

Attachment C

Clause 4.6 Statement - Floor Space Ratio

The URBIS logo consists of the word "URBIS" in a bold, white, sans-serif font. To the right of the text is a white square frame that is partially open on the left side, with the text "URBIS" appearing to be inside or attached to it.

URBIS

CLAUSE 4.6 – FLOOR SPACE RATIO

86-90 Bay Street, Ultimo

Prepared for
HBB PROPERTY
6 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 4.4 FLOOR SPACE RATIO IN SYDNEY LEP 2012

Address: 86-90 Bay Street, Ultimo

Date: 6 February 2026

SITE AND PROPOSED DEVELOPMENT

1. Site Description

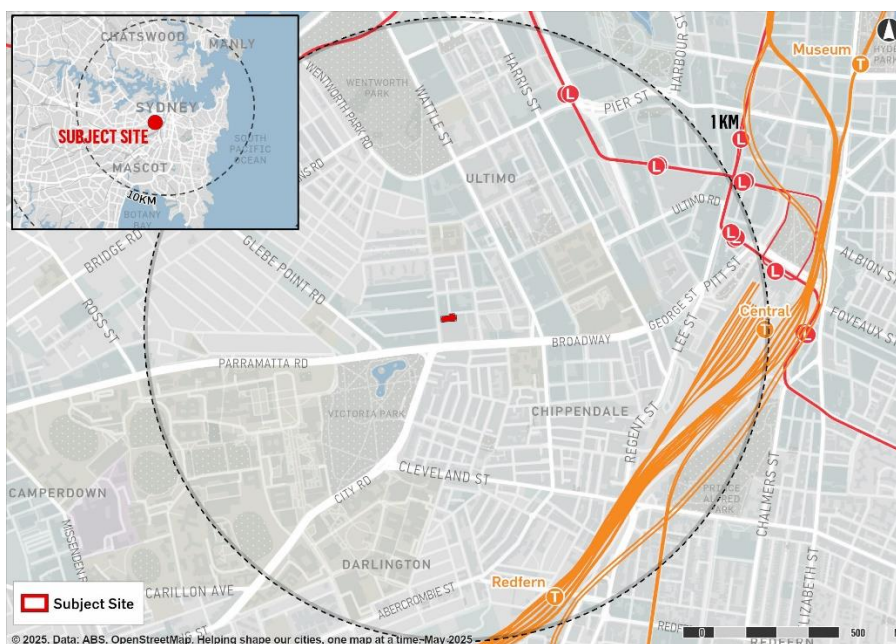
The key features of the site are summarised in the following table.

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 including a recent approval for co-living. The International Grammar School is approx. 400m to the north of the site.

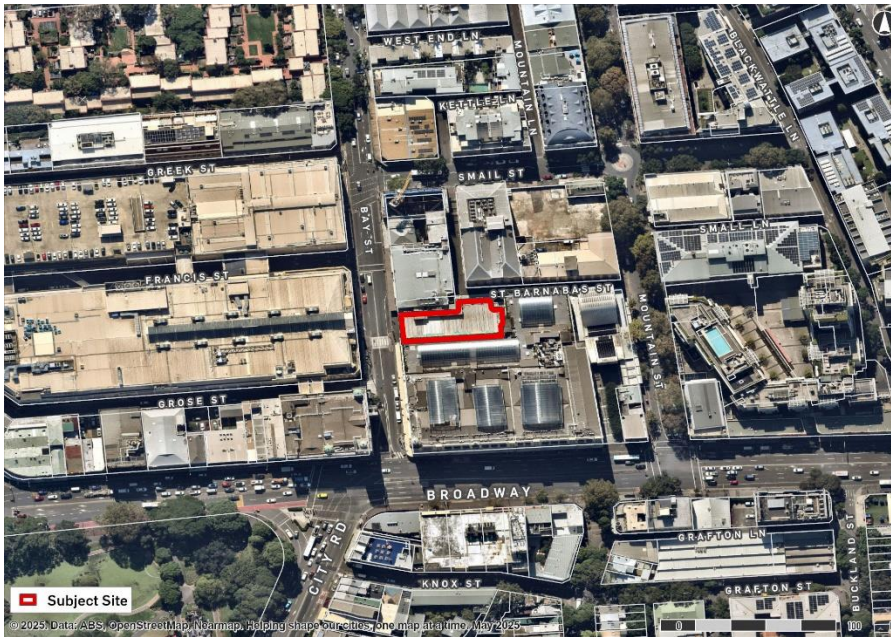
Site Characteristic	Description
Adjacent land uses East	Land uses directly to the east of the site include mixed use developments, including shop top housing and residential flat buildings. Developments range between 2 and 7 storeys. The site is approx. 700m away from Wattle Street, a classified road. 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*



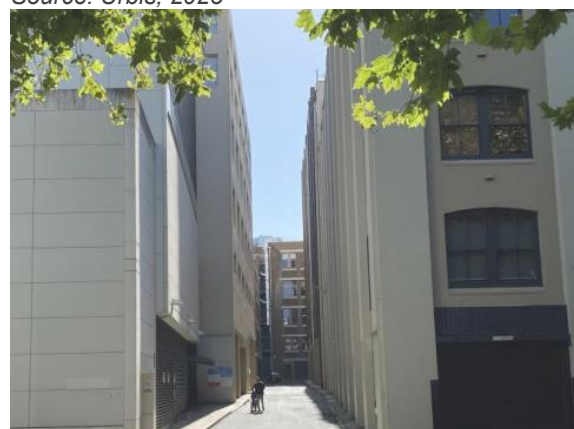
Picture 2 View of the façade along Bay Street

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 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 4.4 Floor Space Ratio.

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?

2.5:1

As the development is prepared pursuant to the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), Section 68(2)(a)(ii) applies an additional 10% floor space for the purposes of co-living housing.

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. This is based on a site area of 1,011m².

Table 2 Percentage variation of exceedance

Building element	Permitted FSR (inclusive of 10% additional FSR under the Housing SEPP)	Proposed FSR	Percentage variation from the standard (%)
86 Bay Street, Ultimo	2.75:1 (amounting to 2,780.25sqm of GFA)	4.5:1 (amounting to 4,550sqm of GFA)	63.7%

9. Visual representation of the proposed variation

Nil.

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?	The proposed development achieves the objectives of the development standard as outlined below: <i>(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,</i> - The strategic context of the site encourages greater housing supply, which is diverse, affordable and has access to jobs, services and public transport. The proposal utilises the existing building footprint and provides 137 co-living apartments with retail at the ground floor, and an EoT facility on the lower ground floor. <i>(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic, The proposed development prioritises a high level of amenity over maximising residential density within the site, through:</i> - The proposed design is consistent with the prevailing and emerging character of developments of a similar scale within the locality. The proposed alterations and additions to the existing commercial building complement the heritage significance of the existing building and the character of the Heritage Conservation Area. - The proposed built form is in keeping within the density and surrounding context of surrounding development within the Mountain Street Heritage conservation area and adjoining heritage items - The proposal will result in a reduction in vehicle traffic noting the proposal seeks to reduce the current car parking provision: - o The proposed development provides one accessible car park and 3 car share spaces thereby significantly reducing the number of private car spaces within the building. Further, the proposal seeks to incorporate 156 bicycle spaces. - o The site is well serviced by nearby buses and within walking distance to metro, heavy rail, and light rail services to most of Greater Sydney. - The proposal would result in increased pedestrian traffic to this part of Ultimo which is considered a positive for the area and local businesses. - The built form exhibits a high level of amenity as: - o The design includes a biophilic designed open air courtyard that runs through the centre of the building. The central courtyard provides the apartments located around the core access to natural light and improved ventilation. - o An additional common area and communal open space on level 6 increases the residential amenity to the 137 apartments and residents.

Key Questions	Response
	<i>(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,</i> - The location in a dense urban area means the site is well serviced from existing utility and social/community infrastructure. Despite that, the proposed development provides 295m² of communal living which totals a surplus of 3m² under the Housing SEPP. The proposal also exceeds the 20% provision of communal open space, by providing 305m². The proposed development is in line with the capacity of existing and planned infrastructure for the locality. As outlined above, the occupants will have low impact on the road infrastructure as the existing site is highly accessible being well serviced by public transport, existing utility and social/community infrastructure(d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality. - The proposal positively responds and complements the heritage conservation area character by removing a detracting element in the HCA and providing a building form and character that is complementary to the Bay Street streetscape. - The proposed FSR variation responds to and reinforces the scale of a number of buildings in the immediate context, including 1-3 Smail Street and 185 Bay Street resulting in acceptable additional bulk and scale. - As the proposed is setback at different levels, the potential visual impact is minimised. Additionally, the proposal fills the existing and detracting gap between the two adjoining heritage buildings, resulting in a coherent sightline along Bay Street. - 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%. - The Bay Street façade aligns with the character of the heritage conservation area with the design of its Bay windows at level 2 and vertical pilasters throughout. - The ground floor façade has no setback to reflect the alignments of adjoining properties and broader Bay Street. The development proposes a stepped down awning along Bay Street in line with the sloping street and surrounding buildings. - The building façade has a grid like pattern tying in with its immediate heritage surroundings of federation style warehouses with brick masonry walls. The proposed building incorporates brick as its primary material used and detailed modular frames with pigmented zinc, and red reveals throughout. - The built form is proposed to be lower than the parapet by 1.5m. The height of the parapet is proposed to screen the solar panels, plant and lift core to result in a consolidated view from the street. In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	Not replied upon

Key Questions	Response
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 the proposed variation to the development standard, including the following:

- By allowing the inclusion of the FSR variation for co-living housing, development on the site can provide alternative options to the private residential market and can therefore provide a diversity of housing choice, affordability, and opportunities catering to the demographics of the locality. This aligns with the aims of the Housing SEPP to facilitate the effective delivery of new well-located housing.
- The proposed development aims to remove a detracting item within the heritage conservation area which is considered supportable from a heritage outcome.
- The proposed development lessens the traffic and parking impact at the site, whilst contributing positively to the housing needs of the community. The design is carefully considered to be consistent with the future character of the area, as demonstrated by compliance with the objectives of the MU1 zone.
- Significant amounts of landscaped and communal open spaces are provided to enhance the amenity for residents of the site.
- The development forms a consistent character with adjoining heritage buildings along Bay Street by use of contextual materials and design inclusive of a continuous stepped down awning. The development therefore forms part of a broader character area and is suitable in context of the heritage conservation area within which it is located. Potential solar impacts to the neighbouring residential amenity are minimal. At the worst case scenario the overshadowing will be 4.8% at 3PM to the rooftop at 185 Bay Street.
- The increased FSR allows for the incorporation of a retail tenancy on the ground plane, this retail tenancy will provide activation along Bay Street.
- The prescribed FSR of 2.5:1 (notwithstanding the proposed end of journey facilities) for the subject site is only adequate for the existing three storey building on site which is built to the boundary and currently

already exceeds the prescribed FSR. Similarly, the prescribed FSR for immediately surrounding sites within the heritage conservation area of FSR of 2.0-2.5:1 does not reflect the existing context which comprises predominantly historical warehouse buildings built to all boundaries and originally built of a three to six storey height (not including any later additions).

- Compliance is not possible as it would require partial demolition of the existing former commercial building. In addition, the prescribed rate or mapped FSR is inappropriately low in this locality. In this regard, the underlying object or purpose of the FSR standard would be defeated if compliance were required and therefore compliance is unreasonable. Further, it would not allow for achievement of the 22m height requirement prescribed for the area.
- The prescribed FSR for the area has been consistently varied in this immediate precinct given the established built form character associated with its gentrification. In particular, FSR and height of building standard variations have been approved as part of additions or for new development for immediately surrounding sites.

Precedent Study

The prescribed FSR for 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 FSR standards for sites within the Mountain Street Heritage Conservation Area, whether for new development or additions. **Table 3** below provides a summary of the approved variations and existing non-compliant structures in the vicinity.

Table 3 Examples of approved FSR within the Mountain Street Heritage Conservation Area

Site	LEP Maximum FSR	Variation to FSR	Approved FSR
86-90 Bay Street, Ultimo (D/2023/445)	2.5:1	+83%	4.73:1
1-3 Smail Street (D/2024/984)	2.5:1	+108.98%	5.75:1
44 Mountain Street, Ultimo (D/2020/1288)	2.0:1	+102.1%	4.04:1
35-39 Mountain Street (D/2013/2004)	2.0:1	+132.5%	4.65:1
41 & 43-49 Mountain Street (D/2005/1562)	2.0:1 & 2.5:1	+ >90%	4.43:1
11 Smail Street (D/2009/2200)	2.5:1	+36%	3.4:1

The prescribed FSR of 2.5:1 (notwithstanding proposed end of journey facilities) for the subject site is deemed insufficient for the existing three-storey building on site, which is constructed up to the boundary and currently exceeds the prescribed FSR. Similarly, the prescribed FSR for the surrounding sites within the Heritage Conservation Area, ranging from 2.0-2.5:1, does not accurately reflect the existing context. The context primarily consists of historical warehouse buildings that were originally built to all boundaries and had a height of three to six storeys (excluding later additions). These warehouses, in their original state, would have similarly exceeded the prescribed maximum FSR, even with approved later additions, as highlighted within Table 3. The non-compliance with the FSR standard is acknowledged in the assessment of similar additions, recognising it as a common characteristic of buildings in this locality.

Compliance with the prescribed FSR is not feasible without partial demolition of the existing former commercial building, which is not a practical solution. Moreover, the prescribed FSR is inadequately low for the locality, requiring compliance would defeat or prevent the underlying objective or purpose of the FSR standard.

Further, the proposed building form does not create any significant adverse impacts on the immediate surrounding area from the perspective of bulk and scale, traffic, heritage, or operation. Therefore, there is sufficient environmental planning grounds to justify contravening the development standard.

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 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, to a coherent and architecturally appropriate building within the Heritage Conservation Area. The proposal will also deliver ground floor retail and an active frontage to Bay Street.
- 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 FSR 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. The precedent study of surrounding developments (outlined above) show the development standard is thwarted and abandoned and as such the numerical control has little relevance. A contextual built form response, as proposed, is an appropriate way to prescribe the proposed FSR. There would be no public benefit in maintaining the development standard in this case.

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