

COUNCIL ASSESSMENT REPORT
SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-444 – DA-364/2024
PROPOSAL	The construction of a 31-storey mixed-use development comprising hotel or motel accommodation (198 Rooms), recreational facility (indoor), 168 residential apartments, and associated site works.
ADDRESS	Lot 100 DP 1250893 402 Macquarie Street Liverpool 2170
APPLICANT	The Grand Liverpool Pty Ltd
OWNER	The Grand Liverpool Pty Ltd
DA LODGEMENT DATE	15/08/2024
APPLICATION TYPE	DA
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : CIV over \$30 million
CIV	\$144,568,182 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 7.4 Building Separation pursuant to Liverpool Local Environmental Plan 2008
KEY SEPP/LEP	State Environmental Planning Policy (Planning Systems) 2021; State Environmental Planning Policy (Transport and Infrastructure) 2021; State Environmental Planning Policy (Biodiversity and Conservation) 2021; State Environmental Planning Policy (Resilience and Hazards) 2021; State Environmental Planning Policy (Housing) 2021; State Environmental Planning Policy (Sustainable Buildings) 2022; Liverpool Local Environmental Plan 2008
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	2 submissions (total & unique). Key issues include overshadowing, privacy impacts, traffic and parking, suitability, pollution, and lack of necessary infrastructure.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Attachment B: Draft SWCPP Assessment Report (Compliance Tables, ADG, LEP and LDGP) Assessment Tables Attachment C: Architectural Plans - 281579.2024

	<ul style="list-style-type: none"> • Attachment D: Landscape Plans (Public Domain) - 269389.2024 • Attachment E: Landscape Plans - 269388.2024 • Attachment F: Stormwater Plans - 269406.2024 • Attachment G: Survey Plan - 269411.2024 & 269412.2024 • Attachment H: GFA Report and Diagrams - 269372.2024 • Attachment I: Clause 4.6 Request – Building Separation - 269375.2024 • Attachment J: Statement of Environmental Effects - 269405.2024 • Attachment K: Susceptibility Analysis (Architectural Plans) - 269371.2024 • Attachment L: Geotechnical Report - 269386.2024 • Attachment M: Design Principal Statement - 269380.2024 • Attachment N: Design Verification Statement - 269379.2024 • Attachment O: Design Excellence Panel – Minutes - 401057.2024 • Attachment P: BASIX Assessment Report - 269373.2024 • Attachment Q: Access Report - 269368.2024 • Attachment R: Detailed Site Investigation - 269376.2024 • Attachment S: Plan of Management - 269400.2024 • Attachment T: CPTED Report - 269378.2024 • Attachment U: Traffic Report - 269413.2024
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Approval, subject to conditions of consent
DRAFT CONDITIONS TO APPLICANT	YES
SCHEDULED MEETING DATE	16 December 2024
PLAN VERSION	Select Date Version No
PREPARED BY	Nabil Alaeddine
DATE OF REPORT	13 December 2024

1. EXECUTIVE SUMMARY

1.1 The proposal

The Application seeks consent for the construction of a 31-storey mixed-use development comprising hotel or motel accommodation (198 rooms), recreational facility (indoor), 168

residential apartments, and associated site works at 402 Macquarie Street, Liverpool ('the site'), legally known as Lot 100 in DP 1250893. The application is related to an approved concept development application, DA-1262/2022 which approved the building envelope, gross floor area, maximum building height, vehicular access and car parking provision, stormwater management, and concept landscape design. Specifically, the proposal includes the following:

- 6 Level of basement parking for a total of 205 car parking spaces,
- 198 1-bedroom hotel from Levels 2 to 7 with hotel administration on ground floor,
- 168 Residential Apartments on levels 9 to 29 consisting of:
 - 84 x 1-bedroom units,
 - 63 x 2-bedroom units,
 - 21 x 3-bedroom units,
- A 353.95m² two level Gym (Recreational facility (indoor) on the ground and first floor,
- Conference Centre on the ground floor,
- Small Bar lounge on Level 8 with an alfresco area for patrons,
- 959.7m² of Communal Open Space on Levels 8 and 30 for residents, and
- Signage Strategy for the hotel,

1.2 The Site

The subject site is known as 402 Macquarie Street, Liverpool ('the site') is a corner allotment and comprises Lot 100 in DP 1250893 with road frontages to Macquarie Street and Carey Street. It is located within the block bounded by Macquarie Street to the north, Carey Street to the west and Charles Street to the south and occupies an irregularly shaped area of 2,292m², **Figure 1** below.

The site is currently a vacant allotment following the demolition of the existing structures on the site as part of the previous applications for the site.

1.3 The Issues

The key issues identified with the proposal are as follows:

- 1.1.1 **Building Separation** – Was approved under the Concept DA and the subject application is consistent with the separation variation as approved under the Concept DA. A 4.6 variation has been submitted and is considered satisfactory. The matter is resolved.
- 1.1.2 **Street Setback** – The proposed development does not comply with the DCP requirement for a 4.5m landscaped setback to Carey Street. The basement, ground floor, and first floor have a variable setback of 0 – 1.5m, and Levels 2-7 are built to the boundary. 4.5m or greater setbacks are provided from Level 8 and above. This is considered acceptable as it complies with the approved concept DA. The matter is resolved.
- 1.1.3 **Susceptibility Analysis** - The applicant has submitted a satisfactory susceptibility analysis which demonstrates the neighbouring sites are capable of development which achieves the maximum FSR and can receive adequate solar access. The matter is resolved.

- 1.1.4 **Traffic & Parking** – The proposed parking has been reduced from 244 approved in the concept DA, and proposed 205 in the subject DA. The council's Traffic Engineers do not support the reduction in parking and have requested that the proposal comply with the amended Parking requirements as per the revised TfNSW Guide. The Residential component prosperous 103 parking spaces and the new guide requires 127 parking spaces. Furthermore, the Traffic Engineers noted that an additional study is required of hotels in the area to establish appropriate parking, alternatively, the proposal should maintain the approved 244 parking spaces under the Consent DA. for the hotel portion. The matter is proposed to address by revised basement plans to be provided to the council for review prior to the issue of a construction certificate. Not resolved.

1.4 Exhibition of the Proposal

The application was placed on exhibition from 6 September 2024 until 20 September 2024 in accordance with the Liverpool Community Participation Plan. 2 submissions were received comprising of 1 unique submission objecting to the proposed development. The concerns raised in the submissions and the response to the concerns raised are detailed in Section 6.8 of the report.

1.5 Reasons for the Report

The Capital Investment Value (CIV) of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$144,568,182 (excluding GST).

The Sydney Western City Planning Panel is the determining body as the CIV of the development is over \$30 million, pursuant to Schedule 6 of the *State Environmental Planning Policy - SEPP (Planning Systems) 2021*

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the consideration of the written request to vary the height of building separation development standard pursuant to Clause 4.6 of the LLEP 2008, it is recommended that the application be approved, subject to conditions

2. THE SITE AND LOCALITY

2.1 The Site

The development site is identified as a 2,292sqm single corner allotment known as 402 Macquarie Street, Liverpool and is legally described as Lot 100 in DP 1250893. It is irregular in shape, with a frontage of 65.9m to Terminus and Macquarie Streets as well as 38.7m frontage to Carey Street. The site is zoned MU1 Mixed-Use under the Liverpool Local Environmental Plan 2008.

At present, the site is vacant following a previous approval to demolish of existing structures. Surrounding land uses can be summarised as mixed commercial uses to the south-west,

north-east and north along Macquarie Street, and low to medium density residential developments to the south and south-east.

A desktop analysis of the site indicates that the site is impacted by a couple of constraints including the obstacle height limitation and classified road noise impacts. The analysis also indicates that essential services including electricity, reticulated water and sewer, waste collection, telecommunications and NBN are available to the site



Figure 1: Aerial Image of the subject site

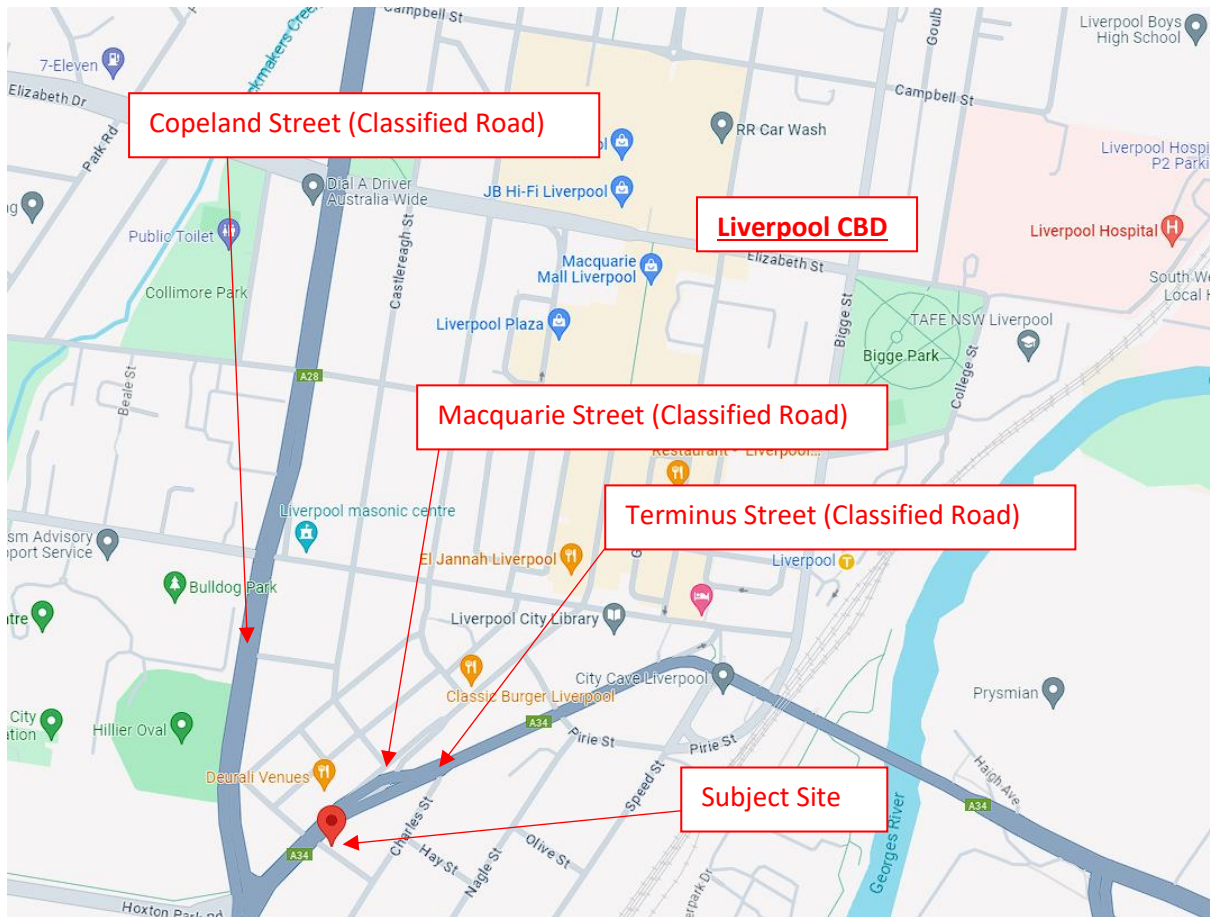


Figure 2: Locality Map

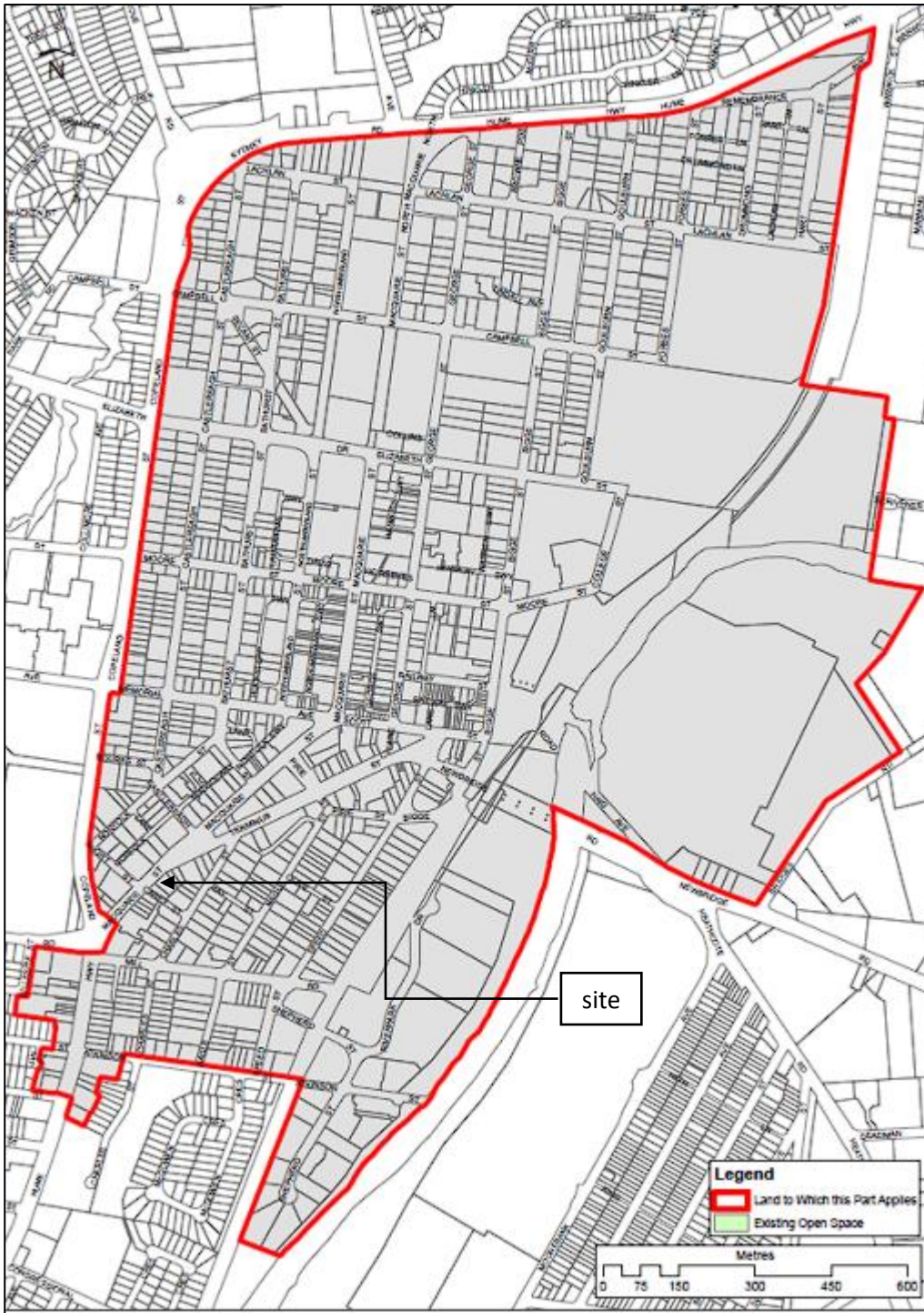


Figure 3: Locality Map and an outline of the Liverpool Town Centre (Source: Liverpool DCP 2008)

2.2 The Locality

The subject site is situated on the western periphery of the Liverpool Town Centre and is surrounded by high density mixed-use buildings and low and medium density residential flat buildings of varying heights and architectural character.

The table below outlines developments within close proximity to the site.

Table 1: Adjacent Developments

Address	Location	Development
166-176 Terminus Street	Adjacent site to the east	9-storey mixed-use building
1-5 Charles Street	Adjacent site to the south-east	2 x 4-storey residential flat buildings
406 Macquarie Street	Site on opposite side of Carey Street	Service Station
420 Macquarie Street	Cnr Macquarie Street and Mill Road	30-storey mixed-use building – Lateral building
405-419 Macquarie Street	Sites on opposite side of Macquarie Street	Single level commercial buildings
387 Macquarie Street	Site diagonally opposite Macquarie Street	24-storey mixed-use building



Figure 4: Street image of the subject site – vacant allotment (Source: Google Street View, 2023)



Figure 5: Existing 9 storey residential flat building on adjacent site to the east (Source: Google Street View, 2023)



Figure 6: Existing 4 storey residential flat buildings to the south-east (Source: Google Street View, 2023)



Figure 7: Existing service station and mixed-use tower development to the west of the site
(Source: Google Street View, 2023)



Figure 8: Existing single storey commercial buildings on the opposite side of Macquarie St
(Source: Google Street View, 2023)



Figure 9: Existing multi-level mixed-use on the corner of Macquarie and Castlereagh Streets (Source: Google Street View, 2023)

3. THE PROPOSAL AND BACKGROUND

3.1 The Proposal

The proposal is for the construction of a 31-storey mixed-use development, comprising demolition and excavation of the existing site to facilitate the construction of basement levels and construction of the following:

- 6 levels of basement comprising residential and commercial car parking, staff facilities, commercial kitchen, service rooms, luggage store, concierge and waste storage facilities;
- Ground and first floors comprising hotel lobby, administrative facilities, conference room, lounge and dining, residential lobby, and publicly accessible gym;
- 6 floors of hotel accommodation;
- Hotel bar and alfresco, and residential communal facilities on the eighth floor;
- 21 floors of residential accommodation;
- Residential communal facilities on the thirtieth floor.

Table 2: Development Data

Control	Proposal
Site area	2,292m ²
GFA	Allowable GFA: 22,920m ²

	Proposed GFA: 22,820m ²
FSR (retail/residential)	Permitted: 10:1 Proposed: 9.95:1
Clause 4.6 Requests	Clause 7.4 Building Separation pursuant to Liverpool Local Environmental Plan 2008
No of apartments	168 residential apartments comprising: <ul style="list-style-type: none"> • 84 1-bedroom units • 63 2-bedroom units • 21 3-bedroom units
Hotel Accommodation	198 1-bed hotel rooms
Max Height	104.99m
Deep Soil Area	84.96m ² (3.7%)
Car Parking spaces	205 total spaces: <ul style="list-style-type: none"> • 150 residential • 54 hotel • 1 gym 115 bicycle spaces & 11 motorcycle spaces
Setbacks	Front (north – Macquarie St): 0 – 7.87m Secondary (west – Carey St): 0 – 6.8m Side (east): 0 – 21m Rear (south): 7 – 17.86m

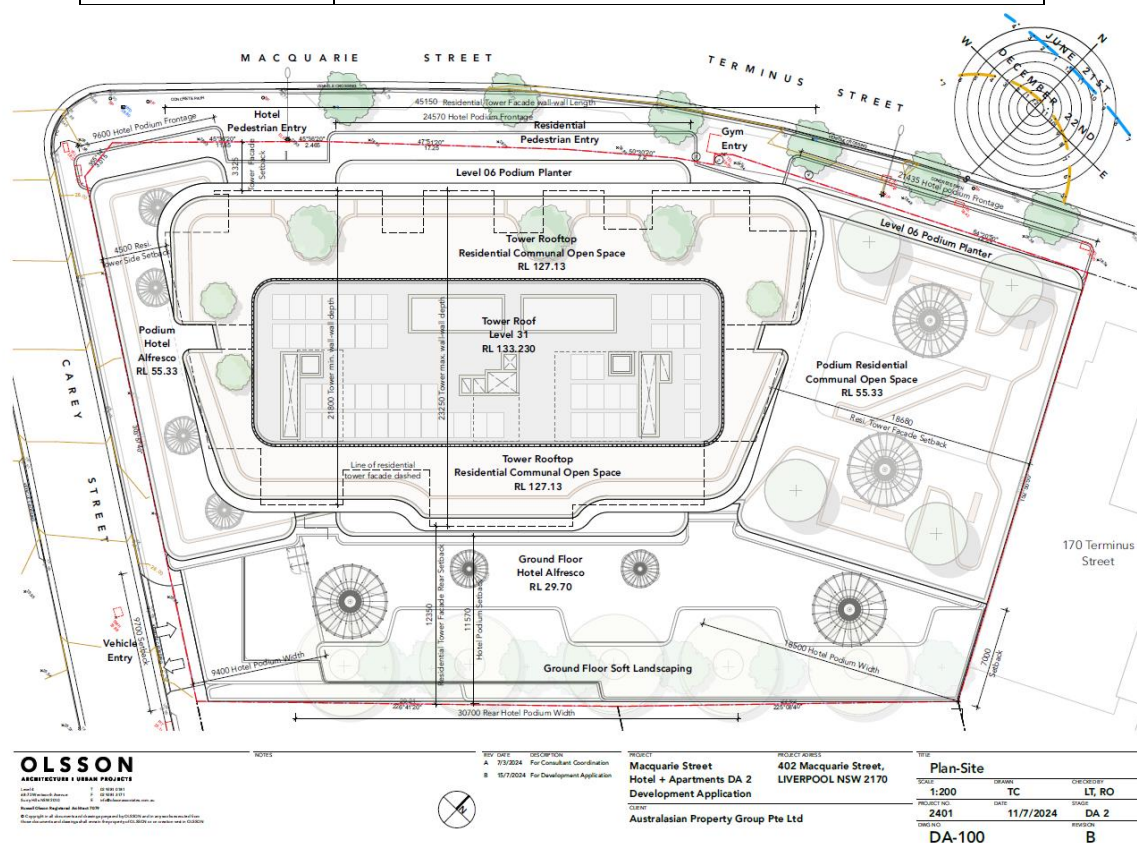


Figure 10: Proposed Site Plan

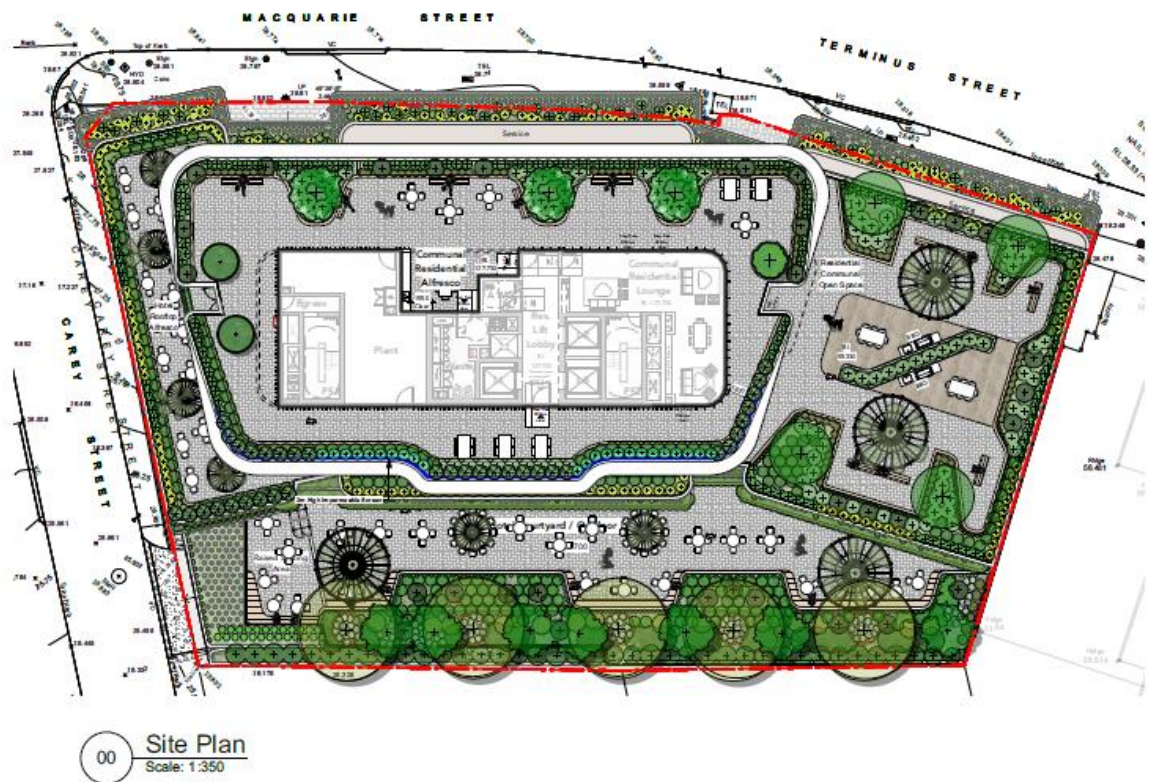


Figure 11: Proposed Landscape Plan

Elevations-Street
Scale 1:750

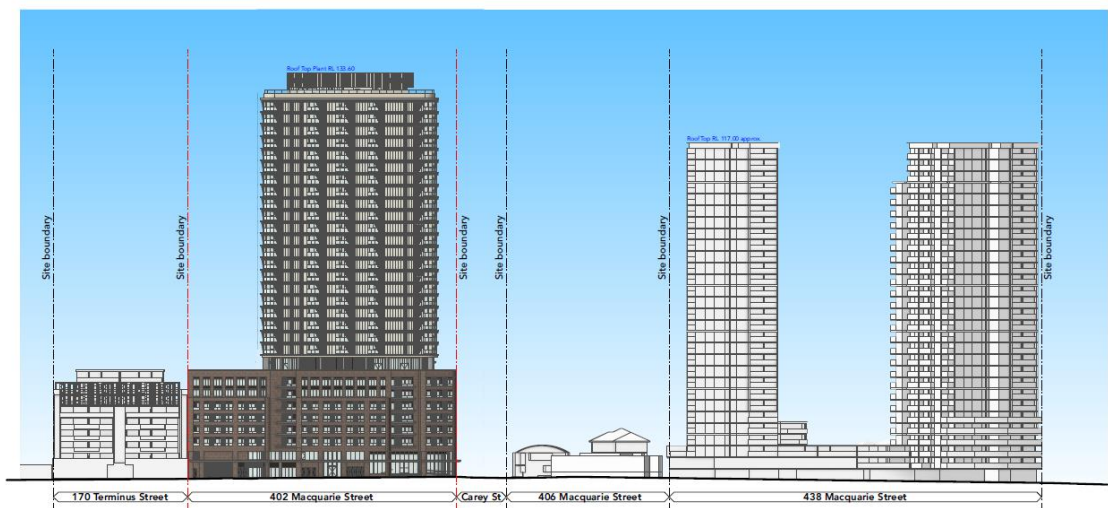


Figure 12: Macquarie Street Elevation

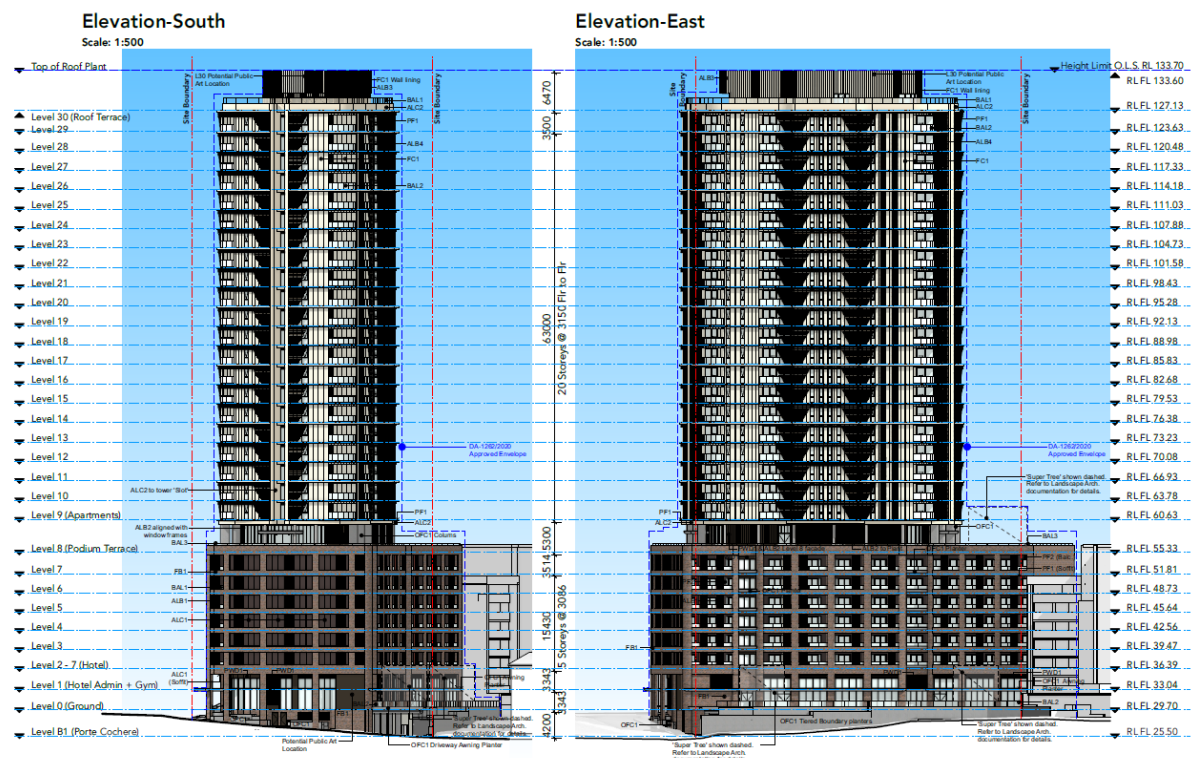
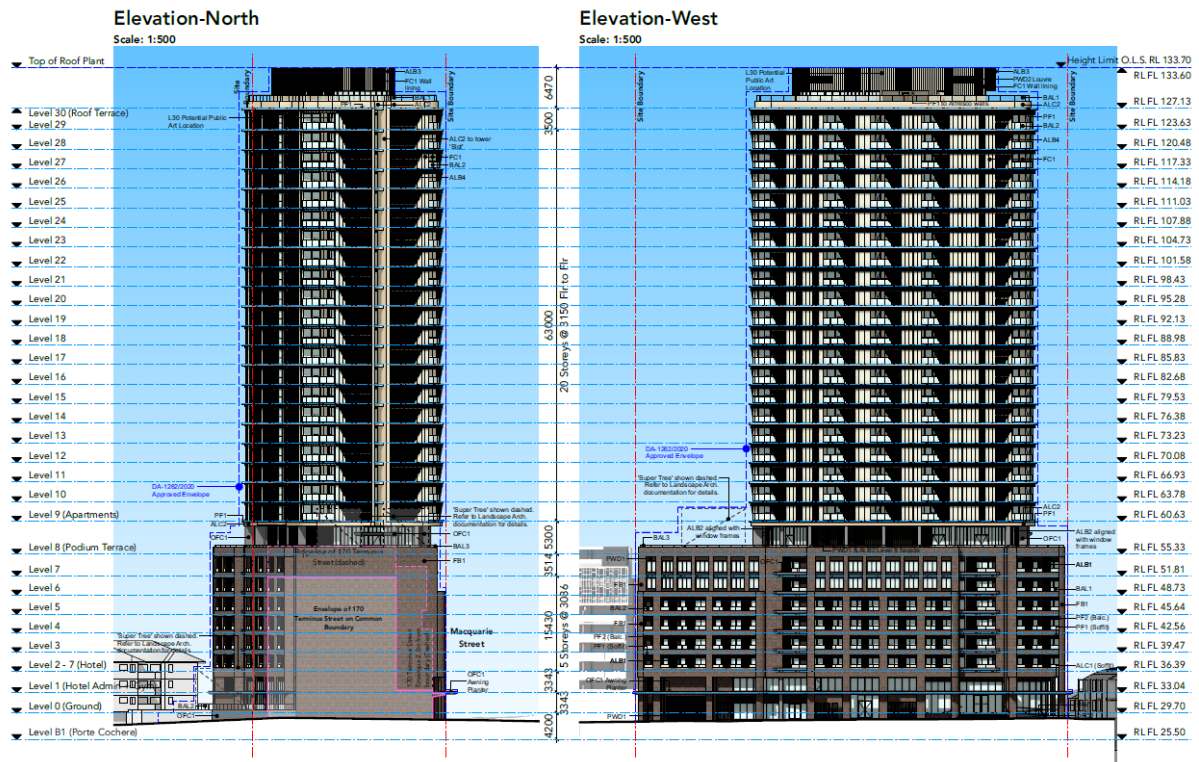




Figure 15: Photo Montage: Views from Castlereagh Street & Short Street

3.2 Background

The subject application is for the construction of a development which was granted concept approval under DA-1262/2022, which was determined by the Panel on 15 December 2023.

A Pre-DA meeting was held prior to the lodgement of the applicant on 17 April 2024 for construction of a 31-storey mixed-use building with a Floor Space Ratio of 10:1 and a maximum height of 104.99m containing a hotel, gym, and residential apartments. Recommendations were made in relation to supporting documentation by several Council departments.

Additionally, a pre-lodgement meeting with the Liverpool Design Excellence Panel was held on 9 May 2024, which gave various recommendations in relation to views, apartment mix and layout, landscaping, public art and façade designs.

The development application was lodged on **15 August 2024**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the DA

Date	Event
15 August 2024	DA lodged

6 September 2024	Advertising and notification of the application commenced
9 September 2024	DA referred to internal departments and external agencies
20 September 2024	Advertising and notification of the application concluded (2 submissions received)
14 November 2024	DEP Meeting

3.3 Site History

The following are previous development applications lodged and considered on the subject site.

Development History of the subject site		
DA Number	Proposal	Outcome
DA-237/2015	A Development Application was granted consent for the demolition of existing buildings and the construction of an 8-storey mixed-use development comprising of group floor commercial space, 59 residential units and associated basement and at-grade car parking	Approved by Council on 16 December 2016.
DA-237/2015/A	A s.96(1A) modification was issued for the inclusion of a staging component as part of the DA. The staging component comprised of 3 individual stages to allow the orderly commencement of works.	Approved by Council on 29 September 2017.
DA-237/2015/B	A s.96(1A) modification was issued for the following modifications to the original approval including: <ul style="list-style-type: none"> - Construction of an additional basement level increasing the total number of basements to 3 and increased the number of car parking spaces on site to 114 spaces; - Addition of adaptable units and - Façade revision. 	Approved by Council on 19 December 2017.
DA-232/2018	A DA was granted for demolition of existing structures and excavation to accommodate a future 3 levels of basement car parking.	Approved by Council on 15 May 2018.
DA-232/2018/A	A s.4.55(1A) modification issued to amend the excavation works to allow additional excavation to a depth of 16.6m.	Approved by Council on 20 December 2018.
DA-625/2018	A DA issued for the consolidation of 4 lots, construction of a 17-storey mixed-use development for 145 residential apartments and 3 commercial units over 5 levels of basement car park, containing 204 car spaces, 16 motorcycle spaces and 114 bicycle spaces.	Approved by Land and Environment Court on 23 August 2019.

DA-262/2018	<p>Concept DA for a mixed-use development. The proposal sought approval for:</p> <ul style="list-style-type: none"> - Establishment of a building envelope across the site, to be used for a mixed-use development incorporating ground floor commercial, indoor recreation facility, upper-level hotel and residential accommodation; - Potential maximum GFA of 23,020m², representing an FSR of 9.99:1; - Maximum building height of 104.99m (30-31 storeys) - Design excellence strategy; - Public domain improvement works; - Vehicular access from Carey St and maximum number of car parking spaces; - Stormwater management works; and - Landscape concept. 	Refused by the Land and Environment Court on 7 April 2021.
DA-1262/2022	Concept DA for the construction of a 31 storey mixed-use development consisting of the establishment of the building envelope, gross floor area, maximum building height, design excellence, public domain works, vehicular access and car parking provision, stormwater management and concept landscape design.	Approved by Sydney Western City Planning Panel on 15 December 2023
DA-1262/2022/A	Modification to Development Consent DA-1262/2022 under Section 4.55 of the Environmental Planning and Assessment Act 1979, seeks to remove condition No.5 and amend the applicant's name listed on the Notice of Determination.	Approved by Council on 10 May 2024

4. STATUTORY CONSIDERATIONS

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,*
- (c) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (d) *the suitability of the site for the development,*
- (e) *any submissions made in accordance with this Act or the regulations,*
- (f) *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 Regulation are considered below.

(a) 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 (Housing) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *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 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas <ul style="list-style-type: none"> No existing vegetation on site. 	N/A
	Chapter 6: Water Catchments <ul style="list-style-type: none"> Does not conflict with objectives of Chapter 6. 	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of residential apartment development <ul style="list-style-type: none"> The proposal is considered to be consistent with the design principles in Schedule 9; The proposal is considered to satisfy the objectives of the ADG 	Y

State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> • Section 3.6 – granting consent to signage • Section 3.11(1) – matters for consideration 	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises development with a cost of works greater than \$30 million. 	Y
State Environmental Planning Policy (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	No compliance issues identified subject to imposition of conditions on any consent granted	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Section 2.118(2) - Development with frontage to classified road • Section 2.119(2) Impact of road noise or vibration on non-road development • Section 2.121(4) - Traffic-generating development 	Y
Liverpool LEP 2008	<ul style="list-style-type: none"> • Clause 2.3 – The proposed development is permissible within the MU1 zone and meets the zone objectives. • Clause 7.5 – Design Excellence in Liverpool City Centre. The proposal was considered by the DEP, with the latest plans supported subject to recommendations. 	Y Y
Liverpool DCP 2008	Section 4.2.7 Street Alignments and Street Setbacks <ul style="list-style-type: none"> • The DCP requires a setback of 4.5m to Carey Street. The proposal includes a variable setback of 0 – 6.8m. This is considered acceptable as it complies with the building envelope approved under DA-1262/2022. 	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

(i) Chapter 2 – Vegetation in non-rural areas

Not applicable, as the site is vacant and devoid of any vegetation.

(ii) Chapter 6 – Water Catchments

Part 6.2 – Development in regulated catchments applies to the application as the development is within the Georges River catchment area. The relevant clauses are as follows:

Clause	Comment
6.6 Water quality and quantity	Complies The development would not result in any unreasonable impacts to water quality or quantity, and has been deemed satisfactory by Council's Land Development Engineering section.
6.7 Aquatic ecology	Complies The development would not result in any adverse impacts on aquatic ecology.
6.8 Flooding	Not Applicable The site is not affected by flooding.
6.9 Recreation and public access	Not Applicable The site is not in proximity to any waterbody
6.10 Total catchment management	Complies The proposal satisfactorily manages stormwater and as such it is considered that it would not have an adverse impact on the total catchment.

Based on the above assessment, the proposal satisfies the requirements of Chapter 6 and is considered to comply with the SEPP (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Housing) 2021

The development is classified as “*mixed use development with a residential accommodation component*” and as such Chapter 4 – Design of residential apartment development applies to the subject application.

The requirements of Chapter 4 are as follows:

Clause	Requirement	Comment
145 – Referral to design review panel for development applications	Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.	Complies The application has been referred to the Liverpool Design Excellence Panel, who were supportive of the proposal.
147 – Determination of development applications and modification applications for residential apartment development	Development consent must not be granted to residential apartment development unless the consent authority has considered the following— (a) the quality of the design of the development,	Considered (a) The development has been evaluated in accordance with the design principles in Schedule 9 (b) The Apartment Design Guide has been considered

	<p>evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,</p> <p>(b) the Apartment Design Guide,</p> <p>(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.</p>	<p>in the assessment of the application</p> <p>(c) As detailed above, the LDEP were supportive of the proposal and their advice has been considered in the assessment of the application.</p>
148 – Non-discretionary development standards for residential apartment development	<p>(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,</p> <p>(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,</p> <p>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.</p>	<p>Does not comply</p> <p>(a) As per discussion of the application against the ADG below, proposal does not comply with parking requirements.</p> <p>(b) As per discussion of the application against the ADG below, proposal complies with internal area requirements.</p> <p>(c) As per discussion of the application against the ADG below, proposal complies with ceiling height requirements.</p>
149 – Apartment Design Guide prevails over development control plans	<p>A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—</p> <p>(a) visual privacy, (b) solar and daylight access,</p> <p>(c) common circulation and spaces, (d) apartment size and layout, (e) ceiling heights, (f) private open space and balconies,</p>	<p>Noted</p> <p>Compliance with the Apartment Design Guide is discussed below.</p>

	(g) natural ventilation, (h) storage.	
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Apartment Design Guide

In accordance with Clause 147(1)(b) of the SEPP (Housing) 2021, the application has been assessed against the Apartment Design Guide (ADG). A full assessment of the development against the requirements of the ADG is provided in Attachment B; non-compliances and variations are detailed below.

3E Deep soil zones

84.96m² or 3.7% is proposed on the site. This is considered to be acceptable as this is contributed to by the site constraints, its location, and surrounding developments. The development proposes much of its vegetation in communal areas and on the rooftop, which is acceptable as it is the only location that vegetation can be planted. The site location is positioned on a corner of a Classified Road and Carey Street on one side and linked with a nil boundary to the neighbouring development up to the podium level which is a requirement to align the CBD block. This constitutes no private open space or communal open space on the ground floor therefore resulting in reduced deep soil on the ground plain.

The CBD site is significantly constrained by its urban density, existing built environment, and lot size. These factors limit the availability of ground-level open space suitable for deep soil zones. The prioritisation of active street frontages, retail spaces, and pedestrian pathways aligns with the urban context and supports the broader objectives of activating and contributing to the public domain.

To compensate for the absence of deep soil zones at ground level, the development incorporates raised planting zones with sufficient soil volume and depth to support the growth of medium to large trees. These alternative planting solutions achieve similar ecological and visual benefits to ground-level deep soil areas.

The proposal integrates extensive landscaped podiums and green roof areas with engineered soil profiles to provide equivalent functionality for water infiltration, urban heat reduction, and vegetation growth. These spaces contribute to urban greening and biodiversity, offsetting the lack of deep soil at ground level.

The proposal aligns with the broader urban planning context for CBD areas by prioritising built-form efficiency, active street frontages, and the maximisation of usable space for communal and public benefit. These priorities take precedence in high-density urban environments where ground-level deep soil provision may conflict with other critical design objectives.

4F Common circulation and spaces

The proposal is 31 stories in height, 56 units sharing 1 lift. 3 lifts are proposed in total for the exclusive use of the residents. The hotel and public use areas are serviced by a further 3 lifts.

The site contains signification constraints, in particular its size. In acceptance of the variation in lifts for the residential portion, Council assessed the ration to residents and the uses proposed on site.

State Environmental Planning Policy (Industry and Employment) 2021

The proposed development includes the provision of signage, and as such Chapter 3 – Advertising and Signage applies to the development. In accordance with Clause 3.6, consent must not be granted unless the consent authority is satisfied—

- (a) that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and

The aims and objectives of Chapter 3 are considered below.

- (a) *to ensure that signage (including advertising)—*
(i) *is compatible with the desired amenity and visual character of an area, and*
(ii) *provides effective communication in suitable locations, and*
(iii) *is of high quality design and finish, and*

Complies. The proposed signage comprises a total of 5 signs for business and building identification. This includes 2 façade-mounted signs showing the hotel logo, 1 wall-mounted vertical blade sign showing the hotel logo, 1 static floor mounted 3D sign of the hotel logo, and 1 static floor mounted pylon sign showing the hotel logo and wayfinding.

The proposed signage is considered to be compatible with the desired amenity and visual character of the area, as the surrounding streetscape is zoned MU1 and comprises various mixed-use developments with commercial development on the lower floors, with similar development being permissible. As such, the limited number of signs and minimalist design are unlikely to have any adverse impact on the amenity and visual character of the area.

The size and quantity of signage is appropriate to ensure effective communication in suitable locations, as it allows identification of the building from further away and clearly identifies entrances.

The proposed signage is considered to be of a high-quality design and finish.

- (b) *to regulate signage (but not content) under Part 4 of the Act, and*

Noted. Content of signage has not been considered in the assessment under this Part.

- (c) *to provide time-limited consents for the display of certain advertisements, and*

Not Applicable. The proposal consists of building identification and business identification signage, which are not classified as advertisements and as such are not affected by this objective.

- (d) *to regulate the display of advertisements in transport corridors, and*

Not Applicable. The proposal consists of building identification and business identification signage, which are not classified as advertisements and as such are not affected by this objective.

- (e) *to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

Not Applicable. The proposal consists of building identification and business identification signage, which are not classified as advertisements and as such are not affected by this objective.

Overall, the proposal is considered to satisfy the requirements of Clause 3.6(a).

- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.

The application has been assessed against the criteria in Schedule 5 below.

Criteria	Comment
1 Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Complies The proposed signage is relatively minimal considering the site is within the MU1 Mixed-Use zone and is considered compatible with the desired future character of the locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Not Applicable There is no existing theme for advertising/signage in the area. Nonetheless, the proposed signage is minimalist and would align with most themes which could arise.
2 Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	Complies The proposed signage would not detract from the amenity of any adjoining residential development.
3 Views and vistas	
Does the proposal obscure or compromise important views?	Complies The proposed signage does not obscure any views.
Does the proposal dominate the skyline and reduce the quality of vistas?	Complies The proposed signage does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	Complies The proposed signage would not impede other signage within the area.
4 Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	Complies The proposed signage is of a scale and proportion appropriate to its location and the scale of development in the area.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Complies The proposed signage would not adversely impact the visual interest of the streetscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	Not Applicable There is no existing advertising on the site.
Does the proposal screen unsightliness?	Not Applicable

	There is no unsightliness in the vicinity which could be screened by signage on the subject lot.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	Complies The proposal does not protrude above the proposed building.
Does the proposal require ongoing vegetation management?	Complies No additional vegetation management will be required for the proposed signage.
5 Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Complies The proposed signage is compatible with the scale, proportion and characteristics of the building on the site.
Does the proposal respect important features of the site or building, or both?	Complies The proposed signage is designed with appropriate consideration to the site and building features.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Complies The proposed signage is integrated into the building design to minimise its impact on the streetscape and maximise the effectiveness of communication.
6 Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	Not Applicable No structures have been designed as part of the signage; the signage is generally integrated with the building design.
7 Illumination	
Would illumination result in unacceptable glare?	Complies by condition A condition of consent can be imposed requiring illumination to be restricted to appropriate levels.
Would illumination affect safety for pedestrians, vehicles or aircraft?	Complies by condition The illuminated signs would not result in safety concerns for pedestrians or aircraft, and appropriate conditions around brightness can be imposed to prevent impacts to vehicles.
Would illumination detract from the amenity of any residence or other form of accommodation?	Complies by condition The signage is located on the frontages and would not result in impacts to adjoining lots. Conditions of consent around brightness and screening can be imposed to ensure there are no amenity impacts to the accommodation forming part of the development.
Can the intensity of the illumination be adjusted, if necessary?	Complies by condition A condition of consent can be imposed requiring illumination to be adjustable.
Is the illumination subject to a curfew?	Complies by condition A condition of consent can be imposed requiring a curfew if applicable.
8 Safety	

Would the proposal reduce the safety for any public road?	Complies The proposal would not impact the safety of any public road.
Would the proposal reduce the safety for pedestrians or bicyclists?	Complies The proposal would not reduce safety for pedestrians or cyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	Complies The proposal would not obscure sightlines from public areas.

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

(i) Chapter 2: State and Regional Development

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 proposal is development with an estimated development cost of more than \$30 million. Accordingly, the Sydney Western City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

(i) Chapter 4: Remediation of Land

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land.

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.*

Clause 4.6(1) prescribes the contamination, and remediation matters that must be considered by Council before determining the development application. Specifically, Council must consider:

- whether the land is contaminated; and
- if the land is contaminated, the Council must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation); and
- if the land requires remediation to be made suitable, Council is satisfied that the land will be remediated before it is used.

Pursuant to Clause 4.6(1) the following shall be addressed:

Clause	Comment
(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	The Detailed Site Investigation found evidence of minimal asbestos contamination on site.
(b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation)	The DSI indicates that the site is suitable for the proposed use in its current state, and Council's Environmental Health section are

for the purpose for which the development is proposed to be carried out, and	supportive of the application subject to conditions of consent.
(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 site does not require remediation.

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 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.1756814M prepared by ADP Consulting dated 23 July 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the SEPP. The proposal is consistent with the SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

(i) Clause 2.119 – Development with frontage to classified road

The subject application fronts Macquarie Street, which is a classified road, and as such the provisions of Clause 2.119 of the SEPP apply to the development. Clause 2.119(2) provides the following:

Clause	Comment
(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	Complies Vehicular access to the land is provided from Carey Street,
(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	Complies The proposed development would not impact on the safety, efficiency and ongoing operation of the classified road.
(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.	See discussion of Clause 2.120 below.

(ii) Clause 2.120 – Impact of road noise or vibration on non-road development

The subject application includes development for the purposes of residential accommodation adjacent to the road corridor for a road with an annual average daily traffic volume of more than 20,000 vehicles and is likely to be adversely affected by road noise or vibration, and as such the provisions of Clause 2.120 apply to the subject development. Clause 2.120(3) provides requirements for the maximum noise level in a bedroom or other space within residential accommodation. An acoustic report has been provided which addresses noise impacts from the classified road on the development, and conditions of consent can be imposed requiring construction to adhere to the requirements of the report.

(iii) Clause 2.122 – Traffic-generating development

The application involves a total of 168 residential apartments with access provided within 90m of a classified road. As such, Clause 2.122 of the SEPP applies to the application. The applicable provisions under this clause are Subsection 4(b) (i)-(iii), which are discussed below.

(4) Before determining a development application for development to which this section applies, the consent authority must—

(b) take into consideration—

- (i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*

The application has been referred to Transport for NSW (TfNSW) and they have advised they are supportive subject to imposition of conditions.

(ii) the accessibility of the site concerned, including—

- (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
- (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

The site is fairly accessible, being located in the Liverpool CBD with multiple bus stops within reasonable walking distance. The proposed use would principally generate individual car trips, with some small- to medium-sized trucks providing occasional services.

(iii) any potential traffic safety, road congestion or parking implications of the development.

The proposal would not result in any unreasonable impacts on traffic safety or road congestion. The development proposes parking that complies with the previous RMS parking guidelines and proposes lesser parking that is approved under the concept of DA. The reduced parking has been deemed to be negative due to insufficient car parking being provided within the development in the neighbouring area.

Liverpool Local Environmental Plan 2008

The relevant local environmental plan applying to the site is the *Liverpool Local Environmental Plan 2008* ('the LEP'). The aims of the LEP include the following:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to encourage a range of housing, employment, recreation and services to meet the needs of existing and future residents of Liverpool,
- (b) to foster economic, environmental and social well-being so that Liverpool continues to develop as a sustainable and prosperous place to live, work, study and visit,
- (c) to provide community and recreation facilities, maintain suitable amenity and offer a variety of quality lifestyle opportunities to a diverse population,
- (d) to strengthen the regional position of the Liverpool city centre as the service and employment centre for Sydney's south west region,
- (e) to concentrate intensive land uses and trip-generating activities in locations most accessible to public transport and centres,
- (f) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- (g) to conserve, protect and enhance the environmental and cultural heritage of Liverpool,
- (h) to protect, connect, maintain and enhance the natural environment in Liverpool, and promote ecologically sustainable development which takes into account the environmental constraints of the land,
- (i) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bush fires, by managing development in sensitive areas,
- (j) to promote a high standard of urban design that responds appropriately to the desired future character of areas,
- (k) to improve public access along waterways and vegetated corridors while ensuring the natural environmental values of riparian and bushland corridors and the habitat they provide are protected and enhanced,
- (l) to improve public transport accessibility, and facilitate the increased use of public transport, cycling and pedestrian activity,
- (m) to enhance the amenity and positive characteristics of established residential areas,
- (n) to ensure the agricultural production potential of rural land and prevent its fragmentation,
- (o) to encourage development opportunities for business and industry so as to deliver local and regional employment growth.

The proposal is consistent with these aims as the proposal:

- Provides housing, employment and recreation to meet the needs of existing and future residents of Liverpool;
- Provides intensive land uses and trip-generating activities in locations most accessible to public transport and centres;
- Promotes a high standard of urban design that responds appropriately to the desired future character of the area;
- Constitutes a development opportunity for business and industry to deliver local and regional employment growth.

Zoning and Permissibility (Part 2)

The site is located within the MU1 Mixed Use Zone pursuant to Clause 2.2 of the LEP.

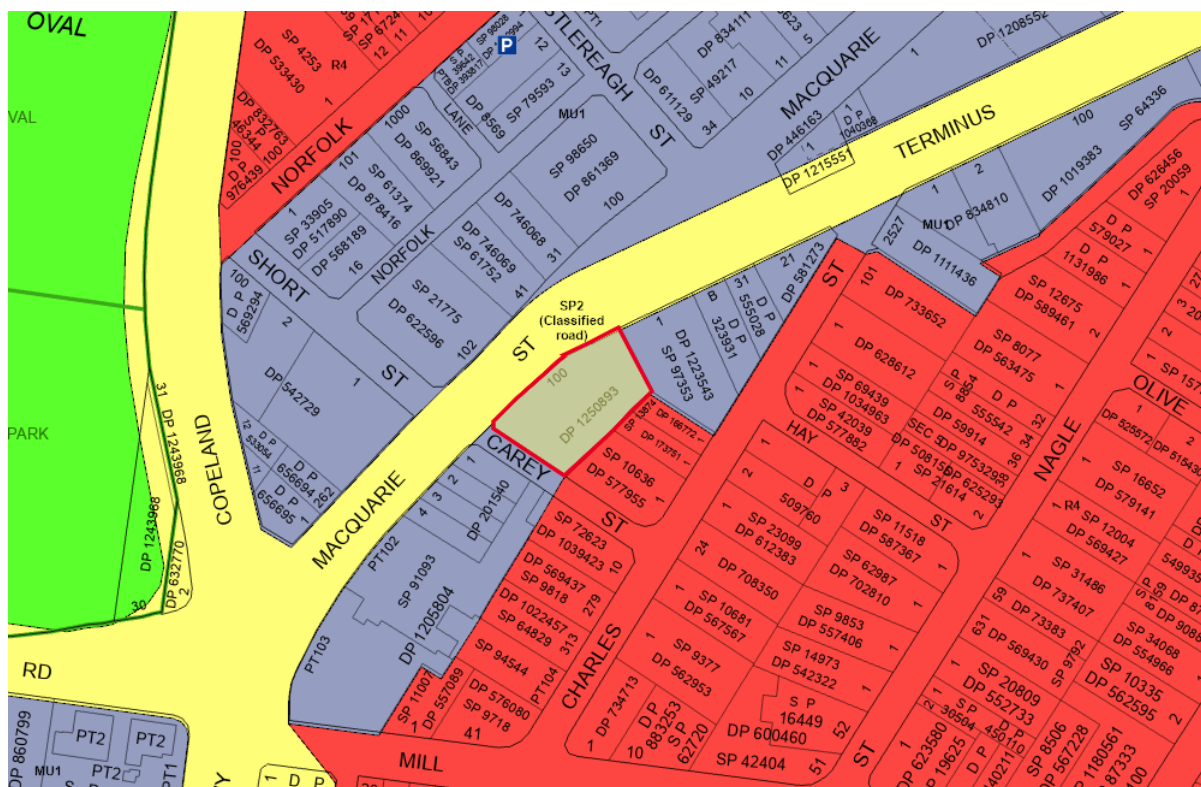


Figure 16: Zoning map

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definitions of “hotel or motel accommodation”, “recreation facility (indoor)” and “residential flat building” which are permissible uses with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To allow for residential and other accommodation in Liverpool city centre, while maintaining active retail, business or other non-residential uses at street level.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- Provides a diversity of business land uses that generate employment opportunities;
- Provides diverse and active street frontages to attract pedestrian traffic and contributes to vibrant, diverse and functional streets and public spaces;
- Minimises conflict between land uses within the zone and adjoining zones;
- Provides non-residential uses on the ground floor of the building;
- Includes residential and other accommodation within the city centre while maintaining active non-residential uses at street level.

General Controls and Development Standards (Part 2, 4, 5 and 6)

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. The proposal does not comply with the development standard/s in Part 7 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the minimum building separation.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	1000m ²	2,292m ²	Yes
Height of buildings (CI 4.3(2))	28 metres, able to be exceeded under Clause 7.5A where site is more than 1500m ²	104.9 metres	Yes
FSR (CI 4.4(2))	3:1, but 10:1 (22,920m ²) under Clause 7.5A where site is more than 1500m ²	9.95:1	Yes
Exceptions to development standards (CI 4.6)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.	Clause 4.6 variation request submitted in support of a variation to building separation development standard contained in Clause 7.4 of the LEP	Yes
Heritage (CI 5.10)	The land is not identified as a heritage item or land within a heritage conservation area.		
Flood Planning (CI 5.21)	The land is not identified as flood-affected		
Car parking in Liverpool city centre	Minimum parking requirements for E2 and MU1 zones.	Approximately 150 car spaces would be required, 205 are provided.	Yes

(CI 7.3)	1 car space per 200sqm gross floor area on the ground floor; 1 car space per 100sqm retail premises not on ground floor; 1 car space per 150sqm of any other purpose not on ground floor.		
Building separation in Liverpool city centre (CI 7.4)	12m for parts of buildings 25-45m above finished ground level in MU1; 28m for parts of buildings 45+m above finished ground level in MU1	Built to boundary for 8 storeys; considered appropriate in the circumstances. This aligns with the concept approval under DA-1262/2022; a Clause 4.6 Variation Request has been received and is addressed below.	Yes (Clause 4.6 Variation)
Design excellence in Liverpool city centre (CI 7.5)	Development must exhibit design excellence.	The application has been referred to the Design Excellence Panel, who were supportive subject to implementation of recommendations	Yes
Acid sulphate soils (CI 7.7)	The land is not identified as affected by acid sulphate soils		
Ground floor development in Zones E1 and MU4 (CI 7.16)	This clause applies to land in E1 and MU1 zones; development consent must not be granted unless the ground floor is to be used for business premises or retail premises, and will have at least one entrance and at least one other door or window facing a street other than a service lane.	The proposed development includes a hotel and gym on the ground floor; a gym is considered business premises, and there are multiple doors and windows facing the street. As such, the requirements of this clause are satisfied.	Yes
Earthworks (CI 7.31)	Council to consider matters such as cut and fill, general excavation, and drainage for the site.	Matters addressed by applicant and considered by Engineering section; conditions of consent to be imposed as required.	Yes

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

Clause 4.6 Request

The Development Standard to be varied and extent of the variation

The development standard to be varied is Clause 7.4 of the Liverpool Local Environmental Plan 2008, which reads as follows:

7.4 Building separation in Liverpool city centre

- (1) *The objective of this clause is to ensure minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (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 clauses relevant to the proposal are (2)(d) and (e), as the proposal is within the MU1 Mixed Use zone and has a height over 45 metres.

The portion of the building between 25 and 45 metres in height is Levels 7-14, and the portion of the building over 45m in height is Levels 15 and above. The setbacks for those levels are as follows:

Levels	Setback to comply with Clause 7.4	Side Boundary Setback	Rear Boundary Setback
7	6m	0m	7 – 11.57m
8	6m	20.37m	17.71m
9-29	14m	18.68m	12.35 – 13.85m
30	14m	21m	17.86m

Assuming 50% of any building separation occurs on each lot, and as such the maximum noncompliance would be 50% (where there is no setback), the non-compliances with Clause 7.4 are as follows:

Levels	Side Boundary Noncompliance	Rear Boundary Noncompliance
7	6m (50%)	N/A
8	N/A	N/A
9-29	N/A	0.15 - 1.65m (0.53% - 5.89%)*

* The rear boundary adjoins an R4 zone with a height limit of 45m; barring a Clause 4.6 variation request or LEP amendment, no development adjacent to the rear boundary will reach a height requiring consideration of this.

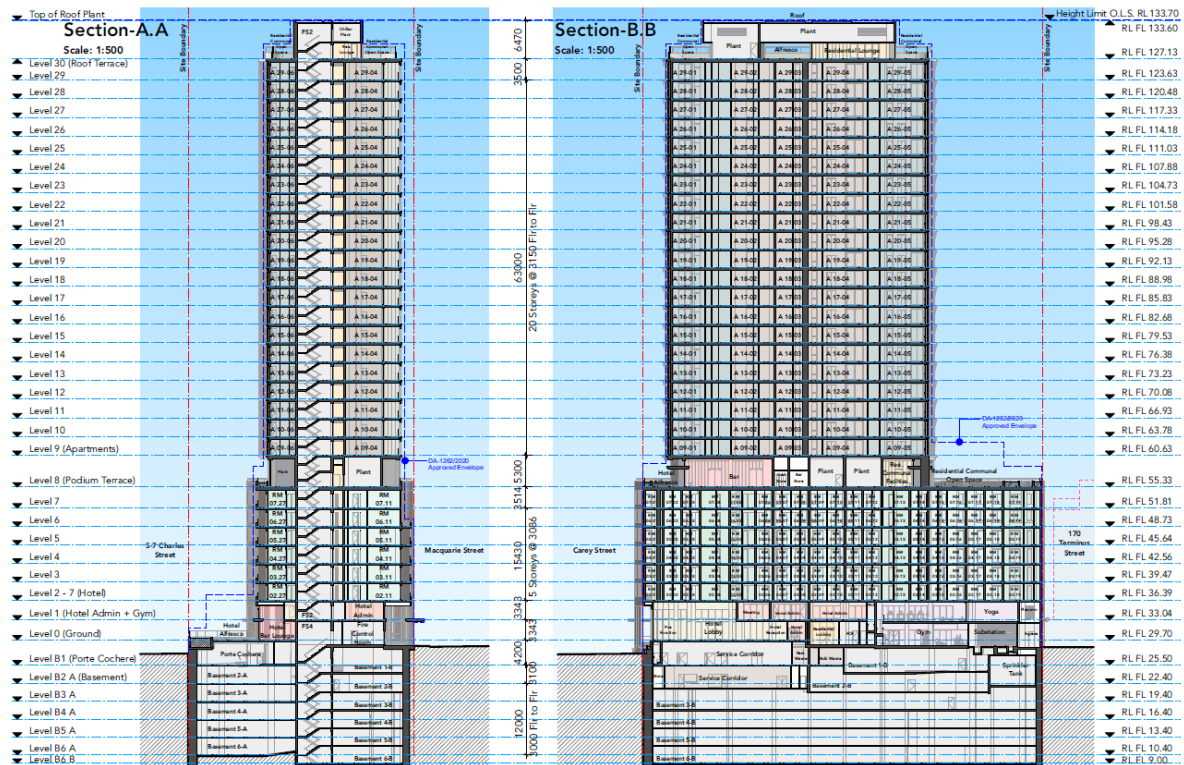


Figure 17: Sections showing side and rear setbacks

Preconditions to be satisfied

Clause 4.6(3) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The preconditions include:

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

(a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

(b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request.

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

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- *The site is irregularly shaped, and the non-compliance helps to achieve a more desirable built form and appropriate floor plate;*
- *The non-compliant walls to the eastern setback have no openings and as such would not create any privacy impacts to the adjoining development;*
- *The non-compliances do not contribute to visual or privacy impacts, or overshadowing, of the adjoining properties beyond what would exist with a compliant built form;*

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

Comments

Strict compliance with the building separation control is unreasonable and unnecessary in this instance due to the site constraints and the irregularly shaped allotment and dimensions, which limit the ability to achieve full compliance without compromising other design outcomes. The site is located on a corner that separates it from the neighbouring site across Carey Street by the widest of the road.

The variation allows for an improved configuration of internal layouts, communal open spaces, and landscaping, which enhance the amenity of residents and neighbours which is emphasized in the circumstances of LEC case *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* established that strict compliance with development standards may be considered unreasonable if the objectives of the control are achieved through alternative means.

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

The applicant has provided the following comments addressing how there are sufficient environmental planning grounds to justify the contravention of the development standard in this case, as summarised:

- *The proposed variation was previously approved under Concept Approval DA-1262/2022, and there are no changes to the building envelope approved under that application;*
- *The only variation with any potential for impact is the eastern boundary setback of Levels 7 and 8, where a blank wall is proposed to the boundary and as such there would be no additional impacts to the adjoining development as a result of the noncompliance;*
- *The variation would not result in any additional privacy or amenity impacts to neighbouring lots;*

- *Strict compliance with the control would severely reduce the capability of the site, with no gain in amenity for adjoining lots.*

In response to the comments raised above, Council has provided the following justification as to how there are sufficient environmental planning grounds to justify the contravention in this instance:

Comments:

The proposed variation aligns with the broader planning objectives of the LEP and the Apartment Design Guide (ADG), particularly with respect to urban densification and efficient land use in the locality. The proposed building separation is consistent with similar developments approved in the area, ensuring compatibility with the existing and future character of the precinct and will contribute to a coherent street layout. These are established in the LEC case *Wehbe v Pittwater Council [2007] NSWLEC 827* which confirmed that flexibility in development standards may be permitted where variations result in no significant adverse impacts and meet broader planning objectives.

The proposal offers superior environmental planning outcomes through enhanced communal spaces, improved pedestrian connectivity, and high-quality architectural design. A detailed environmental assessment confirms that the variation does not result in adverse impacts on neighbouring properties or public spaces.

This Clause 4.6 variation request demonstrates that strict compliance with the building separation standard is unnecessary and unreasonable in this case. The proposed design achieves the objectives of the control through alternative solutions, aligns with relevant planning principles, and delivers superior outcomes for the community and urban environment. Supporting case law from the NSW Land and Environment Court further reinforces the appropriateness of this variation.

(b) 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.

(c) 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')***

Part 1 – General Controls for all Development and Part 4 – Development in Liverpool city centre are applicable to the development. Detailed compliance tables are located in Attachment C, and noncompliance's are listed below.

i. Parking Requirements

The site is located within 400 metres of land zoned B4 Mixed Use in the Liverpool City Centre, being a nominated regional centre for the purposes of this provision. Car parking must therefore comply with either the DCP 2008 or the RMS Guide to Traffic Generating Development, whichever is less.

The car parking does not comply with the revised TfNSW parking guidelines and proposes to

reduce the parking from the approved 244 spaces in the Concept DA to 205 spaces in the development. However, the Council's Traffic Engineer has requested the parking to be consistent with the approved 244 or align with the new TfNSW parking rates. A condition of consent is proposed to be imposed and requires the applicant to prepare a revised Basement plan with amended parking spaces that comply with the updated parking requirements or the approved concept DA (DA-1262/2022).

ii. Street Alignments and Street Setbacks

The proposed development does not comply with the DCP requirement for a 4.5m landscaped setback to Carey Street. The basement, ground floor, and first floor have a variable setback of 0 – 1.5m, and Levels 2-7 are built to the boundary. 4.5m or greater setbacks are provided from Level 8 and above.

The setbacks proposed are consistent with the concept approval DA-1262/2022 and therefore can be considered acceptable for the same reasons, i.e. that the proposed reduced setback accentuates the importance of the site and activates the corner of the site.

The following contribution 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.

(d) 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.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

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

4.2 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:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed mixed-use development complies with the relevant controls and standards and is consistent with development on similar sites within the immediate locality. Additionally, the site adjoins a classified road and is within

the Liverpool CBD, being an area intended for growth with appropriate services existing in the area to support higher-density development.

- Access and traffic – The proposal would result in an increase in traffic around the development, however, it would not exceed the capacity of adjoining roads. Additionally, the site is in reasonably close proximity to public transport, which would reduce the need for car travel and improve accessibility to the development. Insufficient parking spaces are provided within the development, and the adjoining streets do not have sufficient space to support on-street parking for this development.
- Public Domain – The proposal would improve the public domain through the provision of new footpaths and landscaping, as well as open space in front of the development on the ground floor.
- Utilities – The site is appropriately serviced and has been supported by all relevant agencies subject to conditions of consent.
- Heritage – The site does not adjoin any heritage item and would not have any impacts on heritage within the area.
- Natural environment – The subject site is within a highly urbanised area with significant cut and fill, as well as concreting, existing on the site. The proposal involves significant landscaping including native planting, and some deep soil zones and as such is considered to have a positive impact.
- Noise and vibration – Significant excavation is proposed as part of the application. Appropriate conditions of consent will be imposed to mitigate any potential impacts to the vicinity.
- Natural hazards – The site is not affected by natural hazards.
- Safety, security and crime prevention – CPTED principles have been appropriately considered by the applicant and during the assessment process, and it is considered that the development will satisfactorily mitigate safety concerns, subject to conditions of consent.
- Social impact – The proposal would have a positive social impact through the provision of new footpaths, recreational facility and tourist accommodation, as well as residential accommodation.
- Economic impact – The provision of a hotel, restaurant, bar and gym would provide significant employment opportunities within the local area, would encourage economic investment in Liverpool and would facilitate tourism which would also provide economic benefits.
- Site design and internal design – The proposal is situated appropriately on the site to minimise privacy, noise and overshadowing impacts to adjoining lots while maximising economic use of land.
- Construction – Conditions of consent are recommended to be imposed to mitigate impacts from construction. In particular, conditions around pollution, noise and hours of work are to be imposed.
- Cumulative impacts – The proposal is generally consistent with the planning controls and therefore would not result in an adverse cumulative impact.

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

4.3 Section 4.15(1)(c) - Suitability of the site

The proposal fits within the locality, is appropriately serviced by relevant infrastructure, is not affected by natural hazards and is not prohibited by the adjoining uses. As such, it is considered that the site is suitable for the proposal.

4.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

4.5 Section 4.15(1)(e) - Public interest

The proposal is generally consistent with the relevant planning controls, as well as generally consistent with the previously approved concept DA. It appropriately mitigates potential impacts and would provide economic and social benefits through the provision of hotel and residential accommodation. It is consistent with the relevant strategic planning documents and the principles of ecologically sustainable development. On balance, it is considered that the proposal is consistent with 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.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent.

Table 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) – N/A			
Referral/Consultation Agencies			
Endeavour Energy	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 2.122 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	Transport for NSW raise no objections subject to conditions, including road opening and works zone applications to be lodged as necessary prior to CC.	Y
Design Review Panel	Section 145 – <i>State Environmental Planning Policy (Housing) 2021</i> 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 (Housing) 2021 assessment and the Key Issues section of this report.	Y
Sydney Water Corporation	Section 78 – <i>Sydney Water Act 1994</i>	Referral rejected	N/A
South Western Sydney Local Health District	Clause 7.17A – <i>Liverpool Local Environmental Plan 2008</i>	The subject development would not impact the helicopter flight paths to Liverpool Hospital	N/A
Bankstown Airport	[clause]	Bankstown Airport management raise no objection subject to the development remaining at or below 133.70 AHD and separate crane approval requests being submitted to and approved by CASA, Airservices and Flysafe prior to construction.	Y
Liverpool City Police Area Command	[clause]	Liverpool Police raise no objection subject to conditions of consent around CCTV, lighting, and vegetation management.	Y
Integrated Development (S 4.46 of the EP&A Act) – N/A			

5.2 Council Officer Referrals

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

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Land Development Engineering	Council's Land Development Engineering section reviewed the development and raised no objections subject to imposition of conditions of consent.	Y
Traffic & Transport	Council's Traffic Engineering Officer reviewed the proposal and raised concerns in relation to traffic generation and car parking. These issues are considered in more detail in the Key Issues section of this report.	Refer to key Issues

Building	Council's Building section reviewed the application and raised no objections subject to imposition of conditions of consent.	Y
Environmental Health	Council's Environmental Health section reviewed the application and raised no objections subject to imposition of conditions of consent.	Y
Waste Management		
Community Planning	Supported subject to conditions of consent.	Y
Economic Development	Supported without conditions	Y
Fire Safety	Supported without conditions	Y
Flood Engineering	Supported subject to conditions of consent.	Y
Heritage	Supported subject to conditions of consent - Archaeological assessment and detailed heritage interpretation strategy required to be provided via conditions.	Y
Landscape	Supported subject to conditions of consent.	Y
Public Art	The preliminary Public Art Plan is inadequate for the site and requires additional matters to be addressed. The art can be completed via conditions of consent.	By Condition
Strategic Planning	<p>It was noted that the commercial floor area is not clearly defined on the plans. In this regard, the commercial area has been measured and the council is satisfied that at least 20% of the floor area is for commercial purposes.</p> <p>Ground floor access has been amended to be consistent with the existing RL of the footway outside the site boundary. In addition, the development is located on a corner that slopes from north to south and the development proposes a raised garden bed with a ramp that moves through the garden area on the corner to all for mobility access along with a staircase located outside the hotel entry lobby.</p>	Y
Urban Design & Public Domain	Supported subject to conditions of consent	Y

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 Council's Community Participation Plan from 6

September 2024 until 20 September 2024. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

The Council received a total of 2 unique submissions, comprising 2 objections and 0 submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 7**.

Table 8: Community Submissions

Issue	No of submissions	Council Comments
Overshadowing	1	Some overshadowing of sites to the south is inevitable due to the lot orientation, however amenity impacts of the proposal were considered under the concept application and approval, and as no increase in building envelope has occurred, the proposal is considered satisfactory with regard to amenity impacts.
Traffic	1	The application has been referred to and supported by TfNSW subject to conditions, therefore it is deemed satisfactory in regard to traffic impacts on Macquarie Street. Additionally, Council's Traffic section raised no objections in relation to traffic impacts, subject to conditions of consent – concerns were raised around parking provision being insufficient.
Safety	1	The application has been referred to NSW Police and supported subject to conditions of consent, as such it is deemed that there will not be safety impacts from the development. Additionally, the proposed bar establishment is associated with the hotel and is located on the eighth floor, therefore it is deemed unlikely to result in disturbances and violence.
Pollution	1	Appropriate conditions of consent will be imposed to ensure pollution from commercial premises is minimised, and it is considered unlikely for pollution to arise from the residential apartments.
Infrastructure	1	The site is located on a classified (state) road and is within walking distance of multiple parks. There are also bus stops in reasonable proximity to the site, and as it is within the CBD the area is quite walkable and has good access to various services.

6. KEY ISSUES

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

6.1 Building Separation

As discussed in Section 3.1 of this report, the applicant has submitted a Clause 4.6 Variation Request to vary Clause 7.4 (Building Separation) of the LEP. The variation request has been considered in accordance with the provisions of Clause 4.6 and the noncompliance is considered acceptable in the circumstances of the case.

6.2 Street Setback

The proposed development does not comply with the DCP requirement for a 4.5m landscaped setback to Carey Street. The basement, ground floor, and first floor have a variable setback of 0 – 1.5m, and Levels 2-7 are built to the boundary. 4.5m or greater setbacks are provided from Level 8 and above.

The setbacks proposed are consistent with the concept approval DA-1262/2022 and therefore can be considered acceptable for the same reasons, i.e. that the proposed reduced setback accentuates the importance of the site and activates the corner of the site.

6.3 Susceptibility Analysis

The applicant has submitted a satisfactory susceptibility analysis which demonstrates the neighbouring sites are capable of development which achieves the maximum FSR and receives adequate solar access.

6.4 Traffic & Parking

The proposed parking has been reduced from 244 approved in the concept DA, and proposed 205 in the subject DA. The council's Traffic Engineers do not support the reduction in parking and have requested that the proposal comply with the amended Parking requirements as per the revised TfNSW Guide. The Residential component prosperous 103 parking spaces and the new guide requires 127 parking spaces. Furthermore, the Traffic Engineers noted that an additional study is required of hotels in the area to establish appropriate parking, alternatively, the proposal should maintain the approved 244 parking spaces under the Consent DA. for the hotel portion. The matter is proposed to address by revised basement plans to be provided to the council for review prior to the issue of a construction certificate. Not resolved.

7. 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 that the application can be supported.

The key issues around this application are building separation, street setback, susceptibility analysis and traffic & parking issues. These have been addressed, and on balance it is considered that the development is compatible with the locality and worthy of approval.

Based on the assessment against the relevant planning considerations, it is deemed that the site is suitable for the proposed development. The proposal is considered to be compatible with the locality as it is of an envisioned bulk and scale, provides a mix of housing, adaptable housing, and commercial, and improves amenity for residents and visitors. The proposal takes into consideration characteristics of the site and adjoining lots, as well as the locality, and produces an overall acceptable development with limited detrimental impacts to neighbouring lots.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

8. RECOMMENDATION

That the Development Application DA-364/2024 for the construction of a 31-storey mixed-use development comprising hotel or motel accommodation, recreational facility (indoor), residential apartments and associated site works at 402 Macquarie Street, Liverpool be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent/reasons for refusal
- Attachment B: Liverpool DCP Compliance Tables & Apartment Design Guide Compliance Tables
- Attachment C: Architectural Plans - 281579.2024
- Attachment D: Landscape Plans (Public Domain) - 269389.2024
- Attachment E: Landscape Plans - 269388.2024
- Attachment F: Stormwater Plans - 269406.2024
- Attachment G: Survey Plan - 269411.2024 & 269412.2024
- Attachment H: GFA Report and Diagrams - 269372.2024
- Attachment I: Clause 4.6 Request – Building Separation - 269375.2024
- Attachment J: Statement of Environmental Effects - 269405.2024
- Attachment K: Susceptibility Analysis (Architectural Plans) - 269371.2024
- Attachment L: Geotechnical Report - 269386.2024
- Attachment M: Design Principal Statement - 269380.2024
- Attachment N: Design Verification Statement - 269379.2024
- Attachment O: Design Excellence Panel – Minutes - 401057.2024
- Attachment P: BASIX Assessment Report - 269373.2024
- Attachment Q: Access Report - 269368.2024
- Attachment R: Detailed Site Investigation - 269376.2024
- Attachment S: Plan of Management - 269400.2024
- Attachment T: CPTED Report - 269378.2024
- Attachment U: Traffic Report - 269413.2024