Attachment D

Clause 4.6 variation – Floor Space Ratio

Clause 4.6 Variation Request
Floor Space Ratio

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

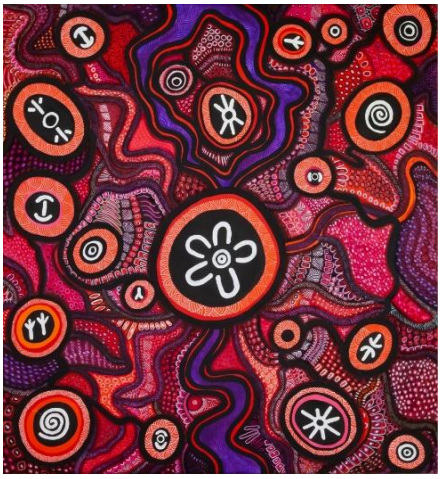
'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'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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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 floor space ratio under Clause 4.4 of the Sydney LEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Colliers Urban Planning.

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 FSR control as it currently applies, noting that the proposed development complies with the future FSR control that will apply once the Ultimo-Pyrmont Planning Proposal (PP-2024-376) 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 floor space ratio 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 floor space ratio 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 complies with the draft FSR control for the site, which will be gazetted imminently as part of the Ultimo-Pyrmont Planning Proposal (currently with NSW Government for finalisation).
  - The proposal provides sufficient floor space to meet anticipated development needs through the delivery of 156 dwellings and ground floor retail uses, significantly increasing housing supply and diversity on a strategically located site.
  - The additional floor space is accommodated within a high-quality built form that avoids excessive bulk and overdevelopment through the redistribution of building mass from the podium to a slender tower form.
  - The proposed density and intensity of development are commensurate with the capacity of existing and planned infrastructure, including major public transport investment such as the future Pyrmont Metro Station.
  - The proposal reflects the desired future character of the Pyrmont Peninsula and the scale, density and urban form envisaged under the Pyrmont Peninsula Place Strategy and imminent Ultimo-Pyrmont Planning Proposal.
  - Technical assessments confirm the additional floor space can be accommodated without unacceptable impacts on solar access, privacy, traffic, wind, noise or visual amenity.
  - The proposal achieves the objectives of draft 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 complies with the 7.7:1 FSR control envisaged for the site under the imminent Ultimo-Pyrmont Planning Proposal, demonstrating that the density proposed has already been strategically assessed and identified as appropriate for the site.
  - 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 site has been specifically identified for an uplift in development capacity under the imminent Ultimo-Pyrmont Planning Proposal, and strict adherence to the existing 3.3:1 FSR control would prevent an outcome consistent with the established future vision for the precinct.
  - The proposal achieves an appropriate built form and density outcome that is consistent with the future character, scale and intensity of development envisaged for this part of Pyrmont.
  - The additional floor space does not result in adverse overshadowing impacts, with shadow analysis demonstrating outcomes comparable to a DCP-compliant envelope and no material impacts on surrounding development or key public spaces.
  - The proposed FSR variation forms part of the design competition winning scheme.
  - The variation facilitates the orderly and efficient redevelopment of a strategically located urban renewal site, enabling improved housing supply to contribute to the City of Sydney's housing targets in relation to the National Housing Accord, housing diversity and public domain outcomes.
- 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 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 2026 in the form of 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 FSR control 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 4.4 of the Sydney LEP

This Clause 4.6 variation request seeks to justify contravention of the development standard set out in Clause 4.4 of the SLEP 2012. Clause 4.4 provides that the maximum floor space ratio, shown on the Floor Space Ratio Map for the site is 3:1. An excerpt from the Sydney LEP 2012 map sheet is shown at **Figure 4**.

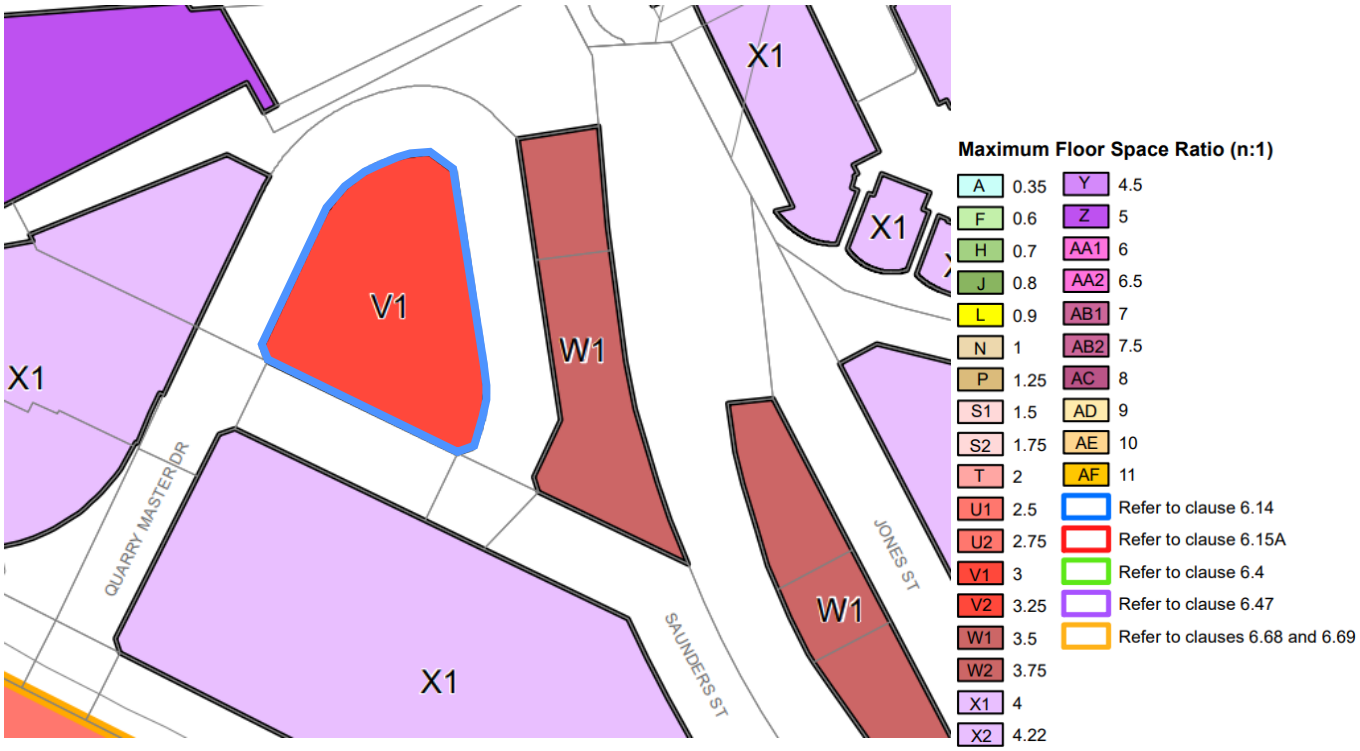


Figure 4 FSR development standard (site identified in blue outline)

Source: City of Sydney

In addition to the base FSR of 3:1, Clause 6.21 of the SLEP 2012 provides 10% of additional FSR for design excellence. The proposed development is the result of a Competitive Design Alternatives Process undertaken in accordance with the City of Sydney Design Excellence Process. Subject to confirmation from the consent authority, the development is considered to exhibit design excellence, on the basis that it maintains the intent of the winning scheme and responds appropriately to the recommendations of the Jury.

Accordingly, the total applicable FSR inclusive of the additional 10% design excellence is **3.3:1**.

3.3 Extent of Variation

The proposal seeks a maximum FSR of 7.7:1, equivalent to a gross floor area of 23,985m².

Accordingly, the proposal exceeds the base FSR control of 3:1 by 4.7:1 (156.7%) and exceeds the maximum permissible FSR of 3.3:1, including the 10% design excellence bonus, by 4.4:1 (133.3%).

It is again noted this exceedance is technical in nature and only relevant for a limited time. The FSR is fully compliant with the future planning controls that will apply to the site.

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 FSR 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 FSR development standard pursuant to the **First Method**.

4.1.1 The proposal complies with the draft FSR control that will apply to the site imminently

The subject site has been specifically identified under the Ultimo-Pyrmont Planning Proposal for an increase in development capacity, including an uplift in the maximum permissible FSR from 3.3:1 to 7.7:1. The proposed development achieves an FSR of 7.7:1 and therefore complies with the draft FSR control which will apply to the site imminently upon finalisation of the Planning Proposal and amendment of the LEP. In these circumstances, requiring strict compliance with the current FSR control of 3.3:1 would be unreasonable and unnecessary, as it would constrain a density outcome that has already been strategically assessed by State and Local Government as appropriate for the site and will apply to the site imminently by way of the Planning Proposal.

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

The objectives of the development standard contained in Clause 4.4 of the Sydney LEP are:

> *"(a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*
>
> *(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,*
>
> *(c) to provide for an intensity of development that is commensurate with the capacity of existing and planned 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."*

4.1.2.1 The objectives of Clause 4.4 floor space ratio are achieved

Objective (a): to provide sufficient floor space to meet anticipated development needs for the foreseeable future,

The proposal achieves this objective notwithstanding the variation. The redevelopment of the site will replace an ageing 63-unit residential flat building with a contemporary and exemplar mixed-use development comprising 156 dwellings and 407m² of retail floor space, representing a significant increase in housing supply and choice in a strategically located inner-city location which has been earmarked for increased density under the imminent Ultimo-Pyrmont Planning Proposal. The proposal provides a significant increase in residential apartments, and a diverse housing mix including one, two, three and four-bedroom apartments. Over 58% of the proposed dwellings comprise three and four-bedroom apartments, supporting family-sized housing within the Pyrmont Peninsula.

The floor space delivered through the proposal directly responds to anticipated growth within the locality and contributes towards meeting identified housing needs in a location with excellent access to employment, services and public transport including the the proposed Pyrmont Metro Station located approximately 500m east of the site and the Bank Street Light Rail Station located approximately 300m south-west. Accordingly, the proposal achieves the objective of providing sufficient residential and retail floor space to accommodate foreseeable development needs, which would not be achieved through strict adherence to the current FSR control.

Objective (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 FSR variation does not undermine the ability of the development standard to regulate density, built form or land use intensity. The site has been identified to accommodate increased density of development under the Ultimo-Pyrmont Planning Proposal, and the proposed built form and massing has been contemplated and deemed appropriate within Council's Planning Proposal. Importantly, the additional floor space has not been achieved through excessive site coverage, bulky podium forms or poor built form outcomes. Rather, the proposal has been subject to an extensive design competition process and iterative urban design testing which has resulted in a slender and articulated tower form and sculpted massing to reduce perceived bulk and improve solar access outcomes.

The proposal further demonstrates that the additional floor space can be accommodated without generating unacceptable traffic impacts. The accompanying Traffic Impact Assessment confirms that the proposal will generate only a modest increase in peak hour traffic movements and that the surrounding road network has sufficient capacity to accommodate the development. The site is also located approximately 500m from the future Pyrmont Metro Station, 300m from the Bank Street Light Rail stop and within walking distance of existing bus and active transport infrastructure, reducing reliance on private vehicle movements. Finally, the existing surrounding pedestrian network is well-established and has sufficient capacity to accommodate the additional density proposed at the site, particularly when viewed with the improvements to pedestrian infrastructure that will be provided with the proposed development.

Further, the built form of the proposed development is generally consistent with the arrangement proposed by Council in the Draft DCP and LEP controls under the Ultimo-Pyrmont Planning Proposal. Namely, the proposal will accommodate majority of the additional built form massing within a slender tower form in the southern part of the site. Council have assessed such a podium-tower form to have acceptable environmental impacts in their Planning Proposal assessment, when compared to the existing site conditions and existing planning controls.

Accordingly, the proposed density and land use intensity remain appropriately regulated notwithstanding the variation.

Objective (c): to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,

The proposal achieves an intensity of development that is commensurate with both existing and planned infrastructure. The site is located within an established urban area serviced by existing water, sewer, stormwater, electricity and telecommunications infrastructure and the supporting technical assessments confirm that these services can be augmented where necessary to accommodate the development. The proposal also benefits from proximity to significant infrastructure investment occurring within the Pyrmont Peninsula, including the future Pyrmont Metro Station, Blackwattle Bay renewal and broader precinct upgrades. Plans have also been made by the City of Sydney to provide additional public open space at Wentworth Park through closure of the commercial dog-racing operation at the site, which will provide new, large public recreation facilities within walking distance of the site.

Importantly, the development is located within a highly accessible inner-city location that is already well serviced by existing transport infrastructure and community facilities. The increase of density on the site has already been contemplated and deemed required by the imminent Ultimo-Pyrmont Planning Proposal, in context of existing and planned infrastructure around the Pyrmont Peninsula. The proposed intensity of development therefore reflects the capacity of both existing and planned infrastructure networks and does not result in demands beyond what the locality is capable of accommodating. Accordingly, the objective is achieved notwithstanding the proposed variation.

Objective (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 achieves this objective notwithstanding the variation because the additional floor space is accommodated within a built form that is consistent with the desired character of the Pyrmont Peninsula. The site is located within an area undergoing significant renewal, with the Pyrmont Peninsula Place Strategy and Ultimo-Pyrmont Planning Proposal envisaging increased housing delivery, higher density mixed-use development and substantial investment in public transport and infrastructure. The proposed development aligns with this strategic vision and delivers a form, scale and intensity of development consistent with that planned for this part of Pyrmont. As shown in **Figure 5** below, the proposed density and built form remain consistent with surrounding proposed development as envisaged in Council's Planning Proposal.

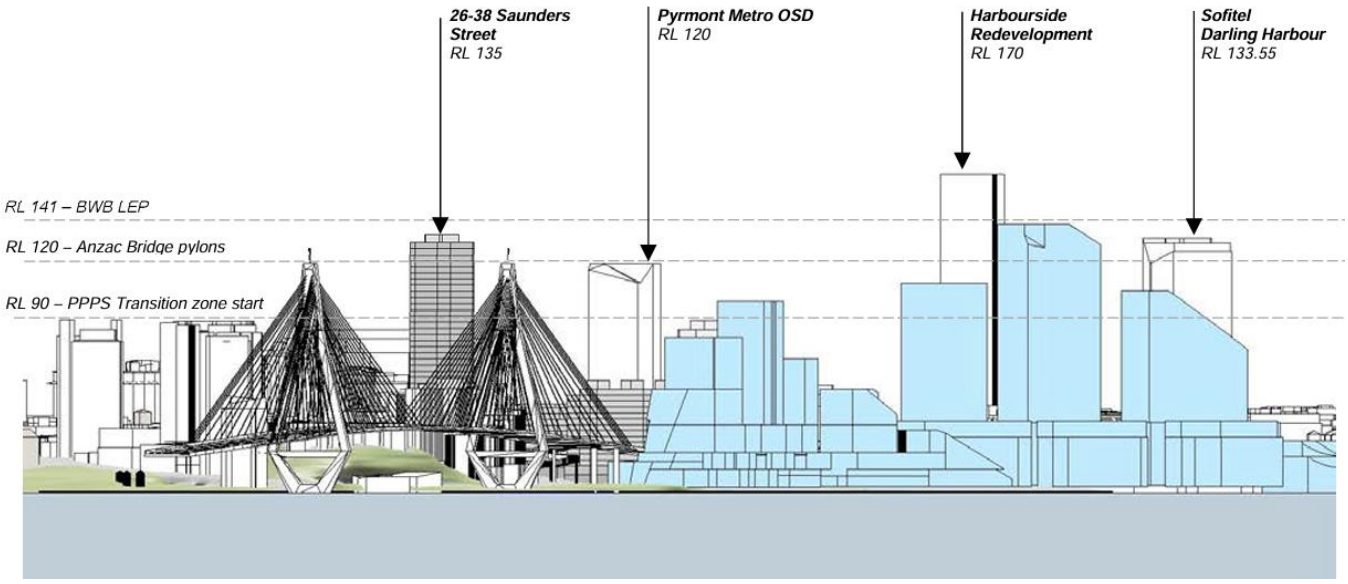


Figure 5 Ultimo-Pyrmont Planning Proposal envelopes in future context (post-exhibition)

Source: City of Sydney

Importantly, whilst the proposal exceeds the existing floor space ratio development standard, it does not result in excessive bulk, scale or overdevelopment. The proposal has been subject to a competitive design process and extensive urban design testing, resulting in a slender sculptural tower form.

The proposal also demonstrates that the additional floor space can be accommodated without adverse impacts on surrounding amenity. Technical assessments confirm acceptable outcomes in relation to solar access, privacy, wind, traffic, noise and visual amenity. The development further delivers significant public benefits, including a publicly accessible pocket park, through-site pedestrian link, activated ground floor retail uses, extensive landscaping and over 1,500m² of private and publicly accessible communal open space. Accordingly, the proposal reflects the desired character of the locality and minimises adverse impacts on the amenity of that locality notwithstanding the proposed FSR variation.

4.1.2.2 Objectives of Draft 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 the draft proposed Clause 6.66A of the SLEP 2012 is provided below, demonstrating that the proposal is consistent with the objectives of Clause 6.66A.

Table 1 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 new controls, notwithstanding the variation to the current FSR control of 3.3:1.
b) to increase the amount and quality of open space appropriately located to support an increase in urban tree canopy	The proposed variation to the FSR 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 FSR, 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**, there are no adverse overshadowing impacts to streets, parks and public places caused by the additional FSR.
e) to minimise overshadowing to residential properties	As detailed in **Section 4.2.4**, there are no adverse overshadowing impacts to residential properties caused by the additional FSR.

Objective	Comment
f) To provide for a diversity of housing	The proposed FSR variation allows for the competition winning scheme yield to be achieved and therefore provide for additional housing diversity in the area.

4.1.3 Conclusion on Clause 4.6(3)(a)

In summary, compliance with the FSR development standard is considered unreasonable and unnecessary since the objectives of the development standard are achieved notwithstanding the proposed variation in the following ways:

- The proposal complies with the draft FSR control of 7.7:1 that will apply to the site imminently, upon finalisation and gazettal of the Ultimo-Pyrmont Planning Proposal.
- The proposal provides sufficient floor space to meet anticipated development needs through the delivery of 156 dwellings and ground floor retail uses, significantly increasing housing supply and diversity on a strategically located site.
- The additional floor space is accommodated within a high-quality built form that avoids excessive bulk and overdevelopment through the redistribution of building mass from the podium to a slender tower form.
- The proposed density and intensity of development are commensurate with the capacity of existing and planned infrastructure, including major public transport investment such as the future Pyrmont Metro Station.
- The proposal reflects the desired future character of the Pyrmont Peninsula and the scale, density and urban form envisaged under the Pyrmont Peninsula Place Strategy and imminent Ultimo-Pyrmont Planning Proposal.
- Technical assessments confirm the additional floor space can be accommodated without unacceptable impacts on solar access, privacy, traffic, wind, noise or visual amenity.
- The proposal achieves the objectives of draft Clause 6.66A Ultimo-Pyrmont Opportunity Land notwithstanding the proposed 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 floor space that results in the exceedance of the development standard.

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

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

The subject site has been specifically identified through the Ultimo-Pyrmont Planning Proposal as suitable for a substantial uplift in development capacity, including an increase in the maximum permissible FSR from 3.3:1 to 7.7:1 (including 10% FSR bonus for design excellence). Whilst the proposal results in a variation to the existing 3.3:1 FSR control, it complies with the FSR of 7.7:1 envisaged for the site under the Ultimo-Pyrmont Planning Proposal which is planned for gazettal imminently (Refer to **Figure 6**).

The site is effectively positioned between the current and emerging planning controls, and the proposed variation allows for the development to be consistent with the density envisaged for the site through this strategic planning process. Accordingly, strict adherence to the existing FSR control would prevent an outcome that is consistent with the established future vision for the precinct, and will unnecessarily constrain development of the site including residential offerings despite its identified capacity to accommodate additional density.

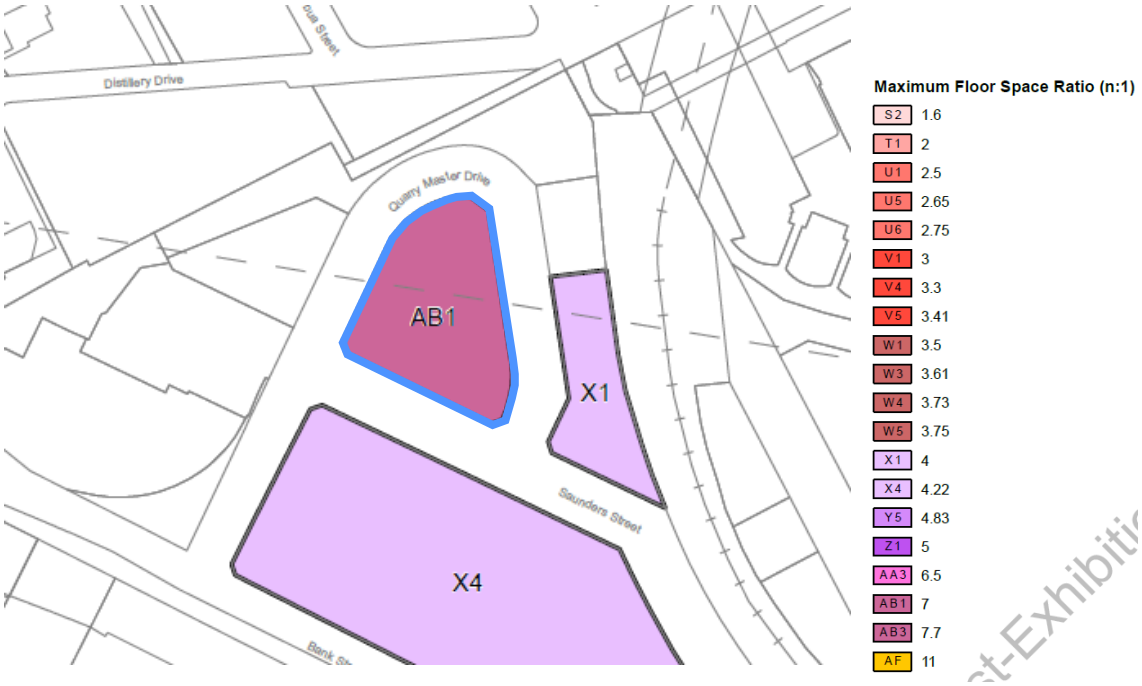


Figure 6 Future base FSR development standard excluding design excellence floor space (site identified in blue outline)

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 FSR 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 3.3:1 FSR standard would result in a significant reduction in the number of apartments being delivered at the site – 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

Whilst the proposal seeks an FSR of 7.7:1, representing a variation above the existing 3.3:1 development standard, the additional floor space is accommodated in a manner that achieves an appropriate built form outcome and does not result in adverse impacts typically associated with excessive density. The site has been specifically identified through the Ultimo-Pyrmont Planning Proposal to accommodate an FSR of 7.7:1, demonstrating that the quantum of additional floor space now sought has been strategically assessed and considered appropriate for the site. As shown in **Figure 5**, the proposed density and built form remain consistent with surrounding proposed development as envisaged in Council's Planning Proposal.

Importantly, the additional floor space has not been achieved through increased site coverage, excessive podium bulk or an expansive building footprint. Rather, through the Competitive Design Process and subsequent design refinement, floor space has been distributed vertically into a slender and sculptural tower form that reduces perceived bulk and scale. This approach enables the additional 4.4:1 of floor space to be accommodated more efficiently than would occur through a lower and broader building form.

Supported by urban design testing and technical assessments for solar access, privacy, traffic, wind, noise or visual amenity, the area of floor space resulting in the variation does not create unacceptable built form, visual or amenity impacts and remains consistent with the scale, intensity and character envisaged for this part of the Pyrmont Peninsula under the emerging planning framework. Accordingly, there are sufficient environmental planning grounds relating to the manner in which the additional floor space is accommodated on the site to justify contravention of the development standard.

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

Whilst the proposal seeks a floor space ratio variation above the existing development standard of 3.3:1, the additional floor space has been accommodated in a manner that does not result in adverse overshadowing impacts.

The proposed FSR variation does not result in adverse overshadowing impacts arising from the additional floor space accommodated within the development. Importantly, the additional floor space has not been achieved through an expansion of the building footprint or excessive podium massing. Rather, through the design competition and subsequent design development process, floor space has been redistributed into a slender tower form.

Shadow Diagrams are also provided in **Figure 7** which show the shadow cast mid-winter by the proposed development and an LEP/DCP compliant scheme. 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.

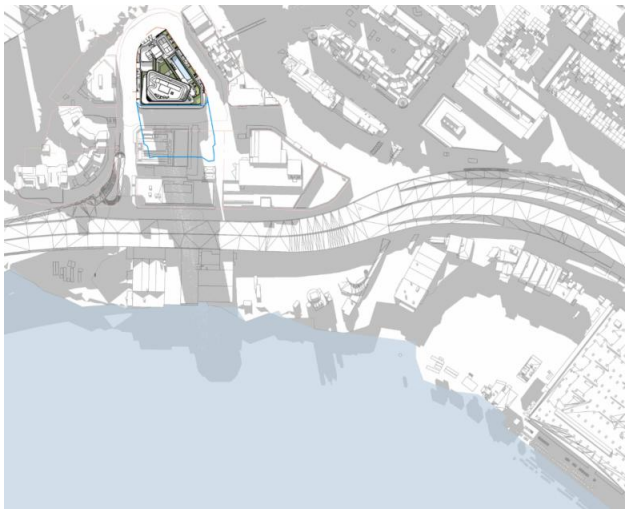
The shadow diagrams confirm that the proposed area of variation does not cause overshadowing on residential properties or public space, and therefore, does not cause adverse environmental impacts. Accordingly, there is sufficient environmental planning ground in relation to overshadowing to support contravention 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 7 Winter solstice shadow diagrams – current LEP/DCP 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 scheme that should be retained through the design and delivery phase was the successful shaping and massing of the building, notwithstanding the proposed FSR variation.

The tower form has been retained in the proposed scheme, notwithstanding the proposed variation. Importantly, the proposed floor space ratio does not arise from a departure from the design competition outcome, but rather forms part of the development envelope and design response that was subject to the competitive design process. Accordingly, the proposal represents the delivery of a scheme that has already been independently assessed as capable of achieving design excellence, and there are sufficient planning grounds relating to design excellence which support the contravention of the development standard.

4.2.6 Ground 6: The variation facilitates the orderly and efficient use of a strategically located site

The site occupies a strategically significant location within the Pyrmont Peninsula, approximately 500 metres from the future Pyrmont Metro Station, 300 metres from the Bank Street Light Rail stop and within close proximity to employment, retail, entertainment and public recreation opportunities. The site has been identified as appropriate for urban renewal and intensification through the Pyrmont Peninsula Place Strategy and subsequent Ultimo-Pyrmont Planning Proposal.

Further, in response to the National Housing Accord, the NSW Government has committed to deliver 377,000 new dwellings by 2025 with a housing target of 18,900 within the City of Sydney Local Government Area. The proposed FSR variation directly facilitates the efficient redevelopment of an ageing 63-unit residential flat building into a contemporary mixed-use development comprising 156 dwellings and ground floor retail uses. This represents an increase of 93 additional dwellings on the site.

Restricting the redevelopment to the existing FSR control of 3.3:1 would unnecessarily constrain the site's ability to contribute to the City of Sydney's housing supply target and the NSW Government's overarching Housing Accord commitment, despite the site's demonstrated capacity to accommodate additional density. Accordingly, the variation promotes the orderly and efficient use and development of land to deliver additional housing and retail development in a location specifically identified for growth and renewal.

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 2** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the FSR development standard.

Table 2 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 and conservation of the State's natural and other resources,	The proposed FSR exceedance facilitates the redevelopment of an ageing 63-dwelling residential flat building into a mixed-use development comprising 156 dwellings, neighbourhood retail uses, a publicly accessible park and through-site pedestrian links, delivering significant social, economic and public domain benefits. If the FSR development standard of 3.3:1 was strictly enforced, these benefits as well as the residential offering would be substantially reduced, resulting in a less positive impact on the social and economic welfare of the community. As such, the proposed FSR 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. The proposal delivers 156 dwellings, including a substantial supply of family-sized housing, contributing to both housing supply and housing diversity within an accessible inner-city location. Strict compliance with the existing FSR control would materially reduce this housing outcome.

Object	Comment
	Whilst 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. Therefore, the proposed FSR 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 such as the future Pyrmont Metro Station 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. The additional FSR 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 FSR variation does not give rise to any additional unacceptable environmental impacts, with overshadowing, wind and visual impacts appropriately managed through design.
(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 in proximity to public transport, which can assist in reducing the reliance on private vehicle travel. The FSR variation is accommodated through a compact urban form via a slender tower 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 building, including the FSR variation, has been designed to respond to the surrounding built context through appropriate massing, articulation and setbacks to ensure that the additional floor area does not adversely affect nearby heritage items. The variation facilitates a built form that transitions appropriately with the evolving Pyrmont skyline. The accompanying Heritage Impact Statement confirms that the proposal, including the additional floor space, will not result in adverse impacts to surrounding 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 slender tower form, active street frontages, publicly accessible through-site lengths and generous communal open spaces. The FSR variation achieves a slender tower form with adequate internal amenity, separation distances, and architectural roof articulation, resulting in a high-quality design/amenity outcome and residential offering.
(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 considerations in decision-making about environmental planning and assessment,	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 FSR variation enables these considerations to be balanced effectively by proposing 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 FSR variation is limited, site-specific and supported by detailed urban design, environmental and amenity analysis and comments made by the Jury as a winning Architectural Design Competition scheme. The proposed variation to FSR has been contemplated and deemed suitable by the imminent Ultimo-Pyrmont Planning Proposal, as the proposed FSR complies with the FSR control and density envisioned for this area. The impacts associated with the additional FSR are well understood and appropriately mitigated, representing a proportionate response consistent with the strategic importance and scale of the development.

Object	Comment
(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 FSR variation will promote the 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 2012, which could not be achieved through strict adherence to the current FSR control.

4.2.8 Conclusion on Clause 4.6(3)(b)

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

- The proposal complies with the 7.7:1 FSR control envisaged for the site under the imminent Ultimo-Pyrmont Planning Proposal, demonstrating that the density proposed has already been strategically assessed and identified as appropriate for the site.
- 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 site has been specifically identified for an uplift in development capacity under the imminent Ultimo-Pyrmont Planning Proposal, and strict adherence to the existing 3.3:1 FSR control would prevent an outcome consistent with the established future vision for the precinct.
- The proposal achieves an appropriate built form and density outcome that is consistent with the future character, scale and intensity of development envisaged for this part of Pyrmont.
- The additional floor space does not result in adverse overshadowing impacts, with shadow analysis demonstrating outcomes comparable to a DCP-compliant envelope and no material impacts on surrounding development or key public spaces.
- The proposed FSR variation forms part of the design competition winning scheme.
- The variation facilitates the orderly and efficient redevelopment of a strategically located urban renewal site, enabling improved housing supply to contribute to the City of Sydney's housing targets in relation to the National Housing Accord, housing diversity and public domain outcomes.
- Demonstrated consistency with the objects of the EP&A Act.

5.0 Conclusion

The assessment above demonstrates that compliance with the floor space ratio development standard contained in Clause 4.4 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 FSR control 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.

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

- Compliance with floor space ratio 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 complies with the draft FSR control for the site, which will be gazetted imminently as part of the Ultimo-Pyrmont Planning Proposal (currently with NSW Government for finalisation).
  - The proposal provides sufficient floor space to meet anticipated development needs through the delivery of 156 dwellings and ground floor retail uses, significantly increasing housing supply and diversity on a strategically located site.
  - The additional floor space is accommodated within a high-quality built form that avoids excessive bulk and overdevelopment through the redistribution of building mass from the podium to a slender tower form.
  - The proposed density and intensity of development are commensurate with the capacity of existing and planned infrastructure, including major public transport investment such as the future Pyrmont Metro Station.
  - The proposal reflects the desired future character of the Pyrmont Peninsula and the scale, density and urban form envisaged under the Pyrmont Peninsula Place Strategy and imminent Ultimo-Pyrmont Planning Proposal.
  - Technical assessments confirm the additional floor space can be accommodated without unacceptable impacts on solar access, privacy, traffic, wind, noise or visual amenity.
  - The proposal achieves the objectives of draft 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 complies with the 7.7:1 FSR control envisaged for the site under the imminent Ultimo-Pyrmont Planning Proposal, demonstrating that the density proposed has already been strategically assessed and identified as appropriate for the site.
  - 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 site has been specifically identified for an uplift in development capacity under the imminent Ultimo-Pyrmont Planning Proposal, and strict adherence to the existing 3.3:1 FSR control would prevent an outcome consistent with the established future vision for the precinct.
  - The proposal achieves an appropriate built form and density outcome that is consistent with the future character, scale and intensity of development envisaged for this part of Pyrmont.
  - The additional floor space does not result in adverse overshadowing impacts, with shadow analysis demonstrating outcomes comparable to a DCP-compliant envelope and no material impacts on surrounding development or key public spaces.
  - The proposed FSR variation forms part of the design competition winning scheme.

  - The variation facilitates the orderly and efficient redevelopment of a strategically located urban renewal site, enabling improved housing supply to contribute to the City of Sydney's housing targets in relation to the National Housing Accord, housing diversity and public domain outcomes.
- 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 floor space ratio development standard.

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