

**CLAUSE 4.6 VARIATION
REQUEST
LIVERPOOL LEP 2008
CL. 7.3 CAR PARKING**

**WESTFIELD LIVERPOOL
25 GEORGE STREET,
LIVERPOOL**

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1. INTRODUCTION

This clause 4.6 variation request has been prepared by Urbis on behalf of Scentre Group, the applicants for a development application (DA) seeking approval for an dining, entertainment and leisure precinct within Westfield Liverpool and construction of an seven-storey commercial tower above ground floor retail at 25 George Street, Liverpool (**the site**).

This request seeks an exemption from the strict application of clause 7.3 of LLEP, specifically:

7.3 Car parking in Liverpool city centre

(2) Development consent must not be granted to development on land in the Liverpool city centre that is in Zone B3 Commercial Core or B4 Mixed Use that involves the erection of a new building or an alteration to an existing building that increases the gross floor area of the building unless:

(a) at least one car parking space is provided for every 200 square metres of any new gross floor area that is on the ground floor level of the building, and

(b) in respect of any other part of the building:

(i) at least one car parking space is provided for every 100 square metres of any new gross floor area that is to be used for the purposes of retail premises, and

(ii) at least one car parking space is provided for every 150 square metres of any new gross floor area that is to be used for any other purpose.

The existing shopping centre provides 3,498 car spaces. In accordance with clause 7.3 (2), the proposed entertainment and leisure precinct and office tower requires an additional 146 car spaces (80 retail and 66 commercial) to be accommodated on site. The proposal satisfies the LEP parking requirement for commercial office GFA through the provision of 66 dedicated commercial parking spaces.

The proposal will result in the loss of 126 car spaces and provide a total of 3,438 car spaces. This results in an overall net shortfall of 206 spaces. A detailed car parking demand analysis has been undertaken by Colston Budd Rogers & Kafes Pty Ltd (CBRK) and identifies the proposed total parking (3,438) is sufficient to meet the demands of the existing and future centre (**Appendix G**). This should be read in conjunction with this Clause 4.6 variation request.

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008

Clause 4.6 of LLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

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

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

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a clause 4.6 written request to justify the contravention of the Building Height development standard in clause 4.3. The assessment of the proposed variation has been undertaken in accordance with the requirements of the LLEP, clause 4.6 Exceptions to Development Standards.

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as

to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

[15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

[16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.

[17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].

[18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].

[19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].

[20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].

[21] A fifth way is to establish that the zoning of the particular land on which the development is proposed 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 circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

[22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. 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.

[23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

- [24] The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].
- [25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- [26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- [27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
- [28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
- [29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

3. SITE AND LOCALITY

3.1. SITE ANALYSIS

The site is known as 25 George Street, Liverpool and comprises 33 lots legally described as:

- | | | |
|--------------------|---------------------|----------------------|
| • Lot 1 DP1037187 | • Lot 13 DP10597 | • Lot 101 DP 1033517 |
| • Lot 1 DP136327 | • Lot 13 DP1068213 | • Lot 423 DP720737 |
| • Lot 1 DP34300 | • Lot 14 DP710597 | • Lot 433 DP822256 |
| • Lot 1 DP554550 | • Lot 14 DP1068213 | • Lot 435 DP822222 |
| • Lot 1 DP729652 | • Lot 20 DP807472 | • Lot 5 DP36148 |
| • Lot 1 DP958735 | • Lot 20 DP871292 | • Lot 6 DP 36148 |
| • Lot 2 DP729652 | • Lot 21 DP 807472 | • Lot 8 DP1217134 |
| • Lot 10 DP871294 | • Lot 21 DP613438 | • Lot A DP33536 |
| • Lot 11 DP1068213 | • Lot 22 DP613438 | • Lot B DP33536 |
| • Lot 12 DP1068213 | • Lot 100 DP1033517 | • Lot D DP382865 |
| • Lot 12 DP710597 | • Lot 100 DP620292 | • Lot E DP382865 |

The location of the site is shown at Figure 1. The subject of this clause 4.6 variation request relates to the proposed commercial tower and dining, entertainment and leisure precinct located in the southern portion of the site.

The site comprises a large parcel of land and is bounded by four street frontages being Campbell Street to the north, George Street to the east, Elizabeth Drive to the south and Bathurst Street to the west.

The principal features of the site include:

- A total area of approximately 72,370m²;
- Primary street frontage to Elizabeth Drive, opposite Macquarie Street Mall;
- Vehicle access is currently available at various locations along Campbell Street, Bathurst Street and George Street;
- Limited vegetation on site with street trees planted along the perimeter of the site;
- Located directly opposite the site is St Luke's Church and Grounds which is recognised in LLEP as a state listed heritage item.

Figure 1 – Aerial Location Plan



Source: Urbis

3.1.1. Existing Development

The site accommodates Westfield Liverpool which is a three-storey shopping centre with basement level and associated car parking. Westfield Liverpool is a significant retail centre with retail facilities provided over three levels. There are 3,498 basement, under-cover and open-air car parking spaces.

The area to which the DA and this clause 4.6 variation request relates is generally located on the central and eastern thirds of the shopping centre and is occupied by the following land uses (see Figure 2):

- Cinemas;
- Retail; and
- Food and drink premises.

Figure 2 – Subject Site



Picture 1 – Westfield Liverpool as viewed from Elizabeth Drive.

Source: Urbis



Picture 2 – Southern entrance to existing shopping centre.

3.2. SURROUNDING LAND USE

North

To the north is Liverpool Memorial Pioneers Park, a State significant heritage item.

East

To the east on the opposite side of Macquarie Street Mall is the University of Western Sydney (WSU) Liverpool campus. The site comprises a nine-storey educational establishment with ground floor café.

South

To the south on the opposite side of Elizabeth Drive is St Luke's Anglican Church, which is listed as a State Heritage Item under LLEP. The Church is set back from Elizabeth Drive by landscaping and a low fence. Also to the south is Macquarie Street Mall which forms part of a pedestrianised section of Macquarie Street. Macquarie Street Mall comprises street furniture, landscaping and outdoor dining.

West

To the west along Elizabeth Drive is Westfield Liverpool which extends to Bathurst Street. Bathurst Street comprises a mix of older residential development and some recent residential development in the form of residential flat buildings.

Figure 3 – Site and Surrounds



Picture 3 – University of Western Sydney Liverpool Campus looking north-east as viewed from Elizabeth Drive.

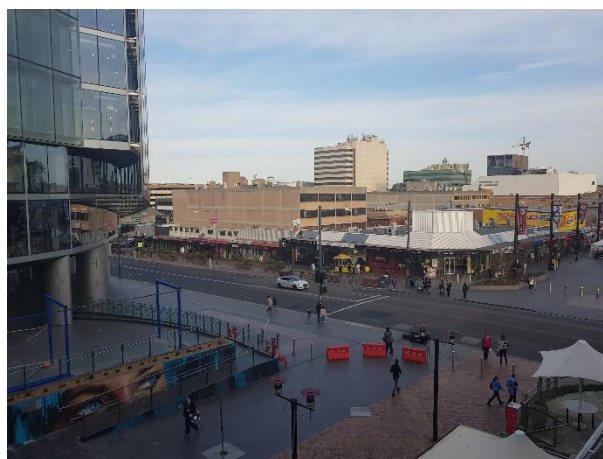


Picture 4 – St Luke's Church Grounds looking south, as viewed from the subject site.



Picture 5 – Macquarie Street Mall looking south across Elizabeth Drive, as viewed from the subject site.

Source: Urbis



Picture 6 – Macquarie Street Mall, Liverpool CBD and WSU Building looking south-east across Elizabeth Drive, as viewed from the subject site.

3.3. TRANSPORT NETWORK

The site is well served by public transport. Liverpool Station is located approximately 700 metres from Westfield shopping centre and services the South, Bankstown and Cumberland lines. The South Line connects Sydney Central to Campbelltown via Redfern, Burwood, Strathfield, Granville, Fairfield and Liverpool. The Bankstown Line connects Sydney Central to Liverpool via Sydenham and Bankstown. Finally, the Cumberland Line connects Campbelltown to Blacktown via Liverpool, Fairfield and Parramatta.

A bus interchange is located immediately adjacent to the station. It serves as a terminus for all bus routes serving the CBD and the Liverpool to Parramatta Transitway. It also caters for taxis and interstate buses. Liverpool CBD is serviced by a total of 30 routes. Over 80% of these routes pass directly adjacent to Westfield shopping centre either on Elizabeth Street or George Street. The routes provide services at headways that vary from five minutes in peak periods to a limited number of services per day on some routes.

The availability of regular bus services, both from outside the CBD and between shopping centre and the station means that the centre has good access by public transport both bus and rail.

3.4. PLANNING CONTEXT

The existing shopping centre provides some 3,498 parking spaces which is in excess of what is required under the provisions of the *RMS Guide to Traffic Generating Developments (2002)* for shopping centres.

In accordance with Clause 7.3 (2), the additional retail area generates the need for an additional 80 car spaces and the proposed commercial tower requires 66 car spaces. As stated in the Traffic and Parking Assessment submitted at **Appendix G**, this approach is flawed because the rates only apply to the additional floor area and does not consider the following:

- Following construction of the ELP and office tower, parking provision for the whole shopping satisfies the LEP and demand rates;
- Peak parking demand for the office tower and retail occur at different times; and
- The existing shopping centre currently has surplus parking and will continue to have surplus parking (based on LEP, RMS and demand analysis).

The most appropriate way to determine whether the proposed development provides adequate parking is to assess parking requirements for the whole shopping centre once the office tower and ELP are constructed. When the LEP rates are applied to the entire shopping centre, a total of 1,006 car spaces are required and the proposed provision of 3,438 car spaces across the entire site satisfies the LEP rates.

As outlined above, the existing shopping centre currently has surplus parking. Parking is currently controlled by a parking management system that directs drivers to areas where parking is available. With the parking management system, it is possible to determine the utilisation of the car park for each hour over the year. The shopping centre generally operates between 9.00am and 6.00pm each day. With a parking management system in place, parking should be provided at demand plus 5% (to allow for circulation within the car park).

A review of the information provided by the parking management system found that the 95th percentile parking demand for the most recent financial year (between the hours of 9.00am to 6.00pm) was 2,847 spaces. The current parking provision of 3,498 spaces and proposed (3,438) is well in excess of the current demand.

The proposed development will result in the demolition of 845 car spaces and the addition of 720 car spaces. A total of 66 spaces will be provided to the new commercial office tower (these will be available for retail parking on weekends and 3,373 spaces will be provided to the existing shopping centre, resulting in a net loss of 126 car spaces. The original development application resulted in a net loss of 272 spaces (see Table 1 below). However, with the amended commercial tower, dining, entertainment and leisure precinct and associated car parking, the incremental reduction in parking attributed to the retail uses is 126 parking spaces and as outlined above, the proposal will still provide 748 spaces in excess of the current demand.

Table 1 – Summary of car parking rates

	Existing	Original DA			Proposed		
	Retail	Commercial	Retail	Net shortfall	Commercial	Retail	Net shortfall
No. Car Spaces	3,498	74	3,152		66	3,373	
Total	3,498	3,226		-272	3,438		-206* (146+80)

*Taking into consideration additional parking required as per clause 7.3

4. THE PROPOSED DEVELOPMENT

4.1. DEVELOPMENT OVERVIEW

The development application seeks consent for the construction of a commercial tower and dining, entertainment and leisure precinct (ELP). Alterations are proposed to existing retail located at the basement (level 1) and ground floor (level 2) of the existing shopping centre and a new ELP precinct is proposed on Levels 3 and 4.

The key elements of the proposal can be summarised as follows:

- Demolition of a portion of the existing shopping centre and southern façade fronting Elizabeth Drive;
- Construction of a seven storey commercial tower (above proposed retail) with 9,827m² of commercial GFA;
- Provision of an additional 7,982m² of retail GFA over four levels;
- Inclusion of the following new tenancies:
 - Commercial premises;
 - Retail premises;
 - Food and drink premises including restaurants and a family friendly tavern;
 - Entertainment facilities;
 - Recreation facility (indoor) – including ancillary uses.
- Landscaping and civil works including a new entrance to the shopping centre at street level and a new landscaped public domain on levels 3 and 4 for public use and for community activities and events.

Amended Architectural Plans prepared by Scentre Group accompany this variation request. Key numeric aspects of the proposal are provided at Table 2 and the various components of the proposed development are described in the following sections.

Table 2 – Numeric Overview of Proposal

Parameter	Proposed
Land Use	<ul style="list-style-type: none"> • Commercial premises; • Retail premises; • Food and drink premises; • Tavern/Pub; • Entertainment facilities; and • Recreation facility (indoor)
Height	45m
Floor Space Ratio	Existing: 108,925.0m ² (1.5:1) Proposed: 181,518.3m ² (2.75:1) <i>Note. The proposed FSR includes 75% above ground car parking.</i>
Car parking spaces	Shopping centre – 3,373 spaces Commercial tower – 66 spaces

Parameter	Proposed
	Total: 3,438 spaces

4.2. PROPOSED COMMERCIAL TOWER

It is proposed to construct a seven-storey commercial tower above ground floor retail on the western side of Macquarie Street mall. The proposed architecture is bold, contemporary and seeks to act as the gateway to Westfield Shopping Centre and the proposed dining, entertainment and leisure precinct.

The design of the proposed tower seeks to complement, although not 'mimic, the existing Western Sydney University Tower located on the eastern side of Macquarie Street Mall and together act as landmarks, contributing to the transformation of the area into a vibrant central business district in Sydney's growing South West.

Figure 4 – Photomontage – Proposed development from Elizabeth Drive and Macquarie Mall



Source: Scentre Group

4.3. STAGING

We note that as per the traffic report, the level 4 car parking may not be built and is subject to demand. Therefore, the associated parking may not be delivered. However, it is noted that we will still provide a surplus of parking if this stage of the development was not delivered based on the LEP, DCP and demand study. This is acknowledged within the submitted traffic report, as amended.

5. EXTENT OF CONTRAVENTION

5.1. CLAUSE 7.3 CAR PARKING IN LIVERPOOL CITY CENTRE

Clause 7.3 (2) states:

(2) Development consent must not be granted to development on land in the Liverpool city centre that is in Zone B3 Commercial Core or B4 Mixed Use that involves the erection of a new building or an alteration to an existing building that increases the gross floor area of the building unless:

(a) at least one car parking space is provided for every 200 square metres of any new gross floor area that is on the ground floor level of the building, and

(b) in respect of any other part of the building:

(i) at least one car parking space is provided for every 100 square metres of any new gross floor area that is to be used for the purposes of retail premises, and

(ii) at least one car parking space is provided for every 150 square metres of any new gross floor area that is to be used for any other purpose.

Despite subclause (2), consent may be granted to a development with less or no onsite parking if the consent authority is satisfied the provision of car parking is not feasible.

5.2. VARIATION TO CAR PARKING

Clause 7.3(2) requires the provision of an additional 146 car spaces (66 commercial and 80 retail). The proposed development will provide 66 commercial spaces and is compliant with the LEP parking rates. The proposed development will result in the loss of 126 car spaces which will result in an overall non-compliance of 206 spaces (126 + 80 retail spaces).

The proposed development provides a total of 3,438 car spaces. This request seeks an exemption from the strict application of Clause 7.3(2) for the following reasons:

- The approach is flawed as the rates are applied only to the additional floor area and ignore whether:
 - Following construction of the ELP and office tower, parking provision for the whole shopping satisfies the LEP and demand rates;
 - Peak parking demand for the office tower and retail occur at different times; and
 - The existing shopping centre currently has surplus parking.

The best way to determine whether the proposed development provides adequate parking is to assess parking requirements for the whole shopping centre once the office tower and ELP are constructed. An assessment of parking required based on the LEP and demand rates for the whole shopping centre, (following construction of the office tower and ELP) is set out below:

- Total retail area (Existing + ELP - 45,948m² GFA ground floor, 70,959m² GFA above ground floor) – LEP rate – 1/200m² GFA ground + 1/100m² GFA above ground floor = 230 ground floor spaces + 710 above ground floor spaces = total 940 spaces
- Office tower – (9,827m²) – LEP rate – 1/150m² GFA= 66 spaces

The proposed ELP and office tower would require 1,006 spaces.

The proposed provision of 3,438 spaces satisfies the LEP rates for the whole centre.

6. CLAUSE 4.6 VARIATION REQUEST: CAR PARKING

The following sections of the report provide an assessment of the request to vary the development standard relating to the car parking in Liverpool City Centre standard in accordance with clause 4.6 of LLEP.

6.1. CLAUSE 7.3 CAR PARKING IN LIVERPOOL CITY CENTRE

Clause 7.3(2) of LLEP requires:

- (a) at least one car parking space is provided for every 200 square metres of any new gross floor area that is on the ground floor level of the building, and*
- (b) in respect of any other part of the building:*
 - (i) at least one car parking space is provided for every 100 square metres of any new gross floor area that is to be used for the purposes of retail premises, and*
 - (ii) at least one car parking space is provided for every 150 square metres of any new gross floor area that is to be used for any other purpose.*

The objectives of the development standard as per clause 7.3(1) of LLEP are as follows:

- (1) The objective of this clause is to ensure that adequate car parking is provided for new or extended buildings on land in the Liverpool city centre that is commensurate with the traffic likely to be generated by the development and is appropriate for the road network capacity and proposed mix of transport modes for the city centre.*

6.2. KEY QUESTIONS

Is the Planning Control a Development Standard?

The car parking control prescribed under Clause 7.3 of the LLEP 2008 is a development standard capable of being varied under Clause 4.6 of LLEP 2008.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it is not listed within Clause 4.6(6) or Clause 4.6(8) of LLEP 2008.

What is the Underlying Object or Purpose of the Standard?

The underlying object or purpose of the standard is to ensure adequate parking is provided for new or extended buildings, maintain a degree of traffic control and limit car parking in Liverpool City Centre.

6.3. CONSIDERATIONS

6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the ‘five-part test’ outlined in *Wehbe v Pittwater* [2007] NSWLEC 827. These tests are outlined in Section 2.2 of this letter (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or ‘ways’. **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 **three** of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The underlying objective of the development standard is to provide a degree of traffic control and limit car parking in the city centre. This is a logical objective for a strategic centre such as Liverpool with strong access to public transport.

The proposed development achieves the objectives of the development standard for the reasons outlined below:

- *The parking is commensurate with the traffic likely to be generated by the development and appropriate for the road network capacity* – The additional traffic likely to be generated by the proposed development is modest when compared to the existing situation. The Traffic Report submitted at **Appendix G** concludes that the surrounding road network and intersections will continue to operate at their existing levels of service with only minor increases in average delays per vehicle (around one second). Given the minor increase in traffic generation, the proposed parking is considered commensurate with the traffic likely to be generated by the proposed works.
- *The parking is commensurate with the proposed mix of transport modes for the City Centre* - The proposed car parking is considered proportionate to the mix of transport modes available in the City Centre. As Liverpool grows in its role as a Strategic Centre and CBD, an objective for the site should be to minimise car parking to promote the use of public transport.
- Liverpool Station is located 700 metres from the site, servicing the Inner West, Leppington, Bankstown and Cumberland lines. Liverpool bus interchange is also located immediately adjacent to the station. It serves as a terminus for all bus routes serving the CBD and Liverpool to Parramatta. Over 80% of these routes pass directly adjacent the site either on Elizabeth Drive or George Street. The proposed commercial tower also provides 56 bicycle spaces and end-of-trip facilities to encourage walking and cycling. It is anticipated that visitors and employees will utilise the existing bus, rail and active transport options available.

Accordingly, the proposed car parking numbers is considered commensurate with the mix of transport modes available in the City Centre. By encouraging its use, the development can reduce transport impacts, parking demands and travel costs for commuters.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

As discussed above, the underlying objective or purpose of the standard is relevant to the development and the proposal achieves the objectives of the car parking control irrespective of the numerical non-compliance.

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

Strict compliance with the car parking development standard would defeat or thwart the achievement of underlying objectives of the standard for the reasons outlined below:

- An underlying objective of the standard is to promote the use of public and active transport. The mix of transport modes in the City Centre has been a key determinant informing the proposed number of car parking spaces provided on site. As discussed, the site is well serviced by trains and buses. If additional car parking is provided, it will encourage the use of motor vehicles and discourage patrons from utilising the existing public transport available, defeating the underlying objective of the standard.
- A secondary objective of this clause is to ensure car parking provision is commensurate with the traffic likely to be generated by the development. As discussed in the Traffic Report submitted at **Appendix G**, the increase in traffic is modest when compared to the existing situation:

‘Once development traffic is distributed to the shopping centre access points and surrounding network, the increase in traffic flow is modest at some 5 to 55 vehicles per hour.’

Accordingly, additional parking is not warranted.

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

Liverpool City Council has previously supported clause 4.6 variations where a variation to clause 7.3(2) has been sought. Approval was recently granted for the construction of a 23 storey commercial building and hotel at 277 Bigge Street & 11-23 Scott Street Liverpool despite a shortfall in car parking of 120 spaces (DA-507/2018).

The DA was recommended for approval by Liverpool City Council and was approved by Sydney Western City Planning Panel on 11 March 2019. Under Clause 7.3 (2), the site was required to provide a minimum of 189 car parking spaces. Approval was granted for a total of 69 car spaces, resulting in a shortfall of 120 spaces and an overall non-compliance of 62.9%.

An extract from the proponent's clause 4.6 request is provided below:

"Compliance with the standard is unreasonable and unnecessary in the circumstances of the case as the site is located near to the metropolitan transport system focus of Liverpool Rail Station, the reduced parking capacity will encourage use of public transport as an alternative to motor vehicle use and will reduce the impact of the proposal on the surrounding local road system."

Evidently Council have previously supported variations of a similar nature to that proposed under this request.

Test 5: The zoning of the particular land on which the development is proposed 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 circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

As outlined below, there are sufficient environmental planning grounds to justify the proposed variation to the development standard:

- As Liverpool grows in its role as a Strategic Centre, development should seek to reduce parking particularly when there is an excess of parking on site than what is required under current demand. Uniform car parking rates cannot always be applied to a development. Historically, traffic authorities have accepted a demand study-based approach to the provision of car parking. As outlined in Section 5.2, the proposed parking satisfies existing and future demand.
- As shopping centres such as Westfield Liverpool grow, their uses tend to diversify. The proposed development will provide a mix of uses, transforming the southern portion of the existing shopping centre into an dining, entertainment and leisure precinct. The co-location of these facilities should be considered when calculating car parking demand for the site. It is anticipated that the majority of trips to the site will be 'multi-purpose' trips, reducing the need for additional car parking.
- Whilst this request seeks a variation to Clause 7.3 (2) of LLEP, one of the primary objectives of on-site car parking in Liverpool DCP is to recognise the complementary use and benefit of public and non-motorised modes of transport. The proposed development will provide end of trip facilities and bicycle storage and is well serviced by trains and buses. Accordingly, there is a greater likelihood of people utilising public or active modes of transport instead of driving.
- As outlined in the Traffic Report submitted at **Appendix G**, Section 5.7.1 of the RMS Guide to Traffic Generating Developments (2002) states that the 85th percentile level of parking demand should be considered for shopping centres. The parking demand when calculated in accordance with the RMS guidelines is 2,690 spaces. The proposed parking greatly exceeds this requirement.
- The proposed commercial tower will provide end of trip facilities and secure bike storage, promoting walking and cycling as viable modes of transport.
- The 66 car spaces dedicated to the commercial tower will be available on weekends for retail parking.
- The proposed development promotes sustainable development by reduce reliance on motor vehicles.
- Complying with the LEP parking rates would require the conversion of gross floor area to car parking, resulting in the loss of significant commercial and retail employment floor space.

- Whilst this variation request relates specifically to Clause 7.3 of LLEP, the LLEP is supported by the Liverpool Development Control Plan 2008 which contains further controls and objectives relating to on-site car parking. Part 4 of LDCP states “the majority of commercial development in Liverpool City Centre will be concentrated around the public transport interchange and in areas already containing a focus of commercial development. This strategy will assist in creating vitality and ensuring a high level of public transport accessibility.”

The proposal directly responds to this objective by providing a retail and commercial development close to existing public transport. This is also consistent with the Western City District Plan which seeks to co-locate infrastructure in metropolitan and strategic centres such as Liverpool and more direct public transport to these places so that people can access services and jobs.

- As noted in the Traffic and Parking Report accompanying the original DA submission, the 85th percentile level of parking demand contained in the RMS Guide to Traffic Generating Developments (2002) should be considered for shopping centres. Based on these rates, the shopping centre, following the completion of the proposed entertainment and leisure precinct and commercial tower would require 3,228 parking spaces. The proposed provision of 3,438 spaces satisfies this requirement.

In conclusion, there are sufficient environmental planning grounds to justify convening the development.

6.3.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Table 3 – Assessment of Compliance with Land Use Zone Objectives

Objective	Consistency with Objective
<i>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community</i>	The proposed development provides a range of retail office and entertainment uses including a commercial tower, restaurants, cafes, specialty retail, cinemas and a family friendly tavern. Increasing the number of car parking spaces to comply with the LEP standard would result in the loss of significant business, retail, office and entertainment floor space for the purposes of additional car parking that is not required based on the RMS parking rates for shopping centres.
<i>To encourage appropriate employment opportunities in accessible locations.</i>	The proposed development provides an additional 9,827sqm of commercial employment floor space and 7,982sqm of retail floorspace in a location highly serviced by public transport. Both land uses are anticipated to create over 900 commercial jobs and 166 retail, cinema and entertainment operation jobs. The proposed car parking encourages employees and patrons of the shopping centre to utilise the public transport modes available and therefore reduces the number of vehicles on the road associated with the increased number of people travelling to the proposed development for work or leisure.
<i>To maximise public transport patronage and encourage walking and cycling</i>	<p>The site is strategically located 700m from Liverpool Station and Bus Interchange. The proposed development provides the unique opportunity to maximise active transport. It is anticipated the majority of patrons will commute by walking or cycling from either of these key public transport nodes.</p> <p>The proposed commercial tower also provides 56 bicycle spaces and end-of-trip facilities as a means of encouraging commuters to walk and cycle. By limiting the number of car parking spaces on site, the</p>

	development further encourages the use of active transport.
<i>To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.</i>	Liverpool City Centre is identified as a Strategic Centre in the Western City District Plan, responsible for delivering the metropolitan functions of higher order jobs and a wide range of goods and services. The proposal will strengthen the role of the centre by constructing an A-grade commercial tower and entertainment and leisure precinct in a prominent and accessible location. The proposal will also support the productivity of Western Sydney through growth and investment in the City Centre.
<i>To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.</i>	The proposed development is considered to be a long-term investment in the City Centre, creating a significant amount of future employment floorspace close to public transport. As Liverpool grows in its role as a Strategic Centre, the city's population and density will increase. The proposed car parking provision is considered sufficient for existing and future demand whilst establishing the foundations for reducing car reliance in the future by encouraging the use of public transport and/or end of trip facilities provided in the commercial development.
<i>To facilitate a high standard of urban design and exceptional public amenity.</i>	The proposal has provided a design that promotes pedestrian activity at street level whilst providing A-grade commercial office and retail space above. The proposed design has been through an extensive design review process and provides a building that exhibits design excellence.

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

6.3.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

6.3.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

There is no public benefit in maintaining the planning control standard.

6.3.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the clause 4.6 request and prior to granting concurrence, should it be required.



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