

DATE OF DEFERRAL	28 June 2019
PANEL MEMBERS	Justin Doyle (Chair), Bruce McDonald, Peter Brennan and Cr Peter Harle
APOLOGIES	Cr Wendy Waller and Nicole Gurran
DECLARATIONS OF INTEREST	Nil

Public meeting held at Liverpool City Council Library on 28 June 2019, opened at 3.00pm and closed at 6.27pm.

MATTER DEFERRED

Panel Ref – 2017SSW034 - LGA – Liverpool – DA284/2017 AT 1-5 Speed Street, Liverpool (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

It was on that basis that the Panel voted unanimously in favour of the following resolutions:

1. The Panel sees merit in the concept plan application.
2. The Panel sees the issue of site isolation as unresolved.
3. The Panel requests the Applicant to supply additional documents to better record the status of negotiations with the adjoining owner to include the “offer” contained in the letter of 24 June 2016 from the solicitor for the adjoining owner and the most recent exchange of correspondence, together with an independent valuation addressing the issue of whether the applicant has made a sufficient offer to the adjoining owner to address the issue of site isolation.
4. The Panel defers its determination for a minimum period of 21 days.
5. The Panel requests the Council to notify the adjoining owner of this decision.

REASONS FOR DEFERRAL

1. The site formed part of the various areas of the City Centre affected by Amendment 52 to Liverpool LEP 2008 which introduced specific development standards for the land designated as an “intensive urban development area”, and particularly added clauses 6.4A and 7.5A.

2. Notably, clause 6.4A prohibits development consent being granted:

“that results in an increase in the number of dwellings in that area, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out”.

No such certificate has yet issued. However, a concept plan does not in the opinion of the Panel “result in an increase in the number of dwellings in that area”, but rather such an increase will only be permitted if a detailed development consent issues which permits construction. Any development consent granted for a concept proposal for the site for the proposed building will need to be subject to a condition which requires the Secretary’s certificate before any development consent permitting development to occur issues. With that requirement, the Panel was of the opinion that adequate provision was made to ensure that the express requirements and evident intent of clause 6.4A would be satisfied.

3. Clause 7.5A(3) provides:

7.5A(3) Development consent must not be granted under this clause unless:

- (a) a development control plan that provides for the matters specified in subclause (4) has been prepared for the land, and
- (b) the site on which the building is located also includes recreation areas, recreation facilities (indoor), community facilities, information and education facilities, through site links or public car parks.

However, s.4.23 of the Environmental Planning & Assessment Act (EP&A Act) provides that where an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

4. Important to the Panel’s consideration of some of the matters raised by subclause 7.5A(4) is the future likely development of adjoining land and the related issue of site amalgamation. Specific issues for consideration under that clause that are relevant are:

- 7.5A4 (a) the suitability of the land for development,
- (e) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (f) the bulk, massing and modulation of buildings,

5. Of direct concern, an adjoining consolidated landholding at Lot A DP 342994 and lots 1 – 3 DP 391105 (**Potential Isolated Site**) is bounded on one side by the proposed development site, and on the other by a telephone exchange. Without amalgamation, that site would likely be too small to take advantage of the uplift in development potential made available to the “intensive urban development area” under clauses 6.4A and 7.5A.
6. Because of the proximity of the Potential Isolated Site to the intersection of Terminus and Speed Streets, it will likely rely on access over the subject development site. While the proposal has made allowance for acquisition of a right of way over the subject site in its

design, an integrated design of both sites in one development proposal would have been preferable.

7. For those reasons, the Panel would expect to see the issue of site amalgamation resolved with regard to the Land & Environment Court's published 'planning principles' on the subject referable to the decisions of *Grech v Auburn Council* [2004] NSWLEC 40; 140 LGERA 1 (noting the questions at [51]) and *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251. The second and third questions identified in *Grech* in particular would seem to be apposite:

“... Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.”

8. Another important issue which arose was the responses from RMS to the proposal. The first response dated 25 July 2017 contained some specific issues which the Panel understands the Council to consider to be adequately addressed in the concept plan. The last issue concerns the likelihood of greater pedestrian activity along Terminus Street which the RMS sees as justifying a Masterplan for development along Terminus Street which might include developer contributions for a pedestrian bridge. That last issue can be addressed at DA stage for this development, noting that no Masterplan has been adopted now, some two years after the date of that letter. The second response dated 13 March 2019 states that:

- Roads and Maritime is of the view that Council should not give consideration to supporting such applications until the outcome of the Liverpool Collaboration Area reservations are identified and a clear policy direction regarding an infrastructure plan is endorsed.
- Roads and Maritime is not in a position to comment of the subject application until such time that the Liverpool Collaboration Area reservations are identified and a clear policy direction regarding an infrastructure plan is endorsed.

That position must be considered along with the rezoning of specifically identified sites such as this one to specifically permit this form of more intensive development, and the fact that any final development consent will no doubt be subject to further scrutiny with regards to the matters identified by the RMS. The Panel was of the view that the issues which have properly been raised by the RMS are best addressed by a condition requiring them to be resolved prior to the issuing of a development consent permitting construction to proceed.

9. If those matters can be satisfactorily addressed, the Panel is of the view that the proposed concept plan will allow for the ordered staged development of the site for substantial mixed-use development within the Liverpool City Centre consistently with the Town Centre development strategy. That development will in turn provide additional commercial and retail capacity, residential development and a child care centre at a location with ready access to the metropolitan transport services available from Liverpool rail station. The staged development will reinforce the role of Liverpool Town Centre by providing additional employment and housing supply and choice within the City of Liverpool and the Western City District.
10. Subject to the issue of site isolation raised for further consideration above the assessment of compliance with relevant planning instruments is considered to have been undertaken to the extent considered appropriate for this concept application. The imposition of conditions will allow for further assessment of each stage of the site's development to be further assessed against the applicable instruments so as to impose important constraints ensuring relevant considerations (such as that raised by the RMS) to be addressed.
11. Development in accordance with the proposed concept subject to appropriate conditions can adequately satisfy the relevant State Environmental Planning Policies including SEPP 65 – Design Quality of Residential Apartment Development, SEPP 55 – Remediation of Land, SEPP (Infrastructure) 2007 and Greater Metropolitan Regional Environmental Plan No. 2 Georges River Catchment.
12. Subject to the matters discussed above, the proposed development subject to appropriate conditions can adequately satisfy the requirements and provisions of Liverpool LEP 2008 (Amendment 4). In that regard, the Panel particularly anticipates:
 - (a) In regard to LEP Clause 6.5A(3) a condition requiring arrangements for designated State Public Infrastructure must be undertaken prior to any development application for residential accommodation being made is appropriate.
 - (b) In regard to LEP Clause 7.5A(3) the provisions of Clause 4.22 of the EPA Act (which enables a concept plan to be submitted in lieu the need for a site specific Development Control Plan) the Panel considers that the submitted concept plan adequately addresses the matters a DCP would address.
13. The assessment report records that the views of the Council's Design Excellence Panel (**DEP**) resulted in significant amendment of the proposal such that the DEP ultimately concluded that with appropriate conditions the concept allowed for a development which would achieve design excellence sufficient to satisfy clause 7.5 of Liverpool LEP.
14. Subject to the matters discussed above, the proposed development adequately satisfies the provisions of Liverpool DCP 2008, noting that the site-specific concept plan is considered in certain respects to prevail over the DCP provisions.
15. The proposed development subject to the conditions imposed which require rigorous assessment of future stage development applications, can be managed to have no unacceptable adverse impacts on the natural or built environments including the amenity of existing or proposed nearby premises, the significance of the adjacent heritage item or the operation of the town centre road upgrades now bring planned.





16. The proposed development is considered to be of a scale and form consistent with the existing and planned development of this planned intense urban development section of Liverpool CBD.

17. In consideration of conclusions summarised above, the Panel considers the proposed concept would allow for a suitable use of the site and (subject to resolution of the issue of site isolation) approval of the concept proposal would be in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

- In coming to its decision, the Panel notes that one public submission was received in relation to the proposal.
- The Panel notes that issues of concern raised in that submission included:
 - Design
 - Drainage for development
 - Noise impact
 - On-street car parking

The Panel considers that concerns raised have been adequately addressed in the assessment report with conditions and that no further new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Bruce McDonald
 Peter Brennan	 Peter Harle

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	Panel Ref – 2017SSW034 - LGA – Liverpool – DA284/2017
2	PROPOSED DEVELOPMENT	<p>Concept development application pursuant to section 4.22 of the Environmental Planning & Assessment Act for a future mixed-use development including commercial business/retail, medical facility, child care centre and residential floor space and parking.</p> <p>The application is for a concept approval only and seeks approval for site layout, location of future buildings, vehicular access, maximum building envelopes including setbacks and height, maximum gross floor area (GFA) across the site and location and maximum number of car spaces.</p>

3	STREET ADDRESS	1-5 Speed Street, Liverpool
4	APPLICANT/OWNER	Applicant – Dreamscape Architects Owner – Mount Pritchard and District Community Club and Mr Momir Dubocanin
5	TYPE OF REGIONAL DEVELOPMENT	The proposal has a capital investment value of over \$30million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment ○ Liverpool Local Environmental Plan 2008 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008: <ul style="list-style-type: none"> Part 1 – General Controls for all development Part 4 – Development in the Liverpool City Centre • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations: Consideration of the provisions of the Buildings Code of Australia • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 14 June 2019 • Written submissions during public exhibition: 1 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Support – Nil ○ Object – Nil ○ On behalf of Council – Boris Santana and George Nehme ○ On behalf of the applicant – Gerard Turrisi, Edward Li and Geoff Higgins
8	MEETINGS AND SITE INSPECTIONS BY THE	<ul style="list-style-type: none"> • Site Inspection and briefing – 11 December 2017

	PANEL	<ul style="list-style-type: none"> • Site Inspection – 28 June 2019 • Final briefing meeting to discuss council’s recommendation, 28 June 2019, 12.45pm. • Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Peter Brennan and Cr Peter Harle ○ <u>Council assessment staff</u>: Boris Santana and George Nehme
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report