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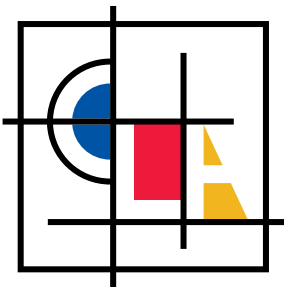
Clause 4.6 Variation Requests

Clause 4.6

Variation Request

**120 Glebe Point Road, Glebe
Gadigal Country**

**Development Standard:
Cl. 4.3 Height of Buildings**



**CRACKNELL
&
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ARCHITECTS PTY LTD

DA-ISS.

Site Registration
Prepared on
Prepared for

Lot 9 in D.P. 244843
5 December 2023
Aboriginal Housing Office



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Prepared On:

5 December 2023 [DA Issue]

Project Address:

120 Glebe Point Road, Glebe
Gadigal Country

Prepared For:

Aboriginal Housing Office

Prepared By:

Cracknell & Lonergan
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1.1 Executive Summary

The following Clause 4.6 Variation to Development Standard - Height of Building written request is a supplement to the Statement of Environmental Effects (SEE) which has been submitted to support a Development Application (DA) to No. 120 Glebe Point Road, Glebe. The proposed multi dwelling housing project encompasses alterations and conservation and restoration works to the primary form to result in a two bedroom house, demolition of the existing rear additions and construction of a new rear addition that will house three units, each with one bedroom and a study.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Height, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

In this written request, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This written request also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

2.0 Setting & Context

2.1 Site Information

The project site description and location is summarised as follows:

Street Address	120 Glebe Point Road, Glebe
Legal Definition	Lot 1 in D.P. 244843
Country	Gadigal Country
Site Area	436.2 sqm
Brief Site Description	The subject site is a largely rectangular subdivision with a primary street frontage of 12.385m on Glebe Point Road and secondary street frontage of 11.46m on Derwent Lane, and an approximate depth of 36.6m. The site consists of a single storey early Victorian freestanding cottage constructed from brick, and is one of four dwellings that comprise the heritage item "House Group "City View Cottages" including interiors and front gardens". The front yard is landscaped and consists of several large trees. The rear yard is largely concreted and paved, but maintains planted areas along the boundaries.
Topography	The subject site has a northeast to southwest orientation with a fall from the western corner (27.43) to the eastern corner (24.32 TW, 23.80 BW), where it is bounded by a sandstone retaining wall with a timber picket fence to its Glebe Point Road frontage.
Public Transport	The site is situated within walking distances to many bus stops along Glebe Point Road with regular connections to the Sydney CBD. The site is located within a 500m radial distance of Glebe Light Rail Station and a radial mile of Redfern and Central Train Stations.
Existing Services	The subject site is currently connected to all standard services - electricity, gas, water, sewerage, telecommunications.

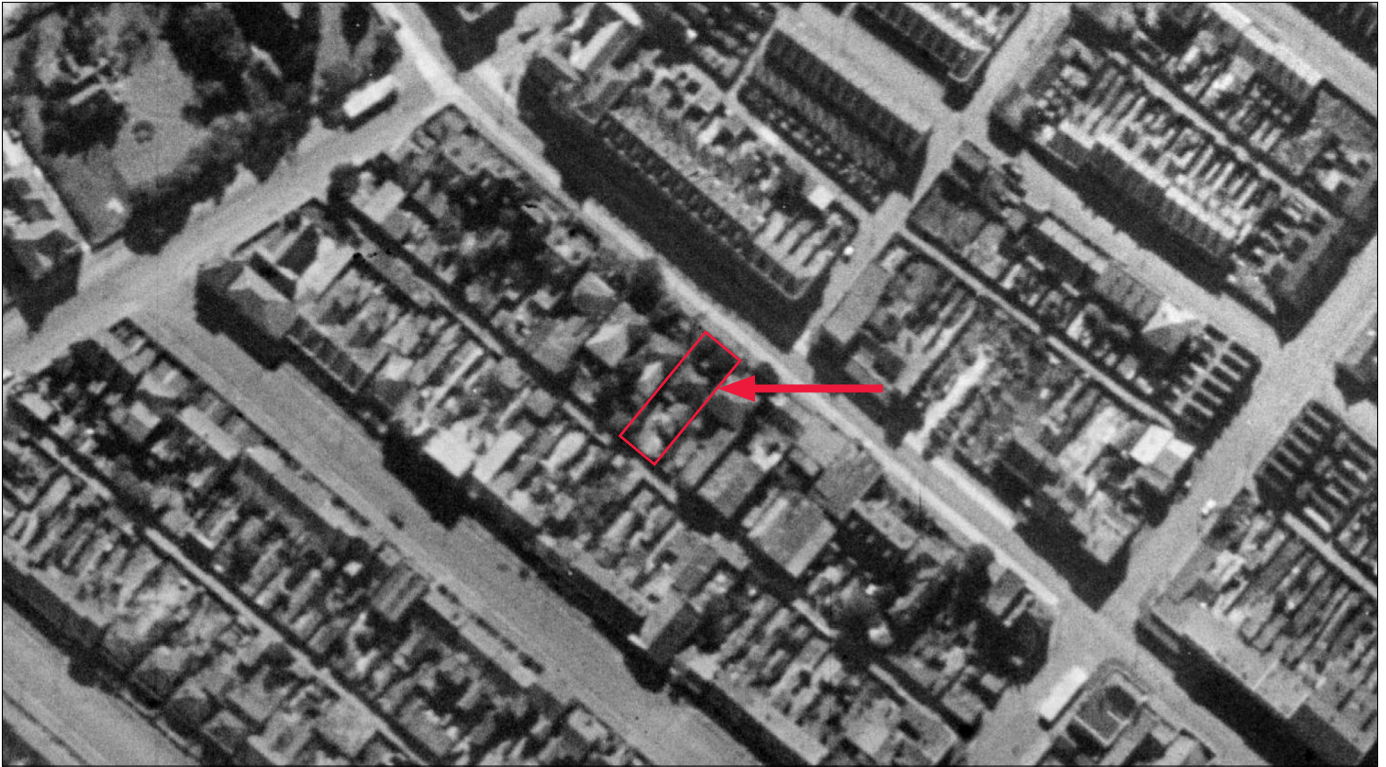


The subject site at No. 120 Glebe Point Road, Glebe. The dwelling is not visible from Glebe Point Road due to overgrown vegetation in the front yard.

2.0 Setting & Context



NSW SIX Maps Imagery - Aerial Map of Site Location



NSW SIX Maps Imagery - Historical 1943 Aerial Image

2.2 Contemporary Neighbourhood Setting & Context

Sourced from the NSW State Heritage Inventory listing for the Glebe Point Road Local Heritage Conservation Area - Physical Description.

The topography is gently undulating, rising to St John's, falling to Bridge Road and then to the water. The road alignment is kinked at St Johns Road. Most of the roadway is well planted with a mix of species, predominantly Simon's Poplar replacing the original Lombardy Poplars planted in 1947-8, and a mix of small rainforest trees including Tulipwood, Red Ash and Tuckeroo.

The subdivision is irregular, reflecting the 1828 subdivision and Villa Estates.

Early villas and cottages with garden settings from the late 1850s and 1870s occur on the Bishopthorpe estate. Intense subdivision and building occurred at the city end of Glebe Point Road in the 1870s and 1880s with the redevelopment of St Phillips Estate, including rows of terraced houses and shops, hotels churches and public buildings.

The architectural character of Glebe Point Road was determined during the 1880s and 1890s. Most of the premises are commercial shopfront type buildings with some mixed residential dwellings. Most are converted Victorian terraces, many with cantilevered street awnings. A number of fine terraces line the road, notably Palmerston Terrace and Elphinstone Terrace. The grounds of Hereford House Garden, now Foley Park. provide an area of open space in a dense urban streetscape.

Towards the Glebe Point end the character of the streetscape is late Victorian and early Federation residential, and includes some fine houses and grand terraces indicative of the notion of the point as a fashionable place to live prior to WWI, and the influence of the Allens. Here the landscape qualities of Jubilee Park and Harbour views dominate. The area also comprises some detracting Post war flats and industrial development.

The following significant public domain features are located within the Conservation Area

- *Street Tree Plantings:*
- *Street Trees: Simons Poplars, replacing Lombardy Poplars*
- *Tram Shelter : 431 Glebe Point Road (now Bus Shelter)*
- *Remnant Tram Tracks*
- *Stone Alignment Marker: North-east corner of Glebe Point Road and Mary Street, in front of 451 and 459 Glebe Point Road*
- *Public Park: Foley Park*
- *Monument: War Memorial*
- *Fountain: Jubilee Commemorative, Corner of Glebe Point Road and Broadway*
- *Sydney Boundary stone marker: adjoining the fountain*
- *Sandstone Wall & Piers: Glebe Point Road*

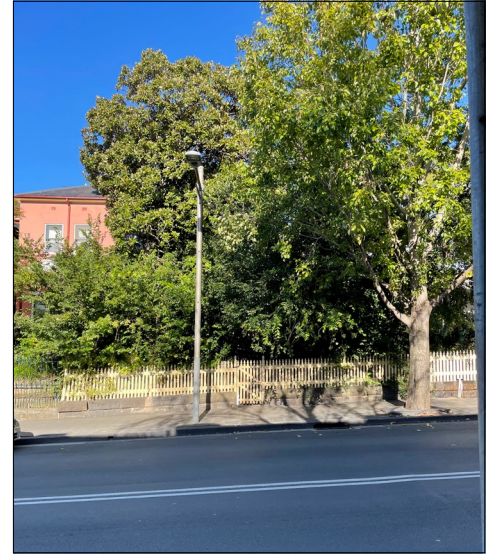
2.0 Setting & Context

Views of the frontages of Nos. 114-116, 118 and 120 Glebe Point Road.

Nos. 114-116 is a commercial premises that is currently the location of Glebe Family Medical Practice and was newly built in 2003.

No. 118 is the heritage item "House "Dalston House" Including Interior and Front Fence", a two storey freestanding Victorian Italianate villa.

No. 120 is the subject site and part of the heritage item "House Group "City View Cottages" including interiors and front gardens" which comprises Nos. 120-126 Glebe Point Road. At present due to dense vegetation the cottage is mostly obscured on its Glebe Point Road frontage.



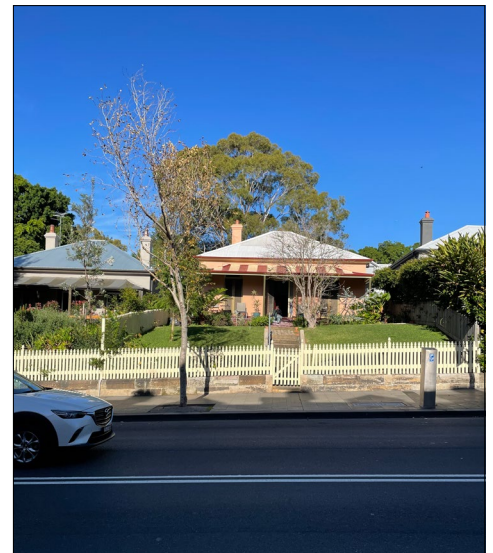
Views of the frontages of Nos. 120, 122 and 124 Glebe Point Road. These are three of the four cottages that comprise the heritage item "House Group "City View Cottages" including interiors and front gardens", a group of four early Victorian freestanding cottages.

No. 120 (the subject site) was City View Cottage 4.

No. 122 was City View Cottage 3.

No. 124 was City View Cottage 2.

No. 126 was City View Cottage 1.

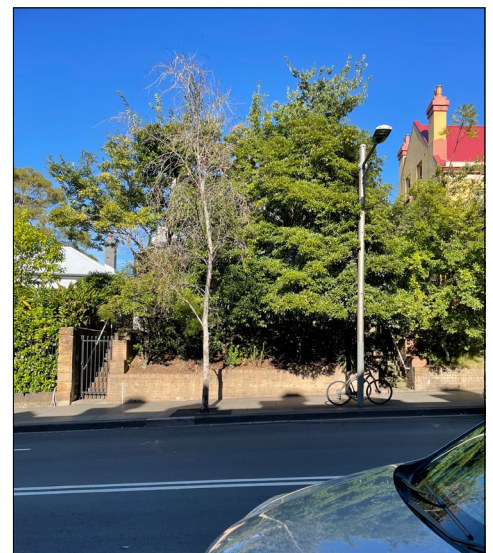


Views of the frontages of Nos. 124, 126, 128 and 130 Glebe Point Road.

Nos. 124 and 126 are part of the heritage item "House Group "City View Cottages" including interiors and front gardens".

No. 128 is the heritage item "House "Calmar" Including Interior", a one and a half storey Victorian freestanding cottage.

No. 130 is the heritage item "House "Leamington House" Including Interior", a two storey Victorian freestanding house.



6.1 Description of Proposal

The proposed multi dwelling housing project encompasses:

- conservation and restoration works to the primary form, including re-roofing and repainting, resulting in a two bedroom house
- landscaping works to the Glebe Point Road frontage of the site, including the reconstruction of the existing sandstone stairs, repair of the timber picket fence, removal of the existing trees and new timber terracing to the front yard
- demolition of the existing single storey rear additions and removal of the rear concreted areas
- construction of a new two storey rear addition that will house three units, each with one bedroom and a study. This addition will maintain a single storey presentation to and thus appropriately retain the character of Derwent Lane

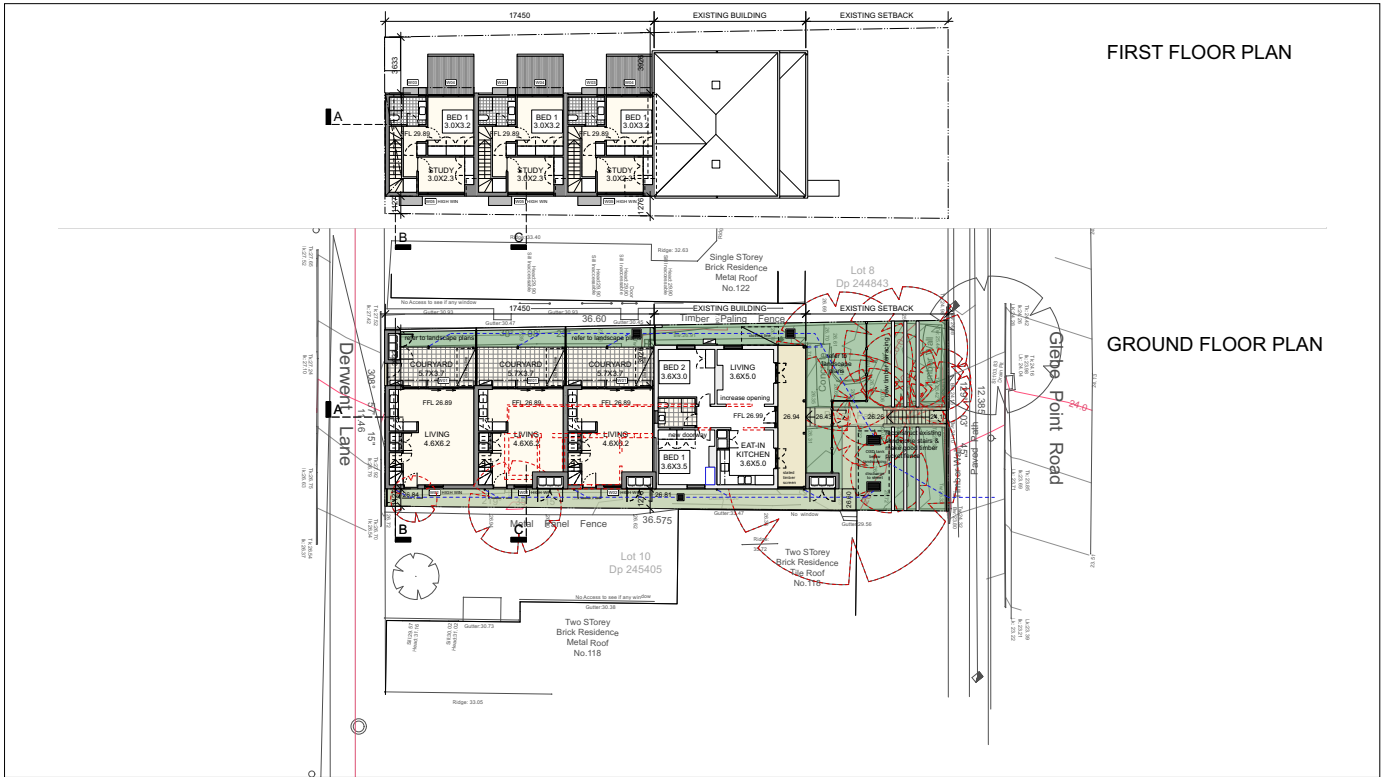
3.2 Numerical Summary

The numerical overview of the proposal is as follows:

Site Area	436.2 sqm
Existing Gross Floor Area	110.2 sqm
Proposed Gross Floor Area	271.2 sqm
Existing Floor Space Ratio	0.25:1
Proposed Floor Space Ratio	0.62:1
LEP Floor Space Ratio	1.5:1
Additional SEPP Housing Bonus	0.5:1
Permissible Floor Space Ratio	2.0:1
Maximum Building Height	6.11 m
Permissible Building Height	6.0 m

Note: The calculation of the maximum building height excludes the calculation of chimneys which are existing and retained as part of the conservation works for the property. This is because the chimneys are considered to be decorative and not part of habitable components of the development as described under the 'architectural roof features' clause of the SLEP.

3.0 The Proposal



Select Floor Plans of the Proposal - Note that the additions on the ground floor retains external fabric fronting Kepos Street and Zamia Streets, continuing a brickwork corner expression. The upper floor is to be in a lightweight steel expression.

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Clause 4.6 of the Local Environment Plan (LEP) this objection seeks to vary the Height of Buildings Clause 4.3 in the LEP which states that:

4.3 Height of buildings

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

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

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Note—

No maximum height is shown for land in Area 3 on the Height of Buildings Map. The maximum height for buildings on this land are determined by the sun access planes that are taken to extend over the land by clause 6.17.

(2A) *Despite any other provision of this Plan, the maximum height of a building on land shown as Area 1 or Area 2 on the Height of Buildings Map is the height of the building on the land as at the commencement of this Plan.*



LEP MAP

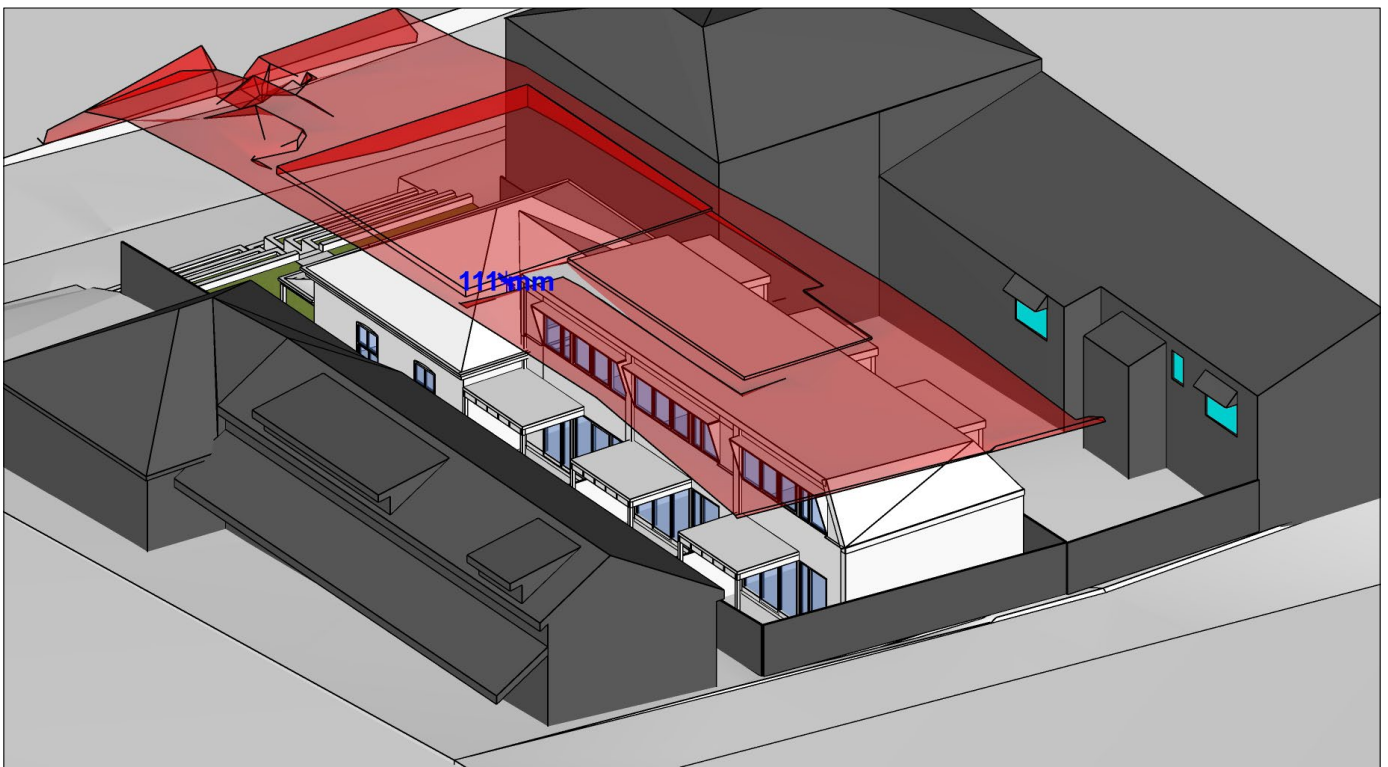
4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Maximum Permissible	Proposed Development	Extent of Variation (%)
Sydney Local Environmental Plan 2012 - Cl. 4.3 Height of Buildings		
Maximum Permissible Height 6.0 metres (6000mm) as measured from the Existing Ground Level	Point 1 - Ridge of Existing Building RL. 32.87	293 mm 4.8%
	Point 2 - Ridge Corner (Unit 2) RL 32.87	111 mm 1.85%

It has been noted that there is a chimney on the existing dwelling house which also exceeds the 6.0 metre height standard. However, pursuant to SLEP Cl. 5.6 Architectural Roof Features, the chimney structure is not included for the purposes of calculating the maximum extent of the height variation as it is considered to be an architectural roof feature.



5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

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

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be 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 the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Height of Buildings Standard contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that “sufficient environmental planning grounds” must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Subsequent to this, a number of decisions within the NSWLEC have continued to inform the various tests to be taken in assessment of Clause 4.6 Written Requests, including *Baron Corporation Pty Ltd -v- Council of the City of Sydney [2019] NSWLEC 61* and *RebelMH Neutral Bay Pty Limited -v- North Sydney Council [2019] NSWCA130*.

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
<p>(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,</p>
<p>The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in <i>Intiial Action Pty Ltd -v- Woollahra Municipal Council</i> [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:</p> <p><i>In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.</i></p> <p>The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.</p>
<p>(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.</p>
<p>The development standard subject to this cl.4.6 Variation Request is not expressly excluded from the operation of this clause.</p>
<p>(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—</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>
<p>An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the ‘five-part test’ outlined in <i>Wehbe -v- Pittwater</i> [2007] NSWLEC 827.</p> <p>It is not considered necessary for an application to need to establish all of the tests or ‘ways’ a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The sufficient environmental planning grounds to justify the contravention of the development standard are as follows:

- The proposal is required to take into consideration the various design objectives and numerical criteria established within the AHO Design Guidelines for public and affordable housing. Part of this has involved ensuring that minimum clearances for habitable spaces are at least 2.7 metres, a standard which is higher than the NCC/BCA requirement of 2.4m for habitable rooms. The additional 300mm height for the living/dining room (ground floor) and bedroom/studies (upper floor) results in a combined 600mm of additional height, which has contributed to the deviation from the height standard.
- The proposal enables a diverse and much needed affordable housing option for First Nations people within a strategic planning location that is close to businesses and work opportunities, is well-connected by public transport.
- The proposal is an affordable housing project developed for and on behalf of the Aboriginal Housing Office and will deliver four affordable housing units which is consistent with the intention and aim of the City of Sydney 2036 Plan which aims to “10,856 new affordable rental housing dwellings and 1,975 new social housing dwellings.” (City of Sydney 2036 Local Strategic Planning Statement, p.47)
- The proposed development will provide housing for the First Nations community of Sydney, and is consistent with the City of Sydney’s Housing for All Strategy, which describes one of its core strategic aims as “an opportunity to start a process of bringing the people back across the local area by partnering with the community to advocate the provision of culturally-appropriate affordable and social housing dedicated to Aboriginal and Torres Strait Islander communities.” (Housing for All, p. 28)

(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

This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
<i>(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</i>	
Objectives of the Development Standard - Height of Buildings	
Objective	Compliance / Response
(a) to ensure the height of development is appropriate to the condition of the site and its context,	<p>Complies</p> <p>The proposed height variation of 111mm represents a numerical deviation of 1.85%, and is the result of the pre-existing topographical slope of the land. The RL of the roof, RL32.87 remains consistent both with the existing heritage retained roof ridge, the adjoining property's roof ridge, as well as substantially below architectural roof features including chimneys for the immediate surroundings.</p> <p>The proposed roof subject of this variation application remains consistent with the character of development in the area and does not impact the ability to view, or appreciate, the retained heritage item.</p>
(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,	<p>Complies</p> <p>The adjoining property at No. 118 Glebe Point Road has a ridge level of approximately RL.33.05, representing a 9.0 metre built form, whilst the development at No. 122 Glebe Point Road has a height of 6.0 metres. The proposal which has a variable height between 5.8 - 6.0 metres, represents an appropriate transition along the streetscape when viewed from Glebe Point Road between pre-existing development surrounding the site, as well as the new extension confined to the rear of the property.</p>
(c) to promote the sharing of views outside Central Sydney,	<p>Complies</p> <p>The proposed development and height variation does not result in a situation where the roof form, scale or other habitable rooms of the development would impinge or impact upon the ability for neighbours to enjoy local views of the streetscape and character. Views toward Derwent Lane and Glebe Point Road will not be impacted by the proposed development, as the roof ridge proposed remains consistent with the existing maximum ridge level.</p>
(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,	<p>Not Applicable.</p> <p>The subject site is not located within the Green Square precinct.</p>
(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.	<p>Not Applicable.</p> <p>The subject site is not located within the Green Square precinct.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
Objectives of the Land Zone - E1 Local Centre (formerly B2 Local Centre)	
Objective	Compliance / Response
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.
To encourage investment in local commercial development that generates employment opportunities and economic growth.	Not Applicable. The proposed development is for residential accommodation which is permissible within the zone, even where it does not necessarily result in the investment of capital in commercial ventures and opportunities for economic growth. It can however be said, that the development of further urban housing in key inner city areas will provide for the people and density to facilitate patronage of commercial sites, thus contributing to the local economic environment.
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	Not Applicable. The proposed development is for residential accommodation.
To maximise public transport patronage and encourage walking and cycling.	Complies. The provision of affordable housing for First Nations communities in key inner city areas supported by public transport and alternatives to car-oriented travel will be achieved by this development. The provision of four residential units increases the urban density of the site, aligned to an existing affordable housing property adjacent, and will therefore lead toward an increase in public transport patronage.
(b) the concurrence of the Planning Secretary has been obtained.	
The proposed variation has a percentage exceedance less than 10%, meaning that external referral and concurrence of the Planning Secretary is not required for this project.	

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
Not Applicable. Concurrence of the Secretary is not required.
(b) the public benefit of maintaining the development standard, and
Not Applicable. Concurrence of the Secretary is not required.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
Not Applicable. Concurrence of the Secretary is not required.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).
Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
Compliant. The proposed development is not an application for complying development.
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
Compliant. The proposed variation request does not seek to vary a provision under SEPP BASIX.

5.3 Assessment Against Relevant NSWLEC Principles

Webbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal continues to ensure an appropriate height of development is provided across the vast majority of the site, with the non-compliance centred to one single corner of the property.
- The proposal does not result in adverse environmental impacts which would impact adjoining properties as a result of the non-compliance with the height standard.
- The proposal's height is appropriate noting that the adjoining property to the south is a 9 metre existing heritage building, necessitating some form of height transition in scale between three and two storey structures.

This proposed variation therefore satisfies the requirements under Webbe Test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

This test is not relied upon for the purposes of this development standard variation request.

5.3.4 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.

Whilst this application for Clause 4.6 Variation predominantly relies upon Test 1, it is noted that Test 4 may also be applicable in the circumstances of this case. The development standard is abandoned by the granting of consents which depart from this clause. The architectural roof features clause adopted by the consent authority regularly permits roof ridges, features and other details such as chimneys and ornaments to exceed the prescribed height control. To the extent that existing features already exceed the height control, which are being conserved and restored as part of this development application, the heritage works required to maintain the existing building and by extension, the height non-compliance would not be possible. Strict adherence to the numerical standard in this case is therefore considered to be unnecessary and unreasonable.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed or to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Height of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

- The proposal is required to take into consideration the various design objectives and numerical criteria established within the AHO Design Guidelines for public and affordable housing. Part of this has involved ensuring that minimum clearances for habitable spaces are at least 2.7 metres, a standard which is higher than the NCC/BCA requirement of 2.4m for habitable rooms. The additional 300mm height for the living/dining room (ground floor) and bedroom/studies (upper floor) results in a combined 600mm of additional height, which has contributed to the deviation from the height standard.
- The proposal enables a diverse and much needed affordable housing option for First Nations people within a strategic planning location that is close to businesses and work opportunities, is well-connected by public transport.
- The proposal is an affordable housing project developed for and on behalf of the Aboriginal Housing Office and will deliver four affordable housing units which is consistent with the intention and aim of the City of Sydney 2036 Plan which aims to “10,856 new affordable rental housing dwellings and 1,975 new social housing dwellings.” (City of Sydney 2036 Local Strategic Planning Statement, p.47)
- The proposed development will provide housing for the First Nations community of Sydney, and is consistent with the City of Sydney’s Housing for All Strategy, which describes one of its core strategic aims as “an opportunity to start a process of bringing the people back across the local area by partnering with the community to advocate the provision of culturally-appropriate affordable and social housing dedicated to Aboriginal and Torres Strait Islander communities.” (Housing for All, p. 28)

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.



Peter J. Lonergan

Director & Nominated Architect

FRAIA | NSWARB 5983 | DEP 0001205 | PDP 0000401

Formal Qualifications

BArchitecture | UNSW

BScArchitecture (Hons) | UNSW

MBEnv (Building Conservation) | UNSW

Certificate Sustainable Design | University of Sydney

Career Profile

Peter Lonergan is Director of Cracknell & Lonergan Architects, a practice he established with Julie Cracknell in 1984. Peter has accumulated over thirty-five years of experience in the field of architecture, interior design, heritage conservation, exhibition design and expert consultancy for the Land & Environment Court. He has also lectured, written, published and taught extensively in the fields of architecture, heritage, planning, history and design. Peter was elected a Fellow of the Royal Australian Institute of Architects in 2019 and continues to serve as a member of the NSWAI Chapter's Heritage Committee.

The practice is actively engaged in the design and construction of many projects of varying scale, often with complex heritage issues. The firm has also been actively engaged in the procurement design and construction of public art projects, also often within very sensitive heritage contexts. Cracknell & Lonergan Architects also works extensively within the fields of heritage conservation and the adaptive reuse of many heritage items and historic structures, as well as providing heritage consultancy services to Sydney architectural practices, advising on the feasibility and opportunities of adaptation.

Experience

NSW Land & Environment Court

Participation in numerous matters in the NSWLEC both as design architect and as expert witness in town planning and heritage matters. Involved in supplying evidence in *Coorey -v- Hunters Hill* which ultimately led to the establishment of the planning principle for determining if a project is new development or alterations and additions.

Architecture

Bradfield, East Crescent St, McMahons Pt | Residential

Aleuca, Miller St, Cammeray | Residential

Kalmar Antiques, QVB | Retail / Heritage

Heritage

Powerhouse Museum | Independent Heritage Review

Mary MacKillop Place | Conservation Management

Mechanics School of Arts (Arthouse Hotel) | Conservation

North Sydney Masonic Temple | Conservation Management

Jarjum College | Restoration & Conservation

Pemulwuy, 'The Block', Redfern | Redevelopment

Redfern Cottage, Minto | Conservation Management

Public Art

Yininmadyemi - Thou Didst Let Fall | Artist: Tony Albert

Murri Totem Poles | Artist: Reko Rennie

Indigenous Art Commission | Musee du Quai Branly, France

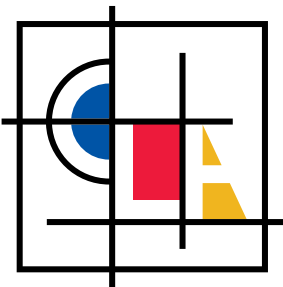
Clause 4.6

Variation Request

**120 Glebe Point Road, Glebe
Gadigal Country**

**Development Standard:
SEPP Housing 2021
cl.18 Non-Discretionary Dev.
Standards (a) - Site Area**

Extent of Variation: 1.85%



**CRACKNELL
&
LONERGAN**
ARCHITECTS PTY LTD

DA-ISS.

Site Registration
Prepared on
Prepared for

Lot 9 in D.P. 244843
11 December 2023
Aboriginal Housing Office

1.1 Executive Summary

The following Clause 4.6 Variation to Development Standard - Minimum Lot Size (SEPP Housing 2021) written request is a supplement to the Statement of Environmental Effects (SEE) which has been submitted to support a Development Application (DA) to No. 120 Glebe Point Road, Glebe. The proposed multi dwelling housing project encompasses alterations and conservation and restoration works to the primary form to result in a two bedroom house, demolition of the existing rear additions and construction of a new rear addition that will house three units, each with one bedroom and a study.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Height, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

In this written request, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This written request also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

Sections 2.1 through to 3.2 are the same in each Clause 4.6 variation request.

In order to consolidate the attachments, the repeated sections have been removed in the subsequent 4.6 requests.

Please refer to the Cl. 4.3 Height of Buildings variation request for sections 2.1 through to 3.2.

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Cl.18 of SEPP Housing 2021, this variation seeks to vary the minimum site area requirement contained within the non-discretionary development standards which states:

18 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—

(a) a minimum site area of 450m².

(b) for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling,

(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,

(d) a deep soil zone on at least 15% of the site area, where—

(i) each deep soil zone has minimum dimensions of 3m, and

(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,

(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,

(f) for a development application made by a social housing provider for development on land in an accessible area—

(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or

(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or

(iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,

(g) if paragraph (f) does not apply—

(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or

(ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or

(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,

(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,

(i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,

(j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—

(i) for each dwelling containing 1 bedroom—65m², or

(ii) for each dwelling containing 2 bedrooms—90m², or

(iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms.

4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Minimum Site Area	Proposed Development	Extent of Variation (%)
SEPP Housing 2021 - Ch.2 Affordable Housing, Div. 1 In-fill Affordable Housing		
450 sqm	436.2 sqm (By Site Survey)	13.8 sqm (3.1%)

5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

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

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be 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 the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Height of Buildings Standard contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that “sufficient environmental planning grounds” must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Subsequent to this, a number of decisions within the NSWLEC have continued to inform the various tests to be taken in assessment of Clause 4.6 Written Requests, including *Baron Corporation Pty Ltd -v- Council of the City of Sydney [2019] NSWLEC 61* and *RebelMH Neutral Bay Pty Limited -v- North Sydney Council [2019] NSWCA130*.

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
<p>(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,</p>
<p>The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in <i>Intiial Action Pty Ltd -v- Woollahra Municipal Council</i> [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:</p> <p><i>In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.</i></p> <p>The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.</p>
<p>(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.</p>
<p>The development standard subject to this cl.4.6 Variation Request is not expressly excluded from the operation of this clause.</p>
<p>(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—</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>
<p>An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the ‘five-part test’ outlined in <i>Wehbe -v- Pittwater</i> [2007] NSWLEC 827.</p> <p>It is not considered necessary for an application to need to establish all of the tests or ‘ways’ a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.</p>

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify the contravention of the development standard which are unique to the circumstances of this site and the circumstances of this development in the context of its public ownership by the AHO. The environmental planning grounds which justify contravention of the numerical control of the development standard are as follows:

1. Adaptive Reuse - The proposed development is an adaptive reuse of an existing heritage item, which is currently uninhabitable single dwelling. The proposed site, whilst slightly below the permissible minimum lot size, is capable of housing up to four families in an in-fill style affordable development as evidenced by a previous application approved adjacent to this site. Whilst the neighbour was approved prior to the commencement of SEPP Housing 2021, it nevertheless provides a reference in terms of visual bulk, scale, form and style of development as being compatible within the Glebe Point Road context, and within a site of a similar size.
2. Heritage Conservation - Under the conservation incentives for heritage items pursuant to cl.5.10.10, colloquially referred to as the 'use for any purpose' clause, the proposed development is able to address the outcomes of the conservation incentives whilst also providing much needed affordable housing in the local government area. The proposal provides for a heritage management (schedule of conservation works) document which accompanies the application with the intention that the existing heritage item will be fully restored and upgraded to meet current housing standards and requirements, without resulting in loss of heritage significance to the property overall. Restoration works to the front fencing, tiered retaining wall garden, front lawns and other exterior works will improve and restore the setting of the heritage item and its relationship to the Glebe Point Road area.
3. Diverse Housing in Urban Areas - The proposal enables a diverse and much needed affordable housing option for First Nations people within a strategic planning location that is close to businesses and work opportunities, is well-connected by public transport.
4. Consistency with Local Strategic Planning Statement - The proposal is an affordable housing project developed for and on behalf of the Aboriginal Housing Office and will deliver four affordable housing units which is consistent with the intention and aim of the City of Sydney 2036 Plan which aims to "10,856 new affordable rental housing dwellings and 1,975 new social housing dwellings." (City of Sydney 2036 Local Strategic Planning Statement, p.47)
5. Consistency with Council Housing for All Strategy - The proposed development will provide housing for the First Nations community of Sydney, and is consistent with the City of Sydney's Housing for All Strategy, which describes one of its core strategic aims as "an opportunity to start a process of bringing the people back across the local area by partnering with the community to advocate the provision of culturally-appropriate affordable and social housing dedicated to Aboriginal and Torres Strait Islander communities." (Housing for All, p. 28)

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(4) Development consent must not be granted for development that contravenes a development standard unless—	
(a) the consent authority is satisfied that—	
<i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>	
This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.	
<i>(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</i>	
Principles of Policy - SEPP Housing 2021	
Principles	Compliance / Response
The principles of this Policy are as follows—	
(a) enabling the development of diverse housing types, including purpose-built rental housing,	Complies. The proposal seeks to provide purpose built affordable rental housing within a key inner city area managed by the AHO. The proposal will provide a mix comprising 1 X 2 Bedroom Unit (Heritage Building) and 3 X 1 Bed + Study units. The subject site is zoned B2 (Now E1 Local Centre) where a diverse mix of residential and commercial are encouraged. The development fulfills this by providing affordable rental housing for First Nations people.
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Complies. The proposal delivers housing which will be for the First Nations Community of NSW. The proposal thus achieves the aim of providing housing opportunities to members of our community to be managed by the AHO.
(c) ensuring new housing development provides residents with a reasonable level of amenity,	Complies. Notwithstanding the numerical variation sought under this Cl.4.6 and other minor variations from the Low Rise Medium Density Design Guide (for which no Cl.4.6 is required or sought, as these are not development standards, but are non-legislated guides), the proposed development is broadly consistent with the principles and guiding objectives of the AHO's own published Design Guidelines (2020). Key numerical objectives in terms of minimum living and bedroom spaces, along with multi-functional study areas are provided, alongside orientation which maximises natural solar access and cross ventilation to all four units proposed without compromising the heritage integrity of the site, or the amenity of neighbouring development. The proposal thus achieves this principle by delivering new high-quality affordable housing which will be afforded a high level of amenity.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>Complies.</p> <p>Glebe Point Road is a highly serviced site in terms of infrastructure and public services. The locality is proximate to Sydney CBD, and is afforded access to a number of local services in terms of retail, commercial, food, and education and medical services. Providing affordable rental housing in such highly developed areas is crucial as it mitigates the adverse impact of additional unnecessary travel for vulnerable persons. The proposition is thus considered to be situated in an appropriate 'accessible area' for the purposes of providing affordable housing and meets this planning principle.</p>
(e) minimising adverse climate and environmental impacts of new housing development,	<p>Complies.</p> <p>A number of passive thermal and comfort actions have been taken, accompanying the BASIX Certificate and assessment process to ensure that the environmental impacts of the housing development are kept to a minimum. The units propose achieve 100% natural cross ventilation, alongside a minimum of two hours direct sunlight to principal living and bedroom spaces in mid-winter. These negate the unnecessary reliance upon artificial heating, cooling and lighting needs for the majority of the year.</p> <p>Furthermore, fans are provided in all key habitable spaces, minimising reliance upon air-conditioning as an alternative for artificial ventilation needs. The use of light coloured materials, and appropriately specified glazing will also help in terms of minimising heat gain, solar heat loss and the provision of solar panels aids in the delivery of less infrastructure reliance from the energy grid. Overall therefore the number of environmental design methods adopted for the project, adequately addresses this principle to ensure compliance, not withstanding the deviation from the minimum lot size requirement.</p>
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	<p>Complies.</p> <p>The proposed development, notwithstanding the numerical non-compliance with the development standard for minimum lot sizes, is still able to reinforce the importance of designing housing in a manner that reflects and enhances the locality. As stated in the Statement of Environmental Effects accompanying the original application, whilst housing two storeys, the rear addition will maintain a single storey presentation to and thus appropriately retain the character of Derwent Lane. The proposal, though contemporary, responds appropriately to its context and results in a coherent and consistent streetscape which is comparable to approved development in the area. The proposal does not adversely impact the fabric, the setting or the view corridors of the heritage conservation area at large. Thus, the proposal is able to achieve and reinforce the character of the locality, without compromising the housing amenity to be afforded future residents, and without compromising the amenity of neighbouring sites. This principle is thus, achieved.</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>Not Applicable.</p> <p>The proposal is not for short-term rental accommodation and is not classified as a home-sharing project. The proposed development is for in-fill affordable rental housing.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(h) mitigating the loss of existing affordable rental housing.	<p>Complies.</p> <p>The proposal will not result in the loss of existing affordable rental housing. As noted in other reports supplementing the application, the existing dwelling, whilst having historically been used as affordable rental accommodation for one family (i.e. one housing unit) has fallen into a state of disrepair and dilapidation which at the moment, means the property is neither sanitary or safe to occupy. As a result, the existing site does not provide any affordable rental housing. The resultant development will provide four, new, contemporary and heritage restored dwellings suitable for housing four separate families or persons, dramatically increasing the site's ability to provide affordable housing. The principle is thus achieved, notwithstanding the minor deviation in terms of site area, which does not compromise the amenity of the housing delivered to future occupants of the site.</p>
Objectives of the Land Zone - E1 Local Centre (formerly B2 Local Centre)	
Objective	Compliance / Response
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	<p>Complies</p> <p>As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.</p>
To encourage investment in local commercial development that generates employment opportunities and economic growth.	<p>Not Applicable.</p> <p>The proposed development is for residential accommodation which is permissible within the zone, even where it does not necessarily result in the investment of capital in commercial ventures and opportunities for economic growth. It can however be said, that the development of further urban housing in key inner city areas will provide for the people and density to facilitate patronage of commercial sites, thus contributing to the local economic environment.</p>
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	<p>Complies</p> <p>As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.</p>
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	<p>Not Applicable.</p> <p>The proposed development is for residential accommodation.</p>
To maximise public transport patronage and encourage walking and cycling.	<p>Complies.</p> <p>The provision of affordable housing for First Nations communities in key inner city areas supported by public transport and alternatives to car-oriented travel will be achieved by this development. The provision of four residential units increases the urban density of the site, aligned to an existing affordable housing property adjacent, and will therefore lead toward an increase in public transport patronage.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
(b) the concurrence of the Planning Secretary has been obtained.
The proposed variation has a percentage exceedance less than 10%, meaning that external referral and concurrence of the Planning Secretary is not required for this project.
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
Not Applicable. Concurrence of the Secretary is not required.
(b) the public benefit of maintaining the development standard, and
Not Applicable. Concurrence of the Secretary is not required.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
Not Applicable. Concurrence of the Secretary is not required.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).
Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
Compliant. The proposed development is not an application for complying development.
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
Compliant. The proposed variation request does not seek to vary a provision under SEPP BASIX.

5.3 Assessment Against Relevant NSWLEC Principles

Webbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal provides housing of an appropriate level of amenity as anticipated by the AHO's housing guide, to deliver quality affordable rental housing for First Nations persons in NSW,
- The proposal minimises the environmental impacts of the development by adaptively reusing an existing dilapidated cottage, as well as adopting a number of passive solar, thermal and environmental controls to ensure a sustainable housing outcome can be adequately achieved,
- The proposal, in its form, scale, bulk, materiality and expression, will not adversely impact the character of the locality and maintains the heritage significance of the local item,
- The proposal does not result in the loss of affordable rental housing in the area, but will instead increase the number of affordable rental units on the site from one (1) to four (4), and,
- The proposal diversifies the housing provision within the E1 Local Centre context of Glebe Point Road, providing much needed affordable rental housing in a key inner city area, without compromising the amenity of the neighbouring properties and providing a high level of amenity to future occupants.

This proposed variation therefore satisfies the requirements under Webbe Test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

The existing subject site is and has been, for sometime, been a property which delivers social housing for the First Nations Community through the AHO. Throughout this period, no change to the subdivision or land size has been undertaken. Under the new SEPP Housing requirements, the underlying purpose, which is to retain existing social housing, to encourage delivery of more social housing and to prevent the loss of social housing would be defeated as the proposed development would effectively be prohibited by strict adherence to the numerical control. The proposal therefore satisfies Webbe Test 2.

5.3.4 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.

The standard has imposed more onerous conditions for development than the Council's own controls. The Sydney LEP has not adopted the minimum lot size controls which is sometimes used to control the type of development in conjunction with other standards to regulate bulk, scale and height. To the extent that there is no adopted minimum lot size, and the development would otherwise have been permissible (were it not made under the SEPP, but made under the LEP), there is an inconsistency between the local and state control where strict adherence to the numerical control would effectively prohibit the development of this nature from occurring on the property. The proposal therefore satisfies Webbe Test 3.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed or to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Minimum Lot Size for the delivery of affordable in-fill housing within SEPP Housing 2021. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

1. Adaptive Reuse - The proposed development is an adaptive reuse of an existing heritage item, which is currently an uninhabitable single dwelling. The proposed site, whilst slightly below the permissible minimum lot size, is capable of housing up to four families in an in-fill style affordable development as evidenced by a previous application approved adjacent to this site. Whilst the neighbour was approved prior to the commencement of SEPP Housing 2021, it nevertheless provides a reference in terms of visual bulk, scale, form and style of development as being compatible within the Glebe Point Road context, and within a site of a similar size.
2. Heritage Conservation - Under the conservation incentives for heritage items pursuant to cl.5.10.10, colloquially referred to as the 'use for any purpose' clause, the proposed development is able to address the outcomes of the conservation incentives whilst also providing much needed affordable housing in the local government area. The proposal provides for a heritage management (schedule of conservation works) document which accompanies the application with the intention that the existing heritage item will be fully restored and upgraded to meet current housing standards and requirements, without resulting in loss of heritage significance to the property overall. Restoration works to the front fencing, tiered retaining wall garden, front lawns and other exterior works will improve and restore the setting of the heritage item and its relationship to the Glebe Point Road area.
3. Diverse Housing in Urban Areas - The proposal enables a diverse and much needed affordable housing option for First Nations people within a strategic planning location that is close to businesses and work opportunities, is well-connected by public transport.
4. Consistency with Local Strategic Planning Statement - The proposal is an affordable housing project developed for and on behalf of the Aboriginal Housing Office and will deliver four affordable housing units which is consistent with the intention and aim of the City of Sydney 2036 Plan which aims to "10,856 new affordable rental housing dwellings and 1,975 new social housing dwellings." (City of Sydney 2036 Local Strategic Planning Statement, p.47)
5. Consistency with Council Housing for All Strategy - The proposed development will provide housing for the First Nations community of Sydney, and is consistent with the City of Sydney's Housing for All Strategy, which describes one of its core strategic aims as "an opportunity to start a process of bringing the people back across the local area by partnering with the community to advocate the provision of culturally-appropriate affordable and social housing dedicated to Aboriginal and Torres Strait Islander communities." (Housing for All, p. 28)

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.

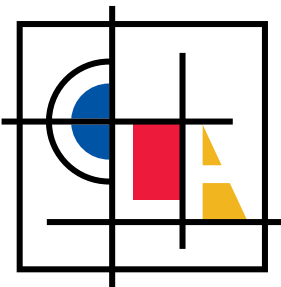
Clause 4.6

Variation Request

**120 Glebe Point Road, Glebe
Gadigal Country**

**Development Standard:
SEPP Housing 2021
cl.18 Non-Discretionary Dev.
Standards (f) - Off-Street
Parking**

Extent of Variation: 100%



**CRACKNELL
&
LONERGAN**
ARCHITECTS PTY LTD

DA-ISS.

Site Registration
Prepared on
Prepared for

Lot 9 in D.P. 244843
11 December 2023
Aboriginal Housing Office

1.1 Executive Summary

The following Clause 4.6 Variation to Development Standard - Parking Requirements (SEPP Housing 2021) written request is a supplement to the Statement of Environmental Effects (SEE) which has been submitted to support a Development Application (DA) to No. 120 Glebe Point Road, Glebe. The proposed multi dwelling housing project encompasses alterations and conservation and restoration works to the primary form to result in a two bedroom house, demolition of the existing rear additions and construction of a new rear addition that will house three units, each with one bedroom and a study.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Height, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

In this written request, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This written request also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

Sections 2.1 through to 3.2 are the same in each Clause 4.6 variation request.

In order to consolidate the attachments, the repeated sections have been removed in the subsequent 4.6 requests.

Please refer to the Cl. 4.3 Height of Buildings variation request for sections 2.1 through to 3.2.

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Cl.18 of SEPP Housing 2021, this variation seeks to vary the minimum site area requirement contained within the non-discretionary development standards which states:

18 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—

- (a) a minimum site area of 450m²,
- (b) for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling,
- (c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,
- (d) a deep soil zone on at least 15% of the site area, where—
 - (i) each deep soil zone has minimum dimensions of 3m, and
 - (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,
- (e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,
- (f) for a development application made by a social housing provider for development on land in an accessible area—**
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or**
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or**
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space.**
- (g) if paragraph (f) does not apply—
 - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or
 - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or
 - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,
- (h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,
- (i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,
- (j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—
 - (i) for each dwelling containing 1 bedroom—65m², or
 - (ii) for each dwelling containing 2 bedrooms—90m², or
 - (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms.

4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Minimum Landscaped Area per Dwelling (sqm)	Proposed Development	Extent of Variation (%)
SEPP Housing 2021 - Ch.2 Affordable Housing, Div. 1 In-fill Affordable Housing		
2 Bedroom = 0.5 parking space	Unit 1 No Off-Street Parking Provided	<p>Variation = 100%</p> <p><u>No Off-Street Parking Provided for this Development</u></p>
1 Bedroom = 0.4 parking space	Unit 2 No Off-Street Parking Provided	
1 Bedroom = 0.4 parking space	Unit 3 No Off-Street Parking Provided	
1 Bedroom = 0.4 parking space	Unit 4 No Off-Street Parking Provided	
Development Total = 1.7 parking spaces = 2 parking spaces	Development Total = 0 spaces provided	

5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

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

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be 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 the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Height of Buildings Standard contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that “sufficient environmental planning grounds” must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Subsequent to this, a number of decisions within the NSWLEC have continued to inform the various tests to be taken in assessment of Clause 4.6 Written Requests, including *Baron Corporation Pty Ltd -v- Council of the City of Sydney [2019] NSWLEC 61* and *RebelMH Neutral Bay Pty Limited -v- North Sydney Council [2019] NSWCA130*.

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
<p>(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,</p>
<p>The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in <i>Intiial Action Pty Ltd -v- Woollahra Municipal Council</i> [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:</p> <p><i>In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.</i></p> <p>The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.</p>
<p>(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.</p>
<p>The development standard subject to this cl.4.6 Variation Request is not expressly excluded from the operation of this clause.</p>
<p>(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—</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>
<p>An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the ‘five-part test’ outlined in <i>Wehbe -v- Pittwater</i> [2007] NSWLEC 827.</p> <p>It is not considered necessary for an application to need to establish all of the tests or ‘ways’ a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.</p>

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify the contravention of the development standard which are unique to the circumstances of this site and the circumstances of this development in the context of its public ownership by the AHO. The environmental planning grounds which justify contravention of the numerical control of the development standard are as follows:

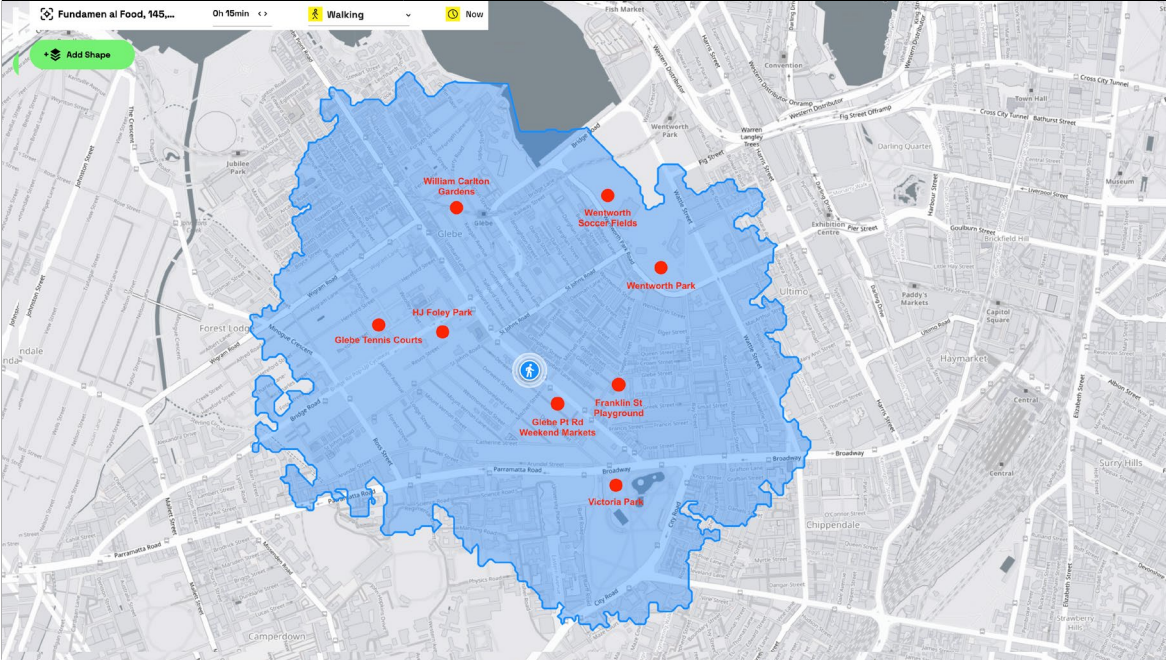
1. Heritage Conservation & Housing Design Compromise - The proposed development is constrained in its ability to provide the minimum car parking required for the units proposed due to the existing configuration of the heritage item and the severe density compromise which would be required to achieve parking. Whilst it is noted that a double garage is capable of being constructed, oriented to Derwent lane, such an approach would result in the loss of at least one unit, reducing the provision of affordable housing for the First Nations community in a crucial area. For the other reasons around public transport patronage and previous design precedence, we believe that a better environment design outcome is achieved by having zero parking spaces and maximising the ability to provide housing on the property.
2. Compliance with LEP Land Zone Objective for Maximising Public Transport Patronage - A core objective of the land zone is: "To maximise public transport patronage and encourage walking and cycling." To the extent that the development does not provide any off-street parking, and each resident is able to park at least one bicycle within their individual units affords a high degree of flexibility in alternative transport options. It is further noted that the site is considered to be a highly accessible area, being within 400m of regular bus services (Glebe Point Road and Parramatta / City Road) and within 800m of local light rail networks (Glebe Station). It is therefore believed that the proposed development is adequately serviced by public transport, and adequately accessible through cycling and walking to warrant a deviation from the minimum parking standard. It is also noted that a number of car share parking spaces are available on Glebe Point Road, to facilitate temporary or short-term car rentals for future occupants who may require a vehicle.
3. Consistency with LEP Local Provisions for Car Parking - cl.7.1-cl.7.9 of the SLEP sets out a number of local provisions with respect to car parking. In particular, it is worth noting that the Council's objectives are to enforce a 'maximum' parking rate, rather than a 'minimum' parking rate. It is our belief that the maximum parking approach is, indirectly, aimed at encouraging the reduction of car parking dependency in the local government area.
4. Design Precedence - Previous Request to Remove Provision of Parking at 122 Glebe Point Road - Whilst we acknowledge that the adjoining development at 122 Glebe Point Road was completed prior to the commencement of SEPP Housing 2021, the proposed development was also for an in-fill affordable rental housing (multi-dwelling housing) development managed and owned by the AHO. We note from Council's RFI in 2019 at the time when the neighbouring development was being amended, that removal of two originally proposed car parking spaces, whilst not explicitly requested, was not discouraged and the proposal at No. 122 Glebe Point Road was ultimately approved without the provision of car parking on the grounds that a better residential amenity was achieved through a 'town house style' configuration, similar to what has been proposed in this application. Given that this development is similar (acknowledging that SEPPARH2009 has been repealed and replaced), we believe that the provision of zero parking spaces, in conjunction with Council's general encouragement of non-car centric design approaches is a better outcome for future residents, without compromising traffic demands for the local area.
5. Consistency with City of Sydney Walking Strategy - The City of Sydney has a vision for reducing car dependency within the local government area to approximately 10% of all transport modes by 2030 as part of its Walking Strategy vision. To the extent that having no parking will discourage future occupants from owning private vehicles. As identified in the other environmental planning grounds, a number of public transport options are available on the site, and private bicycle parking is available to occupants (in each private courtyard space) to facilitate alternative transportation dependency. Overall therefore, it is believed that this development is consistent with the aims of reducing dependency on car usage as the primary form of transportation to and from the premises.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives



Walkability Map of 15 minutes from the subject site, with red markers denoting local parks, recreation areas and other community green spaces which are accessible to the general public.

(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

This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.

(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

Principles of Policy - SEPP Housing 2021	
Principles	Compliance / Response
The principles of this Policy are as follows—	
(a) enabling the development of diverse housing types, including purpose-built rental housing,	Complies. The proposal seeks to provide purpose built affordable rental housing within a key inner city area managed by the AHO. The proposal will provide a mix comprising 1 X 2 Bedroom Unit (Heritage Building) and 3 X 1 Bed + Study units. The subject site is zoned B2 (Now E1 Local Centre) where a diverse mix of residential and commercial are encouraged. The development fulfills this by providing affordable rental housing for First Nations people.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	<p>Complies.</p> <p>The proposal delivers housing which will be for the First Nations Community of NSW. The proposal thus achieves the aim of providing housing opportunities to members of our community to be managed by the AHO.</p>
(c) ensuring new housing development provides residents with a reasonable level of amenity,	<p>Complies.</p> <p>As previously stated, whilst the development does not afford the amenity of private residential off-street parking, it is believed that in lieu of this, amenity related to transport to and from the site has still been reasonably addressed:</p> <ul style="list-style-type: none"> • The development provides for the ability to park at least one bicycle within the private outdoor space of each unit, without compromising the amenity of private open space and without affecting communal open space areas, encouraging cycling as an alternative means of local transportation. • The site is considered to be a highly accessible area, being within 400m of regular bus services (Glebe Point Road and Parramatta / City Road) and within 800m of local light rail networks (Glebe Station). It is therefore believed that the proposed development is adequately serviced by public transport, and adequately accessible through cycling and walking to warrant a deviation from the minimum parking standard. • It is also noted that a number of car share parking spaces are available on Glebe Point Road, to facilitate temporary or short-term car rentals for future occupants who may require a vehicle.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>Complies.</p> <p>Glebe Point Road is a highly serviced site in terms of infrastructure and public services. The locality is proximate to Sydney CBD, and is afforded access to a number of local services in terms of retail, commercial, food, and education and medical services. Providing affordable rental housing in such highly developed areas is crucial as it mitigates the adverse impact of additional unnecessary travel for vulnerable persons. The proposition is thus considered to be situated in an appropriate 'accessible area' for the purposes of providing affordable housing and meets this planning principle.</p>
(e) minimising adverse climate and environmental impacts of new housing development,	<p>Complies.</p> <p>By encouraging alternative means of transport usage, as previously described, particularly passive transport such as walking or cycling as well as public infrastructure including light rail and buses, the proposal is able to reduce dependency of future occupants on car usage, encouraging less energy intensive means of commuting to and from the site. It is believed therefore that passively, this will aid in reducing the on-going functional carbon output of the development in the long term, facilitating a lowered environmental impact of the housing development.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	<p>Complies.</p> <p>The proposed development, with a simple articulated single storey brick facade and upper level timber 'attic' roof style construction is similar to many other rear lane buildings along Derwent Street. Whilst it is not uncommon to have garage openings oriented to the lane, this particular development provides a simple recessed roof form, coupled with openings for garden and pathway access. This is similar to other properties along Derwent Lane where a garage entry is not the principal element of the lane expression. The proposed forms remain respectful, are appropriately setback on upper storeys and continues to reflect the character of the area. This objective is therefore considered to be met, notwithstanding the numerical variation from the parking requirements.</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>Not Applicable.</p> <p>The proposal is not for short-term rental accommodation and is not classified as a home-sharing project. The proposed development is for in-fill affordable rental housing.</p>
(h) mitigating the loss of existing affordable rental housing.	<p>Complies.</p> <p>The proposal will not result in the loss of existing affordable rental housing. As noted in other reports supplementing the application, the existing dwelling, whilst having historically been used as affordable rental accommodation for one family (i.e. one housing unit) has fallen into a state of disrepair and dilapidation which at the moment, means the property is neither sanitary or safe to occupy.</p> <p>As a result, the existing site does not provide any affordable rental housing. The resultant development will provide four, new, contemporary and heritage restored dwellings suitable for housing four separate families or persons, dramatically increasing the site's ability to provide affordable housing. The principle is thus achieved, notwithstanding the minor deviation in terms of site area, which does not compromise the amenity of the housing delivered to future occupants of the site.</p> <p>As noted in this report as well, delivery of car parking does not necessary mean automatic compliance with this objective, whereby a design solution may result in delivery of the required parking, at the expense of smaller, less appropriate housing. The provision of housing which is afforded reasonable amenity, and to be managed by the AHO is considered to be more appropriate in meeting this objective than strict numerical compliance with providing car spaces.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
Objectives of the Land Zone - E1 Local Centre (formerly B2 Local Centre)	
Objective	Compliance / Response
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.
To encourage investment in local commercial development that generates employment opportunities and economic growth.	Not Applicable. The proposed development is for residential accommodation which is permissible within the zone, even where it does not necessarily result in the investment of capital in commercial ventures and opportunities for economic growth. It can however be said, that the development of further urban housing in key inner city areas will provide for the people and density to facilitate patronage of commercial sites, thus contributing to the local economic environment.
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	Not Applicable. The proposed development is for residential accommodation.
To maximise public transport patronage and encourage walking and cycling.	Complies. The provision of affordable housing for First Nations communities in key inner city areas supported by public transport and alternatives to car-oriented travel will be achieved by this development. The provision of four residential units increases the urban density of the site, aligned to an existing affordable housing property adjacent, and will therefore lead toward an increase in public transport patronage.
(b) the concurrence of the Planning Secretary has been obtained.	
The proposed variation has a percentage exceedance less than 10%, meaning that external referral and concurrence of the Planning Secretary is required for this project. As a result of this, a request to the Local Planning Panel for approval will be required.	
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—	
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and	
Complies. There are no known state significant or regional environmental planning controls which would be impacted by the extent of the variation arising from the numerical non-compliance with the minimum parking requirement in this instance.	

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(b) the public benefit of maintaining the development standard, and	Complies. Consideration of maintaining the development standard within the context of this project has been extensively addressed in this report. It argues that the proposed development has sufficient environmental planning grounds to warrant a variation, and that the development will continue to meet the objectives of the policy (SEPP Housing 2021) and the land zone, notwithstanding the extent of the numerical non-compliance with the development standard.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	Complies. There are no other known matters at the time of preparing this report which would require consideration by the Local Planning Panel as part of this Cl.4.6 Variation application.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—	
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or	
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	
	Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).	
	Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—	
(a) a development standard for complying development,	
	Compliant. The proposed development is not an application for complying development.
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,	
	Compliant. The proposed variation request does not seek to vary a provision under SEPP BASIX.

5.3 Assessment Against Relevant NSWLEC Principles

Webbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal provides housing of an appropriate level of amenity as anticipated by the AHO's housing guide, to deliver quality affordable rental housing for First Nations persons in NSW,
- The proposal minimises the environmental impacts of the development by adaptively reusing an existing dilapidated cottage, as well as adopting a number of passive solar, thermal and environmental controls to ensure a sustainable housing outcome can be adequately achieved,
- The proposal, in its form, scale, bulk, materiality and expression, will not adversely impact the character of the locality and maintains the heritage significance of the local item,
- The proposal does not result in the loss of affordable rental housing in the area, but will instead increase the number of affordable rental units on the site from one (1) to four (4), and,
- The proposal diversifies the housing provision within the E1 Local Centre context of Glebe Point Road, providing much needed affordable rental housing in a key inner city area, without compromising the amenity of the neighbouring properties and providing a high level of amenity to future occupants.

This proposed variation therefore satisfies the requirements under Webbe Test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

A principal underlying purposes of SEPP Housing is to encourage delivery of housing which will make good use of existing infrastructure and services (objective (d)) as well as mitigate the loss of affordable housing within New South Wales (objective (h)). To the extent that provision of compliant car parking (2 spaces for 4 units) would reduce local dependency upon public transport and alternative transport (cycling and walking), the objective (d) would be thwarted by reducing use of existing infrastructure. Similarly, the creation of two parking spaces, along with the associated compliance expectations with the Australian Standards would result in the loss of at least one unit, reducing the ability to provide quality affordable rental housing on the site and contradicting the aim of objective (h). Thus, in the circumstances of this site, strict numerical compliance with the provision of car parking on this property is contradictory to the objectives of the development standard and would not result in a positive environmental planning outcome.

5.3.4 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.

Consistency with LEP Local Provisions for Car Parking - cl.7.1-cl.7.9 of the SLEP sets out a number of local provisions with respect to car parking. In particular, it is worth noting that the Council's objectives are to enforce a 'maximum' parking rate, rather than a 'minimum' parking rate. It is our belief that the maximum parking approach is, indirectly, aimed at encouraging the reduction of car parking dependency in the local government area. Thus, to impose a more onerous requirement for car parking, at a rate substantially higher than the council's encouragement for reduced car parking is at odds with the aims of this section of the SLEP.

Design Precedence - Previous Request to Remove Provision of Parking at 122 Glebe Point Road - Whilst we acknowledge that the adjoining development at 122 Glebe Point Road was completed prior to the commencement of SEPP Housing 2021, the proposed development was also for an in-fill affordable rental housing (multi-dwelling housing) development managed and owned by the AHO. We note from Council's RFI in 2019 at the time when the neighbouring development was being amended, that removal of two originally proposed car parking spaces, whilst not explicitly requested, was not discouraged and the proposal at No. 122 Glebe Point Road was ultimately approved without the provision of car parking on the grounds that a better residential amenity was achieved through a 'town house style' configuration, similar to what has been proposed in this application. Given that this development is similar (acknowledging that SEPPARH2009 has been repealed and replaced), we believe that the provision of zero parking spaces, in conjunction with Council's general encouragement of non-car centric design approaches is a better outcome for future residents, without compromising traffic demands for the local area.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed or to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Minimum Lot Size for the delivery of affordable in-fill housing within SEPP Housing 2021. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

- Heritage Conservation & Housing Design Compromise - The proposed development is constrained in its ability to provide the minimum car parking required for the units proposed due to the existing configuration of the heritage item and the severe density compromise which would be required to achieve parking. Whilst it is noted that a double garage is capable of being constructed, oriented to Derwent lane, such an approach would result in the loss of at least one unit, reducing the provision of affordable housing for the First Nations community in a crucial area. For the other reasons around public transport patronage and previous design precedence, we believe that a better environment design outcome is achieved by having zero parking spaces and maximising the ability to provide housing on the property.

- Compliance with LEP Land Zone Objective for Maximising Public Transport Patronage - A core objective of the land zone is: "To maximise public transport patronage and encourage walking and cycling." To the extent that the development does not provide any off-street parking, and each resident is able to park at least one bicycle within their individual units affords a high degree of flexibility in alternative transport options. It is further noted that the site is considered to be a highly accessible area, being within 400m of regular bus services (Glebe Point Road and Parramatta / City Road) and within 800m of local light rail networks (Glebe Station). It is therefore believed that the proposed development is adequately serviced by public transport, and adequately accessible through cycling and walking to warrant a deviation from the minimum parking standard. It is also noted that a number of car share parking spaces are available on Glebe Point Road, to facilitate temporary or short-term car rentals for future occupants who may require a vehicle.
- Consistency with LEP Local Provisions for Car Parking - cl.7.1-cl.7.9 of the SLEP sets out a number of local provisions with respect to car parking. In particular, it is worth noting that the Council's objectives are to enforce a 'maximum' parking rate, rather than a 'minimum' parking rate. It is our belief that the maximum parking approach is, indirectly, aimed at encouraging the reduction of car parking dependency in the local government area.
- Design Precedence - Previous Request to Remove Provision of Parking at 122 Glebe Point Road - Whilst we acknowledge that the adjoining development at 122 Glebe Point Road was completed prior to the commencement of SEPP Housing 2021, the proposed development was also for an in-fill affordable rental housing (multi-dwelling housing) development managed and owned by the AHO. We note from Council's RFI in 2019 at the time when the neighbouring development was being amended, that removal of two originally proposed car parking spaces, whilst not explicitly requested, was not discouraged and the proposal at No. 122 Glebe Point Road was ultimately approved without

the provision of car parking on the grounds that a better residential amenity was achieved through a 'town house style' configuration, similar to what has been proposed in this application. Given that this development is similar (acknowledging that SEPPARH2009 has been repealed and replaced), we believe that the provision of zero parking spaces, in conjunction with Council's general encouragement of non-car centric design approaches is a better outcome for future residents, without compromising traffic demands for the local area.

- Consistency with City of Sydney Walking Strategy - The City of Sydney has a vision for reducing car dependency within the local government area to approximately 10% of all transport modes by 2030 as part of its Walking Strategy vision. To the extent that having no parking will discourage future occupants from owning private vehicles. As identified in the other environmental planning grounds, a number of public transport options are available on the site, and private bicycle parking is available to occupants (in each private courtyard space) to facilitate alternative transportation dependency. Overall therefore, it is believed that this development is consistent with the aims of reducing dependency on car usage as the primary form of transportation to and from the premises.

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.

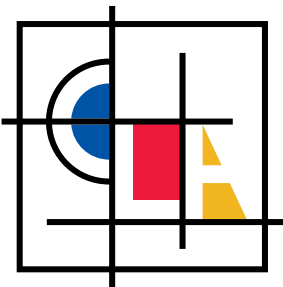
Clause 4.6

Variation Request

**120 Glebe Point Road, Glebe
Gadigal Country**

**Development Standard:
SEPP Housing 2021
cl.18 Non-Discretionary Dev.
Standards (i) - Minimum Unit
Size (Low Rise Housing
Diversity Design Guide)**

Extent of Variation: 26.7%



**CRACKNELL
&
LONERGAN**
ARCHITECTS PTY LTD

DA-ISS.

Site Registration
Prepared on
Prepared for

Lot 9 in D.P. 244843
11 December 2023
Aboriginal Housing Office

1.1 Executive Summary

The following Clause 4.6 Variation to Development Standard - Minimum Unit Size (SEPP Housing 2021) written request is a supplement to the Statement of Environmental Effects (SEE) which has been submitted to support a Development Application (DA) to No. 120 Glebe Point Road, Glebe. The proposed multi dwelling housing project encompasses alterations and conservation and restoration works to the primary form to result in a two bedroom house, demolition of the existing rear additions and construction of a new rear addition that will house three units, each with one bedroom and a study.

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Height, of a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

In this written request, it has been explained that flexibility is justified within this case in terms of the matters described in Clause 4.6 which are required to be addressed as part of the written request. This written request also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



Peter Lonergan

Architect & Director of Design
Cracknell Lonergan Architects Pty Limited
NSW Architects Registration No. 5983

Sections 2.1 through to 3.2 are the same in each Clause 4.6 variation request.

In order to consolidate the attachments, the repeated sections have been removed in the subsequent 4.6 requests.

Please refer to the Cl. 4.3 Height of Buildings variation request for sections 2.1 through to 3.2.

4.0 Development Standard Variation Sought

4.1 Identification of the Standard to be Varied

Pursuant to Cl.18 of SEPP Housing 2021, this variation seeks to vary the minimum site area requirement contained within the non-discretionary development standards which states:

18 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—

- (a) a minimum site area of 450m²,
- (b) for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling,
- (c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,
- (d) a deep soil zone on at least 15% of the site area, where—
 - (i) each deep soil zone has minimum dimensions of 3m, and
 - (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,
- (e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,
- (f) for a development application made by a social housing provider for development on land in an accessible area—
 - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or
 - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or
 - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,
- (g) if paragraph (f) does not apply—
 - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or
 - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or
 - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,
- (h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,
- (i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide.**
- (j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—
 - (i) for each dwelling containing 1 bedroom—65m², or
 - (ii) for each dwelling containing 2 bedrooms—90m², or
 - (iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms.

4.0 Development Standard Variation Sought

4.2 Extent of Variation Sought

The following is a numerical summary of the extent of the variation sought for this proposed development.

Minimum Landscaped Area per Dwelling (sqm)	Proposed Development	Extent of Variation (%)
SEPP Housing 2021 - Ch.2 Affordable Housing, Div. 1 In-fill Affordable Housing		
2 Bedroom Unit 90 sqm	Unit 1 66.0 sqm	90.0 - 66.0 = 24 sqm VARIATION: 26.7%
1 Bedorom Unit 65 sqm	Unit 2 66.0 sqm	NONE - Compliant Design No Variation to Development Standard is being sought.
1 Bedorom Unit 65 sqm	Unit 3 66.0 sqm	NONE - Compliant Design No Variation to Development Standard is being sought.
1 Bedorom Unit 65 sqm	Unit 4 66.0 sqm	NONE - Compliant Design No Variation to Development Standard is being sought.
The following has been extracted from Section 2.4K Dwelling Size and Layout - Design Criteria No. 72 of the Low Rise Housing Diversity Design Guide for Development Applications.		

5.1 Overview of Relevant Considerations

5.1.1 Clause 4.6 of the Local Environmental Plan

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objective of the clause are:

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

The function of Clause 4.6 is to enable flexibility in the application of planning provisions by providing the consent authority the ability to approve a development which does not comply with the numerical controls of certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve a better outcome for and from the development.

In determining whether to grant consent for development which contravenes a development standard, Cl.4.6(3) requires the consent authority to consider a written request from the proponent of an application that seeks to justify the contravention of the development by demonstrating that:

- (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.*

Furthermore, the consent authority must also be 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 the development within the zone, and whether the concurrence of the Secretary has been obtained.

In Cl.4.6(5) the Secretary is required to consider certain matters before granting concurrence, namely:

- (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 Planning Secretary before granting concurrence.*

This document forms a written request in compliance with the required consideration under Cl.4.6 to provide a justification for the contravention of the Height of Buildings Standard contained in the LEP. The assessment of the proposed variation has been undertaken in accordance with this clause.

5.1.2 NSW Land & Environment Court - Case Law

Several decisions by the NSW Land & Environment Court (NSWLEC) have refined the content and structure in which variations to development standards are required to be approached and considered.

The correct approach to preparing and dealing with a request under Cl.4.6 was eloquently summarised by Chief Justice Brian Preston in the case *Initial Action -v- Wollahra Municipal Council [2018] NSWLEC 118* at [13] - [21]. For brevity, this decision is not reproduced in full but it is necessary to note that this decision establishes that “sufficient environmental planning grounds” must be articulated in the written request.

Additionally, in the decision of the commissioner in *Wehbe v Pittwater Council [2007] NSWLEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. The five tests for this are tabulated and responded to.

Subsequent to this, a number of decisions within the NSWLEC have continued to inform the various tests to be taken in assessment of Clause 4.6 Written Requests, including *Baron Corporation Pty Ltd -v- Council of the City of Sydney [2019] NSWLEC 61* and *RebelMH Neutral Bay Pty Limited -v- North Sydney Council [2019] NSWCA130*.

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives

(1)(a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,

(1)(b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances,

The latest authority in relation to the operation of Clause 4.6 is the decision of His Honour Chief Justice Preston in *Intiial Action Pty Ltd -v- Woollahra Municipal Council* [2018] NSWLEC118. Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of Initial Action, the Court held that:

In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.

The legal consequence of this decision is that Cl.4.6(1) is not an operational provision and that the remaining clauses of Cl.4.6 constitute the operational provisions for which an assessment must be made in varying a development standard.

(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.

The development standard subject to this cl.4.6 Variation Request is not 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

An established manner for addressing whether or not compliance with a development standard is unreasonable or unnecessary was established in the 'five-part test' outlined in *Wehbe -v- Pittwater* [2007] NSWLEC 827.

It is not considered necessary for an application to need to establish all of the tests or 'ways' a development standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an Applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way. The development is justified against the Wehbe Tests in the subsequent section of this report.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify the contravention of the development standard which are unique to the circumstances of this site and the circumstances of this development in the context of its public ownership by the AHO. The environmental planning grounds which justify contravention of the numerical control of the development standard are as follows:

1. Heritage Conservation - Without wishing to compromise the integrity of the heritage item's original configuration and scale, the proposal seeks to confine the two bedroom unit to the original four-room house form. As a result, it is believed that the addition (which would have been to the rear) of almost 30sqm for the sole purpose of seeking to comply with the standard would compromise the quality of other units proposed on site, as well as requiring further alterations to the heritage item which could further erode its significance and integrity.
2. Continued Compliance with LRHDDG Objective - The underlying objective of the minimum unit sizes as contained in the LRHDDG Objective 2K Dwelling Size and Layout is "The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provide a high standard of amenity." Notwithstanding the numerical variation sought, the proposed adaptation of a heritage item and the retention of its original spatial configuration (as much as practicable), whilst also allowing for contemporary needs such as a kitchen and bathroom represents a reasonable solution which is flexible, and capable of achieving the intent of this clause in providing a functional, well organised dwelling with a high level of amenity, whilst respecting the heritage significance of the site.
3. Compliance with Design Guidance of LRHDDG - The Design Guidance section of the LRHDDG already acknowledges that the minimum floor space for units is not intended to be a prescriptive control. It states, inter alia that "Where the minimum dimensions are not met, dwellings must be shown to be well designed, usable and functional with realistically scaled furniture layouts and circulation areas. This criteria is assessed on its merits." As the existing floor plan shows, the proposed layout is capable of housing a two bedroom property (foreshadowed to be parents with one child) along with a reasonably sized kitchen/dining space and separated living space for a family. The proposed configuration, whilst varying from the numerical standard, is therefore capable of providing a usable, functional and realistic two bedroom dwelling outcome, without compromising the heritage significance of the property and without compromising on the desired density for the delivery of social housing for the local area and First Nations persons.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(4) Development consent must not be granted for development that contravenes a development standard unless—	
(a) the consent authority is satisfied that—	
<i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>	
This report provides an adequate assessment of relevant considerations under cl.4.6(3) and provides a written response for the purposes of applying for a development standard variation.	
<i>(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</i>	
Principles of Policy - SEPP Housing 2021	
Principles	Compliance / Response
The principles of this Policy are as follows—	
(a) enabling the development of diverse housing types, including purpose-built rental housing,	Complies. The proposal seeks to provide purpose built affordable rental housing within a key inner city area managed by the AHO. The proposal will provide a mix comprising 1 X 2 Bedroom Unit (Heritage Building) and 3 X 1 Bed + Study units. The subject site is zoned B2 (Now E1 Local Centre) where a diverse mix of residential and commercial are encouraged. The development fulfills this by providing affordable rental housing for First Nations people.
(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,	Complies. The proposal delivers housing which will be for the First Nations Community of NSW. The proposal thus achieves the aim of providing housing opportunities to members of our community to be managed by the AHO.
(c) ensuring new housing development provides residents with a reasonable level of amenity,	Complies. Notwithstanding the numerical variation sought under this Cl.4.6, the proposed development is consistent with the principles and guiding objectives of the AHO's own published Design Guidelines (2020) and the objectives and design guidance of the Low Rise Diversity Design Guide. Key design objectives in terms of minimum living and bedroom spaces, along with multi-functional study areas are provided, alongside orientation which maximises natural solar access and cross ventilation to all four units proposed without compromising the heritage integrity of the site, or the amenity of neighbouring development. The proposal thus achieves this principle by delivering new high-quality affordable housing which will be afforded a high level of amenity.

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	<p>Complies.</p> <p>Glebe Point Road is a highly serviced site in terms of infrastructure and public services. The locality is proximate to Sydney CBD, and is afforded access to a number of local services in terms of retail, commercial, food, and education and medical services. Providing affordable rental housing in such highly developed areas is crucial as it mitigates the adverse impact of additional unnecessary travel for vulnerable persons. The proposition is thus considered to be situated in an appropriate 'accessible area' for the purposes of providing affordable housing and meets this planning principle.</p>
(e) minimising adverse climate and environmental impacts of new housing development,	<p>Complies.</p> <p>A number of passive thermal and comfort actions have been taken, accompanying the BASIX Certificate and assessment process to ensure that the environmental impacts of the housing development are kept to a minimum. The units propose achieve 100% natural cross ventilation, alongside a minimum of two hours direct sunlight to principal living and bedroom spaces in mid-winter. These negate the unnecessary reliance upon artificial heating, cooling and lighting needs for the majority of the year.</p> <p>The proposed adaptation and reuse of an existing building for the purposes of one of the four proposed units reduces the embodied energy of the development. Existing fabric, where appropriate has been conserved to minimise adverse environmental impacts and reduces overreliance on a demolition-new construction approach.</p>
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	<p>Complies.</p> <p>The proposed development, notwithstanding the numerical non-compliance with the development standard for minimum unit sizes, provides a scale of development in terms of its height, bulk, scale, setback and materiality which is responsive and consistent with the local area. The two storey scale of the development, expressed as a one storey brick structure with a timber and metal framed 'attic' style upper storey is similar to other two storey buildings, including the social housing already delivered at No. 122 Glebe Point Road. Whilst the roof form and scale is slightly different, the overall design of the proposal is complementary to the character of the heritage item and does not adversely affect the amenity of future occupants, and nor does it compromise the heritage significance of the site or the building's contribution to the wider Glebe Point Road Heritage Conservation Area street context.</p>
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	<p>Not Applicable.</p> <p>The proposal is not for short-term rental accommodation and is not classified as a home-sharing project. The proposed development is for in-fill affordable rental housing.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
(h) mitigating the loss of existing affordable rental housing.	<p>Complies.</p> <p>The proposal will not result in the loss of existing affordable rental housing. As noted in other reports supplementing the application, the existing dwelling, whilst having historically been used as affordable rental accommodation for one family (i.e. one housing unit) has fallen into a state of disrepair and dilapidation which at the moment, means the property is neither sanitary or safe to occupy. As a result, the existing site does not provide any affordable rental housing.</p> <p>The resultant development will provide four, new, contemporary and heritage restored dwellings suitable for housing four separate families or persons, dramatically increasing the site's ability to provide affordable housing. The principle is thus achieved, notwithstanding the minor deviation in terms of site area, which does not compromise the amenity of the housing delivered to future occupants of the site.</p>
Objectives & Design Guidance - Section 2.4K Dwelling Size & Layout Low Rise Housing Diversity Design Guide	
Objective / Guidance (Relevant Controls)	Compliance / Response
<p>Objective 2.4K-1</p> <p>The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provide a high standard of amenity.</p>	<p>Complies</p> <p>Notwithstanding the numerical variation sought, the proposed adaptation of a heritage item and the retention of its original spatial configuration (as much as practicable), whilst also allowing for contemporary needs such as a kitchen and bathroom represents a reasonable solution which is flexible, and capable of achieving the intent of this clause in providing a functional, well organised dwelling with a high level of amenity, whilst respecting the heritage significance of the site.</p>
<p>Guidance</p> <p>The dwelling should allow for sufficient space for the function of contemporary living. Layouts which have long corridors and circulation spaces may need a larger overall area so that other parts of the dwelling are not compromised.</p>	<p>Complies</p> <p>The property does not contain a long corridor, but an existing entry foyer and corridor is retained as part of the original heritage configuration of the space. The proposed development includes upgrades to bathroom and kitchen facilities within the heritage fabric to ensure that adequate amenity is afforded to meet the needs for contemporary living and to ensure compliance as well (concurrently) with the design guidance by the Aboriginal Housing Office.</p>
<p>Guidance</p> <p>Where the minimum dimensions are not met, dwellings must be shown to be well designed, usable and functional with realistically scaled furniture layouts and circulation areas. This criteria is assessed on its merits.</p>	<p>Complies.</p> <p>As the existing floor plan shows, the proposed layout is capable of housing a two bedroom property (foreshadowed to be parents with one child) along with a reasonably sized kitchen/dining space and separated living space for a family. The proposed configuration, whilst varying from the numerical standard, is therefore capable of providing a usable, functional and realistic two bedroom dwelling outcome, without compromising the heritage significance of the property and without compromising on the desired density for the delivery of social housing for the local area and First Nations persons.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives	
<p>Guidance All living areas and bedrooms should be located on the external perimeter of the building.</p>	<p>Complies. All living areas and bedrooms are oriented to the external perimeter of the dwelling, making use of existing window locations and openings, and does not adversely affect the heritage configuration of the house.</p>
<p>Guidance Kitchens should be located in areas of good natural daylight.</p>	<p>Complies. The kitchen/dining area is oriented to provide appropriate daylight from the East.</p>
Objectives of the Land Zone - E1 Local Centre (formerly B2 Local Centre)	
Objective	Compliance / Response
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	<p>Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.</p>
To encourage investment in local commercial development that generates employment opportunities and economic growth.	<p>Not Applicable. The proposed development is for residential accommodation which is permissible within the zone, even where it does not necessarily result in the investment of capital in commercial ventures and opportunities for economic growth. It can however be said, that the development of further urban housing in key inner city areas will provide for the people and density to facilitate patronage of commercial sites, thus contributing to the local economic environment.</p>
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	<p>Complies As a community housing project for the Aboriginal Housing Office, the proposed development represents a diversification of uses from a traditionally privatised housing market, seeking to provide much needed affordable housing within a key inner city precinct.</p>
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	<p>Not Applicable. The proposed development is for residential accommodation.</p>
To maximise public transport patronage and encourage walking and cycling.	<p>Complies. The provision of affordable housing for First Nations communities in key inner city areas supported by public transport and alternatives to car-oriented travel will be achieved by this development. The provision of four residential units increases the urban density of the site, aligned to an existing affordable housing property adjacent, and will therefore lead toward an increase in public transport patronage.</p>

5.0 Variation Assessment Framework

5.2 Assessment Against Cl.4.6 Objectives

The following is an assessment of the proposal against the objectives and clauses of Cl.4.6 of the LEP.

Clause 4.6 Objectives
(b) the concurrence of the Planning Secretary has been obtained.
The proposed variation has a percentage exceedance less than 10%, meaning that external referral and concurrence of the Planning Secretary is not required for this project.
(5) In deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
Not Applicable. Concurrence of the Secretary is not required.
(b) the public benefit of maintaining the development standard, and
Not Applicable. Concurrence of the Secretary is not required.
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
Not Applicable. Concurrence of the Secretary is not required.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
Not Applicable. The subject site is not located within one of the zones listed under this clause.
(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).
Noted. It is the responsibility of the consent authority Council to keep a record of its assessment of this variation.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
Compliant. The proposed development is not an application for complying development.
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
Compliant. The proposed variation request does not seek to vary a provision under SEPP BASIX.

5.3 Assessment Against Relevant NSWLEC Principles

Webbe -v- Pittwater Council [2007] NSWLEC 827

5.3.1 Test 1: The Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance with the Standard.

As discussed in Section 5.2 of this report, the objectives of the development standard are adequately achieved notwithstanding non-compliance with the numerical control of the standard:

- The proposal provides housing of an appropriate level of amenity as anticipated by the AHO's housing guide, to deliver quality affordable rental housing for First Nations persons in NSW,
- The proposal minimises the environmental impacts of the development by adaptively reusing an existing dilapidated cottage, as well as adopting a number of passive solar, thermal and environmental controls to ensure a sustainable housing outcome can be adequately achieved,
- The proposal, in its form, scale, bulk, materiality and expression, will not adversely impact the character of the locality and maintains the heritage significance of the local item,
- The proposal does not result in the loss of affordable rental housing in the area, but will instead increase the number of affordable rental units on the site from one (1) to four (4), and,
- The proposal diversifies the housing provision within the E1 Local Centre context of Glebe Point Road, providing much needed affordable rental housing in a key inner city area, without compromising the amenity of the neighbouring properties and providing a high level of amenity to future occupants.

This proposed variation therefore satisfies the requirements under Webbe Test 1.

5.3.2 Test 2: The Underlying Objective or Purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

5.3.3 Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence being that compliance is unreasonable.

The existing subject site is and has been, for sometime, been a property which delivers social housing for the First Nations Community through the AHO. Throughout this period, no change to the subdivision or land size has been undertaken. Under the new SEPP Housing requirements, the underlying purpose, which is to retain existing social housing, to encourage delivery of more social housing and to prevent the loss of social housing would be defeated as the proposed development would effectively be prohibited by strict adherence to the numerical control. The proposal therefore satisfies Webbe Test 2.

5.3.4 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.

This test is not relied upon for the purposes of this development standard variation request.

5.3.5 Test 5: The zoning of the particular land on which the development is proposed or be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstance of the case would also be unreasonable or unnecessary.

This test is not relied upon for the purposes of this development standard variation request.

6.1 Recommendations

There are no further recommendations to be made in this report.

6.2 Conclusion

Clause 4.6 of the Local Environmental Plan allows the consent authority to grant consent for development even though the development seeks to depart from the numerical controls regarding Minimum Lot Size for the delivery of affordable in-fill housing within SEPP Housing 2021. The clause aims to provide an appropriate degree of flexibility in the application of development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- That the applicant 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.

For the following reasons, it is concluded that the proposed numerical variation to the development standard is acceptable and presents sufficient environmental planning grounds because:

1. Heritage Conservation - Without wishing to compromise the integrity of the heritage item's original configuration and scale, the proposal seeks to confine the two bedroom unit to the original four-room house form. As a result, it is believed that the addition (which would have been to the rear) of almost 30sqm for the sole purpose of seeking to comply with the standard would compromise the quality of other units proposed on site, as well as requiring further alterations to the heritage item which could further erode its significance and integrity.
2. Continued Compliance with LRHDDG Objective - The underlying objective of the minimum unit sizes as contained in the LRHDDG Objective 2K Dwelling Size and Layout is "The dwelling has a sufficient area to ensure the layout of rooms are functional, well organised and provide a high standard of amenity." Notwithstanding the numerical variation sought, the proposed adaptation of a heritage item and the retention of its original spatial configuration (as much as practicable), whilst also allowing for contemporary needs such as a kitchen and bathroom represents a reasonable solution which is flexible, and capable of achieving the intent of this clause in providing a functional, well organised dwelling with a high level of amenity, whilst respecting the heritage significance of the site.
3. Compliance with Design Guidance of LRHDDG - The Design Guidance section of the LRHDDG already acknowledges that the minimum floor space for units is not intended to be a prescriptive control. It states, inter alia that "Where the minimum dimensions are not met, dwellings must be shown to be well designed, usable and functional with realistically scaled furniture layouts and circulation areas. This criteria is assessed on its merits." As the existing floor plan shows, the proposed layout is capable of housing a two bedroom property (foreshadowed to be parents with one child) along with a reasonably sized kitchen/dining space and separated living space for a family. The proposed configuration, whilst varying from the numerical standard, is therefore capable of providing a usable, functional and realistic two bedroom dwelling outcome, without compromising the heritage significance of the property and without compromising on the desired density for the delivery of social housing for the local area and First Nations persons.

In view of this, it is believed that this Clause 4.6 Variation Request is supportable by the consent authority and that, notwithstanding the numerical non-compliance, the proposal is appropriate for its context, consistent with both the objectives of the standard and the land zone.