

# MATTERS FOR LIVERPOOL LOCAL PLANNING PANEL DETERMINATION

**Tuesday the 26<sup>th</sup> of April 2022**

To be held online via  
**MS Teams**  
Commencing at 2:00pm

[Click here to join the meeting](#)

**Or call in (audio only)**

[+61 2 9161 1229](tel:+61291611229), [961926249#](tel:+61291611229) Australia, Sydney

Phone Conference ID: 961 926 249#

Note: Submissions by the applicant and concerned parties will be considered at the meeting. A concerned party is deemed to be a person who has made a written submission in respect to the application. The Panel shall, upon request, hear submissions from persons who identify prior to the meeting that they wish to make a submission to be considered by the Panel. Presentations to the Panel by the applicant and concerned parties shall be restricted to **3 minutes each**. The Panel Chairperson has the discretion to extend the period if considered appropriate.

Should you wish to address the Panel, please advise Brenton Toms, Panel Support Officer on 8711 7855 or 1300 36 2170, by 4pm, Friday the 22<sup>nd</sup> of April.

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The following development applications are referred to the Liverpool Local Planning Panel for its determination.

<b>ITEM No.</b>	<b>SUBJECT</b>	<b>PAGE No.</b>
<b>1</b>	<b>Development Application DA-241/2021</b> <b>Torrens title subdivision of a lot with an existing attached dual occupancy to create a semi-detached dwelling.</b> <b>Lot 2080 DP 881727</b> <b>1 Strzlecki Drive, Horningsea Park</b>	<b>3-46</b>

<b>ITEM No.</b>	<b>SUBJECT</b>	<b>PAGE No.</b>
<b>2</b>	<b>Development Application DA-113/2020/B</b> <b>Modification to DA-113/2020 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification seeks the removal and addition of windows, alterations to the façade, the re-arrangement of the internal layout for Unit 1 kitchen and provision of solar panels.</b> <b>Lot 627 DP 242697</b> <b>9 Kalimna Street, Moorebank</b>	<b>47-85</b>

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<b>Item no:</b>	1
<b>Application Number:</b>	DA-241/2021
<b>Proposed Development:</b>	Torrens title subdivision of a lot with an existing attached dual occupancy to create a semi-detached dwelling.
<b>Property Address</b>	1 Strzlecki Drive, Horningsea Park
<b>Legal Description:</b>	Lot 2080 DP 881727
<b>Applicant:</b>	Mr H F Padilla
<b>Land Owner</b>	Mr H F Padilla Mr H B Padilla Ms M A Padilla Mr E A Obreque
<b>Date Lodged:</b>	17 March 2021
<b>Cost of Works:</b>	\$5644
<b>Assessing Officer:</b>	Maddison Spiteri
<b>Zoning</b>	R2 Low Density Residential under Liverpool Local Environmental Plan 2008
<b>Recommendation:</b>	Approval, subject to conditions of consent

## **1. EXECUTIVE SUMMARY**

Council is in receipt of a Development Application DA-241/2021 seeking consent for Torrens title subdivision of a lot with an existing attached dual occupancy to create a semi-detached dwelling at 1 Strzlecki Drive, Horningsea Park, which is legally known as Lot 2080 in DP 881727.

The subject site is zoned R2 Low Density Residential under *the Liverpool Local Environmental Plan 2008* (LLEP 2008), within which the proposed development is permissible with consent.

The Development Application was required to be notified to adjoining and adjacent properties in accordance with the Liverpool Community Participation Plan 2019. The application was notified during the period from 5 May 2021 to 20 May 2021. Notwithstanding, no submissions were received during the notification period.

The key issues associated with the proposal related to compliance with Clause 4.4 of LLEP 2008 (Floor Space Ratio). The floor space ratio applicable to the subject site is 0.6:1. The proposal seeks a variation to the maximum floor space ratio prescribed, Lot 1 proposes a floor space ratio of 0.616:1 (2.7% variation) and Lot 2 proposes 0.671:1 (11.90% variation). Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant submitted a written request seeking a variation to the floor space ratio control. As demonstrated in the report, the non-compliance is considered acceptable in this instance as strict compliance with the development standard is considered unreasonable as it is unlikely there would be any impacts associated with the variation and it would unreasonably restrict the development.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 30 June 2020*, as the development falls in the category of:

***Departure from Development Standards***

*Development that contravenes a development standard imposed by an Environmental Planning Instrument (EPI) by more than 10% or non-numerical development standards.*

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment (EP&A) Act 1979*. Based on the assessment of the application, it is recommended that the application be approved, subject to the imposition of conditions.

## **2. SITE DESCRIPTION AND LOCALITY**

### **2.1 Site Description**

The subject site is known as 1 Strzlecki Drive, Horningsea Park, and legally described as Lot 2080 in DP 881727. The site is irregular in shape with an arched western boundary due to fronting a roundabout and has a total site area of approximately 864.8m<sup>2</sup>. The site has a primary frontage to Strzlecki Drive to the west of approximately 29.04m. The site is relatively flat with a slight slope from the south-eastern corner (47.13m AHD) to the north-western corner (46.22m AHD) of approximately 0.91m. As shown in Figure 1, the site currently contains an attached dual occupancy, metal carport, metal awning, metal shed, internal rear yard fencing and paving.



**Figure 1:** Aerial view of subject site (in blue) (Source: Nearmaps)

*Site Inspection Photos*



1. Subject site looking East from Strzlecki Drive.

## 2.2 Locality Description

The site is located within the suburb of Horningsea Park which is characterised predominantly by low density developments in the form of single and double storey dwellings within the immediate locality and pockets of RE1 – public recreation zoning. The site is directly adjacent to John Edmondson High School to the south-west, approximately 570m to Camden Valley Way to the south, 600m to Cowpasture Road to the west, 750m to Carnes Hill Shopping Centre to the north and 485m to Cabramatta Creek to the east.



Figure 2: Locality surrounding the subject site (Source: Geocortex)

### 3. BACKGROUND AND DA HISTORY

The following is a list of Development Applications related to the subject site.

DA No.	Lodged	Proposed Development	Determined
A-3061/1999	20 March 1999	Free Standing Dual Occ and Two Lot Torrens Title Subdivision	Refused 17 September 1999
A-400/2001	15 August 2000	Erection of an attached dual occupancy	Approved 16 February 2001

### 4. DETAILS OF THE PROPOSED DEVELOPMENT

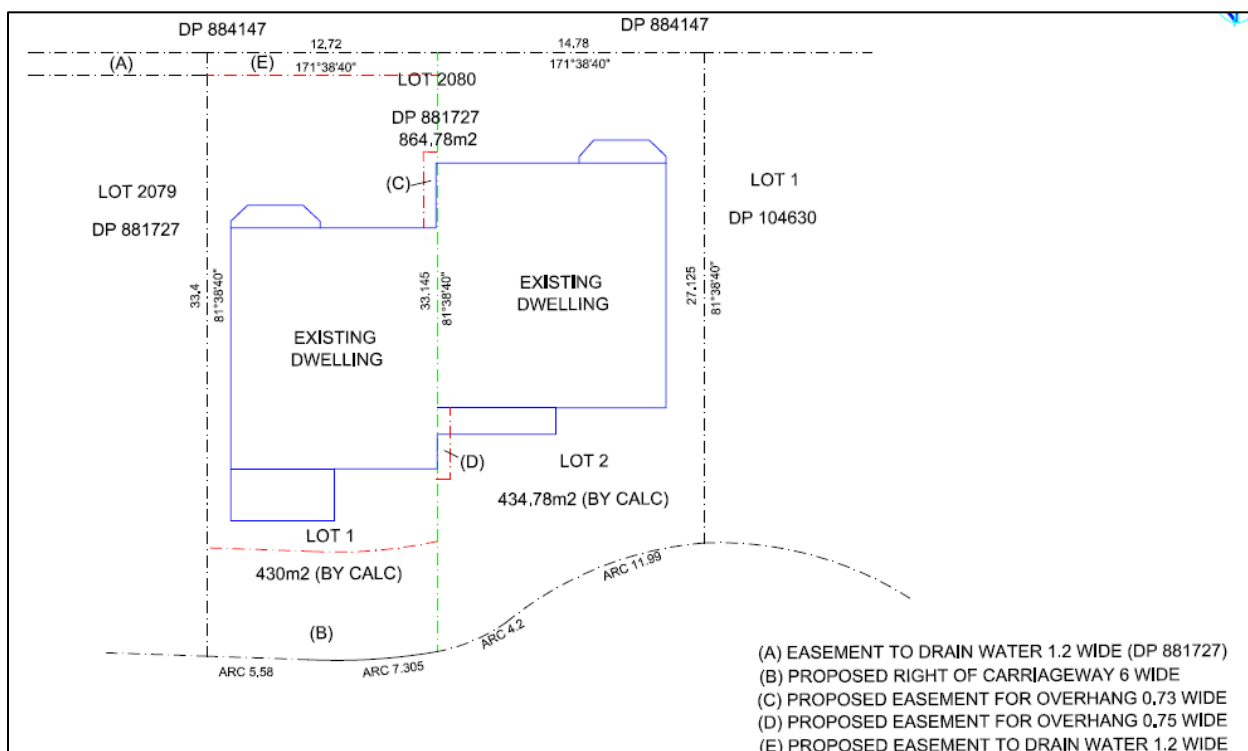
The development application seeks approval for Torrens title subdivision of a lot with an existing attached dual occupancy to create a semi-detached dwelling. The proposal would specifically consist of the following:

#### Torrens Title Subdivision

- The subject site currently has a site area of 864.78m<sup>2</sup>. The Torrens title subdivision would incorporate proposed Lot 1 at the north of the site which would have an area of 430m<sup>2</sup>. Proposed Lot 2 would be located to the south of the site and would have an area of 434.78m<sup>2</sup>.

#### Demolition of Shed

- An easement to drain water (minimum 1.2m wide) is proposed to be created. As a consequence, the existing shed located within the proposed easement to drain water 1.2m wide has been conditioned to be demolished.



**Figure 3.** Proposed Torrens Title Subdivision.

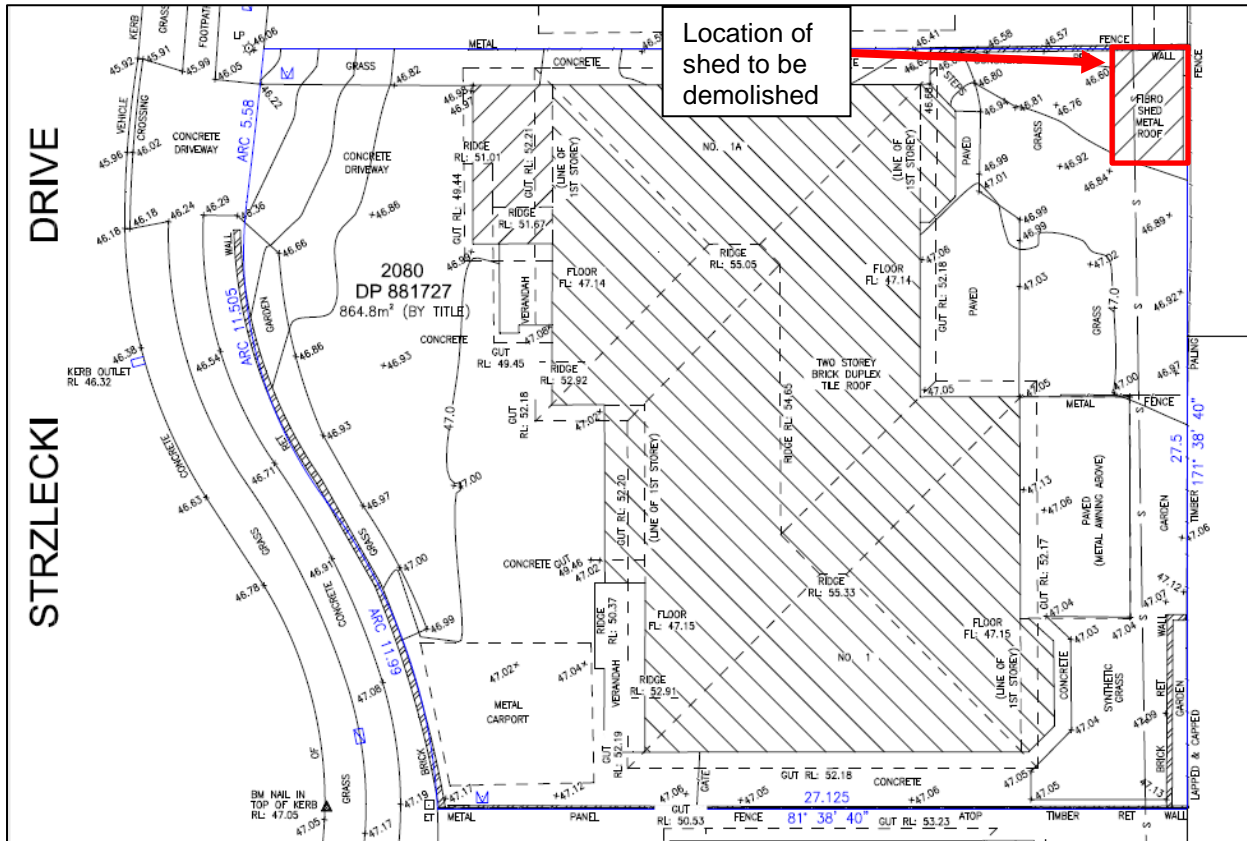


Figure 4. Location of proposed Demolition Works

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

The relevant planning instruments/policies applicable to the proposed development are as follows:

- a) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- b) State Environmental Planning Policy (Resilience and Hazards) 2021;
- c) Liverpool Local Environmental Plan (LLEP) 2008; and
- d) Liverpool Development Control Plan (LDCP) 2008:
  - Part 1: General Controls for All Development; and
  - Part 3.4 Semi-Detached and Attached Dwellings in the R2, R3 and R4 Zones.

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**6. ASSESSMENT**

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 Evaluation of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, as follows:

**6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument**

**(a) State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The subject land is located within the Georges River Catchments and as such Chapter 11 (Georges Rivers Catchment) of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the application. Chapter 11 (Georges Rivers Catchment) of State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries. The application was referred to Council's Land Development Engineering team who reviewed stormwater management and drainage associated with the proposal. They were supportive of the proposed development, subject to conditions of consent. Accordingly, the proposed development is considered to meet the objectives of the SEPP and is unlikely to have a negative impact on the environmental quality of the Georges River Catchment.

**(b) State Environmental Planning Policy (Resilience and Hazards) 2021**

Pursuant to Clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, the following shall be addressed:

<b>4.6 Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated,	The site has been used for residential purposes for a prolonged period of time, therefore would unlikely contain any contaminated land.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	No excavation proposed.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	No excavation proposed.

Aerial images of the site on Council's GIS map show the existing dual occupancy on the site since 2002, with the site being used for residential purposes for at least the past 20 years.

Council's internal records and customer request system (Pathway) includes no records of any dumping or contamination complaints, or activities associated with the subject site.



With consideration to the abovementioned points there is sufficient evidence to suggest that the land is not contaminated and therefore a land contamination assessment is not considered to be necessary.

**(c) Liverpool Local Environmental Plan 2008**

**(i) Zoning**

The subject site is zoned R2 Low Density Residential in accordance with the Liverpool Local Environmental Plan (LLEP) 2008, as shown in Figure 4 below.

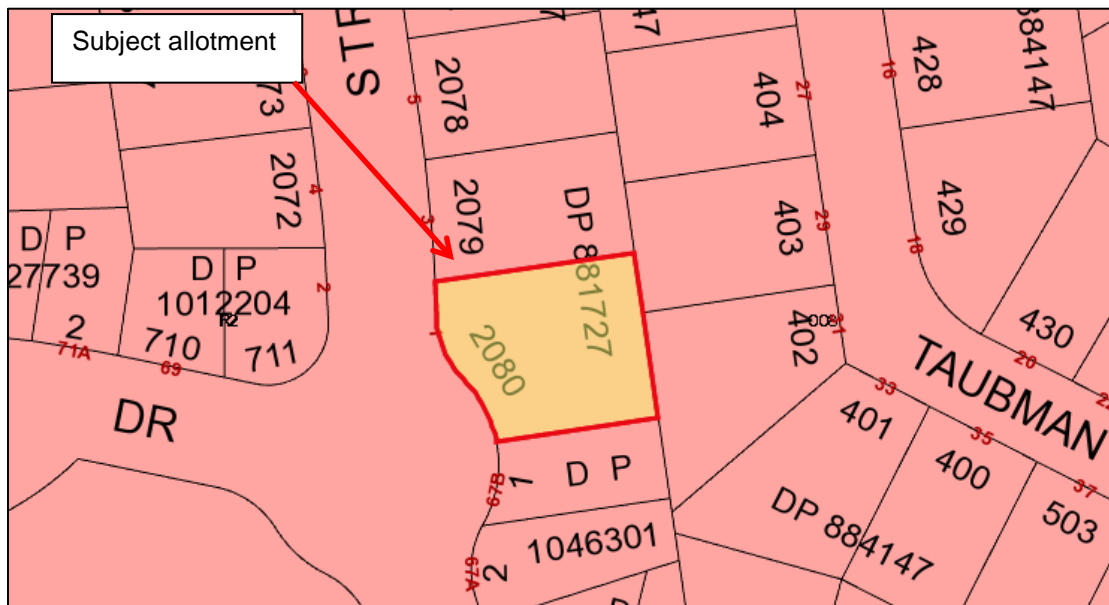


Figure 4: Zoning Map of the subject site (Source: Geocortex)

**(ii) Permissibility**

The proposed development is best defined as **subdivision** and **semi-detached dwellings** which is a permissible form of development in the zone with development consent.

Subdivision is permissible in the R2 Low Density Residential zone in accordance with clause 2.6 of LLEP 2008, with development consent.

The LLEP 2008 defines semi-detached dwellings as “a dwelling that is on its own lot of land and is attached to only one other dwelling.”

**(iii) Objectives of the Zone**

The objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide a suitable low scale residential character commensurate with a low dwelling density.
- To ensure that a high level of residential amenity is achieved and maintained.

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The proposal is a permissible type of development within the R2 Low Density Residential zone and is consistent with the above zone objectives. The proposal will provide for the housing needs of the community within a low density residential environment. The proposed development will provide for a low scale residential character in the area and will have access to services and facilities and ensure a high level of residential amenity is achieved and maintained.

**(iii) Principal Development Standards**

The LLEP 2008 contains a number of provisions which are relevant to the proposal. Assessment of the application against the relative provisions is provided below.

<b>LLEP 2008 - Principal Development Standards</b>		
<b>Development Provision</b>	<b>Requirement</b>	<b>Comment</b>
<b>2.7 Demolition requires development consent</b>	The demolition of a building or work may be carried out only with development consent.	<b>Complies by Conditions.</b>  The existing shed located within the proposed easement to drain water 1.2m wide has been conditioned to be demolished.
4.1 Minimum Lot Size	Minimum lot size permitted: 300m <sup>2</sup>	<b>Complies.</b>  Torrens title subdivision of one lot into two is proposed as follows: Lot 1 (Northern Lot) = 430m <sup>2</sup> Lot 2 (Southern Lot) = 434.78m <sup>2</sup>
4.3 Height of Buildings	Maximum height permitted: 8.5m	<b>Not Applicable.</b>  No changes proposed to the existing building height on site.
4.4 Floor Space Ratio (FSR)	Maximum FSR permitted: 0.60:1.	<b>Considered Acceptable – see Clause 4.6 - Variation assessment below.</b>  Lot 1 = Proposed FSR is 0.616:1 (264.99m <sup>2</sup> / 430m <sup>2</sup> ) Exceedance of 2.7%  Lot 2 = Proposed FSR is 0.671:1 (294.92m <sup>2</sup> / 434.78m <sup>2</sup> ) Exceedance of 11.90%
4.6 Exceptions to Development Standards	Provisions relating to exceptions to development standards	<b>See 4.6 discussion below regarding Clause 4.4 Floor Space Ratio.</b>
7.7 Acid Sulfate Soils	Class 1, 2, 3, 4 or 5	<b>Not Applicable.</b>  The site is not mapped as containing acid sulfate soils.
7.31 Earthworks	Council to consider matters listed (a)-(g)	<b>Not Applicable.</b>  Earthworks are not proposed as part of this application.

As demonstrated in the above compliance table, the proposed development complies with the applicable development standards of the LLEP 2008, with the exception of Clause 4.4 Floor space ratio.

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**Clause 4.6 Exceptions to development standards (Variation to Clause 4.4 Floor space ratio)**

Clause 4.4 (2) of the LLEP 2008 states:

*“The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”*

The proposal seeks a variation to the maximum floor space ratio prescribed by the LLEP 2008. As stated in the LLEP 2008 table above, the maximum allowable floor space ratio for the site is 0.6:1. Lot 1 proposes a floor space ratio of 0.616:1 (2.7% variation) and Lot 2 proposes 0.671:1 (11.90% variation).

Consequently, pursuant to Clause 4.6 of the LLEP 2008 the applicant has submitted a written request seeking a variation to the maximum floor space ratio development standard as prescribed by Clause 4.4.

The objectives of Clause 4.6(1) are as follows:

- (a) *“to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Clause 4.6(3) states, consent must not be granted unless the consent authority has considered a written request to justify the variation of the development standard. The clause is listed and addressed below:

*“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and”*

**Applicant Comment:** The Applicant has provided the following comments addressing why compliance with the development standard is considered unreasonable or unnecessary in this instance, as summarised:

- *Clause 4.4 specifies a maximum floor space ratio of 0.6:1. Lot 1 provides a GFA of 264.99m<sup>2</sup> which equates to a floor space ratio of 0.616:1 a variation to the standard of 2.7%. Lot 2 provides a GFA of 291.92m<sup>2</sup> which equates to a floor space ratio of 0.671:1 a variation to the standard of 11.9%.*
- *This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the maximum floor space ratio development standard are achieved notwithstanding the non-compliance with the standard.*
- *The desired future character and building bulk has been assessed during the proposed buildings inception during 2001. The subdivision makes no alteration to the physical buildings interaction with the controls plans and policies of council that underly the numerical requirements.*
- *The proposed development is consistent with the relevant objectives of the R2 Low Density Residential Zone.*

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**Council Comment:** The compliance with the numerical control of this development standard is considered unreasonable and unnecessary in this instance, for the following reasons:

- The departure from the development standard is 2.7% (6.99m<sup>2</sup>) for Lot 1 and 11.90% (31.06m<sup>2</sup>) for Lot 2. It is considered that Lot 1 proposes a minor variation as it is under 10% and although Lot 2 proposes a variation of over 10%, when considering the overall average variation relative to the existing built form on the existing allotment it is an average variation of 7.33% (0.643:1) for the proposal. As it stands, the current built form demonstrates an FSR non-compliance of 7.33%, irrespective of the proposed subdivision.
- The proposal does not incorporate any further building works and the existing built form of the dwellings will remain unchanged since originally approved under Development Application DA-400/2001. Evidently, the existing built form and scale in relation to the available land onsite remains unchanged despite the Torrens title subdivision.
- The proposed subdivision is considered a regular and orderly pattern and a consistent form of development for the site when considering the existing Torrens title subdivisions of attached and detached dual occupancies within the locality, as occurring at 65 and 67 Horningsea Park Drive, Horningsea Park, directly south of the subject site. As such, the proposed subdivision is an orderly development of the site.
- The proposal provides a dwelling typology consistent with the current desired character for the locality and the zone under the LLEP 2008, in the form of semi-detached dwelling development. The proposed dwelling typology is particularly considerate to the objectives and permitted development of the zone.
- The proposed variation to floor space ratio does not inhibit the ability for any future re-development of the site to demonstrate full compliance with local and state policies.
- The proposal is fully compliant with the relevant State Environmental Planning Policies (SEPP), as discussed in this report.
- The proposal is also consistent with the development standard objectives and the objectives of the zone.

As discussed above, strict compliance with the development standard is considered unreasonable and unnecessary in this instance as it is unlikely there would be any significant impacts associated with the variation and in accordance with local and state policies. The variation is minor in nature when considering that the built form and natural environment will remain unchanged. It would therefore be unreasonable to restrict the site from achieving a currently desired development type in the form of semi-detached dwellings.

*(b) "that there are sufficient environmental planning grounds to justify contravening the development standard."*

**Applicant Comment:** The Applicant has provided the following comments addressing that there are sufficient environmental planning grounds to justify contravening the development standard in this case, as summarised:

- *The proposed paper subdivision has no physical impact upon development density and the interaction of the existing development with infrastructure and generation of vehicle and pedestrian traffic. The subdivisions allows the site to maintain its current level of patronage of existing infrastructure.*
- *The correlation of the building on site and the relationship with the available land remains unchanged.*
- *The physical density of the built form remains as is, despite the alteration of the numerical measures. The low density environment is maintained by the proposal.*

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- *The low scale character of the long-standing development will not be altered by the proposal.*
- *The residential amenity is not impacted upon by the paper subdivision. It can be reasonably argued that in the current housing climate, it would be both in the public benefit and in direct response to the needs of the community, to look upon this proposal favourably, particularly considering both sites resulting from the proposal may be developed in accordance with the relevant plans.*
- *On balance, the variation in maximum floor space ratio would be considered to be outweighed by the public benefit and addition to housing supply, resulting in an appropriate and balanced planning outcome.*
- *Contributes to the longevity of the site overall as a residential land use and increases housing opportunity.*
- *As the proposal provides additional housing opportunity at a time when housing diversity and demand is at an all-time high the proposed variation is in the public interest and necessary.*
- *It is considered that the variation allows for the orderly and economic use of the land and the ability to provide a development that is in accordance with the relevant plans, in an appropriate manner, while also allowing for a positive outcome in planning terms.*
- *As outlined in this written variation request, there is an absence of any significant or unreasonable impacts and the proposal will deliver benefit in accordance with the Liverpool Councils strategic planning framework. The proposed development therefore fulfils Council's vision for the precinct as a residential locale.*

**Council Comment:** It is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance, which are listed below:

- Notwithstanding the floor space ratio exceedance, the proposal does not generate any further impacts to the built and natural environment than that which was considered and approved under Development Application DA-400/2001. Correspondingly, the proposal achieves a positive social and economic development for the site and locality.
- The proposal can achieve and maintain the existing residential amenity on site and for the locality as the building footprint, bulk and scale of the dwellings will remain the same.
- The low density scale of the development will remain the same and demonstrate consistency with the low density residential character of the locality in addition to encouraging diversity of housing typologies.
- The subdivision rationalises the proposed lots to achieve orderly development, which is consistent with the established character of the area in transitioning from attached and detached dual occupancy development to detached dwellings and semi-detached dwellings.
- The proposal does not create any additional traffic generation in the form of vehicles or pedestrians which is considerable due to the adjacent Secondary school.
- The proposal is considered to satisfy all relevant heads of consideration as contained within Section 1.3 Objects of the Act, in accordance with the *Environmental Planning and Assessment Act 1979*.

Having regard to the above, it is considered that there are sufficient environmental planning grounds to support a variation to Clause 4.4 Floor space ratio, in this instance.

Clause 4.6(4) states, consent must not be granted for development that contravenes a development standard unless the proposed development is in the public interest. The clause is listed and addressed below:

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*“Development consent must not be granted for development that contravenes a development standard unless—*

*(a) the consent authority is satisfied that—*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out”.*

The objectives of Clause 4.4 Floor space ratio are as follows:

- (a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

**Council Comment:** It is considered that the proposal would meet the objectives of Clause 4.4 Floor space ratio, for the following reasons:

- (a) To establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic.*

**Applicant Comment:**

- *The proposed paper subdivision has no physical impact upon development density and the interaction of the existing development with infrastructure and generation of vehicle and pedestrian traffic. The subdivisions allows the site to maintain its current level of patronage of existing infrastructure.*

**Council Comment:**

- *Horningsea Park is an established area with the sites historical zoning and land uses permitting dual occupancy development with development consent under the *Liverpool Local Environmental Plan 1997*. The proposal is still consistent with the established standard for maximum development density and land use as the semi-detached dwelling status reflects the current desired development character for the zone while maintaining the same development density. The proposal also adequately addresses infrastructure availability and does not impact on the existing vehicle and pedestrian traffic generation for the street or locality.*
- (b) To control building density and bulk in relation to the site area in order to achieve the desired future character for different locations.*

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**Applicant Comment:**

- *The desired future character and building bulk has been assessed during the proposed buildings inception during 2001. The subdivision makes no alteration to the physical buildings interaction with the controls plans and policies of council that underly the numerical requirements.*

**Council Comment:**

- The proposal does not incorporate any further building works and the existing built form of the dwellings will remain unchanged since originally approved under Development Application DA-400/2001. Evidently, the existing building footprint, bulk and scale in relation to the available land onsite remains unchanged despite the Torrens title subdivision. Semi-detached dwelling development is also a desired future character for the zone and wider area.
- (c) *To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

**Applicant Comment:**

- *The proposals response to this objective remains consistent notwithstanding the proposed subdivision.*

**Council Comment:**

- With consideration to the historical use of the site and the previously approved dual occupancy being one of the first developments within the immediate locality, the current proposed subdivision will not generate any adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain. The proposal enables the current onsite and offsite environmental conditions to be sustained.
- (d) *To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation.*

**Applicant Comment:**

- *This development is recently approved, it is not considered that the building is “new” or the area is undergoing change. No further investigation is required in this regard.*

**Council Comment:**

- Horningsea Park is not currently undergoing a substantial transformation and is an established area that has maintained its low density character. The semi-detached dwelling status and subdivision allows for a suitable transition of the existing built form on site to achieve the desired future character of the area through changing the permissible land use. The proposal is also keeping with the existing character of the area by maintaining the current built form with no works proposed and simply modifying the dwellings description to reflect the current envisioned development typology within a low density setting.

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- (e) *To provide an appropriate correlation between the size of a site and the extent of any development on that site.*

**Applicant Comment:**

- *The correlation of the building on site and the relationship with the available land remains unchanged.*

**Council Comment:**

- The built form in the context of the site area is maintained through the proposed subdivision and is considered to be a positive correlation to sustaining development density within an onsite context.

- (f) *To facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

**Applicant Comment:**

- *This objective is not applicable to the proposal.*

**Council Comment:**

- The proposal does not incorporate any changes to the design of the dwellings. The proposal therefore allows the site and the existing dwellings to maintain their current level of design articulation and modulation.

The objectives of the R2 Low Density Residential zone are as follows:

- (a) *To provide for the housing needs of the community within a low density residential environment.*
- (b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- (c) *To provide a suitable low scale residential character commensurate with a low dwelling density.*
- (d) *To ensure that a high level of residential amenity is achieved and maintained.*

**Council Comment:** It is considered that the proposal would meet the objectives of the R2 Low Density Residential zone, for the following reasons:

- (a) *To provide for the housing needs of the community within a low density residential environment.*

**Applicant Comment:**

- *The physical density of the built form remains as is, despite the alteration of the numerical measures. The low density environment is maintained by the proposal.*

**Council Comment:**

- The proposed development would aid in the provision of achieving housing needs for the community within the low density residential environment. This would be achieved



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through providing a semi-detached dwelling of high residential amenity within an accessible location being adjacent to John Edmondson High School and within close proximity to Carnes Hill Shopping Centre.

- (b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Applicant Comment:**

- *This objective is not applicable to the proposal.*

**Council Comment:**

- The proposal is considered to meet the day to day needs of residents as the site would maintain its currently sufficient access to facilities and services. Due to the location of the site, current and future occupants have a greater ease of access to schooling, Carnes Hill Shopping Centre, two bus stops within 100m to the west and south of the site and access to Schoeffel Park and Percy Rabett Park which are located within close proximity of the site.

- (c) *To provide a suitable low scale residential character commensurate with a low dwelling density.*

**Applicant Comment:**

- *The low scale character of the long-standing development will not be altered by the proposal.*

**Council Comment:**

- The proposal still provides a suitable low scale residential character in proportion with the existing character of the low density residential area of Horningsea Park. This is achieved through the dwelling status changing from attached dual occupancy to semi-detached dwelling development. The existing dwellings are still consistent with the existing style of housing within the locality and maintains the visual appearance of a low scale residential density development.

- (d) *To ensure that a high level of residential amenity is achieved and maintained.*

**Applicant Comment:**

- *The residential amenity is not impacted upon by the paper subdivision. It can be reasonably argued that in the current housing climate, it would be both in the public benefit and in direct response to the needs of the community, to look upon this proposal favourably, particularly considering both sites resulting from the proposal may be developed in accordance with the relevant plans. On balance, the variation in maximum floor space ratio would be considered to be outweighed by the public benefit and addition to housing supply, resulting in an appropriate and balanced planning outcome.*

**Council Comment:**

- A high level of residential amenity would still be achieved for future occupants of the site and residential amenity maintained for adjoining properties. As the building

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footprint, bulk and scale of the dwellings will remain the same, it is unlikely that the proposal will have a negligible impact on the residential amenity of future occupants and adjoining neighbours.

The objectives of Clause 4.6 Exceptions to development standards are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is considered appropriate in this instance to apply a degree of flexibility when applying the maximum floor space ratio development standard applicable to the subject site, based on the planning assessment of the Clause 4.6 Variation as provided above. It is considered that supporting a variation to the floor space ratio development standard is unlikely to result in detrimental impacts to the built and natural environments, nor produce unfavourable outcomes socially and to the economy in this case.

**Clause 4.6 Variation Recommendation:**

With considerations to the discussion above, the proposed variation to Clause 4.4 Floor space ratio adequately addresses Clause 4.6(3) and the objectives of the development standard and zone. The proposal is considered to be in the public interest and is therefore supported in this instance.

**6.2 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument**

There are currently no draft Environmental Planning Instruments which apply to the development.

**6.3 Section 4.15(1)(a)(iii) - Any Development Control Plan**

**(a) Liverpool Development Control Plan (LDCP) 2008**

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008. Part 1 of the LDCP 2008 covers general controls relating to all types of development within the Liverpool LGA. The key controls are discussed in the following table:

<b>LDCP 2008 - Part 1 General Controls for all Development</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
Section 2 – Tree Preservation	Consider impact of development on existing vegetation	No vegetation removal or changes proposed to the existing landscaping.	Not Applicable
Section 3 – Landscaping and Incorporation of Existing Trees	Incorporation of existing trees into development where appropriate	No vegetation removal or changes proposed to the existing landscaping.	Not Applicable
Section 4 – Bushland and Habitat	Consider impact of development on	Minimal to no impact on bushland and habitats considering the location of	Not Applicable

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Preservation	bushland and habitats	the development.	
Section 5 – Bushfire Risk	Land on or adjacent to bushfire prone land to comply with RFS requirements	The site is not mapped as bushfire prone land.	Not Applicable
Section 6 – Water Cycle Management	Consideration of stormwater drainage and	The stormwater plans have been reviewed by Council's Land Development Engineer who have no objections to the proposal, subject to conditions of consent.	Complies by Conditions
Section 7 – Development Near a Watercourse	Consideration of impact to riparian corridors	The site is not located within 40m of a watercourse.	Not Applicable
Section 8 – Erosion and Sediment Control	Sediment Control Plan or Soil and Water Management Plan required	Sediment and erosion controls details have been conditioned for proposed demolition works.	Complies by Condition
Section 9 – Flooding Risk	Flood affection of property to considered	The site is not mapped as flood prone land.	Not Applicable
Section 10 – Contaminated Land Risk	Previous use to be considered in assessing risk	Existing and historical use of residential dwelling does not warrant a land contamination assessment.	Not Applicable
Section 11 – Salinity Risk	Salinity Management response required for affected properties	No works or changes to the existing dwellings proposed.	Not Applicable
Section 12 – Acid Sulfate Soils Risk	Affected properties to consider impact of development on soils	The subject site is not identified as containing acid sulphate soils.	Not Applicable
Section 13 - Weeds	Noxious weeds to be removed as part of development where applicable	No noxious weeds are known to be present on site.	Not Applicable
Section 14 – Demolition of Existing Development	Appropriate measures proposed	Demolition of existing metal shed over a proposed drainage easement has been conditioned.	Complies by Conditions
Section 15 – Onsite Sewage Disposal	S68 Application required where connection to sewer not available	The site is connected to sewer.	Complies
Section 16 – Aboriginal Archaeology	AHIA required where items of aboriginal archaeology exist	No known items of aboriginal archaeology are present on the subject property.	Not Applicable
Section 17 – Heritage and Archaeology	Consideration of the impact on the heritage significance on any heritage buildings, sites, streetscapes or areas.	Site is not a heritage item or within a heritage conservation area.	Not Applicable

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Section 19 – Used Clothing Bins	Applies to any charity bins located on either private or Council land.	No charity bins are located within the subject property.	Not Applicable
Section 20 – Car Parking and Access	Two (2) car parking spaces required for each dwelling.	No works to existing dwellings proposed.	Not Applicable
Section 21 - Subdivision of Land and Buildings	Residential Zones Subdivision of land shall meet the minimum lot width requirements as set out in Table 7. R2, 300sqm, 9m lot width	The site is mapped as having a minimum lot size of 300m <sup>2</sup> therefore is subject to a minimum lot width of 9m. Proposed Lot 1 has a width of 12.89m fronting Strzlecki Drive. Proposed Lot 2 has a width of 16.19m fronting Strzlecki Drive.	Complies
Section 22 - Water Conservation	This section applies to all development involving the use of water.	No works to existing dwellings proposed.	Not Applicable
Section 23 - Energy Conservation	This section applies to development involving the use of energy	No works to existing dwellings proposed.	Not Applicable
Section 24 - Landfill	This section applies to development, which involves cutting and or filling of land. It does not involve land cut and filling in conjunction with a development application for a building(s).	Development does not involve cutting and/or filling of land.	Not Applicable
Section 25 – Waste Management	Waste Management Plan shall be submitted for demolition, construction and on-going waste management.	A Waste Management Plan for demolition of existing metal shed over a proposed drainage easement has been conditioned.	Complies by Condition
Section 26 – Outdoor Advertising and Signage	Controls relating to signage and advertising material	The proposed development does not involve outdoor advertising and signage.	Not Applicable

Part 3.4 of the LDCP 2008 covers controls relating to semi-detached and attached dwellings. The key controls are discussed in the following table:

<b>Part 3.4 Semi-Detached and Attached Dwellings in the R2, R3 and R4 zones</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
Site Planning	Dwelling layout designed around site attributes	The dwellings were previously designed in accordance with the site constraints and approved under DA-400/2001.	Not Applicable
	Direct link from living area to POS	No works or changes to the existing dwellings proposed.	Not Applicable

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	Minimise overlooking from first floor windows to POS of neighbours	No works or changes to the existing dwellings proposed.	Not Applicable
	Stormwater drained satisfactorily	The stormwater plans were reviewed by Council's Land Development Engineering Department who supported the application, subject to conditions.	Complies by conditions
Setbacks	Front Setback: Other streets: Front ground 4.5m First floor 5.5m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
	Secondary side setback 2m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
	Garages setback behind main face of dwelling 1m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
	Verandahs, balconies, eaves and other sun control devices may only encroach on the minimum secondary setback by up to 1m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
	Side Setbacks: Ground floor 0.9m First floor 1.2m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
	Rear Setbacks: Ground floor 4m First floor 7m	No works or changes to the existing dwelling setbacks proposed.	Not Applicable
Landscaping	Min 20% site to be landscaped	No works or changes to the existing landscaping areas proposed.	Not Applicable
	Minimum unencumbered area 4m x 6m at the rear for deep rooted trees	No works or changes to the existing landscaping areas proposed.	Not Applicable
	Min 50% front setback landscaped	No works or changes to the existing landscaping areas proposed.	Not Applicable
	Minimum unencumbered area 3m x 5m at the front for deep rooted trees	No works or changes to the existing landscaping areas proposed.	Not Applicable
Private Open Space	Minimum 60sqm private open space and minimum 2.5m wide	No works or changes to the existing private open space areas proposed.	Not Applicable
	Private open space areas are not permitted within the primary street setbacks.	No works or changes to the existing private open space areas proposed.	Not Applicable
	The POS must have an area for clothes drying	No works or changes to the existing private open space	Not Applicable

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	with at least 2 hours of full sun between 9am and 5pm on 21 June.	clothes drying areas proposed.	
	Principal POS must be directly accessible from a living area with a minimum dimension of 4m x 6m	No works or changes to the existing private open space areas proposed.	Not Applicable
	50% of principal POS area to receive 3 hours sunlight between 9am and 5pm on 21 June	No works or changes to the existing private open space areas proposed.	Not Applicable
Cut and Fill	Max cut 600mm Max fill under slab 1000mm	No cut or fill proposed.	Not Applicable.
	All retaining walls masonry construction	No retaining walls proposed	Not Applicable
Building Design and Appearance	Dwellings to be orientated to the street	No works or changes to existing dwellings orientation proposed.	Not Applicable
	Front pedestrian entrance must be visible from the street.	No works or changes to existing dwellings front pedestrian entrances proposed.	Not Applicable
	The front building facades shall be articulated. The front façade should incorporate porches, entries, pergolas and verandahs.	No works or changes to existing dwellings front building facades proposed.	Not Applicable
	Eave overhang must have a minimum overhang of 400mm and be provided to ≥70% of the dwelling.	No works or changes to existing dwellings eaves proposed.	Not Applicable
	Semi-detached dwellings on a corner allotment must address both frontages through the use of verandahs, windows, balconies, or similar modulating elements.	The subject site is not a corner allotment.	Not Applicable
	“Mirror – imaging” of facades on a Semi-detached dwellings and Attached dwellings are not permitted.	No works or changes to existing dwellings front building facades proposed.	Not Applicable
	The front building line of semi-detached dwellings must be staggered by a minimum of 1m.	No works or changes to existing dwellings front building facades proposed.	Not Applicable
Two Storey Dwellings	Side walls articulated if over 14m	No works or changes to existing dwellings external building facades proposed.	Not Applicable
	On two storey dwellings, balconies	No works or changes to existing dwellings external building	Not Applicable

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	are encouraged above garages	facades proposed.	
	No balconies on side or rear of buildings. Balconies may be considered if they address public open space / utilities	No works or changes to existing dwellings external building facades proposed.	Not Applicable
Garages and Carports	Garages and carports must be designed to be the minor element of the façade.	No works or changes to the existing dwellings garages proposed.	Not Applicable
	Garage doors maximum <50% of the front façade width	No works or changes to the existing dwellings garages proposed.	Not Applicable
	Garage roofs shall be incorporated into the roof design of the house	No works or changes to the existing dwellings garages proposed.	Not Applicable
	Garages are to be compatible with the building design	No works or changes to the existing dwellings garages proposed.	Not Applicable
Internal Design	All dwellings shall have habitable rooms located to the front of the dwelling	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
	Living rooms should take advantage of northern aspects	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
	Access to POS from living room	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
	The internal layout is encouraged to incorporate cross ventilation	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
	Bathrooms, ensuites, laundries and walk in wardrobes should be located to the side and rear of the dwellings	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
	Min storage area 8m <sup>3</sup>	No works or changes to the existing dwellings internal floor layouts proposed.	Not Applicable
Landscaping	Setback areas to include canopy trees with at least one tree with a mature height 8m	No works or changes to the existing landscaping areas proposed.	Not Applicable
Fencing	Maximum height of front fence is 1.2m and must be 30% transparent	No changes proposed to the existing front fencing.	Not Applicable
	Front fences shall be constructed in masonry, timber, metal pickets and/or vegetation and must be	No changes proposed to the existing front fencing.	Not Applicable

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	compatible with the proposed design of the dwelling.		
	Boundary fences shall be lapped and capped timber or metal sheeting.	No changes proposed to the existing front fencing.	Not Applicable
Car Parking and Access	Two car parking spaces shall be provided.	No works or changes to the existing dwellings car spaces proposed.	Not Applicable
	A single garage is to be a minimum of 3 m wide internally and unobstructed.	No works or changes to the existing dwellings garages proposed.	Not Applicable
Overshadowing	Adjoining properties receive 3 hours sunlight to 50% of POS and living area	No works to the existing dwellings proposed that would generate any changes to the existing solar access for adjoining properties.	Not Applicable
Privacy	Windows of habitable rooms facing side boundaries are to be offset by at least 1 m from any adjoining facing window.	No works or changes to the existing dwellings proposed.	Not Applicable
	Windows of habitable rooms on the first floor facing side boundaries are to avoid unreasonable overlooking by having a minimum sill height of 1.5m.	No works or changes to the existing dwellings proposed.	Not Applicable
Acoustic Privacy	Measures to protect from impact of rail and/or traffic related noises as required	No impacts from road or rail noise.	Not Applicable
Site Services	Where a footpath, road shoulder or new or enlarged access driveway is required to be provided this shall be provided at no cost to Council.	No new access driveway is proposed with the application and any damage to the footpath will be required to be paid for by the applicant.	Complies by Condition
	Council must be notified of any works that may threaten Council assets. Council must give approval for any works involving Council infrastructure.	No works are proposed that impact on Council's assets. A standard condition of consent will apply.	Complies by condition
	Where there are no existing street trees in front of the site and contributions have not been collected for street tree planting it may be a condition of	Due to the location, a street tree is not necessary.	Not Applicable.



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	consent that street trees be provided in the footpath area immediately in front of the site.		
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The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008.

**6.4 Section 4.15(1)(a)(iia) - Planning Agreements**

There are no planning agreement or draft planning agreements that apply to the site.

**6.5 Section 4.15(1)(a)(iv) - The Regulations**

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the National Construction Code. Accordingly, appropriate conditions of consent will be imposed.

**6.6 Section 4.15(1)(b) - The Likely Impacts of the Development**

**Natural and Built Environment**

The proposed development is unlikely to create a detrimental impact on the natural environment surrounding the subject site as the application relates to subdivision only.

The proposed development is unlikely to create unreasonable adverse impacts on the surrounding built environment as no further building works are proposed. There are no expected additional impacts generated from the existing dwellings, and the built environment and residential amenity will be maintained in accordance with the development standards and controls for this type of development and zoning, in addition to the requirements of the approval of DA-400/2001.

**Social Impacts and Economic Impacts**

The proposal is likely to result in a positive socio-economic outcome for the locality through the provision of diversity in housing choice. The proposal is unlikely to generate any identifiable detrimental social impacts, being consistent with the desired development type in the zone and for the locality.

**6.7 Section 4.15(1)(c) - The Suitability of the Site for the Development**

The proposal generally complies with the relevant planning controls and provisions that are applicable to development in the locality. It is therefore considered that the site is suitable for the proposed development.

**6.8 Section 4.15(1)(d) - Any submissions made in accordance with the Act or the Regulations**

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**(a) Internal Referrals**

The following comments have been received from Council's Internal Departments:

<b>DEPARTMENT</b>	<b>COMMENTS</b>
Land Development Engineering	Supported, subject to conditions of consent.
Traffic	No objections raised.

**(b) External Referrals**

No external referrals have been required for this application.

**(c) Community Consultation**

The Development Application was required to be notified to adjoining and adjacent properties in accordance with the Liverpool Community Participation Plan 2019. The application was notified during the period from 5 May 2021 to 20 May 2021. In response, no submissions were received during the notification period.

**6.9 Section 4.15(1)(e) - The Public Interest**

The development is consistent with the objectives of the R2- Low Density Residential zone and is generally compliant with the relevant planning provisions and controls contained under the LLEP 2008 and LDGP 2008. Where non-compliances have been identified, these have either been considered justifiable in the circumstances, or addressed by way of consent conditions. As such the proposal is within the public interest.

**7. DEVELOPMENT CONTRIBUTIONS**

Section 7.11 Development Contributions are not applicable to this proposal as they were previously imposed under Development Application DA-400/2001 for the construction of the existing dual occupancy.

**8. CONCLUSION**

The application has been assessed having regard to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act 1979*, and the Environmental Planning Instruments, including the applicable *Liverpool Local Environmental Plan 2008*, Liverpool Development Control Plan 2008, and the relevant codes and policies of Council.

The proposed development is unlikely to result in unreasonable impacts upon neighboring properties and the locality. Based on the assessment of the application, it is recommended that the application be approved subject to the imposition of conditions.

**9. RECOMMENDATION**

That Development Application DA-241/2021 seeking consent for Torrens title subdivision of a lot with an existing attached dual occupancy to create a semi-detached dwelling, be approved subject to conditions of consent.

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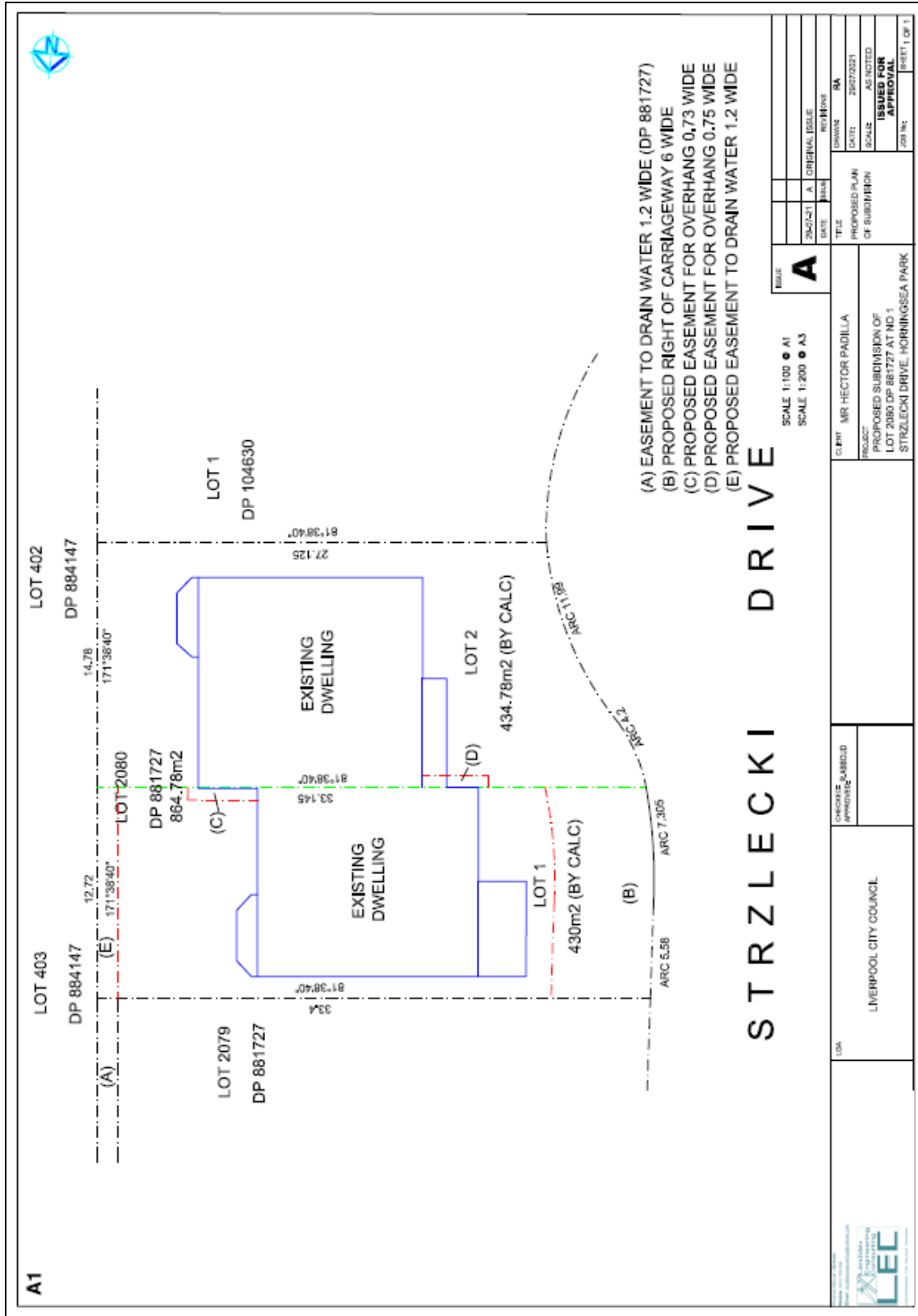
**10. REPORT ATTACHMENTS**

- 1. PLANS OF THE PROPOSAL**
- 2. APPLICANT'S SECTION 4.6 VARIATION JUSTIFICATION**
- 3. CONDITIONS OF CONSENT**

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**REPORT ATTACHMENT 1: PLANS OF THE PROPOSAL**





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**REPORT ATTACHMENT 2 – APPLICANT’S SECTION 4.6 VARIATION JUSTIFICATION**

**MHD Planning and Development**

*Urban and Regional Town Planning*

26 March 2022

General Manager  
Liverpool City Council  
Locked Bag 7064  
Liverpool BC, NSW, 1871

Attn: Maddison Spiteri

RE: Errata to Clause 4.6 Variation request Date 13 October 2021 relating to Floor Space ratio for the DA241/2021 proposing the Torrens Title Subdivision of the existing dual occupancy to create an attached dwelling at 1 Strzlecki Drive Horningsea Park.

Maddison,

We refer to the abovementioned development application details and the following response to the refinement of the Clause 4.6 Request for Variation to the Floor Space ratio Development Standard submission. The amendment is offered to enable the assessment of the proposed Torrens title subdivision.

We thank Council for their diligence in this matter as the opportunity afforded the applicant is a result of the quality of the plans that has created difficulties for Council and also at our end as applicants.

We concur with Councils calculations as follows:

Lot 1

Gross floor area = 264.99sqm  
Site area = 430sqm  
FSR = 0.616 (2.7% exceedance)

Lot 2

Gross floor area = 291.92sqm  
Site area = 434.78sqm  
FSR = 0.671 (11.90% exceedance)

In this regard, we submit that whilst the numerical differences identified have resulted in the amendments to the Clause 4.6 request, the methodology of the analysis remains valid. Much of the Clause 4.6 Variation document before Council is unchanged as we stand by our merit based assessment and observations of the sites and their functionality.

We remain in favour of Council endorsing the variation and the subsequent subdivision application and continue to seek approval.

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### Clause 4.6 Request for Variation to the Development Standard

#### Introduction

This clause 4.6 variation request has been prepared by MHD Planning on behalf of Christin Padilla. It is submitted to Liverpool Council (the Council) in support of a development application (DA) for the subdivision of 1 Strzlecki Drive Horningsea Park (the site).

Clause 4.6 of the Liverpool LEP 2008 enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for, and from, development. This Clause 4.6 variation request has been prepared to address the variation to the development standard for maximum floor space ratio under Clause 4.4 of the Liverpool LEP 2008.

Clause 4.4 specifies a maximum floor space ratio of 0.6:1. Lot 1 provides a GFA of 264.99m<sup>2</sup> which equates to a floor space ratio of 0.616:1 a variation to the standard of 2.7%. (Refer to Figure 1) Lot 2 provides a GFA of 291.92m<sup>2</sup> which equates to a floor space ratio of 0.671:1 a variation to the standard of 11.9%. (Refer to Figure 2)

A unique site-specific analysis has been undertaken throughout the revision of this project to determine appropriate responses to site constraints which result in both allotments having the ability to deliver dwellings consistent with the plan with permissible dimensions and responses to underlying objectives.



Figure 1: GFA Calculated as per Definition, Lot 1

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Figure 2: GFA Calculated as per Definition, Lot 2

### Summary of Variation Request

This variation request demonstrates that compliance with the maximum floor space ratio development standard of the Liverpool LEP 2008 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

Notwithstanding the variation to the maximum floor space ratio development standard, the proposed development:

- Achieves the objectives of clause 4.4 of the Liverpool LEP 2008 by showing consistency with the relevant elements of the following objectives:
  - (a) Establishing standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,
  - (b) To control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,
  - (c) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,
  - (d) To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,
  - (e) To provide an appropriate correlation between the size of a site and the extent of any development on that site,
  - (f) To facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.



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- Is in the public interest as it is consistent with the objectives of both the development standard and the R2 low density residential zone and will ensure the long-term conservation and revitalisation of the site.
- Is consistent with the Greater Sydney Regional Plan, the District Plan and the Liverpool Council strategic planning policies and does not raise any matter of significance for State or regional planning.

In light of the above, the consent authority can be satisfied that there is sufficient justification for the variation to the maximum floor space ratio development standard, as proposed in accordance with the flexibility allowed under Clause 4.6 of the Liverpool LEP 2008.

### Development Standard to be Varied Is the Planning Control in Question a Development Standard?

The maximum floor space ratio in clause 4.4 of the Liverpool LEP 2008 is a development standard.

### Relevant Development Standard

This written variation request made under clause 4.6 seeks to justify a proposed contravention of the maximum floor space ratio development standard set out in the Liverpool LEP 2008. Justification for Contravention of the Development Standard Clause 4.6(3) of the Liverpool LEP 2008 provides that:

#### 4.6 Exceptions to development standards

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

Furthermore, clause 4.6(4)(a) of the Liverpool LEP 2008 provides that:

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) The consent authority is satisfied that:
  - (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) The concurrence of the Secretary has been obtained.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council [2007] NSW LEC 827.*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action).*
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*

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### Role of the consent authority

The role of the consent authority in considering this written request for a Clause 4.6 variation has been recently explained by the NSW Court of Appeal in *Initial Action and in Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- *That the applicant's request has adequately addressed the matters in in clause 4.6(4)(a)(i).*
- *That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.*

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach the required level of satisfaction. The relevant matters contained in Clause 4.6 of the Liverpool LEP 2008, with respect to the maximum floor space ratio development standard, are each addressed below, including with regard to the above decisions.

### Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, *Preston CJ of the Land and Environment Court* provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class, i.e. there may be other ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of recently repealed SEPP 1 (*see Four2Five at [61] and [62]; Initial Action at [16]*).

As the language used in subclause 4.6(3)(a) of the Liverpool LEP 2008 is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five-part test outlined in *Wehbe* are:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

## MHD Planning and Development

### *Urban and Regional Town Planning*

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the maximum floor space ratio development standard are achieved notwithstanding the non-compliance with the standard.

#### The underlying objectives or purposes of the development standard

The relevant objectives of the development standard contained in Clause 4.4 of the Liverpool LEP 2008 are:

#### Relevant Objective

*(a) To establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*

#### Response

The proposed paper subdivision has no physical impact upon development density and the interaction of the existing development with infrastructure and generation of vehicle and pedestrian traffic. The subdivisions allows the site to maintain its current level of patronage of existing infrastructure.

#### Relevant Objective

*(b) To control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*

#### Response

The desired future character and building bulk has been assessed during the proposed buildings inception during 20001. The subdivision makes no alteration to the physical buildings interaction with the controls plans and policies of council that underly the numerical requirements.

#### Relevant Objective

*(c) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

#### Response

The proposals response to this objective remains consistent notwithstanding the proposed subdivision.

#### Relevant Objective

*(d) To maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*

#### Response

This development is recently approved, it is not considered that the building is "new" or the area is undergoing change. No further investigation is required in this regard.

#### Relevant Objective

*(e) To provide an appropriate correlation between the size of a site and the extent of any development on that site,*

#### Response

The correlation of the building on site and the relationship with the available land remains unchanged.

#### Relevant Objective

*(f) To facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

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### Response

This objective is not applicable to the proposal.

The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

This written request adequately and comprehensively addresses the matters required to be demonstrated by subclause (3).

In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action at [27]*, it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

### Consistency

Case law consistency has been defined throughout case law including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council [2008] NSWLEC 190*
- *Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21*
- *Raissy v Randwick City Council [2019] NSWLEC 1040*
- *Abrams v Council of Liverpool [2018] NSWLEC 1648*
- *Kingsland Developments v Parramatta Council [2018] NSWLEC 1241*
- *Dem Gillespies v Warringah Council (2002) 124 LGERA 147*

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible "or "capable of existing together in harmony"(Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21*). Whichever interpretation is adopted the test of "consistency ", is less onerous than that of "achievement ".

### Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum floor space ratio development standard, for the reasons discussed in this report.

### Consistency with objectives of the zone

The proposed development is consistent with the relevant objectives of the R2 Low Density Residential Zone, as follows:

#### Objective

*To provide for the housing needs of the community within a low density residential environment.*

### Response

The physical density of the built form remains as is, despite the alteration of the numerical measures. The low density environment is maintained by the proposal.

#### Objective

*To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

### Response

This objective is not applicable to the proposal.

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### Objective

*To provide a suitable low scale residential character commensurate with a low dwelling density.*

### Response

The low scale character of the long-stading development will not be altered by the proposal.

### Objective

*To ensure that a high level of residential amenity is achieved and maintained.*

### Response

The residential amenity is not impacted upon by the paper subdivision.

It can be reasonably argued that in the current housing climate, it would be both in the public benefit and in direct response to the needs of the community, to look upon this proposal favourably, particularly considering both sites resulting from the proposal may be developed in accordance with the relevant plans.

On balance, the variation in maximum floor space ratio would be considered to be outweighed by the public benefit and addition to housing supply, resulting in an appropriate and balanced planning outcome.

### Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters: (5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

These matters are addressed in detail below.

### Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum floor space ratio development standard does not raise any matter of significance for State or regional planning. As relevant to State and regional planning, the proposal is consistent with the Greater Sydney Regional Plan – A Metropolis of three Cities in that it:

- Contributes to the longevity of the site overall as a residential land use and increases housing opportunity.

### The public benefit of maintaining the development standard

As outlined above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

There is evidence in the existing built form generally in the area and the street specifically, that the allotments will not become atypical if there interaction with the locale. Any reasonable development

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that delivers the additional dwelling to housing stock, and in turn public benefits, can be also understood to contravene the standard.

As the proposal provides additional housing opportunity at a time when housing diversity and demand is at an all-time high the proposed variation is in the public interest and necessary.

Any other matters required to be taken into consideration by the Director General before granting concurrence.

There are no other matters required to be taken into consideration.

### Conclusion

The preceding assessment demonstrates that compliance with the maximum floor space ratio development standard contained in Clause 4.4 of the Liverpool LEP 2008 is unreasonable and unnecessary in the circumstances of the case and that the variation is well founded. It is considered that the variation allows for the orderly and economic use of the land and the ability to provide a development that is in accordance with the relevant plans, in an appropriate manner, while also allowing for a positive outcome in planning terms.

As outlined in this written variation request, there is an absence of any significant or unreasonable impacts and the proposal will deliver benefit in accordance with the Liverpool Councils strategic planning framework. The proposed development therefore fulfils Council's vision for the precinct as a residential locale. Thus, the consent authority can be satisfied that there is sufficient justification for the variation to the minimum allotment size development standard as proposed in accordance with the flexibility allowed under Clause 4.6 of the Liverpool LEP 2008.

Thankyou

Mitchell Drake  
Town Planner B.Sc. M.U.R.P. A.D.M.

**REPORT ATTACHMENT 3 – CONDITIONS OF APPROVAL**

Council has imposed the following conditions under the relevant planning instruments and policies.

**A. THE DEVELOPMENT**

**Approved Plans**

1. Development the subject of this determination notice must be carried out in strictly accordance with the following plans/reports marked as follows, except where modified by the undermentioned conditions:
  - (a) Architectural Plans as prepared by Landdev Engineering Consulting, as follows
    - i) Proposed Plan of Subdivision, Dated 29/07/2021, Sheet 1 of 1, Issue A.

**Compliance with Legislative Requirements**

2. The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of 'on-the-spot' penalty infringements or service of a notice and order by Council.

**Works at no cost to Council**

3. All roadworks, drainage works and dedications, required to affect the consented development shall be undertaken at no cost to Liverpool City Council.

**B. PRIOR TO WORKS COMMENCING**

**The following conditions are to be complied with or addressed prior to works commencing on the subject site/s:**

**Demolition of Existing Shed**

4. Prior to works commencing a Demolition Plan shall be submitted to and approved by the Team Leader Development Assessment of Liverpool City Council demonstrating the removal of the existing shed located within the proposed easement to drain water.
5. Prior to works commencing a Waste Management Plan is to be submitted to and approved by the Team Leader Development Assessment of Liverpool City Council. The Waste Management Plan is to be in accordance with the provisions of the Liverpool Development Control Plan and is to include the demolition phase of the development.

**Fee Payments**

6. Unless otherwise prescribed by this consent, all relevant fees or charges must be paid. Where Council does not collect these payments, copies of receipts must be provided. For

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the calculation of payments such as Long Service Levy, the payment must be based on the value specified with the Development Application/Construction Certificate.

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery.
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve.
- (c) Long Service Levy – based on 0.35% of the cost of building work where the costing of the CC is \$25,000 or more.

**“DIAL BEFORE YOU DIG” DIAL 1100**

7. Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets.

It is the individual’s responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

**Sediment & Erosion Control**

8. Prior to works commencing sediment and erosion control measures shall be installed to ensure compliance with the Protection of the Environment Operations Act 1997 and Landcom’s publication “Managing Urban Stormwater – Soils and Construction (2004)” – also known as “The Blue Book”.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

**Demolition**

9. Prior to demolition the existing building(s) on the land must be investigated for the presence of asbestos. All asbestos must be removed and disposed of in accordance with all regulatory requirements, including those of WorkCover NSW and the Environment Protection Authority.
10. Demolition works shall be carried out in accordance with the following:
  - (a) Prior to the commencement of any works on the land, a detailed demolition work plan designed in accordance with the Australian Standard AS 2601-2001 – The Demolition of Structures, prepared by a suitably qualified person with suitable expertise or experience, shall be submitted to Council and shall include the identification of any hazardous materials, method of demolition, precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials,



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- (b) Prior to commencement of any works on the land, the demolition Contractor(s) license details must be provided to Council, and
- (c) The handling or removal of any asbestos product from the building/site must be carried out by a NSW Work Cover licensed contractor irrespective of the size or nature of the works. Under no circumstances shall any asbestos on site be handled or removed by a non-licensed person. The licensed contractor shall carry out all works in accordance with NSW Work Cover requirements.

**Site Facilities**

- 11. Adequate refuse disposal methods and builders' storage facilities shall be installed on the site. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.

**Site Notice Board**

- 12. A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign is to be maintained during work and removed at the completion of work. The sign must state:
  - (a) The name, address and telephone number of the principal certifying authority for the work; and
  - (b) The name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - (c) Unauthorised entry to the premises is prohibited.

**C. DURING DEMOLITION WORKS**

**The following conditions are to be complied with or addressed during demolition works:**

**Hours of Work and Deliveries**

- 13. Construction work/civil work/demolition work, including the delivery of materials, is only permitted on the site between the hours of 7:00am to 6:00pm Monday to Friday and 8:00am to 1:00pm on Saturday. No work will be permitted on Sundays or Public Holidays, unless otherwise approved by Council.

**Security Fence**

- 14. A temporary security fence to WorkCover Authority requirements is to be provided to the property during the course of construction.

Note. Fencing is not to be located on Council's reserve area.

**Demolition Work**

- 15. All demolition work is to be carried out in accordance with the requirements of AS 2601. Demolition is to be carried out strictly in accordance with the approved procedures and work plan.

**Aboriginal Relics/Artefacts**

16. If any Aboriginal relics/artefacts are uncovered during the course of any construction works including demolition, work is to cease immediately. Government agencies shall be contacted, and no further work shall be undertaken until relevant assessments/approvals/salvage excavation has been undertaken and permission is given by the relevant authorities to re commence works.

**General Site Works**

17. All dangerous and/or hazardous material shall be removed by a suitably qualified and experienced contractor, licensed by SafeWork NSW. The removal of such material shall be carried out in accordance with the requirements of SafeWork NSW. The material shall be transported and disposed of in accordance with NSW Environment Protection Authority requirements.
18. Adequate soil and sediment control measures shall be installed and maintained. Furthermore, suitable site practices shall be adopted to ensure that only clean and unpolluted waters are permitted to enter Council's stormwater drainage system during /demolition. Measures must include, as a minimum:
  - (a) Siltation fencing;
  - (b) Protection of the public stormwater system; and
  - (c) Site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

**Air Quality**

19. Dust screens shall be erected and maintained in good repair around the perimeter of the subject land during demolition works.
20. All vehicles involved in the demolition process departing from the property shall have their loads fully covered before entering the public roadway.

**Waste Management Plan**

21. The Waste Management Plan submitted to and approved by Council must be adhered to at all times throughout all stages of the development. Supporting documentation (receipts/dockets) of waste/recycling/disposal methods carried out, is to be kept and must be produced upon the request of Council or any other authorised officer.

*Note: Any non-compliance with this requirement will result in penalties being issued.*

**Water Quality**

22. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface.

**Notification of Damage**

23. The applicant/ builder shall be responsible to report to the Council any damage to Council's footpath and road carriageway as a consequence of demolition delivery/ departure of materials associated with this site. The damage shall be reported to Council as soon as the damage becomes apparent to the builder/ site manager. Arrangements

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to the satisfaction of Council are to be made for making safe by temporary repairs to the public way until permanent restoration and repair can be organised with Council.

**D. PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

**The following conditions are to be complied with or addressed prior to issue of the subdivision certificate:**

**Linen Plans and 88B Instruments**

24. In order to enable a Subdivision Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of subdivision and one (1) original and two (2) copies of the proposed 88b instrument (where proposed).
25. The applicant shall pay the standard fee for purpose of subdivision certificate administration of plan checking and release.
26. The final plan of subdivision must be supported by an 88B Instrument, approved by Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Council's standards, codes and policies. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.
27. Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as scheduled in Council's Design Specification for Subdivisions (as amended).
28. Correct notation concerning easements is required. The prepared 88B Instrument should be forwarded initially to Council. The land value of the easement and costs associated with checking the instrument are to be borne by the applicant. Part 2 of the 88B Instrument shall contain a provision that the easement may not be extinguished or altered without the written consent of Council.

**S68 Local Government Act – Stormwater drainage works**

29. Prior to the issue of a Subdivision Certificate, an application under S68 of the Local Government Act, including the payment of application and inspection fees, shall be lodged with, and approved by Liverpool City Council for the construction of an inter-allotment drainage pit for proposed Lot 2.

Engineering concept plans are to be prepared in accordance with Liverpool City Councils Design Guidelines and Construction Specification for Civil Works.

30. Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all works associated with the S68 Local Government Act approval have been inspected and signed off by Liverpool City Council.

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**Service Providers**

31. The following documentation is to be provided prior to the release of the subdivision certificate:

- (a) Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a Subdivision Certificate.

Council will not issue a Subdivision Certificate unless the method of sewerage disposal is by gravity reticulation mains to either Sydney Water branch and trunk sewers or Sydney Water point of treatment. Council will not accept any temporary facilities to service the site, including pump-out wet-wells.

- (b) Notification of arrangement for the development from Endeavour Energy shall be submitted to Council.

- (c) Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with:

- i) The requirements of the Telecommunications Act 1997;
- ii) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- iii) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connections of optic fibre technology telecommunications.

**E. ADVISORY**

- a) Sections 8.2, 8.3, 8.4 & 8.5 of the Environmental Planning and Assessment Act 1979 allow you to request the consent authority to review this determination notice if you are dissatisfied with it or the conditions contained within this determination notice. This right must be exercised within six (6) months from the date of this notice with the appropriate fee.

- b) Under Sections 8.7 & 8.10 of the Environmental Planning and Assessment Act 1979 applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice of determination.

- c) In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within five years of the date of this notice.

- d) To confirm the date upon which this consent becomes effective, refer to Section 4.20 of the Environmental Planning and Assessment Act, 1979. Generally, the consent becomes effective from the determination date shown on the front of this notice. However, if unsure applicants should rely on their own enquiries.

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- e) To confirm the likelihood of consent lapsing, refer to Section 4.53 of the Act. Generally, consent lapses if the development is not commenced within five years of the date of approval. However, if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.
- f) In accordance with Sections 8.8 and 8.10 of the Environmental Planning and Assessment Act 1979, an objector who is dissatisfied with the determination of a consent authority to grant consent to a Development Application for Designated Development (including Designated Development that is Integrated Development), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court.
- g) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the developer should investigate their liability under the Act.
- h) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regard to the operation of the building.
- i) "DIAL BEFORE YOU DIG"

Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

- j) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

- k) The Liverpool City Council Local Government area soils and ground water may be subject to varying levels of Salinity. Whilst Council may require applicants to obtain Salinity reports relating to some developments, no assessment may be made by Council in that regard. Soil and ground water salinity levels can change over time due to varying factors. It is recommended that all applicants make their own independent inquiries as to appropriate protection against the current and future potential effect of Salinity to ensure the ongoing structural integrity of any work undertaken. Liverpool City Council will not accept any liability for damage occurring to any construction of any type affected by soil and or ground water Salinity.

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- l) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.
- m) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for letter box positioning and dimensions.
- n) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

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<b>Item no:</b>	2
<b>Application Number:</b>	DA-113/2020/B
<b>Proposed Development:</b>	Modification to DA-113/2020 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification seeks the removal and addition of windows, alterations to the façade, the re-arrangement of the internal layout for Unit 1 kitchen and provision of solar panels.
<b>Property Address</b>	9 Kalimna Street, Moorebank
<b>Legal Description:</b>	Lot 627 DP 242697
<b>Zoning</b>	R3 Medium Density Residential under the Liverpool Local Environmental Plan 2008
<b>Applicant:</b>	Mr S Darwich
<b>Land Owner:</b>	Mr W Manoun
<b>Date Lodged:</b>	10 August 2021
<b>Cost of Works:</b>	N/A
<b>Recommendation:</b>	Approval subject to conditions of consent
<b>Assessing Officer:</b>	Mairead Hawes – The Planning Hub - Consultant Town Planner

## **2. EXECUTIVE SUMMARY**

Council has received a Section 4.55(2) Modification Application to DA-113/2020 which approved the demolition of existing structures and the construction of multi storey dwelling housing development consisting of four (4) two (2) storey dwellings and four lot Strata Title subdivision at Lot 627, DP 242697, 9 Kalimna Street, Moorebank.

The proposed modification pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks the removal and addition of windows, alterations to the façade, and the re-arrangement of the internal layout for Unit 1 kitchen

The site is R3 Medium Density Residential under the Liverpool Local Environmental Plan 2008. The proposed modification is permissible with consent pursuant *Section 4.55(2) of the Environmental Planning and Assessment (EP&A) Act 1979*. The application has been considered to be of minimal environmental impact and substantially the same development as originally approved.

The development application was not required to be notified in accordance with Liverpool Community Participation Plan 2019 as the works involve minimal environmental impact.

A site inspection was undertaken where it was noted that the works proposed under the subject modification application have already been undertaken onsite which was subsequently

confirmed by the applicant. On that basis the subject application is seeking approval for the use of the proposed modification works and a condition has been included in the recommended conditions of consent requiring a Building Information Certificate for the modification works completed onsite prior to the issue of the Occupation Certificate.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 30 June 2020*, as the development falls into the category of conflict of interest.

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment (EP&A) Act 1979. Based on the assessment of the application, it is recommended that the application be approved, subject to the imposition of conditions.

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The Locality

The area is characterised by low and medium density residential development. Properties on the north side of Kalimna Street support single dwellings of both one and two storey height. Properties to the south support low density properties with medium density developments emerging throughout the locality in Ikara Crescent, Ingoola Close, Nuwarra Road and beyond.

The site is located within 400m to the intersection with Newbridge Road to the north and 400m to Maddecks Avenue to the south. The site is located within 800m of the Moorebank Shopping Complex. The site is located within 4km to the Liverpool Railway Station and Bus Interchange.

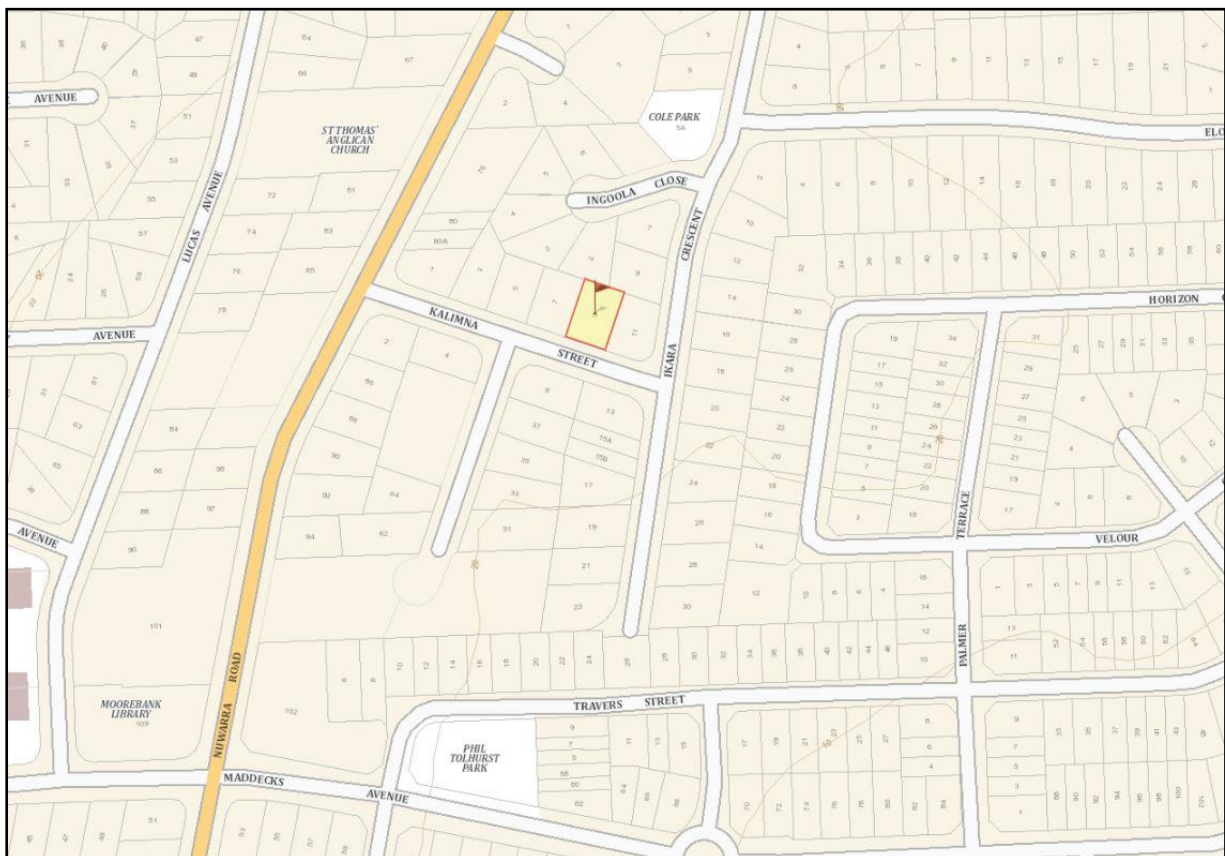


Figure 1: Locality view (Source: Sixmaps)



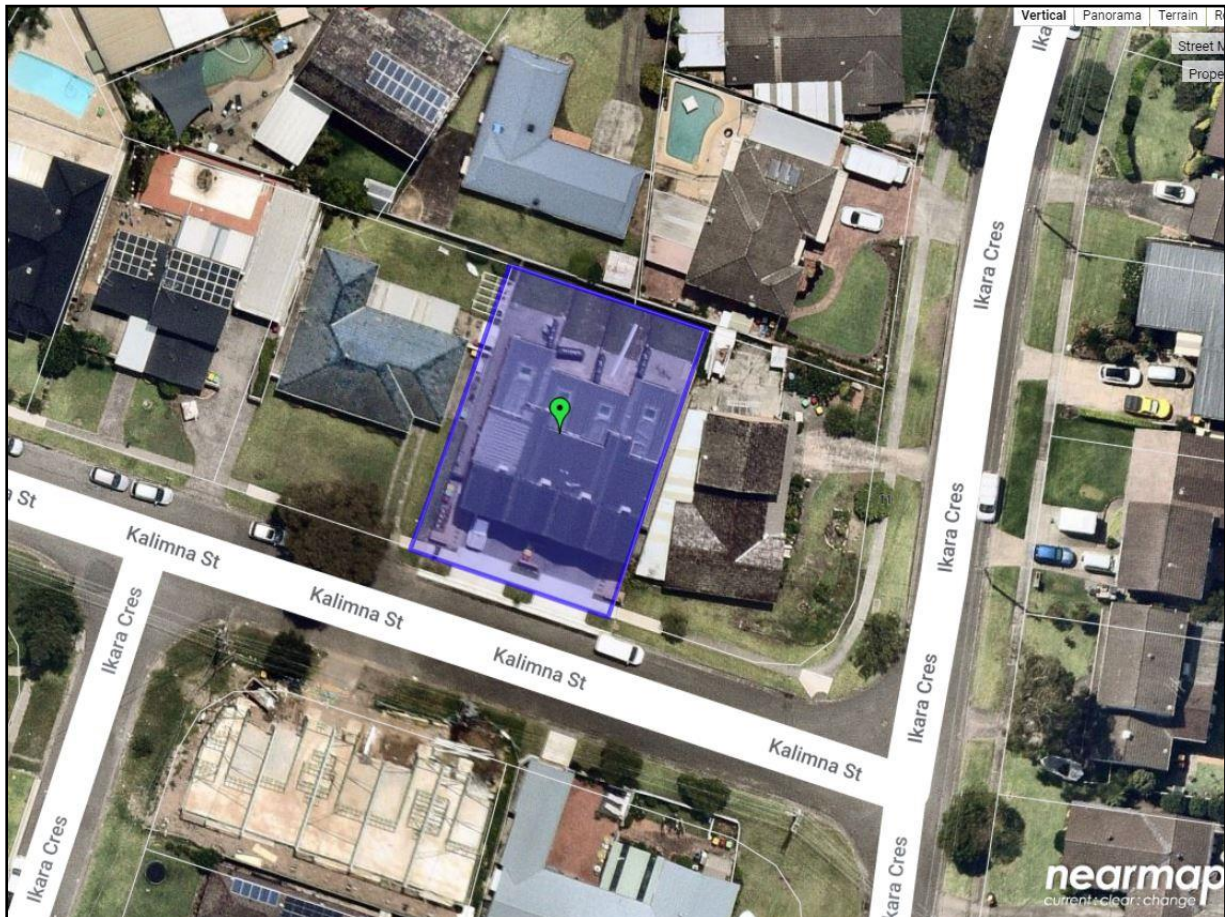
The adjoining properties to the development site are detailed in the following table.

<b>ORIENTATION</b>	<b>DESCRIPTION OF SITE</b>
North (rear)	2 Ingoola Close, Moorebank – Single Storey Detached Dwelling
South (front)	6 Kalimna Street, Moorebank – Single Storey Detached Dwelling
East (side)	11 Kalimna Street, Moorebank – Single Storey Detached Dwelling
West (side)	7 Kalimna Street, Moorebank – Single Storey Detached Dwelling

## 2.2 The site

The subject site is identified as Lot 627 in DP 242697 and is known as 9 Kalimna Street, Moorebank. It is regular in shape with a frontage of 21.54 metres to Kalimna Street, and a depth of 31.09m, with a total area of 663.9m<sup>2</sup>.

The site is a flat parcel of land with fall from the rear to the street of approximately 500mm across the depth of the site. The works approved under DA-113/2020 have commenced onsite.



**Figure 2:** Aerial view of the site (Source: Nearthmap)

### **3. BACKGROUND/HISTORY**

- DA/113/2020 was approved by the Local Planning Panel on 31 August 2020 for the demolition of existing structures and construction of a multi dwelling development consisting of four (4) dwellings and strata subdivision.
- The subject modification application was lodged with Council on 10 August 2021.
- The application was referred to The Planning Hub for Assessment on 23 February 2022 due to pecuniary interests identified in the development application form.
- A site inspection was undertaken where it was noted that the works proposed under the subject modification application have already been undertaken onsite which was subsequently confirmed by the applicant. On that basis the subject application is seeking approval for the use of the proposed modification works and a condition has been included in the recommended conditions of consent requiring a Building Information Certificate for the modification works completed onsite prior to the issue of the Occupation Certificate.

### **4. DETAILS OF THE PROPOSAL**

The application seeks development consent for a Section 4.55(2) Modification to DA-113/2020 for the removal and addition of windows, alterations to the façade, the re-arrangement of the internal layout for Unit 1 kitchen and the provision of solar panels at the site 9 Kalimna Street, Moorebank.

Specifically, the modifications consist of the following:

#### Ground Floor

- Addition of two windows to the West Elevation;
- Addition of two windows to the East Elevation;
- Amendment to the size of the sliding doors at the rear of each unit;
- Amended layout of kitchen in Unit 1.

#### First Floor

- Removal of windows from the front of each unit;
- Amendment to the size of the sliding doors of each unit;
- Amendment of the window size and type on the east and west elevations; and
- Addition of partially frosted fixed windows within the stairways of each unit.

#### Roof

- Addition of photovoltaic system on the roof of Unit 1 and 4; and
- Roof feature on Unit 3 changed to a pitched roof for structural purposes to avoid water leakage issues as a box gutter cannot be placed in the middle.

The development as modified is substantially the same development as approved and there are no adverse impacts as a result of those changes on the public domain or adjoining developments.

The proposed modification works have already been undertaken onsite. On that basis the subject application is seeking approval for the use of the proposed modification works and a condition has been included in the recommended conditions of consent requiring a Building

Information Certificate for the modification works completed onsite prior to the issue of the Occupation Certificate.



Figure 3: Approved Streetscape and Rear Elevations (Source: Campbell Hill Group)

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Figure 4: Streetscape and Rear Elevations as proposed to be modified (Source: Campbell Hill Group)

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West Elevation



East Elevation

Figure 5: Approved East and West Elevations (Source: Campbell Hill Group)



Figure 6: Proposed East and West Elevations (Source: Campbell Hill Group)

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

The relevant planning instruments/policies applicable to the proposed development are as follows:

- e) State Environmental Planning Policy (Resilience and Hazards) 2021;
- f) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- g) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- h) Liverpool Local Environmental Plan (LEP) 2008
- i) Liverpool Development Control Plan (DCP) 2008.

### Other Plans

- Liverpool Community Participation Plan 2019.

## **6. ASSESSMENT**

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 Evaluation of the *EP&A 1979* and the *Environmental Planning and Assessment Regulation 2000*, as follows:

### **6.1 Section 4.55 – Modifications of Consent-Generally**

The following is an assessment of the modification against the relevant section of the Environmental Planning and Assessment Act 1979:

**(2) Other Modifications** - *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) it is satisfied 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 before that consent as originally granted was modified (if at all), and*

#### **Planners Comments:**

The development as modified has been considered to be substantially the same development as originally approved in DA-113/2020. The modifications proposed include:

- Changes to external façade materials and finishes.
- Removal and addition of windows on all facades.
- Reconfiguration of internal layout of Unit 1 kitchen.
- Reconfiguration of sliding doors.
- Amended roof design; and
- Provision of solar panels.

The development as modified is a consistent bulk, scale and mass as originally approved and does not involve any changes to the size or number of units proposed. The development as modified is therefore considered to be substantially the same as originally approved.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

#### **Planners Comments:**

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 30 June 2020*, as the development falls into the category of conflict of interest.

- (c) it has notified the application in accordance with—*

- (ii) the regulations, if the regulations so require, or*

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*(iii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

**Planners Comments:**

The development application was not required to be notified in accordance with Liverpool Community Participation Plan 2019 as the works involve minimal environmental impact.

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

**Planners Comments:**

As noted, the development application was not required to be notified in accordance with Liverpool Community Participation Plan 2019 as the works involve minimal environmental impact. Nevertheless, no submissions have been received.

*(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

**Planners Comments:**

An assessment of the development as modified against Section 4.15 of the Act is provided in this report. The assessment has found that the proposed modification remains consistent with Section 4.15 of the Act and warrants favourable consideration.

*(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

**Planners Comments:**

Noted. The development as modified remains substantially the same as approved under DA-113/2020 and as previously modified under DA-113/2020/A.

**6.2 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument**

**(a) State Environmental Planning Policy (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of land**

Pursuant to Clause 4.6 of Chapter 4 of SEPP (Resilience and Hazards) 2021, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.



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The objective of Chapter 4 of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The subject site was deemed suitable for the intended development under DA-113/2020. The proposed development remains substantially the same development and further investigation is deemed not to be necessary.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The land was deemed suitable for the proposed development under DA-113/2020. Considering the development remains substantially the same, the site is deemed suitable for the intended modification.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	As above, the land does not require remediation.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of Chapter 4.6 of SEPP (Resilience and Hazards) 2021, therefore, it is considered that the subject site remains suitable for the proposed development.

**(b) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less portable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for houses and units.

A revised BASIX Certificate has been submitted for the proposed modified development.

Accordingly, the development, as proposed to be modified, is considered to be satisfactory with regard to water and energy efficiency and thermal comfort.

**(C) State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 11 – Georges River Catchment

The subject land is located within the Georges River Catchment and as such Chapter 11 of SEPP (Biodiversity and Conservation) 2021 applies to the application.



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**(iv) Objectives of the zone**

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained*

The development as modified continues to be consistent with the objectives of the zone in that it provides for the housing needs of the community within a medium density residential environment.

The amended design under this Section 4.55(2) modification application provides a suitable visual transition between the high density development located in the R4 zoned land opposite the site in Kalimna Street and the low density developments of surrounding properties. This is achieved in the spatial arrangement of the site, the two storey height, and the contemporary design.

**(v) Principal Development Standards**

LLEP 2008 contains a number of principal development standards which are relevant to the proposal, as detailed below.

Development Provision	Requirement	Proposed	Complies
<b>Part 4 Principal Development Standards</b>			
4.3 Height of Building	8.5m	The development as modified does not propose any changes to the height of the building approved under DA-113/2020.	<b>Yes</b>
4.4 Floor Space Ratio	0.5:1 per Clause 4.4(2) of LLEP 2008; PLUS 0.05:1 per Clause 4.4(2A) TOTAL = 0.55:1	The development as modified does not propose any changes to the FSR of the building approved under DA-113/2020.	<b>Yes</b>

As demonstrated in the above compliance table, the development as proposed to be modified is consistent with the provisions of LLEP 2008.

**6.3 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument**

There are no draft Environmental Planning Instruments which apply to the development.

**6.4 Section 4.15(1)(a)(iii) - Any Development Control Plan**

**(a) Liverpool Development Control Plan 2008**

The application has been considered against the controls contained in the Liverpool DCP 2008. Due to the minor nature of the proposed modifications the development as modified remains consistent with the relevant provisions of the Liverpool DCP 2008.

The proposed modifications comprise the following works:

- Changes to external façade materials and finishes.
- Removal and addition of windows on all facades.
- Reconfiguration of internal layout of Unit 1 kitchen.
- Reconfiguration of sliding doors.
- Amended roof design; and
- Provision of solar panels.

No changes are proposed to the siting, height, bulk, scale or size of the approved dwellings. On that basis only an assessment of the provisions of the Liverpool DCP 2008 relevant to the proposed modifications has been provided in **Attachment 1** of this report.

The development as modified is found to be consistent with the development as originally approved and the key controls of the Liverpool DCP 2008

**6.5 Section 4.15(1)(a)(iiia) - Planning Agreements**

There are no Planning Agreements which apply to the development.

**6.6 Section 4.15(1)(a)(iv) - The Regulations**

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the BCA and the Safety standards for demolition (AS 2601 – 2001). Accordingly, appropriate conditions of consent will be imposed.

**6.7 Section 4.15(1)(b) - The Likely Impacts of the Development**

**Natural Environment and Built Environment**

The development as modified is considered to be of an appropriate bulk and scale that is consistent with the desired future character for the R3 Medium Density Residential zone. The proposed development will facilitate residential development that achieves the desired future built character of the locality.

It is considered that the proposed development has been designed with sufficient regard to surrounding properties to ensure that any adverse amenity impact is minimised and that the character of the locality is compatible with the envisaged built form.

### **Social Impacts and Economic Impacts**

The development, as proposed to be modified, will continue to provide a positive economic impact in the locality through the capital investment value of the development. The proposal is unlikely to generate any identifiable detrimental social impacts.

#### **6.8 Section 4.15(1)(c) - The Suitability of the Site for the Development**

The development as modified complies with the relevant planning controls and the site is considered to be suitable for the proposed development.

#### **6.9 Section 4.15(1)(d) - Any submissions made in accordance with the Act or the Regulations**

The development application was not required to be notified in accordance with Liverpool Community Participation Plan 2019 as the works involve minimal environmental impact.

#### **6.10 Section 4.15(1)(e) - The Public Interest**

The proposed development as modified is considered to be in the public interest.

### **7. CONCLUSION**

The application has been assessed having regard to the provisions of Section 4.55(2) and Section 4.15 of the EP&A Act 1979, the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, Liverpool Local Environmental Plan 2008, Liverpool Environmental Planning Plan 2008, and the relevant codes and policies of Council.

The proposed development is unlikely to result in any adverse impact upon neighbouring properties and the locality.

Based on the assessment of the application, it is recommended that the application be approved subject to the imposition of conditions.

### **9. RECOMMENDATION**

That Modification Application DA-113/2020/B for the removal and addition of windows, alterations to the façade, the re-arrangement of the internal layout for Unit 1 kitchen and provision of solar panels be approved subject to conditions of consent.

### **10. ATTACHMENTS**

- 1. LIVERPOOL DCP COMPLIANCE TABLE**
- 2. RECOMMENDED CONDITIONS OF APPROVAL**
- 3. PLANS OF PROPOSAL**

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**ATTACHMENT 1 – LIVERPOOL DCP COMPLIANCE TABLE**

<b>Part 1 – General Controls for All Development</b>		
<b>Development Control</b>	<b>Provisions</b>	<b>Complies</b>
<b>Section 22 &amp; Section 23: Water Conservation and Energy Conservation</b>	New dwellings, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	Yes. Proposed development has provided a BASIX Certificate which meets the required Water Efficiency target. Proposed development has provided a BASIX Certificate which meets the required Energy Efficiency and Thermal Comfort targets.
<b>Part 3.6 - Multi Dwelling Housing in the R3 and R4 zone</b>		
<b>Section 10: Amenity and Environmental Impact</b>	<p>Building siting, window location, balconies and fencing should take account of the importance of the privacy of on site and adjoining buildings and outdoor spaces.</p> <p>Windows to habitable rooms should be located so they do not overlook such windows in adjoining properties, other dwellings within the development or areas of private open space.</p>	<p>Yes. The new proposed windows have been sited and designed with regard to the privacy on site and adjoining buildings and outdoor spaces.</p> <p>Yes. The proposed windows have been sited and designed to avoid overlooking such windows in adjoining properties, other dwellings within the development or areas of private open space.</p>

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**ATTACHMENT 2 – RECOMMENDED CONDITIONS OF APPROVAL**

Council has imposed the following conditions under the relevant planning instruments and policies.

**A. THE DEVELOPMENT**

**Approved Plans**

1. Development the subject of this determination notice must be carried out strictly in accordance with the following plans/reports marked as follows:

**Plans**

<b>Title</b>	<b>Plan No.</b>	<b>Revision</b>	<b>Dated</b>	<b>Prepared by</b>
Front perspective – Schedule of Finishes (only),	Drawing No: 01	-	20.05.2021	Campbell Hill Group Pty Ltd
Site Plan	Drawing No: 02	-	20.05.2021	Campbell Hill Group Pty Ltd
Subdivision Plan	Drawing No: 05	-	20.05.2021	Campbell Hill Group Pty Ltd
Sediment Control Plan	Drawing No: 06	-	20.05.2021	Campbell Hill Group Pty Ltd
Streetscape	Drawing No: 07	-	20.05.2021	Campbell Hill Group Pty Ltd
Sun Study	Drawing No: 07	-	20.05.2021	Campbell Hill Group Pty Ltd
Site Analysis Plan	Drawing No: 09	-	20.05.2021	Campbell Hill Group Pty Ltd
Demolition Plan	Drawing No: 10	-	20.05.2021	Campbell Hill Group Pty Ltd
Ground Floor	Drawing No: 11	-	20.05.2021	Campbell Hill Group Pty Ltd
First Floor	Drawing No: 12	-	20.05.2021	Campbell Hill Group Pty Ltd
Elevations (South & North)	Drawing No: 13	-	20.05.2021	Campbell Hill Group Pty Ltd
Elevations (East & West)	Drawing No: 14	-	20.05.2021	Campbell Hill Group Pty Ltd
Sections	Drawing No: 15	-	20.05.2021	Campbell Hill Group Pty Ltd
Roof Plan	Drawing No: 16	-	20.05.2021	Campbell Hill Group Pty Ltd
Waste Management Plan	-	-	15 July 2020	Campbell Hill Group Pty Ltd
BASIX Certificate	Certificate number: 1069049S_04	-	20.05.2021	Issa Darwich
BASIX Certificate	Certificate	-	20.05.2021	Issa Darwich

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	number: 1069059S_03			
BASIX Certificate	Certificate number: 1069062S_03	-	20.05.2021	Issa Darwich
BASIX Certificate	Certificate number: 1069063s_04	-	20.05.2021	Issa Darwich

The Landscape Plan Prepared By: Bluegum Design Solutions, Dated: 20/01/2020 submitted with DA-113/2020 is not approved as part of this determination.

## **2. Amended Plans**

a) The Landscape Plan Prepared By: Bluegum Design Solutions, Dated: 20/01/2020 submitted with DA-113/2020 is not approved as part of this determination. Prior to the issue of CC, a comprehensive landscape plan prepared by a qualified landscape architect is to be prepared. The landscape plan must:

- i. Reflect the approved building footprint as amended and detailed on Sheet 02.
- ii. Replacement street tree planting located centrally within the road reserve. Trees shall not be planted within 2000mm from a driveway, 1000mm from underground services or 6000mm from an intersecting side street. Trees shall be staked, tied and mulched to Council's satisfaction. The replacement planting will need to be a minimum pot size of 45lt and maintained for period of 3 months. Trees species should be selected from the commonly used street trees as follows:  
*Tristaniopsis laurina (water gum)*  
*Elaeocarpus reticulatus (blueberry ash)*  
*Fraxinus griffithii (evergreen ash)*  
*Waterhousea floribunda (weeping Lilly pilly)*  
*Lagerstroemia sp. (crepe myrtle)*  
*Pyrus sp. (ornamental pear)*  
*Malus sp. (crabapple)*

**b) Condition 2B is deleted by Section 4.55(2) Modification DA-113/2020/B.**

## **3. Works at no cost to Council**

All roadworks, drainage works and dedications, required to affect the consented development shall be undertaken at no cost to Liverpool City Council.

## **B. PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions are to be complied with or addressed prior to the issue of a Construction Certificate by the Principal Certifying Authority.**

### **4. Section 7.11 Payment (Liverpool Contributions Plan 2018)**

As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in



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accordance with Liverpool Contributions Plan 2018 as amended.

The total contribution is **\$25,671** and will be adjusted at the time of payment in accordance with the contribution plan. 50% of the total amount is **\$12,835.50** and is to be paid prior to the release of any Construction Certificate (amount to be adjusted at the time of payment in accordance with the contribution plan).

A breakdown of the contributions payable is provided in the attached payment form.

The Contributions Plan may be inspected online at [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au)  
Payment must be accompanied by the attached form.

**5. Long Service Levy**

Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works. The required Long Service Levy payment, under the Building and Construction Industry Long Service Payments Act 1986, is to be forwarded to the Long Service Levy Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with Section 6.8 of the Environmental Planning & Assessment Act 1979.

**6. Comply with EP&A Act**

The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of 'on-the-spot' penalty infringements or service of a notice and order by Council.

**7. Fee Payments – Land Development**

Unless otherwise prescribed by this consent, all relevant fees or charges must be paid. Where Council does not collect these payments, copies of receipts must be provided. For the calculation of payments such as Long Service Levy, the payment must be based on the value specified with the Development Application/Construction Certificate.

The following fees are applicable and payable:

- a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery,
- b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve, and
- c) Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works. The required Long Service Levy payment, under the Building and Construction Industry Long Service Payments Act 1986, is to be forwarded to the Long Service Levy

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Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with Section 6.8 of the Environmental Planning & Assessment Act 1979.

These fees are reviewed annually and will be calculated accordingly.

**8. National Construction Code**

All aspects of construction shall comply with the applicable Performance Requirements of the National Construction Code. Compliance with the Performance Requirements can only be achieved by:

- (a) Complying with the Deemed to Satisfy Provisions; or
- (b) Formulating an Alternative Solution, which complies with the Performance Requirements or is shown to be at least equivalent to the Deemed to Satisfy Provision, or a combination of (a) and (b).

**9. Notification**

The certifying authority must advise Council, in writing of:

- a) The name and contractor license number of the licensee who has contracted to do or intends to do the work, or
- b) The name and permit of the owner-builder who intends to do the work.

If these arrangements are changed, or if a contract is entered into for the work to be done by a different licensee, Council must be immediately informed.

**10. S138 Roads Act – roadworks requiring approval of civil drawings**

Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to:

- 1. Vehicular crossings (including kerb reinstatement of redundant vehicular crossings),
- 2. Road opening for utilities and stormwater (including stormwater connection to Council infrastructure), or
- 3. Road occupancy or road closures.

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council's specifications. Note: Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

- 11.** Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, has been lodged with Liverpool City Council (being the Roads Authority under the Roads Act), for provision of the

following within the Kalimna Street, Moorebank site frontage:

- a) Demolish all existing driveway laybacks and reinstate kerb and gutter
- b) 1.5m wide concrete footpath paving
- c) Removal and replacement of cracked and damaged kerb and guttering

## **12. On-Site Detention**

On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Leading Engineers, reference number 2249-C01-B, 2249-C04-B, 2249-C05-B, 2249-C06-B, revision B, dated 04.05.20

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.

Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification.

A stainless steel orifice plate is to be used, in lieu of the "PVC outlet" for each system.

The outlet pipes from each tank shall be sized to convey 2 times the PSD of the orifice outlet, to the connection into the overflow pipe.

An inspection eye is required at the outlet to allow for future maintenance and inspection purposes.

The roof gutter and downpipe system shall be designed to convey the 100 year 5min design storm event into the OSD system with no gutter overflows.

## **13. No Loading on Easements**

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/ or services easement have been designed clear of the zone of influence.

## **14. Dilapidation report**

Prior to the Commencement of Works a dilapidation report of all infrastructure fronting the development in (Kalimna Street), is to be submitted to Liverpool City Council. The report is to include, but not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 20m either side of the development.

## **15. Access Car Parking and Manoeuvring – General**

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian, and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Liverpool City Council's Development Control Plan.

**16. Provision of Services – Sydney Water**

An application to obtain a Section 73 Compliance Certificate under the Sydney Water Act 1994, must be lodged with Sydney Water. To facilitate this, an application must be made through an authorised Water Servicing Coordinator. Please refer to the “building and developing” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au), or telephone 13 20 92.

Following receipt of the application, a ‘Notice of Requirements’ will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design. A copy of the ‘Notice of Requirements’ must be submitted to the PCA.

**17. Provision of Services – Endeavour Energy**

Written clearance from Endeavour Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development must be submitted to the PCA.

**18. Provision of Services – Telecommunications**

Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following requirements of the Telecommunications Act 1997:

- a) For a fibre ready facility, the NBN Co’s standard specifications current at the time of installation, and
- b) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

**19. Access**

Access must be provided to the building for people with a disability in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standard 2010 and Australian Standard – AS1428.1 (2009), Design for Access and Mobility – General requirements for new building work, to the satisfaction of the Certifying Authority.

**20. Garbage Services**

On site collection of waste and recycling must be provided and integrated with the design of density residential development (RFBs and MUDs). This must comply with the specifications detailed in the Fact Sheet: Waste Management Services for Residential Flat Buildings and Multi Dwelling Housing.

- 21.** The developer/owner of the site is to contact Liverpool Council- Waste Management Section to determine the required number of waste and recycle bins for the residential component of the development as well as servicing requirements. These waste and recycle bins are to be kept at all times within the residential waste storage rooms except before and after collection days. Waste and Recycle bins are to be returned to the storage rooms within 24 hours of collection.

**22. Waste Storage Area**

Any bin bays must be:

1. Provided with mechanical ventilation,
2. Provided with a hose cock for hosing the garbage bin bay and a sewered drainage point in or adjacent to the bin storage area. The drainage point should have a fine grade drain cover sufficient to prevent coarse pollutants from entering the sewer. If the hose cock is located inside the bin storage bay, it is not to protrude into the space indicated for the placement of bins,
3. Provided with sufficient light to permit usage at night,
4. Allocated with sufficient space within the bin bay to allow for access to all required bins by residents and waste collectors, as well as maneuvering of bins within the bay and for the removal and return of bins by the waste collector,
5. Bin bay signs are available from Council,
6. Should garbage chutes be incorporated into the design of the building, signage on how to use the chutes is to be located prominently next to the chute,
7. Operation, maintenance and cleaning of the garbage compactor and associated equipment is the responsibility of the strata management or body corporate and not of Council,
8. Maximum compaction ratio is 2:1,
9. Operation, maintenance and cleaning of the garbage chutes and associated waste cupboards, rooms, or equipment is the responsibility of the strata management or body corporate, and not of Council, and
10. Provided with signage to be prominently displayed in each bin bay, or waste service room, as appropriate indicating that:
  - ii. Garbage is to be placed wholly within the garbage bins provided,
  - iii. Only recyclable materials accepted by Council are to be placed within the recycling bins,
  - iv. The area is to be kept tidy,
  - v. A phone number to be displayed for arranging disposal of bulky items; and
  - vi. 50% of all messages are to be displayed using graphic illustrative content.

**23. Waste Management**

Prior to the issue of the Construction Certificate, the Waste Management Plan from Campbell Hill Group is to be revised to show that the asbestos waste (fibro), noted as being present in the buildings to be demolished, is to be taken to landfill and not recycled. The name and address of the licensed waste facility the asbestos materials will be taken to must be included.

Prior to the issue of the Construction Certificate, The Waste Management Plan is to be revised to explicitly state that all legislation, regulations and WorkCover safety procedures in respect to asbestos will be followed and that a licensed asbestos contractor will be responsible for the removal, wrapping and tipping of all asbestos construction materials from the site. The name, address and license details of the asbestos contractor are to be provided to both Council and the Principal Certifying

Authority.

Prior to the issue of the Construction Certificate, the building plans/waste management plan must note that the bin storage enclosures are to be built on a hardstand surface, be weatherproof and durable in construction, finished in a recessive colour, and fitted with lockable doors.

### **C. PRIOR TO WORKS COMMENCING**

**The following conditions are to be complied with or addressed prior to works commencing on the subject site/s:**

#### **24. Construction Certificates**

Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.

#### **25. Construction Certificates**

Prior to the commencement of any building works, the following requirements must be complied with:

- a) Construction Certificate must be obtained from the Council or an Accredited Certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*,
- b) Where a Construction Certificate is obtained from an Accredited Certifier, the applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 4.19, 6.6, 6.7, 6.12, 6.13, 6.14 of the Act,
- c) A copy of the Construction Certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment,
- d) A Principal Certifying Authority (PCA) must be appointed to carry out the necessary building inspections and to issue an occupation certificate, and
  
- e) The PCA must advise Council of the intended date to commence work which is the subject of this consent by completing a notice of commencement of building works or subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days' notice must be given.

#### **26. Notification**

Written notice of intention shall be given to the owner of the adjoining allotments of land, outlining the particulars of the proposed work, which involves:

- a) Any excavation, below the base of the footings of a building on an adjoining allotment of land, and
- b) The notice shall be given seven (7) days prior to the commencement of work.

**27. Demolition Works**

Demolition works shall be carried out in accordance with the following:

- a) Prior to the commencement of any works on the land, a detailed demolition work plan designed in accordance with the Australian Standard AS 2601-2001 – The Demolition of Structures, prepared by a suitably qualified person with suitable expertise or experience, shall be submitted to and approved by Council and shall include the identification of any hazardous materials, method of demolition, precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials,
- b) Prior to commencement of any works on the land, the demolition Contractor(s) license details must be provided to Council, and
- c) The handling or removal of any asbestos product from the building/site must be carried out by a NSW Work Cover licensed contractor irrespective of the size or nature of the works. Under no circumstances shall any asbestos on site be handled or removed by a non-licensed person. The licensed contractor shall carry out all works in accordance with NSW Work Cover requirements.
- d) If the dwelling to be demolished has an air-conditioning system, then the refrigerants present in that air-conditioning system must be extracted before dismantling into a durable air-tight container by a licensed air-conditioning technician. This container and its contents must be sent to a facility licensed to destroy such compounds, for secure destruction. Documentary evidence that this has been completed (if such a system is part of the original buildings), must be sighted by the Principal Certifying Authority and included as part of the Occupation Certificate documentation.

- 28.** Prior to any demolition or site clearing works commencing, any existing domestic waste bins that have been issued to 9 Kalimna Street Moorebank, must be returned to Liverpool City Council. Please ring Council on 1300 36 2170 to advise that the bins are empty and ready to be removed and so their removal can be noted.

**29. “DIAL BEFORE YOU DIG”**

Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

**30. Site Facilities**

Adequate refuse disposal methods and builder's storage facilities shall be installed on the site. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.

**31. Residential Building Work**

Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be commenced unless the principal certifier for the development to which the work relates (not being the council) has given the council written notice of the name and license number of the principal contractor; and the name of the insurer by which the work is insured under Part 6 of that Act.

**32. Sydney Water**

Development plans must be processed and approved by Sydney Water.

**33. Sediment and Erosion Control**

Prior to commencement of works sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the *Environment Operations Act 1997* and Landcom's publication "*Managing Urban Stormwater – Soils and Construction (2004)*" – also known as "The Blue Book".

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

**34. Traffic Control Plan**

Prior to commencement of works, a Traffic Control Plan including details for pedestrian management, shall be prepared in accordance with AS1742.3 "*Traffic Control Devices for Works on Roads*" and the Roads and Traffic Authority's publication "*Traffic Control at Worksites*" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note: A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Liverpool City Council.

**D. DURING CONSTRUCTION**

**The following conditions are to be complied with or addressed during construction:**

**35. Building Work**

The building works must be inspected by the Principal Certifying Authority, in accordance with Sections 6.5 (3) of the *Environmental Planning & Assessment Act 1979* and Clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.



**36. Building Work**

The *Principal Certifying Authority* (PCA) must specify the relevant stages of construction to be inspected and a satisfactory inspection must be carried out, to the satisfaction of the PCA, prior to proceeding to the subsequent stages of construction or finalisation of the works.

**37. Excavation**

In the event the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- a. protect and support the adjoining premises from possible damage from the excavation,
- b. where necessary, underpin the adjoining premises to prevent any such damage, and
- c. a and b above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Retaining walls or other approved methods necessary to prevent the movement of excavated or filled ground, together with associated subsoil drainage and surface stormwater drainage measures, shall be designed strictly in accordance with the manufacturers details or by a practicing structural engineer.

**38. Refuse Disposal**

Adequate refuse disposal methods and builders storage facilities shall be installed on the site. Builders' wastes, materials or sheds are not to be placed on any property other than that which this approval relates to.

**39. Notification of Damage**

The applicant/builder shall be responsible to report to the Council any damage to Council's footpath and road carriageway as a consequence of demolition or excavation or building activities or delivery/ departure of materials associated with this site. The damage shall be reported to Council as soon as the damage becomes apparent to the builder/ site manager. Arrangements to the satisfaction of Council are to be made for making safe by temporary repairs to the public way until permanent restoration and repair can be organised with Council.

**40. Aboriginal Relics/Artefacts**

If any Aboriginal relics/artefacts are uncovered during the course of any construction works including demolition, work is to cease immediately. Government agencies shall be contacted and no further work shall be undertaken until relevant assessments/approvals/ salvage excavation has been undertaken and permission is given by the relevant authorities to re commence works.

**41. Unidentified Contamination**

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be immediately notified to Council and the Principal Certifying Authority in writing.

A Section 4.55 Application under the EP&A Act shall be made for any proposed works outside the scope of the approved development consent.

**42. Waste Management Plan**

The Waste Management Plan submitted to and approved by Council must be adhered to at all times throughout all stages of the development. Supporting documentation (receipts/dockets) of waste/recycling/disposal methods carried out, is to be kept and must be produced upon the request of Council or any other authorised officer.

Note: Any non-compliance with this requirement will result in penalties being issued. All demolition, excavation and construction wastes must be separated into their different types as they are generated and kept in separate spoil piles, bays, builder's site bins and/or skips.

All lightweight or granular demolition, excavation or construction waste, e.g. wrapping, packaging materials, bags, insulation, sand, soil etc., must be kept fully enclosed at all times to prevent it from becoming displaced by the wind in strong wind conditions or from washing into sewers, storm drains or creeks, or onto adjacent properties or public land during wet weather.

**43. Air Quality – Vehicle Movement**

All vehicles involved in the delivery, demolition or construction process departing from the property shall have their loads fully covered before entering the public roadway.

**44. Termite Protection**

To protect the buildings from subterranean termite, termite barriers must be installed in accordance with AS 3660.1 to the underside and penetrations of the concrete slab floor. In addition, a durable notice must be permanently fixed inside the metre box indicating:

1. the method of protection,
2. the date of installation of the system,
3. where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label, and
4. the need to maintain and inspect the system on a regular basis.

Certification from a licensed pest controller shall be submitted to the PCA certifying that the termite protection system installed complies with AS3660.1.

**45. Erosion Control – Measures**

Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

**46. Drainage Connection**

Prior to the connection of private drainage to Council's drainage system, an inspection is to be carried out by Liverpool City Council's Development Engineering Unit. A fee will be charged in accordance with Council's adopted Fees and Charges and is to be paid prior to the inspection.

**47. Footpaths**

Construction of 1.5m wide by 100mm thick (with one layer of SL72 reinforcing mesh) concrete path paving on one side of all residential access roads and both sides of all collector and distributor roads. Path paving will not be required in minor cul-de-sac with less than fifteen lots.

**48. Toilet Facilities**

Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:

- a) be a standard flushing toilet connected to a public sewer, or
- b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- c) be a temporary chemical closet approved under the *Local Government Act 1993*.

**49. Site Notice Board**

A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign is to be maintained during work and removed at the completion of work. The sign must state:

- a) the name, address and telephone number of the principal certifying authority for the work,
- b) the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c) unauthorised entry to the premises is prohibited.

**50. Building Work**

The building and external walls are not to proceed past ground floor/reinforcing steel level until such time as the PCA has been supplied with an identification survey report prepared by a registered surveyor certifying that the floor levels and external wall locations to be constructed, comply with the approved plans, finished floor levels and setbacks to boundary/boundaries. The slab shall not be poured, nor do works continue, until the PCA has advised the builder/developer that the floor level and external wall setback details shown on the submitted survey are satisfactory.

- a) In the event that Council is not the PCA, a copy of the survey shall be provided to Council within three (3) working days.

**51. Demolition Inspections**

The following inspections are required to be undertaken by Council in relation to approved demolition works:

- a) immediately prior to the commencement of the demolition or handling of any building or structure that contains asbestos. The applicant shall also notify the occupants of the adjoining premises and Workcover NSW prior to the commencement of any works,

*Please note that demolition works are not permitted to commence on site until such time as a satisfactory inspection result is obtained from Council, and*

- b) immediately following completion of the demolition. Please note that proof of appropriate disposal of demolition materials (including asbestos) may be required at this time in accordance with the approved Waste Management Plan.

To book an inspection with Council, please call 1300 362 170.

**52. Removal of Dangerous and/or Hazardous Waste**

All dangerous and/or hazardous material shall be removed by a suitably qualified and experienced contractor, licensed by SafeWork NSW. The removal of such material shall be carried out in accordance with the requirements of SafeWork NSW. The material shall be transported and disposed of in accordance with NSW Environment Protection Authority requirements.

**53. Security Fence**

A temporary security fence to WorkCover Authority requirements is to be provided to the property during the course of construction.

Note. Fencing is not to be located on Council's reserve area.

**54. Hours of Construction, Work and Deliveries**

Construction work/civil work/demolition work, including the delivery of materials, is only permitted on the site between the hours of 7:00am to 6:00pm Monday to Friday and 8:00am to 1:00pm Saturday. No work will be permitted on Sundays or Public Holidays, unless otherwise approved by Council.

**55. Traffic Management**

Construction activities affecting adjoining road reserves require submission of a road occupancy application to Council along with traffic control plan and public liability insurance. The traffic control plan must be prepared by a qualified professional and to be in accordance with the *RMS Traffic Control at Worksites Manual*, the *Austroads Guide to Traffic Management*, the *RMS Supplements for Austroads Guide to Traffic*

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*Management and Australian Standard 1742.*

If a Works Zone is required, an application is to be made to Council's Traffic & Transport Section for approval. The application form can be found at <http://www.liverpool.nsw.gov.au/council/Fees-Forms-Policies-and-Enforcement/forms>

**56. General Site Works – Surface Contours**

Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.

**57. General Site Works – Roofwater**

All roofwater is to be connected to the existing stormwater system.

**58. General Site Works – Stormwater Connection**

Stormwater pipeline connections to the street kerb shall be constructed in the following manner:

- a) the kerb shall be saw cut on both sides of the proposed pipe outlet,
- b) an approved rectangular kerb adaptor shall be installed with the base matching the invert level of the gutter, and
- c) The kerb shall be reinstated to its original profile using a cement mortar containing an epoxy additive for adherence to the existing kerb.

**59. General Site Works – Sediment**

The development, including construction, shall not result in any increase in sediment deposition into any water body, wetland, bushland or environmentally significant land.

**60. Vegetation - Existing Vegetation**

All existing trees and areas of native vegetation not identified for removal on approved plans of the proposed development shall be protected from damage during site works. This protection shall consist of 1800mm high protective fencing, securely installed beneath the outer canopy of any tree to be retained. Trees may be fenced off in clusters where it is not practical to fence off individual trees. There shall be no storing materials, washing machinery or changes to existing soil levels within the fenced areas.

**E. PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**The following conditions are to be complied with or addressed prior to issue of either an Interim or Final Occupation Certificate by the Principal Certifier (PC):**

**61. Occupation Certificate**

The premises must not be utilised until an Occupation Certificate is issued by the principal certifier.

**62. Certificates**

A single and complete Fire Safety Certificate, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the Occupation Certificate.

- 62a Prior to the issue of the Occupation Certificate a Building Information Certificate issued under Division 6.7 of the Environmental Planning & Assessment Act 1979 shall be provided to Council for the unauthorised modification works the subject of DA-113/2020/B.**

***Condition 62a inserted by Section 4.55(2) Modification DA-113/2020/B.***

- 63.** The Principal Certifying Authority shall ensure that all compliance certificates required by this development consent are referenced to the condition consent number. The Compliance Certificate is to state that the works as constructed comply fully with the required condition of consent being acted on by the certifier.

**Strata Subdivision**

- 64.** As Strata Subdivision constitutes part of the development consent, the Strata Subdivision Certificate is to be approved and registered prior to the issue of an Occupation Certificate.
- 65.** Prior to the issue of an Occupation Certificate, the by-laws of the development are to be drafted to state that the responsibility for the maintenance, repair and correct functioning of the bin storage enclosures of Units 2 and 3 is to rest with the body corporate.
- 66.** Prior to the issue of a Occupation Certificate, the by-laws of the development are to be drafted to state that residents of Units 2 and 3 must keep their waste bins locked inside their waste enclosures, to prevent other individuals from using those bins.

**Linen Plans and 88B Instruments**

- 67.** Should the applicant utilise Council for the issuing of a Strata Subdivision Certificate, then in order to enable an Occupation Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of strata subdivision and one (1) original and two (2) copies of the proposed 88b instrument (where proposed).

The applicant shall pay the standard fee for the purpose of Strata Subdivision Certificate administration of plan checking and release.

- 68.** The final plan of Strata Subdivision must be supported by an 88B instrument to the approval of Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Council's standards, codes and policy's. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.
- 69.** Correct notation concerning easements is required. The prepared 88B Instrument should be forwarded initially to Council. The land value of the easement and costs

associated with checking the instrument are to be borne by the applicant. Part 2 of the 88B Instrument shall contain a provision that the easement may not be extinguished or altered without the written consent of Council.

**70. Liverpool City Council Clearance – Roads Act/Local Government Act**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Liverpool City Council.

**71. Works as Executed – General**

Prior to the issue of an Occupation Certificate, works-as-executed drawings and compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Liverpool City Council's *Design Guidelines and Construction Specification for Civil Works*.

An original set of works-as-executed drawings and copies of compliance documentation shall also be submitted to Liverpool City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

**72. Stormwater Compliance**

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the On-site detention system, details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

**73. Rectification of Damage**

Prior to the issue of an Occupation Certificate, any damage to Council infrastructure not identified in the dilapidation report, as a result of the development shall be rectified at no cost to Liverpool City Council.

Any rectification works within Kalimna Street will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

**74. Dilapidation Report**

Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.

**75. Restriction as to User and Positive Covenant**

Prior to the issue of an Occupation Certificate a restriction as to user and positive covenant relating to the following shall be registered on the title of the property:

- a) On-site detention system/s,

The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction

Guidelines and Construction Specification for Civil Works.

**76. Display of Street Numbers**

Street numbers must be prominently displayed at the front of the development in a contrasting colour to the building materials and at the front of each individual unit to comply with the Local Government Act 1973, Section 124(8). The number should be a minimum height of 120mm and be visible at night.

**77. Landscape**

Upon completion of the approved landscape works associated with the development and prior to the issue of any OC, an Implementation Report is to be submitted to the PCA attesting to the satisfactory completion of the landscape works in accordance with the approved landscape plan. The report is to be prepared by a suitably qualified person.

**78. Service Providers**

The following documentation is to be provided prior to the release of the Occupation Certificate:

1. Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a an Occupation Certificate.

Council will not issue a Occupation Certificate unless the method of sewerage disposal is by gravity reticulation mains to either Sydney Water branch and trunk sewers or Sydney Water point of treatment. Council will not accept any temporary facilities to service the site, including pump-out wet-wells.

2. Notification of arrangement for the development from Endeavour Energy shall be submitted to Council.
3. Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with:
  1. The requirements of the Telecommunications Act 1997;
  2. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
  3. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connections of optic fibre technology telecommunications.

**79. BASIX**

Supporting documentation issued by a suitable qualified person who has installed or carried out the works associated with the BASIX commitments shall be submitted to



Council.

**80. Road Works**

All redundant vehicular crossings shall be removed and replaced with Council's standard kerb and gutter at no cost to Council. The removal and replacement of a driveway with standard integral kerb and gutter shall be the subject of a driveway application to Council and works supervised by that driveway inspection process.

**81. Cladding**

Prior to issuing an occupation certificate the principal certifier must be satisfied that suitable evidence has been provided to demonstrate that the external wall cladding material and system is consistent with the consent documentation, NCC and relevant Australian Standards.

**82. External Lighting**

Any external lighting is to incorporate full cut-off shielding and is to be mounted so as to not cause any glare or spill over light nuisance within the development, neighbouring properties or road users.

**83. Air Conditioning Plant**

The plant associated with any air conditioning system is to be located a minimum of 3 metres from any property boundary to the satisfaction of the PCA.

**84. Garbage Services**

Prior to the issue of an Occupation Certificate, if onsite waste and recycling collection is required the following restriction as to user must be registered on the title of the property:

The owner/applicant of any property requiring on site collection of waste and recycling is to enter into a legally binding indemnity with Council to control the access and operation of the waste and recycling service. This shall be inclusive on successive owners in perpetuity. All costs involved are to be borne by the applicant.

The restriction as to user may not be extinguished or altered except with the consent of Liverpool Council.

**F. CONDITIONS RELATING TO USE**

**85. Lighting**

Illumination of the site is to be arranged in accordance with the requirements and specifications of Australian Standard 4282:1997 so as not to impact upon the amenity of the occupants of adjoining and nearby premises.

**86. Waste Collection**

All solid waste stored on site is to be covered at all times. Furthermore, all solid and liquid waste is to be removed from the site by a registered waste contractor.

**87. Waste**

All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.

**88. Waste Storage Area**

Waste bins must be stored in designated garbage/ trade refuse areas, which must be kept tidy at all times. Bins must not be stored or allowed to overflow in parking or landscaping areas, must not obstruct the exit of the building, and must not leave the site onto neighbouring public or private properties.

**89.** Operation, maintenance and cleaning of the garbage storage area is the responsibility of the strata management or body corporate.

**90.** Signage is to be prominently displayed in each waste storage area, or waste service room, as appropriate, indicating that:

1. Garbage is to be placed wholly within the garbage bins provided,
2. Only recyclable materials accepted by Council are to be placed within the recycling bins,
3. The area is to be kept tidy,
4. A phone number for arranging disposal of bulky items, and
5. Graphic illustrative content to be 50%.

**91.** Sufficient space shall be provided within each dwelling for the storage of a minimum of one day's waste and recycling.

Garbage collection – Bins

Bins must be moved to the kerbside frontage of the building for collection by agents of the body corporate or strata management, or individual owners. The bins shall be collected and returned as soon as possible after collection by the same persons.

**92.** A separate storage area must be allocated for the holding of bulk waste prior to collection.

**93. Waste Storage and Disposal – General**

Once the Occupation Certificate has been issued for the new residences, but prior to residents moving in, Council is to be contacted to arrange delivery of the domestic waste bins to these dwellings. Please contact Council on 1300 36 2170 to arrange the delivery of waste bins.

Under current collection arrangements, each dwelling will be issued with a 140 litre general waste bin, a 240 litre recycling bin and a 240 litre green (garden) waste bin. These arrangements may be subject to change under future collection contracts.

Paths of travel of all waste bins to the kerbside of Kalimna Street must remain smooth, unobstructed and free of steps, kerbs or any other sudden change in level.

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Residents of all units must present their waste bins for emptying to the kerbside of Kalimna Street no earlier than the afternoon before collection. After emptying, all bins must be removed from the kerbside within 24 hours; Units 1 and 4 must keep their waste bins within their rear private open space, Units 2 and 3 must lock their waste bins securely in the bin storage enclosure provided for the purpose in their front yards. Domestic waste bins are for the permitted types of household waste only, hazardous materials, builder's/trade waste and car parts are not permitted.

All bulky household wastes must be kept within their residence of origin. Residents are responsible for making their own pre-booked waste collection with Council for a specific date. Bulky household waste may only be placed at the kerbside the evening before the booked date of the pick-up. The amounts and types of materials that are acceptable for collection will be as per the conditions of Council at the time.

**G. ADVISORY**

- o) Section 4.55 of the Environmental Planning and Assessment Act, 1979 gives you the right to request Council to review this determination within six (6) months of the date of determination.
- p) Sections 8.7 & 8.10 of the Environmental Planning and Assessment Act, 1979 gives you the right to appeal to the NSW Land and Environment Court within six (6) months after:
  - a. the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application or, if an application for review under section 8.3 has been decided, the date on which the applicant received notice, in accordance with the regulations, of the decision, or
  - b. the date on which the applicant's application is taken to have been determined in accordance with regulations made under section 8.5 (3), 4.55 (6) or 4.55AA (3).
- q) The Section 4.55 Modification Application does not extend the timeframe of the development consent initially granted by Council.
- r) Modification of the development consent does not remove the need to obtain any other statutory consent necessary under the Act.
- s) Section 8.2, 8.3, 8.4 & 8.5 allows Council to reconsider your proposal. Should you wish to have the matter reconsidered you should make an application under that section with the appropriate fee.
- t) Under Section 8.7 & 8.10 of the Act applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice. The Court's Office is situated at Level 1, 225 Macquarie Street, Sydney (Telephone 9228 8388), and the appropriate form of appeal is available from the Clerk of your Local Court.
- u) In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within five years of the date of this notice.

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- v) To confirm the date upon which this consent becomes effective, refer to Section 4.20 of the Environmental Planning and Assessment Act, 1979. Generally, the consent becomes effective from the determination date shown on the front of this notice. However, if unsure applicants should rely on their own enquiries.
- w) To confirm the likelihood of consent lapsing, refer to Section 4.53 of the Act. Generally, consent lapses if the development is not commenced within five years of the date of approval. However, if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.
- x) In accordance with Section 8.8 and 8.10 of the Environmental Planning and Assessment Act 1979, an objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for designated development (including designated development that is integrated development), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court.
- y) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the developer should investigate their liability under the Act.
- z) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regard to the operation of the building.

aa) "DIAL BEFORE YOU DIG"

Underground assets may exist in the area that is subject to your application. In the interest of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contact the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

bb) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

- cc) The Liverpool City Council Local Government area soils and ground water may be subject to varying levels of Salinity. Whilst Council may require applicants to obtain Salinity reports relating to some developments, no assessment may be made by Council in that regard. Soil and ground water salinity levels can change over time due to varying factors. It is recommended that all applicants make their own independent

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inquiries as to appropriate protection against the current and future potential affect of Salinity to ensure the ongoing structural integrity of any work undertaken. Liverpool City Council will not accept any liability for damage occurring to any construction of any type affected by soil and or ground water Salinity.

- dd) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.
- ee) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for address numbering, and letter box positioning and dimensions.
- ff) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.