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**URBIS**

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

167 Northumberland Street, Liverpool

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Report Number	Final

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CLAUSE 4.6 VARIATION REQUEST\_CARPARKING\_167 NORTHUMBERLAND  
STREET, LIVERPOOL

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# 1. INTRODUCTION

This clause 4.6 Variation Request (**request**) has been prepared on behalf of Meriton Group (**the applicant**) and accompanies a Development Application (**DA**) for the construction of a new mixed use development at 167 Northumberland Street, Liverpool (**the site**).

DA-82/2020 (**the Concept DA**) was lodged on 3 February 2020 to Liverpool City Council (**Council**) seeking consent for *building envelopes for the future development of the site for mixed use purposes, incorporating a 32-storey tower with 2 levels of basement parking, providing retail/commercial floorspace and serviced apartments*. The Concept DA was referred to the Sydney Western City Planning Panel on 2 March 2020. At the time of writing this request the Concept DA remains under assessment.

This request seeks an exemption from the strict application of clause 7.3 of *Liverpool Local Environmental Plan 2008 (LLEP 2008)*, 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.*

This report should be read in conjunction with the Statement of Environmental Effects (**SEE**) prepared by APP Corporation Pty Ltd (**APP**) and dated March 2020, and the Traffic Impact Assessment prepared by ARUP dated 11 May 2021. Additional supporting reports and information provided alongside the DA and through subsequent requests for information.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

## 2. SITE CONTEXT

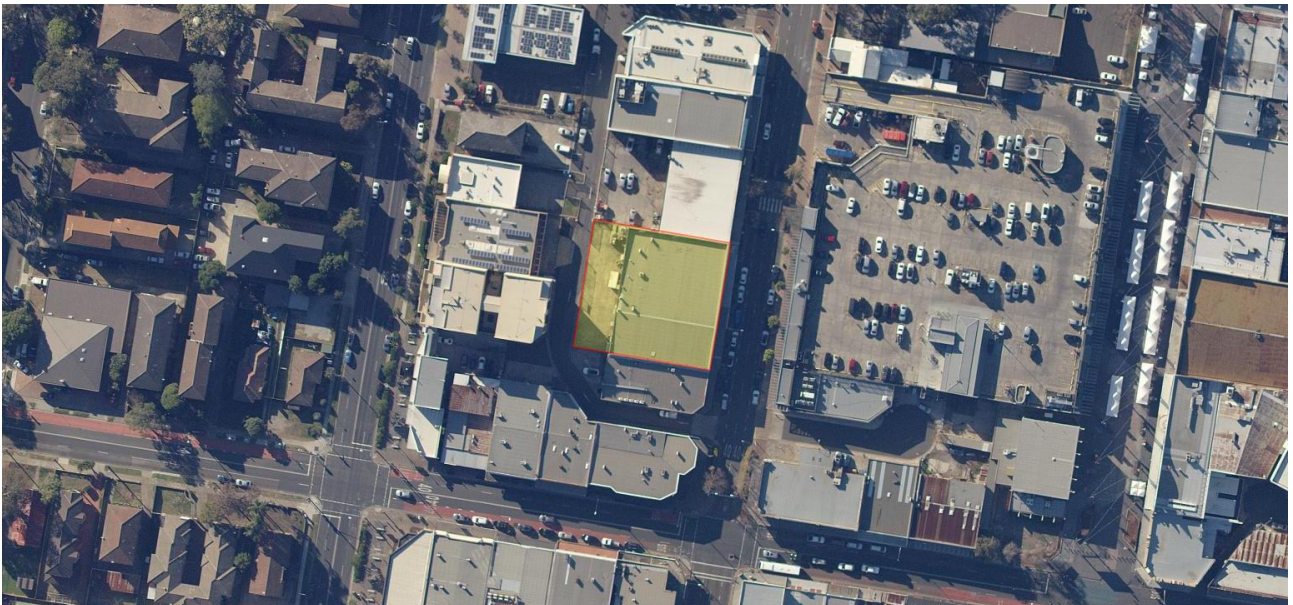
### 2.1. THE SITE

The key features of the site are summarised in **Table 1** below.

Table 1 Site Description

Feature	Description
Street Address	167 Northumberland Street, Liverpool
Legal Description	Lot 6 in Deposited Plan 628996
Site Area	1565sqm
Site Dimensions	<p>The site is rectangular in shape and has the following dimensions:</p> <ul style="list-style-type: none"><li>▪ 38m street frontage to Northumberland Street</li><li>▪ 42m to the adjoining northern building</li><li>▪ 29m street frontage to Laurantus Serviceway</li><li>▪ 41m to the adjoining southern building</li></ul> <p>Refer to <b>Figure 1</b>.</p>

Figure 1 Site Location



Source: SIX Maps

### 2.2. EXISTING AND SURROUNDING DEVELOPMENT

The site currently accommodates a two-storey commercial building and a small parking and loading area located at the rear of the site (**Figure 3**.

Figure 2) as detailed within the SEE prepared by APP. The immediate surrounding locality is predominately a mix of commercial and retail uses, with some residential including:

- North – two storey building comprising retail and commercial uses including a Solicitors office and hairdressers, florists, money lenders and a grocery store.
- East – one storey shopping centre known as Liverpool Plaza comprising a number of uses such as Aldi Supermarket, hair salons, newsagents and other specialist retail stores.
- South – two storey building comprising retail and commercial uses including a butchers and accountants. Entry to Laurantus Serviceway.
- West - five storey residential flat building complex above ground level parking

Within the broader locality is predominately 3 storey apartment complexes. Refer to **Figure 3**.

Figure 2 Existing Development



Picture 1 View of existing development from Northumberland Street



Picture 2 View of existing development from Laurantus Serviceway

Source: Google Maps



Figure 3 Surrounding Development



Picture 3 Commercial and retail uses adjoining the site (north)



Picture 4 Liverpool Plaza located directly across Northumberland Street from the site (east)



Picture 5 Commercial and retail uses and lane access south of site



Picture 6 Residential development located west of site, across rear lane

Source: Google Maps

## 2.3. SURROUNDING CONTEXT

The site is located 25km from the Sydney CBD, 650m from Liverpool Station and 200m from Liverpool Westfield. Additionally, All Saints Catholic College, Liverpool Hospital, Liverpool Bus Interchange, Liverpool Public School and several parks are located within the locality. Refer to **Figure 4**.



Figure 4 Surrounding Context



Source: Urbis

## 2.4. TRANSPORT NETWORK

The site is well serviced by public transport. Liverpool Station is located 650m from the site which operates 10 train services per hour each way on the T2 Inner West & Leppington, T3 Bankstown and T5 Cumberland lines. Some key stations these lines operate to and from include Central, Parramatta, Bankstown, Strathfield and Richmond.

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. The public domain throughout Liverpool CBD is established for ease of walking. **Figure 4** and **Figure 5** indicate the location of the site and surrounding public transport stops and railway station.

The availability of regular bus services, both from outside the CBD and between the Westfield shopping centre and the station means that the Liverpool CBD and the site has good access to both bus and rail public transport options. In addition, visitors staying in the serviced apartments will also access the site by taxi or other ride share methods.

It is also important to note that the site and Liverpool more broadly will be well connected to future connections to the Western Sydney Airport via the T2 Inner West & Leppington Line. The proposed serviced apartments will be well located to support the anticipated demand created by the future airport (**Figure 6**).



**Approximate site location**

851	856	870
852	857	871
853	865	872
854	866	
855	869	

### Figure 6 Future Western Sydney Airport Connections



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### 3. PROPOSED DEVELOPMENT

This request has been prepared to accompany a DA for the construction of a new mixed use development at the site. As discussed in **Section 1**, a Concept DA was lodged on 3 February 2020 (under assessment at the time of writing this request) seeking consent for the building envelopes of a mixed use development which will comprise a 32 storey development with two levels of basement parking. Proposed uses comprise retail, business premises, childcare, recreational facilities(indoor) and serviced apartments.

A detailed description of the proposed development is provided in the SEE prepared by APP, dated March 2020. Various technical reports including this request have been lodged to support the SEE, such as Architectural Plans. These can be found attached to the SEE.

Key features of the proposed development include:

- 32 storey development comprising a 4 storey podium and 28 storey tower;
- 15,650sqm GFA comprising:
  - 12,520sqm of serviced apartment floor space (Levels 4-31) and 163 serviced apartments, including:
    - Ground floor lobby and reception;
    - Indoor swimming pool, spa and sauna, recreational facilities (indoor) located at Level 2;
    - 28 studio apartments;
    - 79 x 1 bedroom apartments;
    - 46 x 2 bedroom apartments; and
    - 10 x 3 bedroom apartments.
  - 1,087sqm childcare centre located at Level 3, including indoor and outdoor play areas;
  - 2,319sqm of commercial;
  - 282sqm of retail GFA located at Ground Floor;
  - Back-of-house, loading and waste storage areas and services at ground level.
- Three basement levels comprising:
  - 94 car parking spaces (including 6 accessible spaces)
  - 1 x Small Rigid Vehicle Loading Space
  - 1 x Medium Rigid Vehicle Loading Space
  - 6 spaces for motorcycles
  - 40 bicycle racks
- External and other elements including signage, landscaping and public domain works, stormwater management and civil works, awnings, external lighting and security systems.

Refer to **Figure 7** for a photomontage of the proposed development.

Figure 7 Photomontage of the proposed development



Source: PTW Architects

A Traffic Impact Assessment has been prepared by ARUP for the DA dated 11 May 2021. A total of 94 off-street car parking spaces have been proposed, resulting in a shortfall of 10 spaces (12%) from the required 104 spaces pursuant to rates specified in clause 7.3 of LLEP 2008. The proposal provides 68 of the required 82 spaces for the serviced apartment use (a shortfall of 14 spaces or 16%). It is noted however that the proposal provides 3 additional childcare parking space and 1 additional retail car parking space. There is therefore a non-compliance with the rate specified in clause 7.3 of the LLEP 2008. As such, this request has been lodged seeking to vary clause 7.3 of the LLEP. Refer to **Section 4** for more information.

## 4. VARIATION TO THE CAR PARKING STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

### 4.1. 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.

### 4.2. PROPOSED VARIATION TO CLAUSE 7.3

The required number of car parks required pursuant to clause 7.3(2) is 104 spaces (4 spaces for the 690sqm Ground Floor GFA, 2 spaces for the 282sqm retail GFA and 100 spaces for the 14,960 GFA for remaining levels). The proposed development provides a total 94 car spaces, creating a shortfall of 10 spaces (12%) from the LLEP 2008 requirements.

The proposed provides 68 of the required 82 spaces for the serviced apartment use (a shortfall of 14 spaces or 16%). It is noted however that the proposal provides 3 additional childcare parking space and 1 additional retail car parking space. This request therefore seeks exemption from the strict application of clause 7.3(2) for the following reasons:

- The approach of the strict application of clause 7.3(2) does not consider the sites location in relation to the Liverpool CBD, train station and the readily available bus routes.
- Strict application of clause 7.3(2) would provide unnecessary demand on the existing road network with regard to traffic generation and deter from encouraging the utilisation of public and active forms of transport in a designated strategic centre.
- Strict compliance would also perpetuate reliance on private vehicles. As a result of a reduced provision of car parking, a lower trip generation rate and lower emissions will result from what is otherwise a highly accessible site.
- A development application seeking consent for excavation to create two levels of basement including shoring and piling was approved by Council on 11 February 2021 (DA-222/2020). It is noted that works relating to this approval have commenced.

An assessment of the clause 4.6 variation has been provided at **Section 6**.

## 5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the LLEP 2008 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the LLEP 2008 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA 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(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have 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*
- (d) the public benefit of maintaining the development standard, and*
- (e) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the car parking standard prescribed for the site in clause 7.3 of LLEP 2008 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the car parking development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

## 6. ASSESSMENT OF CAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to car parking in accordance with clause 7.3 of LLEP 2008.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

### 6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The car parking development standard prescribed by clause 7.3 of the LLEP 2008 is a development standard capable of being varied under clause 4.6(2) of LLEP 2008.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of LLEP 2008.

### 6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The underlying objective of the development standard is to provide car parking that is commensurate to the demands of new or extended developments whilst applying a degree of traffic control and limitation on car parking in the city centre. This is a logical objective for a strategic centre such as Liverpool with access to significant level and multiple-modes of 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 Traffic Impact Assessment prepared by Arup notes that the proposed development will generate less than one vehicle trip every two minutes on average during peak periods, resulting in minor traffic generation impacts to the road network. Strict application of clause 7.3 will result in greater traffic impacts.
- *The parking is commensurate with the proposed mix of transport modes for the City Centre* – The proposed number of car parking spaces 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 and sustainable forms of transport.

Liverpool Station is located 650 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, all within walking distance from the site and servicing the immediate locality (Figure 5). The proposed mixed-use development also provides 40 bicycle spaces to encourage active modes of transport. It is anticipated that guests, visitors and employees will utilise the existing bus, rail and active transport options available. In addition, visitors staying in the serviced apartments will also access the site by taxi or other ride share methods.

Accordingly, the proposed car parking provision is considered commensurate with the mix of transport modes available in the CBD. As such, the objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- ***The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable*** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

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

Strict compliance with the car parking development standard would defeat 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 CBD 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 further 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, the increase in traffic is considered to be 'minor in nature and will have negligible impacts' and that the proposed 'reduced car parking spaces generate less trips in comparison to the trips generated based on the number of the proposed units'.

Accordingly, additional parking is not warranted.

It is further noted that there are prior examples of similar requests being granted in which it was demonstrated that strict compliance was unreasonable or unnecessary under the circumstances, refer to Table 2 below

Table 2 Clause 4.6 Variation Examples – Clause 7.3 – LLEP 2008

Site	DA Reference	Percentage Variation
25 George Street, Liverpool (Westfield Liverpool)	DA-926/2018	5.9%
277 Bigge Street, Liverpool	DA-507/2018	62.9%

The above examples identify a position which support a demand management approach to car parking provisions for mixed use developments in highly accessible central CBD locations.

- ***The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development*** (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

As noted above, complying with the car parking development standard would defeat the objectives of the standard. The site is readily accessible by public and active forms of transport; strict compliance would deter from these modes of transport and encourage private modes of transport to be utilised exacerbating a reliance on private vehicles and increasing emissions. Strict compliance with the development standard would have a greater community and environmental impacts compared to non-compliance in this instance.

### **6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)**

The Land & Environment Court judgment in Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. 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.
- Whilst this request seeks a variation to Clause 7.3 (2) of LLEP 2008, 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 bicycle parking 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.

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.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed car parking non-compliance in this instance.

## 6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE(3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Section 6.2** above. The proposal is also consistent with the land use objectives that apply to the site under the **LLEP 2008**. The site is located within the B4 zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 3** below.

Table 3 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide a mixture of compatible land uses.</i>	The proposed uses complement one another and are compatible, particularly within a central location. The proposed non-compliance will not impact the compatibility of the proposed uses.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	The proposed development provides a mix of retail, commercial, childcare, recreational facility (indoors) and serviced apartments uses within the Liverpool CBD. The site is highly accessible to public and active modes of transport and encourages such modes to be utilised.
<i>To allow for residential and other accommodation in the Liverpool city centre, while maintaining active retail, business or other non-residential uses at street level.</i>	The proposal provides serviced apartments within the CBD while also providing retail, commercial and a childcare centre. Retail and business uses will be located at Ground Floor – Level 2, the childcare centre at Level 3 and serviced apartments from Levels 4 – 31.
<i>To facilitate a high standard of urban design, convenient urban living and exceptional public amenity.</i>	<p>The Stage 2 SEE details the consideration that has been given to the urban design and public domain interface. The building's interface treatment has been considered in detail. The open-style lobby and retail uses will provide an activated entrance and street level to Northumberland Street, preserving the predominate commercial thoroughfare in the CBD.</p> <p>A Public Art Strategy will also be developed further with Council, providing public art as part of the proposed development.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the car parking standard as 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.

## **6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)**

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the car parking 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. Further, a lesser parking provision will also be consistent with relevant state and regional planning policies which seek to promote sustainable transport options and reduce environmental impacts through lower emissions.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the car parking development standard and the land use zone objectives despite the technical non-compliance. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **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, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 7. CONCLUSION

For the reasons set out in this written request, strict compliance with the car parking development standard contained within clause 7.3 of the LLEP 2008 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the car parking development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- There will be minimal environmental impacts resulting from the non-compliance; the non-compliance will promote public and active forms of transport.
- There will be minimal public, community or economic impacts as a result of the non-compliance; the non-compliance will provide suitable car parking for serviced apartments, child care, commercial and retail uses within the Liverpool CBD. The proposed development will provide serviced apartments and jobs within Liverpool, close to public transport, and promote active modes of transport. This will assist in providing jobs closer to homes during both the construction and operation phases.
- The non-compliance will have a more positive effect compared to a compliant scheme; a complaint scheme would result in an influx of private vehicle ownerships and use within the Liverpool CBD and surrounding areas resulting in more cars on the road and less people utilising public and active modes of transport. The supply of public transport servicing the area is high, and the non-compliance will have a minor impact on the surrounding road network.
- Seeking greater compliance with the control will result in greater environmental impacts due to increased emissions from additional vehicles on the road.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the car parking development standard should be applied.

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