

PANEL ASSESSMENT BRIEFING REPORT

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-361 – DA-471/2023 (PAN-361953)
PROPOSAL	<p>Demolition of all structures, tree removal and construction of two (2) residential flat buildings containing 341 residential apartments and 66 co-living dwellings (affordable housing) over basement carparking consisting of 410 parking spaces, 50 Bicycle parking spaces, 22 Motorcycle parking spaces and 20 at-grade parking spaces.</p> <p>The development includes construction and dedication of a new public road, bulk earthworks, the provision of ancillary services, drainage and landscape works, publicly accessible through site link and open space, and Torrens Title subdivision in to three (3) allotments.</p> <p>The proposal is Nominated Integrated Development, pursuant to the Environmental Planning and Assessment Act 1979, requiring a controlled activity approval from the Department of Planning & Environment – Water under Section 91 of the Water Management Act 2000.</p> <p>The proposal is Integrated Development, pursuant to the Environmental Planning and Assessment Act 1979, requiring general terms of approval from Water NSW under Section 90 of the Water Management Act 2000.</p> <p>The proposal is identified as Integrated Development requiring approval from NSW Rural Fire Services under the Rural Fires Act 1997.</p> <p>The proposal is a Regionally Significant Development under Schedule 6 of the State Environmental Policy (Planning Systems) 2021</p>
ADDRESS	<p>Lot 6 DP 247485 and Lot 2 DP 1266735</p> <p>31 SHEPHERD STREET, LIVERPOOL NSW 2170,</p> <p>33 SHEPHERD STREET, LIVERPOOL NSW 2170</p>
APPLICANT	LATERAL ESTATE PTY LTD
OWNER	<p>BTS GREENFIELDS PTY LTD</p> <p>TA BRIGHTFIELDS PTY LTD</p> <p>NA BRIGHTFIELDS PTY LTD</p>
DA LODGEMENT DATE	31 August 2023
APPLICATION TYPE	Development Application (Integrated)

REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of the Planning Systems SEPP.
CIV	\$102,629,935 (excluding GST)
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • Clause 4.3 of <i>Liverpool Local Environmental Plan</i> • Clause 4.4 of <i>Liverpool Local Environmental Plan</i> • Clause 7.4 of <i>Liverpool Local Environmental Plan</i>
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>; • <i>State Environmental Planning Policy (Housing) 2021</i>; • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>; • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>; • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) (BASIX SEPP) 2004</i>; • <i>State Environmental Planning Policy No.65 (Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG), in force under SEPP 65 and applicable at the time of lodgement of the DA.</i> • <i>Liverpool Local Environmental Plan 2008</i>; and • <i>Liverpool Local Development Control Plan 2008</i>; <ul style="list-style-type: none"> - <i>Part 1 - General Controls for all Development</i>; and - <i>Part 3.7 – Residential Flat Buildings.</i> - <i>Part 4 – Development in Liverpool City Centre</i>
TOTAL & UNIQUE SUBMISSIONS	Four
KEY ISSUES	<p>Applicant filed a Deemed Refusal and a Class 1 Appeal is currently ongoing.</p> <p>Key issues and noted in the report and further details are noted in the attached Statement of Facts and Contentions (SOFAC).</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	Noted at the end of the report and as attached.
PLAN VERSION	AS attached
PREPARED BY	Nabil Alaeddine
DATE OF REPORT	30 July 2024

1. THE SITE AND LOCALITY

1.1 The Site

- The subject site is legally described as Lot 6 DP 247485 and Lot 2 DP 1266735 located at 31-33 Shepherd Street, Liverpool NSW 2170. The site is a pentagon shaped lot with a collective area of 7,872 square metres (as surveyed).
- The Site is located at the southern end of the Shepherd Street cul-de-sac, with Powerhouse Road to the south-west, the Georges River to the east, and residential development to the north and north-west as depicted in **Figure 1** below. Powerhouse Road constitutes an easement for access running along the length of the site and in part along the western boundary, providing access between Shepherd Street to the north and areas to the south of the Site.
- The site comprises two (2) lots and is currently occupied by existing buildings:
 - (a) Lot 2 in DP 1266735 – an existing two (2) storey brick building occupied by a towing business.
 - (b) Lot 6 in DP247485 – metal factory and brick building associated with industrial uses, and road ('Powerhouse Road') running the length of the property providing access to the Casula Powerhouse Arts Centre.



Figure 1: Aerial image depicting the Site outlined in red (Source: Geocortex)

1.2 The Locality

- The site is located at the southern end of a precinct, located between the railway line and the Georges River, that is currently undergoing a transformation from an industrial area to an area comprising high density residential developments. The surrounding land to the north forms a part of the Shepherd Street Precinct being redeveloped as a mainly residential precinct with local retail activities within the former Paper Mills Building to the north.

- The site and wider precinct have been the subject of a Planning Proposal (PP) and subsequent development consents, with development on the adjacent site to the northeast at 32 Shepherd Street having been approved (Development Application No. 471/2017), and recently completed as a high-density residential development.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for 'Demolition of all structures, tree removal and construction of two (2) residential flat buildings containing 341 residential apartments and 66 co-living dwellings (affordable housing) over basement carparking consisting of 410 parking spaces, 50 Bicycle parking spaces, 22 Motorcycle parking spaces and 20 at-grade parking spaces. The development includes construction and dedication of a new public road, bulk earthworks, the provision of ancillary services, drainage and landscape works, publicly accessible through site link and open space, and Torrens Title subdivision in to three (3) allotments'.

Specifically, the proposal involves:

- (a) Demolition of structures above and below ground;
 - (b) Tree removal;
 - (c) Torrens Title subdivision into three (3) lots including the dedication of a public road;
 - (d) Construction of new public road and public car parking;
 - (e) Bulk earthworks;
 - (f) Provision of ancillary services, drainage works and landscaping;
 - (g) Provision new publicly accessible through-site link and public access to open space adjacent to the foreshore; and
 - (h) Construction of two (2) residential flat buildings containing a total of 341 residential apartments and 66 co-living dwellings over basement parking.
- The development proposed to vary the building separation control, height of building control, and floor space ratio control and has provided a 4.6 variation for all three (3) development controls.

The key development data is provided in **Table 1**.

Table 1: Key Development Data

Control	Proposal
Site area	7,872m ²
GFA	28,228m ²
FSR (retail/residential)	3.85:1
Clause 4.6 Requests	Yes <ul style="list-style-type: none"> - Height of Building - Floor Space ratio (FSR) - Building Separation
No of apartments	341
Max Height	Building A: 71.55m

	Building B: 84.53m
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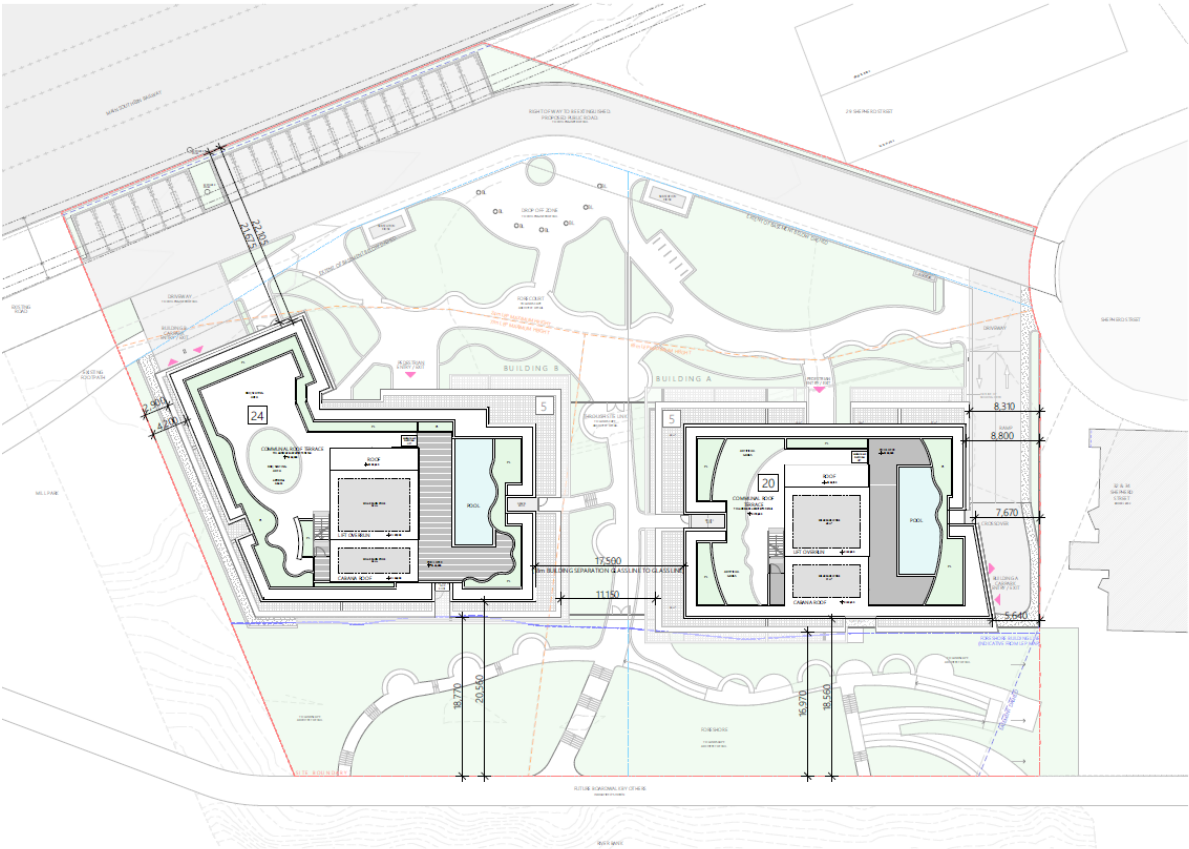


Figure 2: Site Plan

2.2 Background

The development application was lodged on **31 August 2023**. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
31 August 2023	Application lodged with Council.
25 September 2023	Exhibition of the application.
26 September 2023	DA referred to the Design Excellence Panel at its meeting on 9 November 2023.
October 2023 – November 2023	DA referred to internal agencies.

9 October 2024	SWCPP kick off Briefing.
24 October 2023	Additional Information was requested following the preliminary review.
November 2023	DA referred to external agencies.
2 November 2023	The applicant filed Class 1 Appeal in the Land and Environment Court (LEC).
22 November 2023	Sydney Western City Planning Panel was notified of the Class 1 Appeal

2.3 Site History

The site contains industrial warehouses on site which have long stood on the site as part of the historical industrial use of the area.

Aside from the existing industrial warehousing, no other approvals have been adopted on site.

In recent times, there have been large scale residential development occurring on nearby sites as follows:

- DA-471/2017 (Approved LEC) – 32 Shepherd Street - Demolition of existing structures and construction of a 17-storey residential flat building consisting of 200 units over 3 levels of basement parking; with associated landscape and drainage works.
The proposal is Nominated Integrated Development, pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, requiring approval from the Department of Primary Industries – Water.
Note: Liverpool City Council is the consent authority and the Sydney South West Planning Panel has the function of determining the application.
- DA-82/2017 (Approved) – 28 Shepherd Street - Construction of a 14 storey residential flat building comprising of 82 apartments at 26 Shepherd Street;
 - Extension to 'Building C1 South' by an additional 14 storeys and extension to 'Building C1 North' by an additional 12 storeys comprising of an additional 150 units at 28 Shepherd Street;
 - Consolidation of 26 and 28 Shepherd Street.
 - The proposal is identified as Nominated Integrated Development, requiring approval from the NSW Department of Primary Industries - Water pursuant to the Water Management Act 2000.
- DA-823/2017 (Approved) – 20 Shepherd Street - Demolition of portion of the existing heritage building, conversion of a portion of the heritage building into four double storey townhouses.

3. PLANNING CONTROLS

The site is located within the R4 High Density Residential Zone pursuant to Clause 2.3 of the LLEP 2008 as depicted in **Figure 3** below. The proposal is permissible in the zone with consent.

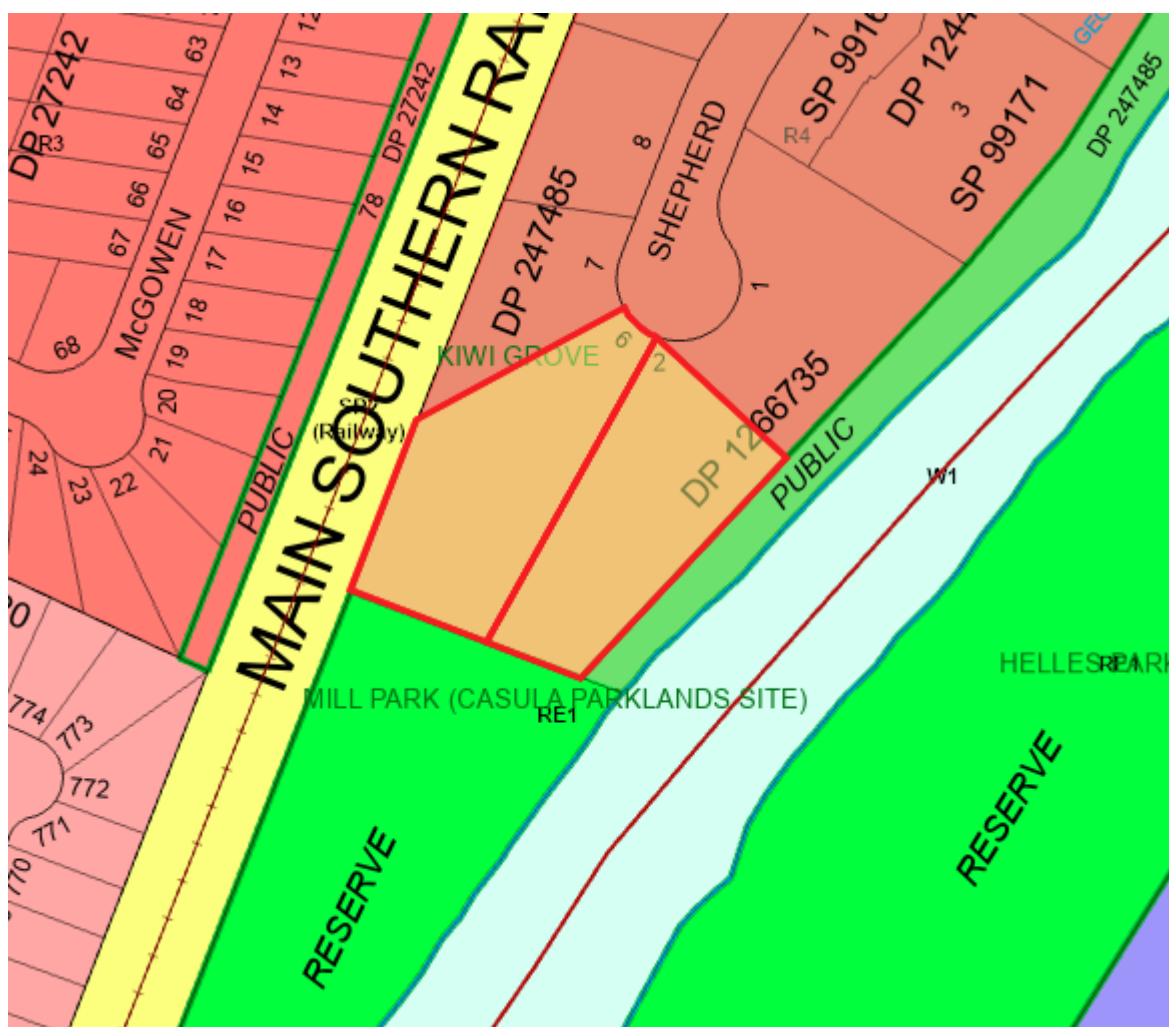


Figure 3: Zoning Map (source: Geocortex)

A summary of the key matters for consideration and non-compliances arising from the relevant EPIs are outlined in **Table 3**. The pre-conditions to the grant of consent have been considered and are outlined in bold.

Table 3: Summary of Key Matters in the Relevant EPIs

EPI	Matters for Consideration	Comply (Y/N)
Planning Systems SEPP	<ul style="list-style-type: none"> Clause 2.19 declares the proposal as regionally significant development pursuant to Clause # of Schedule 7. 	Y
SEPP 65	<ul style="list-style-type: none"> Clause 30(2) - Design Quality Principles - The proposal is consistent/contrary to the design quality principles and the proposal is contrary to the ADG requirements for, solar 	N

	access, building separation, public domain, car parking, bulk and scale, amenities, finishes and communal open space.	
SEPP (Resilience & Hazards)	<ul style="list-style-type: none"> • Clause 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
SEPP Transport & Infrastructure	<ul style="list-style-type: none"> • Clause 2.122 - Traffic-generating development • Clause 2.99 - Excavation in, above, below, or adjacent to rail corridors. • Clause 2.48 - Determination of development applications—other development 	N
SEPP Housing	<ul style="list-style-type: none"> • Chapter 2 Affordable Housing - In-fill Affordable Housing • Part 3 – Co-living 	Y
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Yes
LEP	Clause 4.3 – Height of buildings Clause 4.4 – Floor space ratio Clause 7.2 – Sun Access in the Liverpool city centre Clause 7.4 – Building separation in Liverpool city centre Clause 7.5 – Design Excellence in Liverpool city centre	N
DCP	Part 4, Section 4.2.10 – Housing choice & mix	N

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 4**.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment, Energy & Science Group within DPIE	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	N/A	N/A
Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act	N/A	N/A

	Development on bushfire-prone land		
Transport for NSW – Roads & Maritime	SEPP (Transport and Infrastructure) 2021, s2.122 traffic generating development	Concurrence was received requesting additional information as per the SOFAC	N
Transport for NSW – Sydney Trains	SEPP (Transport and Infrastructure) 2021, s2.99	Concurrence was received requesting additional information as per the SOFAC	N
Endeavour Energy	SEPP (Transport and Infrastructure) 2021, s2.48	Referral comments were received with conditions and the development was supported.	Y
NSW Police Force	CPTED Principles review and requirements	Referral comments were received with conditions and the development was supported.	Y
Bankstown Airport Pty Limited	Site is within the Bankstown Airport Obstacle Height limit and was referred to Aeria Management Group, which manage the airport	Referral comments were received with conditions and the development was supported.	Y
Sydney Water	Section 73 for the Sydney Water Act 1994	Referral comments were received with conditions and the development was supported.	Y
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A	N/A
Transport for NSW	S138 - Roads Act 1993 for works in the road reserve.	N/A	N/A
Heritage NSW	S58 of the Heritage Act 1977 for demolition or works etc to an item listed on State Heritage Register or with an interim heritage order.	N/A	N/A
Department of Planning and Environmental – Water	Water Management Act 2000 s91 controlled activity	General Terms of Approval were issued following an additional information request being addressed by the applicant.	Y
Water NSW	Water Management Act 2000 s90(2) water management work approval	General Terms of Approval were issued following an additional information request being addressed by the applicant.	Y

4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 5**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Not supported, refer to SOFAC contention 9	No
Traffic and Transport	Not supported, refer to SOFAC contention 13	No
Building	No objections subject to recommended conditions	Yes (conditions)
Flooding	Not supported, refer to SOFAC contention 11	No
Environmental Health	Not supported, refer to SOFAC contention 10	Yes (conditions)
Waste Management	No objections subject to recommended conditions	Yes (conditions)
City Design & Public Domain	Not supported, refer to SOFAC contention 12	No
Community Planning	Not supported, refer to SOFAC contention 7	No
Property Services	No objections subject to recommended conditions	Yes (conditions)
City Economy	No objections subject to recommended conditions	Yes (conditions)
Strategic Planning	No objections subject to recommended conditions	Yes (conditions)
Fire Safety	No objections subject to recommended conditions	Yes (conditions)
Design Excellence Panel (DEP)	Not supported, refer to SOFAC contention 4	No

4.3 Community Consultation

The proposal was notified and advertised in accordance with the Council's Community Participation Plan from 25 September 2023 until 26 October 2023A total of 4 unique submissions, comprising 4 objections. The issues raised in these submissions included the following:

- Lack of Parking

- Traffic movement concerns for the area.
- Exceedance to the height of the building above control.
- No Speed limiting controls in Shepherd Street which creates noise.
- More apartments mean de-valuing the area.
- Shop and amenities are needed.
- Concerns are raised regarding construction issues with noise and pollution from the development.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

1. Floor Space Ratio

- Clause 4.4(2) of LLEP 2008 provides as follows:
“(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”
- Pursuant to the Floor Space Ratio Map referred to in Clause 4.4(2) of LLEP 2008, the maximum floor space ratio for the subject site is 3.16:1.
- Collectively the FSR proposed for the development is 3.85:1.
- A written request pursuant to clause 4.6(3) of LLEP 2008 in relation to the contravention of the development standard in clause 4.4(2) of LLEP 2008 has been lodged. Given the bulk and scale concerns of each the buildings, it is deemed that the additional gross floor area proposed contributes to the additional bulk and scale and therefore not supported. It is nevertheless unreasonable or unnecessary to apply the development standard.

2. Height of Building

- Clause 4.3(2) of LLEP 2008 provides as follows:
“(2) 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”.
- Pursuant to the Height of Buildings Map referred to in Clause 4.3(2) of LLEP 2008, the maximum height of buildings for the subject site is 24m, 77m, 65m and 56m.
- The height exceedance encompasses the parts of the top level which contributes to additional gross floor area. In this regard, the additional height contributes to the bulk and scale of the building and is therefore not supported in context. Deletion of a level of the building would result in substantial compliance. It is neither unreasonable nor unnecessary to require that amendment (alternatively substantial compliance could be achieved by a condition requiring deletion of the floor. Alternatively, a variation to the height control might be more favorably considered if the recommendations of Council's DEP were suitably addressed to reduce the apparent bulk and scale of the development.

3. Building Separation

- (a) The ADG requires a building separation of 18m for levels 5 to 8 and 24 for level 9 and above. The proposal deviates from this significantly which is contributing to negative amenity and privacy issues and is contributing to additional bulk and scale.

Control 2F Building Separation of the ADG requires minimum separation distances for buildings as follows:

Nine storeys and above (over 25m)

- *24m between habitable rooms/balconies*
- *18m between habitable and non-habitable rooms*
- *12m between non-habitable rooms*

- (b) Clause 7.4 of the LLEP requires that development consent must not be granted to development of a building on land in Liverpool city centre unless the separation distance from neighbouring buildings and between separate towers, or other separate raised parts, of the same building is at least:

- 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished) on land in Zone R4 High Density Residential, and
- 12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished) on land in Zone R4 High Density Residential, and
- 18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential.

- (c) The proposal provides a separation of 17.5m for levels 10-19 from the adjacent tower compromising the adjacent tower and raising privacy and overlooking concerns and contributing to the bulk and scale of each tower. The proposed separation does not comply with the minimum requirement for building separation in the LLEP and ADG. Compliance could be achieved by a less bulky design.

4. Design Quality and Excellence

- (a) Clause 28(2) of SEPP 65 provides as follows:

“(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

- (b) In light of the matters raised from the ADG, the following matters are unresolved or non-compliant and their matters are discussed in detail below in the DEP comments.

- (i) 2b building envelopes are non-compliant.
- (ii) 2F Building separation are non-compliant.
- (iii) 3B Orientation is unresolved.
- (iv) 3C Public domain interface is unresolved.
- (v) 3F Visual Privacy are non-compliant.
- (vi) 3G Pedestrians access and entries is unresolved.
- (vii) 3H Vehicle access is unresolved.
- (viii) 4A Solar and daylight access is non-compliant.
- (ix) 4F Common circulation spaces are unresolved.
- (x) 4H Acoustic Privacy is non-compliant.
- (xi) 4K Apartment Mix are non-compliant.
- (xii) 4L Ground floor apartments are unresolved.
- (xiii) 4N Roof Design is unresolved.
- (xiv) 4O Landscape design is unresolved.

- (c) The development application was referred to Council's Design Excellence Panel ("DEP") on 9 November 2023. The DEP considered that the proposal was unacceptable and requested that the application be referred back to the DEP for consideration once certain issues had been resolved.

5. General Terms of Approval

- (a) Pursuant to Section 4.46 of the Environmental Planning and Assessment Act 1979, the proposed development is identified as integrated development requiring a water use approval, water management work approval or activity approval under the Water Management Act 2000.
- (b) The application should not be approved until such time as General Terms of Approval have been issued from the NSW Department of Planning and Environment – Water and/or WaterNSW are known given the proximity to, and potential for serious environmental impact on, the Georges River having regard to the objectives of the Environmental Planning and Assessment Act 1979 and Water Management Act 2000.

6. Transport for NSW – Roads and Maritime

- (a) On 26 September 2023 the application was referred to TfNSW for concurrence. A response was received on 17 October 2023. TfNSW has requested additional traffic modelling to justify the data provided in the traffic impact statement.
- (b) Noting the requirement to take into account the response from Section 2.122(4), the DA should not be approved until that modelling is submitted to TfNSW and its response is received.

7. Community Planning

- (a) Insufficient information has been submitted in support of the application to enable the assessment of the social impacts of the proposed development. Council's Community Planning has requested additional information to enable the full assessment of the application against the applicable provisions, which has not been provided. See attached SOFAC below for details.

8. Solar Access

- (a) The applicant indicated that the variation to solar access is mainly due to the "aspect over the orientation" within the design concept utilised.
- (b) Objective 4A-1 of the ADG requires 'a maximum of 15% of apartments in a building to receive no direct sunlight between 9am to 23pm at mid-winter'. The proposal exceeds the maximum design criteria by 14.6%.
- (c) The applicant has justified the variation by referencing the site constraints and chosen building aspects. However, the site area, its orientation, location and positioning allows for a development which can and should comply with the design criteria.

9. Engineering (Land Development)

- (a) Insufficient information has been submitted in support of the application to address Council's engineering requirements. Council's Engineering (Land Development)

division requires additional information to enable the full assessment of the Development Application against the applicable provisions. See attached SOFAC below for details.

10. Public and Environmental Health

- (a) Insufficient information has been submitted in support of the application to address the impacts of the development on public and environmental health. A full and proper assessment could not be undertaken by Council's Environmental Health division due to the following information not been addressed by the applicant. See attached SOFAC below for details.

11. Flooding

- (a) Insufficient information has been submitted in support of the application to address flooding impacts. Council's Flooding division requires additional information for further assessment of this Development Application against the applicable provisions. See attached SOFAC below for details.

12. City Design and Public Domain

- (a) Insufficient information has been submitted to address Council's design and public domain requirements. Council's City Design and Public Domain (CDPD) division requires additional information for further assessment of this Development Application against the applicable provisions. See attached SOFAC below for details.

13. Traffic and Transport

- (a) Insufficient information has been submitted in support of the development application to address traffic and transport impacts. Council's Traffic and Transport division requires additional information for further assessment of this Development Application against the applicable provisions. See attached SOFAC below for details.

14. Public Interest

- (a) The Development Application should be refused as the proposed development as detailed within the current submitted Development Application documents is not in the public interest, having regard to the contentions and information deficiencies raised.
- (b) The Development Application should be refused because approval of the Proposed Development (in its current form) would set an undesirable precedent for inappropriate development as proposed.

6. RECOMMENDATION

The Council considers that the proposal cannot be supported in its current form. Based on the information submitted prior to the deemed refusal of the development application, and the matters raised in this report and attached SOFAC, it is recommended DA-471/2023 should be **Refused**.

7. ATTACHMENTS

The following attachments are provided:

- Attachment A: (Confidential Document) State of Facts and Contentions (SOFAC) (TRIM No. 260352.2024)
- Attachment B: Architectural Plans (TRIM No.294052.2023)
 - Survey Plan (TRIM No. 294083.2023)
 - Photomontage – TRIM No. (294076.2023 & 294075.2023)
 - Basement Plans (TRIM No. 294063.2023)
- Attachment C: Stormwater Plan (TRIM No. 294082.2023)
- Attachment D: Proposed Subdivision Plan (TRIM No. 294077.2023)
- Attachment E: Clause 4.6 Request
 - Building Separation (TRIM No. 294056.2023)
 - Floor Space Ratio (FSR) (TRIM No. 294055.2023)
 - Height of Building (TRIM No. 294054.2023)
- Attachment F: Landscape Plan (TRIM No. 294065.2023)
- Attachment G: Compliance Tables (TRIM No. 294080.2023)
- Attachment H: SEPP 64 Assessment (TRIM No. 294078.2023)
- Attachment I: Design Excellence Panel (DEP) Minutes - 2 Meetings
 - 9 November 2023 (TRIM No. 413633.2023)
 - 8 February 2024 (TRIM No. 080042.2024)