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| DATE OF DETERMINATION | Monday, 9 August 2021 |
| PANEL MEMBERS | Louise Camenzuli (Acting Chair), Nicole Gurran, Sandra Hutton, Peter Harle and Wendy Waller |
| APOLOGIES | Justin Doyle |
| DECLARATIONS OF INTEREST | None |

Public meeting held by teleconference on 9 August 2021, opened at 9.45am and closed at 10:06am.

MATTER DETERMINED

PPSSWC-58 – Liverpool – DA82-2020 at Lot 6 DP 628996 167 Northumberland Street, Liverpool NSW 2170 – Concept DA (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Application to vary a development standard

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

- a) compliance with cl. 7.3 (Car parking in Liverpool city centre) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 7.3 (Car parking in Liverpool City Centre) of the LEP and the objectives for development in the B4 zone; and
- c) the concurrence of the Secretary has been assumed.

Specifically, the Panel is satisfied that the minor non-compliance with clause 7.3 is justified given the proposed development is sufficiently proximate to transport infrastructure and consistent with the general desire to reduce cars in the city centre, and the extent of non-compliance has been reduced during assessment of the application by the amended particulars that introduce a third level of basement parking.

Liverpool Station is located 650 metres from the site, servicing the Inner West, Leppington, Bankstown and Cumberland lines. Liverpool bus interchange is also located immediately adjacent to the station. It serves as a terminus for all bus routes serving the CBD and Liverpool to Parramatta, all within walking distance from the site and servicing the immediate locality. The proposed mixed-use development also provides 40 bicycle spaces to encourage active modes of transport.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to uphold the Clause 4.6 variation to car parking; and approve the application for the reasons outlined in the council assessment report. In particular, the following issues, generally raised at the Panel Briefing on 14 April 2020, have been addressed to the Panel's satisfaction:

1. Satisfaction of the matters set out in clause 7.5A(4) of the Liverpool LEP;
2. Potential site isolation of 179 Northumberland St, Liverpool – offers to purchase the property in line with the principle in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* have been made. While this site will not be able to capitalise on the FSR provision of 10:1 available under clause 7.5A of the Liverpool LEP for site amalgamation, the site can be developed in isolation at an FSR of 3:1. To ensure that that this development potential is capable of being realised, a condition of consent has been imposed requiring the creation of a right of way for vehicular access through the basement, benefiting this property (condition 10).
3. Shadowing, privacy and amenity impacts to the building located at 58 Bathurst St, Liverpool. New condition 8 is proposed to preserve the amenity of this existing building to the greatest extent possible, noting that the Council has indicated that the site at 58 Bathurst St, Liverpool is anticipated to be redeveloped in the future to realise the full potential of the applicable city centre FSR controls. The serviced apartments above the podium have been setback 7.5m from the property boundary, which amounts to a building separation distance of 16.5 metres. In this respect, condition 8 has been imposed.
4. Adequacy of parking: As set out above in relation to the clause 4.6 variation request.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

- New condition 6:

Any future development application is to include a Recreation Facility (Indoor), in accordance with the stamped plans in condition 1. The recreation facility (indoor) is to operate in accordance with the definition of that use as stipulated in the Liverpool Local Environmental Plan 2001 and is to be publicly accessible. This floor space is to be in addition to the GFA specified in Condition 5.

The purpose of this condition is to ensure compliance with clause 7.5A(3) of the Liverpool LEP, taking into consideration Control 2 of Section 4.2.5 of Part 4 Liverpool City Centre in Liverpool DCP 2008.

- New condition 8:

Any future development application is to maintain a minimum 6m setback from the western boundary to the nearest building wall on level 3 of the podium (being the 4th level of the building), consistent with the Master Plan Design Report (page 25, 28, 29, 45-48). Any future development application is to justify any walls, barriers, architectural elements, treatment and use of the level 3 podium edge forward of the 6m setback.

The purpose of this condition is to preserve, to the greatest extent possible, the amenity of the Residential Flat Building to the immediate west of the site, located at 58 Bathurst St, Liverpool. For the avoidance of doubt, level 3 is identified as the 4th Level on the plans. It also addresses inconsistency between the Master Plan Design Report and the Concept Plans, of which the Design Report is preferred, taking into consideration Control 6 and Figure 4.7 of Section 4.2.5 of Part 4 Liverpool City Centre in Liverpool DCP 2008. The condition provides flexibility to allow any future development application to justify any building elements that are proposed forward of the 6m setback associated with use of the setback for outdoor childcare purposes.

- New condition 9:

No signage is to be located above RL.127.






The purpose of this condition is to ensure that no signage extends above the roofline of the proposed development and is otherwise integrated into the façade of each elevation of the building.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Overshadowing
- Privacy Impacts
- Traffic congestion and poor access arrangement
- Inconsistent with character of the area
- Damage to building during construction

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues appropriate conditions have been imposed.

| PANEL MEMBERS | |
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|  Louise Camenzuli (Acting Chair) |  Nicole Gurran |
|  Sandra Hutton |  Peter Harle |
|  Wendy Waller | |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSSWC-58 – Liverpool – DA-82/2020 |
| 2 | PROPOSED DEVELOPMENT | Concept DA to establish building envelopes for the future development of the site for mixed use purposes, incorporating a 32-storey tower with 3 levels of basement parking, providing retail/commercial floorspace and serviced apartments. |
| 3 | STREET ADDRESS | Lot 6 DP 628996 167 Northumberland Street, Liverpool NSW 2170 |
| 4 | APPLICANT/OWNER | Karimbla Construction Services Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$30 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment ○ Liverpool Local Environmental Plan 2008 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 ○ Part 1: General Controls for All Development ○ Part 4 – Development in the Liverpool City Centre • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the Building Code of Australia • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> • Council assessment report: 27 July 2021 • Clause 4.6 variation request Liverpool LEP 2008 Clause 7.3 car parking • Written submissions during public exhibition: 3 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Public - None ○ Council assessment officer - George Nehme ○ On behalf of the applicant – Walter Gordon, Hannah Gilvear, Frank Ru, Siobhan McInerney, James Turner, Cameron Greatbatch and Shilpa Shetye • Total number of unique submissions received by way of objection: 3 |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> • Briefing: Tuesday, 14 April 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Louise Camenzuli (Acting Chair), Peter Harle, Wendy Waller, Nicole Gurran and Justin Doyle ○ <u>Council assessment staff</u>: Peter Nelson and Boris Santana • Final briefing to discuss council's recommendation: Monday, 9 August 2021 |

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| | | <ul style="list-style-type: none"> ○ <u>Panel members</u>: Louise Camenzuli (Acting Chair), Nicole Gurran, Sandra Hutton, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: George Nehme and William Attard |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report. These draft conditions were updated by the Council on 9 August 2021 and have been further amended by the Panel. |