

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**Date: 28 June 2021**

<b>Item no:</b>	1
<b>Application Number:</b>	DA-199/2021
<b>Proposed Development:</b>	Demolition of existing structures and construction of a one storey dwelling with in-ground swimming pool, earthworks, support infrastructure and associated site works.
<b>Property Address</b>	250 Fourteenth Avenue, Austral
<b>Legal Description:</b>	Lot 118, DP 575004
<b>Zoning</b>	R2 Low Density Residential, SP2 Infrastructure and RE1 Public Recreation under Appendix 8 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006
<b>Applicant:</b>	Mr A Hadchiti
<b>Land Owner:</b>	Mr A Hadchiti
<b>Cost of Works:</b>	\$2,315,775.00
<b>Recommendation:</b>	Approve subject to conditions of consent
<b>Assessing Officer:</b>	Mairead Hawes – The Planning Hub - Consultant Town Planner

## 1. EXECUTIVE SUMMARY

Council has received a Development Application (DA) seeking consent for demolition of existing structures and construction of a one storey dwelling with in-ground swimming pool, earthworks, support infrastructure and associated site works at 250 Fourteenth Avenue, Austral.

The site is zoned part R2 Low Density Residential, part SP2 Infrastructure and part RE1 Public Recreation pursuant to Appendix 8 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The proposed dwelling is located wholly within the R2 low density residential zone and ancillary site regrading/earthworks are proposed in the SP2 Infrastructure and RE1 public recreation zones.

The proposed development is permissible with consent in the applicable zones.

The development application was not required to be placed on public exhibition in accordance with Liverpool Community Participation Plan, 2019.

The key issues associated with the proposal relate to:

- Compliance with Clause 4.1B of State Environmental Planning Policy (Sydney Regions Growth Centres Precincts, 2006 (Growth Centres SEPP));
- Compliance with the Indicative Layout Plan (ILP); and
- Potential Flooding impacts.

Whilst the current DA does not meet the minimum dwelling density requirements as required by Clause 4.1B of the Growth Centres SEPP, the applicant has provided a site plan that details how the future development of the site is capable of meeting the minimum 15 dwellings per ha

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requirement. A Clause 4.6 Variation Request has been provided in support of the proposed development and is deemed acceptable.

The proposed development is consistent with the intended purpose of the Indicative Layout Plan (ILP) prepared for the Austral and Leppington North Precinct which requires the provision of local roads to the south, east and west of the site as well as upgrade works to Fourteenth Avenue. Whilst it does not propose to construct the local roads to the south, east and west, an indicative site plan has been provided which details the ability of those roads to be constructed in the future and is deemed acceptable.

The site is identified as being flood affected and ancillary site regrading/earthworks are proposed to support the proposed development. Those works have been reviewed by Council's flood engineer and subject to conditions, flood impacts can be mitigated on site and are deemed acceptable.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with its referral criteria and procedural requirements, as the proposed development contravenes development standards (relating to the minimum residential density requirements) contained in the growth Centres SEPP by more than 10% and the development falls into the category of conflict of interest as the applicant for the development is a current Councillor.

### **1.1 RECOMMENDATION**

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 conditions detailed in this report.

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

### **2.1 The site**

The subject site is located at 250 Fourteenth Avenue, Austral and is legally identified as Lot 118 in DP 575004.

An aerial photograph of the subject site is provided in **Figure 1** below.

The site is irregular in shape with the following site area and dimensions:

<b>SITE AREA</b>	20,240m <sup>2</sup> (9,353.42m <sup>2</sup> R2 zoned land, 4,598.96m <sup>2</sup> of SP2 zoned land and 6,285m <sup>2</sup> of RE1 zoned land)
<b>SITE WIDTH</b>	Frontage to Fourteenth Avenue (North) = 165m
<b>STRUCTURES ON SITE</b>	<ul style="list-style-type: none"><li>• One main dwelling being a 1980's brick single storey dwelling containing 3 bedrooms, 2 carports and an attached covered outdoor area at the rear.</li><li>• A second dwelling being a weatherboard cottage containing 2 bedrooms with separate sheds/storage spaces at the rear.</li><li>• One vehicle access point off Fourteenth Avenue with a central driveway servicing both dwellings.</li><li>• A small farm dam is situated in the south east corner of the site, with a second dam located on the western boundary. Both dams are off-line to the main watercourse alignment in the south western portion of the site.</li></ul>

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Figure 1: Aerial view of the site (Source: Six Maps)

The site is relatively flat and with an overall fall of 3.5m from the north-east corner of the site (RL63.81) to the south-west (RL60.32) as shown in Figure 2 below.



Figure 2: Site Survey (Source: Project Surveyors)

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The primary frontage of the site is Fourteenth Avenue, which is identified as a local road.

The subject site is largely cleared of any vegetation or trees as depicted in **Figure 1** above.

The site is identified as being flood prone, medium to high saline risk, moderate to high potential for archaeological (aboriginal) sensitivity, and bushfire risk area including a requirement for a 25m APZs.

## **2.2 The locality**

The area characterised by low density residential development and is within the established rural residential area of Austral as indicated in **Figure 3**. The site is located approximately 3.0km west of the Middleton Grange and West Hoxton residential areas.

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

<b>ORIENTATION</b>	<b>DESCRIPTION OF SITE</b>
North (front)	Rural residential properties across Fourteenth Avenue.
South (rear)	Agricultural/industrial use with some agricultural sheds to the south east.
East (side)	Rural residential.
West (side)	Rural residential.



**Figure 3:** Locality view (Source: Six Maps)

The site is located in the South West Growth Centre Precinct of Austral approximately 750m west of the Edmondson Avenue and approximately 300m south of Fifteenth Avenue. The subject site is identified as part low density residential, part passive open space and part drainage as identified in the Indicative Layout Plan, extract provided in **Figure 4**.

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**Figure 4:** Indicative Layout Plan (Source: Growth Centres SEPP, Appendix 8, Schedule 1)

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

- The subject DA was lodged with Council on 24 February 2021.
- Additional information was requested from the Applicant on 21 April 2021.
- A response to Council's request for addition information was received on 04 May 2021.

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

The proposed development consists of the following 3 key components:

#### Demolition of the existing buildings

The proposal involves demolition of the two existing dwellings as well as the existing sheds. The existing on-site sewage management system and internal driveway are also proposed to be decommissioned/removed.

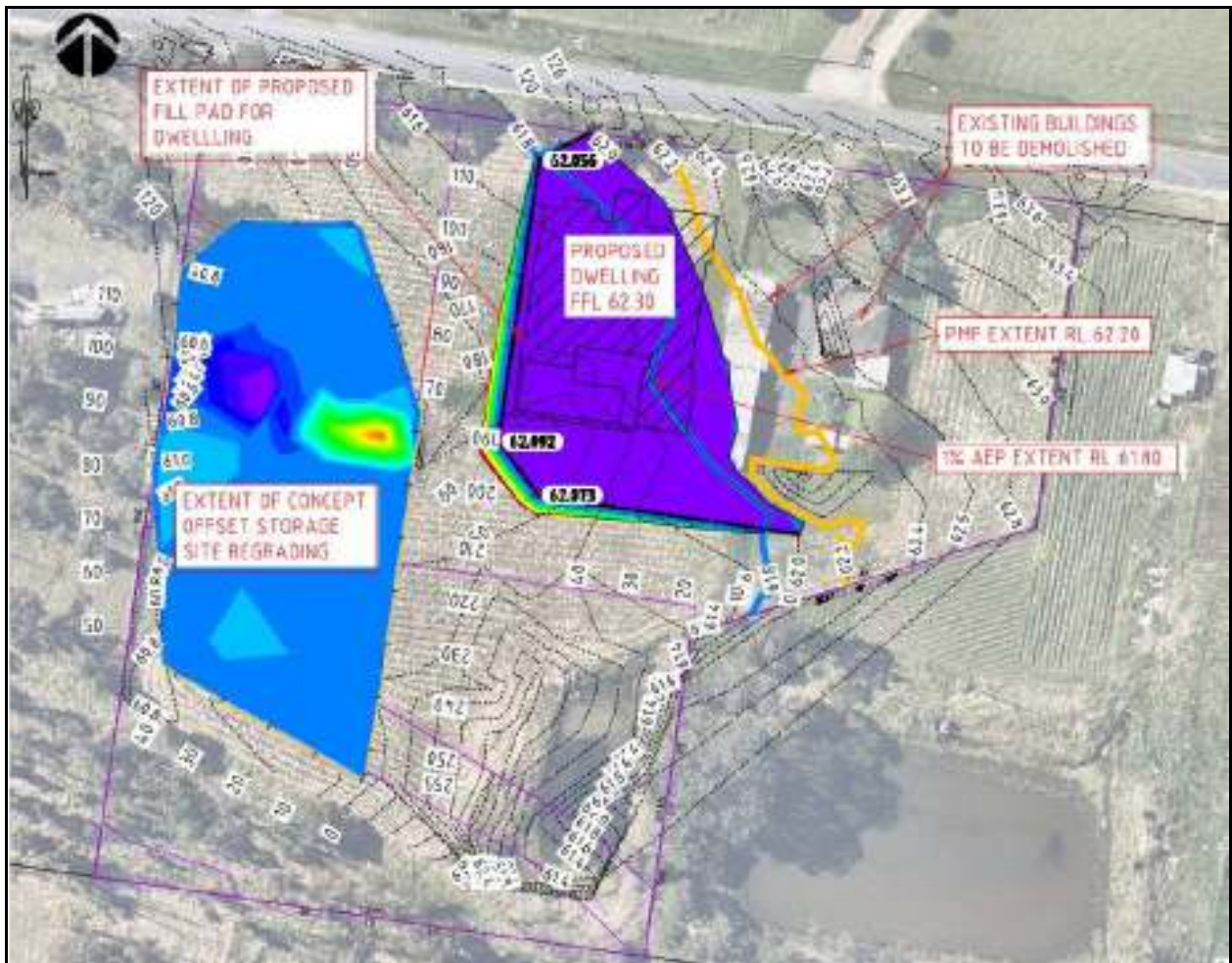
#### Earthworks

The site is subject to inundation by the 1 in 100 year flood event at 61.8m AHD as well as the probable maximum flood event (PMF) at 62.2m AHD. To accommodate the construction of the new dwelling, it is proposed to fill an area of approximately 2,500m<sup>2</sup> with fill between 1-1.3m, equating to 660m<sup>3</sup> of fill material (as shown in **Figure 5**). It is noted that the volume of fill was clarified in the additional information received on 04 May 2021 as a figure of 5,2003m<sup>3</sup> was incorrectly referenced in the submitted Statement of Environmental Effects.

It is proposed that all fill brought to the site would be clean excavated natural material (ENM) sourced from nearby development sites. The fill is proposed to be compacted to the minimum fill level of RL 62.3m. It is proposed that fill be brought to the site over the course of a week in truck and dog vehicles with the necessary excavation equipment to operate across the fill area.

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**Figure 5:** Plan proposed works with extent of 1%AEP and PMF extents overlay (Source: SEEC Flood Risk Assessment, May 2021)

Construction of a single storey dwelling, in-ground swimming pool and associated works

The proposal includes the construction of a new single storey dwelling with a gross floor area (GFA) of 691.29m<sup>2</sup> comprising:

- 4 bedrooms with walk in robes and ensuites;
- Main open plan kitchen, living and dining area;
- Separate formal lounge, study, entertaining and cinema;
- Laundry;
- Outdoor dining area;
- Three-car garage.

The dwelling is designed in a contemporary style. A series of roof components including flat and highlight angles have been utilised. Perspective drawings of the proposed dwelling are shown in **Figure 6**.

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Figure 6: Perspective drawings of proposed dwelling (Source: Architectural Plan Set, Mossca Pserras Architects)

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In addition to the construction of the dwelling, the following is also proposed:

- Installation of a 7.0m x 20m inground pool at the rear of the dwelling;
- Construction of a new hardstand driveway with two new access points;
- Construction of front and side palisade and concrete colonnade fencing;
- Installation of a 22,500L rainwater tank at the rear of the dwelling (as identified in the stormwater plan) as on-site detention (19,600L) and permanent storage (2,900L).
- Installation of a new on-site sewage management system.

Architectural plans of the new dwelling including a schedule of finishes can be found in **Attachment 1**.

## **5. STATUTORY CONSIDERATIONS**

### **5.1 Relevant matters for consideration**

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

- State Environmental Planning Policy (Sydney Region Growth Centres) 2006;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River (No. 2 - 1997) (Deemed SEPP); and
- Liverpool Growth Centre Precincts Development Control Plan (DCP) 2013.

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

#### **(a) State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

Pursuant to Clause 7 of the Growth Centres SEPP, the development site is subject to the controls located in Appendix 8 of the SEPP being the Liverpool Growth Centre Precincts Plan, 2013. The Precinct Plan prevails to the extent of any inconsistencies with any other environmental planning instrument, including the Liverpool Local Environmental Plan, 2008. The Precinct Plan contains the principal development standards as detailed below:

#### **(i) Zoning**

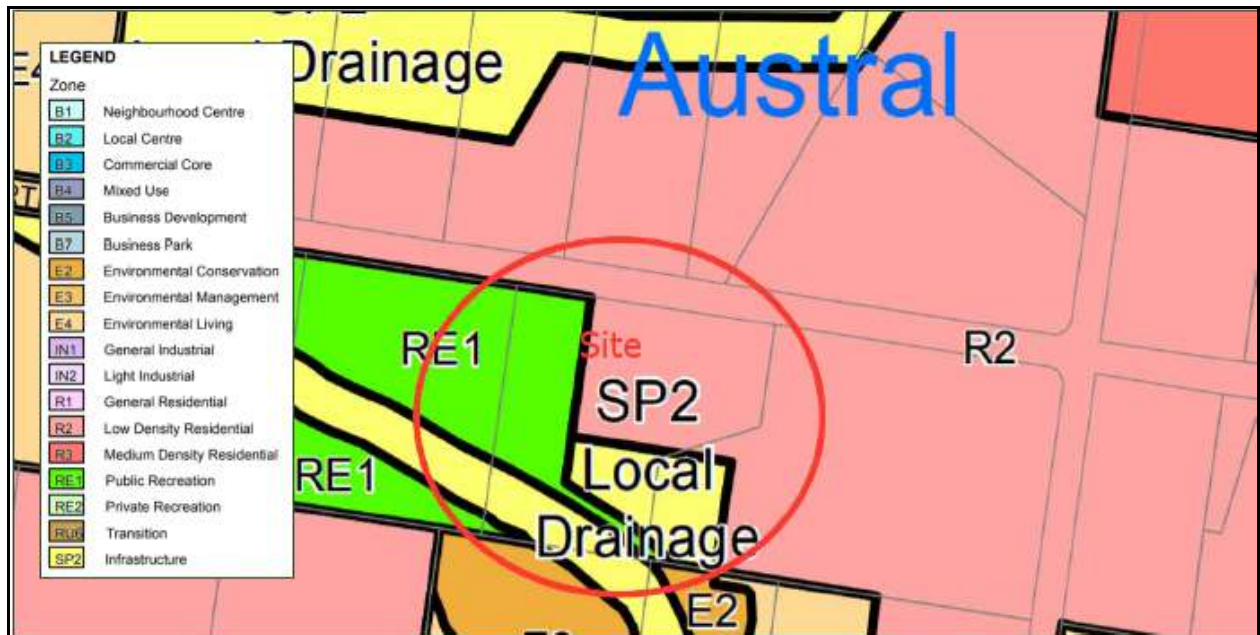


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The subject site is zoned part R2 Low Density Residential, part SP2 Infrastructure and part RE1 Public Recreation. The proposed dwelling is located wholly within the R2 low density residential zone and ancillary site regrading/earthworks are proposed in the SP2 Infrastructure and RE1 public recreation zones.

An extract of the zoning map is provided in **Figure 3** below.



**Figure 3:** Zoning Map (source: NSW Planning Portal as provided in the Statement of Environmental Effects)

**(ii) Permissibility**

The proposed development is appropriately defined by the standard instrument as a “dwelling” and is identified as permitted land use with consent within the R2 Low Density Residential Zone under the Growth Centres SEPP. The definition of a dwelling is provided below:

*“dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile”.*

In addition to the construction of a dwelling, the proposal includes ancillary site regrading/earthworks within the RE1 and SP2 zones for drainage purposes. This work is to offset the flood storage area that will be reduced as a result the fill associated with the construction of the dwelling pad. Ancillary drainage works are permissible subject to consent within the RE1 and SP2 zones.

**(iii) Objectives of the zone**

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.

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- c) To allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.
- d) To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low density residential environment.

The proposal is considered to be consistent with the objectives of the zone in that:

- It provides for the housing needs of the current owner in a manner that is considered to be compatible with the existing low density residential development within the Austral and Rossmore localities.
- While the subject application does not propose any subdivision, the layout and siting of the development takes into consideration the future subdivision layout of the property.
- The dwelling has been architecturally designed and is to be constructed using materials which are considered to contribute to the amenity of the low density residential area.

The objectives of the SP2 Infrastructure (Drainage) zone are as follows:

- a) To provide for infrastructure and related uses.
- b) To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The proposal is considered to be consistent with the objectives of the SP2 zone in that:

- Works proposed within the SP2 Local Drainage zone are ancillary to the proposed dwelling and are consistent with the intention of the zone for drainage purposes.
- The proposed earthworks/site regrading are unlikely to compromise the provision of infrastructure.

The objectives of the RE1 Public Recreation zone are as follows:

- a) To enable land to be used for public open space or recreational purposes.
- b) To provide a range of recreational settings and activities and compatible land uses.
- c) To protect and enhance the natural environment for recreational purposes.

The proposal is considered to be consistent with the objectives of the RE1 zone in that:

- Works proposed on the RE1 zoned land is limited to works associated with earthworks and is therefore considered unlikely to compromise the future of the land to be used for public open space or recreational purposes.

**(iv) Principal Development Standards**

The application has also been considered against the relevant provisions and principal development standards of Appendix 8 of the Growth Centres SEPP, which are listed in the table below.

Development Provision	Requirement	Proposed	Complies
<b>Part 4 Principal Development Standards</b>			
2.7 Demolition	The demolition of a	The application seeks	<b>Yes</b>

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	building or work may be carried out only with development consent.	approval for the demolition of the existing dwellings and associated outbuildings.	
4.1AB Minimum lot sizes for residential development in Zone R2 Low Density Residential	The minimum lot size for a dwelling house is 300m <sup>2</sup> if the dwelling density (per hectare) as shown on the Residential Density Map in relation to the and is 15.	Having regard to Clause 4.1AG (Split zones) the area of the subject site located within the R2 zone is greater than 300m <sup>2</sup> .	<b>Yes</b>
4.1B Residential density	The site is subject to a dwelling density of 15 dwellings per hectare. On this basis, the "net developable area" of the site (being the part zoned R2) is 9353.42m <sup>2</sup> . Therefore, the minimum density requirement is equivalent to 14.03 dwellings.	One dwelling.	<b>No</b> - The proposed development does not comply with this development standard. Consequently, the Applicant has requested consideration of a variation under Clause 4.6. Refer discussion under separate heading 6.1 (a) (v).
4.3 Height of Buildings	9m	Maximum 7.65m	<b>Yes</b>
5.1 Relevant acquisition authority	Liverpool Council is identified as the relevant acquisition authority for the RE1 and SP2 zoned portions of the site.	Dedication of land zoned RE1 and SP2 is not proposed as part of this application and is not required at this stage. This will occur at a later stage when required	<b>Yes</b>
5.9 Preservation of trees or vegetation	The objective of this clause is to preserve the amenity of the area through the preservation of trees and other vegetation.	The site is cleared of any significant vegetation, with the exception of the southern western corner of the site which aligns with the intermittent water course. No tree or native vegetation removal is proposed as part of the development.	<b>Yes</b>
6.1 Public Utility	Public utility	The proposed new	<b>Yes</b>

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Infrastructure	infrastructure must be available.	dwelling will be connected to existing mains electricity, town water supply and telecommunications infrastructure. The site is not connected to reticulated sewer infrastructure. A new aerated waste water treatment system is proposed to be installed on site for on-site sewage management.	
6.2 Native vegetation retention areas	The objective of this clause is to prevent the clearing of certain native vegetation.	The south western corner of the site contains a small portion of land identified as “native vegetation retention area” on the Native Vegetation Protection Map. While some of the flood mitigation works may be carried out within the area identified as “existing vegetation area”, the site of these works has been heavily modified and no trees are located within the area nominated for the flood mitigation works.	<b>Yes</b>
6.3 Existing native vegetation	The objective of this clause is to manage existing native vegetation in accordance with the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995.	The south western corner of the site contains a small portion of land identified as “existing vegetation area” on the Native Vegetation Protection Map. While some of the flood mitigation works may be carried out within the area identified as “existing	<b>Yes</b>

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		vegetation area”, there are no trees located within the area nominated for the flood mitigation works.	
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**(v) Clause 4.6 – Variation to Residential Density**

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

The development standard to be varied is Clause 4.1B (3) – Residential Density under Appendix 8 of the Growth Centres SEPP. The Applicant has submitted a written request to vary the development standard for the residential density, copy provided in **Attachment 2**.

The Applicant contends that Clause 4.1B Residential density should be read in the context of Clause 4.1 Minimum subdivision lot size. On this basis and given that no subdivision is proposed as part of this application, it is the Applicant’s opinion that Clause 4.1B is not a matter for consideration in this assessment.

However, it is Council’s position that Clause 4.1B does apply in that in order to consider the new dwelling, minimum lot size is a consideration and therefore Clause 4.1AB does apply. On that basis, minimum dwelling density under Clause 4.1B is a matter for consideration in this assessment.

In respect to the Clause 4.6 variation the following key questions need to be addressed:

1. Is the proposed development consistent with the objectives of the zone?

Applicant’s justification:

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

The new dwelling contributes towards the current housing needs of the community. The form and scale of the dwelling is compatible with the emerging low-density character of the release area in that it:

- Provides a single storey form with contemporary architectural stylistic features;
  - Includes compliant landscape and private open space zones; and
  - Complies with the minimum front, rear and side setbacks when assessed in the context of its future lot shown in the indicative subdivision plan.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not relevant.

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- To allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.

Not relevant.

- To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low-density residential environment.

Not relevant.

Planner's comment:

The proposed use of the site for residential purposes contributes towards housing needs within the community and therefore is consistent with the applicable zone objective.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Applicant's justification:

- To establish minimum density requirements for residential development,

The minimum density for residential development has been established at 15 dwellings per hectare on this site for the R2 zoned land (developable portion). Although, the proposed development only involves 1 dwelling per hectare (or 9353.42m<sup>2</sup> in this case), there is future capacity for an additional 14 lots (and subsequent dwellings) in stage 1, and an addition six lots (and subsequent dwellings) in stage 2 as per the indicative subdivision layout plans attached.

- To ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing, and

As demonstrated on the indicative subdivision layout plans prepared by Mosca Pserras Architects, the site has future capacity to create an additional 14 lots which will exceed the residential density requirement and will contribute to the availability of new housing. The site will also have the capacity for infrastructure including new roads and services in accordance with the indicative layout plan for Austral and Leppington North precinct in the DCP.

- To ensure that the scale of residential development is compatible with the character of the precinct and adjoining land.

The scale of the proposed development is considered compatible with the existing locality. A number of residential dwellings in the area, with the same residential density requirements are similar in respect to the height, size, bulk and scale of the dwelling proposed. The proposed development will be contained on a larger allotment when included in a future subdivision, as demonstrated in the indicative subdivision layout plan. However, the lot will ultimately be surrounded by an SP2 Infrastructure zone to the south and RE1 Public Recreation Zone to the west and not completely surrounded by residential development. This will ensure the development strikes an appropriate balance between the adjoining large recreational and drainage lands to the south and west and the proposed residential zones to the east.

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Whilst the scale of the proposed dwelling is considerably larger than the envisaged future residential development in the precinct it will not inhibit achievement of the overall density requirement across the existing holding and does not present an offensive building form or one which would be significantly out-of-place in the future context.

Planner's comment:

The objective of the residential density standard is to ensure that development will not compromise the ability to provide for the use of the land and infrastructure for residential purposes in an efficient manner.

In this instance, it is acknowledged that approval for subdivision is not sought. However, it is considered imperative that the development can demonstrate that any future subdivision is capable of complying with the minimum residential density standard to ensure the most efficient use of the land for residential purposes.

The Applicant has demonstrated that while the proposed development of one dwelling per hectare is well short of the required 15 dwellings per hectare requirement, the siting and configuration of the dwelling enables a future orderly and compliant subdivision over the remainder of the developable portion (R2 zoned) of the site.

Consequently, it is considered that the proposed development will not compromise the ability of the land to be subdivided in the future for residential purposes.

3. A) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Applicant's justification:

- The development seeks consent for a single dwelling house which has been sited and designed to enable the future orderly residential subdivision development over the remaining developable area. This future subdivision layout shown is capable of complying with the minimum required density standard of 15 dwellings per hectare.
- The development is unlikely to be redeveloped for 2-3 years as new subdivisions are reliant on the roll out of mains sewer infrastructure to this part of the release area which are scheduled beyond 2022/23.
- The landowner should not be forced in to developing a subdivision which would prohibit the shorter-term enjoyment of their holding where it has been demonstrated that future subdivision of the land is capable of complying with the density standard.

Planner's comment:

It is acknowledged that the subject development does not result in the most efficient use of the land for residential purposes given that one dwelling is proposed on a site where there is a capacity to meet the required residential density. However, on the basis that the single dwelling has been designed having regard to the future use of the site to accommodate the required density, and that mains sewer infrastructure is not currently in place to service the site, the application of the development standard is considered unreasonable and unnecessary in the circumstances of this case.

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B) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the Applicant's written justification well founded?

Applicant's justification:

There are sufficient environmental planning grounds to justify contravening the development standard as there is capacity for compliance with the minimum residential density requirements in the following ways:

- The development proposes an overall density of 1 dwelling per hectare, well beneath the 15 dwellings per hectare requirement, however the proposed undeveloped area allows for future subdivision and dwellings that will meet the 15 dwellings per hectare minimum.
- The remaining developable area is capable of containing an additional 14 lots (in accordance with the indicative subdivision plan – stage 1) with areas ranging from 308.54m<sup>2</sup> to 395.85m<sup>2</sup> which complies with the minimum lot size of 300m<sup>2</sup> for the site.
- The future lots are capable of achieving lot widths ranging from 9m to 11.53m, and depths of 34.33m, which will comply with the minimum dimensions as specified by the DCP.
- Additionally, the lot containing the proposed dwelling can be further subdivided in the longer-term future to enable an additional six lots as shown in the indicative subdivision plan – stage 2.
- The sitting and configuration of the dwelling on the existing allotment is capable of being contained on its own lot as demonstrated in Figure 1 whilst enabling a future orderly and compliant subdivision over the remaining developable portion (R2 zoned) of the site. The location of the dwelling will also enable the design and construction of future roads over the site which accord with the locations shown in the DCP Indicative Layout Plan (ILP).
- The new dwelling will not result in any significant detrimental impacts to the future residential amenity of the area with regard to overshadowing, solar access or visual privacy to neighbouring properties given the single storey format proposed.
- Accounting for the dwelling's future lot boundaries in the indicative subdivision layout, the development will continue to comply with the minimum landscape and private open space requirements of the DCP. It will also adhere to the minimum front, side and rear setback controls for single storey dwellings under the DCP.
- The development does not require extensive bulk earthworks or clearing of vegetation to accommodate the new dwelling and will accordingly have negligible environmental impacts which can be managed in accordance with Council's standard conditions of consent.

Planner's comment:

The proposed development has been designed having regard to the future use of the land for residential purposes. This has been demonstrated by the Indicative Subdivision Layout Plans for the remaining developable area outside of the new dwelling footprint (Stage 1 Plan) as well



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as the potential future development of the land comprising the subject development area (Stage 2 Plan). As it has been established that the subject development does not compromise the site's ability to comply with the minimum residential density requirements for future development, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance.

Conclusion

The Panel can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 subclause 3.

The Panel can also be satisfied that the proposed development will not be contrary to the public interest given that it does not compromise the ability of the site to comply with the residential density requirements in the future.

It is the view of this reports author that the justification provided is satisfactory and having considered the application on its merits, the variation to the residential density requirement of 15 dwellings per hectare development standard is supported in this instance.

**(b) State Environmental Planning Policy No. 55 – Remediation of Land**

Pursuant to Clause 7 of SEPP 55, 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.

Although it is unlikely that the land would be contaminated, given its previous residential use, Council must consider this and the likelihood of any contamination on-site and the possible impacts which may arise from any works associated with this proposal.

The objectives of SEPP 55 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

<b>Clause 7 - 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	A Preliminary Site Investigation, prepared by EI Australia, dated December 2020, has been submitted with this application. When reviewing the aforementioned report, Council's Environmental Health Section considered whether the land is contaminated. Based upon the consultants' findings, Council's Environmental Health Section understands that the land is suitable in its current condition for the proposed use

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	without the need for remediation.
(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	<p>The contamination assessment indicates that the land is suitable for the proposed works and as it is unlikely that the land is contaminated. Furthermore, no complaints or evidence in Council records indicate the presence of any contaminates or dumping of potential contaminates.</p> <p>Based upon the consultants' findings, Council's Environmental Health Section is satisfied that the land is suitable in its current condition for the proposed use without the need for remediation.</p>
(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.	The information provided states that no further remediation of the development site is required which was confirmed by Council's Environment and Health section.

Based on the above assessment and subject to the imposition of conditions addressing the recommendations in the Preliminary Site Investigation, the proposal is considered to satisfy the relevant objectives and provisions of SEPP 55, and can be made suitable for continued residential use.

**(d) State Environmental Planning Policy (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 BASIX Certificate has been submitted for the proposed development. The proposal is considered to be satisfactory with regard to water and energy efficiency and thermal comfort.

**(e) Greater Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River (No 2 –1997)**

The subject land is located within the Hawkesbury Catchment and as such the Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) applies to the application.

The Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) generally aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

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It is considered that the proposal satisfies the provisions of the Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997), subject to appropriate sedimentation and erosion controls being implemented during construction.

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

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

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

**(a) Liverpool Growth Centres Development Control Plan (LGCDCP) 2013**

The application has been considered against the controls contained in the LGCDCP in particular:

- Part 2: Precinct Planning Outcomes;
- Part 3: Neighbourhood and Subdivision Design;
- Part 4: Residential Development; and
- Schedule 1: Austral and Leppington North Precincts

The development is found to be generally consistent with the key controls as detailed within the tables in **Attachment 3** of this report.

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

There are no Planning Agreements which apply to the development.

**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 BCA and the Safety standards for demolition (AS 2601 – 2001). 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, subject to the imposition of appropriate conditions of consent. It is considered that the proposed development has been designed with sufficient regard to the flood potential of the site, as well as the future use of the site for public recreation and drainage infrastructure purposes.

The proposed development is unlikely to create any adverse impacts on the surrounding built environment. The proposed development is considered to be of an appropriate scale and is unlikely to create any detrimental impacts on the adjoining properties or the locality as a whole. The proposal will facilitate residential development which is not an over-development and will not compromise the site's ability to achieve the desired future built character of the locality.

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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 proposal would result in a positive economic impact in the locality through the capital investment value of the development and is unlikely to generate any identifiable detrimental social impacts, being consistent with the desired development type in 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 the site is considered to be suitable for the proposed development.

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

**(a) Internal Referrals**

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

<b>DEPARTMENT</b>	<b>COMMENTS</b>
Building Officer	Approval subject to conditions of consent.
Heritage Officer	Approval subject to conditions of consent.
Development Engineer	Approval subject to conditions of consent.
Environmental Health	Approval subject to conditions of consent.
Flood Engineer	Approval subject to conditions of consent

**(b) External Referrals**

The following comments have been received from external Agencies:

<b>DEPARTMENT</b>	<b>COMMENTS</b>
Sydney Water	No concerns identified. Further approval will be required and is conditioned accordingly.

**(c) Community Consultation**

The proposal was not required to be advertised/notified in accordance with the Liverpool Community Participation Plan, 2019.

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

The proposed development results in the demolition of existing structures and construction of an architecturally designed dwelling which will improve the visual quality of the existing streetscape. The new dwelling has been designed so as not to compromise the future development of the area in accordance with the ILP. For these reasons, the proposed development is considered to be in the public interest.

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**7. CONCLUSION**

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, and the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, LGCDP 2013, 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.

**8. RECOMMENDATION**

That Development Application DA No 199/2021 seeking approval for the demolition of existing structures and construction of a one storey dwelling with in-ground swimming pool, earthworks, support infrastructure and associated site works, be approved subject to conditions of consent.

**9. ATTACHMENTS**

- 1. PLANS OF THE PROPOSAL**
- 2. CLAUSE 4.6 VARIATION REQUEST**
- 3. LGCDP COMPLIANCE TABLE**
- 4. RECOMMENDED CONDITIONS OF APPROVAL**

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PROPOSED SINGLE DWELLING

250 Fourteenth Avenue, AUSTRAL  
(21 - 4, 07 000)



COLOURS

Colour	Code
White	1000
Black	2000
Grey	3000
Dark Grey	4000
Light Grey	5000
Dark Blue	6000
Light Blue	7000
Green	8000
Yellow	9000
Red	10000
Orange	11000
Brown	12000
Dark Brown	13000
Light Brown	14000
Dark Green	15000
Light Green	16000
Dark Red	17000
Light Red	18000
Dark Purple	19000
Light Purple	20000

SAMPLES OF FINISHES



Item	Description	Quantity	Unit
1	Concrete	100	m <sup>2</sup>
2	Brick	500	m <sup>2</sup>
3	Stone	200	m <sup>2</sup>
4	Timber	100	m <sup>2</sup>
5	Glass	50	m <sup>2</sup>
6	Roofing	100	m <sup>2</sup>
7	Paint	100	litres
8	Plaster	100	m <sup>2</sup>
9	Insulation	100	m <sup>2</sup>
10	Windows	10	units
11	Doors	5	units
12	Lighting	10	units
13	Sanitaryware	10	units
14	Electrical	10	units
15	Plumbing	10	units



Item	Description	Quantity	Unit
16	Roofing	100	m <sup>2</sup>
17	Paint	100	litres
18	Plaster	100	m <sup>2</sup>
19	Insulation	100	m <sup>2</sup>
20	Windows	10	units
21	Doors	5	units
22	Lighting	10	units
23	Sanitaryware	10	units
24	Electrical	10	units
25	Plumbing	10	units



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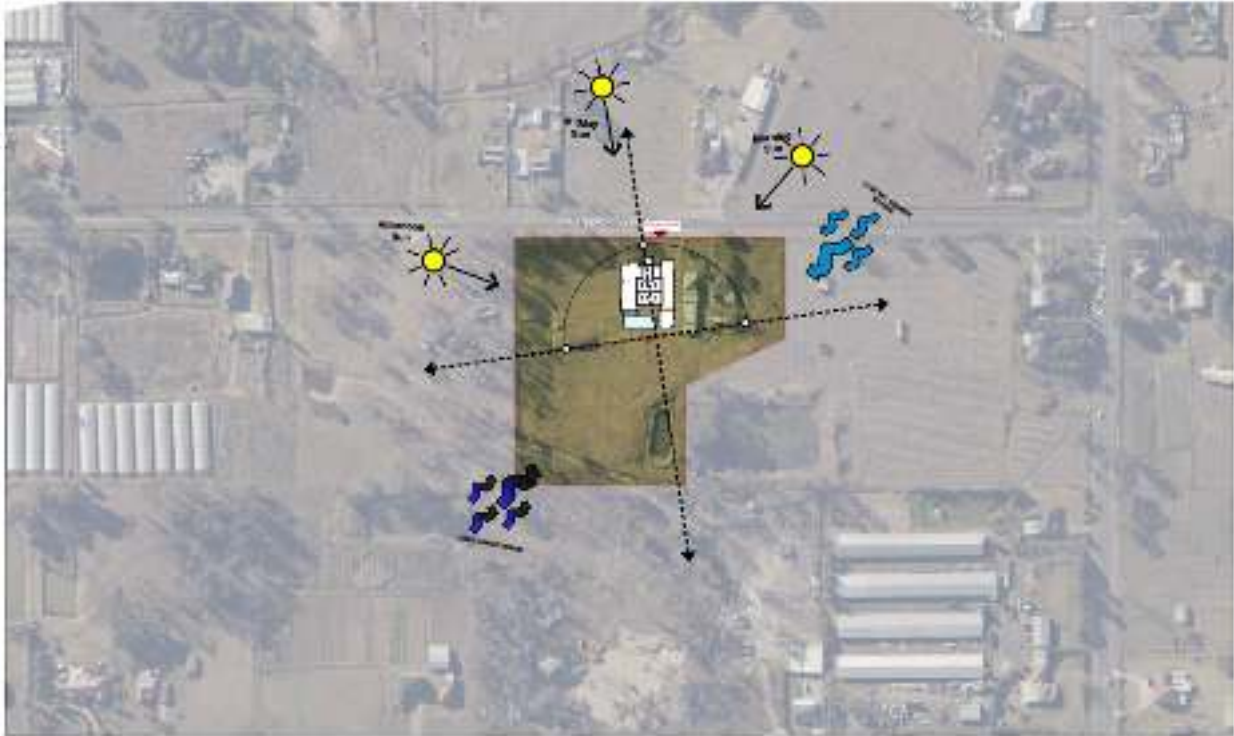
Date: 28 June 2021





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Site Name: [Redacted]  
Site No: [Redacted]  
Date: [Redacted]

mpc

Design & Technical Services  
100-102, [Redacted]  
Liverpool, L3 5 [Redacted]  
Tel: [Redacted]  
Email: [Redacted]



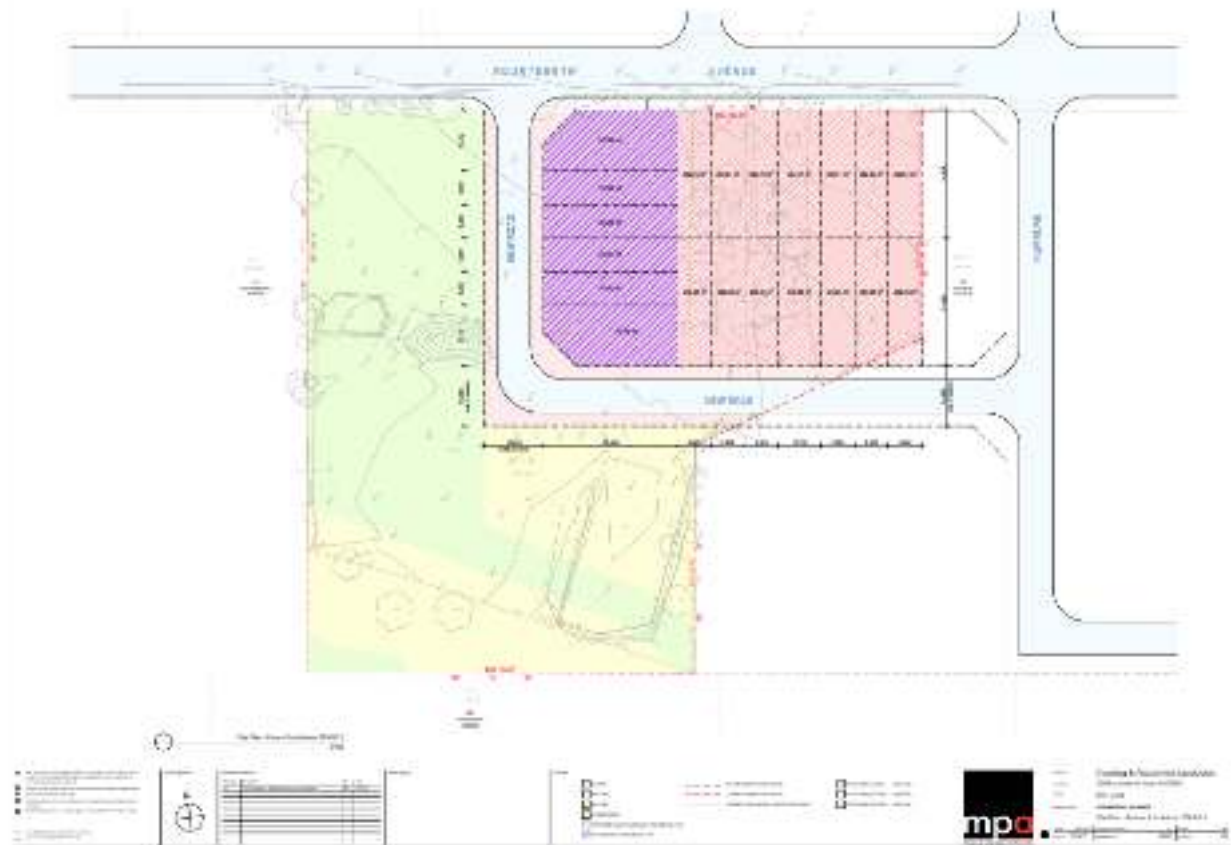
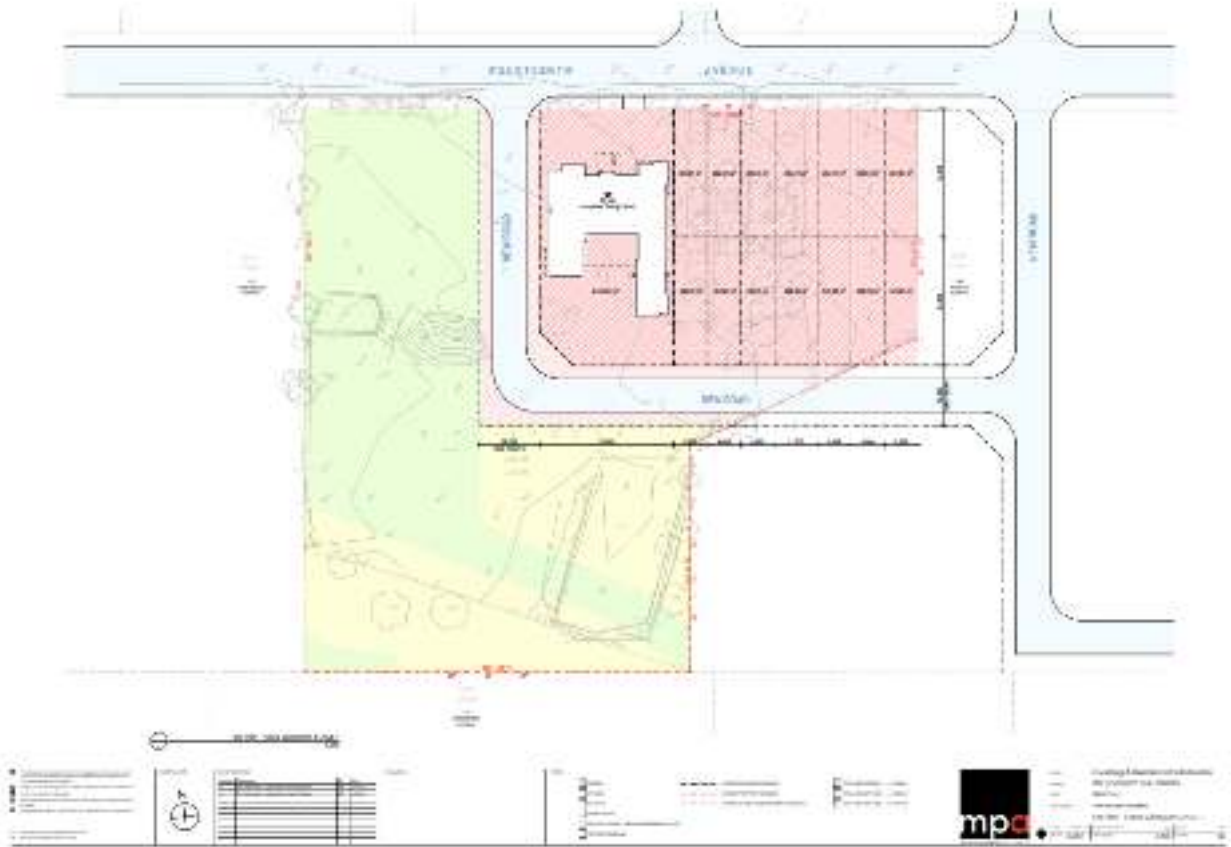
Site Name: [Redacted]  
Site No: [Redacted]  
Date: [Redacted]

mpc

Design & Technical Services  
100-102, [Redacted]  
Liverpool, L3 5 [Redacted]  
Tel: [Redacted]  
Email: [Redacted]

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ATTACHMENT 2: CLAUSE 4.6 VARIATION REQUEST



**CLAUSE 4.6 VARIATION REQUEST**  
CLAUSE 4.1B(3) OF APPENDIX 8, SEPP (SYDNEY  
REGION GROWTH CENTRES) 2006 – MINIMUM  
RESIDENTIAL DENSITY

**250 Fourteenth Avenue, Austral**  
APP Corporation Pty Limited

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This report has been prepared and reviewed in accordance with our quality control system. The report is a preliminary draft unless it is signed below.

This report has been prepared by: Mitch Brown  
Urban Planner

This report has been reviewed by: Josh Owen  
Senior Associate

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## **1. Introduction**

This Clause 4.6 Variation Request has been prepared by APP Corporation on behalf of Mr. Tony Hadchiti in relation to DA-199/2021 for demolition of existing structures, earthworks and construction of a new single storey dwelling with in-ground swimming pool and associated site works at 250 Fourteenth Avenue, Austral (the site). The request has been prepared in responding to point (1) of the request for additional information dated 21 April 2021 from the appointed independent assessor 'The Planning Hub'.

The Clause 4.6 Variation (CI 4.6) relates to the Minimum Residential Density control under Clause 4.1B, Appendix 8 of the State Environmental Planning Policy (Sydney Region Growth Centres Precincts), 2006 (Growth Centres SEPP).

The proposed development does not include any subdivision of the site and therefore, Clause 4.1 of the Growth Centres SEPP would not ordinarily apply in the assessment of the DA. Clause 4.1B seeks to regulate the minimum residential densities resulting from subdivision and is to be read in connection with the broader sub-clauses of Clause 4.1. Notwithstanding this, it is understood that Council have an established precedent of considering a sites' potential yield and minimum residential densities, even where a stand alone dwelling with no subdivision is proposed. Accordingly, this Clause 4.6 Variation sets out the following:

- Strict compliance with the development standard in this particular instance is unreasonable and unnecessary because a future subdivision of the broader site could demonstrate compliance with the minimum density requirement as evidenced in the supporting indicative future subdivision plan prepared by Mosca Pserras Architects (attached and provided in Figure 1).
- In this particular instance, there are sufficient environmental planning grounds to justify the variation to the development standard.
- The proposal will be in the interests of the public because, notwithstanding the subject variation, it is consistent with the objectives of the development standard and objectives of the R2 Low Density Residential zone.

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Figure 1 - Indicative Subdivision Layout - Stage 1 (Source: Mosca Pserras Architects)



Figure 2 - Indicative Subdivision Layout - Stage 2 (Source: Mosca Pserras Architects)

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## **2. Clause 4.6 Exceptions to Development Standards**

Clause 4.6 of the Growth Centres SEPP 2006 enables an exception to the minimum residential density standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

1. *That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and*
3. *That 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 consent authority's satisfaction as to those matters must be informed by the objectives, which are:

1. To provide flexibility in the application of the relevant control; and
2. To achieve better outcomes for and from development.

The Land and Environmental Court has established questions to be addressed in variations to development standards lodged under the previous *State Environmental Planning Policy 1 – Development Standards* (SEPP 1) through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130LGERA 79 and 89. This test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827.

Further to the test established in the above cases, an additional principle was established in the decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five) which was upheld by Pain J on appeal. A further recent judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard." [88]*

How these tests and considerations are applied to the assessment of variations under Clause 4.6 of the SEPP and other standard Environmental Planning Instruments has most recently been confirmed in the judgement of Justice Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSW LEC 118.



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Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of Growth Centres SEPP 2006 reads as follows:

**4.6 Exceptions to Development Standards**

*(1) The objectives of this clause 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.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) 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.*
- (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 Director-General has been obtained.*
  - (5) In deciding whether to grant concurrence, the Director-General must consider—*
    - (a) whether contravention of the development standard raises any matter of significance for State 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 Director-General before granting concurrence.*
  - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
    - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

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*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note— When this Precinct Plan was made it did not include any of these zones other than Zone RU6 Transition, Zone E2 Environmental Conservation and Zone E4 Environmental Living.*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4.*

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### 3. The Development Standard to be Varied

The development standard to be varied is Clause 4.1B(3) - Residential Density under Appendix 8 of the Growth Centres SEPP.

The relevant clause is provided below -

- (2) This clause applies to residential development of the kind referred to in clause 4.1AB or 4.1AC that—*
- (a) is carried out on land to which this Precinct Plan applies that is shown on the Residential Density Map, and*
  - (b) requires development consent, and*
  - (c) is carried out after the commencement of this Precinct Plan.*
- (3) The density of any residential development to which this clause applies is not to be less than the density shown on the Residential Density Map in relation to that land."*

As identified in the Growth Centres SEPP 2006 RDN map (RDN\_007) the site has a minimum residential density of 15 dwellings per hectare which applies to the majority part of the site. The site is outlined in red below.



Figure 3 - Minimum Residential Density (Source: RDN\_007)

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Sub-clause (2) of Clause 4.1B qualifies that the clause applies to development of a kind referred to in clauses 4.1AB or 4.1AC that is carried out on land shown on the residential density map.

Clauses 4.1AB and 4.1AC identify the types of residential development to occur in certain residential density areas (i.e. the minimum lot size for dual occupancies in certain density areas). These clauses are to be read in the context of Clause 4.1 – Minimum subdivision lot size which establishes parameters for residential development involving the subdivision of land. The subject development proposal does not include any subdivision and therefore, it is our view that Clause 4.1B should not be a consideration in the assessment of this application. Notwithstanding this, it is understood that Council have an established precedent of considering a sites' potential yield and minimum residential densities, even where a standalone dwelling with no subdivision is proposed.

The proposal seeks to construct a new detached single storey dwelling on the existing lot. Pursuant to Clause 4.1AB(3) the minimum lot size for a dwelling house in the residential density area of 15 dwellings per hectare is 300m<sup>2</sup>. No change is sought to the existing lot area of approx. 2.02ha. Accordingly, the proposal complies with the minimum standard established under Clause 4.1AB(3) and this variation therefore only relates to Clause 4.1B(3).

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#### 4. Extent of Variation to the Development Standard

The proposal involves the demolition of the existing dwelling and outbuildings, and the construction of a new dwelling and swimming pool with landscaping and associated site works in accordance with the proposed site plan below in Figure 4.

The proposal does not involve any subdivision, or subdivision works.



Figure 4 - Proposed Site Plan (Source: Masca Pserras Architects).

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## 5. Assessment

### **Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

A clear aim of Clause 4.6 is for flexibility in the application of a planning control where it can be demonstrated that strict compliance is unreasonable and unnecessary. This proposal relies on such flexibility to have the development approved at the density proposed in the DA.

The indicative subdivision layout plan supplied in support of this written request and provided in Figure 1 demonstrates that the proposed new dwelling has been sited and designed to ensure that it will not compromise the efficient future use of the remnant developable land. The indicative subdivision plan shows the dwelling being contained on its own large lot of land which will become a remnant parcel capable of future subdivision. Importantly, the remnant developable land around the large lot is shown as being capable of supporting 14 residential lots with areas and dimensions that adhere to the requirements of the Growth Centres SEPP and Austral / Leppington North DCP. Accordingly, the plan demonstrates that future subdivision of the land can comply with the minimum 15 dwelling density target per hectare.

With regard to the above, strict compliance with the control would necessitate that the subdivision of the whole developable area be sought now as part of this application. This is considered unreasonable and unnecessary because:

- The development seeks consent for a single dwelling house which has been sited and designed to enable the future orderly residential subdivision development over the remaining developable area. This future subdivision layout shown is capable of complying with the minimum required density standard of 15 dwellings per hectare.
- The development is unlikely to be redeveloped for 2-3 years as new subdivisions are reliant on the roll out of mains sewer infrastructure to this part of the release area which are scheduled beyond 2022/23.
- The landowner should not be forced in to developing a subdivision which would prohibit the shorter-term enjoyment of their holding where it has been demonstrated that future subdivision of the land is capable of complying with the density standard.

### **Clause 4.6 (3) (b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a Clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site.

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Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient – the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

There are sufficient environmental planning grounds to justify contravening the development standard as there is capacity for compliance with the minimum residential density requirements in the following ways:

- The development proposes an overall density of 1 dwelling per hectare, well beneath the 15 dwellings per hectare requirement, however the proposed undeveloped area allows for future subdivision and dwellings that will meet the 15 dwellings per hectare minimum.
- The remaining developable area is capable of containing an additional 14 lots (in accordance with the indicative subdivision plan – stage 1) with areas ranging from 308.54m<sup>2</sup> to 395.85m<sup>2</sup> which complies with the minimum lot size of 300m<sup>2</sup> for the site.
- The future lots are capable of achieving lot widths ranging from 9m to 11.53m, and depths of 34.33m, which will comply with the minimum dimensions as specified by the DCP.
- Additionally, the lot containing the proposed dwelling can be further subdivided in the longer-term future to enable an additional six lots as shown in the indicative subdivision plan – stage 2.
- The siting and configuration of the dwelling on the existing allotment is capable of being contained on its own lot as demonstrated in Figure 1 whilst enabling a future orderly and compliant subdivision over the remaining developable portion (R2 zoned) of the site. The location of the dwelling will also enable the design and construction of future roads over the site which accord with the locations shown in the DCP Indicative Layout Plan (ILP).
- The new dwelling will not result in any significant detrimental impacts to the future residential amenity of the area with regard to overshadowing, solar access or visual privacy to neighbouring properties given the single storey format proposed.
- Accounting for the dwelling's future lot boundaries in the indicative subdivision layout, the development will continue to comply with the minimum landscape and private open space requirements of the DCP. It will also adhere to the minimum front, side and rear setback controls for single storey dwellings under the DCP.
- The development does not require extensive bulk earthworks or clearing of vegetation to accommodate the new dwelling and will accordingly have negligible environmental impacts which can be managed in accordance with Council's standard conditions of consent.

**Clause 4.6 (4)(a)(ii) – Is the proposed development 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?**

In the case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90, Commissioner Pearson stipulates that the consent authority is to be satisfied that the proposed development will be in the public interest because it is consistent with:

- a) The objectives of the particular standard, and

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- b) The objectives for development within the zone in which the development is proposed to be carried out.

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge observed in his judgement at [39] that 4.6(4) of the Standard Instrument does not require the consent authority to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly be satisfied that the applicant's written request has adequately addressed those matters.

The objectives of the development standard and the zone are addressed below under the relevant headings.

**The Objectives of the Particular Standard**

The particular development standard is Clause 4.1B Residential Density of Growth Centres SEPP 2006 and the relevant objectives are addressed below:

- a) To establish minimum density requirements for residential development.

The minimum density for residential development has been established at 15 dwellings per hectare on this site for the R2 zoned land (developable portion). Although, the proposed development only involves 1 dwelling per hectare (or 9353.42m<sup>2</sup> in this case), there is future capacity for an additional 14 lots (and subsequent dwellings) in stage 1, and an addition six lots (and subsequent dwellings) in stage 2 as per the indicative subdivision layout plans attached.

- b) To ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing, and

As demonstrated on the indicative subdivision layout plans prepared by Mosca Pserras Architects, the site has future capacity to create an additional 14 lots which will exceed the residential density requirement and will contribute to the availability of new housing. The site will also have the capacity for infrastructure including new roads and services in accordance with the indicative layout plan for Austral and Leppington North precinct in the DCP.

- c) To ensure that the scale of residential development is compatible with the character of the precinct and adjoining land.

The scale of the proposed development is considered compatible with the existing locality. A number of residential dwellings in the area, with the same residential density requirements are similar in respect to the height, size, bulk and scale of the dwelling proposed. The proposed development will be contained on a larger allotment when included in a future subdivision, as demonstrated in the indicative subdivision layout plan. However, the lot will ultimately be surrounded by an SP2 Infrastructure zone to the south and RE1 Public Recreation Zone to the west and not completely surrounded by residential development. This will ensure the development strikes an appropriate balance between the adjoining



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large recreational and drainage lands to the south and west and the proposed residential zones to the east.

Whilst the scale of the proposed dwelling is considerably larger than the envisaged future residential development in the precinct it will not inhibit achievement of the overall density requirement across the existing holding and does not present an offensive building form or one which would be significantly out-of-place in the future context.

**The Objectives for Development within the Zone in which the Development is Proposed to be Carried Out.**

The site is located in the R2 Low Density Residential zone, and the relevant objectives of this zone are addressed below.

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

The new dwelling contributes towards the current housing needs of the community. The form and scale of the dwelling is compatible with the emerging low-density character of the release area in that it:

- Provides a single storey form with contemporary architectural stylistic features;
- Includes compliant landscape and private open space zones, and
- Complies with the minimum front, rear and side setbacks when assessed in the context of its future lot shown in the indicative subdivision plan.

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

Not relevant.

To allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.

Not relevant.

To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low-density residential environment.

Not relevant.

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## **6. Any matters of significance for State or regional environmental planning**

The contravention of the minimum residential density standard does not raise any matter of State or regional planning significance.

## **7. Conclusion**

This written request has been prepared in accordance with the provisions under Clause 4.6, Appendix 8 of the Growth Centres SEPP. It seeks a variation to the minimum residential density standard of 15 dwellings per hectare which applies to the subject site under Clause 4.1B(3) of the SEPP and responds to the request for additional information dated 21 April 2021 from the appointed independent assessor 'The Planning Hub'.

The request is underpinned by an indicative future subdivision layout prepared by Mosca Pserras Architects highlighting a future Stage 1 and Stage 2 development over the site. The indicative future layout which contains the subject dwelling within its own larger lot demonstrates achievement of a compliant minimum density with lot areas and dimensions that adhere to the minimum controls. Given that the sitting and design of the dwelling will enable a future orderly and compliant residential development over the R2 zoned portion of the site it is considered unreasonable and unnecessary to enforce strict compliance at this stage.

There are sufficient environmental planning grounds to support the subject proposal, namely:

- The form and height of the development is compatible with the future envisaged residential character of dwellings in the release area.
- The design of the dwelling exhibits a high standard of architectural stylistic elements and is supported by new landscaping and fencing to help dress the frontage to Fourteenth Avenue.
- The proposal will not adversely impact the residential amenity of future neighbouring dwellings by way of unreasonable overshadowing, blocking of solar access or visual privacy.
- The development does not require extensive bulk earthworks, diversion of natural drainage or clearing of native vegetation to accommodate the new dwelling.
- The sitting and configuration of the dwelling will enable the design and construction of roads which accord with the DCP's ILP.

The request also outlines how the proposed development is consistent with the objectives of the standard, notwithstanding the deviation sought, and the objectives of the R2 Low Density Residential zone.

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The variation does not raise any matters of State or regional planning significance and does not affect the future enforcement of the standard in consideration of future similar variations.

It is considered that the proposed variation is acceptable and worthy of support in this instance.

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**ATTACHMENT 3 – LIVERPOOL GROWTH CENTRES DCP 2013 COMPLIANCE TABLE**

<b>Part 2 Precinct Planning Outcomes</b>		
<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>
2.2 The Indicative Layout Plan	All development applications are to be generally in accordance with the Indicative Layout Plan.  When assessing development applications, Council will consider the extent to which the proposed development is consistent with the  Any proposed variations to the general arrangement of the Indicative Layout Plan must be demonstrated by the applicant, to Council's satisfaction, to be consistent with the Precinct Planning Vision in the relevant Precinct schedule.	<b>Complies.</b> The Applicant has submitted an Indicative Future Subdivision Plan which demonstrates that the proposed dwelling does not compromise the future subdivision potential of the land to achieve a layout (including new road) that complies with the Austral Precinct Planning Vision.
2.3.1 Flooding	This section contains controls relating to development on flood prone land.	<b>Complies.</b> The application was accompanied by a Flood Risk Assessment, prepared by SEEC dated May 2021 (Revision C). The habitable floor level is proposed at or above the Flood Planning Level (FPL). Council's Flood Engineers have reviewed the proposed development and raise no concerns subject to conditions.
2.3.2 Water Cycle Management	This section contains controls relating to stormwater management.	<b>Complies.</b> The application was accompanied by Stormwater Engineering Concept Plans prepared by SEC . These plans were reviewed by Council's Development Engineer and no concerns have been raised subject to the imposition of recommended conditions.
2.3.3 Salinity and Soil Management	This section contains controls relating to salinity and soil management.	<b>Complies.</b> The site is identified as being on the "Potential Salinity" Map as being in the "Medium to Highly Saline" category. A soil salinity investigation and assessment was carried out by EI Australia as part of the Preliminary Site Investigation dated December

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		2020. Based on the results of the assessment, the report concludes that soils are non-saline, non-sodic and non-aggressive.
2.3.4 Aboriginal and European Heritage	This section contains controls relating to the management of Aboriginal heritage values and to ensure areas identified as European cultural heritage sites or archaeological sites are managed.	<b>Complies.</b> The site is identified as being a “High Archaeological Sensitivity Area” on the Aboriginal Cultural Heritage Sites figure. Eco-logical Australia has undertaken an Aboriginal Heritage Due Diligence Assessment for the site. The report concludes that Aboriginal objects are unlikely to be present in the area and that the proposed works will be unlikely to impact Aboriginal objects. The report includes recommended general measures to be taken in the event that any suspected Aboriginal objects are uncovered and located during works.
2.3.5 Native Vegetation and Ecology	This section contains controls relating to the conservation and rehabilitation of native vegetation.	<b>Complies.</b> Part of the site is identified as a Riparian Protection Area of the Riparian Protection Areas figure. No trees are to be removed as part of the proposal.
2.3.6 Bushfire Hazard Management	This section contains controls relating to development on bushfire prone land.	<b>Complies.</b> The application was accompanied by a Bushfire Hazard Protection Assessment Report prepared by Control Line Consulting dated November 2020. The report concludes that the development can comply with the requirements of PBP 2019 subject to the adoption of recommendations made in the report.
2.3.7 Site contamination	This section controls relating to development on potentially contaminated land.	<b>Complies.</b> The application was accompanied by a Preliminary Site Investigation prepared by EI Australia, dated December 2020 indicates that the site is suitable for its intended use and that no remediation is required. This report was reviewed by Council’s environment and Health Officer who concurred with the findings of the report.
2.3.9 Noise	This section contains controls relating to ensuring acoustic privacy is achieved for future	<b>Complies</b> The site is not located in an acoustic sensitive area. No further comments are required in this regard.

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	residential development.	
2.3.10 Odour Assessment	This section relates to land deemed by Council to be affected by an odour source.	<b>N/A</b> The proposal is not affected by any odours(i.e. poultry farms).
2.4 Demolition	This section contains controls relating to demolition of buildings.	<b>Complies</b> Demolition is proposed with the DA. Conditions are to be imposed on any consent granted.
2.6 Earthworks	This section contains controls relating to earthworks.	<b>Complies</b> This aspect has been reviewed by Council's Land Development Engineers, who have raised no issues to the earthworks associated with the construction of the dwelling pad and the drainage works, subject to conditions.

**Part 3 Neighbourhood and Subdivision Design**

Development Control	Provision	Comment
3.1.1 ResidentialDensity	All applications for residential subdivision and the construction of residential buildings are to demonstrate that the proposal meets the minimum residential density requirements of the relevant Precinct Plan and contributes to meeting the overall dwelling target in the relevantPrecinct.	<b>Variation.</b> Whilst the subject DA does not meet the minimum dwelling density applicable, it has demonstrated that subject to future development, it is capable of meeting the minimum 16 dwellings per ha requirements. Refer to Section 6.1(v) of the assessment report or further details.
	Residential development is to be generally consistent with the residential structure as set out in the Residential Structure Figure in the relevant Precinct Schedule, the typical characteristics of the corresponding Density Band in Table 3-1.	<b>Complies</b> Whilst subdivision is not proposed as part of this DA, an indicative subdivision plan has been proposed which details the ability of the site to be developed in the future in line with applicable controls.

**Part 4 Residential Development**

Development Control	Provision	Comment
4.1.1 Site analysis	This section contains requirements for a site analysis plan.	<b>Complies.</b> The siting of the dwelling, earthworks and other ancillary works have considered the site conditions and

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		surrounding context.
4.1.2 Cut and fill	The section contains controls relating to the amount of cut and type of fill to be imported.	<b>Complies.</b> All fill brought to the site is proposed to be VENM. The extent of earthworks has been reviewed by Council's Land Development Engineers, who have raised no issues to the earthworks associated with the construction of the dwelling pad and ancillary drainage works, subject to conditions.
4.1.3 Sustainable building design	This section contains controls to minimise energy usage and greenhouse emissions and encourage the adoption of renewable energy initiatives and to minimise consumption.	<b>Complies</b> The proposal includes installation of a 22,500L rainwater tank. A BASIX Certificate has also been generated for the development which includes a number of energy and water efficient measures.  It is considered that adequate sustainable design measures have been incorporated for a new dwelling.
4.1.4 Salinity, sodicity and aggressivity	This section includes controls to manage and mitigate the impacts of, and on, salinity.	The site is identified as being on the "Potential Salinity" Map as being in the "Medium to Highly Saline" category. A soil salinity investigation and assessment was carried out by EI Australia as part of the Preliminary Site Investigation dated December 2020. Based on the results of the assessment, the report concludes that soils are non-saline, non-sodic and non-aggressive.
<b>4.2 Dwelling design controls</b>		
Lots with frontage width >15m for front accessed dwellings		
4.2.2 Streetscape and architectural design	This section includes controls to ensure that building design enhances the built form and character of the neighbourhood.	<b>Complies.</b> The proposed demolition of the existing structures on site and replacement with a dwelling of contemporary design is considered to enhance to the character of the locality. The dwelling has

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		street frontage and includes design elements and materials which are considered appropriate for the area.
4.2.3 Front setbacks	4.5m to building façade line 3.0m to articulation zone 5.5m to garage line and 1.0m behind the building line	<b>Complies</b> Given the 14m building setback with the staggered building line and porch within the articulation zone, the front setback complies and is deemed reasonable.
4.2.4 Side and rear setbacks	Ground floor sides A & B : 0.9m	<b>Complies</b> Side setbacks approximately 66m
	Ground floor rear: 4.0m	<b>Complies</b> Rear setback approximately 34m
4.2.5 Dwelling height, massing and siting	Two stories	<b>Complies</b> Single storey
	Site coverage Single storey 50%	<b>Complies</b> Less than 5% site coverage
4.2.6 Landscaped area	Minimum 30% of the allotment area	<b>Complies</b> Given the size of the allotment, combined with the front setback, there is adequate area to accommodate landscaping. The site plan indicates the extent of proposed landscaping forward of the building line and within the development footprint and is considered to provide an appropriate balance between built and natural form.
4.2.7 Private open space	Minimum 24m <sup>2</sup> with minimum dimension 4m 50% of the area of the required principal private open space should receive at least 3 hours of sunlight between 9am and 3pm at the winter solstice.	<b>Complies</b> A landscaped area to the south of the pool provides opportunities for outdoor recreation and relaxation within the development footprint.
4.2.8 Garages, storage, site access and parking	Maximum garage door width 3m (single) and 6m (double) Triple garages are not permitted 3 bedroom or more dwellings to provide at least 2 car spaces	<b>Variation</b> A triple garage is proposed. The total width of the garage represents approximately 31% of the front façade. This, combined with the size of the site area and the dwelling articulation through use of



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		contrasting materials and the porch, minimises the visual impact of the triple garage.
4.2.9 Visual and acoustic privacy	These controls relate to user requirements for visual and acoustic privacy as well as minimising impacts to adjoining properties.	<b>Complies.</b> The Development maintains sufficient amenity and does not impact on surrounding developments from a visual or acoustic perspective.
4.2.10 Fencing	Front fencing shall be a maximum of 1.2m above EGL and shall be an open style incorporate pickets, slats, pailings or the like or lattice style panels with a minimum aperture of 25mm.	<b>Variation</b> Front fencing to consist of brick pillars, maximum 1.8m high, with 1.1m high panels. A condition is proposed to limit the height of the front fence to a maximum 1.2m above EGL to ensure fencing will be consistent with the anticipated streetscape.

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**ATTACHMENT 4 – RECOMMENDED CONDITIONS OF APPROVAL**

**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>
Cover Sheet & Schedule of Finishes	AP01	07	17.06.21	Mosca Pserras Architects
Development Data	AP02	03	17.06.21	Mosca Pserras Architects
Site Plan	AP03	03	17.06.21	Mosca Pserras Architects
Ground Floor Plan	AP04	05	17.06.21	Mosca Pserras Architects
Elevations	AP05	04	16.06.21	Mosca Pserras Architects
Front Fence Elevation	AP06	04	16.06.21	Mosca Pserras Architects
Demolition Plan	SP02	01	03.02.2021	Mosca Pserras Architects
BASIX certificate	B2475		16.06.21	GAT & Associates
Concept Stormwater Drainage Plan	20000387 – STW01	00	01.02.2021	SEEC
Concept Stormwater Roof & Overall Site Catchment Plans	20000387 – STW02	00	01.02.2021	SEEC
Concept Stormwater Drainage Typical Details & Calculations	20000387 – STW03	00	01.02.2021	SEEC

**Reports**

<b>Title</b>	<b>Project No.</b>	<b>Revision</b>	<b>Dated</b>	<b>Prepared by</b>
Flood Risk Assessment	20000387-FRA01-	C	05.05.2021	SEEC
Wastewater Management: Site & Soil Evaluation and Disposal	20000387		22.02.2021	SEEC

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System Design					
Preliminary Site Investigation	E24919.E01.	0		22.12.2020	EI Australia
Waste Management Plan					
Bushfire Hazard Assessment Report	20.12.391			November 2020	Control Line Consulting
Aboriginal Due Diligence Assessment	SYD20-17737	V1		December 2020	Ecological Australia

**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

**Demolition Works**

- All proposed demolition works shall be completed prior to issue of any Construction Certificate.

**Comply with EP&A Act & Regulations**

- 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.

**Front Fencing**

- Front fencing shall be a maximum of 1.2m high above ground level (existing) at its highest point.

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

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

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

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6. Prior to the issue of a Construction Certificate, the Principal Certifying Authority and/ or Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including the payment of application and inspection fees, has been lodged with, and approved by Liverpool City Council.
7. Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works and best engineering practice.

**Site Development Work**

8. Site development work in the form of excavation, underpinning or shoring works must not take place, until such time as a CC has been issued.

**National Construction Code Compliance**

9. In accordance with Section 4.17(11) of the Environmental Planning & Assessment Act 1979 and Clause 98 of the Environmental Planning & Assessment Regulation 2000, it is a prescribed condition that all building work must be carried out in accordance 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).

**Long Service Levy**

10. 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.

**S138 Roads Act – Minor Works in the Public Road**

11. Prior to the issue of a Construction Certificate, a Section 138 Roads Act application/s, including payment of fees, shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road.

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.

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**Note:** Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

**On-Site Sewage Management System**

12. An application for Approval to Install an On-site Sewage Management System pursuant to Section 68 of the Local Government Act is to be submitted to Council for consideration and approval. The application is to be accompanied by a Waste Water Report prepared by a suitably qualified consultant, specifications of the proposed system and NSW Health accreditation details of proposed system.

**Stormwater Concept Plan**

13. A stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by SEEC, reference number 20000387 (Sheets STW01-03), revision 00, dated 01/02/2021.
14. 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.
15. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the stormwater drainage system has been designed in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

**Dilapidation Report**

16. Prior to the Commencement of Works a dilapidation report of all infrastructure fronting the development in 250 Fourteenth Avenue, Austral, 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 10m either side of the development.

**On-site sewage management**

17. Onsite detention system is not required for the proposed development. Rainwater (retention) tank of at least 4,500 litres shall be installed on site as per BASIX requirements.

**Landscaping**

18. A Landscape Plan shall be submitted to Council for approval prior to issue of the Construction Certificate.

**Site Validation**

19. A Clearance Certificate prepared by an appropriately qualified occupational hygienist to confirm that the site is free of asbestos shall be submitted to the Certifier prior to issue of any Construction Certificate.

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**C. PRIOR TO WORKS COMMENCING**

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

**Construction Certificate**

20. 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 6.6 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 certifier must be appointed to carry out the necessary building inspections and to issue an occupation certificate; and
- e. The principal certifier 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.

**Construction Certificates**

21. 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.

**Commencement of Building Work**

22. Building work shall not commence prior to the issue of a Construction Certificate. Building work as defined under Section 1.4 of the EP&A Act means any physical activity involved in the erection of a building and includes but is not limited to, the placement of any site shed/s

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or builders facilities, site grading, retaining walls, excavation, cutting trenches, installing formwork and steel reinforcement or, placing of plumbing lines.

**Sediment & Erosion Control**

23. 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.

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

**Demolition Works**

24. 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, must be prepared by a suitably qualified person with suitable expertise 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) licence 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.

25. The development shall comply with the recommendations provided in the Preliminary Site investigation report prepared by EI Australia, Reference No. E24919.E01, dated December 2020.

**Residential Building Work**

26. 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 following information:

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- a) In the case of work for which a principal contractor is required to be appointed:
  - I. The name and licence number of the principal contractor; and
  - II. The name of the insurer by which the work is insured under Part 6 of that Act,
- b) in the case of work to be done by an owner-builder:
  - I. the name of the owner-builder, and
  - II. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit,

Note: A certificate supporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part.

**Sydney Water**

27. Development plans must be processed and approved by Sydney Water.

**Riparian Protection Area**

28. Any native vegetation within the Riparian Protection Area shall be conserved and managed in accordance with the Guidelines for riparian corridors on waterfront land prepared by the NSW Office of Water. Should any subsequent approvals be required for works with the riparian corridor, all necessary approvals must be sought.

**D. DURING CONSTRUCTION**

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

**Building Work**

29. 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.

**Site Notice Board**

30. 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 certifier 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



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**Environmental Management**

31. 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 construction/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.

**Excavation**

32. 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 building, structure or work from possible damage from the excavation, and
- b) where necessary, underpin the building, structure or work to prevent any such damage.
- 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.
- d) 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 practising structural engineer.

**Toilet Facilities**

33. 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) be connected to 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.

**Security Fence**

34. 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.

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**Site Facilities**

35. 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.

**Identification Survey Report**

36. 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 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.

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

**Identification Survey Report**

37. On placement of the concrete, works again shall not continue until the PCA has issued a certificate stating that the condition of the approval has been complied with and that the slab has been poured at the approved levels.

**Demolition Inspections**

38. 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.

**Sign Notice board**

39. A sign must be erected and maintained in a prominent position on the site, which contains the following details:

a) name, address, contractor licence number and telephone number of the principal contractor, including a telephone number at which the person may be contacted outside working hours, or owner-builder permit details (as applicable)

b) name, address and telephone number of the principal certifier

c) a statement stating that 'unauthorised entry to the work site is prohibited'.

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**Refuse Disposal**

40. 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.

**Security Fence**

41. 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.

**Waste Management Plan**

42. 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.

**Contamination**

43. The development, including all civil works and demolition, must comply with the requirements of the Contaminated Land Management Act, 1997, State Environmental Planning Policy No. 55 – Remediation of Land, and Managing Land Contamination – Planning Guidelines (Planning NSW/EPA 1998).

**Imported Fill Material**

44. Filling material must be limited to the following:

- a) Virgin excavated natural material (VENM)
- b) Excavated natural material (ENM) certified as such in accordance with Protection of the Environment Operations (Waste) Regulation 2014; and/or
- c) Material subject to a Waste Exemption under Clause 91 and 92 Protection of the Environment Operations (Waste) Regulation 2014 and recognised by the NSW Environment Protection Authority as being "fit for purpose" with respect to the development subject of this application.

Certificates proving that the material imported is ENM or VENM must be provided to the Principal Certifying Authority prior to filling.

Fill imported on to the site must be compatible with the existing soil characteristic for site drainage purposes.

**Record Keeping of Imported Fill**

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45. The following records of accepted waste derived fill material must be submitted to the Principal Certifying Authority at the completion of earth works:
- a) the course (including the address and owner of the source site), nature and quantity of all incoming loads including the date, the name of the carrier, and the vehicle registration,
  - b) Documentation confirming the results of the waste classification assessment carried out on the fill material used in the development, and
  - c) the results of any chemical testing undertaken on fill material.

**Aboriginal Cultural Heritage – Staff and Contractors**

46. All relevant on-site staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977. They are to be informed of what the potential heritage on the site will be and its significance. The site supervisor is to maintain a record of who has completed the heritage induction and this is to be provided to Council prior to Issue of Occupation Certificate.

**Aboriginal Cultural Heritage – Unexpected Finds**

47. As required by the National Parks and Wildlife Service Act 1974 in the event that Aboriginal cultural heritage objects or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Office of Environment and Heritage (OEH) must be notified of the discovery.
48. In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the National Parks and Wildlife Service Act 1974 to obtain the necessary approvals/permits from the OEH.

Note: The National Parks and Wildlife Service Act 1974 impose substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

**Skeletal Remains**

49. In the event that skeletal remains are uncovered, work must cease immediately in that area and the area secured. NSW Police must be contacted and no further action taken until written advice has been provided by the NSW Police. If the remains are determined to be of Aboriginal origin, the Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 and a management plan prior to works re-commencing must be developed in consultation with relevant Aboriginal stakeholders.

**Bushfire**

50. The building shall be of minimum Level (insert level) construction in accordance with AS3959-1999 'Construction of Buildings in Bushfire Prone Areas'.

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51. The development shall comply with the recommendations of the Bushfire Hazard Assessment Report, prepared by Control Line Consulting, REF No. 21.12.391 dated November 2020.

**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 Certifying Authority:**

**Occupation Certificate**

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

**BASIX**

53. 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.

**On-Site Sewerage Management System - Installation/Amendment**

54. The installation / amendment of an On-Site Sewerage Management System is to be finalised in accordance with the approval issued by Council under Section 68 of the Local Government Act 1993. The following documents shall be submitted to the PCA;

- a) A satisfactory final inspection report issued by Council for the newly installed / amended On-Site Sewerage Management System.
- b) An Approval to Operate an On-Site Sewerage Management System issued by Council in accordance with Section 68 of the Local Government Act 1993.

**Decommissioning of On-Site Sewage Management System/s**

55. Following the decommissioning of the on-site sewage management system, a certificate certifying that the system was decommissioned in accordance with NSW Health Advisory Note 3 – Destruction, Removal or Reuse of Septic Tanks, Collection Wells and Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF), shall be submitted to Council. A template decommissioning certificate can be found on Councils website [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au)

**Certificates**

56. A surveyor's certificate shall be submitted confirming that the floor levels are not lower than the required level.

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**Rectification of Damage**

57. 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 250 Fourteenth Avenue, Austral, will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

**Dilapidation Report**

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

**G. CONDITIONS RELATING TO USE**

**Pool Area Design**

59. The swimming pool shall be fenced in accordance with the provisions of AS1926, prior to the pool being filled with water.

**Pool Area Design**

60. All drainage and pool wastes to be discharged in accordance with AS 3500.0.

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**H. ADVISORY CONDITIONS**

- a) Sections 8.2, 8.3, 8.4 & 8.5 of the Environmental Planning and Assessment Act 1979 allow 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.
  
- b) Under Sections 8.7 & 8.10 of the 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 twelve (12) 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.
  
- 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.
  
- e) To confirm the likelihood of consent lapsing, refer to Section 4.53 of the Environmental Planning and Assessment Act 1979. 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) 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 regards to the operation of the building.
  
- g) "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

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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.

- h) 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.
  
- i) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant. 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