

# LOCAL PLANNING PANEL AGENDA

27 November 2023

# MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

**Monday, 27 November 2023**

To be held at the  
**MS Teams**  
Commencing at 2:00pm

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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, Friday, 24<sup>th</sup> November 2023.

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

[Liverpool Local Planning Panel / Liverpool City Council \(nsw.gov.au\)](https://www.liverpoolcitycouncil.nsw.gov.au)

ITEM No.	SUBJECT	PAGE No.
1	<p><b>DEVELOPMENT APPLICATION RZ-5/2023</b></p> <p><b>PLANNING PROPOSAL TO AMEND THE LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008 (LEP) AS FOLLOWS:</b></p> <ul style="list-style-type: none"> <li>• <b>REZONE THE SITE FROM C2 ENVIRONMENTAL CONSERVATION TO C2 ENVIRONMENTAL CONSERVATION, E4 GENERAL INDUSTRIAL AND RE1 PUBLIC RECREATION.</b></li> <li>• <b>INTRODUCE A HEIGHT OF BUILDING OF 20M AND NIL FLOOR SPACE RATIO FOR THE PROPOSED E4 GENERAL INDUSTRIAL PART OF THE SITE.</b></li> </ul> <p><b>LOT 2 DP 1278607</b></p> <p><b>LOT 2 NEWBRIDGE ROAD, MOOREBANK</b></p>	4 - 8

ITEM No.	SUBJECT	PAGE No.
2	<p><b>DEVELOPMENT APPLICATION DA-1386/2021</b></p> <p><b>DEMOLITION OF EXISTING STRUCTURES, THE CONSTRUCTION OF MULTI DWELLING HOUSING DEVELOPMENT CONSISTING OF 6 X 2 STOREY DWELLINGS, REMOVAL OF 5 TREES, AND ASSOCIATED WORKS.</b></p> <p><b>LOT 31 DP 27242 &amp; LOT 77 DP 27242</b></p> <p><b>58 MCGOWEN CRESCENT, LIVERPOOL &amp; 40 ATKINSON STREET, LIVERPOOL</b></p>	9 - 83

ITEM No.	SUBJECT	PAGE No.
3	<p><b>DEVELOPMENT APPLICATION DA-639/2021</b></p> <p><b>THE CONSTRUCTION OF TWO X 4-STOREY RESIDENTIAL FLAT BUILDINGS COMPRISING 39 RESIDENTIAL APARTMENTS, WITH ONE LEVEL OF BASEMENT CAR PARKING, AND ASSOCIATED LANDSCAPING AND SITE WORKS.</b></p> <p><b>LOT 231 DP 1287558</b></p> <p><b>LOT 231 CHANGSHA ROAD, EDMONDSON PARK</b></p>	84 - 164

<b>Item Number:</b>	1
<b>Application Number:</b>	RZ-5/2023
<b>Proposed Development:</b>	<p>Planning proposal to amend the Liverpool Local Environmental Plan 2008 (LEP) as follows:</p> <ul style="list-style-type: none"> <li>• Rezone the site from C2 Environmental Conservation to C2 Environmental Conservation, E4 General Industrial and RE1 Public Recreation.</li> <li>• Introduce a Height of Building of 20m and nil Floor Space Ratio for the proposed E4 General Industrial part of the site.</li> </ul>
<b>Property Address</b>	Lot 2 Newbridge Road, Moorebank
<b>Legal Description:</b>	Lot 2 DP 1278607
<b>Applicant:</b>	Liverpool City Council
<b>Land Owner:</b>	EQ Riverside Pty Ltd
<b>Cost of Works:</b>	Not Applicable
<b>Recommendation:</b>	Proceed to Gateway determination
<b>Assessing Officer:</b>	Stephen Peterson

## 1. BACKGROUND

This is a Council initiated Planning Proposal applying to Lot 2 Newbridge Road, Moorebank (Lot 2 in DP 1278607), owned by EQ Riverside Pty Ltd.

The planning proposal seeks to amend the *Liverpool Local Environmental Plan 2008* (LLEP 2008) zoning of the site from C2 Environmental Conservation to C2 Environmental Conservation, E4 General Industrial and RE1 Public Recreation, introduce a 20m Height of Building (HOB) and nil Floor Space Ratio (FSR) for the proposed E4 General Industrial part of the site. This is to facilitate the development of a General Industrial land use as well as a publicly accessible walkway and maintain the significant biodiversity of the site.

This planning proposal arises from the 26 July 2023 Council meeting resolution seeking to permit less intense general industrial land uses on the subject site in lieu of a previously approved heavy industrial land use of the site (Materials Recycling Facility (Concrete Crushing Recycling)) issued by the former Planning Assessment Commission in September 2015.

Various other land use options have been investigated for the subject site including:

- A previous planning proposal request (RZ-2/2020) prepared by the site owners sought use of the site for mixed land uses including for residential apartments, community facilities, retail/ food and drink premises, a foreshore walkway and recreation areas.

The site was deemed not suitable by Council staff and the Local Planning Panel of which it was concluded that the proposal did not demonstrate site specific or strategic merit, and the site was unsuitable for the proposed land uses given various environmental constraints and lack of infrastructure. The proposal did not proceed to a Gateway determination.

- Use of the site for the purposes of a homemaker/bulky goods centre or specialised/discount retail outlet.

An independent Economic Impact Assessment Report was undertaken which concluded that whilst a homemaker/bulky goods centre is likely to generate a better net community benefit outcome than a specialised/discount retail outlet, that neither scenario performs well against policy and market tests

In regard to strategic merit, the proposal seeks to address and is deemed to be generally consistent with the relevant provisions of the Greater Sydney Regional Plan and Western Sydney District Plan, relevant S9.1 Ministerial Directions, Council's Local Strategic Planning Statement and Council's Industrial and Employment Lands Strategy as detailed in attachment one (Council Initiated Planning Proposal Document).

In regard to site specific merit, constraints for the site include flooding, contamination, biodiversity and traffic/access. Based on the internal advice received, and additionally that the site already has an approved heavy industrial use, and the current planning proposal seeks a less intensive industrial land use zoning for the site, Council staff recommend that the proposal proceed to a Gateway determination.

The planning proposal demonstrates the opportunity for the subject site to provide an industrial land use and employment opportunities. This use will be less intrusive on the surrounding natural and built environment including bushland, waterways, and residential land uses, than the existing approved material recycling heavy industrial land use. It will also provide the opportunity for public recreational facilities along the Georges River Foreshore.

## **2. SITE AND LOCALITY DESCRIPTION AND DETAILS OF PLANNING PROPOSAL**

The subject site ('Concrete Crushers site') is located at Lot 2 Newbridge Road and is legally described as Lot 2 in DP 1278607. The site is bound by the Georges River to the east, Wurrungwuri Reserve and low density residential to the west, Site D (Marina site) to the north and further to the north is a large General Industrial area within Chipping Norton, and Brighton Lakes Golf Course to the south.

The site forms one of five sites which makeup the precinct known as 'Moorebank East'. There are various planning proposals currently with Council for residential, commercial and public space uses including a public Marina on the site to the immediate north of the subject site.

The site is heavily constrained by environmental matters including flooding, coastal wetlands, bushfire, environmental significant land, biodiversity, threatened ecological communities (BC Act) and contamination.

Whilst the site is currently entirely zoned C2 Environmental Conservation, the site benefits from previously approved heavy industrial land use of the site (Materials Recycling Facility (Concrete Crushing Recycling)) issued by the former Planning Assessment Commission in September 2015 (Refer to **Attachment 5**).

Through previous planning proposals and independent investigation, the site is deemed unsuitable for residential and commercial uses due to lack of site specific or strategic merit, various environmental constraints, lack of infrastructure and for use as a homemaker/bulky goods centre or specialised/discount retail outlet as poor performing against policy and market tests.

This Council initiated planning proposal seeks to amend the LLEP 2008 in the following manner:

1. Rezone the site from C2 Environmental Conservation to C2 Environmental Conservation, E4 General Industrial and RE1 Public Recreation;
2. Introduce a 20m Height of Building for the proposed E4 General Industrial part of the site; and
3. Introduce a nil Floor Space Ratio for the proposed E4 General Industrial and RE1 Public Recreation zoning parts of the site.

The proposed 20m height of building proposed for the proposed E4 General Industrial zoning of the site is consistent with the various other General Industrial zoned land within the Liverpool Local Government Area which ranges from 15m-30m. The nil floor space ratio for the proposed General Industrial zoned land is deemed appropriate as Liverpool Development Control Plan 2008 contains industrial controls to manage bulk and scale and amenity impacts on surrounding land uses such as setbacks and landscaping controls.

The planning proposal is prepared in accordance with The Department of Planning and Environment's LEP Making Guideline (August 2023).

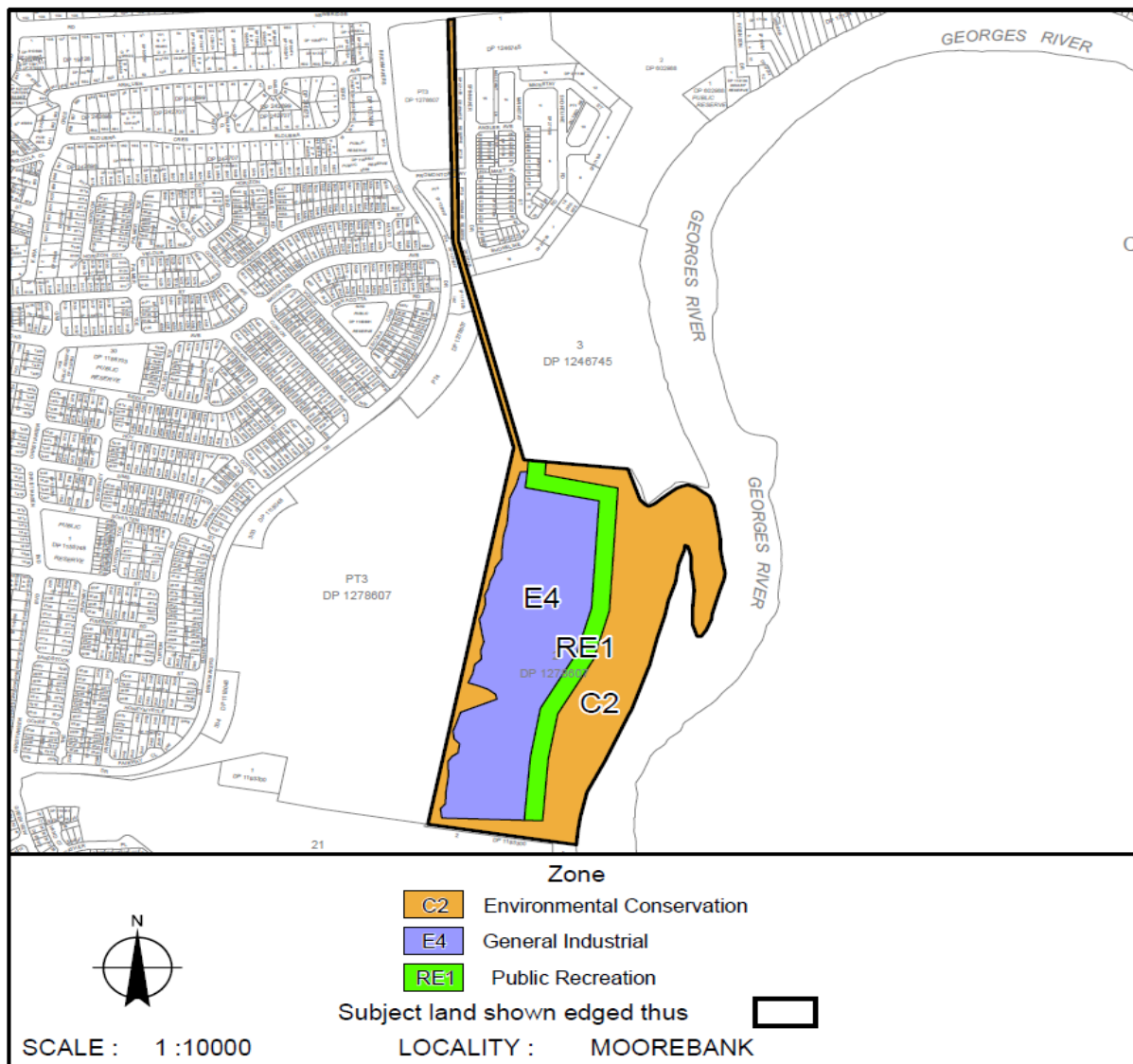


Figure 2: Proposed zoning of subject site

### 3. CONSIDERATIONS FOR STRATEGIC AND SITE SPECIFIC MERIT

The Department's *Local Environmental Plan Making Guideline* includes various questions to guide and justify the merit assessment of planning proposals.

Council has prepared a planning proposal (**Attachment 1**) which provides a comprehensive assessment of the planning proposal against the Department's *Local Environmental Plan Making Guideline* for site specific and strategic merit which concludes that the planning proposal demonstrates site specific and strategic merit.

Further, assessment of the planning proposal against traffic and access, heritage, acoustics, visual privacy, bulk and scale and the sites environmental constraints including flooding, bushfire, contamination and biodiversity are contained within the Planning Proposal report.

#### **4. RECOMMENDATION**

That the planning proposal is supported to proceed to a Gateway determination, as it demonstrates sufficient strategic and site specific merit given the existing approved use on the site.



<b>Item Number:</b>	2
<b>Application Number:</b>	DA-1386/2021
<b>Proposed Development:</b>	Demolition of existing structures, the construction of multi dwelling housing development consisting of 6 x 2 storey dwellings, removal of 5 trees, and associated works.
<b>Property Address</b>	58 McGowen Crescent, Liverpool & 40 Atkinson Street, Liverpool
<b>Legal Description:</b>	Lot 31 DP 27242 & Lot 77 DP 27242
<b>Applicant:</b>	G K C Developments Pty Ltd
<b>Land Owner:</b>	G K C Developments Pty Ltd & Liverpool City Council
<b>Cost of Works:</b>	\$1,787,760
<b>Recommendation:</b>	Approved subject to Deferred Commencement Consent
<b>Assessing Officer:</b>	Margaret Roberts - GAT and Associates

## 1. EXECUTIVE SUMMARY

Council has received a Development Application (DA-1386/2021) seeking consent for the demolition of existing structures, construction of multi dwelling housing development consisting of six (6) two-storey dwellings, removal of five (5) trees, and associated works, on a site legally known as Lot 31 DP 27242 and formally known as 58 McGowen Crescent, Liverpool.

In order to dispose of stormwater in a suitable manner, the development application also involves the creation of an easement to drain water over the adjoining Discovery Park to the west before connecting to the stormwater system within the park. The lot requiring the easement is 40 Atkinson Street (Lot 77 DP 27242) which is owned by Liverpool City Council. A Deed of agreement in relation to the creation of the easement has been entered into with the owners for both properties and adjoining landowners consent has been provided. A deferred commencement condition will be imposed relating to proving that the Deeds of Agreement to Grant Easement over the adjoining lot (Lot 77 DP 27242) have been registered on the title of the affected lots for piping and acquisition of a drainage easement over the drainage pipeline proposed in Discovery Park.

The site is zoned R3 Medium Density Residential and RE1 Public Recreation pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008) and the proposed development is permissible with consent.

The amended development proposal is considered to be generally compliant with Council's applicable local provisions under LLEP 2008 and Liverpool Development Control Plan 2008 (LDCP 2008). The proposal is considered to be an acceptable form of development in that regard.

The Development Application was notified between 9 February 2022 and 24 February 2022 in accordance with Liverpool Community Participation Plan 2019. One objection was received during the exhibition period, which raised the following concerns:

- Amount of fill and retaining wall height proposed along the boundary to No. 60 McGowen Crescent; and
- Location of the proposed stormwater drainage easement.

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

***Conflict of interest***

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

*(a) the council*

The proposal seeks development at 58 McGowen Crescent and requires the creation of an easement at 40 Atkinson Street, which is owned by Liverpool City Council.

The applicant lodged a Class 1 Appeal with the Land and Environment Court against the deemed refusal of DA-1386/2021 on 7 November 2022. On 7 August 2023, a Notice of Discontinuance was issued by the Court as the applicant withdrew the appeal. This was based on discussions held during a joint experts' conference in July 2023 where the applicant made design changes to the proposal. As no determination has been made on the application, the assessment and determination functions are still active and therefore the application is still able to be determined. This report is based on amended plans submitted following these discussions that occurred during the appeal process.

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 as a Deferred Commencement, subject to the imposition of conditions.

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

### **2.1 The site**

The primary subject land for this application is known as 58 McGowen Crescent, Casula, legally described as Lot 31 DP 27242. The site is located on the southern side of McGowen Crescent, Liverpool, approximately 350m south of the intersection of McGowen Crescent and Atkinson Street. The site is irregular in shape having an approximate area of 1328m<sup>2</sup>.

The site slopes from east to west (side boundaries) and adjoins Discovery Park, a public open space to its rear boundary which is under the ownership of Liverpool City Council. Discovery Park (Lot 77 in DP 27242, known as 40 Atkinson Street) is a local heritage item referred to as Discovery Park and Milestone, including Collingwood Heritage Precinct and Aboriginal Place (Item 42) and the Collingwood Heritage Precinct Group, including homestead, service wing, interiors, horse trough, cistern, gardens and grounds (Item 43).

The development proposal relies on a stormwater easement traversing the Council-owned land (Lot 77 in DP 27242).

Existing on the site is a dwelling house with associated structures. The location of the site and the adjoining Discovery Park can be seen in the aerial view in Figure 1 below.



**Figure 1:** Aerial view of subject site (Source: Mecone Mosaic)

## 2.2 The locality

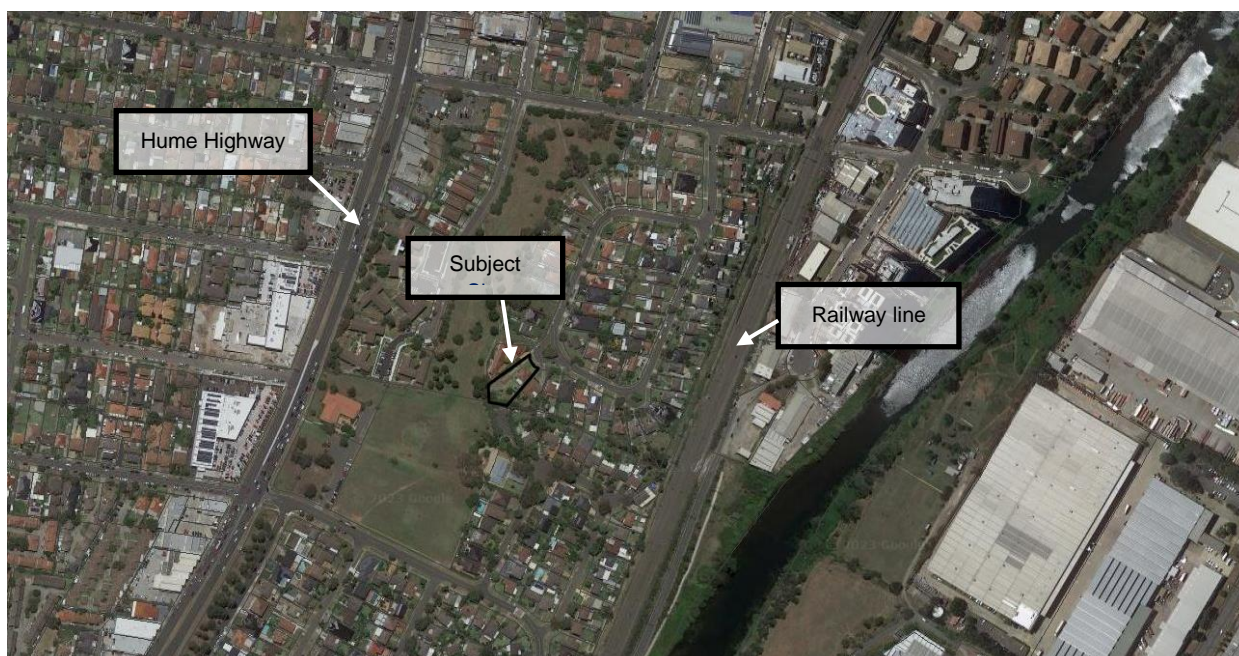
The subject Site is located on the southern side of McGowen Crescent, Liverpool approximately 350m south of the intersection of McGowen Crescent and Atkinson Street.

At the rear boundary, the site also adjoins heritage items Discovery Park and Milestone, including Collingwood Heritage Precinct and Aboriginal Place (item 42) and the Collingwood Heritage Precinct Group, including homestead, service wing, interiors, horse trough, cistern, gardens and grounds (Item 43).

The site is located approximately 203m from Mill Park and 283m from Georges River. It is also located approximately 400m from Liverpool Dunbier Park Community Centre and Al Alamanh College, and 1.3km from Liverpool Railway Station.

The surrounding area consists of a range of low and medium density residential developments in the form of single dwellings and multi dwelling housing developments. Development to the northwest consists of an existing multi-unit housing development with

the eastern property being a single dwelling house. The locality of the site is demonstrated within Figure 2.



**Figure 2:** Locality Surrounding the Proposed Development (Source: Council's maps)

### 3. BACKGROUND/HISTORY

#### 3.1 Site Background & History

DA No.	Proposed Development	Determination
DA-994/2014	Demolition of existing structures, construction of multi-dwelling development consisting of eight (8) double storey dwellings with basement parking	Approved
DA-583/2020	Demolition of existing structures, construction of a multi-dwelling development consisting of eight (8) double storey dwellings with basement parking	Rejected
DA-683/2020	Demolition of existing structures and the construction of a multi-dwelling development consisting of eight double storey dwellings with basement parking	Withdrawn
DA-1386/2021	Demolition of existing structures, the construction of multi dwelling housing development consisting of 6 x 2 storey dwellings, removal of 5 trees, and associated works	Subject Application

The applicant lodged a Class 1 Appeal with the Land and Environment Court against the deemed refusal of DA-1386/2021 on 7 November 2022. On 7 August 2023, a Notice of

Discontinuance was issued by the Court as the applicant withdrew the appeal. This was based on discussions held during a joint experts' conference in July 2023 where the applicant made design changes to the proposal. As no determination has been made on the application, the assessment and determination functions are still active and therefore the application is still able to be determined. This report is based on amended plans submitted following these discussions that occurred during the appeal process.

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

##### **Site Works**

- Demolition of existing structures.
- Removal of 5 trees.
- Driveways and open parking areas.
- Landscaping and associated civil works.
- Strata subdivision.

##### **Multi Dwelling Development – six (6) x two-storey units**

###### **Unit 1**

**Ground Floor** – Kitchen, dining room, living room, laundry, storage, stacked garage with two (2) car spaces.

**First Floor** – Three (3) bedrooms (one with ensuite and walk in robe), balcony, linen press, one (1) bathroom.

###### **Unit 2**

**Ground Floor** – Kitchen, living room, dining room, laundry, single garage.

**First Floor** – Three (3) bedrooms (one with ensuite), linen press, bathroom.

###### **Unit 3**

**Ground Floor** – Kitchen, living room, dining room, laundry, stacked garage with two (2) car spaces.

**First Floor** – Three (3) bedrooms (one with ensuite), linen, bathroom.

###### **Unit 4**

**Ground Floor** – Kitchen, living room, dining room, laundry, stacked garage with two (2) car spaces.

**First Floor** – 4 bedrooms (one with ensuite), bathroom, linen press.

###### **Unit 5**

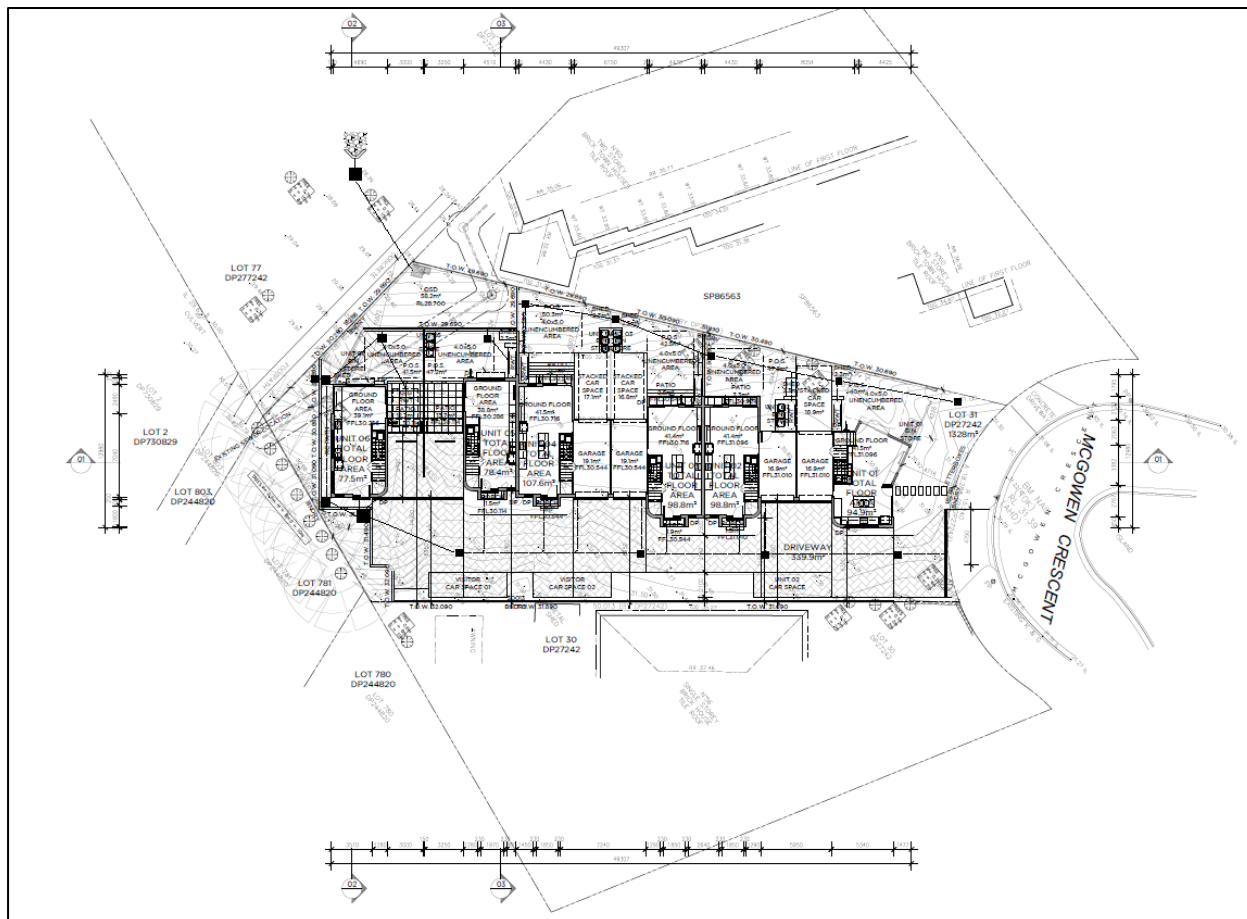
**Ground Floor** – Kitchen, living room, dining room, laundry, single garage, patio.

**First Floor** – 2 bedrooms (one with walk in robe), bathroom.

**Unit 6**

**Ground Floor** – Kitchen, living room, dining room, laundry, single garage, patio.

**First Floor** – 2 bedrooms, bathroom, study.



**Figure 3:** Proposed site plan (source: Alvaro Architects Pty Ltd)

**5. STATUTORY CONSIDERATIONS**

**5.1 Relevant matters for consideration**

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

**Environmental Planning Instruments (EPI's)**

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021; and
- Liverpool Local Environmental Plan 2008.

### Development Control Plan

- Liverpool Development Control Plan 2008;
  - Part 1: General Controls for All Development; and
  - Part 3.6: Multi Dwelling Housing (Terraces, Townhouses and Villas) in the R3 and R4 Zones

### Contributions Plans

- Liverpool Contributions Plan 2018 - Established Areas applies pursuant to Section 7.11 of the EPA & Act.

## **6. ASSESSMENT**

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

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

#### **(a) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The application is supported by a BASIX Certificate in accordance with the provisions of the SEPP which indicates that the required targets for water, thermal comfort and energy are met by the proposal.

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less portable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for houses and units.

A BASIX Certificate (**Certificate number: 1246301M\_04**) has been submitted for the proposed development. The proposal is considered satisfactory regarding water, energy efficiency and thermal comfort.

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

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land.

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

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

Pursuant to the above SEPP, Council must consider:

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

Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, 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.

<b>Clause 4.6 - Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	It is unlikely the land is contaminated as it is an existing residentially zoned allotment.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The land is considered to be suitable for the proposed works and it is unlikely that the land is contaminated, given the history of the site for residential use.
(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, there is no evidence to suggest that the land has been or is contaminated and a formal land contamination assessment is not required. It is considered that the proposal is satisfactory for the site and the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021 through the imposition of appropriate conditions of consent.

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

*Note: Chapters 7 – 12 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 were repealed on 21 November 2022. However, Part 6.6 of the SEPP states these former repealed provisions continue to apply to a development application made, but not yet determined, on or before the date of the repeal. Given that DA-1386/2021 was lodged and has not been determined prior to the date of the repeal, the subject application will continue to be assessed under the relevant former provisions in Chapters 7-12 of the SEPP (Biodiversity and Conservation) 2021 (Biodiversity SEPP).*



At the time of lodgement, Greater Metropolitan Regional Environmental Plan (GMREP) No. 2 – Georges River Catchment was applicable. However, this policy was repealed shortly after, and replaced by State Environmental Planning Policy (Biodiversity and Conservation) 2021. The provisions of GMREP No. 2 were transferred across to the SEPP under Chapter 11 – Georges River Catchment.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

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

<b>Clause 11.6 General Principles</b>	<b>Comment</b>
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Proposal reviewed by Council's Land Development Engineer and considered satisfactory subject to conditions.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	The engineering plans were submitted and reviewed by Council's Land Development Engineer. Conditions of consent apply with respect to sediment and erosion mitigation measures.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	The proposal is consistent with the strategy.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	The application was not required to be referred to the DPE - Water and the proposal is consistent with the guidelines.

(g) whether there are any feasible alternatives to the development or other proposal concerned.	No. The site is located in an area nominated for residential development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
<b>Clause 11.7 Specific Principles</b>	<b>Comment</b>
(1) Acid sulfate soils	The land is identified as containing Class 5 acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping. The site is located within 500m of Class 1 acid sulfate soil, however, there are no works proposed below 5m AHD by which the watertable is likely to be lowered below 1m AHD on the adjacent class of land.
(2) Bank disturbance	No bank disturbance is proposed.
(3) Flooding	The site is not flood affected.
(4) Industrial discharges	Not applicable.
(5) Land degradation	The proposed development is unlikely to cause land degradation.
(6) On-site sewage management	The site will be connected to a reticulated sewer system.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Water management details provided in civil engineering details and approved by condition of consent by Council's Engineers.
(10) Urban development areas	The area is not within an Urban Release Area.
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control and salinity measures to be implemented in construction.
(13) Wetlands	Not applicable.

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

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

Permissibility of the stormwater management system is provided under the provisions of Clause 2.138 of this SEPP, which specifies that:

**2.138 Development permitted with consent**

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

In accordance with this SEPP, the proposed stormwater infrastructure works would be defined as a stormwater management system which is defined as:

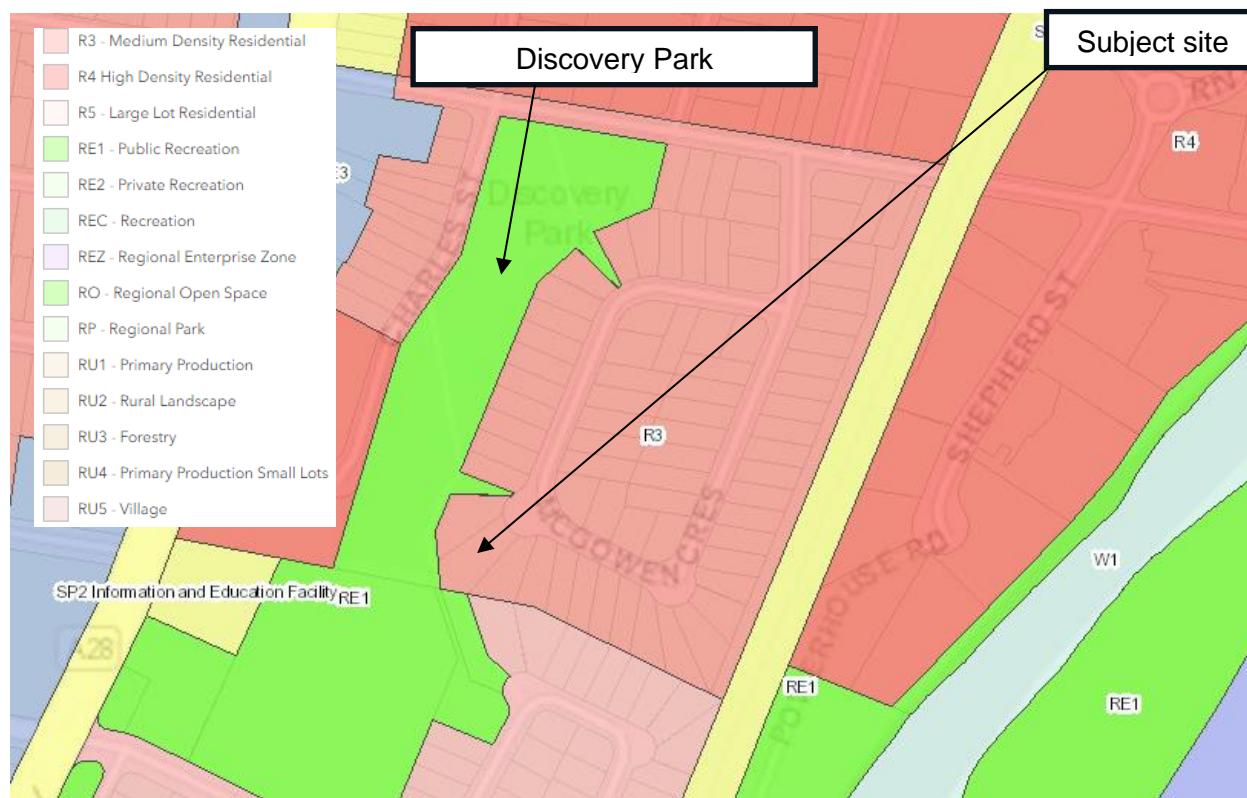
**stormwater management system means—**

- (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.

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

**(i) Zoning**

The subject site is zoned R3 – Medium Density Residential in accordance with the Liverpool Local Environmental Plan 2008. The adjoining Council-owned Discovery Park is zoned RE1 Public Recreation. An extract of the zoning map is provided below.



**Figure 4 – Extract of LLEP 2008 zoning map (site indicated with black arrow) (Source: NSW Planning Portal Spatial Viewer)**

**(ii) Permissibility**

The proposed development is best described as *multi-dwelling housing*, which is defined as follows:

***multi dwelling housing*** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

This form of development is a permissible use within the R3 – Medium Density Residential zone.

Discovery Park, which adjoins the site to the west, is zoned RE1 – Public Recreation. As discussed under the State Environmental Planning Policy (Transport & Infrastructure) 2021 section of this report, permissibility for the stormwater works are gained under Clause 2.138 of the SEPP, which specifies that:

**2.138 Development permitted with consent**

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

In accordance with this SEPP, part of the proposed application involving the drainage works would be defined as a *stormwater management system* which is defined 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.

**(iii) 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 a permissible type of development within the R3 Medium Density Residential zone and is consistent with the above zone objectives. The amended proposal has been designed to mitigate adverse impacts on surrounding land uses and the locality by demonstrating consistency with Council's local planning provisions. As such, the development will ensure a high level of residential amenity is achieved and maintained in accordance with Council's plans and policies. The amended development will also provide an increased variety of housing types in the locality.

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 proposal will not prevent the land from being able to be used for public open space or recreational purposes. The proposal seeks to have the stormwater drainage system designed to discharge runoff through a proposed pipeline across the adjoining Council-owned property (Lot 77 in DP 27242). This will rely on an updated written consent approval through a deed of agreement for piping and acquisition of a drainage easement over the drainage pipeline proposed in the public reserve, which is subject of a recommended Deferred Commencement condition.

#### **(iv) Principal Development Standards**

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

<b>LLEP 2008 - Principal Development Standards</b>		
<b>Development Provision</b>	<b>Requirement</b>	<b>Comment</b>
2.7 Demolition requires development consent	The demolition of a building or work may be carried out only with development consent.	<b>Complies with conditions</b> Consent sought for demolition works onsite and will form conditions of consent.
4.1 Minimum Lot Size	Minimum lot size permitted: 300m <sup>2</sup>	<b>Not Applicable.</b> No Torrens title subdivision is proposed.
4.3	Maximum height permitted:	<b>Complies.</b>

Height of Buildings	8.5m	7.746m maximum building height proposed.
4.4 Floor Space Ratio (FSR)	Maximum FSR permitted: 0.5:1. Area 2 = 0.55:1	<b>Complies.</b> The proposed FSR is 0.465:1.
5.10 Heritage Conservation	To protect and conserve existing items/locations identified as containing significant heritage value	<b>Complies</b> The site adjoins Discovery Park and a car parking area associated with the Collingwood Heritage Precinct, which is listed as a local item (I42) and the Collingwood Heritage Precinct Group including homestead, service wing, interiors, horse trough, cistern, gardens and grounds, off Birkdale Crescent, is listed as a State item (I43). The Collingwood Complex is listed on the State Heritage Register (SHR 01774). The entire Park area has been included as part of the SHR curtilage (Plan 2191).  A Statement of Heritage Impact has been submitted to support the application. The statement assessed the proposal with respect to the controls in LLEP 2008, LDGP 2008, and Heritage NSW criteria. The statement concluded that the proposal is acceptable and any potential heritage impacts are reduced with appropriate measures.  The application was referred to Council's Heritage Officer, who reviewed the relevant information and raised no objection, subject to conditions.
6.5 Public Utility Infrastructure	Public utility infrastructure must be available	<b>Complies with conditions</b> All required utilities are considered to be available.
7.7 Acid sulfate soils	The site is mapped as having Class 5 acid sulfate soils.	<b>Complies</b> The site is located within 500m of

	Development consent is required for works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land	Class 1 soils, however no works are proposed below 5m AHD by which the watertable is likely to be lowered below 1m AHD on the adjacent class of land.
7.31 Earthworks	Council to consider matters listed (a)-(g)	<b>Complies with conditions</b> Earthworks are proposed for this development and is unlikely to adversely impact on the amenity of adjoining properties, drainage patterns and soil stability, subject to the imposition of conditions of consent. Sediment control details have also been provided.

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

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

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

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

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

- Part 1 of the LDCP 2008, which covers general controls relating to all types of development within the Liverpool LGA;.
- Part 3.6: Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 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 1. Matters where variations to the development controls occur are also provided below.

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
Townhouse and Villa Development on an 18m Frontage Block	Dwellings at the rear of the property must not be more than 1 storey high. An attic is permitted. - The rear of the property for Section 4 means all land 15m from the rear property boundary.	<b>Considered acceptable on merit</b> Units 5 and 6 have a building height of two storey. This is considered acceptable as adequate setback is provided to minimise overlooking to POS of neighbouring properties. Furthermore, the built form is consistent with the multi dwelling which adjoins the site to the northwest.  The proposal will not result in adverse impact on solar access or visual outlook as the site adjoins a public open space to the rear where no built form is present.
Setbacks	<u>Rear Setbacks</u> Ground floor without windows to habitable rooms: 4.0m Ground floor with windows to habitable rooms: 4.0m First floor without windows to habitable rooms: 4.5m First floor with windows to habitable rooms and neighbouring POS: 6.0m	<b>Considered acceptable on merit</b> <u>Rear</u> Ground floor: 1.7m First floor: 1.7m  The proposal is consistent with the built form which adjoins the site to the northwest at 60 McGowen. A smaller rear setback is considered acceptable as the site adjoins a public open space to the rear and will not result in solar access or privacy impact to the open space.
Cut and Fill	Maximum Cut permitted: 500mm Maximum Fill permitted: 750mm	<b>Complies with condition</b> A maximum cut of 1m and fill of 600mm have been proposed. This was reviewed by Council's Engineer who raised no objection, subject to conditions.  During the proceedings in the Land and Environment Court, the setback distance of the retaining wall to the south of the site was raised as a concern due to its proximity to trees on Council land. A condition is to be



LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones		
Control	Requirement	Comment
		imposed to ensure adequate setback is provided between the retaining wall and the trees on Council land.
Building Design and Appearance	The first floor of the townhouse developments must be no greater than two thirds of the ground floor area.	<b>Considered acceptable on merit</b> See justification below. The first floor of the dwellings have areas greater than 2/3 of their respective ground floor.
	<p><b><u>Justification</u></b></p> <p>The first floor of all dwellings are greater than two-thirds of the ground floor area for their respective dwelling. Despite this non-compliance with the building design control, the variation is considered justifiable for the following reasons:</p> <ul style="list-style-type: none"> <li>- Although the upper levels are larger than that prescribed under the development control, there is sufficient articulation within each of the building's facades.</li> <li>- The development employs a good mix of building materials to help improve the fenestration and minimise the apparent bulk of the structures.</li> <li>- The proposal includes a substantially compliant building height (i.e. max. of 7.746m) which is well below the 8.5m height limit. Because of this reduced building height, the proposal does not impose undue bulk on adjoining properties or the streetscape.</li> <li>- The development is compliant with the maximum floor space ratio allowed onsite and therefore is not considered to have excessive bulk at the first storey.</li> <li>- The development is generally consistent with the setback requirements and landscaping controls and therefore is not considered to be excessively bulky, especially at the first storey.</li> <li>- Despite the non-compliance, the proposal does not result in any unreasonable overshadowing of adjoining properties and remains compliant with the provisions of the LDCP 2008 in this regard.</li> </ul>	
Car Parking and Access	<u>Internal Driveway and Car Parking layout</u> Minimum Internal Driveway Width permitted: 3.5m	<b>Complies on merit</b> The proposed internal driveway will be a minimum of 3.14m in width. This is considered acceptable as it prevents a 'gun barrel' effect. The section of the driveway which adjoins the street has a minimum width of 5.2m and allows for two-way movement.

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
Landscaping and Fencing	Landscaping shall be provided along the side and rear boundaries to provide privacy for adjoining residents.	<b>Considered Acceptable subject to condition</b> Landscaping has been incorporated along the side and rear boundaries. Conditions to apply regarding an amended landscape plan for the provision of a 1.8m tall trellis with adequate planting (i.e. star jasmine) along the setback for the driveway and visitor parking spaces to the southeast boundary.

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

There are no Planning Agreements which apply to the development.

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

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the National Construction Code. Accordingly, appropriate conditions of consent will be imposed where compliance with the NCC is required.

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

**(a) Natural Environment**

Impacts on the natural environment have been assessed as part of the development application. The proposal is unlikely to result in any detrimental impact on the natural environment surrounding the subject site, or to any endangered and non-endangered species of flora and fauna and appropriate conditions of consent will apply to help minimise and mitigate any potential environmental concerns.

**(b) Built Environment**

The proposed development is unlikely to create an unreasonable adverse impact on the surrounding built environment. The proposed development is considered to have been designed in a way that is generally consistent with Council's requirements for development in a medium density zone and for multi-dwelling development. Furthermore, it is considered that the proposal has been designed with sufficient regard to surrounding properties and any

future occupants of the site to ensure that adverse amenity impacts have been minimised, particularly in terms of visual and acoustic privacy and overshadowing.

**(c) Social Impacts**

The proposed development will have a positive social impact in the area through increasing housing choice in the locality. The development is unlikely to generate any identifiable detrimental social impacts and is consistent with the desired development type in the locality.

**(d) Economic Impacts**

The short term positive economic impacts development that result from construction spending and employment opportunities generated during the construction phase are generally recognised.

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

The site is considered to be suitable for the proposed development. The proposal is generally compliant with the provisions of the LLEP 2008, the relevant Environmental Planning Instruments, and LDCP 2008, as outlined in this report. The proposal is unlikely to result in any adverse impacts to the locality and are considered to be within the public interest.

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

**(a) Internal Referrals**

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

<b>DEPARTMENT</b>	<b>COMMENTS</b>
Land Development Engineering	No objections subject to conditions. A deferred commencement condition will be imposed relating to ensuring that the Deeds of Agreement to Grant Easement over the adjoining lot have been registered on title.
Natural Environment – Landscape	Supported, subject to conditions of consent
Waste Management	Supported, subject to conditions of consent
Traffic and Transport	Supported, subject to conditions of consent
Building	Referral is not required for this application
Environmental Health	Supported, subject to conditions of consent
Heritage	Supported, subject to conditions of consent
Property Service	Condition relating to Stormwater Easement Works is provided.

**(b) External Referrals**

AGENCY	COMMENTS
Sydney Water	Upgrade on water and wastewater servicing facilities may be required. Detailed requirements will be provided once the development is referred to Sydney Water for a Section 73 application, which will be conditioned prior to the issue of the Construction Certificate.

**(c) Community Consultation**

In accordance with the Liverpool Community Participation Plan 2019, the application was notified between 9 February and 24 February 2022. One (1) objection was received in response to the exhibition period. It is acknowledged that the points of objection were dealt with during the Land and Environment Court proceedings.

The issues raised in the submission, and a response to each, are summarised as follows:

**ISSUE 1: *Amount of fill and retaining wall height proposed along the boundary to No. 60 McGowen Crescent***

The extent of fill along the northwestern boundary has been reduced, with a maximum fill of 600mm now proposed above natural ground level. This has been reviewed by Council's Land Development Engineering Section and is deemed satisfactory, subject to conditions.

**ISSUE 2: *Location of the proposed stormwater drainage easement***

The proposed stormwater design and drainage easement has been relocated further north of the previous location with a lower natural ground level. This has been reviewed by Council's Land Engineering Section and is deemed satisfactory, subject to conditions.

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

The development is consistent with the objectives of the R3 Medium Density zone and is generally compliant and considered acceptable with the relevant planning provisions and controls contained under the LLEP 2008 and LDGP 2008. Where non-compliances have been identified, these have either been considered justifiable in the circumstances, or addressed by way of consent conditions. As such the proposal is considered to be within the public interest.

## **7. DEVELOPMENT CONTRIBUTIONS**

A Section 7.11 Development Contributions is applicable to the proposed development in accordance with the Liverpool Contributions Plan 2018 – Established Areas. The contribution has been checked by Council’s Contributions Accountant and will be 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, Liverpool LEP 2008, LDCP 2008, and the relevant codes and policies of Council.

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

## **9. RECOMMENDATION**

That Development Application DA-1386/2021 be **approved subject to a ‘deferred commencement’ consent.**

## **ATTACHMENTS**

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1. Liverpool Development Control Plan 2008 Compliance Tables
2. Plans of the Proposal - **Confidential**
3. Conditions of Approval with Associated External Comments and 7.11. Payment Form

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

27 November 2023

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

LDCP 2008 - Part 1 General Controls for all Development

Development Control	Provision	Comment	Complies
<b>Section 2. Tree Preservation</b>	Controls relating to the preservation of trees	The subject site contains existing trees. Five trees are to be retained and five trees are proposed to be removed to facilitate the development. The applicant has provided Landscape Plans which was reviewed by Council's Landscape Officer who raised no objection subject to conditions of consent.	Complies with conditions
<b>Section 3. Landscaping and Incorporation of Existing Trees</b>	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. Conditions of consent will apply regarding landscaping as well as the inclusion of street trees to be planted along the frontage.	Complies with conditions
<b>Section 4 Bushland and Fauna Habitat Preservation</b>	Controls relating to bushland and fauna habitat preservation	The site is not mapped as containing significant vegetation.	N/A
<b>Section 5. Bush Fire Risk</b>	Controls relating to development on bushfire prone land.	The site is not mapped as bushfire prone land.	N/A
<b>Section 6. Water Cycle Management</b>	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 raised no issues subject to conditions.	Complies with conditions
<b>Section 7. Development Near Watercourse</b>	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval from the NSW Office of Water.	The proposal is not within 40m of a watercourse.	N/A
<b>Section 8. Erosion and</b>	Erosion and sediment control plan to be submitted.	Conditions of consent will be imposed to ensure that erosion	Complies with conditions

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Sediment Control</b>		and sediment control measures are implemented.	
<b>Section 9. Flooding Risk</b>	Provisions relating to development on flood prone land.	The site is not identified as flood prone land.	N/A
<b>Section 10. Contaminated Land Risk</b>	Provisions relating to development on contaminated land.	As per SEPP (Resilience and Hazards) 2021 the development is considered acceptable and the site suitable for the future use of the land.	Complies
<b>Section 11. Salinity Risk</b>	Provisions relating to development on saline land.	Development to comply with the BCA requirements.	Complies with conditions
<b>Section 12. Acid Sulphate Soils</b>	Provisions relating to development on acid sulphate soils	The development site is identified as containing Class 5 acid sulphate soils. No further consideration is required as there are no works proposed below 5m AHD or will likely lower the watertable below 1m AHD.	Complies
<b>Section 13. Weeds</b>	Provisions relating to sites containing noxious weeds.	The site is not identified as containing noxious weeds.	N/A
<b>Section 14. Demolition of Existing Development</b>	Provisions relating to demolition works	Demolition of existing structures is proposed and conditions to be applied to ensure compliance with relevant SafeWork NSW and Australian Standards requirements.	Complies with condition
<b>Section 15. On Site Sewage Disposal</b>	Provisions relating to OSMS.	OSMS is not proposed.	N/A
<b>Section 16. Aboriginal Archaeology</b>	An initial investigation must be carried out to determine if the proposed development or activity occurs on land potentially containing an item of aboriginal archaeology.	The development site is not mapped as a potential area containing Aboriginal archaeology.	N/A
<b>Section 17. Heritage and Archaeology</b>	Provisions relating to heritage sites.	The site adjoins Discovery Park and a car parking area associated with the Collingwood Heritage Precinct, which has been listed as a local item (I42) and the Collingwood Heritage Precinct Group including homestead, service wing, interiors, horse trough, cistern, gardens and grounds,	Complies with conditions

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

Development Control	Provision	Comment	Complies
		<p>off Birkdale Crescent, is listed as a State item (143). The Collingwood Complex is listed on the State Heritage Register (SHR 01774). The entire Park area has been included as part of the SHR curtilage (Plan 2191).</p> <p>A Statement of Heritage Impact has been submitted to support the application. The statement assessed the proposal with respect to the controls in LLEP 2008, LDCP 2008, and Heritage NSW criteria. The statement concluded that the proposal is acceptable and any potential heritage impacts are reduced with appropriate measures.</p> <p>The application was referred to Council's Heritage Officer, who reviewed the relevant information and raised no objection, subject to conditions.</p>	
<b>Section 20. Car Parking and Access</b>	<p><u>Car Parking Controls Residential &amp; Business Zones</u></p> <p>1 space per small dwelling (&lt;65sqm) or 1 bedroom 1.5 spaces per medium dwelling (65-110sqm) or 2 bedrooms 2 car spaces per large dwelling (&gt;110sqm) or 3 or more bedrooms</p> <p>1 visitor car space for every 4 dwellings or part thereof.</p> <p>12 spaces required in total.</p>	12 parking spaces are proposed.	Complies
<b>Section 21. Subdivision of Land and Buildings</b>	There must be a minimum of three buildings, spaces, or land parcels for strata subdivision.	Strata subdivision is proposed for the six (6) units.	Complies
<b>Section 22. Energy Conservation</b>	New dwellings, are to demonstrate compliance with State Environmental	The application has been accompanied by a BASIX Certificate and conditions of	Complies with condition



**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

Development Control	Provision	Comment	Complies
	Planning Policy – Building Sustainability Index (BASIX).	consent will apply to ensure compliance with the BASIX commitments.	
<b>Section 23 Reflectivity</b>	Provisions relating to the use of reflective materials on the exterior of buildings.	Highly reflective materials are not proposed.	Complies
<b>Section 25. Waste Disposal and Re-use Facilities</b>	Provisions relating to waste management during construction and on-going waste.	Waste storage areas are located in the private open spaces and can be accessed through garages where required. Councils Waste Management officer has reviewed the waste management plan and conditions of consent were provided.	Complies with condition

**Liverpool Development Control Plan 2008 – Part 3.6 Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones**

The proposed development is subject to the LDCP 2008. Part 3.6 of the LDCP 2008 covers controls specifically relating multi dwelling housing in areas zoned R3 or R4. The following key controls are discussed in the following table:

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
Control	Requirement	Comment
Subdivision, Frontage and Lot Size	<p>The minimum lot size for multi dwelling housing is 1,000m<sup>2</sup>. Where development pursuant to section 4 is proposed, the minimum lot size shall be 650m<sup>2</sup>.</p> <p>The minimum lot width for multi dwelling housing is 22m. Where development pursuant to section 4 is proposed, the minimum lot width shall be 18m.</p>	<p><b>Complies</b></p> <p>The total site area is 1328m<sup>2</sup> with a site width at the front of 18.288m. Therefore Section 4 of the DCP is applicable.</p>
Site Planning	Site layout should consider, and as far as possible minimise overshadowing, acoustic and visual intrusion on neighbouring and on site dwellings.	<p><b>Complies</b></p> <p>The proposed dwellings are considered to have been designed to minimise impacts on adjoining properties such that the development will not lead to non-compliances with the privacy, overshadowing and solar access controls.</p>
	There must be a direct link from at least one living area to the principal private open space.	<p><b>Complies</b></p> <p>Each dwelling of the multi-dwelling housing development will provide a direct link to the POS from the living</p>

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
		rooms which has been demonstrated in the plans.
	The siting of windows of habitable rooms on the first floor shall minimise overlooking to the principal private open space of neighbouring properties.	<b>Complies</b> The siting of windows of habitable rooms is considered to have been designed to minimise overlooking to POS of neighbouring properties.
	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.	<b>Complies with conditions</b> The stormwater plans indicate that stormwater will be discharged via an OSD system. This aspect has been reviewed by Council's Land Development Engineer, who has raised no issues subject to conditions.
	The siting of dwellings shall be orientated to maximise solar access to both external courtyards and internal living areas.	<b>Complies</b> The shadow diagrams indicate that the POS and living rooms will receive a compliant level of solar access.
	Where possible all existing substantial vegetation on site shall be retained.	<b>Complies</b> 5 trees are being retained on the site.
	Multi Dwelling Housing is not permitted on cul-se-sac heads or streets with a carriageway width of less than 6.5m.	<b>Complies</b> The proposed development is not located on a cul-de-sac head and McGowen Crescent has a carriageway width of 8m.
Townhouse and Villa Development on an 18m Frontage Block	<u>Controls relating to 18m frontage blocks</u> At least two dwellings must have a maximum floor space of 80sqm. - These dwelling must have a maximum of two bedrooms. - These dwellings must have a carport, rather than a garage. This control applies over Section 7 – Car Parking and Access.	<b>Complies</b> Unit 5 and 6 are 2-bedroom units with a floor space of 78.4 sqm and 77.5 sqm respectively. Carports are proposed for these two units.

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	<p>Dwellings at the rear of the property must not be more than 1 storey high. An attic is permitted.</p> <p>- The rear of the property for Section 4 means all land 15m from the rear property boundary.</p>	<p><b>Complies on merit</b> Units 5 and 6 are two storey. This is considered acceptable as adequate setback is provided to minimise overlooking to POS of neighbouring properties. Furthermore, the built form is consistent with the townhouse which adjoins the site to the northwest.</p> <p>The proposal will not result in adverse impact on solar access or visual outlook as the site adjoins a public open space to the rear where no built form is present.</p>
	At least one dwelling should face and address the street.	<b>Complies</b> Unit 1 has frontage to McGowen Crescent.
	All dwellings built must conform to the Controls listed within this Part.	<b>Noted</b>
Setbacks	<p><b>Front Setbacks</b> Ground Floor: 4.5m First Floor: 5.5m Classified Roads: 7.0m</p> <p>Verandahs, balconies, eaves and other sun control devices may encroach on the minimum front and secondary setback by up to 1m.</p> <p>Garages or Carports must be set back a minimum of 1m behind the main face of the dwelling (see Figure 2). (The main face is the first wall of a habitable room)</p>	<p><b>Complies</b> <u>Front</u> Ground Floor – 4.7m First Floor – 6m (1m is encroached by the balcony)</p> <p>No garages face the street and the garages internal to the site are setback behind a wall of the dwelling it is associated with, with the exception of Unit 4, 5 and 6. This is considered acceptable as the pedestrian entrance of these units are articulated with a porch and the parking spaces do not dominate the façade of the dwellings.</p>
	<p><b>Side Setbacks</b> Ground floor with windows to habitable rooms: 4.0m</p> <p>Ground floor without windows to habitable rooms: 0.9m</p> <p>First floor without windows to habitable rooms: 1.2m</p> <p>First floor with windows to habitable rooms and neighbouring POS: 4.0m</p>	<p><b>Complies</b> <u>Side</u> <u>Northwest:</u> Ground floor: 4.3m First floor: 4.5m <u>Southeast:</u> Ground floor: 4.2m First floor: 4.2m</p>

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>																							
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>																					
	<p><b>Rear Setbacks</b> Ground floor without windows to habitable rooms: 4.0m Ground floor with windows to habitable rooms: 4.0m First floor without windows to habitable rooms: 4.5m First floor with windows to habitable rooms and neighbouring POS: 6.0m</p>	<p><b>Complies on merit</b> <u>Rear</u> Ground floor: 1.7m First floor: 1.7m</p> <p>The proposal is consistent with the built form which adjoins the site to the northwest at 60 McGowen. A smaller rear setback is considered acceptable as the site adjoins a public open space to the rear and will not result in solar access or privacy impact to the open space.</p>																					
	<p><b>Setbacks across internal driveways</b> Buildings shall be setback a minimum of 8m from other buildings across a driveway.</p>	<p><b>Complies</b> Buildings are located to the northwestern side of the driveway.</p>																					
Landscaping	<p>A minimum of 20% of the site area shall consist of a Landscape Area, this may include lawn, deep rooted trees, garden beds and mulched areas</p>	<p><b>Complies</b> Landscaped area– 28% (381.6sqm)</p>																					
	<p>A minimum unencumbered area of 4 x 5m shall be provided in rear setback to accommodate deep rooted trees.</p>	<p><b>Complies</b> The rear POS areas provide an area of 4x5m that can accommodate deep rooted trees.</p>																					
Private Open Space	<p>POS required for Dwelling size: Small &lt;65m<sup>2</sup>: 30m<sup>2</sup> Medium 65m<sup>2</sup> – 100m<sup>2</sup>: 40m<sup>2</sup> Large &gt; 100m<sup>2</sup>: 50m<sup>2</sup></p>	<p><b>Complies</b> Private Open Space areas as follows:</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>Unit</th> <th>GFA (m<sup>2</sup>)</th> <th>POS (m<sup>2</sup>)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>94.9</td> <td>40</td> </tr> <tr> <td>2</td> <td>98.8</td> <td>47.8</td> </tr> <tr> <td>3</td> <td>98.8</td> <td>42.5</td> </tr> <tr> <td>4</td> <td>107.6</td> <td>50.3</td> </tr> <tr> <td>5</td> <td>78.4</td> <td>41.5</td> </tr> <tr> <td>6</td> <td>77.5</td> <td>47.5</td> </tr> </tbody> </table>	Unit	GFA (m <sup>2</sup> )	POS (m <sup>2</sup> )	1	94.9	40	2	98.8	47.8	3	98.8	42.5	4	107.6	50.3	5	78.4	41.5	6	77.5	47.5
	Unit	GFA (m <sup>2</sup> )	POS (m <sup>2</sup> )																				
	1	94.9	40																				
2	98.8	47.8																					
3	98.8	42.5																					
4	107.6	50.3																					
5	78.4	41.5																					
6	77.5	47.5																					
	<p>Areas less than 1.5 m in width does not qualify as Private Open Space. Private Open Space must be directly accessible from the main living area.</p>	<p><b>Complies</b> All POS have widths larger than 1.5m and are directly accessible from each dwellings main living area.</p>																					
	<p>A minimum of 50% of the Private Open Space area must receive 3 hours of sunlight between 9:00am and 5:00pm on 21 June.</p>	<p><b>Complies</b> In the morning, shadows fall to the rear of the site to the public open space adjoining to the southwest. During mid-day, shadows fall to the driveway to the</p>																					

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
		southeast. In the afternoon, shadows continue to fall to the southeast and overshadows part of the private open space and front setback area of the property adjoining to the east at 56 McGowen Crescent.
Cut and Fill	Maximum Cut permitted: 500mm Maximum Fill permitted: 750mm	<b>Complies with condition</b> A maximum cut of 1m and fill of 600mm have been proposed. This was reviewed by Council's Engineer who raised no objection, subject to conditions.  During the proceedings in the Land and Environment Court, the setback distance of the retaining wall to the south of the site was raised as a concern due to its proximity to trees on Council land. A condition is to be imposed to ensure adequate setback is provided between the retaining wall and the trees on Council land.
Building Design and Appearance	Unit/s with a street frontage shall orientate the main entrance and where possible at least one living area towards the street.	<b>Complies</b> Unit 1 has its entrances facing the street and incorporate living areas on the ground floor facing the street.
	Entry points shall be enhanced/emphasised to all dwellings especially those facing the street.	<b>Complies</b> The entries of each dwelling are clearly identifiable.
	The first floor of the townhouse developments must be no greater than two thirds of the ground floor area.	<b>Complies on merit</b> See justification below. The first floor of the dwellings have areas greater than 2/3 of their respective ground floor.
	Building facades shall be articulated and roof form is to be varied to provide visual variety.	<b>Complies</b> The building facades are well designed with good articulation and roof form through the use of entry porches and changes in finishes.
	Walls shall be a mix of masonry, rendered and or bagged, and painted, lightweight clad and painted and/or flush face brick. Justification will be required for 100% face brick facades or 100% rendered and painted brick and will be assessed on merit. Facades can be articulated by: - The use of different materials and detailing and / or	<b>Complies</b> The elevation plan demonstrates the use of a mixture of brick and paint on the external face of the dwelling.

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	- The inclusion of balconies, verandas, pergolas and landscaped beds.	
	A sidewall must be articulated if the wall has a continuous length of over 10 m.	<b>Complies</b> All sidewalls do not exceed 10m in length and are articulated.
	The entrance of each dwelling shall be emphasised.	<b>Complies</b> The entrances to each dwelling are articulated with a porch.
	Units built at the rear of the allotment must take into consideration privacy of neighbouring properties. The use of windows with high sill heights should be used to avoid potential privacy issues.	<b>Complies.</b> Windows at the rear of the allotment are designed sufficiently to accommodate privacy of the neighbouring property. Adequate setback is provided to avoid overlooking to adjoining private open spaces.
	Driveways should avoid a 'gun barrel' effect by curving and siting of buildings, which create a driveway form with the divided carriageway separated by soft landscaping.	<b>Complies</b> The driveway is not considered to be a gun barrel and creates articulations and landscaped areas within the site.
	Attic floor space may be used when it is contained wholly within the roof pitch and will not be counted as a storey provided that the attic space is part of the dwelling unit.	<b>Complies</b> The attics proposed are used for storage.
	Space used for car parking shall be included as a storey if the ceiling of the car parking level exceeds more than 1m above the natural ground level.	<b>Noted</b> No basement proposed and parking is incorporated as garages in the dwellings.
	The maximum roof pitch shall be 36 degrees.	<b>Complies</b> Maximum roof pitch is 22.5 degrees.
	Townhouses built on steep or sloping blocks should be built of split-level construction.	<b>Complies</b> Site is relatively level with a gentle slope down from the front to rear. Dwellings are sited to the slope of the land.
	Balconies are not permitted on the first floor of the side and / or rear portion of the dwelling. Balconies may be considered if they address public open space, communal open space and/or private driveways.	<b>Complies</b> No balconies proposed on the side or rear of the site.
	Blank walls in general that address street frontages or public open space are	<b>N/A</b> No blank walls facing the street frontages are proposed.

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	discouraged. Where they are unavoidable building elements or landscaping must be used to break up large expanses of walls. In some cases an anti-graffiti coating will need to apply to the wall to a height of 2 metres.	
	<p><b><u>Justification</u></b> The first floor of all dwellings are greater than two-thirds of the ground floor area for their respective dwelling. Despite this non-compliance with the building design control, the variation is considered justifiable for the following reasons:</p> <ul style="list-style-type: none"> <li>- Although the upper levels are larger than that prescribed under the development control, there is sufficient articulation within each of the building's facades.</li> <li>- The development employs a good mix of building materials to help improve the fenestration and minimise the apparent bulk of the structures.</li> <li>- The proposal includes a substantially compliant building height (i.e. max. of 7.746m) which is well below the 8.5m height limit. Because of this reduced building height, the proposal does not impose undue bulk on adjoining properties or the streetscape.</li> <li>- The development is compliant with the maximum floor space ratio allowed onsite and therefore is not considered to have excessive bulk at the first storey.</li> <li>- The development is generally consistent with the setback requirements and landscaping controls and therefore is not considered to be excessively bulky, especially at the first storey.</li> <li>- Despite the non-compliance, the proposal does not result in any unreasonable overshadowing of adjoining properties and remains compliant with the provisions of the LDCP 2008 in this regard.</li> </ul>	
Internal Design	Multi Dwelling Housing located on street boundaries shall have habitable rooms located to the front of the dwelling for security and surveillance to the street.	<b>Complies</b> Unit 1 incorporates living areas which front the street to promote surveillance.
	Living rooms should take advantage of northern aspects where possible. Access to private open space must be from at least one living room.	<b>Complies</b> Most dwellings are able to benefit from northern solar access, where achievable. Each dwelling's POS is accessible from their respective ground floor living areas.
	The internal layout of the dwelling must incorporate cross ventilation.	<b>Complies</b> Each dwelling can achieve cross ventilation.
	Bathrooms, ensuites, laundries and walk in wardrobes should be located to the side and the rear of the development.	<b>Complies</b> The proposed dwellings incorporate laundry areas near the garages and bathrooms and ensuites are typically

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
		oriented to the side and rear of dwellings.
	Each dwelling must provide a minimum storage area of 8m <sup>3</sup> .	<b>Complies</b> Sufficient storage is provided to each dwelling in the form of wardrobes to bedrooms and storage spaces within the dwelling including the attic and underneath stairs.
	Locate active use rooms or habitable rooms with windows overlooking communal/public areas (e.g. playgrounds, gardens).	<b>Complies</b> The bedrooms for Unit 6 are located to the rear of the site which will allow for passive surveillance to the adjoining public open space.
Car Parking and Access	<u>Internal Driveway and Car Parking layout</u> Minimum Internal Driveway Width permitted: 3.5m	<b>Complies on merit</b> The proposed internal driveway will be a minimum of 3.14m in width. This is considered acceptable as it prevents a 'gun barrel' effect. The section of the driveway which adjoins the street has a minimum width of 5.2m and allows for two-way movement
	The extent of paved area for driveways shall be kept to a minimum. Driveways abutting dwellings shall be kept to a minimum.	<b>Complies</b> The proposed paved area is limited to that required for the driveway, parking, and manoeuvring areas.
	Avoid large expanses of driveways, including concentrating double garages adjacent to each other.	<b>Complies</b> The proposed development has tried to reduce large expanses of driveways where possible.
	<u>Basement Car Parking</u> Basement car parking is permitted but will be included as a storey if the ceiling is located more than 1m above the natural ground level. On sites that slope away from the street, underground car parking structures that protrude more than 1m above natural ground level toward the rear are not included as a storey where topographical features warrant and the streetscape is not adversely affected. The car parking area should be adequately obscured from visible sight by screen planting.	<b>N/A</b> No basement proposed.



**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	Kerbs shall be provided along the edge of all internal driveways. All traffic must be able to enter and exit the site in a forward direction.	<b>Complies</b> Kerbs are to be provided along the edge of the proposed driveway.
Landscaping and Fencing	The setback areas of development are to be utilised for canopy tree planting.	<b>Complies</b> Setback areas of the development have been utilised for canopy tree and screening planting.
	The landscape design for all development must include canopy trees that will achieve a minimum 8m height at maturity within front and rear setback areas.	<b>Complies</b> Landscaping is generally appropriate. The landscape plan has been reviewed and is supported by Council's landscape officer.
	Landscape planting should be principally comprised of native species to maintain the character of Liverpool and provide an integrated streetscape appearance. Species selected in environmentally sensitive areas should be indigenous to the locality. However, Council will consider the use of deciduous trees in small private open space areas such as courtyards for control of local microclimate and to improve solar access.	<b>Complies.</b> The landscaping schedule submitted indicates that: - Various native species have been proposed within the landscaped area. - A mix of vegetation has been proposed within the landscaped areas.
	The landscaping shall contain an appropriate mix of canopy trees, shrubs and groundcovers. Avoid medium height shrubs (600 – 1800mm) especially along paths and close to windows and doors.	<b>Complies</b> Shrubs proposed near fronts of units are appropriately sized.
	Landscaping in the vicinity of a driveway entrance should not obstruct visibility for the safe ingress and egress of vehicles and pedestrians.	<b>Complies</b> Landscaping in the vicinity of the driveway entrance would be unlikely to obstruct visibility.
	Tree and shrub planting alongside and rear boundaries should assist in providing effective screening to adjoining properties. The minimum height of screening to be provided is 2.5 to 3m at maturity.	<b>Complies</b> Tree and shrub planting has been incorporated along the rear and side boundaries to provide effective screening to adjoining properties.
	Landscaping on any podium level or planter box shall be	<b>N/A</b>

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	appropriately designed and irrigated. Landscaping on podium levels and planter boxes should be accessible from habitable areas of dwellings or elsewhere as appropriate for gardener access in other forms of development.	
	Landscaping shall be provided along the side and rear boundaries to provide privacy for adjoining residents.	<b>Complies with condition</b> Landscaping has been incorporated along the side and rear boundaries. A condition of consent is recommended, requesting an amended landscape plan showing a 1.8m tall trellis with adequate planting (i.e. Star Jasmine) along the setback for the driveway and visitor parking spaces to the southeast boundary.
	A maximum of 30% of the front setback is to be paved or sealed, unless the area is used for direct access to a garage, carport or dwelling entry.	<b>Complies on merit</b> 65.2% of the proposed front setback will be landscaped with the remaining land being used for driveway.
	Trees adjacent to private open space areas and living rooms should provide summer shade and allow winter sun entry.	<b>Complies</b> The proposed trees allow for appropriate shade and sunlight. Landscape options were reviewed and accepted by Council's Landscape Officer.
	Any tree with a mature height over 8m should be planted a minimum distance of 3m from the building or utility services.	<b>Complies</b> Trees with mature height of 8m have been proposed to be planted at least 3m from utility services.
	Areas between a driveway and the windows of a dwelling shall be landscaped to provide privacy for dwellings.	<b>Complies</b> The areas between the driveway and the dwellings are landscaped where possible.
	<u>Primary Frontage</u> The max height of a front fence is 1.2m. The front fence may be built to a max height of 1.5m if the fence is setback 1m from the front boundary with suitable landscaping in front.	<b>N/A</b> No front boundary fencing is proposed.
	Fences should not prevent surveillance by the dwelling's occupants of the street or communal areas and are to be a minimum 30% transparent.	<b>N/A</b> As above.

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	Front fences shall be constructed in masonry, timber, metal pickets and/or vegetation and must be compatible with the proposed design of the dwelling.	<b>N/A</b> As above.
	The front fence may be built to a maximum of 1.8m <i>only if</i> : - 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.	<b>N/A.</b> As above.
	Front fences are to be constructed of materials compatible with the proposed design of the dwelling.	<b>Complies</b> No front fencing proposed. The fence proposed for the POS for Unit 1 will be constructed with metal.
	Boundary fences shall be lapped and capped timber or metal sheeting.	Noted.
Amenity and Environmental Impact	<u>Overshadowing</u> 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.	<b>Complies</b> The shadow diagrams indicate that the adjoining properties would receive 3 hours of sunlight to 50% of the POS and living rooms between 9.00am and 5.00pm.
	<u>Privacy</u> 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.	<b>Complies</b> The dwelling design, landscaping and fencing is considered to maximise privacy to the subject site and adjoining properties.
	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.	<b>Complies with condition</b> Windows to habitable rooms are located on the ground floor and are mostly screened by 1.8m high fencing and are appropriately setback to the adjoining properties to minimise overlooking.
	Landscaping should be used where possible to increase visual	<b>Complies</b> Landscaping will be incorporated in the rear and side setbacks and along

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	<p>privacy between dwellings and adjoining properties.</p> <p><u>Acoustic Impact</u> Noise attenuation measures should be incorporated into building design to ensure acoustic privacy between on-site and adjoining buildings.</p> <p>Developments in areas adversely impacted upon by rail or traffic related noises must incorporate the appropriate noise and vibration mitigation measures into the design in terms of the site layout, building materials and design, orientation of the buildings and location of sleeping and recreation areas.</p> <p>Where party walls are provided they must be carried to the underside of the roof and be constructed in accordance with Part F5 of the Building Code of Australia.</p> <p>The proposed buildings must comply with the Environment Protection Authority criteria and the current relevant Australian Standards for noise and vibration and quality assurance.</p>	<p>accessways to increase visual privacy between dwellings and adjoining properties.</p> <p><b>N/A</b> The site is not affected by rail or road noise.</p>
Site Services	<p><u>Letterboxes</u> 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 Freestanding letterbox structures should be designed and constructed of materials that relate to the main building. Residential numbering should be attached to the letterbox so that it is clearly visible from the street frontage. Numbers should be</p>	<p><b>Complies with conditions</b> Advisory conditions will be imposed outlining Australia Post requirements.</p>

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**27 November 2023**

<b>LDCP 2008 Part 3.6 – Multi Dwelling Housing (Villas and Townhouses) in the R3 and R4 zones</b>		
<b>Control</b>	<b>Requirement</b>	<b>Comment</b>
	75mm in height, reflective and in contrast to the backing material.	
	<p><u>Waste Management</u> Waste disposal facilities shall be provided for development. These shall be located adjacent to the driveway entrance to the site.</p> <p>Any structure involving waste disposal facilities shall be located as follows:</p> <ul style="list-style-type: none"> <li>- Setback 1m from the front boundary to the street.</li> <li>- Landscaped between the structure and the front boundary and adjoining areas to minimise the impact on the streetscape.</li> </ul> <p>Not be located adjacent to an adjoining residential property.</p>	<p><b>Complies with conditions</b> Waste storage areas are satisfactory for the development and are located in the private open spaces and can be accessed through widened garages where required. Councils Waste Management officer has reviewed the waste management plan and conditions of consent were provided.</p>
	<p><u>Frontage works and damage to Council infrastructure</u></p> <ul style="list-style-type: none"> <li>- Where a footpath, road shoulder or new or enlarged access driveway is required to be provided this shall be provided at no cost to Council.</li> <li>- Council must be notified of any works that may threaten Council assets. Council must give approval for any works involving Council infrastructure.</li> <li>- 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.</li> </ul>	<p><b>Complies with conditions</b> Footpath and vehicular crossing to be provided as conditions of consent and to be at no cost to Council. Additionally, dilapidation reports will occur before and after works to ensure any damage is rectified.</p>

The proposal is considered to be consistent with the key controls outlined in the Liverpool Development Control Plan 2008.

## **REPORT ATTACHMENT 3 – CONDITIONS OF APPROVAL**

### **ATTACHMENT 1 – DEFERRED COMMENCEMENT**

Development consent shall be deferred pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, until the submission to Council of:

- 1) The applicant shall submit valid/updated documentary evidence that the proposed Deeds of Agreement to Grant Easement over Lot 77 DP27242, 40 Atkinson Street (Discovery Park) have been registered on the title of the affected lots for piping and acquisition of a drainage easement over the drainage pipeline proposed in Discovery Park.

**Note: The items raised within Part 1, above, are to be addressed within twenty-four (24) months of the date shown on Council's determination notice. The consent shall become operative once Council has notified the applicant in writing that the evidence submitted in response to the "Deferred Commencement" conditions is acceptable.**

### **ATTACHMENT 2 – CONDITIONS OF APPROVAL**

**On the submission of the required evidence and on the applicant receiving written notification that Council is satisfied that the matters listed in "Part 1" have been satisfied, then the consent shall become operative subject to compliance with conditions outlined in "Part 2".**

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

#### **A. THE DEVELOPMENT**

##### **Approved Plans**

1. Development the subject of this determination notice must be carried out strictly in accordance with the following plans/reports marked as follows, except where modified by the undermentioned conditions.
  - (a) Architectural plans, prepared by Alvaro Architects Pty Ltd, Job No. 0300, including the following;

<b>Drawing Title</b>	<b>Drawing Number</b>	<b>Revision</b>	<b>Date</b>
Cover Sheet	000	26	11/10/23
Demolition Plan	102	05	29/08/23
Proposed Site Plan	103	21	11/10/23
Proposed Site Plan – Roof	104	16	11/10/23
Setback Plan	105	14	11/10/23
Cut & Fill Plan	106	07	29/08/23
Ground Floor Plan	201	21	11/10/23
First Floor Plan	202	17	11/10/23
Roof Plan	203	13	11/10/23
Sections	301	11	11/10/23
Elevations	302	13	11/10/23

Proposed Area Plan	402	17	11/10/23
Proposed Landscape Area Plan	403	12	11/10/23
Window Schedule	501	11	11/10/23
Fence Elevations & Details	701	10	11/10/23
Driveway Plan	702	12	11/10/23
Strata Subdivision Plan	SUB101	07	29/08/23

- (b) Schedule of External Finishes, prepared by Alvaro Architects Pty Ltd, dated 29/08/2023;
- (c) Landscape Plan; prepared by iScape Landscape Architecture, Plan No. ONE/ONE, Revision E, dated 06/10/2023;
- (d) BASIX Certificate, Certificate No. 1246301M\_04, prepared by Energi Thermal Assessors Pty Ltd, dated 23 August 2023;
- (e) Waste Management Plan for 58 McGowen Crescent, Liverpool, NSW, prepared by Loka Consulting Engineers Pty Ltd, Job No. 21NL174-WMP9, dated 21 August 2023;
- (f) Statement of Heritage Impact, prepared by Perumal Murphy Alessi Pty Ltd, dated November 2021;
- (g) Arboricultural Impact Assessment and Tree management Plan, prepared by Horticultural Management Services, dated 21 August 2023; and
- (h) Traffic Management Report for 58 McGowen Crescent, Liverpool prepared by Loka Consulting Engineers Pty Ltd, Job No. 21NL174-T9, dated 25 August 2023.

#### **Sydney Water Requirements**

- 2. The development is to be carried out in accordance with all relevant requirements issued by Sydney Water in their correspondence dated 10 February 2022. A copy of these requirements is attached to this decision notice (Attachment 4).

#### **Works at no cost to Council**

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

#### **Compliance with EP&A Act**

- 4. The requirements and provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021, must be fully complied with at all times.

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

#### **National Construction Code**

- 5. In accordance with section 4.16(11) of the Environmental Planning & Assessment Act 1979 and clause 69 of the Environmental Planning & Assessment Regulation 2021, it is a prescribed condition that all building work must be carried out in accordance with the applicable Performance Requirements of the National Construction Code. Compliance with the Performance Requirements can only be achieved by:

- (a) Complying with the Deemed to Satisfy Provisions; or

- (b) Formulating an Alternative Solution, which complies with the Performance Requirements or is shown to be at least equivalent to the Deemed to Satisfy Provision, or a combination of (a) and (b).

#### **Stormwater Easement Works**

6. The deeds of agreement between the parties for 58 McGowen Crescent, Liverpool and 40 Atkinson Street, Liverpool are to be complied with before, during and after the construction of the proposed development.

## **B. PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE**

**The following conditions are to be complied with or addressed prior to the issue of a Construction Certificate.**

#### **Section 7.11 Payment (Liverpool Contributions Plan 2018 - Established Areas)**

7. As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with Liverpool Contributions Plan 2018 - Established Areas as amended.

The total contribution is **\$69,755.00** and will be adjusted at the time of payment in accordance with the contributions plan.

A breakdown of the contributions payable is provided in the attached payment form.

The Contributions Plan may be inspected online at [www.liverpool.nsw.gov.au](http://www.liverpool.nsw.gov.au). Payment must be accompanied by the attached form (Attachment 3).

#### **Fee Payments**

8. Unless otherwise prescribed by this consent, all relevant fees or charges must be paid. Where Council does not collect these payments, copies of receipts must be provided. The following fees are applicable and payable:
- a) Damage Inspection Fee – relevant where the cost of building work is \$20,000 or more, or a swimming pool is to be excavated by machinery,
  - b) Fee associated with Application for Permit to Carry Out Work Within a Road, Park and Drainage Reserve, and

These fees are reviewed annually and will be calculated accordingly.

#### **Long Service Levy**

9. Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, is to be forwarded to the Long Service Levy Corporation or the Council, prior to the issuing of a Construction Certificate, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.



**Retaining Walls on Boundary**

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

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

**Retaining Wall Setback**

11. Prior to the issue of a Construction Certificate, an amended site and landscaping plan are to be submitted to the satisfaction of Liverpool City Council's Manager of Development Assessment showing that an adequate setback is provided between the retaining wall to the south of the site (next to Unit 6) and the trees on Council land. The amended plans are to be accompanied by a letter from a certified arborist to ensure the retaining wall does not have an impact on the trees located on the adjoining Council land.

**Landscaping**

12. Prior to the issue of a Construction Certificate, an amended landscaping plan is to be submitted to the satisfaction of Liverpool City Council's Manager of Development Assessment showing planting, such as 1.8m tall trellis with Star Jasmine, within the setback along the driveway next to the visitor parking spaces, along the southeastern boundary.

**S68 Local Government Act - Stormwater drainage works**

13. Prior to the issue of a Construction Certificate, the Principal Certifying Authority and/ or Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including the payment of application and inspection fees, has been lodged with, and approved by Liverpool City Council for stormwater construction and connection to Discovery Park.

Engineering plans are to be prepared in accordance with the development consent, Liverpool City Council's Design Guidelines and Construction Specification for Civil Works and best engineering practice.

**Notification**

14. The certifying authority must advise Council, in writing of:
- The name and contractor licence number of the licensee who has contracted to do or intends to do the work, or
  - The name and permit of the owner-builder who intends to do the work.

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

**S138 Roads Act – Minor Works in the Public Road**

15. Prior to the issue of a Construction Certificate, a Section 138 Roads Act application/s, including payment of fees, shall be lodged with Liverpool City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to:
- Vehicular crossings (including kerb reinstatement of redundant vehicular crossings),
  - Road opening for utilities and stormwater (including stormwater connection to Council infrastructure), or
  - Road occupancy or road closures.

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Liverpool City Council's specifications.

Note: Approvals may also be required from the Roads and Maritime Service (RMS) for classified roads.

**On-Site Detention**

16. On-Site Detention shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by:

Company	Job No./Drawing No.	Title	Revision/ Issue	Date
Loka Consulting Engineers	21NL174- D00	Cover sheet, legend and drawing schedule	F	22-08-23
Loka Consulting Engineers	21NL174- D01	Ground floor, site stormwater drainage plan	J	25-08-23
Loka Consulting Engineers	21NL174- D02	Site stormwater drainage details	G	21-08-23
Loka Consulting Engineers	21NL174- D03	Sediment and erosion control plan and details	D	22-08-23
Loka Consulting Engineers	21NL174-D04	Catchment Plan	D	21/08/23

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.

Engineering plans and supporting calculations for the on-site detention system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the on-site detention system has been designed in accordance with Liverpool City Council's Design Guidelines and Liverpool City Council's On-Site Stormwater Detention policy and Technical Specification.

**Water Quality**

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

The Construction Certificate must be supported by:

- a) Specification & installation details of the stormwater pre-treatment system
- b) The approval of an operation and maintenance manual/ schedule for the stormwater pre-treatment system

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

**No loading on easements**

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

**Dilapidation Report**

19. A dilapidation report of all infrastructure fronting the development in McGowen Crescent is to be submitted to Liverpool City Council. The report is to include, but not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 20m either side of the development.

**Dilapidation Report Private Property (Excavations)**

20. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey is to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

**Cladding**

21. Prior to issue of a construction certificate the certifier must be satisfied that all proposed attachments, cladding material and systems forming part of external walls comply with the NCC BCA and relevant Australian Standards. The certifier must be able to demonstrate compliance with evidence of suitability as per clause A2.2 of the BCA for all products/systems proposed.

**Products banned under the Building Products (Safety) Act 2017**

22. No building products that are banned, or products that are subject to a ban if used in a particular way under the Building Products (Safety) Act 2017 are to be used in the construction of the development.

**Provision of Services – Land Development**

23. An application to obtain a Section 73 Compliance Certificate under the Sydney Water Act 1994, must be lodged with Sydney Water. To facilitate this, an application must be made through an authorised Water Servicing Coordinator. Please refer to the "building and developing" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au), or telephone 13 20 92.

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

**Driveway/Services – Location**

24. Driveway entry points must be located clear of all utility services. It is recommended that discussion be held with the relevant authorities before construction works commence. Council does not accept any responsibility towards these services.

**Driveway/Services – Design**

25. Driveways are to conform to Council standard requirements for vehicle crossings as detailed in Council's Design and Construction Specifications for Subdivisions (as amended) and as per the requirements in Council's DCP.

**Access, Car Parking and Manoeuvring – General**

26. The Certifying Authority shall ensure and certify that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development have been designed and are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Council's Development Control Plan.

**Access, Car Parking and Manoeuvring – Detail**

27. The Certifying Authority shall ensure and certify that:
- a) Off street access and parking complies with AS2890.1,
  - b) Sight distance at the street frontage has been provided in accordance with AS 2890.1,

**Bus Stops**

28. Possible Bus Stop locations are to be discussed with the local bus companies and are to be designed in accordance with bus company requirements including incorporating the requirements of the Disability Discrimination Act 2002, Disability Standards for Accessible Public Transport and the Guidelines for assessing compliance of bus stops with the Disability Standards for Accessible Public Transport 2002.

**Detailed Design Drawings**

29. The applicant is to discuss with Council's Traffic Management Section of the traffic requirements prior to undertaking the detailed design of traffic facilities, signs and linemarking in the existing and/or proposed public domain.

Detailed design drawings of the proposed traffic facilities, signs and line markings in the existing and proposed public domain areas are to be submitted to Council for approval using Approval of Traffic Facilities including Signs and Line Marking Schemes Application Form. The application is available on Council website and should be lodged online. The drawings are to be prepared by a suitably qualified person.

**Road Works**

30. Works within the public road reserve shall not commence until the design drawings including the associated signs and line marking scheme have been approved by Council's Traffic Management Section.

**Public Domain Works – Street Lighting**

31. The approved street lighting designs are to be implemented along all new and existing streets within the proposed development in accordance with Liverpool City Council standards and to the satisfaction of Council.

All street lighting must comply with the service provider Street Lighting Policy and illumination requirements and Council's Street Lighting policy.

All cost associated with the installation of street lighting shall be borne by the developer.

**Provision of Services**

32. An application to obtain a Section 73 Compliance Certificate under the Sydney Water Act 1994, must be lodged with Sydney Water. To facilitate this, an application must be made through an authorised Water Servicing Coordinator. Please refer to the "building and developing" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au), or telephone 13 20 92.

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

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

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

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

#### **Construction Environmental Management Plan (CEMP)**

35. Prior to issue of a construction certificate, a Construction Environmental Management Plan (CEMP) for the development must be provided to the Principal Certifying Authority for approval. The environmental site management measures must remain in place and be maintained throughout the period of the development. The CEMP must address all environmental aspects of the development's construction phases, and include (where relevant), but not be limited to the following:
- a) Asbestos Management Plan;
  - b) Project Contact Information;
  - c) Site Security Details;
  - d) Timing and Sequencing Information;
  - e) Site Soil and Water Management Plan;
  - f) Noise and Vibration Control Plan;
  - g) Dust Control Plan;
  - h) Air Monitoring;
  - i) Odour Control Plan;
  - j) Health and Safety Plan;
  - k) Waste Management Plan;
  - l) Incident management Contingency; and
  - m) Unexpected Finds Protocol.

The CEMP must be kept on site for the duration of the works and must be made available to Council Officers upon request.

#### **Mechanical Plant and Equipment**

36. Before the issue of a construction certificate, the certifier must be satisfied that mechanical plant and equipment were selected in consultation with a suitably qualified acoustic consultant in accordance with the recommendations of the approved acoustic report.

Note: The 'suitably qualified acoustic consultant' must be a member of the Australian Acoustical Society or employed by an Association of Australasian Acoustical Consultants (AAAC) member firm.

## C. PRIOR TO WORKS COMMENCING

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

### Commencement of Building work

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

### Construction Traffic Management Plan (CTMP)

38. A construction traffic management plan (CTMP) prepared by a suitably qualified person is to be submitted to and endorsed by Council's Transport Management Section. The CTMP is to be submitted using Assessment of Construction Traffic Management Plan application form. The application is available on Council website and can be lodged online. Comments on the CTMP will be provided and the updated CTMP are to be implemented during construction.

A copy of the endorsed CTMP and traffic control plans are to be available on the works site for inspection by authorised Council officers.

Construction shall not commence until the assessed construction traffic management plan has been endorsed. The endorsed CTMP is to be implemented during construction.

### Work Zone

39. A Works Zone application is required if on-street parking is affected with commuter parking and there is insufficient off-street parking space.

A Works Zone Application Form is available on Council website and can be lodged online by attaching all required documents indicated on the application form.

### Construction Certificates

40. Any CC that may be issued in association with this development consent must ensure that any certified plans and designs are generally consistent (in terms of site layout, site levels, building location, size, external configuration and appearance) with the approved Development Application plans.
41. Prior to the commencement of any building works, the following requirements must be complied with:
- (a) Construction Certificate must be obtained from the Council or an Accredited Certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*,
  - (b) Where a Construction Certificate is obtained from an Accredited Certifier, the applicant shall advise Council of the name, address and contact number of the Accredited Certifier, in accordance with Section 4.19, 6.6, 6.7, 6.12, 6.13, 6.14 of the Act,

- (c) A copy of the Construction Certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment,
- (d) A Principal Certifying Authority (PCA) must be appointed to carry out the necessary building inspections and to issue an occupation certificate, and
- (e) The PCA must advise Council of the intended date to commence work which is the subject of this consent by completing a notice of commencement of building works or subdivision works form, available from Council's Customer Service Centre. A minimum period of two (2) working days' notice must be given.

#### **Compliance with Home Building Act (if applicable)**

42. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

#### **Signs on site**

43. A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:
- a) showing the name, address and telephone number of the principal certifier for the work, and
  - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

**Note:** This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

#### **Construction Requirements**

44. Retaining walls or other approved methods necessary to prevent the movement of excavated or filled ground, together with associated subsoil drainage and surface stormwater drainage measures, shall be designed strictly in accordance with the manufacturers details or by a practising structural engineer. Retaining walls on any boundary are to be of masonry construction.

#### **"DIAL BEFORE YOU DIG"**

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



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

#### **Home Building Act requirements**

46. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifier for the development to which the work relates (not being Council) has been given the council written notice of the following information:
- a) In the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor; and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act,
  - b) In the case of work to be done by an owner-builder:
    - i. the name of the owner-builder, and
    - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

#### **Demolition Works**

47. Demolition works shall be carried out in accordance with the following:
- a) Prior to the commencement of any works on the land, a detailed demolition work plan designed in accordance with the Australian Standard AS 2601-2001 – The Demolition of Structures, prepared by a suitably qualified person with suitable expertise or experience, shall be submitted to and approved by Council and shall include the identification of any hazardous materials, method of demolition, precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
  - b) Prior to commencement of any works on the land, the demolition Contractor(s) licence details must be provided to Council.
  - c) The handling or removal of any asbestos product from the building/site must be carried out by a SafeWork NSW licensed contractor irrespective of the size or nature of the works. Under no circumstances shall any asbestos on site be handled or removed by a non-licensed person. The licensed contractor shall carry out all works in accordance with SafeWork NSW requirements.

#### **Refuse Disposal**

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

#### **Sydney Water**

49. Development plans must be processed and approved by Sydney Water.

**Waste bins**

50. Prior to any works commencing, all Council-issued domestic waste bins serving the existing house to be demolished at 58 McGowen Crescent Liverpool, must be returned to Liverpool City Council. Please ring Council on 1300 36 2170 to advise that the bins are empty and ready to be removed, so their removal can be noted on the rates system.

**Refrigerants**

51. Prior to any works commencing, any air-conditioning or refrigeration systems fitted to the dwelling or outbuildings to be demolished, must have the refrigerants present in those systems extracted into a durable, air-tight container by a licensed air-conditioning technician. This container and its contents must be sent intact, for secure destruction, to a facility licensed to destroy such refrigerants. Documentary evidence that this has been completed, if indeed these systems are fitted to the dwelling, must be sighted by the Principal Certifying Authority and included as part of the Occupation Certificate documentation.

**Toilet Facilities**

52. Toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
- a) be a standard flushing toilet connected to a public sewer, or
  - b) have an on-site effluent disposal system approved under *the Local Government Act 1993*, or
  - c) be a temporary chemical closet approved under the *Local Government Act 1993*.

**Sediment and Erosion Control**

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

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

**Traffic Control Plan**

54. Prior to commencement of works, a Traffic Control Plan including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note: A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Liverpool City Council.

**Road Occupancy Permit**

55. Road occupancy and road opening approvals will be required from Council to undertake works within the existing road reserve. The following applications are available on Council's website and can be lodged online attaching all required documents indicated on the application form.
- Road Occupancy Application Form
  - Road Opening Application Form

**Environmental Management**

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

**Waste Classification and Disposal of Contaminated Soil and Material**

57. All soils and material(s), liquid and solid, to be removed from the site must be analysed and classified by an appropriately qualified and certified consultant, in accordance with the Protection of the Environment Operations (Waste) Regulation 2014 and related guidelines, in particular the NSW EPA Waste Classification Guidelines, prior to off-site disposal.

All Waste material(s) must be disposed of at an appropriately licensed waste facility for the specific waste. Receipts for the disposal of the waste must be submitted to the Principal Certifying Authority within 30 days of the waste being disposed of.

All waste must be transported by a contractor licenced to transport the specific waste, and in vehicles capable of carting the waste without spillage, and meeting relevant requirements and standards. All loads must be covered prior to vehicles leaving the site.

**Arboricultural Impact Assessment**

58. All recommendations of the approved Arboricultural Impact Assessment and Tree management Plan, prepared by Horticultural Management Services, dated 21 August 2023 that are required to be implemented prior to works commencing shall be carried out to the satisfaction of the PCA.

**D. DURING CONSTRUCTION**

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

**Implementation of the site management plans**

59. While site work is being carried out:
- a) the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times; and

- b) a copy of these plans must be kept on site at all times and made available to Council officers upon request.

#### **Demolition Inspections**

- 60. The following inspections are required to be undertaken by Council in relation to approved demolition works:
  - (a) Immediately prior to the commencement of the demolition or handling of any building structure that contains asbestos. The applicant shall also notify the occupants of the adjoining premises and Workcover NSW prior to the commencement of any works. Please note that demolition works are not permitted to commence on site until such time as a satisfactory inspection result is obtained from Council.
  - (b) Immediately following completion of the demolition. Please note that proof of appropriate disposal of demolition materials (including asbestos) may be required at this time in accordance with the approved Waste Management Plan.

To book an inspection with Council, please call 1300 362 170.

#### **Building Inspections**

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

#### **Identification Survey Report**

- 63. The building and external walls are not to proceed past ground floor/reinforcing steel level until such time as the PCA has been supplied with an identification survey report prepared by a registered surveyor certifying that the floor levels and external wall locations to be constructed, comply with the approved plans, finished floor levels and setbacks to boundary/boundaries. The slab shall not be poured, nor works continue, until the PCA has advised the builder/developer that the floor level and external wall setback details shown on the submitted survey are satisfactory.

In the event that Council is not the PCA, a copy of the survey shall be provided to Council within three (3) working days.

- 64. On placement of the concrete, works again shall not continue until the PCA has issued a certificate stating that the condition of the approval has been complied with and that the slab has been poured at the approved levels.

#### **Construction Requirements**

- 65. In the event the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the following is to be undertaken at full cost to the developer:

- (a) Protect and support the building, structure or work from possible damage from the excavation, and
  - (b) where necessary, underpin the building, structure or work to prevent any such damage.
  - (c) a and b above does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.
  - (d) Retaining walls or other approved methods necessary to prevent the movement of excavated or filled ground, together with associated subsoil drainage and surface stormwater drainage measures, shall be designed strictly in accordance with the manufacturers details or by a practising structural engineer.
66. The applicant/ builder shall be responsible to report to the Council any damage to Council's footpath and road carriageway as a consequence of demolition or excavation or building activities or delivery/ departure of materials associated with this site. The damage shall be reported to Council as soon as the damage becomes apparent to the builder/ site manager. Arrangements to the satisfaction of Council are to be made for making safe by temporary repairs to the public way until permanent restoration and repair can be organised with Council.

#### **Hours of Construction Work and Deliveries**

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

#### **Construction Noise and Vibration**

68. Noise and vibration associated with excavation, demolition and construction activities shall comply with the management levels detailed within the 'Interim Construction Noise Guideline' published by the Department of Environment and Climate Change NSW (DECC 2009/265) dated July 2009 and acceptable vibration values prescribed within the Environmental Noise Management Assessing Vibration: A Technical Guideline (Department of Environment and Conservation, 2006).

All feasible and reasonable noise and vibration mitigation measures shall be implemented and any activities which may exceed the construction noise management levels and vibration criteria shall be identified and managed accordingly.

#### **Craning and Hoardings**

69. If the work is likely to cause pedestrian or vehicular traffic in a public area to be obstructed or rendered inconvenient; or if craning of materials is to occur across a public area or road reserve area a construction hoarding must be erected to prevent any substance from, or in connection with the construction site, falling onto a public area as follows:

Such hoarding or barrier must be designed and erected in accordance with Council's guidelines on hoarding construction. Relevant application under the Roads Act approval must be completed and fees paid prior to the construction of a hoarding on Council road reserve area.

70. Lifting or craning materials over a public footway or roadway is not permitted unless a "B" class construction hoarding has been installed in compliance with Work Cover authority requirements.

#### **Security Fence**

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

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

#### **Removal of Dangerous and/or Hazardous Waste**

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

#### **Contamination**

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

#### **Imported Fill Material**

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

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

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

#### **Record Keeping of Imported Fill**

75. The following records of accepted waste derived fill material must be submitted to the Principal Certifying Authority at the completion of earth works:
- a) the course (including the address and owner of the source site), nature and quantity of all incoming loads including the date, the name of the carrier, and the vehicle registration,
  - b) Documentation confirming the results of the waste classification assessment carried out on the fill material used in the development, and

- c) the results of any chemical testing undertaken on fill material.

#### **Unidentified Contamination**

76. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately after discovery.

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

#### **Environmental Controls**

77. Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
78. Alterations to the natural surface contours must not impede or divert natural surface water runoff, so as to cause a nuisance to adjoining property owners.
79. All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for a period of greater than 14 days.
80. Sediment and erosion control measures are to be adequately maintained during the works until the establishment of grass.
81. Vehicular access to the site shall be controlled through the installation of wash down bays or shaker ramps to prevent tracking of sediment or dirt onto adjoining roadways. Where any sediment is deposited on adjoining roadways, it shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.

#### **Vegetation - Existing Vegetation**

82. All existing trees and areas of native vegetation not identified for removal on approved plans of the proposed development shall be protected from damage during site works. This Protection shall consist of 1800mm high protective fencing, securely installed beneath the outer canopy of any tree to be retained. Trees may be fenced off in clusters where it is not practical to fence off individual trees. There shall be no storing materials, washing machinery or changes to existing soil levels within the fenced areas.

#### **Air Quality**

83. Dust screens shall be erected and maintained in good repair around the perimeter of the area being remediated for the duration of works and until such time as dust nuisance is unlikely.
84. During construction where operations involve excavation, filling or grading of land, or removal of vegetation, including ground cover, the consent holder is to ensure dust is suppressed by regular watering until such time as the soil is stabilised to prevent airborne dust transport. Where wind velocity exceeds five knots the Principal Certifying Authority may direct that such work is not to proceed.
85. The loading and unloading of all vehicles associated with the development must be undertaken within the property boundary of the premises subject to this consent.

86. Measures must be implemented to prevent tracking of sediment by vehicles onto roads.  
Vehicle loads must be covered when entering and exiting the site with material.

**Water Quality**

87. All topsoil, sand, aggregate, spoil or any other material shall be stored clear of any drainage line, easement, water body, stormwater drain, footpath, kerb or road surface and there shall be measures in place in accordance with the approved erosion and sediment control plan.

**Pollution Control**

88. Building operations such as brick cutting, mixing mortar and the washing of tools, paint brushes, form-work, concrete trucks and the like shall not be performed on the public footway or any other locations which may lead to the discharge of materials into Council's stormwater drainage system.
89. The developer is to maintain all adjoining public roads to the site in a clean and tidy state, free of excavated "spoil" material.

**Earthworks**

90. All earthworks shall be undertaken in accordance with AS 3798 and Liverpool City Council's Design Guidelines and Construction Specification for Civil Works. The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

**Waste Management**

91. The Waste Management Plan submitted to and approved by Council and as amended by conditions of consent, must be adhered to at all times throughout all stages of the development. Supporting documentation (receipts/dockets) of waste/recycling/disposal methods carried out, is to be kept and must be produced upon the request of Council or any other authorised officer.

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

92. Any asbestos materials encountered during the demolition work, must be removed, handled, wrapped and disposed of in accordance with the relevant legislation, regulations and safe work practices, of the NSW EPA and WorkCover NSW, as current at the time. If over 10m<sup>2</sup> of asbestos sheet materials are found on the site, all asbestos works must be carried out by a suitably licensed asbestos contractor. The licenced disposal facility of any asbestos found, must be advised to Council and the PCA.
93. All solid and liquid waste is to be removed from the site by a registered waste contractor.
94. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.
95. All solid waste stored on site is to be covered at all times.
96. All demolition, excavation and construction wastes must be separated as they are generated and kept in separate spoil piles, bays, builder's site bins and/or skips. No



wastes other than those noted on the approved waste management plan as being re-used on site, are to be left on site after the completion of the works.

97. All lightweight or granular demolition, excavation or construction waste, e.g. wrapping, packaging materials, bags, insulation, sand, soil etc., must be kept fully enclosed at all times to prevent it from becoming displaced by the wind in strong wind conditions or from washing into sewers, storm drains or creeks, or onto adjacent properties or public land during wet weather.

98. While site work is being carried out:

all waste management must be undertaken in accordance with the waste management plan; and

upon disposal of waste, records of the disposal must be compiled and provided to the Principal Certifying Authority detailing the following:

- a) The contact details of the person(s) who removed the waste;
- b) The waste carrier vehicle registration;
- c) The date and time of waste collection;
- d) A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill;
- e) The address of the disposal location(s) where the waste was taken;
- f) The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.
- g) If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and Council.

#### **Ventilation**

99. The premises shall be ventilated in accordance with the requirements of the BCA (if using deemed to satisfy provisions: AS 1668, Parts 1 & 2)

#### **Traffic Management**

100. If a works zone is required, an application must be made to Council's Traffic and Transport Section. The application is to indicate the exact location required and the applicable fee is to be included. If parking restrictions are in place, an application to have the restrictions moved, will need to be made.
101. Notice must be given to Council's Traffic and Transport Section of any interruption to pedestrian or vehicular traffic within the road reserve, caused by the construction of this development. A Traffic Control Plan, prepared by an accredited practitioner must be submitted for approval, 48 hours to prior to implementation. This includes temporary closures for delivery of materials, concrete pours etc.
102. Applications must be made to Council's Traffic & Transport Section for temporary road closures. The applicant is to include a Traffic Control Plan, prepared by a suitably qualified person, which is to include the date and times of closures and any other relevant information. Applications prepared by a suitably qualified person, are to specify the date and times of proposed closures, traffic control plans, insurances and any other relevant information. This activity may require a seven (7) days advance notice to be installed near the site and/or advertisement in local newspapers and websites to Council's satisfaction.

103. Construction activities affecting adjoining road reserves require submission of a road occupancy application to Council along with traffic control plan/s and public liability insurance. The traffic control plan/s must be prepared by a qualified professional and to be in accordance with the RMS Traffic Control at Worksites Manual, the Austroads Guide to Traffic Management, the RMS Supplements for Austroads Guide to Traffic Management and Australian Standard 1742.
104. All works within the road reserve, including the approved sign and line making scheme, are to be at the applicant cost and all signage is to be in accordance with the RMS Traffic Control at Worksites Manual and the RMS Guide to Signs and Markings.

#### **Car Parking Areas**

105. Car parking spaces and driveways must be constructed of a minimum two coat finish seal or better.

All parking spaces must be clear of obstructions and columns, permanently line marked and provided with adequate manoeuvring facilities.

The design of these spaces must comply with Council's DCP 2008, and Australian Standard 2890.1 Parking Facilities – Off-Street Car Parking.

All car parking areas are to be appropriately line marked and sign posted in accordance with the Council approved stamped plans.

All customer/visitor/staff parking areas are to be clearly signposted limiting car parking for customers/visitors/staff only. The applicant is to cover the costs of installation and maintenance of the signage.

The on-site parking spaces shown in the approved plans must be identified in accordance with A.S.2890.1 Parking Facilities – Off-Street Car Parking.

#### **Directional Signage**

106. Directional signage indicating the location of visitor parking, "in" and "out", crossings and directional arrows are to be provided in accordance with the Council approved stamped plans.

#### **Road Works (Laybacks)**

107. All redundant vehicular crossings shall be removed and replaced with Council's standard kerb and gutter at no cost to Council. The removal and replacement of a driveway with standard integral kerb and gutter shall be the subject of a driveway application to Council and works supervised by that driveway inspection process.

#### **Termite Protection**

108. To protect the buildings from subterranean termite, termite barriers must be installed in accordance with AS 3660.1 to the underside and penetrations of the concrete slab floor. In addition a durable notice must be permanently fixed inside the metre box indicating:
- (a) The method of protection;
  - (b) The date of installation of the system;
  - (c) Where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label;

(d) The need to maintain and inspect the system on a regular basis

Certification from a licensed pest controller shall be submitted to the PCA certifying that the termite protection system installed complies with AS3660.1.

**Construction Environmental Management Plan (CEMP)**

109. The CEMP requirements must remain in place, adhered to and be maintained throughout the period of the development.

**External**

110. Switchboards for utilities shall not be attached to the street and/or road elevations of the development.

111. The mailboxes are to be consistent with the design and colours and materials for the development.

112. The windows of all bathrooms, W.C. and ensuites shall be fitted with translucent obscure glazing to the satisfaction of the PCA.

**Vegetation and Landscaping**

113. Premium quality organic garden soil shall be incorporated into all planting areas in sufficient quantity to achieve optimum plant growing conditions.

114. All garden/planting areas shall be mulched to a depth of not less than 75mm using weed free leaf mulch, wood chip or similar, not pine bark.

**Arboricultural Impact Assessment**

115. All recommendations of the approved Arboricultural Impact Assessment and Tree management Plan, prepared by Horticultural Management Services, dated 21 August 2023 that are required to be implemented during works shall be carried out to the satisfaction of the PCA. This includes, but is not limited to, the works being supervised by an appropriately qualified site Arborist.

**Implementation of BASIX commitments**

116. While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

**Historic Archaeology**

117. As required by the *Heritage Act 1977* in the event that historical relics are encountered/discovered where they are not expected, works must cease immediately and Council and the NSW Heritage Division must be notified of the discovery.

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

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

#### **Aboriginal Cultural Heritage – Staff and Contractors**

118. All relevant on-site staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977. They are to be informed of what the potential heritage on the site will be and its significance. The site supervisor is to maintain a record of who has completed the heritage induction and this is to be provided to Council prior to Issue of Occupation Certificate.

#### **Aboriginal Cultural Heritage – Unexpected Finds**

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

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the National Parks and Wildlife Service Act 1974 to obtain the necessary approvals/permits from the OEH

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

#### **Public Domain Works**

120. All works within the road reserve, including the approved sign and line making scheme, are to be carried out by the applicant, at no cost to Council, in accordance with the TfNSW/RMS 'Delineation Guidelines'.

#### **Public Domain Works – Street Lighting**

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

## **E. PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**The following conditions are to be complied with or addressed prior to issue an Occupation Certificate.**

#### **Occupation Certificate**

122. The premises must not be utilised until an Occupation Certificate is issued by the principal certifier.

**Certificates**

123. Details of critical stage inspections carried out by the principal certifying authority together with any other certification relied upon must be provided to Council with the occupation certificate.
124. The Principal Certifying Authority shall ensure that all compliance certificates required by this development consent are referenced to the condition consent number. The Compliance Certificate is to state that the works as constructed comply fully with the required condition of consent being acted on by the certifier.

**Works as executed – General**

125. Prior to the issue of an Occupation Certificate, works-as-executed drawings and compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Liverpool City Council's Design Guidelines and Construction Specification for Civil Works.

An original set of works-as-executed drawings and electronic copies on a USB of compliance documentation shall also be submitted to Liverpool City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

**Liverpool City Council Clearance – Roads Act/Local Government Act**

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

**Public Domain Works – Street Lighting**

127. The approved street lighting designs are to be implemented along all new and existing streets within the proposed development in accordance with Liverpool City Council standards and to the satisfaction of Council. Endeavour Energy pole numbers and the date poles were energised are to be submitted to Council's Traffic Management Section prior to submitting OC or SC application.

All cost associated with the installation of street lighting shall be borne by the developer.

**Stormwater Compliance**

128. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the On-site detention system/s:
- a. Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent,
  - b. Have met the design intent with regard to any construction variations to the approved design, and
  - c. Any remedial works required to be undertaken have been satisfactorily completed.

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

**Restriction as to User and Positive Covenant**

129. Prior to the issue of an Occupation Certificate a restriction as to user and positive covenant relating to the On-site detention system/s shall be registered on the title of the property.

The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

**Rectification of Damage**

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

Any rectification works within McGowen Crescent will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

**Footpaths**

131. Construction of 1.5m wide by 100mm thick (with one layer of SL72 reinforcing mesh) concrete path paving is to be constructed in front of the development site.

**Dilapidation**

132. Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.

**Inter-allotment Drainage**

133. Prior to the issue of any Occupation Certificate, interim or otherwise the proposed inter-allotment drainage line within Lot 77 DP27242, 40 Atkinson Street (Discovery Park) must be constructed, and the proposed easement registered with the LPI. Evidence of the registration must be provided to the PCA.

**Display of Street Numbers**

134. Street numbers must be prominently displayed at the front of the development in a contrasting colour to the building materials and at the front of each individual unit to comply with the Local Government Act 1973, Section 124(8). The number should be a minimum height of 120mm and be visible at night.

**Certificates**

135. The Principal Certifying Authority shall ensure that all compliance certificates required by this development consent are referenced to the condition consent number. The Compliance Certificate is to state that the works as constructed comply fully with the required condition of consent being acted on by the certifier.

**Section 73 Sydney Water**

136. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained for submission to the PCA prior to issue of Occupation certificate.

**Cladding**

137. Prior to issuing an occupation certificate the principal certifier must be satisfied that suitable evidence has been provided to demonstrate that any external wall cladding material and system is consistent with the consent documentation, NCC and relevant Australian Standards.

**Certificates**

138. Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements of the Telecommunications Act 1997:

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

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

**BASIX**

139. Supporting documentation issued by a suitable qualified person who has installed or carried out the works associated with the BASIX commitments shall be submitted to Council.

**Waste Receipts**

140. Prior to issue of an Occupation Certificate, both the PCA and Council are to be provided with records of all waste transport and disposal dockets, demonstrating that waste materials from the project, have been disposed of at the waste facilities nominated in the approved waste management plan.

**Garbage Services**

141. Prior to the issue of an Occupation Certificate, if onsite waste and recycling collection is required the following restriction as to user must be registered on the title of the property:

The owner/applicant of any property requiring on site collection of waste and recycling is to enter into a legally binding indemnity with Council to control the access and operation of the waste and recycling service. This shall be inclusive on successive owners in perpetuity. All costs involved are to be borne by the applicant.

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

**Landscape**

142. Upon completion of the approved landscape works associated with the development and prior to the issue of any OC, an Implementation Report is to be submitted to the PCA attesting to the satisfactory completion of the landscape works in accordance with the approved landscape plan. The report is to be prepared by a suitably qualified person.

**F. PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

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

**Completion of Subdivision Works**

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

**Stormwater Compliance**

144. Prior to the issue of a Subdivision Certificate the Principal Certifying Authority shall ensure that the on-site detention system/s:
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to be undertaken have been satisfactorily completed.

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

**Restriction as to User and Positive Covenant**

145. Prior to the issue of a Subdivision Certificate a restriction as to user and positive covenant relating to the on-site detention system/s shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Liverpool City Council's standard wording as detailed in Liverpool City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

**Subdivision Compliance**

146. Prior to the issue of a Subdivision Certificate the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:
- a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The Work as Executed drawings shall be prepared in accordance with Council's Design



- Guidelines. Electronic copies of the WAE shall be provided in PDF format and a DXF format to Council along with two hard copies of the WAE plans;
- b) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Inspections are to be carried out in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2006. Any damage that is identified is to be rectified in consultation with Liverpool City Council;
  - c) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries; and
  - d) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Council's Design Guidelines and Construction specifications. The report shall include:
    - i. Compaction reports for road pavement construction,
    - ii. Compaction reports for bulk earthworks and lot regrading,
    - iii. Soil classification for all residential lots, and
    - iv. Statement of Compliance.

#### **Rectification of Damage**

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

Any rectification works within McGowen Crescent will require a Roads Act application. The application is to be submitted and approved by Liverpool City Council prior to such works commencing.

#### **Linen Plans and 88B Instruments**

148. In order to enable a Subdivision Certificate to be issued for submission to the LPI Service, the applicant is required to lodge a separate application along with one (1) original and ten (10) copies of the proposed plan of subdivision and one (1) original and two (2) copies of the proposed 88b instrument (where proposed).
149. The applicant shall pay the standard fee for purpose of subdivision certificate administration of plan checking and release.
150. The final plan of subdivision must be supported by an 88B Instrument, agreed to by Council. The 88B Instrument must burden each lot with a restriction as to user that the dwellings to be erected on each lot are to be sited and constructed in accordance with approved plans and notice of determination (Development Consent) issued by Council for Development Application No. (DA-1386/2021). Any costs associated with the preparation and checking of the instrument are to be borne by the applicant. The preparation of an 88B Instrument will not be required if construction has reached a stage where all brickwork is a minimum 500mm above finished floor level and the construction is in accordance with the development consent and the CC's.
151. The final plan of subdivision must be supported by an 88B Instrument, approved by Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent, and Council's standards, codes and policy's. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.

**Footpaths**

152. Construction of 1.5m wide by 100mm thick (with one layer of SL72 reinforcing mesh) concrete path paving is to be constructed in front of the development site.

**Dilapidation Report**

153. Any rectification works required by Council regarding the condition of Council infrastructure shall be undertaken, at full cost to the developer.

**Service Providers**

154. The following documentation is to be provided prior to the release of the subdivision certificate:

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

Council will not issue a Subdivision Certificate unless the method of sewerage disposal is by gravity reticulation mains to either Sydney Water branch and trunk sewers or Sydney Water point of treatment. Council will not accept any temporary facilities to service the site, including pump-out wet-wells.

- b) Notification of arrangement for the development from Endeavour Energy shall be submitted to Council.
- c) Written certification from the relevant service providers that the telecommunications infrastructure is installed in accordance with:
- i. The requirements of the Telecommunications Act 1997;
  - ii. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
  - iii. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

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

**Completion of Public Utility Services**

155. Before the issue of the relevant occupation certificate, confirmation must be obtained from the relevant authority that any adjustment or augmentation of any public utility services including gas, water, sewer, electricity, street lighting and telecommunications, required as a result of the development, have been completed and this confirmation must be provided to the principal certifier.

**Public Domain Works – Street Lighting**

156. The approved street lighting designs are to be implemented along all new and existing streets within the proposed development in accordance with Liverpool City Council standards and to the satisfaction of Council. Endeavour Energy pole numbers and the

date poles were energised are to be submitted to Council's Traffic Management Section prior to submitting the SC application.

All cost associated with the installation of street lighting shall be borne by the developer.

## **G. CONDITIONS RELATING TO USE**

### **Landscaping**

157. Landscaping shall be maintained in accordance with the approved plan, in a healthy state and in perpetuity by the existing or future owners and occupiers of the development.

If any of the vegetation compromising the landscaping dies or is removed, it is to be replaced with vegetation of the same species, and similar maturity as the vegetation which has died or was removed.

### **Use of Building Intruder Alarm/s**

158. Any building intruder alarm/s associated with the development must only be permitted to operate in accordance with Clause 42 of the Protection of the Environment Operations (Noise Control) Regulation 2017.

### **Domestic Waste Bins**

159. The waste bins for the development, and collection and disposal of the wastes from those bins, must be supplied to the development by a licensed private waste contractor, after the Occupation Certificates have been issued. The waste bins are to be equivalent to a 1 x 140 litre general waste bin, 1 x 240 litre co-mingled recycling bin and 1 x 240 litre green (garden) waste bin per residence. General waste bins are to be collected weekly, and co-mingled and green waste are to be collected on alternate weeks.
160. Bin repair, or replacement when necessary, is to be undertaken by the private waste contractor.
161. The agents of the strata (for Units 1 to 6), must present the waste bins for emptying to the kerbside of McGowen Crescent, no earlier than the afternoon before collection. After emptying, all bins must be removed from the kerbside as soon as possible, and no later than 24 hours after collection, and placed back into the private open space of the relevant unit. No bins are to be left on common property.
162. All bins are to be presented for emptying with lids fully closed.
163. General waste and recycling/green waste bins are to be presented either double-stacked (one behind the other), if the agreement between the strata and the private waste contractor allows for that, or on different days, if double-stacking is not permitted.
164. If the development ever returns to a Council-supplied waste service, then the presentation point for the bins will be along the eastern edge of the adjacent road island, in a single line, with no less than 30cm between each bin.
165. Areas around waste bins must be kept tidy at all times. Bins must not be stored or allowed to overflow in parking or garden areas and must not obstruct the exits of any property.

166. Residents must ensure that all materials they place in the co-mingled recycling bins are acceptable for recycling through that means, and are loose, unbagged and easily separable.
167. Residents will mark their own bins clearly and permanently with both their unit number and the overall property number, to ensure that each unit's bins can be identified and retained by the residents of that property.
168. Bulky household waste collections can be booked either through Council's Customer Service Section, or through the Council website. Maximum limits apply, and the types of materials accepted will be as per the council conditions at the time. Bulky household materials may be put out for collection no earlier than 24 hours before a booked clean-up is due.

#### **Waste Collection and Management**

169. Waste and recyclable material must be managed in a satisfactory manner, covered at all times and not give rise to offensive odour or encourage pest activity. All solid and liquid waste must be removed regularly from the site by a registered waste contractor. Waste must not be permitted to accumulate near the waste storage bins.

#### **Parking Spaces**

170. The following parking spaces should be used solely for the purpose it has been provided:
  - a) Unrestricted resident car parking
  - b) Visitor car parking

#### **Car Parking**

171. A total of 12 off-street parking spaces must be provided on site at all times inclusive of 10 parking spaces for residencies and 2 visitor parking spaces.

#### **Car Parking Management**

172. All parking areas shown on the approved plans must be used solely for this purpose.

#### **Vehicle Access**

173. Vehicles entering or leaving the development site should be in forward direction, if practicable.

#### **Council Assets**

174. Council's on-street assets should be protected at all times. Any damages should be rectified to Council satisfaction.
175. All waste materials generated as a result of the development are to be disposed at a facility licensed to receive such waste.
176. Sufficient space shall be provided within each dwelling for the storage of a minimum of one day's waste and recycling.

**Graffiti**

177. Any graffiti carried out on the property shall be removed, within 48 hours, at full cost to the owner/occupier of the site.

**Use of air conditioner/s on residential premises**

178. Any air conditioner/s used on the residential premises shall comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017 and shall not:
- a) emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):
    - i. before 8:00am or after 10:00pm on any Saturday, Sunday or public holiday; or
    - ii. before 7:00am or after 10:00pm on any other day; or
  - b) cause "offensive noise" as defined by the Protection of the Environment Operations Act 1997; or
  - c) emit a sound pressure level as measured over a 15 minute period (LAeq (15 minute)) at the boundary of any other residential property, at a time other than those specified in (i) and (ii) above, which exceeds the background (LA90 (15 minute)) by more than 5 dB(A).

**Use of Pump/s on Residential Premises**

179. Any pump/s used on the residential premises including but not limited to swimming pool pumps, spa pumps, solar water pumps, rainwater tank pumps and associated equipment must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017 and must not:
- a) emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):
    - i. before 8:00am or after 8:00pm on any Saturday, Sunday or public holiday; or
    - ii. before 7:00am or after 8:00pm on any other day; or
  - b) cause "offensive noise" as defined by the Protection of the Environment Operations Act 1997; or
  - c) emit a sound pressure level as measured over a 15 minute period (LAeq (15 minute)) at the boundary of any other residential property, at a time other than those specified in (i) and (ii) above, which exceeds the background (LA90 (15 minute)) by more than 5 dB(A).

**Use of Heat Pump Water Heater/s on Residential Premises**

180. Any heat pump water heater/s used on the residential premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulation 2017 and must not:
- a) emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):
    - i. before 8:00am or after 10:00pm on any Saturday, Sunday or public holiday; or
    - ii. before 7:00am or after 10:00pm on any other day; or
  - b) cause "offensive noise" as defined by the Protection of the Environment Operations Act 1997; or

- c) emit a sound pressure level as measured over a 15 minute period (LAeq (15 minute)) at the boundary of any other residential property, at a time other than those specified in (i) and (ii) above, which exceeds the background (LA90 (15 minute)) by more than 5 dB(A).

## H. ADVISORY

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

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

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

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

## (h) TELECOMMUNICATIONS ACT 1997 (COMMONWEALTH)

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

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

**ATTACHMENT 3 – SECTION 7.11 PAYMENT FORM****CONTRIBUTIONS PURSUANT TO SECTION 7.11 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979**  
**Liverpool Contribution Plan 2018 Established Areas**

When remitting payment as specified in the Conditions of Consent to the approval, this Form must be submitted with your payment.

**These figures have been calculated to the current CPI Quarter and will be adjusted at the time of payment in accordance with the conditions of consent.**

**APPLICATION NO:** DA-1386/2021

**PROPOSAL:** Demolition of existing structures, the construction of multi dwelling housing development consisting of 6 x 2 storey dwellings, removal of 5 trees, and associated works

<b>Facilities</b>	<b>Amount (\$)</b>	<b>Job No.</b>
<b>Liverpool Contributions Plan 2018 Established Areas</b>		
Community Facilities - works		
Central	\$6,017	GL.10000001870.10099
District Sporting Fields - works		
Central	\$20,236	GL.10000001869.10211
District Passive Open Space - works		
Central	\$12,647	GL.10000001869.10093
Local Passive Open Space - works		
Liverpool	\$17,706	GL.10000001869.10103
Transport - Bikeways - works		
Central	\$2,563	GL.10000001865.10207
Transport - Traffic management - works		
Central	\$7,304	GL.10000001865.10213
Drainage - works		
Central	\$2,250	GL.10000001866.10209
Administration	\$1,031	GL.10000001872.10104
<b>TOTAL</b>	<b>\$69,755</b>	

-----OFFICE USE ONLY -----

**RECORD OF PAYMENT**

**Total Amount paid:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Receipt No.:** \_\_\_\_\_ **Cashier:** \_\_\_\_\_



## ATTACHMENT 4 – SYDNEY WATER REFERRAL



10/02/2022

**Melanie Smith**  
Liverpool City Council  
smithm@liverpool.nsw.gov.au

**RE: Development Application DA-1386/2021 at 58 McGowen Crescent, Liverpool**

Thank you for notifying Sydney Water of DA-1386/2021 at 58 McGowen Crescent, Liverpool, which proposes the demolition of existing structures, development of six two-storey dwellings, associated works and removal of five trees. Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

**Water Servicing**

- Potable water servicing should be available via a DN100 CICL watermain (laid in 1957) on McGowen Crescent.
- Amplifications, adjustments, and/or minor extensions may be required.

**Wastewater Servicing**

- Wastewater servicing should be available via a DN150 VC wastewater main (laid in 1960) within the property boundary.
- Amplifications, adjustments, and/or minor extensions may be required.

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

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

Yours sincerely,



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



#### Attachment 1

##### Section 73 Compliance Certificate

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

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

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

##### Building Plan Approval

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

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

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

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

Sydney Water recommends developers apply for Building Plan approval early as in some instances the initial assessment will identify that an Out of Scope Building Plan Approval will be required.



#### Out of Scope Building Plan Approval

Sydney Water will need to undertake a detailed review of building plans:

1. That affect or are likely to affect any of the following:
  - Wastewater pipes larger than 300mm in size
  - Pressure wastewater pipes
  - Drinking water or recycled water pipes
  - Our property boundary
  - An easement in our favour
  - Stormwater infrastructure within 10m of the property boundary.
2. Where the building plan includes:
  - Construction of a retaining wall over, or within the zone of influence of our assets
  - Excavation of a basement or building over, or adjacent to, one of our assets
  - Dewatering – removing water from solid material or soil.

The detailed review is to ensure that:

- our assets will not be damaged during, or because of the construction of the development
- we can access our assets for operation and maintenance
- your building will be protected if we need to work on our assets in the future.

The developer will be required to pay Sydney Water for the costs associated with the detailed review.

#### Tree Planting

Certain tree species placed in close proximity to Sydney Water's underground assets have the potential to inflict damage through invasive root penetration and soil destabilisation. Sydney Water requires that all proposed or removed trees and vegetation included within the proposal adhere to the specifications and requirements within Section 46 of the Sydney Water Act (1994) and *Diagram 5 – Planting Trees* within our [Technical guidelines – Building over and adjacent to pipe assets](#). Please note these guidelines include more examples of potential activities impacting our assets which may also apply to your development.

If any tree planting proposed breaches our policy, Sydney Water may need to issue an order to remove every tree breaching the act, or directly remove every tree breaching the Act and bill the developer or Council for their removal.

<b>Item Number:</b>	3
<b>Application Number:</b>	DA-639/2021
<b>Proposed Development:</b>	The construction of two x 4-storey residential flat buildings comprising 39 residential apartments, with one level of basement car parking, and associated landscaping and site works.
<b>Property Address</b>	Lot 231 Changsha Road, Edmondson Park
<b>Legal Description:</b>	Lot 231 DP 1287558
<b>Applicant:</b>	Inzitari Holdings Pty Ltd
<b>Land Owner:</b>	Inzitari Holdings Pty Ltd
<b>Cost of Works:</b>	\$12,574,705
<b>Recommendation:</b>	Refusal
<b>Assessing Officer:</b>	Robert Micallef

### 1. EXECUTIVE SUMMARY

Council has received a Development Application (DA-639/2021) seeking consent for the construction of two x 4-storey residential flat buildings comprising 39 residential apartments, with one level of basement car parking, and associated landscaping and site works on a portion of the land known as Lot 231 Changsha Road, Edmondson Park.

The site has been the subject of a recent development approval under DA-182/2021 for the Torrens title subdivision into two (2) lots and the construction of roads. The proposal is sought over one of the two lots created by that application.

The site is zoned R1 – General Residential and SP2 – Infrastructure (Local Road) pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). Due to the abovementioned subdivision application, the location of the proposed development is wholly within the R1 – General Residential zoning and the proposed development is permissible with consent.

The key issues associated with the proposal relate to the Clause 4.6 Variation for Clause 4.3 – Height of Buildings and a variation to Clause 4.4 – Floor Space Ratio under the LLEP 2008. The proposal seeks a height variation of 1.83m or 12.2%, however is not considered acceptable as the variation is not considered to be unreasonable or unnecessary in the case and there are insufficient environmental planning grounds to justify the variation. Given the proposal has not satisfactorily resolved inconsistencies with the relevant planning provisions for a development of this nature, namely an exceedance of the floor space ratio development standard by 51.56m<sup>2</sup> or 1.36%, which was not accompanied by a written statement from the applicant to vary this development standard, Council is unable to support this development application.

The proposed development is considered to be compliant with the provisions of the Apartment Design Guideline, other relevant State Environmental Planning Policies and is generally consistent with the relevant development control plans.

The Development Application was advertised between 1 September and 30 September 2021 in accordance with the Liverpool Community Participation Plan 2019. One (1) submission was received during this notification period. The concerns raised by the submission included the following:

- Privacy and overlooking,
- Bulk and scale.

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

***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.*

***Sensitive Development***

*(b) Development to which State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development applies and is 4 or more storeys in height.*

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

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

### **2.1 The site**

The overall site is currently known as Lot 231 Changsha Road and is legally defined as Lot 231 in DP 1287558. The development is sought to occur on Lot 201 as approved under DA-182/2021 and illustrated in the figure below.

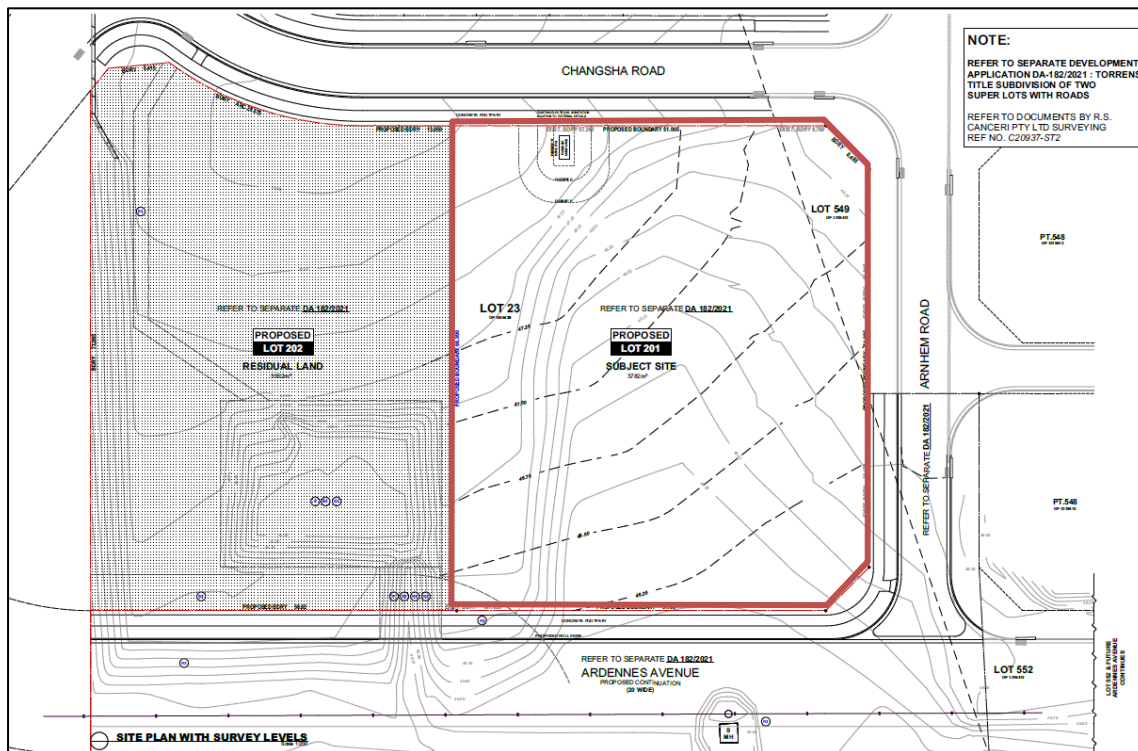


Figure 1: Subdivision Plan under DA-182/2021 (future subject site in orange outline)

Lot 201 approved under DA-182/2021 is 3,782m<sup>2</sup> in area and comprises three street frontages. The northern street frontage to Changsha Road measures 51.005m, while the eastern frontage to Arnhem Road is 54.985m. The southern street frontage to Ardennes Avenue, to be developed in the future under DA-182/2021, is 51m. The western side boundary to approved Lot 202 is 66.99m. Splay corners measuring 8.485m are present at the corners of Changsha Road and Arnhem Road, and Arnhem Road and Ardennes Avenue. The site is currently vacant except for a padmount substation near the Changsha Road frontage. The location of the site can be seen in the aerial and site photos in the figures below.



Figure 2: South view of site and Arnhem Road from intersection with Changsha Road



Figure 3: West view of site and Changsha Road from intersection with Arnhem Road



**Figure 4:** View east from Changsha Road, including the existing substation



**Figure 5:** View northwest from Arnhem Road with single and two storey dwellings opposite



**Figure 6:** Current extent of Bartle Lane to the east of the site

## **2.2 The locality**

The site and its immediate locality are part of the emerging residential area of Edmondson Park. The majority of surrounding development to the north and east comprise single and two storey dwellings and attached dwelling development. To the west and south are remnant rural residential dwellings and undeveloped land/bushland.

The site is approximately 650m to the northeast of Edmondson Park Train Station and the Ed Square Shopping Centre. Land to the northwest, north and east is zoned R1 General Residential, while to the south is a future riparian park zoned RE1 Public Recreation and land zoned C1 National Parks and Nature Reserves. The site and locality can be seen in the figures below.



Figure 7: Aerial view of subject site (in green) (Source: Mecone Mosaic)

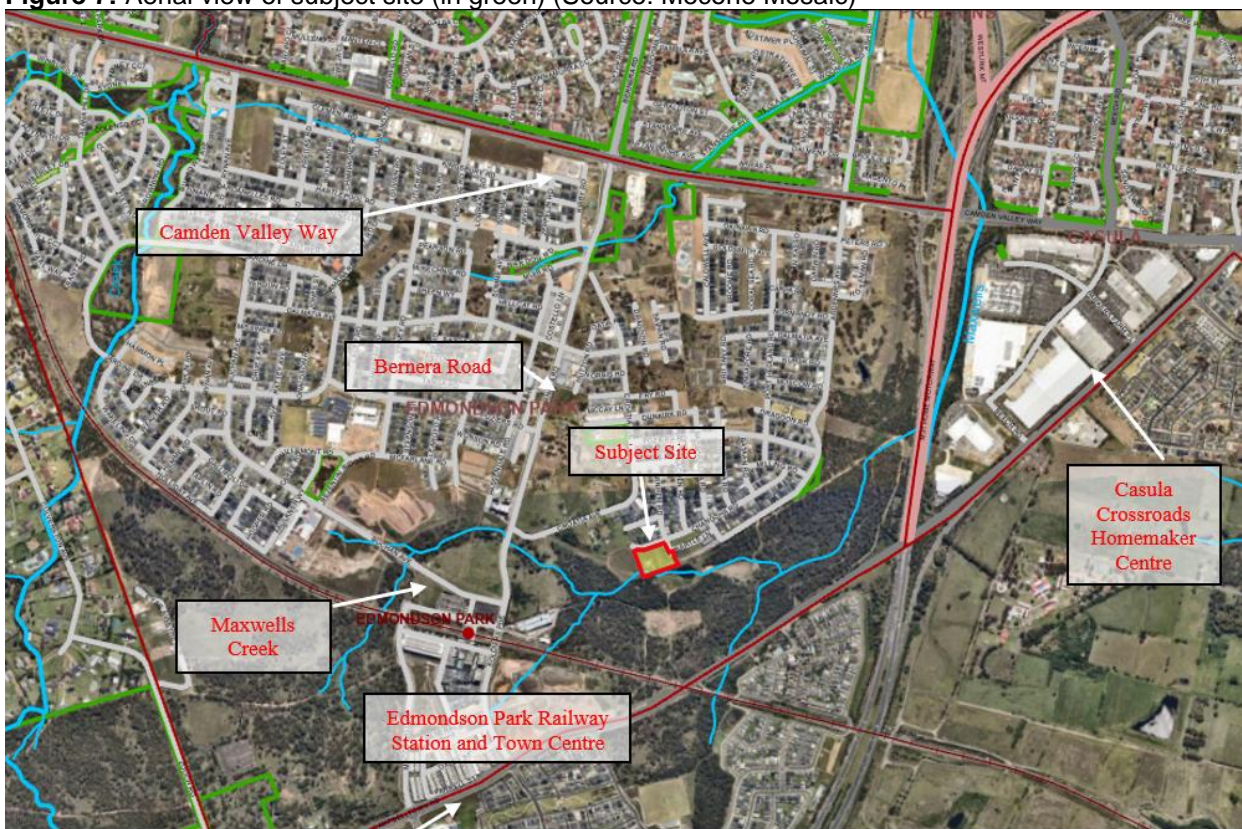


Figure 8: Locality Surrounding the Proposed Development



### 3. BACKGROUND/HISTORY

#### 3.1 Design Excellence Panel

The application was presented to the Liverpool Design Excellence Panel on 14 October 2021 where the panel supported the proposal in principle but provided feedback to be incorporated. Minutes of that meeting were provided to the applicant to address and incorporate into the design of the development subject to Council approval. The key issues raised by the DEP were as follows:

- Provide a contextual analysis of the scale of development transitioning to the low-rise development nearby.
- Maximise communal open space and landscaping.
- Remove louvres to corridors to ensure compliance with GFA and compliant cross-ventilation for Unit 308.
- Incorporate ESD measures.
- Consider landscaping treatments for all seasons.
- Communal open space solar access.
- Consider CPTED principles.
- Consider a revised unit mix that supports families.

The applicant supplied amended architectural plans following the provision of the minutes and a request for additional information. A summary of the Design Excellence Panel's comments with a comment to each is provided below.

#### Context

- *The Panel notes that the subject site is part of a subdivision application which is currently under review by Council. Panel notes that the subdivision application (once approved) would allow for development of an RFB on the subject site and will allow for the removal of the proposed rear laneway. Panel requires the applicant ensures that the subdivision application is resolved as soon as possible. Comments can only be made making an assumption that this subdivision application is approved. If the subdivision is not approved none of the advice provided here is relevant.*

**Council Comment:** The subdivision application (DA-182/2021) has been approved and is fundamentally unchanged from the proposal at the time of the minutes provided by the DEP. The laneway will not exist and the subdivision scheme seen by the Panel is still relevant.

- *The Panel notes that the 600m distance (i.e., indicated on the location plan) from the station is not as per the actual access path distance on ground. The Panel requires the applicant to provide a clear representation of the actual distance from the station as part of the drawings.*

**Council Comment:** The amended plans provided demonstrate the walking distance to Edmondson Park Train Station as approximately 700m. In reality, the distance will exceed what has been illustrated once taking into consideration footpaths and the future envisioned road network between the site and the station.

- *The Panel requires the applicant to provide a detailed contextual analysis of the site to demonstrate the appropriateness of the proposed density on this site. The*

*applicant should include the details of the developments that are approved on the lots closer to the town centre and ways in which the transition to the low-rise development nearby has been considered.*

**Council Comment:** The applicant did not submit additional contextual analysis information. As discussed in later points, the proposal varies the Floor Space Ratio (FSR) development standard and is not supported on the grounds of this exceedance of the density.

- *The Panel notes that the proposed development of a 3 storied residential flat building with generous setback / open space will provide better amenity for the residents and the surrounding community than the nearby townhouse developments. The Panel encourages the applicant to maximise the amount of communal open space and landscaping being provided for the site.*

**Council Comment:** The amended proposal remains four storeys in height. It has also introduced additional communal open space areas above ground level and provides ample areas and landscaping. As the proposal is largely within the maximum building height plane (refer to discussions later in this report), no requirement should be imposed to reduce the development to three storeys. However, the current design exceeds both the prescribed building height and FSR and is not supported. A compliant FSR would not require a reduction to three storeys.

- *The proposal utilises the laneway as communal open space for inhabitants of the building. This relies on the approval of the subdivision, but is otherwise supported as it continues the sight lines from the laneway on neighbouring blocks.*

**Council Comment:** The resolution to the subdivision application has not altered this application in terms of the sight lines from the eastern laneway to the communal open space.

### **Built Form + Scale**

- *The Panel notes that the applicant is discounting the north-south corridor from the GFA, however provides louvres to the corridor which makes it enclosed. The Panel requires the applicant to remove the louvres to ensure compliance with GFA calculations and provide a better design outcome. This would also help in making Apartment 308 compliant for cross ventilation.*

**Council Comment:** The amended proposal has included the corridors in GFA and has not removed the louvres. As a principle, no concerns are raised about retaining the louvres. However, the proposal has exceeded the maximum FSR and is not supported. Further discussion on this matter is made later within this report.

### **Density**

- *The Panel supports the overall density being proposed on site conditional on the points in 4.1 Context, and 4.8 Housing Diversity + Social Interaction, regarding distance to train station, consideration of the adjacent low rise sites, and demographics of the area.*

**Council Comment:** Noted.

### Sustainability

- *The Panel requires that the applicant to consider adequate sustainability initiatives as part of the development (e.g., Photovoltaic panels, sufficient OSD storage and rainwater harvesting system for irrigation, etc.). Panel requires the applicant to provide a summary of all sustainability initiatives being proposed as part of the development.*

**Council Comment:** The amended proposal increased the number of Photovoltaic panels provided on the rooftops and an irrigation system is to be installed. Sustainability measures are also incorporated within the built form design, use of materials and landscaping design. Although not specifically detailed by the applicant, these measures have been incorporated into the design of the proposal.

### Landscape

- *The Panel notes that the landscape and deep soil being provided is compliant with the ADG and is supported.*

**Council Comment:** Noted. The amended proposal remains compliant with both landscaped area and deep soil.

- *Panel requires the applicant to consider appropriate treatments and landscaping palette that would appropriate environments for all seasons.*

**Council Comment:** An amended landscape plan was submitted and provides for a generally acceptable landscaping and communal open space outcome.

### Amenity

- *The Panel notes that the open space is overshadowed in winter until the afternoons. The Panel recommends that the applicant consider providing an additional Communal Open Space to provide amenity for the residents during winter months.*

**Council Comment:** The amended proposal introduced a communal open space area on Level 3 on the northern building and the rooftop of the southern building. The southern rooftop communal open space receives excellent solar access on June 21, while the Level 3 space on the northern building receives some solar access. The proposal achieves 2 hours of solar access to 51.7% of the communal open space area in accordance with the Apartment Design.

### Safety

- *The Panel requires the applicant to consider all safety provisions for the development. Panel recommends the applicant to consider CPTED principles as part of the design to ensure safety for the residents.*

**Council Comment:** The proposal appears to be generally consistent with CPTED principles, however the applicant has not elaborated further as to how the principles have been met.

**Housing Diversity + Social Interaction**

- *The Panel requires the applicant to look at the demographics of the area to inform the apartment mix for the building and consider larger apartment to support families. The Panel requires the applicant to consider providing a higher mix of 3-bedrooms and consider providing at least one 4-bedroom apartment to cater to the demographics. The larger apartments can be considered as dual key layouts providing flexibility over time for inhabitants*

**Council Comment:** The amended proposal did not alter the unit mix. The unit mix as proposed is compliant with Section 3.9 of Part 2.11 Land Subdivision and Development in Edmondson Park in the Liverpool Development Control Plan (LDCP) 2008. Consequently, the proposal is acceptable in this regard.

**Aesthetics**

- *The Panel supports the material palette being proposed for the development. The Panel requires that the detailing of the building be thoughtful, aesthetically pleasing and robust. Details of key junctions, including external spaces should be provided at the next session.*

**Council Comment:** The details of key junctions were not submitted.

**Overall Compliance**

**Council Comment:** Based on the amended plans provided, the proposal is largely consistent with what was requested by the DEP however the application is recommended for refusal on other grounds.

**3.2 Assessment History and Site Background**

Date	Event
10 June 2021	DA lodged
1 September 2021 – 30 September 2021	Application advertised. One submission received.
14 October 2021	Design Excellence Panel held
26 June 2023	DA for subdivision of the site into two lots approved by the Liverpool Local Planning Panel.
17 July 2023	Request for information letter sent to applicant regarding: <ul style="list-style-type: none"> <li>• DEP comments,</li> <li>• Planning aspects including FSR and ADG matters,</li> <li>• Building and BCA matters</li> <li>• Waste management concerns</li> </ul>
11 September 2023	Finalised additional information package received for assessment

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

This development application seeks the development consent for the construction of a two x 4-storey residential flat buildings containing 39 units with a single basement level.

The unit mix proposed is:

- 4 x 1 bedroom units
- 29 x 2 bedroom units
- 6 x 3 bedroom units

Specifically, the proposal includes:

##### Basement

- Vehicle access is proposed from Ardennes Avenue via a double width driveway.
- The basement comprises 46 car parking spaces with the following allocation:
  - 39 residential car spaces,
  - 7 visitor car spaces.
- 4 motorcycle and 20 bicycle spaces.
- Residential storage cages.
- Two lift cores.
- Waste rooms and bulky waste storage.
- Plant rooms.

##### Residential Flat Buildings

- The Ground Floor consists of 10 units with 5 per building, with 1 x 1 bedroom unit, 8 x 2 bedroom units and 1 x 3 bedroom units.
- Communal open space is proposed east-west between the two buildings and along the western boundary.
- The First Floor comprises 10 units with 5 per building, with 1 x 1 bedroom unit, 7 x 2 bedroom units and 2 x 3 bedroom units.
- The Second Floor comprises 10 units with 5 per building, with 1 x 1 bedroom unit, 7 x 2 bedroom units and 2 x 3 bedroom units.
- The Third Floor comprises 9 units with 4 in the northern building and 5 in the southern, with 1 x 1 bedroom unit, 7 x 2 bedroom units and 1 x 3 bedroom unit.
- A communal open space is located on the Third Floor of the northern building.
- A rooftop communal open space is located on the southern building.

##### General

- The buildings are primarily to be constructed of face brick with the top floor metal cladding.
- Waste is to be collected by Council from the Ardennes Avenue frontage.
- No tree removal is sought.
- New trees will be planted across the site along with an array of vegetation within the communal open space areas.

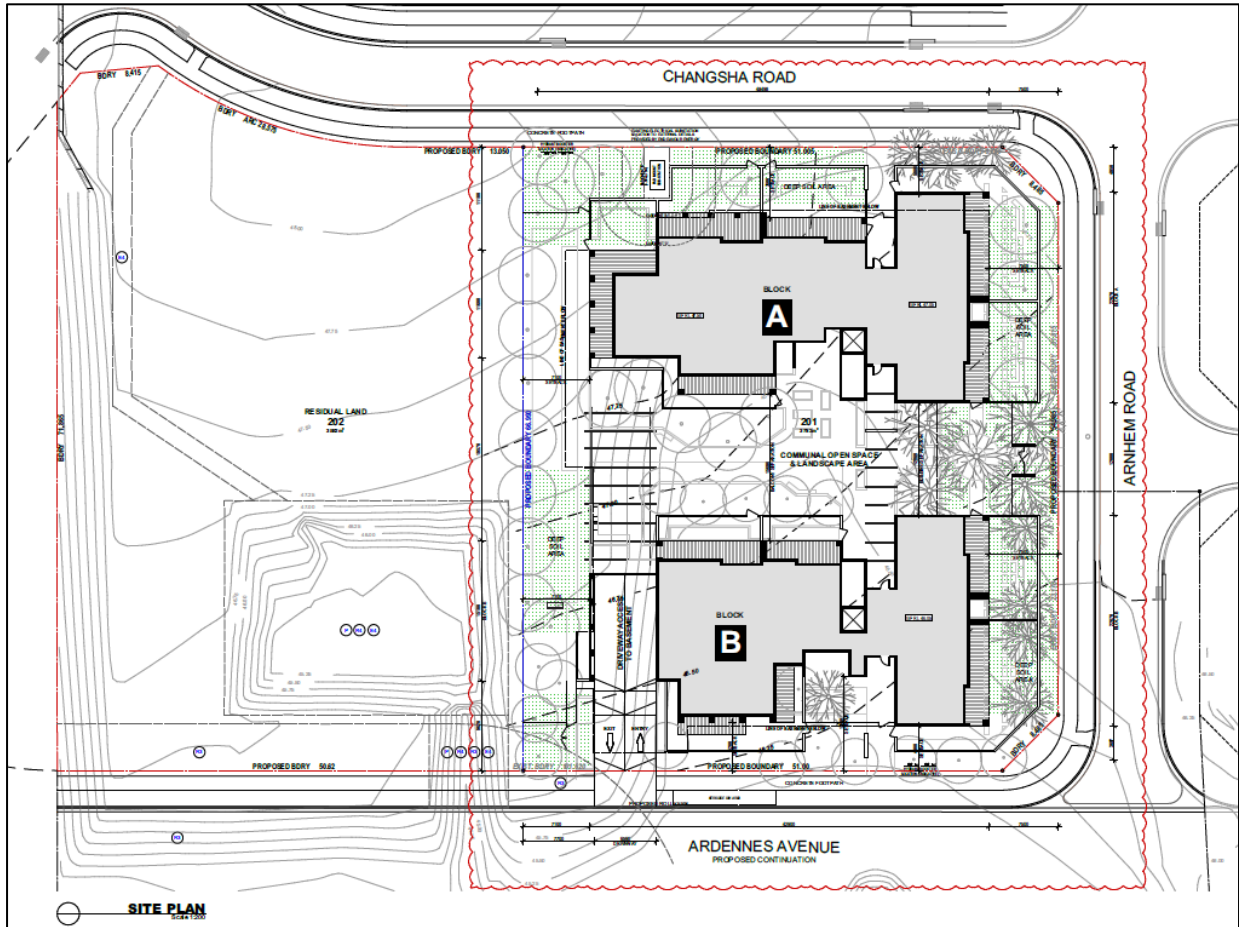


Figure 9: Proposed site plan



Figure 10: North elevation



Figure 11: East elevation



Figure 12: South elevation



Figure 13: West elevation



**Figure 14:** Internal north elevation



**Figure 15:** Internal south elevation

## 5. STATUTORY CONSIDERATIONS

### 5.1 Relevant matters for consideration

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

- Environmental Planning & Assessment Act 1979

#### Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021; and
- Liverpool Local Environmental Plan 2008.

#### Development Control Plan

- Liverpool Development Control Plan 2008;



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

Contributions Plans

- Liverpool Contributions Plan 2008 – Edmondson Park.

**6. ASSESSMENT**

**Environmental Planning & Assessment Act 1979 (EP&A Act 1979)**

The development application has been assessed in accordance with Section 4.14 of the Environmental Planning & Assessment Act 1979 as the site is mapped as bushfire prone land. It is unclear if strata subdivision is occurring under this application, which would trigger the requirement for General Terms of Approval under 100B of the Rural Fires Act 1997. As such, the application was referred to the NSW Rural Fire Service under Section 4.14 of the EP&A Act 1979 and comments were received in relation to the bushfire measures for the development. Council is also satisfied that the development would be able to meet the relevant specifications and requirements for this development and as such, the development is deemed to be satisfactory in this regard.

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

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

**(a) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guidelines (ADG)**

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential flat development. SEPP 65 requires the consent authority to consider the development against 9 key design quality principles and against the guidelines of the ADG. The ADG provides additional detail and guidance for applying the design quality principles outlined in SEPP 65.

The following table provides an assessment of the proposal in accordance with the 9 key design quality principles of SEPP 65, as follows:

<b>Design Quality Principle</b>	<b>Comment</b>
<b>Principle One – Context and Neighbourhood Character</b>	
<i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i>	The site and its surrounds to the north, east and west are zoned R1 General Residential. The properties to the north and east are primarily single and two storeys in scale with a mixture of dwelling houses to the north and attached dwellings to the east. The western land is yet to be redeveloped from rural residential land uses. It is anticipated that the locality will continue to develop to the prescribed planning controls within the short to medium term.
<i>Responding to context involves</i>	

<b>Design Quality Principle</b>	<b>Comment</b>
<p><i>identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>The site is within a 650m radius of the Edmondson Park Train Station and is prescribed a 15m height, 1:1 FSR and minimum 28dw/Ha dwelling density. Residential flat buildings are permissible in the zone.</p> <p>The property is at the southern end of the northern precinct of Edmondson Park. It is opposite a future riparian park and bush corridor. The site has three street frontages, with only one direct neighbour in a superlot to the west. The site is considered well suited to accommodate a residential flat building development with appropriate separation and transition to lower scales.</p> <p>The street setbacks are proposed to be well landscaped and integrate plantings, private open space, and balancing privacy and casual surveillance of the public domain, compatible with the local context. A primarily brick material base fits within the emerging character of the area. The proposal generally is a development that is responsive to the neighbourhood character.</p>
<b>Design Principle 2 – Built form and scale</b>	
<p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i></p> <p><i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p>The proposed development adopts a built form and scale that is generally reflective of the controls and site context. The two x 4 storey residential flat buildings are accommodated within the height of building development standard with the exception of a rooftop communal open space and are compliant with setbacks and separation distances within the development and to the western neighbour.</p> <p>The built form is articulated and will positively present to the street. The transition between the four storey development and single and two storey development created by the larger street setbacks, landscaping and articulated form would be a positive example of development in the area. However, due to the exceedance of the floor space ratio and height of buildings development standards, the proposed development does not sufficiently demonstrate that there are environmental planning grounds to satisfactorily justify the additional built form and scale proposed as part of this development application.</p>
<b>Design Principle 3 – Density</b>	
<p><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></p>	<p>The proposal seeks 39 units with a mix of 1, 2 and 3 bedrooms. The apartment designs are functional, generally in excess of their minimum requirements and will provide a high standard of amenity.</p> <p>The proposal does contravene the height of buildings</p>

Design Quality Principle	Comment
<p><i>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>development standard. While this serves the provision of a rooftop communal open space on the southern building, a measure proposed to provide solar access to open space otherwise not available due to the primary ground level area being overshadowed in winter, it contributes to an FSR variation. The height contravention is not supported on this ground.</p> <p>As noted, the proposal also contravenes the FSR development standard and this is not supported. The site is a greenfield property without any site constraint or environmental planning ground to propose a density above that of the prescribed standard. Notably, the development greatly exceeds the minimum dwelling density of 28 dw/Ha, proposing approximately 104 dw/Ha. Therefore, the overall density and associated bulk of the development in terms of gross floor area exceeds that of which is permitted and the application is recommended to be refused on this ground.</p> <p>No Clause 4.6 variation was submitted for the contravention of the FSR development standard.</p>
<p><b>Design Principle 4 – Sustainability</b></p>	
<p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation</i></p>	<p>A BASIX Certificate was submitted with the original development application. An amended Certificate has not been submitted with the amended scheme presented as part of the additional information submission. However, the proposal provides for the following elements that positively address the sustainability design principle:</p> <ul style="list-style-type: none"> <li>• Photovoltaic panels on both buildings.</li> <li>• Cross-ventilation and solar access well in excess of their minimum requirements under ADG.</li> <li>• Generous deep soil and tree planting to provide summer cooling.</li> <li>• Appropriate shading to balconies to provide summer shade and winter sun.</li> <li>• Low maintenance, long lifecycle and reusable materials proposed such as bricks and concrete.</li> </ul>
<p><b>Design Principle 5 – Landscape</b></p>	
<p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed</i></p>	<p>A landscape plan has been submitted and has been reviewed by Council's Landscape officer and is supported.</p> <p>The landscape plan provides a mixture of grasses, shrubs and tree plantings, enabling a positive landscaping outcome for the site. In particular, the plan</p>

Design Quality Principle	Comment
<p><i>developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i></p> <p><i>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</i></p> <p><i>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, and respect for neighbours' amenity and provides for practical establishment and long term management.</i></p>	<p>provides for 25 new trees with a mature height of 10m or greater and a larger number of more modest trees, which will serve to soften the overall development and reduce heat in the hot summer months.</p> <p>Generous deep soil within the site's boundaries allows for this planting.</p> <p>The landscaping will enable a positive outlook for residents and those around the site.</p>
<b>Design Principle 6 – Amenity</b>	
<p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</i></p>	<p>The apartment design is generally well realised. The development receives a high degree of solar access (85% of units achieve 2 hours) and cross-ventilation (77%). The units generally exceed their minimum sizes and provide the required dimensions. Private open space also generally exceeds the minimum size and proposes compliant depth.</p> <p>The units are primarily orientated to the street frontages, and the remainder generally toward the central separation and communal open space area. Landscaping is proposed within these setback and separation areas.</p> <p>The unit and private open space design has minimised visual and acoustic privacy impacts both within the development and to current and future neighbours.</p> <p>Compliant deep soil, communal open space and storage is proposed.</p>
<b>Design Principle 7 – Safety</b>	
<p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the</i></p>	<p>The proposal has been designed with consideration of CTPED principles. The applicant's Design Verification Statement states the following safety measures will be incorporated:</p>

Design Quality Principle	Comment
<p><i>intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>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.</i></p>	<ul style="list-style-type: none"> <li>• Basement security doors.</li> <li>• A lift which will be fitted with access control.</li> <li>• Delineation of public, semi-private and private areas.</li> <li>• CCTV.</li> </ul> <p>The proposed fencing and landscaping within the street setbacks do serve to delineate the public and private spaces.</p> <p>Residential apartments have been designed in such a way as to have the main living areas and balconies facing the street and communal space area.</p>
<b>Design Principle 8 – Housing Diversity and Social Interaction</b>	
<p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</i></p>	<p>The proposal includes a mix of units with 4 x 1 bedroom units, 29 x 2 bedroom units and 6 x 3 bedroom units. The unit mix proposed is compliant with Council’s DCP.</p> <p>Of those 39 units, 5 units are adaptable and include one and two bedroom units.</p> <p>The development has provided a suitable width for the lobbies for ease of accessibility. The submitted access report identifies some shortfalls in the current design detail, though these would be resolvable by condition of consent were the application recommended for approval.</p> <p>The communal open space designs and locations allow for multiple opportunities for social interaction.</p>
<b>Design Principle 9 – Aesthetics</b>	
<p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</i></p> <p><i>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	<p>The built form articulation and materials and finishes palette are supported. The extensive use of brick is a positive attribute that will wear well and integrate with the emerging character of the locality.</p> <p>All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design and structure contributing positively to the desired future character of the vicinity.</p>

Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential apartment development to be designed in accordance with the ADG. The proposed development is fully compliant with the provisions of the ADG. The compliance

tables for the ADG can be found in Attachment 1.

**(b) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)**

The application was supported by a BASIX Certificate in accordance with the provisions of the SEPP which indicates that the required targets for water, thermal comfort and energy are met by the proposal.

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less potable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for houses and units.

A BASIX Certificate (**Certificate number: 1174556M**) has been submitted for the proposed development. The proposal is considered to be satisfactory with regard to water and energy efficiency and thermal comfort.

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

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

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

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

Pursuant to the above SEPP, Council must consider:

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

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.

Contamination was addressed in DA-566/2017 for the subdivision and civil works of the parent allotment for the site through a Phase 1 and Phase 2 Contamination and Salinity Investigation prepared by GeoEnviro Consultancy Pty Ltd. That contamination was satisfactorily addressed in the original subdivision application was reinforced in the partly concurrent development application for the Torrens title subdivision into two (2) lots and the

construction of roads under DA-182/2021. The application was determined on 26 June 2023. No known activities have occurred since the determination of DA-182/2021 that would have led potential contamination.

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

<b>Clause 4.6 Contamination and remediation to be considered in determining development application</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The contamination of the land was considered under DA-566/2017. The contamination reporting undertaken at that stage was considered acceptable to enable the site to be made suitable for the proposed works subject to conditions. No further works have occurred that would likely led to potential contamination since the determination of the latest application on the land, DA-182/2021 on 26 June 2023.
(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	Past reporting and conditions of consent are sufficient to confirm the land is not contaminated.
(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.

The proposal is considered satisfactory in demonstrating that the site is suitable for residential use and is accordance with the provisions of SEPP (Resilience and Hazards) 2021.

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

*Note: Chapters 7 – 12 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 were repealed on 21 November 2022. However, Part 6.6 of the SEPP states these former repealed provisions continue to apply to a development application made, but not yet determined, on or before the date of the repeal. Given that DA-639/2021 was lodged and had not been determined prior to the date of the repeal, the subject application will continue to be assessed under the relevant former provisions in Chapters 7-12 of the SEPP (Biodiversity and Conservation) 2021 (Biodiversity SEPP).*

The subject land is located within the Georges River Catchments and as such, Chapter 11 – Georges River Catchment of the State Environmental Planning Policy (Biodiversity and

Conservation) 2021, formerly the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River, applies to the application.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

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

<b>Clause 11.6 General Principles</b>	<b>Comment</b>
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	Proposal reviewed by Council's Land Development Engineering Section and considered satisfactory subject to conditions.
(c) the cumulative impact of the proposed development or activity on the Georges River or its tributaries,	The engineering plans were submitted and reviewed by Council's Land Development Engineering Section. Conditions of consent would apply with respect to sediment and erosion mitigation measures.
(d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	Consistent with the strategy.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	The application was referred to the Natural Resources Access Regulator, who advised that a controlled activity approval was not required for the application and thus the proposal is consistent with the guidelines.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	No. The site is located in an area nominated for residential development.
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.



<b>Clause 11.7 Specific Principles</b>	<b>Comment</b>
(1) Acid sulfate soils	The land is not identified as containing acid sulphate soils on LLEP 2008 Acid Sulphate Soil mapping.
(2) Bank disturbance	No bank disturbance is proposed.
(3) Flooding	The site is partly flood affected. Conditions of consent were provided by Council's Floodplain Engineering Section.
(4) Industrial discharges	Not applicable.
(5) Land degradation	The proposed development is unlikely to cause land degradation.
(6) On-site sewage management	The site will be connected to a reticulated sewer system.
(7) River-related uses	Not applicable.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	Water management details provided in concept stormwater plans are supported by Council's Land Development Engineering Section subject to conditions of consent.
(10) Urban development areas	As above
(11) Vegetated buffer areas	Not applicable.
(12) Water quality and river flows	Erosion and sediment control and salinity measures to be implemented in construction.
(13) Wetlands	Not applicable.

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

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

**(i) Zoning**

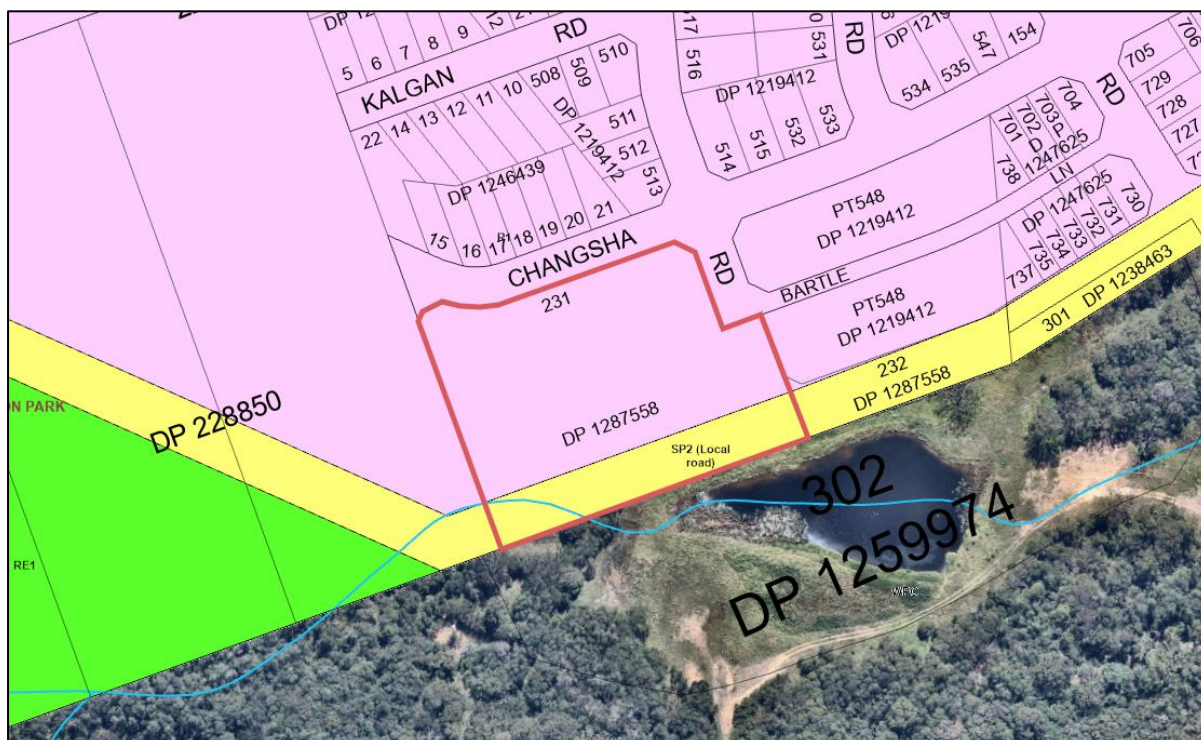
The site is zoned R1 – General Residential and SP2 – Infrastructure (Local Road) pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). Due to the subdivision under DA-182/2021, the location of the proposed development is wholly within the R1 – General Residential zoning. An extract of the zoning map is provided the figure 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 3 dwellings and are not defined as attached dwelling or multi dwelling housing. This form of development is a permissible use within the R1 General Residential zone.



**Figure 16:** Extract of LLEP 2008 zoning map (site in red box)

**(iii) Objectives of the zone**

The objectives of the R1 General Residential zone are as follows:

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

In response the following comments are made to each objective:

- The proposal provides for new residential housing in an area zoned for it.
- The proposed unit mix (1, 2 and 3 bedroom units) is consistent with the LDCP 2008 controls. The residential flat building development will diversify the housing type and densities in the locality.
- No other land uses are sought.
- The proposed density exceeds that of the FSR development standard and is not supported.
- The development is solely for residential accommodation. This objective is not relevant.

In view of the above, the development is not wholly consistent objectives of the zone and is therefore recommended for refusal.

**(iv) Principal Development Standards**

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

Clause	Provision	Compliance
<b>Clause 2.7 Demolition</b>	The demolition of a building or work may be carried out only with development consent	<b>N/A</b> The site is vacant of structures.
<b>Clause 4.1 Minimum Subdivision Lot Size</b>	The size of any lot resulting from a subdivision of land is not to be less than 300m <sup>2</sup> .	<b>N/A</b> No subdivision is sought.
<b>Clause 4.3 Height of Buildings</b>	Maximum height of 15m	<b>See Clause 4.6 - Variation assessment below.</b> A building height of 16.83m is proposed.
<b>Clause 4.4 Floor Space Ratio</b>	Maximum FSR of 1:1	<b>No – see Clause 4.4 discussion below.</b> The development provides an FSR of 1.0136:1 (3,833.56sqm/3,782sqm). A variation of 51.56m <sup>2</sup> is proposed.

**Clause 4.4 Floor Space Ratio Discussion**

Clause 4.4 of the LLEP 2008 prescribes a maximum 1:1 FSR for the site. Based on a site area of 3,782m<sup>2</sup>, being Lot 201 as approved under the subdivision application DA-182/2021, a maximum GFA of 3,782m<sup>2</sup> is permissible.

The original DA submission was found to vary the development standard due to the applicant’s exclusion of the common north-south corridors in both buildings and the relevant portions of the waste rooms above ground level. The request for additional information sent to the applicant identified these elements not counted in the submitted GFA plan. The applicant submitted amended plans following that letter.

The amended application has been found to continue to vary the development standard. A calculation plan has been submitted which is illustrated below.



When measured, the above calculation plan does not include the floor area associated with the waste rooms on each residential level. These areas constitute gross floor area under the definition in the LLEP 2008, as waste is only excluded in a basement.

The calculation plan has also omitted the introduced enclosed space on the rooftop of the southern building, including a closed off but assumed accessible waste room. To address the concern over solar access to communal open space, a rooftop terrace was introduced. The lobby associated with this space is labelled as an open breezeway but is enclosed with louvres to a fraction of the enclosing walls only. The space is illustrated in Figure 19 further in this report and on the elevations in Figures 10-15.

Given the lobby and adjoining waste room are enclosed, they constitute GFA and bring the total proposed GFA to 3,820.6m<sup>2</sup>, a variation of 38.6m<sup>2</sup> and 1% over the development standard.

Further to the above, the car parking proposed exceeds that of the requirements under Guide to the Generating Development by one space. Any car parking in excess of the requirements is deemed GFA, further increasing the variation by 12.96m<sup>2</sup> to a total of 51.56m<sup>2</sup> (1.36% variation).

A written request under Clause 4.6 to vary the development standard has not been submitted with the amended application. Consequently, it is not possible to grant consent to the contravention of the development standard.

Notwithstanding this, it is not considered that the site is subject to any environmental planning ground to justify the contravention. The proposal is a greenfield development on a well sized lot without any irregularities in shape or other constraints that may warrant consideration to a variation.

Given the above, the variation to FSR is not supported and forms a reason for the recommendation of refusal.

<p><b>Clause 4.6 Exceptions to development standards</b></p>	<p>Provisions relating to exceptions to development standards</p>	<p><b>See Clause 4.6 Discussion Below</b> Clause 4.6 request to vary Clause 4.3 Height of Buildings considered as part of this application.</p> <p>No written request has been received from the applicant under the provisions of Clause 4.6 of the LEP for the variation to the Floor Space Ratio Development Standard under Clause 4.4 of the LEP and as such the consent authority must not grant development consent to this development application in the absence of this request.</p>
<p><b>Clause 5.21 Flood Planning</b></p>	<p>Provisions relating to flood affected land.</p>	<p><b>Complies</b> The site is identified as being partly within the flood planning area. Council's Floodplain Engineering</p>

		Section have provided conditions of consent.
<b>Clause 6.5 Public Utility Infrastructure</b>	Public utility infrastructure must be available	<b>Complies</b> The site has or has made suitable arrangements to provide public utility infrastructure.
<b>Clause 7.11 Minimum Dwelling Density</b>	28 dw/Ha	<b>Complies</b> The proposal is at a dwelling density of 104 dw/Ha.
<b>Clause 7.14 Minimum Building Street Frontage</b>	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 street frontage to a public street (excluding service lanes) of at least 24 metres: - any residential flat building.	<b>Complies</b> All street frontages exceed 24m.
<b>Clause 7.31 Earthworks</b>	Provisions relating to bulk earthworks	<b>Complies</b> No bulk earthworks are proposed other than those ancillary to the development being excavation for the proposed basement, which is deemed to be acceptable for a proposal of this nature.

**Clause 4.6 - Exceptions to development standards**

**(Variation to Clause 4.3 - Height of Buildings)**

Clause 4.3 of the Liverpool Local Environmental Plan (LLEP) 2008 states:

*“The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”*

The subject proposal seeks a variation to the maximum height of buildings contained in LLEP 2008. The maximum height of buildings is to be 15m. The subject development is applying for an exceedance of building height to a maximum height of 16.83m, as measured to the lift overrun on the southern building. The variation is 1.83m, or 12.2% over the development standard. The extent of the variation can be found in the figures below.

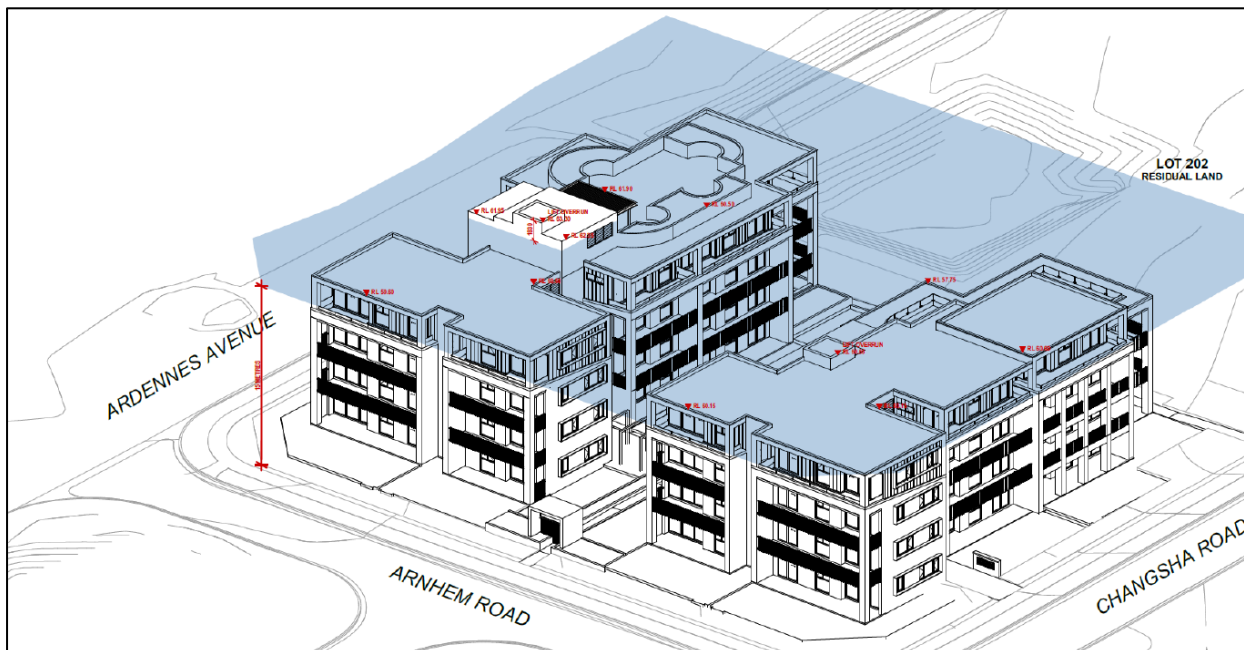


Figure 17: Height Plane of the development showing extent of the building height encroachment

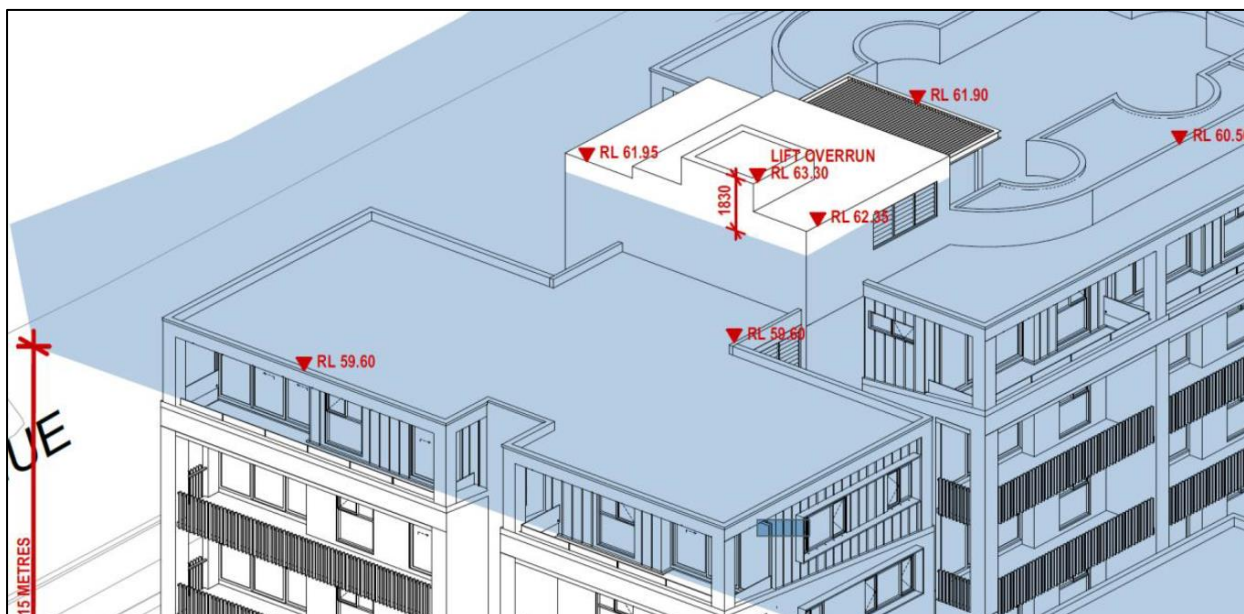


Figure 18: Enlarged height plane of the height encroachment

Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant has submitted a written request seeking a variation to the maximum height of buildings as prescribed by Clause 4.3.

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 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 for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*

The applicant submitted a Clause 4.6 Variation Statement to the Height of Buildings development standard in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

Variation to Height of Buildings, Clause 4.3:

**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 contravening 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 contravention of the development standard:

**Applicant Comment**

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

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served);*

2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

Reference should be made to figures 3, 4, and 5 above of this document, for a clear understanding of site topography and limited extent of height exceedance.

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

The proposal achieves the objectives of the Zone.

As detailed above, this proposal achieves the objectives of the zone. That is, this proposal will provide new residential accommodation in the form of two (2) RFB developments, in a location accessible to public transport and town centre, where a variety of residential accommodation is permitted and such proposal is compatible with the existing and approved and desired high density residential development in the immediate locality.

The land zoning is identified to specifically assist in meeting the demands for more housing and this development proposes a mix of apartment sizes in the form of 1, 2 and 3 bedroom apartments. The development design and configuration will aid in providing broader housing choice for the local community and further opportunities for an integrated mix of housing and household types.

The proposal achieves the objective of clause 4.3

As detailed above, this proposal achieves the objectives of the development standard. That is, this proposal is designed to be compatible with the desired future character of the locality, does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises, and contributes positively to the high quality urban form sought by these objectives, in particular along Ardennes Avenue.



**Council Comment**

In response to the applicant's justification raised above, Council provides the following comments:

- The provision of a rooftop communal open space area is supported in principle. While the application proposes more than adequate communal open space at the ground level, the space is heavily overshadowed by the northern residential flat building and will achieve minimal solar access to the useable areas in mid-winter. A rooftop COS is, therefore, a suitable measure to achieve a good solar amenity outcome.
- The extent of the variation is limited to the lift overrun and upper portions of the enclosed BBQ/lobby and related spaces (e.g. waste room). Numerically, the variation is 12.2% above the development standard but the protruding form is an element that is only approximately 10% of the size of the roof. Inclusive of the setbacks from the street frontages, the additional bulk and scale of the height variation is considered to be minimal.
- The protrusion does not result in any notable additional overshadowing to adjoining properties. It does impact the land to the southern side Ardenes Avenue, a future riparian park, though the extent of additional impact is not significant.
- The development does achieve a generally high quality urban form, notwithstanding the contravention of the development standard.
- The contravention serves a better environmental outcome in the provision of a communal open space that achieves a high level of amenity to future residents of the development.
- No visual or acoustic privacy impacts occur as a consequence of the contravention of the development standard.

However, the provision of the communal open space on the roof has resulted in the proposal of additional gross floor area over and above the FSR development standard. The applicant has not included in their calculations the enclosed lobby adjacent to the lift which includes the BBQ. Refer to the extract below.

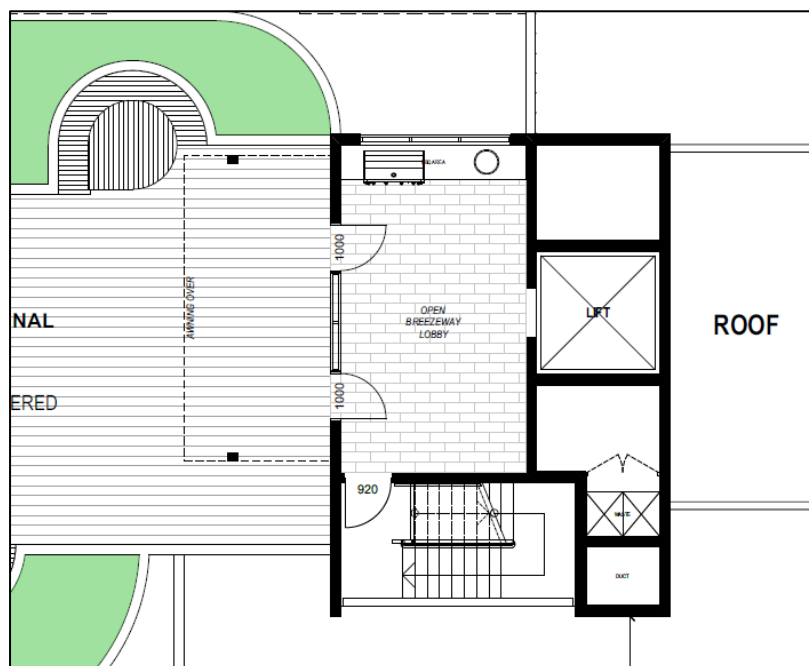


Figure 19: Extract of Roof Plan for Southern Building

While the plans label the area as an ‘open breezeway lobby’, this space is almost entirely enclosed and fully roofed. The space does not achieve any criteria to be excluded from the calculation of GFA and contributes additional FSR. The application is not supported by a Clause 4.6 variation to justify the contravention and, per the discussion on Clause 4.4 earlier in this report, would not be supported due to insufficient environmental planning grounds. Accordingly, the height of buildings variation incorporates a non-compliant FSR which is not supported.

In this regard, compliance with the height control is not considered to be unreasonable where the proposal has not satisfactorily resolved inconsistencies with the relevant planning provisions for a development of this nature.

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

### **Applicant Comment**

Sufficient environmental planning grounds to justify contravening the development standard

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

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of “unreasonable or unnecessary in the circumstances of the case”; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of “unreasonable and unnecessary in the circumstances of the case”, it must therefore be concluded that

“environmental planning grounds” are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

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

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

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

*Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner’s finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.*

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

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

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

Based on that methodology, the environmental planning grounds which support variation to the HOB standard in this instance are:

#### Environmental Planning Ground 1 – Negligible amenity or visual impacts

Numerically, the HOB for maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides appropriately sized buildings complying with setbacks and providing overwhelmingly complying deep soil and communal open space.

It is argued that the exceedance in height does not cause unreasonable impact and satisfies the objectives of the standard, and any impact on the adjoining land to the south is demonstrated in accompanying shadow diagrams, as primarily shadows over a road reserve. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB, which is proposed.

#### Environmental Planning Ground 2 – Street Character

The proposed development represents an excellent design outcome consistent with the desired intensity of urban development along Ardennes Avenue (as per the Edmondson Park Character Area Statements). The particular design, in the context of this particular site means that the excess HOB is not perceived from the public domain given that the protruding elements of the building through the 15m plan are primarily located well within the floor plates and are setback from boundaries. It therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls.

Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone and HOB objectives.

#### Public Interest

The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general ‘public interest’ considerations at large.

The arguments outlined earlier in relation to consistency with clause 4.3, R1 zone objectives of the LLEP 2008 are relied upon as detailed above.

### **Council Comment**

The height of buildings variation incorporates some of the excess gross floor area in the proposed development. As there is a lack of evidence to suggest that there are sufficient environmental planning grounds to justify the FSR contravention, it is considered that the likely impacts of the proposal have not been entirely and appropriately considered or resolved by the applicant. Accordingly, the applicant has not demonstrated that there are sufficient planning grounds to justify contravening Clause 4.3 – Height of Buildings where it contains unsupported GFA.

### **Consistency with objectives of the development standard Clause 4.3 Height of Buildings**

The objectives of Clause 4.3 and assessment are as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

### **Applicant Comment**

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

- is designed to be compatible with the desired future character of the locality being within a four (4) storey built form which complies with SEPP 65 design principle requirements in ensuring excellent amenity to future occupants. The development has been guided by the design input that has informed the proposed building envelope which has resulted in a proposed built form that responds to the site topography and the three (3) bounding roads, while respecting existing and future development on adjoining allotments and not unreasonably impacting on their development potential.

In doing so the proposed development contributes positively to the high quality urban form sought by these objectives, in particular along Ardennes Avenue.

- does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises or dwellings within the development, than what is anticipated in the locality by that development standard and corresponding development controls.

**Council Comment**

In response to the objectives of the development standard, Council has provided the following comments as to the consistency with the objectives:

- The contravention of the height of buildings development standard achieves an improved amenity outcome for residents through access to a rooftop COS. However, the additional floor area is not consistent with the objective as it is floor space not contained within the height limit.
- The proposal is generally considered to be a high-quality urban form. However, the proposal is not supported for the additional floor area contravening the FSR standard which protrudes above the height limit.
- The height contravention does not notably affect exposure to sky or sunlight for public areas and there is no anticipated impact on other buildings in this regard.
- The protrusion into the building height is located on the southern end of the site which has a limited interface with the surrounding lower density (e.g. single and two storey) dwellings and attached dwellings. No residential development will be erected on the land to the south as it is zoned RE1 Public Recreation. Consequently, the contravention of the height maintains an appropriate transition in terms of number of storeys. The addition of floor area over and above the development standards of height and FSR together is not considered to achieve consistency with the objective.

Given the above, it is not agreed that the proposal is consistent with the objectives of Clause 4.3.

**Consistency with objectives of the zone – R1 General Residential**

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

**Applicant Comment**

It is considered that this proposal satisfies the relevant zone objectives. That is, this proposal will provide new residential accommodation in the form of two (2) RFB developments in a location accessible to public transport and town centre, where a variety of residential accommodation is permitted and such proposal is compatible with the existing and approved and desired high density residential development in the immediate locality.

The land zoning is identified to specifically assist in meeting the demands for more housing and this development proposes a mix of apartment sizes in the form of 1, 2 and 3 bedroom apartments. The development design and configuration will aid in providing broader housing choice for the local community and further opportunities for an integrated mix of housing and household types.

Upon review of the development design and the land zoning objectives there is little doubt that development of the subject site as proposed will satisfy the relevant R1 zone objectives.

### **Council Comment**

It is generally agreed that the proposed variation maintains consistency with the zone objectives for the reasons articulated by the applicant insofar as to the provision of housing, unit mix and location of the site are acceptable. It is not, however, agreed that the proposed housing density is acceptable as the proposal unacceptably varies FSR and thus provides for a housing density above what was intended for the land.

### **Conclusion**

The application has an unresolved issue with non-compliant FSR. The introduction of the communal open space on the rooftop included an enclosed lobby area that has not been included in the applicant's GFA calculation. The calculation has also continued to exclude garbage rooms on all levels outside of the basement, an issue raised in the request for additional information made during the assessment of the application. The result is a variation that has not been supported with a Clause 4.6 and is not supported generally. There is no site constraint that warrants the FSR variation.

The above issue directly effects height variation, as elements contributing to the unresolved FSR issue breach the height plane. The rooftop communal open space is supported in principle. It is not, however, supported to vary the FSR development standard to achieve this outcome.

The Clause 4.6 variation to the Clause 4.3 Height of Buildings is therefore not agreed to be acceptable, is not in the public interest and 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 which apply to the development.

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

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

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

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

The following table provides an assessment of the proposal against the relevant provisions of the LDCP 2008 which propose variations that are deemed to be acceptable or that form part of the reasons for refusal for the proposed development.

**LDCP 2008 - Part 1 General Controls for all Development**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Section 27. Social Impact Assessment</b>	Provisions relating to social impact.	A Social Impact Comment is required for any residential flat building with 20 or more units. The Comment was requested in the RFI but was not submitted.	No

**Part 2.11 Land Subdivision and Development in Edmondson Park**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>1.1 Indicative Layout</b>	All development is to be undertaken generally in accordance with the Indicative Layout Plan.	The site planning deviates from the ILP as no central laneway is proposed. This matter was assessed under DA-182/2021. Refer to discussion below.	Complies on merit – refer to discussion below

**Indicative Layout Plan Discussion**

An extract of the relevant section of the ILP is illustrated below.



The site is identified in the image above in the orange outline. The site was intended to accommodate a continuation of Bartle Lane further westward. The proposal, however, seeks two residential flat buildings with communal open space in-between in the area identified for the laneway.

The deletion of the laneway was contemplated as part of the previous development application



<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
for subdivision and road construction under DA-182/2021. The assessment report for that application acknowledges the adjoining landowners agreed to the changes being proposed to the ILP. Consequently, no concern was raised with the deviation, and the laneway was not required to be constructed.			
The current application is acceptable on the grounds of consistency with the ILP.			
<b>3. Controls for Residential Development in Urban Areas (28 Dwellings/Hectare) and Residential Flat Buildings</b>			
<b>3.4 Landscaped Area and Private Open Space</b>	Clothes drying facilities must be provided. Clothes drying areas should not be visible from a public place.	No areas are shown for clothes drying facilities. However, this could be resolved by condition of consent to provide solid balustrades to a portion of balconies to screen clothes drying areas.	Can comply by condition
<b>3.5 Building Design and Streetscape</b>	All staircases should be internal.	Partially external stairs are proposed for the fire stairs to both buildings. The northern building stairs are not visible from the public domain. The southern building stairs are visible from Ardennes Avenue. The stairs are substantially setback and are not considered to be a detrimental element to the presentation, being a modest component of the façade.	Considered Acceptable
<b>3.6 Car Parking and Access</b>	Visitor car parking shall be located between any roller shutter door and the front boundary.	The visitor spaces are generally consolidated together but are not between a roller shutter. No concern is raised as they are within the basement and are able to be accessed by visitors.	Considered Acceptable

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

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

There are no Planning Agreements which apply to the development.

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

The Environmental Planning and Assessment Regulation 2021 requires the consent authority to consider the provisions of the National Construction Code. The applicant submitted a BCA report that identified shortfalls in compliance. It was requested by Council's

Building officer to resolve these non-compliances and provide an amended BCA report to confirm compliance with the NCC. No amended report was received. As such, the application is recommended for refusal in part on this ground.

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

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

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

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

The proposed development will have a minor impact on the built environment. The site is on land zoned for the proposed residential flat buildings and has prescribed development standards for a four storey development (15m height, 1:1 FSR). The development is generally compliant with the ADG and LDCP 2008 and is of a design that would exhibit a high-quality urban form subject to resolution of outstanding issues.

The proposal contravenes both the height of buildings and floor space ratio development standards. The height of buildings contravention is partly occurring due to the non-compliant FSR and is not supported. The FSR variation proposed has not been supported with a Clause 4.6 variation request. Notwithstanding the absence of a written request under Clause 4.6 of the LEP, a variation is not supported generally and was advised to the applicant during the assessment.

Subject to the resolution of these issues, the application may be supportable. In the current form, the proposal is not supported from the built environment perspective.

### **(c) Social Impacts**

The proposed development would have a positive social impact in the area through increasing housing choice in the locality. The proposal does incorporate a suitable unit mix close to retail services and public transport options. Subject to resolution of outstanding issues, it is considered that the proposal is unlikely to generate any unreasonable social impacts on the surrounding area.

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

The short term positive economic impacts development that results 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 site is considered to be suitable for a residential flat building development. The proposal is generally compliant with the provisions of the LLEP 2008, the relevant Environmental Planning Instruments, the Apartment Design Guidelines and LDCP 2008, except where

variations are proposed and not supported as outlined in this report. The identified variations (particularly to height and FSR) have been considered and are not supported and are sufficient to warrant a recommendation 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
Building	Referral was deferred requesting amendments to the plans in alignment with the submitted BCA Report to address identified non-compliances and to submit an updated BCA Report once addressed. A report was not submitted. Matter remains unaddressed.
Flooding	Supported, subject to conditions of consent
Land Development Engineering	Supported, subject to conditions of consent
Landscaping	Supported, subject to conditions of consent
Traffic	Supported, subject to conditions of consent
Waste Management	Supported, subject to conditions of consent

**(b) External Referrals**

AGENCY	COMMENTS
Natural Resources Access Regulator	Controlled Activity Approval and referral not required. Works are more than 40m from the top of bank of the watercourse.
Rural Fire Services	Comments provided with requirements for bushfire protection measures.

**(c) Community Consultation**

The Development Application was advertised between 1 September and 30 September 2021 in accordance with Liverpool Community Participation Plan 2019. One (1) submission was received. The concerns raised by the submissions include the following:

- Privacy and overlooking,
- Bulk and scale.

**ISSUE 1: Privacy and overlooking**

The proposed development provides an acceptable outcome in terms of impacts on the privacy of neighbouring properties. The proposal is compliant with its building setbacks and building separation requirements under the LDCP 2008 and ADG as discussed within this report.

Balconies and living rooms are generally oriented to the roadways which, with the larger setbacks and separation over the roads, have limited privacy consequences. There are no internal visual privacy concerns, noting compliant separation is proposed.

Therefore, it is considered there are negligible impacts from the privacy and overlooking perspective.

**ISSUE 2: Bulk and Scale**

The proposal for a four-storey residential flat building is supported in principal. As all residential floor area is located below the height of buildings development standard, a four-storey form is within the desired future character of the land. The generally larger than required setbacks to the streets and the roadways provide the suitable transition from 4 to 1 and 2 storey development.

The proposal does vary the height and FSR development standards and thus has a larger bulk and scale that was envisioned. There is no site constraint to warrant the contravention to FSR including the varying floor area located above the building height and as such the application is recommended for refusal.

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

The proposed development is permissible within the zoning of the land and would represent a high quality development for the locality. The development provides additional housing opportunities within close proximity to employment opportunities, services and public transport. However, given the assessment undertaken and the variations to the height of buildings and floor space ratio development standards the proposal is considered not to be in the public interest and approval of the development would set an undesirable precedent for similar inappropriate development.

**7. DEVELOPMENT CONTRIBUTIONS**

A Section 7.11 Development Contribution would be applicable to the proposed development in accordance with the Liverpool Contributions Plan 2008 – Edmondson Park if the application was to be recommended for approval.

**8. CONCLUSION**

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

The proposed development is not supported due to the contravention of the height of buildings and floor space ratio development standards. Based on the assessment of the application, it is recommended that the application be refused subject to the imposition of conditions.

**9. RECOMMENDATION**

That Development Application DA-639/2021 seeking approval for the construction of two x 4-storey residential flat buildings comprising 39 residential apartments, with one level of basement car parking, and associated landscaping and site works, be refused.

## ATTACHMENTS

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1. Apartment Design Guide Compliance Table
2. Liverpool Development Control Plan 2008 Compliance Tables
3. Plans of the Proposal - **Confidential**
4. Clause 4.6 Variation Application to Height
5. Design Excellence Panel Meeting Minutes - **Confidential**
6. Draft Reasons for Refusal

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**REPORT ATTACHMENT 1 – APARTMENT DESIGN GUIDE COMPLIANCE TABLE**

<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
<b>3A Site analysis</b>		
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	A detailed site analysis plan has been provided.	Complies
<b>3B Orientation</b>		
<p>Building types and layouts respond to the streetscape and site while optimising solar access within the development</p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p> <p>Solar Access to living rooms, balconies and private open spaces of neighbours should be considered.</p> <p>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</p> <p>Overshadowing should be minimised to the south or downhill by increased upper level setbacks.</p> <p>A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.</p>	The building type is appropriate for the streetscape. Overshadowing of neighbouring properties is minimised during mid-winter. The shadow diagrams indicate that the only affected adjoining property would still receive over 3 hours of solar access.	Complies
<b>3C Public Domain Interface</b>		
<p>Transition between private and public domain is achieved without compromising safety and security.</p> <p>Amenity of the public domain is retained and, enhanced.</p>	The transition from the public to private domain is made in a way that achieves a safe design with security for the future residents, without compromising on the amenity of the public and private domains.	Complies
<b>3D Communal and public open space</b>		
<p>Communal open space has a minimum area equal to 25% of the site</p> <p>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)</p>	The communal open space is provided primarily at ground level between the two buildings and along the western setback area. Two (2) additional spaces are proposed on Level 3 of the northern building and on the rooftop of the southern building. The total	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance												
<p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.</p> <p>Communal open space should be co-located with deep soil areas.</p> <p>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof</p>	<p>communal open space area proposed is 1,456m<sup>2</sup> (38.4%) with 1,064m<sup>2</sup> at ground level, 169m<sup>2</sup> on Level 3 and 223m<sup>2</sup> on the rooftop level, including the enclosed BBQ/lobby.</p> <p>The COS areas are provided with planter boxes, communal facilities, BBQ and sitting areas and pergolas for shading.</p> <p>The COS achieves solar access to 51.7% (754m<sup>2</sup>) of the common open space area.</p>	Complies												
<b>3E Deep soil zones</b>														
<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Site Area</th> <th style="text-align: left;">Minimum Dimension</th> <th style="text-align: left;">Deep Soil Zone (% site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td> <td style="text-align: center;">-</td> <td rowspan="4" style="text-align: center; vertical-align: middle;">7%</td> </tr> <tr> <td>650m<sup>2</sup> to 1500m<sup>2</sup></td> <td style="text-align: center;">3m</td> </tr> <tr> <td>Greater than 1500m<sup>2</sup></td> <td style="text-align: center;">6m</td> </tr> <tr> <td>Greater than 1500m<sup>2</sup> with significant tree cover</td> <td style="text-align: center;">6m</td> </tr> </tbody> </table>	Site Area	Minimum Dimension	Deep Soil Zone (% site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> to 1500m <sup>2</sup>	3m	Greater than 1500m <sup>2</sup>	6m	Greater than 1500m <sup>2</sup> with significant tree cover	6m	<p>Proposal provides 925.67m<sup>2</sup> of deep soil zone, which is 24.5% of the site area and exceeds the minimum 7% &amp; recommended 15% requirements for sites over 1,500m<sup>2</sup>.</p> <p>The deep soil zones have minimum dimensions of 6m.</p>	Complies
Site Area	Minimum Dimension	Deep Soil Zone (% site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> to 1500m <sup>2</sup>	3m													
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Greater than 1500m <sup>2</sup> with significant tree cover	6m													
<b>3F Visual Privacy</b>														
<p>Minimum separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Building Height</th> <th style="text-align: left;">Habitable Rooms and Balconies</th> <th style="text-align: left;">Non Habitable Rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td style="text-align: center;">6m</td> <td style="text-align: center;">3m</td> </tr> <tr> <td>12m to 25m (5-8 storeys)</td> <td style="text-align: center;">9m</td> <td style="text-align: center;">4.5m</td> </tr> </tbody> </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	<p>The separation to the western boundary exceeds 6m. The internal separation between buildings is a minimum of 12m.</p>	Complies			
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												
<b>3G Pedestrian Access and Entries</b>														
<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Access, entries and pathways are accessible and easy to identify</p>	<p>The development site has reasonably clear and defined pedestrian entries to both Changsha Road and Ardennes Avenue. Alternative access via the</p>	Complies												

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance
Large sites provide pedestrian links for access to streets and connection to destinations	communal open space from the Arnhem Road frontage is also proposed.	
<b>3H Vehicle Access</b>		
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Vehicle access point is considered to be in a satisfactory location.	Complies
<b>3J Bicycle and Car Parking</b>		
For development in the following locations:  <ul style="list-style-type: none"> <li>- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>- on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>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</p>	The site is within 800 metres of the Edmonson Park Train Station. The proposal relies upon the rates in the GTTGD.  All parking is provided within the one basement level.  1 bedroom units: 4 units x 0.6 = 2.4 spaces 2 bedroom units: 29 units x 0.9 = 26.1 spaces 3 bedroom units: 6 units x 1.4 = 8.4 spaces  Total required residential: 36.9 (37) spaces Proposed: 39 spaces	Complies
Parking and facilities are provided for other modes of transport	Visitors: 39 units @ 1 per 5 units = 7.8 spaces Required visitors: 8 spaces Proposed visitors: 7 spaces	
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	The proposed allocation of car spaces does not align with the car parking required. One residential car space could be reallocated to a visitor space to resolve the shortfall. One additional car space will remain, which is GFA and has been included in the calculation and assessment of FSR earlier in this report.  The application was referred to Council's Traffic Section who were satisfied with the application subject to conditions.	



**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

<b>4A Solar and Daylight Access</b>		
<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	A total of 39 units are proposed. There are 33 units that receive at least 2 hours sunlight between 9am and 3pm during mid-winter to living rooms and private open spaces. This equates to 85% of the units.	Complies
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	All units are considered to achieve some form of direct sunlight between 9am and 3pm.	Complies
Courtyards, skylights and high-level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms	Noted	Noted
<b>4B Natural Ventilation</b>		
All habitable rooms are naturally ventilated The layout and design of single aspect apartments maximises natural ventilation At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	30 of 39 units (77%) are naturally cross ventilated.	Complies
<b>4C Ceiling Heights</b>		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	A 3.15m floor to floor height is proposed which allows for the minimum 2.7m floor to ceiling heights to be achieved as well as space for services between floors.	Complies
Minimum ceiling height		
Habitable rooms	2.7m	
Non-habitable	2.4m	
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	
If located in mixed use areas	3.3m from ground and first floor to promote future flexibility of use	

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance										
Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms												
Ceiling heights contribute to the flexibility of building use over the life of the building												
<b>4D Apartment Size and Layout</b>												
<p>Apartments are required to have the following minimum internal areas:</p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Apartment Type</th> <th>Minimum Internal Area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each</p>	Apartment Type	Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	All units meet their minimum internal area requirements.	Complies
Apartment Type	Minimum Internal Area											
Studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Habitable rooms are provided with windows of sufficient glass areas.	Complies										
Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Habitable rooms are generally limited to 2.5 x the ceiling height.	Complies										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Kitchens of all units are less than 8m from a window.	Complies										
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	All bedrooms are of sufficient size.	Complies										
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	Bedrooms of all units have a minimum dimension of 3m.	Complies										
<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>- 3.6m for studio and 1 bedroom apartments</li> <li>- 4m for 2 and 3 bedroom apartments</li> </ul>	Sufficient widths are provided to living rooms/dining rooms.	Complies										
<b>4E Private Open Space and Balconies</b>												
All apartments are required to have primary balconies as follows:	All apartments provide the minimum required balcony areas and depths.	Complies										
<table border="1" style="margin-left: 20px;"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> </tbody> </table>	Dwelling Type	Minimum Area	Minimum Depth	Studio	4m <sup>2</sup>	-						
Dwelling Type	Minimum Area	Minimum Depth										
Studio	4m <sup>2</sup>	-										

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required			Proposed	Compliance
1 bedroom	8m <sup>2</sup>	2m		
2 bedroom	10m <sup>2</sup>	2m		
3 bedroom	12m <sup>2</sup>	2.4		
The minimum balcony depth to be counted as contributing to the balcony area is 1m				
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 15m <sup>2</sup> and a minimum depth of 3m			All ground floor units provide a courtyard private open space of greater than 15sqm and a depth of 3m.	Complies
<b>4F Common Circulation and Spaces</b>				
The maximum number of apartments off a circulation core on a single level is eight			Single lift core provided per building. Maximum 5 units per level are proposed off one lift.	Complies
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40			Not applicable.	N/A
Daylight and natural ventilation should be provided to all common circulation spaces that are above ground. Windows should be provided in common circulation spaces and should be adjacent to the stair or lift core or at the ends of corridors			The lift lobby area has louvred openings in external walls for natural light and ventilation.	Complies
<b>4G Storage</b>				
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			Adequate storage has been provided for all units as indicated on the individual unit floor plans, basement plan and calculation page.	Complies
Dwelling Type	Storage Size Volume			
Studio	4m <sup>3</sup>			
1 bedroom	6m <sup>3</sup>			
2 bedroom	8m <sup>3</sup>			
3 bedroom	10m <sup>3</sup>			
At least 50% of the required storage is to be located within the apartment.				
<b>4H Acoustic Privacy</b>				
Noise transfer is minimised through the siting of buildings and building layout			The unit layouts have generally aligned like for like uses to ensure acoustic privacy.	Complies
Noise impacts are mitigated within apartments through layout and acoustic treatments				
<b>4K Apartment Mix</b>				
A range of apartment types and sizes is provided to cater for different household types now and into the future			The proposed unit mix aligns with the DCP controls and is acceptable.	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance
The apartment mix is distributed to suitable locations within the building	While the DEP requested additional 3 bedrooms and a 4 bedroom unit, the proposal does comply with the applicable DCP control.	
<b>4L Ground Floor Apartments</b>		
Street frontage activity is maximised where ground floor apartments are located	All ground floor units have direct access to a courtyard as well as access from the foyer. The ground floor treatment to the building, including landscaping and fencing will assist in providing an active environment to the street while preserving privacy.	Complies
Design of ground floor apartments delivers amenity and safety for residents		
<b>4M Facades</b>		
Building facades provide visual interest along the street while respecting the character of the local area	Building façades are articulated and modulated through the use of balconies, varying windows and recessed elements. Ground floor building entries are clearly defined and articulated by the façades.	Complies
Building functions are expressed by the facade		
<b>4N Roof Design</b>		
Roof treatments are integrated into the building design and positively respond to the street	The rooftop communal open space is integrated with the building and is designed to positively respond to the streetscape. The roof for the northern building is an acceptable flat roof design. Landscaping will also be provided on the roof around the perimeter of the communal open space and photovoltaic panels on both buildings.	Complies
Opportunities to use roof space for residential accommodation and open space are maximised		
Roof design incorporates sustainability features		
<b>4O Landscape Design</b>		
Landscape design is viable and sustainable	An aesthetically pleasing landscape design has been proposed which corresponds well with the built form. The landscape design is considered appropriate. The DA has been reviewed by Council's Landscape Officer who has raised no objections to the landscape design.	Complies
Landscape design contributes to the streetscape and amenity		
<b>4P Planting on Structures</b>		
Appropriate soil profiles are provided	As above. Planting on the rooftop communal open space will have sufficient soil depths in planter boxes and perimeters.	Complies
Plant growth is optimised with appropriate selection and maintenance		
Planting on structures contributes to the quality and amenity of communal and public open spaces		
<b>4Q Universal Design</b>		
Universal design features are included in apartment design to promote flexible housing for all community members	The development provides Units 1.03, 1.05, 2.03, 3.03 and 4.03 as adaptable units in accordance with	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance
A variety of apartments with adaptable designs are provided	the Australian Standard AS 4299-1995 <i>Adaptable Housing</i> . Additionally, access to common corridors and each unit is wheelchair accessible.	
Apartment layouts are flexible and accommodate a range of lifestyle needs		
<b>4R Adaptive Reuse</b>		
New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place	The DA is for the development of a new building and not the adaptive reuse of an existing building.	N/A
Adapted buildings provide residential amenity while not precluding future adaptive reuse		
<b>4S Mixed Use</b>		
Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	The DA does not propose a mixed use development.	N/A
Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents		
<b>4T Awnings and Signage</b>		
Awnings are well located and complement and integrate with the building design	Awnings are integrated with the building design where proposed. Building address signage could be integrated into the building design.	Complies
Signage responds to the context and desired streetscape character		
<b>4U Energy Efficiency</b>		
Development incorporates passive environmental design.	The proposal is accompanied by a BASIX Certificate. Additionally, photovoltaic panels are indicated to be provided on the rooftop.	Complies
Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer		
Adequate natural ventilation minimises the need for mechanical ventilation		
<b>4V Water Management and Conservation</b>		
Potable water use is minimised	The proposal is accompanied by a BASIX Certificate. The proposal has been reviewed by Council engineer who raised no issues in regard to stormwater subject to conditions.	Complies with conditions
Urban stormwater is treated on site before being discharged to receiving waters		
Flood management systems are integrated into site design		
<b>4W Waste Management</b>		
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Waste storage facilities are provided and will be maintained by the caretaker / building manager. The application was referred to Council's Waste Management Section who have indicated that the waste management of the	Complies with conditions
Domestic waste is minimized by providing safe and convenient source separation and recycling		

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Required	Proposed	Compliance
	development is considered to be acceptable subject to conditions of consent.	
<b>4X Building Maintenance</b>		
Building design detail provides protection from weathering	The development is in accordance with these objectives.	Complies
Systems and access enable ease of maintenance		
Material selection reduces ongoing maintenance costs		

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

**REPORT ATTACHMENT 2 – LIVERPOOL DEVELOPMENT  
CONTROL PLAN 2008 COMPLIANCE TABLES**

**LDCP 2008 - Part 1 General Controls for all Development**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Section 2. Tree Preservation</b>	Controls relating to the preservation of trees	The subject site does not contain any prescribed trees that are to be retained.	Complies
<b>Section 3. Landscaping and Incorporation of Existing Trees</b>	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 proposed landscaping has been reviewed by Council's Landscape Officer and is deemed acceptable.	Complies
<b>Section 4 Bushland and Fauna Habitat Preservation</b>	Controls relating to bushland and fauna habitat preservation	The site is not mapped as containing significant vegetation.	Complies
<b>Section 5. Bush Fire Risk</b>	Controls relating to development on bushfire prone land.	The site is mapped as bushfire prone land. A referral to NSW Rural Fire Service was undertaken as part of the assessment and bushfire protection requirements were issued and would form part of any conditions of consent.	Complies with conditions
<b>Section 6. Water Cycle Management</b>	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 raised no issues subject to conditions.	Complies with conditions
<b>Section 7. Development Near Watercourse</b>	If any works are proposed near a water course, the Water Management Act 2000 may apply, and you may be required to seek controlled activity approval from the NSW Office of Water.	The proposal is not within 40m of a watercourse as confirmed by the Natural Resources Access Regulator and as such a controlled activity approval is not required.	N/A
<b>Section 8. Erosion and Sediment Control</b>	Erosion and sediment control plan to be submitted.	An erosion and sediment control plan were submitted. In the event of any approval, the plan would be conditioned.	Complies with conditions

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
<b>Section 9. Flooding Risk</b>	Provisions relating to development on flood prone land.	The site is partly identified as flood prone land. Council's Flooding officer has reviewed the proposal and provided conditions of consent.	Complies with conditions
<b>Section 10. Contaminated Land Risk</b>	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.	Complies
<b>Section 11. Salinity Risk</b>	Provisions relating to development on saline land.	Salinity to comply with the provisions of the BCA.	Complies with conditions
<b>Section 12. Acid Sulphate Soils</b>	Provisions relating to development on acid sulphate soils	The development site is not identified as containing acid sulphate soils.	N/A
<b>Section 13. Weeds</b>	Provisions relating to sites containing noxious weeds.	The site is not identified as containing noxious weeds.	N/A
<b>Section 14. Demolition of Existing Development</b>	Provisions relating to demolition works	There are no existing structures on site requiring demolition	N/A
<b>Section 15. On Site Sewage Disposal</b>	Provisions relating to OSMS.	OSMS is not proposed. Site is sewered.	N/A
<b>Section 16. Aboriginal Archaeology</b>	An initial investigation must be carried out to determine if the proposed development or activity occurs on land potentially containing an item of aboriginal archaeology.	The development site is not mapped as a potential area containing Aboriginal archaeology.	Complies
<b>Section 17. Heritage and Archaeology</b>	Provisions relating to heritage sites.	The development site is not identified as a heritage item or located within close proximity to a heritage item.	Complies
<b>Section 20. Car Parking and Access</b>	<u>Car Parking Controls Residential &amp; Business Zones</u> 1 space per small dwelling (<65sqm) or 1 bedroom 1.5 spaces per medium 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.	Car parking is assessed under the Guide to Traffic Generating Development. The application was referred to Council's Traffic Section who were satisfied with the application subject to conditions. See Section 3J of the ADG tables	N/A




**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Development Control	Provision	Comment	Complies
	Bicycles – Residential Flat Buildings Residents: 1 per 2 units, or 1 for every 4 bedrooms (whichever is greater)  Visitors: 1 per 10 units	39 units = 19.5 (20) bicycle spaces Proposed: 20 resident spaces  39 units = 3.9 (4) spaces Proposed: 4	Complies
<b>Section 21. Subdivision of Land and Buildings</b>	Provisions relating to the subdivision of land.	No subdivision proposed.	N/A
<b>Section 22 and Section 23. Water Conservation and Energy Conservation</b>	New dwellings, are to demonstrate compliance with State Environmental Planning Policy – Building Sustainability Index (BASIX).	The application has been accompanied by a BASIX Certificate. The current certificate does not reflect the amended scheme. In the event of an approval, an amended certificate would be conditioned.	Complies with conditions
<b>Section 25. Waste Disposal and Re-use Facilities</b>	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 and conditions of consent were provided.	Complies with conditions
<b>Section 26. Outdoor Advertising and Signage</b>	Provisions relating to signage.	No signage proposed.	N/A
<b>Section 27. Social Impact Assessment</b>	Provisions relating to social impact.	A Social Impact Comment is required for any residential flat building with 20 or more units. The Comment was requested in the RFI but none was submitted.	No

**LDCP 2008 - Part 2.11 Land Subdivision and Development in Edmondson Park**

Development Control	Provision	Comment	Complies
<b>1. Preliminary</b>			
<b>1.1 Indicative Layout</b>	All development is to be undertaken generally in accordance with the Indicative Layout Plan.	The site planning deviates from the ILP as no central laneway is proposed. This matter was assessed under DA-182/2021. Refer to discussion below.	Complies on merit – refer to discussion below
<b>Indicative Layout Plan Discussion</b> An extract of the relevant section of the ILP is illustrated below.			

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Development Control	Provision	Comment	Complies
 <p data-bbox="300 1061 1335 1167">The site is identified in the image above in the orange outline. The site was intended to accommodate a continuation of Bartle Lane further westward. The proposal, however, seeks two residential flat buildings with communal open space in-between in the area identified for the laneway.</p> <p data-bbox="300 1196 1335 1335">The deletion of the laneway was contemplated as part of the previous development application for subdivision and road construction under DA-182/2021. The assessment report for that application acknowledges the adjoining landowners agreed to the changes being proposed to the ILP. Consequently, no concern was raised with the deviation, and the laneway was not required to be constructed.</p> <p data-bbox="300 1364 1166 1391">The current application is acceptable on the grounds of consistency with the ILP.</p>			
<b>1.2 Development Within Sub Precincts</b>	Sub-precincts are defined by the Fixed Roads.	The development does not impact on the key fixed roads. The proposal will allow for the provision of drainage and services to the site. No impacts are created to adjoining sub-precincts.	Complies
<b>1.4 Character Area Statements</b>	Urban (Zone R1, 28dw/Ha)	<p>The zone is identified as a dense, urban but predominantly residential zone. The proposal fulfills this desired future character.</p> <p>Residential flat buildings and small lot/attached housing are the intended predominate</p>	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
		housing form. The proposal aligns with this.	
<b>1.5 Public Transport</b>	Provide and promote public transport that is accessible.	The proposal does not impact on the provision of public transport. The site is within 800m of the Edmondson Park Train Station.	Complies
<b>2. Controls for the Public Domain</b>			
<b>2.1 Street Network and Access</b>	All plans must indicate street types and intersection treatments.	The road network around the site was assessed under DA-182/2021. The proposal is consistent with that approval.	Complies
<b>2.3 Streetscape and Trees</b>	A minimum of two trees is to be provided for every 6m of street frontage.	A landscape plan was submitted and assessed by Council's Landscape Officer. The degree of provision of street trees is supported.	Complies
<b>2.6 Water Cycle Management</b>	The stormwater quantity and quality management seeks to reduce the impact of rapid stormwater conveyance on streams and wetlands, remove pollutants to improve water quality, retain habitats, conserve water, integrate landscape and recreational opportunities and protect downstream development from inundation.	The proposal was assessed by Council's Land Development Engineer and is supported subject to conditions.	Complies
<b>2.7 Contamination</b>	Council must consider whether the land is likely to be contaminated.	Addressed under SEPP (Resilience and Hazards) 2021.	Complies
<b>3. Controls for Residential Development in Urban Areas (28 Dwellings/Hectare) and Residential Flat Buildings</b>			
<b>3.2 Site Planning</b>			
<b>3.3 Setbacks</b>	Front: 4.5m Secondary Street 2.5m	A minimum 4.5m front setback is proposed and is generally exceeded. Setbacks vary depending on the street frontage but are generally:  Changsha Road: 4.85m-7.6m  Arnhem Road: 4.5m at corner splays, 7.5m  Ardennes Avenue: 4.8m-5.28m	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

<b>Development Control</b>	<b>Provision</b>	<b>Comment</b>	<b>Complies</b>
	Side and rear: Refer to ADG.	Discussed under SEPP 65 assessment for building separation.	
<b>3.4 Landscaped Area and Private Open Space</b>	A minimum of 20% of the site area shall be landscaped area.	20% = 756.4m <sup>2</sup> A precise measurement could not be undertaken. However, deep soil alone accounts for 926m <sup>2</sup> (24%) of the site.	Complies
	Clothes drying facilities must be provided. Clothes drying areas should not be visible from a public place.	No areas are shown for clothes drying facilities. However, this could be resolved by condition of consent to provide solid balustrades to a portion of balconies to screen clothes drying areas.	Can comply by condition
<b>3.5 Building Design and Streetscape</b>	Building facades shall be articulated and roof form is to be varied to provide visual variety.	The building facades are satisfactorily varied in physical, and material means. The roof forms are both flat, one which accommodates rooftop COS and the other provides for ample solar panel coverage.	Complies
	A pedestrian entrance to the building shall be emphasised.	The entrances are recessed into the façades but will remain well visible.	Complies
	A sidewall must be articulated if the wall has a continuous length of over 14m.	No sidewall exceeds 14m without articulation.	Complies
	All staircases should be internal.	Partially external stairs are proposed for the fire stairs to both buildings. The northern building stairs are not visible from the public domain. The southern building stairs are visible from Ardennes Avenue. The stairs are substantially setback and are not considered to be a detrimental element to the presentation, being a modest component of the façade.	Considered Acceptable
	Design front gardens or terraces which contribute	The ground floor terraces include 1.6m high palisade	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Development Control	Provision	Comment	Complies
	<p>to the spatial and visual structure of the street while maintaining adequate privacy for dwelling occupants.</p> <p>Avoid single-aspect dwellings with a southerly aspect.</p> <p>Design the roof to relate to the size and scale of the building, the building elevations and three-dimensional building form. This includes the design of any parapet or terminating elements and the selection of roof materials.</p> <p>Minimise the visual intrusiveness of service elements by integrating them into the design of the roof. These elements include lift over-runs, service plants, chimneys, vent stacks, telecommunication infrastructures, gutters, downpipes and signage.</p>	<p>fencing and landscaping to balance visual privacy with casual surveillance.</p> <p>The number of units with a single aspect have been minimised.</p> <p>The roof forms proposed are flat and relate to the development type proposed, as well as the use of the space, e.g. the communal open space and photovoltaic panels.</p> <p>The elements on the roof have been consolidated and are integrated.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>
<b>3.6 Car Parking and Access</b>	<p>Visitor car parking shall be clearly identified and may not be stacked or tandem car parking.</p> <p>Visitor car parking shall be located between any roller shutter door and the front boundary.</p> <p>Pedestrian entries and driveways shall be separated.</p>	<p>The visitor car spaces are not in stacked or tandem arrangement. Standard space marking/signposting can address the identification of spaces.</p> <p>The visitor spaces are generally consolidated together but are not between a roller shutter. No concern is raised as they are within the basement and are able to be accessed by visitors.</p> <p>The entries are clearly separated.</p>	<p>Complies</p> <p>Considered Acceptable</p> <p>Complies</p>

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Development Control	Provision	Comment	Complies
	Driveways shall be designed to accommodate removalist vehicles.	The driveway can accommodate a removalist vehicle.	Complies
	Where possible vehicular entrances to the basement car parking shall be from the side of the building.	The basement entry is separate from the building to the west side of the southern building.	Complies
<b>3.7 Amenity and Environmental Impact</b>	<u>Overshadowing</u> Adjoining properties must receive a minimum of 3 hours of sunlight between 9am and 5pm on 21 June to at least: <ul style="list-style-type: none"> <li>- One living, rumpus room or the like; and</li> <li>- 50% of the private open space</li> </ul>	There are no buildings on properties to the east, west and south of the site. The shadow diagrams and sun-eye diagrams indicate there will be limited overshadowing between 9am and 11am on the adjoining approved lot to the west. Ample solar access remains available throughout the rest of the day.	Complies
	<u>Privacy</u> 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.	The proposal is compliant with its setbacks and building separation under the ADG. There are no internal or potential future privacy impacts to adjoining properties.	Complies
	<u>Acoustic Impact</u> Noise attenuation measures should be incorporated into building design to ensure acoustic privacy between on-site and adjoining buildings.	The unit design largely provides like room to like room to minimise noise issues between units. Standard conditions to comply with the NCC would otherwise address acoustic impacts within the buildings. No notable concerns are raised with noise impacts to adjoining properties.	Complies
<b>3.8 Site Services</b>	Letterboxes shall be provided for each dwelling on site.	Mailboxes are located near the street frontages of both buildings.	Complies
	Waste disposal facilities shall be provided for development. These shall be located adjacent to the driveway entrance to the site.	Waste rooms are located in the basement, including a bulky waste space. A temporary collection area is identified on the Ardennes Avenue. Council's Waste officer has	Complies

**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

Development Control	Provision	Comment	Complies
	<p>It may be necessary to provide an electricity substation at the front of the development adjacent to the street frontage.</p>	<p>reviewed the application and supports it with conditions.</p> <p>No new substation is required. An existing substation is present on the Changsha Road frontage.</p>	Complies
<p><b>3.9 Residential Choice and Mix for Apartment Buildings</b></p>	<p>To achieve a mix of living styles, sizes and layouts within each residential development, comply with the following:</p> <ul style="list-style-type: none"> <li>• Provide a mix of studio, 1 bedroom, 2 bedroom and 3 bedroom units</li> <li>• Studios and 1 bedroom units are not to be greater than 25% and not less than 5% of the total mix of apartments within each development.</li> <li>• Two bedroom units are not to be more than 75% of the total mix of apartments within each development.</li> </ul> <p>10% of all apartments are to be designed to be capable of adaptation for disabled or elderly residents.</p>	<p>A mix of 1, 2 and 3 bedroom units are proposed.</p> <p>The unit mix is:</p> <ul style="list-style-type: none"> <li>• 4 x 1 bedroom units (10%)</li> <li>• 29 x 2 bedroom units (75%)</li> <li>• 6 x 3 bedroom units (15%)</li> </ul> <p>The mix aligns with the DCP.</p> <p>10% of units is 4 units. A total of five (5) are labelled as adaptable.</p>	<p>Complies</p> <p>Complies</p>

## Clause 4.6 request for variation:

### Height of Buildings

#### 1 Introduction

This request has been prepared as the Applicant's Written Request for Variation to a Development Standard and is made in accordance with the provisions of clause 4.6 of the *Liverpool Local Environmental Plan 2008 (LLEP2008)*.

The Request for Variation is made in respect of a Development Application for the Proposed construction of two (2) Residential Flat Buildings (RFBs) with a common basement car-park, over future residue super-lot (Lot 201) as approved in DA-182/2021.

The development is proposed over land described as part of Lot 231 in DP 1287558, known as Lot 231 Changsha Road. The part of the site over which the proposed development is located is in the eastern part south of Changsha Road, west of Arnhem Road (which will be extended south by approved DA-182/2021 works), and north of future Ardennes Avenue (which will be extended west by approved DA-182/2021 works). This land is the future residue Lot 201.

The site of the development is shown in figure 2. The site area is 3,782sqm.

The total gross floor area of the proposed development is a compliant 3,782sqm. That is, the proposed development proposes a floor space ratio control of 1:1, to comply with the Floor Space Ratio (FSR) development standard.

The development will read as two (2) well designed, contemporary residential flat buildings. The designs of the buildings are compliant with the principles of *SEPP 65 - Design Quality of Residential Flat Building* and the *Apartment Design Guide* with roof top communal open space to augment the ground level deep soil communal open space, which benefits from excellent solar access, as recommended by Council's Design Excellence Panel. The design of each building and orientation is responsive to the three (3) street frontages and is also responsive to the approved deletion of Bartle Lane (from the DCP indicative road layout) in that it provides a ground level central communal open space courtyard.

The Request for Variation relates to clause 4.3(2) Height of Buildings, of LLEP2008, which sets a maximum building height of 15 metres. The entirety of both buildings including rooftop communal open space floor level of are beneath 15m in height, apart from Block B awnings and lobby roof associated with the lift and stair overruns, which exceed the height limit. The height exceedance is a maximum height 1.83m generated by the maximum lift overrun height coinciding with the ground level directly beneath. This is a non-compliance of 1.83m metres or 12.2 per cent. The exceedance of the height limit is demonstrated in figures 3 & 4.

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**APPROVALS**

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The proposed non-compliance arises as a consequence of the proposed rooftop communal open space of Block B, which was considered a significant development improvement as advised by Liverpool's Design Excellence Panel.

The height exceedance will not be obviously perceptible from ground level or the public domain, nor will it cause any noticeable overshadowing. In preparing this Request for Variation, the requirements of clause 4.6 of the LLEP 2008 have been strictly met. The Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled Varying Development Standards – A Guide.

In very brief terms, this variation request says that:

- The intensity of the proposed development accords with the planned intensity in the existing LLEP 2008. This planned intensity forms part of a considered approach to enable the provision of residential apartments within an RFB development, providing for the housing needs of the community in a location which will be well serviced by future public transport and the Edmondson Park town centre.
- The height of the proposed development is consistent with the desired future character of the area — both in terms of the LLEP 2008's existing planned level of density and the Edmondson Park precinct.
- The progressive setbacks and design characteristics of the proposal coordinate to manage bulk, scale and other visual impacts.
- Any minor additions to the shadowing arising from the building height exceedance will not cause an additional material impact in contravention of any solar access controls.
- There are no adverse impacts to the public domain as a result of the non-compliance with the height of buildings development standard.
- The proposed development is in the public interest because it is consistent with:
  - the objectives of the height control standard; and
  - the objectives for development within the zone in which the development is proposed to be carried out.
- Requiring strict compliance with the height control is unreasonable in the circumstances of the case. This because:
  - requiring such compliance will undermine at least one of the objectives of the height control development standard itself.
- Requiring strict compliance with the height control is unnecessary in the circumstances of the case. The Edmondson Park Character Area Statements for the subject 'Urban' area in which the site is located, articulates the desired future character of the development being dense, urban and predominately residential, as well as being

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massed towards the public realm along north of Ardennes Avenue and opposite the nature reserve Regional Park and Public Open Space (as earmarked in the Edmondson Park South DCP 2012), and four (4) storeys in height. The proposed buildings secure good design outcomes for the residential apartments and are consistent with anticipated development bulk and scale. The increased height as proposed has no discernible effect on the bulk of the buildings, which are setback generously from the subject site boundaries. The proposed development remains consistent with the desired future character of the locality.

- There are sufficient environmental planning grounds to justify contravening the height control. This is because, if the variation is not approved there will be adverse environmental planning consequences. These are either that;
  - The height of the development would need to be reduced by one story, or redesigned to remove the rooftop communal open space, or
  - The ground level of Block B would be located below the large communal open space in the centre of the site, affecting the desired natural connection between the buildings and on-site open space, or
  - An additional step down will eventuate thereby reducing the accessibility throughout the site, which is designed around the two separate buildings and their services,

These alternatives lead to an inferior design response with respect to the accessibility and connectivity within the building and communal open space, and the first option derogates from Objective 1.3(c) of the EPA Act because the loss of one storey from the building as a response to a non-compliance resulting from a rooftop communal open space area, would not be orderly and economic development. The grant of development consent with the variation to the height of buildings development standard will avoid these outcomes.

- The contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit of maintaining the development standard in the present circumstances (and there is public benefit in varying the standard). This is because there are site specific circumstances to which the proposed building height responds. The proposed variation will not set an undesirable precedent for sites not sharing those same site specific characteristics. The absence of public benefit from strict application of the standard in this instance is also because the height of buildings as proposed is consistent with the objectives of the standard and the zone and therefore consistent with the public interest.

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**APPROVALS**

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Figure 1: Aerial Imagery of Subject Site (Future Lot)

Subject site

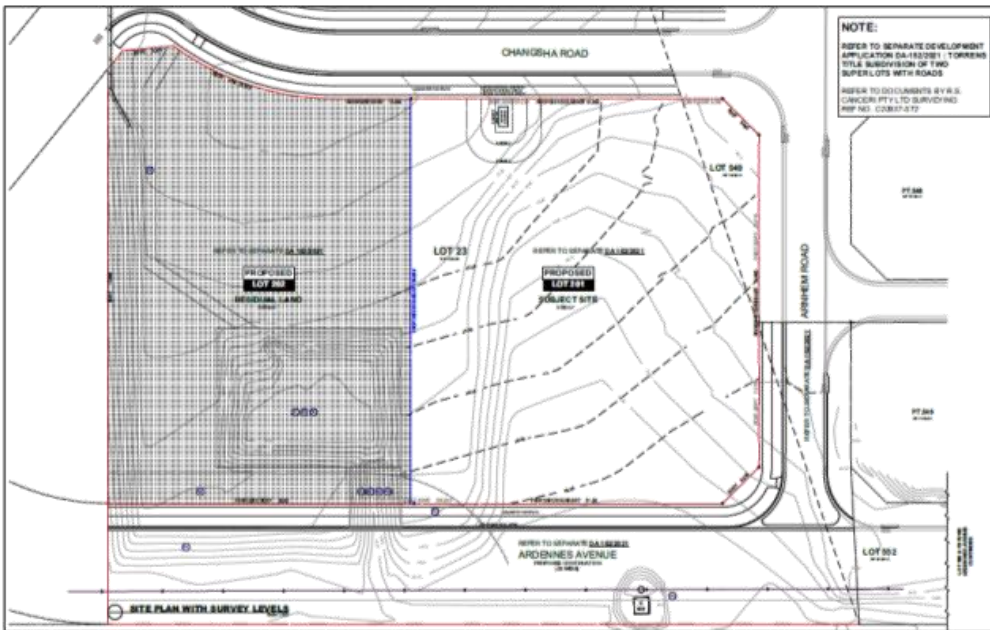


Figure 2: Extract of Site Subdivision Plan (as per DA-182/2021)

PLANNING	APPROVALS	DEVELOPMENT
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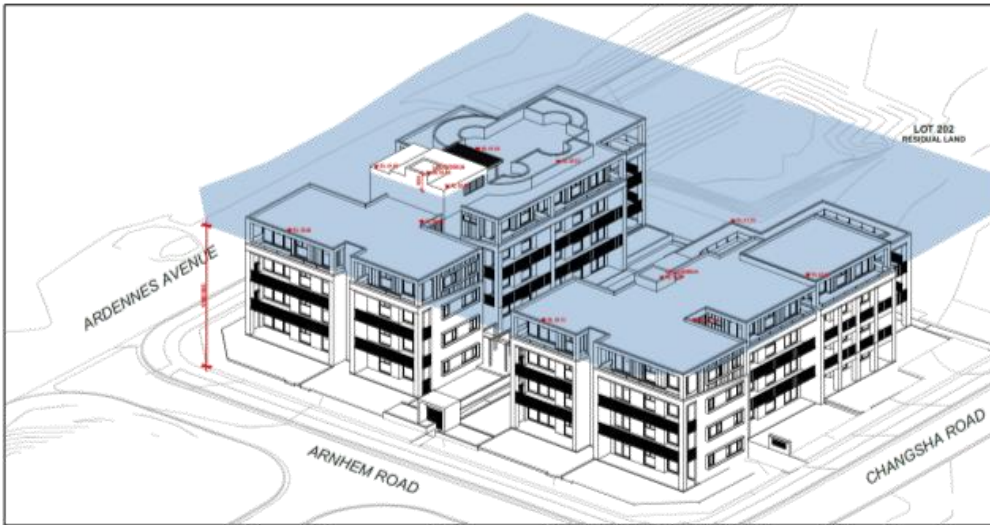


Figure 3: Extract of Height Plane Diagram

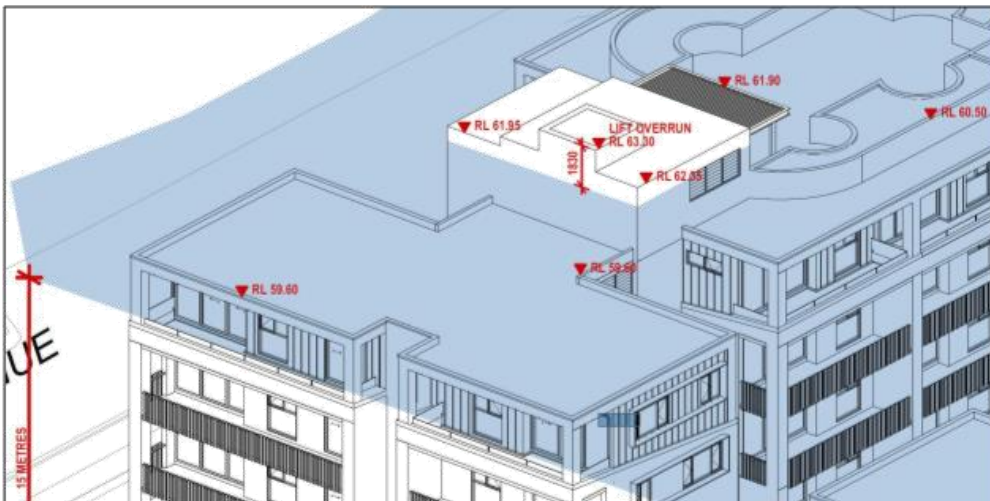


Figure 4: Magnified inset of Height Plane Diagram

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**2 Background and Development Description (including development and site analysis)****2.1 Development Description**

This Development Application seeks development consent for:

**Proposed construction of two (2) Residential Flat Buildings with a common basement car-park, over future residue super-lot (Lot 201) as approved in DA-182/2021, containing:**

- **4 x one (1) bedroom apartments**
- **29 x two (2) bedroom apartments**
- **6 x three (3) bedroom apartments**
- **Basement Carpark with:**
  - **40 Resident car parking spaces,**
  - **8 Visitor car parking spaces.**
  - **4 motorcycle spaces and 24 bicycle spaces**

**2.2 The Site**

The subject site is described as part of Lot 231 in DP 1287558, known as Lot 231 Changsha Road. The part of the site over which the proposed development is located is in the eastern part south of Changsha Road, west of Arnhem Road (which will be extended south by approved DA-182/2021 works), and north of future Ardennes Avenue (which will be extended west by approved DA-182/2021 works). This land is the future residue Lot 201.

In this regard the proposed development site will enjoy three (3) street frontages of:

- Approx. 51 metres in length to Changsha Road to the north of the subject site (excluding 8.485m splay)
- Approx. 55 metres to (unformed) Arnhem Road to the east of the subject site (excluding 8.485m splay); and
- Approx. 51 metres to (unformed) Ardennes Avenue to the south of the subject site (excluding 8.485m splay).

The site of the development is shown in figure 1. The site area is 3,782sqm.

The site is vacant apart from the bio-retention water quality basin which services the subject future lot, and which is located off the future site within residue super-lot Lot 202.

Future Lot 201 contains a steady fall of approximately 1.5m from the north-west corner of the site to the south-east corner.

The site has no vegetation of any significance and there are no trees or remnant bushland requiring removal, but is partially affected by a bushfire prone buffer from vegetation hazard on the future regional park site to the south.

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Apart from detached low density housing located north of Changsha Road to the north, the immediate locality is largely remnant semi-rural large lot residential land, undergoing transition to urban/suburban.

### 2.3 The Variation

The subject site is zoned R1, the proposed development is two (2) RFBs, and the maximum building height is 16.83m. This represents a maximum exceedance in height of 1.83m above the 15m maximum as per the development standard.

### 2.4 Proposed Development Context

This request seeks to establish the particulars of the height exceedance by providing an overview of the proposed development outcome in the context of:

- a) the design response to the site topography, and
- b) the adjoining site existing (and onsite and adjoining site future) developments.
  - a) Design Response
 

The proposed development provides two (2) building forms which;

    - i) steps down once in response to the fall of the natural ground level, and
    - ii) provides equitable access across the site and buildings despite the topography by means of one lift core per building.
  - b) Adjoining site existing (and onsite and adjoining future site) developments.
    - i) both the allotments to the north of the subject site and proposed Block A building onsite are not impacted upon by the exceedance of the height development standard as proposed by Block B, as there is no possibility of overshadowing and the height exceedance will be visually imperceptible. Additionally, future adjoining development to the west as per the approved future Lot 202, will be impacted only in morning hours by any additional overshadowing.
    - ii) There is no private development to the south (future road and future public open space).

The proposed development has been designed to facilitate a complementary and modern addition to the locality in which it sits. Setbacks of the proposed development are overwhelmingly compliant with the applicable development controls, and provide for an appropriate response to site constraints by providing a building envelope that responds to the existing adjoining development and desired future development, while also ensuring that any prospects for adjoining development potential is not impacted upon.

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

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**Figure 7:** Perspective from corner of Ardennes Avenue and Amhem Road



**Figure 8:** Perspective looking east along Ardennes Avenue

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**3 Clause 4.6 Request for Variation**

Clause 4.6 of LLEP2008 allows for variation to development standards.

Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

**4.6 Exceptions to development standards**

- (1) *The objectives of this clause are as follows—*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*

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- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

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

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 6.4, 6.5, 6.6, 7.5A, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30.

**Clause 4.3 is not identified as being excluded from the operation of clause 4.6. Therefore, a request to vary the development standard may be made by the applicant.**

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

Liverpool Local Environmental Plan 2008.

### 3.2 What is the zoning of the Land?

The subject site is zoned R1 General Residential.

PLANNING

APPROVALS

DEVELOPMENT

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**3.3 What are the objectives of the zone?**

The objectives of the R1 General Residential zone are:

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

It is considered that this proposal satisfies the relevant zone objectives. That is, this proposal will provide new residential accommodation in the form of two (2) RFB developments in a location accessible to public transport and town centre, where a variety of residential accommodation is permitted and such proposal is compatible with the existing and approved and desired high density residential development in the immediate locality.

The land zoning is identified to specifically assist in meeting the demands for more housing and this development proposes a mix of apartment sizes in the form of 1, 2 and 3 bedroom apartments. The development design and configuration will aid in providing broader housing choice for the local community and further opportunities for an integrated mix of housing and household types.

Upon review of the development design and the land zoning objectives there is little doubt that development of the subject site as proposed will satisfy the relevant R1 zone objectives.

**3.4 What is the Development Standard being varied?**

The subject Request for Variation relates to the maximum height of building standard pursuant to clause 4.3(2) of the LLEP2008. Therefore, the proposed development seeks exception to the 15m HOB standard.

**3.5 What are the objectives of the Development Standard?**

The objectives of the development standard are:

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*

PLANNING	APPROVALS	DEVELOPMENT
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- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

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

- is designed to be compatible with the desired future character of the locality being within a four (4) storey built form which complies with SEPP 65 design principle requirements in ensuring excellent amenity to future occupants. The development has been guided by the design input that has informed the proposed building envelope which has resulted in a proposed built form that responds to the site topography and the three (3) bounding roads, while respecting existing and future development on adjoining allotments and not unreasonably impacting on their development potential.

In doing so the proposed development contributes positively to the high quality urban form sought by these objectives, in particular along Ardennes Avenue.

- does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises or dwellings within the development, than what is anticipated in the locality by that development standard and corresponding development controls.

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

Clause 4.3 prescribes a maximum height of building of 15m, by reference to Clause 4.3(2) of the LLEP 2008.

### **3.7 What Is The Numeric Value Of The Exceedance to the Development Standard In The Development Application?**

The maximum building height proposed is 16.83%. This exceeds the maximum permitted building height by 1.83m. The variation of exceedance is principally due to a proposed built form that overall responds to the site topography, but which also affords future residents a rooftop communal open space with views to the future Regional Park, which augments the large ground level communal open space.

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

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

The proposed maximum building height exceedance is 1.83m above the 15m development standard. This represents a per cent exceedance of 12.2%.

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

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

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

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

- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a **floor space ratio variation of 187 per cent**.
- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a **38 per cent height exceedance over a 15-metre building height standard**.
- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **28 per cent height exceedance over a 22-metre building height standard**.
- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **21 per cent height exceedance over a 18-metre building height standard**.

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

PLANNING

APPROVALS

DEVELOPMENT

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Even so, the actual per cent exceedance in this instance is considered minor given it is primarily caused by the rooftop communal open space facility, and the highest point is measured at the lift overrun, as identified earlier in this document.

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

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

The 5 ways are:

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

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

Reference should be made to figures 3, 4, and 5 above of this document, for a clear understanding of site topography and limited extent of height exceedance.

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

**The proposal achieves the objectives of the Zone.**

PLANNING

APPROVALS

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As detailed above, this proposal achieves the objectives of the zone. That is, this proposal will provide new residential accommodation in the form of two (2) RFB developments, in a location accessible to public transport and town centre, where a variety of residential accommodation is permitted and such proposal is compatible with the existing and approved and desired high density residential development in the immediate locality.

The land zoning is identified to specifically assist in meeting the demands for more housing and this development proposes a mix of apartment sizes in the form of 1, 2 and 3 bedroom apartments. The development design and configuration will aid in providing broader housing choice for the local community and further opportunities for an integrated mix of housing and household types.

#### **The proposal achieves the objective of clause 4.3**

As detailed above, this proposal achieves the objectives of the development standard. That is, this proposal is designed to be compatible with the desired future character of the locality, does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises, and contributes positively to the high quality urban form sought by these objectives, in particular along Ardennes Avenue.

#### **Sufficient environmental planning grounds to justify contravening the development standard**

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

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

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

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site*

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

**Ivan Kokotovic – Senior Associate, HDC Planning**

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that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the "environmental planning grounds" referred to in cl 4.6(4)(a)(i) of the LEP. *(emphasis added)*

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

*Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner's finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.*

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

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

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

Based on that methodology, the environmental planning grounds which support variation to the HOB standard in this instance are:

#### **Environmental Planning Ground 1 – Negligible amenity or visual impacts**

Numerically, the HOB for maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides appropriately sized buildings complying with setbacks and providing overwhelmingly complying deep soil and communal open space.

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

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It is argued that the exceedance in height does not cause unreasonable impact and satisfies the objectives of the standard, and any impact on the adjoining land to the south is demonstrated in accompanying shadow diagrams, as primarily shadows over a road reserve. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB, which is proposed.

#### **Environmental Planning Ground 2 – Street Character**

The proposed development represents an excellent design outcome consistent with the desired intensity of urban development along Ardennes Avenue (as per the Edmondson Park Character Area Statements). The particular design, in the context of this particular site means that the excess HOB is not perceived from the public domain given that the protruding elements of the building through the 15m plan are primarily located well within the floor plates and are setback from boundaries. It therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls.

Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone and HOB objectives.

#### **Public Interest**

The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general ‘public interest’ considerations at large.

The arguments outlined earlier in relation to consistency with clause 4.3, R1 zone objectives of the LLEP 2008 are relied upon as detailed above.

#### **Secretary’s Concurrence**

It is understood that the Secretary’s concurrence under clause 4.6(4) of LLEP 2008 has been delegated to Council. Nevertheless, Council may wish to consider the concurrence requirements, being:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

**Ivan Kokotovic – Senior Associate, HDC Planning**

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

### Conclusion

For the reasons outlined above, the objection to Clause 4.3 of LLEP 2008 is considered well-founded on the basis that the development in fact demonstrates achievement of the objectives of the development standard and the objectives of the R1 zone. In this regard, strict compliance with the development standard is considered unreasonable or unnecessary, particularly noting the following:

- there are no unreasonable impacts associated with the proposed development with respect to overshadowing, amenity and privacy concerns, and less so than fully compliant building designs;
- the proposed development is consistent with the desired future character of the area in relation to the building bulk, form and scale; and,
- the proposed development is not an overdevelopment, and provides for the desired density in the part of Edmondson Park which is most benefited by its access to public transport, and town centre commercial and other services.

As demonstrated within this submission and the Architectural plans, the overall massing, scale, bulk and height of the proposed development is considered appropriate to the locality.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that the Council not withhold development consent for the proposed development due to a noncompliance with the HOB development standard.

**PLANNING**

**APPROVALS**

**DEVELOPMENT**

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**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

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**REPORT ATTACHMENT 6 – DRAFT REASONS FOR REFUSAL**

**Reasons for Refusal**

1. The proposed development contravenes Clause 4.4 Floor Space Ratio under the Liverpool Local Environmental Plan 2008 (LLEP 2008) and is not supported by a written request under Clause 4.6 of the LLEP 2008 to vary the development standard, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
2. The proposed development contravenes Clause 4.3 Height of Buildings under the Liverpool Local Environmental Plan 2008 and is not supported by sufficient environmental planning grounds, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
3. Insufficient information has been submitted to allow Council to carry out a full and proper assessment of the application. In this regard, an inadequate response has been received to Council's requests for additional information and the application has not submitted a written request to vary Clause 4.4 Floor Space Ratio of the Liverpool Local Environmental Plan 2008 pursuant to Sections 4.15(1)(a)(i), 4.15(1)(a)(iv), 4.15(1)(b), 4.15(1)(c) and 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
4. The proposed development is not consistent with the objectives of the R1 – General Residential zone under the Liverpool Local Environmental Plan 2008 as the proposed development does not demonstrate satisfactory compliance with ensuring *that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities*, pursuant to Sections 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
5. The proposed development does not achieve satisfactory compliance with the controls stipulated in the Liverpool Development Control Plan 2008, including:
  - a. Part 1 – General Controls for all Development
    - i. Section 27 – Social Impact Assessment
 

pursuant to Sections 4.15(1)(a)(iii), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
6. Insufficient information has been provided to demonstrate that the proposed development would not have an adverse impact on the built environment, pursuant to Sections 4.15(1)(a)(iv), 4.15(1)(b) and 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. Insufficient information has been provided to demonstrate that the site would be suitable for the proposed development, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
8. The proposed development is not considered to be acceptable having regard to the concerns raised from internal referrals within Council, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.

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**LIVERPOOL CITY COUNCIL**  
**LOCAL PLANNING PANEL REPORT**

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9. The proposed development is not considered to be acceptable having regard to the concerns raised from community submissions, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
10. Due to the above reasons, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest, pursuant to provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

**ADVICE**

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

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