



Clause 4.6 Variation - Floor Space Ratio, Car Parking and Building Separation

Commercial Tower and Commercial Hotel Redevelopment

277 Bigge Street, 11 Scott Street, 13-15 Scott Street, 17 Scott Street, 19 Scott Street, 21 Scott Street and 23 Scott Street

Lot 15 DP979379, Lot 16 DP979379, Lot 17 DP1050799, Lot 18 DP979379, Lot B DP350234, Lot 2 DP102307, Lot 1 DP77180, Lot B DP358314, Lot 24 DP700728 and Lot 23 DP700728

Prepared by Willowtree Planning Pty Ltd on behalf of Mackycorp

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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the redevelopment of the site for a 23 storey commercial tower, with conservation management works of the local heritage listed Commercial Hotel. The proposed Tower would comprise a landmark building of manifestly outstanding design. A new 1,200m² high quality plaza-style civic space would also be included as the heart of the site. This would provide through-site links in a north-south and east-west orientation, with highly activated edges bringing diversity and 24 hour quality to the site. The proposed conservation management and adaptive reuse of the Commercial Hotel at the site would provide significant value for this local heritage listed item.

The site comprises several lots with a combined site area of 2,780m² as follows:

- 277 Bigge Street:
 - Lot 15 in DP979379;
 - Lot 16 in DP979379;
 - Lot 17 in DP1050799; and
 - Lot 18 in DP979379;
- 11 Scott Street:
 - Lot B in DP350234;
- 13-15 Scott Street:
 - Lot 2 in DP102307;
- 17 Scott Street:
 - Lot 1 in DP77180;
- 19 Scott Street:
 - Lot B in DP358314;
- 21 Scott Street:
 - Lot 24 in DP700728; and
- 23 Scott Street:
 - Lot 23 DP700728.

The proposed non-compliances are with the following development standards under the *Liverpool Local Environmental Plan 2008* (LLEP 2008):

- Clause 4.4 Floor Space Ratio;
- Clause 7.3(2) Car Parking; and
- Clause 7.4 Building Separation in Liverpool City Centre.

This Variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of LLEP 2008, which include the following objectives:

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

1.2 PROPOSED NON-COMPLIANCES

1.2.1 Floor Space Ratio

Under the provisions of Clause 4.4 in LLEP 2008, the site is subject to a maximum FSR of 8:1, with an additional 10% bonus where Design Competition provisions have been met, equating to a total FSR of 8.8:1. Based on a site area of 2,780m² and an FSR control of 8.8:1, a maximum GFA of 24,464m²

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may be obtained at the site. The proposed development would result in a GFA of 27,628.8m² and an FSR of 9.94:1. The proposed development therefore exceeds the Clause 4.4 FSR control of 8:1 by 24.25%, and of the 8.8:1 Design Competition bonus by 12.95%.

1.2.2 Car Parking

For consent to be granted for new GFA on B3 Commercial Core zoned land in the Liverpool City Centre, Subclause 7.3(2) provides that the consent authority must be satisfied that:

- At least one car parking space is provided for every 200m² of new ground floor GFA;
- At least one car parking space is provided for every 100m² of new retail premises GFA; and
- At least one car parking space is provided for every 150m² of new GFA to be used for any other purpose.

However, Subclause 7.3(3) provides that the consent authority may waive this requirement where the provision of car parking at the site is not feasible.

Clause 7.3(4) provides that existing above-ground and below-ground car parking areas are to be included in a building's GFA for the purposes of determining its car parking requirement under Subclause 7.3(4). For the purposes of calculating the site's car parking requirement under Subclause 7.3(2), the site's standard GFA is the correct GFA to take into consideration.

Based on a GFA of 27,628.8m², including a combined ground floor area of 887.8m², the site would be required to provide at least 189 car parking spaces in order to be compliant with Subclause 7.3(2). However, it is proposed to provide 69 car parking spaces at the site. This equates to a non-compliance with the car parking requirements of Clause 7.3 by 62.9%.

1.2.3 Building Separation

Subclause 7.4(2)(d) and (e) require the following building separations for land zoned B3 Commercial Core within the Liverpool City Centre:

- 12m for parts of buildings between 25-45m above ground level (finished); and
- 28m for parts of buildings 45m or more above ground level (finished).

The proposed development would not achieve the building separation required under Subclause 7.4(2)(d) and (e). Separation distances to be achieved at the site would be as follows:

- Along its western boundary, the proposed Tower would have a zero boundary setback, which would equate to a building separation with the neighboring commercial tower of less than 500mm (at 25, 29 and 35 Scott Street). This equates to a variation at the 25-45m building height level of around 95.8% and at the 45m and up building height level of around 98.21%;
- To the east, the proposed Podium would achieve a building separation of around 13.35m to the local heritage listed Commercial Hotel. However, given that the Commercial Hotel is less than 25m in height, Clause 7.4 does not apply to the building separation between it and the proposed Tower;
- To the north, the proposed Stables building would have a zero boundary setback which would equate to a building separation with the neighboring commercial tower of less than 500mm (273-259 Bigge Street). However, given that the Stables would have a height of less than 25m, Clause 7.4 does not apply to the building separation between it and the 273-259 Bigge Street neighbor; and
- To the north, the proposed Tower would achieve a building separation of around 10.46m from the neighboring commercial tower (273-259 Bigge Street). This equates to a variation at the 25-45m building height level of around 12.83% and at the 45m and up building height level of around 62.64%.

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1.3 STRATEGIC PLANNING JUSTIFICATION

Under the alternative LLEP 2008-compliant scenario, the built form potential of the site would be under-realised. It is furthermore submitted that a hypothetical FSR, car parking and building separation compliant building at the site would:

- Not provide a similar level of critical Office Premises floorspace to support the strategic need for commercial employment floorspace in Liverpool as recognised by the Greater Sydney Commission;
- Provide less encouragement for patrons of the site to use public transport, reducing the proposed development's status as Transit Oriented Development;
- Discourage patrons of the site to access the proposed development by walking from Liverpool Station and/or the Liverpool-Parramatta Transitway, thereby reducing the potential for enjoyment of the significant new skyline views afforded by the proposed development, detracting from patronage of the ground floor retail land uses which would take place at the site, and further discouraging those patrons from further exploring the highly compact and walkable Liverpool CBD;
- Achieve a less affordable and less sustainable building design by promoting the construction and maintenance of additional energy-intensive basement car parking levels;
- Create quasi through-site links to the west and north of the site, which would be lacking in ground-level activation (as such activation was not incorporated into the design of these neighboring commercial towers and this is not possible to affect retrospectively). These hypothetical through-site links would also not have the same level of legible walkability in terms of encouraging patrons to walk to Liverpool Station or other parts of the Liverpool CBD;
- Result in reduced building setbacks from the local heritage listed Commercial Hotel and therefore impacts for the heritage significance of that item;
- Effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating and other purposes by:
 - Not providing sufficient room to achieve the new 1,200m² high quality plaza-style civic space as the heart of the site; and
 - Reducing the feasible building floorplate achievable for the proposed Tower, which would not be efficient to deliver from a cost-benefit perspective and therefore threaten the financial viability of the proposed development.

It is furthermore submitted that a hypothetical FSR, car parking and building separation compliant design would:

- Result in an outcome which does not necessarily meet the objective of the site's zone to strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney under the LLEP;
- Not serve the needs of Mackycorp and its tenants;
- Result in a car parking outcome which is out of line with current sustainable building design knowledge; and
- Potentially result in greater wind impacts for surrounding pedestrians.

Moreover, under the pending Amendment 52 to the LLEP 2008, the site will be subject to a maximum FSR of 10:1 which would align with the current design of the proposed development. It is furthermore noted that positive feedback has been received from both Liverpool City Council and the Urban Design Panel based on the current design, with both parties indicating that they were willing to support the identified non-compliances with the LLEP 2008 so long as those non-compliances could be sufficiently justified.

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This Clause 4.6 Variation request has therefore been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under LLEP 2008. It considers various planning controls, strategic planning objectives and existing characteristics of the site, and concludes that the proposed FSR, car parking and building separation non-compliances are the best means of achieving the objective of encouraging orderly and economic use and development of land under section 1.3 of the *Environmental Planning and Assessment Act 1979*.

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PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF THE LLEP 2008

In accordance with Clause 4.6 of LLEP 2008 Council is required to consider the following Subclauses:

(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.*

These matters are responded to in Part D of this Clause 4.6 Variation.

2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions has established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
 - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
 - There are sufficient environmental planning grounds to justify contravening the development standard;
 - The development is in the public interest;
 - The development is consistent with the objectives of the particular standard; and
 - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

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- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- 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; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in Part D of this Clause 4.6 Variation.

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PART C STANDARD BEING OBJECTED TO

3.1 CLAUSE 4.6 FLOOR SPACE RATIO OF THE LLEP 2008

The development standards being requested to be varied are:

- Clause 4.4 Floor Space Ratio;
- Clause 7.3(2) Car Parking; and
- Clause 7.4 Building Separation in Liverpool City Centre.

Table 1 outlines the proposed Clause 4.6 Variation to the LLEP 2008 Clauses 4.4, 7.3(2) and 7.4.

Table 1 Proposed FSR Variation – LLEP 2008			
LLEP 2008 Clause	LLEP 2008 Development Standard	Proposed Development Non-Compliance	Percentage of Variation
Clause 4.4 Floor Space Ratio	Subclause 4.4(2B) of the LLEP 2008 allows the site to achieve an FSR of 8:1. However, Clause 7.5(6) of the LLEP 2008 allows for a further additional 10% of the site's height or FSR or both if design competition requirements are met. This would equate to an overall permissible FSR at the site of 8.8:1.	The proposed development seeks consent for an FSR of 9.94:1	The proposed development would result in a variation of the Subclause 4.4(2B) by 24.25%
			The proposed development would result in a variation of the Subclause 7.5(6) bonus FSR available at the site by 12.95%.
Clause 7.3(2) Car Parking	Subclause 7.3(2) of the LLEP would require the site to provide at least 189 car parking spaces.	The proposed development seeks consent to provide 69 car parking spaces at the site.	The proposed development would result in a variation of the Subclause 7.3(2) requirement by 62.9%.
Clause 7.4(2) Building Separation in Liverpool City Centre	Subclause 7.4(2)(d) and (e) would require building separations between the proposed Tower and the adjoining commercial towers to the north and west as follows: <ul style="list-style-type: none">▪ 12m for parts of the proposed Tower between 25-45m above ground level (finished); and▪ 28m for parts of the proposed Tower 45m or more above ground level (finished).	The proposed development seeks to provide a minimum western building separation of less than 500mm. It also seeks to provide a minimum northern building separation of 10.46m.	The proposed development would result in a variation of the Subclause 7.4(2) requirement by 95.8% between 25-45m and of 98.21% above 45m for the western building separation. The proposed development would also result in a variation of the Subclause 7.4(2) requirement by 12.83% between 25-45m and of 62.64% above 45m for the north building separation.

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3.2 HYPOTHETICAL COMPLIANT DESIGN

An alternative, hypothetical design compliant with Clauses 4.4, 7.3(2) and 7.4 would:

- Not provide a similar level of critical Office Premises floorspace to support the strategic need for commercial employment floorspace in Liverpool as recognised by the Greater Sydney Commission;
- Provide less encouragement for patrons of the site to use public transport, reducing the proposed development's status as Transit Oriented Development;
- Discourage patrons of the site to access the proposed development by walking from Liverpool Station and/or the Liverpool-Parramatta Transitway, thereby reducing the potential for enjoyment of the significant new skyline views afforded by the proposed development, detracting from patronage of the ground floor retail land uses which would take place at the site, and further discouraging those patrons from further exploring the highly compact and walkable Liverpool CBD;
- Achieve a less affordable and less sustainable building design by promoting the construction and maintenance of additional energy-intensive basement car parking levels;
- Create quasi through-site links to the west and north of the site, which would be lacking in ground-level activation (as such activation was not incorporated into the neighboring sites). These hypothetical through-site links would also not have the same level of legible walkability in terms of encouraging patrons to walk to Liverpool Station or other parts of the Liverpool CBD. They would also not respond to the CPTED issues which the site is currently subject to, and for which Council desires a resolution;
- Result in reduced building setbacks from the local heritage listed Commercial Hotel and therefore increased impacts for the heritage significance of that item;
- Effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating and other purposes by:
 - Not providing sufficient room to achieve the new 1,200m² high quality plaza-style civic space as the heart of the site; and
 - Reducing the feasible building floorplate achievable for the proposed Tower, which would not be efficient to deliver from a cost-benefit perspective and therefore threaten the financial viability of the proposed development.

Overall, an alternative, hypothetical design compliant with Clauses 4.4, 7.3(2) and 7.4 is not considered justified for the site.

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PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

4.1 OBJECTIVES OF THE CLAUSE 4.4 FSR STANDARD UNDER LLEP 2008

A key determination of the appropriateness of a Clause 4.6 Variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognized this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the site is subject to specified numerical controls for FSR, car parking and building separation, the objectives and underlying purpose behind these development standards are basic issues for consideration in the development assessment process.

4.1.1 Floor Space Ratio

The objectives of Clause 4.4 under the LLEP 2008 are responded to as follows:

- *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 proposed development can be delivered without significant impacts to the surrounding road network or other services infrastructure, and would improve pedestrian permeability and legibility for the surrounding blocks. The site can adequately support the 24,232.8m² of Office Premises floorspace which is proposed to be provided at the site.

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

The proposed Tower's design has been developed so as to appear slender and elegant. Given that the site will be subject to an FSR of 10:1 under the pending Amendment 52, the FSR of the proposed development is considered consistent with the desired future character of the site. The site also forms part of the Scott Street Key Site, and the proposed development would comprise a gateway development and a regional marker for the locality.

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

As set out in **Part F** of the SEE, the proposed development would not significantly impact on the amenity of adjoining premises. Rather, it is considered that the proposed development would positively impact on the amenity of adjoining premises.

- *To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation;*

The proposed Tower would have a curved shape along its eastern facade to respond to the local heritage listed Commercial Hotel. This curvature would further address the Scott Street/Bigge Street corner whilst reducing the proposed Tower's weight and appearance. It would also allow sunlight into the southern side of the street. Setbacks to the northern existing tower have been provided for to allow a comfortable relationship between these two items whilst also allowing north western sun into the new civic space. It would address the arrival of residents entering the Liverpool CBD by road or rail. The proposed Tower's curved glass form would articulate the skyline and the proposed

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development in total would provide a prominent, quality aesthetic to vistas visible throughout view corridors from Liverpool Station, Light Horse Bridge, Scott Street, Bigge Street and the Railway Serviceway.

The proposed Tower would be articulated to provide a high level of activation from its western boundary, including with a glass façade. The proposed Tower's core has also been designed to be as slender as practicably possible, and is further articulated with windows to the lift lobbies and bathrooms to reduce the non-activated surfaces. With reference to the adjoining commercial tower on Scott Street, the proposed Tower would complete the street wall. The separation between these two towers would help to distinguish the proposed development with a slender and elegant tower. Further reference to the neighbouring Scott Street tower would be achieved through the proposed Tower's waistline corresponding to the height of this neighbouring tower to the west. This waistline would create a quasi streetwall whilst articulating the proposed Tower form. The waistline would further create the opportunity for external terrace space on level 11, giving the building scale and balance. The relatively short building setback to the west is preferred to avoid the creation of a quasi through-site link which would be lacking in ground-level activation (as such activation was not incorporated into the neighboring Scott Street DA).

The proposed development would include various scaled features which would increase focus onto the local heritage listed Commercial Hotel as part of views and vistas to and from the site. These design elements would include:

- Constructing a two storey ground floor Podium responding to the height of the co-located Commercial Hotel;
- Elevating the height of the proposed Tower above its Podium to create a volume of air space around the co-located Commercial Hotel;
- Creating space around the Commercial Hotel and connecting the new civic space to Bigge Street, Scott Street and the Railway Serviceway;
- Removal of the non-original Commercial Hotel wings;
- Construction of a new two storey 'Stables' building co-located with the Commercial Hotel and the proposed Tower to complete the relationship between the Commercial Hotel, the Heritage Conservation Area, and the proposed Commercial Tower;
- Shaping the eastern edge of the 'Stables' building to wrap around the nearby Commercial Hotel;
- Creating around 1,200m² of civic space within the Conservation Area and immediately surrounding the Commercial Hotel, highlighting groundfloor space around the Commercial Hotel (being separated from the Podium by around 25m); and
- Elevating the height of the proposed Tower above its Podium to create a volume of air space around the Commercial Hotel.

The proposed development would therefore maintain an appropriate visual relationship with the local heritage listed Commercial Hotel.

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

The proposed development responds to the size and extent of the local heritage listed Commercial Hotel which will remain co-located at the site, as outlined above in this **Section 4.1.1**.

- *To facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

The proposed development is considered to meet the prerequisites for design excellence within the Liverpool CBD on the following bases:

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- The proposed development would comprise a manifestly outstanding built form design, including quality materials and finishes to complement the site's heritage context whilst providing general site uplift;
- The proposed development would create around 1,200m² of high quality new civic space which relates to both the site's existing heritage context and the proposed Tower;
- The proposed development would open up views to the local heritage listed Commercial Hotel;
- The proposed development would constitute a landmark building within the Liverpool CBD, addressing the arrival of residents entering Liverpool by road or rail. The proposed Tower's curved glass form would articulate the skyline and the proposed development in total would provide a prominent, quality aesthetic to vistas visible throughout view corridors from Liverpool Station, Light Horse Bridge, Scott Street, Bigge Street and the Railway Serviceway;
- The proposed development would not cause overshadowing for Bigge Park, Liverpool Pioneers' Memorial Park, Apex Park, St Luke's Church Grounds and Macquarie Street Mall;
- The proposed development is generally consistent with the relevant provisions of LDGP2008. **Appendix 5** of the SEE considers these development controls in more detail. **Appendix 6** of the SEE considers the proposed development against Amendment 52;
- The suitability of the site for the proposed development is summarised in **Section 7.1** of the SEE;
- The proposed development responds to heritage constraints at the site as outlined above in this **Section 4.1.1**;
- The proposed Tower would be articulated to provide a high level of activation from its western boundary, including with a glass façade. The proposed Tower's core has also been designed to be as slender as practicably possible, and is further articulated with windows to the lift lobbies and bathrooms to reduce the non-activated surfaces. With reference to the adjoining commercial tower on Scott Street, the proposed Tower would complete the street wall. The separation between these two towers would help to distinguish the proposed development with a slender and elegant tower. Further reference to the neighbouring Scott Street tower would be achieved through the proposed Tower's waistline corresponding to the height of this neighbouring tower to the west. The relatively short building setback is preferred to avoid the creation of a quasi through-site link which would be lacking in ground-level activation (as such activation was not incorporated into the neighbouring Scott Street DA);
- The proposed Tower would have a curved shape along its eastern facade to respond to the local heritage listed Commercial Hotel. This curvature further addresses the Scott Street/Bigge Street corner whilst reducing the proposed Tower's weight and appearance. It would also allow sunlight into the southern side of the street;
- **Part F** of the SEE sets out how the proposed development responds to matters of sustainable design, overshadowing, wind and reflectivity;
- **Table 2** below explains how the proposed development meets the principles of ecologically sustainable development;
- The proposed development would establish new through-site linkages to promote pedestrian permeability and legibility throughout the site and within the Liverpool CBD more generally. The proposed development would include a combined 142m² End of Trip facility with provision for 129 bicycles to encourage cyclist patronage of the site. Level one of the Podium would include back of house areas adjacent to the Railway Serviceway allowing convenient access for servicing and maintenance. This would include provision for electrical, mechanical, gas and water, switch room and substation. The proposed Tower ground floor would include car parking and loading dock entry off the Railway Serviceway, as well as areas for security, HV, waste bin storage, loading docks and courier loading areas, as well as the general lobby with a supporting commercial/retail area and access to the elevator lobby; and
- The proposed development would create around 1,200m² of high quality new plaza-style civic space which would create significant uplift for the locality. The proposed development would there significantly improve the public domain.

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Commercial Tower and Commercial Hotel Redevelopment – 277 Bigge Street, 11 Scott Street, 13-15 Scott Street, 17 Scott Street, 19 Scott Street, 21 Scott Street and 23 Scott Street, Liverpool WTJ17-350

4.1.2 Car Parking

The objective of Clause 7.3 under the LLEP 2008 is as follows:

The objective of this clause is to ensure that adequate car parking is provided for new or extended buildings on land in the Liverpool city centre that is commensurate with the traffic likely to be generated by the development and is appropriate for the road network capacity and proposed mix of transport modes for the city centre.

Compliant carparking rates at the site would necessitate additional levels of basement car parking. However, the underlying geological conditions of the site are not favourable for an additional level of basement carparking. From a cost perspective, it is therefore not feasible to deliver the proposed development with additional levels of underground car parking at significant expense due to those geological constraints as such unnecessary costs would be borne by the eventual tenants of the site.

From an ESD perspective, these matters were further discussed in the *Parramatta Road Corridor Urban Transformation Strategy: Sustainability Implementation Plan Reference Report* (November 2016, UrbanGrowth NSW) (the PRUTS Sustainability Plan). In the PRUTS Sustainability Plan, the following research was noted with regards to the provision of underground car parking:

A Plan for Growing Sydney demonstrates a strong link between improved quality of life and greater access to public transport. However, a weakness or potential shortfall of this strategy is that it does not address the other side of the coin - car dependency and parking, and its impact on local amenity, affordability and the feasibility of urban transformation projects. This is potentially affecting our ability to deliver "density done well". Consider the following:

- *In a typical new apartment development, parking is equivalent to between 30% and 50% of the development floor area;*
- *Reducing underground parking by 1 space could equate to reducing the sales price of a new apartment by \$60,000 to \$100,000;*
- *Less energy demands for parking lighting and ventilation equate to lower compliance costs with BASIX Energy Targets; and*
- *Studies have shown that underground parking can contribute up to 50% of the energy demands in a high rise apartment building¹.*

Whilst the proposed development is for Commercial Premises rather than Residential Accommodation, and is located within the Liverpool Local Government Area and not within the Parramatta Road Urban Transformation Corridor, the above research is nevertheless valid. In order to achieve a better cost-benefit and ESD performance of the site, Mackycorp is therefore committed to providing less underground car parking at the site than would otherwise be required under Clause 7.3. Furthermore, the potential provision of above-ground car parking was previously considered as an option for the site. However, this received negative feedback from the Urban Design Panel and Liverpool City Council.

Given the site's strategic location within 80m of Liverpool Station and 140m within the Liverpool-Paramatta Transitway, it is moreover likely that the majority of patrons to the site would access the proposed development by walking from either of those key public transport nodes. Car parking proposed to be provided at the site therefore meets the above-mentioned objective of being appropriate for the proposed development due to the following:

¹ Multi-Unit Residential Building Energy and Peak Demand Study (2005) EnergyAustralia, http://www.ausgrid.com.au/Common/Our-network/Demand-management-and-energy-efficiency/Energy-use-facts-and-figures/~/_media/Files/Network/Demand%20Management/Energy%20use%20resources/Networks_multi_unit_sumrep_Oct08.pdf, as quoted in the *Parramatta Road Corridor Urban Transformation Strategy: Sustainability Implementation Plan Reference Report* (November 2016, UrbanGrowth NSW).

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- Compliant carparking rates would necessitate additional levels of basement car parking. However, the underlying geological conditions of the site are not favourable for an additional level of basement carparking. From a cost perspective, it is therefore not feasible to deliver the proposed development with additional levels of underground car parking at significant expense due to those geological constraints as such unnecessary costs would be borne by the eventual tenants of the site;
- The proposed development would meet key outcomes for Transit Oriented Development due to its strategic location within 80m of Liverpool Station as well as the further creation of through-site linkages connecting to surrounding street blocks. This would reduce the dependency on car travel to access to the site;
- The proposed development would provide End of Trip Facilities, further encouraging other modes of transport to and from the site. Liverpool Station (around 80m from the site) also provides secure bike locking facilities;
- The nearby Liverpool Station has four platforms meaning that it can serve the:
 - T2 line with services to Central, the City Circle via Granville and Leppington;
 - T5 line with services to Schofields, Richmond and Leppington; and
 - T3 terminating services returning to the City Circle via Bankstown;
- The site is around 140m from the Liverpool-Parramatta Transitway, which provides significant bus connections throughout the Liverpool and Parramatta CBDs as well as further afield throughout Greater Sydney. Specifically, the Liverpool-Parramatta Transitway provides direct connections to:
 - 801 to Badgerys Creek;
 - 802 to Parramatta via Green Valley;
 - 803 to Miller;
 - 804 to Parramatta via Hinchinbrook;
 - 805 to Cabramatta via Bonnyrigg Heights;
 - 806 to Parramatta via Abbotsbury;
 - 808 to Fairfield via Abbotsbury;
 - 819 to Prairiewood;
 - 823 to Warwick Farm;
 - 827 to Carnes Hill Marketplace via Bonnyrigg Heights;
 - 851 to Carnes Hill Marketplace via Cowpasture Road;
 - 852 to Carnes Hill Marketplace via Greenway Drive and Cowpasture Road;
 - 853 to Carnes Hill via Hoxton Park Road;
 - 854 to Carnes Hill via Greenway Drive and Hoxton Park Road;
 - 855 to Rutleigh Park via Austral and Leppington Station;
 - 856 to Bringelly;
 - 857 to Narellan;
 - 865 to Casula via Lurnea Shops;
 - 866 to Casula;
 - 869 to Ingleburn via Edmondson Park and Prestons;
 - 870 to Campbelltown;
 - 871 to Campbelltown via Glenfield;
 - 872 to Campbelltown via Macquarie Fields;
 - 901 to Holsworthy via Wattle Grove;
 - 902 Holsworthy via Moorebank;
 - 903 Chipping Norton;
 - 904 to Fairfield;
 - M90 to Burwood;
 - N30 from Macarthur to City Town Hall;
 - N50 to City Hall;
 - 1043 Webster Road and Hoxton Park Road to Unity Grammar College; and
 - T80 to Parramatta via T-way;
- Mackycorp prefers to encourage patrons to access the site by walking from Liverpool Station and/or the Liverpool-Parramatta Transitway as this allows the significant viewsapes of the

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site including the heritage listed Commercial Hotel to be appreciated from the Bigge Street frontage (rather than vehicle access via the Railway Serviceway). It also encourages those accessing the site to patron the ground floor retail land uses which are proposed at the site. It also encourages those accessing the site for work or services to further explore the Liverpool CBD, which is a compact and highly walkable CBD centred around a grid-type pattern. In this manner, patrons of the site can access the Westfield centre within 11 minutes of walking from the site, Bigge Park within 6 minutes of walking from the site, the Liverpool Library within 7 minutes of walking from the site, Liverpool Court House within 7 minutes of walking from the site, the pedestrianised Macquarie Mall within 8 minutes of walking from the site, and the Georges River foreshore (Moorebank Reserve) within 8 minutes of walking from the site; and

- The site is easily accessible from a range of residential suburbs, including new residential release areas, thereby delivering on the Greater Sydney Commission's strategic aim of the 30-minute city.

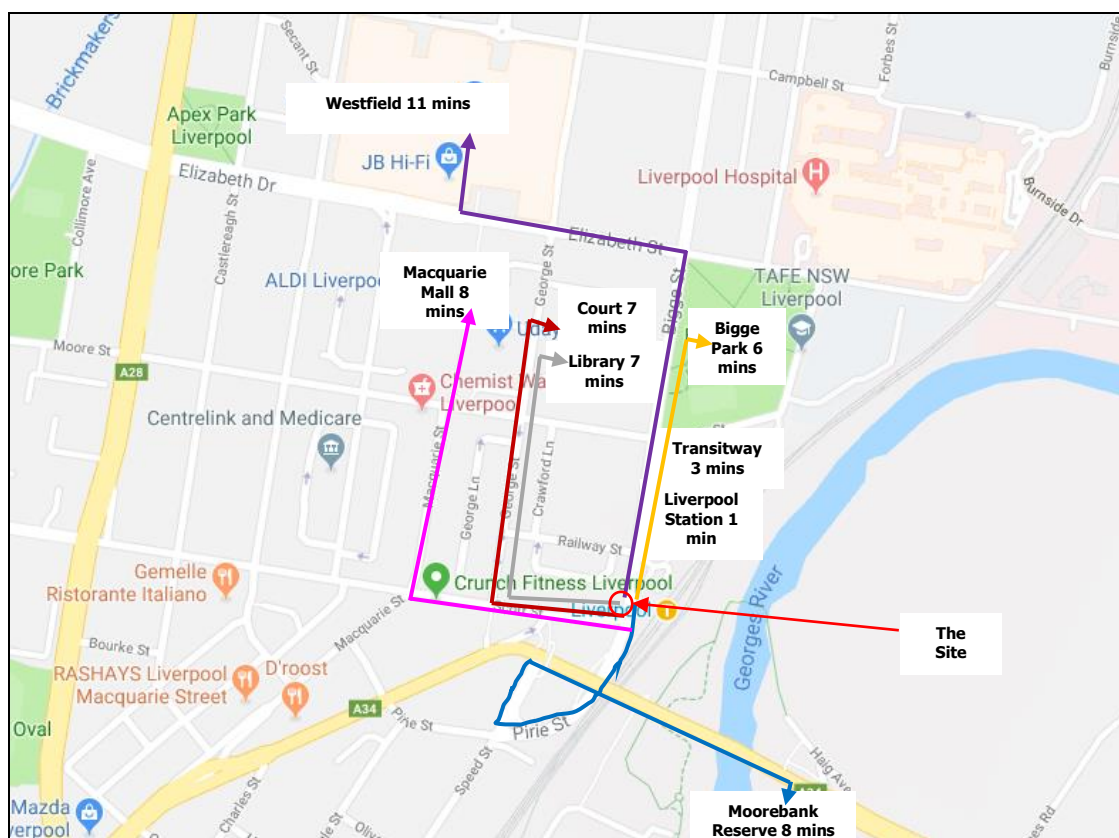


Figure 1 Walking Catchment of the Site (Google Maps, 2018)

4.1.3 Building Separation

The objective of Clause 7.4 under the LLEP 2008 is as follows:

The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

Part F of the SEE sets out how the proposed development would not significantly impact on the amenity of surrounding land users. In fact, the proposed development would improve the amenity of the locality.

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4.2 OBJECTIVES OF THE ZONE

The site is currently zoned B3 Commercial Core use under LLEP 2008. The proposed development is located within the Scott Street Key Site and the Bigge Park Conservation Area and is permissible at the site. The proposed development is consistent with the following B3 Commercial Core zone objectives:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

The proposed development would provide significant business, retail, office and entertainment land uses. The Stables building would provide for ground floor activating land uses such as Food and Drinks Premises and/or Retail land uses. The second storey of the Stables may also provide for Retail land uses or other forms of Commercial Premises. The proposed development would also see the conservation and continued use of the Commercial Hotel. The most likely reuse for the Commercial Hotel is for Food and Drinks Premises, and potentially also for Office Premises or similar suitable Commercial premises.

Overall, the proposed development would create around 24,232.8m² of Office Premises floorspace, concentrated within the proposed Tower. The proposed development is therefore considered to be key in meeting the demand for new Commercial Premises and Office Premises floorspace within the Liverpool CBD, providing around 24,232.8m² of Net Lettable Office Premises floorspace. It therefore assists in meeting the rising demand for office floorspace outside of the traditional office centres throughout Greater Sydney, as recognised by the Greater Sydney Commission. This is furthermore consistent with the NSW Government's Decentralisation Program, whereby public sector jobs will be relocated from the Harbour CBD into other parts of Greater Sydney with a particular focus on Western Sydney. Indeed, Liverpool is one of the cities targeted for relocation of some of the 3,000 NSW Public Sector jobs which would fall under this scheme. The proposed development has the potential to contribute toward this Public Sector program, and has been designed to be suitable for a range of commercial tenants, including public sector tenants should that need arise. By contributing toward the growth of higher order jobs, the proposed development would also allow Liverpool to deliver metropolitan functions as a cluster centre of the Western Parkland City as recognised by the Greater Sydney Commission.

A range of other suitable land uses are currently permitted in the B3 Commercial Core land zone which could support alternative uses of commercial floorspace within the finished tower should potential tenants desire to be located at the site. Such suitable land uses as are currently permitted in the B3 Commercial Core land zone under the LLEP 2008 include:

- Commercial premises;
- Community facilities;
- Educational establishments;
- Entertainment facilities;
- Function centres;
- Medical centres; and
- Public administration buildings.

It is envisaged that the site would primarily cater to Office Premises type land uses, and this is indeed the key strategic land use driver of the proposed development. However, the DA does not seek consent for any specific tenancy fit-out and use of the site. It is understood that in the future, DAs or Code Complying Development Certificates would be sought to facilitate more specific commercial land uses at the site.

The proposed development would also create around 1,200m² of high quality new plaza-style civic space which relates to both the site's existing heritage context and the proposed Tower. This civic

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space would be generously sized. It therefore has the potential to be used for a variety of future events and other such temporary land uses as the need arises (potentially encompassing both public and private events).

- *To encourage appropriate employment opportunities in accessible locations.*

The proposed development would create employment supporting floorspace near to where a range of new residential land release areas are located, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City. The site itself is highly accessible by rail, bus and car, as well as via active modes of transport.

- *To maximise public transport patronage and encourage walking and cycling.*

Given the site's strategic location within 80m of Liverpool Station and 140m within the Liverpool-Paramatta Transitway, it is likely that the majority of patrons to the site would access the proposed development by walking from either of those key public transport nodes. The proposed through-site linkages at the site would assist in establishing this walking legibility of the site.

Indeed, Mackycorp prefers to encourage patrons to access the site by walking from Liverpool Station and/or the Liverpool-Parramatta Transitway as this allows the significant viewscales of the site including the heritage listed Commercial Hotel to be appreciated from the Bigge Street frontage (rather than vehicle access via the Railway Serviceway). It also encourages those accessing the site to patron the ground floor retail land uses which are proposed at the site. It also encourages those accessing the site for work or services to further explore the Liverpool CBD, which is a compact and highly walkable CBD centred around a grid-type pattern. In this manner, patrons of the site can access various key sites in the Liverpool CBD within 10 minutes of walking, including:

- The Westfield centre;
- Bigge Park;
- The Liverpool Library;
- Liverpool Court House;
- The pedestrianised Macquarie Mall; and
- Georges River foreshore (Moorebank Reserve).

The nearby Liverpool Station has four platforms meaning that it can serve the:

- T2 line with services to Central, the City Circle via Granville and Leppington;
- T5 line with services to Schofields, Richmond and Leppington; and
- T3 terminating services returning to the City Circle via Bankstown.

The Liverpool-Parramatta Transitway also provides significant bus connections throughout the Liverpool and Parramatta CBDs as well as further afield throughout Greater Sydney.

The proposed development would also provide End of Trip Facilities, further encouraging other modes of transport to and from the site. Liverpool Station (around 80m from the site) also provides secure bike locking facilities.

Overall, the proposed development would encapsulate Transit Oriented Development principles through its relationship with the surrounding Liverpool CBD and public and active transport modes.

- *To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.*

The proposed development comprises a manifestly outstanding architectural design and would be delivered with quality materials and finishes, further exemplifying quality development and garnering

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the status of a new landmark building for the Liverpool CBD. It would create significant uplift for the locality, particularly given the site's strategic location with the Scott Street Key Site and the Bigge Park Conservation Area. It would also drive increased commercial interest in renting or purchasing Office Premises Floorspace within the Liverpool CBD, thereby meeting some of the new demand for Office Premises floorspace within the Western Parkland City as identified by the Greater Sydney Commission.

The proposed development furthermore has the potential to contribute toward the NSW Government's Decentralisation Program. It has therefore been designed to be suitable for a range of commercial tenants, including public sector tenants should that need arise

- *To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.*

The proposed development has a Capital Investment Value of \$106.6M, and is therefore considered to be a long term investment for the Liverpool CBD, creating a significant amount of future employment floorspace close to burgeoning residential land release areas.

After the passage of Amendment 52 to the LLEP 2008, the proposed development would continue to be permissible as part of the site's proposed B4 Mixed Use zoning (as per Amendment 52). The proposed conservation management and adaptive reuse of the Commercial Hotel at the site would secure the continued use of this important landmark building long into the future.

- *To facilitate a high standard of urban design and exceptional public amenity.*

The proposed development comprises a manifestly outstanding architectural design and would be delivered with quality materials and finishes, further exemplifying quality development and garnering the status of a new landmark building for the Liverpool CBD. The proposed Tower's curved glass form would articulate the skyline and the proposed development in total would provide a prominent, quality aesthetic to vistas visible throughout view corridors from Liverpool Station, Light Horse Bridge, Scott Street, Bigge Street and the Railway Serviceway.

A new 1,200m² high quality plaza-style civic space would also be included as the heart of the site. This would provide through-site links in a north-south and east-west orientation, with these highly activated edges bringing diversity and 24 hour quality to the site. The proposed conservation management and adaptive reuse of the Commercial Hotel at the site would provide significant value for this local heritage listed item whilst respecting its heritage status.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.2**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

As shown in **Section 4.1**, the proposed development is considered consistent with the objectives of Clauses 4.4, 7.3 and 7.4.

Compliance with the Clause 4.4 FSR requirement is considered unnecessary given that the site will soon be subject to a maximum FSR of 10:1 under Amendment 52 of the LLEP 2008.

Compliance with the Clause 7.3 car parking requirements is considered unreasonable given the negative impact this would have on ESD outcomes for the site. Compliance with Clause 7.3 is further considered unnecessary given that the proposed development would benefit from its direct access to Liverpool Station and the Liverpool-Parramatta Transitway and encapsulate the principles of Transit Oriented Development.

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Compliance with the Clause 7.4 building separation requirements is considered unnecessary because the existing building facades of the western and northern neighbors have not been designed with significant façade articulation in mind. Compliance with Clause 7.4 is furthermore considered unreasonable given that this would:

- Effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating and other purposes;
- Not providing sufficient room to achieve the new 1,200m² high quality plaza-style civic space as the heart of the site;
- Reducing the feasible building floorplate achievable for the proposed Tower, which would not be efficient to deliver from a cost-benefit perspective and therefore threaten the financial viability of the proposed development;
- Creating quasi through-site links to the west and north of the site, which would be lacking in ground-level activation (as such activation was not incorporated into the neighbouring Scott Street DA). These hypothetical through-site links would also not have the same level of legible walkability in terms of encouraging patrons to walk to Liverpool Station or other parts of the Liverpool CBD; and
- Resulting in reduced building setbacks from the local heritage listed Commercial Hotel and therefore impacts for the heritage significance of that item.

It is also noted that the design of the proposed development has been generated in response to the neighbouring properties which have been approved for use surrounding the site. The design of the proposed development is therefore not only a response to the planning controls contained within the LLEP 2008 and LDCP 2008, but also to the current built-form environment along Scott Street and Bigge Street.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The objectives of the relevant clauses and the B3 Commercial Core would be upheld as a result of the proposed development.

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

As shown in **Section 4.1**, the proposed development would result in a built form outcome which meets the future desired character of the site as part of the Scott Street Key Site. The proposed development is permissible at the site, proposes suitable adaptive reuse of an iconic local heritage item, complies with the current height limit of 100m under the LLEP 2008, and is consistent with the future FSR control of 10:1 which will apply to the site under the provisions of the pending Amendment 52 to the LLEP 2008.

The proposed development would also deliver on the Greater Sydney Commission's key strategic requirements for the Liverpool CBD.

Moreover, the Clause 4.6 Variation to the development standards for FSR, car parking and building separation is considered well founded on planning grounds because, notwithstanding the proposed non-compliances:

- The proposed development is entirely consistent with the underlying objectives or purposes of the standards as demonstrated in **Section 4.1**;
- The proposed development is entirely consistent with the underlying objective or purpose of the B3 Commercial Core zone as demonstrated in **Section 4.2**;
- The proposed development would lead to a preferred outcome for the local heritage listed Commercial Hotel at the site;

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- The proposed development would lead to a superior public domain outcome as a result of the 1,200m² civic space which would not otherwise be feasible to deliver at the site;
- Strict compliance with these development standards would result in a significant portion of the site being effectively sterilised;
- The proposed development represents a superior ESD outcome for the site with reduced basement car parking rates and encouraging reliance on public and active modes of transport;
- The proposed development is consistent with the desired character of the site as part of the Scott Street Key Site; and
- The proposed development would not result in significant environmental or amenity impacts. Rather, the proposed development is considered to improve the amenity of the surrounding locality.

4.5 PUBLIC INTEREST

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Sections 4.1 and **4.2** have already demonstrated how the proposed development is consistent with the objectives of Clauses 4.4, 7.3(2) and 7.4, as well as the B3 Commercial Core zone under the LLEP 2008.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- Creating significant uplift for the locality, particularly given the site's strategic location within the Scott Street Key Site and the Bigge Park Conservation Area;
- Activating the streetscapes along Bigge Street and Scott Street;
- Providing suitable funding opportunities and compatible reuse of the heritage listed Commercial Hotel;
- Driving increased commercial interest in renting or purchasing Office Premises Floorspace within the Liverpool CBD, thereby meeting some of the new demand for Office Premises floorspace within the Western Parkland City as identified by the Greater Sydney Commission;
- Potentially contribute to the NSW Government's Decentralisation Program, whereby public sector jobs will be relocated from the Harbour CBD into other parts of Greater Sydney with a particular focus on Western Sydney;
- Meeting key outcomes for Transit Oriented Development due to the site's strategic location within 80m of Liverpool Station as well as the further creation of through-site linkages connecting to surrounding street blocks;
- Making use of a site which is highly walkable in terms of access to the remainder of the Liverpool CBD, including other government, business, commercial and educational land users;
- Creating employment supporting floorspace near to where a range of new residential land release areas are located, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City; and
- Stimulating employment and resolving existing CPTED issues within the locality.

There are no significant public disadvantages which would result from the proposed development.

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The proposed development is therefore considered to be justified on public interest grounds.

4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE

The proposed non-compliances with Clauses 4.4, 7.3(2) and 7.4 would not raise any matters of significance for State or regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under section 117 of the *Environmental Planning and Assessment Act* (EP&A Act).

Planning circular PS 08-014, issued by the NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by Council rather than under delegation. The proposed development would result in exceedances of the relevant planning controls as follows:

- FSR control by 12.95%;
- Car parking control by 62.9%; and
- Building separation control by up to 98.21%.

These non-compliances are more than the 10% prescribed in this planning circular.

Furthermore, by including these non-compliances with Clauses 4.4, 7.3(2) and 7.4, the proposed development would better be able to meet the objectives of the following State Government planning policies:

- *A Plan for Growing Sydney* (The Plan):
 - By providing a greater FSR at the site, the proposed development can better respond to the need identified in The Plan of strengthening Liverpool's commercial core by providing significant new commercial floorspace within the Liverpool CBD;
 - By providing less car parking spaces, the proposed development can directly respond to the issue raised in The Plan whereby Western Sydney residents are over-reliant on car travel. By being located close to burgeoning residential land release areas and near to Liverpool Station and the Liverpool-Parramatta Transitway, the proposed development would therefore reduce over-reliance on car travel for those accessing the site for employment and other purposes; and
 - By providing lesser building separations the proposed development is better able to provide suitable through-site linkages which connect the site to the surrounding street blocks and the remainder of the Liverpool CBD, rather than creating a new through-site linkage to the west which is not wholly legible in the context of pedestrian access to Liverpool Station and the Liverpool-Parramatta Transitway, and which is also not able to be fully activated (as such activation was not incorporated into the neighbouring Scott Street DA);
- *NSW 2021*:
 - By providing a greater FSR at the site, the proposed development can better respond to the key strategy under NSW 2021 of rebuilding the economy by providing around 24,232.8m² of Net Lettable Office Premises floorspace within the Liverpool CBD;
 - By providing less car parking at the site, the proposed development can better respond to the key strategy under NSW 2021 of strengthening local environments and communities by encouraging Transit Oriented Development and thereby further encouraging patrons to patron the ground floor retail land uses which are proposed at the site and further explore the Liverpool CBD on foot. Given that the Liverpool CBD is a compact and highly walkable CBD centred around a grid-type pattern and the site is within 10 minutes walking distance of a range of important Liverpool locations, the design of the site would therefore help to strengthen the character of the Liverpool CBD as a whole; and

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- By providing lesser building separations at the site, the proposed development can likewise better respond to the key strategy under NSW 2021 of strengthening local environments and communities. The reduced building separation distances to the west and north would allow the site to provide a new 1,200m² high quality plaza-style civic space as the heart of the site. This would provide through-site links in a north-south and east-west orientation, with these highly activated edges bringing diversity and 24 hour quality to the site. Greater building separations at the site would have also meant reduced building setbacks from the local heritage listed Commercial Hotel and therefore impacts for the heritage significance of that item. Alternatively, greater building separations at the site would have resulted in the proposed Tower achieving a lesser building floorplate which would not be efficient to deliver from a cost-benefit perspective. Such a result could therefore effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating purposes;
- *A Metropolis of Three Cities:*
 - By providing a greater FSR at the site, the proposed development can better respond to the Greater Sydney Commission's vision and the NSW Government's aim of establishing new commercial office premises within the Liverpool CBD. In fact, the proposed development would be of such a scale so as to make it crucial to the delivery of this vision on behalf of the State Government and the Greater Sydney Commission;
 - By providing less car parking at the site, the proposed development can better respond to the need for Liverpool to become even better connected to the existing rail network, which will leverage associated benefits to drive its education and commercial sector strengths. Indeed, the proposed development, as Transit Oriented Development, would further encourage patronage of this existing public transport network; and
 - By providing lesser building separations at the site, the proposed development can better respond to Objective 13 of the Metropolis Plan by identifying, conserving and enhancing environmental heritage. Indeed, greater building separations to the west and north would have resulted in inappropriate setbacks and design relationships with the local heritage listed Commercial Hotel;
- *Western City District Plan:*
 - By providing a greater FSR at the site, the proposed development can better respond to the delivery of new higher order jobs and related services to support the burgeoning Western Parkland City. Indeed, with a greater FSR at the site, the proposed development would be able to provide around 24,232.8m² of Net Lettable Office Premises floorspace within the Liverpool CBD;
- *Future Transport Strategy 2056:*
 - By providing less car parking at the site, the proposed development can better encourage patronage of the Liverpool-Parramatta Transitway which is around 140m away and provides significant bus linkages throughout the Liverpool and Parramatta CBDs as well as further afield throughout Greater Sydney. It can also encourage better patronage of Liverpool Station, which, at around 80m from the site and on the Main South Line, provides rail connections throughout Greater Sydney and beyond. This directly responds to the Future Transport Strategy's identification of interchanges as places which can deliver mixed-use, walkable, cycle-friendly centres and neighbourhoods.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARDS

Given that strict compliance with Clauses 4.4, 7.3(2) and 7.4.4 would result in:

- Less Office Premises floorspace to respond to the Greater Sydney Commission's strategic vision for Liverpool;

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- Less encouragement of public transport modes to access the site and a corresponding decline in ESD outcomes;
- Greater impacts to the local heritage values of the Commercial Hotel; and
- The sterilisation of a significant portion of the site from being able to be redeveloped for commercial employment generating purposes.

As such, there is no genuine public benefit in maintaining this strict FSR, car parking and building separation controls at the site.

4.8 OBJECTIVES OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*

All planning determinations made under the EP&A Act are required to be made with regard to the objectives of the EP&A Act. **Table 2** assesses the proposed development is assessed against these objectives.

Table 2 EP&A Act Objectives

Objective	Proposed Development Compliance
The objects of this Act are as follows:	
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	<p>The proposed development is considered to be key in meeting the demand for new Commercial Premises and Office Premises floorspace within the Liverpool CBD by providing around 24,232.8m² of Net Lettable Office Premises floorspace. It therefore assists in meeting the rising demand for office floorspace outside of the traditional office floorspace centres throughout Greater Sydney, as recognised by the Greater Sydney Commission. This is furthermore with the NSW Government's Decentralisation Program, whereby public sector jobs will be relocated from the Harbour CBD into other parts of Greater Sydney with a particular focus on Western Sydney. Indeed, Liverpool is one of the cities targeted for relocation of some of the 3,000 NSW Public Sector jobs which would fall under this scheme. The aim of this Decentralisation Program is to stimulate economic growth, long-term job generation and provide jobs closer to where people live. The proposed development has the potential to contribute toward this Public Sector program, and has been designed to be suitable for a range of commercial tenants, including public sector tenants should that need arise.</p> <p>The site is furthermore easily accessible from a range of residential suburbs, including new residential release areas. Providing commercial employment floorspace near to where people live would thereby deliver on the Greater Sydney Commission's strategic aim of the 30-minute city.</p> <p>The proposed development has been designed to provide a new civic space connected with new through-site linkages to increase the permeability, walkability and legibility of the Liverpool CBD. The proposed development furthermore meets the key outcomes for Transit Oriented Development due to its strategic location within 80m of Liverpool Station and 140m from the Liverpool-Parramatta Transitway.</p> <p>Overall, the proposed development would create significant uplift for the locality. It is therefore wholly justifiable on socio-</p>

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	<p>economic grounds.</p> <p>The proposed development would not impact on any natural resources in the vicinity of the site.</p>
<p>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</p>	<p>The proposed development has been assessed against the principles of ecologically sustainable development as set out in the <i>Protection of the Environment Operations (General) Regulation 2009</i>.</p> <p>The proposed development would not create the risk of serious or irreversible damage to the environment. Section 4.1 of the SEE explains how various alternative options were assessed in determining the desired scope of the proposed development.</p> <p>Ultimately, the proposed development would not create any threats of serious or irreversible environmental damage which would require further scientific study to fully ascertain.</p> <p>The proposed development would be designed to achieve a 4 star rating under the Australian Building Greenhouse Rating Scheme. The proposed development would create significant commercial employment floorspace near to where a range of new residential land release areas are located, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City. This would improve the work-travel conditions for future residents of the Western Parkland City. By encapsulating the principles of Transit Oriented Development and including an End of Trip facility, the proposed development would also encourage more efficient transport modes for patrons accessing the site and a corresponding drop in excess greenhouse gas emissions which would otherwise be generated through inefficient transport modes.</p> <p>The proposed development would therefore maintain the health, diversity and productivity of the environment for the benefit of future generations.</p> <p>The proposed development would take place on a brownfield site. It would not cause any impacts to the nearest sensitive environmental receiver, Georges River, which is located around 150m from the site and physically separated from the site by roads and the Main South Railway Line.</p> <p>The proposed development would therefore not impact on the conservation of biological diversity or the ecological integrity of the locality.</p> <p>The proposed development would not require any Environment Protection Licence or other mechanism to compensate for any pollution generating activities at the site.</p>
<p>(c) to promote the orderly and economic use and development of land,</p>	<p>The proposed development would make use of a brownfield site for orderly, economically beneficial development without resulting in any unacceptable economic, environmental or social impacts. It would also respond to the current CPTED</p>

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	issues within the locality, for which Council desires resolution.
(d) to promote the delivery and maintenance of affordable housing,	The proposed development would not include any Residential Accommodation. However, the proposed development would create employment supporting floorspace near to where a range of new residential land release areas are located, thereby supporting the Greater Sydney's Commission's ideal of the 30-Minute City.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	<p>The proposed development would take place on a brownfield site. It would not cause any impacts to the nearest sensitive environmental receiver, Georges River, which is located around 150m from the site and physically separated from the site by roads and the Main South Railway Line.</p> <p>No clearing of threatened plant species, ecological communities or other fauna habitat elements would be undertaken as part of the proposed development.</p> <p>The proposed development would therefore not impact on the conservation of biological diversity or the ecological integrity of the locality.</p>
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposed development presents an opportunity to significantly improve the siting of, and to fund the conservation of, the local heritage listed Commercial Hotel. The proposed development would also create significant uplift for the site as it forms a key part of the Bigge Park Heritage Conservation Area.</p> <p>Given the scale of historical land uses which have taken place at the site, the potential for Aboriginal heritage items to be located at the site is low. Therefore, no further assessment of Aboriginal cultural heritage is required to support the proposed development, and no Aboriginal Heritage Impact Permits are required under section 90 of the <i>National Parks and Wildlife Act 1974</i>.</p>
(g) to promote good design and amenity of the built environment,	<p>The proposed development would constitute a landmark building of manifestly outstanding design. The proposed Tower's curved glass form would articulate the skyline and the proposed development in total would provide a prominent, quality aesthetic to vistas visible throughout view corridors from Liverpool Station, Light Horse Bridge, Scott Street, Bigge Street and the Railway Serviceway. The new civic space at the site would encourage community activation, pedestrian permeability and local amenity, and would also strengthen the existing urban connections. Its highly activated edges would bring a diversity and 24 hour quality to this important site.</p> <p>The proposed development can also be undertaken without significant impacts to the amenity of surrounding land users.</p>
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development can be constructed and maintained without health and safety risks to future tenants.
(i) to promote the sharing of the	The proposed development has a Capital Investment Value of

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responsibility for environmental planning and assessment between the different levels of government in the State,	\$106.6M. As such, it is classified Regionally Significant Development under Schedule 7 of <i>State Environmental Planning Policy (State and Regional Development)</i> 2011. It will therefore require final determination by the Sydney Western City Planning Panel after initial assessment by Liverpool City Council.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The DA for the proposed development would be subject to the relevant public notification requirements.

4.9 SUMMARY

For the reasons outlined above, it is considered that the objections to Clauses 4.4, 7.3(2) and 7.4 of the LLEP 2008 are well-founded in this instance and the granting of Clause 4.6 Variations to these development standards are appropriate in the circumstances. Furthermore, the objection is considered to be well founded for the following reasons as outlined in Clause 4.6 of the LLEP 2008, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives of the particular standard;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State or regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

It is furthermore submitted that:

- Strict compliance with the standards would hinder the achievement of the objects of the EP&A Act (refer to **Section 4.5**);
- The proposed development is considered to be key in meeting the demand for new Commercial Premises and Office Premises floorspace within the Liverpool CBD as recognized by the Greater Sydney Commission, and by providing around 24,232.8m² of Net Lettable Office Premises floorspace; and
- No unreasonable impacts are associated with the proposed development.

Overall, it is considered that the proposed Clause 4.6 Variations to the maximum FSR, car parking and building separation controls are entirely appropriate and can be clearly justified having regard to the matters listed within LLEP 2008 Clause 4.6.

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PART E CONCLUSION

4.10 RECOMMENDATION

It is requested that Liverpool City Council and the Sydney Western City Planning Panel exercise their discretion (as identified in *Randwick City Council v Micaul Holdings Pty Ltd* – refer to **Section 2.2**) and find that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the LLEP 2008 (refer to **Section 2.1**).

This is particularly the case given that a hypothetical compliant design at the site would result in a building which:

- Cannot provide the same level of critical Office Premises floorspace required within the Liverpool CBD;
- Would fail to encapsulate Transit Oriented Development principles;
- Would achieve a less affordable and less sustainable building design;
- Would create inadequate through-site linkages to the west and north which are not capable of sufficient ground floor activation and would confuse the legibility of the block's walkable connections;
- Would result in reduced building setbacks from the local heritage listed Commercial Hotel and therefore impacts for the heritage significance of that item;
- Would effectively sterilise a significant portion of the site from being able to be redeveloped for commercial employment generating and other purposes;
- Would prevent the development of the new 1,200m² high quality plaza-style civic space at the heart of the site;
- Would threaten the financial viability of the proposed development; and
- Would not allow for the conservation management and adaptive reuse of the local heritage listed Commercial Hotel.