

DATE OF DETERMINATION	30 September 2022
DATE OF PANEL DECISION	29 September 2022
DATE OF PANEL MEETING	Monday, 29 August 2022
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, Peter Harle and Ned Mannoun
APOLOGIES	Nicole Gurran
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 19 August 2022 supplemented by the addendum report dated 28 August 2022 and further addendum report and associated material reporting on negotiation of conditions involving and NSW Police and NSW Police and Department of Communities and Justice circulated 20 September 2022.

MATTER DETERMINED

PPSSWC-223 – Liverpool City Council – DA-1408/2021 at 28 Elizabeth Street, Liverpool – Demolition of existing structures and construction of a thirty-four (34) storey mixed use 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 listed at item 8 in Schedule 1.

Application to vary a development standard

The Panel has considered the applicant's written request made under cl 4.6 (3) of Liverpool Local Environmental Plan 2008 (LEP) to permit a departure from the development standard for building separation applying under Clause 7.4 of the LEP in the determination of the DA.

Clause 7.4(2) of the LEP 2008 states;

- 7.4(2) Development consent must not be granted to development for the purposes of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least—
- ...
- (d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use, and
 - (e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone B3 Commercial Core or B4 Mixed Use.

The site is within the B4 Mixed Use zone and those standards therefore apply.

The separation distances measured from the approved neighbouring building yet to be constructed on the adjoining site to the eastern boundary (at 26 Elizabeth Street) are in excess of those standards as follows:

- 14 metres between 25 and 45 metres – compliant with Clause 7.4(d)
- 24 metres over 45 metres – non-compliant with Clause 7.5(e)

Despite the non-compliances, 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 the Panel considers that compliance is unreasonable or unnecessary in the circumstances.

The development as proposed will be consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the B4 Mixed Use zone in which the building is proposed to be located for the reasons set out in the staff assessment report.

The development will also meet the objective of the standards identified at cl 7.4(1), which is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access. The building is of an attractive sophisticated design which has been carefully prepared to respond to neighbouring development and proposed development. Further refinement of the design has usefully been achieved through detailed engagement with Council and the Design Excellence Panel during the assessment period. The non-compliances arise in part because of the non-compliant setback on the adjoining site, and the separation between the buildings proposed will be equitable and the buildings will present well together.

The ADG building separation design criteria are met, particularly in relation to solar access. The Council assessment report records that the proposal exceeds the ADG requirements in that regard because a total of 284 out of 312 apartments (91%) are predicted to achieve the required direct solar access for two hours in mid-winter. The proposal is also reported to provide 908 sqm communal open space at Level 05, of which at least 50% receives direct sunlight for two or more hours on 21 June.

Taking those matters into account, it is in the public interest to allow the departure from the LEP standards.

The concurrence of the Secretary is assumed (see Planning Circular PS 20-002 issued 5 May 2020).

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

The Panel determined to uphold the Clause 4.6 variation to building separation in Liverpool City Centre; and approve the application for the reasons outlined in the Council Assessment Report. The Panel has further concluded that:

1. The proposed development will allow for the ordered development of this site on the edge of the commercial core for substantial mixed-use development consistent with the Town Centre development strategy. When the development is complete, it will provide additional commercial and retail capacity including a ground level retail and commercial tenancies to activate the site's dual frontage to Elizabeth Street and George Street. Activation of the through-site link will also contribute to this centrally located precinct with ready access to the metropolitan transport services available from Liverpool rail station. Combined with the local art strategy, the proposal will assist with the enhancement of a modern identity for Liverpool town centre and its social and cultural life.
2. Overall the mix of uses will contribute to the diversity and progress of Liverpool Town Centre to reinforce the role of Liverpool Town Centre as a civic hub. It will add to available employment as well as increasing housing supply and choice within the City of Liverpool and the Western City District.
3. The Council assessment reports positively on the architecture and design choices improved with liaison with Council's design excellence panel. The amenity of residents is addressed through open space and facilities above the podium on Level 5. Features include an outdoor swimming pool with shallow

seating, an open lawn, outdoor seating, a gym with interior and exterior exercise spaces, communal open amenities with BBQ facilities, dining, kitchen and a casual lounge for the use of residents. A separate contribution to the common amenities is a large lawn and deck area with a dog wash facility.

4. The maximum building height for the site is limited by the Obstacle Limitation Surface (OLS) and Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) from Bankstown Airport. The site is also within the vicinity of the helipad of Nepean Hospital. The building and cranes used in its construction are classified as ‘controlled activity’ that require approval by the Department of Infrastructure, Transport, Regional Development and Communications. To date, while the hospital is reported to have confirmed it does not object to the proposal, no response has received from the Department within the timeframes allowed for integrated development. Conditions including the preparation of construction management plan are imposed and it is expected that the building and associated cranes will be appropriately illuminated with a steady red obstruction light per the requirements of the CASA Manual of Standards Part 139.
5. Under section 182 of the *Airports Act 1996*, activities that result in intrusions into an airport's Prescribed Airspace are called “controlled activities”. Controlled activities cannot be carried out without approval under that Act. Nothing in the Panel’s determination is intended to obviate the ongoing separate requirement for approval as required under the Commonwealth Act and Regulation.
6. Bigge Park should not be significantly overshadowed by the development.
7. The proposed development has been reviewed by Council’s Design Excellence Panel (DEP) on two occasions. The recommendations of the Panel have been satisfactorily adopted into the concept design.
8. The proposal includes an RAP, and addresses the requirements of the Remediation of Land SEPP by ensuring the land will be compatible with its proposed residential use.
9. Development in accordance with the proposed concept plan subject to appropriate conditions can adequately satisfy the relevant State Environmental Planning Policies including SEPP 65 – Design Quality of Residential Apartment Development, and other applicable state planning instruments.
10. Taking all of these matters into account, and the discussion of the community submissions below, approval of the application is in the public interest.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report.

An important issue arose late in the assessment of the proposal when it was discovered that NSW Police and NSW Department of Communities and Justice (NSW DCJ) had not received notification of the proposal, despite the Liverpool Police Station and Area Command, and Liverpool Courthouse adjoining the site. That omission led to the adjournment of the Panel’s assessment of the DA as publicly reported by Memorandum on 29 August 2022.

Subsequent to that deferral, the Panel initiated direct communication between the Council, the Applicant, NSW Police and NSW DCJ, which in substance has produced a set of agreed conditions which will regulate matters identified as the subject of concern. Discussed in detail in the Panel’s 29 August 2022 Memorandum, the concerns included:

- a) Overlooking into operational areas of the Police and Court
- b) Loss of Police parking
- c) USDs on the Police land
- d) Vibration and the Court
- e) Encroachment onto Police land
- f) Impact of the construction on air traffic
- g) Shadow impacts

However, not all aspects of the conditions were agreed. The Panel was presented with an addendum from the Council assessment staff which discusses the respective positions of the Police and the Applicant in relation to those conditions. The original draft of the relevant Conditions was produced by Council. NSW





Police and Department of Communities and Justice proposed amendments. The Applicant proposed a further refinement of that draft, and finally the Council set out in its Addendum Report by Patrick Curmi – Team Leader – Development Assessment, an ultimate draft with reasons for its recommended adjudication of the position of the stakeholders for each condition.

Having reviewed the Council’s recommended final draft of the conditions (a copy of which accompanies these reasons), the Panel accepts it as a measured response which the Panel adopts for the reasons advanced by the Council. Issues of privacy will be reasonably addressed, a suitable regime is set down to involve the Police and NSW DCJ in the implementation of relevant conditions (with NSW DCJ as the point of contact for other interested Justice related authorities and instrumentalities). Construction Noise and Vibration Management Plan is required by Condition 34 to be prepared by a suitably qualified acoustic consultant, with the Police and NSW DCJ involved in its content. Operational considerations are in the Panel’s view sufficiently protected.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the single written submission made during public exhibition, which raised the issue of potential overshadowing of solar panels.

The Council assessment report says a shadow diagram was requested and provided to the objector which demonstrates overshadowing occurs only in the morning hours and from 11am onwards will have sufficient solar access. The objector did not respond to that feedback, but the Panel is satisfied the concern is addressed.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 Ned Mannoun	 Peter Harle

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-223 – Liverpool City Council – DA-1408/2021
2	PROPOSED DEVELOPMENT	<p>Demolition of existing structures and construction of a thirty-four (34) storey mixed use development comprising of the following:</p> <ul style="list-style-type: none"> • Six levels of basement car parking providing a total of 542 car and 29 motorcycle parking spaces; • Ground floor level retail tenancies, commercial and residential lobby entries, loading dock, basement entry, waste and storage collection zones, associated civil, stormwater, and services infrastructure; • Site improvements including establishment of a through-site link along the eastern boundary from the Elizabeth Street frontage to the rear service lane incorporating public domain improvements, landscaping, public art, street trees and paving; • Mezzanine level for end-of-trip facilities (including locker storage and unisex bathrooms); • Level 1 to 4 commercial office spaces with bathroom and amenities, and outdoor terrace. – Communal open space, including seating areas, open lawn areas, multi-purpose decking, swimming pool, outdoor gymnasium, outdoor kitchen / barbecue area, breakout space, and lounge area; and • Level 5 to 33 providing 312 residential apartments (136 x one-bedroom units, 128 x two-bedroom units, and 48 x three-bedroom units)
3	STREET ADDRESS	Lot 1 in Deposited Plan 1261270, 28 Elizabeth Street Liverpool
4	APPLICANT/OWNER	Altis Bulky Retail Pty Ltd /The Trust Company (Australia) Limited
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"> ○ SEPP (Biodiversity and Conservation) 2021 (Repealed Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment). ○ State Environmental Planning Policy (Resilience and Hazards) 2021 (Repealed Environmental Planning Policy No.55 – Remediation of Land). ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. ○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development ○ 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 4 – Development in the Liverpool City Centre. • Planning agreements: Nil • Provisions of the Environmental Planning and Assessment Regulation 2000: <ul style="list-style-type: none"> ○ Section 4.15 (1)(a)(iv)- 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

		<ul style="list-style-type: none"> 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: 14 August 2022 Addendum Report & updated conditions: 16 September 2022 Written request to vary clause 7.4 of the Liverpool LEP– Building separation in the Liverpool City Centre. Written submissions during public exhibition: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick off Briefing: Monday, 11 April 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair) <u>Council assessment staff</u>: Patrick Curmi, Robert Micallef, William Attard, Kerrie Elliott, Brenton Toms Applicant Briefing: Monday, 6 June 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Ned Mannoun <u>Council assessment staff</u>: Emmanuel Torres, Patrick Curmi <u>Applicant representatives</u>: John Wynne, Rob Battersby, James McCarthy Turner, Kate Riley, Fiona Beaverson, Claire Kratochvil Final briefing to discuss council’s recommendation: Monday, 29 August 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Ned Mannoun <u>Council assessment staff</u>: Emmanuel Torres, Patrick Curmi, Rachel King and Michael Oliverio The Chair Justin Doyle attended the site on 8 September 2022
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report and adopting the amendments to conditions recommended in the final Addendum Report by Patrick Curmi – Team Leader – Development Assessment.