

DATE OF DETERMINATION	Monday, 11 May 2020
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Councillor Peter Harle and Councillor Wendy Waller
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Teleconference Call on 11 May 2020, opened at 12:25pm and closed at 1:40pm.

MATTER DETERMINED

2018SSW026 – Liverpool City Council – DA-627/2018 at 23-29 Harvey Avenue, Moorebank– Demolition of existing structures and construction of a 6-storey residential flat building comprising 58 units. (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 advised the meeting that it would deliberate on the matter and formulate a resolution to be voted on by circulation of papers electronically.

Through that process the Panel has reached a decision which was not unanimous. 3 Panel members voted to approve the development and two members voted for refusal.

Justin Doyle (Chair), Nicole Gurran, and Louise Camenzuli voted that the development application be approved as set out below, whereas Councillors Peter Harle and Wendy Waller voted for refusal.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.3(2) of Liverpool 2008, the majority of the Panel agreed with the recommendation of the Council assessment staff that the applicant's written request adequately had addressed the matters required to be considered under cl 4.6 (3) and (4) of the LEP, and particularly that it had demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, because:

- (a) The proposed height exceedance is predominantly attributable to the rooftop communal open space amenity facilities and related structures. Those features are set back and are thereby screened from the street and neighbouring properties.
- (b) The impact of the exceedance of the main building structure of around 250 – 350 mm will not have a significant adverse impact and in particular will not create impacts in relation to solar amenity or overlooking.
- (c) The overall variation maintains a high quality design while achieving the objectives of the SEPP (Affordable Rental Housing) 2009.
- (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) The concurrence of the Secretary is assumed (Planning Circular PS 18-003 Varying Development Standards).

Development application

By majority, the Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was carried 3:2 in favour. Against the decision were Councillors Wendy Waller and Peter Harle.

REASONS FOR THE DECISION

The Majority's reasons for the decision were:

1. 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.
2. 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.
3. 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 character of the R4 zone. While 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, this site was not included in that proposal. A recent substantial new 6 storey residential flat building had already been completed nearby in Lucas Street.
4. 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).
5. The proposed development will be amongst the first residential flat buildings situated in a residential context now comprising detached dwellings. Consequently, it contrasts with the current residential character. However, the proposed development is considered to be of acceptable form and scale consistent with the planned residential apartment context and character of the locality within which the site is placed.
6. Further the Panel notes that the proposed building design has been reviewed by the Council's Design Excellence Panel and amended to Council's satisfaction in response to the Panel's comments. Specifically, the development can be seen to have adequately taken up or responded to those recommendations, particularly in relation to privacy and overlooking issues, environmental performance and the quality of common open space and landscaping (as acknowledged by the

assessment report). Four new street trees have been added to the design to soften its impact on the present streetscape.

7. The building overall achieves a sufficient degree of compliance with the ADG. The Panel accepts the staff assessment that incursions into the minimum setbacks of some of the balconies are acceptable and provide for more generous private open space for the units. The overshadowing impacts have been assessed by Council staff to be acceptable in the context of the changing character of the R4 zoning.
8. While the Panel was informed that there is a current planning proposal to change the zoning of other land within the R4 zone including the block across Harvey Avenue, and a proposal for a childcare centre to be constructed across the road, this did not alter the merits of the development warranting approval.
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

Councillors Wendy Waller and Peter Harle disagreed with the majority decision, concluding that the DA should be refused. Councillor Waller's reasons were:

- Inadequate accessibility to public transport
- Excessive FSR
- Overshadowing
- Parking provision within the development
- Increased traffic to the area
- Bulk and scale of the development-it's inconsistent with the area

Councillor Harle's reasons were:

- Excessive non-compliance to permissible building height amounting to 4.2 metres and not limited to lift overruns.
- Un-reasonable FSR resulting in an extra floor and contributing negatively to the built form of the area.
- Due to Affordable Rental Housing benefits, there is a lack of adequate parking space provided resulting in negative impacts on already congested narrow streets.
- Due to the extra height there are unacceptable levels of overshadowing and privacy issues.
- Limited access to regular public transport.
- The development is better suited in closer proximity to a railway station.

CONDITIONS

The majority voted that the development application be approved subject to the conditions in the council assessment report 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 and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- **Accessibility and adequacy of public transport**

The site is located within 400 metres of bus stops via Astor Avenue, Dredge Avenue, Dredge Pathway and Regan Park and Council has assessed the servicing to be adequate.

- **Excessive Height**

This has been assessed as acceptable, noting particularly the discussion of the cl. 4.6 request above.

- **Waste disposal and excessive numbers of bins**

There was some confusion about whether waste would be disposed of via public collection or privately. Private collection is proposed. Council's assessment staff have assessed this to meet requirements, and there are various conditions of consent regulating waste collection.

- **Excessive FSR**

The proposed FSR has been assessed to comply with the maximum FSR allowing for the design excellence bonus.

- **Loss of privacy**

The building has been assessed by Council staff to be in line with the separation distance outlined in the ADG, with the exception of some small portions of balconies which are to be fitted with privacy screens to ensure the privacy of neighbouring properties will be maintained. Setbacks of other parts of the building, splays and blade walls will also assist with addressing privacy impacts.

- **Overshadowing**

As noted above, Council assessment staff have found the resulting overshadowing to be acceptable in terms of the character of this changing area under the R4 zoning.

- **Affect on property values**

It has not been established that any feature of this building will reduce surrounding property values.

- **Increase in population in the area**

The proposal complies with the permitted density within the R4 Zone and is a form of development that is permissible within that zone. The Council assessment report concludes that the proposal is in line with that expected by the zoning of the land.

- **Increased traffic and traffic congestion, traffic safety and parking, including visitor parking.**

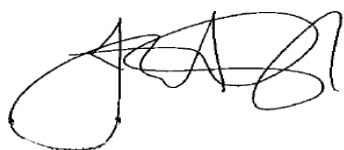
The proposal has been assessed to meet the parking requirements of the ARH SEPP and the traffic impacts have been assessed to be commensurate with the zoning of the area. The subject land is sufficiently well serviced by public transport. No objections were made upon referral to Council's Traffic Department.

- **Bulk and scale inappropriate and incompatible with surrounding area and inconsistent with the character of the area**

The scale of the building has been found to be acceptable by Council's assessment staff after referral to Council's design excellence panel. It complies with the permitted FSR and (with allowance for the minor departures discussed above) complies with the requirements of the ADG. In this respect, the Panel was informed that there is already a six storey building to the east facing Lucas St.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS



Justin Doyle (Chair)



Nicole Gurran



Louise Camenzuli



Peter Harle



Wendy Waller

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018SSW026 – Liverpool City Council – DA-627/2018
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a 6-storey residential flat building comprising 58 units. The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.
3	STREET ADDRESS	23-29 Harvey Avenue, Moorebank
4	APPLICANT/OWNER	Pagano Architects / Qing Shi & Yao Chen
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 Apartments Development State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning) Building Sustainability Index: BASIX) 2004 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 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: 27 April 2020 Council Memo dated 7 May 2020 Council Memo dated 8 May 2020 The applicant has provided an assessment under Clause 4.6 to vary the maximum height limit under Clause 4.3 of LLEP 2008. Written submissions during public exhibition: 10 individual submissions and 2 petitions Verbal submissions at the public meeting: <ul style="list-style-type: none"> Jennifer Fitzgerald, Michael Byrne and Hon Melanie Gibbons MP Council assessment officer – Adam Flynn On behalf of the applicant – Alfredo Pagano and Gerard Turrisi
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: Monday, 11 February 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurrán, Peter Harle and Wendy Waller <u>Council assessment staff</u>: George Nehme and Adam Flynn

		<ul style="list-style-type: none"> • Site inspection: Monday, 11 February 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald, Nicole Gurran, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: George Nehme and Adam Flynn • Final briefing to discuss council's recommendation, Monday, 11 May 2020, 11:00am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: Adam Flynn and Boris Santana
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report