

Attachment D

**Clause 4.6 Variation Request -
Floor Space Ratio**

29 January 2019

218073

Monica Barone
Chief Executive Officer
GPO Box 1591
SYDNEY
NSW 2001

Attention: Jemima Royall

Dear Jemima

**RE: Response to Council's Request for Additional Information (D/2018/1097) – Clause 4.6 Variation Request
29-43 Balfour Road, Chippendale**

This Clause 4.6 Variation Request is submitted to City of Sydney in support of Development Application (DA) D/2018/1097 at 29-43 Balfour Street Chippendale. The Development Application seeks approval for:

- modification to the existing mezzanine level including:
 - removal of part of the southern section of the roof;
 - construction of a trafficable roof terrace to the east and west of the existing mezzanine;
 - construct a new roof over the existing mezzanine;
 - installation of plant equipment behind acoustic screening; and
 - installation of acoustic screening surrounding the roof terrace to a height of 1.6m
- internal modifications
 - remove the existing lightwells, frame and infill the area; and
 - extend the existing stair into the mezzanine level.

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of MH Chippendale Pty Ltd. Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the application has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that 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.

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

This report requests and justifies a variation to Clause 4.4 Floor Space Ratio, as permitted under Clause 4.6 of the Sydney LEP 2012. It should be read in conjunction with the architectural plans prepared by SJB dated 21 November 2018 and the Statement of Environmental (SEE) prepared by Ethos Urban dated 13 September 2018.

1.0 Background

The site has been subject to a number of development applications, including:

- Development application D/2002/1179, was for the addition of two levels and a change of use, facilitating a mixed-use development within the existing building. This application was refused by Council in August 2003.
- Development application D/2010/92, was for the enlargement of two existing ground floor openings and the installation of roller shutters. This application was refused in March 2010.
- Development application D/2017/1538, was for the change of use to commercial offices and associated fitout. This application was approved with conditions in January 2018.
- Section 4.55 application was to modify D/2017/1538 by way of incorporating minor alterations to the building's entrance, removal of paint on the façade and the installation of glazing. This modification was approved with conditions in July 2018.

A subsequent Development Application D/2018/1097 to which this request relates was lodged on 13 September 2018 for alterations and additions to the existing building including 2 new roof-top terraces, alterations to the existing mezzanine level and the internal reconfiguration of the existing building. The additions to the existing mezzanine level necessitated the submission of a clause 4.6 variation as the proposal contravened the 12m height limit. The contravention was attributed to the proposed alterations to the mezzanine level which reached a height of 15.9m. However, it is noted that the existing building, and the mezzanine level itself, have a height greater than the 12m limit, with the mezzanine reaching 15.9m in height. Accordingly, the rationale for the non-compliant height was to ensure the additions accord with the existing height of the mezzanine.

The maximum floor space ratio (FSR) applicable to the site is 1.75:1. It is noted that the existing building achieves an FSR of 2.5:1 (2,480.88m²). The proposed development did not seek to alter the FSR and consequently a clause 4.6 variation request was not considered necessary.

Subsequent to the lodgement of the DA, Council issued a Request for Further Information dated 29 October 2018. Council's request raised issues pertaining to confirmation of the proposed GFA and FSR; amenity impacts resulting from the western terrace; the setback of the mezzanine level; the trafficable areas on the eastern terrace and the location of the roof plant.

A Response to Request for Further Information was issued to Council on the 23 November 2018. It outlined the key changes made in response to Council's correspondence, including the conversion of the western terrace to non-trafficable space and amendments to the setback of the mezzanine level. Updated GFA plans accompanied the response and provided a re-calculation of the GFA in accordance with the definitional requirements of the Sydney Local Environmental Plan (SLEP 2012). In accordance with these calculations, the existing FSR is 2.5:1 (2,480.88m²) and the proposed FSR is 2.5:1 (2,487.76m²). In light of this, the revised calculations decreased the proposed GFA from 2,659.78m² to 2,487.76m². Council informed the Applicant that the revised GFA necessitates the submission of a Clause 4.6 variation request.

2.0 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard

'Development Standards' are defined under Section 4(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act) as follows:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...”

The floor space ratio control under Clause 4.4 of the Sydney LEP 2012 is clearly and unambiguously a development standard.

2.2 Relevant Development Standard

The development standard that is sought to be varied as part of this application is Clause 4.4 Floor Space Ratio nominated by the Sydney LEP 2012, which establishes the maximum FSR permitted for all development. Under the Sydney LEP 2012, the site is afforded a maximum FSR of 1.75:1 as shown in **Figure 1**. The proposed building has an FSR of 2.5:1 (2,487.76m²).



Figure 1 Maximum Floor Space Ratio

Source: Sydney LEP 201

2.3 Variation Sought

The proposal has a maximum FSR of 2.5:1 (2,487.76m²). The site is subject to a maximum FSR of 1.75:1 (1,717.28m²) and therefore the proposal exceeds the maximum FSR Standard by 44%.

It is noted that the existing building has a non-compliant FSR of 2.5:1 (2,480.88m²). As the proposal seeks to retain the existing building and provide alterations and additions, the principal reason for the departure from the maximum floor space ratio development standard is the existing non-compliance.

The contravention of the maximum FSR provision also arises from the recalculation of the FSR in accordance with the definitional requirements of the Sydney LEP 2012, which decreases the GFA noted in the Statement of Environmental Effects prepared by Ethos Urban (dated 13 September 2018) from 2,659.78 (2.7:1) to 2,487.76m² (2.5:1). The amendment necessitates the preparation of a Clause 4.6 variation request.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Sydney LEP 2012 provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4)(a) of The Hills LEP 2012 provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827;*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
4. *Turland v Wingecarribee Shire Council [2018] NSWLEC 1511.*

The relevant matters contained in Clause 4.6 of The Hills LEP 2012, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

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

In *Wehbe*, Preston CJ of the Land and Environment Court identified five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard was unreasonable or unnecessary in the circumstances of the case, was not limited to the five ways identified in *Wehbe*.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis is applicable to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of The Hills LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are applicable to this Clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).
2. The underlying objective or 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 primarily compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because objectives of the standard are achieved notwithstanding the non-compliance with the standard (First Way).

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

3.1.1 First Way: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives as set out by Clause 4.3(1) of the Sydney LEP 2012 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.

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
 (b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The proposal to which this clause 4.6 Variation Request relates seeks consent for an FSR which exceeds the maximum nominated under the SLEP 2012. The following section demonstrates that the development achieves the objectives of the development standard, despite the proposed numerical non-compliance.

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

The development needs associated with the proposal are primarily to facilitate the delivery of a development that is both appropriate for attracting long term commercial tenants and compatible with the surrounding locality. The site is located in Chippendale within a heritage conservation area and the surrounding locality is characterised by a mix of uses typically accommodated within pre-war and post-war industrial warehouses. The character statement for the locality is set out in Section 2.3.1 of the Sydney DCP and provides the following relevant principles which govern redevelopment throughout the area.

- *Retain the rich mix of building types and encourage the adaptive re-use of heritage and warehouse buildings.*
- *Maintain the existing pattern of retail and small-scale commercial uses scattered throughout the neighbourhood.*

The proposal relates to alterations and additions that are predominately internal and do not substantially alter the bulk and scale of the existing envelope which already contravenes the FSR development standard. The works are proposed for the purpose of adaptively reusing the existing warehouse building located within a heritage conservation area and will contribute to maintaining the character of the area. It is noted that the GFA is generally consistent with the building's existing GFA and proposes no change to the FSR.

The gross floor area is also proposed for the purpose of supporting the building's redevelopment as a functional and economically viable commercial premises. With the building consisting of an outdated warehouse, there is a clear need to execute upgrades to ensure the building's internal spaces are suitable for commercial purposes without compromising the warehouse character of the building. In doing so, the proposal will assist in maintain the existing pattern of small-scale commercial uses that typify the Chippendale neighbourhood.

As noted above, the existing building exceeds the relevant development standard and consequently any proposed works to the building would require a variation to the development standard. A building that strictly adhered to the FSR standard would provide a significantly smaller building envelope. A reduced building envelope would result in a less optimal outcome for occupants in that it would be less functional and have limited capacity to support a future commercial premise. It would also necessitate the redevelopment of the warehouse which would likely reduce the heritage values of the conservation area.

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

The density of development within the City of Sydney is in part regulated by the FSR controls established by the SLEP 2012. The proposal is subject to a maximum GFA of 1.75:1. Notwithstanding, the existing building exceeds the development standard by providing an FSR of 2.5:1. Being an early twentieth century industrial warehouse, the applicable development standard was introduced subsequent to the redevelopment of the site and is therefore considered inappropriate in respect to the assessment of the proposed alterations and additions.

When calculated in accordance with the gross floor area definition provided by the SLEP 2012, the proposal has an FSR consistent with the existing building. Whilst the proposed provides a slightly greater GFA, the increase is negligible and will not alter the building's level of occupancy. In light of this, it is considered the proposal will not increase the land use intensity or level pedestrian traffic generation.

The proposal does not seek to provide parking and benefits from access to public transport due to its proximity to Redfern and Central stations. Consequently, the proposal will not increase traffic generation.

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

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


The proposed development is limited to alterations and additions and will not substantially increase the GFA beyond what is already accommodated within the site. As such, the proposal will not create an intensity of development that is incompatible with the site's existing and planned infrastructure. As noted above, the site is well located close to public transport. Specifically, it is situated a 10-minute walk from Central Station (850m) and a 13-minute walk from Redfern Station (900m). In light of this, no appreciable impact on the locality's infrastructure capacity is anticipated to arise as a result of the proposed development.

Objective (d): To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The site is located within Chippendale and seeks to provide a commercial use. An assessment of the proposed development against the relevant design principles established by the Chippendale locality statement within the Sydney DCP is provided in **Table 1**.

Table 1 Consistency with Chippendale locality principles established by Section 2.3 of the SLEP 2012

Design principles	Comment
Development is to respond to and complement the heritage items and contributory buildings within heritage conservation areas, including streetscapes and lanes.	<p>The proposal is entirely consistent with the principle as it seeks to retain the exterior of the building and deliver only minor alterations and additions that will improve its functionality and facilitate its future occupation and use.</p> <p>The proposal retains the warehouse aesthetic of the development and respects the heritage quality of the site as well as the broader heritage conservation area.</p>
Retain the rich mix of building types, and encourage the adaptive re-use of heritage and warehouse buildings.	A mixture of materials are proposed. The materials are sympathetic to the building's warehouse character.
Retain residential uses in the neighbourhood and areas of low scale development and consistent building types particularly terrace rows.	The alterations and additions are minor and the FSR is not proposed to increase. Consequently, the scale of the existing building is not proposed to change.
Ensure infill development responds to the height, massing and predominant horizontal and vertical proportions of heritage and contributory items.	The site is not a heritage item. Notwithstanding, the alterations and additions respect the massing and scale of the existing building.
Ensure the new infill buildings reinforce the predominant street frontages in terms of height, setbacks and street alignment in the eastern part of Chippendale.	The non-compliance with the FSR standard does not alter the building's existing setbacks or street alignment.

Design principles	Comment
<p>Design additions and alterations to retain the scale and massing of front elevations and the original roof form as viewed from the primary street frontages.</p>	<p>As shown in the Architectural Plans that accompanied the SEE, the front elevation of the building is not proposed to change. The proposal seeks to replace the existing mezzanine structure and will sit within the sloped roof. As shown in the street views within the Architectural Plans and below, the alterations and additions will have no visibility when viewed from the frontage of Balfour Street.</p> 
<p>Retain and protect early industrial and pre-war, interwar and post war warehouse buildings.</p>	<p>The proposal seeks to retain and adaptively reuse the existing warehouse building. Key external elements, including the facades, will remain unchanged.</p>
<p>Protect the curtilage of heritage items to enable visual appreciation of the buildings in their setting.</p>	<p>The proposal relates to a commercial use and therefore will not contribute to the growth of residential development.</p>
<p>Continue to support non-residential uses on sites with active ground floor uses on Broadway, Regent Street and City Road.</p>	<p>The proposal relates to a commercial use and therefore will not contribute to the conversion of sites for residential purposes.</p>
<p>Maintain the existing pattern of retail and small scale commercial uses scattered throughout the neighbourhood.</p>	<p>The proposal seeks consent for a small scale commercial use that will be accommodated within the existing warehouse building. Accordingly, the proposal will therefore contribute to maintaining the character of the area which is typified by small scale commercial uses.</p>
<p>Design institutional development to be sympathetic to the scale and fine grain character of the area.</p>	<p>Whilst the proposal does not constitute an institutional development, it maintains the existing building envelope and will therefore continue to be sympathetic to the fine-grain character that prevails within the streetscape.</p>
<p>Maintain and reinforce the existing character of well established street tree plantings including those in Bartley, Balfour and Buckland Streets.</p>	<p>The proposed alterations and additions will have no impact on the existing character of the streetscape.</p>

The proposed development will reflect the desired character of the locality as it will assist in meeting the objectives set out in the relevant character statement in the DCP. The retention of the existing building envelope and the consequent contravention of the standard will assist in conserving and restoring the existing warehouse building which contributes to the industrial character of the heritage conservation area to which it relates.

It is considered that the contravention of the standard provides a superior outcome that would otherwise not be attainable through strict compliance with the control. If the proposal were to comply with the development standard, it would result in a significantly reduced built form which would be incompatible with the surrounding warehouse buildings that are commensurate in bulk and scale to the subject site.

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

Clause 4.6(3)(b) of The Hills LEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify contravention of the height development standard in this specific instance.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site for the following reasons:

- The proposed FSR is commensurate with that which already exists on site and therefore does not seek to increase the density of the development.
- The proposal increases the site's existing GFA by 6.8m² (0.02%) which is considered to be a negligible and will not intensify the use of the site.
- The additional FSR will not substantially alter the envelope of the development and consequently will have no impact on view corridors obtained from surrounding properties.
- The maximum FSR nominated by the SLEP 2012 was established subsequent to the redevelopment of the site and therefore cannot reasonably be applied to proposals that seek consent to retain the existing building envelope;
- The proposed development seeks to maintain and upgrade the existing warehouse building. In doing so the proposal respects site's unique qualities and location within a heritage conservation area and will continue to contribute to the legibility of the locality's industrial character.
- As demonstrated by the shadow diagrams that accompanied the SEE, the proposal will provide a minimal amount of overshadowing on the basis that the alterations and additions are minor and will not substantially amend the existing envelope.
- The proposal does not include on-site parking and consequently the additional GFA will not give rise to additional traffic generation.

Overall, in light of the above, the proposed variation to the site's maximum FSR control does not result in unacceptable impacts to surrounding properties or the heritage values of the locality.

3.3 Clause 4.6(4)(a)(i): The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Subclause (3) has been adequately addressed at **Section 4.1** and **4.2** above.

3.4 Clause 4.6(4)(a)(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

In *Initial Action v Woollahra Municipal Council* [27], it is established that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. Accordingly, it is demonstrated throughout this Clause 4.6 that the proposal is in the public interest as it is entirely consistent with the objectives of the development standard and the objectives of the zone.

3.4.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum FSR development standard, for the reasons discussed in **Section 3.1.1** of this report.

3.4.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use zone, as demonstrated over the page.

Objective (a): To provide a mixture of compatible land uses

The immediate surrounding development consists of a mix of two storey townhouses and warehouse buildings containing commercial uses. The proposal seeks consent for a commercial use and therefore provides a compatible land use. The proposed alterations and additions will allow for upgrades to an existing building commensurate with current market expectations of commercial buildings within Central Sydney. The alterations and additions will improve the functionality of the commercial floor plate to attract a long-term tenant.

Objective (b): 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 site is located in walking distance of Central Station and Redfern Station. It is also in walking distance of Central Park and close to the Sydney CBD which accommodate a range of office and retail services.

The proposal does not seek consent for on-site parking. The absence of parking and the site's ample access to public transport / services will maximise public transport patronage and encourage walking and cycling.

Objective (c): To ensure uses support the viability of centres

The site is located within the Harbour CBD Metropolitan Centre. The proposal will introduce a commercial use within a walking catchment of public transport. It will therefore assist in generating employment opportunities that are easily accessible which will support the growth and viability of the Centre.

3.5 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General 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 are addressed in detail below.

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

The variation of the maximum building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the *Greater Sydney Region Plan* and *Eastern City District Plan* in that it will:

- facilitate a redevelopment that improves the supply of quality of commercial office space;
- increase the provision of employment opportunities within the Harbour CBD;

- assist in providing employment opportunities close to public transport and housing; and
- contribute to maintaining the local identity and heritage quality of the subject locality.

3.5.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit maintaining the development standard in terms of State and regional planning objectives.

The variation proposed to the FSR is in the public interest as it will allow the achievement of a viable commercial development of the site to serve market demands and will do so in the absence of unreasonable or unwarranted planning impacts.

There are a number of strategic and design outcomes as described throughout this Statement that warrant the proposed variation to the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

3.5.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

None.

4.0 Conclusion

The assessment above demonstrates that compliance with the maximum FSR development standard contained in Clause 4.4 of The SLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum FSR development standard, that:

- there are sufficient environmental planning grounds to justify contravening the development standard, as the non-compliance will not give rise to additional amenity impacts such as overshadowing and privacy impacts;
- The proposal provides an appropriate density for the site that is largely consistent with the existing built form and commensurate in bulk and scale with surrounding developments;
- Compliance with the development standard would be both unreasonable and unnecessary in this instance because the development is able to fully satisfy the objectives of the B4 Mixed Use zone and the objectives of the maximum FSR development standard;
- The proposal will assist in upgrading an existing commercial building commensurate to contemporary market expectations; and
- The existing building contravenes the development standard and maintaining the contravention provides a superior built-form outcome in that it will assist in adaptively reusing a historic warehouse located within a heritage conservation area.

In particular, the variation proposed to building height will result in a better planning outcome when compared to a compliant scheme on the site as it will allow the achievement of a viable commercial development of the site, which is in the public interest for the reasons outlined above.

Therefore, there is sufficient justification for the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the SLEP 2012.

Yours sincerely,



Alicia Desgrand
Senior Urbanist, Planning
9956 6962
adesgrand@ethosurban.com



Belinda Thomas
Principal Planning
9956 6962
bthomas@ethosurban.com