

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

Monday 27th November 2023

Held online via
MS Teams

Panel:

Michael Mantei (Chair)
Brendon Beirne (Expert)
Jan Murrell (Expert)
Stephen Dobell-Brown (Community)

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

Speakers:

Item 3: DA-639/2021

- Nick Zappia (Architect for the Applicant)
- Ivan Kokotovic (Planner for the Applicant)

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ITEM No:	1
APPLICATION NUMBER:	RZ-5/2023
SUBJECT:	Planning proposal to amend the Liverpool Local Environmental Plan 2008 (LEP) as follows: <ul style="list-style-type: none">• Rezone the site from C2 Environmental Conservation to C2 Environmental Conservation, E4 General Industrial and RE1 Public Recreation.• Introduce a Height of Building of 20m and nil Floor Space Ratio for the proposed E4 General Industrial part of the site.
LOCATION:	Lot 2 Newbridge Road, Moorebank
OWNER:	EQ Riverside Pty Ltd
APPLICANT:	Liverpool City Council
AUTHOR:	Stephen Peterson

ISSUES RELATED TO THE APPLICATION

The Panel has familiarised itself with the site and read the Council officer's overview report and accompanying documents, but an inspection of the site was not practicable due to the nature of the surrounding land.

The Panel recognises that the development history of the site and environmental constraints are important factors influencing the strategic and site specific merits of the proposal. Principal among those factors is the approval issued by the Planning Assessment Commission in September 2015 for a concrete crushing and recycling plant. The concrete crushing plant is approved to be constructed on the central mainly cleared area of the site and within a part of the site proposed to be zoned E4 General industrial zone. The Panel is advised by Council officers that the approval has been physically commenced and remains in force although the plant is yet to be substantially completed.

The Panel understands that the proposed E4 zone, while permitting a concrete crushing plant with development consent also permits a range of less intrusive uses that are more compatible with the environmental attributes of the site and nearby residential development. The Panel understands that discussions have occurred with the current owner of the site and the owner has indicated that the crushing plant will not proceed if the amendments outlined in the Planning Proposal are made. The Planning Proposal is in effect a trade-off to encourage a less intrusive eventual use of the site than the previously approved concrete crushing plant. The Panel agrees with Council officers that this circumstance is an important factor in the strategic and site specific merit of the Planning Proposal.

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The Panel understands that the proposed C2 and RE1 zones are located on the more environmentally sensitive parts of the site and are designed to protect these parts of the site from further development and provide public access along the Georges River foreshore providing the missing link to sites that adjoin to the north and south. The Panel understand that dedication of the foreshore as public land is an issue that will be the subject of further discussions with the owner, and potentially a planning agreement could be prepared post gateway determination. The dedication of the foreshore is also an important factor in the strategic merits of the proposal and the Panel recommends a planning agreement be negotiated and implemented to give effect to the dedication.

The site-specific merit of the proposal will depend largely on suitable resolution of the flooding constraint, including evacuation. Evacuation from a general industrial use is potentially more easily managed than evacuation from a residential use. Significant filling of the site (between 4m – 5m in depth) will be required to achieve flood-free building platforms. This degree of landform change has been accepted by Council for the other sites within the precinct. How this is to be resolved in a design sense, particularly along the narrow accessway is yet to be demonstrated. The Panel recommends that further concept design details be provided post gateway demonstrating that any filling and compensatory excavation if required can be contained wholly within the E4 zone and appropriate transition can be design to the adjoining C2/RE1 zone.

The proposed 20 maximum height of buildings may result in visually intrusive development when the site filling is taken into account. A reduction in this maximum height should be considered equivalent to the depth of filling.

The Panel otherwise considers the proposal to be capable of site specific merit.

The Panel suggests Council consider amending the proposed zoning of the access way from C2 (as currently proposed) to E4.

The Panel also suggests Council consider:

- a. initiating a new Planning Proposal, or at the least a structure plan, combining all planning proposals for the Moorebank East Precinct which would enable strategic consideration of the constraints and opportunities of the individual sites and coordination of public and private infrastructure required to service the individual sites; and
- b. including in the future planning agreement a requirement that the owner of the site surrender the development consent for the concrete crushing plant if the LEP amendment is made.

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VOTING NUMBERS:

4 – 0

RECOMMENDATION OF PANEL:

The Panel recommends that:

- A. RZ5/2023 be amended to reduce the maximum Height of Building limit of 20 m by the depth of filling necessary on the site to raise the site above the flood level;
- B. Council undertake further studies, including flood modelling, evacuation procedures and investigation of other environmental constraints of the site post gateway; and
- C. RZ5/2023, as amended, proceed to gateway.

ITEM No:	2
APPLICATION NUMBER:	DA-1386/2021
SUBJECT:	Demolition of existing structures, the construction of multi dwelling housing development consisting of 6 x 2 storey dwellings, removal of 5 trees, and associated works.
LOCATION:	58 McGowen Crescent, Liverpool & 40 Atkinson Street, Liverpool
OWNER:	G K C Developments Pty Ltd & Liverpool City Council
APPLICANT:	G K C Developments Pty Ltd
AUTHOR:	Margaret Roberts - GAT and Associates

ISSUES RELATED TO THE APPLICATION

The Panel has familiarised itself with the site and read the Council officer's assessment report and accompanying documents.

Subject to the legal issue explained below, the majority of the Panel agrees with the assessment and recommendation in the Council's consultant planner's report. The Panel considers that the proposed development is an appropriate land use for the site and that the design and its impacts are acceptable.

The Chairperson sought confirmation from Council officers that Council had the power under the *Local Government Act 1993* to grant an easement to drain water over land

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classified as community land. It is not clear in the Council officer's report under which provision in the LG Act the proposed easement is to be granted. A council can grant a lease, licence or other estate for drainage purposes under section 46(1)(a1) of the LG Act. However, it appears that an easement is not a lease, licence or other estate. The Court's decision in *Aussie Skips Recycling Pty Ltd v Strathfield Municipal Council* [2020] NSWCA 292 also suggests that a council does not have the power to grant an easement over community land.

Council officers confirmed in the briefing session that Council did in fact have the power to grant an easement over community land.

In any event, even if the Council does not have the power to grant an easement, the proposed deferred commencement condition is capable of being satisfied by reclassification of the land to operational land and the registration of an easement once the land is reclassified. The means of satisfying the deferred commencement condition is a matter for the applicant and Council to resolve. The Panel has determined to increase the deferred commencement period to 3 years in the event that reclassification of the land is required.

One of the panel members is concerned that the proposed drainage works on the Council land will have an unacceptable impact on the aboriginal archaeological significance of the Council land. The Panel understands that the Council land was declared in 2009 to be an Aboriginal Place under the *National Parks and Wildlife Act*. This dissenting panel member considers that the impact of the proposed drainage infrastructure will have an unacceptable detrimental impact on the archaeological significance of the site.

The majority of the Panel agree with the Council officer's recommendation for the reasons set out in the Council officer's assessment report. The majority of the Panel has also resolved to impose an additional deferred commencement condition requiring the issue of an Aboriginal Heritage Impact Permit prior to operation of the consent.

VOTING NUMBERS:

3 – 1

DETERMINATION OF PANEL:

DA1386/2021 for demolition of existing structures, the construction of multi dwelling housing development consisting of 6 x 2 storey dwellings, removal of 5 trees, and associated works be approved by deferred commencement consent subject to the draft conditions recommended by Council officers, with the exception that the deferred commencement period be extended to 3 years and the following additional deferred commencement condition is imposed:

"An Aboriginal Heritage Impact Permit is to be obtained from Heritage NSW and submitted to Council for works required for the construction of an underground

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stormwater connection within Discovery Park benefitting the development at 58 McGowen Crescent, Liverpool.”

ITEM No:	3
APPLICATION NUMBER:	DA-639/2021
SUBJECT:	The construction of two x 4-storey residential flat buildings comprising 39 residential apartments, with one level of basement car parking, and associated landscaping and site works.
LOCATION:	Lot 231 Changsha Road, Edmondson Park
OWNER:	Inzitari Holdings Pty Ltd
APPLICANT:	Inzitari Holdings Pty Ltd
AUTHOR:	Robert Micallef

ISSUES RELATED TO THE APPLICATION

The Panel has familiarised itself with the site and read the Council officer's assessment report and accompanying documents.

The Panel received representations from the applicant's architect and the applicant's consultant town planner.

The principal reason for the Council officer's recommendation for refusal appears to be the breach in FSR and the absence of a written request under clause 4.6 of Liverpool LEP 2008. The absence of a written request for breach of FSR appears also to be the primary reason for Council officer's rejection of the proposed contravention of the height of building standard.

The Applicant requested the Panel defer the application for amended plans and outlined how compliance with the FSR could be achieved by minor amendments, including waste chutes that would then be exempt from the definition of FSR and the removal of walls to the roof top structure.

The Panel agrees that it does not have the power to grant consent in circumstances where the Panel is satisfied that the proposed development breaches the FSR standard in LEP 2008, as this is a threshold issue. However, the majority of the Panel considers that the proposal could be made compliant with FSR with relatively minor changes as described by the Applicant. The majority considers that the application should be deferred to enable the applicant to be afforded the opportunity to review the design and submit an amended plan to Council that complies with maximum FSR.

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Although the decision to amend the design or submit a written request is a matter for the applicant, the majority of the Panel considers that it would be preferable for the design to be amended to comply with the FSR standard.

The applicant advised the Panel that amended plans could be supplied to Council within one week of the Panel meeting. Accordingly, the Panel will defer its determination of the application in the expectation that Council will submit a supplementary report to the Panel in approximately 6 weeks (allowing for the Christmas period). The amended plans will need to be accompanied by supporting documentation such as recalculations of FSR, a revised waste management plan to clarify the waste chute arrangement and a new BASIX certificate may be required. The application will be determined by the Panel by exchange of emails (ie by electronic means).

VOTING NUMBERS:

2-2 (Casting vote by Chairperson)

DETERMINATION OF PANEL:

- A. That determination of DA639/2021 for the construction of two x 4-storey residential flat buildings comprising 39 residential apartments, with one level of basement car parking, and associated landscaping and site works be deferred pending the submission of amended plans that address the breach of FSR standard.
- B. That the revised plans, supporting documentation and an updated assessment report be submitted to the Panel for determination by electronic means in approximately 6 weeks.