

Request to vary Foreshore Building Line development standard under Clause 4.6 of LLEP2008

1 Foreshore Building Line development standard under Clause 7.9 of LLEP2008

The 'Foreshore Building Line Map' (Sheet FBL_0012) identifies the Foreshore Building Line for the site, as shown in Figure 1 below.



Figure 1: FSR Map

Source: Liverpool Council

The development has been sensitively designed to minimise any encroachment of the built form into the Foreshore Building Line. However, as illustrated in figure 2 below the eastern portion of Building B slightly encroaches the Foreshore Building Line in addition to some of the below ground basement.



Figure 2 – Ground floor plan with Foreshore Building Line in Black
Source: Woods Bagot

It is noted the standard does not necessarily have a numeric value allocated to vary however the Clause 4.6 variation has been provided as the proposed development slightly encroaches in the Foreshore Building Line.

2 Clause 4.6 of LLEP 2008

Clause 4.6 of the LLEP 2008 enables an exception to the development standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below:

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

3 Request to vary under Clause 4.6

The matters specified in Clause 4.6 of Liverpool LEP 2008 that are required to be addressed in the proposed contravention to the Foreshore Building Line are addressed below.

There are sufficient environmental planning grounds

There are sufficient environmental grounds for the slight encroachment of the Foreshore Building Line which are detailed below:

- It is noted that Clause 7.9 (2) (a) stipulates the following:
 - '(2) Subject to the other provisions of this Plan, development may be carried out, with development consent, for the purposes of a building on land in the foreshore area only if:
 - (a) the levels, depth or other exceptional features of the site make it appropriate to do so'

It is considered that the 'exceptional features' of the site make it appropriate to slightly encroach into the Foreshore Building Line. The site is heavily constrained by the existing heritage listed Mill Building, which is required to be retained for heritage conservation.

The proposed alignment and orientation of the two building envelopes has been designed around the heritage item. A public plaza has been created in front of the heritage item which provides an appropriate setting for the Mill Building and allows views to the Mills from surrounding buildings. The retention of the heritage item and provision of a public plaza restricts the building massing options and has pushed the built form towards the northern and eastern site boundaries and the interface with the Georges River. To ensure a reasonable development solution is achieved the rear building line of Building B is pushed slightly to towards Georges River which encroaches the Foreshore Building Line.

If the Foreshore Building Line was fully implemented and the Mill Building was retained with a public plaza created in front of the heritage item, the building footprint of Building B would be severely restricted and would effectively render the site



undevelopable. Therefore the slight encroachment of Building B within the Foreshore Building Line is considered to be acceptable in this regard;

- The rear setback of Building B complies with Council's minimum setback requirement of 6m while Building A exceeds this controls;
- The slight encroachment of the Foreshore Building Line allows for sufficient internal amenity to future residents of Building B. If the proposal was to comply with the Foreshore Building Line it would significantly reduce the floorplate of Building B and a high level of amenity would be difficult to achieve;
- The slight encroachment of the Foreshore Building Line will improve public access to the riverfront prepare and the land for the future Council boardwalk along Georges River; and
- The proposal incorporates a 30m riparian setback zone which is consistent with the Foreshore Building Line within the LLEP 2008. The riparian zone is heavily infested by weeds and is to be rehabilitated with the removal of the weeds and planting of native vegetation. Within the 30m riparian setback there will be no development proposed in the inner 50% of the zone while the slight encroachment of the outer 50% is off set by connecting an equivalent area to the riparian corridor within the development site.

The development will be in the public interest because it is consistent with the objective and requirements of the standard and objectives for development in the zone

Objectives of the Foreshore Building Line standard

The objective of Clause 7.9 is as follows:

'(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.'

Furthermore, Clause 7.9 (3) outlines the requirements the development must satisfy which are as follows:

(3) Development consent must not be granted to development referred to in subclause (2) unless the consent authority is satisfied that the development:

(a) will contribute to achieving the objectives for development in the zone in which it is to be carried out, and

(b) will be compatible in its appearance with the surrounding area, as viewed from both the waterway concerned and the adjacent foreshore areas, and

(c) will not cause environmental harm, such as:

(i) pollution or siltation of the waterway, or

(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, flora or fauna habitats, or

(iii) an adverse effect on drainage patterns, and

(d) will not cause congestion of, or generate conflicts between, people using open space areas or the waterway, and

(e) will not compromise opportunities for the provision of continuous public access along the foreshore and to the waterway, and

(f) will maintain any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land.



The proposed development is consistent with the objective and requirements of the Foreshore Building Line standard:

- Redevelopment of the site for residential dwellings and local retail uses contributes to achieving the zone objectives for the R4 zone and implementing Council's vision for the Liverpool City Centre. The development will provide high quality residential development and contribute towards Liverpool Council's housing targets. The development will also provide local business services and employment opportunities through the adaptive reuse of the Heritage Mill Building;
- The subject area is undergoing transition from low-density industrial to high-density residential. Although not strictly compatible with the existing surrounding area, it will be compatible in appearance with the surrounding area once developed, including the proposed development at 28 Shepherd Street, which is currently being assessed. Importantly, the proposed development is compatible with the current R4 zoning, for high-density residential;
- The development has been sensitively designed and is accompanied by a number of specialist environmental reports including stormwater and fauna and Riparian management to ensure it will not cause environmental harm. The vegetation in the current foreshore area currently comprises of mainly noxious and environmentally invasive weeds and vines. The redevelopment of the site will allow the riparian component of the riverbank to undergo best-practice bush regeneration and rehabilitation, which will improve the health of the ecosystem and surrounding vegetated areas. This will improve the environmental outcomes of the existing area;
- The subject site is separated from the waterway by a steep bank. The development will not cause congestion or generate conflicts between people using open space areas or the waterway; and
- The proposal has been assessed both in terms of European and Aboriginal heritage and is found to be acceptable. This has been discussed in detail in previous Heritage Reports submitted to Council in support of the application.

Objectives of the zone

The objectives of the R4 High Density Residential Zone are as follows:

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

The proposal is consistent with the objectives of the R4 High Density Residential zone for the following reasons:

- The proposed development will make a substantial contribution towards the housing needs of the community by providing 250 new residential dwellings at appropriate prices within a high density residential environment with significant communal infrastructure on site;
- The development provides a variety of housing types including 1,2 and 3-bedroom units and townhouse style dwellings;



- The development of new residential dwellings will encourage the provision of other land uses such as local shops and retail to provide facilities and services to meet the day-to-day needs of residents;
- The adaptive reuse of the Heritage Mills Building will provide for local non-residential uses to support and revitalise the surrounding area;
- The proposed development has good access to transport including Liverpool and Casula Train stations and local pedestrian, cycling and bus routes; and
- The proposed development prevents the fragmentation of the site to prevent the achievement of high density residential development.

Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

The public benefit of maintaining the Foreshore Building Line standard

In the circumstances, there is no significant benefit in maintaining the Foreshore Building Line standard as the contravention facilitates the following public benefits:

- The proposal retains the Mills Building which is important to the heritage conservation of the locality;
- The proposal incorporates a public plaza which allows for community interaction;
- The proposed plaza and massing provides a strong visual and physical connection from the public plaza to the riverfront;
- The proposal will improve access to the riverfront for the public;
- Improved transition and massing from Shepherd Street to the riverfront;
- High quality architectural design to provide good quality residential accommodation within the Liverpool City Centre; and
- Better site layout with respect to building setbacks and site coverage.

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

- There are sufficient environmental planning grounds to justify the contravention to the Foreshore Building Line standard as demonstrated;
- The proposed development is nevertheless consistent with the objective and requirements of the Foreshore Building Line standard and R4 High Density Residential Zone as described above;
- The contravention of the Foreshore Building Line standard does not raise any matter of State or regional planning significance; and
- There is no public benefit in maintaining the standard in the circumstances of the case as explained above.

Conclusion to exception to Foreshore Building Line standard

This written request for an exception to the Foreshore Building Line standard under Clause 4.6 of the Liverpool LEP 2008 justifies the contravention to the standard in the terms required under clause 4.6 of the LEP. The requests demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts, and therefore the proposed variation to the Foreshore Building Line development standard meets the requirements of Clause 4.6 of the LEP2008.

