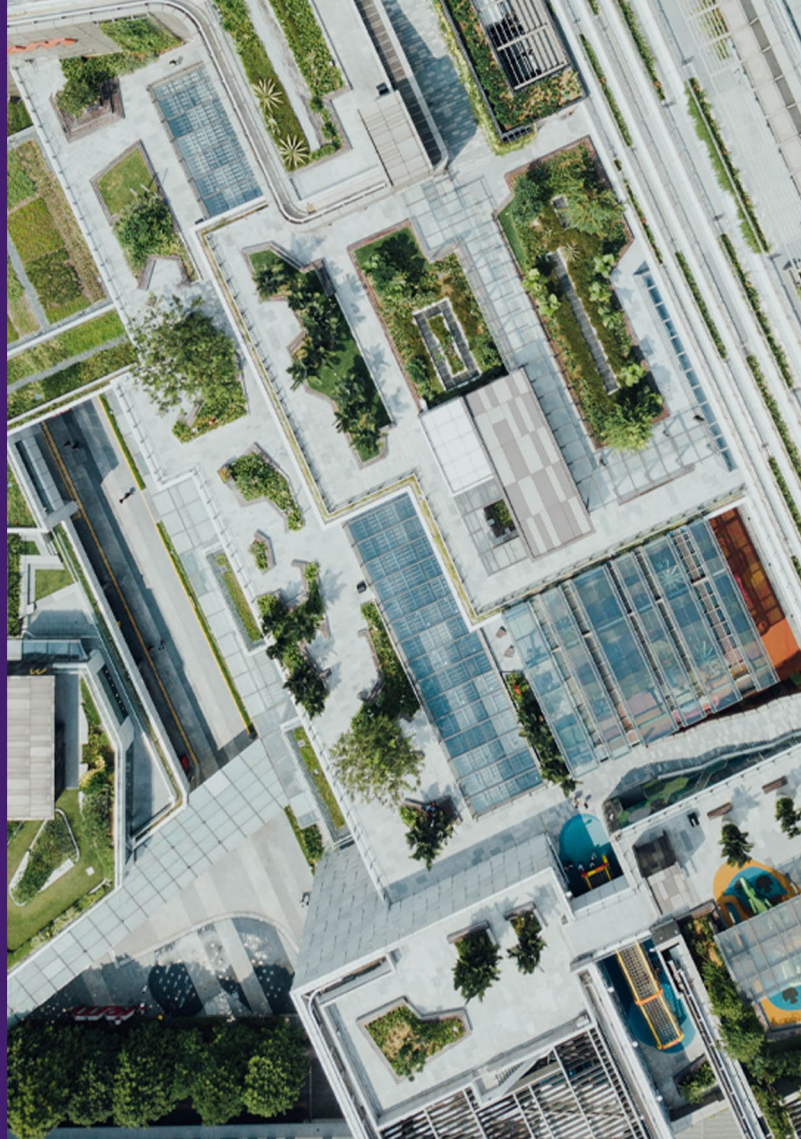


Attachment C

Clause 4.6 Variation Request - Height of Building



93-97 Macquarie Street, Sydney NSW 2000

Updated Clause 4.6 Variation Request
- Building Height

On behalf of Macquarie St
Development Pty Ltd

02 June 2025

The Planning Studio acknowledges the traditional custodians of the lands + waters of Australia, particularly the Gadigal People on whose traditional lands our office is located, and pay our respects to Elders past, present + emerging. We deeply respect the enduring Connection to Country + culture of Aboriginal and Torres Strait Islander peoples and are committed to walk alongside, listen + learn with community as we plan for equitable, sustainable, generous, and connected places. Always was, Always will be.

Project Director

Kate Bartlett

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Revision	Revision Date	Status	Authorised	
			Name	Signature
V1	17 November 2023	Draft	Kate Bartlett	
V2	23 April 2024	Final	Kate Bartlett	
V3	02 June 2025	Post-Lodgement	Kate Bartlett	

* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

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1 Introduction

This Clause 4.6 Variation Request seeks to allow a variation to the Height of Buildings development standard associated with the Development Application at 93-97 Macquarie Street, Sydney NSW 2000 (the site).

The DA seeks approval for:

- Demolition of existing 'Stamford Hotel' 1990s building;
- Adaptive reuse of the existing Health Building for new restaurant (B1 and Lvl 00) and commercial uses (Lvl 01 and 02) for a total of 917m²;
- New development tower on remainder of site, incorporating:
 - Lower ground and ground floor retail uses facing Macquarie Street;
 - Public right of way and outdoor courtyard between Macquarie and Albert Street and residential lobby at Lvl 00;
 - 15 storey residential flat building with 68 units comprising:
 - 5 x 1-bedroom units;
 - 30 x 2-bedroom units;
 - 32 x 3-bedroom units; and
 - 1 x 4-bedroom unit (penthouse).
 - 5 levels of basement including residential and commercial car parking, motorcycle and bicycle parking, waste storage and collection, EV charging and end of trip facilities.
 - Communal indoor and outdoor areas on the level 07 podium facing Macquarie Street; and
 - Plant, lift overrun and PV cells on rooftop levels 16 and 17.

The Clause 4.6 Variation Request seeks to vary one development standard within the Sydney Local Environmental Plan 2012 (SLEP2012):

- Clause 4.3 – Height of Buildings

This Clause 4.6 Variation Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and existing building, and as such, is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliances, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of SLEP 2012, despite the non-compliance with the numerical standard in Clause 4.3, and therefore compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- Will deliver a development that is appropriate for its context, despite the numerical breach to development standard 4.3, and therefore has sufficient environmental planning grounds to permit the variation.



As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the SLEP 2012.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

SLEP2012 Clause 4.6 Exceptions to development standards of the reads as follows:

1. The objectives of this clause are as follows—
 - a. to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - b. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
2. Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
3. Development consent must not be granted to 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.

Note—

The Environmental Planning and Assessment Regulation 2021 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 paragraphs (a) and (b).

4. The consent authority must keep a record of its assessment carried out under subclause (3).

3 The Development Standard to be varied

This Clause 4.6 Variation Request has been prepared in a written format, seeking to justify the variation to the following development standard in the SLEP2012:

- Clause 4.3 (Height of Buildings) – which permits a maximum Height of Buildings of 55m. Refer to the Figure below.





Figure 1: Height of Buildings SLEP 2012 map extract (NSW Planning Spatial Viewer)

4.3 Height of buildings

- 1) 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.
- 2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Note—

No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.



- 2A) Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.

4 Extent of Variation to the Development Standard

The subject application proposes a maximum building height of 57.54m, which represents a maximum 2.54m or 4.6% variation to the height control. This greatest extent of breach occurs at the north-west corner of the building where the top of the building (RL70.05) sits 2.54m above the 55m height plane as it steps down across the site from east to west based on the calculation of 'existing ground level'.

The proposed building still remains largely within the approved envelope, noting that the approved envelope is also proposed to be modified under a separate Modification Application to be consistent with the Detailed DA.

Other building elements that do not comply with the 55m height control (but to a lesser extent) are outlined below

- Upper Roof – The upper roof is a total of 315m² in size and is generally rectangular in shape. This part of the building is exclusively used for plant and does not contain any floor space. The corners of this area vary in height noncompliance from the greatest at a 2.54m breach, down to a 1.855m breach (3.37%), and 1.125m breach (2.04%). The fourth corner is below the height plane.
- Lower Roof – This area is roughly L shaped and is 114m² in size and has the penthouse apartment beneath it. At its worst, this plane exceeds the maximum height limit by 1.36m (2.47%) above the height plane. Whilst a small element of the penthouse ceiling is above the 55m height control, none of the GFA of the penthouse sits above the height control.

The Figures below show the building elements that sit above the 55m height plane, none of which contain any GFA.

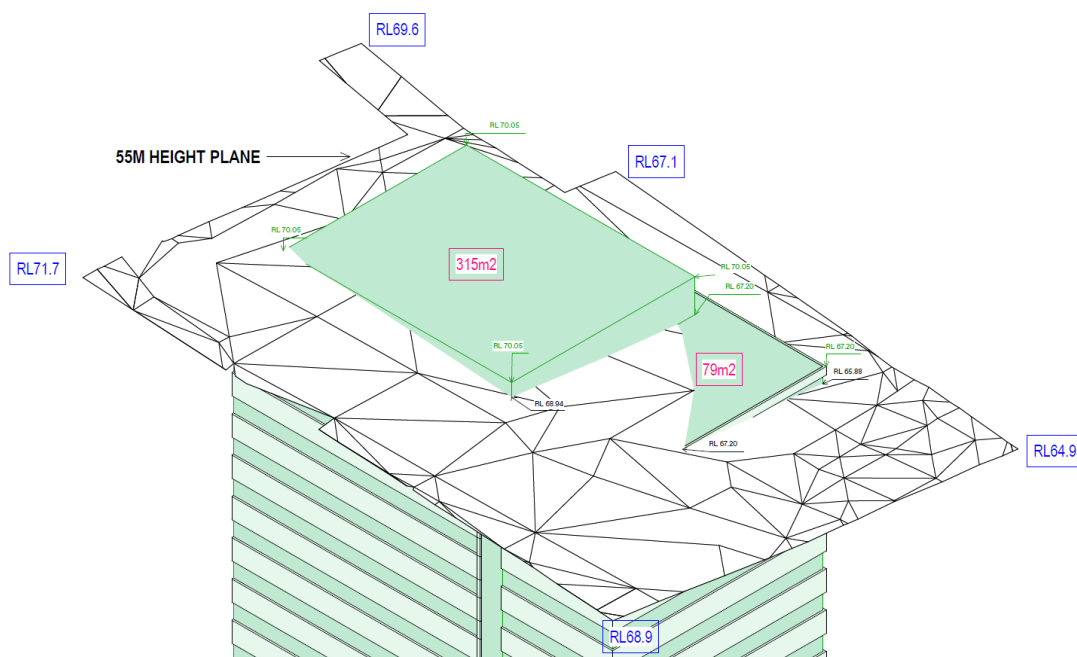


Figure 2: Building Height Compliance North East View (BVN)



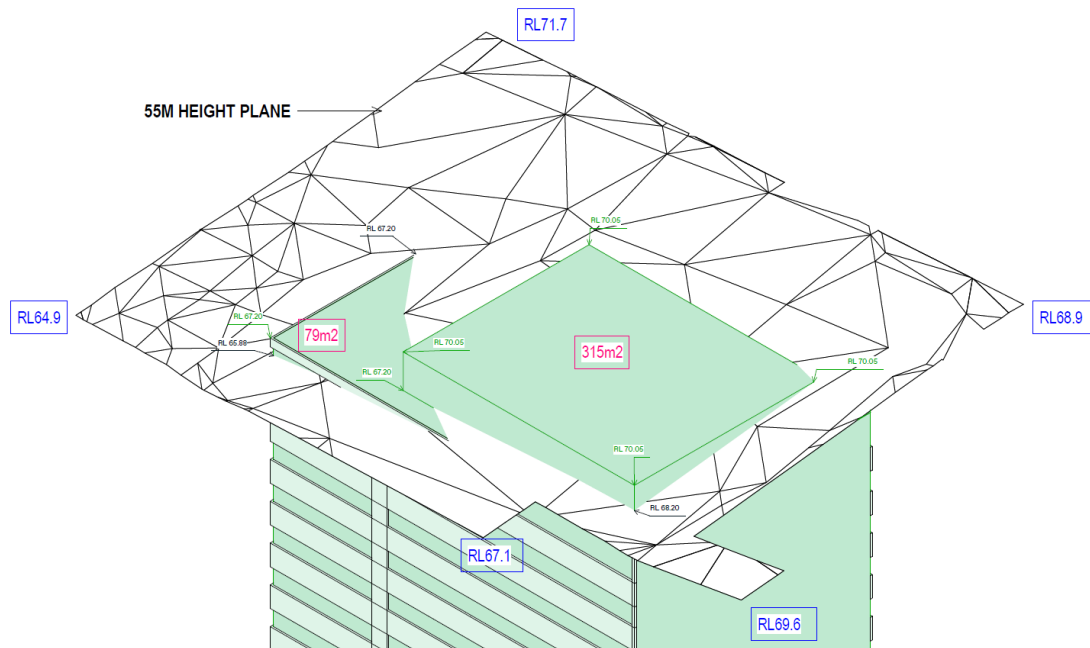


Figure 3: Building Height Compliance South West View (BVN)

This variation assumes that 'existing ground level' has been calculated based on existing survey points across the site and extrapolated to 55m in height. Noting the findings of *Tony Legge v Council of the City of Sydney* [2016] NSWLEC 1424, *Stamford Property Services Pty Ltd v City of Sydney* [2015] NSWLEC 1189, and *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070, this approach seeks to place the building in its context, rather than relying on the present built form of any existing development on the site. This is the approach that has historically occurred for the subject site given its existing development and 5-storey basements on site, and was previously validated by the Court.

It is noted that the methodology employed in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 for measuring height has not been employed for the subject site, given the subject site has a different built form circumstance, with an excavated basement below ground, and its CBD location.

The exceedance of the building height control is largely driven from two environmental planning grounds that have evolved since the Concept DA approval in 2020:

- Introduction of National Construction Code 2022 and its implications for floor-to-floor levels in high-density residential development related to servicing, insulation, and other building tolerances between levels. In particular, the required allowances for flush thresholds to balconies, integral set downs to wet areas, acoustic and thermal insulation requirements, coordination of hydraulic services, and minimum 2700mm ceilings to habitable spaces in residential areas. It has also forced an increase in height of plant on the roof due to required amendments to the services strategy, and additional acoustic attenuation of plant room equipment with taller screening; and
- Updated detailed flood modelling, which demonstrated the need to increase the finished floor level of the future ground level above the current 'existing ground level'.

5 Objectives of the Standard

The objectives of the Standard 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.

6 Assessment

6.1 Clause 4.6(3)(a) – compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the height standard is unreasonable and unnecessary as the objectives of the Height of Buildings development standard are achieved notwithstanding non-compliance with the numerical standard (Wehbe 1# test):

As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.

Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]–[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:

- Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- Test 3: The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- Test 4: 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; or
- Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.



These five ways to demonstrate that compliance is unreasonable or unnecessary are not exhaustive, and it may be sufficient to establish only one way.

With respect to the subject application, we consider that the proposed development meets the requirements of Wehbe Test 1 and therefore compliance with the development standard is unreasonable and unnecessary when considered holistically with the development outcome being sought.

6.2 Objectives of the standard are achieved notwithstanding non-compliance with the standard (Wehbe#1)

6.2.1 Wehbe Test 1 – Objectives of the Standard are achieved

The proposal will be in the public interest as it meets the objectives of the building height development standard as follows:

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

Key to the design proposition of the competition winning scheme from an overall development perspective is to deliver an appropriate response to the site's context. This includes considering the natural systems of the harbour, Indigenous and colonial histories, and the evolving contemporary urban context.

BVN utilised a clear massing strategy to simplify the Concept DA envelope into a series of clear masses that respond to different urban scales, proportions and height datums surrounding the site. This strategy articulates the Health Department building as a legible mass held separate to the new development. The space created between the masses holds a new landscaped 'room' and through site link that enriches the pedestrian experience of Macquarie St and its link down through Albert St to Circular Quay.

Materiality is carefully considered to reference the sandstone foundations of the site and extend the materiality from the older buildings in the precinct. An elegant, lighter tower form opens to the harbour views and breezes optimising the amenity of the new residences.

The averaging of the western podium creates a sympathetic and non-obtrusive backdrop to the Police and Justice Museum west of the site. This aligns to the datum of Transport House. Along Albert Street the building mass breaks down into discrete elements that are comparable in mass and form to the adjacent heritage buildings.

The tower form is articulated into two distinct masses delineated by a deep shadow or 'scoop' between the northern block, and the southern which relates to width and proportions of the podium below. The two masses further distinguished by double height articulation to the top levels of the eastern block that finishes the building, and incorporates the top level plant areas.

As demonstrated in the above description and demonstrated in the Design Report accompanying the application, the proposal is the result of a context driven design which responds to the broader context of the site, despite the small breach to the building height control for a small portion of the tower plant level and penthouse ceiling.

The additional height does not result in additional amenity impacts on adjoining or adjacent properties, nor will the relatively small breach of between 1.125m and 2.54m at the top of the tower be perceptible from the public domain. The proposed non-compliance does not result in a building which exceeds the Sun Access Plane for the Royal Botanical Garden.



Notwithstanding the additional height proposed, the development still presents the same to the surrounding streets as detailed in the Figures below, and the overall height of the detailed development proposal is appropriate to the condition of the site and its context.

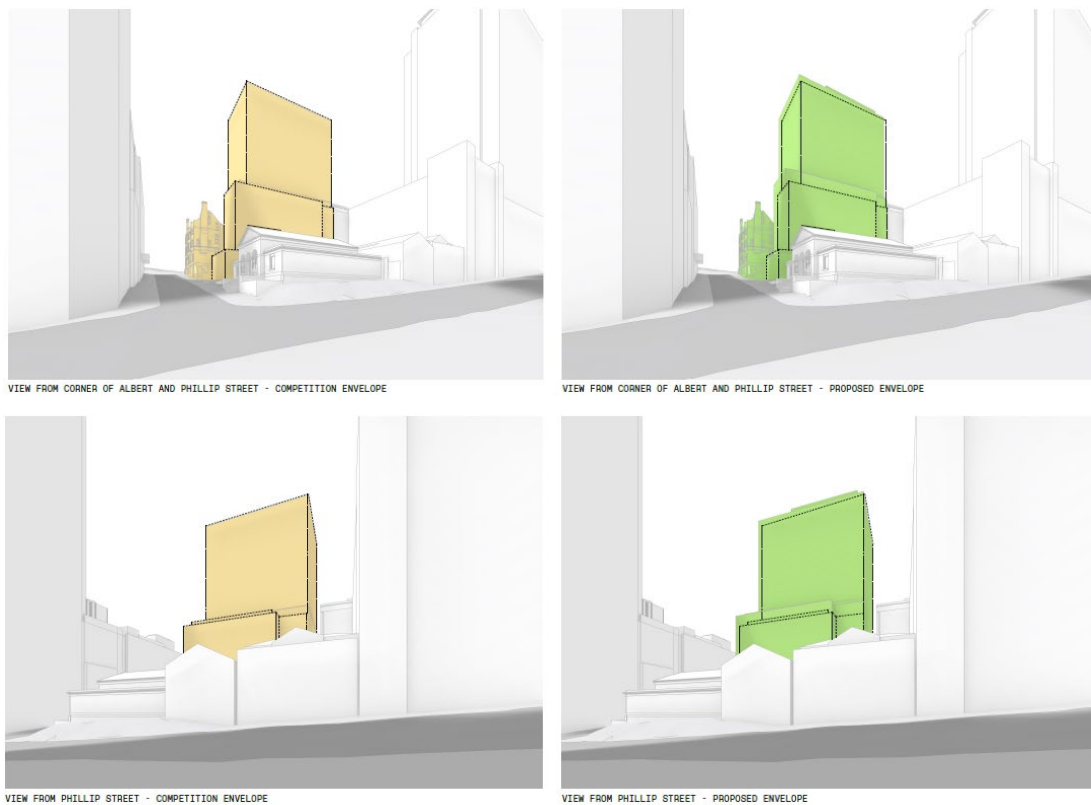


Figure 4: Proposed Building Envelope and Design Competition Comparison (BVN Design Report)

Additionally, further images are provided below that show the views of the site from surrounding areas, establishing the existing context pre and post development. As demonstrated below and in the supporting Visual Impact Assessment, the proposed building height is appropriate to the condition of the site and its context.



Figure 5: View of building pre and post development, showing site and surrounding buildings - view from Sydney Conservatorium of Music (Urbaine)



Figure 6: View of building pre and post development, showing site and surrounding buildings - view from Royal Botanical Garden (Urbaine)



Figure 7: View of building pre and post development, showing site and surrounding buildings - view from Royal Botanical Garden (Urbaine)



Figure 8: View of building pre and post development, showing site and surrounding buildings - view from Circular Quay, Manly Ferry (Urbaine)

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

The development contains a state listed Health Department building, and the site is within the Macquarie St Special Character Area, which is also recognised as a nationally significant streetscape. Understanding the history and character of Macquarie Street, Albert Street and the taller built forms of the city has driven the design to create a cohesive and complementary civic composition 'stitched' into its context.

The proposal has been carefully designed to enable appropriate conservation of the Health Department building- enabling new uses and a new engagement with the city. Openings and entries in the new building borrow from those in the existing building, particularly along



Macquarie Street where the arched form of the Health Department Building entry is re-imagined to mark entry into the carved sandstone podium of the new residential building.

The current street wall to Macquarie Street north of the site has consistent setbacks, built form articulation, material and scale that extends from north of Bridge Street to the adjacent Transport House. As the existing Health Building is more modest in scale and material, the role of the new building is to extend and terminate the predominant street wall.

Consideration of height and building base datums and material make a clear reference to the adjacent Transport House. Building separation to the Health Building allows the character of Macquarie Street to 'reset' from this point and north of Albert Street. Refer to the Figures below from the BVN Design Report visually articulating this design driver.

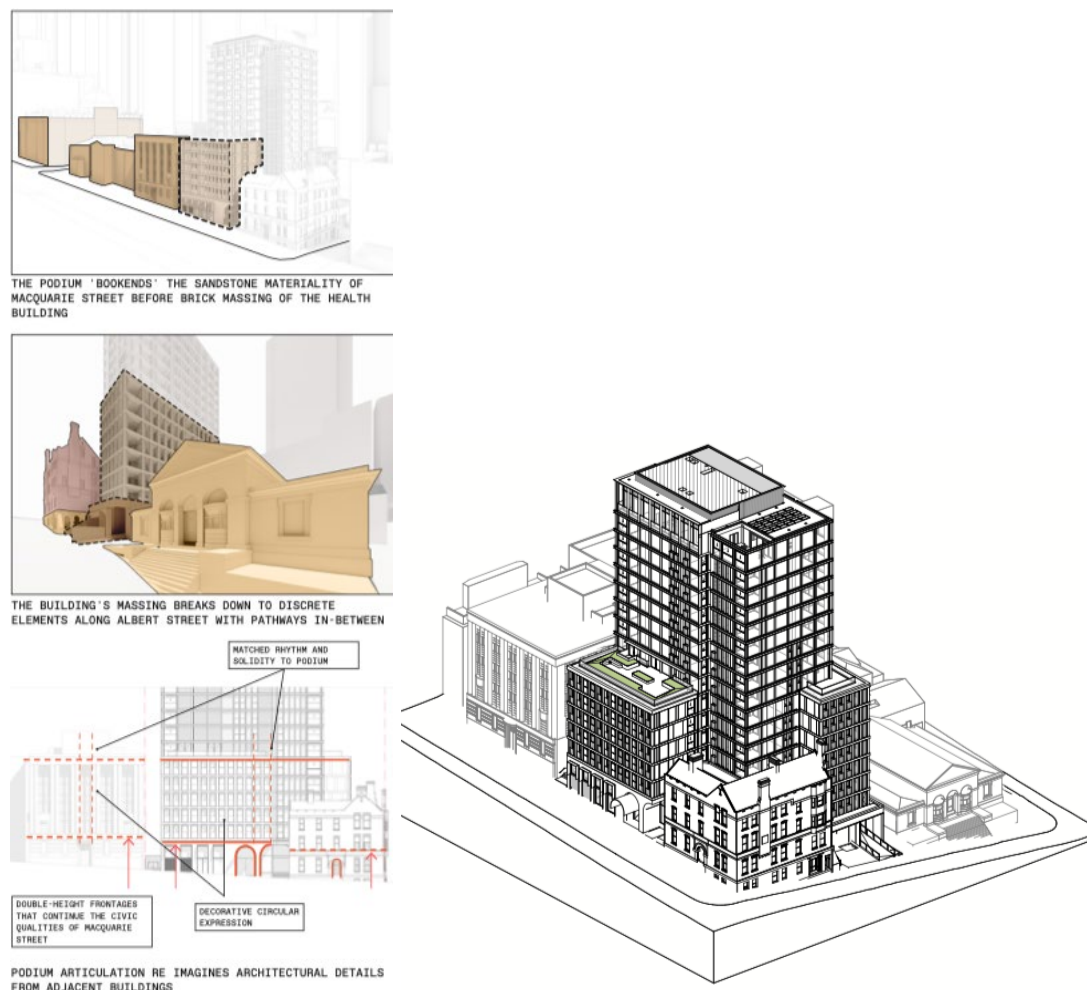


Figure 9: Proposed building height transitions with surrounding heritage items (BVN Design Report)

The proposed approach engages with the established 'boulevard' character of Macquarie Street while mending the urban composition and improving the legibility of the heritage forms on Albert Street. The building's massing breaks down into a discrete element comparable in height and proportion to the western elevation of the (now detached) Health Building. Its mass is further articulated as a podium of complementary scale and materiality to both the Police Museum and the base of the Health Building.

The additional height at the top of the tower will not impact the adjoining heritage items as the proposal's podium is the primary design device which ties the future building to its



adjoining buildings. The minimal extent of variation to the height control also ensures the anticipated height transitions between the new development and heritage items are retained.

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

This objective is not relevant as the proposal is within Central Sydney. However, a detailed analysis of the building height impacts with respect to view sharing is outlined in **Section 6.3.2** of this Clause 4.6 Variation Request.

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

The proposal is on the edge of Central Sydney with significantly taller buildings to the west of the subject site. As such, the proposal building height results in an appropriate transition in building height to the Royal Botanical Gardens which is the east of the site. Critically, the proposed non-compliance does not result in a building which exceeds the Sun Access Plane for the Royal Botanical Garden.

The relationship of the proposed building to the Sun Access Plane is shown below.

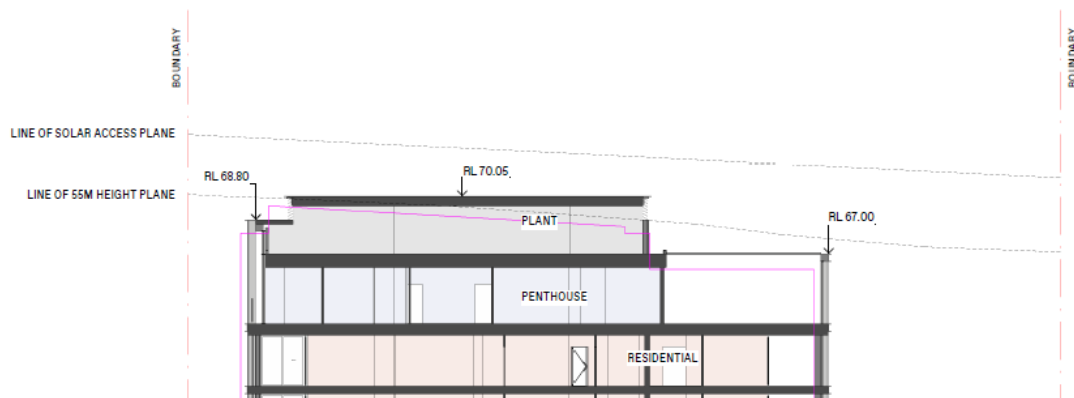


Figure 10: Extract of building section showing compliance with Solar Access Plane (BVN Design Report).

Further, the building height variation is of a minor nature considering the building heights in the immediate surrounds, including the new developments adjacent Circular Quay directly to the west and south.

The variation to the building height will not have meaningful impact to the height transitions from Central Sydney and Green Square Town Centre to adjoining areas established through the planning controls.

Objective (e) in respect of Green Square—

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

Not applicable.



6.3 Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

Clause 4.6(3)(b) of the SLEP 2012 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. 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 (*Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The particular environmental planning grounds relevant to the proposed minor height variation are partially driven by the need for compliance with the requirements of the Design and Building Practitioners Act that came into effect in 2022, after the Concept DA was approved in 2020, including:

- The requirement to increase floor-to-floor levels to meet updated requirements for servicing, insulation, and other building tolerances between levels. In particular, allowances made for flush thresholds to balconies, integral set downs to wet areas, acoustic and thermal insulation requirements, coordination of hydraulic services, minimum 2700mm ceilings to habitable spaces in residential areas;
- The need for an increase in height of plant on the roof due to required amendments to the services strategy, and additional acoustic attenuation of plant room equipment with taller screening; and
- Updated detailed flood modelling, which demonstrated the need to increase the finished floor level of the future ground level above the current 'existing ground level'.

In addition, the aspects of the development that are non-compliant with the building height control do not create any additional environmental impacts such as overshadowing, acoustic privacy or view loss beyond what a compliant height would create. A detailed analysis of the imperceptible solar and view loss impacts of the proposed development's height breach, compared to the originally approved (and strictly compliant) building envelope is provided below.

6.3.1 Solar Analysis

The impact of the additional height is negligible on adjoining and adjacent land. The additional overshadowing generated by the height above the control falls exclusively on the vehicle carriageway of surrounding roads and inaccessible rooftop areas utilised for plant. The outline in red is the competition envelope (which complied with the maximum height control), and the green is the shadow cast by the proposed building.



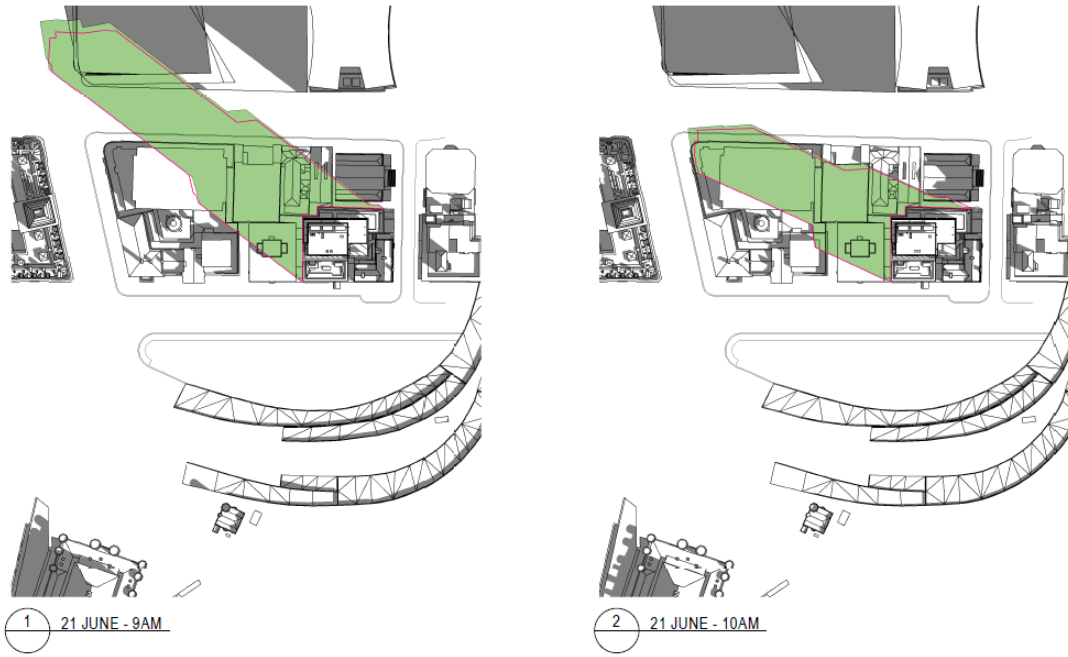


Figure 11: Overshadowing at 9am and 10am (BVN)



Figure 12: Overshadowing at 11am and 12pm (BVN)

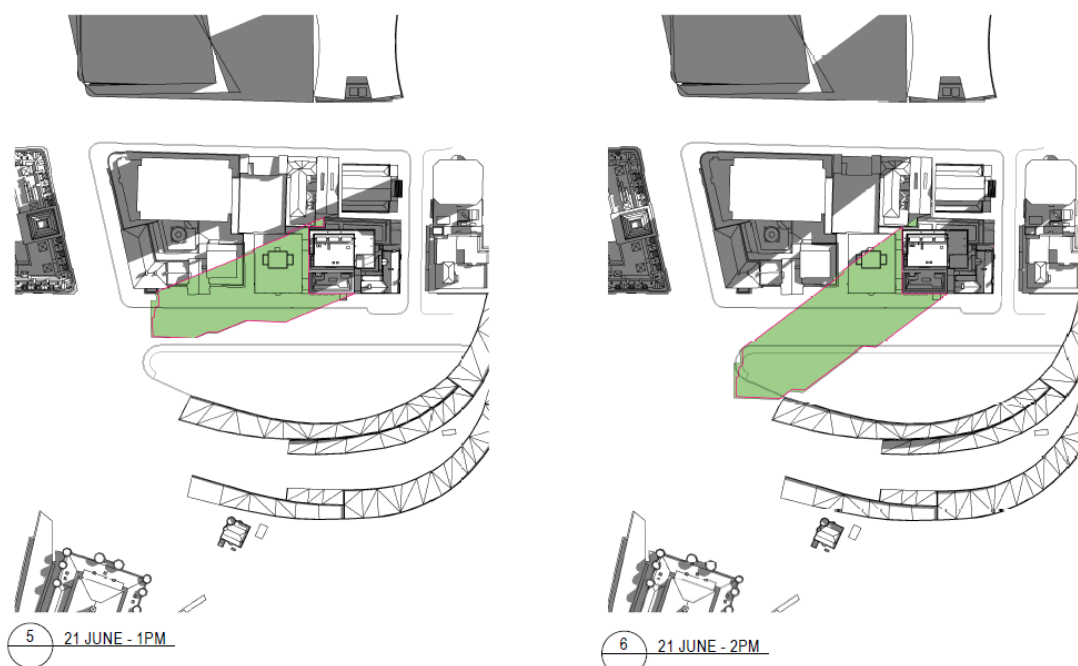


Figure 13: Overshadowing at 1pm and 2pm (BVN)

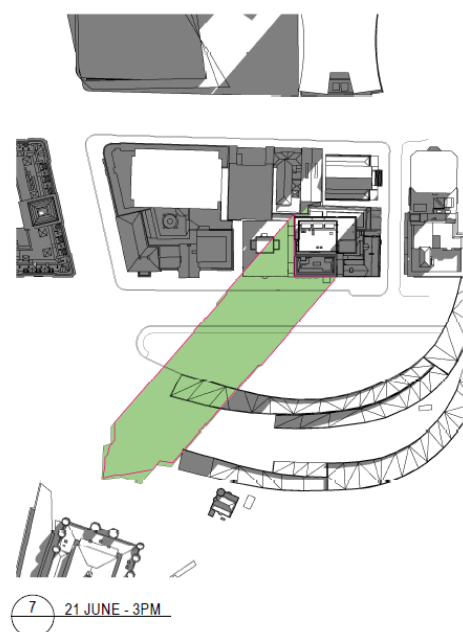


Figure 14: Overshadowing at 3pm (BVN)

Full size images of the above and sun's eye view are also provided in the architectural drawings accompanying the application.

As detailed in this variation request, the proposed additional overshadowing will occur over existing vehicular carriageways of streets and inaccessible rooftop plant, resulting no amenity or environmental impacts from the development beyond one that strictly complies with the building height control.

6.3.2 View Sharing

The application was accompanied by a detailed Visual Impact Assessment Report prepared by Urbaine Design Group (October 2023), who also provided a further report during the assessment of the DA with further analysis of the impacts from the



Intercontinental Hotel (May 2025) given that view impacts to the Intercontinental Hotel and Astor Apartments was a consideration in the previous Court case; *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC.

This analysis has reviewed the view impact of the proposed development (including building height breach) compared to the approved building envelope for the following buildings:

- Intercontinental Hotel (117 Macquarie Street);
- Royal Automobile Club (89-91 Macquarie Street);
- The Astor Apartments (123-125 Macquarie Street);
- AMP Tower (33 Alfred Street); and
- Apartment Building (2 Phillip street).

A summary of the view impacts and assessment against relevant principles established under the *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 (Tenacity Principles) court case has been provided below. Generally, where some impact on views over the Botanical Gardens are impacted, in accordance with the Tenacity Principles, they are considered to be of less significant landscape components given the importance of the overall precinct. Any views impacted from these buildings are generally of the Botanic Gardens and some Harbor elements, rather than the more iconic views such as the Harbour Bridge or Opera House.

It is also noted that other views where a 'severe' classification has been identified should be read alongside the *Furlong v Northern Beaches Council* [2022] NSWLEC 1208 judgement, which stipulates that views obtained within the whole of any residence should also be considered. In this instance, the worst-affected locations have extensive and uninterrupted views to the east, of high-value and iconic elements, not impacted by the new proposal.

Intercontinental Hotel (non-residential)

Principle 1

The view analysis has detailed that despite impacting some northerly views at mid-levels of the Intercontinental Hotel, the view lost compared to the approved building envelope is generally of the sky and of 'low value' within the CBD and Harbour context.

The views impacted at the taller levels of the Hotel – generally above level 17, where the minor additional building height compared to the envelope can be viewed (e.g. Room 2125) is of slight water and harbour front views to the Botanic Gardens.

Principle 2

North facing rooms at in the mid-levels of the building are slightly further affected compared to the approved envelope. This view is across the Intercontinental Hotel's side boundary. The Tenacity Principle 2 outlines that often, maintaining views across side boundaries is unrealistic.

Principle 3

The views are from Hotel Rooms, which are not defined as a type of "residential accommodation" and therefore strictly speaking the Tenacity Principles do not apply. However the *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC court case recognised the value that is associated with having views from hotel rooms. As



the view loss only relates to sky views (and some waterfront) when compared to the approved building envelope, the loss of view is most often determined to be negligible. The view loss from some rooms at taller levels (e.g. Room 2125) is categorized as 'moderate' (refer to Figure below).



Figure 15: View impact comparing approved and proposed model Room 2125 (Urbaine)

Principle 4

The proposal's impact on the Hotel is considered reasonable as the views impacted from the height breach, compared to the approved building envelope, are generally negligible and where identified as 'moderate', the rooms will still maintain appropriate views towards the harbour, botanic gardens, Harbour Bridge and skyline.

2 Phillip Street

Principle 1

The views impacted at ones achieved at the highest levels of the building only and are of sky views to the south-east.

Principle 2

The views are not obtained across side boundaries, but the building's Albert Street frontage looking to the south-east.

Principle 3

Whilst the impact of the original Concept DA was severe, the additional impact from the proposed building height breach is negligible given it only affects minor sky views for taller levels of the building, with significant skyline retained.

Principle 4

The proposal's impact on the Hotel is considered reasonable as the views impacted from the height breach, compared to the approved building envelope, are generally negligible and these rooms will still retain general sky views compared to the approved envelope.

The Astor (123-125 Macquarie Street)

Principle 1

The views affected in the Astor Apartments, compared to the approved envelope, will be a small portion of the sky, with general views of the wider skyline retained.



Principle 2

The loss of this small area of sky view will affect north facing rooms at the mid and high level. The view lost is between buildings, across the Sydney CBD.

Principle 3

The impact to the affected views is negligible given good sky views are maintained to the north.

Principle 4

The view impact of the proposed development's additional height is therefore considered acceptable. The view loss should be considered alongside other available views from this location, as outlined within the Furlong v Northern Beaches Council [2022] NSWLEC 1208 judgement. Since extensive views are uncompromised to other parts of the precinct, this should be considered alongside the assessment of the visual impact in this direction.

Royal Automobile Club (89-91 Macquarie Street) (non-residential)

Principle 1

The views affected are minor additional sky view loss for south-facing windows at the upper floors of the RAC when compared to the approved concept envelope.

Principle 2

The views are obtained over the south-facing frontage along Albert Street and are not obtained across side boundaries.

Principle 3

The impact to the affected views is negligible given good sky views are maintained to the east and south-east, and the view is for a small portion of south-facing sky.

Principle 4

The view impact of the proposed development's additional height is therefore considered acceptable. The views also relate to a non-residential use.

The view loss should be considered alongside other available views from this location, as outlined within the Furlong v Northern Beaches Council [2022] NSWLEC 1208 judgement. Since extensive views are uncompromised to other parts of the precinct, this should be considered alongside the assessment of the visual impact in this direction.

AMP Tower (33 Alfred Street) (non-residential)

There are no additional impacts to the view loss at this building when compared to the views impacted by the approved concept envelope that was compliant with the building height control.

In conclusion, the minor non-compliant height is incorporated into the overall design of the building, ensuring that design excellence as demonstrated through the successful design competition process is preserved, despite the non-compliance with the numerical standard. The breach to the building height development standard is imperceptible compared to a strictly compliant development and is driven by particular environmental planning grounds relevant to the subject site.

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention.



For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.

7 Conclusion

The variation to the Height of Buildings development standard should be supported for the following reasons:

- The development achieves the objectives of the development standard in Clause 4.3 of SLEP 2012 in accordance with the Wehbe #1 test;
- There are sufficient environmental planning grounds to permit the variation to the standard under the circumstances; and
- Compliance with the height of buildings development standard is unreasonable or unnecessary under the circumstances and therefore the development is able to be granted consent.

