

## 4.0 Request to Vary Street Frontage Height Development Standard

### 4.1 Development Standard to be Varied

In accordance with clause 4.3B of Ashfield LEP 2013, the building element that fronts onto Liverpool Road is afforded a maximum height of 12m for a distance of 12m.

The proposed development is well below the required 12m height frontage (refer to **Figure 5**), however this street wall does not continue for the full required distance of 12m. In other words, the proposed tower is not setback a minimum of 12m from Liverpool Road, but a minimum of 6m (refer to **Figure 6**).

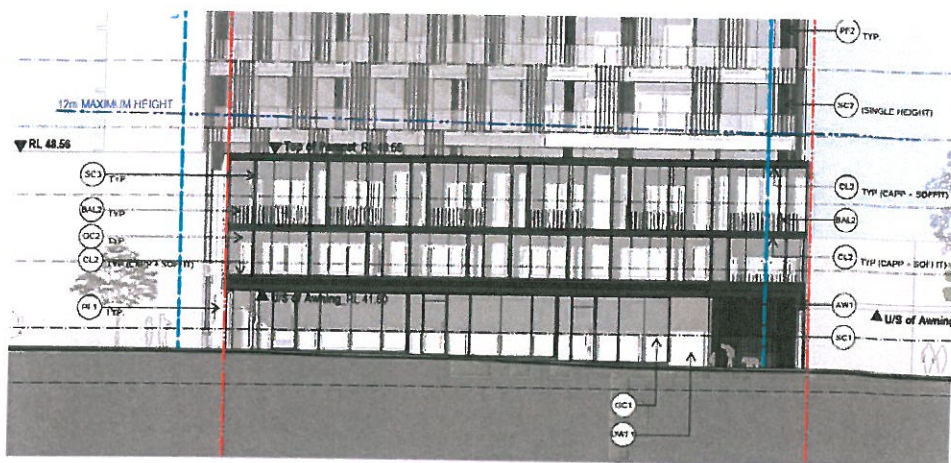


Figure 5 – Proposed Liverpool Road elevation and street wall height

Source: Turner

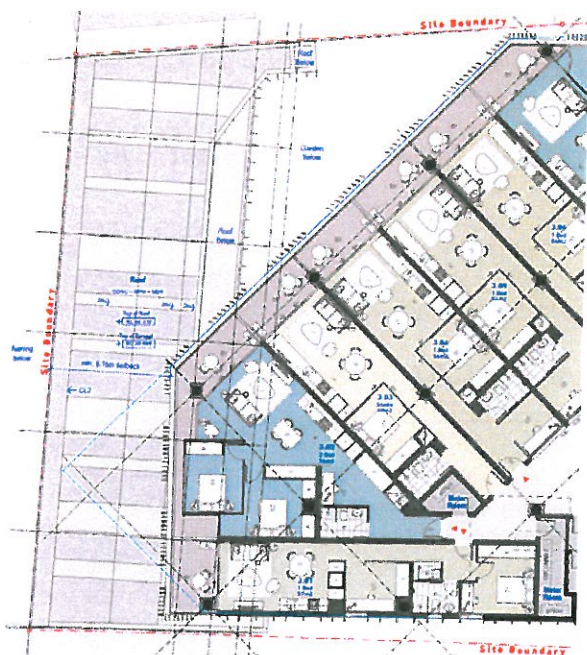


Figure 6 – Proposed Liverpool Road elevation and street wall height

Source: Turner

## 4.2 Justification for Contravention of the Development Standard

### 4.2.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, which provides case law relating to SEPP 1 Objections, Chief Justice Preston expressed the view that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary. Of particular relevance in this instance is 'WAY 1', that a development standard might be shown as unreasonable or unnecessary in the event that 'the objectives of the standard are achieved notwithstanding non-compliance with the standard'. Indeed this is considered to be the case for the proposed development as despite the technical non-compliance with the numerical standard the proposed development successfully achieves the relevant overarching objectives of the standard.

The objective of the 'Ashfield town centre – maximum height for street frontages on certain land' development standard is *'to apply a maximum height for primary street frontages on certain land in Ashfield town centre.'*

The stated objective for Clause 4.3B does not provide clarity on the desired outcome that ALEP seeks to be achieved through the standard but merely states that its intention is to set a numerical height control. To gain a better understanding of the intent of the standard we have referred back to Clause 4.3 'Height of Buildings'. The objectives of which are as follows:

- (a) *to achieve high quality built form for all buildings,*
- (b) *to maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes,*
- (c) *to provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings,*
- (d) *to maintain satisfactory solar access to existing buildings and public areas.*

The following demonstrates that despite the proposed development having a front building for a depth less than 12m, it will still result in a development outcome that achieves the objectives of the building height development standard.

#### ***To achieve high quality built form for all buildings.***

The proposed design for the development includes a three storey street wall building and a taller component setback from the street edge. The building design has therefore been tailored to provide a stepped building form that transitions across the site. The use of this massing strategy together with the choice of building materials and architectural detailing delivers an outcome that ensures the façade of the building at Liverpool Road is proportional to adjoining buildings while maintaining the human scale building height sought by the DCP. Furthermore the design approach also complements and strengthens the existing character of Liverpool Road. Refer **Figures 7 – 9** that show the existing and proposed massing of the building.



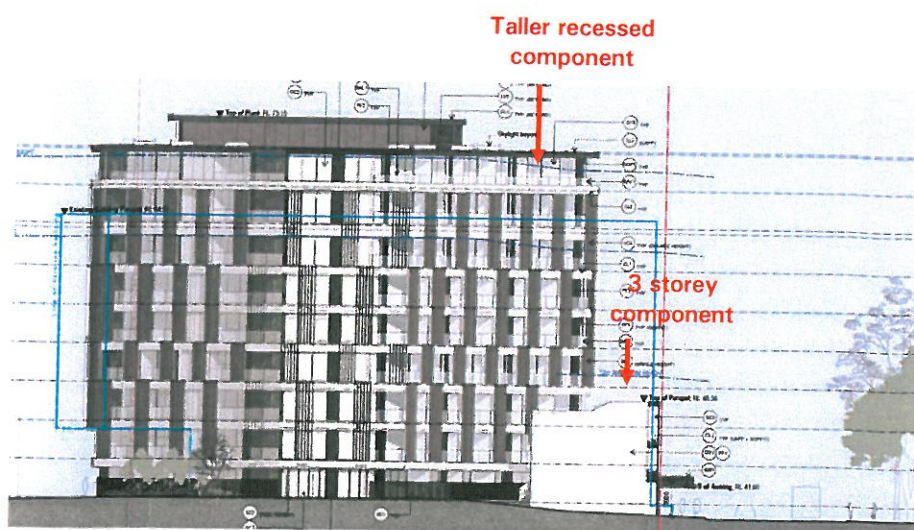


Figure 7 – Section view showing building form and massing

Source: Turner



Figure 8 – Proposed Liverpool Road elevation and street wall height

Source: Turner



Figure 9 – Existing Liverpool Road elevation (no street wall)

Source: Turner

***To maintain satisfactory sky exposure and daylight to existing buildings, to the sides and rear of taller buildings and to public areas, including parks, streets and lanes.***

Through utilising the existing commercial building but providing for a reduced tower floor plate (at the northern and southern ends) the development will result in a net increase in sky exposure and daylight to existing buildings and surrounding public domain. The proposed development therefore satisfies this objective.

***To provide a transition in built form and land use intensity between different areas having particular regard to the transition between heritage items and other buildings.***

As highlighted in Figures 7 and 8 the proposed design provides an appropriate transition across the site from the Liverpool Road frontage by setting back the taller building component to the centre of the site. Incorporation of the three storey component enables the development to effectively integrate with the streetscape whilst achieving an appropriate density reflective of its town centre location. More importantly as highlighted in Figure 8 the proposed development results in a significantly improved relationship and transition to Liverpool Road than the existing commercial development.

***To maintain satisfactory solar access to existing buildings and public areas.***

Shadow analysis diagrams provided with the Statement of Environmental Effects demonstrate that the redeveloped building has minimal shadow impacts on the surrounding area.



#### 4.2.2 There are sufficient environmental planning grounds to justify contravening the development standard

There are considered to be sufficient environmental planning grounds to justify contravening the development standard, these being:

- The positioning of the tower from Liverpool Road is consistent with a previous development consent issued on the site by the Land and Environment Court for a similar proposal (which required a 5m setback).
- The splayed form of the Liverpool Road elevation assists with making the tower recessive and assists with offsetting the reduced setback at the western end of the northern boundary.
- The overall proposed development will not result in any adverse impacts on the surrounding area.
- The proposed building design and massing complements the existing Liverpool Road streetscape.
- The proposed development is consistent with the objectives of the height control as highlighted above.
- The proposal will fill in the missing gap in the street wall.
- A number of design measures are incorporated into the building design that together help minimise the building mass and bulk, and ensure the achievement of a high quality design outcome. These include:
  - the combined use of a street wall building and setbacks to the tower component that helps reduce the building's mass and bulk when viewed from Liverpool Road and the wider surrounds;
  - effective use of fenestration and building materials to complement the rhythm, details and scaling of the existing Liverpool Road street wall; and
  - incorporation of a pedestrian awning for the full width of the site to separate the building mass and ensure an attractive and active pedestrian scaled frontage to the street whilst providing continuity in the streetscape character.

## 5.0 Public Interest

***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.***

The proposed development is in the public interest as it is consistent with the overarching objectives of the development standards that are proposed to be varied. In addition the proposal also provides an outcome that meets the objectives of the B4 Mixed Use Zone, specifically given that it will:

- provide a mixture of compatible land uses that are appropriate to the site's town centre location and context;
- facilitate the future integration of sustainable business, office, residential and retail uses in a highly accessible location with excellent access to public transport, walking and cycling facilities and services;
- make a significant contribution to the viability, vitality and amenity of Ashfield town centre, and will reinforce its role as the primary activity, employment and civic centre of Ashfield LGA; and
- result in the orderly and efficient development of land through the redevelopment of a vacant and structurally unsound site within the town centre.

## 6.0 Director General's Concurrence

It is understood that the Director-General's concurrence under clause 4.6(5) of ALEP 2013 has been delegated to Council. The following section provides a response to those matters sets out in clause 4.6(5) which must be considered by Council under its delegated authority:

***Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.***

The proposed departure from the development standards do not give rise to any matter of State or regional significance, other than contributing to the achievement of dwelling targets and housing affordability objectives established by the Draft Inner West Subregional Strategy.

***The public benefit of maintaining the development standard.***

There is no public benefit in maintaining the development standards in this instance. Specifically, there will be no adverse impacts as a result of the variations to the development standards and the overall development provides a positive contribution to the site's heritage context and the town centre.

If the current development standards were maintained this would have a detrimental impact on the development by unnecessarily and unreasonably limiting the site from realising its full and proper development potential. Further to this it would substantially limit the amount of affordable housing that can be provided on the site.

Accordingly maintaining the development standard would limit the orderly and economic use of the land.

***Any other matters required to be taken into consideration by the Director-General before granting concurrence.***

The proposed variation will facilitate the orderly and economic redevelopment of a vacant commercial office building for the purposes of a new high quality mixed use development that will positively contribute to the achievement of the vision and strategic objectives of the Draft Sydney Metropolitan Plan, Draft Inner West Subregional Strategy and the Ashfield LEP 2013.

## 7.0 Conclusion

This variation request supports a proposal for the redevelopment of land at 168 Liverpool Road, Ashfield into a new 9 storey mixed use building consisting of ground floor retail and residential apartments on ground level and above.

The proposal will retain and convert an existing vacant commercial office building (that has been deemed to be structurally) in a prominent and well located site in Ashfield, with a new high quality mixed use development that will rejuvenate this part of Ashfield and encourage further investment and business activity in the area.

The proposed building is the culmination of an extensive design process whereby the architects have made numerous modifications in response to pre-application feedback and discussions with Ashfield Council. The outcome is a Turner designed scheme that responds to the site opportunities and constraints, is highly sustainable in terms of re-using and giving life to an existing building and which delivers a high standard of design excellence.

The proposed building is architecturally innovative and will effectively integrate with the surrounding area. Once complete it will make a substantial contribution to the quality of the local building stock, and in doing so will raise the profile of Ashfield town centre as a location for new contemporary architecture.

The assessment contained in this report and the accompanying documents has demonstrated that the proposed scheme will provide high quality accommodation for future occupants in accordance with the relevant standards and requirements, and will have minimal adverse environmental effects on both future occupiers and the surrounding area.

On top of delivering a building that is of a high quality design, the proposed development will enhance the quality of the public domain and deliver new amenities and services to the local area including new retail floor space and affordable housing. Where variations to Council's controls occur, the proposal demonstrates that these variations do not detract from the quality of the development, do not adversely impact on the surrounding area, and enhance the overall design and development outcome for the site.

Overall, this variation request demonstrates Council can be satisfied that:

- compliance with the height of buildings and street frontage height development standards under the Ashfield LEP 2013 is unreasonable and unnecessary in the circumstances of the case; and
- that there are sufficient environmental planning grounds to justify contravening the development standards, including being in the public interest.

It is therefore requested that Council recommend approval for the proposed development even though it contravenes the height of buildings and street frontage height development standards imposed by Ashfield LEP 2013. Importantly, the components of the building that exceed and vary the building height and street frontage height controls do not result in any adverse impacts on the surrounding area.