DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	7 November 2025
DATE OF PANEL DECISION	6 November 2025
DATE OF PANEL BRIEFING	11 August 2025 and 27 October 2025
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Stuart Mangleson, Anthony Krilich
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 11 August 2025 and 27 October 2025.

MATTER DETERMINED

PPSSWC-512 – Liverpool – DA-565/2024 – 2 Charles Street and 134 Terminus Street, Liverpool - Concept Development Application for the Construction of a 34 Storey Mixed Use Building, comprising a ground floor commercial/information & educational facility, a child care centre, 118 hotel suites, 190 residential apartments, and 4 levels of basement parking.

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and matters listed at item 8 in Schedule 1.

Applicability of Clause 7.5A

In previous briefings, the Panel asked for confirmation that Clause 7.5A of the *Liverpool Local Environmental Plan 2008* applies to the development.

The Panel is now satisfied that it does:

- the site is in Area 8
- it has an area of over 1,500m^2
- it has 2 street frontages, and the Nagle Street Serviceway is an acceptable second frontage
- at least 20% of the gross floor area (GFA) will be set aside for the uses anticipated in Clause 7.5(4)(2) even though the specific uses are yet to be determined
- the concept DA could satisfy the requirements in Clause 7.5A(3) and (4).

An issue raised by Council is the requirement of the clause that the land the subject of the DA "has a lot size exceeding 1500m2" whereas the Council reports that "lot consolidation has not been proposed and each existing lot is less than 1500sqm". The Panel accepted for the purposes of its assessment that the clause should be read to require the 'total lot size' of the DA site to exceed 1500m^2 although the development must extend over all of the lots making up that total. Because the development as proposed includes new building work including major excavation extending over both lots, if approved some form of consolidation of the lots would likely be required by condition. If the development were to be found to be otherwise acceptable, the Panel is confident that the issue of permissibility could be managed.

Clause 7.5A also requires a development control plan to have been prepared that provides for the matters specified in subclause (4). The Panel accepts that a concept DA may be proposed as alternative to the DCP required by an environmental planning instrument under Section 4.23 of the EP&A Act. Under Section 4.23(3), the concept DA would have to satisfy the requirements for the DCP in Clause 7.5A which include the matters specified by Clause 7.5(3)(f)(i)–(viii) and (x) of the LEP. Those matters include that are of particular relevance to the Panel's assessment:

(i) the suitability of the site for development,

(ii) heritage issues and streetscape constraints,

(iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form, and

(v) bulk, massing and modulation of buildings,

Given the extent of the substantial increase in the potential development permissible on a site where the clause operates, those matters are critical and require close assessment.

Consideration of additional information

At the final briefing the Applicant was critical of Council saying:

- it had not properly considered the additional information that was submitted to support the assessment of the amended DA
- it was still asking for information that was unnecessary for the determination of the concept DA and could be provided in future DAs for the development of the site.

In making its determination, the Panel has considered all of the additional information submitted by the Applicant, including the Urban Design Study, Conservation Management Plan, Heritage Archaeological Assessment and Childcare Statement.

After considering this information, the Panel is satisfied that some of the matters raised in Council's assessment report and supplementary report – such as the shortfall in parking requirements – could potentially be addressed by the provision of further information or conditions if the proposed development otherwise warranted approval.

After considering the following matters, however, the Panel ultimately concurred with the Council's recommendation that the DA in its present form should be refused.

Heritage

The Panel has considered the matters required under Clause 5.10 of the LEP while taking note that Clause 7.5A (by reference to Clause 7.57.5(3)(f)(ii)) directs particular attention to issues of heritage.

The Conservation Management Plan for the site records that the item is of local significance and that:

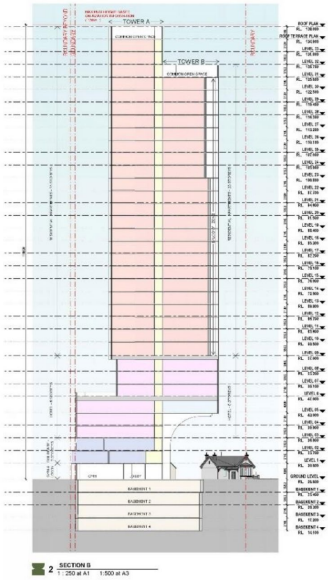
> "… the site at 2 Charles Street, Liverpool, known as Lyndeer House, demonstrates the historical development and evolution of the Liverpool locality. The dwelling remains a good example of a Victorian/Federation-period dwelling with aesthetic features including a canted bay window, decorative timber bargeboards and fretwork, chimney stacks complete with chimney pots, later interwar-period decorative plaster ceilings.. The site has research and archaeological potential, particularly linked to the tyre platform, well, and its contents. The dwelling does not demonstrate rarity at a local level on its own however it is a rare example of a dwelling with an associated stable."

The Panel accepts the CMP's conclusion that adaptive reuse of the item to ensure its future conservation, management and ongoing use is feasible, and that any proposed modification must consider the identified significance of the place and the significant fabric that is intrinsic to the understanding and conservation of the identified heritage values of the place.

The proposal includes substantial work on the heritage site including major excavation close to the wall of the item which will result in the loss of most of the curtilage. The façade of the cantilevered building extends upwards close to the alignment of the building.

The Panel recognises that substantial effort has been undertaken in the architectural design to attempt to modulate the proposal to respond to the heritage item while accommodating the proposed new tower.

However, the Panel ultimately agreed with Council that the heritage impacts of the development remain unacceptable: On any view, the proposed 34 storey building will completely dominate the local heritage item on the site as is evident from this image included in the Applicant's Heritage Archaeological Assessment:



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Coupled with the loss of the grounds of the item, the resulting built form will substantially detract from its heritage value and setting. While the fabric of the building will be conserved, Clause 5.10 of the LEP includes as an objective of its heritage provisions to be to "to conserve the heritage significance of heritage items …, including associated … settings and views."

A substantial reason for the form of the development proposed is that the heritage item makes up the greater part of the total site area. As discussed below, the adjoining site to the east (which apparently was advertised for sale and transferred during the process of preparing and assessing this DA) would allow for the construction of a tower without those profound heritage impacts if consolidated with the part of the site that is not listed as a heritage item. For that reason, it is not established that preservation of the heritage item is inconsistent with a reasonable development of the site.

The Panel considered the Applicant's arguments that there were successful examples of this sort of development in North Sydney and the Sydney CBD, but does not believe that these examples are directly translatable: they are in the thick of those two urban areas whereas this development will be right on the edge of the Liverpool city centre as it transitions from the "opportunity zone" to the lower density residential areas to the west.

Compliance with development standards

The development does not comply with the building separation requirements in Clause 7.4(e) of the LEP, which seeks to ensure "*minimum sufficient separation of buildings for reasons of visual appearance, privacy and solar access*". The development breaches those standards from 45 metres above the finished ground level.

These non-compliances relate to the frontages on the eastern, southern and south-western boundaries; but the key non-compliance relates to the frontage on the eastern boundary.

This is because the Applicant's justification for the non-compliance in its Clause 4.6 request is that the development on the adjoining sites on the southern and south-western boundaries cannot be constructed beyond 45 metres above the finished ground level under the current planning controls. But the situation is

more complicated when it comes to development on the adjoining site on the eastern boundary, which is also located in the opportunity zone in the LEP.

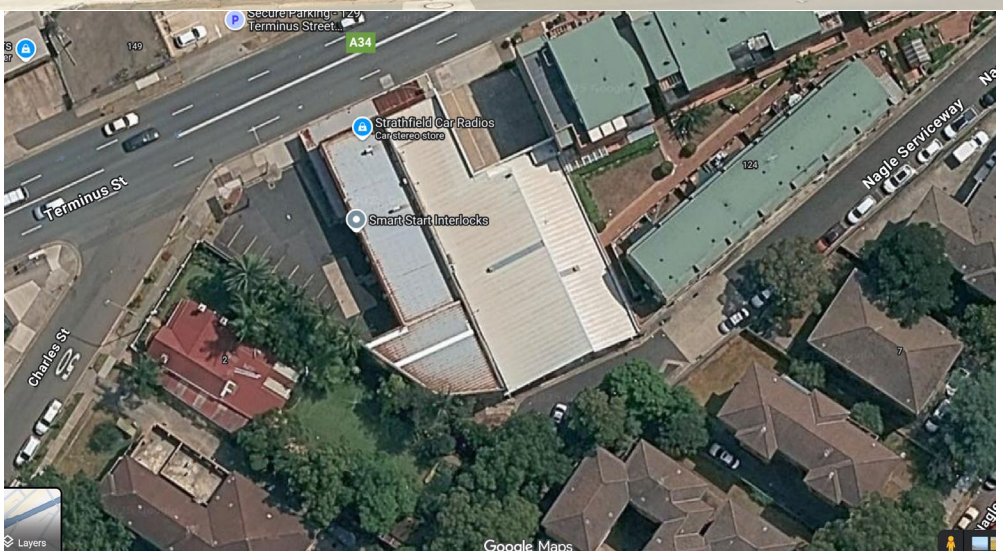
In its Clause 4.6 application to vary the development standard, the Applicant says:

- this site is too small to get the bonuses under Clause 7.5A of the LEP, so it cannot be constructed more than 45 metres above the finished ground level – just like the adjoining sites on the southern and south-western boundaries, or
- the site could be amalgamated with the larger site to the east to get the bonuses, and the redevelopment of the larger site could achieve the required building distances.

While those two propositions may be correct, there is a tension between them because if the adjacent site to the east can be amalgamated with the larger site to the east then the bonuses allowing development above 45 metres will then apply. While no doubt there are developments on a future consolidated site to the east which could be set further back from the boundary than the LEP requires, the development of the subject site is nonetheless in breach of the LEP standard which will constrain future options for the adjoining land. The Panel is not persuaded by the argument that the non-compliance is acceptable because an adjoining site could adopt a form which would absorb the reduced setback.

The Panel notes there are several constraints to amalgamating and redeveloping the 2 sites to the east – including that the larger site was redeveloped in recent years and is subject to a strata scheme – compared with amalgamating the site on the eastern boundary with the development site. This means the achievement of the bonuses could be delayed for many years and may never occur.

This is what is at the heart of Council's concern about the constraints of this site. This Google Streetview photograph dated as being taken in December 2024, and this aerial photograph of the sites, together assist in understanding these issues:



The Panel is also not convinced by the Applicant's arguments that there are good planning reasons for allowing the non-compliances, particularly the argument that it is necessary to accommodate the relocated floor space across the site to minimise the heritage impacts of the development, particularly when the Panel considers these impacts to be unacceptable.

Consequently, the Panel is not satisfied that it would be unreasonable or unnecessary to apply the development standard in this case.

Design excellence
In its previous briefing, the Panel asked Council to refer the amended DA to the Design Review Panel for advice, or alternatively, to commission advice from an independent design expert.

Unfortunately, Council did not do this.

Nevertheless, after reviewing the amended plans, Urban Design Study and other additional information relating to design, the Panel is not satisfied that the development exhibits design excellence as required under Clause 7.5 of the LEP.

In particular, the Panel is not satisfied having regard to the matters discussed above that:

- the development exhibits a high standard of architectural design
- the site is suitable for the development
- the development will have acceptable impacts on the existing heritage item on the site
- the development will achieve an acceptable relationship with potential towers on neighbouring sites, particularly in relation to compliance with relevant building separation development standards.

Development application
The Panel determined to refuse 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 refused the DA for the reasons outlined in Council's assessment report and supplementary assessment report, as modified by the comments in this report.

The primary reasons for refusal were:

- the unacceptable heritage impacts of the development
- non-compliance with the relevant building separation distances in Clause 7.5 of the LEP
- the development does not exhibit design excellence as required by Clause 7.5 of the LEP
- the site is unsuitable for the development.

CONSIDERATION OF COMMUNITY VIEWS
Council exhibited the DA from 18 December 2024 to 23 January 2025 and received one submission. This submission was concerned about overshadowing impacts of the development.

The Panel considered the issues raised in this submission when it decided to refuse the DA.

PANEL MEMBERS	
Justin Doyle (Chair)	Louise Camenzuli

David Kitto	Stuart Mangleson
Anthony Krilich	

SCHEDULE 1		
1	**PANEL REF – LGA – DA NO.**	PPSSWC-512 – Liverpool – DA-565/2024
2	**PROPOSED DEVELOPMENT**	Concept Development Application for the Construction of a 34 Storey Mixed Use Building, Comprising of Ground Floor Commercial/Information & Educational Facility, a Child Care Centre, 118 Hotel Suites, 190 Residential Apartments, and Four (4) Levels of Basement Parking.
3	**STREET ADDRESS**	2 Charles Street and 134 Terminus Street, Liverpool
4	**APPLICANT/OWNER**	Applicant: Chanine Design Pty Ltd Owner: Mr N David and Mr P Costi
5	**TYPE OF REGIONAL DEVELOPMENT**	General development over $30 million

6	**RELEVANT MANDATORY CONSIDERATIONS**	• Environmental planning instruments:
		  ○ 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
		• Draft environmental planning instruments: Nil
		• Development control plans:
		  ○ Liverpool Development Control Plan 2008
		• Planning agreements: Nil
		• Provisions of the *Environmental Planning and Assessment Regulation 2021:* Nil
		• Coastal zone management plan: Nil
		• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality
		• The suitability of the site for the development
		• Any submissions made in accordance with the *Environmental Planning and Assessment Act 1979* or regulations
		• The public interest, including the principles of ecologically sustainable development

7	**MATERIAL CONSIDERED BY THE PANEL**	• Council assessment report: 1 August 2025 • Council addendum report: 15 October 2025 • Written submissions during public exhibition: 1 • Total number of unique submissions received by way of objection: 1

8	**MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL**	• Briefing: 17 March 2025
		  ○ Panel members: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ned Mannoun
		  ○ Council assessment staff: Emily Lawson, Nabil Alaeddine, Thomas Wheeler
		  ○ Applicant representatives: Declined to attend
		
		• Deferral briefing: 11 August 2025
		  ○ Panel members: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Ned Mannoun, Peter Ristevski
		  ○ Council assessment staff: Emily Lawson, Nabil Alaeddine
		  ○ Applicant representatives: James Corry, Margaret Roberts, Geoff Bonus, Rudy Jasin

		• Final Determination briefing**:** 27 October 2025
		  ○ Panel members: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Stuart Mangleson, Anthony Krilich
		  ○ Council assessment staff: Emily Lawson, Nabil Alaeddine
		  ○ Applicant representatives: James Corry, Margaret Roberts, Geoff Bonus, Rudy Jasin

9	**COUNCIL RECOMMENDATION**	Refusal
10	**DRAFT CONDITIONS**	Not Applicable