

LOCAL PLANNING PANEL AGENDA

26 June 2023

To be held at the
“Gold Room, Liverpool Library”
170 George Street
Liverpool

Doors open at **1:45 PM** to commence at **2:00 PM**

MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

Monday, 26 June 2023

**“Gold Room, Liverpool Library”
170 GEORGE STREET, LIVERPOOL**

Doors open at 1:45 PM to commence at 2:00 PM

Note: 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 the 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 or 1300 36 2170, by 4pm, Friday, 23rd June 2023.

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).

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

ITEM No.	SUBJECT	PAGE No.
1	<p>DEVELOPMENT APPLICATION DM/211/1990/A</p> <p>MODIFICATION TO DEVELOPMENT CONSENT NO.211/1990 UNDER SECTION 4.55(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, SEEKING TO AMEND CONDITION 16 TO EXTEND THE HOURS OF OPERATION.</p> <p>LOT 17 DP 261574</p> <p>24 WENDLEBURY ROAD, CHIPPING NORTON NSW 2170</p>	4 - 38

ITEM No.	SUBJECT	PAGE No.
2	<p>DEVELOPMENT APPLICATION DA-182/2021</p> <p>TORRENS TITLE SUBDIVISION INTO TWO SUPER-LOTS (LOTS 201 & 202) OF THE CURRENT LOT 231 CHANGSHA ROAD, EDMONDSON PARK INCLUDING:</p> <ul style="list-style-type: none"> • CONSTRUCTION OF THE SOUTHERN EXTENSION OF ARNHEM ROAD TO THE FUTURE INTERSECTION OF ARDENNES ROAD ALONG THE EASTERN BOUNDARY OF PROPOSED FUTURE SUPER-LOT 201; AND • CONSTRUCTION OF ARDENNES ROAD ALONG THE SOUTHERN BOUNDARY OF FUTURE SUPER-LOTS 201 AND 202. <p>THE APPLICATION IS INTEGRATED DEVELOPMENT REQUIRING APPROVAL FROM THE NSW RURAL FIRE SERVICE UNDER THE RURAL FIRES ACT 1997.</p> <p>LOT 231 IN DP 1287558</p> <p>LOT 231 CHANGSHA ROAD, EDMONDSON PARK</p>	39 - 108

Item Number:	1
Application Number:	DM/211/1990/A
Proposed Development:	Modification to Development Consent No.211/1990 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, seeking to amend condition 16 to extend the hours of operation.
Property Address	24 Wendlebury Road, Chipping Norton
Legal Description:	Lot 17 DP 261574
Applicant:	Tanis Confectionery Australia Pty Ltd
Land Owner:	Mr N A Finocchiaro
Cost of Works:	\$0
Recommendation:	Refusal
Assessing Officer:	Eunice Pedrosa

1 EXECUTIVE SUMMARY

Council has received a Modification Application, DM/211/1990/A, seeking consent to amend condition 16 of Development Consent No. 211/1990 to extend the hours of operation at 24 Wendlebury Road, Chipping Norton, legally identified as Lot 17 DP 261574.

The site is zoned E4 – General Industrial, formerly known as IN1 – General Industrial pursuant to Liverpool Local Environmental Plan 2008 and the proposed development is permissible with consent.

The key issues associated with the proposal relates to insufficient information being provided to Council, as it cannot be ascertained if the development is considered substantially the same development for which the consent was originally granted. Further, it has been confirmed by the applicant that no approval has been granted for the current use.

In addition, insufficient information has been provided to Council to demonstrate that the proposed modification is of minimal environmental impact. Considering the number of submissions received (20) from the surrounding residents, it is evident that the proposed extension of hours is likely to impact on the amenity of the locality. As a result of the assessment of the application, it is considered that the proposal is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.

The development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal. The issues of concern raised in the submissions can be summarised as follows:

- Breach of conditions under development consent no. 211/1990;

- Noise impacts associated with roller doors left open, machinery, and truck and car movement;
- On street parking availability and safety;
- Traffic generation and movement of heavy vehicles;
- Presentation to the street due to littering;
- Devalue of the residential properties;
- Unauthorised changes to the premises;
- Location of machinery and storage areas;
- Privacy and amenity concerns;
- Site Inspection conducted by a Council member; and
- Inconsistences of Council's position.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 30 June 2020*, as the development falls in the categories of:

Contentious Development

Development that:

(b) in any other case – is the subject of 10 or more unique submissions by way of objection

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1997). Based on the assessment of the application, it is recommended that the application be refused.

2. SITE DESCRIPTION AND LOCALITY

2.1 The locality

The surrounding locality is characterised by a mix of land uses including industrial development, residential land, an educational establishment and public reserves. The site adjoins residential development to the west of the site, which is separated by a public road (Wendlebury Road). The east and north of the site comprises of industrial uses.

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

East	Fifty-eight (58) strata industrial and warehouse units for the purpose of industrial use approved under (DA-106/2005)
West	Single storey dwelling houses, which is separated by a public road (Wendlebury Road)
South	Single storey and double storey dwellings, which is separated by a vacant lot and a public road (Alfred Road).
North	Industrial unit for the purpose of light engineering and tool making (approved under B/1185/1991)



Figure 1: Locality surrounding the Site (Source: Geocortex)

2.2 The site

The subject site is identified as Lot 17 in DP 261574 and is known as 24 Wendlebury Road, Chipping Norton. It is irregular in shape with a frontage of approximately 78 metres to Wendlebury Road and a depth of approximately 88 metres along the northern boundary, with a total area of 4160sqm.

Currently, the subject site contains an industrial unit, flush wall business identification and turf within the front setbacks. No trees are currently on site. In addition, the site provides two driveway access points along Wendlebury Road.



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

2.3 Restrictions on Title

The subject site consist of four (4) easements on site as follows:

1. Easement for underground mains 1 wide
2. Easement for Electricity purposes 2.75 wide
3. Easement to drain water of 2.5 wide
4. A restriction as to user

Terms of easement for underground main 1 wide Firstly referred to in above-mentioned Plan:

An easement for the transmission of electricity with full and free right leave liberty and licence for the Council and its successors to erect construct place repair renew maintain use and remove underground electricity transmission mains wires cables and ancillary works for the transmission of electricity and for purposes incidental thereto under and along the servient tenement AND to cause or permit electricity to flow or be transmitted through and along the said transmission mains wires and cables and for the purposes of the erection construction and placement of the electricity transmission mains wires cables and ancillary works to enter into and upon the servient tenement or any part thereof at all reasonable times with surveyors, workmen, vehicles, materials, machinery or implements or with any other necessary things or persons and to place and leave thereon or remove therefrom all necessary materials, machinery, implements and things AND the Registered Proprietor for the time being of the land hereby burdened shall not erect or permit to be erected any building or other erection of any kind or description on over or under the servient tenement or alter the surface level thereof or carry out any form of construction affecting the surface, undersurface or subsoil thereof without the Council's permission in writing being first had and obtained PROVIDED that anything permitted by the Council under the forgoing covenant shall be executed in all respects in accordance with the reasonable requirements of the Council.

Terms of easement for Electricity purposes 2.75 wide Secondly referred to in abovementioned Plan:

An easement for the transmission of electricity and for that purpose to install all necessary equipment (including transformers and underground transmission mains, wires and cables) together with the right to come and go for the purpose of inspecting, maintaining, repairing, replacing and/or removing such equipment and every person authorised by The Prospect County Council to enter into and upon the servient tenement or any part thereof at all reasonable times and to remain there for any reasonable time with surveyors, workmen, vehicles, things or persons and to bring and place and leave thereon or remove therefrom all necessary materials, machinery, implements and things provided the The Prospect County Council and the persons authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore the surface as nearly as practicable to its original condition.

Terms of restriction as to user Fourthly referred to in abovementioned Plan:

No fence shall be erected on any lot to divide it from any other lot without the consent of the said Colin C. Needs Pty. Limited, its successors and assigns but such consent shall be deemed to have been given if such fence is erected without expense to the said Colin C. Needs Pty. Limited, its successors and assigns.

Name of person empowered to release vary or modify restriction Firstly referred to in abovementioned Plan:

The Prospect County Council

Name of person empowered to release vary or modify restriction Secondly referred to in abovementioned Plan:

The Prospect County Council

Name of person empowered to release vary or modify easement Thirdly referred to in abovementioned Plan:

The Council of the City of Liverpool without the consent of any other person or persons PROVIDED THAT any such release variation or modification which may be given shall be made and done at the costs and expense of the person or persons requesting such release variation or modification.

Name of person empowered to release vary or modify restriction Fourthly referred to in abovementioned Plan:

The person or persons having the right to release vary or modify this restriction is Colin C. Needs Pty. Limited or such other person or persons Company or Companies so nominated by it under its Common Seal for that purpose and if Colin C. Needs Pty. Limited shall no longer be in existence or shall not be the Registered Proprietor of any of the land comprised in the plan of subdivision and there shall no such person or persons Company or Companies so nominated the persons for the time being registered as the Proprietor of the land having common boundaries with the lot burdened.

Figure 3: Extract of 88B restrictions associated with the site

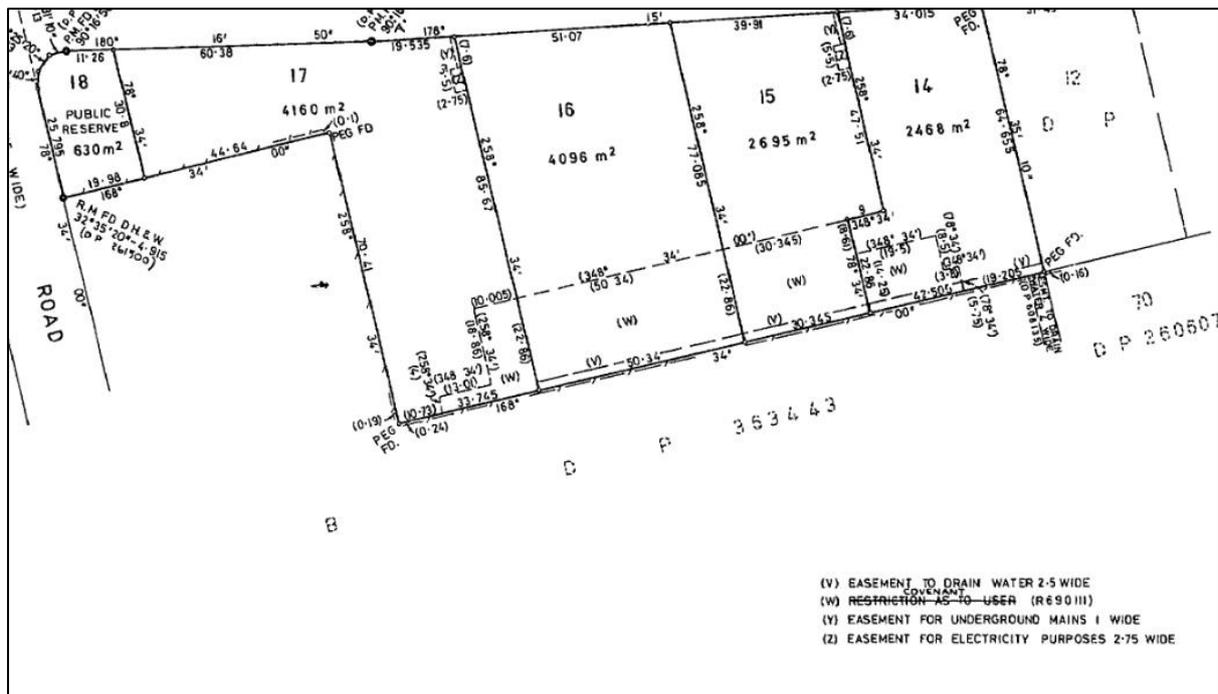


Figure 4: Extract of Deposited Plan of the site

3. BACKGROUND/HISTORY

i. History of Site

Application no.	Lodged	Proposed Development	Determination
No. 273/82	-	The erection of a commercial sporting complex containing squash and tennis court	16 June 1982
No. 335/84	-	Erection of a factory unit building	12 November 1984
No. 335/84 (Modification application)	-	Modify conditions 1, 3, 5 of Council's Notice of 12 November 1984.	13 September 1985
No. 211/90	26 April 1990	Erection of a factory and warehouse for furniture and furnishings	5 July 1990
No. 1277/90 (Building Permit) & No. 549/92 (Building Certificate)	16 June 1992	-	19 June 1992
TP-458/2009	11 June 2009	Removal of one tree	15 June 2009
DM/211/1990/A	06 December 2021	Modification to Development Consent No.211/1990 under Section 4.55(1A) of the Environmental and Assessment Act 1979, to amend condition 16 to extend the hours of operation.	Subject application

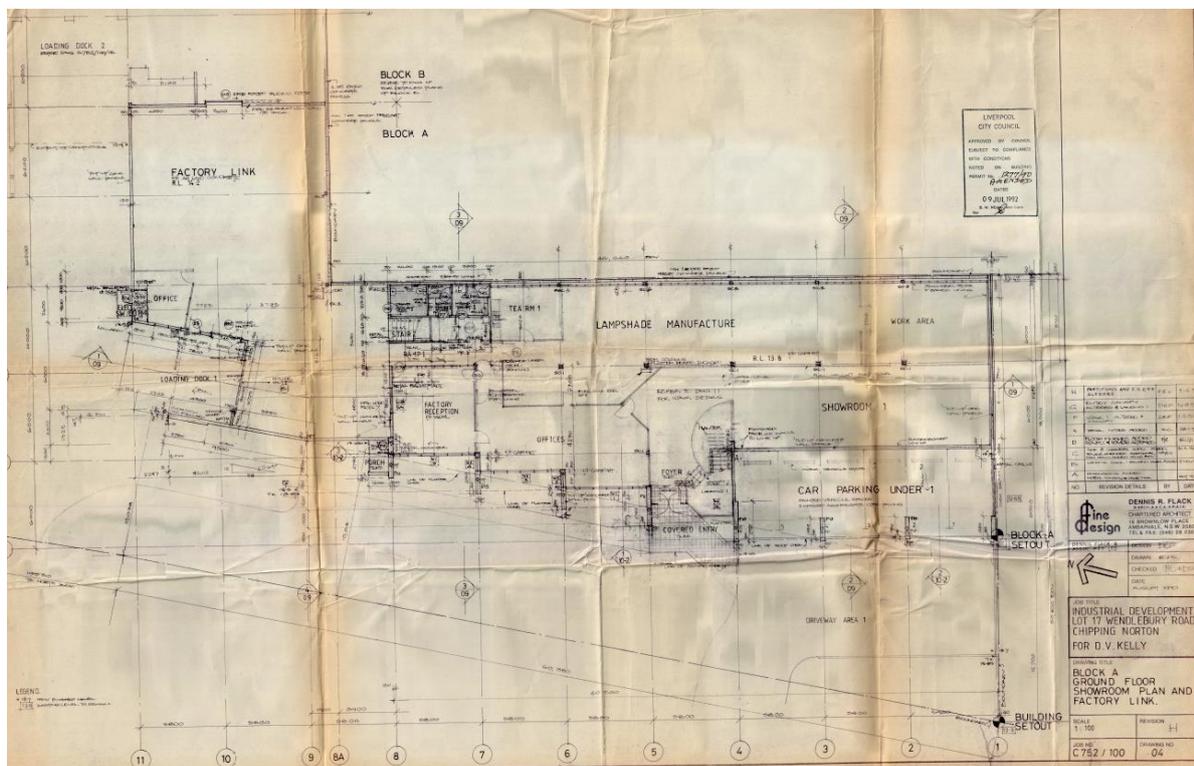


Figure 5: Extract of the approved ground floor showroom plan and factory link under no. 211/1990

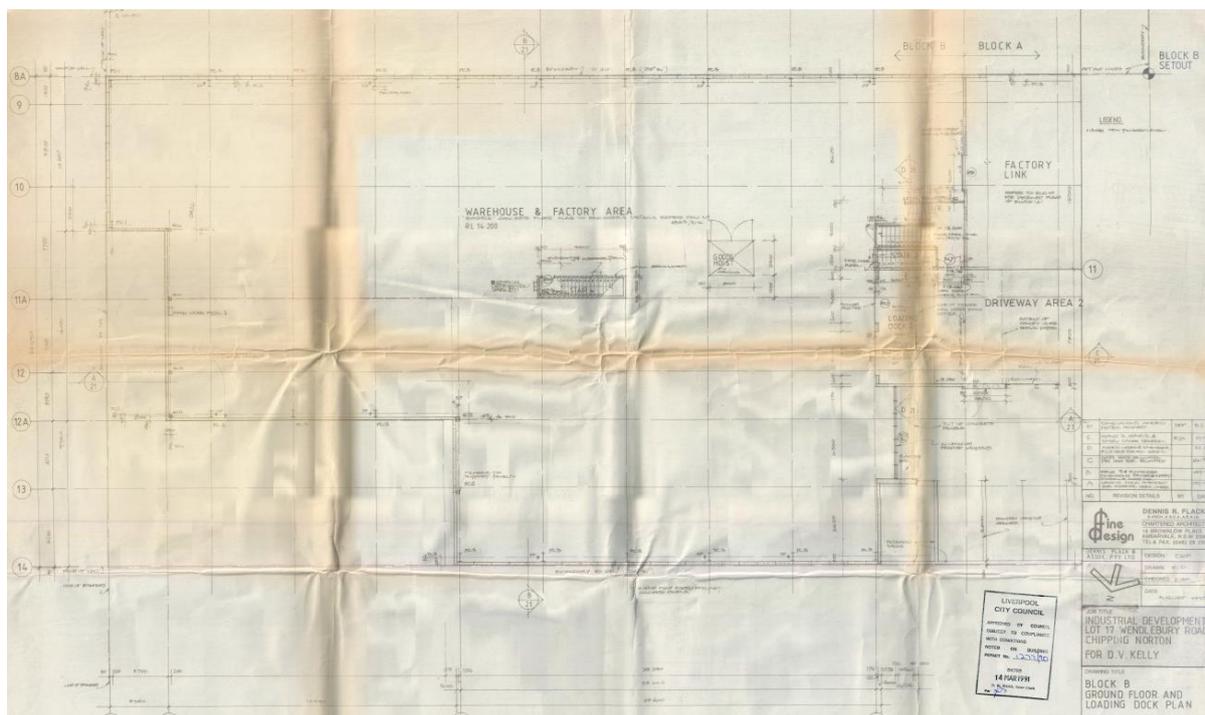


Figure 6: Extract of the approved block B ground floor and loading dock plan under no. 211/1990 (northern portion)

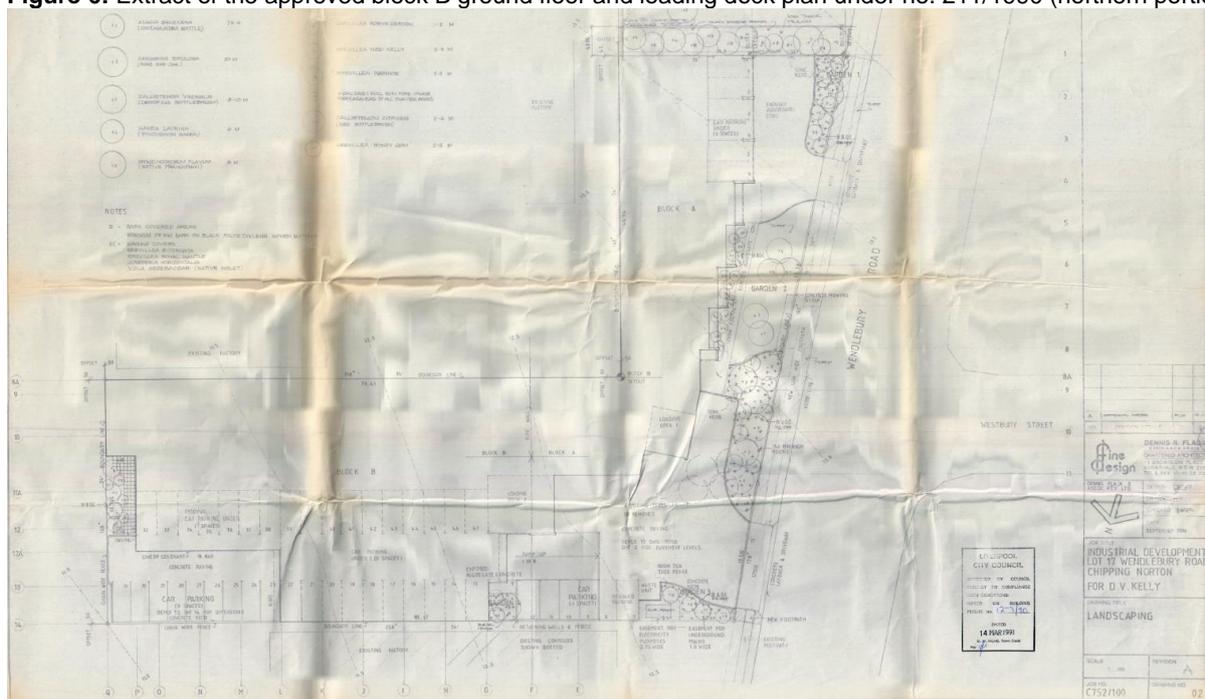


Figure 7: Extract of the approved landscaping plan under no.211/1990

ii. Development Application History

Date	Action
06 December 2021	Application was lodged to Council
06 June 2022	The adjoining sites were notified for 14 days of the proposed development
28 June 2022	The proposed development was re-notified for 14 days. Given that there was a change in assessing officer, a re-notification was issue to the public to ensure the public was provided with the contact

	details of the assessing officer.
04 July 2022	All submissions were acknowledged
19 August 2022	<p>Additional 14 Days letter sent to applicant requesting the following:</p> <ol style="list-style-type: none"> 1. A search of Council's records reveals the current use to be operating without approval. Please provide evidence that the current use has planning approval. 2. A Statement of Environmental Effects (SEE) must be provided and addresses s4.55 of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act 1979). The applicant must demonstrate how the proposed development is substantially the same development to the development originally determined. Please see attachment 1 of the original consent of development application no. 211/1990. <p><i>Please note: In the event the application does meet the requirements of a s4.55 under the EP&A Act 1979, please provide the following.</i></p> <ol style="list-style-type: none"> 3. The SEE must demonstrate how the current use is permitted within the zone. Also, the SEE must include a compliance table identifying all relevant clauses of the Liverpool Local Environmental Plan (LEP) and Liverpool Development Control Plan Part 1 and Part 7. 4. Council acknowledges the Acoustic report provided. However, due to the location of the site and the amount of submissions received, the extension of hours is not supported. As per Liverpool's Development Control Plan Part 7, Section 9, Councils requires the hours of operation be limited to the following: <ul style="list-style-type: none"> • 7am to 6pm Monday to Friday; • 7am to 12pm on Saturday; and • No operation on Sunday 5. In addition, the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types, staff numbers, carparking arrangements, and hours of operation). 6. It appears that the concrete driveway to the south-western boundary has been extended. Please provide evidence that this portion of the driveway has planning approval and building approval. Please see extract below:

	 <p>7. A full set of architectural plans that show the existing development on site. This must include a site plan and floor plan of the development, drawn to a scale of either 1:100 or 1:200.</p> <p><u>Submissions:</u> Twenty (20) Submissions have been received by Council, raising objections to the proposed development. It is requested that the applicant addresses the matters raised in any submission for Council's consideration. To view the submissions in full, this can be accessed via Council's GIPA request system.</p>
12 October 2022	Follow up of Additional 14 Days letter was issued to the applicant
17 October 2022	Applicant had engaged a Solicitor and requested an extension of 6 weeks to respond
20 October 2022	Extension was granted until the 10 of November 2022 to respond to Council's letter.
14 November 2022	Responded to Council, however, requested additional 2 weeks to respond to the objections the applicant could not access all the GIPA information.
16 November 2022	Granted extension till the 11 of November 2022, due to issues with the GIPA request.
07 December, 08 December, and 13 December of 2022	<p>Solicitor (acting on behalf of applicant) stated the following via correspondence:</p> <ul style="list-style-type: none"> Requested to remove all restrictions surrounding hours of operation as the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 2.46C applies. The site is permitted to operation for 24 hours in industrial areas.
08 December, 13 December, and 15 December of 2022	<p>Council responded to the Solicitor the following points via correspondence:</p> <ul style="list-style-type: none"> Advised that the applicant is to demonstrate to Council whether Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008 applies. Based on the current information, 2.64C of the SEPP does not apply as only an Acoustic report was provided. Advised an amended Statement of Environmental Effects outlining how the development satisfied Clause 2.46C of the

	SEPP is required to be provided.
26 May 2023	A Site Inspection was conducted

No response has been received by the Applicant. As per the abovementioned timeline, it is considered that ample time has been granted to the applicant in order to address and resolve the matters raised by Council as a result of its assessment. As an insufficient response to these matters has been provided by the applicant, the Modification Application is not in a position to be supported. As such, the application is recommended for refusal.

4. DETAILS OF THE PROPOSAL

The modification seeks approval to amend condition 16 of Development Consent No. 211/1990 to extend the hours of operation, as follows:

- Monday to Friday: 6am to 11pm
- Saturday: 6am to 4pm

The existing hours as per condition 16, under Development Application no. 211/1990 are as follows:

- Monday to Friday: 7:30am to 5:30pm
- No operations on public Holidays

A Site Inspection was conducted on 25 May 2023 and it revealed that the existing warehouse is being utilised to manufacture candy producing equipment, including complete production lines for gummies and jellies (confectionery goods). The following images are from the site inspection which was carried out.



Figure 8: Site Inspection photos of the streetscape and secondary frontage



Figure 9: Site Inspection photos of the loading docks



Figure 10: Site Inspection photos of the basement parking and rear of the site

In addition, an erected sign provided the current operation hours of the development, which are:

- Monday – Thursday: 6am – 4pm
- Friday: 6am – 12pm



Figure 11: Site Inspection photos of the signage

5. PLANNING ASSESSMENT

The modification development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*, as follows:

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

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

Comment: The industrial development proposes to extend the hours of operation to be from 6am to 11pm on Monday to Friday, and 6am to 4pm on Saturday. Given that the industrial site is located adjacent to residential dwellings, it is considered that the proposed extension of hours would significantly impact the locality and intensify the environmental impacts of the development.

The proposed extension of hours would lead to an increased duration of industrial activities, resulting in prolonged noise and traffic concerns outside of what was previously assessed. Considering the number of submissions received (20) from the surrounding residents, it is evident that the proposed extension of hours is likely to impact on the amenity of the locality.

In addition, a search of Council's records has been conducted and demonstrated a number of complaints have been filed against the operations of the current industrial use, since 2021 and for the previous tenant dated from 2013. Despite the industrial development generally operating within the existing operations hours of 7:30am to 5:30pm on weekdays, several complaints have been made to Council, due to the excessive noise levels. As such, the extensions of operational hours would likely result in unreasonable noise levels and adverse impacts in the locality.

It is acknowledged that the proposal was accompanied by an Acoustic Report and was reviewed by Council's Environmental Health, who raised no objections to the proposal. In spite of this, due to the location of the site, the amount of submissions received and historical complaints regarding the noise, the extension of hours cannot be supported. As such, Council's Planner is not satisfied that the proposed modification would have a minimal environmental impact within the site and the greater locality.

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

Comment: The original consent No. 211/1990 was granted for the erection of a factory and warehouse for furniture and furnishings. Based on a site inspection conducted, it appears that the current use of the factory and warehouse has changed to produce confectionery goods and confectionery equipment.

Council had issued a request for additional information letter, dated 12 October 2022, requesting a statement of environmental effected to address Section 4.55 of the EP&A Act 1979, demonstrating that the proposed development is substantially the same development to the development originally determined. In addition, a set of architectural plans showing the

layout of the current use was requested to ensure no changes were made to the footprint and structure of the warehouse, under the approved consent no. 211/1990.

However, the requested information was not provided to Council. As such, due to the lack of information being provided for this modification, it cannot be ascertained if the development is considered to be substantially the same development for which the consent was originally granted.

Based on the assessment, the current industrial use of the factory and warehouse is operating without approval. As such, the proposed modification application is not considered to meet the requirements under Section 4.55 of the EP&A Act as the development is not substantially the same development as what was originally granted consent under Development Consent No. 211/1990.

(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 development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal. Please see the discussion below in Section 6, addressing the submissions received.

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

Comment: All submissions received have been acknowledged and considered throughout the assessment stages of the proposed modification.

(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 of the development, the subject of the application.

Comment: Relevant matters of Section 4.15(1) have been taken into consideration, as detailed below.

6. STATUTORY CONSIDERATIONS

These considerations are as follows:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- Liverpool Local Environmental Planning Policy 2008
 - Liverpool Development Control Plans 2008

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 (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 has not properly addressed the provisions of this SEPP and therefore, insufficient information has been submitted which can ensure that the proposed modification would be acceptable.

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

The subject land is located within the Georges River Catchment and as such Chapter 11 – Georges River Catchment of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, formerly the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River, applies to the application. Insufficient information has been submitted to ensure the proposed modifications would be compliant with the general planning considerations and specific planning policies and recommended strategies within Clauses 11.6 and 11.7 of this SEPP.

(c) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The SEPP (Exempt and Complying Development Codes) 2008 applies to all land in the state, in particular clause 2.46C. Please see the following:

2.46C Specified development

- (1) *The operation of premises in Zone E1, E2, E3, E4, E5, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3, IN4, SP5 or W4 in accordance with an existing development consent or complying development certificate at any time outside the hours permitted by the development consent or complying development certificate is development specified for this code.*
- (2) *The trading on or from premises in accordance with an existing development consent or complying development certificate at the following times occurring outside the hours permitted by the development consent or complying development certificate is development specified for this code—*
 - (a) *in Zone E1, E2, E3, B1, B2, B3, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4—6am–10pm,*
 - (b) *in Zone MU1 or B4—6am–7pm,*
 - (c) *in Zone E4, E5, IN1, IN2 or IN3 for relevant premises—*
 - (i) *until the end of 31 January 2024—24 hours a day,*
 - (ii) *from the beginning of 1 February 2024—6am–7pm,*
 - (d) *in Zones Zone E4, E5, IN1, IN2 or IN3 for all other premises—24 hours a day.*
- (3) *In this clause—*

relevant premises *means boat building and repair facilities and vehicle body repair workshops that are located within 100m of a residential zone.*

Comment: Typically, exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 would not require planning approval

from Council, nor be considered as part of the Development Application process. However, for the purposes of the modification, Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008 has been considered as discussions with the applicant have been held in reference to this SEPP.

The applicant had requested to remove all restrictions surrounding hours of operation as clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008, applies to development located on E4 – General Industrial zones. Further, the applicant stated that the proposed development can operate for 24 hours, as per clause 2.46C(2)(c)(i).

For the development to operate in accordance with the SEPP (Exempt and Comply Development Codes) 2008, the proposal must meet all development standards under Clause 2.46C to be considered exempt.

Council requested a Statement of Environmental Effects outlining how the development satisfies all requirements under Clause 2.46C of the SEPP. However, no response was provided from the applicant. As such, based on the available information provided to Council it appears that the proposal does not meet all development standards outlined under Clause 2.46C of the SEPP. In addition, no development consent has been obtained for the current use. Subsequently, Clause 2.46C of the SEPP does not apply to the proposal.

(d) Liverpool Local Environmental Plan 2008

The modification of the application has been considered and will remain in compliance with the LLEP 2008.

(i) Zoning

The subject site is zoned E4 General Industrial (formerly known as IN2 Light Industrial) under the Liverpool Local Environmental Plan 2008.

Land uses permissible under the IN2 zone would still be permissible if not still permissible in the E4 zone until 26 April 2025 and any new permissible uses under the E4 zone would now be permissible for this site.

An extract of the zoning map is provided below:

The approved factory and warehouse would be used for the purposes of furniture and furnishings under consent No. 211/1990. This is best described as a general industry with a different type of industrial activity.

A search of Council's records suggests that the change in use (Tanis Confectionary) has occurred since 2021. In addition, the applicant had stated that no planning approval has been granted for the current use. As such, the current use is not substantially the same development as what consent has been originally granted for.

(iii) Objectives of the zone

The objectives of the E4 – General Industrial zone are as follows:

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- *To allow other land uses that are compatible with industry and that can buffer heavy industrial zones while not detracting from centres of activity.*

The proposed development is not considered to meet the objectives of the zone as insufficient information has been provided surrounding the current use and the likelihood that adverse impacts may occur on other land uses. Therefore, the application is considered to not be consistent with the character of the zone.

(iv) Principal Development Standards

The proposed modification has been assessed against LLEP 2008 and the modification based on the submitted information is unlikely to alter consistency with the principal development standards which apply to the site considering the proposal is only for an extension in the hours of operation.

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

Development Application No. 211/1990 was granted approval prior to the Liverpool Development Control Plan 2008 was implemented. However, the proposed modification generates the following considerations under Part 1 and Part 7 of the LDCP 2008.

Liverpool Development Control Plan 2008 – Part 1 General Controls for all Developments		
Provision	Requirement	Comment
Section 25 – Waste Disposal and Re-Use Facilities	A Waste Management Plan (WMP) shall be submitted with a Development Application for any relevant activities generating waste. The WMP is provided in three sections: <ul style="list-style-type: none"> - Demolition - Construction; and On-going waste management 	Insufficient information No waste management plan was submitted for the ongoing use of the current use.

Part 7 – Development in Industrial Zones		
Provision	Requirement	Comment
Section 9. Amenity and Environmental Impact	<u>External Industrial Activities</u> 1. External processes in an industrial area and storage of materials will not be permitted along a Classified Road frontage or a road frontage opposite a residential area.	Insufficient information An RFI (dated 12 October 2022) was sent to the applicant and requested additional information such as the operation details of the premises must be provided in the SEE. This includes, but not limited to activities carried out in the premise, machinery numbers and types. The applicant did not provide the additional information and therefore Council is unable to determine the noise impacts the machinery have upon the surrounding residential premises.
	2. Storage and processing of motor vehicles, concrete, soil, glass and other similar components or materials shall be totally screened by fencing and dense landscaping (refer to Landscaping and Fencing and Section 4 Landscaping and Existing Trees in Part 1).	
	3. The maximum height of a stockpile for the recycling of motor vehicles, concrete, soil, glass and other similar components or materials shall be 6m.	
	<u>Noise</u> In order to comply with the Protection of the Environment Operations Act 2008 it may be necessary to construct external works. Mounding, planting and/or noise barriers may be permitted to reduce the impact of noise levels, provided that this does not compromise any other provision in the DCP. The following illustration gives examples of satisfactory treatments.	Does not comply Condition 5 of consent no. 211/1990 requires a high standard of landscaping to be implemented within the 5m setback of the site. A historical aerial search and a site inspection revealed that the site has been cleared of all vegetation. It is noted that a tree removal application was lodged to Council for the removal of one tree within the front setbacks. However, the site has been cleared of all vegetation.

		Based on the 20 objections received during the notification period and the number of complaints associated with the site, no noise mitigation or barrier mechanisms have been implemented to mitigate the noise levels impacting the adjoining sites.
	<p><u>Hours of operation</u> Development which would have an adverse impact on adjoining or nearby residential areas will be limited to 7 am to 6 pm Monday to Friday and 7 am to 12 pm on Saturday and no work to be undertaken on Sundays.</p>	<p>Does not comply Council acknowledges the Acoustic report provided. In addition, the application has been reviewed by Council's Environmental Health Section and raised no objections, subject to consent.</p> <p>However, due to the location of the site and the amount of submissions received, the extension of hours of the following is not supported.</p> <ul style="list-style-type: none"> • Monday to Friday: 6am to 11pm • Saturday: 6am to 4pm

Overall, the proposal does not comply with the key controls outlined in the LDCP 2008 as insufficient information has been provided to Council.

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 BCA and the Safety standards for demolition (AS 2601 – 2001). No changes are proposed to the existing development in this regard.

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

a. Built Environment

No changes to the existing development are proposed under the modification application to the trading hours of the site. However, it is noted that although the modifications are for changes to hours of operation, the use it is associated with does not have development consent. As such insufficient information has been provided to Council to conduct a full and proper assessment of the application to fully determine if the proposal will have impacts on the built environment.

b. Natural Environment

Insufficient information has been provided to Council to carry out a full and proper assessment of the potential impacts on the natural environment. Therefore, Council cannot determine the potential impacts to the natural environment of the current unapproved use.

c. Social Impacts

The proposed extension of hours is considered to present significant concerns due to the non-compliances with the relevant development controls as detailed in this report. In addition, 20 submissions were received during the notification period objecting to the proposed extension of hours. It is considered that this will interfere with the amenity of the nearby residential zoned areas, resulting in an unacceptable social impact.

d. Economic Impacts

The proposal is unlikely to generate negative economic impacts.

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

Although the site is zoned and is suitable for industrial uses, the proposed extension of hours associated with the use is considered to not be suitable for a use of this nature. As a result, the site is not deemed to be suitable for the modified 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
Building and Development Compliance Community Standards	<p>The application was referred to Council's Building Section and provided the following comments:</p> <p><i>The Building and Compliance team has received a significant number of complaints over a long period of time regarding the current operations at the premises. The investigation revealed that the premises has very specific time constraints which the current occupier was not complying with.</i></p> <p><i>The specific conditions included hours of operation and also the roller doors. It is my understanding that the conditions relating to the roller doors do not form part of this amendment application.</i></p> <p><i>Many of the complaints relate to vehicle and people movements prior to the operating hours (from 5am onwards). Given the site constraints and the location of the building in relation to adjoining residential houses, the amendment is not supported.</i></p> <p><i>If the application is recommended for approval then very specific conditions will need to be placed in the application, including arrival times for workers, cleaners etc..</i></p>
Environmental Health Officer	Approval subject to conditions of consent.

(b) External Referrals

Nil

(c) Community Consultation

The development application was notified for a period of 14 days from 28 June 2022 to 13 July 2022 in accordance with the Community Engagement Strategy and Community Participation Plan 2022. Twenty (20) submissions were received, consisting of sixteen (16) unique submissions in response to the public consultation period objecting to the proposal.

The following comments are provided in respect to the concerns raised by surrounding residents:

ISSUE 1: Breach of conditions

CCTV footage showing ongoing breaches of the approved consent and disregard of amenity in locality by the currently tenants.

Comment: It is noted that CCTV footage has been provided to Council, however, the footage provided has been excluded from the assessment due to privacy concerns.

As assessment has been undertaken and reveals that the current operation of the premises is not substantially the same as originally approved. No approval has been granted to the current use, which has been operating unlawfully. In addition, it has been confirmed by the applicant that no approval has been granted for the current use.

It should be noted that conditions under consent no. 211/1990 cannot be enforced by Council's Building and Compliance Section to a use that is unlawful. As such, a new development application for the change of use of the premises must be submitted.

Furthermore, Council's Building and Compliance Section will be notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

ISSUE 2: Noise impacts

Tenants historically operated outside of the proposed hours of 7:30am to 5:30pm. The proposed extension of hours to the existing hours would exacerbate the noise levels that currently affect the residences. The acoustic report is not a true representation of the business at full operation.

Comment: Council has requested additional information relating to the operation of the premises such as types of machinery and numbers of machinery at the site. The applicant did not address this and therefore Insufficient information has been submitted with the application to establish all potential impacts to the locality and within the premises.

Given that the site is located adjacent to residential zoned areas, the proposed extension of hours is considered to not be appropriate with the surrounding residential topology.

ISSUE 3: Roller doors left open

The rollers door remains open at all times, as such, machinery noises and associated works can be heard from the residential areas.

Comment: Council's Building and Compliance Section has been notified to further investigate the unauthorised use at the premises. As such, the relevant procedures will be undertaken to address the unlawful activity.

ISSUE 4: On street parking availability and safety

The proposed extension to operation hours would increase the traffic movements and provide limited to no on-street parking for the residents which is predominately used by staff. Cars parked in close proximity to intersections and driveways reducing visibility.

Comment: Council has requested additional information relating to the operation of the premises. Insufficient information has been submitted with the application for Council to establish all potential impacts relating to on street parking and safety.

Given that the premises has been operating unlawfully, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

If any disregard for traffic laws is carried out, residents should contact Council or NSW Police.

ISSUE 5: Traffic generation and safety

Traffic flow increased and the intersections of Wendlebury Road and Westbury Street are impacted by heavy truck movement and car movement. This has increased the pollution, noise levels and safety of the residences.

Comment: Council has requested additional information relating to the operation of the premises. Insufficient information has been submitted with the application for Council to establish all potential impacts relating to traffic movement, pollution and safety.

It is noted that the applicant has provided an Acoustic report which has been reviewed by Council's Environmental Health Officer and raised no objections, subject to conditions.

However, given that the current operation of the premises is not substantially the same as originally approved. No approval can be granted under a Section 4.55 Modification Application. As such, a new development application is required to be submitted and must be accompanied with all relevant documentation for Council to establish all the potential impacts associated with the development.

ISSUE 6: Presentation to the street.

Littering and rubbish have been left by the Tanis staff and local residents have had to clean up after their mess.

Comment: Council's Compliance Team have dealt with numerous complaints in the past and any future complaints will be dealt with by this Section.

ISSUE 7: Devalue of the residential properties.

The impacts from the use devalues the local residential real estate.

Comment: In respect to depreciation of property value, there is no evidence to suggest that the proposed development will result in the depreciation of the value of any neighbouring properties.

ISSUE 8: Unauthorised changes to the premises

Considerable alterations have been made to the existing layout and landscaping.

Comment: Council has requested additional information including architectural plans of the site. However, no information has been provided for Council to establish whether alterations to the development have been undertaken.

A site inspection has been conducted, dated 26 May 2023, which revealed that the site has been cleared of all vegetation. As such, Council's Building and Compliance Section has been notified of the unauthorised use and landscape clearing and relevant procedures will be undertaken to address the unlawful activity.

ISSUE 9: Location of machinery and storage areas

Car parking spaces have been utilised by machinery and storage areas, which have limited the on-street parking availability.

Comment: Council has requested additional information including architectural plans of the site. However, no information has been provided for Council to establish whether the approved car parking spaces under consent no. 211/1990 are being utilised for machinery and storage areas.

ISSUE 10: Privacy and amenities

The increase in operation hours would impact the residents' privacy and wellbeing from Tanis Staff leaving early and late from the premises.

Comment: The proposal to extend the hours of operation is unable to be supported as the current use is not substantially the same development as originally granted. It should be noted that hours of operation under consent no. 211/1990 cannot be enforced to a use that is unlawful. As such, a new development application for the use of the site must be lodged to Council.

Furthermore, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

ISSUE 11: Site inspection

A visit to the site to get a better understanding of the properties that could be affected by the proposal.

Comment: A site inspection was conducted dated 26 May 2023 looking at the site and locality. Insufficient information was provided for Council to establish the potential impacts to the locality and within the premises.

Given that the premises has been operating unlawfully, Council's Building and Compliance Section has been notified of the unauthorised use and relevant procedures will be undertaken to address the unlawful activity.

ISSUE 13: Inconsistencies of Council's position

24-hour trading by Tanis contradicts Council's position. Council should issue a development control order to Tanis and do all things necessary or convenient to give affect to the terms of the order.

Comment: For a development to operate in accordance with the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the proposed development must meet all development standards under the provisions of Clause 2.46C to be considered exempt.

Council had requested the applicant to outline how the development satisfies all requirements under Clause 2.46C of the SEPP (Exempt and Complying Development Codes) 2008. However, no response was provided from the applicant.

Based on the information available, it appears that the proposal does not meet all development standards outlined under this provision.

In addition, an assessment has been undertaken and reveals that the current operation of the premises is not substantially the same as originally approved. No approval has been granted to the current use, which has been operating unlawfully. In addition, it has been confirmed by the applicant that no approval has been granted for the current use.

It should be noted that conditions under consent no. 211/1990 cannot be enforced to a use that is unlawful. As such, a new development application for the change of use of the premises must be submitted.

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

This modification is not considered to be within the public interest as the modification application is not considered to be substantially the same development as what was originally approved and is not of minimal environmental impact.

7. DEVELOPMENT CONTRIBUTIONS

Not applicable

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.

9. RECOMMENDATION

That Development Application DA No. 211/1990/A be **refused**.

ATTACHMENTS

1. Response to Council's Request for Information
2. Reasons for Refusal

**REQUEST FOR ADDITIONAL INFORMATION
LOT 17, DP 261574
24 WENDLEBURY ROAD CHIPPING NORTON
MODIFICATION TO DEVELOPMENT CONSENT DA-211/1990**

SUBMISSIONS IN REPLY

1. On 20 October 2022 the writer spoke to council staff member Eunice Pedrosa discussing the contents of the letter requesting for additional information dated 12 October 2022.
2. The writer sought further time to respond to the request for additional information given the short time limit provided to respond. The writer was advised copies of the submissions received in reply to the development application could only be provided through a GIPA request.
3. On the same day, 20 October 2022 four (4) GIPA requests were made seeking various documents, including copies of the submissions and information required to be able to respond to the request for additional information. As of the date of these submissions, no information has been received despite the writer chasing council for same.
4. On 8 November 2022, the writer wrote to Eunice Pedrosa seeking an extension of time to respond to the request for additional information. No reply was received.
5. The applicant finds itself in an impossible position, where it is requested to respond to submissions in reply to the development application without having the benefit of seeing those submissions. Additionally, required documents held with council have not been released that would allow the applicant to

respond to the various objections and points listed under the heading *Submissions* in that letter dated 12 October 2022.

6. As a matter of procedural fairness, the applicant ought to be given the opportunity to peruse the submissions in response to the development application. An extension of time is pressed to allow the applicant to receive the documents sought so that it may consider same and respond accordingly.
7. In reply and adopting same numbering, it is respectfully submitted as follows. It is noted these submissions are limited to what the applicant has before it, without having the benefit of seeing the submissions in reply nor documents held with council.
 1. Whilst there is no final approval in place, the applicant is currently operating under a temporary approval pending an outcome of the current development application.
 4. The Acoustic Report submitted to council dated 24 November 2021 is a comprehensive report factoring in many conditions of the applicant's operations both during night and day. The report writer concludes:

Renzo Tonin & Associates has completed an assessment of a proposed extension of hours, and operational noise for the proposed light industrial development at 24 Wendlebury Road, Chipping Norton during those periods. The main aspects with regard to acoustics relate to vehicle movement and parking, and noise breakout from the manufacturing floor.

The proposed use has been assessed against all relevant noise criteria with project specific noise goals established from long-term noise monitoring at the nearest most potentially affected receiver locations. With the adoption of the assumed parameters and the implementation of the recommendations described in the report, the noise predictions

show that the design can comply with the established noise goals during the proposed extended hours of operation

Further, the report writer makes well considered recommendations to further mitigate any potential issues with neighbours, namely:

The following recommendations are made to ensure noise from the site within the extended hours of operation are controlled to comply with the nominated acoustic criteria.

- i. The roller shutters to the premises are to be kept closed during the operation of the site within the extended hours period.*
- ii. Deliveries (either drop offs or pick ups) are not to occur during the extended operation periods.*
- iii. Staff are to be instructed to arrive at and leave the premises quietly during the extended operation period, giving due consideration to the neighbouring residences.*

Council has open to it the option of consenting to the development application with imposed conditions as recommended by the report writer. The findings as contained in the acoustic report are clear in confirming that the applicant's operations as running currently meet and exceed council noise level expectations. The further recommendations made in the acoustic report go even beyond this to absolutely ensure no noise is emitted that would disrupt the peaceful enjoyment neighbouring residents expect.

Without limiting the hours proposed and sought in the development application, if council is absolutely against the proposal, then as a last resort the hours of operation as set out in the DCP are sought, namely:

- 7am to 6pm Monday to Friday
- 7am to 12pm on Saturday, and

- No operations on Sunday.
6. The concrete driveway has not been extended by the applicant. The applicant has no knowledge of this matter. As submitted previously, the applicant has not had the benefit of seeing the information in reply to the GIPA request.
 7. This is being worked on and the applicant needs more time to provide this.

In reply to the Submissions purportedly received but not viewed by the applicant:

1. This submission is not true. Tanis is operating under a temporary approval with no impact on any neighbouring properties.
2. There is no evidence whatsoever to support such a claim that neighbouring streets have become public parking. The applicant has onsite parking and that is being utilised by employees. It is noted the surrounding properties are all business of similar size and employees. It appears the applicant is being specifically targeted.

Any claim that the applicant's employees are littering is outright rejected. There is no such evidence of this. Council is welcome to inspect the applicant's premises at any time. The site and its surrounds are immaculate.

The applicant does not accept its employees are parking on corners narrowing the field of vision for motorists. If there are cars parking on corners, which has nothing to do with the applicant, and that is causing danger to road users, council ought to respectfully consider installing no stopping signage. This matter cannot be blamed on the applicant.

3. This submission is confusing in circumstances where the adjoining properties are business of similar nature that operate with extended hours. It is noted that the development approval for 22 Wendlebury Road Chipping Norton does

not have any restriction as to operating hours. More information has been sought in the GIPA requests. There is no evidence supporting a submission that extended hours would affect traffic movement. The applicant is not in the business of transportation, nor are the neighbouring properties. Wendlebury Road is a wide road that can comfortably accommodate all the traffic it takes at all hours. The likelihood of increased traffic during the extended hours sought is remote.

4. It is unclear what alterations are being referred to. It can only be assumed the alterations being referred to were made by occupants prior to the applicant.
5. The applicant repeats it has not had the benefit of having the information sought in the GIPA requests. It is not clear what is meant by *the cars on the streets are used as lunch rooms*. The premises has its own kitchen and staff have their lunch onsite or at food facilities in the surrounding area. The accusation that staff throw their rubbish on the footpaths is not true.
6. It is a serious matter to suggest that Wendlebury Road is now at most times a Hazard because of the applicant. This is outright rejected and impossible to comprehend. When the applicant receives deliveries, the vehicles drive straight into the premises, and then reverse to the loading dock. There is ample room and space onsite for this to happen.
7. This is made up and not true. The suggestion that the applicant has no consideration to the local residents is nothing more than an unfounded attack on the applicant. It appears this submission including others is driven not by fact or reality but rather a bizarre hatred towards the applicant. It is concerning that council has taken up and adopted these complaints into their letter. The applicant invites the maker of this submission to put forward any evidence supporting this claim.
8. Without having seen the information sought in the GIPA requests, the applicant can only assume there is no such condition. If there was then it ought to be changed. The safety and wellbeing of employees is equal to any neighbouring concerns about noise. Staff must be permitted to enjoy working

in a clean and fresh environment, with air circulating between entry/exit points. Fresh air is critical to their health, to assist in stopping the spread of undetected illness including COVID-19, and well-established safety practices. The acoustic report confirms it is impossible for neighbours to hear the suggested noise as worded in that submission. To hear drilling, welding and grinding if that was happening on site, one would have to be physically sanding within the premises.

9. Respectfully this is not true and does not occur. The applicant has no control over who parks on the street and has no knowledge as to who's cars or trucks those are if that were true.
10. Again, this submission is not true.
11. Again, and repeatedly this submission is not true.

One can quickly see the predominant complaints set out relate to parking. For unknown reasons it is assumed the applicant's employees have taken over the street with their cars. This couldn't be further from the truth. The site has ample parking and that is being utilised by employees. At times if employees park on the public road that is well within their right to do so, so long as it is done legally. The fact that the entire street has industrial sites has been overlooked, and that an assumption the applicant is to blame for parking issues is unfair and wrong. If the matter is such due to the companies operating on the road, council could very easily instal parking signs limiting parking to say 2 hours a day. Residents would be exempt from this and that would solve any suggested parking issues.

Again, it is repeated this submission is made without having had the benefit of obtaining council records and copies of the submissions made against the proposed extended hours. Those submissions made against the proposal seem either few in number, or very much repetitive copies of the same complaint. They are made unfairly attacking the applicant's proposal without any fact but rather assumptions and untruths.

The applicant invites any member of council to physically inspect the premises to see for themselves what the reality is on the floor. The applicant has no doubt that any reasonable investigation will result in an approval.

It is intended further submissions will be made once the GIPA requests are actioned.



For the Applicant
Mayaz Raihani
Solicitor

Reasons for Refusal

1. Insufficient information has been provided which can sufficiently demonstrate that the proposed modification is of minimal environmental impact and therefore the modification application is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.
2. Due to a lack of information being provided for this modification, it cannot be ascertained if the development is considered to be substantially the same development for which the consent was originally granted and therefore is inconsistent with the provisions of Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*.
3. The modification application has provided insufficient information and has not sufficiently demonstrated consistency with Clauses 11.6 and 11.7 of Chapter 11 – Georges River of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
4. The modification application has provided insufficient information and has not sufficiently demonstrated consistency with Clause 4.6 of Chapter 4 – Remediation of land of the State Environmental Planning Policy (Resilience and hazards) 2021, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
5. The proposed development is inconsistent with the objectives of the E4 – General Industrial zone described within the Liverpool Local Environmental Plan 2008. In particular, *To minimise any adverse effect of industry on other land uses.*, as the proposal is likely to unreasonably impact on the adjacent residential area, pursuant to Sections 4.55(3), 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
6. The proposed modifications do not achieve satisfactory compliance with the objectives and controls of Part 1 – General Controls for All Development, in Liverpool Development Control Plan 2008 (LDCP 2008), including Section 25 – Waste Disposal and Re-Use Facilities, pursuant to Sections 4.55(3), 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. The proposed modifications do not achieve satisfactory compliance with the controls and objectives of Part 7 – Development in Industrial Areas, in LDCP 2008, including Section 9 – Amenity and Environmental Impact, pursuant to Sections 4.55(3), 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
8. Insufficient information has been submitted to allow Council to carry out a full and proper assessment of the application. In this regard, detailed documentation has not been received in response to Council's request for additional information, pursuant to Sections 4.55(3), 4.15(1)(a)(iv), 4.15(1)(b), 4.15(1)(c) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.
9. Insufficient information has been provided to demonstrate that the proposed modification would not have an adverse impact on the built environment and natural environment and would not have adverse social impacts, pursuant to Sections 4.55(3), 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

10. Insufficient information has been provided to demonstrate that the site would be suitable for the proposed modifications to the development, pursuant to Sections 4.55(3) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
11. The proposed modification application is not considered to be acceptable having regard to the concerns raised during the notification period of the proposal, pursuant to the provisions of Section 4.55(1A), 4.55(3) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.
12. Due to the above reasons, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest, pursuant to the provisions of Section 4.55 and 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

ADVICE

The following matters are included as advice relative to this application:

- (i) *If you are dissatisfied with this notice of determination or the conditions contained within this notice of determination, Section 8.2, 8.3, 8.4 & 8.5 of the Environmental Planning and Assessment Act 1979 gives you the right to request a review of the determination within 6 months after the date of this determination.*
- (ii) *If you are dissatisfied with this decision, Section 8.7 & 8.10 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.*

Item Number:	2
Application Number:	DA-182/2021
Proposed Development:	<p>Torrens Title subdivision into two Super-Lots (Lots 201 & 202) of the current Lot 231 Changsha Road, Edmondson Park including:</p> <ul style="list-style-type: none"> • Construction of the southern extension of Arnhem Road to the future intersection of Ardennes Road along the eastern boundary of proposed future Super-Lot 201; and • Construction of Ardennes Road along the southern boundary of future Super-Lots 201 and 202. <p>The application is Integrated Development requiring approval from the NSW Rural Fire Service under the Rural Fires Act 1997.</p>
Property Address	Lot 231 Changsha Road, Edmondson Park
Legal Description:	Lot 231 in DP 1287558
Applicant:	R S Canceri Pty Ltd
Land Owner:	Inzitari Holdings Pty Ltd
Cost of Works:	\$335,000
Recommendation:	Approval, subject to conditions of consent
Assessing Officer:	Robert Micallef

1. EXECUTIVE SUMMARY

Council has received a Development Application (DA-182/2021) seeking consent for the staged subdivision into two (2) super lots of a site currently consisting of 1 allotment legally known as Lot 231 in DP 1287558, and formally known Lot 231 Changsha Road, 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 and SP2 – Infrastructure (Local Road), pursuant to Liverpool Local Environmental Plan (LEP) 2008 with the proposed development being permissible with consent. The proposal is generally compliant with Council’s applicable local provisions and an acceptable form of development in that regard. The 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 93.04% over 2 lots.

The proposal was notified from 12 April – 28 April 2022 in accordance with Liverpool Community Participation Plan 2019. Notwithstanding, no submissions have been received on the application.

The key issues associated with the assessment of the subject Development Application relate to the variation to the minimum lot size development standard, and land being mapped by the NSW Rural Fire Service as bushfire prone land. As demonstrated in the report, the variation to the minimum lot size 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 30 June 2020*, 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 subject land for this application is an irregular shaped block. The property frontage is partially arced and measures 113.49m including splays along Changsha Road, 54.99m along Arnhem Road (when fully constructed), and 110.11m along Ardennes Road (when fully constructed). The site also shares a boundary to the western adjoining lot known as 136-148 Croatia Avenue of 71.87m. The site has an area of 1.028ha. The location of the site can be seen in the aerial view in the Figure below.



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

2.2 The locality

The site and its immediate locality is transitioning from rural residential to suburban/urban residential as seen in Figure 1. The proposed subdivision represents the type of development that the established planning controls have been put in place to achieve.

NORTH	Changsha Road and new residential housing adjoins the northern boundary of the site.
SOUTH	Recreational parkland adjoins to the south.
EAST	Vacant residential superlots divided by Bartle Lane to the east of the site.
WEST	Rural land yet to be redeveloped

The site is located approximately 470m east of Bernera Road/Soldiers Parade. By road, the site is approximately 1.2 kilometres from the Edmondson Park Railway Station, 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.

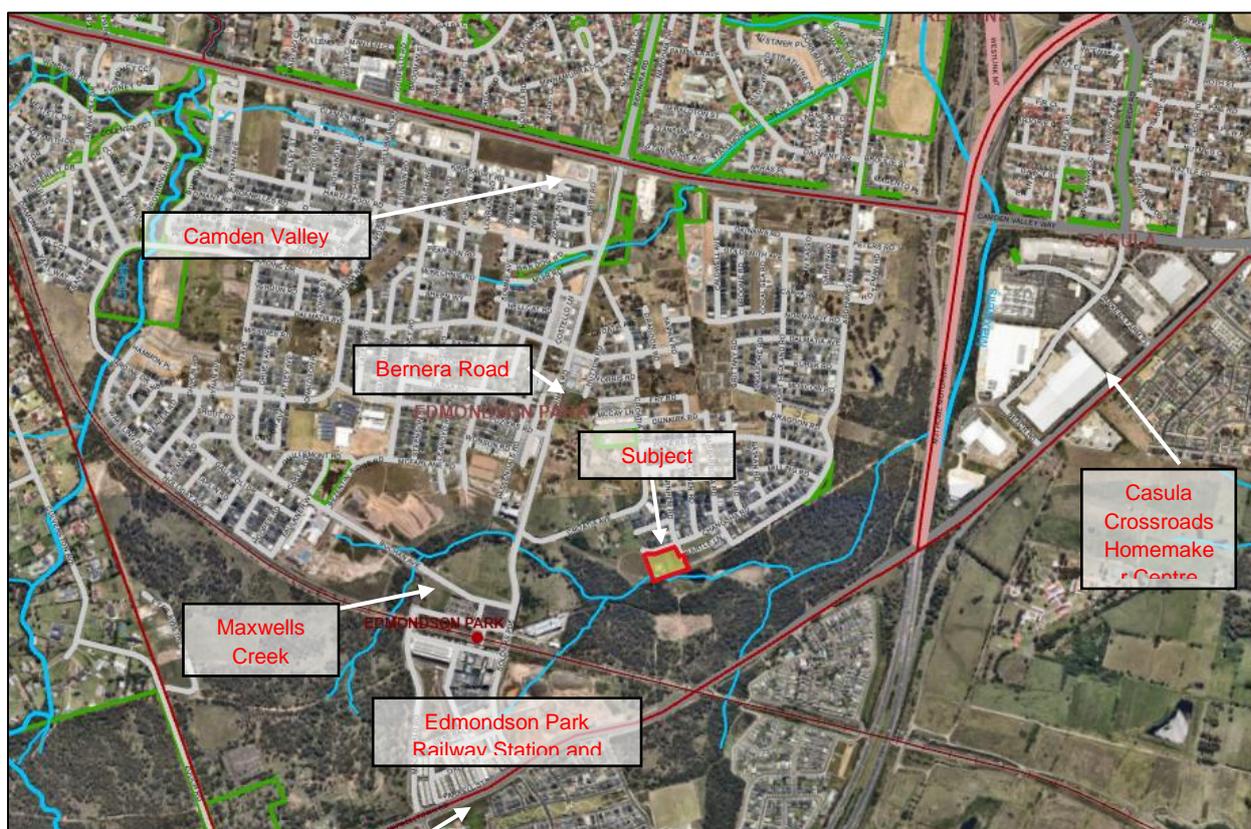


Figure 2: Locality Surrounding the Proposed Development (Source: Geocortex)

3. BACKGROUND/HISTORY

- The subject DA was lodged with Council on 19 February 2021.
- The initial DA relied upon boundary adjustments between historical lots (Lot 23 DP1246439, Lot 549 & Lot 552 DP1219412). As per the Deposited Plan, the boundary adjustment was executed under DA-566/2017 & SC-23/2021.
- 25 June 2021 – General Terms of Approval issued by NSW Rural Fire Service.
- 29 September 2021 - Request issued to the Applicant to address planning, flooding and engineering issues. Response submitted by the Applicant on 8 November 2021.
- 24 February 2022 - Application reallocated to current assessing officer.
- 2 March 2022 - Request issued to the Applicant to reiterating that planning, flooding and engineering issues have not been adequately addressed. Response submitted by the Applicant on 8 April 2022.
- 14 to 28 April 2022 – Proposal is notified for 14 days. No submissions received. Applicant advised to amend deed of agreement (to change road layout) to include correct landowner details.
- 6 March 2023 – Applicant is issued a final warning to amend the deed. Response submitted by the Applicant on 18 April 2023.
- 4 May 2023 - Request issued to the Applicant to submit a Clause 4.6 variation for dwelling density. Response submitted by the Applicant on 16 May 2023.

4. DETAILS OF THE PROPOSAL

This development application seeks the development consent for a residential subdivision to create 2 Torrens title allotments. The application also seeks consent for construction of the southern extension of Arnhem Road to the future intersection of Ardenne Road and construction of Ardenne Road along the southern boundary of future lots 201 and 202.

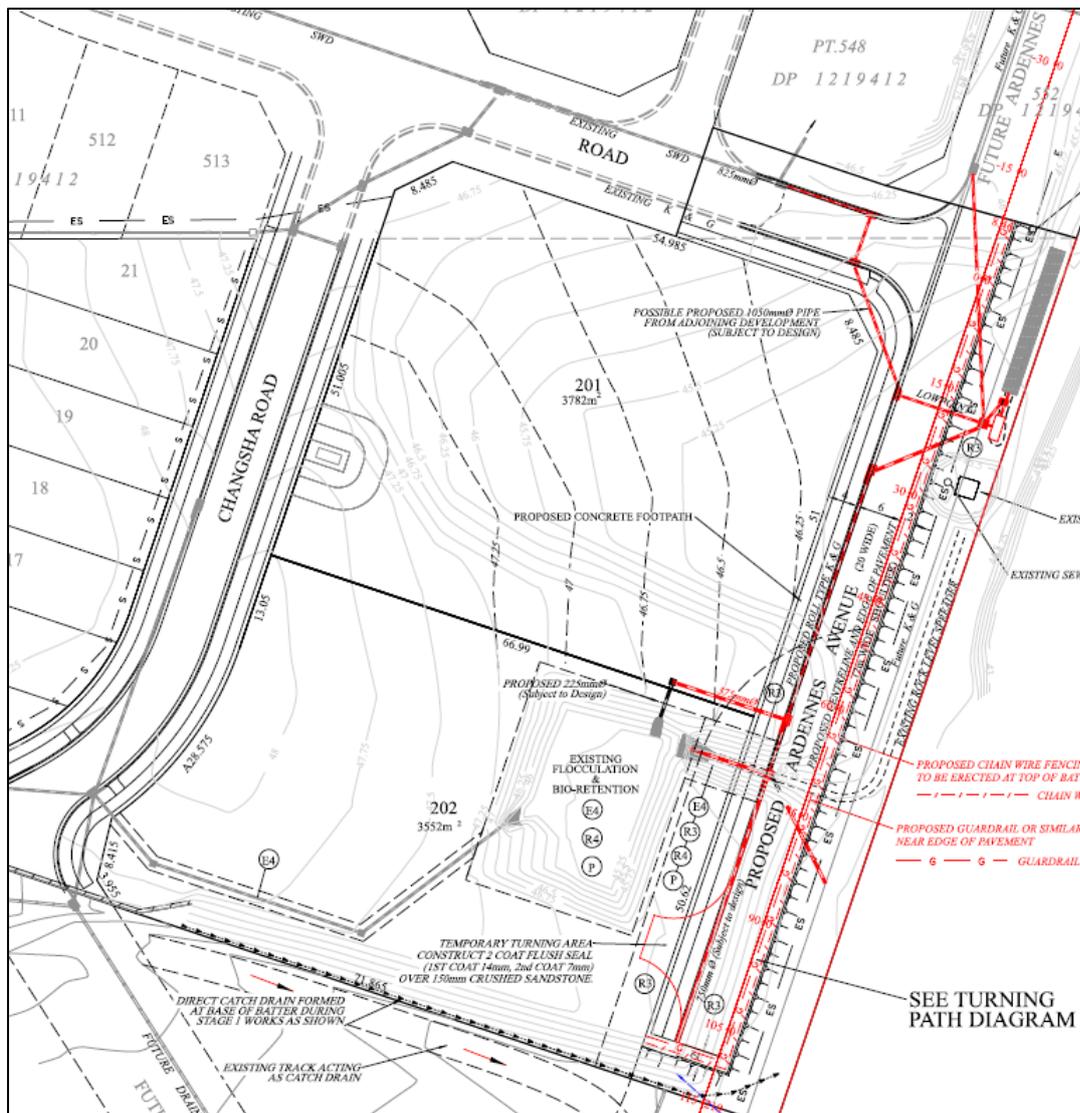


Figure 3: Extract of proposed subdivision plan

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 EP&A 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 Act 1979 and the Environmental Planning and Assessment Regulation 2000, as follows:

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

(a) State Environmental Planning Policy (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.

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	Contamination and remediation to be addressed as part of the development consent issued under DA-566/2017 for the subdivision and civil works of the parent allotment, 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	The sites are 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-566/2017. 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).

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

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows the majors Rivers associated its tributaries. As the site is located within the Georges River Catchment, Chapter 11 of the SEPP is applicable.

(Note: Chapters 7 – 12 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 were repealed on 21 November 2022. However, the savings and transitional provisions in Part 6.6 of the SEPP (Biodiversity and Conservation) 2021 state these former repealed provisions of the SEPP continue to apply to a development application made, but not yet determined, before the date of the repeal. Given that DA-182/2021 was lodged and not determined before the repeal date of 21 November 2022, the former Chapter 9 of the SEPP (Biodiversity and Conservation) 2021 applies to this DA.

The application was referred to Council’s Land Development Engineering Department who reviewed the stormwater management and drainage associated with the proposal. Land Development Engineering raises no objection to the proposed application, subject to conditions.

When a consent authority determines a development application, planning principles are to be applied (Clause 11.5). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 11.6 and Clause 11.7), and compliance with such is provided below.

Clause 11.6 General Principles	Comment
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Proposal reviewed by Council’s Land Development Engineer and considered satisfactory subject to conditions.

(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	The engineering plans were submitted and reviewed by Council's Land Development Engineer. Conditions of consent apply with respect to sediment and erosion mitigation measures.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Consistent with the strategy.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	The application was not required to be referred to the Natural Resource Access Regulator (NRAR) and the proposal is consistent with the guidelines.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	No. The site is located in an area nominated for residential development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
Clause 11.7 Specific Principles	Comment
(1) Acid sulfate soils	The land is not identified as containing acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping.
(2) Bank disturbance	No bank disturbance is proposed.
(3) Flooding	The site is flood affected (low risk – restricted to existing detention basin and SP2 zone). Flood impacts to be mitigated, subject to conditions.
(4) Industrial discharges	Not applicable.
(5) Land degradation	The proposed development is unlikely to cause land degradation.
(6) On-site sewage management	The site will be connected to a reticulated sewer system.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Water management details provided in civil engineering details and approved by condition of consent by Council's Engineers.
(10) Urban development areas	The area is within an Urban Release Area.
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control and salinity measures to be implemented in construction.
(13) Wetlands	Not applicable

It is considered that the proposal satisfies the provisions of the SEPP (Resilience and Hazards) 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 and SP2 – Infrastructure (Local Road) in accordance with the Liverpool Local Environmental Plan 2008. An extract of the zoning map is provided below.

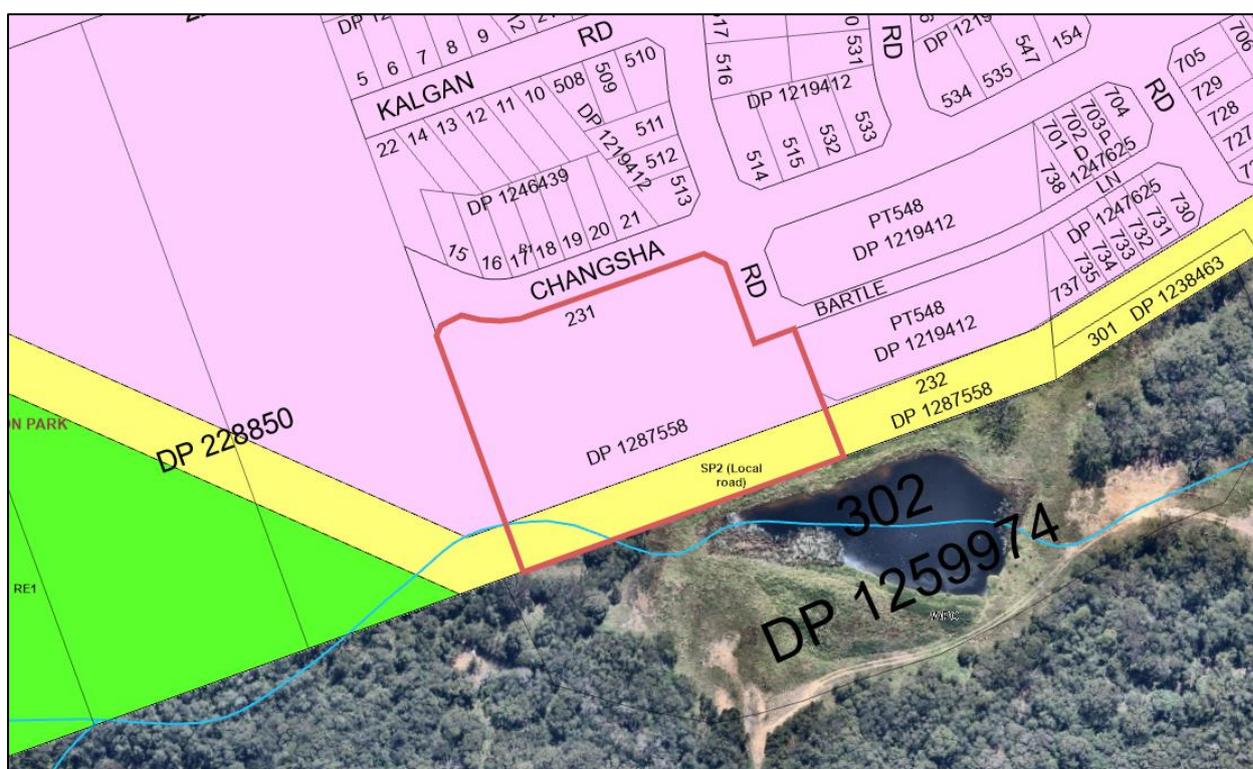


Figure 4 – Extract of LLEP 2008 zoning map

(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.

The objectives of the SP2 zone are as follows:

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

It is considered that the proposal is consistent with these zone objectives in the fact that it will provide road infrastructure.

(iv) Principal Development Standards

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

Clause	Provision	Comment	Complies
Clause 2.6 Subdivision	Land to which this Plan (LLEP 2008) applies may be subdivided with development consent.	Consent is being sought for subdivision of land.	Yes
Clause 4.1 Minimum Subdivision Lot Size	The development site is identified as having a minimum subdivision lot size of 300m ²	The proposed subdivision has 2 lots at 3782m ² and 3552m ² .	Yes
Clause 4.3 Height of Buildings	The development site is identified as having a maximum building height of 12m and 8.5m.	No built form is proposed.	N/A
4.6 Exceptions to Development Standards	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.
Clause 6.5 Public Utility Infrastructure	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	Complies by conditions

Clause	Provision	Comment	Complies
		DA-566/2017.	
7.7 Acid Sulfate Soils	Class 1, 2, 3, 4 or 5	The site is not mapped as containing acid sulfate soils.	N/A
7.8 Flood Planning	To minimise the flood risk to life and property associated with the use of land	Site is flood affected (low risk – restricted to existing detention basin and SP2 zone). Flood impacts to be mitigated, subject to conditions.	Complies by conditions
Clause 7.11 Minimum Dwelling Density	The site is subject to a minimum dwelling density of 28dw/ha for majority of the site. No minimum dwelling density applies to SP2 portion of the site	2 lots achieved in 1.028ha (including roads). 1.95dw/ha overall	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 1.94 dwellings per hectare is proposed, which results in a numerical variation of 93.04%.

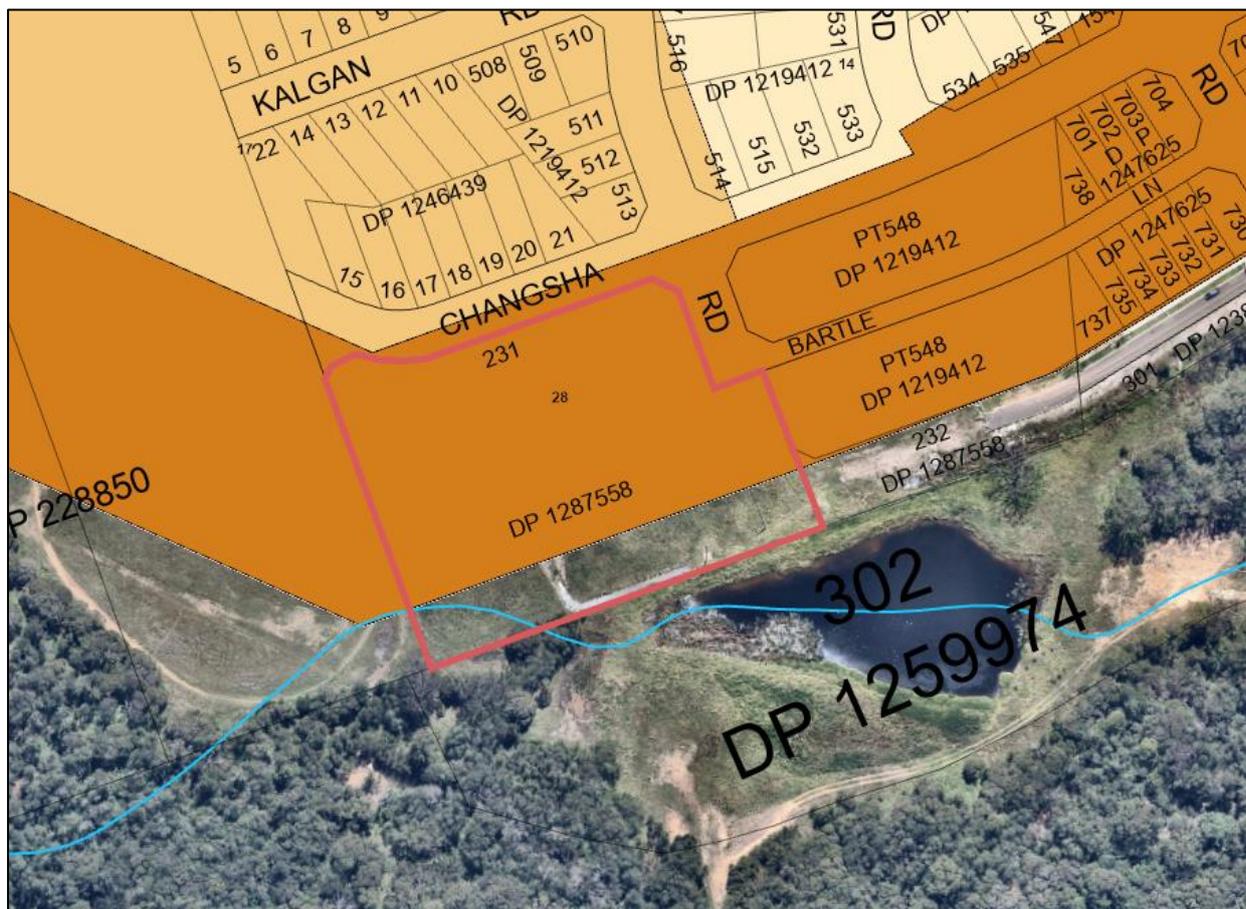


Figure 5 – Extract of LLEP 2008 minimum dwelling density map

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 of Clause 4.6(1) are as follows:

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

Clause 4.6(3) prescribes:

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

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

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

The applicant submitted a Clause 4.6 Variation Statement to 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:

Variation to Minimum Dwelling Density, Clause 7.11:

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

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

Environmental Planning Ground 1 – Orderly and Coherent Development

The variation is not considered unnecessary or unreasonable, and is instead considered a more orderly and coherent approach to achieving the anticipated planning outcomes, in comparison to a fully compliant development.

The delivery of orderly development as proposed is assured as the consent authority is in possession of the proposed residential flat building under DA-639/2021 over proposed Super-Lot 201, which demonstrates that future development will meet the minimum dwelling density for the subject lot.

Requiring full compliance for this proposed development would require the subdivision of the land into 29 separate allotments, each with their own access to services including driveway crossings across newly constructed footpaths (as would be a requirement of this proposed development). This is considered unreasonable and would result in incoherent development, as the subsequent development for a residential flat building would be required to consolidate allotments unnecessarily, and remove the multiple service access points and driveway crossings within the road reserve to accommodate the development. This is considered inefficient and an unwarranted impost in comparison to the more coherently derived proposals.

The consent authority can satisfy itself to achieve the anticipated planning outcomes through orderly and coherent development as proposed, that imposition of restrictions over the proposed residue super-lots, will ensure that the minimum dwelling density yield is achieved.

Environmental Planning Ground 2 – Planning outcomes as anticipated by the planning controls

The anticipated planning outcomes for desired development typology are enshrined in the zone objectives, permissible forms of development, and the bulk and scale development standards (height of building and floor space ratio).

Requiring full compliance with the minimum dwelling density for this subdivision would result in 29 lots over which future development design excellence is likely to be undermined. The

inter-relationship between the 15m maximum Height of building and 1:1 Floor space ratio development standards, and the 28dw/ha minimum dwelling density is undeniably anticipating the permissible residential flat building development typology for the subject site, which is more efficiently delivered on larger allotments with access to road frontages.

As proposed, this is a more positive response to the planning controls and therefore desired planning outcomes than that which might be achieved by a replication of detached and attached low rise housing forms of development, approved and constructed east of the subject site, which undermine the desired planning outcomes and design expectations, by fragmenting the land into small lots which will not be re-consolidated to achieve the built form development as informed by the applicable development standards, and could only ever realistically result in a maximum 2-storey built form.

Full compliance with the minimum dwelling density development standard in this instance obviously results in the likelihood of future development not achieving the development potential as expressed in the LLEP 2008.

Council Assessment of variation proposed

- The departure from the development standard is limited to two allotments.
- Lot 201 will be subject of a DA seeking approval for the construction of a residential flat building containing 40 dwellings, which will represent 105 dw/ha. The proposed dw/ha on lot 201 will exceed the minimum of 28 dw/ha by 74.
- Proposed Lot 202 can also accommodate a residential flat building or be further subdivided into smaller lots to meet the minimum dwelling density.
- 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 full compliance with all applicable requirements of the LLEP 2008 and LDCP 2008. Ensuring full compliance with all 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 proposal has been made to suit the site attributes in order to reduce the scope of variations required to the minimum dwelling density.
- 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 that can accommodate dwellings and achieve appropriate amenity based on full compliance with relevant state and local policies. In this regard, refusing the application based on 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.

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

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The objectives of the minimum dwelling density standard 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.*

The proposal achieves the objectives of the Zone.

This proposal does not jeopardise the achieving of the zone objectives (that is, it is not inconsistent with the zone objectives), rather facilitates in achieving them. This proposal will provide for the efficient development of land to enable an orderly release of serviced super-lots which can subsequently be developed to provide for the housing needs of the community, within a residential development typology consistent with the anticipated intensity of development, while not impacting adversely upon other land uses and services required within the suburb as it emerges, commensurate with the anticipated development of the locality as a whole. Despite the site constraint being the temporary on-site water quality infrastructure, this proposed development enables the excision of the developable part of the land to be made suitable for the anticipated development as enshrined in the zone objectives and applicable development standards, and as such it is considered the proposal is compatible with the existing and future development in the locality.

The proposal achieves the objective of clause 7.11.

As detailed above, this proposal achieves the objectives of the development standard. That is, the efficient use of land will be achieved through the development of Council's infrastructure (roads and stormwater) including the extension of existing essential services to ensure the site is suitable for subsequent development as anticipated by the planning controls. In extending the street network and by facilitating the provision of the anticipated dwelling density, the viability of public transport and other services are not jeopardised and are in fact reinforced. Additionally, the relevant contributions as applied in Edmondson Park on the developable area rather than on allotment and dwelling yield can be recouped by the consent authority as part of this development proposal as anticipated, ensuring that the local authority is in possession of public funds to invest into infrastructure crucial to the growth of the locality.

Comment: It is considered the proposed development would meet the objectives Development Standard 7.11 Minimum dwelling density, as listed below:

(a) *To contribute toward the efficient use of land resources,*

Comment: 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. The proposed development enables future development involving residential flat building developments fosters a diverse range of activities within a concentrated area, reducing the need for extensive land sprawl. By adhering to these principles, the development serves as an exemplary model of land resource efficiency, providing a blueprint for future endeavours aiming to achieve a harmonious balance between urban growth and responsible land stewardship.

(b) *To ensure the viability of public transport and other services planned for the area,*

Comment: The proposed allotments will accommodate residential development that will not fetter the availability of public transport. It is expected that any future residents will utilise public transport and planned services. Furthermore, the subject site is located in close proximity to Edmondson Park railway station and with a comprehensive approach to transportation and service infrastructure, the proposed development aims to establish a sustainable and efficient system that meets the needs of the community. By strategically locating the development in close proximity to existing public transportation hubs, it encourages the use of eco-friendly modes of travel and reduces dependence on private vehicles. Moreover, the project incorporates dedicated pedestrian and cycling paths, promoting active mobility and enhancing connectivity within the area. In terms of services, careful attention is given to the provision of essential amenities, such as schools, healthcare facilities, and retail spaces, within walking distance or easily accessible by public transport. By prioritizing the integration and accessibility of these services, the development ensures the convenience and long-term viability of the area, fostering a vibrant and self-sustaining community.

(c) *To ensure adequate funds for the recreation and community facilities planned for the area.*

Comment: The proposal would not result in reduced funding of land for any recreation and community facilities. Development contributions were paid as part of DA-566/2017 which created the subject site. Any SIC levies and local contributions funds will be collected as required. Through the imposition of conditions relating to contribution calculations and SIC levies, the proposed development not only guarantees the availability of funds for these vital amenities but also demonstrates commitment to the well-being and enrichment of the community, creating a vibrant and inclusive environment for residents and visitors alike.

Consistency with objectives of the zone – R1 – General Residential

Objectives of Zone R1 – General Residential

- *To provide for the housing needs of the community.*

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

Objectives of Zone SP2 – Infrastructure

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

Comment: The proposed development meets the objectives as the proposed subdivision enables future development of dwellings and therefore fulfills the housing needs of the community. Through careful planning and design, it ensures an adequate supply of housing that caters to diverse groups of residents, including affordable housing, middle-income housing, and high-end housing, among others.

The proposed subdivision allows for future development of dwellings and enables the provision of diverse housing types and densities. By incorporating a well-thought-out layout and design, including apartment buildings, townhouses, and multi-story complexes, it caters to residents' varying needs in terms of housing styles and sizes.

The proposed subdivision allows for other land uses that provide essential facilities or services to meet residents' daily needs. Examples include commercial zones, schools, healthcare facilities, shopping centres, and public parks, ensuring residents have convenient access to amenities related to living, education, healthcare, and recreation.

The proposed subdivision will enable future developments and allow for housing densities. are broadly concentrated in locations accessible to public transport, employment, services, and facilities. The project ensures that housing densities are primarily concentrated in areas that offer easy accessibility to public transportation, employment opportunities, services, and facilities. By promoting mixed-use development and locating housing in proximity to key amenities and transportation hubs, it encourages a more sustainable and connected living environment.

The proposed subdivision enables future developments to facilitate the development of social and community infrastructure that caters to the needs of future residents. This includes the establishment of community centers, recreational facilities, green spaces, and other amenities that promote social interaction, well-being, and community cohesion among residents.

The development project ensures that adequate infrastructure is planned and implemented to support the subdivision. This includes essential facilities such as roads, water supply, sewage systems, electricity, and telecommunications. By allocating space and resources for these infrastructure elements, the development facilitates the smooth functioning of the subdivision and enhances the quality of life for its residents.

The development project sets aside designated land within the subdivision for the purpose of future infrastructure expansion or improvement. This land reservation ensures that sufficient space is available for the development of additional infrastructure, such as schools, parks, healthcare facilities, and community centres. By proactively allocating land for future infrastructure needs, the development anticipates the growth and evolving requirements of the community and helps maintain a sustainable and well-equipped living environment.

Consistency with Clause 4.6 objectives

Objectives of Clause 4.6 Exceptions to development standards:

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

It is considered appropriate in this instance to apply a degree of flexibility when applying the Minimum Dwelling 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

With considerations to the discussion above, the proposed variation to Clause 7.11 – Minimum dwelling density, adequately addresses the provisions of Clause 4.6 including the objectives of the development standard and the zoning. The proposal is also considered to be in the public interest and is therefore supported in this instance.

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 landscaping and the indicative layout plan.

LDCP 2008 - Part 1 General Controls for all Development			
Development Control	Provision	Comment	Complies
Section 3. Landscaping and Incorporation of Existing Trees	Controls relating to landscaping and the incorporation of existing trees.	Landscaping plan provided for street tree planting as part of DA-639/2021.	No, but acceptable on merit.

LDCP 2008 - Part 2.11 Land Subdivision And Development in Edmondson Park			
Development Control	Provision	Comment	Complies
Section 1.1. Indicative Layout	To be in accordance with Figure 2 of the DCP	<p>Three variations proposed as follows:</p> <ol style="list-style-type: none"> 1. Deletion of westward extension of Bartle Lane 2. Subsequent completion/southern extension of Arnhem Road <p>The proposed variations have the effect of ensuring appropriately sized and configured lots to accommodate future development such as that proposed under DA-639/2021. Additionally, the adjoining landowners have agreed to the changes being proposed. Accordingly, the variation does not impact on the development potential of any other adjoining property, nor any property within the locality. Therefore, the proposed variation is consistent with the Precinct Planning vision for Edmondson Park, to the extent that any assessment of consistency with the objectives of the DCP (including the street network) can be</p>	No, but acceptable on merit

		demonstrated to comply.	
2.2 Pedestrian And Cycleway Network	Plans indicating non-vehicular connections and links in residential areas	Amendments to the ILP will result in changes to any proposed footpath along the road network. Footpaths will be provided to both sides of Arnhem Road and Ardennes Road, such that pedestrian desire lines and walking distances within the locality will not be affected by the deletion of the laneway through proposed Lot 201.	No, but acceptable on merit
2.3 Streetscape and Street Trees	Minimum of two trees per six metres of frontage.	Landscaping plan provided for street tree planting as part of DA-639/2021.	No, but acceptable on merit

All relevant compliance tables for the LDCP 2008 can be found in Report Attachment 1.

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 National Construction Code. Accordingly, appropriate conditions of consent will be imposed where the NCC is 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:

DEPARTMENT	COMMENTS
Land Development Engineering	Supported, subject to conditions of consent
Traffic & Transport	Supported, subject to conditions of consent
Flooding	Supported, subject to conditions of consent

(b) External Referrals

AGENCY	COMMENTS
NSW Rural Fire Service	General Terms of Approval issued
Sydney Water	No objection subject to comments

(c) Community Consultation

The proposal was notified from 12 April – 28 April 2022, in accordance with Liverpool Community Participation Plan 2019. No submissions have been received on the application.

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

Approval of the proposed development is not contrary to the public interest. The development is consistent with the objectives of the R1 and SP2 zones and may be conditioned to comply with the relevant provisions of the Liverpool Local Environmental Plan 2008 and Liverpool Development Control Plan 2008.

7. DEVELOPMENT CONTRIBUTIONS

Although Section 7.11 Development Contributions are applicable to the proposed development in accordance with the Liverpool Contributions Plan 2008 (Edmondson Park). As this development is for residue super lots to facilitate future residential development, Council's Contributions Accountant has confirmed that contributions will be levied as part of future development/s for residential purposes. Restrictions will apply to the super lots to ensure that future development includes the payment of 7.11 contributions.

A Special Infrastructure Contribution condition is also required.

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, Liverpool DCP 2008, and the relevant codes and policies of Council.

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

9. RECOMMENDATION

That Development Application DA-182/2021 seeking approval for the Torrens Title subdivision into two Super-Lots (Lots 201 & 202) of the current Lot 231 Changsha Road, Edmondson Park including:

- Construction of the southern extension of Arnhem Road to the future intersection of Ardennes Road along the eastern boundary of proposed future Super-Lot 201; and
- Construction of Ardennes Road along the southern boundary of future Super-Lots 201 and 202.

ATTACHMENTS

1. Liverpool Development Control Plan 2008 Compliance Tables
2. Plans of the Proposal
3. Clause 4.6 Request for a Variation
4. Conditions of Approval

**REPORT ATTACHMENT 1: LIVERPOOL DEVELOPMENT CONTROL PLAN 2008
COMPLIANCE TABLES**

LDCP 2008 - Part 1 General Controls for all Development			
Development Control	Provision	Comment	Complies
Section 2. Tree Preservation	Controls relating to the preservation of trees	The site is currently vacant and there is minimal vegetation.	Yes
Section 3. Landscaping and Incorporation of Existing Trees	Controls relating to landscaping and the incorporation of existing trees.	Landscaping plan provided for street tree planting as part of DA-639/2021.	No, but acceptable on merit
Section 4. Bushland and Fauna Habitat Preservation	Controls relating to bushland and fauna habitat preservation	The site is mapped as bio-certified land. As such, further assessments on flora and fauna is not required.	Yes
Section 5. Bush Fire Risk	Controls relating to development on bushfire prone land.	The sites are mapped as bushfire prone land. General Terms of Approval have been provided by the NSW Rural Fire Service.	Complies with conditions
Section 6. Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	This aspect has been reviewed by Council's Land Development Engineer, who have raised no issues subject to conditions.	Yes
Section 7. Development Near a Watercourse	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval from the NSW Office of Water.	The proposal is not within 40m of a watercourse.	N/A
Section 8. Erosion and Sediment Control	Erosion and sediment control plan to be submitted.	Conditions of consent will be imposed to ensure that erosion and sediment controls measures are implemented.	Complies with conditions

Section 9. Flooding Risk	Provisions relating to development on flood prone land.	The site is identified as flood prone land. Conditions of consent will be imposed to ensure that flood mitigation measures are implemented.	Complies with conditions
Section 10. Contaminated Land Risk	Provisions relating to development on contaminated land.	As per SEPP (Resilience and Hazards) 2021, contamination and remediation addressed as part of the parent Development Consent DA-566/2017. The development is considered acceptable and the sites are suitable for the future residential use of the land.	Yes
Section 11. Salinity Risk	Provisions relating to development on saline land.	Development to comply with the BCA requirements.	Complies with conditions
Section 12. Acid Sulphate Soils	Provisions relating to development on acid sulphate soils	The development site is not identified as containing acid sulphate soils.	N/A
Section 13. Weeds	Provisions relating to sites containing noxious weeds.	The site is not identified as containing noxious weeds.	N/A
Section 14. Demolition of Existing Development	Provisions relating to demolition works	No demolition proposed.	N/A
Section 15. On Site Sewage Disposal	Provisions relating to OSMS.	OSMS is not proposed.	N/A
Section 16. Aboriginal Archaeology	An initial investigation must be carried out to determine if the proposed development or activity occurs on land potentially containing an item of aboriginal archaeology.	The development site is not mapped as a potential area containing Aboriginal archaeology. Aboriginal Cultural Heritage assessed as part of DA-566/2017 and was considered acceptable subject to conditions of consent	Yes
Section 17. Heritage and Archaeological Sites	Provisions relating to heritage sites.	The development site is not identified as a heritage item or located within close proximity to a heritage item.	N/A

Section 20. Car Parking and Access	This section of the DCP specifies requirements in relation to vehicular access and car parking.	The proposed subdivision will result in allotments of an area capable of providing complying car parking and access to each lot.	Yes
Section 21. Subdivision of Land and Buildings	The development site is identified as having a minimum subdivision lot size of 300m ² .	Lot 201 – 3782m ² Lot 202 – 3552m ²	Yes
	Minimum Lot width: In R1 Zones where minimum lot size is 300m ² (Area 2), minimum lot width is 8m	Lot 201 – 51m Lot 202 – 50.62m	Yes
Section 22 and Section 23. Water Conservation and Energy Conservation	New dwellings, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	The application does not propose the construction of new dwellings.	N/A
Section 25. Waste Disposal and Re-use Facilities	Provisions relating to waste management during construction and on-going waste.	Waste not expected from proposed works, however, will be conditioned to ensure a waste management plan is provided prior to CC due to need for servicing lots.	Complies by conditions
Section 26. Outdoor Advertising and Signage	Provisions relating to signage.	No signage proposed	N/A
Section 27. Social Impact Assessment	Provisions relating to social impact.	Social impact comment is not required.	N/A

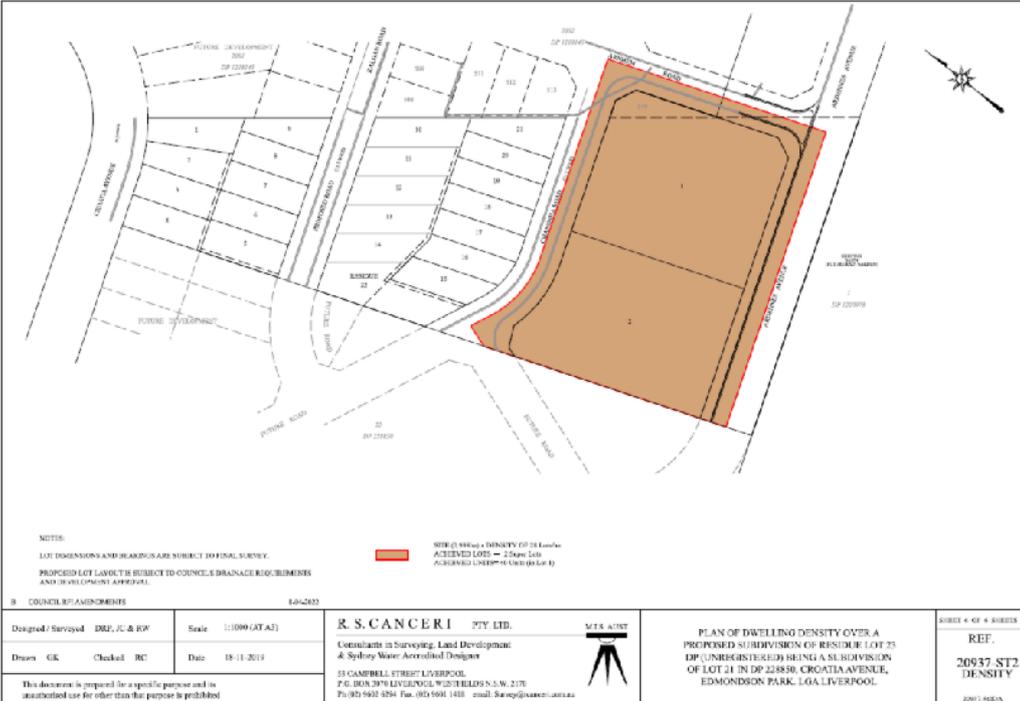
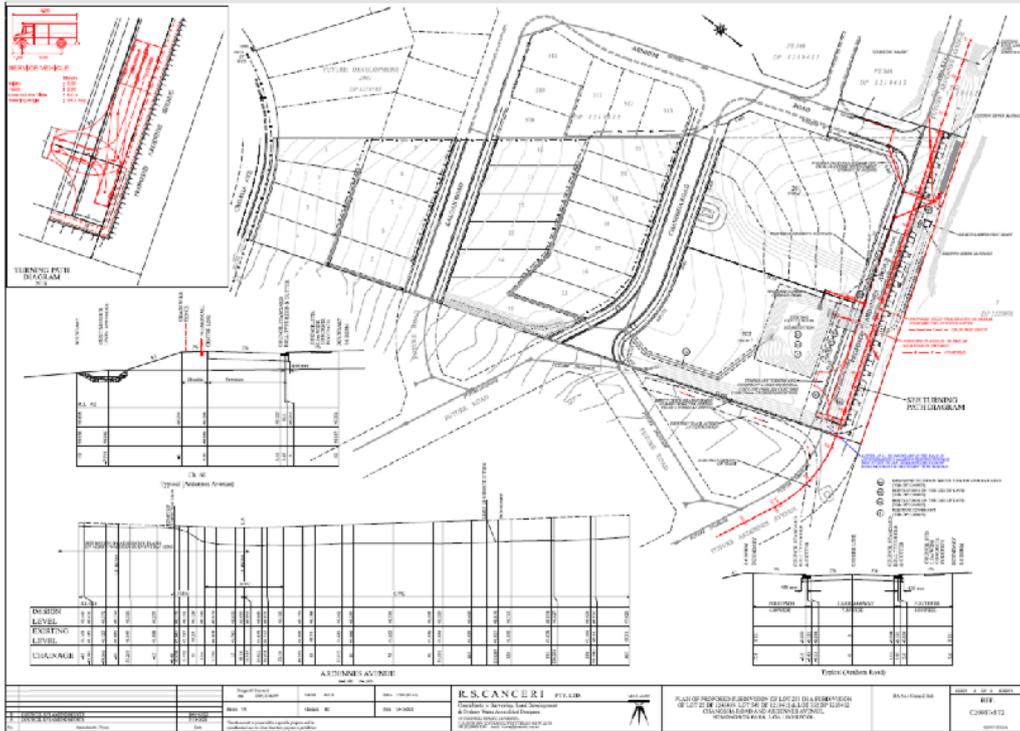
Consideration of LDCP 2008, Part 2.11 Development in Edmondson Park

The table below provides an assessment of the proposal in relation to the relevant sections of Part 2.11 of the Liverpool DCP 2008.

DEVELOPMENT CONTROL	PROPOSAL	COMMENT
PART 2.11 – LAND SUBDIVISION AND DEVELOPMENT IN EDMONDSON PARK		
<p>1.1 INDICATIVE LAYOUT</p> <p>To be in accordance with Figure 2 of the DCP</p>	<p>Three variations proposed as follows:</p> <ol style="list-style-type: none"> 1. Deletion of westward extension of Bartle Lane 2. Subsequent completion/southern extension of Arnhem Road <p>The proposed variations have the effect of ensuring appropriately sized and configured lots to accommodate future development such as that proposed under DA-639/2021. Additionally, the adjoining landowners have agreed to the changes being proposed. Accordingly, the variation does not impact on the development potential of any other adjoining property, nor any property within the locality. Therefore, the proposed variation is consistent with the Precinct Planning vision for Edmondson Park, to the extent that any assessment of consistency with the objectives of the DCP (including the street network) can be demonstrated to comply.</p>	No, but acceptable on merit
<p>2.1 STREET NETWORK AND ACCESS</p> <p>Subdivision plans must indicate street type.</p>	The proposed subdivision will provide a local street (Arnhem Rd) and a collector street (Ardennes Road).	Yes
<p>2.2 PEDESTRIAN AND CYCLEWAY NETWORK</p> <p>Plans indicating non-vehicular connections and links in residential areas</p>	Amendments to the ILP will result in changes to any proposed footpath along the road network. Footpaths will be provided to both sides of Arnhem Road and Ardennes Road, such that pedestrian desire lines and walking distances within the locality will not be affected by the deletion of the laneway through proposed Lot 201.	No, but acceptable on merit
<p>2.3 STREETSCAPE AND STREET TREES</p>	Landscaping plan provided for street tree planting as part of DA-639/2021.	No, but acceptable on merit

Minimum of two trees per six metres of frontage		
2.4 OPEN SPACE Provision of open space within the Edmondson Park precinct	The proposal does not incorporate any provisions for public open space.	N/A
2.5 ENVIRONMENTAL MANAGEMENT Protection of vegetation and riparian corridors	The site does not have any significant vegetation which requires protection and there are no riparian corridors and waterways over the site.	N/A
2.6 WATER CYCLE MANAGEMENT Appropriate management of stormwater quality and quantity	The proposed stormwater system for the site complies with the requirements of this section of the DCP. This aspect has been reviewed by Council's Land Development Engineers, who have raised no issues subject to conditions.	Complies by conditions
2.7 CONTAMINATION Potential for contamination to be assessed.	Contamination and remediation addressed as part of the original Development Consent DA-566/2017. This aspect was reviewed by Council's Environmental Health Section who have found no issues with the proposal.	Complies

REPORT ATTACHMENT 2: PLANS OF THE PROPOSAL



Clause 4.6 request for variation:

Minimum Dwelling Density

This request has been prepared as the Applicant's Written Request for Variation to a Development Standard and is made in accordance with the provisions of clause 4.6 of the *Liverpool Local Environmental Plan 2008 (LEP 2008)*.

The Request for Variation is made in respect of a Development Application for the Torrens Title subdivision into two Super-Lots with road construction, land which was previously legally described as Lot 23 DP1246439, Lot 549 & Lot 552 DP1219412, and is currently legally described as site described as Lot 231 DP1287558, and known as Lot 231 Changsha Road, Edmondson Park.

Background and Development Description (including development and site analysis)

This Development Application seeks development consent for the:

- the Torrens Title subdivision into two Super-Lots (Lots 201 & 202) of the current Lot 231 Changsha Road, Edmondson Park;
- construction of the southern extension of Arnhem Road to the future intersection of Ardennes Road along the eastern boundary of proposed future Super-Lot 201; and
- construction of Ardennes Road along the southern boundary of future Super-Lots 201 and 202.

(note: the referenced boundary adjustment in the originally submitted Statement of Environmental Effects, has taken place under a Subdivision Certificate SC-23/2021 which had not been approved at the time of the lodgement of this subdivision DA-182/2021, but which has since been approved and registered, and has resulted in the making regular of the boundaries of the current Lot 231 Changsha Road, Edmondson Park, with the effect of making the three previous subject lots historical).

Therefore, this proposal now relates to Lot 231 DP1287558, which is known as Lot 231 Changsha Road, Edmondson Park NSW 2174.

The subject site is situated on the southern side of Changsha Road in an area of Edmondson Park which is undergoing transition from semi-rural large lot residential land into an urbanised environment of low/medium to higher density residential development, having been a residue lot from a previous subdivision of historical lots known as 1903 & 2002 Croatia Avenue, Edmondson Park.

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The site encloses a total site area of 10,280sqm (1.028ha). The property frontage is partially arced and measures 113.49m including splays along Changsha Road, 54.99m along Amhem Road (when fully constructed), and 110.11m along Ardennes Road (when fully constructed). The site also shares a boundary to the western adjoining lot known as 136-148 Croatia Avenue (also currently semi-rural large lot residential land) of 71.87m.

The development proposal has been designed to facilitate residential development consistent with the planning controls which are to align with the highest minimum dwelling yield band in the R1 General Residential zone. A practical example of the form of future development is enshrined in the currently under assessment DA-639/2021 over proposed future Super-Lot 201 which proposes:

The construction of two x 4-storey residential flat buildings above basement carpark containing 40 residential apartments.

Otherwise, the proposed allotments meet the minimum lot size and are generally compliant with the applicable controls for the subdivision of land, and provide for an appropriate response to site constraints including the existing temporary flocculation and bio-retention basin, while also ensuring that any prospects for adjoining development potential is not impacted upon.

Note: the laneway as it appears on the Development Control Plan Indicative Layout Plan (ILP) is proposed to be deleted and is not proposed to be constructed, and adjoining owner's consent from the adjoining land to the west has been provided supporting this aspect of the proposed subdivision.

The Development Standard

Below are the relevant extracts of the **LLEP2008** development standard.

7.11 Minimum dwelling density

(1) The objectives of this Plan for the control of dwelling densities are as follows—

(a) to contribute toward the efficient use of land resources,

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

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

(2) 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.

(3) In this clause—

dwelling density means the ratio of the number of dwellings to the area of the land to be occupied by the development, including internal streets and half the width of any roads

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adjoining the development that provide vehicular access to the development but excluding land used for public open space and non-residential purposes.

The dwelling density which applies to the site as per the [Dwelling Density Map](#) is 28 dwellings per hectare (28dw/ha).

Variation

The subject site is zoned R1 General Residential and the proposed development is for the subdivision of one existing allotment into two residue Super-Lots and the construction of infrastructure including roads and civil works and provision of services to facilitate future residential flat building development. This represents a deficiency with respect to Clause 7.11 in that the proposed subdivision of land into only two allotments across the 1.028ha of land yields 1.95 lots per hectare, which Council is insisting should be characterised as 1.95dw/ha, which is significantly less than the minimum required dwelling density of 28dw/ha.

Proposed Development Context:

This request seeks to establish the particulars of the dwelling yield deficiency by providing an overview of the proposed development outcome in the context of;

- a) the design of the lots and infrastructure in the context of the existing temporary water quality basin;
- b) the proposed development under DA-639/2021 over proposed future residue Super-Lot 201; and
- c) the adjoining owners consent for the deletion of the laneway from the ILP, through the two adjoining lots.

a) *Design Response*

The proposed development provides for a subdivision layout and construction of infrastructure which:

- i) results in two large residue Super-Lots with proposed 201 bound by three road frontages providing access to the existing street network and required essential services to enable the efficient use of land and for the strategic planning to continue with respect to the provision of public transport as intended by the ILP.
- ii) essentially, enables the creation of proposed Lot 201 separate from proposed Lot 202 and ensures that the proposed residential flat building on Lot 201 (under DA-639/2021) is not burdened by the location of the existing temporary water-quality basin.
- iii) enables the release of the part of the subject lot which can contribute to the mix of residential development in the locality, prior to the delivery of Council's stormwater infrastructure (hence the temporary water quality basin).

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b) *DA-639/2021 for residential flat building proposed development*

The proposed DA-639/2021 facilitates the development of proposed Lot 201 which has been submitted with Council as:

- i) a proposal for the construction of two x 4-storey residential flat buildings above basement carpark containing 40 residential apartments.
- ii) a development consistent with the R1 zone objectives and a permissible land use.
- iii) a compliant built form with respect to maximum allowable height and floor space ratio controls such that it is not an overdevelopment of the subject future site.
- iv) a development which on its own would meet the minimum dwelling density of the subject site (38.91 dw/ha).

c) *Adjoining owner's consent for laneway deletion*

The development of proposed Lot 201 under DA-639/2021 relies upon the deletion of Bartle Lane, and for consistency so does the development the subject of this application. This has the effect of:

- i) ensuring a more appropriate site area and configuration for the proposed residential flat building and future development, given the advantages provided by the road construction and existing road frontage, for access to services without requiring a service lane.
- ii) ensuring the preferred form of residential development can be delivered to the locality, given the desired height and dwelling density as expressed in the development standards, and in particular given its location opposite from RE1 Public Recreation zoned open space. That is, not rear loaded low rise attached housing in areas where built form potential through the controls, informs more efficient use of land to achieve the desired dwelling densities and intensity of development.
- iii) enabling the adjoining land to the west, which is more affected by the ILP laneway, to develop in a more consolidated fashion such that it can respond to any development on the subject allotment. This has been acknowledged by the adjoining owner's consent ensuring that any potential impact of the laneway deletion is now not an issue for consideration.

The figures within this request provide a visual interpretation of the proposed subdivision within the site, and the proposed residential flat building development within proposed Lot 201, below.

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Figure 1: Subject site with adjoining land as described in this document

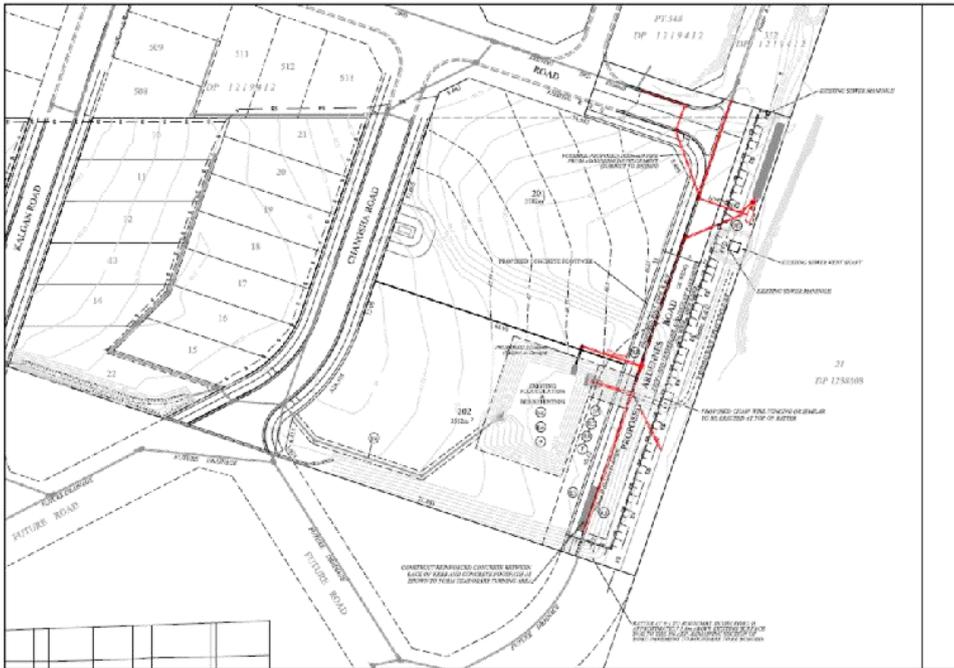


Figure 2: Subdivision Layout Plan (north to top left)

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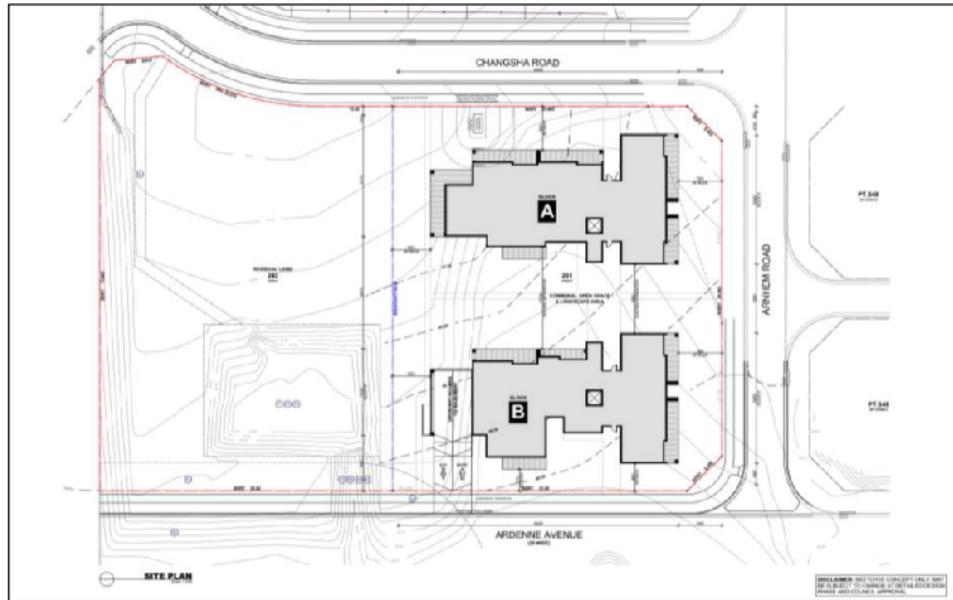


Figure 3: Proposed Residential Flat Building development over proposed Lot 201 under DA-639/2021

Purpose of Request

This Clause 4.6 variation has been submitted to assess the proposed non-compliance with the minimum dwelling density as per the [Dwelling Density Map](#) provided under Clause 7.11 of the LLEP2008.

The subject site is zoned R1, the proposed development is for the subdivision of one lot into two residue Super-Lots including the construction of roads and associated infrastructure.

This represents a deficiency in the number of potential dwellings yielded by this application on those two lots by 26.05 dwellings, that being less than the required 28dw/ha as per the development standard.

The Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled Varying Development Standards – A Guide.

In summary, this variation request says that:

- The reason for deficiency of minimum required dwelling density is the procedural nature of the subdivision. That is, this development does not propose residential development, merely

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the facilitating subdivision of land including the provision of road and essential services infrastructure, which enables some of the land of the existing allotment not burdened by the site constraint being the temporary water quality infrastructure, to be developed and utilised for residential purposes within the desired built form, as prescribed through the development standards applicable to the site.

- The extent of proposed non-compliance although significant when viewed only in isolation (in that it may be understood to contribute to the fragmentation of land and thereby not enable the efficient use of land as intended by the precinct plan), is proven not to be so egregious in the context of the subsequent proposed development for a residential flat building complex over future proposed Super-Lot 201, which demonstrates full compliance with the minimum dwelling density in achieving the desired future character of the area.
- The deficiency with the development standard as applied in this proposed development does not create unacceptable planning outcomes to impact on the anticipated delivery of housing and infrastructure in the precinct, and provides for a logical staged form of development to be delivered over multiple development applications, enabling Council to exert its assessment of future development as the consent authority, without abandoning or jeopardising the intent of the zone objectives and development standards as applied. This can be done in particular through the imposition of restrictions on created land benefiting Council to ensure that minimum anticipated planning outcomes are achievable.

The proposed subdivision and associated construction of infrastructure is in the public interest because it is consistent and compatible with:

- the objectives of the development standard in ensuring future dwelling density will contribute to the efficient use of land, provision of services, and adequate funding for the recreation and community facilities planned for the area.
- the requirement that Council is satisfied that the dwelling density likely to be achieved by the subdivision is not less than the dwelling density applicable to the site, which is demonstrated through the existing under assessment proposed residential flat building complex, and as can be made to Council's satisfaction through the imposition of restrictions over created land to that effect.
- the objectives for development within R1 zones in which the development is proposed to be carried out.
- the delivery of a logical staging of subsequent development, which responds to the temporary infrastructure site constraint while resulting in negligible additional material impact on any adjoining site, and which enables a more positive response to the planning controls and therefore desired planning outcomes than that which might be achieved by a replication of detached and attached low rise housing forms of development, approved and constructed east of the subject site, which undermine the desired planning outcomes by fragmenting the land into small lots which will not be re-consolidated to achieve the built form development as informed by the applicable development standards, and;

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- the delivery of orderly development in that, as the consent authority is in possession of the proposed residential flat building under DA-639/2021, the requiring of full compliance by subdividing the land into 29 separate allotments, each with their own access to services including driveway crossings across newly constructed footpaths (as would be a requirement of this proposed development), is unreasonable and results in incoherent development, as the subsequent development for a residential flat building would be required to consolidate allotments unnecessarily, and remove the multiple service access points and driveway crossings within the road reserve to accommodate the development. This is considered inefficient and an unwarranted impost on any development involving infrastructure for a public purpose, in comparison to the more coherently derived proposals.

Requiring strict compliance with the minimum dwelling density development standard is unreasonable in the circumstances of the case. This is because:

- the objectives of both the zone and standard are achieved notwithstanding non-compliance with the standard; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 Request for Variation

Clause 4.6 of **LLEP 2008** allows for variation to development standards. Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

4.6 Exceptions to development standards

(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.*

(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.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from*

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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.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

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(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) Clause 5.5

(ca) clause 6.4, 6.5, 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30.

Clause 7.11 is not identified as being excluded from the operation of clause 4.6. Therefore, a request to vary the development standard may be made by the applicant.

What is the name of the environmental Planning instrument that applies to the land?

Liverpool Local Environmental Plan 2008.

What is the zoning of the Land?

The subject site is zoned R1 General Residential.

What Are the objectives of the zone?

The objectives of the R1 zone are as follows:

1 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 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.

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The proposed development is not inconsistent with the relevant R1 zone objectives. That is, with respect to the R1 zone objectives, this proposal includes development of infrastructure and creation of land which will facilitate subsequent proposed development which will provide for the housing needs of the community, in a suitable housing typology and density as informed by the height of building, floor space ratio and minimum dwelling density development standards, concentrated in an area accessible to Edmondson Park Town Centre and Rail Station, without impacting on any other site's ability to develop for the purpose residential use, other services and social and community infrastructure.

What Is The Development Standard Being Varied?

The subject Request for Variation relates to the minimum dwelling density pursuant to clause 7.11 of the **LLEP2008**. Therefore, the proposed development seeks exception to the 28dw/ha minimum dwelling density for the site, as identified on the [Dwelling Density Map](#).

What are the objectives of the Development Standard?

(1) The objectives of this clause are as follows—

- (a) to contribute toward the efficient use of land resources,*
- (b) to ensure the viability of public transport and other services planned for the area,*
- (c) to ensure adequate funds for the recreation and community facilities planned for the area.*

With respect to the objectives of the development standard it is argued that this proposal satisfies the objectives. That is:

- the proposed residue Super-Lots are sufficient in size and of suitable dimension and alignment to the roads (existing and proposed) to enable the efficient use of the land by subsequent proposed developments, especially as the subject lot is temporarily constrained by a water quality basin, which will be removed once Council's stormwater infrastructure is upgraded. The excision of the part of the site not affected on which residential flat building development can be constructed in the interim, as informed by the relevant development standards, is undoubtedly efficient use of land, especially as the development contributes to the expansion of the street network in the locality. The consent authority can satisfy itself that subsequent development on the residue lots can result in efficient use of the land through the imposition of restrictions to achieve the minimum dwelling densities when residential development is proposed.
- by way of providing for the suitably sized lots and through the imposition of restrictions to ensure minimum dwelling densities eventuate, there is no doubt that public transport will be sought after and required as well as other services for the area, which this proposed subdivision will help deliver in an orderly and coherent manner through the expansion of the street network and infrastructure, for subsequent development to connect into.

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- developer contributions are impossible as part of this subdivision development application as they are accounted for in Edmondson Park per area of land developed, rather than being recouped at the time that smaller lots and dwellings are approved and delivered. As such, this proposed development is entirely consistent with objective (c) of the development standard.

What Is the Numeric Value of the Development Standard in the Environmental Planning Instrument?

Clause 7.11 prescribes a minimum dwelling density of 28dw/ha.

What Is The Numeric Value Of The Development Standard In The Development Application?

As applied by the consent authority, the proposed two lot subdivision is characterised as contributing 1.95dw/ha. This is deficient in achieving the minimum 26.05dw/ha.

What is the percentage variation between the proposal and the environmental planning instrument?

The proposed deficient minimum dwelling density is 26.05dw/ha less than the 28dw/ha development standard. This represents a per cent variation of 93.04%.

Whilst the NSW Department of Planning and Environment includes a requirement to identify the percentage variation in its *Guide to Varying Development Standards* there are a number of case law examples that demonstrate that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

The following examples relate to Floor Space Ratio and Height of Buildings development standards and assist in demonstrating that the degree of exceedance alone is not determinative in assessment of a Request for Variation to a development standard.

Clause 4.6 of the LEP is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a **floor space ratio variation of 187 per cent**.

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- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a **38 per cent height exceedance over a 15-metre building height standard**.
- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **28 per cent height exceedance over a 22-metre building height standard**.
- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **21 per cent height exceedance over a 18-metre building height standard**.

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

Even so, the actual per cent exceedance in this instance is considered a result of the interpretation applied by the consent authority, that although residential development is not proposed by this application, that a development standard purely relevant to residential development is required to be applied.

How is strict compliance with the development unreasonable or unnecessary in this particular case?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out five ways in which strict compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case.

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (if is achieved anyway) and unreasonable (no purpose would be served);*
2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary*
3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

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5. *"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.*

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard or does not jeopardise the achieving of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved or not are not jeopardy of being achieved.

Strict compliance with the minimum dwelling density development standard is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons:

The proposal achieves the objectives of the Zone.

As detailed above, this proposal does not jeopardise the achieving of the zone objectives (that is, it is not inconsistent with the zone objectives), rather facilitates in achieving them. This proposal will provide for the efficient development of land to enable an orderly release of serviced super-lots which can subsequently be developed to provide for the housing needs of the community, within a residential development typology consistent with the anticipated intensity of development, while not impacting adversely upon other land uses and services required within the suburb as it emerges, commensurate with the anticipated development of the locality as a whole. Despite the site constraint being the temporary on-site water quality infrastructure, this proposed development enables the excision of the developable part of the land to be made suitable for the anticipated development as enshrined in the zone objectives and applicable development standards, and as such it is considered the proposal is compatible with the existing and future development in the locality.

The proposal achieves the objective of clause 7.11.

As detailed above, this proposal achieves the objectives of the development standard. That is, the efficient use of land will be achieved through the development of Council's infrastructure (roads and stormwater) including the extension of existing essential services to ensure the site is suitable for subsequent development as anticipated by the planning controls. In extending the street network and by facilitating the provision of the anticipated dwelling density, the viability of public transport and other services are not jeopardised and are in fact reinforced. Additionally, the relevant contributions as applied in Edmondson Park on the developable area rather than on allotment and dwelling yield can be recouped by the consent authority as part of this development proposal as anticipated, ensuring that the local authority is in possession of public funds to invest into infrastructure crucial to the growth of the locality.

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Sufficient environmental planning grounds to justify contravening the development standard

The term “environmental planning grounds” is not defined in LLEP2008 nor any other environmental planning instrument. It is also not defined in the Department of Planning’s Guide to Varying Development Standards

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of “unreasonable or unnecessary in the circumstances of the case”; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of “unreasonable and unnecessary in the circumstances of the case”, it must therefore be concluded that “environmental planning grounds” are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

The matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some helpful guidance on the subject of “environmental planning grounds”, however it is in fact limited to defining some factors which are not environmental planning grounds. Paragraph 60 of Commissioner Pearson’s decision states:

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the “environmental planning grounds” referred to in cl 4.6(4)(a)(i) of the LEP. (emphasis added)*

30. On Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (3 June 2015), the Court considered whether the Commissioner had erred in law in confining environmental planning grounds to those particular to a site or proposed development. The Court held at [29] and [30] that this was a matter which the Commissioner was entitled to consider in her exercising of discretion:

Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the

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particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner's finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.

To the extent the issue raised can be described as a question of mixed fact and law, the Commissioner is exercising a discretion under subclause (4)(a)(i) in relation to the written report where the terms in subclause (3)(b) of sufficient environmental planning grounds are not defined and have wide import,

From this we interpret that particular circumstances of the site or development is an appropriate (although not exclusive) filter through which to view the sufficiency of environmental planning grounds.

In the absence of a legislative or other definition we adopt a definition for "environmental planning grounds" as 'any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard'.

Based on that methodology, the environmental planning grounds which support variation to the minimum lot width at front building line standard in this instance are:

Environmental Planning Ground 1 – Orderly and Coherent Development

The variation is not considered excessive or unreasonable, and is instead considered a more orderly and coherent approach to achieving the anticipated planning outcomes, in comparison to a fully complaint development.

The delivery of orderly development as proposed is assured as the consent authority is in possession of the proposed residential flat building under DA-639/2021 over proposed Super-Lot 201, which demonstrates that future development will meet the minimum dwelling density for the subject lot.

Requiring full compliance for this proposed development would require the subdivision of the land into 29 separate allotments, each with their own access to services including driveway crossings across newly constructed footpaths (as would be a requirement of this proposed development). This is considered unreasonable and would result in incoherent development, as the subsequent development for a residential flat building would be required to consolidate allotments unnecessarily, and remove the multiple service access points and driveway crossings within the road reserve to accommodate the development. This is considered inefficient and an unwarranted impost in comparison to the more coherently derived proposals.

The consent authority can satisfy itself to achieve the anticipated planning outcomes through orderly and coherent development as proposed, that imposition of restrictions over the proposed residue super-lots, will ensure that the minimum dwelling density yield is achieved.

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Environmental Planning Ground 2 – Planning outcomes as anticipated by the planning controls

The anticipated planning outcomes for desired development typology are enshrined in the zone objectives, permissible forms of development, and the bulk and scale development standards (height of building and floor space ratio).

Requiring full compliance with the minimum dwelling density for this subdivision would result in 29 lots over which future development design excellence is likely to be undermined. The inter-relationship between the 15m maximum Height of building and 1:1 Floor space ratio development standards, and the 28dw/ha minimum dwelling density is undeniably anticipating the permissible residential flat building development typology for the subject site, which is more efficiently delivered on larger allotments with access to road frontages.

As proposed, this is a more positive response to the planning controls and therefore desired planning outcomes than that which might be achieved by a replication of detached and attached low rise housing forms of development, approved and constructed east of the subject site, which undermine the desired planning outcomes and design expectations, by fragmenting the land into small lots which will not be re-consolidated to achieve the built form development as informed by the applicable development standards, and could only ever realistically result in a maximum 2-storey built form.

Full compliance with the minimum dwelling density development standard in this instance obviously results in the likelihood of future development not achieving the development potential as expressed in the LLEP 2008.

Public Interest

The proposed development will be in the public interest because it is consistent with the objectives of clause 7.11 and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general 'public interest' considerations at large.

The arguments outlined relation to the holistic consistency with **LLEP 2008** are relied upon as detailed above.

Secretary's Concurrence

It is understood that the Secretary's concurrence under clause 7.11 of **LLEP 2008** has been delegated to Council. Nevertheless, Council may wish to consider the concurrence requirements, being:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and

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(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

In this matter, for the reasons outlined above – and particularly having regard to the minimal adverse amenity impacts stemming from the non-compliance – there is nothing about this proposed variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters required to be taken into consideration before granting concurrence.

Conclusion

For the reasons outlined above, the objection to Clause 7.11 of **LLEP2008** is considered well-founded on the basis that the development in fact demonstrates achievement with the objectives of the development standard and the objectives of the R1 zone. In this regard, strict compliance with the development standard is considered unreasonable or unnecessary, particularly noting the following:

- the proposed delivery of development is consistent with the anticipated future character of the area in relation to the building bulk, form and scale which is proposed to eventuate on the subject land; and,
- requirement of full compliance of this proposed development would undermine the overall anticipated planning outcomes for the subject land, as informed by the planning development standards and controls.

As demonstrated within this submission the subdivision plans, and proposed residential flat building development on the proposed Super-Lot 201, the proposed site dimensions, addressing of the site constraint temporary infrastructure, and delivery of infrastructure required to make the site suitable for future development consistent with overall massing, scale, bulk and height, is considered appropriate to the locality.

The consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standard, and can further satisfy itself through the imposition of restrictions on land proposed to be created to achieve the development standard.

It is therefore requested that the consent authority not withhold development consent for the proposed development due to a non-compliance with the minimum dwelling density development standard.

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REPORT ATTACHMENT 4 – CONDITIONS OF APPROVAL

ATTACHMENT 1 – CONDITIONS OF APPROVAL

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

A. THE DEVELOPMENT

Approved Plans

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

Plan Name	Project Reference	Revision	Date	Prepared By
Plan of proposed Subdivision	C20937-ST2	B	8-04-2022	R.S.Canceri P/L
Plan of proposed Stormwater	C20937-ST2	B	8-04-2022	R.S.Canceri P/L
Erosion & Sediment Control Plan	C20937-ST2	B	8-04-2022	R.S.Canceri P/L
Plan of Dwelling Density	20937-ST2	--	18-11-2019	R.S.Canceri P/L

NSW Rural Fire Service (RFS) General Terms of Approval (GTAs)

2. The development is to demonstrate compliance with all relevant General Terms of Approval issued by the NSW Rural Fire Service, dated 25 June 2021 (Attachment 2).

Sydney Water Requirements

3. The development is to demonstrate compliance with all relevant requirements issued by Sydney Water, issued 6 May 2021 (Attachment 3).

Council Waste-Water Requirements

4. The development must provide for a physical sewerage connection to each created allotment to enable the method of sewage disposal by gravity reticulation mains to either, Sydney Water branch and trunk sewers or Sydney Water point of treatment. Liverpool City Council will not accept any temporary facilities to service the site, including pump-out wet-wells.

Works at no cost to Council

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

B. PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

Site Development Work

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

BCA Compliance

7. The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

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

Fee Payments

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

The following fees are applicable and payable:

- (a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery.
- (b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve.
- (c) Long Service Levy – based on 0.35% of the cost of building work where the costing of the CC is \$25,000 or more.

These fees are reviewed annually and will be calculated accordingly.

9. All fees associated with a road opening permit required for the connection, extension or amplification of any services within Council's road reserve must be paid to Council and receipts provided to the PCA. A separate form must be submitted in conjunction with payment of the fees. The fees include the standard road opening permit fee and any restoration fees that may be required as a result of the works.

Notification

10. The Principal Certifying Authority must advise Council, in writing of:
 - (a) The name and contractor licence number of the licensee who has contracted to do or intends to do the work, or
 - (b) The name and permit of the owner-builder who intends to do the work.

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

Waste Management Plan

11. A Waste Management Plan is to be submitted to the PCA for approval prior to the issue of any Construction Certificate. The Waste Management Plan is to be in accordance with the provisions of the Liverpool Development Control Plan and is to include potential waste generation, including any excavation material details and/or volumes during the construction phase. The waste management plan is to also take into account the on-going waste management for the future development.

S138 Roads Act – roadworks requiring approval of civil drawings

12. Prior to the issue of a Construction Certificate for building or subdivision works the Certifying Authority shall ensure that a S138 Roads Act application, including the payment of application and inspection fees, has been lodged with Liverpool City Council (being the Roads Authority under the Roads Act), for provision of road and drainage in Arnhem Road.
13. Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works, Austroad Guidelines and best engineering practice.

Note: Where Liverpool City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

Subdivision Work Certificate

14. Prior to the issue of a Subdivision Work Certificate the Certifying Authority shall ensure that engineering plans are consistent with the stamped approved concept plan/s prepared by R.S.Canceri P/L , reference number C20937-ST2, revision B, dated 08-04-2022 and that all subdivision works have been designed in accordance with conditions of this consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works, any Roads Act approval issued, Austroad Guidelines and best engineering practice.
15. Prior to the issue of any Subdivision Works Certificate written owner's consent for any works on adjoining land must be submitted to Council. The consent must refer to specific Subdivision Works Certificate plans issued for construction.
16. A temporary turning head must be designed for the end of Ardennes Ave. Details must be included with any Subdivision Works Certificate and is to include a suitable pavement to the satisfaction of the Council.

The subdivision works may include but are not limited to the following:

- (a) Public and private roads
- (b) Stormwater drainage including water quantity and quality treatment measures
- (c) Interallotment drainage
- (d) Private access driveways
- (e) Sediment and erosion control measures
- (f) Overland flowpaths
- (g) Flood control measures
- (h) Traffic facilities including roundabouts, intersection treatments, car parks, bus stops, cycleways, pathways etc.
- (i) Earthworks

- (j) Bridges, culverts, retaining walls and other structures
- (k) Landscaping and embellishment works
- (l) All works required for conversion of the proposed sediment basin to a bio retention function
- (m) All works required for the decommissioning temporary OSD systems including pipe removal, basin filling and works to existing pit structures if required

The Subdivision Work Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Road design criteria table

17. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the proposed roads have been designed in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works and the following criteria:

Road No.	Road Reserve Width	Carriageway Width	Verge	Footpath (1.5m wide)	ESA
Arnhem Road	15.2	7.2	4.0	Both sides	3 x 10 ⁵
Ardennes Ave	20.5	6.0	4.0	West side	2x 10 ⁶

Traffic Management

18. A detailed road design for the proposed Arnhem Road and extension of Ardennes Road, including gradient, swept path analysis, sign posting and line markings, and intersection controls, is to be submitted to Transport Management Section for review.
19. The applicant is to provide street lighting to Council's specifications.
20. Construction Traffic Management Plan (CTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to and endorsed by Council's Transport Management Section. The CTMP is to outline any need for a Road Occupancy Permit issued by Council.
21. Works within the road reserve shall not commence until the construction traffic management plan has been endorsed.

Access, Car Parking and Manoeuvring – General

22. Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Liverpool City Council's Development Control Plan.

Flooding

23. Proposed subdivision to create two super lots 201 & 202 shall be in accordance with the following DA documentation:

- Statement of Environmental Effects (28/01/2021, RS Canceri Pty Ltd)
- Responses to additional information request- RS Canceri Pty Ltd
- Stormwater Report -RS Canceri Pty Ltd
- Stormwater Concept Plan, Sheet 3 dated 05/11/2021, RS CanCeri Pty Ltd

24. Future development applications for development of proposed super lots shall address stormwater quantity and quality of the development and accompany with associated concept design plans/drawings, hydrologic/hydraulic modelling analysis, reports and electronic copies of DRAINS and MUSIC models.
25. Existing bio-retention on the super lot 202 which accommodate and treat stormwater from upstream catchment & from the development sites shall remain and functional until the regional water quality measures (bio-retention basins) are built on the southern side of the site in Maxwells Creek.
26. Any roads of future development including proposed extension of Ardennes Road shall be no lower than the 1%AEP flood for the location.
27. Finished habitable floors of future residential development of super lots shall be no lower than the 1%AEP flood level plus 0.5m freeboard for the location.

Stormwater Concept Plan

28. A stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval prepared by R.S.Canceri P/L , reference number C20937-ST2, revision B, dated 08-04-2022.
 - a) The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.
 - b) Engineering plans and supporting calculations for the stormwater drainage system are to be prepared by a suitably qualified engineer and shall accompany the application for a Construction Certificate. The plan shall indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finish surface levels and sizes of all pipes.
 - c) Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the stormwater drainage system has been designed in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

No Loading on Easements

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

Water Quality

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

The Construction Certificate must be supported by:

- (a) Specification & installation details of the stormwater pre-treatment system

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

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

Retaining Walls on Boundary

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

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

Inter-allotment drainage

32. Inter-allotment drainage shall be provided for all lots that are unable to be drained by gravity to the street system. Inter-allotment drainage is to be constructed with a pit located immediately within the lot boundary of each lot created by the subdivision at the lowest point in the line or a maximum pit spacing of 40m.

Dilapidation Report

33. Prior to the Commencement of Works a dilapidation report of all infrastructure fronting the development in Ardennes Avenue and Arnhem Road is to be submitted to Liverpool City Council. The report is to include, but be not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 10m either side of the development.

Provision of Services – Sydney Water

34. Prior to the issue of a Construction Certificate, an application to obtain a Section 73 Compliance Certificate under the Sydney Water Act 1994, is to be lodged with Sydney Water. To facilitate this, an application must be made through an authorised Water Servicing Coordinator. Please refer to the “building and developing” section of Sydney Water’s web site at www.sydneywater.com.au, or telephone 13 20 92.

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

Provision of Services – Endeavour Energy

35. Written clearance from Endeavour Energy, stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development must be submitted to the PCA, prior to the issue of a Construction Certificate.

Provision of Services – Telecommunications

36. Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following requirements of the Telecommunications Act 1997:
- a) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation, and
 - b) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

C. PRIOR TO WORKS COMMENCING

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

Commencement of work

37. Building work shall not commence prior to the issue of a Construction Certificate. Building work as defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 means any physical activity involved in the erection of a building and includes but is not limited to, the placement of any site shed/s or builders facilities, site grading, retaining walls, excavation, cutting trenches, installing formwork and steel reinforcement or, placing of plumbing lines.

Construction Certificates

38. Detailed engineering plans and specifications relating to the work shall be endorsed with a CC, in accordance with Section 4.19, 6.6, 6.7, 6.12, 6.13, 6.14 of the EP&A Act, and a copy submitted to Council, with payment of any relevant fees.
39. Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.
40. Where this consent requires both engineering and building works to be undertaken, a separate construction certificate shall be issued for each category of works i.e., a separate Civil Engineering CC and a separate Building CC.

Notification/Principal Certifying Authority

41. The applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 81A (4) of the Act.
42. The PCA must advise Council of the intended date to commence work which is the subject of the consent, by completing a notice of commencement of building works or

subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days notice must be given.

43. Written notice of intention shall be given to the owners or the adjoining allotments of land, outlining the particulars of the work, which involves:
- (a) Any excavation below the base of the footings of a building on an adjoining allotment of land.
 - (b) The notice shall be given seven (7) days prior to the commencement of work.
44. In the event the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, the following is to be undertaken at full cost to the developer;
- (a) Protect and support the adjoining premises from possible damage from the excavation, and
 - (b) Where necessary, underpin the adjoining premises to prevent any such damage.

Traffic Management

45. The developer shall obtain road occupancy, road opening permits, and works zone approval from Council as required prior to undertaking any works within public road reserve. The application forms are available on Council's website or can be requested from the Council's Customer Service Centre.
46. Prior to commencement of any works a Traffic Control Plan including details for pedestrian and cyclist access management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the TfNSW "Traffic Control at Worksites" and certified by a suitably qualified person, and submitted to and approved by Council and the PCA.

Environmental Management

47. Adequate soil and sediment control measures shall be installed and maintained. Furthermore, suitable site practices shall be adopted to ensure that only clean and unpolluted waters are permitted to enter Council's stormwater drainage system during construction/demolition. Measures must include, as a minimum:
- (a) Siltation fencing;
 - (b) Protection of the public stormwater system; and
 - (c) Site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

Site Notice Board

48. A sign must be erected in a prominent position on the premises on which work is to be carried out. The sign is to be maintained during work, and removed at the completion of work. The sign must state:
- (a) The name, address and telephone number of the principal certifying authority for the work; and

- (b) The name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- (c) Unauthorised entry to the premises is prohibited.

Matters to be addressed prior to commencement of Subdivision Works

49. Work on the subdivision shall not commence until:
- (a) a Construction Certificate (if required) has been issued,
 - (b) a Principal Certifying Authority has been appointed for the project, and
 - (c) any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement is to be submitted to Liverpool City Council two (2) days prior to commencement of engineering works or clearing associated with the subdivision.

Sediment & Erosion Control

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

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

Site Facilities

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

Facilities

52. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Waste Classification and Disposal of Contaminated Soil and Material

53. All soils and material(s), liquid and solid, to be removed from the site must be analysed and classified by an appropriately qualified and certified consultant, in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 and related

guidelines, in particular the NSW EPA Waste Classification Guidelines, prior to off-site disposal. All Waste material(s) must be disposed of at an appropriately licensed waste facility for the specific waste. Receipts for the disposal of the waste must be submitted to the Principal Certifying Authority within 30 days of the waste being disposed of. All waste must be transported by a contractor licenced to transport the specific waste, and in vehicles capable of carting the waste without spillage, and meeting relevant requirements and standards. All loads must be covered prior to vehicles leaving the site.

D. DURING CONSTRUCTION

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

Building Inspections

54. The building works must be inspected by the Principal Certifying Authority, in accordance with section 6.5 of the EP&A Act 1979 and Clause 61 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.
55. The Principal Certifying Authority must specify the relevant stages of construction to be inspected and a satisfactory inspection must be carried out, to the satisfaction of the Principal Certifying Authority, prior to proceedings to the subsequent stages of construction or finalisation of the works (as applicable).

Security Fence

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

Note: Fencing is not to be located on Council's reserve area.

Construction Requirements

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

Drainage Connection

58. If a connection of private drainage to Council's drainage system is required, an inspection is to be carried out by Liverpool City Council's Development Engineering Unit. A fee will be charged in accordance with Council's adopted Fees and Charges, and is to be paid prior to the inspection.

Hours of Construction Work and Deliveries

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

Unidentified Contamination

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

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

Contamination

61. The development, including all civil works and demolition, must comply with the requirements of the Contaminated Land Management Act 1997, State Environmental Planning Policy (Resilience and Hazards) 2021, chapter 4, and Managing Land Contamination – Planning Guidelines (Planning NSW/EPA 1998).

Imported Fill Material

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

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

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

Record Keeping of Imported Fill

63. Records of the following must be submitted to the principal certifying authority monthly and at the completion of earth works:
- (a) The course (including the address and owner of the source site), nature and quantity of all incoming loads including the date, the name of the carrier, and the vehicle registration;
 - (b) The results of a preliminary contamination assessment carried out on any fill material used in the development.

- (c) The results of any chemical testing of fill material.

Removal of Dangerous and/or Hazardous Waste

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

Soil testing – Subdivisions

65. Soil Testing is to be carried out to enable each lot to be classified according to AS2870 "Residential Slabs and Footings".

Major Filling / Earthworks

66. All earthworks shall be undertaken in accordance with AS 3798 and Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

Traffic Management

67. The endorsed CTMP is to be implemented during construction.
68. Applications must be made to Transport Management Section for any road closures. The applicant is to include a Traffic Control Plan, prepared by a suitably qualified person including the date and times of closures and any other relevant information. A copy of the Traffic Control Plan shall be made available on site at all times.

Public Domain Works - Street Lighting

69. Street lights are to be installed in accordance with the Endeavour Energy certified plans to their satisfaction.

General Site Works

70. Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
71. Dust screens shall be erected and maintained in good repair around the perimeter of the subject land during land clearing, demolition, and construction works.
72. Where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, dust is to be suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the PCA may direct that such work is not to proceed.
73. All vehicles involved in the delivery, demolition or construction process departing from the property shall have their loads fully covered before entering the public roadway.

74. Building operations such as brick cutting, mixing mortar and the washing of tools, paint brushes, form-work, concrete trucks and the like shall not be performed on the public footway or any other locations which may lead to water pollution.
75. The loading and unloading of all vehicles associated with the development must be undertaken within the property boundary of the premises subject to this consent.
- Measures must be implemented to prevent tracking of sediment by vehicles onto roads.
- Vehicle loads must be covered when entering and exiting the site with material.
76. Vehicular access to the site shall be controlled through the installation of wash down bays or shaker ramps to prevent tracking of sediment or dirt onto adjoining roadways. Where any sediment is deposited on adjoining roadways is shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.
77. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.
78. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.
79. While site work is being carried out:
- (a) the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and
 - (b) a copy of these plans must be kept on site at all times and made available to council officers upon request.

Waste Management Plan

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

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

Waste

81. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.
82. Stockpiles of topsoil, sand, aggregate, spoil or other material capable of being moved by water, to be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

Vegetation

83. No known environmental or noxious weeds or known invasive plant species shall be included in the landscaping/revegetation.

84. Any imported soil and/or mulch shall be free of contaminants, seed and propagules of weeds and undesirable species. Mulch shall not be used on flood liable land.
85. Mulch generated from exotic trees or other weed species cleared shall not be used on site. It shall be removed from the site and disposed of appropriately and in accordance with legislative requirements.

Aboriginal Heritage

86. As required by the National Parks and Wildlife Service Act 1974 and the Heritage Act 1977, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from the Heritage Division of the OEH.

Note: The National Parks and Wildlife Service Act 1974 and the Heritage Act 1977 impose substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

87. All relevant on-site staff and contractors should be made aware of their statutory obligations for heritage under NSW National parks and Wildlife Act 1974 and the NSW Heritage Act 1977. They are to be informed of what the potential heritage on the site will be and the significant of the heritage. The site supervisor is to maintain a record of who has completed the heritage induction and this is to be provided to Council prior to Issue of Subdivision Certificate.
88. In the event that skeletal remains are uncovered, work must cease immediately in that area and the area secured. NSW Police must be contacted and no further action taken until written advice has been provided by the NSW Police. If the remains are determined to be of Aboriginal origin, the Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 and a management plan prior to works re-commencing must be developed in consultation with relevant Aboriginal stakeholders.
89. Copies of all relevant Aboriginal Archaeological assessments and reports (including summary excavation and analysis reports) are to be provided to Liverpool City Council, Liverpool City Library and the relevant Local Aboriginal Land Councils.

E. PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions are to be complied with or addressed prior to issue of a Subdivision Certificate by Council:

SPECIAL INFRASTRUCTURE CONTRIBUTION

90. A special infrastructure contribution is to be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011, as in force when this consent becomes operative.

Information about this special infrastructure contribution can be found on the Department of Planning and Environment regarding arrangements for the making of a payment.

Liverpool City Council clearance – Roads Act/ Local Government Act

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

Completion of subdivision works

92. Prior to the issue of a Subdivision Certificate for each stage, the Principal Certifying Authority shall ensure that all relevant subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Liverpool City Council for any outstanding works.

Subdivision Compliance documentation

93. Prior to the issue of a Subdivision Certificate the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:
- (a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The Work as Executed drawings shall be prepared in accordance with Council's Design Guidelines. Electronic copies of the WAE shall be provided in PDF format and a DXF format to Council along with two hard copies of the WAE plans;
 - (b) The WAE drawings shall clearly indicate the 1% Annual Exceedence Probability flood lines (local and mainstream flooding),
 - (c) The WAE drawings shall be accompanied by plans indicating the depth of fill for the entire development site. The plans must show, by various shadings or cross hatchings, the depth of any fill within 0.3m depth ranges;
 - (d) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Inspections are to be carried out in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2006. Any damage that is identified is to be rectified in consultation with Liverpool City Council,
 - (e) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries;
 - (f) Documentation for all road pavement materials used demonstrating compliance with Council Design Guidelines and Construction Specification; and
 - (g) Structural Engineer's construction certification of all structures.
 - (h) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Council's Design Guidelines and Construction specifications. The report shall include:
 - a. Compaction reports for road pavement construction,
 - b. Compaction reports for bulk earthworks and lot regrading,
 - c. Soil classification for all residential lots, and
 - d. Statement of Compliance.

Linen Plans & 88B

94. In order to enable a Subdivision Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of subdivision and one (1) original and two (2) copies of the proposed 88B instrument if required.
95. The applicant shall pay the standard fee for purpose of Subdivision Certificate administration of plan checking and release.
96. The final plan of subdivision must be supported by an 88B instrument to the approval of Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Councils standards, codes and policy's. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.
97. Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as scheduled in councils design specification for subdivisions (as amended).
98. A Restriction as to User over Proposed Lot 201 & 202 is to be created under Section 88B of the Conveyancing Act 1919 in the following terms:

'No further development of the lot burdened is to take place unless it is approved by a Development Consent. Such approval is likely to require, but not be restricted to, construction of road and drainage works, the provision of lot fill, compliance with the minimum dwelling density if residential development is proposed and payment of Section 7.11 Contributions and Special Infrastructure Contributions.'

The restriction as to User may not be extinguished or altered except with the consent of Liverpool City Council.

Note: The final wording of the recital of the Restriction as to User is to be to Council's satisfaction.

Service Providers

99. The following documentation is to be provided prior to the release of the subdivision certificate.
 - (a) Written evidence of suitable arrangements with Sydney Water (Section 73 Compliance Certificate) for the supply of water and sewerage services to the development is to be submitted to the PCA prior to the issue of a Subdivision Certificate.

Council will not issue a Subdivision Certificate unless the method of sewerage disposal is by gravity reticulation mains to either Sydney Water branch and trunk sewers or Sydney Water point of treatment.
 - (b) Notification of arrangement for the development from Endeavour Energy shall be submitted to Council.
 - (c) Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with:

- The requirements of the Telecommunications Act 1997;
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connections of optic fibre technology telecommunications.

Bonds

100. A maintenance bond in the form of a bank guarantee or cash bond, shall be lodged with Council prior to the issue of a subdivision certificate. The bond shall cover maintenance and any damage to roads, drainage lines, public reserves or other council property or works required as a result of work not in accordance with Council's standards, and/or development consent conditions. The bond will be held by Council for a minimum period of 6 months from the date of Council's acceptance of final works.

Maintenance Bond

101. Prior to the issue of nominate (an Occupation Certificate/ a Subdivision Certificate) a maintenance bond is to be lodged with Liverpool City Council for road and drainage works.
102. The value of the bond shall be determined in accordance with Liverpool City Council's Bond Policy. The bond will be administered in accordance with this policy.

Dilapidation Report

103. Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.
104. All disturbed areas must be turfed and all sediment controls must remain in place until the turf is established well enough to avoid any sediment loss.

Rectification of Damage

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

Any rectification works within Ardennes Avenue and Arnhem Road, will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

Stormwater Compliance

106. Prior to the issue of an Subdivision Certificate the Principal Certifying Authority shall ensure that the On-site detention system/s have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent, Have met the design intent with regard to any construction variations to the

approved design and that any remedial works required to be undertaken have been satisfactorily completed.

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

F. ADVISORY

- (a) Section 4.53 of the EP&A Act provides that unless otherwise stated by a condition of this consent, this consent will lapse if development is not physically commenced within five years of the date of this notice.
- (b) Section 8.2 of the EP&A Act provides that an applicant may request, within six (6) months of the date of the determination of the Development Application, that Council review its determination (this does not relate to designated development or Crown development).

An application under Section 8.2 of the EP&A Act cannot be reviewed/determined after 6 months of the date of determination. Therefore, the submission of a Section 8.2 Application must allow sufficient time for Council to complete its review within the prescribed timeframe, including the statutory requirement for public notification.

- (c) Section 8.7 of the EP&A Act provides that an applicant who is dissatisfied with the determination of a Development Application, may appeal to the Land and Environment Court within six (6) months of the date of determination, or as otherwise prescribed by the EP&A Act.
- (d) Section 8.8 of the EP&A Act provides that an objector who is dissatisfied with the determination of the consent authority to grant consent to a Development Application for Designated Development (including any State significant development that would be designated development but for Section 4.10(2) of the EP&A Act), may, within 28 days after the date on which the application is taken to have been determined, appeal to the Land and Environment Court, against the determination.
- (e) The Commonwealth Disability Discrimination Act 1992 may apply to this proposal. Approval of this application does not imply or infer compliance with this Act. Applicants and owners are required to satisfy themselves as to compliance and make their own enquiries to the Human Rights and Equal Opportunity Commission. Attention is also drawn to the provisions of Australian Standard 1428 – Design for Access and Mobility.
- (f) The requirements of all authorities including the Environmental Protection Authority and the Work Cover Authority shall be met in regard to the operation of the building.
- (g) “DIAL BEFORE YOU DIG”

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

relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

(h) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

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

- (i) The Liverpool City Council Local Government area soils and ground water may be subject to varying levels of Salinity. Whilst Council may require applicants to obtain Salinity reports relating to some developments, no assessment has been made by Council. Soil and ground water salinity levels can change over time due to varying factors. It is recommended that all applicants make their own independent inquiries as to appropriate protection against the current and future potential affect of Salinity to ensure the ongoing structural integrity of any work undertaken. Liverpool City Council will not accept any liability for damage occurring to any construction of any type affected by soil and or ground water Salinity.
- (j) Care shall be taken by the applicant and the applicant's agents to prevent any damage to adjoining properties. The applicant or applicant's agents may be liable to pay compensation to any adjoining owner if, due to construction works, damage is caused to such an adjoining property.
- (k) Letter boxes must be provided in accordance with the requirements of Australia Post. In this regard, the developer is required to obtain approval from Australia Post for letter box positioning and dimensions.
- (l) The cost of any necessary adjustments to utility mains and services shall be borne by the applicant.

ATTACHMENT 2 – GENERAL TERMS OF APPROVAL ISSUED BY NSW RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL ISSUED BY NSW RURAL FIRE SERVICE



NSW RURAL FIRE SERVICE

Liverpool City Council
Locked Bag 7064
LIVERPOOL BC NSW 1871

Your reference: DA-182/2021 (CNR-21678)
Our reference: DA20210511001917-Original-1

ATTENTION: Peter Oriehov

Date: Friday 25 June 2021

Dear Sir/Madam,

Integrated Development Application
s100B – Subdivision – Torrens Title Subdivision
Lot 23 Changsha Road Edmondson Park NSW 2174, (none)

I refer to your correspondence dated 06/05/2021 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- At the issue of a subdivision certificate, and until such time as the land is developed, to ensure ongoing protection from the impact of bush fires, the entire site must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*. When establishing and maintaining an IPA the following requirements apply:
 - tree canopy cover should be less than 15% at maturity;
 - trees at maturity should not touch or overhang the building;
 - lower limbs should be removed up to a height of 2m above the ground;
 - tree canopies should be separated by 2 to 5m;
 - preference should be given to smooth barked and evergreen trees;
 - large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
 - shrubs should not be located under trees;
 - shrubs should not form more than 10% ground cover; and
 - clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

NSW Rural Fire Service
4 Murray Rose Ave
SYDNEY OLYMPIC PARK NSW 2127

T (02) 9741 5555
F (02) 9741 5550
www.rfs.nsw.gov.au



- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed

Access – Public Roads

The intent of measures is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

2. Perimeter roads, i.e. the extension of Ardennes Avenue, must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- are two-way sealed roads;
- minimum 8m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- are through roads, and these are linked to the internal road system at an interval of no greater than 500m;
- curves of roads have a minimum inner radius of 6m;
- the maximum grade road is 15 degrees and average grade of not more than 10 degrees;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.

For any queries regarding this correspondence, please contact Peter Eccleston on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager Planning & Environment
Built & Natural Environment





BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision
Lot 23 Changsha Road Edmondson Park NSW 2174, (none)
RFS Reference: DA20210511001917-Original-1
Your Reference: DA-182/2021 (CNR-21678)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

Nika Fomin

Manager Planning & Environment
Built & Natural Environment

Friday 25 June 2021

ATTACHMENT 3 – SYDNEY WATER COMMENTS



6 May 2021

Peter Oriehov
Council Assessing Officer
Liverpool City Council
oriehovp@liverpool.nsw.gov.au

RE: Development Application DA-182/2021 at Lot 23 Changsha Road, Edmondson Park

Thank you for notifying Sydney Water of DA-182/2021 at Lot 23 Changsha Road, Edmondson Park which proposes the Torrens title subdivision of two super lots and road works. Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

Water Servicing

- Potable water servicing should be available via a 150mm mPVC watermain (laid in 2019) on Changsha Road.
- Amplifications, adjustments, and/or minor extensions may be required.

Wastewater Servicing

- Our servicing investigation shows that the trunk wastewater system should have adequate capacity to service the proposed development
- Amplifications or extensions to the wastewater network may be required complying with the Water Services Association of Australia (WSAA) code – Sydney Water edition.

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the [Land Development Manual](#).

Further advice and requirements for this proposal are in Attachment 1. If you require any further information, please contact the Growth Planning Team at urbangrowth@sydneywater.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "KL", with a horizontal line extending to the right.

Kristine Leitch
Commercial Growth Manager
City Growth and Development, Business Development Group
Sydney Water, 1 Smith Street, Parramatta NSW 2150



Attachment 1

Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

Applications must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

Building Plan Approval

The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.

The [Tap in™](#) service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's [Tap in™](#) online service is available at:
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>