

Attachment C

Clause 4.6 Variation Request Height of Buildings
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Clause 4.6 Variation Request

Request to vary Clause 4.3 Height of Buildings in Sydney Local Environmental Plan 2012

683-689 George Street, Haymarket



'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.

Ethos Urban 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, present and emerging.

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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This document has been reviewed by:

Yvette Carr 8 November 2024

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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Posei Pty Ltd. It is submitted to the City of Sydney Council (Council) in support of a development application (DA) for 683-689 George Street, Sydney (the site).

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 the development standard. This Clause 4.6 Variation Request relates to the development standard for the height of buildings under clause 4.3 of the SLEP 2012 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated November 2024.

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 building height 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).

The extent of the building height variation relates to the proposed tower. This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of Clause 4.3 of the SLEP 2012:
 - The 5m exceedance to the height limit is generally consistent with the outcome achieved on a number of other developments in the vicinity of the site, therefore being appropriate to the condition of the site and its context.
 - The podium and street wall heights, being the parts of the site that are particularly sensitive to height impacts have either been reduced in height or provided with an appropriate height and designed to ensure a general consistency with the prevailing street wall heights.
 - The additional height does not result in any clearly visible additional scale compared to a compliant development outcome and therefore is appropriate to the condition of the site and its context.
 - The podium has been designed to sympathetically respond to the adjoining Bank of China heritage building through the reduction or sensitive increase in its street frontage heights and by stepping back the upper podium level to ensure an appropriate height transition is achieved.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The proposed development includes community uses in response to demand identified in the Haymarket and Chinatown Revitalisation Strategy, as well as in Council's pre-DA feedback from the second pre-DA meeting for the project that took place on 12 November 2023.
 - The proposed development is subject to unique site constraints which limit the ability to utilise the floor space available to the site, which is further limited given the provision of substantial community space that is being provided in line with within Council's identified demand and further community consultation.
 - The proposed additional height does not result in any adverse overshadowing impacts.
 - The additional height proposed is not substantially noticeable and does not obstruct any key views compared to a compliant scheme.

2.0 Site and proposed development

2.1 Site description

The site is located at 683-689 George Street, Haymarket within the City of Sydney Local Government Area (LGA). It forms part of the street block bound by Hay Street (north), Ultimo Road (south), George Street (east) and Thomas Street (west). The broader context of the site forms a part of the Haymarket precinct being home to Sydney's vibrant Chinatown as well as Thaitown, Koreatown, Railway Square and Darling Square.

The site is irregular in shape and has primary frontages to George Street (20m in length) and Thomas Street (40m in length), along with a secondary frontage to Hay Street. Vehicular access to the site is provided from the Thomas Street frontage. The site is legally described as Lot 100 DP1190673 and has a site area of 1040.11m². The land is owned by Posei Pty Ltd.

An aerial photo of the site is provided at **Figure 1** below.



 The Site



NOT TO SCALE

Figure 1 Site Aerial

Source: Nearmap / Ethos Urban

2.2 Description of the proposed development

The DA seeks approval for the construction and use of a 13 storey commercial office building, including:

- Construction and use of a 13 storey mixed use building, comprising:
 - Retention of five (5) storeys of the existing six (6) storey commercial podium and alterations to its design to include a new terracotta framing.
 - A podium form containing:
 - a double height retail arcade at the ground level;
 - educational uses at Levels 2 and 3 and community uses at Level 2; and
 - medical uses at the fourth and fifth levels.
 - Eight (8) tower levels, comprising:
 - food and beverage tenancies on the podium rooftop level where rooftop terraces are also provided;
 - seven (7) storeys of office space; and
 - rooftop plant space.
- Retention of the existing three level basement and reconfiguration to reduce car and loading bay spaces, include bicycle parking, and relocate plant space and bathrooms to the basement. The reconfigured basement levels will include:
 - Nine (9) car spaces (including one accessible parking space);
 - Three (3) loading bay spaces;
 - 97 bicycle spaces (including 67 staff spaces and 30 visitor spaces);
 - End of trip facilities including:
 - male and female bathrooms, as well as one (1) accessible bathroom;
 - three (3) male and female showers;
 - male and female changing rooms; and
 - 68 lockers.
- Inclusion of landscaping, comprising:
 - Level 6 landscaped roof terraces; and
 - A level 13 rooftop landscaped terrace.
- Extension and augmentation of services and utilities to the development as required.

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



Figure 2 *Photomontage of the proposed development as viewed from George Street*

Source: Wardle

3.0 Planning instrument, development standard and proposed variation

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 1**.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	<i>Sydney Local Environmental Plan 2012</i>
The site’s land use zone	SP5 Metropolitan Centre
Development standard sought to be varied	Clause 4.3 Height of buildings The objectives of this clause are as follows— (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.
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	50m (map extract provided in Figure 3).
Difference between the existing and proposed numeric values. Variation percentage between the proposal and the EPI	The proposed maximum height of the building is 55m. The proposal exceeds the maximum 50m development standard by 5m, which is a variation of 10%.
Visual representation of the proposed variation	Refer to Figure 4 , Figure 5 and Figure 6 .

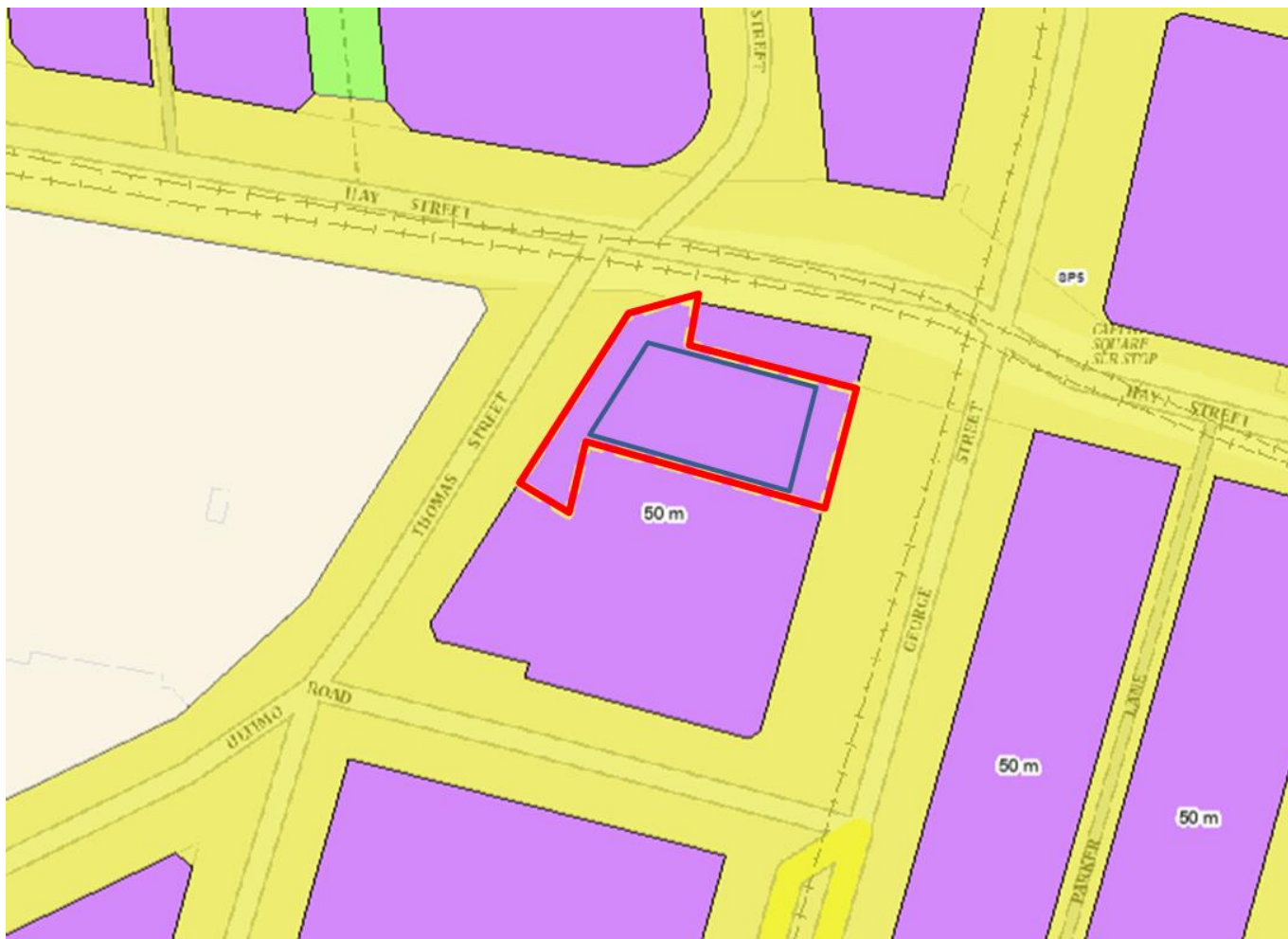


Figure 3 Extract of height of buildings map (site outlined in red, approximate location of tower footprint subject to variation outlined in blue)

Source: NSW Planning Portal Spatial Viewer

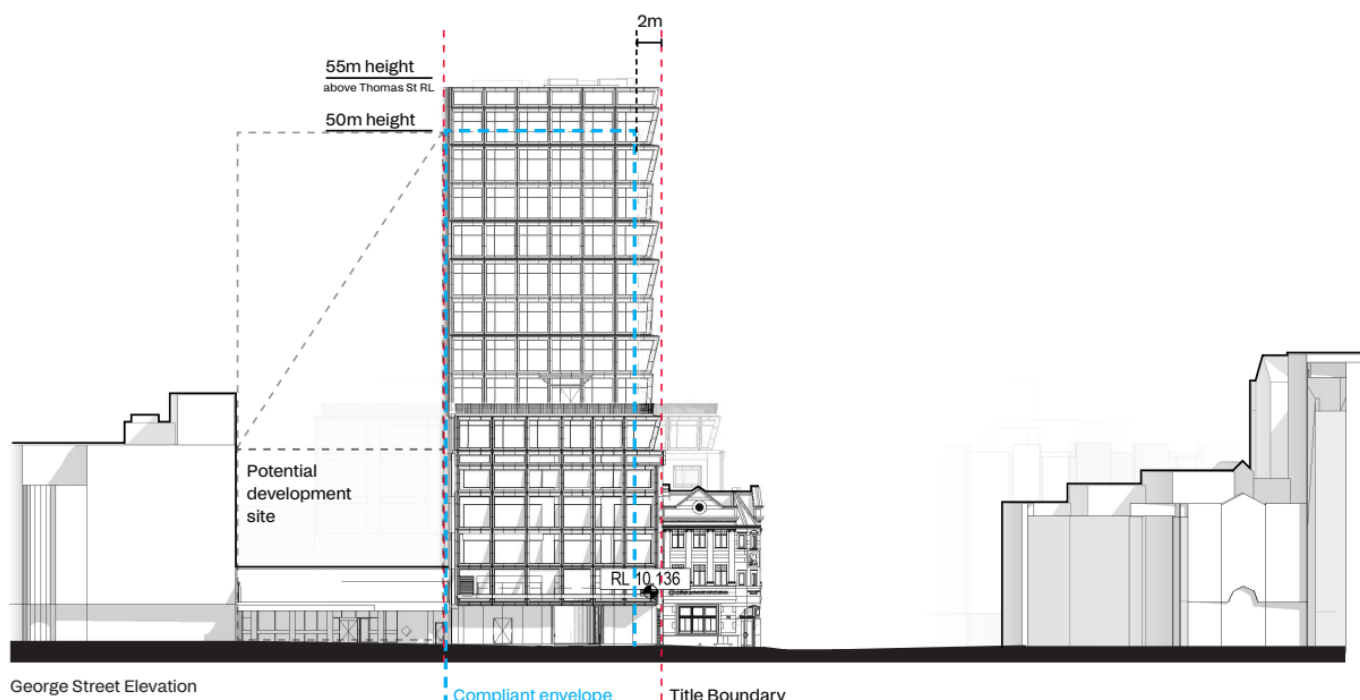


Figure 4 Visual representation of the proposed variation – George Street elevation

Source: Wardle

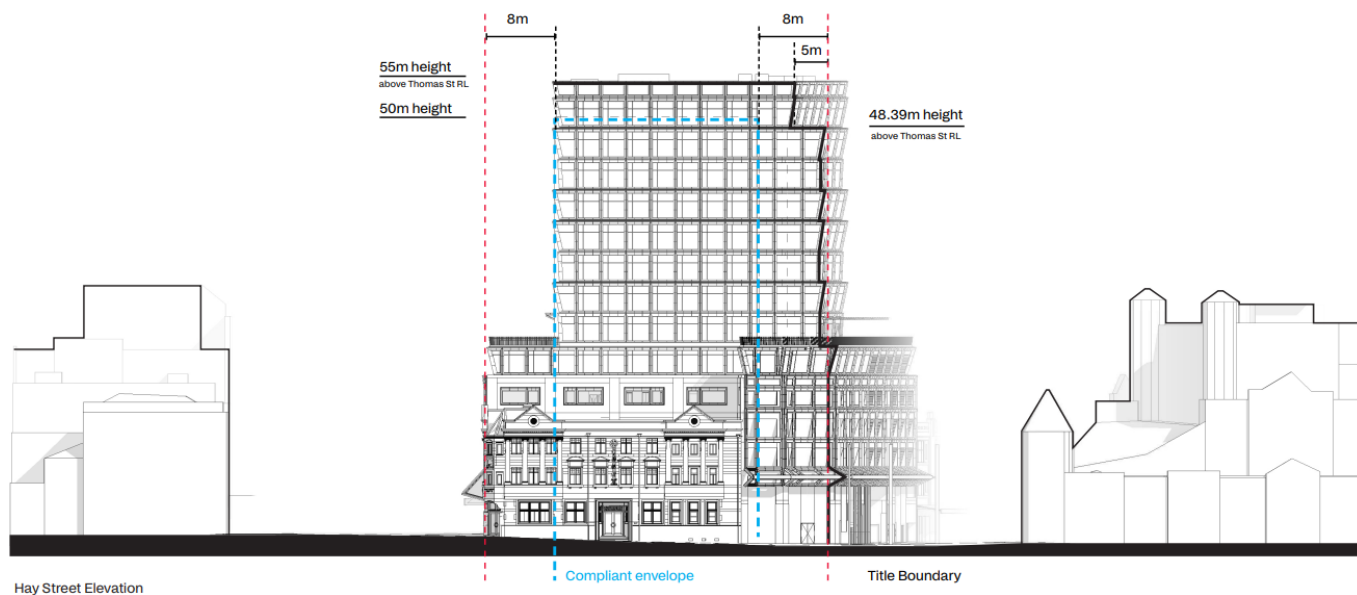


Figure 5 Visual representation of the proposed variation – Hay Street elevation

Source: Wardle

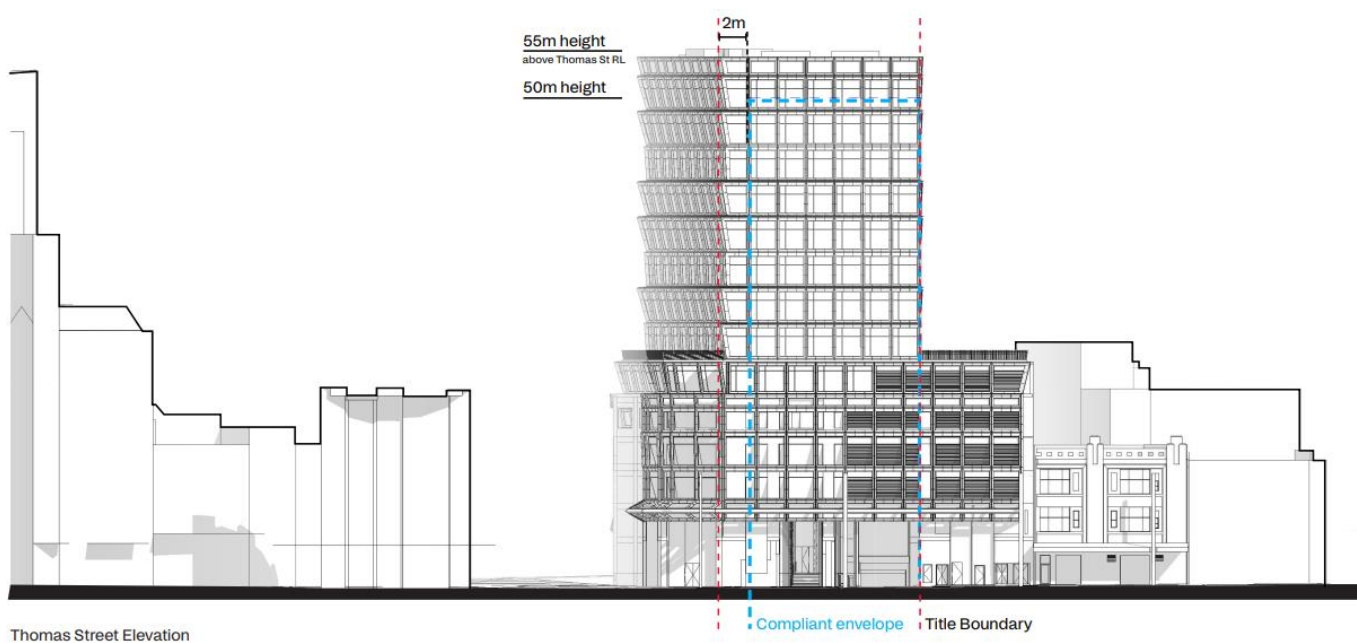


Figure 6 Visual representation of the proposed variation – Thomas Street elevation

Source: Wardle

4.0 Justification for the proposed variation

Clause 4.6(3) of the SLEP 2012 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 has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) that there are sufficient environmental planning grounds to justify contravening 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*;
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*;
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action); and
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* (Al Maha).

Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i).¹

The consent authority is required to form this opinion first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in clause 4.6 of the SLEP 2012 with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.

4.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the NSW 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, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

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 the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the SLEP 2012 is 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.

¹ Clause 4.6(4)(a)(i) has since been repealed. The note under clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3)(a) and (b).

The five methods outlined in *Wehbe* include:

- The objectives of the development 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**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is 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 SLEP 2012 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,*

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

The proposed building has been designed to ensure that the height of the development is appropriate to the condition of the site and its context. This is achieved through removing the upper level of the existing building and reducing the street frontage heights at the primary George Street frontage, as well as adopting an appropriate street frontage height and design along Thomas Street.

The parts of the site that are particularly sensitive to height impacts, including the street wall and podium heights, are treated appropriately to allow for a seamless integration with the site and its context. In this regard, the proposal includes the demolition of the upper two levels of the existing building and its replacement with a façade comprising glazed areas framed by a terracotta framework, which lightens the mass and creates a gradual visual transition to surrounding buildings, including a sympathetic relationship to the adjoining heritage Bank of China building.

Further, the proposal includes a considerable reduction in the existing street frontage height to George Street to appropriately respond to the condition of the site and its context, with a reduction from 27.47m to 22.5m (4.97m reduction). The street frontage height along Thomas Street is increased

With respect to street frontage height along Thomas Street, this is increased from the existing 28.8m street frontage height to 48.39m, being a 19.59m increase. This increased street frontage height along Thomas Street has been adopted in response to TfNSW's requirement that all new structural loads for the proposed building being located outside the CBD Rail Link zone which runs along the east of the site and the Great Sydney Dyke which is located along the northern edge of the site. These constraints have required that the structural solution be situated in the south-western portion of the site.

To accommodate these constraints, the structural engineer has developed a cantilevered structure that transfers the tower's loads towards the western side of the site. This solution ensures that no additional load is imposed on the CBDRL zone or first reserve areas. To provide the necessary back span to support the cantilevered structure, the tower has been shifted to a nil setback position along Thomas Street. This adjustment enables effective load transfer and ensures compliance with TfNSW's regulations while optimising the structural performance of the building.

In developing an appropriate street wall height, Wardle undertook a design study of various street wall heights to assess their impact on the surrounding environment. Initially, a 35m street wall height was explored. However, this configuration resulted in the creation of a series of smaller towers, which appeared disjointed and out of place within the existing cityscape. The fragmentation of the tower massing compromised the visual harmony and integration of the building with its urban surroundings.

To achieve a more cohesive and appropriate response to the city's architectural character, a street wall height of 48.39m is proposed. This adjustment aligns with the scale and proportions of nearby buildings, reinforcing the urban context and enhancing the overall street presence. The taller street wall also complements the massing strategy and allows for a more integrated tower design, avoiding fragmentation. This is demonstrated in the streetscape relationship diagrams provided in **Figure 4 - Figure 6**.

These proposed street frontage heights are coupled with appropriate tower setbacks of 8m from George Street and 5m from Thomas Street. This allows the podium street wall height to be the key datum that is legible from the street level, and ensures general consistency with the prevailing street wall height along George Street. Setting back the tower from the street edge reduces the visual bulk and scale such that the part of the tower above the 50m height limit does not add any notable bulk or scale to the development on the site. A visual comparison of the proposed tower height compared to a compliant envelope is shown in **Figure 7** and **Figure 8** below. These comparisons demonstrate that the additional building height does not result in any clearly visible additional scale when viewed from George Street or Thomas Streets and is appropriate to the condition of the site and its context. Additional view comparisons are provided in the Architectural Design Report at **Appendix A**.

Further, the proposed height of the development is also consistent with its surrounding context. **Figure 9** shows multiple developments in the surrounding context, including three developments immediately east of the site that have approved buildings with a height of 54-55m, exceeding the 50m height limit. The majority of surrounding buildings with a height in the range of 13-15 storeys exceed the 50m height limit. It is therefore clear that developments up to a height of 55m in the site's context are acceptable and appropriate, and that the proposed development is appropriate for its context.



Figure 7 *Photomontage comparison view of compliant and proposed scheme from George Street*

Source: Wardle



Compliant Envelope - Thomas Street



Proposed Envelope - Thomas Street

Figure 8 Photomontage comparison view of compliant and proposed scheme from Thomas Street

Source: Wardle

The site context plan opposite identifies the different development heights that are approved on all sites throughout the surrounding area. We have included the following development with similar heights.

- Project Site
- 13 Parker Street (54.36m)
- 15-31 Parker Street (15 Floors)
- 746-750A George Street (54.93m)
- 637-645 George Street (14 Floors)
- 413-415 Sussex Street (59.7m)
(55-59.7m architectural roof feature))
- 136 Hay Street (60.092m)
- 651 George Street (15 Floors)
- 187 Thomas Street (RL 226.8m - planning proposal approved height, with this height limit included in the Sydney LEP for this site)
- 757-763 George Street, Haymarket (RL 117.87m - planning proposal approved height, with this height limit now included in the Sydney LEP for this site)
- (X) Approximate number of floors



Figure 9 Height of similar developments in the site context (site is outlined in red dash)

Source: Wardle

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 located adjacent to the Bank of China (Item 1835) local heritage item which adjoins the site to the north. The site is also located within the Haymarket/Chinatown special character area (SCA), but is not located in a heritage conservation area.

The reduction in the existing street wall height of the building along George Street, the development of an appropriate street wall height along Thomas Street (as detailed in relation to objective (a) above), and the lightening of the upper podium levels through the inclusion of articulated glazing and a new terracotta skin, provides a sympathetic response to the adjoining Bank of China building. Further to the reduction and adoption of appropriate street wall heights and the careful choice of materiality, the top podium level has been stepped back to provide relief and an appropriate height transition to the Bank of China building.

The proposed development also breaks the tower's mass and bulk into distinct single-storey elements, including the stepped back upper podium level, enabling it to sympathise with rather than dominate the adjoining Bank of China heritage building, and any other lower scale buildings in its vicinity within the Haymarket/Chinatown SCA. The incorporation of a ground floor awning also provides a consistent street datum at street level, that contributes to the transition in height and scale. These adopted design initiatives achieve an appropriate transition in height, particularly with the adjoining Bank of China building, as illustrated in **Figure 10**.

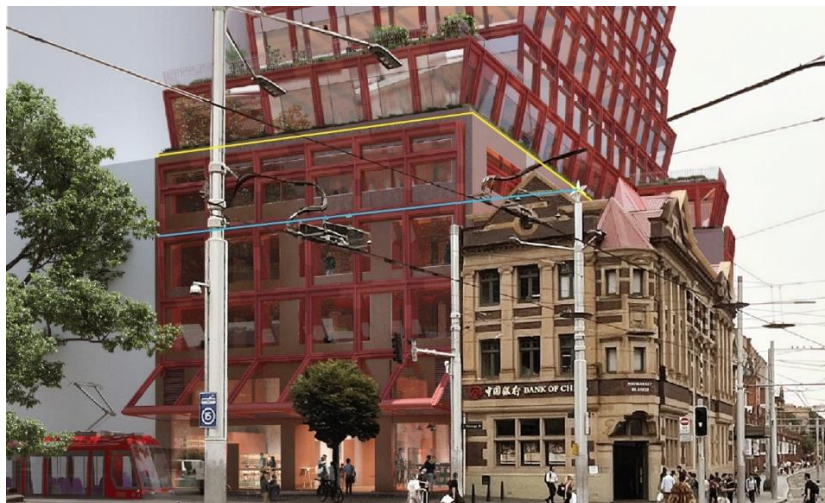


Figure 10 Key podium datums adopted to manage transition in scale to the Bank of China heritage item

Source: Wardle

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

The site is located within Central Sydney. Therefore, the proposed height of 55m will not affect sharing of views outside Central Sydney.

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

As above, the site is located within Central Sydney. As shown in **Figure 9**, there are multiple buildings located between the site and the boundary of Central Sydney. Given the proposed height of the building is generally consistent with the surrounding heights of buildings, the proposal will contribute to an appropriate height transition from Central Sydney to adjoining areas.

4.2 Sufficient environmental planning grounds to justify the contravention of the development standard

4.2.1 Improving public benefit through proposed community use

Within the second pre-DA meeting that took place with Council on 12 November 2023, Council raised that additional height up to 55m may be accepted in the circumstance that the proposed development includes an additional floor for community space, in line with demand for such floor space in the Haymarket/Chinatown SCA. Specifically, Council stated the following in its pre-DA advice following this meeting:

'As your client is aware from the recent Haymarket consultation, there is a desire for community space in the Haymarket/Chinatown. As you have one of the larger and better located sites, a community space/floor could be considered (preferably at the first floor within the building with direct access).

If such as space was of interest, the City may be willing to consider an additional floor in height and floor area in recognition of such a public benefit offer provided there were no negative impacts. If of interest, please advise. Further research into the needs and desires of the Chinatown community would need to be undertaken.

It should be noted that:

- Development over 55m would require a site-specific Development Control Plan (or Concept Proposal) and a competitive design process unless waived in consideration of an agreed public benefit offer as noted above.'*

Not only was Council's desire for the provision of community space set out in the Pre-DA advice, but the vision for increased community space in the Haymarket and Chinatown area is enshrined within the Haymarket and Chinatown Revitalisation Strategy published in January 2024. This strategy aims to set a vision and actions for revitalising Haymarket and Chinatown into a diverse, friendly and safe area that's easy to navigate, with a range of food options and a streetscape that respects and celebrates the social and cultural history of the area. To achieve this vision, the strategy sets out a 5-point action plan, of which one of the points is planning and heritage, which identified exploring opportunities for community and cultural space as an action following strong community desire for more community and vibrant cultural space. This included a commitment for Council to explore opportunities through future development applications and planning proposals to deliver more community and cultural space, of which this development application is a key example. Therefore, there is a clear strategic planning mandate for the provision of social and cultural benefit in this area through the incorporation of community space within new developments.

Further to extensive multilingual consultation undertaken by Council as part of the strategy, the Applicant conducted further consultation with the community to identify exact types of community uses that are desired. The Applicant held a number of community meetings with over 40 community stakeholders, organisations, business operators, property owners, residents, and individuals who actively advocate for Chinatown and Haymarket. The community voiced a strong demand for flexible community spaces capable of accommodating both small and large groups for meetings, conferences, presentations, exhibitions, musical concerts, performances, events, functions, sports and exercise. These insights provide valuable guidance for the development of a multi-purpose centre on level 2 of the Citymark Building for commercial as well as community users that aligns with the specific needs and interests of the Haymarket & Chinatown residents and businesses and Sydney's wider Chinese community.

Posei proposes to offer use of the centre to not-for-profit community groups at discounted hiring charges. Access to the centre will be facilitated through lifts via the public arcade, ensuring convenience and inclusivity for all members of the community. To facilitate easy community access, a user-friendly booking system will be implemented. To ensure the centre continuously meets community needs, a community advisory panel will be established to provide advice and feedback to Posei on the operation of the centre from the community perspective.

Therefore, it is clear that the proposed development offers a significant social and public benefit in accordance with the community's desire and Council's strategic planning initiatives for Haymarket and Chinatown. However, incorporation of a level of community space comes at a cost of net lettable commercial floorspace which is crucial for facilitating a feasible and sustainable development that can financially support subsidised community space. The proposed 5m height variation which yields one (1) additional commercial storey provides some compensation for the community space to ensure a feasible and sustainable development. As such, the provision of public and social benefits through community space is a key environmental planning ground that justifies the contravention of the height of buildings development standard. The tenancies provided within these will be determined through future pre-commitments and commercial leases in the space.

4.2.2 Built form considerations

Site configuration and constraints

The site has a unique and constrained irregular shape and site constraints that preclude the expansion of the building at the lower levels to accommodate and maximise floor space and compensate for the provided community floor space. In particular:

- The irregular shape of the site along Thomas and Hay Streets which constrains the tower footprint.
- The requirement for tower setbacks to George Street and Thomas Street which constrain the tower footprint.
- The requirement to minimise street wall heights which precludes a taller podium that can accommodate a large floorplate than the tower.
- The presence of a heritage building to the north which requires a sensitive treatment, including a stepped back tower element at the upper podium level which reduces floor space.
- The CBD Rail Link which applies to the site and prevents new loads from being located within the mapped zone which runs along the east of the site.

Given these constraints, there is no further ability to maximise the floor space within the maximum building height. The planning controls therefore envisaged a building with greater bulk and scale that would achieve the maximum FSR. An increase to the building height remains the only alternative for increasing floor space in this key location within Haymarket / Chinatown and to compensate for the provision of community and education

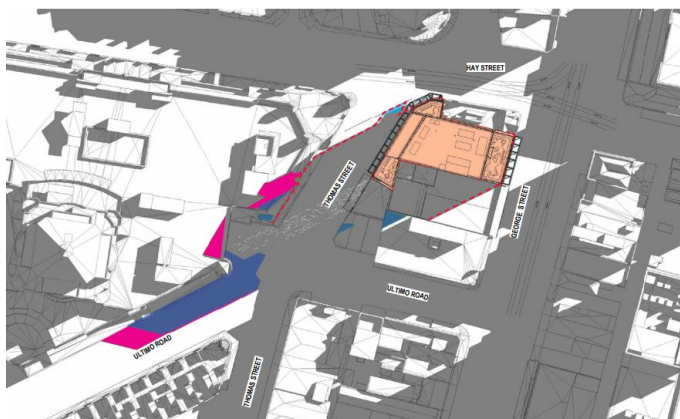
space. Given that the additional height does not result in any significant increase to the perceived bulk and scale from the streetscape, it is considered that a height variation results in less impact than further reducing the tower setbacks or increasing the podium street wall height. As such, the site configuration and constraints justify the contravention of the height of buildings development standard.

Overshadowing

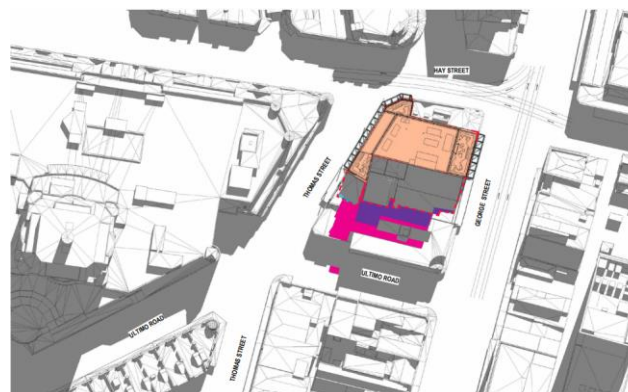
Wardle has prepared overshadowing diagrams within the Architectural Design Report and shown below in **Figure 11** comparing the overshadowing impacts between a compliant scheme and the proposed scheme on the 14th of April and 21st of June. Shadows cast by a compliant scheme are shown in dark blue, additional shadows cast as a result of the 5m height variation are shown in pink, and reductions in shadowing as a result of the proposal are shown in light blue.

On the 14th of April, the additional shadow cast as a result of the 5m height variation is mainly limited to areas of road. Where additional shadow is cast onto buildings, these are either commercial building façades or non-accessible rooftop areas of commercial buildings. At 9am on 14th of April, there is minor additional overshadowing to the Peak Apartments and Paddy's Markets site, however, the overshadowing impact is limited to a portion of a rooftop area that is part of Paddy's Markets and does not appear to be accessible.

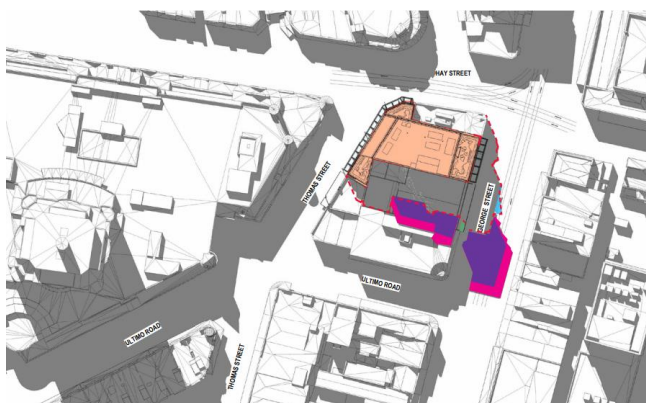
On the 21st of June, the additional shadow cast as a result of the 5m height variation either falls within existing shadows cast by surrounding development, onto George Street, or onto a slither of a commercial building to the south.



Overshadowing on 14 April – 9am



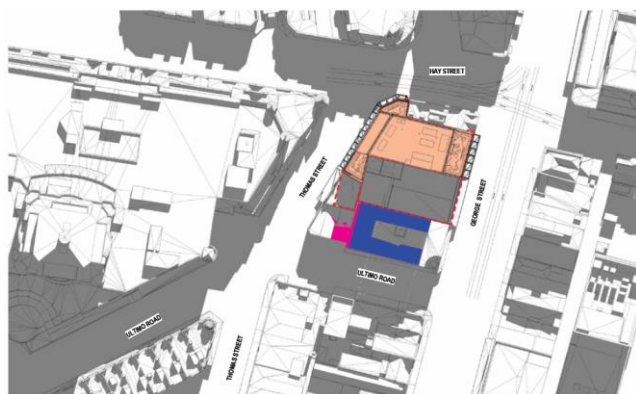
Overshadowing on 14 April – 12pm



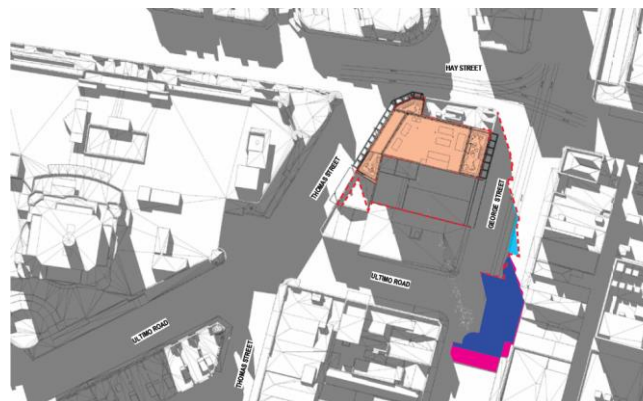
Overshadowing on 14 April – 2pm



Overshadowing on 21 June – 9am



Overshadowing on 21 June – 12pm



Overshadowing on 21 June – 2pm

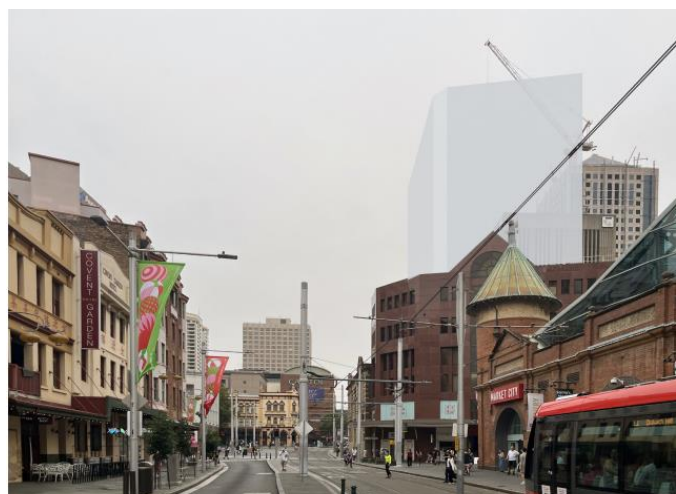
- Existing shadow line
- Compliant scheme
- Additional shadowing from proposed building
- Shadow reduced from proposed building

Figure 11 Shadow diagrams comparing the shadow impact of the compliant and proposed scheme

Source: Wardle

Views

As shown in **Figure 7** and **Figure 8** above and **Figure 12** below, the additional height compared to a compliant scheme is not substantially noticeable from the surrounding streetscape. Moreover, the additional height does not obstruct any significant views. The additional height also does not obstruct views to any buildings that would not already be obstructed by a compliant scheme. Further, the proposed scheme is visually compatible with the height and scale of a potential development on the adjacent site. While it is slightly higher, given the site is essentially located on two street corners, the minor additional height serves to reinforce the street corner within the streetscape.



Compliant Envelope - Hay Street



Proposed Envelope - Hay Street

Figure 12 Photomontage comparison view of compliant and proposed scheme from Hay Street

Source: Wardle

Consistency with Surrounding Context

As discussed in **Section 4.1.1** and shown in **Figure 9**, the proposed 55m building height is consistent with multiple surrounding developments within the site's vicinity. As such, given that there are no site-specific adverse environmental impacts arising from the additional height, the acceptability and appropriateness of the height variation is reinforced by the precedents and presence of existing surrounding building heights up to 55m.

4.2.3 Consistency with Objects of the EP&A Act

An assessment against the proposed development's consistency with the objects of the EP&A Act is set out in **Table 2** below.

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 development promotes the social and economic welfare of the Chinese community through the provision of publicly accessible flexible and subsidised community and education spaces in the podium. The social welfare of the Chinese community is further promoted by incorporating Chinese elements into the design, including the tower form shaped like traditional Chinese objects and use of red materiality that positively contributes to the Haymarket/Chinatown SCA.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	As above, the proposed development will provide community space to contribute towards the social and economic sustainability of the Chinese community and the broader Chinatown and Haymarket area through its revitalisation. The proposed development does not result in any significant environmental impacts. The proposed height variation will facilitate an economically sustainable and feasible development.
(c) to promote the orderly and economic use and development of land	The proposed redevelopment of the site with the additional 5m in building height allows for a community space to be provided in line with Council's desires set out in the Haymarket and Chinatown Revitalisation Strategy, and as referenced in Council's pre-DA feedback. The proposed development is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of the land.
(d) to promote the delivery and maintenance of affordable housing	The proposal will promote the delivery and maintenance of affordable housing through the payment of an affordable housing contribution subject to Clause 7.13(2C)(b)(ii) of the SLEP 2012. This clause imposes a contribution levy applying to 1% of the total floor area of the development that is intended to be used for non-residential purposes, for which the contribution amount is specified in the City of Sydney's Affordable Housing Program (the rate applicable to the period from 1 March 2024 to 28 February 2025 is \$11,176.22 per sqm of gross floor area).
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal will not have any impact on threatened species or ecological communities, including the biodiversity values of the Wrights Creek riparian corridor.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The proposal has been designed to sensitively respond to the adjoining Bank of China local heritage item, as detailed in Section 4.1.1 .
(g) to promote good design and amenity of the built environment	The proposed development has been designed by renowned architects Wardle and incorporates feedback from two pre-DA feedback sessions with Council, in turn promoting good design. The additional height has also been designed to break the tower's mass into single storey elements with Chinese cultural significance and thereby will have a positive impact on the Haymarket/Chinatown SCA, altering a neutral building into a highly contributory one that enhances and

Object	Comment
	interprets the area's cultural heritage in an appropriate and architecturally exciting work.
	The additional height also results in limited shadow impacts when compared to a compliant envelope, as detailed in Section 4.2.2 .
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, can comply with the requirements of all relevant BCA standards, SLEP DCP 2012 and the SLEP 2012 and promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal, however, the proposal has adhered to the required planning processes for the site and scale of development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

5.0 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 4.3 of the *SLEP 2012* is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard. The extent of the building height variation relates to the upper 5m of the building, and is a result of the additional community space that has been provided at level 2 on the basis of Council's identified demand for such space to be delivered in the Haymarket/Chinatown SCA.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of clause 4.3 of the *SLEP 2012* as:
 - The 5m exceedance to the height limit is generally consistent with the outcome achieved on a number of other developments in the vicinity of the site, therefore being appropriate to the condition of the site and its context.
 - The podium and street wall heights, being the parts of the site that are particularly sensitive to height impacts have either been reduced in height or provided with an appropriate height and designed to ensure a general consistency with the prevailing street wall heights.
 - The additional height does not result in any clearly visible additional scale compared to a compliant development outcome and therefore is appropriate to the condition of the site and its context.
 - The podium has been designed to sympathetically respond to the adjoining Bank of China heritage building through the reduction or sensitive increase in its street frontage heights and by stepping back the upper podium level to ensure an appropriate height transition is achieved.
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The proposed development includes community uses in response to demand identified in the Haymarket and Chinatown Revitalisation Strategy, as well as in Council's pre-DA feedback from the second pre-DA meeting for the project that took place on 12 November 2023.
 - The proposed development is subject to unique site constraints which limit the ability to utilise the floor space available to the site, which is further limited given the provision of substantial community space that is being provided in line with within Council's identified demand and further community consultation.
 - The proposed additional height does not result in any adverse overshadowing impacts.
 - The additional height proposed does not result in not substantially noticeable and does not obstruct any key views compared to a compliant scheme.

Therefore, the consent authority can be satisfied that there are sufficient grounds for the variation to the building height development standard as proposed in accordance with the flexibility allowed under clause 4.6 of the *SLEP 2012*.