

ITEM NO: DPG 02
FILE NO: 133470.2015
SUBJECT: Proposal to rezone 77-83 Moore and 193 Macquarie Streets and 165 Macquarie Street from B3 - Commercial Core to B4 - Mixed Use

RECOMMENDATION

That Council:

1. Endorses in principle, the proposal to rezone 77-83 Moore and 193 Macquarie Streets and 165 Macquarie Street, 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.

COUNCIL DECISION

Motion: **Moved: Mayor Mannoun** **Seconded: Cllr Balloot**

That the recommendation be adopted.

Vote for: Mayor Mannoun
 Cllr Balloot
 Cllr Hadid
 Cllr Harle
 Cllr Karnib
 Cllr Ristevski
 Cllr Waller

Vote against: Cllr Hadchiti
 Cllr Shelton
 Cllr Stanley

DPG 02	Proposal to rezone 77-83 Moore and 193 Macquarie Streets and 165 Macquarie Street from B3 - Commercial Core to B4 - Mixed Use
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Strategic Direction	Vibrant Prosperous City Activate the city centre and develop vibrant places that attract people to Liverpool
Key Policy	City Centre Strategy
File Ref	133470.2015
Report By	Graham Matthews - Strategic Planner
Approved By	Toni Averay - Director Planning & Growth

EXECUTIVE SUMMARY

Council has received an application to rezone 77-83 Moore and 193 Macquarie Streets and 165 Macquarie Street, Liverpool. The proposal seeks a rezoning from B3 Commercial Core to B4 Mixed Use as well as changes to development standards corresponding to the proposed changes in land use and built form.

Council officers are in the process of finalising the review of this application and preparing a Planning Proposal which details the changes that will be sought to Liverpool Local Environmental Plan 2008. To allow Council officers to continue to progress this application in good faith with the proponent, in principle endorsement for the rezoning of the subject site is being sought from Council. Following this, officers will proceed with finalising the planning proposal, pending the receipt of outstanding information from the proponent. The finalised planning proposal would be approved by the CEO to send to the NSW Department of Planning and Environment for Gateway Review.

RECOMMENDATION

That Council:

1. Endorses in principle, the proposal to rezone 77-83 Moore and 193 Macquarie Streets and 165 Macquarie Street, 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.

REPORT

Background

On 20 June 2014 Council received an application to rezone land at 77-83 Moore Street and 133 Macquarie Street Liverpool from the Abacus Property Group (the proponent). In a revised proposal submitted to Council in June 2015 the proponent has also sought to rezone 165 Macquarie Street as part of the proposal.

The subject site is identified as being Lot 1 DP 628824, Lot 2 DP 1189772 and Lot 1 DP 1189772 and is pictured in Figures 1 & 2 below.

The application seeks to rezone the site from B3 – Commercial Core to B4 – Mixed Use, and also seeks to increase the permissible building height pertaining to part of the subject site as detailed below.

On 20 August 2014 Council wrote to the proponent seeking further information on their proposal. The proponent submitted further information to Council on 24 April 2015, on 24 June 2015 and 8 July 2015.

As noted above, the proposal has been modified in later submissions. The scale of the proposed rezoning has been expanded to include the Liverpool Plaza site (165 Macquarie Street), the proposed increase in permissible height of buildings on the development site (i.e. 77-83 Moore and 193 Macquarie Streets) has been increased from 70 metres to 100 metres and the foreshadowed development on the site has been modified to incorporate an elliptical tower on podium, where the original proposal envisaged a square tower. The proponent has also agreed to Council's request to incorporate more floorspace for commercial uses than the original proposal provided, as discussed below.

It is to be noted that the Liverpool City Centre LEP Review, which was endorsed by Council at its meeting of 29 April 2015, proposes to rezone all existing B3 – Commercial Core zoned land in Liverpool City Centre to B4 – Mixed Use. This review would rezone the subject site to B4 but proposes to designate most of the subject site as part of the "Fine Grain Precinct", and would establish a maximum FSR for the site of 2.5:1 and a maximum building height of 21 metres, as depicted in Figure 3 below. The western portion of the Liverpool Plaza site would be designated as part of the "Mid Rise Precinct", with a maximum FSR of 3.0:1 and a maximum building height of 28 metres.

The proponent's application seeks further amendments to Liverpool Local Environmental Plan (LLEP) 2008, which would permit the development of a much taller building on the subject site to that envisaged in the Liverpool City Centre Review. It includes an increase in the permissible building height to 100 metres to permit the development of a mixed-use tower on the site.

As the proponent's proposed development for the subject site differs significantly from that outlined in the LEP Review, it is recommended that the proponent's application be treated as a separate and unique proposal.

Figure 1: The subject site situated on the corner of Macquarie and Moore Streets, and between Macquarie and Northumberland Streets Liverpool
Source: Liverpool City Council GIS

Subject site is designated "Fine Grain" and "Mid Rise" as shown.

Liverpool Development Projects Initiative

- Light Green: New Development
- Dark Green: Mid Rise
- Blue: Fine Grain

Figure 3: The subject site is designated both as “Fine Grain” and “Mid Rise”
Source: City Centre LEP Review report to Council 29 April 2015

The proposal

The proponent is seeking Council support to rezone the subject site from B3 – Commercial Core to B4 – Mixed Use, so that mixed-use development is permitted on the site, which is in line with Council's objectives for Liverpool City Centre as articulated in its adoption of the City Centre LEP review report at its ordinary meeting of 29 April 2015. Specifically, the proponent has indicated that they wish to develop a 28 storey tower on podium building on the site with uses including retail, office, serviced apartments and residential flats.

Building Height

In addition to rezoning the subject site from B3 – Commercial Core to B4 – Mixed Use, the proponent has sought to amend the Height of Buildings Map for the subject site to increase the maximum permissible building height for the development site (i.e. 77-83 Moore and 193 Macquarie Streets) from 18 metres to 100 metres, which would permit the development of the 28 storey tower on podium building on the site as described above.

Floor Space Ratio

The revised planning proposal does not seek to increase the FSR applying to the subject site, on the basis that any substantial increase in FSR for the site would provide a precedent and raise expectations of neighbouring landowners of a similar increase, which would risk undermining the recommendations of Council's City Centre LEP Review.

The proponent does foreshadow that, were the proposed amendments to the LLEP 2008 to be adopted, a development application for the proposed site would seek to utilise the provisions of Clause 4.5(6) of LLEP 2008, which allows the residual FSR of an adjoining lot to be utilised, on condition that "significant development" is also being proposed on that adjoining lot.

The proponent has indicated that they intend to develop a childcare centre and an additional level of carparking on the adjoining lot (Liverpool Plaza) to the development site, as partly illustrated in Figure 6 below. LLEP 2008 does not provide a definition of "significant development" for the purpose of meeting the requirements of clause 4.5(6). In support of their rezoning application, the proponent has argued that the proposed development of the Liverpool Plaza site should be considered as "significant development" because:

- The sole purpose of the car parking will be to serve the retail and serviced apartments on the development site (i.e. 77-83 Moore and 193 Macquarie Streets);
- Without the proposed carparking to be developed on the Liverpool Plaza site, there would be insufficient parking provided for the proposed retail and serviced apartment uses on the development site, according to the requirements of Liverpool Development Control Plan (LDGP) 2008;
- The carparking and childcare centre will be substantial structures that will increase the existing building envelope on the Liverpool Plaza site by more than 50%;
- The carparking and childcare centre are not incidental or ancillary to the overall envisaged development, but are core uses supporting the overall concept of the envisaged development; and

- The carparking and childcare centre are physically and functionally connected to the envisaged development on the development site.

The proponent has provided a draft covenant (see attached) which would prevent "double dipping" of the floor space to be taken from the Liverpool Plaza site. The covenant would be required to satisfy the requirements of clause 4.5(9) of LLEP 2008 for a future development application for the envisaged development.

Legal considerations

The proponent has provided legal advice to Council (see attached), which considers whether the proponent's intention to develop a childcare centre and carparking on the adjacent (Liverpool Plaza) site would be considered "significant development".

The legal advice notes that there is no definition of "significant development" provided by either LLEP 2008 or the Environmental Planning and Assessment Act. While the Act defines "development", this is a very broad definition; "significant development" must imply greater nature and scale. As neither the Act nor the Court has provided a definition of the term, it must retain its everyday meaning. The advice notes in part:

- 5.6 "Significant" means material, noteworthy or of consequence. In this case, the development on Site C is ancillary and directly related to the retail, commercial and serviced apartment uses to be constructed on the Development Site – development it will support. Accordingly, in comparative terms it is clearly material, noteworthy and of consequence. The addition of a gymnasium or childcare centre (although having no direct relationship to the Development Site uses) adds further weight to that proposition.

On account of the late submission of the proponent's legal advice, Council Officers have been unable to commission a peer review of the advice provided. However, having considered legal advice on the matter in general terms, it is recommended that, in the absence of a detailed development application, Council is not in a position to indicate if the proponent is entitled to the benefit of the provisions of clause 4.5(6) of LLEP 2008.

As the proponent is not requesting modification to the existing FSR for the site, the issue of whether the proposed development on the Liverpool Plaza site constitutes "significant development" does not require resolution prior to the submission of a planning proposal to the Department of Planning and Environment. Nevertheless, it is important to note that, were the proponent's definition of "significant development" to fail, a development application for the site would be unable to rely on residual FSR from the Liverpool Plaza site to provide extra floorspace on the subject site pursuant to the provisions of Clause 4.5(6) of LLEP 2008.

Commercial uses

The proponent has proposed to develop one floor (894sqm) of retail, two floors (2,182sqm) of commercial floorspace on the subject site in addition to 72 serviced apartments (3186sqm) in order to provide for employment in Liverpool City Centre. Prior to the submission of a planning proposal to the Department of Planning and Environment (DP&E),

Council Officers will work with the proponent to develop a mechanism (i.e. specific wording for an additional clause to LLEP 2008) that ensures that the proposed commercial floorspace is developed in any new mixed-use building developed on the site.

Proposed building form and uses

An application to amend planning controls for a site need not be tied to a specific building design. The proponent has not lodged a development application for the redevelopment of the site at this time.

The proponent has provided Council with images of a building that they intend to develop were the planning proposal to proceed. These images are reproduced for councillors' information at Figures 4, 5 & 6 below.



Figures 4 & 5: Future development of the subject site envisaged by the proponent
Source: JPRC Architects as supplied by the proponent.

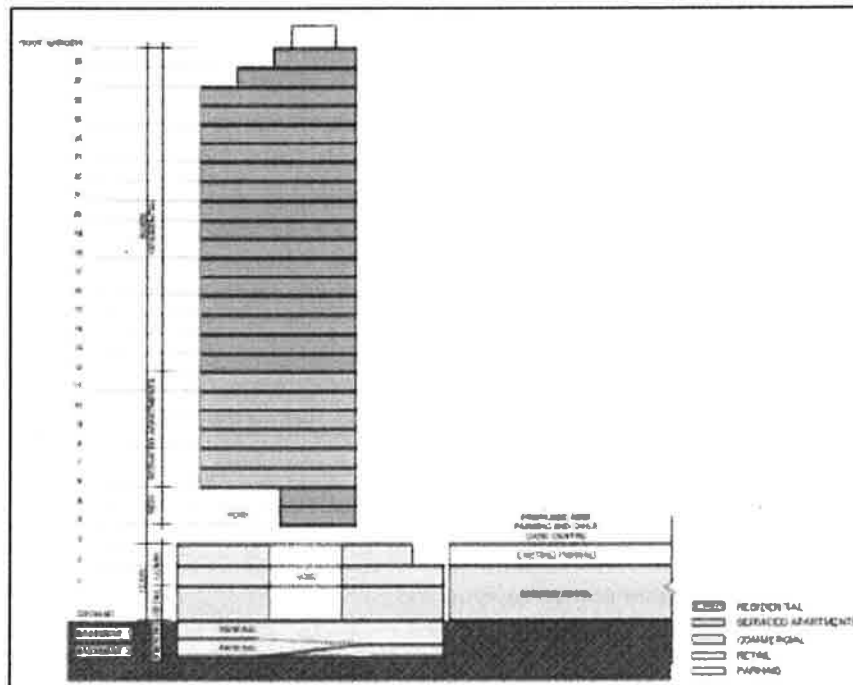


Figure 6: Envisaged uses of proposed development

Source: JPRC Architects as supplied by the proponent.

Justification for the proposed rezoning

The proponent has provided justification for the proposal in the document *Highest and Best Use Options*. A summary of the justification provided is as follows:

Housing

- There is strong underlying demand for infill residential development, compatible with the demographic profile of market catchment residents, and evidenced by strong capital and rental growth, strong sales rates for competing developments and ongoing population growth;
- The need to maintain housing growth to keep downward pressure on dwelling prices.
- There is market demand to support the absorption of an additional 134 residential units.
- The proposal will contribute to the development of Liverpool City Centre as a mixed-use centre.
- The inclusion of serviced apartments in Liverpool City Centre will promote local tourism and improve access to Liverpool by visitors.

Commercial

There is limited demand for new office space in Liverpool City Centre. Retaining the B3 – Commercial Core zoning for the site (which prohibits most residential uses) may restrict the development of the site to its highest potential.

Feasibility

The proponent's preliminary feasibility analysis demonstrates that the rezoning would provide a net development profit in the order of \$15.1 million, or 18.75%, which is within the viable development margin of 18-20%. Were the site not to be rezoned as requested, the proponent maintains that development on the site would not be readily viable.

Economic Impact

The proponent indicates that development made permissible by the rezoning of the subject site as proposed, would yield 324 construction jobs, 381 operational jobs and support an additional retail spend of \$4.7 million annually.

The proponent's *Highest and Best Use Options* document is included as an attachment for reference.

Overview of the Assessment of the Proposal

An initial assessment of the proposal was undertaken by Council officers in 2014, following which further information and justification was requested of the applicant in a letter dated 20 August 2014. The applicant submitted a letter detailing further information to Council on 24 April 2015, with extra information submitted on 24 June 2015 and again on 8 July 2015.

Suitability of the foreshadowed development

The proponent has provided photographic images which depict the proposed building outcome but no scaled plans for assessment.

The proposed rezoning would permit the development of a 100 metre high (28 storey) mixed-use building on the site. The planning controls currently applying to the development site restrict the maximum building height to 18 metres. Council's City Centre LEP Review proposes to increase the maximum height of a building on the development site to 21 metres.

In support of their application to increase the maximum height of a building on the development site to 100 metres, the proponent has argued that the development site meets the criteria for an Opportunity Site as described by the City centre LEP Review. The criteria outlined in the LEP Review for a site to qualify as an Opportunity Site is as follows:

- The site must have a minimum area of 1500sqm;
- The site must have multiple street or laneway/serviceway frontages;
- The site can accommodate tower footprints of up to 750 square metres gross floor area for residential uses or 1200 square metres gross floor area for commercial uses;
- The site can accommodate tall buildings without significant impact on the adjacent public domain, heritage buildings or neighbouring sites;
- The site offers the potential to deliver some additional car parking located in key locations in the CBD; and

- The site has the potential to improve the public domain, extend lanes and/or provide through-site links.

The proponent has provided evidence that the site generally meets the criteria as follows:

- The site area exceeds the minimum of 1500sqm necessary to qualify as an 'Opportunity Site';
- The site has multiple street/laneway frontages (the site fronts both Macquarie Street and Moore Street and is serviced by Davis Serviceway to the rear);
- The proponent states that the site is capable of mitigating impacts on the public domain, heritage buildings or neighbouring sites. Submission of a Heritage Impact Assessment and Shadow Analysis will be required to confirm this;
- The proponent states that the site can accommodate a tower footprint of up to 750sqm with the appropriate setbacks. It is noted, however, that the proponent has not provided plans which demonstrate this;
- The proponent has stated that there is the potential to provide additional roof-deck parking on the adjacent Liverpool Plaza site; and
- The proponent has not addressed the consideration of the site having the potential to improve the public domain or provide through-site links.

On available evidence, it may therefore be concluded that the site generally meets the criteria for an Opportunity Site as described in the City centre LEP Review. The site may meet all criteria, dependent on further information being provided to permit a more detailed assessment.

The proponent has advanced further arguments in favour of the rezoning, stating that the site should be considered as a special case for the following reasons:

- The site is at the centre of Liverpool City Centre, at the junction of Moore and Macquarie streets, on the southern end of the Macquarie Street Mall;
- The site is one of only two "Fine Grain" sites that have the potential for tower development (the other being the Liverpool RSL Club site directly opposite the development site);
- Other sites around the Macquarie/Moore streets corner do not have potential, on account of heritage restrictions or fragmented ownership;
- The opportunity to consolidate "Opportunity Sites" to the south of the development site is limited by fragmented ownership and rear lanes which limit lot size. Similar impediments exist on much of the east of the Macquarie Street mall; and
- Being situated at the southern end of the Mall, the site can accommodate a tower development without overshadowing the Mall.

Impact on the development potential of the adjacent site

At Council's request, the proponent has provided information regarding the potential impact of the proposal on the development potential of the adjacent site (85-95 Moore Street). This site along with the development site comprise a Key Site identified by LLEP 2008. The sites are depicted in Figure 7 below.

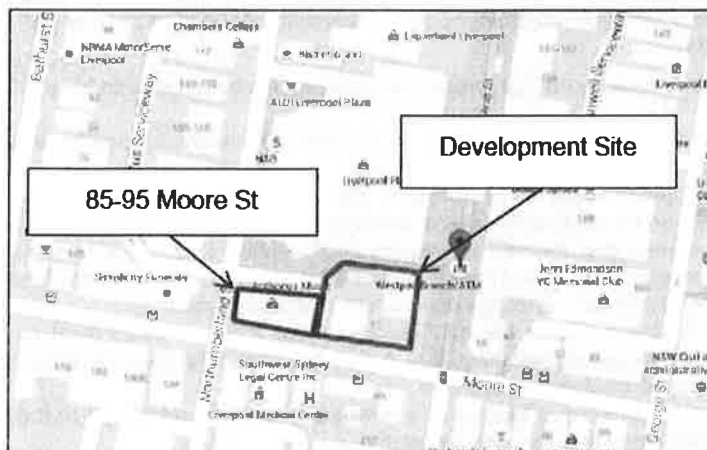


Figure 7: Depiction of the development site and adjacent site
Source: Urbis

According to Part 4 of LDCP 2008, this Key Site, constituted by both sites, has the following development potential:

This site is in a prominent location fronting directly onto the south western corner of the Macquarie Street Mall. The present treatment of this important corner and "arrival" point to the Mall is relatively poor and requires improvement through a quality architectural and urban design response to this site. (Part 4 LDCP 2008 p73)

The City Centre LEP Review seeks to remove reference to the Key Sites in the city centre, to allow for greater flexibility for individual lots to develop as Opportunity Sites, as discussed above. The proponent has also provided the following information regarding the impact of the proposal on the site as follows:

- The site (of itself) is smaller than 1500sqm and is therefore unable to support a tower development as an "Opportunity Site" as described by the City Centre LEP Review;
- The site cannot be amalgamated with any other site; and
- The site has the potential to be developed according to the recommendations of the City Centre LEP Review, which would permit a 6 storey street edge and 4 storey lane edge form.

Conclusion

On the basis of the evidence provided by the proponent, it is concluded that the proposal has merit. It is therefore recommended that Council support the proposal in principle, including the drafting of a planning proposal and its submission to the department of Planning and Environment (DP&E) seeking a Gateway Review.

It is noted that, should DP&E issue a gateway Determination for the site, the proposal may be further refined and assessed including in response to any submissions received during public authority consultation or public exhibition. Council would then have a further opportunity to assess the proposal prior to the proposed amendment being made.

Outstanding Information

Certain information required by Council Officers for the completion of a planning proposal remains outstanding. The completion of a planning proposal for submission to the DP&E is contingent on Council receiving such information. The outstanding information that the proponent has agreed to provide includes:

- A shadow analysis depicting the likely shadowing generated by the foreshadowed development on surrounding development, at 9am, 12pm and 3pm on March 21, June 21, September 21 and December 21; and
- A mechanism to ensure the development of the proposed commercial floorspace, as detailed above, on the development site.

Following the receipt of the outstanding information, a planning proposal detailing the changes sought to the LLEP 2008 will be prepared by Council Officers to be forwarded to DP&E for Gateway Review.

The proponent has also agreed to submit a Heritage Impact Assessment assessing the potential impact of the proposed development on heritage items (particularly item #95 – the Corner Pub). It is recommended that the report, including any recommendations for amelioration of impacts is to be submitted prior to the planning proposal being publicly exhibited.

Catalyst for further development

The proposed rezoning from B3 Commercial Core to B4 Mixed Use is considered appropriate for the subject site. This zoning change would provide for a more flexible range of uses, in particular residential accommodation as part of a mixed-use development. This will facilitate increasing the population in the City Centre, contributing toward Council's vision to increase activity and vibrancy within the Liverpool City Centre.

While the proposal for the site does not align with that described in the Liverpool City Centre LEP review, the proposal has merit and could provide a catalyst for further development of Liverpool City Centre as a mixed-use precinct.

Voluntary Planning Agreement (VPA)

The subject site occupies a central position in Liverpool City Centre at the entrance to Macquarie Street Mall. The proposed rezoning of the site would afford significant additional development opportunities and it is expected that such development should make a substantial contribution to the improvement of the public realm.

The subject site is liable to a developer contribution equivalent to 3% of the cost of carrying out the development according to the Liverpool City Centre Contributions Plan 2007. Nevertheless, it is recommended that Council seek to negotiate a VPA with the developer which could include required road works and public domain improvements in both the Macquarie Street Mall and Moore Street.

Process from here

The usual process for rezoning applications following a review of the application is for Council Officers to prepare a planning proposal detailing the proposed changes to the Liverpool LEP 2008. This planning proposal would then be reported to Council for endorsement to send to the DP&E for Gateway Review.

This report seeks in principle endorsement from Council before finalising the detailed planning proposal. To expedite the lodgment of the proposed amendment with DP&E, it is

further recommended that Council delegates to the CEO the authority to approve the final planning proposal to send to the DP&E for Gateway Review.

Following a Gateway Determination for a planning proposal, there is a process of state agency consultation, public exhibition, and a further report to Council before proceeding with the making of any changes to the LEP.

Conclusion

It is recommended that the proposal to rezone the subject site in the Liverpool City Centre from B3 Commercial Core to B4 Mixed Use be endorsed, in principle, and that the authority to approve the finalised planning proposal be delegated to the CEO so that it can be submitted to the DP&E for Gateway Review.

CONSIDERATIONS

Economic and Financial	Further develop a commercial centre that accommodates a variety of employment opportunities. Facilitate economic development. Further develop a commercial centre that accommodates a variety of employment opportunities (in the City Centre).
Environmental and Sustainability	There are no environmental and sustainability considerations.
Social and Cultural	Preserve and maintain heritage, both landscape and cultural as urban development takes place. Regulate for a mix of housing types that responds to different population groups such as young families and older people.
Civic Leadership and Governance	There are no civic leadership and governance considerations.

ATTACHMENTS

1. Liverpool Plaza - Highest and Best Use Options View (Under separate cover)
2. Draft Covenant View (Under separate cover)
3. Proponent's legal advice View (Under separate cover)
4. Proponent's Planning Proposal View (Under separate cover)