

4 STATUTORY CONTEXT

4.1 The Environmental Planning and Assessment Act 1979

- 4.1.1 Part 3A of the Environmental Planning and Assessment Act 1979 (the Act) commenced operation on 1 August 2005. Part 3A consolidates the assessment and approval regime of all Major Projects previously considered under Part 4 (Development Assessment) or Part 5 (Environmental Assessment) of the EP&A Act.
- 4.1.2 Under the provisions of Section 75B of the Act development may be declared to be a Major Project by virtue of a State Environmental Planning Policy or by order of the Minister published in the Government Gazette.

4.2 State Environmental Planning Policy (Major Projects) 2005

- 4.2.1 State Environmental Planning Policy (Major Projects) 2005 (Major Projects SEPP) outlines the types of development declared a project for the purposes of Part 3A of the Act. For the purposes of the Major Projects SEPP certain forms of development may be considered a Major Project if the Minister (or his delegate) forms the opinion that the development meets criteria within it.
- 4.2.2 On 6 April 2006, the Minister formed the opinion that the project is a development which meets the criteria of Clause 18, Group 7 of Schedule 1 of the SEPP, namely:

Hospitals

- (1) *Development that has a capital investment value of more than \$15 million for the purpose of providing professional health care services to people admitted as in-patients (whether or not out-patients) are also cared for or treated there), including ancillary facilities for:*
- a) *day surgery, day procedures or health consulting rooms, or*
 - b) *accommodation for nurses or other health care workers, or*
 - c) *accommodation for persons receiving health care or for their visitors, or*
 - d) *shops or refreshment rooms, or*
 - e) *transport of patients, including helipads and ambulance facilities, or*
 - f) *educational purposes, or*
 - g) *research purposes, whether or not they are used only by hospital staff or health care workers and whether or not any such use is a commercial use, or*
 - h) *any other health related use. is the subdivision of land (not including strata subdivision or boundary adjustments), or*
 - i) *has a capital investment value of more than \$5 million.*

- (2) *For the purposes of this clause, professional health care services include preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, care or counseling services provided by health care professionals.*

4.2.3 The Capital Investment Value (CIV) of the project is \$390 million. As the CIV of the project exceeds the \$15 million threshold and the development is for the expansion of Liverpool Hospital, the development is considered to be a Major Project and the Minister is the approval authority.

4.3 Critical Infrastructure Project Declaration

4.3.1 On 29 September 2006, the Minister formed the opinion pursuant to clause 6A of the Major Projects SEPP that the redevelopment of the Liverpool Hospital site meets the description of development in Item 3 of Schedule 5 to the Major Projects SEPP. In doing so the Minister declared the proposal to be a critical infrastructure project pursuant to Section 75C of the EP&A Act.

4.3.2 The implications of the Liverpool Hospital project being declared a critical infrastructure project includes (amongst other things):

- There are no proponent or third party objector appeals (in accordance with Sections 75K, 75L, 75Q and 75T of the EP&A Act as applicable).
- Orders and notices under separate legislation (Protection of the Environment Act, 1997 and Local Government Act, 1993) cannot be made to prevent or interfere with the carrying out of the project (in accordance with Sections 75U and 75V of the EP&A Act as applicable).
- Part 3 of the EP&A Act and State Environmental Planning Policies will not apply to the carrying out of the project unless such a SEPP expressly provides that it applies to and in respect of that particular project (in accordance with Section 75R of the EP&A Act).
- Exclusion of the wholly prohibited restriction on the Minister's determination powers (in accordance with Sections 75J(3) and 75O(3) of the EP&A Act).
- Exclusion of Section 81A requirements in respect of erection and occupation of buildings and subdivision of land, unless the Minister requires compliance with these provisions as a condition of project approval (in accordance with Section 75S of the EP&A Act).

4.4 Permissibility

4.4.1 Liverpool Local Environmental Plan 1997 (Liverpool LEP) predominantly zones the site 5(a) Special Uses however portions of the site are also zoned part 2(c) Residential – Flat Buildings, part 5(b) Special Uses – Railways, part 5(c) Special Uses – Arterial Road, and part 6(a) Recreation – Public as indicated in Figure 8.

4.4.2 Hospitals are permissible in the 2(c) Residential – Flat Buildings and 5(a) Special Uses zones with development consent. Roads, which are proposed to be located in the remaining 5(b) Special Uses – Railways, part 5(c) Special Uses – Arterial Road, and part 6(a) Recreation – Public zones are also permissible with development consent pursuant to clause 9(4) of Liverpool LEP.

4.4.3 The development proposal generally accords with the objectives and provisions of the LEP despite the critical infrastructure declaration exempting the Minister from considering those provisions.

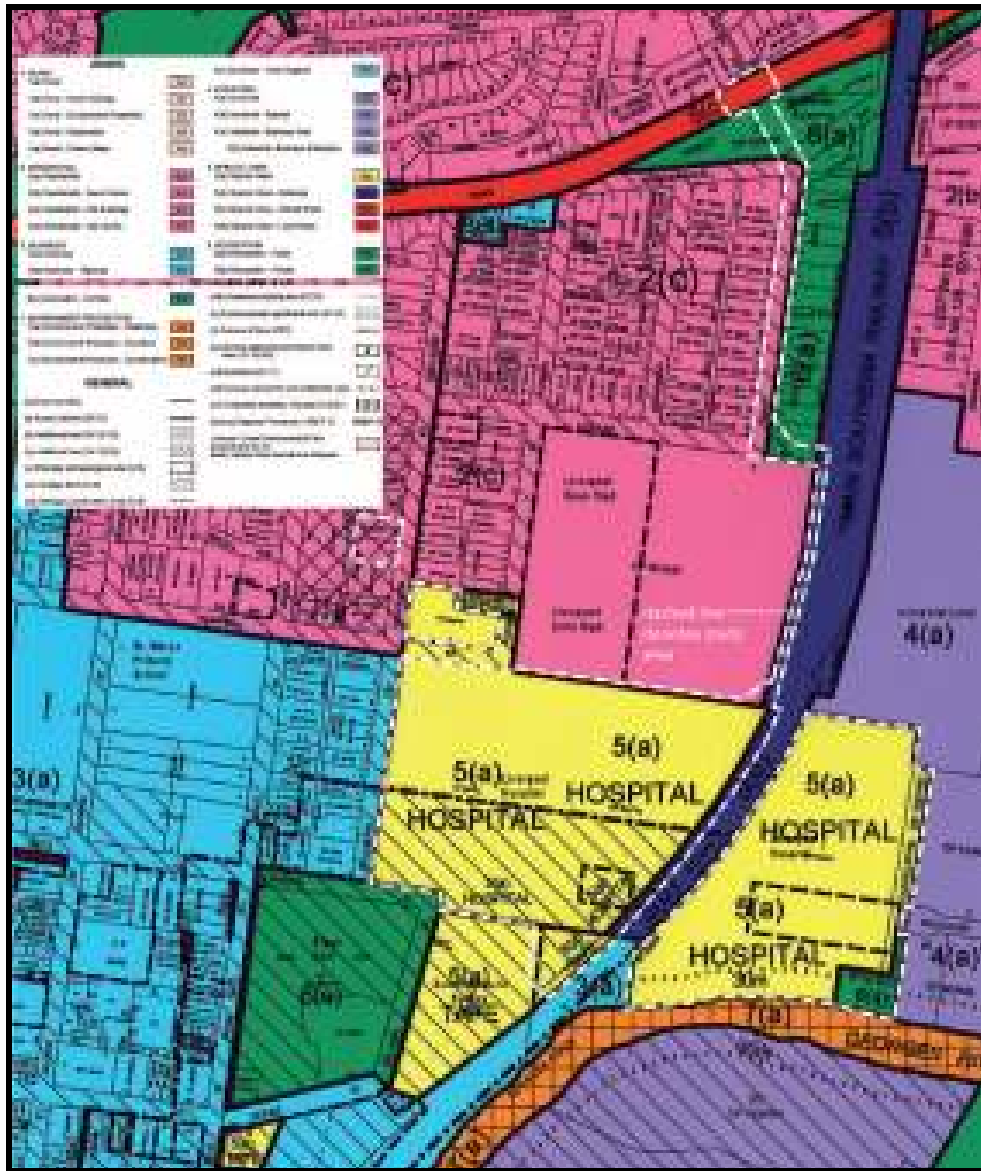


Figure 9: Current Zoning of Liverpool Hospital Site

4.5 Minister's power to approve

4.5.1 Notwithstanding the apparent permissibility, as a result of the Minister declaring the proposal a critical infrastructure project, Section 75O(3) of the EP&A Act provides that the Minister can approve a concept plan for a project that is a critical infrastructure project and that is wholly prohibited under an environmental planning instrument.

4.5.2 When giving an approval for a concept plan for a project, the Minister may, in accordance with Section 75P(1) determine:

- further environmental assessment requirements for approval to carry out the project or any particular stage of the project under this Part (in which case those requirements are taken to be environmental assessment requirements;
- that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act (in which case the project or that stage of the project ceases to be a project to which Part 3A applies);
- that no further environmental assessment is required for the project or any particular stage of the project (in which case the Minister may, under section 75J, approve or disapprove of the

carrying out of the project or that stage of the project without further application, environmental assessment or report under Part 3A).

- 4.5.3 As discussed in Section 6, the Department will be recommending the Minister utilise his approval powers under Section 76P(1), as they apply to determining future environmental assessment requirements and determining that no further environmental assessment is required for the early works package.
 - 4.5.4 Section 75J(3) is a reciprocal provision for project applications declared as critical infrastructure applications and accordingly the Minister may also disregard any prohibitions that would prevent the carrying out of the project. This is not the case in relation to the early works package.
- 4.6 Other relevant legislation and environmental planning instruments**
- 4.6.1 **Appendix G** sets out the relevant consideration of legislation (including other Acts) and environmental planning instruments as required under Part 3A of the Act.