

<b>DATE OF DETERMINATION</b>	25 July 2023
<b>DATE OF PANEL DECISION</b>	25 July 2023
<b>DATE OF PANEL BRIEFING</b>	10 July 2023
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), David Kitto, Louise Camenzuli, Karress Rhodes
<b>APOLOGIES</b>	Ned Mannoun
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 3 July 2023.

#### **MATTER DETERMINED**

PPSSWC-306 – Liverpool – DA-627/2018a – 23 Harvey Avenue, Moorebank - Modification to Development Consent DA-627/2018 under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979, to:

- Providing a substation at the northeast corner of the site.
- Increasing provision of affordable housing from 27 apartments to 31 apartments and affordable housing allocation revised.
- Adjustment to the internal basement layout, removing the garbage chutes and combining two garbage rooms into one room.
- Removal of the stair pressurisation from fire stairs as per BCA advice due to the effective height of building being less than 25m (effective height of 22.8m).
- Relocation of car park exhaust duct and waste exhaust duct next to the lift to the east in each tower.
- Specification of services room and relocating them from basement level 2 to basement level 1.
- Revision of parking layout to improve efficiency and accommodate more parking spaces.
- Total number of car parking increased from 60 to 68 spaces.
- Basement core design adjusted to suit new parking layout.
- Fire egress revised in accordance with BCA requirement. Provide roof cover to the fire egress.
- Basement ramp gradients revised with change of basement levels. Stormwater arrangement and OSD tank level and dimensions adjusted accordingly.
- Other elements have been adjusted such as motorcycle and bicycle parking locations.
- Increase in bicycle spaces from 15 to 16. Provision of 1 motorcycle space.

- Booster assembly provided to the northwest corner of the site on ground level near front boundary to satisfy standards.
- Provision of security gate to the pedestrian entry of each tower. Relocation of letterboxes to the under covered corridor of each tower and to keep the letterboxes away from street entries for security.
- Garbage chutes are removed from each residential level in both towers. Garbage room size reduced.
- Amendments to unit layout and additional bathrooms for units G01, G04, G05, G09 and G10. Unit G02 bedroom 1 and ensuite, and bedroom 2 room layout adjusted to meet with adaptable unit accessibility requirement. A minor adjustment to the layout of units G03, G06, G07, and G08.
- Amendments to unit layout and additional bathrooms for units 1.05, 1.06, 1.07, 1.11 and 1.12. Unit 1.02 (southwest unit) bedroom 1 and ensuite, and bedroom 2 room layout adjusted to meet with adaptable unit accessibility requirements. A minor adjustment to the layout of 1.03, 1.04, 1.08, 1.09, and 1.10.
- The setbacks remain as approved under the parent consent on level 1. The proposed building envelope remains consistent with the approved consent. A minor extension occurs at the north elevation of Unit 1.05. However, the extended building external wall aligns with the balcony to improve construction.
- Level 2 repeats the same revisions as Level 1.
- Amendments to unit layout and additional bathrooms for units 3.01, 3.02, 3.03, 3.04, 3.06 and 3.08. Unit 3.06 bedroom 1 and ensuite, and bedroom 2 room layout adjusted to meet adaptable unit accessibility requirements. A minor adjustment to the layout of 3.05, and 3.07 room.
- The proposed setbacks remain as approved under the parent consent on level 3. The proposed building envelope remains generally the consistent with the approved parent consent. The minor extension occurs at the north elevation of Unit 3.01 and 3.02. The extended building external wall aligns with the balcony. On the south elevation, the external wall of Unit 3.06 is extended to be aligned with the building line at the west tower.
- Level 4 and 5 remain consistent with Level 3. It is noted that building envelope is reduced at the west elevation, and on the north elevation of the living room for Unit 3.06, 4.06, 5.06 and the balconies.
- Floor-to-floor levels increased from 3050mm and 3100mm. Overall height of building increased from RL 45.4m to RL 46 at the top of lift at the east tower.
- Facade materials revised including proposing brick veneer in lieu of external face brick wall with warm colour palette as per the parent consent DA-627/2018.
- Finishes of balcony screens and frames around windows and vertical louvres are proposed to be replaced with Powder coated aluminium.
- Minor amendments to the landscape design on ground level in accordance with the layout revision. This includes:

- Amending the street frontage fence with low masonry base and palisade fencing on top, and the provision of landscape area in front of low fence wall to improve streetscape.
- Amend the roof of balcony in Unit 5.04 and Unit 5.06 to be pergola roof.
- Amend Units 1.06, 1.07, 2.06 and 2.07 layout to provide solar access opportunity to the private open space and living room.
- Provide sky light to Unit 5.04 and amend the balcony roof of Units 5.04 and 5.06 to be a pergola style roof to provide solar access to the private open space and living room.
- Reduce the balcony of units 1.02, 1.05, 1.08, 2.02, 2.05, 2.08, 3.02, 3.03, 3.05, 4.02, 4.03, 4.05, 5.02, 5.03, and 5.05 to provide solar access opportunity to the private open space and living room.
- Amend the street frontage fence with low masonry base palisade fencing on top and the provision of landscape area in front of low fence wall to improve streetscape.
- Provide additional seating opportunity on roof top Communal Open Space of the Western Tower.

## **PANEL CONSIDERATION AND DECISION**

### **Consideration**

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters listed at item 8 in Schedule 1.

The modification application proposes a number of changes to the DA approved design as described above, and as described more particularly in the draft notice of determination supplied by Council staff. While a number of those changes are minor, cumulatively they are significant albeit that the Panel is satisfied that the building will remain substantially the same development.

The changes to the design made are directed to achieving a more resolved detailed design for the building and will result in both an improved architectural presentation and better amenity for residents. The Panel is satisfied they are justified for that reason, noting they are supported by Council staff. The Panel accepts and adopts the Council staff assessment of those changes.

One significant change which the Panel considered carefully is an increase in the floor-to-floor levels from 3050mm and 3100mm. The increase is promoted by the applicant on the basis that the additional 5 centimetres per floor is desirable to achieve BCA compliance and to avoid construction problems associated with allowing for desirable specifications for waterproofing and services. The architect for the present owner of the building also advises that an increase in the lift overrun is required.

The Panel sought advice from the Department of Planning as to what it saw as an appropriate minimum floor to floor dimension given that these considerations are presumably of general application to the construction of residential flat buildings across NSW. It was advised that *"a residential floor to floor height of 3.1m for a residential flat building is the current industry benchmark used to achieve necessary requirements under the National Construction Code, the Design and Building Practitioners Act and the Apartment Design Guide."* That advice is consistent with the Applicant's position and encourages approval for the associated increase in height.

The mapped maximum height for the building is 18 metres. The cumulative consequence of that change as described in the material supporting the application is that:

- a) A portion of the top level of front of the development which exceeds the height limit due to the irregular site topography will be further increased, such that the proposed modified building

including the roof and communal open space will be 18.85m at the west tower and 18.75m at the east tower, which is an exceedance of 0.85m and 0.75m, respectively. This is a variation of 4.7% and 4.2%, respectively. The Panel views the impacts of that exceedance to be relatively minor and to be sufficiently justified.

- b) A greater exceedance arises at the lift overruns. The maximum height of the development as proposed to be modified at the lift overrun at the east tower will be 22.8 m (RL 45.3), resulting in a maximum non-compliance of 4.8 m from the 18 m standard. This is a variation of 26.7%. The maximum height of the development as proposed to be modified at the west tower will be 22.77m (RL 46m) at the lift overrun, resulting in a maximum non-compliance of 4.77m development. This is a variation of 26.5%. Given the small area of the overruns which are centrally located so as to not be easily visible from the public domain, those exceedances are not expected to generate significant impacts and are acceptable.

In comparison, maximum height of the originally approved building was 22.4m at the lift overrun of both towers, being a variation of 24.4%. The increases in height of the west tower and east tower respectively are 0.4m and 0.37m when compared with what was approved by the consent granted to DA 627/2018.

While a clause 4.6 variation request was made in support of the application, in the assessment of a s4.55 application, development standards do not strictly apply because s 4.55 bestows a complete source of power to modify a consent, and a request under clause 4.6 is not required in order for the Panel to approve this development notwithstanding the exceedance.

The Panel is however persuaded by the reasoning advanced in the clause 4.6 request which has been accepted by Council staff.

#### **Determination of Modification application**





For the reasons set out above, the panel determined to approve the modification application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

The conditions are modified in accordance with the draft notice of determination uploaded with the assessment report on 5 July 2023.

#### **CONSIDERATION OF COMMUNITY VIEWS**

The Council assessment report states that no submissions were made in response to notification of the application.

PANEL MEMBERS	
Justin Doyle (Chair) 	David Kitto 
Louise Camenzuli 	Karress Rhodes 

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-306 – Liverpool – DA-627/2018a
2	PROPOSED DEVELOPMENT	Modification to Development Consent DA-627/2018 under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979, to: - Reconfiguration of basement by increasing the number of car parking spaces from 60 to 68, reconfiguration of waste management arrangement, and revised fire egress in accordance with BCA requirements; - Revised basement ramp gradients with changes of basement levels, stormwater arrangement and OSD tank level and dimension adjusted - Increase floor-to-floor height from 3050mm to 3100mm; - Minor extension at the north elevation and revised apartment layouts with the inclusion of an additional bathrooms to a number of apartments - Increase affordable housing apartments from 27 to 31 and affordable allocation revised. - Inclusion of substation at the northeast corner of the site - Amended façade materials and finishes. - Landscape design update on ground level in accordance with the layout revision (contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards).
3	STREET ADDRESS	23 Harvey Avenue, Moorebank
4	APPLICANT/OWNER	Applicant: D.R. Design (NSW) PTY Limited Owner: UFN at Harvey Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>Environmental Planning and Assessment Act 1979</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021.</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021.</li> <li>State Environmental Planning Policy (Housing) 2021.</li> <li>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</li> <li>Liverpool Local Environmental Plan 2008</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Liverpool Development Control Plan 2008</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>:</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> </ul>

		<ul style="list-style-type: none"> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 30 June 2023</li> <li>Clause 4.6 height variation</li> <li>Written submissions during public exhibition:0</li> <li>Total number of unique submissions received by way of objection: 0</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: 6 March 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), David Kitto</li> <li><u>Council assessment staff</u>: Amanda Merchant, Glen Hanchard, Patrick Curmi</li> <li><u>Applicant representatives</u>: Nigel Dickson, Stacy Zhang</li> </ul> </li> <li>Final briefing to discuss council's recommendation: 10 July 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Karress Rhodes</li> <li><u>Council assessment staff</u>: Amanda Merchant, Glen Hanchard, Patrick Curmi</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report