

DATE OF DETERMINATION	21 December 2022
DATE OF PANEL DECISION	21 December 2022
DATE OF PANEL MEETING	12 December 2022
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Julie Savet Ward, Peter Harle
APOLOGIES	Ned Mannoun
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 8 December 2022.

MATTERS DETERMINED

PPSSWC-210 – Liverpool – DA-1295/2021 - Gurner Avenue, Austral - 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.

PPSSWC-211 – Liverpool – DA-1298/2021 - Gurner Avenue, Austral - Residential subdivision of proposed Lot 102 (to be created under DA-1295/2021) to create 92 Torrens Title residential lots with associated vegetation removal, site remediation, earthworks, construction of new roads and 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.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

This deferral record has been prepared to address two related development applications concerning staged residential subdivision over 3 stages representing a substantial release of land to facilitate the development of the Austral Precinct of the South West Growth Area by Landcom.

DA-1295/2021 (PPSSWC-210) is for the staged superlot and residential subdivision (over 3 stages) for 123 residential lots and 22 residue lots.

DA-1298/2021 (PPSSWC-211) is for the residential subdivision of proposed Lot 102 (to be created under DA-1295/2021) to create 92 Torrens Title residential lots, as part of the staged development proposed by DA 210.

A joint briefing of the Panel was convened on 12 December 2022 with the hope of facilitating an electronic determination of the two DAs, but at that time recommended conditions of development consent had not been fully resolved. A determination of approval for either DA would require deferred commencement conditions given that a number of design matters remain for final conclusion.

The Council reports for the two DAs both reported acceptance that the development proposed by each was generally “compliant with the relevant development standards and applicable planning controls”. Subject to

the resolution of detailed issues of design, the Panel is satisfied for the reasons set out in the respective DA assessment reports, that the residential development proposed in each DA will be consistent with the objectives of the R2 – Low Density Residential zone that applies to the portions of the site proposed for residential subdivision under the Liverpool Growth Centres Precinct in the *SEPP (Precincts – Western Parkland City) 2021*, and the considerations arising under s.4.15 of the EP&A Act.

At the briefing the following residual issues were raised for discussion:

Land owners consent

The DA plans showed earthworks and roadworks which encroach on the adjacent land at 29 Gurner Avenue, and specifically road return works at the end of the laneway are depicted in the plans as extending onto 29 Gurner Avenue in the location of future Lapwing Street. The Panel cannot lawfully approve a DA which includes works on land without the consent of the owner of that land (see *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*).

Any development consent that can be granted must expressly and unequivocally provide that it does not approve proposed development on neighbouring land. To the extent that access is required, any development consent that relies upon access over other land could not commence until development consent is separately obtained for that access.

Alternately, if the access is to be relocated within the Landcom site, the consequent design changes would need to be examined. Such changes are beyond the scope of a deferred commencement condition.

Remediation of contamination

An issue arose as to whether an RAP was necessary before the granting of development consent. The Panel indicated on a preliminary basis that while final approval of a completed RAP for the site was not required by the statutory scheme, the Panel would need to be satisfied of the matters identified by New South Wales State Environmental Planning Policy (Resilience and Hazards) 2021, and would need professional assurance that the requirements of that SEPP as necessary for the granting of consent had been met, and particularly that when the development is complete it will be suitable for the intended residential use with reference to relevant guidelines.

Flooding

At the briefing the Panel was not yet informed by Council's engineering staff as to how the flood engineering solutions might affect the subdivision design. That would require attention in any consent granted. A deferred commencement condition would be suitable as long as it remained certain that the development would not materially be altered from that described in the DA documents by the flood mitigation works.

External road and intersection works

The Roads Act provides an independent means for the Council (or other roads authorities) to consider and approve works within a public road. The subdivision can be approved without those works being finally resolved, but the Panel would need to be satisfied that there is a sufficiently reliable means to resolve any consequential traffic issues, and may (where appropriate) require that the completed development will not be occupied until those works have been completed.





The Panel also considered carefully the issues raised in the submissions made by and for the owner of neighbouring land at 29 Gurner Avenue including concerns about the access proposed over that property which is discussed above, which must be taken into account in the final determination. Some of those concerns are to be addressed by condition.

At the conclusion of the briefing, the Panel requested that Council and the Applicant work to supply an agreed set of conditions which addressed the matters discussed.

Late on Friday 16 December 2022, the Panel received correspondence about the conditions to be imposed on any approval. From reviewing that correspondence, the Panel could not be satisfied that the conditions were sufficiently resolved, and particularly that Landcom had been accorded sufficient opportunity to consider and respond to the Council's draft.

For that reason, despite the work by the Panel to facilitate the prompt determination of these important DAs if possible this year, deferral to allow for the conditions to receive closer examination by Landcom, and any residual concerns to be resolved, is unavoidable.

The Panel does expect that, at the earliest practicable opportunity, the DAs will be reported back for final electronic determination.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurran
 Julie Savet Ward	 Peter Harle

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-210 – Liverpool – DA-1295/2021 PPSSWC-211 – Liverpool – DA-1298/2021
2	PROPOSED DEVELOPMENT	PPSSWC-210 - 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. PPSSWC-211 - Residential subdivision of proposed Lot 102 (to be created under DA-1295/2021) to create 92 Torrens Title residential lots with associated vegetation removal, site remediation, earthworks, construction of new roads and civil works.
3	STREET ADDRESS	Lot 184 DP1237400, Gurner Avenue, Austral NSW 2179.
4	APPLICANT/OWNER	The Office of Strategic Lands
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 State Environmental Planning Policy 2 (Resilience and Hazards) 2021 State Environmental Planning Policy (Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Environment) 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Liverpool City Council Growth Centre Precincts Development Control Plan 2021 Planning agreements: Nil 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 The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 7 December 2022 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"> Kick-Off Briefing: 24 January 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair) <u>Council assessment staff</u>: Kelly Coyne and Melanie Prior <u>Applicant representatives</u>: Steven Boukatos, Pat Coleman, Paul Neville, Joe Rowling Applicant Briefing: 16 May 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Julie Savet Ward, Ned Mannoun, Peter Harle <u>Council assessment staff</u>: Kelly Coyne, Brenton Toms, Patrick Bastawrous, Maruf Hossain <u>Applicant representatives</u>: Andy Yung, Steve Boukatos, Tim Colless, Phil Clifford, Pat Coleman, Joe Rowling, Matt, Greg Moore,

		<p>Maddison Spiteri</p> <ul style="list-style-type: none"> Applicant and Council Briefing: 24 October 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, 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 Final briefing to discuss council's recommendation: 12 December 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Ned Mannoun, Peter Harle <u>Council assessment staff</u>: Nabil Alaeddine, Anna Johnston <u>Applicant representatives</u>: Pat Coleman, Steven Boukatos
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report