Attachment C

Clause 4.6 variation - Height

Clause 4.6 Variation Request Building Height

26-38 Saunders Street, Pyrmont

Submitted to City of Sydney Council
on behalf of TM No. 6 Pty Ltd ATF TM No. 6 Development Trust

Prepared by Colliers Urban Planning

9 October 2026 | 2240676



'Gura Bulga'

Liz Belanjee Cameron

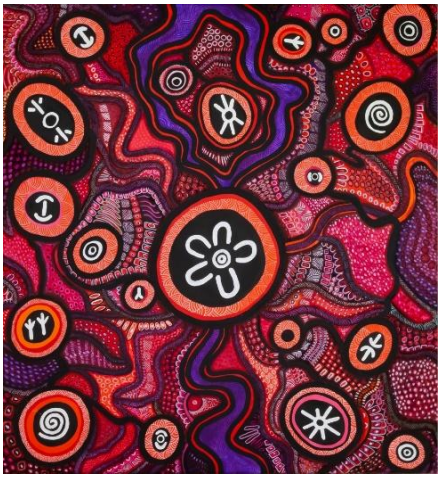
'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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Version No.	**Date of issue**	**Prepared by**	**Approved by**
A (DRAFT)	30/04/2026	MC/MJ	JD
B (DRAFT)	04/05/2026	MC/MJ	JD
C (FINAL)	06/05/2026	MC/MJ	JD
D (UPDATED)	02/10/2026	MC/IAS	JD
E (FINAL)	09/10/2026	MC/IAS	JD

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1.0 Introduction

1.1 Overview

This Clause 4.6 Variation Request has been prepared by Colliers Urban Planning on behalf of TM No. 6 Pty Ltd ATF TM No. 6 Development Trust (The Applicant). It is submitted to the City of Sydney Council (the Council) in support of a development application (DA) for shop-top housing at 26-38 Saunders Street, Pyrmont.

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP 2012) enables the consent authority to grant consent for development even though the development contravenes a development standard. This Clause 4.6 Variation Request relates to the development standard for height of buildings under clause 4.3 of the Sydney LEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Colliers Urban Planning dated 6 May 2026.

The development application which this request accompanies has been made in reliance on the future planning controls that apply at the site. However, due to finalisation of the LEP and DCP taking longer than anticipated, the application has been assessed and is ready to be determined prior to the new controls coming into effect. As such, this administrative Clause 4.6 Variation Request has been prepared to vary the base building height control as it currently applies, not the future building height control that will apply once the Ultimo-Pyrmont Planning Proposal is finalised and the LEP amended.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

This Clause 4.6 Variation Request demonstrates that, notwithstanding the proposed variation to the development standard that:

- Compliance with height of buildings development standard is unreasonable and unnecessary in the circumstances of this case as the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:
  - The proposal is generally consistent with the height envisaged for the site under the Ultimo-Pyrmont Planning Proposal with only a 2m height variation below an architectural roof feature, and remains below the key tallest surrounding elements including Harbourside Redevelopment (RL170) and Blackwattle Bay (RL141). The proposal is therefore appropriate to the condition of the site and context.
  - The proposal continues to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
  - The additional height will have an acceptable impact on views from the public areas surrounding the site, as per Council's assessment of the draft DCP envelope in the Ultimo-Pyrmont Planning Proposal Urban Design Study. Similarly, impacts on private views will be comparable to that already assessed by Council in their Planning Proposal which assessed the impacts of the draft DCP building envelope.
  - The proposal is located centrally within an area transitioning to higher densities and taller buildings, extending from the CBD to Blackwattle Bay and Bays West. The proposed height will ensure appropriate height transitions from the Central Sydney to these areas.
  - The site is not located in Green Square.

  - Part of the height exceedance is caused by an architectural roof feature that was proposed in the Design Competition winning scheme. The roof feature achieves the objectives and provisions of Clause 5.6 of the SLEP 2012.
  - The proposal achieves the objectives of Clause 6.66A Ultimo Pyrmont Opportunity Land notwithstanding the variation.
- There are sufficient environmental planning grounds to justify contravention of the standard, as:
  - The proposal is consistent with the height envisaged under the imminent Ultimo-Pyrmont Planning Proposal and strict adherence to the existing 24m height control would prevent an outcome consistent with the established future vision for the precinct.
  - The variation allows for increased provision of housing in accordance with the strategic aims of the Federal and NSW Governments under the Housing Accord.
  - The proposal has an appropriate built form and density that is consistent with the future character of the site and surrounds. The proposed height remains below the maximum allowable height in Blackwattle Bay of RL141, and below the Harbourside Redevelopment height of RL170, which are the tallest elements on the western/Pyrmont peninsula.
  - The exceedance does not cause any adverse overshadowing impacts, with the additional shadow caused by the variation falling predominantly on water, roads and commercial properties – not residential dwellings or public parks.
  - The proposal is consistent with the design competition winning scheme, which included a height variation to accommodate the proposed architectural roof feature.
- The proposal remains consistent with the objects of the EP&A Act.
- The variation is in the public interest as it is consistent with the objectives of the zone and the development standard.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Sydney LEP.

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89* in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council [2007] NSWLEC 827* (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*;
- *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511*;
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*;
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*; and
- *Moskovich v Waverley Council [2016] NSWLEC 1015*.

In accordance with the above requirements, this Clause 4.6 variation request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 26-38 Saunders Street, Pyrmont, situated on the western side of the Pyrmont Peninsula within the City of Sydney Local Government Area (LGA), and is approximately 2.7km west of the Sydney CBD, which provides a wide range of commercial, retail and food and beverage outlets as well as residential development.

The site has an area of 3,115m^2 and is legally described as Lot SP61725. The site is irregular in shape and contains three (3) street frontages including one (1) to Saunders Street and two (2) frontages to Quarry Master Drive. Vehicular access is currently provided from the eastern frontage to Quarry Master Drive. Additionally, the site is predominantly devoid of significantly dense vegetation.

The Site is well serviced by public transport with the proposed Pyrmont Metro Station located approximately 500m east of the site and the Bank Street Light Rail Station located approximately 300m south-west, providing access to the Sydney CBD. The new Pyrmont Metro Station will provide access to assist in the revitalisation of the Pyrmont Peninsula Precinct and support the extension of the Sydney CBD. As well, bus services located approximately 400m south east of the site that provide access to Central Station (501).

The site is currently occupied by an ageing multi-storey residential flat building, as shown in **Figure 1**.



Figure 1 Site Aerial (site identified in red)

Source: Nearmap and Colliers Urban Planning

It is noted that the site is surrounded by a mixture of medium and high-density development with a range of uses, including commercial and residential development. The broader context beyond the site is subject to significant renewal, as a result of the Planning Proposal (PP-2024-376) to amend the SLEP 2012 and Sydney Development Control Plan 2012 (SDCP 2012), which will enable the significant redevelopment of key sites within Ultimo-Pyrmont, to support the finalised Pyrmont Peninsula Place Strategy. Additionally, the construction of the new Sydney Fish Market, as well as the delivery of a new mixed-use precinct on the western side of Blackwattle Bay will further contribute to the on-going renewal of the surrounding area.

2.2 Description of the Proposed Development

This detailed Stage 2 DA seeks development consent for:

- Strata plan consolidation of 63 strata lots;
- Site preparation works including demolition of the existing residential flat building, excavation, earthworks and tree removal;
- Construction and use of a shop-top housing development comprising:
  - Six (6) basement levels, including bicycle parking, residential parking and other plant/servicing rooms;
  - Ground Level comprising of a range of retail and food and beverage premises, residential lobby spaces, and apartments oriented to the eastern side of Quarry Master Drive;
  - Podium ranging from 5-6 storeys, consisting of residential apartments, as well as communal internal and external spaces on the podium rooftop; and
  - Tower above comprising residential apartments as well as an architectural roof feature.
- Internal landscaped courtyard at the Ground Level with East-West through-site link connecting Quarry Master Drive;
- Wind gallery separating the podium from the tower above;
- Landscaping works including Ground Level landscaping as well as on the podium rooftop communal open space; and
- Extension and augmentation of infrastructure and services as required to support the development.

A photomontage of the proposed development is shown at **Figure 2** and **3**.



Figure 2 Photomontage of the Proposed Development (viewed from Quarry Master Drive)

Source: BVN Architecture



Figure 3 Photomontage of the Proposed Development (viewed from Saunders Street)

Source: BVN Architecture

For a further detailed project description, please refer to the Statement of Environmental Effects and Response to Further Information and Submissions Report prepared by Colliers Urban Planning.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Colliers Urban Planning, the Architectural Plans prepared by BVN, and the other accompanying technical documents that form part of the Development Application, as well as the Response to Further Information and Submissions Report and appended information relating to the amended design.

3.0 Development Standard to be Varied

3.1 Ultimo Pyrmont Planning Proposal

A Planning Proposal (PP-2024-376) to amend the LEP and DCP to enable the significant redevelopment of key sites within Ultimo-Pyrmont was approved by the Central Sydney Planning Committee and Council in October 2025. The key objectives of the Ultimo Pyrmont Planning Proposal are:

- Provide additional floor space for employment and business uses close to the Pyrmont Metro Station;
- Provide additional residential floor space through a diverse range of residential accommodation types;
- Ensure appropriate levels of sun access is maintained to existing habitable rooms;
- Ensure appropriate levels of sun access to Wentworth Park;
- Provide for a new development type, Ultimo-Pyrmont Small Lot Housing, and remove FSR restrictions for both existing and proposed lots in these areas;
- Allow business premises as an additional permitted use for certain site in the general residential zone to support activity and provision of local services;

- Deliver additional affordable housing by identifying sites with an uplift in residential yield in Schedule 6C of the LEP, requiring an additional contribution for affordable housing on the increased FSR.

The key proposed amendments that relate to the site include an increased building height and FSR. Specifically, the planning proposal will:

- Amend the maximum building height from 24m to RL 135m; and
- Amend the base mapped FSR control from 3:1 to 7:1 (plus 10% additional design excellence floor space).

The relevant amendments to the SLEP 2012 are planned for imminent gazettal in the form of changes to the base mapped controls and new site-specific provisions under clause 6.66A.

The Planning Proposal was returned to DPHI for finalisation on 31 October 2025. At the time of writing this report, the finalisation process has taken nearly 12 months.

This development application has been made in reliance on the future planning controls that apply at the site. However, due to finalisation of the LEP and DCP taking longer than anticipated, the application has been assessed and is ready to be determined prior to the new controls coming into effect. As such, this administrative Clause 4.6 Variation Request has been prepared to vary the base building height standard as it currently applies, noting that the proposed development complies with the future FSR control that will apply once the Ultimo-Pyrmont Planning Proposal is finalised and the LEP amended.

3.2 Clause 4.3 of the Sydney LEP

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the SLEP 2012. Clause 4.3 provides that the maximum height, shown on the Height of Buildings Map for the site is 24m. An excerpt from the Sydney LEP 2012 map sheet is shown at **Figure 4**. Since the Ultimo-Pyrmont Planning Proposal has not been finalised, this variation request is made in relation to the existing base mapped development standard.

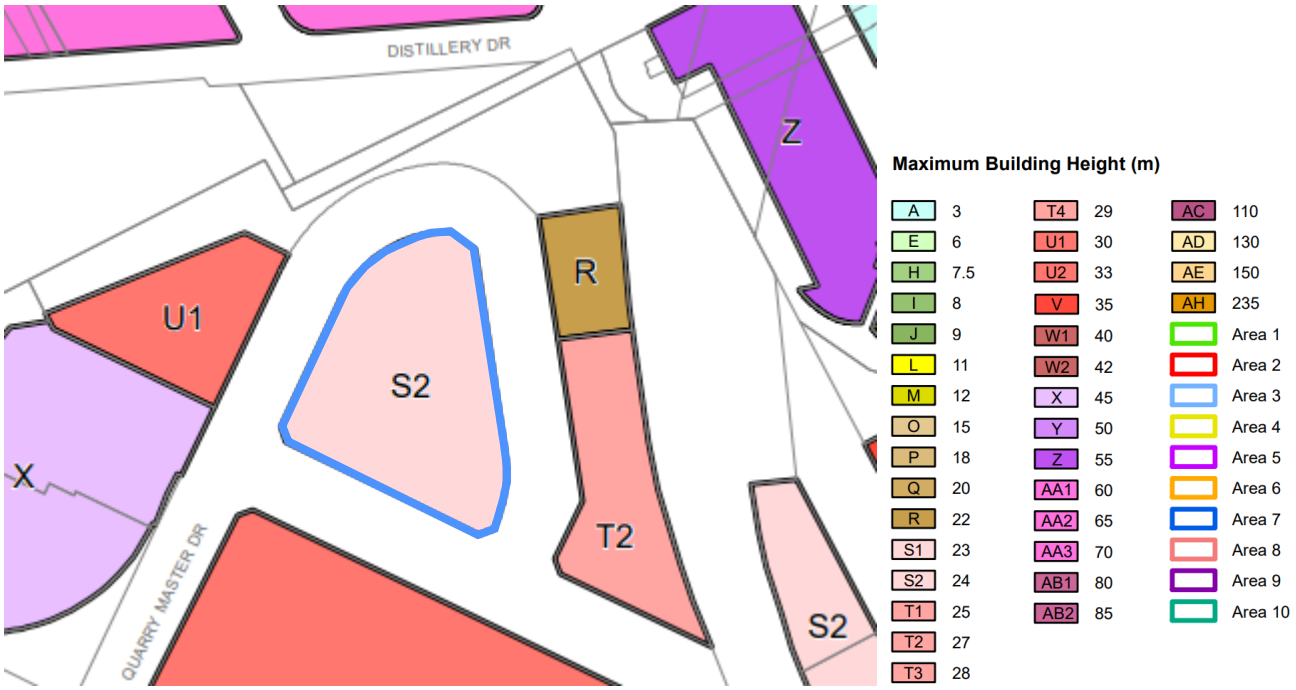


Figure 4 Height of buildings development standard (site identified in blue outline)

Source: City of Sydney

3.3 Extent of Variation

The proposal seeks a maximum height of RL140.8 (126m) to the top of the architectural roof feature and a maximum height of RL137 (123.2m) to the top of the building parapet. Details of the architectural roof feature are provided in **Section 3.4**.

Clause 5.6 of the SLEP 2012 allows roof features to exceed the mapped height limit if certain provisions are met. Since the architectural roof feature as proposed is consistent with the provisions of clause 5.6 of the SLEP 2012, it is excluded from the clause 4.6 variation request.

Therefore, the extent of variation sought is 99.2m, or 413% for the current building height standard (a 1.8% variation of the draft building height standard), as shown in **Figure 5** (excluding architectural roof feature).

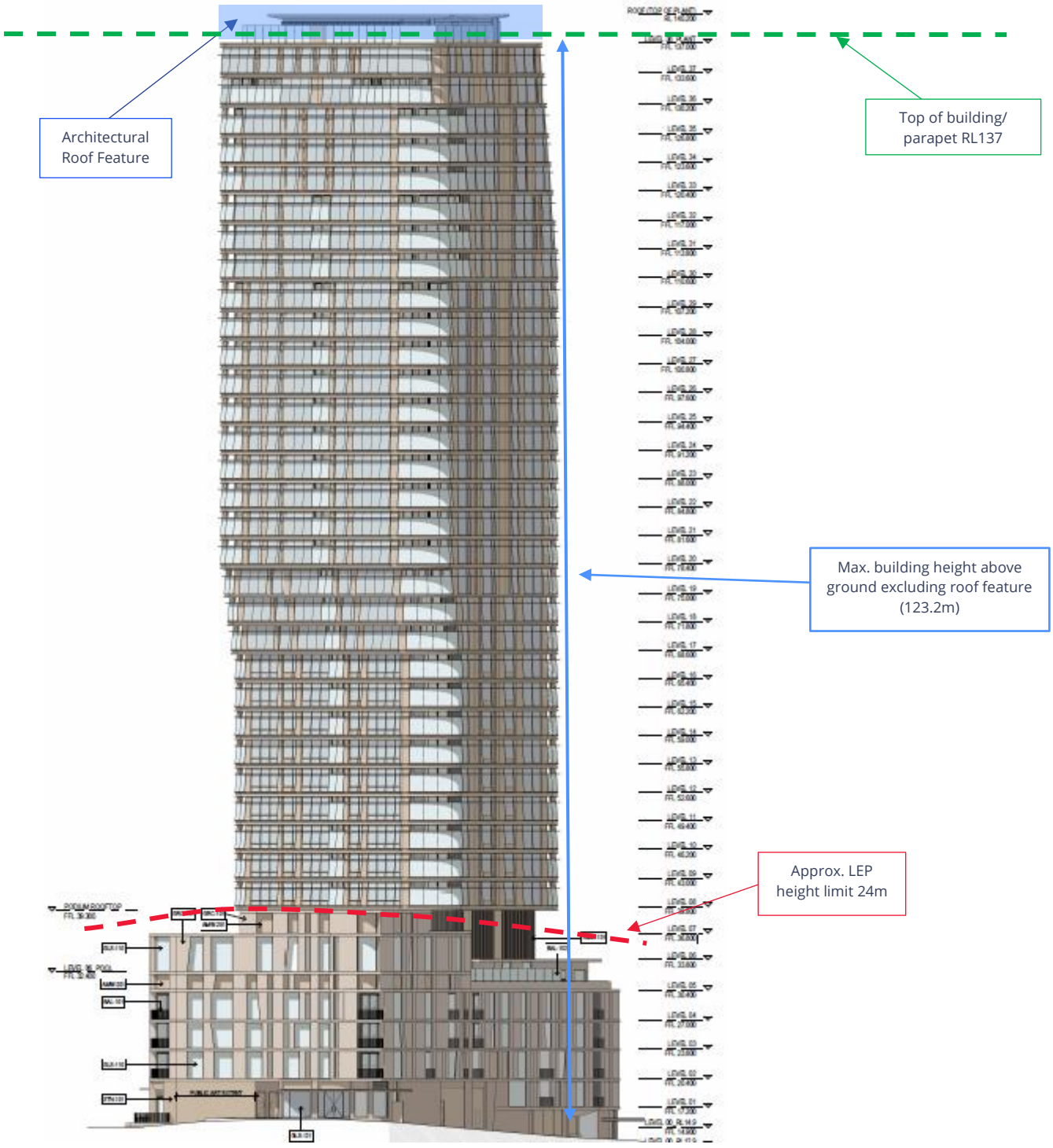


Figure 5 Proposed height variation above 24m

Source: BVN

3.4 Architectural Roof Feature

The tower incorporates a 3.8m tall architectural roof feature from RL137 to RL140.8. The roof feature has been designed as a fundamental architectural element of the tower. Whilst the architectural roof area is well defined from the rest of the tower, it is critical to the tower's expression as an elegant form through the continuation of the perimeter columns. The roof feature formed part of the competition winning scheme and has been subject to further refinement throughout the DA design stage.

The roof feature comprises vertical perimeter screening. Integrated into the roof feature are areas of plant and lift overruns that are set back from the tower edge as shown in **Figure 6** and **Figure 7** below. Refer to the Updated Design Report for further detail.

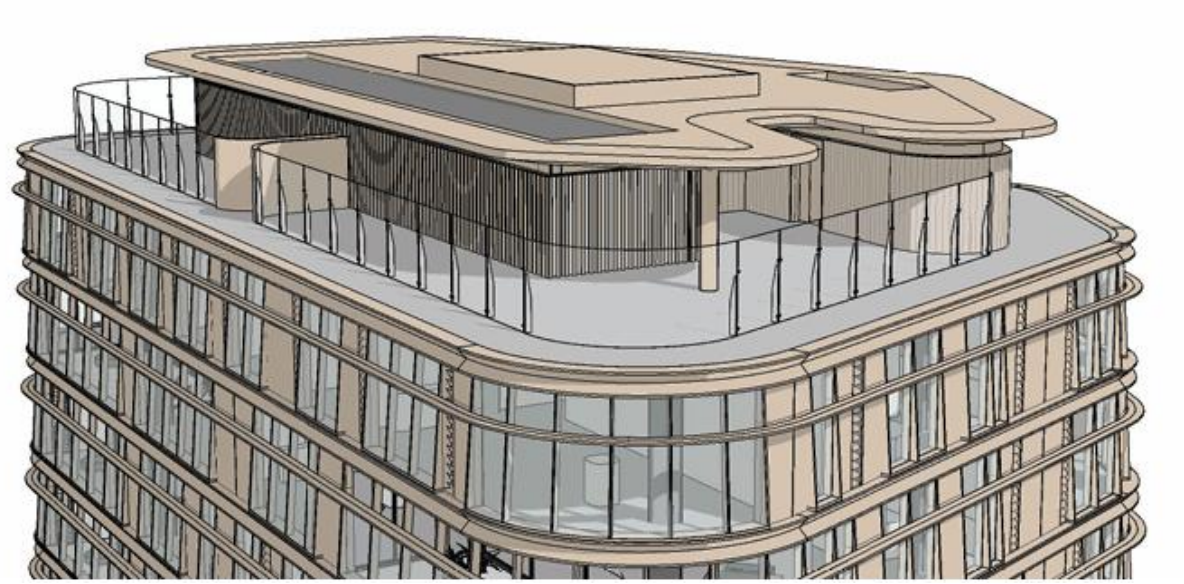


Figure 6 Proposed Perspective of Architectural Roof Feature

Source: BVN Architecture

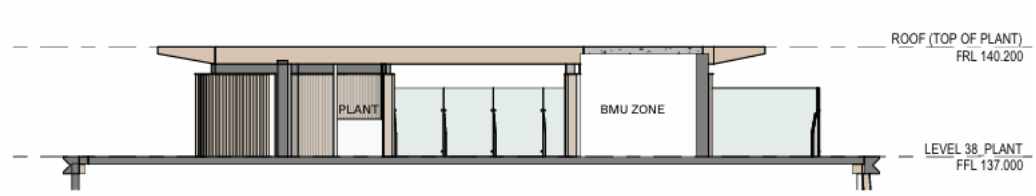


Figure 7 Proposed Section of Architectural Roof Feature

Source: BVN Architecture

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP provides that:

4.6 Exceptions to development standards

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827* (Wehbe);
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (Four2Five);
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action)

The relevant matters contained in Clause 4.6 of the Sydney LEP, with respect to the building height development standard, are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In Wehbe, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While Wehbe related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see Four2Five at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in Wehbe are of assistance to this clause 4.6 variation request.

The five methods outlined in Wehbe include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the building height development standard pursuant to the **First Method**.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the development standard contained in clause 4.3 of the Sydney LEP are:

(a) to ensure the height of development is appropriate to the condition of the site and its context,

(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

(c) to promote the sharing of views outside Central Sydney,

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

(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.

4.1.1.1 The objectives of Clause 4.3 height of buildings are achieved

Objective (a): to ensure the height of development is appropriate to the condition of the site and its context,

The height of the proposed development is appropriate to the condition of the site and context for the reasons described below.

The site is within a precinct with an evolving future character, which is set to significantly increase in density. The site is located within the Pyrmont Peninsula Precinct which was recently rezoned to facilitate the renewal of Ultimo and Pyrmont consistent with the Pyrmont Peninsula Place Strategy, and the direction to find capacity within planning controls to accommodate an additional 4,000 homes for over 8,000 future residents. The site is also in close proximity to Blackwattle Bay, which is set to accommodate 1,200 apartments and several new buildings up to 35 storeys in height. Further west across Blackwattle Bay, the Bays West Precinct has also been recently identified for rezoning and high-density development.

The strategic review of Ultimo Pyrmont undertaken by the City of Sydney identified several key sites, including the subject site, where update the planning framework would be updated to accommodating additional density. Subsequently, the site's planning framework will be amended through the planning proposal process to accommodate additional density, including a new height limit of RL135. These controls were determined by Council through a detailed urban design analysis and informed by advice from a City Design Advisory Panel Subcommittee and internal expert advice including heritage, tree, public domain, transport, access, urban analytics, economic, environmental and planning assessments.

In particular, in Council's assessment report of the planning proposal, it notes that *'New height controls are proposed for certain sites across the Precinct. These are site specific. They have been designed taking into account specific site constraints'.* In this respect, the height control of RL135 has been determined by Council to directly respond to the specific environmental conditions of the site, and the site context being in an evolving high density residential area.

In this respect, the proposed area of variation is appropriate to the condition of the site and its context, being a site earmarked for a significant increase in density within a broader precinct envisioned for significant residential and commercial development uplift. Notwithstanding the variation with the current height control, the proposal is of a height that reflects the site's capacity to accommodate additional height without resulting in unacceptable amenity or environmental impacts. As shown in **Figure 8** below, the proposed height of RL137 (or RL140.8 inclusive of roof feature) remains consistent with surrounding proposed development as envisaged in Council's Planning Proposal. Critically, the height remains below the maximum allowable height in Blackwattle Bay of RL141, and below the Harbourside Redevelopment height of RL170, which are the tallest elements on the western/Pyrmont peninsula.

In relation to the site conditions, an overshadowing analysis has been undertaken for the site to assess any impacts associated with the additional height. An in-depth assessment has been undertaken at **Section 5** below, which confirms that the additional area of height does not result in any adverse overshadowing impacts to surrounding residential properties or public parks.

Accordingly, whilst the proposal exceeds the mapped building height standard, the resulting height is considered appropriate to the conditions of the site in its existing and emerging urban context and therefore achieving objective (a).

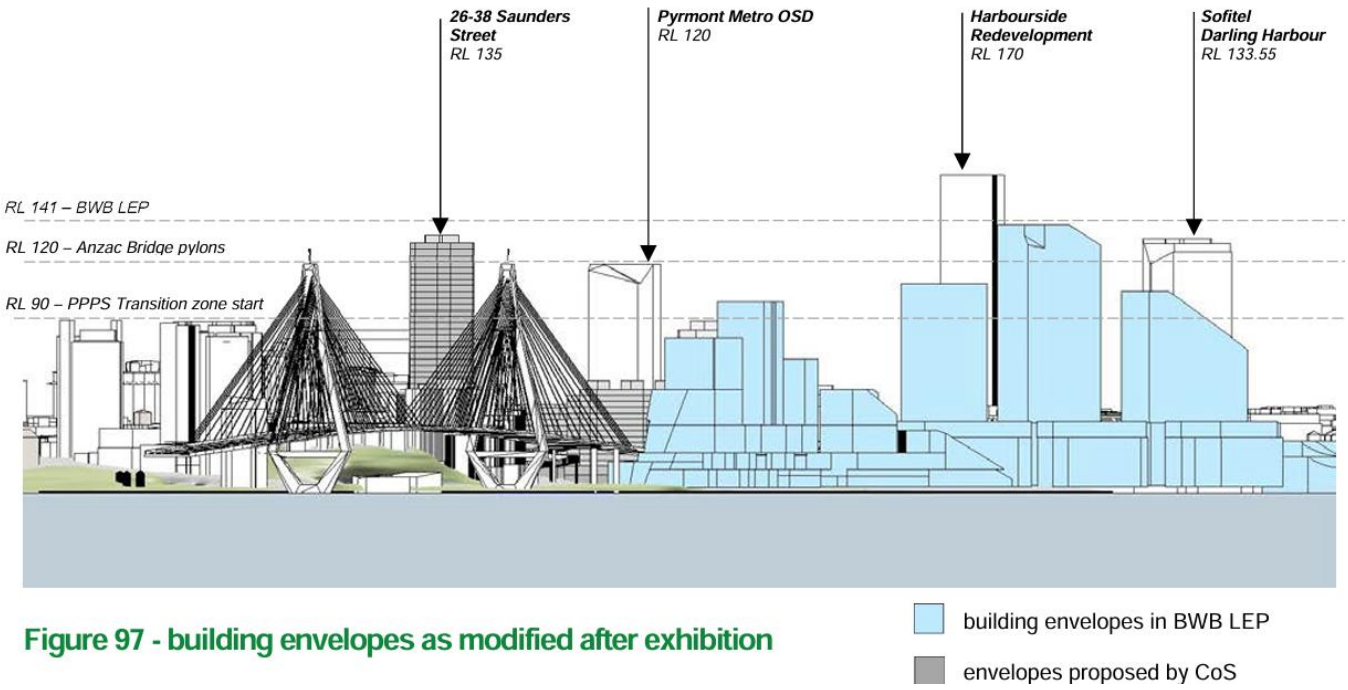


Figure 8 Ultimo-Pyrmont Planning Proposal envelopes in future context (post-exhibition)

Source: City of Sydney

Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,

The site is not a heritage item, within a heritage conservation area or located adjacent to any heritage items, however the proposal has considered the potential for heritage-sensitive interfaces. The site is within the Pyrmont Point Locality identified within the Sydney DCP 2012. The site is also in the vicinity of the following listed heritage items:

- Railway Cutting, item I1203.
- Pyrmont and Glebe Railway Tunnels, item 01225 in the State Heritage Register.
- Escarpment face from former quarry 'Saunders Quarry', item I1199.
- Former CSR McCaffery's Building including interiors, 21 Cadigal Ave, Pyrmont, item I1212.
- Terrace group including interiors, front gardens and fences, 54-66 John St, Pyrmont, item I1235.
- Former Quarryman's Arms Hotel including interiors and courtyard, 75-77 John St, Pyrmont, item I1236.
- Former Pyrmont Public School including interiors, fences and grounds, 79A John St, Pyrmont, item I1237.
- Terrace group including interiors, 5-15 Mount St, Pyrmont, item I1240.
- Terrace group including interiors, 31–45 Mount Street, Pyrmont, item I1242.

The nearby heritage items are shown at **Figure 9** below.

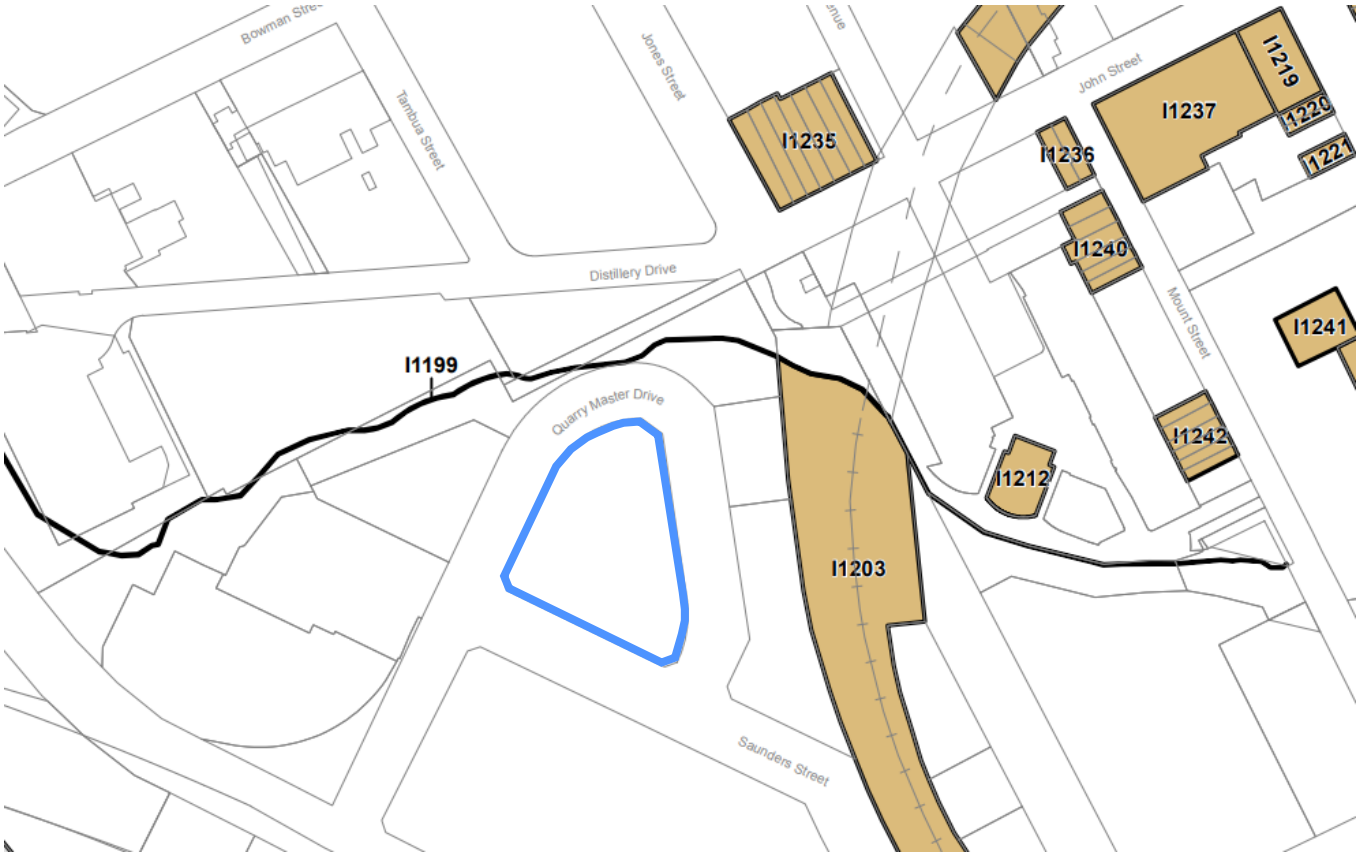


Figure 9 Heritage Map with Site Outlined in Blue

Source: City of Sydney / Colliers

A Heritage Impact Statement has been prepared by GBA Heritage which is provided at **Appendix BB** of the SEE, which has assessed the proposal, including the height variation, in respect of heritage. In particular, the Heritage Impact Statement has undertaken an assessment of the proposal in relation to each listed heritage item in the near vicinity, which is described below.

Overall, GBA Heritage has provided that the ground level of the site is approximately 10-15 metres below that of the heritage items on John and Mount Streets, and approximately 20 metres below the item at 21 Cadigal Avenue. GBA Heritage notes that this topography difference generally reduces the height of the proposed building relative to these heritage items, meaning the area of variation also has a lesser impact on the setting of these items.

Railway Cutting and Escarpment face from former quarry 'Saunders Quarry', Item I1203 and I1199: GBA Heritage notes that the proposal will not be within the setting of the escarpment face and railway cutting (I1199 and I203) as both items are effectively concealed from public view, and there will be no views that include both the proposed building and either of these heritage items notwithstanding the height variation.

54-66 John St, item I1235: Any portion of the building that may appear above the tree line will be minimal and have an acceptable impact on views from the item. The additional height will not have an adverse impact on this item due to its distance from the site and its position behind several large, mature trees within Carmichael Park. Therefore, the setting of this item will not be affected.

75-77 and 79A John St, item I1236 and I1237: It is highly unlikely that the proposed building, including the area of proposed height variation, will be visible over the existing high-rise building behind the heritage items. Therefore, the setting of this item will not be affected.

21 Cadigal Ave, item I1212: There will be no obstruction of views to the item. The proposed building including the area of height variation will appear on the western fringe of views from this item, set among other high-rise structures. The area of additional height is generally consistent in scale with the height envisaged for the site under the imminent Ultimo-Pyrmont Planning Proposal, and will not have an adverse impact on the setting of this heritage item.

5-15 Mount Street and 31–45 Mount Street, item I1240 and I242: Some portion of the building may appear above the roofs of these items, including the area of height variation. The site is approximately 230m away from this heritage item,

and therefore GBA Heritage has provided that the visual impact will be minimal and have an acceptable impact on views to these items. It is considered the area of additional height will not have an adverse impact on the setting of this heritage item.

More generally, the site's future height limit of RL135 under the imminent Ultimo-Pyrmont Planning Proposal has been determined by the City of Sydney through urban design testing informed expert heritage advice. The proposed height variation is considered appropriate in this context.

Based on the above, the proposed area of height variation ensures appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.

Objective (c): to promote the sharing of views outside Central Sydney,

The site is located in Pyrmont outside of Central Sydney.

The Ultimo Pyrmont Urban Design Study prepared by the City of Sydney dated September 2025, notes that the site is not affected by view corridors to and from public spaces. A number of localised views from the public domain were assessed in the Planning Proposal, which are shown at **Figure 11**. The change in height up to RL135 and associated impacts were considered acceptable in Council's assessment of the Planning Proposal. The minor additional height above this (up to RL140.8) does not change the visual/viewing impacts from these public viewpoints and therefore the additional height will have an acceptable impact on view sharing from the assessed viewpoints.

In relation to private view sharing, Council in their Planning Proposal assessment of the draft controls for the site concluded that some private view loss will occur, mainly of distant views over existing private sites, and that the proposal and Pyrmont Place Strategy prioritises protecting and enhancing public views over private ones. The proposed development, including the height variation, remains consistent with the impacts assessed in Council's Planning Proposal and is therefore acceptable. Critically, the proposal is for a slender tower form, consistent with the future intent for the site, and does not represent a blanket increase in height over the entire site that may result in adverse view sharing impacts. Several private viewpoints were assessed in Council's Planning Proposal and the impacts associated with the draft LEP and DCP controls was deemed acceptable. The proposed variation above the proposed draft height standard has no impact on these private views beyond what was assessed in Council's proposal.

The additional height beyond that assessed in Council's Planning Proposal is minor and located at the very top of the building, meaning any associated view impacts would be to sites located very far from the proposed development, viewing the proposal in the context of a broader backdrop looking towards the CBD skyline (if viewed from near Glebe Foreshore or Rozelle Parklands) or towards the western suburbs of Sydney (if viewed from within all residential towers within the CBD). For these distant viewpoints, a variation in height up to Rl135 of has already been contemplated within the Planning Proposal and will have no adverse impacts on views. The further additional height up to RL140.8 has also been assessed within the Visual Impact Assessment provided with the Response to Submissions as having no adverse impact on private view sharing.

Therefore, it is considered that an increase in height from the existing 24m to RL135 has been assessed as acceptable from a view impacts perspective by Council in their Planning Proposal assessment. Due to the further additional height above the draft LEP height limit having no perceptible impacts to the assessed viewpoints, the variation achieves objective (c).

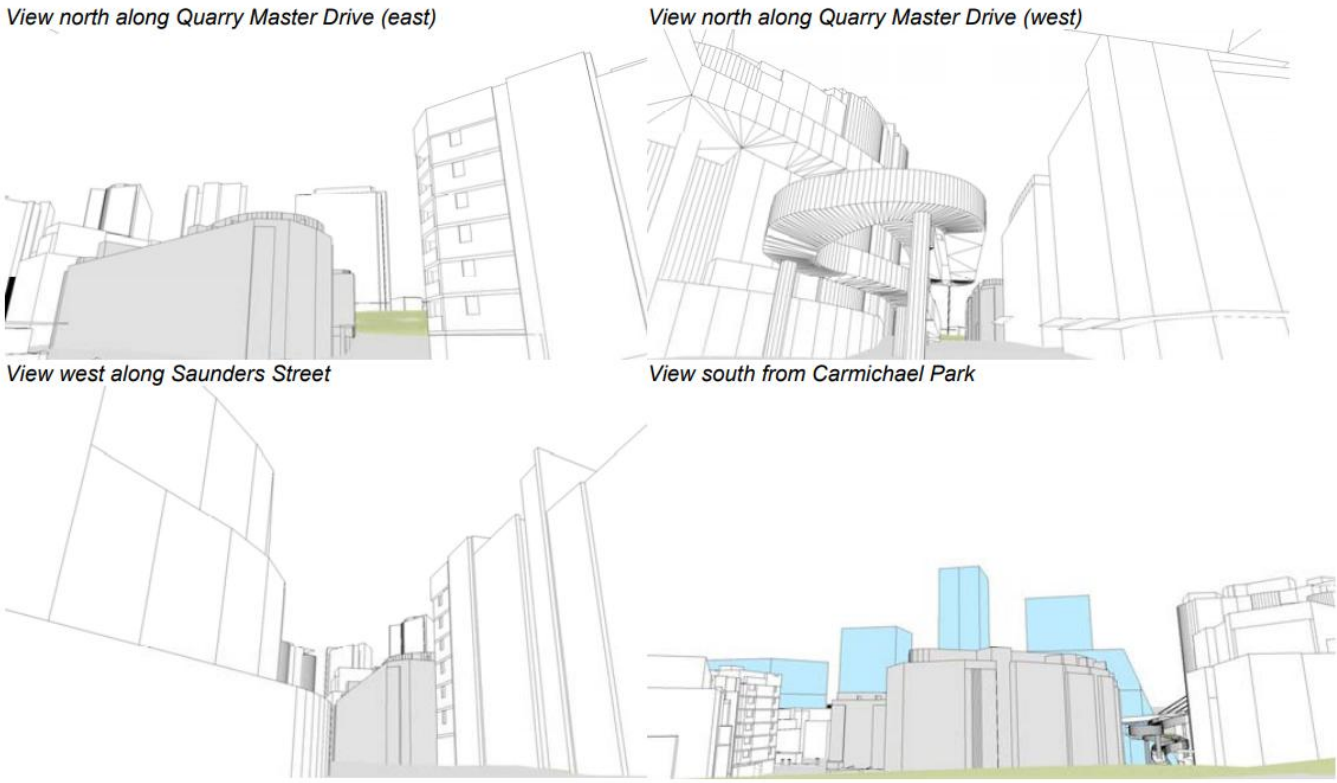


Figure 10 Viewpoints studied in the Ultimo-Pyrmont Planning Proposal – existing condition + nearby approvals

Source: City of Sydney

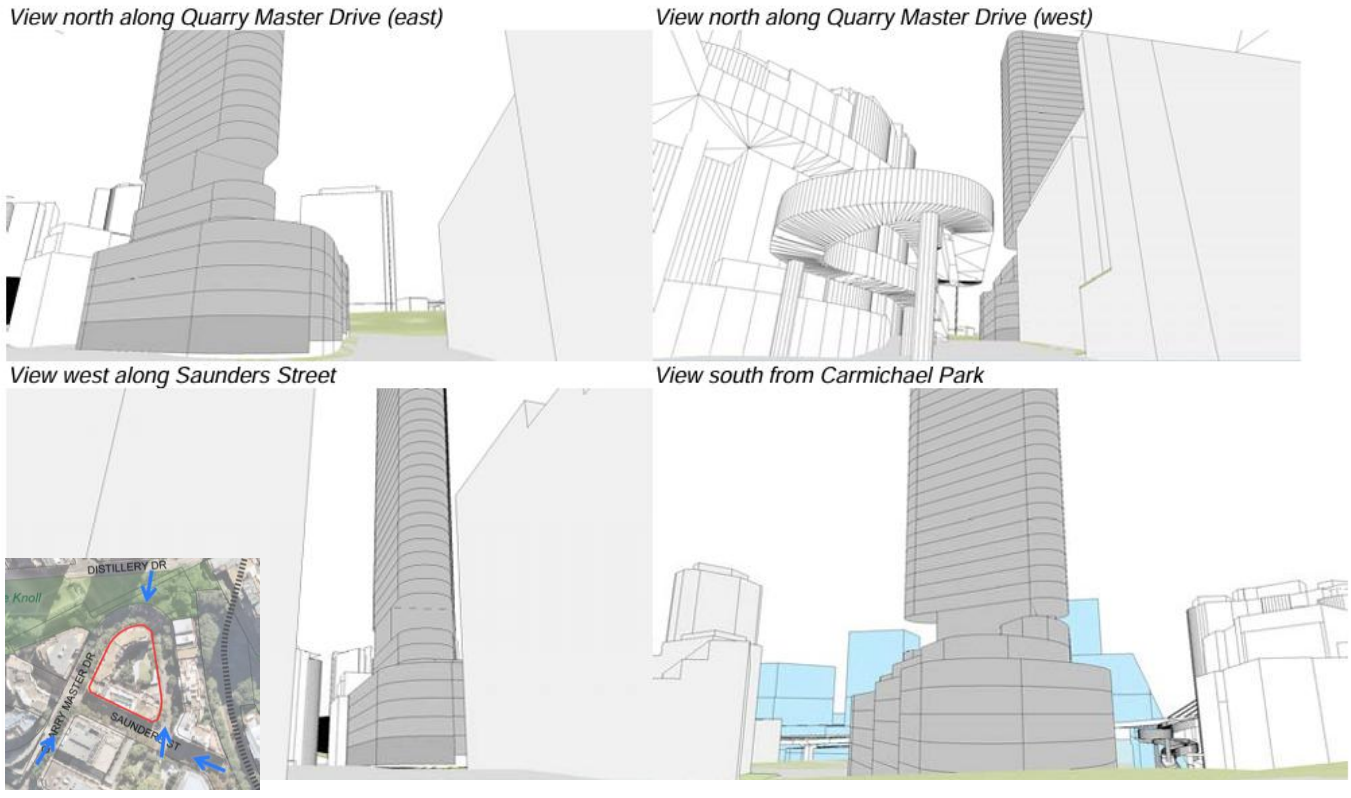


Figure 11 Viewpoints studied in the Ultimo-Pyrmont Planning Proposal – impact of proposed envelope

Source: City of Sydney

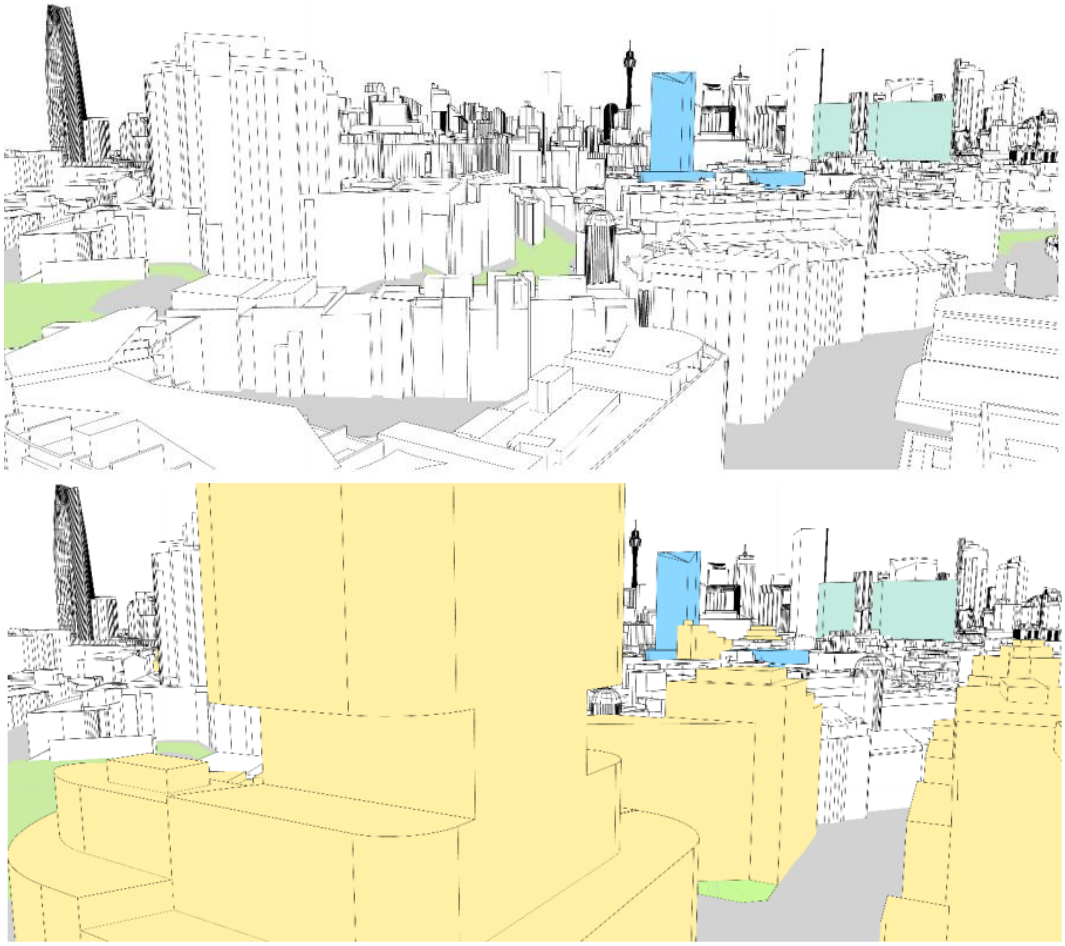


Figure 12 Comparison between existing (top) and proposed draft DCP envelope (bottom) from Council Planning Proposal showing acceptable impacts on private views from 122 Saunders Street

Source: City of Sydney

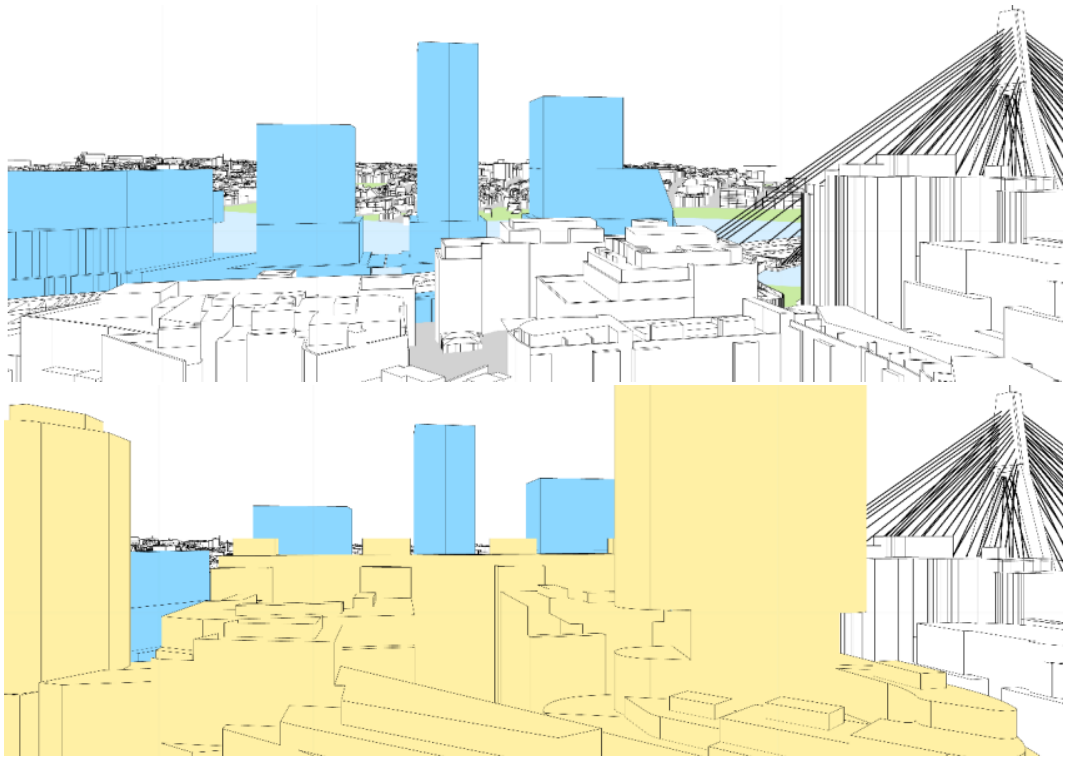


Figure 13 Comparison between existing (top) and proposed draft DCP envelope (bottom) from Council Planning Proposal showing acceptable impacts on private views from 21 Cadigal Avenue

Source: City of Sydney

Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

The site is located to the west of Central Sydney in the Pyrmont Peninsula. As described above, the area is subject to a changing character and will have increased heights of buildings in the future. As shown at **Figure 14**, the site is located centrally in a future high-density urban environment, with Darling Harbour and the CBD to east, and Blackwattle and Bays West to the west. Combined with the Ultimo-Pyrmont Planning Proposal, this will see increased heights in these areas located outside of the CBD. Notwithstanding the height variation, the proposal remains of a height that will ensure the future scale transitions from the CBD to these redeveloped areas will be retained. As described above and shown in **Figure 8**, the proposal remains below the key tallest surrounding elements including Harbourside Redevelopment (RL170) and Blackwattle Bay (RL141).

Therefore, the proposal will continue to achieve appropriate height transitions from Central Sydney to the adjoining areas.



Figure 14 Site context aerial showing future redevelopment areas to the west

Source: Nearmap, Colliers Urban Planning

Objective (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.

Not relevant for consideration. The site is not located within Green Square.

4.1.1.2 Objectives of Clause 5.6 architectural roof features are achieved

Consistent with the Design Competition winning scheme, an architectural roof feature is proposed above RL137. An assessment against Clause 5.6 Architectural Roof Features of the SLEP 2012 is provided below which demonstrates it is consistent with the requirements of clause 5.6 and can therefore be omitted from this request for variation.

Table 1 Clause 5.6 Architectural roof features objectives

Objective	Comment
(1) The objectives of this clause are as follows—	
(a) to allow minor architectural roof features to exceed height limits,	The proposed architectural roof feature is 3.8m in height, representing a minor portion of the total building height of RL140.8m or 2.3% of the entire proposed height. While exceedances to the maximum permissible height are sought notwithstanding the architectural roof feature, the proposal meets the objectives of this clause as the architectural roof feature is permitted to exceed the height limit. Specifically, clause 5.6(2) expressly permits development that includes an architectural roof feature that exceeds the height limit to be carried out with development consent. Therefore, the architectural roof feature (which comprises an integrated BMU and lift motor room) aligns with this objective in that there is a permitted height exceedance beyond the building height standard.
(b) to ensure that any architectural roof feature does not cause an adverse visual impact or adversely affect the amenity of neighbouring premises,	Due to the positioning and siting of the building, the height exceedances sought under this proposal result in no adverse amenity impacts to neighbouring premises. Overshadowing is assessed in detail at **Section 5.2.3**, which confirms that the proposed roof feature which is above the height limit will not have adverse overshadowing impacts. With regards to visual impact, the architectural roof feature improves the visual appearance of the building through screening the building's BMU and lift motor room, resulting in an improved visual outcome compared to that of a height compliant design with no architectural roof feature.
(c) to ensure that architectural roof features are considered in the design of a building and form an integral part of a building's design.	The architectural roof feature will be an integral part of the building form, function and overall design. The feature presents a unique opportunity to crown the development, as a landmark building on the point of Pyrmont. The roof feature serves as a decorative element the visually terminates the building form and integrates required plant and lift motor rooms. The architectural roof feature was proposed in the Design Competition winning scheme and has been retained and further developed in this DA.

Table 2 Clause 5.6 Architectural roof features provisions

Objective	Comment
(3) Development consent must not be granted to any such development unless the consent authority is satisfied that—	
(a) the architectural roof feature—	
(i) comprises a decorative element on the uppermost portion of a building, and	The proposed architectural roof feature is a decorative element located at the uppermost portion of the tower (the roof). The architectural roof feature has been intentionally designed to crown the building and appropriately concealing the building services, providing an interesting addition to the skyline. The architectural roof feature was proposed in the Design Competition winning scheme and has been retained.
(ii) is not an advertising structure, and	The roof feature is not an advertising structure and is not proposed to be used as such at any time in the future.
(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and	The proposed roof feature does not include any floor space, with all floor space located below the maximum height limit. The only elements which are contained within the rooftop feature include the BMU and lift motor room. The roof feature will only be accessed for maintenance as required and will not be trafficable for residents. The BMU and lift motor room cannot be converted to floor space.
(iv) will cause minimal overshadowing, and	Due to the positioning and siting of the building, the height exceedances sought under this proposal result in no adverse amenity impacts to neighbouring premises. Overshadowing is assessed in detail at **Section 5.2.3**, which confirms that the proposed roof feature will cause minimal overshadowing.
(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.	The architectural roof feature discretely screens equipment for servicing the building including the BMU and lift motor room, of which will not be perceivable from ground floor and not obvious from neighbouring buildings. No building identification signage is proposed on the roof feature.

4.1.1.3 Objectives of Clause 6.66A Ultimo Pyrmont Opportunity Land are Achieved

Since the site is located on land within the Ultimo Pyrmont Opportunity Land, an assessment against the objectives of Clause 6.66A of the SLEP 2012 is provided below.

Table 3 Clause 6.66A Ultimo Pyrmont Opportunity Land

Objective	Comment
(1) The objectives of this Division are as follows:	
a) To support the growth and development of the Ultimo Pyrmont Precinct	The proposal will contribute to realising Council's vision for the precinct by developing in accordance with the future controls, notwithstanding the variation to the current 24m height control.
b) to increase the amount and quality of open space appropriately located to support an increase in urban tree canopy	The proposed variation to height control does not impact the amount of open space and urban tree canopy being provided.
c) to enhance the amenity of streets, parks and public places	The proposal, notwithstanding variation in height, does not have any visual, overshadowing or other impacts on the surrounding streets, parks and public domain.
d) to protect and improve sunlight to streets, parks and public places	As detailed in **Section 4.2.4**, the resulting overshadowing impacts to streets, parks and public places are minimal and acceptable.
e) to minimise overshadowing to residential properties	As detailed in **Section 4.2.4**, the resulting overshadowing impacts to surrounding residential properties are minimal and acceptable.
f) To provide for a diversity of housing	The proposed height variation allows the FSR and competition winning scheme yield to be achieved and therefore provide for additional housing diversity in the area.

4.1.2 Conclusion on clause 4.6(3)(a)

In summary, compliance with the building height development standard is considered unreasonable and unnecessary since:

- The proposal is generally consistent with the height envisaged for the site under the Ultimo-Pyrmont Planning Proposal with only a 2m height variation below an architectural roof feature, and remains below the key tallest surrounding elements including Harbourside Redevelopment (RL170) and Blackwattle Bay (RL141). The proposal is therefore appropriate to the condition of the site and context.
- The proposal continues to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
- The additional height will have an acceptable impact on views from the public areas surrounding the site, as per Council's assessment of the draft DCP envelope in the Ultimo-Pyrmont Planning Proposal Urban Design Study. Similarly, impacts on private views will be comparable to that already assessed by Council in their Planning Proposal which assessed the impacts of the draft DCP building envelope.
- The proposal is located centrally within an area transitioning to higher densities and taller buildings, extending from the CBD to Blackwattle Bay and Bays West. The proposed height will ensure appropriate height transitions from the Central Sydney to these areas.
- The site is not located in Green Square.
- Part of the height exceedance is caused by an architectural roof feature that was proposed in the Design Competition winning scheme. The roof feature achieves the objectives and provisions of Clause 5.6 of the SLEP 2012.
- The proposal achieves the objectives of Clause 6.66A Ultimo Pyrmont Opportunity Land notwithstanding the variation.

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

Clause 4.6(3)(b) of the Sydney LEP requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental

planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development is the additional building height that results in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described below.

4.2.1 Ground 1: Consistent with the Ultimo-Pyrmont Planning Proposal

Whilst the proposal results in a notable variation to the existing 24m height control, it is generally consistent with the height limit of RL135 envisaged for the site under the Ultimo-Pyrmont Planning Proposal which is planned for gazettal imminently (Refer to **Figure 15**) with just a 1.8% variation to the draft control proposed. The proposed height of RL137 excluding the architectural roof feature has only a 2m height discrepancy with the height control of the Ultimo-Pyrmont Planning Proposal, and remains below the key tallest surrounding elements including Harbourside Redevelopment (RL170) and Blackwattle Bay (RL141), and consistent in height with Anzac Bridge.

The site is effectively positioned between the current and emerging planning controls, with the proposed height aligning closely with the scale of development envisaged under the Ultimo-Pyrmont Planning Proposal. Accordingly, strict adherence to the existing control would prevent an outcome that is consistent with the established future vision for the precinct.

Further, notwithstanding the proposed height variation to the current FSR control of 24m, the proposal complies with the maximum floor space ratio (FSR) of 7.7:1 set by the Ultimo-Pyrmont Planning Proposal (including 10% additional floor space for design excellence). As such, notwithstanding the height of buildings variation, the proposal maintains consistency with the density of floor space envisaged for the site under the imminent Ultimo-Pyrmont Planning Proposal. The proposed variation to the maximum height of buildings standard therefore does not contribute to a development outcome that is inconsistent with the capacity afforded to the site under the planning controls of the Ultimo-Pyrmont Planning Proposal and is not of a density that exceeds what was envisaged for the site. Accordingly, there are sufficient planning grounds to justify the contravention of the development standard, particularly given the proposal has a height and FSR that is consistent with the emerging planning controls established by the Ultimo-Pyrmont Planning Proposal.



Figure 15 Height of buildings development standard (site identified in blue outline)

Source: City of Sydney

4.2.2 Ground 2: The variation allows for increased provision of housing in accordance with the strategic aims of the Federal and NSW Governments under the Housing Accord

In response to the housing crisis, the bipartisan National Housing Accord was agreed and includes an initial target to build one million new well-located homes by mid-2029, with 377,000 new homes to be provided in NSW. The targets prioritise more diverse and well-located homes in areas with existing infrastructure capacity – such as transport and water servicing.

Further, the Ultimo-Pyrmont Planning Proposal is the City of Sydney's response to the NSW Government's Pyrmont Peninsula Place Strategy and the Minister for Planning and Public Spaces' direction to provide capacity for 4,000 new homes and 23,000 jobs. The proposed draft planning framework will deliver up to 4,192 new homes in the Ultimo-Pyrmont area.

In light of the above, the proposed variation to the building height development standard allows for the provision of new, well-located housing consistent with the aims and intent of the Housing Accord and the Ultimo-Pyrmont Planning Proposal. Adherence with the 24m height limit would result in the entire tower form being removed and a reduction of 101 apartments from the proposed development – which would be an inferior outcome.

4.2.3 Ground 3: The proposal has an appropriate built form and density that is consistent with the future character

As described in **Section 4.1.1.1**, the site has been recently upzoned and earmarked for a significant increase in density within a broader precinct envisioned for significant residential and commercial development uplift, situated centrally between the CBD/Darling Harbour and future Blackwattle Bay/Bays West precincts. Notwithstanding the variation, the proposal is of a built form and height that remains consistent with the envisaged density for the site and its surrounds.

As shown in **Figure 8**, the proposed height of RL137 (or RL140.8 inclusive of the architectural roof feature) remains consistent with surrounding proposed development as envisaged in Council's Planning Proposal. Critically, the height remains below the maximum allowable height in Blackwattle Bay of RL141, and below the Harbourside Redevelopment height of RL170, which are the tallest elements on the western/Pyrmont peninsula.

Therefore, notwithstanding the height variation, the proposal has an appropriate built form and density consistent with the future character of the Pyrmont Peninsula and its surrounds.

4.2.4 Ground 4: The exceedance does not cause adverse overshadowing impacts

Shadow Diagrams are provided in the updated Design Report and in **Figure 16**. These diagrams compare the shadow cast by the proposed scheme and a compliant scheme under the current LEP and DCP height limit.

Hourly shadow diagrams on 21 June have been prepared show the worst-case scenario. These show that between 9am and 2pm the additional shadow falls on the Western Distributer, the Blackwattle Bay Water, and existing commercial, industrial and non-residential properties. Critically the Bay Street Park remains unimpacted during the hours protected under the SLEP 2012.

The shadow diagrams confirm that the proposed area of variation does not cause overshadowing on residential properties or public space, and therefore, does not cause adverse environmental impacts. Accordingly, there is sufficient environmental planning ground in relation to overshadowing to support contravention of the development standard.



Shadow Analysis 9:00AM



Shadow Analysis 10:00AM



Shadow Analysis 11:00AM



Shadow Analysis 12:00PM



Shadow Analysis 1:00PM



Shadow Analysis 2:00PM



Shadow Analysis 2:45PM



Shadow Analysis 3:00PM

Figure 16 Winter solstice shadow diagrams – current LEP/DCP compliant envelope shadow shown in blue

Source: BVN Architecture

4.2.5 Ground 5: The proposal is consistent with the design competition winning scheme

BVN's design was selected as the winning scheme following an Architectural Design Competition. In the assessment of the scheme during the competition, the Jury noted that one of the key attributes of the of the scheme that should be retained through the design and delivery phase was the successful shaping and massing of the building. It is clear the massing strategy of the tower was integral to the built form and winning design chosen by the Jury. Further, the competition winning scheme included an architectural roof feature which exceeded the SLEP 2012 building height control. These elements have been retained in the proposed scheme. While there has been a minor increase in height when compared to the competition winning design due to increases in floor-to-floor levels, the scheme is otherwise unchanged in overall height.

As such, the proposed design is consistent with the BVN design competition winning scheme and there are sufficient planning grounds relating to design excellence which support the contravention of the development standard.

4.2.6 Ground 6: Architectural Roof Feature

As detailed in **Section 4.1.1.2**, the proposal includes an architectural roof feature which contributes to the height exceedance. This roof feature was an element proposed in the design competition winning scheme and has been retained in the development application proposal. Also detailed in **Section 4.1.1.2**, the roof feature has been designed such that it achieves the objectives and provisions of clause 5.6 of the SLEP 2012 which allows for minor architectural roof features to exceed the height of buildings standard. Therefore, there are sufficient planning grounds relating to the architectural roof feature element to support contravention of the standard.

4.2.7 Ground 7: Consistency with Objectives of the EP&A Act

In Initial Action, the Court stated that the phrase "environmental planning grounds" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 4** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height of buildings development standard.

Table 4 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development	The proposed height variation will promote social and economic welfare through enabling a better design outcome, while delivery housing on the site inline with the capacity envisioned by the controls of the SLEP 2012. In addition, the architectural roof feature

Object	Comment
and conservation of the State's natural and other resources,	over the height limit provides a decorative element to the building which screens plant and provides an improved visual outcome. If the height of building development standard is strictly enforced in this circumstance, it would result in the loss of the entire tower form and 101 apartments, meaning a less positive impact on the social and economic welfare of the community would result. As such, the proposed height exceedance will facilitate a more effective use of land and amenity without resulting in unacceptable environmental impacts.
(b) to promote the supply, delivery and maintenance of housing, including affordable housing,	The proposed development contributes positively to housing supply by delivering additional residential apartments in an accessible inner-city location. While the proposal does not include dedicated affordable housing, it supports broader housing affordability objectives by increasing overall supply and housing choices in Pyrmont, consistent with the strategic planning priorities of the area. If the height of building development standard is strictly enforced in this circumstance, it would result in the loss of at least a floor of residential apartments. Therefore, the proposed height variation promotes the supply, delivery and maintenance of housing and improves housing affordability by increasing stock.
(c) to promote productivity through the development and management of the State and its resources,	The proposal supports productivity by intensifying development on a strategically located site within a renewal precinct, close to major transport infrastructure and employment areas. Ground-level retail and food and drinks premises will contribute to economic activity, while increased residential density supports a vibrant mixed-use urban environment which aligns with the Pyrmont Peninsula Place Strategy. The additional height allows productivity gains without compromising urban design principles.
(d) to protect the environment, including the conservation of threatened species of native animals and plants and ecological communities and their habitats,	The site is located within a highly urbanised environment and does not contain threatened species or ecological communities. The proposal includes landscaping, tree replacement where required and urban design measures that enhance environmental performance and amenity, ensuring that environmental impacts are appropriately managed. The proposed height variation does not give rise to any unacceptable environmental impacts, with overshadowing, wind and visual impacts appropriately managed through design. The variation allows height to be accommodated vertically rather than through increased site coverage, supporting an improved environmental outcome at the ground level.
(e) to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention,	The development promotes climate resilience by delivering higher density housing in a highly accessible location which can assist in reducing the reliance on private vehicle travel. The height variation supports a compact urban form, enabling greater landscaping, deep soil and deep plating areas, and communal space that contributes to improved performance and long-term resilience.
(f) to promote the sustainable management of built and cultural heritage, including Aboriginal cultural heritage,	The site is not a heritage item and is not located within a heritage conservation area. The proposed height variation has been designed to respond to the surrounding built context through appropriate massing, articulation and setbacks to ensure that the additional height does not adversely affect nearby heritage items. The variation facilitates a built form that transitions appropriately with the volving Pyrmont skyline and does not impact any heritage items.
(g) to promote good design, amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings,	The proposed development exhibits high-quality design outcomes, including a clearly defined podium and tower, active street frontages, publicly accessible through-site lengths and generous communal open spaces. The height variation is required to achieve a slender, tapered tower form with adequate internal amenity, separation distances, and architectural roof articulation, resulting in a superior design and amenity outcome compared to a compliant envelope.
(h) to provide opportunities for participation in environmental planning and assessment,	The development application, including this clause 4.6 variation request, is subject to statutory notification and assessment processes under the EP&A Act which provides opportunities for community and stakeholder participation in decision making.
(i) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social	The proposal integrates economic outcomes (housing supply and commercial uses), environmental considerations (landscaping, efficient land use and reduced car dependence) and social outcomes (housing diversity and improved public domain). The

Object	Comment
considerations in decision-making about environmental planning and assessment,	height variation enables these considerations to be balanced effectively by allowing a built form that optimises site potential while managing impacts.
(j) to promote a proportionate and risk-based approach to environmental planning and assessment,	The proposed height variation is limited to a specific portion of the site, and supported by detailed urban design, environmental and amenity analysis and comments made by the Jury as a winning Architectural Design Competition scheme. The impacts associated with the additional height are well understood and appropriately mitigated, representing a proportionate response consistent with the strategic importance and scale of the development.
(k) to promote the orderly and economic use and development of land.	The consolidation of multiple strata lots and redevelopment of the site facilitates an orderly and efficient pattern of development consistent with surrounding high-density urban form. The proposed height variation will orderly and economic use of the site through delivering housing on the site in line with the capacity envisioned by the controls of the Sydney LEP.

4.2.8 Conclusion on clause 4.6(3)(b)

Considering the above, there are sufficient environmental planning grounds to justify contravening the height of building development standard in this case. These include:

- The proposal is consistent with the height envisaged under the imminent Ultimo-Pyrmont Planning Proposal and strict adherence to the existing 24m height control would prevent an outcome consistent with the established future vision for the precinct.
- The variation allows for increased provision of housing in accordance with the strategic aims of the Federal and NSW Governments under the Housing Accord.
- The proposal has an appropriate built form and density that is consistent with the future character of the site and surrounds. The proposed height remains below the maximum allowable height in Blackwattle Bay of RL141, and below the Harbourside Redevelopment height of RL170, which are the tallest elements on the western/Pyrmont peninsula.
- The exceedance does not cause any adverse overshadowing impacts, with the additional shadow caused by the variation falling predominantly on water, roads and commercial properties – not residential dwellings or public parks.
- The proposal is consistent with the design competition winning scheme, which included a height variation to accommodate the proposed architectural roof feature.
- Demonstrated consistency with the objects of the EP&A Act.

5.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in Clause 4.3 of the Sydney LEP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

The development application which this request accompanies has been made in reliance on the future planning controls that apply at the site. However, due to finalisation of the LEP and DCP taking longer than anticipated, the application has been assessed and is ready to be determined prior to the new controls coming into effect. As such, this administrative Clause 4.6 Variation Request has been prepared to vary the base building height control as it currently applies, not the future building height control that will apply once the Ultimo-Pyrmont Planning Proposal is finalised and the LEP amended.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of buildings development standard, the proposed development:

- Compliance with height of buildings development standard is unreasonable and unnecessary in the circumstances of this case as the objectives of the standard are achieved notwithstanding non-compliance with the standard, as follows:
  - The proposal is generally consistent with the height envisaged for the site under the Ultimo-Pyrmont Planning Proposal with only a 2m height variation below an architectural roof feature, and remains below the key tallest surrounding elements including Harbourside Redevelopment (RL170) and Blackwattle Bay (RL141). The proposal is therefore appropriate to the condition of the site and context.
  - The proposal continues to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.
  - The additional height will have an acceptable impact on views from the public areas surrounding the site, as per Council's assessment of the draft DCP envelope in the Ultimo-Pyrmont Planning Proposal Urban Design Study. Similarly, impacts on private views will be comparable to that already assessed by Council in their Planning Proposal which assessed the impacts of the draft DCP building envelope.
  - The proposal is located centrally within an area transitioning to higher densities and taller buildings, extending from the CBD to Blackwattle Bay and Bays West. The proposed height will ensure appropriate height transitions from the Central Sydney to these areas.
  - The site is not located in Green Square.
  - Part of the height exceedance is caused by an architectural roof feature that was proposed in the Design Competition winning scheme. The roof feature achieves the objectives and provisions of Clause 5.6 of the SLEP 2012.
  - The proposal achieves the objectives of Clause 6.66A Ultimo Pyrmont Opportunity Land notwithstanding the variation.
- There are sufficient environmental planning grounds to justify contravention of the standard, as:
  - The proposal is consistent with the height envisaged under the imminent Ultimo-Pyrmont Planning Proposal and strict adherence to the existing 24m height control would prevent an outcome consistent with the established future vision for the precinct.
  - The variation allows for increased provision of housing in accordance with the strategic aims of the Federal and NSW Governments under the Housing Accord.
  - The proposal has an appropriate built form and density that is consistent with the future character of the site and surrounds. The proposed height remains below the maximum allowable height in Blackwattle Bay of RL141, and below the Harbourside Redevelopment height of RL170, which are the tallest elements on the western/Pyrmont peninsula.
  - The exceedance does not cause any adverse overshadowing impacts, with the additional shadow caused by the variation falling predominantly on water, roads and commercial properties – not residential dwellings or public parks.

  - The proposal is consistent with the design competition winning scheme, which included a height variation to accommodate the proposed architectural roof feature.
- The proposal remains consistent with the objects of the EP&A Act.
- The variation is in the public interest as it is consistent with the objectives of the zone and the development standard.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the SLEP 2012 and may grant development consent in these circumstances notwithstanding the contravention of the height of building development standard.

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