

FOOTPRINT OF 1500x1500mm
HEIGHT OF 3000mm
MATERIALITY - STEEL



5 MARKHAM PLACE, ASHFIELD
SCULPTURE/PUBLIC ART ELEMENT
NTS.
16.06.2015

**Proposed Residential Mix Development
At
5 Markham Place & 7-9 Cavill Avenue, Ashfield**

**For
Ganghui Pty Ltd**

**SEPP 65 Design Verification
Statement**



**SUBMITTED FOR DEVELOPMENT APPLICATION
JUNE 2015**

REVISION A

Page 1 Of 1

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Table of Contents

1. SEPP 65 Design Verification Statement	2
2. Introduction	3
3. Aims and Objectives of SEPP 65	4
4. Design Quality Principles	5
Principle 1- Context	
Principle 2- Scale	7
Principle 3- Built Form	8
Principle 4- Density	10
Principle 5- Resource, Energy & Water Efficiency	11
Principle 6- Landscape	12
Principle 7- Amenity	13
Principle 8- Safety and Security	15
Principle 9- Social Dimensions	16
Principle 10- Aesthetics	17

1. SEPP 65 Design Verification Statement

My full name is Susan Teng. I am a director of H3 Architects, an architectural firm established in 1979.

I hold the following qualifications:
Bachelor of Architecture, HonsII Div I, UNSW 1992
Registered architect NSW Chapter

I have 22 years practical experience in architecture . It is my professional opinion that the proposed development complies with the Principles detailed in SEPP 65. Where the proposal varies from the Residential Flat Design Code's rules of thumb applied to assessing various elements, justification is provided in the submitted SEPP 65- Compliance Table.

This statement has been prepared on behalf of Ganghui Pty Ltd to support the proposed development application to be submitted with Ashfield Council for 5 Markham Place & 7-9 Cavill Avenue, Ashfield.

This statement addresses the 10 Design Quality Principles set out in SEPP 65 and then addresses the rules- of- thumb contained in the Residential Flat Design Code (RFDC). Consideration for the draft Residential Flat Design Code was also made in preparing this statement.



.....
Susan Teng (reg: 8972)
Director H3 Architects

01 June 2015

Dated:

2. Introduction

As part of the Development Application to Ashfield Council for this project, this SEPP 65 assessment of the proposal is provided in accordance with the Design Quality principles as set out in Part 2 (Sections 9-18). A summary of the principles set out in section 8 include the following:

- Good design is a creative process which, when applied to towns and cities, results in the development of great urban places: buildings, streets, squares and parks.
- Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas.
- Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges.
- The design quality principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

This assessment seeks to consider the SEPP 65 guiding principles in determining the quality of the proposed residential mix development design as depicted in H3 Architects drawings and accompanying supporting consultants drawings.

3. Aims and Objectives of SEPP 65

The SEPP 65 Policy aims to improve the design quality of residential flat developments in New South Wales.

This Policy recognises that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high quality design.

Improving the design quality of residential flat development aims:

(a) to ensure that it contributes to the sustainability development of New South Wales:

(i) by providing sustainable housing in social and environmental terms, and

(ii) by being a long term asset to its neighbourhood, and

(iii) by achieving the urban planning policies for its regional and local contexts, and

(b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and

(c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and

(d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and

(e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.

4. Design Quality Principles

Principle 1- Context

Principle:

Good design responds to and contributes to its context. Context can be defined as the key natural and built features of an area.

Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality of an area (SEPP 65, page 7.)

Comments:

The subject site is located within Ashfield Council's Town Centre. The site includes a frontage to Markham Place to the south and Cavill Avenue to the west. The eastern boundary is shared with an existing 10 storey high residential mix development. The northern boundary is shared with the rail corridor. A row of mature trees of varying species and height provides screening from the site to the rail corridor.

The northern side of Markham Place is characterised by predominantly 2 to 3 storey commercial buildings whose primary loading access is via the northern side of Markham Place.

Cavill Avenue is characterised by predominantly older brick single and two storey cottages and flats.

The context for the site varies for the two street frontages. The desirable elements of Cavill Avenue is for the proposed development to respond to the lower scaled buildings evident along Cavill Avenue and to provide a proposal which addresses the street.

In this regard, the proposal addresses the context through the implementation of a row of terrace style units with frontage to Cavill Avenue and providing a podium for the main residential tower. Generous landscaping and courtyards along Cavill Avenue creates a pleasant streetscape, provide privacy to the ground floor units and softens the development in the backdrop.

The context of form and scale are important for the Markham Place and Cavill Avenue streetscape and the proposal responds to this with a combination of suitable rendered masonry and metal clad facade of colours which are contemporary and sympathetic to the existing context.

Ashfield Council's vision for this laneway is to revitalise and inject a new sense of place as part of the Town Centre DCP. Part of this vision is to create a public domain on the southern side of Markham Place and provide a pedestrian friendly access path between Cavill Avenue and Ashfield Train Station approximately 300m away.

The proposal responds to this by removing the vehicular ingress and egress point Markham Place and locating it off Cavill Avenue allowing for a pedestrian open space with new landscaping, seating and retail fronts to activate the new public domain.

A variety of balconies and roof terrace over retail spaces allows visual interaction, provides casual surveillance and activation to the public domain.

Principle 2- Scale

Principle:

Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.

Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of an area.

Comments:

The current Markham Place streetscape with the exception of 17-20 The Esplanade is comprised of a mix of 2 and 3 storey buildings. The development immediately adjacent to 5 Markham Place (17-20 The Esplanade) is a 10 storey residential development.

The precinct is undergoing a transition which is reflected in Ashfield Council's LEP 2013 and Ashfield Town Centre Renewal Plan permitting increased density and height within the Town Centre and the revitalisation of key laneways and gateways.

The development proposal responds not only to the existing character of the existing streetscape but also to the desired future character through the podium/tower form. The residential tower has a proposed 12m setback from Markham Place to provide a public domain space aligned to the provisions of Ashfield Council's Town Centre Renewal Plan.

Articulation to the first 2 storey provides a podium form which wraps around the public domain space to the west and south containing the public domain space.

The scale of proposed terrace style units with frontage to Cavill Avenue responds to the the low rise developments on Cavill Avenue.

The proposed development terraces away from the adjoining residential development to maintain good solar access and separation to ensure that existing amenities of privacy and outlook is maintained.

The proposed development includes an activated open space on the ground floor and first floor podium linked with an external stair to the east. podium to the east as well as on the ground floor.

A low key treatment of the roof top plantroom is proposed so as not to detract from the design of the main building. A metal screen encapsulates the plantroom to provide an architectural treatment to the roof top of the building to screen this from the street level and from neighbouring buildings. This screen is based on the geometry of the feature walls and privacy screens featured on the western facade providing consistency in form and design of the overall building.

Principle 3- Built Form

Principle:

Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comments:

The site for this mixed use development is set within the Ashfield Town Centre. An established pedestrian link between Markham Place and Liverpool Road is available adjacent to the building at 317 Liverpool Road. The proposal comprises an active street front by way of retail space and work/live units framing the new public domain space. New seating and landscaping will allow for a space for people to stop and rest. Good articulation over a 2 storey height provides a human scale whilst the landscape at the edges of the first storey softens and provides an aesthetically pleasing cap to the first storey podium.

A highly considered response refers to the specific context of Markham Place and surrounding buildings in materiality, alignments and proportions makes the proposal a contemporary and appropriate addition to this streetscape.

The residential tower is accessed via a large lobby located off Markham Place and the new public domain to the south through glass doorways. The wide lobby allows for the interior space to be designed as a meet and greet space interspersed with seating and green landscape. The lobby is intended to be designed as an internal street. The northern end of the lobby is met with a full height and full span glazed wall providing outlook to a focal reflection pool. The pool detracts from the rail corridor and allows light to be reflected into the building.

The residential tower is of rectilinear form that mirrors the proportions of existing buildings in the precinct. Punctuations of strategically placed splayed walls to the Cavill Avenue units provides visual interest and angled to allow good solar penetration to the living rooms. Balconies and living room windows to the central units located to the east are angled to reflect the built form on Cavill Avenue, provide privacy between the units, direct outlook away from windows of the adjoining property and increase solar access to the living rooms. The finishes, grains and positioning of openings, balconies and louvres creates an interesting, articulated and strong textured facades both on Markham Place and Cavill Avenue.

Blank walls are treated as canvases for graphic relief to provide visual interest. Abstract eucalyptus prints reflects the existing eucalyptus trees to be retained on the site and the privacy screens. The 3 storey masonry facade at the corner of Markham Place and Cavill Avenue wraps around and morphs into the low masonry fence for the terrace units providing a well considered transition from Markham Place to Cavill Avenue.

The built form to the north addresses the issue of noise emitted from the rail corridor. Winter garden enclosures of glass louvres provides natural light and reduces noise nuisance.

Good articulation of a high quality finish provides visual interest when viewed from the north.

Principle 4- Density

Principle:

Good design has a density appropriate for a site and its context in terms of floor space yields (or number of units or residents)

Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing transition, are consistent with the stated desired future density. Sustainability densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality (SEPP 65, page 8)

Comments:

The proposed density of the development is consistent with the floor space yields for the site as determined by Ashfield Council. The proposed design creates a strong urban form consistent with the desired future density within the Ashfield Town Centre. The site is located approximately 300m to the train station, bus stops along Liverpool Road, existing community facilities and infrastructure.

Principle 5- Resource, Energy and Water Efficiency

Principle:

Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.

Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and re-use of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and re-use of water.

Comments:

The proposed residential units exceed the 70% benchmark for solar access to units recommended in SEPP 65. Cross ventilation is achieved to 67.40% of the apartments exceeding the 60% requirement.

The accessibility of the site to major public transport also reduces the carbon footprint of the development by reducing the necessity of owning a private motor vehicle or reduce the use of private vehicles on a daily basis.

The project has embedded sustainability into the design with a comprehensive focus including resource, energy and water efficiency. This will be realised through passive features including building orientation, the maximisation of solar access through the implementation of appropriately sized facade openings, utilisation of high performance facade materials and use of ceiling fans to minimise operation of air conditioning will be considered.

Natural light and ventilation will be provided in the common lobbies at every floor via operable windows. The design of this project also aims to focus on water efficiency and resource conservation with an aspiration to use high rated, low consumption fixtures and fittings.

A minimum of 25 square metres of solar panels are proposed to be mounted on the roof to provide electricity to service the common areas.

The design has a focus on quality of space, amenity and indoor environmental quality. This includes glazing and orientation to minimise glare and ensure thermal comfort for occupants.

Every floor is provided with access to a garbage chute and a co-mingled recycling bin is provided on every floor to encourage the sorting of general waste and reduce the amount of waste going to landfill sites.

Soft landscaping to the podium deck will reduce the heat gain resulting from heat reflecting off hard surfaces and provides a cool green space for the residents to use.

Principle 6- Landscape

Principle:

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, microclimate, and tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

Landscape design should optimise usability, privacy and social opportunity, equitable access and respect for neighbours amenity and provide for practical establishment and long term management.

Comments:

The proposal includes a landscaped open space on the ground level and first floor podium located to the east. A void linking the ground floor and first floor open space allows good ventilation to the ground floor units, allow natural light to the communal meeting room and corridors as well as provide a pleasant outlook from the ground floor units. The proposed external stair linking the 2 levels of common open space ensures that the space is used to it's full potential. The increased accessibility for the residents encourages integration and encourages the space to be utilised.

It is envisaged that the communal meeting room can be booked for small gatherings by the residents thus encouraging the common open with it's outdoor kitchen facilities to be utilised and the landscaped garden appreciated. Seating is provided at various intervals to encourage maximum use of the space by residents.

Principle 7 – Amenity

Principle:

Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.

Comments:

The location and site context precludes the the ability of the design proposal to achieve a minimum of 3 hours solar access to a minimum of 70% units. Given the site constraints and it's location in the Town Centre (characterised by increasing high density developments), the proposal achieves a minimum of 2 hours solar access to 79% of the total number of units.

Cross ventilation is achieved to 67.4% of the total number of units.

The apartment layouts and orientation of rooms are designed to include the primary living and dining spaces to the perimeters for maximum solar access and provide outlook. Appropriate room dimensions are adopted to allow for furnishing layouts and circulation paths to work together within the adopted apartment floor plate.

Bathrooms and utility rooms are clustered in close proximity within apartments and aligned above each other wherever possible to minimise plumbing runs and maximise ceiling heights.

A minimum 50% storage space required under the Residential Flat Design Code is provided within each unit, with the remaining storage space allocated in the basement carpark.

The design of the building maximises privacy between the apartments within the development as well as ensuring privacy between the proposed apartments and that of the existing adjoining properties. This is achieved through distance separation which is in accordance with the Residential Flat Design Code and in some circumstances exceed the separation distance requirement.

Privacy has also been considered through the deliberate orientation and placement of window openings away from openings of an adjoining unit.

Good solar access is maintained to the adjoining residential apartment with the majority of units having access to a minimum of 2 hours solar access. One unit located on the podium deck (corner of Markham Place and the east boundary) will receive 1 hour and 45 minutes of solar access. Whilst this is 15 minutes short of the desired 2 hours, in the context of the site being located in the Town Centre and in an area of increased density, it is considered acceptable.

100% of the apartments are provided with private open space, all with a minimum of 2m in depth for good outdoor usability. All apartments have a private open space which is accessible from a lounge room.

Common Circulation Space

Common circulation spaces include a 1.8m width to the lift lobbies and 1.55m to the remaining corridors. Natural light and ventilation is achieved to the common area lift lobbies via operable windows.

All common shared space and landscape gardens are highly accessible. Transportation of waste bins and retail goods to the ground level for pick up has been considered with the provision of a goods hoist.

Convenience

The location of the site maximises the use of public transport given the proximity of the site to many forms of public transport such as trains, buses and taxis. The development also provides adequate bicycle parking bays for the convenience of residents and staff. Each apartment floor has direct access to a garbage chute. Private storage is also provided for the residents in the basement levels.

Principle 8 – Safety and Security

Principle:

Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non- visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.

Comments:

The main entry to the lift lobby has direct access from the public domain and is highly visible from Markham Place. Retail shop fronts are aligned to define the public domain space; deep recesses have been avoided to discourage loitering in non visible areas and prevent areas where potential crime can occur. Adequate lighting will be proposed to facilitate a safe environment at night.

Balconies overlooking Markham Place encourages casual surveillance of the area and promotes safety through passive design.

Access to the residential tower will be via a security system at the lift lobby entry door fitted with audio/visual intercom and entry to the lobby will be via card or pin to release the door.

The loading bay and driveway will be accessed by remote control activated panel lift perforated garage doors to provide security to the residents and prevent access to the building via the carpark.

Each floor may be fitted with a CCTV camera to facilitate safety and surveillance of the common lobby areas.

The footpath along the Markham Place/Cavill Avenue junction is proposed to be widened to 2.4 metres to allow greater pedestrian safety and improve the amenities leading to the public domain space.

Principle 9 – Social dimensions

Principle:

Good design responds to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities.

New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for desired future community.

Comments:

The apartment mix caters for a range of household and demographic group. The proximity to public transport and the CBD is attractive for young couples and those with children who wish to work close to their workplace. The location is also ideal for elderly couples who may wish to downsize- convenience to local shops, restaurants, community facilities such as medical care, libraries and social venues is desirable for those who are dependant on public transport and walking.

10% of the total number of units (9 units) have been allocated as adaptable units which can cater for people with disabilities. The passenger lift and lobbies provide easy access and allows manoeuvrability for wheelchairs comfortably.

The proposal provides for bicycle parking and motorcycle parking in the basement to cater for various transportation modes needs of the community and encourages a sustainable means of transportation within the Ashfield area.

An activated common open space over 2 storeys is provided for the enjoyment of the residents.

Small retail shops and work/live units concentrated around the public domain space will attract local businesses to cater for the needs of the community and will facilitate the activation of the public domain.

Principle 10- Aesthetics

Principle:

Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of an area.

Comments:

The proposal responds to quality aesthetics in the composition, scale and materiality of the podium and residential tower. All proposed facades in particular the treatment of the Markham Place and Cavill Avenue facade, responds to the scale and general composition of existing buildings in the vicinity.

One of the key desirable element of the site for Ashfield Council is the creation of a new public domain space for the community. In response to this, the driveway is located to Cavill Avenue to maximise pedestrian usage of the public domain and remove the conflict between vehicular access and pedestrian usage along Markham Place. Strategically placed building elements, openings and retail shops helps to contain the space, activates the domain and allows for a hub catering for good interaction between future developments in the immediate vicinity of Markham Place. The building scale and aesthetics responds to H3 Architects' desire to provide Ashfield Town with a new residential mix development which is modern; of a high quality finish and contributes to the quality of living for the residents and community.

The well articulated Markham Place facade establishes a 2 storey podium with lush landscaping generating a positive contribution to the public domain which extends vertically beyond the ground level giving definition to the space appropriate to the human scale. Metal clad feature walls and elements adds visual interest and reduces the scale of the bulk.

Intricate abstract relief reminiscent of eucalyptus leaves are proposed to blank walls featured around the development. The same graphic pattern is replicated on the external sunshade louvres to the western facade.

An attractive glass clad ground floor entrance communicates a prominent element at the ground level and provides wayfinding for both residents and visitors to the main building entry. Backlit building signage is intended to the prominent stair wall adjacent to the retail shop located to the west-illumination serves to provide a safer environment around the domain space at night.

The integration of various materials, textures and colour provides for an attractive, contemporary building in Ashfield which is desirable and meets the broad aims and objectives of Ashfield Council's LEP 2013.

15 June 2015

General Manager
Ashfield Council
260 Liverpool Road
ASHFIELD NSW 2131

RE: DEVELOPMENT APPLICATION – PROPOSED MIXED USE DEVELOPMENT AT 5 MARKHAM PLACE AND 7-9 CAVILL AVENUE, ASHFIELD

FORMAL REQUEST UNDER CLAUSE 4.6 OF THE ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013 TO VARY THE DEVELOPMENT STANDARD FOR HEIGHT UNDER CLAUSE 4.3B(3) OF THE ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013

Dear Sir/Madam,

1.0 INTRODUCTION

This letter has been submitted in connection with Council's assessment of the proposed development at 5 Markham Place and 7-9 Cavill Avenue, Ashfield for a "mixed use redevelopment" involving a residential flat building component and a minor variation sought under Clause 4.3B(3) of the *Ashfield Local Environmental Plan 2013* (**ALEP**), namely:

- A variation to a minor portion of the proposed building which breaches the 12 metre height limit for the part of the building which is within 12 metres of the boundary to Markham Place at the south-east corner of the site. As the facade of the proposed mixed use building is straight and the majority of southern edge of the building is set back more than 12 metres from the boundary to Markham Place, it is considered that the majority of the development is compliant with Clause 4.3B and that the variation is minor. **Figure 1** below demonstrates the minor extent of the non-compliance.

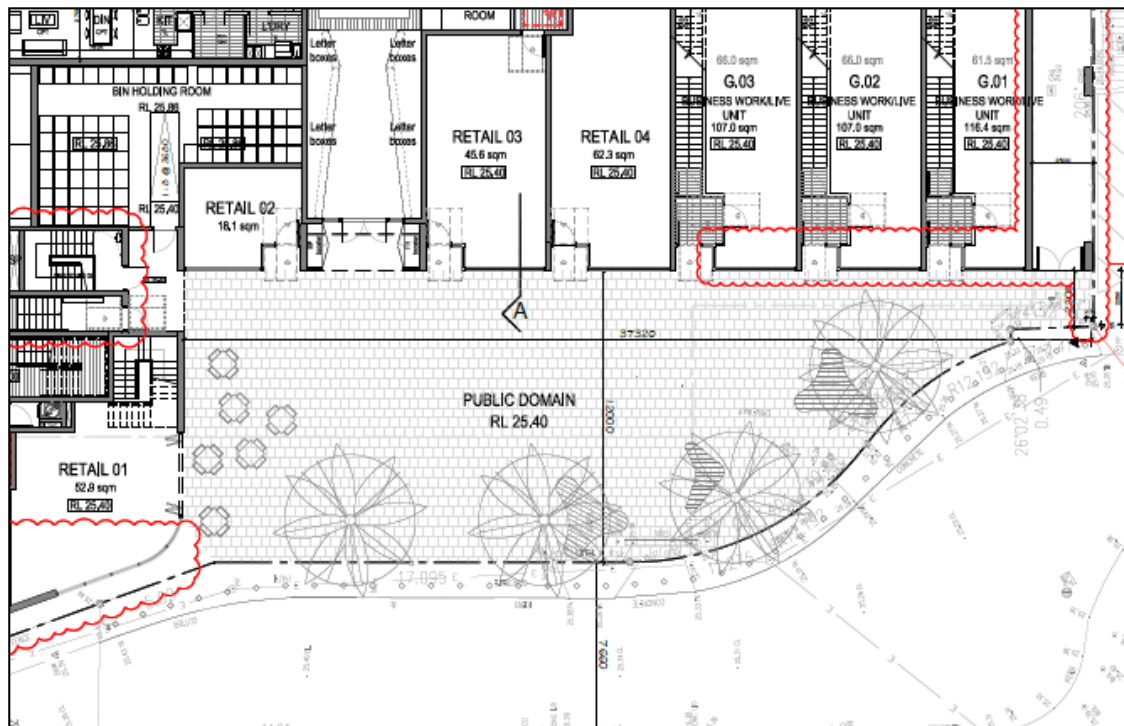


Figure 1: Extract from proposed Ground Floor Plan

This letter forms a request to grant an exception to the development standard in Clause 4.3B(3) of the ALEP under Clause 4.6 "Exceptions to development standards" of the ALEP.



1.1 Environmental Planning Instruments

Clause 4.6 of the ALEP states:

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.*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

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

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

(7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning*

Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

Clause 4.3B(3) of the ALEP contains a development standard controlling maximum building height, which states as follows:

4.3B Ashfield town centre—maximum height for street frontages on certain land

- (1) The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.
- (2) This clause applies to land identified as “Area 1” on the [Height of Buildings Map](#).
- (3) Despite clauses 4.3 (2) and 4.3A (3), the maximum height of that part of a building that has an entrance or lobby on the ground floor facing Liverpool Road, Norton or Hercules Streets or Markham Place, Ashfield (a **primary street frontage**) is 12 metres for a distance of 12 metres from the primary street frontage away from the road.

Under the Height of Buildings Map of the ALEP, the subject site is affected by Clause 4.3B(3).

This Clause 4.6 variation request relates to a departure from a numerical standard set out under Clause 4.3B(3) of the ALEP Height of Buildings Map. The Clause stipulates that the maximum building height for a building within 12 metres of the primary street frontage is 12 metres for that part of the building. The Clause constitutes a “development standard” as defined under section 4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**). The proposed development seeks the following variation:

- The overall height of the proposed development is compliant with the overall height limit of the site of 23 metres (inclusive of the bonus provided under the ALEP), however a minor portion of the building encroaches into the 12 metre primary street frontage referred to in Clause 4.3(B). The non-compliance is the result of the front boundary of the site along Markham Place curving north towards the development at the south-east corner of the allotment (the boundary curves to accommodate the cul-de-sac curve at the end of the two-way portion of Markham Place).

As the facade of the proposed mixed use building is straight and the majority of southern edge of the building is set back more than 12 metres from the boundary to Markham Place, it is considered that in the main the development is compliant with Clause 4.3B and that the variation is minor. **Figure 2** below demonstrates the minor extent of the non-compliance.

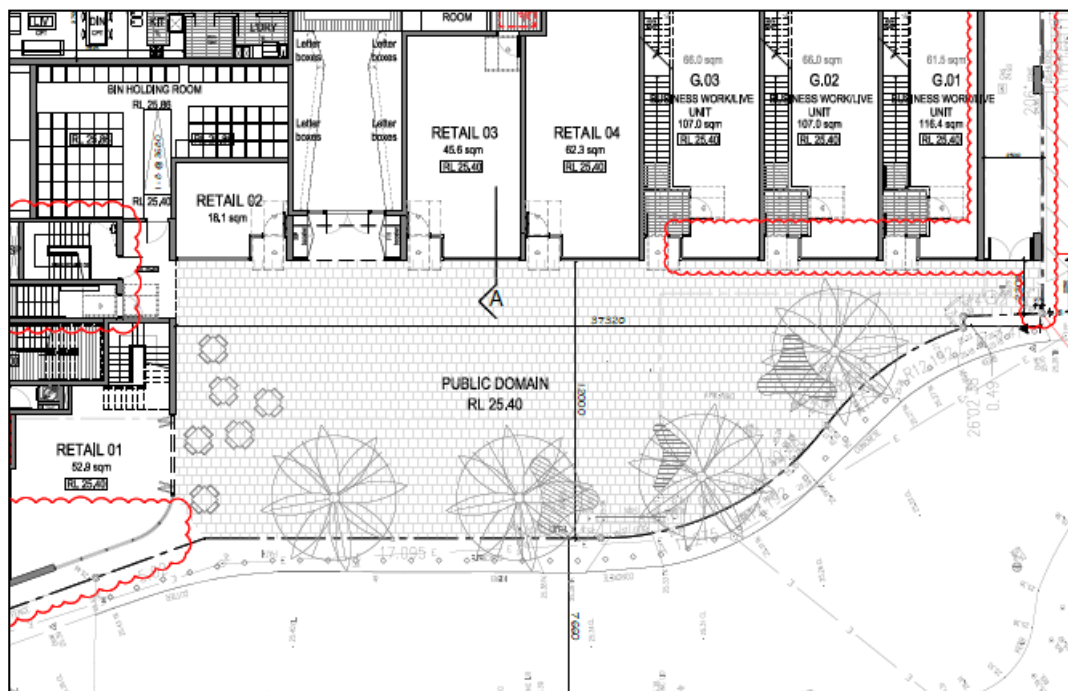


Figure 2: Proposed Ground Floor Plan



2.0 DEVELOPMENT STANDARDS

2.1 Clause 4.3B(3) Ashfield town centre – maximum height for street frontages on certain land

Based on the provisions of Clause 4.3B(3) of the ALEP, a 12 metre maximum building height is to be observed for the part of a building within a distance of 12 metres from the Markham Place street frontage (where that building has an entrance or a lobby on the ground floor facing Markham Place).

The drawing information demonstrates the entrance/lobby faces Markham Place, where a variation is sought of the maximum height for street frontages on certain land development standard in Clause 4.3B(3) of the ALEP.

To comply strictly with Clause 4.3B(3) under the ALEP, the proposed development would require a curved facade and a therefore a diminished floor plate of the apartments which front Markham Place. The proposed building footprint has not been designed to align with the curve of the street frontage to Markham Place.

Therefore, the proposal does not strictly comply with the maximum height for street frontages permitted on the subject site in accordance with the provisions set out in the ALEP.

This formal Clause 4.6 request seeks to vary the provisions of Clause 4.3B(3) of the ALEP in the circumstances of this case, as the strict application of the standard is unreasonable and unnecessary and will not result in a departure from the standard which is not in the public benefit, but rather is consistent with both the stated and intended outcomes and objectives sought by the ALEP for the development of land such as the subject site.

3.0 REASONS FOR NON-COMPLIANCE WITH DEVELOPMENT STANDARDS

There are a number of reasons for the non-compliance with Clause 4.3B(3) of the ALEP and these factors when combined, have contributed to the design as proposed:

- Accommodating the curved street alignment of Markham Place would be a challenging design for the building both in construction and cost. Therefore the building presents as a straight facade to Markham Place;
- The intention to create an appropriate streetscape to Markham Place will still be achieved by the proposed development despite the non-compliance, in that the majority of the facade complies;
- The setback of the facade to Markham Place is a similar setback/alignment as the building to the immediate east and its alignment to Markham Place; and
- To minimise impacts on adjoining properties views and outlooks.



4.0 ASSESSMENT OF THE PROVISIONS OF CLAUSE 4.6 “EXCEPTIONS TO DEVELOPMENT STANDARDS”

The provisions of Clause 4.6 “Exceptions to development standards” under the ALEP provide the determining authority with the flexibility to vary a development standard where the circumstances of the development demonstrate that an exception to the development standard will maintain the objectives of the standard and the development achieves a better outcome.

The provisions of Clause 4.6(1) and (2) of the ALEP states:

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 development standard that is expressly excluded from the operation of this clause.*

...

Clause 4.6(3) further states:

- (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.*

The provisions of Clause 4.6(3)(a) and (b) have been considered in the preparation of this exception request to vary the development standard as set out in Table 1 below.

Table 1: Clause 4.6(3) assessment

Objective	Comment
<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</i>	<p>Strict application of the development standard is considered to be unreasonable and unnecessary as the proposed development will be consistent with the stated aims of Clause 4.3B of the ALEP:</p> <p><i>(1) The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.</i></p> <ul style="list-style-type: none"> • In light of the objective above which clearly encourages a flexible approach to compliance with design principles where the design of the development responds to the site and its form, strict compliance with the standard under Clause 4.3B(3) is unnecessary because: <ol style="list-style-type: none"> a. Only a minor part of the development exceeds the development standard; b. The majority of the development, and in particular the street edge of the portion of the proposed residential flat building development at Markham Place presents as 12m/3 storeys which is compliant with the development standard; c. The design of the building results in a better outcome in relation to Markham Place which includes a significant public domain; d. The amended design provides for an improved public domain with



	<p>the widening of the footpath to Markham Place to 2.4m, which has involved setting back the proposal at the Markham Place frontage by a further 1.2m; and</p> <p>e. The proposed development does not result in a significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties.</p> <ul style="list-style-type: none"> • Strict compliance with the development standard is unnecessary as the development will still achieve the environmental and planning objective of Clause 4.3B(1), as discussed above. <p>Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development standard and would not bring about a good planning outcome, on the following grounds:</p> <ul style="list-style-type: none"> • The height of the proposed development is consistent with surrounding desired future character in the B4 Mixed Use zone along Markham Place and Cavill Avenue; • The proposed development is considered to be compatible with the streetscape along Markham Place and Cavill Avenue and will provide a direct public benefit in the public domain along Markham Place; • The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscape; and • The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible. <p>For these reasons it is considered that strict application of the height standards is unreasonable and unnecessary in this circumstance, particularly given that the non-compliance is minor and there are no impacts flowing from the non-compliance.</p>
<p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</i></p>	<p>The exceedance of the development standard for a minor part of the built form is primarily to ensure the design is consistent with the existing streetscape and provides for a regular façade.</p> <p>The minor non-compliance with the development standard is far outweighed by the majority of the development achieving the objective in Clause 4.3B. In promoting the principles outlined in the Sydney Regional Growth Plan – <i>A Plan for Growing Sydney</i>, the development promotes a use in an urban area which supports:</p> <ul style="list-style-type: none"> • Existing urban housing; and • Increasing housing densities within the set FSR under the ALEP. <p>In this regard, the development is also consistent with State and regional objectives.</p>



5.0 ACHIEVING THE UNDERLYING OBJECTIVES OF THE STANDARDS

Clause 4.6(4) of the ALEP states:

- (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.*

It is considered that the variation still achieves the stated objectives of the standard:

- (1) *The objective of this clause is to apply a maximum height for primary street frontages on certain land in Ashfield town centre.*

The proposed development achieves the above stated objective for the reasons stated in **Table 1**, notwithstanding a minor portion of the development being non-compliant with the height standard. In summary:

- The main street frontage does not result in any abrupt change in the streetscape and is compatible with the adjoining neighbourhood. This is evidenced by the fact that the Markham Place frontage and setback in the design does not adversely impact on any adjoining property or heritage item;
- The amenity of the public domain is preserved and the surrounding areas are retained; and
- Visual privacy, sunlight access is retained whilst minimising overshadowing.

6.0 CLAUSE 4.6(5) CONSIDERATIONS

Clause 4.6(5) of the ALEP states:

- (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.*

The matters for consideration in clause 4.6(5) have been addressed in table 2 below.

Table 2: Clause 4.6(5) assessment

Matter of Consideration	Comment
<i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning</i>	The minor non-compliance with the development standard does not raise any matters of significance for State or regional planning as the development meets the underlying objectives of the development standards.
<i>(b) the public benefit of maintaining the development standard</i>	As the development substantially complies with the stated objectives of the development standard, there is little utility in requiring strict compliance with the development standard for an otherwise compliant development. There is no public benefit of maintaining the development standard in this circumstance.
<i>(c) any other matters required to be taken into consideration by the Director-General before granting</i>	It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately addressed as part of this Clause 4.6 variation request.



7.0 CONCLUSIONS

The Clause 4.6 variation request to Clause 4.3B(3) of ALEP should be supported on the basis that the strict application of the development standard to the residential flat building component of the proposed mixed use development is both unreasonable and unnecessary given that:

- Only a minor part of the development exceeds the development standard;
- The majority of the development, and in particular the street edge of the portion of the proposed residential flat building development at Markham Place presents as 12m/3 storeys which is compliant with the development standard;
- The design of the building results in a better outcome in relation to Markham Place which includes a significant public domain;
- The amended design provides for an improved public domain with the widening of the footpath to Markham Place to 2.4m, which has involved setting back the proposal at the Markham Place frontage by a further 1.2m; and
- The proposed development does not result in a significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties.
- The development meets the stated objective of Clause 4.3B.
- The bulk and scale of the future surrounding development has been considered carefully, the proposed development is considered to be compatible with the streetscape along both Markham Place and Cavill Avenue and the public domain, given the following:
 - The design is complementary to the streetscapes and will not impact on the available solar access to the adjoining residential properties;
 - The minor non-compliance will not impact on any heritage item, will accommodate the minimum floor levels required for flood planning; and
- The setback of the proposed development is consistent with character of surrounding development;
- The development will not generate any adverse traffic impacts and therefore the variation does not result in the intensification of the land outside of what is permissible development; and
- There will not be any detrimental overshadowing of adjoining properties, loss of privacy for adjoining properties nor will there be any adverse visual impacts upon the streetscape or the public domain given the area of non-compliance is in a small portion of the development and one that does not dominate the streetscape.

For the reasons set out above, the development should be approved with the minor exception to the numerical height standard in Clause 4.3B(3). Importantly, the development as proposed achieves the stated objectives of the standard notwithstanding the minor numerical non-compliance with the development standard in a small portion of the building. Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on (02) 9925 0444.

Yours Sincerely,

THE PLANNING GROUP NSW PTY LTD

Marian Higgins
(Managing Director)

2 June 2015

General Manager
Ashfield Council
260 Liverpool Road
ASHFIELD NSW 2131



TOWN PLANNING
AND URBAN DESIGN

**RE: DEVELOPMENT APPLICATION – PROPOSED RESIDENTIAL FLAT
BUILDING AT 5 MARKHAM PLACE AND 7-9 CAVILL AVENUE,
ASHFIELD**

**FORMAL REQUEST UNDER CLAUSE 4.6 OF THE ASHFIELD LOCAL
ENVIRONMENTAL PLAN 2013 TO VARY THE DEVELOPMENT
STANDARD FOR HEIGHT UNDER CLAUSE 4.3(2) & (2A) OF THE
ASHFIELD LOCAL ENVIRONMENTAL PLAN 2013**

Dear Sir/Madam,

1.0 INTRODUCTION

This letter has been submitted in connection with Council's assessment of the proposed development at 5 Markham Place and 7-9 Cavill Avenue, Ashfield for a "mixed use redevelopment" and the minor variations sought under Clause 4.3(2) & (2A) of the *Ashfield Local Environmental Plan 2013 (ALEP)*, namely:

- A minor variation to a part of the building that is greater than 10m in height under Clause 4.3(2) of the ALEP; and
- a minor variation to a part of the building that is within 3 metres of the height limit set by subclause (2) which area forms part of the gross floor area of the building development standard under Clause 4.3(2A) of the ALEP;

This letter forms a request to grant an exception to the development standard in Clause 4.3(2) & (2A) of the ALEP under Clause 4.6 "Exceptions to development standards" of the ALEP.

1.1 Environmental Planning Instruments

Clause 4.6 of the ALEP states:

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.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4.*

This Clause 4.6 variation request relates to a departure from a numerical standard set out under Clause 4.3(2) & (2A) of the ALEP Height of Buildings Map in relation to the 10 metre height standard for the land at 7-9 Cavill Avenue. This development standard relates to the height of the development, Clause 4.3 of the ALEP falls within the scope of a "development standard" as defined under section 4 of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EP&A Act**).

Clause 4.3 of the ALEP contains a development standard controlling maximum building height, which states as follows:



4.3 Height of buildings

(1) *The objectives of this clause 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.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *If a building is located on land in Zone B4 Mixed Use, any part of the building that is within 3 metres of the height limit set by subclause (2) must not include any area that forms part of the gross floor area of the building and must not be reasonably capable of modification to include such an area.*

Under the Height of Buildings Map of the ALEP, the subject site is partly granted a maximum building height of 10 metres, and therefore under Clause 4.3(2) & (2A) of the ALEP any part of the building greater than 10m and within 3 metres of this height limit as set by Clause 4.3(2) & (2A) of ALEP is not to be gross floor area of the building and not reasonably be capable of modification to include such area. The proposed development seeks a minor variation of 200mm to vary Clause 4.3(2) and 2.8m to vary clause 4.3(2A) of the ALEP.

2.0 DEVELOPMENT STANDARDS

2.1 Clause 4.3(2) and (2A) Height of buildings development standard:

Based on the provisions of Clause 4.3(2) of the ALEP a 10 metre height of buildings development standard is identified under the Height of Buildings Map.

The drawing information demonstrates a variation of 200m to the height of building control in Clause 4.3(2) of the ALEP.

Therefore to comply strictly with Clause 4.3(2A) under the ALEP no gross floor area of the building is to be located higher than 7 metres.

The proposed development has a maximum height of 10.2 metres as shown on the architectural drawings included at **Appendix E** of the consolidated response to Council dated 2 June 2015 and therefore, and does not comply with the maximum height of building permitted on the subject site in accordance with the provisions set out in the ALEP.

Therefore, as the proposed development exceeds 10m as indicated in the height of buildings map extract shown in the SEE report, this is the applicant's formal request to vary the development standard under Clause 4.6 of the ALEP.

Further, this formal Clause 4.6 request also seeks to vary the provisions of Clause 4.3(2A) of the ALEP demonstrates that in the circumstances of the case, the strict application of the standard is unreasonable and unnecessary and will not result in a departure from the standard which is not in the public benefit, but rather is consistent with the both stated and intended outcomes and objectives sought by the Ashfield LEP 2013 for the development of land such as the subject site.

3.0 REASONS FOR NON-COMPLIANCE WITH DEVELOPMENT STANDARDS

There are a number of reasons for the non-compliance with Clause 4.3 of the ALEP and these factors when combined, have contributed to the design as proposed:

- To accommodate the inclusion of stair accessibility for maintenance access and to the roof area of the portion of the building at 7-9 Cavill Avenue. No residential gross floor area is located within the height above 10m metres on 7-9 Cavill Avenue;
- To create a streetscape presentation to Cavill Avenue which is generally three (3) storeys and is consistent and sympathetic with the surrounding streetscape and does not impact on adjoining properties;
- To achieve a driveway access to the basement car parking area suitable for gradients;
- To accommodate the flood planning level for the site which essentially for this portion of the site which includes the basement access and a minimum freeboard; and
- To minimise impacts on adjoining properties views and outlooks.



4.0 ASSESSMENT OF THE PROVISIONS OF CLAUSE 4.6 “EXCEPTIONS TO DEVELOPMENT STANDARDS”

The provisions of Clause 4.6 “Exceptions to development standards” under the ALEP provide the determining authority with the flexibility to vary a development standard where the circumstances of the development demonstrate that an exception to the development standard will maintain the objectives of the standard and the development achieves a better outcome.

The provisions of Clause 4.6(1) and (2) of the ALEP states:

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 development standard that is expressly excluded from the operation of this clause.*

...

Clause 4.6(3) further states:

- (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.*

The provisions of Clause 4.6(3)(a) and (b) have been considered in the preparation of this exception request to vary the development standard as set out in Table 1 below.

Table 1: Clause 4.6(3) assessment

Objective	Comment
<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case</i>	<p>Strict application of the development standard is considered to be unreasonable and unnecessary as the proposed development will be consistent with the stated aims of Clause 4.3 of the ALEP:</p> <p><i>(a) to achieve high quality built form for all buildings,</i></p> <p><i>(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,</i></p> <p><i>(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,</i></p> <p><i>(d) to maintain satisfactory solar access to existing buildings and public areas.</i></p> <ul style="list-style-type: none"> In light of the aims above which clearly encourage a flexible approach to compliance with design principles where the design of the development responds to the site and its form, strict compliance with the standard under Clause 4.3(2A) of 3m is unnecessary because: <ul style="list-style-type: none"> Only a small part of the development exceeds the development standard. That area will not be readily visible from the frontage to Cavill Avenue; The majority of the development, and in particular the street edge of the portion of the proposed residential flat building development at Cavill Avenue presents as 3 storeys which is compliant with the development standard; The design of the building results in a better outcome particularly as the building allows for disabled access throughout and access to the roof area for maintenance without resulting in overlooking given the perimeter landscaping; The amended design provides for an improved public domain with the widening of the footpath to Markham Place to 2.4m, which has involved setting back the proposal at the Markham Place frontage by a further 1.2m; and The proposed development does not result in a significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties. Strict compliance with the development standard is unnecessary as the development will still achieve the environmental and planning objectives of Clause 4.3, as discussed above. <p>Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development</p>





	<p>standard and would not bring about a good planning outcome, on the following grounds:</p> <ul style="list-style-type: none"> • The height of the proposed development is consistent with surrounding desired future character in the B4 Mixed Use zone along Markham Place and Cavill Avenue; • The proposed development is considered to be compatible with the streetscape along Cavill Avenue and will provide a direct public benefit in the public domain along Markham Place; • The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscape; and • The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible. <p>For these reasons it is considered that strict application of the height standards is unreasonable and unnecessary in this circumstance, particularly given that the non-compliance is minor and there are no impacts flowing from the non-compliance.</p>
<p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</i></p>	<p>The minor impacts of the exceedance of the development standard for a very minor part of the built form are considered to be negligible, as the design is primarily to allow for the flood planning level and basement access, along with providing access to the roof area.</p> <p>The minor non-compliance with the development standard is far outweighed by the development achieving the aims in Clause 4.3 in promoting the principles outlined in the Sydney Regional Growth Plan – A Plan for Growing Sydney. For example, the development promotes a use in an urban area which supports:</p> <ul style="list-style-type: none"> • Existing urban housing; and • Increasing housing densities within the set FSR under the ALEP. <p>In this regard, the development is also consistent with the State and regional objectives.</p>

5.0 ACHIEVING THE UNDERLYING OBJECTIVES OF THE STANDARDS

Clause 4.6(4) of the ALEP states:

- (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.*

It is considered that the variation still achieves the stated objectives of the standard:

- (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 proposed development achieves the above underlying objectives for the reasons stated in Table 1, notwithstanding the minor non-compliance with the height standard. In summary:

- The main street frontage does not result in any abrupt change in the streetscape and is compatible with the adjoining neighbourhood. This is evidenced by the fact that the Cavill Avenue frontage and setback in the design does not adversely impact on any adjoining property or heritage item;
- The amenity of the public domain is preserved and the surrounding areas are retained; and
- Visual privacy, sunlight access is retained whilst minimising overshadowing.

6.0 CLAUSE 4.6(5) CONSIDERATIONS

Clause 4.6(5) of the ALEP states:

- (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.*

The matters for consideration in clause 4.6(5) have been addressed in table 2 below.

Table 2: Clause 4.6(5) assessment

Matter of Consideration	Comment
<i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning</i>	The minor non-compliance with the development standard does not raise any matters of significance for State or regional planning as the development meets the underlying objectives of the development standards.
<i>(b) the public benefit of maintaining the development standard</i>	As the development substantially complies with the stated objectives of the development standard, there is little utility in requiring strict compliance with the development standard for an otherwise compliant development. There is no public benefit of maintaining the development standard in this circumstance.
<i>(c) any other matters required to be taken into consideration by the Director-General before granting</i>	It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately addressed as part of this Clause 4.6 variation request.



7.0 CONCLUSIONS

The Clause 4.6 variation request to Clause 4.3(2) and (2A) of ALEP should be supported on the basis that the strict application of the development standard to the residential flat building development is both unreasonable and unnecessary given that:

- (1) The development meets the stated objectives of Clause 4.3. Specifically:
 - (a) The bulk and scale of the future surrounding development has been considered carefully, the proposed development is considered to be compatible with the streetscape along both Markham Place and Cavill Avenue and the public domain, given the following:
 - (i) The design is complementary to the streetscapes and will not impact on the available solar access to the adjoining residential properties;
 - (ii) The minor non-compliance will not impact on any heritage item, will accommodate the minimum floor levels required for flood planning; and
 - (b) The height of the proposed development is consistent with desired future character for surrounding development;
 - (c) The development will not generate any adverse traffic impacts and therefore the variation does not result in the intensification of the land outside of what is permissible development; and
- (2) There will not be any detrimental overshadowing of adjoining properties, loss of privacy for adjoining properties nor will there be any adverse visual impacts upon the streetscape or the public domain given the area of non-compliance is in a small portion of the development and one that does not dominate the streetscape.

For the reasons set out above, the development should be approved with the minor exception to the numerical height standard in Clause 4.3(2) & (2A). Importantly, the development as proposed achieves the stated objectives of the standard notwithstanding the minor numerical non-compliance with the development standard in a small portion of the building.

Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on (02) 9925 0444.

Yours Sincerely,

THE PLANNING GROUP NSW PTY LTD



Marian Higgins
(Managing Director)

