



## Attachment 3 - Revised Conditions of Consent

### PART ONE:

#### CONDITIONS RELATING TO “DEFERRED COMMENCEMENT”

**This development consent shall not operate until such time as the following matters are completed to the satisfaction of Council.**

#### SITE CONTAMINATION REPORT

1. The preparation of a site contamination audit report by a suitably qualified person at full cost to the applicant. This report shall include:
  - (i) Details regarding the location, nature, extent and type of any site contamination;
  - (ii) Review the adequacy of any site remediation works which may have already been undertaken”;
  - (iii) Recommend any remediation works; and
  - (iv) Confirm the suitability of the site for the proposed development.
2. The findings of the above report being validated by the Environment Protection Authority, New South Wales by way of written confirmation or by a qualified person accredited by the EPA, NSW.
3. Written confirmation from the Environment Protection Authority, New South Wales or by a qualified person accredited by the EPA, NSW that any required remediation works have been carried out in accordance with their procedures and completed to their satisfaction.

#### STORMWATER DRAINAGE

4. The carrying out of drainage investigations by a qualified drainage engineer identifying the location and design required of any drainage channel or detention basin. If drainage investigations reveal that downstream drainage system are not capable of catering for the discharge, then Council requires the design and construction of an on-site retention/retardation system to maintain peak stormwater discharge downstream of the site at the pre-development levels for all flood frequencies.
5. To this end a stormwater drainage plan, including hydrological and hydraulic calculations based on a 1 in 10, 1 in 20, 1 in 50 and 1 in 100 year storm, is required. The plan must show how the stormwater is to be collected within the site and conveyed in a suitable pipeline to the most appropriate gutter or drain under the control of Council.

This plan shall also show existing and proposed surface contours within the site and along its boundaries in immediately adjacent property, and shall define overland flow paths in storms which exceed the capacity of the underground pipe system.

## **PART TWO**

### **A. OPERATIONAL MATTERS**

These conditions pertain to the use of the site and have been imposed to ensure that the development and its operations do not interfere with the amenity of the surrounding area.

#### **THE DEVELOPMENT**

1. Development must be carried out generally in accordance with Development Application received 25 March 1998 and accompanying plans and Table 1 marked 691/98 dated 29 December 1999, except where amended by application DA-691/1998/A received on 5 July 2011 and approved on 21 November 2012 as follows:

- (a) Site Plan prepared by LBG, Revision 7, dated 12 September 2011;
- (b) Section 1, 2 and 3 Plan prepared by LBG, Revision 12, dated 12 September 2011;
- (c) Section 4 and 5 Plan prepared by LBG, Revision 11, dated 12 September 2011;
- (d) Ground Floor Plan prepared by LBG, Revision 13, dated 12 September 2011;
- (e) Fountain Plan and Elevation prepared by LBG, Revision 3, dated 12 September 2011;
- (f) West and East Elevation prepared by LBG, Revision 10, dated 12 September 2011;
- (g) North and South Elevation prepared by LBG, Revision 10, dated 12 September 2011;
- (h) Mezzanine Floor Plan, prepared by LBG, Revision 13, dated 12 September 2011;
- (i) Roof 1 Plan prepared by LBG, Revision 13, dated 12 September 2011; and
- (j) Roof 2 Plan prepared by LBG, Revision 13, dated 12 September 2011

marked DA-691/1998/A, except where modified by the undermentioned conditions.

**Condition amended as per modification application D/691/1998/A made on 5 July 2012 and approved on insert date.**

2. The overall height of the mosque building shall not exceed 11.92m (measured from ground level to top of dome).
- 2A.** The minarets shall not to exceed a maximum height of 21.8 metres as per the plans approved under application DA-691/1998/A.

**Condition inserted as per modification application D/691/1998/A made on 5 July 2012 and approved on insert date.**

3. The septic tank and collection well shall be located near the south-eastern corner of the mosque building to the satisfaction of Council.

4. A paling fence of 1.8 m high shall be erected along the western boundary between the mosque building and adjacent dwelling.
5. The development shall be undertaken in two stages as follows:
  - Stage 1: The construction of the mosque building, the installation of landscaping, the installation of the septic tank system, the provision of 122 car parking spaces, the provision of the access driveway and associated roadworks in Camden Valley Way.
  - Stage 2: The construction of the remaining buildings which are the subject of the application, the timing of their construction being subject to availability of funds.
6. Further fencing shall be provided at Stage 2. Detailed design of such fencing must be submitted to and approved by Council prior to construction of Stage 2 development.

**OPERATIONAL HOURS AND NUMBER OF ATTENDANCE**

7. Approval for the operating hours and maximum number of attendance is granted as per Table 1 which forms part of this consent.

**COMPLIANCE WITH OTHER ACTS**

8. Use and occupation of the premises must be carried out all times without nuisance and in particular so as not to breach the provisions of either Clean Waters Act, Clean Air Act and the Noise Control Act. The operation and use of any machinery, plant and/or equipment within, on or in connection with the operation and use of the premises to be carried out so as not cause:
  - (a) Transmission of vibration to any place of different occupancy
  - (b) An Offensive Noise, as defined in the Noise Control Act, 1975

**COMPLIANCE WITH APPROVED PLANS**

9. All aspects of the development shall comply with the approved plans and conditions.

**COMPLIANCE WITH BUILDING CODE OF AUSTRALIA**

10. The design of the building is to comply with the requirements of the Building Code of Australia.

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

The following conditions are to be complied with prior to the issue of a Construction certificate,

### **APPLICATIONS**

11. A separate application shall be submitted and approved by Council for the following aspects of the developments:
  - (a) a pump out tanker removal system
  - (b) The details of where demolished and/or excavated materials are to be disposed. Evidence will be required by Council that the disposal site has been approved by the relevant local Council for receipt of such materials.
  - (c) The food preparation area. It must comply with the Food Act and its Regulations and shall be accordance with the handbook entitled "Food Premises" prepared by Council's Planning and Development Department. Prior to finalisation of details for the abovementioned requirements consultation with Council's Environmental Health Department
  - (d) A Construction Certificate will be required for the engineering plans defining

all physical works necessary on the site and adjacent to it.

These plans must incorporate the following:

- i. A geotechnical report identifying any contamination of the site, the chemicals present, and proposed remediation required.
- ii. A drainage study identifying the location and design required of any drainage channel, or detention basin.

### **DESIGN OF DEVELOPMENT**

12. 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.

### **STORMWATER DESIGN**

13. Stormwater is to be collected within the site and conveyed in a pipeline to the appropriate gutter or drain under the control of Council, as detailed on the plans approved as part of this development application.
14. 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.
15. Provision for the 1:100 year overland stormwater flow shall be maintained through the site to Camden Valley Way.

16. Proposed access shall include a culvert of suitable size to provide drainage to the culvert under Camden Valley Way. Details are to be included with the engineering plans submission.
17. Proposed access is to be constructed above the 1:100 year flood level to provide flood free access to the site.
18. The future drainage channel within the flood zone and upstream basin shall be taken into consideration in the design of the development

#### **ROAD DESIGN**

19. All roads are to be graded in such a manner as to provide continuous surface drainage flow paths to appropriate points of discharge. In this context, these are to be into their roads or swales, as appropriate, connecting into the major trunk system.
20. All redundant vehicular crossings shall be removed and replace with Council's standard kerb and gutter at no cost to Council prior to issue of the occupation certificate.

#### **DESIGN FINISHES**

21. The development is to be constructed and finished in the materials and colours approved by Council as part of the development application. The external materials, colour and finishes of the proposed development are to be submitted to Council for approval.

#### **BUILDING WORKS & BUILDING DESIGN**

22. All demolition work is to be carried out accordance with the requirements of AS2601-1991.
23. Soil erosion and sediment control measures shall be designed in accordance with Councils Soil Erosion and *Sediment Control Policy*. Details are to be included with the plans and specifications to accompany any Construction Certificate.
24. A preliminary assessment of the plans submitted with the application has disclosed that the following design and/or construction issues need to be addressed prior to the issue of any Construction Certificate to ensure compliance with the *Building Code of Australia*:
  - (a) Disabled access and toilet facilities are to be provided.
  - (b) All buildings are to be serviced by a smoke hazard management system.
25. The floor level of the building must be at least equal to or above the 1% probability flood level. Flood sensitive materials must be above the 1% probability flood level. The flood levels should be confirmed with Council prior to the application for construction certificate.

## **LANDSCAPING DESIGN**

26. Landscaping is to be carried out in accordance with the landscaping plans approved as part of this development application and marked 691/98. For the purpose the following conditions shall be complied with:
27. A six-metre wide landscaping buffer shall be provided along the east and west boundary with 1-1.2m high earth mound adjacent to adjoining residential development. The design of the earth mound shall not adversely affect the overland stormwater flow of the area and shall be approved by Council prior to construction.
28. All landscaping works must be carried out at the initial stage of the development to the satisfaction of Council.
29. Council will require the submission of a cash bond or bank guarantee of \$2,000 to ensure completion of landscaping. The bond is to be lodged prior to issue of a construction certificate, and will be held until Council has received a written certification from the consultant landscape architect stating that all landscaping has been completed in accordance with the approved plans and conditions.
30. Existing vegetation along the creek and surrounding the dam shall be retained as they form part of a community under the threatened species act. Landscaping in this zone shall be limited to those species including Casuarina and Eucalypt species currently occurring on the site.
31. Locally indigenous plants shall be used where possible for landscaping.

## **DESIGN OF CAR PARKING AND DRIVEWAYS**

32. A total of 248 on site car parking spaces shall be provided to two stages.(Stage 1: 122 spaces; Stage 2: 126 spaces). Stage 1 is to be provided at the completion of the mosque building. Stage 2 is to be subject to the findings of a separate traffic survey to be carried out three (3) years after the issue of occupation permit for the mosque building or as required by Council.
33. Six (6) of the car parking spaces are to be reserved for disabled persons. Two (2) of them are to be provided at Stage 1. These spaces must be a minimum 3.6 metres wide and located close to the main entrance of the buildings near pedestrian access routes designed for disabled persons.
34. Car parking spaces and driveways must be constructed of concrete or other approved hard surfaced materials. The 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 Development Control Plan –Parking and Service Provision.
35. Stage 1 car parking spaces shall be fully sealed, clearly signposted and line marked. The use of grass cells for Stage 2 car parking is subject to further approval by Council prior to construction.
36. The driveways are to be sealed and constructed in accordance with Council's Development Control Plan for engineering works.

37. Driveways must have a minimum width of 6.7 metres adjacent to garages, carports and car spaces to allow for vehicle manoeuvring to and from these spaces.
38. A deceleration lane of 100 metres shall be provided to the satisfaction of the Roads and Traffic Authority and taking into consideration future widening of Camden Valley Way.
39. Entry and exit driveways shall be separated by a 15m wide triangular splitter island to the satisfaction of Council.
40. In order to prevent right turning vehicles, a 400mm concrete median shall be installed for the full length of the property boundary. This may require an element of road widening in order to accommodate lane widths and lane marking.
41. Raised Reflective Pavement Markers shall be positioned at half standard spacing along the edge of the painted median parallel to Camden Valley Way to deter motorists from "drifting" into this area.
42. Guardrail shall be installed around the culvert to reduce the chance of serious accident should a vehicle lose control at the proposed concrete triangular median. The installation of this guardrail must be in accordance with the Roads and Traffic Authority standards and must tie-in with existing guardrail on site.
43. Any existing regulatory sign posting disturbed by the development is to be relocated at an appropriate location, in accordance with Roads and Traffic Authority guidelines.
44. All road works associated with the development are to be at no cost to Council and the Roads and Traffic Authority.
45. Access to the site is to conform with the requirements of the Roads and Traffic Authority and take into consideration future widening of Camden Valley Way with engineering plans approved by RTA prior to release of the Construction Certificate.
46. Consideration shall be given to traffic calming devices on the entry/exit driveway and in parking aisles.
47. Parking along Camden Valley Way is not permitted, the number of off-street parking spaces must be able to accommodate peak demands.
48. All vehicles must enter and exit the site in a forward direction and be wholly within the site before being required to stop.
49. Propose car parking layout must conform to AS 2890.1983 and AS 2890.2-1989.
50. Pavement arrows to be installed throughout the car parking area to illustrate circulation movements.
51. Carparking aisles are to be of sufficient width to allow for parking movements and turning of vehicles.

52. All private bus services to the site shall be able to access the car parking area for set down/pick up. The internal roundabout shall have a turning circle of 26 metres.
53. The existing access to Camden Valley Way is to be extinguished.
54. Adequate internal street lighting and pedestrian facilities shall be provided to Council's satisfaction. Such lighting shall not adversely affect adjacent residential dwellings.

#### **ENVIRONMENT**

55. No residue of chemicals and fertilizers shall enter areas of established vegetation or any waterway.
56. The oil and sediment trap servicing the drainage from car parking areas shall be adequately maintained.
57. Capacity of the septic tank and collection well shall be designed to the satisfaction of Council. The current proposal does not cater for peak demand.
58. Should pollution of any waterway or water body occur as a result of an inadequacy or deviation from maintenance schedule for the septic system, Council may instigate legal proceeding against the owner.
59. Stockpiling or storage is not permitted within currently vegetated areas or waterways.
60. No rubbish is to enter vegetated areas or waterways.
61. The septic pump-out system, the galvanised pipe servicing the system shall be located in the flood free zone and in a position to minimise disturbance to existing vegetation communities and risk of pollution of the waterway.
62. Pushbike storage rack shall be incorporated into the car park design to promote environmentally responsible transport.
63. Noise level of all activities carried out on site shall not exceed 40 dB(A) during night time and 50 dB(A) during day time or not exceeding 5dB(A) above the background noise level at the boundary of the site, whichever is the lowest.
64. All activities shall be carried out within the proposed buildings.

#### **THE PROVISION OF SERVICES**

65. The following documentary evidence is to be obtained prior to the issue of any Construction Certificate, whether by Council or an accredited certifier:

A Section 73 Certificate issued by the Sydney Water Corporation Limited or other evidence of Sydney Water's non-objection to the commencement of work on the basis of service availability.

A written clearance from Integral 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.

66. Written letters from the adjoining owners stating that approval is given for the disposal of downstream drainage and the battering of cut or filled areas onto their property shall be submitted to Council.

#### **FIRE SAFETY**

67. A schedule specifying all of the measures which are required for the building, to ensure the safety of persons in the building in the event of fire, shall be attached to the construction certificate, and submitted to Council.

#### **C. PRIOR TO ANY COMMENCING ON THE SITE**

The following conditions are to be complied with prior to any work commencing on the site;

#### **CONSTRUCTION CERTIFICATES**

68. Detailed engineering plans and specifications relating to the work shall be endorsed with a Construction Certificate, in accordance with Section 81A of the Act and a copy submitted to Council, with payment of any relevant fees. The fees will include damaged deposit, road opening, damaged inspection fee or bond. You are required to contact Council's Customer Service to confirm the current amounts.
69. Detailed building plans and specifications relating to the work shall be endorsed with a Construction Certificate, in accordance with Section 81A of the Act and a copy submitted to Council.

#### **NOTIFICATION**

70. The applicant shall advise Council of:
  - (a) the name, address and contact number of the Principal Certifier, in accordance with Section 81A (4) (b) of the Act.
  - (b) the date it is intended to commence to work. A minimum of two (2) working days notice shall be given.
71. The Principal Certifier shall advise Council in writing, of the date it is intended to commence the work which is the subject of the complying development certificate. A minimum period of two (2) working days, notification shall be given.

#### **LANDFILL**

72. Cut and fill site works are to be in accordance with Council's Policy for cut and fill sites.
73. No land filling activity is allowed to occur within the flood plain area.

**TREES**

74. No trees shall be removed without Council approval. Existing along the creek and surrounding the dam shall be retained as they form part of a community under the threatened species act.

**SITE FACILITIES**

75. The following facilities shall be installed on the site:
- (a) Sediment and erosion measures as indicated on the approved plan. On-the-spot fines may be issued by Council where maintenance or measures is inadequate. Access is only to be provided to the site via an all weather driveway. All sediment and erosion control measures shall be maintained on site, until such time as the site has been turfed and landscaped.
  - (b) A temporary builders toilet complying with the requirements of CI 78G of the regulations.
  - (c) Adequate refuse disposal methods and builders storage facilities. Builders wastes, materials or sheds are not to be placed on any property other than that which this approval relates to. All builders waste and excess fill to be removed from the site prior to occupation.
76. Access to the site is to be provided only via the all weather driveway on the property and is not to be provided from any other site, in accordance with Council's sedimentation and erosion policy.
77. All landscaping is to be maintained at all times to the standard at which it was at the time of issue of the occupation certificate.

**NOTIFICATION OF SERVICE PROVIDERS**

78. Approval, in the form of stamped Construction Certificate plans, is to be obtained from Sydney Water to verify that the development meets its requirements concerning the relationship of the development to any water mains, sewers or stormwater channels.

**D. DURING CONSTRUCTION**

The following conditions are to be complied with whilst works occurring on the site;

**BUILDING WORK**

79. Compliance certificates issued by an appropriately accredited person or documentary evidence shall be supplied to the Principal Certifier, for the following components of construction:
- (a) Piers, before placing concrete or covering;
  - (b) Steel reinforcement, before placing concrete or covering;

- (c) Wet area flashing, after the installation of any bathing and shower fixtures.
- (d) Framework, after the installation of all plumbing, drainage and electrical fixtures, and after the external cladding and roof sheeting has been fixed.
- (e) External drainage lines, prior to backfilling;
- (f) Fire Hose Reels
- (g) Fire Hydrant
- (h) On completion of the structure

### **ENGINEERING WORK**

80. Compliance certificates must be obtained to ensure that specified elements of the construction have been carried out in accordance with the plans and Council's specification. Specifically:
- (a) A compliance certificate will be required to demonstrate that the site has been remediated in accordance with the Construction Certificate and the supporting contamination report. To this effect a site remediation report must be produced by an EPA accredited geotechnician, or to the satisfaction of the EPA.
  - (b) A compliance certificate will be required demonstrating that pavement compaction has been carried out in accordance with Council's specification, and, the specified pavement densities have been achieved. To this effect a pavement density report is to be prepared.

### **HOURS OF OPERATION/NOISE**

81. Construction/civil work is only permitted on the site between the hours of 7am to 6pm Monday to Friday and 8am to 1pm on Saturday with no work permitted on Sundays or Public Holidays, unless otherwise approved by Council.
82. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards. Such work is to be guarded and protected to prevent it from being dangerous to life or property.

### **SITE ACTIVITIES**

83. Internal roads requiring access by service/emergency vehicles must be designed to withstand a laden weight up to 24 tonnes.
84. Any noise generated during the construction of the development shall not exceed the limits specified in the *Noise Control Act 1975*.

### **DEMOLITION**

85. All outbuildings are to be demolished and the materials disposed of without nuisance.

**LANDFILL**

86. Where the land is to be filled, graded or roadwork's constructed, it will be necessary that regular watering down of operations be carried out. Where the creation of dust during earthworks is a problem, Council may direct that such is not to proceed when the wind velocity exceeds five knots.

**POLLUTION CONTROL**

87. No fires are to be lit or waste materials burnt on this site.
88. Waste water from the washing of concrete forms or trucks is not to enter the stormwater drainage system. To ensure that the Clean Waters Act is not breached.
89. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavate "spoil" material. To ensure that the Clean Waters Act is not breached.
90. All soil erosion measure required to be put in place prior to the commencement of construction works are to be maintained during the entire construction period until disturbed areas are restored by turving, paving or revegetation.

**SITE MANAGEMENT & RESPONSIBILITIES**

91. The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

**E. PRIOR TO OCCUPATION OF THE BUILDING**

The following conditions are to be complied with prior to the occupation of the building;

**GENERAL**

92. The use or occupation of the approval development shall not commence until such time as all conditions of this development consent have been complied with. The use or occupation of the development prior to compliance with all conditions of development consent may make the applicant/developer liable to legal proceedings.
93. The premises must not be occupied until an occupation certificate is issued either by Council or an accredited officer.

**CERTIFICATES**

94. All required compliance certificates shall be submitted to Council.
95. A final fire safety certificate is to be issued prior to the issue of a final Occupation Certificate to use or change the use of a building, except in the case of a Class 1a or Class 10 building(s).

## ROAD DAMAGE

96. The cost of repairing any damage caused to Council's assets in the vicinity of the subject site as a result of construction works associated with the approved development is to be met in full by the applicant/developer prior to the issue of an Occupation Certificate.

**Note:** Should the cost of damage repair work not exceed the road maintenance bond Council will automatically call up to bond to recover its costs. Should the repair costs exceed the bond amount a separate invoice will be issued.

## PARKING

97. Disabled access is to be provided in accordance with Australian Standard 1428.

## F. USE OF THE SITE

- 97A Access into the minarets is restricted to building maintenance purposes only at all times.

**Condition inserted as per application DA-691/1998/A received on 5 July 2011 and approved on 21 November 2012**

- 97B Lighting of the minarets is to be in accordance with the approved operating hours of activities associated with the mosque building only. Any provision of lighting associated with the minarets must ensure minimum light spill to adjoining properties and not result in any unacceptable glare.

**Condition inserted as per application DA-691/1998/A received on 5 July 2011 and approved on 21 November 2012**

## G. ADVISORY

- a) If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 82A of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination within 6 months after the date on which the application is taken to have been determined.
- b) If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which the application is taken to have been determined.
- c) In accordance with Section 98 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.

- d) The Planning Assessment Commission has not, conducted a review of the application.
- e) These conditions are imposed to control development, having regard to 79C of the Environmental Planning and Assessment Act 1979.
- f) The approval of this application does not imply or infer compliance with the Disability Discrimination Act and that the developer should investigate their liability under the Act.
- g) Prior to completion of the pool, the owner of the premises is requested to attend an approved Cardio Pulmonary Resuscitation Course.
- 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" DIAL 1100  
Before any excavation work starts, contractors and others should phone "Dial Before You Dig" service to access plans/information for underground pipes and cables. [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au)
- j) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for address numbering, and letter box positioning and dimensions.
- k) You are advised that the placement of a concrete path around your home may render your home vulnerable to termite attack. To minimise the possibility of any damage, ensure that a minimum of 75mm clearance is provided between the base of the weephole and the level of the path.
- l) The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required by other conditions of this consent.
- m) 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.
- n) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

- o) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or the 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.

Yours faithfully

**Natalie Stewart**  
Manager Statutory Planning

## LIVERPOOL CITY COUNCIL

### CITY PLANNING REPORT

**ORDINARY MEETING**

**28/11/2012**

<b>ITEM NO:</b>	<b>PLAN 06</b>	<b>FILE NO:</b>	<b>DA-591/2012</b>
<b>SUBJECT:</b>	<b>VOLUNTARY PLANNING AGREEMENT ACCOMPANYING DEVELOPMENT APPLICATION DA- 591/2012</b>		
<b>OWNER:</b>	<b>MR F PIGNATARO AND MRS C PIGNATARO</b>		
<b>APPLICANT:</b>	<b>R S CANCERI PTY LTD</b>		
<b>COMMUNITY STRATEGIC PLAN REFERENCE:</b>	<b>DECISION MAKING PROCESSES ARE TRANSPARENT AND THE COMMUNITY HAS OPPORTUNITY TO BE INVOLVED</b>		

#### **EXECUTIVE SUMMARY:**

Council has received and considered Development Application DA-591/2012 which seeks development consent for the subdivision of a residue lot into 14 lots and the associated construction of 14 dwellings on each of the lots at 75 - 85 Flynn Avenue, Middleton Grange.

The application is accompanied by a written request in accordance with Clause 4.6 of Liverpool Local Environmental Plan 2008 (LLEP 2008) to vary Clause 7.11 in relation to minimum dwelling density. The proposal seeks a 6% variation from this development standard.

The development application is accompanied by an offer of a Voluntary Planning Agreement (VPA). The item of offer contained within the VPA is for a monetary contribution for local community, recreation, transport and drainage facilities in accordance with the lot yield required by Clause 7.11.

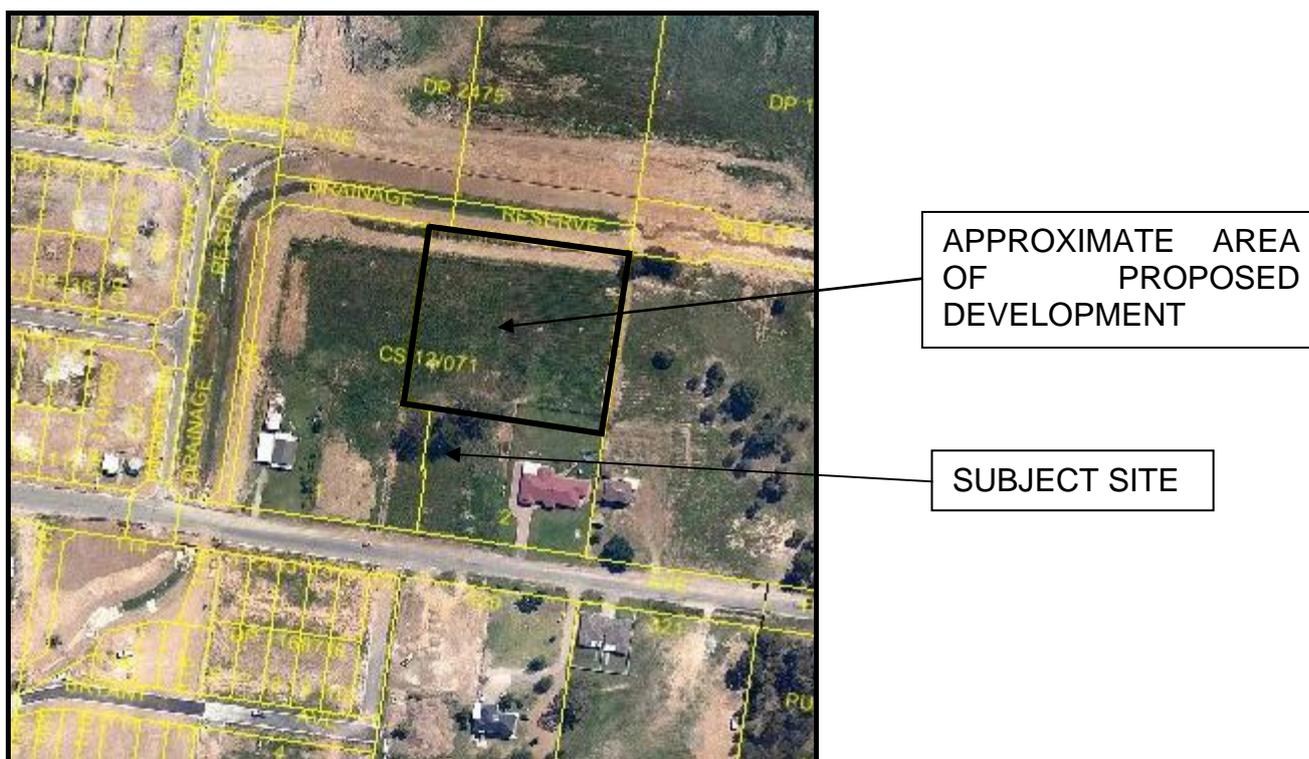
Council's endorsement is sought as part of this report to execute the VPA. If Council resolves to execute the VPA, development consent for the subdivisions can then be issued under Officer Delegation.

It is recommended that Council endorse the offered Voluntary Planning Agreements and delegate the General Manager to execute the deed and affix the seal of Council.

## DETAILED REPORT:

### The Site

The site the subject of this development application is proposed Lot 33 created in the subdivision of Lots 265 and 266 in DP 2475, No. 75-85 Flynn Avenue, Middleton Grange. The subject site is identified below.



**Figure 1: Aerial of subject site**

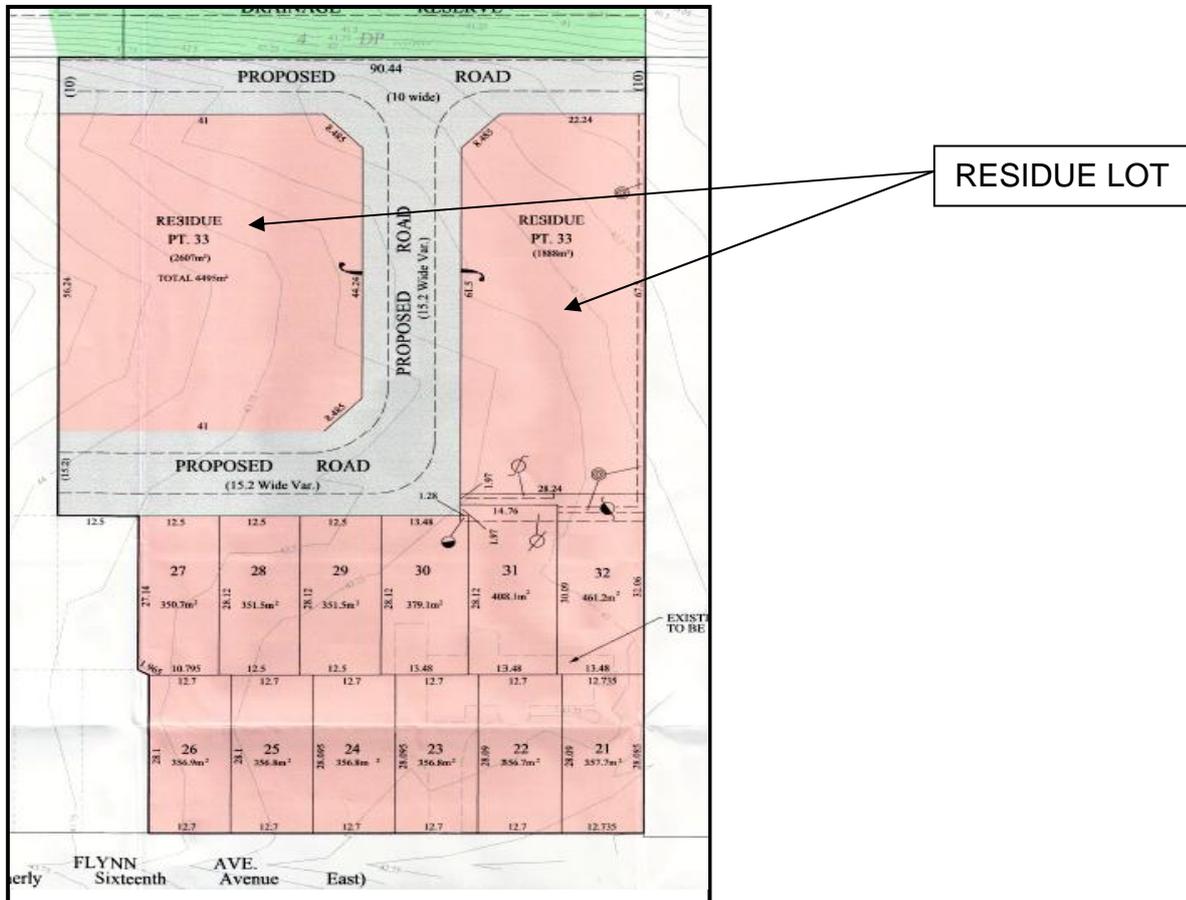
The site is located to the west of the Middleton Grange town centre and is directly surrounded by residential zoned land that is being developed for residential purposes.

### Background

The subject site has been the subject of two previous development applications for subdivisions which were approved under delegation. Details of these applications are as follows:

DA Number	Proposed works	Determination
DA-588/2012	Subdivision creating 9 residential lots (Lots 11-19), 1 residue lot, construction of roads, demolition of existing dwelling	Approved
DA-589/2012	Subdivision creating 12 residential lots (Lots 21-32), 1 residue lot, construction of roads, demolition of existing dwelling	Approved

Development Application DA-589/2012 approved residue Lot 33 which is the subject of this development application. A copy of the subdivision layout which created residue Lot 33 is illustrated in Figure 2 below.



**Figure 2: Approved subdivision**

### The Proposal

Council is receipt of an application which seeks development consent for the subdivision of residue Lot 33 created in DA-589/2012 into 14 lots and the associated construction dwellings on each proposed lot. The lots being created as part of this subdivision range in area between 254.2m<sup>2</sup> and 351.5m<sup>2</sup>. Each lot has a minimum width of 9m.

The dwellings which also form part of the application are two storey in built form and are considered to be consistent with the desired future residential character for Middleton Grange. Assessment of the dwelling component of the application against the relevant development standards and controls has demonstrated the proposal is generally compliant with the relevant provisions.

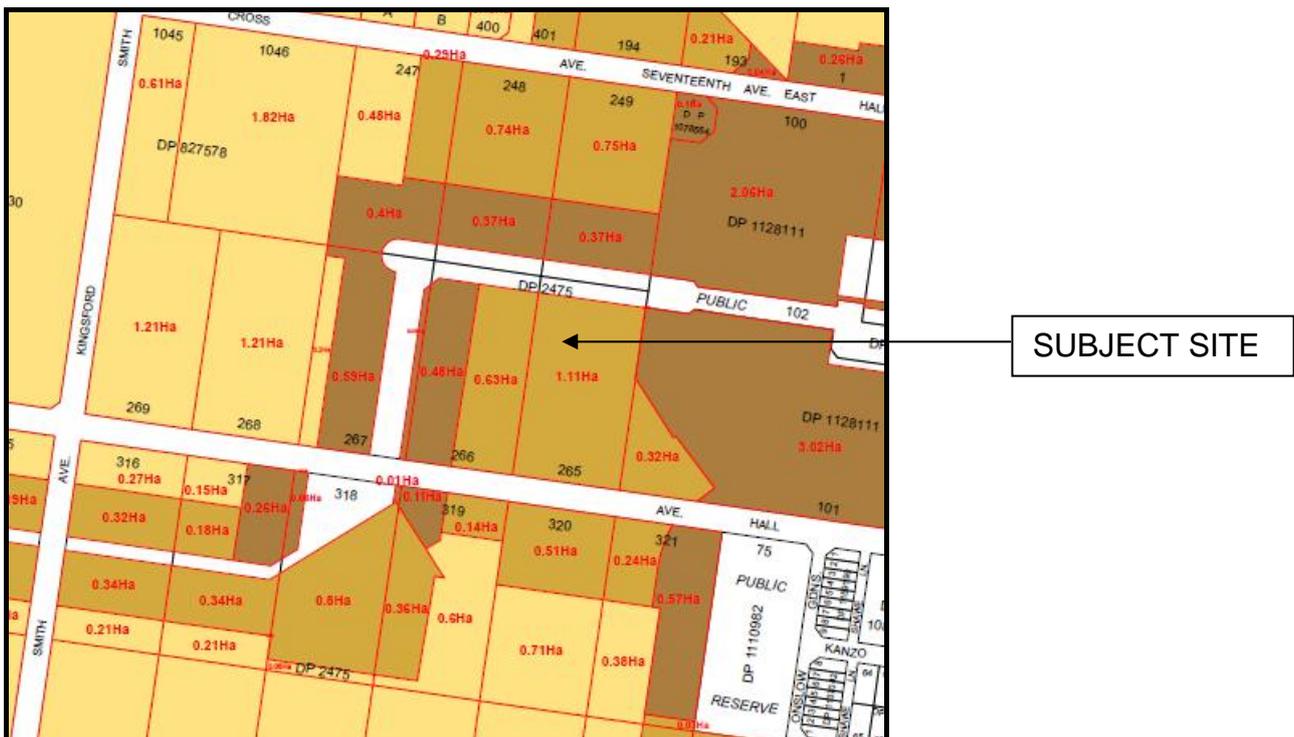
As identified earlier, the development application is accompanied by an offer of a VPA. The item of offer contained within the VPA is for a monetary contribution for local community, recreation, transport and drainage facilities in accordance with dwelling density provisions contained in LLEP 2008. Should Council resolve to accept and endorse the offer of the VPA, the development application can be determined under delegation.

## Development Controls

The main issue that has been identified concerning this application is the variation to minimum dwelling density requirements prescribed by Clause 7.11 of LLEP 2008.

## Dwelling density requirements in Middleton Grange

Clause 7.11 and the associated Dwelling Density Map establish the primary controls over the dwelling density for both the subject site and all of Middleton Grange. The dwelling density provisions provide for higher dwelling density to occur in areas of higher amenity and in areas that are in proximity to existing and proposed services and facilities such as public transport and commercial centres.



**Figure 3: Dwelling Density Map extract from LLEP 2008**

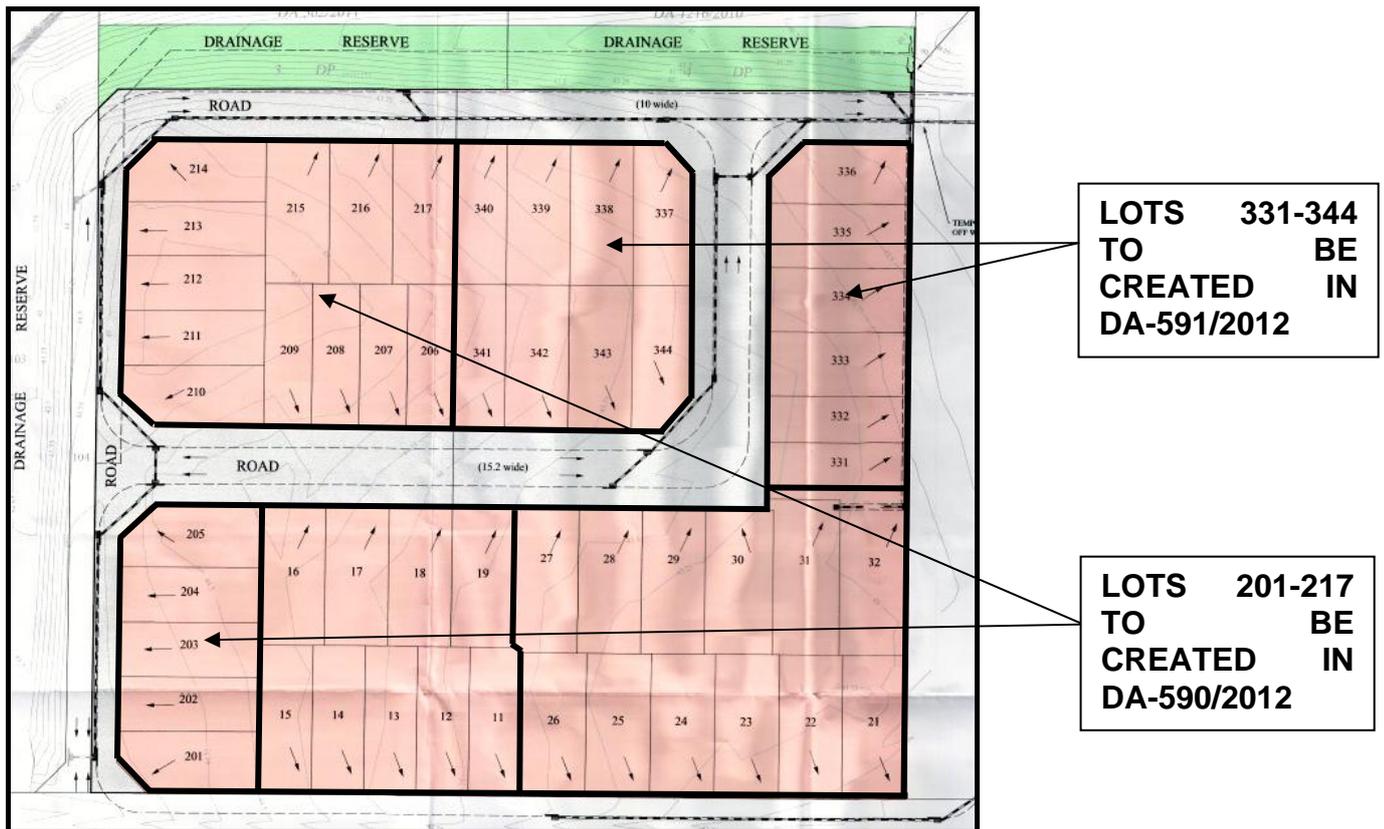
The subject site being Lots 265 and 266 are mapped under the LLEP 2008 as having the minimum required density of partly 23 dwellings per hectare (ochre) and partly 30 dwellings per hectare (brown) as illustrated in Figure 3.

Based on the Dwelling Density Map, the site in its entirety is required to provide a total of 54 residential lots. A breakdown of the residential lots provided under previous approved development applications and current applications yet to be determined is illustrated in Table 2 below.

<b>DA Number</b>	<b>Proposed Works</b>	<b>Determination</b>	<b>Lots Provided</b>
DA-588/2012	Subdivision creating 9 residential lots, 1 residue lot, construction of roads demolition of existing dwelling	Approved on 5 June 2012	9
DA-589/2012	Subdivision creating 12 residential lots, 1 residue lot, construction of roads, demolition of existing dwelling	Approved on 27 June 2012	12
DA-590/2012	Subdivision creating 17 residential lots, construction of 17 dwellings	Under assessment	17
DA-591/2012	Subdivision creating 14 residential lots, construction of 14 dwellings	Under assessment (forms part of this agenda)	14
<b>Total residential lots</b>			<b>52</b>

As illustrated in Table 2, a cumulative total of 52 lots are provided on the site. This represents a shortfall of two lots and a 6% variation to the development standard. It is noted for way of background that DA-591/2012 is also accompanied by an offer of a VPA for the one lot shortfall and also forms part of this Council agenda.

An illustration of all development applications approved and under consideration is provided in Figure 4.



**Figure 4: Plan of whole subdivision**

### Exceptions to Development Standards

The Development Application is accompanied by a written request to vary a development standard Clause 7.11 Dwelling Density pursuant to Clause 4.6 of LLEP 2008.

It is considered that there are sufficient environmental planning grounds to support the variation to the dwelling density requirements of Clause 7.11 and that the proposed plan of subdivision is still consistent with the objectives of the dwelling density requirements, in that:

- The proposal provides for a range of lot sizes which is considered adequate to contribute to the efficient use of land for residential purposes.
- The proposal provides for a sufficient number of residential lots which will ensure the viability of public transport and services found in the Middleton Grange Town Centre.
- The proposal is accompanied by a Voluntary Planning Agreement which will see the land owner contribute Section 94 contributions in accordance with the dwelling density requirements rather than on the number of lots proposed as part of the application.

### Planning Agreement

A planning agreement can be made under section 93F of the Environmental Planning & Assessment Act 1979 (the Act) and is a voluntary agreement between Council and the developer, under which the developer is required to dedicate land free of cost, pay a monetary contribution or provide other material public benefit, or any combination of these, to be used towards a public purpose.

The Act specifies that a public purpose includes the provision of public amenities or public services, the provision of affordable housing, the provision of transport or other infrastructure relating to the land, the funding of recurrent expenditure relating to any of these, the monitoring of the planning impacts of a development and the conservation or enhancement of the natural environment.

### **Voluntary Planning Agreement for Lots 265 and 266 in DP 2475**

A VPA offer has been made by the landowners of lots 265 & 266 DP 2475 in conjunction with Development Applications for a subdivision of the property that is being determined under Officer Delegation.

The monetary contribution levied within the subject VPA is based on a subdivision plan compliant with the dwelling density requirements of LLEP 2008 which requires a yield of 54 dwellings for the entire site.

The subject VPA levies for one additional lot which is the shortfall of this current subdivision application. The VPA offered in conjunction with DA-590/2012 will provide the monetary contribution for the other lot and ensure that a total of 54 residential lots are levied for in accordance with LLEP 2008.

### **Monetary Contribution**

An offer has been made by the land owners of Lots 265 & 266 in DP 2475 in respect of a VPA as follows:

- A monetary contribution to Council for a Stage to Council prior to the issue of a Subdivision Certificate for that Stage / Consent
- A monetary contribution of \$31, 804 with respect to DA 591/2012

### **Exhibition of VPA**

The VPA was publicly exhibited for 28 days from 26 September 2012 to 24 October 2012 in accordance with the provisions of the Environmental Planning and Assessment Regulation 2000. No submissions were received during the exhibition period.

### **Public purpose and public benefit**

The public purpose of the VPA offers includes the payment of a monetary contribution for local facilities within Middleton Grange in accordance with the endorsed contributions plan. The nexus of the monetary payment has been calculated for the number of lots to be required pursuant to Clause 7.11 of LLEP 2008, being a total of 54 lots.

Payment of the monetary contribution as contained within the VPA will contribute to local community, recreational, transport and drainage facilities within Middleton Grange, as contained within the Liverpool Contributions Plan 2009 (Middleton Grange).

Middleton Grange is envisioned to have a high quality public domain of parks and playing fields, streets, footpaths and open space. Water quality, run-off and drainage will be incorporated into the existing watercourses and are to have a high aesthetic appeal. The monetary payment will assist in ensuring adequate contributions are levied to achieve this planning vision for Middleton Grange.

The proposed development application for subdivision which are being considered in conjunction with the VPA will also assist in activating land release within this portion of Middleton Grange.

**Conclusion**

The subject development application is considered to have merit and is considered to be worthy of support. While the proposal does result in a variation to the Minimum Dwelling Density provision, the proposal will provide for appropriately sized development lots that are located within close proximity to both open space and the Middleton Grange Town Centre.

The developer has offered to enter into a VPA to ensure that appropriate contributions are made towards the necessary local community, recreational, transport and drainage facilities as contained within the Liverpool Contributions Plan 2009 (Middleton Grange).

It is considered that the VPA has both planning and public benefit and on this basis the VPA should be endorsed and accepted.

**FINANCIAL IMPLICATIONS:**

Council will receive appropriate contributions towards necessary local community, recreational, transport and drainage facilities as contained within Liverpool Contributions Plan 2009 (Middleton Grange).

**RECOMMENDATION:**

That Council:

1. Accepts the offer of a Voluntary Planning Agreement accompanying DA-591/2012.
2. Delegates to the General Manager to execute the deeds and affix the seal of Council.

**SIGNED BY:**

**Milan Marecic**  
Director  
City Planning

- Attachments:**
1. Applicant and Land Owner Details
  2. Plan of subdivision for DA-591/2012
  3. Voluntary Planning Agreement

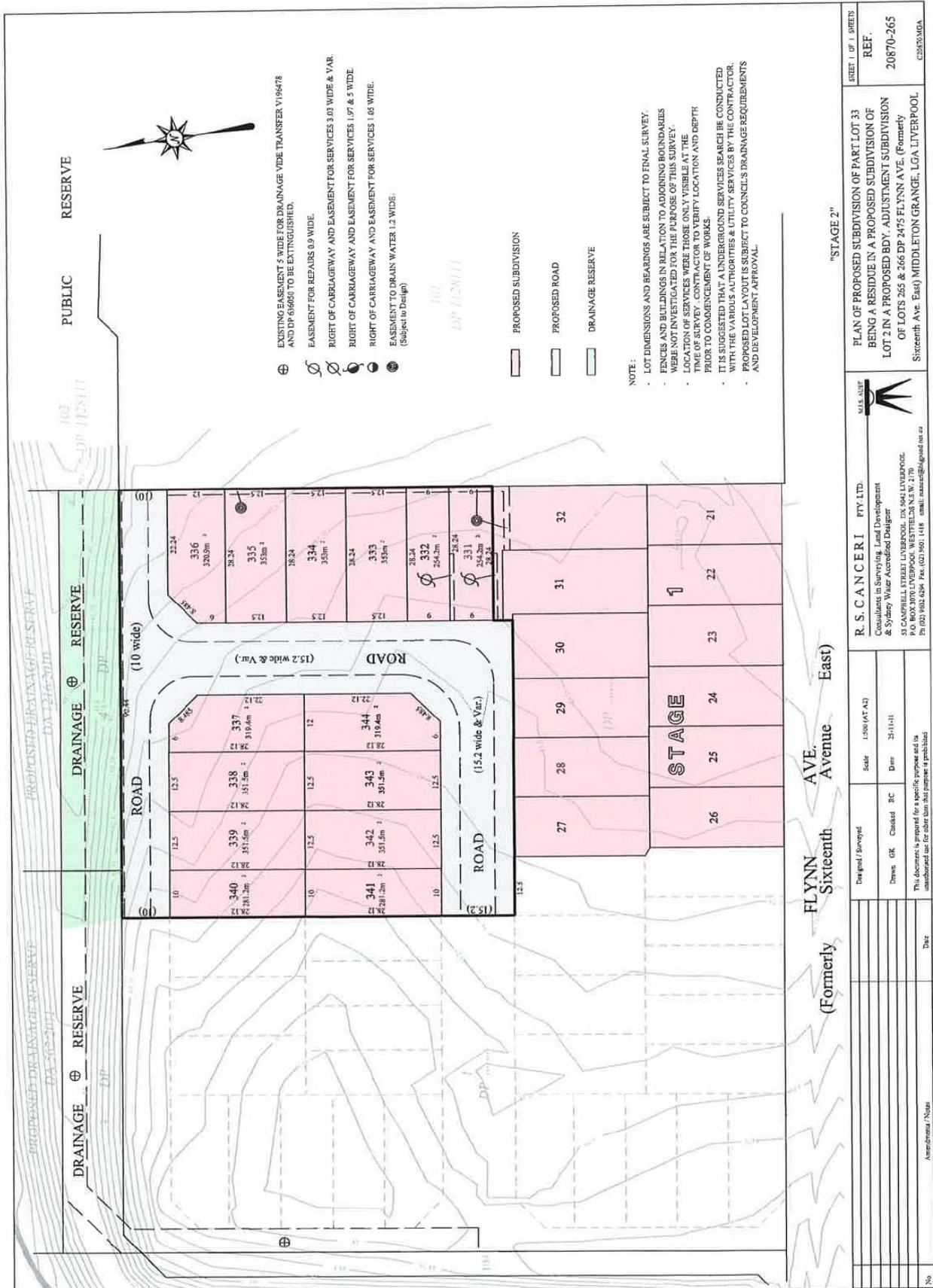
**Attachment 1 - Applicant and Land Owner Details**

## Applicant Details

<b>CORPORATE DETAILS</b>	
Registered Name	R.S Canceri Pty Limited
Registered Address	Narellan NSW
<b>OFFICER HOLDERS</b>	
Director Name	Suburb & State
Janine Canceri	Chipping Norton NSW
Robert Canceri	Chipping Norton NSW

**Note: Land owner details are not available as they are not a company.**

Attachment 2 - Plan of subdivision for DA-591/2012



SHEET 1 OF 1 SHEETS	
REF. 20870-265	
CS9450.MGA	
PLAN OF PROPOSED SUBDIVISION OF PART LOT 33 BEING A RESIDUE IN A PROPOSED SUBDIVISION OF LOT 2 IN A PROPOSED B.D.Y. ADJUSTMENT SUBDIVISION OF LOTS 265 & 266 DP 4475 FLYNN AVE. (Formerly Sixteenth Ave. East) MIDDLELETON GRANGE, LGA LIVERPOOL	
R. S. C A N C E R I PTY. LTD. Consultants in Surveying, Land Development & Sydney Water Accredited Designer 59 CAMPBELL STREET LIVERPOOL, NSW 1500 P.O. BOX 3090 LIVERPOOL, WESTMEAD NSW 2170 PH 002 9595 4248 FAX 002 9595 1144 email: rscancer@ign.com.au	
Designed / Surveyed	Scale 1:500 (A1-A2)
Drawn GR	Checked RC
Date	25/11/11
This document is prepared for a specific purpose and its unauthorised use for other than that purpose is prohibited.	
Author/Drawn / Note	Date
No	

## Attachment 3 - Voluntary Planning Agreement

**Our Ref:** 65 36 0371  
**Contact:** Justin Thornton  
**Contact Tel:** (02) 4626 5077  
**Contact Email:** jthornton@marsdens.net.au



ABN 59 874 202 316

**Attn:** Ian Lacy

**EMAIL:** [i.lacy@liverpool.nsw.gov.au](mailto:i.lacy@liverpool.nsw.gov.au)

The General Manager  
 Liverpool City Council  
 Level 2, 33 Moore Street  
 LIVERPOOL NSW 2170

**E-MAILED**  
 13 September, 2012

**All correspondence to**  
 PO Box 291  
 Campbelltown NSW 2560  
 DX 5107 Campbelltown

[www.marsdens.net.au](http://www.marsdens.net.au)  
[email@marsdens.net.au](mailto:email@marsdens.net.au)

Dear Ian,

**Re: Advice on VPA with Sanfilippo Investments Pty Ltd – Proposed Lot 1 in a boundary adjustment of Lots 265 & 266 in Deposited Plan 2475, Flynn Ave, Middleton Grange**

Please find enclosed a copy of the letter received from the Solicitor for the Proponent in this matter.

I also enclose the Planning Agreement in duplicate which you will see has been executed by the Proponent.

I also enclose a copy of my letter in response to the letter from the Solicitor for the Proponent referred to above.

I note that in accordance with the Regulations it will now be necessary for Council to undertake the Public Exhibition of the Planning Agreement. If Council requires any further advice from me in relation to that process then please do not hesitate to contact me.

Once that Public Exhibition process has been concluded it will be a matter for Council as to whether or not it enters into the Planning Agreement on the terms presently offered by the Proponent.

As you will see from the enclosed letter, the Proponent has indicated that its intention is to attend to the payment of the Monetary Contributions required under the Agreement in full in order to avoid the need for the registration of the Agreement on the title of the land. I do not see any issue with that proposal and it will simply mean that the Proponent has fully discharged its obligations under the Agreement earlier than would otherwise be anticipated.

Could you please confirm your instructions reflecting that advice or alternatively whether Council is not prepared to accept the payment of the Monetary Contributions unless and until a request for a subdivision certificate is made for the Development.

Yours faithfully  
**MARSDENS LAW GROUP**

**J.R. THORNTON**  
 Partner  
 Accredited Specialist Business Law

**RECEIVED**  
 16 SEP 2012  
 BY: .....

**Partners**  
 J H Marsden  
 J B Adam  
 K J Searle  
 A I Percival  
 A J Seton  
 D R Baird  
 P J Crittenden  
 T C Reeve  
 G P Butterfield  
 J Bonura  
 E M White  
 J J Tunks  
 N M Youssef  
 J R Thornton  
**Consultant**  
 R H Norwood  
 J T Henshaw  
**Senior Associates**  
 P D Hudson  
 E Macfarlane  
 A L Johnson  
**Associates**  
 D A Vardy  
 T M Danjoux  
 U Parente  
 R Lachman  
 J A McCulllan  
 N M Arias-Alvarez  
 S L Ramsden

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Accredited Specialist Advocacy  
 Accredited Specialist Family Law  
 Accredited Specialist Local Govt. & Planning  
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 Accredited Specialist Wills & Estates Law  
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 Accredited Specialist Business Law



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**Albert A. Macri & Co**  
**SOLICITORS CONVEYANCERS ATTORNEYS**

ABN 65 856 378 168

SUITE 3  
3-5 NORFOLK STREET  
LIVERPOOL NSW 2170  
P.O. BOX 710  
LIVERPOOL BC NSW 1871  
DX. 5017 LIVERPOOL  
**PHONE: 9601 7888**  
FACSIMILE: 9601 5996

Our Ref: AAM:MC:110324  
Your Ref:

6 September 2012

Mr Justin Thornton  
Marsdens  
Lawyers  
DX 5107 CAMPBELLTOWN

COPY

Dear Colleagues

**RE: SANFILIPPO INVESTMENTS PTY LTD & SIX CENTRAL AVENUE PTY LTD  
PLANNING AGREEMENT WITH LIVERPOOL CITY COUNCIL  
PROPERTY: LOTS 265 & 266 FLYNN AVENUE, MIDDLETON GRANGE**

Further to our telephone conversation yesterday, we now enclose the following duly executed Planning Agreement:

1. Sanfilippo Investments Pty Ltd concerning Lot 265 in Deposited Plan 2475, Flynn Avenue Middleton Grange, in duplicate; and
2. Six Central Avenue Pty Ltd concerning Lot 266 in Deposited Plan 2475, Flynn Avenue, Middleton Grange, in duplicate.

Our clients request that once they have made payment in full of the monetary contribution and your legal fees, that Council refrains from lodging the document for registration.

We look forward to receiving the duly counterpart Agreements signed by Liverpool Council in due course.

Yours faithfully,  
**ALBERT A MACRI & CO**

  
Albert Macri  
Encl



"Liability limited by a scheme approved under Professional Standards Legislation."

**Our Ref:** 65 36 0371  
**Contact:** Justin Thornton  
**Contact Tel:** (02) 4640 3633  
**Contact Email:** jthornton@marsdens.net.au

**Your Ref:** AA:MC:110324

Albert A Macri & Co  
DX 5017 LIVERPOOL

11 September, 2012

Dear Sir

**Re: VPA with Sanfilippo Investments Pty Ltd – Proposed Lot 1 in a boundary adjustment of Lots 265 & 266 in Deposited Plan 2475, Flynn Ave, Middleton Grange**

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Thank you for your recent letter in this matter enclosing the Planning Agreement duly executed by your client in duplicate.

I have forwarded the executed Agreements to my client for further instructions.

In this regard I confirm my verbal advice to you that in accordance with the Regulations Council must undertake a Public Notification and Exhibition of the proposed Planning Agreement before Council can resolve whether or not to enter into the Agreement.

In this regard could you please confirm that by the submission of the executed versions of the Agreements that your client makes an irrevocable offer to Council to enter into the Agreements as submitted.

In relation to the payment of the Contributions under the Agreement I confirm my verbal advice to you that no such payments should be made to my client unless, and until, the Planning Agreement has been formed in accordance with the Regulations. Having said that, if your clients attend to the payment of their monetary contributions required to be made under the Agreements as soon as they are formed then your clients' obligations under those Agreements would be at an end and it is unlikely that Council would require them to be registered on the Title of the properties in question.

I confirm that I will obtain instructions from my client in relation to that issue before contacting you further.

Yours faithfully  
**MARSDENS LAW GROUP**

**J.R. THORNTON**  
**Partner**  
**Accredited Specialist Business Law**

**Planning Agreement**

**Flynn Avenue, Middleton Grange**

---

Sanfilippo Investments Pty Ltd (ACN 116 949 341) (**Developer**)

Liverpool City Council (ABN 84 181 182 471) (**Council**)

Prepared by:

**Marsdens Law Group**

Level 1  
49 Dumaresq Street  
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Tel: 02 4626 5077  
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DX: 5107 Campbelltown

Ref: 65 36 0371 DGF

