

25 October 2018

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Dear Mike

**Advice regarding car parking rates  
Commercial Tower and Commercial Hotel Redevelopment  
277 Bigge Street and 11- 23 Scott Street, Liverpool**

We refer to your development application which seeks consent for the redevelopment of the local heritage listed 'Commercial Hotel' for the purpose of a 23 storey commercial tower with conservation management works (**the Development Application**). The land to which the Development Application relates is 277 Bigge Street, 11 Scott Street, 13-15 Scott Street, 17 Scott Street, 19 Scott Street, 21 Scott Street and 23 Scott Street, Liverpool (**the Site**).

You have asked us to provide advice that considers:

1. Whether the Development Application can be approved with a car parking rate lower than the value set by clause 7.3 of the *Liverpool Local Environmental Plan 2008* (**the LEP**); and
2. Whether you would be required to provide a contribution to Liverpool Council (**the Council**), by way of a voluntary planning agreement, to account for any reduced car parking rate for the Development Application.

**Summary advice**

We consider that the Development Application is capable of being approved with a lower car parking rate than the value set by clause 7.3, in circumstances where a suitable clause 4.6 written request has been submitted with the Development Application. We also consider that the reduced car parking rate must be considered to be in the public interest as the reduced car parking rate remains consistent with the objectives of clause 7.3, and also specifically responds to the objectives of the B3 Commercial Core zone.

We do not consider that a voluntary planning agreement or a monetary contribution is required as part of the Development Application in circumstances where the proposed development, as a Transport Oriented Development, responds directly to the strategic planning policies of the NSW State Government that seek to increase reliance on public transport, rather than over-dependence on private vehicles. Further, the inclusion of 10 car spaces for car sharing vehicles will result in approximately 120 less vehicles requiring parking at the Site. In our opinion, the number of car parking spaces should be adjusted accordingly, and only 69 car parking spaces should be provided as part of the Development Application.

**Background**

In preparing this advice, we have understood the relevant facts to be as follows:

- For the purpose of the Development Application, the Site is zoned B3 Commercial Core and is located in the Liverpool city centre.

- The Development Application was lodged with the Council on 29 June 2018. The Development Application has been amended since it was lodged with the Council.
- Clause 7.3 of the LEP (Car parking in Liverpool city centre) applies to the Site. We understand that the requirements of clause 7.3 of the LEP would mean that 189 car parking spaces would be required for the Development Application in its current form.
- The Development Application in its current form proposes to provide 69 car parking spaces. A clause 4.6 variation request was submitted with the Development Application in respect of this proposed variation from the requirements of clause 7.3 of the LEP.
- You are proposing to provide approximately 10 'car sharing' vehicle spots in the car park for the Development Application.
- The Site is located immediately opposite Liverpool Station, being within 80 metres of the same. The Site is also located within 140 metres of the Liverpool Parramatta Transitway.
- Liverpool Station provides service along the following train lines:
  - T2 line with services to Central, the City Circle via Granville and Leppington.
  - T5 line with services to Schofields, Richmond and Leppington.
  - T3 line with terminating services returning to the City Circle via Bankstown.
- The Liverpool-Parramatta Transitway provides significant bus connections throughout the Liverpool and Parramatta CBDs and across Greater Sydney.
- The Development Application proposes to provide End of Trip facilities. Liverpool Train Station also provides secure bike locking facilities.
- The underlying geological conditions at the Site are not suited to providing an additional level of basement car parking, and the Council has previously provided negative feedback in respect of the potential provision of above-ground car parking.
- Council have requested a VPA for the car parking 'shortfall' in the quantum of \$34,000 per space, for every space that the Development Application does not provides that would be required under the LEP. This figure has been calculated in accordance with the costs for a multi storey carpark provided for in Local Infrastructure Benchmark Costs, Costing Infrastructure in Local Infrastructure Plans prepared by IPART, dated April 2014.

#### Substantive advice

1. **Can the Development Application be approved with a car parking rate lower than the value set by clause 7.3 of the LEP?**
  - 1.1 The Development Application (as amended) seeks consent for a car parking provision of 69 spaces, being 120 spaces less than what is required under the provisions of cl 7.3 of the LEP.
  - 1.2 Clause 7.3 of the *Liverpool Local Environmental Plan* relates to car parking in the Liverpool city centre, and provides:
    - (1) The objective of this clause is to ensure that adequate car parking is provided for new or extended buildings in the Liverpool city centre **that is commensurate with the traffic likely to be generated by the development** and is appropriate for the road network capacity and **proposed mix of transport modes for the city centre**.
    - (2) Development consent must not be granted to development on land in the Liverpool city centre that is in Zone B3 Commercial Core or B4 Mixed Use that involves the erection of a new building or an alteration to an existing building that increase the gross floor area of the building unless:
      - (a) at least one car parking space is provided for every 200 square metres of any new gross floor area that is on the ground floor level of the building, and
      - (b) in respect of any other part of the building:

(i) at least one car parking space is provided to every 100 square metres of any new gross floor area that is to be used for the purposes of retail premises, and

(ii) at least one car parking space is provided for every 150 square metres of any new gross floor area that is to be used for any other purpose.

(3) Despite subclause (2), **development consent may be granted to a development with less or no on site car parking if the consent authority is satisfied that the provision of car parking on site is not feasible.**

...

[Our emphasis in **bold**].

- 1.3 Clause 7.3 of the LEP is a development standard. The consent authority is therefore able to choose to depart from the standard provided for in circumstances where an appropriate written justification pursuant to clause 4.6 has been provided. We address the relevant provisions of clause 4.6 below that would support a variation from the above standard.

***In accordance with cl 4.6(3)(a), does the written request justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?***

- 1.4 The Chief Judge of the Land and Environment Court recently summarised the approach to determining a clause 4.6 request in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (***Initial Action***), at paragraphs [5]-[29].

- 1.5 At paragraph [17] of *Initial Action*, Preston CJ confirmed that one way to demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, in accordance with c. 4.6(3)(a) is:

***‘...to establish that compliance with development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard...’***

[Our emphasis in **bold**]

- 1.6 The objective of cl 7.3 of the LEP is two-fold, being to ensure that adequate car parking is provided for new or extended buildings in the Liverpool city centre that:

- (a) is commensurate with the traffic likely to be generated by the development; and
- (b) is appropriate for the road network capacity and proposed mix of transport modes for the city centre.

- 1.7 The clause 4.6 written justification that accompanied the Development Application confirms that:

- (a) A high number of patrons to the Site will be expected to travel to the Site by way of public transport, in light of the proximity of the Site to Liverpool Station and the Liverpool-Parramatta Transitway. Accordingly, the reduced number of car parking spaces will be commensurate with the traffic likely to be generated by the development.
- (b) The proposed reduced number of car parking spaces for the Development Application is appropriate in light of the proposed mix of transport modes for the city centre, as this design actively responds to the proximity of public transport to the site and also recognises modern reliance on car sharing vehicle arrangements.

- 1.8 Accordingly, in our opinion, the Development Application meets the objective provided for at cl 7.3(1) of the LEP, and satisfies cl 4.6(3)(a).

***In accordance with cl 4.6(3)(b), does the written request justify that there are sufficient environmental planning grounds to justify contriving the development standard?***

- 1.9 Preston CJ confirmed in *Initial Action*, at paragraph [24] that the consent authority must also be satisfied that:
- ‘The environmental planning grounds relied on the written request under cl 4.6 must be “sufficient”...The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds...’*
- 1.10 The clause 4.6 written request that accompanied the Development Application confirms that the following environmental planning grounds justify a reduction in the number of car parking spaces:
- (a) Visitors will be encouraged to travel to and from the Site by public transport, due to the close proximity of the proposed development to Liverpool Station. This will ensure that the proposed development helps meet the cl 7.3(1) objective of responding to the proposed transport modes for the city centre; namely by bus and rail.
  - (b) The provision of a reduced number of car parking spaces will also help towards reducing over-reliance on car travel in the local area. This will ensure that the actual number of car parking spaces provided is commensurate with the traffic likely to be generated by the proposed development.
  - (c) Further, by providing less car parking at the Site, the local environment and community will be strengthened as users of the Site will be encouraged to visit the proposed ground floor retail uses, and also the wider Liverpool CBD, when traveling on foot between the Site and Liverpool Station or the Liverpool-Parramatta Transitway.
  - (d) The provision of a reduced number of car parking spaces will result in a car parking outcome commensurate with current sustainable building design awareness.
- 1.11 We consider that the above environmental planning grounds are also directly in line with the NSW State Government’s strategic planning policies for the future of infrastructure in the Liverpool local government area. We discuss these strategic planning policies in further detail in ‘Part 2’ of our advice below.
- 1.12 In our opinion, the written clause 4.6 request that accompanied the Development Application therefore satisfies the requirements of clause 4.6(3)(b).
- In accordance with cl 4.6(4)(a)(ii), will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?***
- 1.13 The Chief Judge confirmed in *Initial Action*, at paragraph [27], that cl 4.6(4)(a)(ii) requires the consent authority to focus on the objectives of the development standard and relevant zone, noting that:
- ‘...It is the proposed development’s **consistency with the objectives of the development standard and the objectives of the zone** that make the proposed development in the public interest.’*
- [Our emphasis in **bold**]
- 1.14 The objectives of the B3 Commercial Core are:
- 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**.

[Our emphasis in **bold**]

- 1.15 In our opinion, through a reduction in the provision of car parking spaces, the proposed development will directly encourage 'maximum public transport patronage', and also provide employment opportunities accessible by rail and bus networks. The reduced number of car parking spaces proposed by the Development Application is therefore directly consistent with the objectives of the B3 Commercial Core zone.
- 1.16 As discussed at paragraphs 1.4-1.7 above, the Development Application is also consistent with the objective of clause 7.3, in that the proposed provision of a reduced number of car parking spaces is:
  - (a) commensurate with the traffic likely to be generated by the development; and
  - (b) appropriate for the road network capacity and proposed mix of transport modes for the city centre.
- 1.17 Accordingly, in our opinion, a consent authority should be satisfied that the proposed reduction in car parking spaces as part of the Development Application is in the public interest.
- 1.18 In light of the above reasoning demonstrated by the clause 4.6 written request submitted with the Development Application, it is apparent, in our opinion, that the Development Application is capable of being approved with a lower car parking rate than the value set by clause 7.3.
2. **Are you required to provide a contribution to the Council, by way of voluntary planning agreement, to account for any reduced car parking rate for the Development Application?**
  - 2.1 As discussed in detail above, the Development Application is suited to providing a lower number of car parking spaces in circumstances where the objectives of clause 7.3, and the B3 Commercial Zone, are met, and where there are sufficient environmental planning grounds to support the variation.
  - 2.2 The Development Application, as a proposed Transport Oriented Development, responds to the strategic planning policy prepared by the NSW State Government in respect of increasing reliance on public transport. We note the following specific policies prepared by the NSW State Government, for example, seek to reduce over-reliance on cars, and increase public transport usage:
    - (a) Integrating Land use and Transport, dated August 2001, provides (at page 18) that '[c]ontrol of parking is an effective tool in managing demand for travel. Consideration needs to be given to reducing parking requirements for development in areas with good public transport [and] the location and design of parking areas.' This document also provides (at page 51) that '[p]arking requirements should see a balance between satisfying a proportion of parking demand on-site, addressing car reduction objectives and minimising the spread of parking into surrounding areas...Reduced parking requirements may also help attract good quality and affordable higher density development at these nodes.'
    - (b) Sydney's Bus Future, dated December 2013, states (at page 30) that '[w]ith most of Sydney's future growth set to take place in Western Sydney, a modern bus network that integrates with the wider transport network will be essential to connect customers to jobs, education and services.'
    - (c) The Greater Sydney Commission's 'Western Sydney District Plan', dated March 2018 (**the Western Sydney District Plan**). 'Planning Priority W11 – Growing investment, business opportunities and jobs in strategic centers' provides, at page 94, that '[a]ll strategic centers will be the focus of public transport investments that seek to deliver a 30-minute city.'



- 2.3 The Development Application also proposes to provide 10 'car sharing' vehicle spots (as part of the proposed 69 car park spaces).
- 2.4 In determining that 10 'car sharing' vehicle spots should be provided in lieu of the provision of the number of spaces that would be required under cl 7.3 of the LEP, you have relied upon the Land and Environment Court matter of *Turner Architects v City of Botany Bay Council* [2016] NSW 1186, where Commissioner O'Neill held at [38]:
- '...I accept the applicant's submission that... **a car share vehicle replaces up to 10 to 12 private cars...***
- [Our emphasis in **bold**]
- 2.5 In the matter of *Dimitri Dilles v Randwick City Council* [2017] NSWLEC 1202, Commissioner Smithson observed at [56] that *'...[f]urther, the Council's website advised that one car share space was equivalent to taking 7-20 cars off the road...'* In this matter, the Court found at [125] that *'[o]n balance, I therefore believe it is a reasonable outcome to accept a car share space and car sharing membership for occupants as an alternative to onsite provision...'*
- 2.6 In the matter of *Sheer Property Group Pty Ltd & Anor v Randwick City Council* [2013] NSWLEC 1168, Commissioner Fakes held at [62]-[63]:
- 'While it is clearly desirable for anyone who owns a car to park close to his or her dwelling, planning strategies that encourage higher density living in areas close to the city of public transport routes will inevitably lead to measures to decrease dependence on car ownership.*
- In my view, the measures proposed by the applications in regards to car share options are fully in line with the thrust of the sustainable transport measures...'*
- 2.7 Car sharing is emphasized as a preferred future mode of transport in the Western Sydney District Plan. In respect of 'Planning Priority W1 – Planning for a city supported by infrastructure', for example, the Western Sydney District Plan states at page 20:
- 'In terms of transport planning, new public transport services and infrastructure such as rideshare, car sharing and other emerging modes that complement public transport, will help connect residents to their nearest strategic or metropolitan cluster within 30 minutes.'*
- 2.8 The Liverpool Central Business District has been identified as a 'Collaboration Area' in the Western Sydney District Plan. The Western Sydney District Plan provides (at page 55) that in Collaboration Areas, that Council's, other planning authorities and state agencies should ensure parking availability takes into account the level of access by public transport, and facilities to encourage the use of car sharing are incorporated.
- 2.9 We also note that in respect of 'Planning Priority W19 – Reducing carbon emissions and managing energy, water and waste efficiently', that the Western Sydney District Plan states at page 132 that potential pathways towards net-zero emissions in the District include 'a range of transport demand management initiatives including...imported access to car sharing...'. The Western Sydney District Plan then continues at page 133 noting:
- '...Prioritising parking spaces for car sharing and carpooling can support more efficient use of road space and help reduce emissions. Emerging transport technologies will reduce the need for parking spaces and help reduce congestion...'*
- 2.10 Further, we note that the Sydney Central City Planning Panel recently commented, when considering a development application for a 9-13 storey residential flat building comprising 330 units at Spurway Drive, Baulkham Hills, that:
- '...the Panel believes there is capacity to further reduce private vehicular use and that this **would be an appropriate outcome given proximity to Norwest Metro station...***
- [Our emphasis in **bold**]
- 2.11 Accordingly, we do not consider that you would be required to provide a contribution to the Council, by way of a voluntary planning agreement or monetary contribution, as a result of the

Development Application seeking consent for a reduced number of car parking spaces in circumstances where:

- (a) The Development Application responds to the objective of cl 7.3 of the LEP and the B3 Commercial Core Zone.
- (b) The Development Application seeks to respond to NSW State Government Strategic Planning policy for Western Sydney that aims to reduce dependence on car travel, and increase reliance on public transport.
- (c) Clause 7.3(3) provides that 'development consent may be granted to a development with **less or no** on site car parking if the consent authority is satisfied that provision of the car parking on site is not feasible'.
- (d) The Land and Environment Court has recognized that a car sharing service equates to removing approximately 12 vehicles from the road. Accordingly, the provision of 10 car parking spaces for car sharing vehicles, applying the Land and Environment Court's ratio of 1:12 vehicles, should reduce the number of car spaces required at the Site by 120 spaces.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on +61 2 8035 7848 or [awhealy@millssoakley.com.au](mailto:awhealy@millssoakley.com.au).

Yours sincerely



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