

Amended Statement of Environmental Effects

Demolition of existing structures, construction of a shop top housing development and strata subdivision

101 Nuwarra Road
Moorebank

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1 INTRODUCTION

This Statement of Environmental Effects has been prepared to accompany a development application to Liverpool City Council seeking consent for demolition of existing structures, construction of a shop top housing development and strata subdivision at 101 Nuwarra Road, Moorebank.

The proposed development, which has been designed by Kennedy Associates Architects, incorporates 76 apartments over 6 storeys, six ground floor commercial tenancies, car parking for 215 vehicles over two and a half basement levels and site landscaping.

The application has been amended from an earlier iteration which sought to incorporate affordable housing within the development. The proposal now does not include affordable housing.

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of S.4.15 of the Environmental Planning & Assessment (EP&A) Act, 1979.

This Statement is divided into five sections. The remaining sections include a locality and site analysis; a description of the proposal; an environmental planning assessment and a conclusion.

2 LOCALITY AND SITE ANALYSIS

2.1 The Site

The site is located at No. 101 Nuwarra Road, Moorebank and has a legal description of Lot 101 in DP 601256. Figure 1 shows a recent aerial photograph of the site and the immediate locality (the subject site is outlined in red).



Figure 1: Aerial photo of the site

The site is an irregular shape with two street frontages, being to Nuwarra Road and Lucas Avenue. The northern side combined boundary is 71.8m, eastern frontage (Nuwarra Road) is 81.8m, southern side boundary is 70.5m, western frontage (Lucas Avenue) is 42.2m, and north-eastern boundary is 19.7m. The area of the subject site is 5,210m². The site includes a two storey building containing business premises that are vacant and in a derelict state.

All essential services are available for connection to the site.

The site is approximately 40m north of the intersection of Nuwarra Road and Maddecks Avenue. There is a bus stop located 75m to the south west on Maddecks Avenue which provides transport to Liverpool and surrounding suburbs.

Photographs of the site as viewed from Nuwarra Road and Lucas Avenue are included in Figures 2 and 3.



Figure 2: View of the site from Nuwarra Road (looking west)



Figure 3: View of the site from Lucas Avenue (looking east)

2.2 Character of the Locality

The area is undergoing redevelopment given the change in zoning under the *Liverpool Local Environmental Plan 2008*. The existing area on the western side of Nuwarra Road remains predominantly low density residential development with a maximum height of two storeys however it is expected that these properties will be redeveloped in the short to medium term. The recent LEP changes has resulted in examples of the desired character of the area along the eastern side of Nuwarra Road and surrounding streets (refer to Figure 4).



Figure 4: Existing medium and high density residential development

Nuwarra Road is an arterial road connecting the subject site with Newbridge Road to the north and M5 South Western Motorway to the south. Newbridge Road provides direct and convenient access to Liverpool City Centre and Liverpool Transport Interchange with regular bus and trains services. The M5 Motorway links the site with the broader south-west region and Sydney Central Business District. The site is well connected to other localities for employment, education and recreational activities.

2.3 Surrounding Development

Development within the immediate vicinity of the site is varied. The adjoining properties to the north includes two dwelling houses (Figures 5 and 6) with R4 High Density Residential zoning. The site on the opposite side of Nuwarra Road, at Nos, 96-98 Nuwarra Road is a 6 storey residential flat building (Figure 7). The opposite side of Lucas Avenue, to the west is Nuwarra Public School (Figure 8). Adjacent to the south is a one storey community centre and library (Figure 9).



Figure 5: Development to the north at 97 Nuwarra Road (looking west)



Figure 6: Development to the north at 90 Lucas Avenue (looking east)



Figure 7: Development located opposite the site on Nuwarra Road (looking east)



Figure 8: Development opposite the site on Lucas Avenue (looking west)



Figure 9: Development to the south at 109 Nuwarra Road (looking north)

3 THE PROPOSAL

3.1 Development Principles

The proposed development ensures a high quality built form with durable materials and finishes. The following development principles are established:

- The development provides generous ground floor common open space and landscaped central buffer between the two buildings, thereby increasing residential amenity. This sets precedence for adjoining sites to continue the green corridor.
- Built form massing to the southern end of the development ensures adverse impacts are limited, as the southern property is anticipated to be of similar density and scale.
- Nil setback to the southern boundary permits the southern adjacent property to maximise their development potential by also proposing a nil setback. Additionally, given the business zoning of the adjacent property a nil setback is encouraged. The nil setback will also provide a continuous built form, define the streetscape and create a street edge.
- The proposal presents a high quality articulated design, dwellings demonstrate excellent amenity particularly complying with solar access and natural cross ventilation required by the ADG, including well positioned common open space on the ground floor and levels 3, 5 and 6. The materials and finishes are sympathetic to the locality while providing visual interest.

3.2 Proposed Development

It is proposed to construct a six (6) storey shop top housing building, containing 76 apartments and seven commercial tenancies over (2.5) levels of basement parking. The following table is a summary of the development data.

TABLE 1: PROJECT DATA	
Allotment Area	5210m ²
Number of apartments	12 x 1 bedroom 56 x 2 bedroom 8 x 3 bedroom TOTAL = 76 apartments
Commercial tenancies	5 x Nuwarra Road building 2 x Lucas Ave building
Communal Open Space Area	37.4% of site area
Deep soil area	16.7% of site area
Building Height	6 storeys
FSR	R4 zone: 1.2:1 B2 Zone: 1.71:1
Parking	215 spaces

Source: Kennedy Associates Architects, 2019

The proposal is detailed further as follows:

Level 2 Basement

The Level 2 basement floor provides 84 parking spaces, 10 motorcycle parking spaces, storage space for each unit, plant room, lift and stair access to the upper levels.

Level 1 Basement

The Level 1 basement floor provides 83 parking spaces, 14 bicycle spaces, 10 motorcycle parking spaces, storage space for each unit, plant room, lift and stair access to the upper levels.

Level 00/Lucas Avenue Ground Floor

The Lucas Avenue ground floor consists of two commercial tenancies, and vehicle access to the site from Lucas Avenue. Pedestrian access to the western building is provided from Lucas Avenue through the main entry, with separate commercial and residential garbage rooms and service areas also provided. The level also provides 48 parking spaces, and 28 bicycle spaces. The commercial loading area can accommodate a 4.5m truck.

Level 01/Nuwarra Road Ground Floor

The Nuwarra Road ground floor consists of five commercial tenancies, 10 residential apartments and communal open space located between the two buildings. Pedestrian access to the eastern building is provided from Nuwarra Road.

Level 2

Level 2 contains residential units in each building. The Lucas Avenue building contains 10 units and the Nuwarra Road building contains 13 units. A mix of 1, 2 and 3 bedroom units are provided with private balconies overlooking the street or the central communal open space area.

Level 3

Level 3 of the Lucas Avenue building contains a large rooftop communal open space area with seating, BBQs, shade and amenities. The Nuwarra Road building contains 13 units providing a mix of 1, 2 and 3 bedroom units.

Level 4 Nuwarra Road Building

Level 4 of the Nuwarra Road building contains 13 residential units providing a mix of 1, 2 and 3 bedroom units.

Levels 5 and 6 Nuwarra Road Building

Levels 5 and 6 of the Nuwarra Road building contain a mix of 1, 2 and 3 bedroom units (11 on Level 5 and 6 on Level 6). Level 6 also provides a large rooftop communal open space area with seating, BBQs, shade, landscaping and amenities.

3.3 Landscaping

The proposed landscape concept is illustrated on the Landscape Plan prepared by Conzept Landscape Architects submitted with this application. There are no trees of ecological significance on the site and all are to be removed to accommodate the development and new landscaping. The landscape concept maximises the deep soil areas provided throughout the site. Deep soil dimensions are suitable for the establishment of tree species to attain a mature height which will enhance the appearance of the site as well as improve the amenity of neighbouring and future residents.

Landscaping includes appropriate species to enhance tree canopy along the street frontage, and along the northern side boundary. Groundcovers and feature plants are also utilised to aid the aesthetic appeal of the development and add variety and interest with low maintenance, water efficient planting. Private courtyards are also landscaped appropriately.

4 ENVIRONMENTAL PLANNING ASSESSMENT

4.1 Preamble

This section of the Statement provides a planning assessment of the proposed development covering all relevant heads of consideration under Section 4.15 of the EP&A Act, 1979.

4.2 Statutory and Policy Compliance

The relevant matters for consideration under Section 4.15(1)(a) of the EP&A Act, 1979, are identified in the following Table:

TABLE 2: SECTION 4.15 MATTERS FOR CONSIDERATION				
EP & A Act, 1979.	Matters for Consideration	OK	See Comments	N/A
S.4.15(1)(a)(i)	SEPP No.55 – Remediation of Land	✓	✓	
“	SEPP (Building Sustainability Index: BASIX) 2004	✓	✓	
“	SEPP 65 – Design Quality of Residential Apartment Development	✓	✓	
“	Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment	✓	✓	
	Liverpool LEP 2008	✓	✓	
S.4.15(1)(a)(iii)	Liverpool DCP 2008	✓	✓	
S.4.15(1)(a)(iv)	Any other prescribed matter: - AS 2601-1991: Demolition of structures.	✓		

The matters identified in the above Table as requiring specific comment are discussed below. The two primary statutory documents applying to the proposed development on the subject site are Liverpool Local Environmental Plan (LLEP) 2008, and the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development. The primary non-statutory document in relation to the proposed development is Liverpool Development Control Plan (LDGP) 2008 and the Apartment Design Guide.

The relevant provisions of these documents and other relevant planning documents are summarised below and the proposal's compliance with them assessed.

4.2.1 SEPP No.55 – Remediation of Land

State Environmental Planning Policy (SEPP) 55 – Remediation of Land was gazetted on 28 August 1989 and applies to the whole State. It introduces planning controls for the remediation of contaminated land and requires an investigation to be made if land contamination is suspected.

There is no reason to suspect that the site is contaminated as the land is currently used for commercial development and there is no evidence of contamination.

4.2.2 SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 commenced on 1 July 2004 and applies to all land in the State. Part 3 sets out the aims of the Policy and states that Regulations under the Act have established a scheme to encourage sustainable residential development. Applications for certain types of development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out.

In accordance with the requirements of the SEPP, a BASIX Certificate has been prepared and is submitted separately with this application. Commitments under the BASIX Certificate have been indicated on the architectural plans accordingly.

4.2.3 SEPP 65 – Design Quality of Residential Apartment Development

Schedule 1 of the Policy sets out the 9 ‘Design Quality Principles’ and Clause 28(2) requires that the consent authority, in determining a development application to take into consideration:

1. The advice (if any) of a relevant design review panel;
2. The design quality of the residential flat development when evaluated in accordance with the design quality principles; and
3. The Apartment Design Guide.

Clause 6A of the SEPP states that development control plans cannot be inconsistent with the Apartment Design Guide in relation to:

- “
- (a) visual privacy,
 - (b) solar and daylight access,
 - (c) common circulation and spaces,
 - (d) apartment size and layout,
 - (e) ceiling heights,
 - (f) private open space and balconies,
 - (g) natural ventilation,
 - (h) storage.”

In addition, Clause 30(1) of the SEPP states that a development application cannot be refused if it complies with the prescribed criteria of the Apartment Design Guide in relation to ceiling heights, parking and internal apartment sizes.

A compliance table is provided at Annexure A detailing compliance with the applicable *Design Criteria* contained within the *Apartment Design Guide*. The compliance table identifies that the proposal is consistent with the relevant design criteria.

4.2.4 Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment

The SEPP aims to maintain and improve the water quality and river flows of the Georges River and its tributaries and to protect and enhance the environmental quality of the Catchment. The Concept Stormwater management Plan demonstrates the stormwater runoff from the site can be integrated with the existing constructed network.

The proposed development is not listed in the planning control table in the SEPP. There are no further provisions of the SEPP that require consideration.

4.2.5 Liverpool Local Environmental Plan 2008

Liverpool Local Environmental Plan 2008 (LLEP 2008) applies to the subject site. Under the LEP the subject site is within *B2 Local Centre* and *Zone R4 – High Density Residential* and amongst other things residential flat buildings are identified as permissible with consent in the zone.

Provided at Annexure B is a compliance table which identifies the relevant objectives and development standards that apply to the proposal and undertakes an assessment of the proposed development against those provisions. As indicated, the proposal generally complies with the relevant objectives of the applicable development standards, however seeks variation to the numeric controls for maximum building height and floor space ratio. A Statement pursuant to Clause 4.6 is provided in relation to each at Annexures C and D.

In relation to the nature of use at ground floor level, the subject site is located within the B2 Local Centre zone, Clause 7.16 Ground floor development in Zones B1, B2 and B4 states:

- “
- (1) *The objective of this clause is to ensure active uses are provided at the street level to encourage the presence and movement of people.*
 - (2) *This clause applies to land in Zone B1 Neighbourhood Centre, B2 Local Centre or B4 Mixed Use.*
 - (3) *This clause does not apply to land at Edmondson Park.*
 - (4) *Development consent must not be granted for development for the purposes of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:*
 - (a) *will not be used for the purposes of residential accommodation, and*
 - (b) *will have at least one entrance and at least one other door or window on the front of the building facing a street other than a service lane.”*

The proposed development is for a shop top housing development and includes commercial premises on the ground floor of each building.

There are no further provisions of the LEP that require consideration.

4.2.6 Liverpool Development Control Plan 2008

The relevant design principles and controls of the DCP as they relate to the subject site and the proposed development are detailed at Annexure E.

As indicated, the proposal generally complies with all relevant provisions of the DCP. Where the proposal does not strictly comply, a justification is provided within the table.

4.3 Impacts on Natural & Built Environment

4.3.1 Topography & Scenic Impacts

The site topography slopes from the Nuwarra Road frontage to the Lucas Avenue frontage. This topography has been used to enable basement car parking to be excavated “into the slope”, sleeved by residential units on the Lucas Avenue frontage. The split building form will provide for an active street address to each frontage.

In terms of scenic impacts, the building is well articulated with architectural features to break up the building mass and reduce the visual bulk. Deep soil planting along the street and side boundaries will accommodate trees suitable to attain a mature height compatible with the scale of the building, enhance the streetscape and separation between the new building and neighbouring sites.

The potential visual impacts on the streetscape will therefore be typical for areas undergoing transition to higher density uses. The building will not visually dominate the anticipated future streetscape and development character of the locality as surrounding properties undergo redevelopment to higher densities.

4.3.2 Micro-climate Impacts

The proposed development will have no significant impact on the micro-climate of the locality.

4.3.3 Water & Air Quality Impacts

The proposed development will have no significant impact on air or water quality in the locality. It is proposed to provide on-site stormwater detention (OSD) and water harvesting to minimise the level of urban runoff and water usage.

4.3.4 Flora & Fauna Impacts

All vegetation is to be removed from the site, however there are no trees of ecological significance. New landscaping throughout the site will be complementary to the microclimatic conditions within the development site and for neighbouring properties. Low maintenance species including endemic species will be planted to provide sustainable and long term planting which is aesthetically appealing and ecologically functional. Details of landscaping are provided on the Landscape Plans submitted with the Development Application.

The proposal provides high quality common open space on the ground floor, and levels –3, 5 and 6. The ground floor open space is centrally located between the two buildings, creating a green corridor and separation for improved amenity to future occupants. The ground floor is landscaped with mature trees and low ground cover, seating furniture is also provided to encourage recreational use. Landscaped common open space is also provided on levels 3, 5 and 6 with barbeque, seating and bathroom facilities.

4.3.5 External Appearance & Design

The proposal involves the construction of a shop top housing development comprising six (6) storeys above basement car parking. The development provides clearly defined pedestrian and vehicular access points from the Nuwarra Road and Lucas Avenue frontages. At ground level, the proposal will incorporate hard and soft landscaping elements that are appropriate to the scale of development. Excavation associated with the proposal is limited to that required for the basement car park and vehicle ramp, the basement is concealed below ground level.

The proposed design has an appropriate appearance, bulk and scale, and impacts on neighbouring properties. The design of the building ensures functional internal layouts for each dwelling with building orientation and window openings being determined by access to natural light and ventilation and sensitivity of the adjoining land uses. Private open spaces and living areas address the street frontages and the central communal open space area and promote passive surveillance of the streets. The development encourages street activation by providing seven commercial tenancies at ground level.

The proposed building is well articulated, incorporating varied setbacks, alternation between horizontal and vertical modulation and use of varied materials, colours and detailing to provide a highly articulated built form with a contemporary external appearance. Extensive landscaping will further soften the development's appearance and balance the built form.

Materials used are detailed on the material schedule submitted separately with this application. The massing of the building creates a landscaped corridor in the centre of the site and encourages sunlight and natural ventilation to the majority of the development. A SEPP 65 Design Statement has been prepared by Kennedy Associates Architects which provides a detailed description of the architectural treatment for the proposal.

4.3.6 Relationship to Neighbouring Properties

Solar Access

Shadow diagrams of the proposed development on the site have been prepared and are submitted with the development application in accordance with Council's submission requirements. These diagrams have been prepared between 9am and 3pm mid-winter.

The ADG includes the following solar and daylight access provision:

“ Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.”

The proposal complies with the solar access requirements of the ADG as it achieves a minimum 2 hours of solar access to living room windows and living areas for 56 of the proposed 76 dwellings (73.6%) between 9.00am and 3.00pm during mid-winter.

The common open space located between the two buildings, and on levels –3, 5 and 6 will receive at least 3 hours of sunlight to over 50% of these areas between 9am and 3pm in mid-winter, complying with the ADG design criteria. By providing well located common open spaces with access to sunlight, future occupants are likely to use these facilities more often, thereby improving amenity to the development.

The shadows cast by the proposed development are consistent with the expected impacts of a building of this scale. Overshadowing on adjoining southern neighbours does not present an issue based on the existing non-residential uses and subject to future redevelopment of that site following a similar pattern to the subject site, appropriate solar access could be achieved.

In light of compliance with the applicable solar access controls of the Apartment Design Guide, the proposed development is considered to be acceptable.

Views

There are currently no significant primary or secondary views enjoyed across the site. Accordingly the proposed development is unlikely to result in any loss of aspect or views.

Aural & Visual Privacy

The proposed development has been designed to minimise any adverse impact on surrounding residential properties in respect of visual or acoustic privacy.

A Noise Assessment was prepared by Acoustic Consulting Engineers, submitted under separate cover. The Assessment recommends appropriate building construction materials, and equipment selection to mitigate acoustic impacts to future occupants. The proposal is found to comply with these requirements by proposing suitable materials and mechanical equipment location.

The separation of the building from site boundaries complies with the ADG, an assessment is provided at Annexure A. The building mass has been split into two built forms and are focussed towards the eastern and western ends of the site with a generous landscaped common open space area in the centre of the site. The central open space facilitates internal building separation and improves residential amenity. The proposed internal separation of 18m exceeds the ADG separation requirements. The separation reduces adverse visual privacy impacts, increases solar access and natural ventilation to internal dwellings and increases overall amenity.

Perimeter landscaping is proposed within all setbacks. Private open space areas are well separated from neighbouring residential properties. The proposed landscaping will obscure overlooking between the subject site and adjoining properties and offer high levels of amenity for the future residents of the site.

The proposal incorporates appropriate measures to assist with mitigating potential privacy impacts on adjoining properties, including orientation of living areas, and balconies, and inclusion of solid balustrades.

4.4 Economic & Social Impacts

The proposed development is a well-designed and modern residential development. The proposal includes 1, 2 and 3 bedroom apartments which adds variety to the existing housing stock and improves affordability within the locality.

Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. Accordingly, it is considered that the proposed development is likely to have only positive social and economic impacts in the locality.

4.4.1 Crime Prevention through Environmental Design

Part B of the Department of Urban Affairs and Planning's (now Department of Planning and Environment) *Crime Prevention and the Assessment of Development Applications: Guidelines under Section 4.15 of the Environmental Planning and Assessment Act 1979* identify four Crime Prevention through Environmental Design (CPTED) principles (Table 2). Each of the principles seeks to reduce opportunities for crime and have been used to inform the *NSW Police Safer by Design Guidelines for Crime Prevention*. The principles are:

- Surveillance;
- Access control;
- Territorial reinforcement; and
- Space management

The subject development performs well in terms of achieving the safer by design guidelines for crime prevention. The development is deemed to be either safe or safe subject to the implementation of the following recommendations:

- The proposed vegetation located at the frontages of the site is to be limited to shrubs that do not preclude direct lines of sight from the street frontage to the pedestrian entrances. The vegetation at the site frontages are to be maintained to ensure that vegetation does not obstruct sight lines to building entries;
- The pedestrian entrances for the apartments is to be controlled by a security door with access being restricted by an intercom, key, code or card lock system;

- The main pedestrian access points to the buildings as well as the frontage of the buildings at the ground level is to be illuminated during the evening to a level that allows clear lines of sight from the street frontages;
- Vehicular access to the basement is to be restricted via a security door with access being controlled by an intercom, key, code or card lock system;
- A security alarm is to be linked to the basement entry, pedestrian entry to the dwellings and ground floor tenancies to be activated in the event of forced entry;
- The street number of the subject building is to be readily identifiable from Nuwarra Road and Lucas Avenue;
- Vehicular access to the basement car park is to be illuminated by a sensor light during the evening. The internal portions of the basement are to be illuminated in accordance with the AS1158.1, AS1680 and AS2890.1;
- All painted surfaces on the external parts of the ground floor level are to be treated with a graffiti resistant coating;
- The ceiling of the car parking areas shall be painted white or a similar light colour to increase visibility and reflective light; and
- Strata management is to be responsible for the maintenance of common property including landscaping and removal of any graffiti.

4.5 The suitability of the site

Access to Services

The subject site enjoys good access to public transport including bus links providing access to Liverpool Railway Station and a wide range of commercial centres. Additionally, the site is in close proximity to arterial road infrastructure (M5 South Western Motorway and Newbridge Road), providing connection to main centres of employment, education and recreational activities.

A bus stop located 75m to the south west on Maddecks Avenue provides transport to Liverpool and surrounding suburbs. The bus service provides connection to Liverpool City Centre including Liverpool Interchange from 5.21am to 10.12pm Monday to Friday, 6.59am to 6.59pm Saturday, and 8.55am to 4.55pm Sunday, however services are limited on Sunday.

The proposed development will utilise existing infrastructure including electricity, sewer, water and telecommunication services.

Traffic and Parking

The proposal complies with Council and Australian Standard requirements, an Assessment of Traffic and Parking Implications was prepared by Transport and Traffic Planning Associates, the Assessment concluded:

“ The proposed residential apartment development at Moorebank will be suitably located with convenient access to the arterial road system. Assessment has concluded that:

- *the development will not present any unsatisfactory traffic implications*
- *the proposed parking provision will be suitable and appropriate for the needs of the development*
- *the proposed internal circulation and parking arrangements will be satisfactory*

- *the proposed access and loading arrangements for service vehicles will be suitable and appropriate”*

The amount of traffic generated by the development is consistent with that expected for higher density residential redevelopment of the locality. The vehicle access and egress provisions including driveway dimensions, grades and sight distances comply with the relevant requirements for safe movement of vehicles to and from the site.

The additional traffic generated by the proposal will be within the safe and efficient operating capacity of the existing local street network. Due to the convenient proximity of public transport future residents will have excellent opportunities to use alternative means of transport to private cars.

Hazards

The site is not in an area recognised by Council as being subject to landslip, bushfire, flooding or any other particular hazards. The proposed development is not likely to increase the likelihood of such hazards occurring and is considered appropriate in this instance.

4.6 The Public Interest

The proposed development has been designed to relate to the size, shape and topography of the site and to the future form of development anticipated within the locality.

As demonstrated within the report, the proposal will not have any unreasonable or significant amenity impacts on surrounding properties. Given that the locality is undergoing transition to higher density living, the proposal is considered to be an acceptable form of development consistent with the intent of planning provisions for the site and its context. Accordingly, the proposed development is considered to be in the public interest.

5 CONCLUSION

The impact of the proposed development has been assessed in accordance with the provisions of Section 4.15 of the EP&A Act, 1979 and found to be satisfactory.

The proposed development is permissible with Council's consent in the zone and is consistent with the prescribed objectives and development standards of LLEP 2008 with the exception of building height and floor space ratio. A request for variations to these controls is contained in Annexure C and D.

The siting, design and external appearance of the proposal is considered to be appropriate and in character with likely future development in the locality. The proposal is not likely to result in any significant or unreasonable loss of privacy or amenity to any adjoining or nearby property owners as outlined in this Statement. In particular the building has been designed to allow reasonable solar access and maintain privacy to adjoining properties.

The completed development will have no significant impact on the topography, micro-climate, air or water quality of the locality and is also considered to comply with the objectives and provisions of Council's planning controls in relation to aural and visual privacy.

Undertaking the construction works will have some short-term positive economic impacts through employment generation, both direct employment and multiplier effects. The proposal will not generate any significant additional traffic levels which would affect the level of service, capacity and function of nearby roads and intersections.

The proposed development is compatible with Council's planning objectives and controls for the site and the locality. The site is suitable for the development proposed which will generally have acceptable impacts on the environment and the amenity of the locality. Accordingly, in the circumstances of the case, the proposal is considered to be in the public interest and worthy of Council's support.

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE

Design Criteria	PROPOSAL	COMPLIES																					
<u>Communal and Public Open Space</u> Communal open space has a minimum area equal to 25% of the site (1302.25m ² of COS) Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	37.4% (1950m ²) Minimum 50% of the principal common open space area on Level 01, 03, 05 and 06 will receive at least 2 hours sunlight midwinter.	Yes Yes																					
<u>Deep Soil Zones</u> Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site Area</th><th>Minimum Dimension</th><th>Deep Soil Zone (% of site area)</th></tr><tr><td>Greater than 1,500m²</td><td>6m</td><td>7%</td></tr></table>	Site Area	Minimum Dimension	Deep Soil Zone (% of site area)	Greater than 1,500m ²	6m	7%	Total deep soil zones onsite - 16.5% Minimum dimension 6m.	Yes Yes															
Site Area	Minimum Dimension	Deep Soil Zone (% of site area)																					
Greater than 1,500m ²	6m	7%																					
<u>Visual Privacy</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr></table>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<table><tr><td></td><td>Side setback (north)</td><td>Side setback (south) No separation is required between blank walls.</td><td>Rear Setback (portion of Nuwarra Rd Building)</td></tr><tr><td>Levels 1-4</td><td>6m ✓</td><td>Nil (blank wall)</td><td>More than 6m ✓</td></tr><tr><td>Levels 5 – 8</td><td>9m ✓</td><td>Nil (blank wall)</td><td>9m ✓</td></tr></table>		Side setback (north)	Side setback (south) No separation is required between blank walls.	Rear Setback (portion of Nuwarra Rd Building)	Levels 1-4	6m ✓	Nil (blank wall)	More than 6m ✓	Levels 5 – 8	9m ✓	Nil (blank wall)	9m ✓	Yes
Building Height	Habitable Rooms and Balconies	Non-habitable rooms																					
Up to 12m (4 storeys)	6m	3m																					
Up to 25m (5-8 storeys)	9m	4.5m																					
	Side setback (north)	Side setback (south) No separation is required between blank walls.	Rear Setback (portion of Nuwarra Rd Building)																				
Levels 1-4	6m ✓	Nil (blank wall)	More than 6m ✓																				
Levels 5 – 8	9m ✓	Nil (blank wall)	9m ✓																				

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE

Design Criteria	PROPOSAL	COMPLIES
Separation distances between buildings on the same site should combine required building separations depending on the type of room.	The proposal provides a separation distance of minimum 18m internally between buildings.	Yes
<u>Bicycle and Car Parking</u>	Refer to Annexure D, Liverpool DCP 2008 parking requirements.	N/A
<u>Solar Access and Daylight</u> Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.	56 of the proposed 76 dwellings (73.6%) receive in excess of 2 hours of sunlight to living room windows and private open space areas during mid winter.	Yes
<u>Natural Ventilation</u> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	46 of the proposed 76 dwellings (60.53%) are naturally cross ventilated. Cross-through apartments do not exceed 18m in depth.	Yes Yes
<u>Ceiling Height</u> Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable rooms – 2.4m 2 storey apartments - 2.7m for main living area and 2.4m for second floor where its area does not exceeds 50% of the apartment area Attic Spaces - 1.8m at the edge of the room with a 30 degree minimum ceiling slope. 	All habitable rooms have minimum 2.7m ceiling heights. Non-habitable rooms contain ceiling heights that are at least 2.4m N/A N/A	Yes Yes N/A N/A

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE

Design Criteria	PROPOSAL	COMPLIES
<ul style="list-style-type: none"> If located in a mixed use area - 3.3m for ground and first floor to promote future flexibility <p>These minimums do not preclude higher ceilings if desired.</p>	<p>The ground floor of each building are 3.3m minimum.</p> <p>Noted.</p>	<p>Yes</p> <p>-</p>
<p><u>Apartment Layout</u></p> <p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 Bedroom - 50m² 2 Bedroom - 70m² 3 Bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<p>NA Min. 50.52m² Min. 70.73m² Min. 97.77m²</p> <p>Apartments with additional bathrooms are provided with additional floor space.</p> <p>N/A</p> <p>All habitable rooms have a window to an external wall.</p> <p>Refer to architectural plans for compliance.</p> <p>Refer to architectural plans for compliance. Refer to architectural plans for compliance.</p> <p>Minimum internal width achieved.</p>	<p>NA Yes Yes Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes Yes</p> <p>Yes</p>

SEPP NO. 65 APARTMENT DESIGN GUIDE (DESIGN CRITERIA) - COMPLIANCE TABLE

Design Criteria	PROPOSAL	COMPLIES
<u>Environmental Performance</u> Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Refer to architectural plans for compliance.	Yes
<u>Open Space</u> All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> • Studio - 4m² • 1 Bedroom - 8m² (Minimum depth of 2m) • 2 Bedroom - 10m² (Minimum depth of 2m) • 3 Bedroom - 12m² (Minimum depth of 2.4m) The minimum balcony depth to be counted as contributing to the balcony area is 1m For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	NA All 1 bedroom balconies exceed 2m in depth and 8m ² All 2 bedroom balconies exceed 2m in depth and 10m ² All 3 bedroom balconies exceed 2.4m in depth and 12m ² Not applicable.	NA Yes Yes Yes NA
<u>Common Circulation Space</u> The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	Maximum of 8 dwellings off a single circulation space.	Yes
<u>Storage</u> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> • Studio - 4m² • 1 Bedroom - 6m² • 2 Bedroom - 8m² • 3 Bedroom - 10m² At least 50% of the required storage is to be located within the apartment	Storage units are provided in the basement levels and within the apartments.	Yes

LIVERPOOL LEP 2008 - COMPLIANCE TABLE

LEP Clause	Requirement	Proposal	Complies?
2.1 Land Use Zone	<p><u>R4 High Density Residential</u></p> <p>The objectives of the R4 zone are:</p> <ul style="list-style-type: none"> • 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. <p><u>B2 Local Centre</u></p> <p>The objectives of the B2 zone are:</p> <ul style="list-style-type: none"> • To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. • To encourage employment opportunities in accessible locations. • To maximise public transport patronage and encourage walking and cycling. • To allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level. • To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community. <p>Shop top housing is permissible with Council consent.</p>	<p>The proposed development type is identified as shop top housing and is permissible with consent. The proposal provides additional housing stock and commercial tenancies in a suitable high density environment. A variety of one, two and three bedroom dwellings are proposed. The site has sufficient access to public transport, services and facilities. The development is well designed and demonstrates a high standard of urban design that contributes to the desired character of the area.</p> <p>As discussed above, the proposal successfully achieves the objectives of the applicable zones.</p>	✓
4.3 Maximum Height	<p>R4 zone – 18m</p> <p>B2 zone – 21m</p>	<p>R4 zone – Nuwarra Road building 20.6m</p> <p>B2 zone – Nuwarra Road building 21.8m</p> <p>Lucas Avenue building 12.95m</p> <p>Refer to Clause 4.6 Statement for justification.</p>	<p>No</p> <p>No</p> <p>✓</p>

LIVERPOOL LEP 2008 - COMPLIANCE TABLE

LEP Clause	Requirement	Proposal	Complies?
4.4 Floor Space Ratio	Lot 101 - R4 zone – 1.2:1 Lot 01 - B2 zone – 1.7:1	Lot 101 - R4 zone – 1.1:1 (complies) Lot 01 - B2 zone – 1.71:1 (non-compliance) Compliance is achieved overall. Refer to Clause 4.6 Statement for justification.	Yes No
5.9 Tree Removal	<i>Any trees to be removed are to be properly identified and assessed.</i>	Trees proposed for removal are indicated on the Demolition Plan and are also discussed in the Statement.	✓
7.14 Minimum building street frontage	<i>Any building of more than 2 storeys on land in Zone R4 High Density Residential or B2 Local Centre is to have at least one street frontage of at least 24m.</i>	The site has a street frontage to Nuwarra Road of 81.8m, and a street frontage to Lucas Avenue of 42.2m.	✓
7.16 Ground floor development in Zones B1, B2 and B4	<i>Development consent must not be granted for development for the purposes of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:</i> <i>(a) will not be used for the purposes of residential accommodation, and</i> <i>(b) will have at least one entrance and at least one other door or window on the front of the building facing a street other than a service lane.</i>	The proposed ground floor of each building contains commercial tenancies.	✓

CLAUSE 4.6 VARIATION STATEMENT - HEIGHT (CLAUSE 4.3)

101 NUWARRA ROAD, MOOREBANK

1. General

Clause 4.3 of Liverpool LEP 2008 relates to maximum building height of development and prescribes a maximum height of 21m and 18m in relation to the subject site. Building height is defined as:

“ **building height** (or **height of building**) means:
 (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
 (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
 including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The maximum height of the buildings (including lift overrun) are listed below, Figures 1, and 2 indicate the extent of the height non-compliance in section and height blanket.

- Nuwarra Road Building – 21.8m (B2 zone), 20.6m (R4 zone), exceeding the height limit by 0.8m and 2.6m respectively;
- Lucas Avenue Building – 12.95m, complies with the height limit (note the building is 5.05m under the height limit).

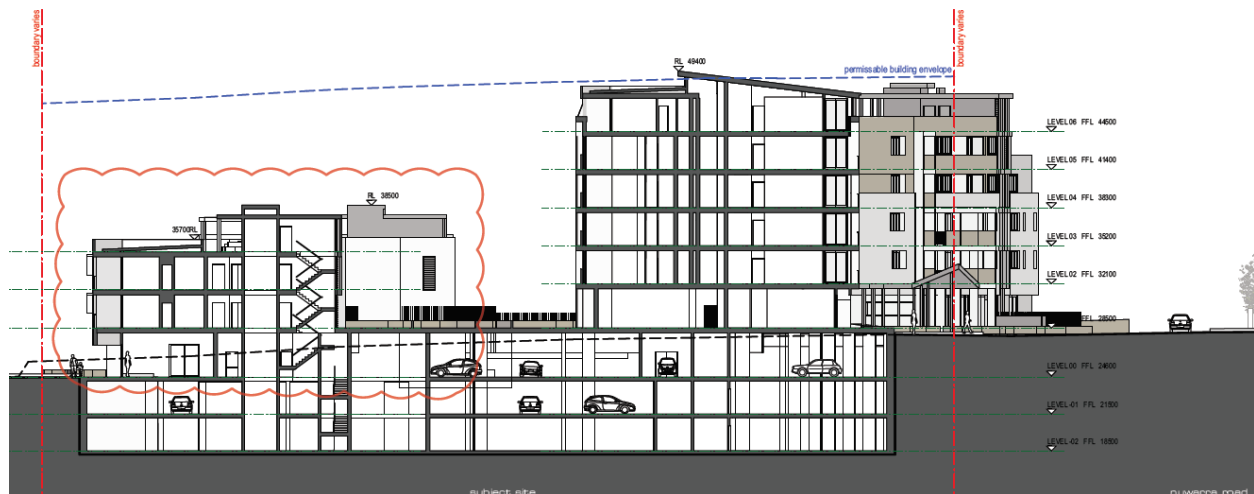


Figure 1: Height non-compliance in section

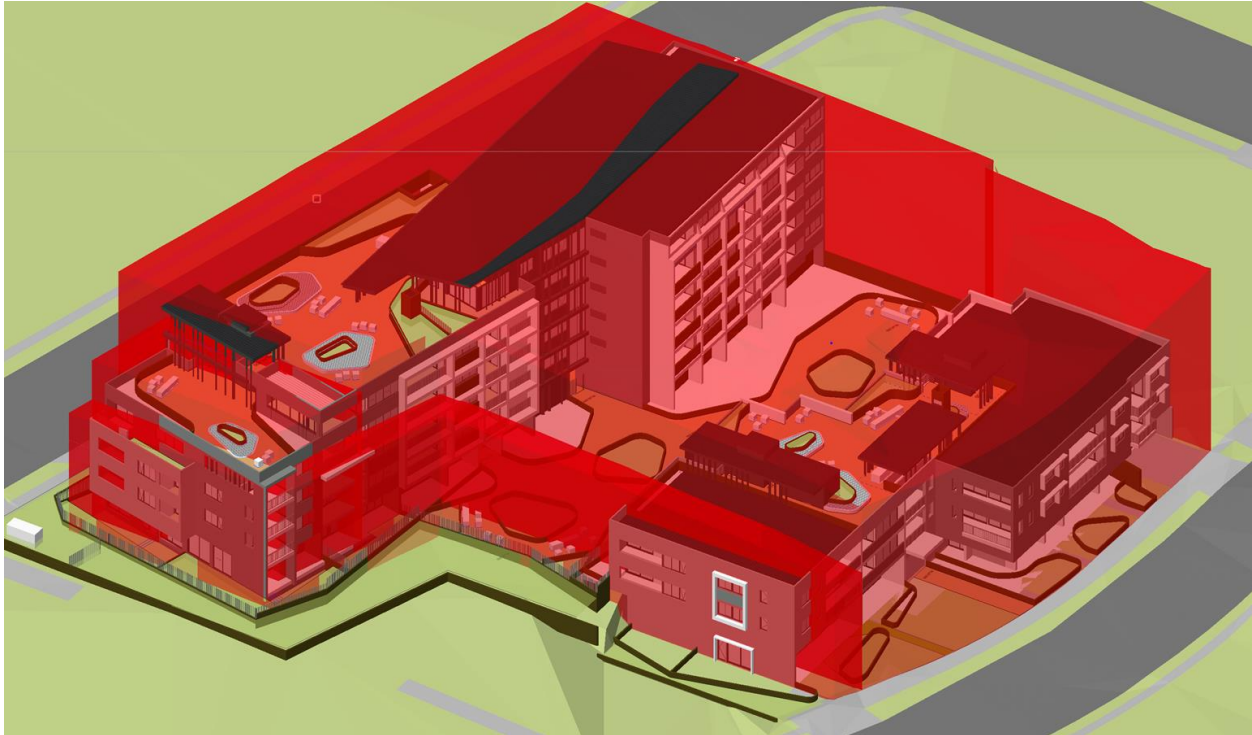


Figure 2 Height blanket diagram indicating non-compliance

It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 of the LEP so as to permit the proposed building heights.

The objectives and provisions of clause 4.6 are as follows:

“

4.6 Exceptions to development standards

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the 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.

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

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

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

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

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

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4.

The development standards in clause 4.3 are not “expressly excluded” from the operation of clause 4.6.

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, it is noted that the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, for example, subclause 4.6(6).

The balance of this request will be divided into the following sections, each dealing with the nominated aspect of clause 4.6:

- consistency with the development standard objectives and the zone objectives (clause 4.6(4)(a)(ii));
- sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)); and
- compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)).

2. Consistency with the development standard objectives and the zone objectives (clause 4.6(4)(a)(ii))

Development standard objectives

The relevant objectives of clause 4.3 are as follows, inter alia:

- "
- (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."

In order to fulfil the requirements of subclause 4.6(4)(a)(ii), each of the objectives of clause 4.3 are addressed in turn below:

Objective (a): establishes the maximum building height of 21m and 18m.

The proposed height of the buildings are Nuwarra Road 21.8m (B2 zone), 20.6m (R4 zone) and this request for a variation to the maximum building height control is consistent with the provisions of Clause 4.6.

Objective (b): relates to high quality urban form for buildings.

The proposal demonstrates high quality urban form. The architectural design and materials selected are appropriate to the location which is an area identified for high density redevelopment. The building design is well modulated with a combination of vertical and horizontal elements and distribution of colours and materials which minimise the bulk and mass of the building form. The design provides a large central corridor of open space which will add significant occupant amenity and break down the mass of the development.

The existing development on site is a derelict commercial building that adds no urban design or architectural value to the area. The proposed built form and external appearance will improve the amenity and quality of the public domain with landscaped setbacks to Nuwarra Road and Lucas Avenue, activated frontages with commercial tenancies to each street frontage, and a clearly defined pedestrian entry addressing the two street frontages with reconstruction of the footpath and street tree planting anticipated. There are no view corridors impacted by the proposal and there will be no adverse overshadowing of neighbouring properties.

The proposal includes an internal landscaped communal open space buffer between two buildings. The buffer increases natural ventilation and solar access to the overall development, thereby providing superior amenity to future occupants. The ground floor communal space will allow congregation and social interaction of occupants, which will present a community atmosphere. This configuration is anticipated to be replicated on adjacent sites due to its high amenity design. By providing this centrally located communal area the built form mass is redistributed which increases the overall building height of the development. This urban design form sets a high quality standard for residents and the immediate area.

For the reasons listed above, the site is suited to accommodate a building height of six (6) storeys. The site has a gentle slope and there are no hazards, heritage or environmental constraints. The lot is an irregular shape and the building footprint allows generous separation internally and to the adjoining residential

properties to the north. The siting and height of the building will not compromise the redevelopment potential of neighbouring properties.

Objective (c): relates to the impact of the development on access to the sky and sunlight for buildings and public areas.

The variation to the building height control will not significantly impact on solar access to surrounding properties when compared to a fully compliant scheme. Given the orientation of the site, overshadowing is largely restricted to local streets (Nuwarra Road and Lucas Avenue), and to the southern adjacent property containing a non-residential use. However, if the southern property were to develop, it is assumed that the perimeter block typology set by the proposed development will be continued. If this pattern is continued then the southern development will be able to achieve compliant ADG solar access and natural cross ventilation. As such, the proposed development does not adversely overshadow adjacent properties and maintains adequate access to the sky and sunlight for the development.

As demonstrated in the shadow diagrams, the proposed development will maintain acceptable levels of sunlight to northern adjoining sites. In addition, it has been demonstrated that the development will achieve compliant solar access for the units proposed within the development.

No recreational public areas are located adjacent to the subject site.

Objective (d): relates to transitioning built form and land use intensity.

The proposed development results in a transition in height and land use intensity which is consistent with the pattern demonstrated in the Height of Buildings Map to LLEP 2008 (see Figure 3 where the site is outlined in red). Figure 3 shows that the site has a maximum height of 21m (dark brown) and 18m (light brown). It also demonstrates that surrounding properties have similar height provisions. Properties to the north include an LEP maximum building height of 18m, the Lucas Avenue building is compliant with the height limit and provides a height transition to adjacent properties. The site is well suited to provide built form transitioning to adjacent properties and area. The proposal has been designed to be in accordance with the vision for the area by providing a complimentary density and scale.

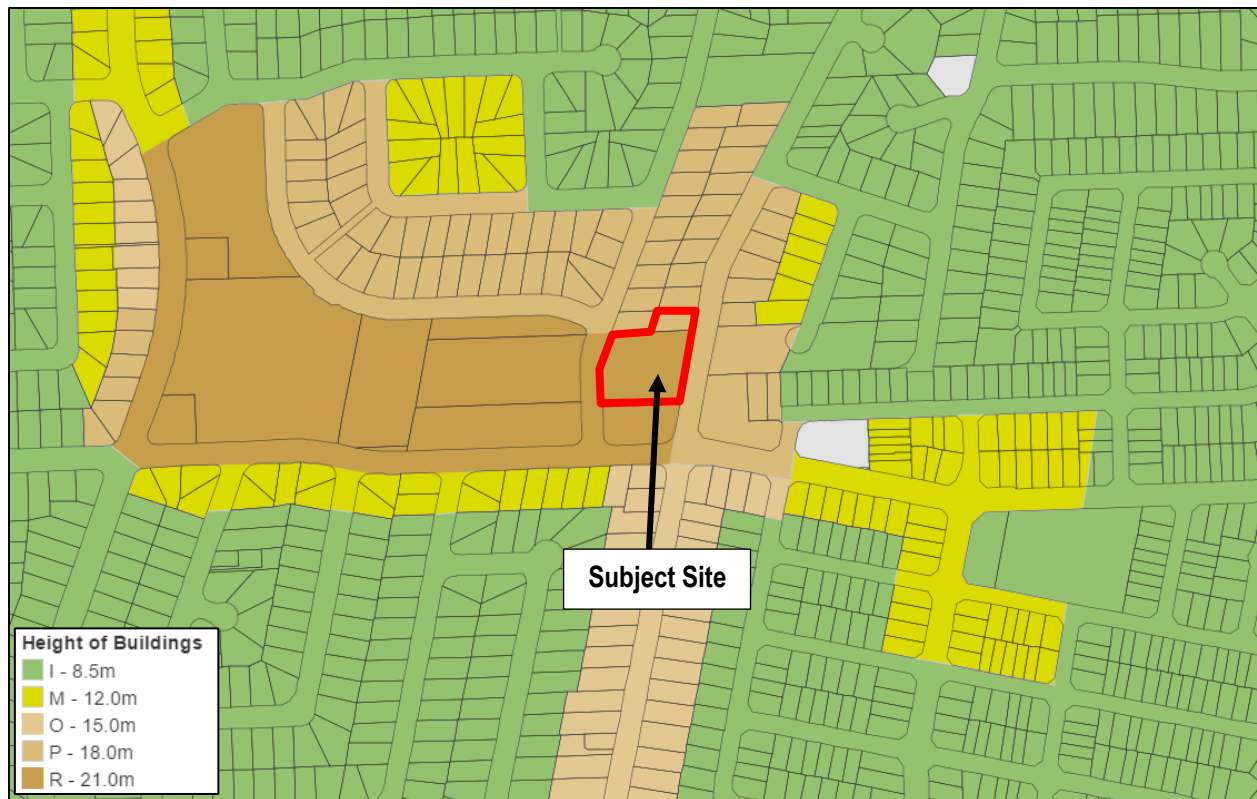


Figure 3: Extract from Height of Buildings Map to LLEP 2008

Zone objectives

The objectives of the B2 Local Centre and R4 High Residential zones are as follows:

B2 Local Centre

“

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level.
- To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.”

R4 High Density Residential

“

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

The proposed development is entirely consistent with the relevant zone objectives. The shop top housing development will provide a range of suitable dwelling types that meet the housing needs of the community within a locality identified for high density residential redevelopment.

The number of adaptable dwellings proposed provides suitable housing for the elderly and people with a disability and the building promotes a high quality urban outcome with minimal environmental impacts. The proposed scheme does not fragment adjoining land parcels.

The development provides a range of housing types in the form of one, two and three bedroom units and adaptable dwellings. The variation to the height limit does not detract from the development's consistency with the zone objectives. Consequently, the proposed variation to the height is consistent with the objectives of the building height standard and the zone objectives.

3. Sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))

In *Moskovitch v Waverley Council* [2016] NSWLEC 1015 Commissioner Tuor upheld a Clause 4.6 to vary building height on the grounds there were sufficient environmental planning grounds for the variance because of the lack of environmental impact of the development and the environmental benefits of the replacement of two residential flat buildings with poor amenity. Similarly, the subject proposal provides planning grounds to vary building height as environmental impacts are limited and there are environmental benefits of replacing the existing derelict commercial development with a high quality commercial and residential development.

The associated environmental planning benefits of the design can be summarised as follows:

- the Lucas Avenue building is 5.05m under the height limit to achieve the best planning outcome for the site and the transition to surrounding low density residential land;
- the urban design and architectural merit of the proposal are of a high standard that exceed compliance with planning policies such as the ADG and DCP 2008. The proposed development is fully compliant with these policies despite the FSR and height variations, indicating a good design outcome.
- the provision of a generous common open space and landscaped buffer internally between the two buildings increases residential amenity;
- the proposed building height will achieve a cohesive urban design outcome and transition in height appropriate for the location of the site within the broader context of the locality. Buildings of similar scale to the proposal are anticipated to the south and west;
- strict compliance with the building height standard would be a suboptimal planning outcome as it would have the effect of requiring the removal of a number of units and access to the rooftop communal open space area without any associated planning benefit;
- the development has been designed to minimise impacts on neighbouring properties and adjoining properties, as outlined in this Statement;
- the development provides increased housing choice close to the Liverpool City Centre and to public transport options;
- existing commercial uses onsite have not been viable, and the replacement of the derelict commercial building with high quality shop top housing development will provide environmental planning benefit to the locality;
- to require strict compliance would require removing parts of the building without resulting in a real planning or environmental benefit.

The proposed building height is consistent with the orderly and economic redevelopment of the subject site in accordance with the intentions of the *Environmental Planning and Assessment Act, 1979*. There is no planning purpose to be served by limiting the height strictly to the building height of 21m given the site setting within the anticipated urban landscape and the absence of amenity related impacts.

In short, we consider that there are sufficient environmental planning grounds to justify the proposed variation to the height standard.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

However, in *Four2Five v Ashfield Council [2015] NSWLEC 90* the Land and Environment Court said that whether something was 'unreasonable or unnecessary' is now addressed specifically in clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary. Accordingly, while the objectives of the standard are achieved despite non-compliance with the standard, this request goes further. It seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons **that are additional** to consistency with the planning objectives.

Preston CJ in *Wehbe* expressed the view that there are four additional ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

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

This list was not exhaustive.

Having regard to all of the above, it is considered that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of this case for the reasons set out below:

- The height non-compliance is limited to the lift shaft and small sections of the roof and will have no adverse impact in terms of visual impact, privacy or solar access;

- The Lucas Avenue building complies with the 18m height limit and is 5.05m below the maximum height; and
- The proposed development meets the objectives of the height control and strict compliance with numeric height controls of 21m would undermine or thwart its objectives.

Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance with the building height standard is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives, will create negligible environmental impacts and will offer high quality contemporary residential accommodation, in a highly desirable, high amenity location. The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed building height variation is consistent with the requirements of Clause 4.6(3) of the LEP.

Furthermore, to insist on strict compliance with the subject height control would frustrate the orderly and economic development of the site thereby hindering the attainment of the objectives of the *Environmental Planning and Assessment Act, 1979*. Therefore, the variation to the maximum building height standard is considered reasonable and consistent with the requirements of Clause 4.6(3) of the LEP.

Conclusion

The development proposal will provide diverse and additional housing choice with superior amenity. This is achieved by well-planned and functional apartments with high solar and cross ventilation performance and shared open space which supports deep soil planting and passive recreation opportunities for residents and visitors. Variation to Clause 4.3 of the Liverpool LEP 2008 is therefore justified in accordance with the requirements of Clause 4.6.

CLAUSE 4.6 VARIATION STATEMENT – CLAUSE 4.4 FLOOR SPACE RATIO – 101 NUWARRA ROAD, MOOREBANK

Clause 4.4 (2) of Liverpool LEP 2008 relates to the maximum floor space ratio (FSR) requirements and refers to the *Floor Space Ratio Map*. The relevant map identifies the subject site as having a maximum FSR of 1.2:1 (Lot 01) and 1.7:1 (Lot 101).

Clause 4.4 defines FSR as follows:

“ The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.”

The proposal has a maximum FSR of 1.1:1 (Lot 01) which complies with the LEP control and 1.71:1 (Lot 101) which exceeds the LEP 2008 control by 58m² for Lot 101 (equivalent to a 0.75% variation to the control). The proposal complies overall if the allowable FSR is combined across the two lots:

Lot	Maximum FSR	Proposed FSR
101	1.7:1 (7,714m ²)	1.71:1 (7,772m ²)
01	1.2:1 (806m ²)	1.1:1 (742m ²)
Combined site	8,520m ²	8,514m ²

Maximum FSR is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

The objectives and provisions of clause 4.6 are as follows:

“ **4.6 Exceptions to development standards**

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the 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.*

- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4."

The development standards in clause 4.4 are not "expressly excluded" from the operation of clause 4.6.

The Liverpool LEP 2008 nominates a maximum FSR of 1.2:1 (Lot 01) and 1.7:1 (Lot 101) for the site. It is hereby requested that an exception to this development standard be granted pursuant to clause 4.6 so as to permit a maximum FSR of 1.71:1 (Lot 101) which is a variation of 0.75%.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) and (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of clause 4.6 is addressed later in this request.

The objectives and relevant provisions of clause 4.4 are as follows, inter alia:

- "
- (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."

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the objectives of clause 4.4 are addressed in turn below.

Objective (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 maximum floor space ratio for the site is 1.2:1 (Lot 01) and 1.7:1 (Lot 101). All essential services are available for connection to the site and the proposal will not require upgrading of infrastructure capacity. The subject site is located in a well serviced area and is also well connected to other localities for employment, education and recreational activities. The surrounding road network provides sufficient accessibility to the region, with Nuwarra Road providing convenient access to Liverpool City Centre and M5 Motorway.

Furthermore, the site is approximately 40m north of the intersection of Nuwarra Road and Maddecks Avenue. There is a bus stop located 75m to the south-west on Maddecks Avenue which provides transport to Liverpool and surrounding suburbs.

The development site is serviced by frequent public transport, and an established road network, consequently the site is located in an appropriate area to accommodate the proposed floor space ratio.

Despite the minor additional development density on the site, it would not (from a strategic planning perspective) create intensity of a development that is beyond the planned infrastructure or services capacity for the locality. Furthermore, the Assessment of Traffic and Parking Implications prepared by Traffic and Transport Planning Associates states:

“ The generated traffic movements are relatively minor and vehicles will have no difficulty accessing site and this will be facilitated by the operation of the traffic signals at nearby intersections instilling gaps into the Maddecks Avenue flows.”

The proposal is therefore consistent with this objective despite the proposed variation.

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

The proposal sits opposite a residential flat development to the east at No. 96-98 Nuwarra Road that has a height of 6 storeys. The future character of the area is high density development, typically 5-6 storeys in height with floor space ratio ranging between 1.2:1 and 1.7:1. The proposal complies overall if the allowable FSR is combined across the two lots. The minor additional floor area will still achieve a density that is contextually appropriate and achieves a compatible urban design outcome.

The proposed built form is compatible with existing and desired future development in the area and with the Council's high density vision for renewal in the area. In our view, “compatible” does not promote “sameness” in built form but rather requires that development fits comfortably with its context. Of relevance to this assessment are the comments of Roseth SC in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191:

“ 22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

In relation to the built form context of the site, the proposed building is of a suitable scale and form within the intended streetscape and is therefore in harmony with the future built form context. The proposed building density is a site specific response to the character of the locality. The Moorebank Town Centre has been targeted to accommodate higher density redevelopment. As part of the LLEP 2008, the subject site was nominated for redevelopment by substantially increasing the FSR and building height. The site includes two street frontages and a large site area capable of accommodating a density envisaged for the area.

The proposal complements the built form and future character of the area with a sympathetic architectural form. The development provides a generous common open space and landscaped buffer internally between the two buildings, ensuring a better design outcome, thereby increasing residential amenity.

The proposed development has been specifically designed to suit this parcel of land, address the streetscapes and surrounding area, promote good urban design, address the adjacent sites in terms of amenity and provide good internal amenity for future residents and neighbours.

The proposed design will complement the intended character of the surrounding area in terms of its height, bulk, scale, building form, roof design, materials, textures and colours. The proposed development will not dominate the streetscape due to its sympathetic design, appropriate setbacks and its compatibility with the surrounding area.

Objective (c): to minimise adverse environmental impacts on adjoining properties and the public domain.

The proposal will not compromise the use and enjoyment of adjoining properties. The submitted Statement of Environmental Effects demonstrates that there will be no adverse impacts on privacy and daylight access for neighbouring properties and the public domain.

The southern property is anticipated to be of similar density and scale, thus by increasing the built form massing to the southern end of the development it ensures adverse visual impacts to northern adjacent properties are limited. The proposed nil setback to the southern boundary permits the southern adjacent property to maximise their development potential, by building to their northern boundary and also proposing a nil setback. Furthermore, living areas and private open space areas are designed to limit impacts on existing and potential neighbouring residential properties. Specifically, the proposed architectural design orientates dwellings and balconies towards the streets and internally within the site to reduce adverse impacts.

Given the east-west site orientation, overshadowing is limited to the adjacent southern property. However, the adjacent property is a community centre/library and is a non-residential land use. The subject development has given consideration to future redevelopment potential of the southern site, by providing a central landscaped common open space which will permit solar access and natural ventilation to any potential development on the southern site.

The proposal complies overall if the allowable FSR is combined across the two lots and has been designed to minimise adverse environmental impacts on adjoining properties by considering site context, existing and potential development. Furthermore, no adverse environmental impacts are likely on the adjacent public domain (Nuwarra Road/Lucas Avenue). As such, the variation to FSR will not result in adverse impacts to adjoining properties and the objective is satisfied.

Objective (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 subject site and immediate locality has been nominated for high density development pursuant to Liverpool LEP 2008. The character of the area will undergo substantial transformation from low density 2 storey buildings to high density 6 storey buildings. Evidence of the area undergoing substantial transformation is located at No. 96-98 Nuwarra Road directly opposite the subject site to the east, including 2 x 6 storey buildings. Further high density development is considered to emerge in the area as time progresses and owners maximise their property yield.

The proposal complies overall if the allowable FSR is combined across the two lots and provides a suitable building of a height and scale that will transition to land to the north and south which are zoned for high density development. Adjacent properties are likely to undergo substantial transformation from low density to high density development, as such the visual relationship is not a consideration for this site.

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

The subject site is substantially larger than other properties in the immediate locality and benefits from two street frontages that permit a design that distributes building mass into two buildings addressing each street. The site is well suited to accommodate the proposed FSR as the development complies with good design principles such as common open space, solar access and cross ventilation. The site is 5,210m² in area and considered appropriate to cater for the development by proposing a built form that complements the site context.

The development standard clearly contemplates tower forms of development in this location. This proposal results in tall and better proportioned structures consistent with the desired future character of the Moorebank Town Centre. The recessed uppermost storey of the Nuwarra Road building will reduce the apparent bulk and ensure that the development will provide an appropriate correlation to size of the land on which it sits.

Given the density and height of the residential flat development to the east and LEP densities of adjacent properties, the additional height and density proposed is considered appropriate. The built form is suitable given its location in the R4 High Density Residential and B2 Local Centre zones. The proposal complies overall if the allowable FSR is combined across the two lots, achieves complying SEPP 65 setbacks and amenity requirements, thus the size of the site is capable of accommodating this scale of development.

Strict compliance with the FSR control would have minimal change to overshadowing, privacy or any other amenity impacts on surrounding properties because the building envelope is generally compliant and the three dimensional proportions of the building represent a largely compliant form. Therefore, on balance, the proposal will achieve a planning purpose of enhancing residential amenity and efficient use of an infill site in the absence of any additional adverse impacts.

The proposed development is therefore consistent with the objectives for FSR, despite the numeric non-compliance.

Zone Objectives

Clause 4.6 (4) also requires consideration of the relevant zone objectives. The objectives of the B2 Local Centre and R4 High Residential zones are as follows:

B2 Local Centre

- “
- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
 - To encourage employment opportunities in accessible locations.
 - To maximise public transport patronage and encourage walking and cycling.
 - To allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level.
 - To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.”

R4 High Density Residential

- “
- 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.”

In response to the above zone objectives, the proposed development is consistent with the relevant zone objectives in that the development will maximise public transport patronage to Liverpool City Centre and encourage walking/cycling to nearby amenities such as Moorebank Town Centre. The development exhibits design excellence through well positioned communal open space, and dwelling functionality. The proposed scheme is considered to be the most suitable in terms of residential amenity and bulk and scale whilst providing for economic redevelopment of the site.

The proposal provides a range of suitable dwelling types that meet the housing needs of the community within an appropriate high density residential environment. The number of adaptable dwellings proposed provides suitable housing for the elderly and people with a disability and the building clearly promotes a high quality urban outcome with minimal environmental impacts. The site is well located to nearby public transport, and is therefore in a prime location where the density of development should be optimised rather than limited, especially where it can be demonstrated that the proposal is of an appropriate scale and form. The variation to the floor space ratio limit does not detract from the development's consistency with the zone objectives.

Sufficient Environmental Planning Grounds

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW *LEC Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of commissioner Pearson.

On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development”, it is considered that the proposal represents a building density which is compatible with the character of the neighbourhood and strict compliance would be counterproductive in terms of internal amenity, streetscape, impacts to neighbouring properties and constraining provision of high quality residential development in a highly accessible locality.

The merits of the proposal on “environmental planning grounds” need to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a better or neutral outcome. The development has been designed to provide a high quality urban outcome by providing new apartments that are compatible with the desired future character of the locality.

Moskovitch v Waverley Council [2016] NSWLEC 1015 is of particular relevance to this development, the commissioner upheld a Clause 4.6 to vary FSR on the grounds there were sufficient environmental planning grounds for the variance because of the lack of environmental impact of the development and the environmental benefits of the replacement of two residential flat buildings with poor amenity. Similarly, the subject proposal includes significant planning grounds to vary FSR as environmental impacts are limited and there are environmental benefits of replacing the derelict existing commercial development.

The “better outcomes” of the proposal can be summarised as:

- The proposal complies overall if the allowable FSR is combined across the two lots;
- The proposal presents a fully compliant scheme in accordance with the ADG and DCP 2008. Full compliance suggests that architecture and design quality of the development is of high standard despite the FSR non-compliance;
- Redistribution of building mass to the edges of the site accommodates a central landscaped area that ensures better internal amenity than a complying development. It also frames the streetscape on both frontages in accordance with future development on adjacent properties (refer to submitted plans for indicative built form);
- The development has been designed to take into consideration the development potential of the southern Council owned property. By including a blank wall and nil setback the southern site can continue the built form located around the perimeter of the site and provide centrally located landscaped open space. This pattern ensures a viable development form with increased amenity;
- Existing commercial uses onsite have not been viable, and the replacement of the derelict commercial building with high quality commercial and residential development will provide environmental planning benefit to the locality;
- Strict compliance with the FSR standard would be a suboptimal planning outcome as it would not be responsive to the site context;
- The variation directly assists Council in achieving additional housing choice within a high density residential environment within the locality, as desired by the zone objectives;
- The proposed variation will create consistent streetscape presentation given development to the east, and this will achieve a superior planning outcome in comparison to achieving strict compliance;
- The proposed development meets the objectives of the FSR control and strict compliance would undermine or thwart its objectives, or the zone’s objectives (or both); and
- The burden placed on future residents (by eliminating apartments) and/or the broader community (by reducing the numbers of homes within an accessible location in easy reach of commercial centres and public transport) would be disproportionate to any consequences that may arise from the proposed non-compliance with the FSR control.

Insisting on strict compliance in this instance would result in a reduction of the gross floor area with no built form or functional benefits and could place unreasonable burden on the development and the inability to provide high quality development.

Therefore on environmental planning grounds, the site location and its proximity to sites which may develop to higher density provides an opportunity for a transitional density that is consistent with Council’s expectations for the site.

To require strict compliance would therefore result in an unreasonable burden on the development with no demonstrable built form benefits and as such the proposal results in a better outcome relative to the site.

Insistence on Compliance is Unreasonable and Unnecessary

Returning to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ *An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*”

The judgement goes on to state that:

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

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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

Furthermore, the decision of the Land and Environment Court in the case of *Moskovitch v Waverley Council [2016] NSWLEC 1015* concluded that compliance with the development standard was unreasonable or unnecessary in the circumstances of the case as required by cl 4.6(3)(a) because the relevant objectives of the standard were met by a proposal and would not be achieved or would be thwarted by a complying development.

Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance with the FSR standard is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives, will create negligible environmental impacts and will offer high quality contemporary residential accommodation in a highly desirable, high amenity location. The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed FSR variation is consistent with the requirements of Cause 4.6(3) of the LEP.

Having regard to all of the above, it is our opinion that compliance with the maximum FSR development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal will result in a high quality development the viability of such must be supported by the increase in FSR to achieve a significantly better planning outcome than to enforce compliance (and reduce overall floor space).

Therefore, insistence upon strict compliance with the standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
Part 1.1- Controls for all Development			
Section 3 – Landscaping and incorporation of existing trees	Landscape Specification 1. Landscape planting should be principally comprised of native species provide an integrated streetscape appearance. Species selected in environmentally sensitive areas should be indigenous to the locality. However, Council will consider the use of deciduous trees in small private open space areas such as courtyards for control of local microclimate and to improve solar access. Environmental and noxious weeds in Liverpool shall not be used in the landscape design	See Landscape Plan for compliance.	✓
	2. The landscaping shall contain an appropriate mix of canopy trees, shrubs and groundcovers. Avoid medium height shrubs (0.6 – 1.8m) especially along paths and close to windows and doors.	See Landscape Plan for compliance.	✓
	3. Landscaping in the vicinity of a driveway entrance must not obstruct visibility for the safe ingress and egress of vehicles and pedestrians.	The proposed landscaping adjacent to the driveway entrance will not obstruct visibility.	✓
	4. Trees, which are planted around high use facilities such as car parking areas, children's, play areas and walkways should have clean trunks to a height of 1.8m.	See Landscape Plan for appropriate species selected.	✓
	5. All topsoil used shall be sourced from a recognized commercial topsoil supplier. Site topsoil will only be considered suitable where the material has a high organic content. The consultant shall inspect and approve all top soiling prior to commencement of planting and application of mulch. An imported light and free draining topsoil mix is to be used in all planters.	Council may wish to impose a suitable consent condition.	✓
Section 6 - Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. Mechanical means (i.e. pump) for disposal of stormwater runoff will not be permitted except for basement car parks. Charged systems will not be permitted.	See Stormwater Drainage Plans for compliance.	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	<u>Visual impact</u> All drainage structures and storage areas are to be designed to be visually unobtrusive and sympathetic with the environment. This requirement is necessary to help ensure that future occupants do not adjust or remove facilities for aesthetic reasons without understanding the functional impact of such actions.	All drainage structures are appropriate in location and design. See Stormwater Drainage Plans for details.	✓
	<u>Surface flow Paths</u> 1. Surface flow paths, including the provision of an emergency overflow to cater for blockage of the system or flows in excess of the 100-year ARI storm flow must be provided. 2. The flow route must be capable of carrying the flows generated by a 100-year ARI storm with a freeboard of 300mm to the adjacent habitable floor levels of the development site and adjoining properties. 3. Development must not cause any adverse impact on adjoining or any other properties. This includes maintaining surface flow paths and not increasing water levels in these flow paths. Diverting flows from one catchment to another will not be permitted.	See Stormwater Drainage Plans for details. See Stormwater Drainage Plans for details. See Stormwater Drainage Plans for details.	✓ ✓ ✓
	<u>Floor and Ground Levels</u> All habitable floor levels are to be a minimum of 300mm and garage/non habitable floor levels to be a minimum of 150mm above the maximum design storage water surface level and flow path levels.	See Stormwater Drainage Plans for details.	✓
	Environmental Controls 1. The peak runoff for the 1-year ARI post development does not exceed that of an undeveloped catchment. 2. The peak runoff for the 1-year ARI post development is not less than 50% from that of an undeveloped catchment.	See Stormwater Drainage Plans for details of discharge rates.	✓
Section 8 - Erosion and Sediment Control	Erosion and Sediment Control Plan is required for development on sites up to 2,500m ²	See Erosion and Sediment Control Plan submitted with this application.	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
11 Salinity Risk	<ol style="list-style-type: none"> Multi Lot Development? N/A Identify Salinity Potential- Moderate salinity potential Level 3 salinity - management response is required. 	Council may impose suitable consent conditions requiring a design response to salinity issues prior to construction of the proposal.	✓
15 On-site Sewage Disposal	Applications for development of land shall be accompanied by an application under S68 of the Local Government Act 1993 for an On Site Sewer System. Development consent will not be issued until Council can issue this application.	The proposed development is to be connected to existing service infrastructure.	✓
20.- Car Parking and Access	<ul style="list-style-type: none"> 1 space per small dwelling (< 65sqm) or 1 Bedroom – 12 spaces required 1.5 spaces per medium dwelling (65 -110sqm) or 2 bedrooms- 84 spaces required 2 spaces per large dwelling (> 110sqm) or 3 or more bedrooms – 16 spaces required 1 visitor car space for every 4 dwellings or part thereof – 19 spaces required <p>Total – 131 parking spaces required</p>	The proposal provides 220 parking spaces located onsite.	✓
22. Water Conservation	New dwellings, including a residential component within a mixed-use building and serviced apartments intended or capable of being strata titled, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	See the BASIX Certificate submitted with the application.	✓
23. Energy Conservation	Dwellings, including multi-unit development within a mixed use building and serviced apartments intended or capable of being strata titled, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX). A complying BASIX report is to be submitted with all	See the BASIX Certificate submitted with the application.	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	<i>development applications containing residential activities.</i>		
Part 6 Development in Business Areas			
2. Street frontage	<i>Sites must have a minimum street frontage of 20m.</i>	The site has a street frontage to Nuwarra Road of 81.8m, and a street frontage to Lucas Avenue of 42.2m.	✓
3. Site Planning	<p><i>The siting of buildings and the development should:</i></p> <ol style="list-style-type: none"> <i>1. Provide safe pedestrian, cycle and vehicle access to and from the public street.</i> <i>2. Be compatible with nearby residential development in terms of appearance, overshadowing, privacy, views, setbacks and height.</i> <i>3. Address the street and consider its presentation to the public domain.</i> <i>4. Consider the impact on existing and potential pedestrian links.</i> <i>5. Stormwater from the site must be able to be drained satisfactorily. Where the site falls away from the street, it may be necessary to obtain an easement over adjoining property to drain water satisfactorily to a Council stormwater system. Refer to Water Cycle Management in Part 1.</i> 	<p>The proposal responds to site planning criteria as follows:</p> <ol style="list-style-type: none"> 1. Safe pedestrian and vehicle access from both frontages. 2. The immediate locality is undergoing change from 2 storey residential and commercial development to large scale development. The proposal is in line with the desired character of the area under Liverpool Council's LEP 2008. 3. The development is well presented and addresses the public domain. 4. No pedestrian links are existing on the site. 5. Stormwater is drained satisfactorily, refer to Stormwater Plans. 	✓
	<p><i>In Local Centres the redevelopment of the centres should also:</i></p> <ol style="list-style-type: none"> <i>1. Utilise opportunities to address the street and provide an outdoor public domain.</i> <i>2. Where appropriate provide bus access within the centre.</i> <i>3. Incorporate links from any adjoining community facilities, open space or residential areas not currently linked.</i> 	<p>The proposal addresses Nuwarra Road and Lucas Avenue by providing commercial tenancies and generous pedestrian areas to the streets.</p> <p>Buses are readily accessible on Maddecks Avenue, with frequent services.</p> <p>Pedestrian links are not required onsite, Meddecks Avenue is located in close proximity to the site.</p>	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
4.Setbacks	<p><i>Rear Setback</i></p> <ol style="list-style-type: none"> Where the site has rear lane access the building may be built to the rear boundary, at ground and first floor level. Any floors above the first floor shall be setback equal to the height of the additional floors. Where there is no rear lane access and the site adjoins land that is in a residential zone, the building shall be setback from the rear boundary as follows: <ul style="list-style-type: none"> - 5m for non-residential component of building up to 10m high. - 8m otherwise for components of building up to 15m high. 	N/A – the listed controls do not apply to the subject site as the site has two street frontages and two side boundaries.	N/A
	<p><i>Side Setbacks</i></p> <ol style="list-style-type: none"> Where the site adjoins land that is also in a business zone there is no setback requirement. Where the side boundary of the site adjoins land that is in a residential zone, the building may be required to be setback from the side boundary or limited to one storey near the boundary. Any floors above the ground floor shall be setback equal to the height of the additional floors. 	<p>The site adjoins a B2 zone to the south and therefore no setback required. The proposal includes a nil setback to the south.</p> <p>Lucas Avenue northern side setback is 6m up to four storeys.</p> <p>The Nuwarra Road building is partially in the R4 zone. The requirements for residential flat buildings are different for that of a B2 zone. Refer to the discussion listed in this table below.</p>	✓
	<p><i>Front Setbacks</i></p> <p>As each layout and location of each Local Centre is distinct the setback shall be determined as part of an urban design strategy. This strategy shall consider the following in determining the appropriate setbacks:</p> <ol style="list-style-type: none"> Opportunities for a public domain/public street frontage. Need for car parking, bus stops and drop off points between the buildings and the public street. Whether the street is a primary access to the Local Centre. The location of adjacent residential development. The range of adjoining uses, such as Health Consulting Rooms etc. 	The proposed architectural form has taken into consideration the locality, existing/future development and the distinct precinct. Whilst in a business zone, the proposal adopts a suitable setback typology to Nuwarra Road and Lucas Avenue that will integrate with the landscape setting and pattern of development that is likely to continue on properties to the north. Landscaped open space is located between the two buildings and sets a standard for a landscaped corridor for future development to the north.	✓
5.Landscaped Areas and Pedestrian Areas	<ol style="list-style-type: none"> Redevelopment of a centre should incorporate shops having frontage to the exterior of the centre. 	Each street frontage has commercial tenancies.	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	<p>2. Usable pedestrian areas having frontage to shops should be provided and should be sufficiently wide in places to provide for outdoor eating areas.</p> <p>3. Pedestrian areas should minimise any changes in levels and allow wheelchair access to the shops from the car parking area, bus stops, public footpaths and drop areas.</p> <p>4. Pedestrian areas should link all major activity areas of the centre.</p> <p>5. Pedestrian areas should be separate from loading areas.</p> <p>6. Separate pedestrian access should be provided to adjoining public footpaths, community facilities and open space.</p> <p>7. Sufficient area shall be provided to permit landscaping and tree planting within pedestrian areas and car parking areas.</p>	<p>Generous pedestrian areas are provided to each tenancy.</p> <p>Pedestrian areas have minimal change in levels.</p> <p>The pedestrian areas have been designed to connect with future development.</p> <p>Complies.</p> <p>Complies.</p> <p>Complies.</p>	
6. Building Form, Streetscape and Layout	<p>Building Form</p> <p>1. Articulate building walls addressing the street to add visual interest.</p> <p>2. Development adjoining open space shall address the open space and avoid blank walls.</p>	<p>The proposed development is well articulated through the use of windows, balconies, materials and finishes.</p> <p>The subject site does not adjoin open space.</p>	✓
	<p>Building Materials</p> <p>1. Highly reflective finishes are not permitted above the ground floor.</p> <p>2. Colour & materials of the buildings shall be consistent with the existing adjoining development.</p>	<p>Reflective materials are not proposed and materials are sympathetic to the surroundings. Refer to the materials and colours schedule for further details.</p>	✓
	<p>Entrances</p> <p>1. Orientate entrances to buildings towards the public street and provide clear lines of sight between entrances, foyers and the street.</p> <p>2. The common lobby to a home unit development should face the street.</p> <p>3. Where the ground floor of a business development, mixed-use development, and shop-top housing faces the street, the ground floor must incorporate shopfront style windows with clear glazing so</p>	<p>The entrances are oriented to Nuwarra Road and Lucas Avenue. The entrances are obvious and provide clear pedestrian access.</p> <p>The common lobbies face both Nuwarra Road and Lucas Avenue and are also clearly defined.</p> <p>Shopfront windows are provided to all commercial tenancies on the ground floor.</p>	<p>✓</p> <p>✓</p> <p>✓</p>

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	<i>that pedestrians can see into the premises and vice versa.</i>		
	<p><i>Street Frontage</i></p> <p>1. Ground floor uses are to be at the same general as the footpath and be accessible directly from the street.</p> <p>2. Provide predominately glazed shop fronts to all ground floor retail areas.</p> <p>3. Developments on corner sites shall address the corner and the secondary street frontage.</p> <p>4. Avoid blank or solid walls and the use of dark or obscured glass on street frontages.</p> <p>5. Roller shutters that obscure windows are not permitted.</p> <p>6. Provide opportunities for table seating along shop frontages.</p> <p>7. Any Automatic Teller Machine (ATM) must be located at a highly visible location at street level, and must be well lit at night and incorporate mirrors or reflective materials so that users can observe people behind them.</p> <p>8. The street number of a building must be visible from the street and made of a reflective material to allow visitors and emergency vehicles to easily identify the location of the building.</p>	<p>The site has a significant slope from east to west and the proposal is designed to follow the slope of the land with ground floor tenancies directly accessible from Nuwarra Road and Lucas Avenue. The southern part of each building will be built to the southern boundary to enable future development on the adjoining site to be built to the boundary. The length of these walls means that in the short term the visual impact will be minimal whilst this pattern is considered to be a more suitable urban design outcome when considering future redevelopment of the adjoining site.</p> <p>The street number will be displayed in a visible location for all visitors.</p>	<p>✓</p> <p>✓</p> <p>✓</p>
	<p><i>Awnings</i></p> <p>1. Provide continuous street frontage awnings to all new developments.</p>	Awnings are provided to the commercial tenancies at each street frontage.	✓
	<p><i>Roof Forms</i></p> <p>1. Minimise the bulk and mass of roofs and the potential for overshadowing from roofs.</p> <p>2. Provide eaves with a minimum length of 400mm in dwellings with pitched roofs.</p> <p>3. Where flat roofs are proposed, lift overruns and rooftop plant and machinery are to be obscured from view by parapets or designed to be incorporated within rooftop activities/features.</p> <p>4. Incorporate lift overruns and service plant etc into the design of the roof.</p> <p>5. Wherever possible provide landscaped and shaded areas on</p>	<p>The proposal includes a skillion roof that demonstrates visual interest. The roof does not increase the potential of overshadowing to adjacent properties due to the development configuration and site orientation. Plant services and lift overruns cannot be viewed from the public domain.</p> <p>The proposal provides landscaped communal open space on the ground level, levels 3, 5 and 6.</p>	<p>✓</p> <p>✓</p>

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	roofs to serve as communal private open space for residents of the building.		
	<p><i>Material and Finishes</i></p> <p>1. Avoid expanses of any single material.</p> <p>2. Utilise high quality and durable materials and finishes, such as face brick with / without coloured render; and plain glass windows.</p> <p>3. Avoid large wall tiles, rough textured render, polished metal and curtain walls or reflective glass.</p>	The proposal includes high quality and durable materials and finishes that are sympathetic to the surrounding locality.	✓
	<p><i>Dwellings above shops</i></p> <p>1. Dwellings and balconies in upper storeys shall address the street, rear laneway and any adjacent open space.</p> <p>2. Access to dwellings above shops must be from the front street.</p> <p>3. Dwellings above shops should be designed to facilitate flow through ventilation.</p>	<p>Apartments are designed to address Nuwarra Road and Lucas Avenue. This is achieved through the use of balconies and windows. Pedestrian access each building are provided from Nuwarra Road and Lucas Avenue. Vehicle access to the site is provided from Lucas Avenue, considered to be the lower order road.</p> <p>The development provides apartments that are sufficiently cross ventilated (refer to the submitted architectural plans).</p>	✓
	<p><i>Adjoining Residential Areas</i></p> <p>1. Development should minimise impact of the privacy of adjoining and nearby dwellings.</p> <p>2. Development should be compatible with any adjoining and nearby dwellings.</p>	The proposal is well designed to mitigate any potential adverse impacts to neighbouring properties, by including sufficient side setbacks and orientating dwellings east-west. The proposal responds to the future character of the area, as specified by Council's LEP and DCP.	✓
	<p><i>Public Transport Facilities</i></p> <p>Redevelopment of a centre should consider the need to provide easier public transport access to a centre. This may include bus access through any car parking area to the pedestrian entrance to the centre. Covered pedestrian access from the bus stop should also be considered. Provision for timetable and route information should be provided.</p>	The site is serviced by public transport including bus services south of the site on Maddecks Avenue.	✓
	<p><i>Building Form</i></p> <p>Developments should incorporate opportunities for pedestrian links. Redevelopment of local centres should attempt to enable a better transition between the indoor and outdoor locations of a centre, by enabling restaurants and cafes and similar businesses to have a dual frontage, internally and externally, to improve the amenity of</p>	Through site pedestrian links are not warranted, as the subject site is located approximately 40m from Maddecks Avenue, and there is no need for pedestrians to traverse the site.	✓

LIVERPOOL DCP 2008 - COMPLIANCE TABLE			
Control	Requirement	Proposal	Compliance
	<i>the building. This outdoor space should be located within close proximity to bus stops and where pedestrians enter the centre.</i>		
	<i>Car parking structures</i> <i>1. Where car parking structures is provided above or below ground level its design shall be integrated into the design of the building.</i>	Due to the slope of land, a portion of the first level of basement parking protrudes above the existing ground level. The car parking structure has been integrated into the design by including dwellings forward of the basement on the Lucas Avenue elevation to eliminate visual impact on the public domain.	✓
7.Landscaping and Fencing	<i>Where landscaping is to be provided a detailed landscape plan shall accompany a development application. A suitably qualified Landscape architect must prepare all Landscape Plans submitted with the development application.</i> <i>Landscaped areas within the redevelopment of any Local Centres shall generally involve the provision of trees and shrubs in mulched garden beds.</i>	A Landscape Plan is prepared and submitted with the subject application.	✓
8.Car parking and Access	<i>As each layout and location of each Local Centre is distinct the location and design of car parking shall be determined as part of an urban design strategy.</i>	The design and access of the car park has been in consultation with a Traffic Engineer to achieve a desirable outcome for the site and immediate road network. Vehicle access to the site is provided from Lucas Avenue to reduce traffic congestion on Nuwarra Road.	✓
9. Amenity and Environmental Impact	<i>Privacy</i> <i>Development shall be designed to minimise overlooking of adjoining and nearby residential development.</i> <i>Access to sunlight</i> <i>Dwellings above shops shall be designed to maximise solar access.</i>	The proposal is designed to mitigate adverse privacy impacts to neighbouring properties by orienting dwellings east-west, to the public domain and internally. Dwellings achieve ADG compliant solar access.	✓