

# SYDNEY WESTERN CITY PLANNING PANEL

## ADDENDUM REPORT

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| <b>Panel Reference</b>   | PPSSWC-300  |
| <b>DA Number</b>   | DA-1245/2022  |
| <b>LGA</b>   | Liverpool City Council  |
| <b>Proposed Development</b>  | <p>Construction of a multi-dwelling housing development including 178 townhouses and associated landscaping across 3 sites:</p> <p>Construction of 43 residential townhouses at Site 1, including:</p> <ul style="list-style-type: none"> <li>- 32x 4-bedroom townhouses.</li> <li>- 11x 3-bedroom townhouses.</li> </ul> <p>Construction of 63 residential townhouses at Site 2, including:</p> <ul style="list-style-type: none"> <li>- 33x 4-bedroom townhouses.</li> <li>- 30x 3-bedroom townhouses.</li> </ul> <p>Construction of 72 residential townhouses at Site 3, including:</p> <ul style="list-style-type: none"> <li>- 40x 4-bedroom townhouses.</li> <li>- 32x 3-bedroom townhouses</li> </ul>  |
| <b>Street Address</b>  | <p>1-3 BEZENTIN RIDGE ROAD AND 4-5 BUCHAN AVENUE, EDMONDSON PARK NSW 2174</p> <p>LOTS 1, 2, 3, 4 AND 5 IN DP 1275478 (KNOWN AS 'SITES 1-3')</p> <p><i>(formerly known as Lot 101 Buchan Avenue, Edmondson Park (Lot 1 DP 776645))</i></p>   |
| <b>Applicant/Owner</b>   | <b>UPG EDMONDSON PARKLAND PTY LTD</b>   |
| <b>Date of DA Lodgement</b>  | 16 December 2022  |
| <b>Number of Submissions</b>   | 1 objection   |
| <b>Recommendation</b>  | Approval  |
| <b>Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021</b> | <p>Clause 2 of Schedule 6 - Development with a Capital Investment Value (CIV) of over \$30 million.</p> <p>The CIV of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$99,546,033 (excluding GST).</p>   |
| <b>List of all relevant s4.15(1)(a) matters</b>                                      | <ul style="list-style-type: none"> <li>• <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i> <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021;</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021;</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021;</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>○ State Environmental Planning Policy (Precincts – Western Parkland City) 2021; and</li> <li>○ Liverpool Local Environmental Plan (LLEP) 2008.</li> </ul> </li> <li>• <i>List any proposed instrument that is or has been the subject of</i></li> </ul> |

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|  | <p><i>public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)</i></p> <ul style="list-style-type: none"> <li>○ No draft Environmental Planning Instruments apply to the site.</li> </ul> <p>• <i>List any relevant development control plan: s4.15(1)(a)(iii)</i></p> <ul style="list-style-type: none"> <li>○ Edmondson Park Development Control Plan 2008 (DCP)</li> </ul> <p>• <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)(iiia)</i></p> <p>A draft offer to enter into a voluntary planning agreement has been made and is being amended in this addendum report.</p> <p>• <i>List any relevant regulations: s4.15(1)(a)(iv)</i></p> <ul style="list-style-type: none"> <li>○ Consideration of the provisions of the National Construction Code (NCC).</li> </ul> |
| <b>List all documents submitted with this report for the Panel's consideration</b> | 1. Amended Draft Notice of Determination   |
| <b>Clause 4.6 requests</b>   | N/A  |
| <b>Summary of key submissions</b>  | Addisons   |
| <b>Report date</b>   | 6 November 2024  |

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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? **Yes**  
*e.g. Chapter 4 of SEPP (Resilience and Hazards) 2021, Clause 4.6(4) of the relevant LEP*

### 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? **Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.11EF)? **Yes**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **Yes**  
*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*

## 1. REASONS FOR ADDENDUM REPORT TO SYDNEY WESTERN CITY PLANNING PANEL

This addendum report was prepared in response to the developer contributions associated with the development. The parent report indicated a draft Voluntary Planning Agreement had been agreed to be entered into with Council and the developer and that would be reflected in the draft conditions of consent sent to the Sydney Western City Planning Panel (SWCPP) on 11 October 2024 to be heard at the SWCPP meeting held on 14 October 2024. In relation to the deferral of the Development Application DA-1245/2022 by the Sydney Western City Planning Panel (SWCPP)

### ***Reasons for deferral***

- (1) *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.*

## **2. ASSESSMENT**

The following assessment addresses the above matters raised in the Panel's deferral, site inspection and how additional information addresses the concerns of the author as outlined in Section 7 and throughout the previous Council assessment report.

### **2.1 Applicant's response:**

The applicant produced written advice from Addisons Law indicating that the development and the land are subject to the Liverpool Contributions Plan or Edmondson Park 2008 and that a VPA can only be entered into in this area in the event the dwelling density reaches 439 dwellings as specified in the Edmondson Park Development Control Plan 2012 (DCP), Section 2.3 'Residential Dwelling Target' controls.

Considering the proposal has been assessed under the DCP and not the Modification 5 of the Landcom Edmondson Park Masterplan, the density has been assessed under the DCP. The written legal advice provided was referred to Council's Legal Counsel who identified that in the absence of the Modification, 5 Masterplans being approved by the NSW Department of Planning, Housing and Infrastructure, the Section 7.11 contributions plan attached to the land known as the Liverpool Contributions Plan 2008 - Edmondson Park applies to the land.

Notwithstanding, council has accepted the applicant's legal advice and amended the notice of determination by removing the two conditions 14 and 103 from the draft conditions and amended it with a Section 7.11 condition and payment request imposed under condition 103 and Attachment 2 to be finalised prior to the final occupation certificate.

## **3. CONCLUSION**

This development application has been considered in accordance with the requirements of the Environmental Planning and Assessment Act 1979 (**the Act**) and the Environmental Planning and Assessment Regulations 2021 (**the Regulations**). It is considered that the

matters raised by the SWCPP in the Records of Deferral dated 14 October 2024 have been adequately addressed by the Applicant's submission of additional information.

The site's location, zoning, and permitted land use make it suitable for the proposed development and it is considered that the overall social and economic impacts of the proposed development would be minimal and that potential impacts on the natural and built environments will be mitigated through design measures and the imposition of specific conditions of consent.

Based on the assessment of the application and the additional information and amendments made by the applicant, it is recommended that the DA be approved, subject to the recommended conditions of consent.

#### **4. RECOMMENDATION**

- (i) That the Developer Contributions be imposed under Section 7.11 of the Environmental Planning and Assessment Act 1979 (EPA Act) and not under any Voluntary Planning Agreement (VPA).
- (ii) That pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979, Development Application DA-1245/2022 for the Construction of a multi-dwelling housing development including 178 townhouses and associated landscaping across 3 sites, be approved subject to conditions of consent.
- (iii) That residents who have lodged a submission in respect to the application be notified of the determination of the application.

#### **5 ATTACHMENTS**

- Drat Amended Notice of Determination
- Plans are not subject to change and remain the same as the initial report