

**DERTERMINATION OF THE
LIVERPOOL LOCAL PLANNING PANEL**

7 May 2018

Determination Made Electronically

Panel: Michael Mantei (Chair)
Grant Christmas
Lindsay Fletcher
Stephen Dobell-Brown

There were no declarations of any conflict of interest by panel members in respect of any item on the meeting agenda.

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ITEM No:	1
APPLICATION NUMBER:	DA-724/2016
SUBJECT:	Torrens title subdivision of the site into two lots. The application is integrated development under section 4.46 of the environmental planning and assessment act 1979 (rural fires act 1993)
LOCATION:	76 PLEASURE POINT ROAD, PLEASURE POINT NSW 2172 LOT 74 DP 1134477
APPLICANT/OWNER:	AS Investment Company Pty Ltd
AUTHOR:	Boris Santana

ISSUES RELATED TO THE APPLICATION

At the Panel meeting on 26 March 2018 the Panel deferred the determination of this development application pending submission of additional information addressing the following issues:

- whether Clause 7.12 of LLEP 2008 is a prohibition or a development standard capable of being varied under clause 4.6 of LLEP 2008;
- a variation request from the applicant setting out justification for the variation to Clause 7.12 having regard to the tests in Clause 4.6 of LLEP 2008 and relevant Land and Environment Court decisions; and
- further information on the existing restriction on use affecting the land relating to the conservation management plan for the land within zone E2.

The Panel has been provided with a supplementary report prepared by Council officers, which annexes:

- a legal advice prepared by Anthony Whealy of Mills Oakley Solicitors dated 13 April 2018;
- an amended Clause 4.6 variation request prepared by Keeplan Planning and Development Services dated 16 April 2018;
- Vegetation Management Plan prepared by Greening Australia (NSW) Ltd
- Draft conditions of development consent

The Panel is satisfied that the legal advice addresses the Panel's concerns that clause 7.2 may not be a development standard.

The Panel is not satisfied that the variation to the development standard in clause 7.12 of LEP is justified by the clause 4.6 variation request. In particular the panel considers that:

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- There are no sufficient environmental planning grounds that justify the variation;
- The proposed subdivision layout does not represent orderly development of the land.
- The proposed subdivision will create an allotment without a direct street frontage and will create an additional allotment “at the rear of the subject allotments” in apparent contravention of the underlying objective of the standard (see 4th dot point outcome of the community consultation as set out on page 4 of the supplementary report);
- The resultant configuration of the allotments in this subdivision is not a better planning outcome than could be achieved by a more orderly and co-ordinated approach to the location and spacing of dwellings and the conservation of the land within the E2 zone through a re-subdivision and development of the whole of the original parcel.
- The separation between future dwellings on Lots 73, 74 & 74A will compromise aural and visual privacy and is inconsistent with expectations for development in large lot residential areas.

For those reasons the Panel does not support the Council officer’s recommendation that development consent be granted to the application. The Panel has determined to refuse consent to the application.

VOTING NUMBERS:

4-Nil

DETERMINATION OF PANEL:

The DA-724/2016 for Torrens title subdivision of the site into two lots be refused for the following reasons:

1. The written request from the applicant to vary the development standard in clause 7.12 of LLEP 2008 does not adequately justify the contravention of the development standard by demonstrating:
 - a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) that there are sufficient environmental planning grounds to justify contravening the development standard.
2. The proposed variation to the development standard in clause 7.12 of LLEP 2008 is not in the public interest because it is not consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
3. The proposed subdivision:
 - a) does not represent orderly development of the land; and

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- b) will create an allotment without a direct street frontage and will create an additional allotment “at the rear of the subject allotments” in contravention of the underlying objective of the standard; and
- c) is not a better planning outcome than could be achieved by a more orderly and co-ordinated approach to the location and spacing of dwellings and the conservation of the land within the E2 zone through a re-subdivision and development of the whole of the original parcel; and
- d) will result in inadequate separation between future dwellings on Lots 73, 74 & 74A inconsistent with expectations for development in large lot residential areas.