Attachment C

Clause 4.6 Request – Minimum Lot Size

Ref: D24/2581598
18/10/2024

Clause 4.6 Request to contravene development standards – Affordable Housing, Boarding House 10-18 Raper Street, Newtown

1 Introduction

This report has been prepared for Homes NSW (Land and Housing Corporation), which is a public authority, in relation to a Crown development application for a proposed affordable housing boarding house at 10-18 Raper Street, Newtown.

In accordance with Clause 4.6 of the *City of Sydney Local Environmental Plan (SLEP) 2012*, a contravention to the development standards relating to the minimum lot size for boarding houses and car parking provisions in *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) is proposed.

This submission should be read in conjunction with the Statement of Environmental Effects prepared by Barker Ryan Stewart for Homes NSW, the architectural plans designed by Sam Crawford Architects and other accompanying documentation.

1.1. Location of Property

The development site is commonly known as 10-18 Raper Street, Newtown, and is legally referred to as Lot 61 in DP 1277404; Lot 62 in DP 1277404; and Lot 63 in DP 1277404.

1.2 Proposed Development

The development application seeks consent for the redevelopment of the land for a boarding house development pursuant to the Housing SEPP and the main features of the proposed development are summarised as follows:

- Demolition of existing one and two-storey residential development and associated structures;
- Construction of a one and two-storey boarding house providing a total of 8 self-contained, sole occupant boarding rooms including one accessible living boarding room;

- Construction of a common room containing communal facilities including a dining area, kitchen facilities and areas for social gathering;
- Private open space areas for each boarding room in the form of courtyards or balconies which are directly accessible off living areas;
- At grade motorcycle parking for 2 motor bikes;
- At grade bicycle parking for 6 bicycles;
- Pedestrian, bicycle and motorcycle access to the site from Raper Street;
- Provision of a landscaped communal open space area;
- Extensive landscaping scheme, including the provision of numerous advanced/ mature trees (7 trees), a mix of low and medium planting, hedging and seating benches including accessible seating.
- Secure waste enclosure accommodating 2 x 240L recycling bins; 2 x 240L general waste bins; and 2 x 240L green waste bins;
- Civil works including:
  - onsite detention of stormwater in an underground tank with a capacity of 11.7m^3.
  - underground rainwater tank with a capacity of 2kl for landscaping / irrigation reuse;
  - provision of stormwater drainage; and
- Consolidation of 3 lots into 1.

Refer to **Figures 1** to **4** for excerpts of the development plans.

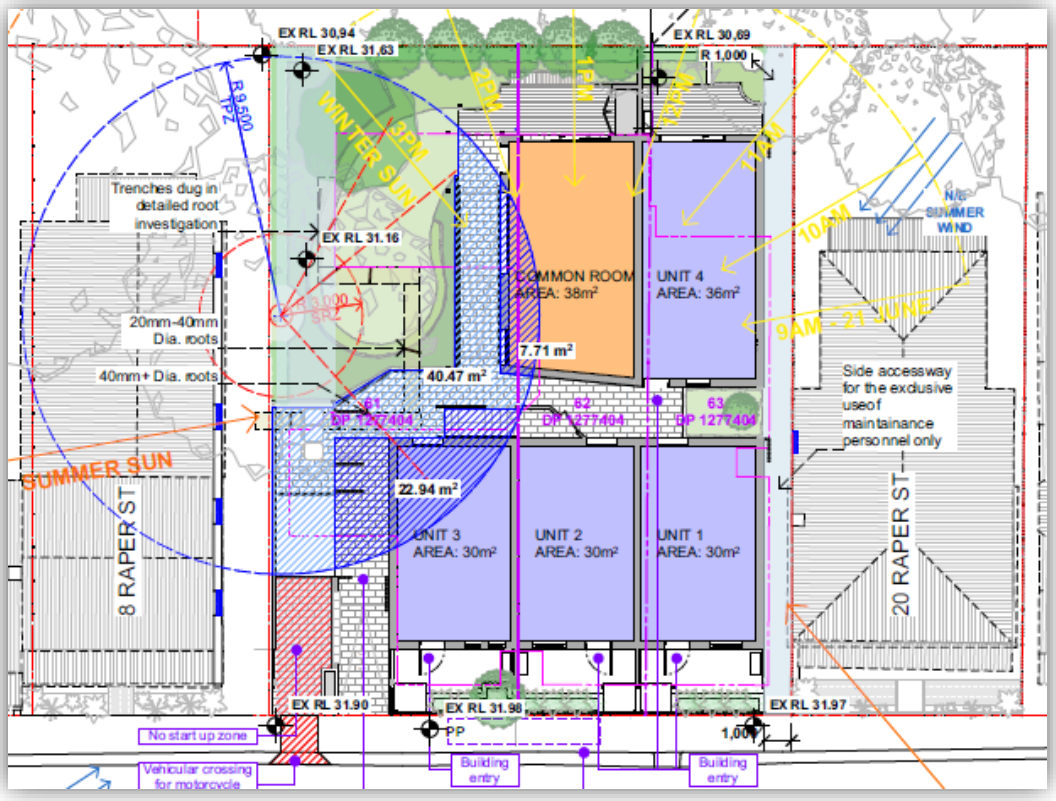

Figure 1: Extract of Site Plan (Source: Sam Crawford Architects, 2024)

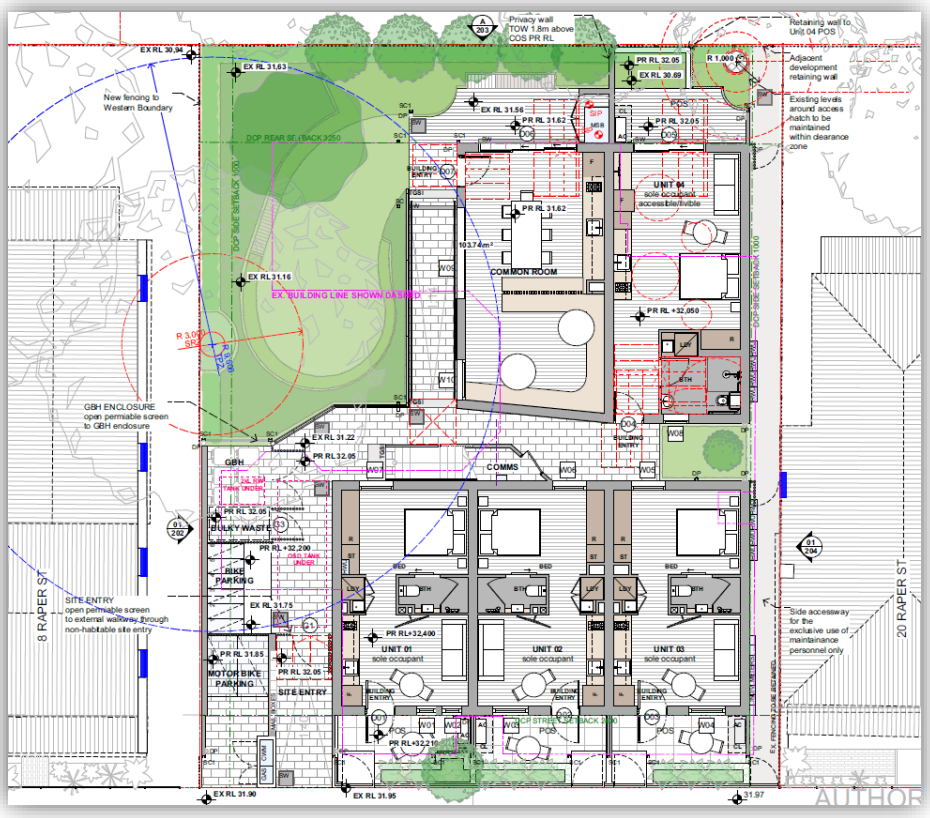

Figure 2: Extract of Proposed Ground Floor Plan (Source: Sam Crawford Architects, 2024)

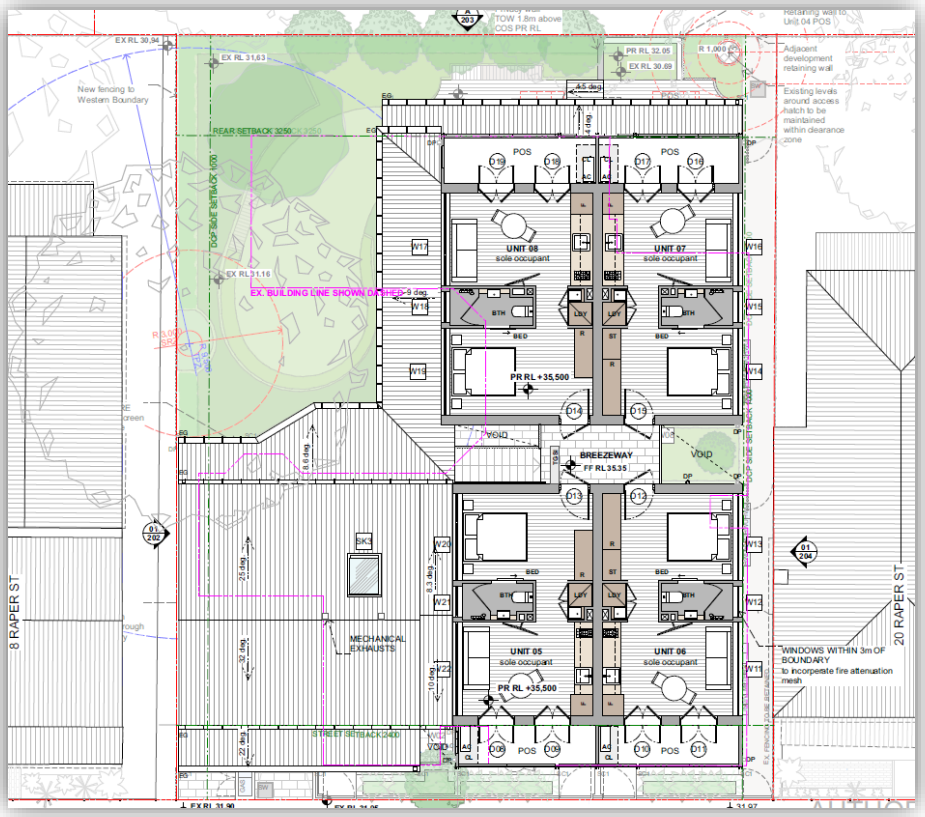

Figure 3: Extract of Proposed First Floor Plan (Source: Sam Crawford Architects, 2024)

Figure 4: Extract of Photomontage (Source: Sam Crawford Architects, 2024)

1.3 Summary of Planning Instrument and Development Standard to be Varied

EPI applicable	State Environmental Planning Policy (Housing) 2021
Zoning:	R1 General Residential under SLEP 2012
Development Standards to which the Objection Relates:	– Minimum parking requirement under Section 24(2)(i) of the Housing SEPP. – Minimum lot size under Section 25(1)(g) of the Housing SEPP.
Numeric Value of the Development Standards:	<u>Minimum parking requirement</u> 24(2)(i) if a relevant planning instrument does not specify a requirement for a lower number of parking spaces — at least the following number of parking spaces — (i) for development on land within an accessible area — 0.2 parking spaces for each boarding room, (ii) otherwise — 0.5 parking spaces for each boarding room,

	Minimum lot size 25(1)(g) the minimum lot size for the boarding house is not less than— (i) for development on land in Zone R2 Low Density Residential—600m^2, or (ii) for development on other land—800m^2. (iii) (Repealed)
Percentage and numeric variation of the proposed development to the development standards:	Minimum parking requirement The proposed development does not include any car parking spaces. The proposal represents a variation of 2 car parking spaces (100%). Minimum lot size The site has an area of 472.8m^2 which represents a variation of 327.2 m^2 (40.9%) to the 800m^2 minimum lot size for boarding house development under the Housing SEPP.

1.4 Nature of the Contravention

1.4.1 Minimum Parking Requirement

The proposed development is within 800 metres walking distance of the entrance of the Newtown Railway Station. The site is therefore determined to be within an accessible area. Therefore, the proposal would require 1.6 car parking spaces (2 car parking spaces) under Section 24(2)(i) of the Housing SEPP.

The SLEP 2012 and Sydney Development Control Plan (SDCP) 2012 do not set out a maximum number of car parking spaces for boarding house development.

The proposal seeks approval for no car parking spaces, resulting in a shortfall of 2 spaces (or a 100% variation) from the rate required under Section 24(2)(i) of the Housing SEPP.

It is noted that Section 24(2)(i) is a non-discretionary standard. Non-discretionary development standards are standards that if complied with, prevent consent authorities from:

- taking the non-discretionary development standard into further consideration in determining the DA.
- refusing the DA on the grounds that the development does not comply with those standards.
- imposing a condition of consent that has the same, or substantially the same, effect as the standard but is more onerous than the standard.

If a development does not comply with a non-discretionary development standard, section 4.15(3) of the *Environmental Planning and Assessment Act* (EP&A Act) 1979 allows the consent authority to apply Clause 4.6 (or an equivalent provision) when considering and determining the development.

It should be noted that sufficient motorcycle and bicycle parking is proposed for the development, with the variation specially relating to the non-provision of car parking spaces.

1.4.2 Minimum Lot Size

The site is zoned R1 General Residential under SLEP 2012. The minimum lot size for boarding house development in this zone is 800m^2 under Clause 25(1)(g) the Housing SEPP.

The proposal seeks the consolidation of three lots with a combined total area of 472.8m^2 which represents a variation of 327.2m^2 (40.9%) to the 800m^2 minimum lot size for boarding house development under the Housing SEPP.

1.4.3 Preparation of Submission

This submission and application has been prepared in accordance with the NSW Department of Planning and Environment guidelines and has incorporated relevant principles identified in the following Land and Environment Court decisions:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248
- Moskovich v Waverley Council [2016] NSWLEC 1015
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
- RebelMH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130
- SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112

2 Clause 4.6 Assessment

2.1 Overview

Clause 4.6 (1) and (2) of the SLEP 2012 state:

1. *The objectives of this clause are as follows—*

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

   (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

The proposal seeks a contravention of the development standards imposed by the Housing SEPP.

The development standards in Section 24(2)(i) and Section 25(1)(g) of the Housing SEPP are not excluded from the operation of clause 4.6 for this site by clause 4.6(8).

Clause 4.6 requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)]; and
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)].

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be directly satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated.

Initial Action involved an appeal pursuant to section 56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

In *Initial Action* Chief Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and

- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

This report details the proposed variation to the minimum parking requirement non-discretionary development standard and the minimum lot size development standard and addresses sequentially each of the following sub-clauses:

> 3. *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
>
> a. *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
>
> b. *there are sufficient environmental planning grounds to justify the contravention of the development standard.*
>
> *Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

2.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

As found by Chief Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm or adverse amenity impacts for the proposed development.

The Court has held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827). It is important to note that:

- The requirement is to demonstrate that compliance is unreasonable **or** unnecessary. It does not need to be shown that compliance is both unreasonable and unnecessary;
- *Wehbe* identifies five ways of demonstrating that compliance is unreasonable or unnecessary, but the Courts have held that this list is not exhaustive (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [22]).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

3. The objective would be defeated, thwarted or undermined (*Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]) if compliance was required with the consequence that compliance is unreasonable;
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 the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

Note the Court confirmed it is sufficient to satisfy only one (1) of the five tests in order to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

The proposed development is supported on grounds that the objectives of the Housing SEPP are achieved notwithstanding non-compliance with the two standards. In this case, as outlined below, it is demonstrated that Tests 1 and 3 have been met, with further assessment provided.

2.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

The proposal has been designed considering the objectives of the requirements as detailed below. Strict compliance is seen as being unnecessary in the circumstances of this proposal, given that the development would not be able to proceed if it was required to comply with the land size requirement, and if the proposal complied with the parking requirements it is not considered that a better or improved outcome would be achieved. This proposal provides for a boarding house that will provide appropriate amenity to residents on and adjoining the site. Despite the numerical non-compliances, the information below confirms that the underlying objectives have been achieved.

2.2.1.1 Minimum Parking Requirement

The only objective under Section 24 of the Housing SEPP, under which this non-discretionary development standard is located, is as follows.

> 1. *The object of this section is to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*
>
> *Note — See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.*

As such, the principles of the Housing SEPP and objectives of the R1 General Residential Zone have been considered and are achieved by the proposal notwithstanding the variation which is being sought to the minimum parking requirement. Refer to discussion below in Section 2.2.1.3.

2.2.1.2 Minimum Lot Size

Whilst there are no objectives stated for the development standard itself, the principles of the Housing SEPP and objectives of the R1 General Residential Zone have been considered and are achieved by the proposal notwithstanding the variation which is being sought to the minimum lot size. The principles of the Housing SEPP have been discussed individually below.

2.2.1.3 Principles of the Housing SEPP

The principles of this Policy are as follows—

a. *enabling the development of diverse housing types, including purpose-built rental housing,*
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,*
c. *ensuring new housing development provides residents with a reasonable level of amenity,*
d. *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
e. *minimising adverse climate and environmental impacts of new housing development,*
f. *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
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,*
h. *mitigating the loss of existing affordable rental housing.*

Principle

a. *enabling the development of diverse housing types, including purpose-built rental housing,*

Comment

The proposed variations would not restrict the development of the site for the purpose of affordable housing in the way of boarding house development. The proposed variations actually assist in enabling the provision of an alternative type of purpose built rental housing.

Principle

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*

Comment

The proposed variations would not restrict the development of the site for the purpose of affordable housing in the way of boarding house development. The proposed development will be delivered by Homes NSW who are a social housing provider. Social housing is affordable housing provided by the government and community sectors to assist people who are unable to afford or access suitable accommodation in the private rental market. The proposal seeks to provide an affordable housing boarding house comprising 8 sole occupant boarding rooms that will accommodate vulnerable members of the community.

Principle

c. ensuring new housing development provides residents with a reasonable level of amenity,

Comment

The proposed development will achieve an appropriate level of amenity for residents, notwithstanding the proposed variations. The proposal has been designed to achieve privacy and amenity to residents of the boarding house and adjoining residences e.g. solar access, natural ventilation, accessibility, landscaping. Despite the size of the lot, the proposal meets setback and height requirements and provides expansive landscaping to achieve amenity within and surrounding the site. Furthermore, the absence of car parking provision is well mitigated by the site's proximity to public transport and the high level of accessibility which allows for the opportunity to use active modes of transport such as walking and cycling. Newtown railway station is located approximately 750 metres southwest of the proposal with at least two bus stops located within 400 metres of the site, serviced by regular bus services. As such, the provision of car parking is not considered warranted.

Principle

d. promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

Comment

The proposed boarding house is well located within an established residential area within close proximity to services, public transport and employment opportunities. With the subject site being situated within a highly accessible area, this would encourage the use of alternative modes of transport such as walking and cycling. The proposal seeks the provision of 2 motorcycle spaces and 6 bicycle spaces. The provision of car parking spaces is therefore deemed excessive for the development in its context.

Principle

e. minimising adverse climate and environmental impacts of new housing development,

Comment

The proposed variations would not result in adverse climate and environmental impacts, as demonstrated by the BASIX certificate and NatHERS (Nationwide House Energy Rating Scheme) star ratings. Additionally, the proposal has been designed to reduce flood risk and incorporates extensive landscaping, despite its lot size, including a generous deep soil zone area.

Principle

f. reinforcing the importance of designing housing in a way that reflects and enhances its locality,

Comment

The proposed boarding house development has been designed to respond to the heritage character of the local area which typically comprises smaller lots with no parking spaces. The proposed variations would not detract from the character of the surrounding area.

Principle

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,

Comment

The proposed variations would not restrict the development of the site for the purpose of affordable housing in the way of boarding house development, including for short term rental accommodation.

Principle

h. mitigating the loss of existing affordable rental housing.

The proposed variations would not result in the loss of affordable rental housing. Rather, through the support of the proposed variations, the provision of affordable rental housing would be facilitated at the subject site.

2.2.1.4 Objectives of the R1 Zone

Boarding houses are permitted in the R1 zone under the SLEP 2012. The relevant objectives of the R1 zone, as set out in the SLEP 2012 are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maintain the existing land use pattern of predominantly residential uses.*

The proposed development provides affordable housing in the form of an 8 room boarding house that maintains the residential land use and meets the identified housing needs of the community. It will provide a variation in density and housing type that would be important in promoting diversity in this locality. The proposal will not impede the provision of other land uses that provide facilities or services to meet the needs of residents. The proposal is therefore consistent with the relevant objectives of the R1 zone and the variations will not impact compliance with these objectives.

2.2.2 Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary?

The underlying objectives of the Housing SEPP seek to facilitate the increased supply of social and affordable housing to meet social and economic needs. The objective of the standard is therefore relevant to the proposed development.

2.2.3 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

2.2.3.1. Minimum Parking Requirement

Yes, if compliance with the minimum number of car parking spaces was required, the proposal would not achieve the provision of 8 boarding rooms, with the loss of one or more boarding rooms. This outcome would not assist with the supply of social housing which is in high demand. In the Leichardt/Marrickville allocation zone (CS03), in which the site is located, the wait list for social housing is approximately 1,520 applicants with wait times greater than 10 years for studios/ 1-bedroom and 2, 3 and 4-bedroom properties, as demonstrated in **Figure 5** below. Further, local strategic planning documents identify affordable housing as a key concern for the City of Sydney LGA. This proposal will provide an affordable housing boarding house containing 8 boarding rooms in close proximity to services, transport and jobs in an area expected to see an increase in demand for housing, specifically single person households. The proposal will allow for a diverse mix of housing in the Newtown locality that will cater for various social and economic needs.

Further, the inclusion of two parking spaces would increase the hardstand area at the site, reducing the opportunity for landscaping which not only contributes to amenity but also provides environmental benefits. In addition, surrounding developments generally do not include off-street car parking. The provision of a driveway within the front setback is therefore out of character, with only one driveway located along the entire length of Raper Street. To provide car parking at the ground level would cause a disruption to the overall character of the development and streetscape presentation of the proposal, given there is no opportunity for rear access from a laneway or secondary street.

The site is well located within proximity to public transport which would encourage the use of these modes of transport. The public entrance to the Newtown railway station is located approximately 750 metres southwest of the proposal. At least two bus stops are located within 400 metres of the site that are serviced by regular bus services. These modes of public transport connect Newtown to the wider Sydney locality and beyond.

Further, the proposal allows for 6 bicycle spaces and 2 motorcycle spaces which are considered adequate to service the proposed development as demonstrated in the Traffic Impact Assessment prepared by The Transport Planning Partnership.

Newtown is in the CS03 Leichhardt/Marrickville zone.

Expected waiting times for general applicants	CS03 Leichhardt/Marrickville
Expected waiting time for a studio/1-bedroom property	**10+ years**
Expected waiting time for a 2-bedroom property	**10+ years**
Expected waiting time for a 3-bedroom property	**10+ years**
Expected waiting time for a 4+ bedroom property	**10+ years**

Information for applicants and expected waiting times:

CS03 Leichhardt/Marrickville

Figure 5: Waiting times for Social Housing CS03 Leichardt/Marrickville Allocation Zone (Source: NSW Communities and Justice)

2.2.3.2 Minimum Lot Size

Yes, if compliance with the minimum lot size of 800m^2 was required, the proposal for a boarding house development on the site would not be achievable. Therefore, the opportunity to provide an affordable

housing boarding house containing 8 boarding rooms in an area with an identified need for social and affordable housing would not occur. This outcome is not desirable, as discussed in Section 2.2.3.1 above.

2.2.4 Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard?

2.2.4.1 Minimum Parking Requirement

It is not suggested that the standard has been abandoned or destroyed. Rather, the proposal seeks variation to Section 24(2)(i) and Section 25(1)(g) of the Housing SEPP which came into force in November 2021. A review of Council's development application tracker did not find a development application lodged for a boarding house development after this time. Notwithstanding, the City of Sydney seeks to minimise car dependency and retain boarding house development.

At a Council meeting held on 23 October 2023 (File No S051491), Councillor Clover Moore addressed the Council concerning the importance of affordable housing in the City of Sydney and the need for the retention of boarding houses within the local government area. Councillor Clover Moore stated the following –

> *While housing is primarily the responsibility of the NSW Government, the City is using every lever available to us to deliver and support more Social and Affordable Housing across our local area.*

SLEP 2012 seeks to minimise the amount of vehicular traffic generated because of a proposed development by stipulating a maximum number of car parking spaces that may be provided to service a proposed development. The SLEP 2012 and SDCP 2012 do not set out a maximum number of car parking spaces for boarding house development. Council have approved a number of boarding houses with nil or limited car parking spaces, as noted below -

- DA2020/1050 – Construction of boarding house - 103 boarding rooms – 0 car parking spaces
- DA2021/802 - Change of use from student accommodation to a boarding house – 37 boarding rooms – 1 car parking space
- DA/2021/1299 – Change of use and associated alterations and additions to a former Salvation Army hall including retention of the building, demolition of ancillary structures, and construction of a new building for use of the site as a boarding house for a maximum of 29 lodgers and 1 on-site manager - 20 boarding rooms – 0 car parking spaces

It is acknowledged that the abovementioned development applications were lodged prior to the Housing SEPP coming into force. Notwithstanding, the proposed variation to the non-discretionary development standard to include no car parking spaces is reflective of the high level of accessibility to the site by walking, cycling and public transport, and is consistent with the City of Sydney's policy to minimise car dependency and encourage active transport use.

2.2.5 Is the zoning of the land unreasonable or inappropriate?

No. The proposed development is defined as a 'boarding house' under the provisions of SLEP 2012 and is permissible with Council's consent in the R1 zone. The site is well located, close to employment, services and public transport. The locality will readily support boarding house development of the proposed scale.

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

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Initial Action* the Court also confirmed that it is not necessary to show that there would be a better environmental planning outcome – this is not the test.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site, and whether they are 'sufficient'.

The predominant planning grounds identified to justify the variations are based on the appropriate location and design of the proposal, and improved design and amenity of the built environment, which includes the following advantages:

- Proximity of the site to services, facilities and public transport,
- Provision of extensive landscaping on the site,
- Protection of adjoining sites from overshadowing and privacy impacts, and
- Provision of important affordable housing within an accessible area.

These are investigated in more detail below.

2.2.1.1 Minimum Parking Requirement

Providing car parking is considered excessive and unwarranted in the context of the subject site given its proximate location to public transport, services and employment. The site is located approximately 750 metres walking distance to Newtown Railway Station and within 400 metres walking distance to several bus services within the immediate locality. Each of these provide connections to nearby services, amenities, facilities, and to a more expansive public transport network.

Access to public transport and services is reflected by the low numbers of private car ownership in the City of Sydney in comparison to the Greater Sydney area. The City of Sydney community profile found the following –

> *Analysis of the car ownership of the households in the City of Sydney in 2021 compared to Greater Sydney shows that 56.2% of the households owned at least one car, while 36.7% did not, compared with 84.2% and 10.8% respectively in Greater Sydney.*
>
> *Of those that owned at least one vehicle, there was a larger proportion who owned just one car; a smaller proportion who owned two cars; and a smaller proportion who owned three cars or more.*
>
> *Overall, 43.6% of the households owned one car; 10.5% owned two cars; and 2.0% owned three cars or more, compared with 38.1%; 31.0% and 15.1% respectively for Greater Sydney.*
>
> *(Source: City of Sydney – Number of cars per household - .idcommunity)*

Figure 6 below reflects these findings.

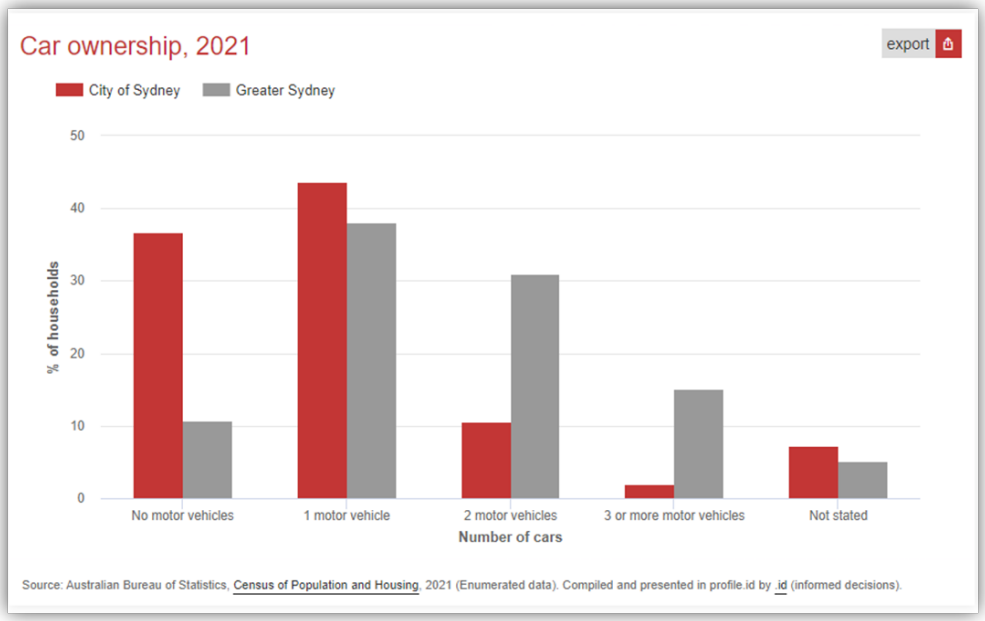

Figure 6: Car ownership, 2021(Source: City of Sydney – Number of cars per household - .idcommunity)

It should also be noted that social housing tenants generally have a lower rate of car ownership than that of the general population.

Further, the proposal allows for 6 bicycle spaces and 2 motorcycle spaces which is considered adequate to service the proposed development as demonstrated in the Traffic Impact Assessment prepared by The Transport Planning Partnership. The provision of bicycle and motorcycle parking at the site is deemed appropriate in compensating for the non-provision of car parking spaces. Hence, it would be considered excessive if any car parking spaces were provided at the site, given the site's accessible location as detailed earlier. The residential amenity for future residents would in no way be impacted through the non-provision of car parking spaces as active modes of transport are encouraged through the provision of bicycle spaces and the alternative transport options made available in the locality. This will ensure future residents are able to stay well connected to goods, services and amenities which are offered in the immediate and broader locality.

Figure 7 below shows an extract of the Sydney Cycling Map which shows that Raper Street is well located in relation to cycling routes and is identified as a low traffic street.

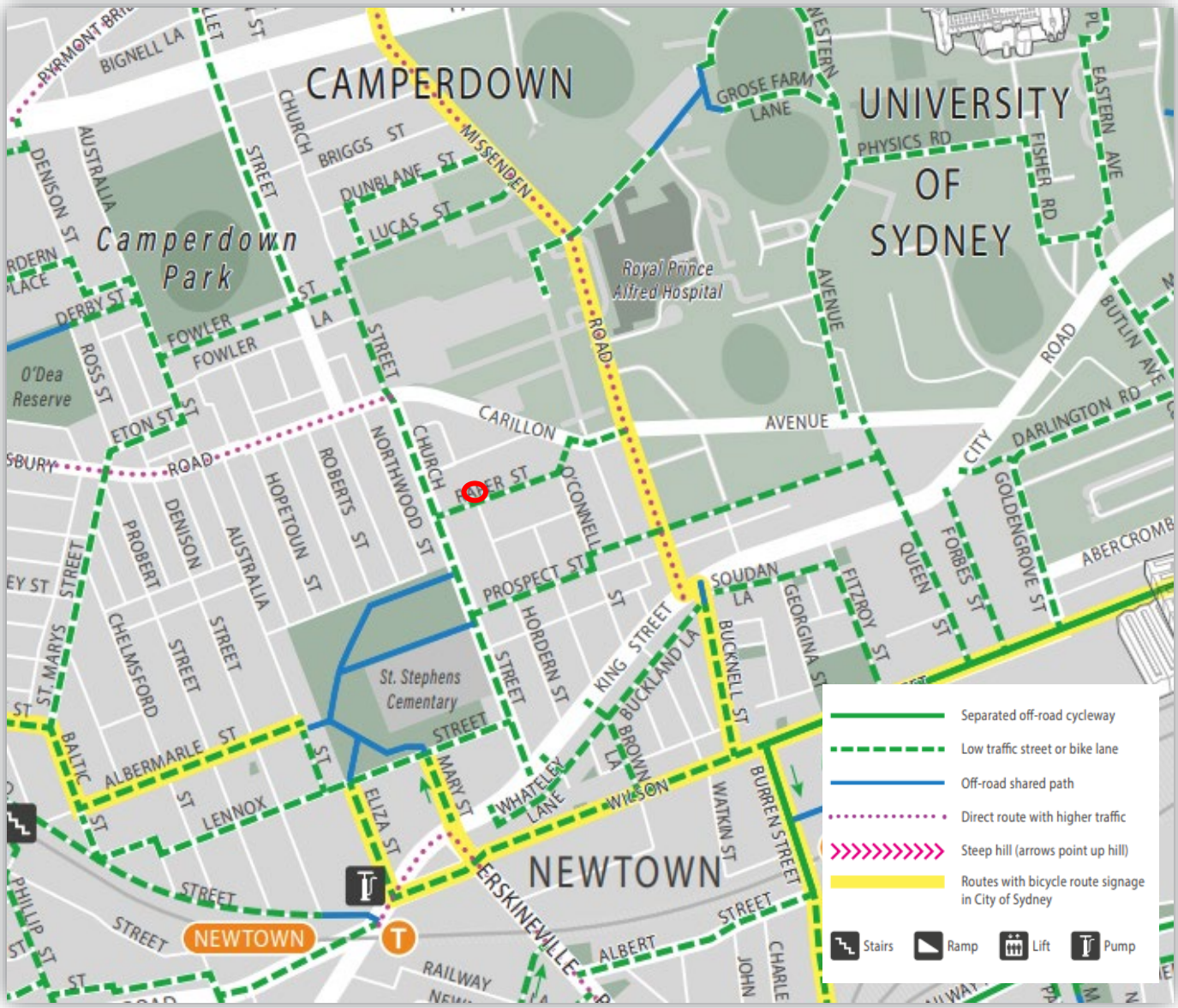

Figure 7: Sydney Cycling Plan Extract (Source: City of Sydney)

2.3.1.2 Minimum Lot Size

One of the predominant planning grounds identified to justify the variation is based on the improved design and amenity of the built environment which includes the following advantages:

- The proposal has been designed to be in-keeping with character of area.
- Compliance with the SDCP 2012.
- No adverse impact on privacy of adjoining development.
- No adverse impacts on amenity of adjoining development, including overshadowing and acoustic privacy.
- No unacceptable environmental impacts.

These are investigated in more detail below.

Character of Area

The surrounding lot subdivision pattern in the locality of the proposal generally comprises small lots below 200m^2. Some lots within the locality have an area greater than this, but do not comprise an area of 800m^2 or greater. For example, whilst not boarding house development, development comprising 4 terrace houses at 38-44 Raper Street has a land area of approximately 450m^2. Therefore, the proposal is not considered out of character with development in the surrounding area. Rather, the proposal is considered in character given it comprises residential development within a smaller lot size.

Development within the immediate locality of the proposal generally comprises attached, one and two storey terrace style development. The proposal seeks to provide a one and two storey development consistent with the bulk and scale of surrounding development. The proposal is therefore not considered an overdevelopment of the site. This is supported by the heritage assessment undertaken to accompany the proposed development by Everick Heritage, included with the Statement of Environmental Effects.

Compliance with SDCP 2012

The proposal is comfortably positioned on site whilst complying with the SDCP 2012, including controls related to building height, building setbacks, solar access, landscaping, privacy and amenity.

Privacy

A high level of internal and external privacy is maintained by the proposed development through a range of measures including careful and considered site landscaping, adequate site setbacks and strategic placement of windows and balconies to avoid direct overlooking of neighbours. In particular:

- Balconies associated with Units 5 and 6 are orientated toward Raper Street with landscaping proposed within the front setback to improve streetscape amenity and privacy for future residents.
- Balconies associated with Units 8 and 7 are orientated toward the rear of the site and have been designed with privacy screening to minimize opportunity for overlooking to adjoining residential development. Further, landscaping, including trees, are proposed within the rear setback which will further reduce the opportunity for overlooking.
- The use of landscaping throughout the site as well as appropriate setbacks between the building forms will ensure privacy for future residents and surrounding development.
- Windows from first floor units are provided with high sill heights to restrict direct line of site into the neighbouring properties at No 8 and No 22 Raper Street.
- The proposed boarding house has been designed in accordance with the requirements of the *National Construction Code* for sound and impact transmission so that acceptable noise levels between the proposed development and adjoining properties are achieved.
- Visual and acoustic privacy within the development and to adjacent neighbours is provided and maintained through the strategic use of privacy screens, considered window locations including high sill windows, and screen planting.
- The front setback is consistent with SDCP 2012 and the prevailing building line on Raper Street and includes landscaping to further mitigate privacy impacts.
- Side and rear setbacks are compliant with SDCP 2012.

- Principal private open spaces are set back from neighbouring properties with privacy screens and landscaping provided to ensure privacy.

Amenity

The shadow diagrams prepared to support the development application confirm the development has been designed to minimise overshadowing of surrounding development. Shadow diagrams confirm the proposed development will not generate unacceptable shadow impacts to living areas and private open space of dwellings on adjoining sites.

At 9am, shadows generated by the proposed development are generally contained within the site and adjacent side setback of No. 8 Raper Street. At 12pm, shadows are contained within the subject site and out towards Raper Street. At 3pm, shadows are cast to the south east towards No 22 Raper Street. No 8 and No 22 Raper Street are marginally affected by overshadowing, however it is noted that the proposed development does not impact on the solar access to the private open spaces of these residences. Further, the proposal does not impact these sites for more than a few hours each day at mid-winter. Resultantly, the dwellings shall receive not less than 3 hours of sunlight at the mid-winter solstice between 9am and 3pm. No other properties are impacted by the proposed development. It is therefore demonstrated that solar access to surrounding properties will not be unreasonably reduced by the proposed development. It is acknowledged that shadows created from the development are not dissimilar to what is currently experienced.

Noise generated when the proposed building is completed and occupied will be entirely in keeping with its residential surroundings. Recommendations of the Acoustic Report prepared by Northrop will be implemented, including measures surrounding glazing, mechanical equipment and motorbike parking. The report concluded the following –

> *With a combination of engineering and managerial mitigation measures, the development is capable of operating without causing a nuisance or result in an offensive noise as defined by the POEA Act 1997.*
>
> *Providing the recommendations outlined in this report are implemented, the proposed development will comply with the acoustic requirements of City of Sydney Council and relevant Australian standards and guidelines.*

Environmental Impact

The proposal will have not result in any unacceptable adverse environmental impacts. The proposal encourages walking and cycling to services and public transport as well as including improved landscaping and green spaces. A larger site would not have guaranteed this outcome.

2.4 Is the objection well founded?

The objection/submission to the contravention of the development standards has identified that the proposed variations to the development standards under the Housing SEPP will result in a better outcome than a proposal where strict compliance with the development standards was enforced. The development, in its proposed form, will allow for the delivery of an additional 8 new affordable boarding house rooms within the City of Sydney, specifically Newtown, that are close to services, transport and jobs.

Should the development standards be enforced, the proposal for a boarding house development on the site would not be achievable. Therefore, the opportunity to provide 8 boarding house rooms in an area with an identified need for social and affordable housing would not occur.

It is considered that this has been adequately addressed in Parts 2.2 and 2.3 of this request for contravention. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the SLEP2012 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the principles of the Housing SEPP and the objectives of the R1 General Residential zoning;
- The proposed development will provide housing to meet the needs of the community in a well located area situated close to services, public transport and jobs;
- Adequate bicycle and motorbike spaces have been provided which assists in compensating for the provision of nil car parking spaces at the subject site.
- The proposal is comfortably sited within the lot whilst still being capable of compliance with the building height, building setbacks, solar access, landscaping, privacy and amenity controls, and creating no unacceptable adverse environmental impacts.

Accordingly, this request to contravene the development standards for car parking and minimum lot size is considered to be well founded.

3 Conclusion

The proposal does not strictly comply with Section 24(2)(i) and Section 25(1)(g) of the Housing SEPP as it specifically relates to the provision of car parking and the minimum lot size for boarding house development.

Strict compliance with these development standards is considered to be unnecessary in the circumstances of the proposed development given it will provide affordable housing in an area expected to see an increase in housing need, specifically single person households, and in demand for the provision of social housing. Development that incorporates strict compliance with Sections 24(2)(i) and 25(1)(g) of the Housing SEPP would not be able to achieve a boarding house development in this location, one which is identified as being well suited due to its access and proximity to services, public transport and employment opportunities.

Noting the absence of any unacceptable environmental impacts to be generated by the nil parking provision and reduced lot size, strict compliance would facilitate an inferior urban design outcome that would not assist in achieving social equity and inclusion. Strict compliance with Section 24(2)(i) of the Housing SEPP would result in reduced opportunity for affordable housing and increased hardstand area in an accessible area with numerous opportunities to access services, employment and public transport. The shortfall in car parking spaces will not restrict the provision of a high-quality development and an architecturally well-designed boarding house on the subject site. A variation to the required number of car parking spaces will still result in a development which contributes to the provision of affordable housing in an area well serviced by public transport infrastructure, local services and employment opportunities.

Further, strict compliance with Section 25(1)(g) of the Housing SEPP would not allow for the site to be developed for affordable housing by the means of a boarding house at all, reducing the opportunity of a well-placed affordable housing development that is desired and supported in local and regional planning documents and that is an identified need by Council.

Consequently, strict compliance with these development standards is unreasonable and unnecessary in this particular case and the use of Clause 4.6 of the SLEP2012 to vary these development controls is appropriate in this instance.

The design and occupation of the development will not generate any unacceptable amenity or environmental impacts on surrounding development and the proposal represents a quality upgrade to existing, vacant development on site.

Based on the above, it is reasonable to conclude that strict compliance with the development standards is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

The consent authority can be assured that contravention of the controls will not result in any unreasonable environmental planning impacts and the request contravene the car parking requirement and minimum lot size will contribute to the provision of inclusive, affordable housing in the City of Sydney LGA to support community needs.