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| DATE OF DETERMINATION | 9 October 2023 |
| DATE OF PANEL DECISION | 9 October 2023 |
| DATE OF PANEL BRIEFING | 28 August 2023 |
| PANEL MEMBERS | Justin Doyle (Chair), Louise Camenzuli, David Kitto, Karress Rhodes, Ned Mannoun |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Papers circulated electronically on 15 September 2023.

MATTER DETERMINED

PPSSWC-334 – Liverpool – DA-50/2021/A – 23 Charles Street, Liverpool - Modification of development consent under section 4.55 (2) of the Environmental Planning and Assessment Act 1979 to alter the approved building form including internal design changes.

PANEL CONSIDERATION AND DECISION

Scheduled considerations

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.

Original DA determination

The development consent for this development was granted by a determination of this Panel on 5 October 2022. At that time the maximum height of the building shown in the DA plans was 27.796m (to the top of the rooftop solar panels 49.078m AHD) which exceeded the mapped LEP development standard for height by 3.796m (or 15.8%).

The Panel indicated in its determination report for the original DA that it considered the height exceedance to be reasonable in the circumstances given that there will be open space on the roof top and given the surrounding residential flat buildings. The height exceedance was observed to arise as a consequence of parapet, lift overrun and toilet to service the roof top open garden.

The consent included a condition levying developer contributions under s 7.11 of the EP&A Act totalling \$106,114.00 to be adjusted at the time of payment in accordance with the contributions plan to be adjusted at the time of payment.

The DA site subsequently changed hands, with the architects of the new owner engaging proposing various changes to achieve Australian Construction Code compliance, to address what were seen as potential construction issues, and to improve residential amenity.

The Council has recommended approval for the development.

Modifications proposed

The subject modification application made under Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 seeks the following changes to the original development consent:

- a) Reconfiguration of internal apartment layouts including balcony design.

- b) Revised basement ramp gradients with changes of basement levels, stormwater arrangement and OSD tank level and dimension adjusted.
- c) Reconfiguration of car park layout to accommodate structural columns.
- d) Site works including amendments to access ramp, retaining walls to accommodate revised ground level, revised front fence to accommodate services including hydrant booster assembly.
- e) Amendment to Garbage storage and deletion of waste chutes.
- f) Inclusion of lift overrun.
- g) Amended façade materials and finishes.
- h) Landscape design including the provision of an external bicycle parking area.
- i) Consequent amendment of Condition 21, 25,60, 62,151 and 179
- j) Deletion of Condition 155.

The amendments result in a maximum height of 29.5m equating to approximately a 23% variation to the mapped development standard to accommodate the lift overrun and servicing. The application must be determined by the Panel because the additional height of buildings proposed will exceed that development standard by more than 10%.

Determination

The Panel has determined to approve the Application by adopting the reasons contained in Council's assessment report, with the exception of the issue of developer contributions which is addressed separately below.

No clause 4.6 variation request is required for the departure from the height development standard because development standards do not prevent the approval of a modification application (*North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 43 NSWLR 468* at 480–481 per Mason P; *SDHA Pty Ltd v Waverley Council [2015] NSWLEC 65* at [34] – [35]).

On the key issue of height, the panel concludes that the height of the building does not alter the substance of the design, and will not lead to any substantial adverse effects on neighbours or otherwise, noting the centrally located positioning of the lift overrun which leads to the main exceedance. Due to that positioning they are shielded when viewed from the street.

There is some exceedance from the roof of the development, but it is not viewed to be unacceptable.

The Panel accepts the Council staff conclusion that:

“... strict compliance with the height standard 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.”

The other changes to the building design will not lead to significant changes to the impact of the proposal. Particular attention was given to the changes to the landscaping which the Panel accepts are required to deliver equitable access to the building. The building is expected to perform sufficiently when measured against the ADG. The Panel is pleased to see the additional provision for bicycle parking in compliance with Council's DCP.

Developer contributions

Notably, no change was proposed to the developer contributions by the modification application.

Despite this Council has proposed to alter the developer contributions in condition 8 relevantly as follows:

"The total contribution is ~~\$199,014.00~~ ~~\$106,114.00~~ and will be adjusted at the time of payment in accordance with the contributions plan".

The Council advises that it proposed that increase in the developer contributions because of the updated estimate of the costs of the development provided with the s 4.55 application.

However, clause 208(4) of the Environmental Planning and Assessment Regulation 2021 reads relevantly:

208 Determination of proposed cost of development—the Act, s 7.12(5)(a)

- (4) The following costs and expenses must not be included in an estimate or determination of the proposed cost—
- (l) the costs of development that is provided as affordable housing,

The Applicant is a social housing provider and its proposal is for all of the development to be provided as affordable housing. The conditions require an instrument being registered on the title to the development for a period of 15 years binding the operator to that commitment.

Accordingly, the cost of the development as correctly calculated for the purpose of determining the amount of contributions is nil.

The condition in relation to developer contributions must be amended accordingly.

Development application

The panel determined to approve the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

CONDITIONS






The development application was approved subject to the conditions in the council assessment report with the exception that condition 8 must be amended to reflect the assessment of the cost of the development at nil.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered one written submission made during public exhibition which addressed provision of social housing by the development.

The modification does not propose a change to that aspect of the development.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment have been raised.

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

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSWC-334 – Liverpool – DA-50/2021/A |
| 2 | PROPOSED DEVELOPMENT | Modification of development consent under section 4.55 (2) of the Environmental Planning and Assessment Act 1979 to alter the approved building form including internal design changes. |
| 3 | STREET ADDRESS | 23 Charles Street, Liverpool |
| 4 | APPLICANT/OWNER | Applicant: Hume Community Housing Association Company Owner: Hume Community Housing Association Company Limited |
| 5 | TYPE OF REGIONAL DEVELOPMENT | Section 4.55(2) Modification Application |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Housing) 2021 (Repealed Affordable Rental Housing 2009) State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 Liverpool Local Environmental Plan 2008 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Liverpool Development Control Plan 2008 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> Council assessment report: 21 August 2023 Clause 4.6 variation – Height variation proposed List any council memo or supplementary report received: Updated Council Assessment Report 12 September 2023 Written submissions during public exhibition: 1 Total number of unique submissions received by way of objection: 1 |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Kick Off Briefing: 19 June 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Karress Rhodes, Ned Mannoun <u>Council assessment staff</u>: Nabil Alaeddine, Ariz Ashraf, Emily Lawson, Lashta Haidari <u>Applicant representatives</u>: Anna Johnston, Dan Lincoln, Bryce Luke, Sudden Masta, Mahi Lau Final briefing to discuss council's recommendation: 28 August 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Karress Rhodes, Ned Mannoun |

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| | | <ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Nabil Alaeddine, Ariz Ashraf, Emily Lawson, Lashta Haidari ○ <u>Applicant representatives</u>: Anna Johnston, Dan Lincoln, Bryce Luke, Sudden Masta, Mahi Lau |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the Council updated assessment report dated 13 September 2023 |