

# Clause 4.6 – Exceptions to Development Standards

*Liverpool Central*

17-25 Bigge Street, Liverpool

Exceptions to Development Standards – Height of Buildings

Prepared by Tract Consultants  
for CV McNally

31 August 2016

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Executive Summary

Background

Owners	
Address	17-25 Bigge Street, Liverpool
Lot Description	Lot 4 DP 13930 Lot A – D DP 345161

Relevant Planning Controls

State Planning Policy Framework	State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
Local Planning Policy Framework	Liverpool Local Environmental Plan 2008
Zone	R4 – High Density Residential

Quality Assurance - Report Record

Project Name	Clause 4.6 – Exceptions to Development Standards
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# 1 INTRODUCTION

## 1.1 Introduction

This variation under Liverpool Local Environmental Plan 2008 has been prepared in relation to a development application for demolition of existing structures and construction of a residential apartment development including two residential towers, landscaping and basement parking located at 17-25 Bigge Street, Liverpool.

This objection relates to the following provisions of Liverpool Local Environmental Plan 2008.

a) 4.3 Height of Buildings

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

In accordance with the provisions of SEPP No 1 and the decision in *Hewitt v Hurstville Council* (2001) NSWLEC 294 (21 December 2001) this objection demonstrates that the 'control' is a development standard rather than a prohibition on development, outlines the underlying objects or purposes of the standard, demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and shows that the departure well founded.

## 1.2 Pre-DA History

The proposed development was discussed at length with Council over three Pre-DA meetings. The purpose of these meetings was to ensure that the proposed development was able to provide a high quality built form in Liverpool City Centre, despite the challenges of being a highly constrained site. These meetings took place as follows:

1. Pre-DA Meeting – 15 June 2015 with CV McNally, Tract Consultants, Rothelowman and Liverpool City Council staff;
2. Pre-DA Meeting – 11 November 2015 with CV McNally, Tract Consultants, Rothelowman, Site Design Studies, TEF Consulting, Erbas and Liverpool City Council staff; and
3. Design Excellence Panel – 10 December 2015 with CV McNally, Tract Consultants, Rothelowman and Liverpool City Council staff.

At the first Pre-DA meeting, Council's City Architect noted the following, as detailed in the minutes:

*"Given the complexity of the site and the approved adjacent developments the overall design philosophy is to treat the site as a design intervention and to gently manipulate the controls to achieve the best outcome."*

From the outset it was acknowledged by Council that the site was constrained, and that in order to achieve the best built form outcome, there would need to be delicate manipulation of the controls stipulated in the Apartment Design Guide (ADG) and Local Environmental Plan (LEP).

Through these meetings, the design was significantly altered in relation to height and bulk of Tower A and the provision of a large internal square to provide superior communal open space within the site and establish a three storey street frontage height.

From the outset communication lines were open with Council, as a consequence of the Land and Environment Court approved development located to the north of the site, which presents significant non-compliances and restricts our land in relation to setback and solar access.

The most significant alteration to the scheme was the purchase of 17 Bigge Street to incorporate within the design, in accordance with the recommendations of Council. The purchase of 17 Bigge Street from NSW Health was a significant undertaking at substantial cost to the developer, which was completed to alleviate any concerns Council may have had in relation to the isolation of the subject site.

### 1.3 Post Lodgement

Council issued the Applicant a letter dated 4 July in relation to a number of items that needed to be addressed in order for the application to proceed. These issues related to:

- Building Height and Floor Space Ratio variations;
- Building separation;
- Private Open Space;
- Solar Access and Natural Ventilation;
- Universal Design;
- Car Parking; and
- DA Objections (Tree removal).

Through a number of constructive meetings with the assessing officer, team leader and manager, the proposal has been amended to provide the following design improvements:

1. Provision of additional 3 bedroom apartments (originally 18, now 36) to enhance housing diversity in the city centre;
2. 10% of the 3 bedroom units required by the DCP will be situated within a compliant building form;
3. Reduce floor space ratio variation from 3.33:1 (11%) to 3.23:1 (7.8%);
4. Level 12 has been reduced in size and pulled back to the north, south and west;
5. High level windows provided on northern and southern boundaries on both towers to increase natural cross ventilation;
6. External louvres added to Tower B to improve cross ventilation;
7. New core area introduced in the southern portion of Tower B to provide greater access to the building;
8. Screening introduced to balconies B104, B105, B304, B305, B404, B405, B804, B805 to improve privacy in relation to 20-22 George Street;
9. Amendments to balcony and room sizes; and
10. Amend the basement parking layout to provide fire stair and lift to service new core at Tower B.

These design improvements are supported by additional diagrams and plans to demonstrate the amendments.

The development in its amended form provides a superior built form outcome, has reduced the overall FSR variation and provides public benefit with the provision of additional three bedroom units.

## 2 DESCRIPTION OF THE PLANING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

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

Liverpool Local Environmental Plan 2008 (LLEP 2008).

### 2.2 What is the zoning of this land?

The subject site is zoned R4 High Density Residential as shown in the zoning map provided and marked **Figure 1**.

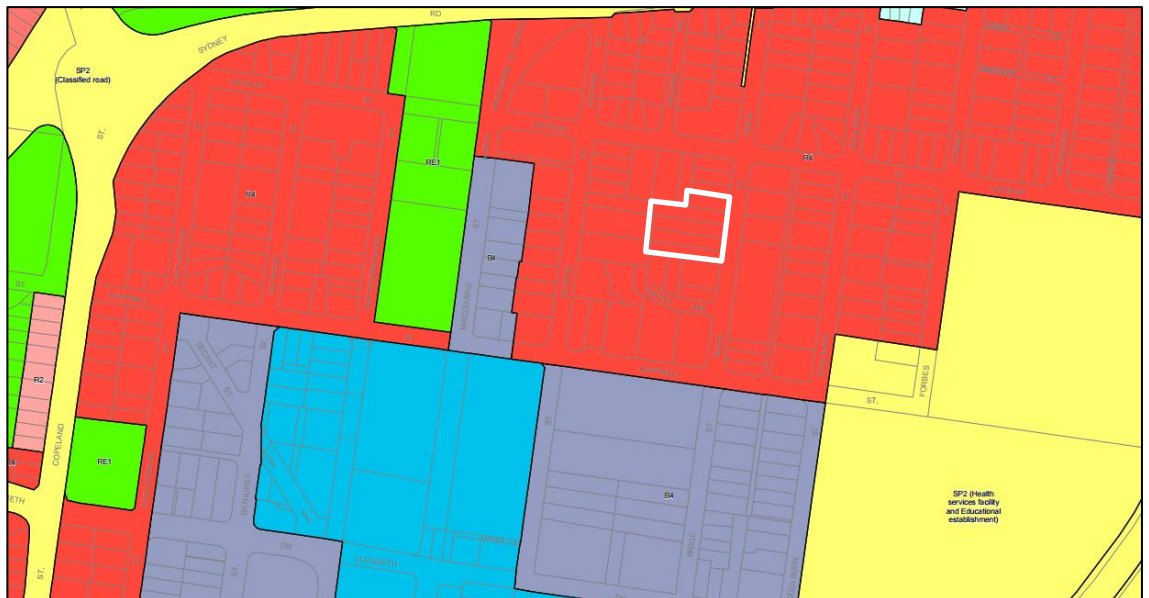


Figure 1: Zoning Map Extract (Source: LLEP 2008)

### 2.3 What are the Objectives of the zone?

The land use zone for the R4 High Density Residential zone prescribes the following objectives:

#### 1 Objectives of zone

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

## 2.4 What is the development standard being varied?

The development standard being varied relates to Clause 4.3 “Height of Buildings”.

## 2.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3(2) of LLEP 2008 ensures that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

## 2.6 What are the Objectives of the development standard?

Pursuant to Clause 4.3 of LLEP 2008, objectives to the development standard are prescribed the following:

- (1) *The objectives of this clause are as follows:*
- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
  - (b) *to permit building heights that encourage high quality urban form,*
  - (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
  - (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

## 2.7 What is the numeric value of the development standard being varied?

Clauses 4.3(2) is a development standard relating to the maximum height of the building, which prescribes a maximum height of 35 metres and is marked “V” on the height of buildings map.

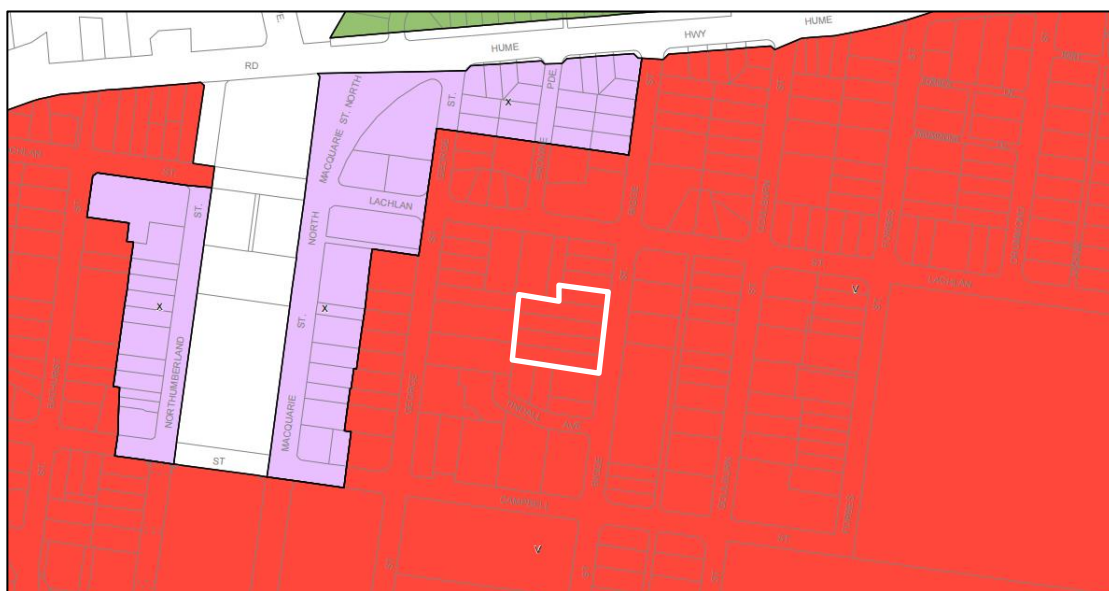


Figure 2: Height of Buildings Map Extract (Source: LLEP 2008)

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

The proposal comprises a building height of 41.7 metres (top of parapet), which exceeds the permissible 35 metre building height identified in LLEP 2008.



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

The proposal exceeds the maximum building height by 6.7 metres or 19% in relation to Tower A only. Tower B provides a compliant height.

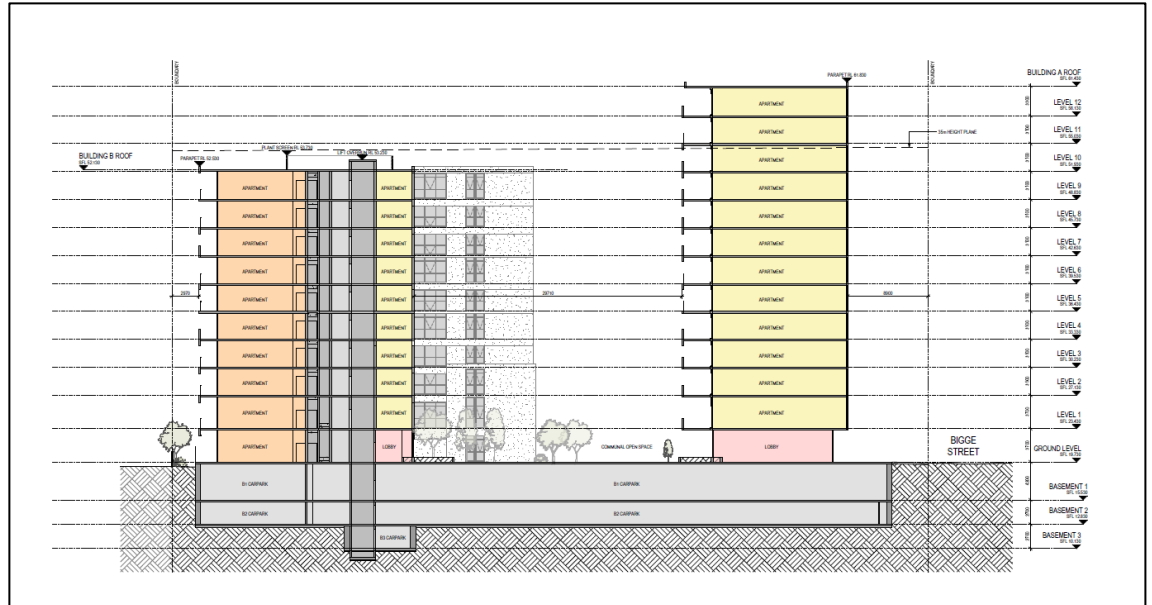


Figure 3: Variation in Building Height



### 3 ASSESSMENT OF PROPOSED VARIATION

#### 3.1 Background

'Development Standards' has the following meaning ascribed to it under Section 4(1) of the Environmental Planning and Assessment Act, 1979:

*"development standards" means provisions of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of*

- a. the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;*
- b. the proportion or percentage of the area of a site which a building or work may occupy;*
- c. the character, location, siting, bulk scale, size, height, density, design or external appearance of a building or work;*
- d. the cubic content or floor space of a building;*
- e. the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, maneuvering, loading or unloading of vehicles;*
- f. the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;*
- g. the provision of facilities for the standing, movement, parking, servicing, maneuvering, loading or unloading of vehicles;*
- h. the volume, nature and type of traffic generated by the development;*
- i. road patterns;*
- j. drainage;*
- k. the carrying out of earthworks;*
- l. the effects of development on patterns of wind, sunlight, daylight or shadows;*
- m. the provisions of services, facilities and amenities demanded by development;*
- n. the emission of pollution and means for its prevention or control or mitigation; and*
- o. such other matters as may be prescribed;*

The Clauses relevant in this instance are:

*"(c) the character, location, siting, bulk scale, size, height, density, design or external appearance of a building or work;*

Clause 4.6 "Exceptions to Development Standards" facilitates the variation of a development standard under the Standard Instrument LEP. An application to vary a development standard can be made under Clause 4.6. It aims to provide flexibility in applying certain development standard to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

LLEP 2008 Clause 4.6 "Exceptions to Development Standards" is a local policy mechanism available to applicants to seek variation of development standards contained within in an environmental planning instrument.

The objectives of the 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.*

Clause 4.6(2) of LLEP 2008 incorporates the mechanism for the making of a Clause 4.6 Variation and provides as follows:

- (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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Assessment of the floor space ratio variation is provided in accordance with the requirements of Clause 4.6. This variation has been prepared in accordance with DP&I Circular dated August 2011 "Varying development standards: A Guide", which identifies matters to be addressed in an application to vary a development standard.

### **3.2 How is strict compliance with the development standard unreasonable or unnecessary in this instance?**

In this case, strict numeric compliance is considered unreasonable and unnecessary as the proposed design has adopted an increased height with regard to Town A, in consideration of the impact on adjoining development to the south. As a consequence of the east west orientation of the lots, any development on the subject site has the potential to significantly impact land to the south. The resultant non-compliance has improved the solar access to existing southern development by reducing the height and bulk of Tower B and relocating the removed floor area from Tower B onto Tower A, where the resultant shadow impacts primarily the road reserve.

The proposed development seeks to provide a maximum building height of 41.7 metres in relation to Tower A, which exceeds the permitted building height of the site by 6.7 metres or 19%. The proposed development is able to achieve the underlying objective and purpose of the building control despite non-compliance with the numeric controls.

A variation is considered reasonable on the basis that:

- The non-compliant height (levels 11 and 12) will provide 12 of the 36 proposed 3 bedroom apartments;
- 10% of the 3 bedroom units required by the DCP will be situated within a compliant building form;
- Level 12 has been amended to recess into the building and minimise any perceived bulk and scale impacts;
- The development contributes 16.2% of the unit mix to 3 bedrooms to satisfy a market demand not currently addressed through the DCP provisions of the 10% 3 bedroom mix;
- 16.2% 3 bedroom apartments are a product offering that will improve housing choice in the city centre and cater for larger families and those seeking penthouse living;
- The proposed massing and built form outcome has been workshopped extensively with Council over three Pre-DA meetings, as well as post-lodgment discussions;
- The proposal offers superior open space in the form of a communal square, which provides a range of quality outdoor experiences including alfresco area, BBQs, fixed and flexible seating, outdoor table tennis, kids play area and numerous seating areas;
- The proposal will be of an appropriate bulk, scale and will not result in adverse visual impacts and will not detract from the continuity of the streetscape;
- The proposal delivers a high quality and well defined urban form;
- The site is within excellent access to Liverpool City Centre and public transport options;
- It is not considered to impact on the areas surrounding heritage context; and
- It will not result in any adverse amenity issues to surrounding properties or the locality.

These factors warrant an approach that properly considers and realises the potential of the site beyond strict compliance to LLEP 2008 provisions. It is appropriate to assess the variation of the proposed building height against the aims and objectives outlined in Clause 4.3 of LLEP 2008. The following sets out the ways in which the proposed building height complies with the objectives, notwithstanding numerical compliance.

- a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved*

The proposed development seeks to provide a maximum building height of 41.7 metres, which represents a departure of 6.7 metres (19%) from the permissible height control. The departure relates to Tower A, at the front of the site fronting Bigge Street. It is noted that Tower B, at the rear of the site, is compliant with the current height control and provides a maximum building height under 35 metres.

The 6.7 metres in height proposed on Tower A provides two floors, identified as Level 11 and Level 12 and will accommodate an additional 22 units. This comprises a total of 1,345.3m<sup>2</sup> dedicated to the delivery of 3 bedroom units. The provision of these additional units within the proposed 6.7 metre height facilitates a development that encourages appropriate housing mix and choice, without the impacts on development to the south, if the additional units were provided to Tower B.

Importantly, 3 bedroom units are a desired product offering that is currently limited in city centre. The unit mix comprises 16.2% dedicated to 3 bedroom units, which is substantially larger than the 10% requirement prescribed under the DCP.

The 12 x 3 bedroom units located within the non-compliant building height will contribute greatly towards housing diversity in the city centre and provide a type of housing for larger families and also penthouse living opportunities. It is also noted that 10% of the 3 bedroom units are located within the compliant building form.

*b) to permit building heights that encourage high quality urban form*

The subject site presents a void in the streetscape, due to the existing dilapidated single dwelling house built form which is currently presented in an area identified as a R4 High Density Residential zone. The site presents a timely and unique opportunity to consolidate and develop a positive response to the surrounding locality. The current site comprises single storey dwellings and inappropriate tree species that do not provide a high quality urban form. The site is not consistent with the desired density and objectives prescribed in the R4 High Density Residential zone.

The proposed height of Tower A will define and contribute towards the dense urban character of Bigge Street and seek to provide appropriate massing in respect of its proximity to Liverpool City Centre to the south. The proposed height variation will not substantially or severely impact on the quality of urban form, the streetscape and the locality. In our view, the proposed building height for Tower A will not negatively impact on the urban form that would be generated by a compliant development.

The bulk and scale of the development provides transitional density from the Liverpool City Centre in the south, which presents building heights greater than 45 metres, and high density residential (with maximum building heights of 45 metres) to the north. The proposed height seeks to define the streetscape and compliments the scale of health and medical facilities on the opposite side of Bigge Street.

The proposed height elements which exceed the 35 metre height control are located on the eastern portion of the site on Tower A, which fronts Bigge Street. The proposal maintains that taller built form elements are appropriately located within the site and in relation to the surrounding context. The proposal establishes a compliant building height at the rear with Tower B, which is appropriately sited with respect to development at the rear.

We note that 13-15 Bigge Street, adjoining the subject site to the north, has been approved for a 14 and 8 storey residential apartment development. The approved development will provide a total of 99 units in Tower A and 24 units in Tower B.

Tower A, subject of this application will provide for 136 units, 13 of those provided in areas considered part of the additional building height and will contribute significantly to the housing stock, choice and affordability of Liverpool.

The urban form delivered by virtue of the increased height establishes a development that results in a quality built form outcome. As such, strict compliance with the standard is considered to be unreasonable and unnecessary in this instance.

The development establishes high quality built form through the central communal open space area, which is considered critical to the overall development. The landscape design includes an outdoor alfresco area with BBQ's and fixed and flexible seating areas, an outdoor table tennis and

kids play area for recreational activity and numerous seating areas for families to sit and enjoy the landscape.

The proposed development provides superior landscape design excellence, as noted in the statement provided by SiteDesign Studios:

*Although most of the landscape area is on podium the space is more park-like than podium gardens. This is innovative in design and rarely seen in apartment living... the landscape is not a transient space but more magnetic to attract residents to use as part of their living and outdoor activities. The park like arrangement is design excellence at its best'*

Additionally, the statement identifies a range of landscaping measures that contribute to the quality of the outdoor communal open space:

*'...planting design incorporates a variety of canopy trees, palms native and exotic in an informal arrangement. The planting is diverse, with different textures, colours, scents and sizes which is interesting and less predictable. The planting emphasises the more park-like design and strengthens the place making appeal'*

The landscaping design provides superior outdoor living experiences and establishes a new benchmark in communal open space. We believe this is a key feature of the proposed development and will complement the developments capacity to provide for addition 3 bedroom units and enhance the housing mix of the city centre.

- c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight*

Consideration is made to the proposed building height in relation to solar access and natural sunlight impacts on adjoining properties and the streetscape. The design as originally presented at the first formal Pre-DA with Council on 8 July 2015, provided a development which presented two towers, both in compliance with the building height control.

Through Pre-DA discussions the design was amended to relocate some of the height and bulk of the Tower B building onto Tower A, in order to directly improve the solar access of development to the south. The proposal now provides additional height in relation to Tower A, however, is able to demonstrate a better built form outcome with improved shadow impacts, than a compliant development.

A large portion of overshadowing between 11:00am and 1:00pm is a result of proposed Tower B at the rear of the subject site, which reflects a building height below the maximum building height control. The reduction in the size of this building has served to reduce the impact. The lots within the subject block are oriented east west, following the prevailing road and subdivision pattern of the area. As a consequence of the lot configuration and city centre location of the site, overshadowing is unavoidable even in the form of a compliant building.

As a design response, this proposal seeks to rationalise the existing site constraints including adjoining residential apartments to the north at 8-10 Lachlan Street (9 storeys), 4-6 Lachlan Street (9 storeys and 14 storeys), 20-22 George Street (6 storeys) and 26-29 Bigge Street (6 storeys) to provide a development that is configured to minimise impacts to 3 Tindall Avenue and 26-29 Bigge Street located to the south.

- d) *to nominate heights that will provide an appropriate transition in built form and land use intensity*



The proposed height variation will not give rise to any adverse impacts on the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, community facilities and will provide an appropriate transition in built form and land use intensity.

Level 12 has been amended to further recess into the building and to eliminate any perceived bulk and scale impacts generated from this additional level.

In addition, the development provides less site coverage than what is permitted in the R4 zone. While the maximum site cover is 50%, the proposed development seeks to provide a site cover of 47%, which presents a proportionate, transitional, open and scaled development that provides ample communal space and recreation areas. The sites nominated coverage mitigates the perceived impact of the additional 6.7 metre height proposed on Tower A.

When viewed from Bigge Street and adjoining roads, Tower A will read as a connected, well defined and appropriately scaled residential building that provides excellent access to public transport, medical and health services and the city centre. The first 3 levels of Tower A provide a fine grain and human scale form, which will mitigate any impacts of the additional height and further reduces the perceived building mass when viewed from Bigge Street.

Consideration of the proposed building height is made within the context of the Liverpool City Centre and surrounding residential apartment developments. Inspection of the locality and Liverpool City Centre confirms that significantly taller developments have been established surrounding the subject site, specifically north of the site towards Lachlan Street. Accordingly, there is very little opportunity for the additional height to protrude above the established height or dominate the built form in the locality.

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

Section 5(a)(i) and (ii) of the Act provide the following objectives:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

Compliance with the standard would hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Act.

The proposal in its current form enables the development to be commercially viable and will build upon the residential and apartment growth in Liverpool City Centre. The proposal seeks to provide excellent amenity outcomes in respect of larger private open space areas than prescribed under SEPP 65, large communal open space with varying depths for deep soil zones, opportunities for recreation and seating areas, provision of waste disposal in the basement parking and generous lobby and meeting areas. The provision of such amenity has an economic cost and will be supported partially by the ability to provide additional building height to cater for additional 3 bedroom units and to enhance housing diversity of the city centre.

As previously identified, the building height does not result in any additional impacts than what is achievable through a compliant development. The additional units contribute to greater dwelling diversity through different 3 bedroom designs. The housing choice proposed by virtue

of the proposed height supports greater social and economic welfare to the community. The additional 3 bedroom units also provide a new housing choice for larger families or those seeking a penthouse style living arrangement. We consider this diverse product offering key to Liverpool retaining its commercial and residential primacy.

The development promotes orderly economic use and development of land. Compliance with the floor area control is not considered necessary to enable the desired built form and character inherent of the Liverpool City Centre. The development is already in an established urban area, located centrally in Liverpool and has excellent access to infrastructure and services. The size and depth of the site is considered entirely suitable for a more intense use of the land than prescribed under existing LLEP 2008 controls. Variation to the standard does not compromise or undermine the promotion and co-ordination of the orderly and economic use of land.

### **3.4 Is the development standard a performance based control? Give details**

The development standard is not a performance based control.

### **3.5 Are there sufficient environmental planning grounds to justify contravening the development standard? Give details**

The proposed development is able to demonstrate sufficient environmental planning grounds for contravening the development standard.

The proposed variation must be considered within the future character, context and lifestyle envisaged for the Liverpool. In *A Plan for Growing Sydney* released December 2014, Liverpool is identified as a strategic centre. Strategic centres prioritise the following future directions:

- *work with council to retain a commercial core in Liverpool, as required, for long-term employment growth.*
- *work with council to provide capacity for additional mixed-use development in Liverpool including offices, retail, services and housing.*
- *work with council to investigate potential future uses of land located east of Georges River and north of Newbridge Road.*
- *support health-related land uses, infrastructure and conference facilities around Liverpool Hospital and Bigge Park.*
- *work with council to improve walking and cycling connections to Liverpool train station from east of the train line.*
- *work with council to improve walking and cycling connections between Liverpool and the Georges River.*
- *investigate a potential light rail corridor from Parramatta CBD to Liverpool via the T-way.*

In recognition of Liverpool's strategic centre role, Liverpool Council has outlined a series of growth targets for the city centre to 2036. These include:

- *35,000 jobs by 2036*
- *5,000 new dwellings within the centre by 2036*
- *New infrastructure to support commercial and residential investment*

Liverpool's strong population growth will place demand for new housing, amenity and facilities for the city centre. The proposed development provides a wide variety housing choice and mix for the current and future populations of Liverpool. In Liverpool City, 25.9% of the dwellings were medium or high density, compared to 40% in Greater Sydney. A greater concentration of higher



density dwellings is likely to attract more young adults, families and smaller households, often renting.

Analysis of the types of dwellings in Liverpool City in 2011 shows that 73.8% of all dwellings were separate houses, 15.1% were medium density dwellings and 10.8% were in high density dwellings. This is compared with 58.9%, 19.7%, and 20.7% in the Greater Sydney respectively. This highlights a need to provide greater housing density, diversity and adaptable units that cater to the needs of Liverpool's growing residential and employment growth. The proposed building height does not undermine the over-arching strategic planning objectives for Liverpool, rather, it reinforces Liverpool's role as a key strategic centre.

Pursuant to the Apartment Design Guide, development must be able to demonstrate appropriate housing choice and mix. The development provides 14.9% 1 bedroom units, 68.7% 2 bedroom units and 16.2% 3 bedrooms units. The provision of 3 bedroom units exceeds the minimum requirement stipulated under LDCP 2008 of 10% and ensures an appropriate number of 1, 2 and 3 bedroom units are provided for adaptable apartment mix. The apartment mix provided within the development, as a result of the additional height, contributes greatly to a balanced apartment mix that provides improved housing diversity.

The proposed building height creates an impetus for greater walkability and cycling potential along Bigge Street, which has direct and convenient access to Liverpool City Centre and transport infrastructure. It is evident the building height does not undermine the strategic intent of Liverpool, rather, the building height promotes its future urban character and vision.

The assessment of the environmental planning grounds that justify contravention of the development standard include the following main points:

- The non-compliant height (levels 11 and 12) will provide 12 of the 36 proposed 3 bedroom apartments;
- 10% of the 3 bedroom units required by the DCP will be situated within a compliant building form;
- Level 12 has been amended to recess into the building and minimise any perceived bulk and scale impacts;
- The development contributes 16.2% of the unit mix to 3 bedrooms to satisfy a market demand not currently addressed through the DCP provisions of the 10% 3 bedroom mix;
- 16.2% 3 bedroom apartments are a product offering that will improve housing choice in the city centre and cater for larger families and those seeking penthouse living;
- The proposed building height contributes to greater housing diversity and mix, particularly with 3 bedroom units;
- The additional building height does not contravene or undermine the strategic importance or future character of the Liverpool City Centre;
- The building height utilises the sites location to Liverpool Town Centre and proximity to public transport, promoting transit oriented development;
- The resulting building height does not result in additional impacts to the public domain or surrounding development;
- The resulting building height does not contribute to over-development of the site or substantially change the bulk of the development;
- The additional building height, and subsequent density, creates excellent residential apartment amenity and a commercially viable development;
- The additional building height does not contribute to any additional impacts than what would normally be developed through a compliant development;
- The additional building height does not create adverse visual impact or impact on the perceived bulk of the development;

- The additional building height does not impact on design excellence in the Liverpool City Centre, rather, the development provides generous private open space, lobby areas, communal open space and locates waste in the basement;
- The additional building height is offset by the proposed landscaping attention and site which exceeds the required minimum percentage of landscape area. This creates a proportionate and scaled building outcome for the site;
- The site has generous lot width and depth, which is capable of more intense development and additional building height; and
- There are no negative net outcomes in ensuring variation with the standard.

In our view, the proposed development does not result in any additional or noticeable impacts than what can be achieved on site through a compliant development.

A large portion of overshadowing between 11:00am and 1:00pm is a result of proposed Tower B at the rear of the subject site, which is development below the compliant building height. The site provides an east west orientation following the prevailing road and subdivision pattern of the area. As a consequence of the surrounding site context and existing and proposed residential development, overshadowing is unavoidable even in the form of a compliant building.

The design changes adopted during Pre-DA with Council have resulted in a breach of the building height control, however, minimised the impact in relation to land to the south. By relocating a portion of Tower B onto Tower A, the outcome provides a non-compliant height in respect of Tower A, however, provides an improved urban design outcome, with less impact on adjoining land to the south.

As a design response, this proposal seeks to rationalise the existing site constraints including adjoining residential apartments to the north at 8-10 Lachlan Street (9 storeys), 4-6 Lachlan Street (9 storeys and 14 storeys), 20-22 George Street (6 storeys) and 26-29 Bigge Street (6 storeys) to provide a development that is configured to minimise impacts to 3 Tindall Avenue and 26-29 Bigge Street located to the south.

Overshadowing impacts do not relate to public open space areas and areas used for recreational purposes. Therefore impacts to these areas in the public domain are considered minimal.

The proposed building height will facilitate additional residential units that are considered entirely suitable and appropriate given the close proximity and excellent access to transport, commercial centre, shops and services. The location provides an important opportunity to maximise an intense use of land, encourage active streets and create active neighbourhoods.

The development redistributes the massing of the site to the frontage along Bigge Street, which establishes a solid urban form when presented to the street and unifies the sites frontage.

It is clear that non-compliance with the standards does not result in any additional or noticeable amenity impacts to the locality. There is no benefit to the locality by maintaining compliance with the standard.

### **3.6 Is the variation well founded?**

The variation is well founded for a number of reasons. Firstly, the additional floor area does not contravene or provide inconsistency with the objectives specified within 5(a)(i) and (ii) of the Act. Secondly, the proposed building height maintains consistency with the objectives set out in the R4 High Density Residential Zone.

As highlighted through this assessment, the proposed building height is appropriate within its context. It is in an area of land zoned for a range of intense urban uses including commercial, high density, mixed use and commercial core. Due to the localities existing infrastructure, desired future character and strategic importance, the proposed building height is considered well founded and is able to substantiate significant benefits.

### 3.7 Is the development in the public interest?

Consideration is made to Clause 4.6 of LLEP 2008, which states the following:

*(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*

It is therefore appropriate to consider the proposed variation in respect to maintaining consistency with the objectives set out under the R4 High Density Residential Zone.

#### R4 High Density Residential Zone

The objectives of the R4 Zone are addressed as follows:

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

Comment: The building height enhances housing needs of the community within a high density residential environment, which provides for 22 additional 1 and 2 bedroom dwellings.

The development provides 14.9% 1 bedrooms units, 68.7% 2 bedroom units and 16.2% 3 bedrooms units. The allocation of 3 bedroom units is significantly larger than the prescribed 10% under LDCP 2008. Furthermore, the development provides generous and modulating private open space, unit designs and layouts that contribute to apartment mix and adaptable living for all ages and lifestyle arrangements.

The development rationalises a large and dynamic communal open space area that offers BBQ facilities, seating and social opportunities. The amenity will provide a benchmark for future high density development in Liverpool and raise the standard for housing needs of the community.

*b) To provide a variety of housing types within a high density residential development*

The development provides for a total of 221 residential units. These comprise of 36 x 3 bedroom units, 152 x 2 bedroom units and 33 x 1 bedroom units. The units have been designed to cater for a range of incomes, ages and promote housing diversity. The proposed building height maximises a variety of housing types within a high density residential development that is within excellent access to transport, commercial services, retailers and restaurants. The proposed floor area does not result in an inconsistent outcome with this objective.

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

Whilst providing for a high density residential development, the proposal offers excellent facilities and services to meet the day to day needs of residents. The development provides generous private open space retreats, lobby areas and relocates waste collection and disposal to the basement for improved amenity.

- d) To provide for a high concentration of housing with good access to transport, services and facilities*

The proposed building height seeks to provide a high concentration of housing with excellent access to transport, services and facilities. The site is located 680 metres north of Liverpool Train Station with direct road access from Bigge Street and is 767 metres south west of Warwick Farm Train Station. The two train stations are approximately 10-14 minutes walking distance from the proposed site.

There are a number of bus services within close walking distance that provide convenient access to surrounding suburbs and major centres including the 902 bus service to Holsworthy, 902X bus service to Liverpool, 904 bus service to Fairfield. Most of these bus services are within a 200 metre walking catchment of the development and demonstrate that additional building height is entirely suitable for providing a higher concentration of housing on the site.

Notwithstanding excellent proximity to public transport, the additional height compliments and is compatible with surrounding services and facilities. Development on the opposite side of Bigge Street comprises Sydney Southwest Private Hospital and South Western Day Surgical Centre. There are a number of educational establishments within a 500 metre walking distance to the site including Liverpool Girls High School, Liverpool Public School and Liverpool Tafe. Providing additional units will enable greater opportunity for residents to live in close proximity to essential services and facilities.

Development within approximately 300 metres of the site comprises a range of retail, commercial services and shops including Westfield. Westfield provides a variety of shops and services including restaurants, cafes, bank services, hairdressers, electronic retailers and retail stores. Development surrounding the Westfield comprises further shops, services and restaurants. It is evident the proposed building height reinforces the objective to provide high concentration of housing in close proximity to transport, services and facilities.

- e) To minimise the fragmentation of land that would prevent the achievement of high density residential development*

The development amalgamates five existing allotments, identified as Lots A, B, C and D in Deposited Plan 345161 and Lot 4 in Deposited Plan 13930 with a total area of 5,715.8m<sup>2</sup>. Consolidation of the site provides a timely and unique opportunity to enable high density residential development on the site.

On their own, each lot would be unable to accommodate appropriate built form, massing and density outcomes need to satisfy the future character of the Liverpool Town Centre. The sites consolidated lot width and depth is large for this area of Liverpool, with lot depths deeper than the standard on surrounding land. The consolidated site is able to support appropriate high density residential development and accommodate a greater floor area than prescribed under LLEP 2008 controls.

The purchase of 17 Bigge Street from NSW Health was a significant undertaking at substantial cost to the developer, which was completed to alleviate any concerns Council may have had in relation to the isolation of the subject site. The purchase of 17 Bigge Street has reduced potential

for land fragmentation along Bigge Street and has allowed for appropriate massing and built form continuity to occur along the Street.

Based on the considerations set out Clause 4.6(4) of LLEP 2008, the variation to building height does not undermine or present inconsistency with, the objectives of the R4 High Density Residential Zone.

## 4 CONCLUSION

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In summary, it is our opinion that the Clause 4.6 submission hereby submitted should be supported and the development standards varied for the following reasons:

Paragraph 3 of Circular No. B1 from the former Department of Planning states-

*"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard."*

In our opinion the variations to the standard prescribed by Clause 4.3(2) of LLEP 2008 have shown to:

- a) be consistent with the underlying objectives of the standards;
- b) contribute positively to the desired future character of the area;
- c) be underscored by state strategic planning framework;
- d) meets the SEPP 65 principles and ADG criteria for a high quality development;
- e) have no demonstrable negative impact on the amenity of adjoining properties beyond a fully compliant development; and
- f) consistent with the objectives of the R4 High Density Residential Zone; and
- g) show no public benefit in maintaining strict compliance with the standard.

As such, in this case, strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case.

In our opinion the Clause 4.6 submission is able to be supported by the consent authority and the development may be granted consent on its merits.