

**DPG 04**

**Draft LLEP 2008 Amendment No. 56**

<b>Strategic Direction</b>	Vibrant Prosperous City Activate the city centre and develop vibrant places that attract people to Liverpool
<b>Key Policy</b>	City Centre Strategy
<b>File Ref</b>	053882.2017
<b>Report By</b>	Amy van den Nieuwenhof - Strategic Planner
<b>Approved By</b>	Stephen Joannidis - Acting Director Planning and Growth

## **EXECUTIVE SUMMARY**

On 20 June 2014, Council received an application from Abacus Funds Management Ltd to rezone the land and amend the Floor Space Ratio (FSR) and Height of Building (HOB) controls at 77-83 Moore Street and 165 and 193 Macquarie Street. This application is generally referred to as the 'Abacus' development.

Following receipt of the application, Council requested further information regarding the proposal. Information was received over a period of time between August 2014 and July 2015. The proposal itself was modified in this time, including the land to which it applied.

Council lodged the proposal with the Department of Planning and Environment (DPE) on 20 November 2015 and received a Gateway determination on 28 June 2016. Council has addressed the conditions of the determination, which included the preparation of a Heritage Impact study, and public exhibition of the proposal.

This report details the actions undertaken by Council as directed by the Gateway conditions, and the outcomes of public exhibition. Consideration has also been given to the relationship between this Amendment (56) and Liverpool Development Control Plan (LDCP) Amendment 25 and Liverpool Environmental Plan (LLEP) 2008 Amendment 52.

## **RECOMMENDATION**

That Council:

1. Adopts Draft Liverpool Local Environmental Plan 2008 (Draft Amendment 56).
2. Forwards a copy of the attached draft amendment and supporting documentation to the Department of Planning and Environment for finalisation.

## **REPORT**

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### **Introduction**

A planning proposal for 77-83 Moore Street and 193 and 165 Macquarie Street was received by Council on 20 June 2014. It sought a rezoning of all lots, and an amendment to the FSR and HOB controls on 77-83 and 193 Macquarie Street (see Figure 1 below for a map for the subject site, and surrounding landmarks). Council requested, and later received, further information regarding the proposal, and some modifications were also made to the original proposal by the proponent. At its Ordinary Meeting on 29 July 2015, it was resolved:

*That Council:*

1. *Endorses in principle, the proposal to rezone 77-83 Moore and 193 and 165 Macquarie Streets Liverpool from B3 Commercial Core to B4 Mixed Use.*
2. *Delegates to the CEO the authority to approve the final Planning Proposal to administer this rezoning for submission to the Department of Planning and Environment for Gateway Review.*

On 20 November 2015, the finalised planning proposal was lodged with the Department of Planning and Environment (DPE) seeking a Gateway determination to:

- Rezone 77-83 Moore Street, and 165 and 193 Macquarie Street Liverpool from B3 Commercial Core to B4 Mixed;
- Increase the Height of Building control at 77-83 Moore Street and 193 Macquarie Street only from 18 metres to 100 metres; and
- Amend the text of LLEP 2008 by adding a new clause (7.37 Minimum non-residential floor space ratio control at 77-83 Moore Street and 193 Macquarie Street, Liverpool).

On 28 June 2016, after discussion with the DPE, a revised planning proposal for Amendment 56 was submitted to the DPE. This revision was submitted to excise 77-83 Moore Street and 193 Macquarie Street from the concurrent Amendment 52 to the LLEP 2008 (also affecting the City Centre). The revision retained 165-191 Macquarie Street in Amendment 52. The decision to excise 77-83 Moore and 193 Macquarie Streets was based on the fact that the proposed planning controls in Amendment 52 would not accommodate the Abacus proposal. It was thought that, notwithstanding the fact that the proposal was not consistent with the outcomes sought by Amendment 52, the proposal would be a positive catalyst for mixed use development in the City Centre, particularly because of its intention to provide serviced apartments.

A Gateway determination was received by Council on 28 July 2016 (Attachment 1), which provided consent for the proposal to proceed, subject to meeting the Gateway conditions. An outline of the actions taken to meet the Gateway Conditions are detailed below.

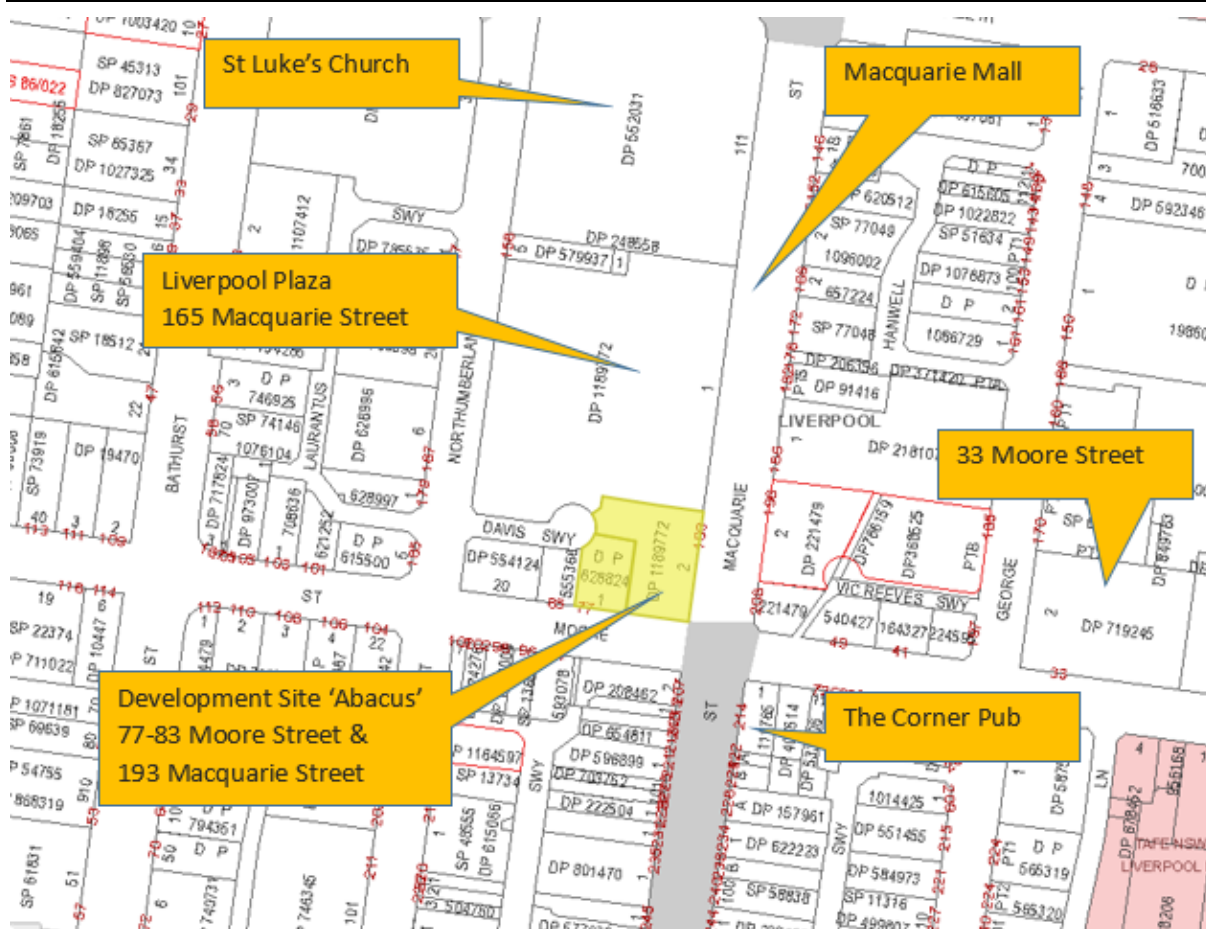


Figure 1: Location of development site and surrounding landmarks

### **Condition 1: Heritage Impact Study**

The Gateway determination required that a Heritage Impact Study (HIS) be prepared before exhibition of the proposal.

An HIS was subsequently prepared by Urbis on behalf of the proponent and was received by Council on 5 August 2016. The HIS then formed part of the public consultation documentation. One authority consulted was the Office of Environment and Heritage (OEH). They noted in their first submission to Council that the HIS should be revised to incorporate a visual analysis to clearly depict the proposal's impact on key view lines and streetscape amenity in light of the proposed amendment to the HOB control from 18m to 100m. In particular, the visual analysis would be able to illustrate the impacts of the development on surrounding heritage items, notably St. Luke's Church, the Corner Pub, and the Plan of Town of Liverpool (street grid).

In response to the OEH comments, a revised HIS (Attachment 2), was received by Council on 19 October 2016 which included a visual analysis of the proposal. Council then commissioned a peer review to be undertaken by Ashley Built Heritage (Attachment 3). The revised HIS and the peer review were sent to the OEH for additional comments.

The proponent submitted a letter of response to the peer review (Attachment 4) and a further revision of the HIS (Attachment 5), received by Council on 17 February 2016. Revised comments from the OEH were received on 21 February 2017 (Attachment 6).

A more comprehensive discussion of the issues considered by the above documentation is set out below:

**Impacts on the Corner Pub**

The Corner Pub (the pub) is located directly opposite the Abacus site, on the south-east corner of the Moore Street/ Macquarie Street intersection.

The revised HIS considered that the lower story podium element envisaged by the proponent, coupled with a minimal setback to the tower, and the physical separation (approximately 37 metres) from the pub would adequately minimise its visual and contextual impact on the heritage item. It submitted that the proposed tower would not obstruct key public views to the pub, and that the pub would remain as a prominent local landmark. The revised HIS also acknowledged that the planning proposal would cast a shadow on the pub in the afternoon of June 21 (winter solstice), however it did not consider this to be a significant heritage impact.

The peer review raised some concern about the overshadowing impact and suggested that the large difference in scale between the proposal and the pub would have notable impacts on the pub's heritage integrity. The revised submission from the OEH recommended that Council takes into consideration the proposal's impact on the pub's solar access, heritage significance, contextual setting, and streetscape.

The proposal and above documentation has been reviewed by Council's Heritage Officer, who indicated that design elements to mitigate potential solar impacts can be dealt with at the development application stage.

**Impacts on St Luke's Church**

St Luke's Church is a State heritage listed item, located to the north of the subject site. The church block borders Northumberland Street to the west, Elizabeth Street to the north and Macquarie Street to the east, and is approximately 100m from the subject site.

The revised HIS considered that the subject site is both visually and physically separated from the church, meaning that proposed tower would be viewed as a backdrop element, rather than a dominating visual intrusion. The peer review generally agreed with the revised HIS that the planning proposal would not 'loom' over St Luke's church due to the 'breathing space' provided by the surrounding garden and the physical distance between the sites. Both documents noted that the proposal would not impact on any primary view lines to the church from the north, east or west.

Revised comments from the OEH generally agreed with this view, however suggested that a sympathetic design and appropriate materials and finishes be used so to ensure an

appropriate backdrop to the church. Such details can be negotiated and finalised at the development application stage.

### **Impacts on the Plan of Town of Liverpool (Street Grid)**

Liverpool's street grid was laid out by Sir. Robert Hoddle in 1827, and both Moore and Macquarie Streets form part of this local heritage item.

While not covered extensively in the revised HIS, the peer review suggests that the eventual height and scale of the tower should respect the historical layout of the town and give consideration to scale, building height and architectural form. The City Centre is likely to undergo significant change in the future, which gives the proponent the opportunity to design a building that respects the historic street grid pattern while making use of contemporary building designs and materials.

As noted above, a building design that addresses these heritage considerations can be addressed at the development application stage.

### **Archaeological Potential of the Site**

The revised HIS notes the potential for archaeological remains on the subject site, identifying that the former post office may have some remains or relics available for uncovering. Comments from the OEH recommended that the proponent undertake an archaeological assessment of the site to fully explore the potential heritage impacts of the proposal.

Council's Heritage Advisor considers that the submission of an Historic Archaeological Assessment (completed by a fully qualified archaeologist) as part of the development application is acceptable.

### **Conditions 2 & 3: Community and Public Authority Consultation**

The above conditions in the Gateway Determination required Council to undertake community consultation in accordance with Sections 56(2)(c) and 57 of the *Environmental Planning and Assessment Act, 1979*.

Council received one submission as a result of the community consultation. The main points to the submissions, and the Officer's response is summarised below.

	<b>Comments</b>	<b>Officer Response</b>
<b>Private submission</b>	<p>The submission objected to the proposal on the following grounds:</p> <ul style="list-style-type: none"> <li>• Inappropriate height of the proposal;</li> <li>• Lack of strategic justification;</li> <li>• Outstanding heritage concerns;</li> <li>• Outstanding traffic and parking issues; and</li> <li>• An over-emphasis on</li> </ul>	<p>Council considers that the height of the proposal is in keeping with the future direction of Liverpool City Centre. It is noted that other sites in the City Centre may be able to achieve heights above the HOB control if they are classified as an 'Opportunity Site' through Amendment 52.</p>

	<p>residential use and not enough focus on commercial/retail uses; and</p> <ul style="list-style-type: none"> <li>• Poor amenity outcomes.</li> </ul>	<p>This planning proposal has been excised from Amendment 52 because it is considered that the proposal will be a positive catalyst to development in the Liverpool City Centre. It is therefore considered that the proposal has strategic merit in light of the changes proposed to the City Centre.</p> <p>This report notes that any outstanding heritage concerns can be addressed at the development application stage. It is not considered that this approach will result in any negative heritage outcomes.</p> <p>Traffic and parking issues are addressed in more detail in the following table, as part of the Officer's response to RMS comments.</p> <p>The report considers that the planning proposal will result in an optimal mix of residential and commercial/retail uses. The amendment include a new clause to the LLEP 2008 which will ensure that the site has a minimum of 37.5% commercial floorspace.</p> <p>The proposal will undergo a separate development application assessment, which will consider the application in terms of its amenity impacts (both on the public domain, and amenity within the building itself).</p>
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Section 56(2)(d) of the *Environmental Planning and Assessment Act, 1979*, the public authorities that were consulted were:

- The Office of Environment and Heritage;
- Roads and Maritime Services;
- Sydney Water;
- Telstra;
- Sydney Metro Airport;
- The Department of Infrastructure and Regional Development; and
- Endeavour Energy.

A summary of each is detailed in the table below, as well as considerations for Council arising from the submissions.

Authority	Authority Comments	Officer Response
<b>Office of Environment and Heritage</b>	<p>There are three items of heritage in the vicinity of the proposal.</p> <p>The proposal is not likely to have an impact on St Luke's Church, but it is recommended that sympathetic design be incorporated to ensure an appropriate backdrop.</p> <p>There has been an inadequate consideration given to the archaeological potential of the site, and as such the proponent should carry out and archaeological assessment (by a fully qualified archaeologist) to fully understand the possible impact on heritage, prior to the lodgement of a development application.</p> <p>Council should consider the impact of overshadowing on the Corner Pub, and the impact of the proposal on the heritage significance, setting and streetscape of the Moore and Macquarie Streets.</p>	<p>Council should consider requesting a completed archaeological study to be submitted to Council prior to the lodgement of a development application.</p> <p>Council should consider developing a schedule of materials to be approved at the Development Application stage.</p>

<p><b>Roads and Maritime Services</b></p>	<p>RMS considered that: Liverpool City Council should take into review the cumulative transport implications of this planning proposal (and other similar scale developments as a result of Amendment 52).</p> <p>Site specific planning proposal are not optimal to determining cumulative traffic and transport effects, and the mitigation measures required.</p> <p>RMS understands that Council is in the process of preparing a comprehensive transport study and traffic modelling to identify cumulative impacts.</p>	<p>Council has engaged consultants to prepare a draft traffic and transport study, and this is being discussed with RMS.</p> <p>Additionally, discussions with RMS have indicated that a VPA agreement must be entered into for all new developments. The VPA must agree to providing a contribution figure to regional traffic improvements that is agreed to by RMS.</p> <p>Additionally, an agreed amount to local road upgrades must also form part of the VPA.</p> <p>An amended traffic report prepared by GTA was submitted to Council in June 2015. Council's Traffic Department Commented on this, and noted that:</p> <ul style="list-style-type: none"> <li>• The applicant is to upgrade the existing pedestrian crossing at the frontage of the Liverpool Plaza to traffic signal control; and</li> <li>• The applicant is to enter into a VPA with Council for the development of regional or local roads within the LGA.</li> </ul>
<p><b>Sydney Water</b></p>	<p>No response.</p>	<p>N/A</p>



<b>Telstra</b>	<p>A number of Telstra Base Stations are located in the area.</p> <p>These are located at No. 1 Elizabeth Street, Liverpool, 40 Terminus Street, Liverpool, and 4 Homepride Avenue, Warwick Farm.</p> <p>Buildings over three stories will affect coverage as signals do not penetrate solid structures.</p> <p>Telstra has no objections at this time.</p>	No action required.
<b>Sydney Metro Airport</b>	<p>The proposal will extend close to the obstacle limitation service (OLS).</p> <p>An aviation assessment will be required when final drawings are available.</p> <p>Construction cranes as a result of the development will require a separate assessment.</p>	Council must refer any DA applications as a result of the proposal to Sydney Metro Airport for an aviation assessment.
<b>The Department of Infrastructure and Regional Development</b>	<p>The building is below the OLS.</p> <p>Construction cranes may be required to operate at heights higher than the building height, and would therefore require prior assessment.</p> <p>Council may wish to consider any relevant NASF guidelines with regards to the development application, including relation to noise.</p>	<p>Council must refer any application for use of cranes to the DIRD.</p> <p>Council should require that a suitably qualified professional be engaged (at the proponent's expense) to review any development application to consider its effect on wind shear, and any impact on the development as a result of aircraft noise.</p>
<b>Endeavour Energy</b>	<p>Significant low and high voltage electricity is located over and in the vicinity of the site.</p> <p>Electricity substations cannot be removed.</p> <p>The applicant will need to submit an application for connection of load.</p> <p>Supply will be provided from Speed</p>	<p>No action required.</p> <p>Should the proposal proceed to a development application, the proponent may need to seek advice from Endeavour Energy.</p>

	<p>Street or Homepride Parade substations.</p> <p>There is feeder capacity at the eastern side of Anderson Street.</p> <p>Endeavour Energy does not reserve capacity, and therefore augmentation works may be required.</p> <p>If assets are required to be relocated, advice can be obtained from Endeavour Energy.</p>	
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### **Further Considerations**

#### **The relationship between Amendment 52 and 56**

The relationship between Amendments 52 and 56 is of some significance to this proposal. Since 2015, Liverpool City Council has been preparing Amendments 25 (LDGP) and 52 (LLEP 2008) as part of the 'Building Our New City' program which aims to revitalise the City Centre. These amendments are in the later stages of finalisation, and it is expected that these controls will come into effect later in 2017. As a suite of controls, Amendment 25 and 52 seek to rezone land, alter height and FSR controls, and bring in a variety of design guidelines to facilitate development in-line with Council's future vision of the City Centre.

The key differences between Amendment 52 and Amendment 56 are that:

- Amendment 56 seeks to increase the HOB from 18m to 100m. If the Abacus site had been included in Amendment 52, the HOB control would have been amended to 28m.
- Amendment 56 seeks to introduce a new clause to the LLEP 2008, requiring a minimum of 37.5% of the total floorspace of the development to be used for commercial uses.
- Amendment 56 does not seek a change to the FSR control, and so will retain its current FSR control of 5:1. If the site had been included in Amendment 52, the FSR control would have been amended to 3:1.

The points above highlight the main differences between Amendments 52 and 56. While it may appear to be an anomaly, this report draws attention to the Opportunity Sites provisions detailed in Amendment 52 (Clause 7.5B). This Clause has been designed to facilitate taller buildings in the City Centre on larger sites, above what is envisaged by the amended planning controls in Amendment 52. In light of this, Amendment 56 can be viewed as a positive catalyst to future development in the City Centre that aligns with Council's future vision of the City Centre, rather than an incongruous development.

As noted above, the Abacus site sits outside the purview of Amendment 52 to allow for optimum development potential. It is therefore worth considering the policy outcomes if Amendment 56 is not made. These are detailed below:

- The site would retain its current planning controls (i.e. B3 – Commercial Core zoning, FSR of 5:1 and a HOB of 18 metres).
- As a result of the retention of B3 zoning, and given the fact that the site exceeds 1500m<sup>2</sup> and meets a range of other criteria, the Abacus site would benefit from the Opportunity Sites provision in Draft Clause 7.5B (subject to gazettal of Amendment 52). Please note that while the Abacus site is not included in Amendment 52, it will nonetheless be subject to the amended LLEP 2008 when made. The Opportunity Site provisions would allow a proposal on the site to pursue a development with a height above 28 meters, and potential maximum FSR of 10:1, provided that a masterplan is approved by Council.
- If Amendment 25 is approved, the development of the site would also be guided by the 'Opportunity Site' provisions as detailed in the draft LDGP (Part 4 – Liverpool City Centre), which applies to the entirety of the City Centre. If Amendment 25 does not proceed, the provisions the current LDGP Part 4 will apply.

### **Conclusion**

By addressing the conditions of the Gateway Determination, Council has been able to fully assess the potential impacts of the proposal. It is considered that the site has strategic merit within the context of broader changes occurring in the City Centre. This report concludes that Amendment 56 is a planning proposal that is consistent with Council's aspirations for the City Centre.

Following receipt of the Gateway Determination, Council undertook all required actions to meet the Gateway conditions. This included requesting a Heritage Impact Study from the proponent, (which was then peer reviewed), and consulting with the community and required public authorities. It is considered that detailed heritage and traffic considerations can be addressed at the development application stage.

### **CONSIDERATIONS**

<b>Economic and Financial</b>	<p>Further develop a commercial centre that accommodates a variety of employment opportunities.</p> <p>Encourage and promote businesses to develop in the hospital, health and medical precinct (of the City Centre).</p> <p>Provide efficient parking for the City Centre.</p> <p>Facilitate economic development.</p> <p>Further develop a commercial centre that accommodates a variety of employment opportunities (in the City Centre).</p>
<b>Environmental and Sustainability</b>	<p>There are no environmental and sustainability considerations.</p>

<b>Social and Cultural</b>	<p>Preserve and maintain heritage, both landscape and cultural as urban development takes place.</p> <p>Regulate for a mix of housing types that responds to different population groups such as young families and older people.</p>
<b>Civic Leadership and Governance</b>	<p>There are no civic leadership and governance considerations.</p>

## **ATTACHMENTS**

1. Gateway Determination (Under separate cover)
2. Revised HIS (October 2016) (Under separate cover)
3. Peer Review of Revised HIS (January 2017) (Under separate cover)
4. Letter of Response by proponent to peer review (February 2017) (Under separate cover)
5. Updated HIS (February 2017) (Under separate cover)
6. Revised OEH Response (February 2017) (Under separate cover)