

DETERMINATION AND STATEMENT OF REASONS
SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	18 November 2024
DATE OF PANEL DECISION	18 November 2024
DATE OF PANEL BRIEFING	14 October 2024
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Louise Camenzuli
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 11 October 2024.

MATTER DETERMINED

PPSSWC-348 – Liverpool – DA-380/2023 at 28 McKay Avenue, Moorebank

Demolition of existing structures and the construction of a six (6) storey Residential Flat Building with associated basement parking.

Of the 28 apartments proposed, 15 (or 54%) are proposed to be ‘affordable units’ pursuant to SEPP (Housing) 2021, which will occupy 51.8% of the total GFA.

PANEL CONSIDERATION AND DECISION

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

Application to vary a development standard

The maximum height of a building on the site as mapped by the LEP is 18m with the development proposing a maximum height of 22.6m or a 25.6% variation of the numeric standard.

While there is a minor exceedance of the height limit by the upper level of accommodation, the majority of that additional height is taken up by a centrally located rooftop open space area which will allow superior shared open space for residents without being prominent when viewed from the street.

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Liverpool Local Environmental Plan 2008 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- a) the applicant’s written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the R4 High Density Residential zone; and
- c) the concurrence of the Secretary has been assumed.

In coming to that conclusion, the Panel has taken into account the objectives of the R4 High Density Residential and particularly the objective of providing for a high concentration of housing with good access to transport, services and facilities.

Within that context the Panel is also satisfied that the objectives of the height development standard under clause 4.3 are met. Of particular importance in that regard, the additional height allows for improvements in the building by allowing for the centrally located roof top open space as encouraged by Council's design excellence panel. In that way the development can achieve "high quality urban form" with good access for residents to see the sky in good sunlight when recreating outside on the property. The additional height will be compatible with the emerging higher density environment of this part of Moorebank.

The Panel also takes into account the favourable review of the clause 4.6 included in the staff assessment report.

Notably, on 14 December 2023 after the DA was lodged, amendments were made to the Housing SEPP to increase the bonus floor space ratio to up to 30% for residential development projects that include at least 15% of the gross floor area (**GFA**) as affordable housing. The changes also now allow for additional permissible height in addition to the mapped maximum permissible height. Clause 16 of the Housing SEPP now allows an increase in height which is "*the same percentage as the additional floor space ratio permitted under subsection (1)*" of clause 16.

While the amendment to now allow for that additional height does not apply to a DA such as this one made but not finally determined before the commencement date, it is nonetheless indicative of a more facilitative approach to calculating height that would be permissible if the DA was lodged now. Under the new provisions the proposal would comply with the maximum permitted height that the bonus allows.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to uphold the Clause 4.6 variation to building height for the reasons explained above, and approve the application for the reasons outlined in the council assessment report.

Matters arising from the Panel briefings which the Panel is now satisfied are resolved include:

Design Excellence – recommendations from Council's Design Excellence Panel meeting of May 2024 have been incorporated into the final design, which the Council advises are acceptable subject to compliance with the consent conditions.

Affordable housing component - The committed affordable housing component of the building has been increased above 50% (from the 20% originally proposed). 15 units will now be operated and managed as affordable housing by a registered housing provider for a minimum of 15 years after the occupation of the building

Building Separation – While minor non-compliances remain with the building separation guideline controls within the ADG, primarily at the lower levels at the rear of the site, improvements in the design have better resolved the associated related potential visual and acoustic privacy issues. The Panel has concluded those departures are acceptable.

Setbacks – The Panel accepts the Council staff advice that due to the irregularity of the site, compliance with the DCP minimum setbacks would create unusable spaces.

Access safety – At briefings during the assessment, the Panel raised concerns about issues of sight line conflicts with the entrance and pick up and drop off arrangements of the public school opposite the site. Council’s Traffic Management Section has worked with the Applicant and is satisfied that the Australian Standard and DCP can be achieved with the design. Conditions are included to improve sight lines to and from the driveway.

CONDITIONS




The development application was approved subject to the conditions in the council assessment report

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- excessive height of the proposed building
- overshadowing impacts
- lack of parking and infrastructure
- Privacy impacts.

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

PANEL MEMBERS	
 Justin Doyle (Chair)	 David Kitto
 Louise Camenzuli	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-348 – Liverpool – DA-380/2023
2	PROPOSED DEVELOPMENT	Demolition of existing structures and the construction of a six (6) storey Residential Flat Building with associated basement parking and 20% Affordable units pursuant to SEPP (Housing) 2021.
3	STREET ADDRESS	28 MCKAY AVENUE MOOREBANK 2170
4	APPLICANT/OWNER	Morfosis Architects Pty Ltd/ Meika Group Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Housing) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ○ 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 2021</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: 11 October 2024 • Written submissions during public exhibition: Four (4) • Total number of unique submissions received by way of objection: Four (4)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 20 November 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Karress Rhodes, Ned Mannoun ○ <u>Council assessment staff</u>: Nabil Alaeddine, Greg Mottram • Briefing: 20 May 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Karress Rhodes, Ned Mannoun ○ <u>Council assessment staff</u>: Nabil Alaeddine, Greg Mottram
9	COUNCIL RECOMMENDATION	Approval

10	DRAFT CONDITIONS	Attached to the council assessment report
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