

LOCAL PLANNING PANEL AGENDA

26 May 2025

MS TEAMS

LIVERPOOL
CITY
COUNCIL



MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

Monday, 26 May 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, Thursday 22nd May 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://liverpoolcitycouncil.nsw.gov.au/liverpool-local-planning-panel)

ITEM No.	SUBJECT	PAGE No.
1	DEVELOPMENT APPLICATION DA-597/2024 DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION AND OPERATION OF A CONTAINER DEPOSIT FACILITY. LOT 1 DP 207924 335 HOXTON PARK ROAD, HINCHINBROOK NSW 2168	4 - 20

ITEM No.	SUBJECT	PAGE No.
2	DEVELOPMENT APPLICATION DA-793/2019/A MODIFCATION TO DEVELOPMENT CONSENT DA-793/2019 UNDER SECTION 4.55(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 INVOLVING ADDITIONAL STORMWATER INFRASTRUCUTRE WITHIN LOT 9 DP 776297 AND ELEVENTH AVENUE TO REPLACE THE APPROVED TEMPORARY BASIN, DELETION OF THE STAGES, REMOVAL OF ELEVEN TREES AND RECTIFICATION OF THE ERROR IN THE LOT NUMBERING AND ASSOCIATED INCONSISTENCIES. LOT 11 DP 1304045; LOT 9 DP776297 231-245 ELEVENTH AVENUE, AUSTRAL NSW 2179	21 - 48

Item Number:	1
Application Number:	Application No. 597/2024
Proposed Development:	Demolition of existing structures, construction and operation of a container deposit facility.
Property Address	335 Hoxton Park Road, Hinchinbrook
Legal Description:	Lot 1 DP 207924
Applicant:	Sell & Parker Properties Pty Limited
Land Owner:	Sell & Parker Properties Pty Limited
Cost of Works:	\$1,138,329.00
Recommendation:	Approved subject to conditions of consent
Assessing Officer:	Tamim Omar

1 EXECUTIVE SUMMARY

Council has received a Development Application (DA No. 597/2024) seeking consent for the demolition of existing structures and construction and operation of a container deposit facility (Return & Earn Facility) at 335 Hoxton Park Road, Hinchinbrook.

The site is zoned E1 Local Centre pursuant to Liverpool Local Environmental Plan 2008 and the proposed development is permissible with consent subject to the provisions of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

The development application was advertised for a period of 28 days from 15 January 2025 and 12 February 2025. in accordance with Community Participation Plan 2022. No submissions were received during the public consultation period.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with its referral criteria and procedural requirements in that the development falls into the category of sensitive development being designated development pursuant to Schedule 3 of the Environmental Planning and Assessment Regulation 2021.

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.

The subject site is identified as Lot 1 in DP 207924 and is known as 335 Hoxton Park Road, Hinchinbrook. It is regular in shape with a frontage of 39.38metres to Hoxton Park Road and a depth of 36.58m on the western boundary and 39.38m on the eastern boundary with a total area of 1435m².

The subject site is within a medium risk flood area and is not located within a bushfire prone area in accordance with the 2025 Bushfire Prone Land Mapping as approved by the NSW RFS Commissioner. Notwithstanding, a bushfire report was prepared and submitted with the application as the 2021 Bushfire Prone Land Mapping indicated the site to be within a vegetation buffer 100m and 30m area.

Currently, the subject site is improved by a single storey brick building being the former substation building. The majority of the site is grassed and the entire site is fenced with a 2.4m tall metal fence with barbed wire.

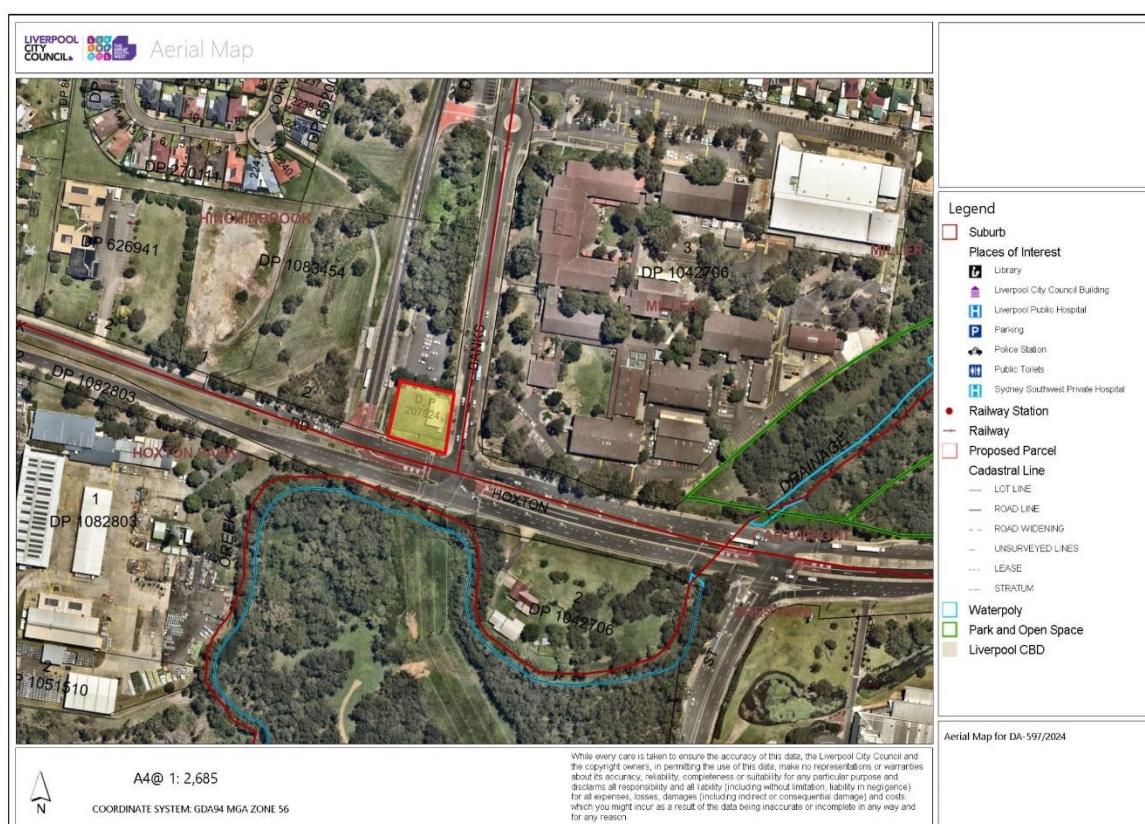


Figure 2: Aerial view of the site (Source: Geocortex)

3. BACKGROUND/HISTORY

- A pre-lodgement meeting held with Council on the 16 November 2022.
- The subject DA was lodged with Council on 13 December 2024
- The subject DA was advertised from 15 January to 12 February 2025
- Transport for New South Wales referral returned on 3 March 2025 raising no objections subject to the imposition of conditions.
- Department of Planning and Environment – Water referral returned on 17 April 2025 raising no objections subject to the imposition of conditions.

4. DETAILS OF THE PROPOSAL

The proposed development consists of the following:

- Site preparation works including demolition of an existing structure on the site;
- Construction and operation of a container deposit facility, comprising:
 - 4 container deposit machines (singulator stations) to collect and sort containers.
 - A container transfer area and distribution conveyers to transfer collected containers into collection bins.
 - Onsite office administration building located above the container deposit machines.
 - A payment booth structure.
 - 7 customer unloading bays, 5 staff and visitor parking bays, and 1 forklift parking bay.
 - Associated hardstand paved area, perimeter fencing and landscaping; and
- Services and utilities work to enable the development's operation.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

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

- Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Transport and Infrastructure)
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Industry and Employment) 2021
- Liverpool Local Environmental Plan (LLEP) 2008;
- Liverpool Development Control Plan (LDCP) 2008;

Contributions Plans

- LIVERPOOL CONTRIBUTIONS PLAN 2018 - ESTABLISHED AREAS applies to all development pursuant to Section 7.11 of the EPA & Act.

6. ASSESSMENT

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

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

(a) Environmental Planning and Assessment Regulation 2021

Pursuant to Schedule 3 of the Environmental Planning and Assessment Regulation 2021, the proposed development is classified as designated development.

The proposed development is classed under ‘Waste Management Facilities or works’ under Clause 45 of Schedule 3. Pursuant to Clause 45(4)(a), the proposed development is classified as designated development as the proposal is located *‘in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area of State significance’*

The subject site is located within 100m of Cabramatta Creek and hence is designated development. Accordingly, the applicant has submitted an Environmental Impact Statement with the development.

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

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

The applicant submitted a Combined Preliminary Site Investigation and Detailed Site Investigation prepared by Neo Consulting (Ref N09587) dated 22 November 2023 in support of the application.

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The report prepared by Neo Consulting (Ref N09587) concludes that the potential for significant contamination of soils is considered to be low and has provided recommendations to be undertaken.
(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 not contaminated requiring remediation and is considered suitable for the purposes of a resource recycling facility.
(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 land does not require remediation.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP 55, therefore, it is considered that the subject site is suitable for the proposed development.

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

Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP) applies to all signage that, under an environmental planning instrument, can be displayed with or without development consent and is visible from any public place or public reserve.

An assessment of the assessment criteria in Schedule 5 of the Industry and Employment SEPP is provided below.

Consideration	Comment
1 Character of the area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The sign is considered consistent with the use of the site and will provide clear business identification.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Given the unique isolation of the site, the proposal and associated signage is considered consistent with the locality.

Consideration	Comment
2 Special areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	It is considered that the proposed signage is consistent with business identification signs in the area and unlikely to detract from the amenity of the locality.
3 Views and vistas	
Does the proposal obscure or compromise important views?	The signage does not obscure important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposal does not dominate the skyline or reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	Yes however there are no other advertisers in the immediate area
4 Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The size and location of the proposed signs are considered consistent with character of the locality given the sites isolated nature.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signs will provide site and business identification signage that are consistent with signage anticipated in this zone.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	No existing signage present on site
Does the proposal screen unsightliness?	The proposed signs do not screen unsightliness
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No, signage proposed are located on the new structure and fences.
Does the proposal require ongoing vegetation management?	N/A
5 Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	It is considered compatible with the scale of the building and the site.
Does the proposal respect important features of the site or building, or both?	N/A There are no important features.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposed signage is considered an appropriate response to the site.
6 Associated devices and logos with advertisements and advertising structures	
Have any safety devices, platforms, lighting devices or logos been	The proposed signage is limited to simply the logo and wording related to the 'Return and Earn'

Consideration	Comment
designed as an integral part of the signage or structure on which it is to be displayed?	facility.
7 Illumination	
Would illumination result in unacceptable glare?	N/A- Signs are not illuminated
Would illumination affect safety for pedestrians, vehicles or aircraft?	N/A- Signs are not illuminated
Would illumination detract from the amenity of any residence or other form of accommodation?	N/A- Signs are not illuminated
Can the intensity of the illumination be adjusted, if necessary?	N/A- Signs are not illuminated
Is the illumination subject to a curfew?	N/A- Signs are not illuminated
8 Safety	
Would the proposal reduce the safety for any public road?	The proposed signage is unlikely to reduce the safety for any public road.
Would the proposal reduce the safety for pedestrians or bicyclists?	The signage is unlikely to reduce the safety for any pedestrians or bicyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage is not of a scale to obscure pedestrian sightlines.

On the basis of the above, it is considered the proposal is satisfactory against the requirements of State Environmental Planning Policy (Industry and Employment) 2021.

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

The subject land is located within the Georges River Catchment and as such the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* – Chapter 2 Vegetation in non-rural areas & Chapter 6 Water catchments, applies to the application.

Chapter 2 – Vegetation in non-rural areas

As the site is devoid of any vegetation, it is considered this section is not relevant.

Chapter 6 – Water Catchments

Part 6.2 Development in Regulated Catchments	
Division 2 Controls on Development Generally	Comment
6.6 Water Quality and Quantity	Council's Land Development has reviewed the proposal and is satisfied that no adverse impacts will arise in regard to water quality and quantity within the Georges River catchment.
6.7 Aquatic Ecology	This clause is not applicable as there is no aquatic ecology present on site.
6.8 Flooding	The site is located in a flood plain area being impacted by 'Medium Flood Risk' as per Council's GIS System. The application has been reviewed by Council's floodplain engineers who have supported the application subject to the imposition of conditions.
6.9 Recreation and public access	This proposed development will not adversely affect access to recreation and public access.
6.10 Total catchment management	The proposed development is not likely to have an adverse impact on the Georges River catchment, therefore no consultation is required.
Division 4 Controls on development for specific purpose	Comment
6.22 Waste or resource management facilities	Whilst Clause 6.22(1) states that "<i>Development for the purposes of waste or resource management facilities is prohibited on flood liable land in the Georges River Catchment</i>" and the site is identified as flood liable land. Clause 6.3(2) of the SEPP states that <i>State Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 2, other than section 2.80(3), prevails to the extent of an inconsistency with this Chapter.</i> As the proposal is permissible via the virtue of Clause 2.153 of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the proposed development for waste or resource transfer facility remains permissible with consent. Refer to discussion 1

Discussion 1:

Council notes the origin of Clause 6.22(1) of the Biodiversity and Conservation SEPP as a carry over clause from the former Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (1999 EPI 52), which is since repealed. The former Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (1999 EPI 52) was repealed by the State Environmental Planning Policy (Biodiversity and Conservation) 2021 on the 1st of March 2022.

Under Clause 22 ‘Waste Management Facility or Works’ of the Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (1999 EPI 52), development consent for the purposes of ‘Waste Management Facility or Works’ was required unless on flood liable land, in which case it is prohibited.

The subject site is considered flood liable land.

A ‘Waste Management Facility’ is currently not identified under the Standard Instrument (In Force Version 10/11/2023), however it was last defined as the following under the Standard Instrument (Historical Version 23/02/2011):

Waste Management Facility means a facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any such operations are carried out on a commercial basis. It may include but is not limited to:

- (a) an extractive industry ancillary to, required for or associated with the preparation or remediation of the site for such storage, treatment, purifying or disposal, and*
- (b) eco-generating works ancillary to or associated with such storage, treatment, purifying or disposal.*

A Waste or Resource Management Facility was first termed in the Standard Instrument (Historical Version 01/01/2008) and the term is now cited under Clause 6.22 of the Biodiversity and Conservation SEPP and carries the same intent as that of the prohibition of the Waste Management Facility under Clause 22 of the Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (1999 EPI 52).

Whilst Clause 6.22(1) explicitly refers to the prohibition of the intended use of this subject application, Council cites Clause 6.3(2) of the Biodiversity and Conservation SEPP which cites “*State Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 2, other than section 2.80(3), prevails to the extent of an inconsistency with this Chapter.*”

On the basis that the development proposal seeks permissibility by virtue of Clause 2.153 of State Environmental Planning Policy (Transport and Infrastructure), Council deems Clause

6.22 of the Biodiversity and Conservation SEPP to be overridden by Clause 6.3(2) of the Biodiversity and Conservation SEPP and hence remain a permissible land-use.

It is considered that the proposal satisfies the provisions of the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* subject to conditions of consent and appropriate sedimentation and erosion controls being implemented during construction.

(e) Liverpool Local Environmental Plan 2008

(i) Zoning

The subject site is zoned E1 Local Centre pursuant to the LLEP 2008. An extract of the zoning map is provided in Figure 3 below.

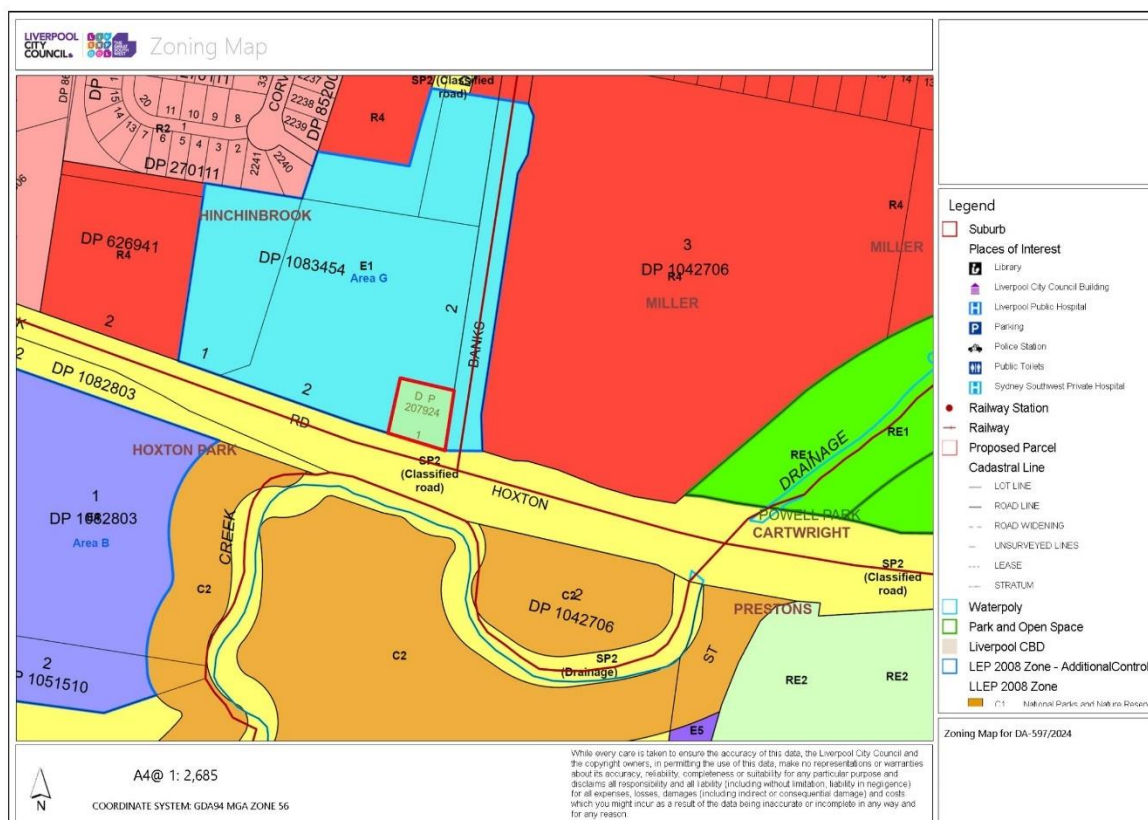


Figure 3: Zoning Map (source: Geocortex)

(ii) Permissibility

The proposed development is best defined by the standard instrument as a 'Waste or Resource Transfer Station'.

***waste or resource transfer station** means a building or place used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport*

The proposed development is not identified as a permitted land use with consent within the E1 Local Centre Zone under Liverpool Local Environment Plan 2008 and rather seeks permissibility via the provisions of Section 2.153 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

Section 2.153(2)(c) states that development for the purposes of a waste or resource transfer station may be carried out by any person with consent on land in which business or detail premises are permitted.

It is noted that Commercial Premises of which business and retail premises are inclusive of, are a permitted land use within the E1 Local Centre zone and hence the proposal is deemed to be permissible within the zone.

(iii) Objectives of the zone

The objectives of the E1 Local Centre zone are as follows:

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

The proposal is considered to be consistent with the objectives of the zone in that:

- The proposal seeks to provide investment into the Hinchinbrook region via employment opportunities during both the construction and operational stages of the development proposal.

It is to be noted however that due to the unique location of the subject site and unique nature of the proposal, the proposal does not achieve the other objectives of the zone.

In the instance of the subject site being bounded on all sides by road related infrastructure such as the Liverpool – Parramatta T-way and its associated parking to the north and west, Hoxton Park Road an SP2 Classified Road to the South and Banks Road to the East, it can be considered the site being used for the purposes of a Resource Recovery Facility (Return and Earn facility) is appropriate given the site constraints and hence not meeting the zone objectives is considered acceptable on merit.

It is also to be noted that the land parcels zoned for E1 Local Centre purposes are all owned by Transport for New South Wales (with the exception of the subject site) and given the medium to heavy flood affectation, it may be unlikely for the area to be developed for the purposes of a local centre in the current context.

(iv) Principal Development Standards

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

Development Provision	Requirement	Proposed	Comment
Part 4 Principal Development Standards			
2.7 Demolition	The demolition of a building or work may be carried out only with development consent	The existing structure on site is proposed to be demolished.	Complies by condition.
4.3 Height of Buildings	18m height limit	The proposal is approximately 8m in height at its highest point.	Complies
4.4 Floor Space Ratio	1.5:1 FSR limit	The proposed development has a total GFA of approximately 80m ² , equating to an FSR of 0.06:1	Complies
5.21 Flood planning	Provisions relating to development on flood prone land.	The subject site is identified as medium risk flood affected. Council's flooding engineers have reviewed the proposal and deemed the proposal satisfactory against the provisions of Clause 5.21.	Complies
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	Public utility infrastructure is available on site.	Complies

7.16 Ground floor development in Zones E1 and MU4	Provisions requiring active uses at ground level.	Clause 7.16(4)(a) states that <i>Development consent must not be granted for development for the purposes of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building - if the development is on land in Zone E1 Local Centre—will not be used for the purposes of residential accommodation.</i> The proposal does not provide residential accommodation.	Complies
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As demonstrated in the above compliance table, the proposed development is consistent with the provisions of LLEP 2008.

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 application has also been assessed against the relevant controls of the LDCP 2008, particularly *Part 1 General Controls for all Development and Part 6 Development in Business Zones*.

The development is found to generally comply with the provisions of the LDCP 2008 except in relation to as detailed within the tables in Attachment 1 of the report.

Overall, the proposal is considered to be consistent with the key controls outlined in the LDCP 2008.

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 2000 requires the consent authority to consider the provisions of the BCA and the Safety standards for demolition (AS 2601 – 2001). 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 unlikely to create a detrimental impact on the natural environment surrounding the subject site, subject to the imposition of appropriate conditions of consent.

The proposed development is unlikely to create any adverse impacts on the surrounding built environment. The proposed development is considered to be of an appropriate scale and is unlikely to create any detrimental impacts on the adjoining properties or the locality as a whole.

It is considered that the proposed development has been designed with sufficient regard to surrounding properties to ensure that any adverse amenity impact is minimised, particularly in terms of visual and acoustic privacy.

Social Impacts and Economic Impacts

The proposal would result in a positive economic impact in the locality through the capital investment value of the development and is unlikely to generate any identifiable detrimental social impacts, being consistent with the desired development type in the locality.

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 the site is considered to be 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:

DEPARTMENT	COMMENTS
Flooding	Approval subject to conditions of consent
Development Engineering	Approval, subject to conditions of consent
Environmental Health	Approval subject to conditions of consent
Urban Design	No comment, the site is considered exempt from Design Excellence Panel review.
Traffic	Approval subject to conditions of consent

(b) External Referrals

The following comments have been received from external Agencies:

DEPARTMENT	COMMENTS
Transport for New South Wales	Approval subject to conditions of consent
Department of Planning and Environment-Water	Approval subject to conditions of consent
Endeavour Energy	No objections, subject to conditions of consent

(c) Community Consultation

The proposal was advertised for a period of 28 days from 15 January to 12 February 2025 in accordance with the Community Participation Plan 2022. No submissions were received in response to the public consultation process.

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

The proposed development is considered to be in the public interest as employment opportunities are created in addition to establishing a facility for locals to aid towards environmental conservation.

7. DEVELOPMENT CONTRIBUTIONS

A Section 7.11 Development Contributions is applicable to the proposed development in accordance with Liverpool Contributions Plan 2018 – Established Areas and will be imposed as a condition of consent of any approval for the proposed development. The development attracts a total contribution of \$11,383.29.

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.

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 No 597/2024 be approved subject to conditions of consent.

ATTACHMENTS

1. Assessment Tables (Under separate cover)
2. Plans (Under separate cover)
3. Draft Notice of Determination (Under separate cover)
4. Agency Advice Conditions (Under separate cover)

Item Number:	2
Application Number:	DA-793/2019/A
Proposed Development:	Modification to Development Consent DA-793/2019 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 involving additional stormwater infrastructure within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, deletion of the stages, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies. <u>Approved Application DA-793/2019</u> Existing approval under DA-793/2019 is for the demolition of existing structures and subdivision of one (1) lot into fourteen (14) low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space over three stages
Property Address	231-245 Eleventh Avenue, Austral NSW 2179
Legal Description:	Lot 11 DP 1304045; Lot 9 DP776297
Applicant:	The Trustee for Crown Trust 28
Land Owner:	Crownland Austral Pty Ltd; Liverpool City Council
Cost of Works:	Nil
Recommendation:	Approved subject to modified conditions of consent
Assessing Officer:	Leena Sebastian – Monteath & Powys

1 EXECUTIVE SUMMARY

This development application (DA) seeks to modify Development Consent DA-793/2019 for subdivision on the subject site, pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The subject site is legally described as Lot 11 DP 1304045 and is known as 231-245 Eleventh Avenue, Austral.

The original Development Application DA-793/2019, for the subdivision of the subject site was approved by Liverpool City Council (the Council) as a deferred commencement consent on 8 January 2023, under Section 4.16(3) of the EP&A Act. The deferred commencement condition required the submission of evidence demonstrating that the proposed subdivision would not be adversely affected by odour from the neighbouring poultry farm at 200 Eleventh Avenue, Austral. This condition has now been satisfied, and an operative consent letter was issued by the Council on 21 February 2025.

The existing approval for DA-793/2019 includes an onsite detention and bioretention basin on approved Lot 14, as part of the stormwater management system. The conditions of consent require this basin to remain operational until regional flood detention and water quality basins for the precinct are constructed.

The proponent, also the developer of several other sites within the broader precinct, has developed an alternative stormwater strategy aimed at optimising land use. This strategy proposes direct discharge into the nearby Kemps Creek, eliminating the need for temporary detention.

The proposed modification seeks to replace the approved stormwater management system with the alternative strategy, which will remove the onsite detention basin. This will require tree removal and stormwater pipe installation on adjoining Council-owned land at Lot 9 DP776297. Owner's consent for these works has been obtained from Council's Property Services Manager and is submitted with this application.

In addition to tree removal and modifications to the stormwater system, this application also seeks to correct an error in the lot numbering and associated discrepancies in the proposal description. The low-density residential lots in the approved subdivision plan are numbered from 1 to 14, excluding the number '11'. As a result, the lot yield has been incorrectly described as 'fourteen low-density residential lots' instead of 'thirteen low-density residential lots' in the Notice of Determination (NoD). Changes to the lot numbering and proposal description are included in this modification to rectify these inconsistencies.

The application was notified in accordance with Council's Community Engagement Strategy and Community Participation Plan 2022 from 7 February 2025 to 10 March 2025, and no submissions were received.

During the assessment of this application, the application was amended to include an additional change, being, the deletion of the staging of the development. Renotification was not undertaken due to the minor nature of this change.

The extent of impacts from the proposed modification has been considered in this assessment report, and it has been determined that the modified proposal is substantially the same as the originally approved development. In assessing the application in accordance with Section 4.55(2) of the EP&A Act, it is considered to have merit for approval, subject to amended conditions of consent.

This application is referred to the Liverpool Local Planning Panel for determination, in accordance with the Liverpool Local Planning Panel's Direction – *Development Applications and Applications to Modify Development Consent*, on May 6, 2024, as the development falls within the category of:

- **Conflict of Interest** – Development for which Council is the landowner

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is a split-zoned parcel with an approximate area of 2.26 hectares. It is located at the western end of Eleventh Avenue adjoining Lot 9 DP 776297, a Council-owned land containing a designated drainage zone. A tributary of Kemps Creek traversing this drainage zone is closely located to the western boundary of the site.

Access to the subject site is gained through Eleventh Avenue which remains unformed at its western end. Most of the site is cleared and vacant, except for some dwellings, sheds, and vegetation in the eastern and northern parts, as shown in **Figure 1**.

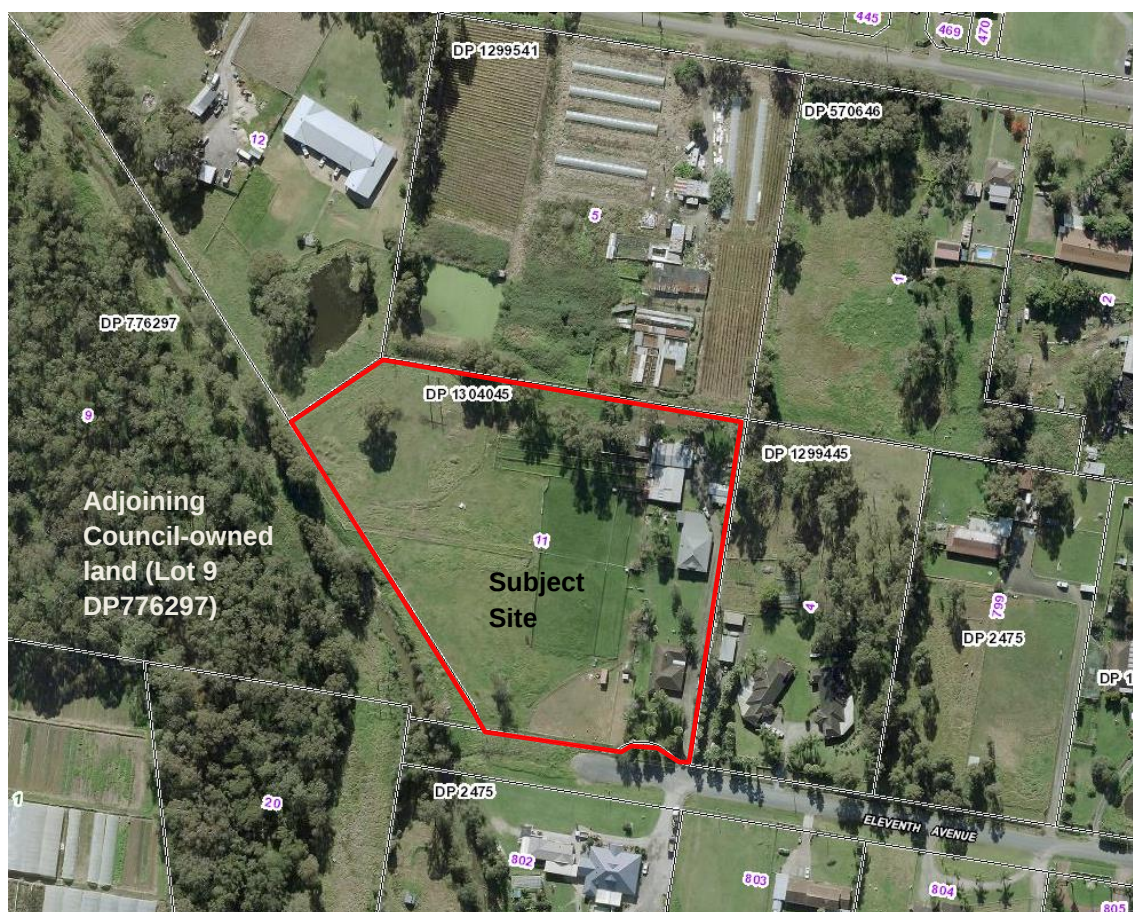


Figure 1: Aerial Photo of the Subject Site (Source: Six Maps, March 2025)

2.2 The locality

The subject site and the entire suburbs of Austral and Leppington form part of the South West Growth Centre Precinct identified in the *State Environmental Planning Policy (Precincts Western Parkland) 2021*. Despite the identified development potential, the surrounding area remains sparsely developed, retaining a rural residential character.

However, it is noted that the proponents of this development have secured DA approvals for other sites to the east, between Twelfth Avenue and Eleventh Avenue, as shown in **Figure 2**. A transition to low-density residential development is anticipated in the near future, with the implementation of these approvals.



Figure 2: Sites with existing DA approvals (Source: Colliers, November 2024)

3. BACKGROUND / HISTORY

DA-793/2019 for the demolition of existing structures on the subject site and subdivision to create fourteen low density residential lots and three environmental living lots, and one RE1 public open space lot and associated civil works, in three stages was approved by Council on 8 January 2023. The consent was issued with a deferred commencement condition which required the consent holder to provide evidence of closure of the poultry farm at 200 Eleventh Avenue to ensure no odour impacts to the proposed development, within 24 months from the date of approval.

The timeframe for satisfying the deferred commencement condition was extended by 12 months by Council on 10 July 2024, under Section 4.7(2)g of the EP&A Act.

Subsequent to the lodgement of this application, information to satisfy the deferred commencement condition was submitted by the applicant, and the consent has been operative from 21 February 2025.

The components of the existing approval that are of relevance to this modification application are detailed below:

- Error in the lot numbering and lot yield – As highlighted in the approved Plan of Subdivision in **Figure 3**, the lot numbering erroneously excludes the number '11'. This has resulted in a misdescription in the NoD where the proposed development is described as creating fourteen low density residential lots instead of thirteen.
- Omission of tree removal – An excerpt of the approved Tree Removal Plan is provided in **Figure 4** which indicates the removal of two trees (highlighted in yellow) affected by the proposed lot boundaries has been overlooked in the existing approval.
- Stormwater management - The existing approval includes a stormwater management basin on proposed Lot 14 to meet Council's water quantity and quality requirements, refer **Figure 4**. Conditions of consent require this basin to remain in operation until a regional stormwater basin for the precinct is constructed.
- Removal of staging of the development – The proposed modification seeks to undertake the whole subdivision in a single stage.

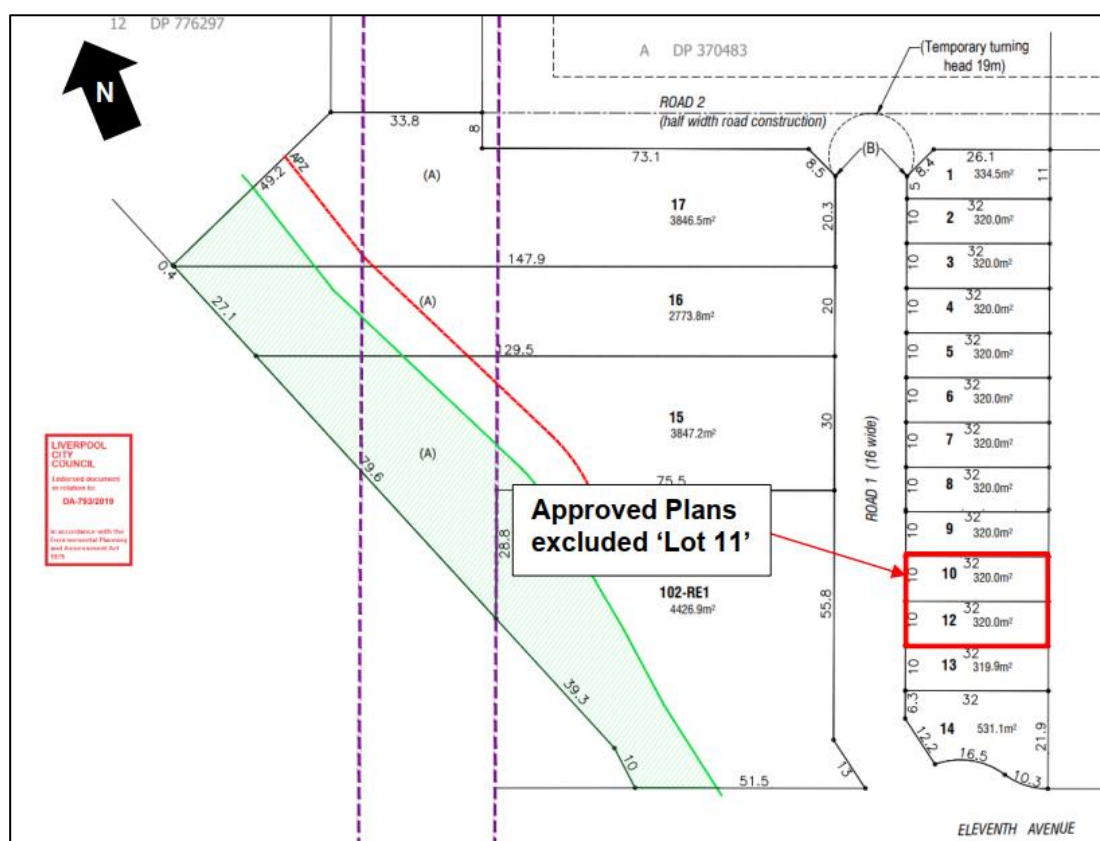


Figure 3: Approved Plan of Subdivision (Source: GDS, December 2022)

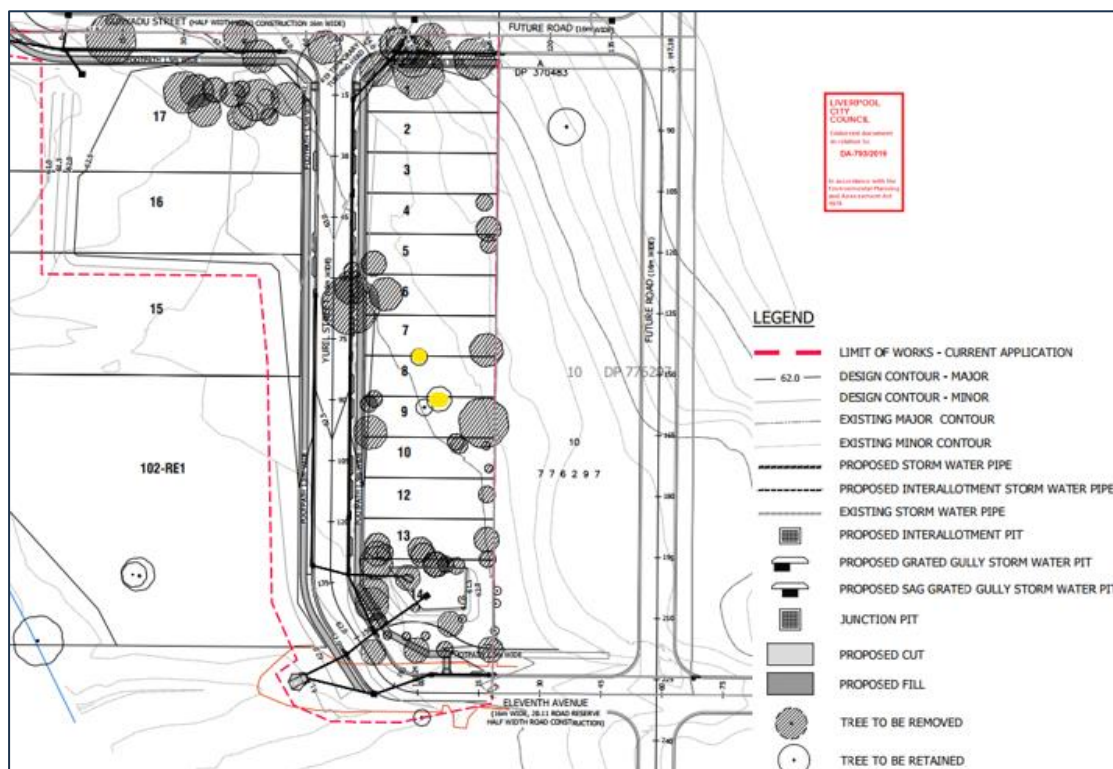


Figure 4: Approved Tree Removal Plan (Source: Colliers, November 2024)

4. DETAILS OF THE PROPOSAL

The proposed modification involves the removal of the approved bioretention/detention basin on Lot 14, and construction of stormwater outlets draining directly into the adjoining creek, as indicated in **Figures 5** and **6**. Direct discharge into the creek via a tail out drain and spreader, with appropriate water quality control through Gross Pollutant Traps (GPTs) eliminates the need for onsite detention. The proposal aligns with a new stormwater strategy for the broader precinct which is subject to separate development approvals.

Specifically, this application includes works on the subject site and adjoining Council-owned land (Lot 9 DP 776297), as detailed below:

- Installation of a new 1050-1200mm trunk stormwater pipe, complete with a GPT, to extend the trunk stormwater drainage along Eleventh Avenue, as detailed at Outlet 1 in **Figure 5**. The proposed pipe and headwall will extend into Lot 9 DP 776297 necessitating the removal of four trees.
- Incorporation of a GPT for the approved stormwater pipe at the northern part of the site and works at the outlet, identified as Outlet 2 in **Figure 5**. Five trees on Lot 9 DP 776296 will be affected by these works.
- In addition to the clearing of nine trees from Lot 9 DP 776297, two medium-sized trees located on the subject site are also proposed for removal. These trees are affected by the proposed lot boundaries and such their removal is not a result of the proposed works under this modification, but rather an oversight in the previous application.

Other amendments include rectification of the following errors and removal of the staging of the subdivision, which do not result in any material change to the development.

- Renumbering of lots to include Lot 11 as shown in the Proposed Subdivision Plan in **Figure 7**.
- Modify the description of the proposed development in the NoD to accurately reflect the lot yield and deletion of staging, as below:

*“The application is seeking consent for the demolition of existing structures and subdivision of one (1) lot into ~~fourteen (14)~~ **thirteen (13)** low density residential lots, three (3) environment living residential lots and (1) RE1 lot for public open space. over three stages”*

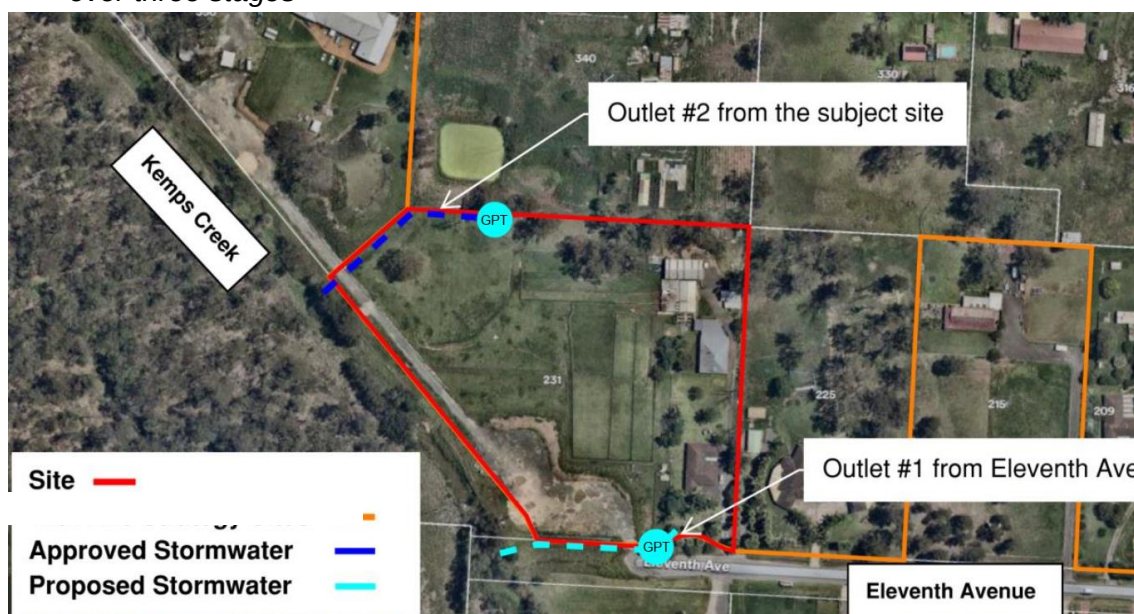


Figure 5: Proposed Stormwater Concept (Source: Colliers, November 2024)

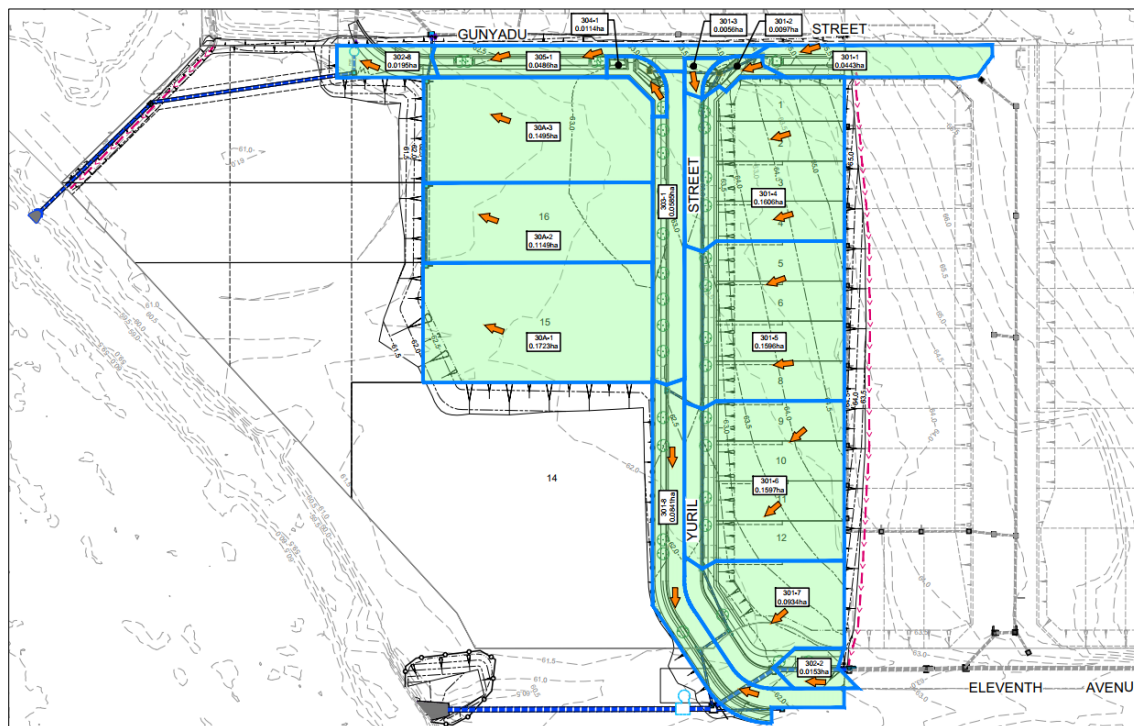


Figure 6: Proposed Catchment Plan (Source: Colliers, October 2024)

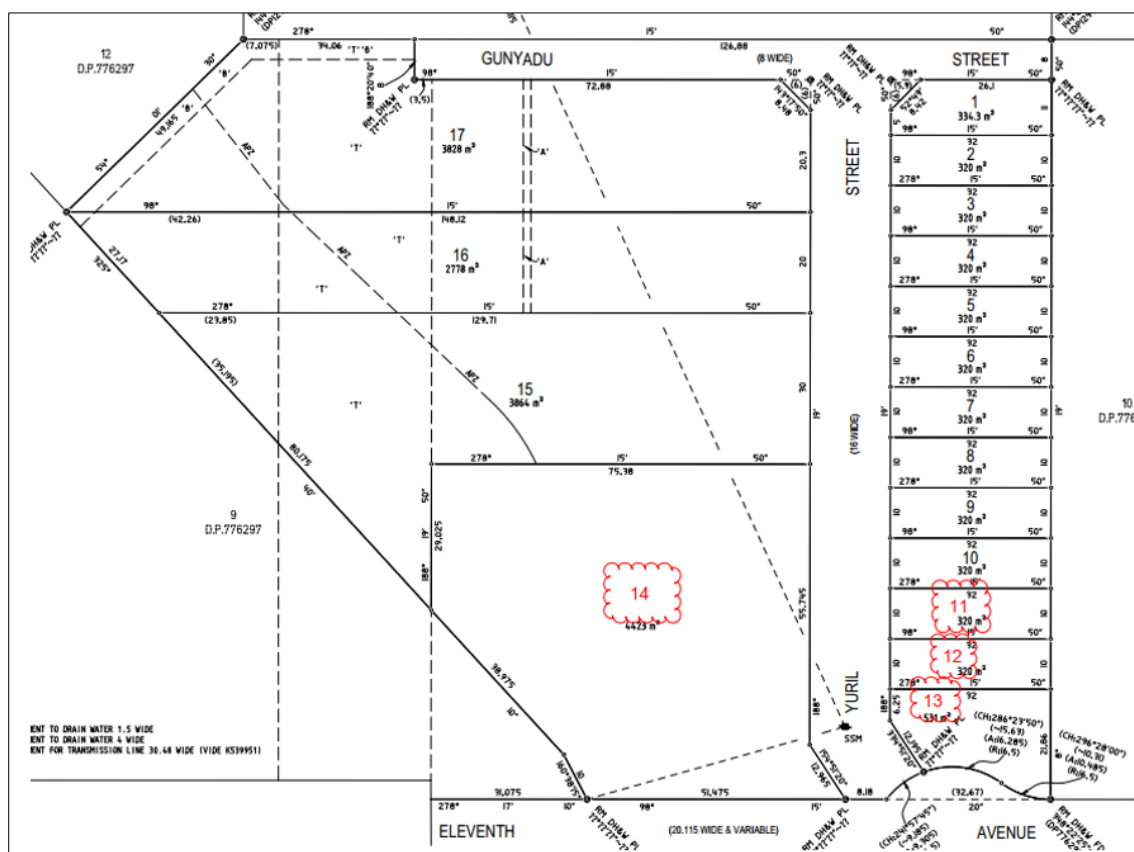


Figure 7: Proposed Subdivision Plan (Source: Stephen Craig Bishop)

Attachment 1 contains the proposed subdivision plan. The stages of the proposed subdivision are not mutually dependent and therefore the proposal to undertake the development in a single stage does not impact the planning outcomes on the site.

The proposed modification will require modification to a number of conditions to reflect the amended proposal and General Terms of Approval obtained from NSW RFS and Department of Planning and Environment - Water. Some additional conditions are also required for the work required. The modified conditions of consent attached to this report provides details of the amendments required.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The relevant environmental planning instruments and policies applicable to the proposed modification are listed below:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Precincts Western Parkland) 2021
- State Environmental Planning Policy (Biodiversity Conservation) 2021
- Liverpool Growth Centre Precincts Development Control Plan 2021
- Community Engagement Strategy and Community Participation Plan 2022

6. ASSESSMENT

6.1 Section 4.55 of the Environmental Planning & Assessment Act 1979

The development application has been lodged pursuant to Section 4.55(2) of the EP&A Act which states:

“(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 changes to the stormwater management system do not affect the approved subdivision layout or any other aspects of the development. Removal of the detention basin will enable efficient use of residential land on the site while managing the

post development flows through the proposed stormwater outlets to the creek. Water quality and erosion control measures included in the proposal to maintain the integrity of the riparian corridor. An assessment of the tree removal and other works associated with the modified stormwater management system did not identify any significant environmental impact. Other changes involved in the application are to rectify the description and annotation errors, with no bearing on the outcome of the development. On this basis, it can be concluded that the modified proposal is substantially the same as the originally approved development.

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

Comment: The application was referred to NSW RFS as minor corrections were required to the lot numbers in the conditions of approval, and amended GTAs have been obtained. Similarly, GTAs have been obtained from DPE-Water due to the proximity of the proposed works to Kemps Creek.

(c) it has notified the application in accordance with—
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: The application was notified for 28 days from 7 February 2025 to 10 March 2025 in accordance with Council's Community Participation Plan 2022, and no submission were received.

From the above considerations, it can be confirmed that the application can be assessed as a modification under Section 4.55(2) of the EP&A Act.

Section 4.15(1) of the EP&A Act provides the matters for consideration by the consent authority in the assessment and determination of a development application. According to Section 4.55(3), the considerations for a modification application under Section 4.55 are limited to those of relevance to the proposed works associated with the modified proposal, as stated below:

(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.

Relevant matters for consideration in the assessment of this application are addressed in this report. Further, it is noted that the proposal is substantially the same as the original development and therefore the reasons for granting of consent for this modification is consistent with that for the existing consent. While some amendments to the conditions are required, they do not change the reasoning behind the granting of the approval.

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

(a) State Environmental Planning Policy (Precincts - Western Parkland City) 2021

The subject site along with the entire suburb of Austral and Leppington are identified in the South West Growth Centre under the State Environmental Planning Policy (Precincts - Western Parkland City) 2021 (the Western Parkland City SEPP). This policy is the main planning instrument for developments on the subject site, containing provisions for the orderly release of land for residential, employment and other urban developments in Sydney region growth centres.

(i) Zoning

The subject site is zoned R2 Low Density Residential, E4 Environmental Living and RE1 Public Recreation zone under the Western Parkland City SEPP, as shown in **Figure 8**.

The drainage works and tree removal proposed under this application will occur within the SP2 Infrastructure (local Drainage) Zone of Lot 9 DP 776297, as well as the SP2 and RE1 zoned areas of the road reserve to the south.

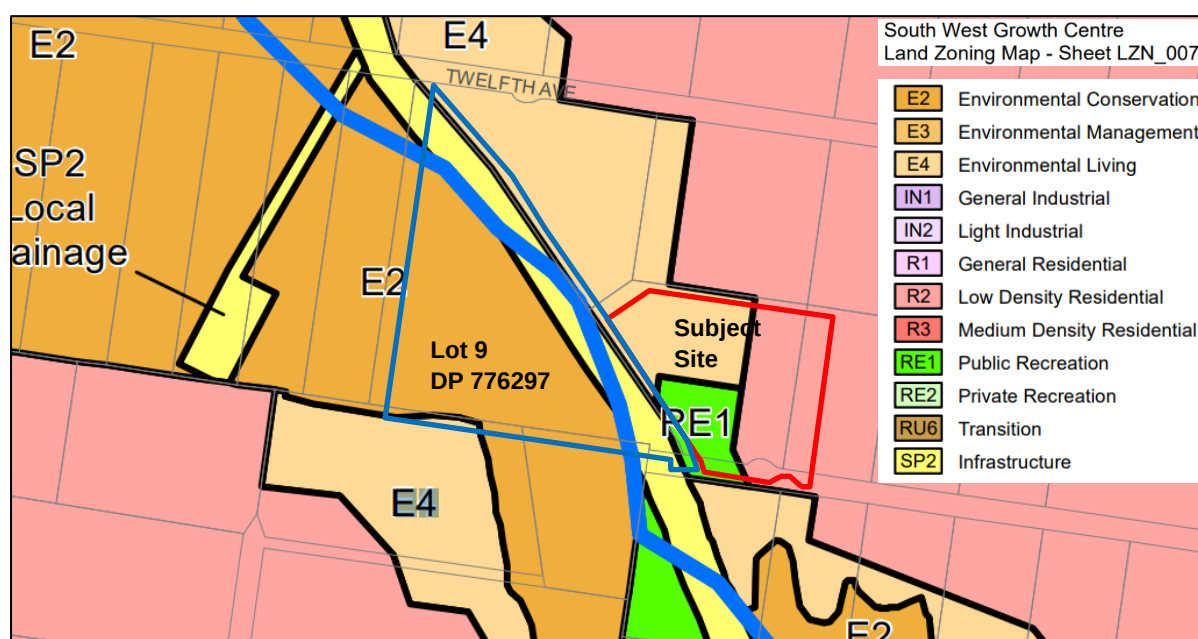


Figure 8: Zoning map (Source: Western Parkland City SEPP, 2025)

(ii) *Permissibility*

As per the land use table for the SP2 zone, developments for the purposes shown on the Land Zoning Map, as well as any development that is ancillary or incidental to the primary development, are permitted with consent.

The SP2 zoned areas where the stormwater works are proposed are designated for drainage in the Land Zoning Map (refer to **Figure 8**). Therefore, the proposed drainage works, and ancillary tree removal are permitted with consent in the SP2 Infrastructure Zone.

Drainage is listed as a permissible use in the land use table for the RE1 zone.

Accordingly, the proposal is permissible with consent pursuant to the provisions of Schedule 4, Part 2 of the Western Parkland City SEPP.

(ii) *Objectives of the zone*

SP2 Infrastructure (local Drainage) Zone

The objectives of zone are as follows:

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

The proposed works align with the objectives of the SP2 Infrastructure Zone by facilitating stormwater drainage for the proposed subdivision on the subject site.

RE1 Public Recreation zone

The objectives of zone are as follows:

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

The proposed drainage works do not conflict with the objectives of the RE1 zone, as they are entirely contained within the road reserve of Eleventh Avenue, without compromising the use of the land for public recreational purposes.

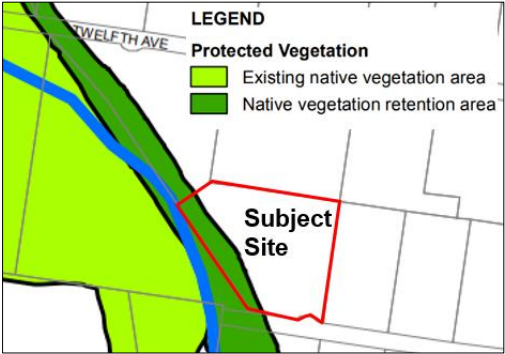
Chapter 3, Part 3.2, Section 3.10 outlines the provisions for developments in various precincts within the South West Growth Centre. Specifically, Appendix 4 contains the requirements for the Liverpool Growth Centres Precinct Plan, which includes Austral.

The sections relevant to the proposed modification are outlined in **Table 2**.

Table 2 – Consideration of relevant matters in Appendix 4 – the Western Parkland City SEPP

Appendix 4 - Part 5 – Miscellaneous Provisions		
Development provision	Requirement	Comments
5.9 - Preservation of trees or vegetation	Development consent is required for clearing of vegetation.	Complies. This application includes the removal of nine trees for the proposed stormwater works. The impacts of the proposed clearing have been addressed in a Threatened Species Assessment conducted by ACS Environmental. Additionally, an Arboricultural Impact Appraisal and Method Statement, prepared by Naturally Trees, provides an assessment of the amenity values of the trees to be removed, as well as the protection measures required for the trees to be retained. For further details, refer to the discussion under Section 6.6 of this report. In summary, the assessments have concluded that the removal of these nine trees will not have a significant impact on the amenity or biodiversity values of the locality. It is also noted that the remaining two trees requiring removal from the subject site are located within a Biodiversity Certified area, the impact of which has already been assessed as part of the previous approval.
5.10 – Heritage conservation	This section requires development consent for altering, demolition, or disturbing items, relics or places of heritage significance. Consent is also required for works in a heritage conservation	Complies. The subject site and Lot 9 DP 776297 do not contain any items of European heritage significance, nor are they within a heritage conservation area. However, Lot 9 DP776297 where the stormwater works are proposed is identified as a high Archaeological

	area	Sensitivity Area in Schedule 1 of the Liverpool Growth Centre Precincts Development Control Plan (Liverpool Growth Centre DCP). As such, an Archaeological Due Diligence Assessment of the proposed works has been undertaken by McCardle Heritage, which concluded that the likelihood of insitu cultural materials is low to have any adverse impacts. Refer to the discussion under Section 6.6 of this report.
6.2 - Development controls – native vegetation retention areas	Clearing of trees from a 'native vegetation retention area' identified under this policy will require development consent. Approval for clearing should not be granted unless the consent authority is satisfied of the following: • There is no reasonable alternative to clearing of native vegetation • As little native vegetation as possible will be disturbed • Disturbance will not increase salinity • Native vegetation disturbed will be reinstated where possible on completion of construction • Vegetation loss will be offset by compensatory plantings on or near the land to avoid net loss of remnant native vegetation.	Complies on merit. The proposed clearing will occur within land identified as a 'native vegetation retention area,' as shown in the figure below. As mentioned previously, this application seeks consent for the removal of nine trees from an overall footprint of 150 m². With regard to the proposed clearing, it is noted that: Minor clearing for the installation of stormwater outlets and energy dissipation works is inevitable for any development that involves discharge into the creek. The extent of disturbance is limited to a footprint of 15 m x 5 m at each stormwater outlet, which equates to 150 m². This is considered minimal when compared to the extent of native vegetation on the site. The proposed area of works is not affected by saline soils. The disturbed areas on the site will be rehabilitated as part of the sediment and erosion control plan required for the development.

	No more than 0.5 hectares of native vegetation will be cleared In addition to the above, the consent authority is required to give consideration to the zone objectives in the context of the proposed clearing.	Compensatory plantings will be imposed through conditions of consent to offset the vegetation loss. The proposed clearing is well below the limit of 0.5 hectares prescribed in this section. The proposed vegetation removal will occur within the SP2 Infrastructure Zone, identified for local drainage. Therefore, the proposal is considered consistent with the objectives of the zone. The Threatened Species Assessment (refer to discussion under Section 6.6) concluded that the proposed disturbance to a small patch of Coastal Valley Riparian Forest will not have any significant impacts. 
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In addition to the considerations under Appendix 4, Part 3.5, Section 3.26 of the Western Parkland City SEPP provides the development control for flood prone and major creeks land. The consent authority is required to consider the impact of flooding provided in Section 3.26(b) prior to approving development on floor prone and major creeks land.

The proposed stormwater pipes and energy dissipaters will be located within an area affected by 1% Annual Exceedance Probability (AEP) event, as shown in **Figure 9**.

In reviewing the considerations under Section 3.26(b), it is noted that the proposed stormwater management works involve tree removal, the installation of a tail-out drain, and

spreaders at the outlet of each pipe. These works are of minor scale and confined to a small footprint near the two outlets. No significant changes to the existing site conditions will occur that would aggravate the flood behaviour or cause additional risks to the site and adjoining properties.

The proposal was reviewed and supported by Council's Floodplain Management Engineer, subject to a condition requiring the design and sizing of the proposed stormwater pipe on Eleventh Avenue to accommodate all storm events up to the 1% AEP and compliance with Engineering requirements for flood depth and velocity*depth criteria.

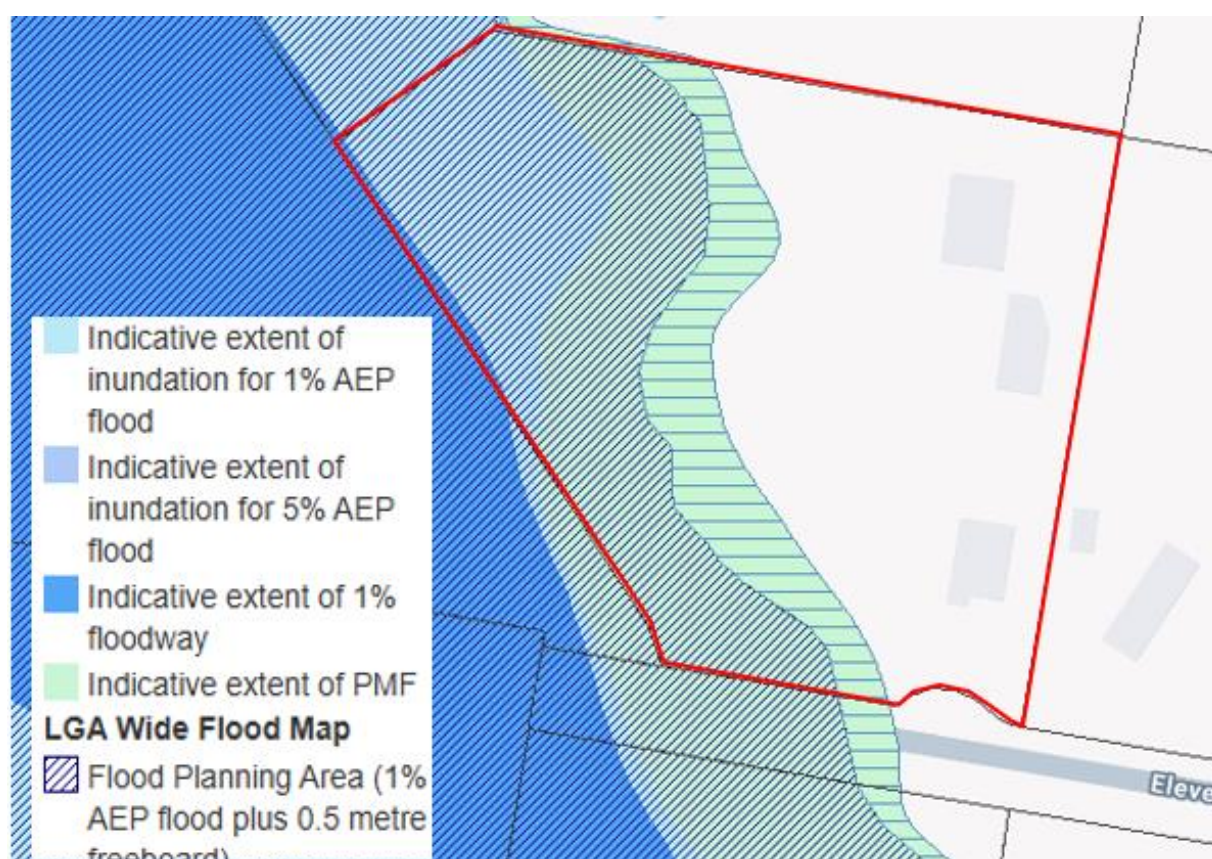


Figure 9: LGA Flood Wide Map (Source: Liverpool City Council, March 2025)

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

Chapter 2 of this policy applies to clearing of vegetation in non-rural areas which includes Liverpool Local Government Area. However, the clearing associated with the development has been considered under the Western Parkland City SEPP, and therefore these requirements do not apply to the proposal.

The site is situated within the Hawkesbury-Nepean Catchment Area. Chapter 6 outlines the key considerations for consent authorities when assessing development proposals in a water

catchment. Relevant matters have been reviewed, and it has been determined that the water quality or quantity, aquatic ecology, wetlands, riverine habitats, scenic values, and the recreational use of the watercourse will not be impacted by the proposed works. As the proposal involves appropriate water quality treatment measures prior to direct discharge into the creek, no prohibitions apply to the development. An assessment is provided in the table below.

Table - Assessment against relevant provision in Chapter 6 of State Environmental Planning Policy (Biodiversity Conservation) 2021

Division 2 – Controls on development generally		
Development provision	Requirement	Comments
6.6 - Water quality and quantity	The consent authority must consider the requirements under Section 6.6 (1) to ensure that the quality of the water entering the waterway and the quantity of run off will not adversely impact the waterflow in the natural waterbody. Impact of the development on the quantity and quality of the water table and cumulative environmental impact should be considered. As per Section 6.6(2), a consent can be granted only if the consent authority is satisfied that the quality of the water entering the watercourse is as close as possible to neutral or beneficial, and the impact on waterflow in a natural body is minimised.	Due to the site's location in the immediate vicinity of the creek, post development flows can be conveyed rapidly into the watercourse through the proposed piped drainage, with energy dissipators at the outlets to prevent scouring and erosion. Also, there are no other developments downstream of the subject site which could be impacted by the runoff from the subject site. The proposed direct discharge into the creek is considered acceptable although the post development flows will not match the predevelopment scenario The design and sizing of the trunk main will be required to cater for fully developed upstream catchments for all flows up to 1%AEP. The design will also require compliance with Council's road flood depth criteria ($d < 0.2\text{m}$) and velocity * depth criteria ($vd < 0.4\text{m}^2/\text{s}$) to ensure safety. Although the development will increase the flow rates, the construction of the trunk main in accordance with Council's standards will ensure that runoff is safely conveyed to the creek, without adversely impacting adjacent properties

		or increasing flood risks. The development will be required to install a sediment control basin to manage sediment and pollutant discharge downstream during the works as a condition of consent. The proposed stormwater design has been assessed and supported by Council's Flood Plain Management Engineer, subject to a condition requiring the construction to meet Council's standards.
6.7 – Aquatic ecology	Section 6.7(2) requires the authority to ensure the following before granting consent: • Direct, indirect and cumulative impacts on terrestrial, aquatic and migratory animals or vegetation are minimised. • No adverse impact will occur on the aquatic reserves. • If a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994, these have been obtained. • Erosion of land abutting the natural waterbody is minimised. • Adverse impact on wetlands are	The proposed water quality measures have been assessed and considered adequate to minimise any direct, indirect or cumulative impacts on aquatic ecology and reserves. The proposed vegetation removal is no significant to adversely impact the terrestrial habitat or species. The application was referred to DPE-Water under Section 91 of the <i>Water Management Act 2000</i>, and GTAs have been obtained. While a controlled activity approval has not yet been issued, it has been imposed as a requirement in the GTAs. This is consistent with the current practices where the developments are required to obtain a controlled activity approval prior to commencement of works on waterfront land. The development will be required to provide adequate sediment and erosion control measures to minimise impacts during works. No wetlands exist in the vicinity of the proposed works.

	minimised.	
6.8 - Flooding	The consent authority should be satisfied that the development will not release pollutants that affect the water quality of the watercourse in the event of flooding.	The proposed stormwater system with the GPTs are designed to minimise the discharge of pollutants into the creek during flooding. Further, it is noted that the proposal is not a type of development that involves storage of hazardous substances or chemicals to result in adverse environmental impacts in the event of any inundation.
6.9 – Recreation and public access	The recreational use of the watercourse and foreshore access should not be impacted by the development.	The location of the proposed works are not directly accessible to the public. Notwithstanding, the proposal will not obstruct the access or impede the use of the creek.
Division 3 – Controls on development in specific areas		
6.11 – Land within 100m of natural waterbody	The consent authority is required to consider the type of use and the potential for land use conflicts while determining development within 100m of a natural body.	The proposal is not a water-dependent use, nor does it cause any land use compatibility issues.
6.13 – Hawkesbury-Nepean sub-catchments	The consent authority is required to consider the human interference with the conditions of the catchment, impact on the structure and floristics of native vegetation, the scenic quality of the locality and whether the development has been previously carried out on the development site, prior to determining the application	The proposed stormwater management system is not a type of use that will result in significant human interference with the sub-catchment. Removal of nine trees form a substantially vegetated riparian corridor will not result in any perceivable change in the structure or floristics of native vegetation. Given the low profile nature of the works and the minor scale of tree removal from a dense canopy area, no significant change will occur to the visual environment

Division 4 – Controls on development for specific uses		
6.21 Stormwater management	Stormwater management works in a regulated catchment will require development consent. Section 6.21(3) prohibits works that discharge untreated stormwater into a natural waterbody.	No discharge of untreated water will occur. GPTs are incorporated into the proposed stormwater management works to remove pollutants and sediments.

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

Chapter 4, Section 4.6 of this policy requires the consent authority to assess whether the land is contaminated and ensure that it is either suitable in its current state or can be made suitable through remediation for the intended use, before determining a development application. The proposed modification will result in additional disturbance on Lot 9 DP 776297, requiring a contamination investigation around the area of the proposed drainage works. A Detailed Site Investigation, prepared by GeoEnviro Consultancy Pty Ltd, has been submitted with this application.

As part of the investigation, twenty-one soil samples were collected from eleven test pit locations and analysed for a range of potential contaminants of concern (COPC), including heavy metals and asbestos. The results indicated that the concentrations of COPC did not exceed the relevant assessment criteria, although asbestos was detected in one sample near Outlet 2. As a result, this location has been flagged as an Area of Environmental Concern (AEC). In addition, the samples near Outlet 1 contained topsoil with traces of anthropogenic materials such as brick fragments and terracotta tile pieces. While these materials do not pose a significant risk, further investigation of the fill material may be necessary during construction to ensure that no significant contaminants or asbestos are present. An excerpt from the contamination investigation can be found in **Figure 10**.

The overall absence of widespread chemical contamination suggests a low potential for groundwater contamination at these locations and minimal risk for offsite impacts to groundwater or other water bodies.

A Remediation Action Plan (RAP) has been prepared by GeoEnviro Consultancy Pty Ltd to address the AEC identified on the site. The plan proposes offsite disposal of impacted soils as the most appropriate method of remediation for the site and recommends the preparation of a Validation Plan and Site Management Plan.

The report concludes that the implementation of these strategies will effectively remediate the site and ensure its suitability for the proposed use. Council's Environmental Health Officer has reviewed the report and supported the proposal, with the recommendation for an

additional condition for site remediation and validation to be included in the modified consent. **Attachment 2** contains the RAP and the Detailed Site Investigation for the development.

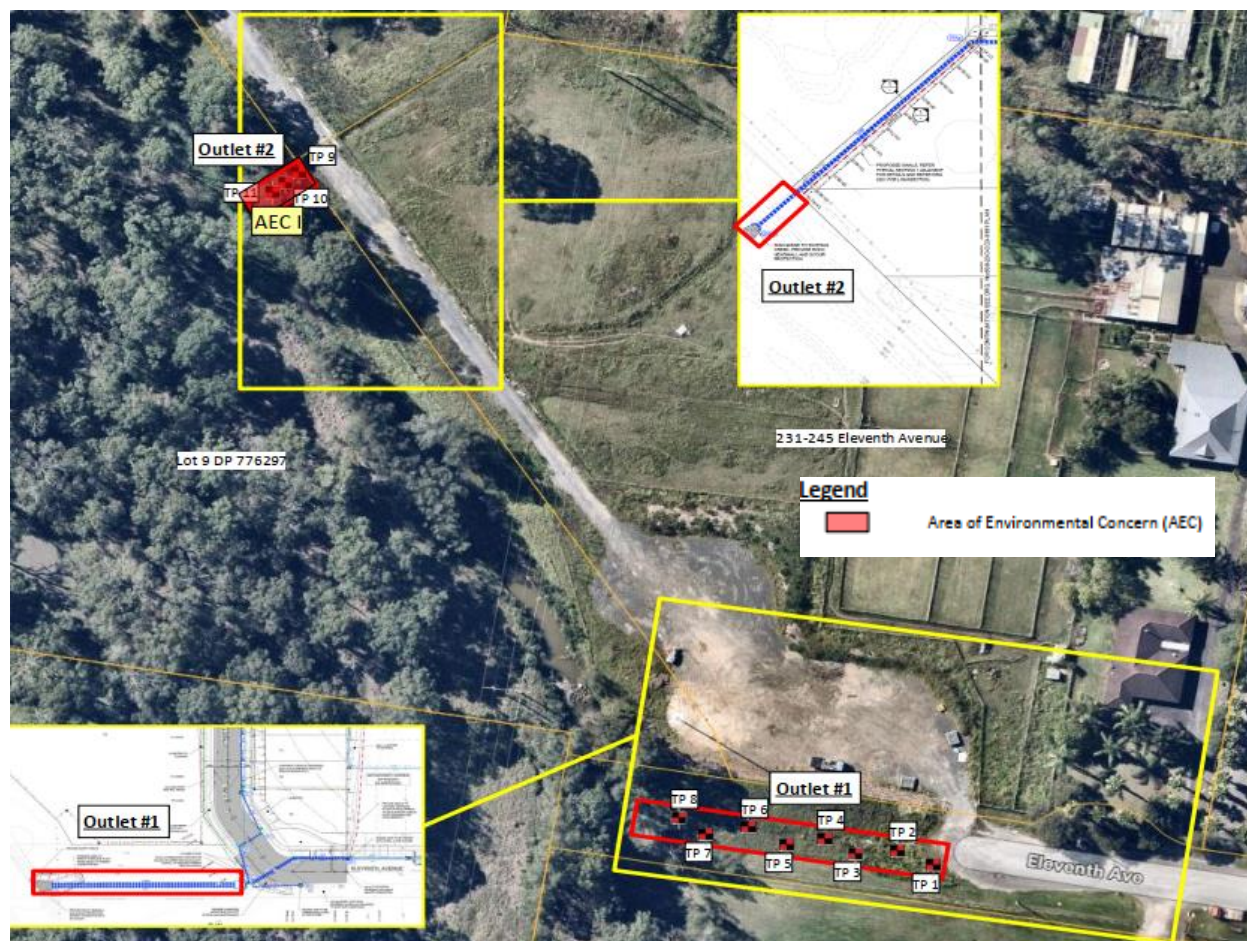


Figure 10: Area of Potential Concern (Source: GeoEnviro Consultancy, June 2024)

6.3 Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no draft Environmental Planning Instruments that are relevant to the proposed modification.

6.4 Provisions of any Development Control Plan

The Liverpool Growth Centre Precinct Development Control Plan (Liverpool Growth Centre DCP) provides the general controls for developments within the growth centre, with Schedule 1 containing the requirements and maps specific to Austral and Leppington North Precincts.

As this proposal relates to the modification of the stormwater management system for a previously approved residential subdivision, the scope of consideration is limited to the works associated with the proposed drainage works on Lot 9 DP776297.

An assessment of the proposal against relevant sections in Liverpool Growth Centre DCP 2021 is provided in the table in **Attachment 3**.

Overall, the proposal is considered to be consistent with the key controls outlined in the Liverpool Growth Centre DCP 2021 as demonstrated in the table in **Attachment 3**.

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

There are no additional matters for consideration in the *Environmental Planning and Assessment Regulations 2021* that apply to the development.

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

Natural and Built Environment

The works associated with the proposed stormwater infrastructure are of a modest scale and hence no significant impacts are anticipated on the natural and built environment. The trunk main on Eleventh Avenue will be appropriately sized to cater for events up to the 1% AEP, with energy dissipators at the outlets to control erosion. Water quality control devices are included in the proposal to prevent the discharge of pollutants into the water. Removal of nine trees from the designated drainage zone on adjoining land is not considered to have an adverse impact on the visual environment or the biodiversity values of the area.

It is anticipated that the sediment and erosion control conditions imposed by this consent, along with any additional environmental safeguards required by DPE-Water as part of the Controlled Activity Approval, will ensure the protection of the riparian areas during construction. The proposal, as modified, is not considered to have an unacceptable level of impact on the natural and built environment.

Aboriginal Heritage

The Liverpool Growth Centre DCP identifies Lot 9 DP 776297 as a high Archaeological Sensitivity Area. As such, an Archaeological Due Diligence Assessment has been undertaken by McCardle Cultural Heritage for the proposed works (**Attachment 4**).

An analysis of historic aerial imagery revealed that the project area and the surrounding watercourse have been cleared and disturbed several times in the past, resulting in the widening of the creek into its current form as a 3rd-order watercourse.

A search of the Aboriginal Heritage Information Management Systems (AHIMS) revealed no registered sites or places within the project area, although 26 known sites were identified

within 2 kilometers of the project area. Based on these findings and other local and regional archaeological investigations, it was determined that the creek near the project area was a minor watercourse lacking a reliable supply of freshwater to serve as a campsite.

The site survey undertaken by McCardle on 24 May 2024 confirmed that the project area had been subject to significant disturbance, including creek widening, clearing, track creation, powerline easements, and grazing. No sites or areas of potential archaeological sensitivity were identified during the survey, mainly due to the past disturbances. Further, as the project area is more than 1 kilometre away from freshwater sources and resources, it may have been utilised for more transitory activities rather than camping. Evidence of such past uses is reflected in the archaeological record as a scatter of discarded artifacts, which may have been disturbed or destroyed by the clearing activities in the past.

The assessment concluded that the likelihood of insitu cultural materials is low to have any adverse impacts and recommends the following precautionary measures to be implemented during works:

- All contractors and persons involved are to be made aware of the responsibilities to protect sites and places of significance under the *National Parks and Wildlife Act 1974* and the *National Parks and Wildlife Regulation 2019*.
- An unexpected finds protocol is to be implemented during works as per Appendix B of the Due Diligence Assessment by McCardle.
- Should any Aboriginal objects be uncovered, all works are to cease immediately. The unexpected finds protocol should be followed and the Environmental Line contacted.

Despite the above findings, Council's Heritage officer has advised that due to the location of works within 200m of the creek, An Aboriginal Cultural Heritage Assessment and an Aboriginal Heritage Impact Permit will be required as per the DCP. These requirements will be imposed as conditions of consent.

Ecology and Amenity

The construction of the tail-out drain, and energy dissipater will require the removal of nine trees from Lot 9 DP 776297. The impact of this clearing has been investigated in a Threatened Species Assessment undertaken by ACS Environmental, a copy of which is provided as **Attachment 5**.

An impact zone of 15m x 5m was identified at each outlet, and an assessment of vegetation within these areas was undertaken. The site inspection and survey undertaken by ACS confirmed that the Plant Community Type (PCT) on the site resembled Coastal Valleys Riparian Forest (PCT 4023), which is a component of the Swamp Oak Floodplain Forest – an Endangered Ecological Community listed under the Biodiversity Conservation Act 2016 (BC Act).

The vegetation near the proposed works was dominated by *Casuarina glauca* along with some *Eucalyptus teretifolia* and *Eucalyptus moluccana*. The ground mostly consisted of dense grass with some weeds. The clearing required within a total area of 150sqm will impact nine trees, including semi-mature and mature individuals of *Casuarina Glauca* and one *Acacia decurrens*. Despite this clearing, a healthy canopy density will be maintained by 21 other trees located around the area of works.

No threatened flora or fauna species were observed on the site or in its vicinity. The dense canopy cover does not typically support foraging, roosting, or breeding activities for Swift Parrots or Regent Honeyeaters. Notwithstanding, it was observed that the reduction of 150 sqm of this habitat will have minimal impact.

The assessment includes a 5-part test of significance for potential impacts to Coastal Valleys Riparian Forest as per Section 7.3 of the BC Act. Given the very small area of impact, and the satisfactory level of vegetation regeneration of Swamp Oak currently occurring at the site, the removal of nine trees and mostly weed species from the ground cover was not considered to place the local flora and fauna communities at risk of extinction, further fragmentation, or significant modification.

Since no significant impact was identified on threatened ecological communities, a Species Impact Statement was not required for the development. The assessment recommends monitoring and management of weed species, and the following measures to minimise impacts during works:

- Stockpile and equipment laydown areas are to be located such that no disturbance will occur to the native vegetation.
- Appropriate sediment and erosion control measures are to be implemented.
- A spill kit should be on site at all times.
- Any spill or leakage should be immediately contained, and the Incident Management Plan implemented.
- Access to the site should be restricted, with appropriate signage installed at the entry points to inform users of the works.

The impact of the tree removal on the amenity and character of the area was investigated in an Arboricultural Impact Appraisal and Method Statement prepared by Naturally Trees. A copy of this report is provided in **Attachment 6**.

Apart from one high category (Category A) tree, the vegetation proposed for removal were assessed as having low to very low retention value. However, the assessment identified that tree protection measures are required to protect other trees near the proposed works which included three high-category trees and 25 low-category trees. Below is a summary of the tree protection measures recommended in the report to ensure no adverse impacts on the trees to be retained:

- Works are to be supervised by a suitably qualified project arborist.

- Tree protection fencing and ground protection are to be in accordance with AS4970.
- Specific precautions when working within Tree Protection Zones of Trees 65, 88, and 89.
- Use of existing services and avoiding new services within TPZs where possible.
- Trenchless installations preferred; however, if unfeasible, hand excavation should be used.
- Site storage, cement mixing, and washing points must be outside TPZs unless approved by the project arborist or Council.
- Any pruning must comply with AS4375-1996 and be carried out by a qualified arborist.

The assessment concluded that the proposed tree removal is anticipated to have low to moderate impact on the local amenity and character, subject to the implementation of tree protection measures recommended in the report. Replanting will be imposed as condition of consent to offset the loss of amenity value from the removal of the high category tree (Tree 98).

Social Impacts and Economic Impacts

No adverse socio-economic impacts are anticipated from the proposed modification works. The proposal will facilitate efficient use of the land for the delivery of an essential infrastructure for the residential subdivision.

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

The proposed works will largely occur on land zoned for the purposes of drainage infrastructure. The development is permissible on the site and consistent with the site's zoning objectives. All environmental constraints and the and impacts associated with the proposed works have been adequately addressed and the site is considered suitable for the proposed use.

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
Floodplain Management Engineer	The applicant's response to additional information request and the documents submitted with the application was considered satisfactory in support of the proposed stormwater works. A condition requiring the following has been recommended: • The proposed works are to comply with the

	documents and additional response submitted with the application. • Two GPTs are to be installed at the stormwater outlets. The GPT design and sizing should consider capturing pollutants from a fully developed upstream catchment area • A sediment control basin should be installed during subdivision works • Design and sizing of the trunk main must account for all flows up to 1% AEP event and comply with the road flood depth and velocity* depth criteria.
Land Development Engineer	Council's Floodplain Management Engineer and the developer have had extensive discussions, and it was agreed that the detention basin can be removed if it is demonstrated that direct connections to the creek are achievable through the use of CDS GPTs. Given the support from Council's Floodplain Management Engineer and owner's consent from the Property Department, no objections were raised by Council's Land Development Engineer.
Heritage Officer	As the proposed works involves direct impacts within 200m of the creek, an Aboriginal Cultural Heritage Assessment has been imposed as a condition of consent. Additional standard conditions for an Aboriginal Heritage Impact Permit, and procedures for any unexpected discoveries during works were also recommended.
Natural Environment – Flora and Fauna	The conclusion in the Threatened Species Assessment that no significant impact will occur from the vegetation removal was supported. Conditions were recommended for the following: • soft engineering measures to control flows and erosion • revegetation at specific densities • water quality control • sediment control • tree removal to be supervised by a qualified ecologist, and fauna management • measures to prevent the spread of phytophthora pathogens • tree protection fencing

Environmental Heath	The application was reviewed and supported, subject to a new condition requiring the site to be remediated in accordance with the RAP submitted with this application.
Property Services	In addition to the owner's consent that has already been issued for the works in the road reserve, the applicant will be required obtain S138 approval to undertake the works.

(b) External Referrals

AGENCY	COMMENTS
DPE-Water	GTAs requiring a Controlled Activity Approval to be obtained prior to commencement of works on waterfront land, were issued on 16 January 2025. Refer to Attachment 7 .
NSW RFS	Amended GTAs referencing the rectified lot numbers were issued on 13 March 2025. Refer to Attachment 8 .

(c) Community Consultation

The application was notified in accordance with Council's Community Engagement Strategy and Community Participation Plan 2022, from 7 February 2025 to 10 March 2025, and no submissions were received.

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

The development is considered to be in public interest as it is in accordance with Council's adopted planning instruments and other State level policies which have been subject to public review and consultation.

7. DEVELOPMENT CONTRIBUTIONS

This application does not involve any cost of works to trigger development contributions, as the application seeks to delete the staging of the development.

8. CONCLUSION

Assessment of the proposed modification has been undertaken in accordance with the provisions of Sections 4.15(1), 4.55(2), and 4.55(3) of the Act, relevant environmental

planning instruments, including applicable State policies, the Liverpool Growth Centres DCP, and relevant codes and policies of Council.

The proposal has demonstrated that it is substantially the same as the originally approved development, with no adverse environmental impacts. It demonstrates compliance with relevant planning instruments and includes appropriate mitigation measures to minimise impacts. It is therefore considered to have merit for approval, subject to modified conditions of consent.

9. RECOMMENDATION

The Liverpool Local Planning Panel, as the consent authority, grants consent to DA-793/2019/A for the proposed modification application involving additional stormwater infrastructure within Lot 9 DP 776297 and Eleventh Avenue to replace the approved temporary basin, removal of eleven trees and rectification of the error in the lot numbering and associated inconsistencies, and deletion of staging, subject to the modified conditions as outlined within **Attachment 9**.

ATTACHMENTS

1. Plan of Subdivision (Under separate cover)
2. RAP and Detailed Site investigation (Under separate cover)
3. Liverpool Growth Centre DCP 2021 Assessment Table (Under separate cover)
4. Aboriginal Due Diligence Assessment (Under separate cover)
5. Threatened Species Assessment (Under separate cover)
6. Arboricultural Impact Appraisal and Method Statement (Under separate cover)
7. NSW DPE—Water Response (Under separate cover)
8. NSW RFS Response (Under separate cover)
9. Draft Modified Conditions of Consent (Under separate cover)
10. Notice of Determination - DA-793/2019 (Under separate cover)