

# 40-76 William St, Leichhardt

Clause 4.6 variation request

Clause 6.11 Adaptive reuse of existing buildings in Zone R1

On behalf of  
Anprisa Pty Ltd  
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# 1 Introduction

This Clause 4.6 Variation Request relates to the Development Application (**DA**) for 40-76 William Street, Leichhardt (**subject site**), which proposes adaptive reuse and alterations and additions at the site located at 40-76 William Street, Leichhardt (the site) for the purpose of a new residential flat building.

The proposed development will provide:

The development application seeks development consent for the adaptive reuse of an existing industrial warehouse and conversion into an architecturally designed residential flat building. The proposal includes:

- Retention and refurbishment of the buildings on the site to enable them to be modified into residential apartment buildings;
- Alterations and additions and conversion of the existing industrial building into an architecturally designed residential accommodation up to 6 storeys and comprising 181 apartments of various configurations;
- Careful alteration of the internal floors to provide one, two and three bedroom apartments within the building footprints including circulation space, stairs and lifts;
- Retention of the external elevations of the buildings on the site and modification of the existing openings of the industrial buildings to enable more operable and code compliant windows;
- Installation of some new or modified openings in the existing elevations for entrance lobbies into the apartment buildings;
- Removal the existing roofs off the industrial buildings to add new apartment levels behind and setback from the street elevations or to create courtyards and open space within the residential plan that are open to the sky;
- Creation of a new apartment building on the current parking area to North Street;
- Creation of two levels of basement parking providing 182 car parking spaces, 8 motorcycle parking spaces and ground floor loading bay for waste collection both accessed via the existing vehicular access from Francis Street;
- Bicycle storage area with a capacity of 110 bicycles; and
- Creation of a new landscape open space between the existing buildings.

The Clause 4.6 Variation Request seeks to vary one development standard within the Leichhardt Local Environmental Plan 2013 (LLEP2013):

- Clause 6.11(3)(c) – Adaptive Reuse of existing buildings in Zone R1

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

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

- Achieves the objectives of the development standard in Clause 6.11 of LLEP 2013, despite the non-compliance with the numerical standard in Clause 6.11(3)(c);

- Achieves the objectives of the R1 General Residential zone under LLEP2013;
- Will deliver a development that is appropriate for its context, despite the theoretical breach to development standard 6.11(3)(c), and therefore has sufficient environmental planning grounds to permit the variation; and
- Is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the LLEP 2013.

## 2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the LLEP 2013 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Specifically, the objectives of this clause are:

- To provide flexibility in the application of a development standard; and
- To achieve better outcomes for and from development.

Clause 4.6 enables a variation to the relevant development standards in the LLEP2013 for:

- Clause 6.11(3)(c) – which requires that any increase in the floor space ratio will be generally contained within the envelope of the existing building.

In particular, it is noted that Clause 4.6(8) does not include any of the above Clauses as a provision which cannot be 'contravened'.

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 provided a written request that has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant has provided a written request that 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 objectives of Clause 4.6, which are:

1. providing flexibility in the application of the relevant control; and
2. to achieve better outcomes for and from development.

The *Land and Environment Court* has set out common ways in which an applicant might justify a Clause 4.6 variation request, in relation to both the *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* and local environmental plans that adopt Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006*: see *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v*

Ashfield Council [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.

A further recent judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal.

Clause 4.6 of the MLEP 2011 reads as follows:

#### **Clause 4.6 Exceptions to development standards**

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

- (a) to provide an appropriate degree of **flexibility in applying certain development standards** to particular development,
- (b) to **achieve better outcomes for and from development by allowing flexibility** in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and
- (b) that there are **sufficient environmental planning grounds to justify contravening the development standard**.

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and
- (ii) the proposed development will be **in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**, and

(b) the concurrence of the Secretary has been obtained.

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

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

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

#### Consideration of Clause 6.11(3)(c) acting as a development standard

As outlined above, Clause 4.6 can only be applied to a 'development standard'. As such, the question of whether Clause 6.11 provision (3)(c) of the LLEP 2013 acts as a 'permissibility / prohibition' provision, or whether it is a Development Standard has been considered.

Clause 6.11 provision (3)(c) of the LLEP 2013 reads:

- (3) Development consent **must not** (emphasis added) be granted to the change of use to residential accommodation of a building on land to which this clause applies unless the consent authority is satisfied that:
  - (a) the development will not adversely affect the streetscape, character or amenity of the surrounding area, and
  - (b) the development will retain the form, fabric and features of any architectural or historic feature of the existing building, and
  - (c) any increase in the floor space ratio will be **generally** contained within the envelope of the existing building.

(emphasis added)

In considering whether the subject Clause acts as a development standard or prohibition, Mecone has considered the following Land and Environment Court findings:

- *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* [2016] NSWLEC 153; and
- *Agostino v Penrith City Council* (2010) 172 LGERA 380.

Both these cases utilised the two-step Poynting approach, which requires:

- a) a consideration of whether the proposed development is prohibited under any circumstances pursuant to cl 26 of SEPP (HSPD) when it is read both in context, and as a whole; and
- b) if it is not so prohibited, a consideration of whether cl 26 of SEPP (HSPD) relevantly specifies a requirement or fixes a standard in relation to an aspect of the proposed development.

"Development standards" is defined in the *Environmental Planning and Assessment Act 1979* and includes a regulation in relation to carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any developments. There is opportunity to vary development standards under certain circumstances; namely that there are sufficient environmental planning grounds to justify contravening the development standard.

In particular in *Poynting*, the Court found that "Control by complete prohibition on the development in question will not leave room for requirements or standards. But anything less than complete prohibition means that there can be the development in

*question, and provided the relevant aspect of the development is identified the control will be by imposition of a development standard (Poynting at [98])."*

In reviewing the two-step Poynting approach, it is our view that the subject Clause acts as a development standard capable of being varied, as:

- residential flat buildings are permitted within the zone, therefore the land use is not prohibited; and
- Clause 6.11(3)(c) fixes an aspect of the development – in the form of acceptable variations to the maximum permitted FSR of the development – which is capable of being varied subject to meeting the requirements of Clause 4.6.

It is also noted that Clause 6.11 is not identified as a Clause that is not capable of being varied under Clause 4.6(8) of the LLEP2013.

Please refer to advice by Counsel Michael Staunton attached in **Appendix 1** to this Clause 4.6 Variation Request outlining why Clause 6.11(3)(c) is a development standard that can be varied and not a prohibition.

### 3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify the variation to the following development standard in the LLEP2013:

- Clause 6.11(3)(c) – which requires that any increase in the floor space ratio to be **generally** contained within the envelope of the existing building

#### 3.1 Clause 6.11(3)(c) – additional FSR within the existing building

The proposal is consistent with provisions (3)(a) and (b) of Clause 6.11 of the LLEP 2013. The proposal is not consistent with 6.13(3)(c) with respect to the increase in floor space ratio being generally contained within the envelope of the existing building.

Clause 6.11 states:

##### **6.11 Adaptive reuse of existing buildings in Zone R1**

- (1) The objectives of this clause are as follows—
  - (a) to provide for the adaptive reuse of existing buildings for residential accommodation,
  - (b) to retain buildings that contribute to the streetscape and character of Leichhardt,
  - (c) to provide satisfactory amenity for future residents of the area,
  - (d) to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.
- (2) This clause applies to land in Zone R1 General Residential.
- (3) Development consent must not be granted to the change of use to residential accommodation of a building on land to which this clause applies that was constructed before the commencement of this clause unless the consent authority is satisfied that—
  - (a) the development will not adversely affect the streetscape, character or amenity of the surrounding area, and
  - (b) the development will retain the form, fabric and features of any architectural or historic feature of the existing building, and
  - (c) any increase in the floor space ratio will be **generally contained** within the envelope of the existing building.

...

It is noted that a significant majority of the future development will be contained within the existing buildings on site. However, not all of it.

**For the purposes of the subject site (6,938sqm site area), an FSR of 0.5:1 (3,469sqm GFA) applies for base purposes. However, under Clause 6.11 the amount of GFA contained generally within the existing building envelope is 12,632sqm (1.82:1), with 2,432sqm (0.35:1) outside the building envelope. As such the extent of variation is 19.23% above the maximum FSR permitted in Clause 6.11.**



## 4 Extent of Variation to the Development Standard

### 4.1 Clause 6.11(3)(c) – floorspace outside the existing envelope

As noted in Section 3.1 on page 8, the amount of GFA contained generally within the existing building envelope is 12,632sqm (1.82:1). This includes GFA contained within the 45-degree sight plan, which is consistent with the approach under Control 3.2/C16 of the Leichhardt DCP 2013 on how building envelope is determined. The subject application seeks a variation to the floorspace permitted outside the existing building envelope of 2,432sqm (0.35:1).

This is inconsistent with Clause 6.11(3)(c), which requires additional FSR beyond the site control of 0.5:1 to be '**generally contained**' within the existing building envelope. The proposal includes a total GFA of 15,064sqm (2.17:1), of which the 12,632sqm of GFA (1.82:1) contained within the 45-degree sight plan is **generally contained** within the envelope after redevelopment. As such, the extent of variation is 19.23% above the maximum FSR permitted in Clause 6.11 (Refer to figure below).



**Figure 1** GFA diagram.  
Source: PBD Architects

## 5 Objectives of the Standard

### 5.1 Clause 6.11(3)(c) – non-residential floor space

The objectives of the Clause 6.11 Adaptive reuse of existing buildings in Zone R1 are:

- to provide for the adaptive reuse of existing buildings for residential accommodation,
- to retain buildings that contribute to the streetscape and character of Leichhardt,
- to provide satisfactory amenity for future residents of the area,
- to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.

## 6 Objectives of the Zone

### 6.1 R1 General Residential Zone

The objectives of the B7 Business Park zone are as follows:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To improve opportunities to work from home.
- To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.
- To provide landscaped areas for the use and enjoyment of existing and future residents.
- To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.
- To protect and enhance the amenity of existing and future residents and the neighbourhood.

## 7 Assessment

### 7.1 Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

1. Compliance with Clause 6.13(3)(c) is unreasonable or unnecessary in the circumstances of the case for the following reasons:
  - i. As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
  - ii. Furthermore, Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]–[51] outlined five common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable and unnecessary which are summarised below:
    - Test 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
    - Test 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
    - Test 3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
    - Test 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
    - Test 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental

*character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

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

- i. With respect to the subject application, we consider that the proposed development meets the requirements of *Wehbe Test 1* and therefore compliance with the development standards are unreasonable and unnecessary when considered holistically with the development outcome being sought.
- ii. The specific environmental planning grounds that justify contravening the development standards in this instance (Clause 4.6(3)(b)) – Refer to Section 7.8; and

### 7.1.1 Wehbe Test 1 - Objectives of the Standard are achieved

Clause 6.11(3)(c) – FSR to be generally contained in existing building envelope

2. Objectives of this clause are met notwithstanding the numerical non-compliance:

- a. *to provide for the adaptive reuse of existing buildings for residential accommodation,*

The proposal will meet this Objective by delivering a high-quality adaptive re-use of existing, poorly utilised industrial buildings with 181 new dwellings of differing typology including a range of apartment types and sizes and terrace/townhouse style dwellings.

- b. *to retain buildings that contribute to the streetscape and character of Leichhardt,*

The proposal is accompanied by a detailed Heritage Impact Statement, which finds that, despite the numerical variation in Clause 6.11(3)(c) the proposal still contributes to the streetscape and character by:

- *The proposed alteration and additions have been carefully designed to maintain the fabric, positive construction and streetscape character of the industrial buildings to the historic and aesthetic significance of the Helsarmel Distinctive Neighbourhood; and*
- *The proposed alteration and additions have been carefully designed to maintain the fabric, positive construction and streetscape character of the industrial buildings to the historic and aesthetic significance of the Helsarmel Distinctive Neighbourhood.*

Accordingly, the proposal is considered to meet this objective.

- c. *to provide satisfactory amenity for future residents of the area,*

In accordance with the submitted SEPP 65 and Design Verification Statement, the development has been carefully designed to ensure a high standard of amenity for future residents of the development, while ensuring amenity is retained for surrounding developments. Accordingly, this objective it met.

- d. *to ensure that development does not adversely affect the quality or amenity of existing buildings in the area.*

The alterations and additions to the existing buildings were carefully designed in consultation with Weir Phillips to ensure they were appropriate for the quality and amenity of existing buildings in the area, as referenced earlier. The new proposed building on North Street is appropriately stepped down, which provides a balanced transition between the developments to the north and south. In addition, the proposal ensures that there is no change in the relationship of the industrial building with the shop/residence heritage item at 2 Hubert Street, and no significant view corridors to or from nearby heritage items will be impacted. Accordingly, this objective is met.

3. Accordingly, it is considered that strict compliance with the numerical controls of 6.11(3)(c) is unnecessary and unreasonable in this instance given the proposed development meets the objectives of the Clause 6.11 (Wehbe#1).

## 7.2 Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

1. As discussed above, Pain J held in *Four2Five vs Ashfield Council [2015] NSWLEC 90* that to satisfy clause 4.6(3)(b), a Clause 4.6 variation must do **more than** demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a Clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that Clause 4.6(3)(a) and (b) have been properly addressed.
2. On appeal, Leeming JA in *Four2Five vs Ashfield Council NSWCA 248* acknowledged Pain J's approach, but did not necessarily endorse it, instead re-stating Pain J and saying:

*"matters of consistency with objectives of development standards remain relevant, but not exclusively so."*

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent Initial Action Class 1 appeal (LEC 2019 1097), where she stated that *"the environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). 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 [24])..."*

*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."*

3. There are sufficient environmental planning grounds to justify contravening the development standards for the following reasons:
  - i. The purpose of Clause 6.11 is to enable former commercial and industrial buildings in residential zones to be converted for residential uses rather than be simply demolished or left to fall into disrepair (demolition by neglect).
  - ii. The purpose of this application, is to enable sensitive and high-quality adaptive re-use of these important early 20<sup>th</sup> century industrial buildings, that preserves the significance of the site as an early twentieth century industrial complex pioneered by *John Heine and Sons*, who were one of the first companies in Australia to produce automated machinery and the iconic Cyclops tricycles, bicycles and toys.
  - iii. Where the proposed development exceeds the existing building envelopes, the additions have been carefully designed to be recessive, through stepping back and utilising recessive materials, so that they clearly read as a contemporary addition that does not take away from the importance of the original buildings.

- iv. The additions have been carefully designed to ensure appropriate amenity for future residents of the development and existing dwellings, including through amenity provisions such as appropriate building setbacks, solar compliance, cross ventilation and communal space and landscaping. Many of these controls would not have been able to be met if the development was to strictly comply with Clause 6.113(c).
- v. The proposal represents a balance between ensuring appropriate amenity for existing and future residents, while still enabling an economic development that ensures the heritage of the existing buildings can be retained and enhanced.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land for residential dwellings.

### 7.3 Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

1. As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:
  - i. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - ii. There are sufficient environmental planning grounds to justify contravening the development standard.
2. In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

### 7.4 Clause 4.6(4)(a)(ii) - Is the proposed development 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?

1. The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:
2. The objectives of the particular standard

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 6.11 provision (3)(c) within the LLEP2013 notwithstanding the non-compliance with the standards.



3. The objectives for development within the zone in which the development is proposed to be carried out.

The site falls within the R1 General Residential zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the R1 General Residential zone;

i. *To provide for the housing needs of the community.*

The proposal provides 15,064sqm of residential floor space, which will strongly contribute to the housing needs of the community.

ii. *To provide for a variety of housing types and densities.*

The subject site is located in an area with a large number of terrace/townhouse type developments, as well as converted warehouses and some free-standing dwellings. The proposal will provide for a number of dwelling types including 1, 2 and 3 bedroom apartments and terraces/townhouses, which will provide additional variety of housing types and densities to the area.

iii. *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development will also incorporate gym and spa resident facilities on the ground floor of Building A and D.

iv. *To improve opportunities to work from home.*

The dwellings have been carefully designed to reflect a range of sizes so that units can be easily worked in from home.

v. *To provide housing that is compatible with the character, style, orientation and pattern of surrounding buildings, streetscapes, works and landscaped areas.*

The proposal is an adaptive re-use of existing early 20<sup>th</sup> century industrial buildings, which is representative of the eclectic nature of the precinct, with a variety of housing types, existing and former commercial and industrial buildings. Accordingly, it is considered to be housing that is compatible with the streetscape as it is largely being retained as is. Where the proposal exceeds the existing building envelope, it is recessive and does not create inappropriate design, heritage or amenity impacts on surrounding development.

vi. *To provide landscaped areas for the use and enjoyment of existing and future residents.*

The development provides significant landscaped area consistent with the requirements of SEPP 65 and the ADG and therefore meets this objective.

vii. *To ensure that subdivision creates lots of regular shapes that are complementary to, and compatible with, the character, style, orientation and pattern of the surrounding area.*

N/A no change is proposed to the existing subdivision pattern in this application.

viii. *To protect and enhance the amenity of existing and future residents and the neighbourhood.*

The proposed development will enable the adaptive re-use of an important industrial site, while also protecting the amenity of existing and future residents of the neighbourhood, which meets this objective.

4. For all of the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the B7 Business Park zone.

## 8 Any matters of significance for State or regional environmental planning

No matters of significance for State or regional environmental planning are raised.

## 9 Secretary's concurrence

The Planning Circular PS 18-003, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (with some exceptions). The LLEP is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council. This restriction however does not apply to decisions made by a local planning panel, as they are not legally delegates. The proposed development will be assessed by a local planning panel, and as such the 10% limit does not apply.

## 10 No public benefit in maintaining the development standard

There is no public benefit in maintaining the development standards, due to the reasons outlined in Section 7 above. The proposed development would not be able to be delivered if development standards were maintained given it would be unfeasible for Anprisa to redevelop the site. It is reiterated that the proposal will enable a high-quality, adaptive re-use of a series of early 20<sup>th</sup> Century industrial buildings, that may otherwise fall into disrepair and be demolished in the future.

## 11 Conclusion to variation to develop standards

This written request is for a variation to Clause 6.11(3)(c) development standard, under Clause 4.6 of the LLEP 2013. It justifies the contravention to the development standards by demonstrating that compliance is unreasonable and unnecessary in the circumstances of the case because the proposal:

- Achieves the objectives of the development standard 6.11(3)(c) of LLEP 2013;
- Achieves the objectives of the R1 General Residential zone under LLEP 2013;
- Will deliver a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation; and
- Is, therefore, in the public interest.