

DATE OF DETERMINATION	30 November 2022
DATE OF PANEL DECISION	30 November 2022
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran, Angus Gordon, Nathan Hagerty
APOLOGIES	None
DECLARATIONS OF INTEREST	Ned Mannoun, Peter Harle & Karress Rhodes declared a conflict of interest as the original DA was discussed at a council meeting.

Papers circulated electronically on 16 November 2022.

MATTER DETERMINED

PPSSWC-232 – Liverpool – DA-611/2018/A – 146 Newbridge Road, Moorebank

Modification to DA-611/2018 pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act. The modifications sought by the Applicant are as follows:

(The following deferred commencement conditions as originally imposed on the development consent are 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 are amended **as 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:**
- All requirements prescribed by the NSW EPA in the General Terms of Approval dated 19th February 2020.
 - 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.

- 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.
- The location and maintenance of stockpiles created during construction that might include contaminated material and their protection against flood risk.
- The potential that flooding of the site will occur during construction uncovering or disturbing previously unknown contaminants.
- 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.
- 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.
- Validation of all remediation work.
- 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.
- Supervision of the implementation of the EMP during construction and in the long term if any contaminant is encountered during construction.
- Reimbursement of costs reasonably incurred by the Council in considering the RAP, DSI and SAS.
- Material tracking from cradle-to-grave, and
- Contingency planning.
- 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 to be amended prior to the issue of a Construction Certificate 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 to be executed prior to the issue of a Construction Certificate.

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 prepared by a suitably qualified engineer with flooding expertise.

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 prepared by a suitably qualified engineer with flooding expertise** shall be complied with at all times during construction of the Georges Cove Marina. **A suitably qualified and experienced engineer with experience in flooding must 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.~~

4. **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, and are to be approved by TfNSW.**

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 AUSTROADS. 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.

The Panel notes that the final form of the conditions to be so amended has been resolved through lengthy discussion since lodgement of the modification application. The Panel is informed by Council that the Applicant has agreed to accept the conditions as proposed in the Council staff assessment report, and has amended its modification application accordingly.

The only significant change by the Panel to the wording of the Conditions is to ensure that the author of the Protocols for the opening of the basin is a suitably qualified engineer with flooding expertise, which the Panel also understands the applicant agrees to.

PANEL CONSIDERATION, REASONS 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.

The Panel determined to approve the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979* so as to modify the conditions of consent as follows (as proposed by Liverpool Council assessment staff and agreed to by the Applicant):

The Panel is satisfied for the reasons set out in the Council staff assessment report that the proposed modifications are suitable and do not compromise the original intent of the development consent conditions. In particular, through progress in the discussions between Council and the Applicant a number of matters which had been nominated as deferred commencement conditions can now be appropriately resolved as operational conditions.

Notably, a requirement is imposed for a suitably qualified engineer with flooding expertise to prepare protocols for the opening of the approved basin to the Georges River for the first time to ensure that pollution event does not occur.


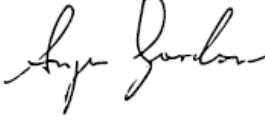


The Panel is of the opinion that the development will remain substantially the same given that the substance of all conditions is preserved allowing for progress in the preparatory work, discussions concerning the VPA,

and discussions between Applicant and Council. The Panel does not expect significant environmental effects arising from the modifications

The decision was unanimous.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Angus Gordon
 Nicole Gurran	 Nathan Hagerty

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-232 – Liverpool – DA-611/2018/A
2	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
3	STREET ADDRESS	146 Newbridge Road, Moorebank
4	APPLICANT/OWNER	Tanlane Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No 19 – Bushland in Urban Areas ○ State Environmental Planning Policy No.33 – Hazardous and Offensive Development ○ State Environmental Planning; Policy No.55 - Remediation of Land; ○ State Environmental Planning Policy (Coastal Management) 2018 ○ State Environmental Planning Policy (Infrastructure) 2007; ○ State Environmental Planning Policy – (State and Regional Development) 2011 ○ Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment; ○ Liverpool Local Environmental Plan 2008 • Draft environmental planning instruments: VPA • Development control plans: <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 ○ Part 1: General Controls for All Development ○ Part 2.10 – Moorebank East (Benedict Sands) • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the National Construction Code of Australia • 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: 5 November 2022 • Total number of unique submissions received by way of objection: Nil
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Kick-Off Briefing: 9 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Karress Rhodes, Nathan Hagarty, Angus Gordon ○ <u>Applicant</u>: Phil Towler, Ernest Dupere

		<ul style="list-style-type: none"> • Applicant Briefing: Monday, 18 July 2022, 11:05am – 12:40pm <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Angus Gordo, Ned Mannoun and Nathan Hagerty ○ <u>Council assessment staff</u>: Kevin Kim, William Attard, Rachel King, Lina Kakish and Neil Ramsay • Panel Briefing: Monday, 8 August 2022, 3-4pm <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran, Angus Gordon, Ned Mannoun and Nathan Hagerty ○ <u>Council assessment staff</u>: Kevin Kim
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report