
Report

Property Description: Lot 100 DP 1176622 (known as No. 194 Campbelltown Rd,
Denham Court)

Owner: Press Australia PTY LTD

Applicant: Smyth Planning

The Subject site

The subject site is located within the suburb of Denham Court and known as No 194 Campbelltown Road. The site is bounded by major roads on all sides. Campbelltown Road lies to the west, the South Western Freeway (F5) to the east and south and the Ingleburn F5 exit off-ramp to the north. An aerial photo of the site is shown as attachment 3 to this report.

The site has an area of 1.241 hectares and part of the site was previously used by the former Roads and Traffic Authority (RTA) as a storage area for road works material and equipment associated with the F5 Freeway upgrade.

Existing zoning of the site

The site is currently zoned Zone 7 (d5) - Environmental Protection 1 hectare Minimum Zone (7(d5) Zone) under Campbelltown (Urban Areas) Local Environmental Plan 2002 (LEP 2002) and is proposed to be zoned E4 Environmental Living (E4 Zone) under draft Campbelltown Local Environmental Plan 2014 (draft CLEP 2014).

Under the provisions of LEP 2002, service stations are not permissible on land zoned 7 (d5) Zone. The same provision applies under draft CLEP 2014, as service stations type developments are not proposed to be a permissible land use under the E4 Zone.

The Planning Proposal

The draft Planning Proposal seeks to amend both LEP 2002 and the draft CELP 2014 by creating a 'scheduled use' for the subject site to allow it to be used for a service station. An additional clause under both planning instruments is also proposed to be included to prohibit the refuelling, servicing and parking of heavy vehicles on site. The current zoning of the site of 7(d5) Zone under LEP 2002 will remain the same. There is no proposal to amend the proposed zoning of the site under the draft CLEP 2014 either.

Gateway Determination

The Gateway Determination (attachment 1) issued by the Department supported the proposed amendment to LEP 2002 subject to a number of matters being addressed including:

- Consultation with a number of public authorities
 - Public consultation for a period of 14 days
 - Delegation to Council to exercise the Minister's plan making powers
 - A nine month time frame for the completion of the amendment to LEP 2002
 - A number of minor amendments to the draft Planning Proposal prior to the public exhibition
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Prior to the commencement of the public exhibition the planning proposal was revised in line with the amendments required by the Gateway conditions. The following sections of this report address the conditions that were required by the Gateway Determination.

Consultation with Public Authorities

The Department, as part of the Gateway Determination required Council to specifically consult with the following public authorities:

- Office of Environment and Heritage (OEH)
- Transport for NSW - Roads and Maritime Services (RMS)
- Liverpool City Council (LCC)
- Sydney Water

Council consulted with the above public authorities and received written comments from all of them, a copy of which is shown as attachment 4. Notably, no objections were raised to the planning proposal.

OEH recommended that a flora and fauna study be prepared at the development application stage. RMS indicated that it will provide additional detailed comments on the access arrangement at the development application stage.

LCC supported the planning proposal pending the inclusion of the prohibition clause proposed by Council to restrict the refuelling, parking and servicing of heavy vehicles on site. LCC submission stated that "while acknowledges that fuel and other supplies may be delivered to the site via an appropriate heavy vehicle, the use of the site for any other purpose by heavy vehicles should not be permitted in order to limit heavy vehicle traffic on Council's local road network". In addition, LCC suggested some minor amendments to the traffic study to ensure consistency with the planning proposal. These amendments were undertaken by the consultant acting on behalf of the landowner, prior to the commencement of the public exhibition.

Public Exhibition

The revised Planning Proposal (attachment 5), Gateway Determination and other supporting documentation were placed on public exhibition for over two months (from Wednesday 26 November 2014 until Friday 6 February 2015) at the following locations:

- Council's Civic Centre
- HJ Daily Library
- Greg Percival Library
- Council's website

An advertisement was also placed in the two circulated local newspaper advising of the public exhibition of the planning proposal.

Individual letters were sent to property owners within the vicinity of the subject site advising of the public exhibition and inviting them to provide comments on the planning proposal.

Extended period of public exhibition

The Gateway Determination required the planning proposal to be placed on public exhibition

for 14 days, which was inconsistent with Council's resolution of 1 July 2014, where Council resolved to place the planning proposal on public exhibition for 28 days. In addition, the timing of the public exhibition coincided with last year's Christmas and school holiday period, and for this reason the 28 day public exhibition period was extended until after the commencement of schools to provide sufficient time for residents and nearby landowners to comment on the planning proposal. This is in accordance with Council's common practice for public exhibitions and notifications around this time of year.

Submissions received from the general public

Council received one comprehensive and detailed submission, prepared by Smyth Planning on behalf of the landowner/proponent of the site that is subject to this planning proposal. A copy of this submission is shown as attachment 6 to this report.

The submission requests Council to reconsider its position on restricting the proposed service station from providing refuelling services to heavy vehicles on site. Notably, the submission did not object to Council's decision to prohibit heavy vehicles from parking and undertaking mechanical servicing on site.

In support of this request, the applicant submitted to Council a revised layout/site plan of the service station, an acoustic assessment and a traffic study.

The acoustic assessment concluded that where certain specific measures are implemented, the noise from the proposed development (including refuelling of heavy vehicles/trucks) is predicted to comply with acoustic requirements of the Environment Protection Authority (EPA) noise limits and the relevant Australian standards.

The submission also argues that refuelling of heavy vehicles on site would result in minimal impacts on the aesthetic and scenic values of the locality due to the extent of existing vegetation on site along Campbelltown Road and the vegetated mound along the F5.

The traffic report concluded that the proposed service station including the refuelling of vehicles /trucks on site would not generate an unreasonable amount of additional traffic on the road network within the locality.

Comments

The matter of refuelling, parking and servicing of heavy vehicles on site was considered in the previous report to Council, as it was previously proposed by the applicant. Council did not assent to the applicant's proposal and sought advice from Marsdens Law Group (Marsdens) on a legal mechanism to ensure that a service station at this location would not be utilised by heavy vehicles. Marsdens suggested the inclusion of a prohibition clause under LEP 2002 and the draft CLEP 2014 to this effect.

Allowing a service station on the site to provide specialised refuelling services to heavy vehicles is not recommended for the following reasons:

- It would have the potential to unnecessarily increase the volume of 'passing by' heavy vehicle traffic on the surrounding local roads, thus resulting in adverse environmental impacts including increased noise and air pollution.

Theoretically, trucks travelling on the F5 would access the service station for refuelling services directly from the F5 exit ramp that is adjacent to the site. In order for those

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Denham Court

trucks to continue their journey on the F5 after refuelling, they need to travel through Campbelltown Road to Williamson Road (at the roundabout), to Brooks Road and then back to the F5 (refer to Attachment 7 that shows a map of this route). The trucks' movement (exiting and entering the F5) would potentially and unnecessarily generate additional volumes of heavy traffic on local roads, thus adversely impacting upon the road network within the locality.

Another matter for consideration is the potential additional impacts on local roads (Williamson Road and Brooks Road) pavements and the need to undertake more frequent maintenance on those roads.

- Given the close proximity of the proposed entrance to the service station to the traffic lights at the intersection of Campbelltown Road and the F5 exit ramp, there is a legitimate concern that trucks queuing for refuelling at the service station may potentially cause traffic congestion on both Campbelltown Road and the F5.
- Increased noise and air pollution, particularly where heavy vehicles had to make a complete stop at the refuelling point and restart of the engine to leave the site.
- It is considered that refuelling or servicing of heavy vehicles on site would undermine the objective of this zone and create a land use conflict with adjoining rural-residential development.

The planning proposal (attachment 1) has been updated to include information on the outcome of the public exhibition.

Marsdens Legal Advice

The original planning proposal submitted to Council by the applicant (in July 2013), specifically sought to allow the site to be used for a service station that would provide services such as parking and refuelling of heavy vehicles (including semi-trailers and B-doubles). Council supported the use of the site for a service station subject to an additional requirement that a service station at this location would not provide any services for heavy vehicles.

Council sought advice from Marsdens Law Group on a legal mechanism to ensure that a service station at this location would not be utilised by heavy vehicles. To achieve this, Marsdens recommended that Council add a clause under Schedule 2 Additional Development of the LEP 2002 that reads:

'Development for the purpose of a service station that is not used and is not so constructed or adapted as to be capable of being occupied or used for refuelling, parking, washing, greasing, storing, repairing, installing accessories or servicing of motor vehicles or trailers that have a maximum loaded mass of more than 4.5 tonnes (as specified by the manufacturer or by the Roads and Maritime Services constituted under the *Transport Administration Act 1988*).'

Notably, a GVM is the maximum weight that a vehicle can carry, including its own weight, as measured where the tyres contact the road.

The intention of including the above clause, as part of the amendment to LEP 2002, is to prohibit heavy vehicles from using the site. It is not intended to prohibit smaller type trucks that would normally refuel at typical/car service stations from using the service station.

Research on this matter showed that for small type trucks there is no defined relationship between the GVM and the overall size of the vehicle. Some smaller trucks with lengths similar to, or slightly larger than cars, have a GVM of 6 tonnes, which exceeds the 4.5 tonne limit referred to in the Marsdens' clause above.

Heavy vehicle operators/drivers (such as B-doubles and the like) refuel their trucks at specialised service stations designed for trucks, or at certain service stations that provide additional services for trucks, usually at a designated diesel/gas refuelling point located away from the car refuelling points. Another criterion that truck operators take into account prior to entering a service station is the size of the truck compared to the design of the service station in terms of the canopy height and ease of manoeuvring (turning circles) in and out of the refuelling point.

From the above discussion, it is concluded that:

- the 'GVM' of a vehicle does not necessarily correlates to its size.
- the use of the '4.5' GVM limit, as recommended by Marsden's clause would potentially exclude smaller type trucks that would normally use typical/car service stations for refuelling; and
- the design features of the service station rather than the "GVM" dictates the size of vehicles that it would service.

The relevant design features of a service station relating to heavy vehicles include:

- **Vehicle's turning paths at refuelling points**

Longer/larger vehicles would require greater turning paths as they enter and leave the refuelling point.

Notably, under the provisions of the NSW Road Rules 2014, a long vehicle means a vehicle that, together with any load or projection, is 7.5 metres long, or longer.

As such, designing a service station at this location for vehicles less than 7.5 metres in length would eliminate the heavy long trucks (i.e. B-doubles, heavy combinations or multi combinations) from using the site for refuelling, while still allowing for smaller trucks to refuel at this location.

- **Designated diesel/gas refuelling point for heavy vehicles**

To ensure that a service station at this location is not designed to accommodate heavy vehicles, a designated diesel/gas refuelling point for heavy vehicles should not be allowed on site.

Notably the mechanical servicing of any vehicle larger than 4.5 GVM on site should still be prohibited as per Marsdens advice.

Given the above, it is now proposed that the Clause originally provided by Marsden's be reworded to read:

Development for the purpose of a service station that:

- is not to be designed or capable of being adapted as to be capable of being occupied or used for, parking, washing, greasing, storing, repairing, installing
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accessories or servicing of motor vehicles or trailers that have a maximum loaded mass of more than 4.5 tonnes (as specified by the manufacturer or by the Roads and Maritime Services constituted under the *Transport Administration Act 1988*)

- is not to be designed or capable of being adapted as to be capable of being used for refuelling long vehicles as defined by NSW Road Rule 2014
- is not to provide a designated diesel or gas refuelling point for long vehicles.

Proposed amendment to LEP 2002 (Amendment No 28) and draft CLEP 2014

It is proposed that LEP 2002 be amended in the following manner (Amendment No 28):

- Amend Schedule 2 Additional Development of LEP 2002 to include the following:

12 Development for the purpose of a service station

Lot 100 DP 1176622, 194 Campbelltown Road, Denham Court
- Add a clause under Schedule 2 Additional Development of the LEP 2002 that reads:

Development for the purpose of a service station that:

- is not to be designed or capable of being adapted as to be capable of being occupied or used for, parking, washing, greasing, storing, repairing, installing accessories or servicing of motor vehicles or trailers that have a maximum loaded mass of more than 4.5 tonnes (as specified by the manufacturer or by the Roads and Maritime Services constituted under the *Transport Administration Act 1988*)
- is not to be designed or capable of being adapted as to be capable of being used for refuelling long vehicles as defined by NSW Road Rule 2014
- is not to provide a designated diesel or gas refuelling point for long vehicles as defined by NSW Road Rule 2014

The draft CLEP 2014 is proposed to be concurrently amended in the following manner:

- Amend Schedule 1 Additional Permitted Uses of draft CLEP 2014 to include the following:

14 Development for the purpose of a service station (Service Station):

Lot 100 DP 1176622, 194 Campbelltown Road, Denham Court
- Add a clause under Schedule 1 Additional Permitted Uses of the draft CLEP 2014 (immediately under point 14 above) similar to the proposed clause under LEP 2002.

The exact wording of the amending draft LEP will need to be approved by the Parliamentary Counsel Office prior to the making of the amending plan.

The proposed amendment to the draft CLEP 2014 as part of this planning proposal is considered necessary at this time so as to avoid the need to undertake an additional

amendment to the forthcoming CLEP 2014 after its gazettal.

Would a revised Gateway from the Department be required?

Normally, a revised Gateway would be required where:

- the proposed changes were of substantial nature or
- the revised planning proposal was considered inconsistent with the original Gateway Determination issued by the Department

In this regard, the proposed changes to the planning proposal are not considered substantial, given that a large number of smaller type trucks with a GVM of 4.5 tonnes would have been able to refuel at the service station under Marsdens' prohibition clause that was publicly exhibited as part of the planning proposal.

The proposed rewording of the prohibition clause would clarify Council's intention to not exclude smaller size trucks (with GVMs slightly greater than 4.5 tonne) from utilising the refuelling services at the service station. In line with the planning proposal that was publicly exhibited, B-doubles, semi-trailers and long large heavy vehicles would still not be able to refuel at the service station.

The proposed changes to the planning proposal are also considered to be consistent with the Department's Gateway Determination. Written advice received from the Department has confirmed that a revised Gateway would not be required.

The proposed changes are not considered inconsistent with Liverpool Council submission, as long large vehicle would still not be allowed to refuel on site.

Delegation to Make the Plan - Amendment No 28 to Campbelltown (Urban Areas) Local Environmental Plan 2002

As part of the Gateway Determination and pursuant to Section 23 of the *Environmental Planning and Assessment Act 1979*, the Department delegated the Minister's powers to Council to make this plan.

Council on 26 February 2013, under Section 377 and Section 381 of the Local Government Act 1993, delegated its functions to the General Manager, subject to a number of specified limitations.

Accordingly, should Council endorse the planning proposal as publicly exhibited, the General Manager will be able to make Amendment No 28 to Campbelltown (Urban Areas) Local Environmental Plan 2002 under delegation.

Where to from here

Should Council decide to adopt the amendment to LEP 2002 as publicly exhibited or as proposed to be amended (as discussed in this report), the next step would be to work directly with the Parliamentary Counsel Office (PCO) to legally draft the instrument. The instrument would then be formally signed by Council's delegate, in this Council's General Manager and sent to the Department to enable publishing in the Government gazette.

If Council was to decide to vary the planning proposal and allow the site to provide refuelling services for long and heavy vehicles (as per the proponent's request), then it would be recommended that Council re-exhibit the planning proposal to provide the community with the opportunity to comment on the planning proposal. Notably, a revised Gateway determination would not be required.

Conclusion

The site known as No. 194 Campbelltown Road Denham Court is considered suitable to be developed for a service station, providing that refuelling, parking and servicing of long and heavy vehicles such as B-doubles and semi-trailers is not allowed.

It is considered appropriate to allow the site to provide refuelling services for smaller type trucks that are less than 7.5 metres in length that normally utilise car service stations to refuel.

As a result of the public exhibition, only one submission (attachment 2) was received from the proponent. The submission requested Council to allow the refuelling of heavy vehicles on site. It is recommended that Council do not support the applicant's request for the reasons outlined in this report.

Public authorities who were consulted did not object to the planning proposal. However LCC submission indicated that the use of the site by heavy vehicles should not be permitted in order to limit heavy vehicle traffic on Council's local road network. The proposed amendment to allow smaller type vehicles to refuel on site is not considered inconsistent with LCC submission, as large long vehicles (7.5 metres or longer) would still not be allowed to refuel onsite.

It is therefore recommended that Council endorse a variation to the prohibition clause by allowing vehicles less than 7.5 metres in length to refuel on site, and proceed to make the plan under delegation.

Officer's Recommendation

1. That Council adopt Amendment No 28 to LEP 2002 as proposed by this report to allow the site known as 194 Campbelltown Road, Denham Court to be used for a service station with additional restrictions as outlined in this report.
 2. That Council's delegate, the General Manager, make Amendment No 28 to Campbelltown (Urban Areas) Local Environmental Plan 2002 under delegation, pursuant to Section 59 of the *Environmental Planning and Assessment Act 1979* as authorised by the Minister for Planning and Environment.
 3. That Council inform the Department of Planning and Environment of its decision to adopt and make Amendment No 28 to Campbelltown (Urban Areas) Local Environmental Plan 2002.
 4. That Council advise the applicant of its decision on this matter.
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25th July 2018

Your Ref:

Our Ref: 11/16

The General Manager
Campbelltown City Council
PO Box 57
Campbelltown NSW 2560

Attention: Mr Jeff Burton

Dear Jeff,

RE: Planning Proposal Request - Lot 100 DP 1176622, No 194 Campbelltown Road, Ingleburn

Reference is made to Council's email dated 23rd July 2018 requesting further information in respect of the following:

1. Council Report 10 March 2015 - as discussed, a focus of my report is addressing the reasons for Council's original decision to restrict truck access under the existing CLEP 2015 Schedule 1 provisions. Are you able to provide a detailed response / justification to the issues outlined in the 2015 Council report?

Comment

The report to the Council meeting of 10th March 2015 provided legal advice from Marsdens Law Group. The purpose of requiring legal advice is unclear; however, it purports to require a legal mechanism of preventing access directly from the Hume Highway M31, which is part (d) of the following clause to the LEP amendment:

Amendment No 28 was made to rezone the land to permit a service station, subject to the following provisions:

- (a) does not include a diesel or gas fuelling point for long vehicles (within the meaning of rule 200 of the *Road Rules 2014*), and
- (b) is not designed or constructed to be used by such long vehicles, and
- (c) is designed and constructed to be used by heavy vehicles (within the meaning of the *Road Rules 2014*) only for the purpose of fuelling, and
- (d) is not able to be accessed from a freeway.

This application does not seek to delete part (d). Indeed, it is our opinion that the clause is unnecessary as the Roads and Maritime Service (RMS) is the consent authority to permit access from this road.

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No 194 Campbelltown Road, Ingleburn

It is highly unlikely that the RMS would ever grant consent for direct access given the speed of vehicles on this road and particularly having regard to a number of safety aspects for such access. The applicant has never sought such access, when there is a clear safer access from Campbelltown Road, which is also an RMS controlled road. Access from RMS controlled roads, and in this case a 'denied access' road as compared to a controlled access road, is contingent on safety not being compromised.

Indeed, the RMS has approved the access and egress points from Campbelltown Road, as shown on the plans. The approval required certain works to be undertaken to ensure vehicles can access and egress the site in a safe manner.

The issue of heavy vehicles accessing the service station safely is addressed by the RMS approval. In addition, Campbelltown Road carries a significant amount of traffic and the location of the service station on the periphery of the Ingleburn Industrial Estate makes the site ideal to service heavy vehicles for fuelling purposes. The industrial estate is already serviced by heavy vehicles and we note the comment in the Council report, which states:

"The trucks' movement (exiting and entering the F5) would potentially and unnecessarily generate additional volumes of heavy traffic on local roads, thus adversely impacting upon the road network within the locality".

We simply do not agree with this statement and it is not supported by any traffic report to the contrary. Indeed, the updated traffic report prepared by Colston Budd Rogers & Kafes states:

"Most traffic generated by service stations (some 70 per cent or more) is passing trade (i.e. traffic which would have driven past the site, regardless of its visit to the site). The additional traffic which would access the development (with the LEP amendment) would therefore include trucks already using the M5 exit and Campbelltown Road.

Moreover, trucks would comprise only a proportion of the traffic generated by a development envisaged by the LEP amendment. Such a development would be likely to have a similar traffic generation to that approved in the existing development application.

In any event, a small additional traffic generation of five to 10 vehicles per hour (two-way) at peak times would not have noticeable effects on the operation of the surrounding road network.

Our previous reports found that the signalized intersection of Campbelltown Road with the M5 exit would operate at a good level of service with the additional traffic from the approved development. The intersection will continue to operate at a good level of service with a development envisaged by the proposed LEP amendment".

Clearly, the RMS have approved access and egress from the approved service station and the additional truck traffic movements will not compromise traffic safety. If there was a safety issue, then the RMS would not approve such arrangements.

2. Acoustic - the report states that it is based upon Architectural Drawings (Appendix B), described as "Drawing A-02 Issue DA5 Date 14.03.17 Description: Proposed Site Plan". The plan is not annexed, do you have a copy of this plan?

Comment

The attached acoustic report provides the approved plans at Appendix D.

3. Traffic - What changes if any will be required to the approved DA Plan for the Service Station to accommodate truck access and movements as proposed under the LEP amendment?

The traffic report states that access and internal layout will be provided at the time of a DA, so I take this to mean changes will be required / proposed under a subsequent DA (or Modification DA)?

Comment

No changes required to the approved plans. However, it would be noted that the consent essentially deleted any trucks from entering the site for fuelling purposes and the plans reflect the LEP clauses. If the restriction is lifted, as requested, then an amended application will be submitted to show the truck fuelling area.

4. RMS – your report states that RMS approval was obtained (page 7), and RMS have approved the traffic study (page 23). Is this correct? The RMS will need to be consulted as part of the exhibition process, but it would be highly advantageous if RMS approval could be obtained beforehand and referenced in my report to Council / Planning Panel for the subject LEP amendment and revised Service Station Plan (whatever that may be), particularly given their ownership of the adjoining allotment traversed by the proposed service driveways.

Comment

The RMS approved traffic arrangements for access and egress were submitted separately via email due to size of documents.

Should you require clarification of any aspect of this correspondence please do not hesitate to contact me.

Sincerely yours,



M J BROWN
DIRECTOR
MICHAEL BROWN PLANNING STRATEGIES PTY LTD

4.3 Draft Planning Proposal - 194 Campbelltown Road, Denham Court

Executive Summary

- The subject site is located at the junction of Campbelltown Road and the Hume Motorway exit ramp at Denham Court, and is zoned E4 Environmental Living under Campbelltown Local Environmental Plan 2015. The site was occupied by a single dwelling that has been recently demolished.
- 'Service stations' are prohibited in the E4 Environmental Living zone.
- At its meeting of 17 March 2015 (CLEP 2015) Council supported a planning proposal requesting the amendment of the Campbelltown LEP to permit a service station on the site as an 'additional permitted use', subject to a restriction to deny access to long vehicles being vehicles over 7.5 metres in length. Campbelltown (Urban Area) LEP 2002 was amended to this effect on 22 May 2015, and the additional permitted uses clause for the site has been carried over to the prevailing instrument CLEP 2015.
- On 23 November 2017 Council approved Development Application 3253/2015 for a service station development on the site, which precluded access for long vehicles in accordance with the relevant LEP clause. On 26 July 2018 a construction certificate was issued by a private certifier for the service station development and works have commenced on the land.
- The current Planning Proposal requests the amendment of the additional permitted uses clause under CLEP 2015 to remove the restriction on long vehicles (trucks) accessing a service station on the land. Should the restriction on trucks be removed, the proponent has advised a development application will be submitted to redesign the approved service station to provide site access for trucks.

Public Address

The Local Planning Panel was addressed by Josh Hollis and Michael Brown in support of the proposal.

Panel members asked questions that were responded to directly at the meeting.

Panel Considerations and Reasons for Decision

The panel considered the officers report and inspected the site and was concerned that the original reasons for restricting truck access to the proposed service station were matters that ought to be dealt with at Development Applications stage. The views of the RMS on the removal of the long vehicles restriction imposed in the LEP ought to have been sought prior to approaching Council and the inspection of the site revealed what appeared to be large amounts of fill at a level that appeared to be inconsistent with easy access from Campbelltown Road.

Advice of the Panel

This matter would be best dealt with by utilisation of the provisions of section 3.38 of the Environmental Planning and Assessment Act, 1979 which provides for a development application to be submitted and assessed concurrently with a planning proposal. The Panel advises Council that it should invite a development application from the applicant in respect

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of the matter and that the application should be accompanied by a traffic study assessing the suitability of the proposed long vehicle movements and access and egress arrangements.

Voting

The Local Planning Panel voted 4-0
