

**BRIEFING DETAILS**

|                             |                                       |
|-----------------------------|---------------------------------------|
| <b>BRIEFING DATE / TIME</b> | Monday, 20 May 2024, 3:00pm to 4:00pm |
| <b>LOCATION</b>             | MS teams                              |

**BRIEFING MATTER(S)**

PPSSWC-348 – Liverpool – DA-380/2023 – 28 McKay Avenue, Moorebank - Demolition of existing buildings, construction of residential flat building and associated landscaping.

**PANEL MEMBERS**

|                                 |  |
|---------------------------------|--|
| <b>IN ATTENDANCE</b>            | Justin Doyle (Chair), David Kitto, Louise Camenzuli, Karress Rhodes, Ned Mannoun |
| <b>APOLOGIES</b>                | NIL  |
| <b>DECLARATIONS OF INTEREST</b> | NIL  |

**OTHER ATTENDEES**

|                                    |                               |
|------------------------------------|-------------------------------|
| <b>COUNCIL ASSESSMENT STAFF</b>    | Nabil Alaeddine, Greg Mottram |
| <b>APPLICANT</b>                   | Jean Ligadu                   |
| <b>PLANNING PANELS SECRETARIAT</b> | Renah Givney, Tim Mahoney     |

**KEY ISSUES DISCUSSED**

The Panel noted its concern that this DA remains undetermined.

The Council advised that the DA was considered by Council's Design Review Panel on 8 May 2024, but the report from the relevant meeting was not yet available.

The Panel re affirmed its concern about issues of conflict with the entrance and pick up and drop off arrangements. Inquiries were also made as to compliance with the sightline requirements for the basement carpark.

The continuing height non-compliance was noted, but the advantage of allowing for additional rooftop open space presently planned above the height limit was also discussed.

The Panel agreed to defer determination of the DA until mid-July when it was hoped the assessment report, draft conditions and DEP assessment would be available.

**Planning Panels Secretariat**

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## PREVIOUS KEY ISSUES DISCUSSED

- **Does Division 1 of Part 2 of the Housing SEPP apply to the DA?**

The answer to this question is crucial to the determination of the DA.

If it applies, then the bonus FSR in the SEPP will apply and the DA will comply with the FSR development standard in the LEP. If it doesn't apply, then the DA will result in significant exceedances of the FSR development standard and should be refused unless a suitable case can be made for a Clause 4.6 variation to the standard.

Despite being raised as a key issue by the Panel at the preliminary briefing on 21 August 2023, it remains unresolved.

Determination of the issue turns on an assessment of the development proposal against the requirements in Clause 16 of the Housing SEPP.

There is no dispute that the development proposal complies with the requirements in Clause 16 (a) and (b) of the Housing SEPP: it is permissible with development consent in the zone, and over 50% of the GFA of the building is proposed to be occupied as affordable housing subject to the relevant requirements of Housing SEPP in that regard.

Under Clause 16(c), the proposed development must be in an accessible area, which for the Liverpool LGA means within 400 metres walking distance of a bus stop used by regular bus service, within the meaning of the *Passenger Transport Act 1990*, that has at least 1 bus per hour servicing the bus stop between 6 am – 9 pm each day from Monday to Friday, both days inclusive, and 8 am – 6 pm on each Saturday and Sunday.

The traffic report for the DA identifies two bus stops in the vicinity of the site: one near Nuwarra Public School on Maddecks Avenue (240 metres), which complies with the 400-metre limit; and the other on Newbridge Road (650 metres), which doesn't.

The Panel's own investigations (carried out today in the absence of reporting from Council on the subject) indicate that there are two bus stops on Maddecks Avenue that comply with the 400-metre limit with one bus stop on either side of the road in the vicinity of the school. Both bus stops are serviced by the 902-bus, which runs between Holsworthy Station and Liverpool Station.

The timetable for the 902-bus service shows that there is at least 1 bus per hour servicing each bus stop between 6 am – 9 pm each day from Monday to Friday, both days inclusive, and 8 am – 6 pm on each Saturday.

But this is not the case on Sundays. The Liverpool to Holsworthy bus stop does not have a bus service between 9 am – 10 am and the Holsworthy to Liverpool bus stop does not have a bus service between 3 pm – 4pm and 5 pm – 5 pm. But taken cumulatively, there is at least 1 bus per hour servicing one of the bus stops between all three of these periods.

Whether this is sufficient to ensure compliance with the requirement in Clause 16(c) of the Housing SEPP seems to turn on whether you apply the interpretation of:

- Commissioner Dixon in *Touma v Liverpool City Council* [2018] NSWLEC 1635; or
- Justice Sheahan in *Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)* [2018] NSWLEC 204.

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In this case, the Panel is more inclined to accept Justice Sheahan's arguments.

However, prior to making a final decision on the matter the Panel would like to receive and consider Council's position on the matter.

As it is a determinative threshold issue, the Panel asks that Council staff supply a written record of their consideration of this issue as a priority.

- **Is the DA for regional development under Clause 5 of Schedule 6 of the Planning Systems SEPP?**

The applicant has provided further information clarifying that over 50% of the GFA of the proposed development will be for affordable housing and that the CIV of this component of the proposed development will be over \$5 million.

Based on this information, it would appear as if development for the purpose of affordable housing is proposed as the predominant component of the proposed development, and the entire development would comply with the required CIV for regional development (even if only the CIV of the affordable housing component is taken into consideration). That is because there is only one development proposed albeit that it has different components.

Consequently, the Panel is satisfied (subject to compelling reasoning supplied by the Council to the contrary) that the DA is for regional development and that it is the consent authority for the DA.

- **Location of driveway**

Council is opposed to the location of the proposed driveway because it is too close to the pedestrian crossing to the Nuwarra Public School and will create unacceptable traffic safety risks.

The applicant's architect explained that the driveway was put in this location because it is at the lowest end of the site and will result in a shorter ramp and less bulky presentation to the street.

The Panel encouraged prompt direct conferral between the Applicant's architect and/or traffic engineer with the Council's traffic engineer if a concern remains on this subject. The results of that conferral should be immediately reported to the Panel if the issue remains unresolved.

- **Height**

In its report to the Panel, Council indicated it does not support the Clause 4.6 variation to the height limit in the LEP because it will result in an additional floor to the development. The Panel noted that relevant sections and elevations marked up with the projected height limits indicate a significant exceedance of the height limit occurs at one end of the building due largely to the slope of the site (if the lift overrun is excluded from consideration), and that the Design Excellence Panel offered in principle support to further exceedances of the height limit if a suitable roof-top communal open space was incorporated into the design.

The Panel appreciates and shares the Council's concern for adverse precedent from height exceedances, but if additional rooftop open space can be setback from the building walls to as to be substantially screened from the street and neighbouring properties, and results in significant planning improvements, a clause 4.6 request might well be supported in that regard.

- **Design Changes**

Both the Design Excellence Panel and Council suggested design changes to the proposed development to address various concerns and ensure compliance with the relevant planning controls.

These changes relate to several matters, including the parallelogram-shaped built form, design of the apartments on level 4 and 5, overuse of awnings, compliance with the bedroom size and private open space requirements in the Apartment Design Guide.

The Panel encouraged the Council and the applicant to consider the merits of the DEP's recommendations (including in relation to potential for roof top open space as soon as possible. If a change to the plans will result it must be proceeded with as a matter of urgency, and possibly through a deferred commencement condition provided that the Council concludes that necessary change is expected to be achievable without significant amenity impacts on neighbouring properties.

## **NEXT STEPS**

- The applicant is to provide a memo to Council by 28 November 2023, identifying the changes it proposes to make to the design of the proposed development and how long it will take to submit revised plans to Council showing the proposed changes.
- Council is to provide written advice to the Panel by 5 December 2023 (a) recording its position as to the merit of considering such proposed changes, (b) summarising its view on whether Division 1 of Part 2 of the Housing SEPP applies to the DA, and (c) providing a tentative date for the determination of the DA.

## **TENTATIVE DETERMINATION DATE – 15th July 2024**