

Clause 4.6 – Exceptions to Development Standards

17-25 Bigge Street, Liverpool

Exceptions to Development Standards – Floor Space Ratio

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 A to D DP 345161
Lot 4 – DP 13930

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

Document Number

Revision (see below) B

Prepared By JF

Reviewed By GS

Approved By GS

Date of Issue 31 August 2016

Revision Number	B
Description of Revision	Minor amendments relating to Design Excellence Panel consideration
Prepared By	JF
Reviewed By	GS
Pages Revised	Various

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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) 4.4 Floor Space Ratio

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 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 is 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 3.24:1 (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 firestair 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**.

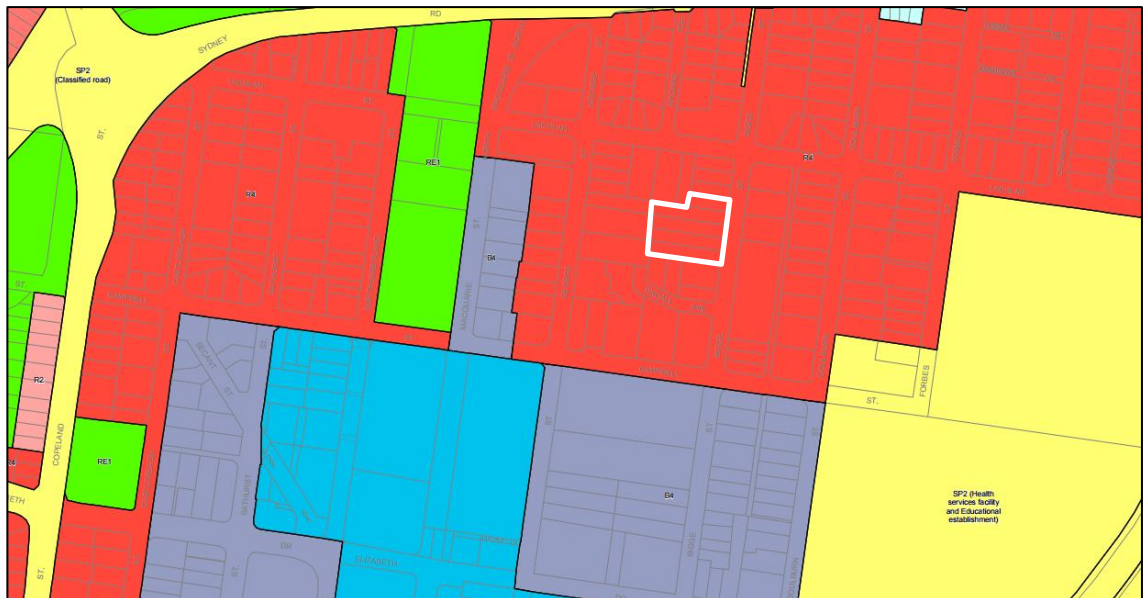


Figure 1: Zoning Map Extract (Source: LLEP 2008)

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 4.4 “Floor space ratio”.

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

Clause 4.4(2) of LLEP 2008 establishes the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

2.6 What are the Objectives of the development standard?

Pursuant to Clause 4.4 of LLEP 2008, objectives to the development standard are prescribed the following:

(1) The objectives of this clause are as follows:

- (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.*

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

Clause 4.4(2) is a development standard relating to the maximum floor space ratio of the building, which prescribes a maximum FSR of 2:1 and is marked “T” on the floor space ratio map.

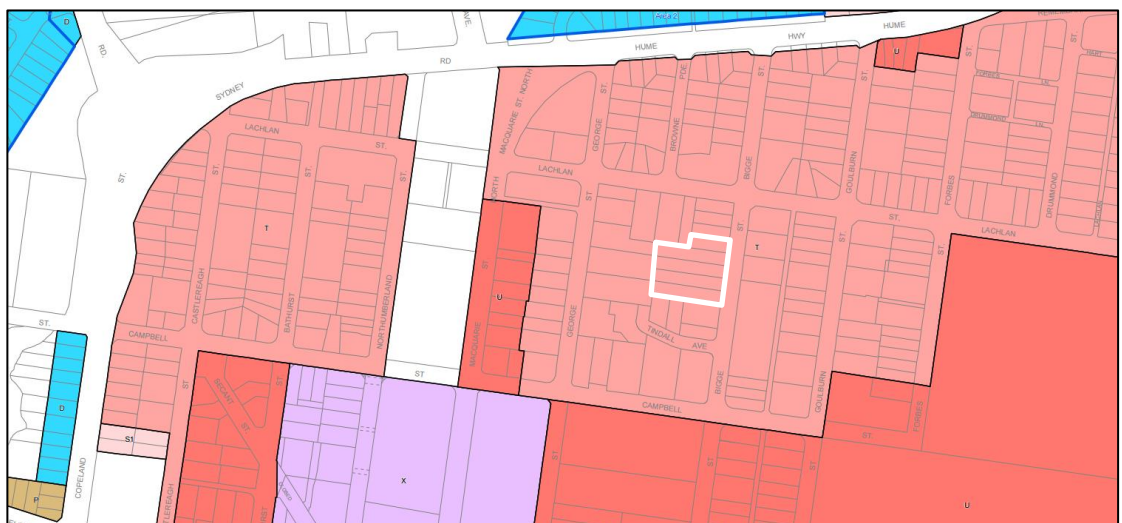


Figure 2: Floor Space Ratio Map Extract (Source: LLEP 2008)

Despite the floor space ratio identified on the Floor Space Ratio Map at **Figure 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.

Column 1	Column 2	Column 3
Zone B3 Commercial Core		
21m	(3 + 0.5X):1	3.5:1
28m	(3 + X):1	4:1
35m	(4 + X):1	5:1
45m	(4.5 + 1.5X):1	6:1
100m	(5 + 3X):1	8:1
Zone B1 Neighbourhood Centre, B4 Mixed Use, SP1 Special Activities or SP2 Infrastructure		
18m	(1.5 + 0.5X):1	2:1
24m	(2 + X):1	3:1
35m	(2.5 + X):1	3.5:1
45m	(2.5 + 1.5X):1	4:1
80m	(2.5 + 3.5X):1	6:1
Zone R4 High Density Residential		
18m	(1 + X):1	2:1
24m	(1.5 + X):1	2.5:1
35m	(2 + X):1	3:1
45m	(2 + 1.5X):1	3.5:1

The proposed development is located within Liverpool Town Centre, is greater 2,500m² and is specified within the R4 Zone. Subsequently the permissible floor space ratio for the subject site is 3:1.

The proposal seeks an FSR of 3.24:1 based on the following calculation:

Gross Floor Area ÷ Site Area = Floor Space Ratio

GFA 18,492.8 ÷ SA 5,715.8 = FSR 3.24:1

The proposed variation represents a 7.8% variation from the LEP control of 3:1.

Within the compliant height scheme (ground floor to level 10), the proposed development provides a FSR of 3.0:1.

All additional height and floor space is contributed to the provision of additional 3 bedroom apartments to satisfy a market demand not currently addressed through the DCP provisions of the 10% 3 bedroom mix.

The development concentrates appropriate massing onto Bigge Street, while providing compliant building heights at the rear to complement the adjoining residential development.

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

The proposal includes 18,492.8m² GFA. Based on the definition of FSR and the site area of 5,715.8m², the proposed FSR for the site is 3.24:1

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

The proposal exceeds the maximum FSR by 1,345.3m² or 7.8%.

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:

"(b) the cubic content or floor space of a building;"

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 unreasonable and unnecessary because the variation to floor space ratio is consistent with the floor space ratio objectives set out in Clause 4.4 of LLEP 2008.

The proposed development seeks to provide a FSR of 3.24:1. The proposed development is able to achieve the underlying objective and purpose of the FSR control despite non-compliance with the numeric controls. A variation is considered reasonable on the basis that:

- The additional FSR contributes to a substantial supply of 3 bedroom units within the development, which are a diverse product offering that will improve housing choice in the city centre;
- 10% of 3 bedroom units are located within the compliant building height of the development to satisfy DCP requirements;
- Within the compliant height scheme (ground floor to level 10), the proposed development provides a FSR of 3.0:1;
- The additional 3 bedroom units enhances housing choice in Liverpool City Centre and offers a 3 bedroom mix beyond what is required under the LDCP 2008;
- 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 proposed development provides a total of 47 flexible units, which are a combination of adaptable units in accordance with AS4299-1005 (10%) and Silver Level Liveable Housing Australia compliant apartments (20%);
- The development provides excellent access to public transport, facilities and services;
- Close proximity to transport should enable provision of dwellings within walking distance to train stations;
- The proposed development is compatible with the existing and desired future character and reinforces the locality as a centre;
- The development is consistent with the pattern of development and seeks to maintain appropriate visual relationship through mass, bulk and scale; and
- The proposal maximises dwelling potential created by the impetus of transport oriented development.

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 floor area against the aims and objectives outlined in Clause 4.5 of LLEP 2008. The following sets out the ways in which the proposed floor space complies with the objectives, notwithstanding numeric compliance.

- 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,*

The additional floor space created is a product of carefully considered site analysis and acknowledgement of the sites ability to provide appropriate housing development in the area. The site is located in Liverpool City Centre, an area well serviced by transport, high density residential, health, education, commerce and recreation. The site is within close walking distance to a number of these services. The proposed floor space seeks to capitalise on the sites unique proximity to a range of established services and is able to accommodate for greater density and intensity of land use.

The site is 3 – 5 minute walking distance to Westfield, schools and commercial services and a 10 minute walk from Warwick Farm and Liverpool Stations. These train stations are within 800 metres walking distance to the site. The variation to floor space will enable additional residential floor space that is appropriate given existing infrastructure, proximity to an established urban centre and services. This enables direct and convenient pedestrian access to shops and services heading south along Bigge Street. By virtue of the sites context, it allows for a more intense use of the site.

The additional FSR will contribute 12 x 3 bedroom apartments on levels 11 and 12 of the proposed development. 10% of 3 bedroom units are located within the compliant building height of the development. The provision of 3 bedroom units is a product offering that will provide greater housing diversity for the city centre. In our view, the proposed floor space to create additional units is considered entirely appropriate given the close proximity to a range of health, education and transport infrastructure and the generation of pedestrian and vehicular traffic arising from an intense use of the site. Numeric compliance in this instance does not support any additional benefits to the locality.

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

As highlighted in Liverpool Development Control Plan 2008 (LDCP 2008), development needs to maintain good residential amenity ensure building depth and bulk is appropriate to the environmental setting, contribute to city legibility and establish the scale, dimensions form appropriate for the setting the city centre. In our view, the prescribed floor space control for the subject site is unable to facilitate the best development outcomes and objectives for the Liverpool City Centre.

The site provides a total area of 5,715.8m². The site is an irregular shaped allotment with boundary dimensions of 75.59 metres at the eastern boundary, 75.355 at the western boundary, 84.66 metres at the northern boundary and 82.31 metres at the southern boundary. The site has a substantially larger site depth and size than many sites zoned for R4 High Density purposes in the area. The substantial site area enables greater bulk and density in relation to the desired future character of the Liverpool City Centre. In addition, nearby infrastructure, transport, services and commercial development facilitates capacity to accommodate for greater floor space for residential units. The proposed floor space contributes to the desired future character of the Liverpool City Centre.

The proposed building density and bulk in relation to the site area demonstrates the development is able to accommodate a more intense development that reflects the future character of the Liverpool City Centre. The development provides an exceptionally high standard of residential amenity in the form of communal open space, BBQ and recreational areas, larger private open space areas, generous lobby areas and locating waste disposal to the basement parking rather than ground level.

By pursuing high quality and diverse residential amenity, the development seeks to accommodate additional units which more residents can utilise, particularly in relation to providing 3 bedroom units, which are a product offering that will improve the availability of greater housing mix in the city centre. The additional floor area will facilitate housing diversity and is consistent with the development density and bulk within the Liverpool City Centre.

In our view, the additional floor area does not result in a substantially different outcome, or result in additional impacts on the locality, than what would be achieved through a compliant development. Rather, the proposed FSR enhances the suitability of the site and reinforces Liverpool as a major commercial and residential centre.

The additional floor space will not contribute to the perceived bulk of the development. The development adopts a 3 level podium style development at Tower A fronting onto Bigge Street. The podium design addresses a unifying language of architecture and a strong sense of connection to the public domain. It was advised at the first Pre-DA meeting that there was a need to avoid a 'wedding cake' style development and to consider rationalising the relationship between the street frontage and the building to create a more human scale outcome. In line

with Council's advice, the approach adopted minimises any perceived bulk generated from the proposed FSR.

The podium delivers a three storey expression to the street, provides human scale context to the public domain, creates fine grain interaction, uses permeable finishes and landscaping to create a fine grain urban form at the ground level. The variation to floor space will not contribute to perceived bulk of the development and will not result in any additional impacts to size, density and bulk than what would be achieved through a compliant development.

The non-compliant form has resulted out of a combination of Pre-DA comments and the site being constrained. It was suggested by DEP that the applicant relocate the bin storage, services and electrical substation out of the ground floor of Tower A. Further to Council consideration, the decision to relocate the bin storage and services to the basement allows for an increased amenity to residents, the locality and Bigge Street. All waste will now be stored in the basement and access will be available to waste trucks so that all pick up will occur in the basement.

The relocation of services, waste and the electrical substation from the southern portion of Tower A, resulted in a void within the building, which has been utilised to provide additional ground floor apartments. Consequently, the area of the building, which was previously not calculated in terms of GFA, now comprises habitable area, which is included within the GFA calculations and resultant FSR increase.

The proposed floor space seeks to provide appropriate building density, form and bulk that is reflective of surrounding development and the locality. The development provides a high quality multi-residential building complex that will establish a strong precedent for future residential development in Liverpool. In our view, the contravening the permissible floor space supports additional benefits for the locality.

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

The existing site is constrained by surrounding apartment development and an approved LEC decision at 16 Bigge Street adjoining the subject site to the north, which has been approved for a 14 and 8 storey residential apartment development. This development will result in overshadowing impacts and solar compliance issues that cannot be resolved through a compliant design of the subject site.

The proposal will inevitably result in overshadowing impacts to adjoining development to the south. In our view, overshadowing is unavoidable even if compliant building forms were adopted, notwithstanding compliant building height and floor space. The additional floor area does not result in excessive or additional overshadowing impacts to adjoining development. The site does not adjoin any parks or public plazas and therefore, any impact on prominent public areas are considered negligible.

The proposal provides a significant benefit to the quality and enjoyment of the public domain. The site currently comprises vacant and dilapidated residential dwellings with inadequate pedestrian footpaths, inappropriate location of utility poles and undesirable tree species. The development will provide satisfactory basement parking, create a human scale and high quality three storey podium interaction onto Bigge Street and adopt appropriate landscaping and planting species. In our view, the development and additional floor area do not result in any negative net outcome to the immediate public domain and Bigge Street.

The proposal is located in Liverpool City Centre, an area well established and urbanised with land zoned predominately for R4 High Density Residential, B3 Commercial Core and B4 Mixed Use.

The development seeks a variation of 7.8%, which is considered to be minimal in relation to urban form and character of the area. The proposed floor space will not result in any additional environmental impacts, enjoyment of adjoining properties and the public domain than what could be achieved in a compliant development.

Level 11 and 12, which provide the addition 1,345.3m² of non-compliant FSR, have been recessed from the original design to minimise additional overshadowing impacts and perceived bulk generated by the additional levels.

- 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,*

The proposed floor space does not significantly alter or modify the built form outcome that would be achieved through a compliant development. In our view, the additional floor area compliments the buildings visual relationship with the street and establishes a unique design contribution by virtue of its proposed form and interaction with the street at lower levels.

The building has excellent proximity to transport, infrastructure, education establishments, medical facilities and retail. Therefore non-compliance with the permissible floor space is unlikely to negatively impact on the areas established character and maintain a visual relationship that would be achieved through a compliant development.

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

Consideration of the sites depth and width presents an appropriate opportunity to seek additional floor area for the purposes of providing additional residential units. The site comprises five separate allotments, with a total area of 5,715.8m. The site size and depth is untypically large for the Liverpool City Centre.

The proposed development is able to sufficiently accommodate the scale, density and size of the additional floor area on the site. The development concentrates appropriate massing onto Bigge Street, while providing compliant building heights at the rear to complement the adjoining residential development.

The development provides a site coverage of 47%, which is less than the maximum 50% prescribed for high density residential development. This allows the development to provide additional floor area that is proportionate to the site and offsets the perceived extent of the building. It does not result in an over-development of the site.

In our opinion, the site dimensions are entirely suitable for the purposes of additional floor area that does not result in excessive over development of the 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 development displays excellent design standards and high quality finishes. The development has rationalised an open space 'square' in the middle of the site, which is defined by the scale and height of proposed Tower A and B.

The development provides an exceptionally high standard of residential amenity in the form of communal open space, BBQ and recreational areas, larger private open space areas, generous

lobby areas and locating waste disposal to the basement parking rather than ground level. By establishing these key amenity needs for residents, the development creates generous space for articulation of the development design and modulating balconies. The proposal encourages future development in Liverpool City Centre to have a high standard of amenity and enhance the locality as a safe, liveable and vibrant centre.

The development provides a significant portion of the site for landscaping, devoting over 50% of the site for outdoor uses. The inner courtyard provides fluid connectivity between the two buildings, enhances the developments design, creates high forms of legibility and facilitates diverse and attractive open space.

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.

In our opinion, the proposed FSR does not undermine or negate the ability of the development to provide attractive, unique and ample communal open spaces.

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 provide an increased mix of 1, 2 and 3 bedrooms apartment. The proposal will build upon the residential and apartment growth in Liverpool City Centre, particularly in relation to the provision of 3 bedroom units to enhance the product offering in the centre.

The proposal in 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 in part by the ability to provide additional floor space to cater for additional residential units.

As previously identified, the additional floor area 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 unit 1, 2 and 3 bedroom designs. The housing choice proposed by virtue of additional floor area supports greater social and economic welfare to the community.

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 an 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 additional floor area does not undermine the over-arching strategic objectives for Liverpool as a strategic centre and maximises best use of land near public transport.

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 1 and 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 additional floor area 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 additional floor area does not undermine strategic objectives of Liverpool rather, the additional floor area 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 additional floor area contributes to greater housing diversity and mix, particularly with 3 bedroom units;
- The proposed floor area does not contravene or undermine the strategic importance or future character of the Liverpool City Centre;
- The additional floor area utilises the sites location to Liverpool Town Centre and proximity to public transport, promoting transit oriented development;
- The resulting floor area does not result in additional impacts to the public domain or surrounding development;
- The resulting floor area does not contribute to over-development of the site or substantially change the bulk of the development;
- The additional floor space, and subsequent density, creates excellent residential apartment amenity and a commercially viable development;
- The additional floor area does not contribute to any additional impacts than what would normally be developed through a compliant development;

- The additional floor area 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 communal open space displays landscape design excellence and emphasises a park-like design that strengthens place making appeal;
- The additional floor area is offset by the proposed landscaping attention and site coverage, which is substantially less than the prescribe 51%;
- The site has generous lot width and depth, which is capable of more intense development and additional floor area; and
- There are no negative net outcomes in ensuring variation with the standard.

The non-compliant form has resulted out of the adoption of DEP comments, which advised to relocate the bin storage, services and electrical substation out of the ground floor of Tower A. Further to Council consideration the decision to relocate the bin storage and services to the basement allows for an increased amenity to residents, the locality and Bigge Street. All waste will now be stored in the basement and access will be available to waste trucks so that all pick up will occur in the basement.

The relocation of services, waste and the electrical substation from the southern portion of Tower A, resulted in a void within the building, which has been utilised to provide additional ground floor apartments. Consequently, the area of the building, which was previously not calculated in terms of GFA, now comprises habitable area, which is included within the GFA calculations and resultant FSR increase.

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 reflects a compliant building form. The lots are configured in an east west direction 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, however the current design serves to limit impacts as much as possible through an increased Tower A form and reduced Tower B form.

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 storey), 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.

The additional floor area will allow for additional residential units that are considered entirely suitable and appropriate given the close proximity and excellent access to transport, commercial centre, shops and services. These units comprise 3 bedroom apartments and are considered to be a product offering that will enhance the opportunity for housing diversity in the centre, as well as provide a public benefit to attract a broader demographic to the area. The location provides an important opportunity to maximise an intense use of land, encourage active streets and create active neighbourhoods.

It is clear that non-compliance with the standards does not result in any additional or noticeable amenity impacts to the locality. There are no benefits 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 is inconsistent with the objectives specified within 5(a)(i) and (ii) of the Act. Secondly, the additional floor area maintains consistency with the objectives set out in the R4 High Density Residential Zone.

As highlighted through this assessment, the additional floor area 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, additional floor area 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 additional floor area enhances housing needs of the community within a high density residential environment. The development provides 14.9% 1 bedroom units, 68.7% 2 bedroom units and 16.2 % 3 bedrooms units. The allocation of 1 and 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.

The proposed development provides a total of 47 flexible units, which are a combination of adaptable units in accordance with AS4299-1005 (10%) and Silver Level Liveable Housing Australia compliant apartments (20%).

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 additional floor area 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 focus of 3 bedroom units within the non-compliant FSR provides enhanced public benefit to the area. It promotes diverse unit stock and appeals to a broader demographic seeking to live or work in the city centre. 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 variation to floor area contributes towards generous private open space retreats, lobby areas and relocates waste collection and disposal in the basement parking.

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

The additional floor area 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 floor area is entirely suitable for providing a higher concentration of housing on the site.

Notwithstanding excellent proximity to public transport, the additional floor area 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 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 additional floor area 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 Lot 4 Deposited Plan 13930 and Lots A, B, C and D in Deposited Plan 345161 with a total area of 5,715.8m². 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 and 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 floor area does not undermine or present inconsistency with, the objectives of the R4 High Density Residential Zone.

4 CONCLUSION

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 4.4(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.