

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

Monday 31st July 2023

Held online via
MS Teams

Panel: Michael Mantei
David Ryan
Mary-Lynne Taylor
Ellie Robertson

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

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 1

31st July 2023

ITEM No:	1
APPLICATION NUMBER:	DA-165/2023
SUBJECT:	Demolition of existing structures, subdivision of the site into two Torrens Title Lots and the construction of two double storey semi-detached dwellings with a secondary dwelling on one lot and associated landscaping works (Integrated Development: Controlled Activity under Water Management Act 2000).
LOCATION:	29 O'Neile Crescent, Lurnea NSW 2170
OWNER:	Mr. M J Oliveiro
APPLICANT:	Mr. M J Oliveiro
AUTHOR:	Margaret Roberts – The APP Group

ISSUES RELATED TO THE APPLICATION

The panel has familiarised itself with the site of the proposed development and has been provided with the Council engaged planner's assessment report including reports and plans submitted with the development application.

The panel notes that the applicant for development consent is an employee of Liverpool City Council. The Council has rightly engaged an external planning consultant to undertake the assessment of the application and prepare the assessment report being considered by the panel. The employee has advised the panel that he has not taken any part in the assessment of the application.

The applicant attended the meeting and answered questions from the panel.

The assessment report contains a proper and thorough assessment of the proposed development against relevant planning controls. The panel is satisfied that the proposed subdivision, construction of attached dwellings and a secondary dwelling are permitted with development consent, provided the subdivision precedes construction of the attached dwellings. The panel has imposed a condition to ensure the appropriate sequencing occurs.

The panel is also minded to impose a condition requiring retention of the four existing trees adjacent to the northern (rear) boundary of the subject land. The applicant advised the panel at the meeting that the existing trees on the northern boundary are non-native trees but there is no particular reason why these trees are shown to be removed on the demolition plan. An amended landscape plan is to be prepared reflecting retention of those trees.

The panel is satisfied that non-compliance of the proposed development with the DCP requirements for lot width, garage setback, side boundary setback and prohibition on secondary dwellings are justified in the circumstances of this case for the reasons set out in the assessment report.

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 2

31st July 2023

VOTING NUMBERS:

4 – 0 in favour

DETERMINATION OF PANEL:

1. That development consent is granted to DA165/2023 for demolition of existing structures, subdivision of the site into two Torrens title lots and the construction of two double storey semi detached dwellings with secondary dwelling on one lot and associated landscape works at Lot 21 DP211007, 29 O'Neile Crescent Lurnea subject to the conditions attached to the assessment report and the conditions and amended condition recommended in paragraphs 2 and 3 below.
2. The following conditions are to be included in the notice of determination:
 - a. No whole occupation certificate shall be issued until such time as the proposed lot of the subdivision is endorsed by a subdivision certificate from council and the plan of subdivision is registered with the Land and Property Information Service.
 - b. The landscape plan is to be amended to retain the four existing trees shown on the demolition plan adjacent to the northern boundary and delete the proposed native trees in this location. The amended landscape plan is to be submitted to the certifier responsible for issuing the construction certificate for building works prior to the issue of that certificate.
3. Proposed condition 88 is amended by deleting the last sentence in that condition.

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 3

31st July 2023

ITEM No:	2
APPLICATION NUMBER:	DA-264/2018/C
SUBJECT:	<p>Modification of Development Consent DA-264/2018 as modified pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979.</p> <p>The modification seeks an increase in production capacity at the approved concrete batching plant from 200,000 tonnes per annum to 300,000 tonnes per annum of concrete and concrete products.</p> <p>The original development has been previously approved as a Designated Development as specified in Schedule 3 of the Environmental Planning and Assessment Regulations 2000.</p> <p>The application is identified as Nominated Integrated Development requiring approval from the NSW Environmental Protection Authority pursuant to Protection of the Environment Operations Act 1997.</p> <p>The application is identified as Nominated Integrated Development requiring approval from the Department of Planning and Environment - Water, pursuant to the Water Management Act 2000.</p>
LOCATION:	4 Ash Road Prestons
OWNER:	Renita Developments Pty Ltd
APPLICANT:	Renita Developments Pty Ltd
AUTHOR:	Emily Lawson

ISSUES RELATED TO THE APPLICATION

The panel has familiarised itself with the site of the proposed development and has been provided with the Council officer's assessment report including reports and plans submitted with the development application.

A representative of the applicant addressed the panel meeting. The applicant objects to proposed condition 101(d) that limits traffic movements to no more than 20 vehicular movements between 7 am and 9 am and 20 vehicular movements between 4 pm and 6 pm.

The applicant's principal reasons for objecting condition 101(d) are that: (a) there is presently no limitation on the number of movements from the site, (b) the proposed condition will apply to those existing movements, (c) the peak traffic movements from the business occurs during the morning peak hour, and (d) the proposed limitation will be a significant imposition on the operation of the existing and proposed modified business. The applicant requests the panel defer consideration of the application to enable the applicant sufficient time to take advice from its traffic engineer and to prepare a submission to Council as to why the condition should not be imposed.

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 4

31st July 2023

Council officers advise that the proposed condition 101(d) arises from a submission made to Council by Transport for NSW and advice by Council's traffic engineer.

The panel considers it appropriate to defer determination in the circumstances that have now arisen. The panel does not have sufficient information to determine the application. The proposed condition may have a significant impact on the existing operation and will take effect immediately on granting of the approval. The deferral will also provide an opportunity for Council officers and the applicant to confer and potentially reach agreement on an alternative condition.

VOTING NUMBERS:

4 – 0 in favour

DETERMINATION OF PANEL:

1. That determination of the modification application DA264/2018/C to increase production capacity of an approved concrete batching plant at 4 Ash Road Prestons from 200,000 tonnes per annum to 300,000 tonnes per annum of concrete and concrete products, be deferred.
2. That the modification application be resubmitted to the panel for determination once a reasonable opportunity has been afforded to the applicant to provide additional information to Council as to why proposed condition 101(d) should not be imposed. Following the provision of this information, should Council consider that an alternative conditions should be imposed, it should provide the applicant the opportunity to also respond to that condition before finalising its updated assessment report. The assessment report is to include details of the legal and factual justification for imposition of the condition and whether similar conditions have been imposed on other development consents in the locality.

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 5

31st July 2023

ITEM No:	3
APPLICATION NUMBER:	DA-259/2022
SUBJECT:	3 Lot Torrens title subdivision with site remediation, tree removal, construction of roads and associated civil works. The application is integrated development requiring approval from the NSW Rural Fire Service Under the Rural Fires Act 1997
LOCATION:	430 Fifteenth Avenue, Austral
OWNER:	Mustafa Mustafa & Gonul Mustafa
APPLICANT:	Fulya Karabacak
AUTHOR:	Emily Lawson

ISSUES RELATED TO THE APPLICATION

The panel has familiarised itself with the site of the proposed development and has been provided with the Council officer's assessment report including reports and plans submitted with the development application.

The applicant's planning consultant and architect addressed the panel meeting. The applicant's representative objected to the deferred commencement condition requiring demolition of the existing dwelling house on the land. The applicant's representative informed the panel that a development application had been lodged on the planning portal seeking consent to change the use of the existing dwelling to a childcare centre. Council officers confirmed this to be the case.

The applicant submits that the deferred commencement condition is unnecessary in order to justify contravention of the minimum density requirements in clause 4.1B – residential density in Appendix 4 of *SEPP (Precincts - Western Parkland City) 2021*. The applicant supports this submission on the basis that: (a) the minimum density requirements are satisfied by future development contemplated by the applicant on proposed lots A and B and (b) the existing dwelling is capable of being used for another lawful use (such as a childcare centre) that would be a suitable and appropriate use of the site and the locality.

In response, Council officers advised the panel in the briefing session that Council agrees that the proposed deferred commencement condition is not fundamental to Council's support for the applicant's objection under clause 4.6 of Appendix 4 of *SEPP (Precincts - Western Parkland City) 2021* to the development standard in clause 4.1B.

The panel has carefully considered the applicant's written objection under clause 4.6 of Appendix 4 of *SEPP (Precincts - Western Parkland City) 2021* to the development standard in clause 4.1B and the applicant's objection to the proposed deferred commencement condition.

For the reasons set out in the Council officer's assessment report, clarified in briefing session, the panel is satisfied that:

LIVERPOOL CITY COUNCIL

LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION PAGE 6

31st July 2023

- a. the applicant's written request adequately justifies the contravention of clause 4.1B by demonstrating that compliance with the development standard in that clause is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention; and
- b. that the proposed subdivision will be in a public interest because it is consistent with the objectives of clause 4.1B and the objectives for development within the R3 medium density zone.

While the demolition of the existing dwelling is not a fundamental element in the panel's decision regarding the contravention of clause 4.1B, the panel considers that the continued use of the existing building on proposed lot C as a dwelling will constrain the orderly development of that lot in the future if the subdivision is approved. The panel considers that either demolition of the existing dwelling or a change of use of the building to another lawful use is desirable in order to promote the future orderly development of proposed lot C. Demolition or change in use should occur within a defined period as an operational condition of approval.

The panel has decided to impose a condition requiring retention of those mature native trees on the site that are not required to be removed as a result of the subdivision works. There are several mature trees on the site that provide amenity value and which may not be impacted by the subdivision works. A decision about the removal of those trees ought to be made at the time of the development of the super lots. The panel is satisfied that it has the power to impose such a condition even though the land is biodiversity certified under the Biodiversity Conservation Act 2016.

VOTING NUMBERS:

4 – 0 in favour

DETERMINATION OF PANEL:

That development consent is granted to development application DA 259/2022 for three lot Torrens title subdivision, site remediation, tree removal, construction of roads and associated civil works at Lot 415 DP2475, 430 Fifteenth Avenue Austral subject to the draft conditions attached to the Council officer's assessment report, modified as follows:

- a. deferred commencement conditions 1 and 2 are not imposed and development consent is granted as an fully operational consent;
- b. the following new operational conditions are to be included in the notice of determination:
 - (1) Within two years of the lawful commencement of the subdivision consent, either of the following conditions must be satisfied:
 - a. evidence must be submitted to the satisfaction of Liverpool City Council demonstrating that the existing dwelling on proposed lot C has been demolished with the appropriate approval; or
 - b. the use of the existing dwelling on proposed lot C must be changed to another lawful use in accordance with a development consent granted for the new use.

LIVERPOOL CITY COUNCIL

**LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION
PAGE 7**

31st July 2023

- (2) Consent is granted only for removal of mature native trees on the site that are required to be removed as a result of the subdivision works. All mature native trees not impacted by subdivision works must be retained.