

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	25 November 2024
DATE OF PANEL DECISION	22 November 2024
DATE OF PANEL MEETING	2 September 2024
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Brian Kirk
APOLOGIES	None
DECLARATIONS OF INTEREST	Louise Camenzuli - Louise Camenzuli declared a conflict of interest as the firm she is employed at represents the applicant for a different site unrelated to this matter.

Papers circulated electronically on 20 November 2024.

MATTER DETERMINED

PPSSWC-322 – Liverpool – DA-83/2023 at Zouch Road and Campbelltown Road, Edmondson Park -

Proposed subdivision of Lots 2, 3 and 5 DP1272931 into one hundred and fifty-eight (158) residential lots, eight (8) super lots for future medium density subdivision, two (2) lots for open space, two (2) drainage lots, one (1) residue lot for C1 zoned land and associated open space works, road works, drainage, stormwater infrastructure, services and remediation.

PANEL CONSIDERATION AND DECISION

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

Matters in dispute

After the final briefing on 15 August 2024, the Panel deferred the determination of the development application to give Council and the Applicant more time to resolve two outstanding matters:

1. Conditions 33 and 36, relating to the scope of the required upgrades to Zouch Road; and
2. Conditions 133 and 134, which required the Applicant to pay developer contributions for the development in accordance with the requirements in the approved Part 3A Edmondson Park South Concept Plan. Instead, the Applicant wanted the condition to require the Applicant to enter into a Voluntary Planning Agreement (VPA) with Council for the development in accordance with the terms of its VPA offer to Council on 9 July 2024.

On 2 September 2024, the Panel convened a further meeting with Council and the Applicant to discuss the Council's revised conditions for the development.

At the meeting, the Panel was advised that Council and the Applicant had agreed on the scope of the required upgrades to Zouch Road. However, the Applicant indicated that there were still two outstanding matters:

1. Condition 36(e), which requires the Applicant to pay 25% of the costs associated with installing traffic signals at the MacDonald Road/General Boulevard intersection. The Applicant says it should only be required to pay 6% of the costs consistent with the findings of its traffic assessment which predicts the development will only generate 6% of the traffic using this intersection in the future; and
2. Conditions 132 and 133 (the former Conditions 133 and 134), which read:

132. *As a consequence of this development, Council identified an increased demand for public amenities and public services. Prior to the issue of a Subdivision Certificate, a Voluntary Planning Agreement is to be agreed to between Council and the Applicant, or a Letter of Undertaking or another legally binding instrument is to be provided by Landcom for any outstanding works the subject of this consent and subject to the Voluntary Planning Agreement.*

Note: If in the scenario the VPA is withdrawn and/or will not be carried out, Section 7.11 development contributions are payable prior to a Subdivision Certificate. Evidence needs to be provided of an agreement between Council and the Applicant acknowledging that a VPA is withdrawn and/or will not occur.

133. *Any works required under the VPA incorporating the pocket park, including public art, are to be completed within 12 months and 1 day from the issue of the subdivision certificate which creates the open space lot.*

The Applicant wanted the note to the condition to be amended to allow any relevant works carried out on site to be discounted from any developer contributions to be paid if the VPA does not proceed.

However, the Panel was critical of the drafting of the Condition 132 as it does not comply with the requirements for such conditions in Section 7.7(3) of the EP&A Act: specifically it requires the Applicant to enter a VPA with Council for the development in different terms to the offer that has been made to the Council by the Applicant.

Council advises it has not yet agreed to the Applicant's offer because its terms are still being reviewed and Council is unwilling to commit to entering into a VPA on the terms presently offered at this stage.

The Panel gave Council and the Applicant more time to try and resolve these matters.

In an email dated 20 September 2024, the Applicant advised the Panel that it now:

- Agrees to Condition 36(e); and
- Accepts Conditions 132 and 133 in their current form.

This resolved the outstanding matters between Council and the Applicant but did not resolve the Panel's concerns about the current drafting of Conditions 132 and 133 and its consistency with the stipulations as to conditions requiring the payment of development contributions under Part 7 of the EP&A Act.

On 24 October 2024, the Panel deferred the determination of the development application again to:

- Give the Applicant time to:
 - Submit the terms of the offer it wishes the Panel to consider under Section 7.7(3) of the EP&A Act
 - Justify why this offer is appropriate
- Afford the Council an opportunity to comment on the terms of the offer and the Applicant's justification.

In an email dated 28 October 2024, the Applicant summarised and justified the terms of the offer made to Council on 9 July 2024. The offer provides for development contributions worth around \$12.2 million for open space, roads and drainage land works. This is substantially above the \$4.74 million (1568 lots at \$30,000 per lot) that would be required under the *Liverpool Contributions Plan 2008 – Edmondson Park* or the \$8.1 million (270 lots at \$30,000 per lot) that would be required if the proposed development of the 8 medium density lots was included.

The Applicant also provided a legal advice from Lindsay Taylor Lawyers which agreed with the Panel's concerns about the drafting of conditions 132 and 133 and suggested the following:

Development Contributions

132. *Subject to Condition 133, the Applicant and the Council are to enter into a Voluntary Planning Agreement generally in accordance with the terms of the Applicant's Letter of Offer dated 9 July 2024 by the date of the first Subdivision Certificate for the development.*
133. *The development is likely to require the provision of or increase the demand for public amenities or services and development contributions (adjusted to account for any **relevant** road, open space and drainage works, and land provided or dedicated by the Applicant) are required to be made prior to the issue of a Subdivision Certificate, pursuant to and in accordance with the Liverpool Contributions Plan 2008 – Edmondson Park, unless:*
- a. a planning agreement in the terms of the offer referred to in Condition 132, and which excludes the operation of s7.11 of the EP&A Act, is in force and registered on the title of the land to which the development application relates; or*
 - b. a replacement planning agreement which excludes s7.11 of the EP&A Act is in force and registered on the title of the land to which the development application relates; or*
 - c. the Applicant offers, and the Council accepts, a Letter of Undertaking to make development contributions (adjusted to account for **relevant** roads, open space and drainage works, and land provided or dedicated by the Applicant) at a date later than the date of the Subdivision Certificate and agreed in writing between the Applicant and the Council.*
134. *Any works incorporating the pocket park, including public art, are to be completed within 12 months and 1 day from the issue of the Subdivision Certificate which creates the open space.*

In an email dated 4 November 2024, Council accepted the proposed drafting of the conditions with the addition of the red text above.

The Panel has reviewed the terms of the Applicant's offer to Council and is satisfied that it is appropriate for the proposed development and will provide a better outcome than the existing *Liverpool Contributions Plan 2008 – Edmondson Park*.

However, the Panel considers the proposed drafting of the conditions to be overly complicated and does not support the alternative arrangements contemplated in proposed conditions 133 b and c. Instead, it believes the drafting should align more closely with what is envisaged in Section 7.7(3) of the EP&A Act, which only allows a condition "if it requires a planning agreement that is in the terms of the offer made by the developer".

Consequently, the Panel has decided to amend Conditions 132 and 133 to read:

132. *Prior to the issue of the first Subdivision Certificate for the development, the Applicant must enter into a Voluntary Planning Agreement with the Council generally in accordance with the terms of the Applicant's Letter of Offer dated 9 July 2024.*
133. *The Voluntary Planning Agreement required by Condition 132 is to commit the Applicant to development of the pocket park, including public art, within 12 months of the issuing of the Subdivision Certificate that creates the open space.*

With these amendments, the Panel is satisfied suitable arrangements will be in place to ensure the orderly provision of infrastructure and services to the proposed development.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to approve the application for the reasons outlined above and otherwise for the reasons set out in Council's assessment report and supplementary assessment report.

In particular, the panel concluded that:

- The development is generally consistent with the Part 3A Edmondson Park South Concept Plan, which was approved by the then Minister for Planning in August 2011, despite the changes to the road layout of the proposed subdivision of the site which are required to accommodate the planned upgrade of Campbelltown Road;
- The development either complies with or is consistent with the provisions of the relevant environmental planning instruments, including the requirements in Appendix 1 of *State Environmental Planning Policy (Precincts – Western City Parkland)* and the *Edmondson Park South Development Control Plan 2012*;
- The relevant integrated approval authorities have provided their general terms of approval for the development, which have been incorporated into the recommended conditions;
- The impacts of the development are acceptable and can be suitably controlled with the recommended conditions;
- With the remediation required under the recommended conditions, the site can be made suitable for the development;
- Suitable arrangements are in place to provide infrastructure and services to the development;
- The development will complement the development of the Edmondson Park town centre by providing additional housing within walking distance of the railway station and regional open space for the growing population, consistent with the strategic planning objectives for the area; and
- The development is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in Council's supplementary assessment report with amendments to Conditions 132 and 133 as outlined above.

The panel amended the conditions in the determination which have been approved by the applicant in an email on 25 November 2024.

CONSIDERATION OF COMMUNITY VIEWS

Council exhibited the development application from 5 April to 3 May 2023 and received 2 submissions.

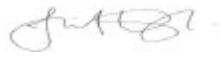
These submissions raised concerns about the potential impacts of the development, which included:

- The new road to Zouch Road and through the site which would result in adverse traffic impacts on Denham Court;
- Traffic, noise and air quality impacts which would reduce the quality of life of the surrounding community;
- Negative impacts on environmental land;
- On street parking, especially for commuters and implementing parking restrictions;
- Concerns with road widths and traffic safety devices; and
- Road vehicle sizes for access, including heavy vehicles due to restricted right turns in future.

In coming to its decision, the panel considered these concerns and is satisfied that they have been adequately addressed in Council's assessment report and recommended conditions.

PANEL MEMBERS

Justin Doyle (Chair)



Brian Kirk



David Kitto



SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-322 – Liverpool – DA-83/2023
2	PROPOSED DEVELOPMENT	Proposed subdivision of Lots 2, 3 and 5 DP1272931 into one hundred and fifty-eight (158) residential lots, eight (8) super lots for future medium density subdivision, two (2) lots for open space, two (2) drainage lots, one (1) residue lot for C1 zoned land and associated open space works, road works, drainage, stormwater infrastructure, services and remediation.
3	STREET ADDRESS	Lot 5 Campbelltown Road and Lots 2 & 3 Zouch Road, Edmondson Park Lot 2 DP 1272931, Lot 3 DP 1272931 & Lot 5 DP 1272931
4	APPLICANT/OWNER	Landcom
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Precincts – Western Parkland City) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 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 • Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil • 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: 9 July 2024 • Supplementary assessment report: 28 August 2024 • Written submissions during public exhibition: 2 • Total number of unique submissions received by way of objection: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 15 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: David Kitto (Acting Chair), Karress Rhodes, Ned Mannoun ○ <u>Council assessment staff</u>: Robert Micallef, Nabil Alaeddine, Amanda Merchant, Michael Oliviero, William Attard ○ <u>Applicant representatives</u>: Jared Marsh, James Arena, Michael Rodger • Briefing: 24 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Karress Rhodes ○ <u>Council assessment staff</u>: Nabil Alaeddine, Amanda Merchant

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Michael Rodger, Jared Marsh, Kerry Simone • Briefing: 31 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Karress Rhodes ○ <u>Council assessment staff</u>: Nabil Alaeddine, Amanda Merchant, Michael Oliviero, William Attard ○ <u>Applicant representatives</u>: Michael Rodger, Jared Marsh, Kerry Symonds • Site inspection: 20 May 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto ○ <u>Council assessment staff</u>: Robert Micallef, Nabil Alaeddine • Final briefing to discuss council's recommendation: 15 July 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Karress Rhodes, Ned Mannoun ○ <u>Council assessment staff</u>: Robert Micallef, Nabil Alaeddine, Amanda Merchant Michael Oliviero, William Attard, Anna Johnston, Andrijana Mijoski ○ <u>Applicant representatives</u>: Jared Marsh, Kerrie Symonds • Further briefing to discuss council's revised conditions: 2 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk ○ <u>Council assessment staff</u>: Robert Micallef, Nabil Alaeddine, Amanda Merchant ○ <u>Applicant representatives</u>: Jared Marsh, Kerrie Symonds, Megan Angelo • The email from the Applicant to the Panel dated 28 October 2024, setting out the terms of the VPA offer to Council and why the offer is appropriate.
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Published on the planning portal on 28 August 2024