

<b>DATE OF DETERMINATION</b>	Thursday, 16 September 2021
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Wendy Waller and Peter Harle
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

The Panel resolved to defer determination of this concept development application following a public meeting held by teleconference on 9 August 2021, opened at 3:05pm and closed at 3:37pm.

After reviewing the additional material supplied to the Panel since that time, the Panel has resolved that the concept plan ought to be approved once the requirements of S 4.23 of the Environmental Planning & Assessment Act 1979 read together have been sufficiently satisfied by the provision within the concept proposal of principles required to be adhered to in detailed development proposals to adequately address the matters listed at Clause 7.5A(4) of Liverpool LEP.

Upon taking into account the additional material and advice supplied, the panel now determines to approve the concept development application for the concept development proposal described in item 2 of the Schedule below pursuant to sections 4.16 and 4.22 of the Environmental Planning and Assessment Act 1979 subject to the updated conditions.

**MATTER DETERMINED**

PPSSWC-74 – Liverpool – DA-285/2020 at Lot 11 DP 533054, Lot 12 DP 533057, Lot 1 DP 542729, Lot 2 DP 542729, Lot 100 DP 569294, Lot 262 DP 656694, Lot 1 DP 656695 431 Macquarie Street, Liverpool NSW 2170 – Concept development application pursuant to section 4.22 (as described in Schedule 1)

S 4.22 allows for an applicant to apply for development consent for a concept proposal for the development of a site for which detailed proposals for the site are to be the subject of a subsequent development application or applications.

In this case the concept proposal for which consent is sought as most recently updated during the assessment process is as follows:

**Approved Concept Development Proposal**

- a) Demolition of all existing site features.
- b) A stepped 26-17-4 storey tower comprising a total maximum GFA of 49,425m<sup>2</sup> made up of:
  - o A minimum of 9,715sqm of retail/business floor area for future cafes, restaurants, shops and a possible community civic arts centre (20% of total proposed floor area);
  - o A commercial component (office premises);
  - o A residential component (Levels 1-3).
- c) Building elements adopting massing and modulation to generally accord with the building envelope plans Issue D 01.04.21 and with appropriate interface at ground level between buildings and the public domain to achieve (as a minimum) the outcomes indicated in the urban design review submitted with the concept development proposal.
- d) The street frontage heights are not to exceed those shown in the building envelope plans Issue D 01.04.21.

- e) The proposal is not to cast additional shadow to that shown in the building envelope plans Issue D 01.04.21.
- f) The principles of ecologically sustainable development are to be addressed in the design and engineering of the building, as well as during its operational phase including measures to address:
  - the use of sustainable building materials
  - the considered storage, treatment and recycling of waste and water
  - the use of energy efficient appliances to conserve electricity
  - conservation of water and energy
  - the incorporation of resilient landscaping, water and building materials
  - delivery of design outcomes that decrease reliance on power for heating and cooling
  - utilisation of recyclable materials in operations
  - management of waste such that materials can be efficiently recycled and re-used.
- g) Parking is to be provided at the site for cars, motorbikes and bicycles, with end of trip facilities.
- h) A new publicly accessible civic plaza from Short Street with a minimum area of that shown in the approved concept plans.
- i) Vehicular access is to be exclusively provided from Short Street.
- j) Five (5) basement levels of parking and loading areas for service and waste vehicles with access from Short Street, inclusive of a minimum of 365 car parking spaces, 412 bicycle spaces and loading areas.
- k) Landscaping as proposed in the landscape concept strategy provided with the concept development proposal.

#### **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.

Council's Design Excellence Panel raised a number of concerns about the original scheme presented with the concept DA as lodged particularly in relation to:

- a) the impacts of the proposed structure on exacerbating wind impacts in the locality,
- b) reduction in solar access to existing and likely development on nearby sites (particularly on the opposite side of Macquarie Street to the south east),
- c) the final appearance of the building,
- d) the materials to be employed,
- e) sustainability principles, and
- f) improvement of the public domain.

The Panel deferred determination of the DA to allow for the final updated building envelope plans to be referred to the DEP for consideration. The DEP has advised that sufficient progress with the concept design has been made to warrant approval of the concept, with the remaining concerns able to be resolved at detailed DA stage. The Panel accepts and accords with that advice, noting in particular the improvements to the public domain that have been made during the DA process.

Importantly, a new building which implements the approved concept proposal including its civic spaces, urban design features and sustainability commitments will provide a strong impetus for a rejuvenation of this part of the Liverpool City Centre. The proposed civic plaza in particular offers the potential to allow for a pedestrian friendly outdoor space to set the tone for future development presenting to the Norfolk Serviceway. The Community Civic Art Centre will also add to the community life of the area. Its prominent presentation to a major intersection offers the potential to emphasise Macquarie Street as a gateway to the commercial heart of Liverpool.

On the key issue of impacts on solar access to neighbouring developments (including the Skyhouse), this has been assessed by the Council staff who has accepted that the proposed envelope can comply with the ADG requirements. The Panel accepts that advice while noting it will require further assessment at the detailed DA stage.

The Panel accepts that a detailed design which accords with the proposed concept can achieve a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings, which accords with the applicable principles under the ADG. The Council staff advise that the proposed concept aligns with the FSR and heights allowed under Clause 7.5A of the LLEP 2008.

The design principles under SEPP65 can be met.

Cl 7.5A of Liverpool LEP provides that development consent cannot be granted drawing upon the bonus provisions it allows for the site unless:

- (a) the development will include recreation areas, recreation facilities (indoor), community facilities, information and education facilities, through site links or public car parks (Cl 7.5A(3))
- (b) a development control plan has been adopted for the site which addresses a number of specified planning considerations (including those listed at clause 7.5(3)(f)(i)–(viii) and (x) (Cl 7.5A(4)).

In relation to cl 7.5A(4), while no development control plan has been adopted specifically for the site, s 4.23 of the Environmental Planning & Assessment Act 1979 "*Concept development applications as alternative to DCP required by environmental planning instruments*" provides for the requirement for a site specific DCP to be satisfied by "a concept development plan which contains the information required to be included in the development control plan".

The Panel is satisfied that the concept plan set out above meets that requirement by including aspects of the concept which sufficiently address the relevant matters required to be addressed in a development control plan by cl 7.5A.

The Panel is satisfied that the proposed publicly accessible square and the proposed community civic art centre comprising gallery/exhibition space proposed to be located at Ground Level of the new building satisfies the requirement of cl 7.5(3).

When the concept DA was referred to TfNSW, concern was raised that the subject property is within an area under investigation for Copeland Street/Macquarie Street intersection upgrade for which property acquisition was proposed. Since those comments were received the drawings provided to justify the concept proposal were amended such as to satisfy the Council the concept could be developed in a way which was sufficiently clear of the nominated acquisition area nominated by TfNSW. The Panel is satisfied that this issue is sufficiently addressed for this concept DA stage, but expects that the interests of TfNSW will receive further attention at the stage of any detailed DA. The plans provided with the application demonstrate that a suitable detailed design can be achieved which allows for suitable vehicular access to the site provided off a road other than a classified road so as to enable satisfaction of clauses 100 and 101 of the Infrastructure SEPP.

### **Reasons for Decision**

The panel determined to approve the application for the reasons set out above and as outlined in the council assessment report.

The decision was unanimous.

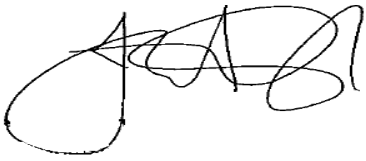
### **CONDITIONS**

The development application was approved subject to the updated conditions dated 3 September 2021

### **CONSIDERATION OF COMMUNITY VIEWS**

No public submissions were received during the exhibition period.

PANEL MEMBERS



Justin Doyle (Chair)



Nicole Gurran



Louise Camenzuli



Peter Harle



Wendy Waller

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-74 – Liverpool – DA-285/2020
2	PROPOSED DEVELOPMENT	<p>Concept development application pursuant to section 4.22 of the Environmental Planning &amp; Assessment Act for a proposal that will encompass the Approved Concept Development Proposal as described in the report above.</p> <p>Liverpool City Council is the assessment authority and the Sydney Western City Planning Panel has the function of determining the application</p>
3	STREET ADDRESS	Lot 11 DP 533054, Lot 12 DP 533057, Lot 1 DP 542729, Lot 2 DP 542729, Lot 100 DP 569294, Lot 262 DP 656694, Lot 1 DP 656695 431 Macquarie Street, Liverpool NSW 2170
4	APPLICANT/OWNER	Butterfly Developments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>○ SEPP65 – Design Quality of Residential Apartment Development</li> <li>○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment</li> <li>○ Liverpool Local Environmental Plan 2008</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Liverpool Development Control Plan 2008</li> <li>○ Part 1: General Controls for All Development</li> <li>○ Part 4 – Development in the Liverpool City Centre</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the Building Code of Australia</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> <li>•</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 27 July 2021</li> <li>• Written submissions during public exhibition: 0</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Council assessment officer – George Nehme</li> <li>○ On behalf of the applicant – Josh Owen and Frank Mosca</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 0</li> <li>• Updated Conditions received from Council following the determination meeting</li> <li>• Advice of the Councils Design Excellence Panel received by email from the Council to the Secretariat received 23 August 2021</li> </ul>

8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing: Tuesday, 9 June 2020 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli and Peter Harle</li> <li>○ <u>Council assessment staff</u>: Boris Santana and Zeliha Cansiz</li> </ul> </li> <li>• Briefing: Monday, 8 February 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli, Wendy Waller Peter Harle</li> <li>○ <u>Council assessment staff</u>: Boris Santana and Zeliha Cansiz</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Monday, 9 August 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurrán, Peter Harle and Wendy Waller</li> <li>○ <u>Council assessment staff</u>: William Attard and George Nehme and Nelson Nu</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report