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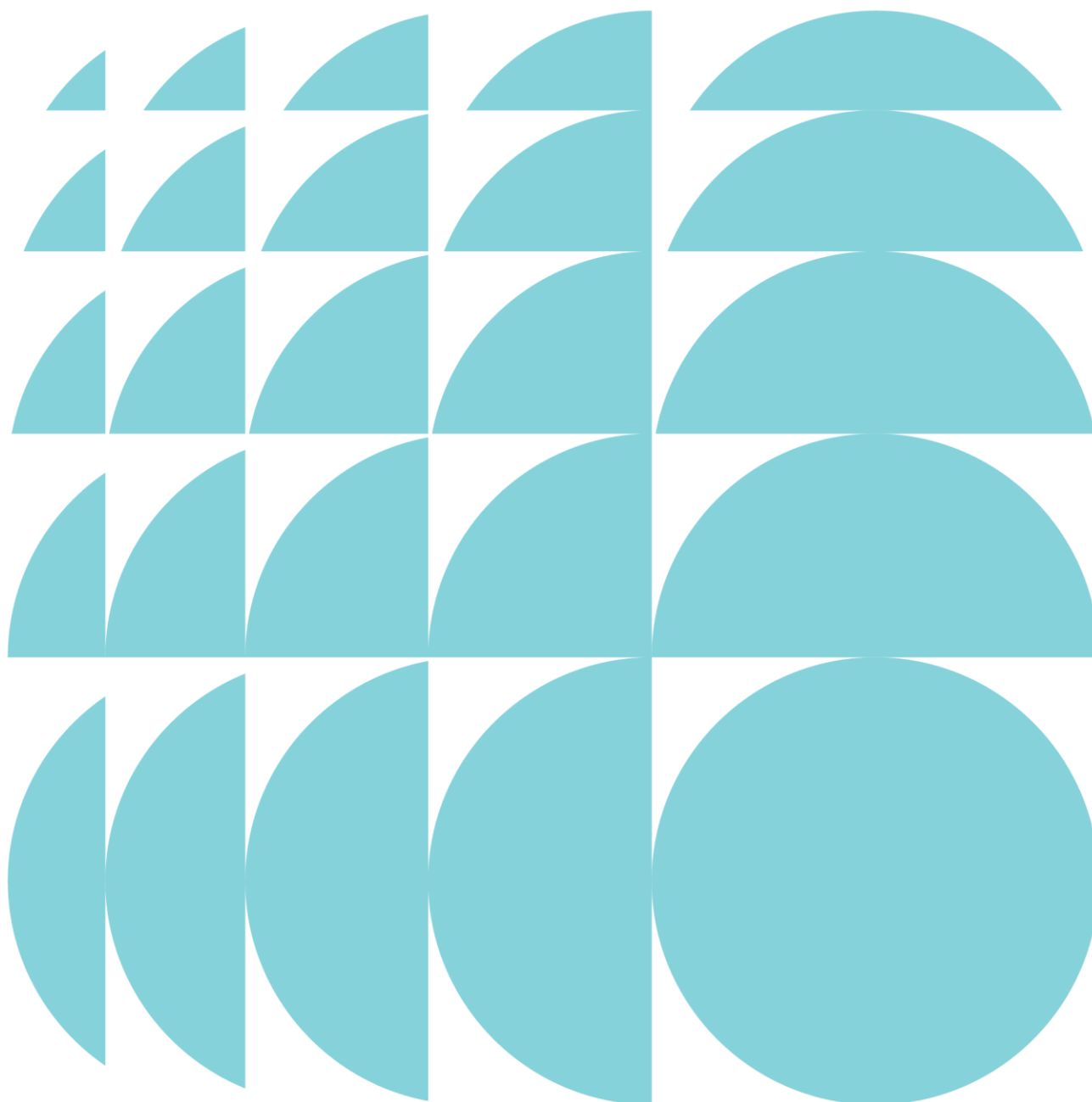
<p>Clause 4.6 Variation Request – Height of Buildings</p>
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Clause 4.6 Variation

16-18 Meagher Street, Chippendale
Request to Vary a Development Standard
Building Height

Submitted to City of Sydney Council
On behalf of BaRa Nominees atf The Meagher
Street Trust

12 December 2022 | 2210311



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of BaRa Nominees at The Meagher Street Trust. It is submitted to City of Sydney Council (Council) in support of a development application (DA) for alterations and additions to an existing commercial building (former warehouse) including fit-out and use as a gallery and commercial office space at 16-18 Meagher Street, Chippendale.

Clause 4.6 of the *Sydney Local Environmental Plan 2012* (SLEP) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide a degree of flexibility in applying certain development standards to achieve better outcomes for and from development. This clause 4.6 variation request relates to the development standard for building height under clause 4.3 of the SLEP and should be read with the Statement of Environmental Effects prepared by Ethos Urban dated 29 March 2022.

This clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objectives of the building height development standard since it:
 - Results in an appropriate height for the site and its context as a corner block that transitions from taller buildings to the north and east to lower scale two-storey terrace housing to the south and west.
 - Provides an appropriate transition to surrounding heritage items and to other contributing buildings within the Chippendale heritage conservation area.
 - Promotes view sharing by not impacting key public vantage points or views from surrounding building occupants.
 - Is lower than nearby buildings and therefore does not impact the height transition from Central Sydney to Green Square.
- Demonstrates there are sufficient environmental planning grounds to support the variation, including that:
 - It results in a better height transition and streetscape than a compliant development would.
 - It is of a scale that is consistent with the site's location and locality.
 - The existing building exceeds the height limit.
 - It promotes good design through an innovative roof design, consistent with the objects of the EP&A Act.
 - The variation results in acceptable overshadowing impacts, with shadows cast by the additional massing falling on the roof of 12-14 Meagher Street and the road surface or southern footpath of Meagher Street.
- Is in the public interest since it:
 - Is consistent with the objectives of the building height development standard and the B4 Mixed Use Zone.
 - Will contribute a new public gallery space to the community at Ground Level, which is intended to be operate as The Sydney Architecture Gallery.
 - Allows for the contemporary adaptive re-use of a former warehouse building that contributes to the Chippendale heritage conservation area.
- Is consistent with the Greater Sydney Regional Plan, the District Plan and the City of Sydney Council strategic planning policies such as City Plan 2036 and does not raise any matter of significance for State or regional planning.

The concurrence of the Secretary of the Department of Planning and Environment (DPE) is also required before the consent authority can grant development consent under cl 4.6(4)(b). Concurrence is currently assumed for the City of Sydney Council where the decision maker is not a delegate of the Council. In this instance the decision maker will be the Sydney Local Planning Panel. Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the SLEP.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the building height development standard set out in clause 4.3 of the SLEP. Clause 4.3 provides that the maximum height, shown on the Height of Buildings Map (sheet 9) for the site is 9m. An excerpt from the SLEP map sheet is shown at **Figure 1**.

The proposed development has a maximum height of between 10.33m and 12.395m, which exceeds the 9m development standard by 1.33m to 3.395m, or 14.7% to 37.7%. Note that the existing building has a maximum height of 10.855m, which exceeds the development standard by 1.855m, or 21%.



Figure 1 Excerpt from SLEP 2012 Height of Buildings Map (Sheet 9)

Source: City of Sydney via NSW Legislation



Figure 2 Meagher Street elevation showing proposed building, height limit (dash) and existing building (blue)

Source: Smart Design Studio

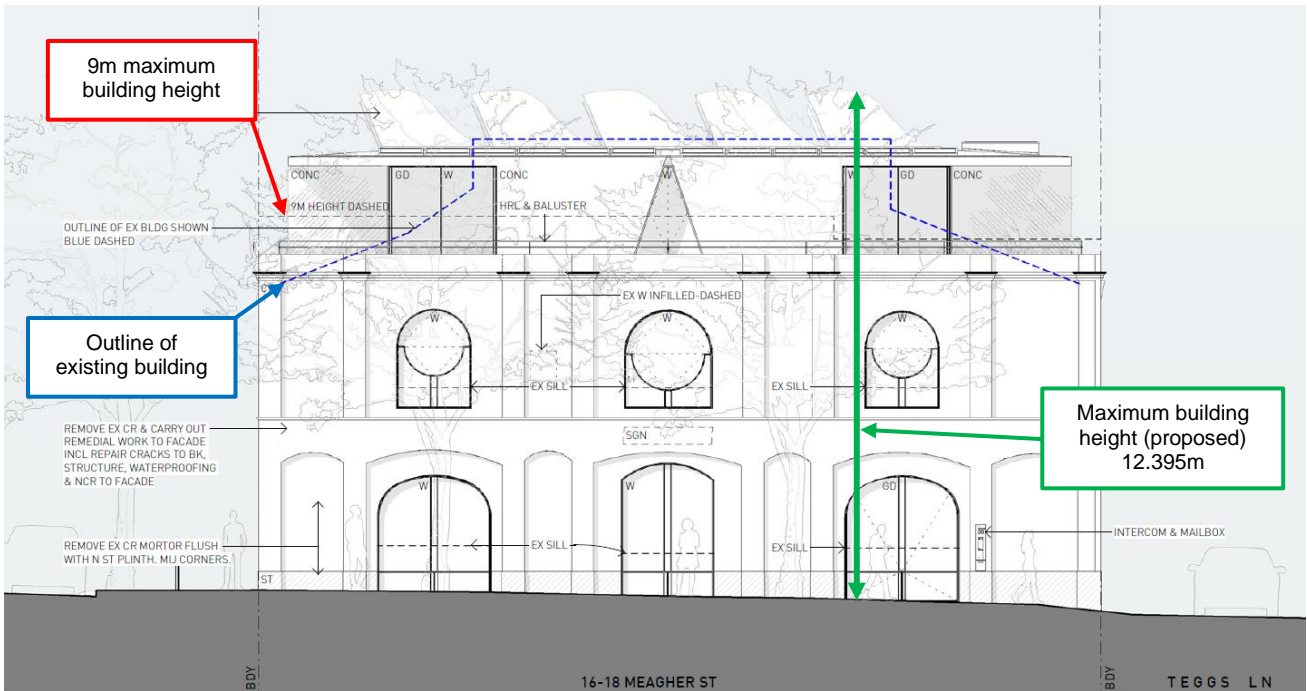


Figure 3 Balfour Street elevation showing proposed building, height limit (red) and existing building (blue)

Source: Smart Design Studio

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the SLEP 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 SLEP 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 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).
5. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.
6. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
7. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation).

3.1 Role of the consent authority

The role of the consent authority in considering this written request for a clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

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

This report provides the basis for the consent authority to reach the required level of satisfaction.

The relevant matters contained in clause 4.6 of the SLEP, with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.

3.2 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 provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

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

As the language used in subclause 4.6(3)(a) of the SLEP is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request. The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard

would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method**.

3.2.1 The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.3 of the SLEP are:

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views outside Central Sydney,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (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.*

3.2.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

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

The proposed variation results in an appropriate height for the site and its context, as described below.

As shown at **Figure 4**, the site is surrounded by taller buildings to the north and east, generally of four-storeys and greater. Directly to the north across Teggs Lane is a 17m four-storey commercial building, while directly to the east across Balfour Street is a 15m three-storey commercial building. Building heights further to the north increase towards the recent high-rise development at Central Park and remain fairly constant towards Regent Street in the east.

To the south and west of the site is a lower context, generally of two-storey terrace housing with taller three- and four-storey buildings scattered throughout.

From this context, it can be seen that the site is at a transitional location, where the neighbourhood steps down from the taller buildings in the north and east to the lower buildings in the south and west. Due to the existing buildings directly to the north and west of the site being approximately 17m and 15m in height (respectively), there is currently a discrete step down at the site, to the two-storey streetscape on Meagher Street. The proposed development includes a third storey addition, which will provide a better transition from these tall areas to the two-storey terrace housing to the south and west of the site, improving the streetscape and mediating the height differential between north and south Chippendale. **Figure 5** visually demonstrates the improved transition.



Figure 4 Aerial image showing height of surrounding context
Source: Smart Design Studio

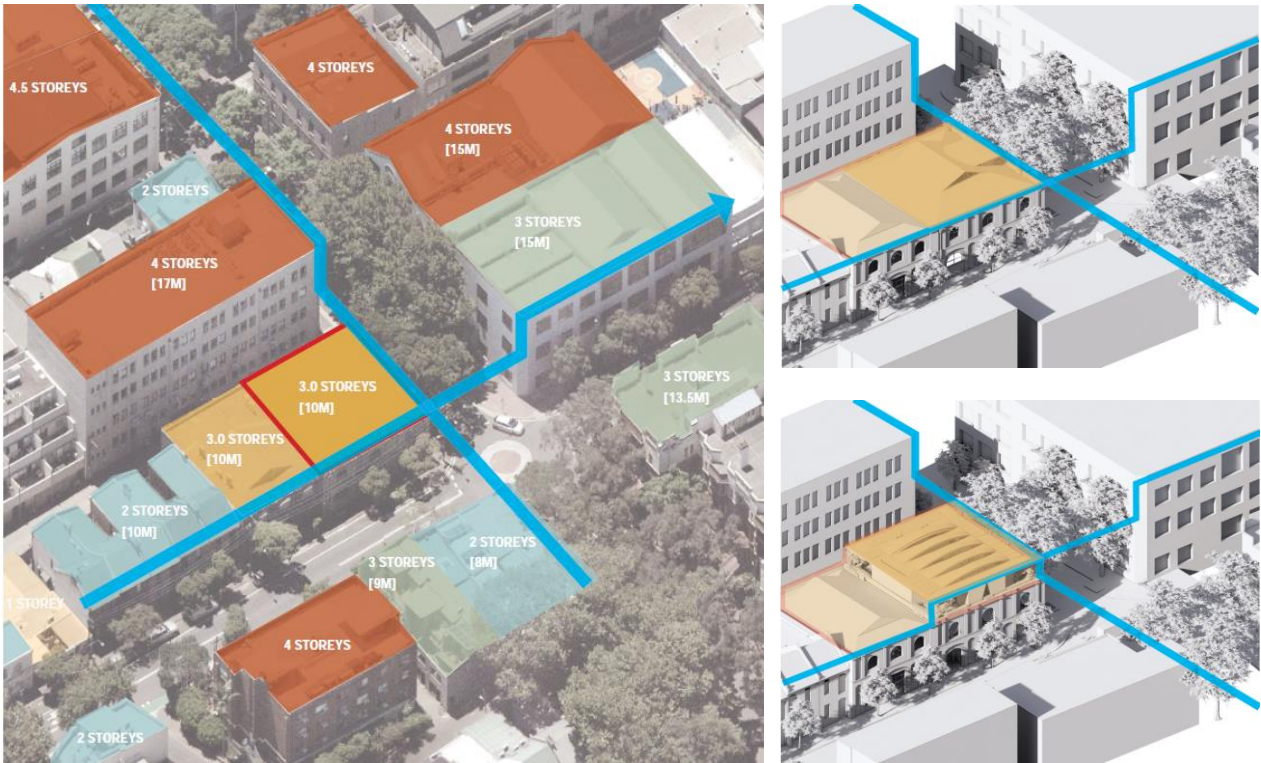


Figure 5 Height transition under existing site conditions (left) and proposed improvement in transition (right)

Source: Smart Design Studio

Further, the site is a corner site located at a four-way intersection. **Figure 6** shows a selection of corner buildings in the immediate locality surrounding the site. It can be seen that corner buildings are typically three-storeys and mark the corner with a slightly higher built form than the terrace housing that lines many of the surrounding streets. The proposed development will bring the height of the existing building in line with the height of surrounding corner buildings, resulting in a slight increase in height from the remainder of the Meagher Street streetscape.

Therefore, the proposal achieves objective (a) by providing a better transition in height and marking site's the corner location with a scale of development that is commensurate with the existing corner buildings throughout the locality.



- 1 Judeith Nielson Institute by Tzannes
79 Abercrombie Street Chippendale
- 2 John Storey Memorial Dispensary
36 Regent Street, Chippendale
- 3 Centennial Terrace
67 Abercrombie Street Chippendale

- 4 White Rabbit Gallery by SDS
30 Balfour St, Chippendale
- 5 The Lord Gladstone
115 Regent Street Chippendale
- 6 The Chippo Hotel
87 Abercrombie Street Chippendale

- 7 140 Myrtle Street Chippendale
- 8 La Gonda House
93 Myrtle Street Chippendale
- 9 Proposed development
16-18 Meagher Street Chippendale

Figure 6 Corner buildings in the surrounding locality

Source: Smart Design Studio

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

The proposed development is located within the Chippendale conservation area, mapped as being of local heritage significance under the SLEP. The existing building is identified as a contributing building in this area. The site is not mapped as an individual heritage item. The only individually mapped heritage item in the immediate vicinity of the site is the *Residential flat and retail building group “Strickland Building” including interiors* located at 54-62 Balfour Street, across the intersection of Meagher Street and Balfour Street to the south-east of the site. This item is three-storays in height (approximately 13.5m).

As described above, the proposal results in a superior transition from the surrounding taller areas to the lower-scale two-storey terrace housing along Meagher Street and further to the south. The Chippendale area is characterised by these rows of terrace houses and warehouse buildings scattered between. Therefore, the proposed development results in a better transition in heights between key elements of the heritage conservation area. Additional views of the proposed transition are shown at **Figure 7** and **Figure 8**.

A Heritage Impact Statement prepared by Urbis has been provided as **Appendix E** to the SEE. The statement concludes that the proposal has add to the character and transition within the conservation area. It also finds that the new roof-level addition will maintain the existing relationship between the subject site and the nearby heritage item, I163. It is noted that the heritage item – which is located to the south-east of the site, on the other side of the road intersection – is significantly taller in scale than the subject building. While the new addition will be visible, it will not alter this established relationship with the nearby heritage item.

Therefore, the proposal is compatible with objective (b).



Figure 7 Meagher Street streetscape visualisation looking north-west (left) and north-east (right)

Source: Smart Design Studio

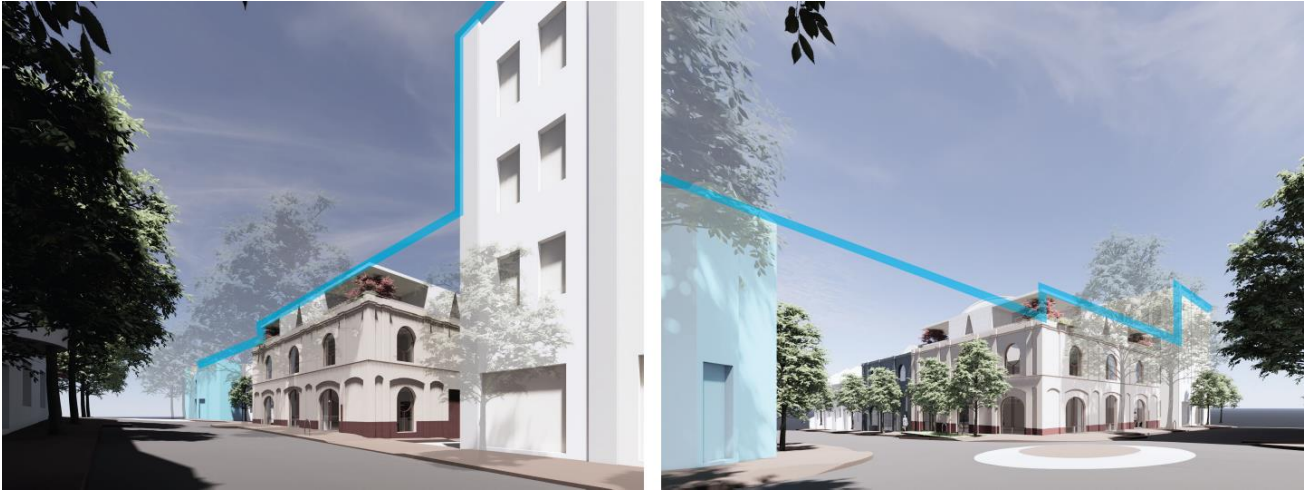


Figure 8 Balfour Street streetscape visualisation looking south (left) and north (right)

Source: Smart Design Studio

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

The site is located outside of Central Sydney as defined in the SLEP. The proposed development includes a well-designed addition that increases the height of the existing building by up to 1.54m. The top of the roof is curved, with its highest points setback from the street edge. This minimises any potential view loss from the surrounding public domain and from any surrounding residences. The addition remains lower than many surrounding buildings and therefore it will not have any significant impacts on views.

A comparison of views from key public vantage points, under the existing and proposed conditions, is provided at **Figure 9** and **Figure 10**. As shown, the proposal does not result in any key views being impeded or blocked.

In terms of views from within surrounding buildings, some views from the commercial buildings to the north and east will be impacted. These views are from offices and are not considered to be of high value. The extent of these impacts is minimal due to the minimal additional height proposed. Further, the proposed development will result in an improved visual outcome when compared to the existing condition, so the outlook from these properties will be more pleasant.

Any views from residential dwellings along Meagher Street will not be impacted. Views from residential dwellings on Level 1 and 2 located on the south-eastern corner of Balfour and Meagher Streets will not be significantly impacted, due to the distance between the building and the proposed development. As for the commercial buildings mentioned above, the outlook from these buildings will be improved since the existing unattractive roof will be replaced with a new roof of significantly better design quality and visual amenity. Landscaping is also proposed on the outdoor terraces of the development which will improve views and outlook towards the building.

Therefore, the proposal is compatible with objective (c).



Figure 9 Photomontage showing existing (left) and proposed (right) view from Balfour Street corner

Source: Smart Design Studio



Figure 10 Photomontage showing existing (left) and proposed (right) view from Balfour Street north of site

Source: Smart Design Studio

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

The proposed development results in an additional 1.54m height when compared to the existing building. The resulting building will be lower than many surrounding buildings, including those directly to the north, east and

south-east of the site. Therefore, the proposal is in keeping with the heights in the area, and is lower than many surrounding buildings, meaning that the height transitions from Central Sydney to Green Square Town Centre will remain unchanged. Therefore, the proposal is compatible with objective (d).

Objective (e): in respect of Green Square—

- (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and**
- (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.**

The site is not located within Green Square. Therefore, the objective does not apply to the proposed development.

3.2.3 Conclusion on clause 4.6(3)(a)

In summary, compliance with the building height development standard is considered unreasonable and unnecessary since:

- The variation results in a height that is appropriate for the site and its context, which will better transition heights in the locality and respond to the site's location as a corner building.
- An appropriate transition to surrounding heritage items is achieved, notwithstanding the variation.
- Views from key public vantage points and surrounding buildings will not be negatively impacted.
- The proposal remains lower in height than many of the surrounding buildings and therefore does not impact height transitions between Central Sydney and Green Square.

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

3.3.1 Ground 1: The variation results in a better height transition and streetscape

The proposal results in a height that provides a more appropriate transition in height from the taller buildings to the north and east to the lower two-storey buildings to the south and west. This would not be possible if strict compliance with the height limit was enforced. Refer to **Section 3.2.1** Objective (a) for further discussion.

3.4 Ground 2: The variation is of a scale that is consistent with the site's location and locality

The proposal results in a building that is three-storeys in height. The site is located on the intersection of Meagher and Balfour Streets, which is a four-way intersection. The proposed height is consistent with the height of many corner buildings in the immediate locality and is lower than the height of the immediately surrounding buildings to the north and east of the site. Therefore, the proposed development is of a scale that is consistent with its location and locality. Refer to **Section 3.2.1** Objective (a) and Objective (b) for further discussion.

3.4.1 Ground 3: The existing building exceeds the height limit

As described in **Section 2.0**, the existing building has a height of 10.855m, which exceeds the height limit by 1.855m or 21%. While the variation to the development standard proposed in this application is up to 37.7%, the increase compared to the height of the existing building is only 1.54m or 14%. Refer to **Figure 11**.

The existing building includes a partial third storey that has a tapered roof and is set back from the two-storey street frontage height. The proposed development seeks to retain the two-storey street frontage height of the existing building but include a complete and more usable third storey, which includes outdoor terraces at each corner of the building. As such, the proposed development does not represent a tangible increase in the number of storeys or street frontage height when compared to the existing building.

Finally, the proposed additional height beyond that of the existing building height is related to the innovative roof design and not additional useable/lettable floor area.

Therefore, the proposed variation should be considered in the context of the existing building and its exceedance of the height limit.

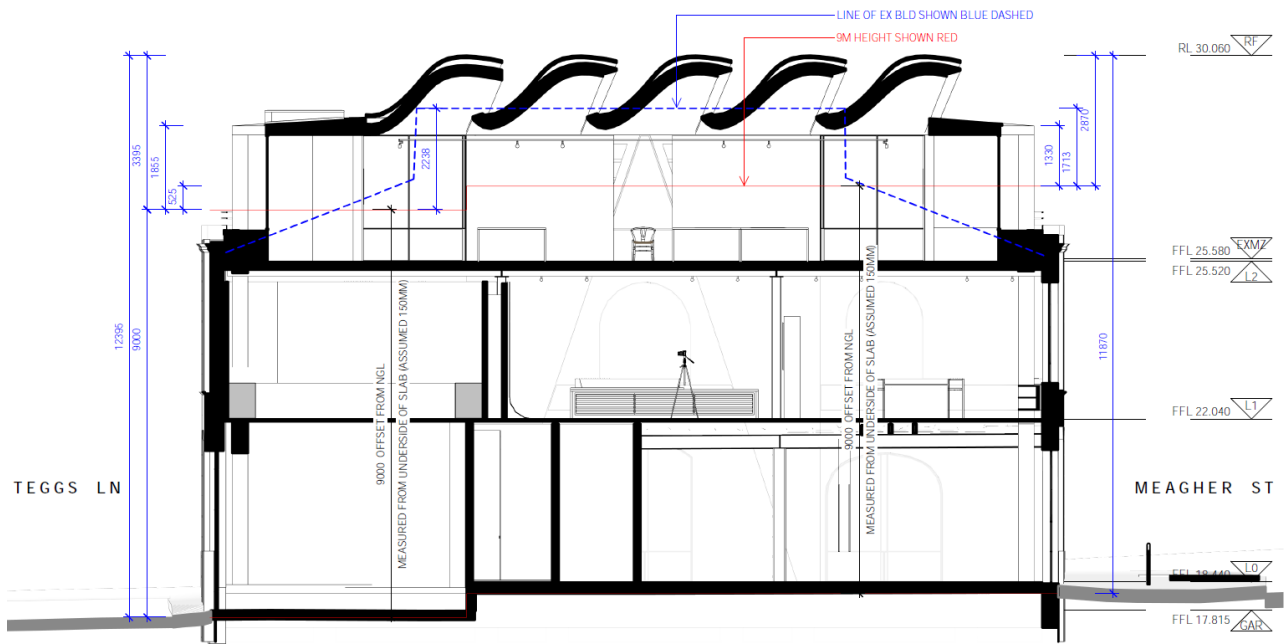


Figure 11 Section showing proposed maximum building height (black) and height of existing building (blue)

Source: Smart Design Studio

3.4.2 Ground 4: The variation promotes good design through an innovative roof design

The proposed variation is predominantly the result of an innovative roof design that responds to the proposed use of the site as an art and photography studio and the context of the site as a transitioning corner location from taller buildings in the north and east to shorter buildings to the south and west.

The optimal lighting for the art studio use is top-lit, uniform lighting that is preferably not direct sunlight but instead diffuse, natural light. An open, uninterrupted workspace is also preferred so that large format imagery can be handled, worked on and displayed.

In collaboration with ARUP structural engineering, Smart Design Studio have designed an innovative, highly efficient and thin vaulted roof structure based on Gaussian geometry. Inspired by the light weight, durable and thin “Gaussian vaults” by Uruguayan engineer Eladio Dieste it is believed that this will be the first roof of its kind in Australia.

The light-weight concrete vaults will rest on a perimeter beam and be grounded with new structure on Ground Level without impacting the retained heritage fabric. The proposed roof allows diffuse, natural light to enter the top level of the building and results in a column-free workspace.

As shown in **Figure 11**, the additional height proposed beyond the existing building height is predominantly due to the structure of this innovative roof design (not additional lettable space or gross floor area). Object (g) of the EP&A Act is to promote good design and amenity of the built environment. The innovative roof design is considered to be good design, and results in superior amenity than a standard roof would provide. This innovation in design could not be achieved if strict compliance with the height control was imposed. Therefore, the exceedance of the height limit is considered appropriate in this circumstance since it allows for innovation and the promotion of good design in the built environment, consistent with Object (g) of the EP&A Act.

3.4.3 Ground 5: The variation results in acceptable overshadowing impacts

The proposed variation results in acceptable overshadowing impacts. As shown at **Appendix B**, at mid-winter the additional shadow cast by the proposed built form falls on the roof of 12-14 Meagher Street in the morning and on the road surface and footpath on the southern side of Meagher Street between 11am and 3pm. From 9am to 10am, there is a small amount of additional shadow cast onto the lower portion of the façade of the residential dwellings at 11-11A Meagher Street, shown in the shadow diagrams and sun-eye diagrams at **Appendix B**. However, after this

the additional shadow cast by the addition falls entirely on the road and footpath again. The windows of these residential dwellings across Meagher Street currently receive more than two hours sunlight mid-winter. After 10am, the additional mass has no impact on these windows. The windows are ground level windows facing directly onto the street and as such have privacy screens which would limit their solar access. The residents will continue to receive more than two hours sunlight in accordance with Section 4.1.3.1(2) of the SDCP.

At the equinox, almost all of the additional shadow cast by the additional built form falls either on the roof of the adjacent building at 12-14 Meagher Street, or on the road surface of Meagher and Balfour Streets, as shown at **Appendix B**.

Object (g) of the EP&A Act is *to promote good design and amenity of the built environment*. Since the proposal results in acceptable overshadowing impacts, the amenity of the built environment is preserved despite the variation and the proposal is consistent with Object (g) of the EP&A Act.

3.4.4 Ground 6: The variation responds appropriately to heritage values

The site is identified as a contributing building in the Chippendale heritage conservation area. The building has been significantly modified internally and externally, notably to its roof, windows, and door openings. The primary contribution to the conservation area is through the building's original form and scale, which remain largely legible.

The proposed development, notwithstanding the variation, has been assessed by a heritage expert as respecting the site's character and significance, while demonstrably enhancing its contribution to the conservation area. It is concluded that the proposed works will not generate any adverse or unreasonable impacts on the established significance of the Chippendale conservation area, or on the contributory status of the subject building.

It is noted that the existing building remains clearly evident as an original two-storey structure, despite the visibility of the introduced roof terrace and partial third storey. Similarly, the proposal will introduce a visible new single-storey addition to the existing building, however this will not overwhelm its predominant two-storey scale nor its presentation as a remnant late-Federation warehouse. The proposed roof-level addition is of exceptional architectural quality and will undoubtedly add to the locality's growing stock of innovative, architecturally designed additions.

With respect to the surrounding context of the site, it is noted that there are number of older and contemporary buildings which exceed the height of the proposed addition to the subject building. The context of the site is characterised largely by its fine-grain subdivision and development pattern, with its building stock varying in age, height, character, and typology while still maintaining the requisite cohesiveness of a heritage conservation area. The new roof-level addition will not disrupt this character, but rather will respectfully add to and enhance it as a result of its high architectural quality.

It is noted that the building, in its current form, already exceeds the existing height control limit with little adverse impacts with respect to the presentation and ongoing contribution of the building to the HCA.

Therefore, it is considered that the proposal, notwithstanding the height variation, responds appropriately to the heritage values of the site and its surrounds. Refer to the Heritage Impact Statement provided at **Appendix E** of the SEE for further discussion and detail.

3.4.5 Conclusion on clause 4.6(3)(b)

There are sufficient environmental planning grounds to support contravention of the development standard in this circumstance, including:

- The variation results in a better height transition and streetscape than a compliance development would.
- The variation is of a scale that is consistent with the site's location and locality.
- The existing building exceeds the height limit.
- The variation promotes good design through an innovative roof design and is consistent with Object (g) of the EP&A Act.

- The variation results in acceptable overshadowing impacts, with almost all of the shadows cast during the equinox and mid-winter falling on the roof of 12-14 Meagher Street and the road surface or southern footpath of Meagher Street.
- The variation responds appropriately to heritage values, not overwhelming the existing building's predominant two-storey scale or its presentation as a remnant late-Federation warehouse, as well as not impacting the height transition to surrounding heritage items or within the conservation area itself.

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

3.5.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the building height development standard, for the reasons discussed in **Section 3.2.1** of this report.

3.5.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

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

The proposal seeks approval for gallery and commercial office uses, both of which are permissible in the B4 Zone. The proposed uses are complimentary to each other in that they are both of a creative, artistic nature, as well as being complimentary to the locality, which includes a mix of offices, co-working spaces and galleries and other creative spaces (White Rabbit, Harrington Street Gallery, Sydney Theatre School, etc.). Therefore, the proposal provides a mixture of compatible land uses and is compatible with Objective (a).

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 proposal includes office and gallery uses in a highly accessible location in the fringe areas outside Sydney's CBD. The site is located within walking distance of both Central and Redfern rail stations, as well as City Road, Cleveland Street and Broadway – all of which are major bus corridors. Meagher and Balfour Streets are both City of Sydney cycling routes (on-road) which circumnavigate the site, and on-street public bike parking is provided out the front of the site. No additional car parking beyond what is already provided in the existing building is proposed on site.

The proposal is also co-located with many other creative uses that already operate in Chippendale, so it will both benefit from, and contribute to, the ease of accessibility for staff and patrons.

Therefore, the proposal will encourage public transport patronage, walking and cycling and is compatible with Objective (b).

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

The proposed uses will support the viability of Chippendale. As described above, the proposed uses include a gallery and commercial office space. These uses are of an employment and creative nature, which is consistent with the existing nature of business in the Chippendale locality. Chippendale is home to many small offices, co-working facilities, art and other creative spaces (as described above). The addition of a new creative and employment development in this area will ensure the viability of Chippendale as a creative and employment hub on the fringe of the CBD.

The proposal also retains the heritage components of the existing site and contributes a contemporary addition that is in keeping with the type, quality and scale of development within the area. The proposed innovative roof further contributes to the viability of Chippendale as a creative centre.

Therefore, the proposal is compatible with Objective (c).

3.5.3 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,	The proposed form, inclusive of height variation, will promote the economic and social welfare of the community through the introduction of a tangible improvement in building form in the area. The proposed buildings respond appropriately to the surrounding scale of the site and its location as a corner lot. The proposal provides a new public facing gallery space and creative employment opportunities that will contribute to the social and economic welfare of the community.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposed form, inclusive of height variation will facilitate ecologically sustainable development by: <ul style="list-style-type: none"> • Integrating PV cells into the new roof design • Including landscape on the building, which is currently devoid of any planting. • Retaining the façade and other key elements of the existing building.
(c) to promote the orderly and economic use and development of land,	The proposed height variation will promote the orderly and economic use of land by allowing development of a scale that is commensurate with the site’s environmental density (FSR of 1.98:1 proposed), whilst responding to the site’s location on a corner lot in Chippendale transitioning taller buildings to lower-scale residential terrace housing. The proposal is for permissible uses and improves the visual quality of the site through a high-quality addition integrating landscape rooftops with the architectural design.
(d) to promote the delivery and maintenance of affordable housing,	The proposal is non-residential and does not impact the delivery or maintenance of affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed development will have no impact on threatened species or ecological communities. The potential to enhance existing habitat is facilitated through the landscape design.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposal will retain and adaptively re-use a contributory warehouse building in the Chippendale heritage conservation area.
(g) to promote good design and amenity of the built environment,	The proposal includes an innovative roof design and high-quality contemporary addition, as well as custom window and door design. The proposal results in acceptable amenity to the surrounding public domain and occupants, and visually improves the site. It contributes to good design and amenity of the built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants. A structural engineering report, access, BCA and fire safety report are provided with this application.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not directly relevant to this proposed development.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with the requirements of Council’s DCP.

3.5.4 Overall public interest

In addition to being consistent with the objectives of the zone and development standard, the proposed development is in the public interest for the following reasons:

- It will contribute a new public gallery space to the community at Ground Level, which is intended to be operate as The Sydney Architecture Gallery.
- It allows for the contemporary adaptive re-use of a former warehouse building that contributes to the Chippendale heritage conservation area.
- Creative uses are proposed including a photography studio workspace and gallery, which will contribute to creative employment and the promotion of art, architecture and design in the local community.
- It positively addresses the public domain through additional and restored openings to the street and a publicly accessible gallery use at Ground Level.
- Will not generate any adverse or unreasonable impacts on the established significance of the Chippendale heritage conservation area, or on the contributory status of the existing building on the site.
- While exceeding the height control, the additional building height results in acceptable amenity impacts to the public domain and surrounding building occupants and encourages good design through an innovative roof design that has not been seen in Australia before.

3.5.5 Conclusion on clause 4.6(4)(a)(ii)

The proposed development is in the public interest, notwithstanding the proposed variation to building height, since it:

- Is consistent with the objectives of the building height development standard.
- Is consistent with the objectives of the B4 Mixed Use Zone.
- Will contribute a new public gallery space to the community at Ground Level, which is intended to be operate as an art, architecture and design gallery.
- Allows for the contemporary adaptive re-use of a former warehouse building that contributes positively to the Chippendale heritage conservation area.
- Positively addresses the public domain through additional and restored openings to the street and a publicly accessible gallery use at Ground Level.
- Proposes additional building height that results in acceptable amenity impacts to the public domain and surrounding building occupants and encourages good design through an innovative roof design.

3.6 Other Matters for Consideration

Under Clause 4.6(5) of the Sydney LEP the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the DA, therefore the Secretary's concurrence is assumed. In particular, even though the nature of the variation sought is greater than 10%, assumed concurrence is only rescinded where the decision maker is a delegate of the consent authority – and planning panels can still undertake the assumed concurrence role in that instance.

Nevertheless, the following section provides a response to those matters set out in clause 4.6(5) of the Sydney LEP which must be considered by the Secretary.

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:*
- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - the public benefit of maintaining the development standard, and*
 - any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.6.1 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 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 most recent metropolitan plan for Sydney, in that it:

- Locates employment and creative space in a highly accessible location near the fringe of the CBD, co-located with other small scale creative and employment uses.
- Allows for the use of the site to provide additional local employment opportunities.
- Is well located to public transport connections.

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

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height proposed generally reflects the height of existing buildings in the locality and is only a small increase compared to the height of the existing building, which exceeds the height limit. Further, the proposed variation would not give rise to any adverse environmental impacts.

It is not considered that there would be any public benefit from maintaining the development standard, since the height of the existing building would have to be reduced and would result in a poorer urban design outcome than the current proposal, which also sufficiently addresses key planning issues deriving from height such as privacy and overshadowing.

3.6.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters required to be taken into consideration by the Director General.

4.0 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 4.3 of the SLEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objectives of the building height development standard since it:
 - Results in an appropriate height for the site and its context as a corner block that transitions from taller buildings to the north and east to lower scale two-storey terrace housing to the south and west.
 - Provides an appropriate transition to surrounding heritage items and to other contributing buildings within the Chippendale heritage conservation area.
 - Promotes view sharing by not impacting key public vantage points or views from surrounding building occupants.
 - Is lower than nearby buildings so does not impact the height transition from Central Sydney to Green Square.
- Demonstrates there are sufficient environmental planning grounds to support the variation, including that:
 - It results in a better height transition and streetscape than a compliant development would.
 - It is of a scale that is consistent with the site's location and locality.
 - The existing building exceeds the height limit.
 - It promotes good design through an innovative roof design and is consistent with the objects of the EP&A Act.
 - The variation results in acceptable overshadowing impacts, with most shadows cast by the additional massing falling on the roof of 12-14 Meagher Street and the road surface or southern footpath of Meagher Street.
- Is in the public interest since it:
 - Is consistent with the objectives of the building height development standard and the B4 Mixed Use Zone.
 - Will contribute a new public gallery space to the community at Ground Level, which is intended to be operate as The Sydney Architecture Gallery.
 - Allows for the contemporary adaptive re-use of a former warehouse building that contributes to the Chippendale heritage conservation area.
- Is consistent with the Greater Sydney Regional Plan, the District Plan and the City of Sydney Council strategic planning policies such as City Plan 2036 and does not raise any matter of significance for State or regional planning.

The concurrence of the Secretary of the Department of Planning and Environment (DPE) is also required before the consent authority can grant development consent under cl 4.6(4)(b). Concurrence is currently assumed for the City of Sydney Council where the decision maker is not a delegate of the Council. In this instance the decision maker will be the Sydney Local Planning Panel.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the SLEP.