

Attachment B

Clause 4.6 Statement - Height of Buildings

URBIS

CLAUSE 4.6 - HEIGHT OF BUILDING

86-90 Bay Street, Ultimo

Prepared for
HBB PROPERTY
February 2026

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Project Code	P0043774
Report Number	Final



The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

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REQUEST TO VARY A DEVELOPMENT STANDARD

REQUEST TO VARY CLAUSE 4.3 HEIGHT OF BUILDINGS IN THE SYDNEY LEP 2012

Address: 86-90 Bay Street, Ultimo

Date: 6 February 2026

SITE AND PROPOSED DEVELOPMENT

1. Site Description

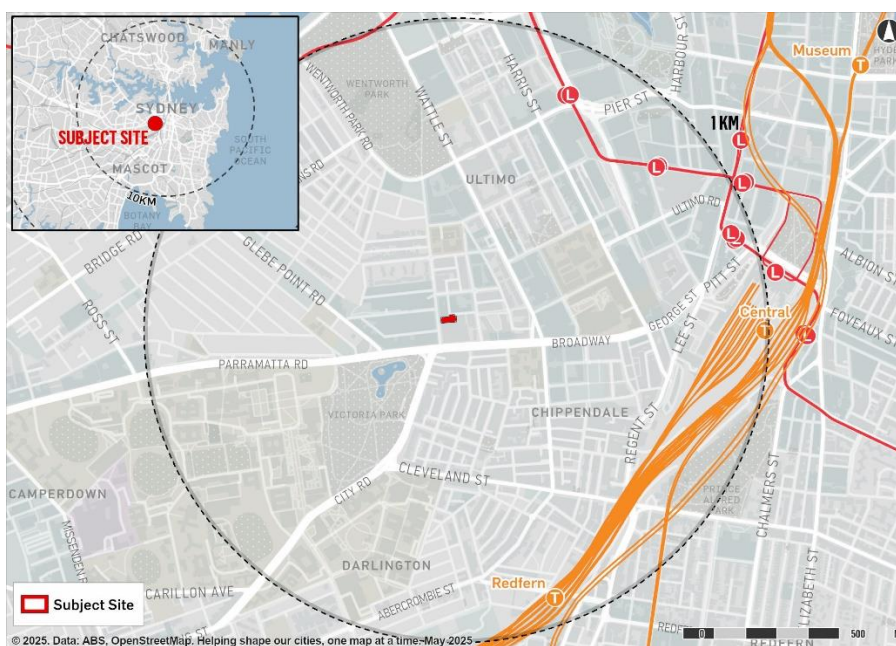
The key features of the site are summarised in the following table.

Table 1 Site Description

Site Characteristic	Description
Country	Gadigal Country
Address	86-90 Bay Street, Ultimo
Legal Description (Title Particulars)	CP/-/SP21479
Zoning	MU1 – Mixed Use
Existing Use / Structures	86-90 Bay Street contains a four-storey commercial building with a partial lower ground floor and below ground carpark accessed via St Barnabas Street. Due to the existing building's scale and architecture, it is noted to contribute negatively to the Bay Street, streetscape and considered detracting by the City of Sydney Development Control Plan SDCP 2012.
Site Area	1,011m ²
Existing GFA	2,685m ²
Site Frontages	The site frontage is on Bay Street and a side secondary frontage to St Barnabas Street
Topography	There is a cross fall of 800mm along Bay Street and a 3m fall to the back lane St Barnabas Street.
Vegetation	The site contains no existing vegetation.
Flooding/Overland Flow	The site is not located within a flood planning area.
Heritage	The site is identified as a detracting building within the Mountain Street Heritage Conservation Area. To the north of the site is heritage listed 4 storey building Reader's Digest and to the south is 5 storey Uni Lodge (student accommodation), which has been recently refurbished.
Vehicular Access	Vehicle access for parking and waste collection via St Barnabas Street.
Adjacent land uses North	The land uses directly to the north of the site consist of mixed-use developments, including shop top housing and residential flat buildings

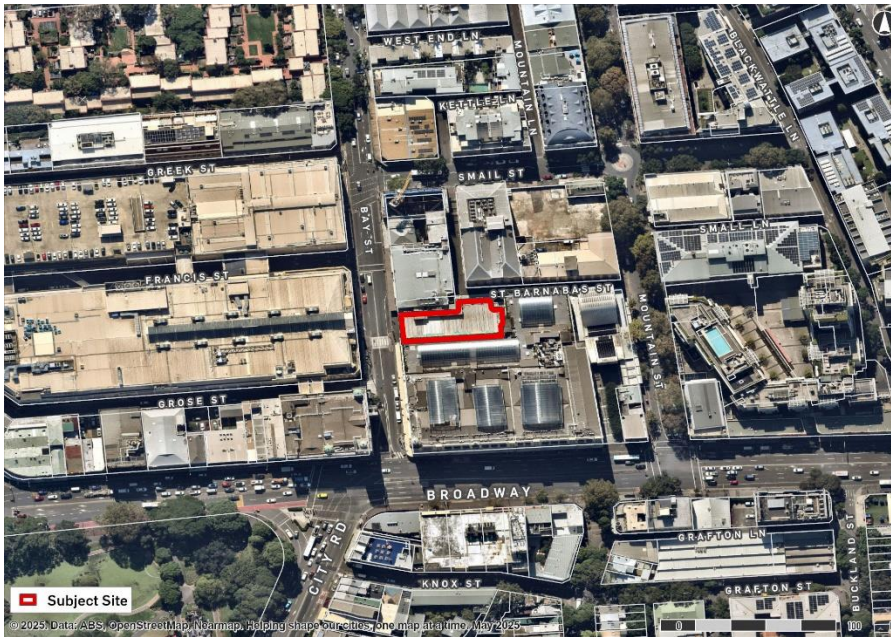
Site Characteristic	Description
	including a recent approval for co-living. The International Grammar School is approx. 400m to the north of the site.
Adjacent land uses East	Land uses directly to the east of the site include mixed use developments, including shop top housing and residential flat buildings. Developments range between 2 and 7 storeys. The site is approx. 700m away from Wattle Street, a classified road. Further east includes significant tertiary education facilities, including both Tafe NSW Ultimo and the University of Technology Sydney, Ultimo campus.
Adjacent land uses South	The south of the site consists of mixed-use developments, including residential, commercial and retail development adjoining Broadway. St Barnabas' Anglican Church is situated across the road from the south boundary of the site. Broadway is located 75m south of the site and is a classified road and a major artery of the Sydney Road network.
Adjacent land uses West	The land uses to the west of the site include an E1 – Local Centre zone which encompasses Broadway Shopping Centre and local neighbourhood shops along Broadway and Glebe Point Road. Further west includes Victoria Park and the University of Sydney, a significant tertiary education facility.
Public Transport	The site is proximate to buses on City Road, Broadway, and Glebe Point Road that connect to the Inner West and CBD. The site is within walking distance or short bus ride to Central railway station which provides metro, heavy rail, and light rail services to most of Greater Sydney.
Open Space	There is currently no open space on the site. The site is proximate to Victoria Park, Chippendale Green, and Wentworth Park.

Figure 1 Regional Context Map



Source: *Urbis2025*

Figure 2 Aerial Photograph



Source: *Urbis2025*

Photographs of the existing development and surrounding context are provided below.

Figure 3 Site Photos



Picture 1 View of the site looking northeast.

Source: *Urbis, 2025*



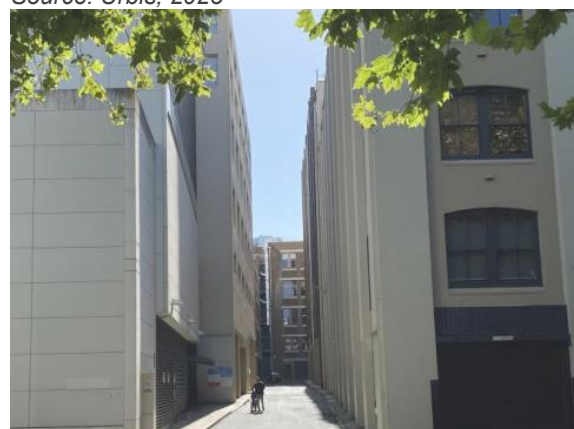
Picture 2 View of the façade along Bay Street

Source: *Urbis, 2025*



Picture 3 View of the site and Bay Street looking north.

Source: *Urbis, 2025*



Picture 4 View of St Barnabas Street located on the northern boundary of the site looking west.

Source: *Urbis, 2025*

2. Proposed Development

The key features and details of the proposed mixed use co-living development at 86-90 Bay Street, Ultimo for which consent is sought as per below:

- Demolition of a 4 storey detracting building.
- Construction of a new 8 storey (maximum 29.45m) building comprising:
 - 137 apartments across levels 1-7
 - Lower ground floor parking with 3 loading bays, 1 accessible car parking space and 2 car share spaces
 - Landscaped terrace with seating on level 6
 - Communal area on level 6
 - Landscaped central courtyard with seating on the ground floor
 - Ground Floor Retail along Bay Street
 - End of Trip Facilities on the lower ground floor

The development proposes an FSR of 4.5:1 across the site with a total GFA of 4,550m²

The proposal is in accordance with the Architectural Plans and Design Report prepared by Fitzpatrick + Partners that accompany this DA. The following sections provide additional details on specific aspects of the proposal.

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

Sydney Local Environmental Plan 2012.

4. What is the site's zoning?

MU1 Mixed Use zone.

5. What is the development standard to be varied?

Clause 4.3 Height of Buildings.

6. Type of development standard?

Numerical Development Standard is capable of being varied under Clause 4.6 of SLEP 2012.

7. What is the numeric value of the development standard in the environmental planning instrument?

22 metres.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

A review of the proposal's exceedance in proportion (percentage variation) is detailed below.

Table 2 Percentage variation of exceedance

Building element	Maximum height measured from existing ground level and height (in metres) exceedance	Variance from the standard (m)	Percentage variation from the standard (%)
North East	29.12m (RL38.25-RL9.13)	7.12m	32.36%
North West (roof of L7)	26.83m (RL38.25-RL9.42)	4.83m	21.95%
South East (roof of L7)	29.12m (RL38.25-RL9.13)	7.12m	32.26%
South West	26.70m (RL38.25-RL11.55)	4.70m	21.34%
Lift overrun	29.45m (RL38.25-RL8.8/basement)	7.45m	33.86%

It is noted that a 1.5m parapet screens the rooftop plant, solar panels, the lift core, a green roof, and 12 apartments.

The Bay Street façade is at RL32.04 and is below the 22m height control (being 20m in the south west (with ground level RL12.05) and 20.77m in the north west (with ground level RL11.27)).

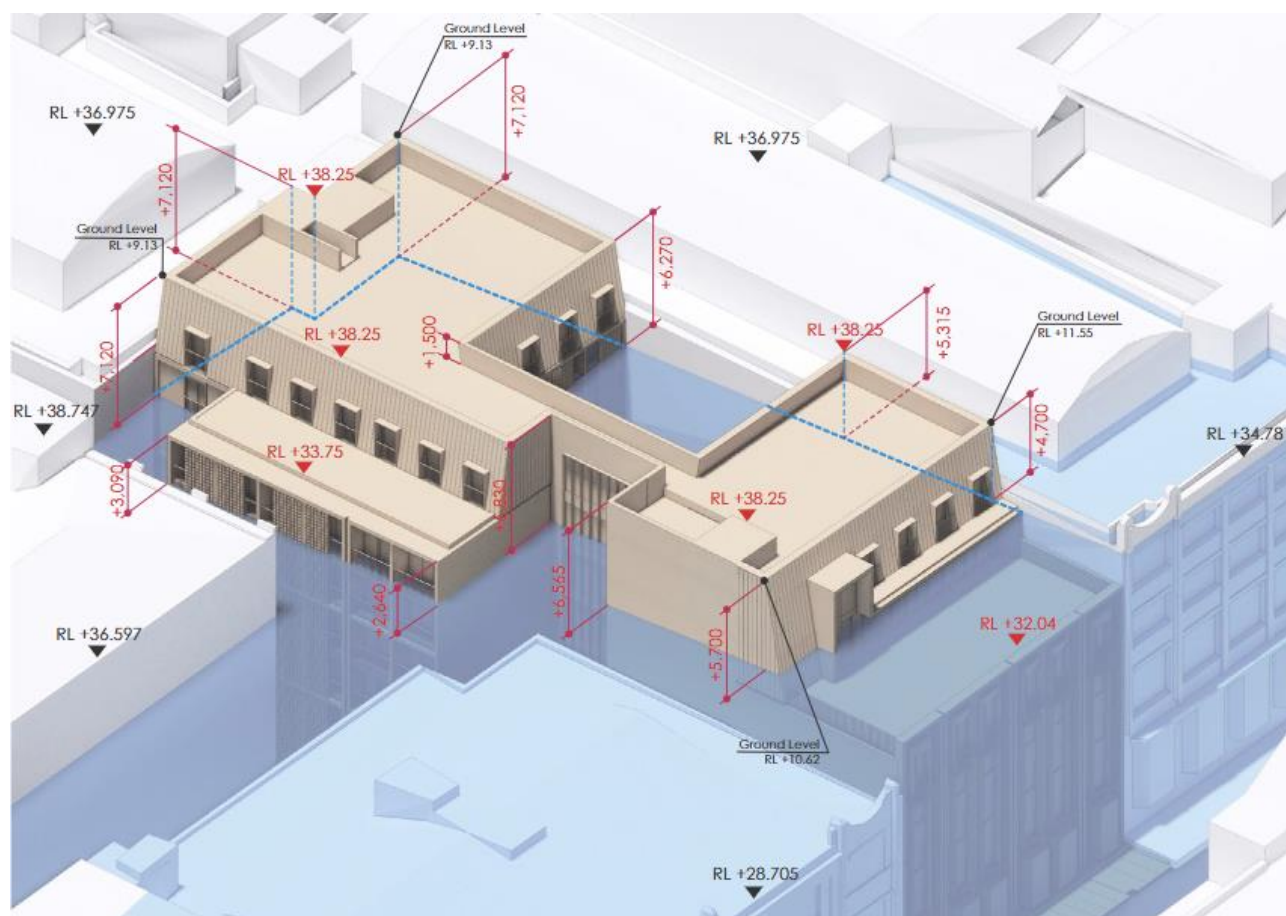
9. Visual representation of the proposed variation

Figure 4 Bay Street Elevation (West) with 22m height control line



Source: *Fitzpatrick + Partners 2025*

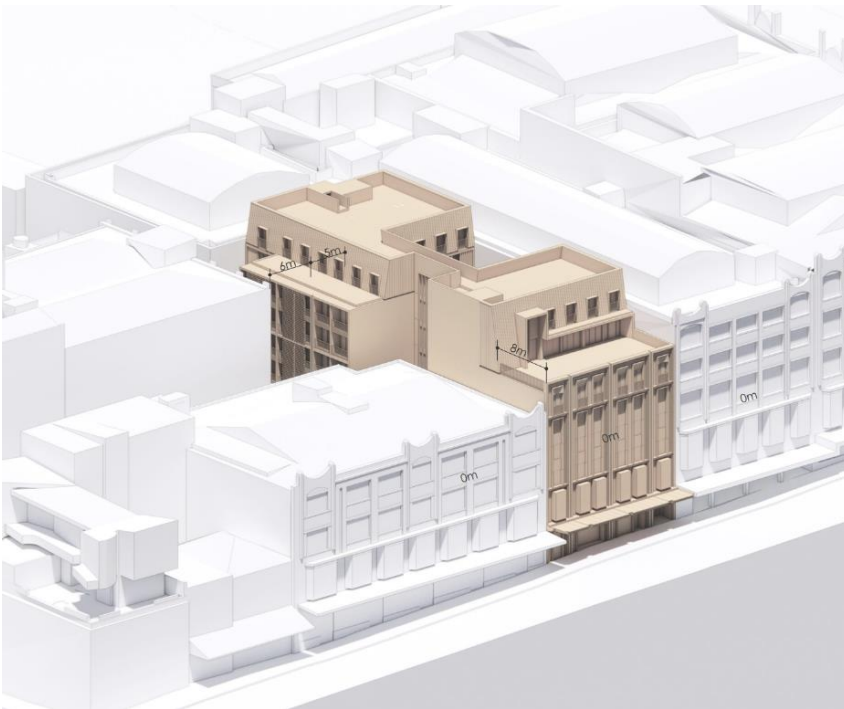
Figure 5 Height Plane Analysis



- 22m Height Plane

Source: Fitzpatrick + Partners 2025

Figure 6 Setbacks

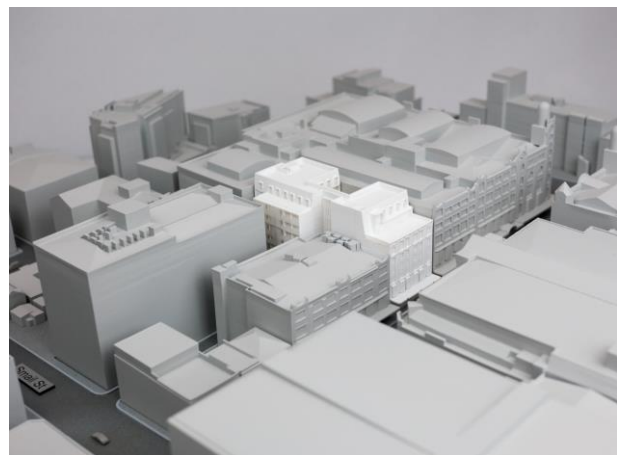


Source: Fitzpatrick + Partners 2025

Figure 7 Massing Study



Picture 5 View from the west



Picture 6 View from the north



Picture 7 View from the north



Picture 8 View from the east

Extract of Physical Model

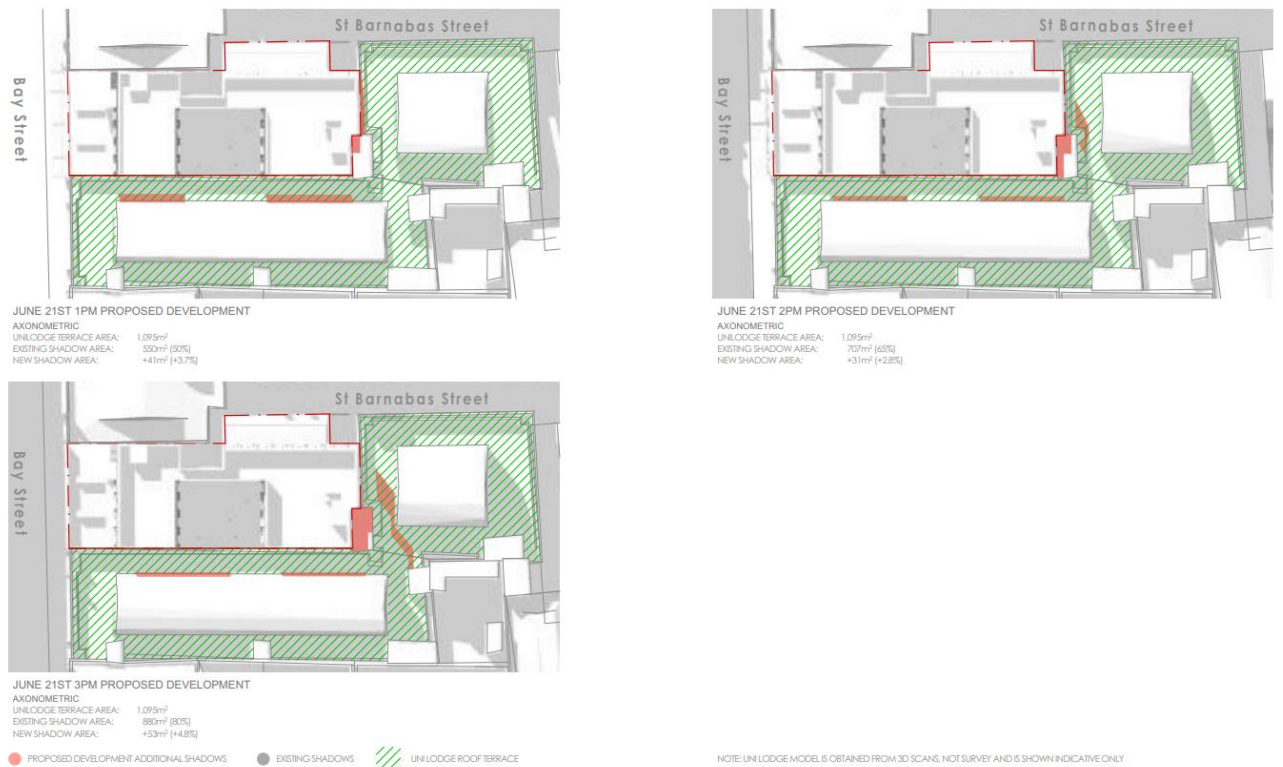


Source: Fitzpatrick + Partners 2025

Figure 8 Shadow Diagrams



Picture 9 Shadow Diagram between 9AM – 12 Noon



Picture 10 Shadow Diagram between 1PM – 3PM

Source: *Fitzpatrick + Partners 2025*

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

There are 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (as transposed in items a to e the Table below). An applicant must satisfy at least one. In relation to the subject development contravention, the table below addresses the first key question.

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	In response to the <i>Height of Buildings</i> development standard objectives, we make the following comments: ▪ <i>to ensure the height of development is appropriate to the condition of the site and its context</i> The proposed built form is appropriate for the context as: An analysis of the surrounding context demonstrates that the height of the existing building (compliant) creates an unsightly gap in the high density area. As such, the surrounding buildings almost all exceed the 22m height of building control, representing the changing needs of the community and outdated nature of the development standard. The proposed building seeks to close the gap between the Readers Digest and 185 Bay Street (student accommodation) improving the consistency of context within the streetscape. – The distribution of mass has been purposefully sited, with recessed top floor and higher elements located to the east, ensuring the Bay Street elevation when viewed from the public domain is compliant and contextually appropriate. – To minimise the non-compliance at the street edge and to ensure the UniLodge northern corner is appreciated, the massing of the top floor has been reduced by setting it back 8m from the street boundary. – The roofline of 1-3 Smail Street to the north of the site is 0.97m higher than the proposed building, and the 185 Bay Street building to the south is 2.31m lower than the proposed building. Accounting for these differences of height alongside the site's cross fall of 800mm and 3m at the rear, the proposed height results in the "filling of the gap", creating a balanced and improved sightline as demonstrated in Figure 7. – The western side of Bay Street contain commercial buildings which when measured from ground floor are taller than the proposed building. Additionally, these buildings are consistent with the 0m setback along the street, resulting a greater bulk and scale impact than the proposed building which has a setback of 8m on Level 7 and a punched in windows as part of the built form. As such the existing building does not currently read in context with the surrounding area and the proposed height will provide a conclusively more appropriate built form outcome. – There will be an acceptable overshadowing impact and negligible adverse impacts to the surrounding area as a result of the proposed development. The largest shadow is proposed to only take up 4.8% of the communal rooftop area at 3pm at 185 Bay Street. At other times, the shadowing will be significantly reduced down to 2.8%.

Key Questions	Response
	– These additional shadows move from the east to west between 9am to 3pm minimising shadowing in one area. The shadowing to the rooftop of 185 Bay Street is considered marginal.
	▪ <i>to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i> – Currently the existing building is a detracting item that is lower and inconsistent in bulk and mass that the adjoining developments. The proposed new development will assist in creating a more appropriate transition of 'old' and 'new' and overall improve the compatibility and consistency along the Bay Street streetscape. – The built form responds to the adjoining heritage buildings to the north and south of the site by proposing a matching 0m setback along Bay Street (to level 5) and the installation of a continuous stepped down awning at level 1. The proposed awning will reflect the existing heritage expression appropriately across the frontage from Broadway to Smail Street. – The built form responds to the heritage items along the Bay Street frontage by proposing a landscaped terrace at Level 6 and pulling back the bulk of the development from this edge by 8m. This setback allows for the adjoining heritage items to remain prominent along the frontage, soften views to the items and minimise overshadowing. – The development is further managed by reflecting appropriate materials and colours that are evident within the HCA and its federation warehouse style heritage buildings. The proposed building includes pilasters which vertically modulate the façade and respond to the rhythm of façade detailing along Bay Street. – The highest point of the building is largely due to the slope of the site. The lift overrun is centrally located from the northern and southern boundaries on the site and well set back from the more heritage streetscape to the west. ▪ <i>to promote the sharing of views outside Central Sydney,</i> – Due to the heights of the surrounding buildings, the site topography and site location the site currently does not benefit from any district views or views of significance. The site provides an aspect onto Bay Street, Broadway Shopping Centre to the west and along Kettle Lane to the north. – The proposed development will not adversely impact key views from the public domain to important public spaces and will not impact views from neighbouring buildings. – The proposed building is set back 5m along the northern façade at Level 7 and 8m at Level 6 along the Bay Street façade which minimise bulk and scale visual impacts from the neighbouring properties. – This objective has limited relevance to the site given the substantial distance of the site from Central Sydney and height being contextually comparable to adjoining developments. The proposed maximum 29.45m in height does not obstruct any views to Central Sydney. ▪ <i>to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.</i> – This is not of relevance to the site given the substantial distance of the site from Central Sydney and Green Square Town Square.

Key Questions	Response
	Overall the proposed massing with its recessed top floor fits within the built form of the surroundings and contributes positively to the street scape of Bay Street by creating a stepped parapet line that is in keeping with the parapet lines of the adjoining properties.
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	Not replied upon
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	Not replied upon
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	Not replied upon
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	Not replied upon

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

"...in order 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"

There are sufficient environmental planning grounds to justify contravening the development standard, given the following:

Visual Impact

- Whilst a significant portion of the site sits well below the height limit, the highest point of the building has been positioned appropriately to align with the lower ground level points at the rear of the site. From an urban design and heritage perspective, the building height on Bay Street has been purposely designed to take cues from the heritage items to the north and south. The building setback allows for an upper level terrace that provides increased amenity to the building's occupants. The elements in exceedance of the control, including the 1.5m parapet screen the rooftop plant, solar panels, the lift core, a green roof, and 12 apartments.
- These exceedances assist in creating a high quality and complete design for the building that leads to a more cohesive streetscape height plane that is in line with the adjoining heritage listed developments to the north and south of the site and following the streets natural topography.
- The current building is detracting from the heritage conservation area. The proposed building design has been carefully considered to be consistent with the existing character of the adjoining buildings along Bay Street and heritage conservation area.

- A building height plane diagram is provided in Figure 4 and shows the location and amount of exceedance above the 22m height control. Figure 5 demonstrates the non-compliances facing the sites frontage are significantly setback from the site boundaries.
- As evident by the visual representation in the massing study prepared by Fitzpatrick + Partners in Figure 7 and based on our site analysis, buildings along the western frontage of Bay Street from Broadway to Greek Street exceed the proposed building height at the site.
- The cross fall of the site has an 800mm drop and a 3m fall at the rear of St Barnabas Street. Reflective of the slope of the land, the proposed height is balanced and consistent with sites to the north, east, south and west.

Loss of Privacy

The non-compliant elements of the building are limited to the upper portion of the building, at the rear of the site and have been designed to maintain the privacy of adjacent buildings, as well as the relationship between the two adjoining buildings. If strict compliance with the maximum building height were to be enforced, the privacy impact on neighbouring properties would remain largely unchanged due to the tight footprint. Mitigation measures for building separation include reducing glazing, offsetting apartments where necessary and introducing breezeways and screening.

Solar Access

- The proposed form above the height control is consistent with the height of 1-3 Smail Street and 185 Bay Street. The built form of the proposed at the upper levels are pulled back by 5m from St Barnabas Street and 8m from Bay Street, minimising potential bulk and scale impacts.
- The building elements that are proposed to exceed the height limit do not cause any adverse additional overshadowing to neighbouring properties or the public domain. Although additional shadowing will fall onto the 185 Bay Street rooftop the most significant shadows will be cast at 3pm and will only take up a 4.8% of the area which is considered minimal.

View Loss

The proposed development's non-compliance with the height limit will not result in any significant loss of views or outlook compared to a compliant building. Importantly, neighbouring properties or the public domain do not currently enjoy any significant views across the subject site due to nature of the streetscape. Despite the additional height of the proposed buildings, the development remains consistent with this objective.

Design Excellence and Urban Design

- The City of Sydney is encouraging the activation and greening of rooftops, through a draft Planning Proposal, and as such the proposed development provides spaces for informal seating and landscaping this contributes to this policy position without any undue impacts. This draft policy is allowing some flexibility of maximum building height controls to accommodate green roofs and ancillary structures as part of communal open space.
- The proposal results in a built form that responds positively to the surrounding urban context, particularly the development immediately to the west which is the dominating building form in the immediate context. From the street, the proposed development presents as an 8-storey building consistent with the existing character of the locality and immediate development.
- The roof top solar panels, plant and lift overruns are a fundamental component to the proper functioning of the residential building. The proposed development has made provision for the parapet to meet the height of these elements to block them from public view and provide clean sightlines.
- Level 7 comprises 12 apartments (incl. 1 accessible apartment) which ensures the feasibility of the project and in turn greater housing provision in the area. As level 7 has been pulled back by 5m, the apartments on the northern façade have views to the green roof below.

Precedent Study

The prescribed maximum height limit of the site should be considered in the context of other development that has similarly demonstrated merit for variance against the development standard. Approvals have been granted for variations in building height standards for sites within the Mountain Street Heritage Conservation

Area, whether for new development or additions. The following table provides a summary of the approved variations and existing non-compliant structures in the vicinity.

Table 4 Examples of Approved Heights within the Mountain Street Heritage Conservation Area Site

Site	LEP Maximum Height (metres)	Variation to Height	Approved Height (metres)
86 Bay Street, Ultimo (D/2023/445)	22m	+18.2%	26m
1-3 Smail Street, Ultimo (D/2024/984)	22m	+60.09%	35.22m
44 Mountain Street, Ultimo (D/2020/1288)	18m	+22.89%	22.12m
35-39 Mountain Street (D/2013/2004)	18m	+24.83%	22.47m
41&43-49 Mountain Street (D/2005/1562)	18m and 22m	+53.8% and +25.09%	27.7m
11 Smail Street (D/2009/2200)	22m	+21.84%	24.93m

In the course of evaluating the aforementioned applications, it was recognised that the surrounding buildings exhibit a notably higher density than the height and Floor Space Ratio (FSR) limits stipulated in the area. As a result, consideration was given that exceeding the maximum building height of 22m may be warranted based on a contextual assessment of the vicinity.

Moreover, the evaluations also took into account that such exceedances would not establish an unfavourable precedent and were generally appropriate in light of the former commercial/industrial warehouse typology prevalent in the area. It is evident based on this development history, acknowledgement that the prescribed height development standards are incongruous with the existing context of the Mountain Street heritage conservation area.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings standard non-compliance in this instance.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Alignment with Zone Objectives

The site is zoned MU1 Mixed Use under SLEP 2012 and the objectives are:

To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

To ensure land uses support the viability of nearby centres.

To integrate suitable business, office, residential, retail and other land uses in accessible locations that maximise public transport patronage and encourage walking and cycling.

- The proposal is consistent with the land use objectives of the MU1 Mixed Use zone and the proposed variation to the maximum private room size development standard does not hinder the proposal's ability to satisfy the objectives as:
- The proposal incorporates co-living and retail land uses integrated across the site, to provide vibrancy and activity within the site while allowing for the successful operation of each. The proposal will serve the workforce, visitors, and the wider community.
- It will provide for redevelopment of a detracting heritage item, delivering ground floor retail and an active frontage to Bay Street.
- It will provide for housing spaces for people that suit various price points and alleviates retail pressures on the private housing market.
- The proposal clearly delineates public and private domain and encourages a high amenity outcome for future residents, whilst not impacting on the current amenity enjoyed by neighbouring residents.
- The provision of additional residents living and working in Ultimo will see economic benefits to local retail centres such as Broadway and Central and create an active community along Bay Street.

Public Benefit

The proposed development achieves the objectives of the Height of Building development standard and the land use zoning objectives despite the non-compliance, and the contravention has been demonstrated to be appropriate and supportable in the circumstances of the case. There would be no public benefit in maintaining the development standard in this case.

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