

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Tuesday, 22 December 2020
PANEL MEMBERS	Louise Camenzuli (Acting Chair), Nicole Gurrán, Sue Francis, Peter Harle and Wendy Waller
APOLOGIES	None
DECLARATIONS OF INTEREST	Justin Doyle: A firm of solicitors occupying a strata unit of the adjoining building has previously briefed Justin.

Papers circulated electronically on 3 December 2020.

MATTER DETERMINED

PPSSWC-24 – Liverpool – DA-262/2019 at 77 – 79 Bathurst Street, 70 Memorial Avenue and 90 – 94 Castlereagh Street Liverpool Lot 7, 8, 9, 10 and 11 DP 7541; Lot 4 and 5 DP 800326 – 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 (including a briefing by the applicant) and the matters observed at site inspections listed at item 8 in Schedule 1.

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 4:1 in favour, against the decision was Councillor Wendy Waller.

REASONS FOR THE DECISION

The Panel determined to approve the application, subject to amended conditions of consent **attached** to this Determination.

The Panel heard from the applicant in respect of the proposed reasons for refusal. In part, the reasons for refusal had been addressed by a prior RFI and could, in part, also be addressed by conditions of consent.

A key issue for the Panel's consideration was the urban design desirability of leaving 60 Memorial Avenue out of the amalgamated site, and then, the potential development opportunities under the relevant controls for the property if not amalgamated. The Panel also had the benefit of legal advice provided to it by Mills Oakley relating to the issue of potential site isolation and the valuation methodology relating to an offer to purchase 60 Memorial Avenue.

In this respect, the applicant's architect took the Panel through four indicative schemes with the subject site amalgamated with adjoining properties. It was clear to the Panel from this analysis that an amalgamated development is highly likely to be similar, in relation to tower position, to that proposed. This is because, when utilising the 80m height limit and the 6:1 FSR, the tower elements at 80m nearly maximise the available GFA. This leaves the remaining parts of the site with lower perimeter buildings of heights no more than 4 storeys. Attempting to place more than two towers on the site is not possible due to tower crowding and the consequential impacts of privacy, overshadowing and massing.

Council raised concern as to the equity of building separation, particularly in respect of 60 Memorial Ave, where the proposed tower does not share the requisite separation distances under the ADG. However, the Panel was persuaded that were 60 Memorial Ave to be redeveloped having regard to the relevant planning controls (where Council informed the Panel that a FSR in the order of 2.6:1 was available based on the site area) it would most reasonably be developed to its maximum FSR with a 4 level podium type development. To attempt a tower form on the site where the equitable separation distances would be required would result in an unreasonably small floor plate that would not be desirable nor likely viable.

Concern was raised as to traffic generation but the Panel noted that the Council's controls anticipated an amalgamated site and thus an increase in permissible GFA. So, by not amalgamating, the yield and thus traffic generation would be less than anticipated.

Finally, concerns were raised regarding the proposed 10m setback and plaza fronting the subject site. The Panel was satisfied that this setback and the interface with 60 Memorial Avenue (which will have a much shorter setback) can be resolved through sensible design. The Panel considers the plaza to be desirable as it will permit deep soil planting of canopy and shade trees, which will improve overall site amenity.

In summary the Panel determined as follows:-

1. The Panel accepts the advice of Mills Oakley that the adjoining site of 60 Memorial Ave is not "isolated" having regard to the planning principle in *Karavellas*.
2. The planning principle in *Karavellas* has been satisfied in relation to 3-5 Norfolk St.
3. The Panel accepts that an unamalgamated site would reduce the likely future traffic generation. In this respect the Panel accepts the location of the proposed entry and loading area but has requested an amendment to the plans to ensure the retention of at least one of the two street trees required to be removed. This can be achieved through conditions of consent.
4. The Panel notes the officer's concern in respect of the dimension and size of the proposed balconies. In this respect the Panel accepts that, for the most part, the balconies exceed the minimum areas required, but that some balconies, whilst larger than required, do narrow in their dimension to less than 2m. As a matter of design and function, the Panel considers this acceptable, but has imposed a condition of consent to ensure that the balconies are the required minimum dimension and that where the dimension narrows, this is in excess of the minimum area required under the ADG.
5. The Panel does not accept that the proposal warrants refusal nor does it warrant a deferred commencement consent where the suggested without prejudice draft conditions of consent may be operational conditions.
6. The Panel reviewed the draft conditions, gave the applicant the opportunity to review the draft conditions and asked the Council to provide a fresh set of conditions incorporating the issues raised in the meeting by the Panel and in light of comments from the applicant on the proposed draft conditions.

Councillor Wendy Waller disagreed with the majority decision for the following reasons:

- the size and bulk of the development;
- the location of the development; and
- the extra traffic congestion and traffic movements that the local road network would have to contend with would not be desirable

CONDITIONS

The development application was approved subject to the "without prejudice" conditions in the Council assessment report with the amendments **attached** to this Determination. The primary amendments to the draft conditions are as follows:

- Replacement of deferred commencement consent conditions with operational conditions.
- Minor re-wording of some conditions.
- Deletion of repeated or unnecessary conditions.






- Insertion of a condition requiring the registration of a positive covenant on title benefiting 60 Memorial Avenue and 3-5 Norfolk St.
- Amendments to balconies to achieve minimum dimensions at the point the balcony achieves the minimum area
- Amendments to the loading area entry to allow the retention of at least 1 of the proposed street trees proposed to be removed.
- A revised condition of consent relating to the provision of public art, which was proposed by the applicant.

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:

- The proposal is not a logical development of the remaining undeveloped portion of the northern side of the street block bounded by Memorial Avenue, Castlereagh Street, Norfolk Avenue and Bathurst Street.
- A suitable adjoining land value has not been determined on the basis of permitted heights and FSR should neighbouring properties amalgamate with the subject site for the purpose of development.
- The site forms a gateway between the zoned land to the west and that land in the Liverpool City Centre to the East Zoned B4. The proposal does not represent a suitable gateway between the two zones due to 60 Memorial Avenue not being developed as part of the proposal.
- The presentation of the western tower to Castlereagh Street is overbearing to the existing streetscape.
- The proposal results in poor street activation to the Memorial Avenue frontage and provides no weather protection to the public footpath to any frontage.
- The site impinges on the neighbouring development in terms of building separation and reduces the capacity of adjoining allotments to be equitably developed in relation to the current planning controls.

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	
 <p>Louise Camenzuli (Acting Chair)</p>	 <p>Nicole Gurran</p>
 <p>Sue Francis</p>	 <p>Peter Harle</p>
 <p>Wendy Waller</p>	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-24 – Liverpool – DA-262/2019
2	PROPOSED DEVELOPMENT	The application proposes the demolition of existing building and structures, remediation of the site, construction of a mixed use development comprising a 4-storey commercial, retail, food use and residential podium including a two-level restaurant, two residential towers at a total of 17 levels and 23 levels in height comprising a total of two hundred and sixty four (264) units, above three (3) levels of basement car parking and associated landscaping and services.
3	STREET ADDRESS	77 – 79 Bathurst Street, 70 Memorial Avenue and 90 – 94 Castlereagh Street Liverpool Lot 7, 8, 9, 10 and 11 DP 7541; Lot 4 and 5 DP 800326
4	APPLICANT/OWNER	Applicant: I Capitano Investments CO/- Brian Mariotti AJ&C Architects Owner: Zdzislaw Sofi, Sam Sofi and Sebastiano Sofi
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"> ○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. ○ State 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 ○ Part 1: General Controls for All Development ○ Part 4: - Development in the Liverpool City Centre • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: 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: 3 December 2020 • Written submissions during public exhibition: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 14 October 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Stuart McDonald ○ <u>Council assessment staff</u>: Peter Nelson and Boris Santana • Site inspection: 14 October 2019

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Bruce McDonald and Stuart McDonald ○ <u>Council assessment staff</u>: Peter Nelson and Boris Santana <ul style="list-style-type: none"> • Applicant Briefing: Tuesday, 15 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Louise Camenzuli (Acting Chair), Nicole Gurran, Sue Francis, Peter Harle and Wendy Waller ○ <u>Applicant representatives</u>: Brett Maynard, Brian Mariotti, Joseph Arnott, Keith Stead, Mathew So and Naomi Daley ○ <u>Council assessment staff</u>: Linda Kakish, Peter Nelson and Boris Santana <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report