

DATE OF DETERMINATION	Monday, 12 October 2020
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Wendy Waller
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by Public Teleconference on 12 October 2020, opened at 11:06am and closed at 11:37am.

MATTER DETERMINED

PPSSWC-70 – Liverpool City Council – DA-18/2020 at 1, 3, 5, 7 and 9 Anderson Avenue – Demolition of existing structures and the construction (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

The Panel has considered the applicant’s written request made under cl 4.6 (3) of the Liverpool Local Environmental Plan 2008 (LEP) to permit a departure from the maximum height development standard of 15m applying to the site as recorded by Clause 4.3 Height of Buildings of that LEP in the determination of the DA.

The Panel is satisfied that it is in the public interest to grant the request, and that the request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP. There are sufficient environmental planning grounds identified and established in the written request to justify contravening the development standard such that compliance is unreasonable or unnecessary in the circumstances.

In particular, the development as proposed will be consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the R4 High Density Residential zone. The building at the proposed height will still be complementary to the streetscape and character of the area in which the development is to be located. The visual impact of the building will still be satisfactory, and the additional height will not disrupt views, result in unacceptable loss of privacy or solar access to existing development.

In reaching those conclusions, the panel has had regard to:

- (a) The fact that only relatively small sections of the roof breach the height standard with the substantial departure limited to the centrally located lift overrun;
- (b) While the surrounding development is presently of a lower scale, the zoning and development standards applying to the locality are likely to encourage more intense development. Examples of recent more intensive developments are cited in the report.
- (c) The Assessment report has concluded that with the design modifications embraced during the assessment process, the design will sufficiently minimise impacts on adjoining properties with particular attention to preserving adequate solar access to the development and the surrounding neighbours with the shadow of the development falling over Anderson Avenue to the South.
- (d) The proposal incorporates significant vegetation to assist in screening the apparent bulk of the building.

The concurrence of the Secretary to the variation from the standard is assumed (see Planning Circular PS 20-002 issued 5 May 2020).

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

1. Given the close proximity of the site to the Liverpool-Parramatta bus transitway, with a walk of less than 200 metres to medium frequency bus routes, the closeness of El Alamein Park, and also the site's location within walking distance of the developing Liverpool civic and town centre to the east, the site is suitable for the higher density proposed in line with the applicable zoning. The development as proposed by the NSW Land and Housing Corporation (LAHC) which includes more than 50% affordable housing will therefore allow for the ordered development of the site.
2. The building has been assessed to generally comply with the Apartment Design Guide guideline controls. While there is a departure arising at the northwest corner of Level 4 of the building where the ADG requires a side setback separation of 9m to habitable rooms and balconies. The proposed building separation is 6m. A condition of consent has been imposed to ensure that the objective of the ADG requirement for separation is still met by the proposed development with screening and the location of windows mitigating privacy impacts. By proposing a building which extends to three different street frontages, amenity impacts from the higher density have been more easily managed without adverse consequences.
3. Overall the mix of uses will contribute to the diversity and progress of this high density residential area immediately outside the Liverpool Town Centre to reinforce its role as a civic hub. It will add to housing supply and choice within the City of Liverpool and the Western City District.
4. Council assessment staff consider that the building design has sufficiently managed solar access both with the present built form on adjoining sites, but also as they too transition to a higher density built form over time. In term of designing to achieve reasonable solar access for occupants of the building, it is assessed that only 5 units of the total 63 units or 7.8% will not receive direct sunlight between 9am – 3pm during the winter solstice. Massive planting of trees around the building will also soften its apparent built form. Accordingly, it is considered that the relevant solar access controls in LDCP 2008 and the ADG are met.
5. The potential for site isolation was considered, but the panel accepted that if jointly redeveloped, the two detached houses to the north west can accommodate some form of more dense townhouse or residential flat building form.
6. Development in accordance with the proposed plans subject to appropriate conditions can adequately satisfy the relevant State Environmental Planning Policies including SEPP 65 – Design Quality of Residential Apartment Development, SEPP 55 – Remediation of Land, SEPP (Infrastructure) 2007 and Greater Metropolitan Regional Environmental Plan No. 2 Georges River Catchment, and will be consistent with the provisions of the draft SEPPs.
7. The basement parking will meet the ARH SEPP and it is not anticipated that the proposal will generate unsatisfactory traffic impacts. No objection was received after notification to Transport for NSW.
8. The panel determined to uphold the Clause 4.6 variation to building height; and approve the application for the reasons outlined above.
9. Taking all of these matters into account, and the discussion below of the community submission received, approval of the application is in the public interest.

CONDITIONS






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

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the written submission made during public exhibition and the issues it raised. They included:

- Obstruction of sunlight
- Drop in property valuation
- Use of units for housing commission
- Traffic levels
- Noise pollution

However, the Panel accepted the conclusion that the matters of concern were suitably addressed by the proposal for the reasons set out above.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurran
 Louise Camenzuli	 Peter Harle
 Wendy Waller	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-70 – Liverpool City Council – DA-18/2020
2	PROPOSED DEVELOPMENT	Removal of trees and the construction of a new residential flat building containing sixty-three (63) dwellings, basement car parking and stratum subdivision. The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.
3	STREET ADDRESS	Lot 57, 58, 59, 60, 61 DP 35980 1, 3, 5, 7 and 9 Anderson Avenue
4	APPLICANT/OWNER	BCL2 Limited/NSW Land and Housing Corporation
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Affordable Rental Housing) 2009. ○ State Environmental Planning Policy (Infrastructure) 2007. ○ State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development. ○ State Environmental Planning Policy No.55 – Remediation of Land. ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. ○ 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 3.7 – Residential Flat Buildings • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the National Construction 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: 29 September 2020 • Council memo received: 14 October 2020 • Clause 4.6 to vary the maximum height limit under Clause 4.3 of LLEP 2008 • Written submissions during public exhibition: 1 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Council assessment officer - Emmanuel Torres and Boris Santana ○ On behalf of the applicant – Glenn Amanonce, Anthony Nolan and Daniel Govers • Total number of unique submissions received by way of objection: 1

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Monday, 25 May 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: Emmanuel Torres and Boris Santana • Site inspection: Saturday, 10 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair) • Final briefing to discuss council's recommendation: Monday, 12 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle and Wendy Waller ○ <u>Council assessment staff</u>: Emmanuel Torres, Boris Santana and George Nehme
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report