

Attachment C

**Clause 4.6 Variation Requests
206-208 King Street, Newtown**

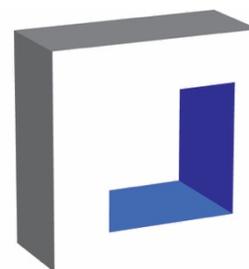
2017-1050

**SYDNEY LEP - CLAUSE 4.3 –
HEIGHT OF BUILDINGS
206-208 KING STREET, NEWTOWN**

CLAUSE 4.6 VARIATION REQUEST

APRIL 2018

VERSION 3



WILSON PLANNING

Document Information

Client: FatBox Technology Services Pty Ltd
Project: Alterations and Additions and Change of Use to Boarding House
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1.0 Introduction

1.1 Subject site

The site comprises Lots 5 and 6 in DP 65247 and is known as 206-208 King Street, Newtown. The site is rectangular in shape and has an area of 281.1m². The site has a frontage of 9.14 metres to King Street and a frontage of 30.46 metres to Brown Street.

The site is fully developed and contains an existing 3-storey building. The ground floor currently contains a 7-Eleven convenience store (facing King Street) and café (facing Brown Street). The first and second floors contain a number of unused rooms associated with the previously approved offices, hospitality school, and boarding house (or student accommodation). The rooftop is currently unused and there is no stair or lift access to this level. There is a storage room for the two ground floor tenancies with access via Brown Street. There is no provision for car parking within the site.

1.2 Background

The present 3-storey building on the site was erected in c1909 and was originally used as a furniture/department store. The building has been used for various commercial activities since, including floristry, furniture warehouse, restricted premises, hospitality school, convenience store, boarding house and café.

Figure 1 below provides a summary of historic building and development application information for the site:

Date	Subject
7 May 1968	Alterations to awning \$450
17 October 1979	Unauthorised work – aldermanic complaint
12 August 1980	Flashing lights on 1 st & 2 nd floors of premises
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17 April 1986	Use ground floor as a convenience food store, involving alterations \$20,000
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31 October 1989	Use premises as exercise centre \$100
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18 May 1989	Erect 2 illuminated wall signs \$2,000
2 November 1989	Use premises as a weight training gym
14 March 1990	Use ground floor as shops, 1 st floors as school and 2 nd floor as offices \$25,000

Figure 1 - Historic building and development application information

Source: NBRIS & Partners Pty Ltd, Statement of Heritage Impact - 206-208 King St, Newtown, 22 March 2017

The most recent development consent relating to the property was granted in 2007, pursuant to DA 2007/590. The description on this consent was as follows:

“Fitout and use of proportion [sic] of ground floor for café, and fitout and use of first floor for offices and hospitality school”

There is no mention of the second floor within the description or conditions of consent, however the stamped plans accompanying the consent include Drawing A03 “Level 2 Plan” which indicates that the second floor was approved as a boarding house (or potentially student

accommodation associated with the hospitality school) with 7 bedrooms, 2 kitchens, 5 bathrooms, 3 WCs, a common laundry and a common lounge room.

In summary, the site currently has approval for:

- Ground floor convenience store and storage
- Ground floor café
- First floor offices and hospitality school
- Second floor 7-room boarding house / student accommodation
- Projecting wall sign, 2 illuminated wall signs, and 2 under awning signs

1.3 Proposed Development

Consent is sought for alterations and additions to the existing building and change of use of the existing ground floor café (grk) and first and second floors to a boarding house. The existing convenience store (7-Eleven) on the ground floor fronting King Street will remain. The proposal also involves the creation of a rooftop communal terrace with lift and stair access.

The boarding house will contain 10 boarding rooms, including one accessible room, with their own kitchen and bathroom facilities. Communal living/sitting spaces and a laundry will be provided on the first and second floors; a communal living room will be provided on the ground floor (in place of the existing café); and an outdoor communal terrace (121m²) will be provided at rooftop level.

1.4 Clause 4.6 Variation Request Outline

The applicant seeks to use Clause 4.6 of SLEP to enable Council to flexibly apply the provisions of Clause 4.3 and approve an exception to the identified development standard.

This request is made pursuant to Clause 4.6 of SLEP; justifies why strict compliance with Clause 4.3 of SLEP is unnecessary in the circumstances of the case; and demonstrates that there are sufficient environmental planning grounds to justify approval of an exception to the development standard.

This request also explains how the proposed development will, despite exceeding the stated height limit, be in the public interest given that it will continue to be consistent with the objectives of the development standard and the objectives of the B2 Local Centre Zone.

The following variation request has been prepared in accordance with the NSW Planning & Infrastructure Guideline “Varying Development Standards: A Guide” (the Guideline), and includes other information deemed relevant to the justification of the exception.

The following variation request has also considered the assessment framework outlined in the Land and Environment Court proceedings *Bates Smart Pty Ltd vs City of Sydney* [2014] NSWLEC 1001.

2.0 Details of development standard to be varied

2.1 Name of EPI that applies to the land

Sydney Local Environmental Plan (SLEP) 2012

2.2 Zoning of the land

B2 Local Centre

2.3 Objectives of the zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

2.4 Development standard being varied

Clause 4.3 of SLEP references a Height of Buildings Map. The height of Buildings Map identifies a maximum height of 15 metres for this site.

2.5 EPI clause development standard listed under

Clause 4.3 – Height of Buildings and associated Height of Buildings Map.

2.6 Performance based development standard

The height development standard in Clause 4.3 is not performance based. Rather, it is a numerical control.

2.7 Objectives of the development standard

- (a) to ensure the height of development is appropriate to the condition of the site and its context,
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,
- (c) to promote the sharing of views,
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,
- (e) in respect of Green Square:
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

2.8 Numeric value of the development standard in the EPI

Height limit of 15 metres.

2.9 Proposed numeric value of the development standard in DA

15 metres.

2.10 Percentage variation between proposal and EPI

1.33%-2% variation

3.0 Assessment of variation to development standard

3.1 SLEP Clause 4.6 Considerations

Clause 4.6 of SLEP provides:

(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.

Comment

The following sections of this Variation Request confirm that the proposed development of the subject site has merit and meets the objectives of this clause, and other relevant clauses. As such, Council's flexibility is sought in applying the height limit development standard on this occasion.

(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.

Comment – Extent of variation

Council is able to grant consent to the proposed development, notwithstanding the contravention of the height development standard. There is no numerical limit to the variation that can be granted consent to.

Comment - Development standard that is expressly excluded from the operation of this clause

There is nothing within Clauses 4.3 or 4.6 that exclude the operation of Clause 4.6 in this instance.

(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.

Comment

An assessment of the variation is provided below in accordance with the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guideline, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* outlined below:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Is a development which complies with the development standard unreasonable or unnecessary?
- Is the objection well founded?

In accordance with the Guideline, this assessment also addresses the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater [2007] NSWLEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary 'because the objectives of the development standard are achieved notwithstanding non-compliance with the standard'.

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

Comment

Planning circular PS 08-003, issued on 9 May 2008, states that concurrence may be assumed under clause 64 of the Environmental Planning and Assessment Regulation 2000.

3.2 How is strict compliance with the development standard unreasonable and/or unnecessary in this particular case?

In the circumstances of this case, strict numerical compliance with the height limit is unreasonable or unnecessary for the following reasons:

- I. The minor increase in height (20mm-30mm) is the result of minimum clearances required for the new lift shaft which provides access to the roof top communal open space for all persons. Given the proposal involves adaptive reuse of a heritage-listed building of local significance,

the lift shaft height is fixed and cannot be altered. The height of the pergola structure matches this same height to ensure there is adequate clearance for people standing under it.

2. The roof top communal open space is considered to be integral to the proposal in that it provides significant amenity for boarders by providing an area for gathering, social interaction, access to natural light and sunshine, and panoramic views.
3. The lift shaft and pergola are setback from front, side and rear boundaries; will not dominate the view of the building from the street level; and is below, well behind, and remains subservient to, the height of the existing turret, which has a height of 16.69 metres.
4. The lift shaft and pergola have been considered in the Statement of Heritage Impact prepared by NBR Architecture, with the following comments made:

'The conservation, internal changes and roof-top works would not prevent visitors from understanding the significance of the building'

The addition on the roof would be visible from Brown Street and from a small area of King Street. The setting-in of the roof-top structures would minimise their visibility in nearby views.

There is an understandable desire to use the roof space as an out-door recreation area. The roof has a parapet that will conceal most of any roof-top elements from public view, so there needs to be more convenient access to the roof than the ladder that currently exists. There must be a new lift, with its required over-run, and also fire egress stairs.

The roof-top additions would be too small to dominate the heritage item.

The roof-top additions are set well towards the rear from King Street, so that the northern section is unlikely to be seen from the public domain.

The windows in the roof-top addition would be proportioned similar to those of the original building, and have sliding sashes.

The roof-top addition would be clad in fibre-cement tiles set at 45 degrees, to match the pattern of the existing cladding of the original lift motor room.

The roof-top works would be largely visible from only a small number of places in the public domain. The setting back of the roof-top work from King Street minimises its potential impact on the King Street Conservation Area.

The external development on the roof would have the positive impact of activating this space that offers fine views over the nearby conservation areas. The relatively small rooftop structures would have a very small adverse heritage impact, that deserves to be acceptable on the basis of the measures to make them fit with the precedent for roof-top structures, the small number of places in the public domain from which the new work would be visible, and the lack of any dominating quality of this work.'

5. The additional 20mm-30mm will have no impact on adjoining properties in terms of overshadowing or obstructing views.
6. The proposal complies with the underlying objectives of the development standard (clause 4.3) and the B2 zone (both discussed further in Section 3.6 of this report).

3.3 Strict compliance with the development standard would hinder the attainment of the objects of Section 5(a)(i) and (ii) of the EP&A Act

The objects stated in Section 5(a)(i) and (ii) are as follows:

(a) to encourage:

(i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

(ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

Comment

The proposal is permitted in the B2 Local Centre Zone. The upper floors of the building have been vacant for several years and require significant maintenance to comply with modern building and living standards. The building needs to be used for something economically feasible to ensure the long-term preservation of the heritage item and the current proposal allows this.

The roof top communal open space is considered to be integral to the proposal in that it provides significant amenity for boarders by providing an area for gathering, social interaction, access to natural light and sunshine, and panoramic views. The new lift shaft will provide universal access to the roof top communal open space. The pergola will provide all weather access to the roof top terrace.

The proposal will provide additional affordable housing in a high amenity location and will generate additional local jobs and investment in the local economy. The proposal is considered to meet the stated objects of the Act, despite the very minor non-compliance with the height limit development standard.

3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard, as outlined in Section 3.2 above.

3.5 Is the variation well founded?

Having regard to the comments provided in Sections 3.2 above, the variation is considered to be well founded and worthy of Council's support.

3.6 Is the development in the public interest?

Clause 4.6(4)(a)(ii) states that *'development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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..'*

3.6.1 Clause 4.3 Objectives

The objectives of clause 4.3 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,
- (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.

An assessment of the proposal against the objectives of clause 4.3 follows:

- (a) there will be no change in the height of the existing building proper. The only portion of the development that will be a very minor distance (between 200mm and 300mm) over the height limit relates to a lift shaft providing access to the roof top terrace and a pergola to be used for social gathering and interaction, thereby providing significant amenity to boarders. The Statement of Heritage Impact prepared by NBRS Architecture concludes *'The external development on the roof would have the positive impact of activating this space that offers fine views over the nearby conservation areas. The relatively small rooftop structures would have a very small adverse heritage impact, that deserves to be acceptable on the basis of the measures to make them fit with the precedent for roof-top structures, the small number of places in the public domain from which the new work would be visible, and the lack of any dominating quality of this work'*. As such, and despite the very minor variation to the 15m height limit, the height of the development is appropriate to the condition of the site and its context.
- (b) to very minor variation to the height limit will not impact on the ability of the site to provide an appropriate height transition between the adjoining multi-storey residential development to the south-east and the surrounding heritage items/heritage conservation.
- (c) the increased height will not have any impact on the sharing of views from surrounding development. There have been no objections received from neighbours in response to notification of the application.
- (d) not applicable.
- (e) not applicable.

3.6.2 B2 Local Centre Zone Objectives

The objectives of the B2 Zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

An assessment of the proposal against the objectives of the B2 zone follows:

- The proposal involves the retention of the existing retail premises on the ground floor, which will continue to serve the needs of people who live in, work in and visit the local area. It will also continue to provide activation of the King Street frontage.

- The site is located in accessible area, as defined in the ARH SEPP. The proposal will generate additional short-term construction employment opportunities, and longer-term cleaning and maintenance jobs.
- The proposal will maximise public transport patronage and encourage walking and cycling, owing to its close proximity to jobs, education establishments, and recreational facilities.
- A boarding house is considered to be an appropriate residential use above the existing retail space, and it will support the vitality of the King Street commercial precinct.

Given that the proposal is consistent with the objectives of Clause 4.3 and the B2 Local Centre Zone, approval of the development is considered to be in the public interest.

4.0 Conclusion

Development standards are a means of implementing planning purposes for a development, class of development or specific locality.

It is clear on this occasion that compliance with the height limit development standard would be impractical and unnecessary.

Strict compliance with the height limit development standard has been shown to be unreasonable in this instance and it has been proven that various environmental planning grounds justify the very minor height exceedance.

This Variation Request satisfies the provisions of clause 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a) of SLEP as it has been demonstrated that:

- compliance with the height limit development standard is both unnecessary and unreasonable in the circumstances of this case,
- there are sufficient environmental planning grounds to justify contravening the development standard, and
- the proposed development will be in the public interest because:
 - it is consistent with the objectives of the particular standard,
 - it is consistent with the objectives for development within the zone in which the development is proposed to be carried out, and,
 - it is consistent with the objectives of clause 4.6.



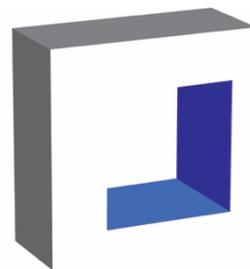
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**SYDNEY LEP - CLAUSE 4.4 –
FLOOR SPACE RATIO
206-208 KING STREET, NEWTOWN**

CLAUSE 4.6 VARIATION REQUEST

DECEMBER 2017

VERSION 3



WILSON PLANNING

Document Information

Client: FatBox Technology Services Pty Ltd
Project: Alterations and Additions and Change of Use to Boarding House
Our Reference: 2017-1050

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1.0 Introduction

1.1 Subject site

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The site is fully developed and contains an existing 3-storey building. The ground floor currently contains a 7-Eleven convenience store (facing King Street) and café (facing Brown Street). The first and second floors contain a number of unused rooms associated with the previously approved offices, hospitality school, and boarding house (or student accommodation). The rooftop is currently unused and there is no stair or lift access to this level. There is a storage room for the two ground floor tenancies with access via Brown Street. There is no provision for car parking within the site.

1.2 Background

The present 3-storey building on the site was erected in c1909 and was originally used as a furniture/department store. The building has been used for various commercial activities since, including floristry, furniture warehouse, restricted premises, hospitality school, convenience store, boarding house and café.

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Figure 1 - Historic building and development application information

Source: NBRIS & Partners Pty Ltd, Statement of Heritage Impact - 206-208 King St, Newtown, 22 March 2017

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accommodation associated with the hospitality school) with 7 bedrooms, 2 kitchens, 5 bathrooms, 3 WCs, a common laundry and a common lounge room.

In summary, the site currently has approval for:

- Ground floor convenience store and storage
- Ground floor café
- First floor offices and hospitality school
- Second floor 7-room boarding house / student accommodation
- Projecting wall sign, 2 illuminated wall signs, and 2 under awning signs

1.3 Proposed Development

Consent is sought for alterations and additions to the existing building and change of use of the existing ground floor café (grk) and first and second floors to a boarding house. The existing convenience store (7-Eleven) on the ground floor fronting King Street will remain. The proposal also involves the creation of a rooftop communal terrace with lift and stair access.

The boarding house will contain 10 boarding rooms, including one accessible room, with their own kitchen and bathroom facilities. Communal living/sitting spaces and a laundry will be provided on the first and second floors; a communal living room will be provided on the ground floor (in place of the existing café); and an outdoor communal terrace (121m²) will be provided at rooftop level.

1.4 Clause 4.6 Variation Request Outline

The applicant seeks to use Clause 4.6 of SLEP to enable Council to flexibly apply the provisions of Clause 4.4 and approve an exception to the identified development standard.

This request is made pursuant to Clause 4.6 of SLEP; justifies why strict compliance with Clause 4.4 of SLEP is unnecessary in the circumstances of the case; and demonstrates that there are sufficient environmental planning grounds to justify approval of an exception to the development standard. This Clause 4.6 Variation Request should be read in conjunction with Wilson Planning Pty Ltd's Statement of Environmental Effects dated 01 December 2017.

This request also explains how the proposed development will, despite exceeding the stated FSR, be in the public interest given that it will continue to be consistent with the objectives of the development standard and the objectives of the B2 Local Centre Zone.

The following variation request has been prepared in accordance with the NSW Planning & Infrastructure Guideline "Varying Development Standards: A Guide" (the Guideline), and includes other information deemed relevant to the justification of the exception.

The following variation request has also considered the assessment framework outlined in the Land and Environment Court proceedings *Bates Smart Pty Ltd vs City of Sydney* [2014] NSWLEC 1001.

2.0 Details of development standard to be varied

2.1 Name of EPI that applies to the land

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B2 Local Centre

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- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

2.4 Development standard being varied

Clause 4.4 of SLEP references a Floor Space Ratio Map. The Floor Space Ratio Map identifies a maximum FSR of 2.0:1 for this site.

2.5 EPI clause development standard listed under

Clause 4.4 – Floor space ratio and associated Floor Space Ratio Map.

2.6 Performance based development standard

The FSR development standard in Clause 4.4 is not performance based. Rather, it is a numerical control.

2.7 Objectives of the development standard

- (a) to provide sufficient floor space to meet anticipated development needs for the foreseeable future,
- (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
- (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

2.8 Numeric value of the development standard in the EPI

FSR of 2.0:1

2.9 Proposed numeric value of the development standard in DA

FSR of 2.45:1

2.10 Percentage variation between proposal and EPI

22.6% variation

3.0 Assessment of variation to development standard

3.1 SLEP Clause 4.6 Considerations

Clause 4.6 of SLEP provides:

- (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.

Comment

The following sections of this Variation Request confirm that the proposed development of the subject site has merit and meets the objectives of this clause, and other relevant clauses. As such, Council's flexibility is sought in applying the FSR development standard on this occasion.

- (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.

Comment – Extent of variation

Council is able to grant consent to the proposed development, notwithstanding the contravention of the FSR development standard. There is no numerical limit to the variation that can be granted consent to.

Comment - Development standard that is expressly excluded from the operation of this clause

There is nothing within Clauses 4.4 or 4.6 that exclude the operation of Clause 4.6 in this instance.

- (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.

Comment

An assessment of the variation is provided below in accordance with the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guideline, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* outlined below:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Is a development which complies with the development standard unreasonable or unnecessary?
- Is the objection well founded?

In accordance with the Guideline, this assessment also addresses the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater [2007] NSWLEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary 'because the objectives of the development standard are achieved notwithstanding non-compliance with the standard'.

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

Comment

Planning circular PS 08-003, issued on 9 May 2008, states that concurrence may be assumed under clause 64 of the Environmental Planning and Assessment Regulation 2000.

3.2 How is strict compliance with the development standard unreasonable and/or unnecessary in this particular case?

In the circumstances of this case, strict numerical compliance with the floor space ratio control is unreasonable or unnecessary for the following reasons:

1. The floor area exists (and has existed since the construction of the building in c1909) and the proposal does not include any building works resulting in a net increase in the internal floor area or existing FSR exceedance. Rather, the proposed alterations and additions will result in a reduction in floor area from 705.36m² to 689.5m² and therefore a reduction to the existing FSR.
2. The proposal allows for the adaptive reuse of a heritage-listed building of local significance, the upper floors of which have been vacant for several years and require significant maintenance to comply with modern building and living standards. The income generated by the proposal will allow the ongoing maintenance and preservation of this heritage item.
3. The proposal will allow the preservation of a contributory building within the King Street Conservation Area and Special Character Area and is therefore considered to be consistent with the character of the local area.

4. The proposal facilitates the provision of additional affordable housing within close proximity of several forms of public transport, employment opportunities, and education facilities.
5. The existing and historical exceedance of FSR does not result in a variation to height controls of any habitable floor area (i.e. the only component of the building that exceeds the current height limit of 15 metres is the decorative turret on the corner of the building). There is therefore no additional bulk or scale added to the building resulting from the existing FSR exceedance.
6. The proposal complies with the underlying objectives of the development standard (clause 4.4) and the B2 zone (both discussed further in Section 3.6 of this report).

3.3 Strict compliance with the development standard would hinder the attainment of the objects of Section 5(a)(i) and (ii) of the EP&A Act

The objects stated in Section 5(a)(i) and (ii) are as follows:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

Comment

The proposal is permitted in the B2 Local Centre Zone. The upper floors of the building have been vacant for several years and require significant maintenance to comply with modern building and living standards. The building needs to be used for something economically feasible to ensure the long-term preservation of the heritage item and the current proposal allows this.

The proposal is limited to a change of use and minor alterations and additions, and as stated earlier, does not involve any building works resulting in a net increase in the existing FSR. As previously stated, the proposed alterations and additions will result in an overall reduction of floor area and therefore FSR. The proposal will provide additional affordable housing in a high amenity location and will generate additional local jobs and investment in the local economy. The proposal is considered to meet the stated objects of the Act, despite the non-compliance with the FSR development standard.

3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard, as outlined below.

As previously stated, the floor area has existed since the construction of the building in 1909. The proposed alterations and additions will reduce the existing FSR exceedance.

The proposal allows for the adaptive reuse of a heritage-listed building of local significance and will allow the preservation of a contributory building within the King Street Conservation Area and Special Character Area. The proposal is in keeping with the character of the area and does not add to the existing building's height. Existing activation of the street frontages will remain.

The proposal is permissible with consent, is compliant with the stated objectives of the standard and zone, and facilitates the provision of additional affordable housing in a high amenity area.

3.5 Is the variation well founded?

Having regard to the comments provided in Sections 3.2-3.4 above, the variation is considered to be well founded and worthy of Council's support.

3.6 Is the development in the public interest?

Clause 4.6(4)(a)(ii) states that *'development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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...'*

3.6.1 Clause 4.4 Objectives

The objectives of clause 4.4 are:

- (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.

An assessment of the proposal against the objectives of clause 4.4 follows:

- The existing floor space contributes, and will continue to contribute for the foreseeable future, to the provision of affordable housing, for which there is a high demand in this location.
- The existing floor area regulates the density of development, built form and land use intensity that can be achieved on this site. There will not be any increase in traffic or parking demand as a result of the proposal and pedestrian traffic will be regulated through dedicated access points.
- The existing floor area is capable of being serviced by existing infrastructure.
- As previously stated, the retention of a contributory building within the King Street Conservation Area and Special Character Area is considered to reflect the existing and desired character of the locality.
- Use of existing windows, and siting and management of the rooftop communal open space will minimise adverse impacts on the amenity of neighbouring residential apartments.

3.6.2 B2 Local Centre Zone Objectives

The objectives of the B2 Zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

An assessment of the proposal against the objectives of the B2 zone follows:

- The proposal involves the retention of the existing retail premises on the ground floor, which will continue to serve the needs of people who live in, work in and visit the local area. It will also continue to provide activation of the King Street frontage.
- The site is located in accessible area, as defined in the ARH SEPP. The proposal will generate additional short-term construction employment opportunities, and longer-term cleaning and maintenance jobs.
- The proposal will maximise public transport patronage and encourage walking and cycling, owing to its close proximity to jobs, education establishments, and recreational facilities.
- A boarding house is considered to be an appropriate residential use above the existing retail space, and it will support the vitality of the King Street commercial precinct.

Given that the proposal is consistent with the objectives of Clause 4.4 and the B2 Local Centre Zone, approval of the development is considered to be in the public interest.

4.0 Conclusion

Development standards are a means of implementing planning purposes for a development, class of development or specific locality.

It is clear on this occasion that compliance with the current FSR development standard would require demolition of part of a heritage listed building, which is undesirable, impractical and unnecessary.

Strict compliance with the FSR development standard has been shown to be unreasonable in this instance and it has been proven that many environmental planning grounds justify the retention of the existing floor area within the 108 year old building. The proposed alterations and additions will also result in a reduction to the existing FSR exceedance.

This Variation Request satisfies the provisions of clause 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a) of SLEP as it has been demonstrated that:

- compliance with the FSR development standard is both unnecessary and unreasonable in the circumstances of this case,
- there are sufficient environmental planning grounds to justify contravening the development standard, and
- the proposed development will be in the public interest because:
 - it is consistent with the objectives of the particular standard,
 - it is consistent with the objectives for development within the zone in which the development is proposed to be carried out, and,
 - it is consistent with the objectives of clause 4.6.



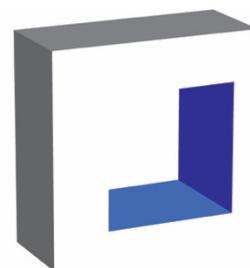
2017-1050

**STATE ENVIRONMENTAL PLANNING POLICY
(AFFORDABLE RENTAL HOUSING) 2009 –
CLAUSE 29(2)(E) – PARKING
206-208 KING STREET, NEWTOWN**

CLAUSE 4.6 VARIATION REQUEST

MAY 2018

VERSION 1



WILSON PLANNING

Document Information

Client: FatBox Technology Services Pty Ltd
Project: Alterations and Additions and Change of Use to Boarding House
Our Reference: 2017-1050

Document History

Version	Date	Description	Author	Checked
1	28/05/18	Final for Council Submission	WW	-

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1.0 Introduction

1.1 Subject site

The site comprises Lots 5 and 6 in DP 65247 and is known as 206-208 King Street, Newtown. The site is rectangular in shape and has an area of 281.1m². The site has a frontage of 9.14 metres to King Street and a frontage of 30.46 metres to Brown Street.

The site is fully developed and contains an existing 3-storey building. The ground floor currently contains a 7-Eleven convenience store (facing King Street) and café (facing Brown Street). The first and second floors contain a number of unused rooms associated with the previously approved offices, hospitality school, and boarding house (or student accommodation). The rooftop is currently unused and there is no stair or lift access to this level. There is a storage room for the two ground floor tenancies with access via Brown Street. There is no provision for car parking within the site.

1.2 Applicant

FatBox Technology Services Pty Ltd
Unit 606, Manning Building, 451 Pitt Street
HAYMARKET, SYDNEY NSW 2000

1.3 Proposed Development

Consent is sought for alterations and additions to the existing building and change of use of the existing ground floor café (grk) and first and second floors to a boarding house. The existing convenience store (7-Eleven) on the ground floor fronting King Street will remain. The proposal also involves the creation of a rooftop communal terrace with lift and stair access.

The boarding house will contain 10 boarding rooms, including one accessible room, with their own kitchen and bathroom facilities. Communal living/sitting spaces and a laundry will be provided on the first and second floors; a communal living room will be provided on the ground floor (in place of the existing café); and an outdoor communal terrace (121m²) will be provided at rooftop level.

1.4 Clause 4.6 Variation Request Outline

The applicant seeks to use Clause 4.6 of Sydney Local Environmental Plan 2012 (SLEP) to enable Council to flexibly apply the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the ARH SEPP) and approve a variation to the identified development standard.

This Clause 4.6 Variation Request is made pursuant to Clause 4.6 of SLEP; justifies why strict compliance with the car parking development standard of the ARH SEPP is unreasonable and unnecessary in the circumstances of this case; and demonstrates that the proposal complies with the objectives of the ARH SEPP, and B2 Local Centre Zone. This variation request should be read in conjunction with Wilson Planning Pty Ltd's Statement of Environmental Effects dated 01 December 2017. The variation request has been prepared in accordance with the NSW Planning & Infrastructure Guideline "Varying development standards: A Guide" (the Guideline); considers NSW Land and Environment Court planning principles and case law; and includes other information deemed relevant to the justification of the exception.

2.0 Details of development standard to be varied

2.1 Name of EPI that applies to the land

Sydney Local Environment Plan 2012 (SLEP)

2.2 Zoning of the land

B2 Local Centre

2.3 Objectives of the zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

2.4 Development standard being varied

Part 2, Division 3, Clause 29(2)(e) of the ARH SEPP, which states:

'(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(e) parking if:

- (i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and*
- (ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and*
- (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site'*

The site is within an accessible area, therefore points (i) and (iii) apply in this instance.

2.5 EPI clause development standard listed under

Clause 29(2)(e) of the ARH SEPP.

2.6 Objectives of the development standard

There are no specific objectives listed under Clause 29 of the ARH SEPP.

2.7 Numeric value of the development standard in the EPI

The site is within an accessible area, therefore points (i) and (iii) of clause 29(2)(e) apply and the numeric value of the development standard is:

0.2 parking spaces per boarding room (10 X 0.2 = 2) plus not more than 1 parking space for each person employed in connection with the development and who is resident on site (0).

2.8 Proposed numeric value of the development standard

No on-site car parking has been provided under this application.

2.9 Percentage variation between proposal and EPI

The percentage variation between what is required under clause 29(2)(e) and the proposal is 100% (2 spaces).

3.0 Assessment of variation to development standard

3.1 SLEP Clause 4.6 Considerations

Clause 4.6 of SLEP provides:

(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.

Comment

The following sections of this variation request confirm that the proposed development of the subject site has merit and meets the objectives of this clause, and other relevant clauses. As such, Council's flexibility is sought in applying the carparking development standard on this occasion.

(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.

Comment – Extent of variation

There is no numerical limit to the variation that can be granted consent to. The following seven examples of Joint Regional Planning Panels and The Land and Environment Court granting consent to numerical departures greater than 10% illustrate this:

Reference	Consent Authority	Proposal	Approval Date	Variation
2014SYE053	Sydney East Joint Regional Planning Panel	14 storey mixed use development	30 October 2014	FSR - 24%
2014SYW125	Sydney West Joint Regional Planning Panel	Mixed-use development comprising 424 residential apartments, commercial / retail tenancies and communal facilities within 3 towers	23 January 2015	FSR - 13.57%
2014HCC023	Hunter & Central Coast Joint Regional Planning Panel	Shop-top Housing (276 apartments), Hotel (134 rooms), Restaurant and bar, Commercial, Function Rooms, Carpark in 2 towers	14 May 2015	FSR - 85.9% Height - 33% and 46%
2014HCC025	Hunter & Central Coast Joint Regional Planning Panel	Retail & Shop Top Housing comprising 180 residential units	14 May 2015	Height - 30%
2014HCC026	Hunter & Central Coast Joint Regional Planning Panel	Residential Flat Building comprising of 16 storeys (140 units) and three basement car parking levels	17 September 2015	Height - 56%
2015HCC002	Hunter & Central Coast Joint Regional Planning Panel	Mixed use development including commercial, residential (Shop Top Housing), Cinema, Hotel and Tavern in 2 Towers	3 December 2015	FSR - 47.5-72% Height - 64.5-210.2%
Baker Kavanagh Architects v Sydney City Council [2014] NSW LEC 1003	NSW Land and Environment Court	Three storey shop top housing development	14 January 2014	FSR - 187%

Council is able to grant consent to the proposed development, notwithstanding the contravention of the carparking development standard.

Comment - development standard that is expressly excluded from the operation of this clause

There is nothing within Clause 29 of the ARH SEPP that excludes the operation of Clause 4.6 of SLEP in this instance.

- (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.

Comment

An assessment of the variation is provided below in accordance the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guideline, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* outlined below:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Is a development which complies with the development standard unreasonable or unnecessary?
- Is the objection well founded?

In accordance with the Guideline, this assessment also addresses the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater [2007] NSWLEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary 'because the objectives of the development standard are achieved notwithstanding non-compliance with the standard'.

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

Comment

Planning Circular PS 08-003, issued on 9 May 2008, states that concurrence may be assumed under clause 64 of the Environmental Planning and Assessment Regulation 2000.

3.2 Strict compliance with the development standard is unreasonable and/or unnecessary in this particular case

For the numerous reasons presented below, strict compliance with the development standard is considered unreasonable and unnecessary in regard to this application.

3.2.1 Parking Historical Deficiency

The building was constructed in c1909 with no provision for on-site parking. The building was built to all 4 boundaries, with no opportunity for there to be parking provided in the future without part demolition of the building. The original building was used as a furniture/department store and has been approved and used for various commercial activities since, including floristry, furniture warehouse, restricted premises, hospitality school, convenience store, boarding house and café. At no time during its varied use has there been any on-site parking provision. The most recent/current approved uses of the site and the applicable parking requirements/provision are discussed in the following table.

Use	Area	Required Parking	Provided Parking	Deficiency
Ground Floor Convenience Store (7-Eleven)	153.7m ²	2.6 spaces (assumed rate of 1 space/60m ² GFA from SLEP)	0	-2.6
Ground Floor Café (grk)	42m ²	6.3 (assumed rate of 15 space/100m ² GFA from RTA Guide to Traffic Generating Development)	0	-6.3
First Floor Offices and Hospitality School	255.3m ²	2 (the site is not within category D, E, or F under SLEP, however the rate of 1/125m ² has been chosen given the FSR control applying to the site and the close proximity of public transport)	0	-2
Second Floor Boarding House	7 bedrooms	1.4 (assumed rate of 0.2 spaces/bedroom from ARH SEPP)	0	-1.4
Total Historical Deficiency >>>>		12.3	0	12.3

As the above table shows, the site has an historical deficiency of 12.3 parking spaces and there is no proposal to increase the internal floor area of the existing building.

The proposal involves a 10-room boarding house, including the conversion of the ground floor café into communal living space. The proposal will generate a demand for 2 parking spaces based on the requirements of the ARH SEPP.

Given the proposal replaces the current parking demand from the ground floor café (6.3 spaces), first floor offices and hospitality school (2 spaces), and second floor boarding house (1.4 spaces) with a boarding house having a parking demand for 2 spaces, there will be a total overall reduction in on-site parking demand of 7.7 spaces (9.7 spaces approved demand less 2 spaces proposed demand).

3.2.2 Heritage – Adaptive Reuse and Preservation of Streetscapes

The proposal allows for the adaptive reuse of a heritage-listed building of local significance, the upper floors of which have been vacant for several years and require significant maintenance to comply with modern building and living standards. The income generated by the proposal will allow the ongoing maintenance and preservation of this heritage item.

The proposal will allow the preservation of a contributory building within the King Street Conservation Area and Special Character Area and is therefore considered to be consistent with the character of the local area.

3.2.3 Affordable Housing - Public benefit and positive social impacts

The proposal facilitates the provision of much needed affordable housing within close proximity of employment opportunities and education facilities.

Due to the type of housing proposed, and the availability of various forms of public transport available, the likelihood of car ownership will be very low for lodgers staying in the proposed boarding house.

3.2.4 Access to public transport services

The site has excellent access to public transport services both in terms of the number and types of services and the frequency of these services. This site is within walking/cycling distance from the University of Sydney (400m), Royal Prince Alfred Hospital (500m), and a variety of shopping and dining options, recreational facilities, and extensive parklands. The site is also within easy walking distance to train and bus routes providing access to surrounding suburbs, University of Technology, the Sydney CBD, and Sydney Airport.

The provision of no on-site parking is also considered to encourage public transport usage and reduce traffic congestion.

3.2.5 Access to on-street parking

There is ample short-term, paid parking in King Street and additional short-term, free parking in Brown Street, to cater for visitors to the boarding house. Parking restrictions in both streets cease at 7pm, allowing visitors to park within close proximity to the site at night.

3.3 The Department of Planning and Infrastructure’s Varying Development Standards: A Guide – August 2011 and the Land and Environment Court’s ‘five part test’

The Department of Planning and Infrastructure’s *Varying Development Standards: A Guide – August 2011* (the Guide) and the ‘five part test’ established by the NSW Land and Environment Court have been considered in preparation of this variation request. The five-part test is outlined below, with a comment provided in response to each of the tests.

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard.*

Comment:

There are no specific objectives listed under Clause 29 of the ARH SEPP.

Clause 3 of the ARH SEPP outlines the overall aims of the policy, as follows:

- (a) to provide a consistent planning regime for the provision of affordable rental housing,
- (b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,
- (c) to facilitate the retention and mitigate the loss of existing affordable rental housing,
- (d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,
- (e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,
- (f) to support local business centres by providing affordable rental housing for workers close to places of work,
- (g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.

As indicated below, the proposal is considered to meet the aims that are relevant to it.

- (a) the proposal otherwise complies with the consistent planning regime for the provision of affordable rental housing across NSW.
- (b) provision of more affordable housing in a highly sought after, and high amenity locality.
- (c) existing affordable rental housing (7 bedrooms) on the site will be replaced with 10 new boarding rooms.
- (d) n/a
- (e) n/a
- (f) the site is perfectly located to provide affordable housing within walking distance of public transport, and easy access to many large scale employers and tertiary institutions.
- (g) the proposal will provide housing for people disadvantaged by unaffordable rental accommodation close to the Sydney CBD.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*

Comment:

There are no specific objectives listed under Clause 29 of the ARH SEPP.

The underlying purpose of the standard is to ensure parking is provided for lodgers of the boarding house.

This underlying purpose is relevant to the development and compliance would ordinarily be necessary, except for the reasons outlined in 3. below.

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*

Comment:

There are no specific objectives listed under Clause 29 of the ARH SEPP.

The underlying purpose of the standard is to ensure parking is provided for lodgers of the boarding house. This underlying purpose would not be defeated or thwarted if compliance was required; however, the reasons identified within Section 3.1 of this variation request for varying the car parking development standard are numerous and compelling. Based on these reasons, compliance is considered to be unreasonable.

There is considered to be public benefit and positive social impacts associated with the proposed boarding house and these would be thwarted by strict compliance with the development standard.

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*

Comment:

See the comments in Section 3.2.1 of this variation request for a discussion about the numerous approvals that Council has granted over the property, none of which required the provision of on-site parking. It is clear from these consents that parking requirements have been routinely varied for this site and it is assumed that these variations were based on the numerous and compelling reasons outlined in Section 3.2 of this variation request.

As previously stated in Section 3.2.1 the proposed use of a major part of the building results in a reduction in the demand for parking on this site, thereby improving the historical deficiency. As such, compliance with the standard is unnecessary and unreasonable in this instance.

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.*

Comment:

Not applicable.

3.4 Strict compliance with the development standard would hinder the attainment of the objects of Section 5(a)(i) and (ii) of the EP&A Act

The relevant objects of the Environmental Planning and Assessment Act 1979 (the Act) are:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities,*

towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

To require compliance with the development standard would necessitate the partial demolition of a heritage listed building, which is not consistent with the proper management and conservation of heritage values or existing building resources.

Adaptive reuse of a heritage-listed building that maintains the locally significant facades, character and streetscape, while at the same time providing affordable rental housing and an income stream for ongoing preservation of the building, is considered to better promote the stated objects of the Act.

Additionally, the proposal is considered to meet the objectives of the B2 zone, within which the site is located.

The objectives of the B2 Zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow appropriate residential uses so as to support the vitality of local centres.

An assessment of the proposal against the objectives of the B2 zone follows:

- In regard to the first objective, the proposal involves the retention of the existing retail premises on the ground floor, which will continue to serve the needs of people who live in, work in and visit the local area. It will also continue to provide activation of the King Street frontage.
- The site is located in accessible area, as defined in the ARH SEPP. The proposal will generate additional short-term construction employment opportunities, and longer term cleaning and maintenance jobs.
- The proposal will maximise public transport patronage and encourage walking and cycling, owing to its close proximity to jobs, education establishments, and recreational facilities.
- A boarding house is considered to be an appropriate residential use above the existing retail space, and it will support the vitality of the King Street commercial precinct.

3.5 Performance based development standard

The off-street car parking development standard is considered to be a performance-based standard, with clause 29(4) of the ARH SEPP stating that '*a consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2)*'. In other words, if Council believes there are sufficient environmental planning grounds, it can grant consent to the application notwithstanding non-compliance with the car parking development standard.

This variation request has clearly identified that there are sufficient environmental planning grounds to justify varying the car parking development standard.

4.0 Conclusion

Development standards are a means of implementing planning purposes for a development, class of development or specific locality. Clause 4.6 of SLEP allows flexibility where there are justifiable reasons for varying numeric development standards.

The proposal is compliant with the requirements of the ARH SEPP, SLEP and SDCP, with the exception of car parking.

This variation request justifies why strict compliance with the car parking development standard of the ARH SEPP is unreasonable and unnecessary in the circumstances of this case; and demonstrates that the proposal complies with the objectives of the ARH SEPP and B2 Local Centre Zone.

It is possible that other sites with similar characteristics will apply for variations to carparking controls also; however in every instance clause 4.6 is invoked, it will be necessary for Council to be satisfied that the development is consistent with the objectives of the relevant standard, that the development will fit within the established and/or desired future character of the locality, and that the development will have no detrimental physical, amenity or privacy impacts, as is the case on this occasion.

This variation request satisfies the provisions of clauses 4.6(3)(a), 4.6(3)(b), 4.6(4)(a), and 4.6(4)(b) of SLEP as it has been demonstrated that:

- compliance with the carparking development standard is both unnecessary and unreasonable in the circumstances of this case,
- there are sufficient environmental planning grounds to justify contravening the development standard, and
- the proposed development will be in the public interest because:
 - it is consistent with the objectives of the particular standard
 - it is consistent with the objectives for development within the zone in which the development is proposed to be carried out, and,
 - it is consistent with the objectives of clause 4.6.

