

# MATTERS FOR LIVERPOOL LOCAL PLANNING PANEL DETERMINATION

**Monday 28<sup>th</sup> November 2022**

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

## Microsoft Teams meeting

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Note: Submissions by the applicant and concerned parties will be considered at the hearing. 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 hearing 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 Amanda Merchant, Panel Support Officer on 8711 7712 or 1300 36 2170, by 4pm, Friday, 25<sup>th</sup> November.

**LIVERPOOL CITY COUNCIL**

**LOCAL PLANNING PANEL REPORT**

**28<sup>th</sup> November 2022**

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

<b>ITEM No.</b>	<b>SUBJECT</b>	<b>PAGE No.</b>
<b>1</b>	<p><b>DEVELOPMENT APPLICATION DA-1321/2021</b></p> <p><b>CONSTRUCTION OF AN ADMINISTRATION BUILDING, GRANDSTAND STRUCTURE, FENCES AND ASSOCIATED CAR SPACES.</b></p> <p><b>THE PROPOSED DEVELOPMENT IS IDENTIFIED AS A NOMINATED INTEGRATED DEVELOPMENT REQUIRING AN APPROVAL FROM NATURAL RESOURCES ACCESS REGULATOR UNDER THE WATER MANAGEMENT ACT, 2000</b></p> <p><b>LOT 2 DP 517744</b>  <b>ERNIE SMITH RECREATION RESERVE, 34 JACK O'SULLIVAN ROAD, MOOREBANK NSW 2170</b></p>	<b>3 - 60</b>

<b>ITEM No.</b>	<b>SUBJECT</b>	<b>PAGE No.</b>
<b>2</b>	<p><b>DEVELOPMENT APPLICATION DA-64/2007/D</b></p> <p><b>MODIFICATION TO DEVELOPMENT CONSENT DA-64/2007 UNDER SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, TO THE CHANGES ARE AS FOLLOWS:</b></p> <ul style="list-style-type: none"> <li><b>• DELETE ROAD 10.</b></li> <li><b>• AMEND EXISTING STORMWATER DRAINS TO RUN ALONG FLYNN AVENUE INSTEAD OF THROUGH THE MIDDLE OF THE SUBJECT SITE AND NEIGHBOURING PROPERTY</b></li> </ul> <p><b>LOT 3 DP 1207518</b>  <b>LOT 3 SEVENTEENTH AVE EAST, MIDDLETON GRANGE</b>  <b>LOT 4 DP 1207518</b>  <b>LOT 4 SEVENTEENTH AVE EAST, MIDDLETON GRANGE</b>  <b>LOT 12 DP 1108343</b>  <b>60 HALL CIRCUIT, MIDDLETON GRANGE</b>  <b>LOT 2 DP 1207518</b>  <b>LOT 2 FLYNN AVENUE, MIDDLETON GRANGE</b>  <b>LOT 5 DP 1207518</b>  <b>LOT 5 SIXTEENTH AVE EAST, MIDDLETON GRANGE</b>  <b>Lot 6 DP 1207518</b>  <b>LOT 6 SIXTEENTH AVE EAST, MIDDLETON GRANGE</b>  <b>LOT 1 DP 1078564</b>  <b>LOT 1 SEVENTEENTH AVE EAST, MIDDLETON GRANGE</b>  <b>LOT 102 DP 1128111</b>  <b>LOT 102 SIXTEENTH AVE EAST, MIDDLETON GRANGE</b></p>	<b>61 - 87</b>

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ITEM No.	SUBJECT	PAGE No.
3	<p>DEVELOPMENT APPLICATION DA-973/2022</p> <p>DEMOLITION OF ALL STRUCTURES AND CONSTRUCTION OF AN AFFORDABLE HOUSING DEVELOPMENT CONSISTING OF NINE (9) DWELLINGS WITH STRATA TITLE SUBDIVISION AND THE CONSTRUCTION OF A STORMWATER EASEMENT OVER 91 &amp; 93 BOX ROAD, CASULA.</p> <p>LOT 201 DP 701551,SP 83076 AND LOT 21 DP 1000072 87 -93 BOX ROAD, CASULA NSW 2170</p>	88 - 192

ITEM No.	SUBJECT	PAGE No.
4	<p>DEVELOPMENT APPLICATION DA-394/2011/B</p> <p>APPROVAL IS SOUGHT TO AMEND DA CONDITION 75 OF CONSENT NO. 394/2011 TO PERMIT THE USE OF EXCAVATED NATURAL MATERIAL (ENM) INSTEAD OF VIRGIN EXCAVATED NATURAL MATERIAL (VENM)</p> <p>LOT 5 DP 252040 41 GREENDALE ROAD, BRINGELLY NSW 2556</p>	193 - 237

ITEM No.	SUBJECT	PAGE No.
5	<p>Development Application RZ-9/2022</p> <p>PLANNING PROPOSAL TO AMEND THE ZONING, FLOOR SPACE RATIO, HEIGHT OF BUILDING AND MINIMUM LOT SIZES DEVELOPMENT STANDARDS APPLYING TO THE LAND.</p> <p>LOT 1103 DP 1051233 22 BOX ROAD, CASULA NSW 2170 (MIMOSA PARK)</p>	238 - 243

# LIVERPOOL CITY COUNCIL

## LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

<b>Item no:</b>	1
<b>Application Number:</b>	DA-1321/2021
<b>Proposed Development:</b>	Construction of an administration building, grandstand structure, fences, and associated car spaces.  The proposed development is identified as a Nominated Integrated Development requiring an approval from Natural Resources Access Regulator under the Water Management Act, 2000
<b>Property Address:</b>	34 Jack O'Sullivan Road, Moorebank
<b>Legal Description:</b>	Lot 2, DP 517744
<b>Applicant:</b>	Southern Districts Soccer Football Association
<b>Land Owner:</b>	Liverpool City Council
<b>Date Lodged:</b>	10 November 2021
<b>Cost of Works:</b>	\$4,625,202.00
<b>Assessing Officer:</b>	Jason Marshall
<b>Zoning</b>	RE1 Public Recreation pursuant to the Liverpool Local Environmental Plan 2008
<b>Recommendation:</b>	Approval, subject to conditions of consent including deferred commencement.

### 1. EXECUTIVE SUMMARY

Council is in receipt of a Development Application DA-1321/2021 seeking consent for the proposed construction of an administration building, grandstand structure, fences and associated car spaces at 34 Jack O'Sullivan Road, Moorebank, which is legally described as Lot 2 in DP 517744.

The subject site is zoned RE1 Public Recreation under *the Liverpool Local Environmental Plan 2008* (LLEP 2008), within which the proposed development is permissible with consent. The allotment to which the development is proposed forms part of a greater parkland spine that runs from Heathcote Road and the M5 Interchange to Newbridge Road through the suburb of Moorebank.

The Development Application was notified in accordance with the Liverpool Community Participation Plan 2019 between 18 October 2022 and 25 October 2022. Three submissions were received during the notification period which raised the following issues:

- Increased noise from vehicles, patrons, and the operation of the facility
- Traffic and parking impacts on Jack O'Sullivan Rd
- Security of property on Jack O'Sullivan Rd
- Opposition to vehicular access from Jack O'Sullivan Rd
- A reduction in recreation space
- Views from Jack O'Sullivan Rd impacted
- A belief that the applicant is from outside the Moorebank Area
- Wants the new facility to provide hall hire

- Residential real estate values on Jack O’Sullivan Rd impacted

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:

**Conflict of interest**

*Development for which the applicant or landowner is:*

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council’s functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

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

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

### **2.1 The Site**

The subject site is known as 34 Jack O’Sullivan Road, Moorebank, which is legally known as Lot 2 in DP 517744 with a total area of approximately 49,970m<sup>2</sup>. The site is an irregular shaped allotment which forms part of the Ernie Smith Recreation Reserve. The slope of the land specifically where the works are to occur has a slope from the eastern proposed building footprint of 13.08m AHD to the western proposed building footprint 6.45m AHD of 6.63m. The Ernie Smith Recreation Reserve currently provides numerous recreational facilities including the Moorebank Liverpool District Hockey Club to the south, existing soccer fields and grandstand and the Moorebank Skatepark to the north. As shown in Figure 1, the two subject allotments currently contain two existing soccer fields, an administration building, grandstand, fencing, lighting and numerous trees and vegetation.



**Figure 1:** Aerial view of subject site (Source: Geocortex)

## 2.2 Locality Description

The subject site is located within the suburb of Moorebank which is characterised by a mix of uses including IN1 General Industrial to the west of the site, R3 Medium Density Residential to the east and R2 Low Density Residential located to the south-east. The site is also directly adjoining Anzac Creek to the west and is approximately 3km from the Liverpool CBD. The site is within close proximity from Heathcote Road, which is located approximately 340m south-west of the site, Newbridge Road located approximately 200m north of the site and the South-Western Motorway (M5) located approximately 400m south of the site.



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

### 3. BACKGROUND AND DA HISTORY

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

Application No.	Lodged	Proposed Development	Determined
D/96/1992	19 February 1992	Erection of a scoreboard	Approved 20 February 1992

### 4. DETAILS OF THE PROPOSED DEVELOPMENT

The Development Application seeks consent for the proposed construction of an administration building, grandstand structure, fences and associated car spaces. The proposal would specifically consist of the following:

- **Construction of one (1) administration building/grandstand including:**
  - Ground floor: Female amenities, match official and admin room, match official change room, bathroom, first aid and medical room, male amenities, two (2) meeting and team change rooms, two (2) storerooms, walkways, spectator seating and a ramp.
  - First floor: Prayer room, male amenities, female amenities, bathroom, kitchen, boardroom, administration room, spectator seating and six (6) car parking

spaces in the form of 3 standard, 2 disability spaces, 1 shared space and 1 bike rack space.

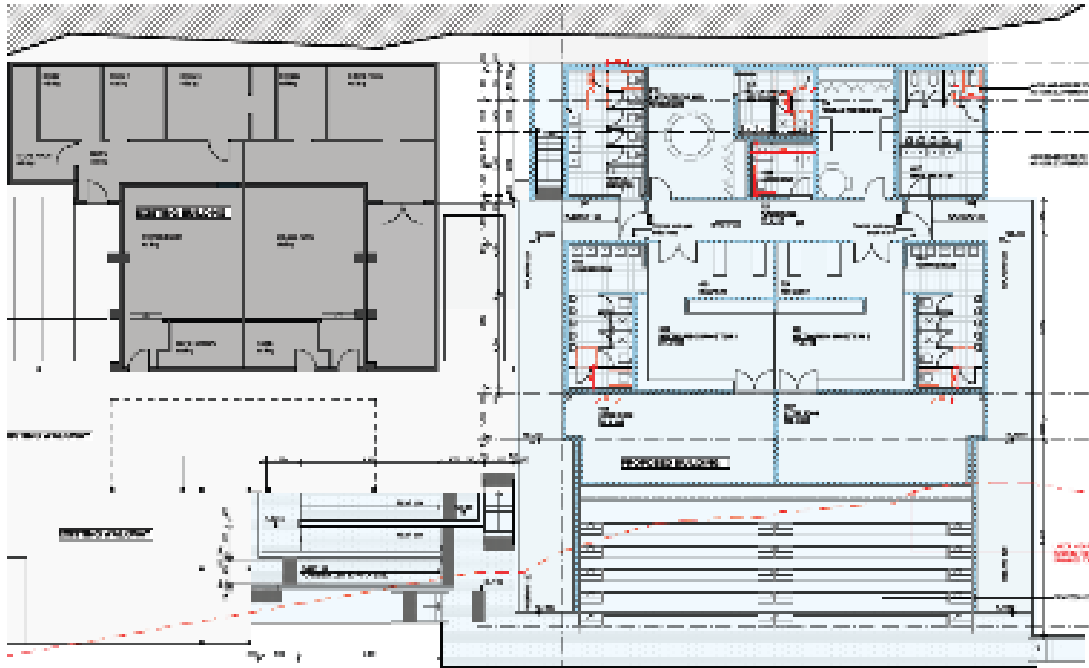


Figure 3: Ground Floor Plan

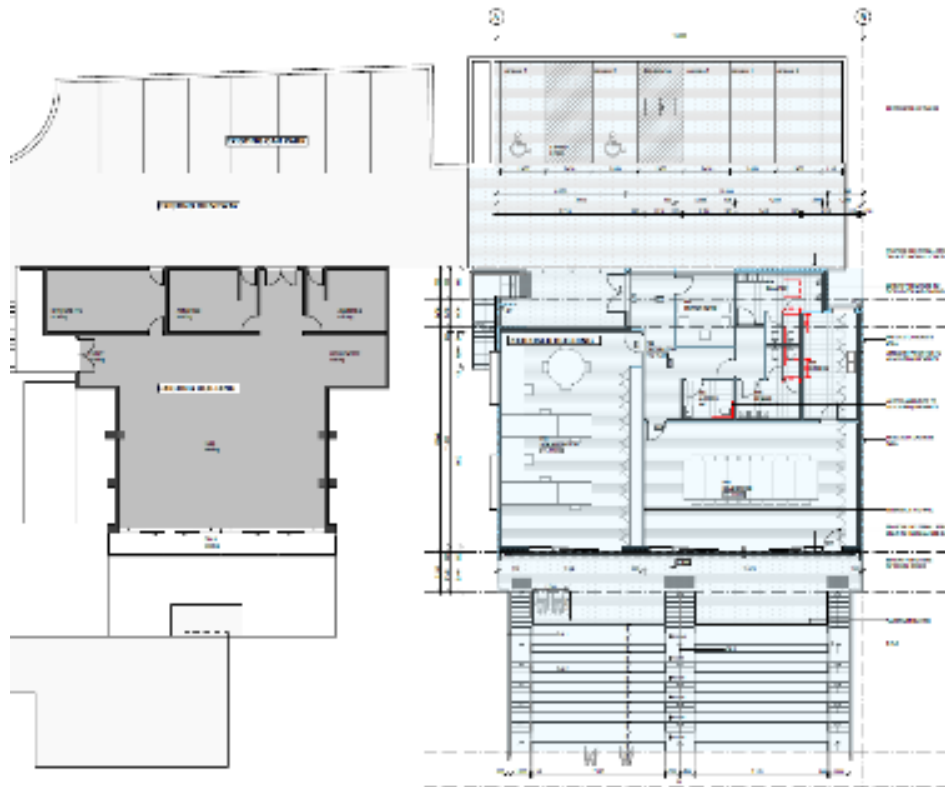


Figure 4: First Floor Plan



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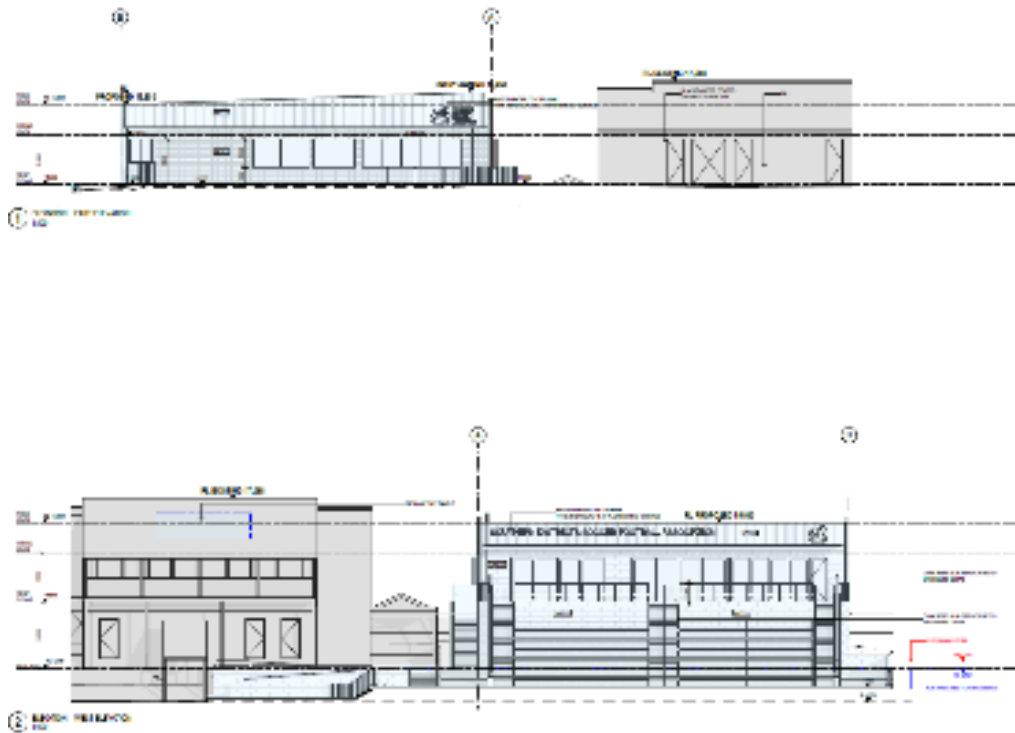


Figure 5: East & West Elevations

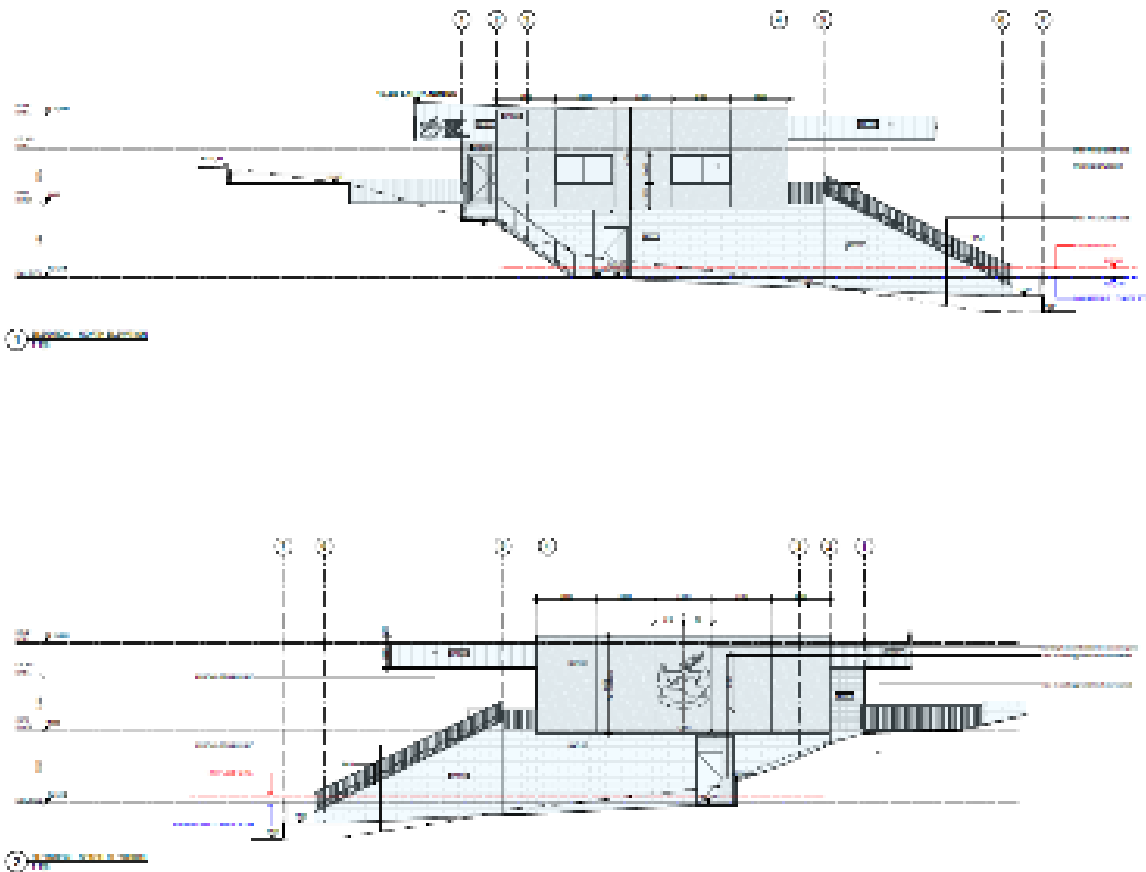


Figure 6: North & South Elevations

- Signage Details:
  - Along much of the western face of the awning above the seating: “Southern Districts Soccer Football Association” and logo mounted on monument colour colorbond steel cladding.
  - On the far-right side of the entry awning on the eastern face: “Southern Districts Soccer Football Association” and logo mounted on monument colour colorbond steel cladding.
  - On the side of the entry awning on the northern face: “Southern Districts Soccer Football Association” and logo mounted on monument colour colorbond steel cladding.
  - A giant logo engraved in the precast concrete panel on the southern face. 2.6m wide by 2.7m tall.
  - Freestanding sign near the entry: “Southern Districts Soccer Football Association”, logo, and Directions to administration or grandstand players entry mounted on masonry to match the colour of the proposed building.
  - All signage except the concrete etching to be slightly raised (3D).

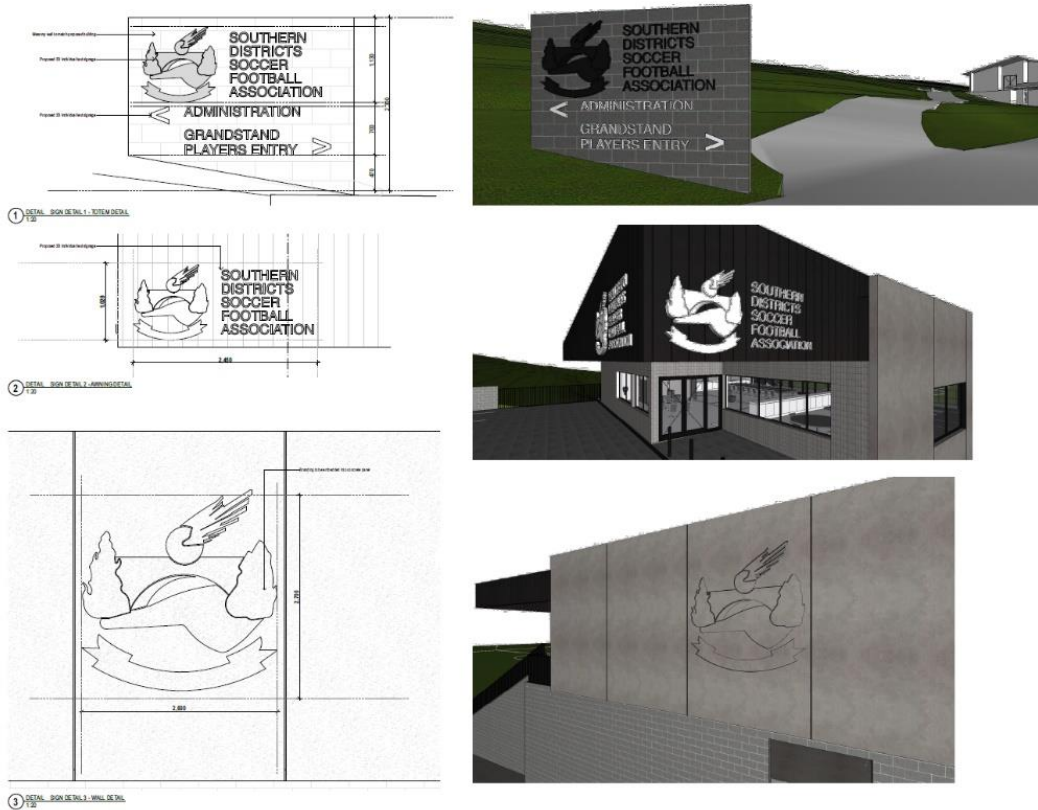
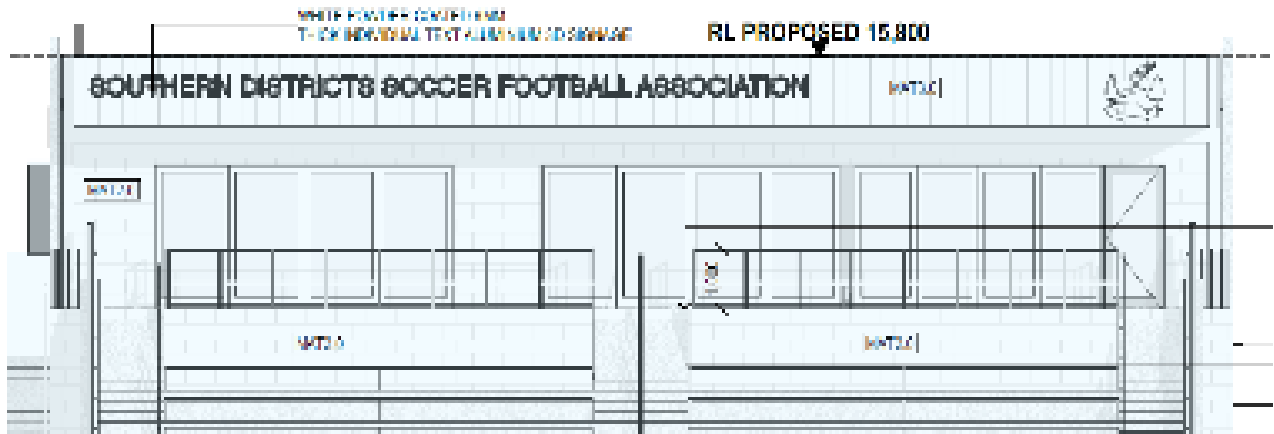


Figure 7: Freestanding, eastern/northern, and southern facing signage.



**Figure 8:** Western facing signage

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

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

- a) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- b) State Environmental Planning Policy (Resilience and Hazards) 2021;
- c) State Environmental Planning Policy (Industry and Employment) 2021;
- d) Liverpool Local Environmental Plan (LLEP) 2008;
- e) Liverpool Development Control Plan (LDCP) 2008;
  - Part 1: General Controls for All Development.

## 6. ASSESSMENT

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

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

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

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

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

Pursuant to Chapter 4 (Remediation of Land) of State Environmental Planning Policy (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.

Considering the existing historical use of the property and the extent of works sought, detailed land contamination assessment is not considered to be necessary for this DA. As such, the proposal is consistent with provisions of the SEPP.

**(c) State Environmental Planning Policy (Industry and Employment) 2021**

Assessment Criteria Chapter 3 – Aims, Objectives	Comment
<p>Consistency with the objectives of SEPP(I&amp;E) as set out in clause 3.1:</p> <ul style="list-style-type: none"> <li>a) to ensure that signage (including advertising):                             <ul style="list-style-type: none"> <li>(i) is compatible with the desired amenity and visual character of an area, and</li> <li>(ii) provides effective communication in suitable locations, and</li> <li>(iii) is of high-quality design and finish, and</li> </ul> </li> <li>b) to regulate signage (but not content) under Part 4 of the Act, and</li> <li>c) to provide time-limited consents for the display of certain advertisements in transport corridors, and</li> <li>d) to ensure that public benefits may be derived from advertising in and adjacent transport corridors</li> </ul>	<p>The proposed signage is compatible with the locality of the site which consists of recreational development.</p> <p>The proposed signage is appropriately set back from the street frontage and is designed at a scale suitable for identifying the football association and is consistent with the character of other established grandstands.</p> <p><b>Raised Awning Signs</b> The proposed 3D (raised) signs on the far-right side of the entry awning cladding on the eastern face, and the far-left corner of the northern face provide effective communication, in suitable locations without dominating the façades.</p> <p>The proposed 3D (raised) sign on the awning above the seating along most of the western face is similarly suitable.</p> <p><b>Concrete Engraving</b> The logo engraved into one of the concrete panels on the south face, while large (2.6m x 2.7), is in scale with the rest of the facade and improves an otherwise monolithic face. The Design Excellence Panel requires the applicant to engage a graphic designer for the concrete panel.</p> <p><b>Wayfinding Signage</b> A sign at the base of the driveway provides directions to facilities and will be constructed from materials that complement the proposed building.</p> <p>The proposed signage does not block any significant views and will not have a detrimental impact on the current and future amenity of the surrounding area.</p> <p>The proposed signage will be designed</p>

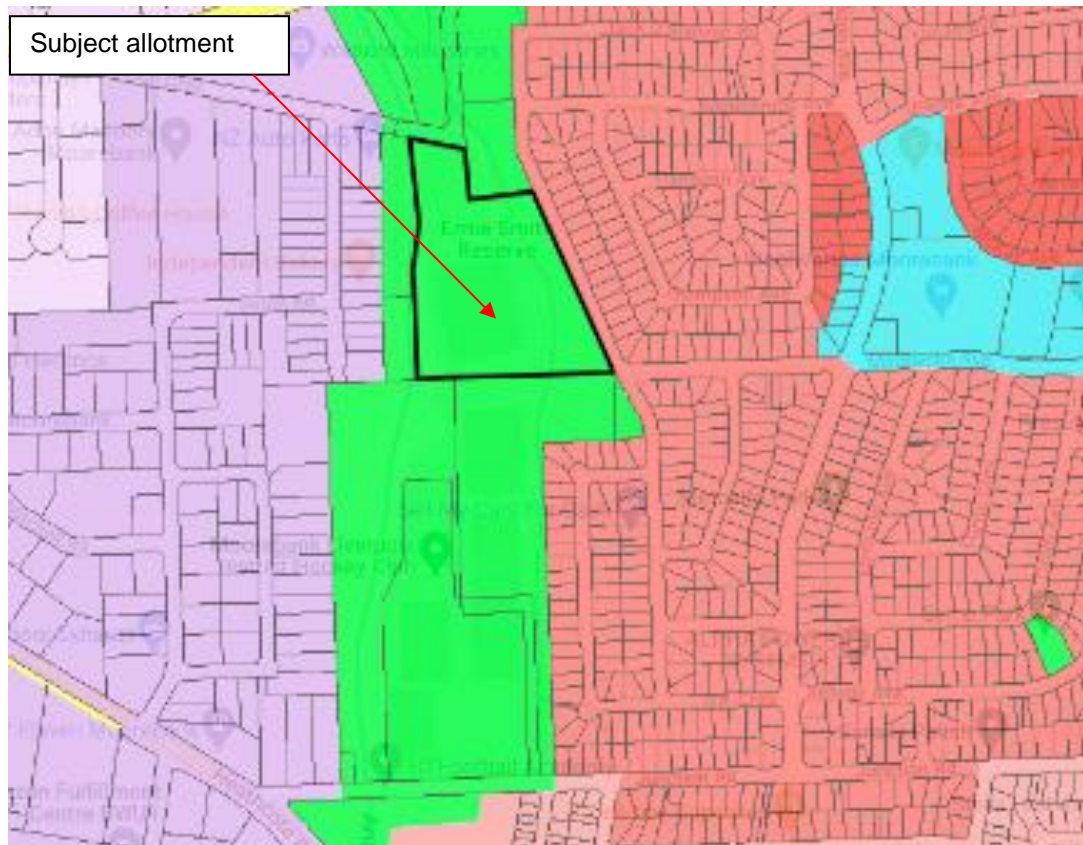
	complementing the site and surrounding landscape, no illumination is proposed.
<b>Schedule 5 Assessment Criteria</b>	<b>Comment</b>
<p><b>Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area of locality?</p>	The proposed sign is considered sympathetic to the building architecture, general built environment and character of the park. The signage design and form complement the buildings architecture. There is no other signage on the site.
<p><b>Special Areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	The proposed signage is located within the vicinity of environmentally sensitive areas, heritage areas, natural other conservation areas, open space etc. However, the proposal has been referred to Council's Urban Designer, Natural Environment Officer, and Heritage Officer who have not raised objections to the signage (subject to conditions), so it is unlikely the proposal will detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas. The proposed signage is unlikely to be visible from residential areas.
<p><b>Views and Vistas</b> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers?</p>	The proposed signage is unlikely to adversely affect important views and vistas. The proposed signage does not dominate the landscape and there are no other advertisers nearby.
<p><b>Streetscape, Setting or Landscape</b> Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? Does the proposal require ongoing vegetation management?</p>	The proposed signage is considered to be designed at a suitable scale that complements the existing setting and landscape. The location of the proposed signage is considered to be appropriate for the locality, identifying the football association and providing wayfinding to facilities. The engraving on the southern face reduces the unsightliness of a façade dominated by concrete panels.
<p><b>Site and Building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	The proposal is considered to be compatible with the scale and proportion of the existing buildings on site.
<p><b>Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it to be displayed?</p>	The proposed sign is a sporting club identification sign. The logo is designed as an integral part of the signage. This proposal does not include advertisements.
<p><b>Illumination</b> Would illumination result in unacceptable</p>	The proposed signage would not be illuminated.

<p>glare? Would illumination affect safety for pedestrians, vehicles or aircraft? Would illumination detract from the amenity of any residence or other form of accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?</p>	<p>The signage will not be visible from any residential area and is considered to be consistent with the RE1 Public Recreation Zone.</p>
<p><b>Safety</b>                  Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists?                  Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>The proposed signage is not located over a public road, does not obstruct pedestrian or cycle routes and does not obscure any sightlines. It is not considered to reduce the safety of pedestrians, cyclists and motorists.</p>

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

**(i) Zoning**

The subject site is zoned RE1 Public Recreation in accordance with the Liverpool Local Environmental Plan (LLEP) 2008, as shown in Figure 9 below.



**Figure 9:** Zoning map of the subject site (source: Geocortex)

**(ii) Permissibility**

The proposed development is best defined as outdoor recreation area, which is defined as:

**“Recreation area** means a place used for outdoor recreation that is normally open to the public, and includes—

- (a) a children’s playground, or
  - (b) an area used for community sporting activities, or
  - (c) a public park, reserve or garden or the like,
- and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).”

**(iii) Objectives of the zone**

The objectives of the RE1 Public Recreation zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To provide sufficient and equitable distribution of public open space to meet the needs of residents.
- To ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.

The proposed development is a permissible type of development within the RE1 Public Recreation zone and is generally consistent with the above zone objectives. The proposal will provide for the recreational needs of the community within a public recreation environment. The proposed development will add to the range of recreational activities accessible to residents and will enhance the natural environment whilst preserving and maintaining environmentally significant land.

**(iv) Principal Development Standards**

The LLEP 2008 contains a number of principal development standards which are relevant to the proposal. As demonstrated in the compliance tables detailed in attachment 1, the proposed development complies with the applicable development standards of the LLEP 2008.

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

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

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

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

The proposed development is subject to the relevant controls of the LDCP 2008, particularly *Part 1 General Controls for all Development*. Part 1 of the LDCP 2008 covers general controls relating to all types of development within the Liverpool LGA. The key controls are discussed in the tables in Attachment 1. The proposal is generally compliance with the LDCP 2008.

**(b) Plan of Management**

The proposal for construction of an administration building, grandstand structure, fences, and associated car spaces does not contradict the aims of council’s Generic Plan of Management for Sportsgrounds 2007.

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

There are no Planning Agreements which apply to the development.

**6.5 Design Excellence Panel Briefing**

The concept proposal was presented to Council's Design Excellence Panel (DEP) during the development application. The concept application was presented on 12 May 2022.

The comments from the meeting are summarised as follows with a response from the Applicant and Council;

**DEP COMMENTS**

For clarity purposes, the specific comments made by the DEP with regards to the application are outlined in the table below, along with a response in the corresponding column.

<b>Design Excellence Panel Comments</b>	<b>Council's Response</b>
<b>4.1 Context</b>	
The Panel notes that the site is in close proximity to an environmentally sensitive land and the proposed development needs to address its relevance within the design of the subject site.	The proposal is on the far side of a football field from the environmentally significant land. The proposal was referred to Council's Natural Environment department who imposed conditions of consent (Consent Nos 71 & 91).
The Panel notes that the proposed facility provides seating for a significant number of people; however, the overall car parking being proposed on site is very limited. The Panel recommends the applicant to develop a parking strategy for the site and demonstrate the provision of adequate car parking for the users / visitors. Engage a traffic consultant to prepare a Traffic Impact Statement for the site.	The applicant prepared a traffic report, limited to the use of the proposal as an administration building. Council's Traffic and Transport department reviewed this and disagreed with that scope. Traffic and Transport imposed a condition of consent to address those issues (condition 39).
<b>4.2 Built form + Scale</b>	
The Panel notes that the proposed overhang above the grandstand seating area appears thick and bulky. The Panel recommends the applicant consider narrowing the cantilevered overhang to achieve a more sleek and narrow profile for the roof overhang.	A condition of consent has been imposed to ensure the submission of plans for a narrower cantilevered overhang to achieve a more sleek and narrow profile (Condition No. 35).
The Panel recommends the applicant to incorporate lighting as part of the building and develop a lighting scheme for the site.	Lighting is provided throughout the building - internally and externally.
The Panel recommends the applicant to ensure that all services and plumbing are concealed within the built form.	A condition of consent has been imposed to ensure all services and plumbing will be concealed within the built form (Condition No. 109).
The Panel raises concerns regarding the trees being identified for removal to accommodate a straight line of fencing which is not acceptable. The Panel requires the applicant to undertake a latest survey and retain as many trees as possible.	A survey was undertaken, and the fencing line altered to avoid removing trees.
<b>4.3 Density</b>	
NIL	
<b>4.5 Landscape</b>	



<p>The Panel requires the applicant to engage an AILA Registered Landscape Architect to develop a detailed landscape plan for the site including treatments along the adjoining creek.</p>	<p>A detailed landscape plan has been imposed as a condition of consent (Condition No. 29).</p>
<p>The Panel notes that the building plans indicate a number of trees that are being identified for removal. The Panel does not support removal of trees and recommends the applicant to retain as many trees as possible. Provide a rationale accompanied by an arborist report for any trees being considered for removal.</p> <p>The Panel requires the applicant to provide detailed sections through the site to identify the amount of soil being retained. The sections should demonstrate the relationship of the subject site with the existing features around the site (e.g., ANZAC Creek, cycleways, etc.)</p>	<p>The fence line has been changed to reduce the number of trees removed.</p> <p>A condition of consent has been imposed requiring a detailed arborists report accompanied by a rationale for each tree removed (Condition No. 30)</p> <p>The applicant provided detailed sections identifying the amount of soil being retained. The relationship of the subject site with the existing features around the site is shown in the site plans.</p>
<p><b>4.6 Amenity</b></p>	
<p>The Panel requires the applicant to ensure that the proposed overhang provides the required shade and cover for the grandstand seating areas</p>	<p>A condition of consent has been imposed to ensure the proposed overhang provides the required shade and cover for the grandstand seating areas (Condition No. 34).</p>
<p><b>4.7 Safety</b></p>	
<p>The Panel questions the applicant regarding the safety and security of the complex, and notes that the subject site has an existing chain link fence around the perimeter and proposes to install separate fencing for the sports field. The Panel recommends the applicant to consider appropriate measures to address vandalism and graffiti as part of the development.</p>	<p>Safety, security, vandalism, and graffiti were addressed with external lighting.</p> <p>A condition of consent has been imposed to ensure the preparation and implementation of a CPTED report as requested below (Condition No. 32).</p>
<p>The Panel notes that no alcohol is permitted on site and the applicant does not intend to allow any alcohol consumption on site even in the future, which is supported.</p>	<p>Noted.</p>
<p>The Panel requires the applicant to ensure general safety and security within the site. Prepare a CPTED report to identify various measures that can be incorporated to improve the overall safety / security for the users and the building (especially during the odd hours).</p>	<p>A condition of consent has been imposed to ensure the preparation and implementation of a CPTED report as requested (Condition No. 32).</p>
<p><b>4.8 Housing Diversity + Social Interaction</b></p>	
<p>The Panel requires the applicant to develop an accessibility strategy for the site to ensure equal access for all.</p>	<p>The applicant provided an access report. Accessibility improvements have been imposed as a condition of consent (Condition Nos. 25, 26, &amp; 27).</p>
<p><b>4.9 Aesthetics</b></p>	
<p>The Panel supports the overall materiality being proposed for the building.</p>	<p>Noted.</p>
<p>The Panel requires the applicant to incorporate public art as part of the building to reduce potential vandalism and graffiti. The Panel requires the applicant to engage a graphic designer to develop the signage for</p>	<p>A condition of consent has been imposed to ensure the applicant incorporates public art as part of the building to reduce potential vandalism and graffiti (Condition No. 31).</p>
<p></p>	<p>A condition of consent has been imposed to ensure</p>

the building (i.e., the signage being engraved within the concrete panels).	the applicant engages a graphic designer to develop the signage for the building (Condition No. 33).
<b>5.0 Outcome</b>	
<p>The panel have determined the outcome of the DEP review and have provided final direction to the applicant as follows:</p> <p>The project is supported. Respond to recommendations made by the panel, then the plans are to be reviewed/approved by Council.</p>	Reviewed and supported subject to conditions imposed.

### 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 Building Code of Australia. Accordingly, appropriate conditions of consent will 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 applying to construction works. The application was referred to Council's Natural Environment department who were supportive, subject to conditions.

The proposed development is unlikely to create any adverse impacts on the built environment. As such the proposed development is likely to contribute positively to the built environment. The development was assessed by Council's traffic engineers who imposed conditions of consent to ameliorate any impacts.

### Social Impacts and Economic Impacts

The proposal would result in a positive economic impact in the locality through the capital investment value of the development. As the proposal seeks to improve an existing public recreation area, upon its completion, it is likely to positively contribute to the locality from a social perspective.

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

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

### 6.9 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:

DEPARTMENT	COMMENTS
Flooding	Supported, subject to conditions of consent.
Environmental Health	Supported.

Engineering	Supported, subject to conditions of consent.
Traffic and Transport	The proposal was reviewed by council's Traffic & Transport Department who requested additional information regarding an increase in patrons and players in order to verify why only 7 additional off street parking spaces were provided. This information was not provided, the applicant and Council disagree regarding traffic and parking generation. Traffic and Transport recommended they be addressed as a condition of consent.
Natural Environment	Supported, subject to conditions of consent.
City Design Heritage	Supported, subject to conditions of consent.
Urban Design and Public Domain	Raised issues with accessibility and connections which were rereferred to council's community planning team who recommended they be addressed as a condition of consent.
Community Planning	Supported subject to conditions of consent.
Property Services	No comments were received at the time of the report.

**(b) External Referrals**

DEPARTMENT	COMMENTS
Department of Planning and Environment – Water (formerly NRAR)	No objection raised.
Jemena Gas	No objection raised.

**(c) Community Consultation**

The Development Application was notified in accordance with the Liverpool Community Participation Plan 2019 between 18 October 2022 and 25 October 2022. Three submissions were received during the notification period which raised the following issues:

- 1) Increased noise from vehicles, patrons, and the operation of the facility
- 2) Traffic and parking impacts on Jack O'Sullivan Rd
- 3) Security of property on Jack O'Sullivan Rd
- 4) Opposition to vehicular access from Jack O'Sullivan Rd
- 5) A reduction in recreation space
- 6) Views from Jack O'Sullivan Rd impacted
- 7) A belief that the applicant is from outside the Moorebank Area
- 8) Wants the new facility to provide hall hire
- 9) Residential real estate values on Jack O'Sullivan Rd impacted

**Issue 1: Increased noise from vehicles, patrons, and the operation of the facility**

The proposal is not considered to cause an unreasonable increase in vehicles or patrons or in the frequency or intensity of use of the facilities. There is already sporting grounds, a grandstand, and support facility on the site. Only six car parking spaces are proposed on site for the use of administrative staff. The site is also significantly set back from the nearest residential housing on Jack O'Sullivan Rd, and down a hill. The proposal was referred to Council's Community and Traffic and Transport departments who imposed conditions of consent to ameliorate any impacts.

**Issue 2: Traffic and parking impacts on Jack O'Sullivan Rd**

The proposal is not considered to cause an unreasonable increase in vehicles or patrons or in the frequency or intensity of use of the facilities. There is already sporting grounds, a grandstand, and support facility on the site. Six car parking spaces are proposed on site for the use of administrative staff. Vehicular access is from Kelso Cres, on the other side of the park. The proposal was referred to Council's Community and Traffic and Transport departments who

imposed conditions of consent to ameliorate any impacts.

**Issue 3: Security of property on Jack O’Sullivan Rd**

The proposal is not considered to cause an unreasonable increase in patrons or in the frequency or intensity of use of the facilities. There is already sporting grounds, a grandstand, and support facility on the site. It is therefore unlikely that the security of nearby residential property will change. The proposal was referred to Council’s Community and Traffic and Transport departments who imposed conditions of consent to ameliorate any impacts.

**Issue 4: Opposition to vehicular access from Jack O’Sullivan Rd**

Vehicular access is only from Kelso Cres, on the other side of the park.

**Issue 5: A reduction in recreation space**

The reduction in recreational space is considered minor. Total site coverage of the proposal is 729sqm in a 23ha park. The proposal will also provide a recreational facility for community use.

**Issue 6: Views from Jack O’Sullivan Rd impacted**

The proposed building is not as high as the existing adjoining building which is not visible from Jack O’Sullivan Rd due to the setback and steep slope away from the road.

**Issue 7: A belief that the applicant is from outside the Moorebank Area**

The applicant has been a tenant on the site for a long period of time and is considered to be part of the community.

**Issue 8: Wants the new facility to provide hall hire to the community**

The proposal does not include a hall.

**Issue 9: Residential real estate values on Jack O’Sullivan Rd impacted**

The proposal is a permitted form of development for the RE1 Public Recreation zoning and the locality. 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.

Property value is not matter for consideration under section 4.15 of the Environmental Planning Assessment Act, 1979.

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

Based on the above assessment the proposed development is considered to be in the public interest.

**7. DEVELOPMENT CONTRIBUTIONS/ LEVIES**

A Section 7.12 Levy is not applicable to the DA.

**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. Based on the assessment of the application, it is recommended that the application be approved, subject the imposition of conditions including deferred commencement.

**9. RECOMMENDATION**

That Development Application DA-1321/2021 seeking approval for the construction of an administration building, grandstand structure, fences, and associated car spaces be approved subject to conditions of consent including deferred commencement.

**10. ATTACHMENTS**

- 1. LIVERPOOL COMPLIANCE TABLES**
- 2. PLANS OF THE PROPOSAL**
- 3. DRAFT CONDITIONS**

**ATTACHMENT 1 - LIVERPOOL COMPLIANCE TABLES**

<b>LLEP 2008 – Principal Development Standards</b>			
<b>Development Provision</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
<b>2.7 Demolition requires development consent</b>	The demolition of a building or work may be carried out only with development consent.	No demolition works are proposed as part of the subject application.	<b>Not Applicable</b>
<b>4.3 Height of Buildings</b>	Height is not applicable to the site.	Height is not applicable to the site.	<b>Not Applicable</b>
<b>4.4 Floor Space Ratio</b>	FSR is not applicable to the site.	FSR is not applicable to the site.	<b>Not Applicable</b>
<b>5.10 Heritage Conservation</b>	To protect and conserve existing items/locations identified as containing significant heritage value	The site is not identified as being located in close proximity to a heritage item or a heritage conservation area. The site is mapped within a heritage sensitivity buffer however Council's Heritage Officer raised no objections, subject to conditions of consent.	<b>Complies by Conditions</b>
<b>5.21 Flood Planning</b>	To minimise the flood risk to life and property associated with the use of land.	The proposed development site is located within Anzac Creek catchment, and the site is affected by flooding under the 1% Annual Exceedance Probability (AEP) event. The proposal is supported subject to fulfilling flooding conditions.	<b>Complies by Conditions</b>
<b>7.6 Environmentally Significant Land</b>	The objectives of this clause are as follows: to maintain bushland, wetlands and wildlife corridors of high conservation value, to identify areas of significance for revegetation to connect to or buffer bushland, wetlands and wildlife corridors, to protect rare and threatened native flora and native fauna, to ensure consideration of the significance of vegetation, the sensitivity of the land and the impact of development on the environment prior to the giving of any development consent. Before determining an application to carry out development on environmentally significant land, the consent	The site is mapped as containing environmentally significant land. However, the proposed development is considered acceptable as: <ul style="list-style-type: none"> <li>The proposed works would not be located or occurring within the portion of the site mapped as containing environmentally significant land.</li> <li>The existing vegetation on the site would be retained, which could still be utilised by fauna.</li> <li>The proposed development was referred to Council's Natural Environment</li> </ul>	<b>Complies by Conditions</b>

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	<p>authority must consider such of the following as are relevant:  the condition and significance of the vegetation on the land and whether it should be substantially retained in that location,  the importance of the vegetation in that particular location to native fauna,  the sensitivity of the land and the effect of clearing vegetation,  the relative stability of the bed and banks of any waterbody that may be affected by the development, whether on the site, upstream or downstream,  the effect of the development on water quality, stream flow and the functions of aquatic ecosystems (such as habitat and connectivity),  the effect of the development on public access to, and use of, any waterbody and its foreshores.</p>	<p>Flora and Fauna  Officer who raised no objections, subject to conditions of consent.</p>	
<p><b>7.7 Acid Sulfate Soils</b></p>	<p>Class 1, 2, 3, 4 or 5</p>	<p>A small portion of allotment 2 in DP 517744 is mapped as containing class 5 acid sulphate soils, however the proposal is highly unlikely to lower the watertable below 1m Australian Height Datum as no works are proposed below 5m AHD. The land would have the capacity to sustain the proposed development.</p>	<p><b>Complies</b></p>
<p><b>7.31 Earthworks</b></p>	<p>Earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p>	<p>Excavation works are required during the construction of the proposed development that will allow for a concrete footing and slab. However, the proposal is not envisaged to cause detrimental impacts on the surrounds. Conditions of consent are to be implemented that will ensure appropriate sediment controls are utilised during the construction phase.</p>	<p><b>Complies by Conditions</b></p>

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<b>LDCP 2008 - Part 1 General Controls for all Development</b>			
<b>Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
<b>Section 2 – Tree Preservation</b>	Consider impact of development on existing vegetation	No trees are proposed to be removed from the site.	<b>Complies</b>
<b>Section 3 – Landscaping and Incorporation of Existing Trees</b>	Incorporation of existing trees into development where appropriate	A landscape plan and arborists report for any removed trees are to be conditioned.	<b>Complies by Conditions</b>
<b>Section 4 – Bushland and Habitat Preservation</b>	Consider impact of development on bushland and habitats	Minimal to no impact on bushland and habitats considering the location of the development.	<b>Not Applicable</b>
<b>Section 5 – Bushfire Risk</b>	Land on or adjacent to bushfire prone land to comply with RFS requirements	The site is not mapped as bushfire prone land.	<b>Not Applicable</b>
<b>Section 6 – Water Cycle Management</b>	Consideration of stormwater drainage and	The stormwater plans have been reviewed by Council's Land Development Engineer who have no objections to the proposal, subject to conditions of consent.	<b>Complies by Conditions</b>
<b>Section 7 – Development Near a Watercourse</b>	Consideration of impact to riparian corridors	The site is located within 40m of a watercourse. The application was referred to the Department of Planning and Environment Water, who raised no objections to the proposal.	<b>Complies</b>
<b>Section 8 – Erosion and Sediment Control</b>	Sediment Control Plan or Soil and Water Management Plan required	Sediment and erosion controls details have been submitted with DA-1321/2021 and will be conditioned to ensure appropriate management during works.	<b>Complies by Condition</b>
<b>Section 9 – Flooding Risk</b>	Flood affection of property to considered	The proposed development site is located within Anzac Creek catchment, and the site is affected by flooding under the 1% Annual Exceedance Probability (AEP) event. The proposal is supported subject to fulfilling flooding conditions.	<b>Complies by conditions</b>
<b>Section 10 – Contaminated Land Risk</b>	Previous use to be considered in assessing risk	Existing and historical use of does not warrant a land contamination assessment.	<b>Not Applicable</b>
<b>Section 11 – Salinity Risk</b>	Salinity Management response required for affected properties	Moderate salinity potential and standard conditions of consent will be imposed to ensure design responds to salinity.	<b>Complies</b>



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<b>Section 12 – Acid Sulfate Soils Risk</b>	Affected properties to consider impact of development on soils	A small portion of allotment 2 in DP 517744 is mapped as containing class 5 acid sulphate soils, however the proposal is highly unlikely to lower the watertable below 1m Australian Height Datum as no works are proposed below 5m AHD. The land would have the capacity to sustain the proposed development.	<b>Complies</b>
<b>Section 13 – Weeds</b>	Noxious weeds to be removed as part of development where applicable	No noxious weeds are known to be present on site.	<b>Not Applicable</b>
<b>Section 14 – Demolition of Existing Development</b>	Appropriate measures proposed	Demolition is not proposed as part of this application.	<b>Not Applicable</b>
<b>Section 15 – Onsite Sewage Disposal</b>	S68 Application required where connection to sewer not available	The site is connected to sewer.	<b>Complies</b>
<b>Section 16 – Aboriginal Archaeology</b>	AHIA required where items of aboriginal archaeology exist	No known items of aboriginal archaeology are present on the subject property.	<b>Not Applicable</b>
<b>Section 17 – Heritage and Archaeology</b>	Consideration of the impact on the heritage significance on any heritage buildings, sites, streetscapes or areas.	Site is not a heritage item or within a heritage conservation area. The site is mapped within a heritage sensitivity buffer however Council's Heritage Officer raised no objections, subject to conditions of consent.	<b>Complies by Conditions</b>
<b>Section 19 – Used Clothing Bins</b>	Applies to any charity bins located on either private or Council land.	No charity bins are located within the subject property.	<b>Not Applicable</b>
<b>Section 20 – Car Parking and Access</b>	Recreation Zones Other sports subject to traffic report	The proposal was reviewed by council's Traffic & Transport Department who imposed conditions of consent.	<b>Complies by Conditions</b>
<b>Section 21 – Subdivision of Land and Buildings</b>	Subdivision of land shall meet the minimum lot width requirements as set out in Table 7.	No subdivision proposed.	<b>Not Applicable</b>
<b>Section 22 – Energy Conservation</b>	To reduce the necessity for mechanical heating and cooling and to minimise greenhouse gas emissions.	The proposal uses large windows to take advantage of solar amenity where possible.	<b>Complies</b>
<b>Section 23 – Reflectivity</b>	To restrict the reflection of sunlight from buildings	Design and materials of the proposed development minimise the reflection of sunlight.	<b>Complies</b>
<b>Section 24 – Landfill</b>	This section applies to development, which involves cutting and or	Development does not involve cutting and/or filling of land that is separate from cut associated with the	<b>Not Applicable</b>

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	filling of land. It does not involve land cut and filling in conjunction with a development application for a building(s).	construction of a building.	
<b>Section 25 Waste Management</b>	Waste Management Plan shall be submitted for demolition, construction and on-going waste management.	A Waste Management Plan for construction and ongoing use of the site has been submitted. Standard conditions shall be imposed for waste management.	<b>Complies by Condition</b>

<b>LDCP 2008 Part 1 – Section 26. Outdoor Advertising and Signage</b>			
Section 26.1 – General Controls	<p>1. Signage design, materials, colours, and placement should be visually compatible with the building, nearby signage and surrounding locality.</p> <p>2. The scale of signage must be consistent with the scale of the building or the property on which it is located.</p> <p>3. Signs must not display offensive content, be reflective, or result in glare.</p> <p>4. Signage should complement natural features and not result in the removal, trimming or damage of trees and other vegetation.</p> <p>5. Signage is to be constructed and secured in accordance with the relevant Australian Standards.</p> <p>6. New and replacement signage should be designed and located in a manner that avoids the intensification of visual clutter caused by the cumulative effect of signage within the</p>	<p>Signage design, materials, colours, and placement are visually compatible with the building and the surrounding locality.</p> <p>The scale of the signage is consistent with the scale of the building and the property on which it is located.</p> <p>The signage is not offensive, or reflective, and won't result in glare.</p> <p>The signage will not result in the removal, trimming or damage of trees and other vegetation.</p> <p>A condition will be placed on any consent ensuring the signed is constructed to the Australian Standard.</p> <p>The signage is not visible form the streetscape and it minimises visual clutter.</p> <p>The proposed sign does not include any of the listed feature in point 7.</p> <p>The signage is not anticipated to hinder drivers' sightlines to critical road infrastructure.</p> <p>The proposed signs are not located in the vicinity of traffic lights and are not anticipated to obscure critical road information from drivers.</p>	<b>Complies</b>

	<p>streetscape.</p> <p>7. Signage displays must not contain/use:</p> <ul style="list-style-type: none"> <li>• Flashing light</li> <li>• Animated display, moving parts or simulated movement</li> <li>• Complex displays that hold a driver's attention beyond glance appreciation</li> <li>• Displays resembling traffic signs or signals, or giving instructions to traffic using colours and shapes that imitate a prescribed traffic control device or words such as 'halt' or 'stop'</li> <li>• A method of illumination that distracts or dazzles.</li> </ul> <p>8. Signage shall not hinder driver's sightlines to critical road infrastructure.</p> <p>9. Signage shall not distract from or reduce the visibility and effectiveness of directional signs, traffic signals, other traffic control devices, regulatory signs or advisory signs, or to obscure information about the road alignment.</p> <p>10. Advertising signage along transport corridors should meet location criteria set out in</p>	<p>The proposed signs are not advertising signs and are not in a transport corridor.</p> <p>The proposed freestanding sign does not obstruct any pedestrian/bicycle paths.</p> <p>The proposed signs are not located in places that would create trip hazards.</p>	
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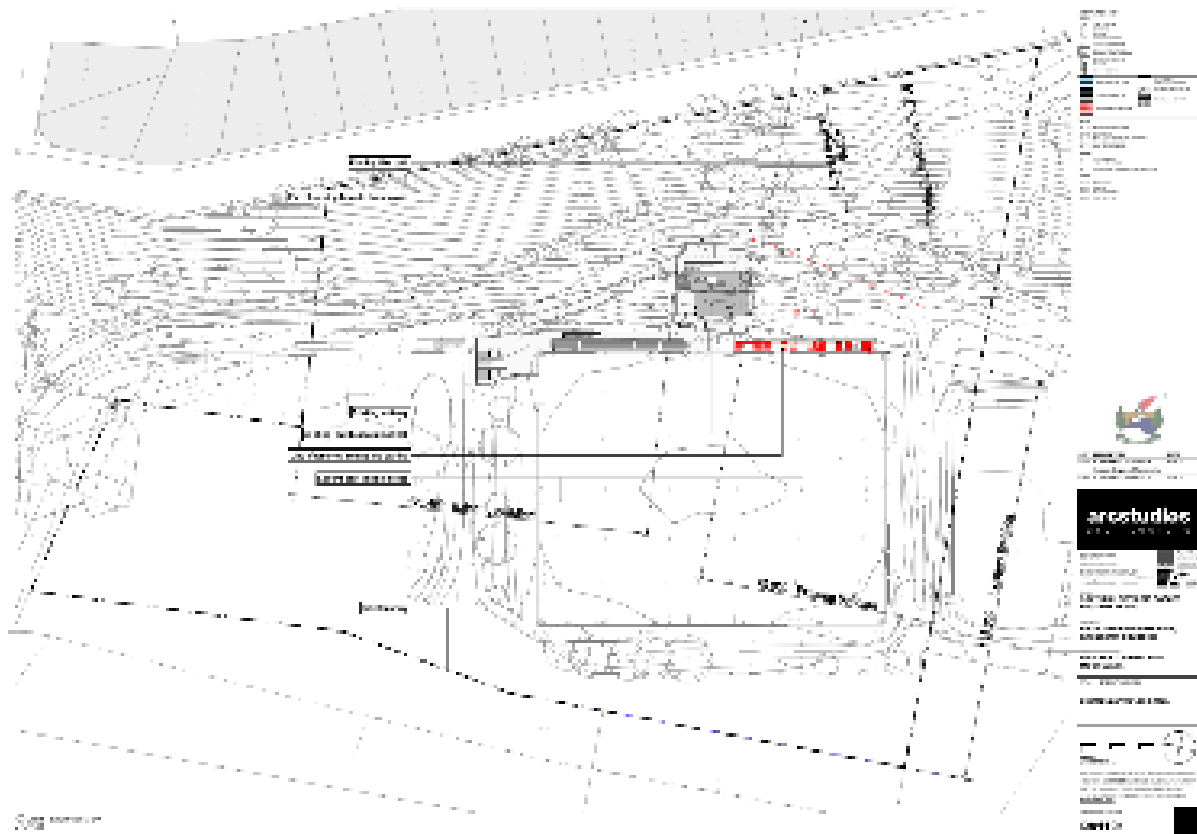
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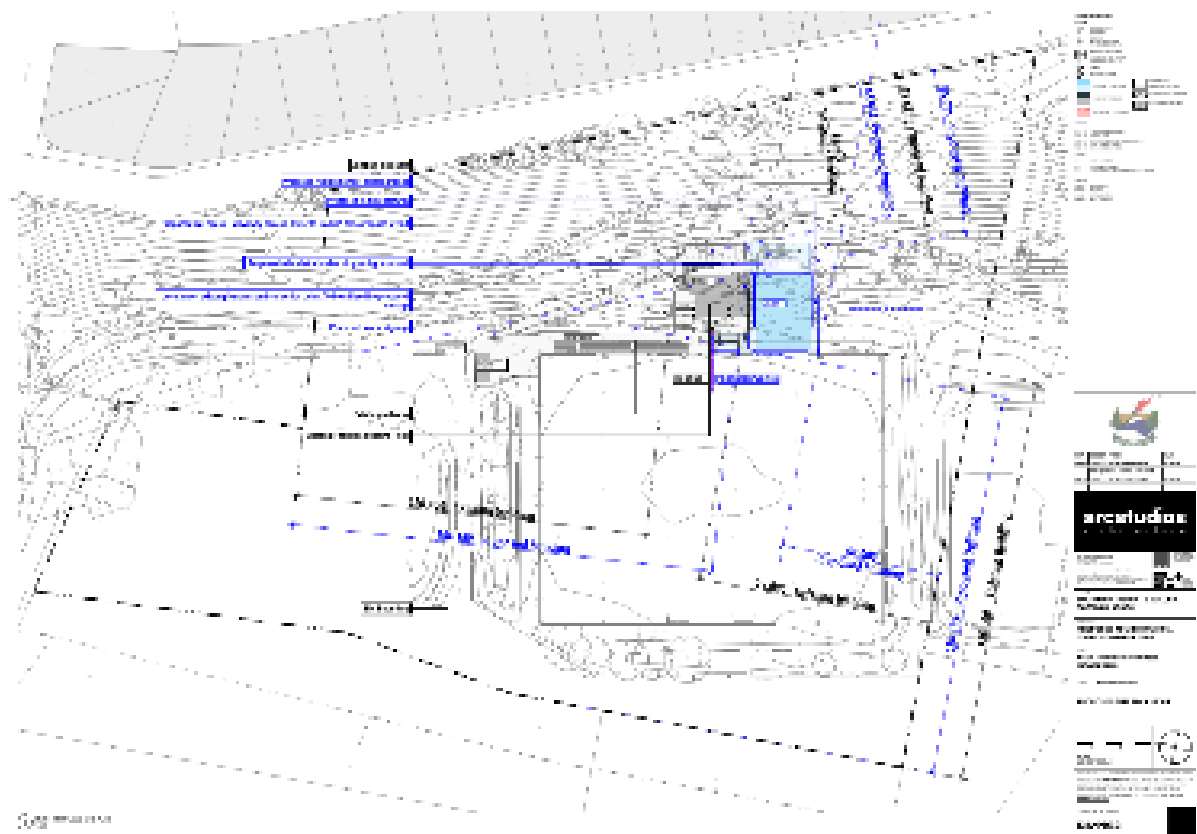
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	<p>‘Section 3.2 Sign Location Criteria’ of the Transport Corridor Outdoor Advertising and Signage Guidelines for assessing development applications under SEPP 64.</p> <p>11. Signage must not obstruct pedestrian/bicycle paths.</p> <p>12. Signage must not create trip hazards.</p>		
<p>Section 26.3 – Signage Controls by Zone (Mislabelled 26.2 Signage Controls by Type)</p>	<p><b>Recreation Zones</b></p> <p>1. Pole or pylon signs are limited to a maximum rate of one pole sign per vehicular entry point to the recreational facility.</p> <p>2. Each pole sign is not to exceed 10sqm in area and not more than 7m in height from ground level.</p> <p>3. Signs in sports grounds may be situated on the perimeter fencing of the play area and on scoreboards and must face the play area only.</p>	<p>No pole or pylon signs proposed.</p> <p>No signage proposed on perimeter fencing or on scoreboards.</p>	<p><b>Complies</b></p>





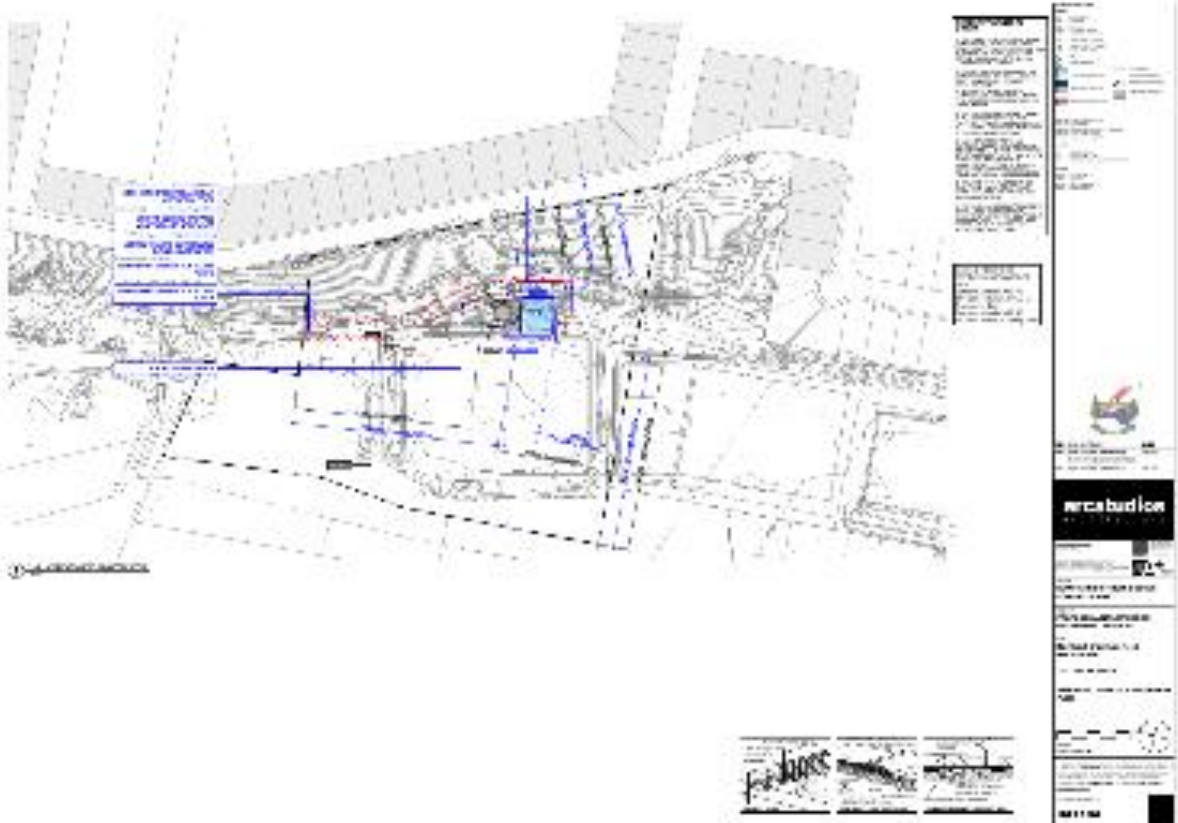
Existing Site Plan Detail



Proposed Site Plan Detail



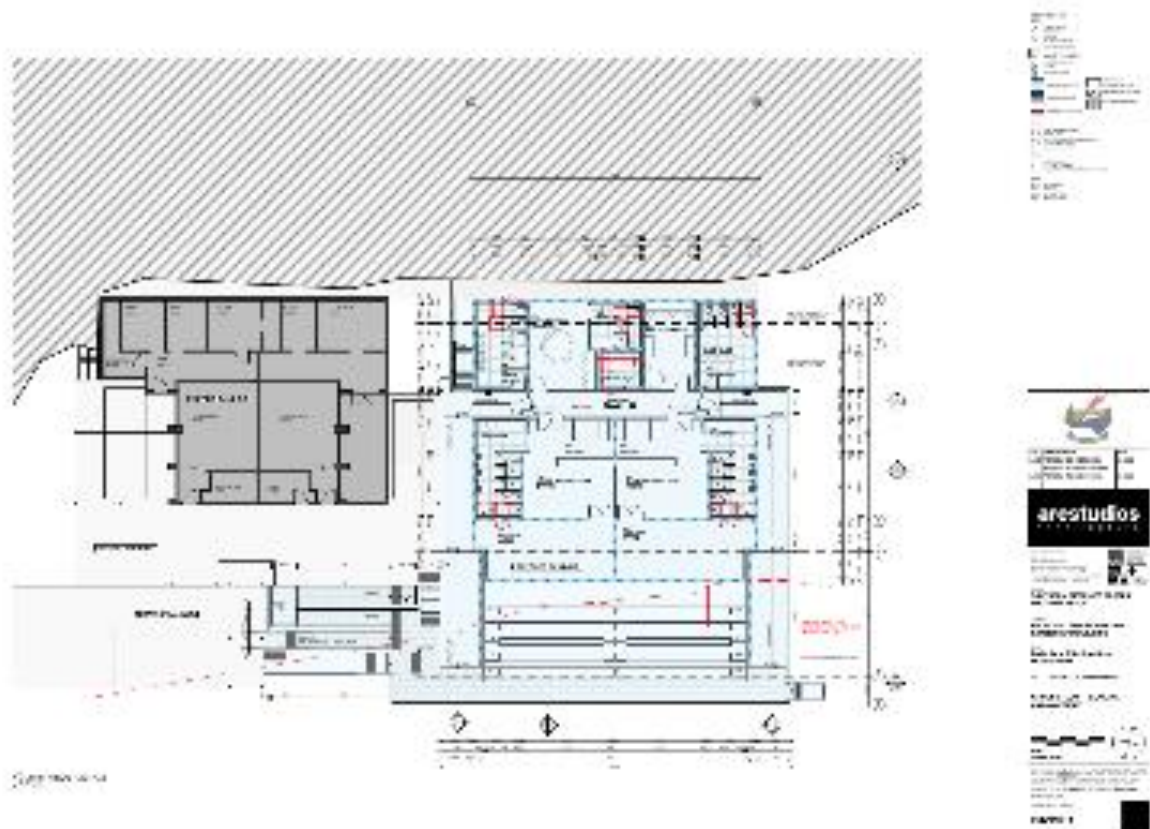
Site Analysis Plan



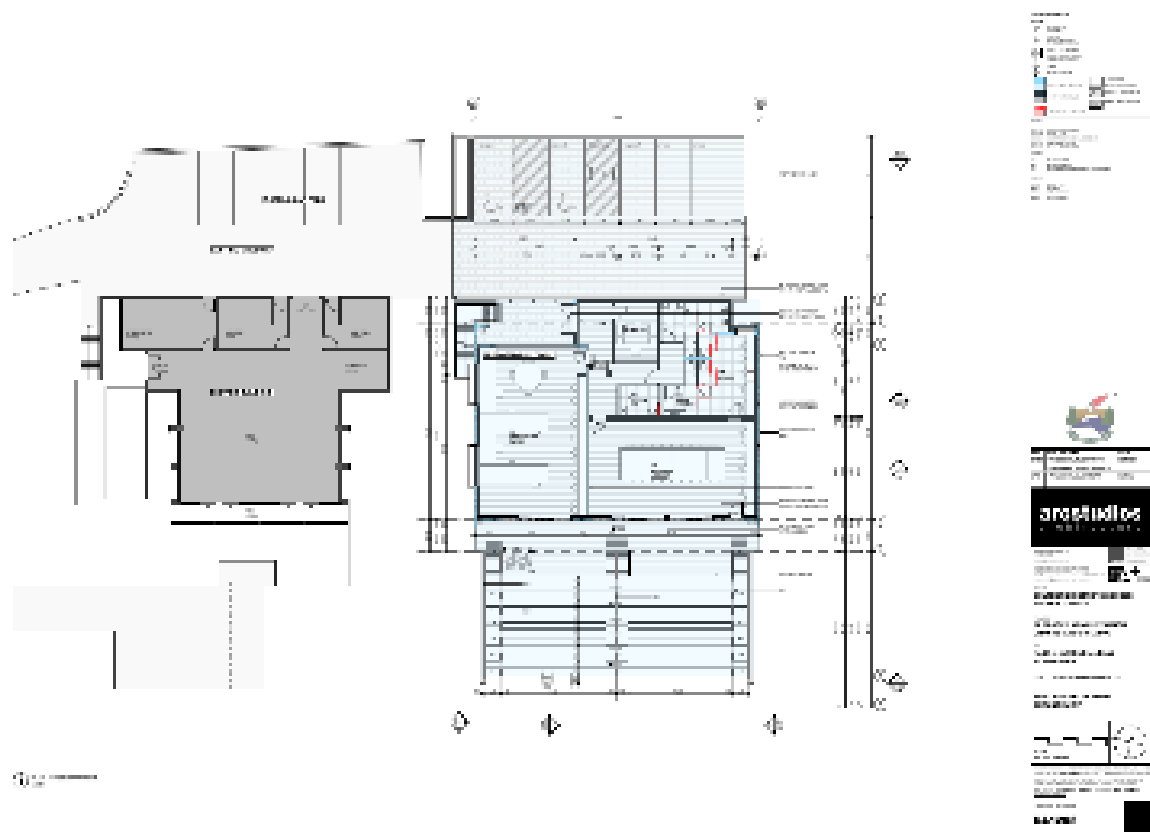
Sediment Control Management Plan

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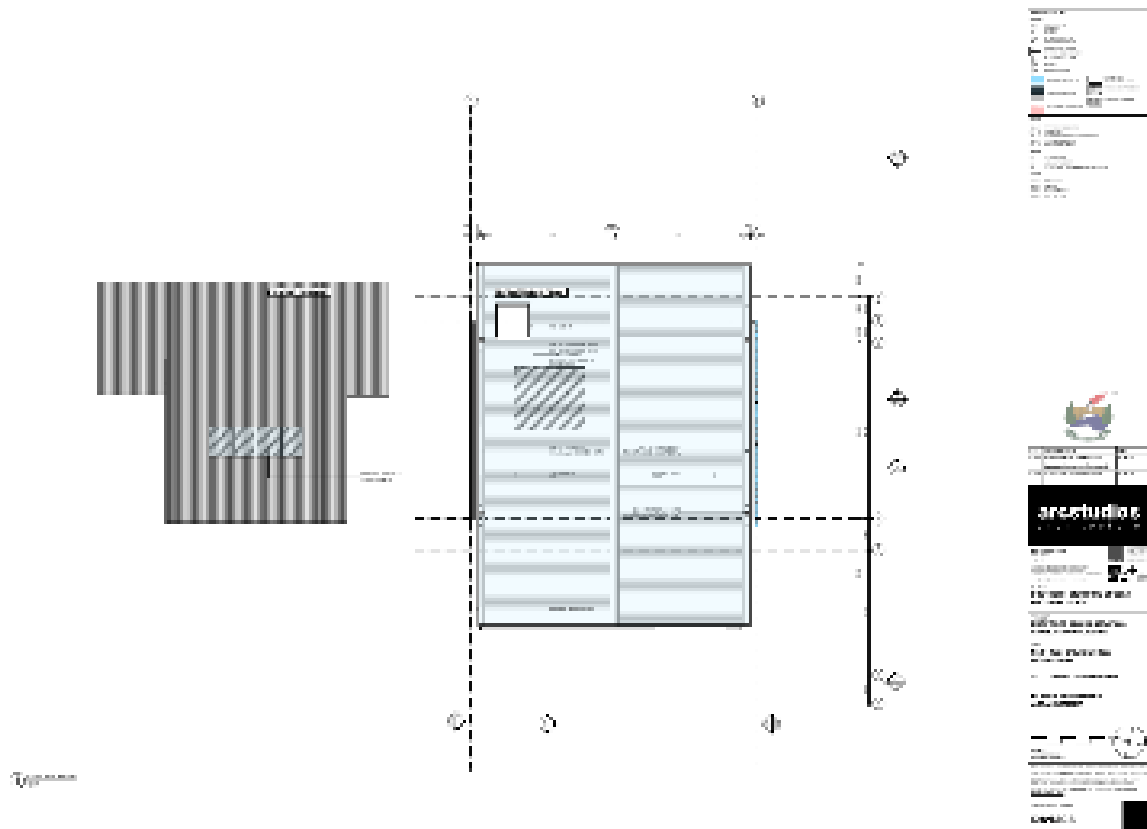


Ground Floor – General Arrangement

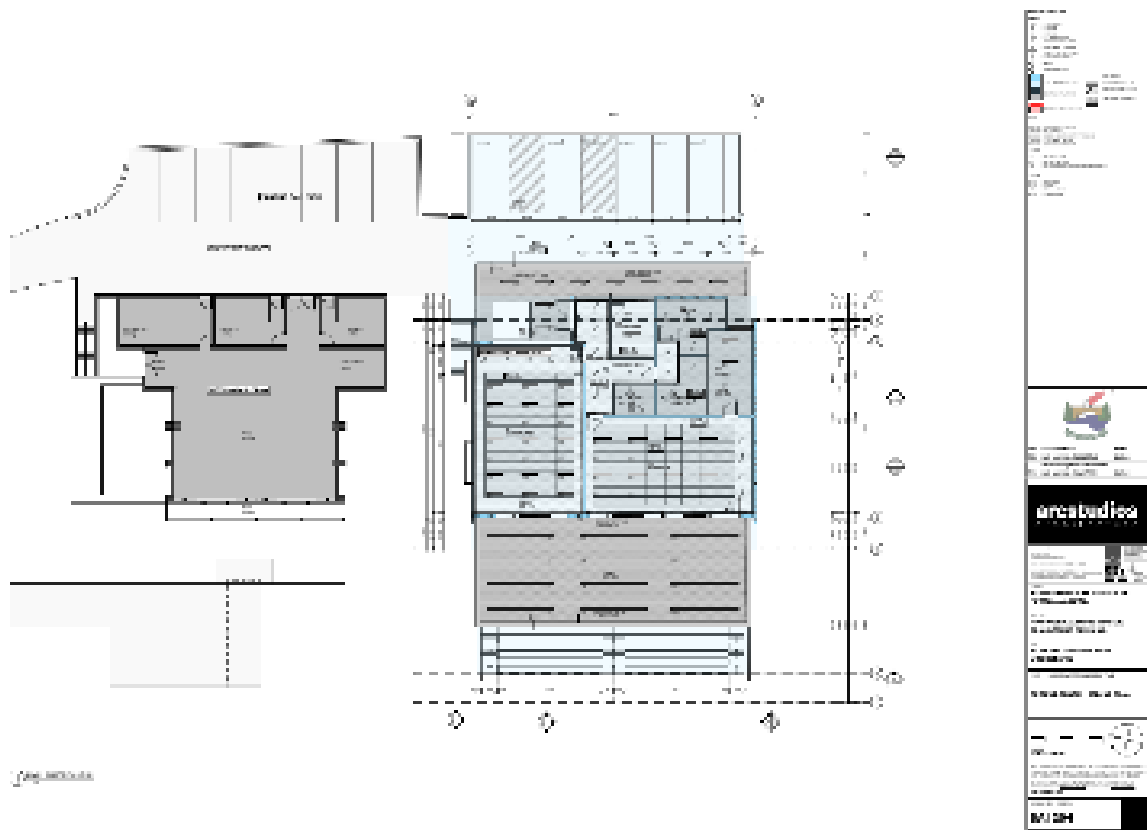


First Floor – General Arrangement





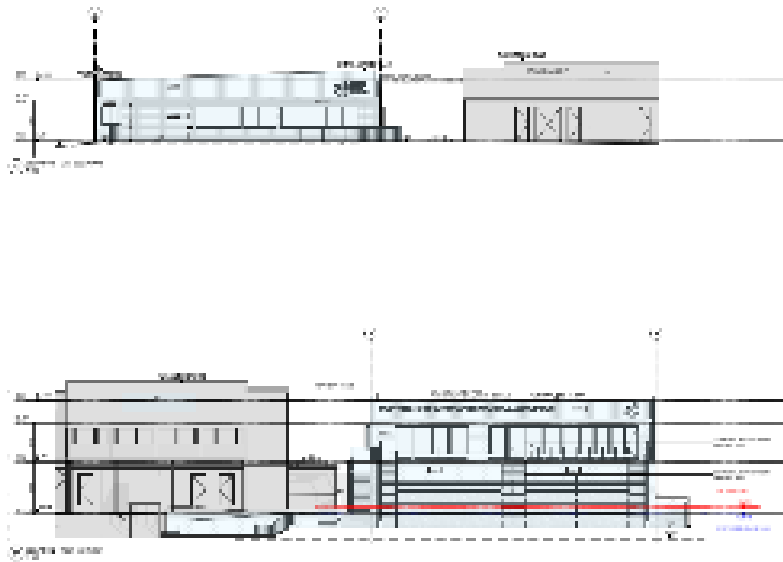
Roof Plan – General Arrangement



Ground Floor – Ceiling Plan

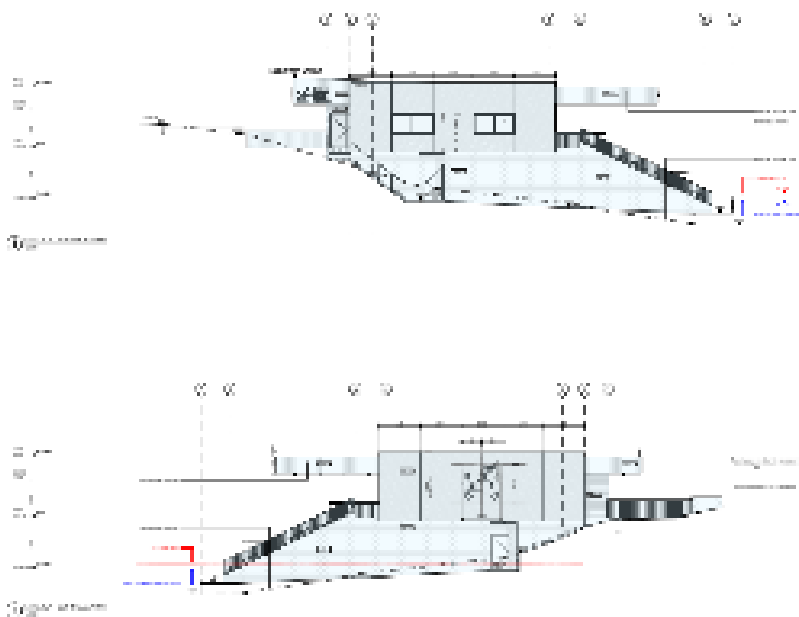
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Architectural drawing metadata including a legend, project information, and the 'arcstudio' logo.

Elevations (sic) – Sheet 1

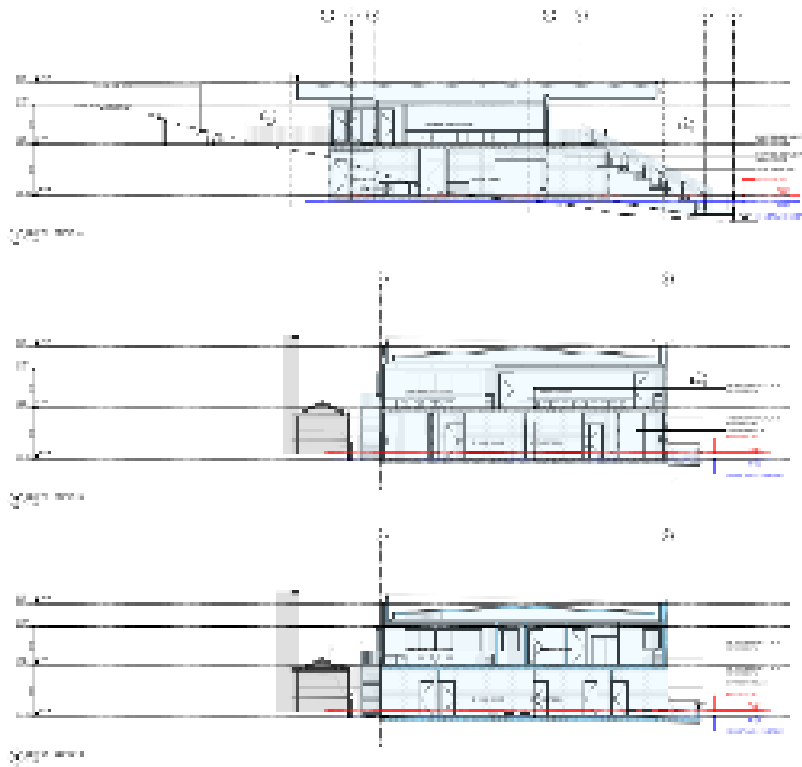


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Elevation (sic) – Sheet 2

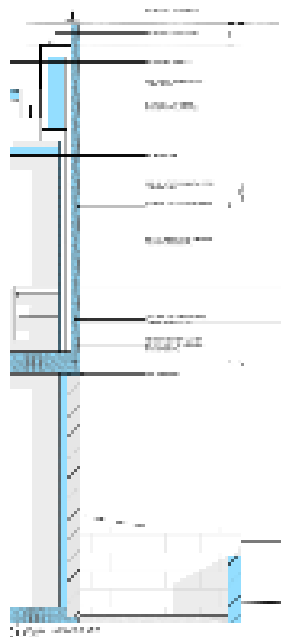
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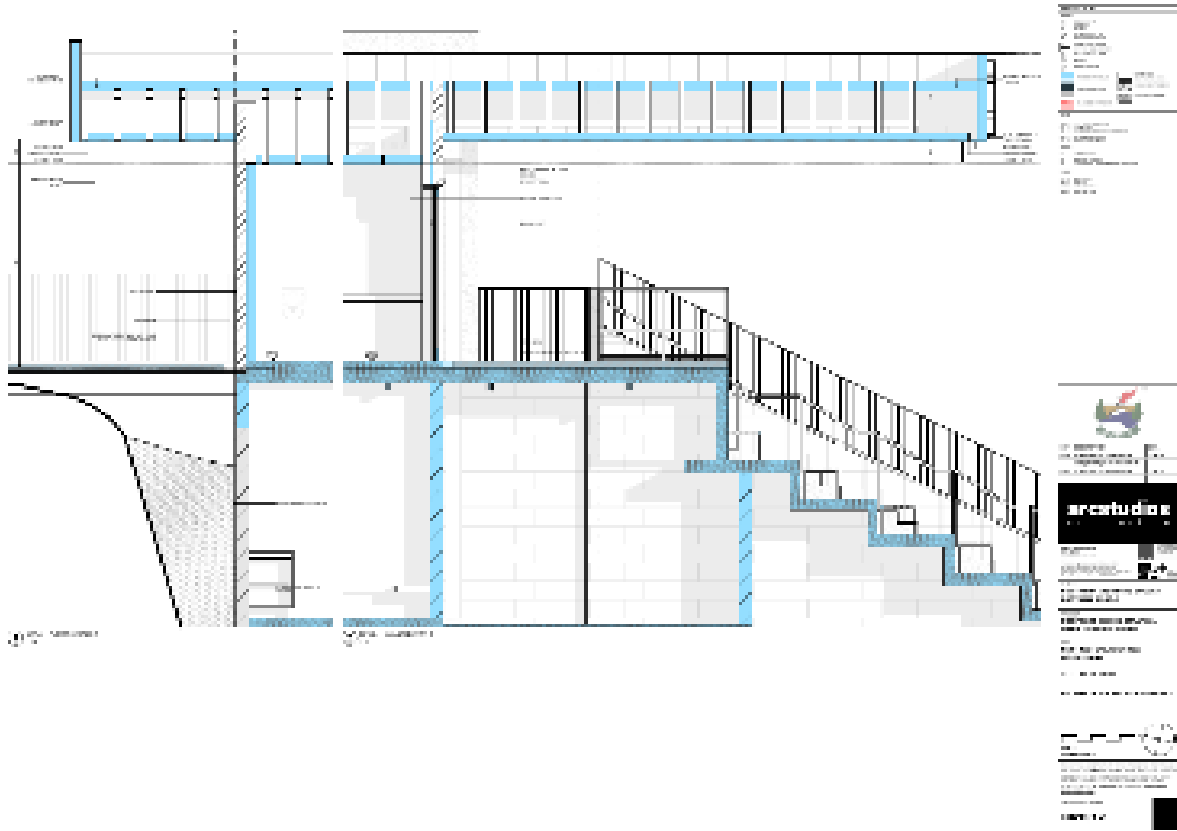
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Section – Sheet 1

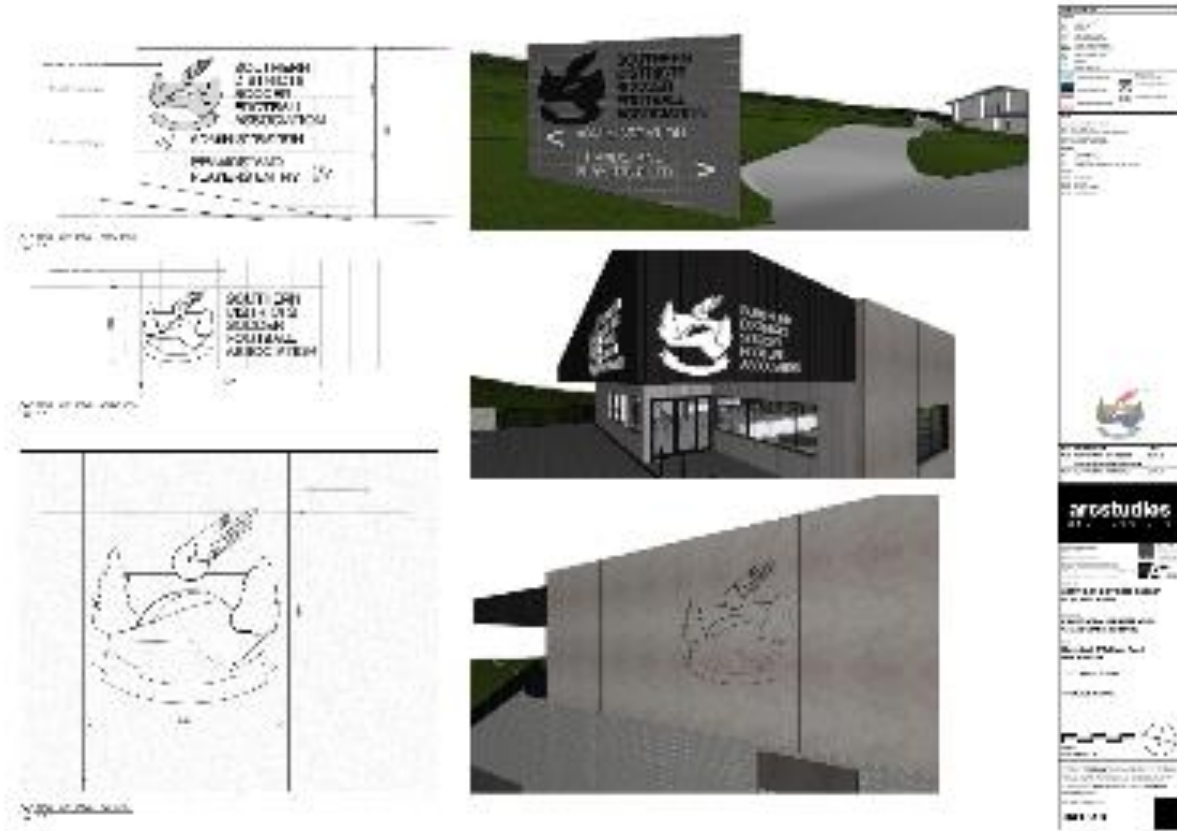


Architectural drawing metadata including a legend, project information, and the 'arc studios' logo.

Facade Detail Section – Sheet 1



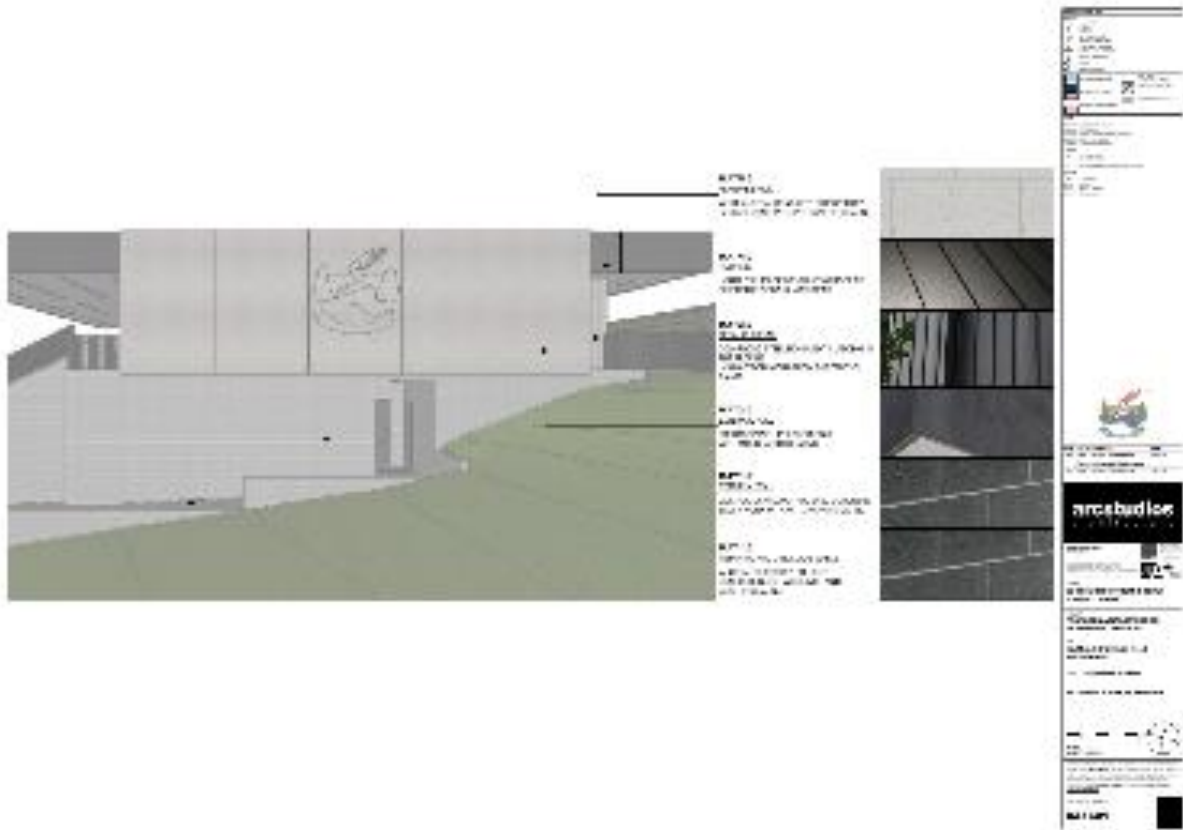
Facade Detail Section – Sheet 2



Signage Detail

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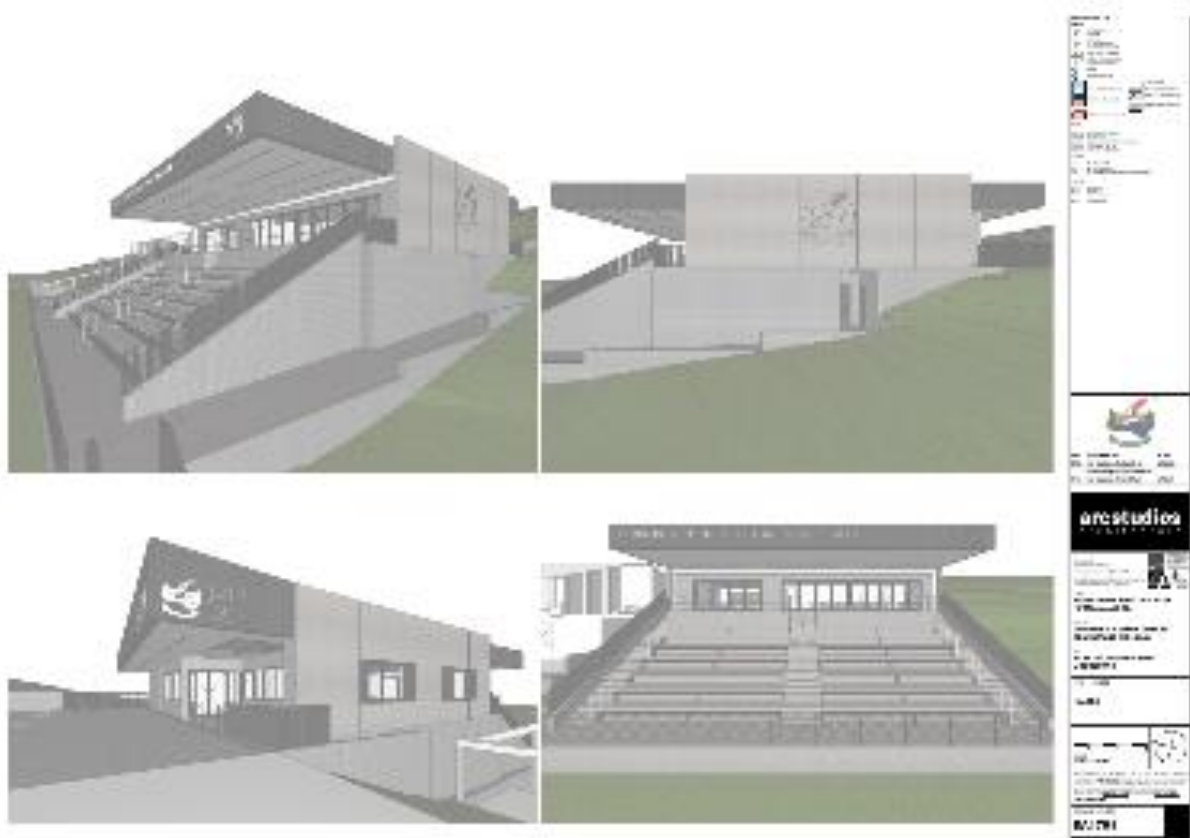
28<sup>th</sup> November 2022



External Finishes Shedule (sic)

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Images

**ATTACHMENT 3 – DRAFT CONDITIONS**

**A. THE DEVELOPMENT**

**Approved**

**Plans**

1. Development the subject of this determination notice must be carried out in accordance with the following plans/reports marked as follows, except where modified by the undermentioned conditions:

(a) Architectural Plans

<b>Title:</b>	<b>Drawing no.</b>	<b>Issue</b>	<b>Prepared By</b>	<b>Dated:</b>
Legend, Area and Drawing List	DA1002	DA02	Arcstudios Architecture	28.06.22
Existing Site Plan Detail	DA1101	DA02	Arcstudios Architecture	28.06.22
Proposed Site Plan Detail	DA1102	DA02	Arcstudios Architecture	28.06.22
Site Analysis Plan	DA1103	DA02	Arcstudios Architecture	28.06.22
Sediment Control Management Plan	DA1104	DA02	Arcstudios Architecture	28.06.22
Ground Floor – General Arrangement	DA1201	DA02	Arcstudios Architecture	28.06.22
First Floor – General Arrangement	DA1202	DA02	Arcstudios Architecture	28.06.22
Roof Plan – General Arrangement	DA1203	DA02	Arcstudios Architecture	28.06.22
Ground Floor – Ceiling Plan	DA1204	DA02	Arcstudios Architecture	28.06.22
Elevatioins (sic) – Sheet 1	DA1301	DA02	Arcstudios Architecture	28.06.22
Elevatioin (sic) – Sheet 2	DA1302	DA02	Arcstudios Architecture	28.06.22
Section - Sheet 1	DA1401	DA02	Arcstudios Architecture	28.06.22
Facade Detail Section – Sheet 1	DA1511	DA02	Arcstudios Architecture	28.06.22

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Facade Detail Section – Sheet 2	DA1512	DA02	Arcstudios Architecture	28.06.22
Signage Detail	DA1513	DA02	Arcstudios Architecture	28.06.22
External Finishes Shedule (sic)	DA1601	DA02	Arcstudios Architecture	28.06.22
Images	DA1701	DA02	Arcstudios Architecture	28.06.22

- (b) Waste Management Plan; prepared by Algorry Zappia & Associates PTY LTD; dated 23/08/2022;
- (c) Acoustic report; prepared by AKA Acoustics Pty Kts; dated July 23rd 2022;
- (d) Traffic Report; prepared by Varga Traffic Planning pty Ltd; Reference No. Ref 22380; dated 20 July 2022;
- (e) Access Report; prepared by ET Consulting Group Pty Ltd; Reference No. CAN2130B; dated 08 August 2021; and
- (f) Aboriginal Due Diligence Assessment; prepared by Apex Archaeology; Revision 2; dated 6 August 2022.

### General Compliance

- 2. The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times. Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of ‘on-the-spot’ penalty infringements or service of a notice and order by Council.

### National Construction Code

- 3. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 8.8, 8.10 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the applicable Performance Requirements of the National Construction Code. Compliance with the Performance Requirements can only be achieved by:
  - (a) Complying with the Deemed to Satisfy Provisions; or
  - (b) Formulating an Alternative Solution, which complies with the Performance Requirements or is shown to be at least equivalent to the Deemed to Satisfy Provision, or a combination of (a) and (b).

### Works at no cost to Council

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

## B. PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE



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

5. Building work shall not commence prior to the issue of a Construction Certificate by Council or an Accredited Certifier. Building work includes but is not limited to, the placement of any site sheds or builders' facilities, site grading, retaining walls, excavation, cutting trenches, installing formwork and steel reinforcement or placing of plumbing lines.

**Fee Payments**

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

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery,
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve, and
- (c) Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works. The required Long Service Levy payment, under the Building and Construction Industry Long Service Payments Act 1986, is to be forwarded to the Long Service Levy Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

These fees are reviewed annually and will be calculated accordingly.

**Stormwater Concept Plan**

7. A stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by SPARKS+PARTNERS Consulting Engineers, reference number 21114 - DA1101, DA1201, DA4101 & DA4301, revision 2, dated 22.09.21.
  1. The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.
  2. Engineering plans and supporting calculations for the stormwater drainage system are to be prepared by a suitably qualified engineer and shall accompany the application for a Construction Certificate. The plan shall indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finish surface levels and sizes of all pipes.
  3. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the stormwater drainage system has been designed in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

**Provision of Services – Sydney Water**

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

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

**Section 138 Roads Act – Minor Works in the public road**

9. Prior to the issue of a Construction Certificate a S138 Roads Act application/s, including payment of fees shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to the following:

- (a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- (b) Road opening for utilities and stormwater (including stormwater connection to Council infrastructure)
- (c) Road occupancy or road closures

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council’s specifications.

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

**Retaining Walls on Boundary**

10. All retaining walls shall be of masonry construction and must be wholly within the property boundary, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage works along common boundaries shall not compromise the structural integrity of any existing structures.

Where a retaining wall exceeds 600mm in height, the wall shall be designed by a practicing structural engineer and a construction certificate must be obtained prior to commencement of works on the retaining wall.

**Site Development Work**

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

**Notification**

12. In the event that Council is not the Principal Certifying Authority, the Certifying Authority must advise Council, in writing of:

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

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

**No Loading on Easements**

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

**Water Quality**

- 14. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that details of a stormwater pre-treatment system have been provided on the stormwater plans and that the design meets pollutant retention criteria in accordance Council's Development Control Plan.

The Construction Certificate must be supported by:

- (a) Specification & installation details of the stormwater pre-treatment system
- (b) The approval of an operation and maintenance manual/schedule for the stormwater pre-treatment system

A copy of the approved operation and maintenance manual/ schedule shall be submitted to Liverpool City Council with notification of the Construction Certificate issue.

**Access, Car Parking and Manoeuvring – General**

- 15. The Certifying Authority shall ensure and certify that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development have been designed and are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Liverpool City Council's Development Control Plan.

**ANZAC Creek Stormwater Pipeline**

- 16. Prior to the issue of a Construction Certificate the Principal Certifier shall ensure that an application under S68 of the Local Government Act, including the payment of application and inspection fees, has been lodged with, and approved by Liverpool City Council for any required upgrade works to the existing stormwater pipeline to ANZAC Creek.

Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works and best engineering practice. All works shall be undertaken at no cost to Liverpool City Council.

**Flooding**

17. There shall be no net loss of flood storage volume below the 1% AEP flood. The flood compensatory excavation shall be undertaken as indicated in the drawings by Sparks+Partners Consulting Engineers (Ref: Project No. 21114, Drawing Nos: DA8101 & DA8501, Revision: 1, dated: 26/08/2022).
18. Building floor levels shall be no lower than the 1% AEP flood plus half a metre freeboard (i.e., 8.5m + 0.5m = 9.0m Australian Height Datum).
19. The structure shall be constructed from flood compatible building components below the 1% AEP flood plus half a metre freeboard (i.e., 8.5m + 0.5m = 9.0m Australian Height Datum).
20. An engineer's report shall be required to certify that the structure can withstand the forces of floodwater including debris and buoyancy up to and including a 1% AEP flood plus half a metre freeboard (i.e., 8.5m + 0.5m = 9.0m Australian Height Datum).
21. Reliable access for pedestrians or vehicles shall be provided from the lowest habitable floor level to a location above the Probable Maximum Flood.
22. Fencing (within the 1% AEP flood extent) shall be constructed in a manner that does not obstruct the flow of floodwaters so as to have an adverse impact on flooding.
23. Fencing (within the 1% AEP flood extent) shall be constructed to withstand the force of floodwaters or collapse in a controlled manner so as not to obstruct the flow of water, become unsafe during times of flood or become moving debris.
24. On-site water quality treatment facilities shall be provided to ensure that stormwater runoffs leaving the site comply with Council's water quality standards. The treatment facilities shall capture all gross pollutants and liquid contaminants from the stormwater before discharging to downstream site. Water quality treatment works shall be designed using MUSIC modelling software, and the water quality treatment system performance shall be verified using Council's MUSIC link. Water quality modelling report and electronic copies of MUSIC model shall be submitted to Council.

**Disability Access**

25. Prior to the issue of a construction certificate, a revised first floor plan prepared by a suitably qualified person is required to be submitted for approval by Liverpool Council incorporating a separate circulation space on the first floor to allow visitors, particularly those in a wheelchair, to move from the disabled parking and/or visitor parking spaces (i.e., eastern carpark) through to the top level of the grandstand without walking through the boardroom and/or administration office.

It is recommended that a separate corridor to facilitate this movement be incorporated into the design of the first-floor layout, to enable ease of movement throughout the building, without having to move through these functional rooms.

26. Prior to the issue of a construction certificate, revised ground floor and first floor plans prepared by a suitably qualified person are required to be submitted for approval by Liverpool Council showing unassisted and independent movement for people with limited mobility between both levels of this building.

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

**Operational Management Plan**

28. Prior to the issue of a construction certificate an Operational Management Plan is required to be submitted to Liverpool Council that outlines the use and operation of the development including opening hours, traffic arrangements parking and access, special events, management of noise and list of contacts for residents, security, risk and reporting processes.

The plan may be an addendum to the current licence agreement or a separate document.

Reason: To ensure the operation of the development minimises impacts to the environment and neighbouring properties.

**Landscape**

29. Prior to the issue of a construction certificate a detailed Landscape Plan, including treatments in the form of trees along the boundary facing the creek, prepared by an AILA Registered Landscape Architect is required to be submitted for approval by Liverpool Council in accordance with Council's DCP.
30. Prior to the issue of a construction certificate an arborist report prepared by a suitably qualified person accompanied by a rationale for any trees being considered for removal is required to be submitted for approval by Liverpool Council.

**Public Art & Security**

31. Prior to the issue of a construction certificate, a plan to incorporate public art as part of the building to reduce the potential vandalism and graffiti prepared by a suitably qualified person is required to be submitted for approval by Liverpool Council's public arts officer.
32. Prior to the issue of a construction certificate, a CPTED report prepared by a suitably qualified person is required. The PCA must ensure that the design principles as recommended are incorporated into the building design.

**Graphic Designer**

33. Prior to the issue of a construction certificate, the PCA must be satisfied that the applicant has engaged a graphic designer to develop the signage for the building.

**Grandstand Overhang**

34. Prior to the issue of a construction certificate, revised elevations prepared by a suitably qualified person are required to be submitted for approval by Liverpool Council to ensure the proposed overhang provides the required shade and cover for the grandstand seating areas.

35. Prior to the issue of a construction certificate, revised elevations prepared by a suitably qualified person are required to be submitted for approval by Liverpool Council for a narrower cantilevered grandstand overhang to achieve a more sleek and narrow profile.

**Street Lighting in Liverpool CBD - Street Lighting Upgrade**

36. The applicant/developer shall engage the services of an Endeavour Energy accredited ASP Level 3 service provider. The consultant is to lodge [Endorsement of Public Lighting Design Application Form](#). The application is available on Council website and can be lodged online.

This form is to be used to seek Council requirements for upgrading or installing new street lights at all frontages.

Consult Council's Traffic Management Section for streetlight upgrade requirement for infill developments in the existing established areas.

The upgrade shall include undergrounding of existing aerial power lines, communication cables and replacement of existing street light poles with Endeavour Energy approved Macarthur Poles as specified by Council in the public lighting design brief.

**Access, Car Parking and Maneuvering**

37. The Certifying Authority shall ensure and certify that vehicular access, circulation, maneuvering, pedestrian and parking areas associated with the subject development have been designed and are in accordance with AS2890.1, AS2890.2, AS2890.6 and Council's Development Control Plan.

The car park shall be formalised including appropriate surface treatment and clearly delineated parking spaces.

38. The Certifying Authority shall ensure and certify that:
- (a) Off street access and parking complies with AS2890.1,
  - (b) Vehicular access and internal manoeuvring have been designed for the longest (B-Double/ Heavy Rigid/ Medium Rigid) vehicle expected to service the development site, in accordance with AS2890.2,
  - (c) Sight distance at the street frontage has been provided in accordance with AS 2890.1,
  - (d) All vehicles can enter and exit the site in a forward direction, and/or
  - (e) Requirements of the Disability Discrimination Act 2002, Disability Standards for Accessible Public Transport and the Guidelines for assessing compliance of bus stops with the Disability Standards for Accessible Public Transport 2002.

**Traffic Impact Statement**

39. The applicant is to prepare a Traffic Impact Statement identifying the existing scenario of the Field in relation to parking demand and any evidence of 'overspill' parking into the local streets.

The Statement shall be prepared by a suitably qualified Traffic Consultant and submitted to and endorsed by Council's Transport Management Section.

Any parking concerns identified in the statement shall be addressed by way of additional parking provisions onsite and demonstrated in the Detailed Design Drawings

**Bus Stops**

40. Possible Bus Stop locations are to be discussed with the local bus companies and are to be designed in accordance with bus company requirements including incorporating the requirements of the Disability Discrimination Act 2002, Disability Standards for Accessible Public Transport and the Guidelines for assessing compliance of bus stops with the Disability Standards for Accessible Public Transport 2002.

**Detailed Design Drawings**

41. The applicant is to discuss with Council's Traffic Management Section of the traffic requirements prior to undertaking the detailed design of traffic facilities, signs and linemarking in the existing and/or proposed public domain.

Detailed design drawings of the proposed traffic facilities, signs and line markings in the existing and proposed public domain areas are to be submitted to Council for approval using [Approval of Traffic Facilities including Signs and Line Marking Schemes Application Form](#). The application is available on council's website.

**C. PRIOR TO WORKS COMMENCING**

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

**Construction Certificate**

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

**Building Work**

43. Building work shall not commence prior to the issue of a Construction Certificate. Building work as defined under Section 1.4 of the EP&A Act means any physical activity involved in the erection of a building and includes but is not limited to, the placement of any site shed/s or builders facilities, site grading, retaining walls, excavation, cutting trenches, installing formwork and steel reinforcement or, placing of plumbing lines.

**Construction Certificates**

44. Prior to the commencement of any building works, the following requirements must be complied with:
  - (a) Construction Certificate must be obtained from the Council or an Accredited Certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*,
  - (b) Where a Construction Certificate is obtained from an Accredited Certifier, the applicant shall advise Council of the name, address and contact number of the

Accredited Certifier, in accordance with Section 4.19, 6.6, 6.7, 6.12, 6.13, 6.14 of the Act,

- (c) A copy of the Construction Certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment,
  - (d) A Principal Certifying Authority (PCA) must be appointed to carry out the necessary building inspections and to issue an occupation certificate, and
  - (e) The PCA must advise Council of the intended date to commence work which is the subject of this consent by completing a notice of commencement of building works or subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days' notice must be given.
45. Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.

#### **Sydney Water**

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

#### **Excavation**

47. In the event the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the following is to be undertaken at full cost to the developer:
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
  - (b) Where necessary, underpin the adjoining premises to prevent any such damage.

#### **Sediment & Erosion Control**

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

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

#### **Dial Before You Dig**

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



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

#### **Notification**

50. Written notice of intention shall be given to the owner of the adjoining allotments of land, outlining the particulars of the proposed work, which involves:
- (a) Any excavation, below the base of the footings of a building on an adjoining allotment of land.
  - (b) The notice shall be given seven (7) days prior to the commencement of work

#### **Site Facilities**

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

#### **Toilet Facilities**

52. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
- (a) Be a standard flushing toilet connected to a public sewer, or
  - (b) Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
  - (c) Be a temporary chemical closet approved under the *Local Government Act 1993*.

#### **Site Notice Board**

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

#### **Security Fence**

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

#### **Waste Classification and disposal of soils and materials from site**

55. All soils and materials, liquid and solid, to be removed from the site must be analysed and classified by an appropriately qualified and certified consultant, in accordance with

the Protection of the Environment (Waste) Regulation 2014 and related guidelines, in particular the *NSW EPA Waste Classification Guidelines*, prior to off-site disposal.

All waste material(s) must be disposed of at an appropriately licensed waste facility for the specific waste. Receipts for the disposal of the waste must be submitted to the Principal Certifying Authority with 30 days of the waste being disposed.

All waste must be transported by a contractor licenced to transport the specific waste, and in vehicles capable of carting the waste without spillage, and meeting relevant requirements and standards. All loads must be covered prior to vehicles leaving the site.

### **Dilapidation Report**

56. Prior to the Commencement of Works a dilapidation report of all public infrastructure along the driveway access from Kelso Crescent and into the site is to be submitted to Liverpool City Council. The report is to include, but not limited to, the pavement, fencing, kerb and gutter, footpath, services and trees and is to extend 20m into Kelso Crescent.

### **Construction Traffic Management Plan (CTMP)**

57. A construction traffic management plan (CTMP) prepared by a suitably qualified person is to be submitted to and endorsed by Council's Transport Management Section. The CTMP is to be submitted using [Assessment of Construction Traffic Management Plan application form](#). The application is available on Council website and can be lodged online. Comments on the CTMP will be provided and the updated CTMP are to be implemented during construction.

A copy of the endorsed CTMP and traffic control plans are to be available on the works site for inspection by authorised Council officers.

Construction shall not commence until the assessed construction traffic management plan has been endorsed. The endorsed CTMP is to be implemented during construction.

### **Work zone**

58. Where a work zone is required, an application must be submitted to and approved by Council's Transport Management Section. The application is to indicate the exact location required and the applicable fee is to be included. If parking restrictions are in place, an application to have the restrictions temporarily altered will need to be submitted to and approved by Council's Liverpool Local Traffic Committee.

### **Road Occupancy Permit**

59. Road occupancy and road opening approvals will be required from Council to undertake works within the existing road reserve. The following applications are available on Council's website and can be lodged online attaching all required documents indicated on the application form.

[Road Occupancy Application Form](#)

[Road Opening Application Form](#)

**D. DURING CONSTRUCTION**

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

**Building Work**

60. The building works must be inspected by the Principal Certifying Authority, in accordance with Sections 6.5 (3) of the *Environmental Planning & Assessment Act 1979* and Clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.
61. The Principal Certifying Authority (PCA) must specify the relevant stages of construction to be inspected and a satisfactory inspection must be carried out, to the satisfaction of the PCA, prior to proceeding to the subsequent stages of construction or finalisation of the works.

**Identification Survey Report**

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

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

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

**Excavation**

64. In the event the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (a) protect and support the adjoining premises from possible damage from the excavation,
  - (b) where necessary, underpin the adjoining premises to prevent any such damage, and
  - (c) a and b above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

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

**Hours of Construction Work and Deliveries**

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

**Construction Noise and Vibration**

66. Noise and vibration associated with excavation, demolition and construction activities shall comply with the management levels detailed within the 'Interim Construction Noise Guideline' published by the Department of Environment and Climate Change NSW (DECC 2009/265) dated July 2009 and acceptable vibration values prescribed within the Environmental Noise Management Assessing Vibration: A Technical Guideline (Department of Environment and Conservation, 2006).

**Craning and Hoarding**

67. If the work is likely to cause pedestrian or vehicular traffic in a public area to be obstructed or rendered inconvenient; or if craning of materials is to occur across a public or road reserve area, a separate Road Occupancy Certificate and/or Hoarding approval must be obtained from Liverpool City Council prior to undertaking the works.

**General Site Works**

68. Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.
69. Existing hydrological regimes shall be maintained so as not to negatively impact vegetation to be retained on site and downslope/downstream of the site.
70. Any runoff entering the areas of vegetation to be retained shall be of an equivalent or better quality, and of a similar rate of flow to present levels.
71. The development, including construction, shall not result in any increase in sediment deposition into any water body, wetland, bushland or environmentally significant land.  
Reason: To minimise impacts to adjacent vegetation and habitat.

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

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

**Earthworks**

73. All earthworks shall be undertaken in accordance with AS 3798 and Liverpool City Council's Design Guidelines and Construction Specification for Civil Works. The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

**Waste Management Plan**

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

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

75. All demolition, excavation and construction waste must be separated as it is generated and kept separate bays, builder's site bins and/or skips.
76. All lightweight or granular excavation or construction wastes such as wrapping, packaging materials, bags, insulation, sand, soil etc. must be kept fully enclosed at all times to prevent them from becoming wind-blown in strong wind conditions or from washing into drains, sewers or waterways or onto neighbouring properties or public land in wet weather.

**Water Quality**

77. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.

**Air Quality**

78. Dust screens shall be erected and maintained in good repair around the perimeter of the subject land during land clearing, demolition, and construction works.
79. Where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, dust is to be suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the Principal Certifying Authority may direct that such work is not to proceed.
80. All vehicles involved in the delivery, demolition or construction process departing from the property shall have their loads fully covered before entering the public roadway.

**Pollution Control**

81. The loading and unloading of all vehicles associated with the development must be undertaken within the property boundary of the premises subject to this consent.

Measures must be implemented to prevent tracking of sediment by vehicles onto roads.

Vehicle loads must be covered when entering and exiting the site with material.

82. Building operations such as brick cutting, mixing mortar and the washing of tools, paint brushes, form-work, concrete trucks and the like shall not be performed on the public footway or any other locations which may lead to water pollution.

**Erosion Control**

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

**Notification of Damage**

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

**Imported Fill Material**

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

Certificates proving that the material imported is ENM or VENM must be provided to the Principal Certifying Authority prior to filling. Certificates are to be provided to Council officers if and when requested.

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

**Contamination**

86. The development, including all civil works and demolition, must comply with the requirements of the Contaminated Land Management Act, 1997, State Environmental Planning Policy Resilience and Hazards) 2021, and Managing Land Contamination – Planning Guidelines (Planning NSW/EPA 1998).

**Record Keeping of Imported Fill**

87. Records of the following accepted waste derived fill material must be submitted to the Principal Certifying Authority at the completion of earth works:
- (a) The course (including the address and owner of the source site), nature and quantity of all incoming loads including the date, the name of the carrier, and the vehicle registration,

- (b) Documentation confirming the results of the waste classification assessment carried out on the fill material used in the development, and
- (c) The results of any chemical testing undertaken on fill material.

#### **Unidentified Contamination**

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

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

#### **Aboriginal Relics/Artefacts**

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

As required by the *National Parks and Wildlife Service Act 1974* if Aboriginal cultural heritage objects or deposits are encountered/discovered where they are not expected, works must cease immediately, and the Council and the Office of Environment and Heritage (OEH) must be notified of the discovery.

If archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the *National Parks and Wildlife Service Act 1974* to obtain the necessary approvals/permits from the OEH

**Note:** The *National Parks and Wildlife Service Act 1974* impose substantial penalty infringements and/or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether such archaeological resources are known to exist on the site.

#### **Skeletal Remains**

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

**Vegetation - Existing Vegetation**

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

**Car Parking Areas**

92. Car parking spaces and driveways must be constructed of a minimum two coat finish seal or better.

All parking spaces must be clear of obstructions and columns, permanently line marked and provided with adequate manoeuvring facilities.

The design of these spaces must comply with Council's DCP 2008, and Australian Standard 2890.1 Parking Facilities – Off-Street Car Parking.

All car parking areas are to be appropriately line marked and sign posted in accordance with the Council approved stamped plans.

All customer/visitor/staff parking areas are to be clearly signposted limiting car parking for customers/visitors/staff only. The applicant is to cover the costs of installation and maintenance of the signage.

The on-site parking spaces shown in the approved plans must be identified in accordance with A.S.2890.1 Parking Facilities – Off-Street Car Parking.

**Directional Signage**

93. Directional signage indicating the location of customer parking, “in” and “out”, crossings and directional arrows are to be provided in accordance with the Council approved stamped plans.

**Public Domain Works**

94. All works within the road reserve, including the approved sign and line making scheme, are to be carried out by the applicant, at no cost to Council, in accordance with the TfNSW/RMS 'Delineation Guidelines'.

**Public Domain Works – Street Lighting**

95. Streetlights are to be installed in accordance with the Endeavour Energy certified plans to their satisfaction.



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

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

96. The proposed structures must not be utilised until an Occupation Certificate is issued by the principal certifier.
97. Details of critical stage inspections carried out by the principal certifying authority together with any other certification relied upon must be provided to Council with the occupation certificate.
98. The Principal Certifying Authority shall ensure that all compliance certificates required by this development consent are referenced to the condition consent number. The Compliance Certificate is to state that the works as constructed comply fully with the required condition of consent being acted on by the certifier.

**Works as executed - General**

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

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

**Stormwater Compliance**

100. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the:

- a) Stormwater pre-treatment system/s,
- b) Overland flowpath works,
- c) Flood control works, and/or

1. Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent,
2. Have met the design intent with regard to any construction variations to the approved design, and
3. Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

**Restriction as to User and Positive Covenant**

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

- a) Stormwater pre-treatment system/s,

- b) Overland flowpath works,
- c) Flood control works, and/or

The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

#### **Rectification of Damage**

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

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

#### **Dilapidation Report**

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

#### **Flooding**

104. A flood evacuation plan shall be developed and maintained, including suitable warning systems, signage and exits, to ensure the safe evacuation of people during floods up to and including the Probable Maximum Flood.

#### **Liverpool City Council clearance – Roads Act/ Local Government Act**

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

#### **Directional Signage**

106. Prior to the issue of an Occupation Certificate, directional signage and linemarking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.

#### **Heritage**

107. The Heritage interpretation and public art plan is to be implemented in full prior to the issue of the occupation certificate.

#### **Public Domain Works – Street Lighting**

108. The approved street lighting designs are to be implemented along all new and existing streets within the proposed development in accordance with Liverpool City Council standards and to the satisfaction of Council. Endeavour Energy pole numbers and the date poles were energised are to be submitted to Council's Traffic Management Section prior to submitting OC or SC application.

All cost associated with the installation of street lighting shall be borne by the developer.

**Services**

109. Prior to the issue of an occupation certificate, the PCA must ensure all services and plumbing are concealed within the built form.

**Sydney Water**

110. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA.

**F. CONDITIONS RELATING TO USE**

**The following conditions are to be complied with during the use of the development.**

**Parking Areas**

**Environment**

111. The construction and use of the premises shall not give rise to the emission into the surrounding environment of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.

**Flooding**

112. There shall be no storage of materials below the 1% AEP flood plus half a metre freeboard (i.e., 8.5m + 0.5m = 9.0m Australian Height Datum), which may cause pollution or be potentially hazardous during any flood.

**Parking Spaces**

113. All 6 parking spaces shall be used per their approved and marked intended use.

**G. ADVISORY**

- a) Sections 8.2, 8.3, 8.4 & 8.5 of the Environmental Planning and Assessment Act 1979 allow you to request the consent authority to review this determination notice if you are dissatisfied with it or the conditions contained within this determination notice. This right must be exercised within six (6) months from the date of this notice with the appropriate fee.
- b) Under Sections 8.7 & 8.10 of the Environmental Planning and Assessment Act 1979 applicants who are dissatisfied with the outcome of a consent authority have a right of appeal to the Land and Environment Court. This right must be exercised within six (6) months from the date of this notice of determination.
- c) In accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979, unless otherwise stated by a condition of this consent, this consent will lapse unless the development is commenced within five years of the date of this notice.
- d) To confirm the date upon which this consent becomes effective, refer to Section 4.20 of the Environmental Planning and Assessment Act, 1979. Generally the consent becomes effective from the determination date shown on the front of this notice. However if unsure applicants should rely on their own enquiries.
- e) To confirm the likelihood of consent lapsing, refer to Section 4.53 of the Act. Generally, consent lapses if the development is not commenced within five years of

the date of approval. However, if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.

- f) In accordance with Sections 8.8 and 8.10 of the Environmental Planning and Assessment Act 1979, an objector who is dissatisfied with the determination of a consent authority to grant consent to a Development Application for Designated Development (including Designated Development that is Integrated Development), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court.
- g) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the applicant should investigate their liability under the Act.
- h) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regards to the operation of the building.
- i) "DIAL BEFORE YOU DIG"

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

- j) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

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

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

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

# LIVERPOOL CITY COUNCIL

## LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

<b>Item no:</b>	2
<b>Application Number:</b>	DA-64/2007/D
<b>Proposed Development:</b>	<p>Modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment Act 1979. The changes are as follows:</p> <ul style="list-style-type: none"> <li>• Delete Road 10.</li> <li>• Amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property.</li> </ul>
<b>Application History:</b>	<p><b><u>Approved Application DA-64/2007</u></b> Subdivision of existing lots into eight (8) Torrens title lots, four (4) public reserve lots, three (3) residue lots and associated roads and drainage works.</p> <p><b><u>Approved Modification Application DA-64/2007/A</u></b> Subdivision of existing lots into seven (7) Torrens title lots, four (4) public reserve lots, two (2) residue lots and associated roads, intersection and pedestrian treatment and drainage works.</p> <p><b><u>Refused Modification Application DA-64/2007/B</u></b> Modification to Development Consent DA-64/2007 under section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposed: realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts.</p> <p><b><u>Approved Modification Application DA-64/2007/C</u></b> Modification to Development Consent DA-64/2007 under section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposes: realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts.</p>
<b>Property Description:</b>	<p>Lot 3 Seventeenth Ave East, Middleton Grange (Lot 3 DP 1207518)            Lot 4 Seventeenth Ave East, Middleton Grange (Lot 4 DP 1207518)            60 Hall Circuit, Middleton Grange (Lot 12 DP 1108343)            Lot 2 Flynn Avenue, Middleton Grange (Lot 2 DP 1207518)            Lot 5 Sixteenth Ave East, Middleton Grange (Lot 5 DP 1207518)            Lot 6 Sixteenth Ave East, Middleton Grange (Lot 6 DP 1207518)            Lot 1 Seventeenth Ave East, Middleton Grange (Lot 1 DP 1078564)            Lot 102 Sixteenth Ave East, Middleton Grange (Lot 102 DP 1128111)</p>
<b>Applicant:</b>	Pacific Planning Pty Ltd
<b>Land Owner/s:</b>	Manta Group Pty Ltd; Liverpool City Council & Al-Somai Developments Pty Ltd
<b>Date Lodged:</b>	29 November 2021
<b>Zoning:</b>	R1 General Residential, B2 Local Centre, RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local

	Environmental Plan 2008 (LLEP 2008).
<b>Recommendation:</b>	Approval, subject to modified conditions of consent
<b>Assessing Officer:</b>	Robert Micallef

## 2. EXECUTIVE SUMMARY

Council has received a Modification Application seeking consent for the modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment Act 1979 to delete proposed Road 10 and to amend the existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property, on a site known as the future Middleton Grange Town Centre, which is legally known as Lots 2, 3, 4, 5 and 6 in DP 1207518, Lot 1 in DP 1078564, Lot 12 in DP 1108343; and Lot 102 in DP 1128111.

This application proposes to modify Development Consent No. DA-64/2007 pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979. Development Consent DA-64/2007 granted approval for the *subdivision of existing lots into eight (8) Torrens title lots, four (4) public reserve lots, three (3) residue lots and associated roads and drainage works.*

The proposed development is generally consistent with the objectives and development standards of the relevant SEPPs, LLEP 2008 and the provisions of the Liverpool Development Control Plan 2008 (LDCP 2008).

The application was notified from 25 February until 14 March 2022 in accordance with the provisions of the Liverpool Community Participation Plan 2019. No submissions were received during this period.

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:

### **Conflict of interest**

*Development for which the applicant or land owner is:*

(a) *the council*

Part of the subject site includes Council land, however, the proposed modifications do not alter development approved on Council land.

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

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The site

The subject site is identified as Middleton Grange Town Centre and comprises eight (8) lots, which are legally described as follows:

- Lots 2,3,4,5 and 6 in DP 1207518

- Lot 1 in DP 1078564
- Lot 12 in DP 1108343; and
- Lot 102 in DP 1128111

The subject site has a total area of 69,040m<sup>2</sup> with a frontage of 200.5m to Seventeenth Avenue East and 220m to Sixteenth Avenue.

The subject site consists of four different zones. The western portion of the site is zoned R1 General Residential, whereas most of the central portion of the site is zoned B2 Local centre, and small portions of the site are zoned RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008.

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



Figure 1: Aerial view of subject site (red) (Source: Geocortex)

## 2.2 The locality

Currently the surrounding locality is a combination of low density residential with some large rural landholdings which would be subject to redevelopment for future residential/commercial/recreational development under the provisions of the Liverpool Local Environmental Plan 2008 and the supporting Development Control Plan 2008.

The subject site naturally drains to Southern Creek which transverses through the development site, a tributary to Hinchinbrook Creek, located in the Georges River Catchment. West of the site is an existing medium density residential development.

The site is located 380m west of the M7 Motorway, and 320m west of Cowpasture Road. The

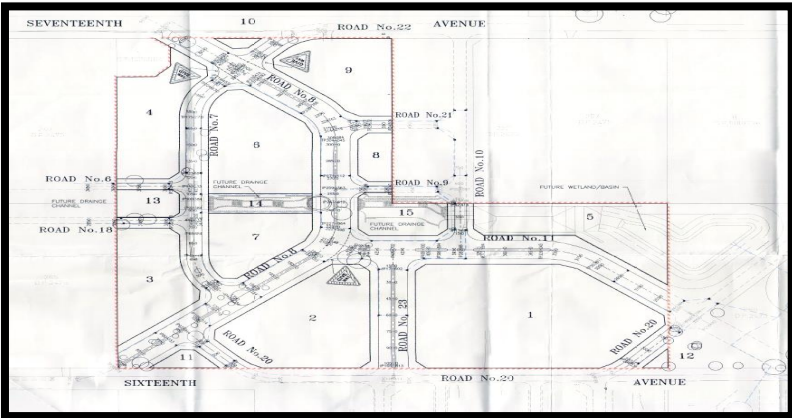


lands north of the subject site are primarily large rural residential allotments zoned R1 General Residential. Directly east of the subject site along Hall Circuit is the Middleton Grange Public School.

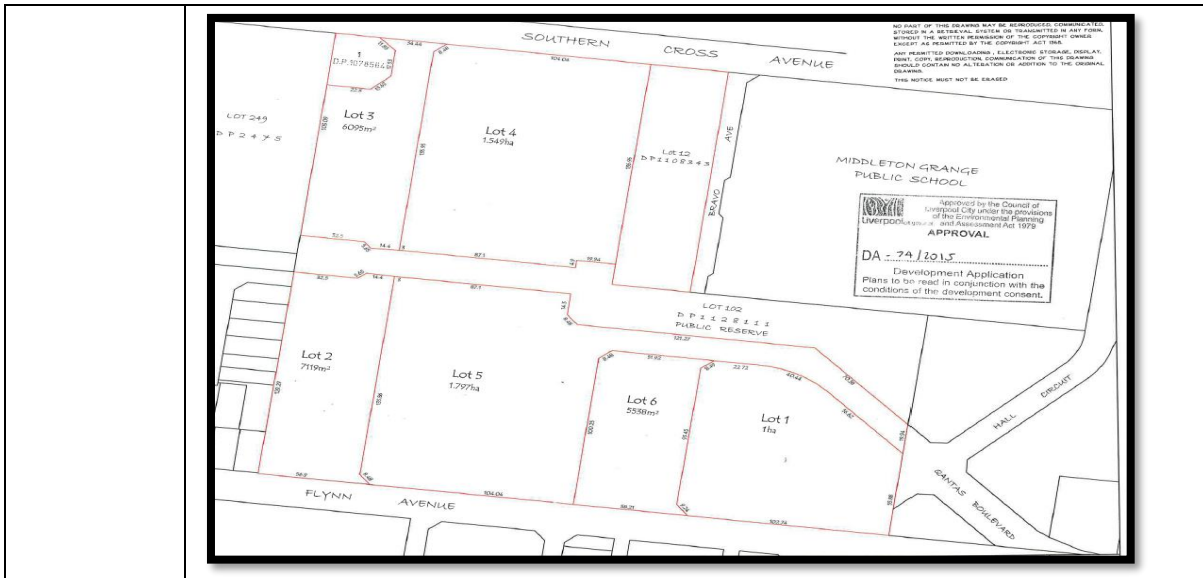


Figure 2: Locality Surrounding the Proposed Development (Source: Geocortex)

3. BACKGROUND/HISTORY

Ref:	Description
DA-64/2007 5 October 2006	Subdivision of existing lots into eight (8) lots Torrens title, four public reserve and 3 residue and associated roads and drainage works. 
DA-64/2007/A 1 February 2008	Subdivision of existing lots into Seven (7) Torrens title, four Public reserve and 2 residue and associated roads, intersection and pedestrian treatment and drainage works

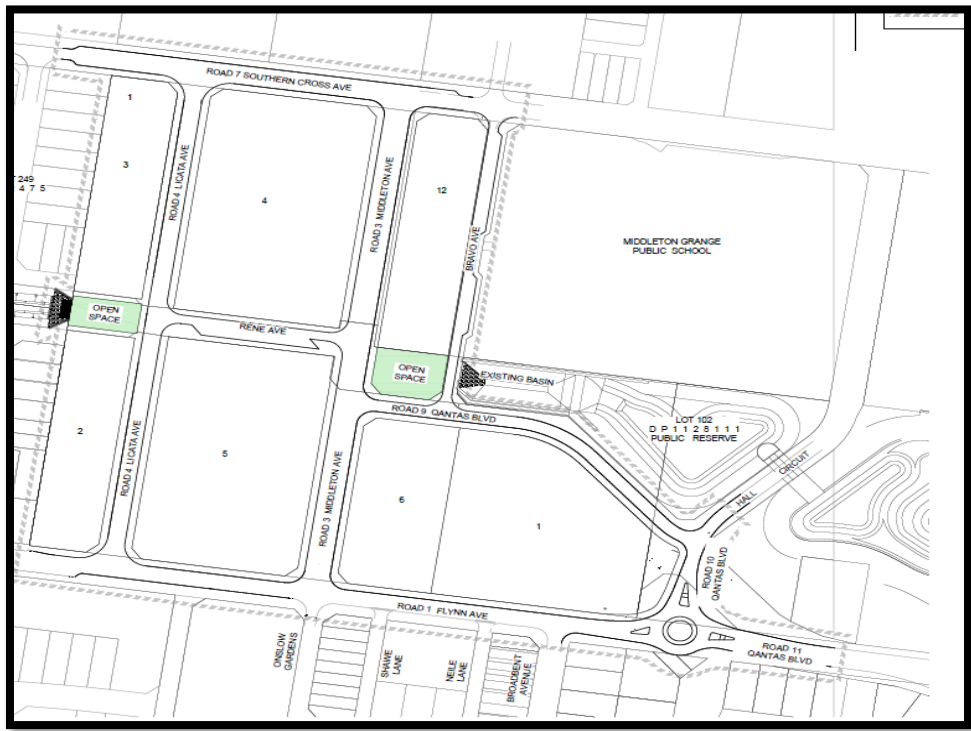




DA-74/2015A  
 14 April 2015  
 Section 96(1) modification to amend the proposal's description to read as follows: Torrens title subdivision of the existing lots into six (6) and the retention of two (2) lots.

DA-64/2007/B  
 20 March 2019  
 Modification to Development Consent DA-64/2007 under section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposed: realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts. (Refused)

DA-64/2007/C  
 22 May 2020  
 Modification to Development Consent DA-64/2007 under section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposes: realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts. (Approved)



**3.1 Restriction on title**

Lots 2, 3, 4, 5 and 6 in DP 1207518, Lot 1 DP 1078564 & Lot 12 DP 1108343 are burdened by an 88B restriction imposed under DA-74/2015. The restriction reads as follows;

*‘Development Applications shall not be considered or determined on the burdened lots until such time Council (and other relevant authorities) have approved a Planning Proposal for a rezoning and revised street network layout for the Middleton Grange Town Centre. The revised street network layout shall include a link road (north-south direction) connecting Flynn Avenue and Southern Cross Avenue.’*

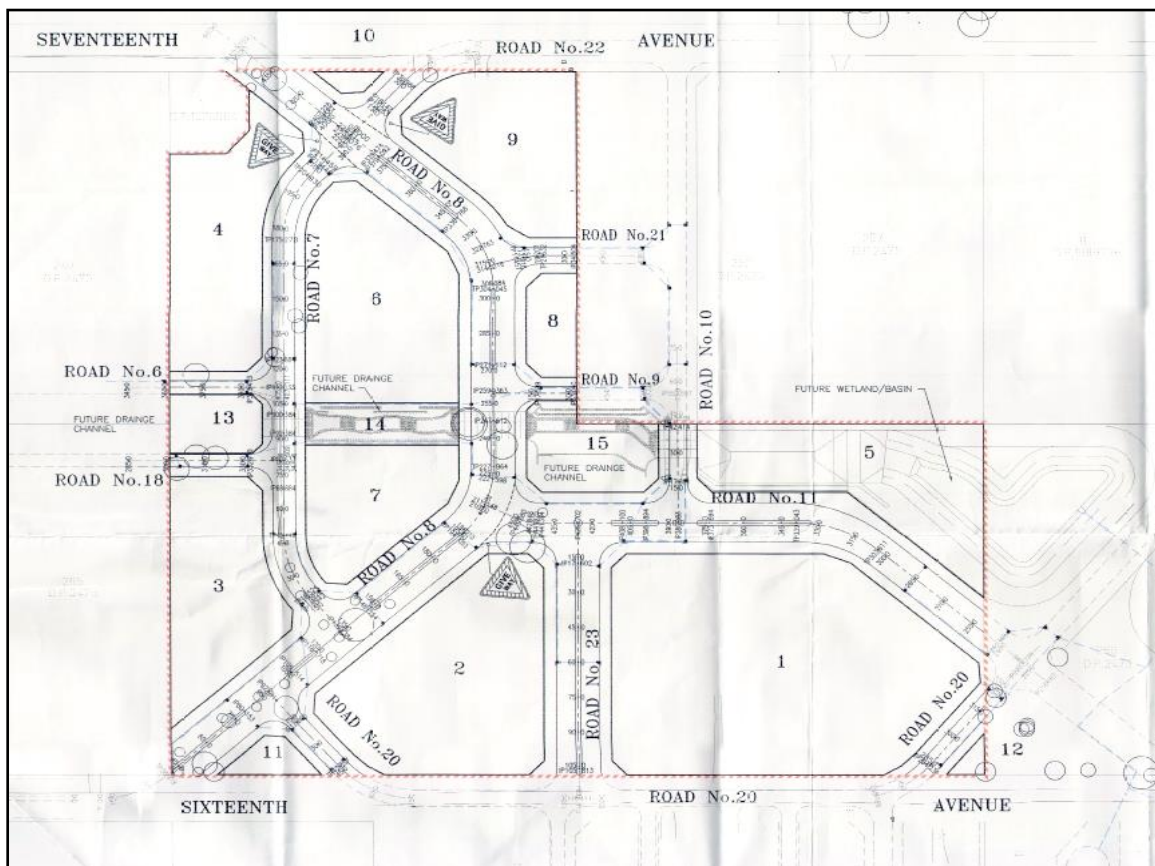
As this is a modification application, and not a development application for future buildings in the town centre, there is no restriction under the s88b instrument to the approval of this modification application.

**4. DETAILS OF THE PROPOSAL**

Consent is sought for the modification of DA-64/2007, which approved the following;

*Subdivision of existing lots into eight (8) lots Torrens title, four public reserve and 3 residue and associated roads and drainage works.*

An extract of approved plan is shown below:



**Figure 3:** Approved Roads and Stormwater Drainage Layout works approved under DA-64/2007

DA-64/2007 granted development consent to Lots 263 & 264 DP 2475, Lot 1 DP 612938 &

Lot 2 DP 1078564, Middleton Grange. The same lots were the subject of Modification Application No. 64/2007/A. These lots have been the subject of separate subdivision applications and are now considered to be historic. Having regard to the subject modification application, it is noted the following lots are identified within the proposal.

- Lot 102 DP 1128111;
- Lot 2, 3, 4, 5 & 6 DP 1207518;
- Lot 12 DP 1108343; and
- Lot 1 DP 1078564.

The following Figure shows the most recently approved subdivision and roads scheme within the site as approved by DA-64/2007/C.

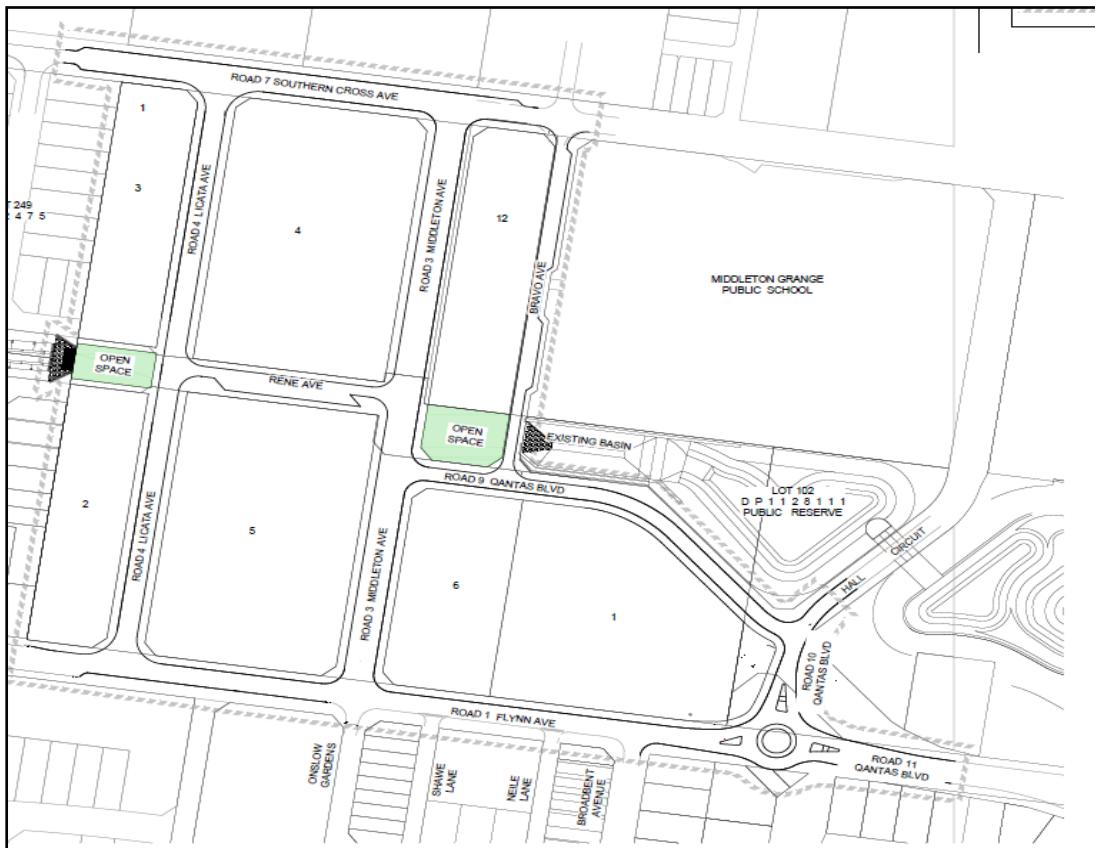
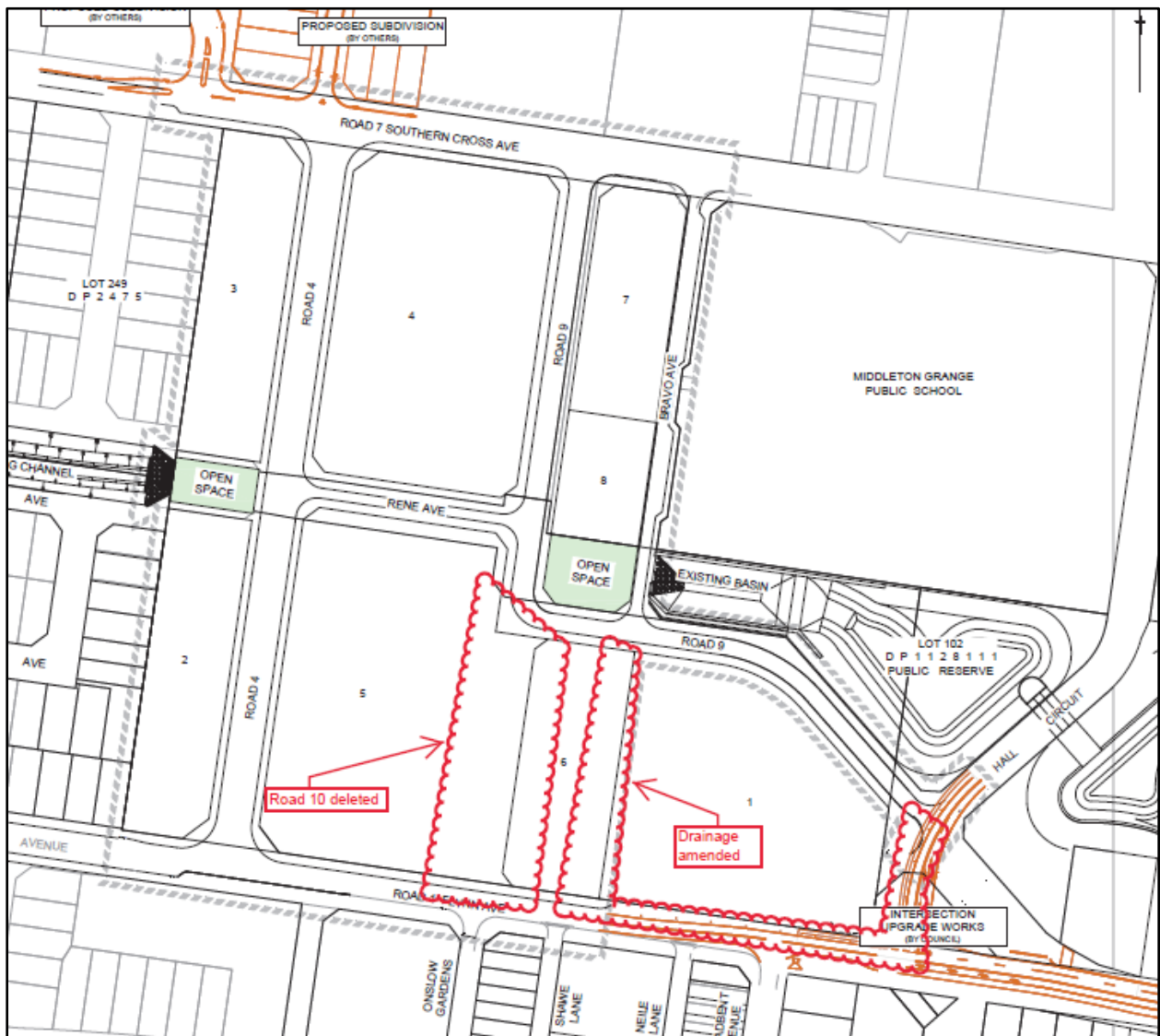


Figure 4: Approved Subdivision Layout works approved under DA-64/2007/C

Notwithstanding this, as part of the modification application the applicant proposes the following works:

- Delete Road 10.
- Amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property.

A plan of the proposed works is seen in the figure below, with red bubbles demonstrating the extent of the modifications.



**Figure 5:** Proposed modifications to the subdivision and drainage network as per the subject modification (DA-64/2007/D)

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

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

#### Environmental Planning Instruments (EPI's)

- f) State Environmental Planning Policy (Resilience and Hazards) 2021;
- g) State Environmental Planning Policy (Biodiversity and Conservation) 2021; and
- h) Liverpool Local Environmental Plan 2008.

#### Draft EPI's

- Liverpool Local Environmental Plan 2008 (Amendment 63)

Development Control Plan

- i) Liverpool Development Control Plan 2008;
  - Part 1: General Control for all Development; and
  - Part 2.5: Land Subdivision and Development in Middleton Grange

**6. ASSESSMENT**

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.55(2) of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021 as follows:

**6.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979**

The application has been lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, which provides:

**(2) Other modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

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

**Comment:** The proposal is considered substantially the same development as originally approved by Council. The modification application demonstrates the same features and components of the originally approved development and although the traffic flows are being redirected due to the removal of one intersection as well as a more suitable drainage design that utilises the road network, the proposal is considered to be substantially the same development.

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

**Comment:** Consultation under Division 4.8 is not required for this application.

- (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 application was notified from 25 February until 14 March 2022 in accordance with the provisions of the Liverpool Community Participation Plan 2019. No

submissions were received during this period.

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

**Comment:** As mentioned above in this report, no submissions were received during the notification period.

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

**Comment:** The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021* as follows:

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

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal.

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

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

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

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 matters of consideration under this SEPP were satisfied with the original application. Further, the applicant submitted an addendum to the approved Preliminary Site Investigation report for DA-64/2007/C, which concluded that:

*Based on the foregoing, we are of the opinion that the contamination status of the site appears to primarily remained unchanged from our 2006 assessment (Reference 1), being low risk however the site is impacted by previous and recent surface and buried fill which will need to be further investigated and remediated to current NSW EPA guidelines to ensure suitability of*



*the site for the proposed town centre development.*

The original contamination report and addendum report were reviewed by Council’s Environmental Health Section who concurred with their findings subject to the submission of a Stage 2 – Detailed Site Investigation report as condition of consent to be addressed prior to the issue of a Construction Certificate, which were inserted into the consent as part of DA-64/2007/C.

The following assessment was undertaken as part of the assessment for DA-64/2007/C.

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the	carrying out of any development on land unless:
(a) it has considered whether the land is contaminated, and	The land is identified as low risk of contamination, but the site is impacted by previous and recent surface and buried fill which needs to be further investigated and remediated.
(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 revised Phase 1 report in the form of an addendum to the contamination assessment report has been submitted as part of this application and reviewed by Council’s Environmental Health section. The land is considered suitable for its proposed use, subject to a Stage 2 – Detailed Investigation report being submitted prior to the issue of CC.
(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.	Conditions of any consent require the remediation of the land as per the recommendations in the submitted contamination assessment.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of the SEPP. Therefore, it is considered that the subject site would be suitable for the proposed development.

**(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. This SEPP generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries. The DA was referred to Council’s Land Development Engineering section who reviewed stormwater management and drainage associated with the proposal. They were supportive of the proposed modified development. Accordingly, the proposed development is considered to meet the objectives of the SEPP and is unlikely to have a negative impact on the environmental quality of the Georges River Catchment beyond the originally approved development.

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

**(i) Zoning**

The subject site consists of four zonings. The western portion of the site is zoned R1 General Residential, whereas most of the central portion of the site is zoned B2 Local Centre, and small

portions of the site are zoned RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008. An extract of the zoning map is provided below.

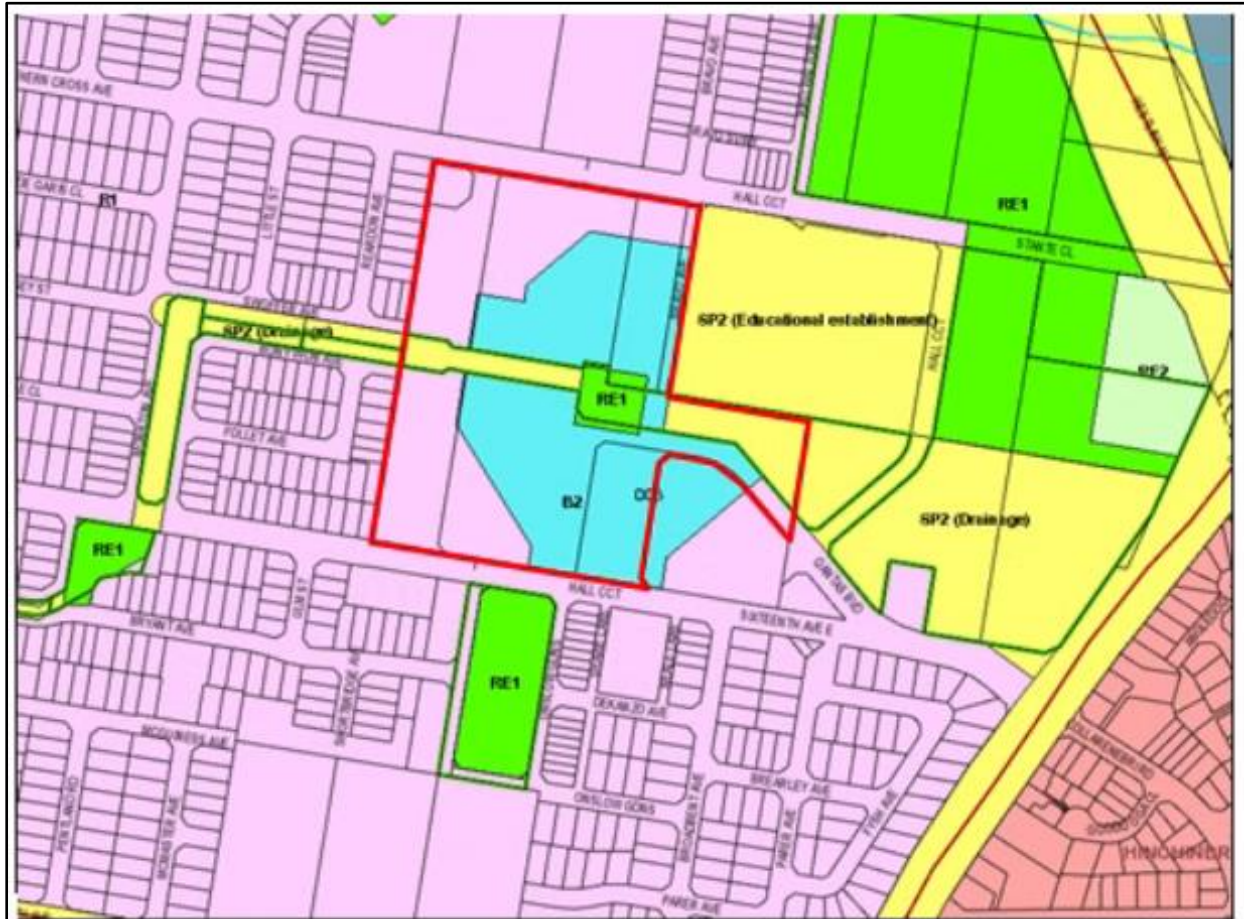


Figure 6 – Extract of LLEP 2008 zoning map (site in red box)

**(ii) Permissibility**

Roads and subdivision are what the proposed development are best defined as and are a permissible form of development in the R1 General Residential, B2 Local Centre, RE1 Public Recreation and SP2 Infrastructure (Drainage) zones as well as under Clause 2.6 - Subdivision pursuant to the Liverpool Local Environmental Plan 2008

A road is defined as follows:

*“road means a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road.”*

**(iii) Objectives of the zone**

**R1 General Residential:**

- *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 proposed modification to Development Consent DA-64/2007 is considered to remain consistent with the objectives of the zone, including the future provision of housing to meet the needs of the community and facilitates the development of social and community infrastructure to meet the needs of future residents.

**B2 Local Centre:**

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level.*
- *To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.*

The proposed modification to Development Consent DA-64/2007 is considered to remain consistent with the objectives of the zone and would facilitate the future orderly development of the Middleton Grange Town Centre to serve the needs of the people who will live in, work in and visit the local area.

**RE1 Public Recreation:**

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To provide sufficient and equitable distribution of public open space to meet the needs of residents.*
- *To ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.*

The proposed modification to Development Consent DA-64/2007 is considered to remain consistent with the objectives of the zone in that it would enable land to be used for public open space or recreational purposes.

**SP2 Infrastructure:**

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To reserve land for the provision of infrastructure.*

The proposed modification to Development Consent DA-64/2007 is considered to remain consistent with the objectives of the zone in that the proposal provides for infrastructure and related uses.

Overall, the proposed modification is considered to be consistent with the objectives of the

above mentioned zones and the proposed grid pattern road layout would resolve the rather complicated current ILP road layout, as well as facilitate an orderly and logical development of the Middleton Grange Town Centre.

#### (iv) Principal Development Standards

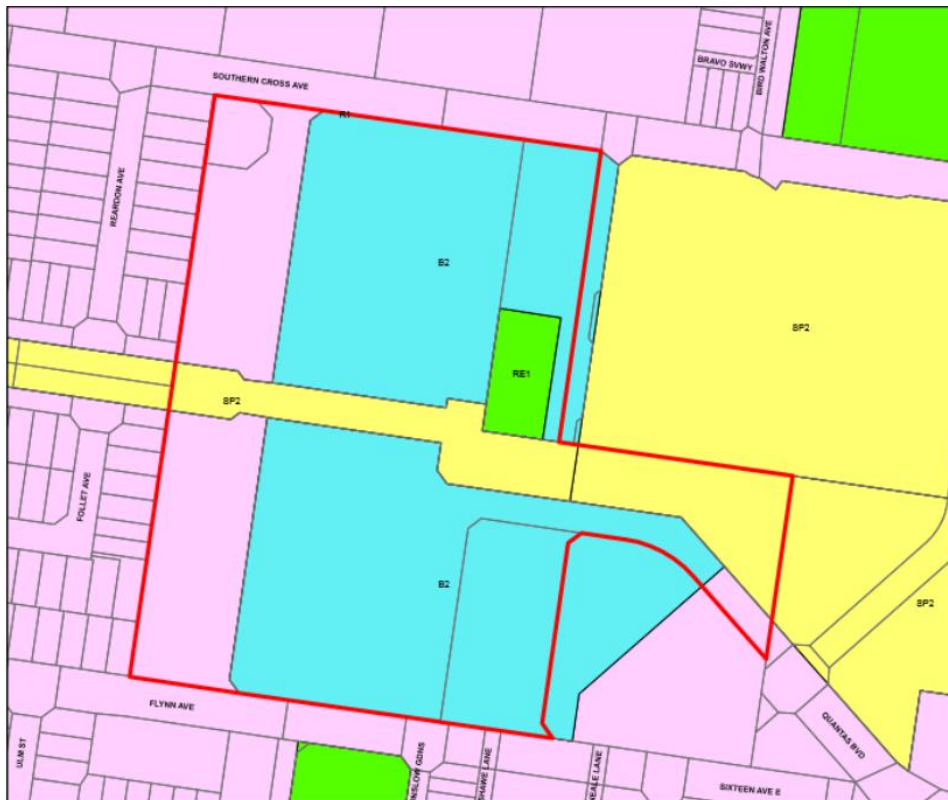
The LLEP 2008 contains a number of provisions which are relevant to the proposal. Assessment of the application against the relative provisions is provided below.

<b>LLEP 2008 - Principal Development Standards</b>		
<b>Development Provision</b>	<b>Requirement</b>	<b>Comment</b>
2.6 Subdivision	Land to which this Plan applies may be subdivided, but only with development consent.	<b>Complies</b> Development consent is sought for subdivision
4.1 Minimum Lot Size	Minimum lot size permitted: 300m <sup>2</sup> & 1000sqm	<b>Complies</b> The subdivision pattern is substantially the same as what has been previously approved, with the area from Road 10 being combined into Lot 5.
5.1A Development on land intended to be acquired for a public purpose	Limit development on certain land intended to be acquired for a public purpose as per the Land Reservation Acquisition Map	<b>Complies</b> Land to be acquired is not impacted within the proposed modification and this Clause was considered acceptable with the previous modifications.
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	<b>Complies</b> All required utilities are considered to be available to the site.
7.31 Earthworks	Council to consider matters listed (a)-(g)	<b>Complies</b> Earthworks required for subdivision and road construction.

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

### Liverpool Local Environmental Plan 2008 (Amendment 63)

A planning proposal for rezoning of Lots 1,2,3,4,5 and 6 in DP 1207518; Lot 1 in DP 1078564; and Lot 12 in DP 1108343 was lodged with Council on 15/07/2016. A Gateway determination was issued on 15/08/2016 by the Department of Planning & Environment and subsequently the planning proposal was placed on exhibition from 29/08/2018 to 26/10/2018 for public consultation. Since the planning proposal has been the subject of public consultation it is a draft planning instrument for consideration. The draft zoning map is seen in the figure below.



**Figure 7:** Land Zoning Map LLEP 2008 (Amendment 63)

Further, Council at its meeting on 25 September 2019 resolved that a grid road pattern is more appropriate for the Middleton Grange Town Centre and would alleviate the rather complicated current ILP road pattern and improve traffic movement within the town centre.

The Middleton Grange Town Centre planning proposal (Amendment 63 or RZ-9/2015), was intended to allow for higher density development within the centre. The planning proposal was recently finalised by the Department of Planning and Environment (DPE) with a limit imposed in the LEP for 671 dwellings, 72,000sqm total residential floor area and 26,000sqm non-residential ground floor area. The instrument was intended to come into effect on 1 November 2022, six months after it was finalised by the DPE. The six-month period has been granted to enable for the draft Planning Agreement and draft DCP amendment associated with this proposal to be finalised.

#### Amendment 37 – DCP Amendment

A DCP amendment (Amendment 37) in support of the above proposal has been lodged with Council and publicly exhibited together with the planning proposal. The amendment primarily intends to modify the ILP. The draft road network which was publicly exhibited is shown below in Figure 8 (right), a local road is not shown in the location of road 10. Figure 8 (left) sourced from the planning proposal Traffic Impact Assessment also shows no local road 10, but a private access road further to the east connecting to Bravo Ave. Amendment 37 has been on hold, and is subject to amendments while also pending DPE's finalisation of Amendment 63 and further refinement of the Planning Agreement.

#### Planning Agreement

The draft Planning Agreement is currently being negotiated with the proponent and will deliver the road upgrades and open space / community facilities necessary to support the uplift. Road

10 does not appear to be covered in the road works on the draft Location Plan (DCP ILP). The culvert and drainage works approved under DA-64/2007/C are referenced in the draft Planning Agreement. Clarification has been sought from Council’s contributions coordinator regarding impacts of the proposed removal of Road 10 and it was confirmed that the removal of this road would not impact on the VPA Schedule as it wasn’t considered in this document.

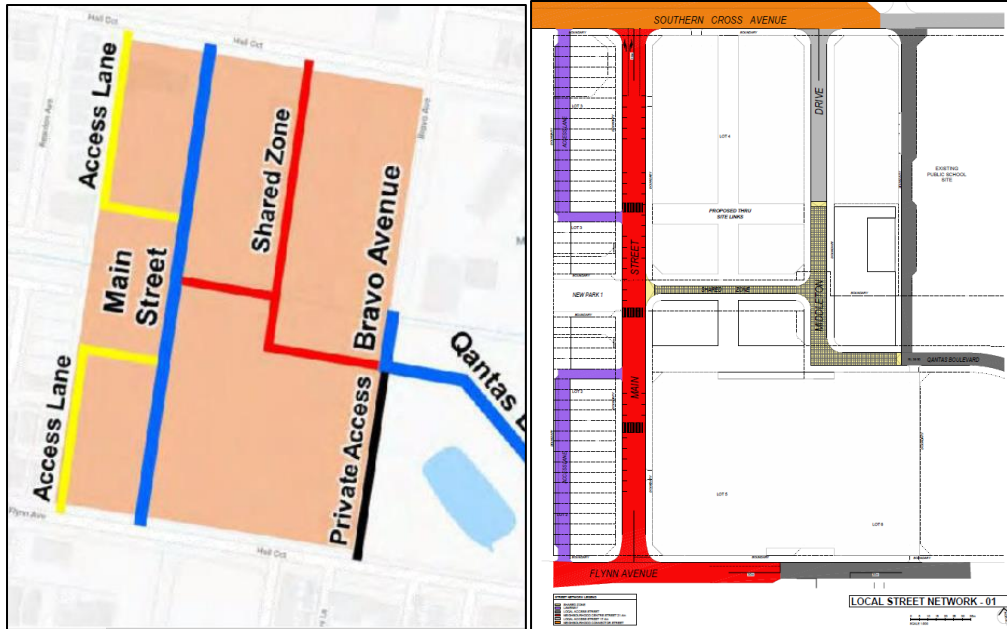


Figure 8: Traffic study mapping (Left) and Draft DCP ILP network (Right) for the roads in the MGTC

An assessment of the proposed amendment (subject of this modification application) to the road layout has been conducted against the proposed zoning in LLEP 2008 (Amendment 63). It is noted that the amended road layout aligns with the proposed land zoning map as depicted in the draft instrument (refer to Figure 7 above).

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

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

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008. The proposal 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 2.5: Land Subdivision and Development in Middleton Grange.

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008. All relevant parts of the compliance tables for the LDCP 2008 can be found below.

**Consideration of LDCP 2008, Part 1: General Controls for All Development**

Development Control	Provision	Comment	Complies
<b>Section 6. Water Cycle</b>	Stormwater runoff shall be connected to Council’s	This aspect has been reviewed by Council’s Land Development	Complies with

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## LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

Development Control	Provision	Comment	Complies
<b>Management</b>	drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	Engineer, who have raised no issues subject to conditions.	conditions
<b>Section 8. Erosion and Sediment Control</b>	Erosion and sediment control plan to be submitted.	Conditions of consent have been imposed to ensure that erosion and sediment controls measures are implemented.	Complies with conditions
<b>Section 9. Flooding Risk</b>	Provisions relating to development on flood prone land.	The site is identified as flood prone land and flooding conditions already form part of the consent which included the requirement for further studies to be submitted to Council prior to a CC.	Complies with conditions
<b>Section 10. Contaminated Land Risk</b>	Provisions relating to development on contaminated land.	As per SEPP (Resilience and Hazards) 2021 the development is considered acceptable and the site suitable for the future use of the land subject to conditions.	Complies

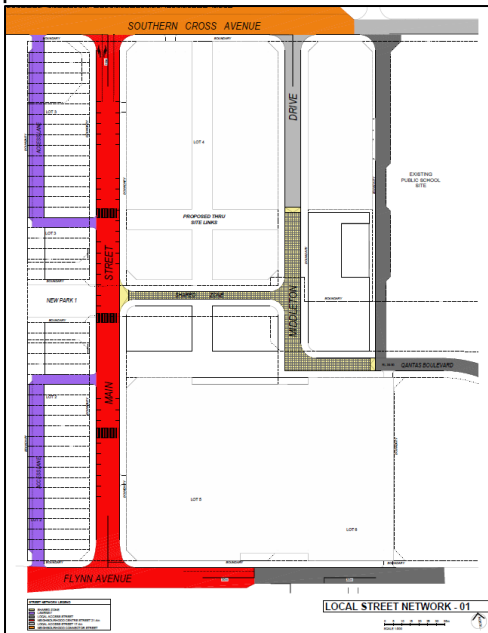
### Consideration of LDCP 2008, Part 2.5: Development in Middleton Grange

Development Control	Provision	Comment
<b>Section 2.1 Street Network</b>	The subdivision of land, design and layout of streets shall be in accordance with the indicative Layout Plan	The proposed road modification is not consistent with the road network depicted in this control of the Liverpool Development Control Plan 2008. However, it is considered that the current ILP road pattern is complicated and not conducive to good traffic flow within the town centre. It also is not considered to provide for the orderly development of the town centre. In addition, Council at its meeting of 25 September 2019 resolved to support a grid pattern road layout. This is also being reflected in an amendment to the DCP (Amendment 37) to support Amendment 63 to the LEP. The proposed modification was supported by a Traffic Impact Assessment and supporting SIDRA analysis and the proposed removal of road 10 has been considered to be acceptable by Council's Traffic Management Section.

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

A draft Planning Agreement is currently being negotiated with the proponent and will deliver the road upgrades and open space / community facilities necessary to support the uplift sought

under the planning proposal. Road 10 is not covered in the road works on the draft road layout plan from the amended DCP as seen below.



**Figure 9:** Draft Road layout plan in DCP

The culvert and drainage works approved under DA-64/2007/C are referenced in the draft Planning Agreement. Clarification has been sought from Council’s contributions coordinator regarding impacts of the proposed removal of Road 10 and it was confirmed that the removal of this road would not impact on the VPA Schedule as it wasn’t considered in this document.

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

The proposed modification is considered to be consistent with the provisions of the Environmental Planning and Assessment Regulation 2021.

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

**(a) The Likely Impacts of the Development on the Natural Environment**

The proposal is unlikely to have any adverse impacts on the natural environment. Stormwater and flooding issues have been appropriately addressed in this application.

**(b) The Likely Impacts of the Development on the Built Environment**

The impacts of the development on the built environment have been assessed and the development is considered to be acceptable and unlikely to cause any adverse impact to the built environment. Future development applications for development in the town centre will be required to be assessed and their impacts appropriately considered.

**(c) The Likely Social Impacts of the Development in the Locality**

The proposal is unlikely to have any negative social impact on the locality. The facilitating works for the development of the town centre will have positive social impacts as a town centre is clearly needed to serve the day to day needs of the Middleton Grange community.



**(d) The Likely Economic Impacts of the Development in the Locality**

Economic benefits will result from the continued development of infrastructure and building with the development of the Middleton Grange Town Centre. The development will provide wider community benefits to the area including employment generation and growth in the building and service industries. The proposal is unlikely to result in any detrimental economic impacts.

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

The development is considered to be consistent with the Generic Plan of Management for Parks 2007, which Council’s Community Planning Section have confirmed is the relevant plan of management for the Council owned land being Lot 102 DP 112811, which is classified as community land. This modification is not proposing works which impact on the Council owned land, however it is noted this land is set aside as a public reserve known as Lascondor Park, which would likely be developed concurrently with the Middleton Grange Town Centre and this is deemed to be a coherent use with this plan. The development as a whole as previously approved and as proposed to be modified, is considered suitable for the whole site, including the Council owned land.

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

**(a) Internal Referrals**

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

<b>Department</b>	<b>Comments</b>
Land Development Engineer	Modifications acceptable.
Traffic Engineer	Modifications considered acceptable.
Strategic Planning	Background provided to planning proposals and draft DCP and advised regarding consistency with documents

**(b) External Referrals**

No external referrals were required for the proposed modification.

**(c) Community Consultation**

The application was notified from 25 February until 14 March 2022 in accordance with the provisions of the Liverpool Community Participation Plan 2019. No submissions were received during this period.

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

The development is consistent with the objectives of the relevant zones and is generally compliant and considered acceptable with the relevant planning provisions and controls contained under the SEPPs, LLEP 2008. As such the proposal is considered to be within the public interest.

**7. CONCLUSION**

Having regard to the provisions of Section 4.15 and Section 4.55(2) of the Environmental

Planning and Assessment Act 1979, it is considered that the application has sufficiently demonstrated that the proposed modified development is substantially the same development as that originally approved. In addition, the proposed modified development has planning merit.

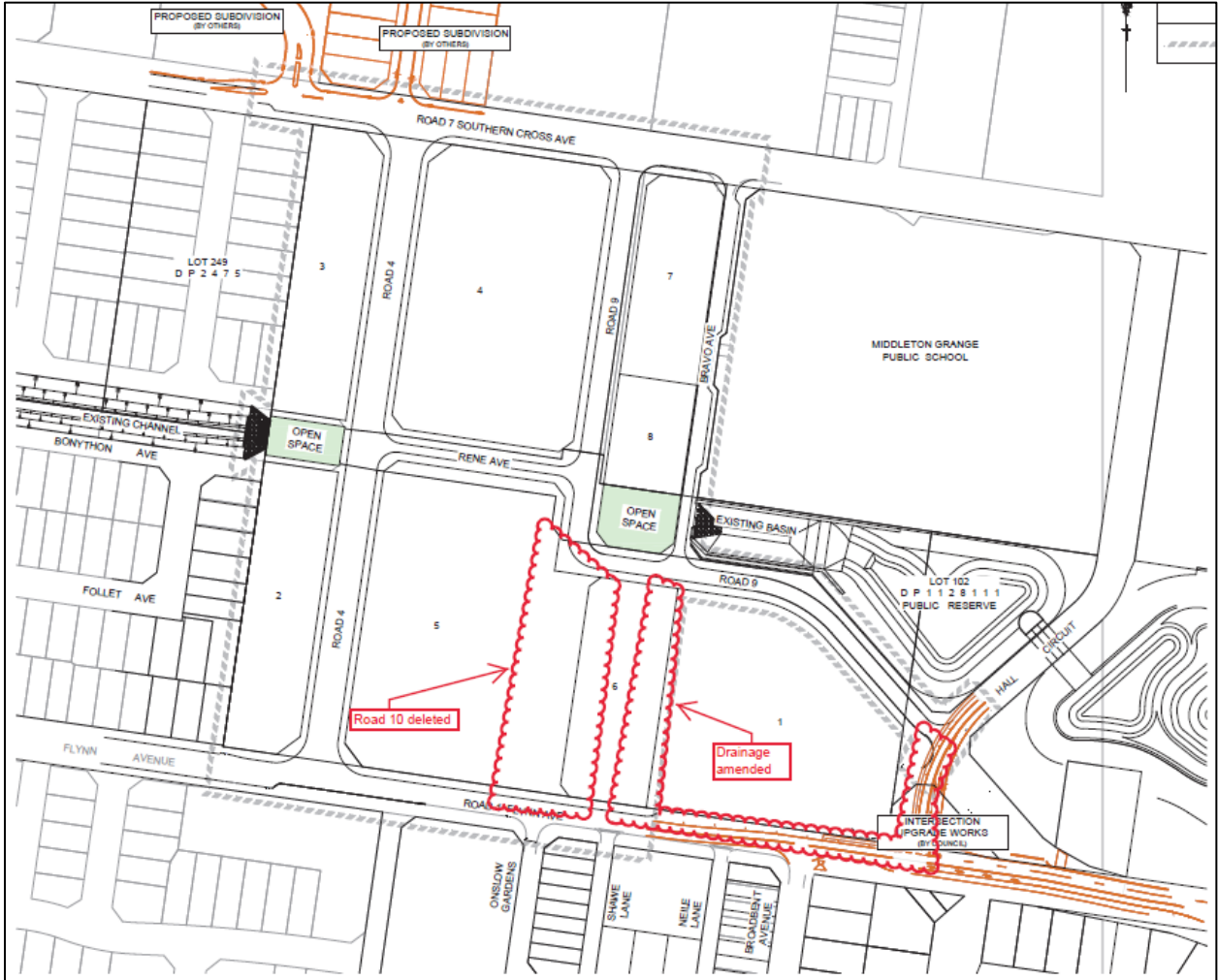
**8. RECOMMENDATION**

That the modification application DA-64/2007/D be approved subject to the modified conditions of consent.

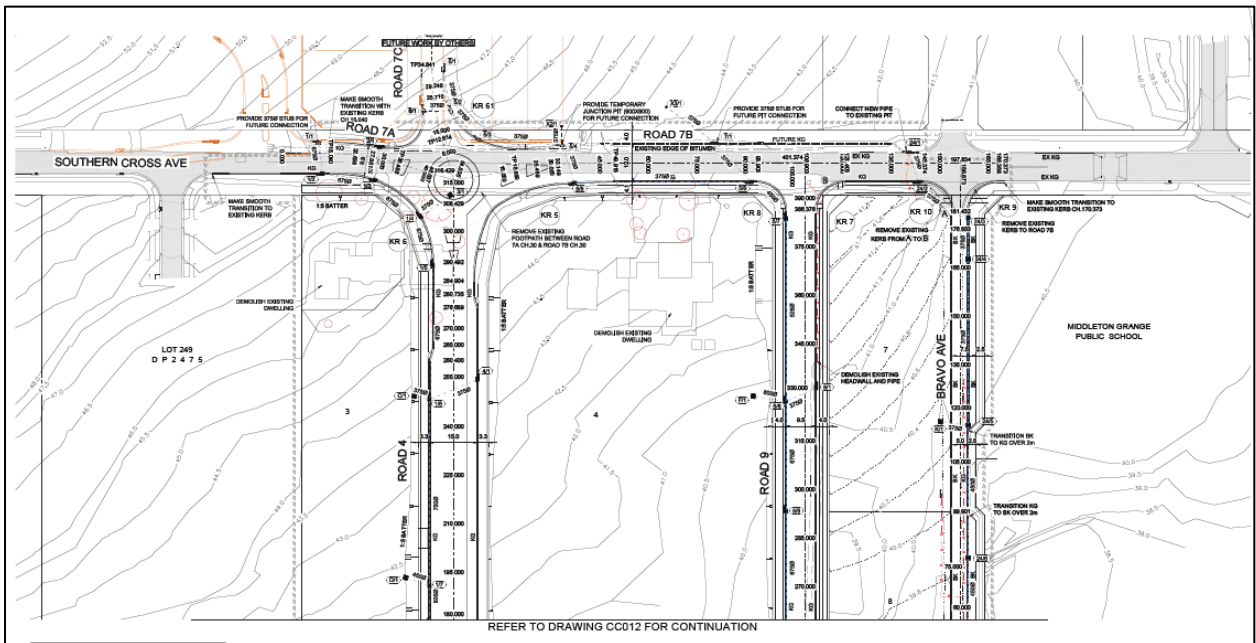
**9. REPORT ATTACHMENTS**

- 1. PLANS OF THE PROPOSAL**
- 2. MODIFIED CONDITIONS OF CONSENT**

# REPORT ATTACHMENT 1 – PLANS OF THE PROPOSAL



Overall Site Plan

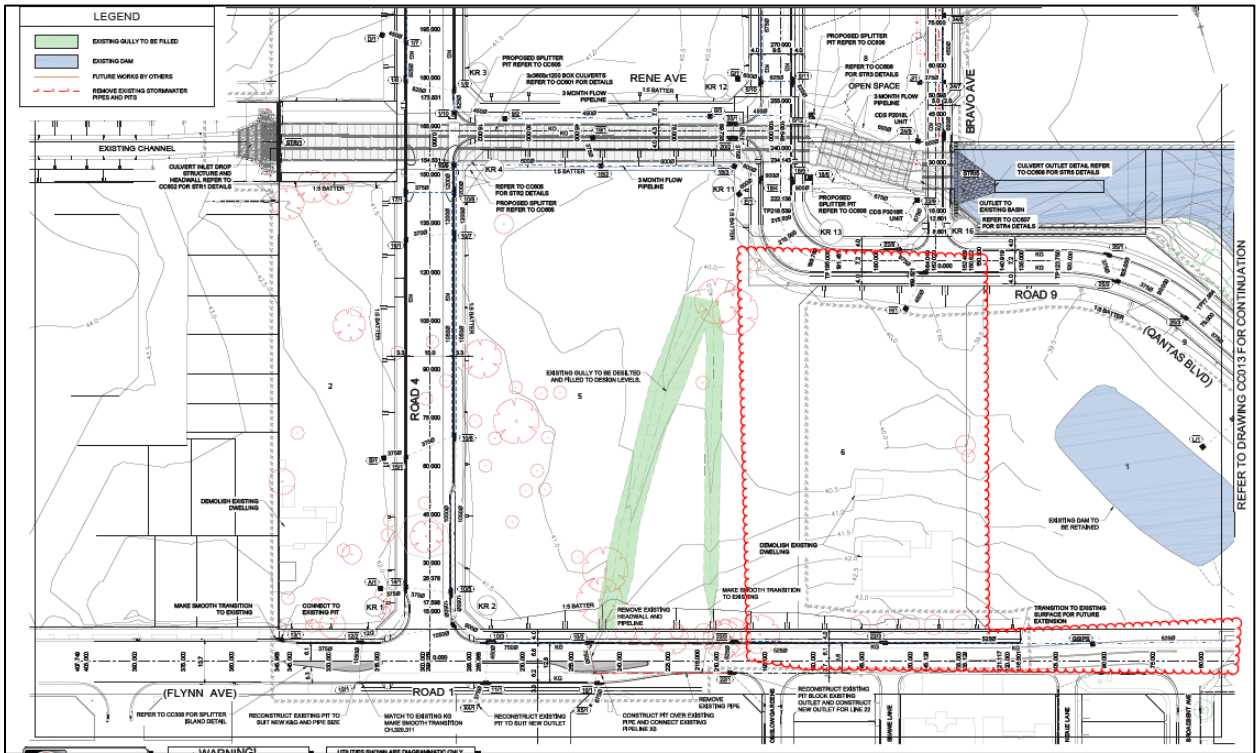


Engineering Plan 1

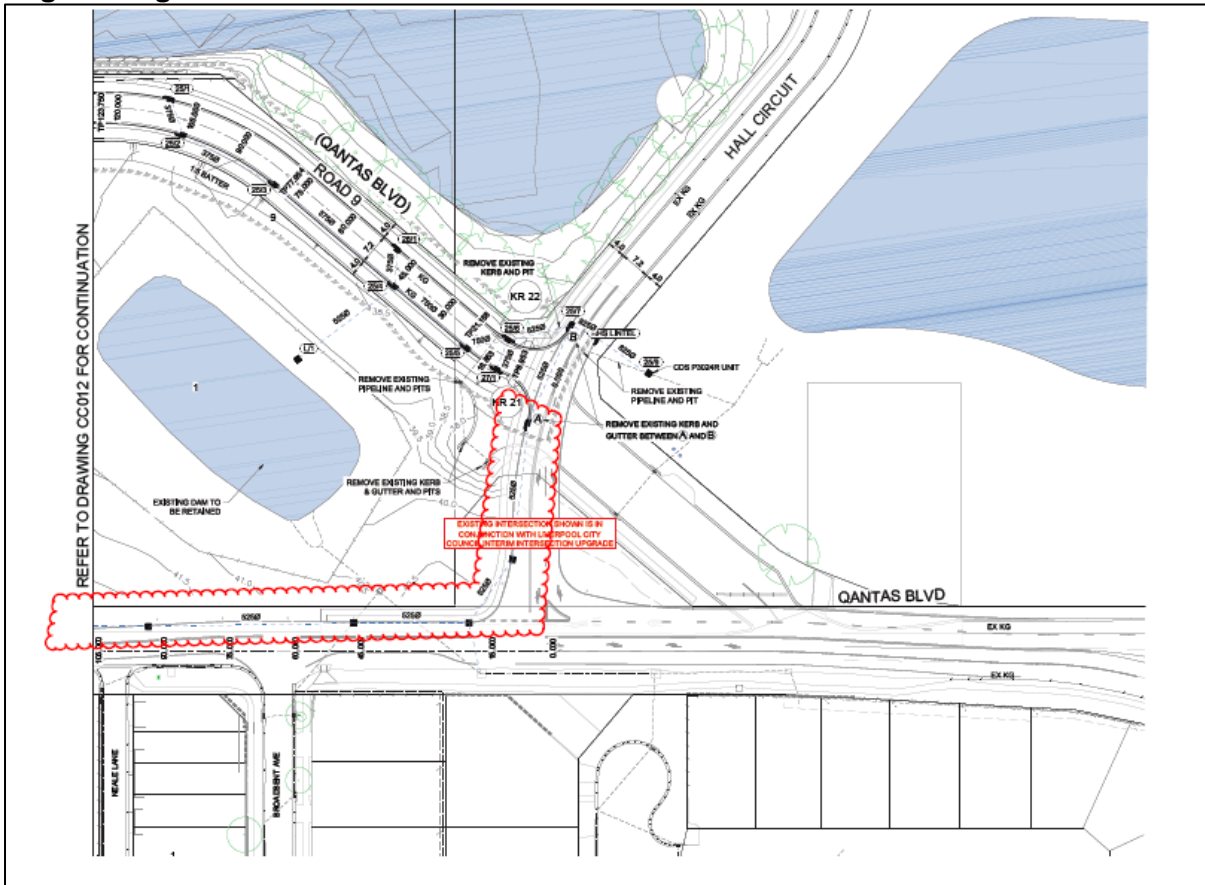
# LIVERPOOL CITY COUNCIL

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**Engineering Plan 2**

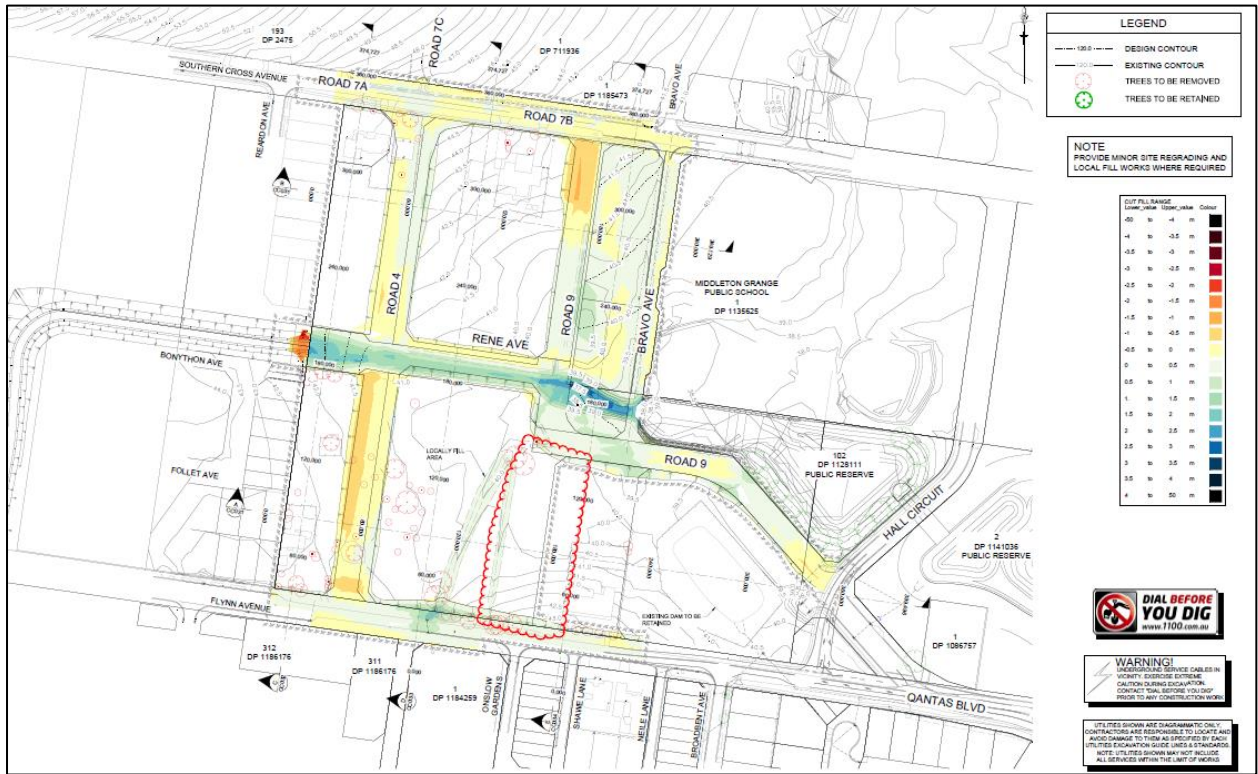


**Engineering Plan 3**

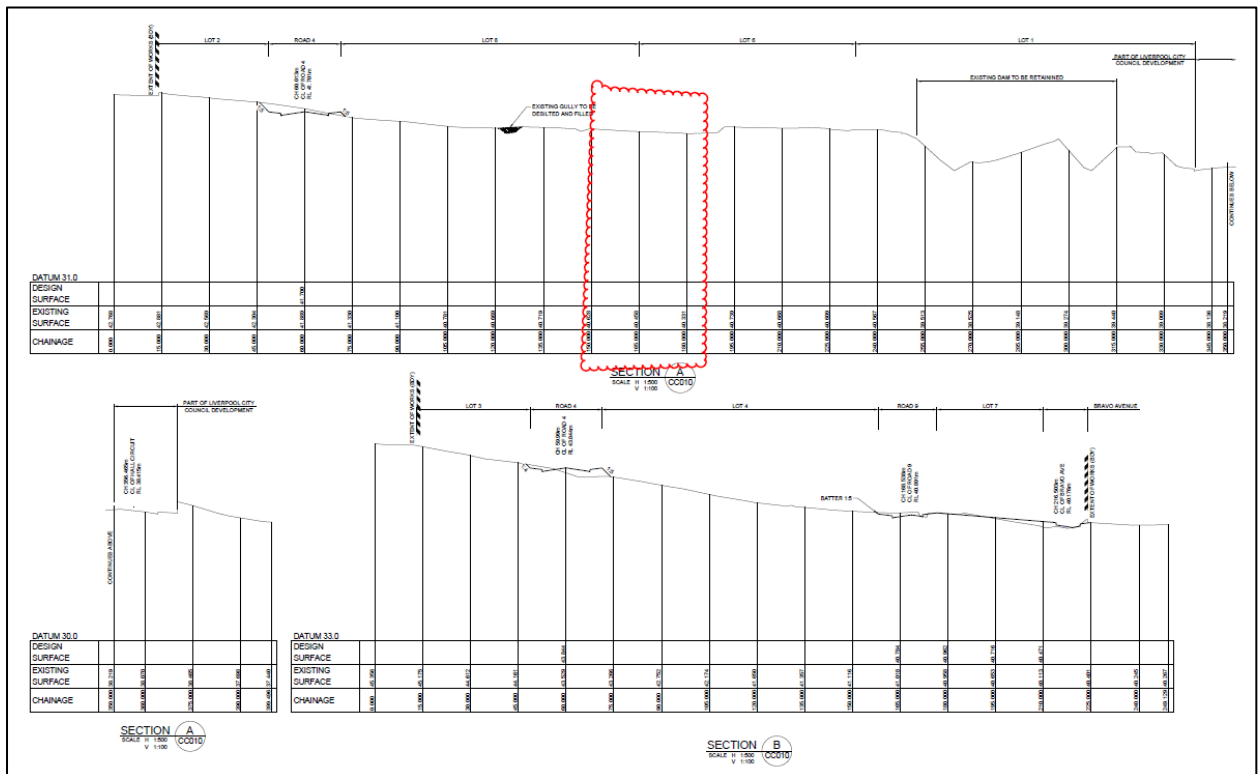
# LIVERPOOL CITY COUNCIL

## LOCAL PLANNING PANEL REPORT

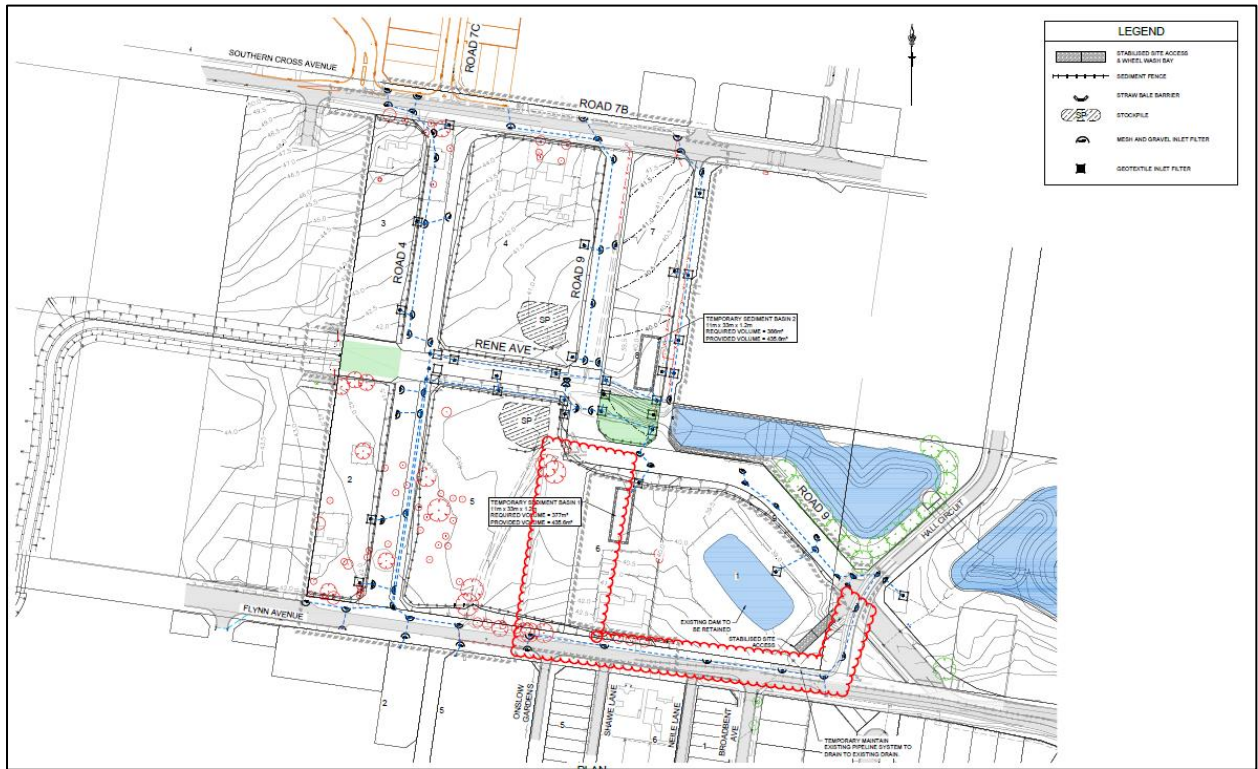
28<sup>th</sup> November 2022



**Cut & Fill Plan**



**Site Section with modified area**



Soil & Water Management Plan

## **REPORT ATTACHMENT 2 – MODIFIED CONDITIONS OF CONSENT**

### **SECTION 4.55(2) MODIFICATION OF DEVELOPMENT CONSENT**

(In accordance with the provisions under Section 4.55 of the *EP&A Act 1979*)

- ADDRESS:** Lot 3 Seventeenth Ave East, Middleton Grange (Lot 3 DP 1207518); Lot 4 Seventeenth Ave East, Middleton Grange (Lot 4 DP 1207518); 60 Hall Circuit, Middleton Grange (Lot 12 DP 1108343); Lot 2 Flynn Avenue, Middleton Grange (Lot 2 DP 1207518); Lot 5 Sixteenth Ave East, Middleton Grange (Lot 5 DP 1207518); Lot 6 Sixteenth Ave East, Middleton Grange (Lot 6 DP 1207518); Lot 1 Seventeenth Ave East, Middleton Grange (Lot 1 DP 1078564); and Lot 102 Sixteenth Ave East, Middleton Grange (Lot 102 DP 1128111)
- DESCRIPTION:** Modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment Act 1979. The changes are as follows:
- Delete Road 10.
  - Amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property.

Reference is made to Modification Application DA-64/2007/D which seeks amendment to DA-64/2007 issued for *Subdivision of existing lots into eight (8) Torrens title lots, four (4) public reserve lots, three (3) residue lots and associated roads and drainage works.*

Modification Application DA-64/2007/D seeks consent to:

- Delete Road 10; and
- Amend existing stormwater drains to run along Flynn Avenue instead of through the middle of the subject site and neighbouring property.

Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Council grants approval for the modifications sought. Accordingly, Development Consent DA-64/2007 has been amended as follows:

- 1. Condition 1.1 of Development Consent DA-64/2007 has been amended to read as follows (deletion struck through and new wording in bold and *italic*):**

#### **General Conditions**

- 1.1 Development must be carried out generally in accordance with the following plans, ***except where modified by the undermentioned conditions:***
- a) ~~Plan Nos:9979/DA02 to DA-9979/DA05, revision G, dated 20/12/19, prepared by J. Wyndham Prince~~
  - b) ~~Plan No:9979/DA05A, revision D, dated 20/12/19, prepared by J. Wyndham Prince~~
  - c) ~~Plan Nos:9979/DA06 to DA-9979/DA14, revision G, dated 20/12/19, prepared by J. Wyndham Prince~~
  - d) ~~Plan No:9979/DA15, revision C, dated 20/12/19, prepared by J. Wyndham Prince~~

## a) Plans prepared by J Wyndham Prince, including the following

<b>Title</b>	<b>Plan No.</b>	<b>Revision</b>	<b>Date</b>
<b>Overall Site Plan</b>	<b>9979/DA02</b>	<b>H</b>	<b>14/10/21</b>
<b>Typical Road Cross Sections Sheet 1</b>	<b>9979-04-CC008</b>	<b>C</b>	<b>28/09/21</b>
<b>Typical Road Cross Sections Sheet 2</b>	<b>9979-04-CC009</b>	<b>B</b>	<b>28/09/21</b>
<b>Cut and Fill Plan</b>	<b>9979-04-CC010</b>	<b>C</b>	<b>28/09/21</b>
<b>Engineering Plan Sheet 1</b>	<b>9979-04-CC011</b>	<b>C</b>	<b>28/09/21</b>
<b>Engineering Plan Sheet 2</b>	<b>9979-04-CC012</b>	<b>D</b>	<b>28/09/21</b>
<b>Engineering Plan Sheet 3</b>	<b>9979-04-CC013</b>	<b>D</b>	<b>28/09/21</b>
<b>Site Sections Sheet 1</b>	<b>9979-04-CC031</b>	<b>C</b>	<b>28/09/21</b>
<b>Site Sections Sheet 2</b>	<b>9979-04-CC032</b>	<b>C</b>	<b>28/09/21</b>
<b>Site Sections Sheet 3</b>	<b>9979-04-CC033</b>	<b>C</b>	<b>28/09/21</b>
<b>Site Sections Sheet 4</b>	<b>9979-04-CC034</b>	<b>C</b>	<b>28/09/21</b>
<b>Road Long Sections Sheet 1</b>	<b>9979-04-CC101</b>	<b>C</b>	<b>28/09/21</b>
<b>Road Long Sections Sheet 2</b>	<b>9979-04-CC102</b>	<b>C</b>	<b>28/09/21</b>
<b>Road Long Sections Sheet 3</b>	<b>9979-04-CC103</b>	<b>C</b>	<b>28/09/21</b>
<b>Road Long Sections Sheet 4</b>	<b>9979-04-CC104</b>	<b>C</b>	<b>28/09/21</b>
<b>Soil and Water Management Plan</b>	<b>9979-04-CC700</b>	<b>C</b>	<b>28/09/21</b>
<b>Soil and Water Management Notes and Details</b>	<b>9979-04-CC700</b>	<b>C</b>	<b>28/09/21</b>

All other conditions of Development Consent DA-64/2007 and Modification Applications DA-64/2007/A and DA-64/2007/C remain unchanged.

**Note:** This determination notice is strictly for changes sought under Modification Application DA-64/2007/D. No approval is granted or implied for any other works / changes proposed to the submitted development.

**ADVISORY NOTES:**

- (a) Section 8.2 of the EP&A Act provides that an applicant may request that Council review the determination of the Modification Application (this does not relate to designated development or Crown development).

Section 244 of the EP&A Regulations provides that an application for review must be submitted within 28 days of the date of the determination, and Section 8.2 of the EP&A Act provides that an application cannot be reviewed/determined after 6 months of the date of determination.

- (b) Section 8.9 of the EP&A Act provides that an applicant who is dissatisfied with the determination of a Modification 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.
- (c) The Section 4.55 Modification Application does not extend the timeframe of the Development Consent initially granted by Council.
- (d) Modification of the Development Consent does not remove the need to obtain any other statutory consent necessary under the EP&A Act.



# LIVERPOOL CITY COUNCIL

## LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

<b>Item no:</b>	3
<b>Application Number:</b>	DA-973/2022
<b>Proposed Development:</b>	Demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula.
<b>Property Address</b>	87-93 Box Road, Casula
<b>Legal Description:</b>	Lot 201 DP 701551,SP 83076 and Lot 21 DP 1000072
<b>Applicant:</b>	Urban Living Designs Pty Ltd
<b>Land Owner/s:</b>	Marvine (NSW) Pty Ltd; Liverpool City Council & The Owners - Strata Plan No 83076
<b>Date Lodged:</b>	16 September 2022
<b>Cost of Works:</b>	\$1,748,850
<b>Zoning:</b>	R3 – Medium Density Residential & RE1 – Public Recreation under Liverpool Local Environmental Plan 2008
<b>Recommendation:</b>	Approval, subject to conditions of consent
<b>Assessing Officer:</b>	Robert Micallef

### 3. EXECUTIVE SUMMARY

Council has received a Development Application (DA-973/2022) seeking consent for the demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula, on a site legally known as Lot 201 DP 701551 and formally known as 87 Box Road, Casula.

In order to dispose of stormwater in a suitable manner, the development application also involves the creation of an easement to drain water over two adjoining sites to the south before connecting to the stormwater system within the Hume Highway. The two lots requiring easements are 91 Box Road, Casula (SP 83076) which is privately owned and 93 Box Road, Casula (Lot 21 DP 1000072), which is land that is owned by Liverpool City Council. Deeds of agreement in relation to the creation of the easement have been entered into with the owners for both properties and adjoining landowners consent has been provided.

The site is zoned R3 Medium Density Residential pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008) and 93 Box Road, land subject to a stormwater easement is zoned RE1 – Public Recreation and the proposed development is permissible with consent.

The proposed development is generally consistent with the objectives and development standards of the LLEP 2008 and the provisions of the Liverpool Development Control Plan 2008 (LDCP 2008). The key issues associated with the proposal relate to the stormwater disposal with the associated landowners' agreements and mitigation of visual privacy impacts. Additionally, a Clause 4.6 Variation has been provided in regard to compliance with a non-discretionary development standard for dwelling sizes under State Environmental Planning

Policy (Housing) 2021 (Housing SEPP 2021). These matters have been addressed through the assessment of the application and the proposal is considered to be acceptable.

The proposed development was originally lodged under DA-725/2021 and was subject to the savings provisions of the Housing SEPP 2021, in that the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 were to be utilised for assessment. That previous application was to be presented to the September 2022 Liverpool Local Planning Panel meeting with a recommendation for approval, subject to conditions of consent, however, it was noted late in the assessment that there was a deficiency with the statutory declaration made as part of the originally submitted development application form with regards to landowners consent; as the properties at 91 and 93 Box Road, Casula were not nominated at the time of submission. It should be noted that the applicant had entered into deeds of agreement with the relevant adjoining owners for the stormwater easements over these properties, but a statutory declaration and the development application form cannot be amended retrospectively. Accordingly, the application was not deemed to be complete due to the deficient owners' consent declaration and the applicant withdrew that previous application.

The subject development application was lodged shortly after the withdrawal for the same proposal, however the proposal no longer benefits from the savings provisions under the Housing SEPP 2021 and thus, the requirements of the Housing SEPP 2021 apply to this application. Resultantly the proposed development is supported by a Clause 4.6 Variation to one of the non-discretionary development standards that it previously was compliant with under the SEPP ARH 2009. The variation is considered acceptable in this case, especially given this unique sequence of events.

The Development Application was notified between 26 September and 11 October 2022 in accordance with Liverpool Community Participation Plan 2019. One objection was received in response to the exhibition period, which raised the following concerns:

- Traffic impacts and safety in the street and general area;
- Insufficient parking within the development causing additional on-street parking, which will increase hazards to pedestrians and traffic;
- Noise;
- Headlights shining into windows;
- Increased air pollution and health concerns;
- High turnover of occupants when dwellings are leased out and occupant type with criminals;
- Privacy issues with people looking into property from across the road;
- Dumping of rubbish on kerb and in front of properties in street; and
- Damage to property from occupants of new development and crime.

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:

***Conflict of interest***

*Development for which the applicant or land owner is:*

*(b) the council*

*and*

***Departure from Development Standards***

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

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

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The site

The primary subject land for this application is known as 87 Box Road, Casula, legally described as Lot 201 DP 701551. The site is 1670.8sqm in area with a frontage width of 34m to Box Road and a lot depth of 49.14m. The site is currently occupied by a two-storey dwelling with several trees found on the property. The site has a fall from the west to the south-east corner of the site of approximately 1.7-2 metres.

Land to the south of the site, 91 Box Road, Casula (SP 83076 on Lot 20 DP 1000072) which is privately owned and 93 Box Road, Casula (Lot 21 DP 1000072), which is land that is owned by Liverpool City Council, would also be subject to the proposed development as there is to be a stormwater easement to traverse the sites along the eastern boundary. 91 Box Road current has a multi dwelling housing development situated on the site and 93 Box Road is classified as a public reserve under the ownership of Council.

The location of the site can be seen in the aerial view in the Figure below, outlined in red. The two lots subject to the stormwater easement are also outlined in blue.



**Figure 1:** Aerial view of subject site (red) and sites an easement will traverse (blue) (Source: Geocortex)

**2.2 The locality**

The area is characterised by a mix of business uses and low density and medium density residential development. The general locality is currently and predominantly characterised by residential uses, with some business uses along the Hume Highway.

The Hume Highway is a major state arterial road. The Casula Crossroads Homemaker Centre and Crossroads Hotel is located approximately 300m to the south-west, a number of hotels along the Hume Highway to the west and 150m east is the Casula Central business centre. The major junction of Camden Valley Way with the M5 and M7 Motorways is located 1.1 kilometres to the west. The locality of the site is demonstrated within Figure 2.



**Figure 2:** Locality Surrounding the Proposed Development (Source: Geocortex)

**3. BACKGROUND/HISTORY**

**3.1 Site Background & History**

DA No.	Proposed Development	Determination
DA-368/2017	Construction of nine townhouses. 3x2 bed, 4x3 bed, 2x4 bed double storey dwellings including strata subdivision pursuant to the Affordable Housing SEPP 2009	Withdrawn
DA-725/2021	Demolition of existing structures and the construction of a multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.	Withdrawn
DA-973/2022	<i>Demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 &amp; 93 Box Road, Casula.</i>	<i>Subject Application</i>

#### 4. DETAILS OF THE PROPOSAL

##### Site Works

- Demolition of existing structures.
- Removal of 10 trees and retention of 1 tree.
- Driveways and open parking areas.
- Landscaping and associated civil works.
- Drainage Easement over 91 & 93 Box Road, Casula.
- Strata subdivision.

##### Multi Dwelling Development – 9 Double Storey Units

###### Unit 1

**Ground Floor** – Kitchen, meals, lounge, laundry, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press.

###### Unit 2

**Ground Floor** – Kitchen, meals, lounge, laundry space, water closet, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area.

###### Unit 3

**Ground Floor** – Kitchen, meals, lounge, laundry space, water closet, under stair storage, single garage.

**First Floor** – 2 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area, retreat space.

###### Unit 4

**Ground Floor** – Kitchen, meals, lounge, laundry space, water closet, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area.

###### Unit 5 (Affordable Housing)

**Ground Floor** – Kitchen, meals, lounge, laundry, under stair storage, single garage.

**First Floor** – 2 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area.

###### Unit 6

**Ground Floor** – Kitchen, meals, lounge, laundry, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press.

**Unit 7**

**Ground Floor** – Kitchen, meals, lounge, laundry space, water closet, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area.

**Unit 8**

**Ground Floor** – Kitchen, meals, lounge, laundry space, water closet, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite and walk in robe), bathroom, linen press, study area.

**Unit 9 (Affordable Housing)**

**Ground Floor** – Kitchen, meals, lounge, laundry, water closet, under stair storage, single garage.

**First Floor** – 3 bedrooms (one with ensuite) bathroom, linen press, retreat space.

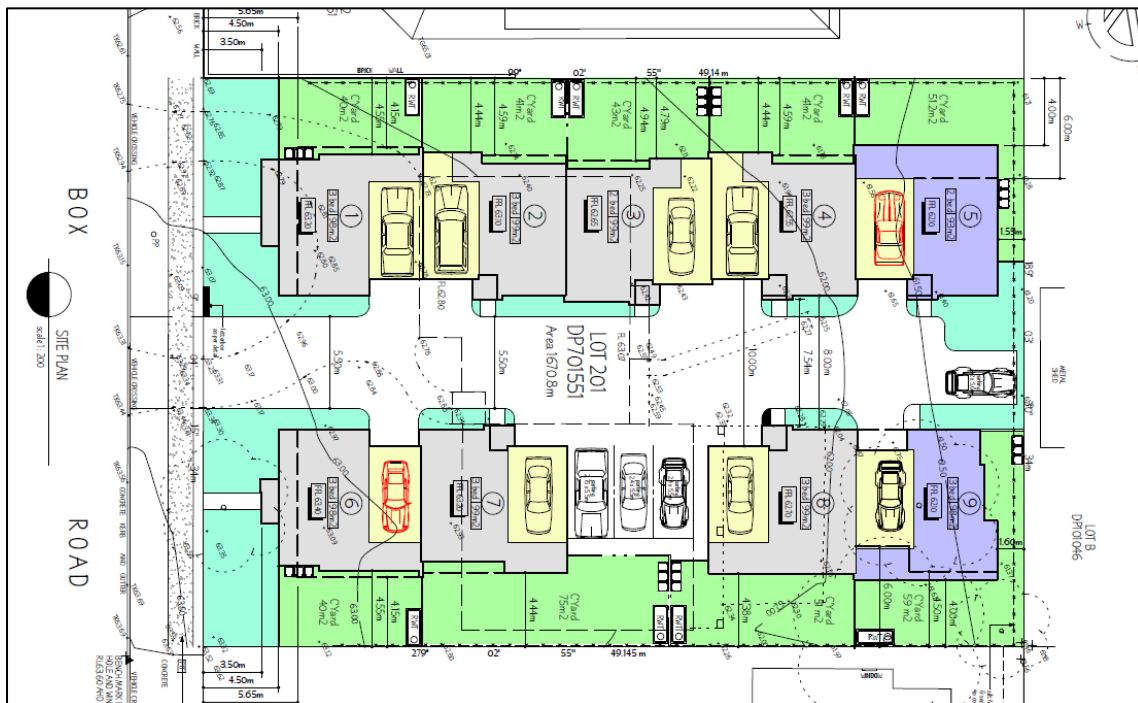


Figure 3: Proposed site plan

**5. STATUTORY CONSIDERATIONS**

**5.1 Relevant matters for consideration**

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

**Environmental Planning Instruments (EPI's)**

- j) State Environmental Planning Policy (Housing) 2021;

- k) State Environmental Planning Policy (Transport and Infrastructure) 2021;
- l) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- m) State Environmental Planning Policy (Resilience and Hazards) 2021;
- n) State Environmental Planning Policy (Biodiversity and Conservation) 2021; and
- o) Liverpool Local Environmental Plan 2008.

#### Development Control Plan

- p) Liverpool Development Control Plan 2008;
  - Part 1: General Controls for All Development; and
  - Part 3.6: Multi Dwelling Housing (Terraces, Townhouses and Villas) in the R3 and R4 Zones

#### Contributions Plans

- Liverpool Contributions Plan 2018 - Established Areas applies pursuant to Section 7.11 of the EPA & Act.

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

#### **(a) State Environmental Planning Policy (Housing) 2021**

The general savings and transitional provisions under Schedule 7A under the State Environmental Planning Policy (Housing) 2021 state that this Policy does not apply to the following:

1. *This Policy does not apply to the following matters—*
  - (a) *a development application made, but not yet determined, on or before the commencement date,*

The previous application DA-725/2021 was captured by the savings provisions of the Housing SEPP being lodged on 29 June 2021 and thus the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 were used and complied with. However, due to the commencement date of this SEPP being 26 November 2021 and the lodgement date of this development application being 16 September 2022, upon the withdrawal of the previous DA, the requirements of Housing SEPP 2021 now apply to this newly lodged application.

The following table assessment has been provided in regards to the Housing SEPP 2021:

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State Environmental Planning Policy (Housing) 2021																									
Division 1 In-fill affordable housing																									
Provision	Requirement	Proposed	Comment																						
<b>16</b> <b>Development to which Division applies</b>	Division applies to residential development if: - development permitted with consent under another EPI, and - the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20% - for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area	The proposed development is for 'multi dwelling' housing which is permissible in the R3 zone pursuant to the LLEP 2008.  The percentage of the GFA of the development is 21.2%.  The subject site is located approximately 150m from the nearest bus stop along the Hume Highway which is serviced by the 872 bus service. This bus service provides frequent services, which are in excess of the amount of services required to deem the site as being within an accessible area.	Complies																						
<b>17</b> <b>Floor space Ratio</b>	(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of— (a) if the maximum permissible floor space ratio is 2.5:1 or less— (i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing— 0.5:1, or (ii) if less than 50% of the gross floor area of the building will be used for affordable housing— Y:1, where— AH is the percentage of the gross floor area of the building that is used for affordable housing. Y= AH ÷ 100	<table border="1"> <thead> <tr> <th>Dwelling</th> <th>GFA (m<sup>2</sup>)</th> </tr> </thead> <tbody> <tr><td>1</td><td>97.5</td></tr> <tr><td>2</td><td>99.7</td></tr> <tr><td>3</td><td>99.7</td></tr> <tr><td>4</td><td>99.7</td></tr> <tr><td>5*</td><td>92.75</td></tr> <tr><td>6</td><td>97.5</td></tr> <tr><td>7</td><td>99.6</td></tr> <tr><td>8</td><td>106</td></tr> <tr><td>9*</td><td>97.7</td></tr> <tr><td><b>Total GFA</b></td><td><b>890.15</b></td></tr> </tbody> </table>	Dwelling	GFA (m <sup>2</sup> )	1	97.5	2	99.7	3	99.7	4	99.7	5*	92.75	6	97.5	7	99.6	8	106	9*	97.7	<b>Total GFA</b>	<b>890.15</b>	Complies
		Dwelling	GFA (m <sup>2</sup> )																						
1	97.5																								
2	99.7																								
3	99.7																								
4	99.7																								
5*	92.75																								
6	97.5																								
7	99.6																								
8	106																								
9*	97.7																								
<b>Total GFA</b>	<b>890.15</b>																								
*Denotes affordable housing  LEP FSR maximum= 0.55:1 *AH= 21.2% (190.45/890.15) Y= 21.4/100 0.55 + (21.4/100) = 0.764:1 The permitted FSR is 0.764:1.  Site Area – 1670.8sqm Proposed FSR- 0.533:1																									
<b>18</b> <b>Non-discretionary development standards</b>	<b>2(a) Site area</b> Site area – 450sqm	Site area – 1670.8sqm	Complies																						
	<b>2(c) Landscaped area</b> Landscaped - 30% site	Landscaped area– 31.6% (528.3sqm)	Complies																						
	<b>2(d) Deep soil zones</b> Deep soil – 15% site Minimum dimension of 3m	17.7% deep soil area (394sqm) Minimum 3m dimension	Complies																						



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	If practicable, at least 65% of the deep soil zone is located at the rear of the site	All deep soil landscaping is located mostly in the rear yards with some located in the front setback.	
	<b>2(e) Solar access</b> Living rooms and POS for 70% dwellings receive 3 hours sunlight between 9am and 3pm mid-winter.	Units 1-5, 7 & 9 are able to achieve 3 hours of sunlight to at least 50% of the private open space and living areas. This is 77.7% of the development.	Complies
	<b>2(g) Parking (Non social housing provider)</b> 0.5 parking spaces- 1 bedroom dwelling 1 parking spaces- 2 bedroom dwelling 1.5 parking space- 3 or more bedrooms dwelling	7 x 3 bedroom = 7x1.5 = 10.5 2 x 2 bedroom = 2x1 = 2 12.5 spaces = 13 spaces required  13 spaces provided.	Complies
	<b>2(j) dwelling size</b> if paragraphs (h) and (i) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m <sup>2</sup> , or (ii) for each dwelling containing 2 bedrooms—90m <sup>2</sup> , or (iii) for each dwelling containing at least 3 bedrooms—115m <sup>2</sup> plus 12m <sup>2</sup> for each bedroom in addition to 3 bedrooms.	The previous application was subject to the provisions of SEPP Affordable Rental Housing 2009 and was compliant. The Housing SEPP 2021 has changed the minimum dwelling sizes by increasing them and a Clause 4.6 variation request has been provided by the applicant for this development standard.	Clause 4.6 Variation requested as discussed below (1)
<b>19 Design Requirements</b>	(1) Development consent must not be granted to development to which this Division applies unless the consent authority has considered the following, to the extent to which they are not inconsistent with this Policy— (a) the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004,	Proposed development is consistent with this standard as assessed against guidelines in discussion in Report Attachment 1.	Complies
	(3) Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing	Proposed development complies with this requirement. See discussion below. (2)	Complies. See discussion below (2)

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	transition—the desired future character of the precinct.		
<b>20 Continued application of SEPP 65</b>	Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.	Noted.	N/A
<b>21 Must be used for affordable housing for at least 15 years</b>	<p>(1) Development consent must not be granted under this Division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued—</p> <p>(a) the affordable housing component of the residential development will be used for affordable housing, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p> <p>(2) Subsection (1) does not apply to development on land owned by a relevant authority or to a development application made by, or on behalf of, a public authority.</p> <p>(3) In this section— <b>affordable housing component</b>, in relation to development to which this Division applies, means the dwellings used for the purposes of affordable housing in accordance with section 16(1)(b).</p>	<p>A condition of Consent to be imposed to ensure that prior to Occupation Certificate, a restriction to be registered against the title requiring the following:</p> <p>(a) for 15 years from the date of the issue of the occupation certificate:</p> <p>i. Units 5 &amp; 9 are to be used for the purposes of affordable housing (due to 20% FSR control), and</p> <p>ii. all accommodation that is used for affordable housing will be managed by a registered community housing provider.</p>	Complies by condition
<b>22 Subdivision</b>	Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority	Strata subdivision proposed as part of application.	N/A

**(1) – Clause 4.6 Variation for Clause 18(2)(j) relating to minimum dwelling size**

Clause 18(2)(j) of the State Environmental Planning Policy (Housing) 2021 states;

- (j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—
  - (i) for each dwelling containing 1 bedroom—65m<sup>2</sup>, or
  - (ii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>, or
  - (iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each

*bedroom in addition to 3 bedrooms.*

For context, Clauses 18(2)(h) and (i) are provided below and as the proposed development does not fall under these categories, Clause (j) applies.

- (h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,*
- (i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,*

Clause 18(j) of the Housing SEPP 2021 is a non-discretionary development standard under the meaning of Section 4.15 of the Environmental Planning and Assessment Act 1979. Clauses (2) and (3) of Section 4.15 specify the following:

- (2) Compliance with non-discretionary development standards—development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority—*
  - (a) is not entitled to take those standards into further consideration in determining the development application, and*
  - (b) must not refuse the application on the ground that the development does not comply with those standards, and*
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under this section and section 4.16 is limited accordingly.*
- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—*
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and*
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.*

Under the provisions of Clause (3)(b) a provision of an EPI allowing flexibility to the application of a development standard may be applied to the non-discretionary development standard. As such, through the provisions of Clause 4.6 of the Liverpool LEP 2008, a variation is able to be considered for the non-compliance with this development standard, in which a written request has been provided by the applicant seeking a variation for the consent authority to consider.

The subject proposal seeks a variation to the minimum dwelling size requirements contained in the Housing SEPP 2021, in particular to the seven three-bedroom dwellings. As stated in the Housing SEPP 2021 table above, the minimum dwelling size for a three-bedroom dwelling is 115sqm. It is also noted that the previous provisions of the SEPP (Affordable Rental Housing) 2009 only specified a 90sqm requirement for a three-bedroom dwelling, in which the previous application, DA-725/2021 was in compliance with.

Proposed Units 1, 2, 4, 6, 7, 8 and 9 are all three-bedroom apartments with sizes below 115sqm, when calculated based on the definition of gross floor area (It is noted that the applicant has used different floor space calculations). A table of these units and their respective

variations are indicated below.

Dwelling	GFA (m <sup>2</sup> )	Variation (m <sup>2</sup> )	Variation (%)
1	97.5	17.5	15.2%
2	99.7	15.3	13.3%
3	99.7	-	-
4	99.7	15.3	13.3%
5	92.75	-	-
6	97.5	17.5	15.2%
7	99.6	15.4	13.4%
8	106	9	7.8%
9	97.7	17.3	15%

Consequently, pursuant to Clause 4.6 of the LLEP 2008 the applicant has submitted a written request seeking a variation to the minimum dwelling size development standard as prescribed by Clause 18(2)(j) of Housing SEPP 2021.

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

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

Clause 4.6(3) prescribes:

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

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

**Written request addressing why compliance with the development standard(s) is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify contravening of the development standard(s)**

The applicant submitted a Clause 4.6 Variation Statement to this development standard, dated October 2022, in order to justify the variation described above. In conjunction with an examination of the five part test applied by the NSW Land and Environment Court, this document provides the following justifications based on the merits of the proposal:

**(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

*A variation is sought to Clause 18(j) of State Environmental Planning Policy (Housing) 2021 in regard to the minimum floor areas for dwellings. Clause 18(j) specifies the following:*

- (j) *if paragraphs (h) and (i) do not apply, the following minimum floor areas—*
- (i) *for each dwelling containing 1 bedroom—65m<sup>2</sup>, or*
- (ii) *for each dwelling containing 2 bedrooms—90m<sup>2</sup>, or*

(iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.

The proposal provides 2 x 2 bedroom dwellings (Units 3 & 5) and 7 x 3 bedroom dwellings (Units 1, 2, 4, 6-9) with the following floor areas:

Unit 1: 110.8sqm

Unit 2: 112.4sqm

Unit 3: 112.4sqm

Unit 4: 112.4sqm

Unit 5: 108.6sqm

Unit 6: 110.8sqm

Unit 7: 123.6sqm

Unit 8: 120sqm

Unit 9: 111.5sqm

Five dwellings (Units 1,2, 4, 6 and 9) do not comply with the minimum floor area as required in the Housing SEPP. Clause 4.6 of the SEPP provides exceptions to development standards under any relevant environmental planning instrument and as such, a variation under Clause 4.6 is requested and detailed below.

#### **Clause 4.6 Exception to development standards**

Under Liverpool Local Environmental Plan 2008, clause 4.6 allows development consent to be granted for development even though the development would contravene a development standard imposed by LLEP 2008 or any other environmental planning instrument provided the consent authority has considered a written request demonstrating that compliance with the development is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation requested is required due to Council requesting that the previous, development application be withdrawn as owners' consent was missing for the adjoining property where a drainage easement is proposed. Instead of accepting a letter from the owner of the property providing consent and accepting the deed agreement submitted with the original development application, Council requested for the development application to be withdrawn and re-submitted with the owners' consent. The issue with this process is that the new Housing SEPPP was gazetted and is now in force meaning that the proposed development now had to comply with any changes from the old Affordable Housing SEPP to the new Housing SEPP. The one change was the minimum floor area which now means that five of the dwellings now do not comply with the minimum floor area required.

Clause 4.6 provides flexibility in the application of relevant development standards from any environmental planning instrument in order to achieve better planning outcomes from development. The proposed variation is considered to be appropriate as detailed below. Clause 4.6 (3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

The NSW Land and Environment Court has established a five part test in determining whether compliance with relevant development standards under the provisions of an environmental planning instruments is unnecessary. Below is an assessment of the proposed variation against the five part test:

**Test 1: the objectives of the standard are achieved notwithstanding non-compliance with the standard**

*Whilst there are no specific objectives for the minimum floor area requirement, there are principles of the Housing SEPP that apply:*

*(a) enabling the development of diverse housing types, including purpose-built rental housing,*

*The proposed development enables a range of housing types from the provision of two bedroom and three bedroom dwellings that are purpose-built affordable housing.*

*(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

*The proposed development will provide housing that will meet the needs of very low to moderate income households as it will be conditioned such that the dwellings are to be used at least 15 years.*

*(c) ensuring new housing development provides residents with a reasonable level of amenity,*

*The proposed dwellings will provide future occupants with acceptable levels of amenity despite the variation for the floor area given that the variation is minor and given that the size of the dwellings and internal rooms are all sufficient enough to meet the intended purpose. In addition, all other development standards within the Housing SEPP and Council's Development Control Plan have been complied with and as such overall satisfactory amenity is maintained.*

*(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

*The location of the proposal is within an accessible area with the 872 Campbelltown to Liverpool via Macquarie Fields bus available every hour with the bus stop being located within 400m of the site.*

*(e) minimising adverse climate and environmental impacts of new housing development,*

*The proposed development has been designed and located to minimise the environmental impacts of new housing development. A Basix certificate has been submitted that details how the proposed development complies with the required targets for water, thermal and energy being achieved.*

*(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

*The subject site is directly adjacent to a multi dwelling development with several multi dwelling developments in the greater locality as well as single dwellings on large lots. Box Road is an evolving streetscape which is evident in the dwellings currently existing in the street as well as the vacant land that exists on Box Road as well as within close proximity to the site. There is a mix of older type brick dwellings as well as a few dwellings that are modern in design. as shown*

*in the below photos.*

*The proposed dwellings that would front Box Road incorporate a similar pitch roof design as well as incorporating the predominant use of brick with rendered and cladded elements tie in the new style of dwellings being constructed.*

*The external colours of dwellings within the Box Road streetscape vary from whites and greys to red and sand coloured brick with there not being a predominant colour theme within the street. The external colours of the proposed multi dwelling uses greys which is a contemporary colour that is consistent with the future desired character of the area.*

*The proposed dwellings are a maximum of two storeys in height which is compatible with the built form in Box Road given that many of the existing dwellings are two storey dwellings with single storey dwellings sparsely located.*

*It is considered that the design and layout of the proposed multi dwelling development is consistent with not only the existing streetscape character of Box Road but also the future desired character and as such should be supported.*

*(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

*The proposed dwellings would be used as affordable housing for 15 years which provides 15 years of potential rental accommodation in a development that has been designed to minimise social and environmental impacts from the use. There is no evidence to suggest that the proposed development would create social impacts or environmental impacts as it would ordinarily operate as a normal multi dwelling development would. Council has processes in place that would deal with any issue that potentially could arise from the development to ensure that there would be no further adverse impacts.*

*(h) mitigating the loss of existing affordable rental housing.*

*The proposed development mitigates the loss of existing affordable rental housing by providing an excess floor area as affordable housing than the 20% that is required under Clause 16 of the Housing SEPP. Even with a variation to the minimum floor area required, there is still 21.3% of the floor area that will be provided as affordable housing.*

***Test 2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.***

*The proposed development still complies with the required overall floor area to be provided as affordable housing under Clause 16 of the Housing SEPP. Only 20% of the overall floor area proposed is required to be affordable with the proposed development provided 21.3% even with the variation to the minimum floor area of each individual dwelling. As the required area of affordable housing is still achieved overall, it is considered that compliance with the minimum floor area for each individual dwelling is not required.*

***Test 3 The underlying objective of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable***

*The proposed development does not rely on this test for approval.*

***Test 4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.***

*As the new Housing SEPP has recently been in force, there have been no consents previously granted departing from the required minimum floor area of individual dwellings. Notwithstanding, it is important to note that the proposed development did comply with the previous standard which was less than the current standard and would have been approved as such if the Council did not require the development application to be resubmitted to include owners consent of the land required for the easement. It is further important to note that there would have been many affordable housing developments approved with the less floor area prior to the implemented of the new SEPP.*

***Test 5 The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.***

*The proposed development does not rely on this test for approval.*

*Given the above, the proposal provides compliance with the development standard and is considered to unnecessary.*

#### **Council Assessment of variation proposed**

- The development was previously subject to the provisions of the Affordable Housing SEPP 2009 in which full compliance was achieved, however was that DA was withdrawn and resubmitted post implementation of the Housing SEPP 2021. This occurred due to a technicality with the development application form originally lodged. Council were supportive of this proposal and were recommending approval to the LPP, for the September 2022 meeting. If it were approved at that time by the panel, the dwelling sizes currently proposed would have been consented to onsite. Given the anomaly with the owners consent declaration, there is considered to be sufficient environmental planning grounds to justify varying the standard, as the subject dwelling designs were already supported onsite. This is the primary reason to support the variation in this case and therefore compliance is considered unnecessary. The following matters are secondary to this, but are considered worthy of mention in this report:
  - Having a smaller dwelling size, which is also above 90sqm, is unlikely to impact on the potential for each of the dwellings to provide a high level of residential amenity, as this previously was the case under the provisions of the Affordable Housing SEPP 2009 and the requirements of the Apartment Design Guidelines, which are reflected in Clause 182(h).
  - The reduced size of the dwellings does not impact the ability of the development to provide dwelling diversity, provide a high level of residential amenity, makes good use of the delivery of a housing product within an accessible area to assist in the demand required for housing in the locality and is capable of enhancing the locality by providing a development that is within the desired future character of the area.
  - The proposal is of an appropriate density, bulk and scale for this type of development. The application does not exceed the FSR requirements under the LEP and would comply with this requirement without the bonus concession provided under the provisions of the Housing SEPP 2021.



- The proposal includes generous sized living rooms and bedrooms in compliance with the provisions of the ADG and Medium Density Design Guidelines and it is considered that further increases in the built form are not necessarily required in this instance in order to achieve a high level of residential amenity without increasing the bulk and scale of the proposal. This in turn assists in keeping a coherent streetscape which moulds in with the existing character and the future desired streetscape character.
- Besides the variation to minimum dwelling size and given the circumstances, the applicant has enabled the proposal to achieve full compliance with all applicable requirements of the LLEP 2008 and generally complies with the provisions of the LDCP 2008. Ensuring full compliance with most of the applicable development standards and controls is considered to demonstrate that compliance with the standard is unreasonable in this case as the development can be sited with full adherence to local provisions and the development would still be able to provide a variation of housing products suitable for the area and provide for the housing needs for the community.

*(b) There are sufficient environmental planning grounds to justify contravening the development standard*

***Clause 4.6 (3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard,***

*The proposed development complies with all other relevant development standards under the provisions of the Housing SEPP as well as Council's LEP and DCP development standards. The variation is considered to be minor and would not adversely affect the amenity of future occupants or neighbouring properties. The proposed development provides a high level of streetscape amenity and is consistent with the streetscape within the locality. The proposed development, with the variation, is considered to be within the public interest given that all concerns raised by objectors to the proposal have been satisfied. In addition, the development provides an affordable and diverse housing option for low income earners and does not have any adverse environmental impacts.*

*In conclusion, it is considered that the proposed variation to the minimum floor area requirements would still comply with the objectives of in-fill affordable housing under the provisions of the Housing SEPP 2021 as well as the five-part test provided by the Department of Planning and Environment. The proposed development would be consistent with similar types of development already approved by Council and would not adversely affect the amenity of the future occupants, surrounding residents or the streetscape if it were to be approved. Furthermore, it is considered that Council support the variation and the proposed development in its current form.*

#### **Council Assessment of variation proposed**

- The DA is fully consistent with the provisions of the relevant SEPP's and the LLEP 2008, as demonstrated in this report.
- The development proposes residential dwellings that can accommodate dwellings and achieve appropriate amenity based on full compliance with relevant state and local policies. In this regard, refusing the application based on the non-compliance with the minimum dwelling size requirement, especially given the history of this application and the specific circumstance which is unlikely to arise again, is considered to be acceptable and within the public interest.
- The development is considered to satisfy all of the relevant heads of consideration as per Section 4.15 (1) of the Act.

As a result of the assessment above, it is also considered that compliance with the dwelling size development standard is unreasonable or unnecessary due to the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (a) *the consent authority is satisfied that—*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

**Applicant Comment**

*Whilst there are no specific objectives for the minimum floor area requirement, there are principles of the Housing SEPP that apply:*

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*

**Applicant Comment:** *The proposed development enables a range of housing types from the provision of two bedroom and three bedroom dwellings that are purpose-built affordable housing.*

- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

**Applicant Comment:** *The proposed development will provide housing that will meet the needs of very low to moderate income households as it will be conditioned such that the dwellings are to be used at least 15 years.*

- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*

**Applicant Comment:** *The proposed dwellings will provide future occupants with acceptable levels of amenity despite the variation for the floor area given that the variation is minor and given that the size of the dwellings and internal rooms are all sufficient enough to meet the intended purpose. In addition, all other development standards within the Housing SEPP and Council's Development Control Plan have been complied with and as such overall satisfactory amenity is maintained.*

- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

**Applicant Comment:** *The location of the proposal is within an accessible area with the 872 Campbelltown to Liverpool via Macquarie Fields bus available every hour with the bus stop being located within 400m of the site.*

- (e) *minimising adverse climate and environmental impacts of new housing development,*

**Applicant Comment:** *The proposed development has been designed and located to minimise*

*the environmental impacts of new housing development. A Basix certificate has been submitted that details how the proposed development complies with the required targets for water, thermal and energy being achieved.*

*(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

**Applicant Comment:** *The subject site is directly adjacent to a multi dwelling development with several multi dwelling developments in the greater locality as well as single dwellings on large lots. Box Road is an evolving streetscape which is evident in the dwellings currently existing in the street as well as the vacant land that exists on Box Road as well as within close proximity to the site. There is a mix of older type brick dwellings as well as a few dwellings that are modern in design. as shown in the below photos.*

*The proposed dwellings that would front Box Road incorporate a similar pitch roof design as well as incorporating the predominant use of brick with rendered and cladded elements tie in the new style of dwellings being constructed.*

*The external colours of dwellings within the Box Road streetscape vary from whites and greys to red and sand coloured brick with there not being a predominant colour theme within the street. The external colours of the proposed multi dwelling uses greys which is a contemporary colour that is consistent with the future desired character of the area.*

*The proposed dwellings are a maximum of two storeys in height which is compatible with the built form in Box Road given that many of the existing dwellings are two storey dwellings with single storey dwellings sparsely located.*

*It is considered that the design and layout of the proposed multi dwelling development is consistent with not only the existing streetscape character of Box Road but also the future desired character and as such should be supported.*

*(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

**Applicant Comment:** *The proposed dwellings would be used as affordable housing for 15 years which provides 15 years of potential rental accommodation in a development that has been designed to minimise social and environmental impacts from the use. There is no evidence to suggest that the proposed development would create social impacts or environmental impacts as it would ordinarily operate as a normal multi dwelling development would. Council has processes in place that would deal with any issue that potentially could arise from the development to ensure that there would be no further adverse impacts.*

*(h) mitigating the loss of existing affordable rental housing.*

**Applicant Comment:** *The proposed development mitigates the loss of existing affordable rental housing by providing an excess floor area as affordable housing than the 20% that is required under Clause 16 of the Housing SEPP. Even with a variation to the minimum floor area required, there is still 21.3% of the floor area that will be provided as affordable housing.*

**Overall Council Comment:** *As a result of the assessment above, it is considered that the non-compliance with the dwelling size development standard is acceptable as the proposal is deemed to meet the requirements of the principles within the Housing SEPP 2021, given that*

there are no specific objectives for the non-discretionary development standards. Therefore, the non-compliance is deemed to be unreasonable or unnecessary due to the circumstances of this case, especially considering the unique history and technicality of the initial proposal and that there are sufficient environmental planning grounds to justify contravening the development standard.

**Consistency with objectives of the zone – R3 – Medium Density Residential**

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

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

**Applicant Comment: (from SEE)** *It is a requirement of the LLEP 2008 that the proposed development be consistent with one or more of the objectives of the zone. It is considered that the proposed development would provide for the housing needs of the community and provide a variety of housing types in the medium density residential environment.*

**Council Comment:** Based on the assessment of Clause 4.6 Variation provided above, the development is considered to be consistent with the objectives of the R3 – Medium Density Residential zone and is a permissible type of development. The proposal has been designed to mitigate adverse impacts on surrounding land uses and the locality by demonstrating consistency with Council’s local planning provisions. As such, the development will ensure a high level of residential amenity is achieved and maintained in accordance with Council’s plans and policies. The amended development will also provide an increased variety of housing types in the locality.

**Consistency with Clause 4.6 objectives**

**Objectives of Clause 4.6 Exceptions to development standards:**

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

It is considered appropriate in this instance to apply a degree of flexibility when applying the minimum dwelling size non-discretionary development standard applicable to the subject site based on the town planning assessment of the Clause 4.6 Variation provided above and also given the historic context of this application being in compliance with the previous legislation. It is considered that achieving a reduced minimum dwelling size in this instance is unlikely to result in detrimental impacts to the built and natural environments as these standards were significantly lower when the proposed dwelling designs were originally lodged and being assessed. The development is considered to be consistent with the characteristics of the zone, locality and density envisioned for the area.

Recommendation

With considerations to the discussion above, the proposed variation to Clause 18(2)(j) of Housing SEPP 2021, adequately addresses the provisions of Clause 4.6 including the objectives of the development standard and the zoning. The proposal is also considered to be in the public interest and is therefore supported in this instance.

**(2) - Clause 19(3) Character Analysis**

The SEPP ARH requires the consent authority to take into consideration whether the proposal is compatible with the character of the local area.

In these cases, the planning principle in *Project Venture Developments v Pittwater Council* is adopted which poses the following two questions in regards to the character of a locality:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical developments include constraints on the development potential of surrounding sites*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The impacts of the subject proposal relate to the proposed private open space areas, the bulk and scale of the building in context to the site and the development controls for the desired character of the area.

The streetscape of Box Road and in the surrounding locality contains single storey and double storey dwelling houses as well as a number of existing and approved multi-dwelling housing developments and semi-detached dwellings.

The development is considered to be an appropriate size and scale for this area undergoing a transition in character and density. A number of already approved developments are present on adjoining sites as well as within the general locality. The locality is generally characterised by dwelling houses and multi-dwelling housing developments. The application proposes a minimum street setback of 4.5m, which complies with the minimum required front building setback under the DCP for both multi-dwelling housing and dwelling houses and is therefore consistent with the future envisioned character of the area.

The bulk, scale and height of the development from the streetscape and within the site is also similar to and not larger than nearby developments. The development also proposes to include sufficient landscaping and deep soil areas to help soften the visual bulk and scale of the development and provide screening to adjoining neighbours.

The scale of the proposed development is larger due to the scope of works and additional built form behind the front dwelling, however, has met the floor space ratio requirements of the LEP as opposed to a larger gross floor area which could be adopted due to the implementation of affordable housing. As such, the development is considered to be harmonious with the scale of future development in the area and is capable of matching with the existing and desired future streetscape. It is also consistent with the desired future character of the areas, as outlined in the Liverpool Development Control Plan (DCP) 2008.

The desired or future character of the area, gathered from the relevant zone objectives and DCP objectives, is a greater mix of multi-unit housing developments. As such, the proposed

development is considered to be in harmony with the existing and desired future character of the locality.

The following comment was made by the applicant in regards to character:

*The subject site is directly adjacent to a multi dwelling development with several multi dwelling developments in the greater locality as well as single dwellings on large lots. Box Road is an evolving streetscape which is evident in the dwellings currently existing in the street as well as the vacant land that exists on Box Road as well as within close proximity to the site. There is a mix of older type brick dwellings as well as a few dwellings that are modern in design as shown in the photos below this discussion.*

*The proposed dwellings that would front Box Road incorporate a similar pitch roof design as well as incorporating the predominant use of brick with rendered and cladded elements tie in the new style of dwellings being constructed. The external colours of dwellings within the Box Road streetscape vary from whites and greys to red and sand coloured brick with there not being a predominant colour theme within the street. The external colours of the proposed multi dwelling uses greys which is a contemporary colour that is consistent with the future desired character of the area.*

*The proposed dwellings are a maximum of two storeys in height which is compatible with the built form in Box Road given that many of the existing dwellings are two storey dwellings with single storey dwellings sparsely located. It is considered that the design and layout of the proposed multi dwelling development is consistent with not only the existing streetscape character of Box Road but also the future desired character and as such should be supported*



**(b) State Environmental Planning Policy (Transport and Infrastructure) 2021**

The proposal has been assessed under the relevant provisions of SEPP (Transport and Infrastructure) 2021, specifically Chapter 2 – Infrastructure. Clause 2.119 of SEPP (Transport and Infrastructure) 2021 applies to applications for residential accommodation that is on land in or adjacent to the road corridor for a road with an annual average daily traffic volume of more than 20,000 vehicles and that the consent authority considers is likely to be adversely affected by road noise or vibration.

Before determining a development application for development to which this clause applies, Council must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

Where the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

The subject development falls into the category of residential accommodation and is located within 100 metres of the Hume Highway which is identified as a classified road and is affected by the provisions of clause 2.119.

The Department of Planning, Infrastructure and Energy's document entitled "Development near Rail Corridors and Busy Roads – Interim Guideline" provides guidance in relation to mitigation of noise sensitive developments in order to provide a minimum deemed acceptable level of acoustic amenity near classified roads.

An acoustic report provided in support of the proposal has concluded that the proposal is able to adopt measures to reduce the intrusion of noise from the Hume Highway to recommended design levels.

On this basis the proposal is considered to satisfy the acoustic requirements of SEPP (Transport and Infrastructure) 2021.

Permissibility of the stormwater management system is also provided under the provisions of Clause 2.137 of this SEPP. A further discussion on this matter is provided within the Liverpool Local Environmental Plan 2008 section of this report.

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

The application is supported by a BASIX Certificate in accordance with the provisions of the SEPP which indicates that the required targets for water, thermal comfort and energy are met by the proposal.

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

A BASIX Certificate (**Certificate number: 761309M\_03**) has been submitted for the proposed development under DA-725/2021. As this is a newly lodged application and the Certificate is therefore not within 3 months of lodgement, a condition will be applied to ensure an updated BASIX Certificate is lodged prior to a Construction Certificate

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal.

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

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

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

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.

Aerial images from 1991 found on Council's GIS system illustrates the presence of the existing dwellings, which suggests the site has principally been used for residential purposes for at least the past 31 years.

Council's internal record and customer request system (pathway) includes no records of any dumping or contamination complaints or activities associated to the subject address.

Based on the above assessment, there is no evidence to suggest that the land has been or is contaminated and a formal land contamination assessment is considered to not be necessary. It is considered that the proposal is satisfactory for the site and the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021 through the imposition of appropriate conditions of consent relating to any unexpected finds.

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

The subject land is located within the Georges River Catchments 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.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

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



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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,		Proposal reviewed by Council's Land Development Engineer and considered satisfactory subject to conditions.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,		The engineering plans were submitted and reviewed by Council's Land Development Engineer. Conditions of consent apply with respect to sediment and erosion mitigation measures.
(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 <i>Georges River Catchment Regional Planning Strategy</i> (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 notice,		The application was not required to be referred to the DPE - Water and the proposal is consistent with the guidelines.
(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 Principles</b>		<b>Comment</b>
(1) Acid sulfate soils		The land is not identified as containing acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping.
(2) Bank disturbance		No bank disturbance is proposed.
(3) Flooding		The site is not flood affected.
(4) Industrial discharges		Not applicable.
(5) Land degradation		The proposed development is unlikely to cause land degradation.
(6) On-site sewage management		The site will be connected to a reticulated sewer system.
(7) River-related uses		Not applicable.
(8) Sewer overflows		Not applicable.
(9) Urban/stormwater runoff		Water management details provided in civil engineering details and approved by condition of consent by Council's Engineers.

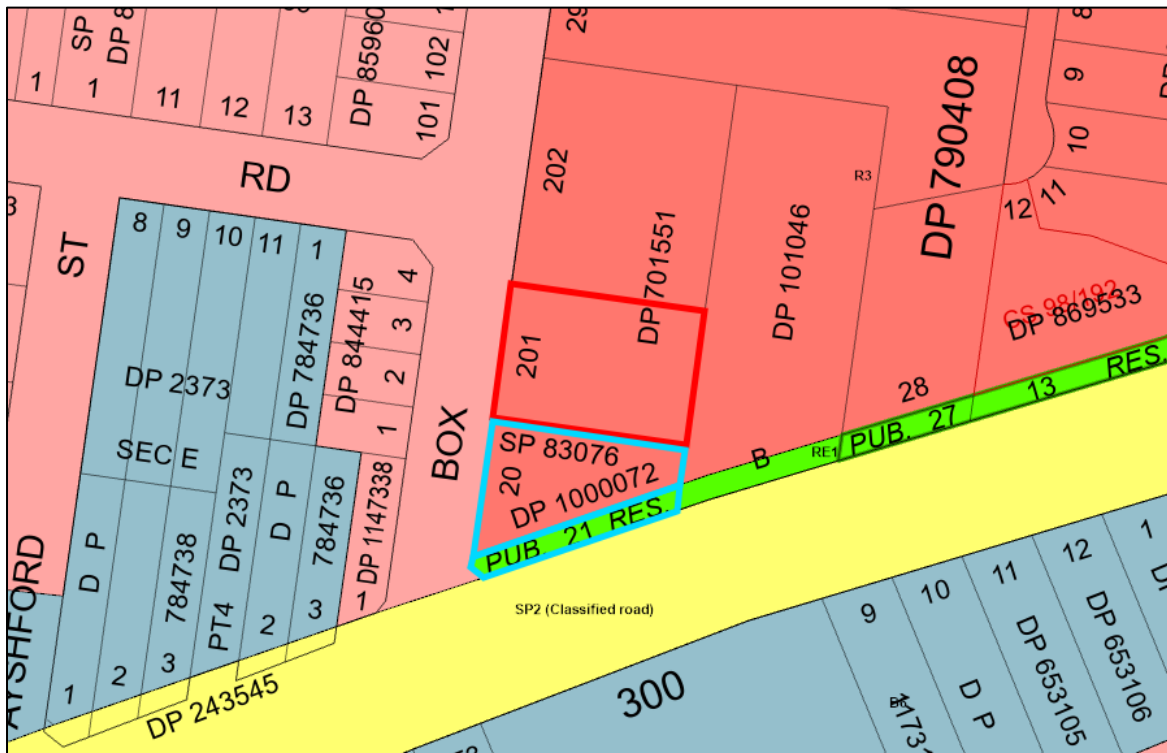
(10) Urban development areas	The area is not within an Urban Release Area.
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control and salinity measures to be implemented in construction.
(13) Wetlands	Not applicable.

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

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

**(i) Zoning**

The subject site is zoned R3 – Medium Density Residential in accordance with the Liverpool Local Environmental Plan 2008. Works are also occurring on RE1 – Public Recreation zoned land for stormwater works. An extract of the zoning map is provided below.



**Figure 4** – Extract of LLEP 2008 zoning map (site in red box and adjoining sites with easement traversing in blue box)

**(ii) Permissibility**

The proposed development is best described as *multi-dwelling housing*, which is defined as follows:

**multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

This form of development is a permissible use within the R3 – Medium Density Residential

zone.

The public reserve is zoned RE1 – Public Recreation. Permissibility for the stormwater works are gained under Clause 2.137 of the State Environmental Planning Policy (Transport & Infrastructure) 2021, which specifies that:

**2.137 Development permitted with consent**

*Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.*

In accordance with this SEPP, part of the proposed application involving the drainage works would be defined as a *stormwater management system* which is defined as:

**stormwater management system means—**

- (a) *works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*
- (b) *stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*
- (c) *stormwater reuse schemes.*

**(iii) Objectives of the zone**

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

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

The proposal is a permissible type of development within the R3 Medium Density Residential zone and is consistent with the above zone objectives. The amended proposal has been designed to mitigate adverse impacts on surrounding land uses and the locality by demonstrating consistency with Council's local planning provisions. As such, the development will ensure a high level of residential amenity is achieved and maintained in accordance with Council's plans and policies. The amended development will also provide an increased variety of housing types in the locality.

Objectives of the RE1 Public Recreation Zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To provide sufficient and equitable distribution of public open space to meet the needs of residents.*

- To ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.

The site owned by Council to the south is zoned RE1 Public Recreation. The proposed drainage works over this land may infringe on the use of this land while works are being carried out, however will be ultimately underground in an easement and would be unlikely to impinge on the use of the land once completed. Further, the land is also a small slither of land alongside the Hume Highway and is also very narrow and is unlikely to serve the full purpose of public recreation in its current form. The drainage works would be unlikely to create negative impacts on the land use and would be consistent with the zone objectives.

#### (iv) Principal Development Standards

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

LLEP 2008 - Principal Development Standards		
Development Provision	Requirement	Comment
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	<b>Complies with conditions</b> Consent sought for demolition works onsite and will form conditions of consent.
4.1 Minimum Lot Size	Minimum lot size permitted: 300m <sup>2</sup>	<b>N/A.</b> No Torrens title subdivision is proposed.
4.3 Height of Buildings	Maximum height permitted: 8.5m	<b>Complies.</b> 7.7m maximum building height proposed.
4.4 Floor Space Ratio (FSR)	Maximum FSR permitted: 0.5:1. Area 2 = 0.55:1	<b>Complies</b> As per the Housing SEPP 2021, the permitted FSR is 0.764:1 when provided a 0.214:1 bonus. However the development demonstrates compliance with the LEP as well.  The proposed FSR is 0.533:1.
4.6 Exceptions to Development Standards	Provisions relating to exceptions to development standards	<b>See discussion above</b> Variation to non-discretionary development standard under the Housing SEPP 2021 utilising functions of Clause 4.6 as seen in discussion above within the Housing SEPP 2021 section.
5.10 Heritage Conservation	To protect and conserve existing items/locations identified as containing significant heritage value	<b>N/A</b> The site is not identified as being a heritage item, adjoining a heritage item or lying within a heritage conservation area.
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	<b>Approval subject to conditions</b> All required utilities are considered to be available.
7.31	Council to consider matters	<b>Complies subject to conditions</b>

Earthworks	listed (a)-(g)	Excavation for site levelling to occur and is unlikely to adversely impact on the amenity of adjoining properties, drainage patterns and soil stability, subject to the imposition of conditions of consent. Sediment control details have also been provided.
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## 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

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008. The proposal 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 3.6: Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones.

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008. All relevant compliance tables for the LDCP 2008 can be found in Report Attachment 2. Matters where variations to the development controls occur are also provided below.

LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
Setbacks	<u>Side Setbacks</u> Ground floor with windows to habitable rooms: 4.0m	<b>Considered Acceptable.</b> See justification below for side & rear setbacks of units 5 & 9
	Ground floor without windows to habitable rooms: 0.9m	Unit 1 (Northern Boundary) Ground floor – 4.55m First Floor – 4.15m
	First floor without windows to habitable rooms: 1.2m	Unit 2 (Northern Boundary) Ground Floor – 4.44m First Floor – 4.4m
	First floor with windows to habitable rooms and neighbouring POS: 4.0m	Unit 3 (Northern Boundary) Ground Floor – 4.79m First Floor – 4.79m
		Unit 4 (Northern Boundary) Ground Floor – 4.44m First Floor – 4.65m
	Unit 5 (Eastern Boundary)	

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LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
		<p>Ground Floor – 1.55m First Floor (no windows) – 1.55m</p> <p>Unit 6 (Southern Boundary) Ground Floor – 4.55m First Floor – 4.15m</p> <p>Unit 7 (Southern Boundary) Ground Floor – 4.44m First Floor – 4.44m</p> <p>Unit 8 (Southern Boundary) Ground Floor – 4.38m First Floor – 4.43m</p> <p>Unit 9 (Eastern Boundary) Ground Floor – 1.6m First Floor – 1.6m</p>
	<p><b>Rear Setbacks</b> Ground floor without windows to habitable rooms: 4.0m Ground floor with windows to habitable rooms: 4.0m First floor without windows to habitable rooms: 4.5m First floor with windows to habitable rooms and neighbouring POS: 6.0m</p>	<p><b>Complies</b> (see discussion below regarding side and rear setbacks for Units 5 &amp; 9)</p> <p>Unit 5 (Northern Boundary) Ground Floor – 4m First Floor – 6m</p> <p>Unit 9 (Southern Boundary) Ground Floor – 4.0m First Floor – 4.5m to wall with no windows and 6m to wall with window</p>
	<p><b>Justification</b> The proposed side setback of Units 5 &amp; 9 have been taken from the eastern boundary and the rear setback has been applied to the north boundary of Unit 5 and south boundary of Unit 9. This approach has been taken as the eastern boundary would be similar to a side boundary due to the shape and orientation of the allotment to the east as well as the POS of the site to the north being at the rear of the site. Additionally, due to the orientation of the proposed development facing into the internal driveway, this approach has been adopted. Special treatment is provided to help mitigate any impacts on adjoining properties, by providing a rear setback to the north for Unit 5 and privacy screens on windows, even though they would comply with the minimum rear setback requirement.</p> <p>It should be noted that the subject non-compliance occurs at the ground level as there is one window from a living room that faces the side boundary to the east of both Units 5 and 9 as well as a window for a bedroom on the first floor facing this direction for Unit 9. This side setback is considered acceptable as the applicant is considered to have satisfactorily demonstrated that the proposed development would not generate any detrimental impacts on adjoining properties in terms of overshadowing,</p>	

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LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
	<p>privacy or amenity issues as a result of this setback. Additionally, to further mitigate any privacy concerns, it will be conditioned that the eastern window of Bed 1 of Unit 9 is to be amended to be a high sill window with a minimum sill height of 1.5m.</p> <p>The shadow diagrams submitted with the application indicate the proposed development will not prevent any adjoining sites from receiving the minimum required 3 hours of solar access between 9am and 5pm in mid-winter to a living room window on any adjoining property and to at least 50% of the private open space of an adjoining site.</p> <p>While the side setback of the ground floor of Units 5 and 9 with a window to a habitable room does not comply with Council’s numerical setback controls, it is not considered to result in unreasonable visual privacy intrusions to the adjoining neighbour. On the ground floor sufficient visual privacy between neighbours is provided largely due to boundary fencing, 1.8m in height, screening a large portion of the ground floor window causing the non-compliance. Accordingly, due to the type, place and screening of windows on the eastern elevations, privacy impacts between neighbours to the east are considered to be consistent with a dwelling house that is setback 1.2m from a side boundary.</p> <p>In regards to the above, strict compliance with the side and rear setback controls for Units 5 and 9 is not considered necessary where it is unlikely there will be any unreasonable solar or privacy impacts as a result.</p>	
Building Design and Appearance	The first floor of the townhouse developments must be no greater than two thirds of the ground floor area.	<b>Considered Acceptable</b> See justification below. The first floor of the dwellings have areas greater than 2/3 of their respective ground floor.
	<p><b><u>Justification</u></b></p> <p>The first floor of all dwellings are greater than two-thirds of the ground floor area for their respective dwelling. Despite this non-compliance with the building design control, the variation is considered justifiable for the following reasons:</p> <ul style="list-style-type: none"> <li>- Although the upper levels are larger than that prescribed under the development control, there is sufficient articulation within each of the building’s facades.</li> <li>- The development employs a good mix of building materials to help improve the fenestration and minimise the apparent bulk of the structures.</li> <li>- The proposal includes a substantially compliant building height (i.e. max. of 7.7m) which is well below the 8.5m height limit. Because of this reduced building height, the proposal does not impose undue bulk on adjoining properties or the streetscape.</li> <li>- The development is compliant with the maximum floor space ratio allowed onsite and therefore is considered unlikely to have excessive bulk at the first storey.</li> <li>- The development is generally consistent with the setback requirements and landscaping controls and therefore is not considered to be excessively bulky, especially at the first storey.</li> </ul>	

LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
	- Despite the non-compliance, the proposal does not result in any unreasonable overshadowing of adjoining properties and remains compliant with the provisions of the LDCP 2008 in this regard.	
Amenity and Environmental Impact	- Windows to habitable rooms should be located so they do not overlook such windows in adjoining properties, other dwellings within the development or areas of private open space.	<b>Complies by condition</b> Windows to habitable rooms are located on the ground floor and are mostly screened by 1.8m high fencing and appropriately setback. Where windows to bedrooms are proposed in a location close to POS, privacy screening or high sill windows have been proposed. A condition will apply to make the eastern window of Bed 1 of Unit 9 to be a high sill window with a minimum sill height of 1.5m.

#### 6.4 Section 4.15(1)(a)(iia) - 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 National Construction Code. Accordingly, appropriate conditions of consent will be imposed where compliance with the NCC is required.

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

##### (a) Natural Environment

Impacts on the natural environment have been assessed as part of the development application. The proposal is unlikely to result in any detrimental impact on the natural environment surrounding the subject sites, or to any endangered and non-endangered species of flora and fauna and appropriate conditions of consent will apply to help minimise and mitigate any potential environmental concerns.

##### (b) Built Environment

The proposed development is unlikely to create an unreasonable adverse impact on the surrounding built environment. The proposed development is considered to have been designed in a way that is generally consistent with Council's requirements for development in a medium density zone and for multi-dwelling development. Furthermore, it is considered that the proposal has been designed with sufficient regard to surrounding properties and any future occupants of the site to ensure that adverse amenity impacts have been minimised, particularly in terms of visual and acoustic privacy and overshadowing.

##### (c) Social Impacts

The proposed development is likely to have a positive social impact in the area through



increasing housing choice in the locality especially with the allocation of some affordable housing units in the development. The development is unlikely to generate any identifiable detrimental social impacts and is consistent with the desired development type in the locality.

**(d) Economic Impacts**

The short term positive economic impacts development that result from construction spending and employment opportunities generated during the construction phase are generally recognised. Other, more enduring impacts should come as the local population increases and use local shopping and services.

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

The site is considered to be suitable for the proposed development. The proposal is generally compliant with the provisions of the LLEP 2008, the relevant Environmental Planning Instruments, and LDCP 2008, as outlined in this report. The identified variations have been considered and are supported as they are unlikely to result in any adverse impacts to the locality and are considered to be within the public interest.

The development is also considered to be consistent with the Generic Plan of Management for Parks 2007, which Council’s Community Planning Section have confirmed is the relevant plan of management for the Council owned land at 93 Box Road, Casula, which is classified as community land. The plan of management permits easements over this land.

Overall, the development is considered to satisfy the relevant controls for site selection.

**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
Land Development Engineering	Supported, subject to conditions of consent
Natural Environment – Landscape	Supported, subject to conditions of consent
Waste Management	Supported, subject to conditions of consent
Traffic and Transport	Supported, subject to conditions of consent
Community Planning	Supported, subject to conditions of consent
Building	Supported, subject to conditions of consent
Property	Applicant and Council’s property team have entered into a deed for the easement and subsequent extensions of sunset clauses have been provided to applicant.

**(b) External Referrals**

AGENCY	COMMENTS
Transport NSW	Concurrence provided under DA-725/2021 for identical development and conditions will form part of this consent.

**(c) Community Consultation**

In accordance with the Liverpool Community Participation Plan 2019, the application was notified between 26 September and 11 October 2022. One objection was received in response

to the exhibition period. The issues raised in the submission, and a response to each, are summarised as follows:

**ISSUE 1:      *Traffic impacts and safety in the street and general area***

The application was assessed by Council's Traffic and Transport Section and had no objection to traffic impacts from the proposal subject to conditions of consent. As such, generated traffic associated with the proposal is considered acceptable based on Council's Traffic Engineers review and for a multi-dwelling housing development of this nature in a medium density zone.

**ISSUE 2:      *Insufficient parking within the development causing additional on-street parking, which will increase hazards to pedestrians and traffic.***

The development requires 13 car spaces onsite in accordance with the parking provisions of the State Environmental Planning Policy (Housing) 2021. The application proposes 13 car parking spaces. Therefore, the development provides adequate car parking spaces with regards to the relevant plans and policies. This SEPP also does not require the provision for visitor parking.

The application has been reviewed and supported by Council's Traffic Engineers, who investigated parking impacts as well as impacts and safety considerations to the local street network, pedestrians and access arrangements and they raised no objections to the development on those grounds.

**ISSUE 3:      *Noise***

While noise associated with the site is likely to increase given the intensification of the residential accommodation at the premises, it is considered to be typical with that generated by a medium density development in a medium density zone. Accordingly, without further evidence that demonstrates the proposal would unreasonably impact the acoustic amenity locality beyond what is envisaged under Council's local policies, it is difficult to address this matter further. The development has also been designed with a landscape plan that provides peripheral landscaping treatments in order to soften the development from the adjoining properties. This may also assist in mitigating acoustic transfer between the subject site and the immediate locality. The dwellings are also required to be designed to include specific material and finishes to reduce traffic noise and vibration from the Hume Highway. It is considered that this will also help reduce noise transference from the proposal into the surrounding locality.

**ISSUE 4:      *Headlights shining into windows***

While light associated from cars exiting the site is likely to increase given the intensification of the residential accommodation at the premises, it is considered to be typical with that generated by a medium density development in a medium density zone with driveway to the street. Accordingly, without further evidence that demonstrates the proposal would unreasonably impact the locality beyond what is envisaged under Council's local policies, it is difficult to address this matter further. The application was reviewed by Council's traffic engineers who investigated the design of the driveway. They raised no objections to its functionality. Vehicles at night time would be required to have their headlights on for safety reasons and compliance with the road rules.

**ISSUE 5:      *Increased air pollution and health concerns***

While an increase of vehicles is anticipated from the intensification of the residential

accommodation at the premises, it is typical of a medium density development in the medium density zone. Additionally, considering the proximity of the development to the Hume Highway, the traffic pollution emitted from the site would be negligible compared to the traffic volume on the Hume Highway. As demonstrated in this report, the proposal is generally consistent with Council's provisions and is therefore consistent with the desired future character of the area.

**ISSUE 6: *High turnover of occupants when dwellings are leased out and occupant type with criminals***

A multi-dwelling development is a land use that is permissible within the zone. The type of residents and length of stay of the tenants that will occupy this development has not been taken into consideration for the assessment of this Development Application. Furthermore, the movements of some tenants will be subject to qualifications for affordable housing.

**ISSUE 7: *Privacy issues with people looking into property from across the road***

Units 1 and 6 are unlikely to cause detrimental overlooking concerns to the dwellings on the other side of Box Road. With a carriageway width of 9.9m for Box Road as well as the two street verges and the setbacks of the dwellings, which are compliant with the front setback controls, any concerns for overlooking across the street is considered to be unlikely from the proposed development.

**ISSUE 8: *Dumping of rubbish on kerb and in front of properties in street***

Any illegal dumping of rubbish on the kerbside, should be reported to Council's Compliance Section for investigation and potential to take enforcement action. It is also noted that some instances of rubbish on the kerbside may be subject to a Council pick up/ clean up.

**ISSUE 9: *Damage to property from occupants of new development and crime***

If other people are damaging personal property or trespassing, this should be dealt with through the relevant channels, namely NSW Police.

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

The development is consistent with the objectives of the R3 Medium Density zone and is generally compliant and considered acceptable with the relevant planning provisions and controls contained under the Housing SEPP 2021, LLEP 2008 and LDCP 2008. Where non-compliances have been identified, these have either been considered justifiable in the circumstances, or addressed by way of consent conditions. As such the proposal is considered to be within the public interest.

**7. DEVELOPMENT CONTRIBUTIONS**

A Section 7.11 Development Contributions is applicable to the proposed development in accordance with the Liverpool Contributions Plan 2018 – Established Areas. The contribution will be imposed as a condition of consent.

**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.

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

**9. RECOMMENDATION**

That Development Application DA-973/2022 seeking approval for the demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula, be approved subject to conditions of consent.

**10. REPORT ATTACHMENTS**

- 3. SENIORS LIVING POLICY URBAN DESIGN GUIDELINES**
- 4. LIVERPOOL DEVELOPMENT CONTROL PLAN 2008 COMPLIANCE TABLES**
- 5. PLANS OF THE PROPOSAL**
- 6. CLAUSE 4.6 VARIATION STATEMENT**
- 7. CONDITIONS OF APPROVAL WITH ASSOCIATED EXTERNAL COMMENTS AND 7.11. PAYMENT FORM**

## **REPORT ATTACHMENT 1: SENIORS LIVING POLICY URBAN DESIGN GUIDELINES**

### **Clause 19 Design Requirements**

The *Seniors Living Policy: Urban design guidelines for infill development*, sets out a range of design principles which are to be considered in the design and assessment of seniors' housing development under the Seniors Housing SEPP. Clause 19 of the Housing SEPP 2021 requires that the provisions of the *Seniors Living Policy: Urban design guidelines for infill development* are taken into consideration in the assessment of an application.

<b>Seniors Living Policy: Urban Design Guidelines for Infill Development</b>		
<b>Principles</b>	<b>Required</b>	<b>Complies</b>
<b>1 Responding to context</b>	<b>Street layout and hierarchy:</b> Development be of an appropriate scale and character to reinforce existing road patterns	<b>Complies</b> The development is an appropriate size and scale for this area undergoing a transition in density. A number of existing multi-dwelling housing developments are present within the general locality. The locality is generally characterised by dwelling houses and multi-dwelling housing developments. The application proposes a minimum street setback of 4.5m, which complies with the minimum required front building setback under the DCP for both multi-dwelling housing and dwelling houses and is therefore consistent with the future envisioned character of the area.
	<b>Block and lots:</b> Have regard to block and lot patterns and suitability for intensification of use.	<b>Complies</b> The site is considered suitable in terms of size and shape for the intensification of the residential use.
	<b>Built environment:</b> Consider pattern and massing of existing buildings and neighbourhood character.	<b>Complies</b> The proposal results in two x 2 storey units directly addressing the street. The building massing proposes two storeys across the site and is considered to be satisfactory for this form of development.
	<b>Trees:</b> Consider the existing patterns of plantings in front and rear gardens of area.	<b>Complies</b> One tree is to be retained in the front of the site. The landscape plan demonstrates a sufficient amount of trees and vegetation to be planted on the site.
	<b>Policy environment:</b> Consider desired character of area as described in Council's planning instruments.	<b>Complies</b> Medium density development permitted. Development meets the controls and objectives outlined in the LEP and DCP.
<b>2 Site planning and design</b>	<b>General:</b> Optimise internal amenity and minimise impacts on neighbours. Cater for broad range of needs from potential residents.	<b>Complies</b> Dwellings have been designed to provide private open space at the rear and take advantage of northern aspects where appropriate. Also dwellings are

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		appropriately setback to assist in reducing overshadowing and privacy concerns to adjoining residents.
	<p><b>Built form:</b> Bulk of development at front of site Development at rear to minimise impacts on adjoining properties Dwellings designed to maximise solar access and to buffer quiet areas from noise</p>	<p><b>Complies</b> 2 units address the street. Rear units designed to minimise privacy impacts on adjoining properties. Solar access is provided to living rooms and living areas of each dwelling.</p>
	<p><b>Trees, landscaping and deep soil zones:</b> Retain existing trees; use new mature or semi mature trees. Provide deep soil areas, at least 10% of site area as a single area at rear.</p> <p>Use of onsite detention and retain stormwater for re-use.</p>	<p><b>Complies</b> One tree is to be retained in the front of the site. The landscape plan demonstrates a sufficient amount of trees and vegetation to be planted on the site. Deep soil areas comply with SEPP Housing 2021 requirements (minimum 15% deep soil area).</p> <p>On-site detention proposed.</p>
	<p><b>Parking, garaging and vehicular circulation:</b> Consider centralised parking. Maintain existing crossing and driveway location on the street.</p>	<p><b>Complies</b> One driveway crossover proposed. Location of crossing is in the middle of the site.</p>
	<p><b>Rules of thumb:</b> Proportion of site given to landscaped area should be increased in less urban areas, on large lots, and in areas already characterized by a high proportion of open space and planting.</p>	<p><b>Complies</b> Medium density area. Landscaping requirements under Affordable Housing SEPP achieved.</p>
<b>3 Impacts on streetscape</b>	<p><b>General:</b> Respond to the desired streetscape by designing development to be sympathetic to existing streetscape.</p>	<p><b>Complies</b> The 4.5m front setback proposed is consistent with the future envisaged character of the area in that this complies with 4.5m setbacks permitted for dwelling houses and multi dwellings. The development is not considered out of character with development in the area.</p>
	<p><b>Built form:</b> Reduce visual bulk.</p>	<p><b>Complies</b> The proposed development will create additional visual bulk, however the impacts are negligible on the basis that the allotment frontage is 34m wide and this could ultimately accommodate 4 houses wide across the street frontage.</p>
	<p><b>Trees landscaping and deep soil zones:</b> Retain existing trees and planting in front and rear setbacks and road reserve.</p>	<p><b>Complies</b> 1 tree being retained and the landscape plan demonstrates a sufficient amount of trees and vegetation to be planted on the site.</p>
	<p><b>Residential amenity:</b></p>	<p><b>Complies</b></p>

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	<p>Define threshold between public and private space. Provide a high quality transition between the public and private domains. Provide pedestrian entry and is separate from vehicular entries. Locating and treating garbage storage areas and switchboards to visual impact is minimized.</p>	<p>The private open space areas of each unit are clearly defined. The entries for the dwellings are well defined and separated from the vehicular access. Each dwelling has their own bin storage area and these are located within the private open space.</p>
	<p><b>Parking, garaging and vehicular circulation:</b> Avoid long straight driveways. Use planting to soften edges. Vary materials. Limit width. Use screening.</p>	<p><b>Complies</b> One driveway is proposed for the site and planting is used where land is not required for manoeuvring.</p>
	<p><b>Rules of thumb:</b> Respond to Council planning instruments that specify the character or desired character for the area.</p>	<p><b>Complies</b> The development is consistent with the controls outlined in the Liverpool Development Control Plan 2008.</p>
<p><b>4 Impacts on neighbours</b></p>	<p><b>Built form:</b> Relationships between buildings and open space to be consistent with the existing patterns in the block. Maintain existing orientations. Setting upper stories back behind side or rear building line. Broken roof lines to reduce bulk. Minimise overlooking.</p>	<p><b>Complies by condition</b> The bulk, scale and orientation of the dwellings is similar to the characteristics of existing and newer developments in the area. The siting of windows is likely to minimise overlooking of neighbouring properties.</p>
	<p><b>Trees, landscaping and deep soil zones:</b> Use vegetation as buffer. Use species that are characteristic of the local area.</p>	<p><b>Complies</b> The proposal includes appropriate setbacks and shrub planting. Privacy of adjoining sites has been preserved through building design and features as well as landscaping.</p>
	<p><b>Residential amenity:</b> Protect sun access and ventilation by ensuring adequate separation. Design dwellings so they do not directly overlook neighbour's private open space.</p>	<p><b>Complies</b> The private open space is appropriately located on the site for the dwellings. Adjoining private open space is unlikely to be overlooked, as the combination of the location and size of windows and the location of adjoining private open space, will likely result in minimal overlooking to occur. The shadow diagrams indicate that neighbouring properties will receive adequate solar access.</p>
	<p><b>Parking, garaging and vehicular circulation:</b> Provide planting and trees to screen noise and reduce visual impacts.</p>	<p><b>Complies</b> Vegetation is proposed along the boundaries to assist in reducing the visual and acoustic impacts on the neighbouring</p>

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	<p><b>Rules of thumb:</b> Length of unrelieved walls alongside setback should not exceed 8m Living rooms of neighbouring dwellings should receive minimum of 3 hours of direct sunlight between 9am to 3pm mid-winter. Solar access to the POS of neighbours should not be unreasonably reduced.</p>	<p>properties.</p> <p><b>Complies</b> All walls along boundaries have some form of building articulation and also have windows and material changes to break up the facade. The shadow diagrams provided illustrate that adjoining properties will receive 3 hours of sunlight to living rooms and POS areas.</p>
<p><b>5 Internal site amenity</b></p>	<p><b>Built form:</b> Maximise solar access to living areas and POS Clearly define entries.</p>	<p><b>Complies</b> The living areas and POS of each unit are located to maximise solar access, in which the development complies with the provisions of the SEPP (70% of dwellings). Architectural features have been used to separate each unit, and each dwelling has a clearly identifiable entry.</p>
	<p><b>Parking, garaging and vehicular circulation:</b> Locate habitable rooms away from driveways and parking areas. Use physical separation where not possible. Avoid large areas of hard surface. Screen parking. Single driveways with passing bays rather than double driveways throughout.</p>	<p><b>Complies</b> Bedrooms are located on the first floor. Landscaping is provided along the boundaries and hardstand/paved surfaces are reduced over the site. The driveway is to be constructed in accordance with Australian Standards and Council's Traffic Section are supportive of the application.</p>
	<p><b>Residential amenity:</b> Provide distinct separate pedestrian circulation to the site. Minimise opportunities for concealment. Provide POS. Provide communal open space that is accessible and includes facilities. Locate service facilities such as garbage storage to reduce visual prominence.</p>	<p><b>Complies</b> Separate pedestrian access from the street to Units 1 and 6. Pedestrian access to the rest of the site is able through the middle of the site. Private open space provided for each unit considered acceptable. Garbage area for each dwelling is provided and is easily accessed by the future occupiers.</p>
	<p><b>Rules of thumb:</b> Separation of 1.2m from habitable rooms and driveways or car park of other dwellings, or screen.</p>	<p><b>Complies</b> Proposed bedrooms are located on first floor. Living areas are located on ground floor, car park is located at grade and in suitable areas to respond to the design of the dwellings.</p>



## REPORT ATTACHMENT 2 – LIVERPOOL DEVELOPMENT CONTROL PLAN 2008 COMPLIANCE TABLES

### LDCP 2008 - Part 1 General Controls for all Development

Development Control	Provision	Comment	Complies
<b>Section 2. Tree Preservation</b>	Controls relating to the preservation of trees	The subject site contains existing trees. One tree is to be retained and the rest are proposed to be removed to facilitate the development. The applicant has provided an Arboricultural Impact Assessment in addition to Landscape Plans which was reviewed by Council's Landscape Officer who supports the proposal subject to conditions of consent.	Complies by conditions
<b>Section 3. Landscaping and Incorporation of Existing Trees</b>	Controls relating to landscaping and the incorporation of existing trees.	A landscape plan was submitted with the application demonstrating the landscape design for the site. Conditions of consent will apply regarding landscaping as well as the inclusion of street trees to be planted along the frontage.	Complies with conditions
<b>Section 4 Bushland and Fauna Habitat Preservation</b>	Controls relating to bushland and fauna habitat preservation	The site is not mapped as containing significant vegetation.	Complies
<b>Section 5. Bush Fire Risk</b>	Controls relating to development on bushfire prone land.	The site is not mapped as bushfire prone land.	N/A
<b>Section 6. Water Cycle Management</b>	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	This aspect has been reviewed by Council's Land Development Engineer, who have raised no issues subject to conditions. Deeds of agreement have also been signed by Council and the adjoining site in regards to the proposed stormwater easement.	Complies with conditions
<b>Section 7. Development Near Watercourse</b>	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval	The proposal is not within 40m of a watercourse.	N/A

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Development Control	Provision	Comment	Complies
	from the NSW Office of Water.		
<b>Section 8. Erosion and Sediment Control</b>	Erosion and sediment control plan to be submitted.	Conditions of consent will be imposed to ensure that erosion and sediment controls measures are implemented.	Complies with conditions
<b>Section 9. Flooding Risk</b>	Provisions relating to development on flood prone land.	The site is not identified as flood prone land.	N/A
<b>Section 10. Contaminated Land Risk</b>	Provisions relating to development on contaminated land.	As per SEPP (Resilience and Hazards) 2021 the development is considered acceptable and the site suitable for the future use of the land.	Complies
<b>Section 11. Salinity Risk</b>	Provisions relating to development on saline land.	Development to comply with the BCA requirements.	Complies with conditions
<b>Section 12. Acid Sulphate Soils</b>	Provisions relating to development on acid sulphate soils	The development site is not identified as containing acid sulphate soils.	N/A
<b>Section 13. Weeds</b>	Provisions relating to sites containing noxious weeds.	The site is not identified as containing noxious weeds.	N/A
<b>Section 14. Demolition of Existing Development</b>	Provisions relating to demolition works	Demolition of existing structures is proposed and conditions to be applied to ensure compliance with relevant SafeWork NSW and Australian Standards requirements.	Complies by condition
<b>Section 15. On Site Sewage Disposal</b>	Provisions relating to OSMS.	OSMS is not proposed.	N/A
<b>Section 16. Aboriginal Archaeology</b>	An initial investigation must be carried out to determine if the proposed development or activity occurs on land potentially containing an item of aboriginal archaeology.	The development site is not mapped as a potential area containing Aboriginal archaeology.	Complies
<b>Section 17. Heritage and Archaeology</b>	Provisions relating to heritage sites.	The development site is not identified as a heritage item or located within close proximity to a heritage item.	Complies
<b>Section 20. Car Parking and Access</b>	<u>Car Parking Controls Residential &amp; Business Zones</u> 1 space per small dwelling (<65sqm) or 1 bedroom 1.5 spaces per medium dwelling (65-110sqm) or 2 bedrooms	Car parking provisions are provided in accordance with the requirements of the Affordable Rental Housing SEPP.	Complies with ARH SEPP

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Development Control	Provision	Comment	Complies
	2 car spaces per large dwelling (>110sqm) or 3 or more bedrooms  1 visitor car space for every 4 dwellings or part thereof.		
<b>Section 21. Subdivision of Land and Buildings</b>	There must be a minimum of three buildings, spaces, or land parcels for strata subdivision.	Strata subdivision to occur and has more than 3 parcels for subdivision.	Complies
<b>Section 22 and Section 23. Water Conservation and Energy Conservation</b>	New dwellings, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	The application has been accompanied by a BASIX Certificate and conditions of consent will apply to ensure compliance with the BASIX commitments.	Complies by condition
<b>Section 25. Waste Disposal and Re-use Facilities</b>	Provisions relating to waste management during construction and on-going waste.	Waste storage areas are satisfactory for the development and are located in the private open spaces and can be accessed through widened garages where required. Councils Waste Management officer has reviewed the waste management plan and conditions of consent were provided.	Complies by condition
<b>Section 26. Outdoor Advertising and Signage</b>	Provisions relating to signage.	No signage proposed.	N/A
<b>Section 27. Social Impact Assessment</b>	Provisions relating to social impact.	Social impact comment has been provided and reviewed by Council’s Community Planning Section who are satisfied with the proposal subject to conditions in relation to the affordable housing units.	Complies by conditions

**Liverpool Development Control Plan 2008 – Part 3.6 Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones**

The proposed development is subject to the LDCP 2008. Part 3.6 of the LDCP 2008 covers controls specifically relating multi dwelling housing in areas zoned R3 or R4. The following key controls are discussed in the following table:

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Control	Requirement	Comment
Subdivision, Frontage and Lot Size	<p>The minimum lot size for multi dwelling housing is 1,000m<sup>2</sup>. Where development pursuant to section 4 is proposed, the minimum lot size shall be 650m<sup>2</sup>.</p> <p>The minimum lot width for multi dwelling housing is 22m. Where development pursuant to section 4 is proposed, the minimum lot width shall be 18m.</p>	<p><b>Complies</b> The total site area is 1670.8m<sup>2</sup> with a site width at the front of 34m. Therefore Section 4 of the DCP would not be required.</p>
Site Planning	<p>Site layout should consider, and as far as possible minimise overshadowing, acoustic and visual intrusion on neighbouring and on site dwellings.</p>	<p><b>Complies</b> The proposed dwellings are considered to have been designed to minimise impacts on adjoining properties such that the development will not lead to non-compliances with the privacy, overshadowing and solar access controls.</p>
	<p>There must be a direct link from at least one living area to the principal private open space.</p>	<p><b>Complies</b> Each dwelling of the multi- dwelling housing development will provide a direct link to the POS from the living rooms which has been demonstrated in the plans.</p>
	<p>The siting of windows of habitable rooms on the first floor shall minimise overlooking to the principal private open space of neighbouring properties.</p>	<p><b>Complies</b> The siting of windows of habitable rooms is considered to have been designed to minimise overlooking to POS of neighbouring properties.</p>
	<p>Stormwater from the site must be able to be drained satisfactorily. Where the site falls away from the street, it may be necessary to obtain an easement over adjoining property to drain water satisfactorily to a Council stormwater system. Where stormwater drains directly to the street, there may also be a need to incorporate on-site detention of stormwater where street drainage is inadequate.</p>	<p><b>Complies by conditions</b> The stormwater plans indicate that stormwater will be discharged via an OSD system. This aspect has been reviewed by Council's Land Development Engineer, who have raised no issues subject to conditions. Deeds of agreement have also been signed by Council and the adjoining site in regards to the proposed stormwater easement.</p>
	<p>The siting of dwellings shall be orientated to maximise solar access to both external courtyards and internal living areas.</p>	<p><b>Complies</b> The shadow diagrams indicate that the POS and living rooms will receive a compliant level of solar access when having regard to the minimum requirements.</p>

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Control	Requirement	Comment
	Where possible all existing substantial vegetation on site shall be retained.	<b>Complies</b> 1 tree is being retained on the site.
	Multi Dwelling Housing is not permitted on cul-se-sac heads or streets with a carriageway width of less than 6.5m.	<b>Complies</b> The proposed development is not located on a cul-de-sac head and Box Road has a carriageway width of 9.9m.
Townhouse and Villa Development on an 18m Frontage Block	<u>Controls relating to 18m frontage blocks</u> Section 4 in Part 3.6 of the LDCP 2008 prescribes controls for multi-unit housing developments on allotments with a frontage of less than 22 metres.	<b>N/A</b> Site with frontage greater than 22 metres and greater than 1000m <sup>2</sup> .
Setbacks	<u>Front Setbacks</u> Ground Floor: 4.5m First Floor: 5.5m Classified Roads: 7.0m  Verandahs, balconies, eaves and other sun control devices may encroach on the minimum front and secondary setback by up to 1m.  Garages or Carports must be set back a minimum of 1m behind the main face of the dwelling (see Figure 2). (The main face is the first wall of a habitable room)	<b>Complies</b> Units 1 & 6 Ground Floor – 4.5m First Floor – 5.65m Porch/ Articulation area – 3.5m  No garages face the street and the garages internal to the site are setback behind a wall of the dwelling it is associated with.
	<u>Side Setbacks</u> Ground floor with windows to habitable rooms: 4.0m  Ground floor without windows to habitable rooms: 0.9m  First floor without windows to habitable rooms: 1.2m  First floor with windows to habitable rooms and neighbouring POS: 4.0m	<b>Considered Acceptable.</b> See justification below for side & rear setbacks of units 5 & 9  Unit 1 (Northern Boundary) Ground floor – 4.55m First Floor – 4.15m  Unit 2 (Northern Boundary) Ground Floor – 4.44m First Floor – 4.4m  Unit 3 (Northern Boundary) Ground Floor – 4.79m First Floor – 4.79m  Unit 4 (Northern Boundary) Ground Floor – 4.44m First Floor – 4.65m

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Control	Requirement	Comment
		<p>Unit 5 (Eastern Boundary) Ground Floor – 1.55m First Floor (no windows) – 1.55m</p> <p>Unit 6 (Southern Boundary) Ground Floor – 4.55m First Floor – 4.15m</p> <p>Unit 7 (Southern Boundary) Ground Floor – 4.44m First Floor – 4.44m</p> <p>Unit 8 (Southern Boundary) Ground Floor – 4.38m First Floor – 4.43m</p> <p>Unit 9 (Eastern Boundary) Ground Floor – 1.6m First Floor – 1.6m</p>
	<p><b>Rear Setbacks</b> Ground floor without windows to habitable rooms: 4.0m Ground floor with windows to habitable rooms: 4.0m First floor without windows to habitable rooms: 4.5m First floor with windows to habitable rooms and neighbouring POS: 6.0m</p>	<p><b>Complies</b> (see discussion below regarding side and rear setbacks for Units 5 &amp; 9)</p> <p>Unit 5 (Northern Boundary) Ground Floor – 4m First Floor – 6m</p> <p>Unit 9 (Southern Boundary) Ground Floor – 4.0m First Floor – 4.5m to wall with no windows and 6m to wall with window</p>
	<p><b>Justification</b> The proposed side setback of Units 5 &amp; 9 have been taken from the eastern boundary and the rear setback has been applied to the north boundary of Unit 5 and south boundary of Unit 9. This approach has been taken as the eastern boundary would be similar to a side boundary due to the shape and orientation of the allotment to the east as well as the POS of the site to the north being at the rear of the site. Additionally, due to the orientation of the proposed development facing into the internal driveway, this approach has been adopted. Special treatment is provided to help mitigate any impacts on adjoining properties, by providing a rear setback to the north for Unit 5 and privacy screens on windows, even though they would comply with the minimum rear setback requirement.</p> <p>It should be noted that the subject non-compliance occurs at the ground level as there is one window from a living room that faces the side boundary to the east of both Units 5 and 9 as well as a window for a bedroom on the first floor facing this direction for Unit 9. This side setback is considered acceptable as the applicant is considered to have satisfactorily demonstrated that the proposed development would not generate any</p>	

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Control	Requirement	Comment																					
	<p>detrimental impacts on adjoining properties in terms of overshadowing, privacy or amenity issues as a result of this setback. Additionally, to further mitigate any privacy concerns, it will be conditioned that the eastern window of Bed 1 of Unit 9 is to be amended to be a high sill window with a minimum sill height of 1.5m.</p> <p>The shadow diagrams submitted with the application indicate the proposed development will not prevent any adjoining sites from receiving the minimum required 3 hours of solar access between 9am and 5pm in mid-winter to a living room window on any adjoining property and to at least 50% of the private open space of an adjoining site.</p> <p>While the side setback of the ground floor of Units 5 and 9 with a window to a habitable room does not comply with Council’s numerical setback controls, it is not considered to result in unreasonable visual privacy intrusions to the adjoining neighbour. On the ground floor sufficient visual privacy between neighbours is provided largely due to boundary fencing, 1.8m in height, screening a large portion of the ground floor window causing the non-compliance. Accordingly, due to the type, place and screening of windows on the eastern elevations, privacy impacts between neighbours to the east are considered to be consistent with a dwelling house that is setback 1.2m from a side boundary.</p> <p>In regards to the above, strict compliance with the side and rear setback controls for Units 5 and 9 is not considered necessary where it is unlikely there will be any unreasonable solar or privacy impacts as a result.</p>																						
	<p><u>Setbacks across internal driveways</u> Buildings shall be setback a minimum of 8m from other buildings across a driveway.</p>	<p><b>Complies</b> Buildings are setback a minimum 8m across the driveway.</p>																					
Landscaping	<p>A minimum of 20% of the site area shall consist of a Landscape Area, this may include lawn, deep rooted trees, garden beds and mulched areas</p>	<p><b>Complies</b> Landscaped area– 31.6% (528.3sqm)</p>																					
	<p>A minimum unencumbered area of 4 x 5m shall be provided in rear setback to accommodate deep rooted trees.</p>	<p><b>Complies</b> The rear POS areas are able to accommodate an area of 4x5m that can accommodate deep rooted trees.</p>																					
Private Open Space	<p>POS required for Dwelling size: Small &lt;65m<sup>2</sup>: 30m<sup>2</sup> Medium 65m<sup>2</sup> – 100m<sup>2</sup>: 40m<sup>2</sup> Large &gt; 100m<sup>2</sup>: 50m<sup>2</sup></p>	<p><b>Complies</b> Private Open Space areas as follows:</p>																					
		<table border="1"> <thead> <tr> <th>Unit</th> <th>GFA (m<sup>2</sup>)</th> <th>POS (m<sup>2</sup>)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>97.5</td> <td>40</td> </tr> <tr> <td>2</td> <td>99.7</td> <td>41</td> </tr> <tr> <td>3</td> <td>99.7</td> <td>43</td> </tr> <tr> <td>4</td> <td>99.7</td> <td>41</td> </tr> <tr> <td>5</td> <td>92.75</td> <td>51</td> </tr> <tr> <td>6</td> <td>97.5</td> <td>40</td> </tr> </tbody> </table>	Unit	GFA (m <sup>2</sup> )	POS (m <sup>2</sup> )	1	97.5	40	2	99.7	41	3	99.7	43	4	99.7	41	5	92.75	51	6	97.5	40
		Unit	GFA (m <sup>2</sup> )	POS (m <sup>2</sup> )																			
		1	97.5	40																			
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		7	99.6	71
		8	106	50
		9	97.7	59
	Areas less than 1.5 m in width does not qualify as Private Open Space. Private Open Space must be directly accessible from the main living area.	<b>Complies</b> All POS have widths larger than 1.5m and are directly accessible from each dwellings main living area.		
	A minimum of 50% of the Private Open Space are must receive 3 hours of sunlight between 9:00am and 5:00pm on 21 June.	<b>Complies with Housing SEPP</b> As per the Housing SEPP, the development achieves solar access to units 1-5, 7 & 9 which is over 70% of the dwellings in the development		
Cut and Fill	Maximum Cut permitted: 500mm Maximum Fill permitted: 750mm	<b>Complies</b> Minimal cut required and maximum fill would be 750mm beneath the slab.		
Building Design and Appearance	Unit/s with a street frontage shall orientate the main entrance and where possible at least one living area towards the street.	<b>Complies</b> Units 1 and 6 have their entrances facing the street and would incorporate living areas on the ground floor facing the street.		
	Entry points shall be enhanced/emphasised to all dwellings especially those facing the street.	<b>Complies</b> The entries of each dwelling are clearly identifiable.		
	The first floor of the townhouse developments must be no greater than two thirds of the ground floor area.	<b>Considered Acceptable</b> See justification below. The first floor of the dwellings have areas greater than 2/3 of their respective ground floor.		
	Building facades shall be articulated and roof form is to be varied to provide visual variety.	<b>Complies</b> The building facades are well designed with good articulation and roof form through the use of entry porches, façade differentiation and changes in colours and finishes.		



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	Walls shall be a mix of masonry, rendered and or bagged, and painted, lightweight clad and painted and/or flush face brick. Justification will be required for 100% face brick facades or 100% rendered and painted brick and will be assessed on merit. Facades can be articulated by: <ul style="list-style-type: none"> <li>- The use of different materials and detailing and / or</li> <li>- The inclusion of balconies, verandas, pergolas and landscaped beds.</li> </ul>	<b>Complies</b> The schedule of colours and finishes demonstrate the use of a mixture of brick, paint, cladding and render.
	A sidewall must be articulated if the wall has a continuous length of over 10 m.	<b>Complies</b> All Sidewalls do not exceed 10m in length and are articulated.
	The entrance of each dwelling shall be emphasised.	<b>Complies</b> The entrances to each dwelling are clearly identifiable.
	Units built at the rear of the allotment must take into consideration privacy of neighbouring properties. The use of windows with high sill heights should be used to avoid potential privacy issues.	<b>Complies.</b> Windows at the rear of the allotment are designed sufficiently to accommodate privacy of the neighbouring property. Where potentially facing private open space, windows are treated with privacy screens or high sill windows.
	Driveways should avoid a 'gun barrel' effect by curving and siting of buildings, which create a driveway form with the divided carriageway separated by soft landscaping.	<b>Complies</b> The driveway is not considered to be a gun barrel and creates articulations and landscaped areas within the site.
	Attic floor space may be used when it is contained wholly within the roof pitch and will not be counted as a storey provided that the attic space is part of the dwelling unit.	<b>N/A</b> No attic spaces proposed.
	Space used for car parking shall be included as a storey if the ceiling of the car parking level exceeds more than 1m above the natural ground level.	<b>Noted</b> No basement proposed and parking is incorporated as garages in the dwellings.
	The maximum roof pitch shall be 36 degrees.	<b>Complies</b> Maximum roof pitch would be 22.5 degrees.
	Townhouses built on steep or sloping blocks should be built of	<b>Complies</b> Site is relatively level with a gentle slope

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	split-level construction.	down from the front to rear. Dwellings are sited to the slope of the land.
	Balconies are not permitted on the first floor of the side and / or rear portion of the dwelling. Balconies may be considered if they address public open space, communal open space and/or private driveways.	<b>Complies</b> No balconies proposed on the side or rear of the site.
	Blank walls in general that address street frontages or public open space are discouraged. Where they are unavoidable building elements or landscaping must be used to break up large expanses of walls. In some cases an anti-graffiti coating will need to be applied to the wall to a height of 2 metres.	<b>N/A</b> No blank walls facing the street frontages are proposed.
	<p><b><u>Justification</u></b> The first floor of all dwellings are greater than two-thirds of the ground floor area for their respective dwelling. Despite this non-compliance with the building design control, the variation is considered justifiable for the following reasons:</p> <ul style="list-style-type: none"> <li>- Although the upper levels are larger than that prescribed under the development control, there is sufficient articulation within each of the building's facades.</li> <li>- The development employs a good mix of building materials to help improve the fenestration and minimise the apparent bulk of the structures.</li> <li>- The proposal includes a substantially compliant building height (i.e. max. of 7.7m) which is well below the 8.5m height limit. Because of this reduced building height, the proposal does not impose undue bulk on adjoining properties or the streetscape.</li> <li>- The development is compliant with the maximum floor space ratio allowed onsite and therefore is considered unlikely to have excessive bulk at the first storey.</li> <li>- The development is generally consistent with the setback requirements and landscaping controls and therefore is not considered to be excessively bulky, especially at the first storey.</li> <li>- Despite the non-compliance, the proposal does not result in any unreasonable overshadowing of adjoining properties and remains compliant with the provisions of the LDCP 2008 in this regard.</li> </ul>	
Internal Design	Multi Dwelling Housing located on street boundaries shall have habitable rooms located to the front of the dwelling for security and surveillance to the street.	<b>Complies</b> Units 1 and 6 incorporate living areas which front the street to promote surveillance.

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	Living rooms should take advantage of northern aspects where possible. Access to private open space must be from at least one living room.	<b>Complies</b> Most dwellings are able to benefit from northern solar access, where achievable. Each dwelling's POS is accessible from their respective ground floor living areas.
	The internal layout of the dwelling must incorporate cross ventilation.	<b>Complies</b> Each dwelling can achieve cross ventilation.
	Bathrooms, ensuites, laundries and walk in wardrobes should be located to the side and the rear of the development.	<b>Considered acceptable</b> The proposed dwellings incorporate bathrooms and laundry around the garage area and bathrooms and ensuites are typically oriented to sides and rears of dwellings.
	Each dwelling must provide a minimum storage area of 8m <sup>3</sup> .	<b>Complies</b> Sufficient storage is provided to each dwelling in the form of wardrobes to bedrooms and storage spaces within the dwelling including under the stairs.
	Locate active use rooms or habitable rooms with windows overlooking communal/public areas (e.g. playgrounds, gardens).	<b>N/A.</b>
Car Parking and Access	<u>Internal Driveway and Car Parking layout</u> Minimum Internal Driveway Width permitted: 3.5m	<b>Complies</b> The proposed internal driveway would be a minimum of 5.5m in width that can ensure 2 way movements.
	The extent of paved area for driveways shall be kept to a minimum. Driveways abutting dwellings shall be kept to a minimum.	<b>Complies</b> The proposed paved area is limited to that required for the driveway and manoeuvring areas.
	Avoid large expanses of driveways, including concentrating double garages adjacent to each other.	<b>Complies</b> The proposed development has tried to reduce large expanses of driveways where possible.
	<u>Basement Car Parking</u> Basement car parking is permitted but will be included as a storey if the ceiling is located more than 1m above the natural ground level.  On sites that slope away from the street, underground car parking structures that protrude more than 1m above natural ground level toward the rear are not	<b>N/A</b> No basement proposed.

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	included as a storey where topographical features warrant and the streetscape is not adversely affected. The car parking area should be adequately obscured from visible sight by screen planting.	
	Kerbs shall be provided along the edge of all internal driveways. All traffic must be able to enter and exit the site in a forward direction.	<b>Complies</b> Kerbs are to be provided along the edge of the proposed driveway.
Landscaping and Fencing	The setback areas of development are to be utilised for canopy tree planting.	<b>Complies</b> Setback areas of the development have been utilised for canopy tree and screening planting.
	The landscape design for all development must include canopy trees that will achieve a minimum 8m height at maturity within front and rear setback areas.	<b>Complies by conditions</b> Landscaping is generally appropriate. Landscape plan reviewed and supported by Council's landscape officer. Conditions to apply regarding an amended landscape plan for street trees to be included and to reflect the most recent iteration of the plans.
	Landscape planting should be principally comprised of native species to maintain the character of Liverpool and provide an integrated streetscape appearance. Species selected in environmentally sensitive areas should be indigenous to the locality. However, Council will consider the use of deciduous trees in small private open space areas such as courtyards for control of local microclimate and to improve solar access.	<b>Complies.</b> The landscaping schedule submitted indicates that: - Various native species have been proposed within the landscaped area. - A mix of vegetation has been proposed within the landscaped areas.
	The landscaping shall contain an appropriate mix of canopy trees, shrubs and groundcovers. Avoid medium height shrubs (600 – 1800mm) especially along paths and close to windows and doors.	<b>Complies</b> Shrubs proposed near fronts of units are appropriately sized.
	Landscaping in the vicinity of a driveway entrance should not obstruct visibility for the safe ingress and egress of vehicles and pedestrians.	<b>Complies</b> Landscaping in the vicinity of the driveway entrance would be unlikely to obstruct visibility.

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	Tree and shrub planting alongside and rear boundaries should assist in providing effective screening to adjoining properties. The minimum height of screening to be provided is 2.5 to 3m at maturity.	<b>Complies</b> Tree and shrub planting has been incorporated along the rear and side boundaries to provide effective screening to adjoining properties.
	Landscaping on any podium level or planter box shall be appropriately designed and irrigated. Landscaping on podium levels and planter boxes should be accessible from habitable areas of dwellings or elsewhere as appropriate for gardener access in other forms of development.	<b>N/A</b>
	Landscaping shall be provided along the side and rear boundaries to provide privacy for adjoining residents.	<b>Complies</b> Landscaping has been incorporated along the side and rear boundaries.
	A maximum of 30% of the front setback is to be paved or sealed, unless the area is used for direct access to a garage, carport or dwelling entry.	<b>Complies</b> The proposed front setback would be 70.6% landscaped with the remaining land being used for driveways the driveway and patio area.
	Trees adjacent to private open space areas and living rooms should provide summer shade and allow winter sun entry.	<b>Complies</b> The proposed trees likely allow for appropriate shade and sunlight. Landscape options were reviewed and accepted by Council's landscape officer.
	Any tree with a mature height over 8m should be planted a minimum distance of 3m from the building or utility services.	<b>Complies</b> Trees with mature height of 8m have been proposed to be planted at least 3m from utility services.
	Areas between a driveway and the windows of a dwelling shall be landscaped to provide privacy for dwellings.	<b>Complies</b> The areas between the driveway and the dwellings are landscaped where possible.
	<u>Primary Frontage</u> The max height of a front fence is 1.2m. The front fence may be built to a max height of 1.5m <i>if</i> the fence is setback 1m from the front boundary with suitable landscaping in front.	<b>N/A</b> No front boundary fencing is proposed.
	Fences should not prevent surveillance by the dwelling's occupants of the street or communal areas and are to be a	<b>N/A</b> As above.

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	minimum 30% transparent.	
	Front fences shall be constructed in masonry, timber, metal pickets and/or vegetation and must be compatible with the proposed design of the dwelling.	<b>N/A</b> As above.
	The front fence may be built to a maximum of 1.8m <i>only if</i> : - The primary frontage is situated on a Classified Road. - The fence is articulated by 1m for 50% of its length and have landscaping in front of the articulated portion. The fence does not impede safe sight lines from the street and from vehicles entering and exiting the site.	<b>N/A.</b> As above.
	Front fences are to be constructed of materials compatible with the proposed design of the dwelling.	<b>Complies</b> No front fencing proposed. Element of fencing for Units 1 and 6 to POS will be timber lapped and capped.
	Boundary fences shall be lapped and capped timber or metal sheeting.	Noted.
Amenity and Environmental Impact	<u>Overshadowing</u> Adjoining properties must receive a minimum of three hours of sunlight between 9am and 5pm on 21 June to at least; - One living, rumpus room or the like; and - 50% of the private open space.	<b>Complies</b> The shadow diagrams indicate that the adjoining properties would receive 3 hours of sunlight to 50% of the POS and living rooms between 9.00am and 5.00pm.
	<u>Privacy</u> Building siting, window location, balconies and fencing should take account of the importance of the privacy of on site and adjoining buildings and outdoor spaces.	<b>Complies</b> The dwelling design, landscaping and fencing is considered to maximise privacy to the subject site and adjoining properties.
	Windows to habitable rooms should be located so they do not overlook such windows in adjoining properties, other dwellings within the development or areas of private open space.	<b>Complies by condition</b> Windows to habitable rooms are located on the ground floor and are mostly screened by 1.8m high fencing and appropriately setback. Where windows to bedrooms are proposed in a location close to POS, privacy screening or high sill windows have been proposed. A

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		condition will apply to make the eastern window of Bed 1 of Unit 9 to be a high sill window with a minimum sill height of 1.5m.
	Landscaping should be used where possible to increase visual privacy between dwellings and adjoining properties.	<b>Complies</b> Landscaping would be incorporated in the rear and side setbacks and along accessways to increase visual privacy between dwellings and adjoining properties.
	<p><u>Acoustic Impact</u> Noise attenuation measures should be incorporated into building design to ensure acoustic privacy between on-site and adjoining buildings.</p> <p>Developments in areas adversely impacted upon by rail or traffic related noises must incorporate the appropriate noise and vibration mitigation measures into the design in terms of the site layout, building materials and design, orientation of the buildings and location of sleeping and recreation areas.</p> <p>Where party walls are provided they must be carried to the underside of the roof and be constructed in accordance with Part F5 of the Building Code of Australia.</p> <p>The proposed buildings must comply with the Environment Protection Authority criteria and the current relevant Australian Standards for noise and vibration and quality assurance.</p>	<b>Complies by condition</b> The site is mapped on land that is likely to be affected by road noise from the Hume Highway. The applicant has submitted an acoustic report which demonstrates that the proposal is able to meet the acoustic requirements with respect to interior noise levels. The application was reviewed during the clearing house process by Council's Environmental Health Officer, who have recommended appropriate noise conditions will be imposed relating to the recommendations of the acoustic report.
Site Services	<p><u>Letterboxes</u> Letterboxes shall to 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 Freestanding letterbox structures should be designed</p>	<b>Complies by conditions</b> Advisory conditions will be imposed outlining Australia Post requirements.

LIVERPOOL CITY COUNCIL

LOCAL PLANNING PANEL REPORT

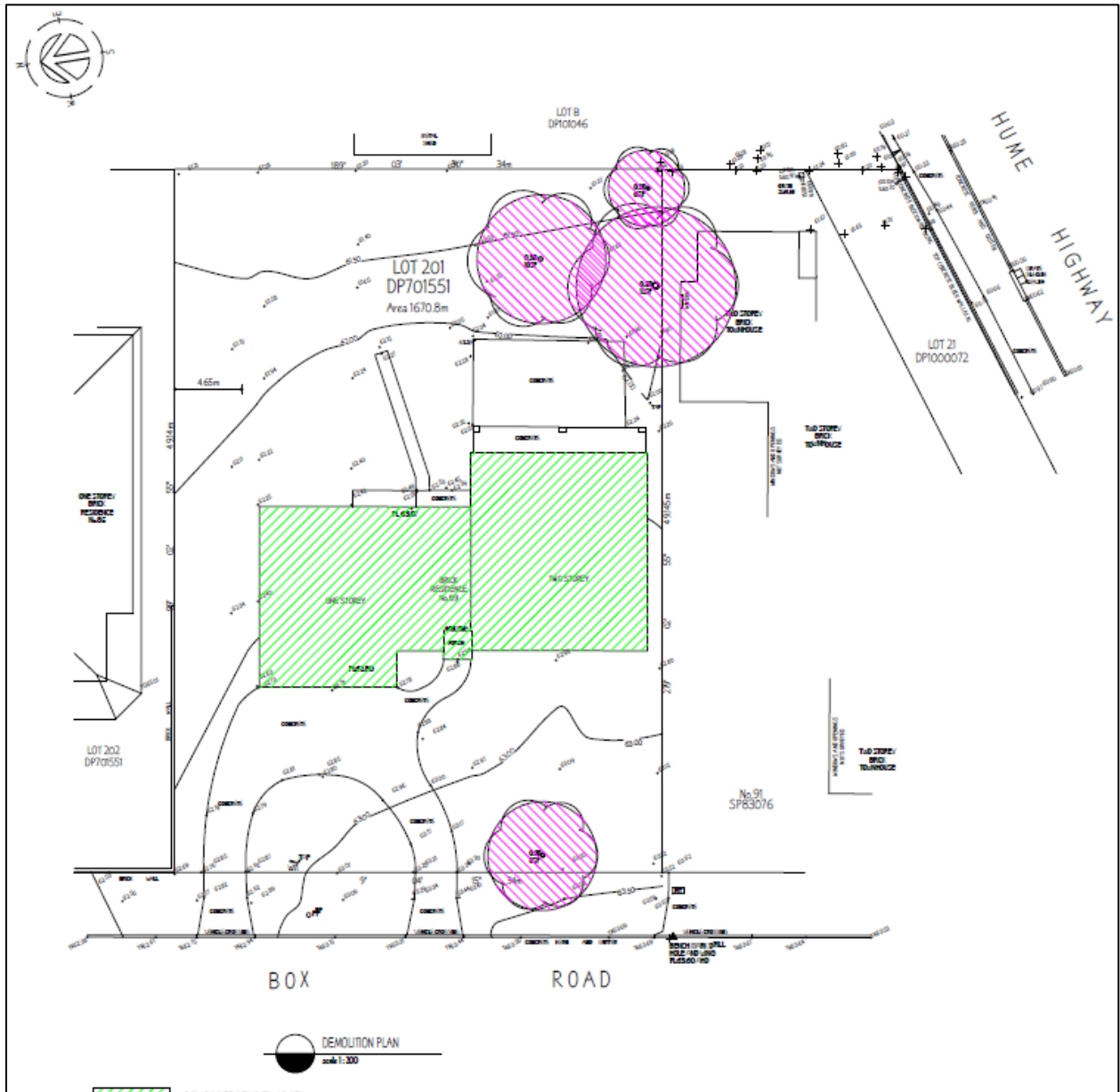
28<sup>th</sup> November 2022

LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
	<p>and constructed of materials that relate to the main building. Residential numbering should be attached to the letterbox so that it is clearly visible from the street frontage. Numbers should be 75mm in height, reflective and in contrast to the backing material.</p>	
	<p><u>Waste Management</u>                      Waste disposal facilities shall be provided for development. These shall be located adjacent to the driveway entrance to the site.</p> <p>Any structure involving waste disposal facilities shall be located as follows:</p> <ul style="list-style-type: none"> <li>- Setback 1m from the front boundary to the street.</li> <li>- Landscaped between the structure and the front boundary and adjoining areas to minimise the impact on the streetscape.</li> </ul> <p>Not be located adjacent to an adjoining residential property.</p>	<p><b>Complies by conditions</b>                      Waste storage areas are satisfactory for the development and are located in the private open spaces and can be accessed through widened garages where required. Councils Waste Management officer has reviewed the waste management plan and conditions of consent were provided.</p>
	<p><u>Frontage works and damage to Council infrastructure</u></p> <ul style="list-style-type: none"> <li>- Where a footpath, road shoulder or new or enlarged access driveway is required to be provided this shall be provided at no cost to Council.</li> <li>- Council must be notified of any works that may threaten Council assets. Council must give approval for any works involving Council infrastructure.</li> <li>- Where there are no existing street trees in front of the site and contributions have not been collected for street tree planting it may be a condition of consent that street trees be provided in the footpath area immediately in front of the site.</li> </ul>	<p><b>Complies by conditions</b>                      Footpath and vehicular crossing to be provided as conditions of consent and to be at no cost to Council. Additionally, dilapidation reports will occur before and after works to ensure damage is rectified. Additionally, the provision of street trees either side of the driveway in Box Road will be provided as conditions of consent.</p>

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



**REPORT ATTACHMENT 3 – PLANS OF THE PROPOSAL**



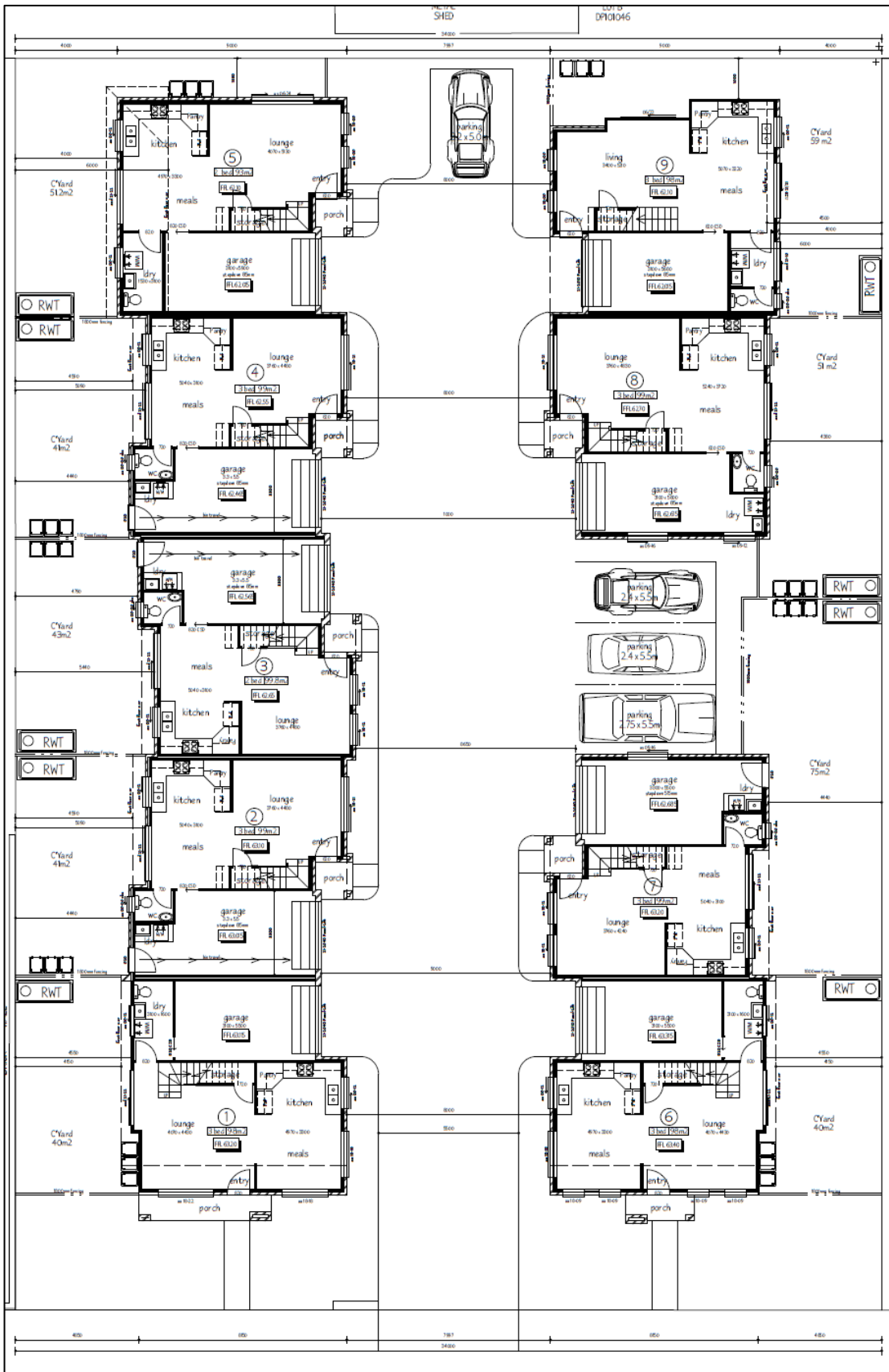
**Demolition Plan**

LIVERPOOL CITY COUNCIL  
 LOCAL PLANNING PANEL REPORT

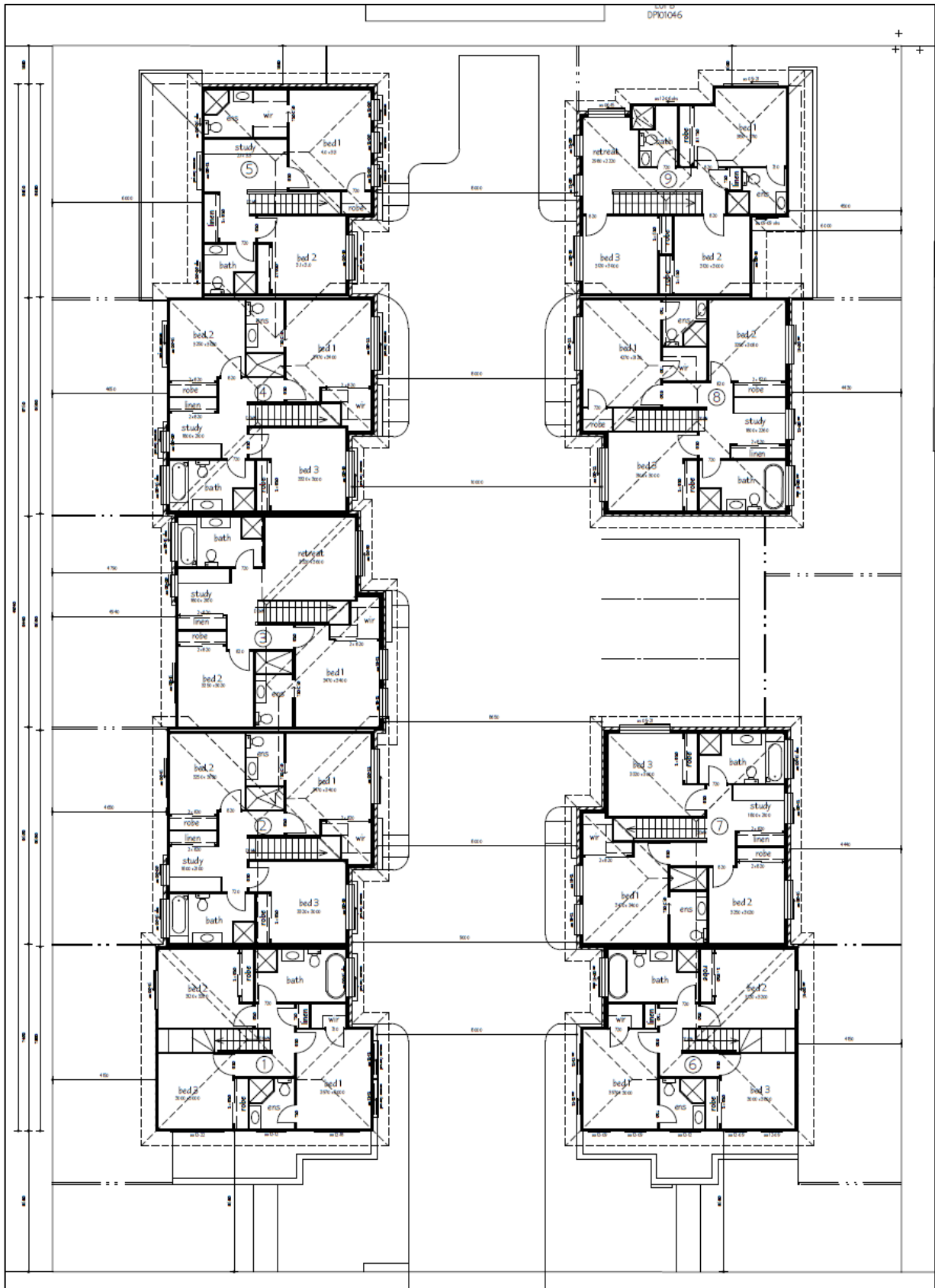
28<sup>th</sup> November 2022



Site Plan



Ground Floor Plan

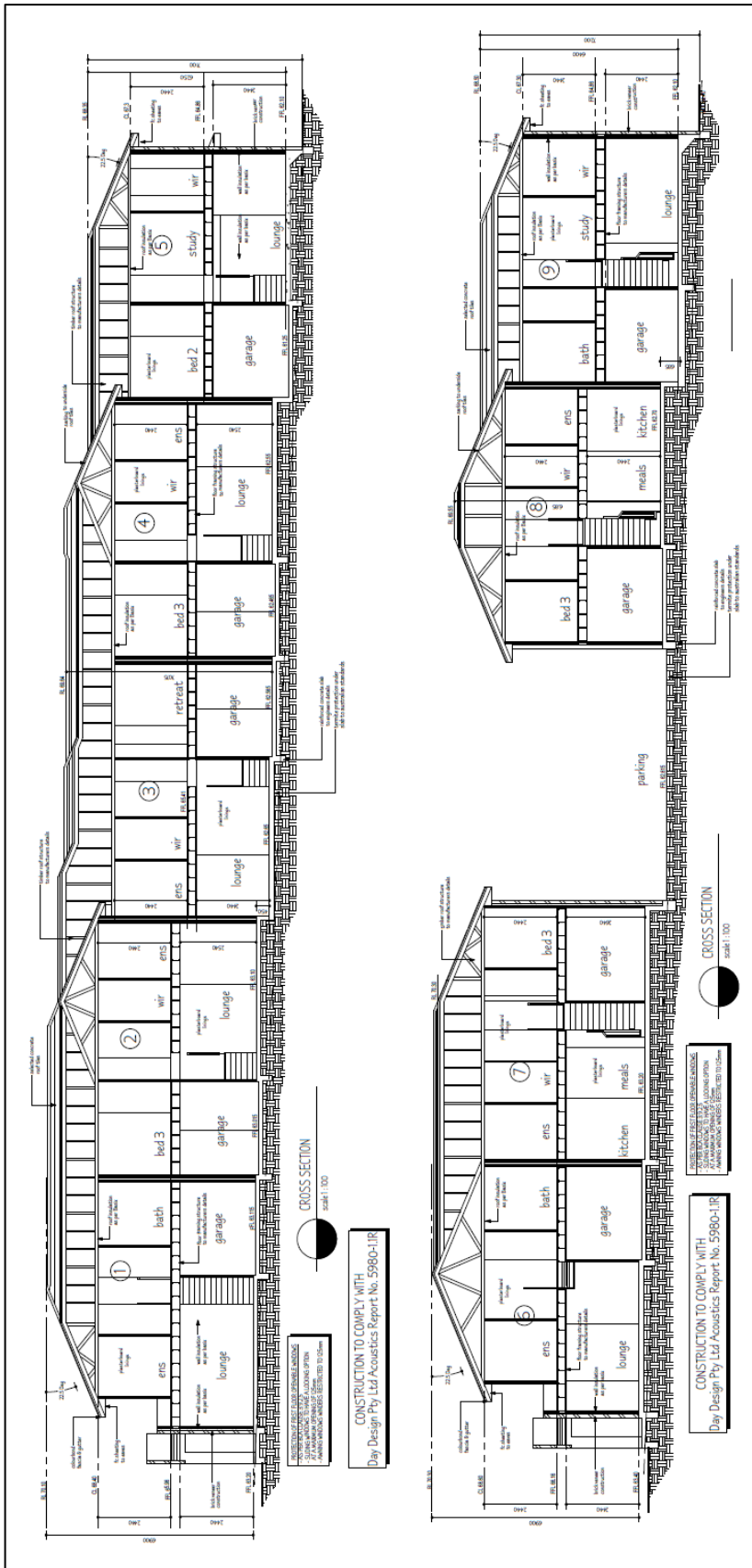


First Floor Plan





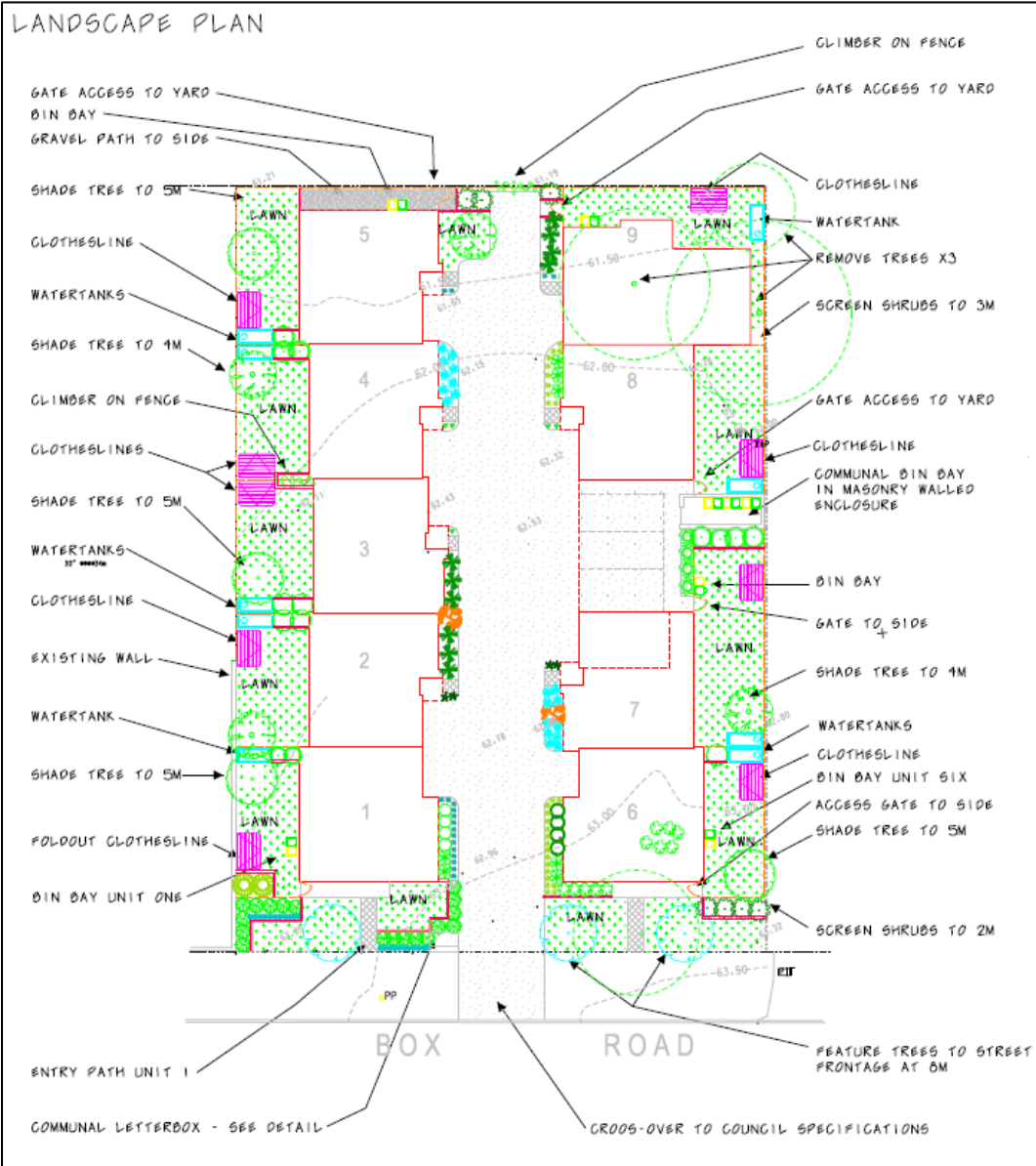
South Elevations



Sections



Perspective



Landscape Plan



**REPORT ATTACHMENT 4 – CLAUSE 4.6 VARIATION STATEMENT**



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**Clause 4.6 Variation  
Statement**

**Demolition of the existing dwelling and construction  
of an affordable housing multi dwelling development  
with Strata title subdivision**

**No.87 Box Road, Casula**

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## 1. Introduction

This statement is to accompany plans as submitted to Council to address an issue raised by Liverpool City Council for a development application lodged at No.87 Box Road, Casula.

Council issued correspondence regarding the proposed development raising the following issue:

*'The development standards within the Housing SEPP are predominantly the same as previously, however, the size of dwellings development standard within Clause 18(j) of this SEPP have been increased as shown in the following table: Bedrooms ARH SEPP 2009 Housing SEPP 2021 1 50 65 2 70 90 3 95 115 As a result of this change, the three-bedroom units fall short of the requirement for dwelling size. The applicant is advised of the following options: a) Amend the plans to reflect the provisions of the revised Housing SEPP requirements; or b) Given the circumstances with this development application and the history of the proposal, Council is willing to consider a Clause 4.6 variation request to this Development Standard, under the provisions of Clause 4.15 of the EP&A Act and Clause 4.6 of the Liverpool LEP. Therefore, in order to seek a variation to Clause 18(j) of the Housing SEPP the applicant is required to provide a Clause 4.6 Variation Statement, in accordance with Clause 4.6 – Exceptions to development standards of the LLEP 2008. For Council to adequately consider and support the variation to the development standard, the applicant must be able to adequately demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the standard.'*

## 2. Justification

A variation is sought to Clause 18(j) of State Environmental Planning Policy (Housing) 2021 in regard to the minimum floor areas for dwellings. Clause 18(j) specifies the following:

- (j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—
- (i) for each dwelling containing 1 bedroom—65m<sup>2</sup>, or
  - (ii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>, or
  - (iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.

The proposal provides 2 x 2 bedroom dwellings (Units 3 & 5) and 7 x 3 bedroom dwellings (Units 1, 2, 4, 6-9) with the following floor areas:

Unit 1: 110.8sqm  
 Unit 2: 112.4sqm  
 Unit 3: 112.4sqm  
 Unit 4: 112.4sqm  
 Unit 5: 108.6sqm  
 Unit 6: 110.8sqm  
 Unit 7: 123.6sqm  
 Unit 8: 120sqm

Unit 9: 111.5sqm

Five dwellings (Units 1,2, 4, 6 and 9) do not comply with the minimum floor area as required in the Housing SEPP.

Clause 4.6 of the SEPP provides exceptions to development standards under any relevant environmental planning instrument and as such, a variation under Clause 4.6 is requested and detailed below.

#### **Clause 4.6          Exception to development standards**

Under Liverpool Local Environmental Plan 2008, clause 4.6 allows development consent to be granted for development even though the development would contravene a development standard imposed by LLEP 2008 or any other environmental planning instrument provided the consent authority has considered a written request demonstrating that compliance with the development is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation requested is required due to Council requesting that the previous, development application be withdrawn as owners' consent was missing for the adjoining property where a drainage easement is proposed. Instead of accepting a letter from the owner of the property providing consent and accepting the deed agreement submitted with the original development application, Council requested for the development application to be withdrawn and re-submitted with the owners' consent. The issue with this process is that the new Housing SEPPP was gazetted and is now in force meaning that the proposed development now had to comply with any changes from the old Affordable Housing SEPP to the new Housing SEPP. The one change was the minimum floor area which now means that five of the dwellings now do not comply with the minimum floor area required.

Clause 4.6 provides flexibility in the application of relevant development standards from any environmental planning instrument in order to achieve better planning outcomes from development. The proposed variation is considered to be appropriate as detailed below.

*Clause 4.6 (3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

The NSW Land and Environment Court has established a five part test in determining whether compliance with relevant development standards under the provisions of an environmental planning instruments is unnecessary. Below is an assessment of the proposed variation against the five part test:

**Test 1: the objectives of the standard are achieved notwithstanding non-compliance with the standard**

Whilst there are no specific objectives for the minimum floor area requirement, there are principles of the Housing SEPP that apply:

*(a) enabling the development of diverse housing types, including purpose-built rental housing,*

The proposed development enables a range of housing types from the provision of two bedroom and three bedroom dwellings that are purpose-built affordable housing.

*(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

The proposed development will provide housing that will meet the needs of very low to moderate income households as it will be conditioned such that the dwellings are to be used at least 15 years.

*(c) ensuring new housing development provides residents with a reasonable level of amenity,*

The proposed dwellings will provide future occupants with acceptable levels of amenity despite the variation for the floor area given that the variation is minor and given that the size of the dwellings and internal rooms are all sufficient enough to meet the intended purpose. In addition, all other development standards within the Housing SEPP and Council's Development Control Plan have been complied with and as such overall satisfactory amenity is maintained.

*(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

The location of the proposal is within an accessible area with the 872 Campbelltown to Liverpool via Macquarie Fields bus available every hour with the bus stop being located within 400m of the site.

*(e) minimising adverse climate and environmental impacts of new housing development,*

The proposed development has been designed and located to minimise the environmental impacts of new housing development. A Basix certificate has been submitted that details how the proposed development complies with the required targets for water, thermal and energy being achieved.

*(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

The subject site is directly adjacent to a multi dwelling development with several multi dwelling developments in the greater locality as well as single dwellings on large lots. Box Road is an evolving streetscape which is evident in the dwellings currently existing in the street as well as the vacant land that exists on Box Road as well as within close proximity to the site. There is a mix of older type brick dwellings as well as a few dwellings that are modern in design. as shown in the below photos.

The proposed dwellings that would front Box Road incorporate a similar pitch roof design as well as incorporating the predominant use of brick with rendered and cladded elements tie in the new style of dwellings being constructed.

The external colours of dwellings within the Box Road streetscape vary from whites and greys to red and sand coloured brick with there not being a predominant colour theme within the street. The external colours of the proposed multi dwelling uses greys which is a contemporary colour that is consistent with the future desired character of the area.

The proposed dwellings are a maximum of two storeys in height which is compatible with the built form in Box Road given that many of the existing dwellings are two storey dwellings with single storey dwellings sparsely located.

It is considered that the design and layout of the proposed multi dwelling development is consistent with not only the existing streetscape character of Box Road but also the future desired character and as such should be supported.

*(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

The proposed dwellings would be used as affordable housing for 15 years which provides 15 years of potential rental accommodation in a development that has been designed to minimise social and environmental impacts from the use. There is no evidence to suggest that the proposed development would create social impacts or environmental impacts as it would ordinarily operate as a normal multi dwelling development would. Council has processes in place that would deal with any issue that potentially could arise from the development to ensure that there would be no further adverse impacts.

*(h) mitigating the loss of existing affordable rental housing.*

The proposed development mitigates the loss of existing affordable rental housing by providing an excess floor area as affordable housing than the 20% that is required under

Clause 16 of the Housing SEPP. Even with a variation to the minimum floor area required, there is still 21.3% of the floor area that will be provided as affordable housing.

**Test 2** The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The proposed development still complies with the required overall floor area to be provided as affordable housing under Clause 16 of the Housing SEPP. Only 20% of the overall floor area proposed is required to be affordable with the proposed development provided 21.3% even with the variation to the minimum floor area of each individual dwelling. As the required area of affordable housing is still achieved overall, it is considered that compliance with the minimum floor area for each individual dwelling is not required.

**Test 3** The underlying objective of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The proposed development does not rely on this test for approval.

**Test 4** The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

As the new Housing SEPP has recently been in force, there have been no consents previously granted departing from the required minimum floor area of individual dwellings. Notwithstanding, it is important to note that the proposed development did comply with the previous standard which was less than the current standard and would have been approved as such if the Council did not require the development application to be resubmitted to include owners consent of the land required for the easement. It is further important to note that there would have been many affordable housing developments approved with the less floor area prior to the implemented of the new SEPP.

**Test 5** The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The proposed development does not rely on this test for approval.

Given the above, the proposal provides compliance with the development standard and is considered to unnecessary.

*Clause 4.6 (3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard,*

The proposed development complies with all other relevant development standards under the provisions of the Housing SEPP as well as Council's LEP and DCP development standards. The variation is considered to be minor and would not adversely affect the amenity of future occupants or neighbouring properties. The proposed development provides a high level of streetscape amenity and is consistent with the streetscape within the locality. The proposed development, with the variation, is considered to be within the public interest given that all concerns raised by objectors to the proposal have been satisfied. In addition, the development provides an affordable and diverse housing option for low income earners and does not have any adverse environmental impacts.

### 3. CONCLUSION

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In conclusion, it is considered that the proposed variation to the minimum floor area requirements would still comply with the objectives of in-fill affordable housing under the provisions of the Housing SEPP 2021 as well as the five-part test provided by the Department of Planning and Environment. The proposed development would be consistent with similar types of development already approved by Council and would not adversely affect the amenity of the future occupants, surrounding residents or the streetscape if it were to be approved. Furthermore, it is considered that Council support the variation and the proposed development in its current form.



**REPORT ATTACHMENT 5 – CONDITIONS OF APPROVAL****ATTACHMENT 1 – CONDITIONS OF APPROVAL**

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

**A. THE DEVELOPMENT****Approved Plans**

1. Development the subject of this determination notice must be carried out strictly in accordance with the following plans/reports marked as follows, except where modified by the undermentioned conditions.

- (a) Architectural plans, prepared by Urban Living Designs, Job No. ULD 21-024, including the following;

Drawing Title	Drawing Number	Issue	Date
Title Page	1/8	D	21/04/22
Site Plan	2/8	D	21/04/22
Analysis/ Demolition	3/8	D	21/04/22
Ground Floor Plan	4/8	D	21/04/22
First Floor Plan	5/8	D	21/04/22
Elevations	6/8	D	21/04/22
BASIX/Streetscape	7/8	D	21/04/22

- (b) Landscape Concept Plan, prepared by PDLA Landscape Architects, Plan No. 1716-02, dated 26/5/2021;
- (c) Waste Minimisation and Management Plan, Applicant Details: Urban Living Designs, submitted for assessment on 18 February 2022;
- (d) Demolition Work Plan, submitted for assessment on 29 June 2021;
- (e) BASIX Certificate, Certificate No. 761309M\_03, prepared by Ecoplus Consultants (fka Outsource Ideas P/L), dated 31 May 2021;
- (f) Road Traffic Noise Intrusion Assessment, prepared by Day Design Pty Ltd, Report No. 5980-1.1R, dated 24 June 2016; and
- (g) Arboricultural Impact Assessment, prepared by Arborlogix, Reference No. 001565 v1.0, dated 27 October 2021.

**Transport for NSW Concurrence**

2. The development is to demonstrate compliance with all relevant requirements issued by Transport NSW, dated 9 February 2022 (Attachment 3).

**Stormwater Easement Works**

3. The deeds of agreement between the parties for 91 Box Road, Casula and 93 Box Road, Casula are to be complied with before, during and after the construction of the proposed development.

**Compliance with EP&A Act**

4. The requirements and provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021, must be fully complied with at all times.

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

**National Construction Code**

5. In accordance with section 4.16(11) of the Environmental Planning & Assessment Act 1979 and clause 69 of the Environmental Planning & Assessment Regulation 2021, it is a prescribed condition that all building work must be carried out in accordance with the applicable Performance Requirements of the National Construction Code. Compliance with the Performance Requirements can only be achieved by:

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

**Works at no cost to Council**

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

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

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

**Section 7.11 Payment (Liverpool Contributions Plan 2018 - Established Areas)**

7. As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with Liverpool Contributions Plan 2018 - Established Areas as amended.

The total contribution is **\$112,317** and will be adjusted at the time of payment in accordance with the contributions plan.

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

The Contributions Plan may be inspected online at [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au)

Payment must be accompanied by the attached form (Attachment 2).

**Plan Amendments**

8. Prior to the issue of a construction certificate, the following are to be amended to the satisfaction of the Principal Certifying Authority, to demonstrate the following:
- (a) The eastern window of bedroom 1 of Unit 9 is to be amended to have a high sill window with a minimum sill height of 1.5 metres.
  - (b) The landscape plan is to be amended to ensure consistency with the approved built form.
  - (c) The landscape plan is to be amended to include two street trees in the Box Road verge. One tree is to be planted on each side of the driveway and is to be in a centralised location between the driveway and the side boundary. The street trees are to have a minimum pot size of 100 litres and be chosen from one of the following species:
    - (i) *Tristania laurina* (water gum)
    - (ii) *Elaeocarpus reticulatus* (blueberry ash)
    - (iii) *Fraxinus griffithii* (evergreen ash);
    - (iv) *Lagerstroemia* species. (crepe myrtle).

**BASIX**

9. Prior to the issue of a Construction Certificate, an amended BASIX Certificate is to be submitted to the PCA.

**Site Development Work**

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

**Fee Payments**

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

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery,
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve, and
- (c) Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, is to be forwarded to the Long Service Levy Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

These fees are reviewed annually and will be calculated accordingly.

**Notification**

12. The certifying authority must advise Council, in writing of:
- a) The name and contractor licence number of the licensee who has contracted to do or intends to do the work, or
  - b) The name and permit of the owner-builder who intends to do the work.

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

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

13. Prior to the issue of a Construction Certificate, a Section 138 Roads Act application/s, including payment of fees, shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to:
- (a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings),
  - (b) Road opening for utilities and stormwater (including stormwater connection to Council infrastructure), or
  - (c) Road occupancy or road closures.

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council's specifications.

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

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

14. Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, has been lodged with Liverpool City Council (being the Roads Authority under the Roads Act), for provision of concrete footpath, driveway crossing, kerb, gutter and stormwater drainage in Box Road and Hume Highway.

Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works, Austroad Guidelines and best engineering practice.

Note: Where Liverpool City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

**Fees – Road Opening**

15. All fees associated with a road opening permit required for the connection, extension or amplification of any services within Council's road reserve must be paid to Council and receipts provided to the Principal Certifying Authority. A separate form must be submitted

in conjunction with payment of the fees. The fees include the standard road opening permit fee and any restoration fees that may be required as a result of the works.

**On-Site Detention**

16. On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by CAM Consulting, reference number C20050, revision B, dated 21/3/2022.

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

Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification.

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

17. Prior to the issue of a Construction Certificate, the Principal Certifying Authority and/ or Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including the payment of application and inspection fees, has been lodged with, and approved by Liverpool City Council for stormwater drainage construction.

Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works and best engineering practice.

**No loading on easements**

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

**Dilapidation Report**

19. Prior to the issue of a Construction Certificate, a dilapidation report of all infrastructure fronting the development in Box Road and Hume Highway is to be submitted to Liverpool City Council. The report is to include, but not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 20m either side of the development.

**Cladding**

20. Prior to issue of a construction certificate the certifier must be satisfied that all proposed attachments, cladding material and systems forming part of external walls comply with the NCC BCA and relevant Australian Standards. The certifier must be able to

demonstrate compliance with evidence of suitability as per clause A2.2 of the BCA for all products/systems proposed.

**Products banned under the Building Products (Safety) Act 2017**

21. No building products that are banned, or products that are subject to a ban if used in a particular way under the Building Products (Safety) Act 2017 are to be used in the construction of the development.

**Retaining Walls on Boundary**

22. All retaining walls shall be of masonry construction and must be wholly within the property boundary, including footings and agricultural drainage lines. Construction of retaining walls or associated drainage works along common boundaries shall not compromise the structural integrity of any existing structures.

Where a retaining wall exceeds 600mm in height, the wall shall be designed by a practicing structural engineer and a construction certificate must be obtained prior to commencement of works on the retaining wall.

**Access, Car Parking and Manoeuvring – General**

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

**Traffic and Parking**

25. Detailed design drawings of the proposed car parking and access arrangements including a signs and line marking scheme prepared by a traffic engineer or designer is to be submitted through Council's Transport Management Section, to the Liverpool Traffic Committee for assessment and Council's approval. It should be supported by swept path diagrams.

The design is to be certified by a qualified professional that it complies with the requirements of Council's DCP and Australian Standards.

Works within the public road reserve shall not commence until the design drawings including the associated signs and line marking scheme have been approved.

**Construction Traffic Management Plan**

26. A construction traffic management plan (CTMP) prepared by a suitably qualified person is to be submitted to Liverpool City Council's Traffic and Transport Section for endorsement. The CTMP is to be lodged online via Council's portal accompanied by an application to be found on the Council website and the appropriate fees. A copy of the endorsed CTMP and traffic control plans are to be available on the works site for inspection at any time by an authorised Council officer.

27. Construction shall not commence until the construction traffic management plan has been endorsed. The endorsed CTMP is to be implemented during construction.

**Waste Management**

28. Prior to the issue of a construction certificate, the waste management plan is to be amended to state that all paths of travel of bins from their place of storage, to the kerbside where they will be emptied, are to be smooth and free of sudden changes in level, such as steps or kerbs.

**Street Lighting**

29. The applicant/developer shall engage the services of an Endeavour Energy accredited ASP Level 3 service provider to assess adequacy of street lighting along a development site frontage and submit a report on whether the existing street lighting needs to be upgraded.

If upgrade is required, the ASP Level 3 service provider is to submit a Public Lighting Design Brief to Council's Transport Management Section, to specify design requirements for the required upgrade.

A street lighting design plan prepared by the accredited service provider is to be submitted to and approved by Council's Transport Management Section and the electricity service provider (currently Endeavor Energy), prior to construction.

The street lighting must comply with the electricity service provider Street Lighting Policy and illumination requirements and Council's Street Lighting policy.

**Provision of Services**

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

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

31. Written clearance from Endeavour Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development must be submitted to the PCA.
32. Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following requirements of the Telecommunications Act 1997:
- (a) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation, and

(b) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

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

#### **Recommendations of Acoustic Report**

33. The recommendations provided in the approved Road Traffic Noise Intrusion Assessment, prepared by Day Design Pty Ltd, Report No. 5980-1.1R, dated 24 June 2016, shall be implemented and incorporated into the design and construction of the development and be shown on plans accompanying the Construction Certificate application.

The construction methodology and plans accompanying the Construction Certificate application shall be assessed and certified in writing by a suitably qualified acoustic consultant to verify conformance with the requirements of the aforementioned acoustic report. The written certification from the suitably qualified acoustic consultant shall be submitted to and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

Note: 'Suitably qualified acoustic consultant' means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society or employed by an Association of Australasian Acoustical Consultants (AAAC) member firm.

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

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

#### **Commencement of Building work**

34. Building work shall not commence prior to the issue of a Construction Certificate. Building work as defined under Section 1.4 of the EP&A Act means any physical activity involved in the erection of a building and includes but is not limited to, the placement of any site shed/s or builders facilities, site grading, retaining walls, excavation, cutting trenches, installing formwork and steel reinforcement or, placing of plumbing lines.

#### **Matters to be addressed prior to commencement of Subdivision Works**

35. Work on the subdivision shall not commence until:
- (a) a Construction Certificate (if required) has been issued,
  - (b) a Principal Certifying Authority has been appointed for the project, and
  - (c) any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement is to be submitted to Liverpool City Council two (2) days prior to commencement of engineering works or clearing associated with the subdivision.



### **Construction Certificates**

36. Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.
37. Prior to the commencement of any building works, the following requirements must be complied with:
- (a) Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.
  - (b) Where a Construction Certificate is obtained from an accredited certifier, the applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 6.6 of the Act.
  - (c) A copy of the Construction Certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
  - (d) A principal certifier must be appointed to carry out the necessary building inspections and to issue an occupation certificate; and
  - (e) The principal certifier must advise Council of the intended date to commence work which is the subject of this consent by completing a notice of commencement of building works or subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days' notice must be given.

### **Notification/Principal Certifying Authority**

38. Written notice of intention shall be given to the owners or the adjoining allotments of land, outlining the particulars of the work, which involves:
- (a) Any excavation below the base of the footings of a building on an adjoining allotment of land.
  - (b) The notice shall be given seven (7) days prior to the commencement of work.

### **Residential Building Work**

39. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the PCA for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

### **Demolition Works**

40. Demolition works shall be carried out in accordance with the following:
- (a) Prior to the commencement of any works on the land, a detailed demolition work plan designed in accordance with the Australian Standard AS 2601- 2001 The Demolition of Structures, prepared by a suitably qualified person with suitable expertise or experience, shall be submitted to and approved by Council and shall include the identification of any hazardous materials, method of demolition, precautions to be

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

#### **Arboricultural Impact Assessment**

- 41. All recommendations of the approved Arboricultural Impact Assessment, prepared by Arborlogix, Reference No. 001565 v1.0, dated 27 October 2021 that are required to be implemented prior to works commencing shall be carried out to the satisfaction of the PCA.
- 42. Tree protection measures with reference to trees proposed to be retained are to be put into place as per the approved Arboricultural assessment.

#### **Site Notice Board**

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

#### **Construction Requirements**

- 44. Structural supporting elements or bracing of the building must be designed and certified by a qualified chartered structural engineer having regards to supporting ground conditions.

#### **Site Facilities**

- 45. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
  - (a) be a standard flushing toilet connected to a public sewer, or
  - (b) have an on-site effluent disposal system approved under the Local Government Act 1993, or
  - (c) be a temporary chemical closet approved under the Local Government Act 1993.

#### **Waste Management**

- 46. Prior to any works commencing, all Council-issued domestic waste bins serving the existing house to be demolished at 87 Box Road, Casula, must be returned to Liverpool

City Council. Please ring Council on 1300 36 2170 to advise that the bins are empty and ready to be removed, so their removal can be noted on the rates system.

47. Prior to any works commencing, any air-conditioning or refrigeration systems fitted to the dwelling or outbuildings to be demolished, must have the refrigerants present in those systems extracted into a durable, air-tight container by a licensed air-conditioning technician. This container and its contents must be sent intact, for secure destruction, to a facility licensed to destroy such refrigerants. Documentary evidence that this has been completed, if indeed these systems are fitted to the dwelling, must be sighted by the Principal Certifying Authority and included as part of the Occupation Certificate documentation.

#### **Sydney Water**

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

#### **“DIAL BEFORE YOU DIG”**

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

#### **Waste Classification and Disposal of Contaminated Soil and Material**

50. All soils and material(s), liquid and solid, to be removed from the site must be analysed and classified by an appropriately qualified and certified consultant, in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 and related guidelines, in particular the NSW EPA Waste Classification Guidelines, prior to off-site disposal.

All Waste material(s) must be disposed of at an appropriately licensed waste facility for the specific waste. Receipts for the disposal of the waste must be submitted to the Principal Certifying Authority within 30 days of the waste being disposed of.

All waste must be transported by a contractor licenced to transport the specific waste, and in vehicles capable of carting the waste without spillage, and meeting relevant requirements and standards. All loads must be covered prior to vehicles leaving the site.

#### **Sediment & Erosion Control**

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

The erosion and sediment control measures shall remain in place and be maintained until

all disturbed areas have been rehabilitated and stabilised.

**Traffic Management**

- 52. No work or craning shall be undertaken within the adjoining public lands without the prior written consent of Council. In this regard Council may require a Traffic Management Plan to be submitted before giving its approval.
- 53. Applications must be made to Council's Traffic and Transport Section under Section 138 of the NSW Roads Act, for required Road Occupancy permit and Road Opening approval for any road occupancy within public road reserve.

The Road Occupancy permit and Road Opening approval application, is to include Traffic Control Plans including details for pedestrian management, prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

The road occupancy permit and road opening approval with approved traffic control measures shall be implemented during construction. A copy of the road occupancy permit and road opening approval shall be available on site at all times. Note: A copy of the road occupancy permit and road opening approval shall accompany the Notice of Commencement to Liverpool City Council.

**Traffic Control Plan**

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

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

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

**Environmental Management**

- 55. Adequate soil and sediment control measures shall be installed and maintained. Furthermore, suitable site practices shall be adopted to ensure that only clean and unpolluted waters are permitted to enter Council's stormwater drainage system during construction/demolition. Measures must include, as a minimum:
  - (a) Siltation fencing;
  - (b) Protection of the public stormwater system; and
  - (c) Site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

## D. DURING CONSTRUCTION

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

### Demolition Inspections

56. The following inspections are required to be undertaken by Council in relation to approved demolition works:
- (a) Immediately prior to the commencement of the demolition or handling of any building structure that contains asbestos. The applicant shall also notify the occupants of the adjoining premises and Workcover NSW prior to the commencement of any works. Please note that demolition works are not permitted to commence on site until such time as a satisfactory inspection result is obtained from Council.
  - (b) Immediately following completion of the demolition. Please note that proof of appropriate disposal of demolition materials (including asbestos) may be required at this time in accordance with the approved Waste Management Plan.

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

### Building Inspections

57. The building works must be inspected by the Principal Certifying Authority, in accordance with section 6.5 of the EP&A Act 1979 and Clause 61 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.
58. The Principal Certifying Authority must specify the relevant stages of construction to be inspected and a satisfactory inspection must be carried out, to the satisfaction of the Principal Certifying Authority, prior to proceedings to the subsequent stages of construction or finalisation of the works (as applicable).

### Identification Survey Report

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

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

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

**Construction Requirements**

61. In the event the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the following is to be undertaken at full cost to the developer:
- (a) Protect and support the building, structure or work from possible damage from the excavation, and
  - (b) where necessary, underpin the building, structure or work to prevent any such damage.
  - (c) a and b above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.
  - (d) Retaining walls or other approved methods necessary to prevent the movement of excavated or filled ground, together with associated subsoil drainage and surface stormwater drainage measures, shall be designed strictly in accordance with the manufacturers details or by a practising structural engineer.
62. The applicant/ builder shall be responsible to report to the Council any damage to Council's footpath and road carriageway as a consequence of demolition or excavation or building activities or delivery/ departure of materials associated with this site. The damage shall be reported to Council as soon as the damage becomes apparent to the builder/ site manager. Arrangements to the satisfaction of Council are to be made for making safe by temporary repairs to the public way until permanent restoration and repair can be organised with Council.

**Hours of Construction Work and Deliveries**

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

**Construction Noise and Vibration**

64. Noise and vibration associated with excavation, demolition and construction activities shall comply with the management levels detailed within the 'Interim Construction Noise Guideline' published by the Department of Environment and Climate Change NSW (DECC 2009/265) dated July 2009 and acceptable vibration values prescribed within the Environmental Noise Management Assessing Vibration: A Technical Guideline (Department of Environment and Conservation, 2006).

**Arboricultural Impact Assessment**

65. All recommendations of the approved Arboricultural Impact Assessment, prepared by Arborlogix, Reference No. 001565 v1.0, dated 27 October 2021 that are required to be implemented during works shall be carried out to the satisfaction of the PCA. This

includes, but is not limited to, the works being supervised by an appropriately qualified site Arborist.

66. Tree protection is to be supervised by an AQF Level 5 consulting Arborist.

#### **Craning and Hoardings**

67. If the work is likely to cause pedestrian or vehicular traffic in a public area to be obstructed or rendered inconvenient; or if craning of materials is to occur across a public area or road reserve area a construction hoarding must be erected to prevent any substance from, or in connection with the construction site, falling onto a public area as follows:

Such hoarding or barrier must be designed and erected in accordance with Council's guidelines on hoarding construction. Relevant application under the Roads Act approval must be completed and fees paid prior to the construction of a hoarding on Council road reserve area.

68. Lifting or craning materials over a public footway or roadway is not permitted unless a "B" class construction hoarding has been installed in compliance with Work Cover authority requirements.

#### **Refuse Disposal**

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

#### **Security Fence**

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

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

#### **Removal of Dangerous and/or Hazardous Waste**

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

#### **Contamination**

72. The development, including all civil works and demolition, must comply with the requirements of the Contaminated Land Management Act, 1997, State Environmental Planning Policy (Resilience and Hazards) 2021, and Managing Land Contamination – Planning Guidelines (Planning NSW/EPA 1998).

73. Filling material must be limited to the following:

(a) Virgin excavated natural material (VENM)

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

Certificates proving that the material imported is ENM or VENM must be provided to the Principal Certifying Authority prior to filling. Certificates are to be provided to Council officers if and when requested.

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

#### **Record Keeping of Imported Fill**

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

#### **Unidentified Contamination**

- 75. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately after discovery.

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

#### **Environmental Controls**

- 76. Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
- 77. Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.
- 78. All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for a period of greater than 14 days.
- 79. Sediment and erosion control measures are to be adequately maintained during the works until the establishment of grass.

#### **Vegetation - Existing Vegetation**

- 80. All existing trees and areas of native vegetation not identified for removal on approved plans of the proposed development shall be protected from damage during site works.



This Protection shall consist of 1800mm high protective fencing, securely installed beneath the outer canopy of any tree to be retained. Trees may be fenced off in clusters where it is not practical to fence off individual trees. There shall be no storing materials, washing machinery or changes to existing soil levels within the fenced areas.

#### **Air Quality**

81. Dust screens shall be erected and maintained in good repair around the perimeter of the area being remediated for the duration of works and until such time as dust nuisance is unlikely.
82. During construction where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, the consent holder is to ensure dust is suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the Principal Certifying Authority may direct that such work is not to proceed.
83. The loading and unloading of all vehicles associated with the development must be undertaken within the property boundary of the premises subject to this consent.
84. Measures must be implemented to prevent tracking of sediment by vehicles onto roads.

Vehicle loads must be covered when entering and exiting the site with material.

#### **Water Quality**

85. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.

#### **Pollution Control**

86. Building operations such as brick cutting, mixing mortar and the washing of tools, paint brushes, form-work, concrete trucks and the like shall not be performed on the public footway or any other locations which may lead to the discharge of materials into Council's stormwater drainage system.
87. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.

#### **Earthworks**

88. All earthworks shall be undertaken in accordance with AS 3798 and Liverpool City Council's Design Guidelines and Construction Specification for Civil Works. The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

#### **Aboriginal Heritage**

89. As required by the *National Parks and Wildlife Service Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately

and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from the Heritage Division of the OEH.

**Note:** The *National Parks and Wildlife Service Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

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

#### **Waste Management**

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

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

92. Any asbestos materials encountered during the demolition work, must be removed, handled, wrapped and disposed of in accordance with the relevant legislation, regulations and safe work practices, of the NSW EPA and WorkCover NSW, as current at the time. If over 10m<sup>2</sup> of asbestos sheet materials are found on the site, all asbestos works must be carried out by a suitably licensed asbestos contractor. The licenced disposal facility of any asbestos found, must be advised to Council and the PCA.
93. All solid and liquid waste is to be removed from the site by a registered waste contractor.
94. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.
95. All solid waste stored on site is to be covered at all times.
96. All demolition, excavation and construction wastes must be separated as they are generated and kept in separate spoil piles, bays, builder's site bins and/or skips. No wastes other than those noted on the approved waste management plan as being re-used on site, are to be left on site after the completion of the works.
97. All lightweight or granular demolition, excavation or construction waste, e.g. wrapping, packaging materials, bags, insulation, sand, soil etc., must be kept fully enclosed at all times to prevent it from becoming displaced by the wind in strong wind conditions or from

washing into sewers, storm drains or creeks, or onto adjacent properties or public land during wet weather.

#### **Ventilation**

98. The premises shall be ventilated in accordance with the requirements of the BCA (if using deemed to satisfy provisions: AS 1668, Parts 1 & 2)

#### **Traffic Management**

99. If a works zone is required, an application must be made to Council's Traffic and Transport Section. The application is to indicate the exact location required and the applicable fee is to be included. If parking restrictions are in place, an application to have the restrictions moved, will need to be made.
100. Notice must be given to Council's Traffic and Transport Section of any interruption to pedestrian or vehicular traffic within the road reserve, caused by the construction of this development. A Traffic Control Plan, prepared by an accredited practitioner must be submitted for approval, 48 hours to prior to implementation. This includes temporary closures for delivery of materials, concrete pours etc.
101. Applications must be made to Council's Traffic & Transport Section for temporary road closures. The applicant is to include a Traffic Control Plan, prepared by a suitably qualified person, which is to include the date and times of closures and any other relevant information. Applications prepared by a suitably qualified person, are to specify the date and times of proposed closures, traffic control plans, insurances and any other relevant information. This activity may require a seven (7) days advance notice to be installed near the site and/or advertisement in local newspapers and websites to Council's satisfaction.
102. Construction activities affecting adjoining road reserves require submission of a road occupancy application to Council along with traffic control plan/s and public liability insurance. The traffic control plan/s must be prepared by a qualified professional and to be in accordance with the RMS Traffic Control at Worksites Manual, the Austroads Guide to Traffic Management, the RMS Supplements for Austroads Guide to Traffic Management and Australian Standard 1742.
103. All works within the road reserve, including the approved sign and line making scheme, are to be at the applicant cost and all signage is to be in accordance with the RMS Traffic Control at Worksites Manual and the RMS Guide to Signs and Markings.

#### **Road Works (Laybacks)**

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

#### **Termite Protection**

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

- (a) The method of protection;
- (b) The date of installation of the system;
- (c) Where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label;
- (d) The need to maintain and inspect the system on a regular basis

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

**Construction Environmental Management Plan (CEMP)**

- 106. The CEMP requirements must remain in place, adhered to and be maintained throughout the period of the development.

**External**

- 107. Switchboards for utilities shall not be attached to the street and/or road elevations of the development.
- 108. The mailboxes are to be consistent with the design and colours and materials for the development.
- 109. The windows of all bathrooms, W.C. and ensuites shall be fitted with translucent obscure glazing to the satisfaction of the PCA.

**Vegetation and Landscaping**

- 110. Premium quality organic garden soil shall be incorporated into all planting areas in sufficient quantity to achieve optimum plant growing conditions.
- 111. All garden/planting areas shall be mulched to a depth of not less than 75mm using weed free leaf mulch, wood chip or similar, not pine bark.

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

**The following conditions are to be complied with or addressed prior to issue an Occupation Certificate.**

**Certificates**

- 112. The premises must not be utilised until an Occupation Certificate is issued by the principal certifier.
- 113. Details of critical stage inspections carried out by the principal certifying authority together with any other certification relied upon must be provided to Council with the occupation certificate.
- 114. The Principal Certifying Authority shall ensure that all compliance certificates required by this development consent are referenced to the condition consent number. The

Compliance Certificate is to state that the works as constructed comply fully with the required condition of consent being acted on by the certifier.

**Services**

115. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA.
116. Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements of the Telecommunications Act 1997:
- (a) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation, and
  - (b) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

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

**Affordable Rental Housing**

117. A restriction shall be registered, before the date of issue of the Occupation Certificate (Interim or Final), against the title of the property on which the development is to be carried out, pursuant to Section 88E of the Conveyancing Act 1919, in the following terms:

*Terms of the Restriction on Use*

The restriction applies for fifteen (15) years from the date of issue of the Occupation Certificate pursuant to Notice of determination of Development Application No. DA-973/2022 issued by Liverpool City Council.

The restrictions are:

- (a) Units 5 & 9 will be used for the purposes of affordable housing as defined in State Environmental Planning Policy (Housing) 2021;
- (b) All accommodation that is used for affordable housing will be managed by a registered community housing provider;
- (c) Name of authority empowered to release, vary or modify the above restriction is Liverpool City Council; and

Evidence is to be submitted to Liverpool City Council that restrictions (a) and (b) have been complied with prior to the issue of an Occupation Certificate.

**Arboricultural Assessment**

118. The PCA shall ensure that all recommendations of the approved Arboricultural Impact Assessment, prepared by Arborlogix, Reference No. 001565 v1.0, dated 27 October 2021 have been satisfactorily completed.

**Cladding**

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

**Liverpool City Council clearance – Roads Act/ Local Government Act**

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

**Works as executed – General**

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

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

**Stormwater Compliance**

122. Prior to the issue of an Occupation Certificate the Principal Certifying Authority shall ensure that the on-site detention system/s:
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

**Restriction as to User and Positive Covenant**

123. Prior to the issue of an Occupation Certificate a restriction as to user and positive covenant relating to the on-site detention system/s shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

**Rectification of Damage**

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

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

**Dilapidation Report**

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

**Landscape**

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

**Footpaths**

127. Construction of 1.5m wide by 100mm thick (with one layer of SL72 reinforcing mesh) concrete path paving is to be constructed in front of the development site.

**Traffic**

128. All road and traffic management works including any requirement for public street lights, are to be completed to Council's satisfaction.

**Recommendations of Acoustic Report**

129. Upon completion of works and prior to the issue of an Interim or Final Occupation Certificate, written certification prepared by a suitably qualified acoustic consultant shall be submitted to and approved by the Principal Certifying Authority (PCA). The written certification prepared by the suitably qualified acoustic consultant shall confirm that the development complies with all requirements and recommendations detailed within the Road Traffic Noise Intrusion Assessment, prepared by Day Design Pty Ltd, Report No. 5980-1.1R, dated 24 June 2016. The acoustic consultant shall confirm that the development or use is capable of operating in accordance with the design criteria.

Note: 'Suitably qualified acoustic consultant' means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society or employed by an Association of Australasian Acoustical Consultants (AAAC) member firm.

**BASIX**

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

**Display of Street Numbers**

131. Street numbers must be prominently displayed at the front of the development in a contrasting colour to the building materials and at the front of each individual unit. The number should be a minimum height of 120mm and be visible at night.

**Waste Management**

132. Prior to the issue of an Occupation Certificate, the strata by-laws governing the development will be drafted in a manner that places the requirement to correctly separate and dispose of waste upon all residents, and ensures that any additional costs to the strata from incorrect waste disposal or dumping of items by residents, can be charged back to the parties responsible.

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

**The following conditions are to be complied with or addressed prior to issue of a Subdivision Certificate by Council:**

**Completion of Subdivision Works**

133. Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Liverpool City Council for any outstanding works.

**Stormwater Compliance**

134. Prior to the issue of a Subdivision Certificate the Principal Certifying Authority shall ensure that the on-site detention system/s:
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works-As-Executed drawings.

**Restriction as to User and Positive Covenant**

135. Prior to the issue of a Subdivision Certificate a restriction as to user and positive covenant relating to the on-site detention system/s shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

**Rectification of Damage**

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

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



**Subdivision Compliance**

137. Prior to the issue of a Subdivision Certificate the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:
- a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The Work as Executed drawings shall be prepared in accordance with Council's Design Guidelines. Electronic copies of the WAE shall be provided in PDF format and a DXF format to Council along with two hard copies of the WAE plans;
  - b) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Inspections are to be carried out in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2006. Any damage that is identified is to be rectified in consultation with Liverpool City Council;
  - c) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries; and
  - d) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Council's Design Guidelines and Construction specifications. The report shall include:
    - i. Compaction reports for road pavement construction,
    - ii. Compaction reports for bulk earthworks and lot regrading,
    - iii. Soil classification for all residential lots, and
    - iv. Statement of Compliance.

**Linen Plans and 88B Instruments**

138. In order to enable a Subdivision Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of subdivision and one (1) original and two (2) copies of the proposed 88b instrument (where proposed).
139. The applicant shall pay the standard fee for purpose of subdivision certificate administration of plan checking and release.
140. The final plan of subdivision must be supported by an 88B instrument to the approval of Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Councils standards, codes and policy's. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.
141. Correct notation concerning easements is required. The prepared 88B Instrument should be forwarded initially to Council. The land value of the easement and costs associated with checking the instrument are to be borne by the applicant. Part 2 of the 88B Instrument shall contain a provision that the easement may not be extinguished or altered without the written consent of Council.

142. Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as scheduled in Council's Design Specification for Subdivisions (as amended).
143. The final plan of subdivision must be supported by an 88B Instrument, agreed to by Council. The 88B Instrument must burden each lot with a restriction as to user that the dwellings to be erected on each lot are to be sited and constructed in accordance with approved plans and notice of determination (Development Consent) issued by Council for Development Application No. DA-973/2022. Any costs associated with the preparation and checking of the instrument are to be borne by the applicant. The preparation of an 88B Instrument will not be required if construction has reached a stage where all brickwork is a minimum 500mm above finished floor level and the construction is in accordance with the development consent and the CC's.

#### **Dilapidation Report**

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

#### **Service Providers**

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

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

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

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

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

## G. CONDITIONS RELATING TO USE

### Car Parking

146. All parking areas shown on the approved plans must be used solely for this purpose.
147. A total of 13 off street parking spaces must be provided on site.
148. Council's on-street assets should be protected at all times. Any damages should be rectified to Council satisfaction.

### Landscaping

149. Landscaping shall be maintained in accordance with the approved plan, in a healthy state and in perpetuity by the existing or future owners and occupiers of the development. If any of the vegetation comprising the landscaping dies or is removed, it is to be replaced with vegetation of the same species, and similar maturity as the vegetation which has died or was removed.

### Mail-boxes

150. The mailboxes must not be accessed by universal keys and must each have their own keys for private access.
151. Vegetation must not cover or obstruct natural surveillance to the mailboxes.

### Affordable Rental Housing

152. Units 5 & 9 are to be used for the purposes of affordable housing for 15 years from the date of issue of the Occupation Certificate. In addition, all accommodation that is used for affordable housing shall be managed by a registered community housing provider.

**Note:** *Affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument. A household is taken to be a very low income household, low income household or moderate income household if the household:*

- (a) *Has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or*
  - (b) *Is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.*
153. Prior to each anniversary date for the fifteen-year period, evidence shall be provided to Council by way of letter from a Registered Community Housing provider confirming that the identified Affordable Rental Housing dwellings are managed in accordance with DA-973/2022.

**Lighting**

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

**Waste Management**

155. Waste and recyclable material generated from the operations of the premises shall be managed in a satisfactory manner that does not give rise to offensive odour or encourage pest activity. All waste material shall be regularly removed from the premises. Waste shall not be permitted to accumulate near the waste storage bins.
156. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.
157. Sufficient space shall be provided within each dwelling for the storage of a minimum of one day's waste and recycling.
158. Under current collection arrangements, each unit in the development will be issued with one 140 litre general waste bin, one 240 litre recycling bin, and one 240 green (garden) waste bin. These arrangements re bin sizes and types may be subject to change in future, as FOGO waste services are brought into use.
159. Once the Occupation Certificate has been issued, but at least seven days prior to residents moving in, Council is to be contacted to arrange delivery of the domestic waste bins to these units. Please contact Council on 1300 36 2170 to arrange the delivery of waste bins.
160. Residents must present the waste bins for emptying to the kerbside of Box Road, no earlier than the afternoon before collection. After emptying, all bins must be removed from the kerbside as soon as possible by the resident, and no later than 24 hours after collection, and placed back into the private open space of their unit. No bins are to be left on common property.
161. Waste and recycling bins are to be presented for emptying with lids fully closed and no less than 400mm (40cm) apart.
162. Waste bin storage areas must be kept tidy at all times. Bins must not be stored or allowed to overflow in parking or garden areas, and must not obstruct the exits of the units.
163. Residents must ensure that all materials placed in the yellow-lid recycling bins are acceptable for recycling through that means, and all materials placed in recycling bins must be loose, unbagged and easily separable.
164. Residents must mark their own bins clearly and permanently with both their unit number and the overall property number, to ensure that each unit's bins can be identified.
165. Bulky household waste collections can be booked either through Council's Customer Service Section, or through the Council website. Maximum limits apply, and the types of materials accepted will be as per the council conditions at the time. Household materials may only be put out for collection the day before a booked clean-up is due to occur, no earlier.

## H. ADVISORY

- (a) Section 4.53 of the EP&A Act provides that unless otherwise stated by a condition of this consent, this consent will lapse if development is not physically commenced within five years of the date of this notice.
- (b) 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.

- (c) Section 8.7 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.
- (d) Section 8.8 of the EP&A Act provides that an objector who is dissatisfied with the determination of the consent authority to grant consent to a Development Application for Designated Development (including any State significant development that would be designated development but for Section 4.10(2) of the EP&A Act), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court, against the determination.
- (e) The Commonwealth Disability Discrimination Act 1992 may apply to this proposal. Approval of this application does not imply or infer compliance with this Act. Applicants and owners are required to satisfy themselves as to compliance and make their own enquiries to the Human Rights and Equal Opportunity Commission. Attention is also drawn to the provisions of Australian Standard 1428 – Design for Access and Mobility.
- (f) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regard to the operation of the building.
- (g) “DIAL BEFORE YOU DIG”

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

- (h) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra’s network and assets. Any person interfering with a facility or

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

- (i) The Liverpool City Council Local Government area soils and ground water may be subject to varying levels of Salinity. Whilst Council may require applicants to obtain Salinity reports relating to some developments, no assessment has been made by Council. Soil and ground water salinity levels can change over time due to varying factors. It is recommended that all applicants make their own independent inquiries as to appropriate protection against the current and future potential affect of Salinity to ensure the ongoing structural integrity of any work undertaken. Liverpool City Council will not accept any liability for damage occurring to any construction of any type affected by soil and or ground water Salinity.
- (j) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.
- (k) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for letter box positioning and dimensions.
- (l) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

**ATTACHMENT 2 – SECTION 7.11 PAYMENT FORM**

**CONTRIBUTIONS PURSUANT TO SECTION 7.11 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**  
**Liverpool Contribution Plan 2018 Established Areas**

When remitting payment as specified in the Conditions of Consent to the approval, this Form must be submitted with your payment.

**These figures have been calculated to the current CPI Quarter and will be adjusted at the time of payment in accordance with the conditions of consent.**

**APPLICATION NO:** DA-973/2022

**PROPOSAL:** Demolition of existing structures and the construction of an affordable housing multi dwelling housing development consisting of nine (9) dwellings with strata title subdivision and the construction of a stormwater easement over 91 & 93 Box Road, Casula.

<b>Facilities</b>	<b>Amount (\$)</b>	<b>Job No.</b>
<b>Liverpool Contributions Plan 2018 Established Areas</b>		
Community Facilities - works		
Central	\$9,666	GL.10000001870.10099
District Sporting Fields - works		
Central	\$32,508	GL.10000001869.10211
District Passive Open Space - works		
Central	\$20,317	GL.10000001869.10093
Local Passive Open Space - works		
Casula	\$28,444	GL.10000001869.10094
Transport - Bikeways - works		
Central	\$4,210	GL.10000001865.10207
Transport - Traffic management - works		
Central	\$11,996	GL.10000001865.10213
Drainage - works		
Central	\$3,515	GL.10000001866.10209
Administration		
	\$1,660	GL.10000001872.10104
<b>TOTAL</b>	<b>\$112,317</b>	

-----OFFICE USE ONLY -----

**RECORD OF PAYMENT**

**Total Amount paid:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Receipt No.:** \_\_\_\_\_ **Cashier:** \_\_\_\_\_

## ATTACHMENT 3 – TRANSPORT FOR NSW CONCURRENCE



9 February 2022

TfNSW Reference: SYD21/01637/01 (A41414295)  
Council Reference: DA-725/2021  
NSW Planning Portal Ref: CNR-32305

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

Attention: Robert Micallef

Dear Mr Micallef,

**DEMOLITION OF EXISTING STRUCTURES AND THE CONSTRUCTION OF A MULTI DWELLING AFFORDABLE HOUSING DEVELOPMENT CONSISTING OF NINE (9) DWELLINGS AND STRATA TITLE SUBDIVISION- 87 BOX ROAD, CASULA**

Reference is made to Council's correspondence dated 24 December 2021, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for concurrence in accordance with the *Roads Act 1993*.

TfNSW has reviewed the development application and would provide concurrence to the proposed stormwater discharge onto Hume Highway under Section 138 of the *Roads Act 1993*, subject to Council's approval and the following requirements being included in the development consent:

1. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to [development.sydney@rms.nsw.gov.au](mailto:development.sydney@rms.nsw.gov.au).

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

2. Proposed kerb and drainage works shall adhere to TfNSW standards.

TfNSW provides the following comments to Council to assist with the assessment of the application:

1. TfNSW advises Council that there are no pedestrian facilities to ensure accessibility to Hume Highway opp Box Road bus stop (Stop ID 2170309).

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Transport for NSW  
27 Argyle Street, Parramatta NSW 2150 | Locked Bag 5085, Parramatta NSW 2124  
P (02) 8849 2666 | W [transport.nsw.gov.au](http://transport.nsw.gov.au) | ABN 18 804 239 602





Transport  
for NSW

Council shall be satisfied that the development complies with access requirements stipulated in *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

2. As at the date of this response TfNSW has no proposal which currently requires any part of this Property. Therefore, there are no objections to the development proposal on property grounds.

If you have any further questions, Zeliha Cansiz would be pleased to take your call on 0460427977 or please email [development.sydney@transport.nsw.gov.au](mailto:development.sydney@transport.nsw.gov.au). I hope this has been of assistance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'LVP'.

**Laura Van Putten**  
A/Senior Land Use Assessment Coordinator

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Transport for NSW

27 Argyle Street, Parramatta NSW2150 | Locked Bag 5085, Parramatta NSW 2124  
P (02) 8849 2666 | W [transport.nsw.gov.au](http://transport.nsw.gov.au) | ABN 18 804 239 602

LIVERPOOL CITY COUNCIL

LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

<b>Item no:</b>	4
<b>Application Number:</b>	DA-394/2011/B
<b>Proposed Development:</b>	Modification to Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM)
<b>Property Address</b>	41 Greendale Road, Bringelly
<b>Legal Description:</b>	Lot 5 DP 252040
<b>Applicant:</b>	Mr C Hua
<b>Land Owner:</b>	Mr A Sadik
<b>Date Lodged:</b>	4 August 2022
<b>Cost of Works:</b>	\$4,000,000
<b>Zoning:</b>	RU4 Primary Production Small Lots under Liverpool Local Environmental Plan 2008
<b>Recommendation:</b>	Approval, subject to modified conditions of consent
<b>Assessing Officer:</b>	Greg Mottram

**4. EXECUTIVE SUMMARY**

Council has received an application, DA-394/2011/B, which seeks consent for the modification of Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM) as part of the approved development onsite.

DA-394/2011/B was a Court approved development which gave consent for the use of land as a natural burial cemetery in accordance with the concept plan and the stage 1 works as follows:

Stage 1

- Demolition of existing structures.
- Earthworks including the decommissioning and filling of a dam
- Use of a site as a cemetery (although internments will not take place in stage 1)
- Construction of an internal road to service the future development;
- Construction of an internal access path;
- Revegetation and weed eradication;
- Stormwater management works; and
- Provision of vegetation buffers and screening.

Stage 2

- Burial plots comprising 6,474 double depth burial plots (1 2,948 internments), 1,542 low impact burial plots in tree protection zones, 4,722 urn burials under trees, 20,000 ash internments within columbarium walls and 5,100 ash

*internments under roses within a walled garden (total 44,312 internments) or other lesser amount pending further environmental assessment;*

- *Erection of administrative and amenity facilities comprising funeral director's office, visitor's centre, multi-function auditorium, cafe and toilets;*
- *Erection of a caretaker's lodge including garage and maintenance shed;*
- *Erection of columbarium walls with enclosed garden;*
- *Erection of elevated and at grade nature walks/access paths;*
- *Provision of car parking for 161 cars comprising 137 permanent hard surface spaces (inclusive of 4 disabled parking spaces) and 24 landscaped overflow spaces;*
- *Erection of entry gates;*
- *Widening of Greendale Road; and*
- *Ancillary drainage, landscaping and earthworks to facilitate water management.*

*Consent is granted for the concept proposal and stage 1 of the development only. Stage 2 of the development must not be carried out without further approval.*

The site is zoned as RU4 – Primary Production Small Lots, pursuant to Liverpool Local Environmental Plan (LEP) 2008 with the proposed development being permissible with consent. The proposal is generally compliant with Council's applicable local provisions and an acceptable form of development in that regard.

The application was required to be notified in accordance with Liverpool Community Participation Plan 2019 between 26 October 2022 and 9 November 2021. Fifteen submissions have been received regarding the subject application which are discussed in the report.

Furthermore, there are two consents relating to the subject site and the approved development, being DA-790/2013 and DA-390/2011 (subject application). The proposed modification to Condition 75 of DA-390/2011 (subject application) proposes to amend to the same condition that was amended as part of DA-790/2013/C, approved by the Liverpool Local Planning Panel (LLPP) on 30 August 2022. It should be noted that the description DA-790/2013/C was worded in a way that also referenced the modification of Condition 75 of DA-390/2011 and was notified with this description. As a modification application cannot relate to a separate consent, DA-790/2013/C split into separate applications. Notwithstanding this separation, it was considered prudent to assess the twenty-one objections relating to DA-790/2013/C as part of this assessment, as those objections (due to the description issue) seem to relate to both DAs.

The key issues associated with the assessment of the subject modification relate to the change in conditions that relate to utilising Excavated Natural Material (ENM) fill in place of the approved Virgin Excavated Natural Material (VENM) fill. As demonstrated in the report, the change from VENM classed fill to ENM classed fill is considered acceptable in this instance.

The application is referred to the 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:

**Contentious development**

*Development that:*

- (a) In the case of a council having an approved submissions policy- is subject of the number of submissions set by that policy, or*
- (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 (EP&A) Act 1979*. Based on the assessment of the application, it is recommended that the application be approved, subject to the imposition of conditions.

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The site

The legal description of the site is Lot 5 DP252040, and it is identified as No. 41 Greendale Road, Bringelly. It has frontage of approximately 236m to Greendale Road along its southern boundary, a depth of about 533m on its western boundary and 462m on its eastern boundary and 200m across its northern boundary – creating a total site area of 10.12 ha.

Greendale Road forms the boundary between Liverpool City Council and Camden Council at this location. Land to the west of the site is zoned R5 – Large Lot Residential while land to the north and east shares the same RU4 – Primary Production Small zone as the subject site. Land to the south (in Camden Council) is rural in character and similarly zoned.



Figure 1: Aerial view of subject site - Lot 204 in red (Source: Geocortex)

## 2.2 The locality

The site and its immediate locality is rural residential as seen in Figure 1. The proposed use represents the type of development that the established planning controls have been put in place to achieve.

NORTH	A rural residential parcel adjoins the northern boundary of the site.
SOUTH	A rural residential parcel adjoins the southern boundary of the site on the opposite side of Greendale Road in the Camden LGA.
EAST	A rural residential parcel adjoins the eastern boundary of the site.
WEST	5 residential lots in the R5 Large lot residential land

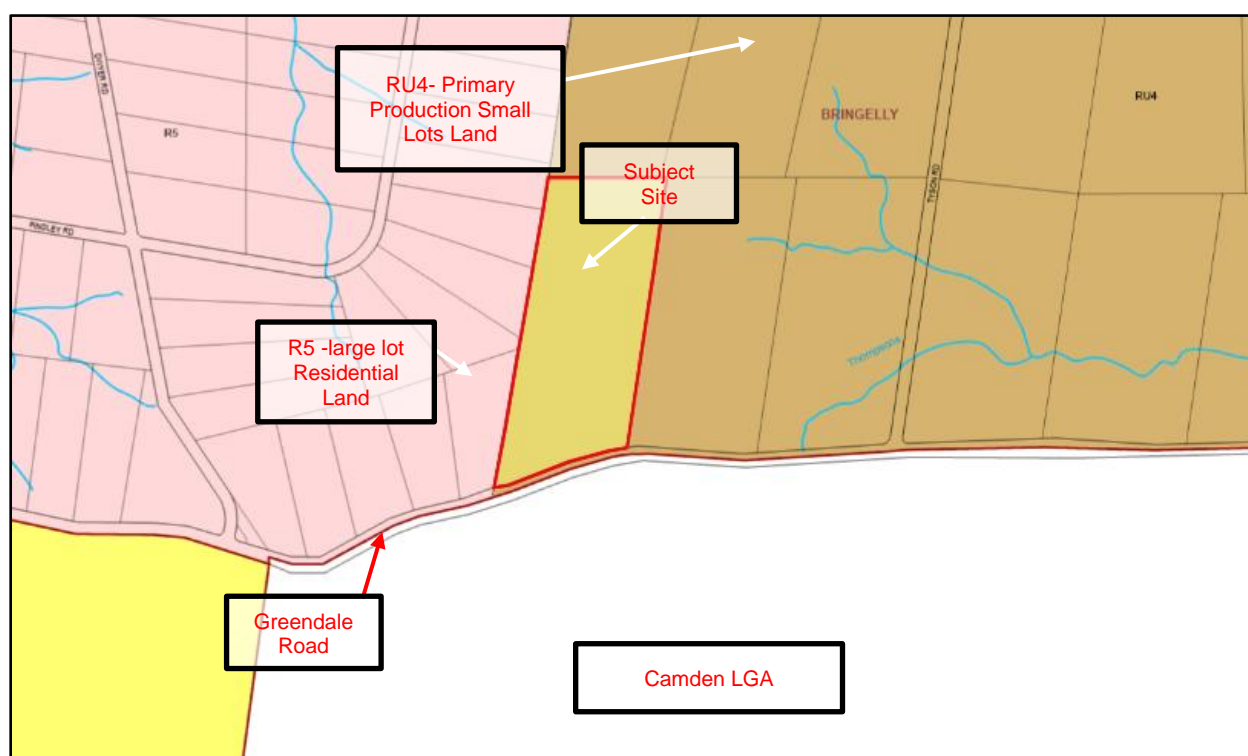


Figure 2: Zoning of surrounding area and the development site (Source: Geocortex)

## 3. BACKGROUND/HISTORY

- The subject modification application was lodged with Council on 9 August 2021.
- The application was notified between 23 August 2021 and 7 September 2021 as a part of modification of DA-790/2013/C and again as part of the subject application between 26 October 2022 and 9 November 2022. In accordance with Section 4.56 the application was also notified to the original objectors to the development.
- 22 September 2021 - Referral response from NSW EPA received.

Development application history of the site.

DA No.	Proposed Development	Determination
DA-394/2011	<p><b>Stage 1</b></p> <p>Stage 1 approved the following:</p>	<p>9 January 2013 (Approved by Land and Environment Court 10281 of 2012)</p>

LIVERPOOL CITY COUNCIL

LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

	<p>(a) <u>Demolition of existing structures;</u>                  (b) Earthworks including the decommissioning and filling of a dam;                  (c) Use of the site as a cemetery (no interments in Stage 1);                  (d) <u>Construction of an internal road;</u>                  (e) Construction of an internal access path;                  (f) Revegetation and weed eradication;                  (g) Stormwater management works; and                  (h) Provision of vegetation buffers and screening.</p> <p><b>Consent is granted for the concept proposal and stage 1 of the development only. Stage 2 of the development must not be carried out without further approval.</b></p>	
DA-790/2013	<p><b>Development Application</b> - Stage 2 development of a court approved masterplan in DA-394/2011 for a non-denominational cemetery comprising of: * Burial plots comprising 6,474 double depth burial plots (12,948 interments), 1,542 low impact burial plots in tree protection zones, 4,722 urn burials under trees, 20,000 ash interments within columbarium poles and 5,100 ash interments under roses within a walled garden (total 44,312 interments); * Erection and operation of administrative facilities comprising funeral director's office, visitors centre, all-weather covered ceremonial space and chapel, cafe and toilets; * Erection and occupation of a caretaker's lodge including garage and maintenance shed; * Erection of columbarium poles with enclosed garden; * Erection of elevated and at grade nature walks/access paths; * Provision of car parking for 161 cars comprising 137 permanent hard surface spaces (inclusive of 4 disabled parking spaces) and 24 landscaped overflow spaces; * Erection of entry gates; * Widening of Greendale Road; and * Ancillary drainage, landscaping and earthworks to facilitate water management * Signage adjacent to entry driveway. The proposed development is identified as Nominated Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. The application is to be referred to the NSW Office of Water for General Terms of approval under the Water Management Act 2000</p>	1/12/2014 (Approved)
DA-790/2013/A	<p>Modification to DA-394/2011 and DA-790/2013 to an approved cemetery pursuant to Section 96(AA) and Section 96(1A) of the Environmental Planning &amp; Assessment Act. The modifications proposed to DA-394/2011 relate to the description of the development, updating plans and amendments to conditions. The modifications proposed to DA-790/2013 relate to staging of demolition works, modifications to the existing dwelling and minor realignment of internal access road</p>	7/5/2019 (Approved)
DA-394/2011/A	<p>Modification to DA-394/2011 and DA-790/2013 to an approved cemetery pursuant to Section 96(AA) and Section 96(1A) of the Environmental Planning &amp; Assessment Act. The modifications proposed to DA-394/2011 relate to the description of the development,</p>	7/5/2019 (Approved)

**LIVERPOOL CITY COUNCIL**

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	updating plans and amendments to conditions.	
DA-790/2013/B	Modification to Development Consent DA-790/2013 under Section 4.55 of the Environmental Planning and Assessment Act 1979, Interments (burials) in the ground, wall and rose garden are to be allowed to occur during the initial stages of the site operation and rectification of levels as per council request.	5/5/2021 (Withdrawn)
DA-790/2013/C	Modification to Development Consent DA-790/2013/A (1A) under Section 4.55 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 95 of Consent 790/2013 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM)	Approved by Liverpool Local Planning Panel 30 August 2022
DA-394/2011/B	Modification to Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM)	<i>Subject of this application</i>

**4. DETAILS OF THE PROPOSAL**

This modification application seeks the development consent for the modification of Condition 75 of the consent to amend the approved development to remove the need to rely on Virgin Excavated Natural Material (VENM) fill and to facilitate the use of Excavated Natural Material (ENM) instead.

**Consent Validity**

Development application 394/2011 was granted on 9 January 2011 with an initial lapse date of 9 January 2015. This application was modified by DA-394/2011A which was approved on 7 May 2019 which established that the application has commenced therefore it is appropriate to proceed with the subject modification application under section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**5. ASSESSMENT UNDER SECTION 4.56 OF THE EP & A ACT 1979**

**5.1 Section 4.56 Modification by consent authorities of consents granted by the Court**

The application has been lodged pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979, which provides:

- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

**Comment:** The modification relates to a change to the type of land fill material that can be brought to the site. The material that has been brought to the site has been extensively tested and found to be not contaminated.

The modification to alter condition 75 of the consent to accept ENM instead of VENM fill material is considered minor and does not alter the requirement of the development to be constructed in accordance with the approved plans and is therefore considered to be substantially the same development.

- (b) *it has notified the application in accordance with—*
- (i) *the regulations, if the regulations so require, and*
  - (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 application was incidentally notified in the notification period for DA-790/2013/C (which sought the modification of VENM to ENM) as the condition being modified in the subject application for DA-394/2011/B was noted in the description. Notwithstanding this, the application was notified in accordance with the provisions of the Liverpool Community Participation Plan 2019 which is equivalent to a development control plan. In accordance with section 4.56, the application was also notified to the objectors of the original application. The notification was for a period of 14 days from 26 October 2022 to 9 November 2022.

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

**Comment:** The application was notified to the objectors to the original application from 26 October 2022 to 9 November 2022 to the last address known to Council.

- (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:** As a result of the application being notified, fifteen submissions were received as well as the twenty one submissions received under DA-790/2013/C. Please refer to section 7.8 of this report for a discussion of the issues raised in the submissions

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

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

The NSW Environmental Protection Authority (NSW EPA) was requested to provide comments in relation to the proposal to permit the use of ENM at the subject premises. Within their correspondence dated 2<sup>nd</sup> September 2021, the NSW EPA supported the use of ENM instead of VENM at the subject premises provided that the material complies with the excavated natural material exemption 2014 issued under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014.



In addition, the NSW EPA confirmed that the removal of waste material from Area A was completed. Contaminated material was removed from the site and disposed of at a licensed waste facility. Approximately 640m<sup>3</sup> of sandstone material that met the ENM Order 2014 was stockpiled on the sealed carpark area for potential reuse to reinstate the berm subject to Council approval. According to the NSW EPA, EI Australia Pty Ltd advised that 116m<sup>3</sup> of sandstone material from Area B was classified as ENM and will be reused to reinstate the berm around the premises. To comply with Clean-Up Notice 1597021, the NSW EPA confirmed that this process will continue until such time as natural ground levels are reached.

In response to Council's Senior Environmental Health Officer's earlier concerns, EI Australia Pty Ltd confirmed that the site surface will be finished to the approved landform elevations.

Therefore, despite the proposed amendment to condition 75 of the consent under DA-394/2011/B, the subject section 4.56 application, it is considered that the proposed change to the type of fill from VENM to ENM will have minimal environmental impact to which the Land and Environment Court originally granted approval.

*(1B) Repealed*

*(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

**Comment:** Noted. The development as modified remains substantially the same as approved under DA-394/2011.

*(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*

**Comment:** Noted. The determination of this consent will be sent to each person making a submission to this modification.

*(3) The regulations may make provision for or with respect to the following—*

- (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*
- (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,*
- (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

**Comment:** Noted.

*(4) (Repealed)*

Based on the above it is considered that the proposed section 4.56 application satisfies the relevant provisions of section 4.56 of the EP&A Act 1979 and is worthy of support in this instance.

The modifications the subject of this application have been considered against the relevant Environmental Planning Instruments, Development Control Plans and other Council Codes, as follows:

## 6. STATUTORY CONSIDERATIONS

### 6.1 Relevant matters for consideration

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

- q) State Environmental Planning Policy (Resilience and Hazards) 2021;
- r) Commonwealth Environment Protection and Biodiversity Conservation Act 1999
- s) (EPBG Act)
- t) Environmental Planning and Assessment Act, 1979 – Integrated Development Provision (Referral under Water Management Act 2000).
- u) State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 - Infrastructure
- v) State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 9 Hawkesbury- Nepean River
- w) Liverpool Local Environmental Plan 2008;
- x) Liverpool Development Control Plan 2008;
  - Part 1: General Controls for All Development

## 7. 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:

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

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal relates to the development of land to accommodate a change of use with the potential under the former SEPP 55 guidelines to be a site that could be potentially contaminated.

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

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

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

The application was referred to Council's Environmental Health officer who made the following assessment:

*The NSW EPA was requested to provide comments in relation to the proposal to permit the use of ENM at the subject premises. Within their correspondence dated 2<sup>nd</sup> September 2021, the NSW EPA supported the use of ENM instead of VENM at the subject premises provided*

*that the material complies with the excavated natural material exemption 2014 issued under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014.*

*In addition, the NSW EPA confirmed that the removal of waste material from Area A was completed. Contaminated material was removed from the site and disposed of at a licensed waste facility. Approximately 640m<sup>3</sup> of sandstone material that met the ENM Order 2014 was stockpiled on the sealed carpark area for potential reuse to reinstate the berm subject to Council approval. According to the NSW EPA, EI Australia Pty Ltd advised that 116m<sup>3</sup> of sandstone material from Area B was classified as ENM and will be reused to reinstate the berm around the premises. To comply with Clean-Up, Notice 1597021, the NSW EPA confirmed that this process will continue until such time as natural ground levels are reached.*

*In accordance with Clause 4.6(1) of State Environmental Planning Policy (Resilience and Hazards) 2021, the consent authority is required to consider contamination and the need for remediation when determining an Application. If the land requires remediation, it must be satisfied that the land will be remediated before the land is used for that purpose. The proponent is seeking approval to modify condition 95 of DA-790/2013 to use Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM) at the premises as part of clean-up action directed by the NSW EPA.*

*The NSW EPA issues resource recovery orders (orders) and resource recovery exemptions (exemptions) which allow some wastes to be beneficially and safely reused. Resource recovery orders and exemptions contain conditions which generators, processors and consumers must meet for reuse. Orders and exemptions are only appropriate if the reuse: is genuine, rather than a means of disposal; is beneficial or fit-for-purpose; and will not cause harm to human health or the environment. All conditions of an order and exemption must be met for the supply and reuse to be lawful.*

*In addition to these requirements, Clause 4.6(2) of State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider a report specifying the findings of a preliminary investigation of land if the proposed development involves a change of use on any land specified in subclause 4. The Application does not involve a change of use and further consideration of Clauses 4.6(2), 4.6(3) and 4.6(4) of State Environmental Planning Policy (Resilience and Hazards) 2021 is not required.*

Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, Council is required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application.

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	Contamination and remediation addressed as part of the development consent issued under DA-394/2011 remain unchanged.
(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	Contamination and remediation addressed as part of the development consent issued under DA-394/2011 remain unchanged.

<p>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</p>	<p>Contamination and remediation addressed as part of the development consent issued under DA-394/2011 remain unchanged.</p>
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The proposed modification is considered to be in accordance with SEPP (Resilience and Hazards).

***Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBG Act)***

The site is 'certified' in accordance with the South West Growth Centres Biodiversity Certification (NSW Government Gazette Number 181, 12 December 2007). Consequently, the requirements for ecological assessment under the Environmental Planning and Assessment Act 1979 are suspended for development applications in certified areas.

However, the original assessment identified that the proposed use was considered to be a controlled use under the EPBG Act and required determination by the then Department of Sustainability, Environment, Water, Population and Communities. It is now administered by the Commonwealth Department of the Environment and Energy.

The modifications proposed do not impact on the original consideration of the site.

***Environmental Planning and Assessment Act, 1979 – Integrated Development Provision (Referral under Water Management Act 2000).***

The original DA was referred to the NSW Office of Water as Integrated Development. The Office of Water issued its General Terms of Approval (GTA) which are attached to DA-790/2013.

The proposed modifications do not impact on the application of the GTA requirements or the need to obtain approvals from the Office of Water or any successor authority for any controlled activities under the Water Management Act.

The Office of Water has requested to be notified of any amendments that significantly change the proposed development. The proposed changes are not considered to fall into that category.

***State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 - Infrastructure***

The approved traffic arrangements and existing traffic generation potential is not affected by the proposed modifications.

***State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 9 Hawkesbury- Nepean River***

As the levels of fill are to be returned to those approved, the proposed modifications do not alter the impact of the proposed cemetery as previously assessed under this SEPP.

**Liverpool Local Environmental Plan 2008**

The proposal was originally assessed and approved under LLEP 2008. The proposal does not alter the consistency of the approved development with the relevant provisions stipulated under LLEP 2008.

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

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

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

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

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008. The proposal 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;

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008 aside from Section 24 – Landfill - Control 1 -

*All fill applied should be Virgin Excavated Natural Material (VENM), as defined by the NSW Department of Environment and Climate Change. Any fill involving material other than VENM is subject to referral to the State Government as potential Integrated Development or contaminated land assessment.*

This control is discussed below as well as in an extract from the LDCP 2008 compliance table.

- Section 24 - Landfill
  - The application was referred to the NSW EPA and to Council’s Environmental Health section who have made no objection to the modification application.
  - The variation to the type of land fill is considered to be acceptable in the circumstances.

<b>LDCP 2008 - Part 1 General Controls for all Development</b>			
<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Section 24. Land Fill</b>	All fill applied should be Virgin Excavated Natural Material (VENM), as defined by the NSW Department of Environment and Climate Change. Any fill involving material other than VENM is subject to referral to the State Government as potential Integrated Development or contaminated land assessment.	The application was referred to the NSW EPA and to Council’s Environmental Health section who are supportive of the proposed amendment of the condition of consent to permit ENM fill in place of the originally approved VENM.	Considered acceptable

All other sections of the assessment against the Liverpool Development Control Plan 2008

remain as originally assessed.

#### **7.4 Section 4.15(1)(a)(iiia) - Planning Agreements**

There are no Planning Agreements which apply to the development.

#### **7.5 The Environmental Planning and Assessment Regulation (2021) – (a)(iv)**

There are no additional items for consideration.

#### **7.6 The likely impacts of the Development – (b)**

The modification proposed by this application being the amendment of condition 95 to permit ENM fill in place of the approved VENM has been assessed by the NSW EPA and Council's Environmental Health section and has been found to be satisfactory. Additionally, the application was accompanied by a report from an environmental hydrogeologist which stated that the fill on site will be returned to be in accordance with the original approval. On this basis it considered that the proposed modification of the original consent will improve the condition of the site to that approved and that it will result in minimal impact to the surrounding uses. As such the proposal is unlikely to cause impacts to the built and natural environment as well as create additional social or economic impacts.

#### **7.7 The Suitability of the Site for the Development – (c)**

The site was considered suitable for a cemetery as proposed in the granting of the original applications for the use. The proposed modifications do not involve changes that undermine those determinations or suggest that the site is no longer suitable for the approved use. The changes relate mainly to the nature of the fill on the site. The suitability of the site for the approved use is not changed.

#### **7.8 Any Submissions made in relation to the Development – (d)**

##### **(a) Community Consultation**

The application was notified between 23 August 2021 and 7 September 2021 under DA-790/2013/C. Twenty-one (21) submissions were received as a result of that notification. The application was notified under this modification application between 26 October 2022 and 9 November 2022 in accordance with the Liverpool Community Participation Plan 2019 and to the original objectors to the application in accordance with section 4.56 of the EP & A Act 1979. Fifteen submissions were received as a result of this notification A summary of the issues raised in these submissions has been included below:

- The site has been used as a landfill site.
- There was no intention for the site to be used as a natural burial cemetery.
- Under no circumstances should fill containing toxic waste such as petroleum, asbestos and other chemicals be permitted on the site.
- The developer should be required to clean up the site as per the EPA order.
- The use of ENM instead of VENM is not in accordance with the original consent.
- The developers knew at the time that they were importing other than ENM to the site which should be grounds to reject the application.
- Only surface sampling was done at the site. Depth Sampling should be done.
- Support of the application would encourage other illegal fill in the area.

- Fill brought to the site should have been disposed of at a licenced waste facility.
- Contamination could reach nearby dams & waterways and catchments potentially impacting on residents' health and wildlife.
- Run off from the site will carry contamination to adjacent properties due to non-compaction of fill and lack of sediment control.
- Large quantities of unauthorised fill have been brought to the site.
- Run-off from the site has caused sediment to be deposited across neighbouring driveways and Greendale Road.
- There is no dust control as required by the consent.
- Protected trees have been built up with fill around their bases and have died.
- Question whether existing material brought into the site has been tested or approved.
- The impacts associated with run-off contamination and dust settling on other properties has not been identified for risk assessments and/or information provided about remediation efforts.
- The proposal appears to be a cost cutting measure for the owner in question without any cost attribution being considered to the local area properties likely to be affected by chemical, soil, dust and water pollution to the area.
- There are significant impacts to flora and fauna and an environmental report has not been afforded to nearby residents to assess the impact
- Given the existing movement of soil to the area, it is questionable as the extent of monitoring likely to occur in the future.
- this cemetery was to be the clean green cemetery of the future – the development is not upholding the 'clean' or the 'green'
- it appears there are exceptions being given to this developer for actions that normal residents would be heavily fined for – this should be investigated with full transparency and findings made public
- EPA has also been notified of strange odours from this site – this should be investigated
- inappropriate materials, equipment and processes have been hidden from inspectors coming to the site
- there are numerous stockpiles of material throughout the site, with asbestos and other contaminants clearly visible - areas already reported by EPA have not been remediated – from surface samples 22 out of 23 returned positive of asbestos and nothing has been done
- Three of the cells have been excavated. Numerous other cells have not been excavated to date which means the site is still contaminated. Western boundary berms or noise wall has not excavated to date. There is asbestos which you can see clearly in daylight.
- Concerns are raised regarding the sources of the ENM and whether the ENM will be subject to testing to ensure that it is safe to be utilised and free of any contaminants.
- Slope or berms have not been compacted in layers creating instability and excessive run off to neighbouring properties
- Contaminants likely to be present in the ENM are likely to lead to the contamination of virgin soils through groundwater migration without monitoring.

The following discussion addresses the issue raised in the submissions, which have been grouped according to common themes.

**Issue 1:** The site has been used as a landfill site.

The development site is the subject of Clean-Up Notice Number 1597021 issued by the NSW

EPA dated 28 September 2020 which is aimed at restoring the site to acceptable conditions and to reduce impacts to adjacent properties.

The application has been referred to the NSW EPA and to Council's Environmental Health section who have raised no objection to the proposed use of ENM instead of VENM on the site. All other conditions of the consent remain in place. Compliance with these other conditions can be investigated through Council's Compliance Section if necessary.

**Issue 2:** There was no intention for the site to be used as a natural burial cemetery.

Consent was issued for use of the site as a natural burial cemetery under DA-790/2013 and DA-394/2011 which was approved by the Land and Environment Court. Conditions of consent were issued for both consents which are to be complied with.

**Issue 3-** Under no circumstances should fill containing toxic waste such as petroleum, asbestos and other chemicals be permitted on the site.

Council is in support of the clean-up order imposed by NSW EPA and that toxic waste is not to be permitted on the site. The modification of the fill from VENM to ENM does not prevent the ability of the site to comply with the clean-up notice or to comply with all other conditions of consent.

**Issue 4** - The developer should be required to clean up the site as per the EPA order.

Council is in support of the clean-up order imposed by NSW EPA and that toxic waste is not to be permitted on the site. The modification of the fill from VENM to ENM does not prevent the ability of the site to comply with the clean-up notice or to comply with all other conditions of consent.

**Issue 5** - The use of ENM instead of VENM is not in accordance with the original consent.

The application has been referred to the NSW EPA and to Council's Environmental Health section who have raised no objection to the proposed use of ENM instead of VENM on the site. All other conditions of the consent remain in place.

**Issue 6** - The developers knew at the time that they were importing other than ENM to the site which should be grounds to reject the application.

The development site is the subject of Clean-Up Notice Number 1597021 issued by the NSW EPA dated 28 September 2020 which is aimed at restoring the site to acceptable conditions and to reduce impacts to adjacent properties. NSW EPA advises that the applicant is working with the EPA to address the issues identified in its clean up notice.

The application has been referred to the NSW EPA and to Council's Environmental Health section who have raised no objection to the proposed use of ENM instead of VENM on the site this modification. All other conditions of the consent remain in place.

**Issue 7** - Only surface sampling was done at the site. Depth Sampling should be done.

The testing of the site was conducted by NSW EPA in accordance with its statutory requirement which is the highest level of environmental protection applicable to the site.

**Issue 8** - Support of the application would encourage other illegal fill in the area.



The dumping of waste is not endorsed as demonstrated by the NSW EPA clean up notice which the developer is working through with the NSW EPA.

**Issue 9** - Fill brought to the site should have been disposed of at a licenced waste facility.

The site has a clean up order on it issued by NSW EPA in order to rectify and remove any non-ENM material to a suitable waste facility.

**Issue 10** - Contamination could reach nearby dams & waterways and catchments potentially impacting on residents' health and wildlife.

The proposed change use of ENM in place of VENM was referred to the NSW EPA and to Council's Environmental Health Officer who have no objection to the proposal. The NSW EPA clean up notice is aimed at minimising any environmental impacts of the fill on the site and on adjacent properties.

**Issue 11** - Run off from the site will carry contamination to adjacent properties due to non-compaction of layers of fill and lack of sediment control methods.

The change use of ENM in place of VENM was referred to the NSW EPA and to Council's Environmental Health Officer who have no objection to the proposal. The NSW EPA clean up notice is aimed at minimising any environmental impacts of the fill on the site and any future fill brought to the site.

Conditions of consent have been imposed under approved DA-790/2013 which was the application under which the main works were conducted. Conditions 109, 110, 111, 113, 116, 117, 137, 139, 140 & 141 relate to the management of the site during construction to minimise issues relating to run-off and sediment control. Additionally, conditions 74, 77, 80, 81, 88-91, 96, 97 & 114-117 of DA-394/2011 have been imposed to ensure appropriate measures for management of the site in terms of run-off and sediment control. The issue of run-off and sediment control from activities on the site can be the subject of Council's Compliance Section if conditions of consent are not adhered to.

**Issue 12** - Large quantities of unauthorised fill have been brought to the site.

The proposed use of ENM fill in lieu of VENM fill does not alter the other conditions of consent which includes the level of fill approved for the site. Excess fill on the site can be investigated by Council's Compliance Section.

**Issue 13** - Run-off from the site has caused sediment to be deposited across neighbouring driveways and Greendale Road.

The issue of uncontrolled run-off leaving the site can be the investigated by Council's Compliance Section.

**Issue 14** - There is no dust control as required by the consent.

Condition 137 of DA-790/2013 provides measures which are to be followed to prevent airborne dust transport. The issue of dust arising from activities on the site can be the subject of Council's Compliance Section if conditions of consent are not adhered to.

**Issue 15** - Protected trees have been built up with fill around their bases and have died. Why

is this site being given an exception or exclusion for damaging the environment?

The site is to be restored to the originally approved levels which should be to that which will prevent tree loss. The Principal Certifying Authority would also need to be satisfied that the conditions of consent have been complied with. The loss of trees not approved for removal would be a matter for Council's Compliance Section to investigate.

**Issue 16** - The impacts associated with run-off contamination and dust settling on other properties has not been identified for risk assessments and/or information provided about remediation efforts.

The clean up of the site is being conducted under the supervision of the NSW EPA in accordance with its requirements.

**Issue 17** - The proposal appears to be a cost cutting measure for the owner in question without any cost attribution being considered to the local area properties likely to be affected by chemical, soil, dust and water pollution to the area.

The proposal was referred and supported by the NSW EPA and Council's Environmental Health Officer. The use of ENM materials on the site is an accepted method and encouraged by the NSW EPA as method to permit suitable to be used onsite where appropriate rather than been diverted to land fill sites.

**Issue 18** - There are significant impacts to flora and fauna and an environmental report has not been afforded to nearby residents to assess the impact

The modification application is to accept ENM fill rather than VENM. This has been endorsed by the NSW EPA who are monitoring the clean-up of the site and Council's Environmental Health Officer. Any environmental impacts caused need to be subject of an investigation Council's Compliance Section.

**Issue 19** - Given the existing movement of soil to the area, it is questionable as the extent of monitoring likely to occur in the future.

The clean up of the site is being actively monitored by the NSW EPA.

**Issue 20** - this cemetery was to be the clean green cemetery of the future – the development is not upholding the 'clean' or the 'green'

The change of fill from VENM to ENM has been endorsed as acceptable process and does not prevent the development from achieving the requirements of NSW EPA. A number of conditions of consent have been imposed in the original consent and DA-790/2013 to ensure this is a green development. Non-compliances with these conditions can be investigated by Council's Compliance section.

**Issue 21** - it appears there are exceptions being given to this developer for actions that normal residents would be heavily fined for – this should be investigated with full transparency and findings made public

A Clean-up notice has been issued to the developers of the site by NSW EPA which they are required to comply with. Any non-compliances with the conditions of consent would be subject to the appropriate investigations by Council's Compliance Section.

**Issue 22** - EPA has also been notified of strange odours from this site – this should be investigated

As the highest environmental authority who are currently investigating the site, NSW EPA would need investigate this issue.

**Issue 23** - inappropriate materials, equipment and processes have been hidden from inspectors coming to the site

The NSW EPA inspectors would be conducting their investigations in accordance with their required practices necessary when assessing these matters.

**Issue 24** - there are numerous stockpiles of material throughout the site, with asbestos and other contaminants clearly visible - areas already reported by EPA have not been remediated – from surface samples 22 out of 23 returned positive of asbestos and nothing has been done

NSW EPA have investigated the site as a whole and would require the developer to clean-up the whole site to an acceptable level before being able to finalise its clean-up order. Any asbestos on the site would need to be in accordance with the levels acceptable for the intended use.

**Issue 25** - Three of the cells have been excavated. Numerous other cells have not been excavated to date which means the site is still contaminated. Western boundary berms or noise wall has not excavated to date. There is asbestos which you can see clearly in daylight.

As stated above, NSW EPA have investigated the site as a whole and would require the developer to clean-up the whole site to an acceptable level before being able to finalise its clean-up order. Any asbestos on the site would need to be in accordance with the levels acceptable for the intended use.

**Issue 26** - Concerns are raised regarding the sources of the ENM and whether the ENM will be subject to testing to ensure that it is safe to be utilised and free of any contaminants.

Part of the clean-up notice from the NSW EPA will require that all fill to be retained on the site is to meet the requirements of ENM. No further material will be brought to the site without the prior permission of the NSW EPA.

**Issue 27** - Slope or berms have not been compacted in layers creating instability and excessive run off to neighbouring properties

Appropriate construction of the slope and berms would be a matter for the principal certifier to be satisfied with

**Issue 28** - Contaminants likely to be present in the ENM are likely to lead to the contamination of virgin soils through groundwater migration without monitoring.

The application to retain ENM on the site is supported by the NSW EPA and Council's Environmental Health Section.

**(b) Internal Referrals**

Environmental Health – Supported.

**(c) External Referrals**

NSW EPA – Supported.

**7.9 The Public Interest - (e)**

The cemetery is approved and, following the completion of clean-up works required by NSW EPA, can be developed. The proposed modifications aim to facilitate that development. The amendment of the proposed quality of the imported fill on the site and for any future fill brought to the site will improve potential impacts to surrounding development and for the future users of the site. Therefore, approval of the proposed modification is still considered to be in the public interest.

**8. DEVELOPMENT CONTRIBUTIONS**

Section 7.11 Development Contributions are not applicable to this modification in accordance with the Liverpool Contributions Plan 2009 – Rural Areas.

**9. CONCLUSION**

The application has been assessed having regard to the provisions of Section 4.56 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.

The proposed development has been assessed as unlikely to result in adverse impacts upon neighbouring properties and the locality. Based on the assessment of the modification, it is recommended that the application be approved subject to the imposition of amended conditions.

**10. RECOMMENDATION**

Having regard to the provisions of Sections 4.56 & 4.15 of the *Environmental Planning and Assessment Act 1979*, the proposed modification to DA-394/2011 relating to the approved cemetery development at 41 Greendale Road, Bringelly is considered to be satisfactory. Therefore, it is recommended that the application be approved and the consent for DA-394/2011 be modified to reflect the proposed changes.

**11. REPORT ATTACHMENTS**

**8. NSW EPA Referral**

**9. NSW EPA Clean-Up Notice**

**10. CONDITIONS OF APPROVAL WITH ASSOCIATED EXTERNAL COMMENTS**

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## REPORT ATTACHMENT 1: NSW EPA REFERRAL



DOC21/755713-3

Mr Patrick Curmi  
Liverpool City Council  
Locked Bag 7064  
LIVERPOOL NSW 1871

2 September 2021

Dear Mr Curmi

**CNR-27055- s45 modification application – DA394/2011/A and DA790/2031/A  
use of ENM at 41 Greendale Road Bringelly**

The Environment Protection Authority (EPA) refers to Liverpool City Council's request for comments in relation to a s45 modification application to permit the use of ENM at 41 Greendale Road Bringelly (premises).

The EPA has assessed the application to amend condition 75 of DC394/2011 and condition 95 of DC790/2013 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material and advises that it supports this proposal provided the material complies with *The excavated natural material exemption 2014* issued under clauses 91 and 92 of *the Protection of the Environment Operations (Waste) Regulation 2014*.

**ENM currently at the premises**

As Council is aware, the EPA issued clean-up notice No. 1597021 (and subsequent variations) to The Garden Cemetery Limited as developers of the burial cemetery approved under DC394/2011, to take specified clean-up actions in two distinct areas of the premises referred to as Area A and Area B (which includes the Berm).

The Garden Cemetery Limited engaged EI Australia Pty Limited (EI) to assess and classify the material that had been imported and land applied at the premises.

To date the removal of waste material from Area A has been completed with contaminated waste material being removed offsite for disposal and approximately 640m<sup>3</sup> of sandstone material that met the chemical and other material requirements under Table 4 of the *excavated natural material order 2014* (ENM) being stockpiled on the sealed carpark area for potential reuse to reinstate the Berm (subject to Council approval).

EI Australia have advised that 116m<sup>3</sup> of sandstone material from Area B which has been classified as ENM will also be transferred to the carpark area for potential onsite reuse. In total approximately 756m<sup>3</sup> of sandstone material which has been classified as ENM will be reused to reinstate the berm around the premises.

Phone 131 555  
Phone +61 2 9995 5555  
(from outside NSW)

TTY 133 677  
ABN 43 692 285 758

Locked Bag 5022  
Parramatta  
NSW 2124 Australia

4 Parramatta Square  
12 Darcy St, Parramatta  
NSW 2150 Australia

[info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au)  
[www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

LIVERPOOL CITY COUNCIL  
LOCAL PLANNING PANEL REPORT

28<sup>th</sup> November 2022

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EI continue to assess and classify the land applied material within Area B for offsite disposal and have advised that they do not anticipate any further ENM material will be set aside for onsite reuse. To comply with clean-up notice No. 1597021 this process will continue until such time that natural ground levels are reached.

If you have any questions regarding this matter, please contact Katharine Falconer on (02) 9995 6287.

Yours sincerely



**BELINDA LAKE**  
Unit Head, Major Compliance and Investigations  
Regulatory Operations Regional

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## **REPORT ATTACHMENT 2: NSW EPA CLEAN-UP NOTICE**

Section 91 Protection of the Environment Operations Act 1997

### **Clean-Up Notice**

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THE GARDEN CEMETERY LIMITED  
ACN 611 122 662  
C/O TITAN PARTNERS  
LEVEL 3, 7-15 MACQUARIE PLACE  
SYDNEY NSW 2000

Attention: The Proper Officer

Notice Number    1597021  
File Number       EF20/21529  
Date                28-Sep-2020

#### **Clean-up Notice**

##### **Why is the EPA writing to you?**

The Environment Protection Authority (EPA) reasonably suspects that a pollution incident has occurred or is occurring on land that forms part of 41 GREENDALE ROAD, BRINGELLY, NSW, 2556 being Lot 5 DP 252040 (Premises) as a result of waste being deposited and land applied to the Premises. The EPA has issued THE GARDEN CEMETERY LIMITED (Garden Cemetery), as the occupier of the Premises, with this Clean-up Notice (the Notice). Further information is set out in the notice below.

##### **BACKGROUND**

- A. The EPA has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (the Act).
- B. Under Section 91(1)(a) of the Act, the EPA can in writing, direct an owner or occupier of a premises at, or from which, the authority reasonably suspects that a pollution incident has occurred or is occurring to take such clean up action specified in the notice and within the specified time period.
- C. Garden Cemetery is the lessee of the Premises under a twenty-five year lease agreement, that commenced on 5 September 2017, and has management and control of the Premises. Garden Cemetery is the occupier of the Premises for the purposes of s91(1)(a) of the Act.
- D. On 29 January 2013, the Land and Environment Court approved staged development DA-394/2011 concept plan and stage 1 works (Court Order) for construction of a natural burial cemetery and associated infrastructure on the Premises. Development is to be carried out in accordance with the

Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



Court Order Conditions of Consent and the list of plans (DA Approved Plans) described in, and the subject of, the Court Order.

E. Condition 75 of Court Order states *"All fill material imported on to the premises must be Virgin Excavated Natural Material (VENM). Validation certificates from a recognized and qualified consultant or geotechnical engineer verifying the material is free of contaminants, prior to transportation to and placing of VENM on the premises."*

F. The Court Order does not permit the use of the Premises for the storage or land application of asbestos waste.

G. The application to land of waste received from offsite, is declared to be a scheduled activity, under Clause 39 of Schedule 1 to the Act.

H. The EPA is the appropriate regulatory authority (ARA) for scheduled activities under the Act.

I. The EPA has not issued an environment protection licence that would permit the disposal and application of waste to the Premises.

### Site Inspection

J. On 7 May 2020, EPA Authorised Officers (EPA Officers) conducted an inspection of the Premises following reports to EPA's Environment Line alleging that the Premises was being used as a waste facility. During the inspection the EPA Officers observed:

#### **Area A** (as delineated in Image 3)

- i. A haul road (Image 6) had been constructed from waste comprising of different types of soil containing building and demolition waste through the South-Western portion of the Premises, labelled as "Haul Road" in Image 1. This haul road is located in an area containing high quality Cumberland Plain Woodland as identified in DA Approved Plan, *flora & fauna analysis plan 02b prepared by McGregor + Coxall, Revision A - April 2011* and has been marked as "Cumberland Plain Woodland" in Image 1.
- ii. Waste comprised of soil mixed with building and demolition material had been placed directly around the trees located in Area A displaying preservation numbers to a depth of several metres and protective fencing was either absent or buried under the waste (Image 7). Vegetation on the Premises falls within the Shale Hills Woodland component of the Cumberland Plain Woodland Endangered Ecological Community.



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



### Area B (as delineated in Image 3)

- iii. A load of waste comprised of soil mixed with pieces of bitumen being deposited on an area identified in Image 1 as the "Western batter" of the Premises. A waste classification report certifying that this material was Virgin Excavated Natural Material (VENM) was not able to be provided to the EPA officer during the inspection by the truck driver and was not provided by the owner of the waste during subsequent requests by the NSW EPA.
- iv. Two excavators were in operation at the Premises, spreading waste, comprised of soil mixed with pieces of brick and bitumen, on the western batter (Image 5).
- v. Waste comprised of soil containing; broken pieces of bricks, concrete, wood, tiles, metal, plastic and suspected bonded asbestos contaminated material (ACM), that had been deposited and spread or landscaped at the Premises in areas marked as:
  - "Western batter" (shaded as purple) and
  - "Eastern batter" (shaded as blue) and
  - "Berm" (shaded as yellow) in Image 1.

Photographs of these areas are also shown in Images 4 and 5.

- vi. Absence of, or poor maintenance of erosion control measures in the North-Eastern corner and North-Western corner and along the Haul Road resulting in sediment laden water being discharged into waterways, onsite dams and dams on adjoining properties (Image 8).
  - vii. The Berm in the North-Eastern corner was structurally compromised, resulting in sediment laden water being discharged onto adjoining property (Image 9).
  - viii. Stormwater had created erosion channels within the top surface area and face of the steeply terraced Eastern batter, compromising the integrity and stability of the batter. The Eastern batter was composed of waste including soil containing broken bricks, concrete, steel and plastic, which was visible within these erosion channels.
- K. The EPA Officers collected 23 fragments of suspected ACM from various areas in Area B (as delineated in Image 3) at the Premises for laboratory analysis. The location of the sampling points is shown in Image 2. The samples were sent for analysis at a National Association of Testing Authorities accredited testing laboratory.
- L. On 12 May 2020, the EPA received laboratory results which confirmed the presence of asbestos in twenty-two (22) of the twenty-three (23) samples collected from the Premises.
- M. The EPA understands Garden Cemetery engaged contractors, Citywide Civil Pty Ltd on the 10 January 2019 to carry out civil works at the Premises.
- N. On 18 May 2020, following the 7 May 2020 inspection of the Premises, the EPA issued Clean-up Notice No. 1594775 to Citywide Civil Pty Ltd. Clean-up Notice No. 1594775 directed Citywide Civil Pty Ltd to immediately prevent the receipt, deposition, disturbance or alteration or removal of any waste material from the Premises. The EPA will revoke Clean-up Notice No. 1594775 by a Revocation Notice on the date this Notice is issued.
- O. As part of Clean-up Notice No. 1594775 issued to Citywide Civil Pty Ltd, the EPA undertook a preliminary analysis of the amount of waste that has been applied to land at the Premises. It was

Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



estimated that there is at least 3,500m<sup>3</sup> of waste in the Western batter, 4,000m<sup>3</sup> of waste in the Eastern batter and 1,400m<sup>3</sup> of waste in the Berm. Based on the conversion rate of 1 cubic metre to 1 tonne, the amount of soil mixed with building and demolition waste is estimated to be a minimum of 8,900 tonnes.

- P. Given the large quantities of waste deposited and applied to the Premises, and the confirmed ACM samples that were collected from the waste materials across the Premises, including from locations in the Western batter, Eastern batter and Berm, the EPA reasonably suspects that more than 10 tonnes of waste materials containing ACM has been deposited on and applied to the Premises.
- Q. Waste has also been applied to other areas of the Premises, not included in the 8,900 tonne calculation. This includes the areas surrounding the Haul Road constructed through the South-West are of the Premises and general filling across the Premises.
- R. The EPA has undertaken a review of available aerial imagery of the Premises and identified that the following works have occurred:
- i. Between 9 January 2013 and 8 July 2017: no civil works were observed;
  - ii. Between 8 July 2017 to 12 January 2019: commencement of excavation works to construct the central internal access road and carparking area (located on the South-Eastern corner of the Premises), filling of the dam on the North-Western portion and limited stockpiled of soil material;
  - iii. Between 12 January 2019 and 23 July 2019: further construction works including completion of the carparking area and earthworks including filling of the central portion of the Premises.
  - iv. Between 23 July 2019 and 7 November 2019: filling works had expanded across the entire North-Eastern portion of the Premises (including the expansion and construction of part of the eastern batter). The Berm had been constructed along the entire 200 metre northern boundary line, a 150 metre section on the eastern boundary line and a 90 metre section along the Western boundary line of the Premises.
  - v. Between 7 November 2019 and 21 March 2020: further filling works on the Eastern batter, filling works had commenced to construct the Western batter, bitumen had been laid to the central internal access road and carpark roadways, the haul road had been constructed through the South-Western portion of the Premises, the Berm had been constructed along the entire 450 metres of the Eastern boundary line and an additional 90 metres section of the Western boundary line (total distance 180 metres).
  - vi. Between 21 March 2020 and 28 May 2020: further filling works on the Eastern batter and Western batter, bitumen had been laid to the remaining central internal access road, the Berm had been expanded to the entire 530 metres of the Western boundary line
- S. On 9 July 2020, EPA Authorised Officers conducted a second inspection of the Premises. During the inspection the Officers observed:
- Area A and B** (as delineated in Image 3)
- i. Plastic fencing had been placed around trees displaying preservation numbers. Waste had not been moved from around the base of the trees which were still buried to a depth of several metres.

Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



### Area B (as delineated in Image 3)

- ii. In North-Western portion of the Premises, an outlet pipe was positioned to discharge into the neighbouring premises (Image 10).
- iii. Stormwater had created erosion channels within the top surface area and face of the steeply terraced Eastern batter, compromising the integrity and stability of this batter. Building and demolition waste was visible within these erosion channels (Image 11).

### ENVIRONMENT PROTECTION LAW

- T. Section 91 of the Act gives power to the EPA to issue a Clean-up Notice for a pollution incident.
- U. Under s91(1)(a) the EPA may direct and owner or occupier of Premises at or from which the Authority reasonably suspects that a pollution incident has occurred or is occurring, to take such clean-up action as is specified in the Notice within the time period specified in the Notice.
- V. The Dictionary to the Act defines:
  - a. "Pollution incident" as an incident or set of circumstances or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.
  - b. "Pollution" as including land and water pollution.
  - c. "Land pollution" or "Pollution of Land" as placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:
    - a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
    - b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter, but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.
  - d. "water pollution" to include placing any matter (whether solid, liquid or gaseous) in a position where it falls or is likely to fall into any waters if the matter would, had it been placed in any waters, have polluted or have been likely to pollute those waters.
  - e. "waters" means the whole or any part of
    - a) any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea) or
    - b) any water stored in artificial works, any water in water mains, water pipes or water channels, or any underground or artesian water.

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## Clean-Up Notice



f. "Waste" as:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.

g. "Asbestos Waste" as any waste that contains asbestos.

h. "Asbestos" as having the same meaning as it has in Schedule 1 of the Act. Clause 50 of Schedule 1 to the Act defines "asbestos" to mean "the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos) anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite".

i. "Building and Demolition waste" includes materials such as bricks, concrete, paper, glass, metal and timber.

j. "Occupier" of premises mean the person who has the management or control of the premises.

W. Under clause 109 of the Protection of the Environment Operations (General) Regulation 2009 (Regulation) more than 10 tonnes of asbestos waste is a matter which is prescribed for the purposes of paragraph (b) of the definition of land pollution.

### POLLUTION INCIDENT

X. In relation to **Area A** of the Premises (as delineated in Image 3), the EPA reasonably suspects, based on the observations of its officer, that:

- a. the haul road in the high value Cumberland Plain Woodland conservation area at the Premises has been constructed of waste, and
- b. waste has been placed around the bases of trees within the Cumberland Plain Woodland conservation area, and
- c. the deposited waste, around the base of those trees and comprising the haul road, has, or is likely, to cause degradation of the land in Area A, resulting in actual, or potential harm, to the health of the Cumberland Plain Woodland ecosystem, that is not trivial.

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## Clean-Up Notice



- Y. The EPA therefore reasonably suspects that a pollution incident, namely land pollution, has or is occurring in Area A of the Premises due to the depositing of waste in the Cumberland Plain Woodland.
- Z. In relation to **Area B** of the Premises (as delineated in Image 3), the EPA reasonably suspects, based on the observations of its officers, and the test results of samples analysed and collected from the Premises, that the waste deposited on, and applied to Area B of the Premises:
- contains asbestos and is 'asbestos waste' as defined in the Act.
  - that more than 10 tonnes of asbestos waste has been deposited and applied to the Premises, and comprises land pollution of a prescribed nature, as a result of which land pollution has occurred, is occurring or is likely to occur.
  - that deposit of the asbestos is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems; and
  - there is the potential for harm to human health on the presence of asbestos in the soil and waste material deposited on the Premises, as the asbestos is accessible and vulnerable to disturbance by people or vehicles, and the disturbance may release fibers into the air.
- AA. On 8 September 2020, the EPA provided Garden Cemetery with a draft version 1 of this Notice for comment.
- AB. On 17 September 2020, Garden Cemetery provided comments on the draft version 1 for consideration.
- AC. On 18 September 2020 the EPA provided draft version 2 to Garden Cemetery for review.
- AD. On 22 September 2020 Garden Cemetery provided comments on draft version 2 for consideration. After review the EPA is providing draft version 3 for consideration.
- AE. On 25 September 2020 Garden Cemetery provided additional comments on draft version 3 requesting an extension for direction 5, 9 & 10. The EPA agrees to this extension.
- AF. The EPA is directing you, Garden Cemetery to take clean-up action in relation to these pollution incidents because you are the occupier of the Premises.

### DIRECTION TO TAKE CLEAN-UP ACTION

The EPA directs THE GARDEN CEMETERY LIMITED to take the following clean-up action in relation to the Premises.

- Immediately:
  - cease, receiving waste at the Premises, or permitting waste to be so received, unless prior written authorisation is provided by the EPA.
  - cease transporting waste to the Premises, or causing or permitting waste to be so transported, unless prior written authorisation is provided by the EPA.
  - prevent, and continue to prevent, unauthorised access to the Premises by ensuring security measures such as fencing are installed and maintained.
  - any security fencing installed at the Premises must be maintained to prevent any unauthorised access to the Premises.

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## Clean-Up Notice



- e. do not move, alter, process or disturb any asbestos or other waste fill material at the Premises until clean up occurs in accordance with this Notice or unless prior written notification has been provided by the EPA.
2. At least **seven (7) days** prior to the removing any waste from the Premises as required by Direction 4 and 5 of this Notice, provide the EPA in writing, details of the place that the waste required to be removed by Direction 4 and 5 will be lawfully disposed of.
  3. You must notify the EPA at least **72 hours** prior to undertaking works associated with Direction 4 and 5 of this Notice. This notification must be given by way of Self Report made to the NSW EPA's Environment Line Telephone Service on 131 555 and quoting "Clean-Up Notice No. 1597021".
  4. By no later than **5pm Monday 21 December 2020**, ensure all waste deposited in **Area A** in Image 3 is disposed of at a waste facility that can lawfully accept this waste.
  5. By no later than **5pm Monday 22 February 2021**, ensure all waste, being asbestos waste, applied to **Area B** (including the Berm) in Image 3 is removed and disposed of at a landfill that can lawfully accept asbestos waste.
  6. An asbestos removalist that is appropriately licensed by SafeWork NSW must be used to remove the asbestos waste from the Premises.
  7. Ensure all asbestos waste transported from the Premises is entered into the EPA's *Waste Locate* tracking system.
  8. By no later than **5pm Monday 18 January 2021**, provide the EPA with the following:
    - a. clear and legible copies of all invoices and receipts for the transportation of the waste material referred to in Direction 4 of this Notice;
    - b. clear and legible copies of disposal dockets to prove the lawful disposal of all waste material referred to in Direction 4 of this Notice;
    - c. the name, address and contact details of any transporter used to transport the waste material referred to in Direction 4 of this Notice.
  9. By no later than **5pm Monday 8 March 2021**, provide the EPA with the following:
    - a. clear and legible copies of all invoices and receipts for the transportation of the waste material referred to in Direction 5 of this Notice;
    - b. clear and legible copies of disposal dockets to prove the lawful disposal of all waste material referred to in Direction 5 of this Notice;
    - c. the name, address and contact details of any transporter used to transport the waste material referred to in Direction 5 of this Notice.
  10. By no later than **5pm Monday 8 March 2021** provide the EPA with a clearance certificate from a an independent suitable person (qualified as an occupational hygienist or licensed asbestos assessor who has expertise in dealing with asbestos waste) that confirms that Area B in Image 3 is clear of asbestos waste in accordance with the requirements of the *Work Health and Safety Regulation 2017*.
  11. All information and records required by Direction 2, 8, 9 and 10 of this Notice must be submitted to:
 

**MAIL:** Director Major Compliance & Investigation (Att: Clean-Up Notice No. 1597021)  
NSW Environment Protection Authority,

Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



Locked Bag 5022  
PARRAMATTA NSW 2124

OR

**Email** [EPA.EDoperationsregional@epa.nsw.gov.au](mailto:EPA.EDoperationsregional@epa.nsw.gov.au) (Clean-Up Notice No. 1597021)

### Signage

12. If Clean Up Notice signage is provided by the EPA, erect the sign on the fence at the Premises where it is in an easily visible position from Greendale Road.
13. If Clean Up Notice signage is provided by the EPA, maintain the sign in good order to ensure it remains visible and legible from Greendale Road.
14. If Clean Up Notice signage is provided by the EPA, you must ensure that you, your employees, subcontractors or agents do not tamper or interfere with or alter the signage in any way.
15. If Clean Up Notice signage is provided by the EPA, you must ensure that you, your employees, subcontractors or agents do not remove the signage without prior written approval from the EPA.
16. If Clean Up Notice signage is provided by the EPA, notify the EPA immediately quoting "Clean-Up Notice No. 1597021" if the signage is removed.
17. If Clean Up Notice signage is provided by the EPA, and the signage is removed, immediately erect and maintain any new signs provided by the EPA in accordance with Directions 11 to 15 above.

### FEE TO BE PAID

- You are required by law to pay a fee of \$563 for the administrative costs of issuing this notice. An invoice for the fee has been attached to this notice.
- It is an offence not to pay this fee. However you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

.....  
**Belinda Lake**  
**UNIT HEAD - MAJOR COMPLIANCE & INVESTIGATIONS**  
**REGULATORY OPERATIONS REGIONAL**  
(by Delegation)

Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



### WARNINGS AND INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 91 of the Act.
- It is an offence against the Act not to comply with a clean-up notice unless you have a reasonable excuse.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Act

#### Penalty for not complying with this notice

- The maximum penalty that a court may impose for a corporation is \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$250,000 and a further \$60,000 for each day the offence continues.

#### When this notice begins to operate

- This notice operates from the day the notice is given, unless a later date is specified in the notice.

#### Continuing obligation

- Under section 319A of the Act, your obligation to comply with the requirements of this notice continues until the notice is complied with in full, even if the due date for compliance has passed.

#### Cost recovery from the person who caused the incident

- If you comply with this clean-up notice but you are not the person who caused the pollution incident to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused the incident.

#### Deadline for paying the fee

- The fee must be paid by **no later than 30 days after the date of this notice**, unless the EPA extends the time to pay the fee, or waives the fee.

#### How to pay the fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

#### How to apply for an extension of time to pay/waive the fee

- Any application for an extension of time to pay the fee or for the fee to be waived must be made in writing to the EPA. The application should set out clearly why you think your application should be granted.

#### Other costs

- The Act allows the EPA to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters.
- If you are required to pay these other costs and expenses you will later be sent a separate notice called a "Notice Requiring Payment of Reasonable Costs and Expenses".



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice

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### Variation of this notice

The requirements of this notice may only be varied or revoked by written notice issued by the EPA.

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Clean-Up Notice



Image 1 - Map of areas of the Premises as of the 7 May 2020



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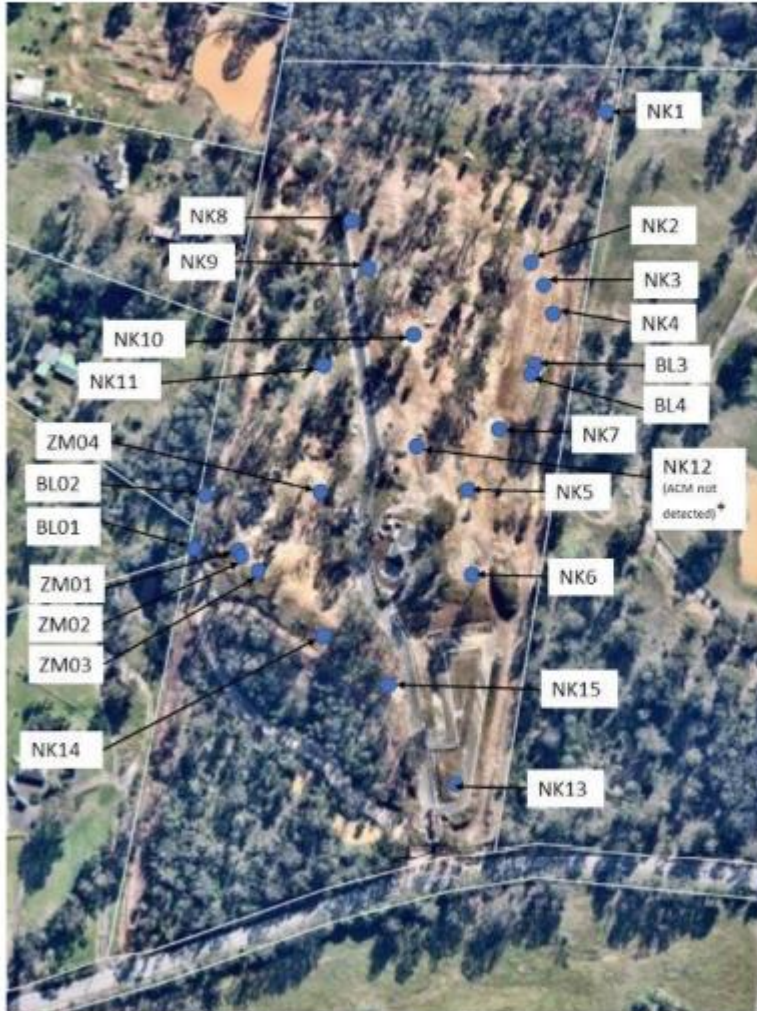
28<sup>th</sup> November 2022

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Clean-Up Notice



Image 2 - Sampling locations at the Premises on 7 May 2020



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**Image 3** - A map of the Premises, showing the location of land applied waste as "Area A" (the area within the green area) and "Area B" (the area within the yellow area) to which the directions in this Clean-Up Notice apply.



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



**Image 4** - Soil material mixed with building and demolition waste in the Western batter



**Image 5** - Aerial view of excavator operating on Western batter



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



**Image 6** - Haul road constructed through the South-Western portion of the Premises which contains high quality Cumberland Plain Woodland



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice

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**Image 7** - Soil material had been placed directly around the trees displaying preservation numbers to a depth of several metres high



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice

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**Image 8** - Absence of/ or inadequate sediment control measures resulting in sediment laden water being discharged into dams on adjoining properties





Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice

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**Image 9** - Compromised bunding wall in North-Eastern corner resulting in sediment laden water being discharged onto adjoining property



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice

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**Image 10** - Outlet pipe positioned to discharge into neighbouring premises adjacent to their dam



Section 91 Protection of the Environment Operations Act 1997

## Clean-Up Notice



**Image 11** - Stormwater had created erosion channels within the steeply terraced Eastern batter, compromising the integrity and stability of this batter. Building and demolition waste is visible within the channels



## **REPORT ATTACHMENT 3: CONDITIONS OF CONSENT**

### **SECTION 4.56 MODIFICATION OF DEVELOPMENT CONSENT**

(In accordance with the provisions under Section 4.56 of the *EP&A Act 1979*)

**ADDRESS:** LOT 5 DP 252040  
41 GREENDALE ROAD, BRINGELLY

**DESCRIPTION:** Modification to Development Consent DA-394/2011 under Section 4.56 of the Environmental Planning and Assessment Act 1979, to amend DA Condition 75 to permit the use of Excavated Natural Material (ENM) instead of Virgin Excavated Natural Material (VENM)

Reference is made to Modification Application DA-394/2011/B which seeks amendment to a court approved masterplan (In DA-394/2011) for the use of land as a natural burial cemetery in accordance with the concept plan and the stage 1 works as follows:

#### Stage 1

- *Demolition of existing structures.*
- *Earthworks including the decommissioning and filling of a dam*
- *Use of a site as a cemetery (although internments will not take place in stage 1)*
- *Construction of an internal road to service the future development;*
- *Construction of an internal access path;*
- *Revegetation and weed eradication;*
- *Stormwater management works; and*
- *Provision of vegetation buffers and screening.*

#### Stage 2

- *Burial plots comprising 6,474 double depth burial plots (1 2,948 internments), 1,542 low impact burial plots in tree protection zones, 4,722 urn burials under trees, 20,000 ash internments within columbarium walls and 5,100 ash internments under roses within a walled garden (total 44,312 internments) or other lesser amount pending further environmental assessment;*
- *Erection of administrative and amenity facilities comprising funeral director's office, visitor's centre, multi-function auditorium, cafe and toilets;*
- *Erection of a caretaker's lodge including garage and maintenance shed;*
- *Erection of columbarium walls with enclosed garden;*
- *Erection of elevated and at grade nature walks/access paths;*
- *Provision of car parking for 161 cars comprising 137 permanent hard surface spaces (inclusive of 4 disabled parking spaces) and 24 landscaped overflow spaces;*
- *Erection of entry gates;*
- *Widening of Greendale Road; and*
- *Ancillary drainage, landscaping and earthworks to facilitate water management.*

*Consent is granted for the concept proposal and stage 1 of the development only. Stage 2 of the development must not be carried out without further approval.*

Modification Application DA- 394/2011/B seeks consent for:

- Modification of condition 75 of the consent to permit Excavated Natural Material (ENM) fill in place of Virgin Excavated Natural Material (VENM).

Pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*, Council grants approval for the modifications sought. Accordingly, Development Consent DA-394/2011/B has been amended as follows:

**1. The following condition of Development Consent DA-394/2011 has been amended to read as follows:**

**Environmental Management**

75. Fill material must be limited to the following:

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

Certificates proving that the material is ENM or VENM must be provided to the Principal Certifying Authority prior to filling. Certificates are to be provided to Council officers if and when requested.

Fill material must be compatible with the existing soil characteristic for site drainage purposes.

All other conditions of Development Consent DA-394/2011 and Modification Application DA-394/2011/A remain unchanged.

**Note:** This determination notice is strictly for changes sought under Modification Application DA-394/2011/B. No approval is granted or implied for any other works / changes proposed to the submitted development.

**ADVISORY NOTES:**

- (e) Section 8.2 of the EP&A Act provides that an applicant may request that Council review the determination of the Modification Application (this does not relate to designated development or Crown development).

Section 244 of the EP&A Regulations provides that an application for review must be submitted within 28 days of the date of the determination, and Section 8.2 of the EP&A Act provides that an application cannot be reviewed/determined after 6 months of the date of determination.

- (f) Section 8.9 of the EP&A Act provides that an applicant who is dissatisfied with the determination of a Modification 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.

- (g) The Section 4.55 Modification Application does not extend the timeframe of the Development Consent initially granted by Council.
- (h) Modification of the Development Consent does not remove the need to obtain any other statutory consent necessary under the EP&A Act.

<b>Item no:</b>	5
<b>Application Number:</b>	RZ-9/2022
<b>Proposal:</b>	Planning proposal to amend the zoning, floor space ratio, height of building and minimum lot sizes development standards applying to the land.
<b>Property Address</b>	22 Box Road, Casula (Mimosa Park)
<b>Legal Description:</b>	Lot 1103 DP1051233
<b>Recommendation:</b>	Proceed to Gateway determination
<b>Assessing Officer:</b>	Brianna van Zyl – Strategic Planner

## 5. EXECUTIVE SUMMARY

This Planning Proposal has been prepared to initiate an amendment to the *Liverpool Local Environmental Plan 2008* (LLEP 2008). The amendment involves the rezoning and reclassification (from community to operational land) of 22 Box Road, Casula (Lot 1103 DP 1051233), known as Mimosa Park. A height of building, floor space ratio and minimum lot size development standard will also be applied to the site.

Mimosa Park is a vacant block of land of approximately 565m<sup>2</sup>, currently zoned RE1 Public Recreation under the LLEP 2008. The site slopes approximately 4m from the Box Road street frontage to the west of the site, and has a gradient of close to 1:10. The site is currently constrained by access, as part of the road is closed along the sites frontage, to prevent Box Road being used as a bypass from the Hume Highway. The road still allows for pedestrian and cycle access to the site. It is bound by low density residential development on the north, south and west frontages. The site has a limited functionality due access, safety and level change constraints.

Several site constraints were identified pertaining to public safety. Accordingly, at its meeting on 31 August 2022, Council resolved to:

1. *“Proceed with an amendment to Liverpool LEP 2008 to seek a rezoning for the property at 22 Box Road, Casula (Lot 1103 DP1051233) to R2 Low Density Residential and reclassification of the site to “operational” land for potential future sale with the proceed from any sale to be allocated for the embellishment of Jardine Park.*
2. *That if a rezoning and reclassification process are approved as part of an amendment to the LEP, that a further report be presented to Council recommending methods of sale and establishing a reserve / minimum price for the property, prior to proceeding with any sale.”*

The planning proposal has been drafted (**Attachment 1**) as required by the above Council resolution. This planning proposal represents the first step in rezoning the property and facilitating the sale of the property. It is envisioned the site will be redeveloped as a single detached dwelling and the funds generated by the sale will embellish Jardine Park, which is located 1.5km from the subject site.

Determination of strategic and site-specific merit has been assessed in accordance with A guide to preparing planning proposal published by NSW Department of Planning and Environment (September 2022).

The proposal is referred to the Local Planning Panel in accordance with Section 2.19 of the EP&A 1979 for advice.

Council officers recommend that the planning proposal proceed to gateway and consideration by the elected Council.

## **2. Site Description and Locality**

The planning proposal relates to 22 Box Road, Casula (Lot 1103 DP 1051233). The subject site can be seen in Figure 1 below.

The site is constrained and has limited functionality due access, gradients, safety and the adjoining residential dwellings.

Zoned RE1 Public Recreation, with nil development standards, and is classified as 'Community Land'. The surrounding development is of low density context, with the streetscape characterised by detached 2 storey dwellings. Residential land to the north, south and west is zoned R2 Low Density Residential, and land to the east is zoned R3 Medium Density Residential which is predominately characterised by low density developments, with a small number of multi-dwelling developments.

The site is approximately 1km from Casula Town Centre, containing library, recreation facilities and shops including Coles, Aldi and Kmart. The site is also located with 280m of the District Park, Peter Miller Reserve which is currently well used by the community, and Jardine Park Casula, is approximately 1.5km north east.



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Figure 1: Locality (Source Near Map)

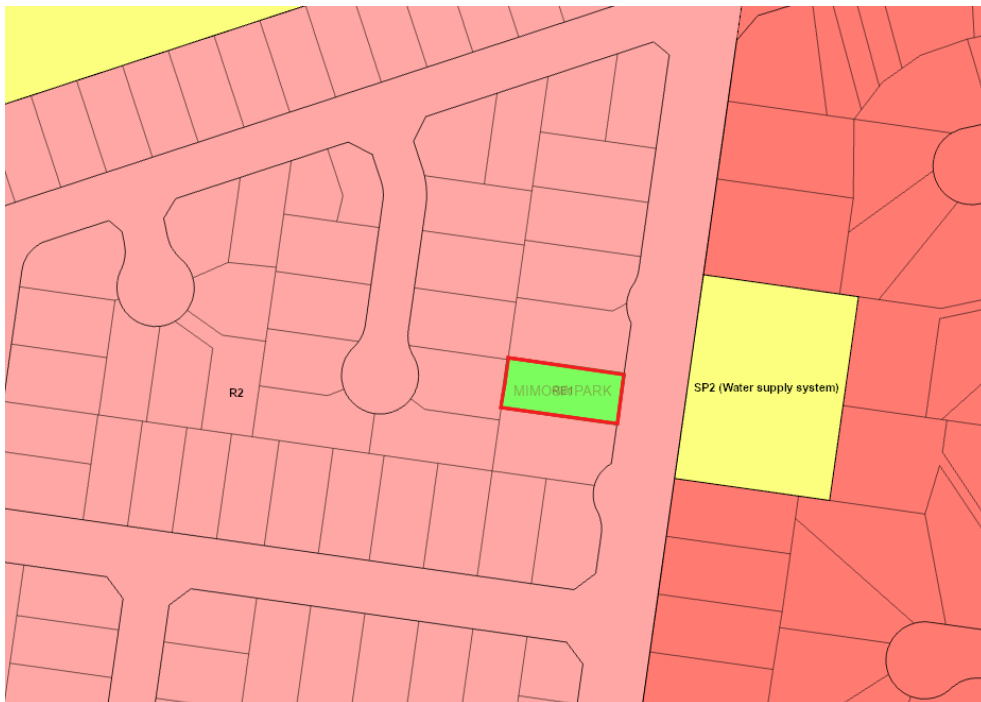


Figure 2: Zoning Map (Source: Geocortex)

### 3. Details of the Proposal

The intent of the planning proposal is to facilitate the reclassification of No. 22 Box Road, Casula (Lot 1103 DP 1051233) from Community Land to Operational Land, and to enable its future development as a single dwelling within a low density residential area, as the site is deemed too constrained for its use as a quality public park.

The planning proposal will impose a Maximum Floor Space Ratio of 0.6:1, Maximum Height of building of 8.5m and a minimum lots size of 300m<sup>2</sup>, commensurate with adjoining land.

At its meeting on 27 October 2020, Council considered a report on Mimosa Park, 22 Box Road, Casula and resolved to endorse Option 1 of the following two options:

- Option 1: Mimosa Park to be kept as a local park and embellished
- Option 2: Reclassify, rezone and dispose of Mimosa Park.

Following this, a feasibility study, environmental testing, and conceptual development was undertaken. The study identified several risks, including the site topography, public safety, accessibility, fall heights, and maintainability.

At its meeting, on 31 August 2022, Council resolved to:

*“That Council:*

- 1. Proceed with an amendment to Liverpool LEP 2008 to seek a rezoning for the property at 22 Box Road, Casula (LOT 1103 DP 1051233) to R2 Low Density Residential and reclassification of the site to ‘operational land for potential future sale with proceeds from any future sale to be allocated for the embellishment of Jardine park*
- 2. That if a rezoning and reclassification process are approved as part of an amendment to the LEP, that a further report be presented to Council recommending methods of sale and establishing an<sub>[sic]</sub> reserve / minimum price for the property, prior to proceedings with any sale.”*

Council intends to sell the site to allow redevelopment for low density residential purposes, as it is currently underutilised and not appropriate for further embellishment into a park. The planning proposal will facilitate this outcome by rezoning the site so it can be redeveloped in the future. Under the existing LLEP 2008 development standards, the application of the R2 Low Density Residential zone and development standards will only facilitate the development of one dwelling. Funding from the sale of the site will be allocated to the embellishment of Jardine Park in Casula.

The site will have to be reclassified from Community to Operational Land. This will be done as per the requirements in the *Local Government Act 1993*.

#### 4. Consideration of Strategic Merit

In summary, the proposed amendment is considered to have strategic merit as outlined within the planning proposal justification report (**Attachment 1**). The proposed amendment is considered the best outcome for the site and the community. The site is currently under-utilised and the risk analysis identifies several safety risks if the site was developed as open space. Thus, the rezoning will generate additional funds to embellish Jardine Park and subsequently increase its functionality. Consideration has been given to the relevant 9.1 Ministerial Direction and State Environment Planning Policies to confirm consistency. This is outlined in detail in **Attachment 1**.

#### 5. Consideration for Site Specific Merit

In summary, the proposed amendment is deemed to have site specific merit as outlined within the Planning Proposal justification report (**Attachment 1**). It is noted the site is constrained in regards to access, site access, and level changes which make it unsuited for public open space, but acceptable for low density residential development.

Ministerial direction '4.4 Remediation Contaminated Land' required consideration where residential development is to occur. Council has considered contamination risks as outlined in **Attachment 1**, due to the nature of illegal dumping on vacant site. However, a recent investigation in July 2021 found the site to be unlikely to be contaminated. Investigations will be ongoing, but the proposal is considered consistent with this direction.

#### 6. Next Steps

Following the panel's consideration, the planning proposal will be reported to Council for their consideration. Should the planning proposal request be endorsed, it will be forwarded to DPE seeking a Gateway determination.

Following a Gateway determination in support of the planning proposal, there will be a public authority and community consultation. This will include a Public Hearing to meet the criteria for reclassifying under the *Local Government Act 1993*. Following consultation, a further report will be tabled to Council.

It is noted additional studies and clarification may be required by DPE prior to exhibition occurring.

#### 7. Conclusion

Pursuant to the requirements of a Guide to preparing planning proposal and relevant ministerial directions, this attached planning proposal provides a merit assessment of the planning proposal.

The following amendments can be supported to proceed with the planning proposal process:

- Rezone to site from RE1 Public Recreation to R2 Low Density Residential;

- Apply a Floor Space Ratio of 0.6:1;
- Apply a Height of Building of 8.5; and
- Apply a minimum lot size of 300m<sup>2</sup>.

The planning proposal request is presented to the panel for consideration.