

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

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| DATE OF DETERMINATION | Monday, 10 th February 2020 |
| PANEL MEMBERS | Nicole Gurran (Acting Chair), Susan Budd, Noni Ruker and Peter Harle |
| APOLOGIES | Wendy Waller, Nathan Hagarty, Justin Doyle and Ali Karnib |
| DECLARATIONS OF INTEREST | Louise Camenzuli: One of my Partners at Corrs Chambers Westgarth has an open file for the applicant of the above development proposal. As a Partner of the firm, I consider that this fact, while the relevant file is unrelated to the proposal being assessed, may result in a reasonably perceived conflict of interest. |

Public meeting held at Liverpool Library, Gold Room, 170 George Street, Liverpool on 10 February 2020, opened at 1:50pm and closed at 4:14pm.

MATTER DETERMINED

PPSSWC-14 – Liverpool City Council – DA-257/2-19 at 127-129 Flowerdale Road, Liverpool – Affordable Housing Development (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.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Liverpool Local Environmental Plan 2008 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the R4 High Density residential zone; and
- the concurrence of the Secretary has been assumed.

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 3:1 in favour, against the decision were Peter Harle.

REASONS FOR THE DECISION

- The proposed development will provide affordable rental housing in a location with good access to public transport, shopping, services and employment opportunities. In contributing to the supply of diverse and affordable housing in the Liverpool Local Government Area, the development brings important social benefit. Although the Panel notes that the scale of the proposed development is a departure from neighbouring properties, it is consistent with the desired future character for the High Density zone within which it is situated, and represents an appropriate design outcome for this prominent gateway site.
- The Panel has considered the Applicant's request under clause 4.6 of the Liverpool LEP 2008 to vary the development standard contained in Cl. 4.3, relating to the Height of Buildings. In the circumstances of this case, the Panel accepts that compliance with the standard is unreasonable and unnecessary, given that the height exceedance results from the topography of the site; is primarily confined to a central lift overrun and the front portion along Flowerdale Rd; and causes minimal shadow impacts. The Panel is therefore of the view the applicant has demonstrated there are environmental planning grounds that justify the height exceedance. Further, the Panel notes that the proposal complies with the maximum FSR allowed by the SEPP (Affordable Rental Housing) and remains consistent with the objectives of the standard (to provide high quality urban form, consistent with buildings of 15m) and the High Density Residential zone. In this regard the Panel notes that the Design Excellence Panel raised no objections to the height exceedance.
- The proposed development subject to the conditions imposed adequately satisfies the relevant State Legislation and State Environmental Planning Policies including the State Environmental Planning Policy (Affordable Rental Housing) 2009, SEPP 65 - Design Quality of Residential Flat Development; SEPP 55 (Remediation of Land), SEPP (Building Sustainability Index: BASIX), 2004; and the Greater Metropolitan Regional Environmental Plan No, 2 – Georges River Catchment.
- The proposal adequately satisfies the requirements and provisions of the Liverpool LEP 2008 and Liverpool Development Control Plan 2008.
- The proposed development, will not unacceptably impact on the natural or built environment including the local streetscape and road network, potential development of the adjacent site to the south, and overshadowing and privacy of neighbouring properties (noting that the design situates the majority of units to face the street, that windows and balconies meet state apartment design guideline setbacks (aside from a minor non compliance addressed in conditions of consent), and that visual and acoustic privacy has been considered in the design and configuration of the rooftop open space. Additionally, the Panel notes that deep soil areas will support vegetation to act as a further visual separation between adjacent sites.
- In consideration of the above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.

Peter Harle disagreed with the majority decision for the following reasons:

- Panel Member Mr Peter Harle disagreed with the majority decision to approve the development for the following reasons:
Unacceptable height exceedance across the fifth floor, noting that this is the first development of this nature in this locality, and sets an undesirable precedent.
In addition, the choice of dark external colours on the building are not conducive to mitigating the Urban Heat Island effect, and future designs in this area should incorporate lighter materials that address these environmental factors.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

1. **The amendments marked in red by Council on the approved plans shall be submitted to Council for approval prior to issue of Construction Certificate as follows:**
 - (a) The architectural plans shall be amended to incorporate:





- i. On Unit 404, the south facing window in the kitchen area to be replaced with a 1.5m high frosted window and the south window on the main bedroom to be relocated to the eastern wall facing the non-trafficable area on the roof. (reworded)
- ii. On the rooftop Communal Open Space (POS), confine the trafficable area within the 9m side and rear setback line. The remaining POS area to be provided with architectural and landscaping treatment to address overlooking and privacy issues on adjoining neighbours. (reworded)
- iii. Fencing on Flowerdale Road and Smith Crescent generally to follow a straight line alignment which is offset by a distance of 1.6m from the street property boundary lines. (new)

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:

- Traffic and parking impacts
- Privacy and over looking
- Solar amenity and overshadowing

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. The panel notes that in addressing these issues Council's traffic planner is satisfied that the proposal will not generate unacceptable traffic impacts; and that the proposal complies with parking requirements under the applicable provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009. Further, the design has been modified and appropriate conditions have been imposed addressing concerns in relation to privacy and overlooking. Some overshadowing to neighbouring properties is inevitable given the orientation of the site and the higher density use anticipated by the zone, but these have been minimised by situating the highest elements of the building towards the front of the street.

| PANEL MEMBERS | |
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|  Nicole Gurrán (Acting Chair) |  Susan Budd |
|  Noni Ruker |  Peter Harle |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSWC-14 – Liverpool City Council – DA-257/2019 |
| 2 | PROPOSED DEVELOPMENT | The demolition of existing structures, construction of a five (5) storey residential flat building comprising of 39 units with at-grade parking and associated landscape and site works to be used wholly for the purposes of affordable rental housing under State Environmental Planning Policy (Affordable Rental Housing) 2009. |
| 3 | STREET ADDRESS | 127-129 Flowerdale Road, Liverpool |
| 4 | APPLICANT/OWNER | Applicant/Owner: SGCH Portfolio Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$30 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Affordable Rental Housing) 2009 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 (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 <ul style="list-style-type: none"> Part 1 – General Controls for all Development Part 3.7 – Residential Flat Development in the R4 Zone Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: 4.15(1)(a)(iv) <ul style="list-style-type: none"> Consideration of the provisions of the National Construction Code of Australia 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: 24 January 2020 Clause 4.6 – Exceptions to development standards Written submissions during public exhibition: 7 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – John Chapman, Charlie Leonardi and John Hewitt Council assessment officer – Emmanuel Torres On behalf of the applicant – Gerald Turris, Nick Byrne and Gareth Williams |

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| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • Briefing: Monday, 9th September 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Peter Harle ○ <u>Council assessment staff</u>: Emmanuel Torres, Boris Santana and George Nehme • Site inspection: Monday, 9th September 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Peter Harle ○ <u>Council assessment staff</u>: Emmanuel Torres, Boris Santana and George Nehme • Site inspection: Monday, 10th February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Nicole Gurran (Acting Chair), Susan Budd and Noni Ruker ○ <u>Council assessment staff</u>: Emmanuel Torres, Boris Santana and George Nehme • Final briefing to discuss council's recommendation, Monday, 10 February 2020, 1:00pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Nicole Gurran (Acting Chair), Susan Budd, Noni Ruker and Peter Harle ○ <u>Council assessment staff</u>: Emmanuel Torres and Nelson Mu |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |