

<b>DATE OF DETERMINATION</b>	9 November 2022
<b>DATE OF PANEL DECISION</b>	8 November 2022
<b>DATE OF PANEL MEETING</b>	24 October 2022
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Nicole Gurran, Louise Camenzuli, Peter Harle, Ned Mannoun
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 21 October 2022.

#### **MATTER DETERMINED**

##### **PPSSWC-172 - Liverpool City Council – DA-416/2021– 5 Orange Grove Road, Warwick Farm**

Partial Demolition and Alterations and Additions to an existing Commercial Centre (The Grove Liverpool), including additional commercial space, amendments to the parking area with additional parking (at Fashion Spree Carpark), new road configuration and access works, landscaping, children play areas, relocation of food truck areas, new signage zones and associated infrastructure works.

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

##### **Application to vary a development standard**

Following consideration of the written request from the applicant, made under cl 4.6 (3) of the Liverpool LEP 2008, the Panel agrees with the advice in the assessment report based on the matters there discussed that the request has demonstrated that:

- compliance with cl. 4.3 (height of buildings) is unreasonable or unnecessary for the development proposed in this DA in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is also satisfied on the basis of the matters discussed in the assessment report that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the Liverpool LEP 2008 and the objectives for development in the B5 Business Development and the B6 Enterprise Corridor zones.

The concurrence of the Secretary is assumed (see Planning Circular PS 20-002 issued 5 May 2020).

##### **Development application**

The Panel is unanimously of the view that the development application should be approved pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, once the matters discussed below relating to the VPA and the potential for a blockage of Homepride Avenue are resolved.

To that end, the Panel resolves to defer final determination until the Council provides further advice on those matters, at which time the DA will record its final determination by circulation of papers.

In coming to that conclusion, the Panel:

- noted that all outstanding matters from the referral authorities had been closed out and incorporated into the draft conditions of consent;
- noted that the vegetation management plan has been expanded down to Cabramatta Creek, being a matter raised by the Panel early in the assessment of the DA;
- was advised by Liverpool Council that the Council is comfortable for the façade treatments of Fashion Spree is to be dealt with at a later time when that tenancy is developed; and
- revisited whether there is an opportunity for a through site link for a cycle pathway across Cabramatta Creek, linking the Liverpool and Fairfield LGAs. The proponent has based its cycle plan on the 2023 Bike Plan. The Panel understands that the Cabramatta Creek masterplan is being drafted now, which will look at the potential for a thoroughfare through this area, and the development will be consistent with any such thoroughfare.

### Developer contributions

The Panel also carefully considered the proposed draft developer contributions conditions, being proposed conditions 8 and 9, noting that there is a VPA applicable to the site which seems to affect the calculation of any contributions payable. The VPA deed briefed to the Panel is dated 25 May 2018.

Clause 4.1 of that VPA Deed appears to operate to exclude the application of what were then ss 94 and 94A of the Environmental Planning & Assessment Act 1979 (now renumbered as ss 7.11 and 7.12) to “the Development” as defined in the Deed, where the Development is described as:

<b>Development</b>	means the development of premises on the Land to be used for Shops having an aggregate GFA of up to 21,000 square metres. Development excludes: <ol style="list-style-type: none"><li>(1) the fitout of Shops (the fitout of Shops will be subject to separate development applications); and</li><li>(2) any redevelopment of the bulky goods premises or other uses currently permissible in the B5 zoned areas of the Land.</li></ol>
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However, the DA site seems to include land in addition to that the subject of the VPA, as shown in the comparison below:



Figure 1 - VPA "Land"



*Figure 2 - DA site*

To the extent that the VPA does apply to the whole or part of the development, it imposes a requirement for the developer to pay the greater of a 3% monetary contribution calculated against the “CIV” for the development as defined in the Deed or \$2,100,000 prior to the issue of an Occupation Certificate for the “Development”. The VPA also appears to require various works to be completed, with a concept design for the works required to be approved by the Council before a construction certificate issues for the Development.

Compliance with the VPA is required by proposed Condition 8 of consent. Condition 9 requires payment of developer contributions under s.7.12.

The Panel requires advice from the Council that the requisite requirements under the VPA have been met, and that arrangements for the payment of developer contributions to be required has been resolved with reference to the VPA, preferably in a manner which the Applicant has confirmed it has agreed to.

#### **Assessment under s 4.15**

The Panel determined to uphold the Clause 4.6 variation to building height and approve the application for the reasons outlined in the Council Assessment Report, in particular, the Panel was satisfied that:

- The application has been assessed having regard to the matters of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory having regard to the advice contained in the Council assessment report.
- The proposal generally complies with the provisions of the provisions of State Environmental Planning Policy (State Significant Precincts) 2005 and the approved Concept Plan for the Edmondson Park Town Centre and its relevant modifications.
- The development will facilitate the future development of the Edmondson Park Town Centre which is well located in relation to existing transport, and future employment, shopping, business and community services, as well as recreation facilities.
- The proposal will facilitate the management of the adjacent riparian corridor.
- Issues of bushfire risk and potential flooding impact have been considered and found to have been successfully resolved. The Panel accepts that issues of flood impact and topography restrict the extent to which the development can connect with the adjoining riparian corridor,

At its meeting on 14 October 2021, Council’s Design Excellence Panel (DEP) found the development to be much improved, but raised a number of matters which the DEP saw as requiring further resolution. Amended plans were submitted after the Panel’s comments were received which addressed a number of the matters the DEP had raised, such as the final design for the roundabout and the breezeway precinct, including better connection with Dwyer Oval, and an updated landscape plan. The design response to some

of the matters raised by the DEP are difficult to resolve because of constraints of the site such as flooding. While not all of the DEP's concerns have been resolved, overall, the Panel accepts the Council assessment staff's advice that the design is satisfactory.

## CONSIDERATION OF COMMUNITY VIEWS

One written submission was made during public exhibition raising principally traffic and operational issues including maintenance, congestion and ownership in relation to the access road.

The Council assessment report in response to that objection refers to a Traffic and Transport Assessment prepared by SCT Consulting (Dated 20 December 2021) that was referred to Council's Traffic and Transport team and Transport for NSW, which both supported the proposed development subject to conditions. Those conditions are included in the development consent recommended by Council staff. They include a requirement that Homepride Avenue be upgraded and rehabilitated to industrial standard.

In particular, the assessment report describes the anticipated increase in vehicle trips in the weekday and weekend peak hours (including both The Grove Liverpool and Fashion Spree) expected to arise from the proposed development. It is reported that SIDRA results show that there is a currently acceptable level of service (LoS) for the intersections of Cumberland Highway/Viscount Place and Hume Highway/Homepride Avenue, and at least 20 per cent of spare capacity to cater for the anticipated potential traffic growth around the site.

The issue of potential blockage of Homepride Parade raised by the objector should be addressed in a management plan as foreshadowed in the assessment report, but not apparently specifically provided for in the conditions. The Panel will require greater clarity and certainty in that regard before the determination can issue.

The Panel is otherwise satisfied that the matters raised by this submission have been adequately dealt with via the conditions of consent and responses in the Briefing Reports.



## CONDITIONS

The Panel is generally satisfied with the conditions recommended in the Council Assessment Report.

However, having regard to the discussion above, operational or deferred commencement conditions addressing the following matters will need to be resolved before the DA can be finally determined:

1. The payment of developer contributions taking into account the VPA (and particularly the definition of "Land" and "Development" in the VPA deed as discussed above.
2. The preparation of a management plan to address a breakdown of a vehicle on Homepride Avenue taking into account the need to minimise impacts on other properties relying on Homepride Avenue, which is anticipated in the assessment report but does not seem to have been included in the draft conditions.

Once conditions addressing those subjects is received, the Panel anticipates being in a position to determine the DA finally.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Peter Harle



Nicole Gurran



Ned Mannoun



Louise Camenzuli

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-172 - Liverpool City Council – DA-416/2021
2	PROPOSED DEVELOPMENT	Partial demolition and alterations and additions to an existing Commercial Centre (The Grove Liverpool), including additional commercial space, amendments to the parking area with additional parking (at Fashion Spree Carpark), new road configuration and access works, landscaping, children play areas, relocation of food truck areas, new signage zones and associated infrastructure works.
3	STREET ADDRESS	5 Orange Grove Road, Warwick Farm
4	APPLICANT/OWNER	TGL Fast Food Investments Pty Ltd, Fashion Spree Investments Pty Ltd, Grove Investments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<p>Environmental planning instruments:</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021.</li> <li>• State Environmental Planning Policy (Planning Systems) 2021.6</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021.</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021.</li> <li>• State Environmental Planning Policy (BASIX) 2004</li> </ul> <p>Draft environmental planning instruments: Nil</p> <p>Development control plans:</p> <ul style="list-style-type: none"> <li>• Part 1 – General Controls for all development.</li> <li>• Part 6 - Development in Business Zones (Except Liverpool City Centre)</li> </ul> <p>Planning agreements:</p> <p>A Voluntary Planning Agreement (VPA) pursuant to Section 7.4 (formerly known as Section 93F) of the Environmental Planning and Assessment Act 1979 was agreed to between Liverpool City Council and Gazcorp Pty Ltd, dated 25 May 2018.</p> <p>Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></p> <p>Coastal zone management plan: Nil</p> <p>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p> <p>The suitability of the site for the development</p> <p>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</p> <p>The public interest, including the principles of ecologically sustainable development</p>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 21 October 2022 and 5 August 2022</li> <li>• Clause 4.6 Variation Request prepared by Ethos Urban dated 16 April 2021</li> <li>• Briefing Note 29 October 2022</li> </ul>

		<ul style="list-style-type: none"> <li>• Written submissions during public exhibition: 1</li> <li>• Total number of unique submissions received by way of objection: 1</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 1 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Wendy Waller, Peter Harle</li> <li>○ <u>Council assessment staff</u>: Kevin Kim, Peter Oriehov</li> </ul> </li> <li>• Briefing: 8 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Peter Harle</li> <li>○ <u>Council assessment staff</u>: Peter Oriehov</li> </ul> </li> <li>• Site inspection: 22 November 2021, 2pm <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Nicole Gurran, Peter Harle</li> <li>○ <u>Council assessment staff</u>: Peter Oriehov</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 24 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Ned Mannoun, Peter Harle</li> <li>○ <u>Council assessment staff</u>: Peter Oriehov, Michael Oliveiro, Amanda Merchant</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report