

Attachment C

Clause 4.6 Variation Requests



Clause 4.6 Variation – Height of Buildings (Clause 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room

79-83 Abercrombie Street, Chippendale

Lot 16 DP 740281

**Prepared by Willowtree Planning on behalf of
Colliers International**

December 2018

CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS (CLAUSE 4.3)

Alterations and Additions to Heritage Building for Commercial Offices and Ancillary Lecture Room
79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281)

PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the development application (DA) for the proposed alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings of Sydney Local Environmental Plan 2012* (SLEP2012). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of SLEP2012 which has the following aims and objectives:

- (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.*

The proposed variation relates to *Clause 4.3 Height of Buildings* of SLEP2012. In summary, the following variations are proposed:

SLEP2012 Clause	SLEP2012 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 12m building height	The proposal seeks development consent for a 15.06m maximum building height	25.5%

In accordance with Clause 4.6 of SLEP2012 Council is required to consider the following:

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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

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PART B THE STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.3 (HEIGHT OF BUILDINGS) OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The development standard requested to be varied is *Clause 4.3 Height of Buildings* of SLEP2012 which provides as follows:

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,*
- (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.

The SLEP2012 map referred to in subclause (2) above, identifies the site as being subject to a 12m maximum building height. The site is not identified in Area 1 or Area 2 and therefore subclause (2A) is not applicable.

Pursuant to Clause 4.6, the proposed development seeks exception to the 12m building height standard prescribed by Clause 4.3.

The site is zoned B4 Mixed Use under the provisions of SLEP2012 where Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the B4 zone.

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2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale. The proposed development will result in a building exhibiting a maximum building height of 15.06m. The proposed 15.06m building height represents a breach of 3.06m under Clause 4.3 of SLEP2012.

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PART C PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Pursuant to Clause 4.6 of SLEP2012, exception is sought from the 12m height of buildings standard applicable to the site pursuant to Clause 4.3 of SLEP2012. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in SLEP2012 are:

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

The proposal would generally maintain the existing building height, as achieved through the conservation of the heritage façade (79 Abercrombie Street) and the design of the new façade (81 and 83 Abercrombie Street) and street corner to relate to the scale, massing and architecture of the existing building. Whilst the existing roof height of the building would be generally retained, the proposed acoustic screen enclosing the rooftop plant would exceed the existing maximum roof height by 0.203m.

Through maintaining and replicating the existing building height on the site (excepting the minor intrusion of the acoustic plant screen), the built form relationship of the site with adjoining built form, the streetscape and the surrounding area, would remain consistent with the existing situation.

Also of note, the built form character of the surrounding conservation area is generally defined by two (2) and three (3) storey buildings, and therefore the three (3) storey form of the development is reflective of this context.

Accordingly, the height of the development is highly appropriate for 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,

The existing building on the site is identified as a heritage item and the site is also situated within a heritage conservation area.

The proposal would generally maintain the existing building height, which is an essential and inevitable outcome of conserving the significant heritage façade. The exception would be limited to the acoustic plant screen which would exceed the roof height by a minor 0.203m only.

Through the preservation of the heritage-listed Abercrombie Street façade (79 Abercrombie Street), and the design of the new building corner and façade (81 and 83 Abercrombie Street) to relate to the scale, massing and architecture of the existing building, the proposal would retain the established height relationship/transition between the subject and surrounding sites.

(c) to promote the sharing of views,

The existing height of the building would be generally maintained as a result of the proposal, and thereby no view impact would arise.

Only the acoustic plant screen exceeds the existing roof height, and this is by 0.203m only. Given the minor amount of additional height proposed, limited area of the plant screen (to which the additional height is isolated), and centralized location of the plant screen on the roof, no adverse amenity or noteworthy visual impacts would result. This is confirmed in the 'Line of Sight' drawings (refer **Appendix 2**) which clearly demonstrate that the plant screen would not be visible from an observer on the street.

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

The site is located to the south-west of Central Sydney and north-west of Green Square, within a heritage conservation area that also forms a mixed use precinct. The surrounding context is generally characterized by two (2) and three (3) storey built form.

The proposal would retain the three (3) storey form and corresponding height of the existing heritage building on the site, which is commensurate with the character of the surrounding area. The development therefore provides an appropriate height within its context.

(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.

The site is not located within Green Square and therefore Objective (e) is not relevant.

3.2 OBJECTIVES OF THE ZONE

The site is zoned B4 Mixed Use under SLEP2012, and Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

The proposal is consistent with the B4 zone objectives in that:

- *To provide a mixture of compatible land uses.*

The proposal provides commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site, which is highly compatible with the range of land uses in the surrounding area. Together with the diversity of commercial spaces, shops, restaurants, cafes and residential accommodation, that are already established in the area, the proposed adaptive re-use of the site would positively contribute to the desired mixed use character.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal provides commercial office premises (with an ancillary lecture room) in a location that is highly accessible by active transport modes.

The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The use of public transport, cycling and walking by staff and guests to access the site would therefore be encouraged.

- *To ensure uses support the viability of centres.*

By supporting the productive use of the site, the proposal would support the viability of centres. As described above, the provision of commercial office premises (incorporating an ancillary lecture room

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for occasional lecture presentations) on the site would positively contribute to the desired mixed use character of the area.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the proposal generally maintains the height of the existing heritage building on the site (with the minor exception of the acoustic plant screen). The non-compliance arises primarily as a result of the existing heritage building exhibiting a height that already exceeds the SLEP2012 standard.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposal relates to an existing building that exhibits a height above what is permitted on the site under the current SLEP2012 height standard. The existing building is heritage-listed and forms a contributory item to the significance of the heritage conservation area within which it is situated. The preservation of the building (and thereby the maintenance of the height non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the height non-compliance) would be unreasonable.
- The proposal generally maintains the existing building height and, accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- Through maintaining and replicating the existing building height on the site (excepting the acoustic plant screen), the built form relationship of the site with adjoining built form, the streetscape and the surrounding area, would remain consistent with the existing situation. The height of the Myrtle Street façade is consistent with the directly-adjoining building on the neighbouring site, thereby contributing to a coherent streetscape and consistent roofline.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.
- The 'Line of Sight' drawings (refer **Appendix 2**) clearly demonstrate that the plant screen would not be visible from an observer on the street.
- The built form character of the surrounding conservation area is generally defined by two (2) and three (3) storey buildings, and therefore the three (3) storey form of the development is reflective of this context.
- The development would protect neighbouring amenity. On the basis that the proposed additions would be consistent with the existing building height, together with the maintenance of the existing building footprint and envelope (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure.
- Maintaining the existing building height is key to also creating an internal building environment that delivers the space and level of amenity required to support the operations of the future tenant and thereby the productive use of the site.

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Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for building height (Clause 4.3) is considered well-founded, having sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the Land and Environment Court (LEC) addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the building height standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of SLEP2012 for the B4 Mixed Use zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The proposal generally maintains the height of the existing heritage building on the site, with the extent of additional height being limited to the acoustic plant screen.
- The acoustic plant screen will assist in protecting the acoustic amenity of the surrounding area, thereby achieving the public interest.
- The 'Line of Sight' drawings (refer **Appendix 2**) clearly demonstrate that the plant screen would not be visible from an observer on the street.
- The proposed alterations and additions, including those relating to sections of the building above the height limit, would uplift the visual character of the site as viewed from the public domain.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent

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height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.

- The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the existing building.
- As well as supporting the future use of the building for offices and lecture presentations, the proposed alterations and additions have been designed to stabilise the heritage fabric and thereby support its long-term conservation. Subject to staged Construction Certificates (CCs), non-heritage components of the building would be sensitively removed and heritage fabric stabilized, prior to the 'main works' component of the alterations and additions being completed. The detail, scale and materials for new internal and external additions have been designed to sympathetically integrate with the heritage value of the place.
- As the maximum building height of development on the site would generally remain consistent with the existing heritage building, the building as altered and added to would integrate with its context. The relationship of the building with surrounding development, with respect to height, would remain consistent with the existing situation.
- Three (3) storey built form is reflective of the character of the heritage conservation area of which the site forms a part.
- The development would maintain neighbouring amenity as well as the amenity of the public domain.
- The proposal will support the productive economic use of a site that is ideally located within a mixed use precinct and in proximity of major commercial centres and public transport networks.

For the reasons outlined above, it is considered that the proposed variation to the building height control is entirely appropriate and can be clearly justified having regard to the matters listed within SLEP2012 Clause 4.6.

3.5 PUBLIC INTEREST

Four2Five Pty Ltd v Ashfield Council emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Section 3.1 and **Section 3.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.3 and the B4 Zone under SLEP2012.

The public advantages of the proposed development are as follows:

- The amenity of the surrounding development and the public domain will not be unreasonably impacted, including with respect to overshadowing and views.
- The *additional* height proposed relates to the acoustic plant screen, which will assist in protecting the acoustic amenity of the surrounding area.

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- Heritage will be conserved as a result of the proposal; the maintenance of the pre-existing height non-compliance is a 'side effect' of preserving the heritage building on the site.
- The proposed alterations and additions, including those relating to sections of the building above the height limit, would uplift the visual character of the site as viewed from the public domain.
- The new façade and parapet for 81 and 83 Abercrombie Street would align with the height of the primary parapet of 79 Abercrombie Street, being the heritage-listed building. The consistent height and architectural design of the facades contributes to greater unity, visual cohesion and continuity in the streetscape and around the street corner. Simultaneously, the new façade and parapet design effectively conceals the rooftop plant from the street, which further contributes to a positive visual outcome.

There are no significant public disadvantages which would result from the proposed development.

The proposed development is therefore considered to be justified on public interest grounds.

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PART D CONCLUSION

It is requested that Council supports the proposed variation to *Clause 4.3 Height of Buildings* of SLEP2012 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).



Clause 4.6 Variation – Floor Space Ratio (Clause 4.4)

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of the development application (DA) for the proposed alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale (Lot 16 DP 740281).

This Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.4 Floor Space Ratio* of *Sydney Local Environmental Plan 2012* (SLEP2012). This Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of SLEP2012 which has the following aims and objectives:

- (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.*

The proposed variation relates to *Clause 4.4 Floor Space Ratio* of SLEP2012. In summary, the following variations are proposed:

SLEP2012 Clause	SLEP2012 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.4 Floor Space Ratio	Maximum 1.75:1 Floor Space Ratio (FSR)	The proposal seeks development consent for a 2.31:1 FSR	32%

In accordance with Clause 4.6 of SLEP2012 Council is required to consider the following:

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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

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PART B THE STANDARDS BEING OBJECTED TO

2.1 CLAUSE 4.4 (FLOOR SPACE RATIO) OF SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

The development standard requested to be varied is *Clause 4.4 Floor Space Ratio* of SLEP2012 which provides as follows:

4.4 Floor Space Ratio

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

- (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.*

(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.*

The SLEP2012 map referred to in subclause (2) above, identifies the site as being subject to a 1.75:1 maximum FSR.

Pursuant to Clause 4.6, the proposed development seeks exception to the 1.75:1 FSR standard prescribed by Clause 4.4.

The site is zoned B4 Mixed Use under the provisions of SLEP2012 where Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the B4 zone.

2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum FSR, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Part C of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.4 development standard.

2.3 PROPOSED VARIATION TO STANDARDS

The proposed development seeks alterations and additions to the heritage building at 79-83 Abercrombie Street, Chippendale. The proposed development will result in a building exhibiting an FSR of 2.31:1 based on a total site area of 393.4m² and a total proposed gross floor area (GFA) of 908.13m². The proposed FSR of 2.31:1 represents a breach of 0.56:1 under Clause 4.4 of SLEP2012.

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PART C PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

Pursuant to Clause 4.6 of SLEP2012, exception is sought from the 1.75:1 FSR standard applicable to the site pursuant to Clause 4.4 of SLEP2012. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

3.1 OBJECTIVES OF THE STANDARD

The objectives of the standard as stated in SLEP2012 are:

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

The proposed development seeks to provide commercial floor space to enable the establishment on the site of the headquarters of a new philanthropic institution dedicated to the advancement of investigative journalism (refer Client Statement at **Appendix 23**). Through adaptive re-use, the building would be sympathetically reconfigured to facilitate commercial office use and ancillary lecture presentations.

The proposed development is therefore key to providing the floor space required to support the adaptive re-use of the existing building for commercial use and to enable the establishment of an important journalistic institution on the site.

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

The proposed alterations and additions to the existing building on the site would generally preserve the existing building footprint and building envelope. The exception relates solely to the south-eastern corner of the building, where it is proposed to remodel the building corner to better address the street corner and both street frontages. This would involve the infill of the small planter (comprising three (3) trees only) that is currently situated in this corner of the site.

Accordingly, the density of development and scale of the built form would remain generally consistent with the established building on the site. This would ensure the development effectively integrates with the streetscape and character of the area.

Additionally, the adaptive re-use of the heritage building for commercial offices and ancillary lecture presentations, is considered to be commensurate with the 'land use intensity' of other sites within the surrounding area, the capabilities of the heritage building, and the capacity of infrastructure systems servicing the site. The future operations of the building would be managed in accordance with the Plan of Management at **Appendix 5** to underpin the efficient functioning of the premises and effectively safeguard neighbouring amenity.

As described in the Traffic Impact Assessment (**Appendix 8**), the anticipated traffic generated by the proposed development (including office and lecture components) is considered minor. The proposal provides only one (1) on-site car parking space and time-unrestricted on-street parking is limited and in high demand. Therefore it is expected that most employees would travel to the site via public transport. Accordingly, it is estimated that the site would generate up to one (1) vehicle movement in the AM and PM peak hours. There is also likely to be some pick-up and drop-off activity (taxis, ride share and private vehicles), however a significant proportion of any such traffic would be linked/pass-by or diverted trips (as opposed to new trips on the road). As such, the anticipated traffic generation from the office use is expected to have a negligible impact on the surrounding road network.

Further to the above, trips to the site would primarily be via active transport modes that would be accommodated by existing infrastructure. The site is serviced by an extensive public transport system,

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including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The proposal would therefore not give rise to any unacceptable levels of traffic generation.

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

The proposed alterations and additions do not represent any significant intensification of development on the site. The proposed use for commercial offices and ancillary lecture presentations represents a relatively low-intensive use that is compatible with the conservation of the significant heritage features of the building.

On this basis, the development is also considered to be commensurate with the capacity of the infrastructure that already services the site. This includes transport infrastructure.

As described above and in the Traffic Impact Assessment (**Appendix 8**), the anticipated traffic generated by the proposed development (including office and lecture components) is considered minor. The proposal provides only one (1) on-site car parking space and time-unrestricted on-street parking is limited and in high demand. Therefore it is expected that most employees would travel to the site via public transport. Accordingly, it is estimated that the site would generate up to one (1) vehicle movement in the AM and PM peak hours. There is also likely to be some pick-up and drop-off activity (taxis, ride share and private vehicles), however a significant proportion of any such traffic would be linked/pass-by or diverted trips (as opposed to new trips on the road). As such, the anticipated traffic generation from the office use is expected to have a negligible impact on the surrounding road network.

Further to the above, trips to the site would primarily be via active transport modes that would be accommodated by existing infrastructure. The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The proposal would therefore be suitably serviced by existing infrastructure, including public transport, cycling, pedestrian and road networks.

Development contributions in accordance with Council's relevant contributions plan would contribute to funding any other public amenities for which demand is generated by the development.

This assessment is in accordance with the Land and Environment Court (LEC) judgement *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552* in which it was found that Section 7.11 contributions will accommodate any additional demand for infrastructure given the correlation between the increased intensity, increased demand for infrastructure and increase in contributions.

(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 proposed alterations and additions preserve the Abercrombie Street heritage façade and similarly conserve other heritage features of the building. The new additions have been designed to relate to the heritage components of the building with respect to scale, massing, architectural design and materiality. The design of additions also responds to other nearby heritage items, the streetscape and the heritage conservation area.

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Accordingly, the development reflects the desired character of the locality, being a heritage conservation area. This is supported by the Heritage Impact Statement (**Appendix 6**) which provides that the proposed development would:

- *Retain and conserve features, fabric, spaces and elements of high heritage significance.*
- *The proposed new building addresses the detailing, scale and proportions of the heritage facades and interiors that form part of the context of the site.*
- *Proposed materials for the new building include glazed tile and face brickwork which would ensure a fine-grained quality to the building. The vertical proportions of proposed windows are in keeping with the character of the conservation area and the adjoining heritage items that date to the Victorian period.*
- *The proposed design has architectural merit and would provide a sympathetic yet distinctive building within the Chippendale Conservation Area which has been revitalised by recent high-quality architectural design while being sympathetic to the heritage values of the place.*

Overall, the proposal is therefore considered to offer a positive contribution toward the heritage significance of the site and surrounding conservation area.

With respect to amenity, the development would not give rise to any adverse impacts. On the basis that the established building footprint and envelope would be generally retained (excepting the infill of the planter adjacent to the street corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure. Any potential impacts associated with the operation of the premises would be mitigated through the implementation of the measures within the Plan of Management at **Appendix 5**.

3.2 OBJECTIVES OF THE ZONE

The site is zoned B4 Mixed Use under SLEP2012, and Commercial Premises (including Office Premises), being the proposed use of the site, are permitted with development consent.

The proposal is consistent with the B4 zone objectives in that:

- *To provide a mixture of compatible land uses.*

The proposal provides commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site, which is highly compatible with the range of land uses in the surrounding area. Together with the diversity of commercial spaces, shops, restaurants, cafes and residential accommodation, that are already established in the area, the proposed adaptive re-use of the site would positively contribute to the desired mixed use character.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposal provides commercial office premises (with an ancillary lecture room) in a location that is highly accessible by active transport modes.

The site is serviced by an extensive public transport system, including bus stops along Cleveland Street (180m from the site) and Broadway (350m from the site) as well as Central train station (900m from the site). Formal pedestrian pathways are provided along most streets in the vicinity of the site, and numerous strategic and local cycling routes are located in proximity of the site. Ten (10) bicycle spaces are proposed for the site.

The use of public transport, cycling and walking by staff and guests to access the site would therefore be encouraged.

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- *To ensure uses support the viability of centres.*

By supporting the productive use of the site, the proposal would support the viability of centres. As described above, the provision of commercial office premises (incorporating an ancillary lecture room for occasional lecture presentations) on the site would positively contribute to the desired mixed use character of the area.

3.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY

Compliance with the standard would be unreasonable and unnecessary given that the proposal generally preserves the footprint and envelope of the existing heritage building on the site. The non-compliance arises as a result of the existing heritage building exhibiting an FSR that already exceeds the SLEP2012 standard. The relatively minor increase in GFA and FSR results from internal reconfiguration and from the remodeling of the south-eastern corner of the building.

The standard is unreasonable and unnecessary in the circumstances of the case on the following basis:

- The proposal relates to an existing building that comprises a quantity of GFA that exceeds that permitted on the site under the current SLEP2012 FSR standard. The existing building is heritage-listed and forms a contributory item to the significance of the heritage conservation area within which it is situated. The preservation of the building (and thereby the maintenance of the FSR non-compliance) is therefore required from a heritage perspective. By contrast, the demolition of the building (which would be required to rectify the FSR non-compliance) would be unreasonable.
- The proposal generally maintains the existing building footprint and envelope, excepting at the south-eastern corner of the site where the building has been extended over the small area of the existing planter. Accordingly, the density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- The remodeling of the building corner described above has been designed to better address the street corner and both street frontages. The treatment of the street and building corner responds to the surrounding context and the building's unique function, through geometry, glazed bricks and glazed elements.
- The development would protect neighbouring amenity. On the basis that the established building footprint and envelope would be generally retained (with the exception of the south-eastern corner), the proposal would generally maintain existing levels of solar access, privacy, views/outlook and sense of enclosure. Any potential impacts associated with the operation of the premises would be mitigated through the implementation of the measures within the Plan of Management at **Appendix 5**.
- The additional GFA proposed for the site is partly attributable to the *internal* alterations that are proposed. The proposal would make efficient use of the internal spaces of an existing building, thereby supporting the productive use of a strategically-located site.

Overall, the above justifications demonstrate that compliance with the standard would be unreasonable and unnecessary. The proposed variation is therefore well-founded and acceptable.

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3.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

The variation to the development standard for FSR (Clause 4.4) is considered well-founded, having sufficient environmental planning grounds to justify contravening the development standard.

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the LEC addressed the 'sufficiency' of environmental planning grounds:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

In *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, the LEC found that the environmental ground advanced by the applicant in the Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposed development is entirely consistent with the underlying objective or purpose of the FSR standard, as demonstrated in **Section 3.1**.
- The proposed development fully achieves the objectives of SLEP2012 for the B4 Mixed Use zone, as described in **Section 3.2**.
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 3.3**.
- The additional FSR results from the infill of the planter at the south-eastern corner of the building and the enclosure of the outdoor terrace. The remodelling of the building corner would reinforce the street corner and better-address both street frontages. Together, the building corner infill and terrace enclosure would make efficient use of the internal spaces of an existing building, thereby supporting the productive use of a strategically-located site.
- Excepting the remodelled building corner, the proposed alterations and additions to the existing building on the site would generally preserve the existing building footprint and building envelope.
- Accordingly, the density of development and scale of the built form would remain generally consistent with the established building on the site. This would ensure the development effectively integrates with the streetscape and character of the area.
- The proposal effectively supports the conservation of significant heritage features whilst enabling the adaptive re-use of the existing building.

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- As well as supporting the future use of the building for offices and lecture presentations, the proposed alterations and additions have been designed to stabilise the heritage fabric and thereby support its long-term conservation. Subject to staged Construction Certificates (CCs), non-heritage components of the building would be sensitively removed and heritage fabric stabilized, prior to the 'main works' component of the alterations and additions being completed. The detail, scale and materials for new internal and external additions have been designed to sympathetically integrate with the heritage value of the place.
- The footprint, envelope, density and scale of development on the site would remain generally consistent with the existing heritage building, and thereby the building as altered and added to would integrate with its context.
- The design of the alterations and additions, including the remodelling of the street corner, respond to the characteristics and heritage fabric of the existing building, adjoining buildings, the streetscape and the wider heritage conservation area.
- The development would maintain neighbouring amenity as well as the amenity of the public domain.
- The proposal will support the productive economic use of a site that is ideally located within a mixed use precinct and in proximity of major commercial centres and public transport networks.

For the reasons outlined above, it is considered that the proposed variation to the FSR control is entirely appropriate and can be clearly justified having regard to the matters listed within SLEP2012 Clause 4.6.

3.5 PUBLIC INTEREST

Four2Five Pty Ltd v Ashfield Council emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Section 3.1 and **Section 3.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.4 and the B4 Zone under SLEP2012.

The public advantages of the proposed development are as follows:

- The amenity of the surrounding development and the public domain will not be unreasonably impacted.
- The additional FSR proposed relates to the infill of the planter at the south-eastern corner of the building and the enclosure of the outdoor terrace. Whilst generally preserving the existing building footprint and building envelope, the additional FSR would provide the internal building spaces required to support the economic use of the site.
- The density and scale of the built form would remain generally consistent with the established building on the site, ensuring the development effectively integrates with the streetscape and character of the area.
- Heritage will be conserved as a result of the proposal; the maintenance of the pre-existing FSR non-compliance is a 'side effect' of preserving the heritage building on the site.

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- The proposed alterations and additions, including the remodelling of the corner and enclosure of the terrace, would uplift the visual character of the site as viewed from the public domain.

There are no significant public disadvantages which would result from the proposed development.

The proposed development is therefore considered to be justified on public interest grounds.

CLAUSE 4.6 VARIATION – FLOOR SPACE RATIO (CLAUSE 4.4)

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PART D CONCLUSION

It is requested that Council supports the proposed variation to *Clause 4.4 Floor Space Ratio* of SLEP2012 for the following reasons:

- Consistency with the objectives of the standard and zone is achieved.
- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standard.

Given the justification provided above, this Clause 4.6 Variation is well founded and should be favorably considered by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).