

Attachment C

Clause 4.6 Variation Request - Height of Buildings

Clause 4.6 Variation Request
Maximum Building Height (Clause 4.3) Sydney
LEP 2012
96-100 Hay Street, Haymarket

Prepared by Planning Lab
Issued 12 November 2025

planninglab.com.au

1 Introduction

This request to vary a development standard has been prepared in accordance with Clause 4.6 (cl 4.6) of Sydney Local Environmental Plan 2012 (SLEP 2012) which accompanies a Development Application (DA)) to partially demolish and retain the façade of the existing 3 storey commercial building and to erect a new 16 storey mixed use shop top housing podium and tower building, including a basement level (plant and services only), three podium levels of commercial premises use, residential bike parking and communal open space areas on Level 3, and 12 storeys of residential tower above comprising 20 x two-bedroom apartments and 2 x 3 bed penthouses, located at 96-100 Hay Street, Haymarket ('the site').

This request specifically seeks to vary the maximum 50m building height development standard contained in Clause 4.3 of SLEP 2012.

This request report should be read in conjunction with the Statement of Environmental Effects and other supporting technical documents that accompany the DA.

The objectives of cl 4.6 provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the following considerations:

- The Department of Planning and Environment's Guide to Varying Development Standards (November 2023);
- The objectives of Clause 4.3 of the SLEP 2012, being the development standard to which a variation is sought; and
- Relevant case law in the New South Wales Land and Environment Court and New South Wales Court of Appeal including *Wehbe v. Pittwater Council* [2007] NSWLEC 827.

This variation request provides an assessment of the development standard and the extent of variation proposed to the standard. The variation is then assessed in accordance with the principles set out in the *Wehbe* matter.

2 Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the SLEP 2012 provides that development consent may be granted for development even though the development would contravene a development standard imposed by the SLEP 2012, or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the maximum height of building development standard be varied.

3 What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is Sydney Local Environmental Plan 2012 (SLEP 2012).

4 What is the zoning of the land?

The site is zoned SP5 Metropolitan Centre pursuant to the SLEP 2012. Refer to **Figure 1**.

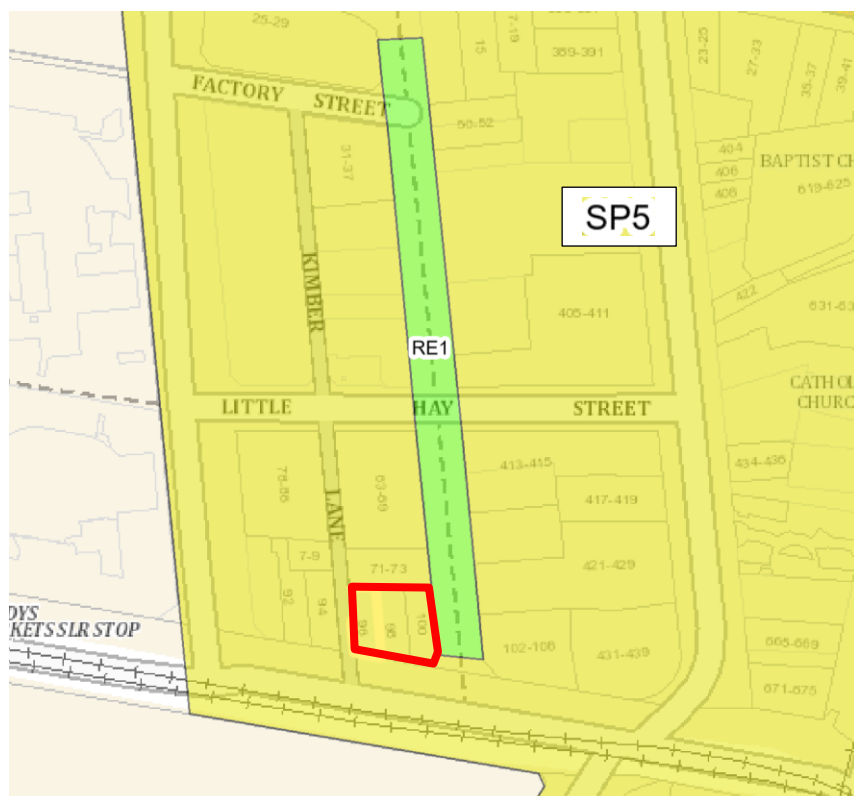


Figure 1: Extract of Land Use Zoning Map SLEP 2012 (subject site shown with red outline) Source: NSW Planning Portal Spatial Viewer



5 What is the development standard being varied?

Clause 4.3 of the Sydney Local Environmental Plan 2012 provides that the height of a building on any land is not to exceed that shown for the land on the Height of Buildings Map. The site is affected by a maximum height of building of 50m, as shown below in **Figure 2**.

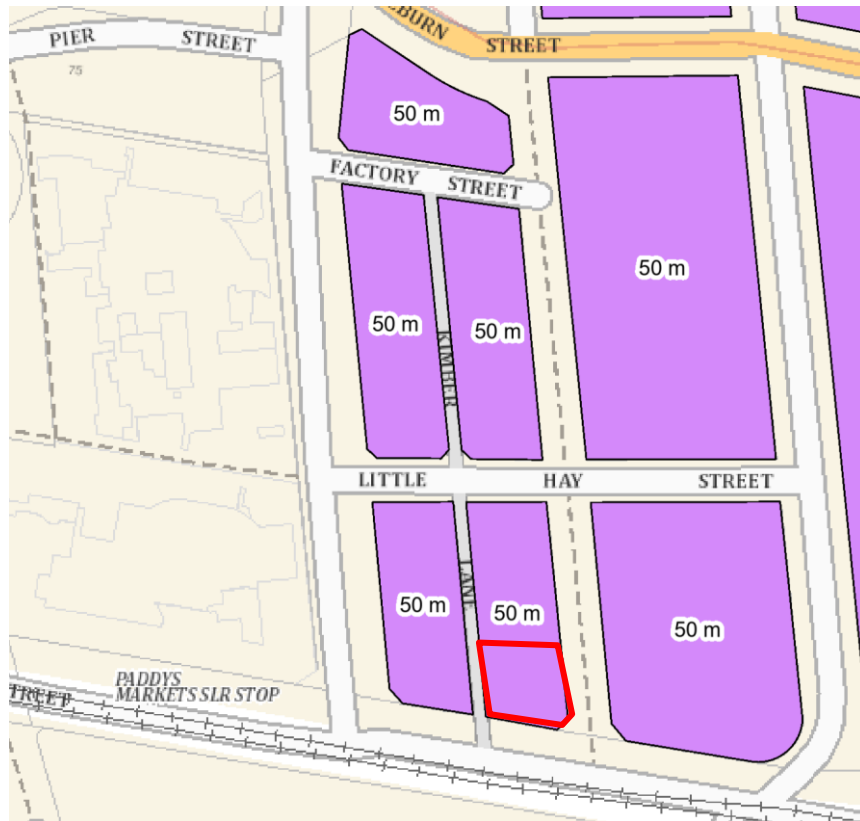


Figure 2: Extract of Height of Building Map SLEP 2012 (subject site shown with red outline) Source: NSW Planning Portal Spatial Viewer

6 Is the development standard excluded from the operation of Clause 4.6 of the EPI?

Cl 4.6(2) states that development consent may be granted for development even though the development would contravene a development standard. However, this does not apply to a development standard that is specifically excluded under cl 4.6(8) of the SLEP 2012. Given the maximum building height development standard is not identified under subclause 4.6(8), it is therefore not specifically excluded from the operation of cl 4.6 of SLEP 2012.



7 The site and its context

7.1 The Site

The site is known as 96-100 Hay Street, Haymarket, comprising of three land parcels, 96 Hay Street (Lot 4, DP 261942), 98 Hay Street (Lot 5, DP 261942) and 100 Hay Street (Lot 6 DP 261942). The combined site area is 450.9m². The site has frontages to Hay Street and Dixon Street and access to the rear from Kimber Lane.



Figure 3 – View of Hay Street façade of subject site. (Source: City of Sydney)

The site's existing three storey commercial restaurant building forms part of a broader site development across the properties 90-100 Hay Street, which was constructed in 1911 by the then Sydney Municipal Council as the Municipal Markets and leased to various market store and business enterprises of the Chinese community. The basic form and facade of these buildings remain, but each have undergone extensive internal modifications.

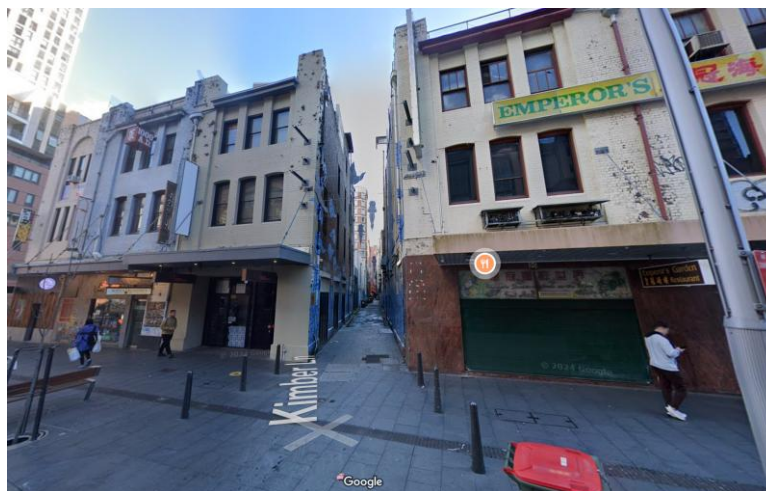


Figure 4 – View of Kimber Lane that separates 96-100 and 90-94 Hay Street, looking north (Source: Google Maps)





Figure 5 – View of Kimber Lane, looking south from Little Hay Street (Source: Planning Lab)

The Emperor's Garden Restaurant was established within the subject building in 1979 and has become a popular dining location within Chinatown.

The Restaurant currently operates across the building's three levels:

- The ground floor contains the main restaurant dining area and commercial kitchen, as well as a bakery fronting Hay Street;
- Level 1 accommodates additional restaurant seating and includes a self-contained managers apartment; and
- Level 2 is utilised for a secondary kitchen and restaurant storage.

The site is located directly adjacent to the southernmost of the Chinatown Gates, a paifang (pailou in Cantonese) style gate installed in the 1970s, in Dixon Street, a pedestrianised thoroughfare. Dixon Street is regarded as the main pedestrian thoroughfare for Chinatown, and features a variety of Chinese restaurants, cafes and shops. In keeping with the area's historical connections to the Chinese community and the 1970s Chinatown movement, many of the heavily modified ground floor shopfronts in Dixon Street have incorporated references to traditional Chinese architectural forms including pagoda style upturned double eaves, glazed terracotta tiles, Chinese-style screens, bamboo details and the colour red.



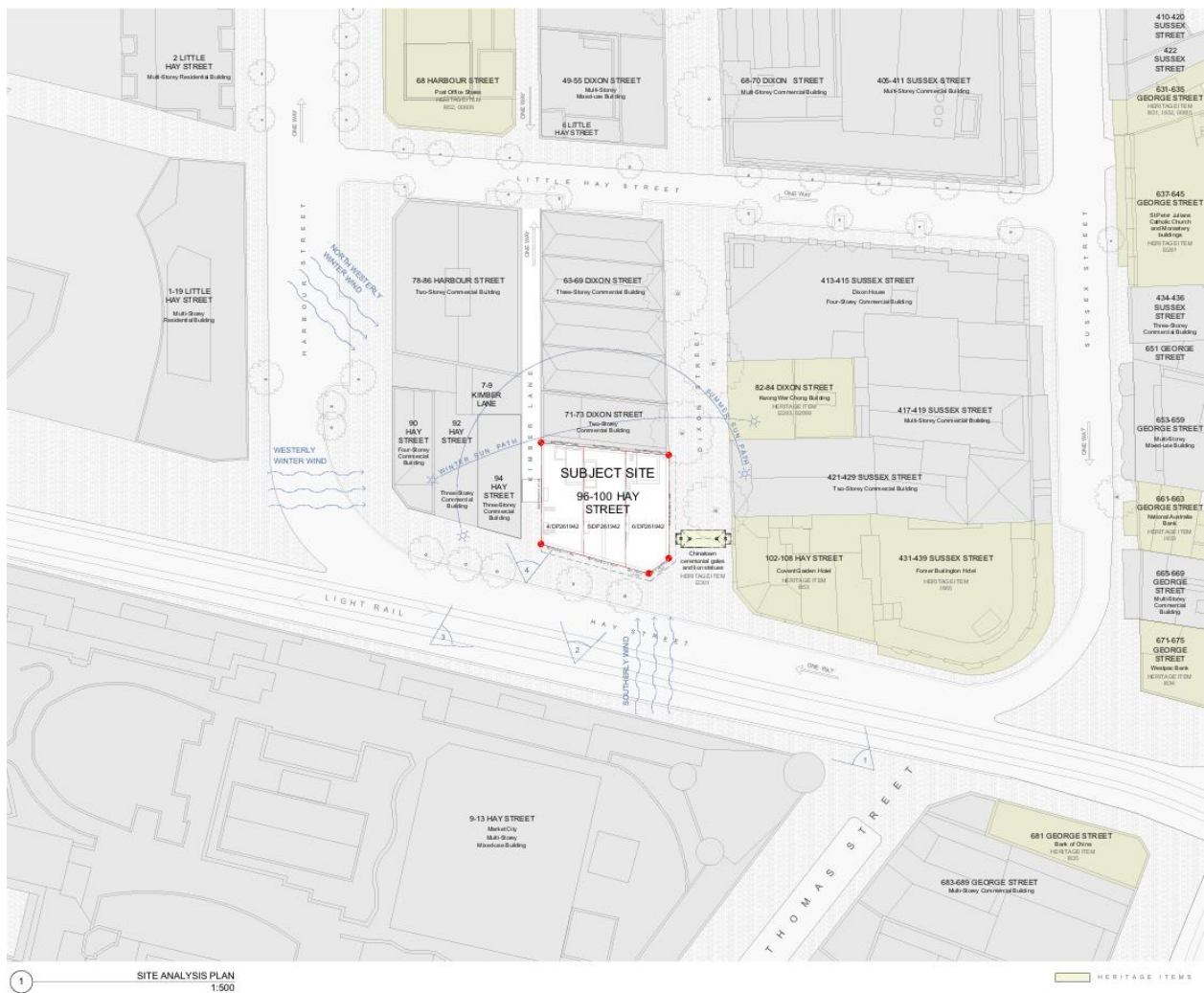


Figure 6 – Extract of Site Analysis Plan (Source: Candalepas Associates)

7.2 Adjoining and Surrounding Context

The three storey, heritage listed, Covent Garden Hotel building is located on the opposite side of Dixon Street. Immediately adjoining to the north is a two storey commercial building located on the property, 71-73 Dixon Street. Adjoining to the west is Kimber Lane, which separates the neighbouring, three storey, commercial building at 90-94 Hay Street. The heritage listed, Market City and Paddy's Markets commercial operations are located opposite across Hay Street to the south, separated by a section of the Sydney Light Rail operations.





Figure 7 – Market City, opposite Hay Street to the south (Source: Planning Lab)

The surrounding blocks, bounded by Hay (south), Little Hay (north), Harbour (west) and Sussex Streets (east) contain relatively low scale forms of older, commercial buildings, ranging from 2 to 5 storeys, which provide the primary commercial and hospitality focus of this southern section of Chinatown. These blocks are also characterised by a smaller allotment pattern, with fragmented ownership.



Figure 8 – View looking east towards the corner of Harbour Street and Hay Street (Source: Planning Lab)





Figure 9 – View looking west to Harbour Street along Little Hay Street (Source: Planning Lab)

Despite the relatively low scale of the existing buildings, this block has been the subject of some recent development approvals that exceed the maximum 50m LEP building height control, highlighting the emerging redevelopment pattern in this area anticipated by Council’s planning controls:

- D/2020/1386 – 413-415 Sussex Street and 82-84 – Dixon Street: approval to demolish the existing Dixon House, retain and upgrade commercial building (82-84 Dixon Street), and erect a new 17 storey mixed use building containing student accommodation and podium retail, including building height variations of 5m (55m) for the main envelope, and 9.75m (59.75m) for roof top plant and lift overruns.
- D/2022/184 – 417-419 Sussex Street – approval to demolish and existing 2 storey commercial building and erect a 13 storey commercial building, including a building height variation of 2.94m (52.94m) for roof top plant and lift overrun.





Figure 10 – Photomontage of Approved DAs D/2020/1386 and D/2022/184 (Source: Supersoma Associates)

- D/2024/1066 – 683-689 George Street Haymarket: approval for the construction and use of a 13 storey commercial office building including building height variation of 5m (55m).





Figure 11 – Photomontage of Approved DA D/2024/1066 – George Street Frontage (Source: Wardle)

To the north, north-west and north-east of this site, there has been significant, contemporary, mixed-use redevelopments, up to a height 15-20 storeys:

- To the north, on the opposite side of Little Hay Street, is the 12 storey, mixed use, Furama Hotel and retail building (68 Harbour Street) and 17 storey mixed use building (49-53 Dixon Street);
- To the north-west, on the western side of Harbour Street is the substantive, State Significant Development precinct known as Darling Square, which is subject to the planning controls of the SEPP (Precincts-Eastern Harbour City) 2021; and
- To the north-east, on the eastern side of Sussex Street, a number of emerging mixed tower redevelopments in the block bounded by George Street.

7.3 Current and Emerging Chinatown/Haymarket Planning Policies

The site is not identified as a heritage item or located within a Heritage Conservation Area under SLEP 2012 but is located within the Chinatown/ Haymarket Special Character Area (identified in Section 5 of the Sydney DCP 2012).



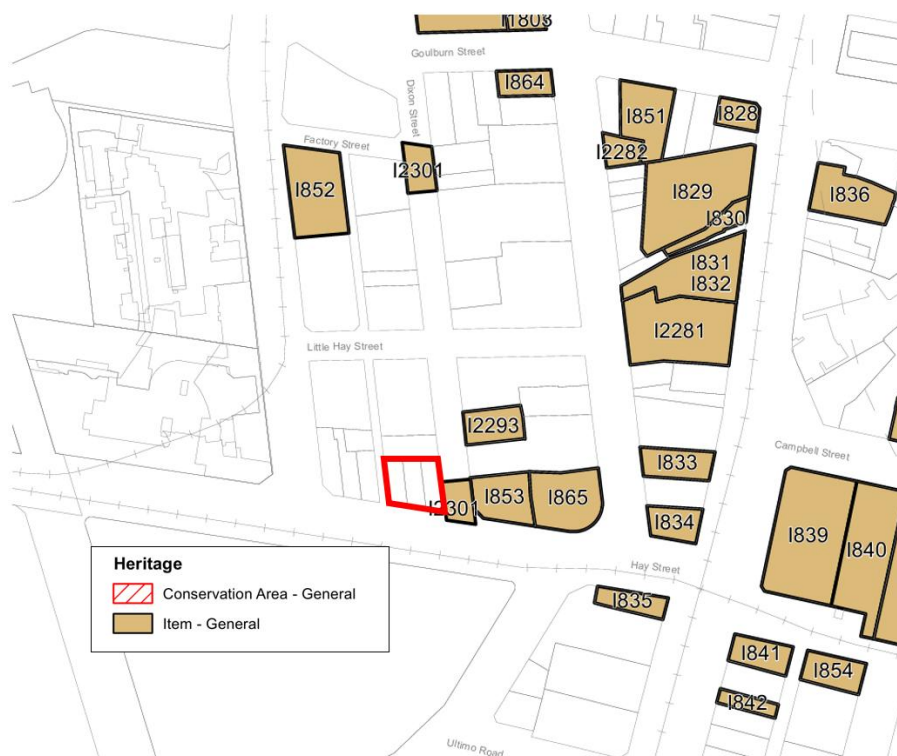


Figure 12 – Extract of Heritage Map – Subject Site outlined in red (Source: Sheet HER_015 - SLEP 2012)

However, the City of Sydney Council has recently progressed significant strategic planning and policy initiatives for the conservation and revitalisation of the Area.

An important driver and guiding influence on these initiatives is the Haymarket and Chinatown Revitalisation Strategy, adopted by Council in December 2023. The Strategy was prepared in response to the economic challenges that the Haymarket and Chinatown areas had been facing, such as the emerging competition from suburban East Asian precincts, limited investment in renewal, and a changing audience with different expectations, and the further impacts of the Covid-19 pandemic. The Strategy was formulated through an extensive community consultation process and evidence-based, economic and heritage studies. The resulting feedback identified:

‘Local residents, workers and visitors have expressed that they would like to see Haymarket revive and become a vibrant and bustling place that celebrates diverse Asian cultures, a place that preserves its history and character while embracing contemporary forms of cultural expression’.

Two actions of the adopted Strategy that are most relevant to the subject proposal are:

- Encourage Fine Grain Renewal: recognising the constraints on the current maximum streetwall height of 15m, and 8m setback above, and consideration of raising the streetwall heights in the special character area (except for Dixon Street) up to 35m to 45m; and
- Recognise Cultural Heritage: the advancement of heritage item listings as potentially having cultural significance, particularly historic and social value linked to the Chinese community, including 96-100 Hay Street.

Arising from the adopted Strategy, the following new planning controls have been advanced:



SLEP 2012 Draft Amendments

- It was resolved at the 14 November 2024 meeting of the Central Sydney Planning Committee to publicly a Planning Proposal, involving an amendment to Schedule 5 of SLEP 2012 to add three Chinatown buildings, 50-54 Dixon Street, 75-77 Ultimo Road and 90-100 Hay Street (including the subject site 96-100 Hay Street), based on the investigation findings:
 - *'The building at 90-100 Hay Street was constructed as municipal stores for the markets and were occupied by Chinese Australian firms which played a role in pioneering the processes of the banana and commercial vegetable growing industries in Australia. It meets the threshold for local significance in terms of its historic significance, historical association, aesthetic / creative / technical achievement, social, cultural and spiritual, research potential and rare attributes.'*
- The public exhibition of this draft Planning Proposal was undertaken between 18 August 2025 to 15 September 2025 and is expected to be reported back to Council in November 2025.

SDCP 2012 Housekeeping Amendments

- At the 23 June 2025 Council Meeting it was resolved to adopt amendments to the Sydney DCP 2012, and Section 5 built form controls for the Haymarket/Chinatown Special Character Area. The Section 5 amendments does not affect the existing maximum streetwall height of 15m, and 8m setback above that apply to the subject site, 96-100 Hay Street. Council resolved that the DCP amendments would not take effect until the gazettal of concurrent housekeeping amendments to SLEP 2012, which is due to occur before 28 November 2025.



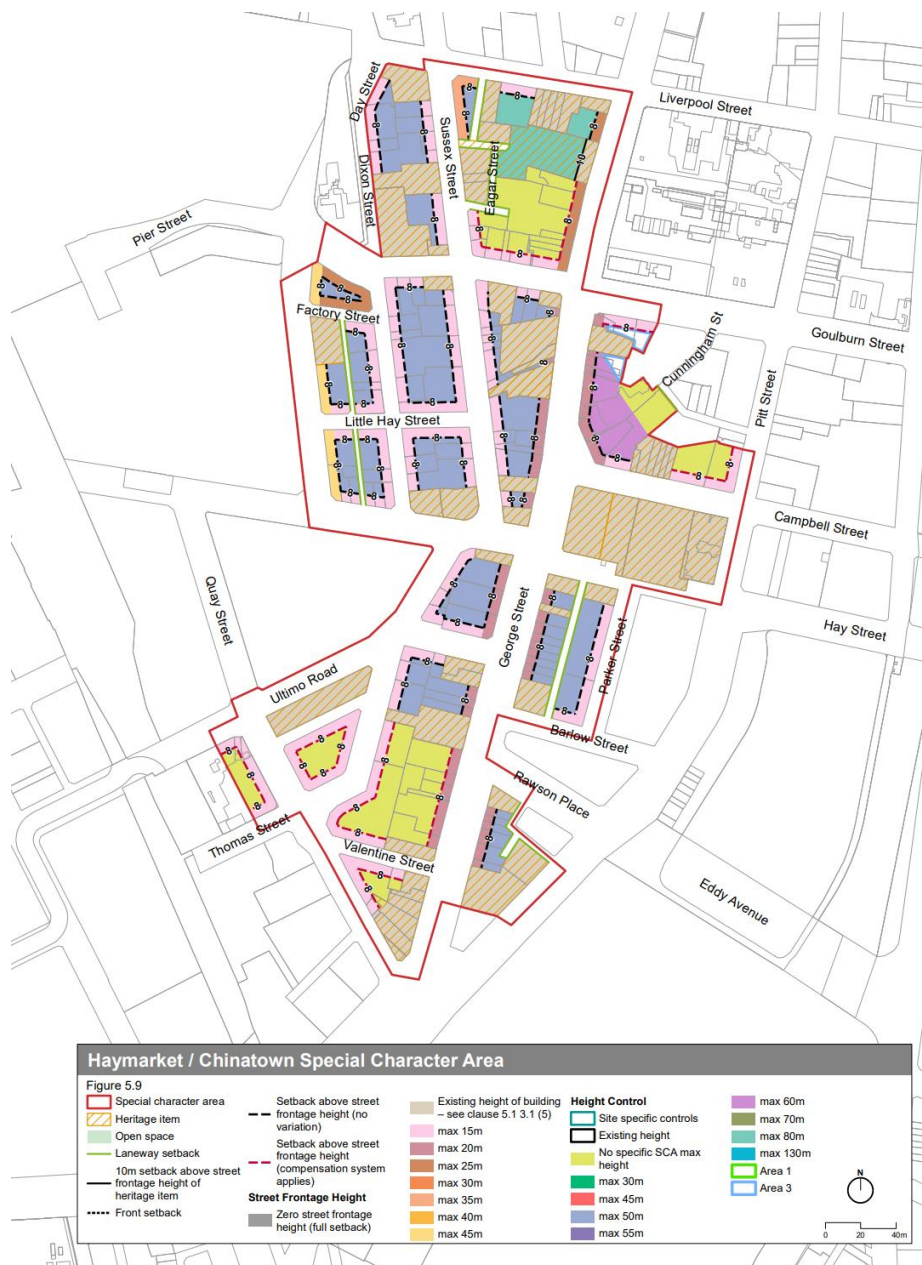


Figure 13 – Extract of Haymarket/Chinatown Special Character Area Map – Subject Site outlined in red (Source: SDCP 2012 – City of Sydney)

The proponents of this DA have been monitoring the progress of these new planning controls and have sought Pre-Lodgement advice from Council to ensure that the current proposal is consistent with these emerging controls.

The subject site is located within close proximity to light rail and train services. Central Station is located an approximately 9-minute walk which accommodates intercity, interstate, and city lines. Light rail lines and stops located along George Street and Hay Street. The Paddy's Market stop, and Capitol Square light rail stops are located less than 200m of the site.



8 Extent of Variation to the Development Standard

This Variation Request accompanies a DA to partially demolish and retain the Hay Street and Dixon Street façades of the existing 3 storey commercial building and to erect a new 16 storey mixed use shop top housing podium and tower building, including a basement level (plant and services only), three podium levels of commercial premises use, residential bike parking and communal open space areas on Level 3, and 12 storeys of residential tower above comprising 20 two-bedroom apartments and two 3 bed penthouses, located at 96-100 Hay Street, Haymarket ('the site').

This request specifically seeks to vary the maximum building height development standard contained in Clause 4.3 of SLEP 2012.

The Variation Request applies to the 50m maximum building height control of SLEP 2012.

As identified in the axonometric plan below, the highest point of the building measured above the existing ground level is **54.87m**, which exceeds the LEP's maximum **50m** building height limit, a variation margin of **4.87m**, or **9.74%**.

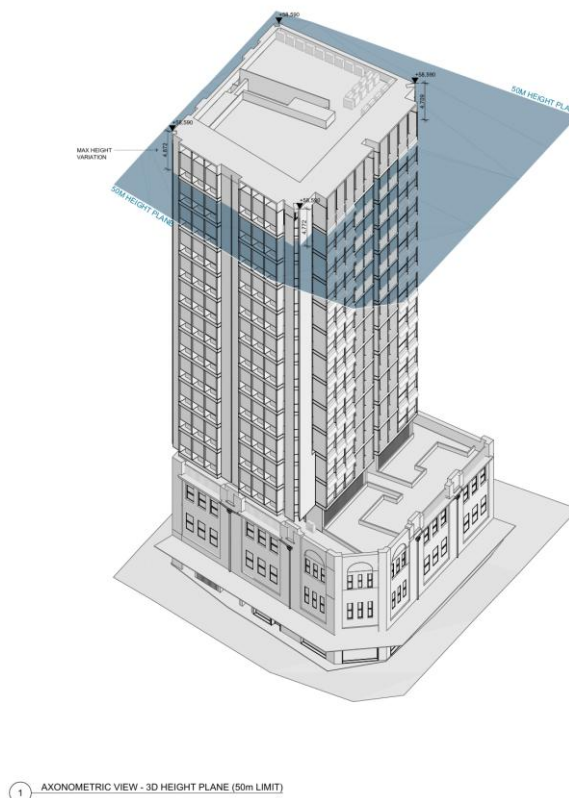


Figure 14 – Axonometric View – 50m Height Plane (Source: Candalepas Associates)



9 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Clause 4.6(3)(a) of the SLEP 2012 requires that the request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

Historically the most commonly used way to establish that a development standard was unreasonable or unnecessary was the satisfaction of the first test of the alternative five tests established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In *Wehbe* at [42] – [51] and repeated in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [17]-[21] the Chief Judge identified five alternative ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established.

Although *Wehbe* concerned a SEPP 1 objection, it remains relevant to requests under clause 4.6 (as confirmed by Preston CJ in *Initial Action* at [16]).

The five potential methods established under *Wehbe* are that:

1. the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. the objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the Council's actions in granting consents departing from the standard and hence the standard is unreasonable; or,
5. the zoning of the land is unreasonable or inappropriate.

The five ways are not exhaustive, and it may be sufficient to establish only one to satisfy cl 4.6(3)(a).

For completeness, this request addresses the first of the five alternative tests established - in *Wehbe v Pittwater Council* [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.



9.1 the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1** (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.

Demonstrating that the proposal will have no adverse amenity impacts is, therefore, one way of showing consistency with the objectives of a development standard.

Table 1: Achievement of Development Standard Objectives

Objective	Discussion
(a) to ensure the height of development is appropriate to the condition of the site and its context,	Section 7 of this report provides a detailed analysis of the subject site and its context. This analysis identified that Council's existing and emerging broader Strategy and LEP and DCP controls seek to achieve a balance between conserving the more significant historical and cultural elements of the Chinatown/ Haymarket Special Character Area, whilst providing the incentive for medium to high rise mixed commercial and residential buildings, as a catalyst for the economic and cultural revitalisation of this strategically important part of the City of Sydney. SLEP 2012 provides the subject site and the surrounding precinct with a maximum building height of 50m, complemented by the podium height and tower setbacks of SDCP 2012 for the Chinatown/ Haymarket Special Character Area. The proposed building height of 54.87m (a variation of 4.87m or 9.74% of the LEP maximum) is considered appropriate in the context of the scale and density envisaged by Council for this precinct, as evident by Council's recent approval of similar height variations for the redevelopment of nearby properties, 413-415 Sussex Street and 82-84 – Dixon Street, 417-419 Sussex Street and 683-689 George Street. The proposed building height is also considered appropriate in terms of the consistency of its built form profile and massing with the design controls of the SDCP 2012, as well as the retention of the Hay and Dixon Streets façades of the existing commercial building.



Objective	Discussion
(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,	As identified in (a) above, the proposed mixed use podium and tower building at a height of 54.87m, inclusive of the retention of the Hay and Dixon Streets façades of the existing commercial building, achieves an appropriate balance between maintaining a respectful arrangement with the street level history and character of the Chinatown/Haymarket area, whilst also contributing to the revitalization and activation of commercial and residential activity envisaged by Council's current and emerging planning controls for this area. The building height and design further complements the site context in terms of visual impact, privacy and solar access. Urbis has conducted an extensive assessment of the heritage significance of this site and the potential impacts of the proposed development through the following accompanying reports: • Heritage Impact Statement • Historical Archaeological Report • Aboriginal Objects Due Diligence Assessment Report Each of these 3 reports identify that the site currently has no physical heritage significance, but rather a social heritage significance documented in the current Draft Planning Proposal, and conclude that the proposed development is suitable to proceed, subject to recommended actions to be implemented as part of the post DA and operational phases.
(c) to promote the sharing of views outside Central Sydney,	No significant or iconic view corridors from surrounding buildings or public places have been identified that would be impacted by the proposal. The scale of the building is compatible in relation to the surrounding built form and the site will be surrounded by both existing and recently approved buildings that already block any extensive district views.
(d) to ensure appropriate height transitions from	Extensive strategic planning and urban design analysis has been undertaken by the City of Sydney in recent years to ensure that the current LEP and DCP height and built form controls provide a suitable scale of incentive to revitalise and



Objective	Discussion
Central Sydney and Green Square Town Centre to adjoining areas,	restore the commercial and cultural attractions of the Haymarket/Chinatown Special Character Area. Whilst the subject site is located on the south-western fringe of Central Sydney, it is considered that the proposed minor variation of the LEP maximum 55m building height will maintain consistency with this objective through the following design elements identified in the Design Verification Statement that accompanies this DA: <i>The building's scale is guided by its surrounding context, CBD location and development controls applicable to the site such as the tower setback to Dixon Street Pedestrian Mall. The tower, positioned above the existing podium, draws on the architectural character of the original building by aligning with its key structural forms. This allows for development to occur which is both contextual whilst also responding to the immediate urban context.</i> <i>By maintaining the podium's height, scale and rhythm, the original street wall (including 90, 92 and 94 Hay Street as well as the heritage listed Covent Garden Hotel at 102-108 Hay St) is able to maintain prominence, and read as the defining edge of the streetscape wall.</i> <i>The setbacks to the tower gives primacy to this podium element, mitigating impacts of scale. The tower's proportion, setbacks and the formal alignments to the heritage podium provide a contemporary counterpoint to this CBD gateway.</i>
(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	<i>Not Applicable.</i>



Objective	Discussion
the physical definition of the street network and public spaces.	

Compliance with the maximum building height development standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the standard are achieved, and the non-compliance will not result in any major adverse environmental impacts.

The requirements of clause 4.6(3)(a) of the SLEP 2012 are therefore satisfied.



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

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the Land and Environment Court (Preston CJ) said that:

- for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

As identified earlier in Section 8 of this report, this Clause 4.6 request specifically seeks to vary the 50m maximum building height development standard contained in Clause 4.3 of SLEP 2012.

The highest point of the proposed building measured above the existing ground level is **54.87m**, which exceeds the LEP’s maximum **50m** building height limit, a variation margin of **4.87m**, or **9.74%**.

This section of the Clause 4.6 Variation Request report is required to focus on the extent of environmental impacts specifically related to the proposed components of height variations.

As identified in the accompanying architectural plans and shown below, the area of the building that exceeds the maximum 50m height limit is comprised of the upper level of proposed residential apartment 14.01 (Level 15) and servicing facility areas enclosed within the upper building parapet.

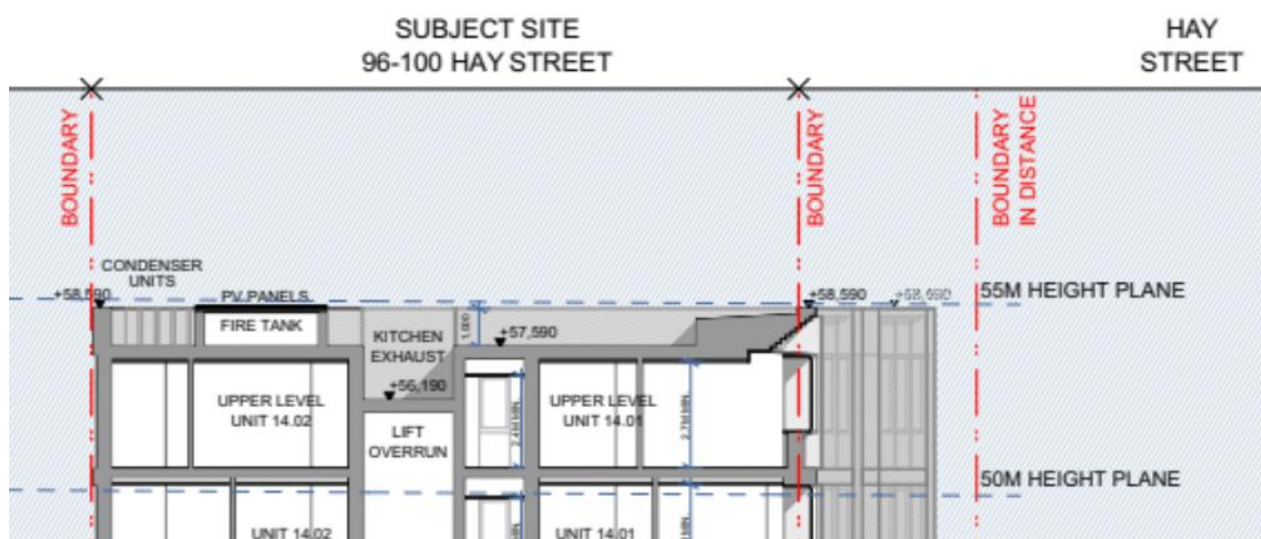


Figure 15 – Section Extract – Proposed Varied Areas Above 50m Height Plane (Source: Candalepas Associates)

It is considered that these areas of maximum height exceedance will have minimal environmental impacts for the following reasons:

Overshadowing

The architectural plans that accompany the application provide the following shadow diagrams:

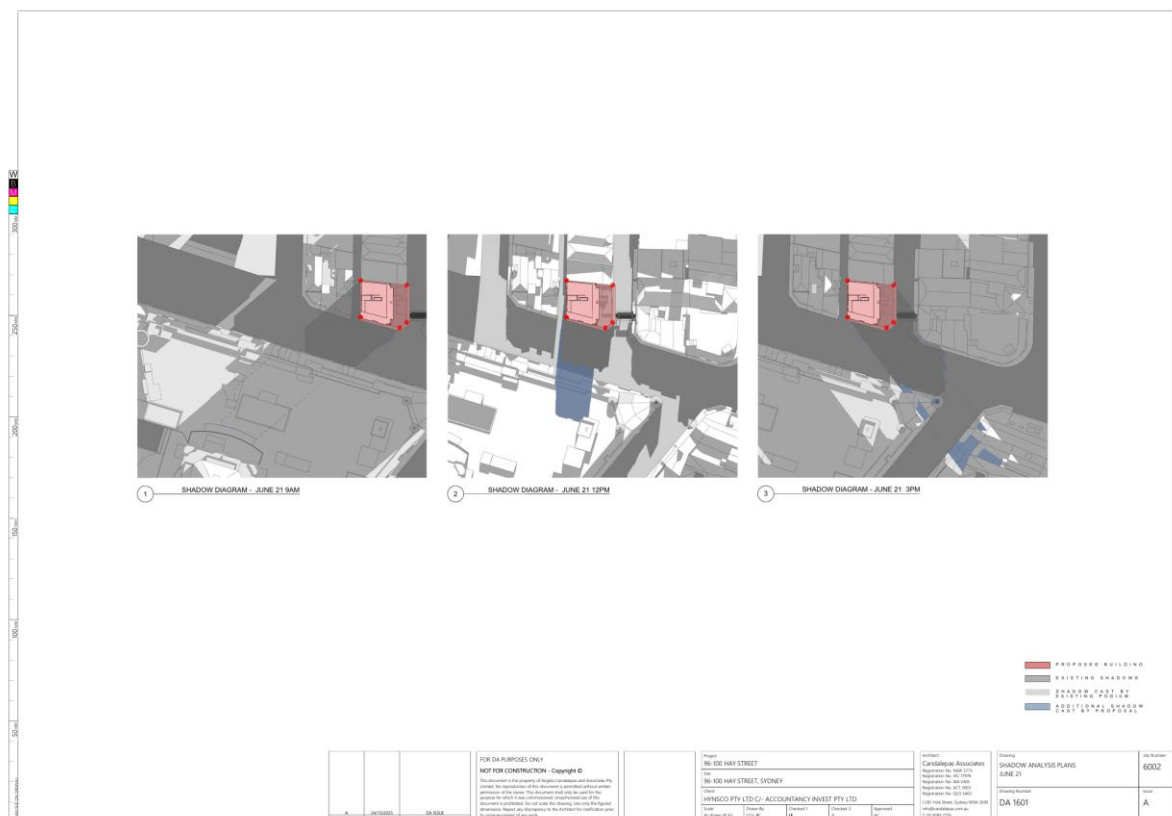


Figure 16 – Plan Extract of Shadow Diagrams Identifying the Overshadowing Impacts of the Proposed Development (Source: Candalepas Associates)

The most immediate area of publicly accessible open space is the adjoining section of the Dixon Street pedestrian mall.

As identified in the shadow diagrams, the main shadows generated by the proposal are to the south, south-east and south-west, and do not impact on the Dixon Street mall in mid winter.

In terms of potential impacts on the adjoining buildings with frontage to Hay Street, and buildings on the opposite side of Hay Street to the south, given the tall buildings to the north of the subject site, Hay Street and these buildings opposite (including the large commercial Paddys Markets building) are already significantly overshadowed in the mid-winter period, with only



limited additional overshadowing created by the proposed mixed-use building. The proposed height exceedance contributes only a minor extent to this impact.

The minor overshadowing of the public realm caused by the development is consistent with what can reasonably be expected by a development located within the Sydney CBD and that is generally consistent with the core planning controls for the site.

Heritage and Special Character Area

The site is not listed as a heritage item nor is it located within a Heritage Conservation Area. It is however located in the vicinity of several locally listed heritage items as listed by the *LEP 2012*, including the following:

- *Former Kwong War Chong & Co building (I12293) – also listed on the State Heritage Inventory (SHR item 02089)*
- *Former Burlington Hotel including interior (I865);*
- *King George Hotel (I832);*
- *Covent Garden Hotel including interior (I853);*
- *Haymarket Post Office (I831);*
- *Westpac Bank including interior (I1834);*
- *National Australia Bank (I833).*

The site is located within the Chinatown/ Haymarket Special Character Area (identified in Section 5 of the Sydney DCP 2012).

It was resolved at the 14 November 2024 meeting of the Central Sydney Planning Committee to publicly a Planning Proposal, involving an amendment to Schedule 5 of SLEP 2012 to add three Chinatown buildings, including 90-100 Hay Street.

Urbis has conducted an extensive assessment of the heritage significance of this site and the potential impacts of the proposed development through the following accompanying reports:

- Heritage Impact Statement
- Historical Archaeological Report
- Aboriginal Objects Due Diligence Assessment Report

Each of these 3 reports identify that the site currently has no physical heritage significance, but rather a social heritage significance documented in the current Draft Planning Proposal, and conclude that the proposed development is suitable to proceed, subject to recommended actions to be implemented as part of the post DA and operational phases.

Of particular design merit, the proposed refurbishment of the existing podium facades,



including reinstating and upgrading fenestration to original details, will maintain and upgrade existing commercial premises offerings sustaining the Haymarket / Chinatown Special Character Area.

In light of this assessment, it is considered that the area of exceeded height will not adversely impact on the heritage significance and special character of this part of the Haymarket/Chinatown area.

Privacy Impacts

As part of their Design Verification Statement, Candalepas Associates puts forward the following further justification for the setback variations and consistency with the Apartment Design Guide 3F-1 Objective in terms of visual privacy impacts:

The windows of habitable spaces detailed in the proposal generally meet the criteria of this control.

The primary openings of the habitable rooms are oriented towards the east, south and west. There are no north facing openings.

To the east, an 8m setback within the site boundary is imposed, providing sufficient privacy protection from Dixon Street as well as buildings across Dixon Street.

To the south, an existing distance in excess of 20m from the building across Hay Street provides sufficient privacy protect from it. Metal mesh screens will be installed in front of the lower portions of the operable windows, allowing natural ventilation while protecting privacy from pedestrian onlookers on Hay Street.

To the west, in anticipation of a possible future neighbouring development on 90-94 Hay Street, privacy screens and louvres will be installed on the western facade. It is noted that these windows will not meet the visual privacy separation controls and fixed screening is offered in lieu of this compliance which is considered appropriate given the existing established city grid.

The same design principles of the above assessment have been applied to the exceeded height area of proposed residential apartment 14 01 on Level 15 to minimise any visual privacy impacts for both the new apartment residents and the residents of surrounding residential uses.

View Impacts

As identified earlier in this report, no significant or iconic view corridors from surrounding buildings or public places have been identified that would be impacted by the proposal. The scale of the building is compatible in relation to the surrounding built form and the site will be surrounded by both existing and recently approved buildings that already block any extensive district views.

it is considered that the area of exceeded height will have minimal adverse impacts on the views from adjoining properties or the public domain.

Visual Impacts



Careful attention has been given by Candalepas Associates to provide a building envelope and form that achieves design excellence and is consistent with the objectives of Council's LEP and DCP, particularly in terms of the site's context both in its overall siting, massing and materiality as well as by use.

The tower form is aligned to the Hay Street frontage with a 3m vertical offset between podium and tower. The tower is further setback from the Dixon Street frontage allowing the podium form to take primacy and connect directly to its immediate neighbours.

The Design Verification Report highlights the strong visual design character of the proposed building:

This detailed development application considers the significance of what is there (the significant masonry brick construction) as a means to inspire the tower above.

With regard to the existing building, the facade is proposed to be retained and revitalised. At the ground level the non-original granite elements and aluminum windows are proposed to be removed, and re-pointed brickwork with timber windows and doors are proposed. At levels 1, 2 and the podium roof, windows and brickwork are to be repaired as required as a means to re-instate the architectural character of the existing building. As part of these works, the non-original paint and signage is proposed to be removed.

The tower form is referential to the geometry and materiality of the existing podium. The buttressing and window bays of the brick structure are reinterpreted in the new tower, forming a robust corner expression that provides occupants with dynamic views, natural light, and ventilation. The solidity of brickwork and off-form and precast panels gives way to the anodised aluminium and reflective glazing of the tower. Deep reveals and shadow gaps retain the proportional rigour of the grid, while responding to the tower's place as a civic landmark and gateway to the Chinatown precinct.

The material palette shown is formulated around both long lasting and natural materials. This is seen to compliment the adjacent masonry heritage buildings as well as speaking to more lasting and substantive human values.

The height exceedance of the upper level residential unit and enclosed services parapet contributes to the appropriate building form sought by Council's LEP and DCP urban design controls, and therefore creates no adverse visual impacts.

Sustainable Design

As identified in the Candalepas Associates Design Verification Statement, the following passive and sustainable design elements have been incorporated:

A high level of residential amenity is achieved through the orientation of the apartments' key habitable spaces (including the living rooms and private open space) to the eastern street frontages. All apartments receive direct sunlight to their balconies and living spaces in the middle of winter. Amenity is also created by the provision of a number of dual aspect apartments. This dual aspect allows for high levels of light and air penetration into the habitable areas. All apartments achieve good district views.



Consideration has been given to wind velocities at height, with recessed ventilation openings moderating the flow of air and allowing ventilation to be maintained during inclement weather.

The exceeded height area of the residential apartment on Level 15 incorporates these same sustainable design qualities, whilst solar panels are provided above the enclosed parapet area.

On that basis, it is considered that the exceeded height areas contribute to a sustainable building for.

Pedestrian Environment Wind Impacts

Windtech have prepared both a Pedestrian Wind Environment Assessment report and Addendum Letter to accompany this application.

This assessment concludes that the architectural design will result in suitable wind conditions within the Ground Level trafficable areas and will comply with the relevant DCP controls for wind comfort and safety.

On that basis, it is considered that the proposed exceeded height area will have minimal impact on the pedestrian wind environment of this building and its surrounding public domain.



11 Conclusion

Strict compliance with the maximum building height development standard contained within clause 4.3 of the SLEP 2012 has been found to be unreasonable and unnecessary in the circumstances of the case. There are sufficient environmental planning grounds to justify the proposed variation. In this regard, it is reasonable and appropriate to vary the maximum building height development standard to the extent proposed. The proposed development is consistent with the objectives of the zone and the Secretary's concurrence is to be assumed.



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