



DATE OF DETERMINATION	Wednesday, 15 September 2021
PANEL MEMBERS	Louise Camenzuli (Acting Chair), Nicole Gurrán, Sandra Hutton, Wendy Waller and Peter Harle
APOLOGIES	Justin Doyle
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 3 September 2021.

MATTER DETERMINED

PPSSWC-128 – Liverpool – D-822/2020] at Lot 6 DP 628996 167 Northumberland Street, Liverpool NSW 2170 – Mixed use development (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.

Following the public meeting on 9 August 2021, the panel determined to defer determination of the application pending provision of further information regarding:

- (a) the architectural or other justification of all structures and façade elevation treatments on level 3 of the podium that sat forward of the 6m setback on the western boundary facing the laneway; and
- (b) solar access information relating to the neighbouring existing residential units facing the laneway at 58 Bathurst St.

The panel has now considered further information provided to it in respect of both matters on 3 September 2021, including an Addendum Assessment Report addressing both matters.

The panel was also provided with a proposed updated set of draft conditions of consent on 3 September 2021.

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 (development standard) 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 (development standard) 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.

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 in Liverpool City Centre; 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 was imposed on DA 82/2020 requiring the creation of a right of way for vehicular access through the basement, benefiting this property (condition 10). The Panel has also now imposed a condition of consent on the subject DA requiring registration of a section 88B instrument creating the right of way prior to grant of an Occupation Certificate for the development (see new condition 134).

Shadowing, privacy and amenity impacts to the building located at 58 Bathurst St, Liverpool. New condition 4A is proposed (consistent with condition 8 of the DA 82/2020) 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. Revised plans (dated 27 August 2021) were also provided to address the façade elevation treatments on level 3 of the podium that sat forward of the 6m setback on the western boundary facing the laneway and these plans are now referenced in condition A1.

Waste collection: Conditions of consent have been imposed to make provision for the collection of waste by a private contractor, including new condition 140.

Adequacy of parking: As set out above in relation to the clause 4.6 variation request.

The Panel notes, for the record, that the Council confirmed at the Briefing prior to the meeting that the references to certain matters being addressed at a "future DA stage" in the Table at pages 81-82 of the Briefing Report are in error (being a hang-over from the Concept DA briefing Report (DA 82/2020)). The Panel is satisfied that these matters are addressed by the subject DA.

CONDITIONS

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

- Updates to plan references in condition A1

- Specifically, condition A1 has been updated to reference the updated architectural plans (dated 27 August 2021) showing the 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 page 25 of the Master Plan Design Report. This is also a requirement under condition 8 of the Concept Plan Approval (DA 82/2020).

- An amendment to condition 4 and new condition 4A

The purpose of the amendments to these conditions is to clarify the requirement for the additional screening (condition 4) and to require balustrading to the level 3 podium to be maintained to opaque glazing (condition 4A).

- Condition 66 to be amended to delete reference to “Council administration building” and replace with “subject development site”.

This amendment is made to correct a typographical error.

- New condition 134:

Prior to the issue of any Occupation Certificate a restriction as to user is to be imposed that burdens the subject site and benefits the adjoining southern site known as (Lot 1 DP628997, 179 Northumberland Street Liverpool, for the purpose of a right of way through the Level 01 basement to serve as a future vehicle driveway connection.

The purpose of this condition is to ensure that Lot 1, DP628997, being 179 Northumberland Street Liverpool, has a legal right of right through the Level 01 basement of the subject property in order to preserve the future development potential of this adjoining site.

- New condition 140:

Prior to the issue of any occupation certificate details of the private waste contractor is to be provided to Council’s Waste Management team for record keeping purposes. Evidence that the details of the contractor have been provided to Council is to be provided to the PCA.

The purpose of this condition is to ensure that appropriate arrangements are made for the private collection of waste from the proposed development.

- New condition 142:

This consent does not approve the fit-out of the Child Care centre. A separate consent is to be obtained for the fit out of the childcare premises.

The purpose of this condition is to clarify that a further development is required for the fit-out of the child care centre.

- Miscellaneous amendments to the references to relevant construction certificates (heading to Section B and conditions 13, 15, 27, 41, 42, 46, 112, 113, 114, 116, 119, 120, 123, 129, 130, 131, 133, 135, 136 and 139.

Amendments were made to various consent conditions to make clear that certain conditions are to be satisfied prior to the issue of a “relevant” construction certificate or occupation certificate, as appropriate.

The Panel notes that the above changes were made at the request of the Applicant and that, some, but not all, of these requested amendments were accepted following consultation with Council.

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 also heard from one objector at the panel meeting who raised concerns regarding additional traffic service lane creating potential pedestrian safety concerns, potential inadequate parking and overshadowing of the area referred to as the Macquarie St mall (being the pedestrian mall between Elizabeth and Moore Sts) and the building located at 58 Bathurst St.

The panel was satisfied at the meeting that there was not anticipated to be any significant shadowing of the Macquarie Mall caused by the proposed development. Appropriate conditions of consent have been raised to address the other matters, including conditions relating to the building setbacks and conditions relating to pedestrian safety and construction management.

The panel notes that the primary issues of concern in the written submissions were:

- Overshadowing
- Privacy Impacts
- Traffic congestion and poor access arrangements
- 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 further assessment were raised during the public meeting. The panel notes that in addressing these issues appropriate conditions have been imposed.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-128 – Liverpool – DA-822/2020
2	PROPOSED DEVELOPMENT	Mixed use development incorporating a 32-storey tower with 3 levels of basement parking, retail/commercial and child care floorspace and serviced apartments and associated signage.
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 No. 55 – Remediation of Land ○ State Environmental Planning Policy No. 64 – Advertising and Signage ○ State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 ○ 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 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: 28 July 2021 • Council addendum assessment report: 3 September 2021. • Clause 4.6 Variation Request Liverpool LEP 2008 Clause 7.3 Car Parking • Written submissions during public exhibition: 2 • Verbal submissions at the public meeting on 9 August 2021: <ul style="list-style-type: none"> ○ Craig Whitehouse ○ 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: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Monday, 8 February 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurrán, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: Boris Santana, George Nehme and Lina Kakish

		<ul style="list-style-type: none"> • Final briefing to discuss council’s recommendation: Monday, 9 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: George Nehme
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council addendum assessment report dated 3 September 2021