

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

28th of November 2022

Held online via
MS Teams

Panel:

Michael Mantei (Chair)

David Ryan

Marjorie Ferguson

Daryl Hawker

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

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ITEM No:	1
APPLICATION NUMBER:	DA-1321/2021
SUBJECT:	Construction of an administration building, grandstand structure, fences, and associated car spaces. The proposed development is identified as a Nominated Integrated Development requiring an approval from Natural Resources Access Regulator under the Water Management Act, 2000
LOCATION:	34 Jack O'Sullivan Road, Moorebank
OWNER:	Liverpool city council
APPLICANT:	Southern Districts Soccer Football Association
AUTHOR:	Jason Marshall

ISSUES RELATED TO THE APPLICATION

The panel has reviewed the Council officers' assessment report, development application documents and written submissions from the public. The panel was also provided with a copy of the plan of management for the land adopted under the *Local Government Act 1993* and a supplementary written advice from Council's Team Leader - Transport Management. The panel was briefed by Council officers. A resident of Jack O'Sullivan Road and the applicant's representatives addressed the panel meeting.

Council's Team Leader - Transport Management advised the panel that there is no anticipated increase in attendees at the site and no additional vehicles movements are expected beyond the current volumes being generated from the existing approved site. Accordingly, draft condition 39 is not required to assess the suitability of the proposed development.

Subject to minor amendments to the proposed conditions of development consent outlined below, the panel agrees with the Council officers' assessment of the application and recommendation. The amendments made by the panel to the draft conditions are as follows, for the reasons as also described below:

Condition 27 is amended to clarify the obligation of the applicant in respect of revised plans and is to read as follows:

Prior to the issue of a construction certificate, revised ground floor and first floor plans prepared by a suitably qualified person are required showing access to the building for people with a disability in accordance with the relevant requirements of the Building Code of Australia, disability (Access to Premises – Buildings) Standard 2010 and Australian Standard – AS1428.1 (2009), Design for Access and Mobility – General requirements for new building work,

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to the satisfaction of the PCA.

Condition 28 is amended to require Council to approve the Operational Plan of Management and is to read as follows:

Prior to the issue of a construction certificate an Operational Management Plan is required to be submitted to Liverpool Council for approval, that outlines the use and operation of the development including opening hours, traffic arrangements parking and access, special events, management of noise and list of contacts for residents, security, risk and reporting processes.

The plan may be an addendum to the current licence agreement or a separate document.

An additional condition is to be inserted to enable enforcement of the management plan required by condition 28 as follows:

The approved Operational Management Plan shall be implemented and adhered to at all times.

An additional condition is to be inserted to confirm the characterisation of the prayer room as being ancillary to the recreational facility as follows:

The prayer room is to be used only as ancillary to the use of the development as a recreational facility.

Condition 34 is to be deleted. The panel understands the purpose of this condition, however the words “required shade and cover” are too uncertain to impose as a condition.

The panel otherwise adopts the Council officers draft conditions of consent

VOTING NUMBERS:

4 – 0

DETERMINATION OF PANEL:

Development consent is granted to DA-1321/2021 for Construction of an administration building, grandstand structure, fences, and associated car spaces subject to the conditions of consent recommended by Council officers, amended as described above.

ITEM No:	2
APPLICATION NUMBER:	DA-64/2007/D

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SUBJECT:	Modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment Act 1979. The changes are as follows: <ul style="list-style-type: none">• Delete Road 10.• Amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property.
LOCATION:	Lot 3 Seventeenth Ave East, Middleton Grange (Lot 3 DP 1207518) Lot 4 Seventeenth Ave East, Middleton Grange (Lot 4 DP 1207518) 60 Hall Circuit, Middleton Grange (Lot 12 DP 1108343) Lot 2 Flynn Avenue, Middleton Grange (Lot 2 DP 1207518) Lot 5 Sixteenth Ave East, Middleton Grange (Lot 5 DP 1207518) Lot 6 Sixteenth Ave East, Middleton Grange (Lot 6 DP 1207518) Lot 1 Seventeenth Ave East, Middleton Grange (Lot 1 DP 1078564) Lot 102 Sixteenth Ave East, Middleton Grange (Lot 102 DP 1128111)
OWNER:	Manta Group Pty Ltd; Liverpool City Council, & Al-Somai Developments Pty Ltd
APPLICANT:	Pacific Planning Pty Ltd
AUTHOR:	Robert Micallef

ISSUES RELATED TO THE APPLICATION

The panel has reviewed the Council officers' assessment report, development application documents and written submissions from the public. The applicant's representative addressed the panel.

The panel has been advised the proposed modification is consistent with and enabled by a proposed amendment to LEP 2008 (amendment 63), a draft DCP and draft planning agreement for the Middleton Grange Town Centre. The draft amendment has now come into force.

The application comes before the panel as a consequence of Council ownership of the land being affected by the underlying development consent. The Council land comprises a drainage/open space reserve. The proposed modification does not directly affect the Council land.

The panel is satisfied that the application has been properly assessed by Council officers in accordance with section 4.55(2) of the EP&A Act. The panel agrees with the Council officers' assessment of the application and proposed conditions of consent. The panel notes a minor anomaly in the reference in condition 1 to the plan titled "Soil and Water Management Notes and Details", which will be corrected by Council officers prior to issue of the consent.

VOTING NUMBERS:

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DETERMINATION OF PANEL:

That development consent DA-64/2007 be modified under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 so as to:

- a. delete Road 10; and
- b. amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property

subject to the modified conditions of development consent recommended by Council officers.

ITEM No:	3
APPLICATION NUMBER:	DA-973/2022
SUBJECT:	Demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula.
LOCATION:	87-93 Box Road, Casula
OWNER:	Marvine (NSW) Pty Ltd; Liverpool City Council & The Owners - Strata Plan No 83076
APPLICANT:	Urban Living Designs Pty Ltd
AUTHOR:	Robert Micallef

ISSUES RELATED TO THE APPLICATION

The panel has reviewed the Council officers' assessment report, development application documents and written submissions from the public. A resident of Box Road Casula addressed the panel.

The history of this application is an unfortunate example of the inflexibility of the NSW planning portal dictating an outcome that is unnecessarily complex, confusing, time consuming, costly and uncertain. The development application should have been assessed under the Affordable Rental Housing SEPP, having been lodged prior to its repeal in November 2021. Instead, the panel understands that the applicant was forced to withdraw and resubmit the application because the form generated by the planning portal on lodgement of an application does not allow additional land to be included in the proposed development, with the consent of the landowner. This process was dictated by the planning portal despite being clearly contrary to the power of an applicant to amend a development application in clause 37 of the EP&A Regulations. The consequence of the resubmission is that the application is now

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subject to new planning controls in the Housing SEPP.

Nonetheless, the panel notes that the application has been assessed under the Housing SEPP. The panel has considered the suitability of the site for the proposed development and compliance of the design with planning controls applying at the time of lodgement of the application. The panel is satisfied that the size, scale and siting of the proposed development is suitable for the site and the potential impacts of the development on traffic, amenity of adjoining development and character of the locality are acceptable.

The panel has considered the written request submitted by the applicant which contains grounds justify the contravention of the minimum dwelling size in clause 18(2)(j) of the Housing SEPP. The panel is satisfied that:

(i) the applicant's written request has adequately addressed demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, namely the high level of amenity afforded to the future occupants of the proposed dwellings; and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of clause 18(2)(j) of the Housing SEPP and the objectives for development within zone R3 medium density under LEP 2008.

The panel has not given any weight to the unusual administrative history of the application in reaching the panel's decision.

The panel is otherwise satisfied that the development application has been properly assessed by Council officers in accordance with section 4.15(1) of the EP&A Act. The panel agrees with the Council officers' assessment of the application and proposed conditions of consent.

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4 – 0

DETERMINATION OF PANEL:

Development consent is granted to DA-973/2022 for demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula subject to the conditions recommended by Council officers, as amended.

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ITEM No:	4
APPLICATION NUMBER:	DA-394/2011/B
SUBJECT:	Modification to Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM)
LOCATION:	41 Greendale Road, Bringelly
OWNER:	Mr A Sadik
APPLICANT:	Mr C Hua
AUTHOR:	Greg Mottram

ISSUES RELATED TO THE APPLICATION

The panel has reviewed the Council officers' assessment report, development application documents and written submissions from the public. The applicant's representatives addressed the panel.

The development consent the subject of this application was granted by the Land and Environment Court. Liverpool City Council has the power under section 4.56 of the EP&A Act to determination an application to modify a development consent granted by the Court. This modification application has been made under section 4.56 of the EP&A Act.

The development consent the subject of this application is a concept approval. The panel notes that the stage 1 development consent (DA-790/2013) that is related to current modification application was modified by the panel at its meeting on 7 October 2022. The modification amended to condition 75 of the stage 1 consent to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM). The same modification is presently before the panel in respect of the overarching concept approval.

The panel is aware of the recent history of the site, including the clean up notice issued by the NSW EPA. In its determination of the modification to DA-790/2013, the panel imposed a new condition (condition 95A) to ensure the ongoing monitoring of the clean up notice, as follows

Until the clean-up of the property has been completed to the satisfaction of the EPA, from the date of this approval the applicant is to provide a written report to Liverpool Council and the NSW Environment Protection Authority not less than once per fortnight outlining:

- *the applicant's plan and timetable to complete cleaning-up of the property*
- *progress with cleaning-up the property during the preceding fortnight*

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- *planned clean-up works during the forthcoming fortnight*
- *an anticipated date when the clean-up of the property will be completed.*

All other conditions of Development Consent DA-790/2013 and Modification Application DA-790/2013/A remain unchanged.

Note: This determination notice is strictly for changes sought under Modification Application DA-790/2013/C. No approval is granted or implied for any other works / changes proposed to the submitted development.

Council officers have informed the panel that the applicant has been providing the fortnightly reports required by condition 95A.

The panel notes that the NSW EPA supports the use of ENM instead of VENM at the subject premises provided that the material complies with the excavated natural material exemption 2014 issued under clauses 91 and 92 of the *Protection of the Environment Operations (Waste) Regulation 2014*.

The panel is satisfied based on the Council officers' assessment, that the requirements in section 4.56 of the EP&A Act are met in the assessment of this modification application. The panel is satisfied that the potential ongoing impacts of the stockpiled ENM will continue to be managed adequately and that the proposed modification to permit the use of ENM instead of VENM on the remainder of the site covered by the concept approval is acceptable, subject to the imposition of the conditions at attachment 3 of the Council officers report and proposed new condition in the terms described above (amended so as to refer to the concept approval).

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DETERMINATION OF PANEL:

The proposed modification to Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM) is approved subject to the conditions attachment 3 of the Council officers report and proposed new condition in the terms described above.

ITEM No:	5
APPLICATION NUMBER:	RZ-9/2022
SUBJECT:	Planning proposal to amend the zoning, floor space ratio, height of building and minimum lot sizes development standards applying to the land.

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LOCATION:	22 Box Road, Casula (Mimosa Park)
OWNER:	Liverpool City Council
APPLICANT:	Liverpool City Council
AUTHOR:	Brianna Van Zyl

ISSUES RELATED TO THE APPLICATION

The panel has reviewed the Council officers' planning proposal documents. Council's strategic planners addressed the panel.

The panel notes the special procedure required by section 32 of the *Local Government Act 1993* for the reclassification of community land dedicated under section 94 of the EP&A Act. If the land the subject of this planning proposal was dedicated under section 94 of the EP&A Act, the requirements of section 32 of the LG Act 1993 are threshold requirements to the reclassification of the land. Accordingly, Council officers should be satisfied before proceeding to request a gateway determination that evidence exists to demonstrate that the land is unsuitable for the purpose for which it was dedicated.

The panel notes that the planning proposal will be publicly notified if a gateway determination is issued giving adjoining owners the opportunity to comment on the proposal. Council ought to give careful consideration to any public submissions on the proposal.

The panel considers based on the Council officers report and subject to consideration of the matters identified above, that the planning proposal has sufficient strategic and site specific merit to progress to the next stage of the planning proposal process.

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ADVICE OF PANEL:

The panel considers that the planning proposal has sufficient strategic and site specific merit to progress to the next stage of the planning proposal process, subject to Council officers being satisfied that evidence exists to demonstrate that the land is unsuitable for the purpose for which it was dedicated as required by section 32 of the LG Act 1993.