 6.60D—Oxford Street Cultural and Creative Precinct,
- (cm) clause 6.60E—Flinders Street and Oxford Street,
- (cn) clause 6.60G—15–23 Hunter Street and 103–107 Pitt Street, Sydney,
- (co) clause 6.60H—Hunter Street Metro Station,
- (cp) clause 6.60I—85–93 Commonwealth Street, Surry Hills,
- (cq) clause 6.60M—47–51 Riley Street, Woolloomooloo.

Clause 4.6(8) is not relevant to the proposed development as it is subject to a DA and does not constitute Complying Development, does not seek to vary any requirements of SEPP BASIX, does not relate to a standard under cl4.3 in relation to Area 1 or Area 2 and does not relate to any other standard listed in cl4.8(8).

4 Conclusion

The proposed development contravenes the height of buildings development standard under cl4.3 of Sydney LEP 2012.

The height of buildings control under cl4.3 of the LEP is a development standard and is not excluded from the application of cl4.6.

This Variation Request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP.

This Variation Request demonstrates that strict compliance with the height of buildings development standard is unreasonable and unnecessary because, notwithstanding the contravention of the development standard:

- the proposed development is consistent with the objectives of the development standard pursuant to cl4.3 of the LEP; and
- There will be a lack of environmental harm arising from the areas of non-compliance.

In addition, this Variation Request outlines sufficient environmental planning grounds to justify the contravention of the height of buildings development standard including:

- The need to remediate the building and reconstruct it generally with the same height and volume as the existing building, to enable its ongoing occupation for the purpose for which it was constructed, a key reason why the building is listed as a heritage item at Commonwealth and local levels;
- The need to comply with current building construction, fire safety and accessibility standards;
- The minimal change from the existing building height, which already exceeds the height of buildings development standard; and
- The lack of significant adverse amenity impacts arising from the areas of non-compliance.

Accordingly, this written request can be relied upon by the consent authority when granting development consent to the proposed development, notwithstanding the contravention of the development standard.