

DATE OF DETERMINATION	Monday, 23 November 2020
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran and Peter Harle
APOLOGIES	Wendy Waller
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 23 November 2020, opened at 3:05pm and closed at 3:39pm.

MATTER DETERMINED

2018SSW021 – DA-552/2018 – Liverpool City Council at 31 Harvey Avenue, 61-65 Lucas Avenue & 36 McKay Avenue, Moorebank – Demolition of existing structures and construction (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.

Application to vary a development standard

In its determination of the DA the Panel has considered the applicant's written request made under cl 4.6 (3) of the Fairfield Local Environmental Plan 2013 (LEP) to permit a departure from the maximum height development standard of 18m applying to the site under Clause 4.3 Height of Buildings of the Liverpool Local Environmental Plan (LEP) 2008.

The Panel is satisfied that it is in the public interest to grant the request, and that the request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP. There are sufficient environmental planning grounds identified and established in the written request to justify contravening the development standard such that compliance is unreasonable or unnecessary in the circumstances.

In particular, the development as proposed will be consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the R4-High Density Residential Zone.

The planning grounds taken into account in reaching those conclusions include:

- (a) The proposal seeks a height of 20.515m at its greatest extent which represents a numerical variation of up to 2.515 metres or 14% to the maximum height limit. However that proposed height exceedance is predominantly attributable to the rooftop communal open space amenity facilities and related structures. Those features are set back and are largely screened from view from the street and neighbouring properties.
- (b) A small volume of the roof of the main building form at one end reflecting the slope of the site also breached the standard, but its impacts would not be significant.
- (b) The height exceedance will not have a significant adverse impact and in particular will not exacerbate impacts in relation to solar amenity or overlooking.
- (c) The building overall complies with the FSR density control for the site (taking advantage of the bonus of 0.39:1 allowable under *SEPP (Affordable Rental Housing) 2009* and maintains a high quality design achieving the objectives of that SEPP.

- (d) The development is in the public interest because the development remains consistent with the objectives of clause 4.3 height of building (development standard) of the LEP, the objectives of the zone and the relevant objectives of the Act, as well as assisting in the achievement of the important objectives of SEPP (Affordable Rental Housing).
- (e) To adopt the observations of the Court in *MGT 6 Pty Ltd v The Council of the City of Sydney* [2017] NSWLEC 1211, Martin SC and Dixon C at [50] in relation to a similar non-compliance (as noted in the assessment report):

“Without the lift overrun and the breach of the standard the communal open space would need to be accessed by a chair lift (and stair) which is less equitable access to the area. Maintaining the standard would result in a sub- optimal outcome for all residents, with a reduction in the amount and type of communal open space provided in the development”

- (e) The concurrence of the Secretary is assumed (Planning Circular PS 18-003 Varying Development Standards).

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The development site is an efficient use of a consolidated parcel resulting from a significant amalgamation of 5 lots, which will include a substantial component of affordable housing. Being strategically located within walking distance of sustainable transport with good connections to the Local Centre makes this an appropriate site to accommodate affordable rental housing with a high level of amenity for occupants of the new building.
2. The design has been responsive to suggestions made by the Council’s Design Excellence Panel with the final iteration of the plans presented to that panel judged to be “effective as a site and program response”.
3. The proposed development will provide additional affordable rental housing supply within the City of Liverpool and the Sydney Western City District in a location with ready access to the amenities and services provided within Moorebank residential area, which is highly serviced with access to a variety of public transport services, educational services, employment opportunities, commercial/retail services, recreation facilities and community uses.
4. The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP (Affordable Rental Housing) 2009, SEPP 55 -Remediation of Land, SEPP 65 Design Quality of Residential Apartment Development and its associated Apartment Design Guide, SEPP (Infrastructure) 2007 and Greater Metropolitan Regional Environmental Plan No2- Georges River Catchment.
5. The proposal adequately satisfies the applicable objectives and provisions of Liverpool Local Environmental Plan 2008 and Liverpool DCP 2008, and responds to the anticipated future high density character of the R4 zone. (Notably Council staff advised that there are parts of the R4 zoned land in Moorebank that are subject to a planning proposal to alter the zoning to R3 including land across Harvey Avenue. However, this site was not included in that proposal. A recent substantial new 6 storey residential flat building has already been completed nearby in Lucas Street. And an adjacent site was recently approved for a similar affordable housing development reflecting the evolving character of this area. This proposal will acceptably conform with that evolving character.

6. The proposed development, subject to the conditions imposed, will have no unacceptable adverse impacts on the natural or built environments, including the amenity of nearby buildings due to loss of privacy or the utility of the local road system. The proposal satisfies the parking demand requirements of the State Environmental Planning Policy SEPP (Affordable Rental Housing) 2009 (ARH SEPP).
7. During the assessment process additional screening has been added to the development to address privacy and overlooking issues.
8. The building overall achieves a sufficient degree of compliance with the ADG.
9. In consideration of conclusions 1-8 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest

CONDITIONS

The development application was approved subject to the conditions in the council assessment report **but subject to an amendment** to add a condition to require the installation of solar panels and any ancillary battery storage as part of the approved works with details in that regard to be included in the construction certificate plans (noting advice from the Applicant at the public meeting that it would agree to such a condition).

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

- height, bulk and scale of development
- development not in keeping with the character of the area
- overdevelopment of the area / too many apartments
- excessive density / FSR
- excessive height
- loss of privacy
- visual impact
- overshadowing
- impact on parking / lack of visitor parking
- traffic safety and access issues
- lack of public transport
- construction impacts
- impact on infrastructure
- not in the public interest
- impact on property values

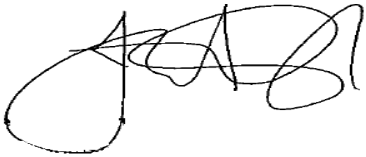



An objection given particular attention by the panel was made verbally by Garry Gibbons who owns the property located at 59 Lucas Avenue Moorebank, on the corner of the intersection with Harvey Avenue opposite the site. The principal objection raised was overlooking from the north facing units into the open space areas located at the road frontage of that property.

There is some attention given to mitigating the overlooking in the design through a 1.5 metre high screen on the north facing balconies.

Potential additional measures to further prevent overlooking were considered at the meeting such as relocating the balconies from the northern façade. Ultimately it was decided that the development was acceptable in its current form given the zoning and permissible forms of development in this R4 zone. Given that the front yard is already the subject of some overlooking by other approved development including the new building on the opposite side of Lucas Avenue to the East, there did not seem to be sufficient benefit in those measures when balanced against the impacts they would have on the amenity of the affected new units. Notably, there is a substantial physical separation between the balconies and the

pool, and the pool seemed from available photographs to be partly screened by a colour bond fence and recent nature strip planting.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 Nicole Gurran	 Peter Harle

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SSW021 – Liverpool City Council – DA-552/2018
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of two 5-storey residential flat buildings comprising 76 units. The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.
3	STREET ADDRESS	31 Harvey Avenue, 61-65 Lucas Avenue & 36 McKay Avenue, Moorebank
4	APPLICANT/OWNER	Applicant: A&K Engineering Pty Ltd Owner: F Hebous; A Tabbah; R Tamer; M Tamer
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ State Environmental Planning Policy (Affordable Rental Housing) 2009 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 • 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 • 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: 12 November 2020 • Clause 4.6 to vary the maximum height limit under Clause 4.3 of LLEP 2008. • Written submissions during public exhibition: 18 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Garry Gibbons ○ Council assessment officer – Adam Flynn ○ On behalf of the applicant – Kathleen McDowell • Total number of unique submissions received by way of objection: 18
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: Monday, 23 November 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli and Peter Harle ○ <u>Council assessment staff</u>: Adam Flynn, Boris Santana, George Nehme and Lina Kakish

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report