

**COUNCIL ASSESSMENT REPORT**  
SYDNEY WESTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSWC-370 – DA-520/2023
<b>PROPOSAL</b>	Demolition of all existing structures, tree removal and construction of a Residential Flat Building with two (2) levels of basement parking and a change of use of the ground floor to a Centre Based Childcare Facility for 90 children with lot consolidation and associated civil and landscaping works.
<b>ADDRESS</b>	7 Castlereagh Street Liverpool, 6,8.10 and 12 Copeland Street Liverpool
<b>APPLICANT</b>	Castlereagh Street Developments Pty Ltd
<b>OWNER</b>	Castlereagh Street Developments Pty Ltd
<b>DA LODGEMENT DATE</b>	4 October 2023
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Capital Investment Value >\$30m
<b>CIV</b>	\$42,260,646 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	<p>Clause 4.3 Height of Buildings under Liverpool Local Environmental Plan 2008</p> <p>Clause 7.4 Building Separation in the Liverpool City Centre</p>
<b>KEY SEPP/LEP</b>	<p>State Environmental Planning Policy (Biodiversity and Conservation) 2021,</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021,</p> <p>State Environmental Planning Policy (Transport and Infrastructure) 2021,</p> <p>State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development</p> <p>State Environmental Planning Policy - Building Sustainability Index (BASIX)</p> <p>Liverpool Local Environmental Plan 2008</p>
<b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS</b>	1 Submission Objecting to the Application

<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	Architectural Plans Design Excellence Panel Minutes Landscape Plan Compliance Assessments for ADG, LDCP and Childcare Planning Guidelines
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	N/A
<b>RECOMMENDATION</b>	Deferred Commencement
<b>DRAFT CONDITIONS TO APPLICANT</b>	No
<b>SCHEDULED MEETING DATE</b>	19 August 2024
<b>PREPARED BY</b>	Emily Lawson
<b>DATE OF REPORT</b>	12 August 2024

## 1. EXECUTIVE SUMMARY

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The Development Application (DA) DA-520-2023 seeks consent for demolition of existing structures and the construction of two (2) 11-storey residential flat buildings consisting of 132 residential apartments, ground floor childcare centre for 90 children and 15 staff, two level basement car park, and associated landscaping and civil works.

The land is zoned R4 - High Density Residential pursuant to the Liverpool Local Environmental Plan 2008 (LLEP). The proposed development is permissible with consent and is consistent with the High-Density Residential zone objectives.

In accordance with the provisions of the Liverpool Community Participation Plan 2022, the proposal was Advertised between the 4<sup>th</sup> of October 2023 and the 7<sup>th</sup> of November 2023. One submission was received in objection to the application which raised concerns on traffic and overall bulk and scale of the proposal. These issues have been addressed within the report.

The application is referred to the Sydney Western City Planning Panel as the development is classified as '*Regionally significant development*', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is for development with a CIV over \$30 million.

The application proceeded to the Design Excellence Panel, which considered the proposal and provided support subject to the implementation of appropriate design recommendations.

The principal planning controls relevant to the proposal include State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development ('SEPP 65'), the Liverpool Local Environmental Plan 2008 (LLEP 2008) and the Liverpool Development Control Plan ('DCP').

The key issues associated with the proposal include:

1. Building Separation – the proposed development does not comply with the required

building separation requirements as prescribed within Clause 7.4 Building Separation in the Liverpool City Centre and ADG requirements, subsequently, the application has submitted a Clause 4.6 requesting a variation be approved, noting the existing approval on site.

2. Building Height – the proposed development does not comply with the prescribed maximum height limit of 35m pursuant to the LLEP. The applicant has submitted a Clause 4.6 to vary the prescribed height limit, which has been considered suitable in terms of the minimal impact it would have on the perceived bulk and scale of the development.

A Request for Information was issued to the applicant on the 14<sup>th</sup> of February in relation to the following concerns:

- Amenity issues,
- Setbacks and Building Separation,
- Deep soil,
- Engineering,
- SEPP 65 requirements and Public art,
- Environmental Health and waste matters,
- Design Excellence Panel, and
- Provide a response to the matters raised the submission regarding traffic and parking concerns.

In response to the above, the majority of issues raised were mitigated, however, the following are outstanding and have been recommended to be included in Deferred Conditions of Consent:

- Proposed Waste Solutions for Residents and Childcare Facility
- Public Art
- Provision of an Additional Lift Shaft to comply with ADG requirements.

Having regard to the matters for consideration under Section 4.15(1) of the EP&A Act, in particular, 4.15(1)(a), (b), (c), (d) & (e), the proposal is able to be supported. Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA-520/2023 is recommended for Deferred Commencement to satisfy the above requirements.

## **2. THE SITE AND LOCALITY**

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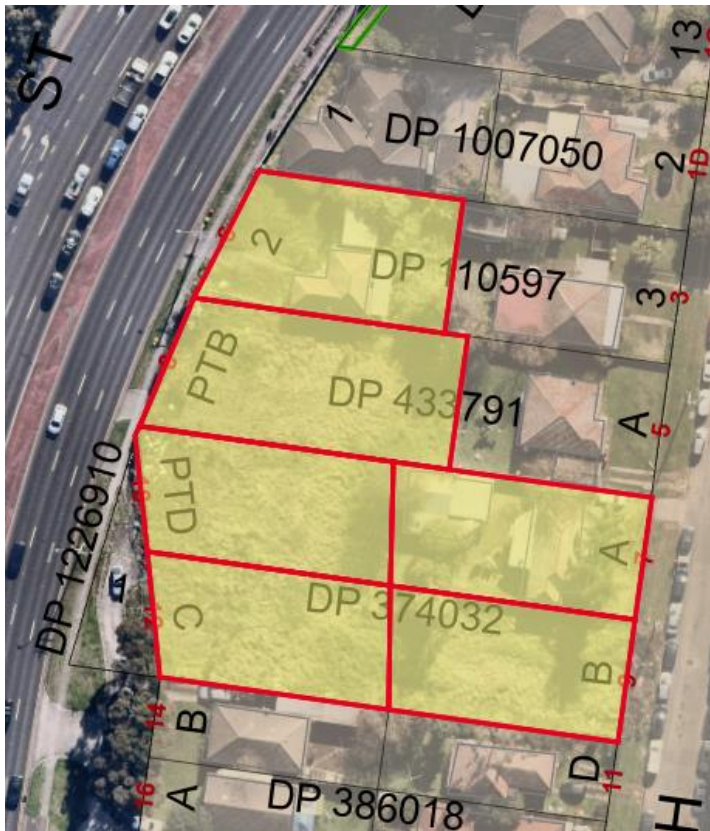
### **2.1 The Site**

The site is comprised of No 7-9 Castlereagh Street and Nos 6-12 Copeland Street, which are legally defined as Lot A in DP 374032, Lot B in DP 374032, Lot 2 in DP 110597, Lot B DP 433791, Lot D and Lot C DP 374032.

The site is located within the Western boundary of the Liverpool CBD. The site is irregular in shape with an approximate total area of 4,300m<sup>2</sup>. The site is bounded by Castlereagh Street to the east and Copeland Street (Hume Highway) to the west.

Existing development on site consists of two (2) single storey detached dwelling which are utilised for private residential purposes. The deposited plan does not identify any easements or restrictions on the site.

An aerial photograph of the development site and photographs of the existing development are provided below.



**Figure 1:** The Site

## 2.2 The Locality

The immediate locality consists of a range of developments comprising of low and high-density residential development.

Immediately to the south are a number of single residential dwellings facing Castlereagh Street and Copeland Street, in which Development Applications for Residential Flat Buildings (RFB) have been approved. A number of RFB are prevalent along Castlereagh Street to the East and a number of other residential flat buildings are located further south of Campbell Street. Adjoining the site to the west is Copeland Street, which is identified as a classified road. Further west of Copeland Street is Brickmakers Creek. To the east of the site is Castlereagh Street.

An aerial photograph of the locality and photographs of the immediate development is provided below:



Figure 2: Site Context

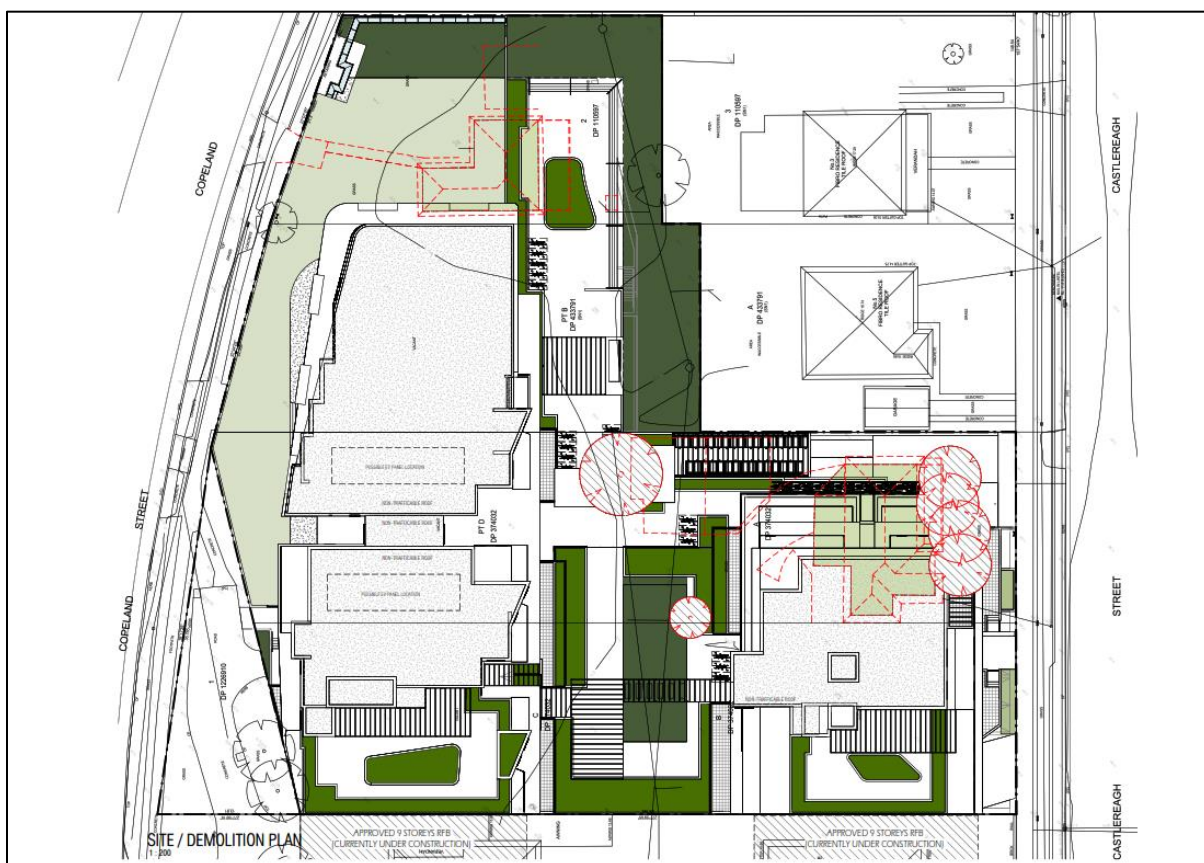
### 3. THE PROPOSAL AND BACKGROUND

#### 3.1 The Proposal

The Development Application seeks consent for the demolition of existing structures and the construction of two (2) 11-storey residential flat buildings consisting of 132 residential apartments, ground floor childcare centre, two level basement car park, and associated landscaping and civil works.

- Two levels of basement parking consisting of
  - 149 Car parking spaces for Residential purposes
  - 14 Visitor parking spaces
  - 80 Bicycle spaces
  - 10 motorcycle parking spaces
  - Four (4) carwash bays
  - 14 car parking spaces for Staff associated with the childcare centre
  - Nine (9) car parking spaces for pick up/drop off for parents associated with childcare centre

- Block A consisting of
  - 51 Units including
    - 14x1 Bedroom Units
    - 37 2x bedroom units
- Block B consisting of
  - 81 Units including
    - 62 2xbedroom units
    - 19 3xbedroom units
- Associated Landscaping and communal open space
- Proposed ground floor Childcare Centre
  - 90 spot childcare centre with 14 fulltime staff.
  - Operating Monday to Friday 7pm-6pm



**Figure 3:** Proposed Development source: architectural plans



**Figure 4:** Copeland Street render



**Figure 5:** Castlereagh Street render

### 3.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 14<sup>th</sup> of June 2023, in which Councils internal officers identified various areas the applicant is required to address prior to lodging the applications.

### 3.3 Planning Panel Briefing

The application was initially briefed to the Sydney Western City Planning Panel on 30<sup>th</sup> October 2023.

### 3.4 Development Application Assessment History

The development application was lodged 4<sup>th</sup> October 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals, etc) with the application:

**Table 1: Summary of Development Application History**

Date	Event
4 October 2023	DA lodged
4 October 2023	Exhibition of the application
23 October 2023	DA referred to external agencies
30 October 2023	Panel briefing
14 December 2023	Design Excellence Panel Meeting
14 February 2024	Request for Further information
28 of March 2024	Additional information received from the applicant.
2 April 2024	Application was re-referred internally
29 of July 2024	Final amended information received from the applicant.

### 3.5 Design Excellence Panel

The application was referred to the Design Excellence Panel (DEP) for comment on two occasions. The nine (9) design principles of the ADG were considered and the Panel identified a number of amendments to improve the overall scheme of the development. Comments and Issues raised by the Panel at their meeting on 14<sup>th</sup> of December 2023 are detailed in the table below with comments provided on how the concerns have been addressed by the Applicant.

The applicant previously held a PRE-DEP meeting on the 10<sup>th</sup> of November 2022.

## 4. STATUTORY CONSIDERATIONS

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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

### 4.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the *Environmental Planning and Assessment Regulation 2021* (the Regulation) are considered below.

#### 4.1.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- 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.

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 2: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 6: Water Catchments  The proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to promote the protection of the Georges River Catchment	Y
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	y
SEPP 65	<ul style="list-style-type: none"> <li>• <b>Clause 30(2)</b> - Design Quality Principles - The proposal is consistent/contrary to the design quality principles and the proposal is consistent/contrary to the ADG requirements for car parking, communal open space....</li> </ul>	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> <li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Schedule 6 a</li> </ul>	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> <li>• Section 4.6 - Contamination and remediation have been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> <li>• Section 2.118(2) - Development with frontage to classified road.</li> <li>• Section 2.119(2) Impact of road noise or vibration on non-road development</li> </ul> Chapter 3: Educational Establishments <ul style="list-style-type: none"> <li>• Section 3.23 - Centre-based childcare facility—matters for consideration by consent authorities.</li> </ul>	Y
Liverpool LEP 2008	<ul style="list-style-type: none"> <li>• Clause 2.3 – Permissibility and zone objectives</li> <li>• Clause 4.3 – Height of Buildings</li> <li>• Clause 7.1 – Objectives for development in Liverpool city centre</li> <li>• 7.4 Building Separation in Liverpool City Centre</li> <li>• 7.5 Design excellence in Liverpool City Centre</li> <li>• 7.5a – Additional Provisions relating to certain land in Liverpool city Centre</li> </ul>	N
DCP	Liverpool DCP	Y

Consideration of the relevant SEPPs is outlined below

**(a) State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The subject land is located within the Georges River Catchment and as such Chapter 6 applies within the Biodiversity SEPP. The Biodiversity SEPP aims to protect the environment of the Georges River system by ensuring the impacts of future land use and development, in general, are considered in a regional context.

The relevant parts of the SEPP are:

**Table 3: Assessment of Chapter 6**

<b>Chapter 6</b>	
<b>Part 6.1 Preliminary</b>	
<b>Provisions</b>	<b>Comment</b>
<b>6.1 Land to which this chapter applies</b>	
This Chapter applies to land in the following catchments— (d) the Hawkesbury-Nepean Catchment	The subject site is identified as being within the Georges River Catchment.
<b>Part 6.2 Development in regulated catchments</b>	
<b>6.6 Water quality and quantity</b> (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following— (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway, (b) whether the development will have an adverse impact on water flow in a natural waterbody, (c) whether the development will increase the amount of stormwater run-off from a site, (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse, (e) the impact of the development on the level and quality of the water table, (f) the cumulative environmental impact of the development on the regulated catchment, (g) whether the development makes adequate provision to protect the quality and quantity of ground water.	Water flow and run-off will be appropriately managed and that impact on water quality and quantity will be appropriately minimised.
<b>6.7 Aquatic ecology</b> (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following— (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,  (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require— a controlled activity approval under the <i>Water Management Act 2000</i> , or (ii) a permit under the <i>Fisheries Management Act 1994</i> , (c) whether the development will minimise or avoid— (i) the erosion of land abutting a natural waterbody, or (ii) the sedimentation of a natural waterbody,	Subject to conditions of consent the impact on terrestrial, aquatic or migratory animals or vegetation will be minimised.  Approval under the Water Management Act 2000 and Fisheries Management Act 1994, as no works are proposed within 40m of the Canal.  Erosion and Sediment Controls have been considered and are suitably addressed by the applicant.

<p>(d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,</p> <p>(e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,</p> <p>(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.</p>	<p>Development is not identified as being in proximity to wetlands or littoral rainforest area.</p> <p>Impacts to the Georges River Catchment have been considered suitable given the locality of the development.</p> <p>The impact on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and the impacts on water quality will be minimised.</p>
<p><b>6.8 Flooding</b></p> <p>(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.</p> <p>(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—</p> <p>(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or</p> <p>(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems.</p>	<p>The subject property is not flood affected.</p>
<p><b>6.9 Recreation and public access</b></p>	<p>The development is not considered to impact public access to recreational land. Noted the site is not adjacent to a recreation land or foreshores.</p>
<p><b>6.10 Total catchment management</b></p>	<p>The development is not anticipated to impact on total catchment management.</p>

The submitted information has been assessed and has demonstrated the proposed development would achieve the stormwater and water quality design requirements of Liverpool City Council. The development has been reviewed by Council's Land Development Engineering section who are supportive of the application subject to conditions.

It is considered the proposal can satisfy the provisions of the Biodiversity SEPP and the consent authority can be satisfied the proposed development demonstrates potential impacts on the water quality and quantity and aquatic ecology is reasonable as expressed within the provisions.

**(b) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

*State Environmental Planning Policy – Building Sustainability Index BASIX– 2004* ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.11415593M\_02 prepared by Taylor Smith Consulting committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

**(c) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential apartment development. SEPP 65 does not contain numerical standards but requires Council to consider the development against 9 key design quality principles, and against the guidelines of the associated Apartment Design Guidelines (ADG).

**Table 4: ADG Principles**

Design Quality Principle	Comment
<b>Principle One – Context and Neighbourhood Character</b>	
<p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The proposal is for a Residential flat development. Located on the fringe of the city centre precinct, the proposed development will bring services and amenity to the local community. The development incorporates active street frontage that will contribute to the community thus generating a point of interest. The development will assist to invigorate the existing area and generate increased pedestrian activity along Castlereagh Street.</p> <p>Certain architectural elements are repeated throughout to unify the development as a whole and assist in adding a material unity and a common language to both street frontages.</p> <p>The two buildings address each street frontage and stand as distinct built forms and has been articulated to assist in breaking down the appearance of the built mass and relate back to the street character belonging to the development as a whole.</p>
<b>Design Principle 2 – Built form and scale</b>	
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p>	<p>The bulk of the proposed development is consistent with the controls set out in the LDCP 2008. It is situated within the site, setback off Copeland and Castlereagh Street. This provides opportunity to reduce scale at street edges where appropriate.</p> <p>Building mass is articulated to achieve discrete built forms to reduce the perceived bulk of the development.</p>

Design Quality Principle	Comment
Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.	The built form is configured to create a communal open space between the two buildings sheltered from Castlereagh and Copeland Street.
<b>Design Principle 3 – Density</b>	
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>This application proposes a density FSR 2.94:1 for this site, it is generally in accordance with densities set out in the LLEP 2008.</p> <p>The proposed density will benefit the public by enabling the proposed building to better respond to the future character of the town centre. The yield will allow for a high-quality design outcome and demonstrate investment in the precinct. In this location, a well-designed Residential flat development will attract greater investment to the area.</p> <p>High densities are also considered to be sustainable within this area as they are supported by the site's proximity to employment, CBD, transport and public open space.</p>
<b>Design Principle 4 – Sustainability</b>	
<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation</p>	<p>The development is designed to respond to the requirements of BASIX and the SEPP 65 Apartment Design Guide.</p> <p>Apartment layouts are optimally designed for a passive response to solar design principles and cross ventilation as outlined in the Apartment Design Guide.</p> <ul style="list-style-type: none"> <li>- All corner and cross through apartments are naturally ventilated.</li> <li>- Outcomes of this development include:</li> <li>- Minimum 60% of apartments are cross-ventilated.</li> <li>- Minimum 70% of apartments have the required solar access in winter.</li> <li>- Collection of roof rainwater for maintenance and irrigation of gardens.</li> <li>- Provision of energy-efficient appliances.</li> <li>- Architectural details incorporating a range of projections and internal blinds for privacy and solar</li> </ul>
<b>Design Principle 5 – Landscape</b>	
Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is	Street planting will be provided in accordance with guidelines and specifications of Liverpool City Council and enhanced through additional planting within the site boundary along Copeland Street and Castlereagh Street.

Design Quality Principle	Comment
<p>achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, and respect for neighbours' amenity and provides for practical establishment and long-term management.</p>	<p>Residents have been provided with private open space in excess of SEPP 65 requirements. Open space will incorporate barbecue facilities, open style pergola structure and timber seating. The landscaped communal open space also incorporates a mix of active and passive landscape spaces</p>
<b>Design Principle 6 – Amenity</b>	
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The development provides the following mix of units:</p> <ul style="list-style-type: none"> <li>- one-bedroom apartments</li> <li>- two-bedroom apartments</li> <li>- three-bedroom apartments</li> </ul> <p>Apartments comply with storage requirements within units. Additional storage cages are located in basement carpark and have the capacity to accommodate large items such as bicycles</p> <p>Communal open space will provide passive and active recreational opportunities. Raised garden beds and benches for seating; grassed, paved and planted surfaces; shaded, sunny and feature-lit areas will be provided.</p> <p>Balcony sizes generally exceed those required by the Apartment Design Guide to ensure quality private open space for residents.</p> <p>Interior corridors have access to daylight and natural ventilation, with views out of the building to improve both amenity and sustainability.</p>
<b>Design Principle 7 – Safety</b>	

Design Quality Principle	Comment
<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The address to the street has been carefully designed to ensure safe access to and egress from the buildings by ensuring direct sight lines to the residential lobbies from the street.</p> <p>The thresholds between public, communal and private areas are clearly defined to ensure a sense of ownership between the public and private domains.</p> <p>Apartments overlook communal open spaces providing passive surveillance to improve safety; the development is designed to avoid blind corners and hidden spaces.</p> <p>Access to each building and individual apartments will be coordinated with a security key system.</p> <p>Secure parking for residents is located within the basement with clear and direct lift access to the apartments. The entrance to the parking area is minimised to maximise street activation and surveillance</p>
<b>Design Principle 8 – Housing Diversity and Social Interaction</b>	
<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The proposed development provides housing choice. The communal open spaces and public interface will encourage social interaction amongst residents and the community.</p> <p>The ground floor address and the interface of buildings have been carefully designed to enhance street activation and frontage.</p> <p>The proposed development will create opportunities for families in the surrounding suburbs to move into the area when their family needs change.</p> <p>The provision of one-bedroom apartments in the development will provide for a more affordable entry point into the housing market.</p> <p>10% of units are designed to be adaptable to the needs of people with disabilities and to facilitate intergenerational changes and changing lifestyles.</p> <p>Variety in sizing, aspect and outlook within apartment types will result in some price differentiation.</p> <p>Dedicated residential communal open spaces are provided on various levels to support the communal life of the building. These spaces typically have direct access from the lift lobby.</p>

Design Quality Principle	Comment
<b>Design Principle 9 – Aesthetics</b>	
<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The intent of the aesthetics is:</p> <ul style="list-style-type: none"> <li>- To further develop and articulate the massing strategy for the site through the application of varying architectural languages</li> <li>- To respond to contextual opportunities and constraints including orientation, internal planning configuration, views to and from the site and to maximize residential amenity</li> <li>- To use materials and a colour palette that appropriately reflects the desired character of the proposed development and to breakdown the mass of the building yet maintain a limited palette for cohesion over the whole</li> </ul> <p>These design responses ensure an appropriate provision for the future desired character of the area as a residential development.</p>

Clause 30(2) of SEPP 65 also requires residential apartment development to be designed in accordance with the ADG. A full assessment of the relevant provisions within SEPP 65 and the ADG is provided in **Attachment 2**. Nonetheless, the proposal also includes a number of non-compliances which Council have recommended to be included within Deferred commencement conditions given the amendments requested facilitate an improved outcome overall, they are provided below.

**Table 5: ADG Assessment**

Provisions	Comment
<b>4A Solar and Daylight Access</b>	
<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p><b>Does Not Comply</b></p> <p>The submitted plans indicate the proposed living spaces of 63% (84 Units out of 132) of apartments receive 2 hours direct sunlight or more at mid-winter.</p> <p>The submitted plans do not nominate solar access to private open space, however it appears that the POS achieves the minimum requirement.</p> <p>Given the site is constrained due to existing approvals and surrounding land uses such as Residential Flat Buildings, the design has maximised the potential for solar access to the living areas of the buildings, and therefore is considered acceptable in this regard. The Design Excellence Panel agreed the amended design did increase the achieved solar access,</p>

Provisions	Comment
	however noted the limitation in which to achieved full compliance under the ADG. .
4F Common Circulation and Spaces	
The maximum number of apartments off a circulation core on a single level is eight	<b>Complies</b>  1 (one) lift is provided to service the apartments.  The proposal features one circulation core that services a maximum of 8 apartments per level.
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	<b>Does not comply.</b>  The applicant is seeking a variation in relation to the number of apartments utilising a single lift.
Common circulation spaces promote safety and provide social interaction between residents.  Roof design incorporates sustainability features.	Both buildings are 11 stores in height, Block A seeks to have 51 units utilise a single lift which is not considered acceptable, Block B seeks to have 81 units utilise two lifts which a maximum of 8 units per flood. A deferred condition of consent will require an additional lift shaft for Block A, given the number of units occupying both lift shafts.
4W Waste Management	
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	<b>Does not Comply</b>  An enclosed waste storage area for residents is provided at ground level with separate bins for recyclable and non-recyclable waste. However, the proposed waste solution is to provide two bins per floor for Residents to utilise which raises concerns of the travel of these bin rooms to the holding room on the ground floor which has not been included into the built form but a separate stand-alone room.
Domestic waste is minimised by providing safe and convenient source separation and recycling	The waste storage facilities have not been designed to minimise impact upon the public domain or streetscape. A Deferred condition of consent will be imposed for the applicant to redesign the waste management facilities on the site to provide for either waste shoots or redesign the basement to accommodate adequate waste storage areas.

**(d) State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')**

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposed development has a development cost of more than \$30million. Accordingly, the Sydney Southwest Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

**(e) State Environmental Planning Policy (Resilience and Hazards) 2021**

Pursuant to Chapter 4, Clause 4.6 of SEPP (Resilience and Hazards) 2021, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state, or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.

Although it is unlikely the land would be contaminated, given its previous residential use, Council must consider this and the likelihood of any contamination on-site and the possible impacts which may arise from any works associated with this proposal, given the transition from residential use to a sensitive use, such as a childcare facility.

The objectives of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a statewide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	Given the existing residential use of the site, the proposal does warrant an assessment of potential contamination given the site is going to a sensitive use, such as a childcare facility. The applicant provided a PSI which identifies the site is considered suitable in terms of contaminated. Council's Environmental Health section have reviewed the DA and are supportive subject to conditions.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	See comment above.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The proposed development is considered suitable in terms of contamination and appropriate conditions of consent will be imposed.

Based on the above assessment, it is considered the proposal would satisfy the relevant objectives and provisions of the Resilience and Hazardous SEPP.

**(f) State Environmental Planning Policy (Transport and Infrastructure) 2021**

*Clause 2.119 – Development with frontage to a classified road*

The application is subject to Clause 2.119 of the SEPP as the development has frontage to a classified road. Clause 2.119 relevantly provides:

## 2.119 Development with frontage to classified road

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
    - (i) the design of the vehicular access to the land, or*
    - (ii) the emission of smoke or dust from the development, or*
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

### **Comment:**

Whilst the proposed faces a classified road, such as Copeland Street, the proposed development vehicular access is strictly from Castlereagh Street, negating the request for access under Section 138 of the Road Acts 1993 states

This proposal has been assessed under the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021, specifically Chapter 3 – Educational Establishments and Childcare Facilities (previously known as State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

Chapter 3 of the SEPP aims to facilitate the effective delivery of educational establishments and early education and care facilities. The proposed development includes a centre-based childcare centre and is subject to the provisions of the SEPP.

A compliance table of the relevant clauses of Chapter 3 specific to the development is provided in Attachment 1.

### **(g) Liverpool Local Environmental Plan 2008**

The proposed development is for a *residential flat building* and *centre-based childcare facility*, which is defined as follows:

***residential flat building*** means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.

***centre-based childcare facility*** means—

*(a) a building or place used for the education and care of children that provides any one or more of the following—*

- (i) long day care,*
- (ii) occasional childcare,*
- (iii) out-of-school-hours care (including vacation care),*
- (iv) preschool care, or*

*(b) an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),*

*Note—*

*An approved family day care venue is a place, other than a residence, where an approved family day care service (within the meaning of the Children (Education and Care Services) National Law (NSW)) is provided.*

*but does not include—*

- (c) a building or place used for home-based childcare or school-based childcare, or*
- (d) an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*
- (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.*

The proposed development satisfies the definition of a residential flat building as it is a building which contains 3 or more dwellings. The proposed centre based childcare facility is considered suitable in terms of the site context given it will contribute to the needs of the surrounding residential built forms. As such, the proposal is considered a permitted development, with consent in the R4 zone.

#### **i) Objectives of the zone**

The objectives of the R4 – High Density Residential zone are as follows:

- *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.*
- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The proposed development would continue to meet and satisfy the above-stated objectives. Specifically, the building will provide a total of 132 Units and the site is located in an area identified for urban renewal and transformation, in close proximity to transport, retail and commercial facilities.

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

**Table 6: Consideration of the LEP Controls**

<b>Control</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Comply</b>
Height of buildings (Cl 4.3(2))	35m	36.6m	No – Clause 4.6 Provided

FSR (CI 4.4(2))	3.1	3.1	Yes
Heritage (CI 5.10)	N/A	Site is not impacted by heritage	Yes
Building Separation (CI 7.4)	9m required	3m	No – Clause 4.6 Provided

The proposal is considered to be generally consistent with the LEP.

#### **Clause 4.6 - Exceptions to development standards**

##### **a. (Variation to Clause 4.3 - Height of Buildings)**

Clause 4.3 of the Liverpool Local Environmental Plan (LLEP) 2008 states:

*“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.”*

The subject proposal seeks a variation to the maximum height of buildings contained in LLEP 2008. The maximum height of buildings is to be 35m. The subject development is applying for an exceedance of building height. The maximum height proposed as part of this application is 36.8m and 36.62m to the lift overrun for both buildings. This equates to a variation of 1.62m and 1.8m which is expressed in a percentage as 4.6% and 5.1% to the development standard.

The extent of the variation can be found in the Figure below.



**Figure 6:** Height Plane of the development showing extent of the building height encroachment.

Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant has submitted a written request seeking a variation to the maximum height of buildings as prescribed by Clause 4.3.

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LLEP) 2008 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*

The applicant submitted a Clause 4.6 Variation Statement to the Height of Buildings Development Standard, dated September 2023, in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

**(Variation to Height of Buildings, Clause 4.3):**

**Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard.**

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant has provided the following justification for the non-compliance with the development standard:

**Applicant Comment:**

*The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827 are considered.*

*In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:*

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

*In the decision of Wehbe vs Pittwater Council (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy*

The applicant's request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of LLEP 2008 are detailed in the table below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
<i>(a) to establish the maximum height limit in which buildings can be designed, and floor space can be achieved,</i>	While the proposed development also seeks a slight variation to the FSR standard, it is important to note that all habitable floor area is located below the 35m building height control. Therefore, the proposed variation to FSR has no bearing on the proposed variation to building height. The majority of the proposed development is compliant with the maximum building height control of 35m, with the only exception being the lift access to the proposed communal open space, plant equipment and the roof over the Level 10 units. The proposed variation to building height will allow for the provision of a roof-top communal open space area that will be able to achieve year-round solar access even after the adjoining northern property is redeveloped to its maximum potential.
<i>(b) to permit building heights that encourage high quality urban form,</i>	High quality urban form is achieved within the design of the building. The building and landscaping fronting Copeland Street and Castlereagh Street will promote a high architectural standard that contributes positively to the streetscape and immediate neighbourhood. In addition, the street façades and the side elevations have been treated with a range of architectural features that ensure a

	<p>high quality built form (illustrated in Figures 4 and 5). These features include:</p> <p>Articulated block colours (light and dark greys proposed on Level 4 and above, and dark greys and caramel proposed at Level 3 and below).</p> <p>Variety of materials, cladding and screening types – Face brick, glass, applied textured paint finish and vertical and horizontal timber screens.</p> <p>Open balconies located at the corner of the buildings to add to the visual articulation of the built form.</p> <p>.</p>
<i>(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,</i>	<p>The proposed development has also been designed to maximise solar access with 71.21% of the proposed units across the entire development achieving a minimum of 2 hours solar access.</p> <p>To further ensure a high level of amenity is provided to all residents, rooftop communal open space is proposed that ensures all future residents are afforded with a quality area of outdoor recreation which achieves good solar access.</p> <p>In terms of adjoining properties, reference should be made to the shadow diagrams prepared by Zhinar Architects submitted under separate cover. It is important to acknowledge that given the orientation of the site and its location to other high-density developments, a degree of overshadowing is inevitable. The proposed elements of the built form that breach the maximum permissible building height are generally located centrally within the site and have a limited effect on the overshadowing cast to adjoining properties.</p>
<i>(d) to nominate heights that will provide an appropriate transition in built form and land use intensity.</i>	<p>The subject site is zoned and bounded by properties that are zoned R4 High Density Residential and mapped on the height of buildings map with the same maximum height standard (35m). Therefore, the proposed building form and scale has been designed to reflect the emerging high density residential character of the area. The site is otherwise under-utilised and will benefit from the redevelopment in a form that is suitable for the intensity of use.</p>

### **Council Comment:**

In response to the comments raised above, the following justification is provided as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The extent of the height exceedance occurs at the lift overrun of the building. The lift overrun is located further towards the centre on the roof of the building and is not readily visible when viewed from the street and does not generate additional overshadowing on adjoining properties.
- The extent of the variation is 4.6% and 5.1% which is considered minor in this instance and will not contribute to additional visual bulk and scale of the development.
- The development provides a consistent floor to floor height required under the ADG. The additional height provides added amenity for the units by enabling better solar access and cross-ventilation and enables a better urban design outcome. The floor-floor height may be reduced to achieve a height compliance, however, will result in a less than the ideal design outcome.
- Notwithstanding the height exceedance the proposed development does not create any detrimental overshadowing or privacy impacts on the adjoining developments.
- The proposed development is considered to be of an appropriate bulk and scale and is consistent with the design principles and relevant standards and objectives of the ADG.

Furthermore, the additional height is not contributing to any detrimental increases in bulk and scale over the site including compliance with the floor space ratio provisions for the whole development as provided in this concept. Compliance with the standard is unreasonable in this case as the development can be sited with adherence to local provisions and any future development on the allotments would still be able to provide a valuable housing product suitable for the area and provide for the housing needs for the community.

Based on the applicant's comments and investigation into the 4.6 variation to the building height, and the review of the potential impact of the height extrusion it is considered a strict compliance is unlikely to reduce any impact and it is argued the height variation for the purpose of lift overruns provides improved amenity for future residents and does not negatively impact on the local area in terms of additional overshadowing or determinantal impact to the design of the building.

Further, the additional height is not contributing to any detrimental increases in bulk and scale over the site including compliance with the floor space ratio provisions for the development. Compliance with the standard is unreasonable in this case as a development can be constructed on the site that generally adheres with the planning controls and provisions for a form of development which is consistent with the future anticipated high density residential character. Having regard to the above, it is considered there are sufficient environmental planning grounds to vary Clause 4.3 – Height of Buildings in this instance.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

**Applicant Comment:**

Clause 4.6(3)(b) of the LLEP 2008, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

*"That there are sufficient environmental planning grounds to justify contravening the development standard".*

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118).

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposal is consistent with the objectives of the development standard and objectives of the R4 – High Density Residential Zone.
- The proposal is compliant with the maximum FSR applicable to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA) outside of that prescribed to the development on the land.
- The lift overrun facilitates equitable access to the rooftop communal open space.
- The majority of the proposed development is compliant with the maximum building height control of 35m, with the only exception being the lift access to the proposed communal open space, plant equipment and the roof over the Level 10 units. The new elements are centralised over the roof form and have limited visibility from the streetscape.
- All habitable floor area is located below the 35m building height control.
- The variation to height sought will allow for the provision of roof-top communal open space that will be able to achieve year-round solar access.
- The proposed development has been carefully articulated to ensure adjoining developments and the public domain will be able to receive an adequate exposure to the sky and sunlight. The minor height breach sought is unlikely to cause significant overshadowing onto the streetscape or adjoining properties.
- The proposed development is located within an established high density residential area characterised by 9-11 storey residential flat buildings. The proposed development will reflect the scale and built form character of the area despite the minor variation to height sought.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance to the maximum height of buildings in this instance.

**Council Comment:**

Based on the above assessment, it is also considered compliance with the height of buildings development standard is unreasonable or unnecessary due to the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the development standard. The increase in the height proposed ensures a better amenity can be provided to the future occupants of the buildings with communal open space on rooftops, opportunities for better open space areas and floor to floor heights maintained, which allows for the minimum floor to ceiling heights to be achieved as well as space for services between floors. The objectives of the Height of Buildings clause, as per the Liverpool LEP 2008, have also been addressed, as well as the objectives of the zone.

Having regard to the above, it is considered there are sufficient environmental planning grounds to vary Clause 4.3 – Height of Buildings in this instance.

**Has the written request adequately addressed the matters in Sub-Clause (3)**

**Applicant Comment:**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

**Comment:**

The applicant has adequately addressed the requirements under Sub-Clause (3) of Clause 4.6. The justifications provided suitably addressed the non-compliance pertaining to Clause 4.3.

**Consistency with objectives of the zone – R4 High Density Residential**

The objectives of the R4 High Density Residential Zone under the LLEP 2008 are as follows:

- *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.*
- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The applicant has provided the following response to how the development is consistent with the objectives of the R4 High Density Residential Zone:

- *To provide for the housing needs of the community within a high-density residential environment.*

The proposal provides for the housing needs of the community in a high-density environment by increasing the supply of housing stock within the Liverpool CBD

- *To provide a variety of housing type within a high density residential environment*

The proposal contributes to housing diversity by providing a mix of dwelling sizes including adaptable dwellings, in the form of a 'residential flat building' housing development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The objective is not relevant to the proposal.

- *To provide for a high concentration of housing with good access to transport, services and facilities.*

The proposal is located in proximity to the Liverpool CBD services precinct located to the east of the site.

- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The proposal does not restrict the future redevelopment of neighbouring lands.

The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

### **Council Comments:**

The proposed variation in height does not prevent the ability of the proposed development to provide the housing needs of the community. The proposed development also provides an opportunity for the provision of a variety of housing types and densities in a developing area. Additionally, the development is amalgamating five sites which will reduce land fragmentation in the area and achieves a high-density development. Having regard to the above it is considered that the proposed development is consistent with the objectives of the R4 High Density Residential Zone.

### **Consistency with Clause 4.6 objectives**

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance for the reasons stated above to apply a degree of flexibility when applying the maximum height development standard.

**b. (Variation to Clause 4.3 – Building Separation)**

**(Variation to Clause 7.4 Building Separation in Liverpool City Centre)**

Clause 7.4 of the Liverpool Local Environmental Plan (LLEP) 2008 states:

*(2) Development consent must not be granted to development for the purposes 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—*

*(a) 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*

*(b) 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*

*(c) 18 metres for parts of buildings above 35 metres on land in Zone R4 High Density Residential, and*

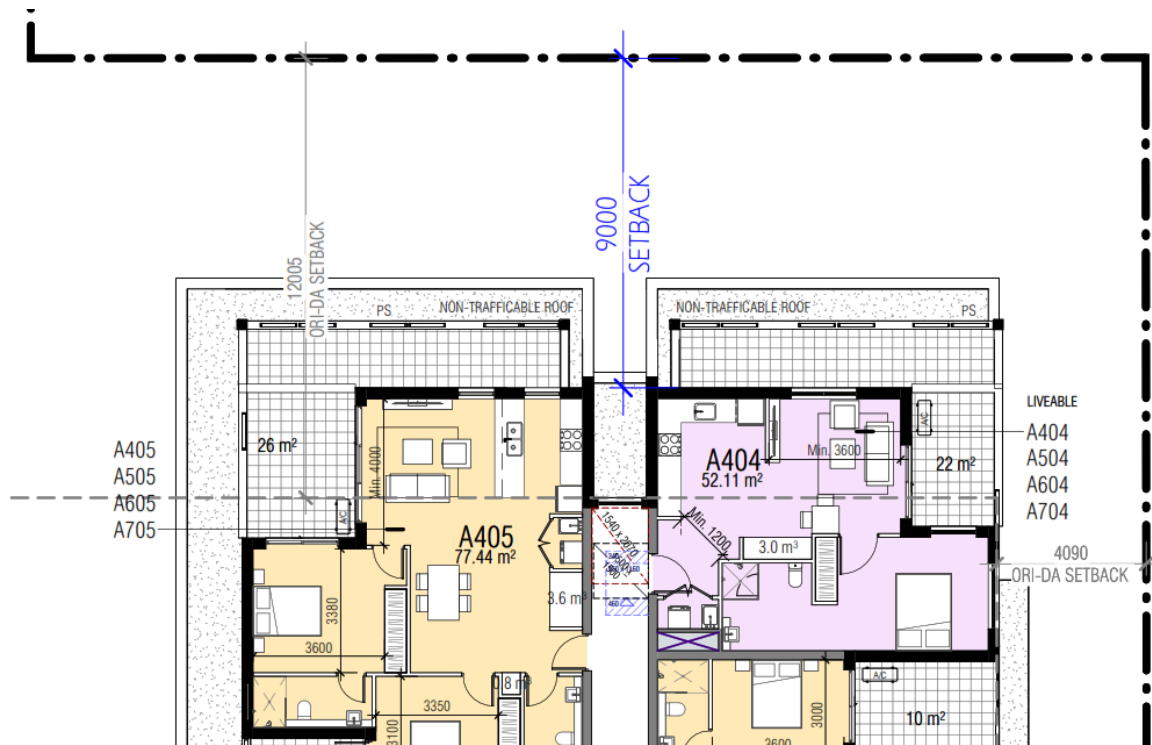
*(d) 12 metres for parts of buildings between 25 metres and 45 metres above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use, and*

*(e) 28 metres for parts of buildings 45 metres or more above ground level (finished) on land in Zone E2 Commercial Centre or MU1 Mixed Use.*

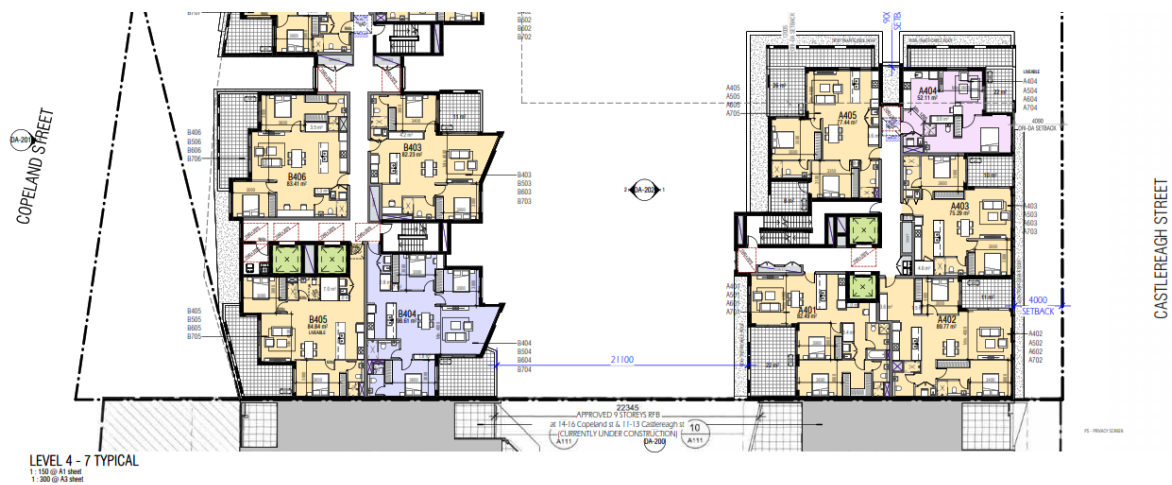
The subject proposal seeks a variation to building separation for Block A which is required to have a compliant 9m for parts of the buildings between 12m and 25m above ground within the land in the R4 Zone, as well as 12m from buildings between 25m and 25m in R4 zones. The variation request pertains to Block A in which a variation is sought for Level 4-7 which is required to have a compliance 9m setback however, the proposal exhibits a setback to the northern boundary of 6m which is compliant under the ADG, however the variation percentage is that of 33%. A further variation is requested for Levels 8 and 9 in which the minimum separation between habitable space is required to be 12m with the development exhibiting a setback of 10m, which is a variation of 2m equalling 16%.

Block A and Block B also have a 0m setback from the southern boundary development, which was an approved RFB under DA-508/2017 which has yet to begin construction. The variation extent is 100%.

The built form complies with the 9m required setback; however, the balconies intrude on the setback as identified above, and demonstrated below.



**Figure 7:** the development showing extent of the setbacks to the northern boundary.



**Figure 8:** The development showing the extent of the setbacks to the southern boundary

Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant has submitted a written request seeking a variation to the building separation as prescribed by Clause 7.4.

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LLEP) 2008 are as follows:

- (c) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (d) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (c) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (d) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (c) *the consent authority is satisfied that:*
    - (iii) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (iv) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (d) *the concurrence of the Planning Secretary has been obtained.*

The applicant submitted a Clause 4.6 Variation Statement to the Building Separation Development Standard, dated September 2023, in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

Variation to Building Separation, Clause 7.4.

**Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard.**

**(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The applicant has provided the following justification for the non-compliance with the development standard:

**Applicant Comment:**

*The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827 are considered.*

*In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:*

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

*In the decision of Wehbe vs Pittwater Council (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy.*

*As detailed within the accompanying SEE, there is also an existing approval south of the subject site for the demolition of existing dwellings and structures, lot consolidation, construction of an 8-storey and a 9-storey residential flat building comprising of 48 dwellings and 2 level basement, at No. 14-16 Copeland Street and 11-13 Castlereagh Street, reference DA-508/ 2017. This development has been designed to abut the shared boundary with the subject site, demonstrating the appropriateness of a blank wall/nil setback in this location.*

*At Levels 4, 5, 6 and 7 being the 5th, 6th, 7th and 8th stories, a minimum separation distance of 9m is required between habitable rooms. A minor variation is sought at this level as it relates to Block A and the immediate boundary to the north. The primary built form has been contained within a compliant 9m setback with a minor variation sought to balcony elements. This variation equals 3m, however, is not considered to offer any negative visual privacy impacts as privacy screening has been proposed along the edges of the balcony to offset any negative visual privacy outcomes. It is considered that with the introduction of privacy screening, view lines would be obscured, and a positive visual privacy relationship would be retained.*

*At Levels 8 and 9, being the 9th and 10th stories, minor variations to the minimum separation distances are sought. A minimum separation distance of 12m is required between habitable spaces. With respect to Block A and the immediate relationship to the northern boundary the primary built form has been setback 12m with the variation relating simply to balconies. The variation is equal to 2m. The balcony element which protrudes into the minimum separation distance requirement has partly taken advantage of the slab of the level below which would otherwise be a vacant space. Therefore, the proposal seeks to promote a heightened degree of residential amenity for future occupants ensuring that the proposal maximise the degree of useable space for the benefit of residents at no detriment to visual privacy.*

*With respect to Block B, a variation of 4m is sought as it relates to the northern portion of the block and the interface with the immediate northern boundary. Whilst a variation is sought, privacy screening is proposed along the northern edges of the balconies which works to obscure any obtrusive view lines so that positive visual privacy relationships are promoted.*

*In terms of separation between Block A and Block B, for majority of this relationship at the 9th and 10th storey a separation distance of 21-22m is proposed falling 3-4m short of compliance. Privacy screens are again proposed to ensure no negative visual*

*privacy impacts result at this interface. At Level 10, the proposal is compliant with the exception of the northern setback to Block B. Following the footprint of the levels below, a variation of 4m is sought as it relates to the northern portion of the block and the interface with the immediate northern boundary. Whilst a variation is sought, privacy screening is proposed along the northern edges of the balconies which works to obscure any obtrusive view lines so that positive visual privacy relationships are promoted.*

*In terms of solar access, it is important to note that there is an existing approval at the subject site for two 9 storey residential flat buildings reference DA-631/2015. As the current proposal seeks an additional two storeys to each building, it is envisioned that the proposal will result in additional overshadowing of the adjoining southern site. This is considered to be a product of both the orientation of the site and the high density zoning which as established by the Planning Principle for solar access makes solar access more difficult to protect.*

*The proposal has sought to maximise solar access to communal open spaces and to residential units in accordance with the provisions of the ADG.*

*As such the proposed separation distances would have no negative implication upon solar access to the development nor upon neighbouring sites.*

The applicant's request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

### **Council Comment:**

In response to the comments raised above, the following justification is provided as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The extent of the building separation exceedance, whilst extensive on the southern boundary, the northern boundary complies with the required setbacks expressed under the ADG, which is considered suitable.
- The setback noncompliance is limited to the balconies on the northern façade on both Block A and Block B and is not readily visible when viewed from the street and does not generate additional overshadowing on adjoining properties.
- The development is predominantly compliant with the ADG, with the amended design for balconies and building shape for both Block A and Block B allowing for additional solar access to the apartment, in which, if weren't provided, would see a further reduction in the number of apartments achieving the required solar access under the ADG. The location of the balconies within the building separation setback provides added amenity for the units by enabling better solar access and cross-ventilation and enables a better urban design outcome.
- Notwithstanding the variation to Building Separation does not create any detrimental overshadowing or privacy impacts on the adjoining developments.

- The proposed development is considered to be of an appropriate bulk and scale and is consistent with the design principles and relevant standards and objectives of the ADG.

Furthermore, the additional height is not contributing to any detrimental increases in bulk and scale over the site. Compliance with the standard is unreasonable in this case as the development can be sited with adherence to local provisions and any future development on the allotments would still be able to provide a valuable housing product suitable for the area and provide for the housing needs for the community.

Based on the applicant's comments and investigation into the 4.6 variation to the building height, and the review of the potential impact of the building separation it is considered a strict compliance is unlikely to reduce any impact and it is argued for the purpose of providing suitable and sizeable balconies within the setback requirements provides improved amenity for future residents and does not negatively impact on the local area in terms of additional privacy, overshadowing or determinantal impact to the design of the building.

*(b) There are sufficient environmental planning grounds to justify contravening the development standard*

#### **Applicant Comment:**

*The proposal addresses the site constraints, streetscape and relevant objectives of both the standard and the zone. The proposal will not result in any unreasonable amenity or environmental impacts.*

*As previously detailed, there is an approval currently at the subject site for demolition of existing buildings, tree removal and the construction of two 9-storey residential flat buildings containing 116 residential apartments over two levels of basement parking with associated landscaping and ancillary site works. Consent was granted on 31/07/2017 under reference DA-631/2015. This approved development was also designed as being built to the southern site boundary, as is being proposed.*

*Consent was also granted on 27/08/2018 to a development application at No. 14-16 Copland Street and 11-13 Castlereagh Street for the demolition of existing dwellings and structures, lot consolidation, construction of an 8-storey and a 9-storey residential flat building comprising of 48 dwellings and 2 level basement, reference DA-508/2017.*

*As detailed on Figure 3 below, this application was also designed as being built to the boundary. Therefore, the relationship of zero lot lines between the subject site and that to the southern neighbour has already been approved. No change to this relationship is sought through this application, rather this is replicated with 0m southern boundary setback proposed.*

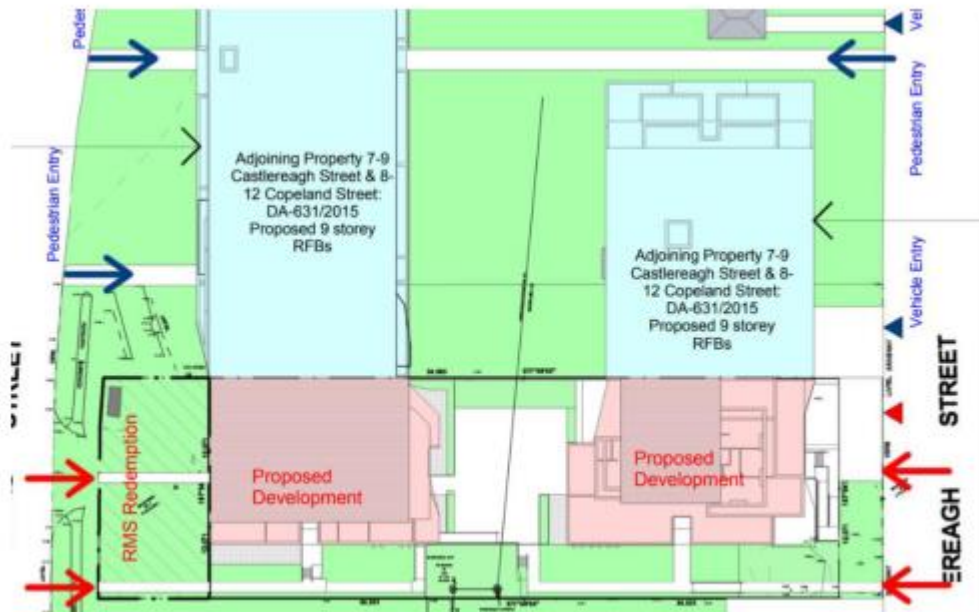


Figure 3: Approved development scheme DA-508/2017

**Figure 9:** Approved development from previous DA.

*This relationship as previously approved between the subject site and the southern neighbour is being replicated with this proposal. This zero-lot boundary alignment of built form was previously considered appropriate and no change is being proposed.*

*With respect to the variation sought to the northern side setbacks, it should be noted that if the current approvals i.e. DA-631/2015 and DA-436/2007 were to be acted upon, the segregation of No. 6 Copeland Street would occur. The holistic development approach which has been applied in this instance has incorporated No. 6 Copeland Street, therefore no isolation would result. This is also beneficial from an overshadowing perspective. If No. 6 were to be redeveloped in isolation, the overshadowing impacts upon the balance of the subject site would be increased. Given its incorporation within the DA no such effects would result as a holistic design approach can be applied and thus an enhanced overshadowing outcome.*

*In this case, strict compliance with the development standard for separation distances in the LLEP08 is unnecessary and unreasonable.*

### **Council Comment:**

Based on the above assessment, it is also considered compliance with the Building Separation can be considered unreasonable or unnecessary due to the neighbouring approval, however, the neighbouring property has yet to begin construction, and the approved only occurred in 2018, in which commencement is yet to be demonstrated.

Nonetheless, Council has taken into consideration the previous approval history of the site, in relation to the proposed 0m setback to the southern boundary. Whilst the non-compliance with the northern boundary with both Block A and Block B, are fully compliant with the ADG in which the proposal generally complies overall, it is considered acceptable given the noncompliance encroachment is due to the balconies which do not impede upon potential privacy, solar access or amenity to the site or neighbouring properties. .

The development still achieves a suitable amenity and urban design outcome regardless of the non compliance under the Building Separation clause of the LLEP. .

Having regard to the above, it is considered there are sufficient environmental planning grounds to vary Clause 7.4 in this instance.

### **Has the written request adequately addressed the matters in Sub-Clause (3)**

#### **Applicant Comment:**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

#### **Comment:**

The applicant has adequately addressed the requirements under Sub-Clause (3) of Clause 4.6. The justifications provided suitably addressed the non-compliance pertaining to Clause 7.4- Building Separation.

### **Consistency with objectives of the zone – R4 High Density Residential**

The objectives of the R4 High Density Residential Zone under the LLEP 2008 are as follows:

- *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.*
- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The applicant has provided the following response to how the development is consistent with the objectives of the R4 High Density Residential Zone:

- *To provide for the housing needs of the community within a high-density residential environment.*

The proposal provides for the housing needs of the community in a high-density environment by increasing the supply of housing stock within the Liverpool CBD

- *To provide a variety of housing type within a high density residential environment*

The proposal contributes to housing diversity by providing a mix of dwelling sizes including adaptable dwellings, in the form of a 'residential flat building' housing development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The objective is not relevant to the proposal.

- *To provide for a high concentration of housing with good access to transport, services and facilities.*

The proposal is located in proximity to the Liverpool CBD services precinct located to the east of the site.

- *To minimise the fragmentation of land that would prevent the achievement of high-density residential development.*

The proposal does not restrict the future redevelopment of neighbouring lands.

The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

#### **Council Comments:**

The proposed variation in height does not prevent the ability of the proposed development to provide the housing needs for the community. The proposed development also provides an opportunity for the provision of a variety of housing types and densities in a developing area. Additionally, the development is amalgamating five sites which will reduce land fragmentation in the area and achieves a high-density development. Having regard to the above it is considered that the proposed development is consistent with the objectives of the R4 High Density Residential Zone.

#### **Consistency with Clause 4.6 objectives**

- c) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- d) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance for the reasons stated above to apply a degree of flexibility when applying the Building Separation development standard.

#### **4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no proposed instruments which have been the subject of public consultation under the EP&A Act and are relevant to the proposal.

#### **4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

- *Liverpool Development Control Plan 2008 ('the DCP')*

An assessment against the provisions of the DCP have been provided within Attachment 3.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Liverpool Contributions Plan 2018 – Liverpool City Centre*

This Contributions Plan has been considered and included within the recommended draft consent conditions.

#### **4.4 Section 4.15(1)(a) (iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

#### **4.5 Section 4.15(1)(a)(iv) - Provisions of Regulations**

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

#### **4.6 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

##### **a) Built Environment**

This area of the Liverpool City Centre is zoned R4 High Density Residential, and the immediate and surrounding locality comprises of higher density, multi-storey residential apartment buildings. It is therefore considered that the proposal is consistent with the existing and future character of the locality.

The proposal is considered satisfactory in terms of potential impacts to adjoining and surrounding properties and does not result in any significant adverse impacts.

##### **b) Natural Environment**

It is considered unlikely that the development will result in any adverse impacts to the natural environment, subject to the implementation of water quality control devices within the stormwater management system and erosion and sediment control measures during construction.

Accordingly, it is considered the proposal will not result in any significant adverse impacts in the locality as outlined above.

### **c) Social Impacts**

The proposal includes 132 units, which will assist in providing additional access to housing within the Liverpool CBD. The proposal also includes the provision of a childcare centre within the complex, this provides suitable opportunity for those living within the complex access to childcare facilities.

Having regard to the findings of the accompanying social impact assessment, it is considered unlikely the proposal will result in any adverse social impacts to the area.

### **d) Economic Impacts**

It is considered that the proposed residential development and proposed childcare centre will have a positive impact upon the Liverpool City Centre through the increase in residential density and access to services within close proximity which will increase economic activity within the centre.

Accordingly, it is considered the proposal will not result in any significant adverse impacts in the locality as outlined above.

## **4.7 Section 4.15(1)(c) - Suitability of the site**

The site is considered suitable for the proposed development. The proposal is permitted within the R4 zone, meets the objectives of the zone, and has demonstrated general compliance with the relevant development controls contained within Council's DCP, ADG and other applicable EPI's.

The site is provided with all essential services including electricity, telecommunications, NBN, reticulated water & sewer. Whilst the site fronts a Classified State Road, vehicular access to the site is provided from Castlereagh Street.

The site represents one of the remaining undeveloped parcels of land within a higher density residential zoned area which comprises other higher density, multi-level apartment buildings.

## **4.8 Section 4.15(1)(d) - Public Submissions**

During the public exhibition period, one (1) submission was received objecting to the development on the grounds of flooding.

The objection received are considered in detail in Section 5 of this report

## **4.9 Section 4.15(1)(e) - Public interest**

The proposed development is permitted within the R4 zone and meets the objectives of the zone. The development provides additional housing opportunities within close proximity to employment and public transport and is considered to result in positive social and economic benefits to the community.

Notwithstanding the submissions received, it is considered that the proposal is considered to be in the public interest.

## **5. REFERRALS AND SUBMISSIONS**

## 5.1 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 5.

**Table 7: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Referral/Consultation Agencies</b>			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Endeavour Energy raise no objection subject to conditions, including details surrounding the location of any future substation if required – to be conditioned prior to CC..	Y
Transport for NSW	Section 2.119 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	No Issues raised, subject to conditions of consent.	Y
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report.	Y
Sydney Water	Sydney Water Act 1994, Section 78.	No issues raised, subject to conditions.	Y

## 5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

**Table 8: Consideration of Council Referrals**

Officer	Comments	Resolved
Engineering	Council's Engineering Section has reviewed the submitted stormwater concept plan and raise no objections subject to conditions.	Y
Flooding	Council's Flooding Section has reviewed the plan and raise no objections subject to conditions	Y

Traffic	Council's Traffic Section has reviewed the proposal having regard to the submitted Traffic Impact Assessment and raise no objections to the proposed access to the site and the design of the on-site parking area.	Y
Building	No issues raised subject to conditions	Y
Health	Council's Environmental Health Section has reviewed the submitted contamination report and acoustic report and raise no objections subject to conditions.	Y
Waste	Council's Waste team have raised concerns in relation to the proposed waste solution on site for the residential and childcare operations. Deferred conditions of consent have been imposed. This is considered acceptable	N
Urban Design	Council's City Design and Public Domain Section has reviewed the amended proposal and raise no concern subject to the recommendations made by the DEP being implemented.  <u>Outcome:</u> The amended design (Issue C) adopts all of the design measures recommended by the DEP	Y
Public Art	Council's Public Art Officer has provided deferred conditions of consent to enable to applicant to provide suitable public art which is required with development located within the Liverpool CBD. This is considered acceptable.	N

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 5.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from. The notification included the following:

- Notification on a website.
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent).

The Council received a total of 1 unique submissions, comprising 1 objection. The issues raised in these submissions are considered in **Table 9**.

**Table 9: Community Submissions**

Issue	No of submissions	Council Comments
<b>Flooding and stormwater</b>  Submission raised concern the	1	The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater to the watercourse in the southern portion of the site. Stormwater modelling has been submitted to demonstrate the proposed

development will adversely impact flooding within the locality.		<p>stormwater management chain, including discharge to watercourse, and will not have negative impacts on downstream properties in peak storm events.</p> <p>Council's Development Engineer has reviewed the proposal and raises no objections to the proposed stormwater management arrangements.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Schedule 1).</p>
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## 6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered the application can be supported through deferred commencement.

## 7. RECOMMENDATION

The Development Application 520/2023 for the demolition of existing structures and the construction of two (2) 11-storey residential flat buildings consisting of 132 residential apartments, ground floor childcare centre for 90 children and 15 staff, two level basement car park, and associated landscaping and civil works at 7 Castlereagh Street Liverpool, 6,8.10 and 12 Copeland Street Liverpool, is recommended for Deferred Commencement pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979*.

The following attachments are provided:

- Attachment 1: SEPP 65 - Apartment Design Guidelines Assessment
- Attachment 2: Liverpool DCP Table (TRIM No.
- Attachment 3: Childcare Planning Guidelines
- Attachment 4: Draft Notice of Determination
- Attachment 5: Architectural Plans
- Attachment 6: Landscape Plans
- Attachment 7: Clause 4.6 Request – Height of Buildings
- Attachment 8: Clause 4.6 Request – Building Separation
- Attachment 9: Statement of Environmental Effects
- Attachment 10: Survey Plan
- Attachment 11: DEP Minutes