

CLAUSE 4.6 VARIATION REQUEST

APPENDIX J





August 2018

Clause 4.6 Variation Request

Floor Space Ratio Development Standard

Concept State Significant Development Application SSD 8875

Sydney Metro City & Southwest

Pitt Street North Over Station Development

Table of Contents

1.	Clause 4.6 Variation Request	3
1.1.	Overview of justification for FSR variation request	3
1.1.1.	Project background	3
1.1.2.	Summary of key arguments	3
1.2.	Clause 4.6 variation	5
2.	Development Standard to be Varied	7
2.1.	Clause 4.4 of the SLEP 2012	7
2.2.	Clause 6.4 of the SLEP 2012	8
2.3.	The land subject to this variation	8
2.4.	Site context	9
2.5.	Extent of proposed variation	9
3.	Justification for contravention of the development standard	12
3.1.	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	12
3.1.1.	The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)	13
3.2.	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	18
3.2.1.	Unreasonable floor space penalty from railway infrastructure	18
3.2.2.	Unique circumstances of the site influence the proposed development	19
3.2.3.	Compliant tower envelope results in no adverse impacts	20
3.2.4.	Design excellence maintained	21
3.2.5.	Transit Oriented Development and Sydney Metro legacy	23
3.2.6.	No adverse environmental impacts	23
3.3.	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	24
3.3.1.	Consistency with objectives of the development standard	24
3.3.2.	Consistency with the objectives of the zone	24
3.4.	Other matters for consideration	25
3.4.1.	Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning	26
3.4.2.	Clause 4.6(5)(b): The public benefit of maintaining the development standard	27
3.4.3.	Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence	27
4.	Summary and conclusion	28
	Figure 1 – Land use zone map excerpt (site boundary in red dash)	7
	Figure 2 – Site aerial photograph	9
	Figure 3 – Capacity of Sydney Metro by comparison to current suburban train lines	15
	Figure 4 – Capacity unlocked by the Sydney Metro project	16

1. Clause 4.6 Variation Request

1.1. Overview of justification for FSR variation request

This clause 4.6 variation request (clause 4.6) has been submitted as part of the Concept State Significant Development Application (SSDA) to the Department of Planning and Environment (DPE), on behalf of Sydney Metro. Specifically, this clause 4.6 application seeks to vary the maximum permissible Floor Space Ratio (FSR) regulated by the *Sydney Local Environmental Plan 2012* (SLEP 2012), as part of SSD 17_8875. This application relates to the over station development (OSD) of the northern portal of Pitt Street Station.

The proposed variation request is considered warranted given a unique set of circumstances which affect the development potential at the site, and the proposal is considered justified in regard to the various tests associated with clause 4.6 variation requests. When the circumstances of this case are detailed and assessed against the tests set out by clause 4.6, it is considered that the proposed FSR is an acceptable outcome.

1.1.1. Project background

On 9 January 2017, the Minister for Planning approved the Sydney Metro City & Southwest – Chatswood to Sydenham application lodged by Transport for NSW (TfNSW) as a Critical State Significant Infrastructure (CSSI) project with reference SSI 15_7400 (CSSI Approval).

The NSW Government identified that stations on the Sydney Metro City & Southwest project could be better integrated with the communities and public spaces around them. This included the construction of buildings on top of these stations and commercial, residential, community and retail opportunities.

The concept proposal capitalises on the Sydney Metro improvements by providing for additional residential capacity in location which is immediately proximate to new high-capacity public transport. Additional residential capacity in this location will align with the fifth Planning Priority in the Eastern City District Plan by providing housing supply in a location which has access to a level of jobs and services which is near unmatched anywhere across Australia.

However, the ability for the proposed project to contribute to the legacy of the Sydney Metro project in a meaningful manner is limited in this case by an overly prescriptive floor space control. This is seen as an unreasonable and unnecessary outcome at the site, given that the development does not result in any unacceptable adverse impacts, and the substantial economic, social and legacy benefits to be gained from the site. This has been further discussed throughout this statement.

1.1.2. Summary of key arguments

In the case of the over station development of the northern portal of Pitt Street station, there are a number of key reasons that capping development at the maximum listed FSR would be unreasonable and unnecessary in the circumstances. If this development is capped as required by the FSR development standard, it would constitute an adverse penalty on the development potential of a prime CBD site. This outcome would be of minimal benefit, and would inhibit the orderly and economic development of land. The key reasons behind the suitability of this development to exceed the FSR standard are further discussed below:

1. **Unreasonable floorspace penalty from public transport infrastructure** – By nature of the definition of Gross Floor Area (GFA) under the SLEP 2012, the proposed development is effectively penalised for providing a significant new piece of public transport infrastructure (being the Sydney Metro station) on the site. This is considered an unreasonable outcome, in which the development potential for uses

other than transport infrastructure is reduced through both the GFA calculated in relation to the transport infrastructure, as well as through the reduced accommodation floorspace available for OSD uses under the provisions of the SLEP 2012. This is despite the fact that the new world class Metro line through the Sydney CBD will provide a substantial ongoing uplift both to the existing transport capacity through Sydney, and through the transport capacity of the Sydney CBD precinct. The Metro OSD sites, including Pitt Street North, offer a strong potential for Sydney Metro to provide great spaces which work well within the context of Sydney, whilst providing land use and transportation together at a density commensurate with the new Metro Station.

2. **Unique circumstances of the site influence the proposed development** – The factors which require this FSR variation are unique to the site, and approval of the development is unlikely to set a precedent which could be easily replicated. The development incurs a ‘triple penalty’ as a result of GFA being counted towards the FSR calculation that would normally not be included. Firstly, the station concourse incurs attributable GFA that is unique to the site and reduces potential floorspace that could be attributed to the OSD development if no station was to be provided on the site. Secondly, residential storage is required to be provided in the podium level (and hence counted as GFA) due to the location of the station portal beneath the site. Finally, the available accommodation floor space above the ‘base FSR’ is reduced through the SLEP 2012 methodology by the inclusion of GFA for the station area, which does not accrue any bonus accommodation floor space despite delivering significant public benefits to the CBD. This is a unique situation and FSR concessions are considered warranted to optimise the land use transport integration outcomes of the site.
3. **Compliant building envelope results in no unacceptable adverse impacts** – A balanced evaluation of the various constraints of the results in a relatively slender building envelope capable of supporting slim tower forms. Noting that the land use in the envelope will remain permissible despite any enforcement of a lower FSR, this building form assists in minimising the environmental impacts. An assessment of the key potential environmental impacts of the proposal demonstrates this.
4. **Design excellence is maintained** – As part of this proposal, a robust framework has been provided to ensure that design excellence is maintained through the development process. By ensuring that a competitive selection process is retained through the provision of a Design Excellence Evaluation Panel, and providing a framework which places importance on the value of design excellence, the framework will work to provide a building form at the site which relates to the approved Metro Station, and strongly exhibits design excellence. This strategy has been provided at Appendix H of the EIS. On the basis that a pathway to design excellence has been maintained through the development process for Pitt Street North, despite not strictly following the requirements of clause 6.21 of the SLEP 2012, this variation nonetheless seeks for the 10 per cent design excellence bonus FSR to be incorporated in the development potential of the site through this variation as part of the concept SSD Application.
5. **Capitalise on public transport opportunity and contribution to the Sydney Metro legacy** – This development is one of the most visible legacies of the Sydney Metro project. The proposed concept SSD Application is a key part of this legacy, providing a clear landmark Northern entrance to Pitt Street Station. The development will also provide additional residential capacity in a location which is set to benefit from the additional transport capacity provided by the Sydney Metro project. By providing additional residential capacity in the Eastern City, the proposal will work to contribute to the creation of the 30-minute city, placing these dwellings within an area of near unmatched levels of jobs, services, transport and open space.

These key arguments have been fully detailed at **Section 3**.

1.2. **Clause 4.6 variation**

Clause 4.6 of the SLEP 2012 is the statutory mechanism which enables the consent authorities to grant consent to development which departs from a development standard imposed by the SLEP 2012. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including the FSR control, in order to achieve superior design outcomes which are in the public interest.

Clause 4.6 of the SLEP 2012 has been reproduced below:

4.6 Exceptions to Development Standards

(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 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.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
- (b) the concurrence of the Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*

-
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Consistency with common law

Additionally, the tests that are relevant to assessing a request to vary a development standard are contained in the following NSW Land and Environment Court cases:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7
4. *Moskovich v Waverly Council* [2016] NSWLEC 1015
5. *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179

In accordance with the statutory requirements, and as guided by the above case law, this clause 4.6 variation request:

- identifies the development standard to be varied (**Sections 2.11 and 2.12**)
- identifies the extent of the variation sought (**Section 2.4**)
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances (**Section 3.1**)
- demonstrates that there are sufficient environmental planning grounds to justify the variation (**Section 3.2**)
- provides an assessment of the matters that the Secretary is required to consider before granting concurrence (**Sections 3.3 and 3.4**), namely:
 - whether contravention of the development standard raises any matter of significance to the State or regional environmental planning;
 - the public benefit of maintaining the development standard; and
 - any other matters required to be taken into consideration by the Secretary before granting concurrence.

Once these matters have been addressed, it is open to the consent authority to be satisfied that pursuant to clause 4.6(4)(a):

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

This variation request should be read in conjunction with the Environmental Impact Statement (EIS) that accompanies the concept SSD Application in relation to the Sydney Metro Pitt Street North OSD.

2. Development Standard to be Varied

The development standard which is sought to be varied under this clause 4.6 variation request is the FSR standard, prescribed by clauses 4.4 and 6.4 of the SLEP 2012, which work to set the maximum permissible FSR at the site.

2.1. Clause 4.4 of the SLEP 2012

Clause 4.4 of the SLEP 2012 works to detail the objectives and the base FSR for land within the City of Sydney Local Government Area, and is to be read in conjunction with the mapping excerpt (as relevant to the site) at **Figure 1**. Clause 4.4 has been further detailed below.

4.4 Floor Space Ratio

(1) *The objectives of this clause are as follows:*

(a) to provide for 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.

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*



Figure 1 – Land use zone map excerpt (site boundary in red dash)

2.2. Clause 6.4 of the SLEP 2012

In addition to the FSR provided under clause 4.4, an additional quantum of floorspace is unlocked for the site by virtue of the use proposed in accordance with land covered by 'Area 2' of the FSR mapping. This is detailed at clause 6.4 of the SLEP 2012, and the relevant parts of the clause have been reproduced below for reference.

6.4 Accommodation Floor Space

(1) *A building that is in an Area, and is used for a purpose specified in relation to the Area in paragraph (a), (b), (c), (d), (e), (f) or (g), is eligible for an amount of additional floor space (accommodation floor space) equivalent to that which may be achieved by applying to the building the floor space ratio specified in the relevant paragraph:*

...

(c) Area 2, office premises, business premises or retail premises – 4.5:1,

(d) Area 2, residential accommodation, serviced apartments, hotel or motel accommodation, community facilities or centre-based child care facilities – 6:1,

...

(2) *The amount of additional floor space that can be achieved under a paragraph is to be reduced proportionally if only part of a building is used for a purpose specified in that paragraph.*

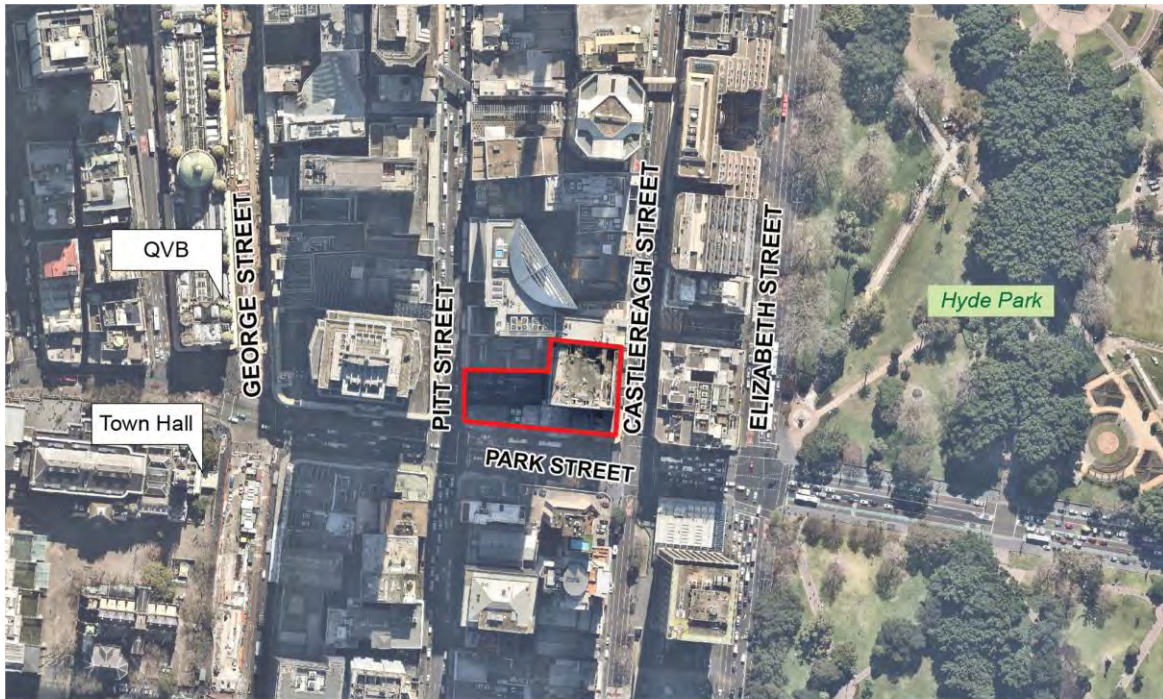
(3) *More than one amount under subclause (1) may apply in respect of a building that use used for more than one purpose.*


2.3. The land subject to this variation

This clause 4.6 relates to the following allotments which, together, are referred to as 175-183 Castlereagh Street, Sydney and outlined in **Figure 2**:

- Lot 1 in DP596474
- Lot 17 in DP1095869
- Lot 2 in DP509677
- Lot 2 in DP982663
- Lot 1 in DP982663
- Lot 3 in DP61187
- Lot 1 in DP74367
- Lot 3 in DP74952
- Lot 2 in DP900055
- Lot 1 in DP229365

The site has an area of 3,150 square metres. A full description of the site is included in Section 4.0 of the EIS submitted for this application.



 The Site

 NOT TO SCALE

Figure 2 – Site aerial photograph

2.4. Site context

It is relevant to consider the context of the site when evaluating the merits of a proposal which seeks to exceed a development standard through clause 4.6 of the SLEP 2012. Specifically, this site comprises a significant consolidated site in the Sydney Central Business District, which forms part of a transformative precinct within the south-eastern portion of the City.

In effect, the development above the Pitt Street Station portals comprises a centrepiece of this wider precinct which will work to reinforce the primacy and legacy of the Sydney Metro project. Sydney Metro will provide a substantial boost to transport accessibility into and through the Sydney CBD, with Pitt Street Station comprising part of the Chatswood to Sydenham stage of the overall future network. On the basis of this boost to public transport capacity, a future over station development at the site will be uniquely positioned to take advantage of the Pitt Street station development. This has been reiterated through the design development of the station, which has made detailed provision for a future OSD element above. On this basis, it is necessary to deliver a building form which delivers on this opportunity, enabling the delivery of a world class integrated station development at the site whereby the station and OSD elements work together to provide a seamless user experience.

2.5. Extent of proposed variation

In accordance with the SLEP 2012, and based on the scheme proposed as part of this SSDA, the maximum FSR permissible for the residential component comprises the sum of the follows:

- The 'base' FSR for the site of 8:1 (clause 4.4 of the SLEP 2012)
- Accommodation floor space FSR of up to 4.5:1 for office premises, business premises or retail premises and up to 6:1 for residential accommodation, serviced apartments, hotel or motel accommodation, community facilities or centre-based

child care facilities (clause 6.4 of the SLEP 2012), calculated based on the maximum accommodation floor space allowance

- Up to 1.4:1 (10 per cent above the sum of the base and accommodation FSRs) which is awarded when design excellence is achieved (noting that this clause is not applicable in the current proposal)

At the site, this would result in a provision of a maximum permissible FSR of 14:1 based on a scheme comprising residential and hotel accommodation only, comprising the base FSR as well as the potential bonus of up to a maximum of 6:1. This would be slightly reduced based upon the inclusion of the commercial office component of the indicative land use mix.

As the Design Excellence Framework (located at Appendix H of the EIS) includes an alternative process to a design competition to deliver design excellence, the 'bonus' FSR afforded in accordance with clause 6.21 of the SLEP 2012 does not apply.

Based upon the mix of land uses proposed (1,482 square metres commercial office; 33,416 square metres residential accommodation; 13,453 square metres hotel accommodation; 1,189 square metres station) and having regard to clause 6.4 of SLEP 2012, the maximum FSR available for the proposed development of the site is 13.81:1 (without the design excellence bonus), which equates to 43,521 square metres. This comprises:

- Base FSR: 8:1
- Accommodation Floor Space: 5.81:1

Should the land use mix be altered from that described above, the maximum FSR would also change in accordance with the provisions of Clause 4.4 and Clause 4.6 of SLEP 2012 as set out in Section 2.1.1 and Section 2.1.2 of this report.

As the Sydney Metro Chatswood to Sydenham project was approved in accordance with the Critical State Significant Infrastructure approval SSI 15_7400, the metro design was never required to contemplate FSR or any other development standard within the SLEP 2012, as development that is deemed CSSI is not bound by any Local Environmental Plans. However, by virtue of the definition of GFA, the future floor space associated with the station must be included in the calculations for the FSR of the overall development of the site.

The location of the station on the site has key implications on the floor space calculations for the OSD component under this application. Initially the floorspace of the station itself, to the extent that it is located within the site boundary, must be included as part of the FSR calculations. This equates to 1,189 square metres of additional GFA that is required to be included in density calculations. Combined with this is the legal requirement to include residential storage in the GFA calculations due to the storage being unable to be accommodated in a basement area, which equates to an additional 769 square metres.

In addition to the direct penalty imposed by the above there is a secondary reduction in GFA which occurs as a result of the inclusion of the station GFA, which does not attract any accommodation floor space bonus despite the significant public benefit arising from the station, in the calculation of the maximum FSR attainable having regard to the SLEP 2012 provisions. The GFA potential lost equates to 478 square metres.

Overall, the proposed FSR has been calculated on the basis of the sum of the following:

- the base allowable FSR of 13.81:1 based on the indicative land use mix
- an amount equivalent to the design excellence bonus of 1.38:1 based on the indicative land use mix
- an offset to the station floorspace, including impacts of that floorspace on the FSR calculations of 0.53:1
- an offset to the residential storage space of 0.24:1

On this basis, a total GFA of 50,309 square metres is proposed, which equates to an FSR of 15.97:1, which consists of the following elements:

- 33,416 square metres of residential floor space (including enclosed balconies)
- 13,453 square metres of visitor accommodation floor space
- 1,482 square metres of commercial floor space
- 1,189 square metres of station floor space
- 769 square metres of residential storage space

On the basis of the above, the proposed FSR of 15.97:1 exceeds the maximum FSR of 13.81:1 under the SLEP 2012 development standard by 2.16:1 (15.6 per cent). The proposed FSR is based on the indicative land use mix, which provides flexibility to allow for future changes to the land use mix to be assessed at the time of the future detailed SSD Application. Should the land use mix change as part of a future detailed SSD Application, the maximum FSR permitted under SLEP 2012 may change and consequently extent of the variation may also change. This would be subject to assessment of the future detailed SSD Application.

3. Justification for contravention of the development standard

3.1. Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSWLEC827 (*Wehbe*), Preston CJ identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. While *Wehbe* related to objections 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 because subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five ways outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (**First Way**)
2. The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**)
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**)
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 (**Fourth Way**)
5. 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 Way**)

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 irrespective of the non-compliance with the FSR controls, and accordingly justifies the variation to the FSR control pursuant to the First Way outlined in *Wehbe*, as will be discussed below at 3.1.1.

In the judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the standard was unreasonable or unnecessary, rather that the applicant's written request adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

3.1.1. The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)

Under the SLEP 2012, clause 4.4 has the following objectives in relation to the FSR development standard:

- (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.*

The concept SSD Application to which this clause 4.6 Variation Request relates seeks consent for a Floor Space Ratio which exceeds the specified rate under the SLEP 2012. As part of any such request, it must be demonstrated whether the development achieves the objectives of the development standard, despite a numerical non-compliance. On this basis, the proposed development has been assessed against each objective contained at clause 4.4 of the SLEP 2012.

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

The NSW Government has identified Sydney as Australia's finance and economic capital, containing half of Australia's globally competitive service sector jobs. It accounts for approximately 70 per cent of total NSW's economic output and over 20 percent of Australia's Gross Domestic Product (SGS Economics, from CSSI Project Application Report p21). Sydney's population is forecast to increase from 4.3 million to 6.2 million people by 2036, and employment is expected to increase from 2.1 million to 3.1 million by 2036.

The proposal provides additional housing to meet the requirements of the future community, additional visitor accommodation to support the tourism economy and additional office floor space to support the growth of jobs in the knowledge economy within the Sydney CBD. The subject site is ideally situated to provide capacity to support anticipated development needs across the employment, housing and visitor accommodation sectors based upon the significant increase in public transport services immediately available at the site.

It is also noted that, but for the penalties imposed on the site by the Metro Station beneath (in regard to residential storage GFA and Station GFA) and the proposed alternate avenue of achieving design excellence, the proposed density would comply with the SLEP 2012. Rather, it is the unique circumstances of the development, rather than substantial additional floorspace above the maximum, which has resulted in this non-compliance.

Accordingly, this objective is satisfied notwithstanding the variation to the development standard.

(b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic.

The subject site, by virtue of the delivery of the Metro Station in accordance with the CSSI Approval, will provide a significant boost to the public transport capacity of the broader Sydney CBD, and deliver a level of convenience, service and accessibility for the future OSD

that is unprecedented in Sydney or NSW. Accordingly, the subject site has a unique ability to accommodate a density and intensity of land use that partially exceeds the FSR controls which apply across the entire Area 2 precinct of the Sydney CBD without resulting in any adverse environmental impacts.

Initially, it is noted that the additional GFA being sought under this clause 4.6 for the purposes of the station floorspace and residential storage do not comprise any increase in the apparent density of the development. The station floorspace entirely comprises the ground floor and below ground station areas, while the residential storage is located within the volumetric podium space which has already been approved under the CSSI Approval.

The built form impacts of the proposed envelope are considered in detail in Section 8 of the EIS and the Design Report provided at Appendix I of the EIS. This assessment concludes that, subject to detailed design, future development within the proposed building envelope will not result in any unacceptable adverse impacts on the surrounding urban environment in terms of urban design, built form, overshadowing, residential amenity, wind impacts or impacts on utilities infrastructure.

The transport and traffic impacts of the proposed development are considered at Section 8.10 of the EIS and Appendix T of the EIS. The site is located within a busy CBD environment, with substantial pedestrian and vehicular traffic in the immediate vicinity of the site. The delivery of the Metro Station will significantly enhance public transit capacity within the Sydney CBD, providing increased opportunities for public transit utilisation and reducing the need for driving. Future occupants of the OSD will benefit from an unprecedented level of accessibility. This is in addition to the high level of walkability and direct access to employment, services and leisure that comes with a CBD-location. Accordingly, vehicular trip generation associated with the use of the future OSD is expected to be low and substantially reduced over the former vehicle generation at the site, which will have minimal impacts on the operation of the local road network. Based upon the public domain upgrades which will be delivered at the ground plane in association with the CSSI Approval, the site is well-located to accommodate additional pedestrian trips and the site is highly walkable.

Further to the above, it is noted that the proposed development of the site would have an FSR of 15.35:1 if the station and residential storage space was excluded from the calculation of FSR, which is a reasonable proposition given that it adds to, rather than detracts from, the infrastructure capacity of the Sydney CBD. This FSR is less than the maximum development capacity of the site (15.4:1) under a fully compliant scheme (absent the Metro Station) which maximises the accommodation floor space bonus and achieves design excellence in accordance with the SLEP 2012 provisions but does not provide any new infrastructure capacity. The proposed development is therefore considered to be entirely compatible with the capacity of the site from a development intensity perspective.

Accordingly, it is considered that the OSD will not result in any adverse impacts on the built form, land use intensity, vehicle or pedestrian generation on the site and therefore satisfies this objective notwithstanding the proposed variation to the development standard.

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

Transport Infrastructure

The proposed development has been proposed within the context of the wider Sydney Metro Chatswood to Sydenham CSSI project, which comprises a step change public transport project which aims to improve accessibility through the Sydney Central Business District. This is one of the key planned infrastructure projects in Sydney in the coming years and will have a direct positive impact on the public transport capacity of the Sydney CBD.

The proposed development will facilitate the creation of the Metro Station precinct, which will enable the NSW Government and Council to regulate private vehicle use in the city over the coming years, by providing better transport infrastructure and raising the public transport capacity of Central Sydney.

The benefits of the Chatswood to Sydenham Metro line are twofold. Initially, the Sydney Metro line will operate with a significantly increased capacity, in two directions on dedicated tracks through the Sydney CBD, with **Figure 3** providing a comparison of the Metro capacity, when compared to current Sydney Trains suburban lines.

Additionally, in repurposing existing rail lines for Metro, Sydney Metro will also work to free up additional spaces within the existing network for the growth of other suburban lines. Effectively, this is caused by a reduced requirement for lines to merge as they approach the CBD. This has been demonstrated visually at **Figure 4**.

The existing FSR provisions of SLEP 2012 for the site were established prior to the designation of the site as the location of the northern portal for the new Pitt Street Station. Accordingly, the underlying FSR controls do not account for the significant increase in transport infrastructure capacity which is to be delivered on the site as a result of the CSSI Approval (as well as the GFA required to be attributed for transport infrastructure purposes). Accordingly, the proposed variation to the development standard is considered to be minor in the context of the substantive increase in transport infrastructure capacity being provided on the site.

It is also noted that the intensity of the development is not increased under this application in and of itself, with the additional floorspace sought due to the floorspace requirements of the Metro Station in the form of the residential storage space, offset for the (largely underground) Metro Station concourse space, and a reduction in the maximum floorspace bonus afforded to the site due to the Metro Station. The only other component under which additional FSR is being sought is due to the proposed alternate avenue of achieving design excellence, which has been pursued so as to align with the broader approach for achieving design excellence across the Sydney Metro project as outlined in the CSSI Approval.

On this basis, it can be considered that the development, which has been proposed in conjunction with this program of wider public transport development, has been aligned with a substantial infrastructure capacity increase at the site in the coming years. In this manner, the proposal directly assists the facilitation of this objective, and has been planned in an integrated manner alongside the future Sydney Metro station.



Figure 3 – Capacity of Sydney Metro by comparison to current suburban train lines

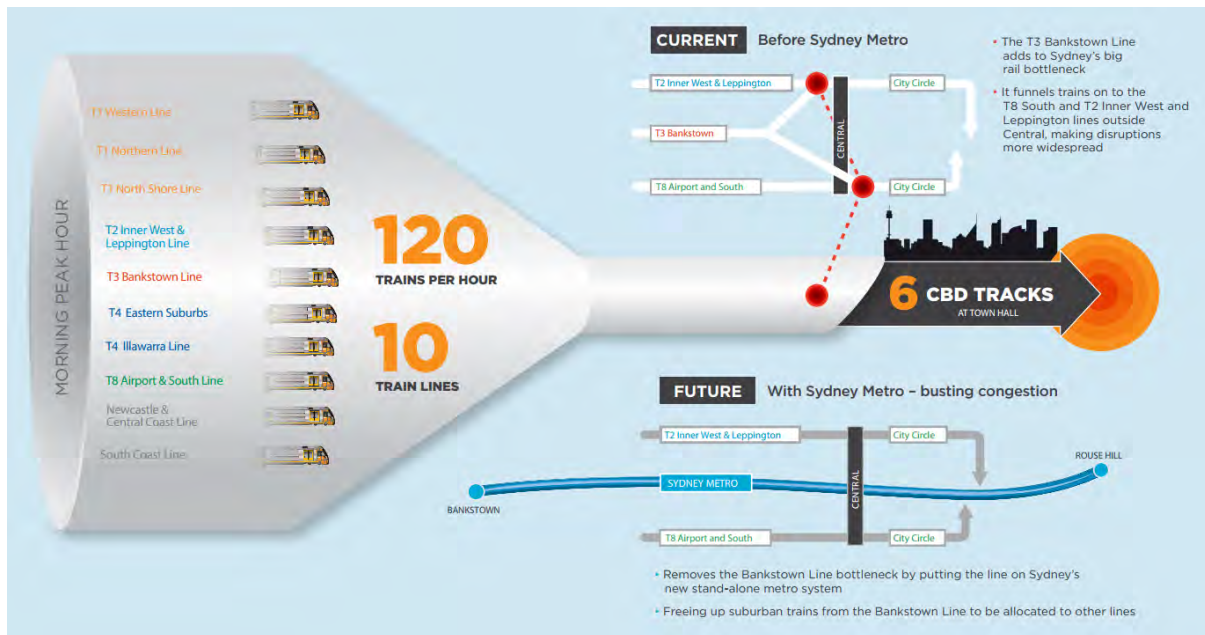


Figure 4 – Capacity unlocked by the Sydney Metro project

Utilities and Services Infrastructure

Additionally, an assessment of the utilities and services infrastructure at the site has been undertaken as Appendix AA of the EIS. This assessment has determined that the proposed development is well serviced for all utilities in the context of available surrounding infrastructure, and if needed these facilities can be supplemented on an as required basis.

(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 OSD Concept Proposal provides for new housing, visitor accommodation and employment capacity within the Sydney CBD, which has been identified through State and local planning policies as the focal point for metropolitan Sydney's growth within the Eastern City. The delivery of high density development on this site is entirely compatible with this desired future character. The CBD Metro provides for a step-change in the nature and capacity of public transport infrastructure within the Sydney CBD, and the OSD is compatible with the significantly increase public transport capacity available at the site whilst remaining generally consistent and compatible with the scale and density of development within the locality. The proposed envelope importantly has been designed to maximise solar access to surrounding public open spaces, including Hyde Park.

As outlined in detail in Sections 8.2 to 8.7 of the EIS and the Design Report provided at Appendix I of the EIS, the proposed building envelope will minimise environmental impacts on the amenity of the locality, with specific key impacts further discuss below.

Overshadowing

A key component to the development of the proposed envelope has been to ensure that the overshadowing impacts of the development are acceptable in nature, which has resulted in the proposed envelope design. The building envelope exceeds the Sun Access Plane in accordance with clause 6.17 due to the exception to the Sun Access Plane enabled at clause 6.18 of the SLEP 2012.

A detailed assessment of the overshadowing impacts of the development throughout the year has been provided by Virtual Ideas as Appendix F of the submitted EIS, with a detailed analysis undertaken at Section 8.2 of the EIS. The following key findings are noted in this regard:

-
- the proposed additional shadows cast by the development are minimal in nature, as for large parts of the year the shadow of the proposal falls partially or fully within the existing shadow of the building at 201 Elizabeth Street
 - the proposed envelope, in light of the above, complies with the building height related provisions under the SLEP 2012, and the proposal complies with all 'No Additional Overshadowing' controls
 - the proposal does not overshadow Hyde Park at any time during the year prior to 1.30pm, with the majority of overshadowing occurring during the late afternoon 2.30pm to 3.00pm period
 - in the periods of the year where the proposal does overshadow Hyde Park, this impact will generally be limited to a small portion of the park and not adversely affect the potential enjoyment of the public open space
 - the proposal comprises a concept SSD Application, which will be subject to further design refinement during future detailed applications and has been assessed on a 'worst case' scenario
 - the proposal generally doesn't result in any adverse overshadowing impacts on residential properties, with a specific assessment of residential overshadowing undertaken at Section 8.7 of the EIS

Views

The proposed development does not interrupt any key public view corridors across the Sydney CBD. However, perspectives demonstrating the envelope from the context of a number of key surrounding points has been provided by Virtual Ideas at Appendix V of the EIS. Additionally, the impact of the proposal on views from surrounding apartments has been assessed at Appendix U of the EIS. Following this, a detailed View and Visual Impact Analysis has been undertaken at Appendix W of the EIS, which determines that the proposed envelope is acceptable from a private view and visual impact perspective.

Heritage

Given the context of the site in relation to a number of surrounding heritage items, including The National Building and Masonic Club located adjacent to the site's northern boundary, heritage impact has been a central consideration in the development of this proposal. A detailed assessment of the envelope, provided at Appendix R of the EIS, has demonstrated that there will be no adverse impacts on the heritage significance of surrounding items from the proposal.

Wind

A Qualitative Wind Assessment has been undertaken as part of this assessment at Appendix M, supported by Wind Tunnel Testing Results at Appendix N. The wind assessment undertaken in relation to the proposed envelope demonstrated that the proposed envelope would not result in any adverse environmental impacts, with wind conditions around the development likely to be classified as acceptable for pedestrian walking under the Lawson criterion, and also pass the distress / safety criterion.

Concluding remarks

The proposal is consistent with the character of the surrounding locality, comprising a well designed mixed use building in an ideal location above the future northern portal of Pitt Street Station. Additionally in line with the above key points, and the full Environmental Assessment undertaken as part of the submitted EIS, the proposed development will not result in any adverse environmental impacts on the surrounding area. By providing for new

residential, visitor accommodation and office spaces above the Metro Station the OSD will enhance the vibrancy and amenity of the locality throughout the day and evening.

Accordingly, the proposal is considered to achieve the objectives of this development standard notwithstanding the non-compliance with the FSR development standard.

Overall, it is open to the consent authority to consider that compliance with the FSR standards is unreasonable and unnecessary in the circumstances of the concept proposal.

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

In accordance with clause 4.6(3)(b), as part of any clause 4.6 Variation Request it must be demonstrated that there are sufficient environmental planning grounds to justify a contravention to the development standard. Accordingly, **Sections 3.2.1 to 3.2.5** below provide a breakdown of the key environmental planning grounds which support the proposed variation request, including:

- the unreasonable nature of a floor space penalty over the site resulting from the provision of railway infrastructure
- a variety of unique circumstances at the site which warrant the provision of a higher FSR
- the proposed building form does not result in any significant adverse impacts and achieves a good urban development outcome for the site
- the maintenance of design excellence through the proposed alternate strategy, which has been designed to be a core element of the delivery of the integrated station development outcome
- the ability of the development to exhibit design excellence, and for the development to contribute to the legacy of the Sydney Metro project
- the delivery of a development outcome which does not result in any adverse environmental impacts

3.2.1. **Unreasonable floor space penalty from railway infrastructure**

Gross Floor Area (GFA) is legally considered in accordance with the following definition contained under the SLEP 2012:

the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*

-
- (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

This definition has been typically designed to provide a clear delineation of what should and should not be counted in regard to floor space, with floor space then calculated through the FSR control to determine an acceptable level of density at a given site. However, this definition becomes illogical in parts, when considered in the context of OSD.

Specifically, the inclusion of basement habitable rooms in calculations results in the station concourse being counted towards the overall GFA, in a manner which reduces the maximum amount of floorspace which can be provided for an otherwise FSR compliant envelope. This is despite the below ground floor space being used for a public use of substantial benefit to the City, as well as Sydney and NSW as a whole.

Additionally, necessary elements of the development such as residential unit storage are unable to be provided in a basement, meaning that storage must also be counted towards the overall GFA figures at the site.

Finally, clause 6.4(2) states that *“the amount of additional floor space that can be achieved under a paragraph [referred to in Clause 6.4(1)] is to be reduced proportionally if only part of a building is used for a purpose specified in that paragraph.”* In the case of the subject OSD, given that use of floor space for a public transport concourse or interchange is not contemplated by the various floor space bonus areas, the proportion of floor space used for the railway purpose above the base 8:1 accordingly results in a proportionate reduction in the bonus floor space available. This effectively means that the public transport infrastructure being provided results in a penalty on the accommodation floor space which could otherwise have been provided for the development.

In effect, the overall impact of this is that the development is penalised three-fold for the station space occupying the below ground portion of the site. This seems unreasonable in the case of the development, given that this floor space is being used for a separately approved, substantially beneficial use which will benefit all of Sydney. On this basis, it is considered that the development standard is unreasonable in the context of the unique circumstances of the site.

3.2.2. Unique circumstances of the site influence the proposed development

In addition to the above analysis, there is an accompanying consideration in regards to the how the location of the station below the site has influenced and constrained the design of the development itself. In turn, some of these design elements have contributed to the proposed variation of the Floor Space Ratio applicable to the site.

Initially, as has been detailed in the analysis of alternatives undertaken at Section 1.7 of the submitted EIS, in providing for the proposed train station portal it would be a substantial missed opportunity for the proposal to not incorporate an over station tower element. Due to

the CBD context of the site, and the consolidated nature of the metro station portal, there is a unique opportunity for over station development to be provided in this location. The site is able to accommodate a tower building form comfortably, and therefore to not take advantage of this would fail to make use of the opportunity provided by the CSSI approval.

It has also been detailed within the accompanying EIS that areas were made available in the above ground station box for limited uses associated with the OSD. This comprises a number of spaces between the ground level and the transfer slab which were identified for OSD use. This space has been proposed to be used for the components of the development which would have otherwise been located underground, including car parking, servicing spaces, vertical vehicle transport and the provision of additional storage. This is a direct consequence of the location of the rail line beneath the building, which prevents the provision of a traditional basement area for these uses, and in accordance with **Section 3.2.1** above, this space must accordingly be considered as GFA. Given the relatively small number of sites within Sydney which have a railway station entrance immediately beneath them, this is a very unique situation which is unlikely to be replicated in more than a handful of significant station sites.

Finally, the vast majority of the floorplate at the ground floor is occupied by the station entrance, as well as the associated plant, loading and other design requirements. The consequence of this is that limited space within the ground floor plane is available for OSD uses, which needs to be used for the vertical transportation of people into the OSD component of the development. In this case, a mixed residential use is accordingly the most appropriate use in the context of the site, given that it requires a less intensive concentration of lifts to accommodate people than a commercial floorplate. Either a commercial floorplate, or a multi use floorplate would not be possible in the context of the site for this reason, given the substantial cores required for each of these buildings.

The 1,189 square metres of GFA which is attributed to the station and included for the purpose of calculating the maximum FSR which applies to this site results in both the loss of development capacity on the site due to the provision of public transport infrastructure, whilst simultaneously resulting in a lowering of the maximum FSR permitted under clause 6.4 of SLEP 2012 due to the exclusion of this GFA from uses which benefit from accommodation floor space bonuses. This exacerbates the extent of the variation to the development standard, and if strictly enforced would penalise the capacity of the site for the provision of significant new public transport infrastructure.

In addition to the above, approximately 12 per cent of the residential gross floor area, and approximately 9 per cent of the total OSD GFA, arises from the enclosure of residential balconies (4,211 square metres) which is necessary in order to provide a suitable level of residential amenity, acknowledging the wind and acoustic conditions of the site within the CBD context. This GFA represents over half of the total FSR variation proposed.

3.2.3. [Compliant tower envelope results in no adverse impacts](#)

A substantial analysis has been undertaken at Section 8.0 of the submitted EIS, as well as within the Design Report at Appendix I, of the various factors which have contributed to the ultimate proposed tower form at the site. As a result of the proposed building envelope, the future development is able to minimise any adverse impacts whilst also maintaining the maximum building height of the development in accordance with clauses 4.3, 6.17 and 6.18 of the SLEP 2012. This dual-tower form would regularly result in a compliant FSR, except for the previous floorspace penalties noted throughout this section of the variation request.

Additionally, given that the development complies with the maximum height of buildings control applicable to the site, and provides setbacks to all sides which are considered reasonable, it is noted that numerical compliance with the FSR control would not result in any additional material benefit. Rather, strict application of the FSR would result in the same building envelope, which could still be developed to the maximum extents proposed under

this application, only comprising an underdevelopment of the potential density of the site, and minimising the benefits enabled through the proposed development. On this basis, it is considered that strict adherence of the maximum FSR control would not result in any additional benefit over the option proposed, given that an FSR compliance would not result any change to the potential building envelope of the site.

As outlined in the EIS, particularly Sections 8.2 to 8.7, and in the Design Report provided at Appendix I of the EIS, the proposed building envelope will not result in any significant adverse impacts as a result of the proposed building envelope. Accordingly the envelope is supported on environmental planning grounds irrespective of the proposed variation to the FSR development standard.

3.2.4. Design excellence maintained

As outlined in Section 4.11 and Appendix H of the EIS, the future development of the site will achieve design excellence in accordance with the Design Excellence Strategy. The Design Excellence Strategy has been designed to be implemented across the various Sydney Metro City and Southwest integrated station developments, which include:

- Crows Nest
- Victoria Cross (North Sydney)
- Pitt Street
- Waterloo

The key rationale and components of the strategy have been described further below, in the context of the proposed development.

Strategy rationale

The key rationale of the Design Excellence Strategy, which has helped to shape the overall document and the format in which development would be demonstrated as exhibiting design excellence, comprise the following:

- **A complex and unique project** – Principally, it is considered that the Sydney Metro project is of a level of uniqueness and complexity which warrants the use of a tailor made process of demonstrating design excellence, combined with the accelerated construction timeframes of the Sydney Metro project. In addition the integrated station developments need to maximise the public value of the infrastructure investment, and the assessment criteria reflect the public significance of the Sydney Metro station precincts.

Building on this, the design and construction of the station portal and the OSD above is envisaged to occur simultaneously, which requires the design excellence measures to be imbedded throughout the design and procurement processes to ensure that the station portal and OSD components are truly integrated.

- **A proud track record** – Sydney Metro has a long-standing commitment, and evidence of the importance of delivering design excellence as an organisation. Sydney Metro has engaged highly experienced, multi-disciplinary design practices to inform reference documents and has been at the forefront of using Design Excellence Panels, and it is considered that this Design Excellence Strategy would be a continuation of this commitment to design excellence in major public sector projects. Specifically, the strategy would assist in the delivery of robust, independent and objective consideration of design. The new measures and enhancements of the

existing Sydney Metro processes and systems are described below, and have been developed in conjunction with the Government Architect NSW.

- **A robust competition** – A key level of importance is placed on the provision of high quality of design through a highly competitive process, which encourages diversity, enables the comparative evaluation of design responses and communicates a commitment to design excellence. Despite a requirement for Authorised Engineering Organisations (AEOs) leading Station Design Teams, Sydney Metro is actively working with industry to encourage partnering between AEOs and non-AEO organisations to ensure robust competition. It is noted that the competition process must occur within the NSW Procurement Framework Policy for NSW Government Agencies.
- **Benchmarks** – Sydney Metro commits to working with the Government Architect NSW and Council to determine the appropriate benchmark projects for each integrated station development site, including Pitt Street North. This will involve selecting high quality examples that demonstrate particular aspirations for each site including integrated station and tower design outcomes, tower / skyline responses, response to place, public domain and materials / finishes. These benchmark examples are expected to be different between sites, and will follow a documented rationale for site selection, with benchmarks used to ensure that the designs submitted meet minimum performance requirements of comparable quality.
- **Design Excellence Evaluation Panel** – A Design Excellence Evaluation Panel (DEEP) has been included in this Strategy, which seeks to ensure that Sydney Metro's competitive tender selection process benefits from expert, independent and objective design expertise and advice. The role of the DEEP will be to review and advise on tender designs submitted through a competitive tender process, and will sit in place of the Sydney Metro Design Review Panel for the purposes of review of design excellence for tender designs. The DEEP will contribute to the design excellence process by:
 - participating in the procurement process to provide expert feedback on design ideas
 - providing an independent evaluation report on the submitted tenders to Sydney Metro

The DEEP members will be design experts that are recognised as advocates for design excellence by drawing from members of the Sydney Metro Design Review Panel. The Panel would also include a member nominated by Council.

Key strategy components

In light of the above, the delivery of design excellence through the Pitt Street North integrated station development process would comprise three key phases, which comprise:

- Phase 1 – Defining quality expectations
- Phase 2 – Competitive selection
- Phase 3 – Design integrity

Each of these phases comprises a number of key steps which work together to ensure the delivery of design excellence. The manner in which this process has been formed ensures that these key actions are required as part of the process right through the selection and evolution of the detailed design of the Pitt Street North site, and in conjunction with the

considered rationale above works to ensure that design excellence will be delivered right through the procurement process.

Concluding remarks

Given the unique nature of the OSD projects, as well as the robust and considered manner in which the Design Excellence Strategy will deliver design excellence in the future development, it is considered that the proposed competitive design process will deliver a high quality design outcome at the site, whilst taking into account the various constraints associated with the OSD projects. On this basis, the proposed strategy is

Further detail regarding the Design Excellence Strategy is available at Section 4.11 and Appendix H of the EIS. Detailed information regarding the role of the DEEP and outlining the Strategy Elements have been provided as appendices to the Design Excellence Strategy.

3.2.5. Transit Oriented Development and Sydney Metro legacy

Two of the fundamental principles which have underpinned the OSD at the Pitt Street North site have been the maximisation of benefits associated with the high level of public transport accessibility provided by the Sydney Metro project, as well as the provision of a lasting contribution to the legacy of the Sydney Metro project.

By virtue of the use analysis previously detailed, it has been demonstrated that the proposed residential land use accurately identifies the residential land use as being the most suitable in the context of the site. Given the demonstration of mixed use as being the most appropriate in the context of the site, it is therefore appropriate that a proposal be provided of a density which is commensurate with the CBD location, the building height limit at the site, and the various constraints applicable to the site. In this context, it is considered appropriate that the development provide additional residential capacity in a location which is located immediately above world class public transportation.

Similarly, it is noted that the development works towards the overarching intention of the Greater Sydney Commission by providing development which contributes positively towards the provision of a 30-minute city, which is reiterated in the Draft Greater Sydney Region Plan. This concept has been further discussed in Section 6.0 of the submitted EIS, however in effect, just like there needs to be additional jobs growth in Western Sydney to minimise commute times and congestion, there also needs to be additional dwellings growth in Eastern Sydney as part of this rebalancing. In providing additional residential capacity in a location which demonstrates and exhibits these principles, whilst also providing future residents with an unmatched level of public transport and jobs accessibility, the proposal strongly exhibits the principles of Transit Oriented Development.

It is undeniable that the development of this site will play a key role in the transformation of the precinct, and the concept proposal has been proposed in a manner which reflects the legacy nature of this project. Within the Sydney Metro project, the OSD of this site (amongst others) will work to reinforce the legacy of the wider project, resulting in an ultimate building form which is memorable and reflective of the transformative nature of the wider project. It is due to this that Sydney Metro have provided a concept design framework which favours the provision of such an ultimate building design. This includes the provision of a design framework which will result in the provision of a building which achieves design excellence.

3.2.6. No adverse environmental impacts

Finally, as discussed previously in this clause 4.6 Variation Request, as well as at detail in the submitted EIS, notwithstanding the proposed variation, the environmental impacts of the proposed envelope can be appropriately managed or mitigated and do not represent an overdevelopment of the site.

Specifically, the proposed development would result in the following impacts:

- **Overshadowing** – the proposed envelope has been specifically designed to minimise public domain overshadowing, with particular attention paid to the impact of the proposed envelope on Hyde Park
- **Visual and view impacts** – the proposal will not result in any adverse visual or view impacts from either the public domain or nearby private residences
- **Traffic** – the proposed development comprises the provision of minimal car parking, and when considered in the context of the development at the site before the construction of the Sydney Metro commenced, will result in a reduction of traffic generation at the site
- **Infrastructure capacity** – the planned infrastructure capacity being delivered by Sydney Metro and other projects will provide substantial additional transport capacity, which the development will be well positioned to benefit from
- **Wind** – the proposed development will not result in any adverse wind impacts

Overall, it is open to the consent authority to consider that the concept proposal does not result in any significant environmental impacts that could be avoided through a compliant form.

3.3. **Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard**

3.3.1. **Consistency with objectives of the development standard**

The proposed development is consistent with the objectives of the FSR development standard, for the reasons previously discussed at **Section 3.1.1**.

3.3.2. **Consistency with the objectives of the zone**

The proposed development is also consistent with the objectives of the B8 Metropolitan Centre land use zone as detailed in the following sections. The objectives of the B8 land use zone are as follows:

- *To recognise and provide for the pre-eminent role of business, office, retail, entertainment and tourist premises in Australia's participation in the global economy.*
- *To provide opportunities for an intensity of land uses commensurate with Sydney's global status.*
- *To permit a diversity of compatible land uses characteristic of Sydney's global status and that serve the workforce, visitors and wider community.*
- *To encourage the use of alternatives to private motor vehicles, such as public transport, walking and cycling.*
- *To promote uses with active street frontages on main streets and on streets in which buildings are used primarily (at street level) for the purposes of retail premises.*

The development proposed under this application satisfies the objectives of the B8 zone, given that:

- The proposed development, as a mixed use building located above the Northern portal of Pitt Street station, has been designed in such a manner which will support and form a part of the overall role of Sydney in the global economy. Specifically, the proposed development will provide for additional residential capacity in a CBD context, working to activate this part of the western CBD and supporting the provision of services throughout the CBD, particularly outside of standard business hours.
- The development is also compatible with the wider use of the site as a key station portal for Sydney Metro, having been designed in a manner which ensures that the development does not interfere with the station operations, and ensuring that both uses can be operated in a harmonious and compatible manner.
- The proposed development contributes to the overall diversity of compatible land uses in the Sydney CBD, providing additional residential capacity for the current and future workforce. This has a direct positive impact on the length of future commutes, ensuring that homes are located in a near unmatched level of accessibility to employment.
- The proposed development will additionally contribute to the diversity of compatible land uses by increasing the number of permanent dwellings in the CBD, as well as the provision of visitor accommodation to increase opportunities for visitors to stay in and experience the Sydney CBD. This will work to ensure that local services and facilities are supported through the day, helping to support the Sydney economy, particularly outside of normal business hours.
- The proposal strongly exhibits the principles of Transit Oriented Development, providing residential development in a location which encourages the use of the multiple public transport options available, including the future Sydney Metro network and Sydney Light Rail. The site also benefits from an excellent surrounding pedestrian environment, and access to the Sydney Cycleway network. Although a small quantum of car parking spaces are proposed, these rates are consistent with the SLEP 2012, and are minimal in proportion to the number of units proposed. Specifically, only 45 residential car parking spaces are proposed, which equates to only about 15 per cent of apartments having access to a car parking space, meaning that the vast majority of units will not have an associated car parking space.
- The proposed development is largely constrained at the ground level by the approved Pitt Street station portal, with the station occupying the majority of the building footprint along with the associated loading area. On this basis, the proposal will seek to activate the available space as much as practicable, ensuring the use of station and OSD lobbies provides for an active, vibrant ground plane.

Overall, it is open to the consent authority to consider that the variation is in the public interest because it is consistent with the objectives of the development standard and the B8 Zone.

3.4. Other matters for consideration

Under Clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

These matters have been further discussed below.

3.4.1. **Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

As part of this Clause 4.6 Variation Request, it has been determined that the proposed development will not raise any matter of significance for State or regional environmental planning.

Rather, the proposal is considered to be highly consistent with the relevant draft and final strategic plans, which have been discussed further below. It is noted that a full assessment against all strategic plans and policies has been undertaken as part of the submitted EIS.

A Plan for Growing Sydney is the current applicable metropolitan plan for the Greater Sydney region and comprises the most recently finalised metropolitan plan in Sydney. The *Greater Sydney Region Plan* is an update to *A Plan for Growing Sydney*, prepared by the Greater Sydney Commission (GSC). This plan reflects the key priorities of the GSC for Metropolitan Sydney in the upcoming key period to 2056. Finally, the *Revised Draft Eastern City District Plan* provides an update regarding the district level priorities of the plan, as they relate to the Eastern Harbour City.

The proposal, despite noncompliance with the applicable FSR controls, is consistent with the abovementioned plans by virtue of the following:

- The proposed development will contribute directly towards the ongoing requirements for the provision of new housing in Sydney, providing capacity within the proposed building envelope and maximum FSR for the delivery of approximately 300 dwellings (subject to future detailed SSD Application) within the context of the Sydney CBD.
- The proposal will directly contribute in a positive manner to the creation of a '30 minute city', which is listed as a priority under both the *Draft Greater Sydney Region Plan* and the *Revised Draft Eastern City District Plan*. This concept, which proposes to co-locate residential capacity and employment growth such that commutes are shortened across Greater Sydney, is applicable to the site in that the proposed additional residential dwellings are located in an area which benefits from a near unmatched level of employment accessibility.
- The proposed development will enable the provision of a range of dwelling typologies, including the provision of one, two and three-bedroom dwellings, as well as the provision of dwellings both with and without car spaces. This approach enables the provision of housing for a range of different household types.
- The proposal enables the delivery of additional housing in a location which has been aligned with the location of government public transport infrastructure investment, and which will experience substantial growth in transport connectivity and capacity following completion of the CBD portion of the Sydney Metro project.
- The proposed development has been designed such that it works with, and does not compromise the operations of, the future Pitt Street Station Northern portal. Rather, the proposal will enable the delivery of an integrated station and OSD solution at the site, which will ensure the efficient operations of both elements.

3.4.2. [Clause 4.6\(5\)\(b\): The public benefit of maintaining the development standard](#)

In the case of Clause 4.6 variations, there are cases wherein the strict maintenance of a development standard is required, such as when it would create an undesirable precedent, or would result in substantial and adverse environmental impacts. However, in this case, the maintenance of the standard is considered unreasonable, and would prevent the orderly and economic development of land.

In the case of the proposal, the site and development characteristics are very unique in nature, and would not result in a precedent being set which would undermine the nature of the control. Rather, this variation request would enable the delivery of development which reflects the building height controls applicable at the site, and would result in the delivery of a unique OSD development in the context of the Sydney CBD. Given that this noncompliance is largely generated by the location of the Pitt Street Metro Station northern portal beneath the site, and the unique nature of design excellence delivery through Sydney Metro, it is unlikely that this development will set a precedent. Rather, the OSD will work with the Metro Station portal component to provide an integrated design outcome at the Pitt Street northern portal site.

On this basis, it is considered that maintenance of the development standard in this instance would not result in any identifiable public benefit.

3.4.3. [Clause 4.6\(5\)\(c\): Any other matters required to be taken into consideration by the Secretary before granting concurrence](#)

There are no other matters which the Secretary is required to take into consideration when granting concurrence to this Clause 4.6 variation request.

4. Summary and conclusion

This clause 4.6 variation request is well founded as it demonstrates that compliance with the FSR standards contained at clauses 4.4 and 6.4 of the SLEP 2012 is unreasonable and unnecessary in the circumstances of the proposal, and on this basis the proposed variation to the standard is considered an acceptable outcome. In this case, the proposed variation acknowledges the unique circumstances of the proposal, and enables the delivery of development which will provide a better planning outcome in the context of the site.

In summary, the variation is justified because:

- Compliance with the FSR standards is unreasonable and unnecessary in the circumstances of the proposed development.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- The concept proposal, notwithstanding the non-compliance, is consistent with the objectives of the FSR standard and the B8 Metropolitan Centre zone.
- The proposed non-compliance with the FSR standard will not result in any matter of significance for State or regional environmental planning, but rather would result in development which achieves the strategic objectives of the NSW State Government; and
- The concept proposal is in the public interest.

The concept proposal will make a significant contribution to the delivery of a vibrant transit-oriented precinct which delivers mixed residential, visitor accommodation and office commensurate with the significant new public transport capacity provided on the site as part of the Sydney Metro CSSI Approval. Given the unique and particular circumstances of the subject site (being located above a Sydney Metro station), and of the proposed integrated development, the proposed variation to the FSR development standard is considered to be reasonable and acceptable and will support the delivery of a positive development outcome for the site, and should therefore be supported.

It is, therefore, open to the consent authority to vary the FSR provisions in the SLEP 2012 as they apply to this concept proposal.