

Mr Stephen Barry
Planning Director
NSW Independent Planning Commission
Level 15, 135 King Street
SYDNEY NSW 2000

Email: [REDACTED]

CC: [REDACTED]
[REDACTED]

Dear Mr Barry,

RE: Planning Proposal (PP-2024-658) – Lot 3, 146 Newbridge Road, Moorebank – Gateway Determination Review

I write in relation to the NSW Independent Planning Commission (IPC) letter to Liverpool City Council ("Council") dated 31 March 2025 regarding the Gateway Determination Review Application for Planning Proposal PP-2024-658 for Lot 3, 146 Newbridge Road, Moorebank.

The letter advised that at the IPC Meeting with the Applicant, Mirvac, on 13 February 2025, the Applicant requested an extension of time to undertake additional analysis of flood risk and evacuation for the subject Planning Proposal.

The IPC subsequently approved the requested extension on 17 February 2025 subject to the Proponent undertaking a thorough consideration of Ministerial Direction 4.1 (Flooding) and the Shelter-In-Place Guideline (DPHI – January 2025).

The IPC received the additional analysis from the Proponent on 28 March 2025 and invited Council to provide feedback on this additional analysis listed below:

- Cover Letter Georges Cove Marina – Flooding Assessment prepared by Coors Chambers Westgarth, dated 28 March 2025;
- IPC Submission prepared by EMM Consulting Pty Ltd, Version 1.0, dated 28 March 2025; and
- Flood Risk Assessment Report Prepared by Martins & Associates Pty Ltd, Issue 1, dated 28 March 2025.

Council's Floodplain and Water Management Team has reviewed the additional analysis and provided a comprehensive response in **Attachment 1** for IPC consideration. It should also be noted that Council's previous correspondence to the Department of Planning, Housing and

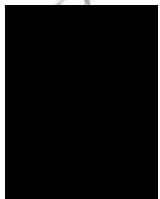
Infrastructure (DPHI) dated 11 November 2024 and provided in **Attachment 2** still remains relevant.

Whilst Council's review of the additional analysis highlights ongoing inconsistencies with Ministerial Direction 4.1 (Flooding), we acknowledge that the analysis provided by the Proponent does take steps to resolve both strategic and site-specific concerns raised throughout the Planning Proposal assessment to date.

As such, Council would be open to the Planning Proposal proceeding to Gateway Determination, with the flooding and evacuation concerns requiring resolution to the satisfaction of Council and relevant NSW Government Agencies post-Gateway.

Should you require any further information on this matter, please contact Stephen Peterson, Council's Senior Strategic Planner, on [REDACTED] [REDACTED] or via email at [REDACTED]

Yours sincerely,



Lina Kakish

Director Planning and Compliance

Attachments

Attachment 1 – Planning Proposal (PP-2024-658) – Council's Review of Proponent's Additional Data

Attachment 2 – Planning Proposal (PP-2024-658) – Council's Gateway Determination Initial Review Comments – November 2024

Attachment 1 – Planning Proposal (PP-2024-658) – Council’s Review of Proponent’s Additional Data

Ministerial Direction 4.1 (Flooding)

On 17 February 2025, the Independent Planning Commission (The Commission) requested for the Applicant to provide a thorough assessment against Ministerial Direction 4.1 (Flooding). A table assessment against Ministerial Direction 4.1 (Flooding) was provided by the Applicant within the additional information submitted to the Commission on 28 March 2025, including the Commission submission prepared by EMM Consulting Pty Ltd, dated 28 March 2025 and repeated within the revised Flood Risk Assessment report prepared by Martins & Associates Pty Ltd, dated 28 March 2025.

Whilst the Applicant provided an assessment of the Proposal against Ministerial Direction 4.1 (Flooding), Council’s assessment of the proposal, including the additional information provided to the Commission by the Applicant on 28 March 2025, against Ministerial Direction 4.1 (Flooding) differs from the Proponents assessment as outlined within table one below.

Most notably, Council’s assessment concludes that the proposal remains inconsistent with Ministerial Direction 4.1 (Flooding) including the objectives of the Ministerial Direction and in this regard consideration and assessment was required by the Applicant with any of the four justification points as to why the proposal may be inconsistent with the direction, as outlined within the Ministerial Direction.

Upon review of the additional information submitted by the Applicant to the Commission, Council highlights that the Planning proposal is inconsistent as follows with the Ministerial Direction.

<u>Provision of Ministerial Direction 4.1</u>		<u>Council’s assessment of Planning proposal against Ministerial Direction 4.1 Provision</u>
(1) A planning proposal must include provisions that give effect to and are consistent with:		
	(a) the NSW Flood Prone Land Policy,	The NSW Flood Prone Land Policy , as outlined in the Flood Risk Management Manual 2023, states: <i>“The primary objective of the policy is to reduce the impacts of flooding and flood liability on communities and individual owners and occupiers of flood-prone property, and to reduce private and public losses resulting from floods, utilizing ecologically positive methods wherever possible. The policy recognizes that flood-prone land is a valuable resource and that development applications and proposals for rezoning of flood-prone land should be the subject of careful assessment which incorporates consideration of local circumstances”.</i>

		<p>The 2022 Flood Inquiry identified the Georges River catchment as a high-risk area, along with the Hawkesbury-Nepean, Wilsons, and Tweed River catchments. The Inquiry recommended the urgent implementation of risk-based planning for these high-risk catchments and revisiting planning decisions to determine whether design rainfall and flooding have been underestimated.</p> <p>The planning proposal site is located within an existing flood rescue hotspot area for the NSW SES, which responded to several flood rescue jobs in the area during the recent 2020, 2021, and 2022 floods. The developments proposed under the planning proposal will increase demand on emergency services. It is however considered that the planning proposal is potentially capable of managing the demand on emergency services through bespoke services, which are proposed to be utilised during a flood event.</p> <p>These proposed developments may increase vulnerabilities for communities, individual property owners, and occupants of flood-prone areas.</p>
	(b) the principles of the Floodplain Development Manual 2005,	<p>Floodplain Development Manual 2005 has been replaced by Flood Risk Management Manual 2023. The 2023 Manual has set out the “NSW Flood Prone Land Policy” and ten guiding principles for the flood management in NSW.</p> <p>The ten principles for flood risk management (FRM) provide guidance for councils in implementing the FRM framework in achieving the primary objective of the policy and the vision for FRM. However, the Planning Proposal is inconsistent with Principles 8 and 9 of the 2023 Manual as follows:</p> <p><i>Principle 8: Maintain natural flood functions</i></p> <p>The Flood Impact Assessment by Martens & Associates indicates that the flood function category of a significant part of the Planning Proposal site will change from a flood fringe area to a floodway due to the proposed developments (see Map E31 and P31). Therefore, the Planning Proposal is inconsistent with Principle 8 of Flood Risk Management Manual 2023.</p>

		<p>Principle 9: Manage flood risk effectively</p> <p>The Planning Proposal site is located within a high flood risk area and the site will be completely isolated during a major flood event. The evacuation modelling by Martens & Associates has used incorrect vehicle numbers for several sites with substantial development potential, noting the vehicle assumptions have been derived through Council's commissioned regional flood evacuation report. Therefore, it is not confirmed whether the flood evacuation from the site can be achieved during a major flood event. It is therefore recommended that the Applicant investigate further the likely vehicle numbers associated with this Planning Proposal and not rely upon Council's study by Molino Stewart.</p>
	(c) the Considering flooding in land use planning guideline 2021, and	<p>The guideline supports the principles of Floodplain Development Manual and formulated two revised Local Environmental Plan (LEP) clauses, which relate to "Flood Planning" and "Special Flood Considerations". The LEP clauses apply to flood prone land within the local government areas.</p> <p>In the current version of Liverpool LEP 2008, Clause 7.8 has been replaced by Clause 5.21. The Planning Proposal is inconsistent with Clauses 5.21(2a) and 5.21(2c) as follows:</p> <p>Clause 5.21 Flood planning, states:</p> <p><i>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</i></p> <p><i>(a) is compatible with the flood function and behaviour on the land,</i></p> <p>The Flood Impact Assessment by Martens & Associates indicates that the flood function category of a significant part of the Planning Proposal site will change from a flood fringe area to a floodway due to the proposed developments (see Map E31 and</p>

		<p>P31). Therefore, the proposed development under the Planning Proposal is not compatible with the with the flood function and behaviour on the land. Therefore, the Planning Proposal is not compatible with the Clause 5.21(2a) of Liverpool Local Environmental Plan 2008.</p> <p><i>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood.</i></p> <p>The proposed development is likely to compromise the safe evacuation of existing developments in the surrounding area. Therefore, further information demonstrating how surrounding developments will not be adversely impacted is required.</p>
	<p>(d) any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.</p>	<p>The Planning Proposal site is located within the Georges River catchment. Council's Georges River Floodplain Risk Management Study & Plan was prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted in 2004. The Georges River floodplain management plan has categorised the site as high flood risk area. As per Georges River floodplain management plan, the site is unsuitable for residential and commercial use.</p> <p>The Flood Impact Assessment by Martens & Associates, which is based on the latest BMT 2020 flood model. The flood hazard categories prepared by Martens & Associates, which are based on the Flood Risk Management Manual 2023, indicate that the Planning Proposal site is located within a high flood risk area (see Section 2.3.3.3 and Map E15). Therefore, the site is unsuitable for the proposed development.</p> <p>This non-compliance may be considered as a philosophical one, because while the subject site is identified as high flood risk, the proposed levels of residential development will be outside of the 'high-risk' category.</p>

(2) A planning proposal must not rezone land within the flood planning area from Recreation, Rural, Special Purpose or Conservation Zones to a Residential, Employment, Mixed Use, W4 Working Waterfront or Special Purpose Zones		<p>The section of the site subject to the Planning Proposal is currently zoned RE2 (Private Recreation).</p> <p>The intent of the Planning Proposal is to permit residential accommodation and commercial development on the subject site which are prohibited within the RE2 zone under Liverpool LEP 2008.</p> <p>The Planning Proposal does not seek to rezone the site and alternatively seeks to permit the land uses via a new key site map for the portion of the subject site with additional permitted uses of which the Planning Proposal applies.</p>
(3) A planning proposal must not contain provisions that apply to the flood planning area which:		
	(a) permit development in floodway areas,	The proposed development site is situated within a flood planning area. According to the Flood Impact Assessment by Martens & Associates, the site is partially located on a floodway in the existing approved scenario (see Map E31). Therefore, the proposal does not comply with the requirements outlined in this clause of the Local Planning Directions regarding flooding.
	(c) permit development for the purposes of residential accommodation in high hazard areas,	The Flood Impact Assessment by Martens & Associates confirms that the Planning Proposal site is situated within a high flood risk area (see Section 2.3.3.3 and Map E15). As such, the proposal seeks approval for residential development in high hazard zones, which is prohibited under the applicable clause of the Local Planning Directions related to flooding.
	(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency	The existing infrastructure in the area is likely to be inadequate to support safe flood evacuation for the Planning Proposal site. Furthermore, the proposed developments would increase the population in an already flood-prone region, amplifying risks for both the local community and individual property owners.

	response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or	<p>An assessment of the adequacy of the infrastructure to support the Planning Proposal is required.</p> <p>Whilst it is noted that the additional information received nominates the implementation of an on-site body corporate manager similar to the adjoining allotment of Lot 2 of 146 Newbridge Road Moorebank of which residential accommodation is constructed on, the proposal continues to present a risk of requiring considerable additional government investment in road infrastructure and emergency management services.</p> <p>Further consideration to an assessment against this point of the Ministerial Direction should be discussed with the NSW SES.</p>
(5) For the purposes of preparing a planning proposal, the flood planning area must be consistent with the principles of the Floodplain Development Manual 2005 or as otherwise determined by a Floodplain Risk Management Study or Plan adopted by the relevant council.		Please refer to the assessments for Clause 1(b) and 1(d).

Due to the above inconsistencies with the Ministerial Direction, Council considers that consideration was required to be provided by the Applicant to the following within Ministerial Direction 4.1:

A planning proposal may be inconsistent with this direction only if the planning proposal authority can satisfy the Planning Secretary (or their nominee) that:

- (a) the planning proposal is in accordance with a floodplain risk management study or plan adopted by the relevant council in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or*
- (b) where there is no council adopted floodplain risk management study or plan, the planning proposal is consistent with the flood study adopted by the council prepared in accordance with the principles of the Floodplain Development Manual 2005 or*
- (c) the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authorities' requirements, or*

(d) the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority.

As no information was provided by the Applicant with regards to the proposal being justifiably inconsistent with Ministerial Direction 4.1 (Flooding), Council is not in a position to advise if the Planning Proposal is satisfactorily inconsistent with the Ministerial Direction.

Shelter In Place Guideline (DPHI – January 2025)

The letter dated 17 February 2025 issued by the Commission to the Applicant requests for the Applicant to thoroughly consider the Shelter In Place Guideline issued by the DPHI in January 2025.

The Shelter In Place Guideline is for flash flooding only. Specifically the guideline states, '*This guideline aims to assist consent authorities to undertake site specific, risk-based assessment to assess if shelter in place is a suitable emergency management strategy for development proposed in flash flood environments*'.

The Shelter In Place Guideline defines flash flooding as '*flooding that occurs within 6 hours of the precipitating weather event, and often involves rapid water level changes and flood water velocity*'.

The revised Flood Risk Assessment report prepared by Martins & Associates Pty Ltd, dated 28 March 2025 provides a table assessment (Table 20 within the report) of the proposal against the Shelter In Place Guideline however notes that the site is not affected by flash flooding.

Regardless of the above, the Planning Proposal demonstrates all habitable residential accommodation floor levels within the proposed apartments and attached dwellings as being located above the PMF level and as such demonstrates shelter in place as a last resort should future occupants refuse to leave the site during flood events.

Council recommends that the Commission seek further advice from the DPHI and NSW SES regarding the consideration of the Shelter In Place Guideline (DPHI – January 2025) for the Planning Proposal.

Council advice regarding the Flood Risk Assessment Report Prepared by Martins & Associates Pty Ltd, Issue 1, dated 28 March 2025.

Council has reviewed the Applicants Flood Risk Assessment Report Prepared by Martins & Associates Pty Ltd, Issue 1, dated 28 March 2025 (Martins & Associates report) and provides the following advice:

- **Blockage Scenarios Assessment:** Floodwater flows through the Georges Cove Marina building in both the approved and proposed scenarios. However, the Martins & Associates report has not conducted any hydraulic modelling to assess blockage scenarios, nor has the Martins & Associates report provided any reasoning for this omission.
- **The Planning Proposal site is within a High Flood Hazard Area:** Flood hazard categories H5 and H6 are considered high flood hazards. According to the Martins & Associates report, the Planning Proposal site, in the current approved scenario, is partially

located within a high flood risk area (see Section 2.3.3.3 and Map E15 of the Martins & Associates report).

- **The Planning Proposal site is within a Floodway:** The Martins & Associates report indicates that, in the existing approved scenario, the Planning Proposal site is partially located on a floodway (see Map E31 of the Martins & Associates report).
- **Proposed development will Increase Flood Hazard:** The Martins & Associates report shows that the flood hazard of a significant part of the site will increase from H3 (low hazard) to H5 (high hazard) (see Map E15 and Map P15 of the Martins & Associates report). Therefore, the developments under the Planning Proposal will increase the flood hazards.
- **Flood Function Category changed from Flood Fringe to Floodway:** The Martins & Associates report indicates that the flood function category of a significant part of the Planning Proposal site will change from a flood fringe area to a floodway due to the proposed developments (see Map E31 and P31 of the Martins & Associates report).

Flood Evacuation Analysis:

On behalf of Liverpool City Council, Molino Stewart conducted a flood evacuation analysis (Georges River Evacuation Modelling – Flood Evacuation Analysis report undertaken in 2022 by Molino Stewart) to assess the evacuation capacity for future developments in the Moorebank Peninsula (Moorebank East) and the Liverpool Collaboration Area.

The study utilised the Life Safety Model (LSM) for the evacuation analysis. Martens & Associates used the Molino Stewart LSM model to conduct updated evacuation modelling for the Planning Proposal. However, the revised evacuation modelling within the Martins & Associates report (Table 13 of the Martins & Associates report) used zero vehicle numbers for the following five sites, which is impractical:

- **Site B:** 124 Newbridge Road, Moorebank
- **Site E:** Lot 2 Newbridge Road, Moorebank
- **Site F:** Moore Point Precinct
- **Site G:** Moore Point Rose Group
- **Site J:** Warwick Farm Structure Plan

The vehicle numbers in the evacuation modelling must consider the future use of the above sites and the associated vehicle numbers. For example, there is an existing approval for the construction and operation of a resource recovery facility at Site E (Lot 2 Newbridge Road Moorebank).

Additionally, a Council-initiated Planning Proposal is currently under consideration for Site E (Lot 2 Newbridge Road Moorebank). Site B (124 Newbridge Road, Moorebank) is being filled above

the 1% AEP flood level under an existing Council approval, and several developments are planned for this site under the current zoning.

Therefore, the vehicle numbers used within the Martins & Associates report in the evacuation modelling are incorrect. The vehicle numbers for Site B (124 Newbridge Road, Moorebank) and Site D (Subject site) will be lower than those used in the Molino Stewart modelling (Georges River Evacuation Modelling – Flood Evacuation Analysis report undertaken in 2022 by Molino Stewart), but the vehicle numbers for the other three sites should match those used in the Molino Stewart modelling.

The evacuation analysis by Martens & Associates is based on the following assumptions:

- **Early Warning:** The NSW SES will issue early warnings to the Planning Proposal site (Site D) and Site A (Lot 1 of 146 Newbridge Road Moorebank).
- **Flood Evacuation Management Plan (FEMP):** A site-specific FEMP will be prepared and managed by a body corporate for the Planning Proposal site (Lot 3 of 146 Newbridge Road Moorebank) and Site A (Lot 1 of 146 Newbridge Road Moorebank).

The **Flood Risk Management (FRM) Manual 2023** and its toolkits provide comprehensive guidelines for preparing flood impact and risk assessments, as well as flood emergency management plans for planning and development proposals. One of these toolkits, the **Flood Risk Management Guideline EM01 (Support for Emergency Management Planning)**, offers specific guidelines for flood emergency management (EM) plans. This guideline outlines seven principles, primarily applicable to councils, with technical assistance from the NSW SES when considering redevelopment in areas with existing evacuation constraints.

The proposed flood emergency strategy for the Planning Proposal site is inconsistent with Guideline EM01 and two of its principles, as follows:

- **Site-Specific Flood Evacuation Management Plans:** According to EM01, the NSW SES does not consider site-specific flood evacuation management plans effective for flood emergency management. The proposed Flood Emergency Management Plan (FEMP) relies on a site-specific FEMP, making it incompatible with Guideline EM01.
- **Principle 1:** EM01 states that "*Any proposed EM strategy should be compatible with any existing community EM.*" The proposed early warning issuance is not compatible with the local SES flood plan for the Moorebank area, making the proposed evacuation strategy inconsistent with Principle 1 of EM01.
- **Principle 3:** EM01 states that "*Development of the floodplain does not impact the ability of the existing community to safely and effectively respond to a flood.*" The evacuation modelling within the Martins & Associates report used incorrect vehicle numbers for several sites with substantial development potential. The proposed developments under the Planning Proposal are likely to compromise the safe evacuation of existing developments in the surrounding area, making the proposed evacuation strategy inconsistent with Principle 3 of EM01.

Guideline EM01 recognizes the critical role of the NSW SES in emergency management, including the flood evacuation process. Therefore, the proposed evacuation strategy for the Planning Proposal site must be acceptable to and endorsed by the NSW SES.

Conclusion

Council notes that a significant issue with previous technical studies and documentation provided by the Applicant prior to Council's meeting with the Independent Planning Commission on 12 February 2025, was that the Proponent had not undertaken an assessment of the Planning Proposal utilising the latest available flood data for the subject site and vicinity being the BMT Georges River flood study and mapping undertaken in 2020 and the Georges River Evacuation Modelling – Flood Evacuation Analysis report undertaken in 2022 by Molino Stewart.

The scope of work undertaken within the revised Flood Risk Assessment report prepared by Martins & Associates Pty Ltd, dated 28 March 2025 utilises both the BMT 2020 Georges River Flood Model and Molino Stewart 2022 Georges River Evacuation Modelling report and whilst Council's assessment concludes that significant issues remain prevalent, particularly regarding evacuation, this is seen as a positive step forward.

Whilst Council's assessment concludes that the proposal is inconsistent with Ministerial Direction 4.1 (Flooding), the Applicant has not provided justification to demonstrate that the inconsistency is adequately justified as required by the Ministerial Direction 4.1 (Flooding) and as such Council is not in a position to conclude if the proposal can be adequately justified as being inconsistent with the Ministerial Direction.

Based on the revised information provided, Council is of the conclusion that whilst improvements have been made, such as; utilising the latest flood reports and modelling; the inclusion of a body corporate manager for the site and; earlier evacuation of the site, significant issues remain prevalent. Further consultation with the DPHI and state agencies, particularly the NSW SES, post a Gateway determination may resolve the significant environmental constraint issues that are prevalent for the subject site and Planning Proposal. This approach is consistent with Planning Proposal PP-2022-1602 for Moore Point within the Liverpool Local Government Area.

However, it is also important to note that for the subject Planning Proposal, DPHI undertook an assessment which differed to the standard Local Environmental Plan Making Guideline (August 2023) process for Planning Proposals by initiating state agency consultation prior to a formal Gateway request being lodged by Council to the DPHI, whereas this process usually occurs post a Gateway determination.

The DPHI undertook this unconventional approach to undertake state agency consultation prior to a formal Gateway request being made by Council, due to the significant environmental constraints of the site and to provide an opportunity earlier on in the Planning Proposal process for issues to be considered, assessed and if achievable, resolved between all stakeholders.

Should the Gateway refusal for the Planning Proposal by the DPHI be overturned by the Commission and a Gateway determination issued, state agency consultation, including with the NSW SES would be a condition of the Gateway determination, which has already occurred with various opportunities for the Applicant to provide additional information.

In this regard, it is essential that the Commission considers any DPHI and NSW SES advice submitted to the Commission, in relation to the additional information provided by the Applicant to the Commission on 28 March 2025.

Attachment 2 – Planning Proposal (PP-2024-658) – Council Review of Gateway Determination – November 2024

Suzanne Wren
Department of Planning, Housing and Industry
Locked Bag 5022
Parramatta NSW 2124

Sent via email: 

Cc: 

RE: Request for Council comments - Gateway determination review – PP-2024-658 – Lot 3, 146 Newbridge Road, Moorebank (Georges Cove Marina)

Dear Suzanne,

I refer to the Department of Planning, Housing and Infrastructure (the Department) letter to Council dated 10 October 2024 advising that the Department has received a request for a review of the Gateway determination for the above Planning Proposal.

Council acknowledges the Departments invitation for Council to review the proponent-initiated Gateway determination request and supporting plans.

Please refer to the following attachments contained within this letter as follows:

- A.** Councils Review of Proponents Gateway determination cover letter – Prepared by Mirvac, Dated 4 October 2024.
- B.** Councils Review of Proponents Gateway determination Planning letter – Prepared by EMM, Dated 4 October 2024.
- C.** Councils Review of Proponents Gateway determination flooding response – Prepared by Tooker + Associates, Dated 30 September 2024.
- D.** Councils Review of Proponents Gateway determination evacuation response – Prepared by Risk-E business consultants Pty Ltd, dated 27 September 2024.
- E.** Application of Georges River Evacuation study (Molino Stewart 2022), Georges River Flood Study (BMT 2020 and Tract Consultants urban design advice 2018).
- F.** Council's Summary.

If you require any further information on this matter, please contact Stephen Peterson on [REDACTED]

Yours sincerely,

[REDACTED]

Luke Oste
Coordinator Strategic Planning

Attachment A: Gateway determination cover letter – Prepared by Mirvac, Dated 4 October 2024

- A. *‘The proponent would like to emphasise that what is being sought is a gateway approval and not a final development approval. The gateway determination is intended to act as a checkpoint for a Planning Proposal, to review the strategic and site-specific merit of the Proposal and whether the Proposal should proceed to public exhibition. Any further technical studies or design work can be completed as a response to the Proposal being put on public exhibition or through the rezoning or development application process’.*

Council notes that the Local Environmental Plan Making Guideline August 2023 (LEP Making Guideline) identifies that state agency consultation generally occurs post the issuing of a Gateway determination by the Department.

Both Council’s Local Planning Panel (Liverpool LPP) report dated 31 August 2020 and the Council report dated 13 December 2023 recommended that the Planning Proposal proceed to a Gateway determination request. However, both reports stress that further consultation with state agencies, particularly in relation to flood evacuation, is crucial to ensure this element of the proposal is effectively considered. Additionally, state agency consultation will help to identify the planning controls and infrastructure upgrades required to ensure safe evacuation is achieved for future development being facilitated by the Planning Proposal. This approach is consistent with the LEP Making Guideline.

Given the significant constraints of the site including infrastructure constraints and environmental constraints, the Department undertook preliminary state agency consultation. This occurred with the NSW State Emergency Services (SES) and Biodiversity, Conservation and Science Group (BCS) in January and February 2024, prior to Council submitting the Planning Proposal to the Department for a Gateway determination request. The proponent was then invited to provide a response to the SES and BCS comments of which Council received the Proponents responses on 6 March and 22 April 2024.

Council notes that these steps undertaken by the Department differ from the standard process of the LEP Making Guideline, however Council understands the Department’s approach to identify issues early on in the Planning Proposal process.

The preliminary state agency consultation comments dated 29 January 2024 from the SES and dated 9 February 2024 from the BCS are viewed by Council as significant. They identify significant and costly infrastructure upgrades such as road upgrades which may not be deemed feasible given the demonstrated yield of the Planning Proposal of approximately 340 dwellings in the form of apartments and medium density dwellings.

The Planning Proposal and documentation submitted by the proponent during the Planning Proposal Council assessment stage and as part of the current Gateway Determination review, do not include infrastructure upgrades to mitigate against these issues.

Whilst the proponent submitted a letter of offer dated 14 September 2023 to Council to amend an existing VPA (Council reference: VPA-11), the item of work identified within the letter of offer being, *‘Construction of “Bike/Pedestrian Path” through the Marina site’* of 2.5m width, is already an item of work within VPA-11. The VPA letter of offer does not nominate any other item of work.

- B. *“The proponent’s assessment of the site’s suitability and strategic merit has been conducted in accordance with recommendation 18 of the NSW Flood Inquiry undertaken in 2022 whereby a risk-based approach is required in the assessment of flood-affected proposals”.*

The 2022 Flood Inquiry Recommendation 18 was based on findings that using the 1% Annual Exceedance Probability (AEP) for calculating flood planning levels is inadequate, especially given changing rainfall patterns. Recommendation 18 suggests a risk-based approach to calculating flood planning levels.

The 2022 Flood Inquiry has identified the Georges River catchment as a high-risk area, along with the Hawkesbury-Nepean, Wilsons, and Tweed River catchments (please refer to page 279, 2022 Flood Inquiry, Volume Two: Full Report, 29 July 2022). The Inquiry has recommended the urgent implementation of risk-based planning for these high-risk catchments. Additionally, it recommends revisiting planning decisions to determine whether design rainfall and flooding have been underestimated.

The flood impact assessment submitted for the planning proposal only considered the 5% and 1% AEP events, failing to assess the full range of flooding events, including the impacts of the Probable Maximum Flood (PMF) event and climate change scenarios.

- C. *“The development which is proposed to be permitted under the Planning Proposal is a mixed use residential flat building, which allows for all residential uses to be located above the PMF. The vertical building provides many efficiencies in the evacuation process (if ever required) as opposed to land subdivisions. The high rise building also allows for residents to safely shelter in place with access to both generators and water in a PMF event”.*

The Georges River Regional Flood Evacuation study by Molino Stewart in 2022 states, *“Failing to evacuate or deliberately Sheltering in Place in the Georges River floodplain is particularly risky considering buildings can be isolated and inaccessible to emergency services for more than 24 hours in the PMF”.*

The Planning Proposal has a heavy reliance and focus on locating residential levels of both the proposed apartments and the medium density developments above the PMF level as a flood risk reduction measure. Greater emphasis is required on ensuring residents are provided a flood free means of escape and don’t further exacerbate existing evacuation difficulties in the Moorebank / Chipping Norton peninsula.

- D. *“Both the surrounding community and Liverpool City Council unanimously supports this development from a social, economic and ecological perspective, providing many benefits for the wider community including the recreational and retail uses provided by the Proposal”.*

In August and September 2020, Council exhibited all Planning Proposals that had been lodged within the Moorebank East precinct, including the subject Planning Proposal where only two submissions were received.

The statement that *“the surrounding community and Liverpool City Council unanimously supports this development”* has yet to be confirmed. It is noted that Council has not voted unanimously for this proposal in the past, and detailed community consultation is yet to occur.

Attachment B: Councils Review of Proponents Gateway determination Planning letter – Prepared by EMM, Dated 4 October 2024.

- A. Whilst the Planning Proposal was recommended to proceed to Gateway request by the Liverpool Local Planning Panel (Liverpool LPP) in 2020, this was prior to significant policy reform with regards to flooding and further was subject to Council undertaking the Georges River regional evacuation analysis. The Liverpool LPP acknowledged that capacity in the local road network is also a potentially significant constraint for redevelopment of the Planning Proposal site and the Moorebank East precinct generally. Council's resolution at the ordinary meeting of 13 December 2023 to forward the Planning Proposal to the Department for a Gateway request acknowledged the constraints of the site and that consultation with state agencies was required.
- B. The Planning letter prepared by EMM focuses on only part of objective 10 of the Greater Sydney Region Plan—A Metropolis of Three Cities (Regional Plan). Whilst Council agrees that the proposal provides opportunity for diverse housing opportunities (Being apartments and medium density dwellings), Objective 10 of the Regional Plan further notes that, *“Importantly, the Plan recognises that not all areas of Greater Sydney are appropriate for significant additional development”*. The objective acknowledges that challenges arise from infrastructure and amenity constraints that require careful consideration.
- C. Council generally agrees with the proponent that a variety of housing is needed to be provided in various areas of the Liverpool Local Government area. The area is serviced by a frequent M90 bus service on Newbridge Road and within proximity to Local shops being the Moorebank local centre and proposed commercial uses on lot 1 of 146 Newbridge Road Moorebank. However, Council notes that state agencies have identified that the infrastructure and environmental constraints of the subject site deem the site not suitable for the proposed development without significant infrastructure improvements.
- D. Council acknowledges the recent Housing Accord targets and the Liverpool Local Government area 5 year housing target. Liverpool is on track to meet the 5 year target and further the Housing Accord target does not override sound land use planning. The Housing Accord encourages the State and Local Governments, as well as Industry, to accelerate the delivery of well-located housing. The constraints as identified by state agencies and the Department suggest that the site is not well-located for the intended use.
- E. With regards to objective 11 of the Regional Plan, Council acknowledges that the Planning Proposal provides a diverse range of housing outside of the Liverpool CBD. Council notes that that the Planning Proposal does not provide any affordable housing at this stage. The affordable housing component could be resolved through either a clause in the Liverpool LEP relating to the site, or a future VPA.

Council notes that the implementation of section 16 of State Environmental Planning Policy (Housing) 2021 could further impact upon the infrastructure and evacuation of the precinct by permitting additional housing beyond what was assessed as part of the Planning Proposal.

- F. The proponents planning letter states that, *“The connectivity achieved through the development of this Site and its ability to deliver the Georges River foreshore active transport trails and the cycleways envisaged through the Liverpool Bike Plan 2018-2023 cannot be rivalled in creating a healthy lifestyle for the community”*.

Amenity of the site is broadly delivered through an existing VPA (Council reference VPA-11) which is linked to the adjoining site to the north (Lot 2 of 146 Newbridge Road Moorebank). The VPA includes various bike and pedestrian pathways on the subject site and along the Georges River foreshore of the site.

The proponent submitted a letter of offer dated 14 September 2023 to Council to amend VPA-11. The letter of offer applies to Lot 3 of 146 Newbridge Road only (subject site) and proposes additional public benefit of ‘Construction of “Bike/Pedestrian Path” through the Marina site’ being 2.5m wide. The item of work identified within the letter of offer is already an item of work within VPA-11. As such the letter of offer does not provide additional active transport infrastructure in association with the Planning Proposal.

- G. The Proponents justification against Council’s Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS) focuses on job creation, productivity, transport and residential opportunity. However it does not include any reference to Local Planning Priority 15 in the LSPS and Housing Priority 5 in the LHS which emphasise the need for resilient housing.
- H. The Proponent states, *“Furthermore, the fact that Liverpool Council considered its own plan and unanimously supported this proposal is more evidence that Council believe that this proposal fits well with their vision for housing and for this precinct”*.

Council’s report for the Ordinary meeting of Council held on 13 December 2023 states, *“The complex constraints of the site regarding vehicular access, flooding, infrastructure and contamination can be further discussed and resolved post Gateway with the relevant State Agencies”*. Additionally, Council did not unanimously support this item at the 13 December 2023 meeting where endorsement was given.

Attachment C: Gateway determination flooding response – Prepared by Tooker + Associates, Dated 30 September 2024

The key flood levels for the subject site are:

- 5% Annual Exceedance Probability (AEP): RL4.6m AHD.
- 1% AEP: RL5.6m AHD.
- Probable Maximum Flood (PMF): RL10.4m AHD.
- Flood Planning Level: RL 6.1 AHD

A. Vehicular access to the subject site (Lot 3 of 146 Newbridge Road Moorebank) is via a constructed road bridge known as Promontory Way and a DCP collector road known as Spinnaker Drive. The road bridge was approved under Council reference DA-1552/2006/B. The low point of the road bridge is to the west at the intersection with Brickmakers Drive.

The road bridge (Promontory Way) is constructed above the 5% AEP, 1% AEP and above the Flood Planning Level, however, is constructed below the PMF level.

A pedestrian foot traffic evacuation bridge is constructed adjoining the road bridge (Promontory Way) providing evacuation access via foot traffic, from Moorebank East precinct to the western side of Brickmakers Drive. The pedestrian foot traffic evacuation at its starting point adjoining promontory Way is above the 1% AEP and Flood Planning Level however lower than the PMF level. The pedestrian foot traffic evacuation bridge at its high point is above the PMF level.

Spinnaker Drive (Identified as a collector road within Liverpool DCP) currently varies from a high point at the intersection with the Road bridge (Promontory Way) to a low point at the northern boundary of the subject site. Spinnaker Drive is constructed at or above the Flood Planning Level and 1% AEP level however is below the PMF level.

The subject site, being Lot 3 of 146 Newbridge Road Moorebank, currently benefits from an approved Marina development application (Council reference: DA-611/2018). The Marina Development including roads on the subject site varies from RL1.65 to RL4.6 and therefore is partially at the 5% AEP level and partially below the 5% AEP level and entirely below the 1% AEP, PMF level and Flood Planning Levels.

The Planning Proposal architectural plans demonstrate alternative levels to the levels approved as part of DA-611-2018 as follows:

- Residential basement vehicle parking: Below the 5% AEP, 1% AEP, PMF and Flood Planning Levels.
- External pedestrian areas: Above the 5% AEP level however below the 1% AEP, PMF and Flood Planning Levels.
- Road access on the subject site to residential component of subject site (Both residential flat buildings and medium density dwellings): Above the 5% and 1% AEP levels and above the Flood Planning Level however below the PMF level.
- Non residential ground floor of residential flat buildings and medium density dwellings: Above the 5% and 1% AEP levels and above the Flood Planning Level however below the PMF level.

- Habitable level one of residential flat buildings and medium density dwellings: Above 5% AEP, 1% AEP, PMF and Flood Planning Levels.

From the information submitted with the Planning proposal it is unclear how the site proposes to raise levels of the subject site from the highest approved level of RL 4.6 as per DA-611/2018 to RL7.4 as demonstrated on the Planning proposal concept architectural plans (I.e: Fill).

As per DA-611/2018, the subject site has neither been filled nor has it received valid approval to be filled above the 1% AEP flood level.



Figure One: Moorebank East precinct indicating levels of structures compared to flood levels.

As outlined above, there is no evacuation from the subject site either in place or proposed should a flood event greater than a 1% AEP flood event occur (I.e PMF flood event).

- B. The Georges River Flood Study (BMT 2020) was not completed when the development applications (DAs) for the Planning Proposal site were lodged with Council. During the flooding assessment of these DAs, Council accepted the proponents' flood impact assessments, which were based on the Council-adopted Georges River Flood Study (2004).

Although the Georges River Flood Study (BMT 2020) has not been formally adopted by Council, it incorporates the latest data and modelling techniques. It is considered the most reliable resource for assessing flooding impacts related to development applications and planning proposals within the Georges River catchment. Therefore, it is recommended that future DAs and planning proposals in the Georges River catchment consider the Georges River Flood Study (BMT 2020).

- C. The Proponent's Flooding Response prepared by Tooker and Associates at figure 1 states that Council's flood mapping is incorrect in indicating that the site is separated as a high flood risk area from the adjoining northern site. Council affirms that Council's flood risk mapping for the subject site is correct as Council has not approved any filling works for the future Marina building pad under DA-24/2017. The approved building pad for the northwest part of the proposed Marina building under DA-611/2018 is at 4.6m AHD which is below the 1% AEP level and below the Flood Planning Level.

Further, the flood impact assessment by Cardno has confirmed that the proposed Marina building site, as approved under DA-611/2018, will remain a high flood risk area during the 1% AEP event, even after the construction of the Marina development.

Consequently, Figure 3 in the flooding response from Tooker and Associates, labelled *"Example of an accurate flood map,"* is incorrect which demonstrates the subject site as a low flood risk area however the subject site is situated in a high flood risk zone.

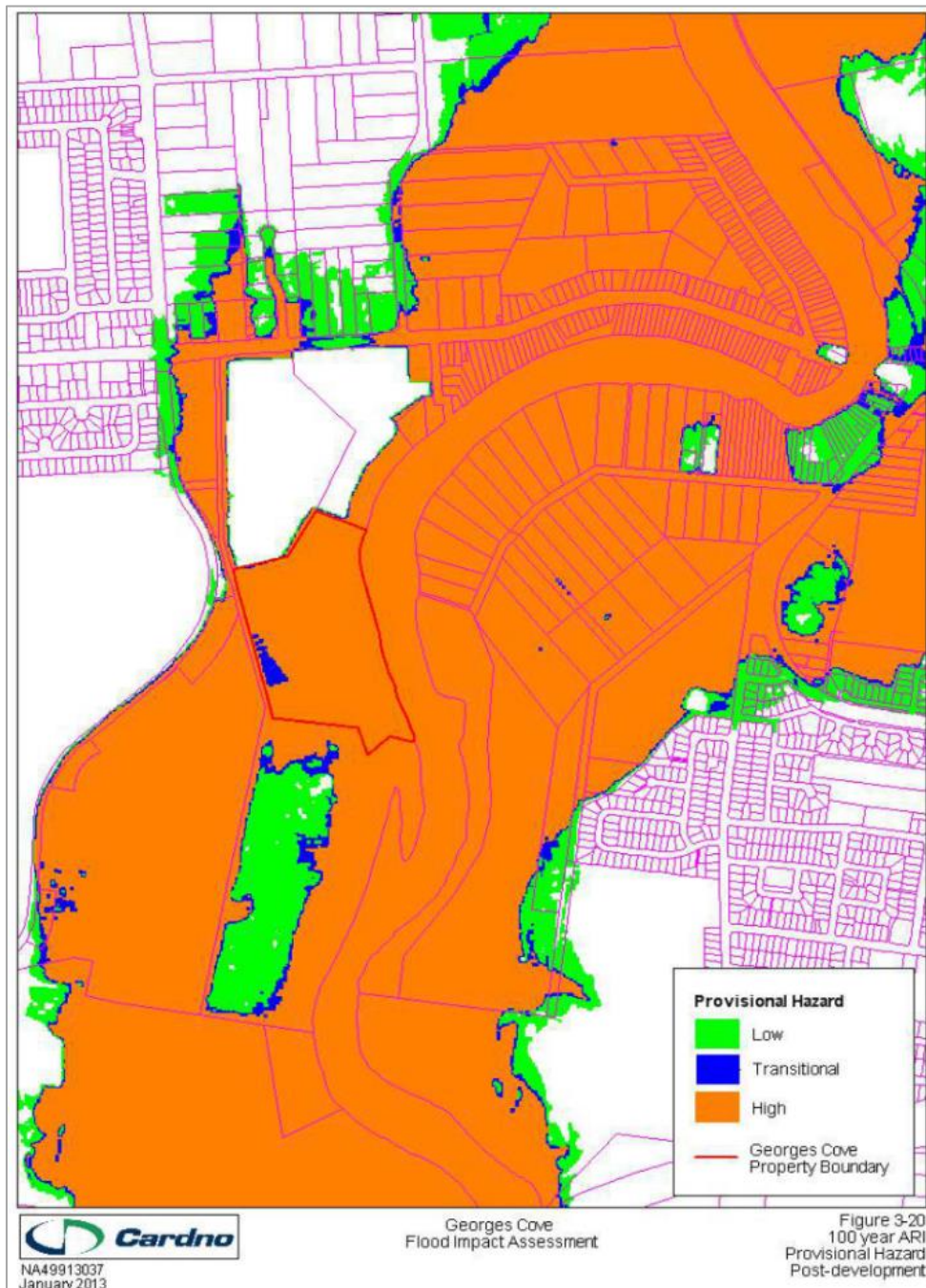


Figure Two: Flood Impact Assessment for the proposed Georges Cove Marina, Moorebank; dated: 29 January 2013, Cardno

- D. Upon review of the additional documentation submitted by the Proponent of the Gateway review application, Council affirms the position that the Planning Proposal is inconsistent with Ministerial Direction 4.1 – Flooding. It is acknowledged that Ministerial direction 4.1 has been recently updated since the proposal went to the LPP and Council. The Proponent is still required to provide adequate justification to demonstrate that it is justifiably inconsistent with the Ministerial Direction.

Attachment D: Gateway determination evacuation response – Prepared by Risk-E business consultants Pty Ltd

- A. The Georges River Regional Flood Study prepared by Molino Stewart in March 2022 was commissioned by Council. Whilst not endorsed, it is considered that this study is the latest available data available and should be considered in assessing development proposals.

The Georges River Regional Flood Evacuation Study – Molino Stewart 2022 on page viii states, *'The modelling suggests that while Planning Proposals for Moorebank East would have sufficient time to evacuate, they would take up road capacity currently used by Chipping Norton evacuees and thousands would be caught by floodwaters who would otherwise have time to escape'*.

- B. The Georges River Regional Flood Study provides five modelled scenarios at table 1 on page 7. Of most relevance, is scenario B which was based on Planning Proposals that were active at the time.

Scenario B modelling is based on the following road upgrades having been completed:

Table 1: Road upgrades proposed at scenario B

<u>Road Upgrade</u>	<u>Status</u>
Road upgrade to Governor Macquarie Drive	Completed
An upgrade to the M5 Motorway westbound that will add two additional lanes connecting between east of the Moorebank Avenue and the intersection with the Hume Highway.	Not commenced
Additional third lane northbound on the M7	Commenced, not completed
Improvements to M7 on ramp capacities through ramp metering	Not commenced

The Study states that that the road network could have capacity for approximately 700 evacuating vehicles from Moorebank East, accounting for the road upgrades included in scenario B which are outlined at table 1 above.

Further, the Study states on page viii, that approximately 360 of the 700 vehicles are estimated to be allocated to Site C (Lot 2 of 146 Newbridge Road Moorebank) within the Moorebank East precinct which is currently being developed. This leaves approximate capacity for the whole of the Moorebank East precinct of 340 vehicles.

The entire area of lot 1 of 146 Newbridge Road, Moorebank and part of 124 Newbridge Road Moorebank are currently zoned E3 Productivity Support. Under Liverpool Local Environmental Plan 2008 (Liverpool LEP 2008), shop top housing is a permissible land use. In this regard, should lot 1 of 146 Newbridge Road, Moorebank and part of 124 Newbridge

Road Moorebank propose a shop top housing development under the existing development standards of Liverpool LEP 2008, this could occupy the remaining 340 vehicle capacity for evacuation of the Moorebank East Precinct.

Additionally, the current remaining vehicle evacuation capacity of the Moorebank East Precinct is anticipated to be less than 340 vehicles as the road upgrades that the 340 vehicle evacuation capacity relies on have not all been completed.

To increase the evacuation capacity of the Moorebank East precinct, the Georges River Regional Flood study March 2022 recommends the investigation of an additional southbound lane on Nuwarra Road between Brickmakers Drive and Heathcote Road to reduce the queuing that severely limits the evacuation of Chipping Norton onto the M5.

The Planning proposal, including the VPA letter of offer do not propose any infrastructure upgrades.

- C. Under the provisions set forth in the State Emergency and Rescue Management Act 1989 (NSW) and the associated State Emergency Service Regulation 2019 (NSW), the NSW SES is mandated to act as the primary combat agency responsible for coordinating emergency management operations. These operations include assessing flood risks, issuing evacuation orders, and providing support to affected communities.

Risk-e Business Consultants have criticised the SES's evacuation procedure as flawed and outdated, accusing the SES of interfering with flood planning development decisions. As the primary combat agency, the NSW SES ensures the safety and welfare of residents during flood events and facilitates timely and effective evacuations. Therefore, the SES's opinion on the flood evacuation of the proposed planning proposal site is crucial for its effectiveness and implementation during a flood event. The Consultants' statements about the SES's view on the evacuation procedure undermine the SES's roles and responsibilities.

- D. Risk-e Business Consultants have recommended a shelter-in-place strategy as a flood emergency response plan. However, this strategy is not viable for the site as all residents need to be evacuated prior to a flood event given the severity and duration of a flood event in this location. The shelter-in-place approach is also not endorsed by the Flood Risk Management Guideline EM01. The SES has reiterated that the preferred primary response to a flood emergency in the Georges River area is evacuation, rather than shelter-in-place.

Attachment E: Application of Georges River Evacuation study (Molino Stewart 2022), Georges River Flood Study (BMT 2020) and Tract Consultants urban design advice 2018.

The Department's Gateway determination considers the following documentation, which is not adopted by Council:

- i. Georges River Evacuation Modelling – Flood Evacuation Analysis, Molino Stewart (2022). (Georges River Regional Flood Evacuation Study – Molino Stewart 2022).
- ii. Georges River Flood Study (BMT 2020).
- iii. Tract Consultants 2018 urban design advice (Structure Plan).

In providing a review of the Proponents Gateway determination review documentation, Council has considered the above three studies.

Council agrees with the Department and NSW SES approach to consider the Georges River Regional Flood Evacuation Study – Molino Stewart 2022 and Georges River Flood Study (BMT 2020) within the Gateway determination for the Planning Proposal. Whilst not endorsed by Council, both studies provide the latest available flooding information for the Moorebank East precinct and broader area.

The Tract Consultants Structure Plan was undertaken a long time ago and only provided high level context. It focuses on built form with little consideration of the infrastructure or environmental constraints of the Moorebank East precinct.

The Tract Consultants Structure Plan was completed prior to significant policy reform undertaken regarding flooding, including prior to the Georges River Regional Flood Evacuation Study – Molino Stewart 2022 and Georges River Flood Study (BMT 2020). Additionally, the Structure Plan was never exhibited, finalised, nor endorsed by Council.

As such the application of Tract Consultants Structure Plan carries little weight given that significant policy reform and environmental and infrastructure constraints have arisen since they were undertaken.

Attachment F: Council's Summary

- A.** Council notes that the Planning Proposal seeks to introduce the land uses of commercial and residential accommodation to the subject site via a key site map and site specific Part 7 (Additional local provisions) clause. The part of the site subject to the Planning Proposal is zoned RE2 Private Recreation.

The proposal is deemed inconsistent with the objectives of the RE2 Private Recreation zone and Council considered that a better method would be for the Planning Proposal to propose E1 local Centre and R3 medium density zoning for the portion of the site subject to the proposed commercial and residential development. Council raised this concern with the proponent in 2023.

- B.** The Proponent's justification for the Planning Proposal to proceed heavily relies on Shelter in Place, by emphasising that the residential floor levels of all residential accommodation on the site are located above the PMF level at RL11.60.
- C.** The proponent's justification heavily relies on the opportunity to provide diverse and more affordable housing opportunities outside of the Liverpool CBD. Whilst this carries some merit, there remains dispute over whether these proposed dwellings could be considered 'well-located' when considering flooding risk.
- D.** The existing roads of Spinnaker Drive, Promontory Way and Brickmakers Drive have all been designed and constructed without the consideration of the subject Planning Proposal and are constructed below the PMF level.
- E.** As outlined within the Molino Stewart 2022 Regional Flood Evacuation Study, the 'spare capacity' of Moorebank East in times of evacuation is approximately 340 vehicles. The 340 vehicles is subject to infrastructure upgrades including: Additional planned road upgrades to the M5 westbound (Not commenced), an additional third lane northbound on the M7 (Under construction) and improvements to M7 on ramp capacities through ramp metering (Not commenced).
- F.** All of Lot 1 of 146 Newbridge Road, Moorebank and part of 124 Newbridge Road Moorebank are zoned E3 Productivity Support which permits shop top housing under schedule 1, section 35 of Liverpool LEP 2008. The existing zoning on these two sites could consume the remaining 340 vehicle evacuation capacity of the Moorebank East Precinct, even with the above road upgrades undertaken.
- G.** Council acknowledges that the proposal was deemed satisfactory to proceed at the Liverpool Local Planning Panel in September 2020 and Council meeting in December 2023. However, both reports noted the significant environmental constraints of the site and that State Agency consultation would be required to resolve these issues.

- H. Council notes that since lodgement of the Planning Proposal in 2018, significant policy reform has occurred regarding flooding. This includes the following:
- Liverpool LEP 2008 Clauses 5.21 and 5.22 came into effect in July 2021.
 - Georges River Flood Evacuation study in March 2022 (Molino Stewart).
 - Local Planning Direction 4.1 (Flooding) commenced in February 2023.
 - Planning Circular: PS 24-001: Update on addressing flood risk in planning decisions;
 - Planning Circular: PS 21-006: Considering flooding in land use planning: guidance and statutory requirements;
 - Flood Risk Management Manual – June 2023;
 - Support for Emergency Management Planning - Flood risk management guideline EM01 – June 2023;
 - the Departments Flood risk management guideline FB03 - June 2023;
 - Considering Flooding in Land Use Planning guideline 2021;
 - 2022 Flood Inquiry Report findings; and
- I. At a broader level, Council acknowledges the Federal Government's housing accord and State Governments recently released 5 year housing targets for the Liverpool Local Government Area. Council further recognises the need for housing however as acknowledged at all levels of government, this housing needs to be provided for in well located areas with sufficient infrastructure to achieve resilience.