

**MINUTES AND DETERMINATION OF THE  
LIVERPOOL LOCAL PLANNING PANEL MEETING**

**Monday 26<sup>th</sup> July 2021**

Held online Via Microsoft Teams

Panel: Michael Mantei (Chair)  
Grant Christmas Expert  
Lindsay Fletcher Expert  
Daryl Hawker Community Representative

There were no conflicts of interest declared by any panel members in relation to any items on the agenda.

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<b>ITEM No:</b>	1
<b>APPLICATION NUMBER:</b>	DA-6/2018/A
<b>SUBJECT:</b>	<b>Modification of Development Consent for Demolition of existing structures, subdivision of the site into 2 separate lots and construction of a single storey allied health facility with 40 at-grade car parking spaces and a slip lane off Heathcote Road and creation of a residential lot – deletion of condition 2.</b>
<b>LOCATION:</b>	Lot D & Cnr Lot E DP 407758, Lot 7 & Lot 8 DP 539636 2-6 Walder Road and 192-194 Heathcote Road, Hammondville
<b>OWNER:</b>	Garloft Pty Ltd and Topglove Pty Ltd
<b>APPLICANT:</b>	Mammoth Projects Pty Ltd
<b>AUTHOR:</b>	Nabil Alaeddine

#### ISSUES RELATED TO THE APPLICATION

The Panel has been provided with the Council officer's assessment report and supporting documents accompanying the development application. The Panel members have familiarised (in person or by electronic means) themselves with the development site and its context.

The application before the Panel proposes a modification to a development consent issued by the Panel at its meeting on 30 March 2020. The modification application requests removal of condition 2 of the notice of determination. Condition 2 requires the pharmacy component of the proposal as originally submitted to Council to be deleted from the proposal. The effect of the application is to reinstate the pharmacy component of the proposed development as originally shown in DA6/2018 in the approved development. The application is made under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The Panel received representations opposing approval of the modification application from representatives of the Hammondville Discount Pharmacy, the Holdsworth Town Centre and two local residents. The Panel received representations in support of approval of the modification application from the proponent's town planning consultant and other representatives of the applicant.

In addition to the Council officer's report, the Panel was provided with:

- a. a copy of the minutes of the Local Planning Panel's meeting held on 30 March 2020,
- b. copies of written submissions received in response to public notification of the proposal,
- c. legal opinions by McPhee Kelshaw Solicitors and Conveyancers and Tim Poisel of counsel in support of refusal of the application,
- d. a legal opinion by Addisons Lawyers in support of approval of the application, and
- e. a legal opinion by Sparke Helmore, obtained by Council.

The principal issues considered by the Panel are the permissibility of the pharmacy under the

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Infrastructure SEPP, whether the proposed modification is of minimal environmental impact (the test in s4.55(1A)(a)) and whether the development consent as modified is substantially the same as the development for which consent was originally granted (the test in s4.55(1A)(b)).

In relation to **permissibility**, the Panel notes that clause 57(1) of the Infrastructure SEPP makes permissible on the site development for the purposes of a health service facility, despite the prohibition of that type of use under *Liverpool Local Environmental Plan 2008*. The Infrastructure SEPP prevails over LLEP 2008.

The Panel is satisfied that the proposed pharmacy is properly characterised as a medical centre, which is a form of health services facility. A medical centre is defined in the Standard Instrument as (our emphasis):

*“ ... premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the **ancillary provision of other health services.**”*

The Panel notes that a medical centre as defined includes, as part of its core uses, the “*ancillary provision of other health services*”. Health service is not defined in ISEPP, the Standard Instrument or the EP&A Act. The sale of medication and advice given by pharmacists on types of medication is a form of health service that is capable of being ancillary to the provision of health services provided by “health services to out-patients only, where such services are principally provided by health care professionals”. Pharmacies are also increasingly becoming places where simple medical intervention such as the administering of flu vaccine and, in the near future, COVID 19 vaccine occurs. Those types of activities are clearly the provision of health services.

Applying a common sense and practical approach to the characterisation of the proposed modification, the Panel is satisfied that the nature and purpose of the proposed pharmacy is such that it is properly characterised as development for the purposes of the *ancillary provision of other health services*. The Panel agrees with the imposition of proposed condition 117A. This condition will reinforce the health service focus of the proposed pharmacy.

A proposal that satisfies the description of *ancillary provision of other health services* is properly characterised as a medical centre and therefore a health services facility. The Panel does not consider it necessary to determine whether the particular health service in this case can also be separately defined as a retail premises.

The Panel is satisfied that the proposed modification is of **minimal environmental impact** and the development consent DA6/2018, as modified, will be **substantially the same** as the development for which DA6/2018 was originally granted, for the reasons outlined in the Council officer’s report.

The Panel has considered the likely impacts of the proposed modification, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. The Panel has considered the suitability of the site for the proposed pharmacy and the public interest as it relates to the proposed modification. The Panel is satisfied that the impacts are acceptable and the site suitable for the proposed pharmacy.

The Panel has also considered the reason for imposing condition 2 on the original grant of DA6/2018, as recorded in the minutes of the Panel’s meeting held on 30 March 2020. The legal uncertainty about permissibility of the pharmacy that caused the Panel to impose

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condition 2 has now been resolved to the Panel's satisfaction.

#### **VOTING NUMBERS:**

4-0 in favour of approval

#### **DETERMINATION OF PANEL:**

The proposed modification to delete condition 2 of DA6/2018 for "Demolition of existing structures, subdivision of the site into 2 separate lots and construction of a single storey allied health facility with 40 at-grade car parking spaces and a slip lane off Heathcote Road and creation of a residential lot" is approved subject to the conditions contained in the Council officers report.

<b>ITEM No:</b>	<b>2</b>
<b>APPLICATION NUMBER:</b>	<b>DA-681/2019</b>
<b>SUBJECT:</b>	<b>Demolition of existing structures and construction of a five (5) storey residential flat building comprising 11 residential units above 2 levels of basement carparking.</b>
<b>LOCATION:</b>	<b>Lot 70 DP 235785 12 Mckay Avenue, Moorebank</b>
<b>OWNER:</b>	<b>AMDG Micharl Pty Ltd</b>
<b>APPLICANT:</b>	<b>Baini Design</b>
<b>AUTHOR:</b>	<b>Emmanuel Torres</b>

#### **ISSUES RELATED TO THE APPLICATION**

The Panel has been provided with the Council officer's assessment report and supporting documents accompanying the development application. The Panel members have familiarised (in person or by electronic means) themselves with the development site and its context.

The applicant's town planning consultant attended the meeting to answer questions. There were no representations received at the meeting from objectors.

The Panel is aware that this part of Moorebank was rezoned some time ago to R4 high density residential, with a commensurate increase in floor space ratio and maximum height of buildings, to enable an increase in residential density. This change in zoning will see a significant change to the character of the existing older, low rise, single detached residential development in the locality. The Panel is aware that pockets of the R4 zone have been recently down zoned to R3 medium density residential. The land the subject of the application before the Panel today remains in the R4 zone.

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The Panel takes note that the design of the proposed development has undergone a series of revisions in response to matters raised by the Design Excellence Panel. The Panel understands that the DEP is now satisfied with the design.

The proposed building is less than the maximum height and floor space controls applying to the site. The design largely complies with the Apartment Design Guide (“ADG”) controls, except for the following setbacks:

- The balconies at the ground level and levels 1 and 3 encroach the 6 m setback required to the rear (eastern) boundary by up to 700 mm, and the 9 m setback required at the roof top level by 300 mm.
- The roof top level encroaches the 9 m setback required to the side (northern) boundary 1100 mm.

These departures are considered acceptable for the reasons given in the Council officer’s report.

The required number of units (70% of total) receive a minimum of 2 hours direct sunlight in compliance with the ADG controls. There are 3 units that do not receive the required direct sunlight, which is non-compliant with the ADG. The non-compliance is considered reasonable in the circumstances for the reasons given in the Council officer’s report.

The other non-compliance with clause 4E (private open space and balconies) is also considered reasonable.

The setback controls in Liverpool DCP apply to the front and southern side boundaries. The design does not comply with these controls (front setback: 5.5 m required, 4.3 m proposed; side setback: 8 m required for level 4 and above, 3 m proposed). The Panel agrees with the Council officer’s assessment that the front boundary encroachment is reasonable given the shape of the boundary and the desirable articulation provided by the design. The Panel agrees with the Council officer’s assessment that the side boundary encroachment is reasonable given the adjoining land comprises a 6 m wide public thoroughfare, and the development site is reasonably entitled to take the benefit of half of that width.

For those reasons the Panel has determined the application by the granting of development consent subject to the conditions contained in the Council officers report.

#### **VOTING NUMBERS:**

4-0 in favour

#### **DETERMINATION OF PANEL:**

That DA681/2019 for demolition of existing structures and construction of a five (5) storey residential flat building comprising 11 residential units above 2 levels of basement carparking be approved subject to the conditions contained in the council officers report.