

Application Number	«Application_Number»
Proposed Development	Erection of a fourteen storey residential flat building comprising 59 units, two levels of basement car parking containing 62 off street car parking spaces and associated landscaping and fencing
Property Description	Lot 1 DP 703565 Speed Street (corner Bigge Street), Liverpool
Applicant	Hely Horne Medcalf Architects Pty Ltd
Land Owner	Liverpool City Council
Cost of Work	\$18,592,200
Recommendation	Refusal



1. EXECUTIVE SUMMARY

1.1 Reasons for the Report

Pursuant to the requirements of the State Environmental Planning Policy (Major Development) 2005 (now repealed), the proposal is referred to the Joint Regional Planning Panel (JRPP) for consideration and determination as the development application has a capital investment value over \$5 million and the development is proposed to be carried out on Council owned land. It is noted that the Council has entered into an agreement with a third party.

This report summarises the key issues which should be considered in the determination of the proposal in accordance with the provisions of the Environmental Planning and Assessment Act 1979 and Liverpool Local Environmental Plan 2008.

1.2 The Proposal

Council is in receipt of a development application seeking consent for the erection of a fourteen storey residential flat building comprising 59 units (12 x one bedroom units, 40 x two bedroom units, and 7 x 3 bedroom units), two levels of basement car parking containing 62 off street car parking spaces (56 resident and 6 visitor spaces), and associated landscaping and fencing.

1.3 The Site

The subject site is known as Lot 1 DP 703565 Speed Street, Liverpool.

1.4 The Issues

The primary concern of the application is the RailCorp's refusal to issue its concurrence. Pursuant to subclause 86(3) of State Environmental Planning Policy (Infrastructure) 2007 *'the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARTC'*.

Assessment of the development application has identified a number of non-compliances in respect to the relevant planning instruments and development codes. These non compliances are canvassed in more detail later in this report.

1.5 Exhibition of the Proposal

The proposed development was initially advertised for fourteen days between 12 May 2010 - 27 May 2010 in accordance with Liverpool Development Control Plan 2008, Part 1.1 General Controls for all Development. During the advertising period Council received two written submissions and one petition (containing four signatures) all objecting to the proposal.

Following receipt of an amended development proposal, the application was subsequently re-exhibited for a period of 14 days between 4 May 2011 – 19 May 2011 in accordance with Liverpool Development Control Plan 2008, Part 1.1 – General Controls for all Development. During the second advertising period Council received six written submissions objecting to the proposal.

1.6 Conclusion

The proposal represents a revised design which is the result of meetings with both Council's Design Review Panel (DRP) and JRPP in 2010 which recommended the redesign of the proposal to achieve full compliance with floor space ratio and building height standards as specified by LLEP 2008.

The revised proposal is considered acceptable in regards to the desired future character of this southern portion of the Liverpool City Centre and presents an opportunity to provide for a good quality high density development which is consistent with the strategic vision for the Liverpool City Centre. Furthermore, the proposal has been considered and assessed by Council's Design Review Panel and it is considered that the proposal achieves a satisfactory design quality which is consistent with the design principles as prescribed by State Environmental Planning Policy No. 65.

However, issues raised by Railcorp pursuant to provisions prescribed by State Environmental Planning Policy (infrastructure) 2007 have not been resolved. This has resulted in concurrence not being received by Railcorp which is required pursuant to clause 86(3) of State Environmental Planning Policy (infrastructure) 2007.

Council has requested the applicant respond to these issues on numerous occasions and despite Council's requests this information has not been forthcoming.

Consequently as RailCorp has not issued its concurrence in accordance with clause 86(3) of State Environmental Planning Policy (Infrastructure) 2007 the Consent authority is unable to grant consent to the development and the application must be refused.

2. SITE DESCRIPTION AND LOCALITY

2.1 The Site

The subject site is known as Lot 1 DP 703565 and is located on the south-eastern corner of Bigge Street and Speed Street, Liverpool. The subject site is identified in Figure 1 below:

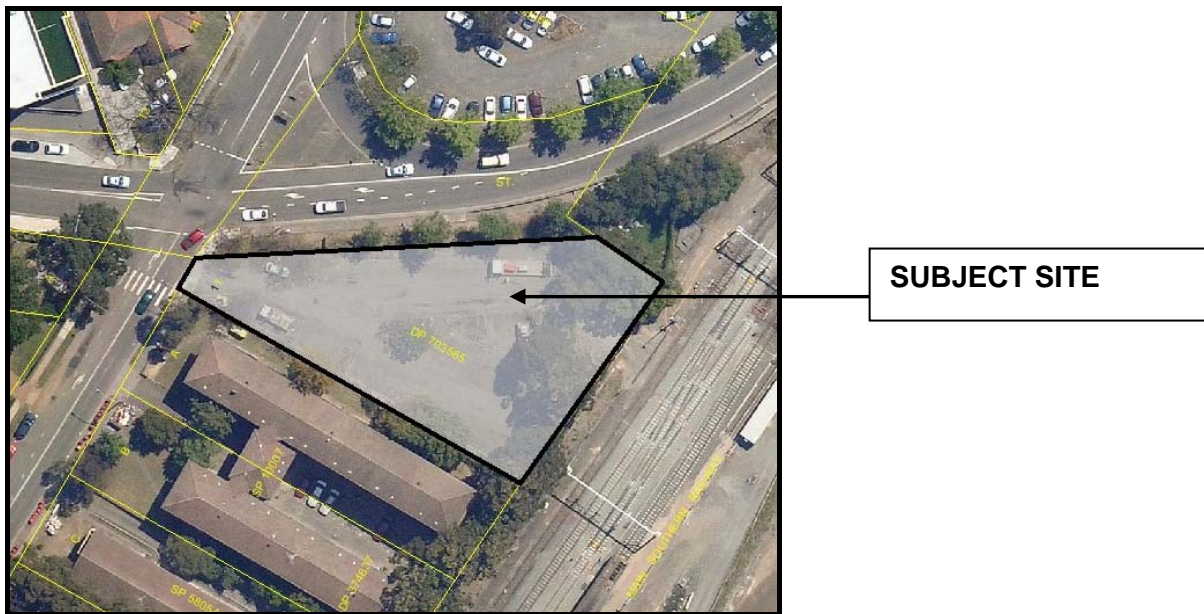


Figure 1: The subject site

It is an irregular (somewhat triangular) shaped allotment with a site area of 1,863m². Its principle street frontage is Bigge Street (approximately 67metres) with Speed Street (4metres) serving as the current point of vehicular access. The eastern boundary (approximately 42metres) adjoins the main southern Rail Line and the southern boundary has a depth of approximately 65metres. There is a substantial fall in the topography of around 5metres (1 in 12 or 8%).

The site is situated at the interface of the high density residential and mixed use area of the City Centre.

The site currently owned by Council (classified as Operational Land) and is used as a car park. It contains a mix of mature trees and shrubs. Adjoining the site to the south is an older three/four storey residential flat building with parking under and to the north and west is a mix of residential and commercial buildings.

2.2 The Locality

The site is situated adjacent to the southern railway line on the southern side of Bigge Street, with Liverpool Railway Station located 200m along Bigge Street to the north. The main commercial and retail centre for Liverpool is located to the north of the site on the western side of the southern railway line.

A locality map is provided in Figure 2 below:



Figure 2: Locality map

3. DETAILS OF THE PROPOSAL

The development application seeks consent for the erection of a fourteen storey residential flat building with a total of 59 residential units comprising of the following:

- Twelve (12) x 1 bedroom apartments (GFA ranging between 63m² - 78.8 m²);
- Forty (40) x 2 bedroom apartments (GFA ranging between 71.3m² - 96m²);
- Seven (7) x 3 bedroom apartments (GFA ranging between 107.7m² - 114m²).
- A total of 6 apartments (10%) are identified as 'readily adapted' with modified layouts in accordance with AS 4299 Adaptable housing. These apartments are identified as Unit 201, Unit 301, Unit 401, Unit 501, unit 601 and Unit 801. Bathrooms to these apartments are larger and can facilitate modification for disabled access in accordance with AS 4299. Internal corridors to all apartments are 1m wide and bedroom/living room configurations are adaptable to conform to AS 4299 requirements.
- Two basement levels containing the following:
 - 68 off street car parking spaces (62 resident and 6 visitors). Two of the visitor spaces are designated as disabled.
 - 5 motor bike spaces.
 - Bicycle storage area for 30 bikes.
 - Service bay and associated area.
 - Wash bay.
 - Auxiliary rooms including: plant, switch, and resident storage rooms.
 - Garbage storage area.
- The development will be serviced by 2 x lifts plus central stairwell.
- Podium and deep soil landscaping.
- External fencing.

A copy of certain architectural plans is contained within the attachment booklets of this report.

4. CHRONOLOGY OF DEVELOPMENT APPLICATION

DATE	ACTIONS
22 April 2010	Development Application lodged
10 May 2010	Correspondence to RailCorp advising of Development Application.
12 May 2010 - 27 May 2010	proposal advertised.
21 May 2010	Correspondence received from RailCorp 'stop the clock' seeking additional information.
16 June 2010	Correspondence to Applicant providing an update on the assessment and seeking further information/response
1 July 2010	Briefing Report to JRPP. JRPP raised concerns regarding LEP no-compliances to height and FSR and some design (amenity) aspects given proximity to Rail Corridor.
8 July 2010	Liverpool Council Design Review Panel (DRP) meeting – recommended redesign with issues similar to JRPP. LEP no-compliances to height and FSR were main issues.
27 July 2010	meeting with applicant to discuss issues arising from JRPP & DRP meetings.
1 November 2010	Follow up Correspondence to Applicant seeking timeframe for submission of additional information.
28 February 2011	Amended Design received – 14 storey residential flat building comprising 59 units (12 x one bedroom units, 40 x two bedroom units, and 7 x 3 bedroom units), two levels of basement car parking containing 62 off street car parking spaces (56 resident and 6 visitor spaces).
6 April 2011	Liverpool Council Design Review Panel meeting (DRP) – amended design approved.
4 May – 19 May 2011	re-advertising of amended proposal.
3 May 2011	correspondence sent to RailCorp under SEPP (Infrastructure).
11 May 2011	Comments received from NSW Police.
12 May 2011	Correspondence received from RailCorp 'stop the clock' seeking additional information.
16 June 2011	JRPP Meeting to consider proposal cancelled due to outstanding RailCorp issues.
5 September 2011	Further correspondence sent to applicant advising of RailCorp request and requesting response by 20 September.
20 September 2011	email from applicant providing update of outstanding information and timing of structural report but requesting deferral of full structural drawings (for inclusion as a condition of DA).
5 October 2011	additional information submitted to RailCorp (Geotechnical Impact Report, Revised Railway Impact Report, and construction details
11 October 2011	Correspondence from RailCorp advising that additional information is inadequate and therefore it has not 'restarted the clock' for its assessment.
4 November 2011	meeting between Council, RailCorp and Applicant to discuss <ul style="list-style-type: none"> • Geotechnical (additional details); • Drainage (design details/connection to existing system); and • Access to Rail corridor (ramp).
28 November 2011	Applicant emailed RailCorp (Additional sections and details of retaining treatment as requested by RTA along the side wall of the property against adjacent land

2 December 2011	Email from to RailCorp to advising that revised drainage information still required from applicant.
2 December 2011	Email from Council to RailCorp following up on the status of its (RailCorp) investigations regarding the access ramp.
5 March 2012	Telephone conversation with applicant regarding outstanding information (email sent 7 th March) and request for timing of submission.
26 April 2012	further email sent to applicant seeking response
11 May 2012	Correspondence sent to applicant requesting submission of outstanding drainage and engineering documentation to satisfy RailCorp. Response requested by 25 May 2012. No response received.

5. STATUTORY CONSIDERATIONS

5.1 Zoning

The subject site is zoned R4 – High Density Residential pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). The proposed development is defined as a “residential flat building” under LLEP 2008, namely:

“Residential flat building” means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

A Residential flat building is permissible with Council consent in the R4 High Density Residential zone and the development satisfies the above definition. An extract from the LLEP 2008 – zoning map is provided in Figure 3 below.



Figure 3: Extract of LLEP 2008 zoning map

5.2 Relevant matters for consideration

In addition to LLEP 2008, the following Environmental Planning Instruments (EPI's), Development Control Plan and Codes or Policies are relevant to this application:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- State Environmental Planning Policy No.55 – Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Infrastructure) 2007; and

- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development.
- Liverpool Local Environmental Plan 2008.
- Liverpool Development Control Plan 2008 (Parts 1.1, 1.2 and 4).
- Liverpool Contributions Plan

An assessment of the proposal against the relevant matters for consideration is detailed below.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 79C of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation as follows:

6.1 Section 79C(1)(a)(1) - Any Environmental Planning Instrument

(a) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GMREP No.2)

It is considered that the proposal satisfies the provisions of the GMREP No.2. Subject to appropriate sedimentation and erosion controls during construction, the development will have minimal impact on the Georges River Catchment. As such, the operation of the proposed development is unlikely to have any adverse impacts on stormwater runoff and water quality.

(b) State Environmental Planning Policy No.55 – Remediation of Land

The proposal involves a change in the use of the land, from a general parking area to residential. A Phase 1 Contamination Assessment has been undertaken and submitted with the development application as required by clause 7 of the Policy.

This preliminary assessment has been based on limited testing however, following a review of the site history, observations, and testing results it is considered the site generally has low potential for contamination. It was also noted that no groundwater was encountered during fieldwork and that in view of the low levels of contaminants found in soil testing, the potential for groundwater contamination is considered to be low.

Should the development application be approved, a condition of consent will need to be imposed requiring the submission of a Phase 2 Contamination Assessment.

(c) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A revised BASIX certificate will need to be submitted with the development application should the application be approved.

(d) State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 applies. Clause 86(3) provides that **the concurrence of RailCorp is required** applies as there is excavation of greater than 2 metres within 25 metres of a rail corridor.

Clause 86(3) of State Environmental Planning Policy (infrastructure) 2007 provides that *'the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARTC'*.

Clause 86 applies to the proposal as the development involves the '*penetration of ground to a depth of at least 2m below ground level*' on land '*within 25m (measured horizontally) of a rail corridor*' [clause 86(1)(b)].

Rail Corp has requested a geotechnical and structural report that addresses the following matters:

- Construction methodology with details pertaining to structural support during excavation.
- Tracked monitoring requirements during excavation and construction phases
- Cross-sectional drawings showing ground surface, rail tracks, subsoil profile and proposed basement excavation and structural design of sub ground support adjacent to the rail corridor.
- Rail safety plea including instrumentation and monitoring regime to be submitted for review.

To date the requested information has not been submitted to RailCorp's satisfaction and consequently it has not granted its Concurrence. As such the Consent authority is unable to grant consent to the development and on this basis the development application is recommended to be refused.

(e) State Environmental Planning Policy No.65

State Environmental Planning Policy No. 65 applies to the proposal, as the application incorporates a residential flat building component. Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles in Part 2 of SEPP 65. The following table summarises the ten (10) design quality principles outlined in SEPP 65.

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
PRINCIPLE 1: CONTEXT	Yes	<p>The site adjoins the Liverpool commercial precinct. The southern area of the City Centre comprises a mix of older 3 storey residential flat buildings however the area is zoned for high density residential and consequently it is to be expected that this area will undergo transition and be redeveloped with high density residential buildings.</p> <p>The proposal responds to the intent of the LEP and draft Southwest Sub Regional Strategy, which promotes a significant increase in residential dwellings by 2030.</p> <p>It is considered that the development responds appropriately to this principle.</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
PRINCIPLE 2: SCALE	Yes.	<p>The reduced height (15storeys to 14 storeys) of the revised design naturally reduces the scale of the building.</p> <p>The height of the proposed development generally falls within the height constraint of 45m permitted within the R4 zone under LEP 2008. The only exception to this is with those upper floor roof elements that are raised above the building façade and roof in roof forms to provide modulation to the façade and roof.</p> <p>It is noted that the proposal represents the first of its type within the immediate area, and that it will involve a minor variation to the allowable floor space ratio and height limit.</p> <p>The height of the proposed building (i.e. 14 storeys) is significantly higher than the predominant built form of between 3-4 storey residential flat buildings.</p> <p>There is a transition in terms of scale when compared with the adjoining building.</p>
PRINCIPLE 3: BUILT FORM	Yes.	<p>The building has been designed as a tower apartment style building (with a 4-storey podium street base form and 10 storey residential tower building above). The building is generally rectilinear in shape with 4 to 6 apartments on each floor arranged around a central core.</p> <p>The form and location of the building has evolved from the functional requirements of the development together with existing site constraints. Location of the proposed development at the eastern end of the site away from Speed Street occupies the more usable areas of the site and allows for adjacent development to the south, both existing and in the future, to optimise solar aspect and streetscape views. Consolidation of the deep soil planting area at the western end of the site provides a positive feature of the proposed development in terms of townscape and also in minimising impact of the development on the adjacent site.</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
		The design provides building facades, with both vertical and horizontal modulation and articulation which assist in reducing the visual impact and bulk of the building.
PRINCIPLE 4: DENSITY	Yes.	<p>The proposal seeks to vary the maximum allowable floorspace ratio and height limits however the nominated variations are considered to be minor.</p> <p>The achieved floor space ratio of the revised development has been reduced to 2.96:1, which represents only 3.39% above Council's planning constraints for floor space set by LLEP 2008 at 1:2.863:1.</p> <p>The land immediately to the north has an allowable density up to 25 stories (80metres) whereas the subject site is limited to 15 stories (45metres).</p>
PRINCIPLE 5: RESOURCE, ENERGY AND WATER EFFICIENCY	Yes. Subject to appropriate conditions being imposed should the development application be approved.	<p>The design will need to receive the necessary BASIX certificate and addresses issues such as water reuse and energy efficiency.</p> <p>The majority of apartments are located on the corners of the tower building with two aspects facilitating natural cross ventilation to these apartments.</p> <p>The building footprint has allowed the required areas of deep soil planting to be provided.</p> <p>The proposed development incorporates a 10,000 litre underground water storage tank, which will harvest rainwater on the site for reuse in irrigation of landscaping and for car washing facilities.</p> <p>It is considered that the development responds appropriately this principle.</p>
PRINCIPLE 6: LANDSCAPE	Yes. Subject to appropriate conditions	<p>An integrated landscaping plan has been provided. At present the site is generally run down with no redeemable landscape features.</p> <p>Landscaping is proposed within the Bigge Street Road reserve and adjoining setback. All</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
		<p>ground floor apartments have landscaped courtyard areas.</p> <p>Along Bigge Street landscaping is proposed within the street setback of the building above the basement carpark structure. The landscaping will provide visual screening and softening of the building frontage at ground level and landscaped forecourts to the ground floor apartments.</p> <p>A large landscaped open space has been created towards the western end of the site out to the Speed Street frontage. This area is predominantly all deep soil planting above natural ground and faces directly north for good solar access.</p> <p>A deep soil landscaped buffer along Is provided along the eastern boundary against the railway precinct.</p> <p>Deep soil planting has been retained around existing trees on the adjoining property to the south. Would need to be conditioned so that they are not adversely affected by the excavation works.</p>
PRINCIPLE 7: AMENITY	Yes. Some noise and vibration issues to review.	<p>There are a variety of internal layouts with approximately 50% having externally located kitchens. The majority of the apartments are dual aspect thus facilitating cross ventilation.</p> <p>Only 7 apartments have a single south facing aspect. The majority of units (88%) receive 3 hours of sunlight into the living areas.</p> <p>61% are cross ventilated.</p> <p>Principle window areas of living rooms are protected by sun shade devices and balcony projections to the upper levels that provide shading in summer.</p> <p>Open space is provided as either a balcony or terrace located adjacent to the main living space.</p> <p>Overshadowing of the adjacent residential flat building to the south is minimal due to the predominant positioning of the proposed</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
		<p>development towards the eastern end of the site.</p> <p>As noted by RailCorp the potential noise impacts upon the eastern facing units (adjoining the Rail Corridor) and potential vibration impacts still require review.</p>
PRINCIPLE 8: SAFETY AND SECURITY	Yes.	<p>The design provides for active and passive surveillance of the common, open space areas.</p> <p>Pedestrian access is restricted to two clearly identified access points: via Bigge Street and Speed Street.</p> <p>Balconies are located on the northern and western elevations allowing natural surveillance of adjoining streets.</p> <p>Perimeter fencing is a combination of masonry construction with open style fencing, providing security whilst allowing visibility both to and from the development.</p> <p>Pedestrian access to the apartment lobby is via a secure intercom.</p> <p>Access to the basement parking is only available through a secure income system and the internal links are located within secure fully glazed vestibule areas.</p> <p>The applicant proposes to install lighting throughout the development and within the basement to conform to Australian Standards.</p>
PRINCIPLE 9: SOCIAL DIMENSIONS	Yes.	<p>There is a mix of 3 bedroom, 2 bedroom and 1 bedroom units including future adaptable units provided.</p> <p>The building is serviced by two lifts and disabled access exists from the Street frontage to each apartment.</p> <p>The proposal allows for high density residential living in close proximity to the commercial core and the Liverpool Railway Station, increasing access to employment and transport.</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
PRINCIPLE 10: AESTHETICS	Yes.	<p>The building design incorporates a number of architectural elements and utilises a range of materials and finishes.</p> <p>The middle section is setback with projecting and wrap around balconies.</p> <p>The tower facades are broken up through colour, texture and finish in order to reduce the apparent visual massing and bulk of the building.</p> <p>The roof design to the building consists of a flat roof profile with sweeping planes cantilevered out from the building façade and reverse sloping soffit planes.</p> <p>The building design provides for a separate and distinct base, middle and top.</p>

Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning's publication entitled *Residential Flat Design Code*. The following table outlines compliance with the Residential Flat Design Code, where numerical requirements ('controls') are specified.

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
PART 1 – LOCAL CONTEXT			
BUILDING HEIGHT	To ensure the proposed development responds to the desired scale and character of the street and local area and to allow reasonable daylight access to all development and the public domain.	<p>The main building is under the maximum allowable height (45metres) in keeping with the height controls contained within clause 4.3 of Liverpool LEP 2008.</p> <p>However the proposed "Roof Feature" has an overall level of around RL67.20 AHD (approximately 2metres over the 45m limit.)</p> <p>The applicant seeks to utilise clause 5.6 to permit the variation.</p>	No.

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STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
BUILDING DEPTH	In general, building depth should be between 10-18 metres.	The building depth varies throughout the development; however an average plan depth is between 12m-18.5m.	Yes.
BUILDING SEPARATION	<p>The minimum setbacks between buildings are as follows</p> <p>Up to 4 storeys/12m in height:</p> <ul style="list-style-type: none"> - 12m between Habitable rooms/balconies - 9m between Habitable/balconies and Non-habitable rooms. - 6m between non-habitable rooms <p>5 to 8 storeys/up to 25m in height:</p> <ul style="list-style-type: none"> - 18m between Habitable rooms/balconies - 13m between Habitable/balconies and Non-habitable rooms. - 6m between non-habitable rooms <p>>9 storeys/> 25m in height:</p> <ul style="list-style-type: none"> - 24m between Habitable rooms/balconies - 18m between Habitable/balconies and Non-habitable rooms. - 12m between non-habitable rooms 	<p>Varied with minor encroachment on 1st Floor (#102). 2nd and 3rd floors 'wc/robe' (#203, #303) within 12metres otherwise compliant</p> <p>Greater than 9metres.</p> <p>Varied but a minimum 7m between rooms.</p> <p>The adjoining building to the South is a four-storey residential flat building; consequently the building separation complies above 12metres.</p>	<p>Yes generally</p> <p>Yes</p> <p>Yes.</p> <p>Yes.</p>

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
STREET SETBACKS	To establish the desired spatial proportions of the street and define the street edge. To relate setbacks to the areas street hierarchy.	The ground floor of the building is varied but a minimum setback 4m from Bigge Street. This complies with controls within Part 4 of DCP 2008 which requires a 4-4.5m setback.	Yes.
SIDE AND REAR SETBACKS	To minimise the impact of development on light, air, sun, privacy, views and outlook for neighbouring properties including future buildings.	Minimum 4 - 6metres on Boundaries Rail Corridor - Side (eastern Boundary) up to 2m to Private Open space and 4m to habitable rooms.	No
FLOOR SPACE RATIO (FSR)	To ensure that the development is in keeping with the optimum capacity of the site and the local area. FSR is not specified in the Design Code.	Clause 4.4(2B) of Liverpool Local Environmental Plan 2008 prescribes a maximum FSR for the site of 2.863:1 (5,328.18m ²). The proposed FSR is 2.69:1 (or 5,514.80m ²) which does not comply. Minor variation of 186.6m ² (3.39%)	No.
PART 2 – SITE DESIGN			
DEEP SOIL ZONES & OPEN SPACE	A minimum of 25% of the open space area of a site should be a deep soil zone, more is desirable. Exceptions may be made in urban areas where sites are built out.	Deep soil zone planting provided is 24% (448.6m ²). Although this is only marginally less than 25% of the site, the deep soil zones proposed exceed the minimum 15% requirement as outlined in DCP 2008 – part 4. Common open space is not centrally located however it is in a single area and easily accessible to all occupants.	No, but complies with DCP 2008 – Part 4 (Development in the Liverpool City Centre).

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
ORIENTATION	To protect the amenity of existing development and to optimize solar access to residential apartments within the development and adjacent to the development.	The building placement attempts to minimise overshadowing of the adjoining residential building to the south. It is considered that the proposed development does not compromise the adjacent buildings in relation to solar access.	Yes.
PLANTING ON STRUCTURES	To contribute to the quality and amenity of communal open space on rooftops, podiums etc.	No landscaping is provided on the roof, however appropriate landscaping is proposed on the podium level and throughout the site.	Yes.
VISUAL PRIVACY	To provide reasonable levels of visual privacy externally and internally, during the day and at night. Relates to separation distance.	The proposal has a modulated facade providing varied setbacks. In addition the adjoin building is setback approximately 4metres from the boundary In my opinion the design has responded to this constraint by locating and orientating balconies to provide reasonable levels of visual privacy.	Yes.
PEDESTRIAN ACCESS	Identify access requirements from the street and parking areas to the residential apartments, and ensure access is accessible.	Acceptable access is provided.	Yes.
VEHICLE ACCESS	Limit width of driveways to 6 metres and locate vehicle entries on the secondary frontage.	Driveway 6 metres in width.	Yes.
PART 3 – BUILDING DESIGN			
APARTMENT LAYOUT	Single aspect apartments should be limited in depth to 8 metres from a window. The back of a kitchen should be no more then 8 metres from a window.	These units (have a depth of 8.4metres. All kitchens within prescribed depth.	Yes generally. Yes

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
APARTMENT MIX	To provide a diversity of apartment types, which cater for different household requirements now and in the future?	The proposal incorporates a mix of 1br, 2br and 3br units. The proposal provides for adaptable units in accordance with the relevant standards.	Yes.
BALCONIES	Primary balconies to be a minimum of 2 metres in depth.	Primary balconies are all an average of 2metres in depth.	Yes.
CEILING HEIGHTS	2.7 metres for residential levels.	2.7metres to all residential levels.	Yes.
STORAGE	To provide adequate storage for every day household items within easy access of the apartment and to provide storage for sporting, leisure, fitness and hobby equipment. At least 50% of required storage should be within each apartment.	Storage areas provided within each unit and basement based on rule of thumb (6m ³ – 1br; 8m ³ – 2br; and 10m ³ – 3br). 50% provided in each unit.	Yes.
DAYLIGHT ACCESS	Limit the number of single aspect apartments with a southerly aspect to a maximum of 10 percent the total units proposed.	There are 6 (10%) single aspect units which have a southern orientation.	Yes.
NATURAL VENTILATION	60% of residential units should be naturally cross ventilated. 25% of kitchens should have access to natural ventilation.	61%of all units are corner or cross through units which maximise natural ventilation. 50.8% of the units have externally located kitchens with natural ventilation.	Yes. Yes.
WASTE MANAGEMENT	Supply Waste Management Plan in conjunction with the DA.	A Waste Management Plan has been submitted	Yes.

(f) Liverpool Local Environmental Plan 2008***Permissibility***

A Residential flat building is permissible with Council consent in the R4 High Density Residential zone and the development satisfies the above definition.

Zone Objectives

The objectives of the R4 – High Density Residential are identified as follows:

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

The proposed development would meet and satisfy the above stated objectives. Specifically, the building will provide a total of 59 units with a mix of 3 bedroom, 2 bedroom and 1 bedroom, and a number of adaptable units.

The site is located in close proximity to both Liverpool Railway Station and retail and commercial facilities and the development does not result in the fragmentation of land. In this regard the site is the subject of a land swap, which if successful, will assist in the amalgamation of land within the adjacent B4 mixed-use area.

Principal Development Standards

The following principle development standards are applicable to the proposal:

CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.3 Height of Building	<p>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map</p> <p>Applicable Height limit to the portion of the site zoned R4 is nominated as "X" 45 metres.</p>	<p>The proposal provides a maximum height of 45m to the upper level of units. There is an encroachment to top of lift shaft.</p>	No, variation sought.

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CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.4 Floor Space Ratio	The floor space ratio is not to exceed 2.863:1 for the site area of 1,863m ² as per Clause 4.4(2B).	FSR for the site of 2.863:1 (5,328.18m ²). The proposed FSR is 2.96:1 (or 5514m ²). Minor variation of 185.8m ² (3.39%) A request to support the variation is made under clause 4.6.	No. variation sought
Clause 4.6 Exceptions to Development Standards	This clause provides for a degree of flexibility in applying development standards provided a better outcome can be achieved. The applicant is required to provide written justification for the variation and demonstrate that the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.	Submission made as part of the application.	
Clause 5.6 – Architectural Roof Features	Council may permit variations to the maximum building height for roof features of visual interest. The roof features must be decorative elements, and the majority of the roof must be contained within the maximum building height.	Submission made as part of the application.	.

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CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 5.9 – Preservation of Trees or Vegetation	Councils consent is required prior to the removal of any existing trees or vegetation.	The submission involves the removal of selected trees and vegetation. The development is accompanied by an integrated landscape plan.	Yes.
Clause 5.10 – Heritage Conservation	Council may, before granting consent to any development on land within the vicinity of land upon which a heritage item is situated, or a conservation area may require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned	The site is located adjacent to Bigge Park Conservation Area, and is in the immediate vicinity of other heritage items, namely: Light horse Park (Item 70) and a residential dwelling 'Del Rosa' (Item 106). The applicant has identified that the site is not located within a zone of archaeological sensitivity, or within an area in which Aboriginal sites, places or relics have been previously identified.	Yes
Clause 7.1 - Objectives for Development in Liverpool City Centre	Council must be satisfied that the proposed development is consistent with such of the objectives considered relevant to the development.	Objectives (a) to preserve existing street layout and reinforced rate character; (e) to reinforce Liverpool Railway Station and interchange as a major passenger transport facility. And (f) to enhance places of heritage significance.	Yes.
Clause 7.3 – Car Parking	Adequate on-site car parking must be provided, and it must be commensurate with the traffic likely to be generated by the development.	Car parking is provided in accordance with Liverpool DCP 2008. A traffic impact statement has previously been prepared and considered to be satisfactory.	Yes.

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CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 7.4 Building Separation in the Liverpool City Centre	A 9metre separation distance is required for parts of buildings between 12m and 25m in height on land in R4 High Density Residential zones	There is one adjoining building to the south which is 4 storeys with a height of approximately 12metres. The proposed building presents an irregular façade to the adjoining building but provides for a minimum separation of 9m at the closest point between the two buildings.	Yes
Clause 7.5 – Design Excellence In Liverpool City Centre	The objective of this clause is to deliver a high standard of architectural and urban design.	Submission made as part of the application.	Yes
Clause 7.7 Acid Sulfate Soils	The subject site is identified as Class 5 Land on the Acid Sulfate Soils Map. Works within 500m of adjacent Class 1, 2, 3, or 4 land that is below 5 metres AHD by which the water table will be lowered an Acid Sulfate Soils Management Plan is required.	The proposal provides two levels of basement car parking which requires excavation of up to 6 metres below natural ground level. The site is not within 500 m of class 1, 2, 3 or 4 land and consequently an Acid Sulfate Soils Management Plan is not required. A salinity assessment however has been undertaken and it was found that the soils and bedrock are non-aggressive to both concrete and steel consequently; a salinity management response is not required.	Yes
7.14 – Minimum Building Street Frontage	The aim of this clause is to ensure that visually buildings have an appropriate overall horizontal proportion compared to their vertical proportion, and to ensure that car parking is appropriately dimensioned and vehicular access is reasonably spaced.	The site has a 67metre frontage to Bigge Street which complies with the required 24metre requirement. Additionally it provides both pedestrian and vehicular access from Bigge Street. The lower levels of the building provide an appropriate mix of horizontal and vertical elements.	Yes.

1.1 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument

No draft environmental planning instruments apply to the site.

1.2 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan**(a) Liverpool Development Control Plan 2008 – Part 4 Development in Liverpool City Centre**

Liverpool Development Control Plan 2008 applies to the site. Part 1.1- General Controls for all Development; Part 1.2 - Additional General Controls for Development; and Part 4 - Development In the Liverpool City Centre of the Development Control Plan are relevant to the proposed development. An assessment of the proposal against the controls contained within Liverpool DCP 2008 are outlined in the table below:

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
CONTROLS	PROVIDED	COMPLIES
TREE PRESERVATION	The majority of existing trees and all other vegetation will be removed, however none deemed to be significant.	Yes.
LANDSCAPING	The proposal provides a landscape plan and design that is fully integrated with the proposed development and includes a report that assesses the potential salinity of the site. Conditions will be imposed regarding the provision of a detailed landscape plan.	Yes.
BUSHLAND AND FAUNA HABITAT PRESERVATION	The subject site is not located within the nominated zones. It does not contain any remnant bushland and is not adjacent to bushland areas.	N/A.
BUSHFIRE RISK	The subject site is not identified as bushfire prone land.	N/A.
WATER CYCLE MANAGEMENT	The proposed development provides a stormwater and hydraulic design that appears to be acceptable to Council. Conditions will be imposed regarding these matters. A Stormwater Drainage design has been prepared. The proposal does not provide for on-site detention.	Yes.
DEVELOPMENT NEAR CREEKS AND RIVERS	The subject site is not located within 50m of a water course, creek or river or within the nominated zones.	N/A.
EROSION AND SEDIMENT CONTROL	The proposed provides a soil and erosion control plan that appears to be acceptable to Council. Conditions will be imposed regarding this matter.	Yes.
FLOODING RISK	The subject site is not identified as flood liable land.	N/A.

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
CONTAMINATION LAND RISK	The proposal involves a change in land-use and a preliminary Hazard Analysis has been undertaken which concludes that the site has a low potential for contamination. Conditions will be imposed regarding this matter.	Yes.
SALINITY RISK	A report on the salinity, assessment of the site has been undertaken, which concludes that the site is not affected and a salinity management response is not required.	Yes.
ACID SULFATE SOILS RISK	The subject site is identified as Class 5 on the Acid Sulphate Soils Map. The site not located within 500metres of Class 1 – 4 land and therefore an acid sulphate soils management plan is not required.	Yes.
WEEDS	The site does not contain any known noxious weeds.	N/A.
DEMOLITION OF EXISTING DEVELOPMENT	The site has no buildings or structures but is used for car parking. All existing concrete and asphalt material will be removed in accordance with the submitted Waste Management Plan. Conditions will be imposed regarding this matter.	Yes.
ON-SITE SEWERAGE DISPOSAL	The subject site does not require on-site sewerage disposal as the area has access to sewer.	N/A.
ABORIGINAL ARCHAEOLOGY	<p>The site is located adjacent to Bigge Park Conservation Area, and is in the immediate vicinity of other heritage items, namely: Light horse Park (Item 70) and a residential dwelling 'Del Rosa' (Item 106).</p> <p>The applicant has identified that the site is not located within a zone of archaeological sensitivity, nor within an area in which Aboriginal sites, places or relics have been previously identified.</p>	Yes.
HERITAGE AND ARCHAEOLOGICAL SITES	<p>The site is located adjacent to Bigge Park Conservation Area, and is in the immediate vicinity of other heritage items, namely: Light horse Park (Item 70) and a residential dwelling 'Del Rosa' (Item 106).</p> <p>The applicant has identified that the site is not located within a zone of archaeological sensitivity, or within an area in which Aboriginal sites, places or relics have been previously identified.</p>	Yes, conditions will need to be imposed should the development be approved.

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
NOTIFICATION OF APPLICATIONS	The development application will be advertised in accordance with this component of the DCP. Submissions received during the exhibition periods are addressed later in this report.	Yes
PART 1.2 – ADDITIONAL GENERAL CONTROLS FOR DEVELOPMENT		
CONTROLS	PROVIDED	COMPLIES
CAR PARKING & ACCESS	Controls for car parking and Access are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
WATER CONSERVATION	Controls for Water Conservation are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
ENERGY CONSERVATION	Controls for Energy Conservation are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
WASTE DISPOSAL AND RE-USE FACILITIES	Controls for Waste Disposal and re-use Facilities are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE		
CONTROLS	PROVIDED	COMPLIES
BUILDING FORM BUILDING TO STREET ALIGNMENT AND STREET SETBACKS Street building alignment and street setbacks are to comply with Figure 3 which requires a 4 -4.5m setback. STREET FRONTAGE HEIGHTS The street frontage height of buildings must comply with the minimum and maximum heights above ground level on the street front as shown in Figure 5 which requires a street frontage height of 15-25m (5-7 storeys). BUILDING DEPTH AND BULK 500m ² maximum floor plate sizes and depth of buildings above 25m in height for residential development.	Varied profile however 4.0m minimum to Bigge Street. Minor encroachment of Sprinkler valve room on first floor and upper level balconies/shading devices by up to 1.200mm as allowed. The proposal provides for a height of 10m-13m (4 levels) to Bigge Street. A variation has been sought by the applicant. Floor plates of levels 10 and above under 500m ²	Yes. No. Yes.

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
<p>Maximum 20% of total gross floor area of development permitted for areas above 25m in height.</p> <p>BOUNDARY SETBACKS</p> <p>The minimum building setbacks are to comply with the following:</p> <p>Residential up to 12m in height:</p> <ul style="list-style-type: none"> - Habitable rooms: 6m side and rear setback - Non-habitable: 3m side; 6m rear. <p>Residential between 12 – 25m height:</p> <ul style="list-style-type: none"> - Habitable room: 9m side and rear - Non-habitable: 4.5m side; 6m rear. <p>Residential between 12 – 25m height:</p> <ul style="list-style-type: none"> - Habitable room: 9m side and rear - Non-habitable: 4.5m side; 6m rear. <p>Residential between 25 – 35m height:</p> <ul style="list-style-type: none"> - Habitable room: 12m side and rear - Non-habitable: 6m side; and rear. <p>Residential between 35 – 45m height:</p> <ul style="list-style-type: none"> - Habitable room: 12m side and rear - Non-habitable: 6m side; and 9m rear. <p>Rail Corridor</p> <ul style="list-style-type: none"> - Side or rear boundary - 12m setback. 	<p>Total GFA = 5,5143m² Area above 25m to be calculated by architect.</p> <p>Complies for both habitable and non-habitable rooms.</p> <p>Complies for both habitable and non-habitable rooms.</p> <p>Complies for both habitable and non-habitable rooms.</p> <p>Complies for both habitable and non-habitable rooms.</p> <p>Complies for both habitable and non-habitable rooms.</p> <p>Side (eastern Boundary) up to 2m to Private Open space and 4m to habitable rooms.</p>	<p>Would need to be addressed should the application be approved.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p> <p>No.</p> <p>No.</p>

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
SITE COVER AND DEEP SOIL ZONES SITE COVER The maximum site cover for development in residential zones is 50%. DEEP SOIL ZONES 15% deep soil zone plantings should be provided.	Maximum site cover is approximately 41% (763.5m ²). Deep soil zone planting complies with the minimum 24% (448.6m ²).	Yes. Yes.
AMENITY FRONT FENCES Front fences are to be designed to not present as a solid edge to the public domain. SAFETY AND SECURITY Ensure building design allows for passive surveillance. Maximise the number of residential front door entries at ground level. Provide entrances which are visually prominent positions. AWNINGS Weather protection to entrances is required.	Front fencing along Bigge Street and Speed Street have been designed and integrated into the design of the development providing pedestrian access points from both Streets. Building design allows for casual and passive surveillance. Restricted but well defined access at the ground level units which have balconies overlooking public areas. Entries are provided from both Bigge Street and Speed Street. Weather protected entrances are provided.	Yes. Yes. Yes. Yes.
TRAFFIC AND ACCESS ON SITE PARKING Car Parking For Residential Development: - 1 space per 1 or 2 bedroom apartments; - 1.5 spaces per 3 bedroom; - 1 space per 10 units for visitors REQUIRED:	Based on the table the following car parking is required: PROVIDED:	

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
Based on the above a total of 68 car parking spaces are required. 13x 1 bedroom = 13spaces 39 x 2 bedroom = 39 spaces 7 x 3 bedroom = 10 spaces A total of 59 units = 6 visitor spaces	The proposal provides for a total of 68 car parking spaces. 13 spaces provided 39 spaces provided 10 spaces provided 6 visitor spaces provided	Yes.
1 motorcycle space per 20 car spaces (3.65 required)	5 motorcycles spaces provided.	Yes.
1 bicycle space per 200 sqm (5,514.3m ² GFA) = 27.5 spaces	30 bicycle spaces provided within basement.	Yes.
ENVIRONMENTAL MANAGEMENT		
ENERGY EFFICIENCY AND CONSERVATION		
New residential development is to comply with BASIX	BASIX certificates will accompany the development application.	Yes.
WATER CONSERVATION		
New residential development is to comply with BASIX	BASIX certificates will accompany the development application.	Yes.

1.2.1 Non-compliances

Despite the non-compliances the proposal has demonstrated that it is consistent with the relevant zone objectives and satisfies the relevant development standards such as FSR and height as prescribed by LLEP 2008. The proposal is considered to satisfy the design principles as outlined in SEPP 65. The proposal has been considered by the Design Review Panel who considered that proposal to be satisfactory subject to some amendments which could improve the amenity of both future occupants of the development and existing residents in adjoining properties as well as the overall presentation of the development. Specifically:

- A formalised entry from the Speed Street frontage to the western end of the building has been created with the revised design, which includes a covered awning and ramped access leading directly from the Speed Street frontage entry via a tree-lined entry pathway through the landscaped open space on the western side of the building;
- Apartment numbers and the footprint for both podium and upper tower levels has been reduced by the reduction in apartment floor area, to reduce the overall Floor Space Ratio of the development;
- The street frontage podium façade design has been modified to create a more visually robust masonry base to the building with simple planar walls punctured by windows and balconies;

- The tower building northern façade to Bigge Street has been modified to incorporate extensive windows at the north eastern and north western corners of the building, with more diverse forms of varied balcony expression on differing levels of the building.

These changes have been incorporated into the amended proposal and result in a development that delivers a high urban design outcome that is appropriate for the site given its prominent corner location and the desired future character of the area.

The proposal provides for a mix of apartment types which includes the one, two and three bedroom units as well as two adaptable units on the ground floor. It is considered that the mix of apartment types provides additional housing choice and supports equitable housing access within the Liverpool city centre.

The development is accompanied by a concept landscape plan which illustrates adequate provision of deep soil zone planting. This ensures that a green outlook is provided for the development, which will further enhance the streetscape.

6.2 Section 79C(1)(a)(iv) - The Regulations

There are no matters prescribed by the Regulations that apply to this development.

6.3 Section 79C(1)(b) - The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

As outlined within the report the proposed development is unlikely to impact on the amenity of adjoining properties and the residential locality. It is considered that the proposed development is consistent with desired future character of the area.

6.4 Section 79C(1)(c) - The suitability of the site for the development

The subject site satisfies the relevant controls for site selection as outlined in both LLEP 2008 and DCP 2008.

6.5 Section 79C(1)(d) - Any submissions made in relation to the development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments

DEPARTMENTS	COMMENTS
Building	Conditions could be imposed should the application be approved
Heritage	No objection subject to conditions of consent should the application be approved
Engineering	No objection subject to conditions of consent should the application be approved
Landscaping	No objection subject to conditions of consent should the application be approved
Traffic	No objection however revised plans would need to be submitted to address car parking layout to ensure that compliance with AS2890.1 is achieved. This matter could be resolved through amended plans should the application be supported.

(b) External Referrals

DEPARTMENTS	COMMENTS
Design Review Panel	<p>As identified within the report concerns were raised by the Design Review Panel in respect to the original proposal.</p> <p>The revised application was presented and considered by the Design Review Panel where the Panel considered that the amendments made to the application are worthy of support.</p>
Railcorp	<p>In accordance with SEPP (Infrastructure) 2007 the development application was referred to Railcorp for concurrence.</p> <p>Rail Corp has requested a geotechnical and structural report that addresses the following matters prior to concurrence being obtained:</p> <ul style="list-style-type: none"> • Construction methodology with details pertaining to structural support during excavation. • Tracked monitoring requirements during excavation and construction phases • Cross-sectional drawings showing ground surface, rail tracks, subsoil profile and proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. • Rail safety plea including instrumentation and monitoring regime to be submitted for review. <p>Despite numerous requests this information has not been forthcoming and that concurrence from Railcorp has not been received.</p> <p>A full copy of all correspondence issued to Council from Railcorp is attached.</p>
NSW Police – Safer by Design	No objection subject to conditions of consent should the application be approved

(c) Community Consultation

The proposed development was initially advertised for fourteen days between 12 May 2010 - 27 May 2010 in accordance with Liverpool Development Control Plan 2008, Part 1.1 General Controls for all Development. During the advertising period Council received two written submissions and one petition (containing four signatures) all objecting to the proposal.

Following receipt of an amended development proposal, the application was subsequently re-exhibited for a period of 14 days between 4 May 2011 – 19 May 2011 in accordance with Liverpool Development Control Plan 2008, Part 1.1 – General Controls for all Development. During the second advertising period Council received six written submissions objecting to the proposal.

- Loss of privacy;
- Solar access,
- Amenity impacts including air, dust and noise;
- Impacts upon the health of residents’;
- Inappropriate built form including excessive height and visual impact;
- Increased traffic hazards and pedestrian safety;
- Impacts upon the structural stability of adjoining residential flat building due to excavation and construction works;
- Loss of vegetation;
- Loss of property values; and
- Interference with RailCorp access and maintenance gate.

The concerns raised in the submissions have been considered as part of this development application and are addressed under separate cover. While the recommendation of the development application is for refusal, it is not considered

6.6 Section 79C(1)(e) - The public interest

The development application results in an appropriate development considering the context of the site and the broader locality. In addition, the proposal as amended has been considered by the Liverpool Design Review Panel where it is noted that the proposal provides a suitable outcome for the site in relation to built form and future character of the area.

Notwithstanding the above, concurrence from Railcorp has not been provided and on this basis Council is not satisfied that the relevant provisions of the SEPP (Infrastructure) 2007 have been satisfied. In this regard, the application is not considered to be in the public interest.

7. CONCLUSION

The proposed development is permissible with consent in the R4 – High Density Residential zone. While the proposal does result in some non-compliances they are considered acceptable for reasons outlined within this report. Furthermore, should the application be approved it is acknowledged that appropriate conditions could be imposed to ensure an adequate outcome for the site and the broader locality.

However, despite the design aspects of the proposal being considered satisfactory clause 86(3) of State Environmental Planning Policy (infrastructure) 2007 provides that *‘the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARTC’*.

Clause 86 applies to the proposal as the development involves the *‘penetration of ground to a depth of at least 2m below ground level’* on land *‘within 25m (measured horizontally) of a rail corridor’* [clause 86(1)(b)].

To date the information required by RailCorp’s has not been submitted to its satisfaction and consequently it has not granted its Concurrence. As such the Consent authority is unable to grant consent to the development and it must be refused.

8. RECOMMENDATION

That Development Application DA1281/2010 be refused for the following reason:

1. The site adjoins a rail corridor and RailCorp has not issued its concurrence in accordance with clause 86(3) of State Environmental Planning Policy (infrastructure) 2007 as the applicant has failed to satisfy the following:
 - (a) Geotechnical and Structural report that meets the requirements of the attached brief.
 - (b) Construction methodology with details pertaining to structural support during excavation.
 - (c) Track monitoring requirements during excavation and construction phases.
 - (d) Cross sectional drawings showing ground surface, rail tracks, sub soil profile.
 - (e) Proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor.
 - (f) Rail safety plan including instrumentation and monitoring regime to be submitted for review.
2. The persons who made a submission with regard to the proposed development be notified in writing of Council's decision.