

# LOCAL PLANNING PANEL AGENDA

31 March 2025

ONLINE VIA MS TEAMS

LIVERPOOL  
CITY  
COUNCIL



# MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

**Monday, 31 March 2025**

**ONLINE 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, 28<sup>th</sup> March 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	<p><b>DEVELOPMENT APPLICATION DA-866/2022/A</b></p> <p><b>MODIFICATION TO DEVELOPMENT CONSENT DA-866/2022 UNDER SECTION 4.55(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, TO RETAIN AND USE EXISTING UNAUTHORISED ALTERATIONS TO THE DWELLING AND THE CONSTRUCTION OF PROPOSED ADDITIONAL ALTERATION TO THE DWELLING HOUSE:</b></p> <ol style="list-style-type: none"> <li><b>1. UNAUTHORISED DEMOLITION OF EXISTING WINDOWS.</b></li> <li><b>2. UNAUTHORISED ALTERATION OF THE EXISTING MAIN ENTRANCE DOOR.</b></li> <li><b>3. UNAUTHORISED ADDITION OF NEW WINDOWS.</b></li> <li><b>4. UNAUTHORISED MODIFICATION OF EXISTING EXTERNAL COLOURS.</b></li> <li><b>5. PROPOSED ALTERATION OF EXISTING ALFRESCO.</b></li> <li><b>6. PROPOSED EXTENSION OF THE EXISTING KITCHEN.</b></li> </ol> <p><b>LOT 102 DP 1007447</b></p> <p><b>50 ROSEWOOD AVENUE, PRESTONS</b></p>	5 - 27

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2	<p><b>DEVELOPMENT APPLICATION DA-344/2024</b></p> <p><b>CONSTRUCTION OF A FOOTPATH AND BOARDWALK TO BE USED FOR PUBLIC RECREATION</b></p> <p><b>LOT 3 DP 1278607, LOT 304 DP 118048, LOT 2 DP 1193300, LOT 21 DP 1207736, LOT 4 DP 1193300</b></p> <p><b>LOT 304 NEWBRIDGE ROAD, 85 BRICKMAKERS DRIVE, NEW BRIGHTON GOLF COURSE AND CLUB, WURRUNGWURI RESERVE AND 85 BRICKMAKERS DRIVE, MOOREBANK</b></p>	28 - 64

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3	<p data-bbox="371 199 991 230">DEVELOPMENT APPLICATION DA-481/2024</p> <p data-bbox="371 293 1206 392">TORRENS TITLE SUBDIVISION OF THE NORTHERN BLOCK OF THE SITE INTO ELEVEN (11) LOTS AND THE SOUTHERN BLOCK OF THE SITE INTO TWO (2) LOTS.</p> <p data-bbox="371 443 1206 510">LOT 738 DP 1247625, LOT 548 DP 1219412, LOT 737 DP 1247625</p> <p data-bbox="371 573 1153 640">61 CHANGSHA ROAD, LOT 548 CHANGSHA ROAD, 157 ARDENNES AVENUE, EDMONDSON PARK</p>	65 - 86

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4	<p data-bbox="371 784 991 815">DEVELOPMENT APPLICATION DA-177/2024</p> <p data-bbox="371 864 1206 1043">RESIDENTIAL SUBDIVISION OF TWO LOTS INTO 52 RESIDENTIAL LOTS AND 3 RESIDUE LOTS INCLUDING DEMOLITION OF EXISTING DWELLINGS &amp; STRUCTURES, TREE REMOVAL, ROAD CONSTRUCTION, STORMWATER DRAINAGE, SERVICING, &amp; EARTHWORKS.</p> <p data-bbox="371 1095 871 1126">LOT 362 DP 2475, LOT 363 DP 2475</p> <p data-bbox="371 1176 943 1207">365-375 FIFTEENTH AVENUE, AUSTRAL</p>	87 - 113

<b>Item Number:</b>	1
<b>Application Number:</b>	DA-866/2022/A
<b>Proposed Development:</b>	<p>Modification to Development Consent DA-866/2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to retain and use existing unauthorised alterations to the dwelling and the construction of proposed additional alteration to the dwelling house:</p> <ol style="list-style-type: none"> <li>1. Unauthorised demolition of existing windows.</li> <li>2. Unauthorised alteration of the existing main entrance door.</li> <li>3. Unauthorised addition of new windows.</li> <li>4. Unauthorised modification of existing external colours.</li> <li>5. Proposed alteration of existing alfresco.</li> <li>6. Proposed extension of the existing kitchen.</li> </ol>
<b>Property Address</b>	50 Rosewood Avenue, Prestons
<b>Legal Description:</b>	Lot 102 DP 1007447
<b>Applicant:</b>	Mr Mahesh Rajan
<b>Land Owner:</b>	Anjila Nadan and Shiu Nadan
<b>Cost of Works:</b>	\$45,000
<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Azmal Hussain

## 1 EXECUTIVE SUMMARY

Council has received a Development Application (DA No. 866/2022/A) seeking consent to modify the existing development consent for the dwelling to retain and use the existing unauthorised alterations to the dwelling and the construction of proposed additional alteration to the dwelling house at 50 Rosewood Avenue, Prestons, legally defined as Lot 102 DP1007447. The extent of the modifications include:

1. Unauthorised demolition of existing windows
2. Unauthorised alteration of the existing main entrance door
3. Unauthorised addition of new windows
4. Unauthorised modification of existing external colors
5. Proposed alteration of existing alfresco
6. Proposed extension of the existing kitchen

The site is zoned R2 – Low Density Residential pursuant to Liverpool Local Environmental Plan 2008 and the proposed development is permissible with consent.

The purpose of the modification is two-fold:

- To enable the applicant to continue current construction which has been issued with a stop work order by the private certification authority. The stop work order requires a modification consent from Council in relation to the unauthorised works listed 1-4 above.
- To seek consent for the proposed enclosure of the covered alfresco for the purpose of a kitchen extension with an increase to the internal gross floor area.

The proposal was not required to be notified in accordance with the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022, and no submissions were received. The original development application DA-866/2022 was also not required to be notified, and no submissions were received.

The key issues associated with the proposal relate to:

1. The modification is not deemed to be substantially the same development as to what was originally approved.
2. The proposal seeks approval for a variation to the development standards, in relation to Clause 4.4 Floor Space Ratio of the Liverpool Local Environmental Plan 2008. The variation proposed equates to 10.23%. Although it is acknowledged that Clause 4.6 does not specifically apply to modification applications, the applicant has submitted a Clause 4.6 variation request to demonstrate compliance with Clause 4.6(3a and 3b) in order to carry out a merit-based assessment on the non-compliance with the development standard. However, Council have assessed that the non-compliance with the development standard is unacceptable. Please refer to the discussion 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 6 May 2024*, as the development falls in the category of:

***Departure from Development Standards***

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

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

## 2. SITE DESCRIPTION AND LOCALITY



Figure 1: Aerial Image of Subject site (in red).

### 2.1 Site Description

The subject is identified as Lot 102 DP1007447, and commonly known as 50 Rosewood Avenue, Prestons. The site is regular in shape with a 15m wide frontage to Rosewood Avenue and 30m depth, with a total site area of 450m<sup>2</sup>. The slope of the site is flat, with a slight incline of 0.6m in the front setback from the front boundary to the building line.

Currently, the site comprises of a double storey dwelling approved by DA-866/2022 on 19 September 2022. The works obtained a construction certificate (CC-22559/01), however unauthorised modifications during construction prompted the Principal Certification Authority (PCA) to issue a stop works order. The history of the site is detailed in the next sections of this report. No additional structures have been constructed on the subject site.

### 2.2 Locality Description

The site is located within Prestons on a local road adjacent to Beech Road, an arterial road for the suburb. The locality of the site contains a mix of one and two storey detached dwelling houses. The site is located 70m south of a childcare centre in operation for 80 children, approved in 2022.

The site is located 600m south-east of Prestons Public School and 300m north of the M5 motorway. The main access points to the locality are Kurrajong Road running in the east-west direction and Beech Road running in the north-south direction.



Figure 2: Locality surrounding the proposed development (subject site in red box).

2.3 Site Constraints

<p><b>Are there any constraints or affectation on the site:</b></p> <ul style="list-style-type: none"> <li>- Bushfire</li> <li>- Flooding</li> <li>- Heritage Items</li> <li>- Aboriginal heritage</li> <li>- Environmentally Significant Land</li> <li>- Threatened Species/ Flora/ Habitat/ Critical Communities</li> <li>- Acid Sulphate Soils</li> <li>- Aircraft Noise</li> <li>- Flight Paths</li> <li>- Railway Noise</li> <li>- Road Noise/ Classified Road</li> <li>- Significant Vegetation</li> <li>- Contamination</li> <li>- Salinity</li> </ul>	<ul style="list-style-type: none"> <li>- Salinity</li> </ul>
<p><b>88B Restriction for subject Lot 102 DP 1007447</b></p>	<p><u>Terms of Restriction on the use of land fourthly referred to in the abovementioned plan.</u> That for the benefit of any adjoining land owned by Surfrace Pty. Limited but only during the ownership thereof by Surfrace Pty. Limited their successors and assigns other than transferees on sale no fence shall be erected on the land hereby burdened to divide the same from such adjoining land without the consent of Surfrace Pty. Limited but such consent shall not be withheld if such fence is erected without expense to Surfrace Pty. Limited and in favour of any person dealing with a transferee such consent shall be deemed to have been given in respect of every fence for the time being erected. The authority whose consent is required to release, vary, or modify the above restriction is Surfrace Pty. Limited. The cost and expense of any release, variation or modification shall be borne by the person or corporation requesting the same in all respects.</p> <p>No adjacent lots owned by Surfrace Pty Ltd currently remain. As such, the restriction does not apply.</p>

**3. BACKGROUND/HISTORY**

**3.1 Background and DA History**

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

DA No.	Development	Determined
DA-866/2022	Alterations and additions to an existing dwelling	Approved 19 September 2022
DA-866/2022/A	<p>Modification to development consent no. DA-866/2022 under S4.55(2) of the EP&amp;A Act 1979, to modify existing consent for the dwelling to retain and use existing unauthorised alterations to the dwelling and the construction of proposed additional alteration to the dwelling house:</p> <ol style="list-style-type: none"> <li>1. Unauthorised demolition of existing windows</li> <li>2. Unauthorised alteration of the existing main entrance door</li> <li>3. Unauthorised addition of new windows</li> <li>4. Unauthorised modification of existing external colours</li> <li>5. Proposed alteration of existing alfresco</li> <li>6. Proposed extension of the existing kitchen</li> </ol>	Subject application

Below is a brief history of the subject application in Council:

Date	Action
18 December 2024	Application Lodged
30 January 2025	<p>A 14-day RFI letter was issued to applicant, citing the following matters:</p> <ul style="list-style-type: none"> <li>• Non compliance with Floor Space Ratio Development Standard. A clause 4.6 was requested in order to carry out a merit assessment on the matter</li> <li>• Site plan – A site plan is required which includes the unauthorised work and proposed work with the following details: <ol style="list-style-type: none"> <li>a) Calculation of the private open space</li> <li>b) Nomination of the principle private open space</li> <li>c) All setbacks shown, including first floor setbacks</li> <li>d) The rear ‘awing’ to be removed if that structure has been replaced.</li> </ol> </li> <li>• Unauthorised window W12 and W20: <ol style="list-style-type: none"> <li>a) In reference to section 2 - Site Planning and section 8 – Amenity and environmental impact in Part 3.2 of the DCP, the above mentioned existing windows must be treated(obscured or screened) to a sill height of 1.5m to</li> </ol> </li> </ul>

	avoid overlooking.
12 February 2025	Additional information is received.

4. DETAILS OF THE PROPOSAL

The proposed modification to DA-866/2022, under the subject application DA-866/2022/A, pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, seeks consent to retain and use existing unauthorised alteration to the dwelling and the construction of proposed additional alteration to the dwelling house.

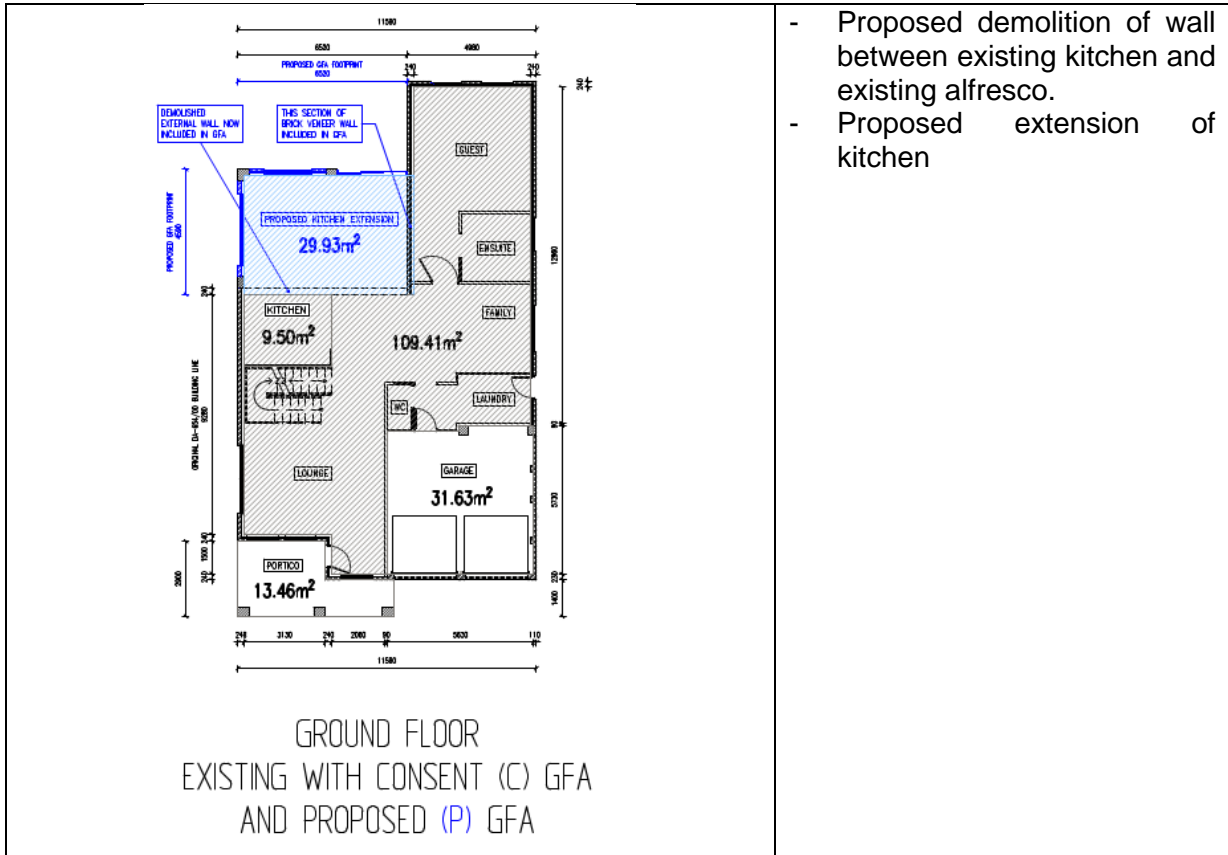
Specifically, the proposal seeks to:

1. Regularise the unauthorised demolition of existing windows
2. Regularise the unauthorised alteration of the existing main entrance door
3. Regularise the unauthorised addition of new windows
4. Regularise the unauthorised modification of existing external colours
5. Proposed alteration of existing alfresco
6. Proposed extension of the existing kitchen

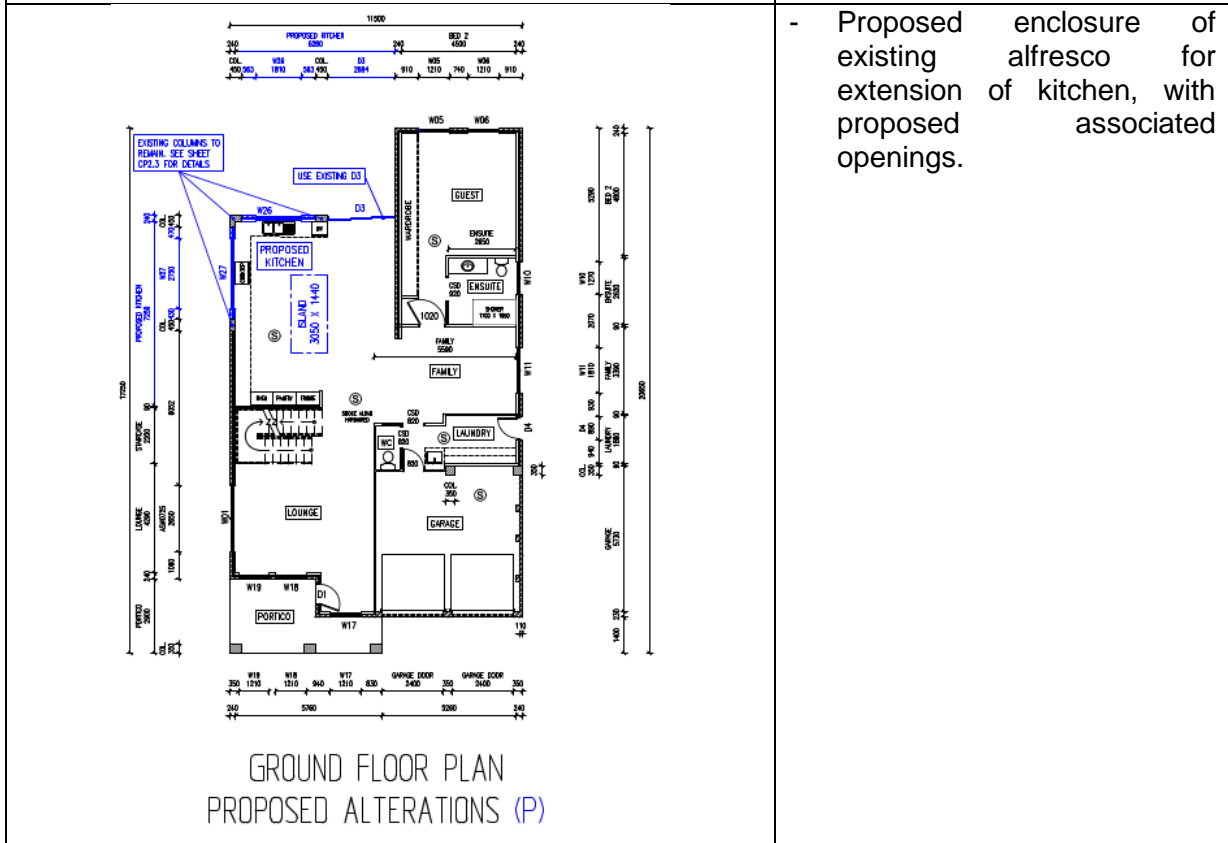
Note: Unauthorised works are in red and proposed works are in blue in the plans in the below table.

Proposal	Commentary
<p style="text-align: center;">GROUND FLOOR PLAN EXISTING WITHOUT CONSENT (U)</p>	<ul style="list-style-type: none"> <li>- Demolition of existing windows to ground floor lounge</li> <li>- Demolition of existing front door and relocating to the front habitable wall.</li> <li>- Addition of new kitchen (W24)</li> <li>- Infill of window location in existing kitchen</li> <li>- Addition of two windows in new Bed 2</li> </ul>

<p>ELEVATION WEST EXISTING WITHOUT CONSENT (U)</p>	<ul style="list-style-type: none"> <li>- Alteration of existing main front door.</li> <li>- Addition of new windows to front façade (removal of 2 windows and addition of 3 windows in the same space)</li> </ul>
<p>ELEVATION NORTH UNAUTHORISED (U) WORKS INTEGRATED WITH PROPOSED (P) WORKS</p>	<ul style="list-style-type: none"> <li>- Addition of new windows to north elevation on first floor for bedroom</li> <li>- Addition of new kitchen window on ground floor (shown red)</li> <li>- Proposed addition of window for new kitchen (shown blue)</li> </ul>
<p>ELEVATION SOUTH EXISTING WITHOUT CONSENT (U)</p>	<ul style="list-style-type: none"> <li>- Addition of new windows to first floor bedroom</li> <li>- Addition of new window to ground floor bedroom</li> </ul>
<p>ELEVATION EAST EXISTING WITHOUT CONSENT (U)</p>	<ul style="list-style-type: none"> <li>- Additional window to ground floor Bed 2.</li> </ul>



- Proposed demolition of wall between existing kitchen and existing alfresco.
- Proposed extension of kitchen



- Proposed enclosure of existing alfresco for extension of kitchen, with associated openings.

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

The relevant planning considerations for the proposed development are as follows:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- Liverpool Local Environmental Plan (LLEP) 2008; and
- Liverpool Development Control Plan (LDCP) 2008;
  - Part 1: General Controls for All Development;
  - Part 3.2: Dwelling houses on land greater than 400 sqm in the R2, R3 and R4 zones

#### Contributions Plans

- Liverpool Contributions Plan 2018 – Established Areas applies to the site.

## 6. ASSESSMENT

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

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

#### **Modification of consents – generally**

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

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

**Comment:** The proposed modification would not result in ‘substantially the same’ development as the development for which consent was originally granted did not have an exceedance to development standards and an enclosure to the alfresco area, which would have been considered in the private open space of the development. The dwelling and alterations originally approved formed a compliant development and was consistent with the zone objectives and character of the area.

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

**Comment:** Concurrence or general terms of approval is not required in the assessment of this modification and was not sought in the consent originally approved.

- (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 not required to be notified in accordance with the regulations or the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1) and (1A) do not apply to such a modification.*

**Comment:** No submissions were received during the course of this assessment.

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

**Comment:** Council has considered matters referred to in Section 4.15(1) and in discussed in the following sections of this report. Council has considered that reasons for the grant of the originally approved consent included the developments compliance of the Floor space ratio within the area prescribed, a 0.6:1 FSR mapped zone.

*(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

**Comment:** Noted.

## **6.1 Section 4.15 Assessment**

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

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

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

The subject site is located within the Georges River Catchment and as such, State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Water Catchments (the Georges River Catchment) applies to the application. SEPP (Biodiversity and Conservation) 2021, in particular Chapter 6 - Water Catchments, generally aims to maintain

and improve the water quality and river flows of catchments such as the Georges River and its tributaries.

The parent application, DA-866/2022 was not referred to Council’s Land Development Engineering Section given the typical application for the construction of a detached dwelling on a residential land. Accordingly, the development was considered to meet the objectives of the SEPP as it would unlikely have a negative impact on the environmental quality of the Georges River Catchment and conditions were applied regarding stormwater and sediment and erosion control measures.

**(b) State Environmental Planning Policy (Resilience and Hazards) 2021 – Remediation of Land**

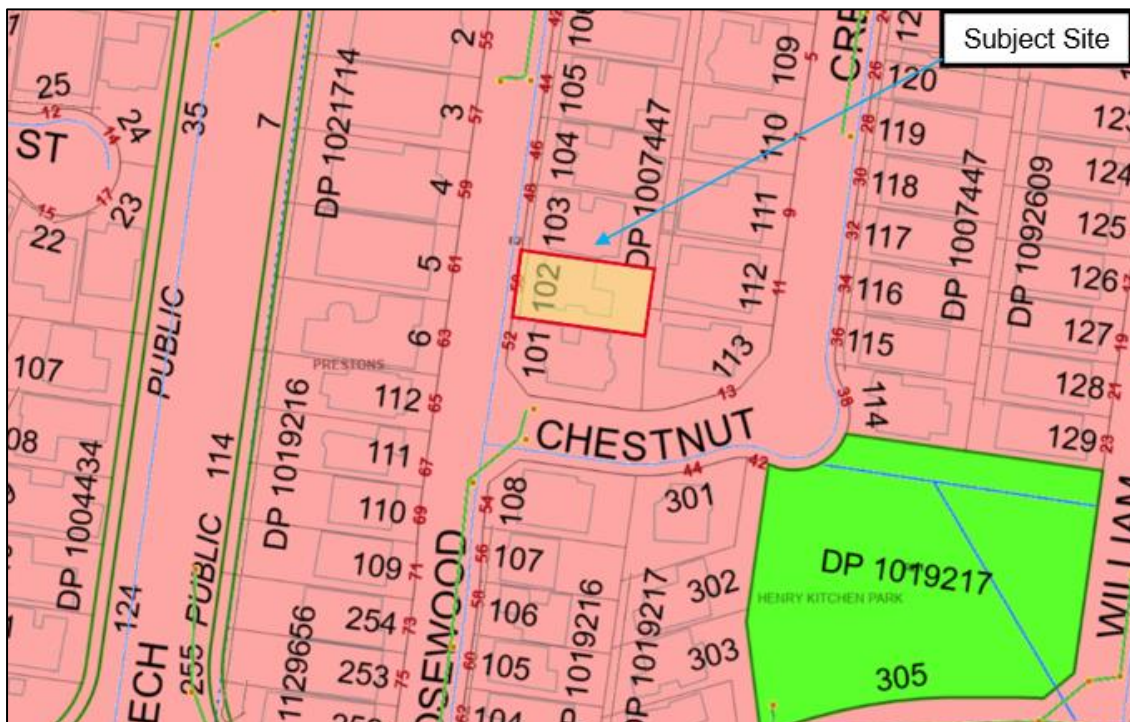
Land contamination and remediation matters were considered in the prior assessment of the approved development under DA-866/2022. No further matters for consideration have been identified under the subject modification.

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

The approved development had been assessed against the LLEP 2008 under DA-866/2022 and the proposed modification generates further matters for consideration in this instance.

**(i) Zoning**

The subject site is zoned R2 Low Density Residential pursuant to the LLEP 2008. An extract of the zoning map is provided in Figure 3.



**Figure 3:** Zoning map (Source: Geocortex)

**(ii) Permissibility**

The proposed additions and alterations of a dwelling is permissible with consent within the R2 Low Density Residential Zone.

**(iii) Objectives of the zone**

The objectives of the **R2 – Low Density Residential** zone are as follows:

- *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.*

The proposal is consistent with the objectives of the R2 Low Density Residential zone, in that it provides for housing needs of the community and can provide a high level of residential amenity. However, with the non-compliance with floor space ratio, the proposal is deemed to exceed the suitability of providing a low scale residential character commensurate with a low dwelling density.

**(iv) Principal Development Standards**

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

<b>Development Provision</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Comment</b>
<b>Part 2 Permitted or prohibited development</b>			
2.6 Subdivision – consent requirements	Subdivision requires development consent	No subdivision proposed	<b>Not applicable</b>
<b>Part 4 Principal Development Standards</b>			
4.1 Minimum subdivision lot size	300m <sup>2</sup> on map	Existing lot is 450sqm. No subdivision proposed	<b>Not applicable</b>
4.3 Height of Buildings	8.5m	No change to existing dwelling height of 7.4m	<b>Complies</b>
4.4 Floor Space Ratio	The FSR limit is 0.6:1.  The site is not mapped within special areas subject to FSR clauses.	Dwelling: 0.6614:1  (GFA: Ground floor = 148.61m <sup>2</sup> , First floor = 149m <sup>2</sup> Total = 297.61m <sup>2</sup> ) Site area=450m <sup>2</sup> FSR Ratio: = 297.61sqm/450sqm = 0.6614:1	<b>Does not comply</b>

		Although not required for a modification application, a Clause 4.6 Variation is provided to make a merit assessment on why the applicant believes the development standard is unnecessary and that there are sufficient environmental planning grounds to justify the non-compliance. This is discussed below.	
4.5 Calculation of floor space ratio and site areas	The definition of floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.	<p>The site area is registered as 450m<sup>2</sup>.</p> <p>The proposed development is carried out on one lot.</p> <p>There are no exclusions from site area present on the subject site.</p> <p>The gross area calculation presented is consistent with the calculation measured.</p>	<b>Noted</b>
4.6 Exception to development standards	The exception to the development standard related to floor space ratio, which is not a standard that is expressly excluded from the operation of this clause.	Although not necessarily required for a Clause 4.55 modification application, a merit-based assessment of the considerations under Clause 4.6 Exception of development standards has been submitted in relation to the non-compliance with Clause 4.4 Floor Space Ratio. This is discussed below.	<b>Considered unacceptable</b>
7.7 Acid Sulfate Soils	The subject site is not mapped as being within a Class 5 acid sulfate soil area	No further consideration is required.	<b>Not applicable</b>

**Clause 4.6 – Exceptions to development standards (Variation to Clause 4.4 – Floor space ratio)**

Clause 4.4(2) of the Liverpool Local Environmental Plan 2008 states:

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The maximum floor space ratio standard applying to the subject land under Clause 4.4(2) is 0.6:1 (gross area: site area) as shown in the extract from the Floor Space Ratio Map below.

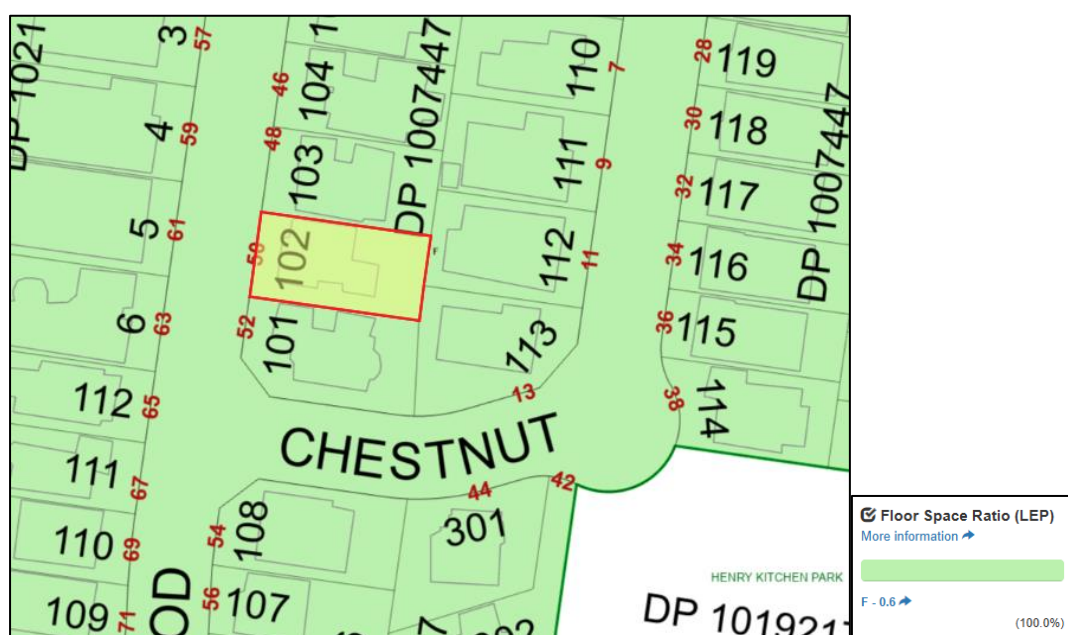


Figure 4: Extract of Floor Space Ratio Map - LEP 2008

The intent of the proposed development relating to this exception sought, as stated in the DA documentation, is to enclose the existing covered alfresco for the purpose of a kitchen extension. However, the modification, whilst located in a maximum 0.6:1 Floor Space Ratio mapped zone, proposes a Floor Space Ratio (FSR) of 0.6614.

The application contravenes the maximum FSR of 0.6:1 by 0.0614:1 or 10.23%, accordingly the proposal seeks a variation to the maximum FSR development standard under clause 4.4 of the Liverpool Local Environmental Plan 2008 (LLEP 2008). Considering that a modification application does not necessarily require the means of a variation to be looked at under the provisions of Clause 4.6 of the LLEP 2008, a merit based assessment based on these provisions will be made to assess whether the variation can be supported.

As such, pursuant to Clause 4.6 of the LEP 2008, the applicant has submitted a request seeking to justify a variation to the maximum floor space ratio prescribed in Clause 4.4(2).

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

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

Clause 4.6(2) prescribes:

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

**Comment:** The variation to FSR is not expressly excluded from the operation of this clause.

Clause 4.6(3) prescribes:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

**Comment:** The applicant has submitted a Clause 4.6 Variation report to the floor space ratio standard, in order to justify the variation described above.

The document provides the following justifications based on the merits of the proposal assessed against Clause 4.6 and the objectives of the *Ageing Well In NSW: Seniors Strategy 2021-2031*.

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and**

**Applicant justification:**

The applicant confirms that the *'underlying objectives of the Floor Space Ratio (FSR) development standard remain highly relevant to the proposed kitchen extension'*.

The applicant continues to justify with the following:

*This zoning aligns with the site's characteristics, the surrounding residential context, and the established character of the neighbourhood. The proposed kitchen extension, despite the minor FSR variation, remains consistent with the zone's objectives, which include:*

- Providing for the housing needs of the community within a low-density residential environment.*
- Ensuring a high level of residential amenity.*
- Maintaining a low-scale residential character commensurate with a low dwelling density.*

*The proposed kitchen extension, driven by the need to accommodate a multi-generational family with elderly occupants and growing children, supports the zone's objectives by facilitating aging in place and promoting adaptable housing solutions within an established residential context.*

*The FSR variation, while exceeding the numerical limit, does not fundamentally alter the dwelling's low-density residential character. The alterations are primarily internal, at the rear of the dwelling and do not significantly impact the dwelling's external appearance or the streetscape.*

*In Housing for Life: Designed for Living (Office for Ageing Well, 2019), the authors highlight the importance of designing homes that adapt to the changing needs of occupants and support aging in place. The proposed kitchen extension is consistent with this principle by providing a more spacious and functional living environment for the multi-generational family, enabling them to age in place comfortably and safely.*

*Therefore, the R2 Low Density Residential zoning remains appropriate for the site, and the proposed kitchen extension, including the FSR variation, is compatible with the zone's objectives and desired future character.*

**Council Assessment:**

- The applicant has confirmed that the objectives of the FSR development standard remains highly relevant to the proposal.
- The site is rectangular in shape with 15m frontage and a depth of 30m. The site area is 450m<sup>2</sup>. The shape of the site is not irregular and does not demonstrate an unreasonable access to the local street. The site shape, topography and access does not create unreasonable or unnecessary development circumstances.
- The site is not restricted by easements or applicable restrictions on use. The land title and 88B instrument does not create unreasonable or unnecessary development circumstances.
- The site contour is generally flat, with a slight incline of 0.6m rise to the front setback. The topography does not create unreasonable or unnecessary development circumstances.
- The subject dwelling is facing west. The location of the proposed extension is located in the rear yard with is orientated to the east. Solar access to the dwelling or its private open space is typical and does not create unreasonable or unnecessary development circumstances.
- The siting of windows of habitable rooms in the subject development and adjoining developments are typical to the local character. Overlooking to private open space does in this instance does not create unreasonable or unnecessary development circumstances.
- Due to the topography of the site, stormwater from the site is able to drain satisfactorily to the street via existing kerb outlets.
- The setbacks of the existing original dwelling have been maintained in the previous consent DA-866/2022. The setbacks are not proposed to be altered in the subject modification application.
- The enclosing of the alfresco area would create an undesirable precedent for the development of dwellings in the local government area, especially where there are no known site constraints or circumstances which would warrant an exceedance to the development standard.
- The 0.6:1 development standard for FSR is generous for residential development in the context of a vast majority of areas in the LGA where the FSR development standard is much lower.

- The argument to support the extra floor space is not substantiated given the dwelling already has a kitchen area and can function as a dwelling. A persons wants should not outweigh the requirements for compliance with the development standard.

**(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.**

**Applicant justification:**

The applicant has submitted a section in the Clause 4.6 Variation report which attempts to justify the contravention of the development standard by addressing the objectives of Clause 1.3 Objects of the Act, pursuant to the *Environmental Planning and Assessment Act 1979*, which reads:

*The proposed kitchen extension and the FSR variation are consistent with the objectives of the Environmental Planning and Assessment Act 1979 in the following ways:*

**(a) Social and economic welfare:** *The proposed kitchen extension enhances the functionality and accessibility of the dwelling, improving the occupants' quality of life and promoting social inclusion. This aligns with the objective of promoting social and economic welfare by creating a more liveable and adaptable home environment.*

**(b) Ecologically sustainable development:** *The proposed kitchen extension promotes sustainable building practices by incorporating energy-efficient appliances and design features that maximise natural light and ventilation. This aligns with the objective of facilitating ecologically sustainable development by integrating environmental considerations into the design.*

**(c) Orderly and economic use of land:** *The proposed kitchen extension involves a minor increase in floor area and does not alter the dwelling's overall footprint. This ensures the efficient use of land and promotes orderly development without significant changes to the existing building envelope.*

**(d) Affordable housing:** *The proposed kitchen extension supports the provision of affordable housing by enabling a multi-generational family to cohabit comfortably. This addresses the growing need for adaptable and affordable housing solutions, particularly for extended families.*

**(e) Environmental protection:** *The proposed kitchen extension has minimal impact on the surrounding environment and promotes sustainable building practices. This aligns with the objective of protecting the environment and minimising any adverse impacts.*

**(f) Sustainable management of heritage:** *The proposed kitchen extension does not impact any built or cultural heritage (including Aboriginal cultural heritage). The development is consistent with the existing character of the area and does not involve any demolition or alteration of heritage features.*

**(g) Good design and amenity:** *The proposed kitchen extension enhances the amenity and functionality of the dwelling, contributing to a more liveable and aesthetically pleasing living environment. This aligns with the objective of promoting good design and amenity of the built environment.*

*(h) **Proper construction and maintenance:** The proposed kitchen extension will be constructed in accordance with the National Construction Code (NCC) and relevant Australian Standards, ensuring the health and safety of the occupants. This aligns with the objective of promoting proper construction and maintenance of buildings.*

*(i) **Sharing of responsibility:** The proposed modifications have been designed and assessed considering the relevant planning controls and building regulations, demonstrating a shared responsibility between different state government levels.*

*(j) **Community participation:** The modification application process allows community participation in environmental planning and assessment. The applicant has submitted a comprehensive SEE, which is publicly available, and the Council will consider any submissions from the community before making a decision on the application.*

*The proposed kitchen extension and FSR variation align with the objectives of the Environmental Planning and Assessment Act 1979 by promoting sustainable development, enhancing the living environment for the occupants, and protecting the environment and community interests.*

**Council Assessment of each objective as labelled:**

- The proposed variation does not adversely affect the State's natural and other resources.
- The proposed variation does not facilitate sustainable development due to setting precedence in exceeding the prescribed floor space ratio based on the current occupant's specific consideration of elderly accommodation. The occupant's justification for elderly accommodation is not a planning consideration, rather a social consideration based on the current scenario of occupants and their desires, which may not attest to future occupants of the dwelling.
- The proposed variation does not promote the orderly development of the land, setting precedence in exceeding the prescribed floor space ratio. An increase in 10% of the FSR is also not considered minor.
- The proposed variation does not promote affordable housing in that the proposal increases the existing kitchen facility, and not accommodation spaces. The increase in kitchen size does not promote affordable housing.
- The subject site is not affected by environmental biodiversity constraints or heritage constraints.
- The proposed variation does not adversely affect the amenity of dwelling, including solar access, cross ventilation, privacy and private open space.
- Any consent would be supported by conditions to comply with the National Construction Code and the relevant Australian Standards.
- The dwelling already has a kitchen and can function with the minimal requirements for a dwelling to function. A larger kitchen can be supported based on compliance with the development standard.
- The application can be assessed and determined by local Council and does not require State agency concurrence.
- Community participation has not been triggered in the submission of variation request.
- The proposal is not considered to meet the objectives of the zone, in particular, *To provide a suitable low scale residential character commensurate with a low dwelling*

*density*, considering the exceedance of the development standard would go beyond the characterisation of the dwelling being a low scale residential development which is commensurate with the low dwelling density.

**Conclusion and recommendation:**

As a result of the assessment above, the proposed variation to the FSR development standard does not satisfactorily justify that the standard is unreasonable or unnecessary or provide sufficient environmental planning grounds to justify the contravention of the development standard.

Accordingly, a degree of flexibility cannot be applied by consent authority with regards to Clause 4.6(1a) of the LEP 2008 and the variation to the development standard is not supported.

**Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instruments**

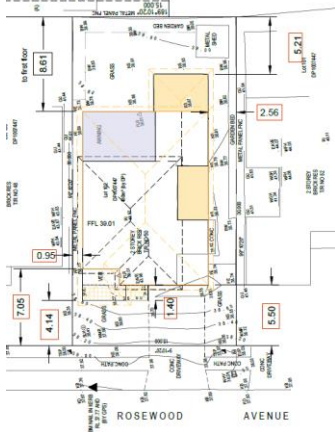
No applicable draft EPs apply to the subject site.

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

The subject application has also been assessed against the relevant controls of the Liverpool Development Control Plan (LDCP) 2008, particularly *Part 1 General Controls for all Development and Part 3.2 Dwelling houses on land greater than 400 sqm in the R2, R3 and R4 zones*.

The modification generates further matters for consideration under this application that were deemed satisfactory under the original approval. This has been assessed in the tables in Attachment 1. Where non-compliances have resulted due to the proposed modifications or as previously approved, these are shown in the table below.

<b>LDCP 2008 Part 3.2 Dwelling Houses on Lots greater than 400sqm</b>			
<b>Control</b>	<b>Required</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Site Planning</b>	There must be a direct link from at least one living area to the principal private open space.	The proposed amendments result in a direct link not being made from a living room to the private open space. Previously, the development provided for a direct link from the family room to the POS, however, access to the POS is now through the kitchen.	<b>Does not comply</b>
<b>Front Setback</b>	A ground floor setback of 4.5m is required. A first floor setback of 5.5m is required. Garages must be setback 1m behind the main face of	Ground floor setback = 5.5m  First floor setback = 5.5m  Garage setback is not	<b>Does not comply. However variation approved with original</b>

	the dwelling.	more than 1m from main face of dwelling.  Existing dwelling does not comply with garage setback 1m behind main face control.	<b>consent.</b>
<b>Side Setback</b>	A ground floor side setback of 0.9m is required.  A first floor side setback of 1.2m is required.	Ground floor setback = 0.95m on northern side  Ground floor southern setback = 2.56m on southern side  First floor setback = 0.95m on northern side = 2.56m on the southern side.  First floor setback on the northern side does not comply with the 1.2m setback requirement. However, this is due to the original dwelling, prior to DA-866/2022, having a northern setback of 0.95m.  	<b>Does not comply. However variation approved with original consent.</b>
<b>Private Open Space</b>	The Private Open Space shall include the principal private open space, which is directly accessible from the main living area of a dwelling with a minimum dimension of 4 x 6 m	The proposed amendments result in a direct link not being made from a living room to the private open space. Previously, the development provided for a direct link from the family room to the POS,	<b>Does not comply</b>

		however, access to the POS is now through the kitchen.	
<b>Building Design and Appearance</b>	The side walls shall be articulated if the wall has a continuous length of over 14m.	The external walls are proposed to be altered for the ground floor kitchen. This is considered to be unsatisfactory as this subject wall 14.35m in length. No variation has been sought and this is also a result of the enclosure of the previous alfresco area, which also leads to a breach of the floor space ratio development standard.	<b>Does not comply</b>
<b>Internal Design of Dwellings</b>	Access to private open space must be from at least one living room.	The proposed amendments result in a direct link not being made from a living room to the private open space. Previously, the development provided for a direct link from the family room to the POS, however, access to the POS is now through the kitchen.	<b>Does not comply</b>

**Section 4.15(1)(a)(iii) – Any Planning Agreement or Draft Planning Agreement**

There is no planning agreement or draft planning agreement applying to the site.

**Section 4.15(1)(a)(iv) – The Regulations**

No additional items for consideration are relevant in this instance. Conditions of consent would still apply to the subject development in relation to compliance with the National Construction Code and Australian Standards.

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

**a) Natural and Built Environment**

The proposed modification would not result in ‘substantially the same’ development as the development for which consent was originally granted did not have an exceedance to development standards. The dwelling and alterations originally approved formed a compliant development and was consistent with the zone objectives and character of the area. The proposal was referred to Councils Building Officer, who supported the proposal with consent.

Since the building footprint remains mostly unaltered, the natural environment impacts remains unaltered, however, the impacts on the built environment are not considered to be acceptable with the expansion of the dwelling.

**b) Social Impacts**

The proposed development is unlikely to have a negative social impact in the locality.

**c) Economic Impacts**

The proposal development is unlikely to have a negative impact on the locality.

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

The proposal is still a permissible form of development, however, the development as amended would not remain suitable for the site as it exceeds key development standards.

**Section 4.15(1)(d) – Any Submissions made in relation to the Development**

**(a) Community Consultation**

The modification application was not required to be notified as the original development application was not notified. With appropriate obscure glazing of unauthorised first floor windows as proposed, the proposed modification does not have the potential to increase the impact of the development of adjoining or nearby land or development, in accordance with Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022.

**(b) Internal Referrals**

Referrals were made to the following Council departments, who have reviewed the proposed modifications to conditions of consent, and have provided the following comments:

DEPARTMENT	COMMENTS
Building	<p>Supported subject to the condition below:</p> <p><i>A Building Information Certificate issued under Division 6.7 of the Environmental Planning and Assessment Act 1979 must be submitted to Liverpool City Council within sixty (60) days of the date of this consent for the subject of this consent.</i></p>

**(c) External Referrals**

Nil.

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

The proposed modification remains consistent with the objectives of the zone, however, does not comply with the relevant provisions of the Liverpool Environmental Plan 2008 and the Liverpool Development Control Plan 2008. Therefore, the development as amended would be contrary to the public interest.

## **7. DEVELOPMENT CONTRIBUTIONS**

No further developer contributions apply to this modification application.

## **8. CONCLUSION**

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

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

## **9. RECOMMENDATION**

That Development Application No. DA-866/2022/A be refused.

## **ATTACHMENTS**

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1. Architectural Plans (Under separate cover)
2. Clause 4.6 Variation Report (Under separate cover)
3. Reasons for Refusal (Under separate cover)
4. Liverpool Development Control Plan 2008 - Compliance Tables (Under separate cover)
5. Notice of Determination - DA-866/2022 (Under separate cover)
6. Determination Documents - DA-866/2022 (Under separate cover)

<b>Item Number:</b>	2
<b>Application Number:</b>	DA-344/2024
<b>Proposed Development:</b>	Construction of a Footpath and Boardwalk to be used for public recreation
<b>Property Address</b>	Lot 304 Newbridge Road, Moorebank 85 Brickmakers Drive, Moorebank New Brighton Golf Course and Club, Moorebank Wurrungwuri Reserve and 85 Brickmakers Drive, Moorebank
<b>Legal Description:</b>	Lot 3 DP 1278607 Lot 304 DP 118048 Lot 2 DP 1193300 Lot 21 DP 1207736 Lot 4 DP 1193300
<b>Applicant:</b>	New Brighton Golf Club LTD
<b>Land Owner:</b>	Liverpool City Council New Brighton Golf Club Ltd
<b>Cost of Works:</b>	\$767,122
<b>Recommendation:</b>	<b>Refusal</b>
<b>Assessing Officer:</b>	Joe Bell – Patch Planning

## 1. EXECUTIVE SUMMARY

The subject development application (DA-344/2024) seeks consent for the construction of a footpath and boardwalk to be used for public recreation between Brickmakers Drive, Moorebank, connecting to the M5 Motorway, through the Brighton Lakes Golf Course and along the Georges River foreshore.

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

### **SCHEDULE 2**

#### **1. Conflict of interest**

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

(a) the council,

....

In accordance with the Managing Conflict of Interest Development Applications Procedure, a management strategy was prepared for this application. Council managed the potential conflict of interest in the following manner:

- The application was outsourced to an external Town Planning Consultant (Patch Planning ['Patch']) for assessment and development assessment staff were not involved with undertaking the assessment.
- The application would be referred to the LLPP to determine the development application, pursuant to the *Local Planning Panels Direction - Development Applications to Modify Development Consents* (as outlined above).

The site is zoned a mix of RE1 – Public Recreation, RE2 – Private Recreation, and C2 – Environmental Conservation, and comprises land held in private ownership as well as land held by Council. The works proposed are permitted with consent in the zones within which they are proposed.

The application was notified and advertised between 15 August 2024 and 12 September 2024 in accordance with Liverpool Community Participation Plan 2019. No submissions were received.

The site is subject to a Voluntary Planning Agreement (VPA) (*Voluntary Planning Agreement – New Brighton Golf Course*) originally executed on 21 September 2012 and amended by a Deed of Variation executed on 14 November 2013. The VPA was associated with the prior rezoning of the western part of the subject golf course, and provides for a number of public benefits to be delivered. This includes the construction of a shared cycleway / pedestrian path, for which the approval of the subject DA would facilitate.

An assessment of the proposal against the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) finds that insufficient information is available to approve the DA in its current form. Key issues include:

- The proposed shared path deviates from the alignment identified within the VPA which applies to the land, and as such, the DA is inconsistent with the requirements of the VPA in its current form.

Additionally, further changes to the VPA have been requested by Council's Property and Contributions Teams regarding the dedication of land to Council. The aforementioned Council teams have recommended that the VPA be revised to instead provide for a public access easement rather than dedication of land.

A Deed of Variation would be required to facilitate these changes to the VPA. No formal offer to vary the VPA has been received from the Applicant to indicate there is in-principle willingness for these changes to occur;

- Insufficient information has been made available with respect to the entirety of the development area's potential for contamination and possible need for remediation;
- The DA is Integrated Development and accordingly the Department of Planning and Environment-Water (DPE-Water) are required to provide general terms of approval in accordance with Section 4.47 of the EP&A Act 1979. DPE-Water require additional information in order to be able to issue general terms of approval which has not yet been responded to;
- Insufficient and inconsistent information has been made available by the Applicant regarding the impacts of the proposal upon trees and vegetation;
- Additional information is required regarding certain aspects of the design of the proposal; and

- Safety impacts for pedestrians and cyclists using the proposed pathway, which would run adjacent to a golf course, have not been adequately addressed as a part of the application.

A Request for Information (RFI) was issued to the Applicant on 23 December 2024 requesting the submission of more information to address these issues, with Council providing until 30 January 2025 for the information to be provided. As of the end of February 2025, this information had not been received and the application is being determined based on the information available to date.

Based on the information available and an assessment against relevant matters as listed under Section 4.15 of the EP&A Act 1979, it is recommended that the application be **refused**.

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

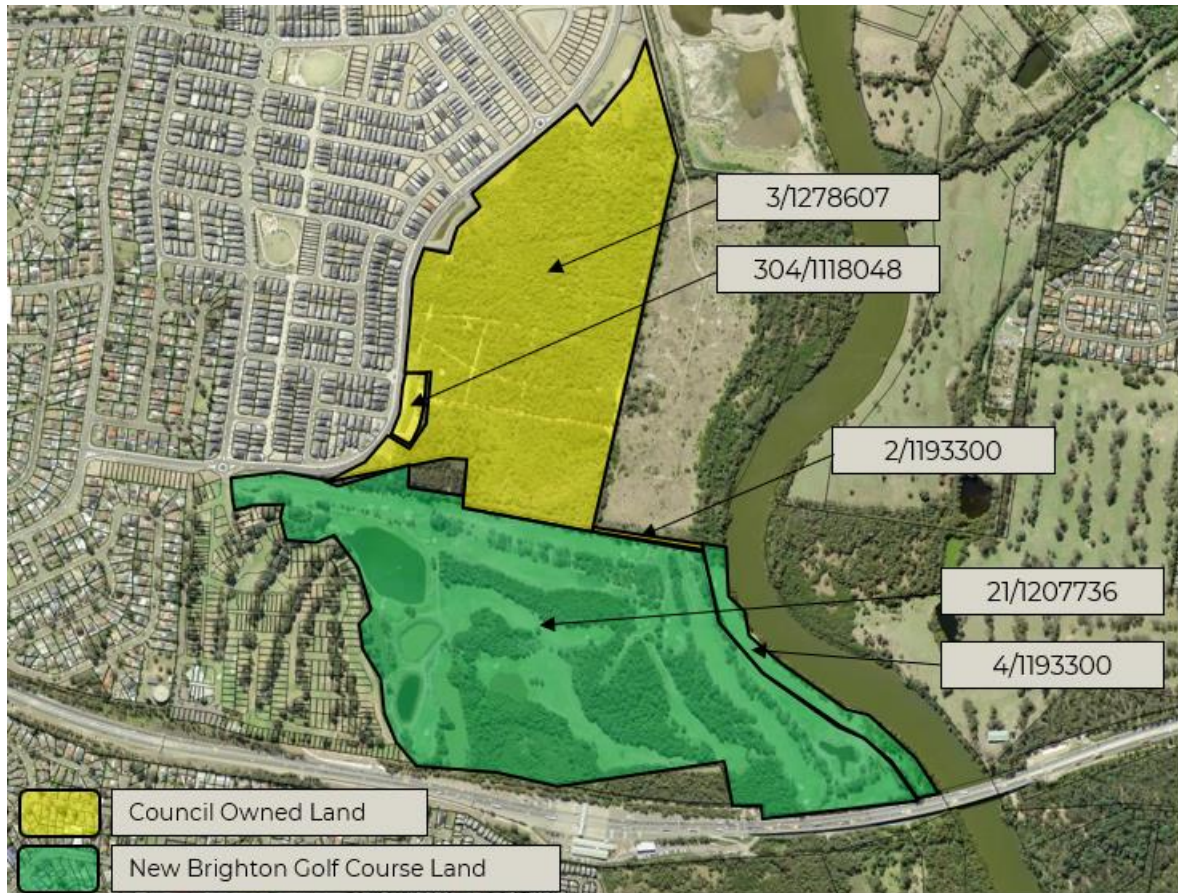
### **2.1. The site**

The site includes the Brighton Lakes Recreation and Golf Club, which comprises a clubhouse, outbuildings, parking, fairways, modified gardens, and internal accessways. The site also incorporates the heavily vegetated Wurrungwuri Reserve, with cleared portions and fire trails crisscrossing the area.

The site is bounded by approximately 1.3km of Georges River frontage to the east, the South Western Motorway to the south, Wurrungwuri Reserve to the north, and the low-density Brighton Lakes residential development to the west, which was previously divested from the Brighton Lakes Recreation and Golf Club.

The subject land is held in both private ownership and Council ownership, as depicted in **Figure 1** with Council land depicted in yellow and privately owned land shown in green.

**Figure 2** overlays the general area of the proposed development across the subject land.



**Figure 1–** Aerial view of subject site including ownership patterns (source: *MetroMap modified by Patch*)

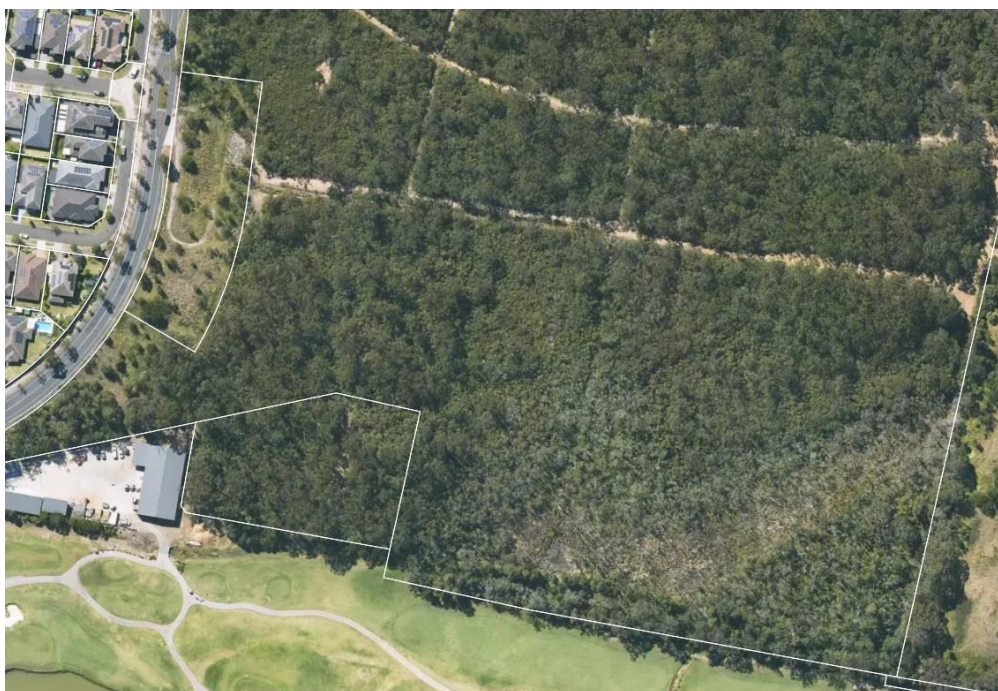


**Figure 2–** Aerial view of subject site showing outline of proposed development location (source: *MetroMaps modified by Patch*)

## 2.2. The locality

The application covers a broad area affecting different contextual localities.

To the northwest (as per the aerial shown in **Figure 3**) the proposal abuts the low density residential suburb of Moorebank (**Figure 4**). This part of the site contains a Council water quality basin on Lot 304 DP 1188048, which the proposed pathway will follow the border of. Tree cover in this area is relatively sparse although there is substantial undergrowth including shrubs and grasses (see **Figure 5**). Moving further eastwards along the existing fire trail, vegetation cover becomes more significant as shown in **Figure 6**, although an existing pathway is well formed by the fire trail itself.



**Figure 3**– Aerial of the northwest section of the site including Council water quality basin and existing fire trail (source: *MetroMap*)



**Figure 4**– View of the Moorebank residential area adjoining the site in the northwest (source: Patch)



**Figure 5**– View of the northwest section of the site opposite the residential area including Council's water quality basin (source: Patch)



**Figure 6**– View of the fire trail in the northwest section of the site facing eastwards (*source: Patch*)

The central portion of the development area comprises the Brighton Lakes Golf Course comprising landscaped areas, pathways, and other embellishments typical of a golf course (see **Figure 7**). As shown in **Figure 8**, the northern boundary of this section is heavily vegetated and contains an existing drainage swale which would be relocated to the south side of the proposed pathway as a part of the works.



**Figure 7** – Aerial of the central section of the site adjoining the Brighton Lakes Golf Course (*source: MetroMap*)

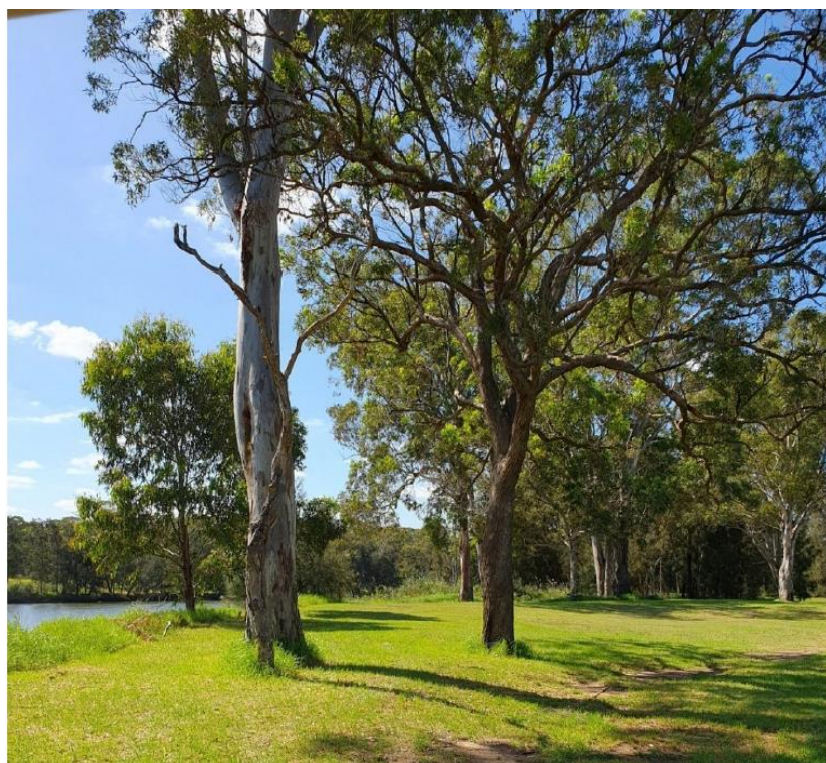


**Figure 8** – View facing eastwards towards the Georges River within central section of the site adjoining the Brighton Lakes Golf Course (*source: Patch*)

The easternmost locality within the site adjoins the Georges River foreshore (Figure 9). This area of the site contains existing vegetation scattered along the river's edge with turf/lawned areas (Figure 10) and extends southwards to where the proposed pathway will connect with an existing walkway leading towards the M5 Motorway (Figure 11).



**Figure 9** – Aerial view of eastern section of the site adjoining the Georges River and extending southwards to the M5 Motorway (source: *MetroMap*)



**Figure 10** – Vegetation along Georges River in eastern section of site (source: *ACS Environmental P/L*)



**Figure 11** – Existing pathway at the southern boundary of the proposed works area leading to the M5 Motorway (source: Patch)

### **3. BACKGROUND**

#### **3.1. Application Timeline**

The following table provides a timeline of the subject application.

<b>Timeline of Development</b>	
<b>Date</b>	<b>Description</b>
8 August 2024	Application lodged.
15 August to 12 September 2024	Application publicly exhibited.
August – November 2024	Internal and external referrals sent and received.
27 November 2024	Site visit attended by applicant's representatives, Council staff, and independent planning consultant.
23 December 2024	RFI issued requesting additional information to be submitted by 16 January 2025 ( <b>Attachment 9</b> ).
January 2025	Applicant requested an extension to the RFI response date. Extension granted to 30 January 2025.

#### 4. DETAILS OF THE PROPOSAL

The proposed development is for the construction of a shared path to connect Brickmakers Drive with the Georges River and provide a pedestrian pathway along its frontage to the M5. The shared path will be provided as a combination of footpaths and boardwalks.

The development is proposed to be constructed in three stages however the exact sequencing of these may be interchangeable to respond to variable construction timeframes.

A description of the works as provided by the Applicant within the Statement of Environmental Effects is provided below. Preliminary engineering plans have been provided alongside the application which are also attached to this report at **Attachment 3**.

##### **Stage 1**

Embellishment of the existing fire trail to be utilised as a footpath, that will also serve as a fire trail if required in an emergency or for routine bushfire hazard reduction. The path will have a finished pavement of 5mm crushed dust and a width of 4m.

This section of the path starts on the eastern side of Brickmakers Drive opposite Sandstock Street and connects to the Fire Trail, where this alignment is followed for approximately 350m on an approximately easterly direction. It then turns 90 degrees and heads in a southerly direction for approximately 50m where it connects with Stage 3.

##### **Stage 2:**

This stage includes the construction of the shared path for the portion over the RE1 Public Recreation Land along the sites northern boundary to where it joins the Georges River foreshore area, from there, the path meanders along the Georges River foreshore until it meets the existing footpath under the M5 motorway. This path will be 2.5m wide and constructed from 100mm thick concrete and have a total length of approximately 850m.

##### **Stage 3:**

This section of the path will be a boardwalk that will be located approximately 1.5m above natural ground due to the area being a wetland. It will be approximately 120m long and be a 2.5m wide raised fibreglass footpath.

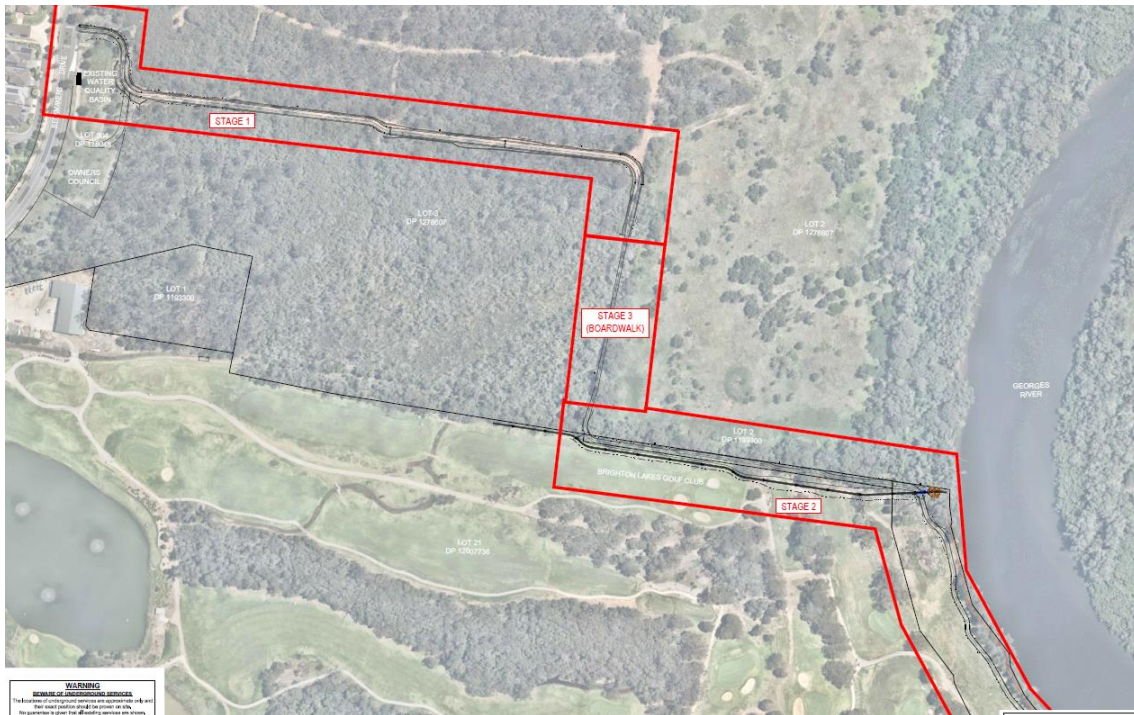


Figure 12- Proposed stages 1 and 2 of part stage 3 (north)



Figure 13- Proposed stage 2 of shared pathway along the Georges River

**5. STATUTORY CONSIDERATIONS**

**5.1. Relevant matters for consideration**

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

Environmental Planning Instruments (EPI's)

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

Development Control Plan

- Liverpool Development Control Plan 2008
  - Part 1: General Controls for All Development.
  - Part 2.15: New Brighton Golf Course

**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 (EPAR) 2021, as follows:

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

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

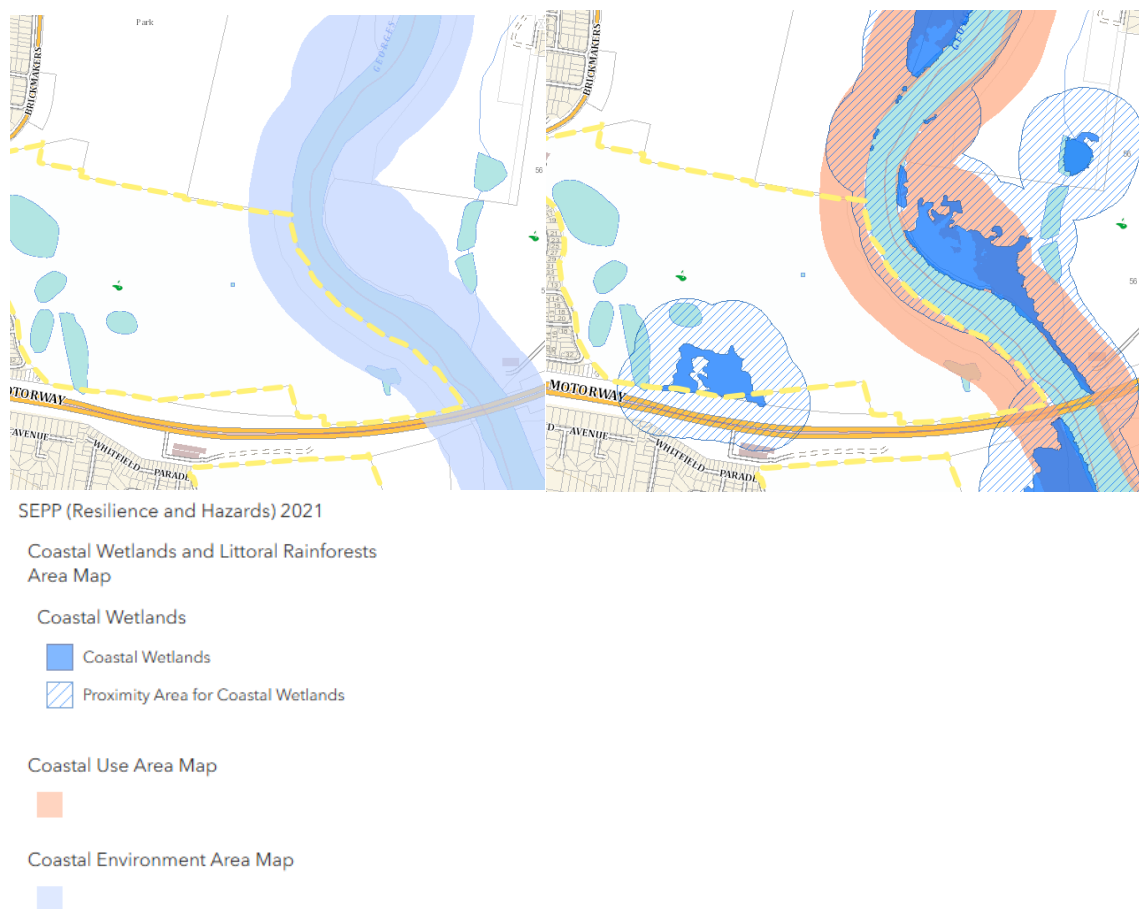
Chapter 2 Coastal management

As shown in **Figure 14**, part of the site is affected by proximity to a coastal wetlands, a coastal use area, and coastal management area overlays.

The submitted Statement of Environmental Effects has not addressed Chapter 2 of SEPP (Resilience and Hazards) 2021 (RHSEPP). Notwithstanding, a preliminary assessment is undertaken below.

<b>RHSEPP Chapter 2 Assessment</b>		
<b>Provision</b>	<b>Requirement</b>	<b>Comment</b>
2.8 Development on land in proximity to coastal wetlands or littoral rainforest	Consent authority must be satisfied that the proposed development will not significantly impact on biophysical, hydrological, or ecological integrity of the adjacent coastal wetland or littoral rainforest, or impact on ground water flows to and from adjacent coastal wetland or littoral rainforest.	<b>Complies.</b> The development is minor in nature and would be unlikely to impact on nearby mapped wetlands, which are some distance from the proposed pathway.

<p>2.10 Development on land within the coastal environment area</p>	<p>Consent authority must be satisfied that the development will avoid, minimise, and mitigate adverse impacts.</p>	<p><b>Does not comply.</b> Based on the information provided, the impacts of the development are unclear with respect to matters described in 2.10(1) of the RHSEPP, specifically:</p> <ul style="list-style-type: none"> <li>• Native vegetation and fauna and their habitats (2.10(1)(d)); and</li> <li>• Aboriginal cultural heritage, practices and places (2.10(1)(f)).</li> </ul>
<p>2.11 Development on land within the coastal use area</p>	<p>Consent authority must be satisfied that the development will avoid, minimize, and mitigate adverse impacts, and must take into account the surrounding coastal and built environment.</p>	<p><b>Does not comply.</b> Based on the information provided, the impacts of the development are unclear with respect to matters described in 2.11(1) of the RHSEPP, specifically Aboriginal cultural heritage, practices and places (2.11(1)(a)(iv)).</p>
<p>2.12 Development in coastal zone generally – development not to increase risk of coastal hazards</p>	<p>Consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.</p>	<p><b>Complies.</b> Given the minor nature of the development, it is considered unlikely that the proposal would increase the risk of coastal hazards on the subject or other land.</p>



**Figure 14**– Coastal wetland, coastal use, and coastal environment area overlays pursuant to the RHSEPP (Source: NSW Planning Portal)

#### Chapter 4 Remediation of land

Pursuant to clause 4.6 of the RHSEPP, the consent authority must not consent to the carrying out of any development on land unless:

- It has considered whether the land is contaminated; and
- 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 proposed use; and
- If the land requires remediation, it can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.

In support of the DA, the Applicant submitted two documents which provided information regarding the site's potential for contamination:

- Preliminary Site Investigation Reference No. S11609R01 43 Brickmakers Drive Moorebank, NSW 2170 prepared by Hibbs & Associates Pty Ltd dated 6th May 2021 ("the Preliminary Site Investigation Report"), contained as **Attachment 4** to this report; and
- Brighton Lakes Recreation & Golf Club Additional Site Investigation Reference No. S12556R01 43 Brickmakers Drive Moorebank, NSW 2170 prepared by Hibbs &

Associates Pty Ltd dated 29th May 2023 (“the Additional Site Investigation Report”), contained as **Attachment 5** to this report.

The Preliminary Site Investigation Report and Additional Site Investigation Report assessed and undertook sampling from the area of the development referred to by the Applicant as Stage 2 (from within/adjacent to the Brighton Lakes Golf Course down towards the M5 Motorway).

It is noted that neither report provides information regarding the area of land subject to Stages 1 or 3 of the proposal.

A summary of the findings of the two reports is provided below as provided by Council’s Senior Environmental Health Officer.

Report	Summary
<p>Preliminary Site Investigation (2021)</p>	<p>The preliminary sampling program consisted of fifteen sampling points and one material sample. Hibbs &amp; Associates Pty Ltd reported that all analytical results were below threshold limits except F2 minus Naphthalene fraction of TRH. 95% UCL calculation was conducted for samples collected and was calculated to be below the corresponding ESL criteria. Although asbestos was not detected above the reporting limit (0.1 g/kg) in any of the soil samples collected from test pit locations, the consultant explained that construction and demolition waste comprising bonded asbestos containing materials (ACM) was observed along the foreshore’s western edge adjoining the riverbank.</p> <p>A stockpile located in the northwest corner of the site may be contaminated with asbestos containing materials. Although the lot’s ground surface (excluding riverbank) was cleared of bonded asbestos containing materials during the inspection, asbestos containing materials may exist at depths or in the areas not investigated.</p> <p>Since there is a potential for future flooding events to move the ACM from the riverbank to the site, partial remediation works are needed in the area of concern before the proposed works and use. The consultant recommended further investigation of the riverbank as this location was not fully assessed due to access constraints. The river’s bank will need to be remediated as part of a Remediation Action Plan (RAP) and the waste to be disposed of offsite.</p> <p>The report also recommended preparation of an asbestos management plan (AMP) comprising an unexpected finds protocol for ACM discovery during earthworks. Due to the presence of ACM fragment (nonfriable), the stockpile to the northwest of the site needs further investigation.</p>
<p>Additional Site Investigation (2023)</p>	<p>Based upon their investigation, the consultant reported that contaminants of potential concern did not exceed the nominated site assessment criteria and no asbestos was detected in the delineation samples for the riverbank. Consequently, Hibbs &amp; Associates Pty Ltd confirmed that the site is considered suitable for the intended use as a walkway for recreational and open space use.</p> <p>Asbestos identified in stockpile SP4 was classified for disposal at a</p>

	licensed waste facility. Hibbs & Associates Pty Ltd confirmed that an Asbestos Management Plan comprising an unexpected finds protocol must be prepared for the proposed development and a visual clearance inspection must be undertaken by a competent person upon removal of Stockpile SP4.
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Following review of these documents, Council’s Senior Environmental Health Officer advised that insufficient information is available to assess the suitability of the proposed development from a contaminated land perspective.

In particular, it was noted that a Preliminary Site Investigation may be required of the northern section of the proposal if it involves a change of use to carry out development for recreational purposes on land where there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out.

The Applicant was advised of the need for additional information to satisfy the RHSEPP via a Request for Information (RFI) dated 23 December 2024 which has not been responded to as of the date of this report.

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

Chapter 6 Water catchments

Chapter 6 of SEPP (Biodiversity and Conservation) 2021 (BCSEPP) generally aims to maintain and improve the water quality and river flows of the several water catchments. The site is located within the Georges River catchment, which is a regulated catchment under Chapter 6 of the SEPP.

When a consent authority determines a development application on land in a regulated catchment, the consent authority must consider those the matters identified (Clauses 6.6 - 6.10), and compliance with such is provided below.

<b>BCSEPP Part 6.2 Assessment</b>		
<b>Development Provision</b>	<b>Requirement</b>	<b>Comment</b>
6.6 Water quality and quantity	The consent authority must be satisfied that the development has a neutral or beneficial impact on the quality of water entering a natural waterbody, and the impact on water flow in the waterbody is minimised.	<b>Complies.</b> The works are minor in nature and will not significantly alter landforms adjacent to the Georges River. The impact on water quality and quantity is expected to be negligible.
6.7 Aquatic ecology	The consent authority must be satisfied that impacts on animals and vegetation will be minimised, that development will not have a cumulative impact on aquatic reserves, that a controlled activity approval has been obtained, and that erosion of land abutting a	<b>Does Not Comply.</b> A controlled activity approval will be required for the works as triggered by the <i>Water Management Act 2000</i> . DPE-Water have requested additional information before

	waterbody will be minimised.	being able to grant general terms of approval for the application.
6.8 Flooding	Development must not release pollutants during a flood that would impact the waterbody or have an adverse impact on the recession of floodwaters into wetlands and other riverine ecosystems.	<b>Complies.</b> Given the minor nature of the works, it can be considered that the proposal would not have an adverse impact on water quality or impact upon recession of floodwaters.
6.9 Recreation and public access	The consent authority must be satisfied that the development will maintain or improve public access to natural waterbodies, public access points will be safe and stable, and public access will be safeguarded.	<b>Complies.</b> The proposal would significantly enhance public access to the Georges River foreshore.
6.11 Land within 100m of natural waterbody	Consideration as to whether works within 100m of a natural waterbody represents water-dependent uses, and minimises land use conflict.	<b>Complies.</b> The works would not be considered a water-dependent use and would not result in land use conflicts.
6.21 Stormwater management	Development consent required for stormwater management works.	<b>Complies.</b> The works would involve a realignment of a stormwater swale within the land for which consent would be sought (if the application were to be approved).

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

**(i) Zoning**

The subject site is zoned a mix of C2 – Environmental Conservation, RE2 – Private Recreation, and RE1 – Public Recreation.

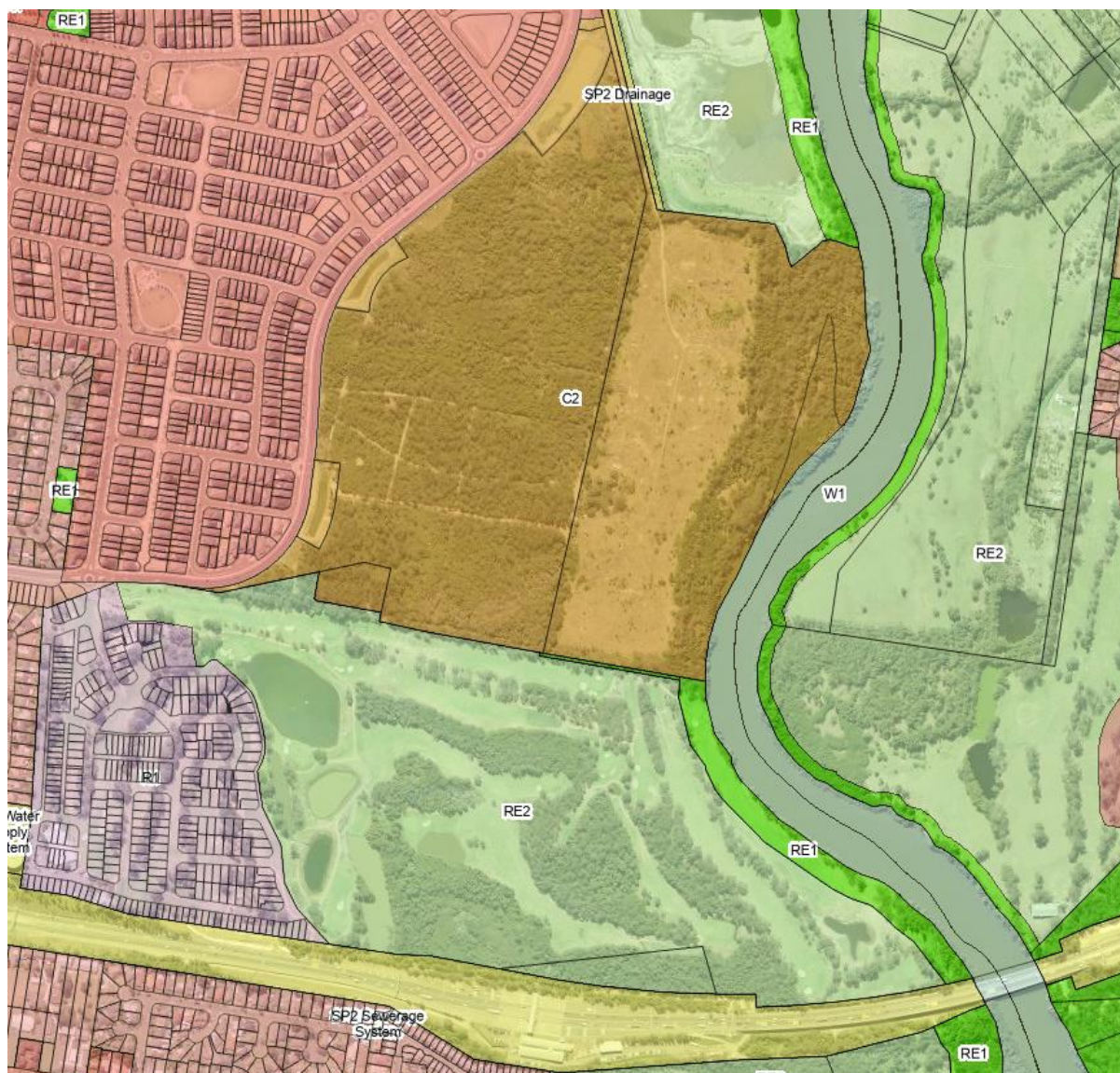


Figure 15 – Extract of the LLEP 2008 zoning map (source: ePlanning Spatial Viewer)

(ii) **Permissibility**

The applicant's Statement of Environmental Effects states that the development is best described as an *environmental facility* which means:

*“environmental facility means a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures.”*

It is noted that clause 5.1A of the LLEP 2008, discussed elsewhere in this report, permits only development for the purposes of recreation areas or earthworks on land zoned RE1 Public Recreation proposed to be acquired by Council. The definition of a recreation area is provided below:

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

*(a) a children’s playground, or*

*(b) an area used for community sporting activities, or*

*(c) a public park, reserve or garden or the like,*

*and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).*

Both definitions are considered applicable to the proposal. The works are considered to meet the definition of an ‘environmental facility’ which is a permitted land use with consent in the C2 Environmental Conservation and RE2 Private Recreation Zones. In turn, the works can also be considered ancillary to the primary function of the RE1 – Public Recreation zoned land, being for a ‘recreation area’. Accordingly, the development as a whole is considered to be permitted with consent.

**(iii) Objectives of the zone**

<b>LLEP 2008 – Objectives of the Zone</b>	
<b>Zone/Objectives</b>	<b>Comment</b>
<p><u>RE1 Public Recreation</u></p> <ul style="list-style-type: none"> <li>• To enable land to be used for public open space or recreational purposes.</li> <li>• To provide a range of recreational settings and activities and compatible land uses.</li> <li>• To protect and enhance the natural environment for recreational purposes.</li> <li>• To provide sufficient and equitable distribution of public open space to meet the needs of residents.</li> <li>• To ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.</li> </ul>	<p>The proposal would be consistent with the objectives of Zone RE1 as it would facilitate greater public access to open space and be delivered in a manner which protects and enhances the natural environment for recreation purposes.</p>
<p><u>RE2 Private Recreation</u></p> <ul style="list-style-type: none"> <li>• To enable land to be used for private open space or recreational purposes.</li> <li>• To provide a range of recreational settings and activities and compatible land uses.</li> <li>• To protect and enhance the natural environment for recreational purposes.</li> <li>• To enable land uses that are compatible with, and complimentary to, recreational uses.</li> </ul>	<p>The works are not inconsistent with the objectives for development in the RE2 Zone as they will continue to allow for land to be used for private recreational purposes.</p>

<p><u>C2 Environmental Conservation</u></p> <ul style="list-style-type: none"> <li>• To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>• To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>• To enable the recreational enjoyment, cultural interpretation or scientific study of the natural environment.</li> </ul>	<p>The proposal would be consistent with the objectives of Zone C2 as it would facilitate access to land to enable recreational enjoyment.</p>
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(iv) **Principal Development Standards**

The LLEP 2008 contains provisions which are relevant to the proposal and an assessment of the application against the relative provisions is provided below.

<b>LLEP 2008 - Principal Development Standards</b>		
<b>Development Provision</b>	<b>Requirement</b>	<b>Comment</b>
5.1A Development on land intended to be acquired for a public purpose	Allows land identified for acquisition by Council and zoned RE1 Public Recreation only to be developed for the purposes of recreation areas or earthworks.	<b>Complies.</b> The development can be described as ancillary to a recreation area within the area of land zoned RE1 Public Recreation.
5.10 Heritage Conservation	To protect and conserve existing items/locations identified as containing significant heritage value	<b>N/A.</b> The site is not listed as a heritage item, and it is not within a heritage conservation area.
5.21 Flood planning	Minimise the impacts of development on land within the flood planning area.	<b>Complies.</b> Council's Flooding Engineer has supported the proposal subject to the imposition of conditions.
5.23 Public Bushland	Part of the works would be proposed with areas defined as "public bushland". To permit for works which would disturb public bushland where the consent authority is satisfied that the works are in the public interest, there is no reasonable alternative, that impacts are minimized, and that the development will	<b>Does not comply.</b> The application was not supported by detailed information regarding the actual impacts to trees and as such this clause cannot be assessed properly. More information has been requested from the applicant regarding this topic including the submission of an arborist report.

	include measures to remediate disturbed bushland.	
7.6 Environmentally significant land	Part of the works are proposed within land identified as “environmentally significant land”. The consent authority must consider the condition and significance of vegetation on the land and whether it should be retained; to consider the effect of development on public access to foreshores.	<b>Does not comply.</b> Limited information has been provided by the applicant with respect to the nature of vegetation on site and the effect the development will have on such vegetation. The development would otherwise contribute positively towards providing public access to the Goerges River foreshore.
7.7 Acid sulfate soils	The site is impacted by Class 1, 2, 3, 4 and 5 acid sulfate soils.	<b>Complies.</b> The works are minor in nature and unlikely to lower the water table. No further assessment required.
7.9 Foreshore building line	Restrictions on buildings that can be built in the foreshore area.	<b>N/A</b> The development does not extend into the foreshore area.

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

There are no draft Environmental Planning Instruments (EPIs) 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 *Liverpool Development Control Plan 2008* (LDCP 2008), including site specific provisions under Part 2.15 – New Brighton Golf Course.

**Part 1 General Controls for All Development**

Noncompliances are detailed in the table below. The full consideration of relevant LDCP controls is included in Attachment 2.

<b>LDCP 2008 Part 1 – General Controls for All Development</b>		
<b>Item</b>	<b>Requirement</b>	<b>Comment</b>
2 Tree Preservation	An application to remove a tree may be refused by Council depending on its significance. All existing indigenous trees shall be retained or replaced. Where approval	<b>Does not comply.</b> The application has provided insufficient information to fully determine the impact on trees and vegetation as it is not supported by an Arboricultural Impact Assessment outlining the condition, dimensions, and species of existing trees

	<p>is given to remove trees, appropriate replacement planting will be required.</p> <p>Significant trees that are identified as having habitat value shall not be relocated or removed.</p>	<p>to be impacted by the development.</p> <p>The Biodiversity Development Assessment Report (BDAR) submitted with the application (<b>Attachment 7</b>) does indicate the potential for the development to impact approximately 507sqm of native vegetation through removal and trimming, including mainly <i>Melaleuca decora</i>, <i>Melaleuca nodosa</i>, <i>Eucalyptus fibrosa</i>, <i>Calochlaena dubia</i> and <i>Typha orientalis</i>. In addition, the preliminary engineering drawings indicate the removal of trees in at least one and possibly up to three locations, although this is not clearly identified (refer to section 0 of this report).</p> <p>The Applicant has been requested to provide more detail regarding the impacts on vegetation including an arborists report clearly indicating the type and location of trees being removed.</p>
3 Landscaping and Incorporation of Existing Trees	<p>Retain, protect and incorporate existing trees and native vegetation into the development proposal.</p> <p>Identify existing trees and consider options to retain existing trees.</p> <p>A report outlining the condition, dimensions and species of existing trees within the development site to be included with any development application documentation.</p>	
4 Bushland and Fauna Habitat Preservation	<p>Bushland shall be substantially retained and incorporated within a development.</p> <p>Clearing of bushland shall be limited to the extent necessary to facilitate safe and orderly use of land.</p>	<p><b>Does not comply.</b></p> <p>Refer to response above.</p>
7 Development near a Watercourse	<p>Controlled Activity Approval may be required under the <i>Water Management Act 2000</i> where development is proposed near a water course.</p>	<p><b>Does not comply.</b></p> <p>The proposal was referred to the Department of Planning and Environment – Water (DPE Water) who requested additional information prior to issuing any General Terms of Approval (<b>Attachment 8</b>).</p> <p>This information has not yet been provided by the Applicant.</p>
10 Contaminated Land Risk	<p>Development Applications to be supported by Preliminary Contamination Investigation, Detailed Contamination Investigation, and Remedial</p>	<p><b>Does not comply.</b></p> <p>Although the DA was supported by site investigations, these are insufficient to support approval of the development as the investigations do not relate to the entire site.</p>

	Action Plans where relevant.	Refer to section 0 of this report for further discussion regarding the application's compliance with <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> .
16 Aboriginal Archaeology	Initial investigations to be carried out to determine if proposed development is occurring on land potentially containing an item of Aboriginal archaeology.	<b>Does not comply.</b> No information regarding Aboriginal archaeological investigations undertaken to support the DA.

**Part 2.15 New Brighton Golf Course**

*2.2 Pedestrian and Cyclist Paths*

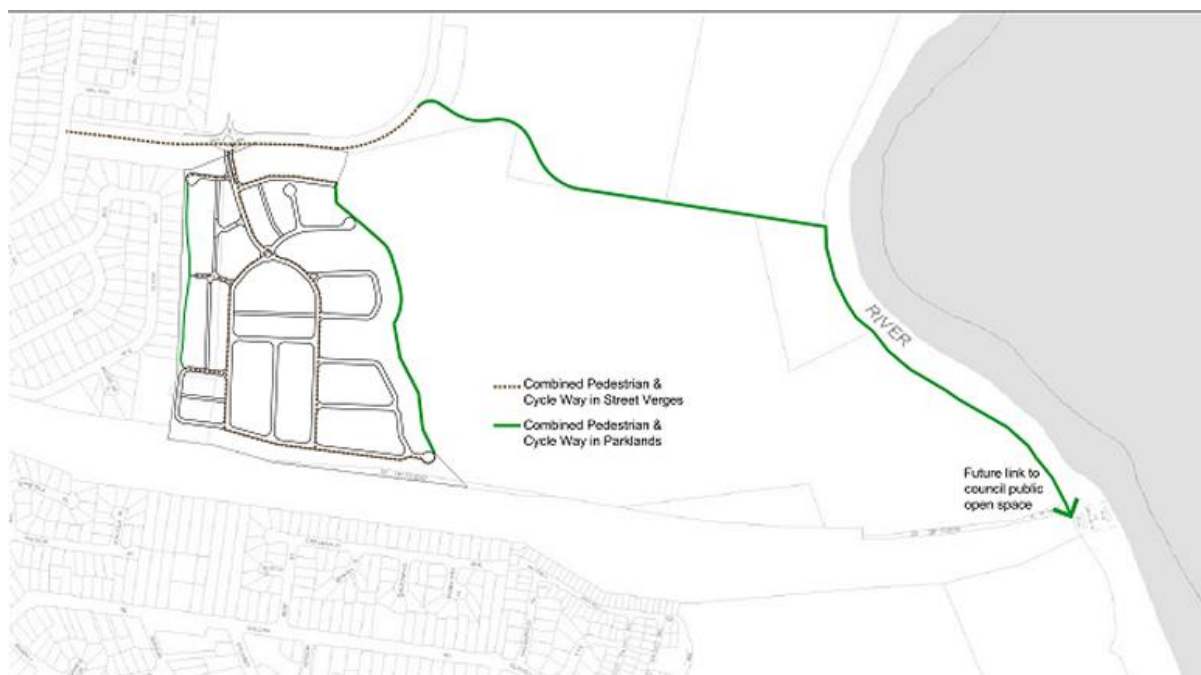
Control 2.2(1) states:

1. Cycle paths shall be provided in conjunction with the subdivision of land, creation of streets and development of open space in accordance with Figure 6.

The cycle path network indicated for the site under Part 2.15 of the LDCP 2008 is shown in **Figure 16** below (Figure 6 of Part 2.15 of LDCP 2008).

The proposal varies from the DCP by taking an alternate route to that shown in the below figure. The deviation has not been objected to in principle by any sections of Council who were referred the application. The deviation is considered acceptable as it maintains the objectives of the control being to encourage walking and cycling for local trips, to create a permeable and interconnected network of streets and pathways, and to provide for safe recreational pursuits.

Notwithstanding the acceptability of the deviation to the network in terms of an assessment against the LDCP 2008, other issues regarding the deviation have arisen throughout this assessment which are discussed elsewhere within this report.



**Figure 16** – Proposed Pedestrian and Cycle Path (Figure 6 of Part 2.15 of LDCP 2008)

## 2.6 Aboriginal Archaeology

Control 2.6 states:

1. *Development applications must identify any areas of Aboriginal heritage value that are within or adjoining the area of the proposed development, including any areas within the development site that are to be retained and protected (and identify the management protocols for these).*
2. *Developments or other activities that will impact on Aboriginal heritage may require consent from the Office of Environment and Heritage (OEH) under the National Parks and Wildlife Act 1974 and consultation with the relevant Aboriginal communities.*
3. *Any development application that applies to land within or adjacent to land that contains a potential Aboriginal cultural heritage site, as indicated by blue shading on the Aboriginal Potential Site (Figure 8), must consider and comply with the requirements of the National Parks and Wildlife Act, 1974.*

The works would be located within “Sensitive Area 2” as identified in **Figure 17** (Figure 8 of Part 2.15 of LDCP 2008).

The application has not been supported by any documentation which outlines whether the works would result in any impact to Aboriginal cultural heritage sites or items.



**Figure 17** – Potential Aboriginal Archaeologically Sensitive Sites (Figure 8 of Part 2.15 of LDCP 2008)

#### 4.3 Safety (Golf Holes near Public / Private Areas)

Control 4.3(1) states:

*Where a golf hole is located in close proximity to public roads, public areas or private property appropriate mitigation measures are to be implemented to reduce the event of damage / harm caused by escaping golf balls. This could include high fencing or the design of holes to reduce the incidence of escaping golf balls.*

In its current form, the application does not provide information regarding the potential safety risk associated with the pathway being located adjacent to an active golf course.

More information has been requested from the applicant in Council's RFI dated 23 December 2024 regarding the interface with the golf course and how considerations for safety are incorporated.

**6.4. Section 4.15(1)(a)(iia) - Planning Agreements**

There is an existing Voluntary Planning Agreement (VPA) over this site which involves the construction of proposed cycleway over Council land (Lot 1 DP 1193300, Lot 2 DP 1193300, Lot 3 DP 1278607 and Lot 304 DP 1118048) and over Lot 4 DP 1193300 (owned by New Brighton Golf Club) proposed to be dedicated/transferred to Council.

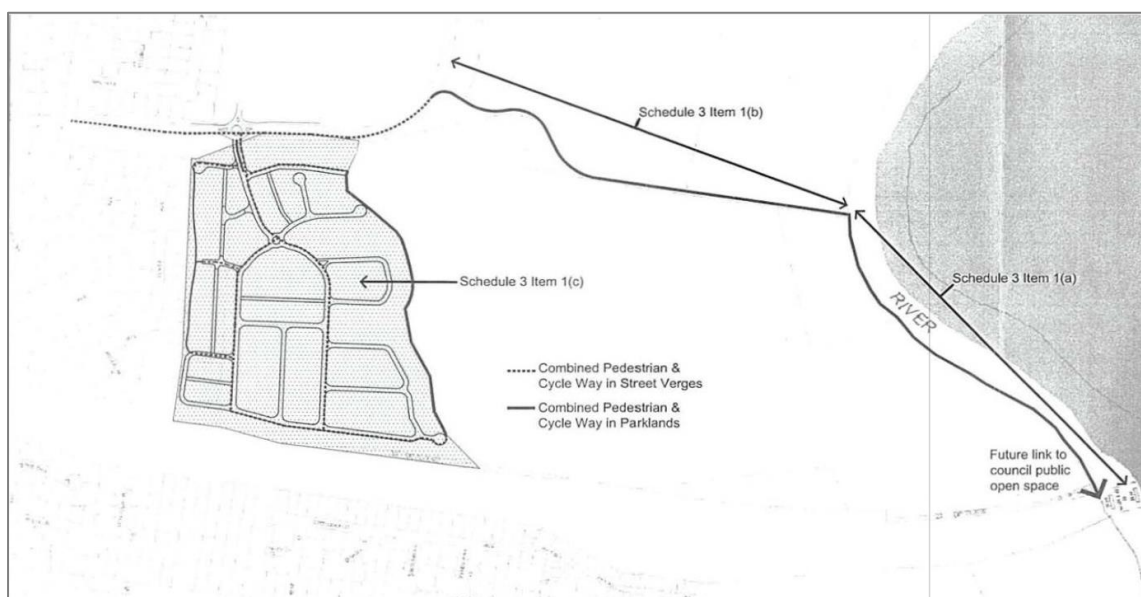
The VPA is associated with a rezoning application prepared by the New Brighton Golf Club which rezoned part of the golf course from RE2 Private Recreation to R1 General Residential, facilitating the development of 310 dwellings by Mirvac Homes NSW. The VPA was originally executed on 21 September 2012 and was varied through a Deed of Variation executed on 14 November 2013. The VPA, as varied, is provided as **Attachment 6**.

Cycleway

The proposed development represents the delivery of Item 1 within the VPA referred to as the Pedestrian path / Cycleway. Specifically, the VPA splits the item into three components being:

- (a) Construction of a 2.5m shared pedestrian/bike path within the Georges River foreshore land to be dedicated to Council.
- (b) Construction of a 2.5m shared pedestrian/bike path linking between the Georges River foreshore and Residential Land along the northern boundary of Lot 103 DP 1070029 to Brickmakers Drive.
- (c) Construction of a 2.5m shared pedestrian/bike network within the residential area in accordance with figure 5 of the DCP.

The above items are represented visually within Annexure 2.1 of the VPA which is replicated in **Figure 18** below. This figure replicates Figure 6 of Part 2.15 of LDCP 2008 (**Figure 16** of this report), being amended only to include a breakdown of the pathway into items 1(a), 1(b), and 1(c).



**Figure 18–** Items 1(a), 1(b), and 1(c) (pedestrian path / cycleway) within the VPA applying to the site  
Council’s Strategic Planner has reviewed the application with respect to the VPA noting the following:

- Item 2(a) of the VPA required the “*Preparation of a Vegetation Management Plan to the satisfaction of Council that defines planting offsets required as a consequence of any possible clearing works*” which had not been provided;
- Given ongoing potential contamination issues, the applicant should deliver Item 1(a) (referred to in the application as “Stage 3”) last; and
- There is a deviation between the VPA and the development in that the proposed cycleway would now traverse through 85 Brickmakers Drive (the fire trail), which would require a Deed of Variation to the VPA.

Land Dedication

The VPA requires the dedication of Georges River Foreshore Land to Council for public recreation purposes as shown in **Figure 19**.

Schedule 4 Georges River Foreshore Land			
Public Purpose	Description of Georges River Foreshore Land	Time for transfer to Council	Value
Public recreation	A 40m wide strip of land running parallel to the Mean High Water Mark of the nearest bank of the Georges River.	By the earlier to occur of:  (1) completion of the new golf tees, fairway and greens within that part of the Golf Course located on the southern side for the M5 Motorway and completion of riparian planting and landscape works within the Public Recreation Land (being Works listed in Schedule 3, Item 2, Description of Works (a)); and  (2) the issue of a Subdivision Certificate for a plan that when registered will create the 201 <sup>st</sup> Residential Lot.	\$760,260
Total Land Value			\$760,260
Total Works Value + Total Land Value			\$3,497,730

**Figure 19**– VPA Schedule 4 pertaining to the dedication of Georges River Foreshore Land

Council’s Property and Contributions Team have raised concerns regarding the dedication of land of this shared path under the VPA due to contamination issues with this land. The new provisions suggested are for the landowner to maintain ownership of the land and set up a right of way easement to allow public access. The owner would be responsible for problems related to contamination, embankment stability, and fencing for golf ball flight conflict issues.

Deed of Variation Required

A Deed of Variation to the VPA is required to resolve the inconsistency of the proposed cycleway alignment with the current VPA, as well as Council’s Property and Contributions Team’s request for a public access easement in replacement of land dedication.

Notwithstanding that this report recommends refusal of the application, if the application was to be approved this would need to be on the basis of a deferred commencement or Pre-Construction requiring the execution of a Deed of Variation implementing the above. However, it should be noted that there is currently no certainty that the developer is willing to amend the VPA given no Letter of Offer has been provided alongside the application confirming any in-principle willingness to accept these changes. In the absence of any such Letter of Offer, the application should not be approved.

### 6.5. Section 4.15(1)(a)(iv) - The Regulations

The proposal is considered to be consistent with the Regulations to the extent to which they are relevant to this development.

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

#### (a) Natural Environment

Based on the information available, the potential impacts on the natural environment are not fully discernible.

#### Site Contamination

As outlined in section 0 of this report, the application is insufficient with respect to the level of information provided to enable a proper assessment against the provisions of clause 4.6 of the RHSEPP. In particular, submitted documentation has not assessed the potential for contamination across the entirety of the development area, with Stages 1 and 3 not having been assessed.

Council's Senior Environmental Health Officer has requested the applicant provide additional information regarding site contamination which were included in the RFI issued on 23 December 2024.

#### Riparian Zone Impacts

As the proposed development is located within 40m of a watercourse (the Georges River), the application is classified as Integrated Development as it will require a controlled activity approval under the *Water Management Act 2000*. Accordingly, the application was referred to DPE-Water for General Terms of Approval.

Additional information was requested by DPE-Water which have been made available to the Applicant via the NSW Planning Portal and via the RFI issued on 23 December 2024. Specifically, DPE-Water requested the below:

- *The position of the boardwalk should be outside the Vegetated Riparian Zone (VRZ). The width of the VRZ within the riparian corridor for the 7th-order stream is 40m (from the highest bank of the stream) on each side of the watercourse. However, you can undertake non-riparian corridor works or development within the outer 50% of a VRZ, as long as they offset this activity by connecting an equivalent area to the RC within the development site.*
- *Please provide a Vegetation Management Plan (VMP) following the guidelines.*
- *Please provide long/cross sections of the proposed outlet including the river cross-section following the guidelines.*

The above information has not been responded to by the Applicant as of the date of this report.

#### Impacts on Trees and Vegetation

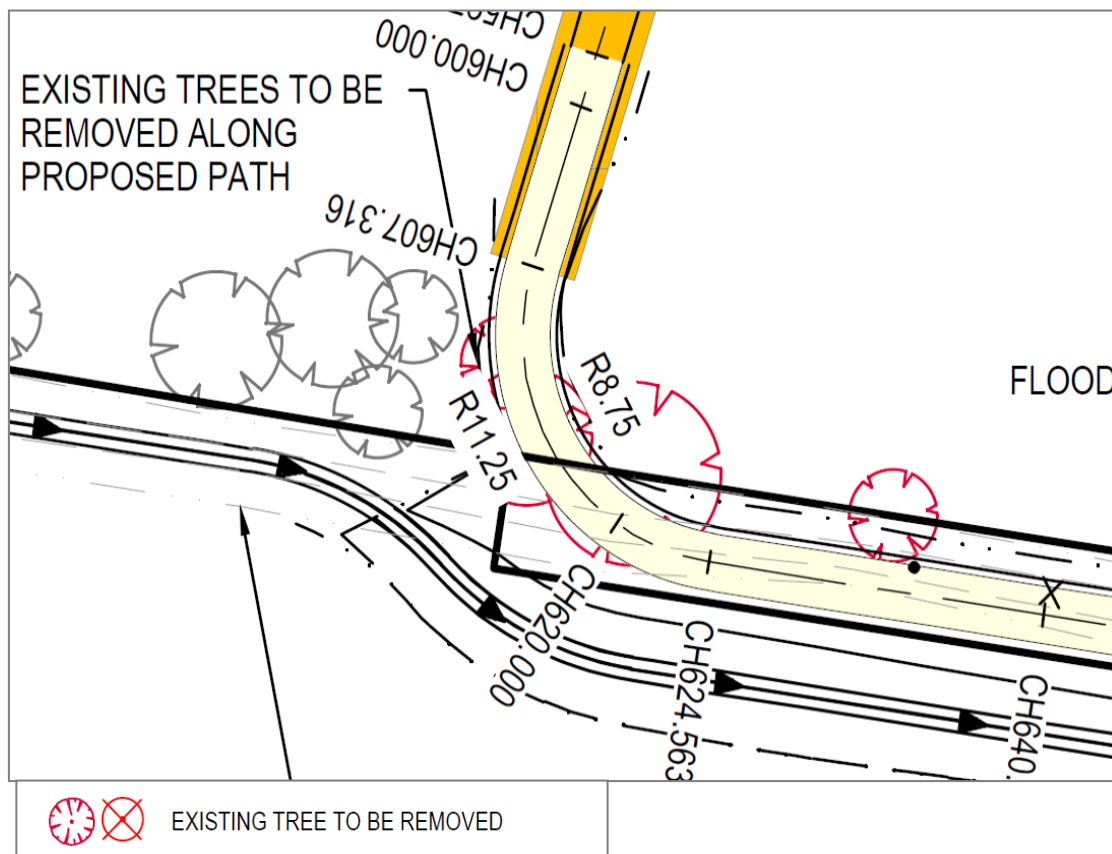
Insufficient information has been made available by the Applicant regarding the impacts of the proposal upon trees and vegetation.

Sheet 2 of 4 of the preliminary engineering drawings prepared by Beveridge Williams (**Attachment 3**) indicate at least four trees (highlighted in red as per the corresponding Legend) would need to be removed to facilitate the development, as shown in **Figure 20**. However the same drawing identifies other trees as “Existing trees to be removed along proposed path” which are not outlined in red (see **Figure 21**).

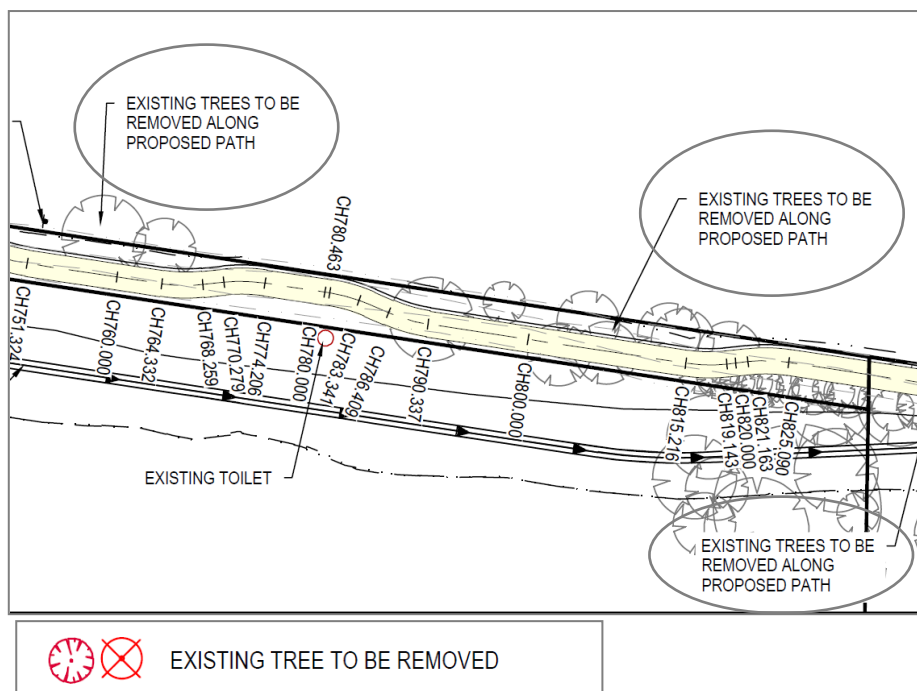
No information regarding tree removal or impacts has been provided for relating to Stages 1 and 3 of the proposal despite these stages occurring within the most heavily vegetated parts of the site.

The number, condition, and species of trees to be impacted by the works is ultimately unclear. In the RFI issued to the Applicant on 23 December 2024, additional information was requested to provide clear and consistent details regarding the trees to be removed, including through the submission of an arborist report.

The information had not been received as of the end of February 2025.



**Figure 20**– Trees identified as proposed for removal (outlined in red) on preliminary engineering drawings as contained at Attachment 3



**Figure 21**– Additional trees likely to be removed but not indicated clearly as such upon the preliminary engineering drawings contained at Attachment 3.

**(b) Built Environment**

More detail has been requested of the applicant regarding the built form of the proposal. Specifically, the RFI dated 23 December 2024 has requested:

- A change in surface material for the shared path / fire trail as raised by both Council’s Land Development Engineer and Urban Design and Public Domain sections. Concern has been raised with the proposed Crusher Dust material which is not considered suitable for bicycles and should be replaced with a smoother and more durable surface.
- Detailed layout plans including line markings, safety barriers, wayfinding signage, fire trail signposting, lighting, and any other relevant infrastructure to ensure safe and effective use of the cycleway.
- Provision of a link to the existing cycleway on the opposite side of Brickmakers Drive.

This information had not been received by the end of February 2025.

**(c) Social Impacts**

Safety Impacts

Concern is raised with the proposal incorporating a shared pathway which runs alongside the golf course fairway and what safety measures are proposed to ensure path user safety from golf balls. The application does not currently provide any information regarding the risk of injury as a result of golf balls, with more information requested on this topic in the RFI dated 23 December 2024.

Additionally, a Crime Prevention through Environmental Design (CPTED) report was requested in response to Council's Urban Design and Public Domain referral.

No response had been received to these requests by the end of February 2025.

#### Foreshore Access and Recreational Opportunities

It is broadly considered that the proposed development would likely have a positive social impact in the area by increasing and promoting active recreation opportunities and improved access to the Georges River foreshore.

On balance, these are considered to be outweighed by the unsatisfactory or unclear impacts described above on the natural and built environment.

#### **(d) Economic Impacts**

It is broadly considered that the proposed development may create short term positive economic impacts generated through the construction phase however economic impacts are otherwise considered likely to be negligible.

On balance, these are outweighed by the unsatisfactory or unclear impacts described above with respect to impacts on the natural and built environment.

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

Based on the information currently available for assessment, it cannot be concluded that the site is suitable for the proposed development.

The approval of the development in its current form would represent a slight deviation from the current commitments to deliver the shared pathway under the VPA which applies to the land. While Council officers have supported the deviation in-principle, the approval of this application preceding any formal commitment or proposal by the Applicant to vary the VPA would not represent an orderly development outcome.

In addition, several environmental concerns have been raised by sections of Council that are yet to be responded to or resolved by the Applicant. These have been outlined in the earlier Section 0(a) of this report. As outlined in Section 0 of this report, additional information is outstanding to satisfy several internal and external referral bodies.

The Applicant was provided with the opportunity to respond to the above issues through the submission of additional information, via a Request for Information (RFI) issued on 23 December 2024. The RFI requested that information be submitted by 16 January 2025 (24 calendar days, noting the Christmas shutdown period).

The Applicant requested a 2-month extension. Council responded by providing for a 14-day extension, with the revised due date for additional information being on 30 January 2025.

No information had been received by the end of February 2025 and the application is therefore being determined on the basis of the information available.

**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	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>Concerns raised regarding potential site contamination. Despite existing reports, there is insufficient information to assess the suitability of the entire development footprint, particularly for Stages 1, 3, and part of Stage 2.</li> <li>Further investigation deemed necessary to determine whether the land is contaminated, suitable for development in its current state, or requires remediation. This includes conducting investigations into the potential for asbestos-containing materials at un-investigated depths and determining the need for further action.</li> </ul>
Flooding Engineering	<p><b>Supported subject to conditions.</b></p>
Land Development Engineer	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>Concern raised with the proposed surface material which is deemed unsuitable for all bicycles and may pose a hazard in certain conditions. To address this, the section must be constructed with a reinforced concrete pavement in accordance with Council Specifications.</li> <li>To enhance connectivity, the engineer has suggested that the proposal should include a 2.5-meter link to the existing cycleway on the western side of Brickmakers Drive. This connection will facilitate seamless movement for path users.</li> <li>Further an updated documentation is required to support the DA. This includes a draft Line Marking and Signage Plan for the works, as well as consistent legends on each Layout plan. The legends should accurately label the proposed shared path, rather than footpath, and include relevant details for the section of path around the basin. Technical details are also necessary, including specifications for the reinforced open invert channel crossing and indication of turf extending to the base of the open swale drain.</li> <li>Additionally, as part of the shared path will run along the golf course fairway, measures must be taken to ensure path user safety from golf balls. The proposal should outline warnings or precautions to mitigate this risk, such as signage, fencing, or other protective measures.</li> </ul>

<p>Natural Environment – Flora &amp; Fauna</p>	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>• To ensure clarity and transparency, revised plans were requested containing clear and consistent details regarding the trees to be removed.</li> <li>• An update to the BDAR is necessary as the previously submitted BDAR is outdated, and the author's accreditation has lapsed. The new BDAR should also specifically consider the threatened plant species Port Jackson heath, given its proximity to the proposed works.</li> <li>• In addition, the SEE requires revision to adequately address sections 2.8 and 2.10 of the Resilience and Hazards SEPP to ensure the DA aligns with the relevant policy requirements and adequately assesses potential environmental impacts.</li> </ul>
<p>Natural Environment (Landscape)</p>	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>• Submission required of a detailed arborist landscape plan and arborist report has been requested.</li> </ul>
<p>City (Urban) Design &amp; Public Domain</p>	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>• Confirms no objection to DCP variation to shared path.</li> <li>• Made recommendations regarding design including incorporation of more consistent materials used and submission of a Public Domain and Landscape Plan.</li> </ul>
<p>Property Services</p>	<p><b>Not supported in current form.</b></p> <ul style="list-style-type: none"> <li>• A VPA amendment is required due to the proposed cycleway alignment change and contamination issues in Lot 4 DP 1193300.</li> <li>• To address contamination, land dedication should be replaced with a public access easement, enabling the New Brighton Golf Club to retain ownership and address encroachment concerns.</li> <li>• An updated VPA, potentially requiring a Council report and public notification would be necessary to formalise these changes.</li> </ul>
<p>Voluntary Planning Agreements and Contributions</p>	<p><b>Supported subject to conditions.</b></p> <ul style="list-style-type: none"> <li>• A Vegetation Management Plan is required, addressing potential clearing works and planting offsets.</li> <li>• The Shared Path Along Georges River's staging is flexible, but aligning Stage 2 with VPA Item 1(a) is preferred. Due to asbestos contamination, Stage 3 should be delivered last.</li> <li>• Conditions of consent must align with VPA9 and any Deed of Variations. Furthermore, the cycleway's revised route through</li> </ul>

	85 Brickmakers Drive (fire trail) necessitates a VPA Deed of Variation.
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**(b) External Referrals**

AGENCY	COMMENTS
NSW Department of Climate Change, Energy, the Environment and Water (DCCEE) - Water	<b>Not supported in current form.</b> More information has been requested relating to the siting of development outside of the Vegetated Riparian Zone (VRZ), requesting a Vegetation Management Plan (VMP), and long/cross sections.
New South Wales Rural Fire Service (NSW RFS)	<b>Supported subject to conditions.</b>

**(c) Community Consultation**

The development application was notified between 15 August and 12 September 2024 in accordance with Liverpool Community Participation Plan 2019.

No submissions were received during the notification period.

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

The development as currently proposed is not considered to be in the public interest as it is inconsistent with the following objects of the EP&A Act 1979.

<b>Inconsistency with relevant objects of the EP&amp;A Act 1979</b>	
OBJECT	COMMENT
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	Insufficient information has been made available to assess with regards to the full environmental impacts associated with the proposal.
(c) to promote the orderly and economic use and development of land,	Approval of the proposal in its current form would not represent the orderly development of land given it is inconsistent with a registered planning agreement applying to the land, and precedes any formal confirmation from the Applicant that there is willingness to enter into a Deed of Variation to resolve these matters. Furthermore, a number of built and natural environment impacts associated with the proposal remain unclear.
(e) to protect the environment,	It cannot be determined that the application accords

including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	with object (e) of the EP&A Act as insufficient information regarding the proposal's impacts on the environment have been provided for.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Evidence of appropriate investigations relating to any potential impacts on Aboriginal cultural heritage have not been provided for within the application.

## **7. DEVELOPMENT CONTRIBUTIONS**

No contributions are required given the application is recommended for refusal.

## **8. CONCLUSION**

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

The assessment finds that, in its current state, insufficient information has been made available to conclude that the proposed works are in the public interest or that the site is suitable for the development proposed.

The Applicant was requested on 23 December 2024 to provide more information which would enable a complete assessment to be undertaken. One 2-week extension was granted by Council to provide the information requested, taking the due date for information to be received to 30 January 2025. As of the end of February 2025, this information had still not been provided for.

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

## **9. RECOMMENDATION**

That development application DA-344/2024 seeking consent for the construction of a footpath and boardwalk to be used for public recreation be **refused**.

## **ATTACHMENTS**

1. Draft Reasons for Refusal (Under separate cover)
2. Liverpool Development Control Plan Tables (Under separate cover)
3. Preliminary Engineering Plans of the Proposal (Under separate cover)
4. Voluntary Planning Agreement (Under separate cover)

5. Biodiversity Development Assessment Report (Under separate cover)
6. DPE-Water Request for Further Information (Under separate cover)
7. Council's Request for Additional Information Dated 23 December 2024 (Under separate cover)

<b>Item Number:</b>	<b>3</b>
<b>Application Number:</b>	DA-481/2024
<b>Proposed Development:</b>	Torrens Title Subdivision of the northern block of the site into eleven (11) lots and the southern block of the site into two (2) lots.  The proposal is identified as Integrated Development requiring approval from NSW Rural Fire Services under the Rural Fires Act 1997.
<b>Property Address</b>	61 Changsha Road, Lot 548 Changsha Road, 157 Ardennes Avenue, Edmondson Park
<b>Legal Description:</b>	Lot 738 DP 1247625 Lot 548 DP 1219412 Lot 737 DP 1247625
<b>Applicant:</b>	Mr R Bianco
<b>Land Owner:</b>	Gobbo Holdings Pty Ltd
<b>Cost of Works:</b>	\$75,563
<b>Recommendation:</b>	Approved subject to conditions of consent
<b>Assessing Officer:</b>	Robert Micallef

### **1. EXECUTIVE SUMMARY**

Council has received a Development Application (DA-481/2024) seeking consent for the Torrens Title Subdivision of the northern block of the site into eleven (11) lots and the southern block of the site into two (2) lots at a site currently consisting of 3 existing allotments legally defined as Lot 548 DP 1219412, Lot 738 DP 1247625 and Lot 737 DP 1247625 and is formally known as 61 Changsha Road, Lot 548 Changsha Road, 157 Ardennes Avenue, Edmondson Park. The application is Integrated Development requiring approval from the NSW Rural Fire Service under the Rural Fires Act 1997.

The site is zoned as R1 – General Residential, pursuant to Liverpool Local Environmental Plan (LLEP) 2008 with the proposed development being permissible with consent. The proposal is generally compliant with Council’s applicable local provisions and an acceptable form of development in that regard. The proposal also involves a variation under Clause 4.6 of the Liverpool LEP 2008 regarding Clause 7.11 – Minimum Dwelling Density, consisting of a variation of 28.4%.

The proposal was not required to be notified or advertised under the provisions of the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022. No submissions have been received for the subject application.

The key issue associated with the assessment of the subject Development Application relate to the variation to the minimum dwelling density development standard. As demonstrated in

the report, the variation to the minimum dwelling density development standard is considered acceptable in this instance.

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 category of:

***Departure from Development Standards***

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

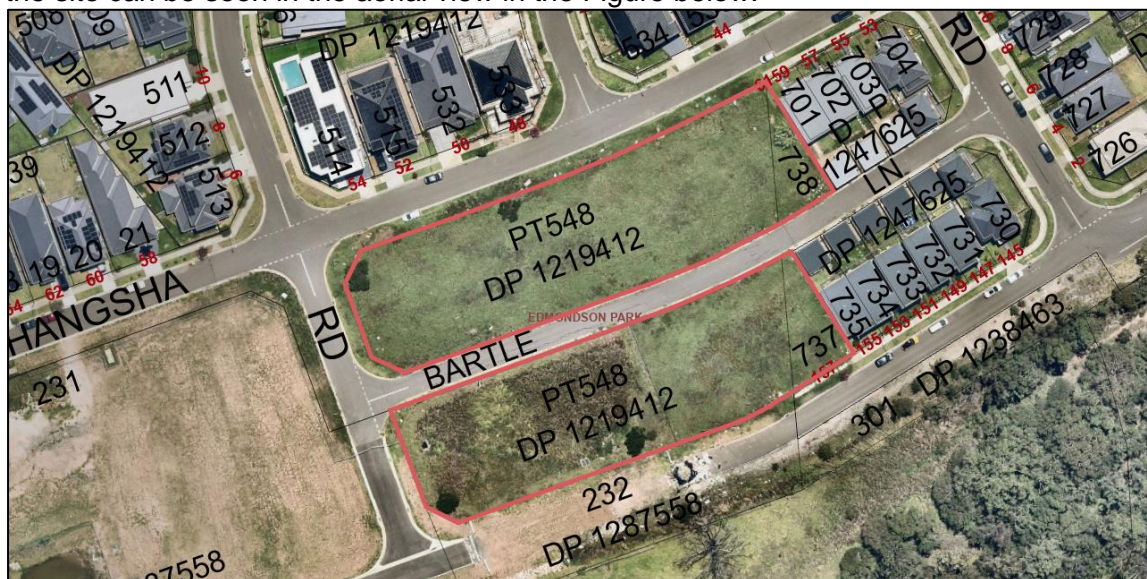
The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment (EP&A) Act 1979*. Based on the assessment of the application, it is recommended that the application be approved, subject to the imposition of conditions.

**2. SITE DESCRIPTION AND LOCALITY**

**2.1 The site**

The development site is legally defined as Lot 548 DP 1219412, Lot 738 DP 1247625 and Lot 737 DP 1247625 and is formally known as 61 Changsha Road, Lot 548 Changsha Road, 157 Ardennes Avenue, Edmondson Park. The land areas have a combined area of approximately 6,388sqm. The site is irregular in shape and is intersected by Bartle Lane, which provides laneway access to both lots.

The site has a gentle sloping topography from the high point at around RL49.5 on the northeast corner to the low point at around RL46 on the southwest corner of the site. It is cleared of vegetation other than grass ground cover. The south-western end of the site is utilised for the purposes of an on-site detention basin, which is a temporary measure until connection to the regional drainage network can occur once it is constructed. The location of the site can be seen in the aerial view in the Figure below.



**Figure 1:** Aerial view of subject site

## 2.2 The locality

The site and its immediate locality are transitioning from rural residential to suburban/urban residential as seen in Figure 1. The site is bordered by Changsha Road to the north, Ardennes Avenue to the south, and Arnhem Road to the west. To the north and east is low density housing. To the south is RE1 Public Recreation zone land and C1 Nationals Parks and Nature Reserves zone land. To the west is undeveloped vacant land zoned R1 General Residential for future housing development, in the form of residential flat buildings.

The site is located approximately 1km from Camden Valley Way and 2.5km west of the Crossroads Homemaker Centre and Industrial District. This area is within the Maxwells Creek catchment, which is a tributary within the Georges River Catchment. Edmondson Park Railway Station and Town Centre are located approximately 700m to the south-west.



**Figure 2:** Locality Surrounding the Proposed Development

## 3. BACKGROUND/HISTORY

Date	Event
15 March 2016	DA-1004/2015 approved for the subdivision to create 47 residential lots, 1 super-lot and 3 residue lots.  The subject site comprises the 3 residue lots created under the approved DA-1004/2015.
22 June 2018	Registration of subdivision creating subject sites.
29 June 2023	DA-1119/2021 approved for the consolidation of Lot 548, Lot 737 and Lot 738 in DP 1219412, and construction of multi-dwellings comprising twenty (20) dwellings and associated landscaping and drainage works over the subject land.
13 August 2024	Modification application (DA-1119/2021/A) to stage the multi dwelling housing development was approved.
25 October 2024	Subject application, DA-481/2024, was lodged.
19 November 2024	Stop the clock request for information provided to applicant request: <ul style="list-style-type: none"> <li>Validation Report from parent subdivision</li> </ul>

	<ul style="list-style-type: none"> <li>• Variation Statement for Dwelling Density non-compliance</li> <li>• Floor plans of approved DA-1119/2021</li> <li>• Waste management plan</li> <li>• Engineering and stormwater concerns</li> </ul>
10 December 2024	Most additional information received by Council but validation report missing.
22 January 2025	Request to applicant to provide validation report or else withdraw application and relodge with contamination reporting of site.
29 January 2025	Validation Report submitted.

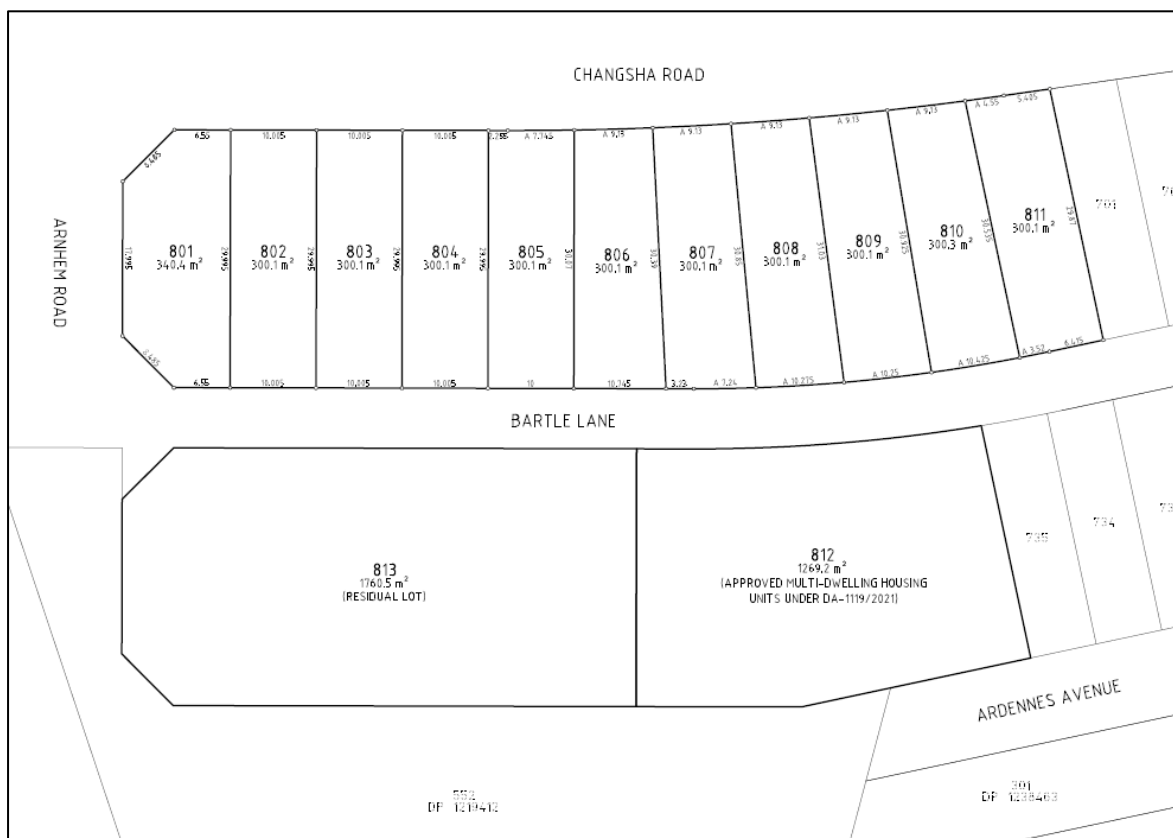
#### **4. DETAILS OF THE PROPOSAL**

This development application seeks the development consent for the Torrens Title Subdivision of the northern block of the site into eleven (11) lots and the southern block of the site into two (2) lots.

The northern block is anticipated to be developed into larger lots with larger dwellings than those approved within DA-1119/2021 under Stage 2. The southern block will be subdivided into two larger residue style allotments. One residue lot, Lot 813 will be utilised for the purposes of an on-site detention basin, which is a temporary stormwater measure until connection to the regional drainage network can occur once it is constructed. The future development of this lot will occur at a later stage and is not proposed under this development. The other lot on the southern block, Lot 812, will be the allotment on which Stage 1 of the multi-dwelling housing development approved under DA-1119/2021 will be situated on, in which 6 dwellings are to be built.

A breakdown of the lots are as follows:

<b>Lot</b>	<b>Size</b>	<b>Purpose</b>
801	340.4sqm	Small lot residential
802	300.1sqm	Small lot residential
803	300.1sqm	Small lot residential
804	300.1sqm	Small lot residential
805	300.1sqm	Small lot residential
806	300.1sqm	Small lot residential
807	300.1sqm	Small lot residential
808	300.1sqm	Small lot residential
809	300.1sqm	Small lot residential
810	300.3sqm	Small lot residential
811	300.1sqm	Small lot residential
812	1269.2sqm	Multi-Dwelling Housing Lot (6 dwellings)
813	1760.5sqm	Temporary On-site Detention Basin



**Figure 3:** Extract of proposed subdivision plan

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

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

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

#### Contributions Plans

- Liverpool Contributions Plan 2008 (Edmondson Park) applies pursuant to Section 7.11 of the EPA & Act.

## 6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.15 Evaluation of the Environmental Planning and

Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021, as follows:

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

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land, as the proposal involves the development of land to accommodate a change of use with the potential under the former SEPP 55 guidelines to be a site that could be potentially contaminated.

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

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

Pursuant to the above SEPP, Council must consider:

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

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

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	Contamination and remediation to be addressed as part of the development consent issued under DA-1004/2015 for the subdivision and civil works of the parent allotments, which formed part of the conditions of consent.
(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	Following site remediation, Geotest Services Pty Ltd was engaged to undertake a validation and land-use suitability assessment of the land Based on the validation results, Geotest Services Pty Ltd considered the site to be successfully remediated and suitable for low-density residential use with accessible gardens. The sites are deemed to be suitable for the future residential use of the land.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The site is not required to be further remediated. This aspect was looked at during the assessment of DA-1004/2015 and the post remediation validation. The current site is suitable for residential purposes.

The proposal has provided satisfactory information to demonstrate that the site is suitable for residential use and is in accordance with SEPP (Resilience and Hazards) 2021.

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

*Note: Chapters 7 – 12 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 were repealed on 21 November 2022 relating to the former catchment areas.*

The subject land is located within the Georges River Catchment and as such the State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 6 Water Catchments, applies to the application. The Biodiversity and Conservation SEPP aims to protect the environment of the Georges River Catchment by ensuring that water quality impacts are considered.

In accordance with the SEPP, when a consent authority determines a development application, the provisions in Part 6.2 - Development in Regulated Catchments are to be considered and consent must not be granted unless the consent authority is satisfied that the matters have been addressed. Accordingly, a table summarising the matters for consideration in determining development applications (Part 6.2) and compliance with such is provided below.

<b>Part 6.2 – Development in Regulated Catchments</b>	
<b>Division 2 – Controls on development generally</b>	<b>Comment</b>
6.6 – Water quality and quantity	Council’s Land Development Engineers have reviewed the application in regard to the stormwater design of the development and are satisfied with the proposal, subject to conditions.
6.7 – Aquatic ecology	The location of works is not part of an Environmentally Sensitive area. The site is also identified as Biodiversity Certified land.
6.8 – Flooding	The site is not affected by overland flows or mainstream flooding. Council’s Floodplain Engineering Section have reviewed the application and are satisfied with the development subject to conditions.
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 relevant Environmental Planning Instruments has considered the impact of the residentially zoned land within the catchment.
<b>Division 3 – Controls on development in specific areas</b>	<b>Comment</b>
6.11 – Land within 100m of natural waterbody	Although the site is within 100m of Maxwells Creek, the residential land use proposed is not a water dependent use and would not conflict with other land uses.
6.12 – Riverine scenic areas	Not applicable.
6.13 – Hawkesbury-Nepean conservation area sub-catchments	Not applicable.

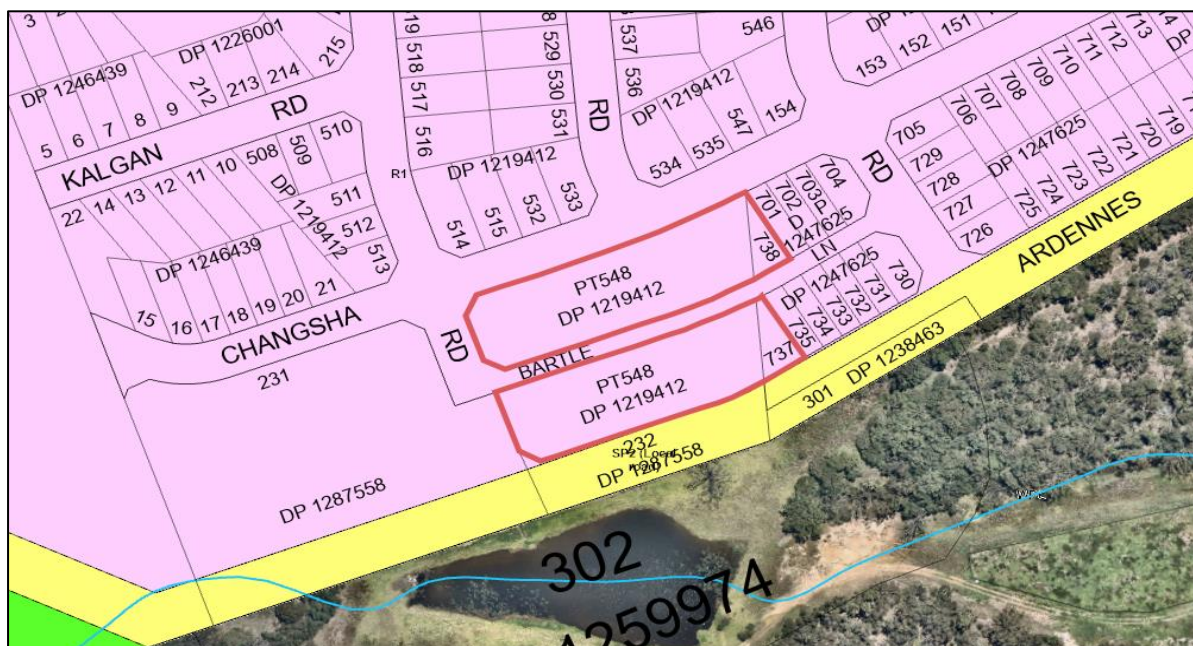
6.14 – Temporary use of land in Sydney Harbour Catchment	Not applicable.
<b>Division 4 – Controls on development for specific purposes</b>	<b>Comment</b>
6.15 – Aquaculture	Not applicable.
6.16 – Artificial waterbodies	Not applicable.
6.17 – Heavy and hazardous industries	Not applicable.
6.18 – Marinas	Not applicable.
6.19 – Moorings	Not applicable.
6.20 – On-site domestic sewerage systems	Not applicable.
6.21 – Stormwater management	Council's Land Development Engineers have reviewed the application in regard to the stormwater design of the development and are satisfied with the proposal, subject to conditions.
6.22 – Waste or resource management facilities	Not applicable.
6.23 – Demolition on certain land	No demolition occurring.

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

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

**(i) Zoning**

The subject sites are all zoned R1 – General Residential in accordance with the Liverpool Local Environmental Plan 2008. An extract of the zoning map is provided below.



**Figure 4 – Extract of LLEP 2008 zoning map**

**(ii) Permissibility**

The development is categorised as subdivision, which is permissible pursuant to Clause 2.6 of the Liverpool Local Environmental Plan 2008.

**(iii) Objectives of the zone**

The objectives of the R1 zone are as follows:

- *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.*

It is considered that the proposal is consistent with these zone objectives in the fact that it will supply housing to the community and still allow for a variety of housing types while being in an area which is in close proximity to public transport, services and facilities.

**(iv) Principal Development Standards**

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

<b>Clause</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Clause 2.6 Subdivision</b>	Land to which this Plan (LLEP 2008) applies may be subdivided with development consent.	Consent is being sought for subdivision of land.	Yes
<b>Clause 4.1 Minimum Subdivision Lot Size</b>	The development site is identified as having a minimum subdivision lot size of 300m <sup>2</sup>	The proposed subdivision intends to create 13 lots ranging from 300.1sqm to 1760.5sqm.	Yes
<b>Clause 4.3 Height of Buildings</b>	The development site is identified as having a maximum building height of 15m	No built form is proposed.	N/A
<b>Clause 4.4 Floor Space Ratio</b>	The site has a maximum floor space ratio of 1.0:1	Although no built form is proposed under this application, the multi-dwelling housing development approved under DA-1119/2021, situated on Lot 812, would provide a floor space ratio of 0.57:1.	Complies
<b>Clause 4.6 Exceptions to Development Standards</b>	Provisions relating to exceptions to development standards	Clause 4.6 request to vary Clause 7.11 Minimum Dwelling Density considered as part of this application.	See 4.6 discussion below.
<b>Clause 5.21 Flood Planning</b>	To minimise the flood risk to life and property associated with the use of land	The site is not affected by overland flows or mainstream flooding. Council's Floodplain Engineering Section have reviewed the application and are satisfied with the development subject to conditions.	Complies by conditions
<b>Clause 6.5 Public Utility Infrastructure</b>	Public utility infrastructure must be available	Provided by conditions of consent, but servicing should be available to the sites as the surrounding lots are registered and developable and servicing arrangements were made under Development Consent DA-1004/2015.	Complies by conditions
<b>Clause 7.7</b>	Class 1, 2, 3, 4 or 5	The site is not mapped as	N/A

Clause	Provision	Comment	Complies
Acid Sulfate Soils		containing acid sulfate soils.	
Clause 7.11 Minimum Dwelling Density	The site is subject to a minimum dwelling density of 28dw/ha for majority of the site.	17 dwellings (11 proposed lots + 6x multi dwelling housing units) achieved over a net developable area of 0.8479 hectares (0.6388ha (site) + 0.2091ha (roads)).  Dwelling Density = 20.04 dw/ha  In accordance with the definition of dwelling density in accordance with the definition under this clause, it is noted that the net developable area is inclusive of half roads surrounding the development as well as land for the purposes of the OSD basin considering it is land that would be for residential purposes.	Considered acceptable – see Clause 4.6 - Variation assessment below.

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

Clause 7.11 (2) of the LLEP 2008 states;

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

The subject proposal seeks a variation to the minimum dwelling density contained in LLEP 2008. As stated in the LLEP 2008 table above, the minimum dwelling density is 28dw/ha. A dwelling density of 20.04 dwellings per hectare is proposed, which results in a numerical variation of 7.96 dw/ha or 28.4%.

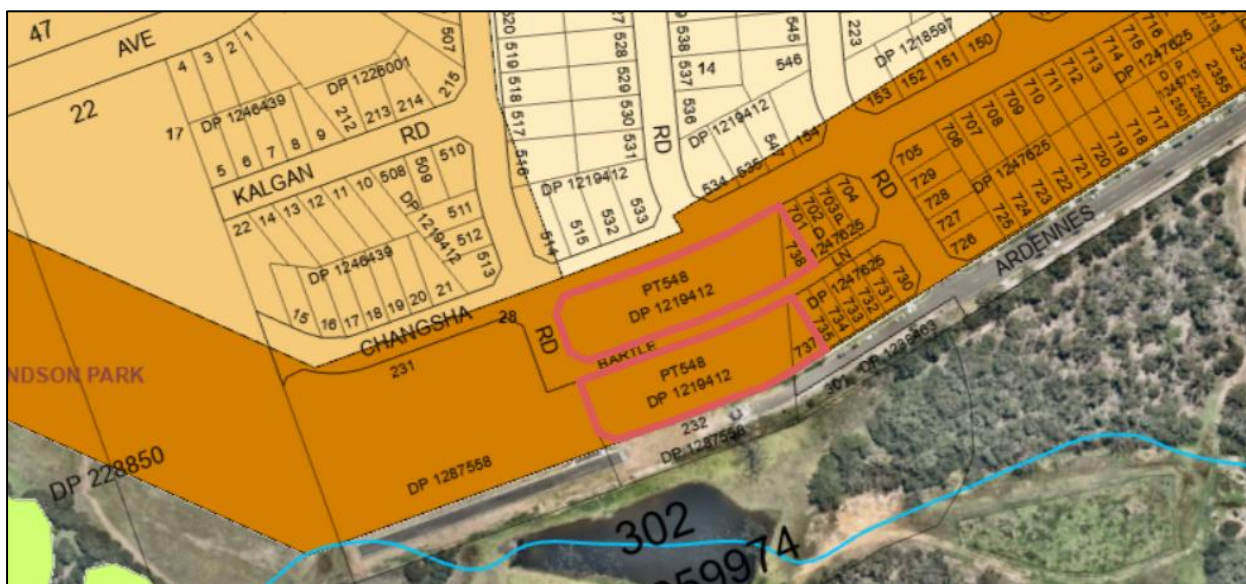


Figure 5 – Extract of LLEP 2008 minimum dwelling density map

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

The objectives and pertinent considerations of Clause 4.6 of the LLEP 2008, as they relate to the subject DA, are as follows:

- (1) *The objectives of this clause are as follows—*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
  
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
  - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

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

The applicant submitted a Statement to support the variation to the Minimum Dwelling Density Development Standard, in order to justify the variation described above. In conjunction with an examination of case law regarding 4.6 Variations, this document provides the following justifications based on the merits of the proposal:

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

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827 are considered.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While *Wehbe* concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b> (applicable)	The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.  The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.
<b>Second</b> (N/A)	A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
<b>Third</b> (N/A)	A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
<b>Fourth</b> (N/A)	A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
<b>Fifth</b> (N/A)	A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary."

In respect of the **minimum dwelling density** development standard, the **first** method is invoked.

The objectives supporting the minimum dwelling density identified in Clause 7.11 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 7.11.

“(1) The objectives of this Plan for the control of dwelling densities are as follows-  
- to contribute toward the efficient use of land resources,

- to ensure the viability of public transport and other services planned for the area,
- to ensure adequate funds for the recreation and community facilities planned for the area.

Objective

to contribute toward the efficient use of land resources,

Comment

The proposed subdivision represents an efficient use of land resources. The area of the proposed subdivision represents one of the last vacant blocks along Changsha Road and Ardennes Avenue that have yet to be developed into residential built form. As such, the proposed subdivision will result in the creation of additional dwelling entitlements that will enable the construction of new residential dwellings on the site, reflective of the emerging and desired future residential character of the area.

While a variation to the minimum dwelling density development standard is proposed as part of the subdivision application before Council, it is important to consider that this variation is as a result of the inability to subdivide residual Lot 813 until the remainder of Ardennes Avenue and drainage infrastructure is constructed. Based on a minimum subdivision lot size of 300m<sup>2</sup>, Lot 813 is capable of being subdivided into at least five (5) Torrens Title lots. If these potential lots are included in the overall dwelling density, a total of twenty-two (22) dwellings are able to be accommodated within the developable area, thereby achieving the minimum dwelling density prescribed for the site.

Therefore, it is concluded that the proposed subdivision represents an efficient use of land resources.

Objective

to ensure the viability of public transport and other services planned for the area,

Comment

The proposed subdivision has no bearing on public transport and other services within Edmondson Park. The majority of the required road network and infrastructure to support the new residential development have already been provided to the area.

Nevertheless, the site is readily accessible with regular bus services operating along Bernera Road (1.5km north-west of subject site) providing services towards Liverpool, Prestons and Ingleburn. Additionally, Edmondson Park Train Station is a 1.6km walk from the subject site.

Objective

to ensure adequate funds for the recreation and community facilities planned for the area.

Comments

No recreation or community facilities are proposed as part of the subdivision application. However, the proposed variation to the minimum dwelling density will not result in any funding issues for the provision and maintenance of recreation and community facilities for the area. This is demonstrated by the fact that the subject site

*is capable of accommodating the minimum required number of dwellings once the remainder of Ardennes Avenue and drainage infrastructure is constructed. Residual lot 813 is capable of being subdivided into at least five (5) Torrens Title lots, resulting in the accommodation of at least twenty-two (22) dwellings within the developable area, satisfying the minimum dwelling density requirement for the site.*

*In view of the above, it is submitted that the proposal is consistent with the objectives of Clause 7.11 of the LLEP08.*

*It is considered that this submission, in that the objectives of the standards are met, provides sufficient environmental planning grounds to justify contravening the development standard.*

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

- The development of Lot 813 can produce a number of residential allotments which enable a density to be achieved which is closer to what is to be provided. A restriction on the title will be made to ensure the minimum dwelling density is met for future development once Ardennes Avenue and Arnhem Road can be fully developed.
- The development of Lot 813 would need to ensure that 6-7 dwellings are provided in order to meet the minimum dwelling density and given the range of permissible uses in the zone, this would be able to be achieved by providing additional dwelling variety.
- The departure from the development standard will provide for a residential development which is consistent with the zone and objectives.
- The proposal still meets the minimum lot size and lot width requirements. Accordingly, the development enables a subdivision pattern that is in the context of the area and is consistent with the objectives of the development standard and the zone.
- Besides the variation to minimum dwelling density given the circumstances, the applicant has enabled the proposal to achieve compliance with the applicable requirements of the LLEP 2008 and LDCP 2008. Ensuring compliance with the applicable standards and controls is considered to demonstrate that compliance with the standard is unreasonable in this case as the development can be sited with full adherence to local provisions and any future development on the allotments would still be able to provide a variation of housing products suitable for the area and provide for the housing needs for the community.
- The DA also is fully consistent with the provisions of the relevant SEPP's, as previously demonstrated in this report.
- The proposed subdivision pattern is considered to be regular and consistent with the precinct and as such is considered to be an orderly development of the site.
- The development proposes residential lots which would be able to accommodate dwellings and achieve appropriate amenity based on full compliance with relevant state and local policies. In this regard, refusing the application based on non-compliance with the minimum dwelling density requirement is unlikely to provide additional benefit to the locality.
- The development is considered to satisfy all of the relevant heads of consideration as per Section 4.15 (1) of the Act.

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

The variation statement also addresses whether there are sufficient environmental planning grounds to justify the contravention, as follows:

*The assessment above and shown throughout the supporting documentation demonstrates that the resultant environmental impacts of the proposal will be satisfactory.*

*The key environmental grounds are:*

- *The non-compliance to the minimum dwelling density arises as a result of the inability to subdivide residual Lot 813 until the remainder of Ardennes Avenue and drainage infrastructure is constructed. Lot 813 is proposed to act as a temporary detention basin until the required drainage infrastructure has been constructed downstream on Council owned land.*
  - *Based on a minimum subdivision lot size of 300m<sup>2</sup>, Lot 813 is capable of being subdivided into at least five (5) Torrens Title lots. If these potential lots are included in the overall dwelling density, a total of twenty-two (22) dwellings are able to be accommodated within the developable area, thereby achieving the minimum dwelling density prescribed for the site.*
  - *It is considered that as the road network surrounding the proposed area of subdivision (Changsha Road, Bartle Lane and Arnhem Road) has already been separated from the lots of the proposed development, the area of these roads should not need to be factored in calculations of the minimum dwelling density for the site. Nevertheless, the site remains capable of accommodating the minimum number of dwellings prescribed for the site under clause 7.11 of the LLEP08.*
- *Solely factoring in the area of the site which can currently be developed for residential purposes (4,610m<sup>2</sup>), the minimum number of dwellings required to meet the LLEP08 dwelling density control would be 12.9 dwellings (rounded up to 13). The proposed eleven (11) Torrens Title lots, which are each capable of accommodating a single dwelling, and the retention of the approved six (6) multi-dwelling houses on the southern block, result in a total of seventeen (17) dwellings within the developable area of the site.*

*The proposal adequately addresses the site constraints, streetscape, and relevant objectives of dwelling density standard. The proposal will not result in any unreasonable amenity or environmental impacts.*

*Furthermore, it is important to also consider the objectives of the R1 General Residential zone in relation to the development, which are as follows:*

**R1 General Residential zone**

**Objectives of zone**

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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

*In response to the above the following is provided:*

- *The proposed development will result in the retention of the approved multi-dwelling houses on the southern block and the creation of eleven (11) lots on the northern block that will allow for the construction of dwelling houses to meet the housing needs of the community.*
- *The proposal seeks to retain the approved multi-dwelling houses on the southern block, ensuring a variety of the housing types and densities are provided in the locality.*
- *No other land uses are proposed.*
- *The site is readily accessible with regular bus services operating along Bernera Road (1.5km north-west of subject site) providing services towards Liverpool, Prestons and Ingleburn. Edmondson Park Train Station is a 1.6km walk from the subject site. These destinations provide numerous public and private educational, commercial and recreational facilities and amenities.*
- *The proposal includes the construction of a pedestrian footpath and street trees, assisting in the creation of a public domain that will encourage pedestrian activities.*

*The proposed variation to the dwelling density does not impact on the capacity of the development to meet the above objectives. In view of the above, it is submitted that the proposed development is consistent with the objectives of the zone, and it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will ultimately be in the public interest.*

*In this case, strict compliance with the dwelling density development standard of the LLEP08 is unnecessary and unreasonable, given the required number of dwellings can be accommodated on the site once the remainder of Ardennes Avenue and drainage infrastructure is constructed.*

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

- The proposed development is considered to be consistent with the objectives of the zone, the development standard and Clause 4.6.
- The proposed development site is situated in a location which is close to public transport, provides residential development which can achieve a high amenity value and can accommodate a range of dwelling types.
- It is noted that the site to the west proposes residential flat buildings and other areas within the locality meet and exceed the density.
- Edmondson Park is an area currently being developed and transitioning to an urban character. The proposed subdivision will cater for future residential development of an appropriate scale which would not fetter the efficient use of land resources.
- Contributions can still be collected from the development and can ensure adequate local recreation and community facilities can be provided.
- The development of Lot 813 can produce a number of residential allotments which enable a density to be achieved which is closer to what is to be provided. A restriction on the title will be made to ensure the minimum dwelling density is met for

future development once Ardennes Avenue and Arnhem Road can be fully developed.

- The development of Lot 813 would need to ensure that 6-7 dwellings are provided in order to meet the minimum dwelling density and given the range of permissible uses in the zone, this would be able to be achieved by providing additional dwelling variety.
- The departure from the development standard will provide for a residential development which is consistent with the zone and objectives.
- The proposal still meets the minimum lot size and lot width requirements. Accordingly, the development enables a subdivision pattern that is in the context of the area and is consistent with the objectives of the development standard and the zone.
- Besides the variation to minimum dwelling density given the circumstances, the applicant has enabled the proposal to achieve compliance with the applicable requirements of the LLEP 2008 and LDCP 2008. Ensuring compliance with the applicable standards and controls is considered to demonstrate that compliance with the standard is unreasonable in this case as the development can be sited with full adherence to local provisions and any future development on the allotments would still be able to provide a variation of housing products suitable for the area and provide for the housing needs for the community.
- The DA also is fully consistent with the provisions of the relevant SEPP's, as previously demonstrated in this report.
- The proposed subdivision pattern is considered to be regular and consistent with the precinct and as such is considered to be an orderly development of the site.
- The development proposes residential lots which would be able to accommodate dwellings and achieve appropriate amenity based on full compliance with relevant state and local policies. In this regard, refusing the application based on non-compliance with the minimum dwelling density requirement is unlikely to provide additional benefit to the locality.
- The development is considered to satisfy all of the relevant heads of consideration as per Section 4.15 (1) of the Act.
- It is considered appropriate in this instance to apply a degree of flexibility when applying the Minimum Dwelling Density development standard applicable to the subject site based on the town planning assessment of the Clause 4.6 Variation provided above. It is considered that achieving a reduced minimum dwelling density in this instance is unlikely to result in detrimental impacts to the built and natural environments and the development is consistent with the characteristics of the zone, locality and density envisioned for the area.

### **Recommendation**

As a result of the assessment above, it is also considered that compliance with the dwelling density development standard is unreasonable or unnecessary due to the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard. The objectives of the Minimum Dwelling Density clause have also been addressed, as well as the objectives of the zone. Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 7.11 Minimum dwelling density in this instance.

With considerations to the discussion above, the proposal is also considered to be in the public interest and is therefore supported in this instance.

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

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

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

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

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

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

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008, except those relating to the matter below, which is considered to be acceptable.

<b>LDCP 2008 - Part 1 General Controls for all Development</b>			
<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Section 21. Subdivision of Land and Buildings</b>	Subdivision of land involving the creation of lots less than 300sqm or less than 10m lot width shall include the dwelling house as part of the development application.	See justification below.	Considered Acceptable
	<p><b><u>Justification</u></b>                      The development proposes lots which meet the minimum lot size and width, however as some lots are below 10m in width, the DCP requires dwellings to be built on these lots. The proposed development does not provide for dwellings as part of this application, however, is considered to be satisfactory given the circumstances. The proposal provides for lots which are rear loaded to Bartle Lane and provide vehicular access to the allotments through garages which are oriented toward this laneway. This in turn allows for a less garage dominated frontage and can allow for passive surveillance to the main dwelling frontage, creating a more functional, safe and attractive environment for residents. This also provides for better amenity for occupants with larger or an increased number of north facing rooms as opposed to half a garage in the frontage. Further, as this application is also within one of Liverpool's growth areas, Edmondson Park, as opposed to an established area, smaller widths are more typical, such as what is required in Austral/Leppington, where lots can be 9m in width without any dwelling design included. Additionally, the lots taper from a minimum of 9.13m to a width of 10m or greater due to the shape of the parent lots. As such, the proposed</p>		

<b>LDCP 2008 - Part 1 General Controls for all Development</b>			
<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
	development is consistent with the objectives of this Section of the DCP and is considered acceptable in the circumstances.		

All relevant compliance tables for the LDCP 2008 can be found in the Appendices.

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

There are no Planning Agreements which apply to the development.

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

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the National Construction Code and Australian Standards. Accordingly, appropriate conditions of consent will be imposed where they are relevant to the proposed subdivision works.

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

##### **(a) Natural Environment**

Impacts on the natural environment have been assessed as part of the development application. The proposal is unlikely to result in any detrimental impact on the natural environment surrounding the subject sites, or to any endangered and non-endangered species of flora and fauna.

##### **(b) Built Environment**

The proposed development is unlikely to create any adverse impacts on the surrounding built environment. The proposed development is considered to be of an appropriate scale and unlikely to create any detrimental impacts on the adjoining properties or the locality as a whole. The proposal will facilitate residential development consistent with the desired future built character of the locality.

##### **(c) Social Impacts and Economic Impacts**

The proposed subdivision would result in a positive economic impact in the locality through the capital investment value of the development and is unlikely to generate any identifiable detrimental social impacts.

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

The proposal generally complies with the relevant planning controls and provisions that are applicable to development in the locality. It is therefore considered that the site is suitable for the proposed development.

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

**(a) Internal Referrals**

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

<b>DEPARTMENT</b>	<b>COMMENTS</b>
Land Development Engineering	Supported, subject to conditions of consent
Traffic & Transport	Supported, subject to conditions of consent
Flooding	Supported, subject to conditions of consent
Environmental Health	Supported, subject to conditions of consent

**(b) External Referrals**

<b>AGENCY</b>	<b>COMMENTS</b>
NSW Rural Fire Service	General Terms of Approval issued
Sydney Water	No objection subject to comments
Endeavour Energy	No objection subject to comments

**(c) Community Consultation**

The proposal was not required to be notified or advertised under the provisions of the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022. No submissions have been received for the subject application.

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

The development is consistent with the objectives of the zone and development controls and approval of the proposed development is not contrary to the public interest.

**7. DEVELOPMENT CONTRIBUTIONS**

Section 7.11 Development Contributions are applicable to the proposed development in accordance with the Liverpool Contributions Plan 2008 (Edmondson Park). Restrictions will apply to the two larger lots to ensure that future development includes the payment of 7.11 contributions.

A Special Infrastructure Contribution condition is also required. The Housing and Productivity Contribution does not apply 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, Liverpool LEP 2008, LDGP 2008, and the relevant codes and policies of Council.

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

## **9. RECOMMENDATION**

That Development Application No. DA-481/2024 seeking approval for the Torrens Title Subdivision of the northern block of the site into eleven (11) lots and the southern block of the site into two (2) lots at 61 Changsha Road, Lot 548 Changsha Road, 157 Ardenes Avenue, Edmondson Park be **approved subject to conditions of consent**.

## **ATTACHMENTS**

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1. Liverpool DCP 2008 Compliance Tables (Under separate cover)
2. Plans of the Proposal (Under separate cover)
3. Applicant's Clause 4.6 Statement (Under separate cover)
4. Draft Conditions of Consent (Under separate cover)

<b>Item Number:</b>	4
<b>Application Number:</b>	DA-177/2024
<b>Proposed Development:</b>	Residential subdivision of two lots into 52 residential lots and 3 residue lots including demolition of existing dwellings & structures, tree removal, road construction, stormwater drainage, servicing, & earthworks.  The proposed development is identified as Integrated Development requiring approval from the NSW Rural Fire Service under the Rural Fires Act 1997.
<b>Property Address</b>	365-375 Fifteenth Avenue, Austral NSW 2179
<b>Legal Description:</b>	Lot 362 DP 2475, Lot 363 DP 2475
<b>Applicant:</b>	Peter Graham on behalf of The Trustee for Mera Fifteenth Property.
<b>Land Owner:</b>	W K Shaw, D F Carroll, L A Carroll
<b>Cost of Works:</b>	\$3,203,374.00
<b>Recommendation:</b>	Approved subject to conditions of consent
<b>Assessing Officer:</b>	Tamim Omar

## 1 EXECUTIVE SUMMARY

Council is in receipt of a Development Application DA-177/2024 seeking consent for residential subdivision of two lots into 52 residential lots and 3 residue lots including demolition of existing dwellings & structures, tree removal, road construction, stormwater drainage, servicing, & earthworks located at 365-375 Fifteenth Avenue, Austral which is legally described as Lot 362 DP 2475 & Lot 363 DP 2475

The proposed development is identified as Integrated Development requiring approval from the NSW Rural Fire Service under the Rural Fires Act 1997.

The application was also referred to Sydney Water, TfNSW and Endeavour Energy. All external agencies provided comments and had no objections subject to the conditions provided.

The land is zoned R2 Low Density Residential, R3 Medium Density Residential and SP2 Infrastructure pursuant to the *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, within which the proposed development is permissible with consent.

The Development Application was required to be notified in accordance with the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022. The proposal was notified between 30 April and 15 May 2024. Notwithstanding, no submissions were received.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 06 June 2024*, as the development falls in the category of:

***Departure from development standards***

*Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.*

The non-compliance is summarized below:

- The proposal does not comply with Appendix 4 Liverpool Growth Centres Precinct Plan Clause 4.1B(3) pursuant to the State Environmental Planning Policy (Precincts: Western Parkland City) 2021.
- Clause 4.1B(3) states the following: *The density of any residential development to which this section applies is not to be less than the density shown on the Residential Density Map in relation to that land.*
- South West Growth Centre Residential Density Map Sheet RDN\_012 nominates the subject site as requiring a minimum dwelling density requirement of 25 dwellings per hectare for the R3 portion of the site.
- The proposal seeks to nominate the R3 Medium Density zoned portion of the site as a single residue lot, subject to future development.
- The development has a noncompliance of 95.6%, which in the circumstances and context of the site, is deemed acceptable in this instance, which is summarised in the Clause 4.6 Exceptions to development standards assessment further in this report.

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and it is recommended that the application be approved subject to conditions of consent.

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

### **2.1 The locality**

The site and the immediate locality are in the north-western district of the existing suburb of Austral as shown in Figure 1, the majority of which is still currently semi-rural in nature however is undergoing rapid transformation. The subject land is zoned R2 Low Density Residential and R3 Medium Density Residential and SP2 (Classified Road) pursuant to the State Environmental Planning Policy (Precincts—Western Parkland City) 2021, and due to several developments approved or under construction in the vicinity, the subject site can be considered as land in transition. Directly across Fifteenth Avenue to the south is B2 Local Centre zoned land which is envisioned to be the Austral local centre once designed and developed.

The area is characterised by a mixture of existing large lot residential and rural uses and recent subdivision works and dwellings associated with the development of the Growth Centre. The scale of the proposed development is predominantly low-density developments.

The site is in the local catchment of Kemps Creek, which is a tributary of the Hawkesbury River. The site is therefore within the Nepean-Hawkesbury catchment. The site is currently accessed via Fifteenth Avenue to the south and Sixteenth Avenue from the north. Fifteenth Avenue is identified as a transit boulevard and is subject to future regional connectivity works such as the Fifteenth Avenue Smart Transit (FAST) Corridor.

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

East (side)	<ul style="list-style-type: none"> <li>• 355 Fifteenth Avenue (Lot 3600 DP 1000185) –Site has no previous or current development application history.</li> <li>• 20 Craik Avenue (Lot 3601 DP 1000185) – no active development consents remaining for residential subdivision.</li> </ul>
West (side)	385 Fifteenth Avenue (Lot 364 DP 2475) – Site has no previous or current development application history.
South (bottom)	Fifteenth Avenue – SP2 Classified Road and future transit corridor to Nancy Bird Walton International Airport. To the south of Fifteenth Avenue is the future Austral Town Centre.
North (top)	Sixteenth Avenue (local road) - established low density residential housing.



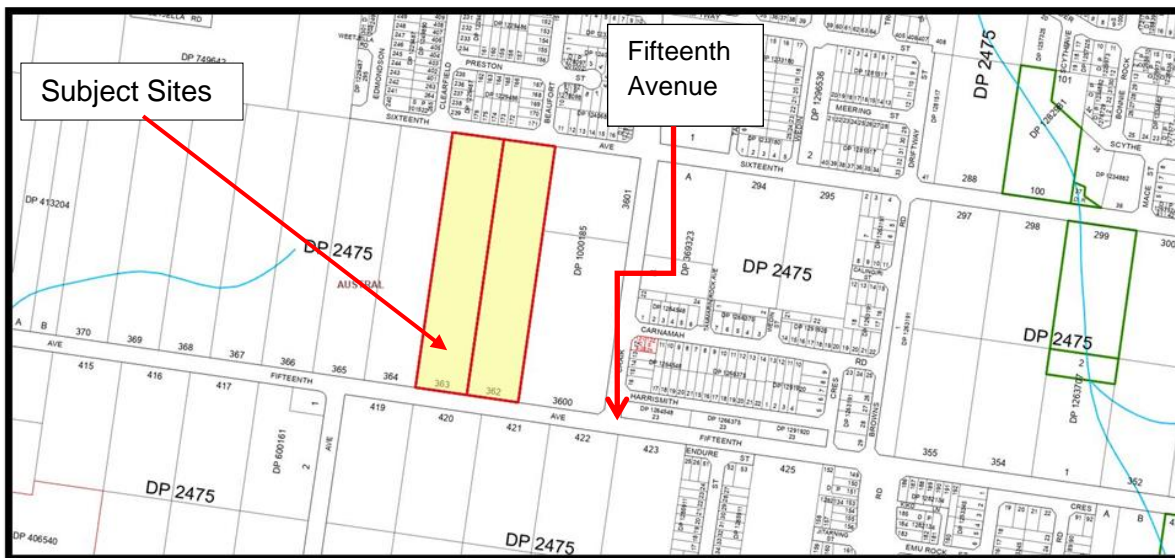
**Figure 1:** Aerial view of the site (Source: Geocortex)

## 2.2 The site

The subject sites are located at 365-375 Fifteenth Avenue, Austral which is legally described as Lot 362 DP 2475 & Lot 363 DP 2475. The sites are rectangular in shape with site areas of approximately 1.8ha for Lot 362 and 1.8ha for Lot 363, which is a total area of 36,292.6521sqm (3.6ha).

The development site fronts onto both Fifteenth Avenue and Sixteenth Avenue with a total frontage of 120.7m to each corresponding street. Current improvements on the subject site contain 2 dwelling houses and several outbuilding structures associated with the past rural use of the site. The site is also significantly vegetated with native trees dominating the site

with scattered exotic species located nearby to the existing dwellings on the subject site. The subject site contains regional core terrestrial biodiversity, however, is biodiversity certified under the Order. The subject site is bushfire affected (vegetation category 2 and category 3) and has moderate salinity potential soil.



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

**2.3 Site Constraints**

<p><b>Are there any constraints or affection on the site:</b></p> <ul style="list-style-type: none"> <li>- Bushfire</li> <li>- Flooding</li> <li>- Heritage Items</li> <li>- Aboriginal heritage</li> <li>- Environmentally Significant Land</li> <li>- Threatened Species/ Flora/ Habitat/ Critical Communities</li> <li>- Acid Sulphate Soils</li> <li>- Aircraft Noise</li> <li>- Flight Paths</li> <li>- Railway Noise</li> <li>- Road Noise/ Classified Road</li> <li>- Significant Vegetation</li> <li>- Contamination</li> <li>- Salinity</li> </ul>	<ul style="list-style-type: none"> <li>- Threatened Species: Lot 362 &amp; Lot 363 are partially mapped as containing critically endangered species across the site. However, the site is also mapped as Biodiversity Certified and does not require further assessment of biodiversity impacts pursuant to Section 8.4 of the <i>Biodiversity Conservation Act 2016</i>.</li> <li>- Bushfire: The sites are mapped as bushfire prone land</li> <li>- Moderate Salinity Potential.</li> <li>- A portion of the site is subject to future acquisition (road widening of Fifteenth Avenue)</li> </ul> <p><i>Note: Standard conditions of consent require the design to respond to site salinity at the construction certificate stage.</i></p>
<p><b>Are there any restrictions on title?</b> Attach 88B instrument to the report</p>	<p>Nil.</p>

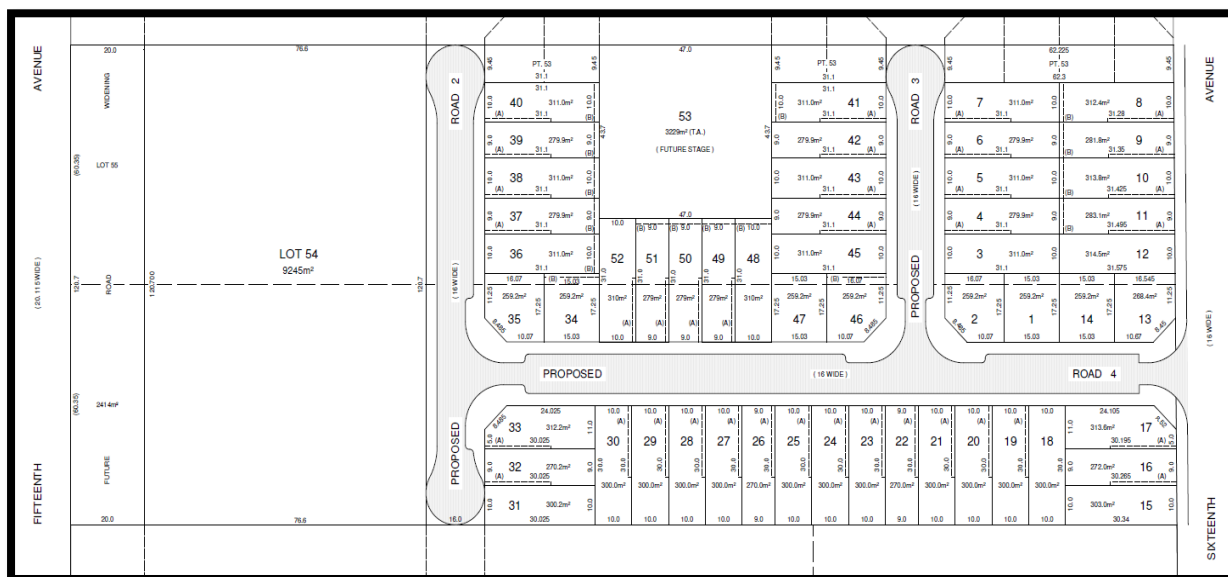
### 3. BACKGROUND/HISTORY

<b>Date</b>	<b>Details</b>
18 April 2024	Application lodged.
30 April 2024	Internal referrals to: <ul style="list-style-type: none"> <li>• City Design Heritage</li> <li>• Landscape</li> <li>• Strategic Planning</li> <li>• Waste Management</li> <li>• Traffic and Transport</li> <li>• Flood Engineering</li> <li>• Environmental Health</li> </ul> External referral to: <ul style="list-style-type: none"> <li>• Transport for NSW</li> <li>• Rural Fire Service</li> <li>• Jemena</li> <li>• Sydney Water</li> </ul>
20 May 2024	Transport for New South Wales response returned.
28 May 2024	Jemena response returned.
5 June 2024	RFS response returned.
14 August 2024	RFI issued containing Planning, Strategic Planning, Engineering, Flooding and Waste Matters.
28 August 2024	Sydney Water response returned.
29 August 2024	Meeting held with applicant regarding RFI.
20 September 2024	Council informed of R3 portion of site to be nominated as residue.
24 September 2024	Additional Information provided.
26 September 2024	Internal Referrals created on Assess to address additional information.
10 October 2024	Further Traffic Impact Assessment report submitted to Council
31 October 2024	Amended Drains Modelling and Flooding Matter additional information provided to Council
21 November 2024	Amended Drains Modelling provided on reduced OSD volumes
12 December 2024	Amended civil plans removing works on R3 portion of site and nomination as residue lot.
12 February 2025	Applicant justification of Clause 4.6 Variation provided to Council.

### 4. DETAILS OF THE PROPOSAL

The proposed development consists of the following:

The Development Application seeks consent for subdivision of two lots into 52 residential lots and 3 residue lots including demolition of existing dwellings & structures, tree removal, road construction, stormwater drainage, servicing, & earthworks.



**Figure 3: Subdivision Plan**

A variety of lots are proposed including 23 lots less than 300sqm which are inclusive of a Building Envelope Plan (BEP). All lots are minimum 9m in width with a variety of lot widths provided and additionally varying lot depths thus offering a variety of housing forms to be created.

The proposal also entails the creation of 3 residue lots,

- one residue lot (Lot 55) is for future road widening of Fifteenth Avenue,
- one residue lot (Lot 53) is to be developed at a future stage in conjunction with development of the adjoining site (Lot 364, DP 2475). Under this DA, this lot will be used for temporary on-site detention (OSD) purposes.
- The remaining residue lot (Lot 54) is to be developed at a future stage subject to surrounding development occurring including the proposed upgrade of Fifteenth Avenue and development of the Austral Town Centre.
- Lot 54 is zoned R3 medium density and originally entailed development of the site for subdivision purposes at the time of lodgement. However, due to the uncertain nature of the proposed FAST corridor on Fifteenth Avenue and the possibility of additional land required for acquisition, the applicant revised plans to change this portion of the site to a residue lot with view to develop once the surrounding area has further developed and further clarity is gained on the future of the FAST corridor and acquisition requirements.

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

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

- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *State Environmental Planning Policy (Precincts—Western Parkland City) 2021;* and
- *Liverpool Growth Centre Precincts Development Control Plan 2021.*

#### Contributions Plans

- Liverpool City Council Section 7.11 – Austral and Leppington North Contributions Plan 2021

### **6. ASSESSMENT**

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

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

##### **(a) *State Environmental Planning Policy (Transport and Infrastructure) 2021***

The application was referred to Transport for New South Wales (TfNSW) under Section 2.119 of the SEPP (Transport and Infrastructure) 2021 as the subject site fronts Fifteenth Avenue which is a classified road. TfNSW supported the proposal on the 20th of May 2024 subject to conditions of consent.

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

The proposal has been assessed under the relevant provisions of the *State Environmental Planning Policy (Resilience and Hazards) 2021* – Chapter 4 Remediation of Land, which applies to the DA.

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

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

Pursuant to the above SEPP, Council must consider:

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

The applicant submitted a Stage 2 Detailed Site Investigation Report and Remediation Action Plan to Council for review –

- Preliminary & Detailed Site Investigation prepared by Geotest Services Pty Ltd dated 19/12/2023
- Remedial Action Plan 365 & 375 Fifteenth Avenue, Austral 2179 Lots 362 & 363 in DP 2475 (P34034.1\_R02) prepared by Geotest Services Pty Ltd dated 25/01/2024.

The reports were reviewed by an accredited consultant, that has the necessary qualifications under the Environment Institute of Australia and New Zealand- Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)); or Soil Science Australia- Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme. Council's Environmental Health Section have also reviewed these documents and consider them to be acceptable.

Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, Council is also required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application (Clause 4.6).

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	A Stage 2 Detailed Site Investigation has been prepared in support of this application. The report concluded that the site is considered suitable for the proposed works from a contamination perspective subject to the remediation of 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	The land is suitable for the proposed works subject to the implementation of remediation works.
(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.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021. Therefore, it is considered that the subject site is suitable for the proposed development subject to the implementation of conditions requiring the remediation of the subject site.

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

Chapter 2 Vegetation in non-rural Areas

The subject land is located within the Hawkesbury-Nepean Catchment and as such Chapter 2 Vegetation in non-rural areas and Chapter 6 Water catchments of the SEPP, applies to the application. The Biodiversity and Conservation SEPP aims to protect the environment of the Hawkesbury-Nepean Catchment by ensuring that biodiversity values are protected and preserved and that water quality impacts are considered.

The subject site contains a significant number of trees across the subject site. The site has been identified to have non-specific vegetation schedule throughout. Native trees dominate the landscape with scattered exotic species predominantly closer to the existing site dwellings. A total of 362 trees are present on the subject site ranging from 5m to 22m in

height. The site has also been biodiversity certified as part of the Southwest Growth Centre rezoning process.

An Arborist Report prepared by Vertical Tree Management & Consultancy Version 1.0 - Derek Arnaiz has confirmed that all trees within the development site are required to be removed for the development to proceed and has also identified a number of trees on adjoining sites requiring removal as a result of the works proposed.

The Arborist Report has been reviewed by Council's Landscape section who have supported the proposal subject to conditions of consent.

As such, the development is acceptable with regard to Chapter 2 of *SEPP (Biodiversity and Conservation) 2021*.

### Chapter 6 Water Catchments

The subject land is located within the Hawkesbury-Nepean River Catchment and as such Chapter 6 Water Catchments of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the application. The Biodiversity and Conservation SEPP aims to protect the environment of the Hawkesbury-Nepean River Catchment by ensuring that water quality impacts are considered.

In accordance with the SEPP, when a consent authority determines a development application, the provisions in Part 6.2 - Development in Regulated Catchments are to be considered and consent must not be granted unless the consent authority is satisfied that the matters have been addressed. Accordingly, a table summarising the matters for consideration in determining development applications (Part 6.2) and compliance with such is provided below.

<b>Part 6.2 – Development in Regulated Catchments</b>	
<b>Division 2 – Controls on development generally</b>	<b>Comment</b>
6.6 – Water quality and quantity	Council's Land Development Engineers and Floodplain Engineers have reviewed the submitted information relating to water quality and quantity and are satisfied with the proposal. As such conditions of consent in support of the proposal have been provided.
6.7 – Aquatic ecology	The works are not located on Environmentally Sensitive land. The site is identified as Biodiversity Certified land and does not require further assessment on threatened species of flora and fauna.
6.8 – Flooding	The site is not impacted by mainstream flooding but is impacted by overland flows. The development was referred to Council's Floodplain Engineering Section who are satisfied with the proposal subject to conditions.
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 SEPP (Precincts—Western Parkland City) 2021 has considered the impact of the residentially zoned land within the catchment.
<b>Division 3 – Controls on development in specific areas</b>	<b>Comment</b>
6.11 – Land within 100m	The site is not within 100m of a natural watercourse.

of natural waterbody	
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.
<b>Division 4 – Controls on development for specific purposes</b>	<b>Comment</b>
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 Engineers and Floodplain Engineers. Conditions of consent have been provided in support of the application.
6.22 – Waste or resource management facilities	Not Applicable
6.23 – Demolition on certain land	Demolition of existing structures which consent is sought for.

It is considered that the proposal satisfies the provisions of *SEPP (Biodiversity and Conservation) 2021* and appropriate conditions of consent will be imposed pertaining to these matters.

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

**(i) Zoning and Permissibility**

The subject site is zoned R2 Low Density Residential, R3 Medium Density Residential and SP2 Infrastructure (Classified Road) pursuant to *State Environmental Planning Policy Precincts—Western Parkland City) 2021*.

The proposed development is best defined as demolition, *subdivision, roads, and earthworks*. *Demolition*, subdivision and the construction of associated roads, drainage and earthworks are permissible pursuant to Clause 2.6 of Appendix 4 of the SEPP. Demolition is permitted with consent pursuant to Clause 2.7 of Appendix 4 of the SEPP.

An extract of the zoning map is seen in Figure 4 below.

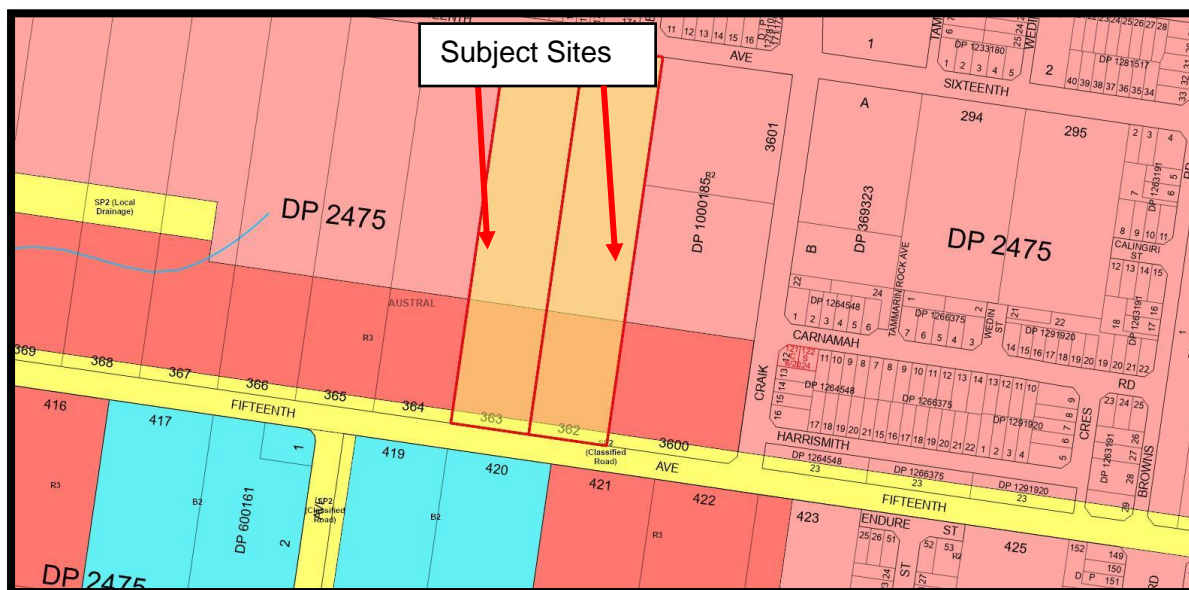


Figure 4: Extract of zoning image of the site. (Source: Geocortex)

• **Objectives of the zone**

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

Objectives of the R3 Low Density Residential zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.

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.*

The proposed subdivision will achieve the objectives of the R2 zone in that it will contribute to the provision of housing to meet the needs of the community within an area of Liverpool LGA designated for future residential development growth. Within this subject DA, the proposed allotments are located within the R2 zoned portion of the site. The proposed lots vary in size between 259sqm and 313sqm allowing for a variety of dwellings to be constructed. All proposed lots meet the minimum allowed allotment size, The proposal will facilitate the future delivery of viable housing types within close proximity to future local parks and infrastructure, to cater to the various needs of the community.

Whilst the proposal will not necessarily meet the objectives of the R3 Zone under this DA as this and is being left residue for future development due to the uncertainty surrounding the future of Fifteenth Avenue and the future Austral town centre, the proposal is still recommended for approval as the future built product on this portion of the site is able to provide for future housing needs through varied housing typology. The portion of the site zoned R3 Medium Density Residential is of sufficient size to accommodate a multitude of development typologies and the proposed upgrade of Fifteenth Avenue as the “FAST Corridor” supporting the Aerotropolis will inform the final design and delivery of this portion of the site. As such, Lot 54 is considered to be able to achieve the zone objectives.

The proposal meets the objectives of the SP2 Infrastructure zone through dedicating this portion of land (Lot 55) for future road widening requirements of Fifteenth Avenue.

### **(iii) Principal Development Standards**

- **Summary of Relevant SEPP (Precincts—Western Parkland City) 2021 Provisions**

The *SEPP (Precincts—Western Parkland City) 2021* contains a number of provisions which are relevant to the proposal. Assessment of the application against the applicable provisions is provided below.

The proposal generally demonstrates compliance with these provisions.

*Note: The Liverpool Local Environmental Plan 2008 does not apply to this proposal as the land is located within a Growth Centre Precinct and the SEPP prevails over the LEP. It is instead assessed against the SEPP and the Liverpool Growth Centre Precincts DCP 2021.*

<b>Clause</b>	<b>Provision</b>	<b>Proposed</b>	<b>Comment</b>
<b>2.6 Subdivision</b>	Subdivision of land may only be carried out with development consent	The proposal seeks consent for the subdivision of land to create 52 residential Lots. Subdivision Plans have been submitted with the application.	<b>Complies</b>
<b>2.7 Demolition</b>	The demolition of a building or work may be	Demolition is proposed as part of this development application and	<b>Complies by Conditions</b>

	carried out only with development consent.	appropriate conditions will be applied.	
<b>4.1 Minimum subdivision Lot size</b>	The size of any Lot resulting from any such subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.	There is no minimum Lot size mapped in the SEPP for the site. Refer to clauses below.	<b>Not Applicable</b>
<b>4.1.AA Subdivision resulting in Lots between 225-300sqm</b>	The consent authority must be satisfied that any Lot between 225-300sqm will contain a sufficient building envelope plan (BEP) to enable the erection of a dwelling house on the Lot	Building envelope plan has been provided for all lots below 300sqm and they contain a sufficient envelope for the erection of a dwelling house and will form restrictions on the title. The BEPs are compliant with the DCP controls and no lots are below 225sqm.	<b>Complies</b>
<b>4.1AB Minimum Lot sizes for dwelling houses in Zone R2 &amp; R3</b>	The site is subject to a minimum Lot size of 300sqm as the site is in 15 & 20 dwelling/hectare areas	The subject site is split zoned and also contains split density minimum requirements. As such the portion of the site which is zoned as R3 Medium Density Residential has a density band of 25dw/h and a min lot size of 225sqm. The portion of the site zoned R2 Low Density Residential has a density band of 15dw/h and a min lot size of 300sqm. All lots within both zones under 300sqm have been provided with a BEP.	<b>Complies</b>
<b>4.1B Residential Density</b>	The site is subject to a minimum dwelling density of 15dw/ha for the R2 portion of the site and 25dw/h for the R3 portion of the site.	<p>15dw/h net developable area = 2.44Ha x 15 = 36.6 dwellings</p> <p>0.93ha x 25 = 23.1125</p> <p>Total required is 59.7 dwellings across the entire site inclusive of the R3 portion of the site.</p> <p>The proposal provides for 52 residential lots and 3 residue lots across the entire site.</p> <p>As the proposal seeks to nominate the R3 portion of the subject as a residue lot for future development dependent on the Fifteenth Avenue upgrade. Council regards the noncompliance in meeting density targets acceptable in the circumstances, via ensuring a restriction on title is placed on the</p>	<p><b>Does not comply.</b></p> <p><b>Considered acceptable – see Clause 4.6 - Variation assessment below.</b></p>

		proposed residue lot to develop the lot to a minimum of 25dw/h.	
<b>4.3 Height of Buildings (as per HOB Map)</b>	9m for this site	No buildings proposed.	<b>Not Applicable</b>
<b>4.6 Exceptions to development standards</b>	Provisions relating to exceptions to development standards	Clause 4.6 request to vary Clause 4.1B Residential Density considered as part of this application.	<b>See 4.6 discussion below.</b>
<b>5.1 Relevant Acquisition Authority</b>	Land to be acquired as identified on the Land Reservation Acquisition Map	A portion of the land on the southern boundary adjoining Fifteenth Avenue is identified as acquisition land (SP2 Classified Road) and has been left as a residue lot for this purpose.	<b>Complies</b>
<b>5.9 Preservations of trees or vegetation</b>	Provided when consent is required to be granted subject to the provision of this clause to remove trees or vegetation.	The site contains some significant native tree species, however, the subject site is predominantly identified as 'certified' pursuant to the Sydney Region Growth Centres 2006 Biodiversity Certification Order, and the removal of trees in these areas are considered appropriate where they accommodate development consistent with the objectives of the R2/R3 zone.	<b>Complies by Conditions</b>
<b>5.10 Heritage conservation</b>	Conservation of environmental heritage and consent requirements	The subject site is not identified as being of heritage significance or in proximity to a heritage item.	<b>Not Applicable. Standard conditions provided.</b>
<b>6.1 Public Utility Infrastructure</b>	The consent authority must not grant development consent to development on land to which this Precinct Plan applies unless it is satisfied that any public utility infrastructure (supply of water, electricity and disposal/management of sewage) that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required	<p>Sydney Water have provided correspondence to Council, which state that water servicing infrastructure will need to be amplified and wastewater servicing infrastructure may need to be amplified. Detailed servicing requirements will be provided upon the submission of a Section 73 application.</p> <p>The requirements provided by Endeavour Energy will form part of the conditions of consent of any approval.</p> <p>Council will apply standard conditions regarding the supply of water, wastewater, telecommunications and electricity to be satisfied prior to the issue of a Subdivision Certificate for each</p>	<b>Complies by Conditions</b>

		allotment.	
<b>6.2 &amp; 6.3 Development Controls Native Vegetation Areas and Existing Native Vegetation</b>	– These control relate only to the clearing of native vegetation within a native vegetation retention area.	The location of works is not part of an Environmentally Sensitive area as defined in this plan.	<b>Not Applicable</b>

As demonstrated in the above compliance table, the proposed development is generally consistent with the provisions of Appendix 4 of State Environmental Planning Policy (Precincts: Western Parkland City) 2021 with the exception of Clause 4.1B Residential Density.

### **Discussion 1**

#### **Clause 4.6 – Exceptions to development standards (Variation to Clause 4.1B – Residential Density)**

Clause 4.1B(2) of the SEPP (Precincts: Western Parkland City) 2021 - Appendix 4 Liverpool Growth Centres Precinct Plan states:

*“This section applies to residential development of the kind referred to in section 4.1AB or 4.1AC that –*

- *Is carried out on land to which this Precinct Plan applies that is shown on the Residential Density Map, and*
- *Requires development consent, and*
- *Is carried out after the commencement of this Precinct Plan*

The subject land is located within the area indicated by the Residential Density Map. The development application requires consent from Council as the consent authority. The Precinct plan has commenced prior to the lodgement for this development application.

Clause 4.1B(3) of the SEPP (Precincts: Western Parkland City) 2021 - Appendix 4 Liverpool Growth Centres Precinct Plan states:

*“The density of any residential development to which this section applies is not to be less than the density shown on the Residential Density Map in relation to that land.”*

The minimum dwelling density standard applying to the subject land is 15dw/h within the R2 portion of the site and 25dw/h within the R3 portion of the site as shown in the extract from the Residential Density Map in Figure 5 below.

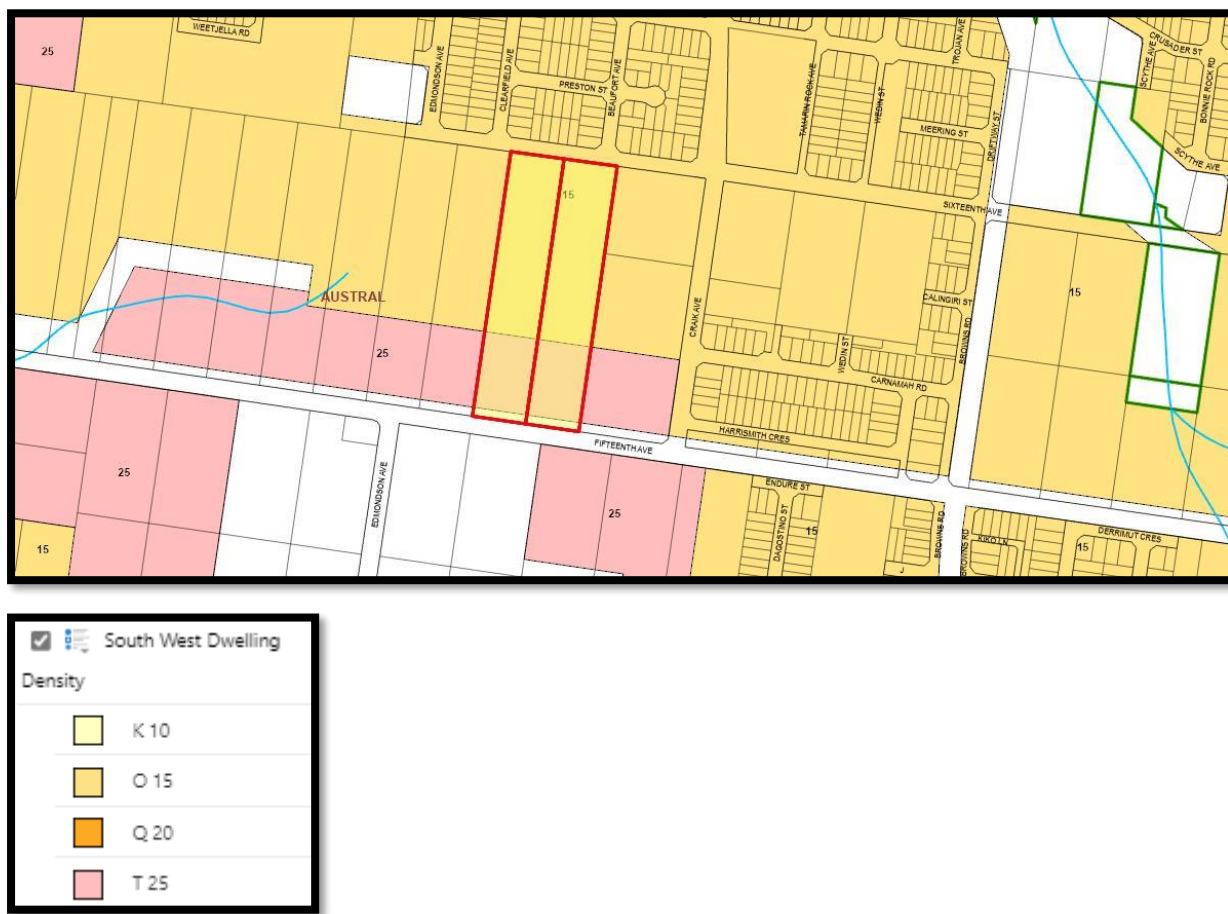


Figure 5. Extract of Residential Density Map SEPP (Precincts – Western Parkland City) 2021

The calculation of residential density is as per the following: *Net Residential Density means the net developable area in hectares of the land on which the development is situated divided by the number of dwellings proposed to be located on that land. Net Developable Area means the land occupied by the development, including internal streets plus half the width of any adjoining access roads that provide vehicular access, but excluding land that is not zoned for residential purposes.*

R2 Portion:  $15\text{dw/h net developable area} = 2.44\text{ha} \times 15 = 36.6$  dwellings

- Provision of 52 lots (21.3dw/ha, meets the minimum requirement of 15dw/ha)

R3 Portion:  $25\text{dw/h} \times 0.93\text{ha} = 23.1125$  dwellings

- Provision of 1 residue lot (1.07dw/ha = 95.6% noncompliance)

The development there has a noncompliance of 95.6%, which in the circumstances and context of the site, is deemed acceptable in this instance.

The intent of the proposed development as originally lodged on the NSW Planning Portal was to deliver a total of 79 residential lots and 2 residue lots. However, during the assessment of this DA and acting on advice provided from TfNSW and Council, the proposal was amended and reduced to 52 residential lots and 3 residue lots due to the uncertainty of the future of Fifteenth Avenue and future of the Austral Town Centre.

Pursuant to Clause 35 (b) (2) of the Environmental Planning and Assessment Regulation

2021, the applicant has provided documentation outlining the two objectives of Clause 4.6 and addressing the following pursuant to Clause 4.6 (3)

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

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

Clause 4.6(3) prescribes:

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

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

The applicant has submitted a written request to justify the contravention of the development standard, pursuant to Clause 4.6(3).

The following discussion provides Council consideration on the merits of the proposal assessed against Clause 4.6.

- (i) **that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

### **Applicant response**

The proposed development application has been modified from its original lodgement to include a residue allotment (Lot 54) comprising the R3 zoned land fronting Fifteenth Avenue. The primary aim of the residue allotment is to enable the preparation of a more targeted higher density Development Application for the R3 part of the site for future assessment by Council.

The application initially included the subdivision of small narrow allotments with rear lane access within the R3 zoned section of the site. The associated residential density was 26 allotments within an R3 area of 9245m<sup>2</sup> providing a resultant density of 28 dwellings per hectare which is compliant within the zone. Figure 6 contains the initial subdivision design submitted with the application.

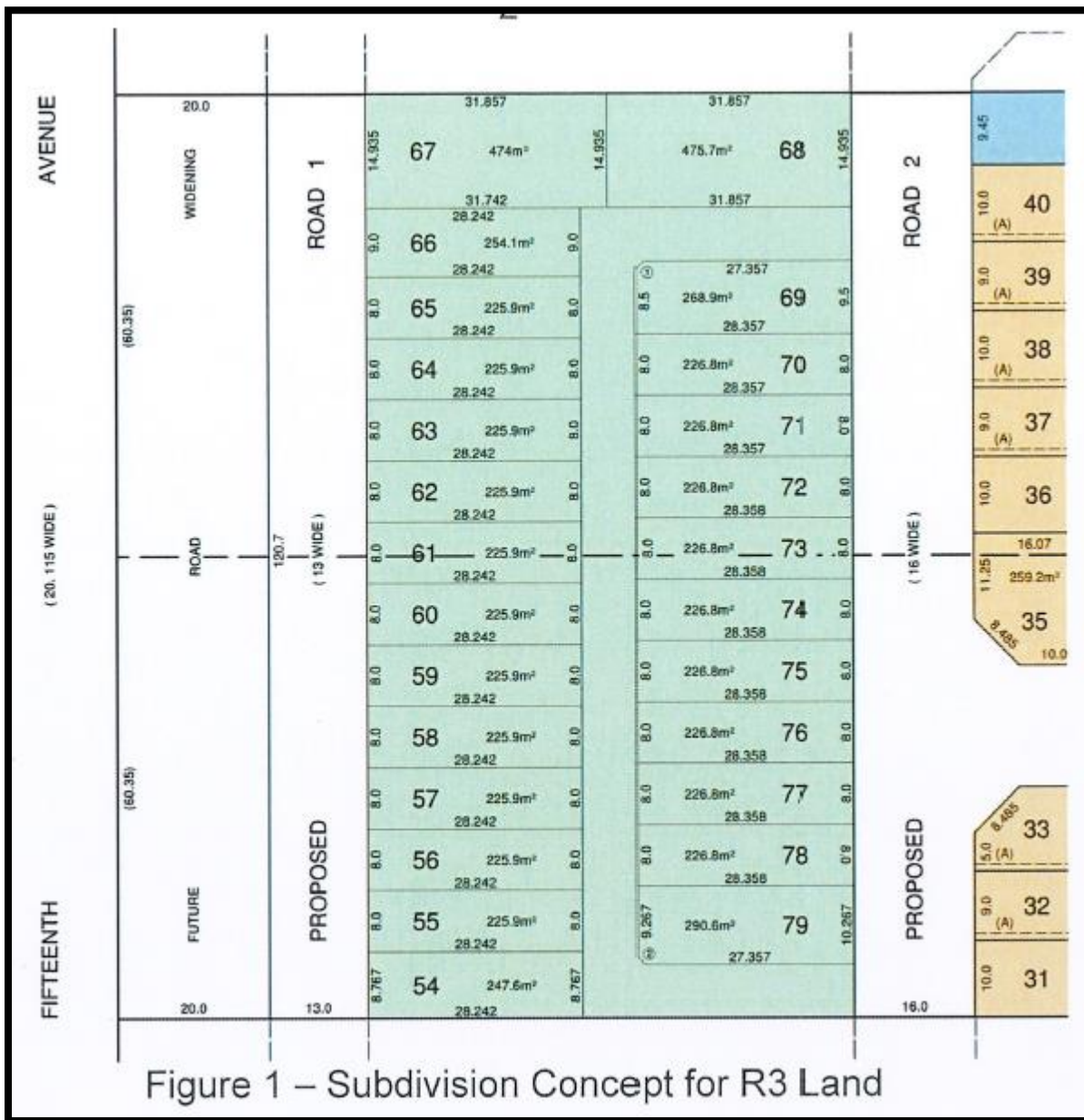


Figure 6: Original Scheme for R3 portion of subject site

Significant uncertainty still remains in relation to the road widths and design layout that will be delivered within the Fifteenth Avenue transit corridor. A future more refined Development Application will be better placed to consider the road layout and potential constraints required to be addressed to deliver the best planning outcome for future residents within the locality.

The current application can be conditioned to include a Restriction on the Use of Land for Residue Lot 54 that confirms any future development must be prepared in accordance with the R3 zoning controls outlined in the Liverpool Growth Centre Precincts Development Control Plan and State Environmental Planning Policy (Precincts-Western Parkland City) 2021.

Compliance with the requirements of the R3 development controls within this application for subdivision are unnecessary. A future more detailed application can be considered post confirmation of the finalized detailed design for the recently announced Transit Corridor upgrade by the NSW and Federal Governments that will likely deliver a higher density more tailored solution for the site.

### **Council consideration**

- The applicant had initially demonstrated that the R3 portion of the site can accommodate a variety of dwelling typologies and had initially proposed 26 lots within the R3 zoned part of the subject site.
- The proposal has been amended to remove the 26 lots from this subdivision and rather propose the R3 portion of the site has a residue lot due to the following reasons:
  - Uncertainty of Fifteenth Avenue Upgrade
    - The proposal fronts onto Fifteenth Avenue which is a SP2 Classified Road earmarked for future expansion. Whilst Residue Lot 55 (20m wide) has been nominated for dedication to TfNSW for road widening purposes, the applicant was relayed the following advice from Council's Traffic Section : *In the absence of definitive road reservation acquisition advice from TfNSW, it is recommended by Council's Traffic Section to provide a minimum 40m wide road reserve for Fifteenth Avenue measured from the southern boundary of Fifteenth Avenue. This is considered consistent with other developments fronting Fifteenth Avenue in the area.*
    - Additionally, the applicant held a meeting with Council officers to discuss the feasibility of the R3 portion of the site following on from comments from Council's Strategic Planning Section raising concerns at the singular form of dwelling typology originally proposed and noting its unique location in proximity to the Fifteenth Avenue corridor and the future Austral Town Centre.
    - It was noted in the meeting that the Austral Town Centre was yet to be subject to the lodgement of a Development Application and the site was not proposed to be utilized to its highest and best use in the short term at the time of the meeting.
    - Furthermore, it is noted that Fifteenth Avenue is subject to the Fifteenth Avenue Smart Transit (FAST) Corridor Program. The FAST Corridor is a visionary city-shaping project to deliver a high-quality public transport link between the Liverpool CBD and Western Sydney International Airport. Under the Western Sydney City Deal, the NSW Government has committed to a rapid bus connection between the Airport, the new Aerotropolis and Liverpool's CBD in time for the airport's opening in 2026. Council will also encourage compact medium/high-density development in appropriate locations along the corridor.

- Whilst the FAST Corridor project is a key priority for Council, the current status of the upgrade is subject to funding and direction from State Government and as such there has been no immediate progress.
  - As of the 19<sup>th</sup> of January 2025, \$1,000,000,000 was allocated towards the upgrade of Fifteenth Avenue by both the State and Federal Government.
  - Due to the uncertainty of the requirements for Fifteenth Avenue, it was agreed by the applicant to nominate the R3 portion of the site as a residue lot so that the site can best be utilised in the future in consideration of the Fifteenth Avenue upgrade and eventual development of the Austral Town Centre.
  - Additionally, the Aerotropolis Sector Plan identifies the Fifteenth Avenue (Liverpool to Airport Transit Corridor) to begin construction from 2027.
  - Council does not disagree with the position for this portion of the site to remain as a residue lot as there is likelihood of further planning and potential additional road widening requirements needed along Fifteenth Avenue to deliver a corridor between the Liverpool CBD and the Western Sydney International Airport.
- On this basis, compliance with the development standard is considered unnecessary in this circumstance given the holistic vision of the locality.
  - On this basis, compliance with the development standard is considered unnecessary as the nomination of the R3 portion of the site as a residue lot allows for the site to be utilized to a potentially more efficient and greater use subject to the forthcoming improvement of the surrounding infrastructure.
    - This will allow for the site to be able to address the zone objectives in a more holistic manner and provide for and support the community by providing alternate housing types and enabling the land to provide facilities and services to meet day-to-day needs dependent on the needs of the community at a future date when the area is more planned and developed.
    - The R3 portion of the site is considered large enough to accommodate a variety of differing housing typologies and flexible enough to adequately meet zone objectives via future applications.

As a result of the assessment above, compliance with the minimum residential density standard is unreasonable and unnecessary.

- (ii) **That there are sufficient environmental planning grounds to justify contravening the development standard.**

**Applicant Response:**

Reference is made to a Land & Environment Court Approval for *UPG 254 Pty Ltd v Liverpool City Council*, DA 902/2022 (No 415 - 425 Fifteenth Avenue) approved by the court on 25th August 2023 for "Subdivision of Land into 43 residential lots and 3 residue lots over two stages with tree removal, road construction and associated site works". The Court Approved a Residue allotment (Lot 36) that comprises the R3 zoned land adjacent to the future widening of Fifteenth Avenue identical to that proposal within our application.

Council was advised on the 20th September 2024 that after careful consideration we wished to remove the design of narrow allotments within the R3 section of the site until such time as the surrounding infrastructure is further advanced and consideration is given to the best form of housing applicable for the site. We believe that a residential flat building maybe the most suitable development for the R3 zoned land in the future.

The Land & Environment Court Approval for DA 902/2022 on land within 180 metres of the subject site which included a residue allotment comprising the sites R3 zoned land. This decision sets a precedent for the application. Council must consider this consent issued by the court and acknowledge the lack of certainty with respect to the Transit Corridor as justifiable grounds for the approval of a residue parcel.

**Council consideration:**

Council considers there to be sufficient environmental planning grounds to justify contravening the development standard in this instance, for the following reasons:

- Whilst the nomination of the residue lot does not technically meet the objective of the zone, the future development of this lot based on surrounding factors is able to better achieve the objectives of the zone.
  - It is noted that the original form of development sought on the R3 portion of the land was small lots for detached housing products, this originally did not meet the objective of the R3 zone being to "provide for a variety of housing types within a medium density environment". Additionally, Council's Strategic Planning section noted that the development did not provide for any residue lots which can enable future built form which is varied and more aligned to the zone objectives.
  - It was noted "By *not providing any lots which provide, or are capable of providing medium density dwelling typologies, the subdivision in the R3 medium density residential area is only capable of providing detached dwellings, which is more characteristic of the R2 zone. The subdivision within the R3 zone is considered inconsistent with the zone objective.*"
  - To address the concerns relating to the zone objectives in conjunction with the future development of Fifteenth Avenue and the Austral Town Centre. The R3 portion of the site has been nominated as a residue lot so that the future development is able to be more efficiently used for its intended purpose.

- Additionally, the residue lot has been conditioned to meet density targets via a restriction on title. The restriction on title is to be of similar nature to that as conditioned within UPG 254 Pty Ltd v Liverpool City Council, where the nominated lot has been burdened by a positive covenant under Section 88B of the Conveyancing Act 1919 to the effect of the lot must be developed for residential purposes with no less than 25 dwellings per hectare.
- Ultimately, the contravention of the development standard is not seen to defy the objectives of the Environmental Planning and Assessment Act 1979, namely Clause 1.3(b), 1.3(c) and 1.3(i)

(iii) **Conclusion and Recommendation**

As a result of the assessment above, it is considered noncompliance with the minimum residential density development standard is reasonable and necessary due to the circumstances of this application and that there are sufficient environmental planning grounds to justify contravening the development standard. Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 4.1B Residential Density.

Accordingly, a degree of flexibility should be applied by the consent authority with regards to Clause 4.1B(3) of the SEPP.

The applicant's written request has demonstrated the proposed development demonstrates orderly and economic use and development of the land, therefore satisfying cl 1.3 (c) of the EP&A Act 1979. Therefore, the applicant's written request has adequately demonstrated compliance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard. Therefore, Council is satisfied the written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

## **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 City Council Growth Centre Precincts Development Control Plan**

The application has been considered against the controls contained in the Liverpool Growth Centre Precincts Development Control Plan (DCP) in particular:

- Part 2: Precinct Planning Outcomes;
- Part 3: Neighbourhood and Subdivision Design;
- Part 4: Residential Controls

The assessment has identified that the proposal generally demonstrates compliance with the Liverpool Growth Centre Precincts DCP requirements with the exception of Control 2.2 'The indicative Layout Plan (ILP) which is discussed below.

All relevant compliance tables for the LGCDP 2008 can be found in the Report Attachments.

### **Discussion on Control 2.2 – The Indicative Layout Plan**

Liverpool Growth Centre Precincts Development Control Plan, Part 2 Precinct Planning Outcomes – Control 2.2- The Indicative Layout Plan outlines the following:

An Indicative Layout Plan, specific to each Precinct, is in the relevant Precinct Schedule. The Indicative Layout Plan forms the basis for urban development in the Precinct by setting out:

- The transport network.
- The open space and drainage networks.
- The locations of land uses including residential development, schools, community facilities, utilities, centres and employment lands;
- Areas requiring protection because of environmental or heritage values.
- The density and types of housing that are preferred in various parts of the precinct.

#### Objectives

- a. To ensure that development in the Precinct occurs in a coordinated manner consistent with the Precinct's Indicative Layout Plan.

#### Controls

1. All development applications are to be generally in accordance with the Indicative Layout Plan.
2. When assessing development applications, Council will consider the extent to which the proposed development is consistent with the Indicative Layout Plan.
3. Any proposed variations to the general arrangement of the Indicative Layout Plan must be demonstrated by the applicant, to Council's satisfaction, to be consistent with the Precinct Planning vision in the relevant Precinct Schedule.

#### Council Assessment:

The proposal seeks the following variations to the ILP:

- Introduction of east west road (proposed road 3) connecting to future Clearfield Avenue extension.
  - The introduction of Road 3 (east west) is a result of flooding modelling done for the subject site which indicates an overland flow path over this approximate area. Thus, in response to the natural topography of the site and the overland flow paths, the engineering design has been catered for the pipe drainage systems to be within this roadway.
  - Additionally, Road 3 has also allowed for opportunity for the introduction of north and south orientated lots in addition to more compact corner lots thus improving future built form housing variety.
- Realignment of Proposed Road 4, twenty metres (20m) to the east of its original position as per the ILP.
  - The shifting of this road 20m to the east has allowed for a variety of housing lots with differing frontages and orientations to be provided. The shorter block depth

- between proposed roads reduces the creation of battle-axe allotments.
- An orderly development plan has been provided to confirm that the realignment of the road does not adversely impact on surrounding properties.
  - Council's Strategic Planning, Traffic and Land Development Engineers have reviewed the realignment and agreed to the revised position.
  - The variation to the ILP is considered appropriate on a safety viewpoint as it reduces the creation of a 4-way intersection. The dog-leg approach naturally reduces vehicles speeds

Overall, the proposed amendments to the ILP are not considered to adversely impact the locality and wider precinct and can be supported on merit.

#### **6.4 Section 4.15(1)(a)(iii) - Planning Agreements**

There are no Planning Agreements which apply to the development.

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

The Environmental Planning and Assessment Regulation 2021 includes provisions in which the consent authority can request additional information under Clause 36. A request for information was uploaded to the NSW Planning Portal on the 14th of August 2024 requesting further information on Planning, Strategic Planning, Engineering, Flooding and Waste Management Grounds.

A meeting between Council and the applicant was held on the 29th of August to discuss the RFI matters due to the comprehensive and complex matters involved. In this meeting, Council sought clarity on several engineering and flooding matters and additionally, discussions were held regarding the viability of the R3 portion of the site given uncertainty on the outcome of Fifteenth Avenue width requirements.

Following this meeting, the applicant sought to prepare amended documentation to submit to Council. Council reviewed the amended documentation and conducted several offline discussions in relation to particular engineering elements required for submission which were amended and addressed.

Further discussions were also held regarding the future of the R3 portion of the zone and how this will be appropriately managed to ensure the subject site meets future density requirements. The applicant provided information pursuant to Clause 4.6(3) of the State Environmental Planning Policy (Precincts: Western Parkland City) 2021 which was reviewed and assessed to be satisfactory.

Council has now comprehensively reviewed the documentation provided and all matters were satisfactorily addressed and/or conditioned accordingly.

The Environmental Planning and Assessment Regulation 2021 also requires the consent authority to consider the provisions of the National Construction Code and Australian Standards with respect to demolition. Accordingly, appropriate conditions of consent will be imposed.

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

### **Natural and Built Environment**

The proposed development is not considered to detrimentally impact the natural environment or surrounding sites nor cause harm to any flora and fauna species. Appropriate conditions of approval have been implemented to ensure the development does not have any significant impacts on the natural environment.

The proposed development is unlikely to create significant adverse impacts on the surrounding built environment. The development is of an appropriate scale and unlikely to create any detrimental impacts on the adjoining properties or on the locality. The proposal will facilitate residential development consistent with the desired future built character of the locality. Consideration has been given to site-specific and broader issues such as, but not limited to, site remediation works, aboriginal and European heritage, odour, traffic, infrastructure and future built form and the development is satisfactory subject to conditions

### **Social Impacts and Economic Impacts**

The proposed subdivision would result in a positive economic impact in the locality through the capital investment value of the development consistent with the Growth Centres controls and is unlikely to generate any identifiable detrimental social impacts and would generate housing for the community in the LGA. Furthermore, the residue portion of the site zoned R3 Medium Density Residential has the potential to be further developed into development typology which is not purely residential in nature hence aiding towards positive social and economic impact on the locality.

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

The proposed development would be suitable for the subject site where it complies with relevant provisions of SEPP (Precincts—Western Parkland City) 2021 and LGCPDCP 2021. The proposal would facilitate future residential development on the land consistent with the desired future built character of the locality.

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

### **(a) Internal Referrals**

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

<b>DEPARTMENT</b>	<b>COMMENTS</b>
<b>Floodplain Engineers</b>	Supported, subject to conditions.
<b>Land Development Engineering</b>	Supported, subject to conditions.
<b>Environmental Health</b>	Supported, subject to conditions.
<b>Landscape</b>	Supported, subject to conditions.
<b>Strategic Planning</b>	Supported, subject to conditions.
<b>Traffic and Transport</b>	Supported, subject to conditions.
<b>City Design Heritage</b>	Supported, subject to conditions.
<b>Waste</b>	Supported, subject to conditions.
<b>Contributions</b>	Confirmation of contributions provided.

**(b) External Referrals**

The following comments have been received from external Agencies:

<b>DEPARTMENT</b>	<b>COMMENTS</b>
<b>Sydney Water</b>	Advice provided and will be conditioned.
<b>Transport for NSW</b>	Supported, subject to conditions.
<b>Rural Fire Service</b>	Supported, subject to conditions.
<b>Jemena</b>	No objections.

**(c) Community Consultation**

The Development Application was required to be notified in accordance with the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022. The proposal was notified between 30 April and 15 May 2024. Notwithstanding, no submissions were received.

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

The proposed development is considered to be in the public interest as the development meets the guidelines of the relevant environmental planning instruments and provides for vital housing needs within the Sydney basin.

**7. DEVELOPMENT CONTRIBUTIONS**

Section 7.11 contributions will be imposed in accordance with the Liverpool City Council Section 7.11 – Austral and Leppington North Contributions Plan 2021. A special infrastructure contribution condition is also required as the SIC Levy applies to the site. As the SIC is in place in this location, a housing and productivity contribution is not required for the proposed development. The Section 7.11 contribution calculations have been confirmed as correct by Council’s contributions accountant.

Note: The residue lots have not been included as part of this calculation and will be subject to future contribution payments when developed. Appropriate restrictions on title have been placed on applicable residue lots.

**8. CONCLUSION**

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, and the Environmental Planning Instruments, including the applicable State Environmental Planning Policies, Liverpool Growth Centre Precincts Development Control Plan 2021, and the relevant codes and policies of Council.

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

**9. RECOMMENDATION**

That Development Application DA-177/2024 be approved subject to conditions

**ATTACHMENTS**

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1. Assessment against DCP Controls (Under separate cover)
2. Development Plans (Under separate cover)
3. Response from Applicant regarding Clause 4.6 Variation. (Under separate cover)
4. Draft Conditions with External Agency Advice (Under separate cover)