

LOCAL PLANNING PANEL AGENDA

25 November 2024

MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

Monday, 25 November 2024

**TO BE HELD ONLINE
VIA MS TEAMS**

Commencing at **2:00 PM**

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

Should you wish to address the Panel, please advise Amanda Merchant, Panel Support Officer on 8711 7712, by 4pm, Thursday 21st November 2024.

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

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

ITEM No.	SUBJECT	PAGE No.
1	DEVELOPMENT APPLICATION RD-38/2024 REVIEW OF DETERMINATION FOR REFUSAL OF DA-347/2023 - DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A SINGLE STOREY TWENTY-SEVEN (27) PLACE CENTRE-BASED CHILDCARE, CAR PARKING, LANDSCAPING, AND ASSOCIATED WORKS. LOT 428 DP 234857 14 SATELBERG STREET, HOLSWORTHY NSW 2173	5 - 36

ITEM No.	SUBJECT	PAGE No.
2	DEVELOPMENT APPLICATION DA-318/2024 CHANGE OF USE OF EXISTING BUILDING AT 111 NEWBRIDGE RD, CHIPPING NORTON FROM 'WAREHOUSING AND WHOLESALING OF FURNITURE AND GENERAL MERCHANDISE' (AS APPROVED) TO 'VEHICLE SALES OR HIRE PREMISES'. LOT 33 DP 819053 111 NEWBRIDGE ROAD, CHIPPING NORTON 2170	37 - 54

ITEM No.	SUBJECT	PAGE No.
3	DEVELOPMENT APPLICATION DA-310/2024 THE PROPOSAL IS FOR THE DEMOLITION OF THE EXISTING DWELLINGS ON THE SUBJECT SITE, AND CONSTRUCTION OF A FIVE STOREY IN-FILL AFFORDABLE RESIDENTIAL FLAT BUILDING (RFB) DEVELOPMENT WITH AT-GRADE CAR PARKING. THE PROPOSAL HAS BEEN DESIGNED ACROSS TWO BUILDINGS AND CONTAINS A TOTAL OF 44 X TWO-BEDROOM UNITS, INCLUDING 14 X AFFORDABLE RENTAL UNITS. ASSOCIATED STORMWATER DRAINAGE WORKS ARE ALSO PROPOSED ALONG PEARCE STREET AND THROUGH A PUBLIC RESERVE WHICH IS OWNED BY COUNCIL. THE PROPOSED DEVELOPMENT IS IDENTIFIED AS NOMINATED INTEGRATED DEVELOPMENT PURSUANT TO THE WATER MANAGEMENT ACT 2000 REQUIRING APPROVAL FROM THE DEPARTMENT OF PLANNING,	55 - 119

INDUSTRY AND ENVIRONMENT – WATER LOT 2 DP 51540; LOT 2 DP 515429; LOT 2 DP 506101; LOT 3 DP 216908 AND LOT 6 DP 1050036 15-21 PEARCE STREET AND 99-101 ROSE STREET, LIVERPOOL NSW 2170	
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Item Number:	1
Application Number:	RD-38/2024
Proposed Development:	Review of Determination for refusal of DA-347/2023 - Demolition of existing structures and construction of a single storey twenty-seven (27) place centre-based childcare, car parking, landscaping, and associated works.
Property Address	14 Satelberg Street, Holsworthy
Legal Description:	Lot 428 in Deposited Plan 234857
Applicant:	Paolo Festa
Land Owner:	Peter Victor Bastawaros
Cost of Works:	\$605,000
Recommendation:	Approved subject to conditions of consent
Assessing Officer:	Jason Marshall

1 EXECUTIVE SUMMARY

Council is in receipt of Review Determination RD-38/2024 seeking review of the Liverpool Local Planning Panel (LLPP) decision for Development Application DA-347/2023 which was seeking consent for demolition of existing structures and construction of a single [storey] twenty eight (28) place centre base childcare, car parking, fencing and associated site works at No. 14 Satelberg Street, Holsworthy, which is legally described as Lot 428 in DP 234857.

The description of the proposal has been updated to better reflect the proposal in its amended form: Demolition of existing structures and construction of a single storey twenty-seven (27) place centre-based childcare, car parking, landscaping, and associated works.

The land is zoned R3 – Medium Density Residential, under Liverpool Local Environmental Plan (LLEP) 2008, and the proposal is permissible with consent.

The original application was referred to the Liverpool Local Planning Panel (LLPP) and determined on 27 May 2024 in accordance with the Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 06 May 2024, as the development falls in the category of:-

Contentious Development

Development that:

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

Pursuant to Section 8.3(5) of the Environmental Planning and Assessment (EP&A) Act 1979, the review of a determination or decision made by a local planning panel is also to be conducted by the panel.

The Review of Determination was required to be notified to properties within a 75m radius in accordance with the Liverpool Community Engagement Strategy and Participation Plan 2022. The proposal was notified from 31 July 2024 to 16 August 2024. Twelve (12) unique submissions were received objecting to the proposal. The issues of concern raised in the submissions can be summarised as follows:

- Noise generated during operational hours.
- Noise generated during demolition.
- Soil Contamination.
- Traffic impacts in the locality.
- The proposal will cause traffic safety issues for pedestrians and other vehicles, particularly given the narrowness and curvature of the road.
- Parking impacts in the locality.
- Demolition, construction, and ongoing use waste impacts.
- Insufficient demand for childcare in the area with existing childcare centres.
- The proposal will set a business and signage precedent in the residential area.
- The design is incompatible with the neighbourhood character.
- The landscaping associated with the proposal is insufficient.
- Privacy.
- Instrument variations would create unwanted precedents.
- Sydney Water infrastructure is insufficient in the area and the proposal will result in low water pressure.
- Don't want a footpath on both sides of the road.
- Carpark is unsightly.
- Safety of pathways on site.
- Impact on property values.
- Disruption of nearby recreational park through additional traffic and noise.
- Overall community wellbeing.

The matters of objection have been discussed in detail in the report below.

The 6-month time limit to review a determination - shortened by a one-month lead in period for LLPP applications - puts a significant constraint on the ability to resolve technical issues for a centre-based childcare. Council has attempted to address a number of unresolved issues through the imposition of conditions of consent. These will need to be resolved by the applicant and private certifier at the Construction Certificate (CC) stage without usurping the unencumbered indoor and outdoor spaces required under the national regulations.

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

2. SITE DESCRIPTION AND LOCALITY

2.1 The locality

The subject site and its surrounds are zoned R3 Medium Density Residential under LLEP 2008. The area is characterised by low density residential and is within an established urban area. The existing Satelberg Street streetscape character contains primarily older stock single storey and two storey dwelling houses, with newer low density type residential developments.

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

South (side)	A single storey clad dwelling house with metal roof at No. 16 Satelberg street
North (side)	A single storey clad dwelling house with metal roof at No. 12 Satelberg street
East (rear)	A single storey brick dwelling house with tile roof at No. 12 Saddle Row.
West(front)	Single storey brick dwelling houses with tile roof at Nos. 13 and 15 Satelberg Street.

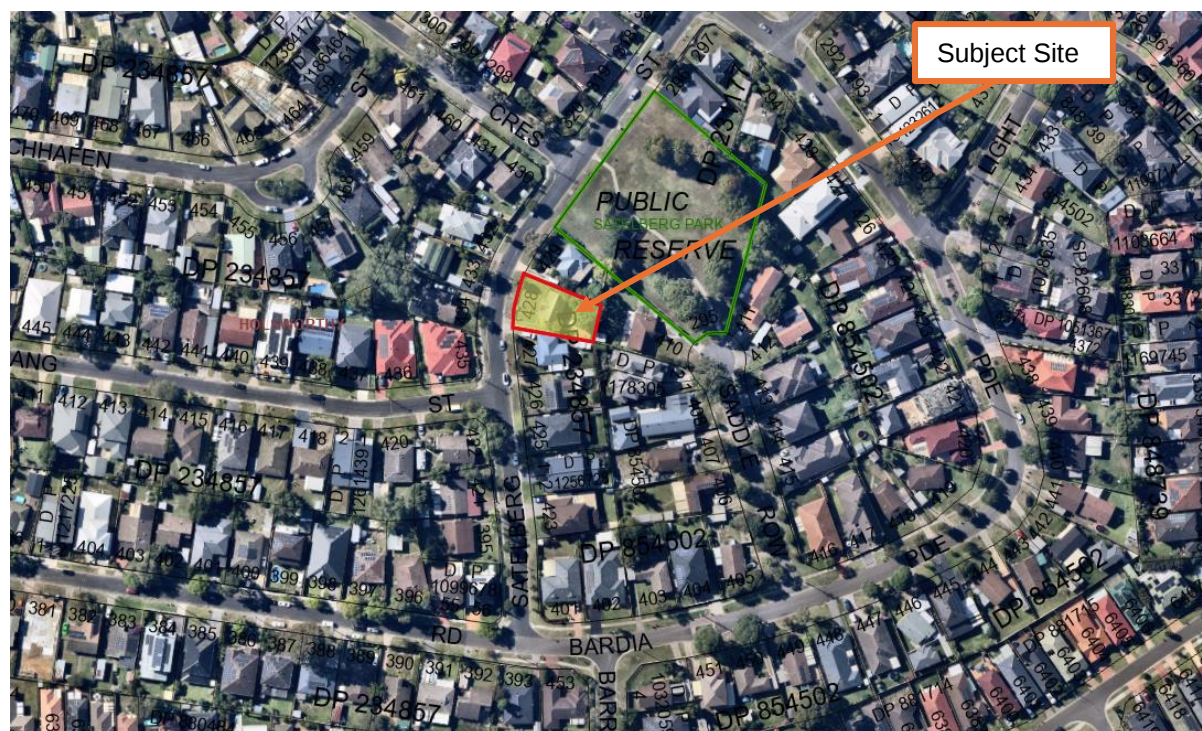


Figure 1: Locality surrounding the proposed development (Source: Geocortex)

2.2 The site

The subject site is legally identified as Lot 428 in Deposited Plan 234857 and is commonly known as 14 Satelberg Street, Holsworthy. It is generally rectangular in shape with a concave street frontage and the front boundary has an arc length of 22.415m. The side boundaries are 33.085m to the south and 33.565m to the north. The rear boundary is 15.24m. The total site area is 636.7m² (by survey).



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

The subject site contains a single storey clad dwelling with a tile roof, detached rear garage and shed, a large tree (15m high) at the north-east corner, and a small tree (4m) tree within the front setback area. The driveway is off Satelberg Street.

A site inspection for DA-347/2023 was carried out on 18 April 2023. The photos below show the subject site and the surrounding context.



Figure 3: The existing dwelling on the site, No. 14 Satelberg Street



Figure 4: View of the site – Satelberg Street looking north



Figure 5: View of the site – Satelberg Street looking south



Figure 6: Streetscape of Satelberg Street – neighbouring dwellings opposite subject site

2.3 Site Constraints

Are there any constraints or affectation on the site: - Bushfire - Flooding - Heritage Items - Aboriginal heritage - Environmentally Significant Land - Threatened Species/ Flora/ Habitat/ Critical Communities - Acid Sulphate Soils - Aircraft Noise - Flight Paths - Railway Noise - Road Noise/ Classified Road - Significant Vegetation - Contamination - Salinity	- Moderate Salinity Potential. - Category 5 Acid Sulfate Soils - Within the 130m Obstacle Limitation Contour for Bankstown Airport - A Sydney Water sewermain traverses the rear third of the lot. A referral response from Sydney Water for DA-347/2023 required a S73 application be lodged as a condition of consent, which would still be imposed if this proposal were approved. - Site is within the asset notification (blast) zone of the APA Moomba to Sydney Ethane Pipeline. Referral to APA completed and comments received.
Are there any restrictions on title? Attach 88B instrument to the report	Nil.

3. HISTORY/BACKGROUND

3.1 SITE HISTORY

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

No.	Proposed Development	Determined
PL-18/2019 Meeting 3 April	Double storey childcare centre for 38 children from 0-6 years old and car parking for 10 spaces	Advice provided 8 May 2019
DA-135/2023 Submitted 10 March 2024	Demolition of existing structures and construction of a 1 storey centre-based childcare.	Rejected 4 April 2023
DA-347/2023 Lodged 19 June 2023	Demolition of existing structures and construction of a single twenty eight (28) place centre base childcare, car parking, fencing and associated site works	Refused By LLPP 27 May 2024
RD-38/2024	Review of Determination Application – for refusal of DA-347/2023 - Development Application - Demolition of existing structures and construction of a single twenty eight (28) place centre base childcare, car parking, fencing and associated site works	Currently Under Assessment

PL-18/2019

A pre-development application (PL-18/2019) meeting for the subject proposal was held on 3 April 2019, which raised the following matters:

- The proposal was considered not suitable due to numerous factors including bulk and scale, play area to be located on ground level, and the commercial outlook design was out of character with development in the vicinity and privacy.
- Comments regarding general planning, parking and access, operational plan of management, community planning, environmental health, traffic, engineering, and stormwater were made.

“A child care facility is a permitted use in the zone but the size and design of such a facility needs to recognise that is essentially located within a residential precinct.”

DA-347/2023

The original application (DA-347/2023) was referred to the 27 May 2024 Liverpool Local Planning Panel (LLPP) in accordance with the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent, endorsed by the Minister for Planning and Public Spaces on 30 June 2020*, as the development fell in the category of:

Contentious Development

Development that:

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

The Panel Minutes noted the following issues related to the application (extracted):

The Panel heard from a number of resident objectors, the owners and owners' representatives. The principal issues related to:

- The evidence available to the Panel concerning potential contamination of the site
- Traffic and safety implications of the development
- The provision of carparking
- The non-compliance with the DCP provision dealing with landscaping in front of the building line
- Internal configuration of the proposed childcare centre, particularly in relation to: security; proximity of the kitchen to the cleaning area; and toilet arrangements.

The applicant provided advice to the Council and Panel one business day before the Panel meeting challenging the arguments raised by Council's Environmental Health Officer regarding the contamination investigation. As the Environmental Health Officer was not provided with sufficient time to respond to the late information and was also unable to attend the Panel meeting, the Panel has insufficient information to assess the arguments presented by the applicant's representative.

The Panel noted the residents' concerns about traffic and safety issues but also noted that Council's traffic and transport section had reviewed the application and raised no objections. The Panel was also mindful that this area is zoned R3 and that over coming years additional development will occur in line with that zoning, increasing traffic in Satelberg Street and other roads in the area. Future residential development in the area is also likely to lead to increased demand for childcare in the area.

In conclusion, the Panel noted that childcare centres are a permissible use in the R3 zone and the demand for childcare exists and is likely to increase over time. However, the present proposal does not sufficiently respond to the site, especially in regard to the provision of car parking and the need for adequate landscaping in the street frontage. Additionally, internal design matters require further resolution.

3.2 REVIEW APPLICATION TIMELINE

Below is a brief timeline for the Review of Determination:

Date	Action
27 May 2024	Determination of DA-347/2023.
25 July 2024	Application lodged with Council.
31 July 2024	Assigned to Assessing Officer.
31 July 2024 to 16 August 2024	Notification.
24 September 2024	Initial referral comments completed.
25 September 2024	14 Day additional information letter sent requesting the applicant address the following Issues: • Public Submissions • Plan of Management inconsistent with child numbers and acoustic report • Landscaping • Waste Management Plan

	• Waste storage • Streetscape compatibility • Excessive signage • Pedestrian and vehicle separation • Traffic safety • Unencumbered indoor and outdoor space calculations • Internal fitout details • Hours of operation
2 October 2024	Teams meeting with the applicant to discuss deficiencies.
4~11 October 2024	The 6-month time limit to review a determination - shortened by a one-month lead in period for LLPP applications - puts a significant constraint on the ability to resolve technical issues for a centre-based childcare. Council agreed with the applicant to postpone a significant number of unresolved issues which could be resolved through the imposition of conditions of consent.
14 October 2024	Applicant provides indicative sketches for Councils review.
21 October 2024	Applicant submits final set of plans and documents.
25 November 2024	Liverpool Local Planning Panel meeting.
27 November 2024	Review of Determination Expiry.

4. DETAILS OF THE PROPOSAL

This application seeks a review of determination of an application seeking consent for the demolition of existing structures and construction of a single [storey] twenty-eight (28) place centre base childcare, car parking, fencing and associated site works.

The amended proposal for twenty-seven (27) would specifically consist of the following:

- Demolition of existing structures
- Construction of a single storey childcare centre including 2 activity rooms, lunchroom, kitchen, admin/meeting room, staff bathroom, Jnr bathroom, cot room, storage, and 7 at grade car spaces (including 1 accessible space)
- Associated site works, new fencing, drainage, and landscaping works

Signage

- Sign 1 - a business identification sign on the façade: 1.98sqm.
- Sign 2 - a business identification sign on the projecting articulation element: 2.78sqm.
- Sign 3 - a wayfinding ("Entry") sign on the projecting element: 0.86m.

Operational Details

The centre would operate with the following hours:

- Monday to Friday: 7am to 6pm
- Saturday, Sunday, and Public Holidays: Closed

Deliveries, and goods or waste collection between 10:00am and 2:00pm.

	Number of Children	Age Group	Number of Educators
Activity Room 1	19	3-6 years	2
Activity Room 2	8	0-2 years	2

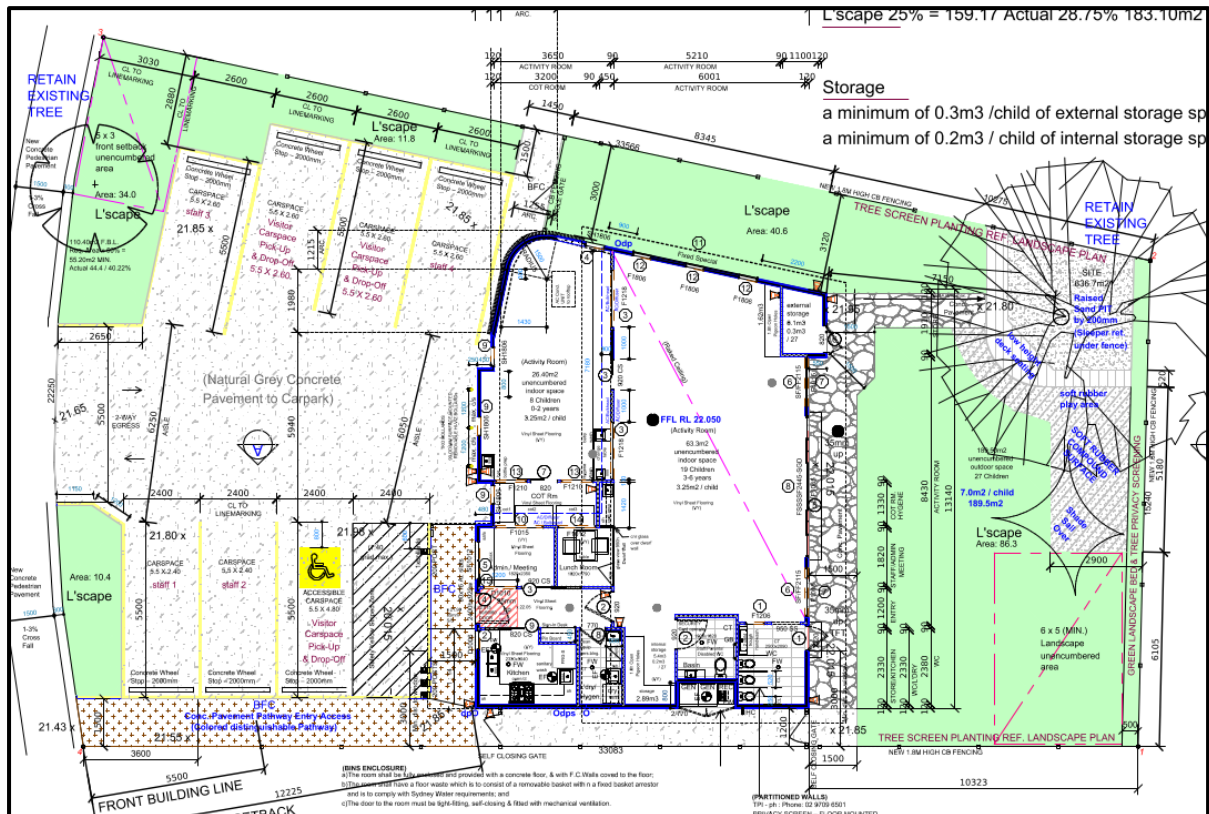


Figure 7: Ground Floor Plan extract

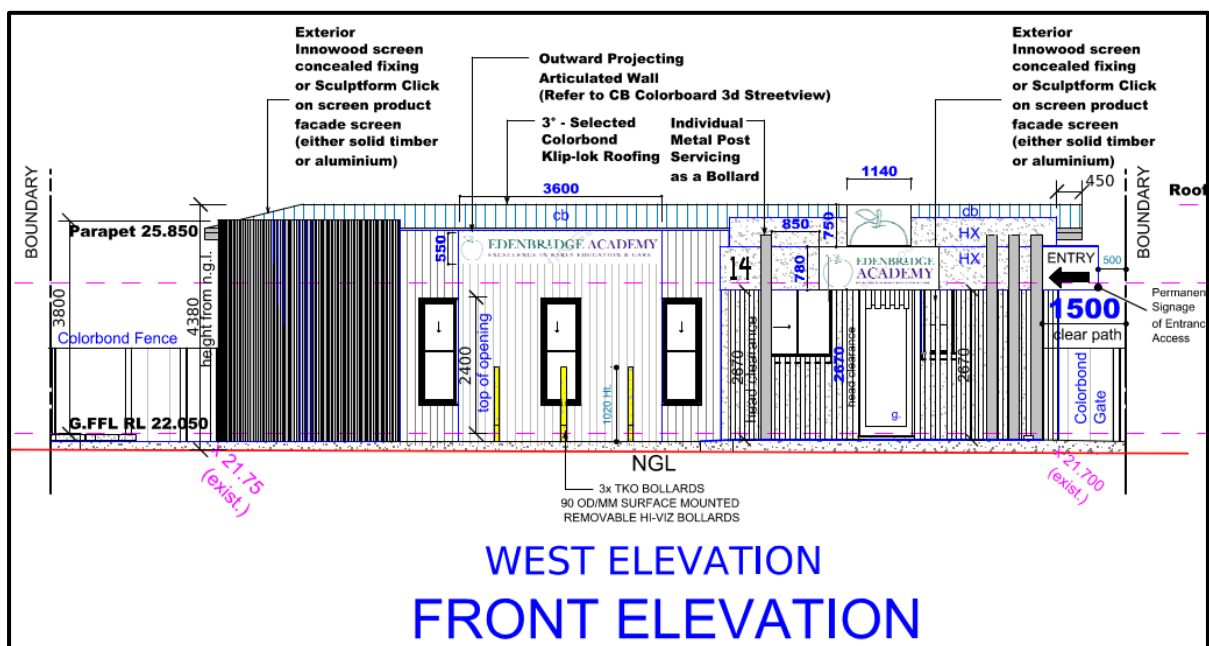


Figure 8: Front Elevation extract

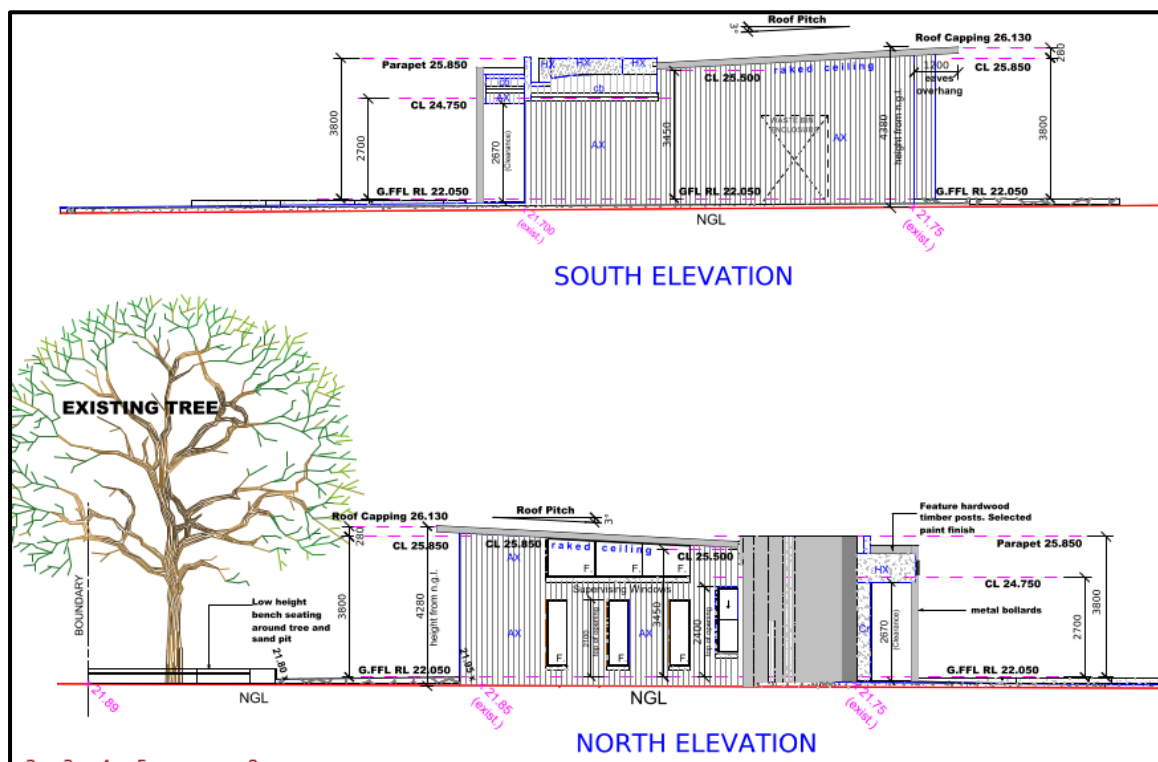


Figure 9: South and North Elevation extract

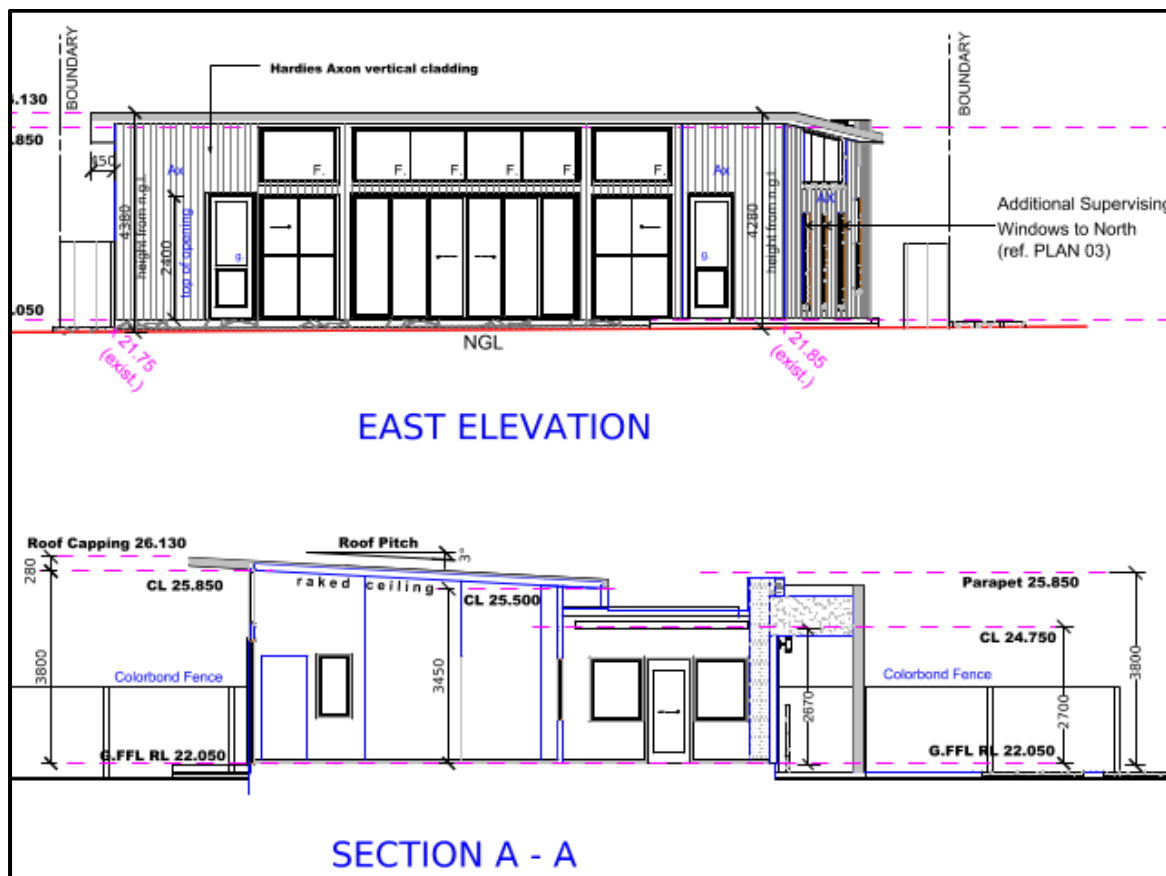


Figure 10: East Elevation & Section

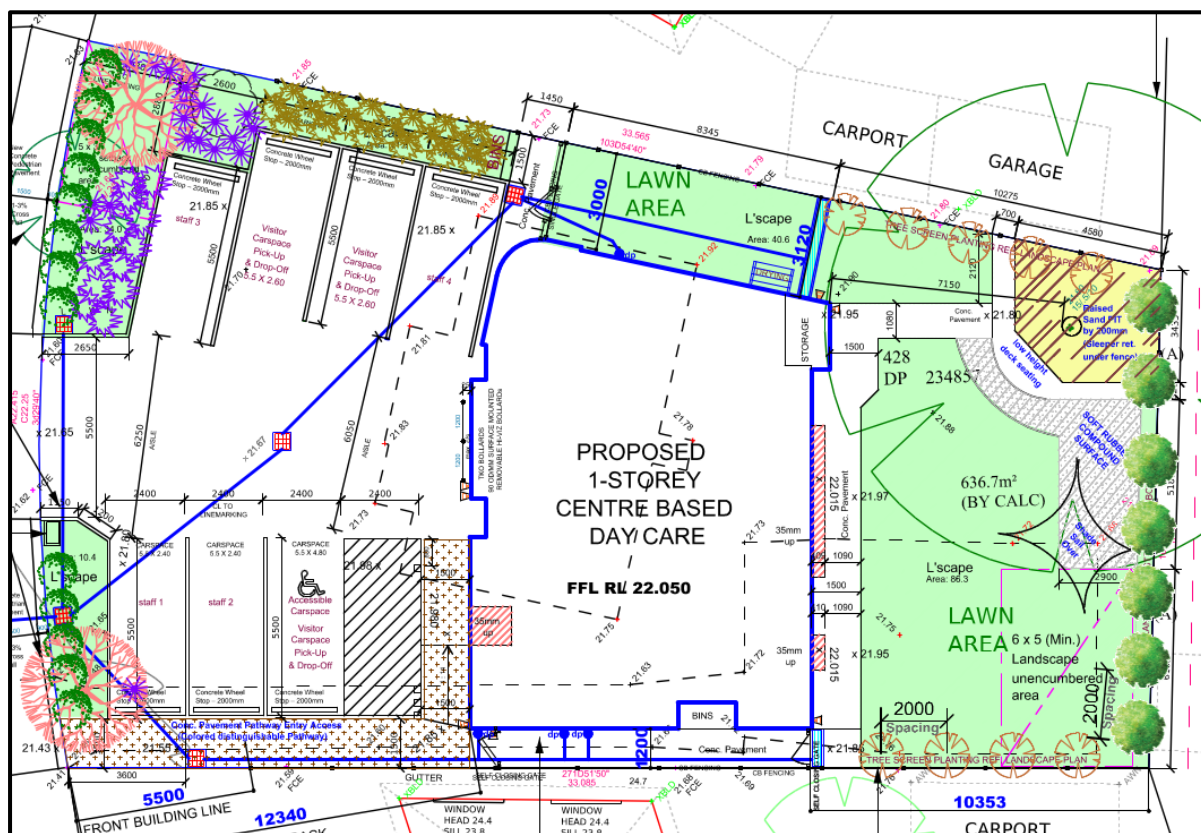


Figure 11: Landscape Plan

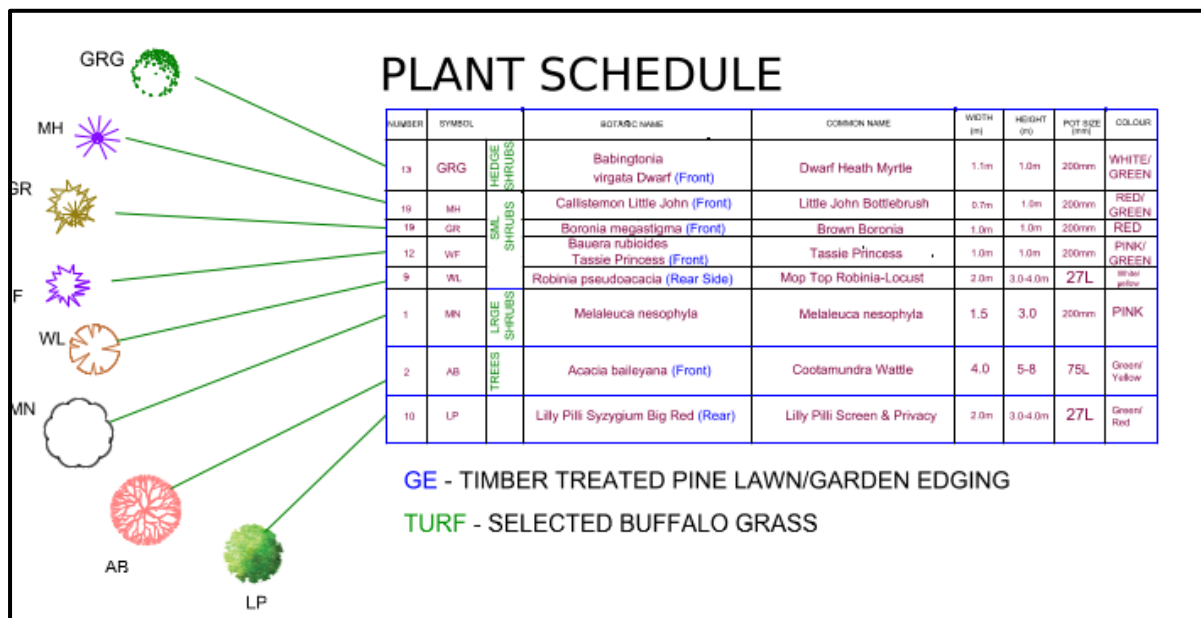


Figure 12: Planting Schedule

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

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

- (a) State Environmental Planning Policy (Industry and Employment) 2021;
- (b) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- (c) State Environmental Planning Policy (Resilience and Hazards) 2021;
- (d) State Environmental Planning Policy (Transport and Infrastructure) 2021;
- (e) Education and Care Services National Regulations 2011;
- (f) Child Care Planning Guideline 2021;
- (g) Liverpool Local Environmental Plan (LLEP) 2008; and
- (h) Liverpool Development Control Plan (LDCP) 2008:
 - Part 1 – General Controls for all developments; and
 - Part 3.8 – Non-Residential Development in Residential Zones.

6. PLANNING ASSESSMENT

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

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

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

Chapter 3 Advertising and Signage

Chapter 3 of SEPP (Industry and Employment) 2021 aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high-quality design and finish.

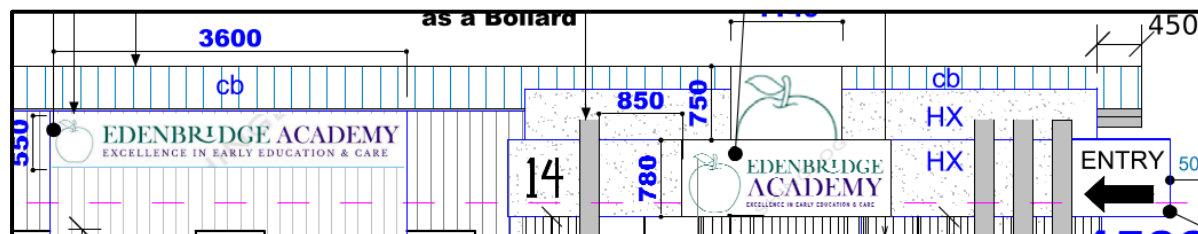


Figure 13: Signage extract

Proposed signage is best described as three flush wall signs on the front facade.

Referring to figure 13 above:

Sign 1 (left) is a business identification sign on the façade: 1.98sqm.

Sign 2 (centre) is also a business identification sign on the projecting articulation element: 2.78sqm.

Sign 2 projects above the articulation element.

Sign 3 (right) is wayfinding ("Entry") and is also on the projecting element: 0.86m.

An assessment against the signage provisions of the LDCP in section 6.3 of this report below found that the 3 signs proposed with a total area of 5.62sqm formed a 750% noncompliance. The signage is excessive and not visually compatible with the visual character of the surrounding residential development, or desired future character of the area. It protrudes above the building, adds visual clutter, and is out of scale with the building and streetscape.

The proposed signage is inconsistent with the relevant objectives of chapter 3 and Schedule 5 of SEPP (Industry & Employment) 2021.

No further assessment is required under chapter 3. A condition will be imposed noting no consent is granted for any signage.

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

The subject land is located within the Georges River Catchment and as such Chapter 6 Water Catchments of the SEPP, applies to the application. The Biodiversity and Conservation SEPP generally aims to protect the environment of the Georges River Catchments by ensuring that biodiversity values are protected and preserved and that water quality impacts of future land uses are considered in a state, regional, and local context.

DA-347/2023 was referred to Council's Land Development Engineering Department who reviewed concept stormwater management and drainage associated with the proposal. They were supportive, subject to conditions of consent. No stormwater changes were proposed for the review of determination.

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

Part 6.2 Development in Regulated Catchments	
Division 2 Controls on Development Generally	Comment
6.6 Water Quality and Quantity (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following— (a) whether the development will have a neutral or beneficial effect on the quality	The proposed centre-based child care and associated works is permissible with consent in the zone and accordingly is one of the envisioned uses of the land. The stormwater management arrangement proposed includes installing new drainage pipes,

of water entering a waterway, (b) whether the development will have an adverse impact on water flow in a natural waterbody (c) whether the development will increase the amount of stormwater run-off from a site, (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse, (e) the impact of the development on the level and quality of the water table, (f) the cumulative environmental impact of the development on the regulated catchment (g) whether the development makes adequate provision to protect the quality and quantity of ground water. (2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures— (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and (b) the impact on water flow in a natural waterbody will be minimised.	pits and an On-Site Detention tank to convey stormwater flows to kerbside outlets in Satelberg Street. The proposal was reviewed by Council's Land Development engineers, who determined the proposed stormwater arrangement to be satisfactory, subject to conditions and, as such, it is unlikely adverse impacts will arise in regard to water quality and quantity within the Georges River catchment.
6.7 Aquatic Ecology	This clause is not applicable as there is no aquatic ecology present on site.
6.8 Flooding (1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems. (2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not— (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality	The proposal is not on flood affected land.

of a natural waterbody, or (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems.	
6.9 Recreation and public access 1. In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider— (a) the likely impact of the development on recreational land uses in the regulated catchment, and (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.	As Council's Land Development Engineering section have recommended conditions be imposed controlling stormwater impacts, it is unlikely the proposal will have significant negative impacts on recreational land uses, or natural waterbodies, watercourses, wetlands or riparian vegetation.
6.10 Total catchment management In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.	The development is not considered to be of a scale which would impact upon the adjacent downstream local government area. Therefore, no consultation is required.

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

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

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

Pursuant to the above SEPP, Council must consider:

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

The applicant submitted stage 1 and stage 2 contamination investigations to Council's Environmental Health Officers for review for DA-347/2023. Council's Environmental Health Officer advised that contamination issues are resolved, subject to the imposition of conditions of consent.

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

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	A Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) were requested from the applicant for DA-347/2023. Council's Environmental Health section reviewed the reports and raises no objections regarding contamination, subject to conditions of consent.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	Council's Environmental Health section reviewed the PSI & DSI and raises no objections regarding contamination, subject to conditions of consent.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Any recommendations in the PSI & DSI will be imposed as part of the approved documents.

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

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

This proposal has been assessed under the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021, specifically Chapter 3 – Educational establishments and child care facilities (previously known as State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017).

State Environmental Planning Policy (Transport and Infrastructure) 2021			
Chapter 3 – Educational Establishments and child care facilities			
Part 3.3 Early education and care facilities – specific development controls			
Clause	Requirements	Proposed	Comment
3.22 - Centre-based child care facility—concurrence of Regulatory Authority required for certain	This clause applies to development for the purpose of a centre-based child care facility if: (a) the floor area of the building or place does not comply with regulation 107 (indoor	Regulation 107 and 108 of Educational and Care Services National Regulation specifies the following: - Indoor - 3.25m² per child - Outdoor - 7.0m² per child	

development	unencumbered space requirements) of the <i>Education and Care Services National Regulations</i>, or (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations Note: Screen planting should not be included in calculations of unencumbered outdoor space, as per C17 & C18 of the Child Care Planning Guideline 2021.	<u>Required:</u> Indoor – (27 x 3.25) 87.75sqm Proposed indoor = 89.89sqm <u>Required:</u> Outdoor - (27 x 7) 189sqm Proposed outdoor = 189.75sqm	Complies Complies
3.23 - Centre-based child care facility—matters for consideration by consent authorities	Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development	Consideration of the Child Care Planning Guidelines is undertaken in section 6.1(f) of this report.	Considered Below
3.24 - Centre-based child care facility in Zone IN1 or IN2, or E4 & E5—additional matters for consideration by consent authorities	To minimise land use conflicts with existing industrial development	The site is zoned R3 Medium Density Residential zone and is not located in proximity to industrial development.	Complies
3.25 - Centre-based child care facility—floor space ratio	FSR in zone R2 – Low Density Residential is not to exceed 0.5:1 unless specified elsewhere.	Site is zoned R3.	Not Applicable

3.26 - Centre-based child care facility—non-discretionary development standards	To identify development standards for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters. – a) the development may be located at any distance from an existing or proposed early education and care facility 1. b) indoor and outdoor space complies with regulation 107 and 108 of the Education and Care Services National Regulations c) the development may be located on a site of any size and have any length of street frontage or any allotment depth, d) the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Noted. Noted. Noted. The site is not listed as local heritage or state heritage.	Complies
3.27 - Centre-based child care facility—development control plans	1) A provision of a development control plan that specifies a requirement, standard or control does not apply in relation to 2. a) Operational or management plans or arrangements (including hours of operation) b) Demonstrated need or demand for child care services c) Proximity of facility to other early education and care facilities d) Any matter in relation to development for the purpose of a centre-based	Noted. Noted. Noted	Complies

	child care facility contained in design principles set out in Part 2 of the <i>Child Care planning Guideline</i> or matter for consideration set out in Part 3 of the requirements set out in Part 4 of Guideline other than height, side and rear setback or car parking rates	Noted.	
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As detailed in the tables above, the proposal is consistent with SEPP (Transport and Infrastructure) 2021.

(e) Education and Care Services National Regulations 2011

In accordance with Part 4 of the Child Care Planning Guideline 2021, Part 4.3 of the *Education and Care Services National Regulations 2011* must be considered. These regulations, in addition to Regulation 123 - Educator to child ratios—centre-based services, form part of the national quality framework and the relevant regulations are discussed in the following table:

Education and Care Services National Regulations 2011			
Chapter 4 National Regulations	Requirement	Assessment	Comment
104 Fencing	The approved provider of an education and care service must ensure that any outdoor space used by children at the education and care service premises is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	Fencing has been provided around outdoor spaces used by children. A condition will be imposed ensuring sufficient security.	Complies by Condition
106 Laundry and Hygiene Facilities	The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering. Laundry/hygienic facilities are located where they do not pose a risk to children	Laundry facilities provided and located away from children's play areas.	Complies
107 Indoor Space Requirements	3.25m ² of unencumbered space per child.	Provided. See above in 3.22 of T&I SEPP.	Complies

108 Outdoor Space Requirements	7m ² of unencumbered space per child.	Provided. See above in 3.22 of T&I SEPP.	Complies
109 Toilet and Hygiene Facilities	The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service. The location and design of the toilet, washing and drying facilities enable safe and convenient use by the children.	Age appropriate toilets are provided for the 3-6 cohort and are easily accessible from their play room and the outdoor space. The proposal was referred to Council's Environmental Health officer who did not raise objections, subject to conditions of consent.	Complies by Condition
110 Ventilation and Natural Light	The approved provider of an education and care service must ensure that the indoor spaces used by children at the education and care service premises — (a) are well ventilated; and (b) have adequate natural light; and (c) are maintained at a temperature that ensures the safety and wellbeing of children.	Natural cross ventilation is available to all playrooms through window openings. Both play areas have north facing windows and will likely get adequate natural light A condition of consent will be imposed to ensure appropriate temperatures are maintained.	Complies Complies Complies by Condition
111 Administrative Space	The approved provider of a centre-based service must ensure that an adequate area or areas are available at the education and care service premises for the purposes of— (a) conducting the administrative functions of the service; and (b) consulting with parents of children; and (c) conducting private conversations.	An admin/meeting room, kitchen, and lunchroom are provided.	Complies
112 Nappy Change Facilities	The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing	A nappy Change table with a sink is provided in the 0-2 activity room.	Complies

	bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area. The proposed nappy change facilities can be designed and located in a way that prevents unsupervised access by children.		
113 Outdoor Space - Natural Environment	The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.	A sandpit, shrubs, lawn and trees are provided.	Complies
114 Outdoor Space - Shade	The approved provider of a centre-based service must ensure that outdoor spaces provided at the education and care service premises include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	The submitted shadow diagram shows the outdoor play area in shade in the afternoon. Additionally, a large deciduous tree will be retained, providing ample shade in summer.	Complies
115 Premises Designed to Facilitate Supervision	The approved provider of a centre-based service must ensure that the education and care service premises (including toilets and nappy change facilities) are designed and maintained in a way that facilitates supervision of children at all times that they are being educated and cared for by the service, having regard to the need to maintain the rights and dignity of the children.	The location of windows and layout of the internal playrooms, outdoor areas, and bathrooms allow appropriate surveillance.	Complies

As detailed in the compliance tables above, the proposal is consistent with the Education and Care Services National Regulations 2011, subject to conditions.

(f) Child Care Planning Guideline 2021;

In determining a Development Application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of parts 2, 3, and 4 of the Child Care Planning Guideline 2021 (CCPG).

All key controls for parts 2 and 3 are discussed in the compliance tables in Report Attachment 3. Part 4 provides guidance for assessment of the National Regulation. The National Regulation is considered in section 6.1(e) of this report above.

Figure 14: Zoning Map (Source: Geocortex)

(ii) Objectives of the zone

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To provide for a suitable visual transition between high density residential areas and lower density areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal is consistent with the relevant zone objectives in that it provides for a compatible land use with a residential environment and the use is a service that would assist in meeting the day to day needs of residents in an area with access to public transport (bus stops 150m to the north) and other services (Wattle Grove Shopping Village and Saint Mark's College 900m to the west). The proposal does not restrict the potential for surrounding land to develop additional residential developments to meet the housing needs of the community. Further, the proposal retains a high level of amenity for the adjoining properties and locality.

Consequently, the proposal is permissible with consent and consistent with the objectives of the zone.

(iii) Principal Development Standards

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

Clause	Required	Proposed	Complies
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	A demolition plan was submitted with the application. If approved, a condition of consent would be imposed to ensure demolition complies with Australian Standards.	Complies by Condition
4.3 Height of Buildings	Maximum height of 8.5m	The maximum proposed height 4.43m.	Complies
4.4 Floor Space Ratio	Maximum FSR of 0.5:1 is applicable.	Site area: 636.7sqm GFA: 139.1sqm FSR: 0.22:1	Complies
7.7 Acid Sulfate Soils	Class 1, 2, 3, 4 or 5	The site is mapped as containing class 5 acid sulfate soils. However minimal cut and fill is	Complies

		proposed with no excavation below 5 AHD. As such, no further consideration is required and the proposed works are unlikely to result in the lowering of the water-table on adjacent Class 1, 2, 3 or 4 land or within the proposed site	
7.31 Earthworks	Council to consider matters listed (a)-(g)	Minimal cut and fill proposed. If approved, standard conditions of consent could be imposed to control matters listed (a)-(g).	Complies by Condition

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

No applicable draft EPIs.

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

Liverpool Development Control Plan 2008

The proposed development is subject to the Liverpool Development Control Plan 2008 (LDCP) 2008.

Applicable controls where the proposal is not compliant are discussed in the tables below.

Part 1 General Controls for all Development			
Control	Requirement	Proposed	Comment
26. Outdoor advertising and signage	Applicable signage controls:	Proposed signage is best described as three flush wall signs on the front facade. Sign 1 is a business identification sign on the façade: 1.98sqm. Sign 2 is also a business identification sign on the projecting articulation element: 2.78sqm Sign 3 is wayfinding (“Entry”) and is also on the projecting element: 0.86m	Does not Comply. No Granted Consent for Signage.
	<u>General Controls</u> 1. Signage design, materials, colours, and placement should be visually compatible with the building, nearby signage, and the surrounding locality <u>Signage Controls by</u>	Signage is excessive and not visually compatible with the surrounding residential development. Sign 2 projects above the articulation element	

	<u>Type – Flush Wall Signs</u> 1. Not to project above, horizontally or below the wall to which it is attached <u>Signage Controls by [zone] – Residential Zones</u> 1. One sign with a maximum area of 0.75sqm is permitted per business operation or activity.	3 signs proposed, total area: 5.62sqm (750% noncompliance). Also see SEPP I&E consideration of signage in section 6.1(a) of this report above. A condition will be imposed noting no consent is granted for any signage.	
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Part 3.8 Non-Residential Development in Residential Zones (Childcare Centres)			
Control	Requirement	Proposed	Comment
2.5 Landscaped Area and Open Space - Landscaped Area	3. A minimum of 50% of the front setback area shall be landscaped area.	Front setback area: 277.82sqm. Front landscaped area: 50.54sqm. = 18% coverage. Opportunities within the front setback for landscaping conflict with required parking. An area to allow vegetation to mature is provided along the front boundary. It includes a variety of plantings that enhance the existing streetscape and soften the visual appearance of the carpark and building. Additionally, the proposal exceeds the landscaped area requirement across the entirety of the site, assisting with reducing stormwater runoff, while retaining a very large mature tree in the rear. More screening is	Does not comply. Acceptable on Merit

		proposed along the side and rear boundary fences, as such the area deficiency is acceptable on merit because the cumulative landscaping is sufficient for a proposal of this scale.	
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All other applicable controls are discussed in the compliance tables in Report Attachment 2.

As detailed in the tables in the attachment, the proposal is consistent with the Liverpool Development Control Plan 2008.

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

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

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

The *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) requires the consent authority to consider the provisions of the National Construction Code. Accordingly, appropriate conditions of consent will be imposed.

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

Head of Consideration	Comment
Built	The development is considered to be consistent with the future and desired character of development in the locality in terms of bulk, scale, colour and design and is not considered to be an overdevelopment of the site.
Natural Environment	The proposed development is unlikely to cause detrimental impact to the natural environment. The proposed development shows satisfactory planting opportunities and provides adequate trees and landscaping across the site, including the retention of the significant tree in the rear.
Social Impacts	The proposed development will provide additional childcare capacity for a target group who will benefit from improved accessibility to these services. Overall, the proposed development will have a positive socio-economic impact providing greater socio-economic opportunity for its residents.
Economic Impacts	The economic impact in the locality is likely to be positive through the capital investment value of the development, the employment of childcare professionals, and by service provision enabling parents to re-enter the workforce.

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, generally complies with the relevant planning controls and the site is considered to be suitable for development of the proposed scale.

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

(a) Community Consultation

The Development Application was required to be notified to properties within a 75m radius in accordance with the Liverpool Community Engagement Strategy and Participation Plan 2022. The proposal was notified from 31 July 2024 to 16 August 2024. Twelve (12) unique submissions were received objecting to the proposal. The issues of concern raised in the submissions are summarised and addressed in the table below:

Issue raised	Comments
Issue 1: Noise generated during operational hours.	The proposal was supported by an acoustic report that recommends an acoustic fence be built along the side and rear boundaries. Outdoor play time is limited by the Operational Plan of Management and the Acoustic report, which contains a noise management plan. Council's Environmental Health Officer reviewed the report, and its recommendations and requirements will be required to be carried out as a condition of consent. Additional conditions of consent will also be imposed to maintain acoustic amenity, including a noise complaint register.
Issue 2: Noise generated during demolition	Conditions of consent will be imposed limiting construction and demolition noise and vibration. Hours of work will be limited by condition to: 7am to 6pm on Monday to Friday 8am to 1pm on Saturday
Issue 3: Soil Contamination	The proposal is accompanied by a Preliminary Site Investigation and a Detailed Site Investigation. Council's Environmental Health Officer has reviewed both reports and raises no objections regarding Soil Contamination. The recommendations of the reports will form part of the consent.
Issue 4: Traffic impacts in the locality.	A Traffic Impact Assessment was submitted with the application, detailing the impact of the development upon traffic in the locality. Council's Traffic Management Team have reviewed the report and are supportive, subject to the imposition of conditions of consent.
Issue 5: The proposal will cause traffic safety issues for pedestrians and other vehicles, particularly given the narrowness and curvature of the road.	Council's traffic and transport section have assessed the proposal and have raised no objections subject to conditions that aim to prevent incidents arising from the reduced sight-line constraint. A stage 3 road safety audit will be required addressing these safety issues. Improved pedestrian paving in front of the proposal, properly separated pedestrian access to the centre, and changes to the proposed landscaping allowing unobstructed vision when leaving the car park will also be conditioned, improving safety.
Issue 6: Parking impacts in the locality.	The applicant has reduced the number of children, reducing the number of staff so proposed parking now satisfies the requirements of Council's Development Control Plan:

	The DCP requires 1 space per staff member and 1 visitor space per 10 children. 27 Children and 4 staff are proposed, requiring 7 car spaces (4 for staff and 3 for visitors). 7 car spaces are provided. Council's Traffic Management Team have reviewed the parking and are supportive, subject to the imposition of conditions of consent.
Issue 7: Demolition, construction, and ongoing use waste impacts	The proposal now includes an enclosed waste storage area that will be conditioned to comply with Council's Environmental Health Officer's requirements. Additionally, an updated waste management plan detailing compliant disposal of commercial waste will be conditioned to satisfy Council's recommendations. Overall, these measures will control the impacts of: - Odours - Vermin - Hazardous Materials - Noise
Issue 8: Insufficient demand for childcare in the area with existing childcare centres.	Clauses 26 & 27 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 prevent Council from enforcing more onerous controls with regard to demonstrated need for childcare or proximity to another facility. Council's Community Planning section reviewed the original application and are supportive.
Issue 9: The proposal will set a business and signage precedent in the residential area.	A centre based childcare facility is permissible form of development in the R3 Medium density zone. No consent is granted, express or implied, for any signage.
Issue 10: The design is incompatible with the neighbourhood character.	The proposed roof form and building design is different to the surrounding properties in terms of pitch and architectural design; a modern skillion design is proposed. However, the proposal is still compatible with the surrounding properties because it is only a single storey, it is set back generously from the street, and it is softened by landscaping along most of the front, side and rear boundary. In terms of bulk, scale, size, and height, the building is compatible with the surrounding residential area and the desired future character of the two storey R3 – Medium Density Residential zone. A schedule of colours, materials, and finishes was submitted with the proposal and the front façade is predominantly brown, grey and white: colours that are common for residential properties and feature in the existing streetscape.

Issue 11: The landscaping associated with the proposal is insufficient.	Substantial landscaping has been proposed along the front boundary line and along the north side boundary within the front setback to soften the impact of the modern building and the car park. Existing trees in the front and rear setback are retained, and at the request of council, screening plants are now proposed along the boundaries surrounding the outside play area in the rear. A condition of consent will be imposed extending the landscape screening along the north side boundary in between the proposed building and the neighbour.
Issue 12: Privacy	The single storey proposal will be surrounded by a 2m high acoustic fence. Additionally, at the request of council, screening plants are now proposed along the boundaries surrounding the outside play area in the rear. A condition of consent will be imposed extending the landscape screening along the north side boundary in between the proposed building and the neighbour.
Issue 13: Instrument variations would create unwanted precedents	The only control variation granted for this proposal is for the percentage of landscaping within the front setback. Opportunities within the front setback for landscaping conflict with required parking. An area to allow vegetation to mature is provided along the front boundary. It includes a variety of plantings that enhance the existing streetscape and soften the visual appearance of the carpark and building. Additionally, the proposal exceeds the landscaped area requirement across the entirety of the site, assisting with reducing stormwater runoff, while retaining a very large mature tree in the rear. More screening is proposed along the side and rear boundary fences, as such the area deficiency is acceptable on merit because the cumulative landscaping is sufficient for a proposal of this scale.
Issue 14: Sydney Water infrastructure is insufficient in the area and the proposal will result in low water pressure	A condition of consent will be imposed requiring a Section 73 application be lodged with Sydney Water to ensure the proposal can be adequately serviced.
Issue 15: Don't want a footpath on both sides of the road	Council's Traffic and Transport section require the footpath for safety and to provide capacity for the future development of the R3 – Medium Density Residential Zone.
Issue 16: Carpark is unsightly	Substantial landscaping has been proposed along the front boundary line and along the north side boundary within the front setback to soften the impact of the car park.
Issue 17: Safety of pathways on site	The pathways on site have been widened to that two prams can pass each other. At the request of Council the access pathway from the street to the front entrance will be delineated with different materials, and a condition of consent will be imposed requiring safety fencing.
Issue 18: Impact on property values	The proposal is a permitted form of development for the R3 Medium Density Residential zone and the locality. In respect to depreciation of property value, there is no evidence to suggest

	that the proposed development will result in the depreciation of the value of any neighbouring properties. Additionally, property value is not matter for consideration under section 4.15 of the Environmental Planning Assessment Act, 1979.
Issue 19: Disruption of nearby recreational park through additional traffic and noise	While the dominant typology in the area surrounding the site consists of single storey dwellings, the site and surrounds are zoned R3 – Medium Density, with a height limit of 8.5 metres, which enables two storey multi-dwelling housing. The envisaged future character of the area will include significant densification, which means additional users of local shared assets including the road and park. A centre based childcare facility is a permissible form of development in the R3 Medium density zone and consistent with the desired future character of the area. Drop-offs and pick-ups are limited to parts of the day, and the proposal is supported by an acoustic report.
Issue 20: Overall community wellbeing	The proposed development will provide additional childcare capacity who will immediately benefit from improved accessibility to these services. Overall, the proposed development will have a positive impact on community wellbeing by: - Enabling primary caregivers - usually women - to return to work earlier, closing the gender pay gap. - Providing an enriched learning environment to children earlier in life, which is widely accepted to be directly linked to better education, employment, health, and crime reduction outcomes over the long term for both the child and the community.

(b) Internal Referrals

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

DEPARTMENT	COMMENTS
Community Planning	No objections to the original proposal, and revisions made for the review of determination were not significant enough to require further referral.
Development Engineering	Supported original proposal subject to conditions of consent. Stormwater changes have not been proposed for the review.
Environmental Health	Council's Environmental Health Officer is supportive of the proposal, subject to conditions of consent, noting the following outstanding requirements: - A designated food preparation sink - A cleaner's sink for disposal of liquid waste. - Details of storage facilities for cleaning equipment and staff personal belongings. - Sufficient sinks for the bottle preparation area. Changes required to accommodate the above may have implications for the unencumbered indoor/outdoor space. A

	condition of consent will be imposed ensuring details are provided prior to CC, without compromising the unencumbered space minimum requirements.
Traffic and Transport	Supported, subject to conditions of consent.
Urban Design & Public Domain	Design guidance was provided regarding outstanding issues from the DA stage: - Street Trees - Bin storage - Paving materials - Water Tank - Excess pavement - Landscape design These either have been addressed by the applicant at the RD stage, or will be addressed by imposed condition.

(c) External Referrals

Agency	COMMENTS
Sydney Water	A sewermain traverses the rear third of the lot. A referral response from Sydney Water for DA-347/2023 required a S73 application be lodged as a condition of consent.
APA	Site is within the asset notification (blast) zone of the APA Moomba to Sydney Ethane Pipeline. A referral response from APA for DA-347/2023 required a meeting prior to construction as a condition of consent.

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

Based on the above assessment the proposed development is generally compliant with the relevant planning controls and is considered to be in the public interest.

7. DEVELOPMENT CONTRIBUTIONS

Council's Contributions Officer has confirmed that S7.12 contributions are required in accordance with the Liverpool Contributions Plan 2018 – Established Areas. They have been imposed as a condition of consent.

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, LDGP 2008, the Education and Care Services National Regulations, the Child Care Planning Guideline, and the relevant codes and policies of the Council.

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

9. RECOMMENDATION

That Review of Determination RD-38/2024 be approved, subject to conditions.

ATTACHMENTS

1. Architectural Plans/Determination Documents (Under separate cover)
2. LDCP Tables (Under separate cover)
3. Childcare Planing Guideline Tables (Under separate cover)
4. Draft Notice of Determination (Under separate cover)

Item Number:	2
Application Number:	DA-318/2024
Proposed Development:	Change of use of existing building at 111 Newbridge Rd, Chipping Norton from 'Warehousing and wholesaling of furniture and general merchandise' (as approved) to 'Vehicle Sales or Hire Premises'.
Property Address	111 Newbridge Road, Chipping Norton 2170
Legal Description:	Lot 33, DP 819053
Applicant:	Market Direct Group Pty Ltd
Land Owner:	Nufima Pty Ltd
Cost of Works:	\$0
Recommendation:	Approved subject to conditions of consent
Assessing Officer:	Anna Stephenson

1 EXECUTIVE SUMMARY

Council has received a Development Application (DA-318/2024) seeking consent for change of use to vehicle sales or hire premises at 111 Newbridge Road, Chipping Norton.

The site is zoned E4 General Industrial pursuant to Liverpool Local Environmental Plan 2008 and the proposed development is permissible with consent.

The development application was notified for a period of 14 days from 29 July 2024 to 12 August 2024 in accordance with Community Participation Plan 2022. No submissions were received during the public consultation period.

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

Departure from development standards

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

The proposed development has a number of non-compliances, however these are deemed acceptable in terms of the overall context of the site.

The non-compliances are summarised below:

- The proposal does not comply with Clause 7.41(4) Certain developments in Zones E4 and E5 pursuant to the Liverpool Local Environmental Plan 2008. The development has a noncompliance of 191.8%, which is deemed acceptable in this instance.
- The proposal has minor non-compliances with the Liverpool DCP regarding:
 - Part 7, Section 11 – Change of Use of Existing Buildings

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

2. SITE DESCRIPTION AND LOCALITY

2.1 The locality

The site is located in an area characterised by existing industrial development in E4 General Industrial zone, opposite to an E3 and RE2 zoned area currently occupied by a plant nursery and proposed to be developed into a hotel/motel accommodation in the future on the opposing side of Newbridge Road.

The site fronts onto Newbridge Road and is adjoined by other industrial lots, including an existing vehicle sales and hire premises at 115 Newbridge Road, a commercial premises at 105 Newbridge Road, and an industrial warehouse at Lot 80 Riverside Road. It is to the west of Riverside Park.



Figure 1: Aerial view of the locality (Source: Geocortex)

2.2 The site

The subject site is identified as Lot 33 in DP 819053 and is known as 111 Newbridge Road, Chipping Norton. It is regular in shape with a frontage of 30.735 metres to Newbridge Road and a depth of 91.455 metres, with a total area of 2796m². The site is accessed through a right of way over the neighbouring lot, Lot 32 in DP 819053.

Currently, the subject site contains an existing industrial building which is occupied by a vehicle sales or hire premises operating without development consent. It was previously used for the purpose of a warehouse associated with the adjoining commercial premises.

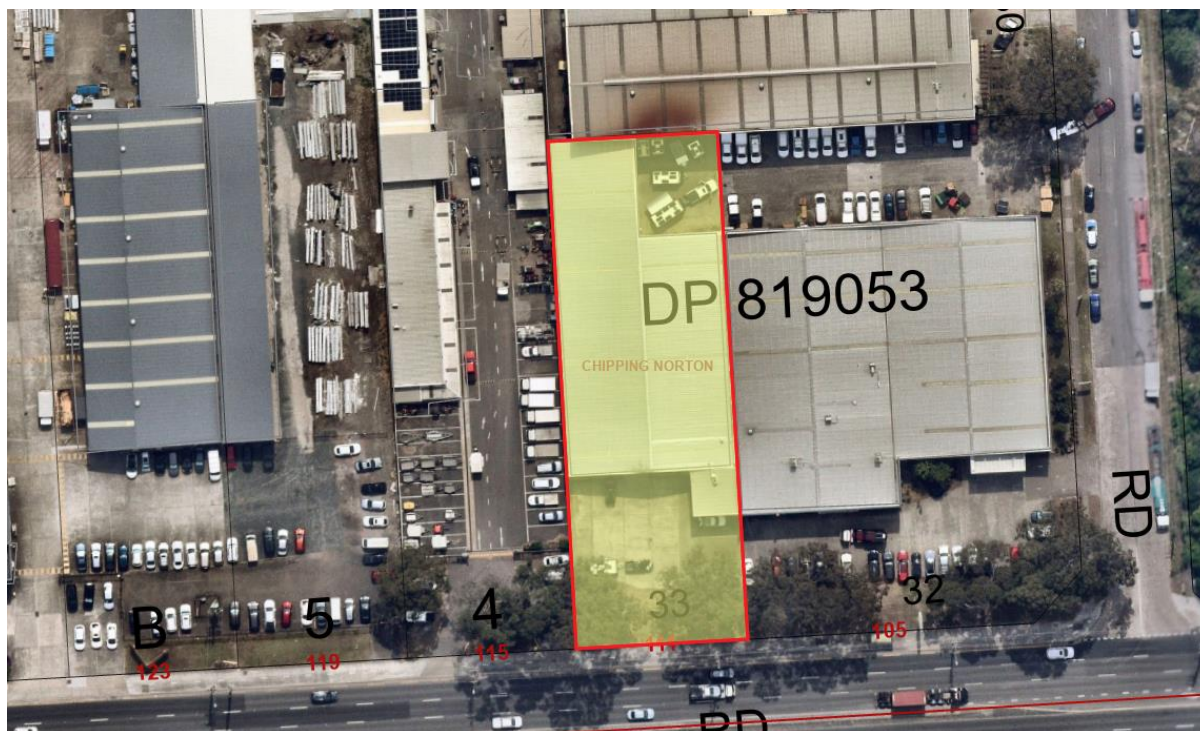


Figure 2: Aerial view of the site (Source: Geocortex)

3. BACKGROUND/HISTORY

A brief history of the development application is provided below:

Date	Details
23 July 2024	Application lodged.
29 July 2024	Internal referrals to: • Building Compliance • Traffic and Transport • Flood Engineering External referral to: • Transport for NSW
7 August 2024	Internal referral to:

	• Fire Safety
26 August 2024	Request for additional information issued raising the following: • BCA/NCC Report • Survey Plan • Noncompliance with Clause 7.41 of the LLEP 2008 • Waste Management Plan
4 September 2024	2-week extension of time until 23 September 2024 granted
23 September 2024	Amended documentation received, including: • Site Plan • Survey Plan • Waste Management Plan • BCA Report • RFI Response letter
24 September 2024	Re-referral to: • Building Compliance
2 October 2024	Amended documentation received, including: • Clause 4.6 Variation Request to vary Clause 7.41 of the LLEP 2008

4. DETAILS OF THE PROPOSAL

The development application seeks approval for change of use of the existing industrial building from a warehouse to vehicle sales or hire premises, involving no physical works.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

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

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

Contributions Plans

- No contributions plans are applicable as the proposed development does not require contributions to be paid.

6. ASSESSMENT

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

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

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

The proposed development is located on a lot fronting a classified road, and as such, Clause 2.119 of the SEPP (Transport and Infrastructure) 2021 applies to the application.

Clause 2.119 – Development with frontage to classified road	Comment
(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—	
(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and	Vehicular access to the land is provided from Riverside Road by way of a right of way registered on title over the adjoining lot (Lot 32 DP 819053).
(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of— (i) the design of the vehicular access to the land, or (ii) the emission of smoke or dust from the development, or (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and	The proposed development would not impact operation of the classified road as: (i) the vehicular access is from Riverside Road and requires a vehicle to turn into the street, so would not impact Newbridge Road, (ii) no smoke or dust is expected to be emitted from the development, given it is for commercial premises, (iii) the nature, volume and frequency of vehicles accessing the land from the classified road would not create any additional impacts on Newbridge Road beyond what exists due to other development in the vicinity.
(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the	The development is of a type which is not sensitive to traffic noise or vehicle emissions.

site of the development arising from the classified road.	
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The development has additionally been referred to Transport for New South Wales (TfNSW) for comment. TfNSW were supportive of the application subject to the imposition of conditions of consent.

Based on the above assessment, the proposal is considered to comply with the SEPP (Transport and Infrastructure) 2021.

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

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

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The site has not been identified as contaminated, but is located in a General Industrial zone, so contamination may have occurred.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	While the site <i>could</i> be contaminated, considering all portions proposed to be used are covered in hardstand and are proposed to be used for commercial purposes, it is considered that if the site were contaminated, it would still be suitable for the proposed use without requiring remediation.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The land does not require remediation.

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

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

The subject land is located within the Georges River Catchment and as such the State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments is applicable. This chapter generally aims to protect the environment of river systems, including the Georges River system by ensuring that impacts of future land uses are considered in a state, regional, and local context.

The proposed development does not involve any physical works, and as such it is considered to comply with the SEPP (Biodiversity and Conservation) 2021 as it would not alter stormwater flows.

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

The subject site is zoned **E4 General Industrial** pursuant to the LLEP 2008. An extract of the zoning map is provided in Figure 3 below.

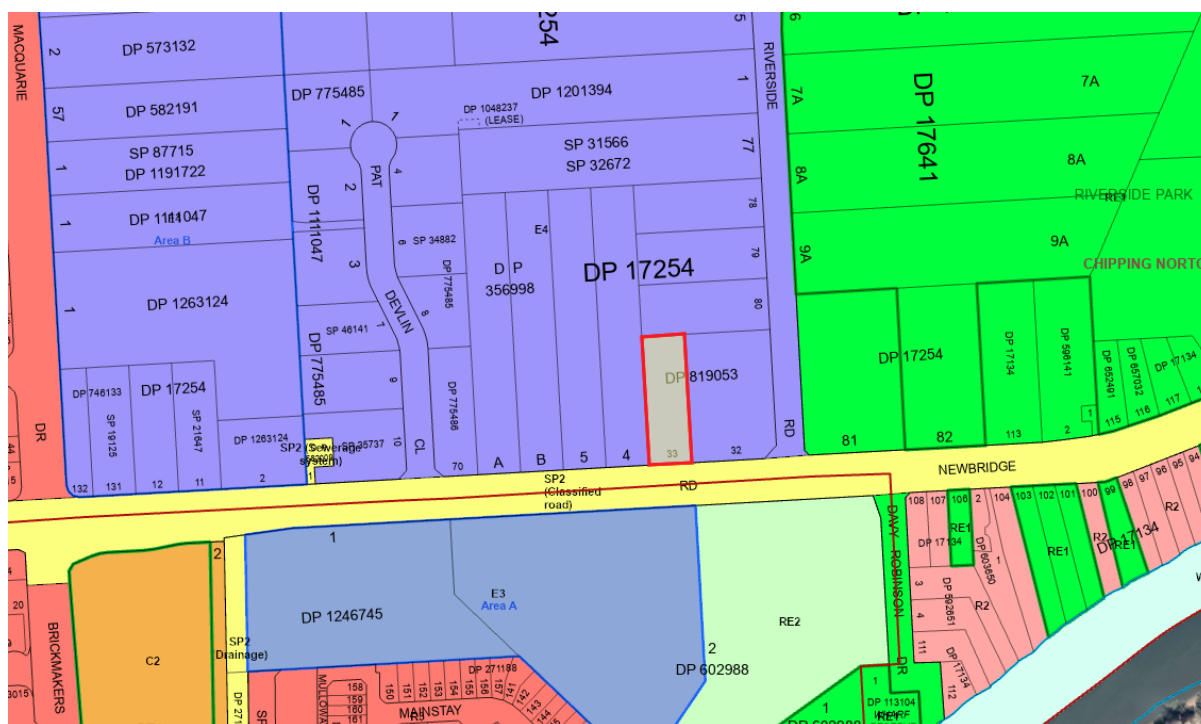


Figure 3: Zoning Map (source: Geocortex)

(ii) Permissibility

The proposed development is best defined by the standard instrument as vehicle sales or hire premises, which is identified as permitted land use with consent within the E4 Zone under Liverpool Local Environment Plan 2008.

***vehicle sales or hire premises** means a building or place used for the display, sale or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.*

(iii) Objectives of the zone

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

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

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

- It does not impact on the use of land for industrial uses, nor the viability of the subject site for future industrial use;
- It would not have an adverse impact on other land uses, nor be adversely impacted by industrial uses;
- It encourages employment opportunities;
- It is a land use which is compatible with industry and can buffer heavy industrial zones without detracting from centres of activity.

(iv) Principal Development Standards

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

Development Provision	Requirement	Proposed	Comment
Part 4 Principal Development Standards			
4.3 Height of Buildings	30m	No change to existing	Not Applicable
4.4 Floor Space Ratio	Not Applicable		
4.6 Exceptions to development standards	Provisions relating to exceptions to development	Clause 4.6 request to vary Clause 7.41 has been considered as part	Considered acceptable – see Clause 4.6 –

	standards.	of this application.	Variation assessment below
5.21 Flood planning	Consent must not be granted unless the consent authority is satisfied the development will not have adverse effects on flood behaviour and will be safe to inhabit/evacuate.	No change to building footprint, therefore Flood Engineer has advised no conditions or design considerations apply.	Not Applicable
7.41 Certain developments in Zones E4 and E5	If development for the purpose of vehicle sales or hire premises is permitted under this plan in Zone E4 General Industrial or Zone E5 Heavy Industrial, the floor area used for hard stand space must not exceed 500 square metres.	Proposed vehicle sales and hire premises comprises approx. 1,459sqm of hard stand floor area. Clause 4.6 Variation Request submitted.	Considered acceptable – see Clause 4.6 – Variation assessment below

Clause 4.6 – Exceptions to development standards

(Variation to Clause 7.41 – Certain developments in Zones E4 and E5)

Clause 7.41(4) of the Liverpool Local Environmental Plan 2008 (LLEP) states:

*“(4) **Vehicle sales or hire premises** If development for the purpose of vehicle sales or hire premises is permitted under this plan in Zone E4 General Industrial or Zone E5 Heavy Industrial, the floor area used for hard stand space must not exceed 500 square metres.”*

The subject proposal seeks a variation to the maximum floor area used for hard stand space under the LLEP 2008. The maximum floor area used for hard stand space is to be 500sqm. The subject development proposes a total floor area used for hard stand space of 1,459sqm. This equates to a variation of 959sqm, which is expressed in a percentage as 191.8% to the development standard.

Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant has submitted a written request seeking a variation to the maximum floor area used for hard stand space as prescribed by Clause 7.41.

The objectives and standards of Clause 4.6 of the LLEP 2008 are as follows:

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

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

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

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

The applicant submitted a Section 4.6 Variation Request, dated 01/10/2024, in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

Written Request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravention of the development standard

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

The applicant has provided the following justification for the non-compliance with the development standard:

Applicant Comment

The most common way of demonstrating compliance with the development standard is unreasonable or unnecessary is by justifying the proposed variation against one or more of the instances that are commonly referred to as the ‘five-part test’, as established in Wehbe v. Pittwater Council [2007] NSWLEC 827.

In response to the tests, it is acknowledged that Section 7.41(a) of LLEP 20085 does not contain any noted objectives; the underlying purpose is relevant to the development; the underlying objective is not defeated or thwarted; the development

standard has not been abandoned or destroyed; and the zoning of the site is not called into question in this instance. As such, none of the tests established in Wehbe v. Pittwater Council [2007] can be relied upon to demonstrate compliance with the development standard is unreasonable or unnecessary.

The applicant asserts that the methods outlined in *Wehbe v Pittwater Council [2007]* NSWLEC 827 are not able to be applied to this application.

- Test 1 relies upon objectives, which are not provided for this control;
- Test 2 and 3 rely on the underlying objectives being irrelevant to the development, or defeated or thwarted by the control; based on a review of the LEP amendment proposal which resulted in this clause being added to the LLEP 2008, the underlying purpose or objective of the control is to limit the development of non-industrial uses within industrial zones, which is relevant to the development and is not defeated or thwarted by the control.
- Test 4 relies upon previous consents being issued which have disregarded the standard to such a degree it has effectively been destroyed; there is no record of previous consideration of variation to this clause.
- Test 5 relies upon the zoning of the land being unreasonable or inappropriate; given the site is surrounded by industrial development and was previously used for industrial purposes, the zoning is considered appropriate and reasonable for the site.

It has been established that the methods outlined in *Wehbe v Pittwater Council [2007]* NSWLEC 827 cannot be applied in the circumstances. However, the applicant identifies the following approach to demonstrating compliance is unreasonable or unnecessary:

Initial Action Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [22] found that the 'five-part test' is not an exhaustive way of demonstrating compliance. Further, a review of the Guide to Varying Development Standards, prepared by NSW Department of Planning and Environment and dated November 2023, provides instruction on how to respond in the absence of any objections pertaining to the development standard to be varied.

Section 3.2.4 'Development standards without objectives' of the Guide to Varying Development Standards provides the following:

If a development standard does not have an objective, the written request must establish, through research and an understanding of the background to the standard, the environmental planning outcome the standard is seeking to achieve.

As the standard is read as part of the whole environmental planning instrument, reference to how the instrument addresses similar provisions in other zones, or the zone objectives in which the development is proposed, may be necessary.

The background of the standard is as follows:

Clause 7.41 formed part of Amendment 82 to the Liverpool Local Environmental Plan 2008, which was determined as follows:

- 25 September 2019: The Council resolved to forward the Planning Proposal for Amendment 82 to the Department of Planning, Industry and Environment (DPIE) seeking a Gateway Determination.
- 17 April 2020: Gateway determination was received.
- 10 June 2020—21 July 2020: Exhibition of Amendment 82 and Draft Land Use Planning Strategies.
- 26 August 2020: The Council resolved to proceed with Amendment 82 subject to the amendments proposed.
- 26 March 2021: Amendment 82 to the Liverpool Local Environmental Plan 2008 published.

The Post-Exhibition Planning Proposal provided to the Council gave the following explanation for the maximum floor area control:

The floor area restriction applying to vehicle sales or hire premises will provide additional flexibility within industrial precincts while ensuring that these particular uses remain ancillary to protect the sustainable growth and operation of industries in the IN1, IN2 and IN3 zone.

The applicant provided the following explanation of how the application meets the purpose of the standard as indicated by the planning proposal:

Strict compliance with Section 7.41(4) of LLEP 2008 is considered unreasonable in this instance as, whether the 500 square metre maximum for hard stand space within the floor area is enforced or not, the vehicle sales and hire premises will:

- *Occur solely within the boundaries of the subject site;*
- *Utilise the existing building on the site;*
- *Be ancillary to industry and surrounding industrial land uses;*
- *Continue to be accessed via the Right of Carriageway (DP1198796) extending from Riverside Road to the east;*
- *Utilise existing onsite parking arrangements;*
- *Not impact upon the viability of the site for industrial uses in the future;*
- *Not impact upon the continued or future operation of industrial uses on adjoining, adjacent and surrounding land; and*
- *Not have any impact on the ability for the proposed hard stance space, or land use, to generally meet the objectives of the E4 General Industrial zone.*

A review of adjoining, adjacent and surrounding uses shows land within the zone is generally used for solely industrial purposes. Therefore, irrespective of the amount of hard stand space within the existing building proposed to be utilised, use of the site

itself for vehicle sales or hire premises is ancillary to the surrounding E4 zone as it is one of the only non-industrial uses.

Strict compliance with the development standard is also considered unnecessary in this instance for the following reasons:

- *Use of approximately 1,459 square metres of floor area for hard stand space will not alter the form, function or fundamental character and intention of the site, the zone or the surrounding industrial area;*
- *Deviation from the development standard will not impact the ongoing growth or operation of industry on surrounding lots or on the subject site in the future;*
- *The proposed variation does not conflict with the objectives of the E4 General Industrial zone in so far as it:*
 - o *provides opportunities for employment through the hiring of staff to undertake the day-to-day operation of the land use;*
 - o *provides an appropriate land use buffer between industrial uses;*
 - o *has no bearing on the impact of industrial uses on the proposed use or other land uses within the zone;*
 - o *does not detract from the efficient and viable use of surrounding land for industrial uses; and*
 - o *does not detract from the efficient and viable use of the subject site for future industrial uses.*

Based on the above, compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the underlying planning outcome sought by the development standard is retained; the objectives of the zone are generally complied with and, despite the proposed variation to the amount of floor area used for hard stand space, the ability for the site and the existing building to be used for industrial uses in the future has not been prejudiced by the proposed use or the variation.

Council Comment:

In response to the comments raised above, the following justification is provided as to why the imposition of the applicable standard is unreasonable and unnecessary in this instance:

- The proposed use, while not strictly ancillary to the adjoining industrial developments, as it is an entirely separate use, is subordinate to them in regards to size, scale and intensity.
- The proposed use does not impact upon the presentation of the site to the street, and is commensurate with the scale and character of adjoining developments.
- The proposal does not inhibit any future use of the site for industrial purposes.
- The proposed use would not have any impact on neighbouring allotments.
- Strict compliance with the development standard would not result in any alterations to the building footprint, merely result in unused space.

As such, it is considered that compliance with the standard would be unreasonable and unnecessary in the circumstances of the case.

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

The applicant has provided the following comment as to how there are sufficient environmental planning grounds to justify contravening the development standard:

Applicant Comment

There are sufficient environmental planning grounds to justify the contravening of the development standard, because:

- Use of more than 500 square metres of hard stand space within the existing building on the subject site does not detract from the environmental planning outcome of the development standard, as the proposed land use will remain ancillary to industrial uses within the zone.*
- Use of more than 500 square metres of hard stand space within the existing building on the subject site does not conflict with the objectives of the E4 General Industrial zone.*
- Use of more than 500 square metres of hard stand space within the existing building on the subject site has no adverse impacts on the viability of the site to be used for general industrial purposes in the future.*
- Use of more than 500 square metres of hard stand space within the existing building on the subject site does not alter existing access to the site nor the existing car parking arrangements within the boundaries of the site.*
- Use of more than 500 square metres of hard stand space within the existing building on the subject site does not impact on the presentation of the land use to Newbridge Road.*
- Use of more than 500 square metres of hard stand space within the existing building on the subject site does not impact upon the orderly and economic use of the land as proposed by the change of use.*

Council Comments

In response to the applicant's comments listed above, Council has provided the following commentary as to why there are sufficient environmental planning grounds to justify the contravention of the development standard:

- The proposal complies with the objectives of the E4 General Industrial zone, and all other LLEP 2008 development standards;

- The proposal complies with the relevant controls in the LDCP 2008;
- The proposal does not have any impact on the natural or built environments, and would not have any social or economic impacts, as it does not involve any physical works or offensive uses;
- The proposed development is consistent with the existing adjacent uses, being a vehicle accessory retail premises and a vehicle hire premises;
- The subject site is constrained by access arrangements and location in proximity to Newbridge Road, limiting capacity for trucks to access the site, and the proposed use would not be inhibited by the access arrangements.

Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 7.41 – Certain developments in Zones E4 and E5 in this instance.

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

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

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

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

(a) Liverpool Development Control Plan (LDCP) 2008

The application has also been assessed against the relevant controls of the LDCP 2008, particularly *Part 1 General Controls for all Development and Part 7 Development in Industrial Zones*.

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008. All relevant compliance tables for the LDCP 2008 can be found in Report Attachment 2.

Below provides a summary of the non-compliances with the LDCP 2008 which are deemed supportable.

Part 7 – Development in Industrial Areas			
Section 11 – Change of Use of Existing Buildings			
Control	Requirement	Comment	Compliance
Landscaping and Fencing	Where existing landscaping is below the standard	Landscaping consists of mature trees and grassed	Considered acceptable

	identified in the DCP, the existing area of landscaping shall where possible be upgraded to the standard specified in the DCP	area. This does not strictly comply with the DCP but is consistent with the character of the area and is considered more appropriate in the circumstances.	on merit
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Overall, the proposal is considered to be consistent with the key controls outlined in the LDCP 2008.

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

There are no Planning Agreements which apply to the development.

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

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the BCA and the Safety standards for demolition (AS 2601 – 2001). Accordingly, appropriate conditions of consent will be imposed.

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

Natural and Built Environment

The proposed change of use involves no changes to the built form of the site, and is not an offensive or polluting industry, and as such it is considered that the development would not have any impacts on the natural or built environments.

Social Impacts and Economic Impacts

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

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

The proposal generally complies with the relevant planning controls and the site is considered to be suitable for the proposed development.

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

(a) Internal Referrals

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

DEPARTMENT	COMMENTS
Building Compliance	Approval subject to conditions of consent
Fire Safety	Approval subject to conditions of consent
Flood Engineering	Approval subject to conditions of consent
Traffic and transport	Approval subject to conditions of consent

(b) External Referrals

The following comments have been received from external Agencies:

DEPARTMENT	COMMENTS
Transport for NSW	Approval subject to conditions of consent

(c) Community Consultation

The proposal was notified for a period of 14 days from 29 July 2024 to 12 August 2024 in accordance with Community Participation Plan 2022. No submissions were received in response to the public consultation process.

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

The proposed development is considered to be in the public interest.

7. DEVELOPMENT CONTRIBUTIONS

Contributions are not applicable to this application.

8. CONCLUSION

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

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

9. RECOMMENDATION

That Development Application DA No DA-318/2024 be **approved subject to conditions of consent.**

ATTACHMENTS

1. Conditions of Consent (Under separate cover)
2. LDCP 2008 Compliance Tables (Under separate cover)

3. Architectural Plans (Under separate cover)
4. Clause 4.6 Variation Request (Under separate cover)

Item Number:	3
Application Number:	DA-310/2024
Proposed Development:	The proposal is for the demolition of the existing dwellings on the subject site, and construction of a five storey in-fill affordable residential flat building (RFB) development with at-grade car parking. The proposal has been designed across two buildings and contains a total of 44 x two-bedroom units, including 14 x affordable rental units. Associated stormwater drainage works are also proposed along Pearce Street and through a public reserve which is owned by Council. The proposed development is identified as Nominated Integrated Development pursuant to the Water Management Act 2000 requiring approval from the Department of Planning, Industry and Environment – Water
Property Address	Nos.15-21 Pearce Street, Liverpool Nos. 99-101 Rose Street, Liverpool
Legal Description:	Lot 2 DP 51540; Lot 2 DP 515429; Lot 2 DP 506101; Lot 3 DP 216908 and Lot 6 DP 1050036
Applicant:	Mackenzie Architects International Pty Ltd
Land Owner:	Amersfoort Investment Group Pty Ltd Liverpool City Council
Cost of Works:	\$19,239,269
Recommendation:	Refusal
Assessing Officer:	GAT & Associates (External Planning Consultant)

1. EXECUTIVE SUMMARY

The subject Development Application (DA-310/2024) seeking consent for the demolition of the existing dwellings and construction of a five storey in-fill affordable RFB development with at-grade parking at Nos. 15-21 Pearce Street, Liverpool. The proposed development is designed as two buildings and contains a total of 44 x 2-bedroom units. The at-grade car park comprises 37 spaces.

The application has been submitted under the in-fill affordable housing provisions under State Environmental Planning Policy (SEPP) (Housing) 2021.

The application also seeks to undertake stormwater drainage works in the road reserve of Pearce Street and partly through a public reserve owned by Liverpool City Council at Nos. 99-101 Rose Street, Liverpool (Lot 6 DP 1050036). It is noted that landowners' consent from

Liverpool City Council (LCC) was not provided at the time of lodgement of the application, nor has this been submitted during the assessment of the application.

The development is identified as Nominated Integrated Development under the Water Management Act 2000 requiring approval from the Department of Planning, Industry and Environment – Water.

The applicant has lodged a Class 1 Appeal in the NSW Land and Environment Court (LEC) against the deemed refusal of the subject application on 6 September 2024.

The site is zoned R4 High Density Residential under Liverpool Local Environmental Plan 2008 (LLEP 2008) and the proposed development is permissible with consent.

The application was notified between 22 July and 7 August 2024. An additional round of public notification including advertising was undertaken between 30 August and 27 September 2024 due to the omission of the works on Council land from the property address description. A total of nine submissions were received, including three duplicates and concerns raised by the submissions included the following:

- Increased traffic congestion.
- Impacts of additional density on street parking.
- Inadequate width of Pearce Street for the development.
- Flooding impacts.
- Overshadowing impacts.
- Visual and acoustic privacy impacts.
- Construction noise impacts and damage to properties during construction.
- Impacts on house values.

These matters are further discussed within this report.

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

1. Conflict of Interest

Development for which the applicant or land owner is:

- a. *The Council*

4. Sensitive Development

(b) Development to which State Environmental Planning Policy (Housing) 2021, Chapter 4 (Design of Residential Apartment Development) applies and is 4 or more storeys in height.

The key issues associated with the proposal relate to:

- The absence of landowner's consent for the proposed works on Council land, Nos. 99-101 Rose Street, Liverpool, as required by the Environmental Planning and Assessment (EP&A) Regulation 2021.
- No details were submitted of the community housing provider to manage the affordable housing component, as required by the EP&A Regulation 2021.

- The stormwater management works on Council land require a contamination assessment due to the historical use of that land as a landfill and has not been submitted.
- Additional engineering and flooding information is required to determine the suitability of the proposed stormwater management works.
- A variation is proposed to the bonus floor space ratio (FSR) provision under Section 16 of State Environmental Planning Policy (SEPP) (Housing) 2021 and no written Clause 4.6 Variation has been submitted with the application.
- Apartment Design Guide (ADG) objectives have not been met or insufficient information has been provided to assess certain objectives, including but not limited to those associated with communal open space, public domain interface, visual privacy, parking, ground floor apartments, private open space, façades, storage, apartment mix and landscape design.
- Insufficient and inconsistent information has been submitted to fully assess tree removal associated with the development on Nos. 15-21 Pearce Street and no assessment was made of the stormwater management works and impacts on trees within Pearce Street.
- Liverpool Development Control Plan (LCDCP) 2008 non-compliances or insufficient information was submitted to assess matters including but not limited to tree removal, contaminated land, water cycle management, flooding risk, bicycle parking, building design, and services.
- The consequences of the proposed at-grade parking on the access to the communal open space and the visual impact of it on adjoining properties.

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

2. SITE DESCRIPTION AND LOCALITY

2.1 The Site

The primary subject land for the proposed development consists of four parcels of land which are known as Nos. 15, 17, 19 and 21 Pearce Street, Liverpool. The lots are legally described as Lot 2 DP 51450, Lot 2 DP 515429, Lot 2 DP 506101, and Lot 3 DP 215908. The site is located on the northern side of Pearce Street centrally on the block bounded to the east by Gillespie Street, to the west by Gill Avenue and to the north by Hoxton Park Road.

The development site is generally rectangular with an irregular, stepped rear boundary. The street frontage measures 74.905m with the eastern side boundary being 38.1m and the western side boundary being 36.575m in depth. The overall site area is 2,749.8m².

The subject site is presently occupied by a brick or clad dwelling houses with tile roofs on each lot, some with detached garages and numerous trees. Street trees are present on the verge outside Nos. 15, 19 and 21 Pearce Street.

The land has a gentle slope from the east down to the west with a high point of RL 21.2m AHD and a low point of RL 20.02m AHD.

Pearce Street is a local street which operates as a cul-de-sac approximately 120m to the east with connection to Hoxton Park Road via Gill Avenue to the west. Refer to the site aerial in Figure 1 below.

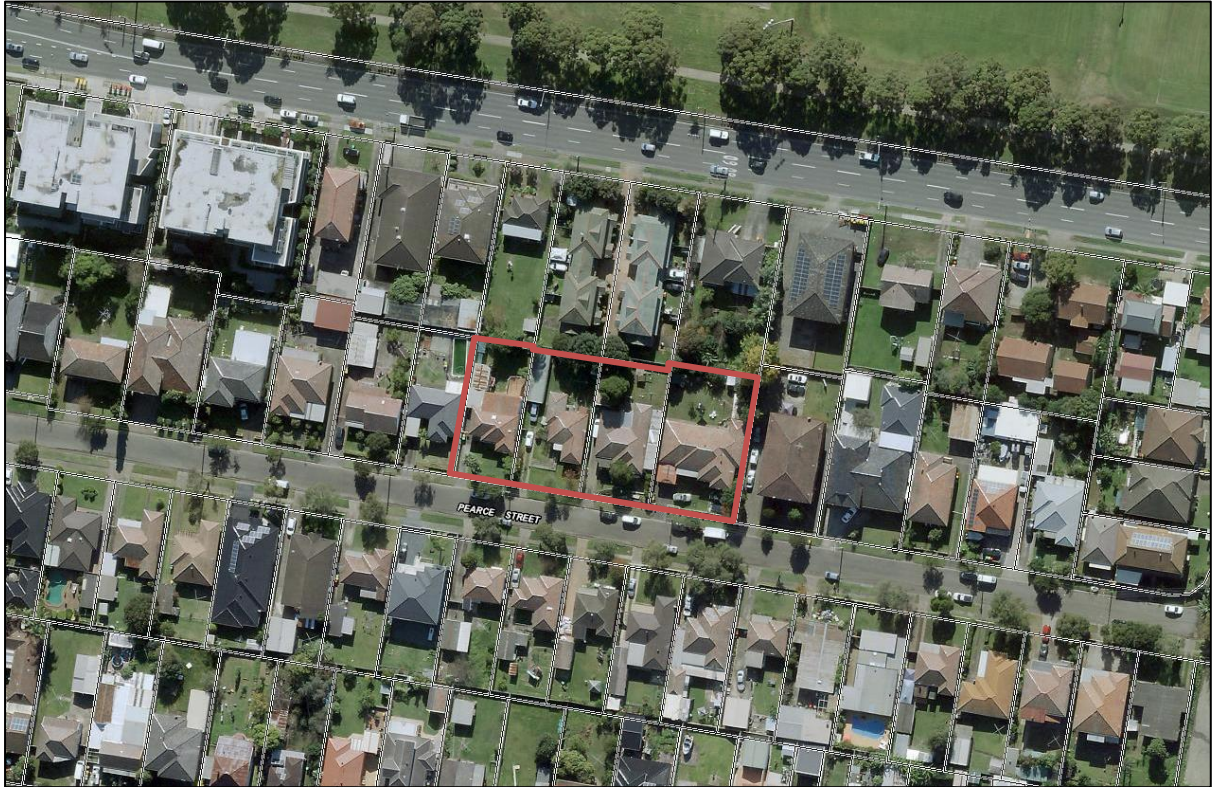


Figure 1: Aerial view of the subject site (Source: SIX Maps)

The applicant has also proposed drainage works along Pearce Street in a westerly direction which extends into Nos. 99-101 Rose Street, Liverpool (Lot 6 DP 1050036), a portion of public land owned by LCC, commonly known as Paciullo Park and discharging into Brickmakers Creek. An extract of the applicant's stormwater plans illustrating the drainage works is in Figure 2 and a drainage context image is in Figure 3.

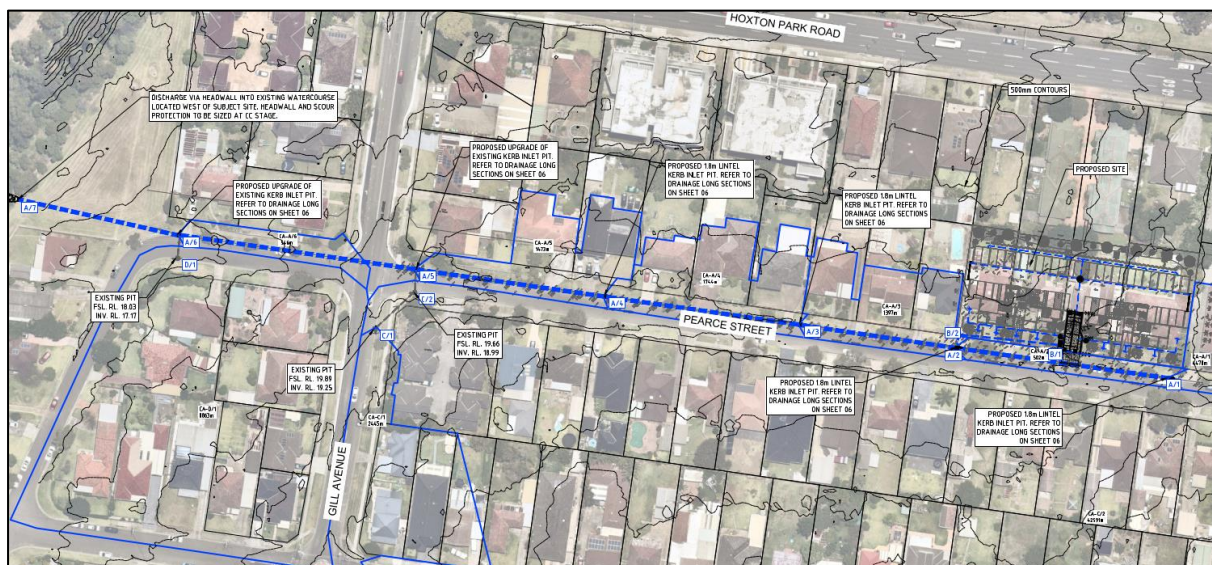


Figure 2: Extract of Stormwater Plans (Drawing No. 21106.DA.C09, prepared by SitePlus)



Figure 3: Aerial Context Image for Drainage Works (Source: SIX Maps)

2.2 The Locality

The site is located within an established residential locality predominantly comprising low density residential developments and generally single storey residential dwellings.

Pearce Street is an east-west local street of modest width that terminates to the east of the site and the block is zoned R4 High Density Residential. Pearce Street serves as the transition point to an R3 Medium Density Residential zone along the south side of the street.

Two examples of high-density developments have been constructed to the northwest of the site at Nos. 42-44 and 50 Hoxton Park Road, comprising five storey residential flat buildings with basement car parking. The remainder of the locality is reflective of its low-density historical purpose.

The immediate adjoining properties consist of:

East (side)	A two storey older stock residential flat building comprising eight units at No.13 Pearce Street.
West (side)	A single storey brick dwelling house at No. 23 Pearce Street to the west.
Northeast (rear)	A two-storey dwelling house at No. 28 Hoxton Park Road to the northeast.
North (rear)	A two Torrens title lot multi-dwelling housing complex of 8 x two storey dwellings with shared central driveway at Nos. 30 and 32 Hoxton Park Road to the north.
Northwest (rear)	A single storey dwelling house at No. 34 Hoxton Park Road to the northwest.

The site is proximate to the following:

- Bus stops along Hoxton Park Road – 300m-400m walking distance.
- Woodward Park – 300m walking distance.
- Paciullo Park – 350m.
- Liverpool to Parramatta Transit way – 500m walking distance.
- Liverpool Train Station – 1.2km.

The site is situated to the southwest of the Liverpool Central Business District (CBD). The closest development is some 150m, at the corner of Hume Highway and Hoxton Park Road. Refer to the photos of the site and surroundings below.



Figure 4: View of the existing dwelling on 15 Pearce Street



Figure 5: View of the existing dwelling on 17 Pearce Street



Figure 6: View of the existing dwelling on 19 Pearce Street



Figure 7: View of the existing dwelling on 21 Pearce Street



Figure 8: View of the western neighbouring dwelling on 23 Pearce Street



Figure 9: View of the eastern neighbouring two storey brick residential flat building on 13 Pearce Street



Figure 10: View of the southern neighbouring dwelling at 18 Pearce Street



Figure 11: View east toward Liverpool CBD and "The Hoxton" tower development

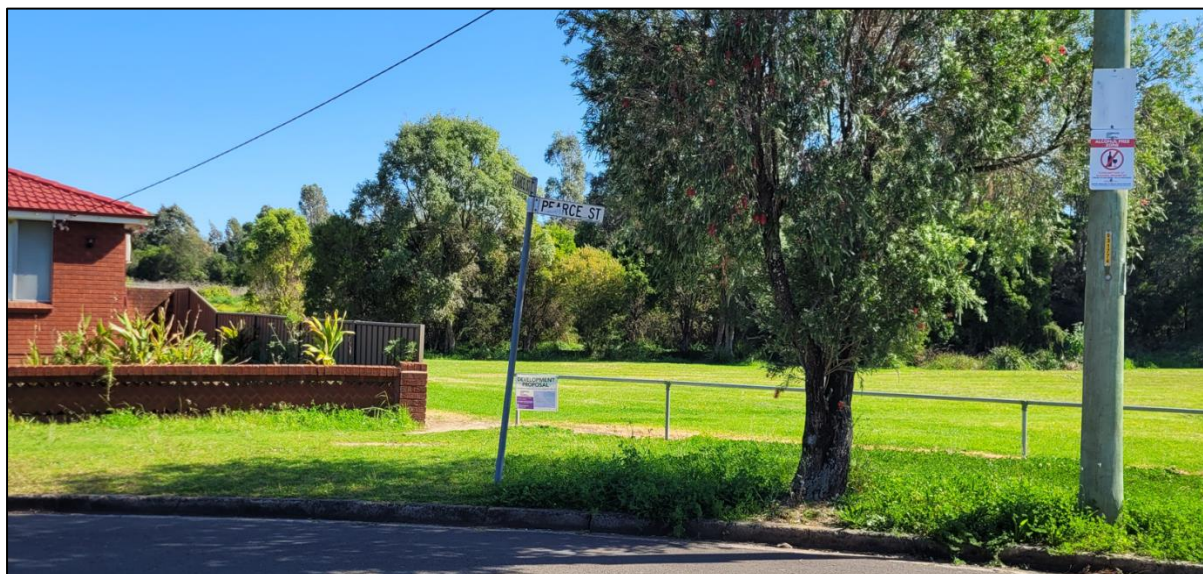


Figure 12: View of a portion of 99-101 Rose Street where drainage works are sought from the western end of Pearce Street

3. BACKGROUND/HISTORY

3.1 Assessment History

The subject Development Application (DA) was lodged with Council on 19 July 2024.

The application was notified between 22 July and 7 August 2024. An additional round of public notification and advertising was undertaken from 30 August to 27 September 2024 due to the omission of the works on Council land from the property address description. A total of nine submissions were received, including three duplicates.

Council engaged an external town planning consultant to assess the application due to the conflict of interest arising from the proposed works on Council land.

A Class 1 deemed refusal appeal to the LEC was submitted on 6 September 2024.

A Design Excellence Panel (DEP) meeting was held on 10 October 2024 and a summary of the matters raised during the meeting are provided in the next section.

3.1 Design Excellence Panel

The application was presented to the Liverpool DEP on 10 October 2024.

Meeting minutes stated the following:

Car Park

1. The Panel highlights that basement car parking is typical of a residential flat building (RFB), because it enables the ground floor plane to have adequate landscaping, quality, communal space, sufficient separation and landscape buffer to neighbouring properties. The applicant provided justification for why at-ground parking is being proposed for this project, and the design strategies incorporate to mitigate negative

impacts. The Panel is supportive of the initial strategies such as the apartments at ground concealing parking from the street frontage, however much more work is needed to further mitigate the impacts and achieve a good and supportable design outcome, including for neighbouring residents, as outlined in further detail through the recommendations in these minutes.

2. The Panel notes there is a growing trend across the industry and other Council's throughout Sydney for more flexibility and a reduction of car parking requirements for residential buildings, due to the cost savings, improvements to design, amenity and space given over to landscaping. The Panel encourages this be discussed between the applicant and Council and recognises this is a complex and broader issue involving multiple stakeholders and may not be resolved for this project.
3. Currently due to the expanse of above ground parking, a resident will be overlooking cars and concrete/bitumen hard surfaces, where a resident normally would look onto landscaping and usable communal space. These areas, instead of being a green environment will emit noise, heat, harsh reflected light and will be a very poor visual outcome. At night, car park movement and security lighting will be similarly disruptive to residential amenity.
4. While basement parking is preferred, if it is not to be further explored, the Panel advises the extent of car parking should be reduced, whether through design efficiency or reduced numbers, so that the parking is completely under the building above, and the landscape and usable space is increased.
5. Building setbacks form part of the controls as there is an expectation that this zone acts as a filter between uses, providing a landscaped buffer to mitigate noise, enhance privacy and ensure that good amenity is maintained between sites and buildings. Car parking above ground and within the side setbacks creates noise day and night, is not consistent with setback controls and should be removed.
6. Based on the current drawings, it appears that about 6-8 car spaces need to be deleted, to enable the car parking to be within the building footprint. The Panel recommends a reduction in the apartments to address some of the car park impact issues. Some suggestions on how this could be achieved include adjusting the mix to support less cars and combining the four top floor apartments into two penthouses. Design efficiencies such as reviewing the column spacing, reducing ground floor apartments sizes, consolidation of the waste rooms can be explored.
7. The Panel recommends a landscaped deck be introduced above the car park in between the buildings at level 1, to completely cover the car park and driveway entry. Generous landscaping should be provided at this level providing a landscaped outlook, mitigating the poor visual impact of the car parking from above and providing weather protectivity to the cars. In addition, exploration of turning this area into private open space (POS) for the adjacent apartments or COS is recommended, noting this would require some amendments to the apartment layouts to provide access. Removal of the COS from the upper levels could be considered, if provided in this area.
8. There are benefits of above ground parking that are not available in basement parking. This includes the opportunity to create a higher quality arrival experience.

The Panel advises that visual connection to landscaping and light is explored, such as generous planting along the perimeter, incorporation of skylights in the 'landscape deck' described in the previous point, quality and permeable screening (where screening is needed), consideration of solar access, and good quality artificial lighting as opposed to standard fluorescent lighting.

9. The above ground parking also creates a unique opportunity to create flexible space for the residents. The Panel recommends investigation of the variety of ways this space can be adapted, utilised, and considered into the design. Activities could include holding residential community events, gatherings, play area for kids and ball sports on occasions.
10. The treatment of the perimeter of the car park and interface with the communal space needs further consideration. The Panel suggests the east and west sides are screened to improve amenity to the neighbours. Screening such as patterned breeze blocks, or battens should be explored. The Panel suggests the appropriate treatment along the north perimeter is guided by the activities anticipated in response to the previous recommendation above. For example, if it is more desirable for areas of the car park to extend into the COS at the rear when events are held then leaving these areas open could be a better functional outcome.
11. The Panel encourages the incorporation of car stackers to reduce the extent of car parking area (and to help car park numbers) and notes while this would require a higher ground level floor to floor dimension, the project is well within the height controls. This is subject to confirmation with Council's Planning Officer.

Landscape and Climate Resilience

12. The Panel recommends generous landscaping is provided along each boundary as a buffer between neighbouring buildings and to improve privacy and amenity.
13. There appears to be inconsistency between the architectural and landscape plans, and it is unclear whether the planter boxes in the street frontage are within the POS or part of the public areas, therefore strata managed. Planter boxes require ongoing maintenance, and if not maintained properly these could risk impacting the visual appearance, particularly when in the street frontage. The Panel recommends that, where planters and proposed planting form an integral part of the aesthetic of the building and its contribution to the streetscape, it needs to be demonstrated that these can be managed by the strata and not be the responsibility of the occupier to maintain.
14. Further to the above, the architectural drawings illustrate direct access from the ground floor apartments to the street, which is not shown on the landscape drawings. Drawings are to be revised and coordinated, noting direct access to the street is preferred.
15. The Panel recommends further development of the landscape design and incorporation of connecting with country particularly throughout the COS areas. Strategies to care for country, resilient species selection, country narratives, attracting flora and fauna should all be considered.

16. The Panel emphasises climate resilience is fundamental in Western Sydney, where temperatures reach hotter levels in summer and colder in winter than other parts of Sydney, and the Local Government Area (LGA) is subject to severe urban heat island effect. The landscape design and caring for country approach has a crucial role in improving climate resilience for this project and an overall more comfortable environment throughout the development, improving amenity for residents.
17. The Panel recommends, as part of the connecting with country and ecologically sustainable development (ESD) approach, that photovoltaic panels are incorporated on the rooftop to power all the communal lighting and EV charge points, rainwater collection tanks are incorporated to collect a minimum of 20 000L to water gardens, and heat loads and losses throughout the building are minimised.
18. As part of the Connecting with Country and ESD approach and to minimise water run-off, the Panel recommends that absorptive, permeable surfaces to the car park be explored, instead of the typical bitumen or concrete treatment.

Planning and Amenity

19. The pedestrian amenity from the apartments to the COS at ground level is poor, with lift lobby doors opening directly into the car aisle, residents having to cross the car park aisle and then walk along the aisle and then through an accessible car space's shared zone to gain access to the open space. This creates conflicts between residents, and vehicles with consequential safety issues and is not supported. The ground floor arrangement must be revised to create a more direct, dedicated and generous, safe access and circulation with pedestrians prioritised over vehicles.
20. The Panel requests the applicant address the visual and acoustic privacy concerns between the apartments facing each other in the space between the two buildings within the development, through amendments to the window design, positioning, orientation and screening.
21. The Panel recommends analysis of the development's surrounding existing and potential future development, such as where eventually developed built form is likely to be sited on the northern neighbouring site, and to then demonstrate how overshadowing and privacy impacts to this development's apartments and communal open space have been addressed.
22. The Panel notes that the ADG should be adhered to as they provide adequate acoustic and visual privacy and notes dimensions on the top floor plan have not been provided. This floor should have 9 metres setback from the side and rear boundaries to habitable rooms and balconies. Revised drawings should be provided demonstrated consistency with the ADG.
23. The Proposed COS is currently on the south side of the building receiving poor solar access. The Panel recommends the roof top POS to the north and COS to the south is flipped and recognises this will involve amendments to these apartments. An alternative location for the COS should be part of this review. The interaction with the current COS and the apartment bedrooms is not satisfactory.

24. Research that informed the draft amendment to the LDCP 2008 identified the growing need for apartments for families and proposes for 25% 3-4 bedrooms apartments in the Liverpool City Centre and other high-density areas in the LGA. The Panel encourages 3-4-bedroom apartments are incorporated into the development for improved housing diversity and respond to the future need of the community. In the process this will create the added benefit of reducing the number of parking required for the development.
25. The Panel recommends all floor-to-floor heights be increased to 3.2m in response to the requirements of the Design & Building Practitioners Act.
26. The Panel recommends further design resolution and refinement of the ground floor lobbies and removal of the air lock, noting these should have a strong arrival experience.

Aesthetics

27. The Panel requests substations, fire hydrants and other large format services are illustrated on the drawings demonstrating how they are integrated with the built form, screened and have minimal visual impact to the streetscape. Further the Panel requires the location and the treatment of all mechanical plant including air-conditioning plant to be shown.
28. The Panel recommends the materials proposed are robust and low maintenance, such as face brick, concrete, and aluminium for windows and doors.
29. The Liverpool LGA experiences severe urban heat island effect, which is of particular concern for the development and its context experiencing significant density, and material colour has a significant role in absorbing and radiating heat. The Panel recommends a lighter colour palette is proposed.

OUTCOME

The panel have determined the outcome of the DEP review and have provided final direction to the applicant as follows:

The proposal is not supported by the DEP and must return to the panel, with all feedback incorporated or addressed

Assessment Comment: The items raised by the DEP are required to be addressed by the applicant to enable support of the application and in the current form, the proposed development is not supported in part due to the matters raised in the minutes described above.

4. DETAILS OF THE PROPOSAL

4.1 Description of Works

This DA seeks development consent for the demolition of the existing dwellings on the subject site and the construction of two x five storey in-fill affordable RFBs comprising 44 x 2-bedroom units with 37 at-grade car parking spaces, landscaping, and site works.

The application is submitted under the in-fill affordable housing provisions of SEPP (Housing) 2021. It also seeks stormwater drainage works along Pearce Street and through a public reserved owned by Council to the west of the site.

Specifically, the proposal includes:

Demolition

- Demolition of all existing structures and removal of all trees on the site.

Ground Level

- 4 x 2-bedroom units.
- A double width driveway located in the centre of the site that narrows to a single car width.
- 37 at-grade car parking spaces including 5 x accessible car spaces, and 16 x bicycle spaces.
- A 567.5m² communal open space (COS) area in the rear setback behind the at-grade car park.
- Two lift cores with fire stairs.
- Plant room.
- A bin room per lift core, and a shared 14m² bulky waste room.

Levels 1-3

- 12 x 2-bedroom units, with 6 per core, on each level.

Level 4

- 4 x 2-bedroom units, with 2 per core.
- A communal open space terrace per lift core on the southern side of the buildings.

Other Elements of the Proposal

- A total of 14 x 2-bedroom units will be allocated as affordable housing units in accordance with SEPP (Housing) 2021.
- New landscaping.

Stormwater Works

- It is proposed to construct drainage within Pearce Street from the site and westwards to the end of Pearce Street and extend into Nos. 99-101 Rose Street, public reserve land owned by Council and discharging to Brickmakers Creek.

4.2 Key Plans and Images



Figure 13: Landscape Plan (Source: Paul Scrivener Landscape)



Figure 14: Photomontage (Source: Mackenzie Architects)



Figure 15: Proposed North Elevation (Source: Mackenzie Architects)

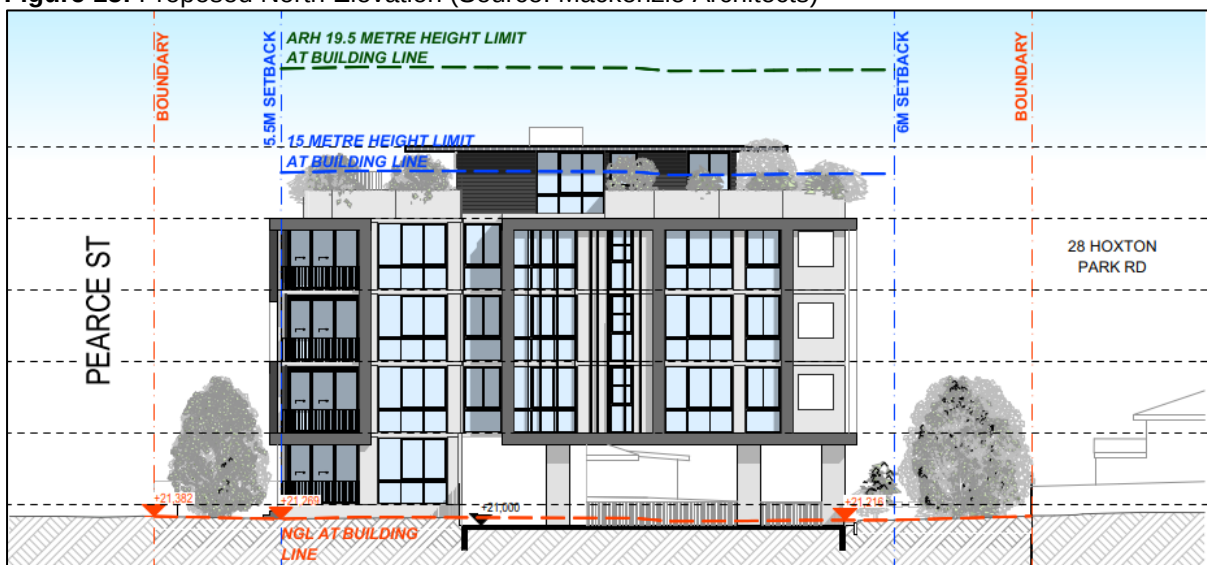


Figure 16: Proposed East Elevation (Source: Mackenzie Architects)

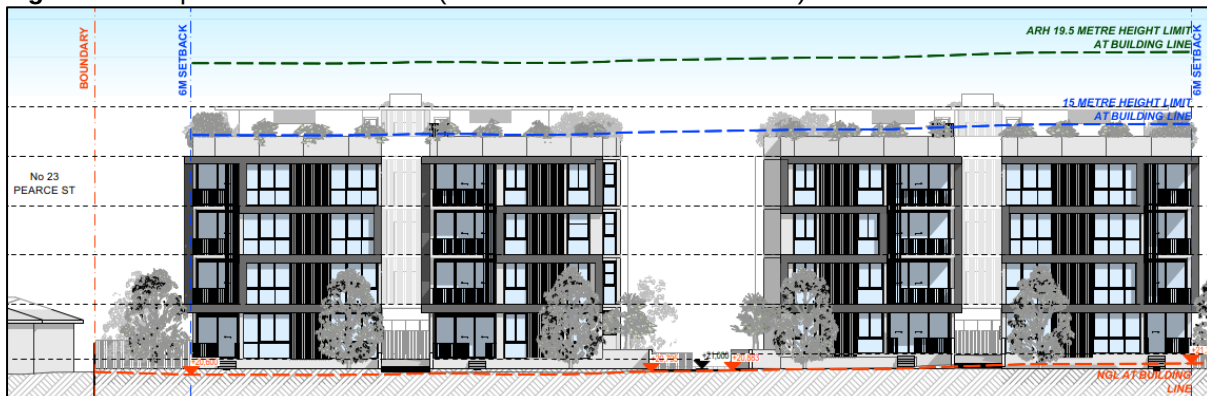


Figure 17: Proposed South Elevation (Source: Mackenzie Architects)

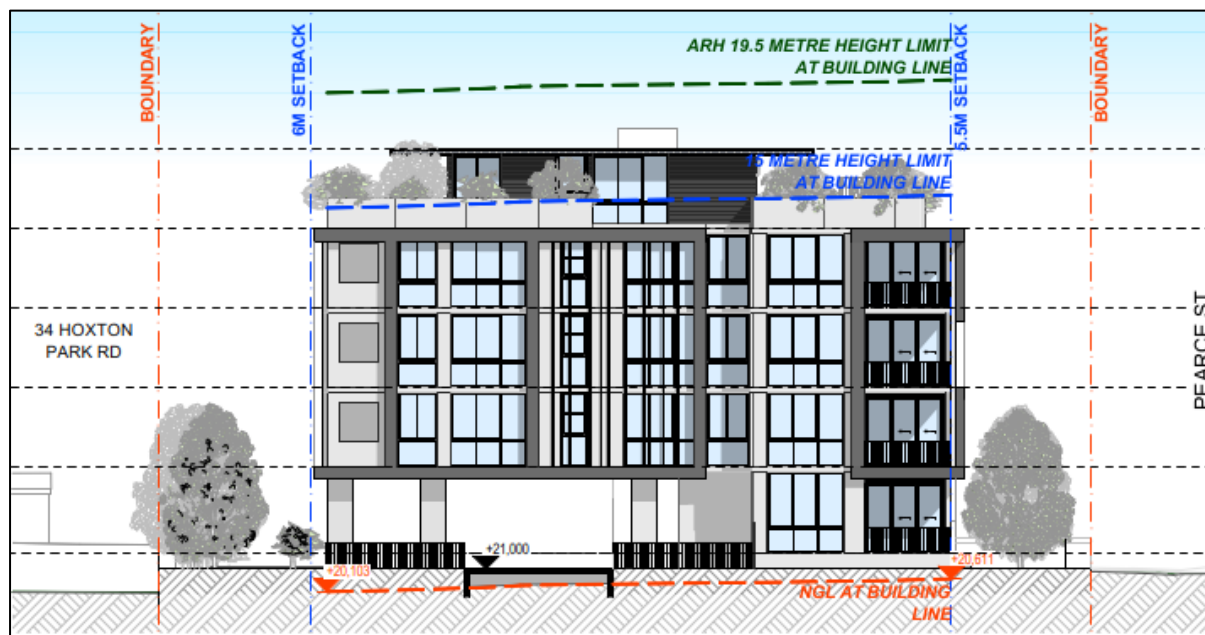


Figure 18: Proposed West Elevation (Source: Mackenzie Architects)

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

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

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy (Housing) 2021
 - Chapter 2 Affordable Housing
 - Chapter 4 Design of Residential Apartment Development
- State Environmental Planning Policy (Sustainable Buildings) 2022
 - Chapter 2 Standards for Residential Development—BASIX
- State Environmental Planning Policy (Resilience and Hazards) 2021
 - Chapter 4 Remediation of Land
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - Chapter 2 Vegetation in Non Rural Areas
 - Chapter 6 Water Catchments
- State Environmental Planning Policy (Transport and Infrastructure) 2021
 - Chapter 2 Infrastructure
- Liverpool Local Environmental Plan 2008.

Development Control Plan

- Liverpool Development Control Plan 2008
 - Part 1: General Controls for All Development; and
 - Part 3.7: Residential Flat Buildings in the R4 Zone (Outside Liverpool City Centre).

Contributions Plans

- Liverpool Contributions Plan 2018 – Established Areas
- Housing and Productivity Contributions

6. ASSESSMENT

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

(a) State Environmental Planning Policy (Housing) 2021

(i) Chapter 2 Affordable Housing

The DA was submitted under the provisions of Chapter 2. The following table assessment has been provided for the relevant provisions of Chapter 2, Division 1 In-fill affordable housing.

State Environmental Planning Policy (Housing) 2021 Division 1 In-fill affordable housing			
Provision	Requirement	Proposed	Comment
15C Development to which Division applies	(1) This division applies to development that includes residential development if— (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and (b) the affordable housing component is at least 10%, and (c) all or part of the development is carried out— (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone. (2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	Residential flat buildings are permissible with consent under the LLEP 2008. The affordable housing component is 1,116.6m ² / 31.5%. The site is within an accessible area. Bus stops along Hoxton Park Road are within 400m walking distance and achieve the frequency criteria under the definition of accessible area in Schedule 10.	Complies
16 Additional Housing Requirements for Additional	(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the	Refer to the comments below this table.	No

Floor Ratio	Space	land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2). (2) The minimum affordable housing component, which must be at least 10%, is calculated as follows— $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$ (3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1). Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing. (4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.	LLEP 2008 permits a maximum building height of 15m. A 30% bonus increases the height to 19.5m. The maximum proposed height is approximately 17.8m.	Complies
19 Non-Discretionary Development Standards—the Act, s 4.15	(2) The following are non-discretionary development standards in relation to the residential development to which this division applies— (a) a minimum site area of 450m², (b) a minimum landscaped area that is the lesser of— (i) 35m² per dwelling, or (ii) 30% of the site area, (c) a deep soil zone on at least 15% of the site area, where—	Site area: 2,749.8m² Landscaped area: 1,046.62m² / 38%* *There is some discrepancy between the landscape and architectural plans on the landscaping and paved areas. However, the development would comply regardless of which design was proposed. N/A due to subsection (3).	Complies	

	(i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site, (d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter, (e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space, (f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces. (g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development, (3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.	N/A due to subsection (3). The development proposes 44 x 2-bedroom units with 14 affordable and 30 non-affordable units. Affordable: $14 \times 0.5 = 7$ spaces Non-affordable: $30 \times 1 = 30$ spaces Total required: 37 spaces Total proposed: 37 spaces Complies Noted	
20 Design Requirements	(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy. (2) Subsection (1) does not apply	Subsection (1) does not apply to this development as Chapter 4 of SEPP Housing 2021 applies.	N/A

	to development to which Chapter 4 applies. (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	Pearce Street is considered an area undergoing transition. While built examples of RFBs in this portion of R4 zoned land are limited to Nos. 42-44 and 50 Hoxton Park Road to the northwest of the site, they are indicative of and responsive to LLEP 2008 development standards of 15m and 1:1 and any affordable housing bonuses that apply. The proposed five storey development, as expressed in this assessment report, is largely consistent with the desired future character insofar as its use, general scale and materials and finishes. The application is not recommended for refusal on grounds of inconsistency with the desired future character.	Complies
21 Must be used for affordable housing for at least 15 years	(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development— (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider. (2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	Any approval would condition the nominated units (all of Level 1 and Units 202 and 203) as affordable housing for at least 15 years.	Complies by condition
22 Subdivision Permitted with Consent	Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority	Strata subdivision was not proposed with the application.	N/A

Section 16 Additional Housing Requirements for Additional Floor Space Ratio

The site is prescribed a maximum 1:1 FSR under LLEP 2008 which equates to a maximum permissible GFA of 2,749.8m².

Based on the applicant's gross floor area (GFA) calculation plan, a total GFA of 3,544.8m² is proposed which exceeds the LLEP 2008 maximum by 795m² or 28.9%.

Based on the proposed GFA and a bonus of 28.9%, an affordable housing component of 14.45% (512.3m²) is required to account for the bonus GFA. The application has identified 1,116.62m² (31.5%) of its GFA as affordable housing. The proposal would be compliant.

However, the applicant's GFA plan has excluded some areas from the calculation and under the definition of '*gross floor area*' in the LLEP 2008, waste rooms are only excluded in a basement. The development proposes a waste room per lift core and a bulky waste room at the ground level. These rooms add an additional 55m² of GFA.

Additionally, portions of the ground floor common circulation area that are fully roofed, bounded by three full-height walls deeply recessed from any opening have been excluded from the calculation.

The actual FSR calculation with these included is approximately 3,615m² and the applicant has provided an affordable housing component sufficient to allow for the maximum 30% bonus to be utilised. However, a 30% bonus would cap the development GFA at 3,574.74m² and a variation of approximately 40.26m² (1.1%) is proposed.

A Clause 4.6 Variation must be submitted to justify any contravention to a development standard and the applicant has not prepared a Clause 4.6 variation request.

Given the above, the development exceeds the maximum permitted FSR and has not provided sufficient environmental planning grounds to justify the contravention. The variation is not supported, and the development must be refused.

(ii) Chapter 4 Design of Residential Apartment Development

Chapter 4 of State Environmental Planning Policy (SEPP) (Housing) 2021 aims to improve the design of residential apartment development. The proposal is for a residential flat building and is subject to these provisions.

Under Section 147(1), a development under Chapter 4 is required to be considered through the 9 key design quality principles, the guidelines and objectives of the Apartment Design Guide (ADG) that support the implementation of the principles, and any advice received from a design review panel.

Section 147(1)(a) – 9 Design Quality Principles

In accordance with Section 147(1)(a), the following is a table summarising the assessment of the development with the 9 design quality principles.

Design Quality Principle	Comment
Principle One – Context and Neighbourhood Character	
(1) <i>Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.</i> (2) <i>Responding to context involves identifying the desirable elements of an area's existing or future character.</i> (3) <i>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i> (4) <i>Consideration of local context is important for all sites, including sites in the following areas—</i> (a) <i>established areas,</i> (b) <i>areas undergoing change,</i> (c) <i>areas identified for change.</i>	The subject site falls within a precinct that is zoned R4 High Density Residential under LLEP 2008. The proposed development is generally of a size and scale that is consistent with the desired future character inclusive of affordable housing bonuses permitted under SEPP (Housing) 2021. There are two examples of the envisaged future character on the block at Nos. 42-44 and 50 Hoxton Park Road to the northwest of the site, being five storey residential flat buildings. The remainder of the neighbourhood character persists as low density residential – single storey dwellings and limited townhouses and older two storey residential flat buildings. The locality can be deemed one undergoing change, albeit slowly. The development is generally responsive to that inclusive of the broad strokes of the building design and setbacks. However, it does fail in certain detailed design aspects as discussed in this report.
Design Principle 2 – Built form and scale	
(1) <i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i> (2) <i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—</i> (a) <i>building alignments and proportions,</i> (b) <i>building type,</i> (c) <i>building articulation,</i> (d) <i>the manipulation of building elements.</i> (3) <i>Appropriate built form—</i> (a) <i>defines the public domain, and</i> (b) <i>contributes to the character of streetscapes and parks, including their views and vistas, and</i> (c) <i>provides internal amenity and outlook.</i>	The development is generally in accordance with the desired future scale, bulk and height under the relevant planning instruments including the affordable housing bonuses. It is noted that a variation is sought to the FSR development standard due to the omission of enclosed waste rooms at the ground level and two highly enclosed common corridors. However, these inclusions would largely not change the scale, bulk and height of the development. The development generally conforms to the setbacks on ground level to Level 3, with some encroachments on Level 4. Inconsistencies across documentation and the absence of some information affect the assessment of the front setback and public domain treatment. Further, the absence of the internal elevations between buildings renders assessment of the dominantly blank walls proposed there (which will be visible from the public domain) difficult to confirm a suitable

Design Quality Principle	Comment
	streetscape is proposed. The long-term solar access of the communal open space at the ground level is questioned. Further, the at-grade car parking creates concerns over suitable landscape screening to the adjoining properties and access to the ground level communal open space. The front façade includes ensuite windows likely to be made opaque, reducing the quality of the presentation.
Design Principle 3 – Density	
(1) <i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i> (2) <i>Appropriate densities are consistent with the area's existing or projected population.</i> (3) <i>Appropriate densities are sustained by the following—</i> (a) <i>existing or proposed infrastructure,</i> (b) <i>public transport,</i> (c) <i>access to jobs,</i> (d) <i>community facilities,</i> (e) <i>the environment.</i>	The development is compliant with the maximum building height under the affordable housing bonuses under SEPP (Housing) 2021. As mentioned, a variation is sought, although not justified, to FSR due to omissions from the GFA calculation. In general, the density of the development is appropriate to the site and its desired future character. However, detailed design aspects are not resolved and thus the application is not supported.
Design Principle 4 – Sustainability	
(1) <i>Good design combines positive environmental, social and economic outcomes.</i> (2) <i>Good sustainable design includes—</i> (a) <i>use of natural cross ventilation and sunlight for the amenity and liveability of residents, and</i> (b) <i>passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.</i> (3) <i>Good sustainable design also includes the following—</i> (a) <i>recycling and reuse of materials and waste,</i> (b) <i>use of sustainable materials,</i> (c) <i>deep soil zones for groundwater recharge and vegetation.</i>	The proposed design is generally suitable from the sustainability perspective. Photovoltaic panels are proposed on the roof. The development is compliant with the cross-ventilation and solar access design guidance under the ADG. Apartments have been oriented north as much as is feasible. The development application was supported by a BASIX Certificate which identified that the water, energy and thermal targets were met. It is noted that a central rainwater tank for irrigation purposes is mentioned in the certificate but not sited in the plans. The landscape design is generally supported in principle. However, inconsistencies between documents (architectural plans, arborist and landscape) render doubt to the intended or proposed outcome for landscaping, particularly in the front setback, tree removal and retention,

Design Quality Principle	Comment
	and rear COS design. The development provides ample deep soil and landscaped areas above the requirements of Chapter 2 Affordable Housing of SEPP (Housing) 2021 and the ADG.
Design Principle 5 – Landscape	
(1) <i>Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.</i> (2) <i>A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i> (3) <i>Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—</i> (a) <i>the local context,</i> (b) <i>co-ordinating water and soil management,</i> (c) <i>solar access,</i> (d) <i>micro-climate,</i> (e) <i>tree canopy,</i> (f) <i>habitat values,</i> (g) <i>preserving green networks.</i> (4) <i>Good landscape design optimises the following—</i> (a) <i>usability,</i> (b) <i>privacy and opportunities for social interaction,</i> (c) <i>equitable access,</i> (d) <i>respect for neighbours' amenity.</i> (5) <i>Good landscape design provides for practical establishment and long term management.</i>	As mentioned, the landscape design is generally supported in principle. However, aspects require refinement to allow support, including: • Inconsistencies between tree removal and retention. • Inconsistencies between front setback design in architectural and landscape plans. • Limited landscaping screening to the at-grade car parking from the (at the minimum) 1m setback. • Embellishment of the rear setback COS.
Design Principle 6 – Amenity	
(1) <i>Good design positively influences internal and external amenity for residents and neighbours.</i> (2) <i>Good amenity contributes to positive living environments and resident well-being.</i> (3) <i>Good amenity combines the following—</i> (a) <i>appropriate room dimensions</i>	The amenity of the units is generally high. Other aspects of the design fall short in achieving a high outcome across the full development. These include: • Safe and direct access through the at-grade car park to connect to the primary COS area. • Modest embellishment of the ground

Design Quality Principle	Comment
and shapes, (b) access to sunlight, (c) natural ventilation, (d) outlook, (e) visual and acoustic privacy, (f) storage, (g) indoor and outdoor space, (h) efficient layouts and service areas, (i) ease of access for all age groups and degrees of mobility.	level COS to encourage multiple activities and uses. • Level 4 COS that compromises the amenity of each unit on the floor due to the proximity of bedroom windows to active areas of COS. • Visual privacy concerns through skylights and between units on Level 4 through inadequate separation. • Inconsistent front setback and ground floor unit POS design. • Insufficient storage.
Design Principle 7 – Safety	
(1) Good design optimises safety and security within the development and the public domain. (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose. (3) Opportunities to maximise passive surveillance of public and communal areas promote safety. (4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	Some of the Safer by Design principles have been adopted in the design. Casual surveillance of the street and ground level communal open space is achieved over multiple storeys. Blind corners and concealment opportunities are minimal. Though the details are not provided, the pedestrian entries indicate secure access. Though documentation is inconsistent with the front setback design, the principles of fencing and landscaping illustrated on the landscape plan define the public and private domains. Clarity is, however, necessary to support the application.
Design Principle 8 – Housing Diversity and Social Interaction	
(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. (2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix. (3) Good design involves practical and flexible features, including— (a) different types of communal spaces for a broad range of people, and (b) opportunities for social interaction among residents.	The proposal incorporates 44 x 2-bedroom units. Of the 44 units, only 8 exceed 76m² (minimum size 75m²) with 4 units exceeding 78m². The above illustrates there is no diversity to the unit mix and minimal in unit size amongst the 2-bedroom dominated development. The development positively offers a higher than required affordable housing component. However, these have been located entirely on Level 1 (and two additional on Level 2), offering limited social integration within the development. The ground level COS design is limited in features and useability for residents, with three seats and a kickabout area. The Level 4 spaces do offer BBQ and seating areas for two separate spaces. The efficiency of the ground level space could be improved.

Design Quality Principle	Comment
	The development would benefit from a more diverse unit mix, embellishment of the ground floor COS and spreading out the affordable units to create improved housing diversity and social interaction opportunities.
Design Principle 9 – Aesthetics	
<i>(1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.</i> <i>(2) Good design uses a variety of materials, colours and textures.</i> <i>(3) The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i>	The development is generally acceptable from the materials and finishes perspective, insofar as the street, side and rear elevations. The development is a mixture of greys, darker colours and white, which are common contemporary residential flat building colour schemes, with a dominance of concrete panels and metal cladding as materials. The development design does offer architectural design features within the façades, as illustrated by the elevations in Figures 15-18. Insufficient information is provided to fully assess the aesthetics of the development in relation to: • The design consequences of ensembles on the front façade, likely resulting in opaque glazing on the street façade for two units each over four storeys. • The internal elevations of the two buildings are largely blank walls. Elevation plans for these were not submitted for assessment and will be exposed to the streetscape to a reasonable degree. • Whether any screening of the at-grade, centralised driveway is proposed (e.g. gate, canopy over the entry, etc.).

Section 147(1)(b) – Apartment Design Guide

Further to the above design quality principles, Clause 147(1)(b) requires consideration of the ADG for residential apartment development.

A complete assessment table for the ADG can be found in Attachment 1. The assessment identifies several areas of concern that warrant the application to be recommended for refusal and these are seen below. Where required, additional comments have been provided below this table to specific objectives.

Required	Proposed	Compliance
3B Orientation		
Building types and layouts respond to the streetscape and site while optimising solar access within the development Overshadowing of neighbouring properties is minimised during mid-winter. Solar Access to living rooms, balconies and private open spaces of neighbours should be considered. If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond the minimums contained in section 3F Visual Privacy Overshadowing should be minimised to the south or downhill by increased upper level setbacks. A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.	The building type is appropriate for the streetscape. The shadow diagrams submitted do not include the properties to the south to illustrate if shadows affect the dwellings to the south. While it is unlikely the impact would be unreasonable, sun-eye diagrams that include the properties to the south have been requested by Council's Urban Design & Public Domain team to assess the impact.	Insufficient Information
3C Public Domain Interface		
Transition between private and public domain is achieved without compromising safety and security. Amenity of the public domain is retained and, enhanced.	The architectural plans and landscape plans are inconsistent with the treatment of the front setback. The architectural plans indicate direct path connections to each of the four dwellings fronting Pearce Street. The landscape plans indicate indirect access to two units via pavers stemming from the two building entry paths. Similarly, fencing is not stated on the architectural plans and 1.5m high palisade fencing is stated on the landscape plans at a point 1m within the property boundary. While either design is in principle a supportable treatment to the public domain, it is not clear which outcome is sought and the follow-on consequences to private open space design and amenity. Council's Urban Design & Public	Insufficient Information

Required	Proposed	Compliance									
	Domain team have also requested a Public Domain Plan to assess the front setback and verge design. Insufficient information is presented in the current documents to assess this.										
3D Communal and public open space											
Communal open space has a minimum area equal to 25% of the site Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter) Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting. Communal open space should be co-located with deep soil areas. Where communal open space cannot be provided at ground level, it should be provided on a podium or roof	Refer to the comments below this table.	No									
3F Visual Privacy											
Minimum separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <tr> <th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non Habitable Rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>12m to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> </table>	Building Height	Habitable Rooms and Balconies	Non Habitable Rooms	Up to 12m (4 storeys)	6m	3m	12m to 25m (5-8 storeys)	9m	4.5m	Refer to the comments below this table.	No
Building Height	Habitable Rooms and Balconies	Non Habitable Rooms									
Up to 12m (4 storeys)	6m	3m									
12m to 25m (5-8 storeys)	9m	4.5m									
3J Bicycle and Car Parking											
For development in the following locations: - on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or - on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a	Car parking is determined by SEPP (Housing) 2021 due to the proposal for in-fill affordable housing. Bicycle parking is determined by LDCP 2008 and is assessed in a separate table below.	No									

Required	Proposed	Compliance										
nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments (GTTGD), or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street Parking and facilities are provided for other modes of transport Car park design and access is safe and secure Visual and environmental impacts of underground car parking are minimised Visual and environmental impacts of on-grade car parking are minimised Visual and environmental impacts of above ground enclosed car parking are minimised	For the at-grade car park design, refer to comments within the body of the report.											
4E Private Open Space and Balconies												
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m	The design of the ground floor courtyards differs substantially between the architectural and landscape plans. It is not clear if these courtyards provide for a size of 15m² with a 3m dimension. The documentation must align to confirm the level of private open space (POS) proposed.	Insufficient Information										
4G Storage												
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage Size Volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom</td><td>6m³</td></tr><tr><td>2 bedroom</td><td>8m³</td></tr><tr><td>3 bedroom</td><td>10m³</td></tr></table> At least 50% of the required storage is to be located within the apartment.	Dwelling Type	Storage Size Volume	Studio	4m ³	1 bedroom	6m ³	2 bedroom	8m ³	3 bedroom	10m ³	The application identifies on its cover sheet that between 4m³ and 4.53m³ of storage is proposed within each unit. However, no additional storage is proposed to then achieve the remaining up to 50% of the storage required.	No
Dwelling Type	Storage Size Volume											
Studio	4m ³											
1 bedroom	6m ³											
2 bedroom	8m ³											
3 bedroom	10m ³											
4H Acoustic Privacy												
Noise transfer is minimised through the siting of buildings and building layout Noise impacts are mitigated within	The unit layouts have generally aligned like for like uses to ensure acoustic privacy.	Insufficient Information										

Required	Proposed	Compliance
apartments through layout and acoustic treatments	The proximity of Bed 2 to the driveway and parking area (2m) raises concern over acoustic (and visual) privacy. The application does not include sufficient detail, including an elevation of this interface, to assess the interface and impact.	
4K Apartment Mix		
A range of apartment types and sizes is provided to cater for different household types now and into the future	The proposed development is for 44 x 2-bedroom units. There is no range of apartment types and not much deviation in unit sizes, with most on the minimum 75m ² and below 76m ² .	No
The apartment mix is distributed to suitable locations within the building		
4L Ground Floor Apartments		
Street frontage activity is maximised where ground floor apartments are located	The architectural and landscape plans are inconsistent with the ground floor apartment access design. The amenity and appropriateness cannot be fully assessed in view of this.	Insufficient Information
Design of ground floor apartments delivers amenity and safety for residents		
4M Facades		
Building facades provide visual interest along the street while respecting the character of the local area	Refer to comments in the body of the report.	No
Building functions are expressed by the facade		
4O Landscape Design		
Landscape design is viable and sustainable	A generally suitable landscaping outcome is proposed based on the landscape plan. However, Council's Urban Design & Public Domain Section has stated the ground level COS should be further embellished to encourage more activities and social interaction. Additionally, the landscaping outcome is inconsistent between documents, the tree retention or removal is unclear, and the level of landscaping in the limited side setbacks of the car parking area is insufficient to visually screen the development from adjoining properties.	No
Landscape design contributes to the streetscape and amenity		

Required	Proposed	Compliance
4V Water Management and Conservation Potable water use is minimised Urban stormwater is treated on site before being discharged to receiving waters Flood management systems are integrated into site design	The BASIX Certificate states there is a central rainwater tank for irrigation purposes. It is not located on any plans. Council's Land Development and Flooding Engineers have requested additional information to enable support of the proposed stormwater design and overland flow management.	Insufficient Information

3D Communal Open Space

Outdoor COS is located on the ground floor on the northern side of the at-grade car parking and supplementary spaces are on the southern side of Level 4. Refer to Figure 13 earlier in the report for the landscape design of the ground floor COS and Figures 19 and 20 below for the ground and Level 4 COS design on the architectural plans.

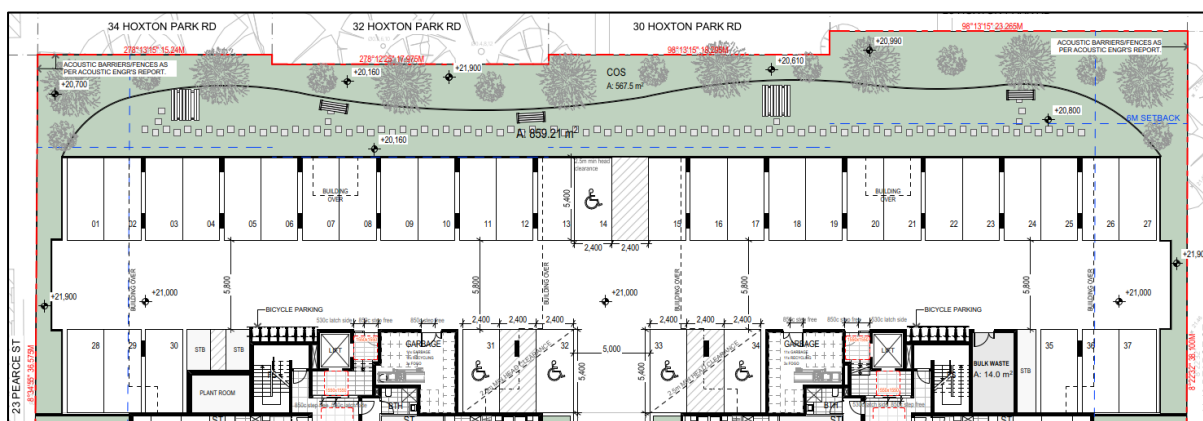


Figure 19: Extract of Ground Floor Plan (Source: Drawing No. A1001)

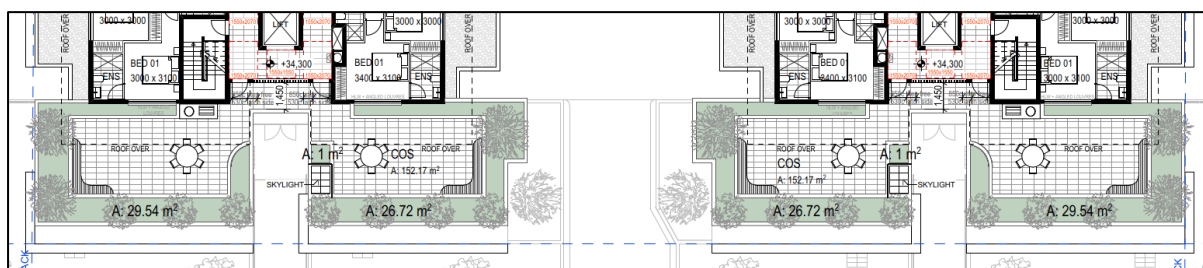


Figure 20: Extract of Fourth Floor Plan (Source: Drawing No. A1005)

The ground level COS is approximately 519m², equalling 18.9% of the site area and the Level 4 spaces are collectively approximately 290m². Combined, the proposed COS is 29% of the site area.

Issues are raised with the current design of the proposed COS areas as follows:

Solar Access

The long-term solar access of the ground level COS is questioned. The sun-eye diagrams illustrate a good level of solar access in its current form and would achieve the 2 hours solar access design guidance under Objective 3D-1. However, the properties to the north are not currently developed to their potential. The northern properties share the same R4 zoning with an LLEP 2008 permissible height of 15m and FSR of 1:1. A similar residential flat building development would cast a shadow over the proposed at-grade COS. The long-term security of the solar access is a relevant and unconsidered aspect of the proposal by the applicant.

The Level 4 COS spaces are located on the southern side of the level. The sun-eye diagrams illustrate negligible portions of the principal useable area of these COS spaces will achieve solar access and not for a period of 2 hours. Refer to the 9am sun-eye diagram in Figure 21 below which illustrates one of the better periods of solar access to the Level 4 COS in the 9am to 3pm period.

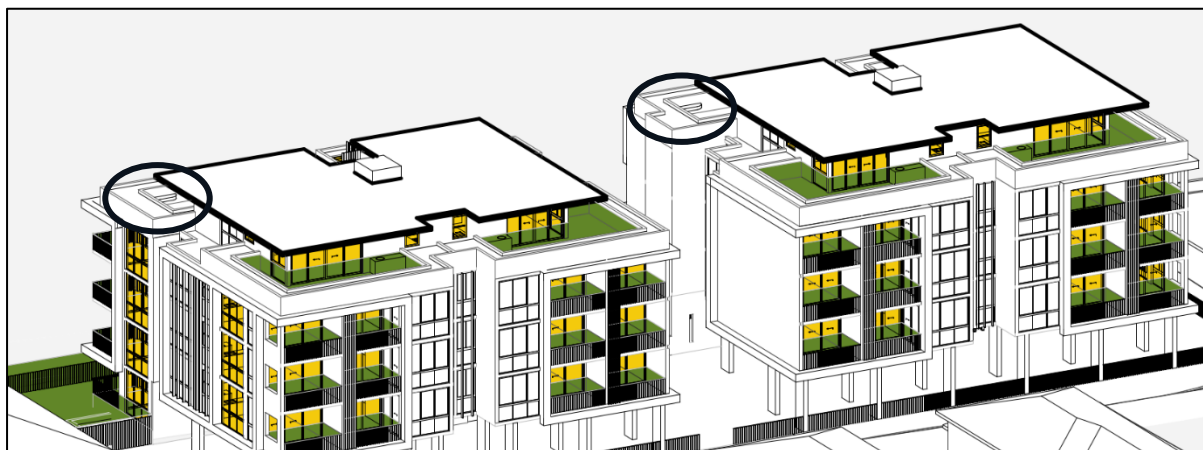


Figure 21: Extract of 9am Sun-eye Diagram (Source: Drawing No. A4001)

If future development on properties to the north would overshadow the ground level COS, the Level 4 spaces are not capable of offsetting the solar access requirements.

Consequently, as the application has not demonstrated that the COS will continue to receive good amenity in the future context, the COS is not supported in its current form.

Access

The at-grade COS is disconnected from the lift core and requires traversing the driveway to a centralised access point. Refer to the extract of the landscape plan below.

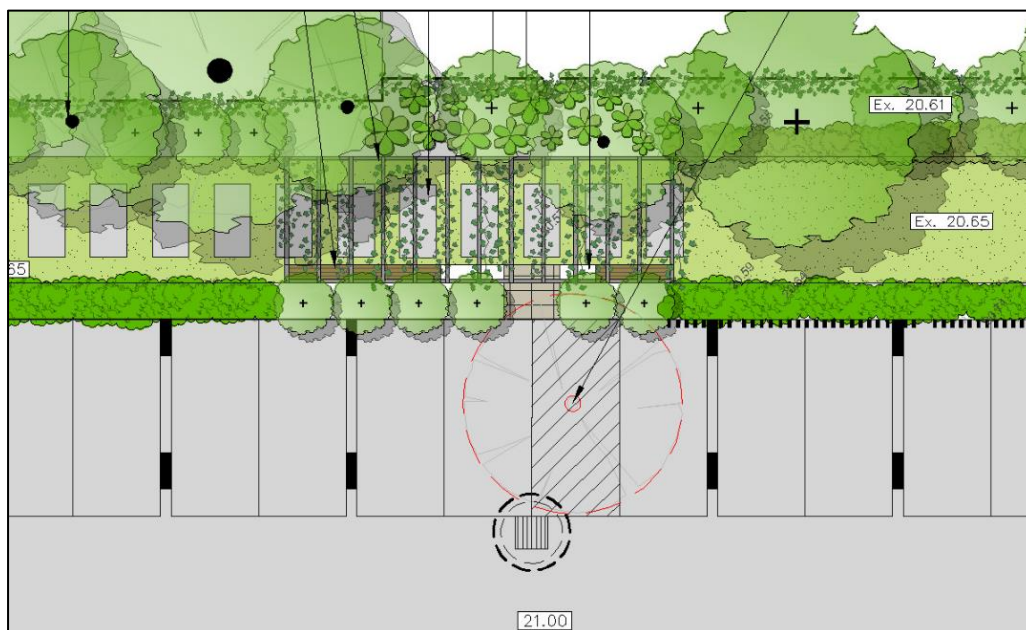


Figure 22: Extract of Landscape Plan for COS Access (Source: Paul Scrivener Landscape)

The current entry point is from the shared space of a disabled car space. The access is also off-centred in the landscape plan. However, even centralised in the space, residents will need to contend with vehicles in the driveway, a likely parked car in the disabled space, and a bollard on the shared space to gain access to the primary COS.

The design guidance of Objective 3D-1 states *“Direct, equitable access should be provided to communal open space areas from common circulation areas, entries and lobbies.”* The current design is not direct and equitable, and it is not well connected to the lobbies. The access configuration for the ground level COS is not supported in its current form.

Privacy

The Level 4 COS design raises acoustic privacy and general amenity concerns for the adjoining units. Each of the four portions of COS sits directly adjacent to the master bedroom window of the four units on Level 4. Refer to the images below.

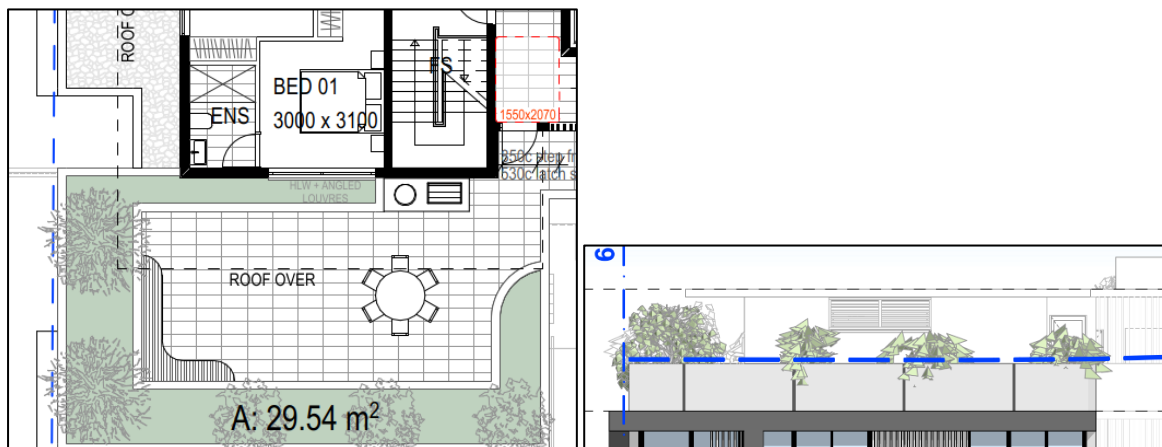


Figure 23: Example Level 4 COS design and bedroom relationship (Source: Mackenzie Architects)

The COS shown above (and is one of two occurrences) identifies a BBQ area directly adjacent to the bedroom window. To compensate for this, a high-level window with an angled louvre screen has been proposed for each master bedroom window. The south facing, high level windows with louvres are the sole outlook, light and ventilation opportunities for these bedrooms. The COS design has led to a compromised amenity outcome for these units.

Notwithstanding the resolution to visual privacy, there remains an acoustic amenity concern from the proximity of the COS to the bedroom windows.

Furthermore, two portions of the Level 4 COS indicate skylights are proposed to allow natural light into two units on Level 3. There is no detail on how privacy would be secured to these skylights, and their presence is inconsistent between the architectural and landscape plans.

Further refinement is necessary to support the privacy outcomes of the Level 4 COS.

For the reasons above, the COS design has not demonstrated that long-term solar access, suitable access and visual and acoustic privacy outcomes are achieved. The application is not supported.

3F Visual Privacy

The proposed development is generally consistent with the building separation design criteria under Objective 3F-1. The ground floor to Level 3 section of the building provides a minimum of 6m separation to adjoining properties and between 9m and 12m of internal separation, with windows appropriately offset where separation is below 12m.

The separation on Level 4 is to increase to 9m between habitable rooms and/or balconies and the side boundaries and 18m internally. This is generally achieved for windows but not for balconies.

The internal separation between the balconies of Units 402 and 403 is 11.45m. No details of any privacy treatments have been submitted.

Similarly, all balconies to the northern rear and the side boundaries propose a trafficable area encroaching within the 9m separation with as little as 7.25m. Privacy treatments have not been documented.

While planter boxes bound the balconies and may assist in mitigating visual privacy to lower levels, equivalent floors on adjoining future developments have not been considered.

Further information would be required to enable support of the proposed separation and in its absence, the application is not supported in its current form.

3J Bicycle and Car Parking

Objective 3J-5 states “*Visual and environmental impacts of on-grade car parking are minimised.*”

In the first instance, the design guidance states that on-grade car parking should be avoided. It has not been demonstrated that a single level basement to accommodate the car parking demand of the application is not feasible.

Notwithstanding this, the current at-grade car park design raises some concerns. Although the parking area has been appropriately located toward the rear of the building, it has as limited as a 1m side setback to both adjoining properties. The applicant has submitted an Acoustic Report prepared by Acoustic Consulting Engineers and has determined that a 1.8m high acoustic fence is sufficient to enable compliance with the relevant noise criteria. Council's Environmental Health officer has raised no objections to the acoustic assessment. No acoustic privacy impacts are therefore raised.

A residential flat building (RFB) is expected to, within its building separation of 6m on lower levels, accommodate landscaping to mitigate the visual impact of the development. The 1m side setback to the car park has resulted in limited vegetation appropriate to manage the neighbouring interface. The landscape plan, shown in Figure 13, proposes low-lying plantings (not visible over the fence line) and palm trees as proposed. These are unlikely to deliver an appropriate reduction in the visual impact of the car park.

Separate concerns have been raised over the COS design and access created by the proposal for and design of the at-grade parking. Refer to earlier comments under 3D Communal Open Space.

The DEP has also acknowledged the urban heat island effect arising from the additional paved area in the side setbacks not roofed or covered by canopy trees. Further, the visual impact of the at-grade car park on future residents of the development and as it presents from Pearce Street is not satisfactory in the current design. A recommendation is to introduce a canopy with a green roof to mitigate the visual impact from the street. Lastly, the impact of light spill arising from car park lighting at night has been raised and must be addressed.

Accordingly, in its current form, the at-grade parking is not deemed to have sufficiently resolved the visual impact and is not supported.

4M Facades

The general aesthetic design of the development is supported however, there is insufficient information to fully assess the street presentation. The centralised driveway and two building design creates a gap between buildings that will be highly visible from Pearce Street. The proposed separation between buildings is largely below 12m, being the minimum distance between habitable windows, and thus is designed with large portions of blank walls to manage the separation.

No internal elevations were submitted. No detailed assessment of these elevations can be undertaken and it is unclear what materials are proposed.

The front façade includes ensuite windows on all four street facing units on Levels 1-3, being Units 106 and 107 and equivalents. Units 101 and 112 screen these windows which will inevitably be made opaque to resolve privacy concerns, diminishing the street presentation. However, there is no screening for the other units.

Amendments to the design would be warranted to screen the windows or relocate them to face the internal separation to eliminate the likelihood of opaque glazing from the street front façade.

The application has not provided sufficient information to fully assess the streetscape presentation and requires amendments to be supported.

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

(i) Chapter 2 Standards for Residential Development

A BASIX Certificate was submitted with the application in accordance with the provisions of SEPP (Sustainable Buildings) 2022. The certificate indicated the required targets for water, thermal comfort and energy were met.

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

(i) Chapter 4 Remediation of Land

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

The 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.

There are two properties for consideration under Chapter 4. The first is the site of the proposed residential flat buildings, Nos. 15-21 Pearce Street. The second is the Council land upon which the stormwater works are sought, at Nos. 99-101 Rose Street, Liverpool. These are discussed separately.

15-21 Pearce Street

Historical aerial images from 1975 illustrates the presence of dwellings on the site which suggested an approximately 50-year period where the land has been used for residential purposes. The Statement of Environmental Effects (SEE) states that the land has been historically used for residential purposes and as such it is unlikely that potentially contaminating activities have occurred on the site. Further, the proposal does not seek any significant excavation noted as no basement car parking is proposed.

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

Clause 4.6 Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	Based on historical imagery, the site has a history of residential use of approximately 50 years. It is unlikely that this use would have led to contaminating activity. Council's Environmental Health Officer was referred the application and raised no objection on this ground.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The site is unlikely to be contaminated, has historically been used for residential purposes and is therefore suitable in its current form.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The site is suitable for the proposed development.

Based on the above assessment, there is no evidence to suggest that the land has been or is contaminated. A formal land contamination assessment is not considered to be necessary. The development site at Nos. 15-21 Pearce Street is satisfactory in relation to Section 4.6 and the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021.

99-101 Rose Street

The application involves the construction of stormwater drainage works within Lot 6 DP 1050036, being part of Paciullo Park owned by Council at the western end of Pearce Street. Council's records indicate that Paciullo Park is a known old landfill listed by the Environmental Protection Agency (EPA) which is currently under investigation to delineate the contamination and identify the extent of the old landfill.

The investigation remains in the initial stages however, putrescible material was discovered in previous, completed investigations which characterised the site as a former landfill.

Consequently, the stormwater drainage works will potentially disturb contaminated material and as a minimum a Stage 1 Preliminary Site Investigation (PSI) would be required.

Clause 4.6 Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	Council's notes and investigations into Paciullo Park identify it as the site as a former landfill. The proposed works will disturb soil within the park and, in turn, create risk of exposure of contaminated material to the public.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The site is potentially contaminated. In the absence of a contamination assessment, there is insufficient evidence to determine that the works can be safely undertaken, or remediation is required prior to the stormwater drainage works.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Insufficient information has been submitted to confirm if the site is suitable or can be made suitable for the works.

Given the above, Council cannot conclude that the site is suitable for the work or that the work itself will not create risk of exposure of contaminants to the public. The application is therefore recommended for refusal due to insufficient information to address Clause 4.6 of SEPP (Resilience and Hazards) 2021.

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

(i) Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 applies to the proposal. The objectives of this Policy are to protect the biodiversity values of trees and other vegetation in non-rural areas of the state and preserve the amenity of non-rural areas through the preservation of trees and other vegetation.

The application inconsistently states the level of tree removal proposed. The Arboricultural Impact Assessment prepared by Laurence & Co identifies all trees within the subject site for removal, and all those in the verge and on adjoining properties for retention. The demolition plan submitted with the application only identifies five trees for removal. The landscape plan prepared by Paul Scrivener Landscape identifies several trees for retention. The SEE simply states that a number of trees will be removed.

Given the inconsistency in the documentation, there is insufficient information to determine the extent of the tree removal and associated impacts. If some trees were to be retained per the landscape plan, the arborist report has not assessed the viability for retention given works proximate to the trees identified for retention in the landscape plans.

The applicant has also not assessed whether the stormwater drainage works in Pearce Street will require the removal of street trees, noting several are present in the verge close to the indicated location of the drainage pipe. Further assessment is required to determine the tree removal and replacement.

The development is recommended for refusal in part due to the lack of clarity on the proposed tree removal.

(ii) Chapter 6 Water Catchments

Chapter 6 of SEPP (Biodiversity and Conservation) 2021 applies to the proposal for it is on land within the Georges River Catchment. The 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 DA, the provisions in Part 6.2 Development in Regulated Catchments are to be considered and consent must not be granted unless the consent authority is satisfied that the matters have been addressed. Accordingly, a table summarising the matters for consideration in determining DAs (Part 6.2) and compliance with such is provided below.

Part 6.2 – Development in Regulated Catchments	
Division 2 – Controls on development generally	Comment
6.6 – Water quality and quantity	Stormwater concept plans were submitted and reviewed by Council's Land Development Engineering Section. Further information was requested to demonstrate that the proposed drainage system can convey current and future catchment flows and the DRAINS model.
6.7 – Aquatic ecology	The works are not located on environmentally sensitive land and are unlikely to impact on aquatic ecology.
6.8 – Flooding	The site is not affected by mainstream flooding however is subject to overland flows flooding. Council's Flooding Engineer reviewed the application and has requested further information on the pre- and post-development flows, design the Pearce Street drainage capacity to cater to future developments and correct inconsistencies between the stormwater plans and MUSIC model.
6.9 – Recreation and public access	The development is unlikely to impact recreational lands or public access to and around foreshores.
6.10 – Total catchment management	Further information has been requested by Council's Engineering and Flooding officers relating to the broader catchment impact of the proposed stormwater management strategy.
Division 3 – Controls on development in specific areas	Comment
6.11 – Land within 100m of natural waterbody	The site (Nos. 15-21 Pearce Street) is not within 100m of a natural watercourse. The stormwater drainage works are within 100m. The works are not unsupported in the area, however, there are concerns over the contamination status of that land as detailed earlier in this report. A referral has also been made to DPE-Water and a Controlled Activity

	Approval (CAA) is required.
6.12 – Riverine scenic areas	Not applicable.
6.13 – Hawkesbury-Nepean conservation area sub-catchments	Not applicable.
6.14 – Temporary use of land in Sydney Harbour Catchment	Not applicable.
Division 4 – Controls on development for specific purposes	Comment
6.15 – Aquaculture	Not applicable
6.16 – Artificial waterbodies	Not applicable
6.17 – Heavy and hazardous industries	Not applicable
6.18 – Marinas	Not applicable
6.19 – Moorings	Not applicable
6.20 – On-site domestic sewerage systems	Not applicable
6.21 – Stormwater management	Stormwater concept plans were submitted and reviewed by Council's Land Development Engineering Section and further information has been requested.
6.22 – Waste or resource management facilities	Not applicable
6.23 – Demolition on certain land	Not applicable. Although demolition is proposed, the land is mapped under the provisions of LLEP.

The above assessment has determined there is insufficient information in the current submission to adequately assess the impact of the proposed stormwater drainage system and consequently, the development is not supported in its current form.

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

(i) Chapter 2 Infrastructure

Clause 2.48 Determination of development applications—other development applies to the development per subclause (1)(b)(ii) due to the presence and works within proximity of existing overhead power lines.

A referral to Endeavour Energy was undertaken who were supportive of the application subject to conditions.

The referral noted that an extension or augmentation of the existing electricity distribution network would likely be required and the application therefore may need a substation.

The location and management of any substation and its presentation are relevant considerations of the proposal. The applicant has not submitted a letter from an Accredited Service Provider confirming whether a substation is or isn't required. Consequently, insufficient information has been submitted to assess the application.

Further to the above, Clause 2.120 Impact of road noise or vibration on non-road development requires development for residential development to consider road noise on

land fronting classified roads or land the consent authority considers is likely to be adversely affected by road noise. The site is not on a classified road, but the land to the north fronts Hoxton Park Road, a classified road.

An Acoustic Report was prepared by Acoustic Consulting Engineers which has considered road noise emanating from Hoxton Park Road. Council's Environmental Health team has reviewed the report and raised no objections. The development is therefore satisfactory.

Lastly, it is acknowledged the stormwater management works sought on the RE1 Public Recreation land is permissible with consent under Part 2.3, Division 20, Clause 2.138 Development permitted with consent which states:

“Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.”

In accordance with the above, the proposed stormwater drainage works are deemed as a stormwater management system, which is defined in Clause 2.136 as:

stormwater management system means—

(a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and

(b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and

(c) stormwater reuse schemes.

(f) Liverpool Local Environmental Plan 2008

(i) Zoning

The site is zoned R4 High Density Residential under LLEP 2008 and an extract of the zoning map is provided in Figure 24 below.

(ii) Permissibility

The proposed development is for a *residential flat building*, which is defined as follows:

Residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing.

The proposed development satisfies the definition of a *residential flat building* as it is two buildings that contain more than three dwellings and is not defined as attached dwelling or multi dwelling housing. This form of development is a permissible use within the R4 High Density Residential zone.

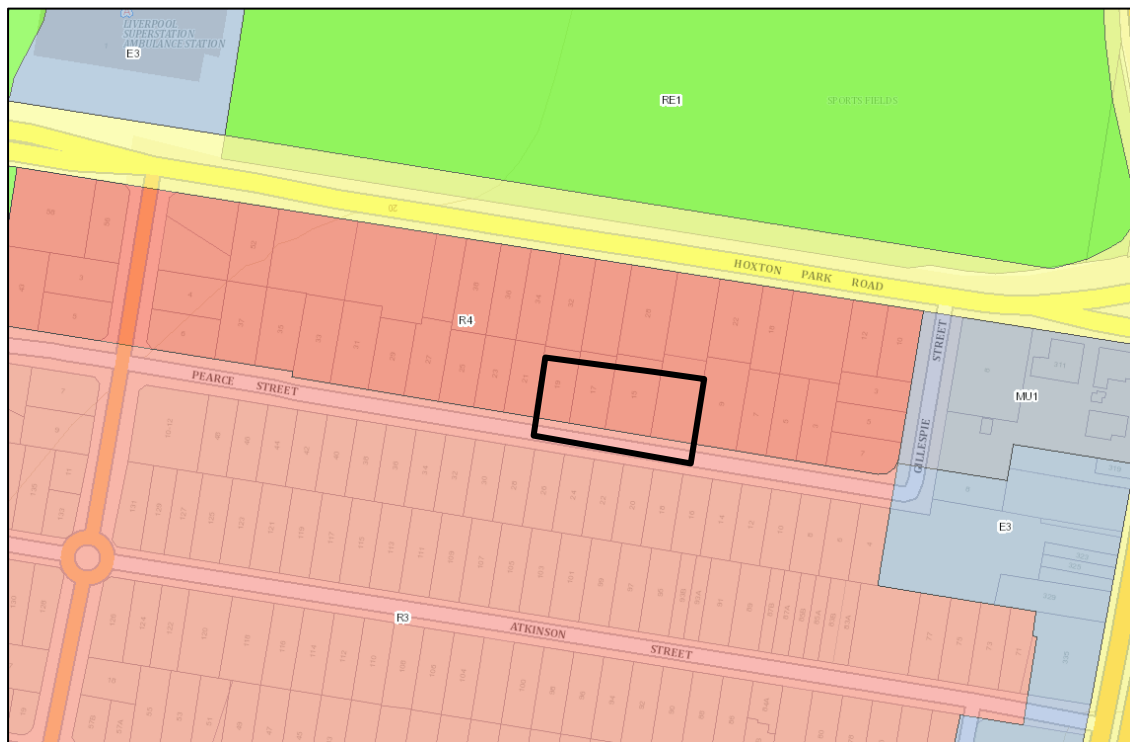


Figure 24: Extract of LLEP 2008 Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

The proposal also involves stormwater management works on Nos. 99-101 Rose Street, Liverpool, which is zoned RE1 Public Recreation. Refer to the zoning map below.

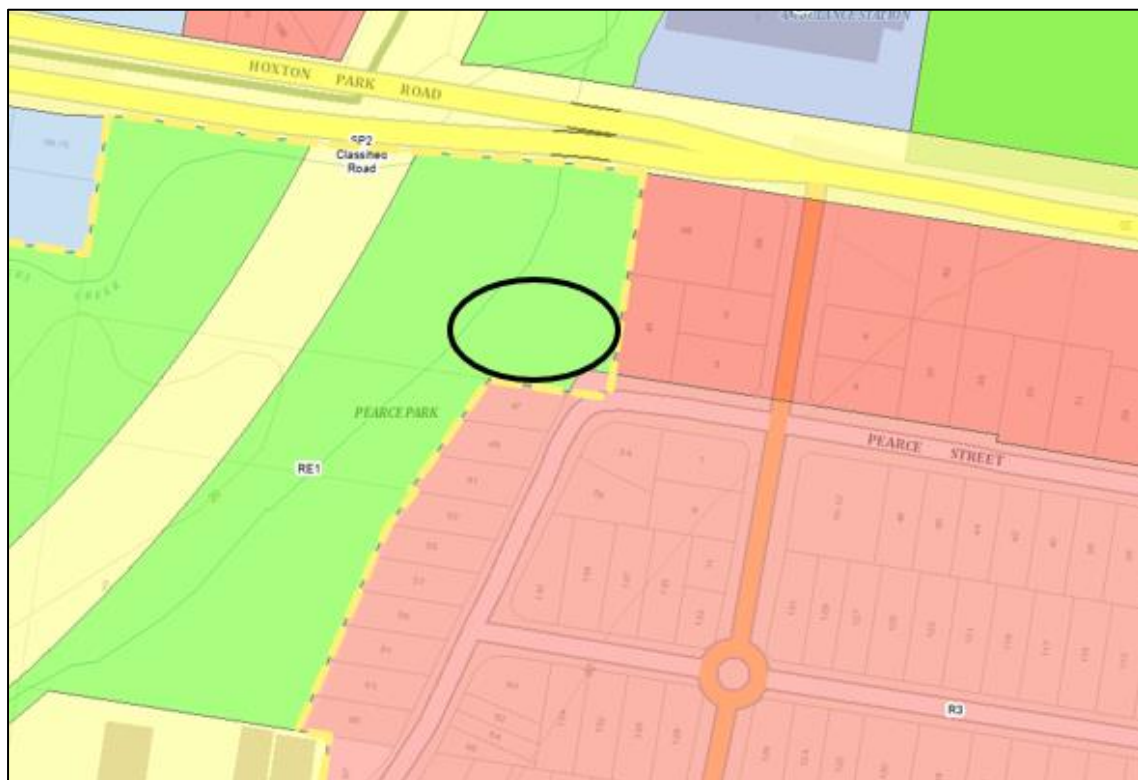


Figure 25: Extract of LLEP 2008 Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

The works are permissible under Clause 2.138 of SEPP (Transport and Infrastructure) 2021, as discussed in the previous section. The use is not expressly permitted under LLEP 2008.

(iii) Objectives of the zone

The objectives of the R4 High Density Residential zone are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent the achievement of high density residential development.*

The proposed development is generally consistent with most objectives of the zone. RFB development is one of the key intended uses within the R4 zone and is in a location with good access to transport, services and facilities. The development will not fragment adjoining land from achieving high density residential development.

However, it is noted that the proposal is solely for 2-bedroom units and therefore does not provide a variety of housing types.

Consequently, the development is not consistent with an objective of the zone and is not supported.

The objectives of the RE1 Public Recreation zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To provide sufficient and equitable distribution of public open space to meet the needs of residents.*
- *To ensure the suitable preservation and maintenance of environmentally significant or environmentally sensitive land.*

The proposed stormwater management works will not prevent the land from being used for public open space or recreational purposes. The proposal meets the objectives.

However, the application in its current form is absent information required by Council's internal referrals. Notably, Nos. 99-101 Rose Street is in Council records as a historic landfill and therefore necessitates a contamination assessment within the area of works proposed to ensure there is no risk. Further, Council's Land Development and Flooding Engineers have requested further information on the specifics of the pipe capacity, catchment details and DRAINS model to ensure the suitability of what has been proposed. Consequently, though the zone objectives may be achieved, the application is not supported based on the current submission.

(iv) Principal Development Standards

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

Clause	Provision	Compliance
Clause 2.7 Demolition	The demolition of a building or work may be carried out only with development consent	Complies Development consent is sought for the demolition of the existing structures on site and a demolition plan has been submitted.
Clause 4.1 Minimum Subdivision Lot Size	The size of any lot resulting from a subdivision of land is not to be less than 1000m ² .	N/A No subdivision is sought.
Clause 4.3 Height of Buildings	Maximum height of 15m	N/A Refer to SEPP (Housing) 2021 Chapter 2 Affordable Housing section earlier in this report.
Clause 4.4 Floor Space Ratio	Maximum FSR of 1:1	N/A Refer to SEPP (Housing) 2021 Chapter 2 Affordable Housing section earlier in this report.
Clause 4.6 Exceptions to development standards	Provisions relating to exceptions to development standards	No No Clause 4.6 variation has been submitted to support the contravention of the bonus FSR.
Clause 5.21 Flood Planning	Provisions relating to flood affected land.	No – Insufficient Information Provided The site is not affected by mainstream flooding however, it is affected by overland flow. A Flood Study was submitted and assessed by Council's Flooding Engineer. While the development has been designed to the minimum flood levels identified in the report, further information was required by the Flooding Engineer to enable support for the application, including that the overland flow entering the property must be captured and discharged in a controlled manner. In the absence of the detail required, the application is not supported.
Clause 7.14 Minimum Building Street Frontage	Development consent must not be granted to development for the purposes of any of the following buildings, unless the site on which the buildings is to be erected has at least one	Complies A street frontage of 74.905m is proposed to Pearce Street. Further, the adjoining sites would also be able to amalgamate together to create sites which achieve the required 24m

	street frontage to a public street (excluding service lanes) of at least 24 metres: - any residential flat building.	frontage.
Clause 7.31 Earthworks	Provisions relating to bulk earthworks	Complies No bulk earthworks are proposed on Nos. 15-21 Pearce Street other than those ancillary to the development, being the excavation for the construction of the building and at-grade parking, which is deemed to be acceptable for a proposal of this nature. A Geotechnical Investigation was submitted and was supportive of the application. Earthworks associated with the stormwater management works are also sought along Pearce Street and in Nos. 99-101 Rose Street. No concerns are raised to the proposed earthworks to undertake the work.

The application is not fully consistent with the provisions of LLEP 2008 and consequently, the application is recommended for refusal.

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

There are no draft Environmental Planning Instruments (EPIs) which affect the assessment of the application.

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

(a) Liverpool Development Control Plan (LDCP) 2008

The proposed development is subject to LDCP 2008. The following parts of the LDCP 2008 are relevant to the proposal:

- Part 1: General Controls for All Development
- Part 3.7: Residential Flat Buildings in the R4 Zone.

The assessment of the application has determined that it is inconsistent with several key areas of LDCP 2008. Compliance tables for LDCP 2008 can be found in Attachment 2. Where variations not otherwise discussed within this report are sought as well as other non-compliances are present and previously discussed, they are discussed below.

LDCP 2008 Part 1: General Controls for All Development

Development Control	Provision	Comment	Complies
Section 2. Tree Preservation	Controls relating to the preservation of trees	Refer to the SEPP (Biodiversity and Conservation) 2021 section of the report.	Insufficient Information
Section 3. Landscaping and Incorporation of Existing Trees	Controls relating to landscaping and the incorporation of existing trees.	A landscape plan was submitted with the application demonstrating the landscape design for the site. The landscape plans are inconsistent with the architectural plans and arborist report for tree removal and retention and front setback design.	Insufficient Information
Section 6. Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	This aspect has been reviewed by Council's Land Development Engineer, who has not supported the application without further information.	Insufficient Information
Section 9. Flooding Risk	Provisions relating to development on flood prone land.	The site is overland flow affected. Council's Flooding Engineer has requested further information to enable support of the proposal.	Insufficient Information
Section 10. Contaminated Land Risk	Provisions relating to development on contaminated land.	As per SEPP (Resilience and Hazards) 2021, the site has been deemed suitable for the future use of the land. The works on Council land, however, require a contamination assessment.	Insufficient Information
Section 20. Car and Access	<u>Car Parking Controls Residential & Business Zones</u> 1 space per small dwelling (<65sqm) or 1 bedroom 1.5 spaces per medium	Car parking is assessed under SEPP (Housing) 2021. Bicycle parking is required under LDCP 2008.	No

Development Control	Provision	Comment	Complies
	dwelling (65-110sqm) or 2 bedrooms 2 car spaces per large dwelling (>110sqm) or 3 or more bedrooms 1 visitor car space for every 4 dwellings or part thereof. <u>Bicycles – Residential Flat Buildings</u> Residents: 1 per 2 units, or 1 for every 4 bedrooms (whichever is greater) Visitors: 1 per 10 units	Required: 22 resident spaces and 4 visitors. Proposed: 16 total There is no justification submitted for the shortfall in bicycle parking. Given the generous car parking rates under SEPP (Housing) 2021, there is no merit in supporting a shortfall in bicycle parking which would benefit the residents of the development.	
Section 25. Waste Disposal and Re-use Facilities	Provisions relating to waste management during construction and on-going waste.	Waste storage facilities are provided, and Council's Waste Management Section has reviewed the waste management plan (WMP) and conditions of consent were provided. It is, however, noted that a demolition and construction management plan was not submitted. This a requirement of Council's DA Checklist.	Insufficient Information

LDCP 2008 Part 3.7: Residential Flat Buildings in the R4 Zone

Development Control	Provision	Comment
3. Site Planning	Siting of buildings should be sympathetic to surrounding development, taking specific account of the streetscape in terms of scale, bulk, setbacks, materials and visual amenity.	Generally complies The surrounding development is largely low-density housing however the land is zoned R4 High Density Residential with a prescribed 15m Height of Buildings Development Standard (and up to 19.5m under SEPP (Housing) 2021). Consequently, the development will deviate from the immediate neighbours. The building envelope is generally compliant with the relevant controls. Other aspects of the design have led to the recommendation for refusal, including (as relevant for the siting of the

Development Control	Provision	Comment
		development) insufficient setbacks to the at-grade car park to allow canopy trees to screen it from adjoining properties. The matter of character and visual amenity has also been discussed by the DEP.
	Stormwater from the site must be able to be drained satisfactorily. Where the site falls away from the street, it may be necessary to obtain an easement over adjoining property to drain water satisfactorily to a Council stormwater system. Where stormwater drains directly to the street, there may also be a need to incorporate on-site detention of stormwater where street drainage is inadequate.	Insufficient Information Council's Land Development Engineer has requested additional information relating to the drainage system proposed. No easement is required however, the proposed drainage works within Pearce Street requires further detail.
	The development will need to satisfy the requirements of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development.	No Refer to assessment of ADG earlier in the report.
5. Landscaped Area and Private Open Space	Optimise the provision of consolidated landscaped area within a site by: - Design of basement and sub-basement car parking, so as not to fully cover the site. - Use of front and side setbacks. - Optimise the extent of landscaped area beyond the site boundaries by locating them contiguous with the landscaped area of adjacent properties. Promote landscape health by supporting for a rich variety of vegetation type and size. Increase the permeability of paved areas by limiting the area of paving and/or using pervious paving materials.	No The landscape design is generally satisfactory in principle from the location of canopy trees, species proposed and overall paved/permeable area balance. However, as mentioned throughout this report, the following concerns are raised in the current documentation that require resolution before support would be given: • Inconsistencies between tree removal and retention. • Inconsistencies between front setback design. • Limited landscaping screening to the at-grade car parking from the (at the minimum) 1m setback. • Embellishment of the rear setback COS.
	Provide communal open space, which is appropriate and relevant to the context and the building's setting.	Insufficient Information While ground level COS is supported in principle, the application has not demonstrated that there will be solar access available long-term. Sun-eyes

Development Control	Provision	Comment
		incorporating future built form on lots to the north are required for assessment. The Level 4 COS areas receive no meaningful solar access on June 21.
	Where communal open space is provided, facilitate its use for the desired range of activities by: - Locating it in relation to buildings to optimise solar access to dwellings. - Consolidating open space on the site into recognisable areas with reasonable space, facilities and landscape. - Designing its size and dimensions to allow for the range of uses it will contain. - Minimising overshadowing. - Carefully locating ventilation duct outlets from basement car parking.	No As above, there is insufficient information to confirm if there will be solar access available in the long-term to the ground level COS. The design of the COS has been questioned by Council's Urban Design & Public Domain team who have requested further embellishment of the ground level space for a greater variety of activities. The present area accommodates a few seats and a modest 'kickabout' area. The Level 4 COS areas offer BBQs. However, these result in compromised amenity for the Level 4 units.
	Locate open space to increase the potential for residential amenity.	No The access arrangements of the ground level COS and the acoustic privacy and internal amenity issues arising from the Level 4 COS design result in COS that has not increased residential amenity.
Building Appearance and Streetscape	Residential Flat Buildings shall comply with State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development and should consider the Residential Flat Design Code.	No The proposal has been assessed under the ADG earlier in the report and is not supported for the reasons outlined in that assessment.
	Building facades shall be articulated and roof form is to be varied to provide visual variety.	Insufficient Information The front, side and rear elevations to the street and adjoining properties generally appear to provide a suitable level of articulation and visual variety. However, the absence of internal elevations is critical due to the blank walls and visibility of the gap between buildings from Pearce Street. A complete assessment is not possible of the façade design without these.
	Where possible vehicular entrances to the basement car parking shall be from the side of	Insufficient Information While for at-grade parking and not a basement, there is, in principle, no

Development Control	Provision	Comment
	the building. As an alternative a curved driveway to an entrance at the front of the building may be considered if the entrance is not readily visible from the street	objection raised to the central driveway location in this instance subject to the resolution of other design concerns raised throughout this report, including the potential for a cover over the driveway to reduce its prominence from the streetscape and amenity to Bed 2 of Unit G03.
	Consider the relationship between the whole building form and the facade and / or building elements. The number and distribution of elements across a façade determine simplicity or complexity. Columns, beams, floor slabs, balconies, window openings and fenestrations, doors, balustrades, roof forms and parapets are elements, which can be revealed or concealed and organised into simple or complex patterns.	Insufficient Information Due to the items raised within this assessment report including those of the DEP, the building design aspects have not been satisfactorily resolved.
	Compose facades with an appropriate scale, rhythm and proportion, which respond to the building's use and the desired contextual character. This may include but are not limited to: - Defining a base, middle and top related to the overall proportion of the building. - Expressing key datum lines in the context using cornices, a change in materials or building set back. - Expressing the internal layout of the building, for example, vertical bays or its structure, such as party wall-divisions. - Expressing the variation in floor-to-floor height, particularly at the lower levels. - Articulating building entries with awnings, porticos, recesses, blade walls and projecting bays. - Selecting balcony types which respond to the street context, building orientation and residential amenity.	

Development Control	Provision	Comment
	- Cantilevered, partially recessed, wholly recessed, or Juliet balconies will all create different facade profiles. - Detailing balustrades to reflect the type and location of the balcony and its relationship to the facade detail and materials	
	Design facades to reflect the orientation of the site using elements such as sun shading, light shelves and bay windows as environmental controls, depending on the facade orientation.	
	Express important corners by giving visual prominence to parts of the facade, for example, a change in building articulation, material or colour, roof expression or increased height.	
	Co-ordinate and integrate building services, such as drainage pipes, with overall facade and balcony design.	
	Co-ordinate security grills/screens, ventilation louvres and car park entry doors with the overall facade design	
Building Entry	Provide and design letterboxes to be convenient for residents and not to clutter the appearance of the development from the street by: - Locating them adjacent to the major entrance and integrated into a wall, where possible. - Setting them at 90 degrees to the street, rather than along the front boundary.	Insufficient Information The location of letterboxes was not nominated on the plans.
Daylight Access	Ensure direct daylight access to communal open space between March and September and provide appropriate shading in summer.	Insufficient Information It is unclear how much solar access the COS will have long-term once adjoining properties redevelop.
Internal Design	Design building layouts to minimise direct overlooking of rooms and private open spaces adjacent to dwellings	Insufficient Information The Level 4 design uses the roof of the floors below as balcony space. It is likely that no visual privacy impacts are

Development Control	Provision	Comment
		created to the current adjoining properties due to the presence of perimeter landscaping. However, for equivalent levels on future developments – or internally, between Units 402 and 403, which has less separation than required on the lower levels – there is insufficient information on how visual privacy is secured.
Ground Floor Dwellings	Design front gardens or terraces, which contribute to the spatial and visual structure of the street while maintaining adequate privacy for dwelling occupants. This can be achieved by animating the street edge, for example, by promoting individual entries for ground floor dwellings.	No The landscape plan and the architectural plans differ in their presentation of the front setback. While either design is likely to achieve a suitable outcome, the application would need to confirm which design is being sought.
	Create more pedestrian activity along the street and articulate the street edge by: - Balancing privacy requirements and pedestrian accessibility. - Providing appropriate fencing, lighting and/ or landscaping to meet privacy and safety requirements of occupants while contributing to a pleasant streetscape. - Utilising a change in level from the street to the private garden or terrace to minimise site lines from the streets into the dwelling for some dwellings. - Increasing street surveillance with doors and windows facing onto the street.	Insufficient Information In the absence of consistent documentation and requested Public Domain Plan by Council's Urban Design & Public Domain referral, the ground level treatment is unclear.
	Ground floor dwellings are special because they offer the potential for direct access from the street and on-grade private landscape areas. They also provide opportunities for the dwelling building and its landscape to respond to the streetscape and the public domain at the pedestrian scale. Ground floor dwellings also support housing choice by providing accessibility	No Ground floor apartments are designed to be consistent with the provisions of the ADG, except where inconsistencies in the front setback (and therefore, POS) are present.

Development Control	Provision	Comment
	to the elderly and/or disabled and support families with small children. Optimise the number of ground floor dwellings with separate entries and consider requiring an appropriate percentage of accessible units. This relates to the desired streetscape and topography of the site. Provide ground floor dwellings with access to private open space, preferably as a courtyard.	
Security	Reinforce the development boundary to strengthen the distinction between public and private space by: - Employing a level change at the site and/or building threshold (subject to accessibility requirements). - Signage. - Entry awnings. - Fences, walls and gates. - Change of material in paving between the street and the development	No A level change occurs due to the flood planning level. Further, fencing (though not defined on the plans, it would appear to be palisade fencing) is proposed 1m within the site coupled with landscaping to distinguish the public and private domains. The lack of consistent plans does preclude a complete assessment.
	Control access to the development by: - Making dwellings inaccessible from the balconies, roofs and windows of neighbouring buildings. - Separating the residential component of a development's car parking from any other building use and controlling car park access from public and common areas. - Providing direct access from car parks to dwelling lobbies for residents.	Insufficient Information The development largely appears to have considered secure access. However, it is not clear what gate/security measure is proposed for the driveway.
Storage Areas	A secure storage space is to be provided for each dwelling with a minimum volume 8 m ³ (minimum dimension 1m ²). This must be set aside exclusively for storage as part of the basement or garage. Storage areas must be	No Units are proposed with only 4m ³ to 4.53m ³ storage.

Development Control	Provision	Comment
	adequately lit and secure. Particular attention must be given to security of basement and garage storage areas.	
7. Landscaping and Fencing	The setback areas are to be utilised for canopy tree planting. The landscape design for all development must include canopy trees that will achieve a minimum 8 m height at maturity within front and rear setback areas.	No Canopy trees are proposed in the front and rear setbacks. However, where it is expected that canopy trees may be planted in the side setbacks, the at-grade parking area is setback as little as 1m and does not allow for this type of planting.
	Tree and shrub planting along side and rear boundaries should assist in providing effective screening to adjoining properties.	No The level of planting in the rear setback is acceptable. The planting within the 1m setback of the at-grade parking is not adequate to screen the car park from adjoining properties.
	The development must be designed around significant vegetation on the site. It is important to retain significant vegetation to maintain an existing streetscape and enhance the visual appearance of new dwellings.	No The application is inconsistent on the level of tree removal. The arborist indicates all trees are to be removed, but the landscape plan identifies trees for retention.
	Contribute to streetscape character and the amenity of the public domain by: - Relating landscape design to the desired proportions and character of the streetscape. - Using planting and landscape elements appropriate to the scale of the development. - Mediating between and visually softening the bulk of large development for the person on the street. Planting design solutions include: - Trees for shading low-angle sun on the eastern and western sides of a dwelling. - Trees that do not cast a shadow over solar collectors at any time of the year. - Deciduous trees for shading of windows and open space areas in	No The treatment of the front setback is inconsistent between plans. The outcome of the landscape plan is generally acceptable. However, the lack of consistency between documentation (and thus a confirmed proposal) is one reason for refusal.

Development Control	Provision	Comment
	summer. methods. - Providing appropriate drainage. - Design planters to support the appropriate soil depth and plant selection by: - Ensuring planter proportions accommodate the largest volume of soil possible. Minimum soil depths will vary depending on the size of the plant. However, soil depths greater than 1.5 m are unlikely to have any benefits for tree growth. - Providing square or rectangular planting areas rather than long narrow linear areas.	
Fencing	The maximum height of a front fence is 1.2m. The maximum height of side boundary fencing within the setback to the street is 1.2m.	Insufficient Information The landscape plan identifies a 1.5m high palisade fence set 1m within the property. The architectural plans do not specify and differ in the front setback design. The higher fence may be supportable subject to clarification on the overall front setback design.
	Fences should not prevent surveillance by the dwelling's occupants of the street or communal areas, be 30% transparent and shall be constructed in masonry, timber, metal pickets and/or vegetation and must be compatible with the proposed design of the dwelling.	As above.
	The front fence may be built to a maximum of 1.8m only if: • The primary frontage is situated on a Classified Road • The fence is articulated by 1m for 50% of its length and have landscaping in front of the articulated portion. • The fence does not impede safe sight lines from the street and from vehicles entering and exiting the site	As above.

Development Control	Provision	Comment
8. Car parking and access	Give preference to underground parking, whenever possible by: - Retaining and optimising the consolidated areas of deep soil zones. - Facilitating natural ventilation to basement and sub-basement car parking areas, where possible. - Integrating ventilation grills or screening devices of car park openings into the facade design and landscape design. - Providing safe and secure access for building users, including direct access to residential dwellings, where possible. - Providing a logical and efficient structural grid. There may be a larger floor area for basement car parking than for upper floors above ground. Upper floors, particularly in slender residential buildings, do not have to replicate basement car parking widths.	No At-grade parking is proposed. Refer to comments below.
	Where above ground enclosed parking cannot be avoided, ensure the design of the development mitigates any negative impact on streetscape and street amenity by: - Avoid exposed parking on the street frontage. - Hiding car parking behind the building facade. Where wall openings (windows, fenestrations) occur, ensure they are integrated into the overall facade scale, proportions and detail.	No The at-grade parking is located behind the front building line and will be somewhat obscured from the street by landscaping. However, the parking does extend close to side boundaries which removes the opportunity to screen the parking from adjoining properties, and it is not clear how the central driveway will be screened (e.g. gate, cover over entry).
9. Amenity and Environmental Impact	Adjoining properties must receive a minimum of three hours of sunlight between 9am and 5pm on 21 June to at least: - One living, rumpus room or the like; and - 50% of the private open space.	Insufficient Information The rear elevations of adjoining dwellings (Nos. 13 and 23 Pearce Street) receive 3 hours of solar access. It is not clear what the impact is on dwellings on the southern side of Pearce Street, noting it is a lower density zone. Detail of this has been requested by Council's Urban Design & Public Domain team to enable

Development Control	Provision	Comment
		an assessment of the impact.
	Building siting, window location, balconies and fencing should take account of the importance of the privacy of on site and adjoining buildings and outdoor spaces. Windows to habitable rooms should be located so they do not overlook such windows in adjoining properties, other dwellings within the development or areas of private open space.	Insufficient Information The visual privacy concerns raised on Level 4 under the ADG separation discussion require resolution.
	Design building layouts to minimise direct overlooking of rooms and private open spaces adjacent to dwellings by: - Balconies to screen other balconies and any ground level private open space. - Separating communal open space, common areas and access routes through the development from the windows of rooms, particularly habitable rooms. - Changing the level between ground floor dwellings with their associated private open space, and the public domain or communal open space. Use detailed site and building design elements to increase privacy without compromising access to light and air by: - Offsetting windows of dwellings in new development and adjacent development windows. - Recessed balconies and/or vertical fins between adjacent balconies. - Solid or semi-solid balustrades to balconies - louvres or screen panels to windows and/or balconies.	Insufficient Information The visual privacy concerns raised on Level 4 under the ADG separation discussion require resolution.
	- Fencing. - Vegetation as a screen between spaces. - Incorporating planter boxes into walls or balustrades to increase	

Development Control	Provision	Comment
	the visual separation between areas. - Utilising pergolas or shading devises to limit overlooking of lower dwellings or private open space.	
10. Site Services	Letterboxes shall be provided for each dwelling on site, easily accessible from the street, able to be securely locked and provided in accordance with Australia Post's requirements.	Insufficient Information Letterbox locations are not shown on the plans.
	Where there are no existing street trees in front of the site and contributions have not been collected for street tree planting it may be a condition of consent that street trees be provided in the footpath area immediately in front of the site.	Insufficient Information Council's Urban Design & Public Domain have requested a Public Domain Plan be prepared inclusive of footpaths and any new street trees.
	In some cases it may be necessary to provide an electricity substation at the front of the development adjacent to the street frontage. This will involve dedication of the area as a public road to allow access by the electricity provider. The front boundary treatment used elsewhere on the street frontage.	Insufficient Information Endeavour Energy has flagged that augmentation or extension of the existing electricity network is likely required. The proposal has not identified a substation, which must be considered as part of the development to ensure a high-quality streetscape and front setback outcome.

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

There are no planning agreements which apply to the development.

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

The Environmental Planning and Assessment (EP&A) Regulation 2021 requires the consent authority to consider the provisions of the National Construction Code (NCC). Typically, this involves appropriate conditions of consent where compliance with the NCC is required as well as compliance with the Australian Standards (AS) for demolition works. In the event of an approval, relevant conditions would be imposed.

Part 3, Division 1 of the Regulations identifies the information required to make a DA.

Section 23(1) of the Regulations allows a DA to be made by the owner of the land to which the DA relates or another person with the written consent of the owner of the land. The application involves works in a public reserve owned by LCC and that land was not identified

as part of the application. Written owner's consent was not provided from Council with the lodgement of the application.

Further, under Section 26 (1) of the Regulations, it is a requirement for an application to which Division 1 of SEPP (Housing) 2021 applies (e.g. in-fill affordable housing) to specify the name of the registered community housing provider who will manage the affordable housing component. This information was not submitted with the application and therefore should be refused as it is incomplete.

The application was not submitted with key information required by the Regulations and accordingly, the application should be refused.

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

(a) Natural Environment

Impacts on the natural environment have been assessed as part of the DA. It is unclear to what extent tree removal is sought to facilitate the proposal given discrepancies between documentation and accordingly, insufficient information has been submitted to allow a complete assessment of the impact on the natural environment.

(b) Built Environment

The proposed development will largely have minimal impact on the built environment given it is of a size and scale that is broadly anticipated by the planning controls, inclusive of affordable housing bonuses. The development, however, has not successfully managed aspects of the form such as the façade design, impacts of the at-grade parking, solar access and amenity to communal open spaces, visual and acoustic privacy and the like. The development therefore may still have a negative impact on the built environment surrounding the site. Insufficient information has been submitted to allow a complete and thorough assessment, and the proposal is therefore not supported.

(c) Social Impacts

The proposed development is exclusively for 2-bedroom units. While additional affordable housing in the locality is a positive outcome, there is no diversity in the unit mix or unit sizes, with almost all units between the minimum 75m² and 76m². The development is not subject to a specific numerical unit mix requirement however an objective of ADG and the R4 High Density Residential zone is to provide a range of apartment types and sizes to cater for different household types.

The allocation of affordable units within the building has also come into question by Council's Community Planner. All units on Level 1 and two units on Level 2 have been allocated as affordable. Council's Community Planner has recommended that the affordable units be distributed throughout the development for improved social cohesion and inclusiveness.

Whilst this may largely not create a negative social impact, this would represent a negative impact on the development in this regard.

(d) Economic Impacts

The short term positive economic impacts from construction spending and employment opportunities generated during the construction phase are generally recognised. Other, more enduring impacts should come as the local population increases and use local shops and services.

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

The subject site for a RFB development is suitable.

Insufficient information has been submitted to ensure the proposed stormwater drainage works in Nos. 99-101 Rose Street will not create a risk to the public due to the historical use of the land as a landfill and the application is therefore recommended for refusal.

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

(a) Internal Referrals

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

DEPARTMENT	COMMENTS
Land Development Engineering	Further information requested. A stormwater management report was requested for the drainage system within Pearce Street, additional catchment details and the DRAINS model.
Flooding	Further information requested. Noted the site is affected by the local overland flow. Further information was requested regarding the applicant's flood study and drainage design and capacity in Pearce Street.
Building	Supported, subject to conditions
Property Services	Further information requested. Required a contamination assessment for the stormwater works within the public land due to known contamination potential in the land, and owner's consent for the works on Council land was not obtained and submitted.
Environmental Health	Supported, subject to conditions.
Landscaping	Supported.
Traffic	Further information requested. Noted the driveway does not allow for two-way safe movement and requested amendments to allow for it.
Waste Management	Supported, subject to conditions
Urban Design and Public Domain	Further information requested.

DEPARTMENT	COMMENTS
	Details of the treatment of the at-grade car parking, front setback landscaping and access, COS design, sustainability measures, resolution of privacy and overshadowing impacts, and noted inconsistencies between the architectural plans and landscape plans.
Community Planning	Further information requested. Recommended that affordable units be blended with non-affordable units for inclusiveness and social cohesion. Details of the Community Housing Provider were not submitted. A plan of management is required for the affordable units.

(b) External Referrals

AGENCY	COMMENTS
Endeavour Energy	No objection, subject to conditions. Noted that the development likely requires an extension or augmentation of the electricity network.
Sydney Water	No objection, subject to conditions
DPE - Water	Determined that no CAA was required. Further clarification has been asked of DPE – Water regarding their comments and have advised a CAA is needed. Amended referral comments have been sought

(c) Community Consultation

The DA was advertised between 22 July and 7 August 2024 in accordance with Liverpool Community Participation Plan 2019. An additional round of public notification and advertising was undertaken from 30 August to 27 September 2024 due to the omission of the works on Council land from the property address description. A total of nine submissions were received, including three duplicates.

All submissions were objections to the proposal.

OBJECTOR CONCERN	COMMENTS
Traffic Congestion	The applicant submitted a Traffic Impact Assessment (TIA) which was reviewed by Council's Traffic Engineer who was supportive of the proposal on the grounds of traffic generation.
Road Width Inadequate for High-Density Development	Council's Traffic Engineer has reviewed the proposal and raised no objection regarding the road width.
On-Street Parking Impacts (Residents parking on the street)	The development has provided the required minimum number of car parking spaces as required by SEPP (Housing) 2021. Council cannot require a development to provide more than the required quantum of car parking.
Visual Privacy	The required building separation to side boundaries is achieved on the ground level to Level 3. Amongst other reasons, the application is not supported for the encroachments on Level 4 which may lead to some visual privacy impacts not fully addressed by the applicant.

OBJECTOR CONCERN	COMMENTS
Construction Noise	Were the application to be approved, standard conditions of consent would be imposed that require construction to be limited between certain hours and a Construction Management Plan (CMP) that identifies means to achieve the relevant noise criteria. The application is recommended for refusal on other grounds.
Overshadowing	The eastern and western neighbouring properties will be partially overshadowed. However, the development is of a compliant height and generally compliant building separation/setbacks. While insufficient information was submitted regarding overshadowing impacts to the properties on the southern side of Pearce Street, it is unlikely for the application to have unreasonable overshadowing impacts. It is noted that the adjoining properties will not be reduced below 3 hours of solar access to the private open spaces and northern elevations.
Sinkhole near 23 & 21 Pearce Street / Damage to Property During Construction	In the event of an approval, appropriate conditions of consent would be enforced requiring dilapidation reports that would cover any sinkhole near the boundary of Nos. 23 and 21 Pearce Street. Any damage caused as part of the construction work would be required to be rectified. The application is recommended for refusal on other grounds.
Flooding Risk	The application was supported by a flood study. Council's Flooding Engineer assessed the report and application and determined there was insufficient information to support the application in its current form. This forms part of the reasons for refusal.
Noise at Night (e.g. AC units/plant)	An acoustic report would be conditioned in the event of an approval to require the A/C and plant areas to be assessed to meet the relevant noise criteria. The application is recommended for refusal for other reasons.
House Value Loss	Housing price impacts as part of a development is not a relevant consideration under Clause 4.15 Evaluation of the EP&A Act.

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

The proposed development is not in the public interest given the outlined non-compliances with the relevant planning instruments within this report, concerns raised by the submissions deemed well founded in the above assessment, and the insufficient information submitted to fully assess the application.

7. CONCLUSION

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, and EPIs, including applicable SEPPs, LLEP 2008, LDGP 2008, and relevant codes and policies of Council.

The proposed development is not supported due to the outlined non-compliances with the relevant planning instruments within this report, concerns raised by the submissions deemed well founded in the above assessment, and the insufficient information submitted to fully assess the application. Based on the assessment of the application, it is recommended that the application be refused.

8. RECOMMENDATION

That Development Application DA-310/2024 seeking approval for the demolition of the existing dwellings and construction of a five storey in-fill affordable RFB development with at-grade parking at Nos. 15-21 Pearce Street, Liverpool, with stormwater drainage works in Nos. 99-101 Rose Street, Liverpool, be refused.

ATTACHMENTS

1. Apartment Design Guide Compliance Tables (Under separate cover)
2. Liverpool Development Control Plan 2008 Compliance Tables (Under separate cover)
3. Plans of Proposal (Under separate cover)
4. Design Excellence Panel Minutes (Under separate cover)
5. Draft Reasons for Refusal (Under separate cover)