

CLAUSE 4.6 VARIATION
CLAUSE 7.4 – BUILDING SEPARATION WITHIN THE LIVERPOOL CITY CENTRE
LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008

September 2023

1. Introduction

This written request under Clause 4.6 of Liverpool Local Environmental Plan 2008 (LLEP08) is for a variation to Clause 7.4 of the LLEP08, which relates to **building separation within the Liverpool City Centre**.

This written request has been prepared in support of an application for the alterations and additions to an approved residential flat building with basement car parking, landscaping and associated site works at 7 – 9 Castlereagh Street & 6-12 Copeland Street, Liverpool. The proposal also includes a change of use to part of the approved ground floor to create a 90 place child care centre. The site is legally identified as:

- Lot A in DP374032
- Lot B in DP374032
- Lot 2 in DP110597
- Lot B in DP433791
- Lot D in DP374032
- Lot C in DP374032

The development includes:

- 2 x 11-storey residential flat buildings.
- 132 residential units.
- 90 place child care centre
- 186 available car parking spaces

As will be detailed throughout this written request, the proposed development meets the requirements prescribed under Clause 4.6 of the LLEP08 and relevant tests to establish why strict compliance with the standard is unreasonable or unnecessary for the circumstance.

2. Site Context

The subject site is commonly referred to as Nos. 7-9 Castlereagh Street and 6-12 Copeland Street, Liverpool and is legally described as Lot A in Deposited Plan 374032, Lot B in Deposited Plan 374032, Lot 2 in Deposited Plan 110597, Lot B in Deposited Plan 433791, Lot D in Deposited Plan 374032 and Lot C in Deposited Plan 374032.

The site is located within the Liverpool City Centre on the eastern side of Copeland Street and on the western side of Castlereagh Street, Liverpool which in part are parallel to one another. Refer to Figure 1 on the following page.

The development site is an irregular shaped allotment with the sites frontage to Copeland Street measuring 80.098m in its length and the site's frontage to Castlereagh Street equalling 36.937m in its length. To the south, the sites boundary measures 69.165m in its length. The site's northern most boundary equals a length of 30.888m. The eastern side boundary which adjoins No. 3 Castlereagh Street equals 20.118m in length with the eastern boundary adjoining No. 5 Castlereagh Street measuring 20.117m in its length. A splay of 3.658m adjoins part of the

boundary shared with No. 3 Castlereagh Street. The sites northern boundary which adjoins No. 5 Castlereagh Street offers a length of 30.480m. Overall, the site provides for an area of 4,300.42m².



Figure 1: Site Location Map (Mecore Mosaic)

Located across the subject site at present are several detached dwellings with associated outbuildings.

It is important to note that an approval had been issued on 31 July 2017 being DA-631/2015 at the site for demolition of existing buildings, tree removal, and construction of two 9 storey residential flat buildings containing 116 residential apartments over two levels of basement car parking with associated landscaping and ancillary site works. This application did not include No. 6 Copeland Street which now forms part of the current development application before Council.

There is also an existing approval north of the subject site for an eleven (11) - storey mixed use development: Stage No. 1 - 6 premises to be used as neighbourhood shops, 4 levels of basement parking, and 43 residential units. Stage No. 2 - 4 levels of basement parking and 128 residential units at Lot 1 Copeland Street, 1d Castlereagh Street, 1a Castlereagh Street, 1b Castlereagh Street, 1c Castlereagh Street, 3 Castlereagh Street and 5 Castlereagh Street Liverpool. The reference for this approved development application is DA-436/2007.

The development application before Council will have an enhanced development outcome as appose to the existing approvals being DA-436/2007 and DA-631/2015 being developed individually. The benefit of incorporating Lot 6 in this development application is that it will not be isolated.

Development in the vicinity of the subject site is typically of a higher density and is residential in nature. In view of the R4 High Density Residential land zoning afforded to the site and those nearby, the development has conformed with the transition to higher density built forms and is therefore representative of this future desired character.

In proximate locations of the subject site to the east and southeast are several education establishments namely, All Saints Catholic Primary School, Liverpool Boys High School, Liverpool Girls High School and Liverpool TAFE. Sydney South West Private Hospital and Liverpool Hospital are also situated within proximity of the site being to the east and southeast, respectfully.

Several local services and amenities are situated nearby the subject site with Westfield Liverpool Shopping Centre being approximately 500m walking distance of the site to the east. Just south of the Westfield Shopping Centre is the Core of the Liverpool City Centre, further enhancing accessibility to a variety of goods and services for the benefit of future residents.

With several bus stops located along nearby Elizabeth Drive, the site is well serviced by public transport infrastructure which offers connections to a more expansive public transport network and nearby suburbs.

3. Clause 4.6

This submission is made under clause 4.6 of the Liverpool LEP 2008 – Exceptions to development standards. Clause 4.6 states the following:

“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 a 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 Director-General 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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include all of these zones.*

(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,*
- (caa) clause 5.5,*
- (ca) clause 6.4, 6.5, 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30.*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development, and the content in this Clause 4.6 written request for a variation to the separation distances standard.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (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*

Contravened Development Standard

The Environmental Planning Instrument to which the variation relates to is the Liverpool Local Environmental Plan 2008. The contravened development standard is Clause 7.4 Building Separation within the Liverpool City Centre, which reads as follows:

7.4 Building separation in Liverpool city centre

- (1) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least—*
- (a) 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and*
 - (b) 12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished) on land in Zone R4 High Density Residential, and*
 - (c) 18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential and*
 - (d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use, and*
 - (e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use.*

As the subject site is located in the R4 High Density Residential zone, subclauses 2(a), (b) and (c) are applicable.

4. Extent of Non-Compliance

The proposal seeks a variation to the southern boundary, at every level of Block A and Block B with a nil setback is proposed.

The proposal also seeks a variation to the northern boundary at Levels 4 – 10.

In particular, a variation is sought at level 4, 5, 6 and 7 as it relates to Block A and the immediate boundary to the north. The primary built form has been contained within a compliant 9m setback with a minor variation sought to balcony elements. This variation is equal to 3m.

At Levels 8 and 9, variations to the minimum separation distances are also sought. A minimum separation distance of 12m is required between habitable spaces. With respect to Block A and the immediate relationship to the northern boundary the primary built form has been setback 12m with the variation relating simply to balconies. The variation is equal to 2m.

In terms of separation between Block A and Block B, a separation distance of 21-22m is proposed at Levels 8 and 9, falling 3-4m short of compliance.

At Level 10, the proposal is compliant with the exception of the northern setback to Block B. Following the footprint of the levels below, a variation of 4m is sought as it relates to the northern portion of the block and the interface with the immediate northern boundary.

It is our submission that the breach to the separation distance will not impact on the amenity of the development or adjoining properties, nor will the variation compromise the architecture of the building or the bulk and scale of the development.

A degree of flexibility is considered reasonable in this instance.

5. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i> <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>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. (not applicable)</i>
Third	<i>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. (not applicable)</i>

Fourth	<i>A fourth way is to establish that 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. (not applicable)</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the separation distances standard, the **first** method is invoked.

The objectives supporting the separation distances control identified in Clause 7.4 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 7.4.

(1) The objectives of this clause are as follows:

- (a) The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access*

With respect to visual appearance, the proposal is for a new infill residential flat building and ground floor child care centre on the site with contemporary facades. The new development has been designed to complement the approved surrounding built forms in terms of its architectural language but incorporates different materials and finishes to create diversity in terms of its visual presentation to the public domain.

The two towers will be read as separate elements, however, utilises the same colour tones in their facades to articulate a cohesion between the two buildings, given the character of this proposal and the size of the site. Therefore, the proposal presents as an overall one large development on the subject site, but with two built forms each with its own unique internal layouts and exterior presentation to provide some variation to the street.

It is considered that the proposal is sympathetic to the development context of the locality and forms a well-designed development with contemporary facades which is reflective of the changing character of Copeland and Castlereagh Street where properties are have transitioned from the existing traditional brick and weatherboard low density dwellings to the future desired character of high density residential flat buildings as envisioned by Council's LEP & DCP controls.

The new development provides for built forms with articulated facades using balconies, glazing and privacy screening. The elevations have been modulated/stepped to add visual interest and reduce bulk. Complementary materials and glazing reduces any large expanse of blank walls.

The proposed landscaping on the ground floor contributes positively to the streetscape by creating a mix of natural and built elements. The landscaping on the ground floor creates a vertical layering around the perimeter of the site for visual benefit in a pedestrian scale.

Therefore, there is sufficient separation between built forms to allow for an appropriate visual appearance as detailed above.

With respect to privacy, blank walls are proposed to the southern side boundary. As such there are no opportunities for overlooking between sites at this interface along the southern boundary.

As detailed within the accompanying SEE, there is also an existing approval south of the subject site for the demolition of existing dwellings and structures, lot consolidation, construction of an 8-storey and a 9-storey residential flat building comprising of 48 dwellings and 2 level basement, at No. 14-16 Copeland Street and 11-13 Castlereagh Street, reference DA-508/ 2017. This development has been designed to abut the shared boundary with the subject site, demonstrating the appropriateness of a blank wall/nil setback in this location.

At Levels 4, 5, 6 and 7 being the 5th, 6th, 7th and 8th stories, a minimum separation distance of 9m is required between habitable rooms. A minor variation is sought at this level as it relates to Block A and the immediate boundary to the north. The primary built form has been contained within a compliant 9m setback with a minor variation sought to balcony elements. This variation equals 3m, however, is not considered to offer any negative visual privacy impacts as privacy screening has been proposed along the edges of the balcony to offset any negative visual privacy outcomes. It is considered that with the introduction of privacy screening, view lines would be obscured, and a positive visual privacy relationship would be retained.

At Levels 8 and 9, being the 9th and 10th stories, minor variations to the minimum separation distances are sought. A minimum separation distance of 12m is required between habitable spaces. With respect to Block A and the immediate relationship to the northern boundary the primary built form has been setback 12m with the variation relating simply to balconies. The variation is equal to 2m. The balcony element which protrudes into the minimum separation distance requirement has partly taken advantage of the slab of the level below which would otherwise be a vacant space. Therefore, the proposal seeks to promote a heightened degree of residential amenity for future occupants ensuring that the proposal maximise the degree of useable space for the benefit of residents at no detriment to visual privacy.

With respect to Block B, a variation of 4m is sought as it relates to the northern portion of the block and the interface with the immediate northern boundary. Whilst a variation is sought, privacy screening is proposed along the northern edges of the balconies which works to obscure any obtrusive view lines so that positive visual privacy relationships are promoted.

In terms of separation between Block A and Block B, for majority of this relationship at the 9th and 10th storey a separation distance of 21-22m is proposed falling 3-4m short of compliance. Privacy screens are again proposed to ensure no negative visual privacy impacts result at this interface. At Level 10, the proposal is compliant with the exception of the northern setback to Block B. Following the footprint of the levels below, a variation of 4m is sought as it relates to the northern portion of the block and the interface with the immediate northern boundary. Whilst a variation is sought, privacy screening is proposed along the northern edges of the balconies which works to obscure any obtrusive view lines so that positive visual privacy relationships are promoted.

In terms of solar access, it is important to note that there is an existing approval at the subject site for two 9 storey residential flat buildings reference DA-631/2015. As the current proposal seeks an additional two storeys to each building, it is envisioned that the proposal will result in additional overshadowing of the adjoining southern site. This is considered to be a product of both the orientation of the site and the high density zoning which as established by the Planning Principle for solar access makes solar access more difficult to protect.

The proposal has sought to maximise solar access to communal open spaces and to residential units in accordance with the provisions of the ADG.

As such the proposed separation distances would have no negative implication upon solar access to the development nor upon neighbouring sites.

6. Are there Sufficient Environmental Planning Grounds?

The assessment in **Section 5** of this written request demonstrates that the resultant environmental impacts of the proposal will be satisfactory against the objectives of the zone.

The proposal addresses the site constraints, streetscape and relevant objectives of both the standard and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.

As previously detailed, there is an approval currently at the subject site for demolition of existing buildings, tree removal and the construction of two 9-storey residential flat buildings containing 116 residential apartments over two levels of basement parking with associated landscaping and ancillary site works. Consent was granted on 31/07/2017 under reference DA-631/2015. This approved development was also designed as being built to the southern site boundary, as is being proposed. A copy of the approved site plan is demonstrated below.

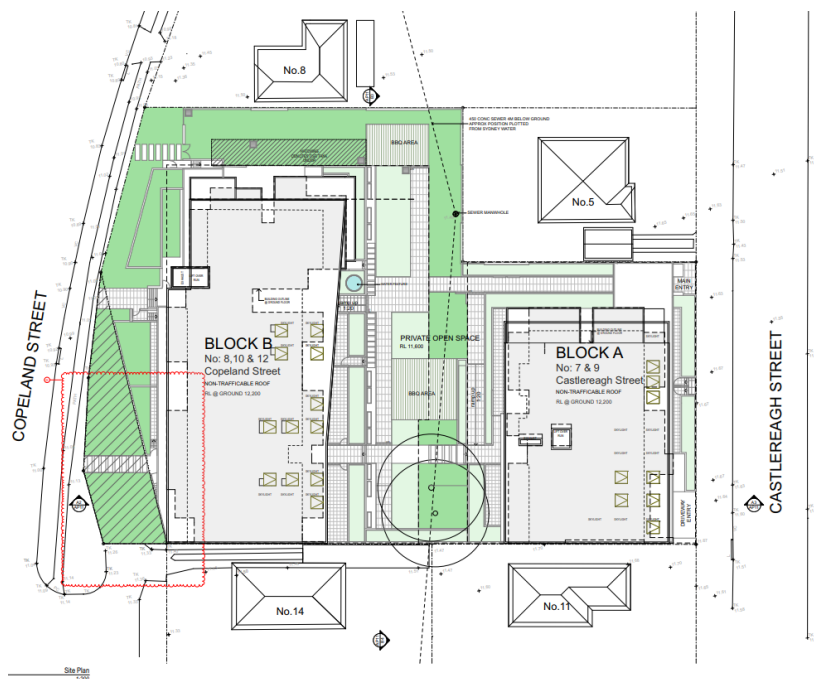


Figure 2: Approved Development Scheme DA-631/2015

Consent was also granted on 27/08/2018 to a development application at No. 14-16 Copland Street and 11-13 Castlereagh Street for the demolition of existing dwellings and structures, lot consolidation, construction of an 8-storey and a 9-storey residential flat building comprising of 48 dwellings and 2 level basement, reference DA-508/2017.

As detailed on Figure 3 below, this application was also designed as being built to the boundary. Therefore, the relationship of zero lot lines between the subject site and that to the southern neighbour has already been approved. No change to this relationship is sought through this application, rather this is replicated with 0m southern boundary setback proposed.

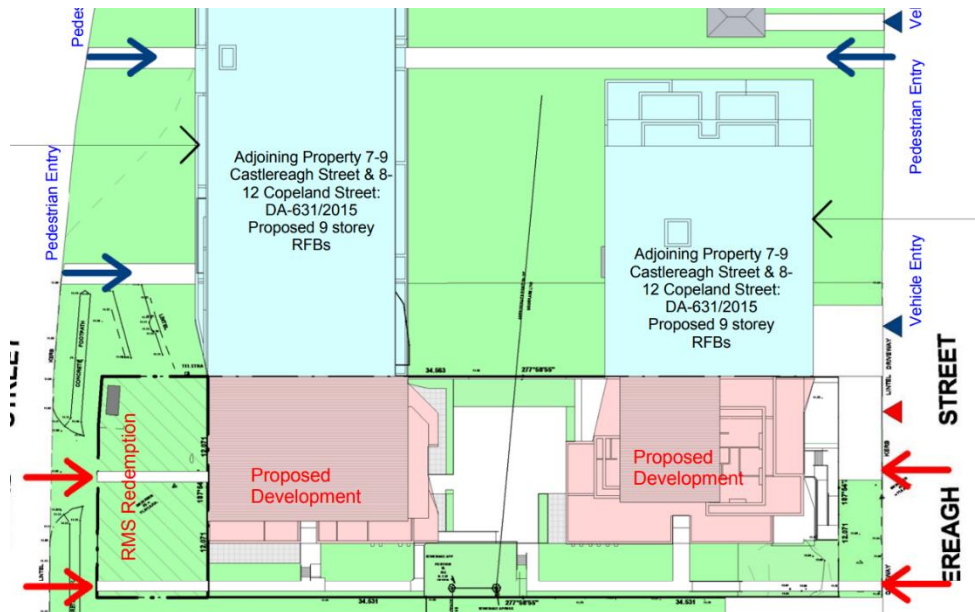


Figure 3: Approved development scheme DA-508/2017

This relationship as previously approved between the subject site and the southern neighbour is being replicated with this proposal. This zero-lot boundary alignment of built form was previously considered appropriate and no change is being proposed.

With respect to the variation sought to the northern side setbacks, it should be noted that if the current approvals i.e. DA-631/2015 and DA-436/2007 were to be acted upon, the segregation of No. 6 Copeland Street would occur. The holistic development approach which has been applied in this instance has incorporated No. 6 Copeland Street, therefore no isolation would result. This is also beneficial from an overshadowing perspective. If No. 6 were to be redeveloped in isolation, the overshadowing impacts upon the balance of the subject site would be increased. Given its incorporation within the DA no such effects would result as a holistic design approach can be applied and thus an enhanced overshadowing outcome.

In this case, strict compliance with the development standard for separation distances in the LLEP08 is unnecessary and unreasonable.

7. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out. It is considered that this written variation provides sufficient environmental planning grounds to justify contravening the development standard.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 7.4. The building contextually has regard to its surrounding properties and provides for a well-articulated built form and heightened amenity for future occupants and visitors.

Furthermore, it is important to also consider the objectives of the R4 High Density Residential zone in relation to the development, which are as follows:

The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

The following comments are made with respect to the objectives, demonstrating that the development is consistent with the above-mentioned objectives of the zone.

- The proposed development provides a positive response to the evolving high density character of the locality which will contribute to the housing stock with the local government areas and specifically within the Liverpool City Centre.
- The proposal offers an appropriate mix of 1, 2 and 3-bedroom apartments to cater for the diverse housing needs of the community.
- The proposal includes a child care centre to part of the ground floor of Block B. The centre will provide for a service to meet the day to day needs of residents.
- With the subject site located within the Liverpool City Centre, the site benefits from its proximate location to an array of local businesses, shops, amenities and infrastructure which are located throughout the Liverpool City Centre. Several bus stops are located within a proximate location to the site, offering alternative transport modes for the benefit of future residents.
- There is no fragmentation of land that would result from the proposed development. It should be noted that the proposal encompasses No. 6 Copeland Street which the previous approval at the site did not, therefore avoiding any isolation of sites.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

8. Public Benefit of Maintaining the Standard

It is considered that the public benefit will not be undermined by varying the standard:

- ❑ The proposal provides for a high quality residential building that is in keeping with the high density residential zoning and desired future character of the land.
- ❑ Given the site's orientation, location and context, it is considered that the site is well suited for the development.
- ❑ The development is generally consistent with relevant planning controls.
- ❑ It is not considered that the variation sought raises any matter of significance for State or Regional environmental planning.

- ❑ The departure from the separation distances control within the Liverpool LEP 2008 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed throughout this written request for a variation. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Liverpool LEP 2008 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 standards;
- ❑ The development meets the objectives of the standard to be varied (separation distances) and objectives of the R4 High Density Residential zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State or Regional Significance; and
- ❑ The development submitted aligns with the residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include all of these zones.

(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,*
 (caa) *clause 5.5,*
 (ca) *clause 6.4, 6.5, 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30."*

The following notes to the above are:

- The variation sought is not contrary to subclause (6) and the proposed variation does not relate to the subdivision of land in the stated land use zones.
- Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.
- The development proposed is not complying development.
- A BASIX Certificate has been prepared and submitted under separate cover.
- Clauses 5.4, 5.5, 6.4 and 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30 are not applicable in this instance.

11. Conclusion

The proposal does not strictly comply with the separation distances control as prescribed by Clause 7.4 of the Liverpool LEP 2008. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the LLEP08 are satisfied as the breach to the controls does not create any adverse environmental impacts, and is a result of environmental constraints and opportunities.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance.

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

GAT & Associates
 Plan 3202