

## **MINUTES AND DETERMINATION OF THE LIVERPOOL LOCAL PLANNING PANEL MEETING**

**Monday, 24<sup>th</sup> February 2025**

Held online via  
MS Teams

### **PANEL MEMBERS:**

|                 |                          |
|-----------------|--------------------------|
| Heather Warton  | Chairperson              |
| Lindsey Dey     | Expert                   |
| Anthony Reed    | Expert                   |
| Anthony Krilich | Community Representative |

There were no conflicts of interest declared by any Panel members in relation to any items on the agenda.

### **Speakers:**

#### **Item 1 – DA-51/2024**

- Trent Ebel (Objector)
- Gerald & Dilma Collison (Objector)
- Ali Hammoud (Planner for Applicant)
- Lisa Biddiscombe (Architect for Applicant)
- Annabel Murray (Landscape Architect for Applicant)
- Howard Tanner (Heritage Architect for Applicant)
- Supun Perera (Traffic Engineer for Applicant)
- Arthur Choi (Site Owner)

#### **Item 2 – DA-1368/2021**

- Tim Ward - Ethos Urban (Planner for Applicant)
- Michelle Chen (Representative of Applicant)
- Andrew Driver (Representative of Applicant)

#### **Item 3 – DA-1263/2022/A**

- Mitchell Brown (Planner for Applicant)
- Tim Pasley (Representative of Applicant)
- Karl Adderley (Representative of Applicant)
- Archana Maharjan (Representative of Applicant)

#### **Item 4 – DA-64/2007/G**

- Matthew Daniel (Applicant)

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|                     |                                                                                                                                                                                                                                                                                                                                                        |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ITEM No:            | 1                                                                                                                                                                                                                                                                                                                                                      |
| APPLICATION NUMBER: | DA-51/2024                                                                                                                                                                                                                                                                                                                                             |
| SUBJECT:            | Conversion of existing heritage item dwelling house into 119 place childcare centre with associated car parking, excavation, earthworks, stormwater, and landscaping works.<br><br>The development is identified as nominated integrated under the Heritage Act 1977 requiring approval from the NSW Department of Planning and Environment – Heritage |
| LOCATION:           | Horningsea Park House, No. 14 Horningsea Park Drive, Horningsea Park NSW 2171                                                                                                                                                                                                                                                                          |
| OWNER:              | FBSP Pty Ltd                                                                                                                                                                                                                                                                                                                                           |
| APPLICANT:          | Planzone Pty Ltd                                                                                                                                                                                                                                                                                                                                       |
| AUTHOR:             | Ben Paterson                                                                                                                                                                                                                                                                                                                                           |

#### DETERMINATION OF PANEL:

Development Application DA-51/2024 is **approved** subject to conditions of the consent as recommended in the Assessment Report with the following amendments and additions. All conditions are to be renumbered accordingly:

- 1) Update all references to current terminology in the Environmental Planning and Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021:
  1. Change all references to *Principal Certifier* in the conditions that require sign off prior to issue of a construction certificate to *Certifier*;
  2. Change reference to *Certifying Authority* to *Certifier*;
  3. Delete references to *Accredited Certifier* and replace with *Certifier*;
  4. Delete references to *Principal certifying authority* or *Principle Certifier* and *PCA* and replace with *Principal Certifier*
- Other changes:
  5. Change references to *Workcover* to *SafeWork NSW*
  6. Change references to *Dial Before You Dig* to *Before You Dig Australia*;
  7. Change all references to *CC* to read *Construction Certificate*
  8. Amend Condition 61 to only state:

A construction certificate shall be issued prior to the commencement of building works.

- 2) Delete the following conditions (as originally numbered):
  - a) That are covered by statutory requirements and/or are matters for the construction certificate stage:

- 53. BCA Assessment
  - 82. Building Work
  - 83. Building Work
  - 89. Procedure for critical stage inspections
  - 155 Termite Protection;
- b) Remove Condition 209. (G240) Advertising;
- c) Remove Condition originally numbered 119. (D350) Window Glazing;
- d) Condition 150 Contamination. The site does not require remediation and has been assessed as being suitable for the proposed use to satisfy Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- e) Condition 158. (E001) Payment of Development Contributions. Now amended and moved after (B008) Housing and Productivity Contribution;
- f) Condition 189. Operational Plan of Management. Now amended and moved after (E001) Payment of Development Contributions;
- g) Remove Condition 191. (E954) Noise Management Plan. The requirements are included in the condition requiring an amended Operational Plan of Management;
- h) Remove Condition 206. (G210) Car Parking Management. This is addressed by Condition 189;
- i) Remove Condition 216. (G350) Spruiking;
- j) Remove Condition 219. (G392) Noise Management Plan. This is addressed by the two preceding conditions.
- 3) After Condition 9. (A130) Council Wastewater Requirements insert new Condition Heritage Fabric:

**Heritage Fabric**

No modifications to exceptional or high significant fabric related to the main heritage homestead are approved as a part of this development. There are to be no changes to the ceiling, glazing or joinery within the main house. This restriction does not relate to the post 1990s modifications or additions to the property.

**Condition reason:** To ensure that there are no changes to the original heritage fabric of the main homestead.

- 4) After new Heritage Fabric Condition insert new Condition: Noise and Privacy Screening:

**Noise and Privacy Screening**

Noise and privacy screening should be limited to timber lapped and capped or safety glass. No solid masonry or corrugated/colorbond steel fencing is to be installed on site.

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**Condition reason:** To provide clarity that the material selection is consistent with the approved plans and suitable heritage outcome.

- 5) After renumbered Condition (B008) Housing and Productivity Contribution, insert new Condition (E001) Payment of development contributions ~~13~~. to read:

**Payment of section 7.11 contributions**

Before the issue of a construction certificate, the applicant must pay the following contributions to Council for:

|                             |           |
|-----------------------------|-----------|
| District Drainage - Land    | \$150,079 |
| District Drainage - Works   | \$17,779  |
| Local Trunk Drainage        |           |
| Prestons West - Land        | \$54,543  |
| Prestons West - Works       | \$59,948  |
| Streetscape - Land          | \$16,890  |
| Streetscape - Works         | \$3,329   |
| Administration              | \$7,112   |
| Professional and Legal Fees | \$7,104   |

The total contribution payable to Council under this condition is **\$316,784** as calculated at the date of this consent, in accordance with LIVERPOOL CONTRIBUTIONS PLAN 2009.

The total amount payable may be adjusted at the time the payment is made, in accordance with the provisions of the LIVERPOOL CONTRIBUTIONS PLAN 2009.

A copy of the development contributions plan is available for inspection at [www.liverpool.nsw.go.au](http://www.liverpool.nsw.go.au).

**Condition reason:** To ensure development contributions are paid to address increased demand for public amenities and services or to address increased demand for regional infrastructure or to ensure any planning agreement is finalised at the specified time.

- 6) Amend Condition 11. (B010) Design Amendments to read:

**Design amendments**

Before the issue of a construction certificate, the Certifier must ensure the construction certificate plans and specifications detail the following required amendments to the approved plans and documents:

1. One window facing the internal courtyard from each of the internal play rooms is to remain operable.
2. A pedestrian path is to be constructed alongside the northern driveway connecting Horningsea Park Drive footpath to the internal car park walkway.

Refer to the red arrow on the approved SITE PLAN - COUNCIL MARKUP; dated 17.01.2025, for recommended locations.

**Condition reason:** 1. To ensure that natural ventilation is provided to the playrooms, as required by Part 4.4 of the *Child care planning guideline* (September 2021). 2. To provide safe access from the car park.

- 7) After Condition 11. (B010) Design Amendments insert new Condition (E592) Amendments to Operational Plan of Management

**Amendments to Operational Plan of Management**

Prior to issue of a construction certificate, the Operational Plan of Management (POM) referred to in Condition 2 shall be amended as follows. The Amended POM shall be submitted to and endorsed by Council's Transport Management Team regarding items 1.- 10 and to Council's Environmental Health Team with regards to the Noise Management component of the POM, Item 11.

1. Address the site servicing arrangements, particularly that service vans are to attend the site outside the peak drop-off/pick-up hours for the centre and outside of the hours of to state that service vehicles are limited to after 9am and before 2:30pm Monday to Friday.
2. State that parents are to use only the on-site parking spaces allocated to visitors when attending the centre. A 3-strike policy for those identified as using on-street parking spaces is to be documented and enforced by the operator.
3. Ensure that all staff and visitors are advised that there is a restriction that only a left-in and left-out traffic movement is allowed. Eastbound traffic approaching the site will be required to approach the roundabout, make a full 360 degree turn at the roundabout and return westbound on Horningsea Park Drive for a left turn into the site.
4. State that a one-way traffic flow on the site is to occur. The operator is to ensure that there is availability of adequate queueing space within the parking area so that vehicles entering the site will not block through traffic on Horningsea Park Drive.
5. Advise that only parking Spaces 6 – 17 are allocated to parents/carers; and advise staff that parking is only allowed in the remaining spaces. The use of the car park is to maximise the available queueing space on site. Insert the Site Circulation Plan (Drawing no. A035 dated 29/10/2024) in the POM.
6. Provide details of the duties of traffic marshal/s to be positioned at the driveway during the peak periods of the site to
  - direct parents/carers to park on the site in an orderly manner and not queue on the driveway cross over or on the street
  - manage potential conflicts between vehicles entering and exiting the driveway, pedestrians, vehicles entering/exiting between parked vehicles and buses, and vehicles entering and leaving on-street parking. The traffic marshal/s is required to operate between the hours of:

- 7am – 9.30am Monday to Friday
  - 4pm – 6pm Monday to Friday.
7. To indicate that parents/carers are to walk their children from the car parking area to the centre in anticlockwise direction to minimise the number crossing at the zebra crossing. This is to be line marked and sign posted on the path. The provision of regular bulletins to parents/carers to reinforce this requirement is to be included in the POM.
8. To provide a schedule showing hour by hour, the number of staff arriving and departing, and the arrival and departure times, so as to ensure that the number of allocated staff spaces (22) will cater for the staff parking demands at all times. The timing of and number of staff on each shift must be such so as to ensure that staff will occupy only the allocated staff parking spaces, including at the changeover times between shifts.
9. Identify the bus schedule including arrival and departure times at Bus Stop ID No 2171123 on the southern side of Horningsea Park Drive, and identify the measures to ensure access and safety is accommodated for during these periods.
10. Identify the traffic and safety measures to be implemented to ensure the safety of students of John Edmondson High School. This shall be prepared in consultation with the School Principal.
11. Include the recommendations of the approved acoustic report with regard to the operation of the centre, as amended by the requirement to require one window facing the internal courtyard from each of the internal play rooms is to remain operable while mechanical ventilation is operating and children are in the indoor areas.
- 8) Amend Condition 32. (B361) Construction Site Management Plan to amend the second last paragraph to add a points 12. - 17. to address possible construction impacts on John Edmonson High School:
12. Construction vehicles must not access and egress from the site during school drop off and pick up times (30 minutes before and after school start and finish times).
13. Work zones should not be proposed in locations that will compromise pedestrian, cyclist and vehicular access to the school and associated drop off and pick-up spaces. Separate staff will be required to manage construction activities during peak school times.
14. Pedestrian and cyclist safety should be closely considered and managed including where necessary, traffic controllers for construction vehicle entry and exit movements.
15. If any impacts to school bus services are anticipated, these should be addressed and mitigated.
16. The Plan must identify that if noise and vibration exceedances at the school are identified, mitigation measures should be developed consistent with EPA construction noise guidelines. The mitigation measures should

seek to maintain internal noise levels for classrooms required by DoE's Educational Facilities Standards and Guidelines (EFSG):

| Room                                                       | Internal noise level (dB LAeq) | Reverberation time, sRT60 (Av 500Hz and 1000Hz) |
|------------------------------------------------------------|--------------------------------|-------------------------------------------------|
| Office areas                                               | 40                             | <0.7                                            |
| Open plan teaching areas                                   | 40                             | <0.8                                            |
| Professional and Administrative offices                    | 35                             | <0.8                                            |
| Staff common rooms                                         | 40                             | <0.6                                            |
| Study Rooms                                                | 35                             | <0.6                                            |
| Teaching spaces – students who are deaf or hard of hearing | 30                             | <0.4                                            |
| Teaching spaces – Primary schools                          | 35                             | <0.5                                            |
| Teaching spaces – Secondary schools                        | 35                             | <0.6                                            |

**Figure 3 – Page 12 of the 0001c Design Checklist – Acoustics (EFSG)**

Refer to Figure 3. Figure 3 – Page 12 of the 0001c Design Checklist – Acoustics (EFSG)

If necessary, a mitigation measure should also be included to provide periods of respite during the school day to limit impacts to student learning. •

17. Consideration is to be given to air quality impacts arising from construction dust including appropriate mitigation measures as necessary.

and delete the second last paragraph “The Certifier must be satisfied...”

- 9) After Condition 28 insert new Condition Amended Arborist Report - Tree protection measures:

**Amended Arborist Report - Tree protection measures**

Before the issue of a construction certificate an amended arborist report is to be prepared that details the construction methodology and tree protection measures, based on root mapping, for the existing street tree N1, *Corymbia maculata*. The amended report shall be submitted to and endorsed by Council's Landscape officer prior to the issue of any construction certificate.

The main access driveway and cross over is to be constructed in accordance with the details approved by Council.

**Condition reason:** To ensure that this street tree is retained in good health notwithstanding the location adjoining the proposed driveway.

- 10) Amend Point 2 of Condition29. (B166) Landscape Plan to read:

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2. A pedestrian path alongside the northern driveway connecting Horningsea Park Drive footpath to the internal car park walkway. Refer to the red arrow on the approved SITE PLAN - COUNCIL MARKUP; dated 17.01.2025, for recommended locations.

- 11) After Condition 51. (B515) Materials and colour finishes schedule insert a new Condition: Noise and Privacy Screening:

**Noise and Privacy Screening**

Detailed drawings of the noise and privacy screens are to be provided to Council for the review and approval of Council's Heritage Officer prior to issue of construction certificate. The detailed drawings are to include all dimensions, materials, colours and an accurate site plan indicating specific locations for installation.

**Condition reason:** To ensure an acceptable heritage outcome.

- 12) Amend Condition 48. (B555) Detailed Design Drawings to read:

**Management of Traffic Access and Pedestrian Safety**

The applicant is to undertake detailed design of traffic facilities, signs and line marking in the existing and/or proposed public domain. The following items must be incorporated:

1. Prohibit right turns movements to and from Horningsea Park Road –
  - (a) Provide a physical median within the driveway itself which will force a left in left out arrangement preventing vehicles from turning right into or out of the site. The median triangle is to be wide enough to deter vehicles from turning right into Horningsea Park Drive.  
  
Note: the median triangle in Site Circulation Plan (Drawing no. A035 dated 29/10/2024) is not wide enough to be effective.
  - (b) Provide sign posting of no right turns into and out of the site;
  - (c) A double dividing BB line along the centre of the carriageway of Horningsea Park Drive, across the site frontage is to be provided;
2. Traffic flow within the site is to be in one-way direction and it must be ensured that there is available space to accommodate two or more vehicle to queue within the car park.
3. Relocate the existing TfNSW School Zone sign approximately 5m west (not to conflict with any street tree) due to the proposed driveway access to the child care centre. The applicant is to liaise with TfNSW and obtain their approval and implement the relocation.
4. Provide appropriate treatment to the footpath where it crosses the proposed driveway in order to manage the potential vehicle-pedestrian conflicts. The treatment to the footpath needs to identify and mark that there is pedestrian priority for the footpath in accordance with the NSW Movement and Place -

Design Solutions.

5. The proposed driveway is not to impact the existing bus zone on Horningsea Park Drive.

Prior to the issue of a construction certificate [detailed design drawings of the proposed traffic facilities, signs and line markings in the existing and proposed public domain areas are to be submitted to Council for approval using Approval of Traffic Facilities including Signs and Line Marking Schemes Application Form. The application is available on Council website and should be lodged online. The drawings are to be prepared by a suitably qualified person.

NOTE: It is advised that the applicant discuss with Council's Traffic Management Section of the traffic requirements prior to preparation of the detailed design drawings.

- 13) After Condition 69. (C095) Tree protection measures insert new Condition:

**Arborist – Tree protection measures**

Before work commences, the project arborist must be satisfied the measures for tree protection detailed in the approved arborist report (as amended and approved by Council) and AS 4970-2009 Protection of trees on development sites are in place.

**Condition reason:** To ensure that all trees to be retained are protected during construction.

- 14) After Condition 109. (D190) Discovery of relics and Aboriginal objects insert new Condition Arborist Checkpoint:

**Arborist Checkpoint for Tree N1**

In accordance with the Critical Checkpoints identified within the approved arborist report (as amended and approved by Council) a qualified arborist is to be present on site to monitor and certify the excavation work and tree protection works for Tree N1.

**Condition reason:** To protect the street tree adjoining the proposed new driveway access.

- 15) Amend Condition 156. (D951) Truck Movements to read:

**Limitation on Hours of Truck Movements**

The movement of construction vehicles, including delivery vehicles, is prohibited from entering and exiting the site during the school drop-off and pick up times (30 minutes before and after school start and finish times) of John Edmondson High School. The prohibited hours are:

- 7:55am - 8:25am Monday, Wednesday, Thursday and Friday
- 2:40pm - 3:10pm Monday, Wednesday, Thursday and Friday
- 8:10am – 8:40am Tuesday
- 2:30pm – 3:00pm Tuesday.

**Condition reason:** To ensure the safety of school students, based on the school bell times for the adjoining John Edmonson High School.

16) Amend Condition 204. (G190) Parking Spaces Assessment Planner to read:

**Allocation of Parking Spaces**

The parking spaces shall be used solely for the purpose as stated:

- Unrestricted staff car parking (parking spaces 1 - 5 and 18 – 34)
- Visitor car parking (parking spaces 6 – 17)
- Accessible car parking (parking space 17)
- Cycle parking
- Delivery area
- Garbage pick-up area.

**condition reason:** To ensure that parking and loading is in accordance with this approval.

17) Amend Condition 213. (G320) Childcare Centres to read:

**Childcare Centre Staff**

A maximum number of 22 staff members are permitted to work at the childcare centre at any given time.

**Condition reason:** To ensure that childcare centre maintain the maximum number of staff approved with this consent.

18) Renumber the conditions accordingly.

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**REASONS FOR DECISION:**

The Panel carried out a site inspection on Friday 21 February 2025. The Panel considered the written submissions and the submissions made at the Public Meeting.

The Panel is supportive of the adaptive re-use of this State Heritage listed building and site and appreciates that approval of this relatively low-impact use should ensure that the maintenance of the house and grounds is on-going. The Panel supports the inclusion of a condition requiring the preparation of a detailed Conservation Management Plan, for the approval of Council, for the whole site.

The Panel understands the concerns of the adjoining residents, including the speakers at the Public Meeting, regarding the existing congestion at the site given the location adjoining the John Edmonson High School, including illegal car parking in the existing bus zone adjacent to the site.

The Panel considered the re-location of the proposed new main access driveway, but the subject location is a result of balancing position of the existing roundabouts, the topography of the site, the location of existing significant Bunya Pine trees and additional heritage impacts that may result of the location was further east along the frontage. Based on the advice of Council's traffic engineers, the access will be as proposed. Conditions of consent have been imposed in order to mitigate conflicts between traffic and pedestrians to/from the school and school students and to/from the child care centre. The reasons for other additional conditions are as indicated in the conditions.

The Panel encourages Council to initiate and work with NSW Police to organise regular patrols in the vicinity of the site and the High School to enforce car parking fines and address other traffic offences as necessary. This is to ensure the safety of all users in the locality, including those using the childcare centre, and address the existing concerns of residential neighbours. The High School principal needs to be informed of the initiative and pass this information on to the school community.

Other than the need to strengthen some conditions to ensure that residential amenity and is maintained, and to mitigate the potential impacts on the adjoining High School, the the Panel supports the approval of the development.

**VOTING NUMBERS:**

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|                            |                                                                                                                                                                                  |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ITEM No:</b>            | 2                                                                                                                                                                                |
| <b>APPLICATION NUMBER:</b> | DA-1368/2021                                                                                                                                                                     |
| <b>SUBJECT:</b>            | Construction and use of a concrete batching plant facility. The proposed development is designated development as per the Environmental Planning and Assessment Regulation 2000. |
| <b>LOCATION:</b>           | 135 Lawson Road, Badgerys Creek NSW 2555                                                                                                                                         |
| <b>OWNER:</b>              | Hanson Construction Materials Pty Ltd                                                                                                                                            |
| <b>APPLICANT:</b>          | Hanson Construction Materials Pty Ltd                                                                                                                                            |
| <b>AUTHOR:</b>             | Robert Micallef                                                                                                                                                                  |

#### **DETERMINATION OF PANEL:**

Development Application DA-1368/2021 is **refused** for the following reasons:

#### **REASONS FOR REFUSAL**

1. The proposed development is inconsistent with Section 2.122 Traffic-generating development under State Environmental Planning Policy (Transport and Infrastructure) 2021 as concurrence has not been received from Transport for NSW, pursuant to sections 4.15(1)(a)(i) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
2. Insufficient information has been submitted with the proposed development to satisfy the provisions of State Environmental Planning Policy – Biodiversity and Conservation 2021, Chapter 9 – Hawkesbury Nepean River, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
3. The proposed development is inconsistent with and/or has not submitted sufficient information to address the provisions of the following clauses within State Environmental Planning Policy (Precincts – Western Parkland City) 2021 – Chapter 4 Western Sydney Aerotropolis:
  - a. Clause 4.1 – Aims of the Chapter (inclusive of non-compliances with the objectives and principles within the Western Sydney Aerotropolis Plan)
  - b. Clause 4.24 – Flood Planning
  - c. Clause 4.26 – Heritage Conservation
  - d. Clause 4.28B – Aboriginal Cultural Guidelines
  - e. Clause 4.31 – Design Review Panel
  - f. Clause 4.33 – Consideration of Design Excellence
  - g. Clause 4.39 – Development must be Consistent with Precinct Plan
  - h. Clause 4.49 – Public Utility Infrastructure

pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

4. The proposed development is inconsistent with and has not submitted sufficient information to address the provisions of the Western Sydney Aerotropolis Precinct Plan (September 2024) as prescribed by Clause 4.39 – Development must be Consistent with Precinct Plan of the State Environmental Planning Policy (Precincts – Western Parkland City) 2021 – Chapter 4 Western Sydney Aerotropolis, including the following:
- a. Part 2 – Precinct Vision and Objectives
    - i. Section 2.3 Badgerys Creek
  - b. Part 3 – Infrastructure and Development Staging
    - i. Section 3.1 – Infrastructure Delivery
    - ii. Section 3.2 – Development Sequencing
    - iii. Section 3.3 – Out of Sequence Development
  - c. Part 4 – Urban Structure
    - i. Section 4.1 – Proposed Land Use and Structure Plan
    - ii. Section 4.2 – Subdivision and Block Structure
    - iii. Section 4.3 – Aboriginal Culture and Heritage – Recognising Country
    - iv. Section 4.5 – Blue-Green Infrastructure Framework
      - 1. Section 4.5.1 – Total Water Cycle Management
      - 2. Section 4.5.3 – Public Domain and Canopy Cover
      - 3. Section 4.5.5 – Scenic and Cultural Connection
    - v. Section 4.6 – Movement Framework
      - 1. Section 4.6.1 – Transport Strategy
      - 2. Section 4.6.2 – Street Hierarchy and Typology.
- pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
5. The proposed development has provided insufficient information and does not achieve satisfactory compliance with the Performance Outcomes under the Western Sydney Aerotropolis Development Control Plan – Phase 1, including:
- a. Part 2 – Precinct Vision and Place Statements
    - i. Section 2.4 Badgerys Creek Precinct
  - b. Part 3 – Natural Environment
    - i. Section 3.1 – Biodiversity
    - ii. Section 3.3 – Waterway Health
    - iii. Section 3.4 – Stormwater and Water Sensitive Urban Design
  - c. Part 4 – Risk Minimisation and Management
    - i. Section 4.2 – Flooding
    - ii. Section 4.4 – Odour
    - iii. Section 4.5 – Noise and Vibration
    - iv. Section 4.7 – Acid Sulphate Soils and Salinity
    - v. Section 4.9 – Land Stability
  - d. Part 5 – General Provisions
    - i. Section 5.1 – Character and Place
      - 1. Section 5.1.1 – Urban Design
      - 2. Section 5.1.2 – Street Design and Network Layout

- 3. Section 5.1.3 – Building Design
- 4. Section 5.1.6 – Digital Technology
- 5. Section 5.1.7 – Urban Ecology and Sustainability
- ii. Section 5.3 – Services and Utilities
- iii. Section 5.4 – Access and Carparking
- e. Part 6 – Heritage and Cultural Conservation
  - i. Section 6.1 – Heritage Items
  - ii. Section 6.2 – Historic Archaeology
  - iii. Section 6.3 – Aboriginal Culture and Heritage

pursuant to Sections 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

6. Insufficient information has been provided to demonstrate that the proposed development would not have significant adverse impacts on the built environment and natural environment and would not have significant adverse social impacts, pursuant to sections 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.

This includes impacts on existing adjoining rural residential development with regard to acoustic impacts from the facility operation and from truck movements along Lawson Road; and odour impacts from waste water, diesel/exhaust fumes from trucks facilitating system pump out of the on-site sewage treatment management system.

7. Insufficient information has been submitted to enable Council to carry out a full and proper assessment of the application. In this regard, the proposal has not been provided with material for assessment, or this material has not met the standards and controls required for assessment pursuant to Sections 4.15(1)(a)(iv), 4.15(1)(b), 4.15(1)(c) and 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
8. Insufficient information has been provided to demonstrate that the subject site would be suitable for the proposed development, pursuant to Section 4.15(c) of the Environmental Planning and Assessment Act 1979.
9. The proposed development is not considered to be satisfactory having regard to the concerns raised from internal referrals within Council and comments from the Liverpool Design Excellence Panel, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
10. The proposed development is not considered to be satisfactory having regard to the concerns raised in external referrals from Transport NSW – Roads and Maritime Services, Sydney Water, Western Sydney Airport Co. and NSW Environment Protection Agency, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
11. The proposal is not consistent with the objectives of the ENT Enterprise Zone under State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021 “To prevent development that is not compatible with or that may detract from future commercial uses of the land”. This in particular is with regard to the non-provision of future roads as required by the Precinct Plan of the State Environmental

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Planning Policy (Precincts – Western Parkland City) 2021 – Chapter 4 Western Sydney Aerotropolis. This will affect the future orderly redevelopment of the locality.

12. Due to the above reasons, approval of the proposed development would set an undesirable precedent for similar inappropriate development and any approval would be contrary to the public interest, pursuant to provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

**ADVISORY NOTES**

Section 8.7 and 8.9 of the Environmental Planning & Assessment Act 1979 provides that an applicant who is dissatisfied with the determination of a Development Application, may appeal to the Land and Environment Court within six (6) months of the date of determination, or as otherwise prescribed by the Environmental Planning & Assessment Act 1979.

**REASONS FOR DECISION:**

The Panel carried out a site inspection on Friday 21<sup>st</sup> February 2025. The Panel considered the written submissions and the presentation by various members of the Applicant's team at the Public Meeting outlining the proposal and refuting the recommended reasons for refusal.

The Panel generally supports the findings of the Assessment Report. In this regard, the Panel understands the view of the Applicant's Planners that the Precinct Plan was not in place at the time of lodgement of the development application. However, the Panel is of the understanding that the Precinct Plan does apply, based on the advice of Council's Assessment Planner that:

- Clause 275C(b), in the applicable Environmental Planning and Assessment Regulation 2000 specifies that assessment under a precinct plan under the Western Sydney Aerotropolis Plan is required
- The previous provisions under the repealed *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* specify in clause 41 that development consent must not be granted to development on land to which a precinct plan applies unless the consent authority is satisfied that the development is consistent with the precinct plan.
- The wording of clause 41 is also consistent within the current SEPP Clause 4.39(1).

The Panel has amended the recommended reasons for refusal as:

- It is not agreed that the proposal is prohibited by virtue of the unacceptable treatment of noise and odour impacts
- For the reasons outlined in the Assessment Report, it is not agreed that the proposal is consistent with the aims of the Enterprise Zone with regards to the Objective *To prevent development that is not compatible with or that may detract from the future commercial uses of the land.*

**VOTING NUMBERS:**

## LIVERPOOL CITY COUNCIL

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|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ITEM No:</b>            | 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>APPLICATION NUMBER:</b> | DA-1263/2022/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>SUBJECT:</b>            | S4.55(1A) Modification Application (DA-1263/2022/A), to development consent DA-1263/2022 for Installation of a shredding machine for the purpose of shredding mattresses and the installation of shipping containers for the purpose of an acoustic barrier and storage of recycled materials. The modification application is to extend the operating hours of the mattress shredder within existing resource recovery facility on Monday to Saturday from 7.30am to 10.30am with trucks coming to the site at 7.00am, to the operation of the mattress shredder on Monday to Saturday from 7:00am - 6:00pm, with trucks coming to the site at 7.00am. |
| <b>LOCATION:</b>           | 99 Rose Street, Liverpool NSW 2170                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>OWNER:</b>              | Liverpool City Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>APPLICANT:</b>          | The APP Group c/o Liverpool City Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>AUTHOR:</b>             | Joseph Bell, Patch Planning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

#### **DETERMINATION OF PANEL:**

Modification Application DA-1263/2022/A is **approved** subject to conditions of the consent as recommended by the Council Officer with the addition of the following. Insert a note under Condition 1 Approved Plans:

The drawings submitted with Modification Application DA-1263/2022/A are unable to be approved as the extended area surrounded by the shipping containers, is of a greater area than that shown on the Approved Plans and has already been constructed.

A separate development application (or a development application to amend DA-1263/2022/A) to extend the use into the larger area and submission of a Building Information Certificate for the physical structures is required.

1. In Condition 1b)

1) In the table of approved document refer to the *Addendum* Operational Waste Management Plan.

2) After the Table, insert the wording:

Conditions 10, 51, 52, and 53, where relevant are superseded by information contained within the *Compliance Noise Monitoring Report and Statement* prepared by VMS Australia Pty Ltd dated 21 November 2024).

**Under D. Conditions relating to use**

1) After Condition 47, insert a new Condition 47A:

**Maximum approved mattress shredding capacity**

This consent limits the number of mattresses that can be processed by the operation to that identified in originally approved Operational Management Plan and Operational Noise Impact Report of 80-100 mattresses per day.

**Reason:** To ensure consistency with the approved application under DA (DA-1263/2022) as the applicant's planning consultant has advised that there is no intensification of the operation.

Note: Any extension of this will require separate development approval to be sought for an increased throughput of mattress processing.

2) After new condition 47A, insert a new Condition 47B:

**Maximum staff numbers**

This consent limits the staff numbers for the operation of the mattress shredding machinery. During any one time, the proposed shredding machine will be operated by two staff members.

**Reason:** To ensure consistency with the originally approved application under DA-1263/2022 as described within the supporting Statement of Environmental Effects prepared by APP Corporation Pty Limited (December 2022).

3) After new Condition 47B, insert a new Condition 47C:

This consent limits the number of truck movements in and out of the site directly associated with the operation to a total of 12 truck arrivals and 12 truck departures per day, therefore, 24 truck movements per day, which is consistent with the number of truck movements assessed within the approved TRAFFIX report dated 29 October 2024 (Reference: 22.217r03v03).

**Reason:** To ensure the actual impacts of the development associated with truck movements is identified and aligns with the information submitted to support the application.

**REASONS FOR DECISION:**

The Panel carried out a site inspection on Friday 21 February 2025. The Panel considered the written submission and the presentations made by representatives of the applicant at the Public Meeting. The Panel also considered an additional letter dated 25 February 2025 from the planners for the applicant, The APP Group.

The Panel is very supportive of the Council's initiative to reduce waste and proactively implement the mattress shredding and recycling project, with a view to expand the operation to other LGAs, which is a positive outcome for waste reduction and management.

However, consideration of the application as submitted has raised a number of issues:

1. The extended area of the operation as shown on the drawings submitted with the modification application is unable to be approved, as the use has already been extended into that area and the containers have already been re-located to form the larger enclosure. The loading bay adjoining the container enclosure is already in place and operation. The erection of the physical structures cannot be retrospectively approved under the subject application, and would require the submission of a Building Information Certificate (BIC). The extended area of the use would be capable of approval, but in the Panel's view this requires the submission of a development application, rather than via a s4.55(1A) Application.
2. The Panel supports in principle the extended hours of operation, given the resulting overall acceptability of the acoustic impacts (as identified in the Assessment Report) and net reduction in overall truck movement on the Depot site, compared to when the development was originally approved. However, it is understood that the request for extended hours of operation is required as additional mattresses are to be processed, compared to that for which consent was sought and approved originally. As indicated in the approved Acoustic Report and in the approved Operational Management Plan, 80-100 mattresses per day were to be processed.
3. Approval for an increased number of mattresses to be processed has not been explicitly sought. It is noted that the submitted *Addendum Operational Management Plan* dated 15 August 2024 indicates that 800 -1000 mattresses per day is now proposed. The submitted Statement of Environmental Effects does not refer to this. Increase. This is clearly an intensification of the activity on the site.
4. As the application has not explicitly sought approval for increased processing, this approval limits the processing activity to that consistent with the original approval.
5. Council is encouraged to lodge a BIC and a new development application for the use of the increased enclosure area and processing throughput.

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| <b>VOTING NUMBERS:</b> |
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|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ITEM No:</b>            | 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>APPLICATION NUMBER:</b> | DA-64/2007/G                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>SUBJECT:</b>            | Modification to Development Consent DA-64/2007 that originally approved Subdivision of existing lots into: eight( 8) torrens tiles lots, four(4) public reserve lots three (3) residue lots and associated roads and drainage works, subsequently modified The Section 4.55(1A) application is to modify and/or delete the 'prior to the issue of a subdivision certificate' wording from conditions to allow subdivision to occur prior to the completion of all works. |
| <b>LOCATION:</b>           | Middleton Grange Town Centre<br>Lot 2 Flynn Avenue, Middleton Grange<br>Lot 3 & 4 Seventeenth Avenue East, Middleton Grange<br>Lots 5, 6 & 102 Sixteenth Avenue East, Middleton Grange<br>60 Hall Circuit, Middleton Grange<br>Lot 1 Seventeenth Avenue East, Middleton Grange                                                                                                                                                                                           |
| <b>OWNER:</b>              | Manta Group Ltd<br>Al-Somai Developments Pty Ltd<br>Liverpool City Council                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>APPLICANT:</b>          | Pacific Planning Pty Limited                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>AUTHOR:</b>             | Darren Laybutt – GAT & Associates                                                                                                                                                                                                                                                                                                                                                                                                                                        |

#### **DETERMINATION OF PANEL:**

The Modification Application DA-64/2007/G is **refused** for the following reasons:

#### **REASONS FOR REFUSAL**

1. The draft Plan of Subdivision prepared by Peter Robert Warwick dated 28 July 2022 titled "Plan of Subdivision of Lots 2,3,4,5 DP 1207518 Lot 12 DP 1108343 Lot 102 DP 1128111 & lot 1 DP 1078564" indicates road names and is consistent with a plan showing dedication of roads to the Council as Public Roads as the subdivision is currently approved. The plan does not show the roads being registered as separate Lots for future dedication as is intended by the modification application to facilitate registering the subdivision before the completion and dedication of roads.
2. As currently construed, the modification would allow for registering lots that are potentially landlocked. There is concern over the ownership of these new lots as they can be sold to others. Were lots in different ownership, others can be held to ransom. In particular, possible future owners of the "road lots" can refuse to dedicate roads.

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3. This proposal is not conventional, and the applicant has not been able to provide any certainty on the end result of dedicated roads. The Subdivision Certificate is normally Council's final opportunity to ensure all works are completed in accordance with the development consent and Council specifications.
4. Current bonds held by Council only cover Section 138 works on existing Council roads and do not cover any internal works.
5. The current Voluntary Planning Agreement executed on the property does not fully address, cover or relate to the works DA-64/2007 as modified, and does not provide the security that all works under DA-64/2007 will be completed.
6. The proposed modification is not considered to promote the orderly and economic use of land, pursuant to Section 1.3(c) of the Environmental Planning and Assessment Act 1979.
7. For the reasons above, the proposed modification is not considered to be in the public interest, pursuant to provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

#### **ISSUES RELATED TO THE APPLICATION**

The Panel carried out a site inspection on Friday 21 February 2025. The Panel considered the presentation made by the applicant at the Public Meeting. There were no written submissions made on the application.

The reason for the application appears to be in order to assist the developer with financing the project and other infrastructure works that are already committed as part of the project, including works the subject of a current Planning Agreement entered into with the Council.

Although the application was recommended for approval, the Panel was concerned regarding the lack of security to ensure that the road works would all be completed. The independent Assessment Officer had based his recommendation on the understanding that the Council's Senior Land Development Engineer had supported the proposal. The Panel was briefed by the Senior Land Development Engineer, who was also present during the Public Meeting. It was subsequently established that the proposal is not supported, based on the material provided with the application. On 25 February 2025, the Senior Land Development Engineer provided the Panel with reasons as to why the application should be refused.

As an administrative matter for the Council, a consolidated development consent should be provided for the Panel's consideration with any similar modification application in the future. The tracking of multiple modifications for an 18 year old consent is not a reasonable function for the Panel members to undertake. For transparency, and for the ease of implementation of the development for both Council's officers and the applicant, the consolidated consent should also be publicly available.

#### **VOTING NUMBERS:**