

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	6 September 2023
DATE OF PANEL DECISION	4 September 2023
DATE OF PANEL BRIEFING	7 August 2023
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Nicole Gurran, Karress Rhodes
APOLOGIES	Ned Mannoun
DECLARATIONS OF INTEREST	Louise Camenzuli declared a conflict as the company she works for represents the applicant on a different site unrelated to this matter.

Papers circulated electronically on 30 August 2023.

MATTER DETERMINED

PPSSWC-210 – Liverpool – DA-1295/2021 – Gurner Avenue, Austral - Site Remediation, Dam dewatering, Subdivision of Existing Allotment into a Torrens Title Staged Subdivision of 123 Residential Lots and 22 residue lots , and Construction of Roads and associated Civil 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 listed at item 8 in Schedule 1.

Interaction with DA-1298/2021

Initially, this development application included the subdivision of Lot 184 DP1237400 to create 9 Superlots, including Superlot 102.

However, due to the delay in the determination of this development application, DA-1298/2021 for the Austral East Landcom development was amended to include the creation of Superlot 102 within Lot 184 DP1237400 which has been separately approved by the Panel.

Council has amended the recommended conditions of consent for this development application to reflect the approval of DA-1298/2021 including the creation of Superlot 102, and the fact that this development application will now consequently only result in the creation of 8 Superlots on the remainder of Lot 184 DP1237400.

The Panel supports that amendment subject to the comments below.

Northern Collector Road Extension

In May 2023, the Panel deferred the determination of this development application to give Council and Landcom more time to resolve outstanding matters concerning the proposed conditions of consent, which (in the wording as first proposed by the Council) required Landcom to extend the Northern Collector Road to the boundary of Lot 10 DP771080 prior to the issue of a subdivision certificate for Stage 3 of the development.

At the time of the deferral, the Panel observed that the road extension did not seem to be required for, or offer any benefit to, the development of the Landcom land, such that it was not clear whether liability for the cost of the road extension could reasonably be required of Landcom as a condition of development consent for this DA if it did not agree to that liability.

While Landcom maintains its position that there is no nexus between the proposed development and Council's requirement to extend the Northern Collector Road to the boundary of Lot 10 DP771080 – as the extension is solely for the benefit of the owner of the adjoining lot and should consequently be paid for and constructed by the owner of the lot, not Landcom – as a compromise with Council to resolve the issue it has now voluntarily offered to Council to make a limited monetary contribution to facilitate the construction of the road extension if it proceeds in the medium term.

To that end Council has advised the Panel that Landcom has agreed to a condition recorded in an email from Matt Cooper of GLN Planning sent 14 August 2023 on behalf of Landcom, a copy of which was supplied to the Panel.

The Panel supports the agreement reached between Council and Landcom as it will facilitate the orderly development of Lot 10 DP771080 and the provision of additional housing in Western Sydney. However, to more clearly express what has been agreed to by Council and Landcom, the Panel has amended the wording of the proposed condition as set out below.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons set out in Council's Assessment and Supplementary Assessment Reports having regard to the matters discussed above.

In particular, the Panel concluded that:

- The development is consistent with the provisions of the relevant environmental planning instruments, including the requirements in Appendix 4 of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* and the relevant controls in the *Liverpool City Council Growth Centre Development Control Plan*.
- The impacts of the development are acceptable and can be suitably controlled with the recommended conditions.
- With the remediation required under these conditions, the site will be suitable for the development.
- The proposal will make a substantial contribution to the provision of affordable housing in Western Sydney, consistent with the strategic objectives for the Austral area.
- The development is in the public interest.

CONDITIONS

The development application was approved subject to Council's recommended conditions of consent dated 26 July 2023 (Attachment D to the Council staff assessment report), but with Condition 157 amended to read:

"This condition is imposed in accordance with an offer made by Landcom accepted by Liverpool Council as recorded by email from Matt Cooper of GLN Planning sent 14 August 2023 on behalf of Landcom.

Prior to the issue of a subdivision certificate for the subdivision approved by this development a binding Letter of Undertaking from Landcom is to be provided to Liverpool Council to the effect of the following:

"If within 10 years of the provision of this 'Letter of Undertaking', development consent is granted for development of the neighbouring Lot 10 DP771080 and Council informs Landcom

in writing that an extension of the Northern Collector Road is required to service that development, then Landcom undertakes to Liverpool Council to:

- (i) pay the sum of \$2,680,000 to Council or as Council directs to be applied to the cost of the construction of the road extension (with any balance of that sum not expended for the road construction two years after the payment is made to be returned to Landcom).
- (ii) enter into a voluntary planning agreement with Council on reasonable terms to record its obligation to make the payment before the payment is made.

The offer from Landcom to provide that binding undertaking is given in consideration of the negotiations between Council and Landcom in relation to the issuing of this development consent.

Note: The sum of \$2,680,000 was offered by Landcom to reflect its estimation of the cost of those works at the time of the granting of this consent accepted as reasonable by the Council:

Road construction \$645,000
Culvert Crossing \$2,035,000
TOTAL OFFER \$2,680,000"



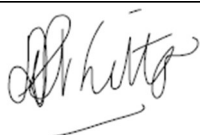
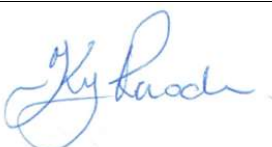
Landcom shall have no further obligation under this condition if:

- (a) *Council so advises Landcom in writing;*
- (b) *Development consent is granted for development of Lot 10 DP771080 which does not rely upon an extension of the Northern Collector Road; or*
- (c) *Landcom constructs sealed vehicular access to Lot 10 DP771080."*

CONSIDERATION OF COMMUNITY VIEWS

Council exhibited the development application from 27 January 2022 to 25 February 2022 and received 3 submissions.

In making its decision, the Panel considered the issues raised in these submissions and determined that these issues were adequately addressed in Council's Assessment Report and Supplementary Assessment Reports and the recommended conditions of consent.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurrán
 David Kitto	 Karress Rhodes

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-210 – Liverpool – DA-1295/2021
2	PROPOSED DEVELOPMENT	<p>Superlot and residential subdivision over 3 stages – including site remediation, dam dewatering, vegetation clearing, subdivision of existing allotment into a torrens title staged subdivision of 123 residential lots and 22 residue lots and construction of roads and associated civil works.</p> <p>Stage 1: Subdivision of one existing allotment (Lot 184 DP1237400) to create 9 superlots for future development (superlots 101 to 109).</p> <p>Stage 2: Subdivision of proposed superlot 101 (Austral West) created under Stage 1 to create 60 torrens title residential lots (Lots 1 to 36, 39 to 42, 44, 45, 47 and 52 to 68) and 11 residue lots (Lots 37, 38, 43, 46, 48 to 51, 69 and 70). Stage 3: Subdivision of proposed superlot 70 (Austral West) created under Stage 2 to create 63 Torrens title residential lots (Lots 201 to 217, 219 to 230 and 232 to 265) and 4 residue lots (Lots 218, 231, 266 and 267).</p>
3	STREET ADDRESS	Gurner Avenue, Austral
4	APPLICANT/OWNER	<p>Applicant: Landcom</p> <p>Owner: The Office of Strategic Lands</p>
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Precincts – Western Parkland City) 2021 – Appendix 4 Liverpool Growth Centres Precinct Plan State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 4 – Remediation of Land. State Environmental Planning Policy (Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Environment) 2021, Chapter 6 – Water Catchments. Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Liverpool Growth Centres Precinct DCP <ul style="list-style-type: none"> - Part 2: Precinct Planning Outcomes - Part 3: Neighbourhood and Subdivision Design - Part 4: Development in the residential zones - Schedule 1: Austral and Leppington Precincts Planning agreements: Landcom’s offer, dated 30 June 2023, to enter into a planning agreement with Council to facilitate the construction of the extension of the Northern Collector Road Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations

		<ul style="list-style-type: none"> The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council's Assessment Report: 7 December 2022 Council's Supplementary Assessment Reports dated: 24 April 2023, 26 July 2023 Landcom's offer, dated 30 June 2023, to enter into a planning agreement with Council to facilitate the construction of the extension of the Northern Collector Road The agreed wording of condition 157 in the emails between Council and Landcom dated 8, 10 and 14 August 2023 Written submissions during public exhibition: 3 Total number of unique submissions received by way of objection: 3
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 16 May 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Julie Savet Ward, Ned Mannoun, Peter Harle <u>Council assessment staff</u>: Kelly Coyne, Brenton Toms, Patrick Bastawrous, Marif Hossain <u>Applicant representatives</u>: Andy Yung, Steve Boukatos, Tim Colless, Phil Clifford, Pat Coleman, Joe Rowling, Matt, Greg Moore, Maddison Spiteri Briefing: 24 October 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Julie Savet Ward, Peter Harle <u>Council assessment staff</u>: Melanie Smith, Amanda Merchant <u>Applicant representatives</u>: Steve Boukatos, John Drivas, Tim Colless, Phil Clifford, Matt Cooper, Zac Wilson Panel Deferral Briefing: 21 December 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Julie Savet Ward, Peter Harle <u>Council assessment staff</u>: Nabil Alaeddine, Anna Johnston <u>Applicant representatives</u>: Steve Boukatos, Pat Coleman Panel Deferral Briefing: 1 May 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, David Kitto, Karress Rhodes <u>Council assessment staff</u>: Nabil Alaeddine, Amanda Merchant, Michael Oliviero, Anna Johnston <u>Planning Delivery Unit</u>: Chris Dwyer <u>Applicant representatives</u>: Steve Boukatos, Margot Chappell, John Drivas, Matt Cooper Final briefing to discuss council's recommendation: 7 August 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, David Kitto, Karress Rhodes, Ned Mannoun <u>Council assessment staff</u>: Nabil Alaeddine, Amanda Merchant, Michael Oliviero, Anna Johnston <u>Planning Delivery Unit</u>: Chris Dwyer <u>Applicant representatives</u>: Steve Boukatos, Margot Chappell, John Drivas, Matt Cooper

9	COUNCIL RECOMMENDATION	Approval – Deferred Commencement
10	DRAFT CONDITIONS	Attached to the Council Assessment Report