

COUNCIL ASSESSMENT REPORT

Panel Reference	2015SYW202
DA Number	DA-1070/2015
LGA	Liverpool City Council
Proposed Development	Construction of an eleven (11) storey commercial building over four (4) levels of basement car parking comprising ninety-five (95) car spaces to be used by Family and Community Services (FACS). The DA is accompanied by a Voluntary Planning Agreement in connection with the subject DA-1070/2015 for monetary contribution to be used by Council for the purpose of acquisition and creation of a laneway.
Street Address	25-33 Scott Street, Liverpool
Applicant/Owner	Applicant – Goldstein and Rush Pty Ltd Owners – Barclay Bannister Pty Ltd, Macquarie Learning Centre Pty Ltd, Faid Hatem, Theresa Hatem and Andrew Elazzi
Number of Submissions	One – submission has been resolved.
Regional Development Criteria (Schedule 4A of the Act)	The proposal has a capital investment value of over \$20 million, the Joint Regional Planning Panel is therefore the determining authority.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • <i>List all of the relevant environmental planning instruments: s79C(1)(a)(i)</i> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55). • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GREP). • Liverpool Local Environmental Plan 2008 (LLEP). • <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii)</i> <ul style="list-style-type: none"> • N/A • <i>List any relevant development control plan: s79C(1)(a)(iii)</i> <ul style="list-style-type: none"> • Liverpool Development Control Plan 2008 (LDCP). <ul style="list-style-type: none"> - Part 1 – General Controls for all Development. - Part 4 – Liverpool City Centre.

	<ul style="list-style-type: none"> List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv) A planning agreement relates to the site or proposed development for the following: The Development Application was accompanied by an offer by the Developer to enter into a Planning Agreement with the Council to make the Developer's Contribution. List any coastal zone management plan: s79C(1)(a)(v) The subject site is not within any coastal zone management plan. List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <p>Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC)</p>
Is a Clause 4.6 variation request required?	<p>Yes, in order to address the following:</p> <ul style="list-style-type: none"> Variation to FSR – Clause 4.4(2B) as per the LLEP 2008; and Variation to Building Separation in Liverpool City Centre – Clause 7.4 within the LLEP 2008.
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	The Special Infrastructure Contributions (SIC) does not apply to this proposal
Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?	Yes, and No
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Voluntary Planning Agreement Recommended Conditions Applicant's Joint Clause 4.6 Variation Statement Final Architectural Plans Statement of Environmental Effects Statement of Heritage Impact Design Excellence Panel Comments Submission Government Property NSW Letter to Council regarding use of building

Recommendation	Approval subject to conditions
Report prepared by	Michael Oliveira
Report date	October 2016

1. Executive Summary

Council has received a Development Application (DA) for the construction of an eleven (11) storey commercial building above 4 levels of basement car parking, comprising 95 spaces at No. 25, 29 and 33 Scott Street Liverpool, within the Liverpool City Centre.

The site is zoned B3 Commercial Core Zone under Liverpool Local Environmental Plan 2008 (LLEP), within which the proposed development is permissible with consent.

The Sydney West Joint Regional Planning Panel (JRPP) is the determining authority for the proposal, as the Capital Investment Value of the development is over \$20 million, pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979. Accordingly, this application has been referred to the JRPP for determination.

The key issues associated with the application relate to departures from FSR Clause 4.4(2B) and Building Separation Clause 7.4 development standards within the LLEP 2008.

The allowable FSR for the site is 5.42:1. The proposed development provides for an FSR of 8.42:1, which is a variation of 55.3%. As for the Building Separation development standard, the LLEP 2008 requires a minimum 12m separation be provided for parts of building between 25m and 45m in height above finished ground level and the proposal provides a building separation of 8.1m, which is a variation of 32.5%.

The departure from the development standards is supported by a Clause 4.6 Variation Statement from the applicant.

In addition, it is to be noted that the proposed development is significantly below the allowable building height for the site as per the LLEP 2008. The additional floor area is the product of the building being proposed to the boundaries, which is not dissimilar to other commercial buildings in the City Centre of Liverpool in terms of built form and scale.

As part of the DA, the applicant has entered into a Voluntary Planning Agreement (VPA) with Council to make a Developer's Contribution towards Council to acquire the Acquired Land for the purpose of a public laneway.

The DA was publically exhibited concurrently with the proposed VPA from the 10 August to the 7 September 2016 for a period of 28 days. As a result of the exhibition process, one submission was received in relation to the DA. The concerns of the submitter have been resolved following discussions between Council staff and the submitter whereby the submitter has provided a written response stating that their objection has been resolved through conditions of consent.

It should be noted that Draft Amendment No.52 to LLEP 2008, which has been publicly exhibited and has received gateway approval from the Department of Planning &

Environment, intends to rezone certain land within the city centre from B3 - Commercial Core to B4 - Mixed-use and modify development standards to allow a base FSR of 3:1 with a potential to upscale to 10:1 should certain criteria for the site be met. Although the subject site does not achieve all the prerequisites to attain a 10:1 FSR as per this amendment, it is considered that the proposed development is consistent with the direction of densities envisaged for land within this portion of Liverpool City Centre and in this regard the development, with the FSR variation proposed, is considered acceptable.

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act (EP&AA) 1979. Based on the assessment of the application, the consideration of the written requests to vary development standards and proposed the VPA associated with the DA, it is recommended that the application be approved subject to conditions.

2. Site and Surrounds

The subject site is located in the Liverpool City Centre and is within the commercial and retail core of the City Centre. It is zoned B3 Commercial Core Zone under LLEP 2008 and has a frontage to Scott Street and rear access to Railway Service Way.

The site is located amongst older style commercial buildings with fragmented lot sizes. This precinct is undergoing gentrification as it progresses toward higher density commercial uses for the future desired character of the area.

The site has frontage to Scott Street and vehicular access is to the rear via Railway Service Way and is known as 25, 29 and 33 Scott Street Liverpool. It is legally described as Lot 12 DP 262442, Lot 20 DP 1103972 and Lot 11 DP 262442.

The site comprises a total land area of 1,208.9m² and has a total frontage of approximately 29m to Scott Street and a rear frontage to Railway Service Way of approximately 28m.

There are currently three (3) commercial buildings standing on the site. It is noted that there is a Development Application currently with Council for the demolition of these buildings and demolition of these buildings are therefore not proposed as part of the subject DA. The site slopes from the south to north, with a gentle gradient from RL 23.90 to RL 22.68 over a distance of 43.56m.



Figure 1: Aerial Site Photo, Source: Evview Mapping

The area is predominantly dominated by older commercial building stock. A large serviced apartment building (Quest) has recently been erected to the west of the site. A public park is located to the south of the site. This provides public open space, public amenity and street parking in close proximity to the site.

There are a number of Heritage Items within close proximity to the subject site, as per the LLEP 2008 (See Figure 4). These include:

Item No.72 – Liverpool Railway Station Group, including station building, goods shed and jib crane.

Item No.74 – Commercial Hotel (former Marsden's Hotel).

Item No.89 – Plan of Town of Liverpool (early town centre street layout – Hoddle 1827).

Item No.101 – Commercial Building.

Item No.102 – Commercial Building (former out-building to former Golden Fleece Hotel and former Eugene's laundry).

Item No.103 – Golden Fleece Hotel.

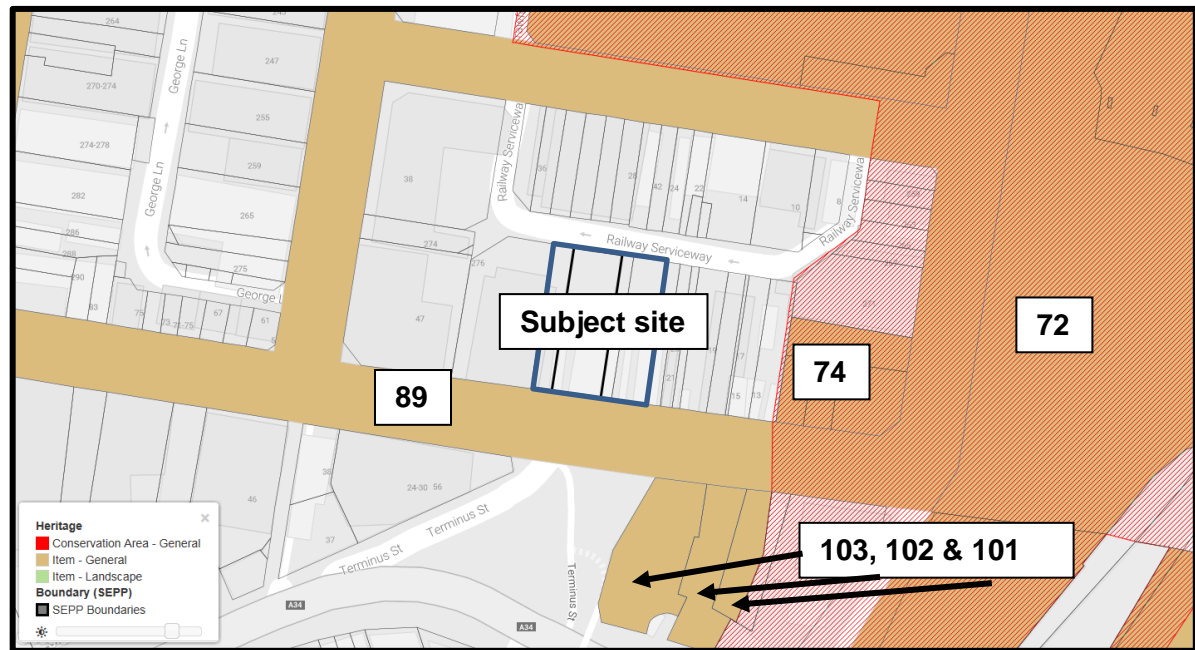


Figure 2: Heritage Items in the locality, Source: ePlanning Map

It is important to note that, Railway Service Way to the rear of the subject premises is not listed as part of the heritage road pattern.



Figure 3: View of part of site frontage from Scott Street, Source: Applicant



Figure 4: View of part of site frontage from Scott Street, Source: Applicant

3. Background

- On 26 August 2015, a pre-DA meeting was held with the applicant to discuss the proposed development, which included the construction of a 10 storey office over 4 levels of basement car parking.
- On 22 October 2015, the Design Excellence Panel (DEP) reviewed the proposed development and supported it in principle, with further consideration given to activation of the pedestrian laneway.
- The subject DA was lodged with Council on 3 November 2015.
- On 25 November 2015, the subject DA was considered by the JRPP at a briefing meeting.
- The DA is being considered concurrently with an offer by the Developer to enter into a VPA with Council to make a Developer's Contribution to acquire the Acquired Land for the purpose of a public laneway. The VPA was endorsed by Council at their meeting dated 29 June 2016. The DA was publically exhibited concurrently with the proposed VPA from the 10 August to the 7 September 2016 for a period of 28 days. No submissions were received in relations to the VPA. The JRPP as the consent authority has not a party to the formulation of the VPA.
- The acquisition of the laneway is likely to be gazetted in early November 2016, however it has been progressed to certainty and the VPA can be executed.

4. Proposed Development

The proposed development involves construction of an 11 storey commercial building 4 levels of basement car parking. The commercial building will be built to the site boundaries on all sides of the site. Construction works will include:

Basement Level 1 – 13 car parking spaces, 8 bike parking spaces, 2 loading bays, secure access gate, building plant, end of trip facilities, garbage room and lift and stair access to the floor above and below;

Basement Level 2 – 23 car parking spaces (3 being disabled accessible), 8 bike parking spaces, 2 motorbike spaces, end of trip facilities, building plant and lift and stair access to the floor above and below;

Basement Level 3 – 29 car parking spaces, 20 bike parking spaces, 2 motorbike spaces and lift and stair access to the floor above and below; and

Basement Level 4 – 30 car parking spaces, 22 bike parking spaces, 2 motorbike spaces and lift and stair access to the floors above.

Ground Floor – 780m² of commercial floor space with small retail premises opening onto proposed pedestrian laneway, two street access points, entry lobby, street awning, amenities, driveway access to basement and lift and stair access to floor above and below;

Level 1 – 1045m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 2 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 3 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 4 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 5 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 6 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 7 – 1050m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 8 – 1025m² of commercial floor space, amenities and lift and stair access to floor above and below;

Level 9 – 1025m² of commercial floor space, amenities and lift and stair access to floor above and below; and

Level 10 – Roof plant including lift overruns, roof terrace, lift and stair access to the floors below.



Figure 5: Front and Rear Elevations, Source: Group GSA

5. Planning Assessment

The following planning instruments, codes and policies have been considered in the planning assessment of the subject DA:

- Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment (Deemed SEPP).
- State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- Liverpool Local Environmental Plan 2008 (LLEP)
- Liverpool Development Control Plan 2008 (LDCP)

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979:

i. Section 79C(1)(a)(i) – Any Environmental Planning Instrument

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

The subject land is located within the Georges River Catchments and as such, The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River applies to the application.

The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

When a consent authority determines a development application planning principles are to be applied (Clause 7(b)). Accordingly, a table summarising the matters for consideration in determining development application (Clause 8 and Clause 9), and compliance with such is provided below.

Clause 8 General Principles	Comment
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Proposal reviewed by Council's Engineers and considered satisfactory
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	A Stormwater concept plan was submitted and reviewed by Council's development engineers.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Consistent with the strategy.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	Notification of a public authority was not required in this instance.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	The site is located in an area nominated for commercial development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application

Clause 9 Specific Principles	Comment
(1) Acid sulfate soils	The land is not identified as containing acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping.
(2) Bank disturbance	No disturbance of the bank or foreshore along the Georges River and its tributaries is proposed.
(3) Flooding	Subject land not flood affected.
(4) Industrial discharges	Not applicable.
(5) Land degradation	An erosion and sediment control plan aims to manage salinity and minimise erosion and sediment loss and is being addressed through a separate DA for demolition and excavation works.

(6) On-site sewage management	Not applicable.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Stormwater Concept Plan submitted.
(10) Urban development areas	The site is not identified as being located within the South West Growth Centre within the Metropolitan Strategy.
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control to be implemented during construction. Salinity measures to be implemented during earthworks and construction.
(13) Wetlands	Not applicable.

Given the above it is considered the proposal is consistent with the controls and objects of the GMREP No.2.

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

The objectives of SEPP 55 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to clause 7 of the SEPP, Council must consider:

- Whether the land is contaminated.
- Whether the consent authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

Comment: Council's records indicate that the uses on site have been predominately commercial in nature and the proposed development will maintain the commercial nature of the site.

The DA was assessed by Council's Environmental Management Section, who considered SEPP 55 and the possible contamination of the site. They raised no issue with regards to contamination and the subject site is considered appropriate for the development proposed.

Based on the above it can be considered that the proposal will satisfy clause 7 of SEPP 55.

c) State Environmental Planning policy (Infrastructure) 2007 (ISEPP)

The proposed development site is not located directly adjacent to any classified road or a road that has an annual daily capacity exceeding 40,000 vehicles per day. As such assessment under clause 101 and 102 of the ISEPP is not required in this instance.

The development does propose more than 10,000sqm of commercial floor area and therefore is considered to be a traffic generating development pursuant to Schedule 3 of the ISEPP. A referral to the RMS was required as part of the assessment of the application. RMS raised no objection to the proposal subject to conditions.

d) Liverpool Local Environmental Plan 2008

(i) Permissibility

The subject land is zoned B3 Commercial Core under the provisions of the LLEP 2008. The proposed development is most appropriately defined by the standard instrument as “Commercial Premises” which is a permitted land use in the B3 Zone. A commercial premise is defined as;

“commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises”

(ii) Objectives of the zone

The objectives of the B3 Zone under the LLEP are as follows;

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.*
- *To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.*
- *To facilitate a high standard of urban design and exceptional public amenity.*

It is considered that the proposal is consistent with the objectives of the B3 Commercial Core Zone. The proposed development offers a range of employment opportunities and contributes to the ability of Liverpool City Centre to become a regional business and retail centre for south western Sydney.

(iii) Principal Development Standards

The LLEP contains a number of principal development standards which are discussed with respect to the proposal as follows:

Development Provision	Requirement	Proposed	Comment
4.3 Height of Building	100m	Maximum height is 43.5m to top ridge level.	Complies
4.4 Floor Space Ratio	5.4178:1 as per clause 4.4(2)(B)(C)	8.4167:1 Exceedance of 2.9989:1 or 55.3%.	Considered acceptable – see Clause 4.6 - Variation assessment below.
5.10 Heritage Conservation	See assessment below	See assessment below	Yes
7.1 Objectives for development in Liverpool City Centre	No comment.	No comment.	Proposed development does not contravene the objectives of clause 7.1.
7.2 Sun access in Liverpool City Centre	N/A	N/A	The subject site is for commercial purposes, therefore this clause does not apply.
7.3 Car parking in Liverpool City Centre	Based on GFA minimum number of spaces required are 67	Proposed 95 spaces	Complies
7.4 Building Separation in Liverpool City Centre Non-compliance triggers from Level 6 on elevations plans.	12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use; and 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use.	This is triggered at RL 48.90 on the Scott Street elevation and RL 47.64 on the Service Way elevation. Proposal exceeds Building Separation requirements between 25m and 45m to the west by 7.4m and 8.5m at the front and rear of the site.	Considered acceptable – see Clause 4.6 - Variation assessment below. Building Separation to the east and north is also discussed below.
7.5 Design excellence in Liverpool City Centre	Must comply with objectives of 7.5(3)	The development was granted exemption from the design	Exemption Provided – The applicant has submitted

		excellence competition. This was granted on the basis that the activation of the laneway and materiality and detailing of the building meets the Design Review Panels requirements.	amended plans which relocate the electrical substations associated with the development within the ground floor of the proposed building and out of the proposed laneway, in order to promote the activation of this laneway and increase the likelihood of clear sight-lines and casual surveillance along this passage.
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Clause 4.6 – Exceptions to development standards

The objectives of Clause 4.6 are as follows:

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

Clause 4.6(3) prescribes:

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

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

Circumstances of variations proposed

The proposed variations to development standards made in accordance with Clause 4.6 of the LEP are as follows:

1. **Variation to Clause 4.4 – FSR:** Based on the subject site’s total site area, the total maximum FSR afforded to the site under clause 4.4(2B) is equal to

5.4178:1. Based upon the total proposed gross floor area of the development, the proposal seeks to achieve a FSR of 8.4167:1. That is 2.9989:1 (or 55.3%) greater floor space than the maximum permitted for the site.

2. **Variation to Clause 7.4 – Building Separation in Liverpool City Centre:** Based on the zoning of the site being B3 Commercial Core, the proposed building shall provide a minimum of 12m separation for parts of the building between 25m and 45m above finished ground level.

The height of the building at 25m above existing ground level is a height of RL 48.90 at the site frontage and RL 47.64 at the rear lane. There are no existing buildings 25m or greater adjoining the site, however the Quest building to the west is approximately 8.1m to 9.73m separated from the proposed building, above the 25m of building height. This only relates to approximately 7.4m of the overall height of the Quest Building at the front of the development site and correspondingly 8.5m at the rear, due to the slope of the site. This is a variation of approximately 32.5% or is deficient by 3.9m.

Written request addressing why compliance with the development standard(s) is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning ground to justify contravening of the development standard(s)

The applicant submitted a Joint Clause 4.6 Variation Statement to FSR and Building Separation Development Standards, dated 17 August 2016 in order to justify the variations described above. In conjunction with detailed examination of case law regarding 4.6 Variations judgements, this document provides the following justifications based on the merits of the proposal:

Variation to FSR, Clause 4.4:

- *The extent of the maximum building height permitted in the B3 zone is inconsistent with the maximum density allowed, which is further adversely affected by the building separation requirements. To conform to the density and height provisions under LEP 2008, would likely result in a skyscraper-type that would be incompatible with existing development in the vicinity.*
- *The development incorporates a clear lower, middle and top façade approach that breaks down the appearance of bulk of the building, with any services on the roof neatly shielded from public view.*
- *The development is consistent with similar and nearby developments in the city centre that are up to 11 storeys in height; whereas were the development was to be compliant with the maximum permitted building height for the site would be in contrast 30 storeys in scale.*
- *To distribute the maximum permitted floor space per the FSR for the site over the 30 storeys that could be achieved for the site would result in significantly diminished floor areas for each level of only 218m² for each floor, whereas the development seeks to provide floor plates that are to be far larger or nearly 5 times this.*
- *The first tenant for the building being Department of Family and Community Services will be a singular tenant for the premises, such that cohesive and less fragmented floor spaces will provide for more integrated and productive working*

arrangements for staff as required by their specifications and will meet the desired outcome sought by the tenant.

- These outcomes are not exclusive to this government tenant, but would be expected outcomes for other office type business that could later accommodate the development.*
- To this end the proposal adopts a standard commercial floor plate design that could accommodate various types of commercial entities, which in itself would be more attractive to future occupants and would help safeguard the building designed to specific to the needs of the new Government tenant.*
- The proposal creates large, open floor plates that also can accommodate scale of efficiencies. The design seeks to locate plant and equipment to the roof space which then helps to maximise light penetration across the commercial floors and facilitate typical modern open plan office development.*
- The building is required to incorporate a large number of lifts per the specifications of the new tenant, which in itself consumes valuable floor space. The larger floor plates enable this to be accommodated for while ensuring that adequate working spaces are afforded. The inclusion of a large number of lifts will also make the building highly accessible.*
- The desire by the Government tenant to ensure the development is fully accessibly throughout per AS 1428.2 will not only benefit this tenant, but will be a legacy that the building will retain such that future tenants will also benefit from equitable access for all.*
- The larger floor plates will lend themselves to more creative use and layouts of the internal space, including different types of workspaces (such as touchdown spaces) and to include a broader range of technologies.*
- To accommodate a higher ratio of employees to floor space, where NSW Government requirements seek to apply 1 employee to 15m², the proposed development will be 1 employee to 10m².*
- Per the NSW Government guidelines, the minimum floor plate requirement is 1,000m² NLA; therefore if the development was to include less internal floor space per floor the development would not be feasible to the future Government tenant.*
- The grid-like pattern of the roads in the Liverpool City Centre coupled with small and narrow allotments adversely affects the achievement of a sufficient site area to accommodate a skyscraper type commercial building as envisioned and reflected in development standards under LEP 2008, which fully reflecting the upper limited setbacks.*
- The density restrictions are evident in the built form outcomes of other nearby similar commercial developments which have been developed up to 11 storeys with minimum building separation.*
- The apparent bulk and scale of the development is consistent with other commercial developments in the City Centre with an improved visual outcome due to its modern expression and articulation.*
- The proposal mimics the existing streetscape pattern of the City Centre, which is typically characterised by new and older commercial developments built to side boundary lines to present a continuous streetscape and maximises private/public domain interaction.*

- *A proposal with reduced density would likely result in a development with the upper levels incorporating large setbacks from adjoining developments, while not being able to achieve an increase in height due to the width of the street frontage. This would result in reduced commercial floor space overall in the proposal restricting the site from being suitable for future employment opportunities in the city centre.*
- *A scheme conforming to the maximum density, height and building separation permitted would result in an alternate building that is not developable over 45m due to the need to provide 28m in building separation. The likely small floor plates would not be conducive to modern commercial office space requirements, which often include open plan arrangements and a need to maximise employee engagement and opportunities for meetings rooms over large floor plates.*
- *The NSW Government's Section 117 direction for employment lands, which applies to the site, is achieved given a suitable quantum of floor space is provided to encourage and provide for employment generating development. Reference should be made to the letter submitted by Colin West, Executive Director of Leasing, NSW Government Property, to Council on 27 November 2015 to the proponent, which illustrates that a future Government anchor tenant is able to potentially secure at least 5,000m² of the future commercial floor space. This letter gives support to the large floor space to accommodate a commercial tenant such as a branch of the NSW government, and would likely appeal to other similar or private sector tenants who may also wish to be associated or work with the NSW Government tenant.*
- *A compliant scheme is also expected to contribute towards increased building costs due the significant height of such a building, potentially not making a fully compliant scheme economically viable.*

Variation to Building Separation in Liverpool City Centre, Clause 7.4:

- *Most commercial developments of similar scale (up to 11 storeys) in the city centre have been developed to all boundaries so that future abutment may take place by adjoining developments to improve the urban outcome of the centre. This future proofing design is evident in the design of the Quest Building to the west and at 269 Bigge Street, where side boundaries walls are blank and the buildings are built to boundary.*
- *This same design for the proposed development is considered a more appropriate outcome in terms of visual appeal and a superior built form outcome than a commercial building incorporating unsustainable setbacks, which would neutralise the commercial appeal on the upper levels of the building. As stated previously in this report, the achievement of adequate floor plates within a commercial development proposal is key to ensuring maximum flexibility and to encourage modern office tenants.*
- *To inset the building to fully accommodate the required 12m setback to the west would make the proposed development appear uneven if only applied to this side, and if were to be applied to both sides would reduce the overall floorplate by 8m overall and would create 'wedding cake' appearance to the building, rather than a uniform built form atypical of commercial buildings (see Figure 7).*



Figure 6: Building Separation to Quest Building on the proposed western elevation

- This reduction in floorplate is also not considered feasible to achieve the type of commercial floor area that is attractive to potential tenants on these levels. In this regard, the proposal would be unable to meet the zone objectives and the Liverpool city centre objectives, which is discussed further in this document.*
- The result of a compliant scheme would also make the appearance of the proposed building inconsistent with the adjoining Quest building which has been built to boundary, and that has ironically been designed to accommodate the same built setback outcome on the corresponding and adjoining site. Moreover, the separation proposed will not impact upon the visual privacy of any of the guests or workers at the Quest building, as none of the windows face the proposed development.*

Refer to the applicant's Joint Clause 4.6 Variation Statement to FSR and Building Separation Development Standards, dated 17 August 2016 in attachment XX, for a comprehensive examination of case law regarding the Clause 4.6 Variation in relation to the subject proposal. The examination of this case law by the applicant is considered acceptable in support of the proposed variations.

Council Assessment of variations proposed

Due to the tenant specific building requirements listed above including: minimum floor plate sizes of 1000m², staff to floor area ratios and the desired office amenity standards for government employees required by Family and Community Services (FACS); the ability to find an appropriate development site within Liverpool City Centre, or most town centres, is considered to be greatly constrained.

In this regard, the subject site was chosen by FACS due to its location within the city centre providing high level accessibility to services (ie. public transport, other community facilities and organisations, etc.) and because the site is able to accommodate the specific tenant required floorplates of 1000m².

Accordingly, before considering the merits of the proposed variations to FSR and building height quantitatively it is important to note that the future tenant, FACS, currently provides essential services to the community of Liverpool City Centre, the LGA and to the region. Outside of Liverpool City the closest FACS centres are located at Campbelltown, Fairfield, Ingleburn or Bankstown. As such, the location of a FACS centre within Liverpool City Centre, is considered crucial in maintaining essential community services within a region of Sydney that is characterised by lower-socio-economic statuses and people that highly demand the services FACS offers. Upon completion of the proposed development at the subject site, FACS would be discontinuing use of the current FACS office in Moore Street, Liverpool and two other offices in the surrounding areas listed above, with the intention to create a regional office within the proposed building. It is intended that the proposed regional office would provide 24 hour FACS services to the community and the region. In the absence of the proposal, FACS is likely reevaluate its operation in Liverpool and if FACS moved its intended regional office out of the Liverpool area it is considered likely to be detrimental to the locality.

When examining the merits of varying numerical standards without considering the tenant, it should be noted that the height limit for the site is 100m as per the LLEP 2008. In this regard, the applicant has proposed a modest building in relation to the desired future character of the streetscape. As such, there is considered to be a disparity between envisaged building heights of the locality and the supporting FSR to accommodate those heights. Notwithstanding this, the proposed building height of 43.5m (11 stories) is considered to be in tune with immediately surrounding commercial towers, which are approximately 10 to 8 stories tall and built to their boundaries, like the proposal. Accordingly, the bulk and scale of the development is considered to be acceptable based on the existing character of the area and thus the FSR non-compliance is considered acceptable in this regard.

With regards to building separation the objectives of this development standard are to maintain quality visual appearance, privacy and solar access in the city centre. Figure 8 below demonstrates solar accessibility to the south, showing both the subject development and the existing Quest building including the 8.1m separation at a height of 25m above ground level. These images depict what is considered to be an acceptable level of solar access for the adjacent commercial developments on the southern side of Scott Street.



Figure 7: Overshadowing, mid-winter, from the proposed commercial tower at 9am, 12pm and 3pm, Source: Applicant

Further to this, non-compliance with the building separation is not considered likely to detract from any visual privacy currently enjoyed in the locality, as views to the west of the office will be on to a blank wall and views to Scott Street and the Service way are likely to provide casual surveillance to these public areas. The non-compliance is also not considered to detract from any visual appearance currently enjoyed in the locality. The application was submitted to Council's Design Excellence Panel who were supportive of the building's appearance and the buildings visual impacts on surrounding heritage items was considered acceptable by the applicants heritage consultant and Council's Heritage advisor.

Accordingly, the development with the variations proposed would facilitate the employment of 1000 employees and would retain essential FACS services that are currently provided on Moore Street in the city centre. Maintaining this employment base, which is set to increase, is considered likely to contribute to economic benefits for the city centre as employees and visitors to the site are likely to service the surrounding city centre on trips to and from the proposed development. Council's Community Planning officer provided comments in support of the economic benefits to the locality with the inclusion of the regional FACS office in the city centre.

Furthermore, FACS has a minimum 10 year lease period to utilise the proposed building which will ensure that these essential services and employment benefits stay within the Liverpool City Centre for at least a decade after it is first occupied.

It has become apparent from this assessment that the variation to FSR and building separation stems from the applicant's specific tenant floor plate and locational requirements. Considering that the proposed development would provide 24 hour family and community services to the region and consolidate those services into one regional office in order to improve service provision, the applicant is limited in their scope and time to 'shop around' for a compliant site. Based on these circumstances the proposed variations to FSR and Building Separation in Liverpool City Centre made in accordance with Clause 4.6 of the LEP by the applicant are considered acceptable.

As a result of the assessment above, it is also considered that compliance with both development standards is unreasonable or unnecessary due to the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standards. The objectives of the FSR and Building Separation clauses have been addressed below, as well as the objective of the zone.

Consistency with objectives of the development standards being varied

Objectives of Clause 4.4 Floor space ratio:

- (a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*

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

Objectives of Clause 7.4 Building separation in Liverpool city centre:

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

Comment: Based on the planning assessment of Clause 4.6 Variation provided above, the development is considered consistent objectives of Clause 4.4 – Floor space ratio and Clause 7.4 – Building separation in Liverpool city centre, as per the LEP.

Consistency with objectives of the zone – B3 Commercial Core

Objectives of Zone B3 – Commercial Core

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.*
- *To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.*
- *To facilitate a high standard of urban design and exceptional public amenity.*

Comment: Based on the planning assessment of Clause 4.6 Variation provided above, the development is considered to be consistent with the objectives of Zone B3 Commercial Core, as per the LLEP.

Consistency with Clause 4.6 objectives

Objectives of Clause 4.6 Exceptions to development standards:

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

It is considered appropriate in this instance to apply a degree of flexibility when applying the maximum FSR and building separation development standards applicable to the subject site based on the town planning assessment of the Clause 4.6 Variation provided above. It is considered that achieving a greater FSR and reduced building separation in this instance will maintain the provision of essential community services to the LGA in an area of high accessibility.

Recommendation

With considerations to the discussion above, the proposed variations to Clause 4.4 – Floor space ratio and Clause 7.1 – Building separation in Liverpool City Centre, have satisfied the provisions of Clause 4.6 and are supported in this circumstance.

Clause 5.10 Heritage Conservation

The objectives of clause 5.10 are as follows;

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Liverpool,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Other pertinent sub clauses under clause 5.10 that apply to this site are as follows;

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document 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.*

Heritage Items

Comment: The subject site is within proximity of 6 identified heritage items under schedule 5 of the Liverpool Local Environmental Plan 2008. The items in the vicinity of the development are identified as follows;

Item No.72 – Liverpool Railway Station Group, including station building, goods shed and jib crane.

Item No.74 – Commercial Hotel (former Marsden's Hotel).

Item No.89 – Plan of Town of Liverpool (early town centre street layout – Hoddle 1827).

Item No.101 – Commercial Building.

Item No.102 – Commercial Building (former out-building to former Golden Fleece Hotel and former Eugene's laundry).

Item No.103 – Golden Fleece Hotel.

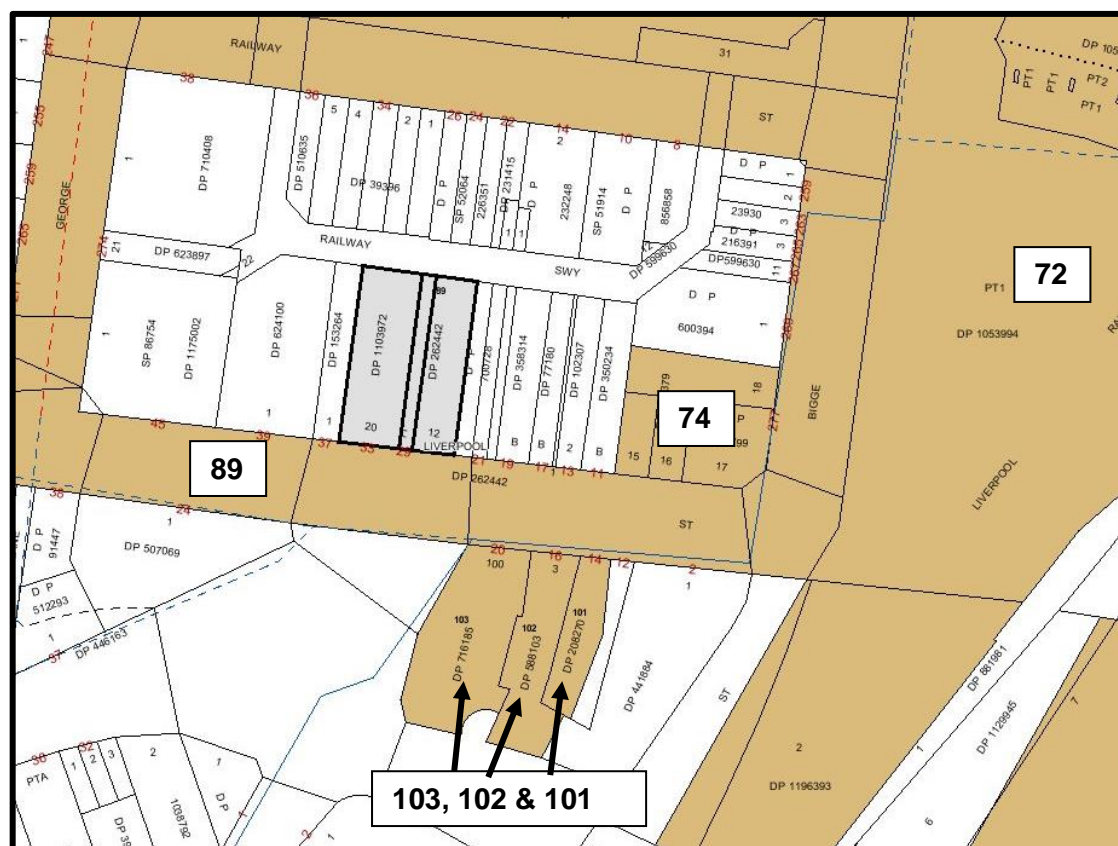


Figure 8: Heritage Items in the locality, Source: Eview Mapping

It is considered that the proposal would not generate any adverse impacts on the heritage significance of either the former Marsden's Hotel, Golden Fleece Hotel, the two heritage commercial buildings (Items 101 and 102), the historic street layout or the Railway Station structures as per the assessment below.

As part of the proposal the applicant submitted a Statement of Heritage Impact, dated November 2015. The statement was prepared to determine the potential heritage impact of the proposed commercial tower on the above-mentioned items. The conclusion of the heritage impact statement provides that, although the proposed development will change the streetscape setting it would not diminish the heritage significance of the nearby heritage items along Scott Street; therefore the development is acceptable from a heritage perspective. It is outlined in the statement that:

"The curtilages of the nearby heritage items [74, 101, 102 & 103] are their allotments combined with the adjacent sections of public roadway [Item 89]. The proposed works do not intrude into the curtilage of nearby heritage items. The concentration of heritage items on the southern side of Scott Street and at the east end is likely to preserve a traditional scale of development here of one-to-three storeys.

The contrast in scale between the subject development and the nearby heritage items that are of typically two-to-three storeys would be clear. The development is not strictly adjacent to a heritage item; a development of the proposed scale will fit into the desired future character described in the Liverpool Local Environmental Plan, of which there are many precedents of development reaching to a similar scale.

The proposed works will continue the transformation of the Liverpool business district as envisaged in the LEP. The development will have no impact on the visibility of the

nearby heritage items, though their streetscape setting would be changed. The public will still be able to appreciate the significance of the nearby heritage items.

The proposed works would not block any known significant view between heritage items. The development would limit some views of the sky from the heritage items on the south side of Scott Street, though this is not a heritage view...

The subject proposal was also reviewed by Council's Heritage Officer in February 2015. Council's Heritage Officer generally agreed with the findings of the submitted Statement of Heritage Impact, dated November 2015. In regards to the building design and scale Council's Heritage officer stated:

"The proposed development is obviously modern in design and materials and does not attempt to mimic the historic structures in the vicinity. It is built to the boundary and respects the orientation and siting of extant development in Scott Street. The simple design built hard up to the boundary allows the landscaped setting of the Golden Fleece Hotel to the south-east to stand out and create a point of difference."

Accordingly, the proposal is not considered to encroach on the physical curtilage of the items across Scott Street. It is also noted by Council's Heritage Officer that the desired future character of the area allows for higher scale and bulk than proposed, buildings up to 100m in height, and that there are existing commercial towers with similar scale and bulk proposed in Scott Street and the city centre. Accordingly, the subject development would not detrimentally impact the heritage significance of items in the area beyond the impacts of the current character of this part of Liverpool City Centre.

On the above basis, the proposed development is considered to comply with clauses 5.10(4)(5), in that the proposed development will not generate a detrimental impact on the significance of the heritage items. As the proposal generally represents a positive response to the surrounding heritage items, with the recommended inclusion of historic material finishes on the Scott Street façade, it is considered the proposal is worthy of support in this instance.

Archaeological Sites

The subject site was identified in the 1996 archaeological management plan as having high archaeological potential and significance. As such, consideration pursuant to clause 5.10(7) must be undertaken. Clause 5.10(7) states the following;

(7) *Archaeological sites*

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):

- (a) notify the Heritage Council of its intention to grant consent, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment: Historical evidence suggests that various structures were built and subsequently demolished on the site through the 19th and 20th centuries.

As a consequence of the above the applicant addressed the archaeological potential of the site as part of the submitted Statement of Heritage Impact, dated November 2015. The report concluded that due to the site disturbance over time, no further action is required with regard to the historic European Archaeological record within the project area. The report also recommended that in the 'unlikely' event any Aboriginal objects or places of Aboriginal heritage significance are identified then all works shall cease and the Office of Environment and Heritage (OEH) be contacted.

The archaeological component of the statement was reviewed by Council's Heritage Officer and it was concluded that the assessment provided is sufficient at this stage. It was concluded that due to the use of the site since the early 1900s that the likelihood of intact historical archaeological deposits of significance being conserved is low. As such no further assessment is required.

Clause 5.10(7) states that Council is to notify the OEH and seek any comments within 28 days, before granting consent on a site identified as an archaeological site. In this instance it is considered that a referral to the OEH will not be required due to the site disturbance undertaken on site through the 19th and 20th century. Both the archaeological assessment and Council's Heritage Officer concluded that the likelihood of intact deposits of significance being conserved to be low. As such the potential for the development site to still be considered an archaeological site has significantly diminished. As such a referral to the OEH in this instance is not considered necessary.

Notwithstanding the above a condition of consent will be imposed specifying that, should any historical artefacts be uncovered during excavation, all work is to cease and the Heritage Division of the OEH be contacted to guide appropriate actions under the heritage Act 1977.

Clause 7.14 – Building Separation in Liverpool City Centre (East and North)

It should be noted that the proposed building may not be consistent with building separation objectives on the eastern side boundary, for parts of the building above 25m and up to 45m above ground level, as the proposed building is to be built to the eastern side boundary without regard to the 12m of building separation requirements to future buildings. Notwithstanding this, the incorporation of building separation provisions into the proposed development and to the east is not considered necessary in this case.

The existing character of the streetscape is dictated by commercial towers with zero setbacks to their side boundaries. This built form would create consistent street edge buildings along Scott Street. In this regard, providing for building separation to the east is not considered necessary and the development of this site is considered likely to facilitate the continuation of commercial buildings built to their side boundaries and to reinforce the definitive built edge presenting to Scott Street.

Building separation to the north also appears to be inconsistent with intention of building separation requirements, as the proposal has not made provisions for building separation to be shared with the adjacent northern site, above 25m. Concern is raised that this may result in building separation issues with future developments to the north of the subject site, however, this is considered to be adequately negated by the commercial use of the proposed building.

Typically, building separation in the City Centre is required to maintain adequate privacy and solar amenity of developments. If development of the northern site was to occur there is likely to be minimal solar access impacts to any future occupants of the proposed office as there is no residential components to the proposal. In addition, privacy issues are unlikely to be created with any future development of the northern sites, as future occupants of the subject site will be commercial tenants with lower level visual and acoustic prerequisites. Accordingly, the development potential of the adjacent northern site is unlikely to be prejudiced by lack of building separation inclusions within the subject development and building separation to the north is considered acceptable in this case.

Accordingly, building separation to the north and east is considered acceptable in these circumstances.

ii. Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments

Draft Amendment 52 to LLEP 2008 seeks to rezone certain land within the Liverpool City Centre from Zone B3 - Commercial Core to B4 - Mixed-use and to modify development standards applying to a number of lots currently zoned B4 - Mixed-use. A critical part of the plan is to improve access to and connectivity within Liverpool City Centre, Council intends to extend laneways through to streets so that there are clear sight lines and create arcades and cross block links. Other upgrades to infrastructure (the provision of further electricity substations, the possible undergrounding of electricity cables) will progress over time as necessary.

Draft Amendment No.52 also seeks to allow a base FSR of 3:1 and a building height of 28m in the subject part of the city centre, with the potential for sites to upscale to FSR's of 10:1 with no height limits should certain site criteria be met. This criteria includes having a minimum site areas of 1,500m², dual street frontages and ensuring the development provides a public benefit, i.e public parking and open space.

While it is noted that the subject site, being 1,200m², would not achieve the 1,500m² site area requirement to attain a 10:1 FSR as per this amendment, it is considered that the proposed development is consistent with the direction of densities envisaged for land within this portion of Liverpool City Centre. The current controls relating to the B3 Zoned land allow a maximum building height of 100m but permit a FSR of only 5.4178:1, making the building height unachievable in most circumstances.

The Draft Amendment 52 has been publicly exhibited and has received gateway approval from the Department of Planning & Environment and does not require any further consideration in relation to the subject DA.

With regards to the subject application, the proposal is likely to facilitate an urban form that responds to the character of the specific precinct and is able to incorporate different building typologies and offers a range of economic opportunities in the city centre, which supports the intention of Amendment No.52.

iii. Section 79C(1)(a)(iii) – Any Development Control Plan

Liverpool Development Control Plan 2008

The Liverpool Development Control Plan 2008 (LDCP) Part 1 is applicable to the proposed development. The key controls in the LDCP are discussed below:

Controls	Comment	Complies
PART 1 - GENERAL CONTROLS FOR ALL DEVELOPMENT		
2. TREE PRESERVATION	No trees on site.	YES
3. LANDSCAPING	N/A	YES
4. BUSHLAND AND FAUNA HABITAT PRESERVATION	N/A	N/A
7. DEVELOPMENT NEAR A WATERCOURSE	Subject site is not near a watercourse or river	N/A
8. EROSION AND SEDIMENT CONTROL	Will be addressed through conditions of consent.	YES
9. FLOODING RISK	Subject site not flood affected	YES
10. CONTAMINATION LAND RISK	Assessment under SEPP 55 detailed above	YES
11. SALINITY RISK	Proposal will not have detrimental impacts on salinity	YES
12. ACID SULFATE SOILS	Site is not affected by Acid Sulfate Soils	N/A
13. WEEDS	No identifiable noxious weeds on site	N/A
14. DEMOLITION OF EXISTING DEVELOPMENT	Subject to separate application for approval	N/A
15. ON-SITE SEWERAGE DISPOSAL	N/A	N/A
16. ABORIGINAL ARCHAEOLOGICAL SITES	Assessed above	YES
17. HERITAGE AND ARCHAEOLOGICAL SITES	Assessed above	YES
18. NOTIFICATION OF APPLICATIONS	Application was not notified in accordance with DCP.	N/A
19. USED CLOTHING BINS	N/A	N/A
20. CARPARKING AND ACCESS	Proposal Complies	YES
Car parking requirements covered by Clause 7.3 of the LLEP 2008		
21. SUBDIVISION OF LAND AND BUILDINGS	No subdivision proposed	N/A
22. WATER CONSERVATION	The Stormwater Quality Assessment (Van Der Meer, 2015) submitted with DA -1070/2015 addresses how stormwater runoff will be managed, devices to control water quality and reduce pollutants. It is proposed that the 25kL rainwater tank be used for toilet flushing with a total daily demand of 2.5kL.	YES

	A rainwater reuse tank with a minimum volume of 25kL is proposed in the plant area on the roof of the building with approximately 60% of the site area draining to this tank. Further details will be provided at Construction Certificate Stage.	
23. ENERGY CONSERVATION	<p>A BCA Report was prepared by Blackett Maguire and Goldsmith (15 October 2015) and was submitted with DA -1070/2015.</p> <p>The requirements of BCA Section J <i>Energy Efficiency</i> are included in the report. The BCA requirements are identified in regards to insulation of the building envelope, energy efficiency requirements for glazing, air conditioning and ventilation systems, artificial lighting and power, hot water supply, and access for maintenance and monitoring.</p> <p>An Environmental Sustainable Design Report is being prepared and will address the energy efficiency requirements of Section J of the BCA and Liverpool DCP 2008. It is planned that this report be submitted to Council at Construction Certificate Stage.</p>	YES
25. WASTE DISPOSAL & RE-USE FACILITIES	Consent will have necessary conditions imposed regarding waste disposal	YES
26. OUTDOOR ADVERTISING AND SIGNAGE	N/A	N/A
27. SOCIAL IMPACT	The application was referred to Council Community Planner to provide comment with regards to the social impacts of the proposal. The Community Planner noted that the proposed development would have a positive impact on the locality socially and economically.	YES

The Liverpool Development Control Plan 2008 (LDCP) Part 4 is applicable to the proposed development. The key controls in the LDCP are discussed below:

Controls	Comment	Complies
PART 4 - DEVELOPMENT IN LIVERPOOL CITY CENTRE		
2. Controls for Building Form		
2.1 – Building Form		
Subject Site located within the residential area in accordance with the DCP		
Street Setbacks		
1. Street building alignment and street setbacks are to comply with figure 3. Subject site requires a 0m street setback.	Zero setback to all boundaries proposed.	YES
2. External facades of buildings are to be aligned with the streets that they front.	Noted.	
3. Notwithstanding the setback controls, where development must be built to the street alignment (as identified in Figure 3), it must also be built to the side boundaries (0m setback) where fronting the street. The minimum height of development built to the side boundary is to comply with the minimum street frontage height requirement.	Noted.	
Street Frontage Heights		
1. Street Frontage height of buildings must comply with the minimum and maximum heights above mean ground level on the street front as shown in figure 5. Subject site requires 16-26m or 4 to 6 storeys	Street frontage height achieved up 26m.	YES
Building Depth and Bulk		
1. The maximum floor plate size and depth of buildings are specified and illustrated in Figure 6 and table 1 above street frontage height. Subject	Floor plate maximum of 1,050sqm and complies; and building depth 30m and does not comply.	NO – considered acceptable as per reasons for Clause 4.6

<p>site requires 1,200sqm floor plate and 30m maximum building depth.</p> <p>2. Notwithstanding the above, the component of a building above the maximum specified street frontage is not to have a building length in excess of 45m.</p> <p>3. Maximum floor plate sizes only apply above street frontage height levels.</p> <p>4. All points on an office floor should be no more than 10m from a source of daylight (eg. window, atria, or light wells) in buildings less than 25m in height, and no more than 12.5m from a window in buildings over 25m in height.</p> <p>Boundary Setback and Building Depth and Bulk</p> <p>1. The minimum building setbacks from the front, side and rear property boundaries are specified in table 2.</p> <ul style="list-style-type: none"> ➤ Up to permissible SFH level requires Nil setback to side and rear ➤ From SFH to 45m, a minimum of 6m side and rear setback is required <p>2.2 – Mixed use Buildings</p> <p>2.3 – Site Cover & Deep Soil Zones</p> <p>1. Site coverage maximum is 100% for development in commercial core</p> <p>2.4 – Landscape Design</p>	<p>Building depths above the SFH are 43m and do not exceed this requirement.</p> <p>Noted.</p> <p>On levels 1-8, internal access to sunlight is available from the western, southern and northern façades. There is no glazing proposed on the eastern façade. Internal access to light will comply with BCA requirements and shall be conditioned accordingly.</p> <p>Proposal is not consistent with setback requirements and proposes zero setbacks to all boundaries for all eleven stories of the development.</p> <p>N/A – no mixed use proposed.</p> <p>100% site coverage proposed.</p> <p>N/A</p>	<p>Variation Statement assessed above.</p> <p>YES</p> <p>To be conditioned.</p> <p>NO – considered acceptable as per reasons for Clause 4.6 Variation Statement assessed above.</p> <p>N/A</p> <p>YES</p> <p>N/A</p>
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[illegible]

<p>- demonstrate the application of "safer-by-design" principles.</p>		
<p>3.2 – Active Street Frontages & Address</p>		
<p>1. Active frontage uses are defined as one of a combination of the following at street level:</p> <ul style="list-style-type: none"> - entrance to retail, - shop front, - glazed entries to commercial and residential lobbies occupying less than 50% of the street frontage, to a maximum of 12m frontage, - café or restaurant if accompanied by an entry from the street, - active office uses, such as reception, if visible from the street, and - public building if accompanied by an entry. 	<p>Achieved through the proposed café, along Scott Street.</p>	<p>Yes</p>
<p>2. Active street fronts are required on ground level of all areas identified in Figure 11, including adjacent through block connections.</p>		<p>Considered Acceptable</p>
<p>3.3 – Front Fences</p>		
<p>3.4 – Safety & Security</p>	<p>N/A</p>	<p>N/A</p>
<p>1. Address "Safer-by-Design" principles to the design of public and private domain, and in all developments (including the NSW Police „Safer by Design" crime prevention through environmental design (CPTED) principles).</p>	<p>A Crime Prevention through Environmental design Statement was prepared by the applicant. The Statement addresses the criteria of Natural Surveillance, Natural Access Control, Territorial Reinforcement between public space and private land, and space management. This was referred to the NSW Police who raised no objection to the proposal subject to conditions. In this regard safety and security associated with the</p>	<p>Yes</p>

<p>3.5 – Awnings</p> <p>2. Awning dimensions should generally be:</p> <ul style="list-style-type: none"> - horizontal in form, - minimum 2.4m deep (dependent on footpath width), - minimum soffit height of 3.2m and maximum of 4m, - steps for design articulation or to accommodate sloping streets are to be integral with the building design and should not exceed 700mm, - low profile, with slim vertical fascias or eaves (generally not to exceed 300mm height), and - 1.2m setback from kerb to allow for clearance of street furniture, trees, and other public amenity elements. - In consideration of growth pattern of mature trees <p>4. Wrap awnings around corners for a minimum 6m from where a building is sited on a street corner.</p> <p>3.6 – Vehicle Footpath Crossings</p> <p>3. Where practicable, vehicle access is to be from lanes and minor streets rather than primary street fronts or streets with high pedestrian priority routes identified in Figure 18 (marked yellow).</p> <p>3.7 – Pedestrian Overpass and Underpass</p> <p>3.8 – Building Exteriors</p>	<p>proposed development is considered acceptable.</p> <p>The proposed awning is 4.5m from the footpath level and this is considered acceptable.</p> <p>Noted.</p> <p>Considered acceptable.</p>	<p>Yes</p> <p>N/A</p> <p>N/A</p>
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<p>1. Adjoining buildings (particularly heritage buildings) are to be considered in the design of new buildings in terms of:</p> <ul style="list-style-type: none"> - appropriate alignment and street frontage heights, - setbacks above street frontage heights, - appropriate materials and finishes selection, - facade proportions including horizontal or vertical emphasis, and - the provision of enclosed corners at street intersections. <p>3.9 – Corner Treatments</p> <p>3.10 – Public Artworks</p>	<p>Building exteriors considered acceptable by Design Excellence Panel. Consideration of surrounding heritage buildings incorporated into proposed design.</p> <p>N/A</p> <p>N/A</p>	<p>Yes</p>
<p>4. Traffic & Access</p> <p>4.1 – Pedestrian Access & Mobility</p> <p>4.2 – Vehicular Driveways & Manoeuvring Areas</p> <p>4.3 – On Site Parking</p>	<p>Proposal considers satisfactory in relation to pedestrian access and mobility.</p> <p>Vehicular access is considered satisfactory. Access is provided at the most practicable point and is appropriately integrated into the building design and is recessed further from the building. Access arrangements have been assessed by Council's Traffic Engineers who raise no objection to the proposed access arrangement to the site.</p> <p>Sufficient on-site parking is proposed. See DCP Part 1 assessment above.</p>	<p>YES</p> <p>YES</p> <p>YES</p>

i. Environmental Management		
5.1 – Energy Efficiency & Conservation		
Non-Residential		
2. All Class 5 to 9 non-residential development is to comply with the Building Code of Australia energy efficiency provisions.	To be conditioned.	YES
5.2 – Water Conservation		
Non-Residential		
2. A comprehensive Water Management Plan is to be submitted with all non-residential development	Details of water savings devices will be provided at construction certificate stage. Also, a rainwater reuse tank with a minimum volume of 25kL will be provided in the plant area on the roof of the building with approximately 60% of the site area draining to this tank, which is considered acceptable.	YES
5.3 – Reflectivity		
2. Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%.	To be conditioned.	YES
5.4 – Wind Mitigation		
3. A Wind Effects Report is to be submitted with the DA for all buildings greater than 35m in height.	A wind assessment was undertaken by CPP in October 2015 and submitted by the applicant. The report found that wind conditions around the site would be classified as acceptable for pedestrian standing or walking under the 'Lawson test' from a comfort perspective, which is considered acceptable.	YES

<p>5.5 – Noise</p> <p>1. An acoustic report is required for all noise affected locations, as identified in Figure 25. This report is to demonstrate that appropriate noise attenuation and barrier planning is to be implemented.</p>	<p>The DA was referred to Council's Environmental Health section for comments. They commented on the proposal and did not require noise attenuation measures due to the commercial use of the building. Accordingly, compliance with this control is not considered necessary in this case.</p>	<p>NO - Considered Acceptable</p>
<p>5.6 – Waste</p> <p>Non-residential Development</p> <p>1. Development applications for all non-residential development must be accompanied by a waste management plan that addresses:</p> <ul style="list-style-type: none"> - best practice recycling and reuse of construction and demolition materials, - use of sustainable building materials that can be reused or recycled at the end of their life, - handling methods and location of waste storage areas, such that handling and storage has no negative impact on the streetscape, building presentation or amenity of occupants and pedestrians, and - procedures for the on-going sustainable management of green and putrescible waste, garbage, glass, containers and paper, including estimated volumes, required bin capacity and on-site storage requirements. <p>2. The waste management plan is to be prepared by a specialist waste consultant and is subject to approval by Council</p>	<p>A Waste Management Plan was submitted by the applicant which addressed the DCP requirements including the potential for reuse or recycling of construction materials, and waste minimisation initiatives and is considered acceptable.</p> <p>WMP was prepared by Taylor, which is considered acceptable.</p>	<p>YES</p> <p>YES</p>

5.7 – Floodplain & Water Cycle Management	Not flood affected.	N/A
5.8 – Sewage Treatment Plant	N/A	N/A
5.9 – Business where trolleys are required	N/A	N/A

vii. Controls for Special Areas		
7.1 – Heritage Items & Conservation Areas		
<p>13. Infill Development - The key to successful infill development adjacent to a heritage item is reflected in design where the infill is of similar mass and character to the adjacent heritage building/s. This may comprise use of the vertical (versus square) windows, verandahs, balconies, positive roof pitches (ie. 25 to 35 degrees) and general facade detailing. Buildings and landscaping may establish a character of an area and provides a sense of continuity and a recognised community value. Unsympathetic infill will disrupt the unity of a group of buildings and may spoil the existing character. Architectural „good manners“ are important in areas of special character. An infill building must not precisely imitate its neighbour but use recognisable tools such as massing, scale, setback and orientation, detailing and materials, roof forms and coursing lines to complement adjacent heritage items.</p> <p>Refer to the joint NSW Heritage Office and RAIA publication <i>“Designing in Context: Guidelines for Infill Development in the Historic Environment”</i> (2005) for further guidance.</p>	<p>Development is in the vicinity of six heritage items. The applicant submitted a Statement of Heritage Impact in support of the subject development in relation to those heritage items and their significance to the City Centre and the locality.</p> <p>The Statement of Heritage Impact was reviewed by Council Heritage consultant who considered the proposal to be acceptable in regards to the heritage items. Accordingly, heritage matter associated with the proposed development are considered acceptable.</p> <p>See further assessment provided above.</p>	<p>YES</p>
7.2 Controls for Restricted Premises	<p>N/A</p>	<p>N/A</p>

<p>7.3 Key Sites</p> <p>1. Development applications for a lot or combination of lots within Key Sites are to demonstrate design excellence.</p>	<p>The subject sites are identified within the key sites area. Accordingly, the proposal was reviewed by the DEP who supported the design of the building.</p>	<p>NOTED.</p>
<p>7.4 Design Excellence</p> <p>1. In determining a development application the <i>Liverpool LEP 2008</i> requires the consent authority to consider whether the proposed development exhibits design excellence.</p> <p>2. The architectural design competition is to be in accordance with the Director General of the Department of Planning procedures (advice available from Council).</p>	<p>The application was granted an exemption for the Design Excellence competition by the Director of Design Excellence of the Office of the Government Architect.</p> <p>N/A</p>	<p>NOT REQUIRED</p> <p>N/A</p>
<p>7.5 Non Business Uses</p>	<p>N/A</p>	<p>N/A</p>
<p>7.6 Restaurants/Outdoor cafes</p>	<p>No details of proposed 'café' on ground floor at this stage.</p>	<p>N/A</p>
<p>7.7 Child Care Centres</p>	<p>Not proposed.</p>	<p>N/A</p>

As per the LDCP 2008 compliance table provided above, the development is considered to be acceptable in relation to the applicable development controls.

(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

The development application is accompanied by an offer to enter into a planning agreement. The main item of offer contained within the agreement is for a monetary contribution to be paid to Council to be attributed to the cost of compulsory acquisition (and future embellishment) of a laneway by Council along the western side elevation of the subject site.

Planning Agreement proposal

A planning agreement can be made under section 93F of the Environmental Planning & Assessment Act 1979 (the Act) and is a voluntary agreement between Council and a developer, under which the developer is required to dedicate land free of cost, pay a monetary contribution or provide other material public benefit, or any combination of these, to be used towards a public purpose.

The Act specifies that a public purpose includes the provision of public amenities or public services, the provision of affordable housing, the provision of transport or other infrastructure relating to the land, the funding of recurrent expenditure relating to any of these, the monitoring of the planning impacts of a development and the conservation or enhancement of the natural environment.

In accordance with Council's adopted Planning Agreement Policy in July 2016, an offer has been made by the land owners to enter into a planning agreement in connection with the subject DA-1070/2015. In summary, the terms of the agreement are outlined as follows:

- A monetary contribution of \$1.5 million to be paid to Council in two instalments of \$750,000.00 each as set out in clause 6 of the Agreement to be used by Council for the purpose of acquisition of the Laneway Land and for any other public purpose as described by the Council's relevant contributions plan under S94A of the Act applicable to the Liverpool Town Centre. (See attached VPA).
- The first instalment of the Monetary Contribution (indexed by the increase in the CPI since the date of this Agreement) is payable upon the gazettal of the compulsory acquisition of the Acquired Land or the transfer of the Acquired Land to the Council if such transfer is made by agreement and compulsory acquisition of the Acquired Land is not required; and
- The other instalment of the Monetary Contribution (indexed by the increase in the CPI since the date of this Agreement) is payable prior to the issue of any Construction Certificate for the Development.

Public Purpose and Public Benefit

The public purpose of the planning agreement includes the payment of a monetary contribution to be attributed to an existing contributions plan, Liverpool City Centre Contributions Plan 2007, with additional funds to be paid and used by Council to construct a public laneway within the Liverpool Local Government Area.

Outcome of the Planning Agreement

A confidential report detailing the VPA proposed by the applicant was considered by Council at its meeting on 29 June 2016.

The following was recommended to Council at that meeting:

1. Endorses the proposed planning agreement and explanatory note in its current form and publicly exhibits the documents for a period of 28 days.

2. Delegates authority to the A/Chief Executive Officer (CEO), subject to consideration of any changes following public exhibition, to execute the planning agreement in the form that is publicly exhibited or with minor alterations.
3. Notes that if changes other than minor changes arise from the public exhibition process these will be reported back to Council.
4. Notes that this delegation is within the powers that can be dedicated under Section 377 of the Local Government Act 1993.

Council adopted this recommendation and on the 10 August 2016 the Planning Agreement in connection with the subject DA, was placed on public exhibition until 7 September 2016. No objections or submission in relation to the Planning Agreement were received by Council.

iv. Section 79C(1)(a)(iv) – The Regulations

The proposed development is consistent with the provisions of the relevant regulations.

v. Section 79C(1)(a)(v) – Coastal Zone Management

Not applicable to the proposed development.

vi. Section 79C(1)(b) – The Likely Impacts of the Development

The proposed development is likely to facilitate the inclusion of a regional FACS office providing 24 hour services to the local government area. Accordingly, there is high potential for positive impacts from the proposed development to the general public as the development will allow essential services to be delivered to the community.

Economic: For the city centre, the development is likely to encourage an employment base of 1000 persons, who will interact with the local economy on a daily basis. The combination of staff and visitors to and from the site is also to result in additional trips to other uses within the city centre, which is highly likely to have a positive impact to local businesses.

Built Environment: The building has been reviewed by Council's Design Excellence Panel, the Office of the Government Architect and Council's Heritage advisor, who have both provided support for the design of the proposed office tower in the context of the locality, and thus it is likely that the proposal will not detrimentally affect appearance and visual amenity of the area. Furthermore, the development is considered to gentrify this portion of Scott Street, which is likely to positively contribute to the streetscape.

Natural Environment: The proposal will redevelop an existing commercial site that is entirely hardstand and has no vegetation onsite. Accordingly, there will be no loss of vegetation at the site as a result of the proposed building. The proposal has also been designed to incorporate sustainable building design features, which is recommended as conditions of consent. In this regard, the proposal is unlikely to have a detrimental impact to the natural environment.

Social: The proposal was referred to Council's Social Planner for comments regarding the social impacts of the proposed development. They raised no objection to the proposal stating that the development would have a positive impact of the locality socially. In this regard, the proposal is likely to have a positive social impact on the locality.

vii. Section 79C(1)(c) – The Suitability of the Site for the Development

The site is considered suitable for the proposal, as it proposes an office tower in a business zone. The development will provide essential FACS related services and the site is considered to be in an area of high accessibility, being close to a public transport hub. As such, the site is considered highly suitable for the proposal.

viii. Section 79C(1)(d) – Any Submissions made regarding the Development

Internal Referrals

Referral	Comments
Building	Proposed development was considered satisfactory subject to the imposition of conditions of consent.
Engineering	Proposed development considered satisfactory subject to conditions of consent.
Traffic	Proposal was considered satisfactory subject to conditions of consent.
Strategic Planning	Proposal considered satisfactory and raises no objection to the location of proposed pedestrian linkage along western site boundary.
Environmental Health	Proposed development was considered satisfactory subject to the imposition of conditions of consent.
Heritage Advisor	Proposal considered to be generally satisfactory subject to imposition of conditions relating to inclusion of heritage material selection on the proposed building façade.
Community Planning	Supportive of the development based on potential to stimulate local economy.

External Referrals

Referral	Comments
Design Excellence Panel	The panel supported the design of the building. The panel noted that the activation of the pedestrian laneway is crucial for the safety and functionality of this space. The applicant provided amended plans to remove the substations from the proposed laneway and address the DEP's comments.
Office of the Government Architect	In accordance with Clause 7.5 – Design Excellence in Liverpool City Centre of the LEP, the Office of Government Architects provided the subject DA with an exemption from the design excellence competition based on the comments provided by the DEP, as discussed above.
NSW Police	Raised no objection to the proposal, subject to conditions.
Endeavour Energy	Raised no objection to the development of the site for the proposal based on their infrastructure in the locality. However, have not provide comments in relation to the location of substation onsite.

RMS	Raised no objection to the development, subject to conditions.
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Public Submission

When the application was submitted in November 2015 it was not required to be notified in accordance with Council's Notification Policy as per the Liverpool DCP 2008. Accordingly, no submission were received in regards to the development proposed at that stage.

Upon endorsement of the proposed VPA by Council the DA was publically exhibited with the associated VPA from the 10 August to the 7 September 2016 for 28 days. As a result of this process one submission was received in relation to the DA and no submissions have been received by Council in regards to the VPA.

Issue Raised:

The subject shops to the removed as part of the proposed development have significant historical ties to the establishment and economic development of Liverpool City. These shop were owned and/or operated by prominent Liverpool historical figures, whom have contributed greatly to the Liverpool community.

This was one of Liverpool's main shopping areas and inadequate provisions have been made addressing their ownership and functionality. The Everett electrical shop was very important to the area. Everett was a long-time supporter Of Liverpool District Hospital and on the Board for many years. The Don Everett wing is named after him. J. McGirr MLA also had a wing named after him at Liverpool Hospital for services to the Community. The Fitzpatrick Family were probably the longest family of shop owners in Liverpool. The Collingwood Stores and Fitzpatrick shop in Speed St Opp development were the same family. Members also served on Council and B Fitzpatrick was a Mayor.

I ask for Interpretative Signage to be on the Site. Where possible some old photo displays.

Comment:

It is agreed that the shops to be removed as part of the DA have historical value with regard to the city centre, despite not being heritage listed items. The submitted Statement of Heritage Impact, dated November 2015, provides some analysis of the importance of these shops but does not divulge into the history of the owners, as the submission discusses. Council's Heritage officer agreed that the shops have historic value, but the area is under gentrification.

Accordingly, the assessing officer contacted the objector and stated that conditions of consent would be imposed as per their submission. These would include:

Prior to the issue of an occupation heritage signage shall be located in appropriate locations on Council's footpath that:

- *Describes the history of this part of Scott Street and the City Centre; and*
- *Provides photo displays/ images relating to the historic value of these shops.*

This signage and their locations shall be provide to the satisfaction of Council's Heritage Advisor.

The submitter agreed to the imposition of condition of this nature and provided written confirmation that their submission has been resolved and that they do not wish to address the JRPP. Accordingly, the submission is considered resolved.

ix. Section 79C(1)(e) – The Public Interest

The proposal generally complies with the relevant planning controls and is considered to be in the public interest.

6. Developer Contributions

The terms of the VPA excludes the operation of sections 94 and 94A of the Act in relation to the subject DA. Therefore, developer contribution is not applicable to the subject DA.

7. Recommendation

- The subject Development Application has been assessed having regard to the matters of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.
- The Development Application seeks development consent for Construction of an eleven (11) storey commercial building over four (4) levels of basement car parking comprising 95 car spaces. The DA is accompanied by a Voluntary Planning Agreement in connection with the subject DA-1070/2015 for monetary contribution to be used by Council for the purpose of acquisition of the Laneway.
- The proposal is consistent with the objectives of the B3 Commercial Core Zone that is applicable to the site under the LLEP 2008. The proposal is also consistent with the objectives of the FSR and building separation development standards despite the numerical non-compliance with these standards. The application is supported by requests to vary this development standard in order to accommodate the form, scale and density proposed.
- The proposal substantially complies with the provisions of the LDCP 2008. There are variations proposed to some development controls, however these are considered acceptable on merit.
- The proposal provides an appropriate response to the site's context and satisfies and built form is consistent with the desired future character of the area that is envisaged under the LLEP 2008 and LDCP 2008.
- The application was referred to a number of external authorities with no objections raised, subject to imposition of conditions.

For these reasons the proposed development is considered to be satisfactory and is recommended for approval.

ATTACHMENTS:

- 1. Recommended Conditions**
- 2. Voluntary Planning Agreement**
- 3. Applicant's Joint Clause 4.6 Variation Statement**
- 4. Architectural Plans**
- 5. Statement of Environmental Effects**
- 6. Statement of Heritage Impact**
- 7. Design Excellence Panel Comments**
- 8. Submission**
- 9. Government Property NSW Letter to Council regarding use of building**