

COUNCIL ASSESSMENT REPORT

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-304 - DA-1262/2022
PROPOSAL	Concept Development Application for the construction of a 31-storey mixed-use development consisting of the establishment of the building envelope, gross floor area, maximum building height, design excellence, public domain works, vehicular access and car parking provision, stormwater management and concept landscape design.
ADDRESS	Lot 100 DP 1250893 402 Macquarie Street Liverpool 2170
APPLICANT	Kingdom Towers 1 Pty Ltd C/- The Planning Hub
OWNER	Kingdom Towers 1 Pty Ltd
DA LODGEMENT DATE	13/01/2023
APPLICATION TYPE	Concept DA
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : CIV over \$30 million
CIV	\$133,600,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 7.4 Building Separation pursuant to the <i>Liverpool Local Environmental Plan 2008</i>
KEY SEPP/LEP	<i>State Environmental Planning Policy (Planning Systems) 2021; and</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021; and</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021; and</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021; and</i> <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> <i>Liverpool Local Environmental Plan 2008</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	Nil submissions received
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans Landscape Plans Tables of Compliance

	Design Excellence Panel Minutes Response to DEP Minutes Susceptibility Analysis Assessment Clause 4.6 Request
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	11 December 2023
PLAN VERSION	10 October 2023
PREPARED BY	Nabil Alaeddine
DATE OF REPORT	23 November 2023

1. EXECUTIVE SUMMARY

The Development Application (DA-1262/2022) seeks consent for a Concept Development Application for the construction of a 31-storey mixed-use development consisting of the establishment of the building envelope, gross floor area, maximum building height, design excellence, public domain works, vehicular access and car parking provision, stormwater management and concept landscape design.

The subject site is known as 402 Macquarie Street, Liverpool ('the site') is a corner allotment and comprises Lot 100 in DP 1250893 with road frontages to Macquarie Street and Carey Street. It is located within the block bounded by Macquarie Street to the north, Carey Street to the west and Charles Street to the south and occupies an irregularly shaped area of 2,292m².

The site is currently a vacant allotment following demolition of the existing structures on the site as part of the previous applications for the site.

The site is located in an area of transition from the medium density to highrise multi-level mixed-use developments within the Liverpool City Centre, located approximately 765 metres to the west of the Liverpool Railway Station. It is situated on the western periphery of the Liverpool Town Centre and is zoned MU1 – Mixed Use pursuant to the Liverpool *Local Environmental Plan 2008* ('LEP 2008'). The proposed development is permitted with consent within the zone.

The development requires the comments of Transport for NSW pursuant to Section 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 as the proposal fronts onto a Classified Road (Macquarie Street). TfNSW has provided their concurrence to the proposal.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

- Section 4.6 of the Transport and Infrastructure SEPP for consideration of whether the land is contaminated.
- Clause 28(2)(a) of SEPP 65 in relation to advice of any design review panel have been satisfied; and
- Section 2.119(2) of SEPP Transport and Infrastructure in relation to the safety, efficiency and ongoing operation of the classified road (Macquarie Street).

The application was placed on public exhibition from 8 February 2023 to 23 February 2023, with no submissions received.

The application is referred to the Sydney Western City Planning Panel as the development is '*regionally significant development*', pursuant to Section 2.19(1) and 2.20 and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is a development with a CIV over \$30 million.

A briefing was held with the Sydney Western City Planning Panel (SWCPP) on 13 November 2023 where key issues were discussed, including whether the proposal exhibits design excellence, whether the uplift in building height and FSR is justified, the Concept DA process, building separation, front setbacks, podium height, impact on the proposal upon development potential of neighbouring sites, urban design and public domain treatment, waste management and contamination.

The Design Excellence Panel has considered the application on 2 separate occasions: at the pre-lodgement stage; and during the assessment of the Concept DA. The Panel has provided their support for the amended proposal, subject to the implementation of a number of design recommendations.

The principal planning controls relevant to the proposal include *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* ('SEPP 65'), the *Liverpool Local Environmental Plan 2008* and the *Liverpool Development Control Plan 2008* ('DCP').

The key issues associated with the proposal include:

1. **Contamination** – To determine whether there is contamination on site and what would be the impacts on the future residential use. Accordingly, the consent authority must consider whether the contamination has been satisfactorily addressed under the *State Environmental Planning Policy (Resilience and Hazards) 2021*, to be satisfied that the site can be made safe for residential use.
2. **Design Excellence** – Whether the proposal exhibits design excellence for the Liverpool City Centre in accordance with the requirements of Clause 7.5 of the *Liverpool Local Environmental Plan 2008*.
3. **Building Height and FSR** – The proposal is seeking an uplift in building height and FSR of up to 10:1 and whether the proposal satisfies the criteria of Clause 7.5A of the *Liverpool Local Environmental Plan 2008* to qualify for an increased building height and FSR.
4. **Concept Development Application** – Whether the proposal satisfies the Concept Development Application criteria of Clause 7.5A of the *Liverpool Local Environmental Plan 2008*.

5. **Building Separation** – Whether sufficient building separation has been provided in accordance with Clause 7.4 of the Liverpool Local Environmental Plan 2008 and the implications of the proposal upon the re-development potential of neighbouring sites.
6. **Front Setback** – Whether the non-compliance with the required 4.5m landscaped area to the Carey Street frontage of the site is sufficiently justified. The building proposes minimal setback to Carey Street and the 4.5m setback is provided above the podium level.
7. **Podium Height** - Whether proposed scheme satisfactorily addresses the intent of the Council's DCP to ensure that future developments in the City Centre achieve a consistent strong perimeter podium form to the public domain of 6-storeys.
8. **Susceptibility Analysis** – Whether the susceptibility analysis assessment satisfactorily resolve the amalgamation patterns of surrounding properties into developable lots and that the development does not prejudice the re-development potential of neighbouring properties.

Having regard to the matters for consideration under Section 4.15(1) of the EP&A Act, in particular 4.15(1)(a), (b), (c), (d) & (e), the Council is unable to support the development on the basis that contamination matters have not been addressed in accordance with Chapter 4 of the Resilience and Hazards SEPP. Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA-1262/2022 is recommended for **Refusal** subject to the Notice of Determination contained at **Attachment A** of this report.

2. THE SITE AND LOCALITY

2.1. The Site

The development site is identified as a 2,292sqm single corner allotment known as 402 Macquarie Street, Liverpool and is legally described as Lot 100 in DP 1250893. It is irregular in shape, with a frontage of 65.9m to Terminus and Macquarie Streets as well as 38.7m frontage to Carey Street. The site is zoned MU1 Mixed-Use under the Liverpool Local Environmental Plan 2008.

At present, the site is vacant following a previous approval to demolish of existing structures. Surrounding land uses can be summarised as mixed commercial uses to the south-west, north-east and north along Macquarie Street, and low to medium density residential developments to the south and south-east.

A desktop analysis of the site indicates that the site is impacted by a couple of constraints including the obstacle height limitation and classified road noise impacts. The analysis also indicates that essential services including electricity, reticulated water and sewer, waste collection, telecommunications and NBN are available to the site.



Figure 1: Aerial Image of the subject site

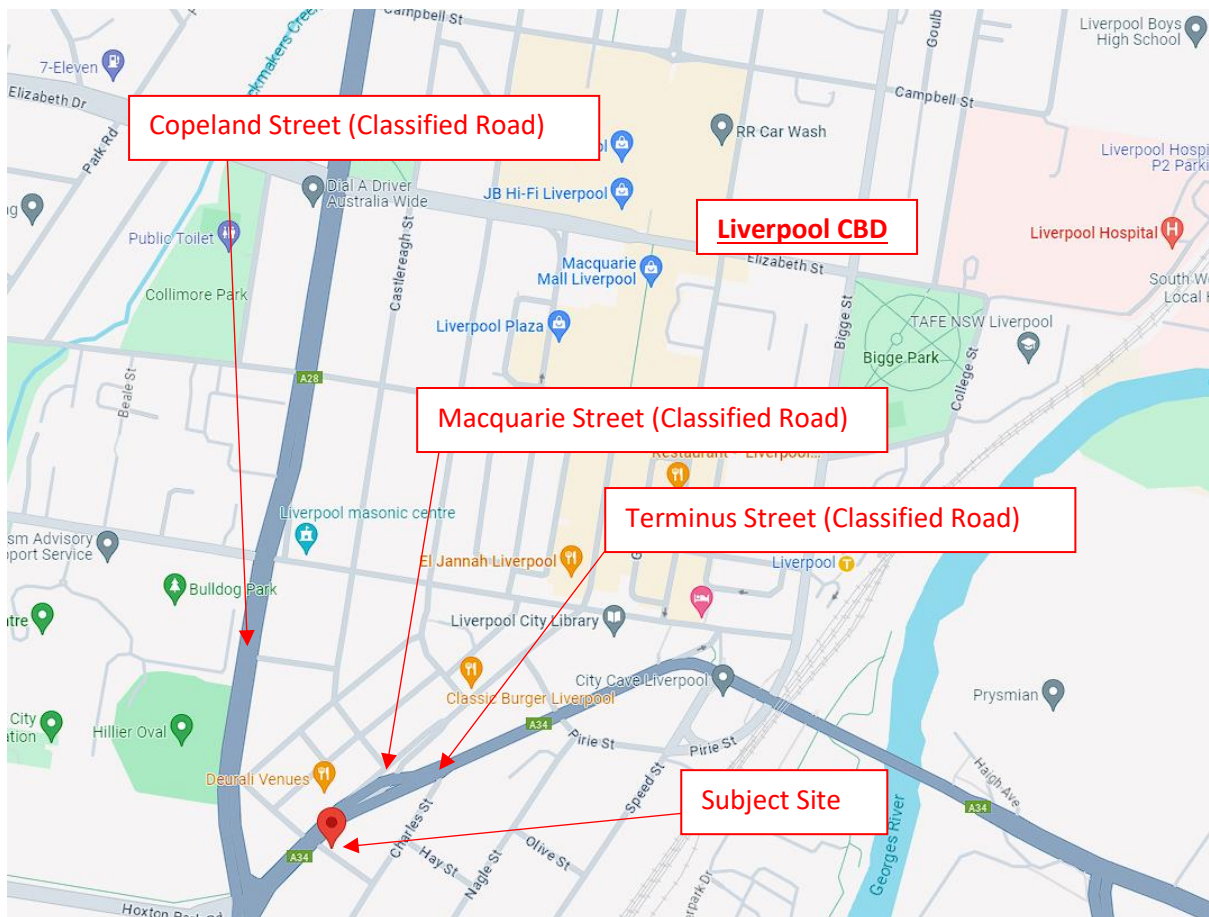


Figure 2: Locality Map

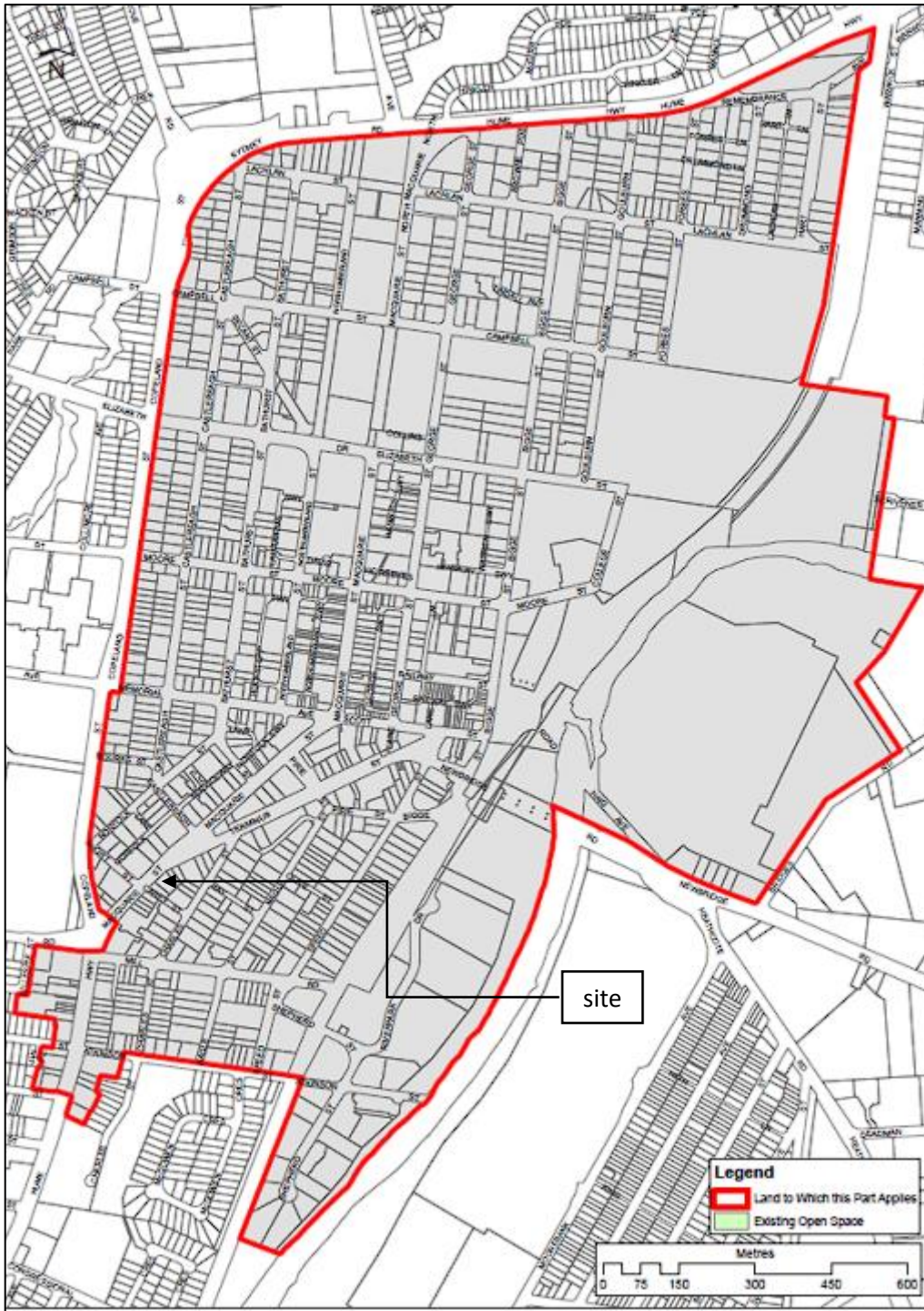


Figure 3: Locality Map and an outline of the Liverpool Town Centre (Source: Liverpool DCP 2008)

2.2. The Locality

The subject site is situated on the western periphery of the Liverpool Town Centre and is surrounded by high density mixed-use buildings and low and medium density residential flat buildings of varying heights and architectural character.

The table below outlines developments within close proximity to the site.

Table 1: Adjacent Developments

Address	Location	Development
166-176 Terminus Street	Adjacent site to the east	9-storey mixed-use building
1-5 Charles Street	Adjacent site to the south-east	2 x 4-storey residential flat buildings
406 Macquarie Street	Site on opposite side of Carey Street	Service Station
420 Macquarie Street	Cnr Macquarie Street and Mill Road	30-storey mixed-use building – Lateral building
405-419 Macquarie Street	Sites on opposite side of Macquarie Street	Single level commercial buildings
387 Macquarie Street	Site diagonally opposite Macquarie Street	24-storey mixed-use building



Figure 4: Street image of the subject site – vacant allotment (Source: Google Street View, 2023)



Figure 5: Existing 9 storey residential flat building on adjacent site to the east (Source: Google Street View, 2023)



Figure 6: Existing 4 storey residential flat buildings to the south-east (Source: Google Street View, 2023)



Figure 7: Existing service station and mixed-use tower development to the west of the site (Source: Google Street View, 2023)



Figure 8: Existing single storey commercial buildings on the opposite side of Macquarie St (Source: Google Street View, 2023)



Figure 9: Existing multi-level mixed-use on the corner of Macquarie and Castlereagh Streets (Source: Google Street View, 2023)

3. THE PROPOSAL AND BACKGROUND

3.1. The Proposal

Concept Development Application for the construction of a 31-storey mixed-use development consisting of the establishment of the building envelope, gross floor area, maximum building height, design excellence, public domain works, vehicular access and car parking provision, stormwater management and concept landscape design.

A summary of the development is described in Table 1.

Table 2: Development Data

Control	Proposal
Site area	2,292m ²
GFA	Allowable GFA: 22,920m ² Proposed GFA: 22,920m ²
FSR (retail/residential)	Permitted: 10:1 Proposed: 10:1

Clause 4.6 Requests	Clause 7.4 Building Separation pursuant to Liverpool Local Environmental Plan 2008
No of apartments	168 Residential Units comprising of: 84 = 1-bedroom unit 63 = 2-bedroom units 21 = 3-bedroom units
Hotel Accommodation	198 Hotel Rooms
Max Height	104.9m
Residential Communal Open Space	1031.4m ² (45%)
Deep Soil Area	86.6m ² (3.7%)
Car Parking spaces	244 (6 basement levels)
Setbacks	Front (north – Macquarie St): 0 - 5.5m Side (east): 0 – 19.9m Side (west – Carey St): 0 – 6.8m Rear (south): 7m – 17.7m



Figure 10: Photomontage of the proposal as originally submitted. The podium level has since been lowered to 6-storey in height.

Proposed Building Envelope

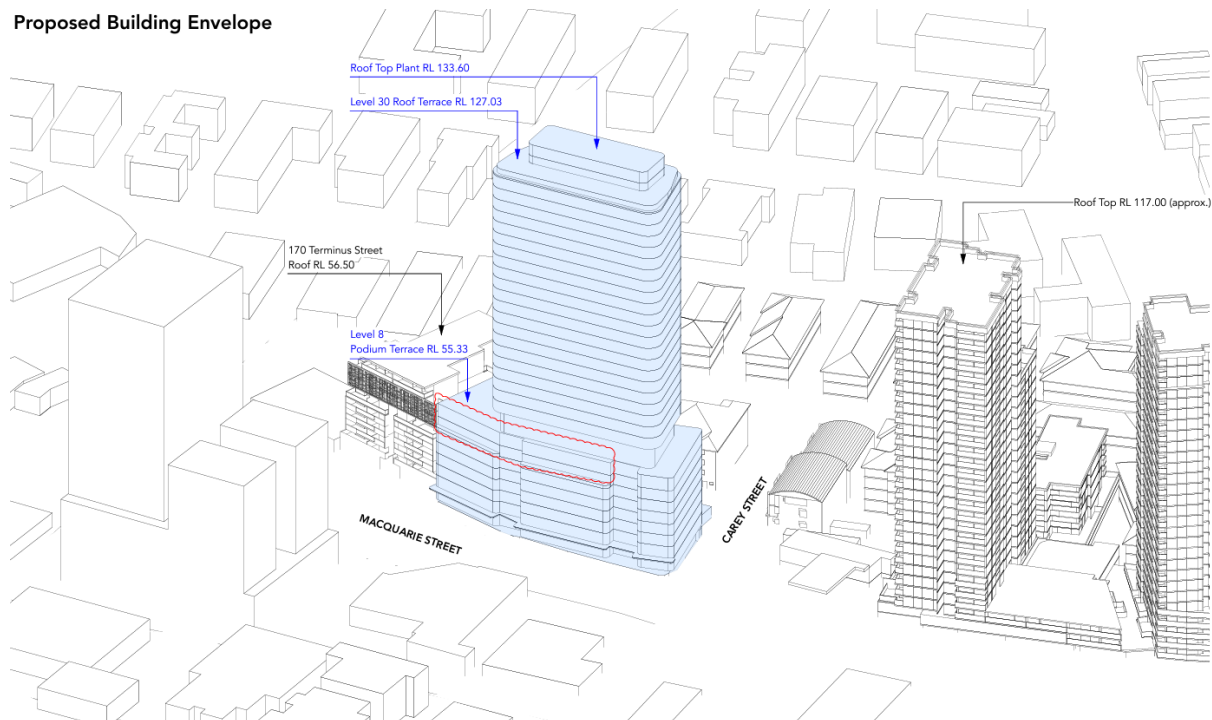


Figure 11: Building Envelope Plan showing proposal relative to its development context.

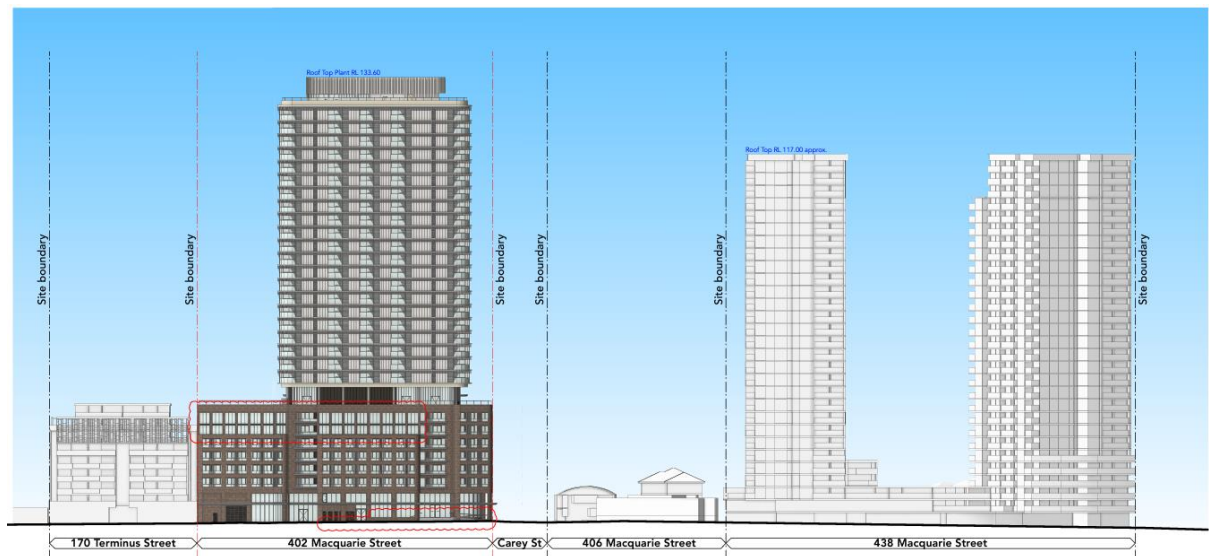
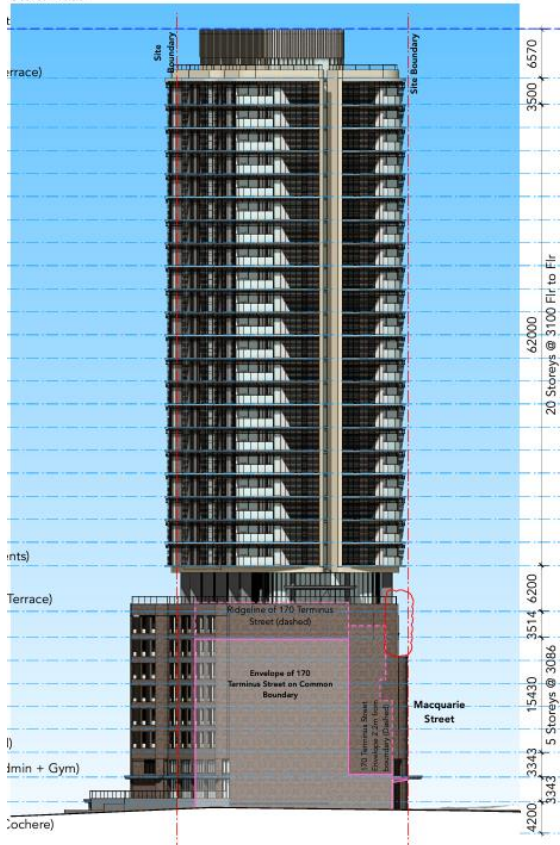


Figure 12: Street elevation as seen from Macquarie Street

Elevation-North

Scale: 1:500



Elevation-West

Scale: 1:500

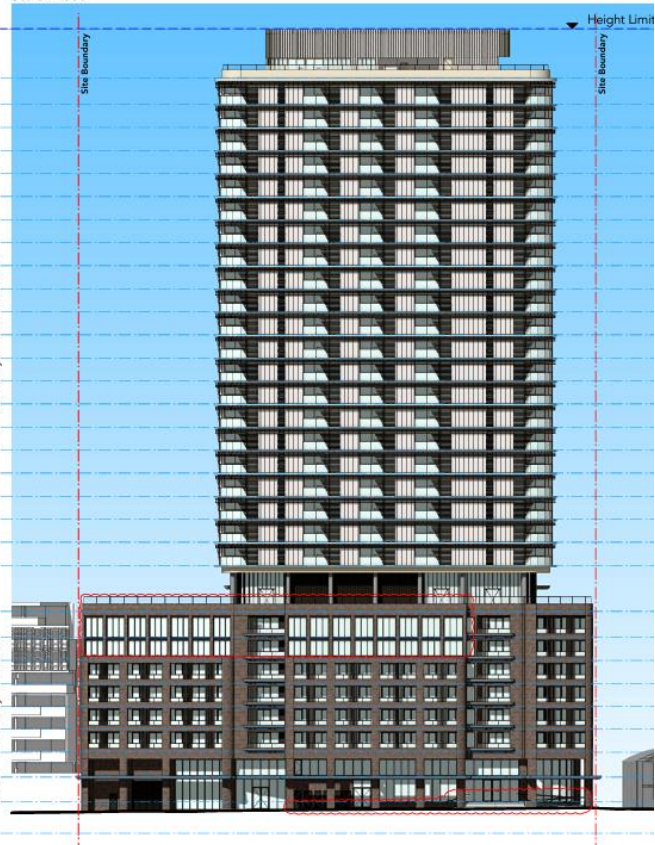
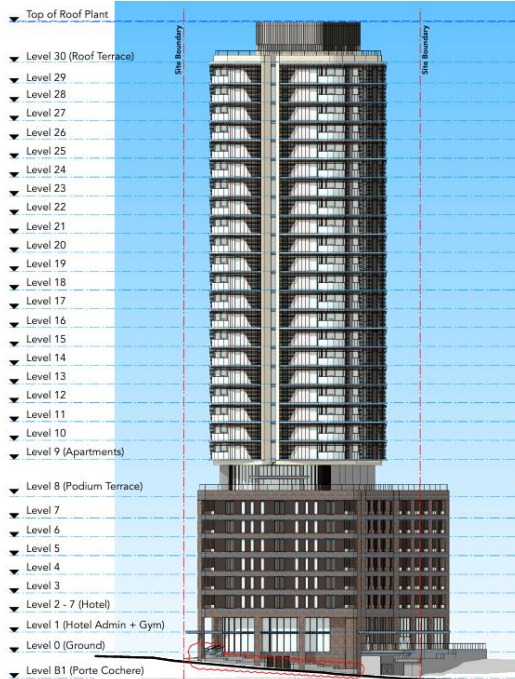


Figure 13: North and west elevations of the proposal

Elevation-South

Scale: 1:500



Elevation-East

Scale: 1:500

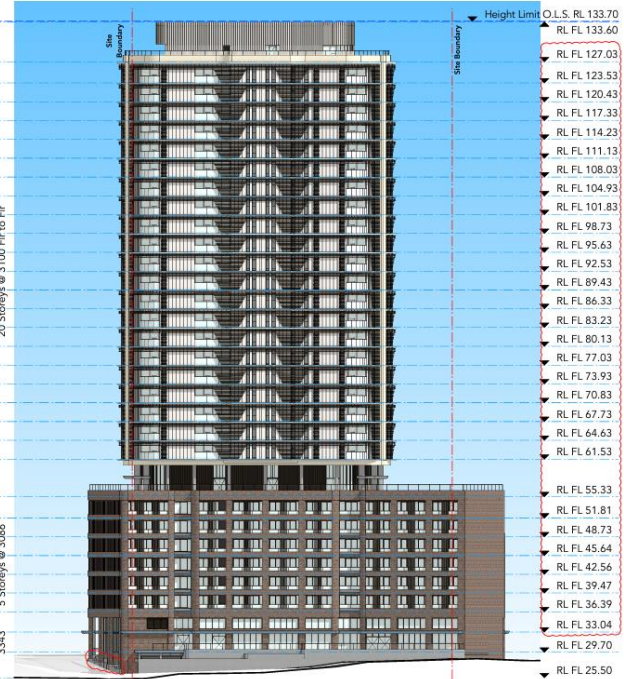


Figure 14: South and East Elevations of the proposal

Exterior Building Fabric: Podium Hotel + Retail

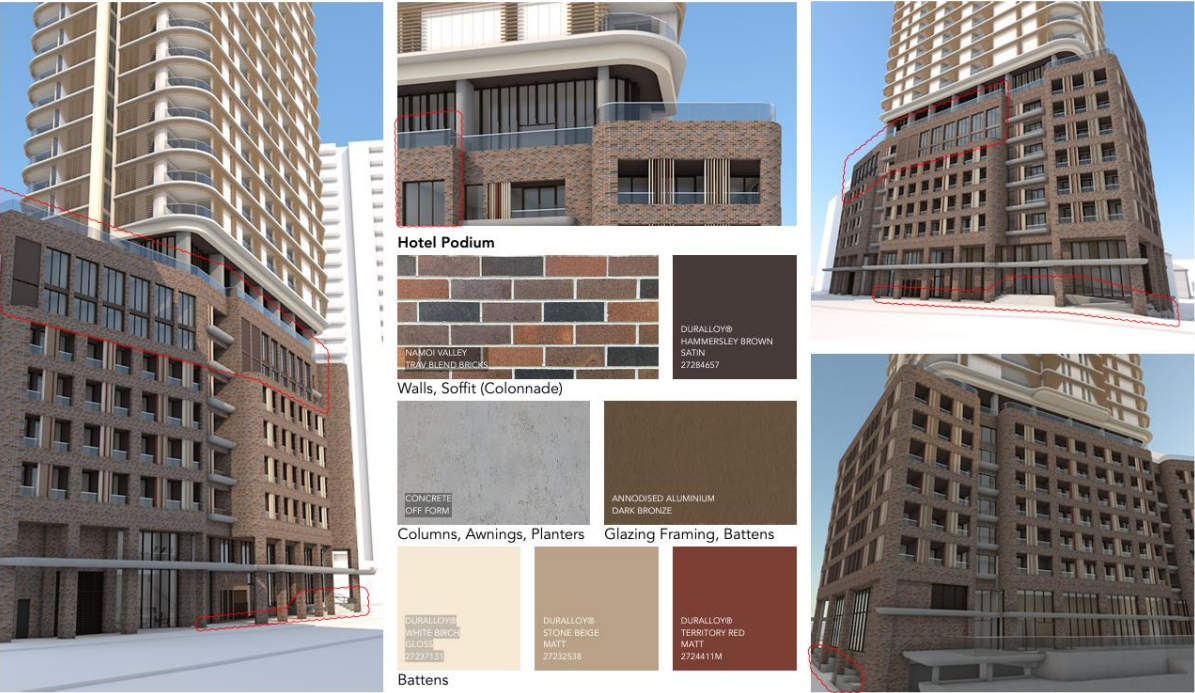


Figure 15: Material Palette: Podium noting amendment to the podium level.

Material Palette: Tower
Exterior Building Fabric: Residential Tower



Figure 16: Material Palette Tower

Photo Montage: Views 2 to 5



Figure 17: Photomontages of the proposal relative to its context

3.2. Background

Development History of the subject site		
DA Number	Proposal	Outcome
DA-237/2015	A Development Application was granted consent for the demolition of existing buildings and the construction of an 8-storey mixed-use development comprising of group floor commercial space, 59 residential units and associated basement and at-grade car parking	Approved by Council on 16 December 2016.
DA-237/2015/A	A s.96(1A) modification was issued for the inclusion of a staging component as part of the DA. The staging component comprised of 3 individual stages to allow the orderly commencement of works.	Approved by Council on 29 September 2017.
DA-237/2015/B	A s.96(1A) modification was issued for the following modifications to the original approval including: <ul style="list-style-type: none"> - Construction of an additional basement level increasing the total number of basements to 3 and increased the number of car parking spaces on site to 114 spaces; - Addition of adaptable units and - Façade revision. 	Approved by Council on 19 December 2017.
DA-232/2018	A DA was granted for demolition of existing structures and excavation to accommodate a future 3 levels of basement car parking.	Approved by Council on 15 May 2018.

DA-232/2018/A	A s.4.55(1A) modification issued to amend the excavation works to allow additional excavation to a depth of 16.6m.	Approved by Council on 20 December 2018.
DA-625/2018	A DA issued for the consolidation of 4 lots, construction of a 17-storey mixed-use development for 145 residential apartments and 3 commercial units over 5 levels of basement car park, containing 204 car spaces, 16 motorcycle spaces and 114 bicycle spaces.	Approved by Land and Environment Court on 23 August 2019.
DA-262/2018	<p>Concept DA for a mixed-use development. The proposal sought approval for:</p> <ul style="list-style-type: none"> - Establishment of a building envelope across the site, to be used for a mixed-use development incorporating ground floor commercial, indoor recreation facility, upper-level hotel and residential accommodation; - Potential maximum GFA of 23,020m², representing an FSR of 9.99:1; - Maximum building height of 104.99m (30-31 storeys) - Design excellence strategy; - Public domain improvement works; - Vehicular access from Carey St and maximum number of car parking spaces; - Stormwater management works; and - Landscape concept. 	Refused by the Land and Environment Court on 7 April 2021.

A pre-lodgement meeting with the Liverpool Design Excellence Panel was held on 11 August 2022 for a Concept Development Application for a 27-storey mixed-use development consisting of 6 levels allocated to hotel and business use and 17 levels allocated for residential uses, basement car parking and associated site works.

The development application was lodged on **13 January 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the DA

Date	Event
20 December 2022	Application submitted onto the NSW Planning Portal
22 December 2022	RFI issued for payment of application fees.
11 January 2023	Application fees not paid. Follow-up reminder sent
08 February 2023	Notification Commenced

23 February 2023	Notification Completed (0 submissions received)
11 May 2023	DEP Meeting
20 June 2023	RFI issued to applicant following Council Assessment
15 September 2023	Amended RFI issued.
13 October 2023	Additional Information Provided
13 November 2023	Sydney Western City Planning Panel Assessment Briefing

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

4.1. Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

4.1.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- (i) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- (ii) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- (iii) *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- (iv) *State Environmental Planning Policy (Planning Systems) 2021*
- (v) *State Environmental Planning Policy (Resilience and Hazards) 2021*
- (vi) *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- (vii) *Liverpool Local Environmental Plan 2008*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none"> The site is vacant, 	NA
	Chapter 6: Water Catchments The proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to promote the protection of the Georges River Catchment.	Y
SEPP 65	<ul style="list-style-type: none"> Clause 30(2) – Design Quality Principles <ul style="list-style-type: none"> (a) The proposal is considered to be consistent with the design quality principles. (b) The proposal is considered to satisfy the objectives specified within the ADG, notwithstanding non-compliance with the numerical requirements for building separation. 	Y
		Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises a development with a CIV greater than \$30 million. 	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> Section 4.6 - Contamination and remediation have not been adequately considered due to no sufficient Detailed (Stage 2) Site Investigation (DSI) or Remediation Action Plan (RAP) being submitted to ensure that the site can be made safe in terms of Contamination. Therefore, Council is not satisfied that the site is free of contaminates. 	N

State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Section 2.118(2) - Development with frontage to classified road. • Section 2.119(2) Impact of road noise or vibration on non-road development 	Y
Liverpool LEP 2008	<ul style="list-style-type: none"> • Clause 2.3 – The proposed Mixed-use development is permitted within the MU1 zone and meets the zone objectives. • Clause 7.5 – Design Excellence in Liverpool City Centre. The proposal was considered by the DEP, with the latest plans supported subject to recommendations. 	Y Y
Liverpool DCP 2008	Section 4.2.7 Street Alignments and Street Setbacks <ul style="list-style-type: none"> • The DCP requires a setback to Carey Street of 4.5 metres. The proposed setback of 0m – 6.8m to Carey Street is considered to be acceptable in that the scheme would facilitate the activation of Carey Street and Macquarie Street. 	Y

Consideration of the relevant SEPPs is outlined in greater detail below.

(a) State Environmental Planning Policy (Biodiversity and Conservation) 2021

(i) Chapter 2 – Vegetation in non-rural Areas

Not applicable, as the site is vacant and devoid of any vegetation.

(ii) Chapter 6: Water Catchments

It is considered that the proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to promote the protection of the Georges River Catchment. It is considered that appropriate conditions can be imposed relating to erosion and sediment control and storm water runoff mitigation.

(b) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential apartment development. SEPP 65 does not contain numerical standards but requires Council to consider the development against 9 key design quality principles, and against the guidelines of the associated Apartment Design Guidelines (ADG).

The ADG provides additional detail and guidance for applying the design quality principles outlined in SEPP 65. The proposal is considered to be consistent with the design quality principles as outlined within the SEPP 65 and is considered to satisfy the objectives specified within the ADG, notwithstanding non-compliance with the numerical requirements for building separation.

A full assessment of the relevant provisions within SEPP 65 and the ADG is provided at **Attachment B**.

(c) State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development with a Capital Investment Value of over \$30m. Accordingly, the Sydney Western City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

(d) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal involves the development of land to accommodate a change of use.

The objectives of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a statewide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Clause 4.6(1) prescribes the contamination and remediation matters that must be considered by Council before determining the development application. Specifically, Council must consider:

- whether the land is contaminated; and
- if the land is contaminated, the Council must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation); and
- if the land requires remediation to be made suitable, Council is satisfied that the land will be remediated before it is used.

Pursuant to Clause 4.6(1) the following shall be addressed:

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	A Stage 2 Detailed Site Investigation has not been submitted with the application.

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	<p>The DSI was not submitted as requested to assist the development and was instead replaced by letters from suitably qualified experts in support of the land contamination. Both documents concluded that contaminants are potentially still present on site and that further detailed assessments are to be undertaken.</p> <p>In the absence of a DSI, Council is unable to ensure that the site is suitable for the proposed use.</p>
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	<p>Whilst works have occurred onsite, it has not been determined if all contaminants have been removed of site.</p>

Based on the above assessment the application has failed to address the SEPP and the consent authority is not satisfied that the site is suitable for the proposed use.

(e) State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.119 – Development with frontage to a classified road

The application is subject to Clause 2.119 of the SEPP as the development has frontage to a classified road. Clause 2.119 relevantly provides:

2.119 Development with frontage to classified road

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
 - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment

Transport for NSW (TfNSW) has provided its concurrence to the proposal.

Point (c) regarding traffic noise is discussed below.

Clause 2.120 – Impact of road noise or vibration on non-road development

The application is subject to Clause 2.120 of the SEPP as the Macquarie Street has an average daily traffic volume of more than 20,000 vehicles per day and the proposed residential development is identified as a sensitive land use. In this regard, the consent authority is required to ensure that the design of the development can meet the relevant noise criteria as stated. In order to achieve the required noise criteria, an acoustic report was prepared by a qualified acoustic consultant demonstrating that the design can meet the stated environmental noise criteria as provided within the SEPP.

(f) Liverpool Local Environmental Plan 2008

The relevant local environmental plan applying to the site is the *Liverpool Local Environmental Plan 2008* ('LEP'). The aims of the LEP include the following:

- (a) to encourage a range of housing, employment, recreation and services to meet the needs of existing and future residents of Liverpool,*
- (d) to strengthen the regional position of the Liverpool city centre as the service and employment centre for Sydney's south west region,*
- (e) to concentrate intensive land uses and trip-generating activities in locations most accessible to public transport and centres,*
- (j) to promote a high standard of urban design that responds appropriately to the desired future character of areas,*

The proposed development is consistent with these aims as the proposal provides for a range of apartments, employments, recreation and services to the needs of existing and future residents of Liverpool within the Liverpool City Centre. The proposal has also undergone assessment by the Design Excellence Panel and is considered to be appropriate for the site and locality.

(i) *Zoning and Permissibility (Part 2)*

The site is located within the MU1 Mixed-use zone pursuant to Clause 2.2 of the LEP.

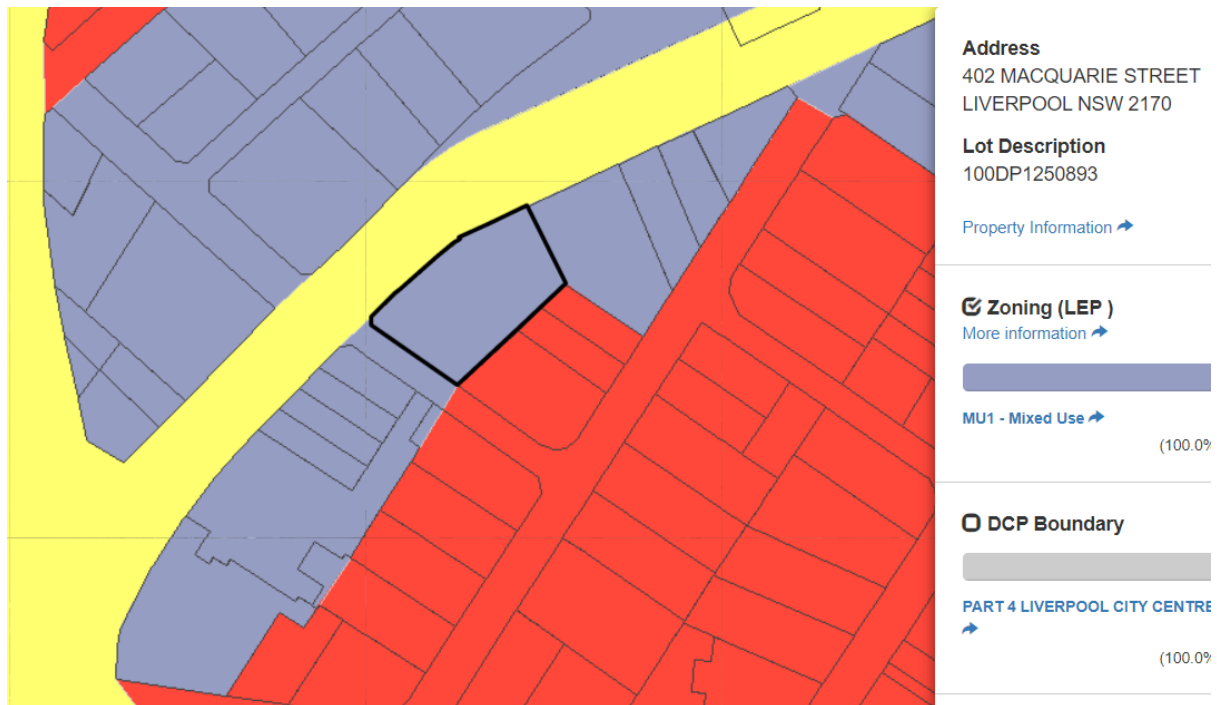


Figure 18: Zoning map (Source: Legislation website, 2023)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of Residential Flat Building, Recreation Facility (Indoor) & Hotel and Motel Accommodation which are permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives for the MU1 zone include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To allow for residential and other accommodation in Liverpool city centre, while maintaining active retail, business or other non-residential uses at street level.*

The proposal is considered to be consistent with these zone objectives as the proposal encourages a diversity of business land uses that generate employment opportunities, and the proposal provides diverse and active street frontages to attract pedestrian and to contribute to vibrant, diverse and functional streets and public spaces. In addition, the proposal encourages business and other non-residential land uses on the ground floor of the building; and allow for residential and hotel accommodation in the Liverpool city centre, maintaining active retail, business or other non-residential uses at street level.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below. The proposal does not comply with the development standard/s in Part 4 of the LEP/Clause 7.4 and accordingly, a Clause 4.6 request has been provided with the application for non-compliance with building separation standard.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	1,000m ²	2,292m ²	Yes. No subdivision proposed.
Height of buildings (CI 4.3(2))	28 metres (Clause 7.5A allows for increased building height for sites in the Liverpool city centre that have a site area exceeding 1,500m ² . No height limit.	104.9 metres	Yes
FSR (CI 4.4(2))	3:1 (Clause 7.5A provides for bonus floor space provisions for sites in the Liverpool city centre that have a site area exceeding 1,500m ² . The maximum permitted FSR is 10:1.	10:1	Yes
Exceptions to development standards (CI 4.6)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.	Clause 4.6 variation statement submitted in support of a variation to building separation development standard contained in Clause 7.4 of the LEP.	Yes
Land acquisition (CI 5.1/5.1A)	The site is not identified as land required to be acquired.	N/A	N/A
Heritage (CI 5.10)	The land is not identified as a heritage item or land within a	N/A	N/A

	heritage conservation area.		
Flood planning (CI 5.21)	Provisions relating to development on flood prone land.	The site is not identified within LEP maps as being affected by flood	N/A
Arrangements for designated State public infrastructure in intensive urban development areas (CI7.1A)	Development consent cannot be granted for the purposes of residential accommodation in an intensive urban development area that results in an increase in the number of dwellings in that area, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out.	The Department of Planning indicated that this issue is to be dealt with at the Detailed DA stage at a future date	Yes
Building separation in Liverpool City Centre (CI 7.4)	<p>(a) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone MU1 Mixed Use, and</p> <p>(b) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone MU1 Mixed Use.</p>	<p>The building is proposed to the eastern side boundary for a maximum height of 8 storeys (or 25.6m) to abut against the boundary wall of the existing 9-storey building at 166-176 Terminus Street. Such arrangements are considered appropriate.</p> <p>As for the tower component of the building, it is setback greater than 12m from adjoining neighbouring buildings from the east and south-eastern boundaries.</p>	<p>Acceptable</p> <p>Yes</p>
Design Excellence (CI 7.5)	Development in Liverpool City Centre to be exhibit design excellence	The Design Excellence Panel is supportive of the amended design subject to the implementation of design recommendations	Yes

		within the future detailed DA for the site.	
Acid sulphate soils (CI 7.7)	Provisions relating to development on land affected by acid sulfate soils.	The subject site is not affected by acid sulfate soils.	N/A

The proposal is considered to be generally consistent with the LEP.

4.1.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act and are relevant to the proposal.

4.1.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Liverpool Development Control Plan 2008* ('the DCP')

The proposed development generally complies with the controls outlined within the DCP, with the exception of the setbacks to Carey Street and the relevant information addressing Contamination and Land Risk. The required setback to Carey Street is 4.5m landscaped setback, however, the proposal provides a setback ranging from 0m to 6.8m. That is, the building is provided with zero setback to Carey Street up to the podium level, it is then setback 6.8m on level 8 and the setback to Carey Street is reduced to 4.5m.

The reduced setback to Carey Street is not considered to be unreasonable, given the prominent corner position of the site within the Liverpool City Centre and the need to accentuate the corner location of the site with a building that punctuates the site. In addition, the reduced setback to Carey Street does not have any impact on the building separation between the proposal and neighbouring buildings and there is no environmental impact upon the locality and adjoining sites (further assessment of the non-compliance is addressed below in the report and within the submitted Clause 4.6 Variation Statement).

The Contaminated Land Risk has not been adequately addressed as the applicant failed to submit a DSI and RAP pertaining to the submitted PSI indicating the potential for contaminants still being present on site. In conjunction with the objectives and controls in the DCP part 1, section 10, the site cannot be deemed as suitable for the site as these matters have not been addressed adequately. Refer to Chapter 4 Remediation of land section of this report for details.

Should the application have been supported, the following contributions plans would be relevant pursuant to Section 7.18 of the EP&A Act and imposed in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Liverpool Contributions Plan 2018 – Liverpool City Centre*

This Contributions Plan has been considered and included within the recommended draft consent conditions.

4.1.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

4.1.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

4.2. Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

Built Environment

This section of the Liverpool City Centre is zoned MU1 Mixed-use, and the immediate and surrounding locality comprises of high density, multi-storey residential apartment buildings. It is therefore considered that the proposal is consistent with the existing and future character of the locality.

The proposal is considered satisfactory in terms of potential impacts to adjoining and surrounding properties in regard to its scale and built form, and in that regard does not result in any significant adverse impacts. However, the unresolved nature of the contamination matters does raise concerns whether the site is safe for the proposed residential use and in the absence of a DSI and RAP, concerns are warranted regarding negative impacts to neighbouring sites.

Whilst located on a Classified State Road, the proposed vehicular access has been designed so that the safety, efficiency and ongoing operation of the classified road will not be affected, given that vehicular access to the development is restricted to Carey Street (local road), not Macquarie Street.

Natural Environment

Due to the unresolved contamination matters, the impact on the natural environment cannot be quantified however any adverse impacts to the natural environment, subject to the implementation of water quality control devices within the stormwater management system and erosion and sediment control measures during construction, will be further addressed in the development application for the building.

(a) Social Impacts and Economic Impacts

Social Impacts

The proposal includes the provisions of 168 residential apartments, gymnasium and 198 Hotel Rooms, which will contribute to the provision of housing and services to the Liverpool city Centre. Having regard to the findings of the accompanying social impact assessment, it is

considered unlikely that the proposal will result in any adverse social impacts to the area.

Economic Impacts

It is considered that the proposed mixed-use development will have a positive impact upon the Liverpool City Centre through the increase in residential density and consequent increase in economic activity within the centre.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

4.3. Section 4.15(1)(c) - Suitability of the site

The site is considered suitable for the proposed development. The proposal is permitted within the MU1 zone, meets the objectives of the zone, and has demonstrated general compliance with the relevant development controls contained within Council's DCP.

The site is provided with all essential services including electricity, telecommunications, NBN, reticulated water & sewer. Whilst the site fronts a Classified State Road, vehicular access to the site is limited to a secondary street (Carey Street).

The site represents a suitable parcel of land within the Liverpool City Centre which comprises other higher density, multi-level apartment buildings. The site is also ideally located within the Liverpool Town Centre and has good access to public transport.

4.4. Section 4.15(1)(d) - Public Submissions

During the public exhibition period, no submission was received objecting to the development.

4.5. Section 4.15(1)(e) - Public interest

The proposed development is permitted within the MU1 zone (at the time of lodgement of the application) and meets the objectives of the zone. Had the application be supported, the development would provide additional housing opportunities and hotel accommodation within close proximity to employment and public transport, however due to the contamination matters not been addressed to enable residential use on site, it is considered that the proposal is not in the public interest.

5. REFERRALS AND SUBMISSIONS

5.1. Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Rail authority for the rail corridor	Section 2.98(3) – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	N/A	N/A
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Endeavour Energy raise no objection subject to conditions, including details surrounding the location of any future substation if required – to be conditioned prior to CC.	Y
Bankstown Airport	Development within the approach slopes to Bankstown Airport (Airports Act 1996 and Protection of Airspace Regulations 1996)	Bankstown Airport Pty Limited advised that it has no objection to the proposal.	Y
Sydney Water	Sydney Water Act 1994, Section 78	No issues raised, subject to conditions	Y
Transport for NSW	Section 2.119 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development fronts onto a classified road.	No objection subject to standard conditions.	Y
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DEP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report.	Y
Referral/Consultation Agencies			
RFS	S100B – <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A	N/A
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	N/A	N/A

5.2. Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Section has reviewed the submitted stormwater concept plan and raise no objections subject to conditions.	Y
Flooding	Council's Flooding Section has raised no concern as the site is not affected by flooding.	Y
Traffic	Council's Traffic Section has reviewed the proposal having regard to comments from TfNSW and raise no objections to the proposed access to the site and the design of the on-site parking area.	Y
Building	No issues raised subject to conditions	Y
Environmental Health	Council's Environmental Health Section has reviewed the submitted contamination report and acoustic report and raise no objections subject to conditions. The acoustic report is considered sufficient. The land contamination has not been adequately addressed. Further detail is provided in the Chapter 4 Remediation of Land discussion in the body of this report.	N
Waste Management	No issues raised subject to conditions	Y
Urban Design and Public Domain	Council's Urban Design and Public Domain Section has reviewed the amended proposal and raise no concern subject to the recommendations made by the DEP being implemented. <u>Outcome:</u> The amended design adopts all of the design measures recommended by the DEP.	Y
Fire Safety	Objection raised by Council's Fire Safety Section requesting any future substation to be illustrated on plan. <u>Outcome:</u> To be condition for prior to CC.	Y
Community Planning	Council's Community Planning Section has assessed the accompanying Social Impact Assessment and are satisfied	Y

	that the proposal will not result in any adverse social impacts to the surrounding area. However, Community Planning did request the submission of a Plan of Management by Evolve Housing, which was not provided. <u>Outcome:</u> To be condition for prior to CC.	
Landscaping	No issues raised subject to conditions	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

5.3. Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 8 February 2023 until 23 February 2023. The notification included the following:

- Notification letters sent to adjoining and adjacent properties within 75m radius of the site.
- Notification on the Council's website.

No submissions were received in response to the public consultation process.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1. Contamination

A review of the Preliminary (Stage 1) Investigation Report ('PSI') indicates that the site contains contaminates of a various nature that may still be present on site. During the site inspection it was noted that significant works has previously occurred on site with a proximate two levels of basement dug into the site. However, no historical evidence could be found indicating that the site has been remediated with the removal of those soils offsite.

The applicant was requested on two separate occasions in a Request for Information ('RFI') letter, dated 20 June 2023 and 15 September 2023 to provide a DSI and RAP. A significant amount of time was afforded to the applicant to address the contamination matters.

In their response to the contamination matters raised in the two previous RFI, the applicant referred to former reports applicable to this site and includes:

- Preliminary Site Investigation (Phase 1) as prepared by Geotechnique of the former Motel Site referred to as 186 Terminus Street (the Site being variously referred in as either 180-186, 180 -188 or 190 Terminus Street); and
- Detailed Site Investigation (Phase 2) as prepared by Getex of the reminder of the site on the corner of Macquarie and Carrie Streets (the area of the 12 m excavation).

“The reports were reviewed by Canopy and outlined in a previous Contaminated Land Review dated 30 July 2020 (CLR - July 2020) referring to the former Motel Site as 190 Terminus Street. The CLR - July 2020 effectively concluded, that subject to the correct construction management processes, in particular ensuring all excavated soil material being waste classified and disposed of off-site, that there is negligible risk of contamination. It should be noted, however, that the previous Contaminated CLR – July 2020 was responding to a slightly different scope, albeit it was not dissimilar to the scope herein. To avoid repetition please note the review of the previous reports as contained in the previous CLR-July2020 should be referred to as may be required.”

It is noted however that the documentation referred to in this report has not been included in the application pertinent to DA-1262/2022. The only contamination documentation submitted with this application from Geotechnique Pty Ltd has identified contaminants of potential concern for soils at the property including, heavy metals; total petroleum hydrocarbons (TPH); benzene, toluene, ethylbenzene and xylene (BTEX); organochlorine pesticides; polychlorinated biphenyls (PCBs); phenols; cyanides; and asbestos. The report states *“Based on this assessment, it is considered that the site would be suitable for the proposed use subject to sampling (preferable after removal of the site features) and testing to address the potential contamination listed in Section 7.0 of the report. If any contaminants are identified the site can be made suitable for the proposed use following successful remediation and validation.”*

In regard to the above, the most recent Contamination Review document refers to a visual assessment regarding asbestos fragments only. The observations from the site visit carried out by Gunnar Haid on 15th November 2023 noted that the former Motel Site has now (since July 2020) been cleared of the sub structures and footings and the underlying shallow fill material has been removed from the area. Asbestos fragments, presumably from the demolishment, had been reported to have been present on-site in a previous report, however no remnants of buildings nor any ACM fragments were present at that portion of the property at the time of Canopy’s recent site inspection on 15 November 2023. The area also appeared to have been scraped to a depth of approximately 0.3 m to 0.5 m, with the resulting soils having been removed from the area. Canopy observed that the remainder of the Site appeared materially unchanged. Based on this the report has concluded:

“Subject to the above, Dr Gunnar Haid, on behalf of Canopy Enterprises Pty Ltd, acting in his capacity a certified CEnvP (SC), has formed the following opinions:

- No further contaminated land assessment is required, with specific reference to Clause 4.6 (3) of the Resilience and Hazards SEPP (2021) (among other sources).
- The Site is suitable for the presently proposed land use as a commercial development, with specific reference to the Resilience and Hazards SEPP (2021), specifically Clause 4.6 (1) (a-c).

Furthermore, we would like to draw attention to Sections 2.1 and 2.2 of the NEPM1 which provide an outline of the requirements for Preliminary Site Assessments (PSI) and Detailed Site Assessments (DSI). The sections are unambiguous about the fact that a DSI is only required when the results of the preliminary investigation indicate that contamination is present or is likely to be present at a site.”

Whilst it is understood that the site will be excavated further, the requirements of Resilience and Hazards have not been addressed based on the findings of the Preliminary Site Investigation that has been submitted in support of this application DA-1262/2022 nor by the Contamination Review document and visual assessment. It must be noted that the Preliminary Site Investigation was carried out in 2017, making the report 5 years old with no sampling

having occurred relevant to this application since the time of the report. Works have also been carried out at the site since 2017 as confirmed in the Contamination Review document. It is also unclear whether adequate sampling for the use of the site has been carried out e.g. underground carpark. Additionally, the proposed use will include residential with minimal opportunities for soil access (HIL B) with the inclusion of residential apartments and a hotel with the proposed development. However, the most recent contamination review specifies that the site would be suitable for the presently proposed land use as a commercial development only (HIL D).

In this regard Council is unable to support the Concept development while the contamination matters are unresolved. Accordingly, the applicant would be required to progress the development by one of the 2 options below which are consistent with both RFI to date:

1) Stage 2 – Detailed Site Investigation

The application was originally supported with a preliminary contamination assessment titled “PRELIMINARY CONTAMINATION ASSESSMENT LOTS 1 & 2 IN DP741869, 180-186 TERMINUS (MACQUARIE) STREET, LIVERPOOL” (Ref: 14149/1-AA) prepared by Saurabh Sapkota and reviewed by James Ngufor Geotechnique Pty Ltd dated 1st December 2017 which identified that a Stage 2 – Detailed Site Investigation is required. The relevant assessment is to be undertaken by a suitably qualified and experienced contaminated land consultant with regard to the potential effects of any contaminants on public health, the environment and building structures and shall meet the sampling density outlined in the NSW EPA Contaminated Sites Sampling Design Guidelines (1995).

Where the Stage 2-Detailed Site Investigation indicates that the site poses unacceptable risks to human health or the environment, a Remedial Action Plan (RAP) shall be prepared by a suitably qualified and experienced Contaminated Land Consultant in accordance with applicable guidelines made or approved by the NSW EPA under the Contaminated Land Management Act 1997. In these circumstances, the Remedial Action Plan shall be referred to Liverpool City Council for review.

2) NSW EPA Site Auditor Scheme Site Audit Statement

*The **Section B** site audit conducted by an EPA accredited site auditor under the Contaminated Land Management Act 1997 is to determine:*

- (B1) the nature and extent of contamination, and/or*
- (B2) the appropriateness of an investigation, remediation or management plan¹, and/or*
- (B3) the appropriateness of a site testing plan in accordance with the Temporary Water Restrictions Order for the Botany Sands Groundwater Source 2017, and/or*
- (B4) whether the terms of the approved voluntary management proposal or management order have been complied with, and/or*
- (B5) whether the site can be made suitable for a specified land use (or uses) if the site is remediated or managed in accordance with the implementation of a specified plan.*

6.2. Design Excellence

Clause 7.5 of the Liverpool Local Environmental Plan 2008 does not allow new building in the Liverpool city centre to be approved unless the building exhibits design excellence and delivers the highest standard of architectural and urban design. In this regard, the the consent authority must take into consideration the following:

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,*
- (c) *whether the proposed development detrimentally impacts on view corridors,*
- (e) *any relevant requirements of applicable development control plans,*
- (f) *how the proposed development addresses the following matters—*
 - (i) *the suitability of the site for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*
 - (iv) *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,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, waste and recycling infrastructure, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain.*

As part of the assessment process, the application was referred to the Liverpool Design Excellence Panel for consideration as to whether the proposal exhibits design excellence. The Liverpool Design Excellence Panel considered the application at its meeting of 11 May 2023 where the Panel concluded that:

The project is supported. Respond to recommendations made by the panel, then the plans are to be reviewed/approved by Council.

The Applicant's architect provided the following response to the recommendations of the DEP (refer to Attachment G for full details of the response):

4.1 Context

The Concept DA contains Solar Access testing to all relevant sites to the south and south-west of the subject site. The Solar Access testing demonstrates that the SEPP 65 ADG recommendations for 2 hours solar access to living areas and POS in midwinter between 9am and 3pm are achieved. Sites are designed to achieve their maximum development potential under the Liverpool LEP FSR controls.

Council's RFI letter requests testing at 2:1 FSR, which does not maximise the development potential of these sites. This approach is not referenced in any Council planning provisions or the ADG. In addition, our testing demonstrates compliance with the ADG. There is no requirement in the ADG or Council's planning provisions to provide testing at multiple development densities. The most likely development densities are those that maximise yield for site owners and those are the densities that have been tested. This Concept DA submission satisfies relevant planning provisions relating to context.

4.2 Built Form + Scale

Panel Comment:

It appears that the height of the building base/podium exceeds the maximum 21m street frontage height within the Liverpool City Centre DCP. In this regard, the built form relationship between the proposed building base and the existing 7 storey building on the adjoining property (170 Terminus Street) needs further improvement. In its current form the blank party wall appears to be highly visible from the surrounding public domain.

Response:

The design of the podium on Macquarie Street has been revised so that it now complies with the 21m maximum street frontage control in mid-blocks in the Liverpool City Centre DCP. The lowest 6 storeys comply with the 21m height control, and the top two storeys are set back from the street frontage as illustrated in the DCP. As well as reducing the perceived scale of the building when viewed from Macquarie Street, this reduces the length of blank wall along the side boundary and resolves the relationship with the building across the N-E side boundary.

Panel Comment:

The Panel expects that the applicant considers further refinement within the ground floor plane to increase activation of Carey Street.

Response:

The subject site is in the B4 city centre zone where it is encouraged that ground floor be built to the property boundary, allowing pedestrians and vehicles to perceive interior activities. The hotel lobby is clearly visible from the corner of Carey Street and pedestrian access is gained to the hotel main entry and lobby from adjacent to the corner.

Panel Comment:

Clarity is required to be established in terms of servicing facilities for Retail space addressing Terminus Street (for example – waste storage, removal, loading and unloading for the retail use). In its current configuration, the Retail appears to be isolated from the basement carpark.

Response:

The previous space at the northern end of the Macquarie Street frontage was retail space and was not connected to the basement carpark. This has been amended, so that a publicly accessible gymnasium is now provided in that location on Macquarie Street, with the gym being distributed over 2 levels. Both these levels are connected to the basement carpark with a lift. The gym is also connected to the hotel lift lobby, ensuring excellent access for both the general public and hotel guests.

Panel Comment:

While the Panel appreciates the details offered as part of the Concept DA, further refinement is required for the site interface treatment to Macquarie and Terminus Streets as the treatment appears cluttered in its current state.

Response:

The previous design had a 1 : 20 ramp extending for a substantial length of the Macquarie Street frontage under the colonnade. The ramp was lined by planter boxes, which created a cluttered appearance under the colonnade.

The design has been amended to remove the 1 : 20 ramp and planter boxes. This has made the area under the colonnade easily accessible to the general public, allowing viewing into the glazed windows of the gymnasium, residential lobby and hotel lobby from under the colonnade. A 1 : 14 ramp and 5 steps are provided adjacent to the corner of Carey Street for access to the hotel lobby.

4.4 Sustainability

The Panel recommends a number of detailed sustainability measures which will be achievable at DA stage. The Concept DA does not preclude any of the recommended sustainability measures.

4.5 Landscape

Panel Comment:

The Panel commends proposal for bringing together landscape and architecture and complementing each other very well. Further details are expected to be reviewed by the Panel as part of the development application stage.

Response:

Further details to be provided at DA stage.

4.6 Amenity

Panel Comment:

The typical residential level includes well-planned internal apartment layouts, and the Panel offers in principle support for the proposal.

The south-eastern hotel rooms (typical rooms 2.27, 2.28, 2.29 and 2.30) would benefit further refinement of the internal layouts which should be considered as part of the DA

Response:

Further details to be provided at DA stage.

4.9 Aesthetics

The Panel offered in-principle support, subject to recommendations made in 4.2 – Built Form and Scale. These recommendations are addressed in 4.2 – Built Form and Scale above. Other Panel recommendations are able to be addressed in detail at DA stage.

Comments

Overall, the revised proposal that includes a recess of the top two levels of the podium height (Level 7 & 8) which reduces the appearance of the podium height of the building to a maximum of 21 metres up to level 6 as required by Council's DCP and the susceptibility analysis undertaken by the Applicant has sufficiently demonstrated that the recommendations of the Liverpool Design Excellence Panel have been satisfactorily resolved. Accordingly, it is considered that the revised proposal exhibits design excellence and satisfies the criteria of Clause 7.5 of the Liverpool LEP 2008.

6.3. Building Height and FSR

Clause 7.5A of the Liverpool LEP provides incentives for building height and FSR uplift for certain land in the Liverpool city centre.

This Clause is relevant to the site in that:

- The site is marked as 'Area 8' on the Floor Space Area Map;
- It has an area greater than 1,500m²; and
- It contains 2 street frontages (Macquarie and Carey Streets).

This clause allows for height to exceed the mapped height and increase FSR up to 10:1, if '*at least 20% of the gross floor area of a development is used for the purpose of centre-based child care facilities, commercial premises, community facilities, educational establishments, entertainment facilities, functions centres, hotel or motel accommodation, information and education facilities, medical centres or public administration buildings*'.

The scheme relies on increased height and FSR under the clause, as it will have height of 104.9m and 10:1 FSR, and it incorporates 'hotel or motel accommodation' in the proposal. The architectural drawings indicate that the floor space of the proposed hotel accommodation (37.3%) exceeds the 20% requirement threshold.

Additionally, development consent must not be granted under this clause unless:

- a) *a development control plan has been prepared for the land*

Clause 4.23(2) of the EP&A Act states that a concept DA may satisfy the obligation to prepare a DCP, if the concept DA contains the matters required in the DCP. Refer to Concept DA details below.

- b) *Site is to include (recreation areas, recreation facilities (indoor), community facilities, information and education facilities, through site links or public car parks.*

The revised proposal includes an indoor recreation facility in the form of a gym 346.9sqm provided over the ground floor and first floor and 2 associated car parking spaces. An exclusive gym elevator is provided connecting the at-grade car park with the gym and the gym is also accessible to the hotel lobby.

The proposed gym is now located at the ground level and is considered to provide an acceptable public benefit given its size and location and an exclusive elevator is provided for the gym.

Given that the Liverpool Design Excellence Panel has provided its in-principal support for the revised proposal and is satisfied that the revised proposal exhibits design excellence, and the proposal now satisfies the criteria of Clause 7.5A of the Liverpool Local Environmental Plan 2008, the proposed uplift in building height and FSR in this instance is considered appropriate. In addition, the revised proposal has demonstrated that a suitable scheme is proposed for the site that is unlikely to prejudice the re-development potential of neighbouring sites and would positively contribute to the future character of the Liverpool city centre, as demonstrated in the susceptibility analysis assessment.

6.4. Concept Development Application

Clause 7.5A of the Liverpool Local Environmental Plan 2008 requires a Concept DA to address the following matters:

Clause 7.5A(4)

- (a) the impact on conservation areas,*
- (b) encouraging sustainable transport, including increased use of public transport, walking and cycling, road access and the circulation network and car parking provision, including integrated options to reduce car use,*
- (c) achieving appropriate interface at ground level between buildings and the public domain,*
- (d) the excellence and integration of landscape design,*
- (e) the matters specified in clause 7.5(3)(f)(i)–(viii) and (x).*

Clause 7.5(3)(f)(i)–(viii) and (x)

- (i) the suitability of the site for development,*
- (ii) existing and proposed uses and use mix,*
- (iii) heritage issues and streetscape constraints,*
- (iv) 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,*
- (v) bulk, massing and modulation of buildings,*
- (vi) street frontage heights,*
- (vii) environmental impacts such as sustainable design, waste and recycling infrastructure, overshadowing, wind and reflectivity,*
- (viii) the achievement of the principles of ecologically sustainable development,*
- (x) the impact on, and any proposed improvements to, the public domain.*

The Concept DA is required to adequately address these issues.

The zone objectives, LEP Local Provisions and Part 4 of the DCP require the development to exhibit design excellence and be of high quality with significant public benefit. It is considered the revised proposal now exhibits design excellence, as confirmed by the Liverpool Design Excellence Panel, and the proposal will provide significant public benefit. The amendments incorporated into the revised proposal include the following notable changes:

- Public Domain

The interface with the public domain has been greatly enhanced. In doing so, the ramps and raised garden beds at the ground floor level along the Macquarie Street façade have been deleted and a deep pedestrian colonnade is proposed along the Macquarie Street façade, along with the embellishment of street trees along Macquarie and Carey Street frontages and landscaped area. Seamless interface with the building at street level is now provided, for positive impact on public domain, rather than requirements for split levels/stairs/ramps. Upgrades to street pavements should also be provided, including the embellishments within the public domain with street trees.

- Landscape Design

Satisfactory revised landscape plan with mature trees is proposed at street level to the full frontage of the site, and along the rear boundary of the site.

- Relationship with other towers

It is considered that the revised proposal satisfactorily responds to the surrounding development and would not have unacceptable amenity impacts. The susceptibility analysis undertaken by the applicant has demonstrated that the location of the tower, its setbacks, amenity and urban form are appropriate for the site and the locality and would not adversely affect the ability of neighbouring sites from re-development as envisaged by the LEP.

The public benefit from this uplift is considered acceptable to warrant the increased building height and FSR in this instance.

6.5. Building Separation

The proposal does not strictly comply with Clause 7.4 of the Liverpool Local Environmental Plan 2008 in terms of building separation in the Liverpool city centre. Clause 7.4 Building Separation in the Liverpool city centre relevantly reads:

- (1) *The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (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 E2 Commercial Centre or MU1 Mixed Use, and*
 - (e) *28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use.*

The site is zoned MU1 Mixed-use under the Liverpool LEP, and this development standard is relevant to the proposed concept development. The relevant building separation between neighbouring buildings for this development is 12m, for parts of the

building between 25m and 45m above ground level (finished), and 28m for part of buildings 45m above ground level (finished).

Here, the proposed concept DA has a maximum building height of 104.9m and as such, this clause is applicable to the top of level 7 and above of the development. The non-compliance with building separation standard are details in the below table:

Table 1: Proposed Separation Distances			
Proposed Level	Required Separation Distance	Proposed Separation Distance (Rear Boundary)	Proposed Separation Distance (Eastern Side Boundary)
Levels 7-14	Building to Building 12m	7m to Boundary (levels 7 & 8)	Nil to Boundary (levels 7 & 8 only)
	Building to Boundary 6m	11.46m to Boundary (levels 9-14)	12m to Boundary (levels 9-14)
Level 15 & above	Building to Building 28m	N/A	12m to Boundary
	Building to Boundary 14m	The maximum building height of the site to the rear cannot exceed 45m as per the applicable LEP height control.	12m to Boundary

As can be seen from the above table, the non-compliance with the building separation only relate to the north-eastern side boundary. It is an accepted approach that the development provides half of the required building separation to the boundary and the adjoining neighbour will provide the remaining half of the required building separation so that that the proposal does not prejudice the re-development potential of adjoining sites and the required building separation is equally shared between development sites.

Levels between 25m and 45m

A small section of the top of level 7 and level 8 of the proposal exceeds 25m in height and a zero setback is proposed to the north-eastern side boundary. It is noted that the adjoining tower development at 166-176 Terminus Street is provided with a 6.1m setback to its south-western boundary at levels 7 and 8. Accordingly, a minimum 5.9m setback would need to be provided to this side boundary in order to achieve the required building separation. The proposed levels 9-14 of the building are setback more than the minimum 12m from this boundary and thus, complies.

Levels 45 and above

Clause 7.4 (e) requires a building separation of 28m for parts of buildings 45m or more above ground level (finished). Given that the mixed-use development to the eastern side boundary is 9-storey high and is unlikely to be re-developed in the future, it is accepted that the proposal would not have any impact upon this eastern adjoining site, notwithstanding a 2m variation to the control.

The below figures clearly show the top level of the eastern adjoining mixed-use development recessed from its south-western side boundary of 6.1m and the non-compliance on relate to a small section of the adjoining building on levels 7 and 8.



Figure 1: Western elevation of adjoining mixed-use building at 166-176 Terminus Street, Liverpool approved under DA48/2015. Level 7 & 8 achieve a 6.1m setback to sites south-western boundary.

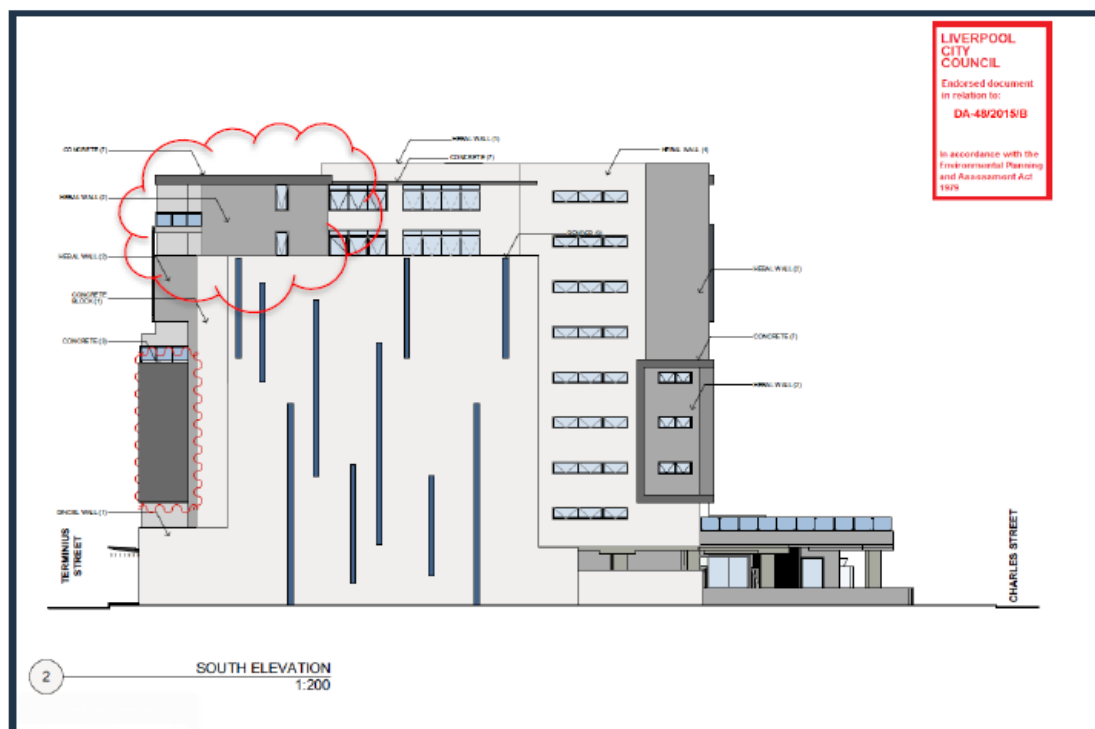


Figure 2: South Elevation of adjoining mixed-use building at 166-176 Terminus Street, Liverpool approved under DA48/2015. The area within red cloud denotes the building depth of Level 7 & 8 and does not extend the length of the site.

The non-compliance with the building separation development standard of the Liverpool LEP is supported by a Clause 4.6 variation statement (refer to Attachment I for details). It is considered that the submitted Clause 4.6 variation statement has sufficiently demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; that there are sufficient environmental planning grounds to justify contravening the development standard; and the concept development application is in the public interest as it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

6.6. Front Setback

The Concept DA does not comply with the required 4.5m landscaped area for Carey Street. The building proposes minimal setback to Carey Street; the 4.5m setback is only provided above the podium level.

The applicant has provided the following in response to the proposed setback to Carey Street:

The proposed development maintains the minimal setback to Carey Street as it results in an improved urban design outcome for the site and surrounding area and better reflect the public domain interface of commercial ground floor spaces in a city centre and to reinforce a prominent corner. The hotel lobby is clearly visible from the corner of Carey Street and pedestrian access is gained to the hotel main entry and lobby from adjoining to the corner.

Furthermore, tiered landscaping is proposed to soften the interface to Carey Street and provide an improved domain interface.

The applicant's argument is considered to have planning merit and not unreasonable, given that the site's prominent corner position within the Liverpool city centre. In addition, having the building with minimal setback, as proposed, would activate the corner position of the site and accentuate the importance of the site within MU1 Mixed-use zone.

Moreover, it is considered that the revised architectural plans and landscape plans have demonstrated sufficient basis to vary the landscape setback to Carey Street. Accordingly, the reduced setback to Carey Street should be supported in this instance.

6.7. Podium Height

The revised scheme has effectively lowered the podium height of the building to 6 storeys (or less than 21m) as required by the Council's DCP. In doing so, the balconies facing Terminus Street and Macquarie Street for the hotel component of the development have been deleted and the podium height has been lowered to only 6 storeys appropriately matching the podium of the eastern adjoining mixed-use development at 166-176 Terminus Street. The revised podium height is now considered satisfactory and consistent with the intent of the DCP.

6.8. Susceptibility Analysis

Given the scale and intensity of the Concept Development Application associated with the uplift in building height and FSR, the Liverpool Design Excellence Panel requested

that the applicant submits a susceptibility analysis assessment demonstrating that the proposal would not adversely affect the ability for neighbouring sites to amalgamate into developable lots and that the development does not prejudice the re-development potential of neighbouring properties. The submitted susceptibility analysis has satisfactory demonstrates that neighbouring sites are capable of amalgamation into developable lots and the potential amalgamated lots are capable of development to would achieve the allowable FSR as well as solar access.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls and the key issues identified in this report, it is considered that the application cannot be supported.

As discussed in Section 5 above, it is considered that the key issues of design excellence, building height and FSR, Concept DA, building separation, setbacks, podium height and susceptibility assessment do not result in significant adverse impacts to adjoining or surrounding development, however due to the unresolved contamination matters, the site cannot be considered suitable for the proposed development.

8. RECOMMENDATION

That the Development Application DA No 1262/2022 for Concept Development Application for the construction of a 31-storey mixed-use development consisting of the establishment of the building envelope, gross floor area, maximum building height, design excellence, public domain works, vehicular access and car parking provision, stormwater management and concept landscape design be **REFUSED** pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the Notice of Determination attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Notice of Determination – TRIM No. 422567.2023
- Attachment B: Tables of Compliance – TRIM No. 422566.2023
- Attachment D: Revised Architectural Plans – TRIM No. 349052.2023
- Attachment E: Revised Landscape Plans – TRIM No. 349053.2023
- Attachment F: Design Excellence Panel Minutes (11 May 2023) – TRIM No. 177618.2023
- Attachment G: Response to DEP Minutes – TRIM No. 349060.2023
- Attachment H: Susceptibility Analysis Assessment – TRIM No. 451578.2022
- Attachment I: Clause 4.6 Request – TRIM No. 451572.2022