

Application Number:	DA-95/2025
Proposed Development:	Two lot Torrens title subdivision and lot consolidation over two stages.
Property Address	Lot 12 Manchuria Road, Edmondson Park 2094 Camden Valley Way, Edmondson Park
Legal Description:	Lot 12 in DP 1249397 Lot 10 in DP 1249397
Applicant:	Beveridge Williams
Land Owner:	Mr Saverio Catanzariti and Mrs Francesca Catanzariti, and Australian Islamic House in Liverpool Incorporated
Cost of Works:	\$10,000
Recommendation:	Refusal
Assessing Officer:	Maddison Spiteri

1. EXECUTIVE SUMMARY

Council is in receipt of a Development Application DA-95/2025 seeking consent for two lot Torrens title subdivision and lot consolidation over two stages on the sites known as at Lot 12 Manchuria Road and 2094 Camden Valley Way, Edmondson Park, which are legally described as Lot 12 and Lot 10 in DP 1249397, respectively.

The site is zoned R1 General Residential pursuant to the *Liverpool Local Environmental Plan 2008*, within which the proposed development is permissible with consent.

In accordance with the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022, the proposal was not required to be notified. No submissions have been received for the subject application.

The application is referred to the Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent*, endorsed by the Minister for Planning and Public Spaces on 6 May 2024, as the development falls in the category of:

Departure from Development Standards

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

The development application proposes a variation under Clause 4.6 of the LLEP 2008 in relation to Clause 7.11 Minimum Dwelling Density, consisting of a variation of 85%, thus triggering the requirement for the application to be determined by the LLPP. A Clause 4.6 variation statement has been submitted, which is discussed in detail within this report.

The proposed development application initially sought consent only for a two lot Torrens title subdivision of Lot 12 in DP 1249397, in which the Statement of Environmental Effects (SEE) stated that the subdivision would enable future lot consolidation with Lot 10 in DP 1249397 (known as the Australian Islamic House [AIH]). Council issued a Request for Information (RFI) Letter dated 4 April 2025 to the applicant which requested the rationale behind the proposed subdivision pattern and for Clause 7.11 of the LLEP 2008 to be addressed. No information had been submitted with the initial application to demonstrate that the proposed subdivision would contribute to lot consolidation with the AIH site on Lot 10 in the future. The proposal was subsequently amended by the Applicant on 22 April 2025 to propose lot consolidation of proposed Lot 1 with the existing AIH site on Lot 10, over two stages. The amended package included a 'Letter of Intent', Clause 4.6 written request, amended subdivision and consolidation plan, owners consent for Lot 10 and an amended SEE and RFI Response.

The key issues associated with the assessment of the application, as amended, relate to the variation to the minimum dwelling density standard and insufficient Clause 4.6 variation request which does not adequately address the test of Clause 4.6. Furthermore, the application does not sufficiently address the Indicative Layout Plan (ILP) under Part 2.11 of the Liverpool Development Control Plan 2008 and proposes a fragmented subdivision layout which is not considered to be orderly development under the objects of the *Environmental Planning and Assessment Act 1979*, especially for a greenfield site with consideration for the envisioned future development in the locality. The proposal is considered insufficient in complying with the relevant provisions and standards and is considered to be an unacceptable form of development.

The application has been assessed pursuant to the provisions of the *Environmental Planning and Assessment Act 1979*. Based on the assessment of the application, it is recommended that the application be refused due to insufficient information and inconsistencies with the relevant environmental planning instruments and policies. Accordingly, the proposed development is not considered to be in the public interest.

2. SITE DESCRIPTION AND LOCALITY

2.1 Site Description

The subject site consists of two allotments known as Lot 12 Manchuria Road and 2094 Camden Valley Way, Edmondson Park, which are legally described as Lot 12 and Lot 10 in DP 1249397. Lot 10 is mostly rectilinear in shape, has an area of approximately 20,621sqm and currently contains a place of public worship, "The Australian Islamic House Masjid", with associated car parking and landscaping, which is accessed from Camden Valley Way via a 'right of carriageway' easement over the northern adjoining site.

Lot 12 has an area of approximately 13,413sqm and is mostly irregular in shape due to the long and narrow strip of the site approximately 521 metres in length and 5 metres wide, which was historically used as an access handle with access to the site directly from Camden Valley Way. Lot 12 currently contains a single storey dwelling and a number of sheds and trees. Lot 12 no longer has access to Camden Valley Way as the access handle has been disused since approximately May 2017 when alternative access was provided at the southern portion of the site through Manchuria Road, as the redevelopment of Edmondson Park has progressively occurred.

Both subject sites are the result of Torrens title subdivisions, land acquisition and rezoning arrangements in recent years, which also created Lots 9, 8 and 7 in DP 1249397 (north of the

subject sites) that directly adjoin the subject sites and have direct frontage to Camden Valley Way. These lots were rezoned to RE1 Public Recreation and were acquired by Council.

The subject sites share a common boundary along the northern portion of the disused access handle for Lot 12 for a length of approximately 210 metres as shown in **Figure 1**.



Figure 1: Aerial imagery of subject site (source: Geocortex)

2.2 Locality Description

The subject site is located within the suburb of Edmondson Park which is characterised by a range of land uses and development. The immediate surrounding locality is zoned R1 General Residential and is considered land in transition from large rural land uses to recently executed subdivisions and dwelling house constructions. Adjoining to the east and north of Lot 12 and south of Lot 10 is a vacant lot (Lot 11) which, once developed in the future, will contribute to a large portion of the precinct planned roads and subdivision, as multiple roads intersect through Lot 11 as well as the subject site Lot 12 (**Figure 3**). The majority of the surrounding locality has been developed including roads, however there is a number of large lots yet to be developed. The below table details the remaining large lots within the precinct which are immediately adjacent to the subject sites and their development status:

Address	Development Status	Orientation
50 Croatia Avenue	PL-4/2018: Advice provided for Demolition of existing buildings, tree removal and construction of ten (10) residential flat building (188 units) with basement parking	West of the subject sites.

		<u>DA Approved:</u> DA-279/2020 and DA-279/2020/A for two lot subdivision and multi-dwelling housing comprising the staged construction of 30 townhouses and associated visitor car-parking, subdivision, civil works including the construction of two roads (including on an adjoining allotment to the south) for premises known as 50 Croatia Avenue, Edmondson Park	
12-14 Avenue	Croatia	<u>PL-82/2017:</u> Advice provided for subdivision of 5 acres with roads and drainage works <u>DA Refused:</u> DA-499/2021 for Two lot Torrens title subdivision, earthworks, road construction, tree removal and the construction of a multi dwelling housing development comprising of 27 x 2 storey dwellings and associated landscaping and stormwater management.	West of the subject sites.
Lot 15 Avenue	Croatia	<u>DA Approved:</u> DA-1371/2021 for subdivision of an existing allotment into five (5) Torrens Title lots for future residential development, one (1) residential lot over which is proposed a new dwelling house, one (1) large residue super-lot in three (3) parts (two (2) residue super-lots, and one (1) residue lot affected by a transmission easement), demolition of existing structures, and associated construction of roads, a pedestrian path reserve, and civil works over two stages	West of the subject sites.
LOT 318 ROAD	FRY	No current or determined applications. (This strip of land is the remaining half of the disused access handle for Lot 12, which was subdivided in half and is under separate ownership).	West of the subject sites.
LOT 11 BRITTANY ROAD		No current or determined applications.	Centrally adjoining both subject sites.

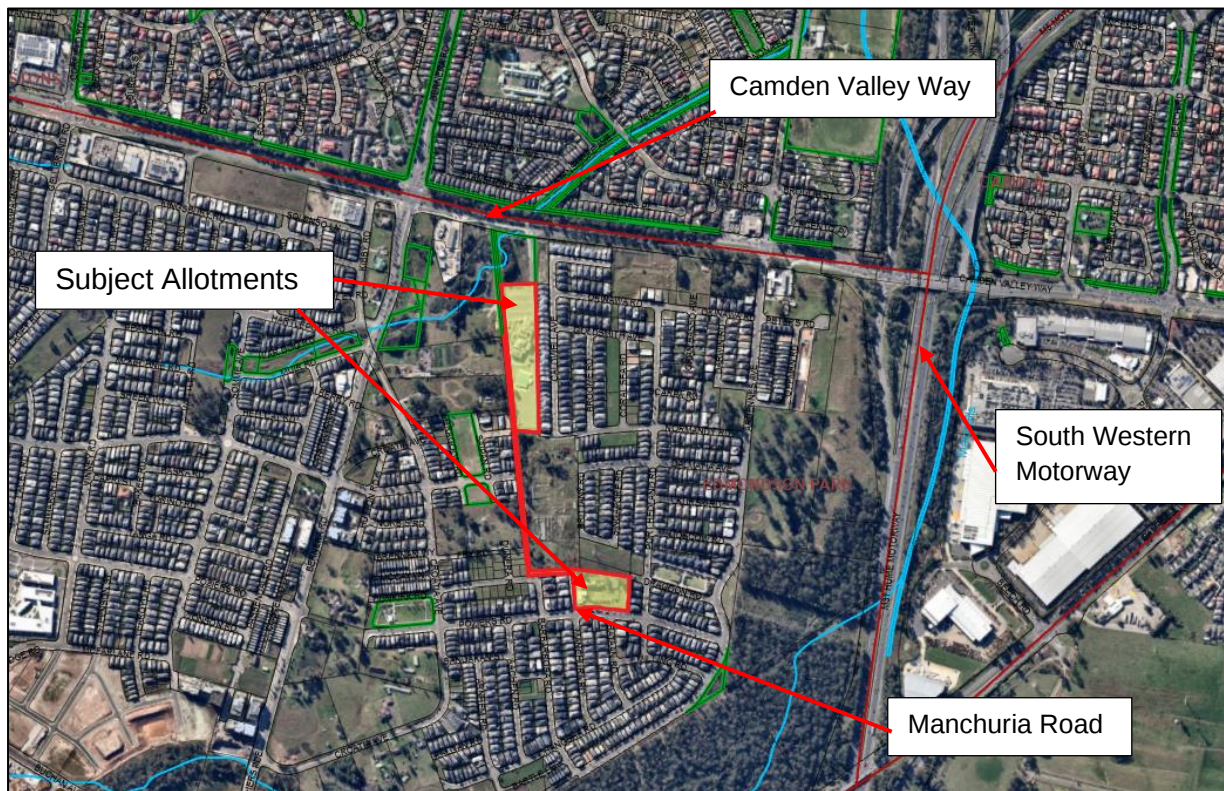


Figure 2: Locality surrounding the proposed development (source: Geocortex)



Figure 3: Indicative Road Layout plan for Lot 12 and surrounding locality (source: Geocortex)

2.3 Site Constraints

Are there any constraints or affection on the site:

- Bushfire
- Flooding
- Heritage Items
- Aboriginal heritage
- Environmentally Significant Land
- Threatened Species/ Flora/ Habitat/ Critical Communities
- Acid Sulphate Soils
- Aircraft Noise
- Flight Paths
- Railway Noise
- Road Noise/ Classified Road
- Significant Vegetation
- Contamination
- Gas Pipeline
- Salinity potential

- Moderate salinity potential
- Flooding: Low flood risk (2.1%) and Flood planning area (6.8%). A minor portion of Lot 10 (AIH site) is mapped within the flood planning area. However, no works are proposed under the subject application. Therefore, it is considered in the circumstances that further assessment of flooding impacts is not necessary for the subject application and would be subject to future development applications involving works and built form.
- Threatened Species: A portion of Lot 12 is mapped as containing 'critically endangered' species, however no works are proposed, therefore further assessment is not necessary.
- Gas Pipeline: Lot 10 is within close proximity to a Jemena gas pipeline, however no works are proposed, therefore further assessment is not necessary.

	- Transmission line: Lot 12 is mapped as containing a Transgrid transmission line, however no works are proposed, therefore further assessment is not necessary.
Are there any restrictions on title? Attach 88B instrument to the report	- Easement for Transmission line over Lot 12. - Right of Way over Lot 12 - Easement to drain water over Lot 12. No works are proposed, therefore easements would not be impacted.

3. BACKGROUND / HISTORY

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

Date	Action
7 March 2025	DA-95/2025 lodged with Council
21 March 2025	Referral to Engineering
4 April 2025	Request for Further Information issued to the Applicant, requesting: - Insufficient information regarding subdivision and disorderly pattern. - Dwelling Density non-compliance
7 April 2025	Engineering referral completed. Supportive subject to conditions.
22 April 2025	The applicant submitted additional information including: - Statement of Environmental Effects - Clause 4.6 Written Request - The AIH ACNC - RFI Response Letter - Title Search (AIH Site) - Updated Subdivision Plan - AIH Letter of Intent - Owners Consent (AIH Site)
5 May 2025	Request for Further Information issued to the Applicant, requesting: Bushfire report as per NSW RFS request.
30 May 2025	Email was sent to applicant advising of outstanding matters from Council's RFI dated 4 April 2025 and that the Clause 4.6 request is not considered adequate and the application would likely be recommended for refusal. A final 7 days was provided to the applicant to address the outstanding matters.
4 June 2025	The applicant submitted additional information including: - Clause 4.6 Written Request Rev C - Statement of Environmental Effects Rev D - RFI Response Letter No. 2

4. DETAILS OF THE PROPOSAL

The development application seeks consent for two lot Torrens title subdivision and lot consolidation over two stages. The proposal will result in the same number of lots as that which currently exists, being two lots. The applicant has stated within their Statement of Environmental Effects, RFI response letter, Clause 4.6 variation letter and Letter of intent that the proposal is effectively a boundary adjustment as the resulting number of lots remains the same, however the applicant has not formerly proposed boundary adjustment as part of this application.

Specifically, the proposal would consist of the following:

STAGE 1:

Torrens title subdivision:

- Two lot Torrens title subdivision consisting of the lots as follows:
 - Proposed Lot 1 – 1,800 square metres
 - Proposed Lot 2 – 11,610 square metres

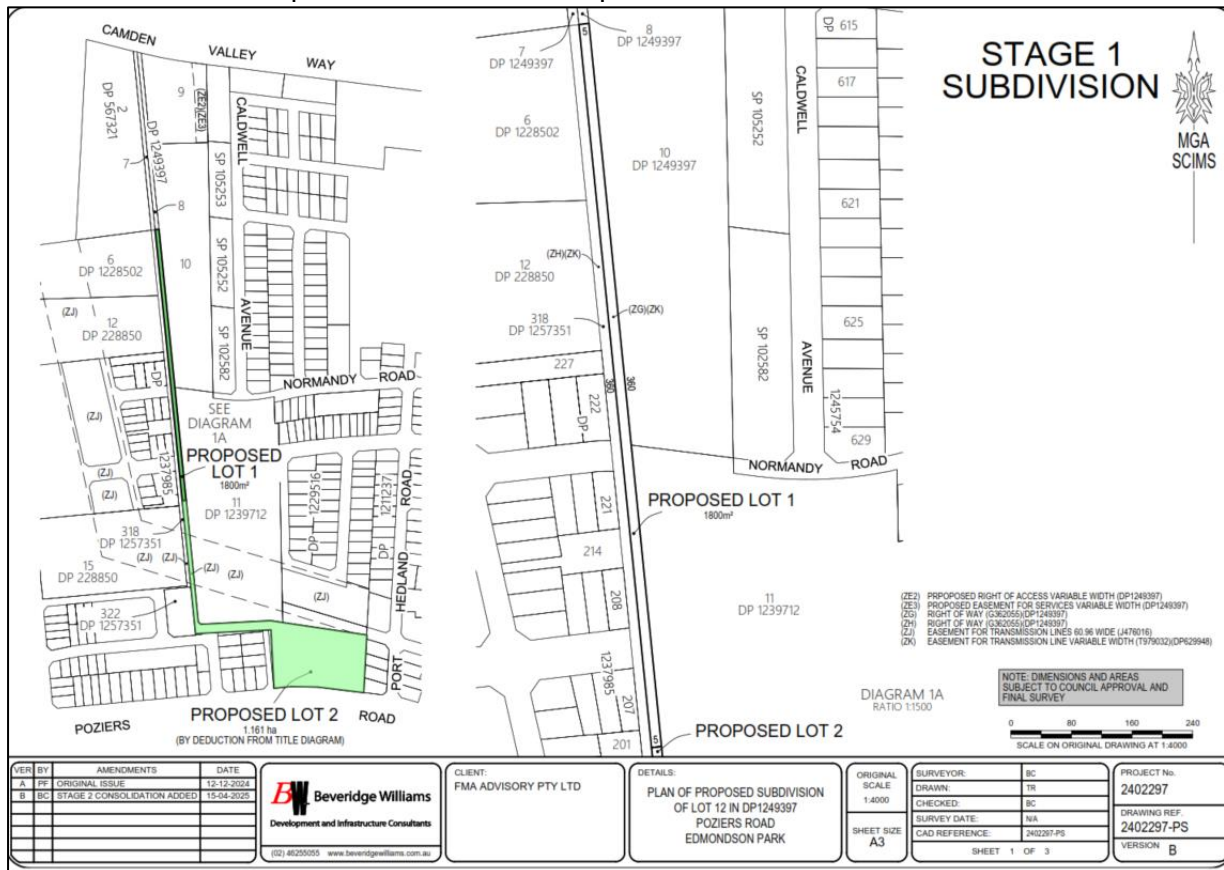


Figure 4: Extract of the proposed Stage 1 Torrens title subdivision.

STAGE 2:

Lot consolidation:

- Lot consolidation of Proposed Lot 1 with existing Lot 10 in DP 1249397 creating one lot as follows:
 - Proposed Lot 20 – 2.24 hectares (22,400 square metres).

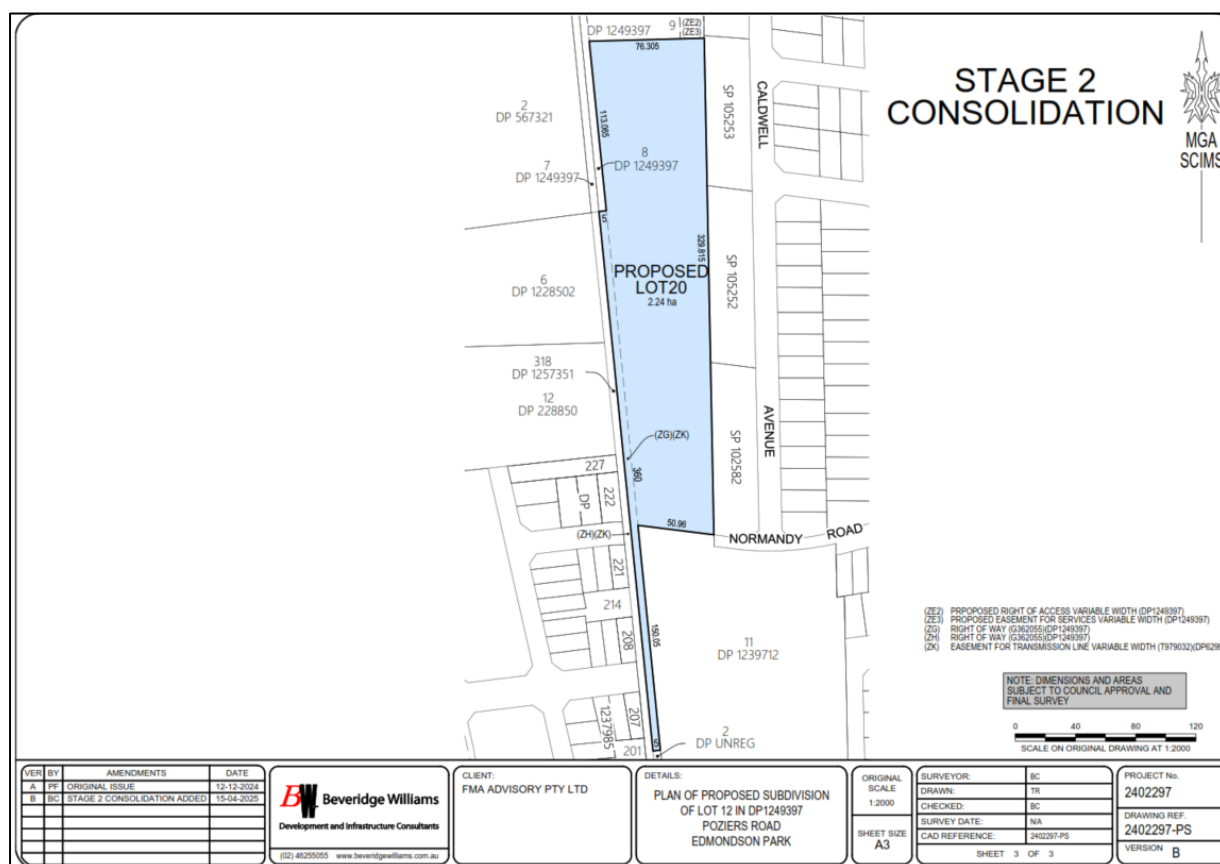


Figure 5: Extract of the proposed Stage 2 lot consolidation.

5. STATUTORY CONSIDERATIONS

The following planning instruments have been considered in the planning assessment of the subject Development Application:

- (a) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*;
- (b) *State Environmental Planning Policy (Resilience and Hazards) 2021*;
- (c) *Liverpool Local Environmental Plan 2008*; and
- (d) *Liverpool Development Control Plan 2008*:
 - o Part 1: General Controls for all Development; and
 - o Part 2.11: Land Subdivision and Development in Edmondson Park.

6. ASSESSMENT

The Development Application has been assessed in accordance with the relevant matters for consideration prescribed by Section 4.15 Evaluation of the *Environmental Planning and Assessment Act 1979* and *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 (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural Areas

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

The site does not propose any development other than land subdivision as part of this application and the site has also been biodiversity certified as part of the South West Growth Centre rezoning process.

The development is acceptable with regards to Chapter 2 of SEPP (Biodiversity and Conservation) 2021.

Chapter 6 Water Catchments

The subject site is located within the Georges River catchment and as such Chapter 6 Water Catchments of SEPP (Biodiversity and Conservation) 2021 applies to the application. The Biodiversity and Conservation SEPP aims to protect the environment of the Georges River catchment by ensuring that water quality impacts are considered.

In accordance with the SEPP, when a consent authority determines a development application, the provisions in Part 6.2 - Development in Regulated Catchments are to be considered and consent must not be granted unless the consent authority is satisfied that the matters have been addressed.

The subject development application does not involve stormwater drainage works, civil engineering works or subdivision works. The proposal relates to the subdivision and consolidation of land, however, does not incorporate any further development works. The application was referred to Council's Land Development Engineering Department who reviewed the proposed subdivision. Land Development Engineering is supportive of the proposed application, subject to conditions if consent were granted.

It is considered that the proposal satisfies the provisions of SEPP (Biodiversity and Conservation) 2021.

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

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

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

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

Pursuant to the above SEPP, Council must consider:

- whether the land is contaminated.

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

The subject development application does not involve stormwater drainage works, civil engineering works or subdivision works. The proposal relates to the subdivision and consolidation of land, however, does not incorporate any further development works. It is considered that further assessment of contamination of the site is necessary under the subject application and would be subject to future development applications involving works.

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

(c) Liverpool Local Environmental Plan 2008

(i) Zoning and Permissibility

The subject site is zoned R1 General Residential pursuant to the LLEP 2008. The proposed development is best defined as **subdivision**. Subdivision is permissible with consent, pursuant to Clause 2.6 of the LLEP 2008. The zoning of the site is demonstrated in **Figure 6** below.

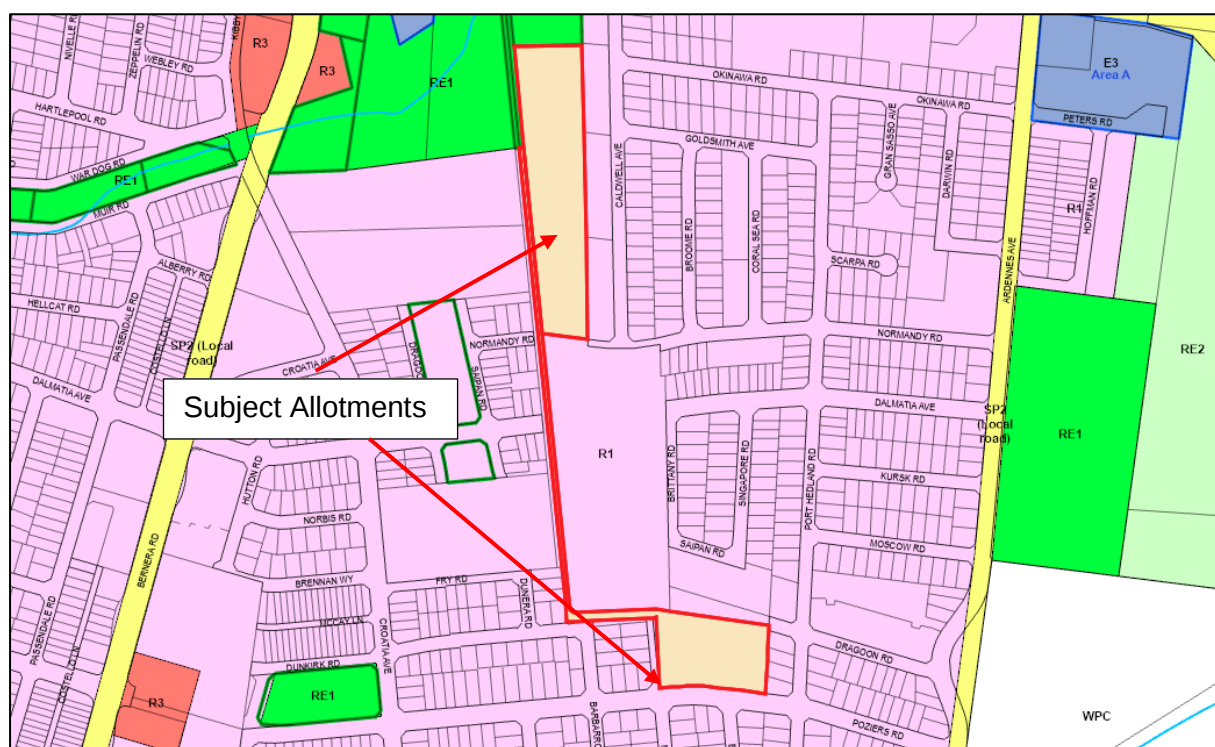


Figure 6: Zoning map of the site (source: *Geocortex*)

(iii) Objectives of the zone

Objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

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

The development application does not propose residential development or any works under the subject application, however as detailed within this report, the proposal is not considered to meet relevant planning controls for the precinct. Due to the observed non-compliances with the precinct planning requirements for orderly subdivision and infrastructure development inclusive of the ILP road layout, it is considered the proposal does not meet the relevant zone objectives in that the proposal would generate further fragmentation of land and increased independent landholdings which would impact upon future development being equitably delivered to adequately provide for the housing needs of the community and potential development of facilities and services and social and community infrastructure to meet the needs of future residents.

The fragmented subdivision pattern would impact upon coordinated and efficient future development of the precinct within the surrounding locality as the subject application does not propose to construct any portions of ILP roads or associated infrastructure which are mapped within the disused access handle portion of Lot 12. Therefore, the required roads and infrastructure for the precinct and future housing would be dependent on future development occurring on adjoining properties and through a neighbouring property amalgamating land with the disused access handle portions of Lot 12.

However, the proposed subdivision pattern seeks to subdivide the disused access handle of Lot 12 into two separate lots in a manner which does not align with the existing lot boundaries of adjoining lots, nor provide a subdivision pattern along future road boundaries and eliminating potential fragmentation of land, potentially leading to future amalgamation hurdles, especially considering the land is in a greenfield area and there would not be any pre-existing conditions requiring the proposed subdivision to be in the proposed location. This would further inhibit future coordinated delivery of required ILP roads due to the increase in land ownership whereby neighbouring properties would need to coordinate with more landholders to amalgamate land or seek additional adjoining landowners consent to complete development of the precinct roads. However, if neighbouring properties did not seek coordinated delivery of roads, then the remaining portions of roads across Lot 12 would not be constructed, which also have associated pedestrian facilities for the community, fragmenting east west permeability and facilities to encourage walking in the area, especially with nearby parks and open spaces.

Accordingly, the proposal is not considered to adequately facilitate future development and would evidently impact upon cohesive and efficient delivery of required facilities and services, community infrastructure and housing.

(iv) Principal Development Standards

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

Part 4 Principal Development Standards			
Development Provision	Requirement	Proposed	Comment

2.6 Subdivision	Land to which this Plan applies may be subdivided, but only with development consent.	Torrens title subdivision is proposed.	Complies
2.7 Demolition	The demolition of a building or work may be carried out only with development consent	Demolition is not proposed as part of this application.	Not Applicable
4.1 Minimum subdivision lot size	300sqm; and 450sqm	Stage 1: Proposed Lot 1 – 1,800sqm Proposed Lot 2 – 11,610sqm Stage 2: Proposed Lot 20 – 22,400sqm	Complies
4.3 Height of buildings	R1 zoned land = 12 metres and 8.5 metres	No buildings are proposed.	Not Applicable
4.4 Floor space ratio	R1 General Residential – 0.75:1 and 0.65:1	No buildings are proposed.	Not Applicable
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
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	The existing residential dwelling and place of public worship on the subject sites has access to key utility infrastructure. However, as no works are proposed, further assessment is not considered necessary.	Not Applicable
7.8 Flood Planning	To minimise the flood risk to life and property associated with the use of land	A minor portion of Lot 10 (AIH site) is mapped within the flood planning area. However, no works are proposed under the subject application. Therefore, it is considered in the circumstances that further assessment of flooding impacts is not necessary for the subject application and would be subject to future development applications involving works and built form.	Considered Acceptable

			
Clause 7.11 Minimum Dwelling Density	The site is subject to a minimum dwelling density of 14dw/ha for majority of the site; and 17dw/h for a minor portion of the site.	Dwelling density has not been calculated for existing Lot 10 as the site contains an existing place of public worship which is not considered to be residential development. 14 dwelling density band 17.262 dwellings (18) required over a net developable area of 1.233ha (excluding land not mapped for density - 330sqm). 2 lots proposed / 1.233ha = 1.62dw/ha over the assessable area, which does not comply. 17 dwelling density band 1.27 dwellings (2) required over a net developable area of 0.0750ha. 1 lot proposed / 0.0750ha = 13.33dw/ha over the assessable area, which does not comply.	Does Not Comply – See Clause 4.6 variation discussion 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 the LLEP 2008. As stated in the LLEP 2008 table above, the minimum dwelling density prescribed for the site is 14dw/ha and 17dw/ha, as shown in **Figure 7** below. A dwelling density of 1.62 dwellings per hectare is proposed under the 14dw/ha density band and 13.33 dwellings per hectare under the 17dw/ha density band, which results in a numerical variation of 88.42% and 21.58%.

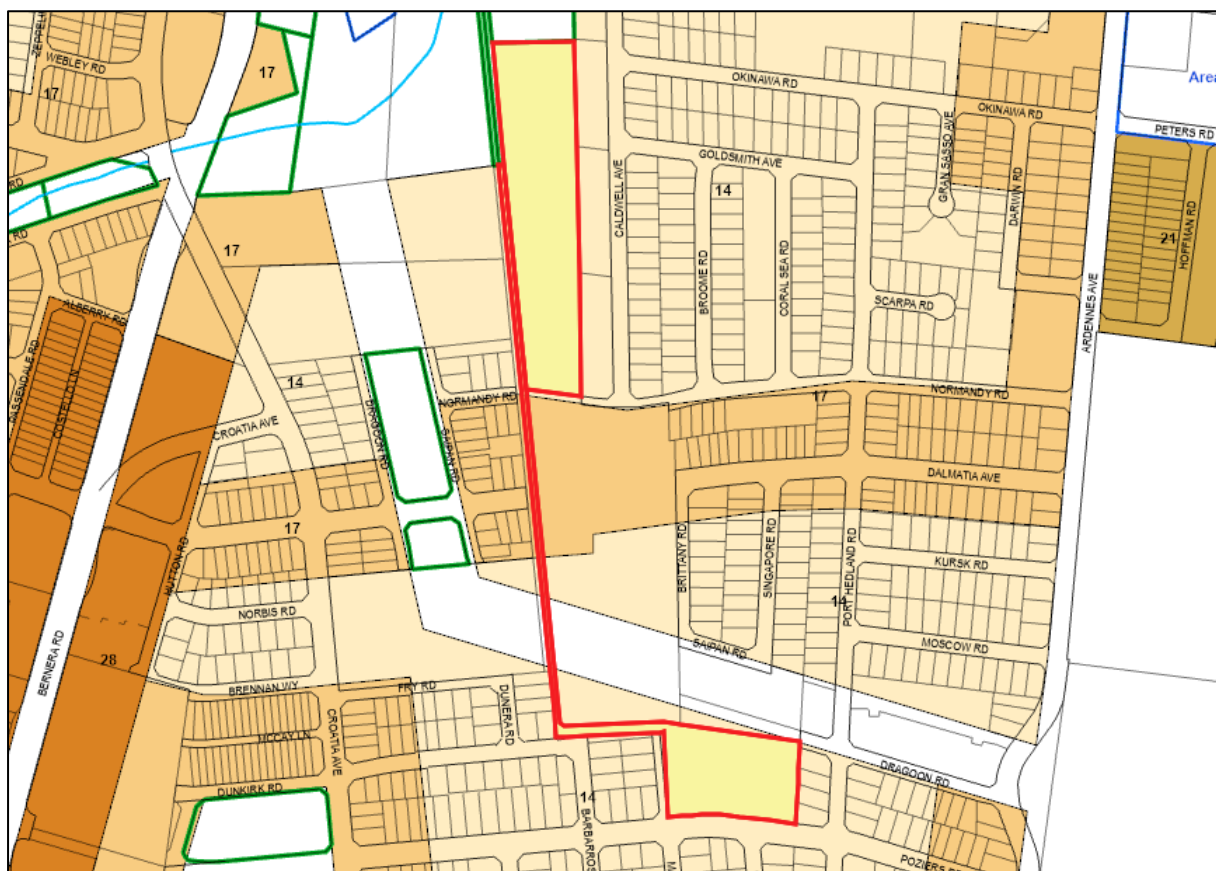


Figure 7: Dwelling density map of the subject sites (Source: Geocortex)

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 is satisfied the applicant has demonstrated that-

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

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

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

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

In conjunction with an examination of case law regarding 4.6 Variations, which the applicant has identified as:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46.
- Wehbe v Pittwater Council [2007] NSWLEC 827.

This document provides the following justifications based on the merits of the proposal:

This written request submits that strict compliance is unnecessary in the circumstances as the objectives of the development standard are achieved notwithstanding the non-compliance under First Way in Wehbe. Consideration of the objectives follows:

Table 1: Compliance with LLEP 2008 Clause 7.11 Objectives

DEVELOPMENT STANDARD OBJECTIVES	ASSESSMENT
a) to contribute toward the efficient use of land resources,	The northern handle of Lot 12 to be excised, used to provide the only access to Lot 12 via Camden Valley Way. The existing irregular subdivision configuration of site and surrounds is a result of introduction of new vehicular accessways and the creation and acquisition of the Lot 8 DP 1249397 by Council. The access handle for Lot 12 became redundant and disused upon alternate access being provided. The proposed Stage 2 subdivision will amalgamate the existing disused handle with Australian Islamic House (AIH) and be revitalised. The redundant space will provide opportunities for landscape screening and acoustic mitigation measures, which will benefit residential zoned land to the west of the site. Therefore, the proposed consolidated Lot 20 will contribute toward the efficient use of the existing disused and redundant access handle. While it is noted this report is for a request of the variation of minimum dwelling density, the variation only refers to existing Lot 12, the proposal will have minimal impact on the existing Lot 12 and future/proposed dwelling density of Lot 2. Proposed Lot 2 and portions of Proposed Lot 1 in future will be able to meet the relevant dwelling density, contributing towards the efficient use of land and providing for the housing needs of the community.

b) to ensure the viability of public transport and other services planned for the area,	Noting that Proposed Lot 2 and portions of Proposed Lot 1 will be subject to future DAs for subdivision and these future subdivisions will be able to meet the relevant density as detailed above, the proposal does not prejudice the viability of public services planned for the area. The proposed subdivision will not affect the existing public transport and other services within the locality.
c) to ensure adequate funds for the recreation and community facilities planned for the area.	Although no recreation or community facilities form part of this proposal we understand that Proposed Lot 2 and portions of Proposed Lot 1 will be subject to future DAs for subdivision and these future subdivisions will be able to meet the relevant density as detailed above, the proposal does not prejudice the imposition or collection of contributions in future to provide for facilities in the local area.

The proposed subdivision to excise a portion of Lot 12 to allow its sale to an adjoining neighbour, being the Australian Islamic House to permit future consolidation with this site to maximise opportunities for landscaping and acoustic mitigation. This subdivision does not prejudice future compliance with the dwelling density control, noting the subject site can be subdivided in accordance with the DCP when desired and meet the relevant density.

The variation only arises with reference to the dwelling density of existing Lot 12 and proposed Lot 2.

The above assessment indicates that all objectives and all underlying objectives of the development standard are achieved, notwithstanding the numerical non-compliance. Following the reasoning of Preston CJ in Wehbe, strict compliance is therefore unnecessary.

Strict compliance with Clause 7.11 of LLEP 2008 would also be unreasonable in the circumstances of the case, as no purpose would be served if flexibility was not applied: Wehbe at [42]. Proposed Lot 1 as a residue lot (so it can be amalgamated with the neighbouring lot) meaning this lot in future can still be developed in accordance with the relevant controls and achieve the minimum dwelling density when desired by the owners.

Council Assessment of variation proposed

- The departure from the development standard is a result of the desire for Lot 10, which contains the Australian Islamic House, to increase their land size through consolidation with Proposed Lot 1 to provide additional landscaping for screening and privacy for the place of public worship. However, the proposed subdivision pattern does not adequately reflect this intended land use as the subdivision boundary is proposed past Dalmatia Avenue and adjacent to the site known as 50 Saipan Road, Edmondson Park. This demonstrates approximately 720sqm of land which lies past the southern boundary of Lot 10 and is not immediately adjoining Lot 10. Therefore, this area of land could not be effectively used for landscaping screening and privacy purposes for Lot 10 as there is no adjoining land area to the place of public worship and would serve no purposes for landscaping or acoustic mitigation. As such, it is considered that the proposed subdivision pattern is disorderly and generates current non-compliances with dwelling density and would also create potential impacts upon future dwelling density and delivery of orderly housing stock..
- The Applicant has written in the Statement that portions of Proposed Lot 1 and all of Proposed Lot 2 would still be capable of achieving the required dwelling density in the

future through subdivision and to provide for the housing needs and infrastructure needs of the locality. However, the proposed subdivision pattern does not consider the mapped density bands and proposes a subdivision boundary which excises off a minor portion of 17dw/ha density band. In viewing the dwelling density map as shown in Figure 7, it is evident that the 17dw/ha density band is aligned with the southern boundary of the site known as 50 Saipan Road, Edmondson Park. However, the subject application does not propose a subdivision boundary which aligns with this density band either, effectively splitting a density band over two proposed lots, which does not promote orderly development and would impact upon future development to be sufficiently coordinated with mapped density bands.

- In addition to the above, the applicant has stated that they have not addressed the 17dw/ha density band as “Proposed Lot 1 is intended to be amalgamated with existing Lot 10, and is therefore not for residential purposes”. However, the Statement has not addressed the minor portion of the 17dw/ha density band that has been cut off due to the proposed subdivision boundary and is situated within proposed Lot 2.
- Furthermore, whilst the applicant intends to consolidate Proposed Lot 1 with existing Lot 10, this has been proposed through staging, which is considered to impact upon the guarantee of lot consolidation and effectively creates an opportunity for lot consolidation to not occur, which instead creates further fragmented land and additional land holdings. As the Applicant has written in their Statement, the proposal effectively demonstrates a boundary adjustment as the existing and resulting number of lots remains unchanged, however the applicant has not proposed a boundary adjustment. It is considered that a boundary adjustment application would have provided the certainty of land being consolidated and used for the stated purpose of landscaping screening.
- Whilst the disused access handle portion of existing lot 12 would not be capable of achieving the required lots under the dwelling density due to the access handle being 5m wide, and this would in turn not be capable of accommodating residential development, the departure from the development standard is still unsupported due to the above mentioned impacts generated from the proposed development. The proposed development increases impacts to dwelling density for future development as any future development will not be capable of occurring without the need to amalgamate with an adjoining site. By proposing a subdivision which splits the disused access handle of Lot 12 into two parts which also do not align with any existing orderly boundaries and roads, it is creating a fragmented and uncoordinated approach to future development with adjoining properties when considering dwelling density to be achieved and road and other infrastructure to be delivered.
- The delivery of the roads across Lot 12 would not be constructed, which also have associated pedestrian facilities for the community, fragmenting east west permeability and facilities to encourage walking in the area, especially with nearby parks and open spaces.
- The proposed dwelling density departure and density band splitting also creates complexities for future development which undermines the precinct planning outcomes and further planning inefficiencies for the locality.
- The proposed subdivision layout is not considered to be an orderly subdivision pattern required to meet the objects of 1.3(c) of the Environmental Planning and Assessment Act 1979.
- The applicant has stated that allowance of this variation will not prevent the proposed Lot 20 and Lot 12 from being subdivided at a later stage that will achieve the desired outcome of the dwelling density development standard. However, there is no mechanism to ensure the desired outcome is achieved, particularly noting that the owners of the Australian Islamic House site on Lot 10 do not seek to develop the

required roads or density within the portion of Proposed Lot 1 which is south of Normandy Road and past their site's existing southern boundary.

- Furthermore, the proposed development does not provide the required infrastructure to accommodate future dwelling densities, and Council cannot be certain that the required infrastructure will be delivered in the future as the applicant has stated within their Clause 4.6 Statement that Proposed Lot 20 is not for residential purposes, therefore by admission, the applicant is excluding the portion of the access handle from current and future dwelling density and therefore there is no intention to deliver the precinct plans for mapped roads in the future.
- Therefore, Council is unsupportive of the proposed variation to the minimum dwelling density given that it has not been adequately demonstrated that full compliance is unreasonable or unnecessary in the circumstances, and the planning assessment of the Clause 4.6 statement has demonstrated an insufficient justification from the Applicant where impacts to future development within the precinct and adjoining properties has not been considered through the subject proposal.
- The development is not considered to satisfy all of the relevant heads of consideration pursuant to Section 4.15 (1) of the Act, particularly in relation to social and economic impacts envisaged due to the above comments.

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

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

Preston CJ in Initial Action considered what constituted "sufficient environmental planning grounds. His Honour states at [23]-[24]

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 3(b) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Pursuant to clause 4.6(3)(b) of LLEP 2008, there are sufficient environmental planning grounds to justify the variation to the dwelling density standard as follows:

1. *The variation refers to an existing non-compliance of Lot 12, the proposed subdivision will slightly decrease the existing variation, representing an improvement. Therefore, the subdivision in isolation does not cause the variation, and it is unreasonable to oppose a DA which brings the development closer to compliance with Council's controls noting the existing noncompliance.*
2. *The proposal will not affect the future subdivision of proposed Lot 2.*
3. *The proposal simply seeks to excise a portion of the disused access handle to allow the sale of this land to an adjoining lot, this new lot to be consolidated with their site, noting over 200m of the handle's side boundary is directly adjoining the Australian Islamic House site, who will purchase this land. This consolidation will assist in minimizing and reducing the existing fragmented ownership of land within the locality.*
4. *As the proposal will facilitate the sale and consolidation of fragmented land, this will promote the orderly and economic use and development of land, which is a key objective of the Environmental Planning and Assessment Act 1979.*
5. *To address the issue of fragmented land ownership, it is often necessary to complete "procedural subdivisions" such as this one where land is excised and exchanged to facilitate further subdivisions in future and to ensure lots better align with the ILP. Considerable weight has to be given as the variation results in part from the inability to subdivide the site in an orderly manner now due to the current fragmentation, noting that;*
 - *North: To the north of this site, there is a strip of land, Lot 441 DP 1229516, will partially contain the extension of Dragoon Road. As the road alignment as per the ILP is on a neighbouring property and not subject to this owners control, the site can not be subdivided currently, till this road is provided by others.*
 - *West: To the west of this site, there is a strip of land, Lot 303 DP 1238463, which is between the subject site and the half width road of Manchuria Road, which prohibits the extension of Manchuria Road and the development of the subject site, this extension is hinged upon the neighbour.*
6. *As Lot 10 currently has a use occurring that is permitted in the zone, and due to the size and scale of the development, the lot warrants a large site area to mitigate environmental impacts, it is unreasonable to apply a minimum dwelling yield, where this use is permitted and furthers the objectives of the General Residential Zone.*
7. *The proposed subdivision is ultimately a boundary adjustment, where the existing two lots, Lot 10 and Lot 12 boundaries will be adjusted to form reconfigured lots, the proposal does not create a new lot.*

The proposed subdivision, while not meeting the minimum dwelling density, is representative of the issues that arise in Greenfield Release Areas where land ownership is fragmented and this fragmentation has to be resolved prior to the envisaged character being realised. This subdivision is procedural in nature which assists in reducing the fragmentation of land and critically will not prejudice against the delivery of the ILP in future, or the dwelling density being met.

The variation to the dwelling density standard furthers the objectives (b), (c) and (g) of s. 1.3 of the Act.

Council Assessment of variation proposed

- *The departure from the development standard is limited to the existing Lot 12, however the Clause 4.6 Statement does not adequately address Clause 7.11 minimum dwelling density. The Statement fails to address both dwelling density bands in full, particularly the 17dw/ha density band as the Applicant provides "We note the calculable area for*

Lot 12 has two different dwelling densities, the existing dwelling and ancillary structures and most of the site lies within 14 dwellings/ha. Approx. 750m², northern redundant handle, of Lot 12 lies within 17 dwellings/ha. As only the dwelling on Lot 12 and as most of the site lies within 14 dwellings/Ha, for easier comprehension and calculation, we believe it is appropriate to use 14 dwellings/Ha to calculate the existing dwelling density of Lot 12.” The applicant is looking at the density in this strip of land in isolation from that in the wider locality, where adjoining land to the east, which would be developed in the future and require this land to be incorporated within it, would utilise the land in the 17dw/ha density band as part of the density calculation and as such, would not be transferrable with the 14dw/ha density band. As such, the applicant has not adequately addressed Clause 7.11, and the Clause 4.6 variation statement is insufficient in demonstrating sufficient environmental planning grounds to justify contravention of the development standard.

- The documents submitted with the application propose that future development (namely the ILP roads mapped through Lot 12) can occur through resell of land, amalgamation with adjoining properties or coordinated approach to redevelopment with adjoining owners. It is considered that the locality would benefit greater from a coordinated approach and subdivision pattern through the subject application that aligns with Normandy Road and adjoining property boundaries rather than depending on future adjoining land owners to purchase and amalgamate or seek further owners consent, causing increased difficulty in redevelopment.
- In addition to the above, the proposed subdivision pattern does not consider orderly and economic use of the land, but rather adds to the existing issue of fragmented land and ownership and is reliant upon a future developer or adjoining neighbour to complete the required precinct outcomes.
- In addition to the variation to minimum dwelling density, the applicant has demonstrated a proposal which is not consistent with the objectives of the zone under the LLEP 2008 and is not consistent with key planning controls in relation to ILP roads under the LDCP 2008. The application does not demonstrate full compliance with all applicable standards and controls which is considered necessary in the circumstances to ensure future development potential of the sites and adjoining sites can occur through coordinated efficient and economical delivery of development.
- The proposal does not give consideration to future potential development on Lot 12 or adjoining properties in relation to delivery of required roads and other infrastructure which provide social benefits, such as footpaths and roadways with potential through site connectivity and permeability to open space. This could also impact upon the delivery of housing due to a lack of sufficient and coordinated infrastructure to meet the needs of the community.
- The proposal has not been adjusted to suit the site attributes in order to reduce the scope of variations required to the minimum dwelling density. The layout of the subdivision is also not suitable for the site. The applicant has the opportunity to provide a subdivision pattern which aligns with Normandy Road and the southern boundary of Lot 10, which would not impact upon future development potential of adjoining properties and would not require development coordination with multiple separate land holdings.
- The proposed subdivision pattern is considered to increase fragmentation of the land and exacerbate poor planning outcomes within the precinct and as such is considered to be disorderly development of the site.
- The development proposes Torrens title lots that do not align with precinct planned ILP roads and do not align with adjoining property boundaries. The proposed subdivision boundary has no orderly alignment within the precinct and has been based on “*both parties mutually agreed upon the 1800sqm area of land being transferred through the*

negotiation process” (as detailed within the AIH Letter of Intent submitted with the application). As such, the proposed subdivision pattern has not been designed with consideration to any environmental planning merits or the existing subdivision pattern of the locality and envisioned character of the precinct with respect to density bands and ILP roads.

- The proposed development does not contribute to achieving housing targets or infrastructure for the locality in accordance with relevant local policies and controls. In this regard, approving the application based on non-compliance with the minimum dwelling density requirement is unlikely to provide additional benefit to the locality now or in the future.
- There is no statutory mechanism to ensure that the minimum dwelling density or the ILP roads required will occur in the future for the disused access handle portions of Proposed Lot 20 and existing lot 12. The only potential for this to be achieved is through an adjoining neighbour to seek owners consent or purchase the narrow strip of land and amalgamate as detailed by the Applicant. This is not considered to be a sufficient environmental ground for contravening the development standard.
- The development is not considered to satisfy all of the relevant heads of consideration pursuant to Section 4.15 (1) of the Act, particularly in relation to social and economic impacts envisaged due to the above comments.

Recommendation

With consideration to the discussion above, the proposed variation to Clause 7.11 - Minimum Dwelling Density inadequately addresses the provisions of Clause 4.6, including the objectives of the development standard and the zoning. The proposal is not considered to be in the public interest and is therefore not 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 2008 (DCP)

The application has been considered against the controls contained within the Liverpool Development Control Plan 2008 (DCP) in particular:

- Part 1: General Controls for all Development; and
- Part 2.11: Land Subdivision and Development in Edmondson Park.

The proposal is not considered to be generally consistent with the key controls outlined in the Liverpool Development Control Plan 2008, as elaborated in the tables below. All other relevant controls demonstrating compliance are found in the relevant attachment to this report.

LDCP Part 1 – General controls for all development			
Clause	Control	Assessment	Compliance
Section 21 – Subdivision of Land and Buildings	Subdivision of land shall meet the minimum lot width requirements as set out in Table 18.	The subject application proposes two lot Torrens title subdivision and lot consolidation. Whilst the proposal achieves the minimum lot size requirements, the proposal demonstrates a disorderly subdivision pattern, does not	Does Not Comply

		comply with dwelling density as detailed at Clause 4.6 Discussion and does not comply with Part 2.11 of the LDCP 2008 in relation to the ILP road layout. Due to the issues identified and discussed within this report, it is considered that the proposal does not meet the objectives of this control in that the proposal does not contribute to meeting the needs of future users of the land regarding road construction requirements which does not facilitate economically efficient and coordinated future development. Therefore, the application is unsupported.	
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LDCP 2008 – Part 2.11 – Land Subdivision and Development in Edmondson Park			
Control	Requirement	Proposed	Compliance
1. Preliminary	Consideration of objectives a) to n)	Due to the non-compliances as discussed within this report, the development does not achieve the objectives of Part 2.11 of the LDCP 2008 as the proposal does not achieve the housing density targets for the locality and does not ensure the timely delivery of critical infrastructure and efficient use of land. The proposed development does not consider the wider precinct planning outcomes and increases fragmentation of land and future development inefficiencies.	Does Not Comply
1.1 Indicative Layout	All development is to be undertaken generally in accordance with the Indicative Layout Plan at Figure 2 subject to compliance with the objectives and development controls set out in this Part.	The proposed subdivision is not considered to be undertaken in accordance with the ILP as the application does not propose construction of the required portions of road. The proposed subdivision pattern does not give consideration to the location and alignment of the ILP roads required to be developed for the precinct. The applicant has not demonstrated how the portions of roads mapped within the subject site would be constructed under a future application and only makes reference that the future land owners of Proposed Lot 2 and Proposed Lot 20 could coordinate with adjoining properties to deliver the required roads and future residential development. In addition to the Clause 4.6 discussion, Council is unsupportive of the proposed development due to the impacts to the wider precinct and ILP layout.	Does Not Comply
	Where variation from the ILP is proposed, the applicant is to demonstrate that the proposed development is consistent with the Vision and Development	The Applicant has not demonstrated that the application is consistent with the vision or development objectives for the precinct. The proposed subdivision pattern creates further fragmentation of the land and does not give consideration to effectively and efficiently enabling current or future development to construct the required road infrastructure. The proposed subdivision pattern creates greater impacts to future delivery of ILP roads in that	Does Not Comply

ELECTRONIC DETERMINATION

	Objectives for the precinct set out within this Part.	the Precinct would have to rely upon an adjoining property owner to purchase and amalgamate the narrow strip of land from multiple parties in order to complete the required portions of through roads. This would particularly burden adjoining Lot 11 to the east. Alternatively, the proposed subdivision would create a future burden for Council to acquire land in order to deliver the remaining portions of road and subsequent infrastructure within the narrow strip of disused access handle. The applicant has not demonstrated whether it is intended for future development to occur in the narrow portion of Proposed Lot 20 south of Normandy Road, whether in relation to the AIH or separate to this use, and given that the width of the strip would not be capable of facilitating residential housing development and would require amalgamation or coordinated delivery with an adjoining site, it is considered disorderly for the proposed subdivision boundary to be proposed past the indicative road layout of where Normandy Road is mapped to be extended. Furthermore, the proposed development does not provide the required infrastructure, and Council cannot be certain that the required infrastructure will be delivered in the future as the Applicant has stated that Proposed Lot 20 is not for residential purposes, therefore there is no intention to deliver the precinct plans in the future. The applicant has provided a 'Letter of Intent' to Council which states "AIH is committed to working collaboratively with neighbours south of Normandy Road if and when they intend to subdivide their site in the future, whether through land sale or joint ventures". Although these owners may be willing to work with adjoining neighbours, given the subdivision at hand as part of this DA, this future step could be avoided through an orderly subdivision pattern which avoids the need for any negotiations with another party, considering the location of the subdivision line along Lot 12. Accordingly, it is considered that the proposal seeks to vary the requirements of the ILP and the overall vision and objectives for the Precinct and intends to re-sell the portion of land south of Normandy Road to an adjoining neighbour to development in the future. As such, Council is unsupportive of the proposal as the applicant has not considered the vision and objectives for the Precinct.	
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ELECTRONIC DETERMINATION

2.1 Street Network And Access	Provide appropriate street layout.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Comply	Not
2.2 Pedestrian And Cycleway Network	Provide appropriate pedestrian and cyclist system.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Comply	Not
2.3 Streetscape And Street Trees	Provide appropriate street furniture and trees.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Comply	Not

As demonstrated above, the proposal is not consistent with the key controls outlined within the Liverpool Development Control Plan 2008.

6.4 Section 4.15(1)(a)(iia) - Any Planning Agreement or Draft Planning Agreement

There are no planning agreements or draft planning agreements which apply to the development.

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

The *Environmental Planning and Assessment Regulation 2021* includes provisions in which the consent authority can request additional information under Clause 36.

Additional information has been requested from the Applicant on 4 April 2025 and 30 May 2025, however as detailed within this report, the additional information is insufficient in addressing the outstanding matters. Therefore, a recommendation has been made using the information available.

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

(a) Natural Environment

The proposed development has not demonstrated it will create a detrimental impact on the natural environment surrounding the subject site as no physical works or changes are proposed to the land.

(b) Built Environment

The proposed development is likely to create adverse impacts on the built environment particularly for future development of adjoining properties. It is considered that the proposed development has been not designed with sufficient regard to future development of the wider precinct and the precinct planning outcomes in relation to the ILP road layout and non-compliant dwelling density.

(c) Social Impacts and Economic Impacts

The proposal would result in a negative social and economic impact for the wider locality, particularly neighbouring properties and future residents of the area through inhibiting economically efficient and coordinated delivery of development. The proposal demonstrates a disorderly subdivision pattern which increases land fragmentation within the precinct which

creates further complexities for future planning outcomes by preventing adjoining owners from effectively consolidating land for future development. The existing lot alignment would only require adjoining landowners to coordinate future development with one land holder rather than multiple, as this proposal seeks to create. Therefore, the proposed development is considered to generate a poor planning outcome for future development of the precinct which would generate negative social and economic impacts.

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

The proposal is a permissible form of development in the zone, however, due to the non-compliances with relevant environmental planning instruments and controls, particularly matters relating to dwelling density and ILP road construction, the site is not considered to be suitable for the proposed development.

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

(a) Internal Referrals

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

DEPARTMENT	COMMENTS
Land Development Engineering	Supported, subject to conditions if consent were granted.

(b) External Referrals

DEPARTMENT	COMMENTS
NSW Rural Fire Service	The application was referred to the NSW Rural Fire Service on 8 April 2025 as the site was mapped as bush fire prone land. On 8 April 2025, the NSW RFS rejected the referral and requested for Council to "Please re-refer under s100B with the required Bushfire report for RFS assessment". However, on 16 April 2025 the Bush Fire Prone Land Spot Change Map was approved by the NSW RFS Commissioner, which resulted in the subject site no longer being mapped as bush fire prone land. Accordingly, the NSW RFS provided correspondence to Council which confirmed the bush fire mapping changes, therefore no longer requiring a referral to RFS.

(c) Community Consultation

In accordance with the Liverpool City Council Community Engagement Strategy and Community Participation Plan 2022, the proposal was not required to be notified or advertised. No submissions have been received for the subject application.

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

The proposal is inconsistent with the objects of the EP&A Act 1979 and does not achieve compliance with the relevant planning instruments and controls, and as such would not be in the public interest.

7. DEVELOPMENT CONTRIBUTIONS

Section 7.11 contributions are applicable to the proposed development in accordance with the Liverpool Contributions Plan 2008 – Edmondson Park. However, contributions have not been applied as the development is recommended for refusal. Appropriate conditions of consent could be imposed if consent were granted.

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, LLEP 2008, LDCP 2008, and the relevant codes and policies of the Council.

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

9. RECOMMENDATION

That Development Application DA No DA-95/2025 be **refused**.

ATTACHMENTS

1. Liverpool DCP 2008 Compliance Tables
2. Reasons for refusal
3. Clause 4.6 variation request
4. Subdivision Plans

LIVERPOOL DEVELOPMENT CONTROL PLAN 2008

COMPLIANCE TABLES

LDCP Part 1 – General controls for all development			
Clause	Control	Assessment	Compliance
Section 2 – Tree Preservation	Consider impact of development on existing vegetation	No changes to landscaping proposed.	Not Applicable
Section 3 – Landscaping and Incorporation of Existing Trees	Incorporation of existing trees into development where appropriate.	No changes to landscaping proposed.	Not Applicable
Section 4 – Bushland and Habitat Preservation	Consider impact of development on bushland and habitats	Minimal to no impact on bushland and habitats considering the location of the development.	Not Applicable
Section 5 – Bushfire Risk	Land on or adjacent to bushfire prone land to comply with RFS requirements	The application was referred to the NSW Rural Fire Service on 8 April 2025 as the site was mapped as bush fire prone land. On 8 April 2025, the NSW RFS rejected the referral and requested for Council to "Please re-refer under s100B with the required Bushfire report for RFS assessment". However, on 16 April 2025 the Bush Fire Prone Land Spot Change Map was approved by the NSW RFS Commissioner, which resulted in the subject site no longer being mapped as bush fire prone land. Accordingly, the NSW RFS provided correspondence to Council which confirmed the bush fire mapping changes, therefore no longer requiring a referral to RFS.  Bush fire mapping 2021 (Geocortex) 	Not Applicable

		Bush fire mapping 2025 (Geocortex)	
Section 6 – Water Cycle Management	Consideration of stormwater and drainage	The subject development application does not involve stormwater drainage works, civil engineering works or subdivision works. The proposal relates to the subdivision and consolidation of land, however, does not incorporate any further development works. The application was referred to Council's Land Development Engineering Department who reviewed the proposed subdivision. Land Development Engineering is supportive of the proposed application, subject to conditions if consent were granted.	Complies by conditions if consent were granted
Section 7 – Development Near a Watercourse	Consideration of impact to riparian corridors	The proposed site is located more than 40m from a water course, and no works are proposed.	Not Applicable
Section 8 – Erosion and Sediment Control	Appropriate erosion and sediment control measures must be in place.	A sediment and erosion control plan were not submitted with the application, however no works are proposed.	Not Applicable
Section 9 – Flooding	Flood affection of property to be considered.	The site is not identified as flood prone land.	Not Applicable
Section 10 – Contaminated Land Risk	Previous use to be considered in assessing risk	The contamination potential of the site has been addressed under the SEPP (Resilience and Hazards) 2021.	Complies
Section 11 – Salinity Risk	Salinity Management response required for affected properties	Moderate salinity potential, however no works are proposed.	Not Applicable
Section 12 – Acid Sulfate Soils Risk	Affected properties to consider impact of development on soils.	The development site is not identified as containing acid sulphate soils.	Not Applicable
Section 13 – Weeds	Noxious weeds to be removed as part of development where applicable	The site is not identified as containing noxious weeds.	Not Applicable
Section 14 – Demolition of Existing Development	Appropriate demolition measures must be implemented	Demolition is not proposed.	Not Applicable
Section 15 – Onsite Sewage Disposal	S68 Application required where connection to sewer not available	OSMS is not proposed.	Not Applicable
Section 16 – Aboriginal Archaeology	AHIA required where items of aboriginal archaeology exist	The site is not identified as containing Aboriginal archaeology.	Not Applicable
Section 17 – Heritage and Archaeology	Consideration of the impact on the heritage significance on any heritage buildings, sites, streetscapes or areas.	The property is not associated with heritage items.	Not Applicable

Section 20 – Car Parking and Access	This section of the DCP specifies requirements in relation to vehicular access and car parking.	The proposal incorporates subdivision of land and does not include works.	Not Applicable
Section 21 – Subdivision of Land and Buildings	Subdivision of land shall meet the minimum lot width requirements as set out in Table 18.	The subject application proposes two lot Torrens title subdivision and lot consolidation. Whilst the proposal achieves the minimum lot size requirements, the proposal demonstrates a disorderly subdivision pattern, does not comply with dwelling density as detailed at Clause 4.6 Discussion and does not comply with Part 2.11 of the LDCP 2008 in relation to the ILP road layout. Due to the issues identified and discussed within this report, it is considered that the proposal does not meet the objectives of this control in that the proposal does not contribute to meeting the needs of future users of the land regarding road construction requirements which does not facilitate economically efficient and coordinated future development. Therefore, the application is unsupported.	Does Not Comply
Section 22 – Water Conservation	This section applies to all development involving the use of water.	The application does not propose construction of residential or non-residential buildings.	Not Applicable
Section 23 – Energy Conservation	This section applies to all development involving the use of energy.	The application does not propose construction of residential or non-residential buildings.	Not Applicable
Section 24 – Landfill	All fill applied should be Virgin Excavated Natural Material.	Landfill is not proposed.	Not Applicable
25. Waste Disposal	A Waste Management Plan (WMP) shall be submitted with a Development Application for any relevant activities generating waste.	Waste is not expected from proposed subdivision as no demolition or construction works are proposed.	Not Applicable
Section 26 – Outdoor Advertising and Signage	Controls relating to signage and advertising material	No signage is proposed.	Not Applicable
Section 27 – Social Impact Assessment	Provisions relating to social impact.	Social impact comment is not required.	Not Applicable

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.

LDCP 2008 – Part 2.11 – Land Subdivision and Development in Edmondson Park			
Control	Requirement	Proposed	Compliance
1. Preliminary	Consideration of objectives a) to n)	Due to the non-compliances as discussed within this report, the development does not achieve the objectives of Part 2.11 of the LDCP 2008 as the proposal does not achieve the housing density targets for the locality and does not ensure the timely delivery of critical infrastructure and efficient use of land. The proposed development does not consider the wider precinct planning outcomes and increases fragmentation of land and future development inefficiencies.	Does Not Comply
1.1 Indicative Layout	All development is to be undertaken generally in accordance with the Indicative Layout Plan at Figure 2 subject to compliance with the objectives and development controls set out in this Part.	The proposed subdivision is not considered to be undertaken in accordance with the ILP as the application does not propose construction of the required portions of road. The proposed subdivision pattern does not give consideration to the location and alignment of the ILP roads required to be developed for the precinct. The applicant has not demonstrated how the portions of roads mapped within the subject site would be constructed under a future application and only makes reference that the future land owners of Proposed Lot 2 and Proposed Lot 20 could coordinate with adjoining properties to deliver the required roads and future residential development. In addition to the Clause 4.6 discussion, Council is unsupportive of the proposed development due to the impacts to the wider precinct and ILP layout.	Does Not Comply
	Where variation from the ILP is proposed, the applicant is to demonstrate that the proposed development is consistent with the Vision and Development Objectives for the precinct set out within this Part.	The Applicant has not demonstrated that the application is consistent with the vision or development objectives for the precinct. The proposed subdivision pattern creates further fragmentation of the land and does not give consideration to effectively and efficiently enabling current or future development to construct the required road infrastructure. The proposed subdivision pattern creates greater impacts to future delivery of ILP roads in that the Precinct would have to rely upon an adjoining property owner to purchase and amalgamate the narrow strip of land from multiple parties in order to complete the required portions of through roads. This would particularly burden adjoining Lot 11 to the east. Alternatively, the proposed subdivision would create a future burden for Council to acquire land in order to deliver the remaining portions of road and subsequent infrastructure within the narrow strip of disused access handle. The applicant has not demonstrated whether it is intended for future development to occur in the narrow portion of Proposed Lot 20 south of Normandy Road, whether in relation to the AIH or separate to this use, and given that the	Does Not Comply

		width of the strip would not be capable of facilitating residential housing development and would require amalgamation or coordinated delivery with an adjoining site, it is considered disorderly for the proposed subdivision boundary to be proposed past the indicative road layout of where Normandy Road is mapped to be extended. Furthermore, the proposed development does not provide the required infrastructure, and Council cannot be certain that the required infrastructure will be delivered in the future as the Applicant has stated that Proposed Lot 20 is not for residential purposes, therefore there is no intention to deliver the precinct plans in the future. The applicant has provided a 'Letter of Intent' to Council which states "AIH is committed to working collaboratively with neighbours south of Normandy Road if and when they intend to subdivide their site in the future, whether through land sale or joint ventures". Although these owners may be willing to work with adjoining neighbours, given the subdivision at hand as part of this DA, this future step could be avoided through an orderly subdivision pattern which avoids the need for any negotiations with another party, considering the location of the subdivision line along Lot 12. Accordingly, it is considered that the proposal seeks to vary the requirements of the ILP and the overall vision and objectives for the Precinct and intends to re-sell the portion of land south of Normandy Road to an adjoining neighbour to development in the future. As such, Council is unsupportive of the proposal as the applicant has not considered the vision and objectives for the Precinct.	
2.1 Street Network And Access	Provide appropriate street layout.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Not Comply
2.2 Pedestrian And Cycleway Network	Provide appropriate pedestrian and cyclist system.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Not Comply
2.3 Streetscape And Street Trees	Provide appropriate street furniture and trees.	No roads are proposed to be constructed as part of this application. As per the discussion under Section 1 above, the application is unsupported.	Does Not Comply
2.4 Open Space	Provision of required open space.	Not required.	Not Applicable
2.5 Environmental Management	Provide protection to the area's	The site has no significant vegetation that requires protection, and there are no riparian corridors and waterways over the site. No works are proposed.	Not Applicable

	environmental characteristics.		
2.6 Water Cycle Management	Provide appropriate stormwater management.	The subject development application does not involve stormwater drainage works, civil engineering works or subdivision works. The proposal relates to the subdivision and consolidation of land, however, does not incorporate any further development works. The application was referred to Council's Land Development Engineering Department who reviewed the proposed subdivision. Land Development Engineering is supportive of the proposed application, subject to conditions if consent were granted.	Complies by conditions if consent were granted
2.7 Contamination	In the consideration of any Development Application, Council must consider whether the land is likely to be contaminated. Refer to Contaminated Land Risk in Part 1 for controls.	The contamination potential of the site has been addressed under SEPP (Resilience and Hazards) 2021	Complies

REASONS FOR REFUSAL

1. The proposed development is inconsistent with Clause 1.3(c) of the *Environmental Planning and Assessment Act 1979*, as the proposed subdivision layout is not considered to be an orderly subdivision pattern and does not promote economic use and development of the land.
2. The proposed development is inconsistent with the objectives of the R1 General Residential zone as per *Liverpool Local Environmental Plan 2008*, as the development inhibits the future potential of development to efficiently and economically achieve the housing and infrastructure needs of the locality, pursuant to 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
3. The proposed development does not satisfy Clause 7.11 Minimum dwelling density of the *Liverpool Local Environmental Plan 2008*, as it fails to demonstrate compliance with the provisions for minimum dwelling density, and the written request to vary the development standard is unsupported, pursuant to 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
4. The proposed development does not achieve satisfactory compliance with the Liverpool Development Control Plan 2008, Part 1 – General Controls for all development and Part 2.11 – Land Subdivision and Development in Edmondson Park, pursuant to Section 4.15(1)(a)(iii), 4.15(1)(b), and 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, in terms of the following:
 - Part 1 – General Controls for all development:
 - a) Section 21: Subdivision of Land and Buildings
 - Part 2.11 – Land Subdivision and Development in Edmondson Park
 - a) Section 1: Preliminary
 - a. 1.1: Indicative Layout
 - b) Controls for the Public Domain
 - a. 2.1: Street Network and Access
 - b. 2.2: Pedestrian and Cycleway Network
 - c. 2.3: Streetscape and Street Trees
5. The proposed development is likely to have adverse impacts on the built environment in the precinct and cause social and economic impacts in the locality, pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
6. The proposed development is inconsistent with the objects of the Act, the objectives of the zone, does not satisfy the minimum dwelling density principal development standard of the Liverpool LEP 2008 and does not comply with relevant planning controls of the Liverpool DCP 2008, indicating it is not suitable for the site within the R1 zone, pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
7. Due to the above reasons, approval of the application is not in the public interest, pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*.

ADVISORY NOTES

- a) 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.

- b) Section 8.7 and 8.10 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.

Clause 4.6 Written Request

Lot 12 Manchuria Road
Edmondson Park

Client

The Australian Islamic House Inc

Issued

4/06/2025



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Beveridge Williams

Client:	The Australian Islamic House Inc	Surveying
Issued:	4/06/2025	Asset Recording
Version:	C	Civil Engineering
Prepared by:	Isaac Camilleri	Infrastructure Engineering
Checked by:	Kellie Hassab	Traffic & Transport Engineering
Project Manager:	Isaac Camilleri	Environmental Consulting
Project Number:	2402297	Water Resource Engineering
		Strata Certification (NSW)
		Town Planning
		Urban Design
		Landscape Architecture
		Project Management

Revision Table

REV	DESCRIPTION	DATE	AUTHORISED
A	Draft Report for Peer Review	11/04/2025	IC
B	Final Report for Lodgement	22/04/2025	IC
C	Updated Report for Lodgement	4/06/2025	IC

Acknowledgment

Beveridge Williams acknowledges the Traditional Custodians of the land on which we live/work and recognise their continuing connection to Country. We pay our respect to Elders past, present and emerging and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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1. INTRODUCTION

Development proposals need to be prepared with reference to development standards in all relevant environmental planning instruments. These plans have been prepared and are consistently implemented to ensure appropriate and sensitive development of the relevant Local Government area (LGA), in this case – Liverpool City Council.

Compliance with the development standards is usually necessary to ensure that the objectives of the Local Environmental Plan (LEP) are achieved. Where an applicant proposes a development that contravenes a development standard within an Environmental Planning Instrument (EPI), a consent authority does not have the power to approve the application unless the application is accompanied by a "written request" prepared in accordance with Clause 4.6 of the relevant Local Environmental Plan (LEP).

This Clause 4.6 Variation Request will seek to vary cl7.11 of the Liverpool LEP (LLEP) 2008 as the minimum residential dwelling density will not be achieved by this subdivision.

The requirements of cl. 4.6 are summarised within cl4.6(3) of the LLEP 2008 as the consent authority is required to reach a level of satisfaction that;

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

This Clause 4.6 Variation Request will detail that compliance with the residential dwelling density control in this circumstance is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention of the standard.

3.1 What is a clause 4.6 Written Request?

A Clause 4.6 Written Request is a submission accompanying a development application which justifies a variation to a development standard in an EPI. A written request is required to enable a consent authority to have the power to approve a development application which contravenes a development standard.

3.2 When is a Clause 4.6 Required?

Where a development proposal does not comply with a development standard contained in an EPI, a Clause 4.6 Written Request is required. If more than one variation to a development standard is proposed, a written request is required to justify each variation.

3.3 In what form should a Clause 4.6 Written Request Take?

A Clause 4.6 written request must be prepared, and address the mandatory matters contained within subclause (3) (a) and (b) of the relevant LEP. A consent authority must be satisfied that the following preconditions are met before granting approval of a development application that contravenes a development standard:

- The written request must adequately demonstrate that compliance with the development standard is unreasonable or unnecessary (cl 4.6(3)(a)).
- The written request must adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

This written request addresses the preconditions of cl.4.6.

Note: Clause 35B Additional requirements for development applications involving contravention of development standards of the Environmental Planning and Assessment Regulation (EPA Reg) 2021, requires the consent authority to consider a written request seeking to justify a contravention of a development standard

2. THE SITE AND APPLICABLE CONTROLS

The property is currently known as Lot 12 in DP 1249397, Manchuria Road, Edmondson Park, with 2094 Camden Valley Way, Camden Valley Way (Lot 10 DP 1249397) also included in the site. The site is located within the Local Government Area (LGA) of Liverpool City Council. The sites were recently subject to a subdivision for acquisition purposes, which created the subject lots in their current arrangement, which is an unconventional shape, with a disused access handle (noting Council acquired the portion of the handle that was connected to Camden Valley Way due to its RE1 Zoning).

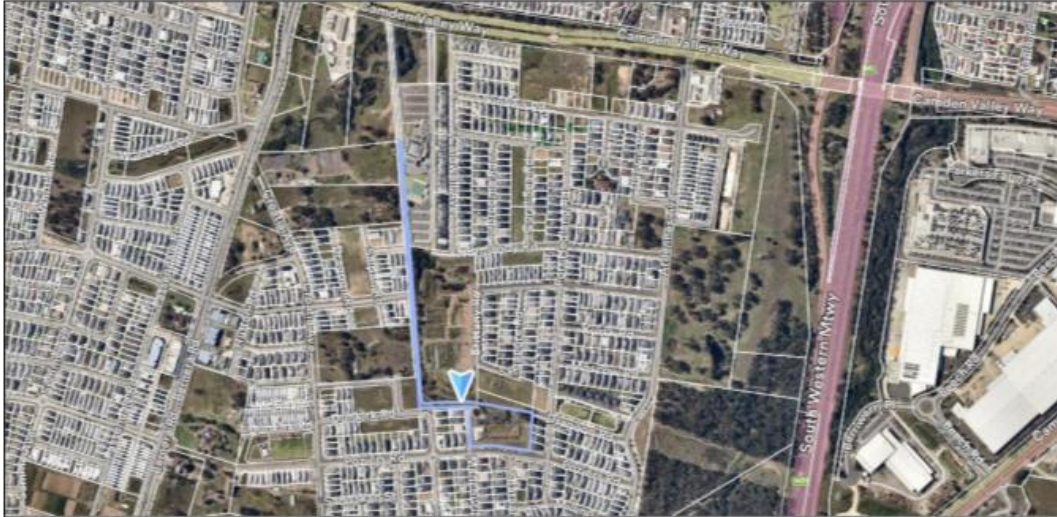


Figure 1: Aerial Image of Site
(Source: Nearmap 2025)

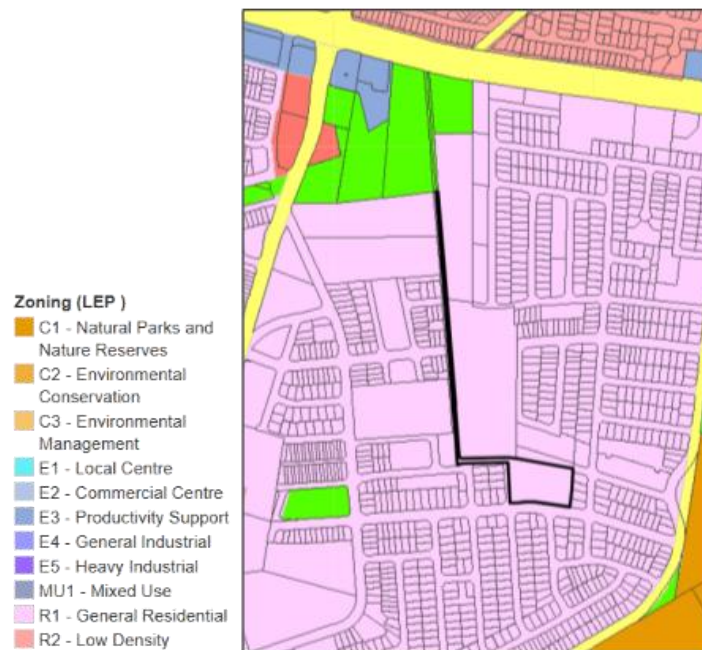


Figure 2: Land Zoning Map from LEP 2008
The site is currently zoned R1 General Residential.

3. CLAUSE 4.6 WRITTEN REQUEST

3.1 Development Standard and Proposed Variation

Clause 7.11 of the Liverpool Local Environmental Plan 2008 (LLEP 2008) and the associated 'Dwelling Density Map' establishes a minimum dwelling density of 14 dwellings/Ha and 17 dwellings/Ha for the property located at Lot 12 Manchuria Road and 2094 Camden Valley Way, Edmondson Park (**The subject property**). The 17 dwelling/Ha is located adjacent to Dalmatia Avenue as this is a higher order road.

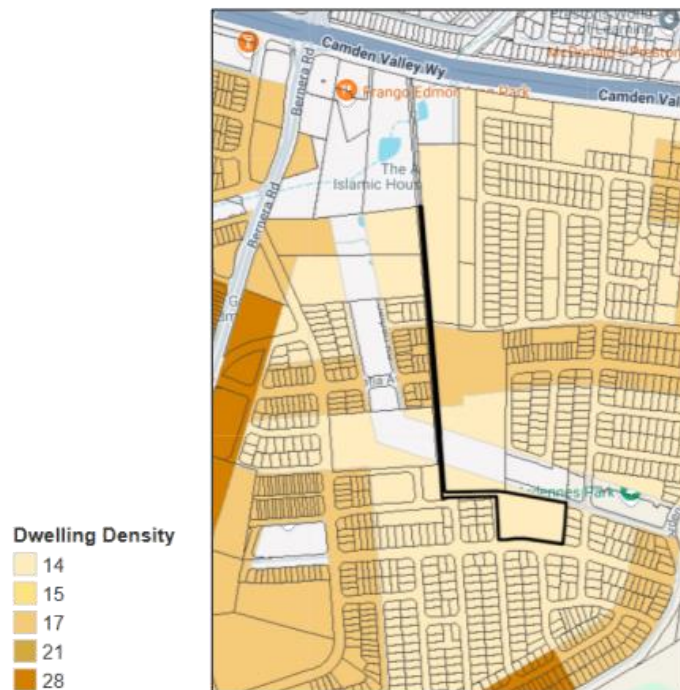


Figure 3: Extract of Dwelling Density Map from LEP 2008
The site has a Dwelling Density of 14 & 17dw/Ha.

Clause 7.11 of the LLEP 2008 reads as;

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

The standard within cl.7.11 is consistent with the definition of "development standard" contained in s1.4 of the Environmental Planning and Assessment Act, 1979 being a provision:

of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

.....
(e) the intensity or density of the use of any land, building or work.

Clause 7.11 of LEP 2008 is not excluded from the operation of cl.4.6 as it is not listed within subclause (8) of cl.4.6.



Figure 4: Proposed Plan of Subdivision – Stage 1
 (Source: Beveridge Williams)



Figure 5: Proposed Plan of Subdivision – Stage 2
 (Source: Beveridge Williams)

We note under the definition of dwelling density, land use for non-residential purposes is excluded from the calculations of dwelling density. Therefore, dwelling density does not apply to the existing place of worship (which is a permitted land use) on Lot 10 as the site is not being used for residential purposes*. Therefore, the below calculations only pertain to Lot 12.

As there are no new proposed roads with the proposed subdivision, the existing vehicular access of Lot 12, Manchuria Road being an existing road, has been excluded in the calculation of dwelling density as it does not form part of the development.

We note the calculable area for Lot 12 has two different dwelling densities, the existing dwelling and ancillary structures and most of the site lies within 14 dwellings/ha. Approx. 750m², northern redundant handle, of Lot 12 lies within 17 dwellings/ha.

As only the dwelling on Lot 12 and as most of the site lies within 14 dwellings/Ha, for easier comprehension and calculation, we believe it is appropriate to use 14 dwellings/Ha to calculate the existing dwelling density of Lot 12.

Therefore, we calculate the existing development has a dwelling density of 14 dwellings/Ha and the area calculable for Lot 12 is 1.296Ha** which represents a density of 0.75 dwellings/Ha. This represents **an existing variation of 95%**.

Under Stage 1 development.

The dwelling density for proposed Lot 1 will not be applicable, as the area will not be used for residential purposes, it is an interim lot, unused lot which will be amalgamated with existing Lot 10 in Stage 2.

The dwelling density of Proposed Lot 2 will be 1 dwelling in an area of 1.161Ha which represents 0.86 dwellings/Ha. This represents a variation of 94%.

Under Stage 2 development.

Proposed Lot 2 will remain and will have the same density as under Stage 1 of 0.86 dwellings/Ha.

The dwelling density is not applicable to proposed Lot 20, as whole of Lot 20 will not be used for residential purposes.

We would like to emphasise that there is an existing non-compliance of dwelling density on Lot 12 of 95% and the proposal reduces the non-compliance and **does not create** a non-compliance dwelling density from an existing complying dwelling density.

The existing dwelling on Lot 12 is an approved development and in the future when the site is to be further subdivided for residential purposes, it has the capacity to comply with the dwelling density control. The loss of the redundant strip of underutilised land will not affect the future subdivision of proposed Lot 2.

When considering the applicable minimum lot size and the available area for development on Lot 12, in future when subdivided for residential purposes, Lot 12 will be able to meet the dwelling density of 14 dwelling a hectare.

*In addition to the reference to the definition of dwelling density under the LLEP 2008, we also refer to a recent DA No. DA 481/2024 – Torrens Title Subdivision of the Site into Thirteen (13) Lots at Lot 548 Changsha Road, Edmondson Park approved by Liverpool Local Planning Panel on 31 March 2025. This DA also included a clause 4.6 request to vary the dwelling density. In the clause 4.6 report, the existing roads/lane and the residual lot (not used for residential purposes) was not included in the calculation of the dwelling density for the approved subdivision. We note even though it is mentioned in the report that the future use of the residual lot will be for residential purposes, the proposed use in the DA was defined as the residual lot (detention basin) and was excluded from the dwelling density calculations.

**Total area = (1.341Ha area of Lot 12) – (Approx. 450m², part of access handle where dwelling density is not applicable).

3.2 Pre-condition 1 — Unreasonable or Unnecessary

Clause 4.6(3)(a) of LLEP 2008 provides a similar test as that set out in cl.3 of State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and mirrors the fourth question Lloyd J established in consideration of SEPP 1 objections in *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 24. This written request therefore draws from the authorities that deal with Justice Lloyd's fourth question.

The term "unreasonable or unnecessary" is not defined in the relevant environmental planning instruments or in the legislation. Preston CJ in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 considers the expression (at [42]):

"An objection under SEPP1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a number of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

This is described as the First Way in *Wehbe*, however his Honour also identified four other "ways" in which the strict application of a development standard can be demonstrated to be unreasonable or unnecessary. The other four "ways" are as listed below.

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary:

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable:

Fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary:

3.2.1 Compliance with objectives of cl 4.3 (First Way in *Wehbe*)

This written request submits that strict compliance is unnecessary in the circumstances as the objectives of the development standard are achieved notwithstanding the non-compliance under First Way in *Wehbe*. Consideration of the objectives follows:

Table 1: Compliance with LLEP 2008 Clause 7.11 Objectives

DEVELOPMENT STANDARD OBJECTIVES	ASSESSMENT
a) to contribute toward the efficient use of land resources,	The northern handle of Lot 12 to be excised, used to provide the only access to Lot 12 via Camden Valley Way. The existing irregular subdivision configuration of site and surrounds is a result of introduction of new vehicular accessways and the creation and acquisition of the Lot 8 DP 1249397 by Council.

	The access handle for Lot 12 became redundant and disused upon alternate access being provided. The proposed Stage 2 subdivision will amalgamate the existing disused handle with Australian Islamic House (AIH) and be revitalised. The redundant space will provide opportunities for landscape screening and acoustic mitigation measures, which will benefit residential zoned land to the west of the site. Therefore, the proposed consolidated Lot 20 will contribute toward the efficient use of the existing disused and redundant access handle. While it is noted this report is for a request of the variation of minimum dwelling density, the variation only refers to existing Lot 12, the proposal will have minimal impact on the existing Lot 12 and future/proposed dwelling density of Lot 2. Proposed Lot 2 and portions of Proposed Lot 1 in future will be able to meet the relevant dwelling density, contributing towards the efficient use of land and providing for the housing needs of the community.
b) to ensure the viability of public transport and other services planned for the area,	Noting that Proposed Lot 2 and portions of Proposed Lot 1 will be subject to future DAs for subdivision and these future subdivisions will be able to meet the relevant density as detailed above, the proposal does not prejudice the viability of public services planned for the area. The proposed subdivision will not affect the existing public transport and other services within the locality.
c) to ensure adequate funds for the recreation and community facilities planned for the area.	Although no recreation or community facilities form part of this proposal we understand that Proposed Lot 2 and portions of Proposed Lot 1 will be subject to future DAs for subdivision and these future subdivisions will be able to meet the relevant density as detailed above, the proposal does not prejudice the imposition or collection of contributions in future to provide for facilities in the local area.

The proposed subdivision to excise a portion of Lot 12 to allow its sale to an adjoining neighbour, being the Australian Islamic House to permit future consolidation with this site to maximise opportunities for landscaping and acoustic mitigation. This subdivision does not prejudice future compliance with the dwelling density control, noting the subject site can be subdivided in accordance with the DCP when desired and meet the relevant density.

The variation only arises with reference to the dwelling density of existing Lot 12 and proposed Lot 2.

The above assessment indicates that all objectives and all underlying objectives of the development standard are achieved, notwithstanding the numerical non-compliance. Following the reasoning of Preston CJ in *Wehbe*, strict compliance is therefore **unnecessary**.

Strict compliance with Clause 7.11 of LLEP 2008 would also be **unreasonable** in the circumstances of the case, as no purpose would be served if flexibility was not applied: *Wehbe* at [42]. Proposed Lot 1 as a residue lot (so it can be amalgamated with the neighbouring lot) meaning this lot in future can still be developed in accordance with the relevant controls and achieve the minimum dwelling density when desired by the owners.

3.3 Pre-Condition 2 — Environmental Planning Grounds

Preston CJ in *Initial Action* considered what constituted "sufficient environmental planning grounds. His Honour states at [23]-[24]

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 3(b) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

Pursuant to clause 4.6(3)(b) of LLEP 2008, there are sufficient environmental planning grounds to justify the variation to the dwelling density standard as follows:

1. The variation refers to an existing non-compliance of Lot 12, the proposed subdivision will slightly decrease the existing variation, representing an improvement. Therefore, the subdivision in isolation does not cause the variation, and it is unreasonable to oppose a DA which brings the development closer to compliance with Council's controls noting the existing noncompliance.
2. The proposal will not affect the future subdivision of proposed Lot 2.
3. The proposal simply seeks to excise a portion of the disused access handle to allow the sale of this land to an adjoining lot, this new lot to be consolidated with their site, noting over 200m of the handle's side boundary is directly adjoining the Australian Islamic House site, who will purchase this land. This consolidation will assist in minimizing and reducing the existing fragmented ownership of land within the locality.
4. As the proposal will facilitate the sale and consolidation of fragmented land, this will promote the orderly and economic use and development of land, which is a key objective of the Environmental Planning and Assessment Act 1979.
5. To address the issue of fragmented land ownership, it is often necessary to complete "procedural subdivisions" such as this one where land is excised and exchanged to facilitate further subdivisions in future and to ensure lots better align with the ILP. Considerable weight has to be given as the variation results in part from the inability to subdivide the site in an orderly manner now due to the current fragmentation, noting that:
 - North: To the north of this site, there is a strip of land, Lot 441 DP 1229516, will partially contain the extension of Dagoon Road. As the road alignment as per the ILP is on a neighbouring property and not subject to this owners control, the site can not be subdivided currently, till this road is provided by others.
 - West: To the west of this site, there is a strip of land, Lot 303 DP 1238463, which is between the subject site and the half width road of Manchuria Road, which prohibits the extension of Manchuria Road and the development of the subject site, this extension is hinged upon the neighbour.
6. As Lot 10 currently has a use occurring that is permitted in the zone, and due to the size and scale of the development, the lot warrants a large site area to mitigate environmental impacts, it is unreasonable to apply a minimum dwelling yield, where this use is permitted and furthers the objectives of the General Residential Zone.
7. The proposed subdivision is ultimately a boundary adjustment, where the existing two lots, Lot 10 and Lot 12 boundaries will be adjusted to form reconfigured lots, the proposal does not create a new lot.

The proposed subdivision, while not meeting the minimum dwelling density, is representative of the issues that arise in Greenfield Release Areas where land ownership is fragmented and this fragmentation has to be resolved prior to the envisaged character being realised. This subdivision is procedural in nature which assists in reducing the fragmentation of land and critically will not prejudice against the delivery of the ILP in future, or the dwelling density being met.

The variation to the dwelling density standard furthers the objectives (b), (c) and (g) of s. 1.3 of the Act.

3.4 Pre-Condition 3 — Objectives of the Zone and standard

The consent authority could be satisfied that the proposed development is consistent with the objectives of the R1 General Residential zone. An assessment against the relevant objectives follows:

Table 2: Compliance with R1 General Residential Zone Objectives

DEVELOPMENT STANDARD OBJECTIVES	ASSESSMENT
a) To provide for the housing needs of the community.	While this subdivision is not providing for the housing needs of the community as no residential lots or dwellings are being provided with this development, this subdivision will not prejudice against this objective as the land is able to be used for residential purposes in future as needed. Objective (a) is satisfied.
b) To provide for a variety of housing types and densities.	While this subdivision is not providing for any housing, this subdivision will not prejudice against this objective as the land is able to provide for a variety of housing types and densities at the appropriate time, which is when the land is developed in conjunction with neighbouring properties in the future. Objective (b) is satisfied.
c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This objective is not applicable to this development.
d) To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.	The site is accessible to public transport and employment opportunities, with the site having direct access to bus routes and collector roads being Poziers Road and Dalmatia Avenue. Objective (d) is satisfied.
e) To facilitate development of social and community infrastructure to meet the needs of future residents.	This subdivision will contribute to the social and community infrastructure within the area and meet the cultural need of the residents, as Proposed Lot 1 is being excised to allow its consolidation with the adjoining Australian Islamic House Inc site, to allow better landscape screening and acoustic mitigation for the adjoining neighbours. Objective (e) is satisfied.

An assessment of the proposed development against the objectives of cl.7.11 is contained in part 2.2 of this written request. The assessment reveals that notwithstanding the numerical non-compliance with the dwelling density standard, the objectives of the clause are achieved and satisfied.

3.5 Other relevant information to be considered

As demonstrated in the SEE Report and supporting documentation/plans attached as Appendices to the DA Submission, the proposal does not result in any adverse impact to the built or natural environment. This Clause 4.6

Written Request should be read in conjunction with the SEE Report and documentation attached as separate Appendices.

The proposed subdivision respectfully responds to the constraints of the site and aims to minimise existing land fragmentation via the consolidation of fragmented lots.

Decisions should not just be based on the process but rather the merits of the case which would reflect best planning outcomes.

The proposed departure from the dwelling density development standard will achieve a positive outcome for and from the proposed development, will not raise any matter of significance for State or Regional environmental planning and there would be no public benefit served by maintaining the standard.

The justification provided to clause 7.11 of LLEP 2008 is considered reasonable, well founded and warrants Council's support.



ISAAC CAMILLERI
Senior Town Planner
BEVERIDGE WILLIAMS



