



**City Planning & Sustainability
Development Services**

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Dedicated to a better Brisbane

11 December 2020

Main Street Projects Pty Ltd
C/- Urbis Pty Ltd
Level 32, 300 George Street
BRISBANE CITY QLD 4000

ATTENTION: **Rose Mosley**
Application Reference: A005542190
Address of Site: 108 LAMBERT ST KANGAROO POINT QLD 4169

Dear Rose,

RE: Decision notice pursuant to section 63 of the *Planning Act 2016*

I regret to inform you that your development application has been refused. Attached is a copy of the decision notice that includes the reasons for the refusal.

Included is a table of appeal rights under the *Planning Act 2016* advising you of appeal rights to the Planning and Environment Court or a tribunal.

Please phone me on the telephone number below during normal business hours if you have any queries regarding this matter.

Yours sincerely,

Matthew Watt
Senior Urban Planner
Planning Services East
Phone: 3178 8877
Email: Matthew.Watt@brisbane.qld.gov.au
Development Services
Brisbane City Council

Decision Notice

(Section 63 (Notice of decision) of the *Planning Act 2016*)

INTRODUCTION

This is a decision notice given pursuant to section 63 of the *Planning Act 2016*. The decision to refuse the application on **11 December 2020** was made by the Team Manager as the delegate appointed by Council to determine the application.

APPLICATION DETAILS

Application Reference Number: A005542190
Application Made Date: 24 September 2020
Properly Made Date: 24 September 2020

DESCRIPTION OF THE DEVELOPMENT

Aspect of Development: DA - PA - Material Change of Use (ref DAMC394680720)
Nature Application: Development Permit
Activity: Multiple Dwelling
Description of Proposal: Multiple dwelling - Tower 1 (87 units, 15 storeys) - Stage 1
Stage: 1

Aspect of Development: DA - PA - Material Change of Use (ref DAMC394740320)
Nature Application: Development Permit
Activity: Multiple Dwelling
Description of Proposal: Multiple dwelling - Tower 2 (68 units, 15 storeys) - Stage 2
Stage: 2

Aspect of Development: DA - PA - Material Change of Use (ref DAMC394740520)
Nature Application: Development Permit
Activity: Multiple Dwelling
Description of Proposal: Multiple dwelling - Tower 3 (145 units, 15 storeys) - Stage 3
Stage: 3

Aspect of Development: DA - PA - Operational Work (ref DAOW394741220)
Nature Application: Preliminary Approval
Activity: Filling and/or Excavation
Description of Proposal: Excavation equal or greater than 100m³ in the Potential and Actual acid sulfate soils overlay
Stage:

Aspect of Development: DA - PA - Reconfiguring a Lot (ref DARL394680820)
Nature Application: Development Permit
Activity: Subdivision of Land and Access Easement

Description of Proposal: Reconfiguring a lot (8 lots into 3) including Access easement
Stage:

APPLICANT DETAILS

Name of Applicant: Main Street Projects Pty Ltd
Applicant Address: Main Street Projects Pty Ltd
C/- Urbis Pty Ltd
Level 32, 300 George Street
BRISBANE CITY QLD 4000

SITE DETAILS

Address of Site: 102 LAMBERT ST KANGAROO POINT QLD 4169, 102A
LAMBERT ST KANGAROO POINT QLD 4169, 104
LAMBERT ST KANGAROO POINT QLD 4169, 106
LAMBERT ST KANGAROO POINT QLD 4169, 108
LAMBERT ST KANGAROO POINT QLD 4169, 46
OCONNELL ST KANGAROO POINT QLD 4169, 94
LAMBERT ST KANGAROO POINT QLD 4169, 98 LAMBERT
ST KANGAROO POINT QLD 4169

Real Property Description: L5 RP.10951, L1 RP.900166, L2 RP.900166, L3 RP.900166,
L1 RP.10951, L1 RP.79525, L3 RP.10951, L4 RP.10951

City Plan Area Classification: CP-HR,QPP-HDR2, CP-HR,QPP-HDR2, CP-HR,QPP-HDR2,
CP-HR,QPP-HDR2, CP-HR,QPP-HDR2, CP-HR,QPP-HDR2,
CP-HR,QPP-HDR2, CP-HR,QPP-HDR2

Owner: Mr Nicholas Michael Ilett, Mr Sean John Kennedy Daly & M/S
Danielle Marie Daly, Mr Sean J Daly, M/S Danielle M Daley,
The Lambert Street Unit Trust, Mr Peter A D Forges, Mr
Nicholas Brooke, Mr Timothy Richard Ilett

Ward: The Gabba, The Gabba, The Gabba, The Gabba, The
Gabba, The Gabba, The Gabba, The Gabba

REASONS FOR THE REFUSAL

1. Side boundary setbacks

The proposed development is unacceptable where it does not achieve sufficient side boundary setbacks to parts of tower 1 and tower 2.

- a) By failing to provide for appropriate side boundary setbacks, the proposed development does not achieve a scale and form that contributes to a cohesive streetscape and built form character; and
- b) By failing to provide for appropriate side boundary setbacks, the proposed development is not designed to avoid a significant and undue adverse amenity and visual impact to adjoining development and is not sited and designed to enable existing and future buildings to be well separated from each other to allow for light penetration, air circulation between buildings, and the preservation of views, vistas and resident privacy; and
- c) The development directly interfaces with established residential land uses, including habitable rooms, private recreation areas and communal spaces and the reduced side boundary setbacks fail to meet community expectations of the setbacks anticipated by the

Kangaroo Point peninsula neighbourhood plan code and Multiple dwelling code, contributing to unreasonable amenity and visual impacts; and

- d) The reduced side boundary setbacks places unreasonable reliance on fixed screening to (attempt to) achieve residential privacy and amenity between the subject site and adjoining established or future residential development; and
- e) It is considered the 5,284m² site is of sufficient area to accommodate a built form which is capable of providing increased side boundary setbacks in the interest of achieving appropriate residential amenity and privacy, and access to for light penetration, air circulation between buildings as indicated in computer modelling prepared as part of assessment of this application.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

High density residential zone:

Overall outcome 4(a), Overall outcome 4(k), Overall outcome 5(a), Overall outcome 5(c)(ii), Overall outcome 5(e), Overall outcome 5f(i), Overall outcome 5f(ii)

Kangaroo Point peninsula neighbourhood plan code:

Overall outcome 3(d), Overall outcome 7(b), Performance outcome PO3(b), Performance outcome PO3(c)

Multiple dwelling code:

Overall outcome 2(c), Overall outcome 2(d), Overall outcome 2(h), Overall outcome 2(k)(ii), Overall outcome 2(p)

2. Building separation

The proposed development is unacceptable where it does not achieve sufficient building separation internally within the site between towers 1 and 2, and between towers 2 and 3. Resulting in part from deficient side boundary setbacks, insufficient building separation is achieved between proposed tower 1 and established residential development adjoining to the north at 44 O'Connell Street and to the south at 39 Castlebar Street, and proposed tower 2 and established residential development adjoining to the north at 48 O'Connell Street.

- a) By failing to provide for appropriate building separation distances, the proposed development does not achieve a scale and form that contributes to a cohesive streetscape and built form character; and
- b) By failing to provide for appropriate building separation, the proposed development is not designed to avoid a significant and undue adverse amenity and visual impacts to adjoining development and is not sited and designed to enable existing and future buildings to be well separated from each other to allow for light penetration, air circulation between buildings, and the preservation of views, vistas and resident privacy; and
- c) The development directly interfaces with established residential land uses, including habitable rooms, private recreation areas and communal spaces and the reduced building separation fails to meet community expectations of the building separation anticipated by the Kangaroo Point peninsula neighbourhood plan code and the Multiple dwelling code; and
- d) The reduced building separation places unreasonable reliance on fixed screening to (attempt to) achieve residential privacy and amenity between the subject site and adjoining established or future residential development; and

- e) It is considered the 5284m² site is of sufficient area to accommodate a built form which is capable of providing increased building separation between buildings onsite and on neighbouring properties in the interest of achieving appropriate residential amenity and privacy, and access to for light penetration, air circulation between buildings as indicated in computer modelling prepared as part of assessment of this application.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

High density residential zone:

Overall outcome 4(a), Overall outcome 4(k), Overall outcome 5(a), Overall outcome 5(c)(ii), Overall outcome 5(e), Overall outcome 5f(i), Overall outcome 5f(ii)

Kangaroo Point peninsula neighbourhood plan code:

Overall outcome 3(d), Overall outcome 7(b), Performance outcome PO3(b), Performance outcome PO3(c)

Multiple dwelling code:

Overall outcome 2(c), Overall outcome 2(d), Overall outcome 2(h), Overall outcome 2(k)(ii), Overall outcome 2(p)

3. Private open space provision

The proposed development is unacceptable where it does not achieve sufficient minimum balcony sizes for select units (within proposed tower 2). This, combined with unreasonably reduced side boundary setbacks and deficient building separation outcomes results in the development failing to provide attractive and functional private open spaces to select dwellings, including those at the north eastern and south eastern corners of tower 2.

- a) In selected locations and floor plate configurations (relevant to tower 2) the development fails to provide balconies that are located to the front or rear of a building, where inadequate building separation has also been achieved to maintain privacy.
- b) In these instances, the private open spaces fail to capitalise on Brisbane's subtropical climate, maximise outdoor living opportunities and enhance amenity for residents.
- c) The proximity of these balconies to the adjoining properties, due to unreasonably reduced side boundary setbacks and building separation, has the potential to negatively impact on the development potential or future residential amenity of adjoining sites.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

High density residential zone:

Overall outcome 4(k), Overall outcome 5(e), Overall outcome 5f(i), Overall outcome 5f(ii)

Kangaroo Point peninsula neighbourhood plan code:

Overall outcome 3(d), Overall outcome 7(b), Performance outcome PO3(b), Performance outcome PO3(c)

Multiple dwelling code:

Overall outcome 2(c), Overall outcome 2(d), Overall outcome 2(h), Overall outcome 2(k)(ii), Overall outcome 2(m)(i), Overall outcome 2(p) and Performance outcome PO28.

4. Pedestrian accessibility

The proposed development is unacceptable where it fails to provide a safe, convenient and secure pedestrian access entry and overall pedestrian movement into and throughout the site.

- a) The pedestrian movement passage from the Lambert Street streetscape to the lobby entry of tower 1 is indirect, reliant on stairs to navigate steep changes in topography and is not legible for pedestrians, particularly visitors. Drawing 1786_DA15.0472 Rev D (Section B – B) illustrates substantial change in site terrain between tower 1 and tower 3 which represents unacceptable impediment to ease of pedestrian movement; and
- b) The revised plans (Information Request response plans received 27 November 2020) show a new ramp has been introduced towards the basement entrance from the main driveway with an unmarked gradient. A pathway is also shown continuing on the original alignment which is not possible given the levels and gradient of the overall ramp. A vertical drop of up to 5m depending on ramp gradients proposed, although shown as level on drawings, prevents or restricts pedestrian through movement. The vertical separation of the pathway at this location will restrict visibility at the basement access location; and
- c) The pedestrian route is significantly encroached by the service vehicle movement within tower 3; and
- d) The pedestrian access does not give suitable regard to persons with a disability or movement impaired persons; and
- e) Proposed tower 1's distance from the streetscape prevents the establishment of a clear pedestrian entry that connects a foyer or building entry directly with the public verge; and
- f) The pedestrian access proposed from O'Connell Street shows a shared zone where pedestrians are intended to cross the driveway to reach mode-separated pedestrian paths internal to the site. This pedestrian access arrangement increases the risk of collision between pedestrians and vehicles entering and exiting the site. It is noted that the proposal anticipates increased traffic movements relative to the increased number of buildings proposed and therefore represents greater traffic movement demand relative to approval A005260505.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

Multiple dwelling code

Overall outcome 2(a), Performance Outcome PO32, Performance outcome PO1, Performance outcome PO19

5. Waste and refuse collection

The proposed development is unacceptable where it fails to provide appropriate waste and refuse collection outcomes.

- a) Tower 1 has no disposal room for the planned chute system; it has not been demonstrated where waste and recycling will be disposed, stored and presented for collection; and
- b) Provision of only six bulk bins are accommodated within the Tower 3 refuse storage area, which is insufficient for the waste and refuse needs of the development; and
- c) While Tower 2 identifies a refuse chute system, the chute system fails to enter a disposal room; and
- d) It has not been demonstrated as to how each stage will be serviced individually, independent of other stages, where plans show refuse storage and collection arrangements

shared and transported between separate towers. In the event the towers proposed were to be constructed at different stages, interim servicing arrangements would be required, but have not been detailed. Tower 1 has no clear servicing arrangement until either tower 2 or tower 3 have been constructed; and

- e) The development does not provide functional gradients for attending refuse collection vehicles, where tower 3 has a 1:6.5 gradient at the location of the refuse collection vehicle manoeuvre where Table 12 of the Transport, access, parking and servicing PSP requires a maximum ramp gradient of 1:10. Further, tower 2 has a 1:8 gradient at the location of the refuse collection vehicle manoeuvre.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

Transport, access, parking and servicing code

Overall outcome 2(a), Performance outcome PO1, Performance outcome PO19

6. Inadequate provision of assessment materials

The submitted assessment material was reviewed and it was determined incomplete information was submitted to address aspects of the proposed development. Further assessment materials were requested in the Information Request dated 23 October 2020, however the following matters remain unresolved through non-provision of necessary information:

- a) The site is located within the Potential and actual acid sulfate soils overlay and the proposal involves up to 6 levels of basement with some of the levels at below 5m AHD. As the proposed development includes soil disturbance of greater than 100m³ at below 5m AHD, and seeks a corresponding development permit for excavation equal or greater than 100m³ within the Potential and Actual acid sulfate soils overlay, further information was required to demonstrate that the site is not affected by, or will not disturb, actual or potential acid sulfate soils, as per the acid sulfate soils provisions within the State Planning Policy and guidance material, and Potential and actual acid sulfate soils overlay code and corresponding planning scheme policy. An Acid Sulfate Soils (ASS) Investigation Report and Management Plan prepared by an appropriately qualified and experienced person was not provided with the assessment material or in response to Council's Information Request; and
- b) The applicant has failed to provide full swept path movements of service vehicles from the external road network at both access points to the collection areas as requested and required by TAPS PSP 8.2.2. Satisfactory operation of the access to the collection area in Tower 3 has not been demonstrated in accordance with the revised access path proposals; and
- c) The supplied Traffic Impact Assessment and other supporting information does not address the suitability of the proposed access gradients for service vehicles. TAPS PSP Table 12 requires a straight ramp used by an RCV to be no steeper than 1:10. The 1:8 ramp proposed for access to Tower 3 is steeper than this and no commentary or endorsement of this performance outcome has been provided or endorsed by an RPEQ; and
- d) The preliminary Construction Management Plan fails to address the access route to the site and does not acknowledge the significant cycle route providing connection from the City to the east along the site frontage.

The proposal would result in a departure from the following elements of the *Brisbane City Plan 2014*:

Potential and actual acid sulfate soils overlay code

Overall outcome 2(a), Overall outcome 2(b), Overall outcome 2(c), Performance outcome PO1

Transport, access, parking and servicing code

Overall outcome 2(a), Performance outcome PO1, Performance outcome PO19

7. The proposed development could not be conditioned to comply with the applicable planning instruments including *Brisbane City Plan 2014*; and
8. There are no discretionary matters that warrant approval of the proposed development; and
9. An approval of the development application would be contrary to the purpose of the *Planning Act 2016*; and
10. The comments received from the public, being common material to the application, reinforce that the development application did not meet community expectations, particularly in regard to building setbacks, separation, form, and anticipated visual amenity and privacy outcomes.

REFERRAL AGENCIES

The development application was referred to the Department of State Development, Manufacturing, Infrastructure and Planning (SARA Brisbane Region) on 16 October 2020 per Schedule 10, Part 9, Division 4, Subdivision 1, Table 1 (State Transport Infrastructure – thresholds – greater than 200 dwellings).

A Referral agency response – No requirements, was issued on 17 November 2020.

SUBMISSIONS

Submissions may have been received for this application. For code assessable applications, submitters are not entitled to appeal this decision.

APPEAL RIGHTS

In accordance with the *Planning Act 2016*, the rights of appeal must be stated for the applicant and any submitters. Attached is a table of appeal rights under the *Planning Act 2016* that details your appeal rights and the appeal rights of any submitters.