

COUNCIL AGENDA ADDENDUM

ORDINARY COUNCIL MEETING

30 August 2023

ADDENDUM ITEMS

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PLAN 06**Variation to VPA-11 (146 Newbridge Road
Moorebank)**

Strategic Objective	Visionary, Leading, Responsible Demonstrate a high standard of transparency and accountability through a comprehensive governance framework
File Ref	284301.2023
Report By	Claire Scott - Coordinator Contributions Planning
Approved By	Lina Kakish - Director Planning & Compliance

EXECUTIVE SUMMARY

The purpose of this report is to seek Council support for the public exhibition of the Voluntary Planning Agreement (VPA) between the parties Liverpool City Council and Tanlane Pty Ltd that applies to the land known as 146 Newbridge Road Moorebank, in accordance with section 7.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

The Voluntary Planning Agreement is an executed agreement however, the proponent sought amendments to the schedule. The report seeks Council endorsement to place the varied Planning Agreement and Explanatory Note on public exhibition for a minimum of 28 days, in accordance with clause 204 (3) of the *Environmental Planning and Assessment Regulations 2021* (EP&A Reg).

The report recommends that post exhibition Council delegate the Power of Attorney to the CEO to execute the varied Planning Agreement should Council not receive any significant public submission, or there are no significant changes other than permitted administration amendments to the exhibited agreement, requiring Council consideration.

The variation to the executed agreements is detailed further in the report. However, it is considered that the amendments do not alter the outcomes provided by the changes to material benefit items.

RECOMMENDATION

That Council:

1. Endorse for public exhibition, the amended Voluntary Planning Agreement VPA-11 and the deed of variation for 28 days in accordance with section 7.5 Environmental Planning and Assessment Act; and
2. Delegate authority the Chief Executive Officer, subject to the considerations noted in the report, to execute the Voluntary Planning Agreement in the form that is publicly exhibition or with minor administrative changes, post exhibition.

REPORT

Background

As part of the draft Liverpool Local Environmental Plan 2008 (LLEP), Council proposed changes to zoning of properties from non-urban to urban zones including business, residential, industrial and recreation.

During the exhibition of the LEP Planning Proposal, Council received an official letter of offer on 23 April 2008 from Tanlane Pty Ltd, to enter into a Voluntary Planning Agreement (VPA) for the dedication of land, works and facilities to the public at the property identified as 146 Newbridge Road, Moorebank, for the rezoning, permitting developable potential of this land.

The VPA was made in accordance to s93F of the Environmental Planning and Assessment Act 1979 (EP&A), now referred to as S7.4. Council publicly exhibited the draft VPA in May 2008 and executed the Planning Agreement on 11 June 2008.

The VPA material benefit scheduled items identified the following:

- *Construction and dedication of 'pedestrian access to Newbridge Road'*
- *Construction of 'bike/pedestrian path' through river foreshore land*
- *Construction of passive recreation facilities on the river foreshore land*
- *Embellishment of river foreshore land*
- *Dedication of river foreshore land*
- *Development of a Vegetation Management Plan for the river foreshore land*
- *Conducting maintenance works described in the Vegetation Management Plan*
- *Construction and dedication of 'bike / pedestrian link to Brickmakers Drive'*
- *Dedication of a drainage channel*
- *Construction and dedication of road bridge over drainage channel embankment and road to Brickmakers Drive*

- *Dedication of an easement over the land for access for the purpose of allowing council to undertake maintenance to the river foreshore land*

The VPA also secured easement of drainage and maritime vessels allowing for vessel crossing for the future marina. The marina vessel crossing would require the installation of a pedestrian/bike bridge to connect the northern and southern recreational lands, and the bridge item was captured in the VPA schedule.

Marina Site Planning Proposal and Development Application

The land zoned 'RE2 - private recreation' sought a development proposal to build a future marina, requiring significant earthworks to create the inland marina as well as a vessel entrance. The development of the Marina proposal has had to be considered so far on the impact to the residential and industrial planning agreement offer. Specifically, the foreshore land to be dedicated, the embellishment of the foreshore land and a continuous accessibility to the southern and northern foreshore land.

These considerations as part of the development application process identified the need to amend scheduled items, timing and clauses within the executed Planning agreement applying to the adjacent development.

Council has since approved the development of the marina which has now required a change in the timing of scheduled items, alternate options to the foreshore embellishment, alternate access options in the design for shared pathway access, interface with the foreshore embellishment and Council maintenance access.

The marina works and community safety has been considered in relation to the timing of infrastructure and amendments to works ensuring a continuation of a material public benefit.

The proponent is progressing a separate planning proposal seeking residential development as an additional permissible use to this land. The planning proposal has yet to receive a Gateway determination given outstanding flooding issues. Once a Gateway is issued, a new VPA will be negotiated specifically in relation to this residential development potential of the land.

Residential Development and VPA Schedule changes

The existing executed VPA schedule currently identifies the delivery of infrastructure to be delivered prior to the registration of the 75th lot. Due to the approval process with the Development Application for the proposed Marina, amendment to the schedule was deemed necessary to allow the developer to continue to release lots to purchases.

The changes proposed also took into consideration changes that take into consideration access and safety. Changes to the schedules were a result of the mitigating risk to community

and Council as work within the marina continued and impact future public access areas. With the removal of the bridge over the vessel entrance, a new pathway link was identified via a southern connection pathway traversing around the boundary of the Marina (RE2) land.

The revision and alignment captured the VPA amendments as:

1. Timing of infrastructure to be delivered prior to the registration of the 151st lot
2. Land to be dedicated prescribed as two separable parcels of land
3. Removal of bridge over marina easement
4. Relocation of shared pathways around the curtilage of the marina
5. Inclusion of additional maintenance over land until land is dedicated

The developer has met in part the agreement of the current VPA, through the registration of a community park and drainage easement associated with the residential development. All other clauses related to rights and responsibilities continue to apply to the planning agreement.

It is considered that the value of the developer contribution in the form of land to be dedicated, infrastructure pathways, foreshore embellishment access and right of carriage easements as well as a stratum cash contribution towards the access bridge has not altered the material public benefit value offered under the current VPA.

Public Exhibition

In accordance with section 7.4 of the Environmental Planning and Assessment Act, a planning agreement cannot be amended unless public notice has been given of the proposed amendment and a copy of the proposed amendment has been available for inspection by the public for a period of not less than 28 days.

Should Council not support the proposed amendment to the existing executed VPA, the developer will be responsible to deliver the works, maintain the land and dedicate the land as per the schedule and the associated timing.

FINANCIAL IMPLICATIONS

There are no financial implications relating to this recommendation, as it is considered an agreement to the land already applies, and that the changes to timing and works, provide an equivalent outcome for the community.

CONSIDERATIONS

Economic	Deliver and maintain a range of transport related infrastructure such as footpaths, bus shelters and bikeways.
Environment	<p>Manage the environmental health of waterways.</p> <p>Protect, enhance and maintain areas of endangered ecological communities and high-quality bushland as part of an attractive mix of land uses.</p> <p>Promote an integrated and user-friendly public transport service.</p>
Social	<p>Regulate for a mix of housing types that responds to different population groups such as young families and older people.</p> <p>Support access and services for people with a disability.</p>
Civic Leadership	<p>Undertake communication practices with the community and stakeholders across a range of media.</p> <p>Foster neighbourhood pride and a sense of responsibility.</p> <p>Facilitate the development of community leaders.</p> <p>Encourage the community to engage in Council initiatives and actions.</p> <p>Provide information about Council's services, roles and decision making processes.</p> <p>Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.</p>
Legislative	<p>Environmental Planning and Assessment Act</p> <p>Environmental Planning and Assessment Regulations</p>
Risk	<p>The risk is deemed to be Low.</p> <p>Inability of the developer to deliver on agreement caused by financial impacts resulting in poor community access to public land. The risk is considered within Council's risk appetite by mitigating through VPA title registration and bonding of works.</p>

ATTACHMENTS

1. VPA-11 - 146 Newbridge Road, Moorebank - Deed of Variation
2. VPA-11/A Voluntary Planning Agreement - 146 Newbridge Road, Moorebank

23 August 2023 version

Deed of Variation of Voluntary Planning Agreement – 146 Newbridge Road, Moorebank

Liverpool City Council (ABN 81181182471)

Tanlane Pty Limited (ACN 057579718)

Deed of Variation of Voluntary Planning Agreement

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Information table

Date

Parties

Name	Liverpool City Council
ABN	81 181 182 471
Address	Ground Floor, 33 Moore Street, Liverpool NSW 2170
Telephone	1300 362 170
Facsimile	N/A
Email	lcc@liverpool.nsw.gov.au
Representative	Chief Executive Officer

Name	Tanlane Pty Limited
ACN	057 579 718
Address	11 Narabang Way, Belrose, NSW 2085
Telephone	9986 3500
Facsimile	9986 3555
Email	ernest@benedict.com.au
Representative	Ernest Dupere

Background

- A. Tanlane is the registered Proprietor of the Land.
- B. Council and Tanlane entered into a voluntary planning agreement on 11 June 2008 pursuant to the then section 93F of the Act (Original VPA) in respect of the Land and the Development.
- C. The Original VPA specified the administrative arrangements regulating the delivery and amount of Original Development Contributions to be delivered by Tanlane.
- D. The parties agree to vary the administrative arrangements and amount of Original Development Contributions specified in the Original VPA, on the terms set out in this document.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Liverpool City Council of Ground Floor, 33 Moore Street, Liverpool NSW 2170.

LRS means NSW Land Registry Services or its successors.

Original Development Contributions means the Development Contributions as defined by the Original VPA prior to the amendments the subject of this document.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Tanlane means Tanlane Pty Limited of 11 Narabang Way, Belrose NSW 2085.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) any term capitalised in this document which is not defined in clause 1.1 has the meaning given to that term in the Original VPA;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the *singular* includes the plural and conversely;
- (d) a *gender* includes all genders;
- (e) where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to any *party* to this agreement or any other agreement or document includes the party's successors and substitutes or assigns;
- (g) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (h) *clause* or *schedule* means a clause of or a schedule to this document;
- (i) a reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this document;
- (j) a reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) a reference to a *right* or *obligation* of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (l) unless stated otherwise, *one provision* does not limit the effect of another; and
- (m) a reference to *conduct* includes, without limitation, any omission, statement or undertaking, whether or not in writing.

1.3 Inconsistency

If there is any inconsistency between the terms and conditions of the Original VPA and the terms and conditions of this document, this document will prevail to the extent of any inconsistency.

1.4 Agreement is supplementary

- (a) This document is supplementary to the Original VPA and the parties agree that the terms of the Original VPA remain unchanged, except as expressly provided in this document.
- (b) Except as otherwise provided in this document, the terms and conditions of the Original VPA are expressly ratified and confirmed.

2. Operation of this document

- (a) This document operates on and from the date on which it is executed by all parties in accordance with clause 25C(1) of the Regulation.
- (b) The party who executes this document last is to insert the date that the party executed this document on the front page, and provide a copy of the fully executed and dated document to the other party.

3. Variation

The parties acknowledge and agree that, on and from the date of operation of this document, the Original VPA is varied, and is to be construed, in the form identified in Schedule 1 to this document (which for the avoidance of doubt contains track changes to the Original VPA which reflect the variations made by this document).

4. Registration of document

- (a) Tanlane and Council agree that this deed of variation will be registered on the title of the Land pursuant to section 7.6 of the Act.
- (b) Tanlane must:
 - (i) obtain any necessary consents required in order to register this document on the title to the Land;
 - (ii) lodge the VPA and this document for registration with the NSW Land Registry Services; and
 - (iii) following registration of the VPA and this document, notify Council of registration, enclosing a title search of the Subject Land confirming the registration.
- (c) Council will at the request of Tanlane release the Land from registration of the VPA and this document where the Original Development Contributions have been provided and Tanlane is not in breach of its obligations under the VPA and this document. The obligations of Council are satisfied when Council provides the Developer with a signed request in registrable form for the release of registration of the VPA and this document.

5. Explanatory note relating to this document

- (a) Schedule 2 of this document contains the Explanatory Note relating to this document required by clause 25E of the Regulation.

- (b) Under clause 25E(7) of the Regulation, the parties agree that the Explanatory Note in Schedule 2 is not to be used to assist in construing this document.

6. General

6.1 No fetter

Nothing in this document will be construed as requiring Council to do anything that would cause it to be in breach of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

6.2 Notices

Any notice given under this document may be given in any manner permitted by the Original VPA.

6.3 Severability

- (a) If a clause or a part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or a part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

6.4 Assignment

The rights and obligations of each party under this document cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of the other parties.

6.5 Costs

Tanlane must pay Council's reasonable costs regarding the preparation, negotiation and execution of this document.

Schedule 1 – Variation to Original VPA

Item	Change
Documentation / Administration	Administration changes to reflect current status of the development, Council representatives, legislative references, updated clauses and background
3.1 – Designated Land	Takes into consideration the marina development interface works and the separation of the two
3.10 – Deferral of works	Insertion of new clause
Section 7 – application of 7.11 and 7.12	Clarify provided in the application of this clause
8.2 – Registration of this planning agreement	Additional clause inserted – rationale for security to be provided prior to the timing specified in schedule 3
10 – Contamination	Additional clauses inserted – to ensure risk of contaminated land is minimal to public and council
21.2 – Legal costs	Additional Clause inserted – reimbursement of reasonable legal costs
Schedule 2 – Defined Terms and Interpretation	Additional, updated and deleted definitions
Schedule 3 – item	Changes to description for northern and southern land – and deletion of new described works
Schedule 3 – timing	Prior to the issue of a subdivision certificate for a plan that when registered would create the one hundred and fifty first (151 st) residential lot within the Development
Schedule 3 – value of bond	Adjusted to reflect outstanding amount and CPI
Schedule 3 – Vegetation management plan and works	Additional clauses prescribing the works and timing for each southern and northern land plus the maintenance responsibility prior to dedication of land
Schedule 3 – Bike Path	Inclusion of new path layout to take into consideration the deletion of the bridge over the marina vessel ingress/egress
Schedule 4 – Terms of easement	Amended to reflect current status of work program.

Schedule 2– Explanatory Note

Explanatory Note

Explanatory Note

Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the Regulation.

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft variation to an existing planning agreement between the parties under section 7.4 of the Act.

Parties

Liverpool City Council ABN 31 459 914 087 of Ground Floor, 33 Moore Street, Liverpool NSW 2170
(Council)

Tanlane Pty Limited ACN 057 579 718 of 11 Narabang Way, Belrose, NSW 2085 (**Developer**).

Description of the Subject Land

The land to which the planning agreement relates and applies is the Land.

Description of Proposed Development

The subdivision of the Land to create up to two hundred and twenty five (225) residential lots, 11,500m² of B6 gross floor area (as defined in Liverpool Local Environmental Plan 2008), and a single RE2 lot as well as the erection of a dwelling on each of the residential lots created.

Objectives of amendments to the VPA

The objective of the varied VPA is to:

- (a) reflect numerical amendments to the Act and Regulation;
- (b) clarify the circumstances in which the Developer may request the deferral of any Works under the VPA;
- (c) ensure the Original Development Contributions are consistent with planning agreements in the surrounding Moorebank area;
- (d) require the Developer to procure the acquisition of, or to acquire the Road Bridge Stratum and dedicate it to Council, or if this does not occur, to regulate the manner in which Council may acquire that interest and the security that must be provided to Council if Council is required to acquire that interest (including payment of the Road Bridge Stratum Payment);
- (e) amend the nature of development contributions to be made under the VPA to ensure they accurately reflect current market value and the staging of the Development.

The varied VPA will protect the public interest as it promotes greater certainty with the delivery of contributions and in a manner which complements the delivery of the Development.

Nature of amendments to the VPA

The varied VPA has been prepared in accordance with s7.4 of the Act. The varied VPA will continue to be a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the VPA) for various public purposes (as defined in s7.4(2) of the Act).

Effect of amendments to the VPA

The VPA (as amended) will continue to:

- relate to the carrying out by the Developer of the Development;
- exclude the application of sections 7.11 and 7.12 of the Act to the Development;
- not exclude the application of Liverpool Contributions Plan 2018 – Established Areas for District Facilities and Works;
- require dedication of land and carrying out of Works;
- impose restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement;
- provides a dispute resolution method for a dispute under the agreement, being mediation and expert determination or further dispute resolution measures if mediation and expert determination is unsuccessful;
- provides that the agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the amendments to the VPA

The planning purposes served by the VPA (Clause 25(2)(e) of the Regulation)

In accordance with section 7.4(2) of the Act, the VPA (as amended) will continue to:

- promote and co-ordinate the orderly and economic use and development of the Land to which the VPA applies;
- require embellishment works to land for public purposes in connection with the Development;
 - provide land for public purposes in connection with the Development; and
- provide and co-ordinate community services and facilities in connection with the Development.

How the Draft Planning Agreement Promotes the Public Interest (Clause 25(2)(a) of the Regulation)

The varied VPA promotes the public interest by promoting the objects of the Act as set out in section 1.3(a), (c), (g) and (h) of the Act. The varied VPA will ensure the delivery of the Development Contributions by the Developer.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities (Clause 25(2)(b) of the Regulation)

N/A

Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted (Clause 25(2)(c) of the Regulation)

N/A

Councils - How the Draft Planning Agreement Promotes the Elements of the Council's Charter (Clause 25(2)(d) of the Regulation)

The VPA (as amended) will continue to promote the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that the public facilities provided by the Developer under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

All Planning Authorities - Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program (Clause 25(2)(f) of the Regulation)

The VPA (as amended) continues to conform with Council's Capital Works Program through the provision of essential infrastructure such as the roads, traffic facilities and drainage as listed in Schedule 3 of the VPA.

Whether the VPA (as amended) specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate (Clause 25(2)(g) of the Regulation)

- The VPA (as amended) will continue to contain requirements that must be complied with, namely the carrying out of Work and dedication of land, before Subdivision Certificates and Construction Certificates may be issued.

Signing page

EXECUTED as an agreement.

Executed on behalf of the **Liverpool City Council**
by its **[COUNCIL TO CONFIRM EXECUTION
CLAUSE]**

Signature of General Manager

←

Signature of Mayor

←

Name of General Manager (print)

Name of Mayor (print)

←

Executed by Tanlane Pty Ltd ACN 057 579 718
in accordance with section 127 of the
Corporations Act 2001 (Cth):

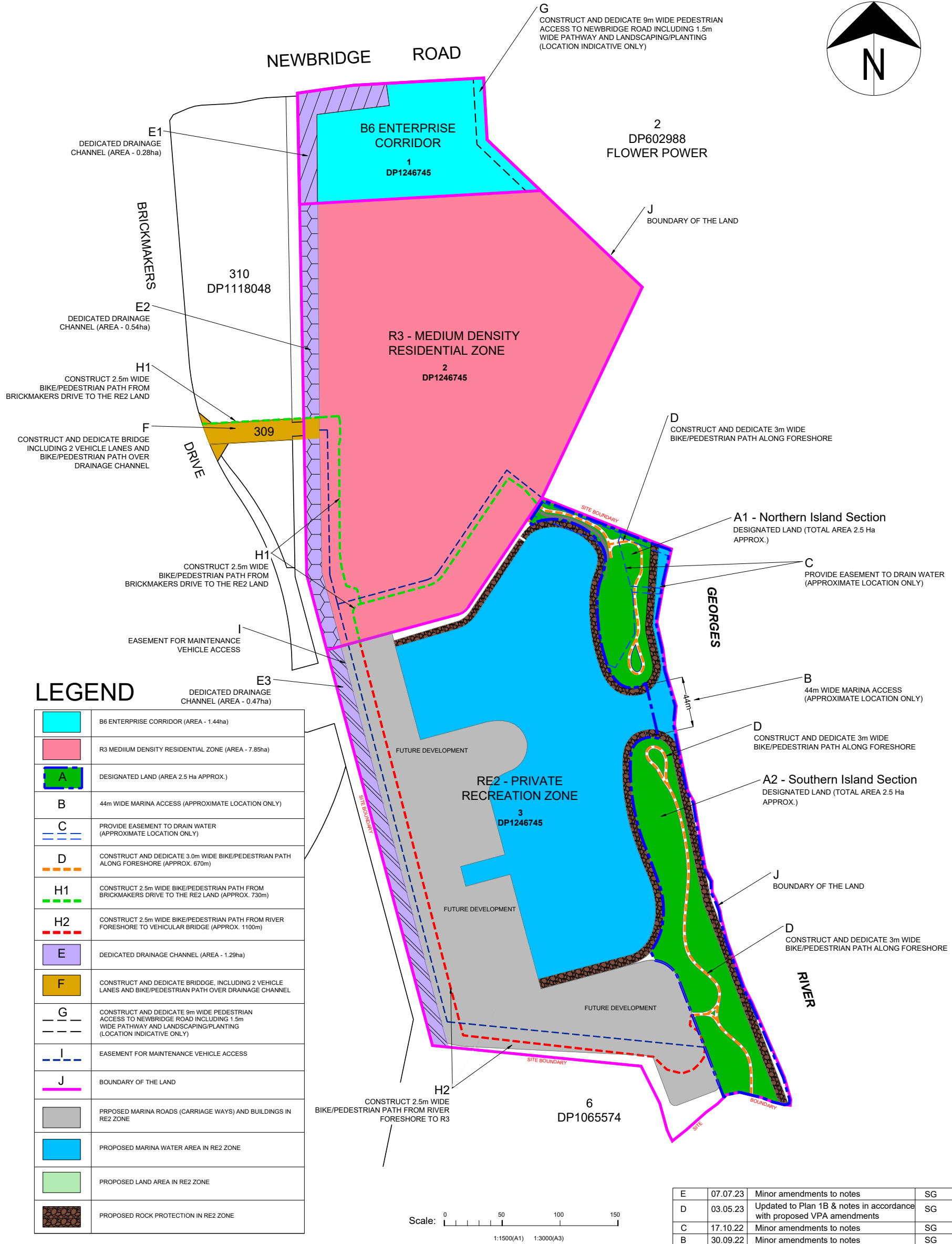
Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

ANNEXURE 1
DEVELOPER MARINA DEVELOPMENT APPROVED



PROJECT:
GEORGES COVE
MASTERPLAN

SITE:
146 NEWBRIDGE ROAD
LOTS 1, 2 & 3 IN DP1246745

E	07.07.23	Minor amendments to notes	SG
D	03.05.23	Updated to Plan 1B & notes in accordance with proposed VPA amendments	SG
C	17.10.22	Minor amendments to notes	SG
B	30.09.22	Minor amendments to notes	SG
A	29.09.22	Issue for review and discussion	SG
ISSUE	DATE	REVISIONS	AUTHOR

Note:
* This layout has been reproduced from a drawing titled 'Annexure 1' in the document 'Voluntary Planning Agreement 146 Newbridge Road Moorebank' - 11 June 2008.
* The survey drawing used for the base: DP1246745
* All dimensions & areas are approximate & subject to final survey

Voluntary Planning Agreement - 146 Newbridge Road, Moorebank

(Council reference VPA-11/A)

Liverpool City Council (ABN 81 181 182 471) (**Council**)

Tanlane Pty Limited (ACN 057 579 718) (**Developer**)

MARSDENS LAW GROUP

Level 1 49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown

Ref: 58 33 9164 AJS:JRT

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VOLUNTARY PLANNING AGREEMENT

PARTIES

Council	Name	Liverpool City Council
	Address	Ground floor 33 Moore Street, Liverpool NSW 2170
	ABN	84 181 182 471
	Telephone	1300362170
	Facsimile	N/A
	Email	lcc@liverpool.nsw.gov.au
	Representative / Contact	Chief Executive Officer
Developer	Name	Tanlane Pty Limited
	Address	11 Narabang Way, Belrose NSW 2085
	ACN	057 579 718
	Telephone	0407 282 444
	Facsimile	(02) 9986 3555
	Email	ernest@benedict.com.au
	Representative / Contact	Ernest Dupere

BACKGROUND

- A** The Developer is the registered proprietor of the Land.
- B** The Developer acknowledges that the grant of Development Consent for the Development is likely to increase the demand for the provision of public facilities.
- C** As a consequence of the matters set out in paragraph B the Developer has offered to dedicate the Designated Land and carry out the Works on the terms of this agreement if Development Consent is granted for the Development.

OPERATIVE PROVISIONS

1 DEFINITIONS

Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 2** apply in the interpretation of terms used in this agreement.

2 APPLICATION AND OPERATION OF AGREEMENT**2.1 Planning agreement**

The parties agree that this agreement is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2.2 Application

This agreement applies to both the Land and the Development.

2.3 Operation

- (1) Subject to paragraph (2) this agreement operates from the date it is executed by both parties.
- (2) The following clauses of this agreement will only operate if and when the Council grants the Development Consent:
 - (a) Clause 3; and
 - (b) Clause 12.

3 PROVISION OF CONTRIBUTIONS**3.1 Designated Land**

- (1) The Developer must dedicate the Designated Land to the Council by the dates or times specified for the relevant item in **Schedule 3**.
- (2) The Developer must ensure that the Designated Land is dedicated to Council such that it:
 - (a) does not include any rock armouring within the marina basin;
 - (b) does not contain any private or public infrastructure associated with the Marina Development; and
 - (c) does not include any drainage infrastructure which services the Marina Development.
- (3) Further to the above, the parties acknowledge that the width of the Northern Island Section Designated Land and the Southern Island Section Designated Land will be measured from the top of the marina basin rock armouring (not including the rock armouring), across to the existing lot boundary on the Georges River Foreshore (being the high tide mark).

3.2 Monetary Contribution (Road Bridge Stratum Acquisition)

The Developer must make the Road Bridge Stratum Payment to Council on and subject to the provisions of clause 4.

3.3 Works Contribution

- (1) The Developer must carry out and complete the Works in accordance with this agreement and generally in accordance with the plan at **Annexure 1**.
- (2) The Council may refuse to issue the relevant Subdivision Certificate for the Development if the relevant portion of the Works identified in **Schedule 3** has not been carried out in accordance with this agreement.

3.4 Standard of Construction

The Developer must construct and complete the Works:

- (1) in accordance with the requirements of, or consents issued by, any Authority;

- (2) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

3.5 Timing

Subject to clause 3.10 of this agreement, each item of the Works must be completed to the reasonable satisfaction of the Council in accordance with **Schedule 3**.

3.6 Acceptance of Risk in Works

Other than as specifically set out in this agreement, once a parcel of Designated Land is dedicated or transferred to the Council, the Council accepts ownership, possession and control of the Land and any Works carried out on the Land.

3.7 Value of Works

- (1) Upon Completion of any item of the Works the Developer must provide Council with a certificate from a Quantity Surveyor in favour of Council and the Developer as to the Value of the relevant Works.
- (2) The Developer warrants that the Value of each item of the Works is equal to or greater than the Contribution Value of that item.

3.8 Indexation of Amounts payable by Developer

The Contribution Value for each item of the Works will be increased in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

Index means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics, or any replacement index published from time to time.

- A = the indexed amount;
- B = the relevant amount as set out in this agreement;
- C = the Index most recently published before the date that the relevant item of the Works is Completed; and
- D = the Index most recently published before the commencement date of this agreement.

If A is less than B, then the amount of the relevant Contribution Value will not change.

3.9 Licence for Maintenance

The Council and the Developer will enter into the licence agreement set out as **Annexure 3** in order to allow the Developer to access the Designated Land to carry out the maintenance works required of it under this agreement.

3.10 Deferral of Works

- (1) Notwithstanding any other provision of this agreement, if the Developer forms the view at any time, that it is unable to Complete any item or items of the Works (**Deferred Works**) by the time required under this agreement, then the Developer may seek Council's approval to defer the relevant Works by providing written notice to the Council:
 - (a) identifying the relevant item of Work that the Developer proposes to defer;
 - (b) specifying the reason for the deferral requests; and
 - (c) identifying the anticipated time for Completion of the relevant item of Work.

- (2) In considering a request under paragraph (1), the Council may take into account the progress of the Works at the time the request is made.
- (3) In response to a request under paragraph (1), the Council will give the Developer a written notice stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any conditions Council requires with respect to the deferral (which may include the provision of security on account of the relevant Works).
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (3) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this agreement as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this agreement.
 - (c) The time for completion of the Deferred Works under this agreement is the revised date for Completion approved by Council.

4 ROAD BRIDGE STRATUM

4.1 Acquisition of the Road Bridge Stratum

- (1) The parties acknowledge that there is an obligation on the Developer to procure the acquisition of or acquire the Road Bridge Stratum and dedicate it to Council in accordance with Item 7 of **Schedule 3**.
- (2) The Developer acknowledges that Council is under no obligation to acquire the Road Bridge Stratum, however it may choose to do so at its absolute discretion.
- (3) If Council acquires the Road Bridge Stratum by Compulsory Acquisition or private treaty, Council must serve a notice on the Developer to confirm that the acquisition has occurred.

4.2 Dedication of the Road Bridge Stratum

The Road Bridge Stratum Payment will not be required to be made if the Road Bridge Stratum is dedicated to Council as a public road (by the Developer or otherwise) without any obligation on Council to make any payments contained within the definition of *Road Bridge Stratum Payment* contained in **Schedule 2**.

4.3 Security

- (1) The Developer must provide Council with a bank guarantee from an Australian bank on account of the Road Bridge Stratum Payment in accordance with this clause 4.3.
- (2) If Council proposes to acquire the Road Bridge Stratum by private treaty, then it may serve notice on the Developer requiring the Developer to provide Council with a bank guarantee in an amount equal to the Council's then reasonable estimate of the Road Bridge Stratum Payment.
- (3) If Council proposes to acquire the Road Bridge Stratum by Compulsory Acquisition then, provided it has obtained the consent of the Minister and the Governor to publish an acquisition notice with respect to that land, it may serve notice on the Developer requiring the Developer to provide Council with a bank guarantee in an amount equal to the aggregate of:
 - (a) one hundred and twenty per cent (120%) of the amount Council believes it will be required to pay on account of the acquisition; and

- (b) any reasonable costs likely to be incurred by Council in undertaking that acquisition.
- (4) The Developer must provide Council with a bank guarantee in accordance with this clause 4.3 by the earlier of:
 - (a) twenty eight (28) days after receiving a notice from Council under clause 4.3(2) or 4.3(3); and
 - (b) the "Time for Completion" with respect to Item 7 of **Schedule 3**.
- (5) Council may immediately call on any bank guarantee provided under this clause 4.3 if the Developer fails to pay the Road Bridge Stratum Payment by the time required under clause 4.4.

4.4 Timing of payment

- (1) If Council acquires the Road Bridge Stratum by private treaty, then the Developer must pay the Road Bridge Stratum Payment on the later of:
 - (a) completion of that acquisition by Council; and
 - (b) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.
- (2) If Council acquires the Road Bridge Stratum by Compulsory Acquisition, then the Developer must pay the Road Bridge Stratum Payment on the later of:
 - (a) the date on which Council is required to make payment of compensation to any relevant interested party on account of that acquisition; and
 - (b) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.

5 COMPLETION OF WORKS

- (1) The Developer must provide a Completion Notice to the Council within fourteen (14) days of Completing any item of the Works.
- (2) The Council must inspect the Works set out in a Completion Notice within fourteen (14) days of the receipt of that notice.
- (3) Within the earlier of:
 - (a) fourteen (14) days of inspecting the item of the Works set out in a Completion Notice; and
 - (b) twenty-eight (28) days from the receipt of the relevant Completion Notice,
 the Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:
 - (c) have been Completed; or
 - (d) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the relevant item which have not be Completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify those deficiencies.
- (4) If the Council does not provide the Developer with notice in accordance with paragraph (3) the Works set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.
- (5) Where the Council serves notice on the Developer pursuant to paragraph (3)(d) the Developer must:

- (a) rectify the deficiencies in that item in accordance with that notice within three (3) months from the date it is issued by the Council; or
- (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (6) Where the Developer:
 - (a) serves notice on the Council in accordance with paragraph (5)(b) the dispute resolution provisions of this agreement apply; or
 - (b) rectifies the Works in accordance with paragraph (5)(a) it must serve upon the Council a new Completion Notice for the item of the Works it has rectified (**New Completion Notice**).
- (7) The provisions of paragraphs (2) - (6) (inclusive) apply to any New Completion Notice issued by the Developer in accordance with paragraph (6)(b).

6 DEFECTS LIABILITY

6.1 Defects Notice

- (1) Where a Final Completion Notice has been issued for any part of the Works but those Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

6.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 5 in respect of the satisfaction of the Defects Notice.

6.3 Right of Council to Step-In

Council may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.

6.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 6.3 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with the Council in undertaking that work.

6.5 Costs of Council

Where Council exercises its step-in rights all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer.

7 APPLICATION OF s7.11 & s7.12**7.1 Application**

This agreement excludes the application of section 7.11 and section 7.12 of the Act to the Development in respect of the imposition of contributions other than:

- (4) in respect of DA 519/2017, DA 758/2017, DA 319/2018 and DA 580/2018, Council may seek to impose contributions pursuant to the Liverpool Contributions Plan 2009 but only in respect of City Wide Facilities and Established Area – District Community Facilities; and
- (5) in respect of any other development application/s proposing any community title uses in respect of DP271188, Council may seek to impose contributions in respect of the Liverpool Contributions Plan 2018 – Established Areas but only in respect of the category Community Facilities – District Works.

7.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Works or Designated Land that are to be carried out or provided pursuant to this agreement.

8 REGISTRATION OF THIS PLANNING AGREEMENT**8.1 Obligation to Register**

- (1) The Developer and the Council agree that this agreement will be registered on the title of the Land pursuant to s 7.6 of the Act.
- (2) The Developer must:
 - (a) do all things necessary to allow the registration of this agreement to occur under paragraph (1); and
 - (b) pay any reasonable costs incurred by the Council in undertaking that registration.

8.2 Partial Discharge of agreement

The Council will do all things necessary to allow the Developer to remove this agreement from the title of a Residential Lot as quickly as practicable upon request by the Developer where the Developer has complied with its obligations under this agreement (including providing the required security in the form of a bond) with respect to the relevant Residential Lot.

In the event that Council requests security in the form of a bond be provided earlier than the timing specified in **Schedule 3** (to ensure Council has adequate security in place prior to partially discharging this agreement from a Residential Lot, then Council must provide reasonable evidence as to why it needs this security earlier than the dates specified in **Schedule 3**).

9 DEVELOPER WARRANTIES AND INDEMNITIES**9.1 Warranty**

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this agreement;
- (3) it has full capacity to enter into this agreement; and
- (4) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

9.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

10 CONTAMINATION

- (1) The Developer warrants that:
 - (a) as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
 - (b) in relation to any notices or orders issued pursuant to the *Contaminated Land Management Act 1997* (NSW), and the requirements of the Department of Planning, Industry and Environment and any other relevant authority, indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land as at the date of dedication of the Designated Land.
- (2) The Developer must ensure that it carries out the Northern Island Section Works and the Southern Island Section Works in accordance with Law and to a remediation standard that ensures the Designated Land is suitable for RE1 Public Recreation uses under the LEP prior to dedication of the Designated Land.
- (3) On completion of the remediation portion of the Works, the Developer must procure, and provide to Council, a site audit statement from a site auditor accredited by the NSW Environment Protection Authority prepared in accordance with Law and which confirms the Designated Land is suitable for RE1 Public Recreation Uses as at the date of dedication.
- (4) The Developer agrees that on and from the date of dedication of the Designated Land it will carry out maintenance works pursuant to the Vegetation Management Plan and Maintenance Schedule as set out in **Schedule 3** for a period of two (2) years.
- (5) To the extent that in undertaking the portion of the Northern Island Section Works and the Southern Island Section Works, any Contamination is disturbed by the Developer or the Developer's Associate and this disturbance results in further Contamination the Developer agrees to indemnify Council for such disturbance provided the Developer's obligation to indemnify is limited to that part of such Contamination which is actually disturbed or interfered with in the carrying out of the portion of the Northern Island Section Works and the Southern Island Section Works (and not to indemnify in respect of a broader mass of Contamination where that broader mass has not been disturbed or interfered with in the carrying out of this portion of the Works).

11 DETERMINATION OF THIS AGREEMENT

11.1 Determination

This agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

11.2 Consequences

Upon the determination of this agreement Council will do all things necessary to allow the Developer to remove this agreement from the title of the whole or any part of the Land as quickly as possible.

12 SECURITY**12.1 Prohibition**

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

12.2 Assignment of Land

The Developer must not Assign its interest in the Land (other than any Lot) unless:

- (1) the Council consents to the Assignment and such consent shall not be unreasonably withheld; and
- (2) the proposed assignee enters into an agreement to the satisfaction of the Council under which the assignee agrees to be bound by the terms of this agreement.

12.3 Delivery to Council of Bank Guarantee

The Developer must deliver to Council unconditional Bond or Bank Guarantee in a form acceptable to the Council for the amounts and timing specified in **Schedule 3**.

12.4 Council may call on Bank Guarantee

- (1) Subject to clause 3.10, if the Developer does not carry out and deliver the Works by the time required under this agreement the Council may issue the Developer with a notice in accordance with clause 22.1 requiring the Developer to rectify the relevant default within twenty-one (21) days or such other time as is reasonable.
- (2) In the event that the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of the Council, the Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantees to the extent necessary to reimburse the Council for any costs incurred by it in rectifying the relevant default of the Developer.

12.5 Top up of Bank Guarantee

Within seven (7) days of being requested to do so by the Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in **Schedule 3**.

12.6 Return of Bank Guarantee

- (1) Within one (1) month after the Developer satisfies its obligation under this agreement to deliver or procure the delivery of the Works, Council must return the amount of the Bank Guarantee to the Developer that is in excess of the "Percentage of Bank Guarantee Retained During Defects Liability Period" identified in **Schedule 3** for the relevant item of Work.
- (2) Within one (1) month after the Defects Liability Period has expired with respect to the relevant item of Work Council must return the remaining balance of the relevant Bank Guarantee to the Developer.
- (3) The Developer may, at its discretion, lodge separate Bank Guarantees for any one (1) or more of the items of Works set out in **Schedule 3**.

13 FORCE MAJEURE**13.1 Definition**

In this clause 13, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

13.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this agreement, it must:
 - (a) give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this agreement.
- (2) If a party is unable to satisfy its obligations under this agreement by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

13.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer must pay to Council the amount specified in **Schedule 3** of the relevant works and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
- (3) In reference to paragraph (2), Council may at its absolute discretion call on the Bank Guarantees (or any part of it) pursuant to clause 12.4.

13.4 Exclusion of operation

The parties agree that this Force Majeure provision does not apply to an obligation of a party to transfer land or to pay money.

13.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 15.

14 REVIEW & AMENDMENT**14.1 Review**

If either party requests a review of the whole or any part of this agreement then the parties must use their best endeavours, acting in good faith, to review the agreement in accordance with that request.

14.2 Amendment

If the parties agree to amend this agreement as a result of a review conducted under clause 14.1 then any such amendment must be made:

- (1) in writing signed by both parties; and
- (2) subject to the provisions of the Act.

15 DISPUTE RESOLUTION**15.1 Notice of dispute**

If a dispute or lack of certainty between the Parties arises in connection with this agreement or its subject matter (a **dispute**), then either Party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within

five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the Parties being together, the **Representatives**).

15.2 Conduct pending resolution

The Parties must continue to perform their respective obligations under this agreement if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the appropriate Party indemnifies the other relevant Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

15.3 Further steps required before proceedings

Subject to clauses 15.14 and 15.15 and except as otherwise expressly provided in this agreement, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 15.5 or determination by an expert under clause 15.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

15.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the dispute, then the Parties must agree within five (5) Business Days to either refer the matter to mediation under clause 15.5 or expert resolution under clause 15.6.

15.5 Disputes for mediation

- (1) If the Parties agree in accordance with clause 15.4 to refer the dispute to mediation, the mediation must be conducted by a mediator agreed by the Parties and, if the Parties cannot agree within five (5) Business Days, then by a mediator appointed through the NSW Law Society Mediation Program.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the dispute and has been terminated, the Parties may agree to have the matter determined by expert determination under clause 15.6.

15.6 Choice of expert

- (1) If the Parties agree to have the matter determined by expert determination, this clause 15.6 applies.
- (2) The dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the Parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the Parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (3) If the Parties fail to agree as to the relevant field within five (5) Business Days after the Parties agree to have the matter determined by expert determination, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- (4) The expert appointed to determine a dispute:
 - (a) must have a technical understanding of the issues in dispute;

- (b) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (5) The Parties must promptly enter into an agreement with the expert appointed under this clause 15.6 setting out the terms of the expert's determination and the fees payable to the expert.

15.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 15.6, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both Parties are present;
 - (d) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
 - (e) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the dispute; and
 - (c) any other documents, records or information which the expert requests.

15.8 Expert may commission reports

- (1) Subject to paragraph (2):
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and

- (b) the Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 15.6(5) of this deed.
- (2) The Parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

15.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The Parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

15.10 Other courses of action

If:

- (1) the Parties cannot agree in accordance with clause 15.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 15.5 has not resulted in settlement of the dispute and has been terminated and the Parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

then either Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

15.11 Confidentiality of information provided in dispute resolution process

- (1) The Parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (a) subject to paragraph (b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

15.12 Final determination of expert

The Parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

15.13 Costs

If any independent expert does not award costs, each Party must contribute equally to the expert's costs in making the determination.

15.14 Remedies available under the Act

This clause 15 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

15.15 Urgent relief

This clause 15 does not prevent a party from seeking urgent injunctive or declaratory relief.

16 DEFAULT IN PERFORMANCE**16.1 Events of default**

The Developer commits an "Event of Default" if:

- (1) it breaches an essential term of this agreement; or
- (2) it breaches a non-essential term of this agreement and fails to rectify that breach within a reasonable time (which must not be less than ten (10) business days) of being requested to do so by the Council.

16.2 Consequences of Events of default

Where the Developer commits an Event of Default the Council may terminate this agreement by notice in writing to the Developer.

16.3 No restriction on rights

The rights vested in the Council pursuant to clause 16.2 do not prevent the Council from exercising any other rights that it may possess at law.

17 TERMINATION**17.1 Termination**

This agreement may be terminated:

- (1) if the parties agree in writing to terminate it; or
- (2) in accordance with clause 11.

17.2 Consequence of termination

Upon termination of this agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

18 POSITION OF COUNCIL**18.1 Consent authority**

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Legislation.

18.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter, in any unlawful manner:

- (1) the power of the Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (Discretion).

18.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 188 is substantially satisfied; and
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect.
- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to that extent this agreement is not to be taken to be inconsistent with the Law.

18.4 No Obligations

Nothing in this agreement will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Land or the Development.

19 CONFIDENTIALITY**19.1 Agreement not Confidential**

The terms of this agreement are not confidential and this agreement may be treated as a public document and exhibited or reported without restriction by any party.

19.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this agreement; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential agreement received before or after the making of this agreement to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, state government policy, local government policy or any listing rule; or

- (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.

- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

20 GST

20.1 Defined GST Terms

Defined terms used in this clause 20 have the meaning ascribed to them in the GST Law.

20.2 GST to be Added to Amounts Payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

20.3 GST Obligations to Survive Termination

This clause 20 will continue to apply after expiration of termination of this agreement.

21 MISCELLANEOUS

21.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this agreement; and
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and
- (3) make decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this agreement; and
- (4) be just and faithful in its activities and dealings with the other parties.

21.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of the Council of the negotiation, preparation, execution, and stamping of this agreement up to a cap of \$10,000 (plus GST);
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a Tax Invoice from the Council;
- (3) pay or reimburse the reasonable legal costs and disbursements of the Council of the negotiation, preparation, execution and stamping of any variations to this agreement; and
- (4) pay or reimburse the legal costs and disbursements of the Council arising from the ongoing administration and enforcement of this agreement including any breach or default by the Developer of its obligations under this agreement.

22 ADMINISTRATIVE PROVISIONS**22.1 Notices**

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

22.2 Entire agreement

This agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

22.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

22.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

22.5 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

22.6 Amendment

This agreement may only be amended or supplemented in writing signed by the parties.

22.7 Unenforceability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

22.8 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

22.9 Governing law

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement ; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
-

EXECUTION PAGE**Executed as a deed**

Dated:

Signed, Sealed and Delivered by **Tanlane Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

 Director/Secretary (Signature)

 Director (Signature)

 Name of Director/ Secretary (Print Name)

 Name of Director (Print Name)

Signed, Sealed and Delivered by **Liverpool City Council** by its duly constituted Attorney pursuant to the registered Power of Attorney Book No in the presence of:

 Witness (Signature)

 Attorney (Signature)

 Name of Witness (Print Name)

 Name of Attorney (Print Name)

Schedule 1 – Commercial Terms**Commercial Terms**

Developer	Name	Tanlane Pty Limited
	Address	11 Narabang Way, Belrose NSW 2085
	ACN	057 579 718
	Telephone	0407 282 444
	Facsimile	(02) 9986 3555
	Email	ernest@benedict.com.au
	Representative / Contact	Ernest Dupere
Council	Name	Liverpool City Council
	Address	Ground floor 33 Moore Street Liverpool NSW 2170
	ABN	84 181 182 471
	Telephone	1300362170
	Facsimile	N/A
	Email	lcc@liverpool.nsw.gov.au
	Representative / Contact	Chief Executive Officer
Land	The whole of the land means the land formerly identified as Lots 1, 2 and 3 in DP1246745 (other than any Lots already released under this Agreement by Council) and known as 146 Newbridge Road, Moorebank.	
Current LEP	Liverpool Local Environmental Plan 2008	

Requirements Under Section 7.5

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) Not applicable
Description of land to which this deed applies – (Section 7.4(3)(a))	The whole of the Land.
Description of the development to which deed applies – (Section 7.4(3)(b))	The Development.
Application of section 7.11 of the Act – (Section 7.4(3)(d))	The application of section 7.11 is partly excluded.
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	The application of section 7.12 is excluded.
Consideration of benefits under this deed if section 7.11 applies – (Section 7.4(3)(e))	Benefits are not to be taken into consideration.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 15.
Enforcement of this deed (Section 7.4(3)(g))	See clause 12.
No obligation to grant consent or exercise functions – (Section 7.4(9))	See clause 18.

Schedule 2 - Defined Terms And Interpretation

Definitions

Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none"> (1) federal, state or local government; or (2) department of any federal, state or local government; or (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bike/Pedestrian Path Link	means the path marked 'D' and 'H2' on the plan at Annexure 1 to this Agreement.
Bond or Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> (1) Australia and New Zealand Banking Group Limited. (2) Commonwealth Bank of Australia. (3) National Australia Bank Limited. (4) Westpac Banking Corporation. (5) Any other financial institution approved by the Council, in its absolute discretion.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete	with respect to an item of the Works means that particular item has been completed to the standard required under this agreement.
Completion Notice	means a notice setting out an item of the Works that the Developer believes is complete and which is: <ol style="list-style-type: none"> (1) in writing; and (2) issued by an Independent Engineer; and (3) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that Engineer.

Compulsory Acquisition	has the same meaning ascribed to that term in the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in the Act.
Contamination	has the same meaning as set out in section 5 of the <i>Contaminated Land Management Act 1997</i> (NSW).
Contribution Value	means the value of the bank guarantee required to be provided for each respective item of Work as set out in Schedule 3 .
Council	means Liverpool City Council.
Defects Liability Period	means twelve (12) months after the relevant item of the Works has been Completed, or as otherwise set out in Schedule 3 .
Designated Land	means that part of the Land: <ol style="list-style-type: none"> (1) marked as "A" on the plan at Annexure 1 to this agreement and which comprises the Northern Island Section Designated Land and the Southern Island Section Designated Land and with an area of approximately 2.5ha; and (2) the Bike/Pedestrian Path Link.
Developer	means the "Developer" set out in Schedule 1 .
Developer's Associate	means any employee, contractor or consultant engaged by the Developer to undertake works on the Designated Land.
DA 519/2017	means development application DA 519/2017 submitted to Council on 6 July 2017.
DA 758/2017	means development application 758/2017 submitted to Council on 22 September 2017.
DA 319/2018	means development application 319/2018 submitted to Council on 18 April 2018.
DA 580/2018	means development application 580/2018 submitted to Council

on 31 July 2018.

Development

means the subdivision of the Land to create up to:

- (1) one hundred and seventy nine (179) residential Lots (as well as the erection of a dwelling on each of the residential Lots created),
- (2) a single RE2 Lot (other than Lots 18 and 19 in DP DP271188, and
- (3) up to 12,650m² of B6 gross floor area (as defined in the Current LEP).

Development Consent

means a development consent for the Development.

Development Cost

means, in relation to an item of Work:

- (1) the construction costs of that item;
- (2) any costs incurred under a building contract in relation to that item;
- (3) the costs of any consultants engaged in relation to that item; and
- (4) any costs or expenses payable to an Authority in relation to that item.

Dispute

means a dispute regarding the terms or operation of this agreement.

Flood free level

means the 100 year ARI – RL 5.6m AHD.

GST Law

means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Independent Engineer

means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld) prior to engagement by the Developer.

Land

means the land formerly identified as Lots 1, 2 and 3 in DP1246745 (other than any Lots already released by Council under this agreement).

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority (and includes guidelines adopted by the NSW Environment Protection Authority).

Legislation

means the Act and the *Local Government Act 1993* (NSW).

Liverpool Contributions Plan 2009

means the Liverpool Contributions Plan 2009 adopted by Council on 14 December 2009 (and as amended on 10 June

2020).

Liverpool Contributions Plan 2018 – Established Areas

means the Liverpool Contributions Area 2018 – Established Areas adopted on 12 December 2018 (and amended on 10 June 2020).

Lot

means a lot comprising part of the Land that is intended to be used for any permissible use under the Current LEP, or Law and includes a Residential Lot.

Maintenance Schedule

means a schedule for maintenance of the Designated Land for a two (2) year period to be approved by Council (and to be read in conjunction with the Vegetation Management Plan) identifying reasonable maintenance measures such as:

- (1) inspection of assets every six (6) months including repair or replacement if asset no longer complies with public asset standards;
- (2) mowing every three (3) weeks during optimum growing season and monthly at other times;
- (3) replanting of missing, vandalised or damaged plants;
- (4) weed removal; and
- (5) rubbish removal (twice per week).

Marina Development

means the proposed marina development 2018SSW027 approved by the Sydney Western City Planning Panel pursuant to DA611-2018 authorising the construction and development of a marina pursuant to that development consent as identified on the plan at **Annexure 1** (as amended or modified from time to time).

Northern Island Section Dedication Land

means the portion of the Designated Land to the north of the proposed river access for the Marina Development marked 'B' on the 'plan at **Annexure 1** and which is marked 'Northern Island Section' on the plan at **Annexure 1**.

Northern Island Section Works

means the Works described in **Schedule 3** required to be undertaken on the Northern Island Section Designated Land.

Noxious Weed

means a plant species declared a noxious weed under the *Noxious Weeds Act 1993* (NSW) as at 12 July 2016.

Occupation Certificate

has the same meaning as defined under the Act.

Quantity Surveyor

means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practices as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of

the same nature as the relevant Works; and

- (5) undertakes to act fairly and promptly in accordance with the requirements of this agreement.

Residential Lot

means a lot comprising part of the Land that is intended to be used for the purpose of a dwelling or a dwelling house without being further subdivided.

**Road Bridge Stratum
Payment**

means:

- (1) if Council acquires the Road Bridge Stratum by private treaty, the aggregate of:
 - (a) the purchase price for that land;
 - (b) any stamp duty payable by Council on the contract for the acquisition of that land;
 - (c) any reasonable costs incurred by Council in undertaking that acquisition (including the cost of obtaining a valuation of the Road Bridge Stratum); and
 - (d) any other amount Council is required to be paid to the relevant owner of that land in conjunction with and on account of, the acquisition; or
- (2) if Council acquires the Road Bridge Stratum by Compulsory Acquisition the aggregate of:
 - (a) the compensation Council is required to pay under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) on account of that acquisition, including for the avoidance of doubt any amount required to be paid by Council as a result of an order in any proceedings commenced by the relevant interested parties against Council on account of that acquisition; and
 - (b) any reasonable costs incurred by Council in undertaking that acquisition including for the avoidance of doubt any legal or other costs incurred by Council in defending any proceedings commenced by the relevant interested parties in Class 3 of the Land and Environment Court but excluding any other fees associated with any other type of legal proceedings against Council on account of that acquisition.

Road Bridge Stratum

has the meaning ascribed to it in **Schedule 3**.

**Southern Island Section
Designated Land**

means the portion of the Designated Land to the south of the proposed river access for the Marina Development marked 'B' on the 'plan at **Annexure 1** and which is marked 'Southern Island Section' on the plan at **Annexure 1**.

Southern Island Section Works	means the Works described in Schedule 3 required to be undertaken on the Southern Island Section Designated Land.
Subdivision Certificate	has the same meaning as in the Act.
Subdivision Certificate Works	has the same meaning as in the Act.
Threatened species	means species scheduled under the <i>Biodiversity Conservation Act 2016</i> (NSW).
Value	means the value of a particular item of the work as at the date it was Completed.
Vegetation Management Plan	means the vegetation management plan adopted by the Council from time to time with respect to the Designated Land.
Works	means all works set out in Schedule 3 .

Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.

reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
agreement	a reference to any agreement, agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 – Description of Contributions and Works

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Embellishment of Northern Island Section Designated Land.	Removal of waste and fill to existing or otherwise approved finished ground level.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.	\$361,648.50	10%	\$36,164.85	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
	Removal of visible surface waste on foreshore.					
	Removal or other appropriate management of any site contamination.					
	Stabilisation of the river bank/wall.					
Embellishment of Southern Island Section Designated Land	Removal of waste and fill to existing or otherwise approved finished ground level.	Prior to the dedication of the Southern Island Section Designated Land to Council.	\$723,297.01	10%	\$72,329.70	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
	Removal of visible surface waste on foreshore.					
	Removal or other appropriate management of any site contamination.					
	Stabilisation of the river bank/wall.					

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Dedication of the Northern Island Section Designated Land	Dedication of the Northern Island Section Designated Land to Council	Two (2) years after the earlier of: <ul style="list-style-type: none"> the date that the Northern Island Section Works are required to be Completed under this agreement; and the date on which those Works are actually Completed. 	N/A	N/A	N/A	N/A
Dedication of the Southern Island Section Designated Land	Dedication of the Southern Island Section Designated Land to Council	The earlier of; <ul style="list-style-type: none"> if an Occupation Certificate for the Marina Development is issued before 30 June 2033, the date of the issue of that Occupation Certificate; and 30 June 2033. 	N/A	N/A	N/A	N/A

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Development of a Vegetation Management Plan	Plan developed by consultants for initial planting and maintenance and approved by Council.	Before the issue of any Subdivision Works Certificate for the riverbank rock armouring works.	\$10,000	Nil	Nil	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
Completion of works described in the Vegetation Management Plan within the Northern Island Section Designated Land	Removal of Noxious Weeds. Restored and enhanced vegetation in keeping with surrounding indigenous species in accordance with approved Vegetation Management Plan.	By the earlier of: 1) the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fiftieth (151st) Residential Lot within the Development; or 2) the Completion of the embellishment works within the Northern Island Section Designated Land.	\$392,850	Nil	Nil	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Completion of works described in the Vegetation Management Plan within the Southern Island Section Designated Land	Removal of Noxious Weeds. Restored and enhanced vegetation in keeping with surrounding indigenous species in accordance with approved Vegetation Management Plan.	By the earlier of: 1) the time by which the Southern Island Section Designated Land is required to be dedicated under this agreement; or 2) the Completion of the embellishment works within the Southern Island Section Designated Land.	\$392,850	Nil	Nil	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
Conduct of maintenance works described in the Vegetation Management Plan and Maintenance Schedule with respect to the Northern Island Section Designated Land.	As set out in the Vegetation Management Plan and Maintenance Schedule.	Two (2) years after the dedication of the Northern Island Section Designated Land.	An amount equal to 50% of the amount of the Bank Guarantee held with respect to the works described in the Vegetation	Nil	Nil	Completion of works described in the Vegetation Management Plan within the Northern Island Section Designated Land

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
			Management Plan within the Northern Island Section Designated Land			
Conduct of maintenance works described in the Vegetation Management Plan and Maintenance Schedule with respect to the Southern Island Section Designated Land.	As set out in the Vegetation Management Plan and Maintenance Schedule.	Two (2) years after the dedication of the Southern Island Section Designated Land.	An amount equal to 50% of the amount of the Bank Guarantee held with respect to the works described in the Vegetation Management Plan within the Southern Island Section Designated Land	Nil	Nil	Completion of works described in the Vegetation Management Plan within the Southern Island Section Designated Land
Construction of "Bike/Pedestrian Path" through the Northern Island	3 metres wide.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and	\$100,500	10%	\$10,500	Prior to the issue of a Subdivision Certificate for a plan that when registered would create
	Entire length of river foreshore reserve within the Northern Island					

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for Lodgement of Bond or Bank Guarantee
Section Designated Land as shown on the plans attached as Annexure 1 and marked as "D".	Section Designated Land 100mm reinforced concrete for maintenance vehicles.	fiftieth (151st) Residential Lot within the Development.				the one hundred and fifty first (151st) Residential Lot within the Development.
Construction of "Bike/Pedestrian Path" through the Southern Island Section Designated Land as shown on the plan attached as Annexure 1 and marked as "D".	3 metres wide. Entire length of river foreshore reserve within the Southern Island Section Designated Land. 100mm reinforced concrete for maintenance vehicles.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.	\$201,000	10%	\$21,000	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Construction and dedication of Bike/Pedestrian Path "Pedestrian Path Link to Brickmakers Drive" as shown on the plan attached as Annexure 1 as marked as "H1".	2.5 metres wide. From bridge to edge of RE2 Land.	Prior to the issue of a Subdivision Certificate for a plan that create the one hundred and fifty first (151st) Residential Lot within the Development.	\$273,750	10%	\$27,375	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
Construction and dedication of Bike/Pedestrian Path Link to from the edge of the R3 Land through the RE2 Land to the Designated Land, as shown on the plan attached at Annexure 1 as marked as "H2".	2.5 metres wide From river foreshore following route of drainage corridor to the edge of the R3 Land.	By the earlier of: 1) the time by which the Southern Island Section Designated Land is required to be dedicated under this agreement; or 2) the Completion of the embellishment works within the Southern Island	\$412,500	10%	\$41,250	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for Lodgement of Bond or Bank Guarantee
		Section Designated Land.				
Construction of passive recreation facilities on the Designated Land.	Covered area seating 12	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.	\$46,000	Nil	Nil	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.
	4 park benches					
Dedication of "Drainage Channel" as shown on the plan attached as Annexure 1 and marked as "E". The dedication of the "Drainage Channel" will occur in three stages as illustrated by notations E1, E2 and E3 on Annexure 1 however all stages are subject to the <i>Time for Completion</i> noted in this row.	Zoned SP2 drainage.	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and fifty first (151st) Residential Lot within the Development.	Nil	Nil	Nil	N/A
	Located along the northern and eastern boundaries of the property					

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
Acquisition, and dedication of the stratum lot comprising the road bridge over drainage channel, embankment and road to Brickmakers Drive, as well as the completion of the construction of the road bridge within that stratum lot, as shown on the plan attached as Annexure 1 and marked as "F".	2 vehicle lanes	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the first (1st th) Residential Lot within the Development.	\$2,989,000	10%	\$298,900	Prior to issue of construction certificate for road bridge
	2.5 metre wide bike/pedestrian path					
	Flood free level					
Construction and dedication of "Pedestrian Access to Newbridge Road" more or less in the position on the plan attached as Annexure 1 marked as "G" and a pedestrian path within the public verge along the	9 metres wide	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and seventy fifth (175 th) Residential Lot within the Development.	\$38,250	10%	\$3,825	Prior to the issue of a Subdivision Certificate for a plan that when registered would create the one hundred and seventy fifth (175 th) Residential Lot within the Development.
	1.5 metre wide pedestrian paths					
	Landscaped and planted					
	To Council specifications					

Item	Description of Contribution and Works	Time for Completion	Amount of Bond or Bank Guarantee	Percentage of Bond or Bank Guarantee Retained during Defects Liability Period	Amount of Bond or Bank Guarantee Retained during Defects Liability Period	Time for lodgement of Bond or Bank Guarantee
entire length of the Land frontage to Newbridge Road.						
Dedication of an easement over the Land for access for the purpose of allowing Council to undertake maintenance to the River Foreshore Land more or less in the position on the plan attached as Annexure 1 marked as "I".	Easement to more or less follow route of bike path marked as "H" on the plan attached as Annexure 1 .	Upon dedication of the River Foreshore Land to Council.	Nil	N/A	N/A	N/A

Schedule 4 – Terms of easements

Easement for Access - Maintenance

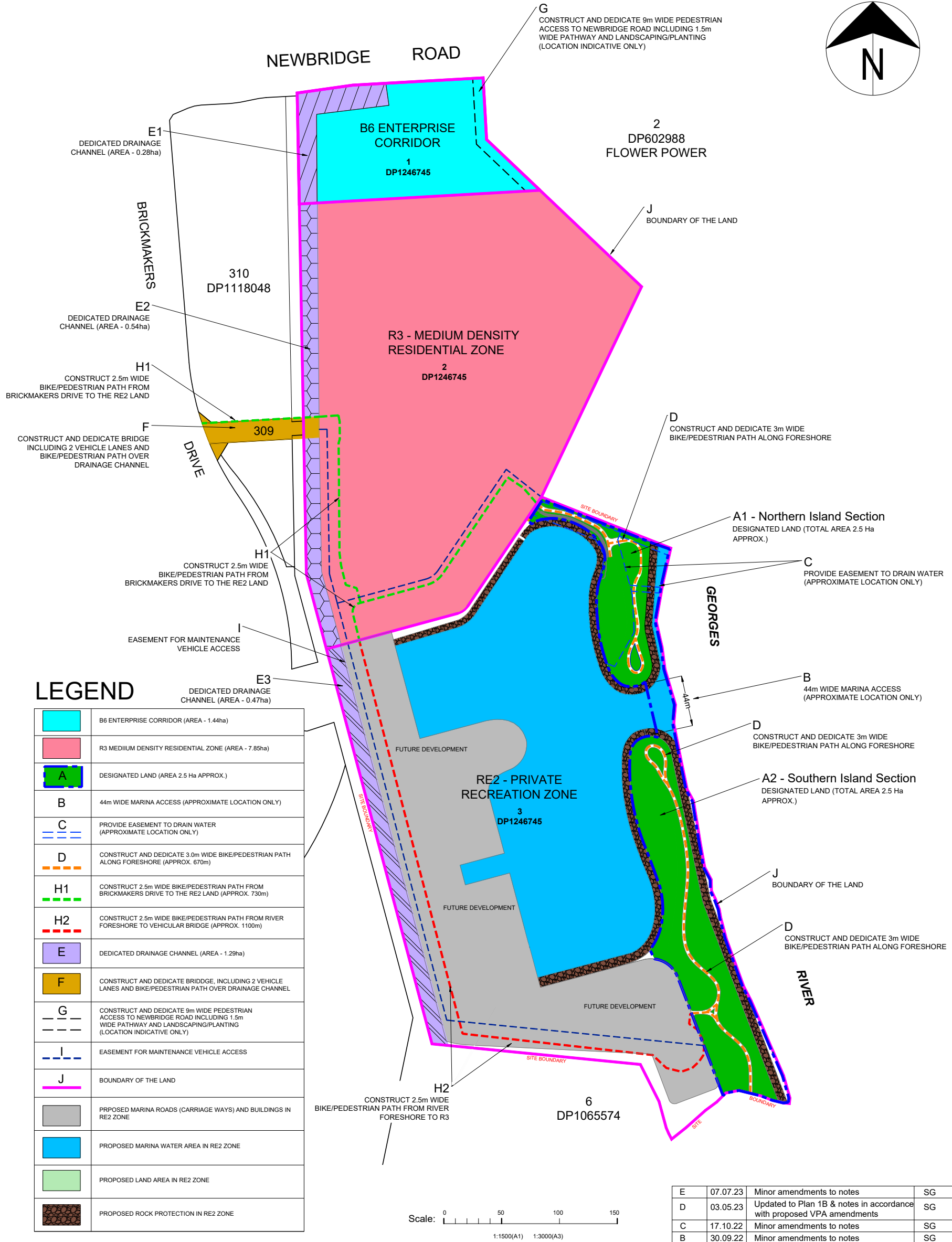
In accordance with Part 14 of Schedule 8 of the *Conveyancing Act 1919* (NSW).

Easement to drain water

In accordance with Part 3 of Schedule 8 of the *Conveyancing Act 1919* (NSW) for both the Northern Island Section Designated Land and Southern Island Section Designated Land.

Annexure 1 - Plan of Land (Including Designated Land)

ANNEXURE 1
DEVELOPER MARINA DEVELOPMENT APPROVED



PROJECT:
GEORGES COVE
MASTERPLAN

SITE:
146 NEWBRIDGE ROAD
LOTS 1, 2 & 3 IN DP1246745

E	07.07.23	Minor amendments to notes	SG
D	03.05.23	Updated to Plan 1B & notes in accordance with proposed VPA amendments	SG
C	17.10.22	Minor amendments to notes	SG
B	30.09.22	Minor amendments to notes	SG
A	29.09.22	Issue for review and discussion	SG
ISSUE	DATE	REVISIONS	AUTHOR

Note:
* This layout has been reproduced from a drawing titled 'Annexure 1' in the document 'Voluntary Planning Agreement 146 Newbridge Road Moorebank' - 11 June 2008.
* The survey drawing used for the base: DP1246745
* All dimensions & areas are approximate & subject to final survey

Annexure 2 - Licence Agreement – Confidential Agreement

PLAN 07**DCP Amendment - Middleton Grange**

Strategic Objective	Evolving, Prosperous, Innovative Implement planning controls and best practice urban design to create high-quality, inclusive urban environments
File Ref	241442.2023
Report By	Lilyan Abosh - Strategic Planner
Approved By	Lina Kakish - Director Planning & Compliance

EXECUTIVE SUMMARY

At its meeting of 25 August 2021 (**Attachment 1**) Council resolved to forward a revised Middleton Grange local centre planning proposal to the Department of Planning and Environment for finalisation, with a recommendation that the proposal proceeds, subject to completion of the following:

- a) The execution of a Planning Agreement that establishes a secure mechanism to deliver the proposed public open space, road upgrades and monetary contribution;
- b) The finalisation of an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008; and
- c) An amendment to the proposed Land Reservation Acquisition map in the LEP to rectify the inconsistency with the Liverpool Contributions Plan 2008.

The planning proposal was gazetted on 27 April 2022, and commenced on 1 November 2022. This deferred commencement date was provided to allow for a Voluntary Planning Agreement to be finalised, which was then executed on 24 November 2022.

In accordance with the above resolution, amendments are required to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008 (the DCP), to ensure the DCP aligns with the finalised planning proposal (Amendment 63).

Most notably, the DCP Amendment seeks to update the road network for the local centre to a grid layout. This includes the provision of a new north-south connecting road (Main Street) to the west of the local centre and a local street (Middleton Drive) connecting with Qantas Boulevard to the east of the centre.

The amended road network aligns with the road works already approved by Council under various Development Applications. Council has also previously indicated its support for a grid road layout at the Council meeting of 25 September 2019.

Additional site-specific controls for the local centre have also been introduced, to support the vision progressed through the planning proposal. This includes controls that seek to:

- Ensure there is a justified supply of non-residential land above the ground floor, which aligns with the job targets for Middleton Grange;
- Promote activated street frontages that encourage pedestrian activity and passive surveillance;
- Secure the delivery of a publicly accessible park on land zoned E1 Local Centre which is functional and provides high quality amenity through design;
- Implement street setbacks and storey walls that are consistent with the LEP and reflect an appropriate transition to surrounding development; and
- Strengthen the design requirements and controls which concerns development in the local centre.

The DCP Amendment (**Attachment 2**) has also been informed by feedback from Council's Traffic and Transport, Contributions Planning, Floodplain and Water Management, and City Design and Public Domain teams.

It is recommended that Council endorses the DCP Amendment and proceeds to publicly exhibit the DCP in accordance with Council's *Community Participation Plan 2022*. In accordance with Clause 15 of the *Environmental Planning and Assessment Regulation 2021*, the draft DCP will be referred to the Liverpool Design Excellence Panel for comment.

Once consultation has occurred and comments have been addressed, a post-exhibition report will be prepared for the next available Council meeting, with a recommendation based on the received submissions.

RECOMMENDATION

That Council:

1. Supports in principle the proposed amendments to the Liverpool Development Control Plan 2008 – Part 2.5 Middleton Grange (the DCP);
2. Delegates authority to the CEO (or delegate) to make minor or typographical changes to the DCP prior to public exhibition;
3. Undertake public exhibition of the DCP amendment, in accordance with the Liverpool Community Participation Plan; and
4. Receives a further report on the outcome of the public exhibition and community consultation

REPORT

BACKGROUND

On **25 June 2015**, a planning proposal request was lodged with Council to amend the *Liverpool Local Environment Plan 2008* (LLEP 2008) for land at 60-80 Southern Cross Avenue and 45-65 Hall Circuit, Middleton Grange, which forms part of the site for a planned local centre for Middleton Grange. The broad intent of this planning proposal was to facilitate the development of the local centre and reduce the provision of dual zoning across the lots. This planning proposal received a Gateway determination from the Department of Planning and Environment (DPE) and was exhibited between **29 August 2018** and **26 October 2018** with 867 submissions received. A post exhibition report was considered by Council at its **12 December 2018** meeting, where support for the planning proposal was withdrawn.

At its **25 September 2019** meeting, Council resolved to assess and publicly exhibit any revised planning proposal that is submitted by the proponent. Council also confirmed at this meeting its support for the provision of a grid road layout in Middleton Grange.

On **29 October 2019** a revised planning proposal and supporting DCP amendment showing a grid road layout was lodged with Council. These documents were publicly exhibited between **13 November 2019** and **11 December 2019**. A total of 240 submissions were received.

On **21 November 2019**, planning consultants HillPDA Consulting were engaged to assess the merits of the revised planning proposal, and to undertake a peer review of the Economic Impact Assessment (EIA) submitted by the proponent. During this period, work on the

supporting DCP Amendment and Voluntary Planning Agreement (VPA) was also being progressed by Council staff.

At its **25 August 2021** meeting, following an extensive independent assessment and recommendation by HillPDA Consulting, Council resolved (**Attachment 1**) that it:

5. *Endorses the planning proposal, subject to the recommended changes contained within the HillPDA assessment, and forwards it to the Department of Planning, Industry and Environment with a recommendation that the planning proposal proceeds, with a request that finalisation only occurs once the following are completed:*
 - a) *The execution of a Planning Agreement that establishes a secure mechanism to deliver the proposed supporting public open space and road upgrades....*
 - b) *The finalisation of an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008; and*
 - c) *An amendment to the proposed land acquisition map is made to rectify the inconsistency with the Liverpool Contributions Plan 2008.*

The revised planning proposal was forwarded to DPE, and was gazetted on **27 April 2022**, with a deferred commencement date of **1 November 2022**. This deferral was granted to allow time for the VPA to be finalised, which was formally executed on **24 November 2022**.

This report seeks Council's endorsement to progress an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008 (the DCP), which is in alignment with the finalised planning proposal and VPA.

DCP AMENDMENT

Amendments to 'Part 2.5 – Middleton Grange' of the DCP are proposed to ensure it is consistent with the planning proposal for the Middleton Grange local centre (Amendment 63). The changes discussed below are to be achieved by amending the controls, maps and figures contained in the DCP.

Road Network

This DCP amendment primarily seeks to update the road network for the local centre to a grid layout. This includes the provision of a new north-south connecting road (Main Street) to the west of the local centre and a local street (Middleton Drive) connecting with Qantas Boulevard to the east of the centre.

The amended road network aligns with the road works approved by Council under DA-64/2007/C (approved 22 May 2020) as well as the approved subdivision pattern of the local centre under DA-74/2015 (approved 1 April 2015). Council has also previously indicated its support for a grid road layout at the Council meeting of 25 September 2019, which enables for a more logical zoning and subdivision pattern (see Figure 1 below).

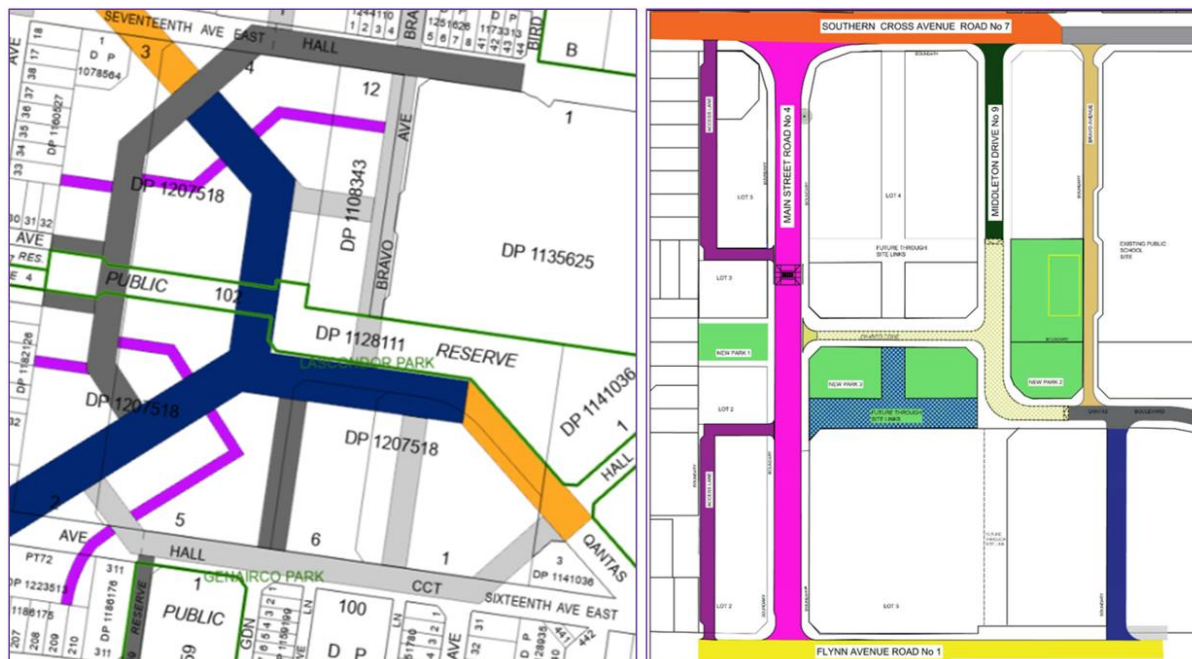


Figure 1 - Current DCP Road Network (left) and Proposed Road Network (Right)

Other Amendments

Additional site-specific controls have also been introduced, to support the vision progressed through the Middleton Grange local centre planning proposal. This includes controls that seek to:

- Ensure there is a justified supply of non-residential land above the ground floor, which aligns with the job targets for Middleton Grange in the Liverpool Local Strategic Planning Statement 'Connected Liverpool 2040';
- Promote activated street frontages that encourage pedestrian activity and passive surveillance;
- Secure the delivery of a publicly accessible park on land zoned E1 Local Centre which is both functional as a park and provides high quality amenity through design;
- Implement street setbacks and storey walls that are consistent with the LLEP 2008 and reflect an appropriate transition to surrounding residential and commercial development; and
- Strengthen the design requirements and controls which concerns development in the local centre.

Various minor amendments have also been made to rectify errors and improve the overall legibility of the DCP. A copy of the DCP Amendment with track changes is attached (**Attachment 2**).

NEXT STEPS

Subject to Council's endorsement of the DCP Amendment, community consultation will occur for a minimum period of 28 days, in accordance with Council's *Community Participation Plan 2022*. In accordance with Clause 15 of the *Environmental Planning and Assessment Regulation 2021*, the draft DCP will be referred to the Liverpool Design Excellence Panel for comment.

Once consultation has occurred and comments have been addressed, a post-exhibition report will be prepared for the next available Council meeting, with a recommendation based on the received submissions.

Conclusion

This amendment will ensure the DCP aligns with the LLEP 2008, following the finalisation of the Middleton Grange local centre planning proposal (LEP Amendment No. 63) by DPE in 2022. It is recommended that Council supports the DCP Amendment to enable community consultation to occur.

FINANCIAL IMPLICATIONS

There are no financial implications relating to this recommendation.

CONSIDERATIONS

Economic	Facilitate economic development.
Environment	Support the delivery of a range of transport options.
Social	There are no social and cultural considerations.
Civic Leadership	There are no civic leadership and governance considerations.
Legislative	Schedule 1 of the <i>Environmental Planning and Assessment Act 1970</i> & Clause 13 of the <i>Environmental Planning and Assessment Regulation 2021</i> .
Risk	There is no risk associated with this report.

ATTACHMENTS

1. Council Report and Resolution August 2021
2. Draft DCP - Middleton Grange

PLAN 02	Post exhibition report - Revised Middleton Grange Town Centre Planning Proposal
Strategic Direction	Strengthening and Protecting our Environment Exercise planning controls to create high-quality, inclusive urban environments
File Ref	242507.2020
Report By	Luke Oste - Coordinator Strategic Planning
Approved By	David Smith - Acting Director Planning & Compliance
Property	60-80 Southern Cross Ave and 45-65 Hall Circuit, Middleton Grange Lots 2, 3, 4, 5 and 6 DP 1207518; Lot 1 DP 1078564; Lot 12 DP 1108343; and Lot 102 DP 1128111.
Owner	Manta Group Pty Ltd Al-Somai Developments Pty Ltd
Applicant	Manta Group Pty Ltd

EXECUTIVE SUMMARY

At its meeting of 16 December 2015, Council resolved to endorse, in principle, a planning proposal request to rezone land and amend development standards at 60-80 Southern Cross Avenue and 45-65 Hall Circuit, Middleton Grange and to delegate authority to the CEO to approve a final planning proposal for submission to the Department of Planning, Industry and Environment (DPIE) for a Gateway determination.

The original planning proposal sought to modify the zoning and development standards applying to the subject site to enable the following:

- 86,031sqm of residential space (approximately 912 dwellings);
- 20,240sqm of retail; and
- 2,533sqm of other commercial uses.

A Gateway determination was issued by DPIE on 15 August 2016, including conditions requiring Council to update the planning proposal to address the conditions of the Gateway determination and to submit the revised planning proposal to DPIE for review prior to public

exhibition. Council was not authorised as the local plan making authority for this planning proposal, and the final decision rests with the Minister for Planning and Public Spaces (or delegate).

An amended planning proposal was referred to DPIE for final review, as required by the Gateway conditions, and the planning proposal was publicly exhibited between 29 August and 26 October 2018. Council received 867 submissions, of which 94% of respondents opposed the planning proposal.

A post exhibition report was considered by Council at its meeting of 12 December 2018 where Council resolved to withdraw support for the planning proposal and to write to the Minister requesting the planning proposal not proceed pursuant to Section 3.35(4) of the Environmental Planning & Assessment Act 1979.

At its 31 July 2019 meeting, Council resolved that it reaffirms the December 2018 resolution opposing the increase in density and heights as proposed for the Middleton Grange Town Centre at the time and commit that if any amendments were to be made by the proponent, an exhibition/community consultation period of 28 days would be undertaken.

At its 25 September 2019 meeting, Council considered a report in response to Council's resolution from the 31 July 2019 Council meeting. Council noted that the proponent seeks to lodge a revised planning proposal and that Council supports in principle the development of a town centre. Council also resolved that a preliminary assessment and exhibition be undertaken if a revised planning proposal was lodged.

A revised planning proposal was subsequently lodged by the proponent on 29 October 2019 (**Attachments 1 – 9**). The stated intent of the revised planning proposal is to facilitate a new town centre comprising a range of mixed-use buildings up to 29m in height (stated as eight storeys) and a total development Gross Floor Area (GFA) of 113,173 sqm comprising:

- 63,703 sqm GFA of residential space (approximately 671 new dwellings);
- 48,248 sqm GFA of non-residential uses including:
 - 12,529 sqm GFA of medical centre space;
 - 8,223 sqm of Office/SOHO (e.g. home office) space;
 - 500 sqm GFA of community centre; and
 - 26,996 sqm GFA of other commercial space (supermarkets, shops, cafes, gyms, entertainment, and childcare).

The revised planning proposal and supporting documents were publicly exhibited between 13 November and 11 December 2019 with 240 submissions received (**Attachment 10**).

On 21 November 2019, planning consultants Hill PDA were engaged by Council to complete an assessment of the merits of the revised planning proposal, as well as a peer review of the Economic Impact Assessment (EIA) submitted by the proponent. Their assessment is provided as attachments to this report:

- Planning proposal assessment – (**Attachment 11**);
- Economic assessment – (**Attachment 12**); and
- Economic assessment of additional information – (**Attachment 13**).

The proponent was provided an opportunity to respond to the Hill PDA assessment. Hill PDA then considered the proponents comments within a final assessment report (**Attachment 14**). The proponent's comments are provided as appendices within this report. In consideration of the proponent's comments, some minor amendments to Hill PDA's assessment and final recommendations were made. The Hill PDA recommendations, as updated, are incorporated into the recommendations of this report.

The proponent does not agree with the final assessment report by Hill PDA and has not agreed to further amend the planning proposal to address the recommendations in the report. The proponent has requested that Council make a recommendation to the Minister on the revised planning proposal as lodged and to then forward the planning proposal to DPIE for the Minister (or delegate) to make the final decision. As outlined above, Council is not authorised as the local plan making authority for this planning proposal, and the final decision rests with the Minister for Planning and Public Spaces (or delegate).

Four Gateway alterations to extend the timeframes for finalising the planning proposal have been issued by DPIE (**Attachment 15**). The most recent alteration requires Council to consider the planning proposal by 27 August 2021 and forward the proposal to DPIE for finalisation by 3 September 2021. Through correspondence with DPIE, it has been clearly stated that this is the final deadline. If this deadline is not met, DPIE, as the local plan making authority, has stated that they will 'call-in' the planning proposal and make a final decision under Section 3.35 of the Environmental Planning and Assessment Act 1979.

The proponent has made an offer to enter into a planning agreement with Council on the condition that the proponent's revised planning proposal is supported unchanged by Council and DPIE. A draft planning agreement (PA) is being negotiated with the proponent to provide public benefit items including open space, road upgrades and a cash contribution in lieu of S.7.11 and S.7.12 contributions. These negotiations have occurred to establish a draft funding mechanism to enable the delivery of critical open space and road upgrades in support of a future development if the revised planning proposal, as lodged by the proponent, is finalised by DPIE unchanged.

However, if the recommendations of the Hill PDA assessment are endorsed by Council and agreed to by DPIE as recommended, the proponent has stated that their offer to enter into a PA is withdrawn. This would have the effect of there being no secure mechanism to deliver

the open space and road upgrades proposed by the proponent in association with the planning proposal under a PA.

It is recommended that the assessment of the revised planning proposal undertaken by Hill PDA, and its recommendations, be endorsed by Council. Due to the proponent not agreeing to amend their PA offer if the recommendation is adopted by Council, there is no secure mechanism to deliver the proposed supporting open space and road upgrades associated with the planning proposal. As a result, it is recommended that the revised planning proposal be forwarded to DPIE in accordance with the Gateway determination (as altered) with a recommendation that the planning proposal not proceed in its current form.

It is also recommended that Council consider the future zoning and planning controls in the LEP to support the development of a local centre in Middleton Grange as part of Phase 2 of the LEP Review next year, including amendments to the DCP and contributions plan to ensure specific design controls and infrastructure provision is secured to guide future development.

RECOMMENDATION

That Council:

1. Notes the Gateway determination and subsequent alterations for Liverpool Local Environmental Plan 2008 (Amendment 63) and the results of public exhibition and community consultation;
2. Notes that Council has not been authorised as the local plan making authority for this planning proposal and that the final decision will be made by the Minister for Planning and Public Spaces (or delegate)
3. Endorses the assessment of the revised planning proposal undertaken by Hill PDA and its recommendations;
4. Notes the draft Planning Agreement and negotiations undertaken to date with the proponent;
5. Forwards the planning proposal to the Department of Planning, Industry and Environment with a recommendation that the planning proposal does not proceed in its current form by 3 September 2021;
6. Considers the future zoning and planning controls in the LEP to support the development of a local centre in Middleton Grange as part of Phase 2 of the LEP Review next year, including amendments to the DCP and contributions plan to ensure specific design controls and infrastructure provision is secured to guide future development if the planning proposal is not supported by the Minister for Planning and Public Spaces (or delegate).

REPORT**Background**

- On **25 June 2015**, a planning proposal request was lodged with Council to amend Liverpool Local Environment Plan (LEP) 2008 for land at 60-80 Southern Cross Avenue and 45-65 Hall Circuit, Middleton Grange, which forms part of the site for a planned local centre for Middleton Grange;
- On **16 December 2015**, Council resolved to provide in-principle support for the planning proposal and delegated authority to the CEO to finalise a planning proposal and submit the planning proposal to DPIE seeking a Gateway Determination;
- On **15 August 2016**, the DPIE issued a Gateway Determination, with conditions. Council was not authorised as the plan making authority to finalise the LEP amendment.
- The following public authorities were consulted, pursuant to the requirements of the Gateway determination:
 - Transport for NSW;
 - Sydney Water;
 - NSW Office of Environment and Heritage;
 - NSW Department of Education; and
 - NSW State Emergency Services;
- Public exhibition was undertaken between **29 August 2018** and **26 October 2018**. 867 submissions were received, of which 94% of respondents opposed the planning proposal;
- A report was considered by Council at its **12 December 2018** meeting. Council resolved in part to:
 - *Withdraw support for the planning proposal pursuant to Section 3.35 of the Environmental Planning & Assessment Act 1979; and*
 - *Write to the Minister of Planning and the Greater Sydney Commission to request that the planning proposal not proceed pursuant to Section 3.35(4) of the Environmental Planning & Assessment Act 1979.*
- At its **31 July 2019** meeting, Council resolved in part that it:
 - *Reaffirms the December 2018 resolution opposing the increase in density and heights as proposed for the Middleton Grange Town Centre at the time;*

- *Commit that if any amendments were to be made by the proponent for the Middleton Grange Town Centre planning proposal an exhibition/community consultation period of 28 days would be undertaken; and*
- *Writes to the Department of Planning advising of Council's action and above resolution.*
- At its **25 September 2019** meeting, Council resolved in part (EGROW 04) that it:
 - *Supports in principle the development of a Town Centre;*
 - *Should the proponent submit a revised proposal, delegates to the CEO to allocate appropriate council resources to progress a preliminary assessment and place on exhibition the revised planning proposal in order to deliver a Town Centre for the people of Middleton Grange in the most timely manner possible;*
 - *Support the principle of the grid road layout in Middleton Grange; and*
 - *Undertake community consultation in conjunction with the assessment of an application and that the community consultation to not overlap the December/January holiday period.*

Gateway Extensions

Since the original Gateway determination was issued on 15 August 2016, four subsequent Gateway alterations have been issued by DPIE to amend the timeframes for finalising the planning proposal. The various Gateway deadlines issued are outlined as follows.

Table 1: Gateway Determinations and Alterations Summary

Gateway Issued	Date Issued	Deadline
Initial Gateway Determination	15 August 2016	15 February 2018
First Gateway Alteration	6 July 2018	22 February 2019
Second Gateway Alteration	24 August 2020	31 December 2020
Third Gateway Alteration	23 December 2020	30 April 2021 (forwarded to DPIE on this date)
Fourth Gateway Alteration	16 July 2021	3 September 2021 (forwarded to DPIE)

The most recent Gateway alteration requires the following:

Council is required to report on the proposal in accordance with the following dates:

- a. *Council to consider a report and recommendation on the proposal by 27 August 2021;*
- b. *Council to forward the proposal to the Department for finalisation by 3 September 2021.*

Through correspondence with DPIE, it has been clearly stated that this is the final deadline for the planning proposal. If this deadline is not met, the Minister, as the local plan making authority in this instance, will 'call-in' the planning proposal and make a final decision under Section 3.35 of the Environmental Planning and Assessment Act 1979 (The Act). DPIE have authority to make the final decision as to whether the planning proposal should proceed and be gazetted in this instance. Council's assessment and formal decision will be a consideration of DPIE in making this final decision.

Revised Planning Proposal

A revised planning proposal was lodged with Council by the proponent on 29 October 2019.

The package of documents submitted include:

- Revised planning proposal (**Attachment 1**);
- Urban design report (**Attachment 2**);
- Visualisation report (**Attachment 3**);
- Amended Middleton Grange town centre road alignment (**Attachment 4**);
- Traffic Impact Assessment (**Attachment 5**);
- Social Impact Response report (**Attachment 6**);
- Economic Response report (**Attachment 7**);
- Landscape plan (**Attachment 8**); and
- Flood Assessment report (**Attachment 9**).

The revised planning proposal and supporting documents, were placed on public exhibition from 13 November until 11 December 2019, in accordance with the requirements of Council resolution EGROW 04 of 25 September 2019. 240 submissions were received (see below in the "Consultation" section for details).

The revised proposal was referred to specialist units of Council for comment. Comment was also sought from the following NSW public authorities, in line with the requirements of the Gateway determination:

- Transport for NSW (TfNSW);
- NSW Department of Education;
- NSW State Emergency Service;
- Environment, Energy and Science Group (formerly Office of Environment and Heritage); and
- Sydney Water.

Notably, the NSW State Emergency Service declined to provide comment on the revised planning proposal and Roads and Maritime Service has since been incorporated into TfNSW. Responses to the submissions received from public authorities are detailed in the assessment report completed by Hill PDA, included as an attachment to this report (**Attachment 11**). It is noted that the Sydney Water response was received much later, on 6 April 2021 (**Attachment 16**), and therefore was not included within the Hill PDA report. The submission did not raise any concerns of note, with several matters to be addressed as part of any future DA.

On 21 November 2019, planning consultants Hill PDA were engaged to assess the merits of the revised planning proposal and to undertake a peer review of the Economic Impact Assessment (EIA) submitted by the proponent. The Hill PDA reports provide a comprehensive assessment of the merits of the revised proposal, to inform a decision by Council and ultimately, DPIE.

Subsequent Planning Proposal Revisions

The proponent provided additional information as requested by Hill PDA to clarify several issues and provide further justification for the proposal. This is provided in Appendix B of the Hill PDA assessment report (**Attachment 11**). Additional information was provided to Hill PDA on 6 August 2020 including:

- An updated Economic Impact Assessment (EIA);
- An updated Transport Impact Assessment (TIA); and
- A Response to Submissions and Infrastructure Report.

Further information was provided by the proponent on 9 October 2020, including:

- A covering letter; and
- Two economic reports considering retail and general economic impacts.

An assessment of the revised planning proposal and supporting documentation was undertaken by Hill PDA:

- Planning proposal assessment – (**Attachment 11**);
- Economic assessment – (**Attachment 12**); and
- Economic assessment of additional information – (**Attachment 13**).

Following completion of Hill PDAs assessment, the proponent was offered the opportunity to provide a response. Hill PDA then considered the proponent's response within a final assessment report (**Attachment 14**). The proponent's comments are provided as appendices within the report. In consideration of the proponent's comments, some minor amendments to Hill PDA's assessment and final recommendations were made. These minor changes included:

- A small increase in the maximum residential GFA that should be facilitated by the planning proposal;
- Slight changes to the height interfaces along the northern and southern boundaries of the site in alignment with the proponent's comments; and
- Enabling additional 'restaurant and café' uses within the R1 General Residential area.

Overall, Hill PDA's final assessment resulted in a recommendation that there should be a maximum GFA of 98,000sqm for the site, in comparison to the 113,000sqm proposed by the proponent. The Hill PDA recommendations, as updated, are incorporated into the recommendations of this report.

The proposal

This planning proposal, as revised, seeks to facilitate the development of a town centre for Middleton Grange, by making amendments to the LEP.

The planning proposal seeks to amend planning controls relating to the following land:

- Lots 2, 3, 4, 5 and 6 DP 1207518;
- Lot 1 DP 1078564;
- Lot 12 DP 1108343; and
- Lot 102 DP 1128111.



Figure 1: Planning proposal site (Source: Pacific Planning, October 2019)

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Figure 2: Recent aerial photograph of the locality (source: Nearmap July 2021)

The stated intent of the planning proposal is to facilitate a new town centre comprising a range of mixed-use buildings up to 29m in height (stated as eight storeys). The proponent has indicated that the planning proposal would enable a total development Gross Floor Area (GFA) of 113,173 sqm comprising:

- 63,703 sqm GFA of residential space (approximately 671 new dwellings);
- 48,248 sqm GFA of non-residential uses including:
 - 12,529 sqm GFA of medical centre space;
 - 8,223 sqm of Office/SOHO (e.g., home office) space;
 - 500 sqm GFA of community centre; and
 - 26,996 sqm GFA of other commercial space (supermarkets, shops, cafes, gyms, entertainment, and childcare).

The planning proposal seeks to amend the LEP mapping to:

- Adjust zone boundaries as they apply to the site with the result of:
 - R1 General Residential: Reduction from 26,189 sqm to 14,243 sqm (approximately 11,946 sqm);
 - B2 Local Centre: Increase from 31,278 sqm to 43,013 sqm (approximately 11,735 sqm);
 - RE1 Public Recreation: Reduction from 2,340 sqm to 2,000 sqm (approximately 340 sqm);
 - SP2: Increase from 9,200 sqm to 9,800 sqm (approximately 600 sqm);
- Amend the Land Reservation Acquisition Map to identify land for acquisition by Council for the purposes of public recreation;
- Increase height limits:
 - New R1 General Residential: From 8.5 m to 9.5-14 m (three to four storeys);
 - New B2 Local Centre: From 8.5-18 m to 20 m-29 m (six to eight or nine storeys);
- Increase FSR limits:
 - New R1 General Residential: From 0.75:1 to 1:1; and
 - New B2 Local Centre: From 0.75:1 and 1.5:1 to 2.3:1.

The planning proposal also seeks to allow an additional permitted use of 'restaurant or café' on the part of the land to be zoned R1 General Residential.

Mapping

The planning proposal seeks to amend the Land Zoning (LZN) map, the Floor Space Ratio (FSR) map, the Height of Building (HOB) and the Land Reservation for Acquisition (LRA) maps applying to the subject site. Mapping changes are illustrated in Figures 3-6 below.

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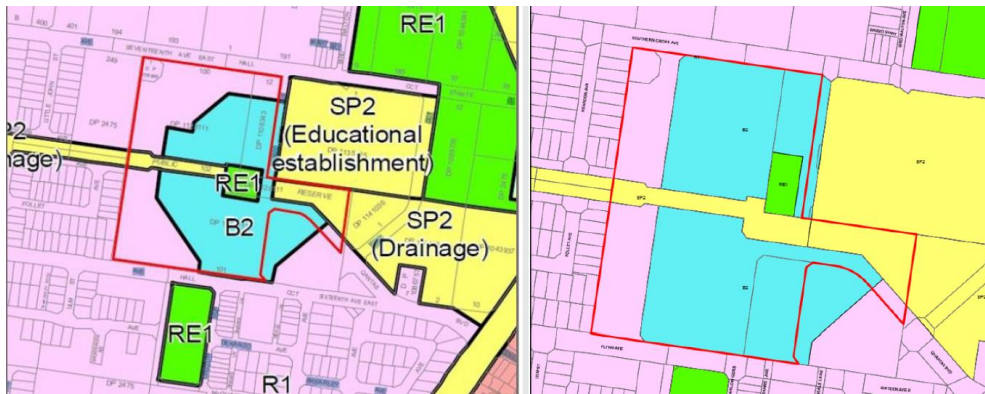
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Figure 3: Existing and Proposed Land Zoning map

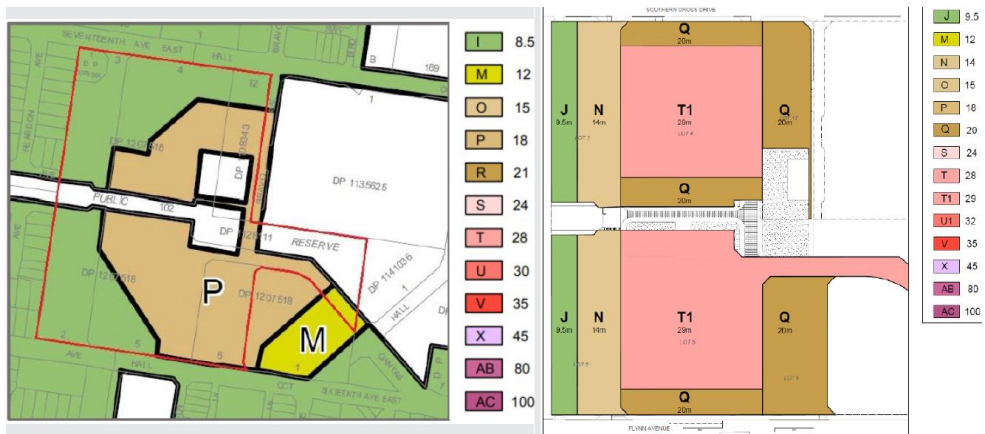


Figure 4: Existing and Proposed Height of Buildings map

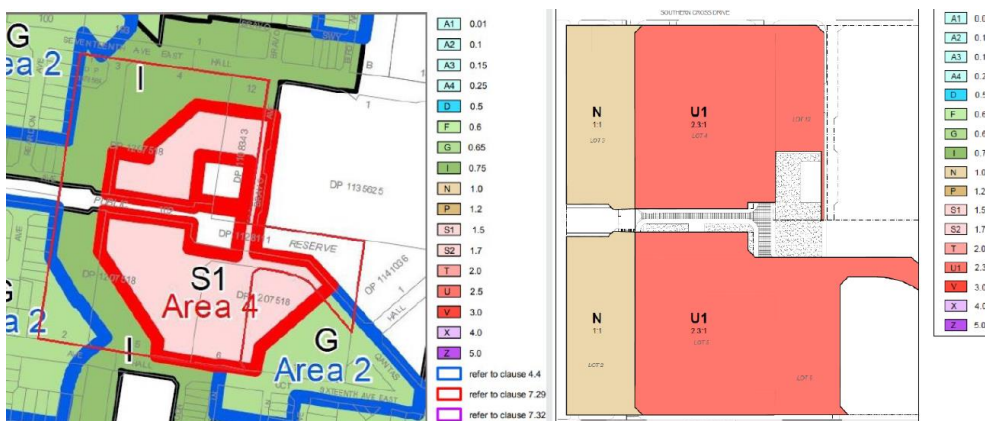


Figure 5: Existing and Proposed Floor Space Ratio map

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Figure 6: Existing and Proposed Land Reservation for Acquisition map

Consultation

As required by Council resolution EGROW 04 of 25 September 2019, the planning proposal and supporting documents were placed on public exhibition for 28 days from 13 November until 11 December 2019. 240 submissions were received, including a submission from Charter Hall, owners of the Carnes Hill shopping centre. Of the submissions received, 136 expressed support for the proposal, 100 expressed opposition and three (3) were mixed. The issues raised by respondents are summarised in Figure 7 below.

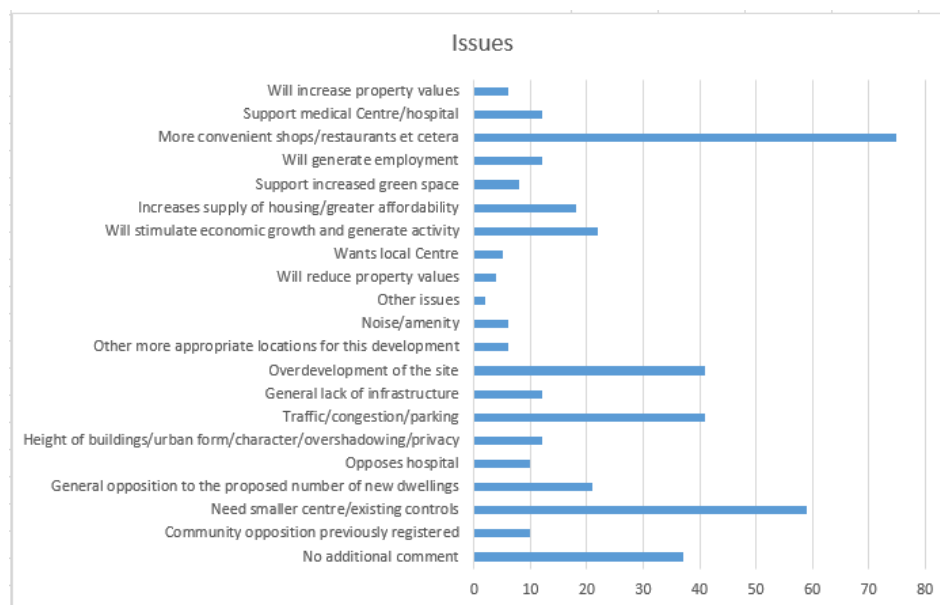


Figure 7: Frequency of issues raised in submissions received

A detailed submissions register summarising each submission is included in **Attachment 10**.

Submissions were received from the following public authorities:

- Education NSW;
- Environment, Energy and Science Group (formerly Office of Environment and Heritage);
- Transport for NSW; and
- Sydney Water.

Assessment of the matters raised in public authority submissions is included as part of the assessment report undertaken by Hill PDA. It is noted that the Sydney Water response was received much later, on 6 April 2021 (**Attachment 16**) and therefore was not included within the Hill PDA report. The submission did not raise any concerns of note, with several matters to be addressed as part of any future DA.

Hill PDA Assessment and Recommendations

The revised planning proposal was externally assessed by Hill PDA. The full assessment report is attached:

- Planning proposal assessment – (**Attachment 11**);
- Economic assessment – (**Attachment 12**);
- Economic assessment of additional information – (**Attachment 13**); and
- Updated assessment following the proponent's comments (the proponent's comments and a further economic assessment are provided as appendices to this single assessment report) – (**Attachment 14**).

The assessment recommended that Council support the planning proposal **subject to** several amendments. The Hill PDA assessment did not support the planning proposal in its current form for the following reasons:

- The proposed planning controls do not provide certainty and could create opportunities for a significantly different form of development from that which is described in the concept plan;
- The proposed building controls permit a scale of development that is inconsistent with the LSPS and has not been demonstrated to be appropriate for the site;
- The described commercial floorspace, while broadly consistent with the LSPS, has not been justified by the applicant as being supported by market conditions and may result in poor ground level activation;
- The proposed planning framework does not provide assurance that the proposed open space provision will be achieved on the site and potentially relies on a planning agreement to deliver the space; and
- The proposed planning controls could result in a scale of development that is not adequately serviced by infrastructure.

The Hill PDA assessment recommends making the amendments outlined in Table 2 to the revised planning proposal as submitted by the proponent. Reasoning and a method for achieving each amendment is provided and is outlined below.

Table 2: Summary of Hill PDA Recommendations

Suggested amendment	Reasoning and Method
Residential Limits: <ul style="list-style-type: none"> Cap residential floorspace to 72,000sqm; Introduce cap on dwellings of 671 units; and Provide Development Control Plan (DCP) controls for the site include design requirements for home-business enabling units (i.e. design objectives and minimum percentage of units). 	<p>The proponent has identified within the proposal documentation a stated goal of 671 dwellings. The suggested amendment to the planning proposal will ensure this goal is achieved through the planning controls applying to the site.</p> <p>This amendment can be achieved through an additional local provision clause within Part 7 of the LEP.</p>
Cap the average FSR for the site to approximately 1.8:1.	<p>Align the non-residential uses with the job generation sought in the LSPS.</p> <p>This is achieved by capping residential floorspace to 72,000sqm and removing a FSR control for 'New Park 3'.</p>
Northern and southern interfaces: <ul style="list-style-type: none"> Maintain the proposed 20m height; Introduce a 2-storey street wall and 4m setback control along the entirety of Southern Cross Ave and Flynn Ave, east of Main St. 	<p>The northern and southern boundaries of the site have proposed heights of 20m, fronting onto lands with an 8.5 m height limit. This could result in six storey development across the street from two storey development, which is a more severe transition.</p> <p>It is recommended that the suggested height transition controls are incorporated as an additional local provision clause within Part 7 of the LEP.</p>
Allow up to 1,200 sqm of R1 General Residential adjacent to New Park to permit the Restaurant or café land use.	<p>The proponent's recommendation to cap the land use at 1,200 sqm is not based on demand, but on a vision to include cafes and restaurants next to the central open space near 'New Park 1.' HillPDA accepts that this limited space, in a centralised area, would likely promote positive amenity and public domain outcomes.</p> <p>It is recommended that an additional permitted use clause to permit the 'restaurant and café' use with consent as an additional local provision clause within Part 7 of the LEP.</p>

Maintain area proposed by the proponent to have height limit of 9.5m at current level of 8.5m	<p>Ensure two storey development proposed by applicant is delivered, aligning with transition to surrounding area. This recommendation was agreed to by the proponent in their response to Hill PDA.</p> <p>It is recommended that this element of the revised planning proposal is removed.</p>
Map 'New Park 3' on key site map and remove development standards.	<p>The revised planning proposal has 'New Park 3' mapped as B2 Local Centre with heights and FSR that would allow for approximately eight storeys of development.</p> <p>It is recommended that the location of 'New Park 3' is mapped on the key site map of the LEP and identified within an additional local provision clause within Part 7 of the LEP. Furthermore, it is recommended that the HOB and FSR maps are amended to remove 'New Park 3', effectively removing development potential to ensure the delivery of this public open space.</p>
Prepare an amended site-specific DCP to ensure future development is in alignment with the LSPS.	Prepare an amended site-specific development control plan that requires future development applications to demonstrate alignment with Council's Local Strategic Planning Statement employment goals for Middleton Grange and be supported by a peer reviewed economic impact assessment, that also demonstrates demand for the quantum of employment floorspace to be provided.
Request DPIE / TfNSW to finalise State level planning agreement for road upgrades prior to finalisation of planning proposal	As per Transport for NSW's submission, request that DPIE and Transport for NSW finalise planning agreements (or similar) with the applicant to ensure delivery of required traffic upgrades to accommodate the uplift associated with the planning proposal, as deemed acceptable by DPIE and Transport for NSW.
Refine development contributions plans to consider demand for infrastructure associated with the planning proposal	This was recommended by Hill PDA to ensure equitable contributions across the local community for infrastructure.

Overall, Hill PDA concurs that the general outcomes of the planning proposal, as revised, are supported. Remaining recommendations in contention are, while minor in nature compared to the overall planning proposal, critical to delivering the outcome sought by the proponent.

Hill PDA's revised recommendations consider the additional responses and evidence provided by the Pacific Planning and PPM Consulting responses. They seek to enable the specific outcomes sought by the planning proposal while limiting the potential for other non-desirable

outcomes, such as overdevelopment of residential uses or commercial uses that are not anticipated by the LSPS or the adopted Centres and Corridors Strategy. While the proponent relies heavily on the potential for the delivery of the concept design developed by the applicant, Hill PDA stresses that this concept design is only one potential outcome. Hill PDA's recommendations seek to ensure a similar outcome is delivered, should the concept design be adjusted in the future.

The proponent does not agree with the final assessment report by Hill PDA and has not agreed to further amend the planning proposal to address the recommendations. The proponent has requested that Council make a decision on the revised planning proposal as lodged and to then forward the planning proposal to DPIE for a final decision to be made.

Planning Agreement

The proponent has offered to enter into a planning agreement (PA) with Council, which provides for monetary contributions and other public benefits in support of the planning proposal. This offer is made on the basis that the revised planning proposal is adopted, without further alteration and finalised by the Minister for Planning and Public Spaces (or delegate).

There have been numerous iterations of a draft public benefit offer, in the form of draft letters of offer and more recently as a draft PA. The proposed draft PA provides for the following public benefit items:

- Construction of an open space park and embellishment works to the area designated as 'Park 3' with a minimum area of 2,500 sqm (park will remain in the private ownership of the developer, but with a public access easement);
- Dedication of 'Park 2' to Council. Park 2 is the land not currently owned by Council that is proposed to be rezoned RE1 – Public Recreation;
- Construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue;
- Construction of an upgrade to the Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council;
- Construction of a road upgrade and services for Southern Cross Avenue between the western boundary of the Land to the Middleton Grange Primary School;
- Construction of the culvert and drainage works approved under the Modification DA-64/2007/C; and
- A monetary contribution of \$8,000,000.

The draft PA excludes the application of S.7.11 and S.7.12 contributions for future development applications (DA's). The proposed PA will come into effect only if the planning proposal is gazetted, unchanged, facilitating the development of approximately 113,000sqm of GFA.

It is noted that if the recommendations of the Hill PDA assessment are accepted and incorporated into the planning proposal, this will reduce the potential yield of future development to approximately 98,000sqm of GFA. The proponent does not support this recommendation and has advised that if this recommendation is adopted, their PA offer is withdrawn. As a result, there will be an absence of a secure mechanism to deliver the open space and road upgrades proposed by the proponent to support the planning proposal.

Infrastructure Delivery – Open Space

The planning proposal identifies the provision of approximately 7,500 sqm of public open space through the proposed amendments. This provision is in response to past Council resolutions seeking sufficient open space be provided to support the population increase proposed. However, the LEP amendments proposed will not achieve this aim, with this open space provision reliant upon an executed PA. As noted by Hill PDA:

- The RE1 Public Recreation area would be approximately 2,000 sqm. These lands are not all owned by Council and would be subject to acquisition from the applicant in the future;
- A further 1,750 sqm of land zoned SP2 Infrastructure, partially identified as flood affected, is identified in concept drawings as being part of future parks;
- The mechanism for delivery of this land, as proposed, is not identified in the planning proposal. It would be likely that Council would deliver this outcome, not the applicant, unless subject to a PA. It should be noted that the relevant contributions plan does not identify the provision of this open space;
- Approximately 3,000sqm of land has been identified in concept drawings to be zoned B2 Local Centre for a plaza and open space grassed areas. This land is proposed to have height and FSR controls that would permit eight to nine storey buildings. As proposed, it would be possible for a future developer to seek consent for commercial development on land identified as being open space in concept plans.

It is noted that a revised PA could resolve these issues, however the proponent has advised that their PA offer is contingent on the planning proposal being support unchanged by both Council and the Minister. A contributions plan amendment could be prepared to deliver this open space. Negotiations have been pursued to this end; however, a resolution has not been reached to ensure a mechanism is established that can ensure that the proposed 7,500 sqm of open space can be delivered should the proposal be amended in alignment with the Hill PDA assessment recommendations.

Infrastructure Delivery – Road Upgrades

In its current state, the transport infrastructure in Middleton Grange is not capable of accommodating the uplift associated with the planning proposal. Development of intersection treatments and road upgrades to support the scale and layout of a future town centre as facilitated by the planning proposal is not addressed in the current contributions plan.

A funding mechanism is therefore required to ensure intersection treatments and roadworks are undertaken to mitigate the impact of the planning proposal on the local road network. Council's transport management department have outlined the required road upgrades, with this negotiated with the proponent and reflected in the draft PA. However as stated, this draft PA is reliant on the planning proposal being gazetted in its current form with a yield of approximately 113,000sqm of GFA.

Summary

As outlined above, the proponent has advised that their PA offer is contingent on the planning proposal being supported unchanged by the Minister.

Hill PDA has recommended that Council support further amendments to the planning proposal, that would result in a reduction in the GFA proposed from approximately 113,000sqm to approximately 98,000sqm. The proponent does not support this recommendation, and requests that Council support the planning proposal without further amendment, and to forward the planning proposal to DPIE for the Minister (or delegate) to make the final decision.

If the Council supports, and the Minister approves, an amended version of the planning proposal (as recommended by Hill PDA), there is no PA offer from the proponent. Therefore, there is no funding mechanism to ensure the delivery of open space and road upgrades to support the revised planning proposal. Further, it should be noted that the current version of the PA is only in draft form at this point and will require in-principle support from Council prior to public exhibition for 28 days. Once this has occurred, and if no significant objections warrant any changes, a decision could be made either by Council or delegated to the CEO, to execute the PA.

Conclusion

Given:

- the assessment conducted by Hill PDA;
- their recommendation that the planning proposal be further amended to reduce the GFA from approximately 113,000 sqm to approximately 98,000 sqm GFA;
- the proponent not agreeing to further amendments;
- the proponents PA offer only applying to the planning proposal that would yield approximately 113,000 sqm of GFA; and

- the lack of a secure mechanism to deliver the proposed open space and road upgrades to support an amended planning proposal as recommended by HillPDA,

It is recommended that Council not support the revised planning proposal in its current form, and that the planning proposal be forwarded to DPIE in accordance with the Gateway determination (as altered) with a recommendation that it not proceed.

Hill PDA concurs with the proponent that the general outcomes of the revised planning proposal are supported, however, the proponent will not agree to further amendments to the planning proposal to address these concerns. It is acknowledged that remaining recommendations in contention, while minor in nature compared to the overall planning proposal, are critical to delivering the outcome purported to be sought by the proponent.

A draft PA is being negotiated with the proponent to deliver infrastructure to support future development enabled by this planning proposal, in the event the planning proposal is supported by the Minister. However, the offer from the proponent is subject to the planning proposal being gazetted in its current form with an approximate yield of 113,000 sqm of GFA.

There is a need for a local centre to be developed within Middleton Grange to service current and future residents. Both the Liverpool Local Strategic Planning Statement – Connected Liverpool 2040 (LSPS) and the Liverpool Centres and Corridors Strategy clearly identify this need. However, the current proposal is not supported for the reasons outlined in the assessment report. The recommended amendments to the planning proposal are considered reasonable, however the proponent will not agree to those amendments, and if they were supported by Council or the Minister, their PA offer would be withdrawn.

If the proposal, in its current form is not supported by Council or the Minister, it is recommended that Council considers the future zoning and planning controls in the LEP to support the development of a local centre in Middleton Grange as part of Phase 2 of the LEP Review next year, including amendments to the DCP and contributions plan to ensure specific design controls and infrastructure provision is secured to guide future development.

CONSIDERATIONS

Economic	<p>Further develop a commercial centre that accommodates a variety of employment opportunities.</p> <p>Deliver and maintain a range of transport related infrastructure such as footpaths, bus shelters and bikeways.</p> <p>Deliver a high-quality local road system including provision and maintenance of infrastructure and management of traffic issues.</p> <p>Facilitate economic development.</p>
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Environment	Promote an integrated and user-friendly public transport service. Support the delivery of a range of transport options.
Social	Regulate for a mix of housing types that responds to different population groups such as young families and older people.
Civic Leadership	Undertake communication practices with the community and stakeholders across a range of media. Encourage the community to engage in Council initiatives and actions. Provide information about Council's services, roles and decision-making processes. Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.
Legislative	Environmental Planning and Assessment Act 1979
Risk	The risk of endorsing the recommendations of this report may lead to a further delay in the delivery of a centre in Middleton Grange. It is noted, however, that DPIE may decide to gazette the planning proposal in its current form. A draft Planning Agreement that would provide a secure mechanism to provide supporting infrastructure is being negotiated. However, this draft Planning Agreement is still required to be publicly exhibited, endorsed by Council and executed before taking effect and will only apply if the planning proposal is gazetted unchanged.

ATTACHMENTS

1. Revised Planning Proposal (Under separate cover)
2. Urban Design Report (Under separate cover)
3. Visualisation Report (Under separate cover)
4. Amended Road Alignment (Under separate cover)
5. Traffic Impact Assessment (Under separate cover)
6. Social Impact Response Report (Under separate cover)
7. Economic Response Report (Under separate cover)
8. Landscape Plan (Under separate cover)
9. Flood Assessment Report (Under separate cover)
10. Summary of Submissions Table - Redacted (Under separate cover)
11. Hill PDA - Planning Proposal Assessment (Under separate cover)
12. Hill PDA - Economic Assessment (Under separate cover)
13. Hill PDA - Economic Assessment of Additional Information (Under separate cover)

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14. Hill PDA - Final Assessment Incorporating Proponents Response Comments
(Under separate cover)
15. Gateway Determination (including all alterations) (Under separate cover)
16. Sydney Water Submission (Under separate cover)
17. Manta Group - Current ASIC Extract (Under separate cover) - **Confidential**
18. Al-Somai Developments - Current ASIC Extract (Under separate cover) -
Confidential

Motion: **Moved: Clr Ayyad** **Seconded: Clr Rhodes**

1. Notes the Gateway determination and subsequent alterations for Liverpool Local Environmental Plan 2008 (Amendment 63) and the results of public exhibition and community consultation;
2. Notes that Council has not been authorised as the local plan making authority for this planning proposal and that the final decision will be made by the Minister for Planning and Public Spaces (or delegate);
3. Notes the assessment of the revised planning proposal undertaken by Hill PDA and its recommendations including reducing the scale of the proposal to approximately 98,000 sqm GFA;
4. Notes the need for a centre in Middleton Grange has been identified in the Liverpool Local Strategic Planning Statement and the Liverpool Centres and Corridors Strategy;
5. Supports the revised planning proposal lodged by the proponent, (approximately 113,000 sqm GFA), and the public benefits offered by the proponent to support the planning proposal and the development of a town centre for Middleton Grange;
6. Notes a draft Planning Agreement is being negotiated with the proponent (and which is required to be reported to Council for endorsement and publicly exhibited) to provide for the following public benefits:
 - a. Construction of an open space park and embellishment works to the area designated as 'Park 3' with a minimum area of 2,500 sqm (park will remain in the private ownership of the developer, but with a public access easement);
 - b. Dedication of 'Park 2' to Council. Park 2 is the land not currently owned by Council that is proposed to be rezoned RE1 – Public Recreation;
 - c. Construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue;

- d. Construction of an upgrade to the Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council;
 - e. Construction of a road upgrade and services for Southern Cross Avenue between the western boundary of the Land to the Middleton Grange Primary School;
 - f. Construction of the culvert and drainage works approved under DA-64/2007/C;
 - g. A monetary contribution of \$8,000,000.
7. Forwards the revised planning proposal to the Department of Planning, Industry and Environment with a recommendation that the revised planning proposal proceeds in its current form, subject to completion of the following:
- a. The execution of a Planning Agreement that establishes a secure mechanism to deliver the proposed public open space, road upgrades and monetary contribution;
 - b. The finalisation of an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008;
 - c. An amendment to the proposed Land Reservation Acquisition map in the LEP to rectify the inconsistency with the Liverpool Contributions Plan 2008.

Vote for: Cllr Ayyad, Cllr Hadchiti, Deputy Mayor Hadid, Cllr Harle and Cllr Rhodes.

Vote against: Mayor Waller, Clr Hagarty, Clr Kaliyanda, Clr Karnib and Clr Shelton.

The motion (moved by Cllr Ayyad) was declared LOST on the Mayor's casting vote.

The following motion was then moved:

Motion: **Moved:** Clr Hadchiti **Seconded:** Clr Harle

That Council:

1. Notes the Gateway determination and subsequent alterations for Liverpool Local Environmental Plan 2008 (Amendment 63) and the results of public exhibition and community consultation;
2. Notes that Council has not been authorised as the local plan making authority for this planning proposal and that the final decision will be made by the Minister for Planning and Public Spaces (or delegate);

3. Notes the assessment of the revised planning proposal undertaken by Hill PDA and its recommendations;
4. Notes the draft Planning Agreement and negotiations undertaken to date with the proponent;
5. Endorses the planning proposal, subject to the recommended changes contained within the Hill PDA assessment, and forwards it to the Department of Planning, Industry and Environment with a recommendation that the planning proposal proceeds, with a request that finalisation only occurs once the following are completed:
 - a. The execution of a Planning Agreement that establishes a secure mechanism to deliver the proposed supporting public open space and road upgrades as follows:
 - i. Construction of an open space park and embellishment works to the area designated as 'Park 3' with a minimum area of 2,500 sqm (park will remain in the private ownership of the developer, but with a public access easement);
 - ii. Dedication of 'Park 2' to Council. Park 2 is the land not currently owned by Council that is proposed to be rezoned RE1 – Public Recreation;
 - iii. Construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue;
 - iv. Construction of an upgrade to the Cowpasture Road intersection, Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council;
 - v. Construction of a road upgrade and services for Southern Cross Avenue between the western boundary of the Land to the Middleton Grange Primary School;
 - vi. Construction of the culvert and drainage works approved under the Modification DA-64/2007/C;
 - vii. A monetary contribution of \$8,000,000;
 - b. The finalisation of an amendment to 'Part 2.5 – Middleton Grange' of the Liverpool Development Control Plan 2008; and
 - c. An amendment to the proposed land acquisition map is made to rectify the inconsistency with the Liverpool Contributions Plan 2008.

On being put to the meeting the motion was declared CARRIED.

Liverpool Development Control Plan 2008
Part 2.5
Land Subdivision and Development in
Middleton Grange

August 2023

Part 2.5 must be read in conjunction with Part 1

Refer to Part 3.8 for Non Residential Development in Residential Zones

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Liverpool Development Control Plan 2008

Part 2.5 Middleton Grange

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1. Preliminary

Applies to

1. Part 2.5 applies to the land, shown in Figure 1.
2. Part 1 also applies to the land shown in Figure 1.
3. Part 3.7 applies to the building of Residential Flat Buildings on land shown in Figure 1.
4. Part 3.8 also applies for non residential development on the land.
5. Parts 3.1 – 3.6 do not apply to the land.



Figure 1 Land to which this Part applies

Background

The suburb of Middleton Grange was rezoned on 18 June 2004. The area was originally subject to Liverpool DCP No. 48, which came into force on 26 June 2002.

Planning Principles

Middleton Grange will evolve as a place that optimises the public transport network and facilitates access between home and work, a place that is safe and attractive and is characterised by quality urban design and architecture.

Development will be environmentally sustainable – cycling and walking will be attractive alternatives to the private car, the neighbourhood will be highly accessible and the physical features of the area will be retained and enhanced. A distinctive feature of Middleton Grange will be its connections and proximity to the Western Sydney ~~Regional~~ Parklands and the incorporation and regeneration of a significant swathe of Cumberland Plain Woodland into the urban fabric providing a continuous biodiversity link.

Places will be distinctive and memorable with higher density living located around areas of highest amenity. The community will be served by local community facilities, parks and sports fields, as well as the convenience of local shops.

At the centre of the suburb will be the local centre, supporting the provision of goods and services, social infrastructure, open space, recreation, entertainment and community facilities that create a focal point for residents and a sense of place within the wider community.

This Part supports this by articulating the following principles:

1. Encourage community and stakeholder collaboration in development decisions.
2. Take advantage of compact building design that is also sensitive to the environment.
3. Ensure that land use is appropriate and that any development uses the development site to its best advantage.
4. Relate the density of development to access to transport and services.
5. Create a range of housing opportunities and choices.
6. Create workable neighbourhoods – ensure a civic focus.
7. Foster distinctive, vibrant communities with a strong sense of place and which reinforce Connection to Country.
8. Preserve and enhance open space, natural features and critical environmental areas.
9. Strengthen existing communities – consider employment options and issues such as safety and recreational facilities for the wider community.
10. Provide a variety of transportation choices – accessibility is the key.
11. Make development decisions predictable, fair and cost-effective.

Objectives

Accessibility

To ensure a clear relationship between accessibility and land use by:

- a) Promoting a movement system that gives appropriate priority to walking, cycling, public transport, and private vehicles.
- b) Guaranteeing a movement system that relates accessibility demand to location of development type.
- c) Ensuring that servicing is able to be carried out appropriately.
- d) Ensuring movement priorities, traffic speeds and street and road designs are appropriate to the location and give priority to pedestrians and children.
- e) Guaranteeing adequate accessibility for emergency vehicles.
- f) Building upon existing movement patterns and infrastructure by utilising the existing street layout.

Social Benefits

To establish affordable and accessible facilities and resources that allow people to maintain wellbeing, live and recreate by:

- a) Making appropriate provision for social and community needs.
- b) Providing for a full range of housing types, form and tenure.
- c) Establishing a hierarchy of recreation facilities and parks/reserves.
- d) Ensuring that development creates a 'people place' by giving priority to people and human relationships through housing mix and safety.
- e) Accommodating life-long educational and learning needs.

Environmental Benefits

To ensure a clean, safe and healthy environment that builds on existing resources and produces quality built and natural assets by:

- a) Establishing appropriate drainage and floodplain management that contributes positively to the area.
- b) Developing solutions to manage environmental issues on-site.
- c) Ensuring that waste disposal is effective and efficient and that recycling is utilised at every opportunity.
- d) Ensuring a high standard of water and air pollution management and water quality.
- e) Maintaining and enhancing the quality of the natural environment.
- f) Connecting and enhancing vegetation corridors and providing links between the Western ~~Regional~~ Sydney Parklands and the Hinchinbrook Creek Corridor.
- g) Promoting the conservation of flora and fauna, including the retention of Cumberland Plain Woodland.
- h) Promoting the development of place and a quality built environment with people and human relationships as a central consideration.

Economic Benefits

To establish economic capital that is accessible and meets the needs of the community by:

- a) Ensuring appropriate accessibility to employment.
- b) Ensuring the area's needs is identified in a local context through provision of local facilities and services.
- c) Ensuring the provision of employment floorspace is responsive to current demands.
- d) Ensuring infrastructure is sufficient to meet current and predicted need.
- e) Providing appropriate locations for local institutions.

2. Controls for Public Domain

2.1 Street Network

Street Network

Background

Middleton Grange shall be an accessible place linked to its surroundings with streets, pedestrian and cyclist pathways and public transport. Good transport linkages contribute to a connected, vibrant and mobile community, where all are able to safely and conveniently access services and facilities, and where dependence on private vehicles is minimised. *The local centre will provide an accessible focal hub for the community, which is connected to the broader suburb by streets, pedestrian pathways, shared zones and a cycle network.*

Objectives

- a) To provide an attractive residential street environment.
- b) *To provide attractive streets and public domain environment within the local centre.*
- c) *To provide for safe vehicular access and active transport links within the local centre.*
- d) To provide for the safe and efficient circulation of traffic.
- e) To provide for the safe and efficient movement of pedestrians with particular regard to the provision of clear and safe access routes for people who have a disability.
- f) To provide for efficient movement of local bus services and direct pedestrian access for all members of the community including those with disabilities.
- g) To provide a focal point for public transport activity through the ~~neighbourhood~~ local centre.
- h) To reduce local vehicle trips, and travel distances.
- i) To guarantee adequate accessibility for emergency vehicles.

Controls

1. The subdivision of land, design and layout of streets ~~within Middleton Grange~~ shall be in accordance with Figure 2 ~~-3-~~.
2. *The layout of streets within the local centre shall be in accordance with Figure 3.*
3. All streets shall be designed and constructed in accordance with Figures 2 – 7 ~~2,3 and 4.~~
4. All intersections shall be designed in accordance with the ~~RTA~~ Austroads and *Transport for NSW* Road Design Guide and the specifications set out in the Transport and Traffic Assessment (see *Background Reports to the Master Plan*).
5. No vehicular access to properties directly from Cowpasture Road and Fifteenth Avenue will be permitted. Access shall be via a service street or local street.
6. Barrier Kerb shall be used adjacent to parks, schools, collector streets and local centre streets. Roll kerb shall be used on all other streets.
7. Barrier kerb shall be installed for the entire length of bus zones and for 10m on the approach of the bus stop.
8. *The design of bus stops and bus stop shelters shall be in accordance with Council's technical specifications.*
9. Tree planting can be located either within the carriageway or road verge.
10. ~~Laneways are to be accessed by two streets at either end.~~ Laneways leading to cul-de-sacs or 'dead ends' are not permitted.

11. Laneways are not to incorporate acute angle bends into the design.



Figure 2: Street Design and Treatment

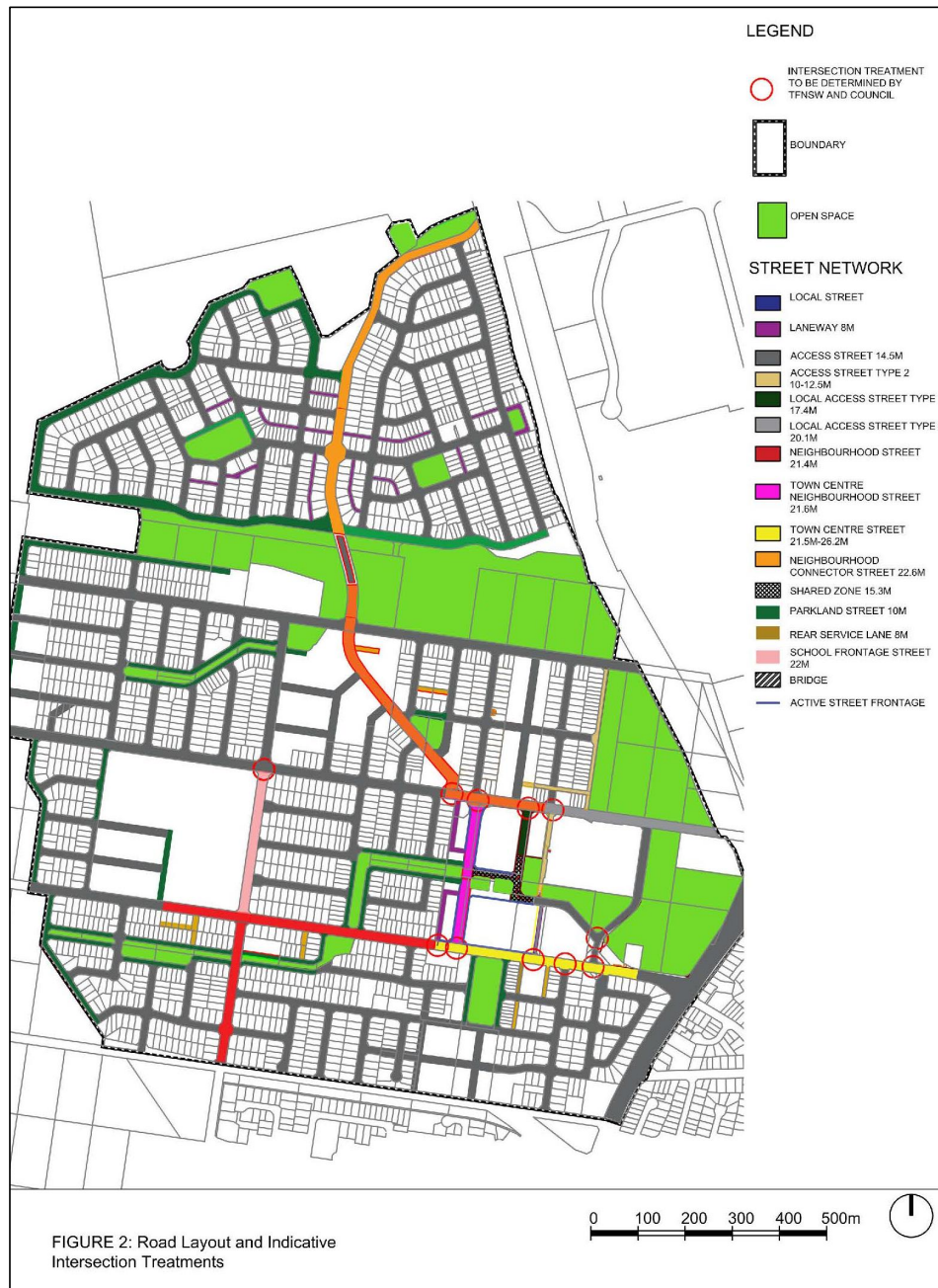


Figure 2 Road Layout and Indicative Intersections Treatments

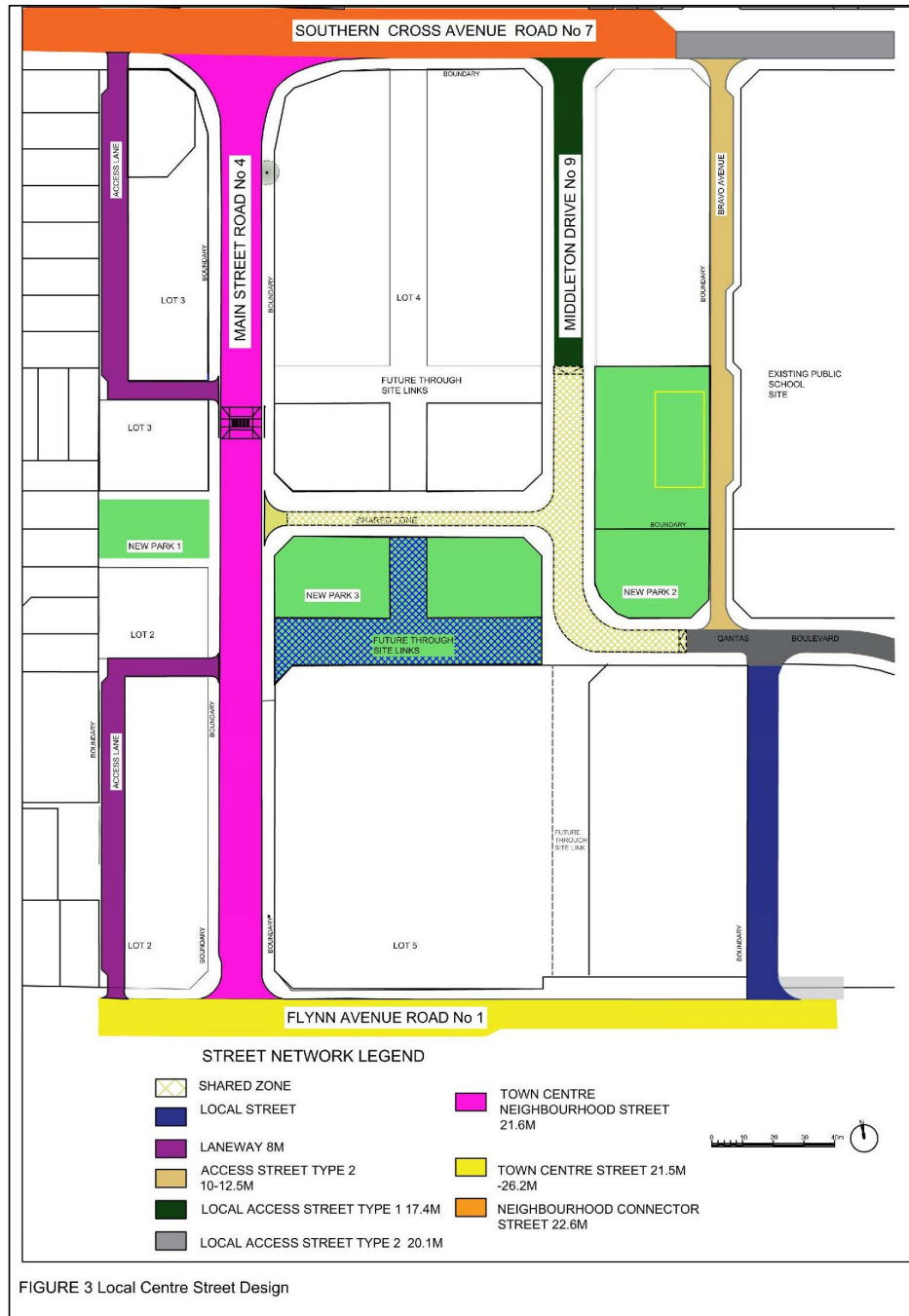


Figure 3 Local Centre Street Design

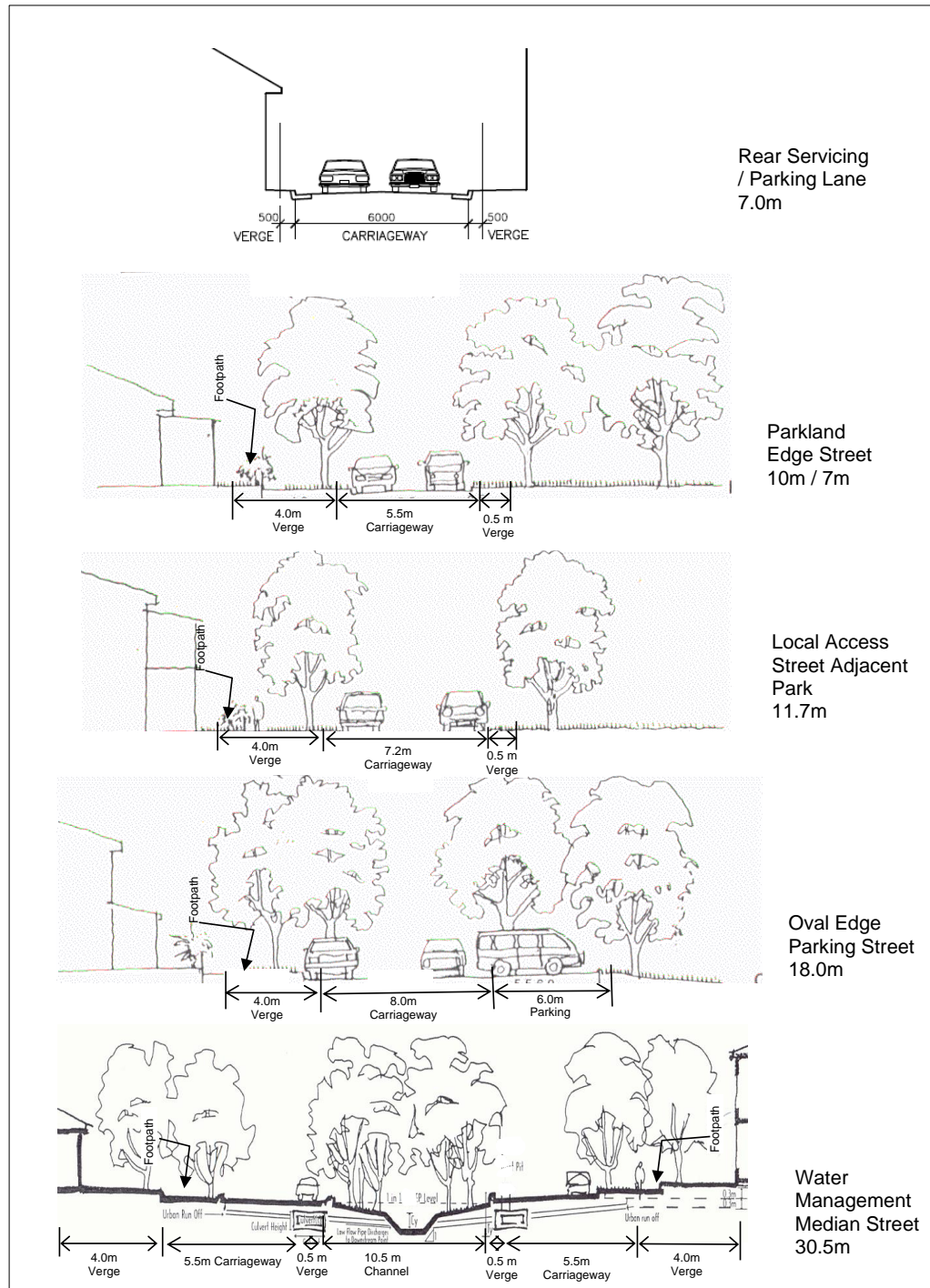


Figure 3.4 Street Sections

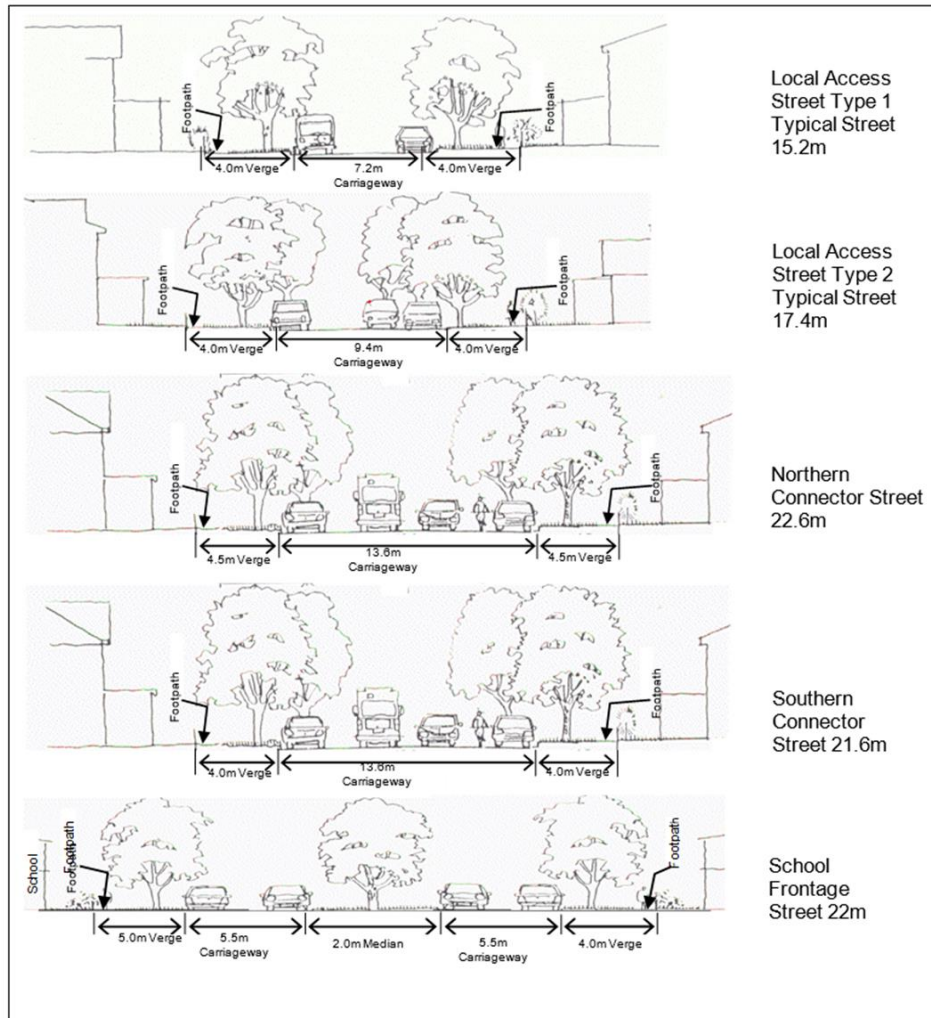


Figure 4.5 Street Sections

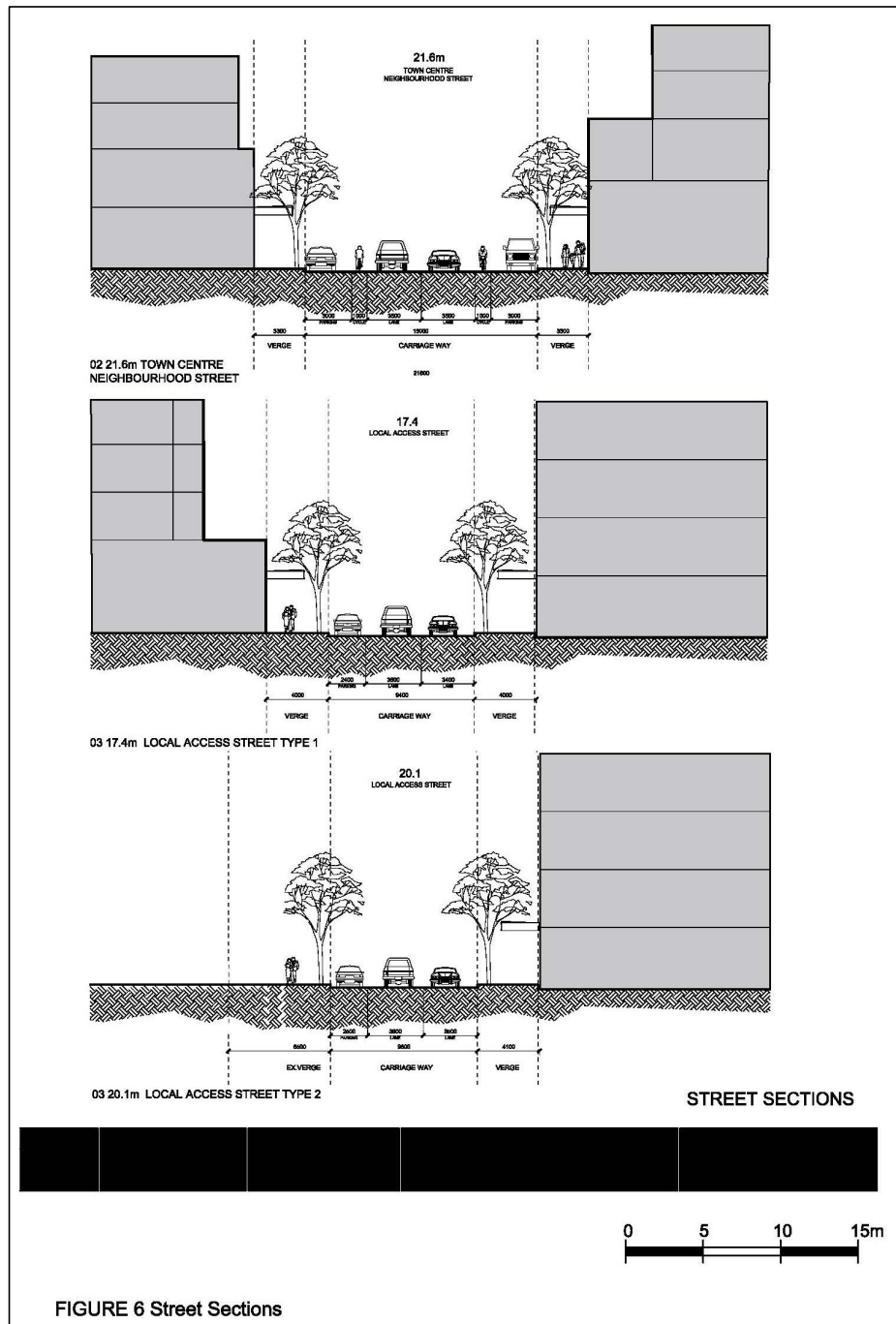


Figure 6 Local Centre Street Sections

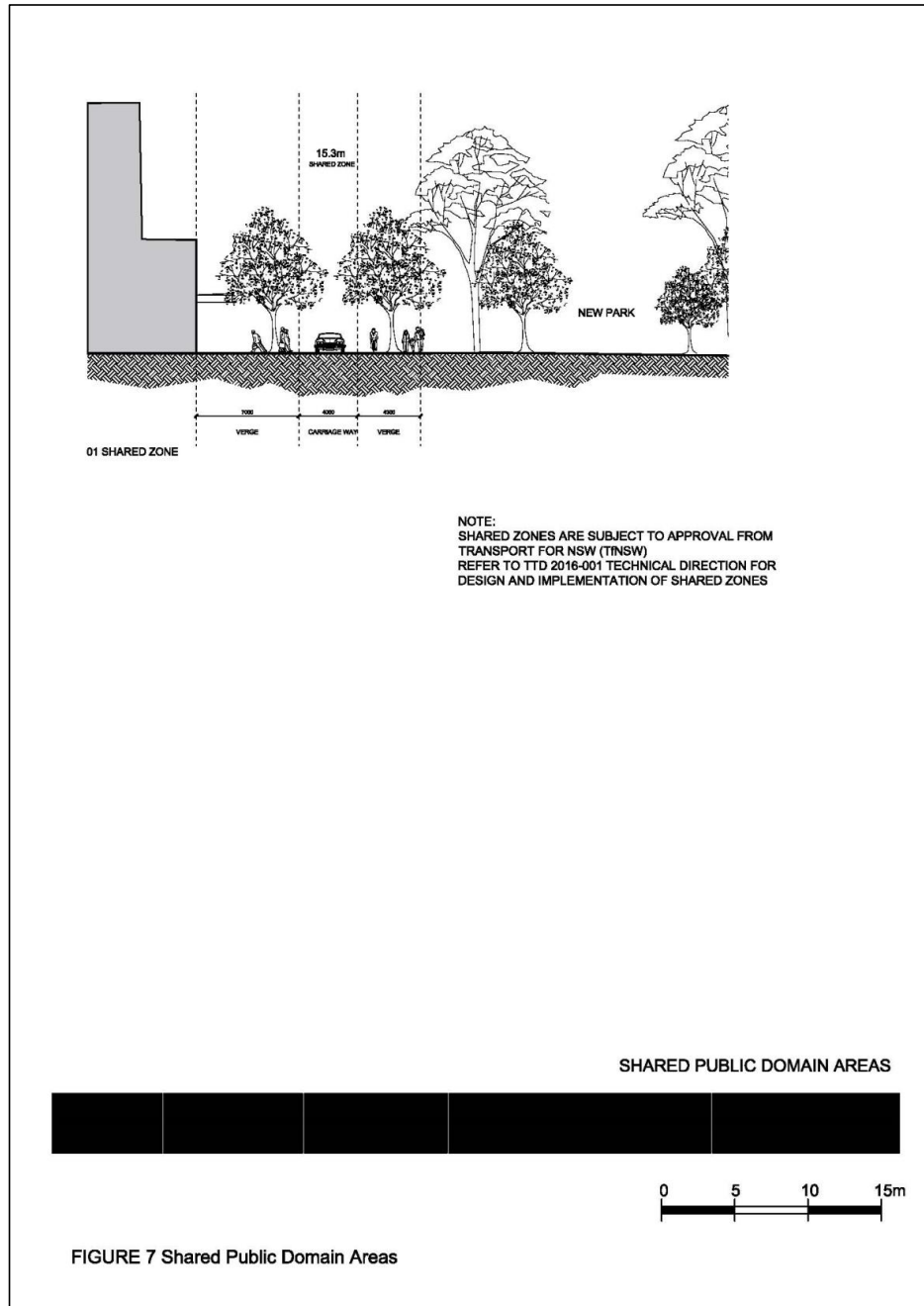


Figure 7 Local Centre Shared Public Domain Street Section

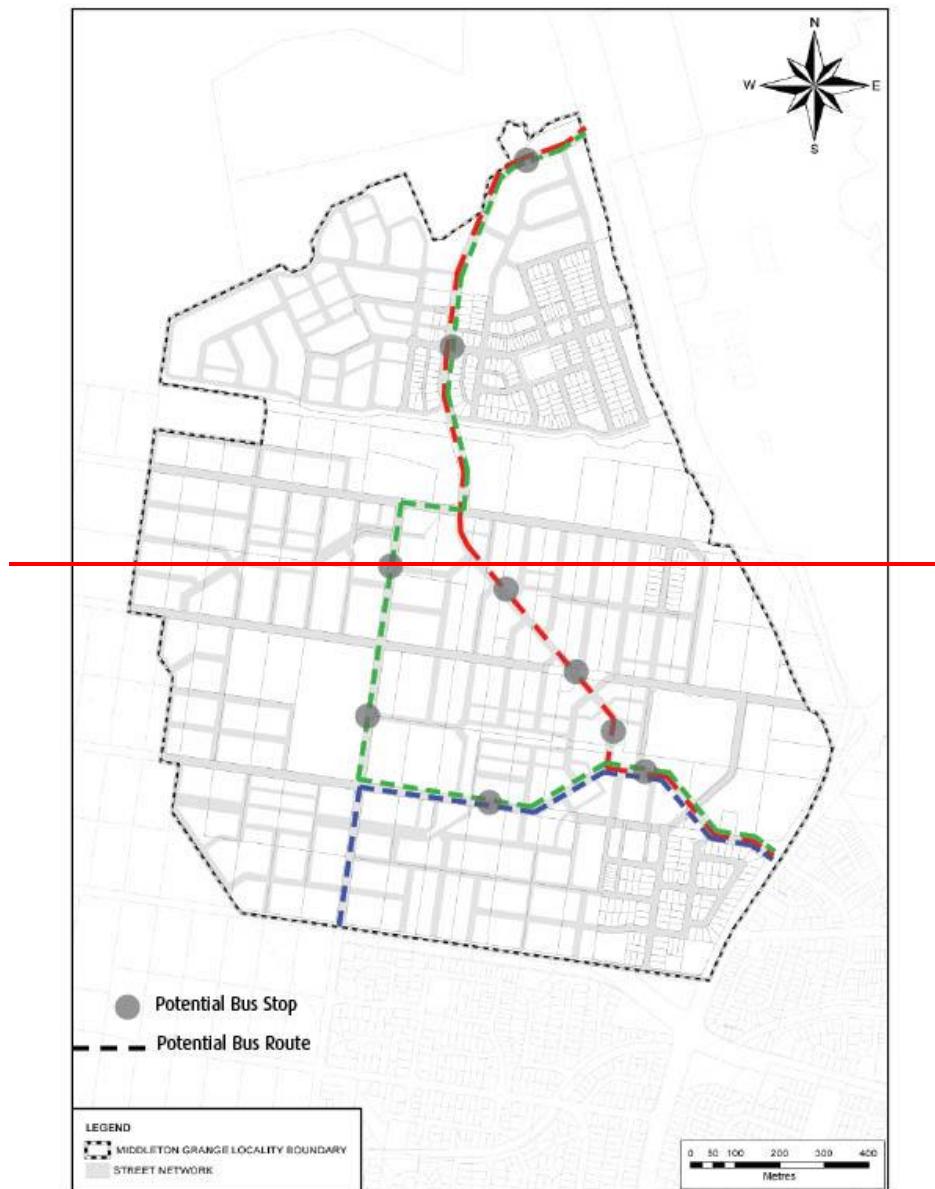


Figure 5 Bus Routes and Bus Stops

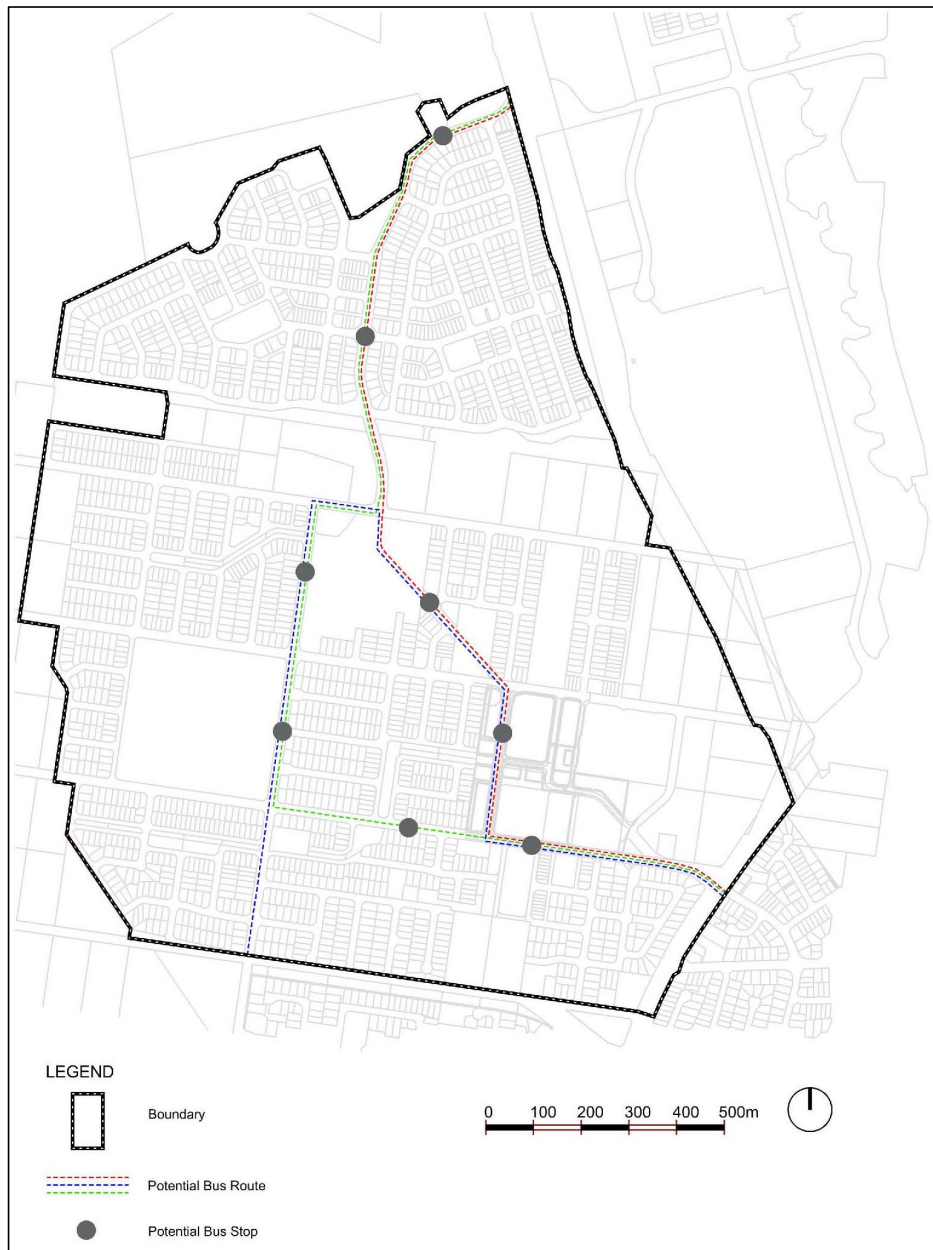


Figure 8 Indicative Bus Routes and Bus Stops

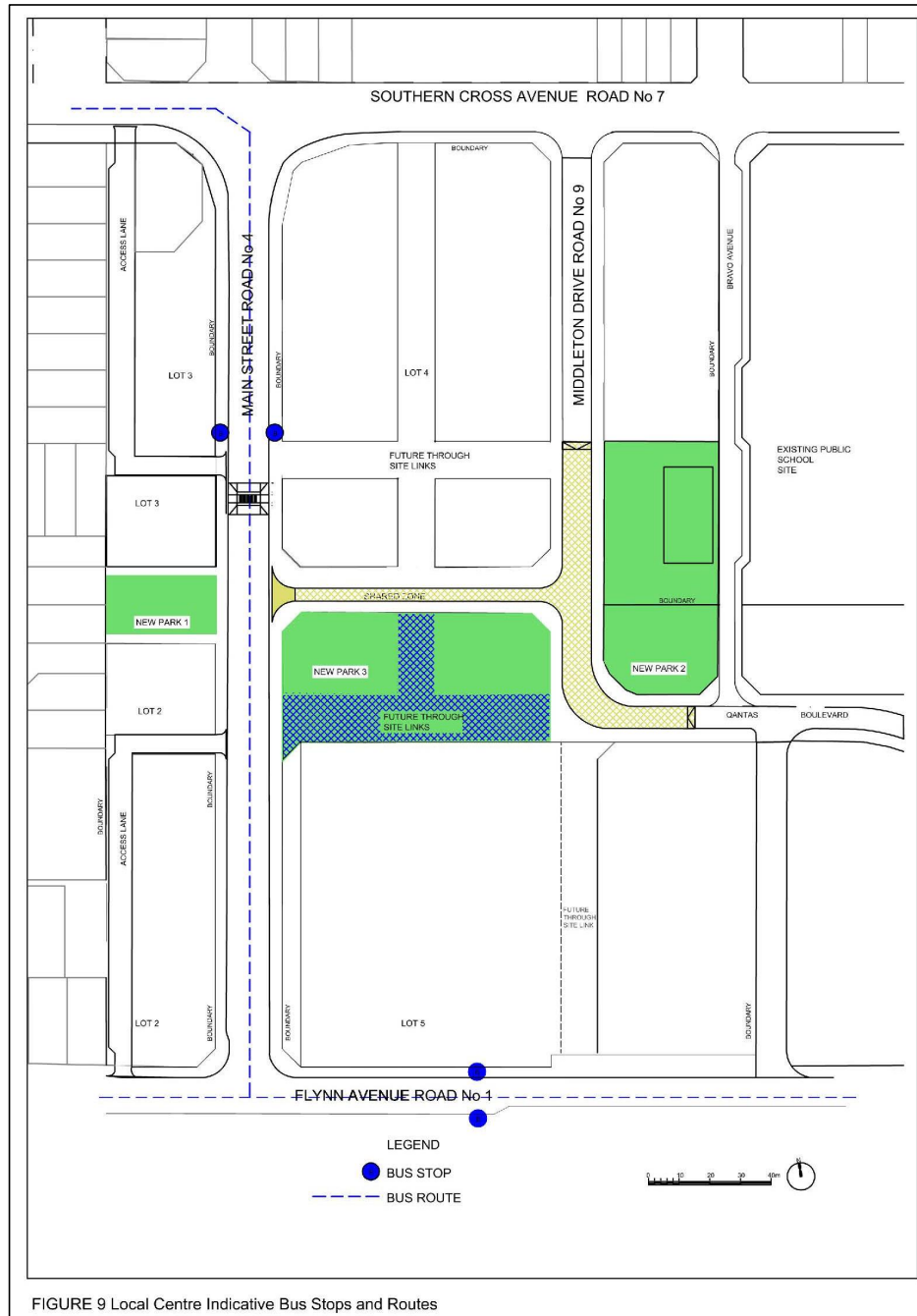


FIGURE 9 Local Centre Indicative Bus Stops and Routes

Figure 9 Local Centre Indicative Bus Stops and Routes

2.2 Pedestrian and Cyclist Paths

Background

Pedestrian and cycle facilities in public spaces provide linkages to social and cultural activities and educational facilities, and should be characterised by ~~excellence of design~~ design excellence appropriate to the area.

Objectives

- a) To encourage walking and cycling for local trips.
- b) To provide adequate infrastructure to support active modes of transport.
- c) To provide high levels of pedestrian and bicycle safety in shared zones.
- d) To provide a permeable and interconnected network of streets and pathways that gives safe, convenient and legible access to areas of attraction both within and beyond the suburb.

Controls

- 1. Pedestrian and cycle paths shall be provided in conjunction with the subdivision of land, creation of streets and development of open space in accordance with Figures 10 and 11 ~~6~~.
- 2. Shared pedestrian/cycle links, cycle ways, public streets and lanes shall be clearly and frequently signposted to indicate their shared status.
- 3. Designated cycle lanes on streets shall be clearly indicated by line-markings on the road surface and/or by signs beside the road.
- 4. Shared pedestrian and cycle paths shall be a minimum ~~2.5m~~ 3m wide.
- 5. Pedestrian footpaths along school frontages shall be a minimum ~~of~~ 2.5m wide in accordance with Austroads Design Guidelines.
- 6. Pedestrian footpaths through the ~~neighbourhood~~ local centre shall be full verge width and paved with a Council approved paver.
- 7. Designated pedestrian-only paths shall be a minimum of 1.5m wide and located in accordance with Figures ~~3-4~~ 4, 5, 6 and 7.

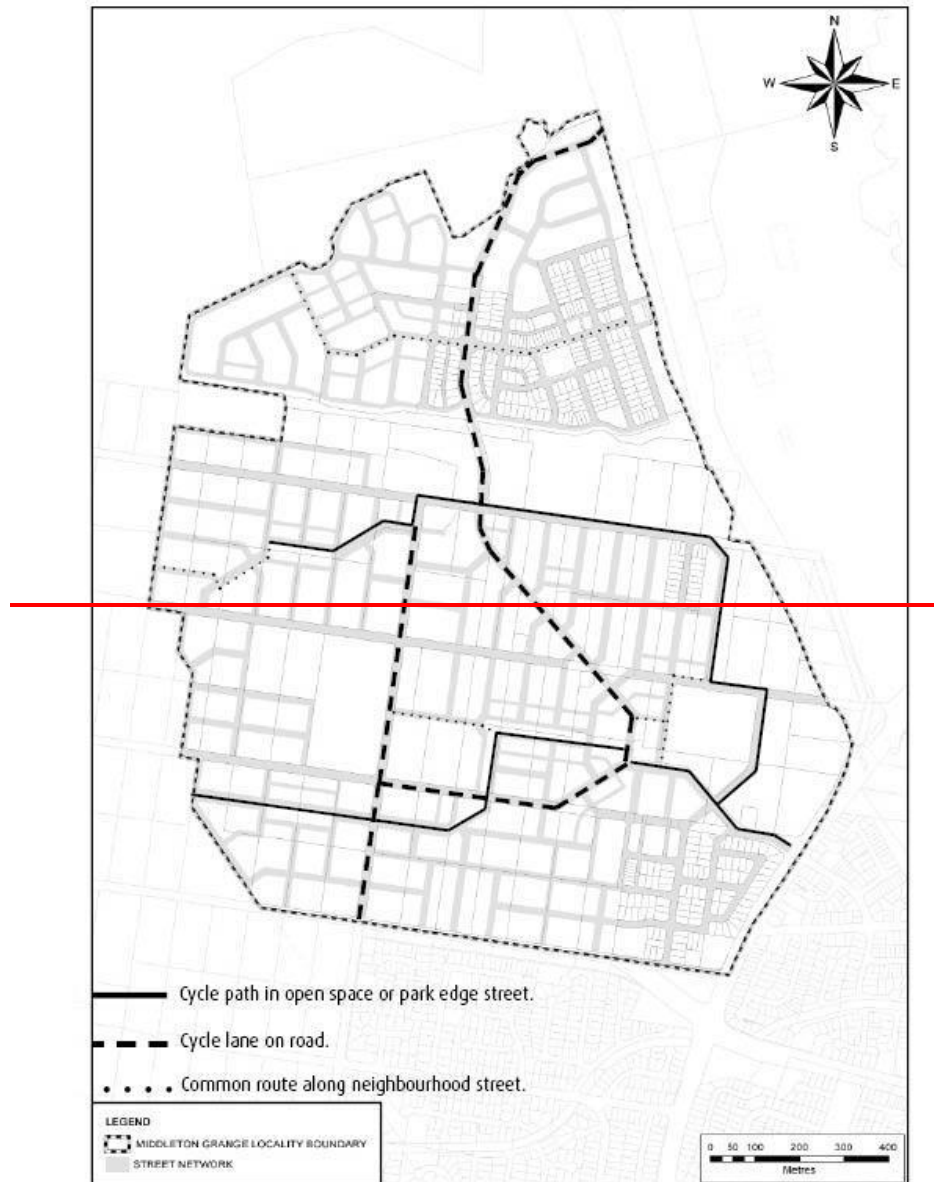


Figure 6 Cycle Paths

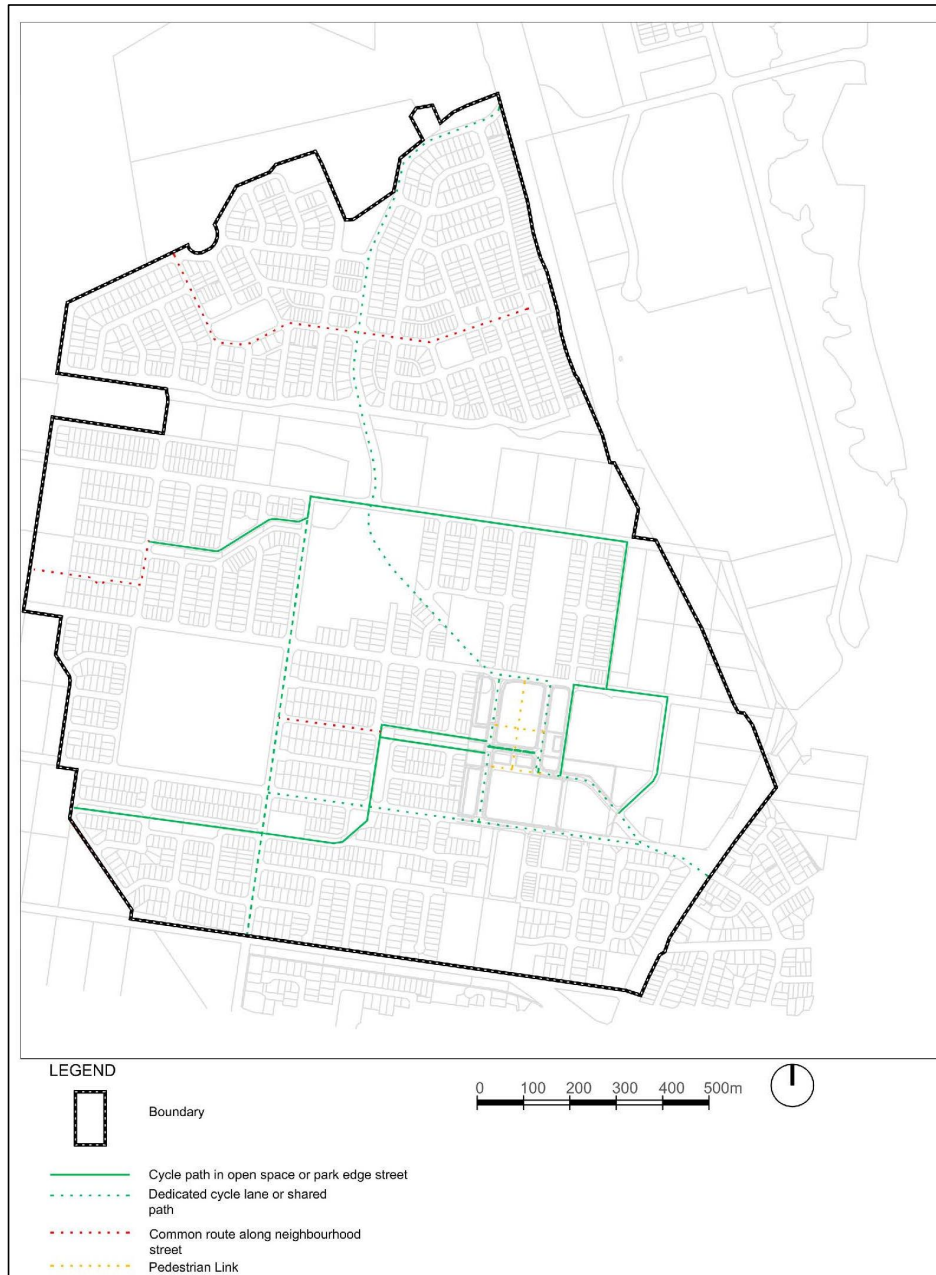


Figure 10 Cycle Paths

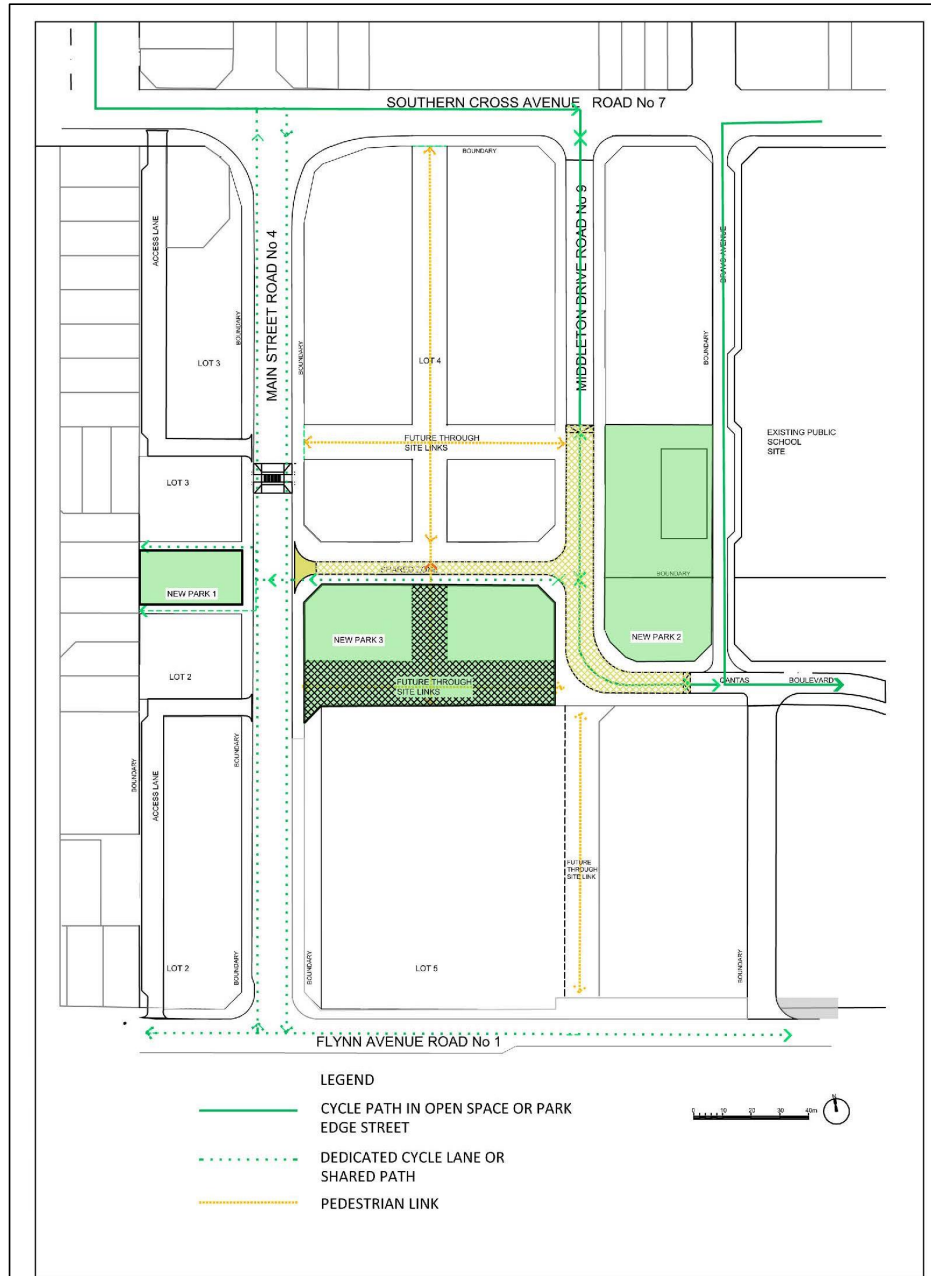


Figure 11 Local Centre Cycle Paths

2.3 Streetscape and Street Trees

Background

Street furniture should maximise pedestrian comfort, convenience and amenity, create visual harmony and be used to define spaces, streets, paths and gateways. Opportunities for public art in significant public domain locations should be explored as part of the development process. The incorporation of trees and landscaping enhance the quality of the public domain, provides protection from the sun and contributes to the 40% tree canopy coverage target.

Objectives

- a) To create a sense of identity for the area.
- b) To enhance public spaces so that they are vibrant, safe and welcoming.
- c) To facilitate cultural identity through art and design in public places.
- d) To create quality streetscapes that is visually attractive and integrates with surrounding street layout.
- e) To preserve and promote a connected tree canopy cover within the streetscape.

Controls

1. Street furniture is to be incorporated into the design of all public spaces and should be consistent in design and style.
2. Street furniture is to be located so as not to impede mobility, generally in accordance with AS 1428:1 - 4.
3. The location and detailing of all proposed street furniture is to be indicated on the Landscape Plan, to be submitted with the development application.
4. Multifunction poles shall be installed within the local centre.

Street Tree Planting

1. Street trees shall be required to be planted in conjunction with the creation of a new street or the extension of an existing street.
2. One street tree shall be planted for each allotment created.
3. The street trees shall be planted prior to the release of the subdivision certificate.
4. The trees shall be provided with protection to ensure their survival during the construction of buildings in the street. Refer to Figure 13 8 for details.
5. Trees and shrubs on individual streets must be of a uniform species. On streets adjacent to bushland, species indigenous to the area must be planted.
6. The trees planted along the main access avenue are to be; *Lophostemon confertus* or an equivalent tree.
7. Where appropriate, incorporate interpretative streetscape elements reflecting the former land use history on the site having regard to the Heritage Interpretation Plan and Strategy Report.
8. A minimum of one street tree shall be provided per lot frontage. Street trees along side property boundaries shall be provided at the minimum rate of 1 tree per 10m of street frontage.

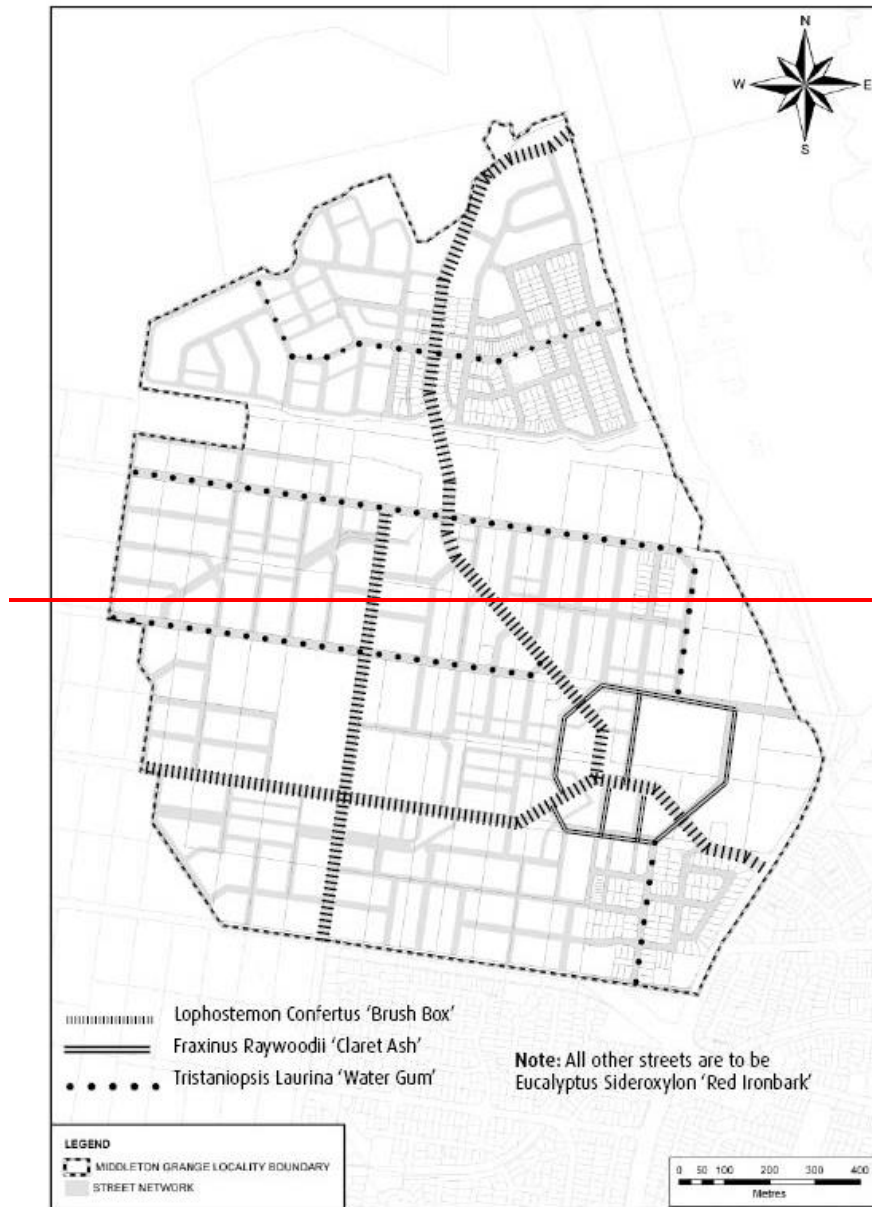


Figure 7 Street Trees

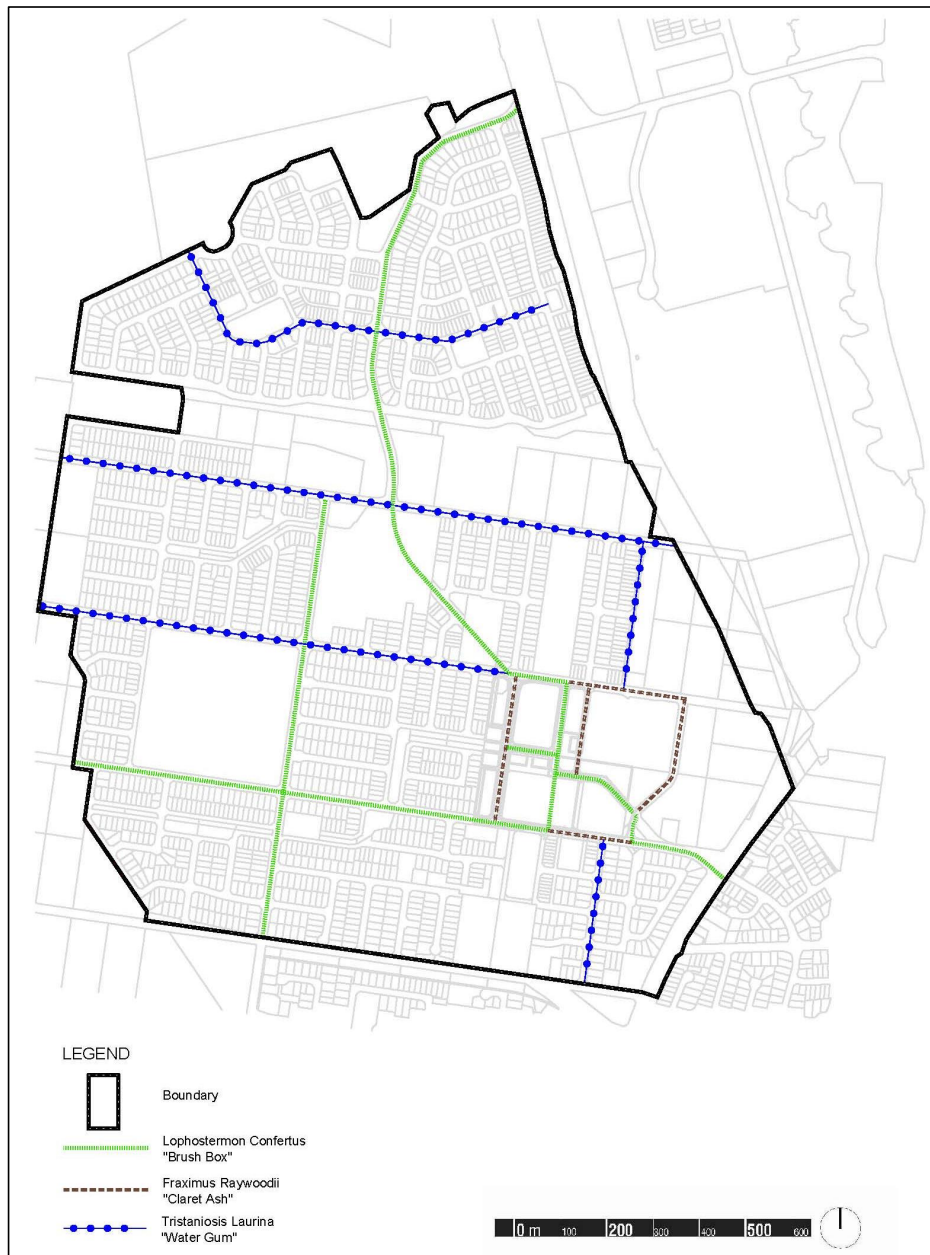


Figure 12 Street Trees

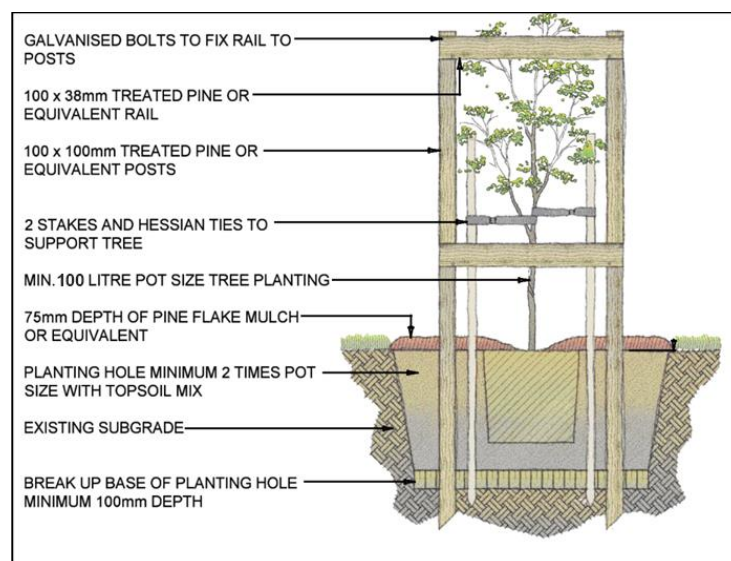


Figure 8-13 Tree Protection

2.4 Open Space

Background

~~Public~~ Open spaces can be designed to promote vibrant social interaction, civic pride and a sense of public ownership and belonging. Landscaped areas and open space within the public domain play a major role in setting the character of the locality. These areas should make the neighbourhood pleasant and welcoming and be convenient to the needs of the community, especially in higher density areas.

Objectives

- To ensure adequate provision and distribution of public open space to meet the needs of the residents.
- To prioritise open spaces as a focal point for the community.
- To retain and integrate existing landscape elements, such as vegetation and topographic features, in the design of new development.
- To provide links between the open space areas and community and retail facilities.
- To create a variety of linked public spaces that fulfils functional requirements as well as creates attractive and memorable places.
- To encourage the use of native species of flora and low maintenance landscaping.
- To facilitate greater tree canopy cover within open space areas.

Controls

- Public open spaces shall be designed and landscaped so as to minimise the need for maintenance. This shall be achieved through the use of appropriate native species. Where public open space is to be provided in conjunction with development, a Landscape Plan shall be submitted with the application showing how the proposed landscaping will minimise maintenance.
- Existing trees, tree stands and vegetation shall be retained where possible.

3. Pedestrian and cycle paths must be provided as part of open space areas, shown in Figures 6, 10 and 11.

2.5 Stormwater Management

Water Management

Background

Nowadays water cycle management is seen holistically rather than just the conveyance of stormwater. This includes provision of drainage in natural or recreated watercourses. In order to assist applicants to achieve the design objectives, reference shall be made to the relevant extract from 'Water Cycle Management Facilities, Northern, Central and Southern Creeks Engineering Design Plans and Design Report by J Wyndham Prince Pty Ltd, December 2005' prepared on behalf of Council.

Objectives

- a) To encourage a holistic approach to water cycle management, implementing total catchment management principles.
- b) To integrate water management measures ~~with innovative urban design~~ and incorporate water sensitive urban design principles where possible.
- c) To minimise the impact of urbanisation on stormwater quality within the catchment so that stream flows mimic natural pre-development flows by encouraging salinity management principles and water sensitive urban design practices.
- d) To ensure that there are no adverse impacts on existing flood regimes in the surrounding areas, as a result of the proposed development.
- e) To minimise the stormwater run-off through the provision of pervious areas and vegetation, and manage the impacts of salinity through the use of salt tolerant species.
- f) To minimise any risk to human life and damage to vehicles as a result of the inundation of basement car parking, other car parking or driveway areas.

Controls

1. Where any construction within the floodplain, adjacent to a watercourse, drainage depression or an enclosed drainage system is proposed, the development application shall be accompanied by a full hydrologic and hydraulic assessment to allow a determination of the risk and impact by, and on, the development proposal by flooding. The assessment shall include:
 - Analysis of the impact of the development on flood storage capacity, flood conveyance, flood levels, and flow velocities.
 - Identification of the flood risk to both people and property as a result of the development.
 - External and internal catchment hydrology for rainfall events up to the probable maximum flood (PMF), including the 1% Annual Exceedance Probability (AEP) design storm.
 - Predicted extents of flood inundation.
 - Depths and velocities of predicted flood flows to allow effective hazard categorisation.
2. The development shall have no adverse impact on the existing flood regime in the surrounding areas and shall demonstrate the operation of any proposed flood mitigation measures.
3. The trunk drainage system shall be designed to convey the 1 in 100 AEP flood event, with a freeboard of 300 mm. Streets adjacent to trunk drains shall be designed to

carry flows in excess of the drainage system. The crown of the road shall be at least 300mm above the 1 in 100 AEP flood level. Buildings adjacent to these streets shall have habitable floor levels 300 mm above the crown of the road.

4. In the ~~neighbourhood~~ local centre, residential and mixed use developments shall be at least two storeys with the lowest habitable floor level at least 600mm above the crown of the road. Alternatively, the building shall be above undercroft parking or garages with rear lane or car court access.
5. Where drainage depressions pass through a property, adequate provisions must be made for the passage of stormwater runoff with adequate freeboard to building floor levels.
6. In the case of development that increases floorspace it may be necessary to enhance the site's existing drainage provision. This could result in the need to locate drainage services across Council-owned land. In this event it may be necessary to obtain Council approval. Such action needs to be identified and addressed at the development application stage.
7. In the event of Council being requested to approve the location of a piece of infrastructure on its land, it will require:
 - Documentation that such an activity will not prejudice the use of the land for the purpose for which it exists.
 - The possible preparation or amendment to the Plan of Management for the land, and if this action is necessary a fee may be required.
8. Basement car parking must be protected from inundation by floods equal to or greater than the 1% AEP flood + 0.1m.
9. Basement car parking and other car parking areas that are at a level below the 5% AEP flood level or more than 0.8m below the 1% AEP flood level, shall have appropriate warning systems and signs to assist in safe evacuation.
10. All exits from the car parking shall be located such that pedestrians evacuating any location during any flood do not have to travel through deeper water to reach a place of refuge above the PMF.

Creek Zone Management

Note: This section does not apply to the portion of the creek that traverses through the local centre. This portion of the creek will be channelled within a set of box culverts to convey the flow under the local centre to provide a ground level public domain area.

Background

The existing water courses provide an opportunity for the provision of environmentally sustainable vegetated creek corridors.

Where a proposed creek line is located on part of the development site, bulk earthworks are to be carried out to create a channel for the creek as per the '*Water Cycle Management Facilities, Northern, Central and Southern Creeks Engineering Design Plans and Design Report by J Wyndham Prince Pty Ltd, December 2005*'. Works are to include temporary stabilisation of all associated disturbed areas of the creek.

Council is to be responsible for the final construction of the channel and permanent landscaping in accordance with the endorsed '*Landscape Works Design & Management, Knox Partners & Australian Wetlands*' as amended.

Objectives

- a) To maximise opportunities for stream/creek restoration and enhancement that mimics natural stream processes.
- b) To conserve, protect and enhance creek corridors and biological connectivity through the provision of continuous vegetated creek protection zones along either side of the creeks.
- c) To link the creek corridors to other remnant areas of vegetation at the Middleton Grange site by providing supplementary plantings.

Controls

1. Applications to Council must include the following detail:
 - Plans showing in detail the existing creek channels, vegetation (including remnant native vegetation) and geomorphic features.
 - Detailed plans of any channel modification and stabilisation works.
 - A longitudinal stream survey section (if stream works are proposed) of the existing and proposed creek channel bed in sufficient detail to identify changes in bed level and hydraulic features (i.e. pools and riffles).
 - Details on the staging and sequencing of any works within the creek zone.
 - Recommendations on how to address the modified drainage system and reaches.
 - A vegetation management plan shall be in accordance with the endorsed 'Landscape Works Design & Management, Knox Partners & Australian Wetlands'.
2. Creek lines and creek buffer zones shall be provided in accordance with Figures 14 - 20 ~~9-15~~, Table 1 and the *Water Cycle Management Facilities, Northern, Central and Southern Creeks Engineering Design Plans and Design Report* by J Wyndham Prince Pty Ltd, December 2005.
3. Where subdivision works are to occur prior to the completion of all downstream drainage works, on site facilities may need to be provided in order to limit drainage volume and velocity to that experienced prior to development.
4. Where streets are proposed to cross the creek alignment the structures must be provided as specified in Figure 19 ~~15~~. These crossings must be designed to facilitate the movement of aquatic and terrestrial species, and shall incorporate features that allow for light and rainfall penetration beneath the structure sufficient to allow vegetation growth.
5. Weir structures will not be permitted on any creeks.
6. Creek Corridors shall be protected by the provision of vegetated creek corridors (measured from the top of bank) as shown in the plans and cross sections for channel types A, B, C and D ~~and E~~ (see figures 15-19 ~~10-15~~) and as per *Water Cycle Management Facilities, Northern, Central and Southern Creeks Engineering Design Plans and Design Report* by J Wyndham Prince Pty Ltd, December 2005.
7. All remnant vegetation along the creeks/channel should be protected and enhanced.
8. Any bank stabilisation measures shall use soft engineering techniques that promote an ethos of sustainability and naturalness.
9. Appropriate bushfire buffer zones shall be located within the defined limits of the development site and not be located in the creek corridor.

10. Any assessment of flood impacts and flood modelling must take into account the establishment of a fully structured vegetated creek corridor along the creeks. The Manning's "n" roughness coefficients shall be such that they represent a diverse and fully structured creek corridor (trees, shrubs and groundcover) for discharge determinations.
11. Any hydraulic assessment should consider not only the initial vegetation density but also the final growth, with due allowance for debris build up before and during flooding.

Removal of Water Storage Facilities

Background

A number of water storage facilities (dams) have been identified throughout the Middleton Grange area. The environmental impact of decommissioning these facilities will be minimised through soil and water testing and appropriate disposal techniques.

Objectives

- a) To ensure that dams are removed in a manner that is controlled and prevents damage to the natural environment.
- b) To ensure that contamination is considered and all legal requirements are met.
- c) To ensure that salinity issues are considered prior to the removal of dams.

Controls

1. For sites with existing water storage facilities (dams) the development application must include a dam removal plan which addresses each of the following controls to Council's satisfaction and must also include details of:
 - A water quality and soil test which details any contaminants in both the water and soil at the base of the dam (all testing shall be undertaken by a qualified consultant and NATA accredited laboratory).
 - A salinity hazard test undertaken in accordance with the Department of Water and Energy draft risk map and salinity site assessment guidelines.
2. Sites identified as contaminated ~~follow the Department of Environment and Climate Change contaminated water or soil removal guidelines in the National Environment Protection (Assessment of Site Contamination) Measure 1999~~ must follow and comply with guidelines made and approved by the NSW Environment Protection Authority. Contaminated water should be disposed of at a liquid waste facility.
3. Sites identified as of Salinity Code of Practice management framework.
4. Water identified as not contaminated must be offered to water users in the area for reuse. Should there be no possible reuse option for the water; a controlled release into the creek may be possible.
5. Any controlled release of water into the receiving waters (creek) must ensure against any erosion impact.
6. Any dam decommission must be undertaken in accordance with the ~~Department of Environment and Climate Change and the Department of Water and Energy guidelines~~ NSW Department of Planning and Environment - Water guidelines. ~~The guideline Department of Water and Energy~~ requires that the receiving waters (creek) be tested to ensure that the dam water will have no adverse impact on the ecology of the creek. It is recommended that any water release is undertaken during high flow events as creek water quality is reduced at this time.



Figure 9-14 Creek Zone Management

Table 1 Minimum Creek Zone Treatments / Widths

	Stretch	Channel Type	Central Creek (m)	Drainage Reserve Width (m)	Total Reserve Width (m)
Southern Creek	S1	A	3.5	10.5	10.5
	S2	A	3.5	10.5	10.5
	S3	B	5.0	16.7	53.0
	S4	B	5.0	21.2	22.6
	S5	B	5.0	23.6	25.0
	S6	LOCAL CENTRE SECTION 3 x 3600mm x1200mm Box Culverts			
	S7	LOCAL CENTRE SECTION 3 x 3600mm x1200mm Box Culverts			
	S8	LOCAL CENTRE SECTION 3 x 3600mm x1200mm Box Culverts			
Middle Creek	S9	B	6.0	26.6	35.0
	M1	A	3.5	10.5	40.0
	M2	A	3.5	10.5	10.5
	M3	C	3.0	13.8	90.0
	M4	D	Existing	Existing	170.0
Northern Creek	M5	B	7.0	24.7	188.0
	N1	D	Existing	Existing	Various
	N2	B	Existing	Existing	Various

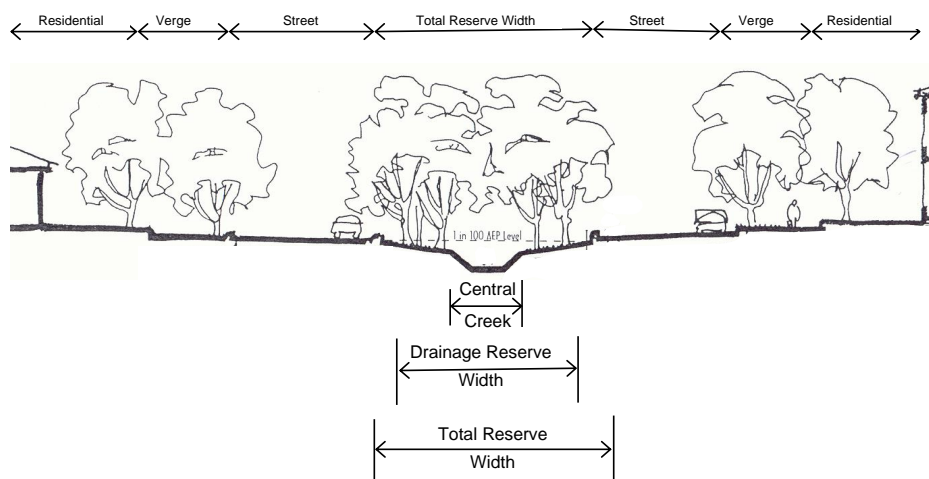


Figure 15 Type A Channel

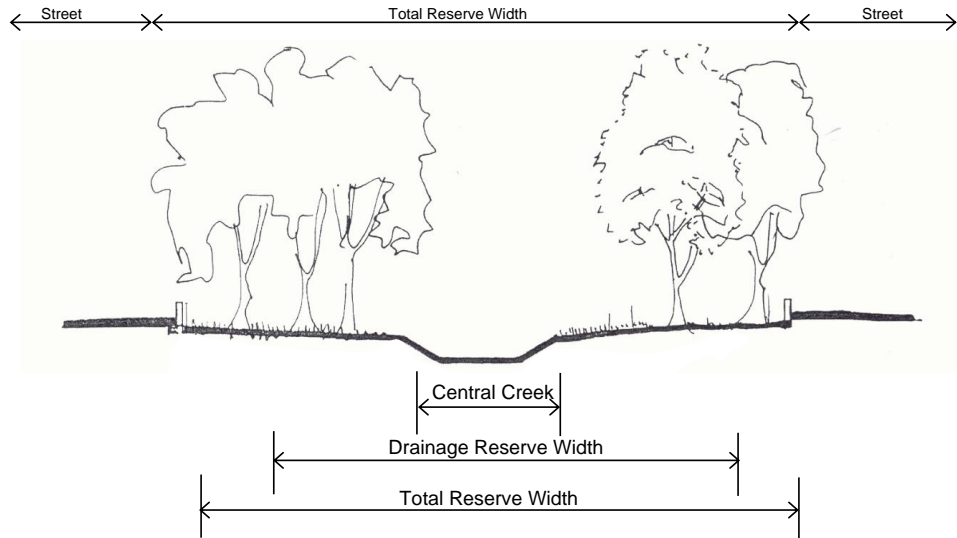


Figure 16 Type B Channel

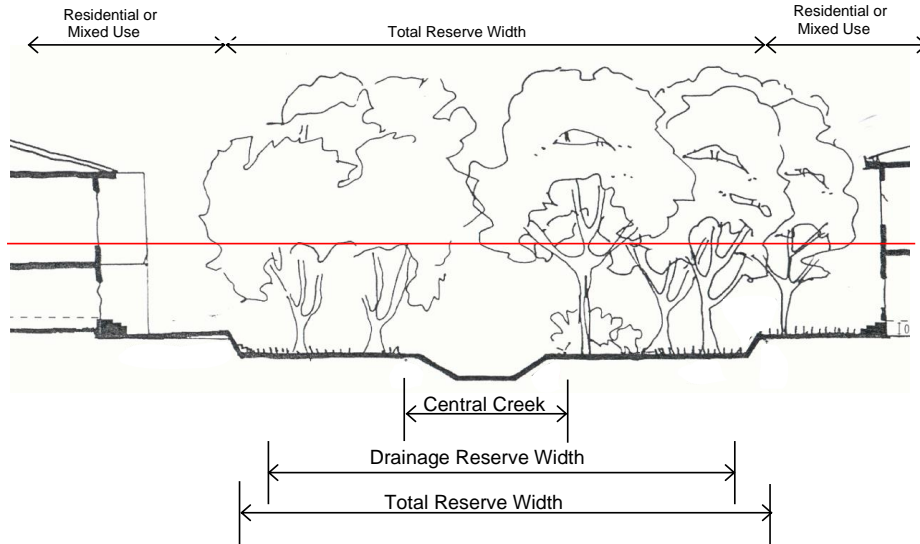


Figure 12 Type C Channel

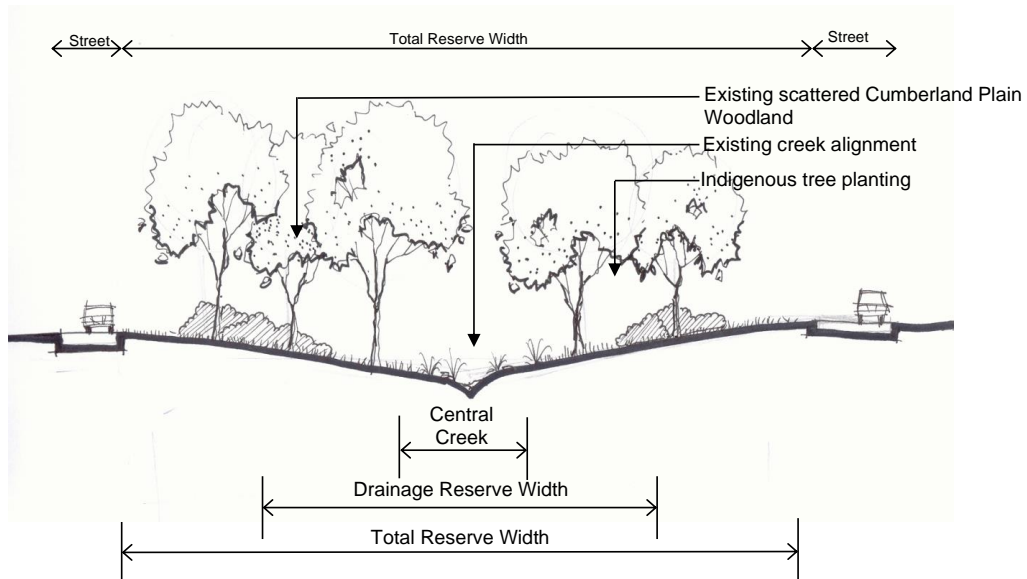
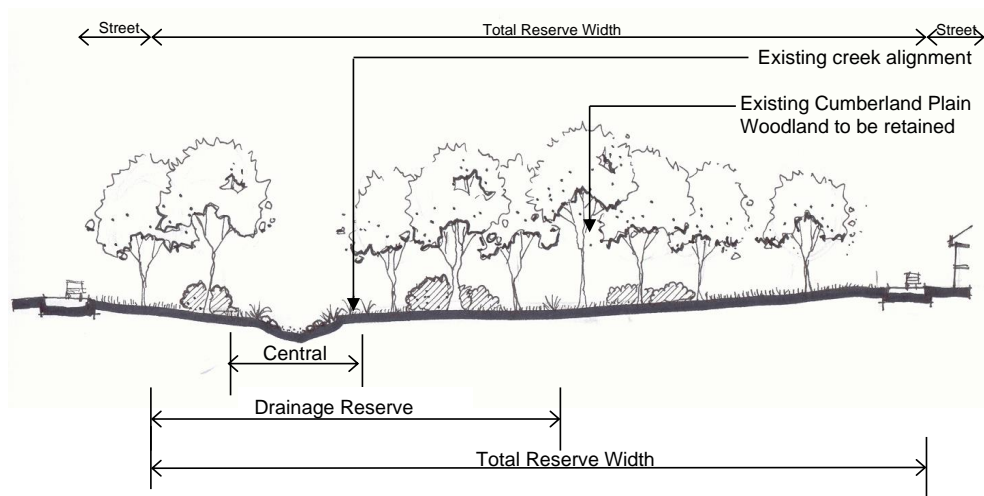
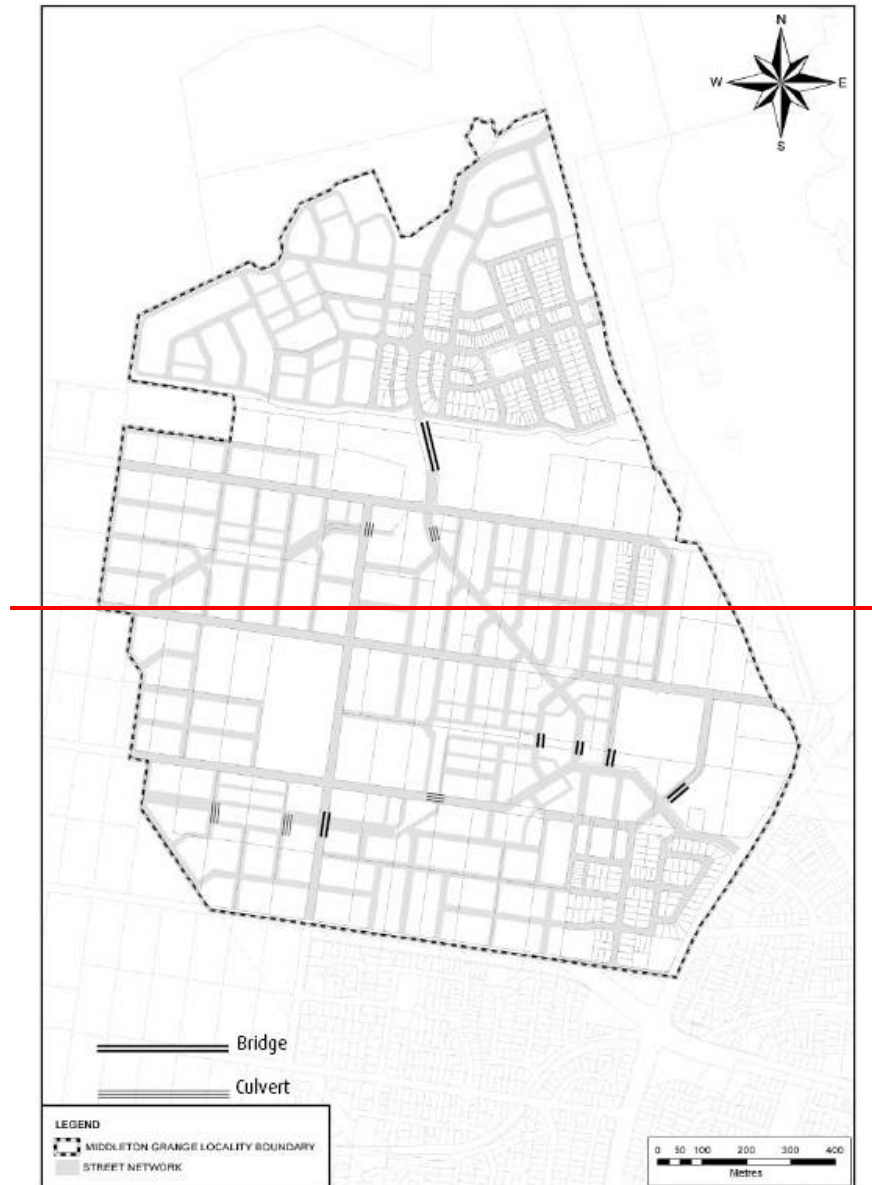


Figure 43 17 Type D Channel



- Environmental Corridor to contain 100 year ARI
- Creek line to remain in current alignment
- Only minor works permitted within the Environmental Corridor as part of the Stormwater Water Management for the Middleton Grange Release

Figure 44 18 Type E Channel



~~Figure 15 Crossing Types~~



Figure 19 Crossing Types

Illustrates the required bridging structure type for each creek crossing.

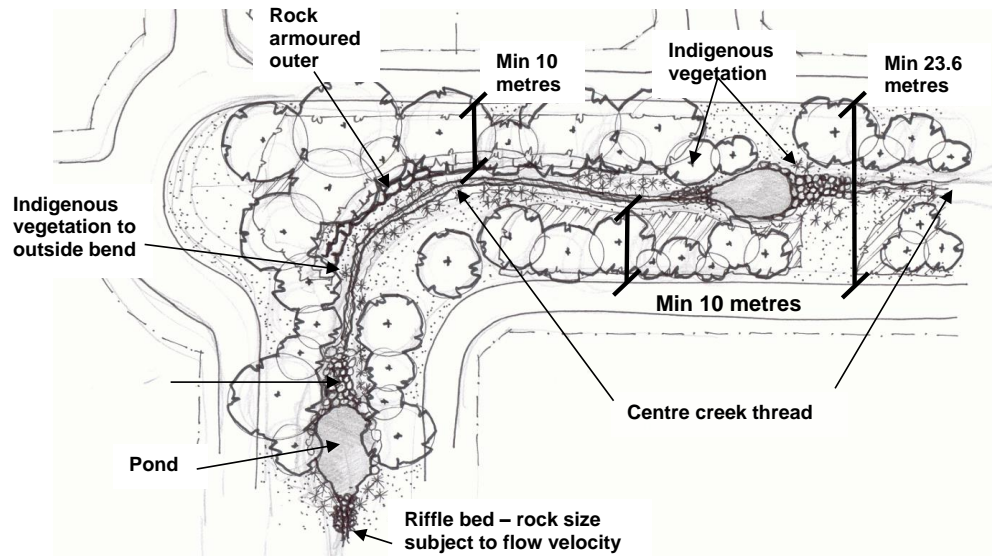


Figure 46-20 Creek Corridor

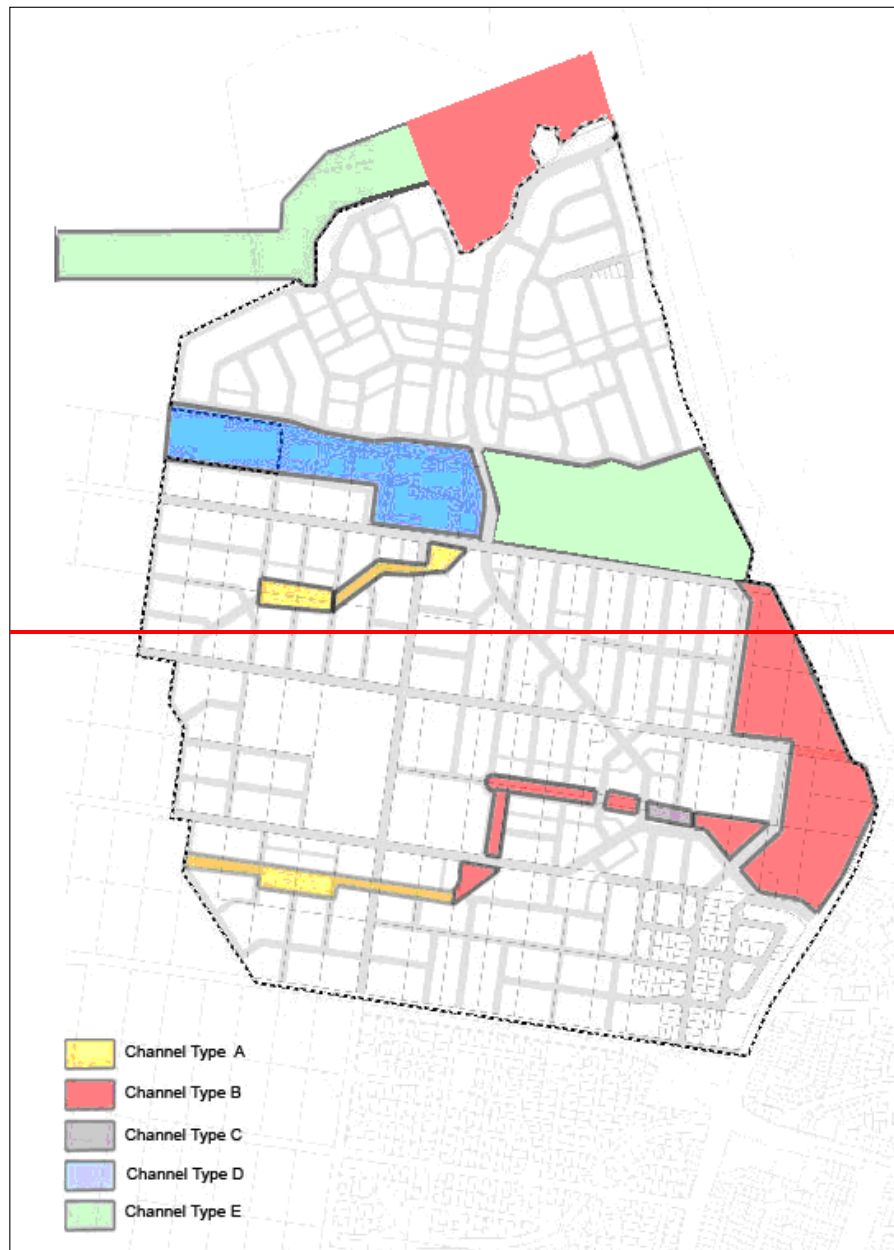


Figure 17 Channel Locations

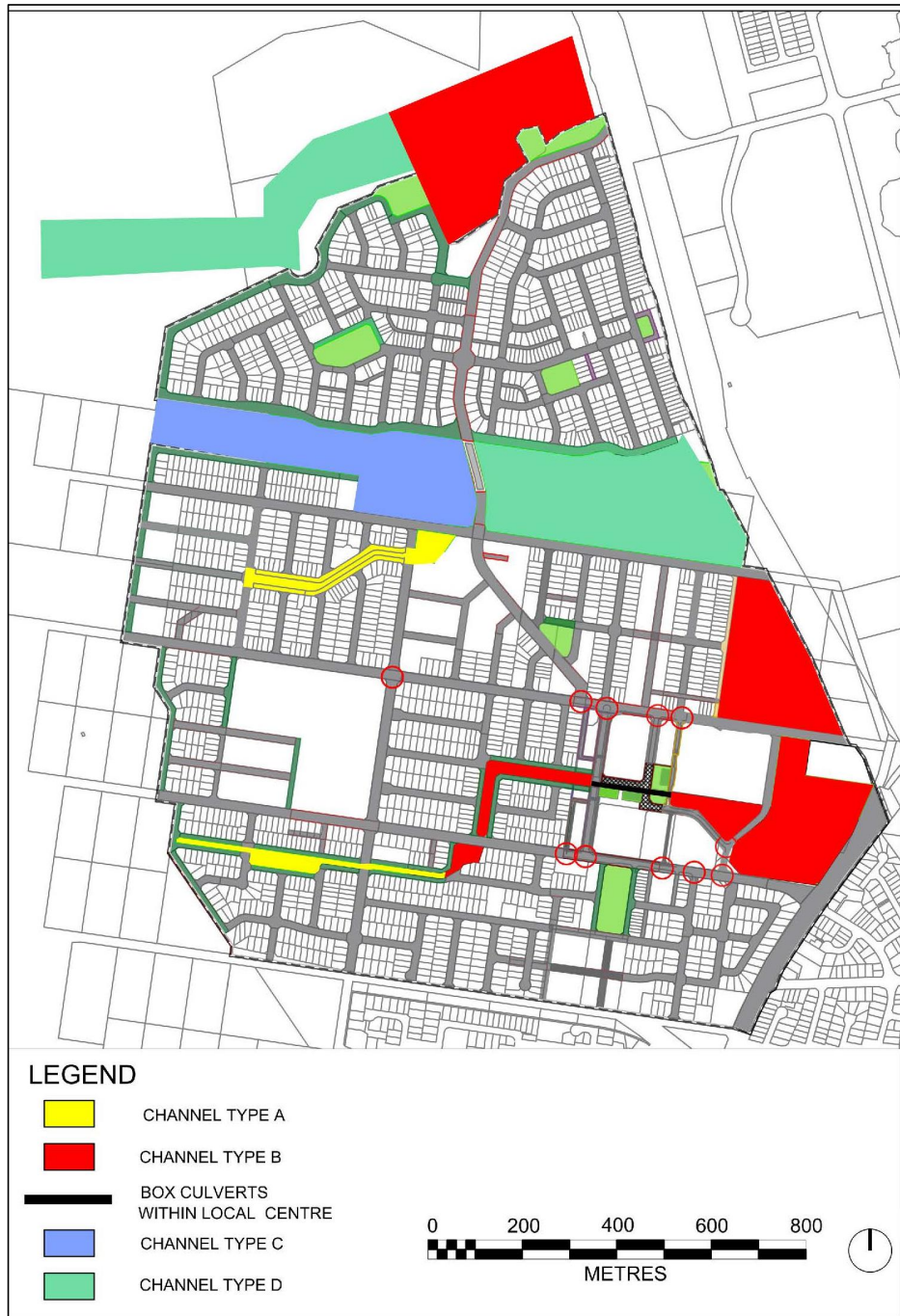


Figure 21 Channel Locations

3. Controls for the Private Domain

3.1 Frontage and Lot Size

Background

The *Liverpool LEP 2008 Dwelling Density* map establishes the primary control over density for the Middleton Grange site. The aim is to provide the opportunity for areas of greater density to occur in areas of higher amenity across the site. Highest amenity means proximity to the ~~neighbourhood~~ local centre, public transport stops, open space and environmental land.

The main objective is to provide choice through a mix of housing types and high quality open space. Opportunities for higher density are provided in places of greatest amenity.

The orientation of lots should be designed to maximise solar access to reduce household energy consumption and to make best use of the land available.

Objectives

- a) To provide a range and mix of lot sizes to suit a variety of dwellings types distributed throughout the area.
- b) To locate higher density development in places of greatest amenity, such as near parks and other open spaces, the ~~neighbourhood~~ local centre and along transport nodes.
- c) To ensure lots are orientated to optimise solar access to facilitate micro-climate management, including the application of energy conservation principles.
- d) To ensure all dwellings address the street and overlook open space where possible.
- e) To ensure that lot size and dimensions take into consideration the physical characteristics of the land, in a way which promotes retention of existing vegetation and reduces the incidence of damaging earthworks and retaining wall construction.
- f) To ensure passive surveillance of public space through the effective and functional layout designs of new developments.

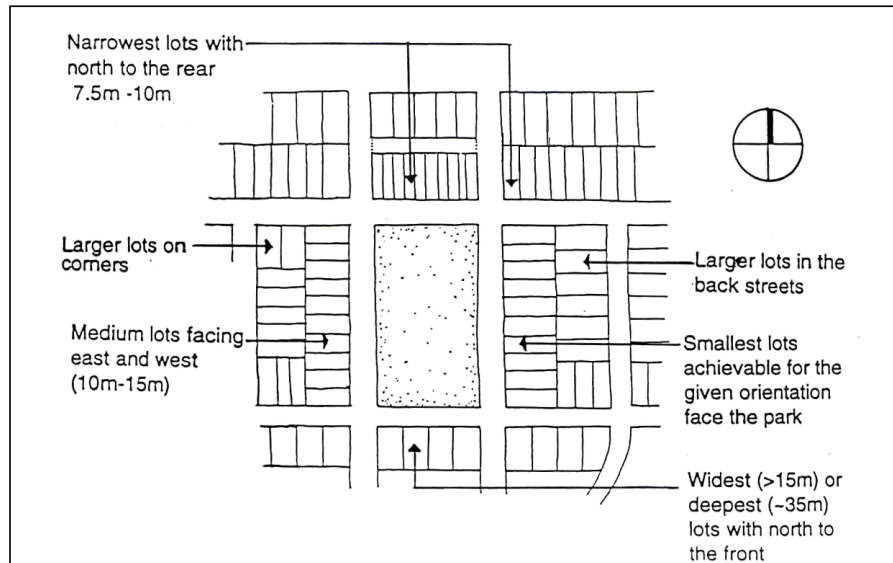


Figure 22 48 Lot Orientation

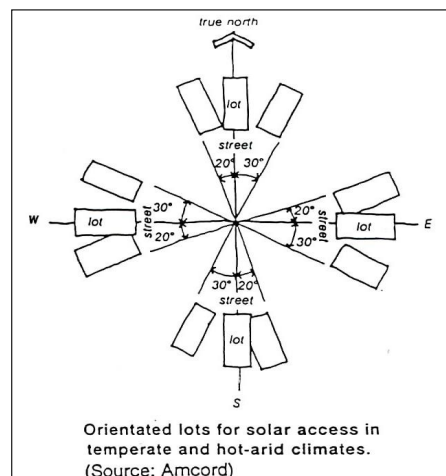


Figure 23 49 Lot Orientation

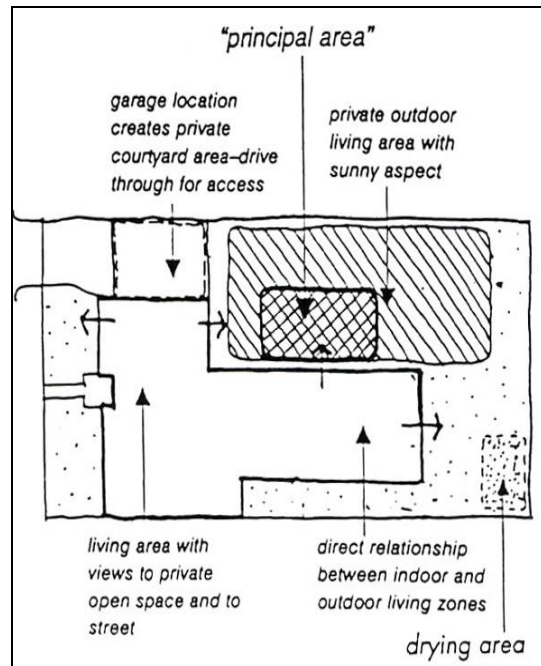


Figure 24 ~~20~~ Private Open Space Considerations on an East-West Lot

Controls

1. Subdivision and lot sizes orientation shall comply with Figures 22, 23 and 24 ~~18, 19 & 20~~.
2. The majority of lots shall be approximately 30m deep.
3. Lot sizes and dimensions shall take into account the slope of the land to minimise cut and fill and the retention of existing trees.
4. Lots less than 300sqm must be designed as part of an integrated dwelling / lot development.
5. Any proposal that creates a residual lot must demonstrate that the required density can be achieved across the residual lot.

~~Minimum lot size for Multi dwelling housing~~

6. The minimum lot size for multi dwelling housing is 1,000m².

3.2 Site Planning**Objectives**

- a) To ensure that the dwelling house is sensitive to site attributes, such as streetscape character, natural landform, drainage, existing vegetation, land capability, slope, solar access and if relevant, heritage items.
- b) To ensure privacy for residents and neighbours.

Controls

1. The dwelling layout must be designed around the site attributes such as slope, existing vegetation, land capability and/or solar access (See Figure 25 ~~24~~).
2. There must be a direct link from at least one living area to the principal private open space.
3. The siting of windows of habitable rooms on the first floor shall minimise overlooking to the principal private open space of neighbouring properties.
4. 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 the 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. Refer to Water Cycle Management in Part 1.

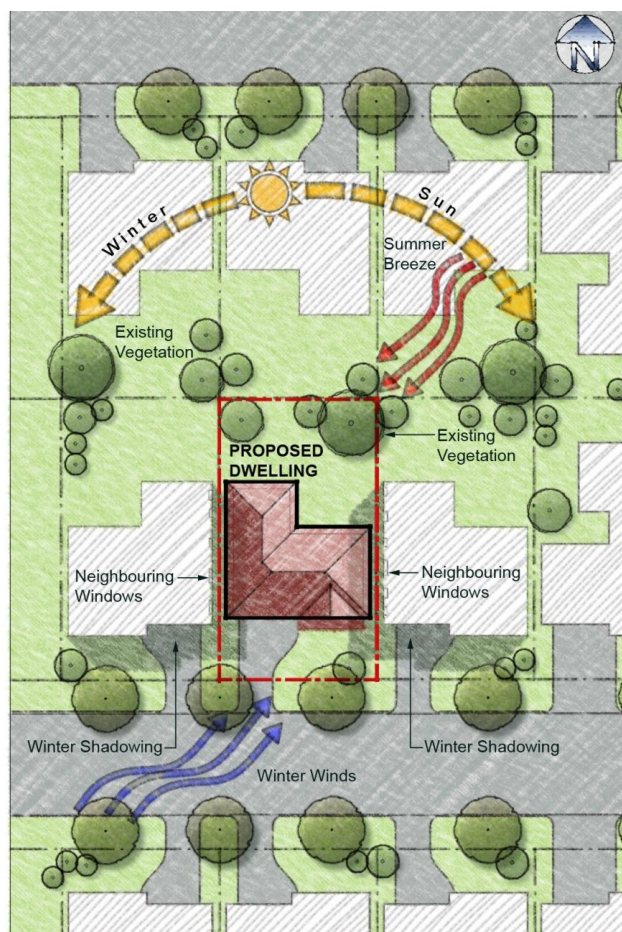


Figure 24 25 Example of a site analysis plan

3.3 Setbacks

Objectives

- To set dwellings back from the street and adjacent properties to provide reasonable space for landscaping, private open space and solar access.
- To set dwellings back from each other to provide visual and acoustic privacy.
- To create a streetscape that provides a desirable and safe environment.
- To establish a streetscape of a scale and sense of enclosure appropriate to the locality.
- To provide an appropriate area capable of allowing the growth of trees and shrubs.
- To discourage vehicular parking across street verges and footpaths.

Controls

Front and Secondary Setbacks

- Dwelling houses, semi detached dwellings, attached dwellings and multi dwelling housing shall be setback in accordance with Table 2.

Table 2 Front and Secondary Setbacks

Height	Front Setback	Secondary Setback	Secondary Setback
		Lots under 450m ²	Lots 450m ² and over
Ground floor	4.5m	2.0m*	2.5m
First floor	4.5m	2.0m*	2.5m

* The dwelling setback may be reduced to 1m for a maximum length of 4m.

- For dwellings fronting RE1 Public Recreation or a Connector Street, the front setback may be reduced to 3m (see Figure 2 ~~Street Design and Treatment~~). A front verandah, porch or patio may be built to within 1.8m of the front boundary. The garage setback is to be maintained at a minimum of 5.5m.
- For all other lots, verandahs, balconies, eaves and other sun control devices may be built to within 2m for the front boundary.
- On the secondary setback encroachments must not be constructed within 1m from the property boundary.
- Garages must be set back a minimum of 1m behind the main face of the dwelling (the main face is the first wall of a habitable room).
- The secondary setback is the longest length boundary.
- Garages that address the secondary frontage must be setback 1m or 5.5m and greater. Garages are not permitted to be setback between 1 – 5.5m.
- Garages that address a laneway must be setback no greater than 1m depending on site services such as sewer, light posts etc.
- Corner sites shall provide a frontage to both streets and should articulate their corner location with an architectural feature such as a wrap around verandah, bay window, corner entry or roof feature.

Side and Rear Setbacks

- Buildings shall be setback from the side and rear boundaries in accordance with Table 3.

Table 3 Side and Rear Setbacks

Item	Side Setback	Rear Setback
Single storey dwelling houses	0.9 m	4.0 m
Second storey component of dwelling houses	1.2 m	7.0 m
Living room doors (including family rooms and rumpus rooms)	4.0 m	4.0 m
First floor with windows to habitable rooms and neighbouring private open space	4.0m	7.0m

Note: Building encroachments may only occur if it is seen as beneficial for open space, solar access and the internal layout of the dwelling. The dwellings living areas should ~~open~~ lead out to open space.

Zero lot lines

- Walls are generally to be 180mm clear of the side boundary to allow for gutter and eaves overhang.
- The length of a zero lot line wall is limited to 50% of the adjacent side wall boundary.
- No windows are permitted in a zero lot line wall.

4. A maintenance easement of at least 900mm shall be provided on the adjoining boundary. Refer to figure 26 22.

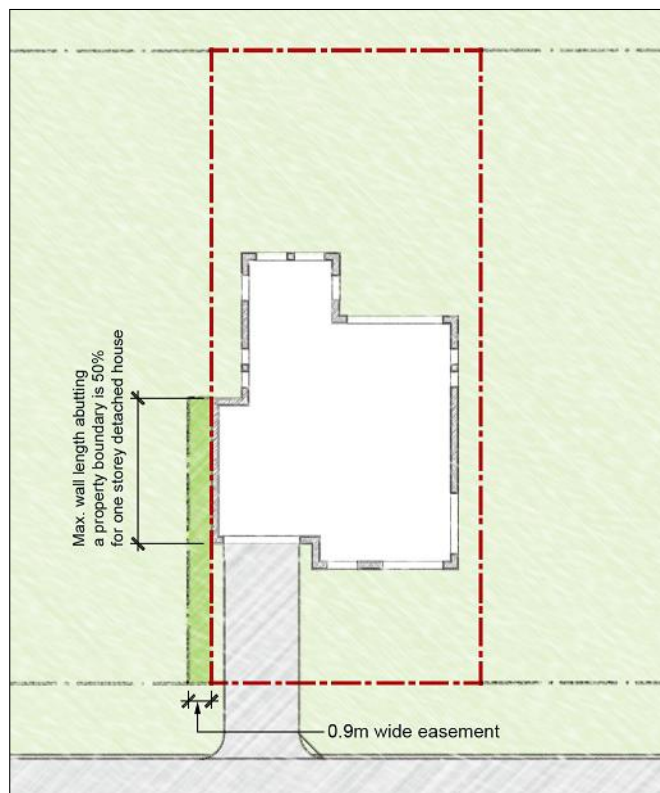


Figure 26 22 Zero Lot Lines

3.4 Dwelling Typology

Objectives

- To provide for certainty as to the location of dwelling types.
- To provide for the orderly development of Middleton Grange.
- To provide for areas of higher density near areas of high amenity such as parks and creeks.
- To provide for areas of higher density near services, public transport services and the ~~neighbourhood~~ local centre.

Controls

- In order to establish dwelling density and certain character through built form, Table 4 identifies building types for each dwelling density category.

Table 4 Permitted Building Types

Dw/ha	Building Types
30 dw/ha	Attached, Semi-detached Dwellings Shop Top Housing (Only in the B2 -E1 zone, or as part of a neighbourhood shop) Small lot housing Studios Multi Dwelling Housing (Terraces, Townhouses or Villas)
23 dw/ha	Attached, Semi-detached Dwellings Detached dwelling Small lot housing Studios Multi Dwelling Housing (Terraces, Townhouses or Villas)
15 dw/ha	Attached, Semi-detached Dwellings Detached dwellings Small lot housing Studios Multi Dwelling Housing (Terraces, Townhouses or Villas)

Shop-top Housing

Around the ~~neighbourhood~~ local centre there are opportunities for residential apartments or shop-top housing above retail, commercial or home office/home business. Building forms should contain sufficient flexibility for later change of use as the area matures. Buildings shall be broken into modules of around 6m in order to create a vertical rhythm of facades, to avoid long unbroken frontages to developments.

Multi Dwelling Housing

Opportunities are provided for row housing in small groups, duplexes, triplexes or terraces. They are located in areas of higher amenity and may contain home businesses. These need rear lanes for parking and servicing.

Small Lot Dwellings

These locations provide the opportunity for small lot housing forms generally with north facing (good solar access) rear yards and with rear lane car access or single stacked parking down the side. These can be free standing but will often have a zero lot line on one boundary.

Dwelling House

These locations are suitable for free standing traditional one and two storey houses often in prime or feature locations (corner site, wider streets). The larger lots provide the opportunity for large traditional family homes.

Secondary Dwellings (Studios)**Objectives**

- To provide an alternate form of housing in master planned neighbourhoods that include community facilities.
- To provide for a variety of housing types to cater for varied socio-demographic households.
- To provide for passive surveillance to laneways and private accessways.

Controls

Type 1 Studio

Type 1 Studios are a room or rooms constructed above a detached garage associated with the main dwelling on the lot. The studio is primarily designed to be used by the occupants of the main dwelling. The studio shall comply with the following:

1. The studio shall be located on corner blocks or addressing secondary streets and on laneway entries and bends to improve surveillance.
2. Located on lots with a minimum size of 300sqm.
3. Must be detached from other studios.
4. Maximum gross floor area: 45sqm.
5. No additional car parking space is required.
6. The studio shall be located above the garage, carport or like structure for the principal dwelling on the land.
7. There may be no subdivision of the studio from the principal dwelling on the land.
8. Windows are not permitted on elevations which directly face the adjoining lots private open space.
9. Garages with studios above are to be constructed 1.5m from the rear boundary and may have a zero lot setback to one side boundary.
10. A studio must have a minimum separation of 4m from the first floor of the principal dwelling on the lot.
11. Studios shall not reduce the minimum required amount of solar access to any dwelling's (adjoining or on the principal dwelling) private open space as stipulated in Section 3.5 of this Part.

Type 2 Studio –

Type 2 Studios are a room or rooms constructed above a detached garage that is intended to be separately strata titled to allow for independent living from the principal dwelling on the lot. The studio shall comply with the following:

1. The studio shall be located on corner blocks with laneway vehicle access.
2. Located on lots with a minimum size of 350sqm.
3. Maximum gross floor area: 75sqm.
4. Studio to be located above the garage, carport or like structure for the principal dwelling on the land and are to be detached from other studios.
5. One additional dedicated on-site car parking space is required to be associated with the Type 2 studio.
6. Car parking space is not to be located in front building setback of the principal dwelling.
7. Car parking space is not to be in a stacked configuration.
8. The studio must include provision of a balcony accessed directly off living space having minimum size of 6sqm, plus a minimum 10sqm ground level service yard with space for clothes drying facilities. The balcony shall not protrude over any property boundary.
9. Type 2 studios may be strata subdivided from the principal dwelling, or dwellings on the land.
10. Garages with studios are to be constructed 1.5m from the rear boundary and may have a zero lot setback to one side boundary.
11. A studio must have a minimum separation of 4m from the first floor of the principal dwelling on the lot.

12. Pedestrian access to studios is to be from the street frontage and not the laneway.
13. Provision for separate services and an on-site garbage storage area e.g. separate letter box.
14. Studios shall not reduce the minimum amount of solar access to any dwelling's (adjoining or on the principal dwelling) private open space as stipulated in Section 3.5 of this Part.
15. Windows are not permitted on elevations which directly face the adjoining lots private open space. Windows may be permitted on the elevation facing the principal dwelling on the lot where they have a minimum sill height of 1.7m.
16. Screened access ways (e.g. staircases) for studios to prevent viewing into adjoining private open space areas.

3.5 Landscaped Area and Private Open Space

Landscaped area is defined in *Liverpool LEP 2008*.

Private open space is an area within the site (usually at the rear) that is set aside for outdoor activities. Clotheslines, BBQ areas, pergola (unroofed structure), patio, garden sheds and pools can be included in the private open space.

Principal Private open space is an area that is directly accessible from at least one living room and is included in the private open space calculations (the principal private open space area may be paved or sealed).

Landscaped Area

Objectives

- a) To provide an area to allow vegetation to mature.
- b) To reduce the impact to neighbouring properties and natural waterways from stormwater runoff.
- c) To reduce the amount of impervious areas.
- d) To enhance the existing streetscape and soften the visual appearance of the dwelling.
- e) To maximise the amount of landscaped area within the front setback of the dwelling.

Note: All proposed developments require a landscape plan to be submitted with the development application.

Controls

1. A minimum of 25% of the site area shall consist of Landscaped Area, this may include lawn, deep rooted trees, garden beds and mulched areas.
2. A minimum unincumbered area of 4 x 6m shall be provided in the rear setback to accommodate deep rooted trees.
3. A minimum of 50% of the front setback area shall be Landscaped Area.
4. A minimum unincumbered area of 3 x 3m shall be provided in the front setback to accommodate deep rooted trees.

Private Open Space**Objectives**

- a) To ensure that a minimum amount of Private Open Space is provided for outdoor activities.
- b) To ensure that Private Open Space is clearly defined for private use.
- c) To ensure that Private Open Space is private, landscaped, screened from overlooking and receives an adequate amount of solar access.

Controls

1. Each dwelling must provide a minimum of 50sqm of Private Open Space.
2. Areas less than 2.5m in width do not qualify as Private Open Space.
3. Private Open Space areas are not permitted within the primary street setbacks.
4. Private Open Space must have an area for clothes drying with at least 2 hours of full sun between 9.00am and 5.00pm at 21 June.
5. The Private Open Space shall include the Principal Private Open Space of 25sqm, which is directly accessible from the main living area and has a minimum dimension of 4m.
6. The Principal Private Open Space must receive 3 hours of sunlight to at least 50% of the area between 9:00am and 5:00pm on 21 June.
7. Where the Principal Private Open Space has a predominately northern aspect Clause 6 (above) does not apply.

Multi Dwelling Housing

8. Each dwelling shall provide a minimum private open space area, which is not covered by a roof in accordance with Table 5.

Table 5 Private Open Space

Dwelling Size	Private Open Space
Small <65m ²	30m ²
Medium 65 - 100m ²	40m ²
Large > 100m ²	50m ²

9. Areas less than 1.5 m in width does not qualify as Private Open Space for the purpose of the above table.
10. Private Open Space must be directly accessible from the main living area.
11. A minimum of 50% of the Private Open Space ~~are~~ must receive 3 hours ~~of hours~~ of sunlight between 9:00am and 5:00pm on 21 June.

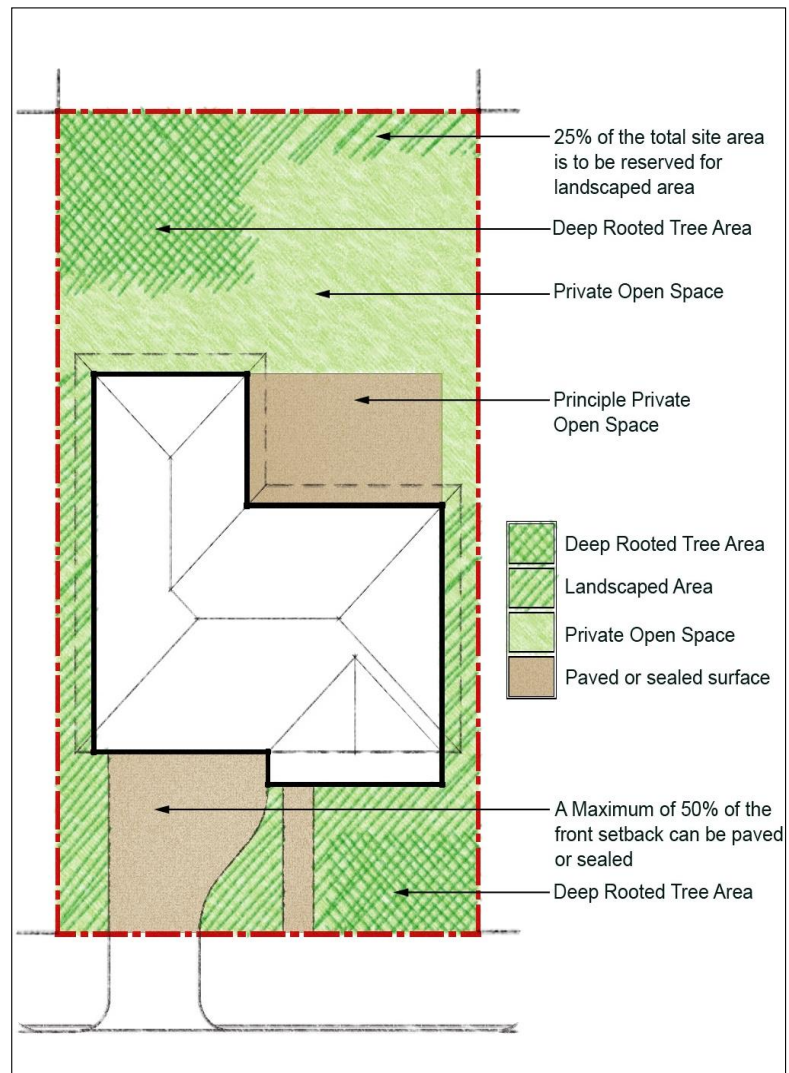


Figure 23-27 An example of Landscaped Area and Private Open Space



Figure 24 28 An example of Landscaping for Multi Dwelling Housing

3.6 Cut and Fill, Building Design, Streetscape and Layout

Cut and Fill of Land

Objectives

- a) To reduce the incidence of change in natural ground levels.
- b) To encourage the architectural designs of dwellings which suit the contours of the land.
- c) To provide controls for cut and fill of land designed to minimise the incidence of soil erosion and subsequent sedimentation of waterways.
- d) To ensure that development on adjoining properties is not threatened or prejudiced by proposed cut and fill practices.
- e) To discourage and eliminate, where possible, the construction of retaining walls on allotment boundaries.
- f) To minimise overshadowing of neighbouring dwellings, their private open space or any solar panelling.

Controls

1. The maximum cut on a site must not exceed 600mm.
2. All retaining wall structures shall be masonry construction and designed by a suitably qualified person, or constructed as specified by the manufacturer of the product. The retaining wall shall be constructed wholly inside (within) the boundary of the site.
3. All slab constructions for dwellings that are above natural ground level are to be constructed using dropped edge beams to retain fill. The maximum fill within the confines of the slab must not exceed 1m. All fill must be contained within the dwelling footprint. Refer to Figure 29 ~~25~~.
4. Contaminated fill, either imported or found on site is not permitted.

Note: In the event of approval being granted to the erection of retaining wall(s) to contain proposed cut, Council will require the completion of such retaining wall(s) PRIOR TO the release of the occupation certificate.

5. Where an applicant considers that an allotment has characteristics which warrant exemption from this policy, an application for exemption may be made by the submission of a development application to Council for consideration. In addition to normal requirements the submission should include:
 - A plan showing existing contours (at 0.5m intervals) of the subject site and all adjoining sites.
 - A plan showing future contours (after proposed cut and fill) of the subject site and all adjoining sites.
 - Full details of any proposed retaining wall(s).

Note: In the event of approval being granted to the erection of retaining wall(s) to contain proposed cut and fill, Council will require the completion of such retaining wall(s) PRIOR TO the commencement of any building works.

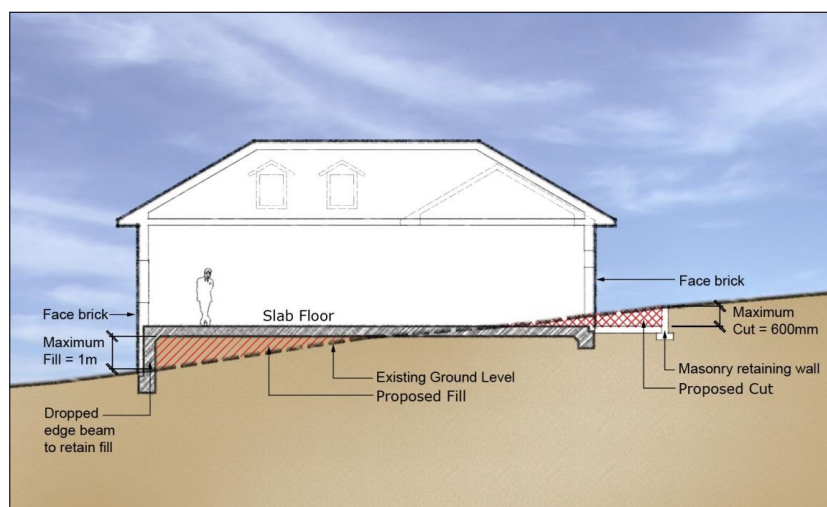


Figure 29 25 Cut and Fill requirements

Building Envelopes**Background**

The orientation and site cover of a building has significant implications for residential amenity. Building envelopes determine the orientation and footprint of a dwelling, as well as the total volume of the dwelling.

Objectives

- To facilitate the efficient use of the site area.
- To maximise private amenity within the building.
- To minimise the impacts of development on neighbouring properties in regard to views, privacy and overshadowing.
- To ensure that buildings are sited so as to provide for solar access and both visual and acoustic privacy.
- To provide an acceptable scale of development.

Controls

- The building footprint for single detached dwellings is not to occupy more than 55% of the site and the total impervious area is not to exceed 75% of the total site area. A minimum of 25% of the site area must be pervious surfaces.
- The building footprint for denser development (i.e. attached/zero lot housing, terrace, townhouse or villa development) is not to occupy more than 60% of the site and the total impervious area is not to exceed 75% of the total site area. A minimum of 25% of the total site area must be pervious surfaces.

Building Design and Appearance**Objectives**

- To encourage designs that will enhance the character of the neighbourhood.
- To promote variation of building facade and design.
- To ensure that the building enhances the streetscape through the use of suitable built form design and landscaping.
- To ensure buildings address all street frontages.

- e) To discourage garages and in particular garage doors from visually dominating the streetscape.
- f) To ensure that the building design, detailing, colour and finish add visual interest to the street and shall ~~complement~~ complement the street.
- g) To ensure habitable rooms address the street.
- h) To encourage balconies over garages on two storey dwellings.

Controls

- 1. All dwelling houses are to be orientated to the street (See Figure ~~26~~ 30).
- 2. The front pedestrian entrance must be visible from the street.
- 3. The front building facades shall be articulated. This articulation may include front porches, entries, wall indents, changes in finishes, balconies and/or verandahs.
- 4. Eave overhang must provide for sun shading and protect windows and doors. Eaves should have a minimum overhang of 400mm and be provided to a minimum of 70% of the dwelling.
- 5. Dwelling houses that face two street frontages or a street and public space shall address both frontages by the use of verandahs, balconies, windows or similar modulating elements.

Two storey dwellings

- 1. To break up the bulk of two storey dwellings balconies built above garages are encouraged (See Figure ~~26~~ 30).
- 2. The maximum total length of the side walls of the first floor component of a dwelling shall be a maximum of 30m as measured from any point within 3m of that side wall (for example 12m + 18m = 30m) (See Figure ~~27~~ 31).



Figure ~~26-30~~ Example of Building Appearance (Indicative Only – Not to Scale)

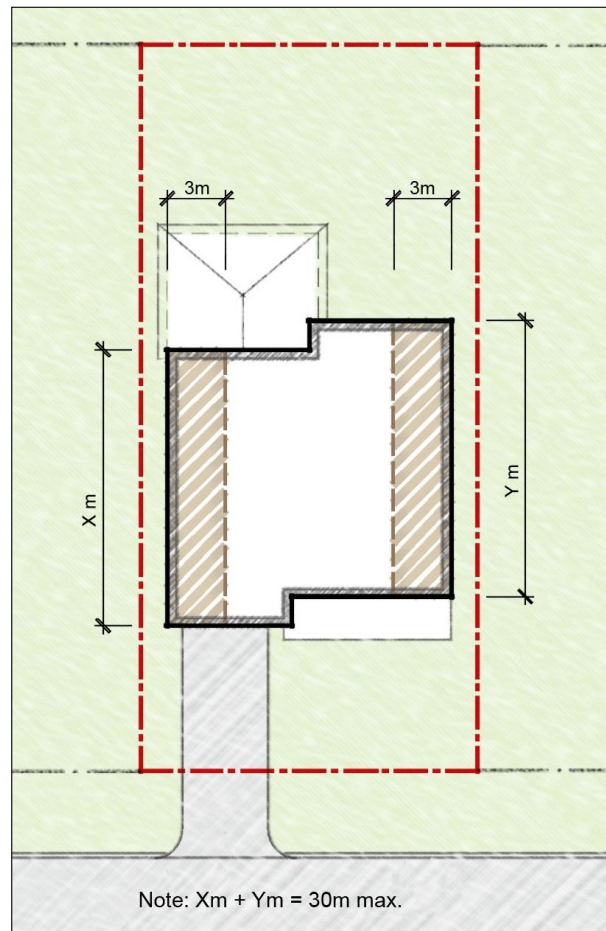


Figure 27-31 Maximum total first floor wall length of a two storey dwelling

Garages and Carports

1. The maximum width of garage doors or carports must be no greater than 50% of the building frontage width.
2. Garages and carports must be designed to be the minor element of the façade
3. Garage roofs shall be incorporated into the roof design of the house. Separate roofs for garages are discouraged, unless actually separated from the dwelling.
4. Garages and carports are to be compatible with the building design in terms of height, roof form, detail, materials and colours.
5. Carports may be built in front of the garage *only if* the carport is:
 - No larger than 5.5 x 6m.
 - Built of a similar colour and materials of the house.
 - Setback 2m from the front property boundary.
 - Compatible with the local streetscape.

6. The conversion of garages to living space may only be permitted if:
 - At least one car parking space is provided behind the front setback.
 - The additional living area does not result in the building exceeding the maximum permitted floor space ratio.

Internal Design of Dwellings

Objectives

- a) The internal design must contribute to personal safety and to the protection of property by permitting casual surveillance of public spaces from private windows and entries.
- b) To provide passive surveillance from rooms addressing the street or any adjoining open space.
- c) To encourage the internal design of the dwelling to take advantage of cross ventilation.
- d) To locate amenity rooms (such as laundries, bathrooms, toilets) to the side and rear of the development.
- e) To ensure that each dwelling shall provide a sufficient amount of storage for elements such as garden and sports equipment.

Controls

1. All dwellings shall have habitable rooms located to the front of the dwelling for security and surveillance to the street.
2. Living rooms should take advantage of northern aspects.
3. Access to private open space must be from at least one living room.
4. The internal layout of the dwelling is encouraged to incorporate cross ventilation.
5. Bathrooms, ensuites, laundries and walk in wardrobes should be located to the side or rear of the dwelling.
6. Each dwelling must provide a minimum storage area of 8m³.
7. Locate active use rooms or habitable rooms with windows overlooking communal/public areas (e.g. playgrounds, gardens).
8. Dwelling entries must be orientated to the street.

3.7 Landscaping and Fencing

Landscaping

Objectives

- a) To retain existing mature trees within the site in a way which ensures their ongoing health and vitality.
- b) To provide privacy, summer shade and allow winter sun.
- c) To enhance the existing streetscape and visual appearance of dwellings.
- d) To encourage landscaping that is appropriate to the natural, cultural and heritage characteristics of its locality.
- e) To ensure the visual impact of development is minimised and integrated into the streetscape.

Controls

1. A minimum of one tree is to be provided within the front setback area of every residential dwelling. This may include existing trees that are to be retained within the front setback area. Newly planted trees are to have a minimum pot size of ~~five~~ **seventy-five** litres.
2. Trees planted on the northern side of private open space and habitable rooms are to be deciduous.
3. Planting of vegetation at the front of higher density development must consider the need for passive surveillance. Excessively dense vegetation that creates a visual barrier must be avoided.
4. Any tree with a mature height over 8 m should be planted a minimum distance of 3 m from the building or utility services **or alternatively incorporate measures to prevent damage to the building or utility services.**
5. A landscape plan must be lodged with all development applications, and is to provide the following details
 - The location of any existing trees on the property, specifying those to be retained and those to be removed.
 - The location of any trees on adjoining properties that is likely to be damaged as a result of excavations or other site works.
 - The position of each shrub and tree species proposed to be planted. Each plant is to be identified by a code referring to a plant schedule on the plan.

Fencing**Objectives**

- b) To provide a clear transition between public and private areas.
- c) To provide a visual element within the streetscape.
- d) To ensure fencing enhances the streetscape.

Controls

1. Wall finishes must have low reflectivity.
2. Where noise insulation is required, consider the installation of double-glazing or other noise attenuation measures at the front of the building rather than construction of a high solid form fence.

Primary Frontage

1. The maximum height of a front fence is 1.2m.
2. Fences should not prevent surveillance by the dwelling's occupants of the street or communal areas.
3. The front fence must be 30% transparent.
4. **The use of palisade style fencing above 0.6m in height and integrated with landscaping is encouraged.**
5. Front fences shall be constructed ~~in~~ **of** masonry, timber and/or vegetation and must be compatible with the proposed design of the dwelling.

Secondary Frontage

1. Side fences and walls must be a maximum of 1.8m in height, and constructed of masonry, timber and/or landscaped (see Figure ~~32~~ **28**).
2. For side walls or fences along the secondary frontage, a maximum height of 1.2m is required for the first 9m measured from the front boundary, the remaining fence / wall

may then be raised to a maximum of 1.8m (see Figure 32 ~~28~~). The secondary setback is the longest length boundary.

3. Side fencing facing a public street or open space must not be constructed of sheet metal.

Boundary Fences

1. The maximum height of side boundary fencing within the setback to the street is 1.2m.
2. Internal boundary fences shall be lapped and capped timber or metal sheeting.

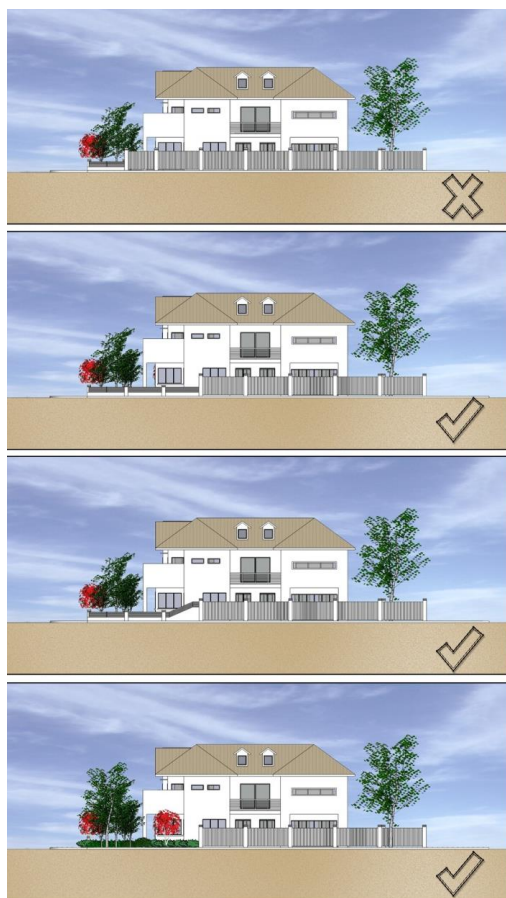


Figure ~~28~~-32 Fence treatments on secondary frontage

3.8 Car Parking and Access Arrangement

Objectives

- a) To provide car parking facilities on site that are convenient, safe and have sufficient space for vehicular manoeuvrability, whilst being visually unobtrusive.
- b) To minimise the need for on-street car parking from new dwellings.

Controls

1. Two car parking spaces shall be provided for each dwelling.
2. At least one car parking space must be provided behind the front setback.

3. A car parking space is to have a minimum dimension of 2.5 x 5.5m.
4. A single garage is to be a minimum of 3m wide internally and unobstructed.
5. All parking spaces for adaptable housing units shall comply with AS 2890:1 for disabled car parking.

Access Arrangement including Private Driveways

Objectives

- a) To provide safe and convenient access to garages, carports and parking areas.
- b) To clearly define public and private spaces, such that driveways are for the sole use of residents.

Controls

1. Private driveways shall have the smallest configuration possible to serve the required parking facilities and vehicle turning movements.
2. Private driveways shall be constructed as one of three general types, depending on block geometry and garages to be accessed, as in Figure 29 33.
3. Higher density development fronting to collector streets shall have rear access through laneways, car courts and the like.
4. Development on corner lots on collector streets shall have access from the street perpendicular to the collector street.
5. The access arrangement shall be in accordance with Australian Standard AS2890.

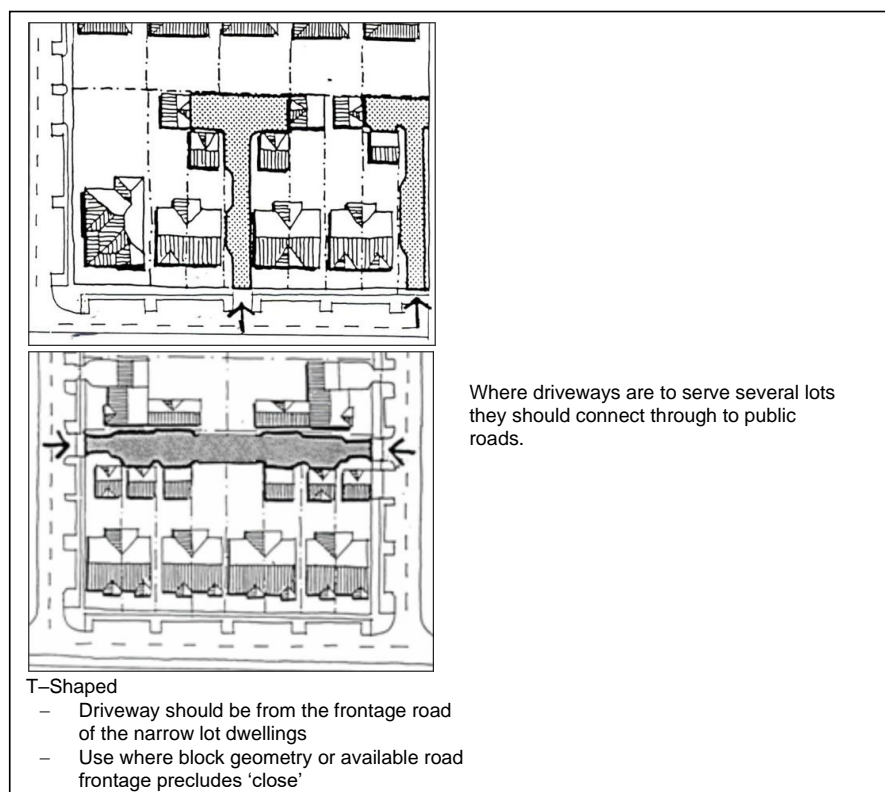


Figure 29 33 Private Driveways

3.9 Amenity and Environmental Impact

Overshadowing

Objective

To minimise overshadowing of neighbouring dwellings and their private open space.

Controls

1. Adjoining properties must receive a minimum of three hours of sunlight between 9am and 5pm on 21 June to at least:
 - One living room, rumpus room or the like.
 - 50% of the private open space.

Privacy

Objective

To site and design buildings in a manner which protects the visual privacy of adjoining dwellings and their private open space.

Controls

1. Habitable room windows facing side boundaries are to be offset by at least 1m from any habitable room windows in an adjoining dwelling (See Figure ~~30~~ 34).
2. Habitable room windows on the first floor that face the side boundary are to avoid unreasonable overlooking by having a minimum sill height of 1.5 m, except where they face a street or public open space (See Figure ~~30~~ 34).
3. Building siting, window location, balconies and fencing must consider the importance of the privacy of on site and adjoining buildings and private open spaces.
4. Landscaping should be used where possible to increase visual privacy between dwellings and adjoining properties.

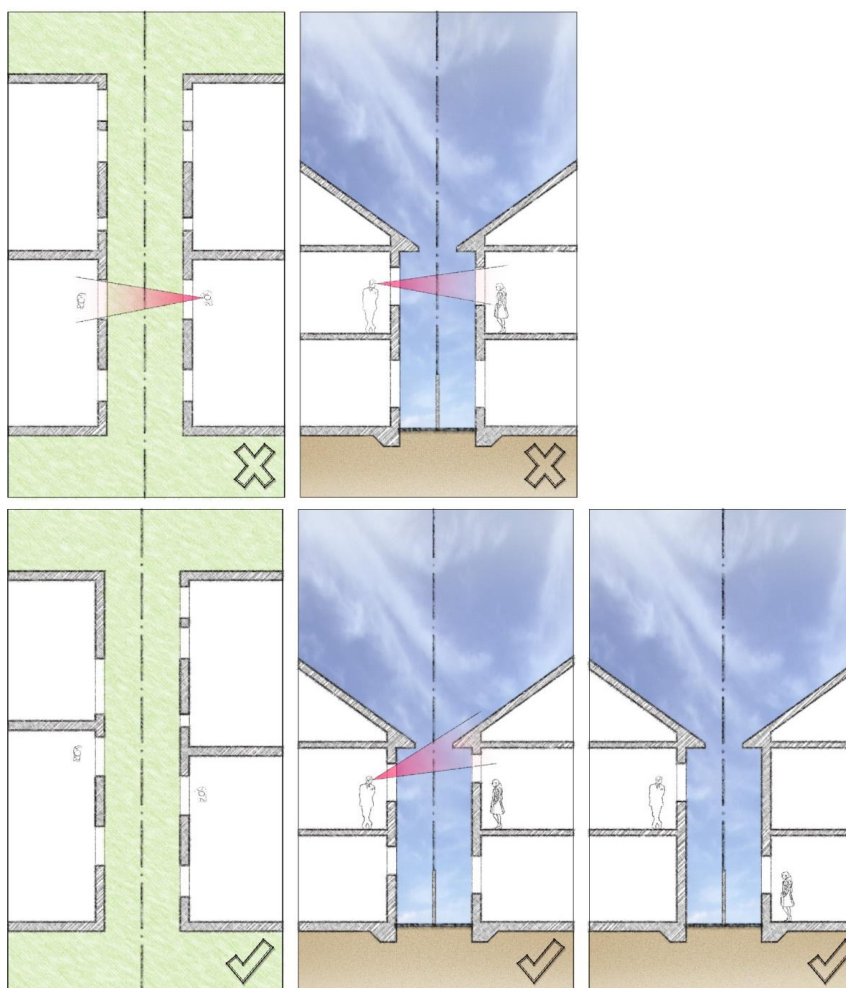


Figure 30-34 Privacy and Amenity

Acoustic Privacy**Objective**

To ensure appropriate noise and vibration attenuation measures are incorporated into residential development.

Controls

1. Noise attenuation measures should be incorporated into building design to ensure acoustic privacy between on-site and adjoining buildings.
2. Developments in areas adversely impacted upon by 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.
3. Where party walls are provided they must be carried to the underside of the roof covering and be constructed in accordance with Part F5 of the *Building Code of Australia*.

4. The proposed buildings must comply with the ~~Department of Environment and Climate Change criteria~~ current relevant state guidelines and criteria as well as Australian Standards for noise and vibration and quality assurance.

3.10 Site Services

Objectives

- a) To ensure that the required services are provided.
- b) To ensure that the services provided are easily protected or maintained.

Controls

Letterboxes

1. Letterboxes shall to be provided for each dwelling on site, easily accessible from the street, able to be securely locked and provided in accordance with Australia Post requirements.
2. Freestanding letterbox structures should be designed and constructed of materials that relate to the main building.
3. Residential numbering should be attached to the letterbox so that it is clearly visible from the street frontage. Numbers should be 75 mm in height, reflective and in contrast to the backing material.

Frontage works and damage to Council infrastructure

1. 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.
2. Council must be notified of any works that may threaten Council assets. Council will assess any applications for works involving Council infrastructure.
3. Where there are no existing street trees in front of the site it may be a condition of consent that street trees be provided in the footpath area immediately in front of the site.

Electricity Substation

In some cases it may be necessary to provide an electricity substation at the front of the development adjacent to the street frontage. ~~Where this is the case, the shorter side of the substation should be orientated towards the street frontage and be adequately screened.~~ This will involve dedication of the area as a public road to allow access by the electricity provider.

4. Neighbourhood Local Centre

Background

The creation of a vibrant ~~neighbourhood~~ local centre is essential for the sustainability of the community. The ~~neighbourhood~~ local centre shall be a key social focal point and public transport node within the locality. It serves local retail demand without detracting from large nearby centres. The ~~neighbourhood~~ local centre is intended to serve ~~predominantly~~ the convenience needs of the Middleton Grange residents, as such the main retail centre is to be located to ensure ease of access for residents ~~making their home bound journey~~ whether by private vehicle, public transport, walking or cycling. ~~The neighbourhood centre incorporates other community facilities such as a primary school, community centre and family and children centre.~~

The incorporation of residential uses in conjunction with commercial/retail developments ~~is desirable~~ will assist to make the Middleton Grange local centre a vibrant active community hub, whilst also offering housing diversity and choice for the suburb.

Note: Refer also to Part 3 Controls for the Private Domain where residential development that is not shop top housing is proposed.

Objectives

- a) To facilitate the development of the Middleton Grange local centre.
- b) To create a lively focal point for the community, which is economically and socially viable and provides employment floor space consistent with the employment targets for Middleton Grange in the Liverpool Local Strategic Planning Statement (LSPS).
- c) To encourage a mix of uses – residential, retail, commercial ~~and community~~ and social infrastructure.
- d) To encourage architectural features that creates a distinctive identity and sense of place for the locality.
- e) To create an area that by its scale, street relationship, built form, detailed design and materials, contrasts with the surrounding residential area to create an urban focus.
- f) To encourage upper floor uses in the form of commercial offices, suites and shop-top apartments.
- g) To ensure streets show priority to active and public forms of transport, landscaping and other streetscape infrastructure.
- h) To ensure a uniform approach to signage and street furniture throughout the ~~neighbourhood~~ local centre.
- i) To encourage the development of active street frontages to provide a pedestrian friendly environment.
- j) To ensure high quality publicly accessible open space is prioritised and central within the local centre.

Controls

1. The central open spaces ~~parcel~~ and ~~adjoining~~ community centre are to serve as the focal point of the local centre. Development proposals ~~have to~~ must demonstrate the impact of associated pedestrian movements in relation to the open space and have architectural treatments which complement and frame the open space area.
2. ~~Retail premises shall not be located above the ground floor.~~
3. ~~Council may request a retail demand analysis for development proposals that include retail floor space is which is to respond to Council's Retail Hierarchy Study and considers the impacts on other retail developments in the region. The Council may request a detailed market analysis (Prepared by a suitably qualified Economic Consultant) for development proposals that include commercial and/or business floor~~

~~space. A maximum floor area that may be used for business premises within the Middleton Grange neighbourhood centre is established by the Liverpool LEP 2008 (Clause 7.29).~~

4. Development that includes non-residential upper floor area must demonstrate:
 - That the development will not result in the total non-residential upper floor area of all buildings on the land exceeding 10,000 m²;
 - That the development is consistent with the Liverpool LSPS 'Connected Liverpool 2040'; and
 - That the inclusion of non-residential upper floor area in the development is justified having regard to the economic impact assessment prepared in relation to the development application.

4.1 Subdivision, Frontage and Allotment Size

Background

Development in the local centre ~~zone~~ may also incorporate shop top housing. To achieve shop top housing, the site will need to meet the minimum requirements for dwelling size, provide an attractive façade to public spaces and achieve functional layouts. The site will also need to be sufficient size to provide an adequate internal layout and private open space for the dwellings.

Objectives

- a) To ensure that land in the local centre can accommodate shop top housing including the car parking and loading provisions.
- b) To ensure that there is sufficient frontage and area for any dwellings in conjunction with the business use.

Controls

Excluding Lots 1, 2 and 3, sites must have a minimum street frontage of 20 m.

4.2 Site Planning

Objectives

- a) To ensure that the development provides a gradual transition to surrounding residential areas and is compatible ~~with~~ in terms of amenity and built form ~~to nearby~~ with these residential areas and open space.
- b) To ensure that the development is compatible with the adjoining business development.
- c) To ensure that the development reflects the character of the locality and environment.
- d) To ensure that the development contributes to the public domain and attractiveness of the centre for its users.
- e) To ensure that the detailed design of the local centre is coordinated, achieves a high quality urban design outcome and provides a high standard of amenity for future and existing residents.

Controls

The siting of buildings and the development should:

1. Provide safe pedestrian, cycle and vehicle access to and from the public street.
2. Be compatible with nearby residential and business development in terms of appearance, overshadowing, privacy, views, setbacks and height.

3. Address the street and consider its presentation to the public domain.
4. Adopt setbacks consistent with Figure 35.
5. Consider the impact on existing and potential pedestrian links.
6. 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. Refer to Water Cycle Management in Part 1.

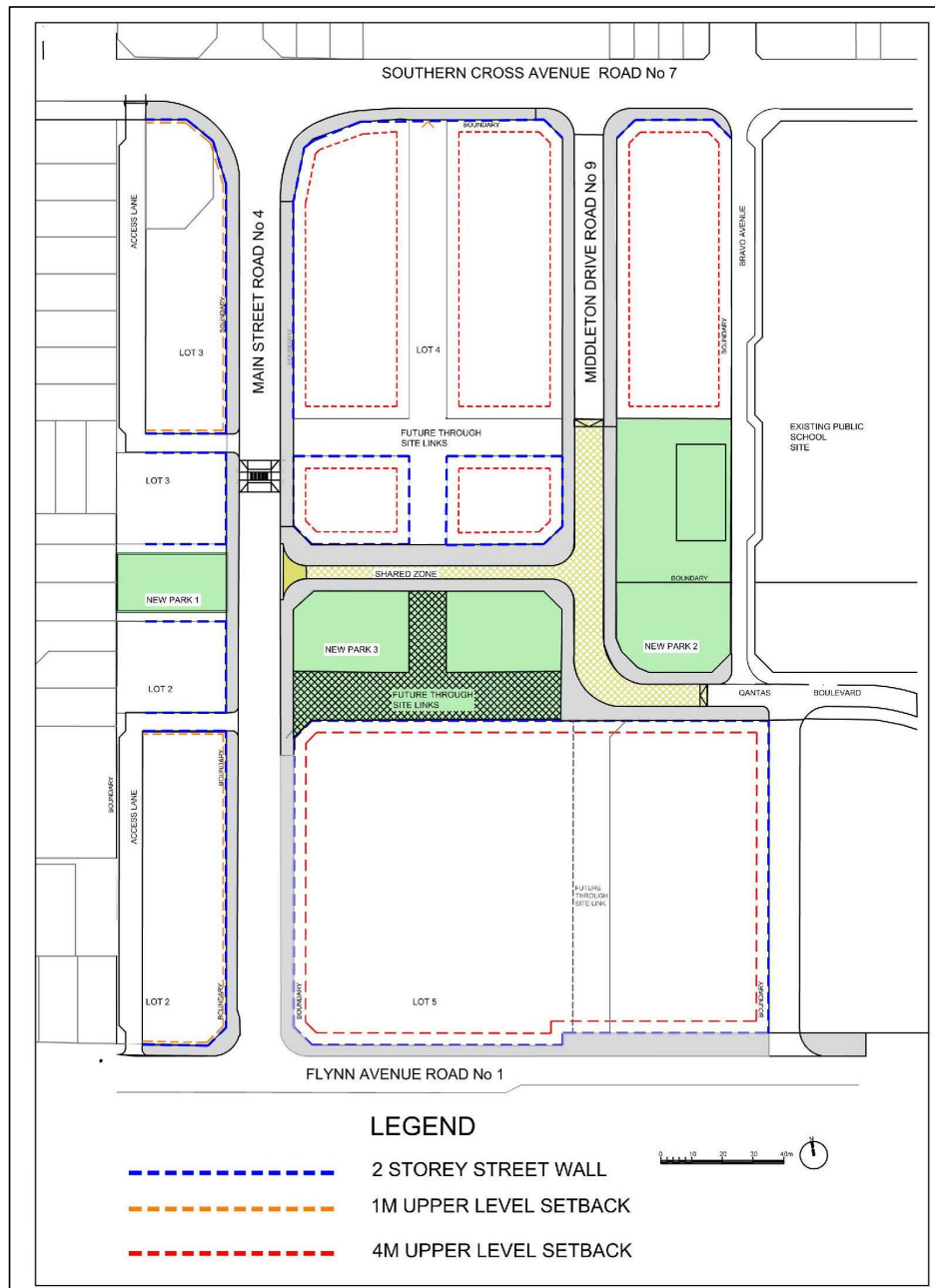


Figure 35 Local Centre Street Setbacks

4.3 ~~Landscaped Areas and~~ Pedestrian Areas and Through Site Links

Background

Active street and building frontages provide safety and security to a street or shopping centre by enabling casual surveillance. Having access from the street or public areas to as many uses as possible provides active and lively streets and public areas.

Pedestrian areas within centres can provide an attractive meeting place for residents and shoppers. It also has the potential to generate additional business for retailers by providing areas for outdoor eating, and a place for local community group promotions.

Objectives

- a) To ensure active street frontages on public streets.
- b) To encourage the provision of permeable, safe and attractive pedestrian areas.
- c) To provide strong north south and east west connections through the centre for pedestrians.
- d) To ensure through site links are delivered to facilitate adequate pedestrian access and support pedestrian activity.

Controls

1. Active street frontages and pedestrian through site links shall be provided in accordance with Figure 36.
2. Pedestrian areas should minimise any changes in levels and allow wheelchair universal access to the shops from the car parking area and public footpaths.
3. Pedestrian areas should be separate from loading areas.
4. Sufficient area shall be provided to permit landscaping and tree planting within pedestrian areas and car parking areas.
5. Outdoor Eating Dining Areas may be permitted in public footpath areas. Refer to section 4.11 (~~Outdoor Eating Areas~~).
6. Development shall maintain the open space parcels as the focal part of the local centre by encouraging pedestrian movement through open space.
7. Pedestrian areas should maximise opportunities for casual surveillance and show consideration of Crime Prevention through Environmental Design principles.
8. Pedestrian areas should be designed and detailed to achieve a high-quality finish.

Primary Active Frontages

Primary active frontages are the areas within the local centre characterised by the greatest pedestrian circulation and interaction.

1. Development along the primary active frontage (See Figure 36) should incorporate uses that attract pedestrian activity along ground floor street frontages.
2. A minimum 75% of the length of a frontage should be activated. Areas not activated should only be used for vehicular access, entrance and lobbies or fire services.
3. Development along the primary active frontages should contribute to the public domain and:
 - a) Facilitate diverse activities and uses;
 - b) Minimise blank walls, service entries and uninteresting facades;
 - c) Demonstrate a high standard of finish and high architectural detail; and
 - d) Include legible entrances and maximise transparent glazing.

Secondary Active Frontages

Secondary active frontages are areas within the local centre which are not identified as primary, however, still play an important role in creating attractive, safe and welcoming streets and pedestrians areas.

1. Secondary active frontages should seek to maximise activation, with up to 75% of the frontage activated.
2. Development along secondary active frontages (See Figure 36) should contribute to the public domain and:
 - a) Demonstrate a high standard of finish and appropriate architectural detail;
and
 - b) Intersperse services and blank walls with active frontages to avoid long stretches of inactivity and uninteresting facades.

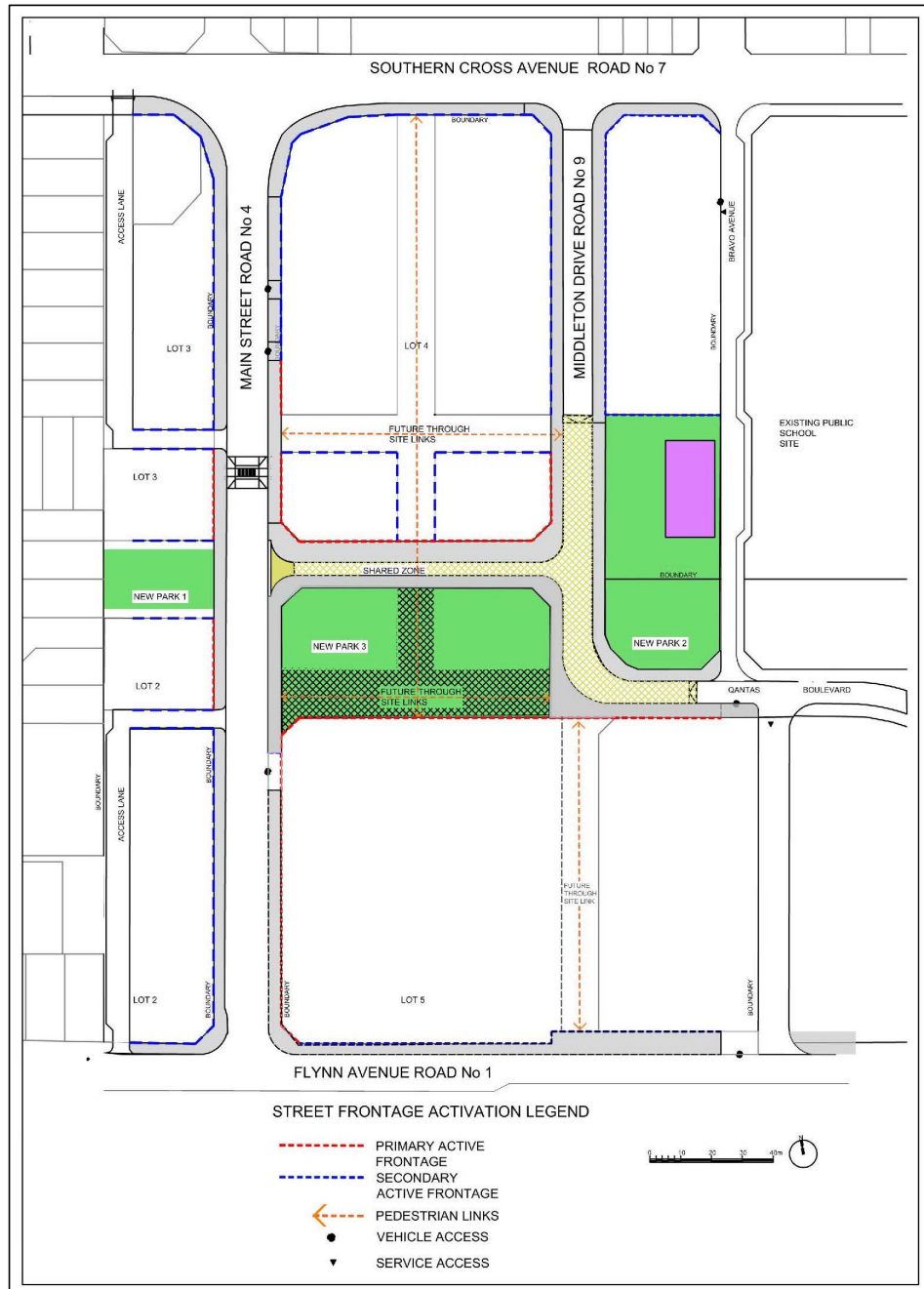


Figure 36 Local Centre Street Front Activation and Through Site Links

4.4 Local Centre Open Space

Background

Open spaces are important publicly accessible spaces where people can relax, exercise, play and enjoy the natural environment. Walkable, accessible, well-designed open spaces are integral to the character and life of towns and cities. The quantum, design, landscaping and adaptability of the Middleton Grange local centre provides an opportunity to promote social interaction, civic pride and a sense of place. It creates a place for people to gather and feel safe; where children can play; where active uses can promote life and vibrancy; and where the community can come together throughout the year.

Open space within the local centre should be pleasant and convenient to the needs of the community.

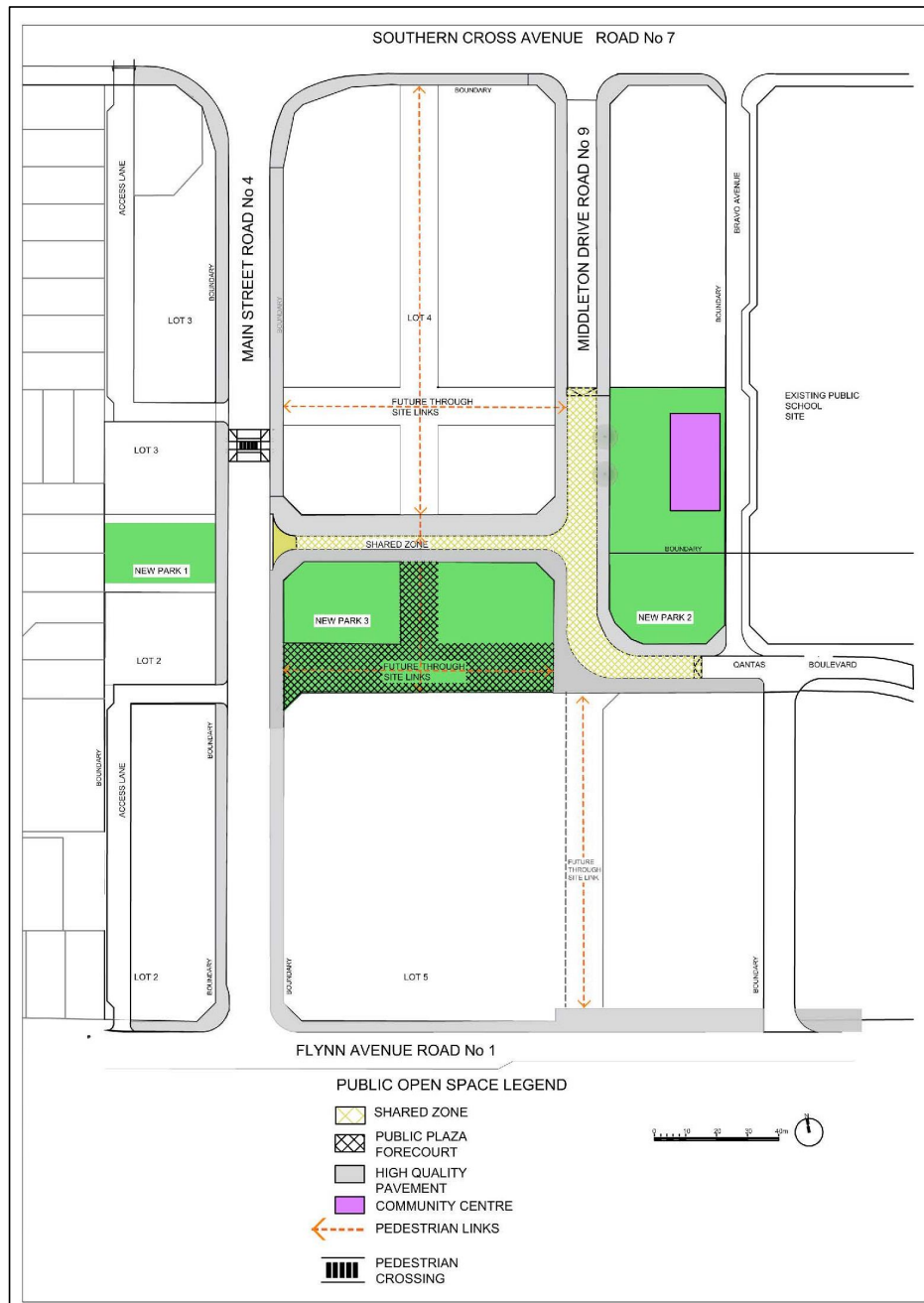
Objectives

- a) To ensure adequate provision of publicly accessible open space to meet the needs of the residents of Middleton Grange.
- b) To make open space within the local centre the focal point of the community.
- c) To provide continuity between open space areas within the local centre and connections to the built form interface.
- d) To be sufficiently adaptable to allow for the closure of roads and the creation of a large contiguous open space area for community events and festivals.
- e) To create a variety of linked publicly accessible open spaces that fulfil functional requirements as well as create attractive and memorable places.
- f) To encourage the use of native species of flora and low maintenance landscaping.
- g) To provide areas of hard and soft landscaping.
- h) To provide a connected tree canopy cover for shading and relief from the urban heat island effect.

Controls

1. Open space within the local centre shall be provided generally in accordance with Figure 37 and be embellished to a high standard.
2. New Park 3 shown in Figure 37 shall be a minimum size of 2,500sqm.
3. Roads identified as 'shared zone' in Figure 37 are to be designed to maintain a slow speed environment at all times to ensure pedestrian safety and to support their closure and the creation of a large area of contiguous open space to support community events and festivals.
4. Open space landscaping is to provide at minimum 40% tree canopy cover to ensure there is adequate shading to improve comfort and safety .
- i) A detailed Landscape Plan (prepared by a suitably qualified AILA registered Landscape Architect) shall be submitted with the development application illustrating the design, layout and function of open space within the local centre and identifying how it will be managed and maintained to Council's satisfaction. The Landscape Plan should seek to achieve the following design criteria:
 - a) Incorporate a palette of high quality and durable materials, including robust and drought tolerant landscaping species;
 - b) Include clear, accessible, safe, and convenient linkages between the three primary open spaces and the broader open space network;
 - c) Integrate stormwater management and urban tree canopy;
 - d) Include design elements, furniture, and infrastructure to facilitate active and passive recreation, community gatherings, and social interaction;

- e) Maximise the safety and security of users consistent with 'Safety by Design' principles;
- f) Encourage pedestrian use through the design of open space pathways and entrances;
- g) Provide opportunities to access both sunlight and shade;
- h) Incorporate appropriate levels of lighting to maximise hours of use; and
- i) Allow for accessibility at all times (24/7).



4.5 Building Form, Streetscape and Layout

Objectives

- a) To ensure the height and scale of a development ~~complements neighbouring development, and/or the desired character of a small scale business centre~~ appropriately transitions to adjoining development.
- b) To provide adequate amenity to the occupants and residents of a development in terms of solar access, visual and acoustic privacy, and natural ventilation.
- c) To ensure a development does not detrimentally affect the amenity of nearby residential development.
- d) To minimise overshadowing and ensure open space and pedestrian areas in the local centre receive adequate solar access.
- e) To ensure a development is integrated with the public domain and contributes to an active pedestrian-orientated environment.
- f) To maximise natural surveillance so that people feel safe at all times.
- g) To ensure pedestrian entrances and exits are clearly visible from the street.
- h) To promote high quality architectural design.
- i) To ensure corner sites are developed as visually significant elements in order to promote a strong and legible character.
- j) To ensure weather protection to pedestrians.
- k) To ensure roof forms contribute to the proposed character of the centre and residential areas.

Controls

Building Form

1. Articulate building walls addressing the street to add visual interest.
2. Development adjoining open space shall address the open space and avoid blank walls.
3. All buildings to be designed and built to have upper floors. Buildings shall be a minimum of two storeys in height.
4. Floor to ceiling heights of the ground floor shall be a minimum of 3.5m to allow for adaptive re-use.

Building Materials

1. Highly reflective finishes are not permitted above the ground floor.
2. Colour and materials of the buildings shall be ~~consistent with the existing adjoining development~~ of a high standard, creating a built form identity for the local centre.
3. Robust and sustainable materials shall be selected to ensure minimal maintenance is required.

Entrances

1. Orientate entrances to buildings towards the public street and provide clear lines of sight between entrances, foyers and the street.
2. The common lobby to a home unit development should face the street.
3. Where the ground floor of a business development, mixed-use development, and shop-top housing faces the street, the ground floor must incorporate shopfront style windows with clear glazing so that pedestrians can see into the premises and vice versa.

~~4. Buildings shall have separate entrances for business and residential development.~~

Street Frontage

1. Buildings shall be modulated to create a vertical rhythm to the street facade. Modules of around six metres are expected which allow for typical construction techniques. No long, unbroken facades will be permitted.
2. All developments must address the street and provide a quality street frontage. Retail and commercial developments must have active street frontages and entries fronting the street
3. Ground floor uses are to be at the same general level as the footpath and be accessible directly from the street.
4. Provide predominately glazed shop fronts to all ground floor retail areas.
5. Developments on corner sites shall address the corner and the secondary street frontage.
6. Avoid blank or solid walls and the use of dark or obscured glass on street frontages.
7. Roller shutters that obscure windows are not permitted.
8. Provide opportunities for table seating along shop frontages.
9. Any Automatic Teller Machine (ATM) must be located at a highly visible location at street level, and must be well lit at night and incorporate mirrors or reflective materials so that users can observe people behind them.
10. The street number of a building must be visible from the street and made of a reflective material to allow visitors and emergency vehicles to easily identify the location of the building.

Awnings

1. Provide continuous street frontage awnings to all new developments.
2. Wrap awnings around corners on street corner buildings.
3. Awnings must be complementary to each other.
4. Canvas blinds along the street edge are permitted.
5. Awnings must take into consideration the growth of street trees, lighting and other street furniture.

Roof Forms

1. Minimise the bulk and mass of roofs and the potential for overshadowing from roofs.
2. Provide eaves with a minimum length of 400mm in dwellings with pitched roofs.
3. Where flat roofs are proposed, lift overruns and rooftop plant and machinery are to be obscured from view by parapets or designed to be incorporated within rooftop activities/features.
4. Incorporate lift overruns and service plant etc into the design of the roof.
5. Wherever possible, provide landscaped and shaded areas on roofs to serve as communal private open space for residents of the building.
6. Developments should feature solar panels on rooftops and provide suitable surface area for solar collection where there is adequate access to sunlight.

Material and Finishes

1. Avoid expanses of any single material.
2. Utilise high quality and durable materials and finishes, such as face brick with / without coloured render; and plain glass windows.
3. Avoid large wall tiles, rough textured render, polished metal and curtain walls or reflective glass.

Dwellings above shops

1. Dwellings and balconies in upper storeys shall address the street, rear laneway and any adjacent open space.
2. Access to dwellings above shops must be from the front street.
3. Dwellings above shops should be designed to facilitate flow through ventilation.
4. Entrances shall be designed to accommodate movement of furniture.

Adjoining Residential Areas

1. Development should minimise the impact of on privacy of adjoining and nearby dwellings.
2. Development ~~should be compatible with any adjoining and nearby dwellings~~ is to be sensitive to adjoining and nearby dwellings and avoid adversely impacting on residential amenity.

Car parking structures

1. Where car parking structures is provided above or below ground level its design shall be integrated into the design of the building.
2. Natural ventilation shall be provided to basement where possible using ventilation grills and structures.
3. Above ground car parking structures shall be appropriately screened and where possible, incorporate public art as part of the screening.
4. Structures shall be ideally designed as flat slabs to allow flexibility for additional uses.
5. The roof level of the car parking structure is to incorporate shading devices.

Residential Ground Floor Development

This section applies to ground floor residential development located within the local centre.

Objectives

- a) To maximise opportunities for ground level activation within the local centre.
- b) To support greater housing mix and facilitate working from home opportunities.
- c) To provide flexibility in building design whilst ensuring a uniform and consistent street setback.
- d) To encourage high quality home businesses and small office/home office (SOHO) on the ground floor.

Controls

1. The layout of ground floor residential units located along the street frontage shall be designed to support home business / SOHO uses.
2. Amenities shall be provided on the ground floor of the residential unit including at minimum the provision of a bathroom.
3. Floor to ceiling heights of the ground floor shall be a minimum of 3.5m to enable both residential and non-residential uses.
4. Residential development with ground floor areas adjacent to, or within 1.4m of the adjoining public domain should have direct access from the public domain.
5. The ground floor of residential development is to be at or near ground level and, in any case, no more than 1.4m above pavement level.

4.6 Landscaping and Fencing

Objectives

- a) To ensure appropriate landscaping in ~~commercial~~ local centres; ~~and~~.
- b) To ensure the protection of existing trees on neighbouring residential zoned land.
- c) To ensure the visual impact of development is minimised and integrated into the streetscape.
- d) To improve the amenity of the local centre.
- e) To create well landscaped and designed central open spaces.

Controls

1. Where trees are planted around high use facilities such as car park areas, children's play areas and walkways, they should have clean trunks to a height of 1.8m.
2. Landscaping on any podium level or planter box shall be appropriately designed and irrigated by:
 - a) Providing soil depth, soil volume and soil area appropriate to the size of the plants to be established;
 - b) Providing appropriate soil conditions, irrigation methods and drainage;
 - c) Ensure planter proportions accommodate the largest volume of soil possible. Minimum soil depths will vary depending on the size of the plant. However, soil depths greater than 1.5m are unlikely to have any benefits for tree growth;
 - d) Providing square or rectangular planting areas rather than long narrow linear areas.
3. In relation to control 2 above, the following are recommended as minimum standards for a range of plant sizes:
 - a) Large trees such as figs (canopy diameter of up to 16m at maturity)
 - i. Minimum soil volume 150m³.
 - ii. Minimum soil depth 1.3m.
 - iii. Minimum soil area of 10 x 10m or equivalent.
 - b) Medium trees (8m canopy diameter at maturity).
 - i. - Minimum soil volume 35m³.
 - ii. - Minimum soil depth 1m.
 - iii. - Approximate soil area of 6 x 6m or equivalent.
 - c) Small trees (4m canopy diameter at maturity).
 - i. - Minimum soil volume 9m³.
 - ii. - Minimum soil depth 0.8m.
 - iii. - Approximate soil area of 3.5 x 3.5m or equivalent.
 - d) Shrubs: Minimum soil depths 500 – 600mm.
 - i. - Ground cover: Minimum soil depths 300 – 450mm.
 - ii. - Turf: Minimum soil depths 100 – 300mm.
 - iii. - Any subsurface drainage requirements are in addition to the minimum soil depths quoted above.
4. Where landscaping is to be provided a detailed landscape plan shall accompany a development application. A suitably qualified AILA registered Landscape architect must prepare all Landscape Plans submitted with the development application. Refer to Part 1 for requirements for Detailed Landscape Plans.
5. Landscaped areas within ~~Neighbourhood Centres~~ the local centre shall generally involve the provision of trees and shrubs in mulched garden beds around car parking

areas and where pedestrian areas are provided. In particular the landscaping shall involve the following:

- Mulched garden beds shall incorporate ground covers that will cover the ground area.
- Large shrubs shall be used as screen planting where there is a need to screen certain areas such as outside storage.
- Shrubs shall only be planted in mulched garden beds.

4.7 Car Parking and Access Arrangements

Objectives

- a) To ensure the provision of appropriate off-street parking for business areas.
- b) To ensure car parking and loading facilities are in the most appropriate location given the urban design needs for the centre.
- c) To ensure ~~that~~ car parking areas ~~that~~ are attractive and do not dominate the streetscape.
- d) To support and encourage sustainable transport modes as an alternative option.

Controls

1. Car parking and loading areas shall be located off rear laneways where there is a rear laneway.
2. The design and layout of servicing areas shall incorporate the potential for nearby pedestrian movement.
3. The access arrangement to carparks shall be in accordance with Australian Standard AS2890.
4. Loading facilities in proximity to residential development shall provide appropriate noise mitigation measures.
5. Electric vehicle charging stations shall be provided in the centre for public use.

4.8 Amenity and Environmental Impact

Objectives

- a) To provide adequate amenity to the occupants of buildings and to neighbouring residential development in terms of solar access, and visual and acoustic privacy.
- b) To ensure buildings and businesses provide safe and easy access for people.
- c) To provide useable private open space for dwellings.

Controls

Privacy

Development shall be designed to minimise overlooking of adjoining and nearby residential development.

Lighting

External lighting to a development must give consideration to the impact of glare on the amenity of adjoining and nearby residents.

Safety

1. Where the hours of operation are after sunset, the car parking areas and any other public areas shall be provided with lighting to provide a safe environment for users of the premises after hours.

2. A Noise Impact Assessment Statement prepared by a qualified Acoustics Engineer may be required to be submitted with the application depending on the scale and location of the proposed use to show that the use can operate satisfactorily in the business area.

4.9 Site Services

Objectives

- a) To ensure that the required services are provided.
- b) To ensure that the services provided are easily protected or maintained.
- c) To ensure that service infrastructure does not detract from the public domain.

Controls

Where services or utility infrastructure are orientated towards the street frontage, adequate screening shall be provided to Council's satisfaction.

Letterboxes and House Numbering

1. A common letterbox structure must be located close to the main pedestrian entrance of a building and not adversely impact on street amenity.
2. The street number of a building must be visible from the street and made of a reflective material to allow visitors and emergency vehicles to easily identify the location of the building.

Frontage works and damage to Council assets

1. Where a footpath, road shoulder, new or enlarged access driveway is required to be provided this shall be provided at no cost to Council.
2. Council must be notified of any works that may threaten Council assets. Council must give approval for any works involving Council infrastructure.

Electricity Substation

In some cases it may be necessary to provide an electricity substation at the front of the development adjacent to the street frontage. Where this is the case, the shorter side of the substation should be orientated towards the street frontage and be adequately screened. The front boundary treatment used elsewhere on the street frontage shall be used at the side and rear of the area. This will also involve dedication of the area as a public road to allow access by the electricity provider.

Waste management

1. Development involving dwellings shall provide at least two waste storage areas to separately cater for the dwellings and non-residential uses on an allotment.
2. A development must provide a waste storage area inside every food premises, and inside any shop that is capable of accommodating a food premises.
3. A development must locate a waste storage area inside the building, or adjacent to a lane where it is convenient and safe for residents, tenants, and waste collection trucks to access the waste storage area and the location and floor level are to the satisfaction of Council.
4. Waste disposal facilities shall be provided for development involving residential flat buildings or shop top housing. These shall be located adjacent to the driveway entrance to the site or at the rear if a rear lane is provided.
5. Any structure involving waste disposal facilities shall be located as follows:
 - Setback 1m from the front boundary to the street.
 - Landscaped between the structure and the front boundary and adjoining areas to minimise the impact on the streetscape.

- Not be located adjacent to an adjoining residential property.
- Details of the design of waste disposal facilities are shown in Part 1 of the DCP.

4.10 Shop Top Housing

Background

~~The planning of the Middleton Grange Release Area envisaged that there would be a residential component within the neighbourhood centre.~~ Middleton Grange local centre will provide for mixed use development, with a range of non-residential uses across lower levels and residential floorspace above. This vertical mix of uses will increase activity through the day and night which in turn will improve the passive surveillance over public areas. Ground floor uses will activate the local centre streets and open spaces and maximise pedestrian circulation and amenity.

Building Design

Objectives

- To ensure ~~an~~ there is adequate amenity for residential development within the ~~neighbourhood~~ local centre.
- To provide housing diversity.
- To provide smaller dwelling types in convenient locations close to transport, goods and services and usable open space areas.

Controls

All residential and mixed use developments shall be at least two storeys with the lowest habitable floor level at least 500 mm above the crown of the road.

Building Appearance and Streetscape

Objectives

- To ensure an attractive streetscape, which is consistent with the environment of a centre.
- To promote high architectural quality in shop top housing.
- To ensure that new developments have facades which define and enhance the public domain and desired street character.
- To ensure that building elements are integrated into the overall building form and facade design.

Controls

- Shop top housing shall comply with *State Environmental Planning Policy No 65 – Design Quality of ~~Shop top housing~~ Residential Apartment Development*, and should consider the ~~Residential Flat Design Code~~ Apartment Design Guide.
- Building facades shall be articulated and roof form is to be varied to provide visual variety.
- The pedestrian entrance to shop top housing shall be from the primary street frontage of the development. Entrances from laneways are not acceptable.
- Driveway walls adjacent to the entrance of a basement car park are to be treated so that their appearance is consistent with the basement or podium walls.
- A master antenna shall be provided for any development of more than three dwellings and be located so that it is not visible from the street or any public open space.
- Consider the relationship between the whole building form and the facade and / or building elements. The number and distribution of elements across a façade determine simplicity or complexity. Columns, beams, floor slabs, balconies, window openings and fenestrations, doors, balustrades, roof forms and parapets are

elements, which can be revealed or concealed and organised into simple or complex patterns.

7. Compose facades with an appropriate scale, rhythm and proportion, which respond to the building's use and the desired contextual character. This may include but is not limited to:
 - Defining a base, middle and top related to the overall proportion of the building.
 - Expressing key datum lines in the context using cornices, a change in materials or building setback.
 - Expressing the internal layout of the building, for example, vertical bays or its structure, such as party wall-divisions.
 - Expressing the variation in floor-to-floor height, particularly at the lower levels.
 - Articulating building entries with awnings, porticos, recesses, blade walls and projecting bays.
 - Selecting balcony types which respond to the street context, building orientation and residential amenity.
 - Cantilevered, partially recessed, wholly recessed, or Juliet balconies will all create different facade profiles.
 - Detailing balustrades to reflect the type and location of the balcony and its relationship to the façade detail and materials.
8. Design facades to reflect the orientation of the site using elements such as sun shading, light shelves and bay windows as environmental controls, depending on the facade orientation.
9. Express important corners by giving visual prominence to parts of the facade, for example, a change in building articulation, material or colour, roof expression or increased height.
10. Co-ordinate and integrate building services, such as drainage pipes, with overall facade and balcony design.
11. Co-ordinate security grills/screens, ventilation louvres and car park entry doors with the overall facade design.

Roof Design

Objectives

- a) To provide quality roof designs, which contribute to the overall design and performance of shop top housing.
- b) To integrate the design of the roof into the overall facade, building composition and desired contextual response.
- c) To increase the longevity of the building through weather protection.

Controls

1. Relate roof design to the desired built form. This may include:
 - Articulating the roof, or breaking down its massing on large buildings, to minimise the apparent bulk or to relate to a context of smaller building forms.
 - Using a similar roof pitch or material to adjacent buildings, particularly in existing special character areas or heritage conservation areas.
 - Minimising the expression of roof forms gives prominence to a strong horizontal datum in the adjacent context, such as an existing parapet line.
 - Using special roof features, which relate to the desired character of an area, to express important corners.

2. 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.
3. Design roofs to respond to the orientation of the site, for example, by using eaves and skillion roofs to respond to sun access.
4. Developments should feature solar panels on rooftops and provide suitable surface area for solar collection where there is adequate access to sunlight.
5. 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.
6. Where habitable space is provided within the roof optimise residential amenity in the form of attics or penthouse dwellings.
7. Where possible, provide landscaped and shaded areas on roofs to serve as communal private open space for residents of the building.

Building Entry

Objectives

- a) To create entrances which provide a desirable residential identity for the development.
- b) To orientate the visitor.
- c) To contribute positively to the streetscape and building facade design.

Controls

1. Provide as direct a physical and visual connection as possible between the street and the entry.
2. Achieve clear lines of transition between the public street, the shared private, circulation spaces and the dwelling unit.
3. Ensure equal access for all.
4. Provide safe and secure access by:
 - Avoiding ambiguous and publicly accessible small spaces in entry areas.
 - Providing a clear line of sight between one circulation space and the next.
 - Providing sheltered well-lit and highly visible spaces to enter the building, meet and collect mail.
5. Generally provide separate entries from the street for:
 - Pedestrians and cars.
 - Different uses, for example, for residential and commercial users in a mixed-use development.
6. Design entries and associated circulation space of an adequate size to allow movement of furniture between public and private spaces.

Balconies

Objective

- a) To ensure that balconies contribute positively to the facade of a building.
- b) To ensure balconies are functional and responsive to the environment thereby promoting the enjoyment of outdoor living for dwelling residents.
- c) To ensure that balconies are integrated into the overall architectural form and detail of shop top housing.

- d) To contribute to the safety and liveliness of the street by allowing for casual overlooking and address.

Controls

1. A minimum of 10sqm of open space in the form of a balcony shall be provided for each dwelling.
2. Private open space areas should be an extension of indoor living areas and be functional in size to accommodate seating and the like.
3. Balustrades on balconies at lower levels shall be of solid construction.
4. Balconies may project up to 1m from the façade of a building.
5. Balustrades must be compatible with the façade of the building.
6. Balconies should where possible be located above ground level to maximise privacy for occupants, particularly from the street.
7. Balconies should be located on the street frontage and boundaries with views.
8. Primary balconies should be:
 - Located adjacent to the main living areas, such as living room, dining room or kitchen to extend the dwelling living space.
 - Sufficiently large and well proportioned to be functional and promote indoor/outdoor living. A dining table and two chairs (smaller apartment) and four chairs (larger apartment) should fit on the majority of balconies in any development.
9. Consider secondary balconies, including Juliet balconies or operable walls with balustrades, for additional amenity and choice in larger dwellings, adjacent to bedrooms or for clothes drying, site balconies off laundries or bathrooms.
10. Design and detail balconies in response to the local climate and context thereby increasing the usefulness of balconies. This may be achieved by:
 - Locating balconies facing predominantly north, east or west to provide solar access.
 - Calculating the depth of balconies to allow sunlight access to the dwelling below.
 - Utilising sunscreens, pergolas, shutters and operable walls to control sunlight and wind.
11. Provide primary balconies for all dwellings with a minimum depth of 2m.
12. Design balustrades to allow views and casual surveillance of the street while providing for safety and visual privacy. Design considerations may include:
 - Detailing balustrades using a proportion of solid to transparent materials to address sight lines from the street, public domain or adjacent development. Full glass balustrades do not provide privacy for the balcony or the dwelling's interior, especially at night.
 - Detailing balustrades and providing screening from the public, for example, for a person seated looking at a view, clothes drying areas, bicycle storage or air conditioning units.
13. Operable screens increase the usefulness of balconies by providing weather protection, daylight control and privacy screening.

Sunlight Access

Objectives

- a) To ensure that daylight access is provided to all habitable rooms.

- b) To provide adequate ambient lighting and minimise the need for artificial lighting during daylight hours.
- c) To provide residents with the ability to adjust the quantity of daylight to suit their needs.

Controls

1. Plan the site so that new shop top housing is orientated to optimise northern aspect.
2. Ensure direct daylight access to communal open space between March and September and provide appropriate shading in summer.
3. Ensure daylight access to habitable rooms and private open space, particularly in winter use skylights, clerestory windows and fanlights to supplement daylight access.
4. Promote two-storey and mezzanine, ground floor dwellings or locations where daylight is limited to facilitate daylight access to living rooms and private open spaces.
5. Ensure single aspect, single-storey dwellings have a northerly or easterly aspect - locate living areas to the north and service areas to the south and west of the development.
6. Avoid south facing dwellings.
7. Design for shading and glare control, particularly in summer:
 - Using shading devices, such as eaves, awnings, colonnades, balconies, pergolas, external louvres and planting.
 - Optimising the number of north-facing living spaces.
 - Providing external horizontal shading to north-facing windows.
 - Providing vertical shading to east or west windows.
8. Consider higher ceilings and higher window heads to allow deeper sunlight penetration.
9. On west facing windows, vertical louver panels or sliding screens protect from glare and low afternoon sun.
10. On north facing windows, projecting horizontal louvres admit winter sun while shading summer sun.
 - Using high performance glass but minimising external glare off windows.
 - Avoid reflective films.
 - Use a glass reflectance below 20%.
 - Consider reduced tint glass.
 - Limit the use of lightwells as a source of daylight by prohibiting their use as the primary source of daylight in habitable rooms.

Where they are used:

- Relate lightwell dimensions to building separation, for example, if non-habitable rooms face into a light well less than 12m high, the lightwell should measure 6 x 6m.
- Conceal building services and provide appropriate detail and materials to visible walls.
- Ensure light wells are fully open to the sky.
- A combination of louvres provides shading for different times of the day.

Internal design

Objective

To ensure that the internal design of buildings provide a pleasant environment for the occupants and residents of adjoining properties.

Controls

1. All staircases should be internal.
2. Minimise the length of common walls between dwellings.
3. Basement car parking shall be located beneath the building footprint.
4. Where possible natural ventilation shall be provided to basement car parking.
5. Design building layouts to minimise direct overlooking of rooms and private open spaces adjacent to dwellings.
6. Minimise the location of noise sensitive rooms such as bedrooms adjoining noisier rooms such as bathrooms or kitchens or common corridors and stairwells.
7. Where common 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*.
8. Locate active use rooms or habitable rooms with windows overlooking communal/public areas (e.g. playgrounds, gardens).

Security

Objectives

- a) To ensure that buildings are orientated to allow surveillance from the street and adjoining buildings.
- b) To ensure that entrances to buildings are clearly visible and easy to locate in order to minimise the opportunities for intruders.
- c) To ensure buildings are safe and secure for residents and visitors.
- d) To contribute to the safety of the public domain.

Controls

1. Entrances to buildings should be orientated towards the front of the site and facing the street.
2. The main entrance to dwellings or other premises should not be from rear lanes and should be designed with clear directions and signage.
3. Blank walls addressing the street frontage and other public places should be avoided.
4. Minimise the number of entry points to buildings.
5. Reinforce the development boundary to strengthen the distinction between public and private space by:
 - Employing a level change at the site and/or building threshold (subject to accessibility requirements).
 - Signage.
 - Entry awnings.
 - Fences, walls and gates.
 - Change of material in paving between the street and the development.
6. Optimise the visibility, functionality and safety of building entrances by:
 - Orienting entrances towards the public street.
 - Providing clear lines of sight between entrances, foyers and the street.
 - Providing direct entry to ground level dwellings from the street rather than through a common foyer.

- Direct and well-lit access between car parks and dwellings, between car parks and lift lobbies and to all unit entrances.
- 7. Improve the opportunities for casual surveillance by:
 - Orienting living areas with views over public or communal open spaces, where possible.
 - Using bay windows and balconies, which protrude beyond the main facade and enable a wider angle of vision to the street.
 - Using corner windows, which provide oblique views of the street.
 - Providing casual views of common internal areas, such as lobbies and foyers, hallways, recreation areas and car parks.
- 8. Minimise opportunities for concealment by:
 - Avoiding blind or dark alcoves near lifts and stairwells, at the entrance and within indoor car parks, along corridors and walkways.
 - Providing well-lit routes throughout the development.
 - Providing appropriate levels of illumination for all common areas.
- 9. Control access to the development by:
 - Making dwellings inaccessible from the balconies, roofs and windows of neighbouring buildings.
 - Separating the residential component of a development's car parking from any other building use.
 - Providing direct access from car parks to dwelling lobbies for residents.

Natural Ventilation

Objectives

- a) To ensure that dwellings are designed to provide all habitable rooms with direct access to fresh air and to assist in promoting thermal comfort for occupants.
- b) To provide natural ventilation in non-habitable rooms, where possible.
- c) To reduce energy consumption by minimising the use of mechanical ventilation, particularly air conditioning.

Controls

1. Utilise the building layout and section to increase the potential for natural ventilation. Design solutions may include:
 - Facilitating cross ventilation by designing narrow building depths and providing dual aspect dwellings, for example, cross through dwellings and corner dwellings.
 - Facilitating convective currents by designing units, which draw cool air in at lower levels and allow warm air to escape at higher levels, for example, maisonette dwellings and two-storey dwellings.
2. Select doors and windows (that open) to maximise natural ventilation opportunities established by the dwelling layout.
3. Provide appropriate building depths to support cross ventilation.
4. Avoid single-aspect dwellings with a southerly aspect.
5. Design the internal dwelling layout to promote natural ventilation by:
 - Minimising interruptions in air flow through a dwelling.
 - Grouping rooms with similar usage together.

Storage Areas

Objective

To provide for the need of residents to be able to store personal items adjacent to the car parking area.

Controls

1. A secure storage space is to be provided for each dwelling with a minimum volume 8m³ (minimum dimension 1sqm). This must be set aside exclusively for storage as part of the basement or garage.
2. Storage areas must be adequately lit and secure. Particular attention must be given to security of basement and garage storage areas.

Planting on Structures**Objectives**

- a) To contribute to the quality and amenity of communal open space on podiums and internal courtyards.
- b) To encourage the establishment and healthy growth of trees in urban areas.

Controls

1. Design for optimum conditions for plant growth by:
 - Providing soil depth, soil volume and soil area appropriate to the size of the plants to be established.
 - Providing appropriate soil conditions, irrigation methods and drainage
 - Ensure planter proportions accommodate the largest volume of soil possible. Minimum soil depths will vary depending on the size of the plant. However, soil depths greater than 1.5m are unlikely to have any benefits for tree growth.
 - Providing square or rectangular planting areas rather than long narrow linear areas.
2. The following are recommended as minimum standards for a range of plant sizes:
 - Large trees such as figs (canopy diameter of up to 16m at maturity)
 - Minimum soil volume 150m³.
 - Minimum soil depth 1.3m.
 - Minimum soil area of 10 x 10m or equivalent.
 - Medium trees (8m canopy diameter at maturity).
 - Minimum soil volume 35m³.
 - Minimum soil depth 1m.
 - Approximate soil area of 6 x 6m or equivalent.
 - Small trees (4m canopy diameter at maturity).
 - Minimum soil volume 9m³.
 - Minimum soil depth 0.8m.
 - Approximate soil area of 3.5 x 3.5m or equivalent.
 - Shrubs: Minimum soil depths 500 – 600mm.
 - Ground cover: Minimum soil depths 300 – 450mm.
 - Turf: Minimum soil depths 100 – 300mm.
 - Any subsurface drainage requirements are in addition to the minimum soil depths quoted above.

Car Parking

Objectives

- a) To provide convenient, accessible and safe on site car parking for residents and visitors.
- b) To minimise driveway crossings to maximise on street parking and landscaped nature strips.
- c) To integrate the location and design of car parking with the design of the site and building without compromising street character, landscape or pedestrian amenity and safety.
- d) To integrate the location and design of car parking with the design of the site and the building.

Controls

- 1. Visitor car parking shall be clearly identified and may not be stacked car parking.
- 2. Pedestrian access ways and driveways shall be separated.
- 3. Driveways shall be designed to accommodate removalist vehicles.
- 4. Give preference to underground parking, whenever possible by:
 - Facilitating natural ventilation to basement and sub-basement car parking areas, where possible.
 - Integrating ventilation grills or screening devices of car park openings into the facade design and landscape design.
 - Providing safe and secure access for building users, including direct access to residential dwellings, where possible.
- 5. Where above ground enclosed parking cannot be avoided, ensure the design of the development mitigates any negative impact on streetscape and street amenity by:
 - Avoiding exposed parking on the street frontage.
 - Hiding car parking behind the building facade. Where wall openings (windows, fenestrations) occur, ensure they are integrated into the overall facade scale, proportions and detail.

Pedestrian Access**Objectives**

- a) To promote shop top housing which is well connected to the street and contributes to the accessibility of the public domain.
- b) To ensure that residents, including users of strollers and wheelchairs and people with bicycles, are able to reach and enter their dwelling and use communal areas via minimum grade ramps, paths, access ways or lifts.

Controls

- 1. Optimise accessibility to the development through site planning.
- 2. Provide high quality accessible routes to public and semi-public areas of the building and the site, including major entries, lobbies, communal open space, site facilities, parking areas, public streets and internal roads.

Privacy**Objectives**

- a) To locate and design buildings to meet projected user requirements for visual and acoustic privacy and to protect privacy of nearby residents.
- b) To avoid any external impacts of a development, such as overlooking of adjoining sites.

- c) To provide reasonable levels of visual privacy externally and internally, during the day and at night.
- d) To maximise outlook and views from principal rooms and private open space.

Controls

1. 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.
2. Windows to habitable rooms should be located so they do not overlook such windows in other dwellings within the development or areas of private open space.
3. Landscaping should be used where possible to increase visual privacy between dwellings and adjoining properties.
4. Design building layouts to minimise direct overlooking of rooms and private open spaces adjacent to dwellings by:
 - Balconies to screen other balconies and any ground level private open space.
 - Separating communal open space, common areas and access routes through the development from the windows of rooms, particularly habitable rooms.
 - Changing the level between ground floor dwellings with their associated private open space, and the public domain or communal open space.
5. Use detailed site and building design elements to increase privacy without compromising access to light and air by:
 - Offsetting windows of dwellings in new development and adjacent development windows.
 - Recessed balconies and/or vertical fins between adjacent balconies.
 - Solid or semi-solid balustrades to balconies - louvres or screen panels to windows and/or balconies.
 - Fencing.
 - Vegetation as a screen between spaces.
 - Incorporating planter boxes into walls or balustrades to increase the visual separation between areas.
 - Utilising pergolas or shading devices to limit overlooking of lower dwellings or private open space.

Acoustic Impact

Objective

To ensure a high level of amenity by protecting the privacy of residents within shop top housing.

Controls

1. Noise attenuation measures should be incorporated into building design to ensure acoustic privacy between on-site and adjoining buildings.
2. The proposed buildings must comply with the ~~Department of Environment and Climate Change criteria~~ relevant state guidelines and criteria and the current relevant Australian Standards for noise and vibration and quality assurance.
3. Arrange dwellings within a development to minimise noise transition between dwellings by:
 - Locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms with living rooms, bedrooms with bedrooms.

- Using storage or circulation zones within a dwelling to buffer noise from adjacent dwellings, mechanical services or corridors and lobby areas.
- Minimising the amount of common walls with other dwellings.
- Design the internal dwelling layout to separate noisier spaces from quieter spaces by grouping uses within a dwelling - bedrooms with bedrooms and service areas like kitchen, bathroom, and laundry together.

4.11 Restaurants/Outdoor Cafes

Background

There is an increasing trend to have outdoor dining in conjunction with restaurants and cafes. This contributes to the activity in business areas. There is however a potential conflict between the users of outdoor dining areas and users of the footpath areas.

Objectives

- a) To ensure that outdoor cafes enhance the economic viability for centres.
- b) To ensure that outdoor cafes **activate and** enhance the streetscape to create attractive and vibrant surroundings.
- c) To preserve or enhance public amenity, safety and access.

Controls

These controls apply to outdoor dining areas on public footpaths. Other than hours of operation, these controls do not apply to outdoor dining areas located on privately owned land.

Building Form, Streetscape and Layout

1. Locate outdoor cafe seating a minimum of 1m from the kerb and to maintain at least 1.5m between seating and the building frontage for pedestrian passage.
2. There shall be no increase in the number of chairs and tables at each individual cafe site to that approval without further approval from Council.
3. Outdoor cafe furniture shall remain at least 3m away from any change in direction of kerb and gutter, as occurs at street corners and from any bus stop or taxi stand.
4. Outdoor cafe furniture shall remain at an appropriate distance from any pedestrian crossing, disabled parking spaces, post box, public telephone, street sign, street tree or other street structure.
5. Outdoor cafe sites shall allow appropriate public access across the footpath between kerb and property boundary. This control does not apply within purpose built Council designed 'al fresco' dining areas.
6. The siting of outdoor cafe areas shall allow for pedestrian road crossing areas.

Written Consent

Written consent from neighbouring tenants to establish outdoor cafe seating in front of other premises must be provided to Council before such seating is permitted.

Car Parking and Access

1. No additional car parking is required for any outdoor eating area.
2. Bollards may be needed to be provided to protect the seating area from errant vehicles.

Amenity and Environmental Impact

The hours of operation shall be restricted to between 7:00 am to 9:00 pm, unless otherwise varied by Council.

Landscaping

Planter boxes should be provided to enclose eating areas.

Site Services

1. If any of Council's street furniture or other items such as garbage bins, seats and planter boxes has to be removed for the installation of outdoor cafe seating, then that removal and any subsequent re-erection in the vicinity shall be at the permit holder's expense and shall be completed to Council's satisfaction.
2. Any additional lighting to normal street lighting shall be provided at the applicant's expense and shall be completed to the satisfaction of Council.
3. Any illuminations shall be appropriately managed during operations of the premises.

Permit

Applicants need to provide public liability insurance for outdoor café areas and sign a permit agreement with Council.

**LIVERPOOL
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COUNCIL**



LIVERPOOL CITY COUNCIL

Ground Floor, 33 Moore Street,
Liverpool NSW 2170



1300 36 2170



www.liverpool.nsw.gov.au



lcc@liverpool.nsw.gov.au



NRS 133 677 (for hearing and
speech impaired callers only)

PLAN 08**Amendment to Fees & Charges for Planning
Certificates and Private Certifier Certificate
Registrations**

Strategic Objective	Evolving, Prosperous, Innovative Implement planning controls and best practice urban design to create high-quality, inclusive urban environments
File Ref	285028.2023
Report By	Kevin Nonweiler - Programme Lead eBusiness and Planning Reform
Approved By	Lina Kakish - Director Planning & Compliance

EXECUTIVE SUMMARY

The EP&A Regulation 2021 was amended by the Department of Planning in June 2023 to increase statutory fees for Planning Certificates and Private Certifier Certificate registrations by CPI, commencing mid July 2023 in the 2023/24 Financial Year.

Councils advertised Fees & Charges for Financial Year 2023-24, for these types of Certificates, do not include the uplift of these fees, and therefore Councils finance department seeks Council approval to align these fees on Councils Fees & Charges Online Portal.

RECOMMENDATION

That Council endorse the increase of statutory fees & charges as detailed in the EP&A Regulation 2021 as amended; and update Council's Fees & Charges Online Portal accordingly.

REPORT

The EP&A Regulation 2021 was amended by the Department of Planning in June 2023 to increase statutory fees for Planning Certificates and Private Certifier Certificate registrations by CPI, commencing mid July 2023 in the 2023/24 Financial Year.

The statutory fees that were increased by this amendment are:

	Advertised Fee	Amended Fee
Certificates Registration Fee (Complying Development Certificate/Construction Certificate/Occupation Certificate/Subdivision Certificate/Subdivision Work Certificate)	\$36	\$39
Planning Certificate - Section 10.7(2)	\$62	\$67
Planning Certificate - Section 10.7(5)	\$94	\$100
Planning Certificate - Section 10.7(2&5)	\$156	\$167

Councils advertised Fees & Charges for Financial Year 2023-24, were adopted prior to the above changes to the regulations, and did not include these fees as being subject to change, as there was no prior advice from the Department that they could be subject to change in the 2023-24 financial year.

On 25 July 2023, the Department commenced charging the revised (increased) fees for Certificate Registrations via the NSW Planning Portal and passed these payments onto Council accordingly.

As Councils Fees & Charges Online Portal no longer aligns with the new statutory fees as per the regulations, it is recommended that the Online Portal be updated accordingly to enable Council to collect the increased statutory fees.

FINANCIAL IMPLICATIONS

The increased fee amounts may increase the revenue attached to these statutory certificates in the 2023-24 Financial Year.

CONSIDERATIONS

Economic	There are no economic and financial considerations.
Environment	There are no environmental and sustainability considerations.
Social	There are no social and cultural considerations.
Civic Leadership	There are no civic leadership and governance considerations.
Legislative	Fees are mandatory under the provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021

Risk	There is no risk associated with this report.
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ATTACHMENTS

Nil

COM 07

Community Shuttle Bus Service

Strategic Objective	Healthy, Inclusive, Engaging Support active and healthy lifestyles by improving footpaths, cycleways and walkways and other infrastructure that promotes and supports active transport
File Ref	285518.2023
Report By	Craig Lambeth - Acting Manager Community Recreation
Approved By	Tina Bono - Director Community & Lifestyle

EXECUTIVE SUMMARY

In 2010 Council established a Community Shuttle Bus service. The service was originally established to provide transport linkages from Collimore Park and Whitlam Leisure Centre parking for Council staff working in the Moore Street Offices. Later, access to the service was expanded to allow to access any member of the community.

At the September 2022 Council Meeting, Question Without Notice were raised that related to the intention to continue the Community Shuttle Bus service. In response, Council Officers have undertaken investigations to assess the current and predicted value of the shuttle bus service.

Those investigations indicated that the use of the Community Shuttle Bus service was impacted by the COVID-19 pandemic. To assess the current and future value of the shuttle bus services, Council canvassed the opinion of current staff and residents. The results of that survey are contained in the body of this report. The key outcomes of that survey indicated that 77% of the 113 respondents indicated their future intention to utilise the shuttle bus service.

In 2022/23, the recorded number of passenger trips was 12,818. Under the current Agreement, the annual cost to Council is \$118,000 per annum. Council has estimated that this equates to approximate subsidy of \$9.21 per individual passenger trip.

Assessment of passenger trips undertaken, post-Covid indicates some significant recovery in numbers from the previous years.

With the Council relocating its offices to Civic Place in 2024, and the subsequent increase in distance from the main commuter parking station at Collimore Avenue, it is expected that usage of the shuttle bus services will be impacted.

RECOMMENDATION

That Council:

1. Receive and notes this report;
2. Support the extension of the Community Shuttle Bus service contract with Big Bus Company until 1 July 2024;
3. Support the implementation of a marketing campaign to maximise awareness of the shuttle bus service;
4. Provide a further report in early 2024 outlining use of, and awareness of the Shuttle Bus Service and recommendation for continuance.

REPORT

Background

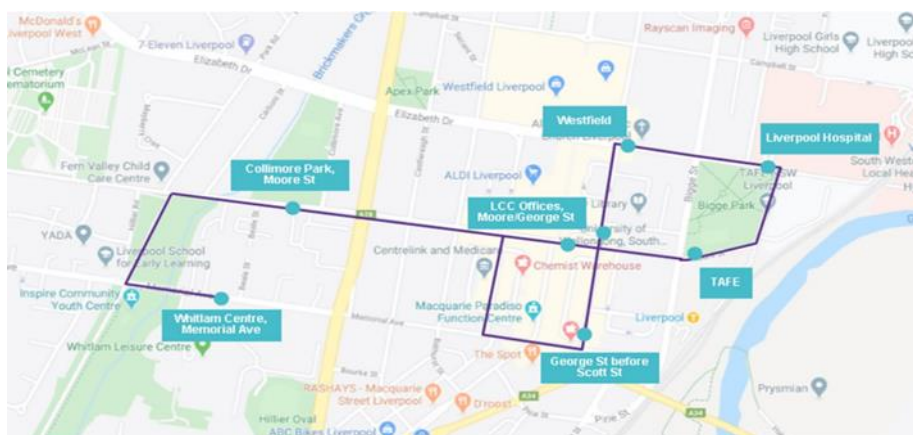
In 2010 Council established its shuttle bus services. While initially intended to support Council staff in the relocation of their workplace from Hoxton Park Rd to Moore Street, the service was expanded to provide public access.

Council outsources the delivery of this service to Big Bus Company. Broadly speaking, the shuttle bus service operates between Whitlam Leisure Centre and the Central CBD of Liverpool during peak commute times. The route of travel connects major commuter parking locations with workplace destinations within the CBD areas (refer below). Four (4) services are offered in the morning (between 7.30am and 9.00am) and between 3-4 services of the afternoon (between 4.00pm and 5.30pm) during weekdays. There are no services operating on weekends or public holidays.

The current bus service timetable and route are indicated below.

MORNING (DEPARTURE TIMES)				
Whitlam Centre, Memorial Ave	7:32	8:02	8:32	9:02
Collimore Park, Moore St	7:40	8:10	8:40	9:10
Liverpool City Council Offices, Moore St	7:44	8:14	8:44	9:14
TAFE, Corner of Bigge and Moore St	7:46	8:16	8:46	9:16
Liverpool Hospital, Elizabeth St	7:48	8:18	8:48	9:18
Westfield, Elizabeth St	7:50	8:20	8:50	9:20
Liverpool City Council Offices, George St	7:52	8:22	8:52	9:22
George St before Scott St (Bus Stop)	7:54	8:24	8:54	9:24
Whitlam Centre, Memorial Ave	8:00	8:30	9:00	9:30

AFTERNOON (DEPARTURE TIMES)				
TAFE, Corner of Bigge and Moore St	-	16:34	17:04	17:34
Liverpool Hospital, Elizabeth St	-	16:36	17:06	17:36
Westfield, Elizabeth St	-	16:38	17:08	17:38
Liverpool City Council Offices, George St	16:10	16:40	17:10	17:40
George St before Scott St (Bus Stop)	16:12	16:42	17:12	17:42
Collimore Park, Moore St	16:16	16:46	17:16	17:46
Whitlam Centre, Memorial Ave	16:18	16:48	17:18	17:48



Current Contract

Council entered the current contract with Big Bus Company in 2020 for an initial twelve (12) months with an additional 12-month option, expiring December 2022. The contract extension was awarded in 2022 to allow for broader community and staff consultation.

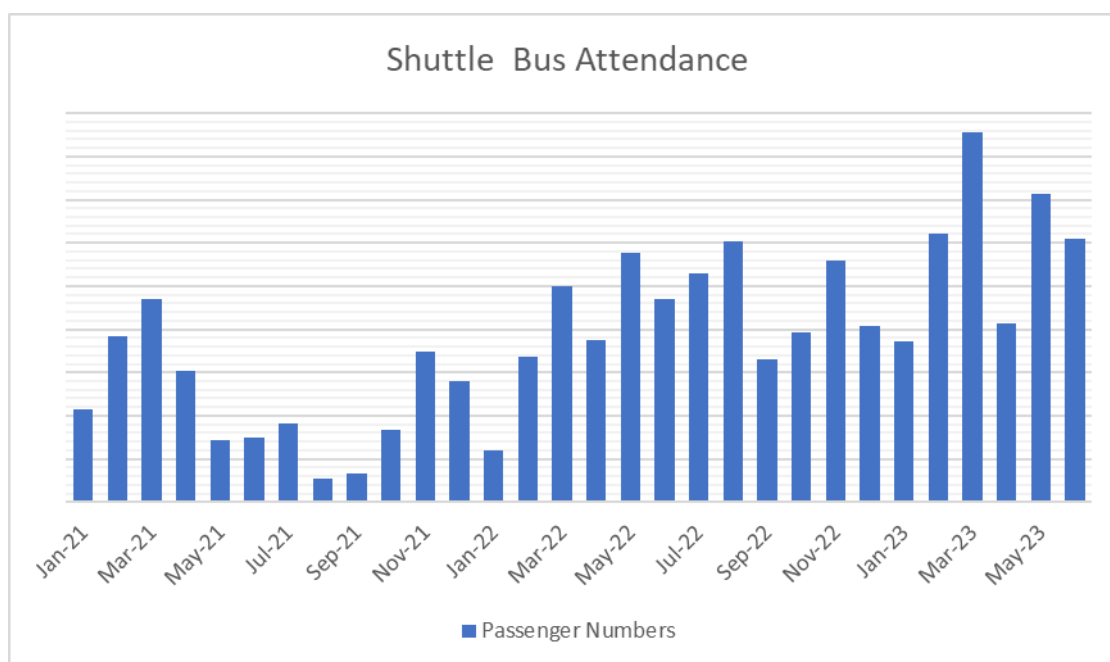
The contract with Big Bus company for shuttle bus services expires in December 2023. Council needs to commence the processes of assessing the value of the community bus services to allow for adequate lead-in time for execution of tendering processes if services are to be continued.

The costs to Council for these services is \$118,000 per year (paid bi-annually).

Usage and Demand

Passenger numbers are reported by the current operator each month. In undertaking an assessment of the uptake of the Shuttle Bus Services since January 2021:

- In the 12 months 2022-23, Big Bus Company have provided passenger reports indicating that 12,818 passengers utilised the service throughout 2022-23 financial year. This is a marked increase from the COVID affected period of 2021-22 that attracted 6,955 passengers.
- There are higher volumes of passenger trips throughout the morning bus timetable than the evening timetable.
- The current typical number of passenger trips is approximately 30 persons per day throughout the morning and 18 throughout the evening.
- The subsidy payable by Council regarding this service is approximately \$9.21 per trip.



In June 2023 Council canvassed internal staff and public opinion on awareness, usage and intended use of the Shuttle Bus Service. The Survey Monkey Survey was live throughout the Month of June and was published on Council's social media pages, as well as through the Council internal communications directly to staff.

Key findings from the survey results are indicated below:

- 113 responses to the survey were received and reflects a large enough sample size to conclude that the responses are a reasonable reflection of staff and commuters.

- 71% of respondents indicated that they were aware of the shuttle bus service. While this may indicate high levels of awareness of the survey, it may also indicate a bias in respondents to those that have a vested interest in the shuttle bus usage.
- 80% of respondents were aged between 25 and 54 years of age. Only 3% of users were over the age of 65 years. It is not possible to conclude that the responses reflect older residents.
- 75% of respondents identified as being female. This reflects the anecdotal data provided by Big Bus company that indicates greater usage by females than males.
- 7% of respondents identified as having a disability noting that a further 9% did not disclose.
- 80% used the Shuttle bus service to travel to/from work. This likely reflects the substantial bias in responses from Council staff.
- Of the responses received, 48% indicated that they had never used the service, however 38% indicated that they are frequent users of the service (either once per week or greater). Significantly, 23% indicated that every day (or almost every day) use.
- 42% had indicated that they last used the shuttle bus service within the 30 days prior to completing the survey; and
- 77% indicated an intention to continue to use the Shuttle Bus service.

Conclusion:

It is likely that uptake of the community shuttle bus service reflects some continued impact from COVID-19. The continuation of work from home arrangements (either in full or part), and a slow return in consumer confidence in public transport will likely have a long-term impact on demand for shuttle bus services.

While the number of passenger trips has increased substantially from the COVID period of 2021-22 to current (84%), the average cost to Council per passenger trip is approximately \$9.21 (estimated as being approximately \$15.73 per individual commuter).

However, it is anticipated, with the relocation of Council offices in Civic Place planned for January 2024, and the subsequent increase in distance and travel time from Collimore parking, it is likely that an impact on shuttle bus usage will result, the extent to which is not yet known. Based on survey data and noting that 77% of respondents indicated the intention to use the shuttle bus service in the future, annual passenger trips exceeding 20,000 could realistically be expected.

It is noted however, that there is significant capacity of the shuttle bus service to accommodate growth in passenger numbers that would be supported by both further investigation in defining current user and non-user demands, and from the execution of a deliberate plan to inflate awareness of the service.

FINANCIAL IMPLICATIONS

Costs associated with this recommendation have been included in Council's budget for the current year and long-term financial plan.

	2023/24	2024/25	2025/26
Operating budget / LTFP impact	\$118,000	\$124,000	\$131,000

Funding source S.7.11, grant funding, s.94, General cash reserve etc

CONSIDERATIONS

Economic	Further develop a commercial centre that accommodates a variety of employment opportunities. Deliver and maintain a range of transport related infrastructure such as footpaths, bus shelters and bikeways. Provide efficient parking for the City Centre.
Environment	Promote an integrated and user friendly public transport service. Support the delivery of a range of transport options.
Social	Support access and services for people with a disability.
Civic Leadership	There are no civic leadership and governance considerations.
Legislative	There are no legislative considerations relating to this report.
Risk	There is no risk associated with this report.

ATTACHMENTS

Nil

CORP 05**LGNSW Annual Conference and Board Election**

Strategic Objective	Leading through Collaboration Strive for best practice in all Council processes
File Ref	284932.2023
Report By	Jessica Saliba - Acting Manager Council & Executive Services
Approved By	Farooq Portelli - Director Corporate Support

EXECUTIVE SUMMARY

The Local Government NSW (LGNSW) Annual Conference will be held from Sunday 12 to Tuesday 14 November 2023 at Rosehill Gardens Racecourse.

The report provides information in relation to voting delegates which Liverpool City Council will be entitled to for voting at the Board Election and draft motions for Council to consider.

RECOMMENDATION

That Council:

1. Determines who would like to attend the LGNSW Conference at Rosehill Gardens Racecourse from Sunday 12 to Tuesday 14 November and to notify the Councillor Support Officer by 15 September 2023;
2. Determines its voting delegates for voting on motions at the conference, noting that Liverpool City Council is entitled to 10 voting delegates for voting on motions;
3. Determines its voting delegations for the LGNSW Board Election noting that Liverpool City Council is entitled to 10 voting delegates for voting on the Board Election; and
4. Determines the draft motions Councillors would like submitted to the Conference.

REPORT

The LGNSW Annual Conference will be held from Sunday 12 November to Tuesday 14 November 2023 at the Rosehill Gardens Racecourse.

The Conference is the main policy making event for the local government sector where issues are debated and motions put forward for consideration by delegates.

The deadline for motions to be submitted to the Conference is 15 September 2023.

This report deals with three components;

1. The Board Election;
2. LGNSW Annual Conference; and
3. Draft motions.

LGNSW Board Election

LGNSW have advised there is a Board Election this year.

The Returning Officer will provide further advice on the lodgment of nominations and procedure of the ballot in due course. We will circulate this information once we receive it.

Members are required to advise LGNSW of the names and postal addresses of their nominated voting delegates for the election by 27 October 2023.

Nominations close for the Board Election on 13 October 2023. Individual Councillors can nominate and this does not require a Council resolution.

Liverpool City Council is entitled to ten (10) voting delegates in the election and the names of the voting delegates are to be determined by Council resolution.

Attendees, voting delegates and motions for LGNSW Conference

The guide for submitting motions is attached to this report.

Member Councils must advise LGNSW of the names of their nominated voting delegates by 27 October. Liverpool City Council is entitled to ten (10) voting delegates.

The LGNSW Board has resolved that motions will be included in the Business Paper for the Conference only where they:

1. are consistent with the objects of LGNSW;

2. relate to or concern local government as a sector in NSW and/or across Australia;
3. seek to establish or change policy positions of LGNSW and/or improve governance of the Association (noting that the LGNSW Board is responsible for decisions around resourcing any campaigns or operational activities, and any necessary resource allocations will be subject to the LGNSW budgetary process);
4. have a lawful purpose (a motion does not have a lawful purpose if its implementation would require or encourage non-compliance with prevailing laws);
5. are clearly worded and unambiguous in nature; and
6. do not express preference for one or several members over one or several other members.

Draft Motions

It is recommended that Council submit the following motions on issues drawn from recent Council resolutions to be considered for inclusion in the Conference Business Paper;

i. Mental Health Services and Accessibility

MOTION

That LGNSW Government of Association resolve to:

1. Make representation to both Federal and State governments to work cooperatively and collaboratively as a matter of urgency to strengthen, improve and invest in accessible community-based mental and psychological health counselling and therapy that is sensitive to and meets the complex needs of our diverse community.
2. Make representation to the State and Federal government to urgently implement the findings of mental health services and accessibility report of University of Sydney, Western Sydney University and University of Wollongong to:
 - Fund the development of more community-based psychosocial, primary and community mental health services, as alternatives to hospital care.
 - Invest in boosting the role and capacity of NGOs and other services providers.

ii. Medicare Psychology Services

Background

Last December the Federal Government took the decision to slash access to psychology services for our community. This decision went directly against the recommendations of the extensive government-commissioned evaluation of Medicare psychology services, conducted

by the University of Melbourne. This, at a time when interest rates and the cost of living pressures are mounting, is an abandonment of our most vulnerable people.

Statistics illustrate that up to 40 percent of people aged 15-24 years report suffering from a mental health condition. The majority of access to Medicare funded psychology services has been provided to young people within the community, particularly young women. Extensive research indicates that 18-20 psychology sessions is required to assist with moderate mental health issues – a far cry from the 10 sessions the government has landed on.

MOTION

That LGNSW Government of Association write to the Federal Health Minister, the Hon Mark Butler MP, expressing its objection in the strongest terms to the slashing of Medicare funded psychology services, and immediately call for the reinstatement of 20 Medicare funded sessions;

We have also provided a list of topics for the Council to consider when preparing draft motions;

- Metro Liverpool to Bankstown Extension
- Climate Change
- Affordable Housing
- Aerotropolis
- Cost of Living
- Infrastructure in Liverpool LGA / Austral
- WestInvest Funding and Grants
- Transport and Tolls

FINANCIAL IMPLICATIONS

Costs are expected to be in the order of \$1,385 per delegate which includes early bird registration and a Conference dinner.

CONSIDERATIONS

Economic	Costs are expected to be in the order of \$1,385 per delegate which includes registration and a Conference dinner. Costs associated with the conference have been included in Council's 2023/24 budget.
Environment	Raise community awareness and support action in relation to environmental issues.

Social	Raise awareness in the community about the available services and facilities.
Civic Leadership	<p>Act as an environmental leader in the community.</p> <p>Provide information about Council's services, roles and decision making processes.</p> <p>Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.</p> <p>Actively advocate for federal and state government support, funding and services.</p>
Legislative	There are no legislative considerations relating to this report.
Risk	The risk is deemed to be low and is within Council's risk appetite.

ATTACHMENTS

Nil

CTTE 07

**Minutes of the Governance Committee meeting
held on 22 August 2023**

Strategic Objective	Visionary, Leading, Responsible Position Council as an industry leader that plans and delivers services for a growing city
File Ref	276009.2023
Report By	Jessica Saliba - Acting Manager Council & Executive Services
Approved By	Farooq Portelli - Director Corporate Support

EXECUTIVE SUMMARY

A Governance Committee Meeting was held on 22 August 2023.

This report attaches a copy of the minutes of the meeting for Council endorsement.

RECOMMENDATION

That Council:

1. Receives and notes the Minutes of the Governance Committee meeting held on 22 August 2023; and
2. Endorse the recommendations in the Minutes.

REPORT

The Minutes of the Governance Committee meeting held on 22 August 2023 are attached to this report.

The minutes contain the following actions or Committee recommendations:

Item No. 01 – Development Assessment**Action items:**

1. Planning and Compliance to undertake a reflection exercise to have a look at the exceedance to the Height of Buildings standard approved for DA-221/2021 related to 1 Harvey Avenue and 11 Dredge Avenue, Moorebank, and the impact of the exceedance.

Also put to the Panels this is a concern Council has expressed because of a strategic direction.

2. Planning and Compliance to arrange a briefing to the Regional Panel and Local Planning Panel on exceedances to the Height of Building standard.

Item No. 02 – Family Friendly Apartments – Liverpool DCP 2008 Amendment

That the Committee recommends that Council:

1. Note proposed draft amendments to the Liverpool Development Control Plan 2008, Part 4 Development in Liverpool City Centre and Part 3.7 Residential Flat Buildings in the R4 Zone, to encourage family friendly apartments.
2. Note further draft amendments will occur to align Part 3.7 Residential Flat Buildings in the R4 Zone with the Apartment Design Guide.
3. Present draft amendments to the Liverpool Design Excellence Panel, as required by Clause 15 of the *Environmental Planning and Assessment Regulation 2021*.
4. Receive a Council report detailing the proposed draft LDGP 2008 amendments, detailing the outcomes of the Design Excellence Panel.

The Committee further recommends the following actions to be included in the draft amendments:

- Objectives to allow developer to justify providing alternate dwelling mixes for unique and innovative developments.
- Investigate the existing dual-key apartment provisions to see if amendments to the 'maximum 10% dual key units' can be increased.
- Incentives or bonuses to further encourage family friendly apartment development.
- Exceptions to state government policies, for example, communal open space.

Item No. 04 – Comprehensive Heritage Study Report.

Action Items:

- i. The CEO requested a consolidated up to date list in an easier format as the current list has multiple tables. The list to also include SEPPs and their register.
- ii. Mayor Mannoun asked if Council staff could look into the history of our records to check if there were more studies done, as Mayor Mannoun recalls another study done with more than 20 properties that is not listed in the presentation.
- iii. Cllr Rhodes requested no consultation in November/December because of the Christmas period.
- iv. Senior Heritage Project Officer and Heritage Officer to bring back a further report on how they will do the consultation.

Item No. 08 – LGNSW Annual Conference and Board Election

That the Committee recommends that Council at its 30 August 2023 Council meeting:

1. Determines its voting delegates for voting on motions at the conference, noting that Liverpool City Council is entitled to 10 voting delegates for voting on motions;
2. Determines its voting delegations for the LGNSW Board Election noting that Liverpool City Council is entitled to 10 voting delegates for voting on the Board Election;
3. Determines the draft motions as outlined in the report to be submitted to the Local Government NSW 2023 Conference.

FINANCIAL IMPLICATIONS

None of the actions contained in the minutes will have a financial impact on Council.

CONSIDERATIONS

Economic	There are no economic and financial considerations.
Environment	There are no environmental and sustainability considerations.
Social	There are no social and cultural considerations.

Civic Leadership	<p>Provide information about Council's services, roles and decision making processes.</p> <p>Deliver services that are customer focused.</p> <p>Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.</p>
Legislative	<p>There are no legislative considerations relating to this report.</p>
Risk	<p>The risk is deemed to be low and is considered to be within Council's risk appetite.</p>

ATTACHMENTS

1. Minutes of the Governance Committee meeting held on 22 August 2023



MINUTES OF THE GOVERNANCE COMMITTEE MEETING HELD ON 22 AUGUST 2023

PRESENT:

Mayor Ned Mannoun (arrived at 10.13am)
 Cllr Hadid (arrived at 10.13am)
 Councillor Ammoun
 Councillor Goodman
 Councillor Green
 Councillor Hagarty (joined online at 1.59pm)
 Councillor Harle
 Councillor Kaliyana (joined online at 2.09pm)
 Councillor Macnaught
 Councillor Rhodes
 Hon John Ajaka, Chief Executive Officer
 Mr Farooq Portelli, Director Corporate Support
 Ms Tina Bono, Director Community & Lifestyle
 Ms Lina Kakish, Director Planning & Compliance
 Ms Michelle Mcilvenny, Director Customer and Business Performance
 Mr Shayne Mallard, Director City Futures
 Mr Jason Breton, Director Operations
 Ms Mimi Curran, Senior Policy Advisor
 Mr Luke Oste, Coordinator Strategic Planning
 Mr Charles Wiafe, Principal Transport Planner
 Ms Claire Scott, Coordinator, Contributions Planning
 Dr. Agata Calabrese, Senior Heritage Project Officer
 Mr Thomas Wheeler, Heritage Officer
 Mr Tim Gavan, Strategic Property Consultant
 Ms Karyn Worlledge, Manager Children's Services
 Mr Craig Lambeth, Manager Community Recreation
 Mr Earl Paradeza, Senior Management Accountant
 Ms Jessica Saliba, Acting Manager Council and Executive Services
 Ms Susan Ranieri, Coordinator Council and Executive Services (minutes)

Minutes of the Governance Committee Meeting held on Tuesday, 22 August 2023 and confirmed on Tuesday, 12 September 2023

.....
Chairperson

2**External Guests****Western Parkland City Authority**

Ms Anne Skewes, Acting Chief Executive Officer

Mr Peter Anderson Executive Director Development & Place

Mr Paul Hedge, Executive Director Delivery

The meeting commenced at 10.09am

ACKNOWLEDGEMENT OF COUNTRY

The CEO, as chairperson in the Mayor's absence, read the Acknowledgement of Country.

APOLOGIES

Clr Karnib.

DECLARATIONS OF INTEREST

During discussion Mayor Mannoun declared an interest in Item 02 - Family Friendly Apartments - Liverpool DCP 2008 Amendment.

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The CEO congratulated Shayne Mallard on his appointment as the new Director of City Futures and welcomed Mimi Curran as the Senior Policy Advisor to the CEO.

Mayor Mannoun and Deputy Mayor Hadid arrived at 10.13am.

Mayor Mannoun became the Chairperson

BRADFIELD MASTERPLAN BRIEFING

Ms Anne Skewes, Mr Peter Anderson and Mr Paul Hedge from Western Parkland City Authority (WPCA) presented the Bradfield City Centre Master Plan, which will commence public exhibition shortly. Following public exhibition the department will make a final decision on the master plan.

WPCA will take out of this meeting Liverpool's advocacy for South West Sydney to be connected.

RECESS

Mayor Mannoun called a recess at 10.49am.

RESUMPTION OF MEETING

The meeting resumed at 10.56am.

Clr Macnaught joined the meeting online at 11:00am.

INFRASTRUCTURE AND PLANNING COMMITTEE

ITEM NO: 01
FILE NO: 243345.2023
SUBJECT: Development Assessment

COMMITTEE DECISION

Motion: **Moved: Cllr Rhodes** **Seconded: Cllr Green**

That the Committee receives and notes the Development Assessment report.

On being put to the meeting the motion was declared CARRIED.

Action items:

1. Planning and Compliance to undertake a reflection exercise to have a look at the exceedance to the Height of Buildings standard approved for DA-221/2021 related to 1 Harvey Avenue and 11 Dredge Avenue, Moorebank, and the impact of the exceedance.

Also put to the Panels this is a concern Council has expressed because of a strategic direction.

2. Planning and Compliance to arrange a briefing to the Regional Panel and Local Planning Panel on exceedances to the Height of Building standard.

During discussion Mayor Mannoun declared an interest in this item as he has previously worked on a similar project.

Clr Hadid left at 11:20am and returned at 11:21am

ITEM NO: 02
FILE NO: 201090.2023
SUBJECT: Family Friendly Apartments - Liverpool DCP 2008 Amendment

COMMITTEE DECISION

Motion: **Moved: Clr Ammoun** **Seconded: Clr Rhodes**

That the Committee recommends that Council:

1. Note proposed draft amendments to the Liverpool Development Control Plan 2008, Part 4 Development in Liverpool City Centre and Part 3.7 Residential Flat Buildings in the R4 Zone, to encourage family friendly apartments.
2. Note further draft amendments will occur to align Part 3.7 Residential Flat Buildings in the R4 Zone with the Apartment Design Guide.
3. Present draft amendments to the Liverpool Design Excellence Panel, as required by Clause 15 of the *Environmental Planning and Assessment Regulation 2021*.
4. Receive a Council report detailing the proposed draft LDCP 2008 amendments, detailing the outcomes of the Design Excellence Panel.

The Committee further recommends the following actions to be included in the draft amendments:

- Objectives to allow developer to justify providing alternate dwelling mixes for unique and innovative developments
- Investigate the existing dual-key apartment provisions to see if amendments to the 'maximum 10% dual key units' can be increased.
- Incentives or bonuses to further encourage family friendly apartment development.
- Exceptions to state government policies, for example, communal open space.

On being put to the meeting the motion was declared CARRIED.

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ITEM NO: 03
FILE NO: 204708.2023
SUBJECT: Transfer/Dedication to Council as Public Road - various lots along The Northern Road in Luddenham and Bringelly

COMMITTEE DECISION

Motion: **Moved: Cllr Harle** **Seconded: Cllr Hadid**

That the Committee recommends that Council note the information in the report.

On being put to the meeting the motion was declared CARRIED.

Clr Macnaught left the meeting during discussion.

CEO left at 11.43am and returned at 11.46am

ITEM NO: 04
FILE NO: 203972.2023
SUBJECT: Comprehensive Heritage Study Report

COMMITTEE DECISION

Motion: **Moved: Clr Rhodes** **Seconded: Clr Green**

That the Committee recommends Council receives and notes this report (and attachments) in relation to undertaking the Liverpool Comprehensive Heritage Study.

On being put to the meeting the motion was declared CARRIED.

Action Items:

- i. The CEO requested a consolidated up to date list in an easier format as the current list has multiple tables. The list to also include SEPPs and their register.
- ii. Mayor Mannoun asked if Council staff could look into the history of our records to check if there were more studies done, as Mayor Mannoun recalls another study done with more than 20 properties that is not listed in the presentation.
- iii. Cllr Rhodes requested no consultation in November/December because of the Christmas period.
- iv. Senior Heritage Project Officer and Heritage Officer to bring back a further report on how they will do the consultation.

RECESS

The Mayor called a recess of the meeting at 12.03pm

RESUMPTION OF MEETING

The Governance Committee meeting resumed at 12.51pm with Mayor Mannoun, Cllr Ammoun, Cllr Goodman, Cllr Green, Cllr Harle, Cllr Macnaught (online) and Cllr Rhodes present.

Deputy Mayor Hadid arrived at 12.54pm.

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Clr Hadid and Clr Ammoun left the meeting at 12.54pm and returned at 1.04pm.

Mayor Mannoun left the meeting at 12.55pm and Clr Hadid, as the Deputy Mayor, became the Chair.

ITEM NO: 05

FILE NO: 253856.2023

SUBJECT: Voluntary Planning Agreement - Monthly Update

COMMITTEE DECISION

Motion:

Moved: Clr Hadid

Seconded: Clr Harle

That the Committee recommends that Council receive and notes this report.

On being put to the meeting the motion was declared CARRIED.

Motion: **Motion: Clr Hadid** **Seconded: Clr Harle**

That the Committee recommends that Council receives and notes this report.

On being put to the meeting the motion was declared CARRIED.

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BUDGET COMMITTEE**ITEM NO:** 07**FILE NO:** 247877.2023**SUBJECT:** Review of Council's Financial progress, forecasts and assumptions**COMMITTEE DECISION****Motion:****Moved: Cllr Harle****Seconded: Cllr Hadid**

That the Governance Committee receives and notes the report.

On being put to the meeting the motion was declared CARRIED.

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STRATEGIC PERFORMANCE COMMITTEE**ITEM NO:** 08**FILE NO:** 258045.2023**SUBJECT:** LGNSW Annual Conference and Board Election**COMMITTEE DECISION****Motion:****Moved Cllr Hadid****Seconded: Cllr Green**

That the Committee recommends that Council at its 30 August 2023 Council meeting:

1. Determines its voting delegates for voting on motions at the conference, noting that Liverpool City Council is entitled to 10 voting delegates for voting on motions;
2. Determines its voting delegations for the LGNSW Board Election noting that Liverpool City Council is entitled to 10 voting delegates for voting on the Board Election;
3. Determines the draft motions as outlined in the report to be submitted to the Local Government NSW 2023 Conference.

On being put to the meeting the motion was declared CARRIED.

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Mayor Mannoun returned to the meeting at 1.06pm and resumed as Chairperson.

ITEM NO: 09
FILE NO: 258045.2023
SUBJECT: Civic Place – Presentation only

Motion: Moved Cllr Rhodes **Seconded: Cllr Harle**

That the Committee notes the presentation.

On being put to the meeting the motion was declared CARRIED,

Deputy Mayor Hadid and Cllr Ammoun left at 1.21pm and returned at 1.26pm.

Cllr Ammoun left at 1.28pm and returned at 1.30pm.

MOTION TO MOVE INTO CONFIDENTIAL SESSION

Motion: Moved: Mayor Mannoun **Seconded: Cllr Ammoun**

That the Committee move into Confidential Session pursuant to s10A(2)(c) of the Local Government Act 1993 *because this item contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.*

On being put to the meeting the motion was declared CARRIED.

Cllr Ammoun left at 1.51pm and returned at 1.54pm
Cllr Macnaught arrived at the meeting in person at 1.57pm
Cllr Hagarty joined the meeting online at 1.59pm
Cllr Kaliyanda joined online at 2.09pm.

MOTION TO MOVE INTO OPEN SESSION

Motion: Moved: Mayor Mannoun **Seconded: Cllr Harle**

That this meeting move into Open Session.

On being put to the meeting the motion was declared CARRIED.

The meeting moved into Open Session at 2.10pm. General business was discussed.

The CEO and Cllr Ammoun left the meeting at 2.14pm and returned at 2.16pm.

Cllr Hagarty retired from the Governance Committee meeting at 2.25pm.

THE MEETING CLOSED AT 2.35pm.