

COUNCIL AGENDA

ORDINARY COUNCIL MEETING

29 March 2023



You are hereby notified that an **Ordinary Council Meeting** of Liverpool City Council will be held at the **FRANCIS GREENWAY CENTRE, 170 GEORGE STREET, LIVERPOOL** on **Wednesday, 29 March 2023** commencing at 2.00pm. Doors to the Francis Greenway Centre will open at 1.50pm.

Liverpool City Council Meetings are livestreamed onto Council's website and remain on Council's website for a period of 12 months. If you have any enquiries, please contact Council and Executive Services on 8711 7584.

A handwritten signature in black ink, which appears to read "John Ajaka".

Mr John Ajaka

CHIEF EXECUTIVE OFFICER

Statement of Ethical Obligations

Oath or Affirmation of Office

In taking the Oath or Affirmation of Office, each Councillor has made a commitment to undertake the duties of the office of councillor in the best interests of the people of Liverpool and Liverpool City Council and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act 1993 or any other Act to the best of their ability and judgment.

Conflicts of Interest

A councillor who has a conflict of interest in any matter with which the council is concerned, and who is present at a meeting of the council when the matter is being considered, must disclose the interest and the nature of the interest to the meeting as soon as practicable. Both the disclosure and the nature of the interest must be recorded in the minutes of the Council meeting where the conflict of interest arises. Councillors should ensure that they are familiar with Parts 4 and 5 of the Code of Conduct in relation to their obligations to declare and manage conflicts of interests.

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Council in Closed Session

The following items are listed for consideration by Council in Closed Session with the public excluded, in accordance with the provisions of the Local Government Act 1993 as listed below:

CONF 01 Fire and Rescue NSW Referrals

Reason: Item CONF 01 is confidential pursuant to the provisions of s10A(2)(g) of the Local Government Act because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

PLAN 02

**Liverpool Local Environmental Plan 2008
Amendment: 22 Box Road, Casula**

Strategic Objective	Evolving, Prosperous, Innovative Implement planning controls and best practice urban design to create high-quality, inclusive urban environments
File Ref	029731.2023
Report By	Brianna Van Zyl - Strategic Planner
Approved By	Lina Kakish - Acting Director Planning & Compliance

EXECUTIVE SUMMARY

At its Ordinary Meeting of Council on 31 August 2022, Council resolved:

“That Council:

1. *“Proceed with an amendment to Liverpool LEP 2008 to seek a rezoning for the property at Box Road, Casula (Lot 1103 DP 1051233) to R2 Low Density Residential and reclassification of the site to “operational” land for potential future sale with the proceeds from any future sale to be allocated for the embellishment of Jardine Park.*
2. *If a rezoning and reclassification process are approved as part of an amendment to the LEP, that a future report be presented to Council recommending methods of sale and establishing a reserve / minimum price for the property, prior to proceeding with any sale”*

A Council initiated planning proposal (**Attachment 1**) has been prepared to amend the *Liverpool Local Environmental Plan 2008* (LLEP 2008) at 22 Box Road, Casula (Lot 1103 DP 1051233). The amendment involves the rezoning of the Council owned site, locally known as Mimosa Park, from RE1 Public Recreation to R2 Low Density Residential, and reclassification from Community to Operational land. Development standards will be applied in accordance with adjacent R2 Low Density Residential land. A Height of Building of 8.5m, Floor Space Ratio of 0.6:1, and a minimum Lot Size of 300m².

The subject site is a vacant block of land approximately 565m² in size, sloping approximately 4m from the Box Road Street frontage to the west of the site and has a gradient of close to 1:10. Council has previously investigated options to further embellish the reserve as a local park. However, technical studies identified a number of concerns pertaining to public safety and the viability of such an endeavour.

On 28 November 2022, the Liverpool Local Planning Panel (LPP) considered the proposal as detailed in the LPP Report (**Attachment 2**). The LPP unanimously agreed that the proposal demonstrated strategic and site-specific merit and should progress to the Department of Planning and Environment (DPE) for a Gateway determination (**Attachment 3**).

It is recommended that Council endorse the planning proposal report and forwards the proposal to the DPE seeking a Gateway determination.

RECOMMENDATION

That Council:

1. Notes the advice of the Liverpool Local Planning Panel.
2. Endorses the planning proposal for 22 Box Road, Casula to amend the Land Use Zone, Floor Space Ratio, Lot Size and Height of Building development standards in the *Liverpool Local Environmental Plan 2008*.
3. Forwards the planning proposal to Department of Planning and Environment, pursuant to Section 3.34 of the *Environmental Planning and Assessment Act 1979*, seeking a Gateway Determination.
4. Reclassify 22 Box Road Casula from Community to Operational Land as per the requirements in the *Environmental Planning and Assessment Act 1979*, and *Local Government Act 1993*.
5. Subject to Gateway Determination, undertake community consultation in accordance with the conditions of the Gateway determination, the Liverpool Community Participation Plan 2022 and the *Local Government Act 1993*.
6. Receives a further report on the outcomes of public exhibition and community consultation.

REPORT

Background

At its Ordinary Meeting of Council on 27 October 2020, Council considered a report on the subject site, being Mimosa Park, 22 Box Road, Casula (Lot 1103 DP 1051233) and resolved to endorse Option 1 of the following two options:

- Option 1: Mimosa Park to be kept as a local park and embellished.
- Option 2: Reclassify, rezone, and dispose of Mimosa Park.

Following this, a feasibility study, environmental testing, and a conceptual development design was undertaken (**Attachment 4**). The studies identified several risks in the site's embellishment as a park, including the site's topography, public safety, accessibility, fall heights and maintainability.

Subsequently, at its meeting on 31 August 2022, Council resolved the following (COM01):

“That Council:

- 1. “Proceed with an amendment to Liverpool LEP 2008 to seek a rezoning for the property at Box Road, Casula (Lot 1103 DP 1051233) to R2 Low Density Residential and reclassification of the site to “operational” land for potential future sale with the proceeds from any future sale to be allocated for the embellishment of Jardine park.*
- 2. That if a rezoning and reclassification process are approved as part of an amendment to the LEP, that a future report be presented to Council recommending methods of sale and establishing a reserve / minimum price for the property, prior to proceeding with any sale”*

A draft planning proposal report was drafted (**Attachment 1**) and reported to the Local Planning Panel on 28 November 2022. The details of the planning proposal and the local planning panel advice are outlined within this report.

Site Description and Locality

The subject planning proposal relates to 22 Box Road, Casula (Lot 1103 DP1051233) (see Figure 1 below). The site is a vacant block of land owned by Council and is locally known as Mimosa Park. The site is approximately 565m² in size.

The site was dedicated as a public reserve on 14 April 2003. Council records indicate the land was dedicated in lieu of developer contributions, where the developer was credited \$102,037 for the site. This was based on the book values from the Liverpool Contribution Plan 2001 (December 2001 version).

The site is currently zoned RE1 Public Recreation under the *Liverpool Local Environmental Plan* (LLEP 2008), no development standards apply and it is classified as ‘Community Land’. The site is constrained and has limited functionality due to access, gradients, safety and the adjoining residential dwellings.

The site is currently constrained by access, as the existing section of Box Road at the site's eastern frontage is closed to vehicles and only allows for walking and cycling. The intent of this was to ensure the road was not used as a bypass road from the Hume Highway to Casula Town Centre. The subject proposal was referred to Council's Traffic Management team, who

stated vehicular access to the site could be extended if the extension included traffic calming devices, and continues to permit walking and cycling. This will be investigated in further detail upon finalisation of the planning proposal.



Figure 1: Subject site at 22 Box Road, Casula (Source: Near map).

The site is approximately 1km from Casula Town Centre, containing a library, recreation facilities and shops including Coles, Aldi, and Kmart. The site is also located within 280m of the District Park, Peter Miller Reserve which is currently well-used by the community, and Jardine Park Casula, located approximately 1.5km northeast. The locality is shown in Figure 2 below.



Figure 2: The locality surrounding the subject site (Source: Geocortex).

The surrounding development is low-density residential, with the streetscape characterised by detached 2 storey dwellings. Residential land to the north, south and west is zoned R2 Low Density Residential, and land to the east is zoned R3 Medium Density Residential which is predominantly characterised by low-density development, with a small number of multi-dwelling developments.

Planning Proposal Summary

As 22 Box Road, Casula is deemed to be too constrained for its use as a quality public park, the intent of the planning proposal is to facilitate the sites sale and future development as a single dwelling within an existing low-density residential area. This involves the reclassification from Community Land to Operational Land and rezoning from RE1 Public Recreation to R2 Low Density Residential.

The planning proposal specifies the following development standards under LLEP 2008: a maximum Floor Space Ratio of 0.6:1, maximum Height of Building of 8.5m and a minimum Lot Size of 300m², commensurate with the adjoining land. This will facilitate the future development of a single dwelling house.

In relation to the reclassification of the land from Community to Operational, the requirements under Cl.29 of the *Local Government Act 1993* require a public forum to be held. This will occur during the legislated community consultation, after a Gateway determination has been received.

Upon finalisation of the planning proposal, the site will be listed for sale. Funding from the sale of the site will be allocated to the embellishment of Jardine Park in Casula, as per Council's resolution on 31 August 2022.

The Council initiated planning proposal report is contained within **Attachment 1** of this report.

Consideration of Strategic Merit

The proposed amendment is considered the best outcome for the site and the community. The site is currently under-utilised, and the risk analysis identified several safety risks if the site was to be embellished as a local park. Thus, the rezoning will generate additional funds to embellish Jardine Park and subsequently increase its functionality.

The proposal is considered consistent with the relevant Ministerial Directions and State Environmental Planning Policies, and thus to have strategic merit. A detailed assessment of the criteria is included in the planning proposal report (**Attachment 1**).

Consideration of Site-Specific Merit

The subject site is constrained in regard to access, visibility and level changes which makes it unsuitable for public open space. Given the surrounding context, the site is considered more appropriate for a low-density residential development. It is therefore considered to have site specific merit.

Ministerial direction '4.4 Remediation Contaminated land' requires consideration where residential development is to occur. Council has considered contamination risks as outlined in the planning proposal, due the nature of potential illegal dumping on a vacant site. A soil contamination assessment was conducted in July 2021. The report was conducted by Environmental Earth Science and included a soil classification assessment (**Attachment 5**). The objective of the assessment was to evaluate the site suitability for recreational open space use. The findings of the assessment are summarised below:

- *A surface inspection of the site identified domestic rubbish and minor building rubble along the western boundary well. No other signs of contamination were evident at the sites surface;*
- *Ten test pits were excavated to a maximum depth of 1.8m below ground level;*
- *No friable asbestos, asbestos fibres were identified; and*
- *No other contaminated were reported.*

The site is considered highly unlikely to be contaminated. While investigations will be ongoing, the proposal is considered to be consistent with this direction.

Local Planning Panel Advice

The planning proposal was referred to the Liverpool Local Planning Panel (LPP) on 28 November 2022 for advice as required by the 'Local Planning Panel Directions – Planning Proposals'. The full advice of the LPP is included in **Attachment 3** and summarised below.

The LPP unanimously agreed (4-0) with Council's assessment, that the planning proposal had sufficient strategic and site-specific merit to progress to the next stages of the planning proposal process.

The LPP noted Council officers should give careful consideration to any public submissions received on the proposal after the public exhibition period, which will occur after a Gateway determination is received. Adjoining neighbours will be notified during community exhibition period, in accordance with the Liverpool Community Participation Plan 2022.

The LPP noted requirements to be addressed within Cl.32 of the *Local Government Act 1993* (LG Act 1993) for reclassification of Community Land which had been dedicated under section 94 of the *Environment Planning and Assessment Act 1979*. This comment has been addressed in detail below.

Local Government Act 1993

Under Cl.27 of the LG Act 1993, there are two methods to classify or reclassify land. One being through the making of a local environmental plan (i.e., planning proposal) or secondly, by resolution of Council under Cl.31, 32 or 33 of the LG Act 1993.

The reclassification of the subject site is occurring through the making of a local environmental plan (i.e. planning proposal), as per Cl.27(1) of the LG Act 1993. A public hearing will be required as per Cl.29 of the LG Act 1993. This will occur during the public exhibition period after a Gateway determination has been received.

In addition to above, Cl.32(5) of the LG Act 1993 requires "*the net proceeds of sale by a council of any land dedicated in accordance with a condition imposed under section 94 of the Environmental Planning and Assessment Act 1979 must be dealt with under that section as if those net proceeds were a monetary contribution paid instead of the dedication.*"

As the land was dedicated as a public reserve in lieu of Developer Contributions, the proceeds of sale are to be dealt with as if they are monetary contribution paid instead of a dedication. In short, this means the money generated by the sale of this land has to be dealt with as if it were developer contributions received as part of the Development Application.

The subject Council resolution from 31 August 2022, states the proceeds from any future sale will be allocated to the embellishment of Jardine Park. This satisfies the requirements under Cl.32(5) of LG Act 1993.

Next Steps

If Council adopts the recommendations of this report, the planning proposal will be forwarded to DPE seeking a Gateway determination.

Pending a positive Gateway determination, community consultation will occur as per the conditions outlined in the Gateway determination, Council's Community Participation Plan 2022 and the LG Act 1993. Once complete, a post-exhibition report will be considered by Council.

FINANCIAL IMPLICATIONS

Costs associated with a Planning Proposal are within Council's current budget for Strategic Planning.

As per Council's resolution on 31 August 2022, upon finalisation of the Planning Proposal, a further report will be presented to Council recommending methods of sale and establishing a reserve / minimum price for the property, noting proceeds from the sale are required to be allocated to Jardine Park, Casula.

CONSIDERATIONS

Economic	There are no economic and financial considerations.
Environment	Creating quality open space for the local community.
Social	Regulate for a mix of housing types that responds to different population groups such as young families and older people.
Civic Leadership	There are no civic leadership and governance considerations.
Legislative	<p>Division 3.4 of <i>Environmental Planning and Assessment Act 1979</i> applies to making of environmental planning instruments.</p> <p>Section 27(1) of <i>Local Government Act 1993</i> allows reclassification of the site by a planning proposal.</p> <p>Section 29(1) of the <i>Local Government Act 1993</i> requires a Public Hearing, which will occur during the future exhibition period.</p>

	Section 32(5) of the <i>Local Government Act 1993</i> requires the net proceeds of any land dedicated under section 7.11 (formally section 94) of the EP&A Act 1979 to be dealt with as if those proceeds were a monetary contribution paid instead of dedication.
Risk	The risk is deemed to be low.

ATTACHMENTS

1. Attachment 1: Council prepared Planning Proposal report: 22 Box Road (Mimosa Park) (Under separate cover)
2. Attachment 2: Local Planning Panel Report 22 Box Road (Mimosa Park) (Under separate cover)
3. Attachment 3: Local Planning Panel Minutes: 22 Box Road Casula (Mimosa Park) (Under separate cover)
4. Attachment 4: Safety Design Report: 22 Box Road, Casula (Mimosa Park) (Under separate cover)
5. Attachment 5: Soil Contamination Report: 22 Box Road (Under separate cover)