

Clause 4.6 Variation to FSR and Building Separation Development Standard

DA 1070/2015 - 25, 29 & 33 Scott Street, Liverpool

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Client: Goldstein and Rush Pty Ltd

ABN: 96 073 794 307

Prepared by

AECOM Australia Pty Ltd

Level 21, 420 George Street, Sydney NSW 2000, PO Box Q410, QVB Post Office NSW 1230, Australia
T +61 2 8934 0000 F +61 2 8934 0001 www.aecom.com
ABN 20 093 846 925

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Prepared by Mina Suh – Senior Planner

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1.0 Introduction

Clause 4.6 of the Liverpool Local Environmental Plan 2008 (LEP 2008) enables a consent authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards in order to enable the achievement of better development outcomes.

This report outlines two clause 4.6 variation requests, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by KDC Pty Ltd dated 2 November 2015 in relation to the proposed commercial building development for 25, 29 and 33 Scott Street Liverpool (herein referred to as the site). This building has been designed in response to the requirements of the future tenant, being the Department of Family and Community Services (FACS). This development will accommodate approximately 1,000 FACS employees, including three floors of 24 hour call centre, which is a critical piece of infrastructure for this Government Department. The leasee is Government Property NSW and the lease period is for a minimum of 10 years.

It should be noted that this joint report substitutes the previous clause 4.6 variation requests included in the SEE prepared by KDC Pty Ltd and the revised drawings prepared by Group GSA Pty Ltd at **Attachment A**. It also has been prepared with reference and regard to the findings of the recent NSW Land and Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90.

The variation requests relate to:

- The development standard for floor space ratio (FSR) under clause 4.4 of LEP 2008
- The development standard for building separation under clause 7.4 of LEP 2008.

We note the proposed commercial building development rises only 43.3m in total building height above ground level 1, which is 56.7m less than the 100m building height maximum afforded to the site under LEP 2008.

We respectfully contend that it is unreasonable and unnecessary to comply with the development standards under clauses 4.4 and 7.4 of LEP 2008, as the standards applied in their totality would:

- only permit a building which would not necessarily meet the objectives of the zone, nor the future desired character of the area;
- only permit a building which would not serve the needs of businesses operating in Liverpool in relation to floor plates and open plan workspaces; and
- produce a building that was not in conformity with the visual character of neighbouring buildings.

A departure from the standards in the circumstances of this case will achieve the goals of the *Environmental Planning and Assessment Act 1979* (NSW) by promoting the objective of orderly and economic use and development of the relevant land.

1.1 Application of Clause 4.6 and Relevant Court Cases

Clause 4.6(3) of LEP 2008 states that a consent authority must not grant consent for development that contravenes a development standard unless it has considered a statement that seeks to justify the contravention 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.*

Clause 4.6(4) of the LEP 2008 states that a consent authority must not grant development consent for development that contravenes a development standard unless:

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

¹ Building height as defined under LEP 2008 as "the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

(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, [...]

The purpose of the clause 4.6 is to permit variations to a development standard, which in some circumstances, is where a development may still achieve the underlying purpose of the standard as much as if it had complied with the standard. To this end, it allows the consent authority to consider where the development is consistent with the underlying purpose of the standard, and also that of the broader planning objectives for the locality, and where strict compliance with the standard would be deemed to be unreasonable and unnecessary.

Clause 4.6 was recently considered in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which ruled that a proponent must justify that there are sufficient environmental planning grounds for the variation. .

Four2Five identified five key matters which must be addressed in order to obtain seek any such variation:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (clause 4.6(3)(a))
- There are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))
- The development is in the public interest (clause 4.6(4)(a)(ii))
- The development is consistent with the objectives of the particular standard (clause 4.6(4)(a)(ii))
- The development is consistent with the objectives for development within the zone (clause 4.6(4)(a)(iii)).

The recent case of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 upheld *Four2Five*, with the court holding that the degree of satisfaction required under clause 4.6(4) was a matter for the consent authority and is therefore discretionary.

The planning principle set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides further considerations for whether compliance with a development standard is unreasonable or unnecessary. The method is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance with the numerical standard (eg, development standards are a means of achieving ends). Once the above is conducted, justification is to be provided based on environmental planning grounds for varying the development standard. While *Wehbe* relates to objections made under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis still provides assistance to variations made under clause 4.6.

In *Wehbe*, Chief Justice Preston stated that there are five different ways in which a variation to a development standard might be shown as unreasonable or unnecessary in the circumstances of the case:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

There are no specific numerical limits to the application of Clause 4.6, however we note the following relevant principles:

- The objective of clause 4.6 is to apply an appropriate amount of flexibility;
- It has been held that there was no limitation on the power to dispense with the conditions under SEPP 1, other than on *Wednesbury* unreasonableness grounds. The Court rejected arguments that only those variations which resulted in “*substantial compliance*” with a condition were permissible: *Legal & General Life of Aust Ltd v North Sydney Municipal Council* (1990) 69 LGRA 201;
- It was held that although the power under SEPP 1 is wide, it needs to be exercised on the grounds in SEPP 1 relating to the development standard and the circumstances of the case: *Wehbe*;
- Nonetheless, it would be an error of law to reject a SEPP 1 application, merely because the percentage reduction from what would be required by the standard is substantial and not minor: *Webb (Graeme and Pamela) v Baulkham Hills Shire Council* [2005] NSWLEC 80; and
- However, the dispensing power under SEPP 1 is not a general planning power to be used as an alternative to power under Part 3 of the Act to change existing planning provisions: *Wehbe*.

2.0 FSR Development Standard to be varied

This clause 4.6 variation relates to clause 4.4 of LEP 2008. The relevant development standard is specifically found at clause 4.4(2B) and states:

4.4 Floor Space Ratio

(2B) Despite subclause (2), the maximum floor space ratio of a building in the Liverpool city centre that is:

- (a) on a site area greater than 1,000 square metres, and*
- (b) on land in a zone specified in the Table to this clause, and*
- (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:

- (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, or*
- (e) Column 3 of the Table, if the site area for the development is equal to, or greater than 2,500 square metres.*

Relevant to the site, Column 2 states that the formula for the maximum floor space for the site is $(5+3X):1$, where 'X' equals $(\text{the number of square metres of the site area} - 1000)/1500$.

Based on the subject site's total site area, the total maximum FSR afforded to the site under clause 4.4(2B) is equal to 5.4178:1.

Thus, based upon the total proposed Gross Floor Area (GFA) of the development, the proposed development seeks to achieve a FSR of 8.4167:1, that is 2.9989:1 (or 55.3%) greater floor space than the maximum permitted for the site under clause 4.4(2B).

It should be noted that the internal design of the building has largely been shaped by the parameters set out by the first and long term tenant, being the Department of Family and Community Services.

A specific number of requirements were necessary to secure this tenant to move to the development. Relevant to the matter of FSR these requirements included:

- To accommodate 1,000 FACS employees.
- To accommodate an employee to square metre of floor space of 1:10, therefore the design is required to accommodate a total of 10,000 NLA
- To include floorplates of 1,000m² GFA
- To minimise the columns over these floor plates to maximise use of each floor
- To provide a 5th lift between the car park and the ground floor and first floor
- To incorporate disabled access measures for all parts of development to ensure the development achieves an exceptionally high degree of accessibility
- End of journey bicycle facilities, lockers and change rooms

It should also be noted that this tenant has selected this location in consideration of other sites in other centres not just because of the site's close proximity to good services and well connected transport services, but also as the design of the development accommodates the abovementioned and other specific needs of this tenant.

These design requirements are further underpinned by the requirement to design to the specifications outlined in the *NSW Government Office Design Requirements*. Fundamental aims of implementing these specifications include:

- Recruiting and retaining good staff by having desirable work premises;
- Supporting productivity gains and achieving results;

- Ensuring the health and safety of staff; and
- Reducing impact on the environment.

The guide also states that designs for new office premises should be *“place(s) where social interaction can occur between staff while still giving them less formal workspaces, touchdown areas, meeting spaces, private areas, meal rooms and the necessary equipment and technology.”*

3.0 Building Setback Development Standard to be Varied

This clause 4.6 variation also relates to clause 7.4 of LEP 2008. The relevant development standard is specifically found at clause 7.4(2)(d) and (e) and states:

7.4 Building Separation in Liverpool city centre

Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least:

....

(d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use, and

(e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use.

The height of the building at 25m above existing ground level is a height of RL 48.90 at the front of the proposal along Scott Street and RL 47.64 to the rear lane. There are no existing and immediately adjoining buildings 25m or greater to the site, however the Quest building to the west is approximately 8.1m to 9.73m separated from the proposed building above the 25m in building height.

This is in contravention to the required setback of 12m under clause 7.4(d) of LEP 2008, but only relates to approximately 7.4m of the overall height of the Quest Building at the front of the development site and correspondingly 8.5m at the rear.

4.0 Justification for Contravention of the FSR Development Standard

The following justification for contravention of the FSR development standard is assessed following subclauses of clause 4.6 of LEP 2008 as per the decision of the *Four2Five Pty Ltd v Ashfield Council* case and in accordance with the decision of *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (clause 4.6(3)(a))
- There are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))
- The development is in the public interest --(clause 4.6(4)(a)(ii))
- The development is consistent with the objectives of the particular standard (clause 4.6(4)(a)(ii))
- The development is consistent with the objectives for development within the zone (clause 4.6(4)(a)(iii)).

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

As was noted in *Wehbe*:

"[T]he rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

The purpose of FSR is to ensure that developments are of an appropriate bulk and scale. A maximum FSR of 5.4178:1 is high, indicating an intention for this area to be redeveloped into high density commercial use, consistent with this development.

Aside from achieving the objectives for the standard (see Section 4.4) the development achieves additional and desirable outcomes for Liverpool City Centre given that:

- the public benefits arising from the additional employment opportunities that would be delivered by the development, noting the site is in direct proximity to Liverpool railway station, major regional road networks and is located in the Liverpool City Centre;
- the site benefits from good access to areas of housing, health and educational facilities, retail development and open space that would serve the needs of the additional employees that would be generated by the additional floor space; and
- it provides increased employment opportunities through the addition of extra business office space.

Strict compliance with the FSR standard is unreasonable and unnecessary not only because no purpose would be served by requiring strict compliance with the standard but the outcomes from not achieving this standard gives rise to additional benefits, specifically:

- The extent of the maximum building height permitted in the B3 zone is inconsistent with the maximum density allowed, which is further adversely affected by the building separation requirements. To conform to the density and height provisions under LEP 2008, would likely result in a skyscraper-type that would be incompatible with existing development in the vicinity.
- The development incorporates a clear lower, middle and top façade approach that breaks down the appearance of bulk of the building, with any services on the roof neatly shielded from public view.
- The development is consistent with similar and nearby developments in the city centre that are up to 11 storeys in height; whereas were the development was to be compliant with the maximum permitted building height for the site would be in contrast 30 storeys in scale.

- To distribute the maximum permitted floor space per the FSR for the site over the 30 storeys that could be achieved for the site would result in significantly diminished floor areas for each level of only 218m² for each floor, whereas the development seeks to provide floor plates that are to be far larger or nearly 5 times this.
- The first tenant for the building being Department of Family and Community Services will be a singular tenant for the premises, such that cohesive and less fragmented floor spaces will provide for more integrated and productive working arrangements for staff as required by their specifications and will meet the desired outcome sought by the tenant.
- These outcomes are not exclusive to this government tenant, but would be expected outcomes for other office type business that could later accommodate the development.
- To this end the proposal adopts a standard commercial floor plate design that could accommodate various types of commercial entities, which in itself would be more attractive to future occupants and would help safeguard the building designed to specific to the needs of the new Government tenant.
- The proposal creates large, open floor plates that also can accommodate scale of efficiencies. The design seeks to locate plant and equipment to the roof space which then helps to maximise light penetration across the commercial floors and facilitate typical modern open plan office development.
- The building is required to incorporate a large number of lifts per the specifications of the new tenant, which in itself consumes valuable floor space. The larger floor plates enable this to be accommodated for while ensuring that adequate working spaces are afforded. The inclusion of a large number of lifts will also make the building highly accessible.
- The desire by the Government tenant to ensure the development is fully accessible throughout per AS 1428.2 will not only benefit this tenant, but will be a legacy that the building will retain such that future tenants will also benefit from equitable access for all.
- The larger floor plates will lend themselves to more creative use and layouts of the internal space, including different types of workspaces (such as touchdown spaces) and to include a broader range of technologies.
- To accommodate a higher ratio of employees to floor space, where NSW Government requirements seek to apply 1 employee to 15m², the proposed development will be 1 employee to 10m².
- Per the NSW Government guidelines, the minimum floor plate requirement is 1,000m² NLA; therefore if the development was to include less internal floor space per floor the development would not be feasible to the future Government tenant.
- The grid-like pattern of the roads in the Liverpool City Centre coupled with small and narrow allotments adversely affects the achievement of a sufficient site area to accommodate a skyscraper type commercial building as envisioned and reflected in development standards under LEP 2008, which fully reflecting the upper limited setbacks.
- The density restrictions are evident in the built form outcomes of other nearby similar commercial developments which have been developed up to 11 storeys with minimum building separation.
- The apparent bulk and scale of the development is consistent with other commercial developments in the City Centre with an improved visual outcome due to its modern expression and articulation.
- The proposal mimics the existing streetscape pattern of the City Centre, which is typically characterised by new and older commercial developments built to side boundary lines to present a continuous streetscape and maximises private/public domain interaction.
- A proposal with reduced density would likely result in a development with the upper levels incorporating large setbacks from adjoining developments, while not being able to achieve an increase in height due to the width of the street frontage. This would result in reduced commercial floor space overall in the proposal restricting the site from being suitable for future employment opportunities in the city centre.
- A scheme conforming to the maximum density, height and building separation permitted would result in an alternate building that is not developable over 45m due to the need to provide 28m in building separation. The likely small floor plates would not be conducive to modern commercial office space

requirements, which often include open plan arrangements and a need to maximise employee engagement and opportunities for meetings rooms over large floor plates.

- The NSW Government's Section 117 direction for employment lands, which applies to the site, is achieved given a suitable quantum of floor space is provided to encourage and provide for employment generating development. Reference should be made to the letter submitted by Colin West, Executive Director of Leasing, NSW Government Property, to Council on 27 November 2015 to the proponent, which illustrates that a future Government anchor tenant is able to potentially secure at least 5,000m² of the future commercial floor space. This letter gives support to the large floor space to accommodate a commercial tenant such as a branch of the NSW government, and would likely appeal to other similar or private sector tenants who may also wish to be associated or work with the NSW Government tenant.
- A compliant scheme is also expected to contribute towards increased building costs due the significant height of such a building, potentially not making a fully compliant scheme economically viable.

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

Whether there are sufficient environmental planning grounds to justify contravening the development standard requires a flexible consideration of the various environmental planning objectives and outcomes, having regard to the objects of the *Environmental Planning and Assessment Act 1979* (NSW) to promote the orderly and economic use and development of land.

The phrase "sufficient environmental planning grounds" is a phrase of extremely wide compass, with no words of limitation or restriction found in that phraseology, suggesting the bar is set quite low: *Four2Five*.

LEP 2008 highlights Council's vision for large scale commercial developments in the city centre in close proximity to the station. The site is located less than 200m from Liverpool train station in the city's commercial core and includes wholly commercial development.

However and unlike the proposal, this vision under LEP 2008 has not been realised to date. A few commercial buildings up to 11 storeys have been constructed near the site over similar floor plates, which indicate that these sites were similarly limited by the planning provisions under LEP 2008. But in total there are very few new office buildings constructed and or approved in this city centre precinct that would demonstrate achievement of the development outcomes sought by LEP 2008.

The existing commercial developments in the vicinity of the site (and including the current built form on the site) are built to front and side boundaries to present continuous street frontages, creating a town centre 'high street' appeal on the street level. The proposal seeks to retain this built form character found throughout the city centre, while incorporating commercial space that demonstrates efficient use of the site.

The proposal's increased commercial GFA allows generous open plan areas that will be able to accommodate a range of commercial/business uses, as envisaged by the zoning of the land. Meanwhile, the bulk and scale of the proposal has been minimised through external expression and façade articulation and sufficient parking has been provided for the development. Combined with the reduced height (which to reiterate is well below the maximum building height limit permitted), the proposal minimises the potential overshadowing and visual impacts to nearby developments, including any heritage items in the vicinity and the adjoining heritage conservation area to the south of the site.

The site's suitability for the proposed development is demonstrated by the proposal's consistency with State Government Planning Strategies, including those for employment generation and its ability to meet future demand for commercial development on a site identified as appropriate for a key centre such as Liverpool by *A Plan for Growing Sydney*. The proposal on the subject site is suitable to meet present and anticipated future demand for employment use. This is particularly relevant to the current character of the southern edge of Liverpool City Centre which has seen some loss of pedestrian traffic and diminished commercial activity due to the presence of larger commercial offerings on the northern part of the centre. This has resulted in the southern side of the centre appearing neglected, compared to its more activated northern counterparts. The proposal offers a genuine opportunity to rejuvenate this part of the Liverpool City Centre and support Council's vision for this part of the centre to transition to the city centre characteristics envisaged under the planning instruments.

Other environmental planning grounds which support the proposed development being constructed at the site include:

- the use is permissible and encouraged under the LEP;
- the size of the site is such that it is appropriate for use as a commercial building and the interfaces with adjoining properties can and have been dealt with through good built form design;
- the site is well located to transport and services and demonstrates as a good example of 'transport orientated development';
- the presence of existing large buildings of similar scale which are comparable in footprint and height to the proposed building; and
- the absence of significant adverse environmental or amenity impacts as a result of the variation.

For these reasons the site is considered capable of accommodating the proposed building with the variation as proposed and there are sufficient environmental planning grounds to exceed the LEP 2008 FSR standard.

4.3 The development is in the public interest

In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Justice Sheahan framed this consideration as: *"Do the public advantages of the proposed development outweigh the public disadvantages of the proposed development?"*

Notwithstanding the non-compliance with the FSR standard, there are significant public advantages to the proposed development, which outweigh any disadvantages to the public from the proposed development.

The objective of clause 4.6 is to *"improve outcomes for the development itself (and those that live in, work in or enjoy the development) and from the development for the benefit of the wider environment"* (Four2Five).

First, the provision of employment generating development in the Liverpool City Centre delivers a number of economic and social benefits to the community as outlined in the Statement of Environmental Effects (SEE).

Secondly, the provision of high quality and premium office space in the Liverpool City Centre delivers a number of significant economic benefits, both direct and indirect to the community namely that it:

- increases new commercial floor space in a high quality building that will initially accommodate a Government tenant and thereby help attract new businesses to Liverpool City Centre;
- highlights and contributes towards the role that Liverpool City Centre has as a vibrant new commercial district on the banks of the Georges River with excellent public transport connections and access to a range of services;
- may help attract associated businesses and other commercial development to the Liverpool City Centre; and
- offers a new, modern building typology that respects and redefines the cityscape and streetscape and serve as a catalyst project for similar future developments to encourage quality new urban outcomes in the city centre.

Thirdly, the development has been both tailored to meet the needs of the new tenant, but will be flexible to meet the needs of other office tenants/occupants in that it adopts a modern office building design that could accommodate one or more commercial entities. To achieve this, the proposal creates regular large and open floor plates that are able to accommodate:

- a number of floor layout options that can be adapted to ever changing work place best practice arrangements in the way people work and to new technologies;
- a total of five lifts, which is more than is generally required for this scale of building;
- full disabled access throughout, making the building equitable and accessible to all and to include end of journey facilities; and
- flexible design will be one of the tools that help an organisation achieve its goals in the most effective and cost efficient manner while also having regard to its impact on the environment.

Fourthly, the development also provides social benefits, some of which are outlined in Section 5.8 of the SEE. However and despite this analysis the key social benefits are that the development will:

- improve the interaction of the site with the public domain of Scott Street through the incorporation of active ground floor uses, such as retail which will increase pedestrian activity on the street level and thus improve the feeling of safety and activation in the immediate area;
- create employment opportunities in the city centre for existing and future residents, considering the growth of large scale urban release and greenfield developments in the region, such as Edmondson Park and in the South West Priority Growth Area;
- revitalise a part of the City Centre which is failing to compete with the more active northern part of the centre by attracting new commercial tenants and business activity, thereby supporting activation;
- be in close proximity to a key train station that may later include a connection to a potential metro line to Bankstown and to the city. This outcome encourages the use of public transport as a method to get to and from work, and encourage opportunities for active transport through walking and cycling; and
- support the provision of a laneway to the west of the site, which will increase pedestrian permeability through the city centre, which with each office floor overlooking the potential laneway, will provide a measure of passive surveillance.

Fifthly, the aesthetic design of the building itself confers benefits to the streetscape as the proposed building:

- provides an improvement to the streetscape appearance through its modern external aesthetics, increased floor to ceiling heights, and vertical fin articulation that echoes the colour and materiality of nearby heritage buildings (this is discussed in the latter sections of this report); and
- because of its consistency with nearby buildings height, colour and materiality, presents an improved aesthetic development that is complementary to the site's surrounds.

On this basis the proposed development is considered to be in the public interest

4.4 The development is consistent with the objectives of the particular standard

One consideration for varying a development standard under clause 4.6 is whether the objectives, or intent, of the development standard are nevertheless achieved by the development, notwithstanding the non-compliance, which in turn needs a careful assessment of the underlying object or purpose of the standard.

The LEP 2008 clause 4.4 FSR objectives are:

- (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,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (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,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (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.*

The following sections demonstrate that the proposed variation to the FSR development standard will still result in a development that achieves the relevant objectives of the FSR development standard.

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

The proposal is consistent with the development density and intensity of land use envisaged for the area, given the high level of availability of infrastructure proximate to the development, and limited extent to which the proposal would adversely impact vehicle and pedestrian traffic,

The site is located within the commercial core of Liverpool City Centre and is less than 200m walking distance of Liverpool train station. The site is located in a relatively fine grain block of commercial, retail and restaurant developments which includes the local Australia Post shop and Quest serviced apartments. The buildings fronting Scott Street in this block are developed generally boundary to boundary to maximise commercial activity on the ground level and development interaction with the public domain (See **Figures 1 and 2**).

Permeability and pedestrian amenity to existing infrastructure, including shops, the railway station and other commercial blocks in the town centre is considered high given the site's central location, proximity to infrastructure and the general grid-like pattern of the centre's local streets.

To the north of the site beyond Railway Street is Liverpool Public School, and a TAFE South Western Sydney campus building is to the site's north-east, less than 5-minutes walking distance from the site.

In this regard, the site is in close proximity to existing public transport, commercial and social infrastructure services that is reflective of its commercial core zoning. Moreover, the proposal will provide sufficient car parking spaces in the basement levels with access from a rear laneway, to minimise potential visual and pedestrian impacts, and impacts to on-street car parking nearby. The site's close proximity to the train station will also encourage the patronage of public transport.



Figure 1 Typical streetscape in city centre with proposal at forefront



Figure 2 Quest serviced apartment development near the proposal with another commercial building in backdrop

To control building density and bulk in relation to the site area in order to achieve the desired future character for different locations

Collectively, the Council's FSR, building height and business core zoning reflect the Council's desire to reinforce the B3 zoned precinct as a key commercial core for the city centre. The controls intend to capitalise upon the precinct's close proximity to transport nodes, but also to permit for building form development that is dense and that is well recognised as the CBD of Liverpool.

The B3 Commercial Core zone extends from the site's southern boundary towards the station to the east, several blocks west to Bathurst Street, then partially northwards to Campbell Street as shown in **Figure 3**. Land around the B3 zone is predominantly mixed use, with the exception of a public open space zone north-east of the site and large industrial lands to the east, fronting the Georges River. The mixed use zone land south of the site acts as a buffer between the B3 zone and the R4 High Density Residential zone further to the south.

Reflective of the site's commercial core zone is the maximum height of building limit of 100m (see **Figure 4**). This is the tallest building height limit permitted in the city centre and surrounding areas. Variable height limits apply west of the site towards the Hume Highway, being between 35m and 100m with the exception of the row of shops on Macquarie Street towards Elizabeth Street, where a maximum building height of 18m is permitted. The B4 Mixed Use zone south of the site also has a maximum building height of 80m.

Thus, LEP 2008 seeks to incorporate an appropriate transition in building heights in the city centre and surrounds where the tallest buildings are in close proximity to the station, before gradually transitioning into lower scale buildings further away.

The density provisions in the city centre closely follow the maximum building height limit, where the land zoned B3 has varying maximum FSR controls of between 2.5:1 and 5:1. The land zoned B3 has a base FSR maximum of 5:1, notwithstanding the bonus FSR that also applies to the site.



Figure 4 LEP 2008 Height of Buildings Map

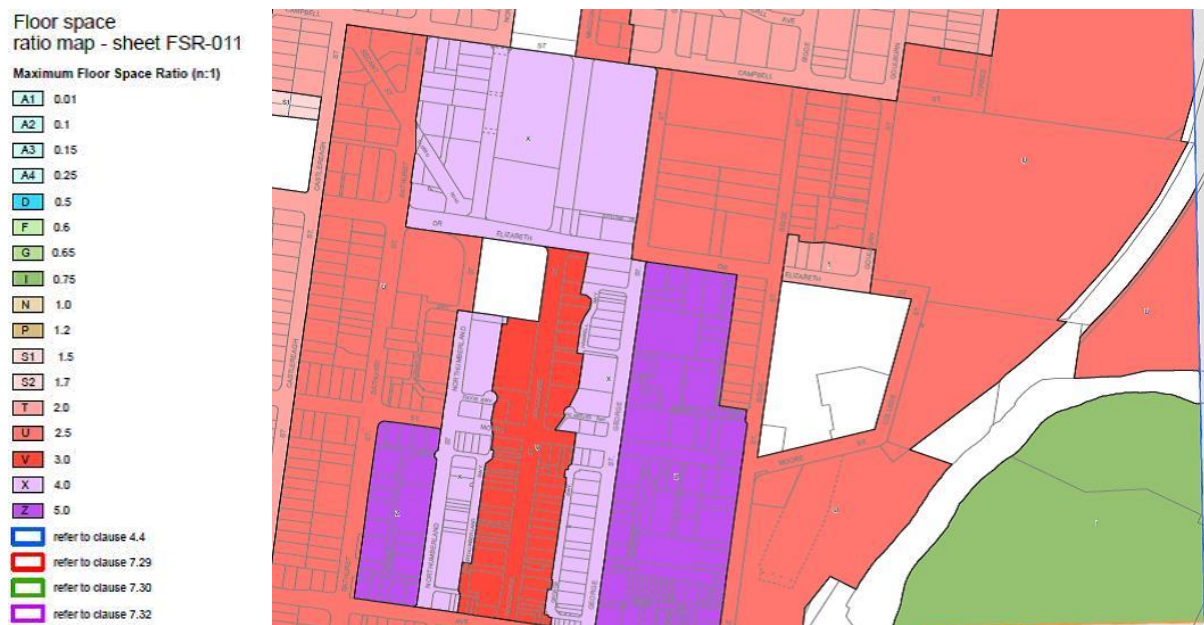


Figure 5 LEP 2008 Floor Space Ratio Map

To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain

As the maximum permissible height for the proposal is 100m, the Liverpool LEP clearly envisaged that the environmental effects tolerated in this area would reflect those reasonably expected of large, high rise buildings for commercial use.

The overall height of the proposal is less than 44m, which limits its potential environmental impacts to nearby developments, particularly when compared to the impacts caused by a 100m building. This reduced environmental impact is particularly evident with regard to overshadowing to the adjoining heritage conservation area to the south of the site (see **Figure 6**). Specifically, the proposal will have fast moving shadows that will afford good amounts of solar access to the park and the conservation area such that these and other developments to the south will receive at least two hours of sunlight between 9am and 3pm during the winter solstice. Should the proposal be proposed closer to the maximum building height limit, this would be expected to result in greater extents of shadow impacts that could potentially impact property farther south across Newbridge Road and Terminus Street.

Car parking is located underground, with access from the rear, which will allow for maximum activation of the Scott Street frontage and minimise safety impacts as a result of potential vehicular and pedestrian conflict. The proposed use of the building for commercial purposes will be generally restricted to business trading hours, and is not likely to impact on the acoustic amenity to adjoining commercial developments.

For these reasons the proposal will not adversely impact upon the use or enjoyment of the adjoining properties or the public domain.



Figure 6 Extract from shadow diagrams – Mid Winter (22 June)

To provide an appropriate correlation between the size of a site and the extent of any development on that site

The proposal is generally consistent in size both in terms with height and bulk with nearby commercial developments in the city centre, while providing a modern built form outcome that is significantly improved from similar developments, through design expression and choice of façade articulation and colours.

The proposal also has a similar number of storeys and bulk as the recently constructed Quest development to the west (see **Figure 7**), with the proposed uppermost levels framed to provide a visually clear top of the building, and with an open style encasement around the building edges which will filter light and ventilation through the roof level housing an open terrace area. Other noteworthy developments of a similar bulk and scale to the proposal are located on Moore Street, at the junction of Scott and George streets, and at 269 Bigge Street directly opposite the train station's on-grade car parking area. These buildings are also between 9 and 11 storeys in height and built to boundary.

The proposal's orientation and front and side setbacks respects the existing setback, subdivision and street block pattern, which is aligned both to the existing streetscape while correlating with newer commercial developments in the immediate vicinity. Therefore the proposal provides an appropriate response to the size of the site and replicates the existing built form pattern in this part of the city centre.



Figure 7 Eastern wall of the Quest development as viewed from Scott Street

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

The floor space within the building envelope of the proposal still permits the successful articulation and modulation of design, with the proposal being an attractive landmark building in keeping with its central place within the Liverpool City CBD. The proposal's external appearance presents a clear lower, middle and top where the building's bulk and scale is broken down to an acceptable human scale. The Quest serviced apartment to the west also presents similar proportioning, but has a more traditional architectural expression than the proposed development.

It is worth noting that while LEP 2008 provisions demonstrate that taller skyscraper type buildings were envisioned for this part of the city centre; based on a city centre plan dating to 2006, these types of buildings have not eventuated. Instead, sporadic office or serviced apartment developments of between 9 and 11 storeys such as the Quest development have been developed in the commercial core.

One of the tallest buildings is on Moore Street opposite the public school, which is approximately 11 storeys (see **Figure 8**). This building features a mostly blank wall towards George Street where there is building separation between itself and the adjoining building to the west. Unlike this building, the proposal will help to fill in this gap between the Quest building and the commercial building at 269 Bigge Street, and will respond to obscure roof top lift overruns and plant.



Figure 8 Commercial building on George Street in City Centre (left) (Source: Google Maps)

Besides being a more modern built form outcome in comparison, which incorporates attractive glass curtain walls around significant parts on the middle of the building façade, the proposed development's façade incorporates various vertical inlays to provide further external articulation and make reference to the masonry heritage built form in the city centre.

It is noted that the Quest building presents a blank wall to the eastern boundary to the property between it and the proposal (see **Figure 9**). It is considered highly likely that this was incorporated and approved so that potential future abutment to the Quest building could be provided by the narrow allotment to the east of this building. The western edge of the Quest development on the upper levels also presents a blank wall, with the levels below abutting the commercial building to its west. This would be in accordance with the existing streetscape context, which is built to side and front boundary lines.

The proposal is located on a site with similar dimensions to the Quest development and the commercial buildings on Scott Street, Moore Street and Bigge Street, such that the proposal incorporates appropriate design that is not

incompatible with the designs of existing developments in the vicinity, but provides a modern interpretation of the traditional commercial building.

The incorporation of the potential laneway west of the site provides an improved public outcome for Scott Street and the proposal provides a highly articulated façade to this potential laneway frontage. The rear of the proposal on the Railway Service Street is dominated by the rear frontages of aging low rise commercial developments, with the exception of some taller commercial buildings. The proposal will improve the streetscape quality of the rear lane through improved visual quality as well as pedestrian activation through the potential facilitation of the future laneway/pedestrian link (see photo of existing view from Railway Street service lane at **Figure 9**).



Figure 9 Streetscape of Railway Street service lane at rear of the site

4.5 Summary

The proposed development satisfies the criteria set out in Clause 4.6 which will justify contravening the FSR standard in clause 4.4(2B). The reasons Council should exercise its discretion in favour of a departure from the standard are as follows:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, as:
 - the bulk and built form is comparable to that of recent commercial buildings developed in the commercial core part of the city centre, and elsewhere in the city centre;
 - the scale of the proposal is controlled by virtue of its reduced height, being less than half of what is permitted under clause 4.3 of LEP 2008;
 - the development includes the larger floorplates and overall floor space is better suited not only to the first tenant, but also to future tenants/occupants; and
 - ensures flexible models of work place design, layouts, technology and ways in which people work in this environment.
- There are sufficient environmental planning grounds to justify contravening the development standard, as the proposal will:
 - deliver a landmark commercial development that is less than 200m from Liverpool train station, and will help promote this part of the city centre as the commercial core of the city centre;
 - the development will replicate and reinforce the overall main street and terrace built form pattern throughout the city centre;
 - the proposal respects the visual relationship between the existing low rise continuous streetscape and taller commercial buildings, while retaining the predominant scale of existing and new commercial buildings in the city centre; and
 - successfully transition between the current built form, and the desired future character for Liverpool City Centre.
- The development is in the public interest, as:
 - the proposal provides an attractive building of a scale and form that is attractive to corporate tenants that are seeking to locate to Liverpool and that helps to modernise the look of the city centre;
 - the development provides a building of high quality design and finishes that will set a good precedent for the future commercial development expected elsewhere in the city centre; and
 - the development has been designed to accommodate a range of tenants and afford flexibility in work place arrangements now and into the future.
- The development is consistent with the objectives of the FSR standard, as bulk and scale are controlled by the height of the building and its visual design.
- The development is consistent with the objectives for development within the zone, given that the proposal:
 - through its reduced height and underground parking, minimises any potential visual, safety and shadow impacts such that it will have minimal environmental impacts to adjoining developments; and
 - reinforces the importance of Scott Street as the southern edge of the CBD of the city centre with an attractive built form outlook.

Given the consistency with the objectives, strict compliance with the floor space ratio standard by this development is unreasonable or unnecessary in this instance.

5.0 Justification for Contravention to the Building Separation in Liverpool city centre Development Standard

The following justification for contravention of the building separation standard is assessed following subclauses of clause 4.6 of LEP 2008 as per the decision of the *Four2Five Pty Ltd v Ashfield Council* case and in accordance with the decision of *Wehbe v Pittwater Council*. The five relevant principles are:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (clause 4.6(3)(a))
- There are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))
- The development is in the public interest (clause 4.6(4)(a)(iii))
- The development is consistent with the objectives of the particular standard (clause 4.6(4)(a)(ii))
- The development is consistent with the objectives for development within the zone (clause 4.6(4)(a)(i)).

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

As per *Wehbe*:

“the rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

The purpose of building separation standards are to ensure appropriate visual appearance, privacy and solar access. As the maximum building height is 100m, the standard was intended to achieve outcomes consistent with high rise commercial land use. The proposal exceeds the building separation requirement between 25m and 45m to the west by approximately 7.4m and 8.5m at the front and rear of the proposed development respectively.

Strict compliance with the building separation standard is unnecessary, as the objective for the standard is achieved anyway. This is because:

- The additional reduced setback for the development will not detrimentally overshadow any neighbouring development, most notably the open space, heritage conservation area and other existing development to the south.
- The proposal provides a development outcome that is built to the boundary lines of the amalgamated site. The front and side setbacks are consistent with existing low rise developments in the city centre which provide predominantly continuous streetscape frontages on the roads and pedestrian paths. This helps to facilitate the activation level on the street, where commercial shopfronts are located close to the pedestrian path to maximise exposure of the business and increase business patronage.
- The proposal will comply with the building separation to the east and north.
- The proposal will complement the plan being considered by council to compulsorily acquire the adjacent property between Quest and the proposal for the purposes of creating a public walkway. Such a walkway would promote the visual appearance of building separation and solar access to adjacent buildings.

Additionally, strict compliance with the building separation standard is unreasonable, because no purpose would be served by requiring strict compliance with the standard. This is because:

- Most commercial developments of similar scale (up to 11 storeys) in the city centre have been developed to all boundaries so that future abutment may take place by adjoining developments to improve the urban outcome of the centre. This future proofing design is evident in the design of the Quest Building to the west and at 269 Bigge Street, where side boundaries walls are blank and the buildings are built to boundary.

- This same design for the proposed development is considered a more appropriate outcome in terms of visual appeal and a superior built form outcome than a commercial building incorporating unsustainable setbacks, which would neutralise the commercial appeal on the upper levels of the building. As stated previously in this report, the achievement of adequate floor plates within a commercial development proposal is key to ensuring maximum flexibility and to encourage modern office tenants.
- To inset the building to fully accommodate the required 12m setback to the west would make the proposed development appear uneven if only applied to this side, and if were to be applied to both sides would reduce the overall floorplate by 8m overall and would create 'wedding cake' appearance to the building, rather than a uniform built form atypical of commercial buildings (see **Figure 10**).
- This reduction in floorplate is also not considered feasible to achieve the type of commercial floor area that is attractive to potential tenants on these levels. In this regard, the proposal would be unable to meet the zone objectives and the Liverpool city centre objectives, which is discussed further in this document.
- The result of a compliant scheme would also make the appearance of the proposed building inconsistent with the adjoining Quest building which has been built to boundary, and that has ironically been designed to accommodate the same built setback outcome on the corresponding and adjoining site. Moreover, the separation proposed will not impact upon the visual privacy of any of the guests or workers at the Quest building, as none of the windows face the proposed development.

For these reasons compliance with the building separation standard for a small fraction of the building's height is considered unreasonable and unnecessary.



Figure 10 Photomontage of proposed development

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

Whether there are sufficient environmental planning grounds to justify contravening the development standard requires a flexible consideration of the various environmental planning objectives and outcomes, having regard to the objects of the *Environmental Planning and Assessment Act 1979* (NSW) to promote the orderly and economic use and development of land.

To substitute the loss in floor space to accommodate the required setback would probably increase the height of the development. This would more than likely increase the overshadowing impacts of the proposal beyond that currently proposed. It would also not result in the most economic use of the land, given the increased building expenses associated with construction of a taller building.

The additional reduced setback for the development will not detrimentally overshadow any neighbouring development, most notably the open space, heritage conservation area and other existing development to the south. Moreover, these sites would likely only receive a nominal increase in solar during the winter solstice if the building were to fully comply with the required building separation standard to the building's western portion, such that this solar benefit it would be imperceptible.

With exception of appearance all other aspects of the proposal would not be any different levels of environmental impacts to that of a compliant scheme, given that it would does not impact upon view loss and would not impede views through the separation between the Quest Building and the proposed development.

Additionally, the proposed floor plate for the proposal promotes the economic use of land, by creating open office spaces suitable and attractive to the needs of commercial tenants. Currently, discussions are underway with a NSW Government tenant to become the anchor tenant on the proposed development. A floor plate with compliant setbacks would result in smaller, less open, floor plans, and thus less useable space for tenants and would be significantly less appealing.

Thus, when the above matters are considered, it is considered there are sufficient environmental planning grounds to exceed the LEP 2008 building separation standard.

5.3 The development is in the public interest

The objective of clause 4.6 is to “*improve outcomes for the development itself (and those that live in, work in or enjoy the development) and from the development for the benefit of the wider environment*”: *Four2Five*. In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Justice Sheahan framed this consideration as: “*Do the public advantages of the proposed development outweigh the public disadvantages of the proposed development?*”

Notwithstanding the non-compliance with the building standard, there are significant public advantages to the proposed development, which outweigh any disadvantages to the public from the proposed development.

Were the proposal to reduce the floorplate size at the upper levels in order to comply with the building separation standard, this would reduce the viability of the development to attract quality tenants and would not meet the minimum requirements sought by the first tenant (Department of Family and Community Services). By contrast, the floor plan of the proposal has potential to draw new business opportunities and job creation in the city of Liverpool.

The proposal will also have the effect of gentrifying the visual appearance of the Liverpool City Centre, replacing lower, older buildings with a new, modern office building.

The non-compliant building separation does not alter the environmental or social benefits of the proposal, as outlined in the SEE. Rather, the non-compliance helps to enhance the economic benefits of the proposal. On this basis, the reduced building separation under clause 7.4 of LEP 2008, the proposed development is considered to be in the public interest.

5.4 The development is consistent with the objectives of the particular standard

A consideration for varying a development standard under clause 4.6 is whether the objectives or intent of the development standard are nevertheless achieved by the development, notwithstanding the non-compliance, which in turn needs a careful assessment of the underlying object or purpose of the standard.

The objective of the development standard for building separation under clause 7.4 of LEP 2008 is:

To ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

The following demonstrates that the proposed variation to the building separation development standard will still result in a development that achieves the relevant objective of the building separation development standard.

As shown in the shadow diagrams with the SEE, the additional reduced setback for the development will not detrimentally overshadow any neighbouring development, most notably the open space, heritage conservation area and other existing development to the south. If the building were to fully comply with the required building separation standard to the building's western portion, these sites would likely only receive a nominal increase in solar during the winter solstice, such that the solar benefit of compliance would be limited.

Although it will alter the appearance of the building, all other aspects of the proposal would not produce substantially different levels of environmental impacts than that of a compliant scheme. The proposal does not impact upon view loss, and would not impede views through the built separation between the Quest Building and the proposed development. Further, the proposal doesn't generate any loss of privacy for guests at the Quest building, as it has no window openings facing the proposed development.

As such, the proposal is consistent with the objectives of the building separation standard.

6.0 The development is consistent with the objectives for development within the B3 zone and for city centre

Despite the contravention of the FSR and building separation standards, the development taken in its entirety is nonetheless consistent with the objectives for development within the B3 zone and Liverpool City Centre.

The objectives of the B3 Commercial Core zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.*
- *To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.*
- *To facilitate a high standard of urban design and exceptional public amenity.*

The proposal provides a generous commercial open plan arrangement on each floor above ground level, which is capable of accommodating a range of commercial office requirements. The proposal is in an attractive built form outcome that deviates from the dated and traditional appearance of similar scale commercial developments in the city centre. The site's proximity to public transport, retail service and other facilities nearby in a generally permeable city centre will encourage active transport to and from work.

The proposal will enhance the site's ability to accommodate a variety of business uses and increased levels of employment, by increasing the commercial floor space offering on the land. The proposal will help further define the southern edge of the commercial core on Scott Street, and will be a visually appealing building for pedestrians, road users and public transport passengers when passing by. The ground floor area provides an attractive opportunity for a business such as retail or a restaurant to occupy the floor, support an activated street frontage, and increase pedestrian activity. These will serve to strengthen the role of the Liverpool city centre as a key commercial centre in the region, due to the city centre's high levels of accessibility, close proximity to existing and future residential development areas and highly accessible public transport network.

The potential future adjoining laneway which the proposal seeks to facilitate will be a beneficial public outcome that improves the urban environment of the city centre through increasing pedestrian permeability and connectivity.

In considering the above, the proposal is considered to be consistent with all the objectives of the B3 zone.

The proposal is located in the Liverpool city centre and clause 7.1 of LEP 2008 is applicable. The objectives of the Liverpool city centre are:

- a. to preserve the existing street layout and reinforce the street character through consistent building alignments,
- b. to allow sunlight to reach buildings and areas of high pedestrian activity,
- c. to reduce the potential for pedestrian and traffic conflicts on the Hume Highway,
- d. to improve the quality of public spaces in the city centre,
- e. to reinforce Liverpool railway station and interchange as a major passenger transport facility, including by the visual enhancement of the surrounding environment and the development of a public plaza at the station entry,
- f. to enhance the natural river foreshore and places of heritage significance,
- g. to provide direct, convenient and safe pedestrian links between the city centre (west of the rail line) and the Georges River foreshore.

Despite the proposed departure from the FSR and building separation development standards, the proposal is consistent with the aims and objectives of the Liverpool city centre (listed at clause 7.1 of LEP 2008) in that the proposal will:

- create a quality new commercial development that is well integrated with the existing subdivision pattern and street block layout of Liverpool city centre, providing a successful transition between the existing developments and desired future character;
- deliver a flexible and innovative development with floorplates of a size that encourages horizontal and vertical integration to enable a range of businesses to relocate to the city centre and yet be designed to accommodate the high level specifications required by the NSW Government;
- develop a building of appropriate bulk and scale that seeks to maximise the streetscape appeal, ground floor activation and employment opportunities while minimising its potential environmental impacts;
- locate all car parking underground with basement access from the rear to reduce the conflict between vehicles, cyclists and pedestrians;
- given generate public benefits arising from the additional employment opportunities that would be delivered by the development, noting the site is in direct proximity to Liverpool railway station, major regional road networks and is located in the Liverpool City Centre;
- benefit from good access to areas of housing, health and educational facilities, retail development and open space that would serve the needs of the additional employees that would be generated by the additional floor space;
- provide increased employment opportunities through the additional of additional business space;
- provide an attractive ground floor area that is suitable for retail or restaurant businesses which will increase the public domain quality and street level activation of Scott Street and the adjoining future pedestrian laneway;
- enhance the streetscape and cityscape appeal of the city centre through the delivery of a modern office building with glass curtain wall façade presentation broken down in scale by vertical articulation elements;
- respect the heritage conservation area and heritage items in close proximity through its modern but respectful design outcome;
- not create generate views loss or loss of privacy to adjoining developments, nor will detrimentally overshadow adjoining development or the heritage conservation area to the site's south;
- incorporate a range of ecological sustainable development measures including orientation of the built form on a north-south axis, minimising the use of energy and water throughout the development;
- capitalise on the existing permeable street network in the city centre with the potential inclusion of a future laneway that will enhance this quality further, especially between the southern edge of the commercial core to the north;
- create a visual marker on the city centre skyline as the southern edge of the commercial core and be distinctively identifiable from the train station; and
- create a high quality commercial development that is consistent with the locality in terms of built form and potential users.

7.0 Other Relevant Matters

In addition to the matters outlined above the following considers the proposed variations in relation to the desired future character for Liverpool city centre, matters of regional and State significance, and the objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

7.1 Consistency with Desired Future Character

Since the lodgement of the subject DA, Council has obtained Gateway determination for draft LEP 2008 (Amendment No 52). This proposed amendment to LEP 2008 suggests the desired future character for the city centre of Liverpool is expected to change. This proposed amendment underwent public exhibition which concluded on 29 January 2016, and public submissions are presently being collated. The current instrument, that is the LEP 2008, therefore takes precedence in consideration under 79C of the EP&A Act.

Amendment 52 does propose some alterations in relation to the subject development and the Council's desired future character for the area. This includes proposals for:

- a change of zoning of large areas of the B3 Commercial Core to B4 Mixed Use;
- a reduction of maximum FSR to 3:1
- a reduction of maximum building height of 28m.

FSR and height bonuses are proposed by Amendment No. 52, for sites which achieve a minimum site area of 1,500m².

These amendments, if adopted, would significantly reduce the built form permitted on the site. Rezoned areas would also allow residential development where this is not currently permitted.

It is thought that this approach has been taken to continue to encourage employment generating development, while also meeting demand for the highest best use, being residential. This mixed use approach is generally sought in places where pure commercial development has not been successful, which may be appropriate for a city centre such as Liverpool, which has not successfully transitioned to as a high rise CBD as was envisaged by the 2008 LEP

Nonetheless, the underlying intent of Mixed Use zoning is still to promote employment development into the city centre. The proposed development, despite its non-compliance with the current and proposed FSR and building height controls, will still promote these opportunities, by providing employment generating commercial space. The proposal would also not look incongruous alongside new buildings constructed to comply with the proposed planning controls.

As such, the proposal would meet the needs and desired future character of both the 2008 LEP and the proposed Amendment 52.

7.2 Matters of State or Regional Significance

The proposed development and variations from the FSR and building separation development standards do not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.

Planning circular PS 08-014, issued by the NSW Department of Planning requires that all development applications, where there has been a variation to a standard of over 10%, be considered by Council (rather than under delegation). The requirements of the circular will be followed in the assessment of this application.

The proposed non-compliance with the standards for FSR and building separation serves the objectives of the Sydney Metropolitan Strategy, *A Plan for Growing Sydney*, by providing a high quality commercial development that will support the commercial functions of Liverpool as a Regional City Centre. It is noteworthy that the first goal for the Plan is to create a competitive economy for the broader Sydney Metropolitan region, which sits ahead of other Plan goals for housing and the environment.

Relevant to the development the Plan has a number of directions to achieve this by:

- Growing strategic centres by providing more jobs closer to home, which exponentially increases the challenge when it is expected by the Plan that in 25 years Western Sydney will be home to more than half of all Sydneysiders
- Locating jobs in around 30 to 40 large centres across Sydney, all of which have capacity to growth because of their size, diversity of activities and connections to the rail network
- Developing an 'Enterprise Corridor' between Liverpool and Bankstown, which is expected to be later connected with an extension of the new metro line from Bankstown and that is expected to 'attract new economic activity'
- Reducing the need for residents of Liverpool to travel outside the region to work, when currently 26% of residents in the broader Western Sydney are having to travel outside of this region to work²

In this regard and although FSR is largely based on controlling the bulk and scale of buildings in order to minimise adverse environmental impacts, the proposed development for Scott Street will generate extra floor space that will contribute to generating additional employment opportunities for Liverpool to support the NSW Government's objective to make a viable and vibrant Liverpool a Regional City Centre. Moreover, this additional floor space is located in centre that well serviced by transport and other supporting infrastructure. Therefore, the proposal for additional floor space directly aligns with the objectives set by *A Plan for Growing Sydney* to best utilise existing infrastructure resources to support economic outcomes and is consistent with good strategic planning by locating high employment generating development in proximity to integrated public transport infrastructure.

7.3 Objects of the EP&A Act

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that it:

- Constitutes "proper management, development and conservation of natural and man-made resources". In particular the proposed non-compliance with the standards for maximum FSR and minimum building separation will result in better internal efficiencies within the proposed building, than if strict compliance were observed;
- Promotes "the social and economic welfare of the community and a better environment" by better utilising the existing resources and infrastructure of the community. Specifically, the proposal will generally be consistent with the desired future character of the area and will promote the use of public transport by those travelling to and from the proposed building, thereby reducing traffic and air quality impacts;
- Will result in "the promotion and co-ordination of the orderly and economic use and development of land" by supporting the commercial function of the Liverpool city centre, and contribute to supporting the commercial objectives sought by the site's B3 zone.

² Sweet Reason Pty Ltd, 'Planning Sydney's Cultural Facilities' on behalf of NSW Arts, Sydney, 2011, p. 4, viewed 8 August 2014, < www.arts.nsw.gov.au/index.php/creative-spaces/planning-sydneys-cultural-facilities/review-of-sydneys-cultural-facilities/ > Data for 1996 to 2011

8.0 Conclusion

Although the proposal exceeds the building FSR and separation development standards, it delivers a built form that is consistent with the current and future intended objectives of Liverpool LEP 2008.

This report justifies these departures, and demonstrates that compliance with the standard is unreasonable and unnecessary given the following circumstances:

- The development as proposed is consistent with the objectives of the FSR and building separation objectives and principles for the B3 zone and Liverpool city centre, both under the applicable planning provisions and those under the planning proposal to amend the LEP 2008.
- The proposal has a significantly less maximum building height than what is permitted, despite its density exceedance, which demonstrates a large disparity between the FSR and Building Height standards.
- The public benefits arising from the additional employment opportunities that would be delivered by the development, noting the site is in direct proximity to Liverpool railway station, major regional road networks and is located in the Liverpool City Centre.
- The site benefits from good access to areas of housing, health and educational facilities, retail development and open space that would serve the needs of the additional employees that would be generated by the additional floor space.
- The development provides increased employment opportunities through the addition of extra business office space.
- To distribute the maximum permitted floor space per the FSR for the site over the 30 storeys that could be achieved for the site would result in significantly diminished floor areas for each level of only 218m² for each floor, whereas the development seeks to provide floor plates that are to be far larger or nearly 5 times this.
- The first tenant for the building being Department of Family and Community Services will be a singular tenant for the premises, such that cohesive and less fragmented floor spaces will provide for more integrated and productive working arrangements for staff as required by their specifications and will meet the desired outcome sought by the tenant. These outcomes are not exclusive to this government tenant, but would be expected outcomes for other office type business that could later accommodate the development.
- The maximum density applicable to the site (and other land in the B3 zone) is unreasonable, and not in context with the desired future character of the city centre and compliance would likely make the proposal unviable.
- The development is of a scale and bulk that is congruous with surrounding development, serves to enhance the continuous streetscape appeal of the city centre, and is respectful of nearby commercial buildings of similar scale.
- The built form will facilitate the achievement of a high quality development outcome in the city centre, which is significantly improved on other commercial buildings of similar scale, which tend to age the city centre.
- The building envelope is aligned to similar developments where the reduced building separation enables viable commercial floor plates which will be attractive to a range of businesses and serve to enhance the function of the city centre as a key commercial location.
- The floor layout of the building have been arranged to maximise flexibility for future tenants, while ensuring the delivery of a high quality and innovative building that is architecturally representative of the Council's employment aims for the Liverpool city centre.
- The contravention of the development standards is a more orderly and economic development of the site, and better supports the Section 117 direction to protect and encourage employment lands, compared to a proposal which complies with density and building separation provisions.

Compliance with the building FSR and building separation standards is therefore unnecessary and unreasonable in the circumstances of the case, and should not be reason to preclude the Sydney West Joint Regional Planning Panel from approving the proposed development.