CLAUSE 4.6 VARIATION STATEMENT

Demolition of all existing buildings and structures and the construction of a seventeen (17) storey mixed use building.

43-45 Atchison Street & 40-46 Kenny Street,
WOLLONGONG

Prepared for: Wollongong Invest Land No.3 Pty Ltd

REF: M200032
DATE: 12 October 2021

Clause 4.6 variation statement – FSR (clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Wollongong Local Environmental Plan (WLEP) 2009 to accompany an application for demolition of all existing buildings and structures and the construction of a seventeen (17) storey mixed use building at Nos. 43-45 Atchison Street & 40-46 Kenny Street, Wollongong ('the site').

2. FLOOR SPACE RATIO STANDARD

Clause 4.4 of WLEP 2009 prescribes the maximum FSR for the site and refers to the *Floor Space Ratio Map.* The relevant map [sheet FSR_025] indicates that the maximum FSR permitted at the subject site is 0.5:1 for the part of the site zoned B6. The part of the site zoned B6 has an area of 1,121sqm and thus the maximum permissible GFA is 563sqm.

Clause 4.4A of WLEP 2009 is applicable to the part of the site zoned B3 and, based on the floor space distribution under the proposed development provides a maximum allowable FSR of 3.7:1 for the entire site. The proposal includes 23,888.1sqm of GFA across the site, providing an FSR of 3.7:1. Therefore, when looking at the site as a whole, the proposal complies with the applicable FSR pursuant to Clause 4.4A. This application of FSR is the same as under the previous extant approval on site (DA-2016/1354).

3. PROPOSED VARIATION

As outlined above, the overall development complies with the 3.7:1 maximum FSR as prescribed by Clause 4.4A.

However, part of the proposed building encroaches into the B6 zoned part of the site, where Clause 4.4 prescribes a maximum FSR of 0.5:1. This part of the development within the B6 zoned part of the site includes 582.7sqm of GFA, providing an FSR of 0.52:1. This equates to a maximum numerical variation of 19.7m^2 or 0.02:1 and a percentage variation of 3.5%.

Furthermore, when looking at the B3 zoned part of the site in isolation, the area is 5,348sqm so applying an FSR of 3.7:1 per Clause 4.4A, 19,787.6sqm of GFA is allowable in this part of the site. 23,305.4sqm of GFA equating to an FSR of 4.36:1 is proposed in the B6 zoned part of the site, providing a numerical variation of 3,517.8sqm or 0.56:1 and a percentage variation of 17.8%. Whilst the proposed FSR is complaint across the entire site, in the interests of abundant caution, this Clause 4.6 request also deals with this technical variation.

The maximum FSR control is a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

4. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of clause 4.6 are as follows:

> ***"4.6 Exceptions to development standards***
>
> *(1) The objectives of this clause are as follows—*
>
> *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

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

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

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

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

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

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 4.2A, 6.1 or 8.3."

(8A) (Repealed)

It is noted that Clause 4.4 is not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of Clause 4.6 is addressed later in this request.

5. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

> *"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The 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."*

The judgement goes on to state that:

> *"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

> *"…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."*

Compliance with the maximum FSR development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 7 below.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

> *"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]."*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson and in *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The following environmental planning grounds are submitted to justify contravening the maximum building height:

1. The proposed development is entirely compliant with the maximum FSR prescribed across the entire site pursuant to Clause 4.4A of WLEP 2009. The non-compliance with Clause 4.4 and 4.4A only applies when looking at the B3 and B6 zoned parts of the site in isolation and is solely a technical non-

compliance. Given that the proposal complies with the prescribed FSR across the whole site, the development provides a density that is anticipated by the planning controls that apply to the site.

2. During the preparation of WLEP 2009, it was anticipated that the road reserve – where the largest FSR breach occurs - would be used for a future road. Hence, the lower order zoning, height and FSR controls applied to this part of the site. Now that the proposal forms part of a contiguous site that has higher order zoning (B3), height (60m) and FSR controls, it is considered appropriate that these controls also apply to what was previously anticipated to be the road reserve area. This is consistent with the assessment and determination of the previous development on site [DA-2016/1354].

3. The part of the proposed development that breaches the 0.5:1 FSR encroaches into the B6 zoned part of the site and provides additional articulation and enhances the building expression of the development. The non-compliance therefore provides a superior design outcome to a scheme with a compliant FSR.

4. The FSR breaches allow the floor space to be distributed across the site and therefore allow for a better design and planning outcome on the site than one that strictly complies with the FSR controls as they apply to each separately zoned part of the site in isolation.

5. It is considered that there is an absence of any impact of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Specifically:

    a. the extent of the non-compliance creates no additional overshadowing to adjoining properties;

    b. the FSR breach does not result in any additional privacy impacts. The area of FSR breach will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building. Indeed, the breach allows floor space to be shifted towards the south of the site and away from the more sensitive northern boundary ; and

    c. the FSR breach does not result in any additional view loss. The proposed development will not result in any loss of views or outlook when compared to a building with a compliant FSR in the B6 zoned part of the site.

6. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

    a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));

    b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118,* Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

"86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."

As outlined above and despite the variation only needing to demonstrate a sufficient environmental planning outcome, the proposal will provide for a better planning outcome than a strictly compliant development due to the enhanced visual appearance and building expression, as outlined previously.

7. Clause 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 8a below). Clause 4.6(3)(b) is addressed in Section 6 above.

The second opinion of satisfaction, in clause 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 clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 8 below.

8. THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT (CLAUSE 4.6(4((a)(ii))

8a. Objectives of Development Standard

There are no objectives provided for Clause 4.4A and therefore the objectives of Clause 4.4 are assumed as relevant for this Clause as well. The objectives and relevant provisions of clause 4.4 are as follows:

(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,

(c) to ensure buildings are compatible with the bulk and scale of the locality.

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed in turn below.

Objective (a): "*to provide an appropriate correlation between the size of a site and the extent of any development on that site*"

As previously described, the maximum FSR permitted across the majority (5,343sqm or 82.6%) of the subject site is 3.7:1 pursuant to Clause 4.4A of WLEP 2009. The 0.5:1 FSR is only applicable to a small part (1,126sqm or 17.4%) of the site that is zoned B6.

Overall, when considering the development as a whole (including parts in the B3 and B6 zones) the proposed development provides 23,888.1sqm of GFA, providing an FSR of 3.7:1. This is compliant with the maximum prescribed for the proposed development. Therefore, despite the numerical non-compliance when assessing the B3 and B6 zoned parts of the site in isolation, the proposed development is compliant with the maximum FSR applicable across the whole site. Accordingly, the development is of a scale and density that is commensurate with the size of the whole site.

Objective (b): "*to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate*"

As set out above, the proposed FSR is compliant with that prescribed by Clause 4.4A of the WLEP 2009 for the entire site. Therefore, the proposed density is consistent with that anticipated by the controls that apply to the site. So it follows, the proposed intensity of the development on site is anticipated and thus it will not prejudice the existing and planned availability of infrastructure to service the site nor will it generate excessive traffic already planned for through the controls that apply to the site. A Traffic and Parking Impact Assessment is also provided with the application and demonstrates that the proposed development will not give rise to any adverse traffic and parking impacts in the locality, despite the numerical non-compliance with the FSR applicable to the B6 zoned part of the site.

Objective (c): "*to ensure buildings are compatible with the bulk and scale of the locality*"

The extent of FSR non-compliance is a result of the massing arrangement that has been adopted, which is ultimately considered to be superior in terms of urban form and appearance when compared to alternative, potentially compliant, arrangements. The FSR non-compliance directly benefits the development and neighbouring properties by allowing the building form to be spread across the entire site rather than confined entirely within the B3 zoned part of the site. This allows the development to achieve generally compliant street setbacks as well as building separation as required by the ADG.

As a result of the building mass being distributed across the site, the development will not unreasonably inhibit future redevelopments of sites to the north and will provide satisfactory building separation at upper levels to provide high levels of amenity and excellent streetscape characteristics. Furthermore, the proposed development is compliant with the 60m maximum building height that is applicable to the B3 zoned part of the site. Accordingly, the scale and bulk of the development is consistent with what is envisaged for the entire site and is compatible with the desired future character of the Wollongong City Centre Precinct.

The proposed development is therefore consistent with the objectives for maximum FSR, despite the numeric non-compliance.

8b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The part of the development that exceeds the maximum FSR prescribed by Clause 4.4 is located within Zone B6. The objectives of the Zone B6 Enterprise Corridor are as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To encourage activities which will contribute to the economic and employment growth of Wollongong.*
- *To allow some diversity of activities that will not—*

    (a) significantly detract from the operation of existing or proposed development, or

    (b) significantly detract from the amenity of nearby residents, or

    (c) have an adverse impact upon the efficient operation of the surrounding road system.

The proposed development is consistent with the objectives of Zone B6 in that it will result in the development of a high quality mixed use development that will provide a mixture of compatible residential and non-residential uses on the site. The inclusion of significant non-residential development on site will enhance the vitality and viability of Wollongong City Centre and diversify the amount of floor space available to businesses. Furthermore, the development will increase housing supply in the locally and thus provide for the housing needs of the community in a high density accessible location. The development will provide significant enhancements to the public domain and provide an improved pedestrian environment in the locality, thus promotion sustainable modes of transport.

In relation to the technical non-compliance with Clause 4.4A in respect of the B3 zoned part of the site viewed in isolation, the objectives of the Zone B3 Metropolitan Centre are as follows:

- *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.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.*
- *To provide for high density residential development within a mixed use development if it—*

    (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and

    (b) contributes to the vitality of the Wollongong city centre.

The proposed development is consistent with the objectives of Zone B3 in that:

- The proposal will provide a mixture of compatible retail, community and residential land uses suitable for the local and wider community;
- The commercial and early education employment opportunities will complement the community needs in a highly accessible location;

- The site is located a five minute walking distance from Wollongong Railway station and bus interchange. The site is also walking distance to Wollongong city centre and associated services;
- The development will set a precedent for the southern sector of the Wollongong business core, attracting further business and retail development;
- The site is within a five minute walk from the Wollongong bus and rail interchange and Crown Street Mall which is a hub for employment, retail and essential services;
- The site will encourage and set a precedence for active streets and retail/commercial opportunities to the southern end of the Wollongong CBD, replacing the current warehousing with development that will contribute to the vitality of the centre;
- The proposed development will not give rise to any adverse impacts on the amenity of neighbouring occupants or the wider locality in general; and
- The development provides the compliant amounts of car and bicycle parking and will not give rise to adverse levels of traffic generation or impacts on the local road and transport network.

In light of the above, the FSR variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

9. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

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, attached to the Planning Circular PS 18-003 issued on 5 May 2020, 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.

10. WETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6 (5)(a))

Contravention of the maximum FSR development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

11. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum FSR. As such, there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed FSR exceeds the maximum permitted on the site (when the B3 and B6 zoned parts are assessed at in isolation), the proposed development is compliant with the FSR when applied across the entire site and 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.

12. CONCLUSION

This written request has been prepared in relation to the proposed variation to the floor space ratio development standard contained in WLEP 2009.

Having regard to all of the above, it is our opinion that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.