

BRIEFING DETAILS

BRIEFING DATE / TIME	Monday, 22 June 2020, 9:20am to 10:38am
LOCATION	Teleconference Call

BRIEFING MATTER(S)

2018SSW030 – Liverpool City Council – DA-626/2018 – 402 Macquarie Street & 180-190 Terminus Street, Liverpool – Concept Development Application pursuant to Section 4.22 of the EP&A Act for a mixed-use development.

Specifically, development consent is sought for the following:

- Establishment of a building envelope across the site, to be used for a mixed-use development incorporating ground floor commercial and part ground floor and upper level residential accommodation;
- Potential maximum Gross Floor Area (GFA) of 23,020m², representing an FSR of 9.99:1;
- Maximum building height of approximately 104.99m (between 30-31 storeys);
- Design Excellence Strategy outlining the process through which design excellence will be achieved;
- Public domain improvement works: construction of physical infrastructure to benefit the future residents of the site and the local and wider community;
- Vehicular access from Carey Street location and maximum number of car spaces;
- Stormwater management works, including water quantity and quality treatment; and
- Landscape concept.

Liverpool City Council is the consent authority and the Sydney Western City Planning Panel has the function of determining the application.

PANEL MEMBERS

IN ATTENDANCE	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Wendy Waller
APOLOGIES	None
DECLARATIONS OF INTEREST	None

OTHER ATTENDEES

COUNCIL ASSESSMENT STAFF	Boris Santana and James Ng
OTHER	Melissa Felipe - Secretariat

KEY ISSUES DISCUSSED

- Clause 7.5A of the Liverpool LEP applies to the subject site, given that it satisfies the 3 prerequisites imposed by subclause (1):
 1. It is located in Area 8 (one of the 3 areas in the FSR map to which the clause may apply);
 2. It has a site area exceeding 1,500; and

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3. It has 2 or more street frontages.

- Clause 7.5A prohibits the grant of development consent unless a development control plan that provides for the matters specified in subclause (4) has been prepared for the land. Section 4.23 of the EP&A Act provides that a concept development application may be made for development requiring consent under Part 4 as an alternative to a development control plan required by an environmental planning instrument. The concept development application must contain the information required to be included in the development control plan by the environmental planning instrument or the regulations. The Panel looks forward to advice as to whether the requirements of section 4.23 and the Regulations have been met,
- One matter to be addressed is the question of whether the proposed “hotel” would fall within any of the purposes listed in clause 7.5A(2) to which 20% of the gross floor area must be employed if the relaxed height and FSR standards are to apply under that subclause. It is not immediately apparent having regard to authorities such as (*Foodbarn Pty Limited v Solicitor-General* (1975) 32 LGRA 157 at 160-161 per Glass JA and *Baulkham Hills Shire Council v O'Donnell* (1990) 69 LGRA 404 at 409-410 per Meagher JA, how 192 hotel rooms could be fairly said to be ancillary to the ground floor food and drink venues. A use will ordinarily not be considered to be ancillary unless it is use of part of land for a purpose that is subordinate to and subservient to another dominant purpose.
- Council staff noted that an amendment to the LEP is being considered by the Council which would introduce “hotel” as an additional use. However, the Panel must consider the DA against the planning instruments applicable at the time of determination. A draft instrument is to be taken into account, but that does not overcome a development standard which would be drastically breached by this proposal without the operation of clause 7.5A(2). Establishing that the hotel can be taken into account in making up the 20% of the gross floor area to satisfy clause 7.5A(2) will be essential. At present, it is not immediately clear how that can be done.
- Notably, Clause 7.5A(3) sets out minimum requirements for the granting of consent to development on the site, which include preparation of the DCP (or concept plan) in accordance with subclause (4). Subclause 7.5A(4) sets out essential matters that must be “addressed” by the DCP (or concept plan), presumably to the satisfaction of the determining authority. If the proposal is otherwise seen to be acceptable it might be possible to defer determination until the fate of the LEP is known applying Section 3.39 of the EP&A Act.
- A qualitative assessment of the concept plan against the various matters identified in Clause 7.5A(4) is required. It should not be assumed that the maximum possible height and floor space will be achievable unless the consent authority is satisfied that the listed considerations have been suitably addressed.
- Issues concerning the suitability of the land for development (Clause 7.5(4)(a)); 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 (Clause 7.5(4)(e)); and the bulk, massing and modulation of buildings (Clause 7.5(4)(f)) will each need close attention. Solar access to adjoining properties will be relevant to those assessments.

TENTATIVE PANEL MEETING DATE: N/A