

# LOCAL PLANNING PANEL AGENDA

28 August 2023

# MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

**Monday, 28 August 2023**

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

## Microsoft Teams meeting

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

Should you wish to address the Panel, please advise Andrijana Mijoski on 8711 7915, by 4pm, 25<sup>th</sup> August 2023.

For further information relating to the Local Planning Panel please refer to Council's web page:

<https://www.liverpool.nsw.gov.au/development/assessment-panels/Liverpool-Local-Planning-Panel>

ITEM No.	SUBJECT	PAGE No.
1	<p data-bbox="373 439 1023 468"><b>DEVELOPMENT APPLICATION DM/211/1990/A</b></p> <p data-bbox="373 517 1150 696"><b>MODIFICATION TO DEVELOPMENT CONSENT NO.211/1900 UNDER SECTION 4.55(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, SEEKING TO AMEND CONDITION 16 TO EXTEND THE HOURS OF OPERATION.</b></p> <p data-bbox="373 745 632 775"><b>LOT 17 DP 261574</b></p> <p data-bbox="373 824 1169 853"><b>24 WENDLEBURY ROAD, CHIPPING NORTON NSW 2170</b></p>	4 - 75

ITEM No.	SUBJECT	PAGE No.
2	<p data-bbox="373 1016 1007 1046"><b>DEVELOPMENT APPLICATION DA-1339/2021</b></p> <p data-bbox="373 1095 1118 1162"><b>TORRENS TITLE SUBDIVISION OF ONE (1) LOT INTO THREE (3) LOTS.</b></p> <p data-bbox="373 1211 679 1240"><b>LOT 3101 DP 1197717</b></p> <p data-bbox="373 1290 1098 1319"><b>50 JARDINE DRIVE, EDMONDSON PARK NSW 2174</b></p>	76 - 130

<b>Item Number:</b>	1
<b>Application Number:</b>	DM/211/1990/A
<b>Proposed Development:</b>	Modification to Development Consent No.211/1900 under Section 4.55(1A) of the <i>Environmental Planning and Assessment Act 1979</i> , seeking to amend condition 16 to extend the hours of operation.
<b>Property Address</b>	24 Wendlebury Road, Chipping Norton
<b>Legal Description:</b>	Lot 17 DP 261574
<b>Applicant:</b>	Tanis Confectionery Australia Pty Ltd
<b>Land Owner:</b>	Mr N A Finocchiaro
<b>Cost of Works:</b>	\$0
<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Eunice Pedrosa

## 1 EXECUTIVE SUMMARY

The purpose of this report is to supplement the original assessment report issued to the Liverpool Local Planning Panel (LLPP) for the 26 June 2023 public meeting. This supplementary report documents events and the actions of Council officers and the applicant and analyses the applicant's most recent response to the outstanding additional information request. Assessment of the proposal is contained within the original assessment report, see Attachment 5.

On 26 June 2022, the LLPP considered the subject application (DM/211/1990/A) and deferred the matter, noting:

*The Panel supports the Council officer's previous request of the applicant for additional information on the nature and extent of the activities and processes involved in the current use of the site. This information is fundamental for Council and the Panel to determine whether there is power to consider the modification application. The applicant should be again requested to provide this information for assessment by Council officers. The information is to be provided within fourteen days of the Council officer's request. If the information is provided as requested the result of the Council officer's assessment should be included in an updated assessment report to be submitted to the future meeting of the Panel.*

The application was deferred as per the above, dated 5 July 2023. A summary of requested information is as follows:

- Evidence that the current use and the extension of the driveway onsite has planning approval;

- Submission of a Statement of Environmental Effects (SEE) addressing Section 4.55 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), permissibility, a compliance assessment identifying all relevant clauses of the Liverpool Local Environmental Plan (LEP) and Liverpool Development Control Plan Part 1 and Part 7, and operational details of the use;
- A full set of architectural plans showing the existing development on site; and
- A response to the submissions.

The applicant responded to Council’s request for additional information on 24 July 2023, with the following:

- A list of comments in a PDF document discussing the site and DA history;
- Historical Aerial photos of the site;
- An existing floor plan;
- Acknowledgement letter for illegal parking; and
- Time sheet of employees dated since November 2021.

The applicant’s response is considered to be insufficient, as it does not comprehensively address the information requested. Council’s assessing officer is still unable to ascertain the nature and extent of the activities and processes involved in the current use of the site and resultant, whether the development is considered substantially the same development for which consent was originally granted and whether the proposed modification is of minimal environmental impact. The applicant’s response is provided as Attachment 2 of this report.

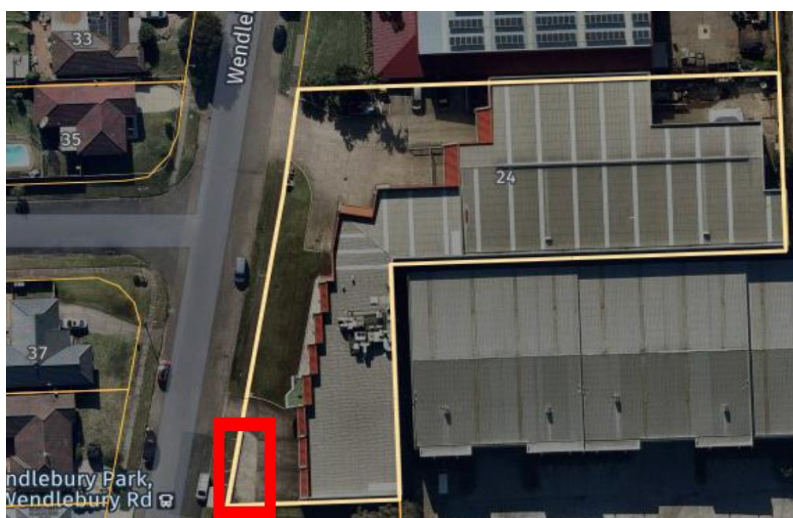
Council maintains the recommendation in its initial assessment report, that the subject modification application be refused.

## **2. DEVELOPMENT APPLICATION HISTORY**

<b>Date</b>	<b>Action</b>
06 December 2021	Application was lodged to Council
06 June 2022	The adjoining sites were notified for 14 days of the proposed development
28 June 2022	The proposed development was re-notified for 14 days. Given that there was a change in assessing officer, a re-notification was issue to the public to ensure the public was provided with the contact details of the assessing officer.
04 July 2022	All submissions were acknowledged
19 August 2022	Additional 14 Days letter sent to applicant requesting the following: <ol style="list-style-type: none"> <li>1. A search of Council’s records reveals the current use to be operating without approval. Please provide evidence that the current use has planning approval.</li> <li>2. A Statement of Environmental Effects (SEE) must be provided and addresses s4.55 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act 1979). The applicant must demonstrate how the proposed development is substantially the same development to the development originally determined. Please see attachment 1 of the original consent of development application no. 211/1990.</li> </ol>

*Please note: In the event the application does meet the requirements of a s4.55 under the EP&A Act 1979, please provide the following.*

3. The SEE must demonstrate how the current use is permitted within the zone. Also, the SEE must include a compliance table identifying all relevant clauses of the Liverpool Local Environmental Plan (LEP) and Liverpool Development Control Plan Part 1 and Part 7.
4. Council acknowledges the Acoustic report provided. However, due to the location of the site and the amount of submissions received, the extension of hours is not supported. As per Liverpool's Development Control Plan Part 7, Section 9, Councils requires the hours of operation be limited to the following:
  - 7am to 6pm Monday to Friday;
  - 7am to 12pm on Saturday; and
  - No operation on Sunday
5. In addition, the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types, staff numbers, carparking arrangements, and hours of operation).
6. It appears that the concrete driveway to the south-western boundary has been extended. Please provide evidence that this portion of the driveway has planning approval and building approval. Please see extract below:



7. A full set of architectural plans that show the existing development on site. This must include a site plan and floor

	<p>plan of the development, drawn to a scale of either 1:100 or 1:200.</p> <p><u>Submissions:</u> Twenty (20) Submissions have been received by Council, raising objections to the proposed development. It is requested that the applicant addresses the matters raised in any submission for Council's consideration. To view the submissions in full, this can be accessed via Council's GIPA request system.</p>
12 October 2022	Follow up of Additional 14 Days letter was issued to the applicant
17 October 2022	Applicant had engaged a Solicitor and requested an extension of 6 weeks to respond
20 October 2022	Extension was granted until the 10 of November 2022 to respond to Council's letter.
14 November 2022	Responded to Council, however, requested additional 2 weeks to respond to the objections the applicant could not access all the GIPA information.
16 November 2022	Granted extension till the 11 of November 2022, due to issues with the GIPA request.
07 December, 08 December, and 13 December of 2022	<p>Solicitor (acting on behalf of applicant) stated the following via correspondence:</p> <ul style="list-style-type: none"> <li>Requested to remove all restrictions surrounding hours of operation as the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 2.46C applies. That the site is permitted to operate for 24 hours in industrial areas.</li> </ul>
08 December, 13 December, and 15 December of 2022	<p>Council responded to the Solicitor the following points via correspondence:</p> <ul style="list-style-type: none"> <li>Advised that the applicant is to demonstrate to Council whether Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008 applies.</li> <li>Based on the current information, 2.64C of the SEPP does not apply as only an Acoustic report was provided.</li> </ul> <p>Advised an amended Statement of Environmental Effects outlining how the development satisfied Clause 2.46C of the SEPP is required to be provided.</p>
26 May 2023	A Site Inspection was conducted
26 June 2023	The modification application was considered by the Liverpool Local Planning Panel at its meeting on 26 June 2023, which the panel's decision was to defer the application.
5 July 2023	14 Day letter was sent to applicant requesting additional information on the nature and extent of the activities and processes involved in the current use of the site.
19 July 2023	No response was provided by the applicant
24 July 2023	The applicant submitted a response to Council's request for additional information. However, the information provided did not sufficiently address Council's concerns.

### **3. APPLICANTS RESPONSE TO ADDITIONAL INFORMATION**

The applicant's response, dated 24 July 2023, notes that the proposed modification adheres to the requirements under the N1 (light Industry) zoning and N1 SEPP code. Additionally, the applicant has provided documentation showing the number of staff onsite at a time and the approved existing floor plan of the warehouse. Please refer to attachment 2.

Notwithstanding this, the applicant has not provided a SEE addressing how the proposed modification adheres to requirements of s4.55 of the EP&A Act 1979 and the SEPP (Exempt and Complying Development Codes) 2008 (if applicable) or detailing the nature and extent of the activities and processes involved in the current use of the site. In addition, no evidence has been provided that the current use relies on or has been granted planning approval.

Based on the available information, the proposal does not meet the provisions of s4.55 of the EP&A Act.

### **4. CONCLUSION**

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

Based on the assessment of the application, it is recommended that the application be refused.

### **5. RECOMMENDATION**

That Development Application DA no. 211/1990/A be **refused**.

### **ATTACHMENTS**

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1. Reasons for Refusal
2. Response from Applicant
3. Acoustic Report provided at Lodgement
4. Liverpool Local Planning Panel Determination Minutes
5. Initial LPP Report



**Reasons for Refusal**

1. Insufficient information has been provided which can sufficiently demonstrate that the proposed modification is of minimal environmental impact and therefore the modification application is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.
2. Due to a lack of information being provided for this modification, it cannot be ascertained if the development is considered to be substantially the same development for which the consent was originally granted and therefore is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.
3. The modification application has provided insufficient information and has not sufficiently demonstrated consistency with Clauses 11.6 and 11.7 of Chapter 11 – Georges River of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
4. The modification application has provided insufficient information and has not sufficiently demonstrated consistency with Clause 4.6 of Chapter 4 – Remediation of land of the State Environmental Planning Policy (Resilience and hazards) 2021, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
5. The proposed development is inconsistent with the objectives of the E4 – General Industrial zone described within the Liverpool Local Environmental Plan 2008. In particular, *To minimise any adverse effect of industry on other land uses.*, as the proposal is likely to unreasonably impact on the adjacent residential area, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
6. The proposed modifications do not achieve satisfactory compliance with the objectives and controls of Part 1 – General Controls for All Development, in Liverpool Development Control Plan 2008 (LDCP 2008), including Section 25 – Waste Disposal and Re-Use Facilities, pursuant to Sections 4.55(3), 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The proposed modifications do not achieve satisfactory compliance with the controls and objectives of Part 7 – Development in Industrial Areas, in LDCP 2008, including Section 9 – Amenity and Environmental Impact, pursuant to Sections 4.55(3), 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
8. Insufficient information has been submitted to allow Council to carry out a full and proper assessment of the application. In this regard, detailed documentation has not been received in response to Council's request for additional information, pursuant to Sections 4.55(3), 4.15(1)(a)(iv), 4.15(1)(b), 4.15(1)(c) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.
9. Insufficient information has been provided to demonstrate that the proposed modification would not have an adverse impact on the built environment and natural environment and would not have adverse social impacts, pursuant to Sections 4.55(3), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

10. Insufficient information has been provided to demonstrate that the site would be suitable for the proposed modifications to the development, pursuant to Sections 4.55(3) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
11. The proposed modification application is not considered to be acceptable having regard to the concerns raised during the notification period of the proposal, pursuant to the provisions of Section 4.55(1A), 4.55(3) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.
12. Due to the above reasons, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest, pursuant to the provisions of Section 4.55 and 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

## **ADVICE**

*The following matters are included as advice relative to this application:*

- (i) *If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 8.2, 8.3, 8.4 & 8.5 of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination within 6 months after the date of this determination.*
- (ii) *If you are dissatisfied with this decision, Section 8.7 & 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.*



Ref No.: DA-211/1990/A  
 Contact: Eunice Pedrosa  
 Ph: 02 8711 7638  
 Date: 12 October 2022

M MANDALINIC  
 1105/50 CLARENCE STREET  
 SYDNEY NSW 2000

### REQUEST FOR ADDITIONAL INFORMATION



(In accordance with the provisions under Section 36 and 94 of the EP&A Regulations 2021)

**ADDRESS:** LOT 17 DP 261574  
 24 WENDLEBURY ROAD, CHIPPING NORTON



**DESCRIPTION:** MODIFICATION TO DEVELOPMENT CONSENT DA-211/1990 UNDER SECTION 4.55(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, TO AMEND CONDITION 16 TO EXTEND THE HOURS OF OPERATION FROM 6AM TO 11PM MONDAY TO FRIDAY AND SATURDAY 6AM TO 4PM.

Council has conducted an assessment of Development Application DA-211/1990/A, and requires further information to enable a complete assessment of the application.

The issues identified/ additional information required:

-  1. A search of Council's records reveals the current use to be operating without approval. Please provide evidence that the current use has planning approval.
-  2. A Statement of Environmental Effects (SEE) must be provided and addresses s4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979). The applicant must demonstrate how the proposed development is substantially the same development to the development originally determined. Please see attachment 1 of the original consent of development application no. 211/1990.

*Please note: In the event the application does meet the requirements of a s4.55 under the EP&A Act 1979, please provide the following.*

-  3. The SEE must demonstrate how the current use is permitted within the zone. Also, the SEE must include a compliance table identifying all relevant clauses of the Liverpool Local Environmental Plan (LEP) and Liverpool Development Control Plan Part 1 and Part 7.
-  4. Council acknowledges the Acoustic report provided. However, due to the location of the site and the amount of submissions received, the extension of hours is not supported. As per Liverpool's Development Control Plan Part 7, Section 9, Councils requires the hours of operation be limited to the following:

- 7am to 6pm Monday to Friday;
- 7am to 12pm on Saturday; and
- No operation on Sunday.



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 Web [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au) NRS 13 36 77 ABN 84 181 182 471



## Summary of Comments on 242128.2023 AdditionalInfo - Other - DA-211 1990 A - 24 WENDLEBURY ROAD CHIPPING NORTON NSW 2170- (Response to Councils Letter - ~ 174077)(2).PDF

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Page: 1

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- |  |                       |                              |
|--|-----------------------|------------------------------|
| Number: 1  | Author: adrian mrsnik | Date: 24/05/2023 11:52:52 AM |
| Planning on the DA is clearly defined as N1 ( light industry )   |                       |                              |
| Number: 2  | Author: adrian mrsnik | Date: 24/05/2023 11:52:54 AM |
| Tanis is compliant under the N1 ( Light Industry ) zoning as per the DA and also the NSW SEPP.   |                       |                              |
| Number: 3  | Author: adrian mrsnik | Date: 24/05/2023 11:52:49 AM |
| As outlined in the DA, Tanis is compliant with the N1 SEEP Code.   |                       |                              |
| Number: 4  | Author: adrian mrsnik | Date: 24/05/2023 11:52:45 AM |
| Acoustic report performed between Tuesday 2nd - Wednesday 10th November. Attendance records show 40 Staff onsite during this period. Why is it not supported ? |                       |                              |




-  5. In addition, the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types, staff numbers, carparking arrangements, and hours of operation).
-  6. It appears that the concrete driveway to the south-western boundary has been extended. Please provide evidence that this portion of the driveway has planning approval and building approval. Please see extract below:



-  7. A full set of architectural plans that show the existing development on site. This must include a site plan and floor plan of the development, drawn to a scale of either 1:100 or 1:200.

#### Submissions

19 Submissions have been received by Council, raising objections to the proposed development. Please see the following issues raised in the submissions:

-  1. TANIS has continuously breached the current conditions of consent, and has done so without any consideration to the effects on the amenity of the residential neighbours. Additionally, TANIS has ignored the directions of the LCC to bring its operations into line with the DA conditions of consent.
-  2. The current use does not comply with conditions 7, 10, 13 and 15 of the original DA. Neighbouring streets have become public car parking with associated litter. Foreign cars are constantly parked on street corners significantly narrowing road and reducing the field of vision for motorists and pedestrians.
-  3. Due to the proximity and impact to the residential properties, increasing the approved DA operation hours would be a complete disregard to the locality. The change to the approved hours would impact the amenity to the adjoining properties and affect the traffic movements during and after the proposed hours of Monday to Friday 6am - 11pm and Saturday 6am – 4pm.



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- 
- Number: 1 Author: adrian mrsnik Date: 24/05/2023 11:53:17 AM  
Tanis complies with the N1 code.
- 
- Number: 2 Author: adrian mrsnik Date: 24/05/2023 11:52:42 AM  
Photographic evidence from October 2020 show clearly the new concrete onsite prior to Tanis becoming tenant in 2021.
- 
- Number: 3 Author: adrian mrsnik Date: 24/05/2023 11:52:36 AM  
Please see attached the site plans scaled 1:1200 as provided by council via the GIPA request. Plan is dated 1998 well before Tanis was the tenant of the building.
- 
- Number: 4 Author: adrian mrsnik Date: 24/05/2023 11:52:34 AM  
Tanis is compliant to the below Legislation requirements under the NSW SEPP.

2.46C Specified  
development

- (1) The operation of premises in Zone E1, E2, E3, E4, E5, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3, IN4, SP5 or W4 in accordance with an existing development consent or complying development certificate at any time outside the hours permitted by the development consent or complying development certificate is development specified for this code.
- (2) The trading on or from premises in accordance with an existing development consent or complying development certificate at the following times occurring outside the hours permitted by the development consent or complying development certificate is development specified for this code—
- (a) in Zone E1, E2, E3, B1, B2, B3, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4—6am–10pm,
- (b) in Zone MU1 or B4—6am–7pm,
- (c) in Zone E4, E5, IN1, IN2 or IN3 for relevant premises—
- (i) until the end of 31 January 2024—24 hours a day,
- (ii) from the beginning of 1 February 2024—6am–7pm,
- (d) in Zones Zone E4, E5, IN1, IN2 or IN3 for all other premises—24 hours a day.
- (3) In this clause - relevant premises means boat building and repair facilities and vehicle body repair workshops that are located within 100m of a residential zone.

- 
- Number: 5 Author: adrian mrsnik Date: 24/05/2023 11:52:32 AM  
Please advise which period was the complaints made? During the period in 2022, there were additional construction personnel in Wendlebury due to works being carried out on an alternate site in Wendlebury. Liverpool Council DA would show this within their records.
- 
- Number: 6 Author: adrian mrsnik Date: 24/05/2023 11:52:39 AM  
Please provide evidence that Tanis employees are impacting the traffic conditions and impacting residence?

In addition, the Acoustic Report provided does not provide a true representation of the current noise levels with the business at full operation.

-  4. Tanis Confectionary has made considerable alterations to the existing layout and operation. The site has not complied with the landscaping requirements and the minimum car parking spaces on site of the original DA.
-  5. Tanis have not provided 47 car spaces as per the conditions. The designated car spaces have become storage areas. Additionally, the cars on the streets are used as lunch rooms and the employees throw their rubbish onto the footpaths and roads.
-  6. The intersection of Wendlebury Road and Westbury Street is now at most times a Hazard caused by the impact of Tanis Confectionary. In addition, traffic flow is often blocked by the poor maneuverability of trucks while reversing into the subject site causing unwarranted delays.
-  7. Tanis Confectionary have no consideration for the amenity of the local residents. They have continuously worked outside of their starting and finishing times. Workers have arrived as early as 4:30am with their radios blasting and slamming doors. Trucks have entered the site beyond the approved hours, this includes Sunday night at 11pm.
-  8. Dock doors are left open throughout the day which is a breach of their condition. We constantly hear noises from their operation, such as drilling, welding, and grinding all day.
-  9. Trucks double park, park across pedestrian pathways, blocking driveways and queue up to enter the TANIS premise, which cause noise issues and safety issues.
-  7. The volume of cars in addition to the double-parked trucks that are parked trucks are currently parked on Wendlebury Road and surrounding streets again pose a safety risk as well as making it difficult for residents to leave and return to their properties.
-  8. Workers of Tanis Confectionary park their cars on surrounding residential streets to the factory, making it difficult for weekly rubbish collection and deliveries to be made to residents. Delivery vehicles are having to park across driveways or double park to drop off items.
-  9. Workers eat their lunch in their cars, and then dump the rubbish on the Council grass area and residents are having to pick up their rubbish to maintain the standard of the area.

It is requested that the applicant addresses the matters raised in any submission for Council's consideration. To view the submissions in full, this can be accessed via Council's GIPA request system.



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## Page: 3

- 
- Number: 1 Author: adrian mrsnik Date: 24/05/2023 11:53:22 AM  
Please outline what changes have been made outside of security bollards to prevent early deliveries? attached again are site images before Tanis occupied the site in 2021.
- 
- Number: 2 Author: adrian mrsnik Date: 24/05/2023 11:53:23 AM  
As per the site plan submitted in 1998, there is a total of 32 allocated carparking spots, please provide where the additional 16 car spots are on the DA planning? See planning Scale 1:1200 dated 1998.
- 
- Number: 3 Author: adrian mrsnik Date: 24/05/2023 11:53:25 AM  
Please provide evidence of Tanis employees causing a hazard and unwarranted delays?
- 
- Number: 4 Author: adrian mrsnik Date: 24/05/2023 11:53:27 AM  
Please provide evidence of employees arriving at 4.30am and leaving 11pm Sunday?
- 
- Number: 5 Author: adrian mrsnik Date: 24/05/2023 11:53:31 AM  
Acoustic report performed clearly defines the noise contributed by Tanis well below the decibel levels during normal daytime operations. Closing of the Roller doors is a OHS risk. No roller doors are open before 7.30am as agreed with council.
- 
- Number: 6 Author: adrian mrsnik Date: 24/05/2023 11:53:32 AM  
This instance happened once and see attached a letter from our freight forwarded showing that Tanis had no control of the rogue truck driver.
- 
- Number: 7 Author: adrian mrsnik Date: 24/05/2023 11:53:38 AM  
Please provide evidence that the cars parked are allocated to Tanis employees?  
Non residence can utilise parking during daylight hours if they should please as there is no NO Parking signage within the area.
- 
- Number: 8 Author: adrian mrsnik Date: 24/05/2023 11:53:50 AM  
"Please provide evidence that the cars parked are allocated to Tanis employees?  
Non residence and residence can utilise on street parking as there is no NO Parking signage within the area outlined.
- 
- Number: 9 Author: adrian mrsnik Date: 24/05/2023 11:53:53 AM  
Please provide evidence that this is Tanis employees?



To enable Council to assess the application as efficiently as possible, you are requested to submit the information within fourteen (14) days of the date of this letter.

If the requested information is not received within the above time period, the application will be determined on the basis of the available information, which may result in refusal of the application.

Alternatively, you may wish to withdraw the application. Should you wish to withdraw the application, you must correspond with Council in writing, within fourteen (14) days of the date of this letter, to which you will be entitled to a partial refund of Development Application fees paid.

Information is required to be submitted via [the NSW Planning Portal](#).

It is important to label the documents in line with Councils electronic filing naming convention. *i.e DA Number – Additional Information – Site Plan – XXX Address.pdf*

To track the progress of your application, please visit <https://eplanning.liverpool.nsw.gov.au/> and click on "Track an Application". The ePlanning portal also contains other relevant information including an online mapping system and access to frequently requested planning information. Alternatively, please visit [the NSW Planning Portal](#).

If you have any further enquiries, please contact Eunice Pedrosa on the abovementioned contact details.

Yours faithfully,



**Eunice Pedrosa**  
**DEVELOPMENT ASSESSMENT**



**Customer Service Centre** Ground floor, 33 Moore Street, Liverpool NSW 2170

All correspondence to Locked Bag 7064 Liverpool BC NSW 1871

Call Centre 1300 36 2170 Email [lcc@liverpool.nsw.gov.au](mailto:lcc@liverpool.nsw.gov.au)

Web [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au) NRS 13 36 77 ABN 84 181 182 471

**Attachment 1 – No. 211/1990 Consent**

*les green* *885-*  
*Plide to file*  
**LIVERPOOL CITY COUNCIL** *10/7/90*  
1 Hoxton Park Road, Liverpool, N.S.W. 2170 Telephone: (02) 821 9222

PROUD OF OUR PAST, CONFIDENT IN OUR FUTURE

Your reference:

Our reference: P 4095.230

Enquiries: Mr S Fryer: vc  
821 9287

5th July 1990

TO: The Secretary  
Dennis Flack & Associates P/L  
18 Brownlow Place  
AMBERVALE 2560

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979.

## NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION.

Being the applicant in respect of Development Application No. 211/90 and pursuant to Section 92 of the Act, Notice is hereby given of the determination by the Consent Authority of the Development Application No. 211/90 relating to:

PROPERTY: LOT 17, D.P. 261574, WENDLEBURY ROAD, CHIPPING NORTON  
ZONING: LIGHT INDUSTRIAL 4(b1) LIVERPOOL PLANNING SCHEME ORDINANCE

The Development Application has been determined by granting of consent subject to conditions specified in this Notice.

PROPOSAL: ERECTION OF A FACTORY AND WAREHOUSE FOR FURNITURE AND FURNISHINGS

## CONDITIONS:

1. Development to take place generally in accordance with Development Application received 26th April, 1990 and plans marked Job No. C752, Drawing Nos. DA1, DA2 & DA3 as amended in red on Council's file, except as modified by the undermentioned conditions.
2. Satisfactory arrangements are to be made to ensure adequate electricity for the development. The developer shall submit an Application to Prospect Electricity, P.O. Box 389, Parramatta 2150, giving details of proposed development together with two (2) copies of the ground floor plan for determination of the electricity supply requirements. A letter from Prospect Electricity to the effect that the necessary consultation has taken place will be required prior to approval of any Building Application.
3. Consultation with Telecom Australia is required as soon as possible to ensure provision of a Telecom service on completion of the building.
4. All buildings to be sited a minimum of 10 metres from the street boundary of Wendlebury Road.

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PLEASE ADDRESS ALL ENQUIRIES TO: THE TOWN CLERK, P.O. BOX 64, LIVERPOOL, 2170

D.X. 5030 LIVERPOOL FAX: (02) 821 9333



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5th July 1990

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5. The landscaped area (i.e. 5 metres setback) shall not be used for parking of vehicles, stacking or storage of goods, materials or equipment. This area shall be surrounded by a dwarf wall, 150 mm. in height, 150 mm. in thickness, planted with grass, trees and shrubs and maintained at all times to the satisfaction of Council. Ground cover materials other than grass may be used only as part of a comprehensive landscaping design, carried out to the satisfaction of Council's Town Planning Department.  
Please note that in view of the residential area directly opposite the development, Council will require a high standard of landscaping. A detailed landscaping plan shall be submitted with the Building Application for the approval of Council.
6. Carparking spaces/driveways to be constructed of concrete or other approved equivalent materials to requirements of Council. Spaces to be minimum 5.5 m x 2.5 m, permanently linemarked and provided with adequate manoeuvring facilities to the requirements of Council.
7. Provision of a minimum of forty seven (47) car parking spaces to be provided in the area behind the 5 metres setback.
8. The driveway nearest Alfred Road shall be suitably signposted to indicate use by cars only. This driveway shall be reduced in width to 6 metres to increase the landscaped area in accordance with the amendments shown in red on the approved plan.
9. No advertising matter to be erected, painted or displayed without the prior approval of Council.
10. Driveways and carspaces not to be used for manufacture, storage or display of goods, materials or equipment.
11. The development is not to interfere with the amenity of zoned Residential areas.
12. Premises to be fully completed in accordance with approvals issued by Council before occupation commences.
13. Driveways and manoeuvring areas shall be designed so as to permit the movement of vehicles in a forward direction to and from the site.
14. Under no circumstances shall the wholesale showroom be used for the display or sale of goods to the public (i.e. as a shop).
15. Roller shutter doors shall be kept closed at all times other than when the loading and unloading of goods is taking place.
16. Hours of operation to be restricted to Monday to Friday, 7.30 am to 5.30 pm and with no operations on Public Holidays.

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17. Compliance with Council's Building and Health requirements as set out under:
- 17.1 The proposal is situated outside a fire zone; has a rise in storeys of three, is classified as Class VII carpark and Class VIII factory.
- 17.2 Building application is to be submitted with the following details:-
- (a) Three sets of plans drawn to a suitable scale and specifications.
  - (b) Structural Engineer's plans for all structural elements of the building.
  - (c) Five (5) sets of plans indicating the stormwater drainage system for the site.
- 17.3 Details of all external finishes to be submitted with the building application.
- 17.4 Use and occupation of the premises is to be carried out at all times without nuisance and in particular so as not to breach the provision of either the Clean Waters Act, Clean Air Act and the Noise Control Act. The operation and use of any machinery, plant and/or equipment within, on or in connection with the operation and use of the premises to be carried out so as not cause:-
- (a) transmission of vibration to any place of different occupancy.
  - (b) 'Offensive Noise' as defined in the Noise Control Act, 1975.
- 17.5 In considering the possible effect on the environment, details for the storage of dangerous goods and processing of noxious trades are to be detailed with the Building Application.
- 17.6 Building works are not to be carried out on Sundays.
- 17.7 Glazing materials used in the building/s are to comply with Clause 53.4 of Ordinance 70 and the relevant parts of Australian Standards:
- (a) 1288 "S.A.A. Glass Installation Code"; and
  - (b) 2208 "Safety Glazing Materials for Use in Buildings (Human Impact Considerations)."
- 17.8 External glazing is to have a reflectivity index of less than 20%.

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- 17.9 Where site filling is necessary, it shall be carried out in accordance with Council's "Requirements for Construction of Subdivisions Roads and Drainage Works" sections 4 and 6. A minimum of 95% standard compacting is to be achieved and certified by a NATA registered Soils Lab.
- 17.10 Trafficked and external storage areas of the site are to be sealed and designed according to their loading requirements. Particular attention is required where pavements cross piped easements. Details of the sub-grade and selected pavement materials are to be submitted prior to release of the Building Application and certified after construction by a Civil Engineer or other suitable Consultant.
- 17.11 The proposed cartage route for the supply of fill material or for the disposal of spoil during site excavation is to be submitted to Council's City Engineer's Department and approved by Council prior to a building permit being issued. A security will be required to cover the possible damage and/or accelerated fatigue of pavements along the cartage route.
- 17.12 Excavation/site works are not to be carried out until the Building Application has been approved by Council.
- 17.13 The written concurrence of the adjoining property owner/s in relation to the proposed excavation, underpinning and shoring works are to be submitted with the Building Application. All such works to be carried out under the design and supervision of a practising structural engineer.
- 17.14 Civil and construction work on site is not permitted between the hours of 6 pm to 7 am Monday to Saturday.
- 17.15 During civil works suitable measures are to be taken to control the effects of wind blown dust from the site.
- 17.16 During Civil and Construction works the Builder/Developer shall ensure that Wendlebury Road is kept clean and free of excavated spoil material and builders debris.
- 17.17 Any external lighting on the site is not to cause a nuisance to residents in the immediate area.
18. Compliance with Council's Engineering Services requirements as under:
- 18.1 A stormwater drainage plan including tabulated drainage calculations are required showing how the stormwater is to be collected within the site and conveyed in a suitable pipeline to the most appropriate gutter or drain under the control of Council.

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- 18.2 Finished surface levels are to be shown together with the stormwater catchment on the stormwater drainage plan.  
Surface run-off towards the vehicular crossings should be minimised to eliminate the need for grates at the crossings. -
- 18.3 Suitable concrete vehicular footpath crossings shall be provided at the entrance to and exit from the site. These crossings shall be constructed in accordance with Council's standard requirements for heavy duty crossings.
- 18.4 1.2 m width concrete footpaving is to be constructed for the full frontage of the proposed site to Wendlebury Road.

## Notes:

- (1) To ascertain the date upon which the Consent becomes effective refer to Section 93 of the Act.
- (2) To ascertain the extent to which the Consent is liable to lapse refer to Section 99 of the Act.
- (3) Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a Consent Authority a right of appeal to the Land and Environment Court exercisable within twelve (12) months after receipt of this Notice.
- (4) The conditions are imposed taking into account the matters for consideration in determining a Development Application under Section 90(1) of the Environmental Planning and Assessment Act, 1979.

For and on behalf of the  
TOWN CLERK/CITY MANAGER



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Acoustics  
Vibration  
Structural Dynamics

## 24 WENDLEBURY ROAD, CHIPPING NORTON

### Acoustic assessment of proposed extension of operation hours

24 November 2021

FMB Architects

TM430-01F02 Acoustic Assessment for proposed operation hours extension (r1)



Sydney Melbourne Brisbane Gold Coast Kuwait Singapore  
Renzo Tonin & Associates ABN 29 117 462 861  
Level 1/418A Elizabeth St SURRY HILLS NSW 2010 | PO Box 877 STRAWBERRY HILLS NSW 2012  
P (02) 8218 0500 F (02) 8218 0501 sydney@renzotonin.com.au www.renzotonin.com.au





## Document details

Detail	Reference
Doc reference:	TM430-01F02 Acoustic Assessment for proposed operation hours extension (r1)
Prepared for:	FMB Architects
Address:	
Attention:	Maurice Mandalinic

## Document control

Date	Revision history	Non-issued revision	Issued revision	Prepared	Instructed	Reviewed / Authorised
23.11.2021	1 <sup>st</sup> Issue	0		R. Corbett		

File Path: R:\AssocSydProjects\TM401-TM450\TM430 24 Wendlebury Rd, Chipping Norton\TM430-01F02 Acoustic Assessment for proposed operation hours extension (r1).docx

### Important Disclaimers:

The work presented in this document was carried out in accordance with the Renzo Tonin & Associates Quality Assurance System, which is based on Australian/New Zealand Standard AS/NZS ISO 9001.

This document is issued subject to review and authorisation by the suitably qualified and experienced person named in the last column above. If no name appears, this document shall be considered as preliminary or draft only and no reliance shall be placed upon it other than for information to be verified later.

This document is prepared for the particular requirements of our Client referred to above in the 'Document details' which are based on a specific brief with limitations as agreed to with the Client. It is not intended for and should not be relied upon by a third party and no responsibility is undertaken to any third party without prior consent provided by Renzo Tonin & Associates. The information herein should not be reproduced, presented or reviewed except in full. Prior to passing on to a third party, the Client is to fully inform the third party of the specific brief and limitations associated with the commission.

In preparing this report, we have relied upon, and presumed accurate, any information (or confirmation of the absence thereof) provided by the Client and/or from other sources. Except as otherwise stated in the report, we have not attempted to verify the accuracy or completeness of any such information. If the information is subsequently determined to be false, inaccurate or incomplete then it is possible that our observations and conclusions as expressed in this report may change.

We have derived data in this report from information sourced from the Client (if any) and/or available in the public domain at the time or times outlined in this report. The passage of time, manifestation of latent conditions or impacts of future events may require further examination and re-evaluation of the data, findings, observations and conclusions expressed in this report.

We have prepared this report in accordance with the usual care and thoroughness of the consulting profession, for the sole purpose described above and by reference to applicable standards, guidelines, procedures and practices at the date of issue of this report. For the reasons outlined above, however, no other warranty or guarantee, whether expressed or implied, is made as to the data, observations and findings expressed in this report, to the extent permitted by law.

The information contained herein is for the purpose of acoustics only. No claims are made and no liability is accepted in respect of design and construction issues falling outside of the specialist field of acoustics engineering including and not limited to structural integrity, fire rating, architectural buildability and fit-for-purpose, waterproofing and the like. Supplementary professional advice should be sought in respect of these issues.

External cladding disclaimer: No claims are made and no liability is accepted in respect of any external wall and/or roof systems (eg facade / cladding materials, insulation etc) that are: (a) not compliant with or do not conform to any relevant non-acoustic legislation, regulation, standard, instructions or Building Codes; or (b) installed, applied, specified or utilised in such a manner that is not compliant with or does not conform to any relevant non-acoustic legislation, regulation, standard, instructions or Building Codes.

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RENZO TONIN & ASSOCIATES

24 NOVEMBER 2021

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Figure 1 – Site locations and surrounds

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## 1 Introduction

Renzo Tonin & Associates was engaged to undertake an acoustic assessment to determine the noise impacts of the proposed extension of hours of operation at the light industrial premises at 24 Wendlebury Road, Chipping Norton.

The DA will seek approval for hours of operation as follows:

- Hours of use of the warehouse units being 6am to 11pm Monday to Friday, and
- 6am to 4pm Saturday,

The current operating hours are 7.30am – 5.30pm Monday to Friday.

The proposal includes warehouse operations only. Deliveries will continue to only occur between 7.30am and 5.30pm Monday to Friday.

This report quantifies noise emission from activities associated with the proposal and assesses operational noise impacts to nearby sensitive receivers in accordance with the noise requirements of the existing consent condition (Noise Control Act) and NSW EPA Noise Policy for Industry (NPfI) 2017.

Appendix A contains a glossary of acoustic terms used in this report.

## 2 Site Description

The light industrial site at 24 Wendlebury Road, Chipping Norton is located at an industrial/ residential interface, with residential premises located on the opposite side of Wendlebury Road.

The nearest residential dwellings are located directly opposite the existing industrial premises to the west. Existing industrial premises are located to the north, south and east of the site.

Figure 1 shows the site location and surrounds.

### 2.1 Acoustic aspects

Based on the proposed design and operational parameters, the following aspects are deemed to require acoustic assessment:

- Operations (machinery) and movement (fork lifts) within the building envelope
- Noise associated with staff arrivals and departures from the premises.

The operator of the light industrial premises has proposed for the roller shutter doors to be closed during the extension hours to reduce noise impacts. No deliveries are to occur during the extended hour period.

#### 2.1.1 Acoustic assessment methodology

In order to assess the potential noise impact from subject site the following methodology was used:

- Identify nearest most potentially affected receiver locations to the subject site
- Determine existing background noise levels at the nearest most potentially affected receiver locations
- Use measured background noise levels to establish noise goals in accordance with the relevant noise criteria
- Using predictive noise modelling, determine the extent of noise impact from the proposed modifications at nearby residential premises
- Identify if noise emission from the area under investigation may exceed the relevant criteria, and
- Where noise emission from the area under investigation may exceed the relevant criteria, provide recommendations to reduce noise impacts from the site.

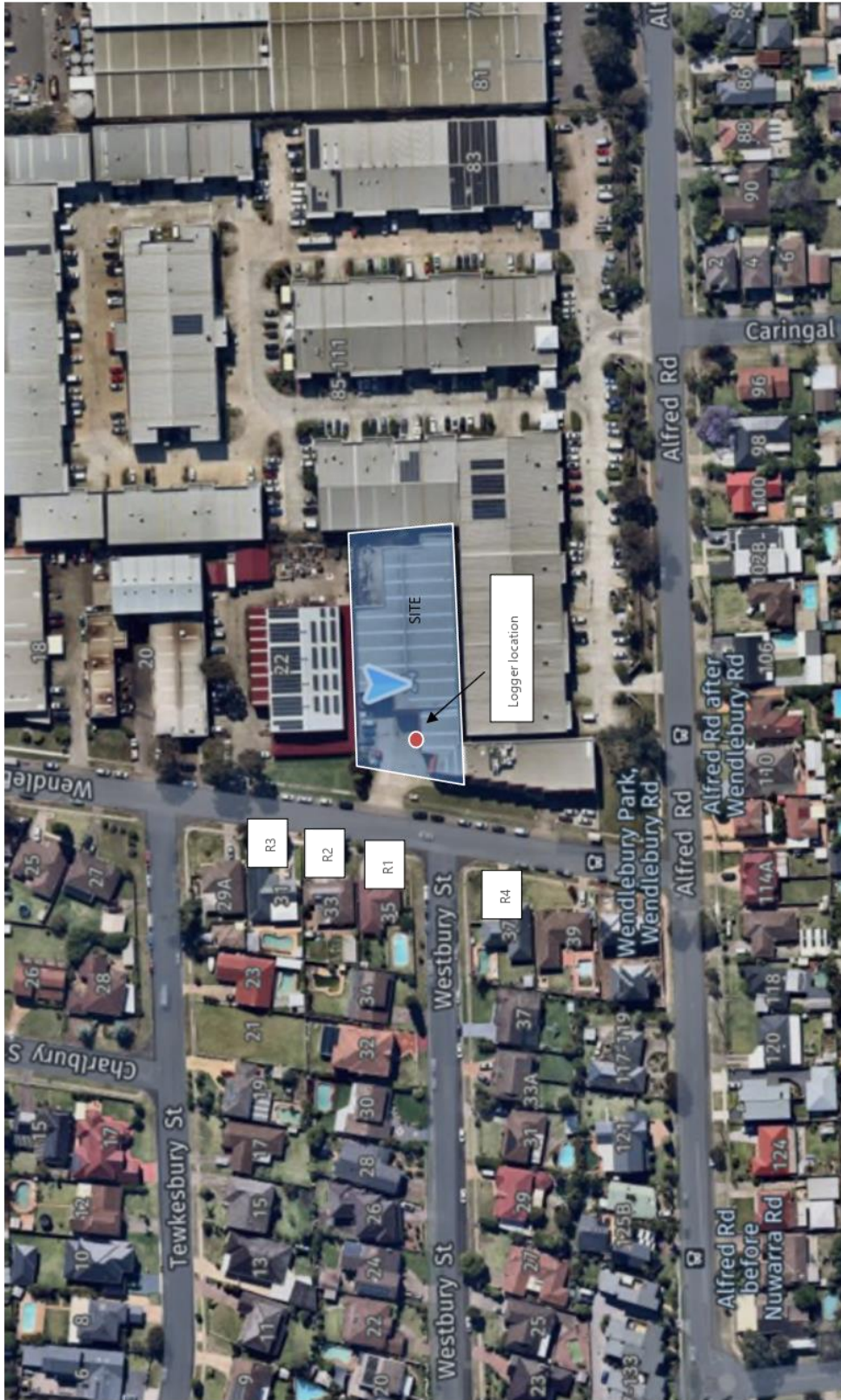


Figure 1 – Site locations and surrounds

### 3 Existing Acoustic Environment

#### 3.1.1 Noise measurement location

Long-term measurements were conducted for this project. The location is outlined in the table below and shown in Figure 1.

**Table 1: Noise monitoring location**

ID	Address	Description
<b>Long-term noise monitoring</b>		
L1	At the front of 24 Wendlebury Road, Chipping Norton	Noise logger was located on the building façade at the fire door along the driveway.

#### 3.1.2 Long-term noise measurement results

Long-term noise monitoring was carried out from Tuesday 2<sup>nd</sup> November to Wednesday 10<sup>th</sup> November 2021. The long-term noise monitoring methodology is detailed in Table 1 and noise level-vs-time graphs of the data are included in Appendix B

Table 2 presents the representative background  $L_{90}$  and ambient  $L_{eq}$  noise levels for each assessment period, determined in accordance with the NPfI.

**Table 2: Long-term noise monitoring results, dB(A)**

Monitoring location	$L_{A90}$ Rating Background Level (RBL)			$L_{Aeq}$ Ambient noise levels		
	Day	Evening	Night	Day	Evening	Night
L1 – 24 Wendlebury Road, Chipping Norton	45	35	30	59	48	46

Notes: Day: 07:00-18:00 Monday to Saturday and 08:00-18:00 Sundays & Public Holidays  
 Evening: 18:00-22:00 Monday to Sunday & Public Holidays  
 Night: 22:00-07:00 Monday to Saturday and 22:00-08:00 Sundays & Public Holidays  
 As required by the NPfI, the external ambient noise levels presented are free-field noise levels, ie. no facade reflection.

In addition, the ambient noise levels during the time extension periods have been identified below:

Mon – Fri 6:00am to 7:30am –  $L_{A90,15\text{minute}}$  38dB

Mon – Fri 5:30pm to 11:00pm -  $L_{Aeq,15\text{minute}}$  34dB

Saturday 6:00am – 4:00pm -  $L_{Aeq,15\text{minute}}$  36dB

### 3.2 Assessment locations

The identified assessment locations are outlined in Table 3 and shown in Figure 1

**Table 3: Assessment locations**

ID	Address	Description
R1	35 Wendlebury Road	Single-storey residential dwelling located to the east of the subject site.
R2	33 Wendlebury Road	Single-storey residential dwelling located to the east of the subject site.
R3	31 Wendlebury Road	Single-storey residential dwelling located to the east of the subject site.
R4	37 Wendlebury Road	Single-storey residential dwelling located to the east of the subject site.



## 4 Criteria

The following documents have been referred to in establishing suitable acoustic criteria for the extension of hours.

### 4.1 Existing Notice of Determination for the site

The original notice of determination for the site was granted on 5th July 1990.

Condition 17.4 in the notice stated:

*Use and occupation of the premises is to be carried out at all times without nuisance and in particular so as not to breach the provision of either the Clean Waters Act, Clean Air Act and the Noise Control Act. The operation and use of any machinery, plant and/or equipment within, on or in connection with the operation and use of the premises to be carried out so as not to cause: -*

- a) *Transmission of vibration to any place of different occupancy*
- b) *'Offensive Noise' as defined in the Noise Control Act 1975*

Offensive noise is defined in the Noise Control Act 1975 as:

*"Noise that by reason of its level, nature, character or quality, or the time which it is made, or any other circumstances, is likely to be harmful or offensive, or to interfere unreasonably with comfort or repose"*

The Noise Control Act 1975 has long since been superseded by the NSW EPA's Noise Policy for Industry, which has been developed specifically to address noise from industrial premises.

The Noise Policy for Industry (NPfI) is considered the most appropriate for this assessment.

### 4.2 NSW Noise Policy for Industry (NPfI)

The assessment procedure has two components:

- Controlling intrusive noise impacts in the short-term for residences; and
- Maintaining noise level amenity for residences and other land uses.

In accordance with the NPfI, noise impact should be assessed against the project noise trigger level, which is the lower value of the project intrusiveness noise levels and project amenity noise levels.

#### 4.2.1 Project intrusive noise levels

According to the NPfI, the intrusiveness of a noise source may generally be considered acceptable if the equivalent continuous (energy-average) A-weighted level of noise from the source (represented by the  $L_{Aeq,15min}$  descriptor) does not exceed the background noise level measured in the absence of the source

by more than 5dB(A). The project intrusiveness noise level, which is only applicable to residential receivers, is determined as follows:

- $L_{Aeq,15minute}$  **Intrusiveness noise level = Rating Background Level (RBL) plus 5dB(A)**

Based on the long-term background noise monitoring results obtained, the intrusiveness noise levels for residential receivers are reproduced in Table 4 below.

**Table 4: Intrusiveness noise levels**

Receiver	Intrusiveness noise level, $L_{Aeq,15min}$		
	Day	Evening	Night
R1 to R4	45 + 5 = 51	35 + 5 = 40	30 + 5 = 35

Notes: Day: 07:00am - 06:00pm Monday to Saturday and 08:00-18:00 Sundays & Public Holidays  
Evening: 06:00pm - 10:00pm Monday to Sunday & Public Holidays  
Night: 10:00pm - 07:00am Monday to Saturday and 10:00pm - 08:00am Sundays & Public Holidays  
\* The project intrusiveness noise level for the evening period should be set at no greater than the project intrusiveness noise level for daytime.

#### 4.2.2 Amenity noise levels

The project amenity noise levels for different time periods of day are determined in accordance with Section 2.4 of the NPfl. The NPfl recommends amenity noise levels ( $L_{Aq,period}$ ) for various receivers including residential, commercial, industrial receivers and sensitive receivers such as schools, hotels, hospitals, churches and parks. These “recommended amenity noise levels” represent the objective for total industrial noise experienced at receiver location. However, when assessing a single industrial development and its impact on an area, “project amenity noise levels” apply.

To ensure that the total industrial noise level (existing plus new) remain within the recommended amenity noise levels for an area, the project amenity noise level that applies for each new industrial noise source is determined as follows:

$$L_{Aeq,period} \text{ Project amenity noise level} = L_{Aeq,period} \text{ Recommended amenity noise level} - 5dB(A)$$

Furthermore, given that the intrusiveness noise level is based on a 15 minute assessment period and the project amenity noise level is based on day, evening and night assessment periods, the NPfl provides the following guidance on adjusting the  $L_{Aeq,period}$  level to a representative  $L_{Aeq,15minute}$  level in order to standardise the time periods.

$$L_{Aeq,15minute} = L_{Aeq,period} + 3dB(A)$$

The project amenity noise levels ( $L_{Aeq,15min}$ ) applied for this project are reproduced in Table 5 below, based on a ‘suburban’ noise amenity area.

**Table 5: Project amenity noise levels**

Type of receiver	Noise amenity area	Time of day	Recommended noise level, dB(A)	
			L <sub>Aeq, Period</sub>	L <sub>Aeq, 15min</sub>
Residential	Suburban	Day	55 - 5 = 50	50 + 3 = 53
		Evening	45 - 5 = 40	40 + 3 = 43
		Night	40 - 5 = 35	35 + 3 = 38

- Notes:
1. Daytime 7:00am to 6:00pm; Evening 6:00pm to 10:00pm; Night-time 10:00pm to 7:00am.
  2. On Sundays and Public Holidays, Daytime 8:00am - 6:00pm; Evening 6:00pm - 10:00pm; Night-time 10:00pm - 8:00am.
  3. The L<sub>Aeq</sub> index corresponds to the level of noise equivalent to the energy average of noise levels occurring over a measurement period.

#### 4.2.3 NPfl project noise trigger levels

In accordance with the NPfl project noise trigger levels, which are the lower (ie. more stringent) value of the project intrusiveness noise level and project amenity noise level, have been determined as shown in Table 6 below.

**Table 6: Project noise trigger levels**

Receiver location	L <sub>Aeq, 15min</sub> Project noise trigger level, dB(A)		
	Day	Evening	Night
R1 to R4	50	40	35

## 5 Acoustic Assessment

Through long-term noise monitoring, Renzo Tonin & Associates have established existing operation noise levels at the noise monitoring location. Typically, during operation periods (without deliveries), the noise level at the monitoring location was  $L_{Aeq,15\text{minute}}$  60dB throughout day with the roller shutter opened.

A conservative approach is to assume a 10dB noise reduction with the roller shutters closed. This results in a predicted noise level of 50dB(A) at the noise monitoring location.

### 5.1.1 Noise prediction results and assessment

The table below shows the predicted noise levels at the identified assessment locations. Predicted noise levels are based on the measured operational noise levels corrected for distance and reflections. For the purpose of the assessment, the most stringent criteria established was used for the assessment.

**Table 7: Predicted noise level assessment for night time period**

Assessment ID	Time Period	Description	Overall noise level, dB(A)
R1 – 35 Wendlebury Road	Night	Predicted noise level	33
		Noise goal	35
R2 - 33 Wendlebury Road	Night	Predicted noise level	33
		Noise goal	35
R3 - 31 Wendlebury Road	Night	Predicted noise level	32
		Noise goal	35
R4- 37 Wendlebury Road	Night	Predicted noise level	32
		Noise goal	35

Note: 1. Daytime 7:00am to 6:00pm; On Sundays and Public Holidays, Daytime 8:00am - 6:00pm

## 6 Sleep disturbance

Noise emanating from the project has been assessed for its potential to disturb sleep. The NSW NPfI includes guidance on assessing the likelihood of noise from a premise during the night-time period disturbing sleeping residents:

*The potential for sleep disturbance from maximum noise level events from premises during the night-time period needs to be considered. Sleep disturbance is considered to be both awakenings and disturbance to sleep stages.*

*Where the subject development/premises night-time noise levels at a residential location exceed:*

- $L_{Aeq,15min}$  40dB(A) or the prevailing RBL plus 5dB, whichever is the greater, and/or
- $L_{AFmax}$  52dB(A) or the prevailing RBL plus 15dB, whichever is greater,

*a detailed maximum noise level event assessment should be undertaken.*

*The detailed assessment should cover maximum noise level, the extent to which the maximum noise level exceeds the rating background noise level, and the number of times this happens during the night-time period. Some guidance on possible impact is contained in the review of research results in the NSW Road Noise Policy.*

...

*Maximum noise level assessments should be based on the  $L_{AFmax}$  descriptor on an event basis under 'fast' time response.*

*The detailed assessment should consider all feasible and reasonable noise mitigation measures with a goal of achieving the above trigger levels.*

The sleep disturbance criteria employed for this assessment are summarized in Table 8 below.

**Table 8: Sleep disturbance criteria**

Receiver ID	Address	Sleep disturbance criteria, 10pm - 7am, $L_{Ap}$	
		$L_{Aeq,15min}$	$L_{AFmax}$
R1	35 Wendlebury Road, Chipping Norton	40	52

### 6.1 Noise sources

Sleep disturbance would most potentially be caused by a single event of a staff member leaving the site at the end of their shift, getting in their vehicle and driving away is expected to be the  $L_{AFmax}$  peak event likely to cause sleep disturbance to the neighbouring residences. The reference sound power levels of a

car door slamming, an engine starting and a car driving away were used for the purpose of this assessment and is presented in Table 9 below.

**Table 9: Carpark activity sound power levels**

Activity	Descriptor	Sound power level, dB(A) re. 1pW
Vehicle moving (10km/h)	Passby $L_w$	45
Door Slam	$L_w + 10\log(t)$	56
Engine Start	$L_w + 10\log(t)$	63

It is expected that staff would park either on site or along the eastern side of Wendlebury Road.

## 6.2 Noise prediction results

Predicted noise levels are presented in Table 10 below.

**Table 10: Sleep disturbance assessment**

Receiver ID		Sleep disturbance criteria, 10pm - 7am, $L_{Ap}$
		$L_{AFmax}$
R1 – 35 Wendlebury Road, Chipping Norton	Predicted noise level	40
	Noise goal	52

Noise levels at the residential receiver predicted to comply with sleep disturbance criteria between 10:00pm and 07:00am.

## 7 Recommendations

The following recommendations are made to ensure noise from the site within the extended hours of operation are controlled to comply with the nominated acoustic criteria.

- The roller shutters to the premises are to be kept closed during the operation of the site within the extended hours period.
- Deliveries (either drop offs or pick ups) are not to occur during the extended operation periods.
- Staff are to be instructed to arrive at and leave the premises quietly during the extended operation period, giving due consideration to the neighbouring residences.

## 8 Conclusion

Renzo Tonin & Associates has completed an assessment of a proposed extension of hours, and operational noise for the proposed light industrial development at 24 Wendlebury Road, Chipping Norton during those periods. The main aspects with regard to acoustics relate to vehicle movement and parking, and noise breakout from the manufacturing floor.

The proposed use has been assessed against all relevant noise criteria with project specific noise goals established from long-term noise monitoring at the nearest most potentially affected receiver locations. With the adoption of the assumed parameters and the implementation of the recommendations described in the report, the noise predictions show that the design can comply with the established noise goals during the proposed extended hours of operation.



## APPENDIX A Glossary of terminology

The following is a brief description of the technical terms used to describe noise to assist in understanding the technical issues presented.

Adverse weather	Weather effects that enhance noise (that is, wind and temperature inversions) that occur at a site for a significant period of time (that is, wind occurring more than 30% of the time in any assessment period in any season and/or temperature inversions occurring more than 30% of the nights in winter).																																													
Ambient noise	The all-encompassing noise associated within a given environment at a given time, usually composed of sound from all sources near and far.																																													
Assessment period	The period in a day over which assessments are made.																																													
Assessment Point	A point at which noise measurements are taken or estimated. A point at which noise measurements are taken or estimated.																																													
Background noise	Background noise is the term used to describe the underlying level of noise present in the ambient noise, measured in the absence of the noise under investigation, when extraneous noise is removed. It is described as the average of the minimum noise levels measured on a sound level meter and is measured statistically as the A-weighted noise level exceeded for ninety percent of a sample period. This is represented as the L90 noise level (see below).																																													
Decibel [dB]	<p>The units that sound is measured in. The following are examples of the decibel readings of common sounds in our daytime environment:</p> <table border="1"> <tr> <td>threshold of hearing</td> <td>0 dB</td> <td>The faintest sound we can hear</td> </tr> <tr> <td></td> <td>10 dB</td> <td>Human breathing</td> </tr> <tr> <td></td> <td>20 dB</td> <td></td> </tr> <tr> <td>almost silent</td> <td>30 dB</td> <td>Quiet bedroom or in a quiet national park location</td> </tr> <tr> <td></td> <td>40 dB</td> <td>Library</td> </tr> <tr> <td>generally quiet</td> <td>50 dB</td> <td>Typical office space or ambience in the city at night</td> </tr> <tr> <td></td> <td>60 dB</td> <td>CBD mall at lunch time</td> </tr> <tr> <td>moderately loud</td> <td>70 dB</td> <td>The sound of a car passing on the street</td> </tr> <tr> <td></td> <td>80 dB</td> <td>Loud music played at home</td> </tr> <tr> <td>loud</td> <td>90 dB</td> <td>The sound of a truck passing on the street</td> </tr> <tr> <td></td> <td>100 dB</td> <td>Indoor rock band concert</td> </tr> <tr> <td>very loud</td> <td>110 dB</td> <td>Operating a chainsaw or jackhammer</td> </tr> <tr> <td></td> <td>120 dB</td> <td>Jet plane take-off at 100m away</td> </tr> <tr> <td>extremely loud</td> <td>130 dB</td> <td></td> </tr> <tr> <td>threshold of pain</td> <td>140 dB</td> <td>Military jet take-off at 25m away</td> </tr> </table>	threshold of hearing	0 dB	The faintest sound we can hear		10 dB	Human breathing		20 dB		almost silent	30 dB	Quiet bedroom or in a quiet national park location		40 dB	Library	generally quiet	50 dB	Typical office space or ambience in the city at night		60 dB	CBD mall at lunch time	moderately loud	70 dB	The sound of a car passing on the street		80 dB	Loud music played at home	loud	90 dB	The sound of a truck passing on the street		100 dB	Indoor rock band concert	very loud	110 dB	Operating a chainsaw or jackhammer		120 dB	Jet plane take-off at 100m away	extremely loud	130 dB		threshold of pain	140 dB	Military jet take-off at 25m away
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dB(A)	A-weighted decibels. The A-weighting noise filter simulates the response of the human ear at relatively low levels, where the ear is not as effective in hearing low frequency sounds as it is in hearing high frequency sounds. That is, low frequency sounds of the same dB level are not heard as loud as high frequency sounds. The sound level meter replicates the human response of the ear by using an electronic filter which is called the "A" filter. A sound level measured with this filter switched on is denoted as dB(A). Practically all noise is measured using the A filter.																																													
dB(C)	C-weighted decibels. The C-weighting noise filter simulates the response of the human ear at relatively high levels, where the human ear is nearly equally effective at hearing from mid-low frequency (63Hz) to mid-high frequency (4kHz), but is less effective outside these frequencies.																																													

Frequency	Frequency is synonymous to pitch. Sounds have a pitch which is peculiar to the nature of the sound generator. For example, the sound of a tiny bell has a high pitch and the sound of a bass drum has a low pitch. Frequency or pitch can be measured on a scale in units of Hertz or Hz.
Impulsive noise	Having a high peak of short duration or a sequence of such peaks. A sequence of impulses in rapid succession is termed repetitive impulsive noise.
Intermittent noise	The level suddenly drops to that of the background noise several times during the period of observation. The time during which the noise remains at levels different from that of the ambient is one second or more.
L <sub>Max</sub>	The maximum sound pressure level measured over a given period.
L <sub>Min</sub>	The minimum sound pressure level measured over a given period.
L <sub>1</sub>	The sound pressure level that is exceeded for 1% of the time for which the given sound is measured.
L <sub>10</sub>	The sound pressure level that is exceeded for 10% of the time for which the given sound is measured.
L <sub>90</sub>	The level of noise exceeded for 90% of the time. The bottom 10% of the sample is the L90 noise level expressed in units of dB(A).
L <sub>eq</sub>	The "equivalent noise level" is the summation of noise events and integrated over a selected period of time.
Reflection	Sound wave changed in direction of propagation due to a solid object obscuring its path.
SEL	Sound Exposure Level (SEL) is the constant sound level which, if maintained for a period of 1 second would have the same acoustic energy as the measured noise event. SEL noise measurements are useful as they can be converted to obtain Leq sound levels over any period of time and can be used for predicting noise at various locations.
Sound	A fluctuation of air pressure which is propagated as a wave through air.
Sound absorption	The ability of a material to absorb sound energy through its conversion into thermal energy.
Sound level meter	An instrument consisting of a microphone, amplifier and indicating device, having a declared performance and designed to measure sound pressure levels.
Sound pressure level	The level of noise, usually expressed in decibels, as measured by a standard sound level meter with a microphone.
Sound power level	Ten times the logarithm to the base 10 of the ratio of the sound power of the source to the reference sound power.
Tonal noise	Containing a prominent frequency and characterised by a definite pitch.

RENZO TONIN &amp; ASSOCIATES

24 NOVEMBER 2021

## APPENDIX B    Noise monitoring results

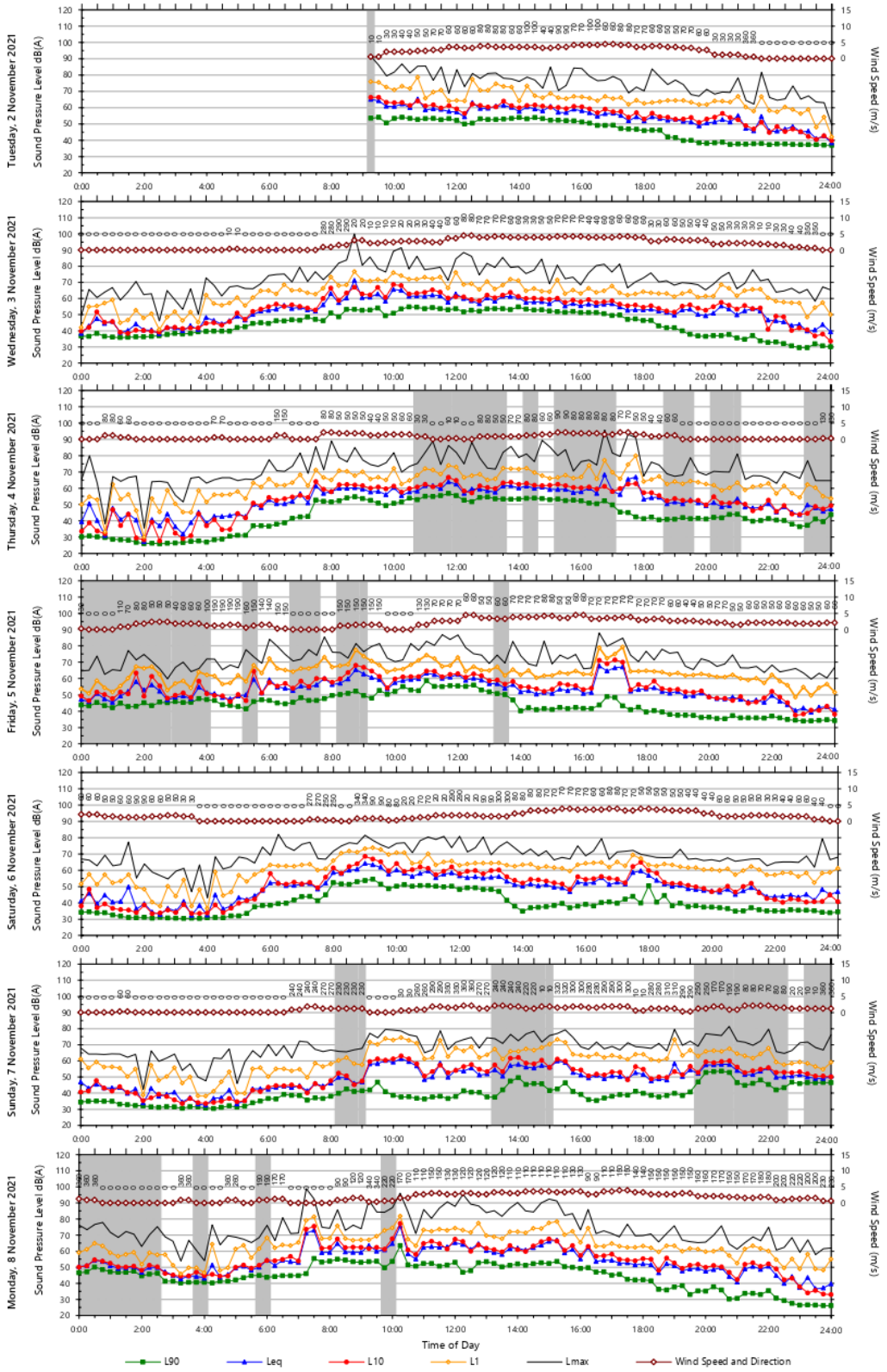
Location: 24 Wendlebury Road, Chipping Norton

Period: Tuesday 2nd November to Wednesday 10th November 2021



Unattended Monitoring Results

Location: front of site facing residences

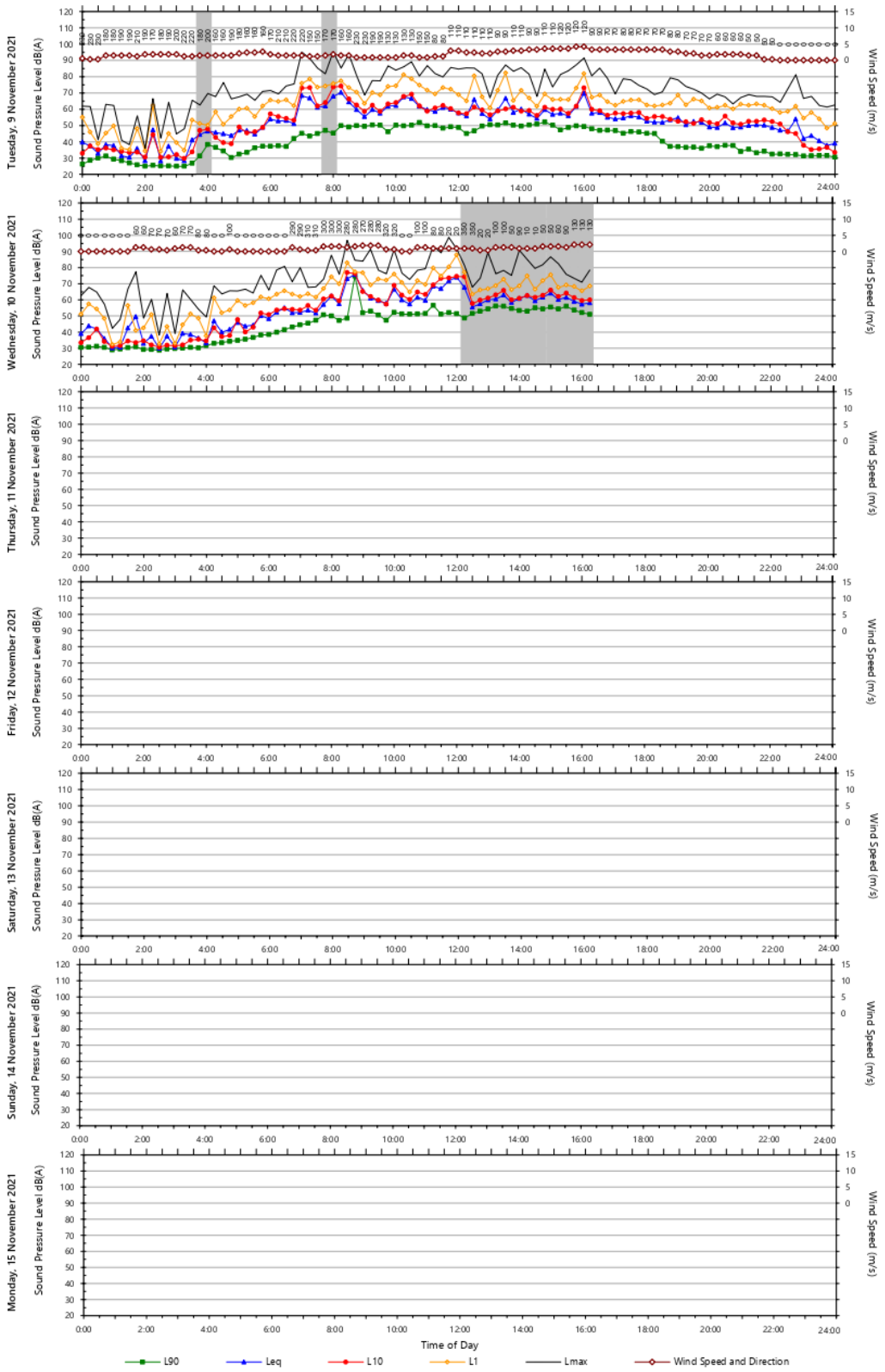


Data File: 2021-11-02\_SLM\_000\_123\_Rpt\_Report.txt

Template: QTE-26 Logger Graphs Program (r38)

Unattended Monitoring Results

Location: front of site facing residences



Data File: 2021-11-02\_SLM\_000\_123\_Rpt\_Report.txt  
Template: QTE-26 Logger Graphs Program (r38)



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

**Monday the 26th of June 2023**

Held at the  
**'Gold Room, Liverpool Library'**  
170 George Street  
Liverpool

Panel: Michael Mantei (Chair)  
Grant Christmas  
Lindsay Fletcher  
Stephen Dobell- Brown

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

**LIVERPOOL CITY COUNCIL****LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION  
PAGE 1****26th June 2023**

<b>ITEM No:</b>	1
<b>APPLICATION NUMBER:</b>	DM/211/1990/A
<b>SUBJECT:</b>	Modification to Development Consent No.211/1990 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, seeking to amend condition 16 to extend the hours of operation.
<b>LOCATION:</b>	24 Wendlebury Road, Chipping Norton NSW 2170
<b>OWNER:</b>	Mr N A Finocchiaro
<b>APPLICANT:</b>	Tanis Confectionery Australia Pty Ltd
<b>AUTHOR:</b>	Eunice Pedrosa

**ISSUES RELATED TO THE APPLICATION**

The Panel inspected the site and has read the Council Officer's assessment report and supporting documents.

The Panel received a letter from Raihani Lawyers on behalf of the applicant dated 26 June 2023 requesting deferral of the item on the basis that the meeting invitation identified the meeting as being held by Microsoft Teams. The meeting in fact proceeded solely in person. As a result, most of the applicant's representatives were not available to attend the meeting in person.

After careful consideration, the Panel has decided to defer determination of the application to a future meeting, which is to be held as soon as practicable.

Given that a number of objectors were in attendance at the meeting and had nominated to address the Panel, the Panel decided to hear from three of those objectors. The Panel will consider the submissions made by these objectors prior to determination of the application at the future meeting. The Panel notes that the meeting was audio recorded and the recording will be made publicly available. The future meeting will be a public meeting and all objectors and the applicant will be given a further opportunity to make representations to the Panel at that time.

The Panel supports the Council officer's previous request of the applicant for additional information on the nature and extent of the activities and processes involved in the current use of the site. This information is fundamental for Council and the Panel to determine whether there is power to consider the modification application. The applicant should be again requested to provide this information for assessment by Council officers. The information is to be provided within fourteen days of the Council officer's request. If the information is provided as requested, the results of the Council officer's assessment should be included in an updated assessment report to be submitted to the future meeting of the Panel.

**LIVERPOOL CITY COUNCIL****LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION  
PAGE 2****26th June 2023****VOTING NUMBERS:**

4-0

**DETERMINATION OF PANEL:**

That modification application DM/211/1990/A be deferred to a future meeting of the Panel (constituted by the same panel members if possible), for the reasons identified in the Panel's minutes.

<b>ITEM No:</b>	2
<b>APPLICATION NUMBER:</b>	DA-182/2021
<b>SUBJECT:</b>	<p>Torrens Title subdivision into two Super-Lots (Lots 201 &amp; 202) of the current Lot 231 Changsha Road, Edmondson Park including:</p> <ul style="list-style-type: none"> <li>• Construction of the southern extension of Arnhem Road to the future intersection of Ardennes Road along the eastern boundary of proposed future Super-Lot 201; and</li> <li>• Construction of Ardennes Road along the southern boundary of future Super-Lots 201 and 202.</li> </ul> <p>The application is Integrated Development requiring approval from the NSW Rural Fire Service under the Rural Fires Act 1997.</p>
<b>LOCATION:</b>	Lot 231 Changsha Road, Edmondson Park
<b>OWNER:</b>	Inzitari Holdings Pty Ltd
<b>APPLICANT:</b>	R S Canceri Pty Ltd
<b>AUTHOR:</b>	R S Canceri Pty Ltd

**ISSUES RELATED TO THE APPLICATION**

The Panel inspected the site and has read the Council Officer's assessment report and supporting documents. A representative of the applicant addressed the panel meeting.

The Panel is satisfied for the reasons outlined in the Panel's determination that the Council Officer's assessment report properly and adequately addresses the requirements of all relevant environmental planning instruments, particularly *Liverpool Local Environmental Plan 2008*.

The Panel agrees with the Council Officer's assessment that clause 7.11(2) of LEP



**LIVERPOOL CITY COUNCIL****LIVERPOOL LOCAL PLANNING PANEL MINUTES AND DETERMINATION  
PAGE 3****26th June 2023**

2008 is a development standard that must not be contravened unless the requirements of clause 4.6 of LEP 2008 are satisfied. In this case the Panel is satisfied that the contravention is acceptable having regard to those requirements.

**VOTING NUMBERS:**

4-0

**DETERMINATION OF PANEL:**

1. The Panel is satisfied that the applicant's written request to contravene the minimum dwelling density development standard in clause 7.11(2) of LEP 2008 adequately addresses the matters required to be demonstrated by clause 4.6(3) of LEP 2008, namely:
  - (a) compliance with the development standard is unreasonable in the circumstances of the case, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
2. The Panel is also satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the minimum dwelling density development standard, and the objectives of the R1 general residential zone. The panel has exercised the concurrence of the Planning Secretary.
3. That DA-182/2021 be approved subject to the conditions of consent contained in attachment 4 in the Council Officer's report, subject to the following minor administrative changes:
  - a. Condition 25 – insert the word "basin" after "bio-retention" and delete the word "and" after "remain".
  - b. Condition 90 – insert the words "website" after "Department of Planning and Environment".
  - c. Condition 96 – delete the word "policy's" and insert the word "policies".
  - d. Condition 101 – delete the word "nominate (an occupation certificate/a subdivision certificate)" and insert instead the words "a subdivision certificate".
  - e. Advisory note (d) – delete the word "designed" and insert instead the word "designated".

<b>Item Number:</b>	1
<b>Application Number:</b>	DM/211/1990/A
<b>Proposed Development:</b>	Modification to Development Consent No.211/1990 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, seeking to amend condition 16 to extend the hours of operation.
<b>Property Address</b>	24 Wendlebury Road, Chipping Norton
<b>Legal Description:</b>	Lot 17 DP 261574
<b>Applicant:</b>	Tanis Confectionery Australia Pty Ltd
<b>Land Owner:</b>	Mr N A Finocchiaro
<b>Cost of Works:</b>	\$0
<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Eunice Pedrosa

## 1 EXECUTIVE SUMMARY

Council has received a Modification Application, DM/211/1990/A, seeking consent to amend condition 16 of Development Consent No. 211/1990 to extend the hours of operation at 24 Wendlebury Road, Chipping Norton, legally identified as Lot 17 DP 261574.

The site is zoned E4 – General Industrial, formerly known as IN1 – General Industrial pursuant to Liverpool Local Environmental Plan 2008 and the proposed development is permissible with consent.

The key issues associated with the proposal relates to insufficient information being provided to Council, as it cannot be ascertained if the development is considered substantially the same development for which the consent was originally granted. Further, it has been confirmed by the applicant that no approval has been granted for the current use.

In addition, insufficient information has been provided to Council to demonstrate that the proposed modification is of minimal environmental impact. Considering the number of submissions received (20) from the surrounding residents, it is evident that the proposed extension of hours is likely to impact on the amenity of the locality. As a result of the assessment of the application, it is considered that the proposal is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal. The issues of concern raised in the submissions can be summarised as follows:

- Breach of conditions under development consent no. 211/1990;

- Noise impacts associated with roller doors left open, machinery, and truck and car movement;
- On street parking availability and safety;
- Traffic generation and movement of heavy vehicles;
- Presentation to the street due to littering;
- Devalue of the residential properties;
- Unauthorised changes to the premises;
- Location of machinery and storage areas;
- Privacy and amenity concerns;
- Site Inspection conducted by a Council member; and
- Inconsistences of Council's position.

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

**Contentious Development**

*Development that:*

*(b) in any other case – is the subject of 10 or more unique submissions by way of objection*

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

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The locality

The surrounding locality is characterised by a mix of land uses including industrial development, residential land, an educational establishment and public reserves. The site adjoins residential development to the west of the site, which is separated by a public road (Wendlebury Road). The east and north of the site comprises of industrial uses.

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

East	Fifty-eight (58) strata industrial and warehouse units for the purpose of industrial use approved under (DA-106/2005)
West	Single storey dwelling houses, which is separated by a public road (Wendlebury Road)
South	Single storey and double storey dwellings, which is separated by a vacant lot and a public road (Alfred Road).
North	Industrial unit for the purpose of light engineering and tool making (approved under B/1185/1991)



Figure 1: Locality surrounding the Site (Source: Geocortex)

## 2.2 The site

The subject site is identified as Lot 17 in DP 261574 and is known as 24 Wendlebury Road, Chipping Norton. It is irregular in shape with a frontage of approximately 78 metres to Wendlebury Road and a depth of approximately 88 metres along the northern boundary, with a total area of 4160sqm.

Currently, the subject site contains an industrial unit, flush wall business identification and turf within the front setbacks. No trees are currently on site. In addition, the site provides two driveway access points along Wendlebury Road.

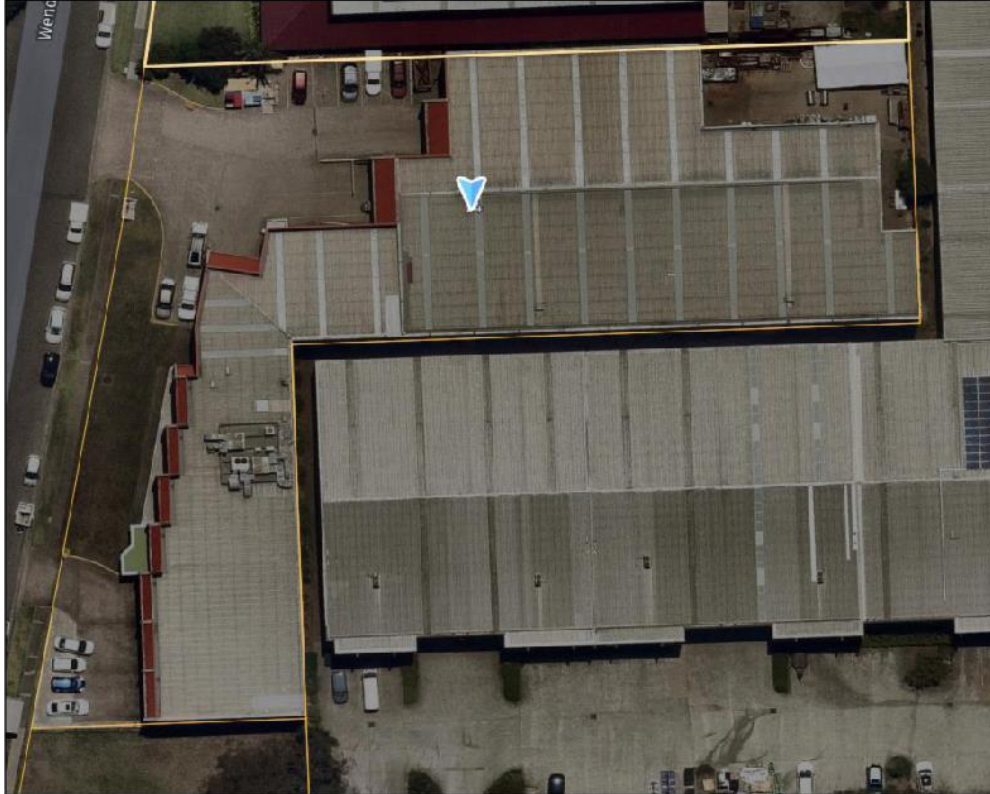


Figure 2: Aerial view of the site (Source: Geocortex)

### 2.3 Restrictions on Title

The subject site consist of four (4) easements on site as follows:

1. Easement for underground mains 1 wide
2. Easement for Electricity purposes 2.75 wide
3. Easement to drain water of 2.5 wide
4. A restriction as to user

Terms of easement for underground main 1 wide Firstly referred to in above-mentioned Plan:

An easement for the transmission of electricity with full and free right leave liberty and licence for the Council and its successors to erect construct place repair renew maintain use and remove underground electricity transmission mains wires cables and ancillary works for the transmission of electricity and for purposes incidental thereto under and along the servient tenement AND to cause or permit electricity to flow or be transmitted through and along the said transmission mains wires and cables and for the purposes of the erection construction and placement of the electricity transmission mains wires cables and ancillary works to enter into and upon the servient tenement or any part thereof at all reasonable times with surveyors, workmen, vehicles, materials, machinery or implements or with any other necessary things or persons and to place and leave thereon or remove therefrom all necessary materials, machinery, implements and things AND the Registered Proprietor for the time being of the land hereby burdened shall not erect or permit to be erected any building or other erection of any kind or description on over or under the servient tenement or alter the surface level thereof or carry out any form of construction affecting the surface, undersurface or subsoil thereof without the Council's permission in writing being first had and obtained PROVIDED that anything permitted by the Council under the forgoing covenant shall be executed in all respects in accordance with the reasonable requirements of the Council.

Terms of easement for Electricity purposes 2.75 wide Secondly referred to in above-mentioned Plan:

An easement for the transmission of electricity and for that purpose to install all necessary equipment (including transformers and underground transmission mains, wires and cables) together with the right to come and go for the purpose of inspecting, maintaining, repairing, replacing and/or removing such equipment and every person authorised by The Prospect County Council to enter into and upon the servient tenement or any part thereof at all reasonable times and to remain there for any reasonable time with surveyors, workmen, vehicles, things or persons and to bring and place and leave thereon or remove therefrom all necessary materials, machinery, implements and things provided the The Prospect County Council and the persons authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore the surface as nearly as practicable to its original condition.

Terms of restriction as to user Fourthly referred to in above-mentioned Plan:

No fence shall be erected on any lot to divide it from any other lot without the consent of the said Colin C. Needs Pty. Limited, its successors and assigns but such consent shall be deemed to have been given if such fence is erected without expense to the said Colin C. Needs Pty. Limited, its successors and assigns.

Name of person empowered to release vary or modify restriction Firstly referred to in abovementioned Plan:

The Prospect County Council

Name of person empowered to release vary or modify restriction Secondly referred to in abovementioned Plan:

The Prospect County Council

Name of person empowered to release vary or modify easement Thirdly referred to in abovementioned Plan:

The Council of the City of Liverpool without the consent of any other person or persons PROVIDED THAT any such release variation or modification which may be given shall be made and done at the costs and expense of the person or persons requesting such release variation or modification.

Name of person empowered to release vary or modify restriction Fourthly referred to in abovementioned Plan:

The person or persons having the right to release vary or modify this restriction is Colin C. Needs Pty. Limited or such other person or persons Company or Companies so nominated by it under its Common Seal for that purpose and if Colin C. Needs Pty. Limited shall no longer be in existence or shall not be the Registered Proprietor of any of the land comprised in the plan of subdivision and there shall no such person or persons Company or Companies so nominated the persons for the time being registered as the Proprietor of the land having common boundaries with the lot burdened.

Figure 3: Extract of 88B restrictions associated with the site

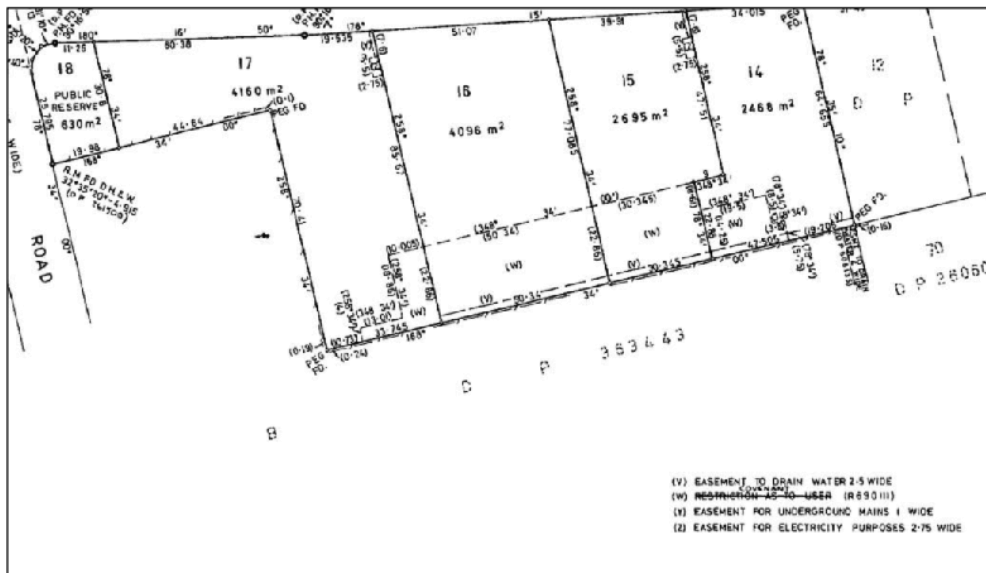


Figure 4: Extract of Deposited Plan of the site

## 3. BACKGROUND/HISTORY

## i. History of Site

Application no.	Lodged	Proposed Development	Determination
No. 273/82	-	The erection of a commercial sporting complex containing squash and tennis court	16 June 1982
No. 335/84	-	Erection of a factory unit building	12 November 1984
No. 335/84 (Modification application)	-	Modify conditions 1, 3, 5 of Council's Notice of 12 November 1984.	13 September 1985
No. 211/90	26 April 1990	Erection of a factory and warehouse for furniture and furnishings	5 July 1990
No. 1277/90 (Building Permit) & No. 549/92 (Building Certificate)	16 June 1992	-	19 June 1992
TP-458/2009	11 June 2009	Removal of one tree	15 June 2009
DM/211/1990/A	06 December 2021	Modification to Development Consent No.211/1990 under Section 4.55(1A) of the Environmental and Assessment Act 1979, to amend condition 16 to extend the hours of operation.	Subject application

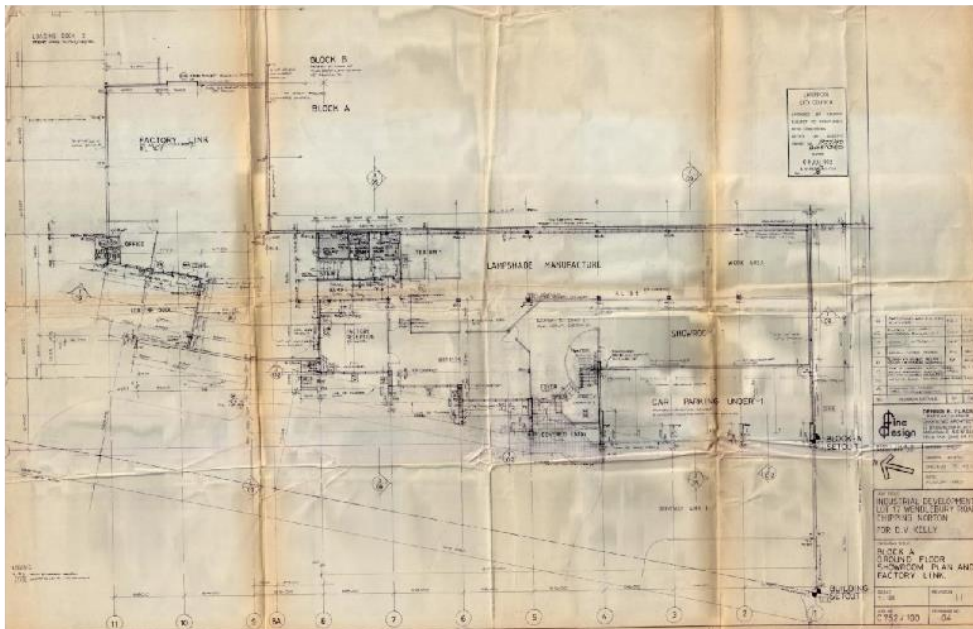


Figure 5: Extract of the approved ground floor showroom plan and factory link under no. 211/1990



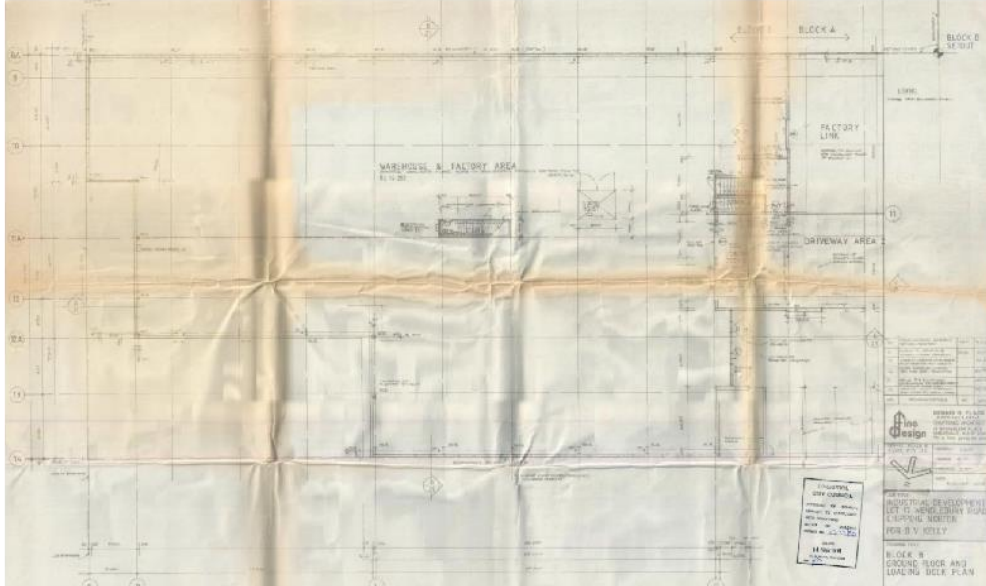


Figure 6: Extract of the approved block B ground floor and loading dock plan under no. 211/1990 (northern portion)

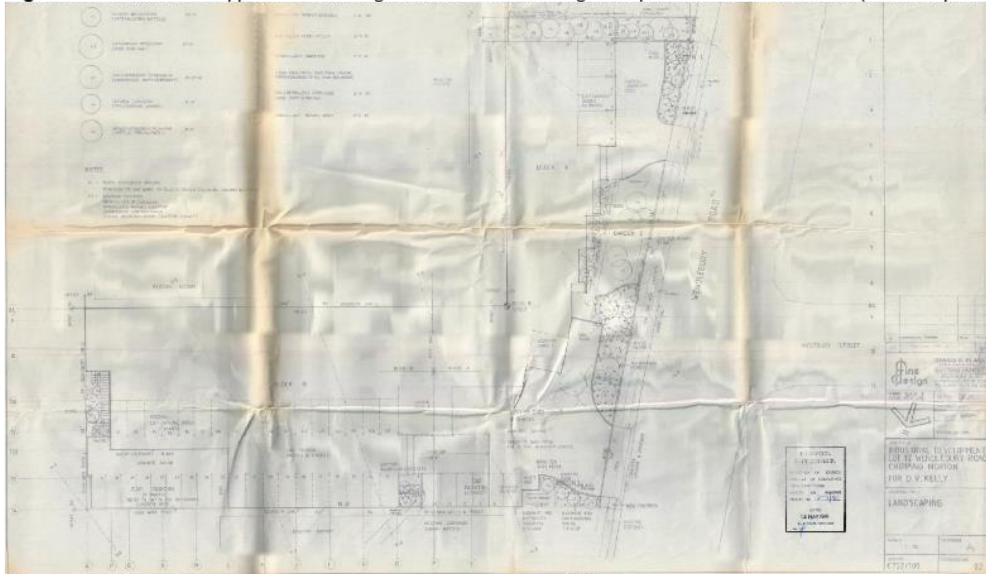



Figure 7: Extract of the approved landscaping plan under no. 211/1990

#### ii. Development Application History

Date	Action
06 December 2021	Application was lodged to Council
06 June 2022	The adjoining sites were notified for 14 days of the proposed development
28 June 2022	The proposed development was re-notified for 14 days. Given that there was a change in assessing officer, a re-notification was issue to the public to ensure the public was provided with the contact

	details of the assessing officer.
04 July 2022	All submissions were acknowledged
19 August 2022	<p>Additional 14 Days letter sent to applicant requesting the following:</p> <ol style="list-style-type: none"> <li>1. A search of Council's records reveals the current use to be operating without approval. Please provide evidence that the current use has planning approval.</li> <li>2. A Statement of Environmental Effects (SEE) must be provided and addresses s4.55 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act 1979). The applicant must demonstrate how the proposed development is substantially the same development to the development originally determined. Please see attachment 1 of the original consent of development application no. 211/1990.</li> </ol> <p><i>Please note: In the event the application does meet the requirements of a s4.55 under the EP&amp;A Act 1979, please provide the following.</i></p> <ol style="list-style-type: none"> <li>3. The SEE must demonstrate how the current use is permitted within the zone. Also, the SEE must include a compliance table identifying all relevant clauses of the Liverpool Local Environmental Plan (LEP) and Liverpool Development Control Plan Part 1 and Part 7.</li> <li>4. Council acknowledges the Acoustic report provided. However, due to the location of the site and the amount of submissions received, the extension of hours is not supported. As per Liverpool's Development Control Plan Part 7, Section 9, Councils requires the hours of operation be limited to the following: <ul style="list-style-type: none"> <li>• 7am to 6pm Monday to Friday;</li> <li>• 7am to 12pm on Saturday; and</li> <li>• No operation on Sunday</li> </ul> </li> <li>5. In addition, the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types, staff numbers, carparking arrangements, and hours of operation).</li> <li>6. It appears that the concrete driveway to the south-western boundary has been extended. Please provide evidence that this portion of the driveway has planning approval and building approval. Please see extract below:</li> </ol>

	 <p>7. A full set of architectural plans that show the existing development on site. This must include a site plan and floor plan of the development, drawn to a scale of either 1:100 or 1:200.</p> <p><u>Submissions:</u> Twenty (20) Submissions have been received by Council, raising objections to the proposed development. It is requested that the applicant addresses the matters raised in any submission for Council's consideration. To view the submissions in full, this can be accessed via Council's GIPA request system.</p>
12 October 2022	Follow up of Additional 14 Days letter was issued to the applicant
17 October 2022	Applicant had engaged a Solicitor and requested an extension of 6 weeks to respond
20 October 2022	Extension was granted until the 10 of November 2022 to respond to Council's letter.
14 November 2022	Responded to Council, however, requested additional 2 weeks to respond to the objections the applicant could not access all the GIPA information.
16 November 2022	Granted extension till the 11 of November 2022, due to issues with the GIPA request.
07 December, 08 December, and 13 December of 2022	<p>Solicitor (acting on behalf of applicant) stated the following via correspondence:</p> <ul style="list-style-type: none"> <li>Requested to remove all restrictions surrounding hours of operation as the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 2.46C applies.</li> <li>The site is permitted to operation for 24 hours in industrial areas.</li> </ul>
08 December, 13 December, and 15 December of 2022	<p>Council responded to the Solicitor the following points via correspondence:</p> <ul style="list-style-type: none"> <li>Advised that the applicant is to demonstrate to Council whether Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008 applies.</li> <li>Based on the current information, 2.64C of the SEPP does not apply as only an Acoustic report was provided.</li> <li>Advised an amended Statement of Environmental Effects outlining how the development satisfied Clause 2.46C of the</li> </ul>

	SEPP is required to be provided.
26 May 2023	A Site Inspection was conducted

No response has been received by the Applicant. As per the abovementioned timeline, it is considered that ample time has been granted to the applicant in order to address and resolve the matters raised by Council as a result of its assessment. As an insufficient response to these matters has been provided by the applicant, the Modification Application is not in a position to be supported. As such, the application is recommended for refusal.

#### 4. DETAILS OF THE PROPOSAL

The modification seeks approval to amend condition 16 of Development Consent No. 211/1990 to extend the hours of operation, as follows:

- Monday to Friday: 6am to 11pm
- Saturday: 6am to 4pm

The existing hours as per condition 16, under Development Application no. 211/1990 are as follows:

- Monday to Friday: 7:30am to 5:30pm
- No operations on public Holidays

A Site Inspection was conducted on 25 May 2023 and it revealed that the existing warehouse is being utilised to manufacture candy producing equipment, including complete production lines for gummies and jellies (confectionery goods). The following images are from the site inspection which was carried out.



Figure 8: Site Inspection photos of the streetscape and secondary frontage



Figure 9: Site Inspection photos of the loading docks



Figure 10: Site Inspection photos of the basement parking and rear of the site

In addition, an erected sign provided the current operation hours of the development, which are:

- Monday – Thursday: 6am – 4pm
- Friday: 6am – 12pm



Figure 11: Site Inspection photos of the signage

## 5. PLANNING ASSESSMENT

The modification development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*, as follows:

*(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if –*

*(a) It is satisfied that the proposed modification is of minimal environmental impact, and*  
**Comment:** The industrial development proposes to extend the hours of operation to be from 6am to 11pm on Monday to Friday, and 6am to 4pm on Saturday. Given that the industrial site is located adjacent to residential dwellings, it is considered that the proposed extension of hours would significantly impact the locality and intensify the environmental impacts of the development.

The proposed extension of hours would lead to an increased duration of industrial activities, resulting in prolonged noise and traffic concerns outside of what was previously assessed. Considering the number of submissions received (20) from the surrounding residents, it is evident that the proposed extension of hours is likely to impact on the amenity of the locality.

In addition, a search of Council's records has been conducted and demonstrated a number of complaints have been filed against the operations of the current industrial use, since 2021 and for the previous tenant dated from 2013. Despite the industrial development generally operating within the existing operations hours of 7:30am to 5:30pm on weekdays, several complaints have been made to Council, due to the excessive noise levels. As such, the extensions of operational hours would likely result in unreasonable noise levels and adverse impacts in the locality.

It is acknowledged that the proposal was accompanied by an Acoustic Report and was reviewed by Council's Environmental Health, who raised no objections to the proposal. In spite of this, due to the location of the site, the amount of submissions received and historical complaints regarding the noise, the extension of hours cannot be supported. As such, Council's Planner is not satisfied that the proposed modification would have a minimal environmental impact within the site and the greater locality.

*(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

**Comment:** The original consent No. 211/1990 was granted for the erection of a factory and warehouse for furniture and furnishings. Based on a site inspection conducted, it appears that the current use of the factory and warehouse has changed to produce confectionery goods and confectionery equipment.

Council had issued a request for additional information letter, dated 12 October 2022, requesting a statement of environmental effected to address Section 4.55 of the EP&A Act 1979, demonstrating that the proposed development is substantially the same development to the development originally determined. In addition, a set of architectural plans showing the

layout of the current use was requested to ensure no changes were made to the footprint and structure of the warehouse, under the approved consent no. 211/1990.

However, the requested information was not provided to Council. As such, due to the lack of information being provided for this modification, it cannot be ascertained if the development is considered to be substantially the same development for which the consent was originally granted.

Based on the assessment, the current industrial use of the factory and warehouse is operating without approval. As such, the proposed modification application is not considered to meet the requirements under Section 4.55 of the EP&A Act as the development is not substantially the same development as what was originally granted consent under Development Consent No. 211/1990.

(c) *It has notified the application in accordance with –*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

**Comment:** The development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal. Please see the discussion below in Section 6, addressing the submissions received.

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

**Comment:** All submissions received have been acknowledged and considered throughout the assessment stages of the proposed modification.

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance of the development, the subject of the application.*

**Comment:** Relevant matters of Section 4.15(1) have been taken into consideration, as detailed below.

## 6. STATUTORY CONSIDERATIONS

These considerations are as follows:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Liverpool Local Environmental Planning Policy 2008
  - Liverpool Development Control Plans 2008

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 2021*, as follows:

**6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument****(a) State Environmental Planning Policy (Resilience and Hazards) 2021**

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

The applicant has not properly addressed the provisions of this SEPP and therefore, insufficient information has been submitted which can ensure that the proposed modification would be acceptable.

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

The subject land is located within the Georges River Catchment and as such Chapter 11 – Georges River Catchment of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, formerly the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River, applies to the application. Insufficient information has been submitted to ensure the proposed modifications would be compliant with the general planning considerations and specific planning policies and recommended strategies within Clauses 11.6 and 11.7 of this SEPP.

**(c) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

The SEPP (Exempt and Complying Development Codes) 2008 applies to all land in the state, in particular clause 2.46C. Please see the following:

**2.46C Specified development**

- (1) *The operation of premises in Zone E1, E2, E3, E4, E5, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3, IN4, SP5 or W4 in accordance with an existing development consent or complying development certificate at any time outside the hours permitted by the development consent or complying development certificate is development specified for this code.*
- (2) *The trading on or from premises in accordance with an existing development consent or complying development certificate at the following times occurring outside the hours permitted by the development consent or complying development certificate is development specified for this code—*
  - (a) *in Zone E1, E2, E3, B1, B2, B3, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4—6am–10pm,*
  - (b) *in Zone MU1 or B4—6am–7pm,*
  - (c) *in Zone E4, E5, IN1, IN2 or IN3 for relevant premises—*
    - (i) *until the end of 31 January 2024—24 hours a day,*
    - (ii) *from the beginning of 1 February 2024—6am–7pm,*
  - (d) *in Zones Zone E4, E5, IN1, IN2 or IN3 for all other premises—24 hours a day.*
- (3) *In this clause—*

**relevant premises** means boat building and repair facilities and vehicle body repair workshops that are located within 100m of a residential zone.

**Comment:** Typically, exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 would not require planning approval



from Council, nor be considered as part of the Development Application process. However, for the purposes of the modification, Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008 has been considered as discussions with the applicant have been held in reference to this SEPP.

The applicant had requested to remove all restrictions surrounding hours of operation as clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008, applies to development located on E4 – General Industrial zones. Further, the applicant stated that the proposed development can operate for 24 hours, as per clause 2.46C(2)(c)(i).

For the development to operate in accordance with the SEPP (Exempt and Comply Development Codes) 2008, the proposal must meet all development standards under Clause 2.46C to be considered exempt.

Council requested a Statement of Environmental Effects outlining how the development satisfies all requirements under Clause 2.46C of the SEPP. However, no response was provided from the applicant. As such, based on the available information provided to Council it appears that the proposal does not meet all development standards outlined under Clause 2.46C of the SEPP. In addition, no development consent has been obtained for the current use. Subsequently, Clause 2.46C of the SEPP does not apply to the proposal.

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

The modification of the application has been considered and will remain in compliance with the LLEP 2008.

**(i) Zoning**

The subject site is zoned E4 General Industrial (formerly known as IN2 Light Industrial) under the Liverpool Local Environmental Plan 2008.

Land uses permissible under the IN2 zone would still be permissible if not still permissible in the E4 zone until 26 April 2025 and any new permissible uses under the E4 zone would now be permissible for this site.

An extract of the zoning map is provided below:

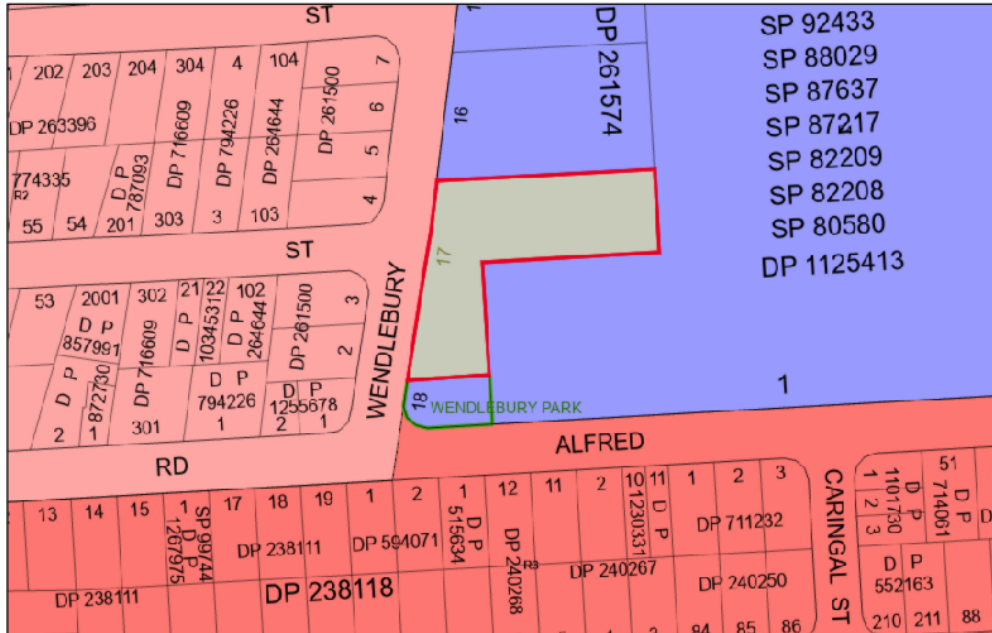


Figure 12: Zoning map of the site (source: Geocortex)

## (ii) Permissibility

Development application no. 211/1990 was approved for the erection of a factory and warehouse for furniture and furnishings.

Due to insufficient information provided to Council surrounding the current use of the site, it is difficult to establish the best description of the proposed development as per the Liverpool Local Environmental Plan 2008.

Based on the current known factors of the proposed use being to produce confectionery goods and confectionery equipment, the development would be best defined as a *general industry* and is identified as a permitted land use with consent within the E4 General Industrial Zone under the LLEP 2008 (Since 26 April 2023). Under the LLEP 2008, general industry is defined as follows:

***general industry*** means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

An industrial activity is defined as:

***industrial activity*** means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

The approved factory and warehouse would be used for the purposes of furniture and furnishings under consent No. 211/1990. This is best described as a general industry with a different type of industrial activity.

A search of Council's records suggests that the change in use (Tanis Confectionary) has occurred since 2021. In addition, the applicant had stated that no planning approval has been granted for the current use. As such, the current use is not substantially the same development as what consent has been originally granted for.

**(iii) Objectives of the zone**

The objectives of the E4 – General Industrial zone are as follows:

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- *To allow other land uses that are compatible with industry and that can buffer heavy industrial zones while not detracting from centres of activity.*

The proposed development is not considered to meet the objectives of the zone as insufficient information has been provided surrounding the current use and the likelihood that adverse impacts may occur on other land uses. Therefore, the application is considered to not be consistent with the character of the zone.

**(iv) Principal Development Standards**

The proposed modification has been assessed against LLEP 2008 and the modification based on the submitted information is unlikely to alter consistency with the principal development standards which apply to the site considering the proposal is only for an extension in the hours of operation.

**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 Development Control Plan (LDCP) 2008**

Development Application No. 211/1990 was granted approval prior to the Liverpool Development Control Plan 2008 was implemented. However, the proposed modification generates the following considerations under Part 1 and Part 7 of the LDCP 2008.

Liverpool Development Control Plan 2008 – Part 1 General Controls for all Developments		
Provision	Requirement	Comment
Section 25 – Waste Disposal and Re-Use Facilities	A Waste Management Plan (WMP) shall be submitted with a Development Application for any relevant activities generating waste. The WMP is provided in three sections: <ul style="list-style-type: none"> <li>- Demolition</li> <li>- Construction; and</li> <li>On-going waste management</li> </ul>	<b>Insufficient information</b> No waste management plan was submitted for the ongoing use of the current use.

Part 7 – Development in Industrial Zones		
Provision	Requirement	Comment
Section 9. Amenity and Environmental Impact	<u>External Industrial Activities</u> 1. External processes in an industrial area and storage of materials will not be permitted along a Classified Road frontage or a road frontage opposite a residential area.	<b>Insufficient information</b> An RFI (dated 12 October 2022) was sent to the applicant and requested additional information such as the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types. The applicant did not provide the additional information and therefore Council is unable to determine the noise impacts the machinery have upon the surrounding residential premises.
	2. Storage and processing of motor vehicles, concrete, soil, glass and other similar components or materials shall be totally screened by fencing and dense landscaping (refer to Landscaping and Fencing and Section 4 Landscaping and Existing Trees in Part 1).	
	3. The maximum height of a stockpile for the recycling of motor vehicles, concrete, soil, glass and other similar components or materials shall be 6m.	
	<u>Noise</u> In order to comply with the Protection of the Environment Operations Act 2008 it may be necessary to construct external works. Mounding, planting and/or noise barriers may be permitted to reduce the impact of noise levels, provided that this does not compromise any other provision in the DCP. The following illustration gives examples of satisfactory treatments.	<b>Does not comply</b> Condition 5 of consent no. 211/1990 requires a high standard of landscaping to be implemented within the 5m setback of the site.  A historical aerial search and a site inspection revealed that the site has been cleared of all vegetation. It is noted that a tree removal application was lodged to Council for the removal of one tree within the front setbacks. However, the site has been cleared of all vegetation.

		Based on the 20 objections received during the notification period and the number of complaints associated with the site, no noise mitigation or barrier mechanisms have been implemented to mitigate the noise levels impacting the adjoining sites.
	<p><u>Hours of operation</u> Development which would have an adverse impact on adjoining or nearby residential areas will be limited to 7 am to 6 pm Monday to Friday and 7 am to 12 pm on Saturday and no work to be undertaken on Sundays.</p>	<p><b>Does not comply</b> Council acknowledges the Acoustic report provided. In addition, the application has been reviewed by Council's Environmental Health Section and raised no objections, subject to consent.</p> <p>However, due to the location of the site and the amount of submissions received, the extension of hours of the following is not supported.</p> <ul style="list-style-type: none"> <li>• Monday to Friday: 6am to 11pm</li> <li>• Saturday: 6am to 4pm</li> </ul>

Overall, the proposal does not comply with the key controls outlined in the LDCP 2008 as insufficient information has been provided to Council.

#### 6.4 Section 4.15(1)(a)(iii) - 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 2021* requires the consent authority to consider the provisions of the BCA and the Safety standards for demolition (AS 2601 – 2001). No changes are proposed to the existing development in this regard.

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

##### a. Built Environment

No changes to the existing development are proposed under the modification application to the trading hours of the site. However, it is noted that although the modifications are for changes to hours of operation, the use it is associated with does not have development consent. As such insufficient information has been provided to Council to conduct a full and proper assessment of the application to fully determine if the proposal will have impacts on the built environment.

##### b. Natural Environment

Insufficient information has been provided to Council to carry out a full and proper assessment of the potential impacts on the natural environment. Therefore, Council cannot determine the potential impacts to the natural environment of the current unapproved use.

##### c. Social Impacts

The proposed extension of hours is considered to present significant concerns due to the non-compliances with the relevant development controls as detailed in this report. In addition, 20 submissions were received during the notification period objecting to the proposed extension of hours. It is considered that this will interfere with the amenity of the nearby residential zoned areas, resulting in an unacceptable social impact.

**d. Economic Impacts**

The proposal is unlikely to generate negative economic impacts.

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

Although the site is zoned and is suitable for industrial uses, the proposed extension of hours associated with the use is considered to not be suitable for a use of this nature. As a result, the site is not deemed to be suitable for the modified 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:

DEPARTMENT	COMMENTS
Building and Development Compliance Standards Community	<p>The application was referred to Council's Building Section and provided the following comments:</p> <p><i>The Building and Compliance team has received a significant number of complaints over a long period of time regarding the current operations at the premises. The investigation revealed that the premises has very specific time constraints which the current occupier was not complying with.</i></p> <p><i>The specific conditions included hours of operation and also the roller doors. It is my understanding that the conditions relating to the roller doors do not form part of this amendment application.</i></p> <p><i>Many of the complaints relate to vehicle and people movements prior to the operating hours (from 5am onwards). Given the site constraints and the location of the building in relation to adjoining residential houses, the amendment is not supported.</i></p> <p><i>If the application is recommended for approval then very specific conditions will need to be placed in the application, including arrival times for workers, cleaners etc..</i></p>
Environmental Health Officer	Approval subject to conditions of consent.

**(b) External Referrals**

Nil

**(c) Community Consultation**

The development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal.

The following comments are provided in respect to the concerns raised by surrounding residents:

**ISSUE 1: Breach of conditions**

***CCTV footage showing ongoing breaches of the approved consent and disregard of amenity in locality by the currently tenants.***

**Comment:** It is noted that CCTV footage has been provided to Council, however, the footage provided has been excluded from the assessment due to privacy concerns.

As assessment has been undertaken and reveals that the current operation of the premises is not substantially the same as originally approved. No approval has been granted to the current use, which has been operating unlawfully. In addition, it has been confirmed by the applicant that no approval has been granted for the current use.

It should be noted that conditions under consent no. 211/1990 cannot be enforced by Council's Building and Compliance Section to a use that is unlawful. As such, a new development application for the change of use of the premises must be submitted.

Furthermore, Council's Building and Compliance Section will be notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

**ISSUE 2: Noise impacts**

***Tenants historically operated outside of the proposed hours of 7:30am to 5:30pm. The proposed extension of hours to the existing hours would exacerbate the noise levels that currently affect the residences. The acoustic report is not a true representation of the business at full operation.***

**Comment:** Council has requested additional information relating to the operation of the premises such as types of machinery and numbers of machinery at the site. The applicant did not address this and therefore Insufficient information has been submitted with the application to establish all potential impacts to the locality and within the premises.

Given that the site is located adjacent to residential zoned areas, the proposed extension of hours is considered to not be appropriate with the surrounding residential topology.

**ISSUE 3: Roller doors left open**

*The rollers door remains open at all times, as such, machinery noises and associated works can be heard from the residential areas.*

**Comment:** Council's Building and Compliance Section has been notified to further investigate the unauthorised use at the premises. As such, the relevant procedures will be undertaken to address the unlawful activity.

**ISSUE 4: On street parking availability and safety**

*The proposed extension to operation hours would increase the traffic movements and provide limited to no on-street parking for the residents which is predominately used by staff. Cars parked in close proximity to intersections and driveways reducing visibility.*

**Comment:** Council has requested additional information relating to the operation of the premises. Insufficient information has been submitted with the application for Council to establish all potential impacts relating to on street parking and safety.

Given that the premises has been operating unlawfully, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

If any disregard for traffic laws is carried out, residents should contact Council or NSW Police.

**ISSUE 5: Traffic generation and safety**

*Traffic flow increased and the intersections of Wendlebury Road and Westbury Street are impacted by heavy truck movement and car movement. This has increased the pollution, noise levels and safety of the residences.*

**Comment:** Council has requested additional information relating to the operation of the premises. Insufficient information has been submitted with the application for Council to establish all potential impacts relating to traffic movement, pollution and safety.

It is noted that the applicant has provided an Acoustic report which has been reviewed by Council's Environmental Health Officer and raised no objections, subject to conditions.

However, given that the current operation of the premises is not substantially the same as originally approved. No approval can be granted under a Section 4.55 Modification Application. As such, a new development application is required to be submitted and must be accompanied with all relevant documentation for Council to establish all the potential impacts associated with the development.



**ISSUE 6: Presentation to the street.**

***Littering and rubbish have been left by the Tanis staff and local residents have had to clean up after their mess.***

**Comment:** Council's Compliance Team have dealt with numerous complaints in the past and any future complaints will be dealt with by this Section.

**ISSUE 7: Devalue of the residential properties.**

***The impacts from the use devalues the local residential real estate.***

**Comment:** In respect to depreciation of property value, there is no evidence to suggest that the proposed development will result in the depreciation of the value of any neighbouring properties.

**ISSUE 8: Unauthorised changes to the premises**

***Considerable alterations have been made to the existing layout and landscaping.***

**Comment:** Council has requested additional information including architectural plans of the site. However, no information has been provided for Council to establish whether alterations to the development have been undertaken.

A site inspection has been conducted, dated 26 May 2023, which revealed that the site has been cleared of all vegetation. As such, Council's Building and Compliance Section has been notified of the unauthorised use and landscape clearing and relevant procedures will be undertaken to address the unlawful activity.

**ISSUE 9: Location of machinery and storage areas**

***Car parking spaces have been utilised by machinery and storage areas, which have limited the on-street parking availability.***

**Comment:** Council has requested additional information including architectural plans of the site. However, no information has been provided for Council to establish whether the approved car parking spaces under consent no. 211/1990 are being utilised for machinery and storage areas.

**ISSUE 10: Privacy and amenities**

***The increase in operation hours would impact the residents' privacy and wellbeing from Tanis Staff leaving early and late from the premises.***

**Comment:** The proposal to extend the hours of operation is unable to be supported as the current use is not substantially the same development as originally granted. It should be noted that hours of operation under consent no. 211/1990 cannot be enforced to a use that is unlawful. As such, a new development application for the use of the site must be lodged to Council.

Furthermore, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

**ISSUE 11: Site inspection**

***A visit to the site to get a better understanding of the properties that could be affected by the proposal.***

**Comment:** A site inspection was conducted dated 26 May 2023 looking at the site and locality. Insufficient information was provided for Council to establish the potential impacts to the locality and within the premises.

Given that the premises has been operating unlawfully, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

**ISSUE 13: Inconsistencies of Council's position**

***24-hour trading by Tanis contradicts Council's position. Council should issue a development control order to Tanis and do all things necessary or convenient to give affect to the terms of the order.***

**Comment:** For a development to operate in accordance with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the proposed development must meet all development standards under the provisions of Clause 2.46C to be considered exempt.

Council had requested the applicant to outline how the development satisfies all requirements under Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008. However, no response was provided from the applicant.

Based on the information available, it appears that the proposal does not meet all development standards outlined under this provision.

In addition, an assessment has been undertaken and reveals that the current operation of the premises is not substantially the same as originally approved. No approval has been granted to the current use, which has been operating unlawfully. In addition, it has been confirmed by the applicant that no approval has been granted for the current use.

It should be noted that conditions under consent no. 211/1990 cannot be enforced to a use that is unlawful. As such, a new development application for the change of use of the premises must be submitted.

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

This modification is not considered to be within the public interest as the modification application is not considered to be substantially the same development as what was originally approved and is not of minimal environmental impact.

**7. DEVELOPMENT CONTRIBUTIONS**

Not applicable

**8. 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, Liverpool LEP 2008, LDCP 2008, and the relevant codes and policies of Council.

**9. RECOMMENDATION**

That Development Application DA No. 211/1990/A be **refused**.

**ATTACHMENTS**

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1. Response to Council's Request for Information
2. Reasons for Refusal

<b>Item Number:</b>	2
<b>Application Number:</b>	DA-1339/2021
<b>Proposed Development:</b>	Torrens Title subdivision of one (1) lot into three (3) lots.
<b>Property Address</b>	50 Jardine Drive, Edmondson Park, NSW, 2174
<b>Legal Description:</b>	Lot 3101 DP 1197717
<b>Applicant:</b>	Francesco Turano
<b>Land Owner:</b>	Ternella Turano
<b>Cost of Works:</b>	\$142,000.00
<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Jason Marshall

## 1 EXECUTIVE SUMMARY

Council has received a Development Application (DA-1339/2021) seeking consent for the Torrens Title subdivision of one (1) lot into three (3) lots, at 50 Jardine Drive, Edmondson Park.

The application was submitted to the Council on 19 November 2021. The original proposal was for the Torrens Title subdivision of one (1) lot into six (6) lots in two stages. However, the proposal has been amended by the applicant in an attempt to respond to matters raised by Council during the assessment process.

The site is zoned R1 General Residential pursuant to Liverpool Local Environmental Plan (LLEP) 2008 and the proposed development is permissible with consent.

The development application was not required to be notified in accordance with Liverpool Community Participation Plan 2022. Notwithstanding, no submissions were received.

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

***Departure from Development Standards***

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

This development application seeks a Clause 4.6 variation of Clause 7.11 of the LLEP 2008 in relation to minimum dwelling density proposing a 55% departure from the development standard. A Clause 4.6 variation statement has been submitted by the applicant, which is addressed in section 6.1(c)(iv) of this report. The variation is unsupported due to the proposal's inconsistencies with the objectives of the zone and the development standard. It is also considered that the submitted Clause 4.6 request does not contain sufficient environmental planning grounds to justify the departure proposed.

In addition to the above, the proposed subdivision layout is not considered to promote the orderly development of the land in accordance with the objects of the Environmental Planning and Assessment Act 1979, which appears to be a result of the proposed retention of dwellings onsite.

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 **refused**.

## 2. SITE DESCRIPTION AND LOCALITY

The subject site is identified as Lot 3101 in Deposited Plan 1197717 and is known as No. 50 Jardine Drive, Edmondson Park. The subject site is located within an Urban Release Area of Edmondson Park. The surrounding area is transitioning from large-lot rural properties to small-lot residential properties. Refer to Figure 1 for aerial imagery of the subject site.



**Figure 1:** The subject site (Source: Nearmaps November 2022)

The subject site currently contains a detached dual occupancy comprising a single storey dwelling with a tiled roof on the western portion of the lot and a single storey dwelling with a tiled roof on the eastern portion of the lot. A detached garage is located to the north of the dwelling on the eastern portion of the site.

The subject site is an irregularly shaped allotment. The site has a front boundary width of 60.96m to Jardine Drive and a rear boundary length of 66.685m to Antwerp Avenue. The subject site has a depth of 59.225m on the western boundary and a depth of 61.115m on the eastern boundary. The subject site has a total area of 3,621.76 m<sup>2</sup>. A 2m wide drainage easement runs the length of the western boundary.

The subject site has a slope from the north-east corner to the south-west corner of approximately 5.21m.

A site inspection was conducted on 2 December 2022. Figures 2 to 9 illustrate the character of the site and its surroundings.



**Figure 2:** The subject site (No. 50 Jardine Drive) as viewed from Jardine Drive.



**Figure 3:** The existing dwelling located on the western portion of the subject site.



**Figure 4:** The existing dwelling located on the eastern portion of the subject site.



**Figure 5:** The existing dwelling located on No. 53 Jardine Drive to the east.



**Figure 6:** Neighbouring site to the west at No. 40 Jardine Drive.



**Figure 7:** Existing dwellings located on the opposite side of Jardine Drive to the south.



**Figure 8:** The subject site as viewed from Antwerp Avenue.



**Figure 9:** Existing dwellings located on the opposite side of Antwerp Avenue to the north.

### 3. BACKGROUND/HISTORY

The following is a history of Development Applications related to the subject site and of the subject application:

Date	Action
22 April 2014	Approved DA-332/2014 for a two (2) lot subdivision of Lot 31 in DP 29317 and saw the creation of the existing parent lot.
05 April 2016	Approved DA-94/2016 for Construction of a shed in the northeast section of the lot. A review of the plans reveals the shed is likely a garage.
19 April 2021	Lodged <b>DA-1339/2021</b> (subject application) for subdivision of one (1) lot into six (6) in two stages.
24 March 2022	RFI Issued for a suitably qualified Environmental Consultant to peer review the submitted contamination report.
21 December 2022	A second RFI raised the following concerns: <ul style="list-style-type: none"> <li>• Inconsistency with the objectives of Clause 4.1 of the LLEP 2008.</li> <li>• Disorderly subdivision pattern.</li> <li>• The retention of existing dwellings results in non-compliance with key controls of the LLEP and LDCP 2008.</li> <li>• The proposed allotments have not demonstrated that a dwelling could be developed that is consistent with the suite of controls in the LLEP and LDCP 2008.</li> <li>• Insufficient details to demonstrate the location of living areas for the dwellings that are being retained.</li> <li>• Insufficient front setback for an existing garage.</li> </ul>
5 May 2023	Third RFI issued regarding unaddressed issues from the second RFI: <ul style="list-style-type: none"> <li>• Disorderly subdivision pattern.</li> <li>• The retention of existing dwellings results in non-compliance with key controls of the LLEP and LDCP 2008.</li> </ul>
25 May	Follow-up letter was issued to the applicant requesting that they withdraw the



2023	application.
26 June 2023	After correspondence with the applicant and Council, additional information was provided which addressed the above issues. As part of the amended information, the proposal has been reduced to a three (3) lot subdivision to enable the retention of the existing dwellings and compliance with key controls of the LDCP 2008.
5 July 2023	After receipt of the above information, it was identified that the proposed amendments resulted in the proposal falling below the Minimum Dwelling Density as identified under Clause 7.11 of the LLEP 2008. The applicant was subsequently contacted regarding this issue and a Clause 4.6 variation request in response was submitted. A review of Clause 4.6 demonstrated that the proposal could not be recommended for approval.

#### 4. DETAILS OF THE PROPOSAL

The proposed development is for the following:

- Subdivision of one (1) allotment into three (3) allotments. The proposed Subdivision is illustrated in Figures 10 and 11.
- Relocation of a metal garage on the proposed Lot 1.



Figure 10: Existing allotment.

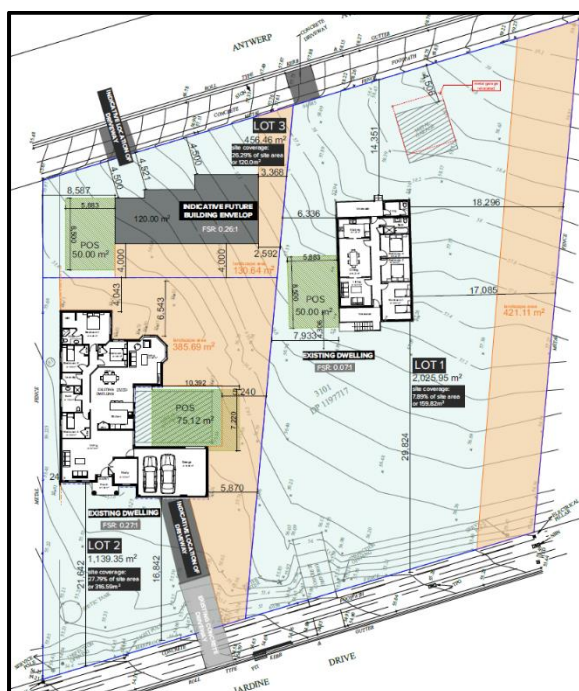


Figure 11: Proposed subdivision.

## **5. STATUTORY CONSIDERATIONS**

### **5.1 Relevant Matters for Consideration**

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

- *Environment and Planning Assessment Act 1979*
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- Liverpool Local Environmental Plan (LLEP) 2008;
- Liverpool Development Control Plan (LDCP) 2008;
  - Part 1: General Controls for All Development; and
  - Part 2.11 Land Subdivision and Development in Edmondson Park.

## **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 2021, as follows:

### **6.1 Section 1.3 – Relevant Objects of the EP&A Act**

*1.3(c) to promote the orderly and economic use and development of land.*

The predominant subdivision pattern for the area is shown in figure 1 above, the proposal is shown in figure 11. While an indicative layout plan has been provided for the proposed northwest lot showing a dwelling can be constructed, the shape of the proposed Lot is found to be inconsistent with the established pattern of the area. The lot sizes for the eastern and southwest lots are also inconsistent with the established pattern of the area.

The proposed subdivision layout is not considered to be an orderly subdivision pattern under the objects of the Environmental Planning and Assessment Act 1979 and is considered to be unacceptable for a subdivision development with the retention of existing dwellings which impacts the applicable dwelling density.

This issue has been included as reason for refusal.

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

It is noted that the application was submitted prior to the gazettal of the SEPP (Resilience and Hazards) 2021, and the SEPP (Biodiversity and Conservation) 2021. These SEPPs replaced the provisions of the following EPIs:

- State Environmental Planning Policy No 55—Remediation of Land 2008.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

- Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River.

There are no savings or transitional provisions, so the new SEPPs apply as assessed below.

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

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

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 applicant submitted a Combined Phase 1 and 2 Contamination Assessment prepared by GeoEnviro Consultancy Pty Ltd dated November 2020. A Request for Additional Information was issued to the applicant dated 24 March 2022, requesting the contamination report to be peer-reviewed by a suitably qualified Environmental Consultant. A Detailed Site Investigation Report prepared by GeoEnviro Consultancy Pty Ltd was submitted, which was reviewed by a suitably qualified environmental consultant.

The assessment determined that the subject site has a low risk of gross ground chemical contamination. The assessment provided recommendations to ensure unidentified contamination is encountered and any asbestos material is suitably tested and removed.

The objectives of SEPP (Resilience and Hazards) 2021 are:

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

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The submitted contamination reports outlined that the site has a low risk of ground contamination.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The Detailed Site Investigation Report submitted has been assessed, and the recommendations made have been considered acceptable. The subject site is suitable for continued residential land uses. The DSI was reviewed by Council's Environmental Health Section who were supportive, subject to conditions.

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	As above.
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Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021.

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

Chapter 2 of this SEPP applies and refers to Vegetation in Non-Rural Areas. The objectives and provisions of this chapter generally aim to protect the biodiversity values of trees and other vegetation in non-rural areas.

No tree removal is proposed to facilitate the subdivision works. The development is acceptable with regard to Chapter 2 of the SEPP.

The subject land is located within the Georges River Catchments, and as such, Chapter 11 of this SEPP applies.

(Note: Chapter 11 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 was repealed on 21 November 2022. However, the savings and transitional provisions in Part 6.6 of the SEPP (Biodiversity and Conservation) 2021 state that these repealed provisions of the SEPP continue to apply to a development application made, but not yet determined, before the date of the repeal. Given that DA-1339/2021 was lodged and not determined before the repeal date of 21 November 2022, the former Chapter 11 of the SEPP (Biodiversity and Conservation) 2021 applies to this DA.

The application was referred to Council’s Land Development Engineering team who reviewed the stormwater management and drainage associated with the proposal. Land Development Engineering raises no objection to the proposed application, subject to conditions.

When a consent authority determines a development application, planning principles are to be applied (Clause 11.5). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 11.6 and Clause 11.7), and compliance with such is provided below.

<b>Clause 11.6 General Principles</b>	<b>Comment</b>
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.

(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	The proposal has been reviewed by Council's Land Development and Flood Engineers. Water quality features to be incorporated in drainage works.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	A Stormwater concept plan has been submitted and reviewed by Council's Land Development and Flood engineers, who support the application subject to conditions.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the Georges River Catchment Regional Planning Strategy (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Consistent with the strategy.
(f) all relevant State Government policies, manuals, and guidelines of which the council, consent authority, public authority, or person has noticed,	Not required to be referred.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	No. The site is located in an area nominated for residential development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
<b>Clause 11.7 Specific Planning Policies and Recommended Strategies</b>	<b>Comment</b>
(1) Acid sulfate soils	The land is not identified as containing acid sulfate soils on LLEP 2008 Acid Sulfate Soil mapping.
(2) Bank disturbance	No bank disturbance is proposed
(3) Flooding	The proposal has been reviewed by Council's Land Development and Flood engineers, who support the application, subject to conditions.
(4) Industrial discharges	Not applicable.
(5) Land degradation	An erosion and sediment control plan to manage salinity and minimise erosion and sediment loss was submitted for the initial 6 lot. If the application was recommended for approval a condition of consent would be imposed requiring an amended erosion and sediment control plan.
(6) On-site sewage management	Not applicable.
(7) River-related uses	Not applicable.

(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	A Stormwater concept plan has been submitted and reviewed by Council's Land Development and Flood engineers, who support the application subject to conditions.
(10) Urban development areas	The site is identified as being an Urban Release Area under LLEP 2008 and is suitable for residential development.
(11) Vegetated Buffer Areas	Not applicable.
(12) Water quality and river flows	An erosion and sediment control plan to manage salinity and minimise erosion and sediment loss was submitted for the initial 6 lot plan. If the application was recommended for approval a condition of consent would be imposed requiring an amended erosion and sediment control plan.
(13) Wetlands	Not applicable.

It is considered that the proposal satisfies the provisions of the SEPP (Biodiversity and Conservation) 2021, subject to appropriate sedimentation and erosion controls being implemented during construction. The development will have minimal impact on the Georges River Catchment.

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

**(i) Zoning**

The subject site is zoned R1 General Residential pursuant to the LLEP 2008. An extract of the zoning map is provided in Figure 12 below.

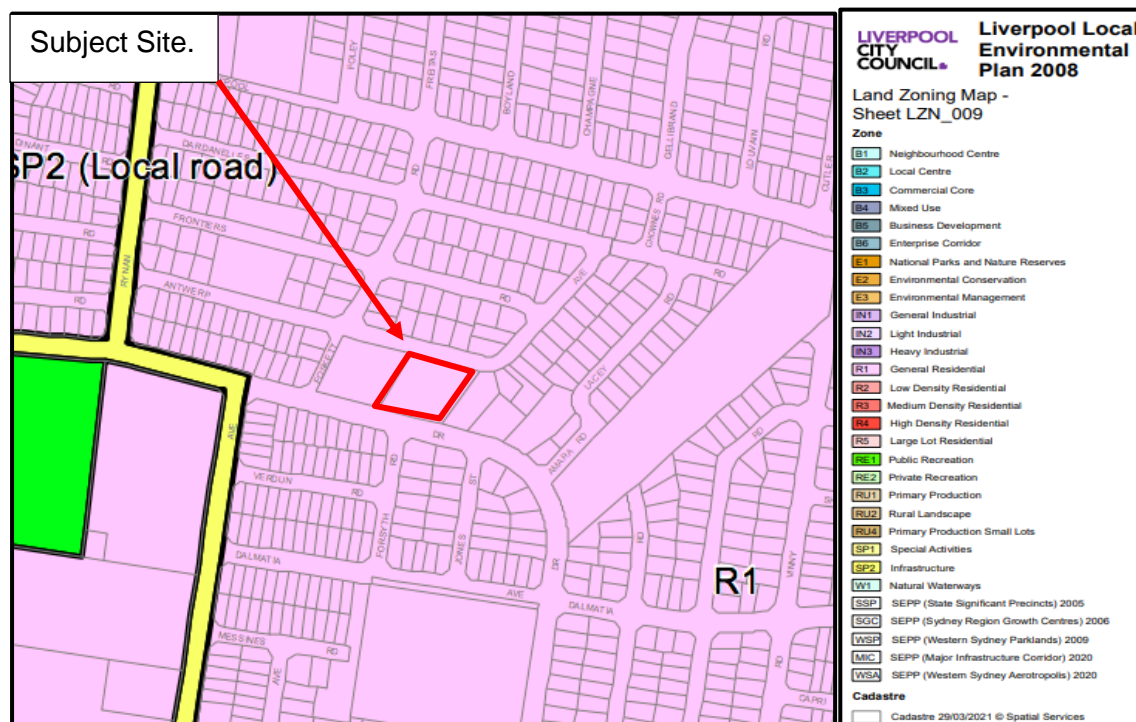


Figure 12: Zoning Map (source: NSW Legislation)

## (ii) Permissibility

The proposed development consists of a **Subdivision** to facilitate the creation of three (3) residential allotments. The proposal includes the retention of two (2) dwellings, one (1) each on proposed Lots 1 and 2. Subdivision is permissible with consent pursuant to Clause 2.6 of the LLEP 2008. The land use of **Dwelling Houses** is also permitted with consent subject to the Land Use table of the R1 General Residential zone. A dwelling house is defined as:

**dwelling house** means a building containing only one dwelling.

## (iii) Objectives of the zone

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services, and facilities.*
- *To facilitate development of social and community infrastructure to meet the needs of future residents.*

The proposal is not consistent with the objectives of the zone because the future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant, and it follows that:

- While the retention of 2 dwellings and the addition of 1 lot may contribute to providing for the housing needs of the community, it would not facilitate the minimum desired dwelling density for the locality.
- The subject site is well located to existing transport services. It is located 80m from a bus stop serviced by route 859, providing access to major centres such as Liverpool, Prestons, Carnes Hills, and the Edmondson Park train station. These centres provide further access to facilities and services. The proposal does not adequately concentrate housing in this area.

### **Principal Development Standards**

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

<b>Development Provision</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
<b>2.6 Subdivision</b>	(1) Land to which this Plan applies may be subdivided, but only with development consent.	Consent is sought for a three (3) lot subdivision.	<b>Complies</b>
<b>4.1 Minimum subdivision lot size</b>	450m <sup>2</sup>	<p>The application proposes a three (3) lot subdivision.</p> <p>The proposed lots have the following site areas:</p> <p>Lot 1 - 2,025.95m<sup>2</sup>                      Lot 2 - 1,139.35m<sup>2</sup>                      Lot 3 - 456.46m<sup>2</sup></p> <p>Lot 1 was previously going to be subdivided into an additional three (3) allotments to provide a total of six (6) across the site. However, concerns were raised about the retention of the dwelling on proposed Lot 1 and visual privacy impacts. As a result, the applicant has amended the application to a three (3) lot subdivision.</p>	<b>Complies</b>
<b>4.3 Height of Buildings</b>	Maximum of 8.5m.	No built form is proposed.	<b>Complies</b>



		The retained dwellings on the proposed Lot 1 and 2 will remain under the maximum height limit.	
<b>4.4 Floor Space Ratio</b>	Maximum of 0.65:1 Proposed lot 1: 1,316.86m <sup>2</sup> . Proposed lot 2: 740.57m <sup>2</sup> Proposed lot 3: 296.764m <sup>2</sup>	Proposed Lots 1 and 2 are retaining their existing dwellings, and the following calculations are provided:  Existing dwelling on proposed Lot 1: 0.047:1 or 96.39m <sup>2</sup> . Existing dwelling on proposed Lot 2: 178.14m <sup>2</sup> or 0.15:1.  No building is sought on the proposed lot 3 as part of this application'.	<b>Complies</b>
<b>4.6 Exceptions to Development Standards</b>	Provisions relating to exceptions to development standards	Clause 4.6 request to vary Clause 7.11 Minimum Dwelling Density considered as part of this application.	<b>See 4.6 discussion below</b>
<b>5.21 Flood Planning</b>	To minimise the flood risk to life and property associated with the use of land	The subject site is not identified by Council mapping as being within a Flood Planning area.  However, a referral has been carried out by Council's Flood Engineer, which confirms the site was not impacted by the 1 in 100-year mainstream flood event. The referral was supportive, subject to conditions.	<b>Complies by Conditions</b>
<b>6.5 Public utility infrastructure</b>	(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the	The site and area are connected to public utility infrastructure.	<b>Complies</b>

	proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.		
<b>Clause 7.11 Minimum dwelling density</b>	The minimum dwelling density is 14 dwellings/hectare.	The subject proposal seeks a variation to the minimum dwelling density contained in LLEP 2008.  The minimum dwelling density is 14dw/ha. As the subject site has an area of 4746.46m <sup>2</sup> , 6.6 dwellings are required onsite, which results in a numerical variation of 55% from the standard.	<b>See Clause 4.6 - Variation assessment below.</b>

**Clause 4.6 Exceptions to development standards (Variation to Clause 7.11 Minimum Dwelling Density)**

Clause 7.11 (2) of the LLEP 2008 states;

*“Development consent must not be granted for the subdivision of land shown on the Dwelling Density Map unless the consent authority is satisfied that the dwelling density likely to be achieved by the subdivision is not less than the dwelling density Shown for land on that Map.”*

The subject proposal seeks a variation to the minimum dwelling density contained in LLEP 2008. As stated in the LLEP 2008 table above, the minimum dwelling density is 14dw/ha. As the subject site has an area of 4746.46m<sup>2</sup>, a dwelling density of 6.3 dwellings per hectare is proposed, which results in a numerical variation of 55%.

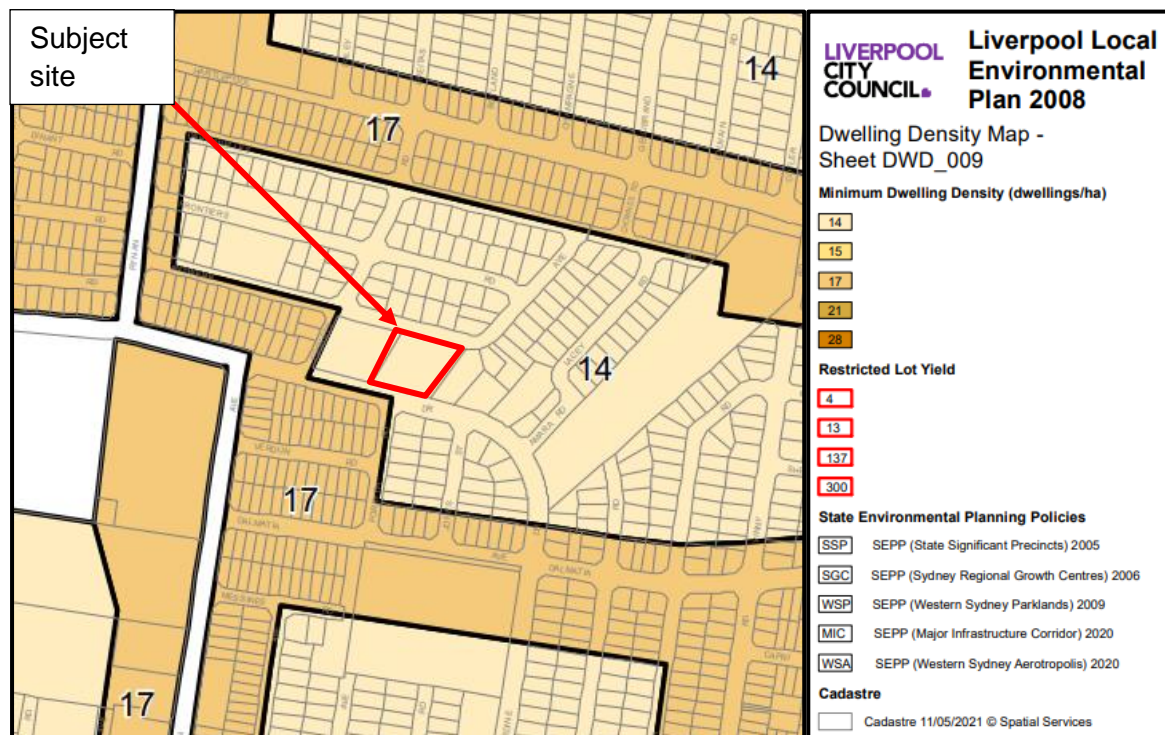


Figure 13: Extract of LLEP 2008 minimum dwelling density map (source: NSW Legislation)

Consequently, pursuant to Clause 4.6 of the LLEP 2008 the applicant has submitted a written request seeking a variation to the minimum dwelling density control as prescribed by Clause 7.11.

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

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

Pursuant to Clause 4.6(2) the 7.11 Minimum dwelling density standard is not expressly excluded from the operation of this clause, and it may be varied.

**Clause 4.6 (4)(a)(i) (Justification) Assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied the applicant’s written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3).

- (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.*

The applicant's justification of unreasonableness and unnecessary, and of the sufficiency of environmental planning grounds is assessed below.

### **That compliance with the development standard is unreasonable or unnecessary**

#### Applicant's Written Request

The applicant has argued that the proposed development complies with the objectives of cl.7.11 of LEP 2008, and as such strict compliance with the development standard is "unnecessary".

In support, the applicant's written request argues, in part:

- *The site contains two dwellings that are in good condition and occupied by family members. The owner does not wish at this stage to demolish the existing dwellings as they serve an important function of providing housing for an extended family.*
- *If the subject property was subdivided to strictly comply with the dwelling density standard, the dwellings will result in non-compliances with the applicable Development Control Plan, namely the rear setback standard requiring the existing dwellings to be retained.*
- *Proposed lot 3 is fully compliant with the minimum lot size clause and minimum dwelling density.*
- *The configuration of proposed lots 1 and 2 can facilitate further subdivision once these dwellings are demolished.*
- *The proposed development will not hinder a 2 into 3 or 2 into 4 lot subdivision which will facilitate an overall development that is compliant with the minimum dwelling density of 14 dwellings/ ha. Proposed lots 1 and 2 which do not comply with the minimum dwelling density are not out of character with the surrounding larger lot pattern.*

#### Council Comments

The exceedance of the development standard is across the three proposed allotments and equates to 55% non-compliance. The applicant has not provided Council with an alternate layout which would meet the minimum density requirements, and therefore the retention of the existing dwellings would result in an unacceptable dwelling density. It is not unreasonable or unnecessary to expect compliance with this development standard.

In retaining the dwellings, the applicant has not demonstrated how the future compliance of the site would be achieved the residential density desired under the LLEP.

The applicant's written request has not demonstrated that the objectives of the development standard have been achieved. The non-compliance is found to be inconsistent with the objectives of the standard as detailed in the later section of this report.

As a result of the above, the proposal fails to meet the objectives of the development standard and fails to establish that strict compliance is considered unreasonable or unnecessary.

### **That there are sufficient environmental planning grounds**

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

*"As to the second matter required by cl 4.6(3) (b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act."*

### **Section 1.3 of the EPA Act**

Section 1.3 of the EPA Act reads as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants:*
  - (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
  - (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicant's Written Request

A contravention of cl.7.11 of LEP 2008 would further the following environmental planning grounds:

1. The requested variation to the development standard would allow the retention of the two existing dwellings. A compliant subdivision would by necessity require the demolition of structures on the land.
2. The proposed retention of the existing dwellings would minimise the environmental impact of the development and would result in the efficient use of scarce resources whilst still allowing for further subdivision of the larger 2 lots in later stages. The environmental impact would be minimised with a reduction in construction related externalities and a general reduction in demolition waste.
3. The proposed development would facilitate a diversity in housing choice in the locality, with the retention of the existing dwellings on Proposed Lot 1 and Proposed Lot 2.
4. The proposed development would allow for the staging of development across the property and would therefore allow Council numerous opportunities of assessing the merits of each stage of development. In the short term Lot 3 would be developed at the initial stage, and then at a later point, Lots 1 and 2 would be further subdivided and then developed in accordance with the applicable planning controls.
5. The proposed variation would enable the owners of the property to age in place, and to provide housing for their extended family. This would represent a strong social benefit and would allow the owners to remain in contact with the local community.
6. The proposed subdivision would result in parcels that are consistent in character with their adjoining neighbours and that are without impact to the natural or building environments.

A few examples of larger lot sizes, surrounding the site are provided in Table 1 below:

Table 1	
Address	Approximate size
40 Jardine Drive	3548 m <sup>2</sup>
52 Jardine Drive	1505 m <sup>2</sup>

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the EPA Act, which are as follows:

<b>Environmental Planning and Assessment Act 1979: Section 1.3</b>	
<b>Objective</b>	<b>Assessment</b>
c) <i>to promote the orderly and economic use and development of land,</i>	The proposed development represents the first stage of development on the property, and the creation of Proposed Lot 3, having an area of 456.46m <sup>2</sup> would represent an efficient first step for more intensive residential development. The proposed subdivision layout represents both an orderly and economic approach to the site, as it would facilitate an appropriate form of development in the future.
g) <i>to promote good design and amenity of the built environment</i>	Notwithstanding the non-compliance with the minimum dwelling density standard, the proposed subdivision has been designed to comply with the Liverpool LEP and the Liverpool DCP .  The proposed subdivision is sympathetic to the character of the area and enhances onsite residential amenity without detriment to surrounding residential land uses in the locality.

Council Comments

The departure from the development standard stems from the applicant's desire to retain two (2) existing dwellings on the proposed subdivided allotments.

The proposed subdivision pattern is not consistent with the existing subdivision pattern of the local area and therefore objective 1.3(c) *to promote the orderly and economic use and development of land,* of the EP&A Act. The similar lots nominated by the applicant at 40 and 52 Jardine drive are outliers and not typical of the existing subdivision pattern of the area.

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant. Nor is it explicitly justified in terms of sufficient environmental planning grounds, with the shape of the smaller lot (3) - shallow depth and wide frontage – which likely to reduce the future lot yield and potentially fail to meet density requirements under the LLEP.

In this regard, the applicant has not presented information to demonstrate that the variation to the Development Standard will achieve a better outcome compared to a compliant development. Additionally, the assessment notes that, aside from the desire to retain the existing dwellings, there are no site difficulties which warrant a variation to the minimum density and trigger such flexibility in the application of the standard. Therefore, the approval of the proposed variation would create an undesirable precedent for other development to seek similar variations and would undermine the aims, objectives and requirements of the Development Standard and the strategic intent of the zone.

### Conclusion on Environmental Planning Grounds

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Accordingly, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

### **Cl 4.6 (4)(a)(ii) (Public Interest) Assessment:**

Cl 4.6 (4)(a)(ii) requires the consent authority be satisfied that:

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

Consistency with the objectives of the cl 7.11 Minimum dwelling density standard and the R1 General residential zone are assessed below.

### **Consistency with the objectives of the Minimum Dwelling Density standard**

*(a) To contribute toward the efficient use of land resources.*

#### Applicant's Written Request

*The proposed development will result in one vacant lot, (proposed lot 3) which is 456.56 m<sup>2</sup> in size and compliant with the minimum dwelling density of 14 dwellings per ha. Two additional lots will be created containing an existing dwelling on each lot. However, these lots are adequately sized and dimensioned to accommodate either further subdivision or more intense forms of residential accommodation, such as a residential flat building or multi dwelling housing. The proposed subdivision pattern is not inefficient in its design, providing one lot that would be immediately available for development (Proposed Lot 3) and two remaining lots that would be available for development in the future.*

#### Council Comment

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

The applicant argues that it is inefficient to demolish the 2 existing dwellings, this must be weighed against the inefficiency of reducing the density yield of at least 7 dwellings on site, to 3. As mentioned previously, the proposed subdivision pattern restricts the ability to efficiently use the land for residential purposes.

Accordingly, the proposal is not consistent with this objective.

*(b) To ensure the viability of public transport and other services planned for the area.*



Applicant's Written Request

*Creation of additional lots and increased density will ensure the viability of public transport and other services planned for the areas. The proposed size and lot configuration of proposed lots 1 and 2 will facilitate further subdivision that can be compliant with the minimum dwelling density standard once the existing dwellings are demolished. The proposed subdivision does not prevent the ability to achieve a planned minimum dwelling density of 14 dwellings per ha, being the objective of Clause 7.11.*

Council Comment

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

Potential population density will be reduced with the creation of fewer lots, impacting the effectiveness of public transport and other services planned for the area.

Accordingly, the proposal is not consistent with this objective.

*(c) To ensure adequate funds for the recreation and community facilities planned for the area.*

Applicant's Written Request

*The proposed development does not prevent the objective to ensure adequate funds for recreation and community facilities are planned for the area. The development of Lots 3 and the future redevelopment of Proposed Lots 1 and 2 would increase the local population and any consent issued would be subject to the payment of mandatory contributions under Council's contribution plan. The development will facilitate greater funds for recreation and community facilities.*

Council Comment

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

S7.11 development contributions collected by Council will be reduced with the creation of fewer lots onsite, impacting the available funds for recreation and community facilities planned for the area.

Accordingly, the proposal is not consistent with this objective.

**Consistency with objectives of the zone R1 General Residential**

- *To provide for the housing needs of the community.*

**Applicant's Written Request**

*The proposed subdivision provides an opportunity for additional housing and diversity for the community. The subdivision provides for a compatible infill subdivision with the potential for further subdivision and compliance with the minimum dwelling density standard of 14 dwellings per ha in later stages once demolition of the existing dwellings occurs.*

**Council Comment**

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

While retention of 2 dwellings and the addition of 1 lot may contribute to providing for the housing needs of the community, it would not provide as much as if the site were subdivided to its full potential.

Accordingly, the proposal is not consistent with this objective.

- *To provide for a variety of housing types and densities.*

**Applicant's Written Request**

*The proposed lot 3 with a lot size of 456.46 m<sup>2</sup> complies with the minimum dwelling density of 14 dwellings/ ha. Proposed lot 1 is 2025.95 m<sup>2</sup> and proposed lot 2 is 1139.35 m<sup>2</sup>. The proposed development therefore provides for a variety of housing types and densities given the divergence in allotment sizes and dwelling typology occurring on the property. Strict application of the development standard would be antipathetic to this objective.*

**Council Comment**

Retention of 2 dwellings on larger lots and the addition of 1 smaller lot would provide for a variety of housing types and densities. The density, however, would be below minimum threshold set for the locality and fails to provide an appropriate form of variety.

Accordingly, the proposal is not consistent with this objective.

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

**Applicant's Written Request**

*This objective is not relevant to the proposed subdivision.*

Council Comment

The proposed development does not impact any other land uses from providing for the community's day-to-day needs.

Accordingly, the proposal is consistent with this objective.

- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*

Applicant's Written Request

*The proposed development can comply with a higher dwelling density, ie 14 dwellings per ha in future in further subdivision of the site with specific reference to proposed lots 1 and 2. Notwithstanding the subject property is not proximate to employment, services and facilities, and public transport is limited to bus travel with the nearest bus stop being over 240 metres from the site. This objective would not require higher housing densities in this location.*

Council Comment

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

The subject site is well located to existing transport services. It is located 80m from a bus stop serviced by route 859, providing access to major centres such as Liverpool, Prestons, Carnes Hills, and the Edmondson Park train station. These centres provide further access to facilities and services. The proposal does not adequately concentrate housing in this area.

Accordingly, the proposal is not consistent with this objective.

- *To facilitate development of social and community infrastructure to meet the needs of future residents.*

Applicant's Written Request

*Not applicable - The development is associated with a residential use.*

Council Comment

The future subdivision of the retained larger lots is neither assured nor adequately demonstrated by the applicant.

S7.11 development contributions will be reduced with the creation of fewer lots, impacting the available funds for social and community infrastructure planned for the area.

Accordingly, the proposal is not consistent with this objective.

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### Conclusion

The proposal is not consistent with the objectives of the standard and some of the objectives of the zone therefore the proposal in its current form is not in the public interest.

### **Clause 4.6 (4) (b) (Concurrence of the Secretary) Assessment:**

cl. 4.6(4) (b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS-20-002, as issued by the NSW Planning and Environment on 5 May 2020, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone and the objectives of the development standard, the concurrence of the Secretary for the variation to the Minimum Density Development Standard cannot be assumed.

### Recommendation

The proposal is not in the public interest and is therefore not supported in this instance.

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

Not applicable.

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

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

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008. The proposed subdivision has been assessed under the following Parts of the LDCP 2008:

- Part 1 of the LDCP 2008, which covers general controls relating to all types of development within the Liverpool LGA;
- Part 2.11 of the LDCP 2008 for Development in Edmondson Park.

Please refer to Attachment 1, outlining an assessment against the controls.

It is noted that no dwellings are proposed as part of this application, however, the subdivision results in changed development outcomes for the retained dwellings on proposed Lots 1 and 2.

Furthermore, the application has provided an indicative layout for the remaining lot proposed, which is also addressed in Attachment 1.

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008.

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

There are no Planning Agreements that apply to the development.

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

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the BCA and the Safety standards for demolition (AS 2601 – 2001). If the application was recommended for approval, appropriate conditions of consent would be imposed.

**6.7 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.

The proposed development is unlikely to create any adverse impacts on the surrounding built environment.

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.

**Social Impacts and Economic Impacts**

The proposal for a three (3) lot subdivision will provide a beneficial social impact through the provision of additional allotments for housing. The proposal will also provide a positive economic impact through the capital investment value of the development.

Though these will not achieve their fullest potential through the current proposal as it does not meet the minimum density requirements and may result in unrealised future economic and social benefits of density.

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

The site does not contain any significant physical constraints which would prevent the development of the site. However, the retention of the dwellings inhibits the ability of the proposal to achieve the objects of the Act and all relevant development standards.

**6.9 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>
Land Development Engineering	Approval subject to conditions of consent.
Traffic & Transport	Approval subject to conditions of consent.
Flood Engineering	Approval subject to conditions of consent.
Environmental Health Officer	Approval subject to conditions of consent.

**(b) External Referrals**

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

<b>External Agency</b>	<b>COMMENTS</b>
APA Group	No objection as the proposed subdivision is not a sensitive land use and will impact on APA's Moomba to Sydney Ethane Pipeline.

**(c) Community Consultation**

The development application was not required to be notified in accordance with Liverpool Community Participation Plan 2022, notwithstanding, no submissions were received.

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

The proposed development is not in the public interest because it is inconsistent with the objects of the EP&A Act, the objectives of the R1 Zone, and the Minimum Dwelling Density principal development standard.

**7. DEVELOPMENT CONTRIBUTIONS**

Section 7.11 Development Contributions are applicable to the proposed development in accordance with Liverpool Contributions Plan 2008 – Edmondson Park.

If the application were recommended for approval, appropriate conditions of consent would be imposed to ensure payment.

## **8. 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, LLEP 2008, LDCP 2008, and the relevant codes and policies of the Council.

This proposed development does not comply with Clause 7.11 of the LLEP 2008 in relation to minimum dwelling density, proposing a variation of 55%. The non-compliance is unsupported due to the proposal's inconsistencies with the objectives of the zone and the development standard, and because there are insufficient environmental planning grounds to justify the contravention.

The proposed subdivision layout is not considered to be an orderly subdivision pattern under the objects of the Act and is unacceptable in its form, particularly due to the retention of existing dwellings which impacts the minimum dwelling density.

Based on the assessment of the application, it is recommended that the application be refused.

## **9. RECOMMENDATION**

That Development Application DA-1339/2021 be **refused**.

## **ATTACHMENTS**

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1. Attachment 1 - DCP Compliance Tables
2. Attachment 2 - Architecture Plans
3. Attachment 3 - Clause 4.6 Variation Request
4. Attachment 4 - Reasons for Refusal

## Report Attachment 1: DCP Compliance Tables

<b>LDCP 2008 - Part 1 General Controls for all Development</b>		
<b>Control</b>	<b>Requirement</b>	<b>Complies/Comment</b>
<b>Section 2 – Tree Preservation</b>	Consider the impact of development on existing vegetation.	<b>N/A</b> No tree removal is proposed.
<b>Section 3 – Landscaping and Incorporation of existing trees</b>	Incorporation of existing trees into development where appropriate.	<b>N/A</b> No tree removal is proposed.
<b>Section 3.4 Landscape Specifications</b>	<p>Landscape planting should be principally comprised of native species to provide an integrated streetscape appearance.</p> <p>The landscaping shall contain an appropriate mix of canopy trees, shrubs and groundcovers.</p> <p>All approved landscaping must be maintained to the satisfaction of Council.</p> <p>All trees are to be planted at not less than 45-litre pot size.</p> <p>Use low water/low maintenance plant selection by selecting drought tolerant species.</p>	<b>N/A</b> No landscaping is proposed.
<b>Section 4 – Bushland and Fauna Habitat Preservation</b>	Consider the impact of development on bushland and habitats	<b>N/A</b> No bushland or habitats are at threat by the proposed development.
<b>Section 5 – Bushfire Risk</b>	Land on or adjacent to bushfire-prone land to comply with RFS requirements	<b>N/A</b> The subject site is not mapped as bushfire-prone land.
<b>Section 6 – Water Cycle Management</b>	Consideration of stormwater and drainage	<b>Complies</b> The applicant has submitted stormwater plans, which have been reviewed and supported by Council's Land Development and Flood Engineers. If the application



		were recommended for approval, conditions would be applied to ensure appropriate stormwater measures are incorporated into the development.
<b>Section 7 – Development Near a Watercourse</b>	Consideration of impact on riparian corridors	<b>Complies</b> The development is not within 40m of a nearby watercourse.
<b>Section 8 – Erosion and Sediment Control</b>	A Sediment Control Plan or Soil and Water Management Plan is required	<b>Complies by Condition</b> An erosion and sediment control plan to manage salinity and minimise erosion and sediment loss was submitted for the initial 6 lot plan.  If the application were recommended for approval, the submission of new plans would be imposed as a condition of consent. Additional conditions would be applied to the consent to ensure sediment and erosion are controlled during construction.
<b>Section 9 – Flooding Risk</b>	Consideration of flooding impact on Flood Prone Land.	<b>Complies by Condition</b> The subject site is not identified by Council mapping as being within a Flood Planning area.  However, a referral has been carried out by Council's Flood Engineer, which confirms the site was not impacted by the 1 in 100-year mainstream flood event. The referral was supportive, subject to the imposition of conditions.
<b>Section 10 – Contaminated Land Risk</b>	Previous use to be considered in assessing risk	<b>Complies by Condition</b> The contamination potential of the site has been addressed in Section 6(a) of this report.
<b>Section 11 – Salinity Risk</b>	Salinity Management response required for affected properties.	<b>Complies by Condition</b> Site is mapped for moderate salinity potential. If the application were recommended for approval, any subdivision works to comply with the NCC requirements.
<b>Section 12 – Acid Sulfate Soils Risk</b>	Affected properties to consider the impact of development on soils	<b>N/A</b> The subject site is not impacted by acid sulfate soils.
<b>Section 13 - Weeds</b>	Noxious weeds are to be removed as part of development where applicable	<b>N/A</b> No noxious weeds were identified as being present on the site.

<b>Section 14 – Demolition of Existing Development</b>	Must comply with AS 2601-2001	<b>Complies by Condition</b> The existing garage on proposed Lot 1 is proposed to be relocated. Minor demolition works will result. If the application were recommended for approval, appropriate conditions of consent would be imposed to ensure compliance.
<b>Section 15 – On-Site Sewage Management Systems (OSMS)</b>	S68 Application required where connection to sewer not available	<b>Complies</b> OSMS is not proposed.
<b>Section 16 &amp; 17 – Aboriginal Archaeology &amp; Heritage and Archaeological Sites</b>	An Aboriginal Heritage Impact Assessment is required where items of aboriginal archaeology exist.	<b>N/A</b> The property is not associated with items of Aboriginal archaeology or heritage items.
<b>Section 20 – Car parking and access</b>	2 spaces per dwelling	<b>Complies</b> Proposed Lots 1 and 2 and their existing dwellings have compliant car parking.  Proposed Lot 3 will have sufficient area for car parking.
<b>Section 22 – Energy Conservation</b>	New dwellings, including multi-unit development within a mixed-use building and serviced apartments intended or capable of being strata titled, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX). A complying BASIX report is to be submitted with all development applications containing residential activities.	<b>N/A</b>
<b>Section 24 – Landfill</b>	All fill applied should be Virgin Excavated Natural Material (VENM), as defined by the NSW Department of Environment and Climate Change.	<b>Complies by conditions</b>
<b>Section 25 – Waste Disposal &amp; re-use Facilities</b>	Waste Management Plan shall be submitted for demolition, construction and ongoing waste management.	<b>Complies</b> A waste management plan has been submitted, which outlines procedures for demolition, construction, and ongoing waste management.

		If the application were recommended for approval appropriate conditions of consent are recommended to control the management of waste through any demolition and construction phases of the development and the ongoing management of waste from the proposed allotments.
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<b>LDCP 2008 – Part 2.11 – Land Subdivision and Development in Edmondson Park</b>		
<b>Control</b>	<b>Requirement</b>	<b>Compliance/Comment</b>
<b>1.1 Indicative Layout</b>	All development is to be undertaken generally in accordance with the Indicative Layout Plan at Figure 2 subject to compliance with the objectives and development controls set out in this Part.	<b>Complies</b> The proposed subdivision is generally consistent with the ILP.
<b>2.1 Street Network And Access</b>	Provide appropriate street layout.	<b>N/A</b> No roads are proposed to be constructed.
<b>2.2 Pedestrian And Cycleway Network</b>	Provide appropriate pedestrian and cyclist system.	<b>N/A</b> The subject site's external footpaths were constructed under the subdivision of a larger parent lot under DA-332/2014.
<b>2.3 Streetscape And Street Trees</b>	Provide appropriate street furniture and trees.	<b>N/A</b> Adequate street trees were planted under DA-332/2014.
<b>2.4 Open Space</b>	Provision of required open space.	<b>Not required</b>
<b>2.5 Environmental Management</b>	Provide protection to the area's environmental characteristics.	<b>N/A</b> The site has no significant vegetation that requires protection, and there are no riparian corridors and waterways over the site.
<b>2.6 Water Cycle Management</b>	Provide appropriate stormwater management.	<b>Complies</b> The applicant has submitted stormwater plans, which have been reviewed and supported by Council's Land Development and Flood Engineers. Adequate conditions are applied to ensure appropriate stormwater measures are incorporated into the development.

<b>2.7 Contamination</b>	In the consideration of any Development Application, Council must consider whether the land is likely to be contaminated. Refer to Contaminated Land Risk in Part 1 for controls.	<b>Complies</b> The contamination potential of the site has been addressed in Section 6(a) of this report.
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<b>LDCP 2008 - Part 2.11 – Section 5 – Controls for Residential Development in Suburban Areas (14 Dwelling/Hectare)</b>		
<b>Clause</b>	<b>Requirement</b>	<b>Compliance/comment</b>
<b>Site Planning</b>	<ul style="list-style-type: none"> <li>• The dwelling layout must be designed around the site attributes, such as slope, existing vegetation, land capability, and/or solar access.</li> <li>• There must be a direct link from at least one living area to the principal private open space.</li> <li>• The siting of windows of habitable rooms on the first floor shall minimise overlooking to the private open space of neighbouring properties.</li> <li>• Stormwater from the site must be able to be drained satisfactorily.</li> </ul>	<p><b>N/A</b> No construction works are proposed for the retained dwellings.</p> <p><b>Complies</b> The existing dwellings of proposed Lots 1 and 2 retain direct access to a usable private open space area.</p> <p><b>N/A</b></p> <p><b>Complies</b> The applicant has submitted stormwater plans, which have been reviewed and supported by Council's Land Development and Flood Engineers. If the proposal were to be recommended for approval, adequate conditions would be applied to ensure appropriate stormwater measures are incorporated into the development.</p>
<b>Setbacks</b>	<u>Front</u> <ul style="list-style-type: none"> <li>• 4.5m.</li> </ul>	<b>Complies</b>

	<ul style="list-style-type: none"> <li>• Articulation features can encroach on the front or secondary setback by 1m.</li> <li>• Garages shall be setback 5.5m.</li> </ul> <p><u>Side</u></p> <ul style="list-style-type: none"> <li>• Ground floor: 900mm.</li> <li>• First floor: 1.2m.</li> </ul> <p><u>Rear</u></p> <ul style="list-style-type: none"> <li>• Ground floor: 4m</li> <li>• First floor: 8m</li> </ul>	<p>Retained dwelling on the proposed Lot 1: Minimum of 29.824m. Retained dwelling on the proposed Lot 2: Minimum of 16.842m.</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p> <p><b>N/A</b></p> <p><b>Complies</b> Retained dwelling on proposed Lot 1: Garage relocated to minimum of 4.5m. Retained dwelling on proposed Lot 2: Minimum of 16.842m.</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p> <p><b>Complies</b> Retained dwelling on proposed Lot 1: Minimum 6.336m. Retained dwelling on proposed Lot 2: Minimum of 2m.</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p> <p><b>Complies</b> Retained dwelling on proposed Lot 1: Minimum of 14.351m. Retained dwelling on proposed Lot 2: 4.04m</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p>
<p><b>Landscaped Area and Private Open Space</b></p>	<p><u>Landscaped Area</u></p> <ul style="list-style-type: none"> <li>• A minimum of 20% of the site area shall consist of a Landscape Area.</li> </ul>	<p><b>Complies</b> Proposed Lot 1 requires: 405.19m<sup>2</sup>. Proposed Lot 2 requires: 227.87m<sup>2</sup>. Both lots provide in excess of the requirement.</p>

	<p><u>Private Open Space</u></p> <ul style="list-style-type: none"> <li>• Dwellings with an area between 101m<sup>2</sup> and 150m<sup>2</sup> must provide a private open space area of 50m<sup>2</sup> with a minimum of 4m in width.</li> <li>• Dwellings with an area greater than 200m<sup>2</sup> must provide a private open space area of 70m<sup>2</sup> with a minimum of 4.5m in width.</li> </ul>	<p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p> <p><b>Complies</b> Proposed Lot 1 requires: 50m<sup>2</sup>. Proposed Lot 2 requires: 70m<sup>2</sup>.</p> <p>The dwelling on proposed Lot 1 provides in excess of 50m<sup>2</sup>.</p> <p>The dwelling on proposed Lot 2 provides in excess of 70m<sup>2</sup>.</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p>
<p><b>Cut and Fill, Building Design, Streetscape, and Layout</b></p>	<p><u>Cut and Fill of land</u></p> <ul style="list-style-type: none"> <li>• The maximum cut on a site must not exceed 600mm.</li> <li>• All retaining wall structures shall be masonry construction and designed by a suitably qualified person, or constructed as specified by the manufacturer of the product. The retaining wall shall be constructed wholly inside (within) the boundary of the site.</li> <li>• The maximum fill within the confines of the slab must not exceed 1m. All fill is to be contained within the dwelling footprint.</li> </ul> <p><u>Building Envelopes</u></p> <p>The building footprint for detached dwelling houses is not to occupy</p>	<p>No new built form is proposed. The subdivision of the Lots containing the existing dwellings will not impact these controls. Except for the building footprint control. Both proposed lots 1 &amp; 2 retain buildings that easily meet this control. The BEP provided for proposed lot 3 shows this control can be met.</p>

	<p>more than 55% of the site and the total impervious area is not to exceed 70% of the total site area. A minimum of 30% of the site area must be pervious surfaces.</p> <p><u>Building Height</u></p> <ul style="list-style-type: none"> <li>• A Dwelling House, Attached dwelling, or Semi detached dwelling may have a maximum of two storeys plus an attic.</li> <li>• For sloping sites the height of a dwelling house must follow the slope of the land.</li> </ul> <p><u>Building Depth</u></p> <ul style="list-style-type: none"> <li>• Maximum building depths for houses are 16m, unless internal courtyards are provided.</li> </ul> <p><u>Building Design and Appearance</u></p> <ul style="list-style-type: none"> <li>• All dwelling houses are to be orientated to the street.</li> <li>• The front pedestrian entrance must be visible from the street.</li> <li>• The front Building facades shall be articulated, this articulation may include front porches, entries, wall indents, changes in finishes, balconies, and/or verandahs.</li> <li>• For two storey or greater height developments, the side walls shall be articulated if the wall has a continuous length of over 10m.</li> </ul>	
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	<ul style="list-style-type: none"> <li>• Eave overhang must provide for sun shading and protect windows and doors. Eaves should have a minimum overhang of 400mm and be provided to a minimum of 70% of the dwelling.</li> <li>• Balconies facing the street on two or more storey dwellings are encouraged.</li> </ul> <p><u>Garages</u></p> <ul style="list-style-type: none"> <li>• The maximum width of garage doors or carports must be no greater than 45% of the building frontage width.</li> <li>• Garages and carports must be designed to be the minor element of the façade.</li> <li>• Garages and carports are to be compatible with the building design in terms of height, roof form, detail, materials, and colours.</li> </ul> <p><u>Internal Design</u></p> <ul style="list-style-type: none"> <li>• Living rooms should take advantage of northern aspects.</li> <li>• Access to private open space must be from at least one living room.</li> </ul> <p>Bathrooms, ensuites, laundries, and walk-in wardrobes should be located to the side and</p>	
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	<p>the rear of the dwelling.</p> <ul style="list-style-type: none"> <li>• Each dwelling must provide a minimum storage area of 8m<sup>3</sup>.</li> </ul> <p><u>Roof Design</u></p> <ul style="list-style-type: none"> <li>• Relate roof design to the desired built form. This may include: <ul style="list-style-type: none"> <li>- Articulating the roof, or breaking down its massing on large buildings, to minimise the apparent bulk or to relate to a context of smaller building forms.</li> <li>- Using a similar roof pitch or material to adjacent buildings, particularly in existing special character areas or heritage conservation areas.</li> <li>- Minimising the expression of roof forms gives prominence to a strong horizontal datum in the adjacent context, such as an existing parapet line.</li> <li>- Using special roof features, which relate to the desired character of an area, to express important corners.</li> </ul> </li> <li>• Design the roof to relate to the size and scale of the building, the building elevations, and three-dimensional building form. This includes the design of any parapet or terminating elements and the selection of roof materials.</li> </ul>	
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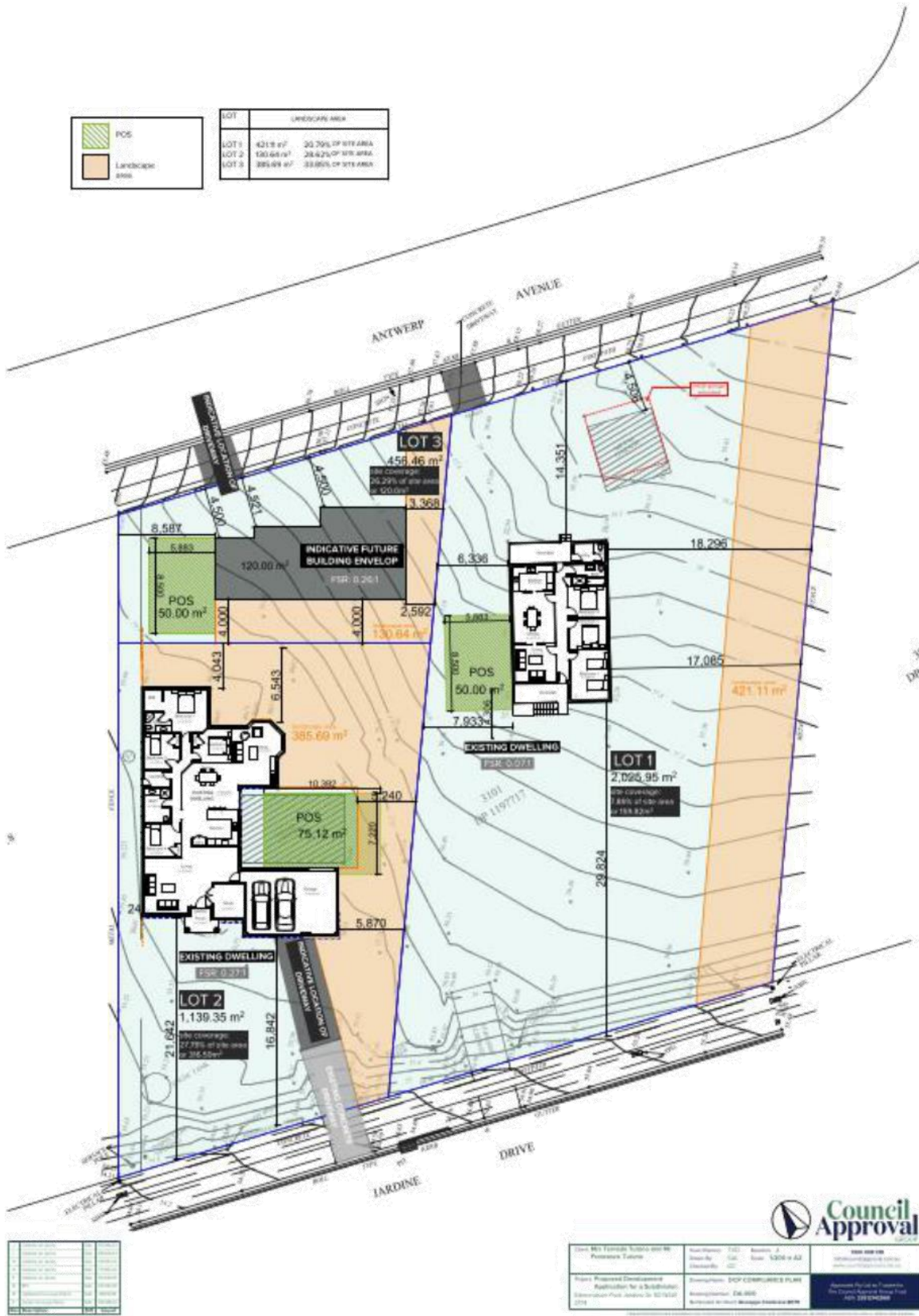
	<ul style="list-style-type: none"> <li>• Design roofs to respond to the orientation of the site, for example, by using eaves and skillion roofs to respond to sun access.</li> <li>• Minimise the visual intrusiveness of service elements by integrating them into the design of the roof. These elements include lift overruns, service plants, chimneys, vent stacks, telecommunication infrastructures, gutters, downpipes, and signage.</li> </ul> <p><u>Storage Areas</u></p> <ul style="list-style-type: none"> <li>• A secure storage space is to be provided for each dwelling with a minimum volume 8m<sup>3</sup> (minimum dimension 1sqm).</li> <li>• Storage areas must be adequately lit and secure. Particular attention must be given to security of basement and garage storage areas.</li> </ul>	
<b>Car Parking and Access</b>	<ul style="list-style-type: none"> <li>• Two car parking spaces shall be provided for each dwelling.</li> <li>• At least one car parking must be provided behind the front setback.</li> </ul>	<p><b>Complies</b> The retained dwellings on proposed Lots 1 and 2 continue to comply.</p> <p>The building envelope plans for proposed Lot 3 demonstrate a dwelling can meet the minimum requirements of this control.</p> <p><b>Complies</b></p> <p><b>Complies</b></p>

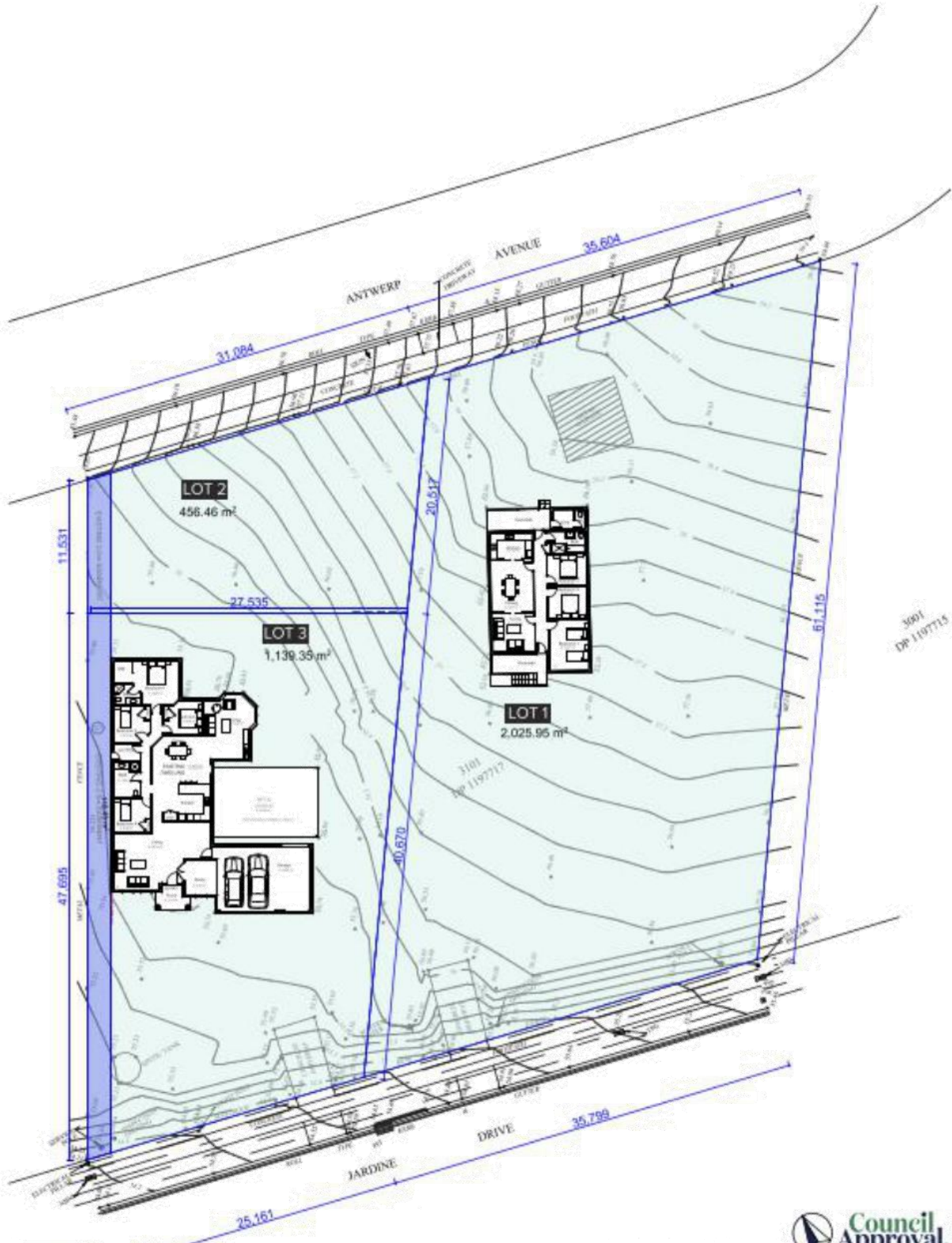
	<ul style="list-style-type: none"> <li>A parking space is to be a minimum of 2.5 x 5.5m.</li> </ul>	
<b>Landscaping and Fencing</b>	<ul style="list-style-type: none"> <li>At least one tree shall be planted in the front and rear landscaped areas. The tree must reach a mature height of over 8m. This tree shall be planted at least 3m from the building or utility services.</li> <li>Landscape planting should be principally comprised of native species to maintain the character of Liverpool and provide an integrated streetscape appearance.</li> </ul> <p><u>Fencing</u></p> <ul style="list-style-type: none"> <li>The maximum height of a front fence is 1.2m.</li> <li>The maximum height of side boundary fencing within the setback to the street is 1.2m.</li> <li>Internal boundary fences shall be lapped and capped timber, masonry or metal sheeting.</li> </ul>	<p><b>Complies by Condition</b></p> <p>No landscaping works are proposed.</p> <p>If the application were recommended for approval, a condition would be imposed to add some native trees.</p> <p><b>N/A</b></p> <p>Not fencing proposed.</p>
<b>Amenity and Environmental Impact</b>	<p><u>Overshadowing</u></p> <ul style="list-style-type: none"> <li>Adjoining properties must receive a minimum of three hours of sunlight between 9am and 5pm on 21 June to at least <ul style="list-style-type: none"> <li>- One living, rumpus room, or the like; and</li> <li>- 50 % of the private open space.</li> </ul> </li> </ul>	<p><b>N/A</b></p> <p>No building works are proposed, which will change the existing status quo of the overshadowing on the subject site.</p>

	<p><u>Privacy and Amenity</u> <u>Privacy</u></p> <ul style="list-style-type: none"> <li>• Building siting, window location, and balconies should take into account the importance of the privacy of on-site and adjoining buildings and outdoor spaces.</li> <li>• Landscaping should be used where possible to increase visual privacy between dwellings and adjoining properties.</li> <li>• Windows of habitable rooms facing side boundaries are to be offset by at least 1 m from any adjoining facing window.</li> <li>• Except where they face a road or public open space, habitable room windows to the side are to avoid unreasonable overlooking by having a minimum sill height of 1.5m.</li> </ul>	<p><b>Complies</b></p> <p>The proposed subdivision and the retention of the dwellings on proposed Lots 1 and 2 have appropriately considered visual privacy impacts to ensure they will be minimised when any future dwellings are proposed on Lot 3.</p>
<p><b>Site Services</b></p>	<p><u>Letterboxes</u></p> <ul style="list-style-type: none"> <li>• Letterboxes shall be provided for each dwelling on site, easily accessible from the street, able to be securely locked, and provided in accordance with Australia Post's requirements.</li> <li>• Freestanding letterbox structures should be designed and constructed of</li> </ul>	<p><b>Complies by condition</b> (If it were recommended for approval)</p> <p><b>Noted. Complies by Condition</b> (If it were recommended for approval)</p>

	<p>materials that relate to the main building.</p> <ul style="list-style-type: none"><li>• Residential numbering should be attached to the letterbox so that it is visible from the street frontage. Numbers should be 75mm in height, reflective, and contrast to the backing material.</li></ul>	<p><b>Complies by Condition</b> (If it were recommended for approval)</p>
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Report Attachment 2: Plans of the Proposal





3001  
DP 1197715

NO.	REVISION	DATE	BY
1	ISSUED FOR TENDERS	12/01/2021	DAVID
2	ISSUED FOR TENDERS	12/01/2021	DAVID
3	ISSUED FOR TENDERS	12/01/2021	DAVID
4	ISSUED FOR TENDERS	12/01/2021	DAVID
5	ISSUED FOR TENDERS	12/01/2021	DAVID
6	ISSUED FOR TENDERS	12/01/2021	DAVID
7	ISSUED FOR TENDERS	12/01/2021	DAVID
8	ISSUED FOR TENDERS	12/01/2021	DAVID
9	ISSUED FOR TENDERS	12/01/2021	DAVID
10	ISSUED FOR TENDERS	12/01/2021	DAVID

	Date: 01/01/2021 Drawn By: DAVID Checked By: DAVID	Project: 1339 Scale: 1:200 @ A3 Drawing No: 001	3001 DP 1197715 50 JARDINE DRIVE EDMONDSON PARK NSW 2174
	Project: Proposed Development Applicant: Mr & Mrs [Name] Description: Prop. 50 Jardine Dr. 50 JARDINE DRIVE	Drawn/Checked: PRCR SUBDIVISION PLAN Drawing/Member: DAVID Material or Method: [Material/Method]	Approved/Not Approved By: [Name] Date: [Date]



# Clause 4.6 Variation Request Report

50 Jardine Drive, Edmondson Park

Development Application for: One Into three Lot Torrens Title Subdivision

**Applicant:** Mrs Ternella Turano and Mr Francesco Turano

*Date: 5 July 2023*

Created By:	TVD
Checked By:	





# 1 Introduction

Council Approval Group has been engaged by Mrs Ternella Turano and Mr Francesco Turano, to prepare and submit a development application for a 1 into 6 lot Torrens title subdivision which has now been amended to a 1 into 3 lot subdivision.

The purpose of this report is to request a variation from the Liverpool LEP, Minimum Dwelling Density standard that requires a minimum number of 14 dwellings/ha.

Once determined, this proposal will retain the existing two dwellings on proposed lots 1 and 2 and create a vacant proposed lot 3.

The development does not comply with Clause 7.11 - Minimum Dwelling Density of the Liverpool Local Environmental Plan 2008 (LEP 2008). A variation request is therefore required.

# 2 Clause 4.6 Variation Assessment

## 2.1 What is the name of the environmental planning instrument that applies to the land?

Liverpool Local Environmental Plan 2008 (LEP 2008)

## 2.2 What is the zoning of the land?

R1 - General Residential

## 2.3 What are the objectives of the zone?

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.
- To facilitate development of social and community infrastructure to meet the needs of future residents.



## 2.4 What is the development standard being varied?

The development standard that is to be varied is as follows:

### Minimum Dwelling Density

Development consent must not be granted for the subdivision of land shown on the Dwelling Density Map unless the consent authority is satisfied that the dwelling density likely to be achieved by the subdivision is not less than the dwelling density shown for the land on that Map.

In this clause—

dwelling density means the ratio of the number of dwellings to the area of the land to be occupied by the development, including internal streets and half the width of any roads adjoining the development that provide vehicular access to the development but excluding land used for public open space and non-residential purposes.

The Dwelling Density Map specifies that the subject property has a dwelling density minimum of 14 dwellings per hectare.

The provision is consistent with the definition of “development standard” contained in s.1.4 of the Environmental Planning and Assessment Act 1979, being a “provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (e) the intensity or density of the use of any land, building or work,

## 2.5 Under what clause is the development standard listed in the environmental planning instrument?

The standard is listed under clause 7.11 Minimum dwelling density of LEP 2008.

## 2.6 What are the objectives of the development standard?

### 7.11 Minimum dwelling density

- (1) The objectives of this Plan for the control of dwelling densities are as follows —
  - (a) to contribute toward the efficient use of land resources,
  - (b) to ensure the viability of public transport and other services planned for the area,
  - (c) to ensure adequate funds for the recreation and community facilities planned for the area.



## **2.7 What is the numeric value of the development standard in the environmental planning instrument?**

The subject property is 3,636.72 m<sup>2</sup>. Antwerp Street is 15 m wide. The road frontage of the site is 66.685 m wide. An area of (7.5 x 66.685 m) 500 m<sup>2</sup> must therefore be added to the site calculation to determine the minimum lot density.

Jardine Drive is 20 m wide. The road frontage of the site along Jardine Drive is 60.96 m. An area of (10m x 60.96m) 609.6 m<sup>2</sup> must therefore be added to the site calculation to determine the minimum lot density.

The total site area for the purpose of calculating minimum dwelling density is therefore 4746.33 m<sup>2</sup>.

As stated above the site is mapped with a minimum dwelling density of 14 dwellings per ha. When applying the standard against the area of the subject property (4746.33 m<sup>2</sup>) Council are required to be satisfied that a minimum of 6.6, rounded up to 7 dwellings are likely to be achieved by the subdivision.

## **2.8 What is the proposed numeric value of the development standard in your development application?**

The proposed development seeks to subdivide the subject property to create three Torrens Title allotments having the following areas:

Lot 1 – 2,025.95m<sup>2</sup> (containing a 3 bedroom dwelling)

Lot 2 – 1,139.35 m<sup>2</sup> (containing a 4 bedroom dwelling)

Lot 3 – 456.46m<sup>2</sup> (being a vacant block suitable for the erection of a dwelling house)

The likely dwelling yield achieved by the subdivision is 3 dwellings. We note however that Lot 1 and Lot 2 are sufficiently sized and dimensions to accommodate a range of permissible residential development, including residential flat buildings, multi dwelling housing, shop top housing and seniors living. The likely dwelling yield could be significantly greater than 7 dwellings in the event that proposed Lot 1 and 2 were developed in this manner.

The numeric value of the development standard is 3 dwellings for the area of the property, or 6.3 dwellings per hectare.

## **2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

6.6 dwellings are required as a minimum and 3 are likely to result from the subdivision. The extent of variation as a percentage is 55%.

## **2.10 Does Clause 4.6 include a provision that would prohibit the application for variation of**

[Clause 4.6 Variation Request Report](#)



### the development standard?

No. Clause 7.11 Minimum dwelling density is not excluded under sub clause (8) of Clause 4.6.

It is noted that the Liverpool LEP 2008 and Clause 4.6 (8) was formulated to exclude a number of development standards from flexibility facilitated by Clause 4.6. In other words, the consent authority and department considered that there were, in formulating the legislation, certain standards that should not be varied. This is of relevance therefore that the consent authority did not exclude Clause 7.11 and accepted that there could be departure from the minimum standards.

### 2.11 Provide site specific reasons to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the particular circumstances of the case?

In *Initial Action Pty v Woollahra Municipal Council* [2018] NSWLEC 118 (*'Initial Action'*) Preston CJ at [14], identified that two opinions of satisfaction were required:

- The first state of satisfaction is that the Applicant's **written** request has adequately addressed the matters required to be demonstrated by cl 4.6(3). The matters at subcl (3) are twofold: first, that compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are **sufficient environmental planning grounds** to justify contravening the development standard (cl 4.6(3)(b)). A written request needs to demonstrate both of these matters: cl 4.6(4)(a)(i) of LEP 2008.
- The second state of satisfaction is that the proposed development will be in the public interest because it is consistent with the **objectives of the particular development standard** that is contravened **and the objectives for development for the zone** in which the development is proposed to be carried out: cl 4.6(4)(a)(ii) of LEP 2008.

### Unreasonable or Unnecessary

Clause 4.6(3)(a) of LEP 2008 provides a similar test as that set out in clause 3 of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and mirrors the fourth question Lloyd J established in consideration of SEPP 1 objections in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 24. This written request therefore draws from the authorities that deal with Justice Lloyd's fourth question.

The term "unreasonable or unnecessary" is not defined in the relevant environmental planning instruments or in the legislation. Preston CJ in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 considers the expression (at [42]):

*"An objection under SEPP1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a number of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."*

*The rationale is that development standards are not ends in themselves but means of achieving ends.*



*The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

The analysis of Preston CJ requires the following questions to be answered:

1. What are the objectives of the development standard?
2. Would the objectives of the development standard be achieved notwithstanding the non-compliance (unnecessary)?
3. Would no purpose be served if strict compliance was required. (unreasonable)?

#### Compliance with Objectives of cl.7.11 (First Way in *Wehbe*)

7.11 Minimum dwelling density (1) The objectives of this clause are as follows –	Statement of compliance
<p>(a) to contribute toward the efficient use of land resources,</p> <p>(b) to ensure the viability of public transport and other services planned for the area,</p> <p>(c) to ensure adequate funds for the recreation and community facilities planned for the area.</p>	<p>a) The proposed development will result in one vacant lot, (proposed lot 3) which is 456.56 m<sup>2</sup> in size and compliant with the minimum dwelling density of 14 dwellings per ha.</p> <p>Two additional lots will be created containing an existing dwelling on each lot. However these lots are adequately sized and dimensioned to accommodate either further subdivision or more intense forms of residential accommodation, such as a residential flat building or multi dwelling housing. The proposed subdivision pattern is not inefficient in its design, providing one lot that would be immediately available for development (Proposed Lot 3) and two remaining lots that would be available for development in the future.</p> <p>b) Creation of additional lots and increased density will ensure the viability of public transport and other services planned for the areas. The proposed size and lot configuration of proposed lots 1 and 2 will facilitate further subdivision that can be compliant with the minimum dwelling density standard once the existing dwellings are demolished. The proposed subdivision does not prevent the ability to achieve a planned minimum dwelling density of 14 dwellings per ha, being the objective of Clause 7.11.</p> <p>The proposed development does not prevent the objective to ensure adequate funds for recreation and community facilities are planned for the area. The development of Lots 3 and the future redevelopment of Proposed Lots 1 and 2 would increase the local population and any consent issued would be subject to the payment of mandatory contributions under Council's contribution plan. The development will facilitate greater funds for recreation and community facilities.</p>

The proposed development complies with the objectives of cl.7.11 of LEP 2008, and as such strict compliance with the development standard is "unnecessary".

It is also evident that no purpose would be served if the development standard was applied in a rigid manner.



In support of this submission we bring to Council's attention the following:

- The site contains two dwellings that are in good condition and occupied by family members. The owner does not wish at this stage to demolish the existing dwellings as they serve an important function of providing housing for an extended family.
- If the subject property was subdivided to strictly comply with the dwelling density standard, the dwellings will result in non-compliances with the applicable Development Control Plan, namely the rear setback standard requiring the existing dwellings to be retained.
- Proposed lot 3 is fully compliant with the minimum lot size clause and minimum dwelling density.
- The configuration of proposed lots 1 and 2 can facilitate further subdivision once these dwellings are demolished.
- The proposed development will not hinder a 2 into 3 or 2 into 4 lot subdivision which will facilitate an overall development that is compliant with the minimum dwelling density of 14 dwellings/ ha . Proposed lots 1 and 2 which do not comply with the minimum dwelling density are not out of character with the surrounding larger lot pattern.

A few examples of larger lot sizes, surrounding the site are provided in Table 1 below:

Table 1	
Address	Approximate size
40 Jardine Drive	3548 m <sup>2</sup>
52 Jardine Drive	1505 m <sup>2</sup>

Strict compliance with cl.7.11 would serve no purpose as the proposed development, and the likely resulting residential development would fully comply with Liverpool DCP standards, with specific reference to provision of:

- a building envelope on each lot;
- private open space;
- compliant boundary setbacks;
- car parking and vehicular movement;
- compliant landscaping areas.

In this particular circumstance it is unreasonable and unnecessary to comply with the minimum dwelling density development standard of 14 dwellings/ha as the proposal has achieved the objectives of clause 7.11 as stated below:

#### **Compliance with zone objectives**

An assessment of the proposed development against the objectives of the R1 Zone is provided below:



R1 - General Residential	
Objective	Assessment
To provide for the housing needs of the community.	The proposed subdivision provides an opportunity for additional housing and diversity for the community.  The subdivision provides for a compatible infill subdivision with the potential for further subdivision and compliance with the minimum dwelling density standard of 14 dwellings per ha in later stages once demolition of the existing dwellings occurs.
To provide for a variety of housing types and densities.	The proposed lot 3 with a lot size of 456.46 m <sup>2</sup> complies with the minimum dwelling density of 14 dwellings/ ha  Proposed lot 1 is 2025.95 m <sup>2</sup> and proposed lot 2 is 1139.35 m <sup>2</sup> . The proposed development therefore provides for a variety of housing types and densities given the divergence in allotment sizes and dwelling typology occurring on the property. Strict application of the development standard would be antipathetic to this objective.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This objective is not relevant to the proposed subdivision.
To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.	The proposed development can comply with a higher dwelling density, ie 14 dwellings per ha in future in further subdivision of the site with specific reference to proposed lots 1 and 2.  Notwithstanding the subject property is not proximate to employment, services and facilities, and public transport is limited to bus travel with the nearest bus stop being over 240 metres from the site. This objective would not require higher housing densities in this location.
To facilitate development of social and community infrastructure to meet the needs of future residents.	Not applicable - The development is associated with a residential use.

## 2.12 Are there sufficient environmental planning grounds to justify contravening the development standard?

A contravention of cl.7.11 of LEP 2008 would further the following environmental planning grounds:

1. The requested variation to the development standard would allow the retention of the two existing dwellings.. A compliant subdivision would by necessity require the demolition of structures on the land.
2. The proposed retention of the existing dwellings would minimise the environmental impact of the development and would result in the efficient use of scarce resources whilst still allowing for further subdivision of the larger 2 lots in later stages. The environmental impact would be minimised with a reduction in construction related externalities and a general reduction in demolition waste.



3. The proposed development would facilitate a diversity in housing choice in the locality, with the retention of the existing dwellings on Proposed Lot 1 and Proposed Lot 2.
4. The proposed development would allow for the staging of development across the property and would therefore allow Council numerous opportunities of assessing the merits of each stage of development. In the short term Lot 3 would be developed at the initial stage, and then at a later point, Lots 1 and 2 would be further subdivided and then developed in accordance with the applicable planning controls.
5. The proposed variation would enable the owners of the property to age in place, and to provide housing for their extended family. This would represent a strong social benefit and would allow the owners to remain in contact with the local community.
6. The proposed subdivision would result in parcels that are consistent in character with their adjoining neighbours and that are without impact to the natural or building environments.

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the EPA Act, which are as follows:

Environmental Planning and Assessment Act 1979: Section 1.3	
Objective	Assessment
c) <i>to promote the orderly and economic use and development of land,</i>	The proposed development represents the first stage of development on the property, and the creation of Proposed Lot 3, having an area of 456.46m <sup>2</sup> would represent an efficient first step for more intensive residential development. The proposed subdivision layout represents both an orderly and economic approach to the site, as it would facilitate an appropriate form of development in the future.
g) <i>to promote good design and amenity of the built environment</i>	Notwithstanding the non-compliance with the minimum dwelling density standard, the proposed subdivision has been designed to comply with the Liverpool LEP and the Liverpool DCP . The proposed subdivision is sympathetic to the character of the area and enhances onsite residential amenity without detriment to surrounding residential land uses in the locality.

### 2.13 Is the proposed development in the public interest? Is it consistent with the objectives of the standard and zone?

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard and objectives for development within the zone. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.





It is considered that the proposal is consistent with the objective of the standard for the following reasons:

- Proposed lot 3 can comply with the minimum dwelling density
- Planned residential density can be achieved as part of future further subdivision of proposed Lots 1 and 2;
- All lots are suitable to achieve compliant future development in terms of lot size, building height, site coverage, landscaping, setbacks, provision of services, parking, access, private open space, pervious area and deep soil zones; and which supports the objective of planned residential density.

For these reasons, it is contended that adherence to the minimum dwelling density standard for the subject site is unnecessary in this case due to the achievement of the objectives of the standard and positive environmental planning outcomes achieved by the proposed subdivision, notwithstanding the non-compliance.

### 3 Conclusion

Clause 7.11 - Minimum Dwelling Density in Liverpool LEP 2008 applies a minimum dwelling density to the site of 14 dwellings per hectare. The subject site at 50 Jardine Drive, Edmondson Park has a site area of 3,636.72 m<sup>2</sup>. The total site area for the purpose of calculating minimum dwelling density is 4746.33m<sup>2</sup> as the area of half the width of any roads adjoining the development must be included. If the total site area of 4746.33 m<sup>2</sup> is divided by 3, then the average lot size is 1582.11 m<sup>2</sup> and therefore a dwelling density of 6.3 dwellings per ha is proposed.

The proposed 1 into 3 lot subdivision will require a 55% variation.

In conclusion:

- This site provides for a compatible infill subdivision while retaining the existing two dwellings on separate lots;
- The proposed subdivision provides an opportunity for future additional housing and diversity for the community;
- The development promotes smaller, affordable dwelling stock for the benefit of Edmondson Park residents;
- The proposal is accessible to the services and facilities of Edmondson Park and surrounds;
- The proposed subdivision will be providing smaller, more manageable lots for the existing dwellings, while creating a new vacant lot (proposed lot 3) compliant with the minimum dwelling density suitable for the construction of a dwelling ; and
- The proposal maintains the existing privacy, amenity, environmental quality, and character of this part of Edmondson Park.

**Report Attachment 4: Reasons for Refusal**

1. The proposed subdivision layout does not promote the orderly development of land and is therefore inconsistent with Section 1.3(c) of the Environmental Planning and Assessment Act 1979.
2. The proposed development is inconsistent with the objectives of the R1 – General Residential zone as per Liverpool Local Environmental Plan 2008, as it does not ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services, and facilities pursuant to Section 1.3(a), 1.3(b), 1.3(c), and Section 4.15(1)(a)(i), 4.15(1)(b), and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
3. The proposed development does not satisfy Clause 7.11 - Minimum dwelling density of the Local Environmental Planning Policy 2008, as it fails to achieve compliance with the minimum dwelling density provisions, and the written Clause 4.6 variation request is unsupported pursuant to 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
4. The proposed development is likely to have adverse Social and Economic impacts through potential lost future economic and social benefits of unrealised density in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
5. The proposed development is inconsistent with the objects of the Environmental Planning and Assessment Act 1979, the objectives of the R1 – General Residential zone and Clause 7.11 Minimum dwelling density of the Local Environmental Planning Policy 2008, which demonstrates that the site is not suitable for a proposal of this nature, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
6. Due to the above reasons, approval of the application is not in the public interest pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

**ADVISORY NOTES**

- a) Section 8.2 of the EP&A Act provides that an applicant may request, within six (6) months of the date of the determination of the Development Application, that Council review its determination (this does not relate to designated development or Crown development).

An application under Section 8.2 of the EP&A Act cannot be reviewed/determined after 6 months of the date of determination. Therefore, the submission of a Section 8.2 Application must allow sufficient time for Council to complete its review within the prescribed timeframe, including the statutory requirement for public notification.

- b) Section 8.7 and 8.10 of the EP&A Act provides that an applicant who is dissatisfied with the determination of a Development Application, may appeal to the Land and Environment Court within six (6) months of the date of determination, or as otherwise prescribed by the EP&A Act.