

**COUNCIL ASSESSMENT REPORT**  
SYDNEY WESTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSWC-334 – DA-50/2021/A
<b>PROPOSAL</b>	<p>Modification to Development Consent DA-50/2021 under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979, for:</p> <ul style="list-style-type: none"> <li>• Reconfiguration of internal apartment layouts including balcony design.</li> <li>• Revised basement ramp gradients with changes of basement levels, stormwater arrangement and OSD tank level and dimension adjusted.</li> <li>• Reconfiguration of car park layout to accommodate structural columns.</li> <li>• Site works including amendments to access ramp, retaining walls to accommodate revised ground level, revised front fence to accommodate services including hydrant booster assembly.</li> <li>• Amendment to Garbage storage and deletion of waste chutes.</li> <li>• Inclusion of lift overrun.</li> <li>• Amended façade materials and finishes.</li> <li>• Landscape design including the provision of an external bicycle parking area.</li> <li>• Amendment of Condition 21, 25,60, 62,151 and 179</li> <li>• Deletion of Condition 155.</li> </ul>
<b>ADDRESS</b>	23-25 Charles Street, Liverpool Lot 1 and Lot 2 DP500066.
<b>APPLICANT</b>	Hume Community Housing Association
<b>OWNER</b>	Hume Community Housing Association Company

<b>DA LODGEMENT DATE</b>	21 November 2022
<b>APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED)</b>	4.55(2) Modification Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Affordable Housing
<b>CIV</b>	\$9,046,077 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Height variation request proposed
<b>List of all Relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>○ SEPP (Housing) 2021 (Repealed SEPP Affordable Rental Housing 2009)</li> <li>○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development.</li> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</li> <li>○ Liverpool Local Environmental Plan 2008.</li> </ul> <p><i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: Section 4.15(1)(a)(ii)</i></p> <ul style="list-style-type: none"> <li>○ Nil</li> </ul> <p><i>List any relevant development control plan: Section 4.15(1)(a)(iii)</i></p> <ul style="list-style-type: none"> <li>○ Liverpool Development Control Plan 2008.</li> <li>○ Part 1 – General Controls for all Development.</li> <li>○ Part 4 – Development in the Liverpool City Centre.</li> </ul> <p><i>List any relevant 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: Section 4.15(1)(a) (iia)</i></p> <ul style="list-style-type: none"> <li>○ No planning agreement relates to the site or proposed development.</li> </ul> <p><i>List any relevant regulations: 4.15(1)(a)(iv)</i></p> <p><i>Consideration of the provisions of the National Construction Code of Australia.</i></p>
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	One

<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ol style="list-style-type: none"> <li>1. Architectural Plan</li> <li>2. Landscape Plans</li> <li>3. Structural Letter</li> <li>4. S4.55 Schedule of Changes</li> <li>5. CIV- Cost Estimate</li> </ol>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A
<b>RECOMMENDATION</b>	Approved subject to conditions of consent
<b>DRAFT CONDITIONS TO APPLICANT</b>	N/A
<b>SCHEDULED MEETING DATE</b>	28 August 2023
<b>PLAN VERSION</b>	As per submission
<b>PREPARED BY</b>	Emily Lawson
<b>DATE OF REPORT</b>	11 September 2023

## **1 EXECUTIVE SUMMARY**

### **1.1 Reasons for the report**

The Sydney Western City Planning Panel is the determining authority as the development includes affordable housing with a Capital Investment Value over \$5 million, pursuant to State Environmental Planning Policy (Planning Systems) 2021. This is a modification subject to 4.55(2) to an application approved by the SWCPP.

Internal referrals were made to traffic and transport, waste management, engineering, building, community planning and urban design regarding the application.

The application has been recommended to be approved subject to the conditions of consent.

### **1.2 The proposal**

The council has received a Development Application (DA No. 50/2021/A) seeking consent for the modification of DA-50/2021 determined by the Sydney Western City Planning Panel on 5 October 2022 at 23 Charles Street, Liverpool.

The application proposes the modification to an eight-story residential flat building comprising 23 affordable housing units, parking and associated landscaping works.

The application as modified proposes a number of design changes, including a revised internal apartment layout, waste management arrangement, and revised fire egress in accordance with BCA requirement, inclusion of a lift overrun and the provision of external bicycle parking.

### **1.3 The site**

The subject site is identified as No 23 & 25 Charles Street, Liverpool with a legal description of Lots 1 & 2 DP 500066. It has a 19.58m frontage on Mill Street to the north, a 32.615m frontage Charles Street to the east, and a 4.255m splay connecting both front boundaries. The property boundary to the south is 22.66m and to the west is 35.66. It has a total land area of 802 m<sup>2</sup>.

## **1.4 The issues/ modifications**

The key issues associated with the proposal relate to the following:

- Amended documentation was submitted onto the NSW Planning Portal on the 18<sup>th</sup> of July 2023 and has been re-referred to respective internal officers, including Urban Design. The additional information recently provided by the application are as follows:
  - o Architectural Plans
  - o s4.55 Schedule of Changes
  - o Landscape Plans
  - o Structural Letter
  - o Architectural Design Statement
- The application was deferred at the SWCPP meeting on the 28<sup>th</sup> of August to allow for the applicant to submit final documentation.
- The applicant submitted documentation on the 1<sup>st</sup> of September which are as follows:
  - o Amended Architectural Plans
  - o Amended s4.55 Schedule of Changes
  - o Amended Structural Letter

In review, of this, the application is recommended for approved, subject to the conditions of consent as modified and added.

## **1.5 Exhibition of the proposal**

The modification application was notified for a period of 21 days from 1 June 2023 to 23 June 2023 in accordance with Council's Community Participation Plan 2022. Notwithstanding, only one submission was received during the public consultation period objecting to the proposal.

## **1.6 Conclusion**

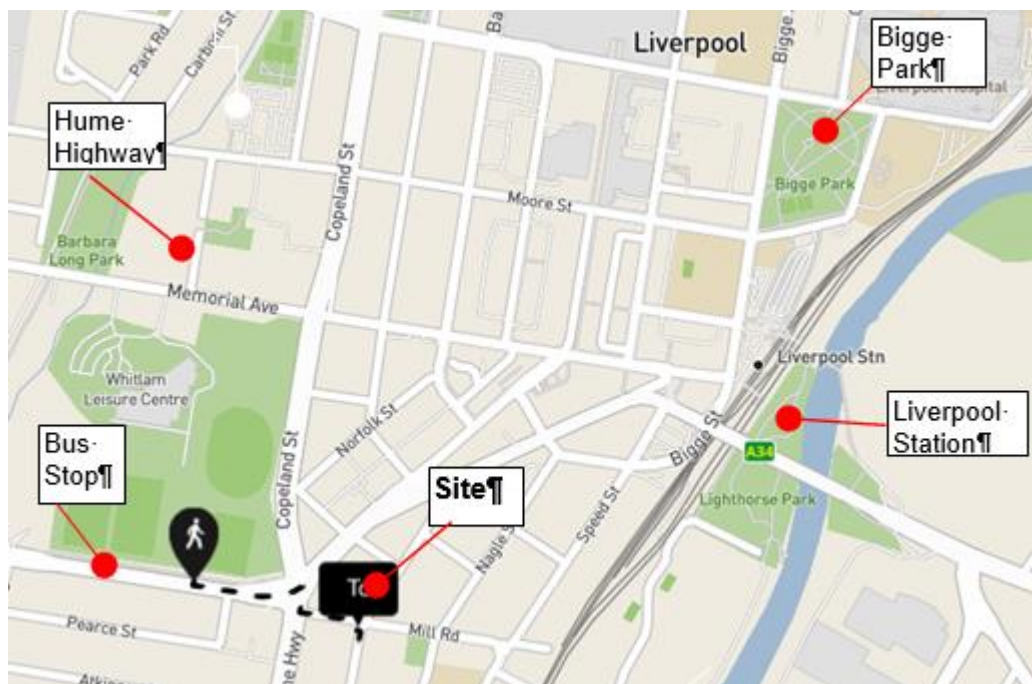
The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A). Based on the assessment of the application, it is recommended the application be approved subject to the conditions of consent.

# **2 SITE DESCRIPTION AND LOCALITY**

## **2.1 The locality**

The locality within the immediate vicinity is characterised by a number of tall, high density residential and mixed-use developments. Older existing dwelling houses, similar to those already on the site, will be developed in the future. Located within the R4 zone, the locality is at the southern edge of the Liverpool CBD area.

The site benefits from being within proximity of major transport links and corridors. Within 400m is a bus stop (ID 2170526) located on the north side of Hoxton Park Road and south of Woodard Park, approximately 398m walking distance from the site. This bus stop is serviced by route 869 – Ingleburn to Liverpool via Edmondson Park & Preston's and provides an hourly service. The Liverpool railway station is approximately 1km walking distance to the north-east of the site, adjacent to the Liverpool CBD.



**Figure 1: Context**

## 2.2 The site

The subject site is identified as Lots 1 & 2 DP 500066 and known as 23-25 Charles Street, Liverpool. The combined site has a total land area of 80sqm. It is a corner lot with the frontage of 19.58m to the Mill Road and 32.615m to the Charles Avenue. A splay corner of 4.255m.

The site is relatively flat with a crossfall of 6.7% from its highest point at the northwest corner (22.94m AHD) adjoining Mill Road to the southeast corner (21.33m AHD) adjoining Charles Street.



**Figure 2: Aerial Photograph of subject allotments (Source GeoCortex)**

## **2.3 Site affectations**

The subject site has no constraints.

## **3 BACKGROUND**

### **3.1 Application History**

- The parent proposal was presented to the Design Excellence Panel (DEP) on 10<sup>th</sup> of September 2020 and the 10<sup>th</sup> of June 2021.
- The parent proposal was approved by the Sydney Western City Planning Panel on 5 October 2022.
- Modification Application was lodged on the 21<sup>st</sup> of November 2022:
  - The application was received by Development Assessment on the 20<sup>th</sup> of January 2023
  - Internal referrals were issued to Council Waste, Community Planning, Building, Flooding, Traffic, Urban Design and Public Domain and Engineering from the 24<sup>th</sup> of February.
  - A request for further information was issued on the 3<sup>rd</sup> of May requesting the application be resubmitted as a Modification (2) pursuant to the EP&A Act.
  - The application was identified as being Regionally Significant on 3<sup>rd</sup> May 2023.
  - The application was advertised from the 31<sup>st</sup> of May to the 22<sup>nd</sup> of June.
  - A kick-off briefing was held with the Sydney Western City Planning on the 19<sup>th</sup> of June.
  - A meeting was held with the Applicant on the 20<sup>th</sup> of June.
  - A request for further information was made to the applicant on the 21<sup>st</sup> of June 2023 stipulating all the information required to be amended including architectural plans, structural letter and a list of all the proposed amendments to the modification. The applicant was afforded 14 days to provide the information to meet SWCPP determination date scheduled for 19<sup>th</sup> July 2023.
  - Additional information was submitted on the Planning Portal on the 18<sup>th</sup> of July.
  - Council requested an extension of time from the SWCPP determination date on 27<sup>th</sup> July 2023 to enable Council to assess the additional information.
  - The application was referred to the SWCPP and deferred by the SWCPP on 28<sup>th</sup> of August for the applicant to submit final plans for determination on the 11 of September.
  - The applicant submitted amended plans on the 1<sup>st</sup> of September.

## **4 DETAILS OF THE PROPOSAL**

Development consent is sought for modification to the seven levels of residential accommodation and communal area, approved under DA-50/2021. The parent application approved the following:

- 23 affordable units provided under the Housing SEPP 2021
- Ground Floor at-grade parking consisting of 10 vehicles and bicycle parking.
- Community room
- New driveway and access ramp.
- Landscaping, including roof gardens, landscaping within setbacks, and deep soil areas.

The applicant has provided a Schedule of Changes proposed under the modification, which seeks to amend the following:

1. Service Basement
  - i. Service Basement
  - ii. Access Stairs
  - iii. Fire Tank
  - iv. Fire Pump Room
2. Siteworks and Ground Floor Plan
  - i. Building Parking Undercroft and Ground Floor
  - ii. Car Parking Layout & Design
  - iii. Community Room & WC
  - iv. Siteworks, Access Ramp & Retaining Walls
  - v. Garbage Store & Waste Chute
  - vi. Bicycle Parking
  - vii. Allowances for Services
  - viii. Ground Floor Setbacks
3. Apartment Design 0 Floor Plan Level 1 – Level 7
  - i. The DA approved apartment layouts did not have any structural or services inputs. Hence, they did not reflect any columns, risers and as many service cupboards. Accordingly, all apartments have been redesigned to include the following design considerations;
    1. Include provision of proposed structural column grid. This required an adjustment in the apartment & balcony designs to accommodate the new columns.
    2. Apartment designs have also been redesigned to accommodate the required services cupboards and risers.
    3. In general, the layout of the living dining/kitchen have also been amended where required to accommodate an improved and compliant kitchen layout.
4. Balcony design and Changes to Balcony Sizes
5. Allowances for Services
6. Garbage Chute
7. Bicycle Parking
8. Floor Plan – Roof Terrace
  - i. Common Area WC
  - ii. Landscape Podium
    1. Changes to Rooftop Communal Open Space
  - iii. Pergola Redesign
  - iv. Roof Terrace Lift Lobby Redesign
9. Roof Plan
  - i. Lift Over run
  - ii. Pergola Redesign
10. East Elevation, West Elevation, North Elevation and South Elevation
  - i. Siteworks, Access Ramp and Retaining Walls
  - ii. Community Room
  - iii. Balcony/ Roof Terrace Balustrade Treatments
  - iv. Floor to Floor Heights
  - v. Facade Materials
  - vi. Enclosing Lift Lobby
  - vii. Building Envelope
11. West and South Elevation
  - i. Window Location
  - ii. Parking Undercroft, cross ventilation

12. ADG – Soft Landscape and Deep Soil Diagrams
  - i. Soft Landscape Calculations
  - ii. Deep Soil Calculations
  - iii. Communal Area Calculations
13. Solar Access Plans
14. ADG Cross Ventilation Diagrams
15. Shadow Diagrams
16. Fence and Letter Box Details
17. Area Calculation
18. Photomontages
19. ADG – Storage Area Plans
20. Gross Floor Area
21. Building Footprint
22. Adaptable Unit Plans

The modification also seeks consent to Modify the following Conditions:

1. Amendment to Condition 21 to remove requirement for 150mm concrete kerb along the western boundary.
2. Amendment to Condition 25 and Condition 62 to include revised Stormwater Concept Plans
3. Amendment to Condition 60 to remove requirement for multifunction poles.
4. Amendment of Condition 151 and Condition 179 to remove reference to garbage chutes.

The Modification seeks the deletion of the following condition:

1. Deletion of Condition 155.

The modification also seeks to amend the description of the development. The description should now read as follows:

- *Demolition of existing dwellings and the construction of an eight-storey building, comprising of ground level parking, seven levels of residential accommodation and roof top communal area.*

## **5 STATUTORY CONSIDERATIONS**

### **5.1 Relevant matters for consideration**

The relevant planning instruments/policies applicable to the proposed development are as follows:

#### Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development.
- State Environmental Planning Policy – Housing 2021 (previously Affordable Rental Housing 2009).



- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Liverpool Local Environmental Plan (LLEP) 2008; and
- Liverpool Development Control Plan (LDCP) 2008.

#### Development Control Plans

- Liverpool Development Control Plan 2008

#### Contributions Plans

- Liverpool Contributions Plan 2018 Liverpool City Centre applies to all development pursuant to Section 7.11 of the EPA & Act.

## **6 Environmental Planning and Assessment Act 1979 (EP&A Act)**

The application has been assessed in accordance with the requirements under the EP&A Act and the associated Regulations, in this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provision of the EP&A Act and associated Regulations.
- A site inspection was conducted, and consideration been given to the impacts of the development upon all sites whether adjoining or in the vicinity.
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made a submission and any advice given by relevant Council/Government/Authority Officers on the proposal.

The application has been assessed in accordance with Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, which states:

***Other modifications 4.55 (2)*** - A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

*(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

**Comment:** The amendments proposed under Section 4.55 (2) are considered to be consistent with the existing development. Contextually, the development remains substantially the same development for which consent was originally granted. The proposed modification does not alter the nature of the development as approved by the regional panel.

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

**Comment:** The parent application was approved by the Sydney Western City Planning Panel (SWCPP). This modification is also required to be taken to the SWCPP for approval and the Council has consulted with the panel.

*(c) it has notified the application in accordance with—*  
*(i) the regulations, if the regulations so require, or*

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

**Comment:** The modification application was notified for a period of 21 days from 1 June 2023 to 23 June 2023 in accordance with Council's Community Participation Plan 2022. Notwithstanding, one submission was received during the public consultation period objecting to the proposal.

(d) It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

**Comment:** The modification application was notified for a period of 21 days from 11 June 2023 to 23 June 2023 in accordance with Council's Community Participation Plan 2022. Notwithstanding, one submission was received during the public consultation period objecting to the proposal.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

**Comment:** The provisions of Section 4.15 are addressed in the below section/s of this report.

## 6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

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

The proposal as modified has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential flat development.

Clause 30(2) of SEPP 65 also requires residential apartment development to be designed in accordance with the Apartment Design Guidelines (ADG). The following table provides an assessment of the proposal against the relevant provisions of the ADG:

Provisions	Comment
<b>3C Public Domain interface</b>	
<i>Key components to consider include entries, private terraces or balconies, fences and walls, changes in level, services locations and planting.</i>	<b>Complies</b>  The amended architectural plans submitted demonstrate the proposed relocation of services in the front setback from the parent approval. The services, such as the hydrant booster and water meters, have not been designed to minimize their appearance within the streetscape or to integrate sympathetically into the over built form. It is noted by the applicant this has occurred due to the changes under the NCC.
<i>Design can influence safety and security, opportunities for social interaction and the identity of the development when viewed from the public domain</i>	
<b>3D Communal and public open space</b>	

Provisions		Comment						
<p>Communal open space (CoS) has a minimum area equal to 25% of the site.</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.</p>		<p><b>Complies</b></p> <p>The proposed modification exhibits a total of 32% (250.71sqm), which is a minor reduction from the parent approval.</p> <p>Given the reduction in CoS from the parent approval, the proposal still achieves a suitable communal open space area at the rooftop and on the ground floor. Whilst the variation is minor, it is noted the CoS would be retained as originally proposed, however, given the alteration to the building envelope, setbacks and ground floor reconfiguration, this has decreased the CoS provided on the ground floor.</p>						
<b>3E Deep soil zones</b>								
<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <table border="1"> <tr> <th>Site area</th><th>Minimum dimension</th><th>Deep soil Zone</th></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td><td>7%</td></tr> </table> <p><i>7% of the site area is to be for Deep Soil zone.</i></p>		Site area	Minimum dimension	Deep soil Zone	Greater than 1,500m <sup>2</sup>	6m	7%	<p><b>Complies</b></p> <p>The modification exhibits a total of 175sqm which is 22%. However, on Council calculation the Deep Soil zone is – 135sqm or (17%).</p> <p>Whilst the proposal is still compliant with the minimum requirement of 7%, the applicant has indicated areas in which are not deemed to meet the definition of deep soil zones and therefore the calculation is incorrect. Notwithstanding the reduction in deep soil as modified, the development is compliant.</p>
Site area	Minimum dimension	Deep soil Zone						
Greater than 1,500m <sup>2</sup>	6m	7%						
<b>4A Solar and Daylight Access</b>								
<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>		<p><b>Complies</b></p> <p>The applicant has provided solar diagram on balconies which demonstrate the impact the proposed structure beams may have on the POS area and internal unit space. The applicant has demonstrated 74% of apartments still achieve the required solar access.</p>						
<b>4B Natural Ventilation</b>								
<p>All habitable rooms are naturally ventilated</p> <p>The layout and design of single aspect apartments maximises natural ventilation</p> <p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the</p>		<p><b>Complies</b></p> <p>The parent approval plans (Cross Ventilation Diagrams – dwg 4006) indicate that 100% of apartments achieve the cross-ventilation requirement.</p> <p>The modification provides a plan which indicates that the design now exhibits only</p>						

Provisions	Comment										
balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	74% of the suitable cross ventilation. Notwithstanding the reduction in natural ventilation, the proposal as modified still complies.										
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line											
4D Apartment Size and Layout											
<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedrooms</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedrooms</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment Type	Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedrooms	70m <sup>2</sup>	3 bedrooms	90m <sup>2</sup>	<p><b>Complies</b></p> <p>The parent application granted approval for 23 units; with the dwelling mix to be retained.</p> <p>All apartments have their GFA altered, be it by reduction or increased, this is due to the internal reconfiguration proposed under this application. Notwithstanding the proposed changes to the GFA, the proposal as modified still complies with dwelling mix controls.</p>
Apartment Type	Minimum Internal Area										
Studio	35m <sup>2</sup>										
1 bedroom	50m <sup>2</sup>										
2 bedrooms	70m <sup>2</sup>										
3 bedrooms	90m <sup>2</sup>										
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	<p><b>Complies</b></p> <p>Windows are visible and within 8m from the furthest point within habitable rooms</p>										
Habitable room depths are limited to a maximum of 2.5 x the ceiling height	<p><b>Complies</b></p> <p>Living areas and bedrooms are all located on the external face of the building. The maximum habitable room depth from windows is 8m.</p>										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window											
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	<p><b>Complies</b></p> <p>Minimum areas and widths for habitable rooms are provided or exceeded. All bedrooms allow a minimum length of 1.5m for robes.</p>										
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)											
Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>- 3.6m for studio and 1-bedroom apartments</li><li>- 4m for 2- and 3-bedroom apartments</li></ul>	<p><b>Not supported.</b></p> <p>Given the internal reconfiguration of units, Units 1, 2, 5, 6, 9 &amp; 10 do not have a functional layout to delineate between living/kitchen or dining. The reconfiguration of these units limits the functionality and liveability of these units as does not allow space for the provision of a dining table, couch or tv unit.</p> <p>Whilst the applicant has demonstrated a floor plan for the units, it is still deemed the reconfiguration restricts the usability and function of the apartments.</p>										
4E Private Open Space and Balconies											
All apartments are required to have primary balconies as follows:	<b>Does not comply however supported.</b>										

Provisions			Comment
Dwelling Type	Minimum Area	Minimum Depth	Unit 22 does not comply with the minimum requirements of 10sqm as it exhibits a balcony size of 9.10sqm. The applicant has stated due to the increase of the Fire stairs, the balcony was required to be reduced to accommodate this.  A review of the amended plans found that predominantly all balconies alter their area size, be it by reduction or increase.
Studio	4m <sup>2</sup>	-	
1 bedroom	8m <sup>2</sup>	2m	
2 bedroom	10m <sup>2</sup>	2m	
3 bedroom	12m <sup>2</sup>	2.4	
The minimum balcony depth to be counted as contributing to the balcony area is 1m.			
4G Storage			
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			<b>Complies</b> Whilst some apartments have increased in storage, others have decreased.  It is noted the modification retains or increases storage as the original approval.
Dwelling Type	Storage Size Volume		
Studio	4m <sup>3</sup>		
1 bedroom	6m <sup>3</sup>		
2 bedroom	8m <sup>3</sup>		
3 bedroom	10m <sup>3</sup>		
At least 50% of the required storage is to be located within the apartment.			
4N Roof Design			
Roof treatments are integrated into the building design and positively respond to the street.			<b>Complies</b> The proposal includes a modification for the provision of a lift overrun. This is considered suitable in terms of the context of the development and the overall existing design and integration of the building design and materials.
Opportunities to use roof space for residential accommodation and open space are maximised			
Roof design incorporates sustainability features.			
4Q Universal Design			
Universal design features are included in apartment design to promote flexible housing for all community members			<b>Complies</b> The parent approval stated 100% of the total apartments incorporate the Livable Housing design. A breakdown of adaptable design levels are as follows: Platinum: 11 Silver: 12  The modification now exhibits only Unit 1 and Unit 2 as adaptable, a reduction of 21 units. The applicant stated the reason for the reduction was due to the limitation of car parking requirements. Notwithstanding the reduction in adaptable units, the proposal complies.
A variety of apartments with adaptable designs are provided			
Apartment layouts are flexible and accommodate a range of lifestyle needs			

**(b) State Environmental Planning Policy – Housing 2021.**

The parent DA was lodged pursuant to the SEPP (Affordable Rental Housing) 2009. This SEPP has now been consolidated into SEPP – Housing (2021) and has undergone policy changes.

The proposal has been amended, the applicant has submitted additional information addressing all concerns raised by Council, including amended plans which demonstrate the proposed modification is able to be supported.

The following assessment table has been provided in regard to the Housing SEPP 2021:

<b>State Environmental Planning Policy (Housing) 2021</b>			
<b>Division 1 In-fill affordable housing</b>			
<b>Provision</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
<b>16 Development to which Division applies</b>	<p>Division applies to residential development if:</p> <ul style="list-style-type: none"> <li>- development permitted with consent under another EPI, and</li> <li>- the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20%</li> <li>- for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area</li> </ul>	<p>The development is permitted with consent under LLEP 2008, and the site does not contain a heritage item.</p> <p>All units are nominated for affordable housing.</p> <p>The subject site is within an accessible area.</p>	Complies
<b>17 Floor space Ratio</b>	<p>(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of—</p> <p>(a) if the maximum permissible floor space ratio is 2.5:1 or less—</p> <p>(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or</p> <p>(ii) if less than 50% of the gross floor area of the building will be used for affordable housing—Y:1, where—</p> <p>AH is the percentage of the gross floor area of the building that is used for affordable housing.</p> <p><math>Y = AH \div 100</math></p>	<p>The Liverpool LEP allows a FSR of 1.5:1.</p> <p>The site area is 802sqm.</p> <p>The proposed amended GFA of total affordable housing units is 1674sqm.</p> <p>Under Clause 17(a)(i) of the SEPP (Housing) 2021, the proposal is entitled to a bonus floor space ratio of 0.5:1 as greater than 50% of the GFA is proposed as affordable housing.</p> <p><math>= 1674/802</math>  <math>= \text{Modified FSR of } 2.1:1</math></p> <p>This is an increase from parent approval which approved a FSR of 1.99:1. The gross floor area (GFA) has increased in the modification application to</p>	Does not comply however supported

	(2) The additional floor space ratio must be used for the purposes of affordable housing.	1674sqm which equates to an FSR of 2.1:1. Notwithstanding the GFA increase, the proposal is supported given the proposal retains its parent approval for the provision of affordable housing and that the increase in GFA does not contribute to additional bulk or scale, nor does it result in additional yield in apartments.	
		Therefore, the proposal is entitled to a maximum floor space ratio of 2:1. The proposal exhibits an FSR of 2.1:1. Which exceeds the maximum FSR prescribed to the site.	

<b>18 non-discretionary development standards</b>	The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies –		
	<b>2(a) Site area</b> Site area – 450sqm	Site area – 802qm	Complies
	<b>2(c) Landscaped area</b> Landscaped - 30% site	The amended architectural plans indicate a landscape area of 250sqm which equates to 31%. The landscaping has been reduced from the parent approval, however, remains compliant.	Complies
	<b>2(d) Deep soil zones</b> Deep soil – 15% site Minimum dimension of 3m If practicable, at least 65% of the deep soil zone is located at the rear of the site	The modification exhibits a total of 175sqm which is 22%. However, on Council calculation the Deep Soil zone is – 135sqm (17%).  Whilst this is a minor reduction from the parent approval, it is primarily due to the building envelope changes and reconfiguration of hydrant booster and community room, which has reduced the availability of deep soil zone on site.	Does not Comply,

		Notwithstanding, the Deep Soil Zone complies with the ADG Under SEPP 65 providing more than 7%.	
	<b>2(e) Solar access</b> Living rooms and POS for 70% dwellings receive 3 hours sunlight between 9am and 3pm mid-winter.	<p>The parent approval indicated a total of 70% (17 units) would achieve a minimum of 2 hours of sunlight at mid-winter. Furthermore, it states 100% (23) units' private open space would achieve a minimum of 2 hours direct sunlight at mid-winter.</p> <p>The applicant has demonstrated 74% of units still achieve the required solar access requirements. Notwithstanding the reduction in solar access, the development still complies with the standard.</p>	Complies
	<b>2(f) Parking (social housing provider)</b> 0.4 parking spaces- 1 bedroom dwelling 0.5 parking spaces- 2-bedroom dwelling 1. parking space- 3 or more bedrooms dwelling	<p>The parent approval provided 10 parking spaces for residential units. No visitor parking was provided.</p> <p>The modification does not alter this, however, now provides 14 bicycle spaces as per Council's DCP requirements.</p>	Complies
	<b>2(h)</b> for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment	Noted – See ADG compliance tables prior.	Complies
	<b>2(j) dwelling size</b> if paragraphs (h) and (i) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m <sup>2</sup> , or (ii) for each dwelling containing 2 bedrooms—90m <sup>2</sup> , or (iii) for each dwelling containing at least 3	The proposed modification complies with requirements of the ADG as per 2(h).	Complies



	bedrooms—115m2 plus 12m2 for each bedroom in addition to 3 bedrooms.		
<b>19 Design Requirements</b>	Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	Proposed development as modified as assessed against Apartment Design Guideline requirements complies in part, however a few minor variations are supported given the modification required to adhere to the NCC, structural requirements and adaptable unit requirements. .	Complies
<b>20 Continued application of SEPP 65</b>	Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.	Noted.	N/A
<b>21 Must be used for affordable housing for at least 15 years</b>	(1) Development consent must not be granted under this Division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued— (a) the affordable housing component of the residential development will be used for affordable housing, and (b) the affordable housing component will be managed by a registered community housing provider.	To ensure that the dwellings proposed to be used for the purposes of affordable housing, conditions of consent have been imposed.	Complies by condition

	<p>(2) Subsection (1) does not apply to development on land owned by a relevant authority or to a development application made by, or on behalf of, a public authority.</p> <p>(3) In this section—  <b>affordable housing component</b>, in relation to development to which this Division applies, means the dwellings used for the purposes of affordable housing in accordance with section 16(1)(b).</p>		
--	---	--	--

**(c) State Environmental Planning Policy (BASIX) 2004**

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less portable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for houses and units.

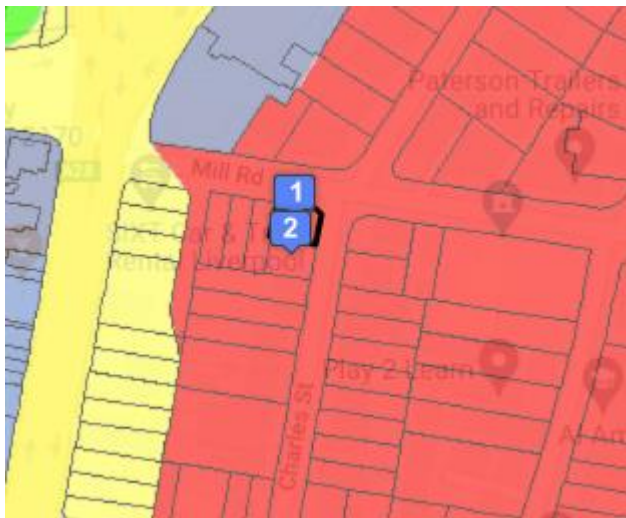
A BASIX Certificate has been submitted for the proposed development.

The proposal is considered to be satisfactory with regard to water and energy efficiency and thermal comfort.

**(d) Liverpool Local Environmental Plan 2008**

**(i) Zoning**

The site is zoned R4 High Density Residential pursuant to LLEP 2008 as depicted in the figure below.



**Figure 23: Zoning Map** (Source – Liverpool eplanning)

## **(ii) Permissibility**

The proposed development is for a *residential flat building*, which is defined as follows:

*a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.*

The proposed development satisfies the definition of a residential flat building as it is a building which contains 3 or more dwellings.

As such, the proposal for a residential flat building is considered a permitted development, with consent in the R4 zone.

## **(iii) Objectives of the zone**

The objectives of the R4 – High Density Residential zone are as follows:

- *To provide for the housing needs of the community within a high-density residential environment.*
- *To provide a variety of housing types within a high-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The proposed development would continue to meet and satisfy the above-stated objectives. Specifically, the building will provide a total of 23 dwellings with a mix of units, affordable housing.

## **(iv) Principal Development Standards**

The LLEP 2008 contains a number of principal development standards which are relevant to the proposal. Assessment of the application against the relevant standards is provided below.

Clause	Provision	Comment
<b>Clause 4.3 of Height of Buildings</b>	Maximum height of 24m	<p><b>Variation Proposed and Considered Acceptable</b></p> <p>The proposal approved maximum building height of 27.796m (to the top of the roof top solar panels (49.078m AHD). The greatest variation is therefore equivalent to 3.796m or 15.8%.</p> <p>The modification seeks to increase this due to the inclusion of a lift overrun. This increased the height to 29.516m (50.520 AHD). This is deemed acceptable given the increase is minor and will not contribute to additional negative impacts on the locality.</p>
<b>Clause 4.4 Floor Space Ratio</b>	Maximum FSR of 1.5:1 (plus bonus FSR of 0.50:1 under ARH SEPP for total of 2.0:1)	<p><b>Does not Comply.</b></p> <p>The parent application approved an FSR of 1.99:1. On review of the proposed modification, there are increases the FSR over the parent approval and the bonus FSR applicable to the site.</p> <p>FSR = 1674/802 = Complying FSR of 2.1:1</p> <p>Given the design requirements and the minor increase of GFA, the noncompliance with FSR pursuant to the ARH SEPP is deemed supportable given the function of the proposal will be retained.</p>
<b>Clause 4.6 Exceptions to development standards</b>	Clause 4.6 variation sought for exceeding the maximum height under Clause 4.3, which is discussed below. The original proposal was granted a 4.6 variation to height of 27.79m equating to a 15.8% variation. The application again proposes an additional height increase to the development to 29.5m equating to a 22.9% variation to building height to accommodate the lift overrun and servicing.	
<b>6.5 Public Utility Infrastructure</b>	Public utility infrastructure must be available	<b>Complies</b> Conditions of consent on the parent application to ensure this is met.
<b>7.7 Acid sulfate soils</b>	Class 1 2, 3 4 or 5	<b>N/A</b>
<b>Clause 7.14 Minimum Building Street Frontage</b>	Development consent must not be granted to development for the purposes of any of the following buildings, unless the site on which the buildings is to be erected has at least one street frontage to a public street (excluding service lanes) of at least 24 metres: <ul style="list-style-type: none"> <li>- any residential flat building.</li> </ul>	<b>Complies</b> Street frontage exceeds 25m.

## **DISCUSSION – Development Standards**

### **Floor Space Ratio (FSR)**

The modified proposal was submitted with a variation to the gross floor area, however due to inconsistencies and incorrect information provided on documentation at lodgment, Council could not verify the applicant gross floor area (GFA) and floor space ratio calculations. The application did not request a variation to the development standard.

Subsequently, following additional information being provided the applicant indicated a variation to the floor space ratio with a gross floor area (FSR) of 1,662.17sqm being proposed, which equates to an FSR of 2.07:1 or 2.1:1 after rounding up.

The parent consent approved an FSR of 1.99:1 and the intent of the modification application was not to increase the FSR but to include minor variations to the internal layouts and balconies brought by the need for structural requirements for the construction of the building and fire stairs. As a result, the gross floor area was increased.

In determining the impact of the increased GFA Council consider whether the additional GFA contributed to additional bulk and scale, and whether these have been varied and the impacts that the variation have on the surrounding area.

The body of the report indicates that there has been a minor variation to the building envelope on ground floor which resulted in changes to the setbacks, however the changes are a result of conditions implied by Council in the parent consent which required relocation of the fire services and the inclusion of bike parking. Furthermore, the primary intent of the modification application by the applicant as implied, was for structural elements to the building as a result of the updated structural engineering requirements.

The applicant did not submit a Clause 4.6 variation request to vary the FSR development standard primarily as it was not intention to amend the GFA. Irrespective of the intent, the consent authority must consider the contravening of the development standard. In its ruling in the case *Gann v Sutherland Shire Council (2008)*, it stated that SEPP 1 at that time only implied to clause 4.6 variations when development consent may be granted rather than development consent being modified.

In this regard, the applicant intent was not to contravene the FSR controls therefore no variation was requested, and this resulted in a minor increase in FSR from 1.99:1 to 2.1:1, which is attributed to the necessary structural and complying development requirements under the relevant building code for fire standards and structural elements of the building. With this consideration and the *Gann v Sutherland Shire Council (2008)* case, a clause 4.6 variation to the FSR standard is not necessary in this case.

In this regard, the Council has considered the contravening of the development which does not contribute to additional bulk scale, or height variation, nor does it result in additional impacts to the surrounding residential properties. In this regard, the proposal is substantially the same as initially approved therefore, with these considerations, the proposed variation to the FSR is supported in this instance.

**(v) Clause 4.6 - Exceptions to development standards**

**(Variation to Clause 4.3 - Height of Buildings)**

Clause 4.3 of the Liverpool Local Environmental Plan (LLEP) 2008 states.

*“The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”*

The subject proposal seeks a variation to the maximum height of buildings contained in LLEP 2008.

The maximum height of buildings is to be 24m. The subject development is applying for an exceedance of building height. The maximum height proposed as part of this modified application is 29.5m to the top of the lift overrun. This equates to a variation of 5.5m which is expressed in a percentage as 22.9% to the development standard.

An approval for variation was granted as part of the parent application. The majority of the proposed development as modified complies with the exception of the lift overrun, rooftop open space and a small portion of the top of the residential component. The detail of the non-compliance is shown in the below figure.

Consequently, the applicant has not provided an assessment under Clause 4.6 to vary the maximum height allowed in this proposal. Whilst Clause 4.6 does not technically apply due to the operation of modification applications under the EP&A Act – consideration of justification requirements has been considered.

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because 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, and*

(b) *the concurrence of the Planning Secretary has been obtained.*

The applicant submitted a Clause 4.6 Variation Statement to the Height of Buildings Development Standard within their Statement of Environmental Effects dated 08 June 2023, in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

**Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard.**

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

### **Council Comment**

Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- Although the building exceeds the height limit by a maximum of 5.5m, the breach spans a relatively short area of the proposed building and relates to an element of the design (lift overrun, open space area and the top of residential component, as such, these elements of the buildings for the most part are not overly visible from the street, or the front of the property.
- The surrounding properties now also have approved Development Applications for residential flat buildings, providing the desired future character of taller buildings coming to fruition.
- The elements of the primary building form that breach the limit continue to be minimal and are located to the rooftop and would not been seen as an excessive structure on the building from the streetscape.
- Notwithstanding the height exceedance the proposed development is not considered to create any detrimental overshadowing or privacy impacts on the adjoining developments.

Compliance with the standard is unreasonable in this case as the development can be sited with adherence to local provisions and any future development on the allotments would still be able to provide a valuable housing product appropriate for the area and provide for the housing needs for the community.

Based on the review of the potential impact of the height extrusion it is considered that strict compliance is unlikely to reduce any impact and that it is argued that the height variation for the abovementioned purposes provides improved amenity for future residents and does not negatively impact on the local area in terms of additional overshadowing or determinantal impact to the design of the building. Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 4.3 – Height of Buildings in this instance.

*(b) There are sufficient environmental planning grounds to justify contravening the development standard*

### **Council Comment**

It is also considered compliance with the height of buildings development standard is unreasonable or unnecessary due to the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard. The increase in the height proposed ensures that better servicing can be provided to the future occupants of the buildings. The objectives of the Height of Buildings clause, as per the Liverpool LEP 2008, have also been addressed, as well as the objectives of the zone.

Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 4.3 – Height of Buildings in this instance.

### **Consistency with objectives of the development standard Clause 4.3 Height of Buildings**

The objectives of Clause 4.3 and assessment are as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved.*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The applicant has stated that the proposal is consistent with the objectives of Clause 4.3 – Height of Buildings.

### **Council Comment**

The breach in building height does not contribute to the breach in floor space ratio as identified under this modification and is consistent with this objective. The breach in building height is unlikely to impact on the urban form.

The variation to building height is unlikely to cause unsatisfactory issues on adjoining sites as they will still be able to receive adequate solar access to their living rooms and private open spaces. The breach in building height would provide an appropriate built form in the locality, which has the same zoning and height limits. The variation is unlikely to cause noticeable visual issues when viewed from the streetscape and the building footprint and floor space ratio is consistent with the ADG, provisions of the LEP, SEPP (Housing) 2021 and the desired future character of the locality.

The exceedance does not add any additional FSR, density or bulk and scale with the proposed development providing an appropriate density outcome for the site.



## **Consistency with objectives of the zone – R4 High Density Residential**

The objectives of the R4 High Density Residential Zone under the LLEP 2008 are as follows;

- *To provide for the housing needs of the community within a high-density residential environment.*
- *To provide a variety of housing types within a high-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

## **Council Comments**

The proposed development would meet and satisfy the above-stated objectives. Specifically, the development provides housing to meet the needs of the community, provides a variety of housing types with a mix of units with access to transport, and amalgamates four titles, minimising land fragmentation. It will support the well-being of the community while maintaining the amenity of the surrounding area.

## **Consistency with Clause 4.6 objectives**

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance to apply a degree of flexibility when applying the maximum height development standard applicable to the subject site having regard to the comments above.

## **Recommendation**

With consideration to the discussion above, the proposed variation to Clause 4.3 – Height of Buildings adequately addresses the provisions of Clause 4.6 including the objectives of the development standard and the zoning. The proposal is also considered to be in the public interest and is therefore supported in this instance.

### **6.2 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument**

There are no draft Environmental Planning Instruments which apply to the development.

### **6.3 Section 4.15(1)(a)(iii) - Any Development Control Plan**

#### **(a) Liverpool Development Control Plan (LDCP) 2008**

The application has been assessed against the controls of the LDCP 2008, particularly Part 1: *General Controls for all Development*; and Part 3.7: *Residential Flat Buildings in the R4 Zone (Outside Liverpool City Centre)*.

The tables below provide an assessment of the proposal against the relevant controls of the LDCP 2008.

#### LDCP 2008 Part 4: Development in the Liverpool City Center

Development Controls	Required	Provided	Complies
4.2 Controls for Building Form			
4.2.7 Street Alignments and Street Setbacks			
<div>1. Buildings are to comply with the front setbacks as set out in <b>Figures 4-12</b>.</div> <div>2. Upper level frontages to a lane/serviceway must be <u>setback</u> 6 metres from the centre line of the lane/serviceway.</div> <div>3. Construct perimeter block buildings and podiums, which comply with the <u>building</u> envelope requirement, to the street and side boundaries (<u>0m setback</u>).</div> <div>4. Buildings with a boundary to the Hume Highway have a minimum <u>setback</u> of <u>8m</u>.</div> <div>5. Buildings on the southern side of streets identified in Figure 4-10 have minimum front setbacks as follows, in order to maximise solar access:<div>1. Elizabeth Street between Bathurst Street and Bigge Street - <u>6m</u>.</div><div>2. Railway Street, Scott Street and Memorial Avenue - <u>3m</u>.</div><div>3. Parts of George, Bathurst, Terminus and Bigge Streets – <u>2.5m</u>.</div></div>	<div>The proposal is required to have a 4.5m landscape setback as per Figure 4.10 of the LDCP. The proposed relocation of the hydrant booster and water meters impedes this landscape setback and further reduces the landscaping requirements within the front setback and to the public domain.</div>	Complies	
4.2.8 – Side and rear boundary setbacks			
<div>1. All residential and commercial buildings must comply with the separation distances in <u>SEPP</u> 65 and the ADG unless otherwise agreed with <u>Council</u> in an approved concept development application.</div> <div>2. For existing buildings that do not comply with the <u>setback</u> requirements identified in control 1 above, appropriate screening must be installed should the <u>building</u> be refurbished or converted.</div> <div>3. Buildings with a rear or <u>side boundary</u> to the rail corridor are to provide a minimum <u>setback</u> of <u>12m</u>. The <u>setback</u> is to be appropriately landscaped.</div> <div>4. Buildings on land zoned B6 – Enterprise Corridor and B1 – Neighbourhood Centre located in the <u>Liverpool city centre</u>, to have setbacks consistent with Table 4-1 below.</div>	<div><div>○ Approved setback of 2.9m to the community room from Mills St.</div><div>○ Modification now proposes 3.9m side setback to community room from Mills St.</div><div>○ Approved side setback of 3.825 to building envelope (carpark)from Mill St</div><div>○ Modification now proposes a side setback of 4.37m to building envelope from Mill St.</div><div>○ Approved rear setback of 3m from the rear (Abutting 26 Mill Road)</div></div>	Complies	

<p>5. Construct buildings across the site facing the street and the rear boundaries rather than facing side boundaries.</p>	<ul style="list-style-type: none"> <li>○ Modification proposes a rear setback of 2.86m to the rear of the carpark (abutting 26 Mill Road)</li> <li>○ Approved rear setback from fire stairs 1.8m.</li> <li>○ Modification proposes rear setback from fire stairs of 1.64m.</li> </ul> <p>Due to the change in the building envelope, setbacks alterations have occurred across the site.</p>	
<p>4.2.9 – Minimum Floor to ceiling Heights</p>		
<p>The minimum floor to ceiling heights are:</p> <ol style="list-style-type: none"> <li>1. Ground floor: 3.6<u>m</u>.</li> <li>1. Above ground level:</li> <li>2. Commercial office 3.3<u>m</u>.</li> <li>3. Capable of adaptation to commercial uses 3.3<u>m</u>.</li> <li>4. Residential 2.7<u>m</u>.</li> <li>2. Active public uses, such as retail and restaurants 3.6<u>m</u>.</li> <li>3. Car Parks: Sufficient to cater to the needs of all vehicles that will access the <u>car park</u> and, if aboveground, adaptable to another use, as above.</li> </ol>	<p>The proposal modifies the floor to ceiling height, however, complies with the require 2.7m height requirement.</p>	<p>Complies</p>
<p>4.2.10 Housing Choice and Mix</p>		
<ol style="list-style-type: none"> <li>1. In addition to the provisions for <u>dwelling</u> mix in the ADG, residential apartment buildings and <u>shop</u>-top housing must comply with the following apartment mix and size: <ul style="list-style-type: none"> <li>• Studio and one bedroom units must not be less than 10% of the total mix of units within each development;</li> <li>• Three or more bedroom units must not be less than 10% of the total mix of units within each development;</li> <li>• Dual-key apartments must not exceed 10% of the total number of apartments; and</li> <li>• A minimum of 10% of all dwellings (or at least one <u>dwelling</u> – whichever is greater) to be capable of adaptation for disabled or elderly residents.</li> </ul> </li> <li>2. Adaptable dwellings must be designed in accordance with the Australian <u>Adaptable Housing</u> Standard (AS 4299-1995).</li> <li>3. Provide certification from an Accredited Access Consultant confirming that the</li> </ol>	<p>The proposed development provides a housing mix of one- and two-bedroom units to accommodate a variety of residents. 12 one-bedroom units (52%) and 11 two-bedroom units (48%) are provided within the development.</p> <p>Only two adaptable units are now proposed across the whole development. No justification has been provided regarding the reduction from 23 units to two units. The applicant has justified this due to the constraints surrounding providing suitable parking for all adaptable units.</p>	<p>Complies</p>

adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian <u>Adaptable Housing</u> Standard (AS 4299-1995).		
4. Ensure car parking and garages allocated to adaptable dwellings comply with the requirements of the relevant Australian Standard for disabled parking spaces.		
4.2.11 Site Cover and Deep Soil Zones		
Maximum cover	<p>1. The maximum site cover for development is specified in the following table: All other zones = 50%</p> <p>2. Developments with a residential component in all zones, except the Commercial Core, must include a deep soil zone.</p> <p>3. The deep soil zone shall comprise no less than 15% of the total site area (or proportionate to the percentage of residential uses in a mixed-use development). It is to be provided preferably in one continuous block but otherwise with no dimension (width or length) less than 6m.</p> <p>4. Where non-residential development results in full site coverage and there is no capacity for water infiltration, the deep soil component must be provided on structure, in accordance with the provisions of Section 2.5. In such cases, compensatory stormwater management measures must be integrated within the development to minimise stormwater runoff.</p> <p>5. Where deep soil zones are provided, they must accommodate existing mature trees as well as</p>	<p>The parent approval designated deep soil zones are along the 3m building setbacks on the periphery of the site. A total 307m<sup>2</sup> or 38%.</p> <p>The modification now exhibits a total of 135sqm (17%).</p> <p>The reductions are primary due to the building envelopes changes and reconfiguration of hydrant booster and community room, which has reduced the availability of deep soil zone on site.</p>
		Complies as per ADG guidelines.

	<p>allowing for the planting of trees/ shrubs that will grow to be mature plants.</p> <p>6. No structures, works or excavations that may restrict vegetation growth are permitted in this zone (including but not limited to car parking, hard paving, patios, decks and drying areas).</p>		
<b>4.2.12 Public Open Space and Communal Open Space</b>			
<p><i>Existing Public Open Space</i></p> <p>1. Ensure that at least 70% of Bigge Park, Apex Park, Pioneer Park and any other public open space in the city centre has a minimum of 3 hours of sunlight between 10am and 3pm on 21 June (Winter Solstice).</p> <p><i>New Public Open Space</i></p> <p>1. Dedicate open space to <u>Council</u>, where required, as part of an approved concept development application if the space meets the requirements of <u>Council</u> in terms of:</p> <p>A. location;</p> <p>B. aspect;</p> <p>C. accessibility;</p> <p>D. safety; and</p> <p>E. solar access. The open space must be located and designed so that at least 50% of the open space provided has a minimum of 3 hours of sunlight between 10am and 3pm on 21 June (Winter Solstice).</p> <p>2. Developments with a residential component in all zones must comply with the sections 3D Communal Public Open Space and 4F Common Circulation and Spaces, of the ADG. Consistent with the requirements of the ADG, communal open space is to be collocated with areas of deep soil, where possible.</p> <p>3. The roof space of residential flat buildings (RFBs) and mixed-use development (including <u>shop-top</u> housing) is to be developed for the purposes of communal open space that incorporate shade structures and amenity facilities (barbecue and rooftop</p>		<p>The proposed modification exhibits a total of 32% (250.71sqm), which is a minor reduction from the parent approval.</p> <p>Given the reduction in CoS from the parent approval, the proposal still achieves a suitable communal open space area at the rooftop and on the ground floor. Whilst the variation is minor, it is noted the CoS would be retained as originally proposed, however, given the alteration to the building envelope, setbacks and ground floor reconfiguration, this has decreased the CoS provided on the ground floor.</p>	Complies

garden) that complement the development.		
<b>4.2.13 Landscape Design</b>		
<p>1. Landscaped areas are to be irrigated with recycled water.</p> <p>2. Landscape species are to be selected in accordance with Council's schedule of Preferred Landscape Species.</p> <p>3. Commercial and retail developments are to incorporate planting into accessible outdoor spaces.</p> <p>4. Remnant vegetation must be maintained throughout the site wherever practicable.</p> <p>5. A long-term landscape concept plan must be provided for all landscaped areas, in particular the deep soil landscape zone. The plan must outline how landscaped areas are to be maintained for the life of the development.</p> <p>6. Any new public spaces are to be designed so that at least 50% of the open space provided has a minimum of 3 hours of sunlight between 10am and 3pm on 21st June (Winter Solstice).</p>	<p>The amended architectural plans indicate a landscape area of 250sqm which equates to 31%. The landscaping has been reduced from the parent approval, however, remains compliant.</p> <p>A condition has been imposed requesting an amended Landscape plan incapsulating all changes proposed under this modification.</p>	Complies
<b>4.3 Amenity</b>		
<b>4.3.3 Active Street Frontages &amp; Address</b>		
<p><b>Street Address</b></p> <p>1. Street address is defined as:</p> <ul style="list-style-type: none"> <li>- a building that is not raised more than a weighted average of 700mm above street level, up to a maximum of 1.1m (refer to Section 3.3 Front Fences), and</li> <li>- contains entries, lobbies, and habitable rooms with clear glazing overlooking the street, and</li> <li>- excludes car parking areas.</li> </ul> <p>2. Street address is required on ground level of all areas identified in Figure 14.</p> <p>3. Residential developments are to provide a clear street address and direct pedestrian access off the primary street front, and allow for residents to overlook all surrounding streets.</p> <p>4. Provide multiple entrances for large developments including an entrance on each street frontage.</p> <p>5. Provide direct 'front door' access to ground floor residential units.</p>	<p>The proposed development has oriented its main building entry and lobby towards the Charles Street frontage.</p> <p>Horizontal and vertical design elements as well as various landscaping species have been implemented to further activate the existing street frontage.</p> <p>Pedestrian access to the site from Charles Street is clearly delineated through paving. The windows of ground floor and upper-level dwellings have been situated to enhance passive surveillance of the public domain on Charles Street.</p>	Complies

6. Residential buildings are to provide not less than 65% of the lot width as street address		
--	--	--

Overall, the proposal is considered to be inconsistent with the key controls outlined in the LDCP 2008.

#### **6.4 Section 4.15(1)(a) (iiia) - Planning Agreements**

There are no Planning Agreements which apply to the development.

#### **6.5 Section 4.15(1)(a)(iv) - The Regulations**

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the BCA and the Australian Standards for demolition. Accordingly, appropriate conditions of consent will be imposed.

#### **6.6 Section 4.15(1)(b) - The Likely Impacts of the Development**

##### ***Built Environment***

It is considered the proposed development will have moderate impact on the built environment given that it is located within the R4 Zone which is zoned for high density residential development. Whilst it may be considered to be consistent with the current and future character of the locality, the redesign, with a few variations to the ADG, ARH SEPP and DCP, are supportable given the built form will not cause any undue impacts onto neighbouring properties.

##### **Social Impacts and Economic Impacts**

Whilst the approval is likely to result in a positive social impact within the locality. The reduction in communal open space locations throughout the site reduces the promotion of social interaction among building occupants. Furthermore, whilst it is noted the modification has a number of variations and a few noncompliance's, given the overall justification is due to structural requirements and fire safety, Council is supporting these variations.

The proposal still provides a suitable social outcome for the provision of affordable housing in Liverpool. The noncompliance's whilst minor, are still supportable given the structural implications associated with the modification.

#### **6.7 Section 4.15(1)(c) - The Suitability of the Site for the Development**

The site is considered to be suitable for the development. The identified modifications have been considered and are supported. In this regard, the modifications to the development as proposed in this application is considered to adequately satisfy the relevant controls for site.

#### **6.8 Section 4.15(1)(d) - Any submissions made in accordance with the Act or the Regulations**

##### **(a) Internal Referrals**

The following comments have been received from Council's Internal Departments:

Department	Comments
Waste Management	Supported, subject to conditions.
Engineering	Supported, subject to conditions.
Traffic and Transport	Supported, subject to conditions.
Urban Design & Public Domain	Supported, subject to conditions.

## (b) External Referrals

The following comments have been received from external agencies:

Department	Comments
Endeavour Energy	Supported, subject to conditions.

## (c) Community Consultation

In accordance with the Liverpool Community Participation Plan the application was notified for a period of 21 days from 1 June 2023 to 23 June 2023. One submission was received objecting to the proposal.

The submission raised concerns in relation to the provision of social housing. As the development was previously approved.

## 6.9 Section 4.15(1)(e) - The Public Interest

The proposed development is consistent with the zoning of the land and would represent a high-quality development for Liverpool. The development provides additional housing opportunities, including a large proportion of affordable housing, within close proximity to employment opportunities and public transport.

## 7 CONCLUSION

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, and the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, Liverpool LEP 2008, LDCP 2008, and the relevant codes and policies of Council.

Based on the assessment of the application, it is recommended that application DA-50/2021/A be approved.

## 8 RECOMMENDATION

It is recommended DA-50/2021/A seeking Council consent for the modification of DA-50/2021/A, be recommended for approval subject to conditions of consent.

[Click or tap here to enter text.](#)

## ATTACHMENTS

Attachment 1 - Architectural Plan  
Attachment 2 - Landscape Plans  
Attachment 3 - Structural Letter  
Attachment 4 - S4.55 Schedule of Changes  
Attachment - CIV - Cost Estimate



Assessment Officer,



**Emily Lawson**  
**Senior Development Planner**  
**Development Assessment**

☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position by Council's CEO.

Reviewing Officer,



**Nabil Alaeddine**  
**Principal Planner**  
**Development Assessment**