



Land and Environment Court
New South Wales

Case Name: Lateral Estate Pty Ltd v Liverpool City Council

Medium Neutral Citation: [2025] NSWLEC 1155

Hearing Date(s): Conciliation conference held 21 June, 16 July, 29 July, 30 September, 18 October, 22 November, 13 December 2024 and 10 February 2025.

Date of Orders: 18 March 2025

Decision Date: 18 March 2025

Jurisdiction: Class 1

Before: Pullinger AC

Decision: The Court orders that:

- (1) Leave is granted to the Applicant to amend Development Application DA 471/2023 and rely upon the amended plans and documents referred to in Condition 1 at Annexure A.
- (2) The Applicant's written request, pursuant to cl 4.6 of the Liverpool Local Environmental Plan 2008 (LLEP), seeking to vary the development standard for height of building as set out at cl 4.3 of the LLEP, is upheld.
- (3) The Applicant's written request, pursuant to cl 4.6 of the LLEP, seeking to vary the development standard for floor space ratio as set out at cl 4.4 of the LLEP, is upheld.
- (4) The Applicant's written request, pursuant to cl 4.6 of the LLEP, seeking to vary the development standard for building separation in Liverpool city centre as set out at cl 7.4 of the LLEP, is upheld.
- (5) The appeal is upheld.
- (6) Consent is granted to Development Application DA 471/2023 (as amended) for the demolition of all structures, tree removal and construction of two residential apartment buildings containing 343

residential apartments and 66 co-living rooms over basement car parking consisting of 425 parking spaces, 50 bicycle parking spaces, 22 motorcycle parking spaces and 7 at-grade public parking spaces, ground level kiosk, and Torrens Title subdivision into three lots, construction and dedication of a new public road, bulk earthworks, the provision of ancillary services, drainage and landscape works, publicly accessible through site links and open space, at 31-33 Shepherd Street, Liverpool, subject to the conditions of consent at Annexure A.

Catchwords: DEVELOPMENT APPLICATION – residential apartment building – cl 4.6 written request – height of building – floor space ratio – building separation – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7
Land and Environment Court Act 1979, s 34

Environmental Planning and Assessment Regulation 2021, ss 27, 29, 37, 38

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, ss 6.6, 6.7, 6.8, 6.9, 6.10, 6.11

State Environmental Planning Policy (Housing) 2021 Chs 3, 4, Sch 9, ss 67, 69, 147

State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6

State Environmental Planning Policy (Sustainable Buildings) 2022, s 2.1

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.98, 2.99, 2.100, 2.122

Liverpool Local Environmental Plan 2008, cl 2.3, 2.7, 4.3, 4.4, 4.6, 5.10, 5.21, 5.22, 6.5, 7.1, 7.4, 7.5, 7.6, 7.7, 7.9, 7.14

Texts Cited: NSW Department of Planning, Apartment Design Guide, July 2015
NSW Department of Planning and Environment, Planning Circular PS 20-002, May 2020

Category: Principal judgment

Parties: Lateral Estate Pty Ltd (Applicant)
Liverpool City Council (Respondent)

Representation: Counsel:
T Bush (Solicitor) (Applicant)
J Garcia (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Liverpool City Council (Respondent)

File Number(s): 2023/348745

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act), brought by Lateral Estate Pty Ltd (the Applicant), against the deemed refusal of Development Application DA 471/2023 (the DA) by Liverpool City Council (the Respondent).
- 2 At the date of its lodgement on 31 August 2023, the DA sought consent for:
 - (1) Demolition of structures above and below ground.
 - (2) Tree removal.
 - (3) Torrens Title subdivision into three lots, including dedication of public road.
 - (4) Construction of new public road and public car parking.
 - (5) Bulk earthworks.
 - (6) Provision of ancillary services, drainage works and landscaping.
 - (7) Provision new publicly accessible through-site link and public access to open space adjacent to the foreshore.
 - (8) Construction of two residential apartment buildings containing a total of 341 residential apartments and 66 co-living dwellings over basement parking.
- 3 The DA is proposed on land at 31-33 Shepherd Street, Liverpool (the site).
- 4 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on

21 June, 16 July, 29 July, 30 September, 18 October, 22 November, 13 December 2024 and 10 February 2025. I presided over the conciliation conference.

- 5 During the conciliation conference, the parties reached agreement as to the terms of a decision in these proceedings that would be acceptable to the parties. The agreement involves the Court upholding the appeal and granting development consent to an amended DA, subject to conditions.
- 6 Of particular note, the DA has been amended by agreement between the parties to resolve the contentions initially raised by the Respondent. These contentions included issues of floor space ratio (FSR) exceedance, excessive building height, inadequate building separation, a failure to exhibit design excellence, inadequate solar access and flooding, amongst other contentions.
- 7 In resolving this matter, flooding has figured as the threshold issue between the parties, with the Respondent's contentions including concerns for human safety during flood events. Additional information in the form of flood modelling and an emergency response evacuation plan has been provided by the Applicant and assessed by the Respondent and its experts. This additional information demonstrates that ahead of any major flooding event, ample warning time is available to manage the orderly evacuation of residents. This material has been accepted by the Respondent.
- 8 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the amended DA.
- 9 There are jurisdictional prerequisites that must be satisfied before this function can be exercised.
- 10 In that regard, I am satisfied the DA was made with the consent of the owner of the land, evidenced within the Class 1 Application accompanying this matter.
- 11 The DA was publicly notified from 25 September and 27 October 2024. A total of four submissions were received by the Respondent raising concerns with the

DA. The parties agree, and I am satisfied, that the amended DA and conditions of consent satisfactorily address the matters raised in these public submissions. Accordingly, I am satisfied that s 4.15(1)(d) of the EPA Act has been appropriately addressed.

- 12 The parties agree, and I am satisfied, that the Liverpool Local Environmental Plan 2008 (LLEP) is the relevant local environmental planning instrument. The site is zoned R4 High Density Residential. The amended DA - characterised as residential apartment development - is permissible with consent within the R4 zone.
- 13 The parties agree, and I am satisfied, that pursuant to cl 2.3 of the LLEP, the amended DA is consistent with the R4 High Density Residential zone objectives, which include:
 - (1) To provide for the housing needs of the community within a high density residential environment.
 - (2) To provide a variety of housing types within a high density residential environment.
 - (3) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
 - (4) To provide for a high concentration of housing with good access to transport, services and facilities.
 - (5) To minimise the fragmentation of land that would prevent the achievement of high density residential development.
- 14 The parties agree, and I am satisfied, that the proposed retail kiosk development is permitted with consent within the R4 High Density Residential zone pursuant to cl 2.3(1)(c) of the LLEP and the R4 entry in the associated Land Use Table.
- 15 The parties agree, and I am satisfied, that the proposed Torrens Title subdivision is permissible with consent pursuant to cl 2.6 - Subdivision—consent requirements - of LLEP.
- 16 The parties agree, and I am satisfied, that pursuant to cl 2.7 of the LLEP, demolition of existing structures is permissible with consent. The amended DA proposes demolition of the existing structures occupying the site.

- 17 The proposed development for the purposes of co-living housing is permitted with consent on the land pursuant to s 67 of State Environmental Planning Policy (Housing) 2021 (SEPP Housing).
- 18 The parties agree, and I am satisfied, that all principal development standards of the LLEP have been met by the amended DA with the exception of cl 4.3 - Height of buildings, cl 4.4 - FSR and cl 7.4 - Building separation in Liverpool city centre.
- 19 In such an instance, cl 4.6 of the LLEP requires consideration of a written request from the Applicant demonstrating that compliance with the each of these development standards is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standards.
- 20 Clause 4.6 of the LLEP then requires the consent authority (the Court in this instance) to be satisfied that the Applicant's written requests each adequately address the matters set out at cl 4.6, and that the proposed development will be in the public interest because it is consistent with the objectives of each development standard (for height of building, FSR and building separation) and the objectives for development within the zone (R4 High density residential) in which the development is proposed to be carried out.
- 21 Additionally, cl 4.6 of the LLEP requires the concurrence of the Planning Secretary be obtained, and requires the Planning Secretary to consider whether the proposed contravention of the development standard raises matters of significance for State environmental planning, and the public benefits of maintaining the standard.
- 22 Given the earlier written advice of the Planning Secretary (in the form of Planning Circular PS 20-002 issued on 5 May 2020), the Court may assume the concurrence of the Planning Secretary in this matter.

Height of buildings

- 23 The Applicant has provided a written request seeking to vary the height of building development standard, prepared by SJB Planning and dated 7 June 2024.

- 24 Pursuant to cl 4.3 of the LLEP the site is subject to a four separate height of building development standards of 24m, 56m, 65m and 77m.
- 25 The amended DA proposes two buildings, each of which exceeds the relevant height of building development standard. Building A proposes a maximum height of 74.65m (where the development standard is 65m). Building B proposes maximum height of 90.73m (where the development standard is 77m).
- 26 The amended DA is therefore proposed to exceed the relevant height of building development standards by 9.65m and 13.73m respectively, and represents a variance of approximately 14.84% and 17.83% respectively.
- 27 The parties agree, and I am satisfied, that the written request adequately justifies these proposed variations to the height of building development standards for the following reasons:
- (1) The amended DA is agreed to be an appropriate form and scale that is compatible with the anticipated future high density character of the immediate locality.
 - (2) The proposal provides for the delivery of more affordable housing outcomes in close proximity to high frequency transport on the site, consistent with the strategic planning context set out in the Western City District Plan.
 - (3) The proposed height of building exceedance provides for substantial improvement to resident and visitor amenity by way of a reduction to site coverage, which in this instance results in improved pedestrian accessibility, visibility and safety, improved rooftop communal open space, a net increase to affordable housing in the city centre, and overall public benefits. These benefits take the form of public access and public domain improvements, which are agreed to be better configured by virtue of the additional building height.
 - (4) The objectives of the LLEP R4 High Density Residential land use zone include 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; and to minimise the fragmentation of land that would prevent the achievement of high density residential development. I am satisfied the amended DA is consistent with these objectives.

- (5) The objectives of cl 4.3 of the LLEP include to establish the maximum height limit in which buildings can be designed and floor space can be achieved; to permit building heights that encourage high quality urban form; to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight; and to nominate heights that will provide an appropriate transition in built form and land use intensity. I am satisfied the amended DA meets these objectives.
- 28 Consequently, I am satisfied the Applicant's cl 4.6 written request adequately justifies the proposed variation to the height of building development standard, and I find to uphold the written request.

FSR

- 29 The Applicant has provided a written request seeking to vary the FSR development standard, prepared by SJB Planning and dated 7 June 2024.
- 30 Pursuant to cl 4.4 of the LLEP the site is subject to three separate FSR development standards of:
- (1) 2.5:1 for the western portion of the site incorporating Powerhouse Road.
 - (2) 3.5:1 for the central and eastern portions of the site.
 - (3) 3.6:1 for a small northeastern portion of the site.
- 31 Additionally, s 68 of SEPP Housing makes an additional 10% FSR available for the provision of housing for the purposes of co-living.
- 32 Adopting a proportional calculation, these various controls translate to a maximum FSR development standard of 3.47:1 across the entire site.
- 33 The amended DA proposes a total FSR of 3.75:1, exceeding the FSR development standard by 2,152sqm and representing a variance of approximately 7.87%.
- 34 The parties agree, and I am satisfied, that the written request adequately justifies the proposed variance to the FSR development standard for the following reasons:
- (1) The amended DA is agreed to be an appropriate form and scale that is compatible with the anticipated future high density character of the immediate locality.
 - (2) The proposal provides for the delivery of more affordable housing outcomes in close proximity to high frequency transport on the site,

consistent with the strategic planning context set out in the Western City District Plan.

- (3) If the site were developed strictly in accordance with the FSR control, it would deliver fewer dwellings. The proposed exceedance of FSR allows for 40 additional apartments and 66 co-living dwellings.
- (4) The amended DA effectively redistributes the proposed GFA on the site in a manner that does not contribute to unacceptable or adverse environmental impacts in terms of overshadowing, visual impacts, privacy or view loss.
- (5) The objectives of the LLEP R4 High Density Residential land use zone include 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; and to minimise the fragmentation of land that would prevent the achievement of high density residential development. I am satisfied the amended DA is consistent with these objectives.
- (6) The objectives of cl 4.4 of the LLEP include to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic; to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations; to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain; to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation; to provide an appropriate correlation between the size of a site and the extent of any development on that site; and to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design. I am satisfied the amended DA meets these objectives.

- 35 Consequently, I am satisfied the Applicant's cl 4.6 written request adequately justifies the proposed variation to the FSR development standard, and I find to uphold the written request.

Building separation

- 36 The Applicant has provided a written request seeking to vary the development standard for building separation, prepared by SJB Planning and dated 7 June 2024.

- 37 Pursuant to cl 7.4 of the LLEP the site is subject to a minimum building separation development standard of 18m for those portions of the building greater in height than 35m.
- 38 The amended DA proposes two buildings (Buildings A and B) which, between levels 10-20, are situated 17.5m apart, falling short of the development standard by 0.5m or 2.8%.
- 39 Additionally, the amended DA results in a building separation of 10.435m (between levels 7-16) with the approved building at 32 Shepherd Street, falling short of the development standard by 7.565m or 42%.
- 40 The parties agree, and I am satisfied, that the written request adequately justifies the proposed variance to the building separation development standard for the following reasons:
- (1) The amended DA is agreed to be an appropriate form and scale that is compatible with the anticipated future high density character of the immediate locality.
 - (2) The non-compliant setback between Building A and Building B at levels 10-20 is minor in nature. The building will continue to achieve the minimum separation requirement of 18m between windows on the facade and between balconies.
 - (3) The approved setback of the building at 32 Shepherd Street is inconsistent with the Shepherd Street Planning Proposal, which anticipated an 18m building separation shared across site boundaries and was intended to facilitate a publicly accessible through site link. The amended DA compensates to maintain the anticipated public link and achieve adequate (albeit reduced) building separation.
 - (4) In both instances, the resultant reduced building separation is mitigated with appropriate window placement, screening and the use of architectural detailing on facades to achieve visual privacy both within the site and with 32 Shepherd Street.
 - (5) The objectives of the LLEP R4 High Density Residential land use zone include 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; and to minimise the fragmentation of land that would prevent the achievement of high density residential development. I am satisfied the amended DA is consistent with these objectives.

- (6) The objectives of cl 7.4 of the LLEP are to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access. I am satisfied the amended DA meets these objectives.
- 41 Consequently, I am satisfied the Applicant's cl 4.6 written request adequately justifies the proposed variation to the building separation development standard, and I find to uphold the written request.
- 42 The parties agree, and I am satisfied, that pursuant to cl 5.10 of the LLEP - Heritage conservation - the site is not an identified heritage item, nor is it situated within a Heritage Conservation Area.
- 43 The parties agree, and I am satisfied, that pursuant to cl 5.21 of the LLEP - Flood planning - the amended DA, and specifically the Applicant's Emergency Response Plan prepared by Martens Engineering and dated June 2024, adequately addresses those matters set out at cl 5.21(2).
- 44 The parties agree, and I am satisfied, that cl 5.22 of the LLEP - Special flood considerations - does not apply since the DA was lodged but not determined prior to the commencement of cl 5.22.
- 45 The parties agree, and I am satisfied, that pursuant to cl 7.1 of the LLEP - Objectives for development in Liverpool city centre - the site is mapped within land in the Liverpool city centre. Accordingly, the amended DA is agreed to be consistent with the objectives set out in cl 7.1, which include to allow sunlight to reach buildings and areas of high pedestrian activity; to improve the quality of public spaces in the city centre; to reinforce Liverpool railway station and interchange as a major passenger transport facility; and to provide direct, convenient and safe pedestrian links between the city centre (west of the rail line) and the Georges River foreshore.
- 46 The parties agree, and I am satisfied, that pursuant to cl 7.5 of the LLEP - Design excellence in Liverpool city centre - the amended DA appropriately addresses those matters set out at cl 7.5(3) of the LLEP.
- 47 The parties agree, and I am satisfied, that pursuant to cl 7.6 of the LLEP - Environmentally significant land - the site is mapped as environmentally significant land. Accordingly, the amended DA is agreed to adequately address those matters set out at cl 7.6(2) of the LLEP. In particular the Applicant has

provided a Flora and Fauna Survey, Biodiversity Impact Assessment and Riparian Zone Assessment report prepared by ACS Environmental Pty Ltd dated and 6 June 2024, which it is agreed satisfactorily demonstrates the amended DA's consistency with this clause.

- 48 The parties agree, and I am satisfied, that pursuant to cl 7.7 of the LLEP - Acid sulfate soils - the site is mapped within a Class 5 acid sulfate soils area. However, the amended DA involves works that are not likely to lower the water table below 1m AHD on any class of land within 500m of the site and therefore cl 7.7 is appropriately addressed.
- 49 The parties agree, and I am satisfied, that pursuant to cl 7.9 of the LLEP - Foreshore building line - a portion of the site is mapped within the identified foreshore area. The amended DA is agreed to adequately address those matters set out at cl 7.9(3) of the LLEP.
- 50 The parties agree, and I am satisfied, that pursuant to cl 7.14 of the LLEP - Minimum building street frontage - the site requires a street frontage of at least 24m in order to accommodate development of the scale anticipated in the amended DA. The parties agree, and I am satisfied, that Powerhouse Road meets the necessary definition for a public street and that its frontage to the site is greater than 24m.
- 51 The parties agree, and I am satisfied, that State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Infrastructure) is an additional relevant environmental planning instrument. Pursuant to s 2.98 of SEPP Infrastructure, the site is situated adjacent a heavy rail corridor. Accordingly, the amended DA has been referred to Transport for NSW (TfNSW), which has provided its concurrence subject to the imposition of conditions of consent, which are agreed by the parties.
- 52 Similarly, the amended DA involves excavation within 25m of a heavy rail corridor. Pursuant to s 2.99 of SEPP Infrastructure, TfNSW has issued its concurrence subject to the imposition of conditions of consent, which are agreed by the parties.

- 53 Section 2.100 of SEPP Infrastructure requires that residential accommodation sited within proximity of heavy rail infrastructure achieve adequate acoustic performance. The Applicant has provided a Noise and Vibration Impact Assessment, prepared by Acoustic Logic and dated 15 May 2024, which identifies recommended noise mitigation measures, resulting in internal noise levels that will not exceed:
- (1) In any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am.
 - (2) Anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.
- 54 Agreed conditions of consent are imposed to ensure the recommendations of the Noise and Vibration Impact Assessment are implemented.
- 55 Section 2.122 of SEPP Infrastructure classifies the amended DA as traffic generating development since it includes residential accommodation with a capacity of 300 or more dwellings. The amended DA has been referred to TfNSW, which has provided comments. The parties agree that TfNSW's comments have been appropriately considered in reaching this agreement.
- 56 The parties agree, and I am satisfied, that State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience) is an additional relevant environmental planning instrument. Pursuant to s 4.6 of SEPP Resilience, the Applicant has provided a Detailed Site Investigation, prepared by EI Australia and dated 12 April 2024, and a Remediation Action Plan, prepared by EI Australia and dated 31 January 2024.
- 57 These documents are agreed to demonstrate that the site will be suitable for the purpose of residential accommodation, and that remediation required to make the land suitable will be carried out before the land is used for that purpose. Agreed conditions of consent are imposed to ensure the implementation of these reports' recommendations.
- 58 The parties agree, and I am satisfied, that State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) is an additional relevant environmental planning instrument.

- 59 Chapter 6 of SEPP BC deals with water catchments. The parties agree, and I am satisfied, that the site is situated within the Georges River Catchment.
- 60 The Applicant's Flora and Fauna Survey, Biodiversity Impact Assessment and Riparian Zone Assessment report, prepared by ACS Environmental Pty Ltd dated and 6 June 2024 is agreed to appropriately address the matters set out at ss 6.6, 6.7, 6.8, 6.9, 6.10 and 6.11 of SEPP BC.
- 61 More specifically, the amended DA is agreed to appropriately manage stormwater quality and quantity.
- 62 The amended DA is agreed to not result in adverse impacts on terrestrial, aquatic or migratory animals or vegetation, does not result in erosion or sedimentation of a waterbody, impact on wetlands or impact on aquatic ecology. And further, the amended DA is agreed to not result in an adverse environmental impact on downstream areas in adjacent local government areas.
- 63 The parties agree, and I am satisfied, that the amended DA remains subject to the provisions of State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings). Consistent with s 2.1 of SEPP Sustainable Buildings and pursuant to s 27 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg), a BASIX certificate, No 1360108M_02, dated 6 June 2024, has been provided with the amended DA. Agreed conditions of consent are imposed to ensure compliance with the BASIX certificate.
- 64 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of Ch 3 of State Environmental Planning Policy (Housing) 2021 (SEPP Housing), dealing with co-living housing. Pursuant to s 69(1) of SEPP Housing, I am satisfied that the relevant co-living components of the amended DA are consistent with the following requirements:
- (1) Each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25sqm and not less than—
 - (a) for a private room intended to be used by a single occupant—12sqm;
 - (b) otherwise—16sqm, and

- (c) includes a proposed subdivision whose lots will exceed the minimum lot size for the co-living housing, being (relevantly) 800sqm;
 - (2) The co-living housing will contain an appropriate workspace for the manager within the communal living area.
 - (3) Adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant.
 - (4) Each private room will be used by no more than two occupants.
 - (5) The co-living housing will include adequate bicycle and motorcycle parking spaces.
- 65 The parties agree, and I am satisfied, that the amended DA is subject to the provisions of Ch 4 of SEPP Housing, dealing with the design of residential apartment development.
- 66 Pursuant to the provisions of the EPA Reg, the Applicant's architect, Mosca Pserras Architects (and its nominated architect Mr Frank Mosca - NSW registered architect 5000) has prepared a Design Verification Statement dated 6 June 2024, fulfilling the requirements of s 29 of the EPA Reg and confirming that the amended DA achieves the Design principles set out in Sch 9 of SEPP Housing. This statement also sets out how the objectives of Parts 3 and 4 of the Apartment Design Guide have been achieved in the design of the amended DA.
- 67 Additionally, on 9 November 2023 the Liverpool Design Excellence Panel considered the DA and provided comments on the design, including suggested amendments to improve the urban design outcomes particularly the interface with the adjacent Mill Park.
- 68 Accordingly, I am satisfied the amended DA meets the requirements of s 147 of SEPP Housing.
- 69 The parties agree, and I am satisfied, that those remaining relevant matters set out at s 4.15 of the EPA Act have been taken into consideration, and that the amended DA warrants the grant of consent, subject to conditions.
- 70 Having considered each of the preceding jurisdictional requirements and having formed the necessary view required by s 34(3) of the LEC Act, I find it is

appropriate to make the orders agreed to by the parties and now dispose of the matter.

71 The Court notes that:

- (1) Pursuant to ss 37 and 38 of the Environmental Planning and Assessment Regulation 2021, the Applicant has amended the DA with the approval of the Respondent.
- (2) The Applicant has lodged the amended DA with the Court on 10 February 2025.

Orders

72 The Court orders that:

- (1) Leave is granted to the Applicant to amend Development Application DA 471/2023 and rely upon the amended plans and documents referred to in Condition 1 at Annexure A.
- (2) The Applicant's written request, pursuant to cl 4.6 of the Liverpool Local Environmental Plan 2008 (LLEP), seeking to vary the development standard for height of building as set out at cl 4.3 of the LLEP, is upheld.
- (3) The Applicant's written request, pursuant to cl 4.6 of the LLEP, seeking to vary the development standard for floor space ratio as set out at cl 4.4 of the LLEP, is upheld.
- (4) The Applicant's written request, pursuant to cl 4.6 of the LLEP, seeking to vary the development standard for building separation in Liverpool city centre as set out at cl 7.4 of the LLEP, is upheld.
- (5) The appeal is upheld.
- (6) Consent is granted to Development Application DA 471/2023 (as amended) for the demolition of all structures, tree removal and construction of two residential apartment buildings containing 343 residential apartments and 66 co-living rooms over basement car parking consisting of 425 parking spaces, 50 bicycle parking spaces, 22 motorcycle parking spaces and 7 at-grade public parking spaces, ground level kiosk, and Torrens Title subdivision into three lots, construction and dedication of a new public road, bulk earthworks, the provision of ancillary services, drainage and landscape works, publicly accessible through site links and open space, at 31-33 Shepherd Street, Liverpool, subject to the conditions of consent at Annexure A.

M Pullinger

Acting Commissioner of the Court

Annexure A

Architectural Plans

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