

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

Monday 28th August 2023

Held online via
MS Teams

Panel: Michael Mantei (Chair)
Julie Walsh
Grant Christmas
Ellie Robertson

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

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ITEM No:	1
APPLICATION NUMBER:	DM/211/1990/A
SUBJECT:	Modification to Development Consent No.211/1900 under Section 4.55(1A) of the <i>Environmental Planning and Assessment Act 1979</i> , seeking to amend condition 16 to extend the hours of operation.
LOCATION:	24 Wendlebury Road, Chipping Norton
OWNER:	Mr N A Finocchiaro
APPLICANT:	Tanis Confectionery Australia Pty Ltd
AUTHOR:	Eunice Pedrosa

ISSUES RELATED TO THE APPLICATION

The panel has considered the Council officer's assessment report and accompanying documents including written objections and oral submissions made to the panel at its meeting on 26 June 2023.

In order to consider whether the modified hours of operation are appropriate the panel needs to be satisfied that the current use of the premises is a lawful use. The panel also needs to be satisfied that the current use of the premises is a lawful use, either by being permitted under DA211/90 or under the exempt development provisions of the Codes SEPP, in order to have the power to determine the application.

The additional information provided by the applicant to Council since the last panel meeting does not demonstrate that the current use of the premises is lawful either by development consent DA211/90 or under the exempt development provisions of the Codes SEPP.

Even if the current use is lawful, the written and oral submissions to the panel demonstrate that the current operation is causing an adverse impact on the amenity of the neighbourhood. This indicates that the proposed modification is not of "minimal impact" as required by section 4.55(1A) of EP&A Act. The panel otherwise agrees with the Council officer's assessment of the modification application.

VOTING NUMBERS:

4 - 0

DETERMINATION OF PANEL:

That DA/211/90/A for modification of development consent DA211/90 under section 4.55(1A) of the Environmental Planning and Assessment 1979 seeking to amend condition 16 to extend hours of operation be refused for the following reasons:

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1. Insufficient information has been provided to demonstrate that the proposed modification is of minimal environment impact and therefore the modification is inconsistent with the provisions of section 4.55(1A)(a) of the EP & A Act.
2. Insufficient information has been provided to demonstrate that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and therefore is inconsistent with section 4.55(1A)(b) the EP & A Act.
3. The proposed development is inconsistent with the objectives of the E4 General Industrial Zone under *Liverpool Local Environmental Plan 2008*. The proposed development does not “*minimise any adverse affect of industry on other land uses*” as proposed is likely to unreasonably impact on the adjacent residential area having regard to sections 4.55(3) and 4.15(1)(a)(i), (b) and (c) of the EP&A Act.
4. The proposed modifications do not comply with the controls and objectives of Part seven – Developing in Industrial Areas in LDCP 2008, including Section 9 – Amenities, pursuant to sections 4.55(3) and 4.15(1)(a)(iii), (b) and (c) of the EP&A Act.
5. Insufficient information has been submitted to allow the panel to carry out a full and proper assessment of the application. In this regard detailed documentation has not been provided in response to Councils request for additional information pursuant to sections 4.55(3) and 4.15(1)(a)(iv), (b), (c) and (d) of the EP&A Act.
6. Insufficient information has been provided to demonstrate that the proposed modification would not have an adverse impact on the built and natural environment, and would not have adverse social impacts pursuant to sections 4.55(3) and 4.15(1)(a)(iv), (b) and (c) of the EP&A Act.
7. Insufficient information has been provided to demonstrate that the site would be suitable for the proposed modification pursuant to section 4.55(3) and 4.15(1)(c) of the EP&A Act.
8. The proposed modification is not considered to be acceptable having regard to the concerns raised during the notification period of the proposal pursuant to the provisions section 4.55(1A), 4.55(3), and 4.15(1)(d) of the EP&A Act.
9. In the circumstances of the case the proposed modification is not in the public interest pursuant to sections 4.55(3) and 4.15(1)(e) of the EP&A Act.

ITEM No:	2
APPLICATION NUMBER:	DA-1339/2021
SUBJECT:	Torrens Title subdivision of one (1) lot into three (3) lots.
LOCATION:	50 Jardine Drive, Edmondson Park, NSW, 2174
OWNER:	Ternella Turano
APPLICANT:	Francesco Turano

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AUTHOR:	Jason Marshall
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ISSUES RELATED TO THE APPLICATION

The panel has considered the Council officer's assessment report, accompanying documents and oral submissions made to the panel by the applicant's town planner at the panel meeting.

The objectives of clause 7.11 of the LEP are:

- a) to contribute toward the efficient use of land resources,
- b) to ensure the viability of public transport and other services planned for the area,
- c) to ensure adequate funds for the recreation and community facilities planned for the area.

The majority of the panel is concerned that the proposed development will prejudice the future orderly development of the subject land and is therefore not consistent with the objectives of clause 7.11.

The application is not accompanied by a concept subdivision of the land at a future time that will enable the density required by clause 7.11 to be achieved. In the absence of that information or a similar proposal for re-subdivision of the proposed lots the panel cannot be satisfied based on the information accompanying the application that the proposed subdivision will not prejudice the future orderly development of the land in accordance with the densities required by clause 7.11.

The subdivision boundary between the three proposed lots does not appear to have been based on any future master planning for the subject land. Rather these boundaries appear to be determined by the location of the existing dwellings.

The panel recognises that the demolition the existing dwellings is not an optimal use of resources however subdivision in accordance with the densities in clause 7.11 will provide a greater number of dwellings at a density contemplated in a release area. The retention of existing dwellings on larger allotment is not optimisation of the existing resources.

For those reasons and the reasons outlined in the Council officer's assessment report the majority of the panel is not satisfied that the variation request under clause 4.6 of LEP 2008 is well founded.

One of the four panel members supports approval of the application and the contravention of the development standard in clause 7.11. The panel member considers that the subdivision will enable continued use of the existing dwelling houses which is a valuable use of existing resources.

The dissenting member considers that demolition of existing dwellings does not serve the public interest. Retention of these dwellings will increase housing choice in the area, will improve the appearance of the area by increasing the amount of green space and separation between dwellings and will afford the occupants of the dwellings to enjoy a high level of amenity.

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VOTING NUMBERS:

3 – 1

DETERMINATION OF PANEL:

That development application DA1339/2021 for Torrens title subdivision of one lot into three lot at 50 Jardine Drive Edmondson Park be refused for the following reasons:

1. The panel is not satisfied that the applicant's written request pursuant to clause 4.6 of Liverpool LEP 2008 has adequately demonstrated that:
 - a) compliance with the development standard in clause 7.11 is unreasonable or unnecessary in the circumstance of the case and
 - b) there are sufficient environmental planning grounds to justify contravening the and standard.
2. The panel is not satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.11 and the objectives of development within the R1 zone.
3. The panel does not consider that the Planning Secretary's concurrence for approval of the proposal should be assumed.