

LOCAL PLANNING PANEL AGENDA

24 February 2025

VIA MS TEAMS

MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

Monday, 24 February 2025

VIA MS TEAMS

Commencing at **2:00 PM**

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

Should you wish to address the Panel, please advise Amanda Merchant, Panel Support Officer on 8711 7712, by 4pm, 20th February 2025.

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

[Liverpool Local Planning Panel / Liverpool City Council \(nsw.gov.au\)](https://www.liverpoolcitycouncil.nsw.gov.au/liverpool-local-planning-panel)

ITEM No.	SUBJECT	PAGE No.
1	DEVELOPMENT APPLICATION DA-51/2024 SEEKING CONSENT FOR THE CONVERSION OF EXISTING DWELLING HOUSE INTO 119 PLACE CHILDREN CHILDCARE CENTRE WITH ASSOCIATED CAR PARKING, EXCAVATION, EARTHWORKS, STORMWATER, AND LANDSCAPING WORKS. THE DEVELOPMENT IS IDENTIFIED AS NOMINATED INTEGRATED UNDER THE HERITAGE ACT 1977 REQUIRING APPROVAL FROM THE NSW DEPARTMENT OF PLANNING AND ENVIRONMENT – HERITAGE LOT 1 DP 1018964 HORNINGSEA PARK HOUSE, 14 HORNINGSEA PARK DRIVE, HORNINGSEA PARK NSW 2171.	5-52

ITEM No.	SUBJECT	PAGE No.
2	DEVELOPMENT APPLICATION DA-1368/2021 CONSTRUCTION AND USE OF A CONCRETE BATCHING PLANT FACILITY LOT 2 DP 226912 135 LAWSON ROAD, BADGERYS CREEK NSW 2555	53 - 84

ITEM No.	SUBJECT	PAGE No.
3	DEVELOPMENT APPLICATION DA-1263/2022/A MODIFICATION TO DEVELOPMENT CONSENT DA-1263/2022 UNDER SECTION 4.55(1A) TO EXTEND THE OPERATING HOURS OF A MATTRESS SHREDDER WITHIN EXISTING RESOURCE RECOVERY FACILITY TO 7:00AM - 6:00PM, MONDAY TO SATURDAY LOT 12 & LOT 13 IN DP 1089620, LOT 1 DP 249314, LOT 130 DP 1093116; AND LOT 3 DP 82270 99 ROSE STREET, LIVERPOOL NSW 2170	85 - 101

ITEM No.	SUBJECT	PAGE No.
4	DEVELOPMENT APPLICATION DA-64/2007/G MODIFICATION TO DEVELOPMENT CONSENT DA-64/2007 UNDER SECTION 4.55(1A) TO MODIFY AND/OR DELETE THE 'PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE' WORDING FROM CONDITIONS TO ALLOW SUBDIVISION PRIOR TO THE COMPLETION OF ALL WORKS LOT 2 DP 1207518, LOT 3 DP 1207518, LOT 4 DP 1207518, LOT 5 DP 1207518, LOT 6 DP 1207518, LOT 12 DP 1108343, LOT 1 DP 1078564, LOT 102 DP 1128111 MIDDLETON GRANGE TOWN CENTRE, LOT 2 FLYNN AVENUE, LOT 3 & 4 SEVENTEENTH AVENUE EAST, LOTS 5, 6 & 102 SIXTEENTH AVENUE EAST, 60 HALL CIRCUIT, LOT 1 SEVENTEENTH AVENUE EAST, MIDDLETON GRANGE NSW 2171.	102 - 139

Item Number:	1
Application Number:	DA-51/2024
Proposed Development:	Seeking consent for the conversion of existing dwelling house into 119 place children childcare centre with associated car parking, excavation, earthworks, stormwater, and landscaping works. The development is identified as nominated integrated under the Heritage Act 1977 requiring approval from the NSW Department of Planning and Environment – Heritage
Property Address	Horningsea Park House, No. 14 Horningsea Park Drive, Horningsea Park NSW 2171
Legal Description:	Lot 1 DP 1018964
Applicant:	Planzone Pty Ltd
Land Owner:	FBSP Pty Ltd
Cost of Works:	\$1,311,272.00
Recommendation:	Approved subject to conditions of consent
Assessing Officer:	Ben Paterson

1 EXECUTIVE SUMMARY

The subject development application DA-51/2024 seeks consent for the conversion of an existing heritage listed dwelling house into a 119 place children childcare centre with associated car parking, excavation, earthworks, stormwater, and landscaping works at No. 14 Horningsea Park Drive, Horningsea Park, which is legally described as Lot 1 in DP 1018964.

The land is zoned R2 Low Density Residential under *Liverpool Local Environmental Plan (LLEP) 2008* where the proposed development is permissible with consent.

The application is for works to a State Heritage Register item and therefore is identified as Nominated Integrated Development under the *EP&A Act 1979*.

Schedule 1, Part 1, Division 2, Section 8A of the EPA Act states the following:

8A Application for development consent for nominated integrated development or threatened species development

- 1) *Minimum public exhibition period for an application for development consent for nominated integrated development or threatened species development—28 days.*
- 2) *In this clause—*

nominated integrated development means integrated development that requires an approval (within the meaning of section 4.45) under—

- (a) a provision of the Heritage Act 1977 specified in section 4.46(1), or
- (b) a provision of the Water Management Act 2000 specified in section 4.46(1), or
- (c) a provision of the Protection of the Environment Operations Act 1997 specified in section 4.46(1).

Therefore, the application was exhibited for 28 days between 6 March 2024 and 3 April 2024 to enable the public to make submissions. Furthermore, the subject application was required to be notified to properties within a 75m radius in accordance with the Liverpool City Council Community Engagement Strategy 2022. A total of 16 unique submissions were received, primarily raising concerns in relation to traffic-related matters, conservation of heritage, proximity to existing preschools, noise pollution and impact on the neighbouring High School. The relevant matters of objection have been discussed in detail in the report below.

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 6 March 2024*, as the development falls within the category of:

Contentious Development

Development that:

- (a) *In the case of a council having an approved submissions policy – is the 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.***

An assessment of the application has demonstrated that the proposal is generally consistent with provisions and requirements of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, *State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021* and *Liverpool Development Control Plan (LDCP) 2008* that are relevant to the proposal.

Additional information has been requested of the applicant on multiple occasions, and several meetings involving the applicant, council officers and NSW Heritage staff have been held and it is considered that these matters have been appropriately resolved. These issues include, but are not limited to:

- **Heritage Impact** - The suitability of the proposed development was required to be considered against the heritage impact assessment requirements of Section 5.10 of *Liverpool Local Environmental Plan 2008*. The applicant was required, through a heritage impact assessment, to identify the level of impact, be it neutral, minor or major, and provide appropriate mitigation measures to reduce the overall impact of the proposal. Supporting Aboriginal and Historic Archaeological assessments were

required as well as a heritage interpretation strategy and conservation management plan.

- **Vehicle Entry** – The location of the driveway off Horningsea Park Drive raises several safety concerns. The proposed driveway is located within an indented parking bay, in a bus zone and will impact the parking for the high school. Adequate mitigating measures were required to be demonstrated.
- **Landscape Character** – Council recognises the importance of tree retention and the introduction of suitable indigenous plants species. The proposed development seeks to retain all the earlier plantings but will involve removing and pruning some of the more recent trees as well as planting new trees. It is concluded that the proposed works enhance the locally significant open space by improving views into the property.
- **Aesthetics** – Council recognises the heritage significance of the home and accordingly the proposal aims to minimise modifications to the visual appearance of the existing building fabric. However, from an urban design perspective it is important child care centres have a clear, identifiable main entry, that is easy to navigate. Heritage additions can be supported if they are sensitive to the built form, and in accordance with appropriate heritage advice.
- **Consistency between plans and reports** – The piecemeal nature of submitted documents meant that several inconsistencies were identified. This has been resolved, and it is considered that the plans and reports speak to each other in a coherent manner.
- **Submissions** – As identified above a total of 16 submissions were received raising concerns in relation to traffic-related matters, conservation of heritage, proximity to existing preschools, noise pollution and impact on the neighbouring High School. A submission from the Department of Education (DoE) further reiterates these concerns in relation to the neighbouring John Edmondson High School.

The application has been assessed pursuant to the provisions of the *EP&A Act 1979*. Based on the assessment of the application, it is recommended that the application be approved subject to conditions of consent.

1. SITE DESCRIPTION AND LOCALITY

1.1. Site Description

The subject site is identified as No. 14 Horningsea Park Drive, Horningsea Park, which is legally described as Lot 1 in DP 1018964. The site is irregular in shape and has a total area of approximately 8,778m² with:

- Primary southern frontage to Bunya Park of 44m, extending a further 40.38m along Twynam Place
- Secondary eastern side street frontage to Horningsea Park Drive of approximately 118.05m.
- Secondary northern rear street frontage to Horningsea Park Drive of approximately 46.37m.
- Side western boundary of 153.50m adjacent to Edmondson Park High School.

The site has a crest of RL 52m at the central western side of the site with a fall of approximately 2m to the north, east and south.

The adjoining properties to the Site are detailed as follows:

Orientation	Address	Description
North (Rear)	• 55 – 63 Horningsea Park Drive	• Single storey residential dwellings
East (Side)	• 47 – 53 Horningsea Park Drive • Intersection of Horningsea Park Drive and Bunya Way	• Single storey residential dwellings • Single lane Roundabout
South (Front)	• 42 Horningsea Park Drive • 4 Twynam Close • Public Reserve	• Single storey residential dwelling • Single storey residential dwelling • Bunya Park
West (Side)	• John Edmondson High School	• Sports field & car park

The existing site contains a State Heritage Item consisting specifically of the two-storey “Horningsea House”, detached single storey buildings, pool, outbuilding, ancillary sheds, extensive driveway, paved area and associated landscaping.



Figure 1: Aerial Image of subject site (Source: Nearmap)

A site inspection was carried out on 17 May 2024 and a subsequent inspection was carried out on 1 October 2024. The photos (Figures 2 – 15) show the subject site and the surrounding area's character.



Figure 2: View from Eastern frontage

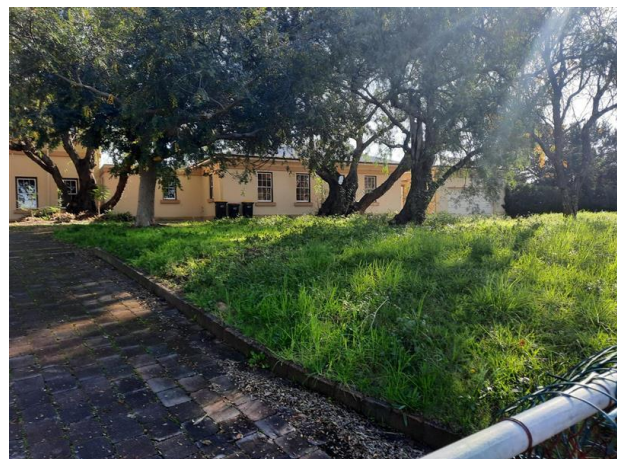


Figure 3: View from Eastern frontage



Figure 4: Facing neighbouring school to the north



Figure 5: View of roundabout at Bunya Way intersection



Figure 6: Southern view of existing homestead



Figure 7: Internal colonnade



Figure 8: View of eastern frontage



Figure 9: Existing car parking area



Figure 10: Existing bus stop to the north



Figure 11: Neighbouring John Edmondson High School



Figure 12: Homestead interior



Figure 13: Homestead interior

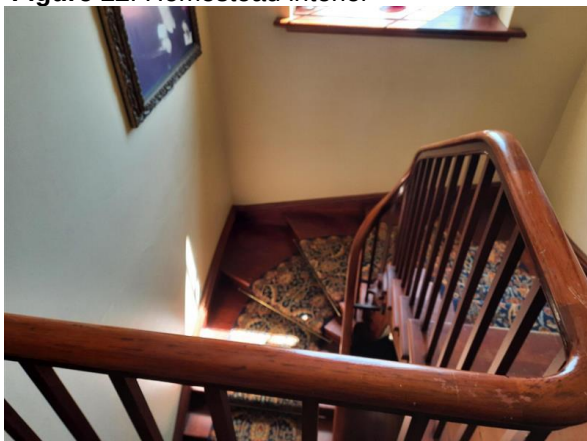


Figure 14: Homestead interior



Figure 15: Homestead interior

1.2. Locality Description

The site is located within an established residential area of Horningsea Park which is characterised predominantly by low density developments in the form of single and double storey dwellings within the immediate locality with several nearby pockets of RE1 – public recreation zoning. The site is directly adjacent to John Edmondson High School to the west,

approximately 570m to Camden Valley Way to the south, 600m to Cowpasture Road to the west, 750m to Carnes Hill Shopping Centre to the north and 485m to Cabramatta Creek to the east.

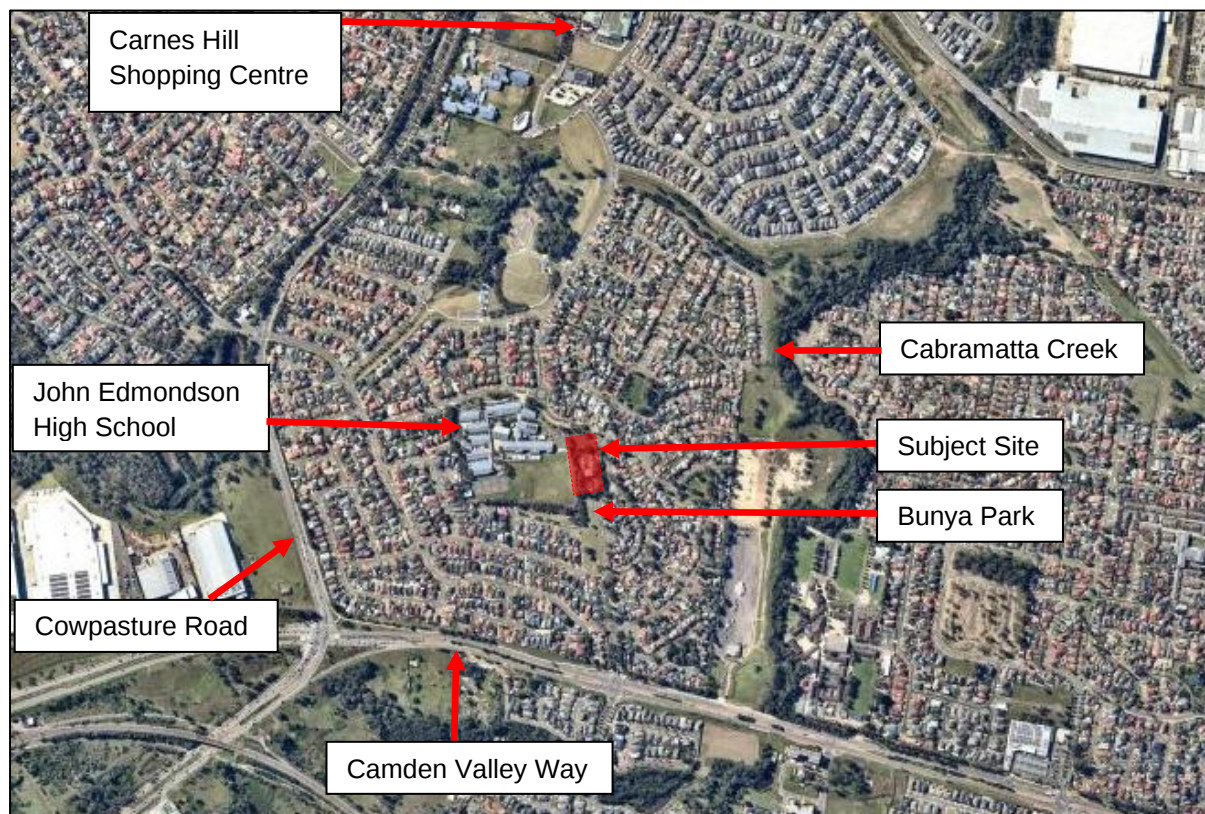


Figure 16: Locality surrounding the subject site (Source: Nearmap)

1.3. Site Constraints

Are there any constraints or affection on the site: - Bushfire - Flooding - Heritage Items - Aboriginal heritage - Environmentally Significant Land - Threatened Species/ Flora/ Habitat/ Critical Communities - Acid Sulphate Soils - Aircraft Noise - Flight Paths - Railway Noise - Road Noise/ Classified Road - Significant Vegetation - Contamination - Salinity	- Heritage Item - Proximity to round-about intersection - Neighbouring High School - Moderate salinity potential - No biodiversity certification - Gas Asset notification zone - Proposed off-road cycle way to the north
Are there any restrictions on title?	Nil.

2. DEVELOPMENT HISTORY

2.1. Site History - Summary

Horningsea House was built in 1839. A dairy was run from the subject location until at least 1938. During this time as a dairy, major renovations were conducted. The cellars were filled in an attempt to resolve the house's instability, the eastern half of the house was reconstructed, and the façade of the house was changed with the front verandah demolished and replaced with a neo-Classical porch.

Between 1947 and 1956 the estate in which Horningsea Park House resides was subdivided and sold multiple times. In 1973 the house was sold, and it ceased to be used as a residence. In 1976, the house was listed by the National Trust. It was in a deteriorated state and substantial demolition had commenced (Figure 17-18) before intervention by Liverpool Council and the Minister for Planning and Environment.

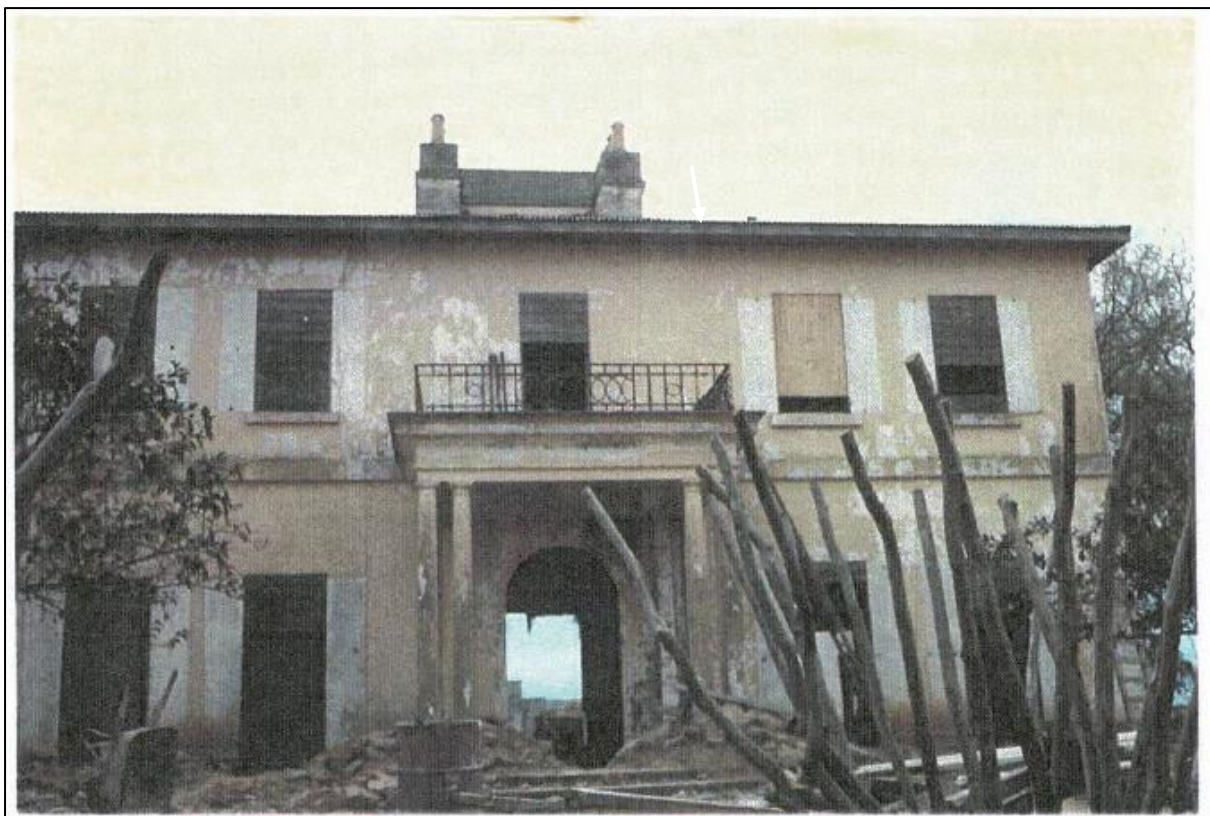


Figure 17: Horningsea House 1982



Figure 18: Partially demolished Horningsea House 1982

Extensive renovation works as designed by Howard Tanner commenced in 1982-83. This involved new floors, recreating joinery and demolition of the service wing on the northern side. These interiors were recreated to replicate the 1830s house. A cistern on the western side of the house was converted into a (disused) wine cellar and currently has an ornamental wish well structure as an entrance and spiral stair.

A Permanent Conservation Order (PCO) was declared over the house and grounds in 1983 and another again in 1998. The driveway vista from Camden Valley Way was retained as public reserve as was a curtilage around the house and gardens.

The rear of the site was carefully examined for archaeological remains in 1998 as a precursor to construction of the northern single storey wings. The archaeologists found no significant evidence of earlier occupation of this area of the site. The new c.2000 wings were designed by Howard Tanner's architectural practice.

In 2000, rear single-storey wings and their colonnade were also added to the house as per design by Howard Tanner. The swimming pool and the pool house (Figure 19) are modern additions c.2000 and are proposed for demolition as part of the current development application.

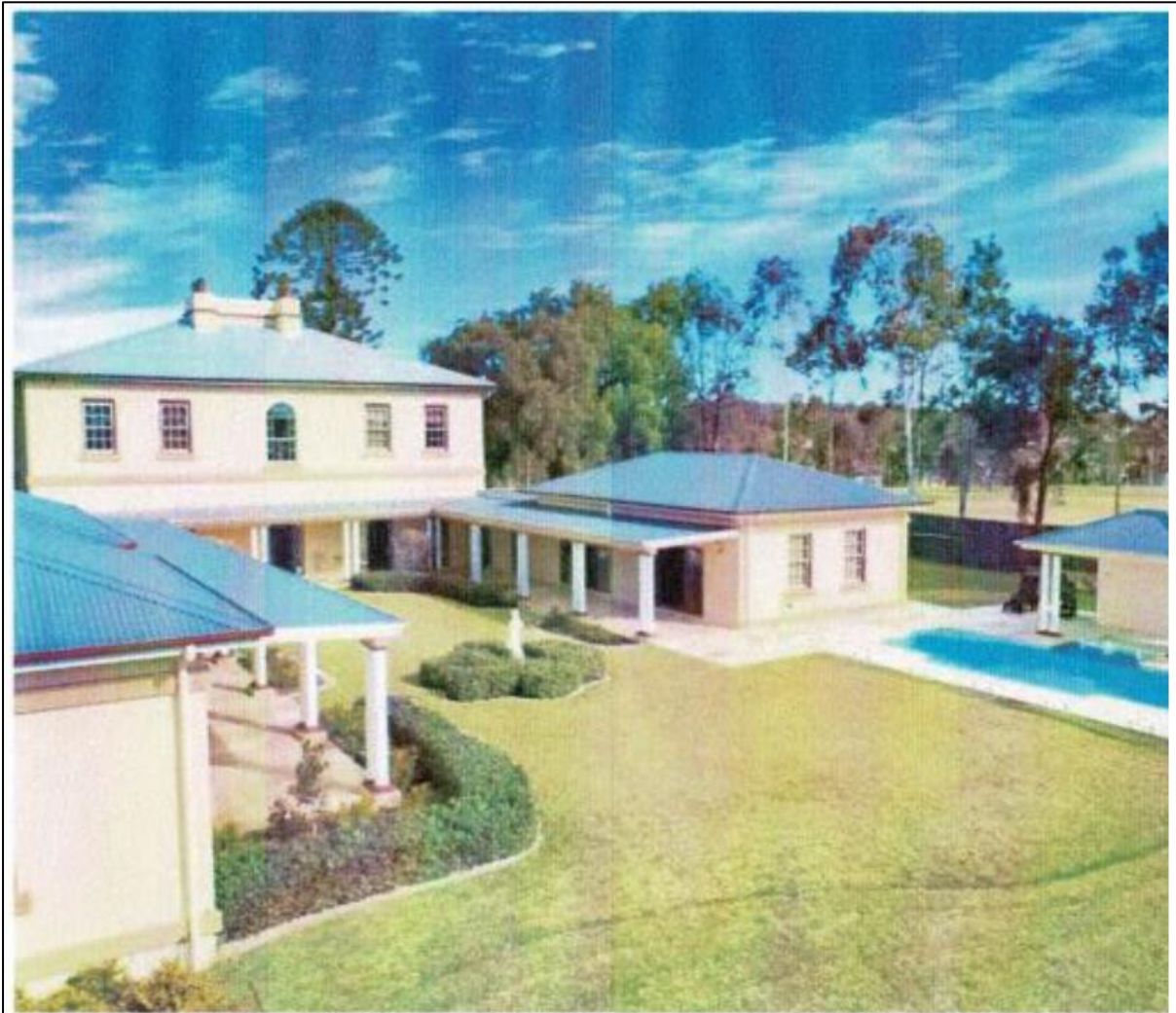


Figure 19: Rear of the property c.2000 wing additions and pool.

To date, the walls of the main house and its chimneys largely date from the 1830s. The southern and eastern garden areas were altered over time to create driveways, carriage loops and gardens. No buildings were ever constructed in the foreground of the historic house.



Figure 20: Rear of the property 2024.



Figure 21: Western extension with 'wishing well' 2024.

Horningsea Park House and its setting were designed for use as a 'gentleman's residence' with extensive grounds and generous support facilities before undergoing a number of transformation over time. It appears unlikely in the present suburban context that this property will be sought after for its original purpose.

2.2. Site Records

The following is a list of relevant applications related to the subject site, from Council's record systems:

DA No.	Lodged	Proposed Development	Determined
CCB-847/2003	29 October 2002	Extension to existing dwelling	Determined on 18 November 2002
DA-1228/2012	19 June 2012	Construction of an inground swimming pool with associated cabana and filter room. Note: Proposal is Nominated Integrated Development pursuant to S58 of The Heritage Act 1977-Office of Environment and Heritage	Approved on 3 October 2012
DA-51/2024	23 January 2024	Seeking consent for the conversion of existing dwelling house into 130 place children childcare centre with associated car parking, excavation, earthworks, stormwater, and landscaping works. The development is identified as nominated integrated under the heritage act 1977 requiring approval from the NSW Department of Planning and Environment – Heritage	Currently Under Assessment

2.3. Current Application Timeline

The following is a timeline of the subject application DA-51/2024:

Date	Proposed Development
6 March 2024	The subject application was placed on public exhibition and notification.
3 April 2024	The exhibition and notification period ended, and 16 submissions were received.
5 July 2024	A request for additional information (RFI) letter was sent to the applicant in relation to the following matters: <u>Planning</u> • Indoor Unencumbered Space • Storage Area • Hours of Operation • Laundry & Hygiene Facilities • Toilet Hygiene Facilities • Nappy Change Facilities • Educator to Child Ratios • Support Staff • Demolition and Tree Preservation

	• Privacy • Signage • Statement of Environmental Effects (SEE) • Submissions – LPP <u>Land Development Engineering</u> • OSD, stormwater, water quality treatment & vehicular crossing <u>Environmental Health</u> • Acoustic Assessment • Construction Details • Mechanical Ventilation System • Waste Storage <u>Traffic & Transport</u> • Driveway location <u>Community Planning</u> • Plan of Management (PoM) <u>Heritage</u> • Amended Architectural drawings • Building Class • Statement of heritage impact • Aboriginal Archaeological Assessment • Historic Archaeological Assessment • Heritage interpretation strategy • Conservations management plan <u>Urban Design & Public Domain</u> • Context • Built form and scale • Density • Landscape • Safety • Amenity • Aesthetics
8 July 2024	The applicant requested a 6-week extension, a 3-week extension was granted in lieu. Additional information was to be submitted by 9 August 2024.
19 July 2024	An in-person meeting was held between the applicant and Council officers to discuss the RFI matters.
7 August 21024	The applicant requested a further extension. This was accepted. Additional information was to be submitted by 19 August 2024.
14 August 2024	The applicant requested a further extension. This was accepted. Additional information was to be submitted by 23 August 2024.

23 – 28 August 2024	The applicant submitted additional information, and this information was re-referred to Council's internal Heritage, Environmental Health, Engineering and Urban Design & Public Domain officers. The information was referred externally to NSW Heritage for comment.
12 September 2024	A meeting between Council and NSW Heritage was held. NSW Heritage indicated that the development would unlikely be supported in its current form. A number of concerns were raised including: • The form and scale of the proposal does not appear to respect this significant character and setting and will have a detrimental impact on the aesthetic and historic values of the SHR item. • The proposed alterations to the building will significantly impact key view lines. • The current proposal includes the introduction of two areas of car parking which diminish the landscape significance of Horningsea Park. • Numerous supporting documents, including but not limited to, an amended SOHI and Arborists report were requested. These concerns were relayed to the applicant via email.
17 September 2024	The applicant provided a partial response to the above concerns. It was agreed that remaining Heritage-related concerns would be addressed at a meeting on site.
26 September 2024	A request for additional information (RFI) letter was sent to the applicant in relation to several planning items that remained outstanding (excluding separate heritage concerns): <u>Planning</u> • Amended Floor Plans • Schedule of Colours and Finishes • Consistency between plans & reports - Educators • Consistency between plans & reports - Fencing • Outdoor Unencumbered Space • Toilet Hygiene – amended PoM • Outdoor Space – Shade • Car Parking • Consistency between plans & reports - Privacy & Acoustic Fencing • Amended Acoustic Report and NMP • Consistency between plans & reports - Signage • Emergency Evacuation Procedure • Consistency between plans & reports - Amended Landscape Plan • Additional items requested at 19.07.2024 meeting • Submissions – DoE <u>Traffic & Transport</u> • Driveway Location – Bus stop

	<u>Land Development Engineering</u> • Stormwater Drainage • Tank Volume <u>Urban Design & Public Domain</u> • Safety • Amenity • Aesthetics
1 October 2024	A meeting was held on-site involving the Applicant, consultants engaged by the applicant, Council staff and NSW Heritage staff.
2 October 2024	The applicant requested a final extension to resolve all outstanding items in a consolidated response by 29 October 2024. This was accepted.
29 October 2024	The applicant submitted additional information, and this information was re-referred to Council's internal Heritage, Environmental Health, Engineering and Urban Design & Public Domain officers. The information was referred externally to NSW Heritage for comment.
3 December 2024	The application was considered by the NSW Heritage – Approvals Committee.
9 December 2024	NSW Heritage submitted General Terms of Approval to the NSW Planning Portal.
13 December 2024	The applicant was emailed a further request for information noting that traffic concerns, specifically safety concerns surrounding the location of the driveway had not been adequately addressed.
19 December 2024	The applicant submitted additional information, addressing the remaining traffic concerns.
24 February 2025	The subject DA scheduled for LPP deliberations.

The submitted documents were found to be satisfactory in response to the issues raised by Council as such the proposal has been recommended for **approval subject to conditions of consent** in this instance.

3. DETAILS OF THE PROPOSED DEVELOPMENT

The development application seeks Council consent for the conversion of existing heritage listed dwelling house into a 119 place children childcare centre with associated at-grade car parking, excavation, earthworks, stormwater, and landscaping works. The proposal would consist of the following:

Demolition:

Structure

- Demolition of in-ground swimming pool, outbuilding and associated paved area;
- Demolition of existing roof to the single storey western wing;

- Partial removal of internal walls and openings;
- Partial removal of existing paving; and
- Partial removal of existing fences along the western boundary.

Landscape

- Removal of planting between the two wings;
- Removal of hedge to the eastern side;
- Removal of hedge to the southern side;
- Partial removal of northern screen planting; and
- Removal of two trees.

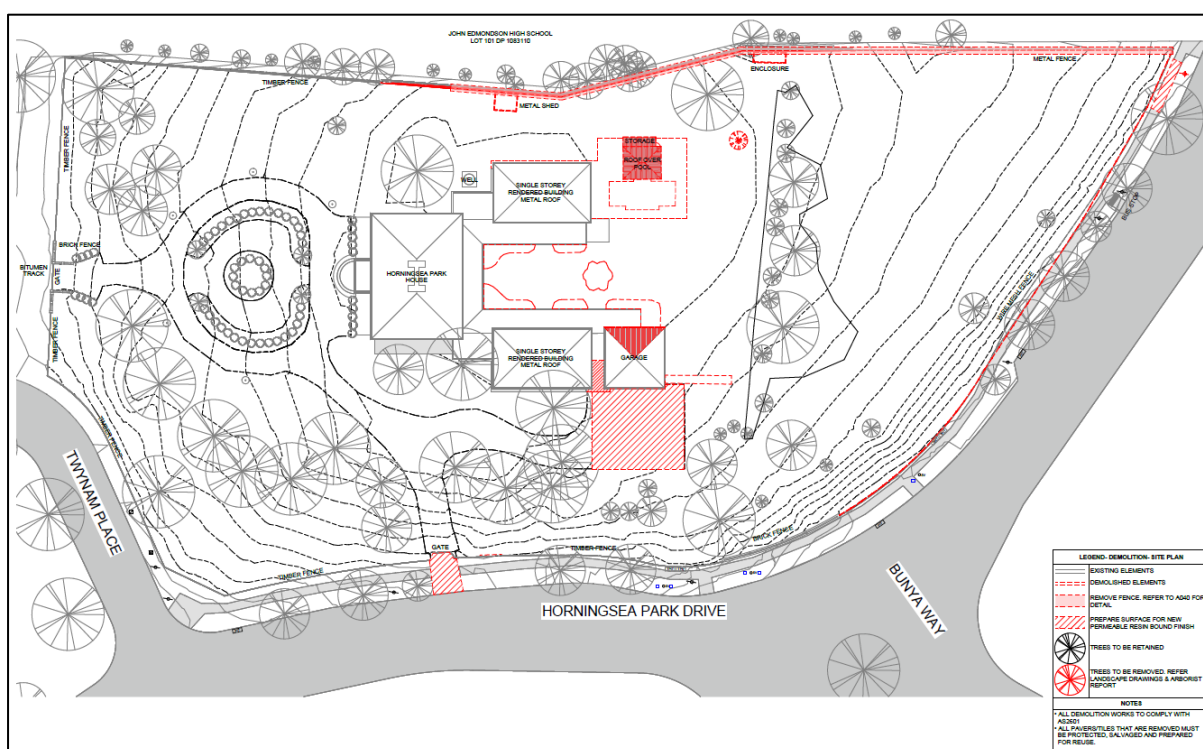


Figure 22: Proposed Site demolition plan

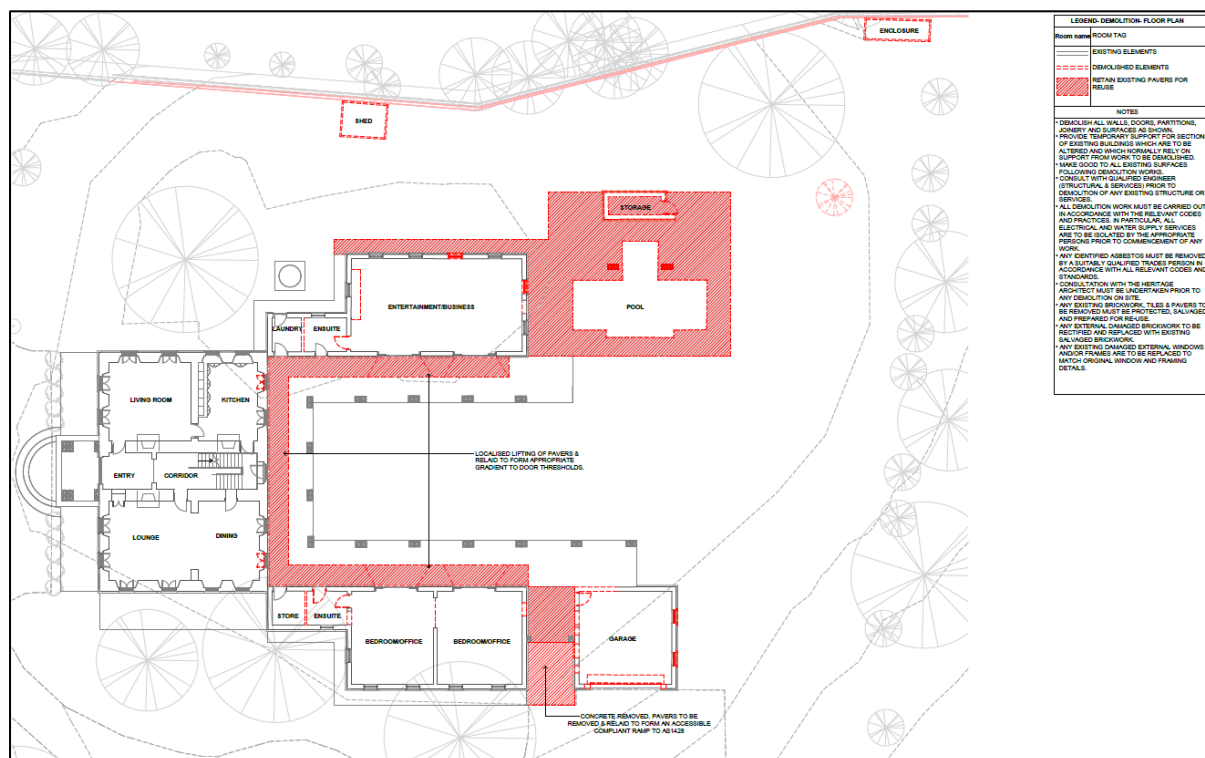


Figure 23: Proposed Ground Floor demolition plan

Construction of a Childcare Centre with at-grade carparking:

The proposal primarily involves the adaptive reuse of the existing heritage property with minor internal alterations and extensions to the wing structures.

Access and Parking:

- Vehicular access to the carpark is proposed from the north to Horningsea Park Drive via two-way manoeuvring.
- Vehicular access from the eastern side of Horningsea Park Drive is retained for service vehicle use. A boom gate is proposed. A new pedestrian gate and footpath is proposed adjacent to the driveway.
- Pedestrian access from the south to Bunya Park is retained.
- A total of 34 car parking spaces have been proposed within the main car park to the north (including one accessible space).
- A total of 12 bicycle parking spaces.

Site:

- Enclosed bin storage bay.
- External storage space.
- Two pylon business identification signs.

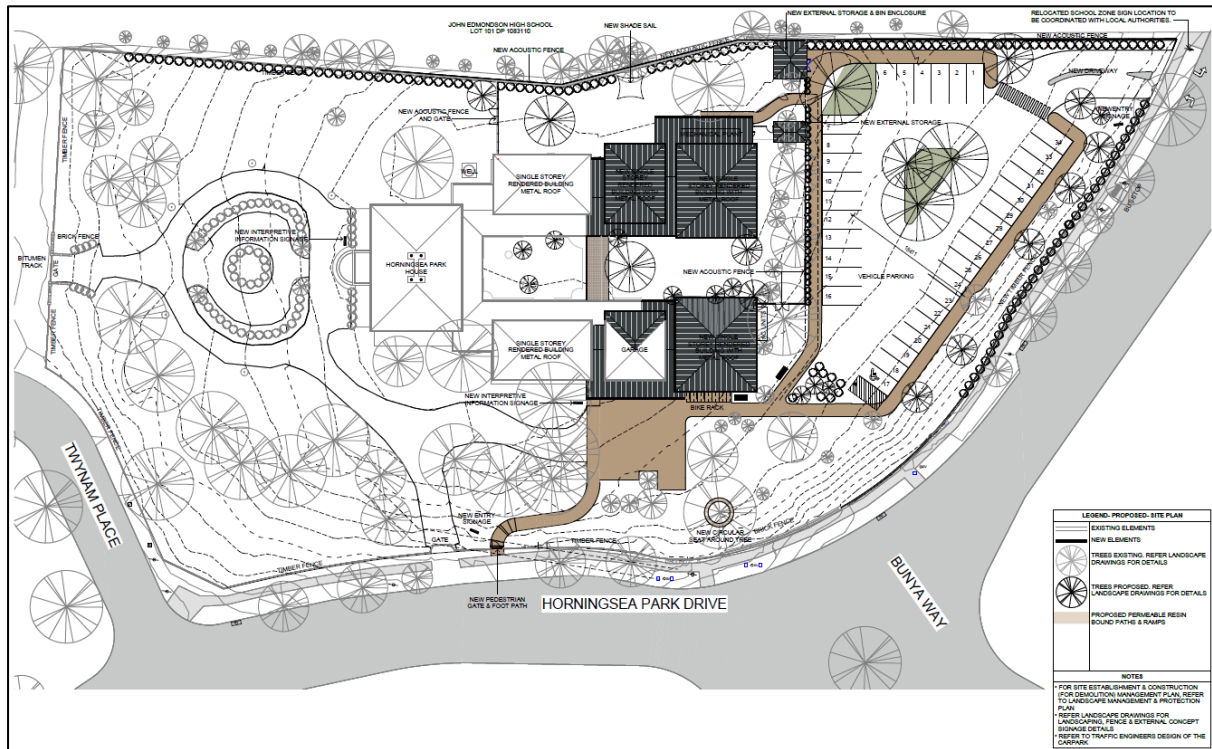


Figure 24: Proposed site plan

Ground Floor Internal Layout:

A total of two wings and existing homestead all connected via a covered walkway with:

Eastern Wing:

- Covered entry foyer, reception, director office, Ambulant WC, covered pram storage, Preeschool 02, WC.
- Nursery Room 01, Cot Room 01, Cot Room 02, Nappy Change & WC.

Southern Wing (Existing Homestead):

- Entry, Staricase, Nursery 02, Nappy Change, Bottle & Craft prep, Kitchen, Program & Meeting Room.

Western Wing:

- Laundry, Toddler 01, Nappy Change & WC.
- Toddler 02, Storage, Kitchen, Preschool 01, Nappy Change & WC.

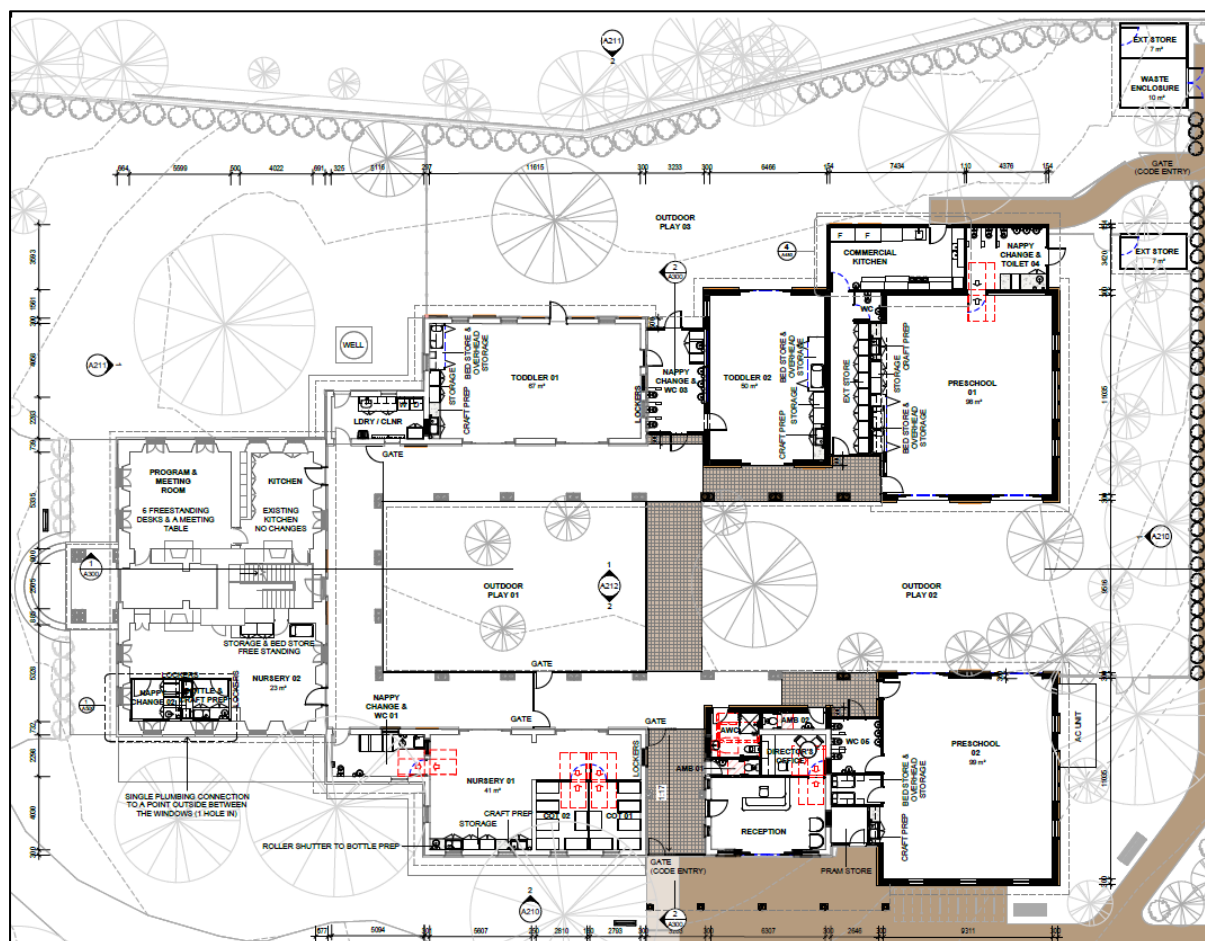


Figure 25: Proposed Ground floor plan

First Floor Internal Layout:

Southern Wing (Existing Homestead):

- Retention of existing: Bedroom 1 – 4, Ensuite, Storage & Library.

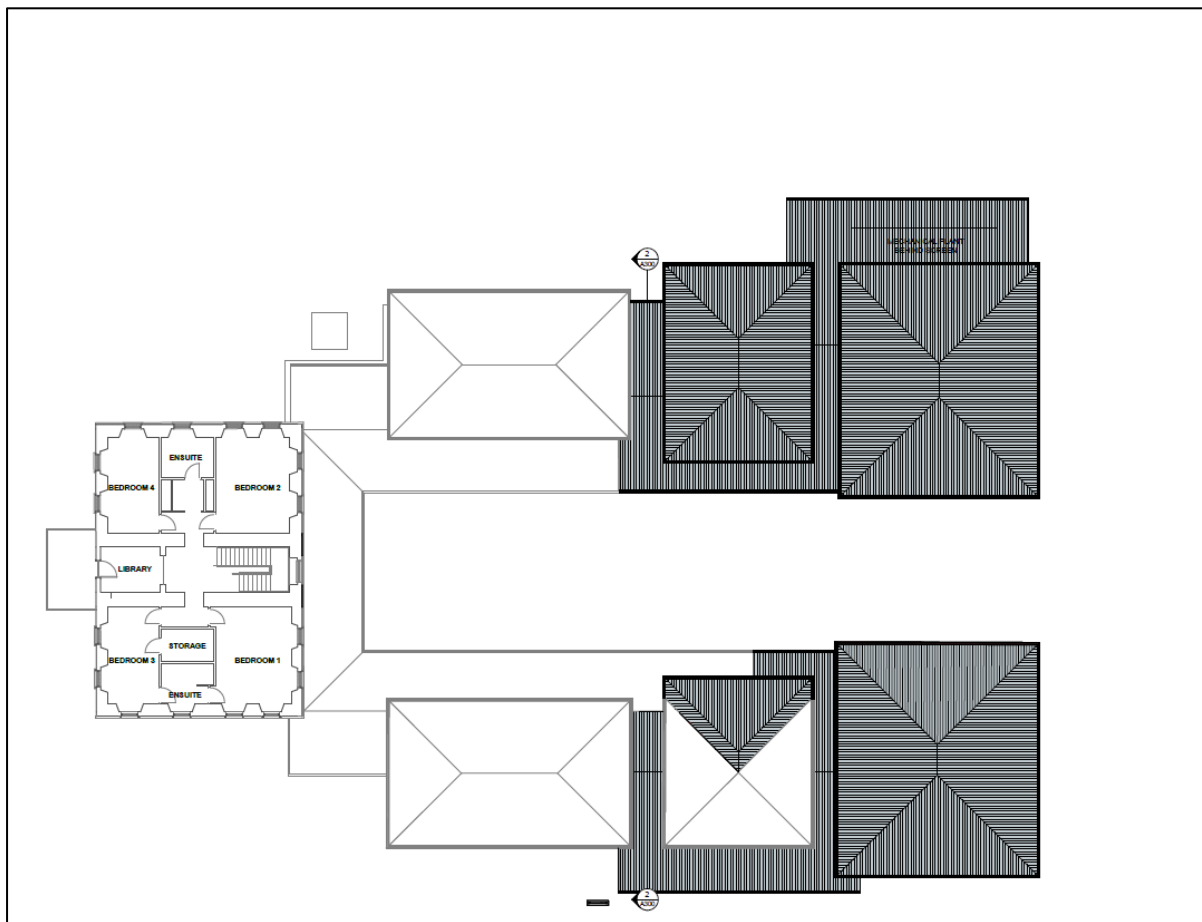
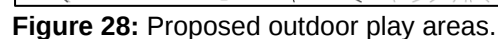
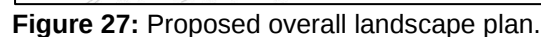


Figure 26: Proposed first floor plan.

Ground Floor External Layout:

- Central Outdoor play area 1
- Northern / Central Outdoor play area 2
- Western Outdoor play area 3



Operational Details:

- The proposed hours of operation are between 7:00am and 7:00pm, Monday to Friday. The child care centre would be closed on Saturdays, Sundays and Public Holidays.
- 119 children are proposed with 19 educators, two administration officers and one chef.



Figure 29: Perspective of the proposal from the south-east.



Figure 30: Perspective of the proposal from the north.

4. STATUTORY CONSIDERATIONS

The following planning instruments have been considered in the planning assessment of the subject development application:

- (a) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- (b) *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- (c) *State Environmental Planning Policy (Sustainable Buildings) 2022*;
- (d) *State Environmental Planning Policy (Industry and Employment) 2021*;
- (e) *State Environmental Planning Policy (Transport and Infrastructure) 2021*;
 - o Education and Care Services National Regulations 2011.
 - o Child Care Planning Guideline 2021.
- (f) *Liverpool Local Environmental Plan (LLEP) 2008*.

Development Control Plans

- Liverpool Development Control Plan (LDCP) 2008.
 - o Part 1 – General Controls for all developments;
 - o Part 2.2 – Carnes Hill, Hoxton Park & Prestons Residential Release Areas; and
 - o Part 3.8 – Non-Residential Development in Residential Zones.

Contributions Plans

- Liverpool Contributions Plan – Hoxton Park, Carnes Hill and Prestons Release Areas – applies to all developments pursuant to Section 7.12 of the EPA & Act.

5. PLANNING ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 of the *EP&A Act 1979* and the *Environmental Planning and Assessment Regulation (EPAR) 2021*, as follows:

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

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

The subject land is located within the Georges River catchments and as such Chapter 6 Water catchments of the SEPP applies to the application. The Biodiversity and Conservation SEPP aims to protect the environment of the Georges River catchments by ensuring that biodiversity values are protected and preserved and that water quality impacts are considered.

Part 6.2 – Development in Regulated Catchments	
Division 2 – Controls on development generally	Comment
6.6 – Water quality and quantity	Stormwater concept plans were submitted and reviewed by Council's Land Development Engineering Section and considered satisfactory subject to conditions.
6.7 – Aquatic ecology	The works are not located on Environmentally Sensitive land and is unlikely to impact on aquatic ecology.
6.8 – Flooding	The site is not affected by mainstream or overland flooding.
6.9 – Recreation and public access	The development is unlikely to impact on recreational lands or public access to and around foreshores.
6.10 – Total catchment management	Environmental Planning consideration through the provisions of the Liverpool LEP has considered the impact of the residentially zoned land within the catchment.
Division 3 – Controls on development in specific areas	Comment
6.11 – Land within 100m of natural waterbody	The site is not within 100m of a natural watercourse.
6.12 – Riverine scenic areas	Not applicable.
6.13 – Hawkesbury-Nepean conservation area sub-catchments	Not applicable.
6.14 – Temporary use of land in Sydney Harbour Catchment	Not applicable.
Division 4 – Controls on development for specific purposes	Comment
6.15 – Aquaculture	Not Applicable
6.16 – Artificial waterbodies	Not Applicable
6.17 – Heavy and hazardous industries	Not Applicable
6.18 – Marinas	Not Applicable
6.19 – Moorings	Not Applicable
6.20 – On-site domestic sewerage systems	Not Applicable
6.21 – Stormwater management	Stormwater concept plans were submitted and reviewed by Council's Land Development Engineering Section and considered satisfactory subject to conditions.

6.22 – Waste or resource management facilities	Not Applicable
6.23 – Demolition on certain land	Not Applicable – Although minor demolition is proposed, the land is mapped under the provisions of the Liverpool LEP.

The application was referred to Council's Land Development Engineering Department who raised no objection subject to conditions of consent. Accordingly, the proposed development is consistent with the controls and objectives of SEPP (Biodiversity and Conservation) 2021.

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021. 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, Council is required to undertake a merit assessment of the proposed development and the following table summarises the matters for consideration in determining a development application (Clause 4.6).

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	A Stage 1 Preliminary Site Investigation (PSI) and Stage 2 Detailed Site Investigation (DSI) were submitted with DA-51/2024 which support the proposed use subject to recommendations.
(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 site is deemed to be suitable for the proposed use in accordance with the submitted PSI and DSI.

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

(c) State Environmental Planning Policy (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 - Chapter 3 applies to development, other than development for the purposes of residential accommodation, that involves-

- (a) the erection of a new building, if the development has a capital investment value of \$5 million or more, or*
- (b) alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.*

The subject application has an estimated CIV value of \$1,311,272 and is therefore 'exempt' as it does not meet the above criteria.

(d) State Environmental Planning Policy (Industry and Employment) 2021

The application seeks consent for erection of 2 signs, one located beside the existing driveway entrance on the eastern frontage of the site and the other beside the proposed new driveway entrance to the car park on the northern side of the site. The proposed 'business identification signs' are applicable to SEPP (Industry and Employment) 2021 and require consent, however, are not required to be assessed pursuant to Part 3 Division 1 as follows;

Division 1 General

3.7 Advertisements to which this Part applies

- (1) This Part applies to all signage to which this Policy applies, other than the following:*

- (a) **business identification signs,***
- (b) building identification signs,*
- (c) signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it,*
- (d) signage on vehicles.*

Otherwise, the proposed signs are consistent with the provisions of Part 3.4 Miscellaneous and are considered to meet the Aims and Objectives of SEPP (Industry and Employment) 2021 and with Schedule 5 – Assessment Criteria SEPP (Industry and Employment) 2021. A detailed assessment of Schedule 5 is provided in ATTACHMENT 2.

Consistency with the objectives of SEPP (Industry and Employment) 2021 as set out in clause 3.1(1)(a):

- a) to ensure that signage (including advertising):
 - (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish, and
- b) to regulate signage (but not content) under Part 4 of the Act, and
- c) to provide time-limited consents for the display of certain advertisements in transport corridors, and
- d) to ensure that public benefits may be derived from advertising in and adjacent transport corridors.

The proposed signage is compatible with the locality of the site which consists primarily of residential use. Each sign will have maximum dimensions of 2 metres in height by 1.15 metres in width. They are of an appropriate scale so as to not block any significant views. The proposed signage is appropriately located beside each driveway to clearly delineate the child care centre from the neighbouring school and homes.

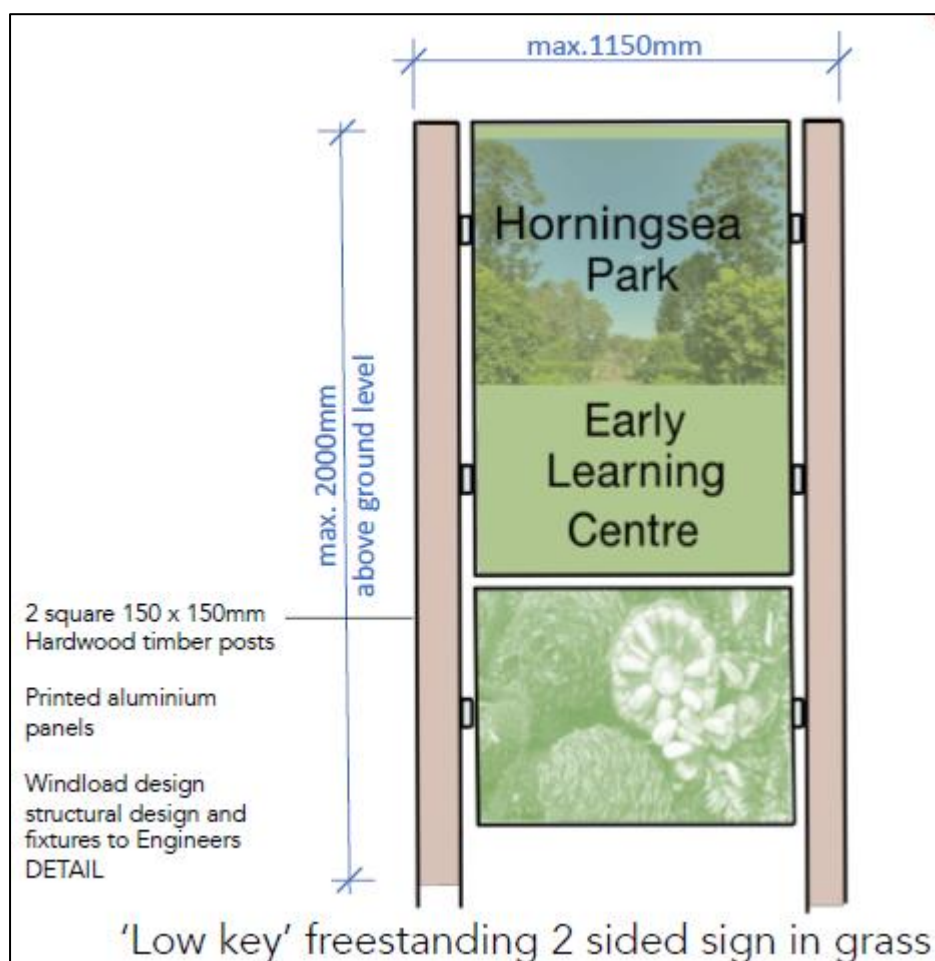


Figure 31: Signage specifications.

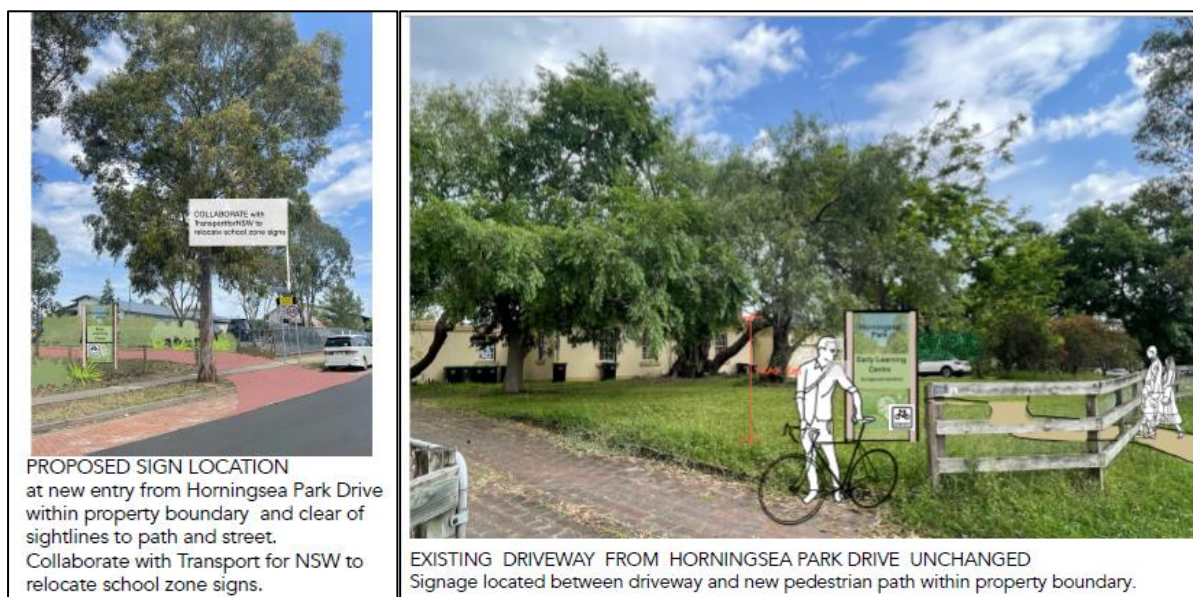


Figure 32: Signage location adjacent to entry.

As a result of the above assessment, the proposal is considered to be consistent with the key controls outlined in SEPP (Industry and Employment) 2021 Chapter 3 – Advertising and Signage.

(e) State Environmental Planning Policy (Transport and Infrastructure) 2021

This proposal has been assessed under the provisions of *SEPP (Transport and Infrastructure) 2021*, specifically Chapter 3 – Educational establishments and child care facilities (previously known as *SEPP (Educational Establishments and Child Care Facilities) 2017*). The development is considered to achieve general compliance with the provisions of Chapter 3 and relevant compliance tables can be found in ATTACHMENT 3.

(e)(i) Education and Care Services National Regulations 2011;

In accordance with the Child Care Planning Guideline 2021, Chapter 4 of the *Education and Care Services National Regulations 2011* is to be applied. The development is considered to achieve general compliance with the provisions of the Regulations and relevant compliance tables can be found in ATTACHMENT 4.

(e)(ii) Child Care Planning Guideline 2021;

In determining a development application for development for the purpose of a centre-based childcare facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline (CCPG) 2021. The development is considered to achieve general compliance with the provisions of CCPG 2021 and relevant compliance tables can be found in ATTACHMENT 5.

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

(i) **Zoning and Permissibility**

The subject site is zoned R2 Low Density Residential under LLEP 2008) and the proposed development is best defined as a '**centre-based child care**', which is a permissible use within the zone, with consent. A centre-based childcare is defined below, and the zoning of the site can also be seen in Figure 33.

centre-based child care facility means—

(a) *a building or place used for the education and care of children that provides any one or more of the following—*

- (i) *long day care,*
- (ii) *occasional child care,*
- (iii) *out-of-school-hours care (including vacation care),*
- (iv) *preschool care, or*

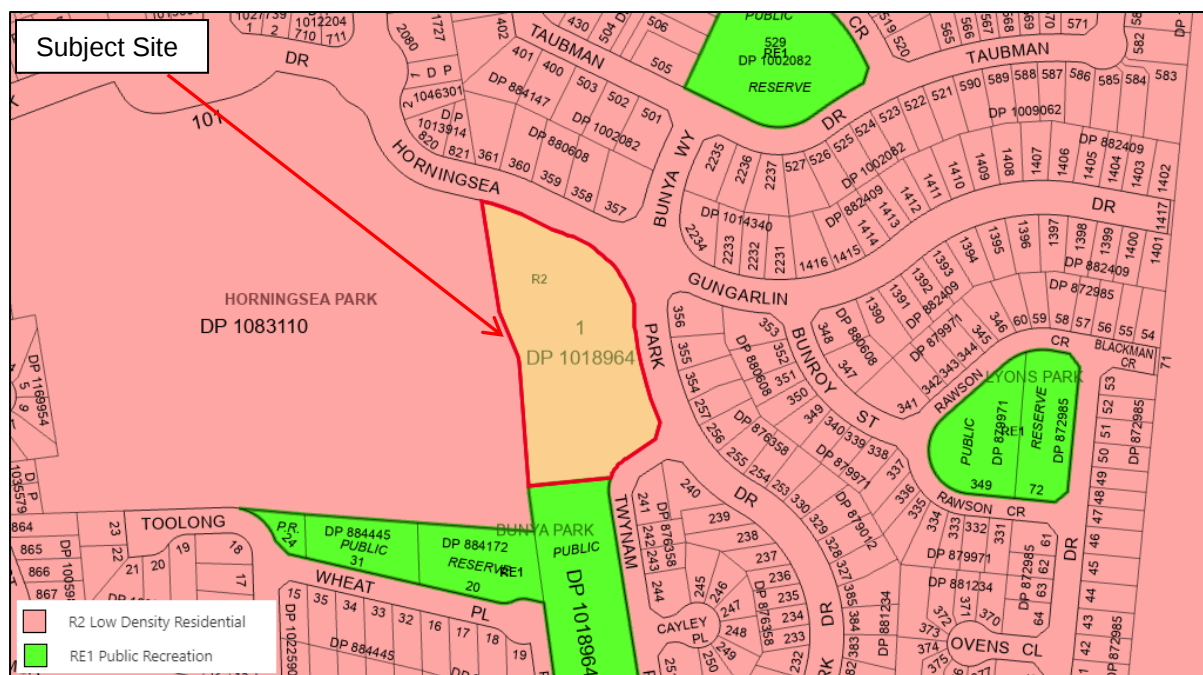


Figure 33: Zoning map (Source: Geocortex)

(ii) **Objectives of the zone**

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

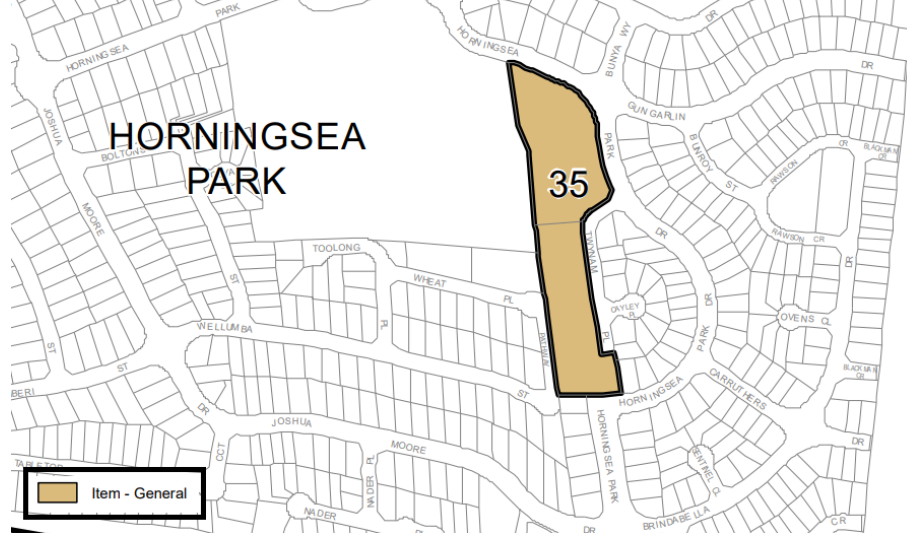
- *To provide a suitable low scale residential character commensurate with a low dwelling density.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

It is considered that the proposal is consistent with the objectives of the R2 - Low Density Residential zone by enabling other land uses, such as childcare centres that provide facilities and services to meet the day to day needs of residents. The quality of the development ensures that a high level of amenity is achieved and maintained.

(iii) Principal Development Standards

LLEP 2008 contains principal development standards which are discussed with respect to the proposal as follows:

Clause	Required	Proposed	Complies
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	Development consent is sought as per this DA. An adequate demolition plan and statement was submitted with DA-51/2024.	Complies
4.3 Height of Buildings	Maximum height of 8.5m	No change proposed to the existing maximum height of the heritage homestead of approximately 11m. The maximum height of the proposed extension is approximately 5.6m.	Complies
4.4 Floor Space Ratio	Maximum FSR of 0.5:1 is applicable.	Site area: 8,778m ² GFA 935.32sqm 935.32 : 8778m ² 0.11 : 1	Complies
4.6 Exceptions to Development Standards	Provisions relating to exceptions to development standards	Clause 4.6 variation not required.	Not Applicable
5.10 Heritage Conservation	(2) Requirement for Consent Development consent is required for any of the following- <u>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a</u>	Items (a)(i) and (b) apply. Development consent is sought as per this DA.	Noted

	<u>building, making changes to its detail, fabric, finish or appearance)—</u> <u>(i) a heritage item,</u> (ii) an Aboriginal object, (iii) a building, work, relic or tree within a heritage conservation area, <u>(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,</u>		
	 HORNINGSEA PARK 35 Item - General <i>Liverpool LEP 2008: Heritage Map – Sheet HER_008</i>		
	(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).	Council has considered the effect of the proposed development on the heritage significance of the item concerned (Item 35 - Horningsea Park Group, including site, main house, interiors and archaeological features). The applicant has provided a Heritage Conservation Management Plan. It is concluded that the proposed development would have minimal effect on the heritage significance of the item. The alterations are	Complies

		minor and fully reversible.	
	(5) Heritage assessment The consent authority may, before granting consent to any development- <u>(a) on land on which a heritage item is located, or</u> (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	Item (a) applies. A Heritage management document (Conservation Management Plan and Statement of Heritage Impact) has been submitted. As noted above it is concluded that the proposed development would have minimal effect on the heritage significance of the item. The alterations are minor and fully reversible. The modern wings will be adapted in a sympathetic manner, and a new wing of complimentary character introduced in a position that has no impact on the historic significance of the place. It is considered that the proposed change of use and alterations to modern additions will have no detrimental impact on the heritage property. The child care role for the site will give Horningsea Park House and its grounds long-term local significance and relevance, and ensure their maintenance and well-being.	Complies
	(6) Heritage conservation management plans The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.	The applicant has provided a Heritage Conservation Management Plan. The application was reviewed by Councils Heritage officer and NSW Heritage, who raised no objection subject to conditions of consent	Complies

	(7) Archaeological sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the <i>Heritage Act 1977</i> applies)— <u>(a) notify the Heritage Council of its intention to grant consent, and</u> <u>(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.</u>	Items (a) and (b) apply. The application was referred to NSW Heritage for comment. At its meeting on 3 December 2024, the NSW Heritage Council's Approvals Committee resolved to grant General Terms of Approval.	Complies
	(8) Aboriginal places of heritage significance The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance— (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.	A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that: no Aboriginal sites are recorded in or near the above location and that no Aboriginal places have been declared in or near the subject site. An Aboriginal Heritage – Due Diligence Assessment Report has been provided. The subject site lies within the Gandagara Local Aboriginal Land Council (GLALC) jurisdiction in the Western Metropolitan area of Sydney as defined under the <i>NSW Aboriginal Land Rights Act, 1983</i>. The report concludes that Aboriginal objects are unlikely to be present within the subject site as no areas potentially containing Aboriginal objects were identified within or adjacent to the subject site during the field assessment of the site.	Complies with Condition

		It is considered the subject site is likely to be of low Aboriginal archaeological potential and the detection of any sub-surface Aboriginal objects is highly unlikely in this instance. Conditions of consent are imposed to ensuring that construction impacts on Aboriginal or non-Aboriginal heritage will be appropriately avoided.	
	(9) Demolition of nominated State heritage items The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item— (a) notify the Heritage Council about the application, and (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.	Demolition is largely limited to recent additions including the swimming pool, cabana, shed and paving surrounding the heritage house. Demolition of the Heritage item is not proposed, notwithstanding the Heritage Council was notified.	Not Applicable
	(10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that— (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and (b) the proposed development is in accordance with a heritage management document that has been approved by the consent	(a) The conservation of the heritage item is sought to be facilitated by the granting of consent. (b) A condition of consent would be imposed to ensure that the proposed development is in accordance with an approved heritage management document. (c) A condition of consent would be imposed to ensure that all necessary conservation work identified in the heritage management document is carried out. (d) The applicant has provided a Heritage	Complies with Condition

	authority, and (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.	Conservation Management Plan. It is concluded that the proposed development would have minimal effect on the heritage significance of the item. The alterations are minor and fully reversible. The application was referred to NSW Heritage and Council's Heritage officer who raised no objection subject to conditions of consent. (d) The amenity of the surrounding area would not be adversely affected by the proposed Childcare centre. The application was referred to Council's Heritage officer and NSW Heritage who raised no objection subject to conditions of consent.	
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Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instruments

No applicable draft EPIs.

Section 4.15(1)(a)(iii) – Any Development Control Plan

(a) Liverpool Development Control Plan (LCDCP) 2008

The proposed development is subject to the LCDCP 2008. The application has been assessed against the relevant controls of LCDCP 2008, particularly Part 1 General Controls for all Development, Part 2.2 Carnes Hill, Hoxton Park & Prestons Residential Areas (Horningsea Park Heritage Area) and Part 3.8 Non-Residential Development in Residential Zones (Childcare Centres). The development is considered to achieve general compliance with the provisions of LCDCP 2008 and relevant compliance tables can be found within ATTACHMENT 6.

6.2 Section 4.15(1)(a)(iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

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

6.3 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 and the Safety standards for demolition (AS 2601 – 2001). Accordingly, appropriate conditions would need to be imposed if consent granted.

6.4 Section 4.15(1)(b) – The Likely Impacts of the Development

Head of Consideration	Comment
Built	The built form of the proposed development would not pose any significant adverse impacts upon neighbouring development. Visual and acoustic privacy mitigation measures have been incorporated into the development. The orientation of the building allows for the proposed development and neighbouring properties to achieve suitable solar access. The proposed car park will alleviate pressure on existing streets to accommodate additional on-street parking, while the likely increased traffic generation is considered to be within acceptable limits. The presentation of the historic Homestead is to remain largely unaltered, while an enhanced landscape design complements the proposed childcare centre. Minor changes to the ground floor are proposed and works are to be fully reversible. The new wings will have very limited impact on the public appreciation of the historic house. The colonnades will be extended to provide sheltered access to new facilities. The modern swimming pool will be removed as it is considered an unsuitable feature in a child care centre. The small pool pavilion, which is of no special architectural, heritage or practical merit, will also be removed to enable new child care accommodation to be constructed. As demonstrated within this report, the overall built form is consistent with the building envelope controls for development within the precinct prescribed under the <i>Liverpool Local Environmental Plan 2008</i> and the <i>Liverpool Development Control Plan 2008</i>.
Natural Environment	The proposed development is not likely to have significant adverse impacts on the existing natural environment, as the development is of an appropriate scale and size for the site. The proposed development seeks to retain all the earlier plantings (pre-1980s) but will involve removing and pruning some of the more recent trees as well as planting new trees. Other than the removal of a hedge and a number of unsuccessful trees from the recent plantings and the raising of the canopy on the trees that form a screen on the northern side of the property, little else is likely to have any significant effect on the more recently planted trees. The provided Landscape Plan and associated Landscape Statement of Heritage Impact demonstrate a thorough rejuvenation of what was otherwise a largely unkempt site. The envisioned aesthetic of the site as a grand rural homestead with grounds is revitalised.

	No significant change is proposed to the natural environment in front of the house, only necessary shade tree will be added to the north and west of the house to reduce the urban heat effect. The vista from Camden Valley Way to the house and from inside the house to the nearby creek-line and ridge beyond is retained. The adaption responds to the regional open space network and ecology by subtly reintroducing endemic local variants of Cumberland Shale Plains Woodland in discrete informal hedge and garden bed planting, strengthening existing cultural plantings while maintaining visually and spatially contiguous open space. As demonstrated within the assessment provided, no significant impact on flora and fauna is envisaged as a result of the development.
Social Impacts	The proposed childcare centre provides a number of positive public interest benefits, including the provision of childcare services in an area where there is a demonstrated need. The proposed development will also provide a positive public interest benefit in the provision of employment opportunities in the construction and operation of the proposed development. The proposed development will ensure the retention and maintenance of a heritage building and grounds for the enjoyment of existing and future generations. It is considered that appropriate Crime Prevention Through Environmental Design (CPTED) principles have been incorporate into the design to discourage any potential anti-social behaviours and crime.
Economic Impacts	The proposal would result in a positive economic impact in the locality through construction of the development and employment will be generated by the ongoing operation of the centre.

6.5 Section 4.15(1)(c) – The Suitability of the Site for the Development

The proposal is a permissible development and satisfies the key planning controls as detailed above. It is therefore generally considered to be suitable for the subject site.

6.6 Section 4.55(1)(d)– Any Submissions made in relation to the Development

(a) Community Consultation

The development application is for works to a State Heritage Register item and therefore is identified as Nominated Integrated Development under the *EP&A Act 1979*. The application was therefore required to be exhibited for 28 days between 6 March 2024 and 3 April 2024 to enable the public to make submissions. Furthermore, the subject application was required to be notified to properties within a 75m radius in accordance with the Liverpool Community

Participation Plan 2022. A total of 16 unique submissions were received objecting to the proposal and the issues of concern raised in the submissions can be summarised as follows:

Issue raised	Comments
Issue 1: Loss of Heritage: The heritage-listed house at 14 Horningsea Park Drive holds immense historical and architectural significance to the area. Its demolition would result in the loss of a culturally valuable landmark that contributes to the character and heritage of the community estate that has stood here for as long as I can remember. The house holds a rich legacy and the community take prides in this. Any construction could jeopardise the integrity and aesthetic appeal of this landmark.	The house is set on a rise overlooking Camden Valley Way. The retention of the axial view along the historic driveway alignment, and the historic garden plantings around the house, contribute to its significance as a visual and historic landmark in the district. The proposed development involves minimal work to and within the historic house, remaining unaltered to public view and only minor changes on the Ground floor of the building. No demolition is proposed to the historic fabric of the house. It is only proposed to remove the c.2000 swimming pool, pool pavilion and pool enclosure. No change is proposed to the southern and eastern public views of the house and its landscape setting. No change is proposed to the historic underground cistern located near the north-west corner of the historic house, apart from the removal of its 1980s 'wishing well' superstructure. Within the house the changes will be limited to the ground floor and will be minor and fully reversible. The new additional north west wing will have no impact on the appreciation of the historic house. The modern swimming pool will be removed as it is considered an unsuitable feature. The small pool pavilion, which is of no especial architectural or practical merit, will also be removed. The northern single storey wings were designed and constructed c.2000. The proposed additions are to be designed by the same heritage architect, Howard Tanner, and as such it is considered that the existing integrity would not be jeopardised.
Issue 2: Visual Impact: The construction of a commercial childcare center in place of the heritage house would significantly alter the aesthetic appeal of the neighborhood. The proposed development will not complement the existing architectural style of the surrounding properties, thereby negatively impacting their overall value and appeal. Residents value the unique charm and appeal of the heritage buildings to the	The Georgian features of the homestead are to be retained. The introduction of the childcare centre has been carefully designed to minimise any visual impact, retaining the nineteenth century grand country impression. The mature trees which enhance the setting of the historic house will be carefully maintained and nurtured with new shrubs and ground covers introduced to enhance the presentation of the property. The main circular carriageway planting will be simplified to reflect its original character. The area proposed for staff parking will be screened by new hedging. The grassed courtyard between the wings and the northern lawn will feature as an outdoor recreation area. Existing planting ensures its general privacy and a degree of shade, although some additional shade sails are anticipated.

locality. Any construction could cause irreparable harm.	It is considered that the proposed change of use and modern additions will have minimal impact on the heritage property. The child care role for the site will give Horningsea Park House and its grounds long-term local significance and relevance, and ensure their maintenance and well-being.
Issue 3: Noise and Privacy: A childcare centre accommodating 130 children is likely to generate significant noise levels throughout the day. This could result in a considerable disturbance to the nearby residential properties, affecting the peace and tranquillity of the neighbourhood. Whilst a state public high school is next door already with extra noise coming from children and a corner location of the estate can pose a risk to the surrounding houses absorbing the extra travelling sounds created.	The application is supported by an Acoustic Assessment. The key findings of the report demonstrate that operational noise levels are predicted to comply with the applicable noise criteria. Additionally, it is to be noted that the proposal via amendments to the design has overseen a reduction in numbers from 130 place childcare to a 119 place childcare. The report concludes that the proposed development, incorporating the recommendations in Section 6, would achieve the noise emission objectives of the AAAC's "Guidelines for Child Care Centre Acoustic Assessment" provided that all acoustic attenuation measures are implemented. The proposed development would not result in noise emission which would unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable to neighbouring properties. The report further incorporates a detailed Noise Management Plan which is to be complied with at all times.
Issue 4: Increased Congestion: The proposed childcare center would attract a substantial number of additional vehicles to the area during peak times leading to increased traffic congestion along Horningsea Park Drive. The small estate is not designed to handle such a significant influx of traffic, which could adversely impact the safety of both pedestrians and motorists. Traffic congestion is an existing issue due to John Edmondson High School with its associated drop-off and pick-up periods a major concern. The streets are not wide enough to support the increase	The application is supported by a Traffic Impact Assessment. The report indicates that the design of the access, parking and servicing arrangements comply with the relevant Australian Standards. It is considered that the proposed traffic generations can be safely accommodated within the existing road network. It is recognised that childcare centres provide an essential community function, and as such, the associated traffic generation are to a large extent an unavoidable necessity. The site is considered an ideal location for providing such a service, nothing that: • It is co-located adjacent to a school. The NSW Planning Guidelines acknowledge the positive land-use outcomes of co-locating childcare centres near schools in order to cater for families of multiple children in a single location. • It is located within a School Zone, where traffic speeds are reduced to 40km/hr during peak operating periods, encouraging a safe road environment. • It is located along a local collector road. • The proposed driveway meets the AS2890.1 requirements for pedestrian sight splays, as well as driveway sight distances, allowing for safe egress manoeuvres from the site. • The proposed driveway location will result in eastbound traffic

in traffic.	approaching the site being required to approach the roundabout, make a 360 degree turn at the roundabout and return westbound on Horningsea Park Drive for a left turn into the site meaning that any queuing of vehicles is provided with the longest possible path to avoid extensive queuing. • In addition to the above, the car park itself provides approximately 70 metres of queuing within the car park in the one way movement to alleviate on-street queuing.
Issue 5: Parking Shortage The introduction of a commercial childcare center catering to 130 children would require adequate parking facilities. However, the limited availability of parking spaces within the small estate could exacerbate the existing parking problems, reducing access for residents and visitors who park alongside the surrounding streets and along Horningsea park drive.	It is noted that a reduction from 130 to 119 children has been incorporated into the design. There is ample parking and queuing space on-site in comparison to many similar-scale childcare centres, such that instances of queueing onto the public road network is highly unlikely. The proposed 34 car parking spaces, 12 bicycle parking spaces, and service area for a van is consistent with council parking requirements.
Issue 6: Safety Hazards The anticipated increase in traffic volume resulting from the proposed development raises concerns about the safety of children and pedestrians within the vicinity. The small estate, already prone to traffic congestion, may experience hazardous conditions, compromising the well-being of residents and the community as a whole. The existing road infrastructure is not designed to accommodate the increased traffic. There are no pedestrian crossings or speed bumps.	As noted above the proposed development is located within a School Zone, where traffic speeds are reduced to 40km/hr during peak operating periods, encouraging a safe road environment. Furthermore, the proposed driveway meets the AS2890.1 requirements for pedestrian sight splays, as well as driveway sight distances, allowing for safe egress manoeuvres from the site. For additional safety the proposed driveway location is supported by a physical median within the driveway itself which will force a left in left out arrangement preventing vehicles from turning right into or out of the site and therefore aiding with the flow of traffic on Horningsea Park Drive. The proposal includes sign posting of no right turn into and out of the site and the use of a traffic marshal during pick-up and drop-off times.
Issue 7: Suitability of Location There are a number of existing child care facilities within the vicinity, including two within a 500m radius.	As noted above Chapter 3, Section 3.27 of SEPP (Transport and Infrastructure) 2021 permits development within proximity to surrounding childcare centres and as detailed within the provided social impact comment the centre is designed to support the population growth within the area.

Issue 8: Native trees Bunya Park has native bunya trees that need to be kept to preserve our native bird life. The removal of trees from the site is not supported.	The immediate setting of the historic house has substantial existing trees which are to be retained. Additional indigenous shrubs and ground covers will be introduced to enhance the setting. No tree removal within Bunya Park is proposed.
Issue 9: Dept of Education The DoE has made several recommendations primarily relating to the delivery of the development, many of which are addressed as a condition of consent.	
<u>Pedestrian/Vehicle Access</u> a) Work zones should not be proposed in locations that will compromise pedestrian, cyclist and vehicular access to the school and associated drop-off/pick-up areas. b) The movement of vehicles accessing the site should be avoided as much as possible during drop-off/pick-up periods. c) Upgrading of the existing narrow footpath in the frontage to 3m. d) Installation of bus shelters.	a) A condition of consent would be imposed requiring a Works Zone application. It is noted that Work zones will not be permitted in locations that will compromise pedestrian, cyclist and vehicular access to John Edmondson High School and associated drop-off and pick-up spaces. b) A condition of consent would be imposed requiring a Construction Site Management Plan. This plan must detail that truck movements to and from the site area avoided as much as possible during school drop-off and pick-up periods. A condition of consent has also been imposed prohibiting delivery vehicles accessing the site 30 minutes before and after school start and finish times. c) A condition of consent would be imposed to ensure the footpath is upgraded to 2.5m shared cycleway in accordance with Councils specifications prior to Construction Certificate (see Contention 6 above). d) A condition of consent would be imposed requiring the applicant to consult with TfNSW with regards to the installation of bus shelters to the identified bus stops.
<u>Stormwater</u> a) Ensure the proposed stormwater system does not adversely impact the High School	a) The application has been reviewed by Councils Land Development Engineer who raised no concerns subject to conditions of consent.
<u>Utilities</u> a) Confirm that utility networks can accommodate the proposed without affecting the High School	a) A condition of consent would be imposed to ensure appropriate utilities and services are provided. The Principal Certifier shall be satisfied that service delivery to John Edmondson High School is not affected. If upgrades are required, they will be at the expense of the developer.
<u>Operation Noise</u> a) The proposal does not comply with the NSW DoE EFSG Design Checklist – Acoustics in which an	a) As noted above the proposal would achieve the noise emission objectives of the AAAC's "Guidelines for Child Care Centre Acoustic Assessment".

internal noise level of 35dB LAeq for teaching spaces is required.	An acoustic barrier is proposed along the western boundary. It must be noted it is unlikely that all age groups would be in the outdoor play areas at the same time. Furthermore, the outdoor play area is adjacent to the High school play area rather than indoor teaching spaces. The nearest internal teaching space within John Edmondson High School is approximately 40m from the subject development boundary. The provided Acoustic Assessment demonstrates that the proposed development is predicted to comply with the set ESFG internal noise levels.
<u>Acoustic Barrier</u> a) The 2.1m high acoustic barrier along the western boundary must not affect any existing school security fence along this boundary. b) DoE requests the applicant consult with DoE prior to the commencement of works.	a) The acoustic barrier along the western boundary is proposed to be contained wholly within the subject site. b) A condition of consent would be imposed requiring the applicant to consult with DoE prior to commencement of works.
<u>Construction Traffic</u> a) Prohibit construction vehicles accessing the site during pick-up/drop-off times. b) Work zones should not be proposed in locations that will compromise access to the school. c) Pedestrian and cyclist safety should be considered and managed. d) Any impacts to school bus services should be addressed and mitigated. e) DoE requires further information on delivery/waste collection times.	a) As noted above a condition of consent would be imposed prohibiting delivery vehicles accessing the site 30 minutes before and after school start and finish times. e) As noted above a condition of consent would be imposed requiring a Works Zone application. It is noted that Work zones will not be permitted in locations that will compromise pedestrian, cyclist and vehicular access to John Edmondson High School and associated drop-off and pick-up spaces. b) A condition requiring a Traffic Control Plan (TCP) and Construction Traffic Management Plan (CTMP) would be imposed to manage construction vehicle entry. Furthermore, a condition requiring a Traffic Marshal during the pick-up and drop-off times of the Childcare centre has been imposed. c) The conditioned CTMP is designed to ensure if any impacts to school bus services is anticipated, these will be addressed and mitigated. d) An operational plan of management and WMP addressing site servicing arrangements has been submitted. It is noted that service/delivery vehicles enter from the east of the site away from John Edmondson High School. The WMP notes that bin collection will be scheduled to occur during off-peak drop off and pick up times.
<u>Construction Noise, Vibration and Air Quality</u> a) Noise and vibration assessments are to assess	a) The conditioned Construction Environmental Management Plan (CEMP) is designed to address noise and vibration control while also noting the neighbouring John Edmondson High

construction noise. b) Mitigation measures should be considered. c) Internal noise levels for classrooms to comply with EFSG. d) Consideration of air quality impacts.	School as a sensitive receiver b) 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. c) The provided Acoustic Assessment demonstrates that the proposed development is predicted to comply with the set ESFG internal noise levels. d) Appropriate conditions of consent regarding air quality, including the use of dust screens would be imposed.
<u>Construction Management and Consultation Post Consent</u> a) Any high noise and vibration activities should be managed to provide periods of respite b) Management plans should be developed in consultation with DoE.	a) As detailed in the Noise Management Plan any high noise activities will be managed to provide periods of respite. Conditions relating to noise and vibration would be imposed to ensure compliance with the relevant guidelines. b) A condition of consent would be imposed requiring the applicant to consult with DoE prior to Construction Certificate.

(b) Internal Referrals

The following comments have been received from Council's internal departments:

DEPARTMENT	COMMENTS
Traffic and Transport	Supported, subject to conditions of consent. - Ban right turning movements to and from Horningsea Park Road – (1) provide a physical median within the driveway itself which will force a left in left out arrangement preventing vehicles from turning right into or out of the site. The triangle median needs to be wide enough to physically deter vehicles from turning right into Horningsea Park Drive ; (2) Provide sign posting of no right turn into and out of the site; (3) BB line along the centre of the carriageway of Horningsea Park Drive, across the site frontage is to be provided - Relocate the existing TfNSW School Zone sign approximately 5m west due to the proposed driveway access to the child care centre. The applicant is to liaise with TfNSW and obtain their approval and implement the relocation. - Include in the Plan of Management (PoM) advice to patrons that as a result of the left-in and left-out arrangement eastbound traffic approaching the site will be required to approach the roundabout, make a full 360 degree turn at the roundabout and return westbound on Horningsea Park Drive for a left turn into the site. The PoM is also to include management measures that will ensure availability of adequate queueing space within the parking area

	so that vehicles entering the site will not block through traffic on Horningsea Park Drive. • Allocate car parking spaces 1 to 12 (farther from the entry) to parents to achieve the potential approximately 70m queueing space within the site, as proposed. • Provide a traffic marshal at the driveway during the peak periods of the site to manage potential conflicts at this location between vehicles entering and exiting the driveway and pedestrians and vehicles entering/exiting between parked vehicles and buses. This is to be included in the Plan of Management for the centre.
Environmental Health	Supported, subject to conditions of consent. SEPP – Hazards/Resilience – PSI and DSI General recommendations have included a hazardous materials survey and waste classification of excavated soils prior to removal from the site. Acoustic Report and Noise Management Plan The acoustic report is supported subject to conditions. The proposed outline of the noise management plan is in line with the recommended guidelines and policies. The methods and proposed strategies are suitable in nature and closely follow general recommendations within the relevant guidelines. Council conditions would complement this plan, with the noise plan being generally supported.
Landscaping	Supported. • The landscape plans have been carefully prepared and are acceptable and suitable for both heritage conservation and the proposed use as a childcare centre.
Heritage	Supported, subject to conditions of consent. • The proposal has been reviewed and with the amendments is considered to be a significant improvement on the original design. • The breaking up of the individual forms through a combination of pavilion structures with flat roof or skillion roof connections reduces the visual bulk of the proposal. • Clarification on some elements of the proposal are required prior to issue of construction certificate but do not impact on the overall approvability of the proposal.
Building and Compliance	Supported, subject to conditions of consent. • All the comments and requirements that are requested on the BCA report is to be addressed and endorsed by the PCA prior of issuing any Construction Certificate. • Full BCA assessment by the PCA prior of issuing Construction Certificate.
Land Development Engineering	Supported, subject to conditions of consent. • Updated drains model has been provided as well as catchment plan, previous engineering matters have been addressed.
Community Planning	No objection, subject to compliance with legislative requirements. • Proposed development seems compatible with the local characteristics.

Urban Design & Public Domain (CDPD)	Supported, subject to conditions of consent. • The Nursery 2 Unencumbered space area on the drawing is labelled 23sqm, on the calculations is noted as 39sqm, and 39sqm is required. The drawing should be revised to reflect the correct area and demonstrate adherence with the Education and Care Services National Regulations. • The Child Care Centre Guideline 4.4 explains the importance of natural ventilation and there should be a mix of both natural and mechanical ventilation. The requirement described in the Plan of Management would result in children breathing only mechanically ventilated all day, this is not supported as it is not in line with the Child Care Guideline, and is a poor health outcome. • A nappy change room with glazing has been incorporated in Nursery 2. The WC is missing however the Plan of Management states how this will be managed through supporting toilet trained children. This would not normally be supported, and CDPD would recommend a WC be included. However if this is due to the difficulty adding a WC in the Heritage building, then in this instance it is acceptable. • Shadow Diagram provided however it should be in plan, illustrating the area of shade hatched and annotated, demonstrating how 30% shade in summer is achieved through trees and shade structures. Similarly, however solar access in mid-winter is achieved. • The AC Units are shown however the Enclosure next to the Preschool 02 room is not shown on the landscape drawing. • CDPD recommends a pedestrian connection to the footpath, or alongside the northern driveway as a safer alternative to the driveway. Families may walk up the driveway especially when approaching from the High School, whereas the only pedestrian entry is much further along the street.
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(c) External Referrals

The following comments have been received from external bodies:

DEPARTMENT	COMMENTS
APA Gas	No objection Whilst the proposal will introduce a sensitive use within the pipeline ML it will not result in a change in the pipeline location class at this location.
NSW Heritage	The Heritage Council's Approvals Committee resolved to grant General Terms of Approval. Refer to ATTACHMENT 7.
NSW Department of Education (DoE)	Recommendations made. Refer to above submission.

6.7 Section 4.15(1)(e) –The Public Interest

The objects of the Act, of relevance to the matters associated with this proposal, are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

- (b) to facilitate ecologically sustainable development by integrating relevant eco/nomic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*

The proposed development is consistent with the objectives in Section 1.3(a), (b), (c), (f) and (g) of the Act in that it promotes social and economic welfare of the community through construction of the development and employment generated by the ongoing operation of the centre. Social considerations, particularly in relation to heritage conservation, have been sensitively addressed through the design process. The proposed development will ensure the retention and maintenance of a heritage building and grounds for the enjoyment of existing and future generations. The economic use of land is advocated for by the provision of childcare services in an area where a need has been demonstrated. As demonstrated throughout this assessment report the proposal incorporates good design practices that effectively responds to the sensitive nature of the built and cultural heritage of the site.

7. EVALUATION

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.46 of the *EP&A Act 1979*, the *Heritage Act 1977* and the *Environmental Planning and Assessment Regulation (EPAR) 2021*, as follows:

7.1 Section 4.46 (1)(a)(1) – Integrated Development

Section 4.46 of the Act details requirements for development that requires a separate approval under other environmental planning instrument or related legislation known as “*integrated development*”.

7.1 Heritage Act 1979

The objects of this Act are as follows-

- (a) to promote an understanding of the State’s heritage,*
- (b) to encourage the conservation of the State’s heritage,*
- (c) to provide for the identification and registration of items of State heritage significance,*
- (d) to provide for the interim protection of items of State heritage significance,*
- (e) to encourage the adaptive reuse of items of State heritage significance,*
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State’s heritage,*
- (g) to assist owners with the conservation of items of State heritage significance*

The subject site is identified as a heritage item, including the site, main house, interiors and archaeological features. The applicant has engaged Heritage Consultant, Howard Tanner, who has been closely involved with the heritage preservation of the site since 1980.

Consultation has also been undertaken with Heritage NSW during the course of the development application and subsequent on site and online meetings have occurred to discuss the heritage aspects. The application was reviewed by the NSW Heritage Approvals Committee who resolved, in accordance with Section 4.47 of the EP&A Act 1979, to grant General Terms of Approval.

8. DEVELOPER CONTRIBUTIONS

7.12 Contributions: Contributions would be applicable to the proposed development, in accordance with the Liverpool Contributions Plan 2009 – Hoxton Park, Carnes Hill and Prestons Release Areas. A condition of consent would be imposed to ensure that the Section 7.12 contributions associated with DA-51/2024 are paid prior to the issue of an Occupation Certificate.

Housing Productivity Contribution (HPC): Contributions would be applicable to the proposed development being located within the Greater Sydney region. Pursuant to the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024; centre-based child care facilities are considered a form of commercial development, and as such the HPC Unit would be calculated based on square meterage of new GFA. A condition of consent would be imposed requiring the applicant to pay contributions in accordance with the related contribution application CON-5928.

9. RECOMMENDATION

That Development Application DA No. 51/2024 be **approved subject to conditions of consent**.

ATTACHMENTS

1. Conditions of Consent (draft) (Under separate cover)
2. SEPP (Industry and Employment) - Schedule 5 Assessment Criteria (Under separate cover)
3. SEPP (Transport and Infrastructure) - Compliance Tables (Under separate cover)
4. Education and Care Services National Regulations 2011 - Compliance Tables (Under separate cover)
5. Child Care Planning Guideline (CCPG) 2021 - Compliance Tables (Under separate cover)
6. Liverpool Development Control Plan (LDCP) 2008 - Compliance Tables (Under separate cover)
7. NSW Heritage Council General Terms of Approval (Under separate cover)
8. Architectural Plan (Under separate cover)

Item Number:	2
Application Number:	DA-1368/2021
Proposed Development:	Construction and use of a concrete batching plant facility. The proposed development is designated development as per the Environmental Planning and Assessment Regulation 2000.
Property Address	135 Lawson Road, Badgerys Creek
Legal Description:	Lot 2 DP 226912
Applicant:	Hanson Construction Materials Pty Ltd
Land Owner:	Hanson Construction Materials Pty Ltd
Cost of Works:	\$11,601,405
Recommendation:	Refusal
Assessing Officer:	Robert Micallef

1. EXECUTIVE SUMMARY

Council has received a Development Application (DA No. 1368/2021) seeking consent for the demolition of existing structures and the construction and use of a concrete batching plant facility at 135 Lawson Road, Badgerys Creek.

The proposed development is designated development under Clause 14 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000, comprising concrete works that produce pre-mixed concrete exceeding 30,000 tonnes per year.

The proposal was notified for a period of 28 days from 13 April 2022 to 11 May 2022 in accordance with the Liverpool Community Participation Plan 2019. Two (2) submissions were received and raised the following issues of concern which are addressed within the body of the report:

- No assessment has been undertaken to ensure there is no aggravation of existing flood levels or flows as a result of the development.
- Insufficient details on the on-site detention system have been submitted to ensure there is no aggravation of flood levels while attenuating increased concentrated flows on downstream properties.
- The use of the rainwater tanks as part of the WSUD measures does not take into consideration if the rainwater tank storage is full at the time of a storm event, resulting in discharge downstream without water quality treatment.
- Inconsistencies with the Precinct Plan for the Aerotropolis in that the area is identified for higher-order employment focused technology, advanced manufacturing and industry uses.
- The rear of the site is identified to be a 'Park Edge Street' but lacks an appropriate interface.

- The site does not achieve the 40% tree canopy cover.
- No side setbacks which impacts on the future amenity of adjacent properties.

Following an initial assessment by Council, the applicant was provided with multiple opportunities to provide amended information, as demonstrated within the background of the application and associated chronology, however, the proposed development still demonstrates multiple inconsistent with the relevant legislation, precinct plan and development controls.

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 6 May 2024*, as the development falls in the categories of:

4. Sensitive Development

(a) Designated development

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment (EP&A) Act 1979. Based on the assessment of the application, it is recommended that the application be refused for the reasons outlined in this report and the draft reasons for refusal as contained within the attachments.

2. SITE DESCRIPTION AND LOCALITY

2.1 The Site

The subject site is identified as Lot 2 in Deposited Plan 226912 and is commonly known as 135 Lawson Road, Badgerys Creek. The land is situated on the west side of Lawson Road on the block bounded by Elizabeth Drive to the north, Pitt Street to the south and Badgerys Creek itself to the west. Refer to Figure 1.

The site is rectangular with a frontage to Lawson Road of 60.96m. The side boundaries measure 322.23m. The overall site area is 20,250m². The site currently contains a disused dwelling house and brick garage located close to the front of the property. The remainder of the land is vacant with limited trees and a small filled in dam at the rear. An unpaved driveway is located in the northeastern corner of the site.

The land falls gently and steadily from the front to the rear, with a level difference of almost 10m (RL 59.73 and RL 49.92).

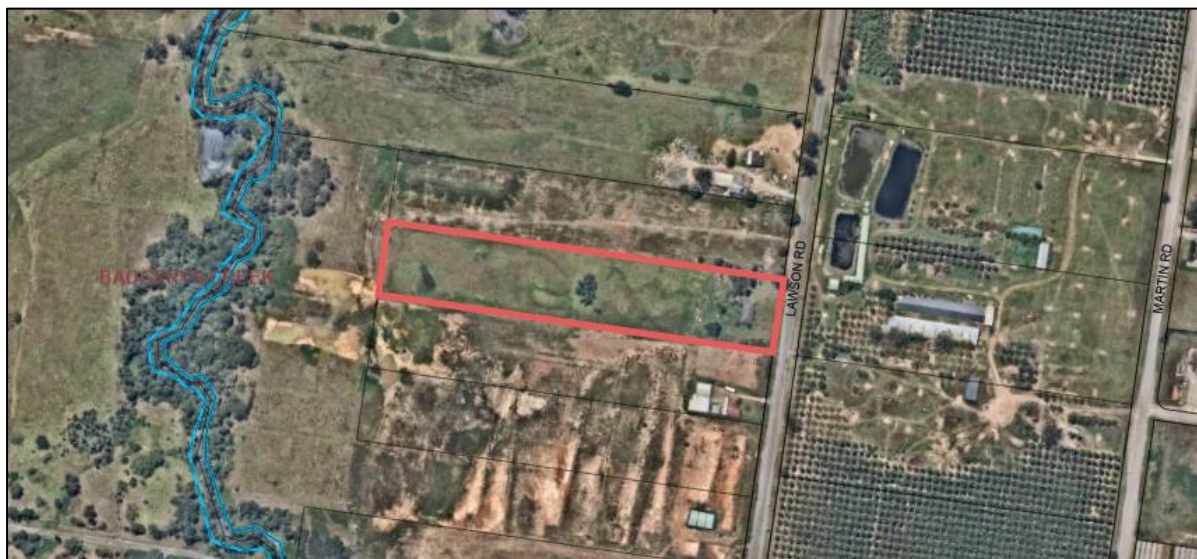


Figure 1: Aerial view of the site and locality.

2.2 The Locality

The area is characterised by single storey structures primarily rural-residential in purpose. The area is broadly rural in its current form however is situated within the northern part of the Badgerys Creek Precinct of the Aerotropolis and is close to Elizabeth Drive and Nancy-Bird Walton Airport and is therefore expected to substantially change in the future.

The purposes of the land around the site include:

- North: Single storey dwelling and detached garage at 125 Lawson Road
- South: Single storey dwelling with detached garage and outbuilding at 145 Lawson Road.
- East: Large agricultural land use comprising a single storey dwelling and multiple ancillary structures including greenhouses and awnings at 75 Martin Road.
- West: The rear portion of 165 Lawson Road. Badgerys Creek is the rear boundary and is approximately 100m from the site's rear boundary.

More broadly, Lawson Road and the adjacent Martin Road (east) are primarily rural-residential streets with some agricultural uses (greenhouses, poultry farms), scrap yards and landscaping material supply businesses. A quarry and brick manufacturer is located approximately 1.5km to the south.

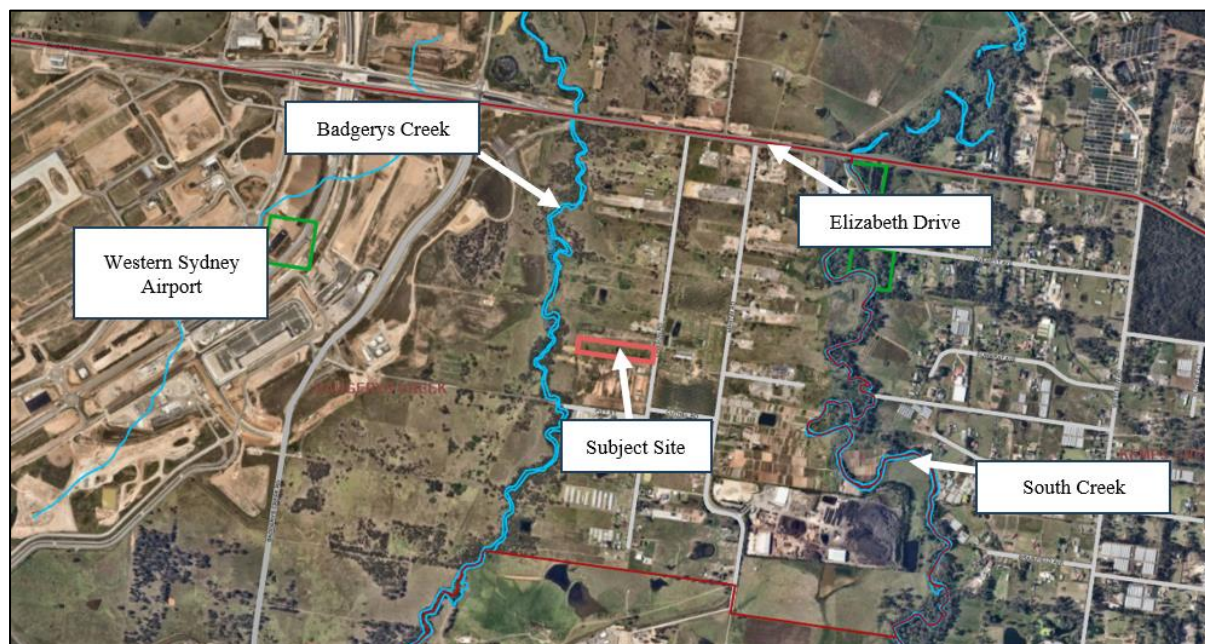


Figure 2: Aerial view of the locality.

3. BACKGROUND/HISTORY

- 29 November 2021 – The subject DA was lodged with Council.
- 2 February 2022 – Request for information sent from clearing house process requesting environmental health concerns including contamination, acoustic, air quality and wastewater matters, cost of works confirmation and drainage plans.
- 22 February 2022 – Amended information received.
- The application was notified and advertised between 13 April 2022 and 11 May 2022. Two (2) submissions were received.
- 29 September 2022 – Further information provided from applicant in response to Sydney Water and traffic concerns.
- The applicant submitted additional information in January and February 2023 in response to the submission's available referrals from internal and external agencies, as well as design changes to the proposal.
- 24 March 2023 – A site inspection was carried out with the applicant.
- The application was reviewed by Council's Design Excellence Panel on 11 May 2023 which raised concerns with the design.
- The application was deferred for a request for additional information (RFI) on 1 June 2023. In summary, the request consisted of the following:
 - Adopt the measures and rectify the issues raised by the Design Excellence Panel in their minutes.

-
- The Environmental Impact Assessment must address the objectives and principles of the Western Sydney Aerotropolis Plan 2020.
 - Further detail is required on how the proposed storage area, parking and office area within the Public Safety Area is permissible.
 - Demonstrate how the development will not prejudice the future park edge road at the rear of the site.
 - The northern side driveway is to be relocated beyond the TPZ of the highly significant mature tree at the north-eastern corner of the site.
 - Confirmation that trucks entering and exiting the premises and travelling on Lawson Road have been considered in the acoustic assessment, as well as peak operation.
 - The relevant consultant reports must be updated to reflect the relocated development closer to the dwellings on adjoining properties.
 - A demolition plan must be submitted.
 - A Waste Management Plan must be submitted for the demolition stage.
 - Details of the 4m high acoustic wall are to be provided on the plans.
 - A landscape plan is to be prepared to illustrate the new plantings specified by the Environmental Impact Statement.
 - A materials and finishes schedule is to be submitted.
 - Sydney Water advised the site will not be appropriately serviced until 2026/2027 for wastewater and only domestic water connection was available. The use of domestic water connection would be inadequate for the new development, resulting in inadequate dust mitigation measures being achieved for the development thus resulting in the development being more closely defined as an offensive industry.
 - An Accredited Service Provider is to be engaged to ensure an adequate connection is available.
 - Confirm whether the 10% loss in wastewater runoff is directed to Badgerys Creek.
 - Engineering referral comments including the need for an easement to discharge to the creek, additional detail for the stormwater plan, a Water Management Strategy, OSD must be gravity drained and display all water quality devices.
 - Traffic referral comments including the assessment and commitment to required interim upgrades at Lawson Road and Elizabeth Drive to accommodate the heavy truck movements generated by the development, preparation of a Road Safety Audit for right turning vehicles into and out of Lawson Road, and address issues raised by Western Sydney Airport Co. and TfNSW.
 - Environmental Health referral comments including the provision of a peer reviewed Preliminary Site Investigation, the submission of a Stage 2 Detailed Site Investigation and Remediation Action Plan if required, a peer reviewed Environmental Impact Assessment, further information on the acoustic mitigation measurements due to exceedances proposed, the submission of a Noise Management Plan, a Wastewater Management Plan, Operational Environmental Management Plan, and further information on the environmental safeguards of the operation.
 - The above issues result in the development being defined as an offensive industry, a type of heavy industry, which is prohibited within the zone.
- 20 July 2023 – Additional information submitted.

- The Design Excellence Panel reviewed the amended application a second time on 9 November 2023.
- Further additional information was submitted on 20 January 2024 in response to DEP minutes and submissions from external agencies. Council advised that this information would not be accepted and the application would be determined based on information previously submitted as the application was to be determined based on the current information, subject to the contributions plan coming into effect.
- January and February 2024 - Correspondence between the applicant and CEO of Liverpool Council regarding the application. Meeting held between these parties early March 2024 and a direction was made that the information submitted in January 2024 was to be assessed by Council.
- 10 April 2024 - RFI issued to applicant on 10 April 2024. A summary of the requested information includes the following:
 - Permissibility issue still outstanding due to noise impacts of the development
 - Inconsistencies with the precinct plan, including the road network and road construction
 - Landscaping and site plan details
 - PV Panel locations
 - Waste management
 - Acoustic assessment concerns including impacts on sensitive receivers and acoustic wall details
 - Noise management plan
 - Sydney Water feasibility application
 - Public Art concerns
 - Wastewater servicing and on-site sewage management
 - Concerns with the vehicle/ equipment wash bays
 - Operational Environmental Management Plan
 - Civil engineering and stormwater concerns
 - Traffic safety and management
- Subsequent meeting held on 30 April 2024 to discuss RFI items.
- 24 July 2024 - The City of Liverpool Aerotropolis s7.12 Contributions Plan 2024 was adopted
- 23 September 2024 – Response to RFI made.

4. DETAILS OF THE PROPOSAL

The development application was submitted for the construction and use of a concrete batching plant facility at 135 Lawson Road, Badgerys Creek.

Due to the scale of the operation, the proposed development is designated development under Clause 14 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000, comprising concrete works that produce pre-mixed concrete exceeding 30,000 tonnes per year.

On 24 January 2023, additional information was submitted that introduced the demolition of the existing structures and transport depot, to comply with the development allowed in the public safety area. Subsequent amendments have retained this general layout. The current site plan and floor plan is illustrated below.

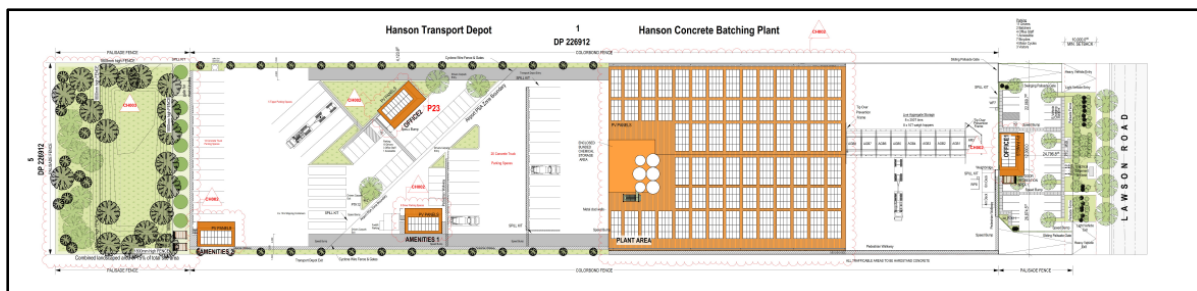


Figure 3: Overall Site Plan of the development.

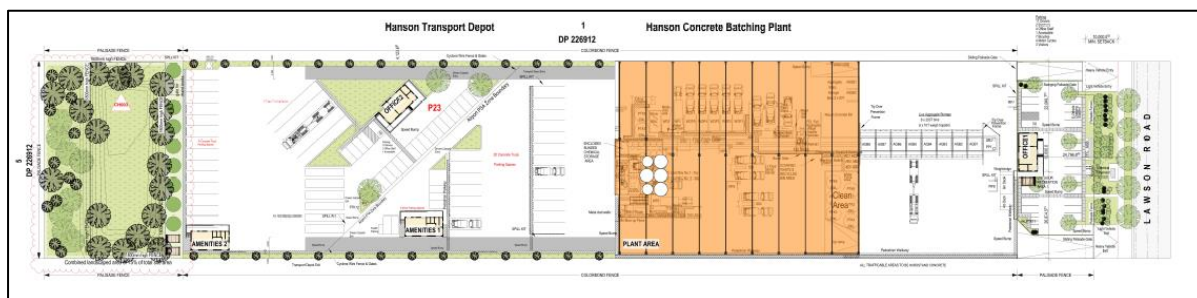


Figure 4: Overall Ground Floor Plan of the development.

In its current form, the proposed is now defined as a mixed-use development consisting of a concrete batching facility and transport depot. Details of the proposal are provided as follows:

Demolition

- Demolition of all existing structures.
- Removal of all vegetation.

Concrete Batching Facility

- Production up to 170,000m³ of concrete per annum. The proposed facility will comprise the following main components:
 - Aggregate storage bins and conveyors, a batching tower where inputs are weighed and discharged into concrete agitator trucks (including an area for storage of additives and admixtures) and slump stands.
 - A range of ancillary components including truck washout facilities; water recycling system; ancillary site office and staff amenities; and car and truck parking facilities.
 - Have a production capacity of up to approximately 240m³ per hour, totalling approximately 170,000m³ of concrete per annum (or some 400,000 tonnes).

Transport Depot

- Located within the Public Safety Area at the western end of the site. See Figure below.
- Used for parking a range of vehicles and other related equipment including concrete agitator trucks, aggregate tippers and containers for equipment storage.
- Based on expected usage, up to 15 people would pass through the Transport Depot on a daily basis, but this part of the development would not be permanently occupied and is likely to be unoccupied at any given time on any given day.



Figure 5: Extent of Public Safety Area

General Details

- Up to approximately 76,000 truck movements per annum, mainly comprising concrete agitator trucks for outbound products, and up to 19 tippers, 25 metres B-double tippers and cement tankers for inbound materials (comprising aggregates and cement), or approximately 300 trucks per day.
- Employ up to 37 employees or contractors.
- Operate 24 hours 7 days a week.
- 2 site offices and 2 amenity buildings
- Include 90 parking spaces for trucks, employees, and visitors across all parts of the site (includes spaces within transport depot part of site).
- 2.5m high noise wall along the north and southern property boundaries.
- Landscaping and drainage.
- Internal outdoor recreation spaces for workers.
- Signage across the site.
- Artwork within the site.



Figure 6: Envisioned Site Elevations



Figure 7: Perspective from Lawson Road



Figure 8: Perspective from rear of the site



Figure 9: Envisioned Eastern Streetscape Elevation (Lawson Road)

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following planning instruments/ policies/ plans applicable to the proposed development area as follows:

- Environmental Planning and Assessment Regulation 2000.
- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Transport and Infrastructure) 2021.
- State Environmental Planning Policy (Industry and Employment) 2021.
- State Environmental Planning Policy (Precincts – Western Parklands City) 2021.
- Western Sydney Aerotropolis Precinct Plan (September 2024).

- Western Sydney Aerotropolis Development Control Plan 2020 – Phase 1.

Contributions Plans

- City of Liverpool Aerotropolis s7.12 Contributions Plan 2024

6. ASSESSMENT

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

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

(a) Environmental Planning and Assessment Regulation 2000

The EP&A Regulation 2000 applies to the subject development as the savings provisions within Schedule 6 of the EP&A Regulation 2021 states that the 2000 Regulation applies to development applications submitted but not finally determined before 1 March 2022.

Designated Development

The EP&A Regulation 2000 defines a designated development in Part 1 of Schedule 3. As relevant to the application, a designated development is defined under Clause 14 - Concrete works as:

- “(1) Concrete works that produce pre-mixed concrete or concrete products and—*
- (a) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year of concrete or concrete products, or*
 - (b) that are located—*
 - (i) within 100 metres of a natural waterbody or wetland, or*
 - (ii) within 250 metres of a residential zone or dwelling not associated with the development.*
- (2) This clause does not apply to concrete works located on or adjacent to a construction site exclusively providing material to the development carried out on that site—*
- (a) for a period of less than 12 months, or*
 - (b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for that development.”*

The Environmental Impact Statement prepared by Ethos Urban has stated the proposal is forecast to produce 170,000m³ of concrete annually, equating to 400,000 tonnes. Consequently, the threshold under (1)(a) has been met.

Additionally, the test under (1)(b)(ii) has also been met as the site is within 250 metres of a residential dwelling/s not associated with the development, with many dwelling house uses still in place located along Lawson Road.

It is noted that the bank of Badgerys Creek to the west may fall within 100m from the western boundary of the site, however, the concrete batching plant is located beyond this 100m buffer due to the setbacks and public safety area over the site.

The exclusion clause under (2) is not applicable to the proposal.

Consequently, the proposal is designated development. A referral of the Environmental Impact Statement provided with the application was made the EPA who have not supported the application at this stage.

Determination of Application

Under Clause 271, a development application in relation to land shown on the Land Application Map under State Environmental Planning Policy (Western Sydney Aerotropolis) must not be determined by the consent authority unless a contributions plan has been approved for the land to which the development relates. Subclause (2)(b) permits approval without a contributions plan if the applicant has entered into a planning agreement with a planning authority for the matters that may be the subject of a contribution plan.

At the time of lodgement, there was no contributions plan in place for the Western Sydney Aerotropolis area. A contributions plan, the City of Liverpool Aerotropolis s7.12 Contributions Plan 2024, was adopted on 24 July 2024 and therefore, the application can now be determined.

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021 as the proposal involves a change of use of land with the potential under the SEPP 55 (previous) guidelines to be a site that could be contaminated (*agricultural/horticultural activities*). Therefore, under the SEPP 55 (previous) guidelines the subject site is identified as a site that could be 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.

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to	the carrying out of any development on land unless:
(a) it has considered whether the land is contaminated, and	A Stage 1 Preliminary Site Investigation was submitted that identified areas of environmental concern and recommended a Stage 2 Detailed Site Investigation be prepared.
(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 Stage 2 Detailed Site Investigation was submitted with the application and demonstrated the site is suitable for the development and a number of recommendations have been made for the proposal which is able to be conditioned if consent were to be granted.
(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.	A detailed Remediation Action Plan is not deemed to be required for the development and the Phase 2 Detailed Site Investigation has advised of a number of recommendations which can be imposed for the development, which can be conditioned if consent were to be granted.

Council's Environmental Health Officer requested the Stage 2 Detailed Site Investigation to be prepared and this was provided. This was reviewed by Council's EHO who have advised that the land is suitable for the proposal and that the recommendations in the report can be conditioned if consent is granted.

Based on the above assessment, the proposal is considered that the proposed development satisfies the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021.

(c) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Note: Chapters 7 – 12 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 were repealed on 21 November 2022. However, Part 6.6 of the SEPP states these former repealed provisions continue to apply to a development application made, but not yet determined, on or before the date of the repeal. Given that DA-1368/2021 was lodged and has not been determined prior to the date of the repeal, the subject application will continue to be assessed under the relevant former provisions in Chapters 7-12 of the SEPP (Biodiversity and Conservation) 2021 (Biodiversity SEPP).

The subject land is located within the Hawkesbury-Nepean Catchment and as such Chapter 9 – Hawkesbury-Nepean River of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, formerly the Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997), applies to the application.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

When a consent authority determines a development application, planning principles are to be applied (Clause 9.3). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 9.4 and Clause 9.5), and compliance with such is provided below.

Clause 9.4 General Planning Considerations	Comment
(a) the aims of this plan,	The plan aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
(b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy	The strategies are applied to this planning assessment in the table under Clause 9.5
(c) whether there are any feasible alternatives to the development or other proposal concerned	The development in its current form is prohibited development and therefore, changes to the application or alternative land uses need to be considered.
(d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored	Council's Land Development Engineers have supported the proposal in its current form, however consideration for the specific stormwater requirements of development in the Aerotropolis have not been adequately considered. Further, Council's Floodplain Engineers and Sydney Water are not satisfied with the stormwater arrangements with the proposed development and how the proposal meets the provisions of the Blue-Green Infrastructure Network in accordance with the Precinct Plan. Therefore, insufficient information has been provided to satisfy these requirements and stormwater impacts in terms of water quality and quantity of the development have not been adequately addressed.
Clause 9.5 Specific Planning Policies and Recommended Strategies	Comment
(1) Total catchment management	The extent of the impact of the development of the total catchment is unclear without further stormwater details to demonstrate they are adequate.
(2) Environmentally sensitive areas	The site is not part of an environmentally sensitive area.
(3) Water quality	See above in 9.4(d).
(4) Water quantity	See above in 9.4(d).
(5) Cultural heritage	The site is identified in the precinct plan as containing moderate Aboriginal cultural sensitivity. The proposed development is required to address the Recognise Country: Guidelines for development in the Aerotropolis published in November 2022 as it is significant development. Further, the proposed development has not considered the guidelines which are required to be addressed if development consent were to be granted.
(6) Flora and fauna	The site is identified as biodiversity certified land and also not impacted by any high biodiversity area.
(7) Riverine scenic quality	Not applicable.
(8) Agriculture/aquaculture and fishing	Not applicable.
(9) Rural residential development	Not applicable.
(10) Urban development	Not applicable.
(11) Recreation and tourism	Not applicable.
(12) Metropolitan strategy	The proposal is generally consistent with the Metropolitan Strategy by contributing to development in support of the Aerotropolis.

As insufficient information has been submitted to address the above criteria for consideration and therefore, the proposal has not satisfied the provisions of Chapter 9 of SEPP (Biodiversity and Conservation) 2021. The proposal is therefore unable to be supported.

(d) State Environmental Planning Policy (Transport and Infrastructure) 2021

The proposal is identified as traffic-generating development requiring concurrence from Transport for NSW (TfNSW) under Clause 2.122 and Schedule 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021. A table addressing the provisions of Clause 2.122 is found below.

Considerations	Comments
2.122 Traffic-generating development	
(1) This section applies to development specified in Column 1 of the Table to Schedule 3 that involves— (a) new premises of the relevant size or capacity, or (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.	The subject site is for an industry and includes access to a road and under the provisions of Column 2, the development is: 20,000m² in site area or (if the site area is less than the gross floor area) gross floor area The proposed development is traffic-generating development requiring referral to TfNSW.
(3) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this section applies that this Chapter provides may be carried out without consent unless the authority or person has— (a) given written notice of the intention to carry out the development to TfNSW in relation to the development, and (b) taken into consideration any response to the notice that is received from TfNSW within 21 days after the notice is given.	The application is not being carried out by a public authority or person acting on behalf of a public authority.
(4) Before determining a development application for development to which this section applies, the consent authority must— (a) give written notice of the application to TfNSW within 7 days after the application is made, and (b) take into consideration— (i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and (ii) the accessibility of the site concerned, including— (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and (iii) any potential traffic safety, road congestion or parking implications of the development.	The application was referred to TfNSW/ NSW Roads and Maritime for comment and TfNSW have provided comments which are being taken into consideration as part of this application. TfNSW provided comments requesting further information regarding the road safety review, which was requested from the applicant. The applicant has stated that further correspondence from TfNSW was provided saying this is no longer required, however, there is no record of this on the Portal or correspondence submitted from the applicant.

(e) State Environmental Planning Policy (Industry and Employment) 2021

Signage is proposed as part of this development application. As such, an assessment of the signage provisions within State Environmental Planning Policy (Industry and Employment) 2021 (formerly State Environmental Planning Policy No 64—Advertising and Signage), specifically Chapter 3 – Advertising and Signage, is to be carried out.

Clause 3.6 of the SEPP states:

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied—

- (a) that the signage is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 5.*

The proposed development includes business identification signage and other associated directional and wayfinding signage around the development in the Hanson theme. A signage detail plan was submitted with the application as seen below:

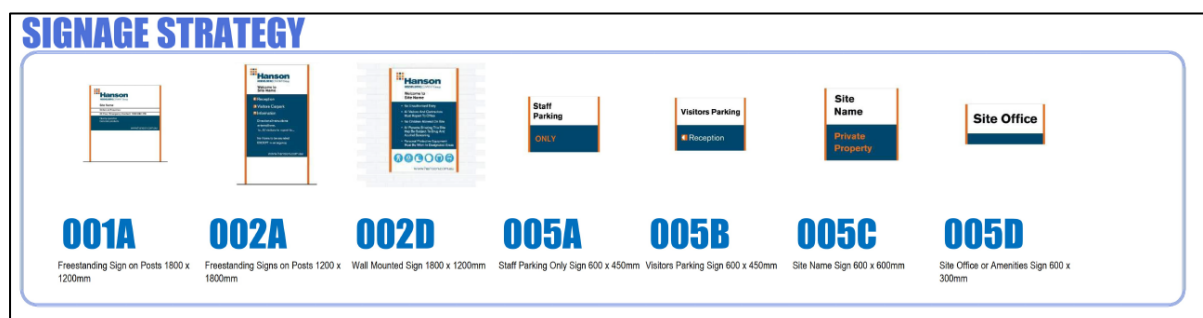


Figure 10: Proposed signage details

The proposed signage has been assessed in accordance with Schedule 5 Assessment criteria in the table below.

Clause	Provision	Proposed	Compliance
Schedule 5 Assessment criteria			
1 Character of the area	- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? - Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposed signage is compatible with the desired future character of the locality and is consistent with the theme and style for this type of development.	Complies
2 Special areas	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?	The proposed signage is unlikely to detract from any special areas including the future public park located in close proximity to the site.	Complies

3 Views and vistas	• 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?	As above. The proposal is unlikely to block any views or vistas and the signage would not dominate any skylines or viewing rights of other advertisers.	Complies
4 Streetscape, setting or landscape	• Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? • 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?	The signage is designed in a manner which is compatible with the streetscape and is appropriate for its setting. The scale and proportions of the signage are complementary of the desired locality. The signage would be implemented to provide some visual interest and is of a simplistic nature which is not cluttered. The signage is not intended to screen unsightliness and it does not also require ongoing vegetation management.	Complies
5 Site and building	• 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?	The signage complements the proposal and is compatible with the scale, proportion and style of development. The signage is in fitting with the character of the zoning and is of a size which is unlikely to compete with the built form.	Complies
6 Associated devices and logos with advertisements and advertising structures	• Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The signage does not require safety devices, lighting and the logos are integral to the business identification.	Complies
7 Illumination	• Would illumination result in unacceptable 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	The signage is not proposed to be illuminated	Not Applicable

	be adjusted, if necessary? • Is the illumination subject to a curfew?		
8 Safety	• 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?	The proposed signage would be unlikely to reduce safety on a road or for pedestrians or cyclists and would not obstruct sightlines.	Complies

The proposed signage is consistent with the provisions of SEPP (Industry and Employment) 2021 and is supported subject to pertinent conditions being applied if approval were granted.

(f) State Environmental Planning Policy (Precincts—Western Parkland City) 2021

State Environmental Planning Policy (SEPP) (Western Sydney Aerotropolis) 2020 came into effect on 1 October 2020 and the subject development application was lodged after this date and therefore the DA was not lodged before the commencement of this Policy and the Aerotropolis provisions apply. On 1 March 2022, SEPP (Precincts – Western Parkland City) 2021 was created to consolidate a number of planning instruments into one legislative document (among other newly consolidated SEPPs) to streamline the planning system. The provisions of SEPP (Western Sydney Aerotropolis) 2020 were transferred over into this newly created Policy. Under the provisions of Section 1.4 Transferred Provisions of the newly formed SEPP and subject to the Interpretation Act 1987, the transfer of a provision does not affect the operation or meaning of the provision and the transferred provision is to be construed as if it had not been transferred.

As such, SEPP (Precincts – Western Parkland City) 2021, Chapter 4 Western Sydney Aerotropolis applies to the subject development. Chapter 4 of State Environmental Planning Policy (Precincts—Western Parkland City) 2021 – Western Sydney Aerotropolis aims to facilitate development in the Western Sydney Aerotropolis in accordance with the objectives and principles of the Western Sydney Aerotropolis Plan.

(i) Zoning and Permissibility

The subject land is zoned ENT - Enterprise pursuant to State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4 Western Sydney Aerotropolis. Refer to the figure below.

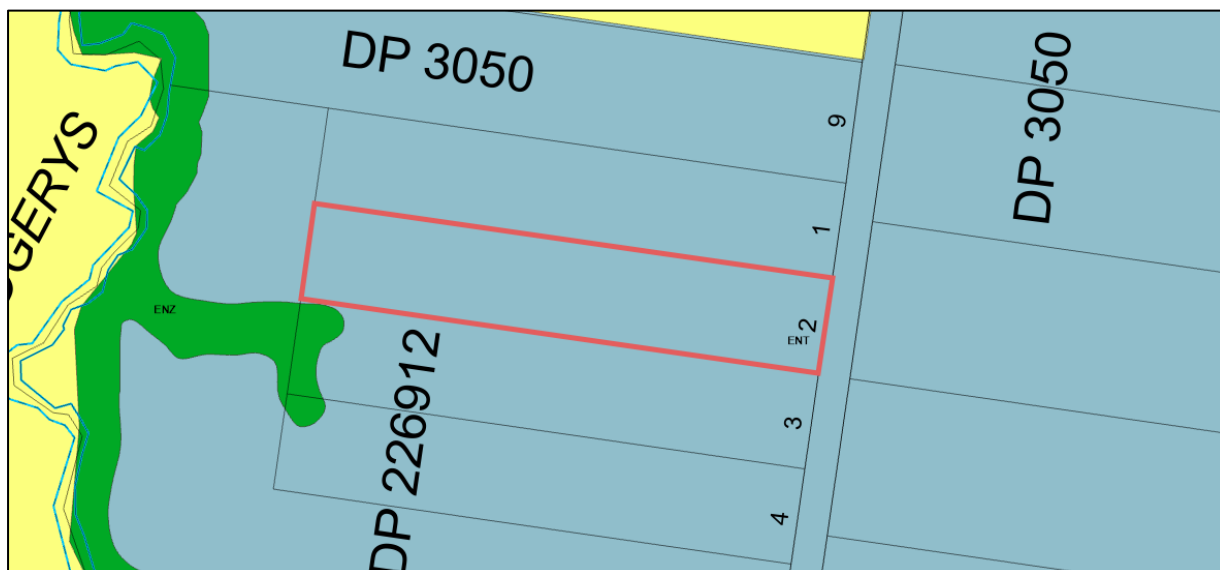


Figure 11: Land Zoning Map

A concrete batching facility is not a defined land use within the Standard Instrument. The use is most commonly defined as either of the following uses:

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

Note—

General industries are a type of **industry**—see the definition of that term in this Dictionary.

heavy industry means a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored or produced, and includes—

- (a) hazardous industry, or
- (b) offensive industry.

It may also involve the use of a hazardous storage establishment or offensive storage establishment.

Note—

Heavy industries are a type of **industry**—see the definition of that term in this Dictionary.

A general industry is not listed as prohibited and is therefore permissible with consent. Heavy industries, however, are listed as prohibited.

The characterisation of the use is discussed further below.

A transport depot is defined as:

transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.

A transport depot is not listed as prohibited and is therefore permissible with consent.
Characterisation of the Concrete Batching Facility

A defining aspect of light, general or heavy industry is the level of impact on other development due to the use. A heavy industry is stated to require separation from other development because of the nature of the processes involved, or the materials used, stored or produced. A light industry is the reverse – where the industrial activity has minimal impacts and separation. A general industry is an industry that falls within neither definition.

The assessment of the application has determined that the concrete batching facility is defined as a heavy industry due to the level of impact the operation will have on surrounding development with particular regard to the noise impacts on the existing rural residential properties in proximity to the industry for both operations of the concrete batching plant as well as traffic noise associated with trucks travelling along Lawson Road.

The acoustic issues are discussed in more detail later within the report. In summary, the proposal was initially submitted with 4m high acoustic walls on the side boundaries to mitigate the noise impact. During the assessment, additional information was submitted that removed these acoustic walls on the premise that the adjoining remnant dwellings were now prohibited in the zone and were not required to adhere to any noise criteria for residential properties. This position is contested, and noise mitigation measures are to be required as these dwellings still have an existing use over the land. A 2.5m was reinstated for the side boundaries in the most recent iteration of the development however noise concerns are still present.

Subsequent further information was provided with the application in attempts to address noise impacts of the proposal. The information provided intends to create a noise agreement between the existing sensitive receivers along Lawson Road. Noise agreements with owners are not generally a supportable option in regard to dealing with noise concerns with some factors such as a changing of land ownership for which agreements are carried out between as well as a development consent to operate with the subject land applied rather than relating to a particular person whether that be the applicant and/or owner of the site or an adjoining property. In order for any consideration of this to be carried out if it were a valid option, insufficient information has still been provided for Council to even consider this. Further, there are deficiencies in the noise impact assessment which are also not addressed and require further information.

Further, the proposed development may also generate potential offensive odour impacts on neighbouring premises from potential odour associated with wastewater and diesel/exhaust fumes of trucks facilitating system pump outs, due to the proposed on-site sewage management system. Insufficient information has also been provided for this element of the proposal.

Given the above, the development is deemed to be an offensive industry. An Offensive Industry is defined as follows:

offensive industry means a building or place used to carry out an industrial activity that would, when carried out and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the activity from existing or likely future development on other land in the locality), emit a polluting discharge (including, for example, noise) in a manner that would have a significant adverse impact in the locality or on existing or likely future development on other land in the locality.

An offensive industry is defined in the Standard Instrument as a heavy industry and is prohibited in the zone. Therefore, the subject development is a prohibited land use, and the application is unable to be supported.

(ii) Zone Objectives

The Enterprise zone has the following zone objectives:

- *To encourage employment and businesses related to professional services, high technology, aviation, logistics, food production and processing, health, education and creative industries.*
- *To provide a range of employment uses (including aerospace and defence industries) that are compatible with future technology and work arrangements.*
- *To encourage development that promotes the efficient use of resources, through waste minimisation, recycling and re-use.*
- *To ensure an appropriate transition from non-urban land uses and environmental conservation areas in surrounding areas to employment uses in the zone.*
- *To prevent development that is not compatible with or that may detract from the future commercial uses of the land.*
- *To provide facilities and services to meet the needs of businesses and workers.*

The proposed development is not deemed to be contradictory of most of the objectives of the zone as specified within the SEPP as the proposal would provide employment opportunities and services for workers and businesses and is capable of promoting the efficient use of resources. Although the use in its current form is defined as a heavy industry due to impacts on existing residential sites, if capable of meeting the definition of a general industry, the concrete batching plant could be considered compatible with the future commercial uses of the land.

(iii) Key Development Controls

The following key clauses are relevant to the assessment of the application.

Development Provision	Requirement	Proposed	Comment
4.1 Aims of Chapter	The aims of this Chapter are as follows— (a) to facilitate development in the Western Sydney Aerotropolis in accordance with the objectives and principles of the Western Sydney Aerotropolis Plan, (b) to promote sustainable, orderly and transformational development in the Western Sydney Aerotropolis, (c) to ensure development is compatible with the long-term growth and development of the Western Sydney Airport (including in relation to the operation of the Airport 24 hours a day) and other critical transport infrastructure,	The proposed development does not satisfy all the aims of this chapter in its current form. Although it is not deemed to be contradictory to many aims in relation to providing a compatible development with the Airport, promoting employment opportunities and promoting sustainable development within the Aerotropolis, there are a number of concerns with how the development is impacts on the natural environment, Aboriginal cultural heritage and delivery of infrastructure. Further details regarding the	Does not comply

Development Provision	Requirement	Proposed	Comment
	(d) to promote employment and world-class innovation and provide for residential development in suitable locations, (e) to recognise the physical and cultural connection of the local Aboriginal community to the land and to incorporate local Aboriginal knowledge, culture and tradition into development, (f) to preserve land for future infrastructure development, (g) to protect, maintain and enhance, and to minimise the impact of development on, trees and vegetation, soil quality and the health of waterways and to contribute to the conservation of biodiversity, (h) to recognise and protect the ecological and cultural value of Wianamatta–South Creek.	principles of the Western Sydney Aerotropolis Plan are also found in the Appendices of this report.	
4.15 Demolition	The demolition of a building or work may be carried out only with development consent.	Demolition is proposed under this DA and pertinent conditions can be applied if consent were granted.	Complies with conditions if consent granted
4.17 Aircraft Noise	(a) to prevent certain noise sensitive development on land near the Airport, and (b) to minimise the impact of aircraft noise for other noise sensitive development, and (c) to ensure that land use and development near the Airport do not hinder or have other adverse impacts on the ongoing, safe and efficient 24 hours a day operation of the Airport.	Site mapped as Australian Noise Exposure Concept (ANEC) of between 30 and 35 and 35+, for the future second runway. It is noted that for the single runway operations, the site is unlikely to be impacted within the ANEC noise mapping. The proposed development is not classified as a noise sensitive development and is unlikely to have any impacts on the safe operations of the future airport in this regard.	Complies
4.18 Building Wind shear and turbulence.	The objective of this section is to safeguard Airport operations from wind shear and turbulence generated by buildings.	The site is not located within the wind shear area.	N/A
4.19 Wildlife Hazards	The objective of this section is to regulate development on land surrounding the Airport where wildlife may present a risk to the operation of the Airport.	The subject site is identified as being a 'relevant development' within the 3km buffer area on the Wildlife Hazards Map. As such, the provisions of Clause apply to the application. The proposal was referred to	Complies with conditions if consent granted

Development Provision	Requirement	Proposed	Comment
		Western Sydney Airport Co. who provided comments on landscaping and wildlife, which can be conditioned if consent were granted.	
4.20 Wind Turbines	The objective of this section is to regulate the construction of wind turbines and wind monitoring towers on land within 30 kilometres of the Airport.	The proposal does not propose any wind turbines.	N/A
4.21 Lighting	The objective of this section is to safeguard Airport operations from the risk of lighting and reflectivity distractions for pilots.	The site falls within Light Control Zone B. The proposal does not fall under development specified under clause (2)(a). The proposal was referred to Western Sydney Airport Co. who provided comments on lighting, which can be conditioned if consent were granted.	Complies with conditions if consent granted
4.22 Airspace Operations	(1) The objectives of this section are— (a) to provide for the effective and ongoing operation of the Airport by ensuring that its operation is not compromised by development that penetrates the prescribed airspace for the Airport, and (b) the relevant Commonwealth body does not object to the development. (2) This section applies to development on land shown on the Obstacle Limitation Surface Map that is a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996 of the Commonwealth.	The proposal is within the RL 100-110 obstacle limitation surface. The proposal is not deemed to be for a controlled activity within the meaning of Part 12, Division 4 of the Airports Act 1996 of the Commonwealth as the highest point of the development has an RL of 81.5. The proposal was referred to Western Sydney Airport Co. who provided comments on airspace operations, which can be conditioned if consent were granted, especially in relation to the construction phase of the development.	Complies with conditions if consent granted
4.23 Public Safety	The objective of this section is to regulate development on land on which there is an appreciable risk to public safety from the operation of the Airport.	The land is partially located within the Public Safety Area. The site has been amended to incorporate a transport depot use within this area of the site and this is considered to be acceptable for the development.	Complies
4.23A Operation of certain air transport facilities	The objective of this section is to regulate development that may impact the operation of certain air transport facilities.	The land is not within the Building Restricted Area.	Complies
4.24 Flood planning	(1) The objectives of this section are— (a) to minimise the flood risk to life	The buildings do not sit within the flood planning areas in the Aerotropolis SEPP, however	Insufficient information provided

Development Provision	Requirement	Proposed	Comment
	and property associated with the use of land, and (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, and (c) to avoid significant adverse impacts on flood behaviour and the environment.	Council's mapping demonstrates a portion of the western side of the site as flood prone land. The application was referred to Council's Floodplain Engineers who require further information regarding Water Cycle management, overland flows, disposal of stormwater and Water Sensitive Urban Design. It is also noted that Sydney Water is the Regional Stormwater Authority in the Area and stormwater must be in accordance with their guidelines.	
4.25 Preservation of trees and vegetation in Environment and Recreation Zone and Cumberland Plain	1) The objectives of this section are— (a) to preserve the amenity of the Western Sydney Aerotropolis through the preservation of trees and vegetation, and (b) to promote the conservation of, and minimise the impact of development on, native vegetation.	The site does not include land within the Environment and Recreation zone or include clearing of any existing native vegetation on the High Biodiversity Areas Map.	N/A
4.25A Clearing of Native vegetation	This section applies to land shown as "existing native vegetation" on the High Biodiversity Value Areas Map.	As above	N/A
4.26 Heritage Conservation	1) The objectives of this section are— (a) to conserve the environmental heritage of the land to which this Chapter applies, and (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, and (c) to conserve archaeological sites, and (d) to conserve Aboriginal objects and Aboriginal places of heritage significance	An Aboriginal Cultural Heritage Due Diligence Assessment was provided at the time of lodgement. However, further reporting is required under Clause 4.28B of the SEPP. Please refer to comments in that section.	Insufficient information provided
4.27 Transport Corridors	(1) Development consent must not be granted to the following development unless the consent authority has obtained the concurrence of Transport for NSW— (a) development on transport corridor land with a capital investment value of more than	The proposed development is not on transport corridor land or within 25 metres of it.	N/A

Development Provision	Requirement	Proposed	Comment
	\$200,000, (b) development that involves the penetration of ground to a depth of at least 2 metres below ground level (existing) on land within 25 metres (measured horizontally) of transport corridor land.		
4.28 Warragamba Pipelines	Development consent must not be granted to development on land shown as "Warragamba Pipeline" on the Warragamba Pipelines Map unless the consent authority— (a) has obtained the concurrence of Water NSW, and (b) is satisfied that the development will not adversely affect— (i) the quantity or quality of water in the Warragamba Pipelines controlled area (declared under the Water NSW Act 2014), or (ii) the operation and security of water supply pipelines from Warragamba Dam to Prospect Reservoir and associated infrastructure.	The land is not within pipeline areas as per the State Environmental Planning Policy (Precincts— Western Parkland City) 2021 Warragamba Pipelines Map.	N/A
4.28A Sydney Science Park	This section applies to land identified as "Sydney Science Park" on the Sydney Science Park Map.	Land not mapped within the Sydney Science Park	N/A
4.28B Aboriginal cultural guidelines	Development consent must not be granted to development on land to which this Policy applies unless the consent authority has considered <i>Recognise Country: Guidelines for development in the Aerotropolis</i> published in November 2022 on the Department's website.	The SEPP does not have any savings provisions for this Clause and as such, the proposed development is required to address the guidelines as it is significant development. Further, the site is identified in the precinct plan as containing moderate Aboriginal cultural sensitivity. The proposed development has not considered the guidelines which are required to be addressed if development consent were to be granted.	Insufficient information provided
4.31 Design Excellence	(1) This section applies to the following development— (a) State significant development, (b) development with a capital investment value of more than \$30 million, (c) development with a site area of at least 10,000m ² , (d) development in relation to a building that has, or will have, 3 or	The site area exceeds 10,000sqm and has been referred to the Design Excellence Panel on two occasions, in which they did not support the development on both occasions. As the Clause only requires the consent authority to take into account the findings of the Design	Does not comply and insufficient information provided

Development Provision	Requirement	Proposed	Comment
	more storeys above ground level (existing). (2) Development consent must not be granted to the development unless— (a) a design review panel reviews the development, and (b) the consent authority takes into account the findings of the design review panel, and (c) the consent authority is of the opinion that the development exhibits design excellence.	Review Panel and due to the type of development proposed under this application (industrial), it is considered that the proposal is able to exhibit design excellence in most regards, taking on recommendations where possible from the DEP comments, subject to conditions if consent were to be granted. However, given the narrow nature of the site, the delivery of the precinct planning outcomes for the locality are unable to be met due to the highly constrained nature of the site, resulting in an unsuitable site for the development. Further, due to the lack of addressing the Recognise Country Guidelines under Clause 4.28B, Design Excellence considerations in regard to Aboriginal heritage have not been thoroughly addressed in the proposed development.	
4.33 Consideration of design excellence	(1) In considering whether development exhibits design excellence for the purposes of this Part, the consent authority must have regard to the following matters— (a) whether the development responds to the physical and cultural connection of the local Aboriginal community to the land, (b) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved, (c) whether the form and external appearance of the development will improve the quality and amenity of the public domain, (d) whether the development detrimentally impacts on view corridors.	As above, due to the lack of addressing the Recognise Country Guidelines under Clause 4.28B and the ability to not meet a number of design objectives in subclause (2), Design Excellence considerations in regard to the proposal have not been thoroughly addressed.	Insufficient information provided
4.39 Development must be consistent	(1) Development consent must not be granted to development on land to which a precinct plan applies unless the consent authority is	The proposed development is inconsistent with a number of provisions within the Precinct Plan. Variations proposed are	Does not comply

Development Provision	Requirement	Proposed	Comment
with precinct plan	satisfied that the development is consistent with the precinct plan.	not supported. Please refer to Western Sydney Aerotropolis Precinct Plan section below.	
4.49 Public Utility infrastructure	(1) Development consent must not be granted to development to which this Division applies unless the consent authority is satisfied that— (a) public utility infrastructure that is essential for the development is available, or (b) the public utility infrastructure will be available when required. (2) In this section— public utility infrastructure includes infrastructure for the following— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage.	The site is deemed to be serviced by electricity, and this is confirmed with support from Endeavour Energy. In regard to the supply of water and disposal of sewage, Sydney Water have advised that the site is not adequately serviced until the planned Sydney Water servicing is in place in 2026/2027 for these services. The proposal intends to provide an on-site sewage management system in the interim, however inadequate information has been provided in order for this to be considered. Also before servicing is provided for water, temporary water management systems are also intended for installation across the site, however it is unclear whether this is satisfactory for Sydney Water and therefore, the requirement for servicing of adequate potable water is needed for the development.	Insufficient information provided

As detailed above, insufficient information has been provided to determine whether the proposal is consistent with the relevant controls in the State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4 Western Sydney Aerotropolis.

(g) Western Sydney Aerotropolis Precinct Plan (September 2024)

As mentioned above, Clause 4.39(1) of State Environmental Planning Policy (Precincts – Western Parkland City) 2021 requires development consent not be granted to development on land to which a precinct plan applies unless the consent authority is satisfied the development is consistent with the precinct plan. The Western Sydney Aerotropolis Precinct Plan (September 2024) applies to the site and an assessment against the provisions of the Precinct Plan is demonstrated in the table within the Appendices of this Report.

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

There are no draft Environmental Planning Instruments that affect the development or the assessment of this application.

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**(a) Western Sydney Aerotropolis Development Control Plan – Phase 1**

The proposed development is subject to the provisions of the Western Sydney Aerotropolis Development Control Plan – Phase 1 (Phase 1 DCP). Although the Western Sydney Aerotropolis Development Control Plan 2022 (Full DCP) is now in effect, as this development application was lodged on 29 November 2021 and was not yet determined prior to the commencement of the full DCP, which came into force on 10 November 2022, a savings provision in the full DCP applies. As a result, the provisions under the Phase 1 DCP apply to this development application.

It is noted that the Phase 1 DCP includes more objective based requirements, called Performance Outcomes, as opposed to development controls, or in the case of the Full DCP namely Benchmark Solutions (as well as performance outcomes), which are the more traditional numerical requirements. As such, a merit-based assessment against these Performance Outcomes will be conducted and although the benchmark solutions are not enforced under the Phase 1 DCP, can assist in supporting a merit-based assessment. Further, many of the DCP Performance Outcomes are linked to the planning outcomes within the Precinct Plan and the Precincts SEPP and as such, many points reflect what has been assessed under the Precinct Plan and Precincts SEPP.

Detailed compliance tables addressing the Phase 1 DCP can be found within the Appendices of this report.

6.4 Section 4.15(1)(a) (iia) – Planning Agreement or any Draft Planning Agreement

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 Regulations 2000 requires the consent authority to consider the provisions of the National Construction Code and Australian Standard for demolition. If approved, appropriate conditions of consent would be imposed. Further as mentioned previously in this report, the development is considered to be designated development under the provisions of Clause 14 of Schedule 3. Also under the Regulations, provisions had been in place regarding the determination of applications prior to the commencement of a contributions plan. As this is now in place, the development application can be determined.

6.6 Section 4.15(1)(b) – The Likely Impacts of the Development**Built Environment**

The proposed built form is largely acceptable from a built form perspective however the proposed development will create adverse impacts on the built environment in regard to noise, non-construction of roads, active transport links and insufficient information regarding stormwater needs to be addressed and therefore the proposal should not be supported.

Natural Environment

The proposed development has not provided sufficient information to adequately assess the impacts on the natural environment, especially in terms of provision of tree canopy coverage, urban heat island effects, stormwater and connection to the blue-green grid envisioned for the area.

Social Impacts and Economic Impacts

The proposed development would likely provide positive economic impacts in the locality and generate employment for up to 37 workers.

The proposal is likely to cause adverse social impacts with the noise and potential odour concerns from the development on nearby existing sensitive residential receivers. Further, the omission of roads has negative social impacts on future people in the area in terms of connectivity and permeability.

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

Given that assessment issues discussed previously in this report, especially with regard to noise and the constrained nature of the site due to being narrower than desired, the site is not suitable for the development in its current form.

6.9 Section 4.15(1)(d) - Any submissions made in relation to the Development.

(a) Internal Referrals

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

DEPARTMENT	COMMENTS
Land Development Engineering	Supported subject to conditions (However, as per flooding referral, further information is needed)
Flooding	Insufficient information provided. Stormwater arrangements are inadequate and lack of detail on how the proposal meets the provisions of the Blue-Green Infrastructure Network in accordance with the Precinct Plan and Sydney Water Requirements. Concerns with overland flows and stormwater design.
Environmental Health	Insufficient information provided. Unable to support based on noise, odour and wastewater.
Traffic	Insufficient information provided regarding amended traffic study and road provisions.
Strategic Planning	Unable to support application based upon permissibility, noise and legislative compliance.
Heritage	Application supported subject to conditions. (Note: this was carried out prior to the Recognise Country requirements coming into effect in which this application is required to address)
Design Excellence Panel	The proposal was referred to the Liverpool Design Excellence Panel on 11 May 2023 and 9 November 2023 and is not supported by the DEP on both occasions. See

	discussion of DEP comments seen within the Appendices of this report.
Landscape	Supported subject to conditions.
Public Art	Not supported. Further information required including better meaningful and connected art and incorporation of First Nations artists as well as design elements of art within the proposal.

(b) External Referrals

The following comments have been received from external agencies:

EXTERNAL DEPARTMENT	COMMENTS
Endeavour Energy	Advice provided.
Sydney Water	Water and wastewater servicing not available. Further information required for the stormwater on site. Applicant provided comments to this in early January, however proposal would require amended plans, management documentation and modelling.
Transport for NSW – Roads and Maritime	Further information required regarding road safety and modelling.
NSW Rural Fire Services	Advice provided.
Western Sydney Airport Co.	Advice provided with recommended conditions as well as items for clarification.
NSW Department of Planning & Environment	No objections.
NSW Environment Protection Agency	Further information required and not supportable until noise concerns are addressed.

(c) Community Consultation

The proposal was notified for a period of 28 days from 13 April 2022 to 11 May 2022 in accordance with the Liverpool Community Participation Plan 2019. Two (2) submissions were received and raised the following issues of concern and are commented against below.

ISSUE 1: Flooding and Stormwater Concerns including:

- **No assessment has been undertaken to ensure there is no aggravation of existing flood levels or flows as a result of the development.**
- **Insufficient details on the on-site detention system have been submitted to ensure there is no aggravation of flood levels while attenuating increased concentrated flows on downstream properties.**
- **The use of the rainwater tanks as part of the WSUD measures does not take into consideration if the rainwater tank storage is full at the time of a storm event, resulting in discharge downstream without water quality treatment.**

Comment: The proposed development has had changes to the stormwater design since the initial iteration of plans from when this submission came. Although Council's Land Development Engineers are generally supportive of the stormwater scheme, consideration for the specific stormwater requirements of development in the Aerotropolis have not been adequately considered. Further, Council's Floodplain Engineers and Sydney Water are not satisfied with the stormwater arrangements with the proposed development and how the

proposal meets the provisions of the Blue-Green Infrastructure Network in accordance with the Precinct Plan. There was also concerns with the treatment of overland flows across the site including impacts on upstream and downstream properties and WSUD measures being adopted within the proposal. These outstanding matters form part of the reasons for refusal

ISSUE 2: Inconsistencies with the Precinct Plan for the Aerotropolis in that the area is identified for higher-order employment focused technology, advanced manufacturing and industry uses.

Comment: In the current form, being a heavy industry, the proposal is a prohibited use and is not deemed to be appropriate in the area. If all offensive issues are met and the use can be classified as a general industry, this is a permissible use in the zone. Although it may not be a high technology style use, the availability of concrete in the locality would be essential to the future operations of the Aerotropolis. This use, when permissible, would complement the development of the vision for the area and also reduces the carbon footprint of future buildings requiring concrete. The plant also integrates innovative technologies and sustainability measures which help in meeting the aims of the Enterprise zone.

ISSUE 3: The rear of the site is identified to be a 'Park Edge Street' but lacks an appropriate interface.

Comment: As identified in the Precinct Plan discussion, the applicant is not delivering any roads as part of the development, and this is not a supported outcome by Council. The omission of the Park Edge Street is unsatisfactory as it is an essential link within the locality and provides an appropriate interface to the adjoining parkland and drainage facilities to the west. The proposed development also lacks its own interface with this future street. Although there is a small recreation area for workers, the development is not oriented to the street well as there is also a drainage basin within this setback area to where the road should be. Further, there is no access or measures for passive surveillance to be effective towards the west.

ISSUE 4: 40% tree canopy cover not met.

Comment: It is acknowledged that this comment came prior to the current iteration of the Precinct Plan or DCPs. The Precinct Plan only speaks to canopy coverage of the collector roads to 40%. The Phase 1 DCP which applies to the proposal does not have a canopy coverage target prescribed and the Full DCP, which does not apply to the development, has a target of 25%. The proposed development provides for a canopy coverage of approximately 12.3% with a greater area of the site being landscaped, being approximately 17.9%.

ISSUE 5: No side setbacks which impacts on the future amenity of adjacent properties.

Comment: It is acknowledged that this comment came prior to the current iteration of the Precinct Plan or DCPs. The Phase 1 DCP does not provide numeric standards for setbacks and the Full DCP does apply setbacks for development. The proposed development has since provided additional landscaped buffers along the side setbacks at the western end of the development; however, the awning structure is built up to the boundary and the plant section of the site is not setback from the sides. Considering the proposal has noise issues, the amenity of adjacent properties is compromised. Further, the lack of delivery of a local

road along the north would have provided a better buffer for the development to sites to the north. Additionally, it is now acknowledged that the owners of all surrounding sites is now the same and the owner of the subject site should consult with the adjoining owners regarding development options in the locality, including roads and noise attenuation as well as how this development may affect their future proposal/s over their land.

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

Given the absence of considerable information sought to clarify key details of the proposal and the impacts of the development on the locality and delivery of the envisioned Aerotropolis Precinct Planning outcomes, the application is not considered to be in the public interest and would set an undesirable precedent.

7. DEVELOPMENT CONTRIBUTIONS

Section 7.12 Development Contributions would be applicable to the proposed development in accordance with the City of Liverpool Aerotropolis s7.12 Contributions Plan 2024. As the development will be refused, no contributions will be applicable to the development.

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, development controls and the relevant codes and policies of Council. Based on the assessment of the application, it is recommended the application be refused.

9. RECOMMENDATION

That Development Application DA No DA-1368/2021 be **refused**.

ATTACHMENTS

1. Draft Reasons of Refusal (Under separate cover)
2. Western Sydney Aerotropolis Precinct Plan Compliance Tables (Under separate cover)
3. Western Sydney Aerotropolis Plan Objectives and Principles (Under separate cover)
4. Western Sydney Aerotropolis Development Control Plan – Phase 1 Compliance Tables (Under separate cover)
5. Liverpool Design Excellence Panel Minutes and Comments (Under separate cover)
6. Collated Plans of Proposal (Under separate cover)

Item Number:	3
Application Number:	DA-1263/2022/A
Proposed Development:	S4.55(1a) Modification Application (DA-1263/2022/A), extension of the operating hours of a mattress shredder within existing resource recovery facility to 7:00am - 6:00pm, Monday to Saturday
Application History:	• 3 January 2023 – DA-1263/2022 was lodged with Council. • 26 August 2024 – DA-1263/2022/A was lodged with Council. • 20 September 2024 – DA-1263/2022/A was initially lodged as a s.4.55(1A) modification. A 'Stop the Clock' letter was issued to the Applicant, requesting withdrawal and re-lodgement as a s4.55(2) application. The Applicant responded with reasons supporting the original s4.55(1A) classification. After reviewing the response, it was agreed to proceed with assessing the proposal as a s.4.55(1A) modification. • 17 October 2024 – Site visit conducted to the existing mattress shredder enclosure. During the visit, it was identified that the increase in the mattress shredder enclosure's floor area and height from what was approved under DA-1263/2022 is already present at the site. Retrospective development consent cannot be granted for these works. The physical changes will be addressed through a building information certificate (BIC). • 23 October 2024 – Request for Information (RFI) issued to applicant. • 22 November 2024 – Additional information provided.
Property Address:	99 Rose Street, Liverpool
Legal Description:	Paciullo Park, Pearce Park & Council Depot Lot 3 DP 82270, Lot 122 DP 1045215, Lot 2 DP 82270, Lot 6 DP 1050036, Lot 12 DP 1089620, Lot 11 DP 1089620, Lot 1 DP 249314, Lot 130 DP 1093116, Lot 26 DP 210637, Lot 14 DP 1090122, Lot 13 DP 1089620 Application only applies to: Lot 12 and Lot 13 in DP 1089620, Lot 1 in DP 249314, Lot 130 in DP 1093116; and Lot 3 in DP 82270
Applicant:	The APP Group c/o Liverpool City Council
Land Owner:	Liverpool City Council
Cost of Works:	\$0

Recommendation:	Approval, subject to conditions of consent
Assessing Officer:	Joseph Bell, Patch Planning

1. EXECUTIVE SUMMARY

A Modification Application (DA-1263/2022/A) has been submitted to Council, seeking development consent for modifications to the existing mattress shredder development at 99 Rose Street, Liverpool.

The proposed modifications to the existing development at 99 Rose Street, Liverpool, involve a key change: extending the operating hours from 7:30am-10:00am to 7:00am-6:00pm, Monday to Saturday.

Initially, the modification application also included alterations to the mattress shredder enclosure, increasing its floor area by 445sqm and height by 600mm, as well as the removal of Conditions 10 and 53 of DA-1263/2022. However, following a site visit on 17 October 2024, it was discovered that the enclosure's increased floor area and height were already present.

As retrospective development consent cannot be granted for physical works, this assessment focuses solely on the requested operational changes. The physical alterations will be addressed through a Building Information Certificate (BIC).

In response to a Request for Information (RFI), the applicant withdrew their proposal to amend or remove Conditions 10 and 53, which related to noise pollution and the implementation of noise reduction measures. Consequently, the modification application now solely pertains to the extension of operational hours.

The site is zoned SP2 Infrastructure (Depot) pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). The development is categorised as a 'resource recovery facility' which is permissible in the zone pursuant to Division 23, Clause 2.153 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

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 (LDGP 2008).

The key issue associated with the proposal relates to acoustic impacts on surrounding properties. These matters have been addressed through the assessment of the application and the proposal is considered to be acceptable.

The Modification Application was initially notified between 4 September 2024 and 20 September 2024 in accordance with Liverpool Community Participation Plan 2019. One (1) submission was received during this notification period and the issues of concern raised within the submission can be summarised as follows:

- Noise pollution and disturbance from extended operating hours and heavy machinery;
- Increased traffic and safety risks;
- Potential environmental and aesthetic impacts;
- Undermining of residential amenity and property values; and
- Lack of community consultation and transparency.

These issues are addressed further in the report.

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 site is owned by Liverpool City Council and is therefore required to be determined by the LLPP.

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 development site is described as 99 Rose Street, Liverpool, and is legally described as:

- Lot 12 and Lot 13 in DP 1089620,
- Lot 1 in DP 249314,
- Lot 130 in DP 1093116, and
- Lot 3 in DP 82270.

The wider site contains Pearce Park and Paciullo Park. The site currently contains a resource recovery facility (community recycling centre) which includes multiple warehouses and open storage areas. The site contains some vegetation along Rose Street and established mature trees within the southwestern corner.

The site is situated at the end of a cul-de-sac road and is irregular in shape comprising an area of approximately 2.4ha. The site has sole frontage to Rose Street and is adjoined by residential development to the east and south and public parks to the west and north.

The location of the site can be seen in the aerial view in the figures below.



Figure 1: Aerial view of subject site (Depot shown in red and location of shredder in yellow) (Source: MetroMaps)

2.2 The locality

Currently the surrounding locality is predominately characterised by low density residential development and parkland. To the northeast of the site is Liverpool State Emergency Services (SES), Woodward Park and the Whitlam Leisure Centre. To the northwest of the site is Liverpool West Public School and Pre-school. The site is in close proximity to the Hume Highway to the east and the South Western Motorway to the south. The Georges River is also approximately 1.4km east of the site.

The locality of the subject site can be found in Figure 2 below.

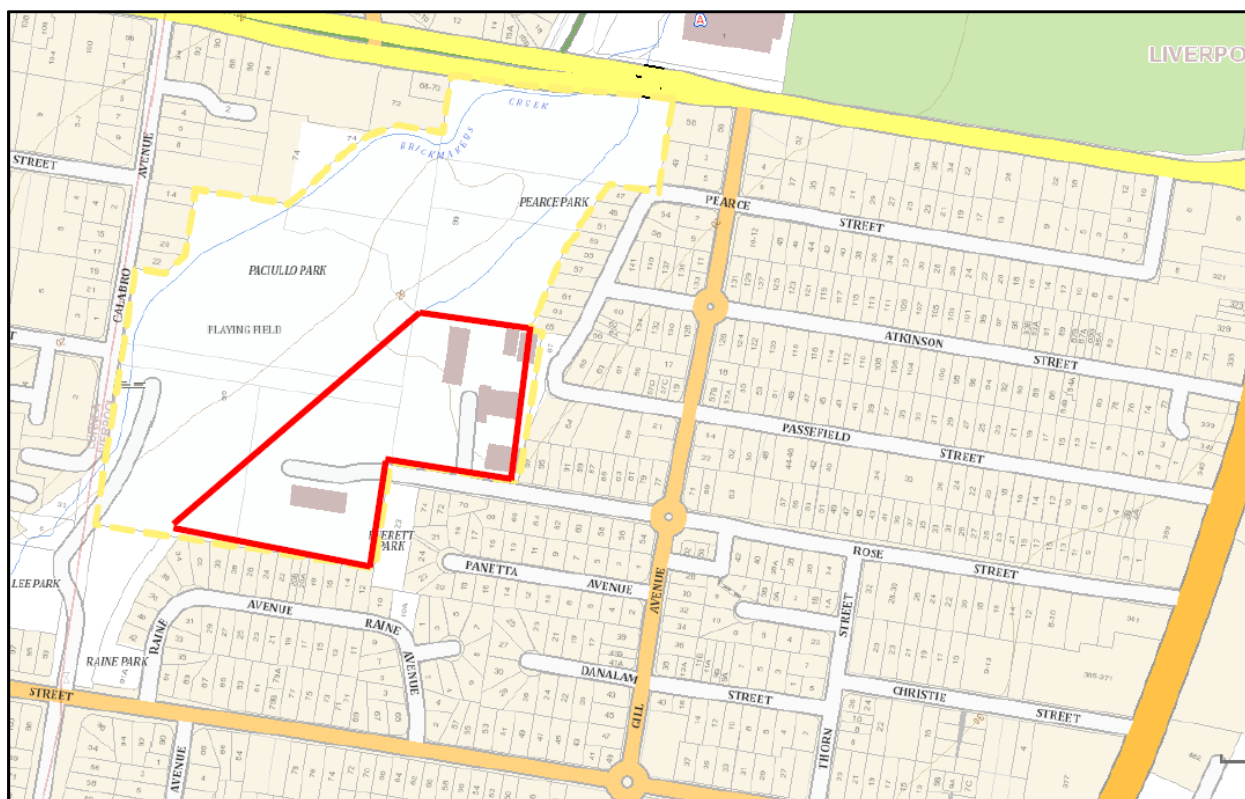


Figure 2: Locality surrounding the proposed development site (in red) (Source: eSpatial Viewer – NSW Planning Portal)

3. BACKGROUND/HISTORY

3.1 Assessment and Site Background & History

- 3 January 2023 – DA-1263/2022 was lodged with Council.
- 13 October 2023 – DA-1263/2022 was approved by Local Planning Panel.
- 26 August 2024 – DA-1263/2022/A was lodged with Council.
- 20 September 2024 – DA-1263/2022/A was initially lodged as a s.4.55(1A) modification. Assessing Officer expressed reservations regarding the suitability of this pathway, suggesting a potential s.4.55(2) application might be more appropriate. A 'Stop the Clock' letter was issued to the Applicant, requesting withdrawal and re-lodgement as a s.4.55(2) application. The Applicant responded with reasons supporting the original s.4.55(1A) classification. After reviewing the response, the Assessing Officer and Council agreed to proceed with assessing the proposal as a s.4.55(1A) modification.
- 3 October 2024 – Environmental Health referral provided requesting additional information.
- 3 October 2024 – Flood engineering referral provided support.

- 3 October 2024 – Traffic and Transport referral provided support, subject to conditions.
- 17 October 2024 – Assessing Officer conducted a site visit of the existing mattress shredder enclosure, accompanied by Council representatives. During the visit, it was discovered that the increase in the mattress shredder enclosure's floor area and height from what was approved under DA-1263/2022 is already present at the site.
Retrospective consent cannot be granted for these physical works. Therefore, this assessment focuses on the operational changes to the mattress shredder enclosure and not the physical alterations. The physical changes will be addressed through a building information certificate (BIC).
- 23 October 2024 – Request for Information (RFI) issued to Applicant.
- 22 November 2024 – Additional information provided.
- 3 December 2024 – Environmental Health re-referral completed providing support.

Application No.	Proposed Development	Determination
DA-1018/2013	Construction of a shed at the existing Liverpool Council depot located on Lot 13 DP1089620 with frontage to Rose Street; use of the shed as a Community Recycling Centre (i.e., waste management facility); and installation of signage	30/04/2014
DA-1018/2013/A	The application seeks to modify the approved operating hours of the Community Recycling Centre to permit operation 7am to 5pm Monday to Saturday	06/05/2024
DA-1202/2022	Installation and operation of a resource recovery facility including mattress shredding equipment and the construction of an acoustic barrier involving the placement of shipping containers on the land at the Liverpool City Council Works Depot.	Rejected 12/12/2022
DA-1263/2022	Installation of a shredding machine for the purpose of shredding mattresses and the installation of shipping containers for the purpose of an acoustic barrier and storage of recycled materials. The approved hours of operation for the development are as follows: • Mattress shredding equipment: 7:30am to 10:00am, Monday to Saturday. • Truck movements associated with mattress shredding activities: 7:00am to 10:30am, Monday to Saturday.	13/10/2023

	Note that the development is not approved to operate on Sundays.	
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4. DETAILS OF THE PROPOSAL

The proposed modifications to the existing development at 99 Rose Street, Liverpool, involve a key change: extending the operating hours from 7:30am-10:00am to 7:00am-6:00pm, Monday to Saturday and extending the truck movement hours from 7:30am-10:00am to 7:00am-6:00pm, Monday to Saturday.

Initially, the modification application also included alterations to the mattress shredder enclosure, increasing its floor area by 445sqm and height by 600mm, as well as the removal of Conditions 10 and 53 of DA1263/2022. However, following a site visit on 17 October 2024, it was discovered that the enclosure's increased floor area and height were already present.

As retrospective development consent cannot be granted for physical works, this assessment focuses solely on the requested operational changes. The physical alterations will be addressed through a BIC.

In response to an RFI, the applicant withdrew their proposal to amend or remove conditions 10 and 53, which related to noise pollution and the implementation of noise reduction measures.

Consequently, the modification application now solely pertains to the extension of operational hours.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

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

Environmental Planning Instruments (EPI's)

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021; and*
- *Liverpool Local Environmental Plan 2008.*

Development Control Plan

- Liverpool Development Control Plan 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 4.55(1A) of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021 as follows:

6.1 Section 4.55 of the Environmental Planning and Assessment Act 1979

The application has been lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, which provides:

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

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposal is deemed to have minimal environmental impact, as demonstrated through this assessment. Specifically, it is not anticipated to significantly affect existing traffic and access arrangements in the area, and its acoustic impact is considered negligible.

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

Comment: The proposal is considered substantially the same as the original development approved by Council. The modification application retains the key features and components of the original approval, with the primary variation being an extension of operational hours.

(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 Modification Application was initially notified between 4 September 2024 and 20 September 2024 in accordance with Liverpool Community Participation Plan 2019. One (1) submission was received during this notification period.

(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 outlined within this assessment, one submission was received during the

notification period that raised concerns about noise pollution, increased traffic and safety risks, environmental and aesthetic impacts, residential amenity and property values, and lack of community consultation. Council assessments addressed these concerns, deeming the proposal acceptable regarding noise and traffic impacts. While physical changes to the mattress shredder enclosure weren't evaluated, the residential amenity and property value concerns were resolved. The notification process fulfilled consultation requirements, ensuring the proposal meets necessary standards.

Subsections (1), (2) and (5) do not apply to such a modification.

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

(a) 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.

The objectives of chapter 2 of SEPP (Transport and Infrastructure) 2021 are:

- *(a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
- *(b) providing greater flexibility in the location of infrastructure and service facilities, and*
- *(c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- *(d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
- *(e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- *(f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- *(g) providing opportunities for infrastructure to demonstrate good design outcomes.*

(i) Permissibility

The use is best defined as a 'resource recovery facility' which is a type of 'waste or resource management facility'. This resource recovery facility use is permissible with consent as the SP2 zone is described as a prescribed zone under Division 23, Clause 2.153 (1) of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Clause 2.153 for reference:

2.153 Development permitted with consent

- (1) Development for the purpose of waste or resource management facilities, other than development referred to in subsection (2), may be carried out by any person with consent on land in a prescribed zone.*

In accordance with 2.152 of SEPP (Transport and Infrastructure) 2021:

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones—

(f) *SP2 Infrastructure*.

resource recovery facility, waste disposal facility, waste or resource management facility and waste or resource transfer station have the same meanings as in the Standard Instrument.

In accordance with the Standard Instrument:

resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

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

The site is within the Georges River Catchment and is therefore subject to the controls of SEPP (Biodiversity and Conservation) 2021.

The objectives of Chapter 6 of SEPP (Biodiversity and Conservation) 2021 are to provide a consistent planning framework across the following catchments—

- (a) *the Sydney Drinking Water Catchment;*
- (b) *the Sydney Harbour Catchment;*
- (c) *the Georges River Catchment; and*
- (d) *the Hawkesbury-Nepean Catchment.*

The provisions under this SEPP were satisfied with the original application.

(c) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 – Hazardous and offensive development

The objectives of Chapter 3 of SEPP (Resilience and Hazards) 2021 are:

- (a) *to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*
- (b) *to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Chapter, and*
- (c) *to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and*

(d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and

(e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and

(f) to require the advertising of applications to carry out any such development.

The provisions under this SEPP were satisfied with the original application.

Chapter 4 - Remediation of land

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

The objectives of Chapter 4 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.

The matters of consideration under this SEPP were satisfied with the original application.

(d) Liverpool Local Environmental Plan 2008

(i) Zoning

The subject site is zoned SP2 Infrastructure (Depot), RE1 Public Recreation and SP2 Infrastructure (Classified Road) in accordance with the *Liverpool Local Environmental Plan 2008*.

The proposed mattress shredder is located on a part of the site zoned SP2 Infrastructure (Depot) as shown in the zoning map extract below.

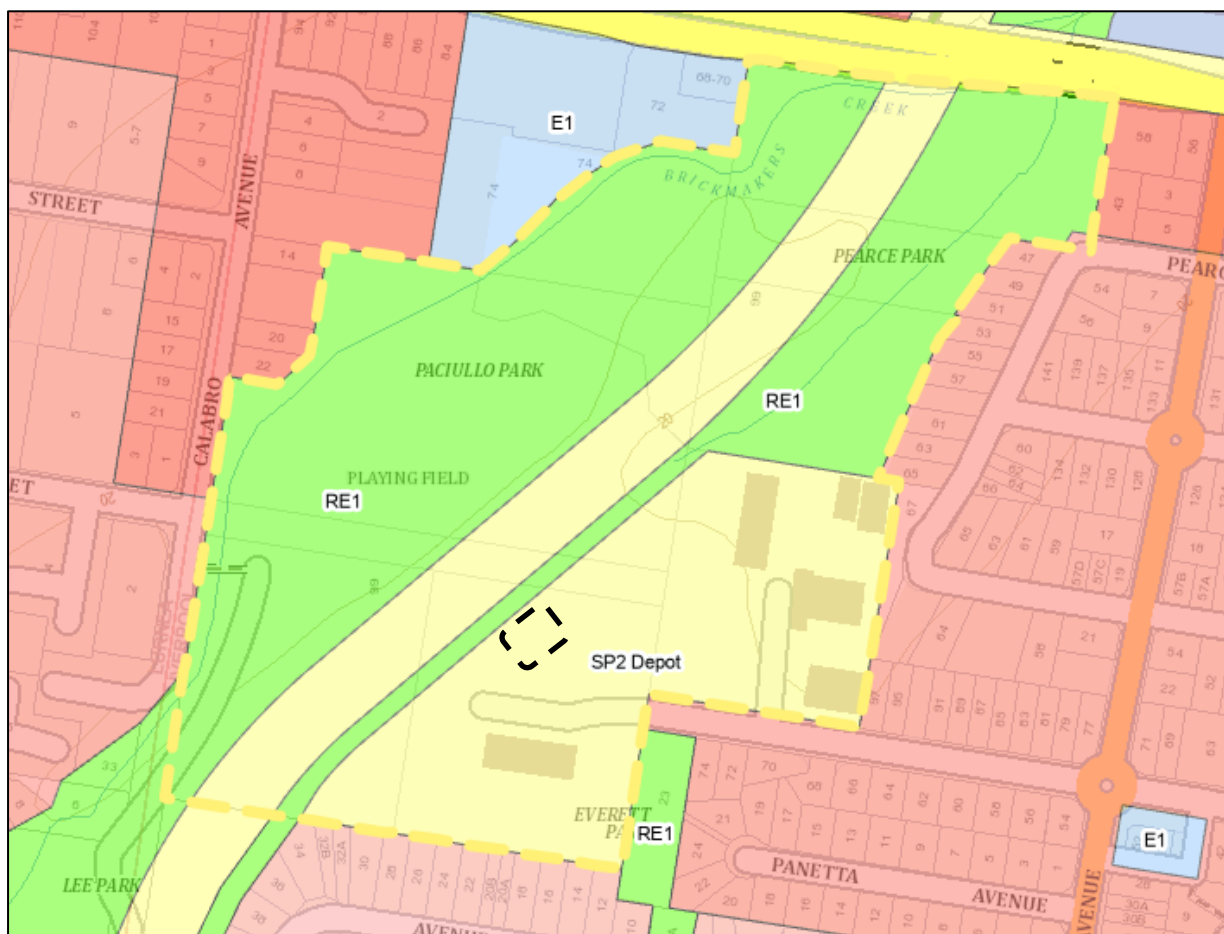


Figure 3: Zoning Map (general location of proposed mattress shredder outlined in black dotted line) (Source: ePlanning Spatial Viewer)

(ii) *Permissibility*

As discussed above, the proposal is permissible pursuant to Division 23, Clause 2.153 of SEPP (Transport and Infrastructure) 2021.

(iii) *Objectives of the zone*

The objectives of the SP2 Infrastructure Zone are as follows:

- 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 development is considered to meet and satisfy the above objectives. Specifically, the proposal will provide recycling infrastructure to support the local community.

(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.

Clause	Provision	Compliance
4.3 Height of buildings	The site is not subject to a maximum building height limit prescribed by the Liverpool LEP 2008.	N/A
4.4 Floor space ratio	The site is not subject to a maximum floor space ratio prescribed by the Liverpool LEP 2008.	N/A
Clause 5.12 – Infrastructure development and use of existing buildings of the Crown	Does not prohibit carrying out of development under the Transport and Infrastructure SEPP.	Yes
Clause 5.21 – Flood planning	Does not adversely impact on flood function, behaviour or increase risk. The proposal was referred to Councils Floodplain Engineering Section and no objections were raised for the proposal from a flooding perspective.	Yes.
Clause 4.6 - Exceptions to development standards	No variation to a development is sought within the application.	N/A

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 provisions of the LDCP 2008 and has been assessed against:

- Part 1, 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. 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
Section 20. Car Parking and Access	Provisions relating to Car Parking and Access.	This aspect has been reviewed by Council's Traffic and Transport Officer, who have raised no issues subject to conditions.	Complies with conditions

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 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) Natural Environment

The proposal is unlikely to have any adverse impacts on the natural environment.

(b) Built Environment

As outlined in this assessment, the physical changes have been withdrawn from the application, and therefore, no adverse impacts on the built environment are anticipated.

(c) Social Impacts

Social impacts of the proposal including acoustic and traffic generation have been assessed below.

Acoustic

Council's Environmental Health Officer has thoroughly assessed the acoustic impacts of extended operation hours.

The assessment provided by the Applicant reveals that noise levels comply with standards at Locations 2 and 3, with a negligible 1 dB exceedance at Location 1. This residual noise level is considered insignificant for residential receivers, according to the NSW EPA's Noise Policy for Industry (2017). The locations of the noise monitoring locations are shown in the figure below.

Verification of implemented mitigation measures confirms compliance with Condition 10 of DA1263/2022. The Environmental Health Section is satisfied with the compliance monitoring report.

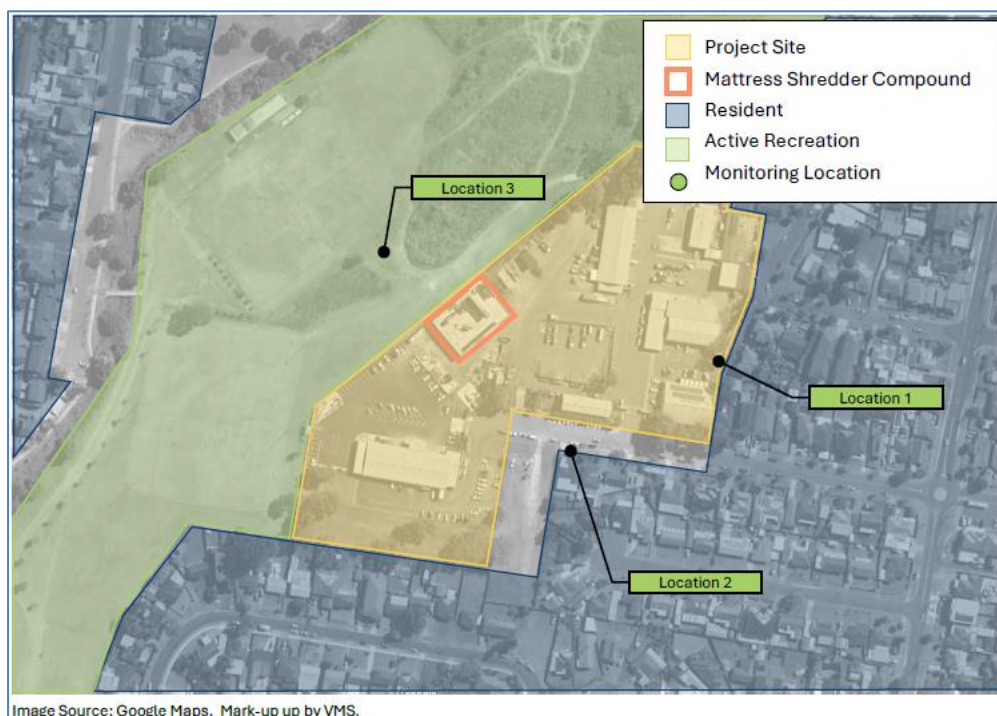


Figure 4: Noise Monitoring Locations (Source: Compliance Noise Monitoring Report and Statement, VMS)

Traffic and Transport

The Traffic Impact Report (29 October 2024) by TRAFFIX, which was provided by the Applicant, concludes that the proposed modification will have minimal traffic and parking impacts.

The traffic impacts associated with the proposed modification to the mattress shredding operations have been assessed using a 'first principles' approach, as the TfNSW Guide to Traffic Generating Developments (2002) does not provide traffic generation rates for depots of this nature.

Council has confirmed that the proposed modification will result in an additional 8-9 truck arrivals per day, equating to an additional inbound and outbound truck movement per hour of operation. The total traffic generation is estimated to be 11-12 truck arrivals per day, resulting in 22-24 truck movements per day. This translates to approximately one movement every half hour of operation.

It is worth noting that Council's waste fleet and diesel refuelling facility, currently located at the Rose Street Depot, are being relocated to the facility at 600 Cowpasture Road, Len Waters Estate. This relocation will result in a net decrease in heavy vehicle movements on the surrounding road network, as the waste fleet consists of 30 heavy vehicles that currently generate approximately 120 vehicle movements per day. When considering the proposed modification resulting in 22-24 additional vehicle movements per day, there will be an overall net decrease of 96-98 vehicle movements per day.

Despite the minor increase in truck movements, it is considered that there will be no adverse traffic impacts on the surrounding road network. Therefore, the proposed modification is supportable from a traffic planning perspective.

The site accommodates adequate truck manoeuvring space, and no additional car parking is required.

Council's Traffic and Transport Officer supports the report's findings, subject to consent conditions.

(d) Economic Impacts

The project supports circular economy initiatives which may lead to the indirect creation of jobs within the local circular economy supply chain.

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. 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
Environmental Health referral	Supported.
Flooding referral	Supported.
Traffic referral	Supported, subject to specified conditions.

(b) External Referrals

No external referrals were required for the proposed modification.

(c) Community Consultation

The Modification Application was initially notified between 4 September 2024 and 20 September 2024 in accordance with Liverpool Community Participation Plan 2019. One (1) submission was received during this notification period.

The key concerns raised in this submission are summarized below.

MATTER	RESPONSE
Noise pollution and disturbance from extended operating hours and heavy machinery.	The proposal has been assessed by Council's Environmental Health Officer, who considers it acceptable in terms of noise impacts.
Increased traffic and safety risks.	The proposal has been assessed by Council's Traffic and Transport Officer, who considers it acceptable in terms of traffic and transport implications.
Potential environmental and	As outlined throughout this assessment, the physical

aesthetic impacts.	changes to the mattress shredder enclosure are not addressed within this report.
Undermining of residential amenity and property values.	This matter is now considered resolved, as addressed above.
Lack of community consultation and transparency.	The notification of the modification application fulfils the Applicant's consultation requirements.

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.

8. CONCLUSION

Having regard to the provisions of Section 4.15 and Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, it is considered that the application has sufficiently demonstrated that the proposed modification is of minimal environmental impact. Based on the assessment of the application, it is recommended that the application be **approved** subject to the imposition of modified conditions.

9. RECOMMENDATION

That Modification Application DA-1263/2022/A seeking development consent for the extension of the operating hours to 7:00AM-6:00PM, Monday to Saturday, be approved subject to modified conditions of consent.

ATTACHMENTS

1. Modified Conditions of Consent (Under separate cover)
2. Site Plan (Under separate cover)
3. Sections and Elevations (Under separate cover)
4. Floor Plan (Under separate cover)
5. Traffic Impact Assessment (Under separate cover)
6. Acoustic Report (Under separate cover)
7. Waste Management Plan (Under separate cover)

Item Number:	4
Application Number:	DA-64/2007/G
Modification Proposal:	Modification to Development Consent DA-64/2007 under Section 4.55(1A) to modify and/or delete the 'prior to the issue of a subdivision certificate' wording from conditions to allow subdivision prior to the completion of all works.
Approved Development	<u>Approved Application DA-64/2007</u> 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. <u>Approved Modification Application DA-64/2007/A</u> Modification to Development Consent DA-64/2007 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposed: 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. <u>Refused Modification Application DA-64/2007/B</u> 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 Avenue, creation of Bravo Avenue, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts. <u>Approved Modification Application DA-64/2007/C</u> 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 Avenue, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts. <u>Approved Modification Application DA-64/2007/D</u> Modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment Act 1979. The modification proposed: • Delete Road 10. • Amend existing stormwater drains to run along Flynn Avenue

	instead of through the middle of the subject site and neighbouring property. <u>Approved Modification Application DA-64/2007/E</u> Modification to Development Consent DA-64/2007 under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979. The modification proposed a change to consent Condition 7.1, which is to be renumbered and relocated in the consent from Part "C. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE" to be a requirement under Part "F. PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE" <u>Approved Modification Application DA-64/2007/F</u> Modification to Development Consent DA-64/2007 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979. The modification proposed to revise the northern alignment of road 4, reposition the roundabout within intersection with Southern Cross Drive (Road 7).
Property Address	Middleton Grange Town Centre Lot 2 Flynn Avenue, Middleton Grange Lot 3 & 4 Seventeenth Avenue East, Middleton Grange Lots 5, 6 & 102 Sixteenth Avenue East, Middleton Grange 60 Hall Circuit, Middleton Grange Lot 1 Seventeenth Avenue East, Middleton Grange
Legal Description:	Lot 2 DP 1207518, Lot 3 DP 1207518, Lot 4 DP 1207518, Lot 5 DP 1207518, Lot 6 DP 1207518, Lot 12 DP 1108343, Lot 1 DP 1078564, Lot 102 DP 1128111
Applicant:	Pacific Planning Pty Limited
Land Owner:	Manta Group Ltd Al-Somai Developments Pty Ltd Liverpool City Council
Recommendation:	Approved subject to conditions
Assessing Officer:	Darren Laybutt – GAT & Associates (External Planning Consultant)

1 EXECUTIVE SUMMARY

Council has received a Modification Application for the modification to Development Consent DA-64/2007 under Section 4.55(1A) of the Environmental Planning & Assessment Act 1979.

The original development application, DA-64/2007, was approved by Liverpool City Council on 5 October 2006 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.*”

A construction certificate was issued for DA-64/2007 on 11 July 2008 (CCE-31/2008). The aerial imagery in Figure 2 and views in Figures 4 and 5 illustrate works have commenced, and the consent remains active.

The application has been modified five times with the latest approval dated 29 July 2024 and determined by the Liverpool Local Planning Panel.

The subject modification seeks to modify conditions of consent to remove the ‘prior to the issue of subdivision’ requirement within conditions, permitting the subdivision of roads and precincts within the Middleton Grange Town Centre site prior to the completion of all works. The specifics are described in Section 4 of this report.

The modification application was lodged with Council on 25 July 2024.

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

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 7 December 2022*, as the development falls in the categories of:

- Conflict of interest – the Council is the landowner.

Due to the conflict of interest, the assessment of this modification was outsourced to an external planner.

An assessment of the proposed modifications is made in this report, and it is determined that the application as proposed to be modified is substantially the same as the original application and will be of a minor environmental impact. Consequently, the tests under Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 are satisfied. Based on the assessment, the proposed modification is recommended for approval subject to amended and new conditions of consent.

2. SITE DESCRIPTION AND LOCALITY

2.1 The subject site and locality

The subject site is known as the Middleton Grange Town Centre and comprises eight (8) Torrens title lots which are legally defined as:

- Lots 2, 3, 4, 5, and 6 in DP 1207518
- Lot 1 in DP 1078564
- Lot 12 in DP 1108343
- Lot 102 in DP 1128111

The site has a total area of 69,040m² with a frontage of 200.5m to the north and 220m to the south. The site is identified in Figure 1 below.

The site has a mixture of land zonings under the Liverpool Local Environmental Plan (LLEP) 2008 as identified in the Land Zoning Map below. Specifically, the site is zoned R1 General Residential, E1 Local Centre, SP2 Drainage and RE1 Public Recreation.



Figure 1 – Aerial view of the locality (Source: Mecone Mosaic)



Figure 2 – Site Aerial (Source: Google Maps)

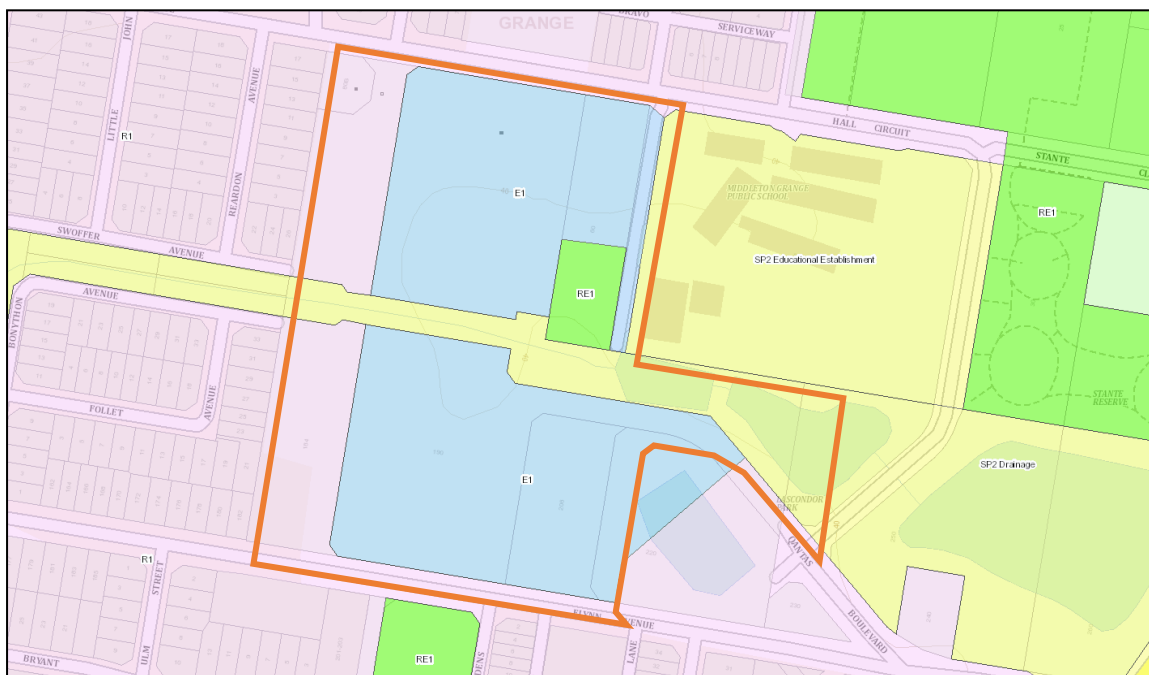


Figure 3 – Land Zoning Map (Source: NSW Planning Portal EPI Viewer)

The work associated with the approvals on the land has commenced. Refer to the photos below.



Figure 4 – View of the site from Flynn Avenue



Figure 5 – View of drainage work from Hall Circuit



Figure 6 – View of the site from Southern Cross Avenue

The locality is well progressed in the redevelopment from rural residential to predominantly low density residential. As Figures 1 and 2 illustrate (now outdated aerials), the immediate surroundings have largely already been developed with the few remnants of rural residential properties remaining.

Adjoining the site to the east is Middleton Grange Public School.

Lots 2, 3, 4, 5 and 6 in DP 1207518, Lot 1 in DP 1078564 & Lot 12 in DP 1108343 are burdened by an S88b restriction imposed under DA-74/2015. The restriction requires:

“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.”

The planning proposal mentioned has been approved. Notwithstanding this, the proposal is a Section 4.55 modification application and not a development application. No conflict arises.

3. BACKGROUND/HISTORY

A number of applications have been submitted in relation to the subdivision and road network associated with the Middleton Grange Town Centre. The history is summarised below.

- DA-64/2007 – 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. Approved on 5 October 2006.
- DA-64/2007/A – Modification to Development Consent DA-64/2007 under section 4.55(2) of the Environmental Planning and Assessment Act 1979. The modification proposed: Subdivision of existing lots into seven (7) Torrens title lots, four (4) public reserve lots and two (2) residue lots and associated roads, intersection and pedestrian treatment and drainage works. Approved on 1 February 2008.
- DA-64/2007/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. Refused on 21 February 2020.
- DA-64/2007/C – Modification to Development Consent DA-64/2007 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to allow for the realignment of internal roads, additional intersections and widening, re-design of Rene Avenue, creation of Bravo Avenue, re-configuration of open space and pedestrian linkages, and change of trunk drainage from channel to culvert. Approved on 22 May 2020.
- DA-64/2007/D – Modification to Development Consent DA-64/2007 under Section 4.55 of the Environmental Planning and Assessment 1979 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. Approved on 28 November 2022.
- DA-64/2007/E – Modification to Development Consent DA-64/2007 under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979. The Modification proposed a change to consent condition 7.1, which is to be renumbered and relocated in the consent from Part "C. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE" to be a requirement under Part "F. PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE." Approved on 5 December 2022.
- DA-64/2007/F – Modification to Development Consent DA-67/2007 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 to revise the northern alignment of road 4, reposition the roundabout within intersection with Southern Cross Drive (Road 7). Approved on 29 July 2024.

The originally approved subdivision and road network design and the most recent approved design are shown in Figures 7 and 8 below.

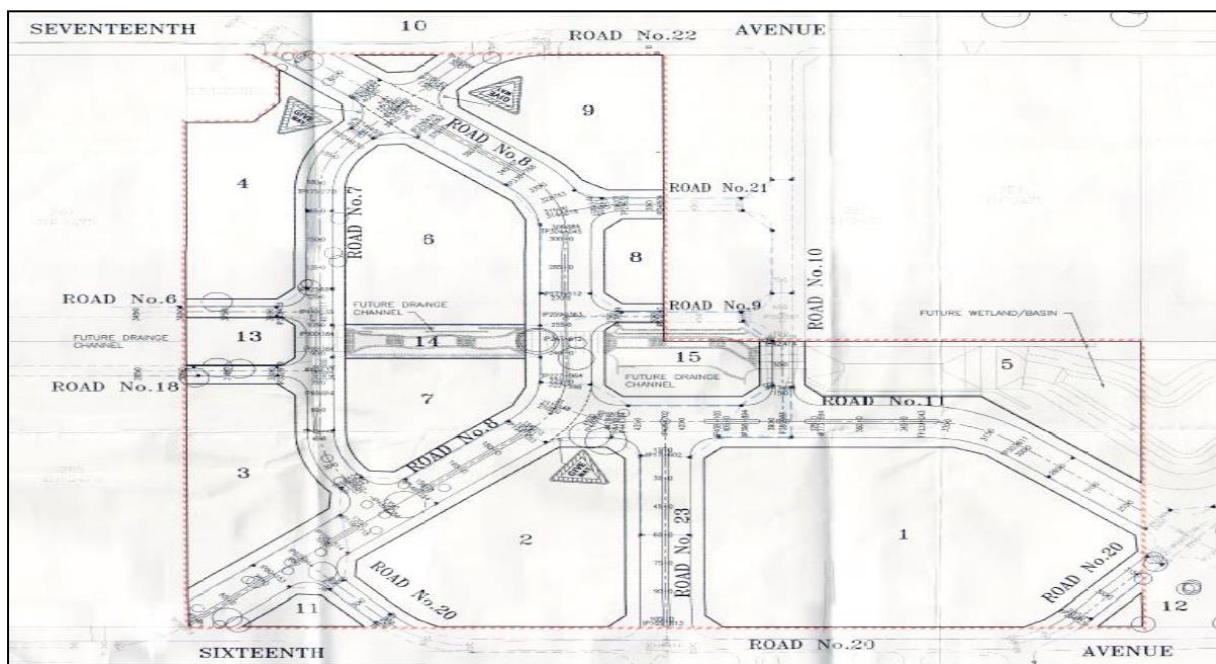


Figure 7 – DA-64/2007 – approved subdivision and roads design

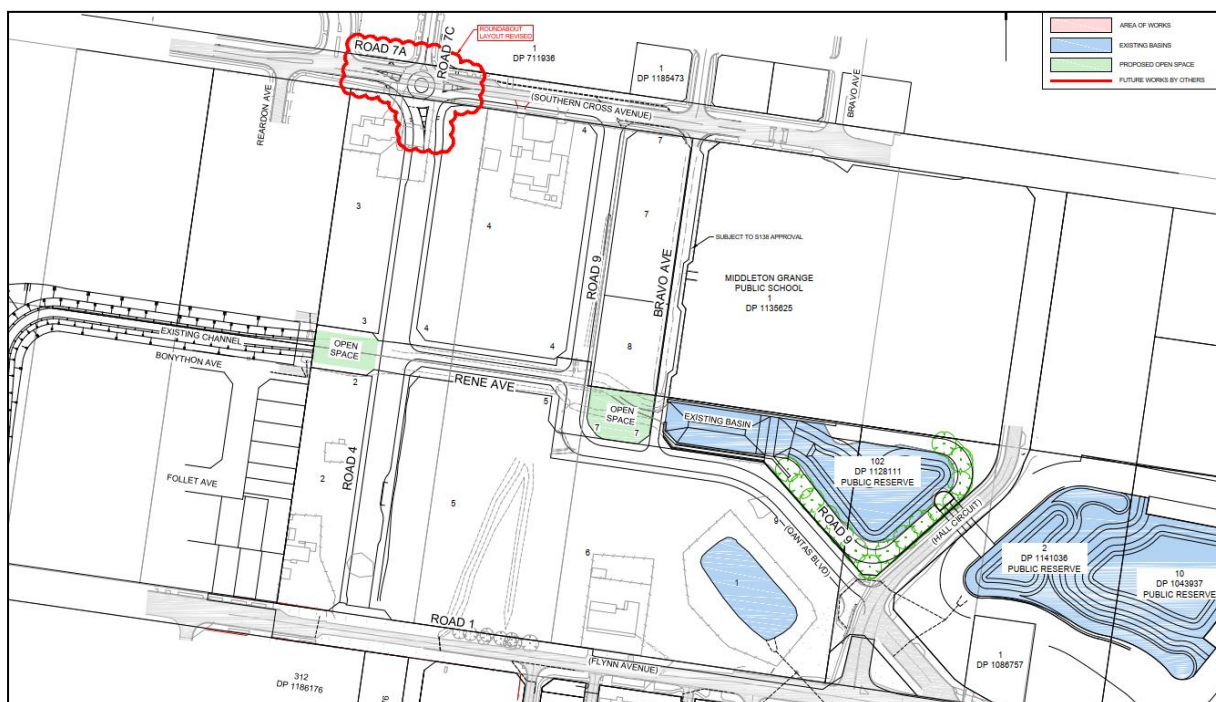


Figure 8 – DA-64/2007/F – approved subdivision and roads design

A separate application (DA-74/2015) was submitted for the subdivision of existing lots into eight Torrens title lots. The application was approved on 1 April 2015. The approved subdivision reflects the current layout. An extract of the approved plan is below.

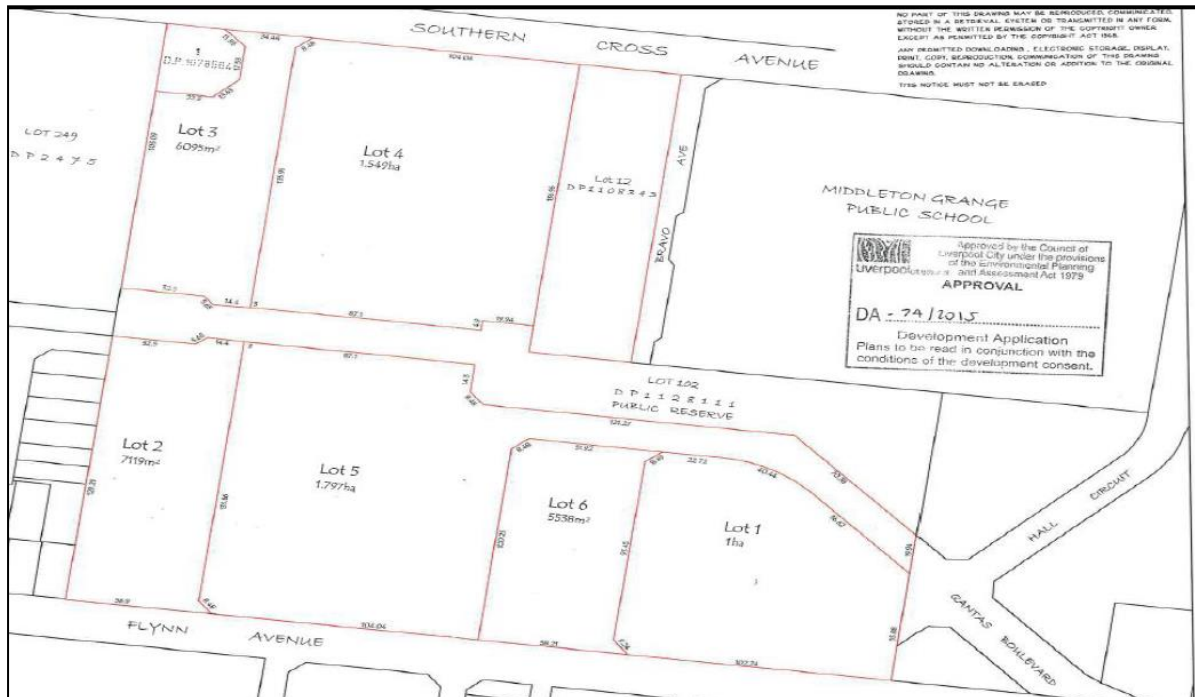


Figure 9 – DA-74/2015 – approved eight (8) lot Torrens title subdivision layout

A further separate development application for Torrens title subdivision of 3 lots into 26 residential lots and the construction of associated roads including a rear laneway was approved on 23 September 2024 (DA-637/2023). An extract of the approved subdivision plan is below.



Figure 10 – DA-637/2023 – approved 26 lot Torrens title subdivision layout

The subject modification was lodged on 25 July 2024. Due to Council being a landowner of the roads associated with the application, the assessment was conducted by an external consultant.

Council met with the applicant on 16 September 2024 to discuss the proposed modification to clarify the intent and mechanism by which the intent would be achieved.

A formal request for additional information letter was issued on 1 October 2024 which requested:

- Clarification on the proposed modification as the description of the modification differed between documents in the following ways:
 - The description of the proposed on the planning portal was *“delete key conditions of consent relating to delivery of roads, drainage and infrastructure.”*
 - The Statement of Environmental Effects (SEE) states the modification is to delete section *“F. Prior to the Issue of a Subdivision Certificate”* from the consent, resulting in conditions 31 to 37 being placed in *“Part E. During Construction Works.”*
- The engineering referral comments that were not supportive as *“the conditions must remain as is to support the issue of a Subdivision Certificate for the dedication of roads etc. at the end of the development.”*
- An inventory of each condition to be modified and relocated to Part E and how their objectives will be secured and preserved.

A response from the applicant was received on 15 October 2024. The response involved an amended SEE and a cover letter.

The application was re-referred to Council’s engineering team and a recommendation for approval has now been given.

The application has been assessed based on the information submitted to date and is recommended for approval subject to conditions.

4. DETAILS OF THE PROPOSAL

As revised through the assessment process, this Section 4.55(1A) Modification seeks to alter and/or delete the wording from conditions of DA-64/2007 (as modified).

As described in the amended SEE, the modification seeks:

“Conditions 31 – 40 are preceded by the following requirement:

“F. PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions are to be complied with prior to the issue of a subdivision certificate.”

It is proposed to delete the above text from the consent.

*This would place these conditions in “Part E. DURING CONSTRUCTION WORKS.”
The conditions in question have been altered in wording to include references to
certain works being completed “prior to the dedication of any land to Council.”*

*This will have the effect of allowing for the paper subdivision of roads and precincts
within the overall site, in preparation for their ultimate dedication to Council.”*

Reference should be made to Section 4.1 below of this report detailing all proposed changes
to conditions and Section 4.2 for discussion of the reasons for the modification.

The modification has also introduced indicative street tree plans and two (2) proposed
associated conditions of consent relating to the provision of street trees. Refer to Section 4.2
of this report.

4.1 Comparison of Conditions of Consent as Approved vs Proposed

The table below states the condition number, relevant consent for the current wording of the
condition, current wording and proposed wording for each condition relevant to the
modification.

The new wording is underlined and bolded for clarity and strikethrough text is used where
relevant to illustrate wording to be deleted.

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
Condition 31 Subdivision Compliance			
DA- 64/2007/C	31.1	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	<u>Prior to the dedication of any land (including roads) to the Council</u> 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: [no further change]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		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) The WAE drawings shall clearly indicate the 1% Annual Exceedance Probability flood lines (local and mainstream flooding), c) The WAE drawings shall be accompanied by plans indicating the depth of fill for the entire development site. The plans must show, by various shadings or cross hatchings, the depth of any fill within 0.3m depth ranges, d) 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, e) 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, f) Documentation for all road pavement materials used demonstrating compliance with Council Design Guidelines and	

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		Construction Specification, g) Structural Engineer's construction certification of all structures, and h) 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.	
DA-64/2007	31.2	ROAD CONSTRUCTION (HALF WIDTH) – Full formation and half width road minimum 5.5m wide shall be constructed at half width at Sixteenth and Seventeenth Avenue -adjacent to the subject land to include kerb and gutter, drainage, pavement construction, sealing and service adjustments in accordance with Council's current design and construction specification for subdivision (as amended) and to the satisfaction of the Roads Authority if within an existing dedicated road reserve, or by the Roads Authority or principal certifier if not within a dedicated road reserve.	[no change]
DA-64/2007	31.3	Prior to the issue of any subdivision certificate, all roads shall be dedicated to Council as public roads.	<u>All roads shall be dedicated to Council as public roads.</u>

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
DA-64/2007	31.4	Prior to the issue of any subdivision certificate, Lots 5, 13, 14 and 15 shall be dedicated to Council.	<u>Prior to the dedication of land (including roads) the landowner and Council will issue a statement countersigned by both parties confirming that all land required to be dedicated is progressed in accordance with any planning agreement between the council and the landowner that applies to the land in the Middleton Grange Town Centre.</u>
Condition 32 Engineering Work			
DA-64/2007	32.1	The following compliance certificates will be required to be submitted with an application for a Subdivision Certificate. The list is indicative only and assumes a conventional subdivision. Other compliance certificates may be required for "one off" components not covered by this list. All compliance certificates are to be submitted by the accredited certifier for the development. a) General Certificates: - Lodgement of Bonds - Lot Filling - Geotechnical Testing and Reporting Requirements - Service Authority Clearances b) Construction - Implementation of Soil Erosion Plan (Several required at appropriate stages) - Implementation of Traffic Control Plan - Log book listing details of all inspections	<u>Prior to the dedication of any land (including roads) to be Council,</u> the following compliance certificates will be required to be submitted with an application for a Subdivision Certificate. Other compliance certificates may be required for "one off" components not covered by this list. All compliance certificates are to be submitted by the accredited certifier for the development. a) General Certificates: - <u>Confirming the financial requirements and contents of the Voluntary Planning Agreement</u> - Lot Filling - Geotechnical Testing and Reporting Requirements - Service Authority Clearances [no further changes]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		undertaken during construction c) Road pavement - Subgrade (Reduced Levels, Roller Test) - Each Subbase Layer (Depth, Roller Test) - Base Course Layer (Depth, Roller Test) - Wearing Course (Depth, grading) - Subsoil Drains - Service Crossings d) Pipework - Trench Excavation (Line, Grade, Location) - Bedding (Type, compaction) - Pipework (before backfilling) - Backfill (compaction) e) Stormwater Pits - Pit Base - Walls - Lintel sizes f) Kerb and Gutter - Kerb line and level - Concrete compaction - Finish g) Footpath formed to profile h) 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.	

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		i) Traffic Management works undertaken in accordance with construction certificate Traffic Management Plan k) Final inspection	
DA-64/2007	32.2	Land filled in excess of 300mm to be compacted to 98% Standard dry density ratio (AS1289 E4.1). Each lot, whether filled or not, to be classified in terms of the Australian Standard for Residential Slabs and Footings (AS2870) prepared by a NATA registered soil testing consultant. Where the lot classification is H, a restriction will be required on the title of that lot that special footings for any building may be required. A classification of E or P is unacceptable	[no change]
Condition 33 Linen Plans and 88B Instruments			
DA-64/2007/C	33.1	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).	[no change]
DA-64/2007/C	33.2	The applicant shall pay the standard fee for purpose of subdivision certificate administration of plan checking and release.	[no change]
DA-64/2007/C	33.3	The final plan of subdivision must be supported by an 88B Instrument, approved by Council. The 88B instrument	[no change]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Council's standards, codes and policies. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council	
DA-64/2007/C	33.4	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 Subdivision.	[no change]
DA-64/2007/C	33.5	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.	[no change]
DA-64/2007/C	33.6	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.	[no change]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
Condition 34 Service Providers			
DA-64/2007/C	34	The following documentation is to be provided prior to the release of the subdivision certificate: 1. Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a 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. 2. Notification of arrangement for the development from Endeavour Energy shall be submitted to Council. 3. Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with: 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	The following documentation is to be provided prior to the <u>dedication of any land (including roads) to Council:</u> 1. Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a Subdivision Certificate. Council will not <u>accept the dedication of any land (including roads)</u> 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. [no further changes]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		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.	
Condition 35 Footpaths			
DA-64/2007	35.1	A contribution shall be paid to Council in accordance with Council fees and charges for the construction of 1.5m wide by 75mm deep concrete path paving on one side of all residential access roads and both sides of all collector and distributor roads. Path paving will not be required in minor cul-de-sac with less than fifteen lots.	<u>Prior to the dedication of any land (including roads) to Council,</u> a contribution shall be paid to Council in accordance with Council fees and charges for the construction of 1.5m wide by 75mm deep concrete path paving on one side of all residential access roads and both sides of all collector and distributor roads. Path paving will not be required in minor cul-de-sac with less than fifteen lots.
Condition 36 Bonds/Monies			
DA-64/2007/C	36.1	A maintenance bond in the form of a bank guarantee or cash bond (\$TBA), shall be lodged with Council prior to the issue of a subdivision certificate. The bond shall cover maintenance and any damage to roads, drainage lines, public reserves or other council property or works required as a result of work not in accordance with Council's standards, and /or development consent conditions. The bond will be held by Council for a minimum	[no change]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		period of 6 months from the date of Council's acceptance of final works.	
Condition 37.1 Site Contamination Validation Report			
DA-64/2007/C	37.1	After completion of the remedial works, a copy of the Validation Report shall be submitted to the PCA. This Report shall be prepared in compliance with the Guidelines for Consultants Reporting on Contaminated Sites (OEH, 2011), and must: 1. describe and document all works performed, 2. include results of validation testing and monitoring, 3. include validation results of any fill imported on to the site, 4. outline how all agreed clean-up criteria and relevant regulations have been complied with, and 5. include clear justification as to the suitability of the site for the proposed use and the potential for off-site migration of any residual contaminants.	[no change]
Condition 37.2 Construction Environmental Management Plan (CEMP)			
DA-64/2007/C	37.2	Prior to issue of a construction certificate, a Construction Environmental Management Plan (CEMP) for the development must be provided to the Principal Certifying Authority for approval. The environmental site management measures must remain in place and be maintained throughout the period of the development. The CEMP must address all environmental aspects of the development's construction phases, and include (where relevant), but not be limited to, the following:	[no change]

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		1. Asbestos Management Plan; 2. Project Contact Information; 3. Site Security Details; 4. Timing and Sequencing Information; 5. Site Soil and Water Management Plan; 6. Noise and Vibration Control Plan; 7. Dust Control Plan; 8. Air Monitoring; 9. Odour Control Plan; 10. Health and Safety Plan; 11. Waste Management Plan; 12. Incident management Contingency; and 13. Unexpected Finds Protocol. The CEMP must be kept on site for the duration of the works and must be made available to Council Officers upon request.	
Condition 38 Completion of Subdivision Works			
DA-64/2007/C	38	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.	[no change]
Condition 39 Rectification of Damage			
DA-64/2007/C	39	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 all existing public roads adjacent to	<u>Prior to the dedication of any land (including roads) to Council,</u> 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 all existing public roads adjacent to the development will require a Roads Act application. The

Consent Inserted or Modified	Condition Number	Current Wording	Proposed Wording
		the development will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.	application is to be submitted and approved by Liverpool City Council prior to such works commencing.
Condition 40 Owner's Agreement			
DA-64/2007/E	40	An agreement in writing from the adjoining owners stating that approval is given for the disposal of downstream drainage onto their property shall be submitted to Council. An easement to drain water shall be created by the applicant over the area affected by downstream drainage. All costs associated with value of land and the easement created are to be borne by the applicant.	<u>Prior to the dedication of any land (including roads) to Council,</u> an agreement in writing from the adjoining owners stating that approval is given for the disposal of downstream drainage onto their property shall be submitted to Council. An easement to drain water shall be created by the applicant over the area affected by downstream drainage. All costs associated with value of land and the easement created are to be borne by the applicant.

4.2 Rationale for the Modification

Modification to Conditions

The current structure of the conditions of consent under DA-64/2007 (as modified, and henceforth inherently referred to as such) requires the completion of all roads and drainage works, and dedication of the roads and land to Council, prior to the release of the subdivision certificates. The road and drainage construction works are ongoing. Built form applications for the Middleton Grange Town Centre ("Town Centre") have not been lodged.

The Town Centre (and broader subdivision of the suburb) has been an ongoing process for a number of years and, for various reasons, there have been delays in the delivery of roads, infrastructure and the ultimate lodgement of built form application(s) for the Town Centre. The broader road network has progressed with Council upgrading roads separate from the Town Centre to meet community demand for infrastructure. However, the roads directly in front of the Town Centre land have not been upgraded as these were acknowledged to be and anticipated to be upgraded as part of the specific Town Centre built form development application(s).

The relevant external road network upgrades to the Town Centre included the construction of intersections on Flynn Avenue, Hall Circuit and Southern Cross Avenue with the internal roads and increased lane capacity on Flynn Avenue approved under DA-64/2007.

The Middleton Grange community has expanded significantly, and pressures exist to complete the external road upgrades to deliver suitable infrastructure to service the community.

Additionally, the construction of the internal roads under the approved application has now progressed sufficiently that consideration of their connection to the external road network is necessary. A Section 138 Roads Act application is currently under assessment for the internal and external road connections.

Council and the applicant met to discuss the broader Town Centre progression. It was acknowledged that the internal roads could be ready for dedication to Council, but the Town Centre built form application(s) would not be. Consideration was then given to a mechanism to deliver the external road network upgrades ahead of schedule and any amendments to LLEP 2008 or DA-64/2007 required to achieve this.

Part of the resolution to this issue has been resolving a financial impediment to expedite the dedication of internal roads. A second resolution (and the subject of this modification) is to allow for the appropriate funding of the external road upgrades by releasing land ahead of the intended sequencing of events.

As a separate but related matter, the applicant entered into a Voluntary Planning Agreement (VPA) with Liverpool City Council executed on 24 November 2022 which included, among other aspects, the construction of the intersection upgrades.

Financial Impediment

A Planning Proposal (PP-2020-4126) was submitted and approved for the rezoning and modification of the LLEP 2008 controls for the development of the Town Centre based on the applicant's design outcome. The proposal was approved, and a new clause inserted into LLEP 2008, Clause 7.42 Development of Middleton Grange town centre.

The original structure of the clause placed restrictions on the number of residential apartments, residential floor area and non-residential ground floor area of all buildings on the land to which the clause applies, being four lots within the subject site. These numerical restrictions were based on the planning proposal.

However, the structure of the LLEP 2008 was such that if the road works were completed and dedicated to Council prior to lodgement and approval of built form development applications for the Town Centre, it would result in a reduced site area associated with the Town Centre lots, rendering a development application that would inherently be capable of less floor area than forecast and approved by the planning proposal to rezone the land. Amendment 99 to LLEP 2008 gazetted on 27 September 2024 resolved this by inserting subclause (6A) which permits the inclusion of the site area associated with the road dedication as if the land had not been dedicated.

The specific wording is quoted below.

“(6A) For the purposes of calculating the floor space ratio of development for which development consent is proposed to be granted under this clause, the site area includes land that—

(a) is dedicated to the Council or a public authority for the purposes of roads, and

(b) would have been part of the site area if the land had not been dedicated.”

This has removed a financial detriment for the applicant to dedicate the land earlier than the envisioned sequencing.

Funding

The second issue with the altered sequencing of works is managing funding. The construction of the external road upgrades occurring without ties to the approved built form development application(s) for the Town Centre results in a substantial additional financial outlay.

To offset this, the applicant has proposed to separate the issuance of subdivision certificates from the completion of all works and dedication of land to Council. This will enable some land to be sold to fund the works.

As described by the applicant, the primary outcome is “...for road dedication to be linked to satisfactory completion of the works and thus enable subdivision of the lots to occur prior to works completion to assist to ensure that the appropriate capital financing can occur.”

The proposed rewording and restructuring of the conditions described in the previous sections of this report illustrate how this is sought to be achieved. All matters specified in the conditions associated with the road and drainage infrastructure are still to be enforced, however this is separate to the subdivision certificate component of the approval.

The primary consequence to assess of the proposed modification to conditions and sequencing of the subdivision certificate is how the outcomes of the conditions of consent will be secured without the subdivision certificate as the end goal.

Security

The matters for consideration are DA-64/2007, the ongoing Section 138 Roads Act application and the VPA.

The internal road and drainage construction are substantially progressed. The road connections to the external network is sought under the Roads Act approval pathway and will include its own requirements to be met to ensure all construction works are satisfactory to Council as part of works on their land. Previous modification, DA-64/2007/F, was informed by the Roads Act approval and proposed intersection designs.

The internal road and drainage network will be dedicated to Council as required by the reworded conditions, including Condition 31.3 that specifically states the roads must be dedicated. Council would not accept the dedication of the road and drainage network without satisfaction of the conditions of consent and all relevant certificates, reporting and documentation required by Conditions 31.1, 32.1 34, 35.1, etc. and thus the completion of the conditions of consent. Alone, this will ensure that the conditions of consent will still be met.

Council can be satisfied that the conditions of consent under DA-64/2007 can be satisfied prior to the issuing of any further subdivision or occupation certificates relating to the site. - The subdivision of the R1 General Residential lots under the separate application, DA-

637/2023, was conditioned to require the completion of all conditions of DA-64/2007 prior to the issuing of any subdivision certificate. Future applications for subdivision and/or built form would similarly be prescribed conditions tying into DA-64/2007 prior to subdivision or occupation certificates and continually would be until the works are completed and the land dedicated to Council.

Further to the above, the VPA between both parties has its own security mechanisms in place to ensure land dedication and the external road upgrades, which are tied into the completion of all conditions of DA-64/2007.

Releasing the subdivision certificates associated with DA-64/2007 will not compromise the intended outcomes of the road and drainage work and associated dedication. There are sufficient security measures in place to ensure the outcome is achieved notwithstanding the modification proposed.

This is furthered by the support of the application provided by Council's Land Development Engineering management team as part of the referral process in this application.

Conclusion

The application has been assessed and is deemed acceptable in its presented form. The rationale behind the application has sufficient merit to warrant a recommendation for approval. The outcomes of the conditions of consent will still be enforceable.

Street Trees

As the construction works have progressed, it has been observed that the provision of street trees for the new internal roads and those relevant to the external road network have been omitted from DA-64/2007 and its modifications. To ensure the delivery of suitable streetscape amenity and shading, discussions between Council and the applicant were held during the assessment of this modification application. An agreement was made to include a street tree plan and related conditions of consent for this modification and separately as part of the subdivision works certificate.

The applicant submitted proposed street tree plans prepared by JWP dated 06.01.2025 (sheets 1, 2 and 3) which are now incorporated into the amended conditions of this application.

The majority of street tree plantings that are to be planted now as part of this approval are in the external road network verge and some on the internal streets. The remainder would form part of the Middleton Grange Town Centre built form applications to ensure the trees are not damaged in the construction process of those buildings. Similarly, it has been agreed that the R1 General Residential zoned land (i.e. western side of Licata Avenue) will have trees planted at a later stage to minimise the potential for damage during the development of dwellings on those lots, which were approved under DA-637/2023.

An extract of the draft street tree plan is shown in Figure 11. The recommended draft conditions of consent provided in Appendix A require a detailed landscape plan to be prepared which will illustrate the tree species, specific locations and quantities, street furniture and the like, to ensure the desired outcome expressed in Part 2.5 of the Liverpool Development Control Plan 2008 is achieved.

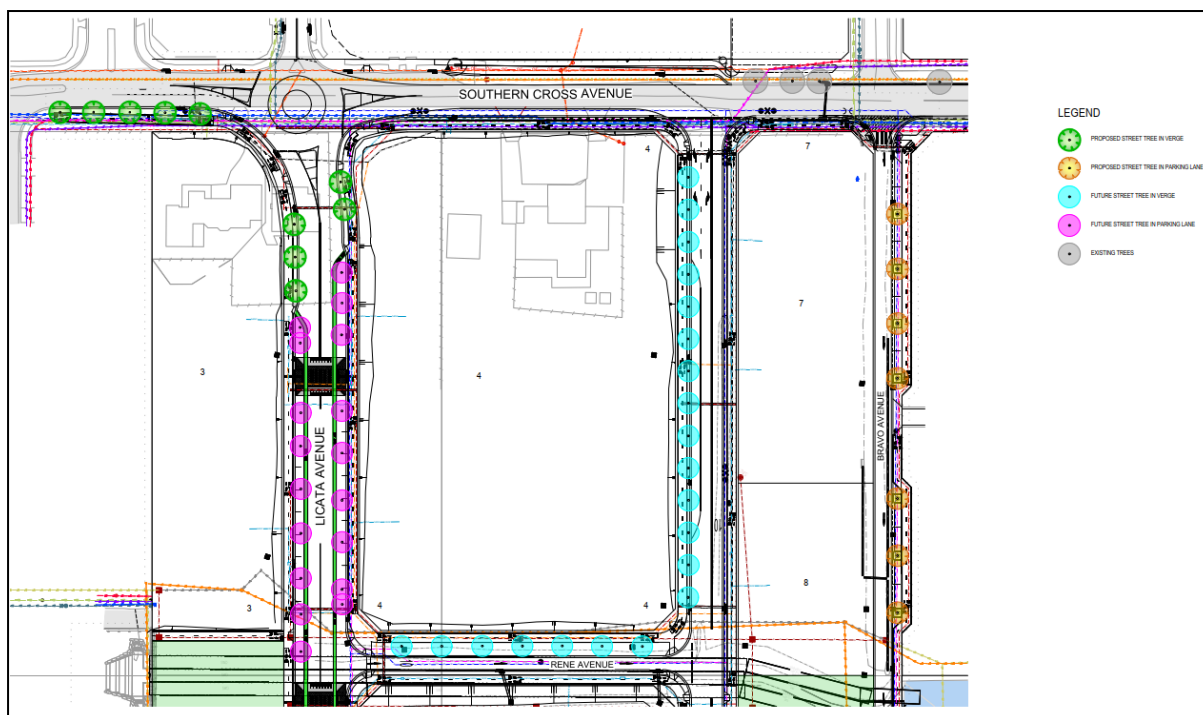


Figure 11 – Extract of Street Tree Plan (Sheet 1) prepared by J. Wyndham Prince illustrating indicative tree planting in the northwest portion of the site

The draft conditions are Condition 1.8 and 41, which state:

Urban Design

1.8 Prior to the dedication of any land (including roads) to the Council, documentation is to be produced for the review and approval of Council demonstrating how good public domain amenity will be delivered within the proposal which must include the provision of street trees, street furniture and street lighting on all streets within the site.

A suitably qualified person (i.e. a registered Landscape Architect) is to prepare and to provide the following information for the review and approval of Council:

- a) *Determine the suitable locations for street trees and suitable species to be installed within the public domain of the town centre.*
- b) *A Public Domain and Landscape Plan is to be produced and provided to Council for review and approval to demonstrate the locations for street trees and other public domain elements. For example, it is to include the following elements (but not limited to):*
 - i. *Footpaths and kerb/gutters;*
 - ii. *Proposed driveways;*
 - iii. *Details of street furniture, tree pits, tree grates and any other fixtures or fittings proposed; and*
 - iv. *The location of streetlight poles.*

Urban Design

41 Prior to the dedication of any land (including roads) to the Council, street trees, street furniture and street lighting must be delivered on all streets within the Middleton Grange Town Centre, as follows:

- a) Street trees are to be installed within the road reserve areas (either within the carriageway or verges) of the Middleton Grange Town Centre, to be generally consistent with the Proposed Tree Plans prepared by J Wyndham Prince dated 06/01/2025 that also demonstrates adjustments to the previously proposed shared paths to facilitate street trees as required.*
- b) Street trees are to be at a minimum spacing of 8-10m, and to be a minimum 100L pot size (at the time of installation), to achieve adequate and connected canopy cover within the streetscape of the town centre.*
- c) Streetlight poles (preferably multifunction poles) are to be installed within the town centre at consistent and even spacing throughout the site, as per the requirements of Council, Australian Standards and Transport for NSW.*
- d) Street furniture is to be included within the public domain of the town centre, to ensure that utility of the town centre can be achieved and maintained throughout its lifetime. This is to include furniture that is consistent in design and style throughout the site such as seats/benches, bins, street lighting and bike racks at consistent and even spacings as required to service the public domain.*

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following planning instruments/policies applicable to the proposed development area as follows:

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- Liverpool Local Environmental Plan (LLEP) 2008.
- Liverpool Development Control Plan (LDCP) 2008
 - Part 1: General Controls for All Development.
 - Part 2.5: Land Subdivision and Development in Middleton Grange

6. ASSESSMENT

This application has been lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act (EP&A Act) 1979. It is considered that the development can be determined under Section (1A) of the EP&A Act 1979, which states as follows:

“(1A) Modifications involving minimal environmental impact

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

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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*
- (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.*

Subsections (1), (2) and (5) do not apply to such a modification.”

Pursuant to subclause (a) of the above extract, the proposal must first be of minimal environmental impact.

The proposed modification involves the amendment of conditions of consent to revise the timing of the release of the subdivision certificate. It also involves the planting of trees in the public domain.

The assessment of the application, including that of Council's Land Development Engineering department which instituted the conditions to be modified, has determined the modification is acceptable. The timing of the release of the subdivision certificate to fund the next stage of the Middleton Grange Town Centre creates minimal environmental impact as the outcomes which the conditions intended to achieve are still secured through other mechanisms. The absence of physical works beyond the planting of street trees is crucial in concluding that there is a neutral or beneficial impact on the natural and built environments, and no social or economic impacts. Consequently, the application satisfies the “*minimal environmental impact*” test.

Pursuant to subclause (b) of Section 4.55(1A), the proposed modification must be substantially the same as the development to which the consent was originally granted. The application affects conditions and the timing of the subdivision certificates, and the inclusion of street trees. These matters are not fundamental components to the approved development, and the development outcome will ultimately remain substantially the same as the consent as originally determined and previously modified. Thus, this test is met.

Pursuant to subclause (c) and (d), the application was not required to be notified by the regulations or the Liverpool Community Participation Plan 2019. No submissions were received.

The application can be considered under clause 4.55(1A) of the EP&A Act 1979.

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

In accordance with Section 4.55(3) of the EP&A Act 1979, this modification 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* (EP&A Regulation).

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

Pursuant to Section 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.

Section 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The original consent issued under DA-64/2007 considered matters of contamination and was satisfactory at the time. Further, in DA-64/2007/C, an addendum to the Preliminary Site Investigation was submitted and supported, stating that the land was at low risk of contamination but would require further investigation and remediation. The original and addendum contamination documents (including a Stage 2 Detailed Site Investigation) were assessed and conditioned prior to a construction certificate. The subject modification relates to the conditions of consent. Condition 37.1 required a validation report at the completion of remedial works. This requirement remains within the development consent to be prepared to the satisfaction of the PCA. No further consideration of contamination on the site.

(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	As above.
(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.	Existing conditions of consent require the remediation of land per the recommendations in the approved contamination assessment.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of Chapter 4 of the SEPP (Resilience and Hazards) 2021.

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

Chapter 6 Water Catchments applies to land within the Georges River Catchment and aims to maintain and improve water quality.

The proposed modification purely affects conditions of consent and the installation of street trees, with no material effect on overall drainage and water quality.

Council's Land Development Engineer reviewed the modification and is supportive with no new conditions.

Accordingly, the proposed development is considered to meet the objectives of the SEPP and is unlikely to negatively impact the environmental quality of the Georges River Catchment.

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

An extract of the zoning map was provided in Figure 3 of this report. As indicated, the site contains a number of zones as prescribed by the Liverpool Local Environmental Plan 2008 (LLEP 2008): R1 General Residential, E1 Local Centre, SP2 Drainage and RE1 Public Recreation.

c) (ii) Permissibility

The modification involves altering conditions of consent and installing street trees relating to a development application originally for the subdivision of land and construction of associated roads and drainage.

All works were and remain permissible in the relevant zones.

d) (ii) Objectives of the Zone

The objectives of the R1 General Residential zone are:

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

The objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.*
- *To maximise public transport patronage and encourage walking and cycling.*

The objectives of the SP2 Infrastructure zone are:

- *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 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 modification to conditions does not impact on consistency of the development application with the zone objectives. The application will continue to deliver the road and drainage infrastructure to facilitate the future development of the Middleton Grange Town Centre and nearby residential development.

The development is acceptable as assessed against the zone objectives.

(iv) Principal Development Standards

The proposed modification has minimal effect and requires a limited assessment of the provisions of the LLEP 2008. The table below addresses the relevant clauses only.

As no built form is proposed in this application, a number of typical development standards are not referenced including Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, among others.

Development Provision	Requirement	Proposed	Comment
Part 5 Miscellaneous Provisions			
5.1 Relevant Acquisition Authority	Community Facility (E1) (see map below)	The modification does not affect the dedication of the land identified for future acquisition on the Land Reservation Acquisition Map. See Figure 12. The dedication of the land has been facilitated under the executed VPA.	N/A
Part 7 Additional Local Provisions			
7.31 Earthworks	Consent is required for earthworks	Limited additional earthworks are required to plant street trees. No concerns are raised.	Complies
7.42 Development of Middleton Grange Town Centre	(1) This clause applies to the following land— (a) Lots 2–5 and 6, DP 1207518, (b) Lot 1, DP 1078564, (c) Lot 12, DP 1108343, (d) Lot 102, DP 1128111. (2) Development consent must not be granted to development if the development will result in any of the following— (a) the total number of residential dwellings on the	Although the subject site is the land specified in the clause, the clause itself relates to development yield including total dwellings, floor area, etc. The modification itself does not directly trigger the clause. However, it is noted (and referenced earlier in this report) that an amendment to LLEP 2008 gazetted on 27 September 2024 inserted subclause (6A) which permits the land area associated with the internal roads to be included as site area for the calculation of	N/A

Development Provision	Requirement	Proposed	Comment
	land exceeding 671, (b) the total residential floor area of all buildings on the land exceeding 72,000m ² , (c) the total non-residential ground floor area of all buildings on the land exceeding 26,000m ² .	GFA/FSR, which has facilitated the revised timing and dedication of the road network that is the purpose behind the modification application. The outcome envisioned by this clause, as amended and now in force, is still achieved by the modification.	

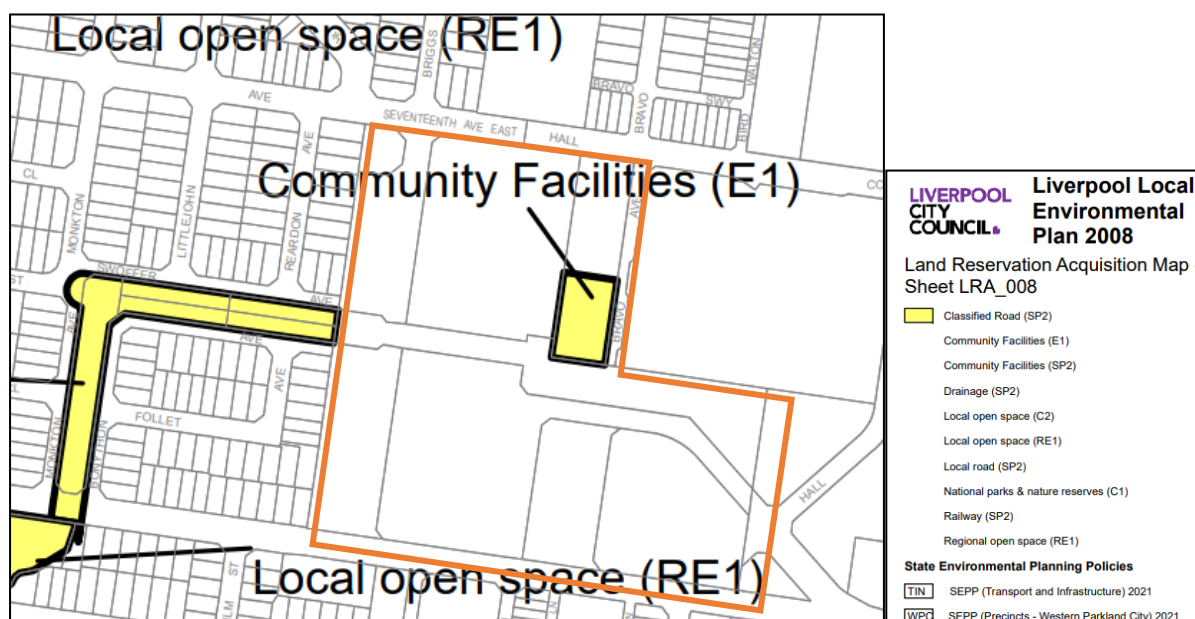


Figure 12 – Land Acquisition Map (NSW Legislation website)

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

There are no draft Environmental Planning Instruments that affect the assessment of this application.

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

(a) Liverpool Development Control Plan (LDCP) 2008

The development is subject to the relevant controls of the LDCP 2008, particularly:

- Part 1: General Controls for all Development
- Part 2.5: Land Subdivision and Development in Middleton Grange

Only the relevant controls for the modification are covered in the tables below. Separate tables have been provided for the different Parts of the LDCP 2008.

The proposal is compliant with the LDCP 2008.

The first table refers to the controls within Part 1 of the LDCP 2008.

LDCP 2008 – Part 1: General Controls for all Development			
Control	Requirement	Proposed	Comment
Section 3 – Landscaping and Incorporation of Existing Trees	Promote landscape planning and design as part of a fully integrated approach to site development.	The inclusion of a condition of consent for street tree planting will ensure a positive landscape amenity outcome for the locality. Council's Urban Design team have reviewed the proposed street tree plan and proposed a condition of consent for a detailed landscape plan to confirm species and planting locations, etc.	Complies by Condition
Section 6 – Water Cycle Management	Consideration of stormwater and drainage	The modified conditions will continue to secure the road and drainage outcomes of the development as previously approved. No change.	Complies
Section 8 – Erosion and Sediment Control	Sediment Control Plan or Soil and Water Management Plan required	As above, but relevant to erosion and sediment controls.	Complies

The below table refers to the controls within Part 2.5 of the LDCP 2008.

LDCP 2008 – Part 2.5: Land Subdivision and Development in Middleton Grange			
Control	Requirement	Proposed	Comment
Section 2.1 – Street Network	The subdivision of land, design and layout of streets shall be in accordance with Figures 2-3. All streets shall be designed and constructed in accordance with Figures 2, 3 and 4.	The currently approved road network aligns with Figures 2-3 and has been previously deemed acceptable. The conditions as modified will continue to secure the road design and specific outcomes through the Section 138 application, VPA and within this consent as modified.	Complies by Condition

LDCP 2008 – Part 2.5: Land Subdivision and Development in Middleton Grange			
Control	Requirement	Proposed	Comment
	Tree planting can be located either within the carriageway or road verge.	Council's Land Development Engineer has reviewed the modification and has recommended approval with no additional conditions. The provision of street trees is consistent with discussions with Council's Urban Design team and, per the proposed conditions, will be provided within the parking lane or road verge.	
2.3 Streetscape and Street Trees	Street furniture is to be incorporated into the design of all public spaces and should be consistent in design and style. Street trees shall be required to be planted in conjunction with the creation of a new street or the extension of an existing street. One street tree shall be planted for each allotment created. The street trees shall be planted prior to the release of the subdivision certificate.	An indicative street tree layout was provided as part of the modification. Council's Urban Design team reviewed this and is supportive subject to a conditions of consent for a detailed landscape plan. The plan is to include details of the species, spacing, and street furniture.	Complies by Condition

6.4 Section 4.15(1)(a) (iia) – Planning Agreement or any Draft Planning Agreement

A VPA was executed on 24 November 2022 regarding road upgrades to Council owned roads and the embellishment and dedication of open space. The proposed modification does not modify the agreement and is not in conflict with it.

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

Natural & Built Environment

The proposed modification has no additional negative impacts on the natural or built environments. Rather, the provision of street trees will enhance the natural environment over the current approval.

Social Impacts and Economic Impacts

No negative social or economic impacts occur. The proposal seeks to allow for the expedition of the dedication of external roads for the benefit of the locality and the release of the subdivision certificates for certain lots to continue the funding of the development of the Middleton Grange Town Centre.

Between all the mechanisms in place, the outcomes of the conditions of consent will remain secure while achieving the objective to deliver the road networks ahead of the envisioned sequencing of events.

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

The subject site remains suitable for the approved land use. The modification has been assessed to have no adverse impacts on neighbouring properties or the broader area.

6.8 Section 4.15(1)(d) - Any submissions made in relation to the Development.

(a) Internal Referrals

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

DEPARTMENT	COMMENTS
Land Development Engineer	Supported.
Urban Design & Public Domain	Supported subject to conditions.

(b) External Referrals

No external referrals were triggered by the proposal.

(c) Community Consultation

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

7. CONCLUSION

The application has been assessed with regard to the provisions of Section 4.15 and Section 4.55(1A) of the EP&A Act 1979 and the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, LLEP 2008, LDCP 2008, and the relevant codes and policies of Council.

The proposal is considered to have sufficiently demonstrated that the proposed modification is substantially the same as originally approved and has minor environmental impact. Furthermore, the proposal has sufficient merit to enable a recommendation of approval.

8. RECOMMENDATION

That application DA-64/2007/G for a modification to development consent DA-64/2007 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 to modify conditions of consent to remove the wording 'prior to subdivision certificate', be **approved** by the Liverpool Local Planning Panel as the consent authority, pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, subject to modified conditions of consent.

ATTACHMENTS

1. Draft Notice of Determination - DA-64/2007/G (Under separate cover)
2. Statement of Environmental Effects (Under separate cover)
3. Proposed Tree Plan (Under separate cover)