

LIVERPOOL CITY COUNCIL

SYDNEY WESTERN CITY PLANNING PANEL

SYDNEY WESTERN CITY PLANNING PANEL
COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-232
DA Number	DA-611/2018/A
LGA	Liverpool City Council
Proposed Development	<p>Modification to DA-611/2018 pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act. The modification seeks amendments to the following:</p> <ul style="list-style-type: none"> • Deletion of Deferred Commencement Conditions 1, 2 and 4 contained in Part 1 – Deferred Commencement. • Amendment of Deferred Commencement Condition 3 contained in Part 1 – Deferred Commencement • Deletion of condition 125 • Amendment of condition 2(e), 8, 12, 28, 54, 56, 57, 88, 139, 170 • Insertion of condition 11a, 54a, 54b, 55a, 63 (a) to (d), 99a, 124a, 124b
Street Address	LOT 3 NEWBRIDGE ROAD MOOREBANK
Property Description	LOT 3 DP 1246745
Applicant/Owner	TANLANE PTY LTD
Date of DA Lodgement	14 December 2021
Number of Submissions	N/A
Recommendation	Approval, subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The Sydney Western City Planning Panel is the determining authority as the application is a Section 4.55(1A) modification of a development application approved by Sydney South West Planning Panel for Construction and operation of a Marina (Georges Cove Marina) with a CIV of \$51,632,975.00 pursuant to Clause 7 of Schedule 6 of the SEPP (Planning Systems) 2021.
List of all relevant s4.15(1)(a) matters	<p>1. <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i></p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy (Biodiversity and Conservation) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021. • State Environmental Planning Policy (Planning Systems) 2021. • Liverpool Local Environmental Plan 2008.

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	<p>2. <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s415(1)(a)(ii)</i></p> <ul style="list-style-type: none"> No proposed instrument relates to the site or proposal. <p>3. <i>List any relevant development control plan: s4.15(1)(a)(iii)</i></p> <ul style="list-style-type: none"> Liverpool City Council Development Control Plan (LDCP) 2008 <ul style="list-style-type: none"> Part 1 – General Controls for all Development Part 2.10 – Moorebank East (Benedict Sands) <p>4. <i>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iv)</i></p> <ul style="list-style-type: none"> A Voluntary Planning Agreement (VPA) pursuant to Section 7.4 of the EP&A Act was agreed between Liverpool City Council and Tanlane Pty Ltd on 11 June 2008. <p>5. <i>List any relevant regulations: s4.15(1)(a)(iv)</i></p> <ul style="list-style-type: none"> Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC).
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> Approved SWCPP Assessment Report Approved Determination Notice Statement of Environmental Effects Draft Conditions
Clause 4.6 requests	N/A
Summary of key submissions	No submissions received from notification period
Report prepared by	Development Assessment
Report date	05 November 2022

Summary of Section 4.15 matters Have all recommendations in relation to relevant Section 4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable

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Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.11EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel is the determining authority as the application is a Section 4.55(1A) modification of a development application approved by Sydney South West Planning Panel for construction and operation of a Marina (Georges Cove Marina) with a CIV of \$51,632,975.00, pursuant to Clause 7 of Schedule 5 of the State Environmental Planning Policy (Planning Systems) 2021.

1.2 The proposal

DA-611/2018 was determined by way of Deferred Commencement on 07 May 2021 by the Sydney South West Planning Panel for the *construction and operation of a marina (Georges Cove Marina) at Lot 3 Newbridge Road, Moorebank.*

The application seeks to modify DA-611/2018 pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act. The modification seeks amendments to the following:

- Deletion of Deferred Commencement Conditions 1, 2 and 4 contained in Part 1 – Deferred Commencement.
- Amendment of Deferred Commencement Condition 3 contained in Part 1 – Deferred Commencement
- Deletion of condition 125
- Amendment of condition 2(e), 8, 12, 28, 54, 56, 57, 88, 139, 170
- Insertion of condition 11a, 54a, 54b, 55a, 63 (a) to (d), 99a, 124a, 124b

1.3 The site

The development site is comprised of Lot 3 DP 1246745, and is identified as Lot 3 Newbridge Road, Moorebank. The site is a regular shaped allotment and has an approximate area of 12.357ha (or 123,570m²).

1.4 Exhibition of the proposal

In accordance with Community Participation Plan 2019 the modification application was not required to be notified to adjoining properties and Council did not receive any submissions in relation to the proposal.

1.5 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application, it is recommended that the modification application be approved, subject to the recommended conditions of consent.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is located on the southern side of Newbridge Road, Moorebank and is irregularly shaped with a total site area of approximately 12.3 hectares.

A site locality plan is included as Figure 1 below.



Figure 1: Aerial Map

2.2 Locality

The site is located adjacent to the Georges River to the east, Newbridge Road to the north and Georges Fair residential estate to the west. Land to the east of the Georges River is located within the Canterbury Bankstown Local Government Area and is characterised as expansive recreational open space. A residential development is planned to the immediate north of the marina site on Lot 2 DP 1246745

3. BACKGROUND & HISTORY

DA-24/2017

- On 24 February 2020, DA-24/2017 Stage 1: Subdivision of the site to create 3 superlots (being superlot 1, 2 and 3); Stage 2: Subdivision of superlot 2 into residue lots (for future residential lots, drainage reserves and a public reserve/open space for dedication to

Council); site remediation works, bulk earthworks, road and drainage and infrastructure construction and connect to services and pedestrian bridge was determined as deferred commencement by the Local Planning Panel. An operational consent was issued for DA-24/2017 on 24 June 2020.

DA-611/2018

- On 7 May 2021, the South West City Planning Panel determined DA-611/2018 as deferred commencement for the construction and operation of a Marina (Georges Cove Marina).

3.1 Planning Panel Briefing

The proposal was briefed to the Sydney Western City Planning Panel on 18 July 2022. The points discussed at the briefing are as follows;

- *Proposed deletion of deferred commencement condition 1 in relation to replacement of the dedication required by item 1e on annexure 1 of the existing VPA with an easement for public access to the waterfront open space and deletion of easement for bridge over entrance to the Marina.*

Council comment: The Panel was advised that the Council would now accept the dedication of the waterfront open space as provided for in the existing VPA, such that amendment of the VPA was no longer necessary. The Council advised that the original requirement for a bridge over entrance to the Marina from the river has been removed and hence the need for an easement for the same could be deleted. On that basis the Council supported the proposed modification to delete deferred commencement condition 1 but said amendment to the operational conditions may be necessary to address issues of timing in making good commitments under the existing VPA.

- *Proposed deletion of deferred commencement condition 2 in relation to obtaining in-principle approval for the installation of traffic control signals at the intersection of Brickmakers Drive and new Link Road, in accordance with the TfNSW requirements.*

Council comment: TfNSW had by email correspondence specifically communicated its objection to deletion of the deferred commencement requirement at this stage. The Panel agreed that a representative of the Applicant and Council, together (if necessary) with the Chair of the Panel assisted by the Secretariat, should liaise with TfNSW to determine its requirements in relation to the intersection, or alternatively, seek agreement for the development consent to be modified with the matter to be changed to an operational condition. A referral was made to Transport for NSW for comment on the deletion of deferred commencement conditions 1 and 2 of DA-611/2018 and a response was provided (dated 20 July 2022) and advised that the modification is not to be altered and requested that the conditions relating to signalised intersection remains. The applicant provided amended information and requested that the condition applies to prior to the issue of a construction certificate. A re-referral was made to Transport for NSW who provided comment and raised no further concern provided requirements from Transport for NSW are adhered to. Therefore, the previous correspondence prepared by Transport for NSW dated 09 September 2020 is superseded and the applicant is required to adhere to the correspondence and conditions dated 05 August 2022 which forms part of the modification consent.

- *Proposed deletion of deferred commencement conditions 3 and 4 in relation to Council's satisfaction with the RAP for the contamination remediation.*

Council comment: The briefing discussed the difficulty of finalising the Phase 2 assessment prior to removal of the stockpiles so that further testing beneath the stockpiles could be carried out. Council's environmental officer indicated that Council was satisfied with the environmental management plan and remedial action plan (RAP) as presently submitted with respect to the matters raised for consideration by the deferred commencement condition at paragraphs (a) – (n), to the extent that they could be addressed prior to removal of the stockpiles. The Panel was advised that the RAP sufficiently controlled determination of the remediation required once the stockpiles were removed under the supervision and control of a site auditor. The Panel was advised that some of the considerations raised by the deferred commencement condition should be preserved in the operational conditions. It was suggested the Applicant could submit to Council a draft of the proposed changes to the operational conditions for comment. The operational conditions should include provision for 'Regular monitoring of the construction work by an appropriately qualified and independent person to take into account flood impacts on the property and adjoining properties, stormwater runoff, groundwater seepage, sediment and pollutant deposition in the basin' (being the subject of deferred commencement condition 4. They should also ensure that at the appropriate time the Applicant's commitment to further develop the final remedial strategy as informed by further testing as it becomes feasible is mandated.

- *Proposed deletion of deferred commencement condition 6 in relation to protocols for opening the marina basin to the Georges River.*

Council comment: The Applicant has now supplied some of the protocols required to address this matter, but it was accepted that they should be updated by the inclusion of additional wording that recognises the potential for a pollution incident due to the release of sediments into the river as a result of the basin opening operation. Specifically, the protocols should include measures to ensure there will be no unintended pollution event in the river as a result of the entrance opening operation, an operation that it is recognised may involve disturbance of silt, soils or sand during the entrance creation operation prior to the final stabilised revetment design being implemented. Relying on the tide to keep silt within the basin was unlikely to be sufficient, given that the process of opening the basin and stabilising the entrance configuration may take place over several tidal cycles. Once the protocols are updated, it may be that again an operational condition is required to enforce them. It was suggested by Council's environmental officer that the process would be regulated by the EPA who would need to be satisfied of the methodology. If that is to be relied upon, the EPA's approval of the methodology should be expressly provided for by an update to the operational conditions.

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The modification was referred again to the Sydney Western City Planning Panel on 8 August 2022. The points discussed at the briefing are as follows;

Council comment:

The Panel raised queries in relation to the resolution of deferred commencement conditions 1, 2, 3 and 6, and was advised:

- *With regards to DCC 1 Council has reached agreement with the Applicant in relation to the VPA, such that no amendment to the VPA would now be necessary before the development consent could become operative, particularly because the Council was now agreeable to accept the dedication of the waterfront in line with the original VPA agreement, and there would no longer be any need for the bridge. Any changes to the VPA could therefore be addressed as a separate matter.*

Council comment: A Voluntary Planning Agreement (VPA) pursuant to Section 7.4 of the EP&A Act was agreed between Liverpool City Council and Tanlane Pty Ltd on 11 June 2008. The proposed modification application seeks to delete condition 1 of DA-611/2018 which required compliance with the VPA between Liverpool City Council and Tanlane Pty Ltd (dated 11 June 2008). The VPA condition is removed from Deferred Commencement stage and relocated to Prior to the issue of the Construction Certificate. A new general condition that requires an updated VPA to be executed prior to any Marina Building construction works commencing would provide Council assurance that the intent of deferred commencement condition 1 is maintained within the Consent. A referral was made to Council's Coordinator Contributions Planning whom supported the relocation of the VPA condition from Deferred Commencement to Prior to the issue of a Construction Certificate.

With regards to DCC 2.

- *The Panel was advised that TfNSW was now agreeable to the consent becoming operative and had supplied its GTA's. It was however observed that point 6 of Council's requirements referred to the "consent authority" approving an environmental study, and the participants in the meeting agreed that should be substituted with an appropriate Council officer.*

Council comment: A referral was made to Transport for NSW for comment on the deletion of deferred commencement conditions 1 and 2 of DA-611/2018 and a response was provided (dated 20 July 2022) and advised that the modification is not to be altered and requested that the conditions relating to signalised intersection remains. The applicant provided amended information and requested that the condition applies to prior to the issue of a construction certificate. A re-referral was made to Transport for NSW who provided comment and raised no concern provided requirements from Transport for NSW are adhered to. Therefore, the previous correspondence prepared by Transport for NSW dated 09 September 2020 is superseded and the applicant is required to adhere to the correspondence and conditions dated 05 August 2022 which forms part of the modification consent.

In regard to DCC 3

- *Reference is made in Council's reporting in relation to DCC3 to Appendix C - the Applicant's response letter. This letter requests Council's confirmation that it accepts the Applicants requested amendments in relation to site remediation. Council's only comment*

in its reporting was that it raised “no further concerns”. However at the briefing it was confirmed that the Council in fact approved of the site remediation approach of the Applicant, and again with suitable adjustment of the Conditions to shift some of the 'deferred commencement' requirements to be operative requirements, the consent could become operative.

Council comment: See discussion on SEPP (Resilience and Hazards) 2021.

- ***With regards to DCC 6***

The Panel noted that it had not received a copy of the final basin opening protocols referred to in Council’s report (Appendix D). Council has subsequently circulated a copy of the updated protocols (contained in a letter from EMM dated 21 July 2022). The Panel has formed the opinion that again this issue has now been addressed. To move the application towards determination it was agreed:

- (a) The Applicant would supply a set of conditions it now proposes marked up against the conditions as imposed by the consent, so as to clearly identify the modification it is now proposing.*
- (b) The Council is to advise whether it agrees with the conditions so modified.*
- (c) The Panel will proceed to an electronic determination*

Council comment: Council’s Environment and Health team reviewed the Deferred Commencement condition 6 relating to *Protocols for opening the basin to the Georges River* and have advised that it is recommended that deferred commencement Condition 6 is deleted and Condition 28 of DA-611/2018 is modified as outlined below to incorporate protocols for opening the marina basin in the Construction Environmental Management Plan. This will enable the protocols related to opening of the marina basin to be addressed in the Construction Environmental Management Plan prior to the issue of the Construction Certificate. These requirements would then be enforceable in accordance with Condition 88 of DA-611/2018.

4. DETAILS OF THE PROPOSAL

DA-611/2018 was determined by way of Deferred Commencement on 07 May 2021 by the Sydney South West Planning Panel for the *construction and operation of a marina (Georges Cove Marina) at Lot 3 Newbridge Road, Moorebank.*

The application seeks to modify DA-611/2018 pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act. The modification seeks amendments to the following:

- Deletion of Deferred Commencement Conditions 1, 2 and 4 contained in Part 1 – Deferred Commencement.
- Amended of condition 8, 12, 28, 54, 56, 57, 88, 139, 170.
- Insertion of condition 11a, 55a, 63 (a) to (e), 99a, 124a, 124b.

Modifications to conditions of consent

1. The following condition/s have been deleted from Development Consent 611/2018:

PART 1:

DEFERRED COMMENCEMENT

Development consent shall be deferred pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, until the submission to Council of:

~~Voluntary Planning Agreement~~

- ~~1. Amendments to the Voluntary Planning Agreement applicable to this site executed by Tanlane Pty Ltd and Liverpool City Council (dated 11 June 2008) shall be completed prior to the issue of any operative consent. The amendment shall ensure that Item 1e on annexure 1 of the existing Agreement is removed and replaced with the granting of an easement in perpetuity for public access to the open space or as alternatively agreed by Council. The amendment shall also ensure deletion of easement for bridge over entrance to the Marina.~~

~~Intersection of Brickmaker's Drive and new Link Road~~

- ~~2. The applicant is to obtain in-principle approval for the installation of traffic control signals at the intersection of Brickmakers Drive and new Link Road from TfNSW. In order to obtain in principle approval, the applicant is required to submit the design of the proposed traffic control signals at the intersection of Brickmakers Drive and the new Link Road in accordance with the TfNSW and Council requirements. The Traffic Control Signal (TCS) plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.~~

~~The road layout for the TCS and a revised SIDRA model is to be submitted to Council's Traffic and Transport Section for endorsement prior to detailed design. The road layout is to be made up of the following:~~

- ~~• Two southbound lanes from Newbridge Road to the intersection with the new Link Road.~~
- ~~• The northbound to accommodate the right turn bay for the 95-percentile queue and two northbound lanes.~~
- ~~• The eastern approach is to accommodate a right-turn bay for the 95-percentile queue and a left-turn lane.~~

~~The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to TfNSW and Council's Manager of Development Assessment for review and approval. Documents should be submitted to Development.Sydney@rms.gov.au.~~

- ~~4. Regular monitoring of the construction work by an appropriately qualified and independent person to take into account flood impacts on the property and adjoining properties, stormwater runoff, groundwater seepage, sediment and pollutant deposition in the basin.~~

DURING CONSTRUCTION

- ~~125. The LTEMP and RAP (as resolved, updated and audited in the manner determined through satisfaction of deferred commencement condition 3) are to be complied with in the carrying out of the development.~~

- 2. The following condition/s of Development Consent DA-611/2018 have been amended (highlighted in red) to read as follows:**

PART 1:

DEFERRED COMMENCEMENT

Development consent shall be deferred pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, until the submission to Council of:

Environmental Management

3. An environmental management plan (and any associated update to the remedial action plan (RAP)) reviewed and approved by a Site Auditor accredited under the Contaminated Land Management Act 1997 (CLM Act) is to be provided to the satisfaction of the Council with regards to contamination (and potential contamination) of any part of the site during and after construction in accordance with applicable guidelines made or approved by the NSW EPA under the Contaminated Land Management Act 1997, having regard to the potential effects of any contaminants on public health, the environment and building structures. **To the extent possible** that material is to include, address, be informed by **or require the preparation of:**
- a) All requirements prescribed by the NSW EPA in the General Terms of Approval dated 19th February 2020.
 - b) A Phase 2 Detailed Site Investigation to be completed to meet the sampling density outlined in the NSW EPA Contaminated Sites Sampling Design Guidelines (1995) to be submitted to Liverpool City Council, Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the Contaminated Land Management Act 1997.
 - c) Updating of the Remediation Action Plan (RAP) with a site audit statement (SAS) including a Long-Term Environmental Management Plan (LTEMP) addressing the findings of the Detailed Site Investigation meeting NSW EPA guidelines and addressing the Secretary's Environmental Assessment Requirements (SEAR 912) as issued to Council on 9/10/18. The LTEMP is to provide a site-specific framework for managing and mitigating contamination for

the life of the proposal. In addition, the LTEMP shall make provisions for auditing the effectiveness of the proposed environmental protection measures and procedures for ongoing site management. The LTEMP shall require periodic inspection by an environmental / geotechnical consultant to confirm the overall integrity of environmental protection measures and ensure compliance with the requirements of the LTEMP. A copy of the revised Remediation Action Plan and LTEMP shall be submitted to the Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the Contaminated Land Management Act 1997.

- d) The location and maintenance of stockpiles created during construction that might include contaminated material and their protection against flood risk.
- e) The potential that flooding of the site will occur during construction uncovering or disturbing previously unknown contaminants.
- f) Procedures to be adopted in the event of any contaminant being encountered on the site during construction and for the life of the development (including a reporting protocol) and requiring an audited addendum to the remedial action plan (RAP) to be completed to address remediation of any such contaminant (and potential data gaps between the submitted PSI reports and the RAP) before construction continues.
- g) No remediation work is to proceed unless and until Council has confirmed its satisfaction with an audited RAP directed to that work and a Section B Site Audit Statement (SAS) having issued by the Site Auditor and supplied to the Council, concluding that the DSI report, the detailed plans and strategies provided by the RAP Addendum are acceptable.
- h) Validation of all remediation work.
- i) A Section A SAS (including any revision recommended by the auditor to the long-term environmental plan (LTEMP)) is to be provided to Council's satisfaction at the conclusion of remediation and bulk earthworks permitted by this development consent, prior to the issue of a construction certificate for the erection of the proposed marina buildings.
- j) Supervision of the implementation of the EMP during construction and in the long term if any contaminant is encountered during construction.
- k) Reimbursement of costs reasonably incurred by the Council in considering the RAP, DSI and SAS.
- l) Material tracking from cradle-to-grave, and
- m) Contingency planning.
- n) Known data gaps.

THE DEVELOPMENT

General Terms of Approval

2. All General Terms of Approval shall be complied with prior, during, and at the completion of construction and if required during the operation of the marina as required in accordance with the General Terms of Approval. A copy of the General Terms of Approval are attached to this decision notice and include:
(e) ~~Transport for NSW – State Environmental Planning Policy (Infrastructure) 2007, dated 9 September 2020.~~
Transport for NSW – reference no SYD18/01728/14, dated 05 August 2022.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

Voluntary Planning Agreement

8. The Voluntary Planning Agreement applicable to this site executed by Tanlane Pty Ltd and Liverpool City Council (dated 11 June 2008) is amended to ensure that Item 1e on annexure 1 is removed and replaced with granting of an easement in perpetuity for public access to the open space or as alternatively agreed by Council. The amendment shall also ensure deletion of easement for bridge over entrance to the Marina.

The Voluntary Planning Agreement between Tanlane Pty Ltd and Liverpool City Council, as amended, is executed.

Confirmation shall be provided to the PCA that all requirements of the amended VPA applicable to this site that are to be met prior to the issue of a Construction Certificate (CC) have been met.

~~Any monetary contributions payable, any actions or works to be undertaken, or any other requirements of the VPA are to be in accordance with the executed Voluntary Planning Agreement applying to this site.~~

Construction Traffic Management Plan

12. A construction **pedestrian** traffic management plan (CPTMP) **detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control** is to be submitted to Liverpool City Council's Traffic and Transport Section for endorsement.

Construction Environmental Management Plan (CEMP)

28. Prior to issue of a construction certificate, a Construction Environmental Management Plan (CEMP) for the development must be provided to the Principal Certifying Authority for approval. The environmental site management measures must remain in place and be maintained throughout the period of the development. The CEMP must **be prepared by an appropriately qualified and independent person**

address all environmental aspects of the development's construction phases, and include, where relevant, but not be limited to, the following:

- a) Asbestos Management Plan;
- b) Project Contact Information;
- c) Site Security Details;
- d) Timing and Sequencing Information;
- e) Site Soil and Water Management Plan, including stormwater runoff, groundwater seepage, sediment and pollution deposition in the basin;
- f) Noise and Vibration Control Plan;
- g) Dust Control Plan;
- h) Air Monitoring;
- i) Odour Control Plan;
- j) Health and Safety Plan;
- k) Waste Management Plan;
- l) Incident management contingency;
- m) Unexpected Finds Protocol;
- n) Landfill gas management during earthworks and construction;
- o) Flood impacts on the property and adjoining properties; and
- p) Protocols for opening the basin to the Georges River.

The CEMP must be kept on site for the duration of the works and must be made available to Council Officers upon request.

Access, Car Parking and Manoeuvring - General

54. Detailed design plans for the proposed Brickmakers Drive and the New Link Road traffic control signals, other intersection treatment, road works, driveways, and car parks including swept path analysis, line markings and sign posting prepared in accordance with the DCP and AS2890 shall be submitted to Council's Traffic and Transport Team for review.

The applicant is required to submit the design of the proposed traffic control signals at the intersection of Brickmakers Drive and the new Link Road in accordance with the TfNSW and Council requirements.

The intersection treatment is to address all Council and TfNSW requirements. The design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements. The certified copies of the TCS design and civil design plans shall be submitted to TfNSW.

Overall, the design should demonstrate that the intersection would accommodate the 95 percentile queue lengths from the SIDRA analysis to Council and TfNSW satisfaction.

56. For the delivery of the approved Brickmakers Drive and New Link Road traffic signal control intersection improvement, the developer is to enter into a Works Authorisation Deed (WAD) with TfNSW for the installation of the required **Traffic Control Signal (TCS)**. The TCS Plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.

TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

57. Detailed design plans for all other roadworks including signs and linemarking are to be submitted to Council's Traffic and Transport Section for referral to the Liverpool Traffic Committee for endorsement. The drawings are to demonstrate that the signs and linemarking including swept path analysis has been prepared in accordance with the DCP and AS2890 **and Austroad Guidelines** should be submitted to Council's Traffic and Transport team for review.

Construction Environmental Management Plan

88. The approved Construction Environmental Management Plan, **including the Protocols for Basin Opening** shall be complied with at all times during construction of the Georges Cove Marina. **A suitably qualified and experienced person should supervise the final opening of the basin, i.e. when the first free exchange of water between the river and the basin occurs, to ensure that a pollution event does not occur.**

Public Road Access

139. All roadworks and access from Brickmakers Drive including traffic facilities and signs and linemarking are to be completed and dedicated as public roads. This includes the construction and dedication of the proposed Road Bridge linking Brickmakers Drive to the subject site (covered under DA-1552/2006/B) and the connecting road(s) to the proposed Marina.

Land is to be dedicated as public road for the maintenance of the Traffic Control Signals and associated infrastructure.

Any realignment boundary to facilitate a footway resulting from proposed road widening works is to be dedicated as public road at no cost to TfNSW.

General Terms of Approval

170. **Confirmation shall be provided to the PCA that all requirements of the amended VPA applicable to this site that are to be met prior to the issue of an Occupation Certificate (OC) have been met.** ~~Confirmation must be provided to the PCA that any monetary contributions payable, any actions or works to be undertaken, or any other requirements of the VPA have been undertaken in accordance with the executed Voluntary Planning Agreement applying to this site.~~

3. The following condition/s have been inserted to form part of Development Consent DA-611/2018 (**highlighted in red**), and read as follows:

PRIOR TO CONSTRUCTION CERTIFICATE

Stormwater Drainage Plan

- 11a.** Prior to the issue of any Construction Certificate, detailed design plans and hydraulic calculations of any changes to the stormwater drainage system associated with the signalisation of the intersection of Brickmakers Drive and new Link Road are to be submitted to TfNSW for approval.

Intersection Treatment

- 54a.** Detailed civil design drawings of the signalised Brickmakers Drive and the new Link Road intersection, in accordance with the design drawing (EMM-C01, Revision B, 17/6/22) and the associated draft Traffic Signals design (B-Line Drafting, TCS0000, Issue A, 10/6/22) are to be submitted to Liverpool Traffic Committee and Transport for NSW for approval.
The proposed Traffic Control Signals at the intersection of Brickmakers Drive and new Link Road, Moorebank shall be designed by a suitably qualified person to meet TfNSW requirements.
- 54b.** The intersection treatment is to be in accordance with Transport for NSW requirements (as attached).

Transport for NSW (TfNSW) Requirements

- 63a.** A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- 63b.** The consent authority is to be satisfied that an environmental assessment has been adequately undertaken for the signalisation of the intersection of Brickmaker Drive/new Link Road.
- 63c.** The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTRROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- 63d.** The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.

DURING CONSTRUCTION

General Site Works

- 99a.** A Road Occupancy Licence (ROL) must be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flow on Newbridge Road during construction activities.

Record Keeping of Imported Fill

- 124a.** Prior to the commencement of site remediation, the Applicant shall engage a Site Auditor accredited under the Contaminated Land Management Act 1997 (CLM Act) to review and approve the proposed design, staging and timing of the Stage 2 Detailed Site Investigation which is to be prepared by a suitably qualified and experienced contaminated land consultant.

The Stage 2 Detailed Site Investigation shall address applicable guidelines made or approved by the NSW EPA under the Contaminated Land Management Act 1997 and give regard to the potential effects of any contaminants on public health, the environment and building structures. In addition, the Stage 2 Detailed Site Investigation shall meet the sampling density outlined in the NSW EPA Contaminated Sites Sampling Design Guidelines (1995) and all requirements prescribed by the NSW EPA in the General Terms of Approval dated 19th February 2020.

A copy of the Stage 2 Detailed Site Investigation shall be submitted to Liverpool City Council, Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the Contaminated Land Management Act 1997. At the completion of the Stage 2 Detailed Site Investigation, the Applicant shall engage a suitably qualified contaminated land consultant to update the Remediation Action Plan (RAP) and prepare a Long-Term Environmental Management Plan (LTEMP) to address the findings of the Stage 2 Detailed Site Investigation.

The LTEMP shall provide a site-specific framework for managing and mitigating contamination for the life of the proposal. In addition, the LTEMP shall make provisions for auditing the effectiveness of the proposed environmental protection measures and procedures for ongoing site management. The LTEMP shall require periodic inspection by an environmental / geotechnical consultant to confirm the overall integrity of environmental protection measures and ensure compliance with the requirements of the LTEMP. A copy of the revised Remediation Action Plan and LTEMP shall be submitted to Liverpool City Council, Principal Certifying Authority, Appropriate Regulatory Authority and Site Auditor accredited under the Contaminated Land Management Act 1997.

The suitably qualified contaminated land consultant shall be certified under either the Environment Institute of Australia and New Zealand's Certified Environmental

Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

Section B Site Audit Statement

124b. Prior to implementation of the revised RAP, the Applicant shall engage a Site Auditor accredited under the Contaminated Land Management Act 1997 to review the revised RAP and issue a Section B Site Audit Statement certifying that the site can be made suitable for the proposed land use if remediated in accordance with the RAP or managed in accordance with the Long-Term Environmental Management Plan. A copy of the Section B Site Audit Statement shall be submitted to Liverpool City Council, Principal Certifying Authority and Appropriate Regulatory Authority. The Applicant shall adhere to the management measurements (if any) prescribed by the accredited Site Auditor in the Section B Site Audit Statement.

No additional amendments are proposed to the approved Maria

5. STATUTORY CONSIDERATION

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Planning Systems) 2021.
- Liverpool Local Environmental Plan 2008.

Development Control Plans

- Liverpool City Council Development Control Plan (LDCP) 2008
 - Part 1 – General Controls for all Development.
 - Part 2.10 – Moorebank East (Benedict Sands).

5.2 Zoning

The site is part zoned SP2 – Drainage, RE1 – Public Recreation, RE2 – Private Recreation and W1 Natural Waterways pursuant to LLEP 2008 as depicted in the figure below.

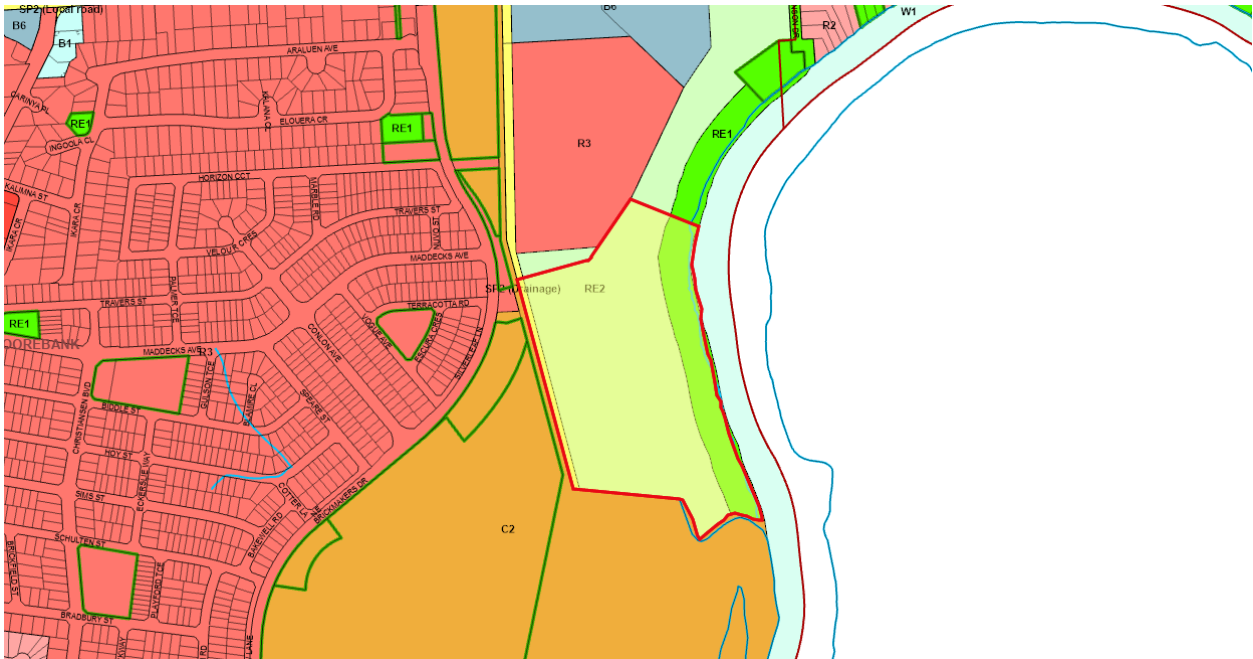


Figure 2: Zoning Map

5.3 Permissibility

The development was originally defined as 'Marina', which is permitted with consent in the applicable zones being RE1 and RE2 Zone.

The proposed modifications do not alter the permissibility of the development and is considered that the proposal is consistent with these zone objectives.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration as prescribed by Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021 as follows:

6.1 Section 4.55(1A) of the Environmental Planning and Assessment Act 1979

The proposal has been lodged under Section 4.55(1A) of the EPA Act, an assessment under 4.55(1A) is included below:

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment: Due to the nature of the works being carried out and in accordance with the technical studies carried out by the applicant and review by Council's internal sections, the modifications proposed are unlikely to create additional impacts on the natural environment and are expected to remain as previously approved. The impacts on the built environment are considered to be minimal with the façade and internal changes occurring. The impacts on the, social and economic impacts in the locality are not expected to change as part of the modification.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment: This Section 4.55(1A) modification is substantially the same as approved DA-611/2018 and the site still remains suitable for the proposed development.

- (c) it has notified the application in accordance with—
- i. the regulations, if the regulations so require, or
 - ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment: The section 4.55(1A) application was not required to be notified.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: No submissions were received.

6.2 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

The proposed modification has been considered against the following Environmental Planning Instrument(s):

State Environmental Planning Policy (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 requires the proponent to investigate the site and provide the consent authority with the information needed to carry out its planning functions. To satisfy the requirements of Chapter 4 – SEPP (Resilience and Hazards) 2021.

The proposed modification involves deletion and amendment of conditions imposed by Environment and Health. The Applicant is now seeking approval to delete deferred commencement conditions 3a, 3b, 3c, 3g and 3k of DA-611/2018 and where required, impose general conditions that are able to be addressed once the consent becomes operational. In addition, the Applicant is also seeking to delete deferred Condition 4 of DA-611/2018. The Environmental Health Section did not raise any objection to deferred commencement Condition 4 being deleted as part of the modification Application. The Applicant was recommended to also seek approval to delete Condition 6 of DA-611/2018 and modify Condition 28 of DA-611/2018 to incorporate protocols for opening the marina basin in the Construction Environmental Management Plan. This amendment would enable the protocols related to opening of the marina basin to be addressed in the Construction Environmental Management Plan prior to the issue of

the Construction Certificate. These requirements would then be enforceable in accordance with Condition 88 of DA-611/2018.

Environment and Health recommended addition of conditions namely 124a and 124b under the 'During Construction' phase. The NSW EPA's General Terms of Approval (Notice Number: 1573083) dated 19th February 2020 contain additional requirements (Conditions O7.4 & O7.5) for the timing and staging of the revised Remedial Action Plan and Long-Term Environmental Management Plan and the review of this documentation by an accredited Site Auditor. The Site Auditor's review was to result in the preparation of a Section B Site Audit Statement.

The timing and staging of the requirements specified by the NSW EPA were reflected in the conditions of consent previously recommended by the Environmental Health Section. This approach was consistent with Clause 4.47(3) of the *Environmental Planning and Assessment Act 1979* which stipulates that a 'consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed'.

Revision of the RAP and Long-Term Environmental Management Plan and preparation of the Section B Site Audit Statement were intended to occur following preparation of the Stage 2 Detailed Site Investigation. These requirements must be insert by Council's draft Conditions 124a and 124b ('during construction') which will align with the NSW EPA's General Terms of Approval (Notice Number: 1573083) dated 19th February 2020.

The proposed modification also seeks deletion of condition 4 of DA-611/2018 which stipulates *Regular monitoring of the construction work by an appropriately qualified and independent person to take into account flood impacts on the property and adjoining properties, stormwater runoff, groundwater seepage, sediment and pollutant deposition in the basin*. The Environmental Health Section did not raise any objection to deferred commencement Condition 4 being deleted as part of the modification Application.

Condition 28 of DA-611/2018 is modified to incorporate protocols for opening the marina basin in the Construction Environmental Management Plan. This will enable the protocols related to opening of the marina basin to be addressed in the Construction Environmental Management Plan prior to the issue of the Construction Certificate.

Based on the above and as such it is considered the development has satisfied Chapter 4 of SEPP (Hazards and Resilience) 2021.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The original development application was assessed under the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

SEPP (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

The modification application seeks to amend the Construction Environmental Management Plan and was referred to Council's Land Development Engineer who supported the modification application. As such, it is considered that the modification proposal does not result in any changes to conclusions made in relation to the provisions of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Transport and Infrastructure) 2021.

A referral was made to Transport for NSW for comment on the deletion of deferred commencement conditions 1 and 2 of DA-611/2018 and a response was provided (dated 20 July 2022) and advised that the modification is not to be altered and requested that the conditions relating to signalised intersection remains. The applicant provided amended information and requested that the condition applies to prior to the issue of a construction certificate. A re-referral was made to Transport for NSW who provided comment and raised no concern provided requirements from Transport for NSW are adhered to. Therefore, the previous correspondence prepared by Transport for NSW dated 09 September 2020 is superseded and the applicant is required to adhere to the correspondence and conditions dated 05 August 2022 which forms part of the modification consent.

Liverpool Local Environmental Plan (LLEP) 2008

The proposed modification does not propose to modify the design, construction or operation of the Marina and is seeking consent for deletion, amendment and addition of conditions. The original application was assessed under the Liverpool Local Environmental Plan 2008 and the modifications to the proposal generally do not result in changes to any conclusions reached from an assessment of the original proposal with regard to objectives and controls of the Liverpool Local Environment Plan 2008.

6.3 Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instrument

Not applicable.

6.4 Section 4.15(1)(a)(iii) – Provision of any Development Control Plan

The original application was assessed under Part 1- General Controls for all Development and Part 2.10 Moorebank East (Benedict Sands) of LDCP 2008. The modifications to the proposal generally do not result in changes to any conclusions reached from an assessment of the original proposal with regard to objectives and controls of the Development Control Plan.

6.5 Section 4.15(1)(a)(iiia) – Any Planning Agreement or any Draft Planning Agreement

A Voluntary Planning Agreement (VPA) pursuant to Section 7.4 of the EP&A Act was agreed between Liverpool City Council and Tanlane Pty Ltd on 11 June 2008. The proposed modification application seeks to delete condition 1 of DA-611/2018 which required compliance with the VPA between Liverpool City Council and Tanlane Pty Ltd (dated 11 June 2008). The VPA condition is removed from Deferred Commencement stage and relocated to Prior to the issue of the Construction Certificate. A new general condition that requires an updated VPA to be executed prior to any Marina Building construction works commencing would provide Council assurance that the intent of deferred commencement condition 1 is maintained within the Consent. A referral was made to Council's Coordinator Contributions Planning whom supported the relocation of the VPA condition from Deferred Commencement to Prior to the issue of a Construction Certificate.

6.6 Section 4.15(1)(a)(iv) – The Regulations

The Environmental Planning and Assessment Regulations 2021 requires the consent authority to consider the provisions of the Building Code of Australia. Appropriate conditions of consent have

been imposed on the original application which are not required to be modified with this application.

6.7 Section 4.15(1)(b) – The likely impacts of the development

The modifications to the approved development generally do not result in changes that would result in any further unreasonable impact on the existing built or natural environment, or any further unreasonable economic or social impact.

6.8 Section 4.15(1)(c) – The suitability of the site for the development

The proposed development remains in keeping with the zones objectives and is compatible with the anticipated future character of the area. The proposal still effectively responds to its surroundings. Having regard to the above, it is considered the site remains suitable for the proposed development.

6.9 Section 4.15(1)(d) – Any submission made in relation to the development

Internal Comments

The modification application was referred to Council's Land Development Engineer, Environment and Health, Traffic and Transport and Transport for NSW who raised no concerns subject to the modification of conditions.

Notification

The application was not required to be notified in accordance Liverpool Community Participation Plan 2019. No submissions were received in relation to the proposal.

6.10 Section 4.15(1)(e) – The Public Interest

The proposal is considered to remain in the public interest.

7. CONCLUSION AND RECOMMENDATION

Having regard to the provisions of Section 4.55 & 4.15 of the Environmental Planning and Assessment Act 1979, the proposed modification is satisfactory.

Given the above, it is recommended that DA-611/2018/A be approved in accordance with the appended conditions of consent.

8. ATTACHMENTS

1. Approved SWCPP Assessment Report
2. Deferred Commencement Determination Notice
3. Statement of Environmental Effects
4. Draft Conditions.