

Clause 4.6 – Exceptions to Development Standards – Floor Space Ratio

Address: 420 Macquarie Street, Liverpool

1. Introduction

This is a request to vary a development standard under Clause 4.6 – Exceptions to Development Standards, of the Liverpool Local Environmental Plan 2008 (LLEP 2008). The development standard for which the variation is sought is the maximum floor space ratio set by Clause 4.4 under the LLEP 2008.

The variation relates to a proposed mixed use development located at 420 Macquarie Street, Liverpool. The development site also has frontage to Carey Street, Charles Street and Mill Road. The building contains 438 apartments and 396m² of retail space and consists of a six (6) storey residential flat building facing Charles Street and two mixed use residential towers towards the centre of the site of 29 storeys (26 storeys above a 3 storey podium) in height.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide*, August 2011.

It is noted that Clause 4.6(5) also requires the concurrence of the Director-General (now Secretary, Department of Planning and Environment) to be obtained prior to the granting of consent for development that contravenes a development standard. However, planning circular PS 08-003 issued on 9 May 2008 says that concurrence may be assumed under clause 64 of the Environmental Planning and Assessment Regulation 2000.

2. Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

Liverpool Local Environmental Plan 2008 (LLEP 2008).

2.2 What is the zoning of the land?

The development is proposed to be carried out on land that is zoned part B4 Mixed Use and part R4 High Density Residential.

2.3 What are the Objectives of the zone?

The objectives of the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *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.*

- *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.*
- *To facilitate a high standard of urban design, convenient urban living and exceptional public amenity.*

The objectives of the R4 High Density Residential zone are:

- *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.*

2.4 What is the development standard being varied?

The development standard being varied is the maximum floor space ratio imposed under clause 4.4(2B)(e) of LLEP 2008.

2.5 Is the development standard a performance based control? Give details.

No. The building floor space ratio development standard is a numerical control.

2.6 Under what Clause is the development standard listed in the environmental planning instrument?

Clause 4.4(2B)(e) of the LLEP 2008 establishes the maximum FSR for certain land within the Liverpool LGA (the Floor Space Ratio Map is excluded where this provision applies). This is detailed below in Section 2.8.

2.7 What are the objectives of the development standard?

The objectives to the development standard are contained in subclause 4.4 and are reproduced below:

- to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.4(2B)(e) sets the maximum floor space ratio for sites with an area greater than 2,500m² in the Liverpool City Centre. Sites of greater than 2,500m² in area with a height limit of 80m are subject to a base FSR of 6:1. The site (excluding future road widening) has an area of 6,113m², therefore the maximum FSR calculation in relation to that part of the site zoned B4 is 6:1.

For that part of the site zoned R4, the FSR maximum for sites greater than 2,500m² in area, and subject to a 45m height limit is 3.5:1. The site has a total area greater than 2,500m². The maximum FSR calculation in relation to the R4 portion of the site is therefore 3.5:1

The table below summarises the provisions of Clause 4.4 (2B) and (2C) as they apply to the Macquarie Street and Charles Street parts of the site.

Macquarie Street	Clause 4.4 (2B) provision	Response
	Despite subclause (2), the maximum floor space ratio of a building in the Liverpool City Centre that is:	The site is within Liverpool City Centre
	(a) on a site area greater than 1,000 square metres	The site area is 6,113m ² (excluding the future road widening land).
	(b) on land in a zone specified in the Table to this clause	The site is part zoned B4 Mixed Use (a zone nominated in the table)
	(c) on land for which the maximum building height shown on the Height of Buildings Map is as specified in Column 1 of the Table under the heading for that zone, is the amount specified opposite that height in	The maximum building height is 80m
	(d) Column 2 of the Table, if the site area for the building is greater than 1,000 square metres but less than 2,500 square metres,	Not applicable
	(e) Column 3 of the Table, if the site area for the development is equal to, or greater than 2,500 square metres	Site area is greater than 2,500m ²
	Clause 4.4 (2C) formula	
	2.5:1 + 3.5:1	Maximum FSR 6:1
Charles Street	Clause 4.4 (2B) provision	Response
	(a) on a site area greater than 1,000 square metres	The site area is 6,113m ²
	(b) on land in a zone specified in the Table to this clause	The site is part zoned R4 High Density Residential
	(c) on land for which the maximum building height shown on the Height of Buildings Map is	The maximum building height is 45m

	as specified in Column 1 of the Table under the heading for that zone, is the amount specified opposite that height in	
	(d) Column 2 of the Table, if the site area for the building is greater than 1,000 square metres but less than 2,500 square metres,	Not applicable
	(e) Column 3 of the Table, if the site area for the development is equal to, or greater than 2,500 square metres	Site area is greater than 2,500m ²
	Clause 4.4 (2C) formula	
	2:1 + 1.5:1	Maximum FSR 3.5:1

The calculation of gross floor area (GFA) arising from the above FSR figures is based on the relevant definition contained in LLEP 2008:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

Note that (g) above excludes from the calculation of GFA car parking to meet the requirements of the consent authority.

The calculation of the maximum gross floor area (GFA) arising from Clauses 4.4 (2B) and (2C) and 4.5 is as follows:

- Macquarie Street
5,213m² (area zoned B4 and height of 80m) x 6:1 FSR = 31,278m² GFA
- Charles Street
900m² (area zoned R4 and height of 45m) x 3.5:1 = 3,150m²
- Total applicable GFA: 34,428m²

The calculation of maximum FSR across the whole of the site, arising from the definition of FSR being *the ratio of the gross floor area of all buildings within the site to the site area* is 5.632:1 (34,428m² GFA/6,113m² site area).

The proposal is for a total of 39,098 m² GFA. Based on the definition of FSR and the site area of 6,113m², the resultant FSR is 6.396:1, which is an overall variation to the applicable FSR applying to the site of 13.57%. (This compares with the originally submitted floor space of 40,259m² with a FSR of 6.56:1 and a variation of 17.0%.)

For comparison purposes the actual development proposed on the part of the site zoned R4 High Density Residential comprises a GFA of 1,757m². This equates to an FSR of 1.95:1, substantially (44%) below the FSR control of 3.5:1 attributable to that portion of the site. Such an FSR, would equate to a GFA of 3,150m² on that portion of the site.

A further matter for consideration in the calculation of GFA are the provisions of Clause 7.3(4) of LLEP 2008, applying to car parking in the Liverpool city centre:

- (4) In this clause, the following are to be included as part of a building's gross floor area:*
- (a) any area of the building that is used for car parking and is at or above ground level (existing), except to the extent permitted by a development control plan made by the Council,*
 - (b) any area of the building that is used for car parking below ground level (existing), except where the car parking is provided as required by this clause.*

The overall car parking numbers provided are consistent with the requirements of Liverpool Development Control Plan 2008 and the requirements of LLEP 2008 so this area is not calculated as GFA or FSR. The parking provided in the podium is less than 25% of the total parking and as such is not to be calculated as part of the FSR pursuant to Clause 7.3(5) of LLEP 2008.

2.9 What is the proposed numeric value of the development standard in the development application?

The proposal includes 39,098m² GFA. Based on the definition of FSR and the site area of 6,113m², the resultant FSR is 6.40:1 (rounded to two decimal places).

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal exceeds the maximum GFA (arising from the FSR applying to the site) by 13.57%.

The varied floor space will provide more apartments (approximately 60) than a development that complied strictly with the maximum floor space ratio.

3. Assessment of the proposed variation

3.1 Overview

Clause 4.6 (Exceptions to development standards) establishes the framework for varying development standards applying under a local environmental plan. Clause 4.6(3)(a) and 4.6(3)(b) says 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 are sufficient environmental planning grounds to justify contravening the development standard.

In addition, Clause 4.6(4) requires that development consent must not be granted for a 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 the development within the zone in which the development is proposed to be carried out ...

An assessment of the floor space ratio variation is provided below in accordance the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guideline, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* outlined below:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *EP&A Act 1979*;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary; and
- Is the objection well founded.

In accordance with the Guideline, this assessment also addresses the relevant test established by the NSW Land and Environment Court in the decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- Is compliance with the development standard unreasonable or unnecessary because the objective of the development standard are achieved notwithstanding non-compliance with the standard.

3.2 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

In the circumstances of this case, strict numerical compliance is unreasonable or unnecessary because the proposal and the varied floor space is consistent with the objectives of the FSR control as is demonstrated in the assessment of the objectives below:

- (a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic

Comment: This objective relates to the application of the FSR control generally and the need to consider if development proposed can be suitably accommodated both physically and relative to the capacity of the surrounding transport networks and servicing needs.

The consideration of the proposal in relation to transport has clearly demonstrated that the transport networks in terms of traffic and car parking are more than capable of accommodating the intensity of land use proposed for the site. The application is supported by a Traffic and Parking Report that confirms the acceptability of the development in the location. The development complies with the overall car parking requirements of the Liverpool DCP 2008.

The application with the varied floor space proposes a form of development that will encourage and support the utilisation of the excellent public transport options available for the locality including passenger rail and numerous bus routes as well as cycling and walking.

The proposal includes a direct and convenient pedestrian link to Carey Street which will encourage future residents to access public transport and local shops on foot (ie supporting active uses at street level). The necessary infrastructure, external to the site, to support this pedestrian movement is in place. It is a desirable urban outcome that development be more intense in well located and well served locations such as the subject site, particularly when it has been demonstrated that the form of the development proposed does not result in unacceptable environmental impacts upon the locality or the amenity of surrounding development.

The variation to the FSR development standard will allow for the provision of additional residential floor space at a level that is appropriate given the availability of infrastructure and the generation of vehicle and pedestrian traffic arising from the more intense use of the site. Of particular note is that this objective is furthered by the more intense use by pedestrians of the public footpaths within the Liverpool City centre as a consequence of the extra floor space provided (supporting active uses at street level).

- (b) *to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*

Comment: The desired future character clearly contemplates tower forms of development in the location. When establishing numerical controls, a site of this size (6,158 sqm) - with its unique characteristics - would not have been at the forefront of thinking.

The subject site is very large and capable of accommodating a significant scale of development within the context of the clearly indicated desired future character under the existing planning controls and strategic directions. (As an aside, we note that Council has clearly indicated that the current controls no longer reflect the vision for the CBD with a comprehensive review well underway, to implement controls that will deliver a form and scale of development that better reflects the vision of Liverpool as a Regional City. The proposed variation is also consistent the Council's intended future direction.)

The proposal provides for a modest scale podium and interface with adjoining properties. The substantial site area has then allowed the taller tower forms to be positioned on the site in a manner and configuration that does not compromise the amenity of the surrounding area and in a location with the capacity of infrastructure to accommodate the development. As the proposed building height does not result in unacceptable impacts and the proposed density does not exceed the physical capacity to be accommodated, it is appropriate to maximise the potential of the site to provide for high quality, high amenity residential tower forms that reflect the vision for Liverpool to be a major regional centre. The proposal is consistent with the desired future character of the area.

While large in size, the site does contain two portions of land that extend into Carey Street and Charles Street respectively. These sections of the site are the most sensitive in terms of proximity and relationship to residential neighbours. On the Carey street frontage no development is

proposed. On the Charles Street frontage a total GFA of 1,757m² is proposed which represents on that part of the site an FSR of 1.95:1, compared to the potential FSR of 3.51 that would be permitted under the LEP.

The variation in height and floor space for the towers is in part attributed to the redistribution of building height and floor space away from the Carey Street and Charles Street sections of the site to the central and western sections of the site fronting Macquarie Street. This redistribution results in a low scale and discrete residential flat building in Charles Street (5-6 storeys) that is consistent with the scale of buildings in this street and well below (44%) the allowable floor space ratio and building height standard associated with this section of the site. The Carey Street section of the site, which could accommodate a residential flat building, is proposed to be used for deep soil landscaping and pedestrian access so as to mitigate potential impacts of development on the adjoining sites.

The scale and form of the slim tower development will help achieve the desired future character in this location in the Liverpool city centre. The proposal incorporates taller slender towers that have a reduced bulk and potential shadow impact on surrounding development. The taller slender towers also act as a distinct marker for the southern entry to the Liverpool city centre.

The applicant has been encouraged by Council to pursue a high quality outcome for the site that lifts the standard of development in the locality. This has led to the application proposing high quality building with facilities, finishes and amenities not previously constructed in the Liverpool area. These additional amenities include grand and luxurious oversized lobbies, a multi-purpose community room, early learning centre, pool, lush expansive passive and active open space areas, barbeque facilities and external lifts to facilitate access to the communal facilities and pedestrian linkage to Carey Street. These additional amenities are reflective of the type and standard of on-site amenities delivered (in this type of development) in eastern and northern Sydney. In those areas revenue per square metre is approximately double the revenue that will be generated by the proposed development. While financial return per square metre may be lower in this development, the cost of providing this level of amenity is the same regardless of the geographic location. The additional floor space means a more intense development with a greater number of dwellings (approximately 60 additional dwellings). The increased intensity is sufficient to make it possible to provide the level of amenity proposed.

It is also noted that the provision of some of these desirable additional amenities (oversized lobbies, multi-function room, early learning centre, manager's office) contribute to the overall FSR of the proposal. When the numerical FSR control was prepared it is likely that the possibility of developments including facilities of this kind was not contemplated, as such facilities have not typically been part of residential flat development in south western Sydney.

In addition to the cost of delivering the additional amenities and facilities, the pursuit of a taller tower form (allowing the provision of low scale development to Charles Street and no development to Carey Street) is a more expensive construction relative to construction at low levels. These extra costs include additional lifting capacity, hydraulics and servicing. Furthermore the physical construction costs are greater due to more expensive hoists, cranes, greater structural support costs, longer construction time frames leading to longer holding costs and site maintenance costs. At Council's request the application (as now proposed) has reduced the car parking proposed within the podium. This parking is now provided within an additional basement which is significantly more expensive to construct.

The cost of delivering a high quality building with high amenity - consistent with the desired future character - is more expensive. The variation to the height and FSR has been demonstrated to have no adverse amenity or capacity impacts. The variation to the FSR will greatly facilitate the delivery of these identified superior outcomes as a new approach to development in Liverpool in regards to amenity, finishes and quality that the additional FSR makes viable.

The image on page 10 is an extract from a document titled Liverpool City Centre Vision 2006. This plan (prepared by the NSW Department of Planning in close consultation with Liverpool City Council) sets a vision for Liverpool as one of the key regional centres of Sydney going forward.

The opening remarks by the then Minister for Planning Mr Frank Sartor state:

"This draft vision for Liverpool is designed to identify the city centre's strengths and achieve a more dynamic economy for the future, with recreational and cultural opportunities, investment and a healthy lifestyle for local families.

The NSW Government has already recognised Liverpool as a major centre in Western Sydney through the Metropolitan Strategy, which includes targets for 12,000 new residents and 15,000 new jobs over the next 25 years.

The document also states that:

"One of the key aims of the Liverpool City Centre Plan is to improve access between residential areas and the commercial core. This will spur economic development of the city and will also ensure that sufficient sites are available within the commercial and retail cores. The Plan assumes a growth target of 12,000 residents or 5,000 dwellings within the city centre. These dwellings are a share of approximately 11,000 dwellings highlighted in the Metropolitan Strategy to apply to a much greater area than just the city centre. The provision of this growth will occur in both existing residential zoned areas (as apartment buildings) and in mixed use developments within the mixed use and retail zones of the city centre. Analysis has concluded that potential redevelopment of existing strata titled residential areas is low, and therefore it is considered that these areas will remain relatively unchanged for some years. In remaining residential areas, significant increases in density must continue in order to achieve an appropriate population density within the city centre."

The above image illustrates in a general sense and specifically for the subject site that slim tower development forms an integral part of the long term vision for the Liverpool City Centre.

The draft Metropolitan Strategy for Sydney says (on page 95) that it is a metropolitan priority to strengthen the role of Liverpool as a Regional City. Specifically the strategy seeks to (among other things):

- enhance the Liverpool Regional City's role as the subregion's main centre for commercial, retail, service and entertainment; and
- increase housing opportunities around Liverpool CBD.

More generally, the draft Strategy says (on page 30) that the policy is that:

New housing will be encouraged in areas close to existing and planned infrastructure in both infill and greenfield areas.

- (c) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

Comment: As stated above, the proposal has been specifically designed so as to minimise potential impacts on adjoining residential properties and the locality. The design principle adopted for the

development is to redistribute building height and floor space away from the Carey Street and Charles Street sections of the site to the central and western sections of the site. This redistribution results in a low scale and discrete residential flat building in Charles Street (6 storeys) that is consistent with the scale of buildings in this street (but nonetheless well below the allowable floor space ratio and building height standard associated with this section of the site).

The proposal will significantly improve the public domain along all frontages of the site. The car parking and traffic generated by the proposal (including the varied floor space) has been assessed to be satisfactory and will not have an unacceptable impact on the surrounding street system.

The shadow diagrams demonstrate that the buildings in the form proposed do not result in any significant additional adverse effects arising from the additional floor space. The proposed built form accommodating the floor space results in a small compact shadow that moves quickly across the ground. The shadow diagrams at hourly intervals have been prepared and are contained within Appendix E.

Supplementary shadow diagrams have been prepared and accompany this statement which illustrate:

- that significant additional overshadowing would result if compliant building forms were adopted, notwithstanding compliant building heights and floor space
- that additional shadow created by the proposed variation to height and floor space is minimal and acceptable

- (d) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation*

Comment: The site is situated in a potentially sensitive location due to the existing scale of adjoining development, although the anticipated scale and form of development is expected to significantly change over time, due to the planning controls contained in LLEP 2008. Notwithstanding this, and recognising that the existing residential flat buildings adjoining and fronting Carey Street, Charles Street and Mill Road may not change for some time, the development has been designed with this in mind, as outlined above in response to objectives (b) and (c).

The planning controls for the site anticipated large scale residential towers.

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

Comment: As mentioned above in response to objective (c), the subject site is very large and so capable of accommodating the scale, form and density of development proposed while mitigating potential impacts.

When establishing numerical controls, a site of this size (6,158 sqm) - with its unique characteristics - would not have been at the forefront of thinking. Such controls are inherently broad-brush. For example the maximum FSR under clause 4.4(2B)(e) is static once the site has an area greater than 2,500 square metres, irrespective of site size and location,

The design minimises development at the sensitive interfaces and concentrates development to the Macquarie street frontage which is capable of readily accommodating significantly taller and more dense built forms.

- (f) *to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design*

Comment: The design of the buildings is highly articulated and modulated and the development complies with the Design Excellence provisions contained in Clause 7.5 of LLEP 2008. Design excellence is also much more than simple aesthetics. Design excellence includes the amenity of the spaces created and how those spaces and buildings relate to existing development. In this regard the variations to the proposed height and FSR are response to addressing the relationship to the surrounding land, and the deliberate approach to minimise development in the Charles and Carey Street interface areas. The solution proposed is superior to that which would be anticipated if a complying development were contemplated in these sensitive areas.

The component of varied floor space resulting from the above-mentioned redistribution away from sensitive locations results in greater open space and separation between buildings thereby leaving generous space for the articulation and modulation of design.

3.3 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land...”*

Compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, and to promote and coordinate orderly and economic use and development of land.

The development as proposed is commercially feasible and will ensure that this important gateway site, which has been vacant for many years, is able to be redeveloped. As outlined above, the proposal is striving for a level of excellence and amenity not previously delivered for Liverpool city centre mixed use developments. The delivery of these outcomes has an economic cost for their provision that will be supported in part by the ability to provide the additional floor space in a building height and form that has been demonstrated to result in no adverse amenity or infrastructure capacity impacts.

The development as proposed promotes orderly and economic development. As outlined in 3.2 above, strict compliance with the FSR development standard as it is reflected across the whole of the site is not necessary in order to achieve the intended built form for the site and strategic direction for this location within Liverpool city centre. Furthermore, compliance with the standard would result in reduced social and environmental benefits.

The variation to the floor space ratio allows more people to live and use the available public infrastructure within the city centre such as parks, cycleways and nearby public transport and promotes the economic viability and development of the land.

Strict compliance with the floor space standard in this circumstance would be unreasonable and unnecessary in the circumstances of the case as it would hinder the viability and delivery of the better outcomes for the development and for the community (as contemplated by the objectives of clause 4.6(1)(b)) which are discussed later in this document.

3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard.

Liverpool City Council have identified a future vision for the Liverpool city centre. The Council is moving towards a comprehensive review of the planning controls to reflect the enhanced role of Liverpool as one of the major regional centres of the Greater Sydney Metropolitan area. This will include the review of the built form controls to permit taller buildings in the city centre to build upon the inherent transport and services advantages of Liverpool. The height control is to be removed from the LEP whilst the FSR control will remain. Council has indicated that it will encourage and support additional density for certain unique sites such as ours to further assist in realising this future vision.

The assessment of the environmental planning grounds that justify the contravention of the development standard should be informed by the future direction for Liverpool identified by Council.

Environmental planning grounds that justify contravening the development standard include the following:

- The proposed height and configuration of development on the site has been demonstrated to have a superior outcome to a development that was compliant with permitted height and FSR controls across the site, particularly at the Charles Street, Carey street and Mill Road interfaces;
- It has been demonstrated that the proposed height and floor space (including the variances) do not result in adverse amenity outcomes to surrounding properties;
- The resulting FSR is an outcome of the building height and configuration which has been found to be appropriate in terms of environmental impacts and result in a density of development that can be readily accommodated in the locality in terms of transport networks, services and utility facilities and it's a step towards the future vision for Liverpool;
- The density proposed (including the additional floor space) results in a commercial viable development with superior amenity which otherwise would not result from a complying development, in this circumstance;
- The additional FSR provides positive outcomes relating to the provision of a new benchmark for development in Liverpool which includes additional cost items relating to:
 - Provision of superior elevated, communal open space with views, consisting of extensive planting and paving, barbecue facilities, a pool (and associated amenities), break out passive and active spaces. Refer to montages in Appendices A and B.
 - Provision of separated and equitable lift access throughout, providing access the external areas of the podium.
 - Superior public domain design and construction, including decorative paving and "Smart Pole" lighting.
 - Use of durable and maintenance free construction materials
 - Design and construction of high quality lobbies with better finishes and enhanced amenity. Refer to montage contained within Appendix D.
 - Construction of internal communal spaces such as a multi-function room and learning centre for kids. Refer to montage in Appendix C.
 - Design and construction of larger than minimum balcony sizes, both in area and dimensions.
 - Provision of additional innovative dual key apartments, which will promote a diverse social mix to the development's population, responding to investor and the extended family demographic in the area.

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- Provision of efficient and modern waste handling systems including compaction and onsite pick-up (Buildings A and B) and exceeding the expected minimum waste standards.

The above items are beneficial outcomes for the development, but importantly they beneficial outcomes that further desirable environmental goals and lead to a better result for the community as a whole.

- The additional floor space will generate extra section 94 funds and, which will be available to improve local infrastructure, services and facilities for the benefit of all residents and visitors to Liverpool City.
- There is no discernible difference in the impacts between a development with a complying GFA/ FSR and the proposed development including:
 - Visual and acoustic privacy impacts. The proposed development is designed with a low scale residential flat building fronting Charles Street and no built form fronting Carey Street so as to minimise direct potential impacts on adjoining properties. The two towers are set well back from the adjoining Mill Road residential properties. Tower forms of development are anticipated on the site, with the variation to the FSR development standard being directed to the towers. The anticipated impacts from this tower form are not changed as a result of the variation.
Building separation distances required for towers above 45m in height in Clause 7.4 of LLEP 2008 are achieved, including the areas containing the varied floor space. Similarly the separation distance to the 5-6 storey Charles Street building are achieved.
 - Visual impacts. Due to the setbacks and building separation distances incorporated into the proposal, and the distribution of the building mass and scale related to the additional floor space, there is only a nominal difference in visual impacts between the proposal and a complying development;
 - Overshadowing impacts. The proposal does not unreasonably overshadow existing residential properties or unreasonably overshadow the public domain. In this regard, there is a negligible difference in shadow impacts arising from tower forms that comply with the FSR and the proposed buildings. The variation of floor space creates a compact fast moving shadow typical of slim towers.
In addition, the distribution of floor space and building height for the two towers away from the sensitive boundaries to adjoining Charles Street, Carey Street and Mill Road properties mitigates direct overshadowing impacts. A complying development (in terms of height and floor space) on the Charles Street section of the site would have a potentially much greater impact on neighbouring properties. Supplementary shadow diagrams have been prepared and accompany this statement which illustrate:
 - that significant additional overshadowing would result if compliant building forms were adopted, notwithstanding compliant building heights and floor space
 - that additional shadow created by the proposed variation to height and floor space is minimal and acceptable
 - Traffic and parking impacts. The additional floor space and dwelling yield that results from the non-compliance with the FSR does not have a discernible difference in traffic or parking demand than a complying development. Importantly, as detailed in the Traffic and Parking Assessment included at Attachment 5 to the Statement of Environmental Effects, the proposal will have an acceptable impact. It is also worth noting that a development within the Mixed Use zone with a much greater component of retail and commercial floor space in a complying development would have a significantly greater traffic and parking impact than proposed.

In the circumstances of the case, a strictly numerically compliant development provides no economic incentive for the proponent to embrace Council's desired future vision for the Liverpool city centre to emerge as a major regional centre or to pursue the standard of finishes, amenities and services proposed within the application.

The strict application of the FSR development standard is unnecessary and unreasonable as the non-compliance does not result in any discernible adverse amenity impacts and the strict application of the FSR would make the pursuit of the additional amenity's and services cost prohibitive and put at risk the application proceeding leaving the site to remain vacant in a prominent location as the gateway to Liverpool.

In addition, given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the floor space ratio standard as set out above.

Other matters that should be noted in this context:

- The proposal remains consistent with the objectives of the applicable B4 and R4 zones, despite the non-compliance with the GFA/FSR control;
- The proposal remains consistent with the objectives of the FSR standard, despite the non-compliance;
- Non-compliance with the standard does not contribute to adverse environmental, social or economic impacts;
- It is a desirable for development be more intense in well located and well served locations such as the subject site;
- The variation to the FSR development standard will allow for the provision of additional residential floor space at a level that is appropriate given the availability of infrastructure and the generation of vehicle and pedestrian traffic arising from the more intense use of the site (of particular note is the improved street activation within the centre arising from the more intense use by pedestrians of the public footpaths within the Liverpool city centre);
- The scale and form of the slim tower development will help achieve the desired future character in this location in the Liverpool city centre - the taller slender towers also act as a distinct marker for the southern entry to the Liverpool city centre;
- The development promotes the Act's objective of the orderly and economic development by ensuring that the project is commercially viable and will proceed;
- The additional FSR facilitates the delivery of a standard of development consistent with Council's vision for the Liverpool city centre in a prominent gateway location reflected by Council's proposed review of the city centre planning controls to appropriately align with Council's vision
- The development is of a scale, form and intensity generally anticipated on this large site within the Liverpool city centre
- The variation facilitate the delivery of a positive urban outcome for the southern gateway to Liverpool.

3.6 Is the variation well founded?

Yes. For reasons outlined in the preceding sections of this submission, the variation to the FSR limit is well founded as compliance with the standard is unreasonable or unnecessary as the development does not contravene the objects specified within 5(a)(i) and (ii) of the Act, the objectives of the B4 Mixed Use zone or R4 High Density Residential zone and the objectives of the FSR standard itself

The variation to the floor space facilitates the delivery of slimmer tower forms located at the southern entrance to the Liverpool CBD to ensure the development is a Gateway site. The gateway location and prominence of the location demands a development of the highest quality in terms of design, finishes and amenities provided both to future residents and the interfaces with the public domain. The variation to the FSR development standard facilitates the delivery of these positive urban outcomes in a manner that does not result in adverse impacts.

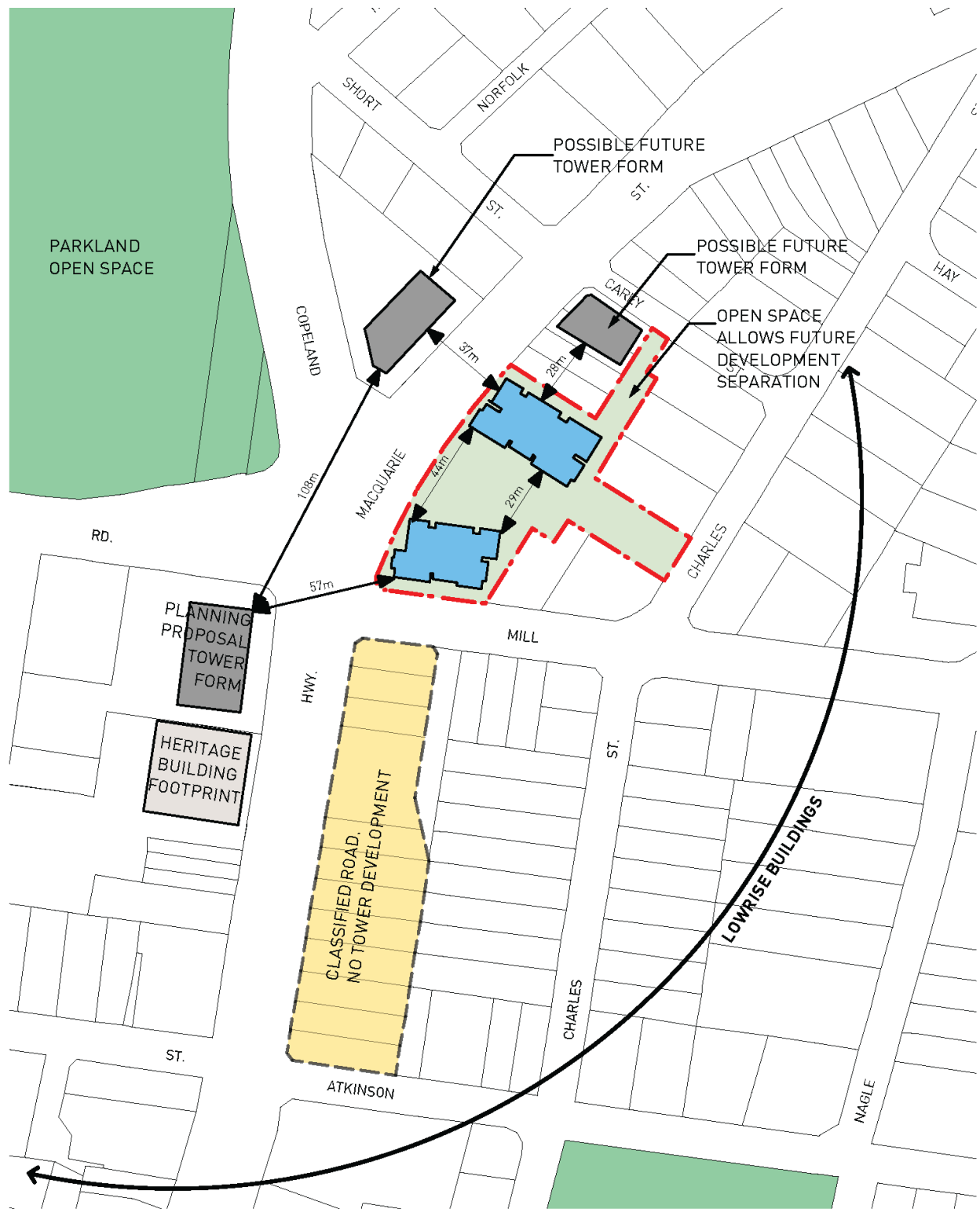
The unique location and range of factors influencing the outcome justifies a departure from the floor space ratio development standard in this circumstance due to the particular circumstance of the site's locality and context and the current and desired character envisaged for Liverpool City Centre

Council's approval of this variation to the floor space will not abandon and/or destroy the current development standards or give grounds for others to not comply.

The sketch on the following page illustrates some of those unique characteristics of this site including:

- Being very large with multiple street frontages thereby being capable of accommodating additional height and density while mitigating surrounding impacts
- Its unique spatial setting allowing generous separation to future built form
- It being an iconic gateway to the southern entrance of Liverpool City Centre.
- Its prominent appearance caused by large undeveloped land parcels including open space to the west, road reservation and low development to the south and east.
- The creation of open space to the Carey street frontage providing separation between Charles and Macquarie Street properties
- The land sits on a ridge and captures 360 degree views
- It being situated in close proximity to shops, Liverpool Railway station, bus routes 872,870,853,M90,T80 and State, arterial and sub-arterial roads/routes.

A development that strictly complies with the standard is unreasonable or unnecessary in this circumstance as no appreciable benefits would result to the nearby sites, or the wider locality whilst jeopardising the viability of the development as proposed including the varied floor space.



UNIQUE SPATIAL/LOCATION CHARACTERISTICS AND DESIRED FUTURE FORM OF LOCALITY



INDICATES SUBJECT SITE

SITE ADDRESS: 420 MACQUARIE STREET
LIVERPOOL

3.7 Is the development in the public interest?

As stated previously, clause 4.6(4)(a)(iii) states that “development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out...”

An assessment against the development standard’s objectives is set out above.

An assessment against the zone objectives appears below.

B4 Mixed Use Zone

(a) To provide a mixture of compatible land uses.

The proposal (including the varied floor space) provides a mixture of compatible land uses with residential use over retail uses at ground level.

(b) 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.

The site is within a highly accessible location within the defined Liverpool city centre and includes retail and residential floor space. The site is within walking distance of Liverpool Railway Station and Bus routes 872, 870, 852, M90, T80. The Mirambeena Chipping Norton Lakes Cycling Track is 500m away down Mill Road.

The proposed variation to floor space and the resultant increase in population will support the provision of a direct, equitable and safe lift and pedestrian access from the development to Carey Street. This will further encourage the use of more environmentally sensitive means such as walking and cycling. It will also further encourage the patronage of public transport as it will circumvent the need to use a more hostile and longer route from Macquarie Street to shops and Liverpool Train Station.

(c) 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 the development includes retail uses and residential lobbies at ground level which will activate the street.

The development includes retail uses and residential lobbies at street level which will activate the street.

Two lobbies are proposed along Macquarie Street. These will be constructed using high quality materials and be oversized to encourage their use thereby further assisting to activate Macquarie Street. The variation and the resultant population will increase the activation of the retail spaces and lobbies.

(d) To facilitate a high standard of urban design, convenient urban living and exceptional public amenity.

The design of the development is of high standard providing convenient urban living in close proximity to parklands, cycleways and public transport. The surrounding public domain will be renewed and the variation in height will create a slimmer more attractive tower form.

The variation in floor space will support the provision of larger lobbies, communal rooms, expansive landscape and paved open space areas, a pool, barbeque facilities, manager’s facilities and more over and above the standard of developments in Liverpool. These will deliver exceptional amenity for future residents.

SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501

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R4 High Density Residential zone

To provide for the housing needs of the community within a high density residential environment.

Comment: The development (with the varied floor space) will provide a range of housing within the proposed 438 apartments. The development will be in the form of high density residential, within the context of the Liverpool city centre and significantly boost affordable housing supply. The varied floor space will provide more apartments (approximately 60) to meet the needs of the community.

To provide a variety of housing types within a high density residential environment.

Comment: There are a total of 438 apartments, made up of 3 x 1 bedrooms; 393 x 2 bedroom; and 42 x 3 bedroom. Notwithstanding, the development has been designed in order to provide maximum flexibility in terms of apartments sizes and configurations, in order to deliver a wide variety of housing types and choice. A total of 271 studio/1 bedroom apartments are located within dual key apartments. This will significantly boost affordable housing supply to Liverpool.

The additional apartments resulting from the varied floor space will increase the supply of dual key apartments. These dual key apartments promote a diverse social mix to the development's population and responds to the investor and extended family demographic of Liverpool.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The varied floor space includes a flexible multi-purpose room, early learning centre for kids and ground floor retail spaces fronting Macquarie Street will service the day to day needs of the development and locality.

To provide for a high concentration of housing with good access to transport, services and facilities.

Comment: The provision of 438 apartments will deliver a high concentration of housing on a very large site within the Liverpool city centre, with good access to transport, services and facilities. The varied floor space increases the concentration of housing in close proximity to transport, services and facilities. The site is within walking distance to Liverpool railway station and bus routes 872, 870, 852, M90 and T80. The Mirrambeena, Chipping Norton Lakes cycle track is located at the end of Mill Road.

To minimise the fragmentation of land that would prevent the achievement of high density residential development.

Comment: The development is to occur on a large consolidated site which, due to its size, is capable of accommodating the scale and density of development proposed, while at the same time mitigating potential impacts on adjoining residential sites and the locality. Accordingly there is no fragmentation of land.

The varied floor space supports the viability of the development and thereby eliminates the need to subdivide/fragment and sever the R4 land as a separate parcel.

An assessment against the objectives of the development standard to be varied has been considered earlier. It was found that the objectives of the development standard are met by the development, as proposed, including the varied floor space.

Additionally, the development as proposed including the varied floor space will achieve better outcomes for the community as follows:

- By creating additional and a more affordable and diverse housing mix.
- By contributing to a diverse social mix and extended family unit, for Liverpool City, arising from the provision of more dual key apartments in this additional floor space.
- By generating additional section 94 funds and rates, which will improve local infrastructure, services and facilities for the benefit of all residents and visitors to Liverpool City.
- By supporting the availability of more housing within the Liverpool CBD in close proximity to public transport, employment and infrastructure, being consistent with the Sydney Metro Strategy.
- By supporting a new Liverpool design benchmark, which will exceed expectations and influence others to improve the quality of other future developments. This is achieved by the:
 - Provision of superior elevated, communal open space with views. It will consist of extensive planting and paving, barbecue facilities, a pool (and associated amenities), break out passive and active spaces.
Refer to montages in Appendix B
 - Provision of separated and equitable lift access throughout, providing access the external areas of the podium.
 - Superior public domain design and construction, including decorative paving and “Smart Pole” lighting.
 - Use of durable and maintenance free construction materials
 - Design and construction of high quality lobbies with better finishes and enhanced amenity. Refer to montage contained within Appendix D
 - Construction of internal communal spaces such as a multi-function room and learning centre for kids. Refer to montage in Appendix c
 - Design and construction of larger than minimum balcony sizes, both in area and dimensions.
 - Provision of more elevated apartments to take advantage of the superior views. Refer to montage contained in Appendix A.
 - Provision of additional innovative dual key apartments, which will promote a diverse social mix to the development’s population, responding to investor and the extended family demographic in the area.
 - Provision of efficient and modern waste handling systems including compaction and onsite pick-up (Buildings A and B) and exceeding the expected minimum waste standards.
- By supporting a better economic outcome from the development by providing additional investment and employment during the construction and throughout the life of the building. The success of this development will encourage further development in Liverpool and enhance its status as a Regional City.
- By supporting unique amenity and design features which will replace an inactive, vacant block of land within the Liverpool City Centre, thereby enhancing the streetscape.
- By supporting the viability of retail uses and enhance the activation of the street which result from the additional population.
- By supporting the patronage and maintain the viability of public transport whilst also encouraging more ecologically sustainable modes of transport such walking and cycling given the proximity to the City Centre.

- The increased population activates taller more slender tower forms and supports a highly visible iconic development for the local area and the surrounding region. It supports enhances this developments status as the gateway to the Southern entrance of the Liverpool City Centre.
- By supporting an efficient and modern waste handling system, including compaction and onsite pick-up (Buildings A and B), which exceeds the expectation of the mandatory planning controls. This compacted waste system will have the wider benefit of reducing long term landfill volumes and consequential environmental harm.
- By supporting a development with superior amenity which will in turn reduce the potential drain on local infrastructure, services and facilities.

4. Conclusion

Development standards are a means of implementing planning purposes for a development or area.

The varied floor space ratio is considered appropriate to the context and circumstances of the site, and positively contributes to the intended future built form / character for this location within Liverpool city centre (whilst still respecting the existing built form in Carey Street and Charles Street).

A development strictly complying with the numerical standard would not have any additional positive social or environmental impacts. Indeed a strictly complying development is unlikely to deliver the range of amenity and design quality outcomes that have been identified in this submission. The additional FSR proposed will allow this significant gateway development to occur, with resultant economic benefits.

The unique location and range of factors influencing the outcome justifies a departure from the floor space ratio development standard in this circumstance. Further the departure will not set a precedent as the combination of factors relating to the site and its uniqueness.

This development in its current form will be an iconic gateway which will promote and encourage the economic use and development of land not only in this location but for all land in the Liverpool CBD.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a) of the LLEP 2008 as it has been demonstrated that:

- compliance with the GFA/FSR development standard is both unnecessary and unreasonable in the circumstances of this case;
- there are sufficient environmental planning grounds to justify contravening the development standard; and,
- the proposed development, with the varied floorspace, will be in the public interest because
 - it is consistent with the objectives of the particular standard;
 - it is consistent with the objectives for development within the zone in which the development is proposed to be carried out; and,
 - it is consistent with the objectives of clause 4.6. In particular, it will support the provision of superior amenity and will achieve better outcomes for, and from the development, that otherwise would not be achieved by a compliant development.