

DATE OF DETERMINATION	28 October 2024
DATE OF PANEL DECISION	28 October 2024
DATE OF PANEL BRIEFING	14 October 2024
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 11 October 2024.

MATTER DEFERRED

PPSSWC-300 – Liverpool – DA-1245/2022 at Buchan Avenue, Edmondson Park

Construction of a multi-dwelling housing development including 178 townhouses and associated landscaping across 3 sites (as described in Schedule 1).

REASONS FOR DEFERRAL

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

The Panel agreed to defer the determination of the matter for three weeks to allow the Council and the Proponent further time to reach agreement on a letter of offer to enter into a voluntary planning agreement (VPA).

While the Council's Assessment Report states that the Proponent has agreed to enter into a VPA, the only "offer" to do so that has been received by Council to date is a draft offer. This "draft" offer must be formally made before the Panel can consent to a DA with a condition requiring the Proponent to enter into a planning agreement in accordance with the terms of that offer.

Specifically, s 7.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act) provides the following in relation to an agreement for a developer to "dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose" under s 7.4:

- s7.7(2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with—
 - (a) the development application or application for a complying development certificate, or
 - (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application or application for a complying development certificate,

or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A

What that condition allows is for the Panel to determine whether a proposed development is acceptable having regard to the matters for the panel's consideration articulated by s 4.15 of the EP&A Act, while taking into account a proposed voluntary planning agreement which proposes the payment of money or dedication of land only if it is set out in an "offer" to enter into such an agreement made by the applicant.

However, while the Act thereby allows for the Panel to approve a proposed development conditional on the planning agreement identified in the offer being entered into, the Act does not empower the Panel to force the Council to enter into the agreement to which the Panel will not be a party. For this reason, it is always preferable that any "offer" to enter into a planning agreement with the Council is agreed.




While the Panel in this case must have a final VPA offer that has been made so that it can assess whether the final wording of that offer adequately addresses the funding of public amenities, public services, traffic and transport infrastructure relating to land, and other matters described in s 7.4(2), the Panel is otherwise satisfied that approval of the DA is in the public interest and that the clause 4.6 height variation request is supportable.

ACTIONS

To allow for the progression of the Development Application to determination, the Panel expects that:

1. The Applicant and the Council will make contact in relation to finalising the letter of offer to enter into a planning agreement and agreeing the proposed contributions as soon as possible.
2. The Applicant will provide its "final" offer to enter into a planning agreement within 7 days.
3. The Council to provide its confirmation or otherwise as to its acceptance of this final offer within a further 7 days.
4. The matter will be reported back to the Panel within 21 days for final determination.

If the outstanding information is not provided the Panel may move to determine the DA based on the information currently at hand.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 David Kitto	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-300 – Liverpool – DA-1245/2022
2	PROPOSED DEVELOPMENT	Construction of a multi-dwelling housing development including 178 townhouses and associated landscaping across 3 sites
3	STREET ADDRESS	Buchan Avenue, Edmondson Park
4	APPLICANT/OWNER	Applicant: UPG Edmondson Parkland Pty Ltd Owner: Landcom
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Transport and Infrastructure) 2021. State Environmental Planning Policy (Precincts – Western Parklands City) 2021. State Environmental Planning Policy (Biodiversity and Conservation) 2021. State Environmental Planning Policy (Resilience and Hazards) 2021. State Environmental Planning Policy (Planning Systems) 2021. Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Edmondson Park South Development Control Plan 2012 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: 11 October 2024 Written submissions during public exhibition: Two (2) Total number of unique submissions received by way of objection: Two (2)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Kick-Off Briefing: 20 February 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Peter Harle, Ned Mannoun <u>Council assessment staff</u>: Amanda Merchant, William Attard, Michael Oliveira, Nabil Alaeddine <u>Applicant</u>: Richard Boulos, Joe Strati, Patrick Elias, Stephen Gouge, Christian Rojas, Rory Brady, Ramin Jahromi <u>Planning Panels Secretariat</u>: Kate McKinnon, Sharon Edwards Final briefing to discuss council's recommendation: 14 October 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto <u>Council staff</u>: Amanda Merchant, Nabil Alaeddine <u>Applicant representative</u>: Richard Boulos - UPG <u>Planning Panels team</u>: Renah Givney

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