

DATE OF DETERMINATION	20 December 2024
DATE OF PANEL DECISION	20 December 2024
DATE OF PANEL BRIEFING	19 November 2024
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto
APOLOGIES	Ned Mannoun, Peter Harle
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 20 December 2024.

MATTER DETERMINED

PPSSWC-364 – Liverpool – DA-489/2023 – 62 & 62A Copeland Street, Liverpool

The proposal seeks approval for the demolition of the site's existing structures followed by the construction of a new twelve storey residential flat building consisting of forty-three (43) residential units and two (2) levels of basement car parking upon land which is known as 62-62A Copeland Street, Liverpool.

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 and the matters listed at item 8 in Schedule 1.

Application to vary a development standard:

The proposed height of the DA building is 37.415m and the height of the building limit is 35m. The portions of the building which significantly contribute to the height exceedance are the lift overrun and minor portions of the parapet wall for the roof-top communal areas. The lift overrun allows access to the rooftop and will have the positive effect of improving the areas available to residents for passive recreation.

The extent of the non-compliance is depicted in this image:

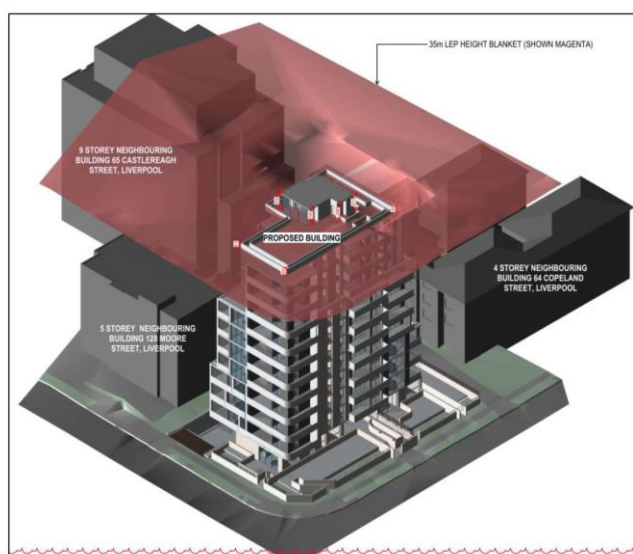


Figure 16: Building Height Blanket & Height Penetration (Source: CDA Architects)

Those portions of the building above the height limit contribute to the shadowing impacts but the degree of additional impact has been adjudged to be acceptable by the Council staff, and are not of themselves

expected to give rise to any significant amenity problems. The Panel takes into account the favourable review of the clause 4.6 included in the staff assessment report.

Importantly, the application is for affordable housing under the State Environmental Planning Policy (Housing) 2021. Notably, on 14 December 2023 (after the DA was lodged on 12 September 2023), 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.

The Panel is of the opinion that in that context the additional height above the LEP maximum is consistent with the objectives of the R4 High Density Residential zone and particularly the objective of providing for a high concentration of housing with good access to transport, services and facilities.

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

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

and the Panel is satisfied that:

- a) the applicant’s written request to vary the standard 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; and
- c) the concurrence of the Secretary has been assumed.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to the amendments to the draft conditions as discussed below.

The decision was unanimous.

REASONS FOR THE DECISION

The panel is satisfied that the Clause 4.6 variation to building height should be accepted, and the DA approved for the reasons outlined in the council assessment report, subject however to the issues discussed below concerning the southern façade being upgraded to improve its design presentation.

The Panel accepted the Council’s advice that:

1. The proposed development will (quoting from the DA material) “make a positive contribution to the character of the locality, particularly when viewed from the public domain” and is “compatible with the scale and character of the existing and desired future character of the Liverpool City Centre.”
2. The proposal complies with the proposed density measured by GFA and FSR anticipated for the site in the Council LEP and the Housing SEPP. The development has been found to achieve sufficient general compliance with DCP controls in that regard.

3. The recommendations made by Council's Design Excellence Panel have been satisfactorily addressed with the requirements of Clause 28(2)(a) of SEPP 65 satisfied (excepting the issue of the eastern façade addressed separately in this report).
4. Side setbacks as revised to address comments from the Design Excellence Panel have been assessed to comply with ADG and LLEP requirements to mitigate impacts on neighbouring sites.
5. The proposed building form presents a relatively sympathetic response considering the variations to the setbacks. The building has been designed to reduce impacts on neighbouring developments.
6. In relation the issue of impacts on adjoining sites, the Panel accepts the Council's assessment advice that the orientation of this site in relation to its neighbours makes it impossible to realise the planning for the site and the permitted height and FSR without significant overshadowing and visual impacts. The present design has however been assessed to be a reasonable response to those challenges.
7. The concurrence of Transport for NSW has been obtained noting that approval for the works within the Hume Highway will be required under Section 138 of the Roads Act 1993. TfNSW concurrence was provided on 23 July 2024, and the GTA's are to be included in the conditions.

However, while the Panel accepts that the building has sufficient modulation in the overall form, it is of the view that given the lack of windows on the southern side of the building, contrasting materials and/or other architectural features could be used in that façade to provide visual interest. Before the final determination of the DA, the Panel has asked that the Applicant work with the Council to resolve an appropriate response to that design issue.

An associated issue that Council raised at the meeting (although apparently not during the DA assessment process) is a complaint that the development did not sufficiently address Council's public art strategy for the city centre. Council suggested that utilising the public art strategy might be a means of addressing what Council said was the unsatisfactory presentation of the building when viewed from the south.

The Panel asked that the Council clarify what was expected of the Applicant and supply precedents or examples if they are available.

If those matters can be resolved the Panel is satisfied that the proposed development is in the public interest.

The Panel considered the state instruments applicable to the development. TfNSW has provided the general terms of its approval of the development and the issue of contamination has been addressed.

CONDITIONS

The Panel has been supplied with submissions from each of the Council and the Applicant in relation to the conditions proposed for the development.

The Applicant has indicated agreement with the conditions proposed by the Council in the draft Notice of Determination dated 19 November 2024 except for three matters.

The first is that the Applicant says that three conditions included in the draft notice of determination do not seem to relate to the form of development proposed and specifically:

- Condition 8 – Entertainment Venues. The building is not going to be used as “an entertainment venue” (nor can it be under the R4 Zoning).
- Condition 12 – Maximum capacity signage. Again, the building is not going to be (nor can it be) used as a function centre, pub, restaurant etc.
- Condition 124 – Swimming Pool Register. There is no swimming pool being proposed.

The Panel agrees, and those conditions should be deleted before the Notice of Determination issues.

The second matter is that references to **Principal Certifying Authority** should be replaced with **principal certifier** wherever they occur to reflect the current wording of the legislation.

The third issue is that the Applicant had queried the requirements for the inclusion of public art on the building by conditions 55, 103, 144 and 168.

Following the determination briefing the Council and the Applicant have met. It is reported that the Applicant and the Council have agreed that conditions 55, 103, 144 and 168 be replaced by conditions to the effect of the following:

“Prior to the issue of a Construction Certificate

- *A Preliminary Public Art Plan, including appropriate planning controls; initial proposed locations, scale to bulk, identified current and/or future audiences, role, benefit, and benchmarking, is to be submitted to Liverpool City Council Public Arts Officer for approval and endorsement.*

Prior to Works Commencing

- *Prior to Works Commencing the Public Art Plan is to be updated, commissioned artist/s, concept designs, artwork dimensions, materials and submitted to Liverpool City Council Public Art Plan for approval and endorsement.*
- *Prior to Works Commencing updated architectural and landscape plans are to be submitted identifying the endorsed public art concept designs.*

During Construction

- *During Construction notification provided to Liverpool City Council Public Arts Officer on commencement of artwork fabrication, delivery, and/or installation.*
- *During Construction, the Public Art Plan is to be finalised, including artist/s and artwork statement, maintenance, ownership and final design, and submitted to Liverpool City Council Public Arts Officer for approval and endorsement.*

Prior to Occupation Certificate

- *Prior to Occupation Certificate high resolution images of completed artworks and associated landscaping submitted to Liverpool City Council Public Arts Officer for approval and endorsement.*
- *Prior to Occupation Certificate the final Public Art Plan is to be submitted to Liverpool City Council Public Arts Officer for approval and endorsement.”*

The Panel accepts that agreement, and the conditions should be amended accordingly.

However the Panel notes that Liverpool Council has for many years had in place a “Public Art Policy” Adopted 21 July 2020, however it offers little guidance to a developer preparing a development application.

The Panel understands that in line with that Policy, Council is preparing a “Public Art Strategy” which is in development and remains uncertain and unresolved at this stage.

Neither of those documents contain any provision which provides meaningful guidance to an applicant or to the consent authority in relation to the inclusion of public art in a development application.

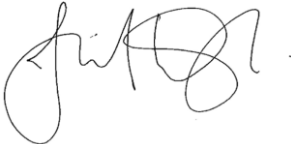


The Panel is concerned that the southern façade of this building in particular will be prominent for many years if not decades, and the Public Art Plan envisaged by the agreed conditions recorded above should prioritise that issue.

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. Issues raised included:

- a) traffic
- b) overshadowing,
- c) privacy issues, excavations concerns,
- d) obstruction of views,
- e) property
- f) value concerns,
- g) promoting undesirable residents,
- h) public safety, building height concerns, wind
- i) tunnel effect, and
- j) ventilation concerns

The panel considers that concerns raised by the community have been addressed in the assessment report. They have also been taken into account in the Panel's assessment under s 4.16 of the Act.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 David Kitto	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-364 – Liverpool – DA-489/2023
2	PROPOSED DEVELOPMENT	The proposal seeks approval for the demolition of the site's existing structures followed by the construction of a new twelve storey residential flat building consisting of forty-three (43) residential units and two (2) levels of basement car parking upon land which is known as 62-62A Copeland Street, Liverpool.
3	STREET ADDRESS	62 and 62A Copeland Street, Liverpool
4	APPLICANT/OWNER	Applicant: Chanine Design Pty Limited Owner: VFC Projects 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 (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Liverpool Local Environmental Plan 2008 (LEP) 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: 12 November 2024 List any clause 4.6 variation requests here: Clause 4.3 – Height of Buildings of the Liverpool Local Environmental Plan 2008 Written submissions during public exhibition: 4 Total number of unique submissions received by way of objection: 4 Correspondence sent between the Panel and both the Council and Applicant
	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 16 October 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, Amanda Merchant, Michael Oliviero <u>Applicant representatives</u>: Rudy Jasin, James Mesiti

		<ul style="list-style-type: none">• Final briefing to discuss council’s recommendation: 19 November 2024<ul style="list-style-type: none">○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Ned Mannoun, Peter Harle○ <u>Council assessment staff</u>: Nabil Alaeddine, Amanda Merchant, Michael Oliviero○ <u>Applicant representatives</u>: Rudy Jasin, James Mesiti
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report