

# Middleton Grange Town Centre Planning Proposal:

## Response to Elton Review of SIA



**21 October 2019**

**This report has been prepared for  
Pacific Planning Pty Ltd**

by

 **JUDITH STUBBS**  
& ASSOCIATES

The Old Post Office  
231 Princes Hwy, Bulli NSW 2516

Ph: 02 4283 7300  
[info@judithstubbs.com.au](mailto:info@judithstubbs.com.au)  
[www.judithstubbs.com.au](http://www.judithstubbs.com.au)

This Report has been prepared by:

Judith Stubbs BSW PhD MPIA

John Storer BE (Civil), Grad Dip (Econ)

#### Disclaimer

© Judith Stubbs & Associates

All Rights Reserved. No part of this document may be reproduced, transmitted, stored in a retrieval system, or translated into any language in any form by any means without the written permission of Judith Stubbs & Associates.

#### Intellectual Property Rights

All Rights Reserved. All methods, processes, commercial proposals and other contents described in this document are the confidential intellectual property of Judith Stubbs & Associates and may not be used or disclosed to any party without the written permission of Judith Stubbs & Associates.

# Table of Contents

<b>1</b>	<b>Background .....</b>	<b>1</b>
<b>2</b>	<b>Supplementary Information .....</b>	<b>3</b>
2.1	Introduction .....	3
2.2	Outline of methodology .....	3
2.3	The Locality .....	4
2.4	Crime and Crime Context .....	5
2.4.1	Background.....	5
2.4.2	Recommendations.....	6
2.4.3	The Crime Context.....	6
	Assault Domestic .....	9
	Assault Non-Domestic.....	10
	Robbery .....	11
	Theft - Break and Enter Dwelling.....	12
	Theft - Break and Enter Non Dwelling .....	13
	Theft – Motor Vehicle theft .....	14
	Theft – Steal from Motor Vehicle.....	15
	Theft – Steal from Dwelling.....	16
	Theft – Steal from Person.....	17
	Malicious Damage to Property .....	18
2.5	Impact on surrounding local businesses.....	19
<b>3</b>	<b>Review of the SIA.....</b>	<b>22</b>
<b>4</b>	<b>Review by Elton Consulting.....</b>	<b>23</b>
4.1	Scope of Review .....	23
4.2	Qualifications of Reviewers .....	23
4.3	The Elton Review .....	25
4.3.1	Background.....	25
4.3.2	Comments on ‘depth’.....	25
4.3.3	Comments on Methodology .....	28
4.3.4	Comments on Social Impacts.....	30
4.3.5	Comments on Community Consultation.....	36
4.3.6	Comments on Conclusion .....	38
4.3.7	S94 Contributions Scheme.....	38
4.3.8	Conclusions of the Assessment.....	38

## Figures

Figure 3-1: Incidents of Assault (Domestic assault) from July 2018 to June 2019, Middleton Grange suburb boundary identified	9
Figure 3-2: Incidents of Assault (Non-domestic assault) from July 2018 to June 2019, Middleton Grange suburb boundary identified,	10
Figure 3-3: Incidents of Robbery from July 2018 to June 2019, Middleton Grange suburb boundary identified	11
Figure 3-4: Incidents of Theft (Break & enter dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified	12

Figure 3-5: Incidents of Theft (Break & enter non dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified	13
Figure 3-6: Incidents of Theft (Motor vehicle theft) from July 2018 to June 2019, Middleton Grange suburb boundary identified	14
Figure 3-7: Incidents of Theft (Steal from motor vehicle) from July 2018 to June 2019, Middleton Grange suburb boundary identified	15
Figure 3-8: Incidents of Theft (Steal from dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified	16
Figure 3-9: Incidents of Theft (Steal from person) from July 2018 to June 2019, Middleton Grange suburb boundary identified	17
Figure 3-10: Incidents of Malicious Damage to Property from July 2018 to June 2019, Middleton Grange suburb boundary identified	18
Figure 10.7: Persons Commuting into HP-HP SA2 by Sub-Region (SA3) of Usual Residence (Proportion of In-Commuters)	20

## Tables

Table 3-1 BOCSAR NSW – Middleton Grange suburb Crime Rates – Year to June 2019	7
--	---

# 1 Background

In 2016, Judith Stubbs and Associates (JSA) prepared *Social Impact Assessment: Proposed Planning Changes to Middleton Grange Town Centre* (“the SIA”)<sup>1</sup> on behalf of Manta Group to accompany a proposal to vary planning controls for Middleton Grange Town Centre.

The proposal was publicly exhibited in late 2018, and Liverpool City Council withdrew support for the proposal on 12 December 2018. Subsequently the proposal has been revised and a further submission is to be made to Council by the applicant.

As part of that further submission, Judith Stubbs and Associates has been asked by Pacific Planning Pty Ltd to respond to a review of the SIA undertaken by Elton Consulting on behalf of Charter Hall.<sup>2</sup> Charter Hall (via two investment funds) is the owner and operator of Carnes Hill Market Place. The development of Middleton Grange Town Centre is understood to provide competition to Carnes Hill Market Place once retail services are in operation.

This report provides the following:

- Supplementary information in response to substantive matters identified by Elton Consulting in their review of the SIA (Section 2 below);
- A review of the findings and recommendations of the SIA with regard to recent changes to the proposal (Section 3 below); and
- A detailed review and response to the Review undertaken by Elton Consulting (Section 4 below).

In summary, the following is noted.

The **supplementary information** provided in Section 2 below sets out more explicitly the methodology of the SIA, the locality for the purpose of assessment, a review of the crime environment and additional recommendations, and a discussion of relevant policy and case law with regard to consideration of impacts on surrounding businesses. There is nothing in this aspect of our response that calls into question the findings of JSA’s SIA.

The review of the **recent changes to the proposal** likewise do not affect the findings or the recommendations of the SIA, although they are likely to result in a decrease in the quantum of social benefits associated with the supply of apartments and employment in the locality, and would likely reduce adverse amenity impacts related to character, density, traffic, parking and the like. The quantum of s94 contributions would also decrease.

Finally, a **detailed response to Elton’s review of our SIA** has been set out at Section 4 below. We find nothing in this review to challenge our original findings and recommendations. A range of problems are evident in the Elton review including their understanding and application of

---

<sup>1</sup> Judith Stubbs and Associates (2016) *Social Impact Assessment: Proposed Planning Changes to Middleton Grange Town Centre*

<sup>2</sup> Elton Consulting (2018) *Social Impact Assessment: Proposed Planning Changes to Middle [sic] Grange Town Centre Submission Peer Review*

frameworks for the assessment of social impacts; their misunderstanding and apparent misrepresentation of the methodology, assumptions and findings of the SIA; the fact that they have undertaken no review of the substantive findings of the literature, data and analysis that we provided in the SIA; and that the opinions they express are not supported by appropriate literature or data analysis.

Unfortunately, it is evident that the reviewers lack the experience or qualifications to understand 'what matters' with regard to the framework for assessment or the analysis required. Again, there is nothing in their review that leads us to revised our overall findings and recommendations.

## 2 Supplementary Information

### 2.1 Introduction

In 2016, Judith Stubbs and Associates (JSA) prepared the *Social Impact Assessment: Proposed Planning Changes to Middleton Grange Town Centre* (the SIA) on behalf of Manta Group to accompany a proposal to vary planning controls for Middleton Grange Town Centre.

Following a review of the SIA, four areas have been identified where supplementary information is required in response to issues raised by Elton consulting.

These are:

- An outline of methodology;
- A clear statement of the locality with respect to section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*;
- Crime and crime context; and
- Impacts on surrounding local businesses from competition with Middleton Grange town centre.

### 2.2 Outline of methodology

The SIA did not contain an outline of the methodology used to conduct a Comprehensive Social Impact Assessment as required by Section 9.1 of Council's *Social Impact Assessment Policy*.

An outline of the methodology used in the SIA is set out below. The methodology used was as follows:

#### **1. Understand the project and its strategic and socio-economic context**

- The proposal is described in Section 3
- Set out the locality with regard to section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (omitted and described below)
- The strategic context of the proposal is described in Section 4 of the SIA
- The Socio-economic context of the proposal is described in Section 5 of the SIA

#### **2. Undertake consultation**

Consultation with the local community and key stakeholders was undertaken to understand current impacts in the locality and to obtain input regarding potential positive and adverse impacts of the proposed development. Consultation with stakeholders and nearby residents is described in Section 8 of the SIA.

For the survey of residents, a stratified cluster sample was undertaken of nearby residents most likely to be impacted by the proposed development. A sampling target of 57 responses was set so that the 95% confidence interval for a variable measured at 50% prevalence would be +/- 10%. Cluster sampling requires intensive sampling of a smaller cluster to avoid sampling biases such as interviewing only those at home in the daytime. Sampling was carried out on the weekend to increase the probability of sampling workers.

### **3. Scope out potential social impacts**

The scoping of potential social impacts is set out in Section 9 of the SIA based on consultation with Liverpool Council officers and other stakeholders; the survey of residents; the Social Impact Comment Initial Assessment Form; and professional expertise of Dr Judith Stubbs of Judith Stubbs and Associates.

### **4. Consider significant potential social impacts**

A prediction of the demography of the proposed development is set out in Section 6 of the SIA.

A Social Comment Initial Assessment Form was completed as required by Council's *Social Impact Assessment Policy*. This is set out in Section 7 of the SIA using Council's pro-forma.

Significant potential social impacts are considered in Sections 10, 11, 12, 13 and 14 of the SIA.

Demand for social services and infrastructure as a result of the development is considered in Section 15 of the SIA.

### **5. Set out the likely benefits of the proposal and the potential adverse impacts**

The executive summary sets out the likely benefits of the proposal and potential adverse impacts.

### **6. Identify mitigations and opportunities**

Section 1 of the SIA sets out an assessment of additional s94<sup>3</sup> contributions and opportunities to address service, facility and open space shortfalls in Middleton Grange.

Section 2 of the SIA sets out recommendations to mitigate existing adverse impacts in the locality and potential adverse impacts arising from the proposed development; and to enhance likely benefits of the proposal.

## **2.3 The Locality**

Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* requires consideration of the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

"Locality" is a contextual term, in the sense that its specific meaning depends on the context of its usage.<sup>4</sup> The term has been interpreted in the planning sense generally to mean the extent of the

---

<sup>3</sup> s94 of the Environmental Planning and Assessment Act is now Section 7.11, however the nomenclature used in the SIA has been maintained.

area likely to be impacted upon by the proposed development.<sup>5</sup> In *Milne v Minister for Planning & Anor* [No. 2] [2007] NSWLEC 66 (concerning social impacts), Jagot J observed that “the nature of the development and its impacts will influence the scope of the locality to be considered”.<sup>6</sup> In *Randall Pty Ltd v Willoughby City Council* [2005] NSWCA 205 (concerning economic impacts), the NSW Court of Appeal noted that “the concepts of “economic impact” and “locality” will interact”, and that,

Subject to identifiable outer limits of connotation, [section 4.15(1)(b)] should be construed as leaving to the consent authority, or the Commissioner on appeal, the identification of what constitutes a relevant impact in a particular case and what constitutes the appropriate locality within which to consider the impact.<sup>7</sup>

The primary locality was taken as Middleton Grange Suburb for the purposes of the SIA. This is the locality where the majority of the impacts of the development will be experienced, including increases in population, increase in dwelling numbers, impacts on transport and connectivity, increased demand for community and recreation services and facilities, the demands of specific population groups, impacts on health and wellbeing, impacts on crime and safety, amenity impacts and the impact of increased services and facilities.

The secondary locality was taken to be a wider region, using variously West Hoxton – Middleton Grange SA2 or Liverpool LGA as a proxy depending on the availability of data. This is the locality where impacts of the development such as increase in population, increase in dwelling numbers, impacts on transport and connectivity and increased demand for regional community and recreation services and facilities will be experienced. Due to the small proportional increase in population as a result of the proposal (between 0.5% and 0.8%) and in view of expected population growth in Liverpool of around 2.7% each year according to DPE 2014 populational projections, impacts in the secondary locality will be marginal. Other impacts experienced in this locality include local economy and employment opportunities and urban sustainability including commuting.

The wider locality is taken to be Greater Sydney, where impacts such as increased supply of housing and lower cost housing will be experienced.

## 2.4 Crime and Crime Context

### 2.4.1 Background

Elton Consulting raised concerns with respect to crime and safety. The Crime and Safety Context was considered in the SIA, but conclusions were not elevated to the Executive summary

---

<sup>4</sup> *Australian Municipal, Administrative, Clerical and Services Union v The Treasurer of the Commonwealth of Australia & Ors* [1998] 249 FCA.

<sup>5</sup> *Prestige Wholesale P/L v City of Burnside* [2005] SAERDC 12.

<sup>6</sup> at [24].

<sup>7</sup> *Randall Pty Ltd v Willoughby City Council* [2005] NSWCA 205 at par [42] per Basten JA (Giles & Santow JJA agreeing).

or included in the recommendations. We note that the proposed development is located within a low crime environment, as discussed below. Nonetheless, a development of this nature opens up opportunities for increased crime, particularly related to the public domain. As such, we have added a recommendation related to CPTED principles.

## 2.4.2 Recommendations

The following additional recommendations should be considered:

### Recommendation 21

CPTED principles need to be applied to the design of public spaces including the plaza, streets and sidewalks, bus interchange area, parklands and drainage areas. Particular care needs to be given to the drainage areas to the east and west. Council needs to ensure that regular maintenance of the public domain occurs.

### Rationale

CPTED principles are stated to lead to crime minimisation. Based on a review of crime maps for Greater Sydney, town centres are often hot spots for various crimes such as assault and malicious damage.

## 2.4.3 The Crime Context

We have further considered the crime context of the proposal. The table below shows crime statistics for Middleton Grange suburb compared to NSW. It can be seen that, with the exception of 'Theft - Steal from Motor Car', levels of crime in Middleton Grange are lower than averages for NSW, and in some cases much lower.

Table 2-1 BOCSAR NSW – Middleton Grange suburb Crime Rates – Year to June 2019

<b>Crime</b>	<b>Area</b>	<b>Incidents</b>	<b>Rate (per 100,000 population)</b>
Assault – Non Domestic	Middleton Grange	3	52.8
	NSW	31,614	402.1
Assault - Domestic	Middleton Grange	15	264.10
	NSW	30,434	387.1
Malicious Damage	Middleton Grange	15	264.1
	NSW	57,564	732.2
Motor vehicle theft	Middleton Grange	6	105.6
	NSW	13,244	168.5
Theft from motor vehicle	Middleton Grange	29	510.60
	NSW	38,063	484.2
Break and enter non dwelling	Middleton Grange	3	52.8
	NSW	9991	127.1
Break & enter dwelling	Middleton Grange	5	88.0
	NSW	25,508	324.5
Steal from person	Middleton Grange	0	0
	NSW	3892	49.5
Robbery	Middleton Grange	1	17.6
	NSW	2556	32.5
Theft steal from dwelling	Middleton Grange	4	70.4
	NSW	18788	239.0

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

The figures below show crime hotspots for Middleton Grange Suburb (shown by a star) and for Carnes Hill Market Place (shown by a cross), taken as a proxy for a commercial and retail development in the locality.

It can be seen that the immediate locality of the proposed development is in a low crime environment, with the site outside any crime hotspots.

Carnes Hill Market Place is within a hotspot for ‘Theft – Break and Enter Non-Dwelling’, ‘Theft – Motor Vehicle Theft’ and ‘Theft – Steal from Motor Vehicle’. Similar impacts would be expected to be associated with the proposed town centre.

With regard to the residential component of the development, we were not able to identify a suitable proxy, and there is nothing in the predicted profile of residents to suggest a greater propensity towards crime than the existing residents of Middleton Grange.

## Assault Domestic

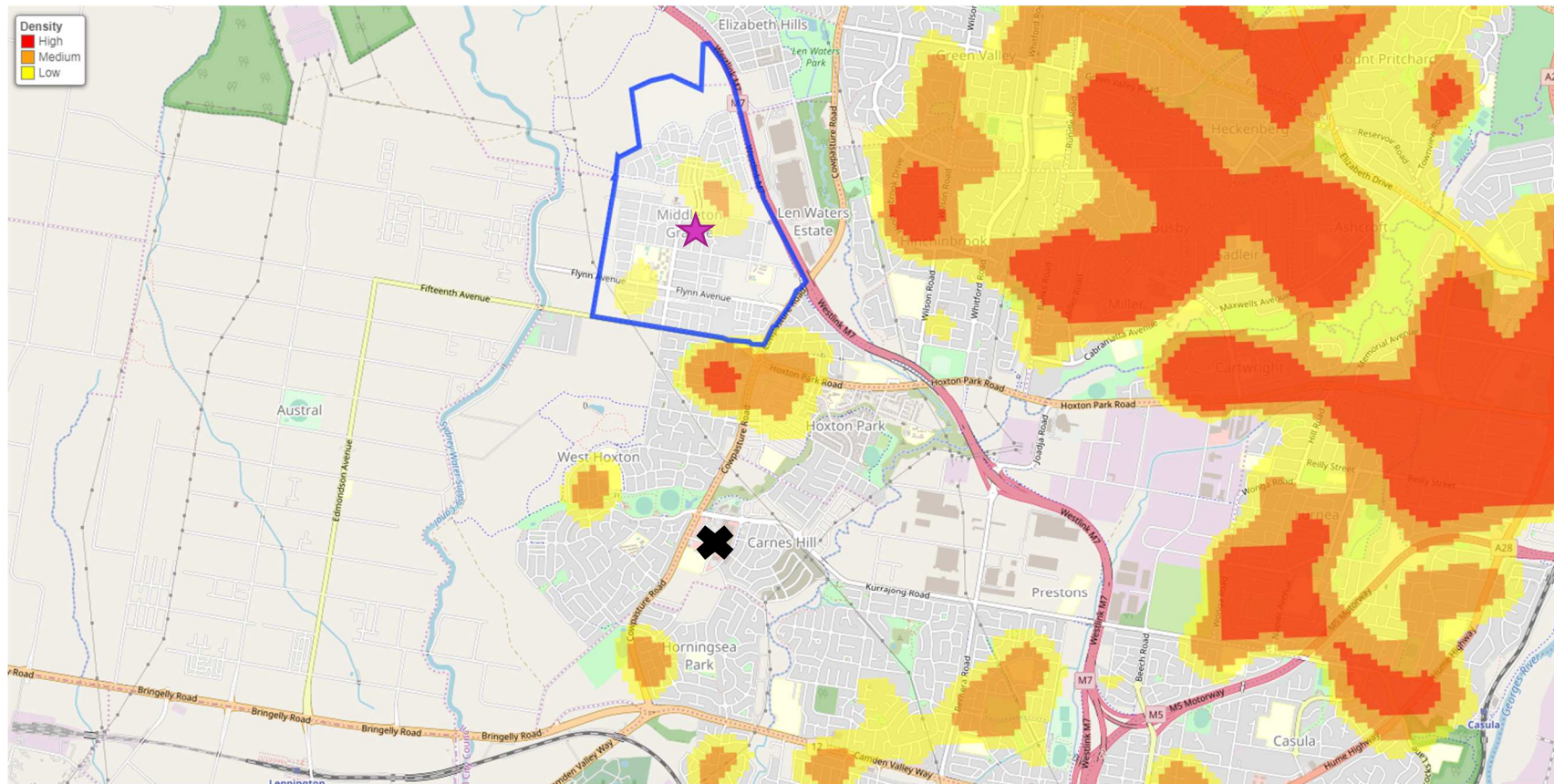


Figure 2-1: Incidents of Assault (Domestic assault) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Assault Non-Domestic

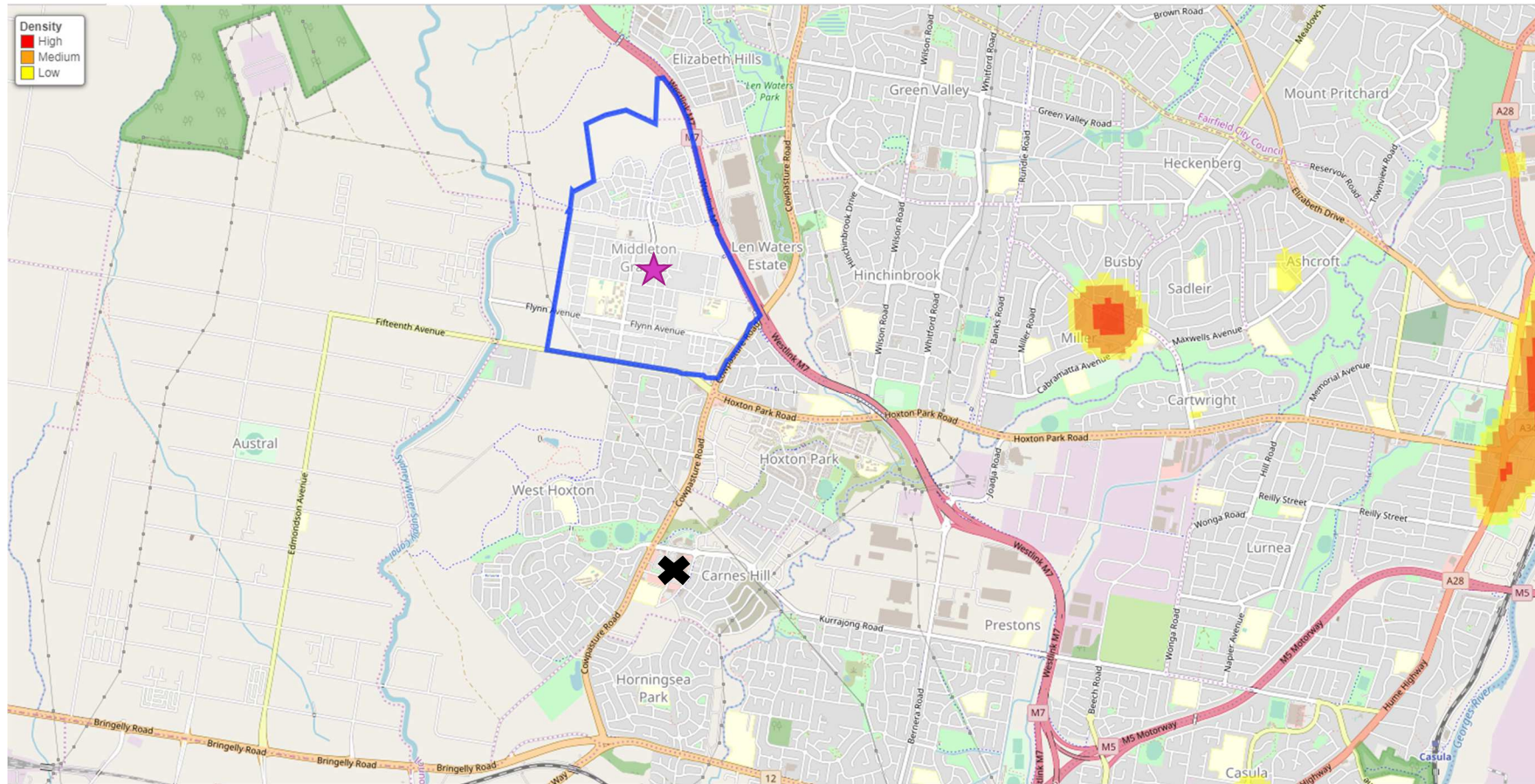


Figure 2-2: Incidents of Assault (Non-domestic assault) from July 2018 to June 2019, Middleton Grange suburb boundary identified,

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Robbery

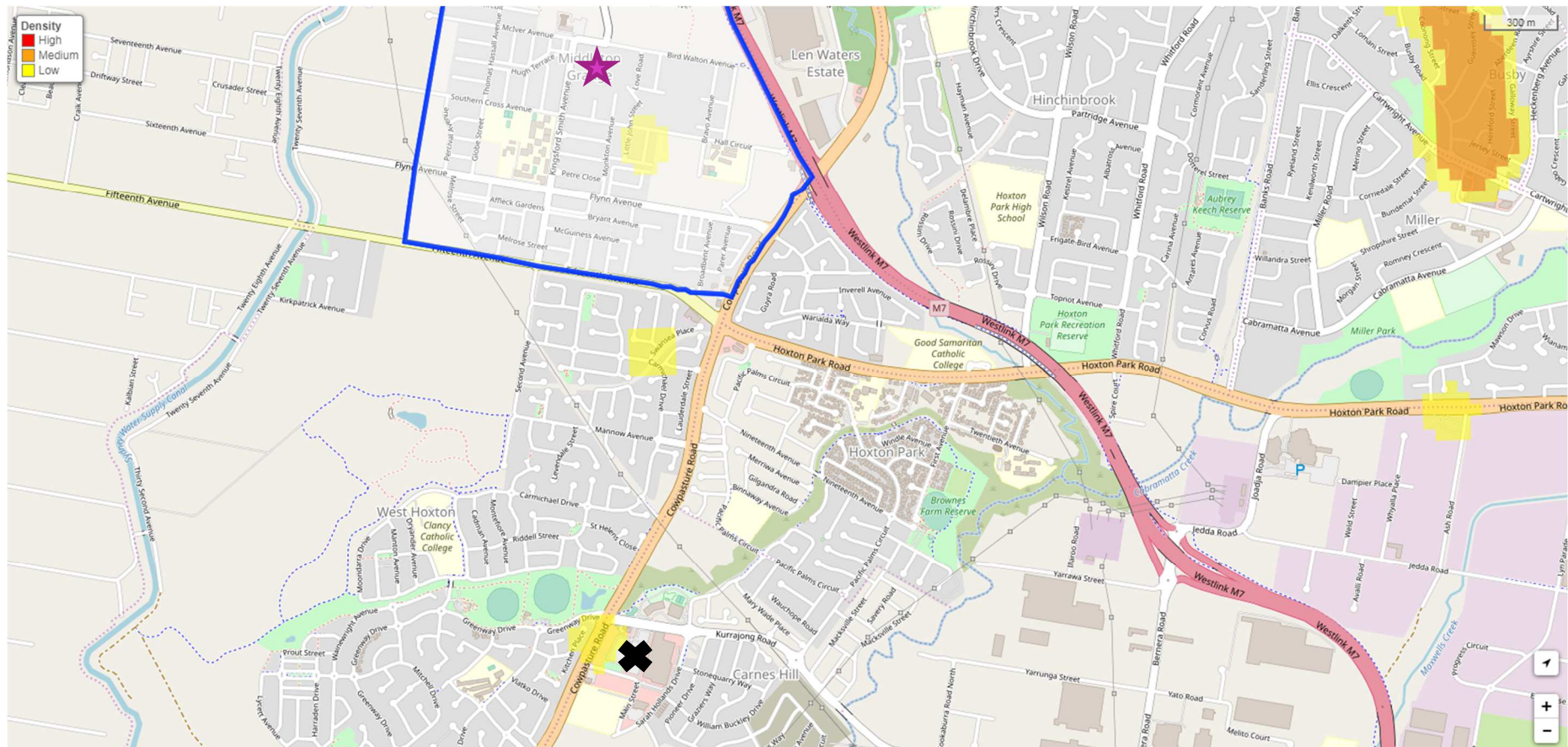


Figure 2-3: Incidents of Robbery from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft - Break and Enter Dwelling

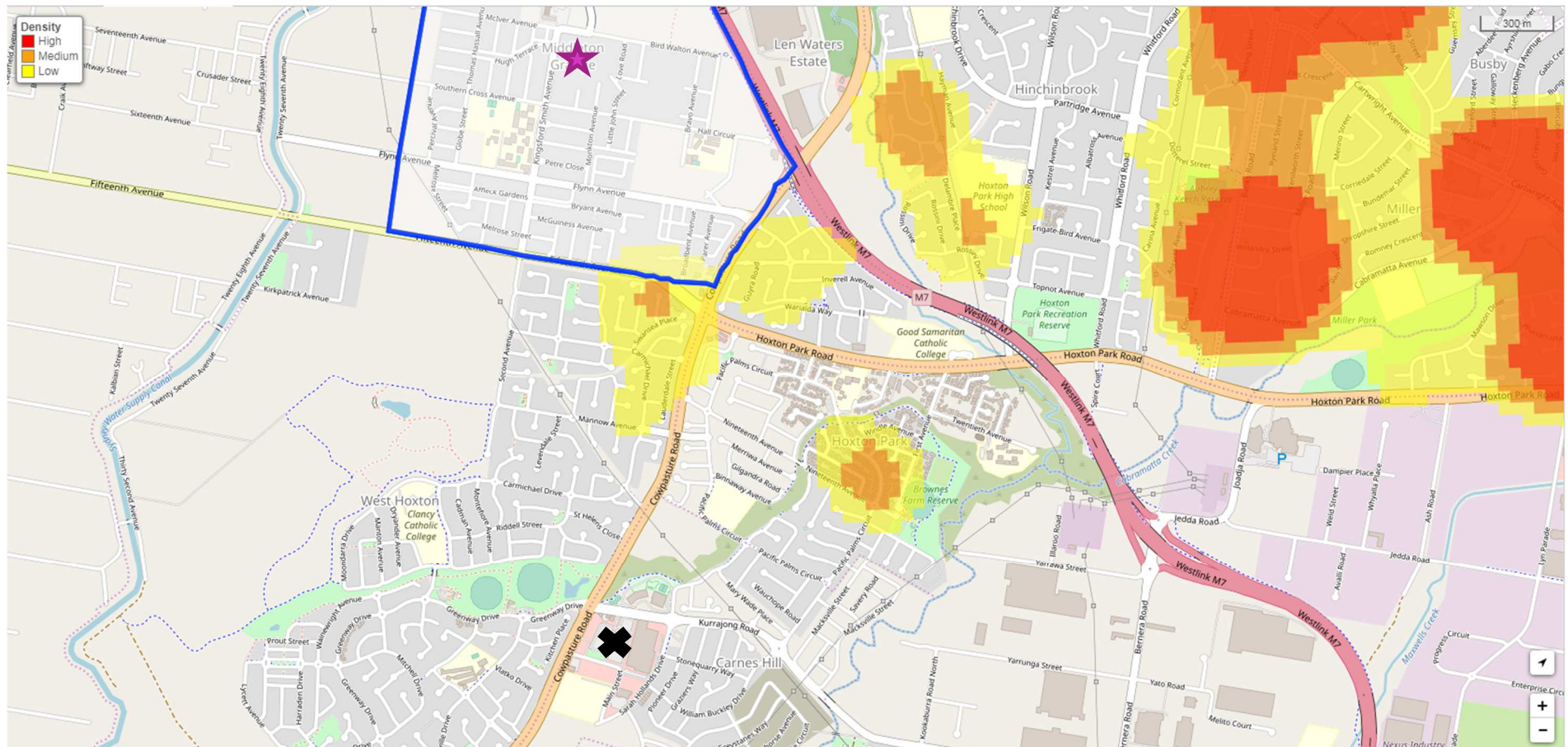


Figure 2-4: Incidents of Theft (Break & enter dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft - Break and Enter Non Dwelling

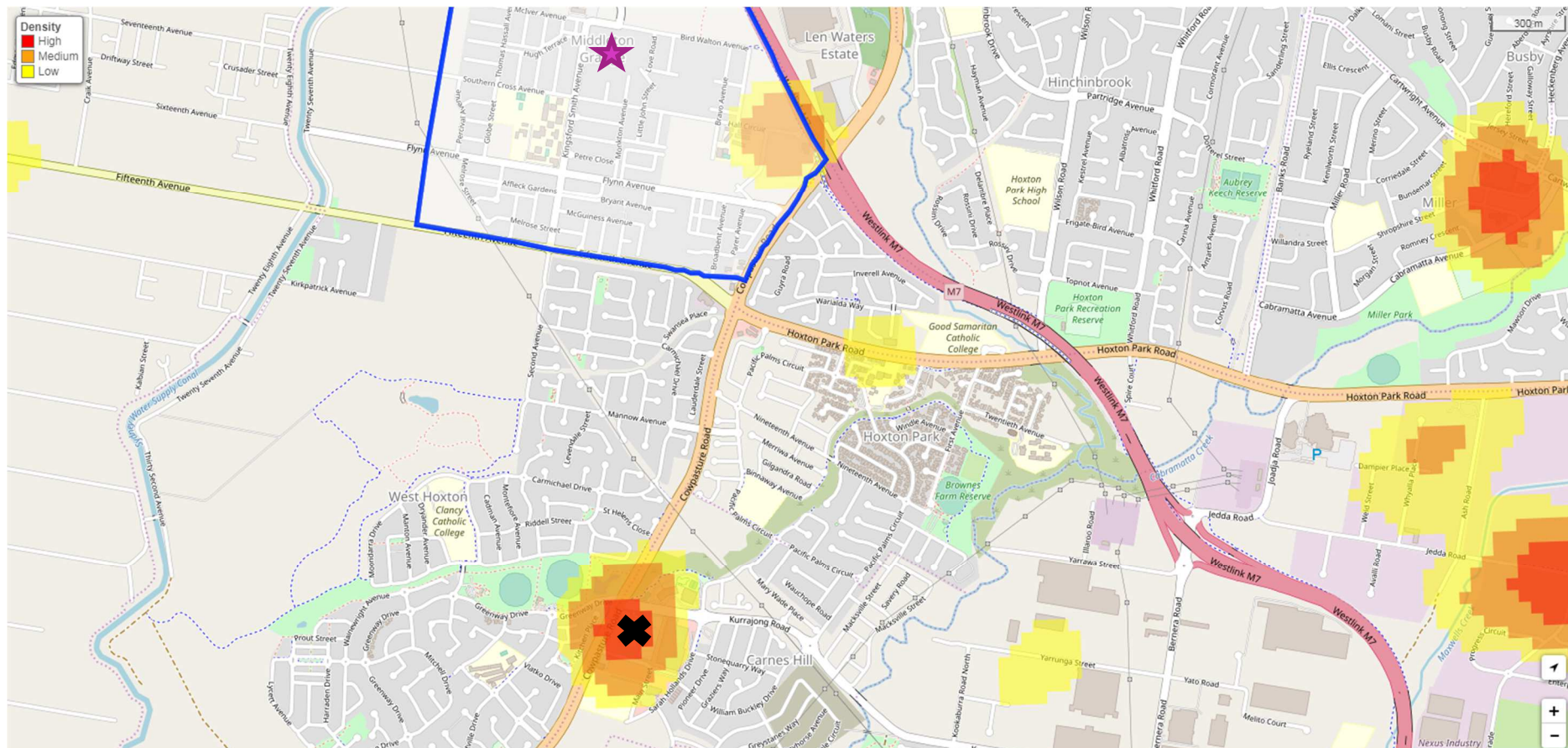


Figure 2-5: Incidents of Theft (Break & enter non dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft – Motor Vehicle theft

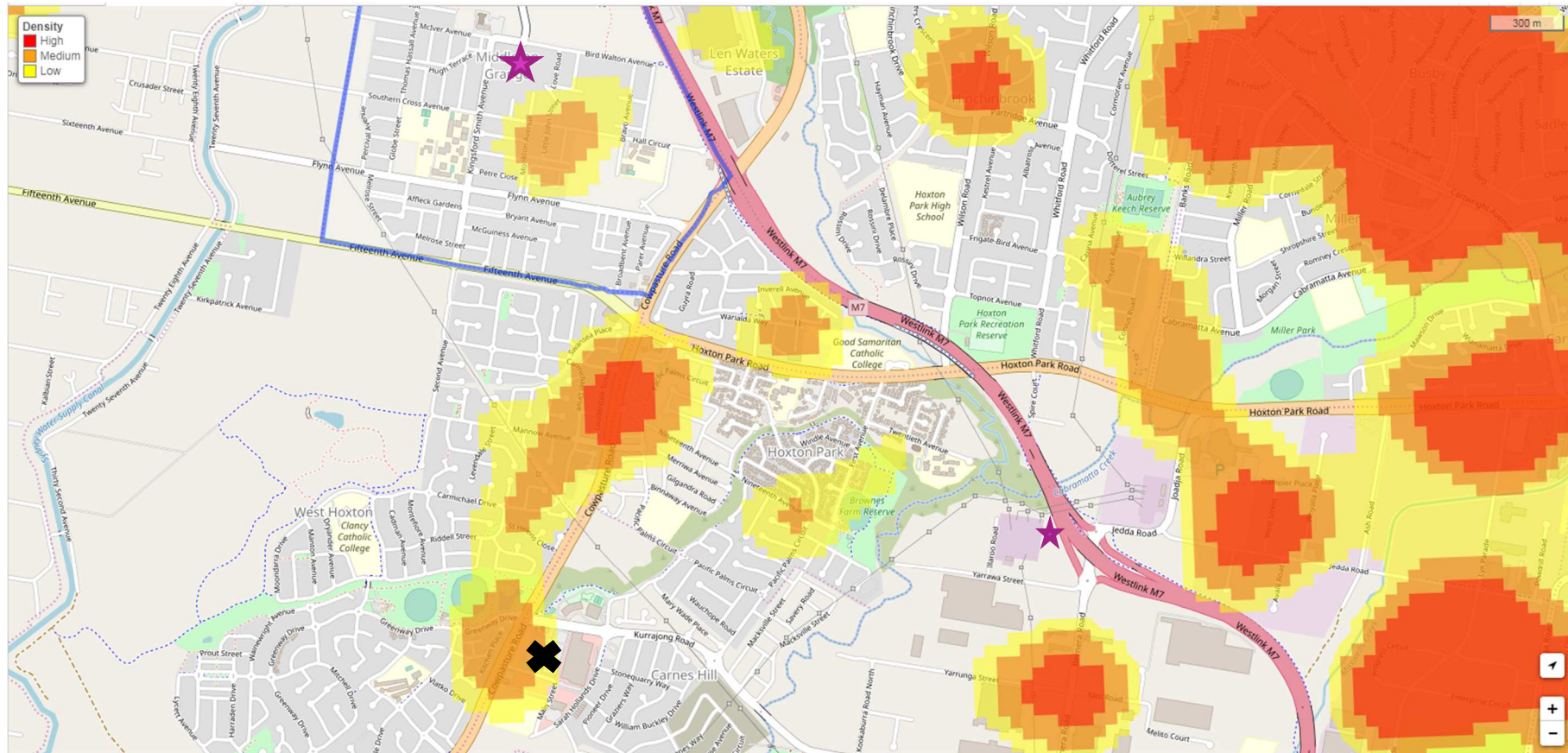


Figure 2-6: Incidents of Theft (Motor vehicle theft) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft – Steal from Motor Vehicle

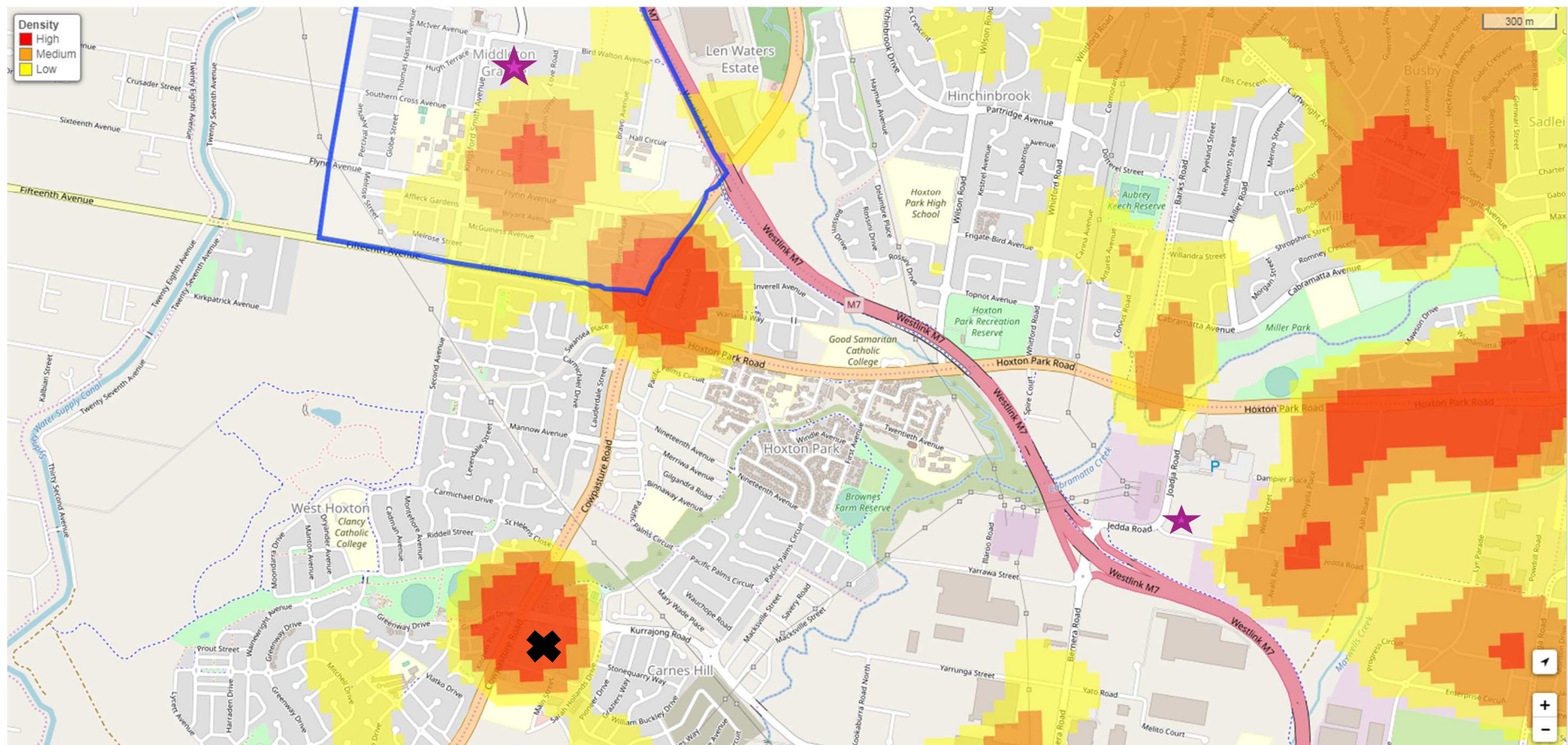


Figure 2-7: Incidents of Theft (Steal from motor vehicle) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft – Steal from Dwelling

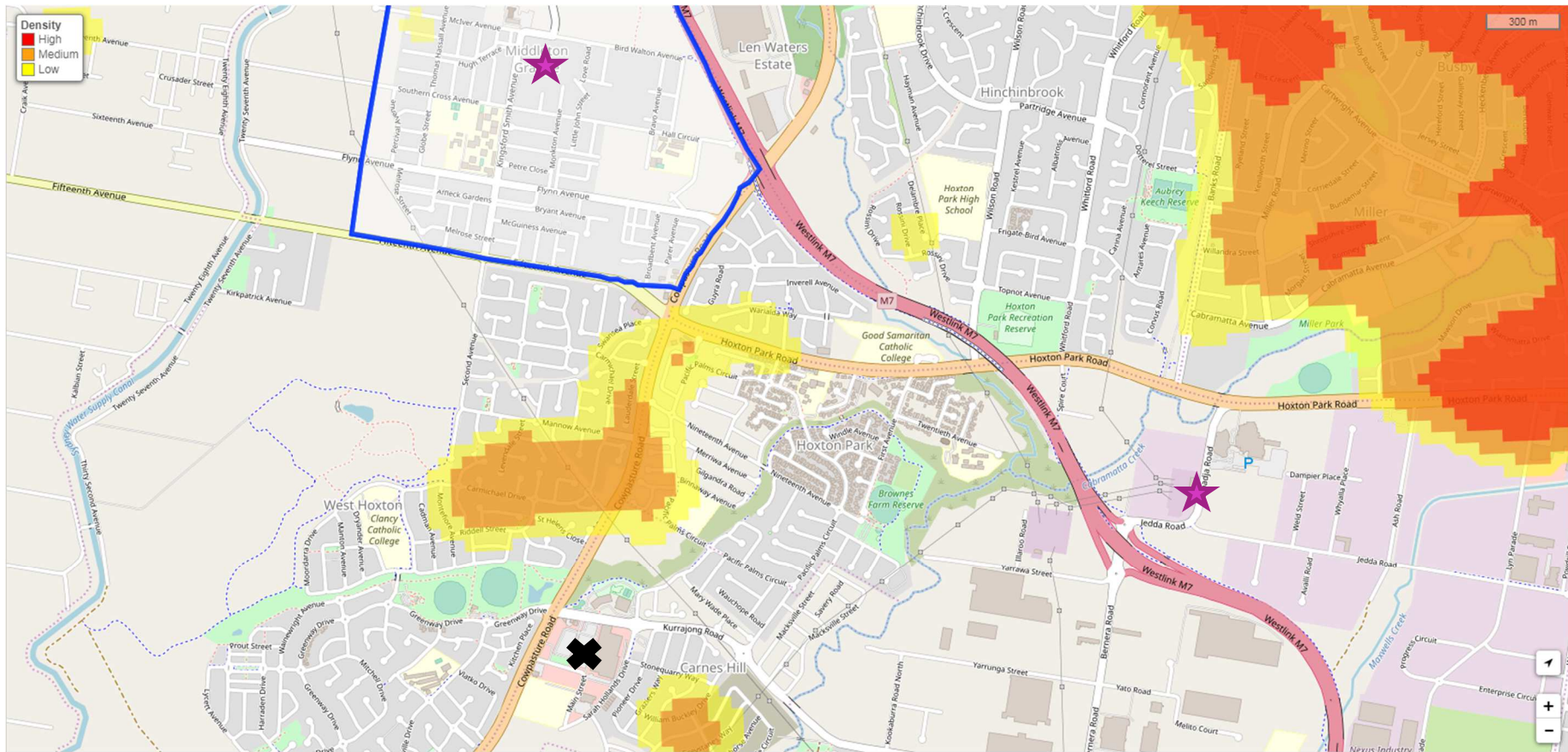


Figure 2-8: Incidents of Theft (Steal from dwelling) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Theft – Steal from Person

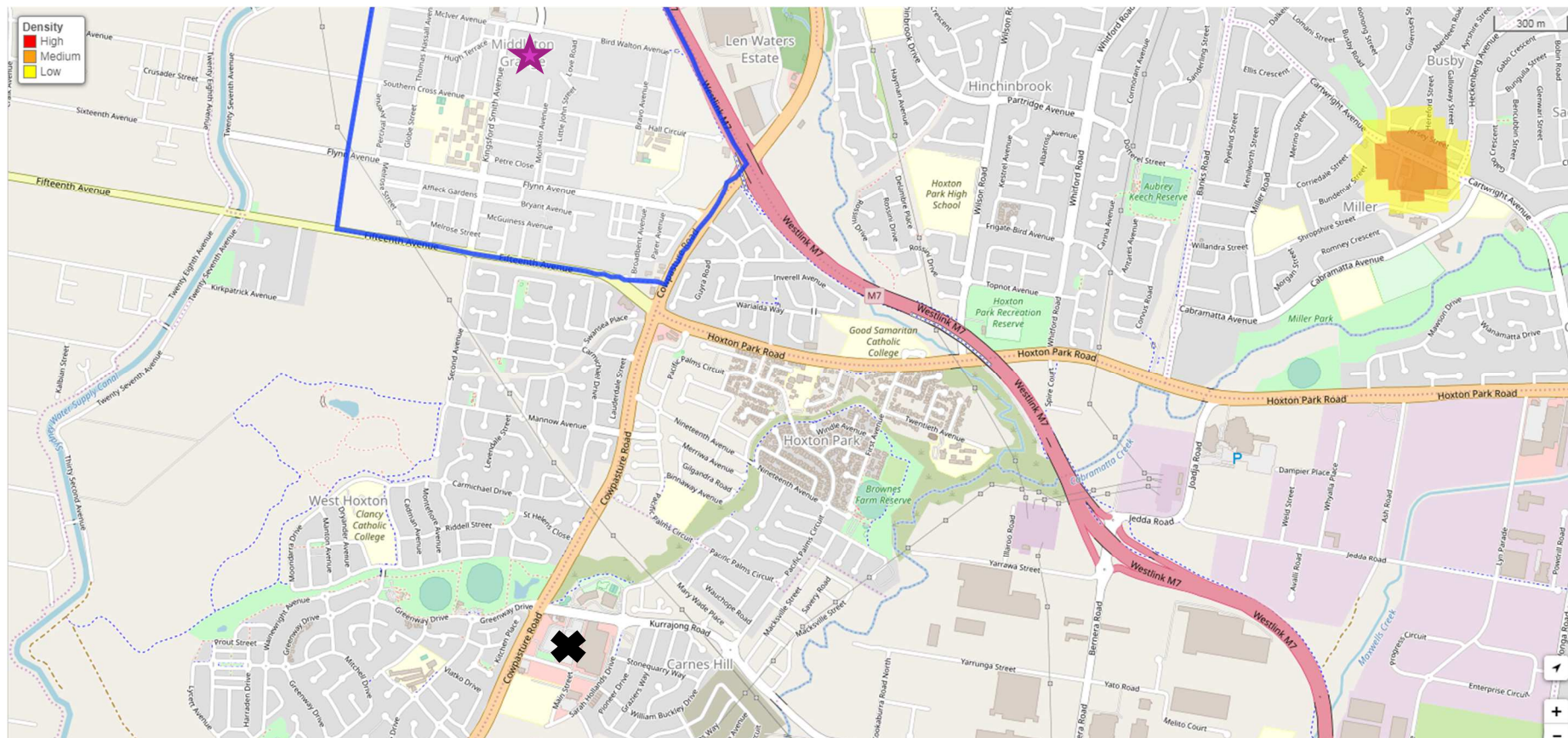


Figure 2-9: Incidents of Theft (Steal from person) from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## Malicious Damage to Property

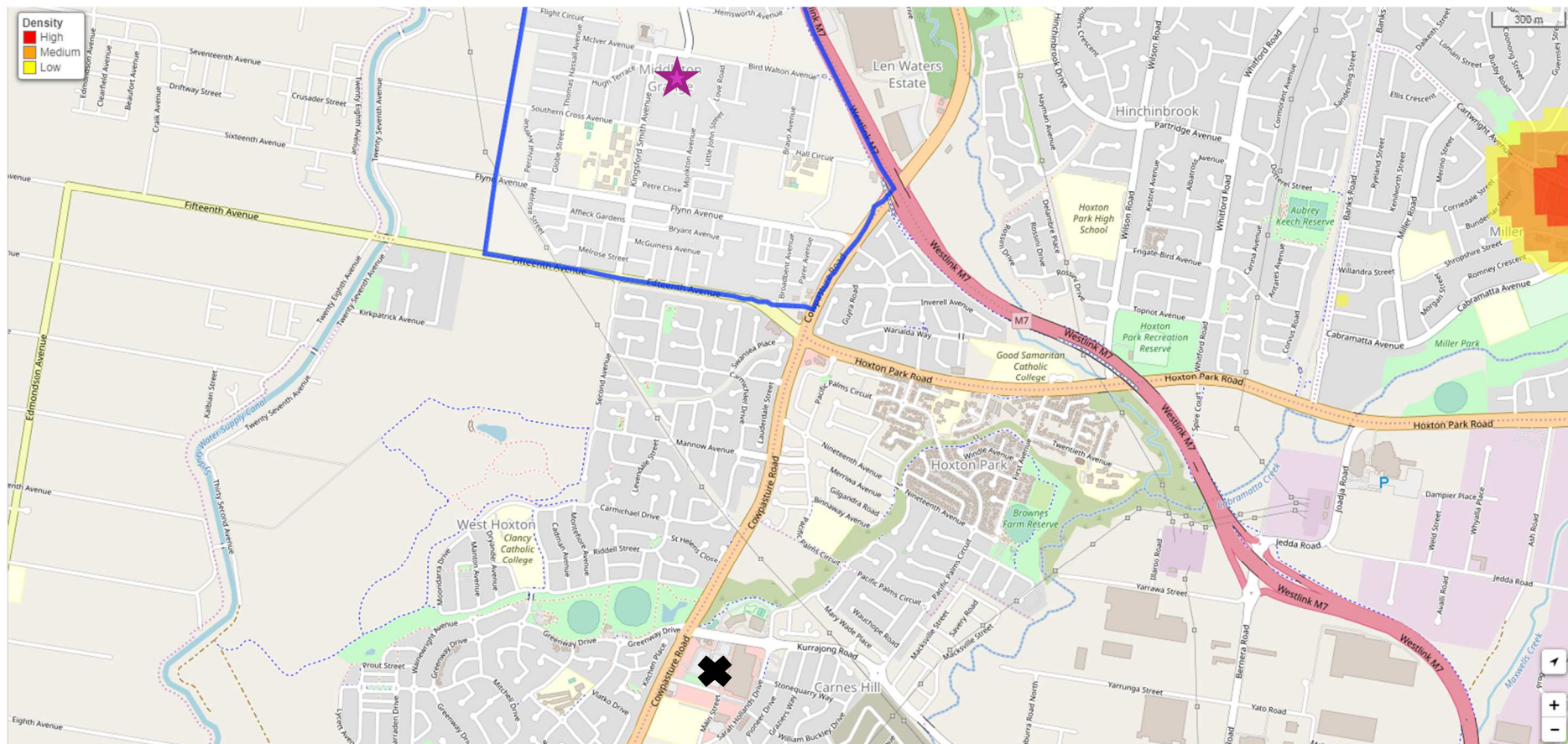


Figure 2-10: Incidents of Malicious Damage to Property from July 2018 to June 2019, Middleton Grange suburb boundary identified

Source: NSW BoCSAR, NSW Crime Tool, <http://crimetool.bocsar.nsw.gov.au/bocsar/>, accessed 18/10/2019.

## 2.5 Impact on surrounding local businesses

It is understood that the market for the proposed commercial development will come from population growth and from capturing market share from existing businesses in the secondary locality. It is understood that the development has been modelled to have an impact on Carnes Hill Market Place, by taking market share.

Depending on the degree to which loss of market share at Carnes Hill Market Place is replaced by population growth, it would be expected that reduced taking at Carnes Hill Market Place could lead to closure and downsizing of businesses, with resultant loss of employment.

At the same time, if market share relocates to Middleton Grange, increased employment would be expected there, with the loss of employment in one area likely offset by an increase in employment in another area.

As set out in the SIA at chapter 10, in 2011 Hoxton Park – Horningsea Park SA2 was characterised by high levels of commuting, with 10% of workers in the SA2 working in the SA2. Similarly, 27% of jobs in Hoxton Park – Horningsea Park SA2 were filled by residents of the SA2. At the level of the SA2, the overall social impact would be neutral, with loss of jobs at Carnes Hill Market Place offset by new jobs at Middleton Grange Town Centre.

The analysis of commuting patterns in the SIA suggests that changes in employment will be experienced at a wider regional locality, as shown in Figure 10.7 of the SIA, reproduced below. At the regional scale, the overall social impact would be neutral, with loss of jobs at Carnes Hill Market Place offset by new jobs at Middleton Grange Town Centre.

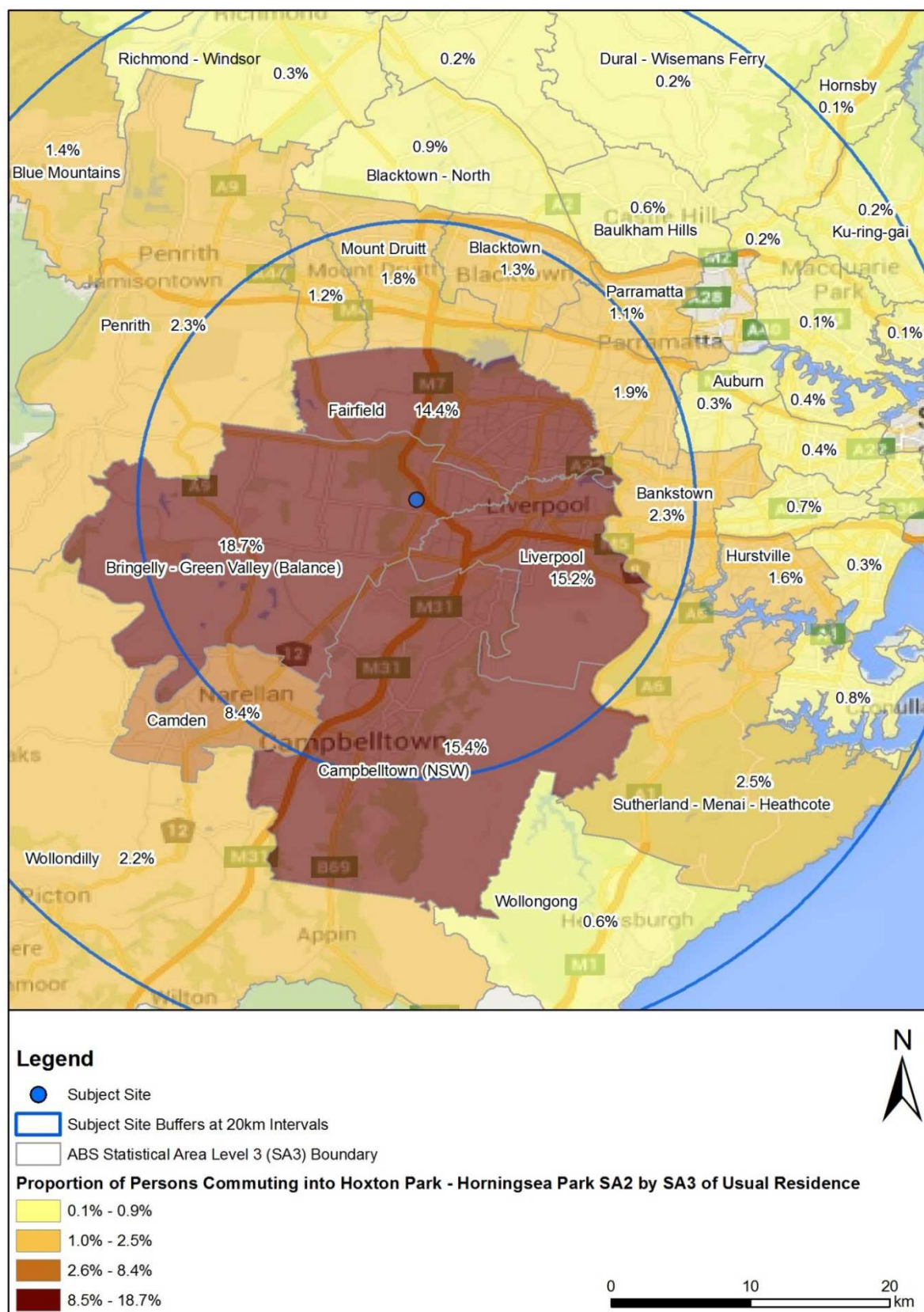


Figure 2.11: Persons Commuting into HP-HP SA2 by Sub-Region (SA3) of Usual Residence (Proportion of In-Commuters)

Source: JSA 2016, based on data from ABS Census of Population and Housing 2011

There is likely to be a **significant social benefit** arising from increased competition due to additional business opportunities in Middleton Grange Town Centre, and increased competition is seen as in the public interest from a public policy perspective.

As an example, the object of the *Commonwealth Competition and Consumer Act 2010* is:

*...to enhance the welfare of Australians through the **promotion of competition** and fair trading and provision for consumer protection.* [emphasis added]

There is extensive case law in NSW with regard to the consideration of competition in planning decisions.

It is irrelevant to consider impacts arising from competition with existing businesses or the fact that there is no “need” for a particular development in an area, the rationale being that these are issues to be resolved by market forces rather than the planning system.<sup>8</sup>

In *Milne v Minister for Planning & Anor* [No. 2] [2007] NSWLEC 66 at par [23] Jagot J stated:

*The fact that all people are members of society and engage in some form of economic activity does not mean that each and every impact of development on a person amounts to a social and economic impact. It is for this reason that, when dealing with the social and economic impacts of development, courts have rejected notions of the profitability of individual businesses and focused on the potential for detriment to the “extent and adequacy of facilities available to the local community if the development be proceeded with” (Kentucky Fried Chicken Proprietary Limited v Gantidis and Another (1979) 140 CLR 675 at 687).*

Focussing on the test of “extent and adequacy of facilities available to the local community if the development be proceeded with”, construction of the Middleton Grange Town Centre would lead to an increase to the extent and adequacy of facilities available within the primary locality of Middleton Grange Suburb (from an existing level of no services or above the services that could be delivered under the current planning controls), and so would be a positive social impact.

At the level of the SA2, any closure of a business in Carnes Hill Market Place as a result of competition from Middleton Grange Town Centre would be offset by the availability of a new business in Middleton Grange Town Centre, and consequently no impact on the extent and adequacy of facilities available to the local community of the secondary locality would be expected.

---

<sup>8</sup> *Ampol Ltd v Rockdale Municipal Council* (1953) 19 LGRA 64; *Ampol Petroleum Ltd v Warringah Shire Council* (1956) 1 LGRA 276 at 278; *Neptune Oil Pty Ltd v Ku-ring-gai Municipal Council* (1958) 3 LGRA 316 at 321; *Total Oil Products (Aust) Pty Ltd v Sydney City Council* (1962) 8 LGRA 217; *Kentucky Fried Chicken Pty Ltd v Gantidis and Anor* (1979) 140 CLR 675 at 687; *Fabcot Pty Ltd v Hawkesbury City Council* (1997) 93 LGRA 373 at 378.

### 3 Review of the SIA

It is understood that the proposal assessed in the SIA has been amended in response to matters raised following community exhibition in late 2018. The changes include a reduction in height and FSR, an increase in open space and a proposed medical precinct.

The effect of the amendment has been to decrease the number of dwellings in the proposal from 924 to 671, and reduce the commercial Gross Floor Area (including the medical precinct) from 56,407 m<sup>2</sup> to 49,470 m<sup>2</sup>.<sup>9</sup>

The changes to the proposed development do not affect the findings or the recommendations of the SIA, however they will lead to a decrease in the quantum of any social benefits associated with the supply of apartments and employment in the locality, and would likely reduce adverse amenity impacts related to character, density, traffic, parking and the like.

The assessment regarding opportunities from the use of s94 contributions will also decrease in quantum.

---

<sup>9</sup> Yield analysis table attached to an email to Liverpool City Council from Pacific Planning Pty Ltd dated 22 August 2019

## 4 Review by Elton Consulting

### 4.1 Scope of Review

In 2016, Judith Stubbs and Associates (JSA) prepared the *Social Impact Assessment: Proposed Planning Changes to Middleton Grange Town Centre* (the SIA) on behalf of Manta Group to accompany a proposal to vary planning controls for Middleton Grange Town Centre. In 2018, Elton Consulting was commissioned by Charter Hall to undertake a review of the Social Impact Assessment prepared by JSA (“the Review”).

Dr Judith Stubbs has extensive experience of peer review, particularly relating to work as an expert witness in Social Impact Assessment for local and State Government authorities in NSW and Victoria. In her experience, review of work by others requires:

- A review and assessment of methodology;
- A review of evidence and analysis, including literature, quantitative data and additional research;
- A statement as to differences in data analysis and relevant literature; and
- A statement as to differences in interpretation of data where both parties are in agreement as to the relevant literature and data to be relied upon.

The Review undertaken by Elton Consulting did not undertake any additional research or undertake a review of evidence and analysis, that is, it did not address any factual matters contained in the SIA, and was largely restricted to a critique of methodological issues.

The Elton Review also contained a number of unsupported matters of opinion, particularly related to the length and layout of the report and to the interpretation of data.

Importantly, the Review does not note the conflict of interest between the client, Charter Hall and the proposed planning changes to Middleton Town Centre. Charter Hall (via two investment funds) is the owner and operator of Carnes Hill Market Place.

Carnes Hill Market Place is 4 kilometres from the proposed Middleton Grange Town Centre, and, depending on the take up of retail space in Middleton Grange Town Centre, is likely to experience competition from Middleton Grange Town Centre. In this regard, it is noted that increased competition is generally considered to be in the public interest, in case law and public policy, as discussed in Section 2.5 above.

### 4.2 Qualifications of Reviewers

Appendix E of Liverpool City Council *Social Impact Assessment Policy* sets out competency requirements for undertaking social impact assessment. These include:

*Does the consultant have qualifications and/or substantial field experience in the relevant technical area?*

Dr Judith Stubbs holds a Bachelor of Social Work majoring in Case Work and Community Development from the University of NSW, and an interdisciplinary PhD in housing policy, land economics and planning law from RMIT, and has won State and national awards for research related to affordable and alternative housing and community planning and social research. The Bachelor of Social Work included course work related to quantitative statistical and demographic analysis, social planning and research, to public policy analysis and to community consultation and group work providing a valuable tool kit for social impact assessment and consultation.

She has more than thirty years' experience in social impact assessment, including working as a social planner and community worker for Wollongong, Camden and Walgett Councils. She is a recognised expert in the area of social impacts, and has appeared as an expert witness in the NSW Land and Environment Court, VCAT, the NSW Supreme Court and other jurisdictions on numerous occasions, and was independent advisor to the NSW Independent Liquor and Gaming Authority for eight years including peer review of all Class 2 SIAs Gaming Machine Applications and development of guidelines, legislation and methodology.

The Elton Consulting Review was prepared by Nash Condran and Felicity Richards, and reviewed by Sonia Dalitz.

According to the brief CV published on the Elton Consulting Web Site, Sonia Dalitz is a project manager. She holds a Graduate Diploma in Education from the Australian Catholic University, and a Bachelor of Arts in English Literature from the University of Sydney. She is currently completing a Master of Politics and Policy at Macquarie University and holds a Community Services Certificate from the Western Institute of TAFE.

Felicity Richards is also described as a project manager. She holds a Bachelor of Arts and a Bachelor of International Development from the University of Adelaide, and a Master of International Business (Diplomacy and Trade) from Monash University. She is currently undertaking a Graduate Certificate in Social Impact Assessment at Macquarie University.

According to Mr Condran's LinkedIn profile, he was employed at Elton Consulting for one year and five months as a graduate. He holds an advanced diploma in Hospitality Management from TAFE Illawarra, a Bachelor of Commerce from University of Wollongong and a Masters of International Development from UNSW.

Based on this information, the Review group appears to lack formal qualifications in the area of social impact assessment or in relevant disciplines such as social science, human geography, urban or social planning, and may lack skills in the areas of quantitative analysis and of policy analysis. They appear to rely on practical experience, and their practical experience is not detailed.

## 4.3 The Elton Review

### 4.3.1 Background

The Review considers the following aspects of the SIA:

- Methodology and Scope characterised as “depth”;
- Methodology;
- Social Impacts;
- Community Consultation;
- Conclusion; and
- s94 Contributions Plan.

A review and response to each of these sections is set out below.

### 4.3.2 Comments on ‘depth’

This section of the Elton Review relies heavily on the Department of Planning and Environment *Draft SIA Guideline*. That Guideline was developed to provide direction on assessing State significant resource projects (that is, State significant mining, petroleum production and extractive industry projects) with regard to both positive and negative social impacts in the context of the environmental impact assessment (EIA) process under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Table 1 of the Review evaluates the SIA with regard to the criteria in Table 2 of the *Draft SIA Guideline*. The final Guideline was issued in final form in September 2017, and Table 2 was extensively revised, presumably as a response to feed back and to clarify the principles in the Table. The current descriptions in Table 2 of the final Guideline are much tighter and better articulated than in the Draft Guideline, and it is not clear why the Elton Review did not rely on them.

Our response below is to Table 1 of the Review, which based on the *Draft SIA Guideline* rather than the final Guideline.

First, it is not clear how Guidelines for the assessment of project such as open cut mines adjacent to urban areas are relevant to a mixed use urban development such as Middleton Grange Town Centre. Notable differences relate to the ongoing monitoring of, for example, open cut coal mining activities with respect to noise, dust and water pollution; health impacts on surrounding populations; issues related to compulsory land acquisition; and remediation environmental works with significant amenity impacts. By comparison, it is not normal practice to require ongoing monitoring of the impacts of residential or retail development during the operational stage or for other developments such as urban expressways, nor to consider or carry out the type of mitigations required under mining projects. This is because the impacts are quite predictable and manageable by appropriate mitigations.

In particular, and of relevance, the Guideline states:

*SIA is not a one-size-fits-all process. It needs to be proportionate and tailored to suit the project's context and the nature and scale of its impacts.<sup>10</sup>*

This is at odds with the ‘tick a box’ or ‘recipe book’ approach taken by the Elton Review.

Nonetheless, the approach taken by the reviewers enables them to provide a visual ‘prop’ at Table 1 with a preponderance of red dots on it, even though the areas shown in Elton’s table as “not evident or partially evident” are either misrepresented or not relevant, as discussed below.

Our response to the items noted as “not evident or partially evident” in Table 1 of the Review is set out below under the relevant principle.

### **Adaptive**

Mitigation strategies for extractive processes are typically adaptive, due to the changing nature of impacts, the requirement for ongoing monitoring and the ability to change the nature of the work. By contrast, mitigations for works where council is the consent authority typically are imposed at the time of consent, and impacts are well understood and able to be modelled, consequently this principle is not relevant to the SIA.

### **Equity Sensitive**

Contrary to the Elton Review, the SIA (at pages 1-3) identifies those groups in the locality who will experience the positive and potential adverse impacts of the proposal and so considers the distribution of social impacts. While future generations may be of concern with regard to extractive industries, construction of a mixed used development does not directly consume non-renewable resources, and so this principle is not relevant to the SIA.

### **Life Cycle Focus**

While mixed use developments have a life cycle, that is construction, operation and demolition, the life cycle is quantitatively and qualitatively different to that of mining projects, with the post project legacy of mining projects often a significant impact e.g. visual impacts from extraction, need for restoration, ongoing maintenance of spoil heaps, tailings dams and the like, and possibility of leaching such as heavy metals and consequent ongoing health risks. Consequently, this principle is not relevant to the SIA.

### **Material**

Contrary to the statement by Elton Consulting, the SIA identifies and evaluates potential social impacts at sections 10-15 and identifies those social impacts that matter the likely to be of most significance.

### **Proportionate**

Contrary to the statement by Elton Consulting, the SIA focuses its assessment on those potential social impacts which are expected to have the most impact.

---

<sup>10</sup> NSW Planning and Environment (2017) *Social impact assessment guideline For State significant mining, petroleum production and extractive industry development* page 1.

## **Rigorous**

Contrary to the assessment by Elton Consulting, the SIA draws on and relies on a wide range of quantitative data including Census data, housing market data and population projections. It relies on expert advice with respect to traffic impacts, economic impacts and dwelling yield.

## **Transparent**

Contrary to the statement by Elton Consulting, all data and information sources in the SIA are clearly identified, and the methods of analysis used are transparent.

The Section also draws on Liverpool City Council's *Social Impact Assessment Policy*. The Elton Consulting assessment takes a similar "tick a box" approach to that taken with the DPE Guidelines.

Similar to the assessment in Table 1 of the Review, the areas shown as "not evident or partially evident" in the Review are either misrepresented or not relevant.

## **The baseline (pre-change) situation is adequately researched and documented**

Contrary to the statement by Elton Consulting, the demographic baseline is documented extensively in Appendix B of the SIA. At the time of writing, there were no baseline services in Middleton Grange Suburb, the locality used by the SIA for the purposes of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*. Consequently, listing the baseline services would be trivial. Where services such as public transport existed, they are identified, e.g. at Section 7.4.1.

## **Examples of similar changes are identified, including impacts likely to affect minority groups, different age, income and cultural groups and future generations**

Despite assertions in the Elton Review, change is based on examples, e.g. predicted population growth and profile in Chapter 6 of the SIA is based on Mount Druitt, Castle Hill, Hornsby and Liverpool. Recommendations note impacts on minority groups e.g. Recommendation 2 refers to older people and Recommendation 7 refers to children, youths and older people, with recommendations supported by analysis in the body of the SIA.

## **Direct as well as indirect, long term and short term, positive and negative, passing and accumulating impacts are identified**

Elton Consulting appears to assume that the various categories are independent. However they are sub-sets of each other e.g. a positive impact may be direct, short term and accumulating. Contrary to the Elton Review, potential social impacts identified in the SIA include direct impacts, e.g. increase in population, indirect impacts, e.g. increased demand for services as a result of the increase in population, passing impacts, e.g. the piecemeal nature of development in Middleton Grange at the time of writing the SIA, and accumulating impacts, e.g. traffic generation.

**The relative equity of impacts is identified. It is important to identify how the benefits and losses will be distributed to different sections of the community**

Contrary to the Elton Review, distribution of benefits is identified at various points of the SIA, e.g. the Executive Summary identifies benefits to various groups including lower skilled and entry level workers and families.

**Impacts over time and location are considered (e.g. local as opposed to state and national benefits and losses)**

As noted above, Middleton Grange Suburb was the locality used by the SIA for the purposes of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*. The identified impacts of the proposal were local and regional, with no potential state or national impacts identified. Regional impacts identified included an increase in employment in the SA2 and an increase in the supply of lower cost housing in Greater Sydney. Impacts were considered over time, that is, post the completion of the development.

**Impacts which are not amenable to precise measurement are not excluded from consideration – the assessment is and evaluation not a proof**

Contrary to the Elton Review, potential impacts considered in the SIA that are ‘not amenable to precise measurement’ included amenity impacts and social cohesion and integration. Other impacts considered such as population growth were estimated by recourse to existing statistics, rather than measured precisely.

**A review mechanism is included where appropriate**

No impacts were identified where inclusion of a review mechanism was appropriate, so this criteria is not relevant for the SIA .

**The precautionary principle is applied in making an assessment**

The precautionary principle is relevant where scientific certainty does not exist and where impacts are serious and irreversible, for example, the destruction of a community through open cut mining. The outcomes of urban and mixed use development are well understood, so it is difficult to purport that scientific certainty does not exist. Consequently, this criteria is again not relevant to the SIA.

### 4.3.3 Comments on Methodology

#### Introduction

In its discussion on methodology, the Elton Review relies on Council’s Social Impact Assessment Policy and on two documents described as IAIA SIA Guidance document and The Social Impact Assessment – The state of the art (2012). Neither of these two documents are referenced and it is not evident what relationship they bear to evaluation under clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, nor is it possible to determine their provenance.

Following the “tick a box” assessment method used previously by Elton Consulting, Table 2 (the second ‘Table 2’ in the Review) provides another visual ‘prop’, again with a preponderance of red

dots. Our response to the items noted as “not evident or partially evident” in the second Table 2 of the Review is set out below under the relevant criterion used by Elton Consulting.

### **Liverpool SIC study requirements (2015)**

Under the heading **Liverpool SIC study requirements (2015)**, Elton Consulting considers that the SIA meets the requirements of a Social Impact Comment.

### **Liverpool CSIA study requirements (2015)**

**Liverpool CSIA study requirements (2015)** are set out. The “study requirements” appear to be a paraphrasing of Section 9.4.2 of Council’s Social Impact Assessment Policy. That section is headed up “What type of impacts should be considered?” and has only partial relevance to the articulation of SIA methodology. Elton Consulting takes Section 9.4.2 of the SIA out of context and further misrepresents it, as discussed below. A response to the items noted as “not evident or partially evident” in Table 1 of the Review is set out below under the relevant “study requirement”.

#### **‘Classify’ all direct and indirect impacts**

The word classify has been added by Elton Consulting. The wording should be “address”. As discussed above, the SIA addressed direct and indirect impacts. There is no requirement to ‘classify’.

#### **Temporary and permanent impacts**

As discussed above, the SIA addresses temporary and permanent impacts.

#### **The potential for cumulative impacts**

As discussed above, the SIA addresses cumulative impacts, to the extent that these are relevant.

#### **The significance of potential impacts**

Contrary to the statement by Elton Consulting, a range of potential social impacts are identified in the SIA at Section 9.2. Following review, the most significant and likely of these potential impacts were addressed in the SIA.

### **IAIA Guiding Document (2015)**

Further Elton sets out criteria from an unreferenced document called IAIA Guiding Document (2015). These included:

#### **Consider the indirect impacts**

As discussed above, the SIA addressed indirect impacts, to the extent that these are relevant.

#### **Consider cumulative impacts**

As discussed above, the SIA addresses cumulative impacts, to the extent that these are relevant.

#### **How will affected groups respond**

The SIA considers the response of affected groups e.g. it notes in the Executive Summary that workers will take up jobs in the development and that families and other local residents will use shops, community facilities and open space.

### **Establish the significance of the predicted changes**

Contrary to the statement by Elton Consulting, a range of potential social impacts are identified in the SIA at Section 9.2. Following review, the most significant and likely of these potential impacts are addressed.

## **4.3.4 Comments on Social Impacts**

### **Introduction**

Elton Consulting has misrepresented the SIA Table 9.1 Scoping of Likely Social Impacts, as JSA's identification **and assessment** of likely social impacts, rather than a scoping of likely social impacts to be considered further in the report. As stated in the SIA, "the table below sets out the likely social impacts for consideration, including the likely positive and adverse impacts".<sup>11</sup>

The analysis in the body of the SIA with respect to these potential impacts is ignored by Elton Consulting in their Review. There is a considerable amount of 'hair splitting' in the Elton review as to whether something is an activity or an impact, e.g. an increase in dwelling numbers is portrayed as an activity, but common sense would suggest that an increase in the supply of dwellings will relate to impacts such as giving people more housing choice/diversity or a reduction in prices/increased affordability as a result of increased supply. The point made by Elton Consulting and its relevance is not at all clear or evident.

The comment in the Review that "a robust and comprehensive analysis of each impact is outside the scope of this review as it would require the SIA to be redone"<sup>12</sup> is particularly telling. JSA has carried out numerous peer reviews and typically would revisit the analysis to see whether the conclusions reached are supported by the evidence offered. As noted above, this is a critical part of a proper 'peer review'. Elton Consulting, to the contrary, rely on their own unsupported opinion.

### **Response to Table 3**

The Elton Consulting comments in Table 3 of the Review have been reviewed to identify any substantive issues.

Adverse comments (shown in italics) and JSA response are set out below.

#### **Under Population Change:**

*Whilst greater densities may support concepts of urban sustainability this does not mean that this will occur as a result of the development*<sup>13</sup>

---

<sup>11</sup> Judith Stubbs and Associates *op cit*, Section 9.2.

<sup>12</sup> Elton Consulting *op cit*, page 10.

<sup>13</sup> *Ibid*, Table 3

The basis of the planning proposal is an increase in densities and it seems very unlikely that these will not be taken up. Developable land within the Greater Sydney region is a finite resource in the context ongoing population growth and demographic change and increasing housing cost. Planning for an increased in higher density development is an efficient use of remaining urban land, and a lower cost option, and contributes to social equity and environmental sustainability.

*It is true that that (sic) there may be a pro-rata increased in S94 contributions although the actual impact of those contributions is unknown as the SIA assumes the VPA will go ahead<sup>14</sup>*

The statement appears to misunderstand the nature of s S94 contributions and the VPA. Such contributions in Liverpool LGA are assessed on number of dwellings, so an increase in the number of dwelling will lead to increased S94 contributions. Any VPA would be based on the developer providing benefits in lieu of part of all of the cash contribution, and if there was no VPA then the additional contribution would be taken in cash, giving Council the opportunity to provide facilities.

### **Under Housing:**

*The opportunity to provide accessible and adaptable dwellings is not a positive social impact unless there is certainty that the developer will commit to this. Further clarification is needed around whether this is something that is proposed as part of development and if so should be labelled as 'likely' to provide context for the reader<sup>15</sup>*

The basis of this comment is the misrepresentation by Elton Consulting of a table of potential social impacts as actual and likely social impacts, and a general misreading of the SIA. The SIA does not say that accessible and adaptable apartments will be provided as part of the development, but rather that there is an opportunity to provide a social benefit through their inclusion. Section 2.4 of the SIA provides recommendations that could be implemented in the delivery of the proposal to maximise social benefit through delivering affordable, accessible and adaptable dwellings.

*The identification of low quality apartments as a potential negative social impact is contradictory to previous claims in the report that "based on the proposed price point, a high quality of dwelling will be provided".<sup>16</sup>*

This is a misrepresentation by Elton Consulting of what the SIA considers as a 'potential' impact as an actual or likely impact. The SIA does not further discuss this impact as it is neither likely or significant.

*There is no discussion on the potential impacts of the increased availability of renters in the new development, in terms of the transient nature of the rental market and the impact on social cohesion<sup>17</sup>*

Apart from the grammatical inconsistency of the statement ('increased availability of renters') this statement seems to contain a range of unsubstantiated assumptions including that the rental market is 'transient', and that renting impacts adversely on 'social cohesion'. A proper review

---

<sup>14</sup> *Ibid*, Table 3

<sup>15</sup> *Ibid*, Table 3

<sup>16</sup> *Ibid*, Table 3

<sup>17</sup> *Ibid*, Table 3

would provide evidence around these assertions so that a reader can form a view as to whether the impact will be substantive or not.

*Much of the analysis is hypothetical and may not hold much weighting with decision makers*<sup>18</sup>

There is no basis provided for this statement, such as references to the SIA, and it is difficult to know on what basis the author purports to see into the minds of decision makers. In any case, it is customary in an SIA to refer to ‘likely’ impacts, as no one can foretell the future with certainty (if this is in fact what the reviewers are referring to); or to evaluate ‘potential’ impacts as part of a scoping exercise (the other possible expression to which they may be referring).

### **Under Transport and Accessibility:**

*It is correct that the development of the new town centre may reduce travel for those accessing goods and services that live in Middleton Grange. This is not a **justification** [emphasis added] for providing more retail in the town centre*<sup>19</sup>

The statement shows a misunderstanding of the SIA process. Liverpool Social Impact Assessment Policy states (at section 7.3.1) that “A CSIA is an in-depth **assessment** of the potential social impacts of a development proposal”. It is not a **justification** of the proposal.

In any case, we would consider reduced travel time for residents of Middleton Grange to be a likely benefit of the application.

*The opportunity to increase walkability and cycling connectivity in Middleton Grange is considered hypothetical. More clarification is needed around whether the development will support this and if so it should be labelled as a [sic] likely or unlikely and if it is significant*<sup>20</sup>

There is a problem with the use of the word hypothetical. As noted, and in the dictionary sense of the word, all ‘potential’ impacts are hypothetical as they have not yet occurred, and nothing is absolutely certain. Connectivity is discussed in detail in Section 11.4 of the SIA.

*Identification of existing road network at or near capacity as a potential negative impact contradicts, [sic] section 7.4.2 of the report which states that the road network is “already expected to be at capacity” therefore any demand generated by new residents, workers and retail customers at Middleton Grange is a cumulative impact*<sup>21</sup>

Cumulative impacts on the road impact are addressed in Section 7.4.2 of the SIA, and mitigations are proposed under Recommendations 1, 2 and 3.

*Limited access to public transport – the suggested mitigation for this impact is ‘connection of a bus route to Leppington Railway Station and construction of the transit investigation route identified in ‘A Plan for Growing Sydney’. This recommendation is out of the control of Manta Group and therefore raises questions of its credibility*<sup>22</sup>

---

<sup>18</sup> *Ibid*, Table 3

<sup>19</sup> *Ibid*, Table 3

<sup>20</sup> *Ibid*, Table 3

<sup>21</sup> *Ibid*, Table 3

<sup>22</sup> *Ibid*, Table 3

Construction of the transit investigation route is not one of the recommendations put forward in the SIA. Recommendation 3 in the SIA is for Council to advocate for an extension of the 853 bus route to Leppington Railway Station. This is entirely credible and would be in the interests of the population of Middleton Grange Suburb.

*Poor connectivity between the town centre and surrounding areas – this impact requires further analysis on the likelihood of the masterplan not delivering its promises of connectivity<sup>23</sup>*

Connectivity is discussed in detail in Section 11.4 of the SIA. The SIA was based on Masterplan documentation provided by Manta Group, changes to the Masterplan cannot be foreseen in the SIA process but will be considered by the consent authority.

*Identification of poor accessibility within the town centre is contradictory to previous comments made in Section 7.4.1 where JSA states that accessibility would be improved as a result of the development<sup>24</sup>*

The statement is an outcome of Elton Consulting conflating potential impacts (as set out in Table 9.1 of the SIA) with likely and substantive impacts.

#### **Under Community and Recreation Services and Facilities:**

*As highlighted in the Liverpool Contributions Plan 2009 there are no existing local neighbourhood facilities except for a private school and church, as such any mention of existing facilities and their capacity is irrelevant. In regards to proposed services and facilities being insufficient for the increased population this would only be a negative impact as a result of poor planning, the significance and likelihood of this impact should be clearly identified so as not to be misinterpreted<sup>25</sup>*

The statement shows a lack of understanding of the SIA process by Elton Consulting and seems to conflate mitigations with impacts. The impact is an increase in population and the potential social impact is insufficient services. The mitigation is to provide the services.

#### **Under Social Cohesion and integration, including needs of specific population groups:**

*The inclusion/exclusion of older people, families, as a result of the provision of privatised public space is proposed as both a potential positive and negative impact. This is a reasonable assertion if the issues of connectivity to open space, care dependence and access to services are not resolved in the final master plan<sup>26</sup>*

The Review author adds in the term privatised, suggesting he is unfamiliar with the extensive literature regarding inclusion and exclusion from public space. The social impacts and matters around inclusion and exclusion from public spaces are discussed in Section 14 of the SIA.

*Similarly, Integration of the Town Centre to surrounding residents is presented as both a potential negative and positive. Again no attempt has been made to further clarify each of the impacts and not doing so creates some confusion<sup>27</sup>*

The statement is an outcome of the misrepresentation of the Table 9.2 of the SIA by Elton Consulting. Aspects of integration are discussed in Section 11 of the SIA.

---

<sup>23</sup> *Ibid*, Table 3

<sup>24</sup> *Ibid*, Table 3

<sup>25</sup> *Ibid*, Table 3

<sup>26</sup> *Ibid*, Table 3

<sup>27</sup> *Ibid*, Table 3

### **Under Health and wellbeing:**

*These recommendations are contingent on the master plan adopting JSAs social planning recommendations, including where to allocate funds from S94 contributions. There is no alternative analysis for the scenario where the social planning recommendations are not adopted<sup>28</sup>*

It is not clear what recommendations are referred to, as there are no recommendations in Table 9.2 of the SIA. The author does not appear to understand the requirements of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*. This section requires the consent authority to consider the “likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”, rather than some alternative development. One of the purposes of Social Impact Assessment is to identify potential social impacts associated with the development and recommend appropriate mitigation. The degree to which mitigation is taken up or not is a matter for the consent authority in discharging their duty under Section 4.15(1)(b) of the Act.

*More clarification is needed around increasing car dependency. Considering the new town centre would be walkable for a number of residents it needs further commentary around its significance and likelihood<sup>29</sup>*

These matters are discussed in sections 15 and 11.4 of the SIA.

*Limited opportunities for recreation and leisure activity for apartment dwellers is a current impact not potential as residents are already being affected. More clarification is needed to highlight the significance and likelihood of this impact<sup>30</sup>*

At the time of preparation of the SIA, there were no apartment dwellers in Middleton Grange Suburb so it is difficult to understand how this is a current impact. Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* requires an assessment of the likely impacts of the development, not the existing situation. These matters are discussed in Section 11.2 of the SIA.

### **Under Crime and Safety:**

*These appear to be generalised recommendations rather than likely social impacts<sup>31</sup>*

This seems to be a fine point around classification.

More analysis is needed here to include the potential for anti-social behaviour in specific reference to the proposed development –

This is a substantive comment as the SIA did not consider the crime context of the area or of similar nearby developments, and mitigations related to crime prevention were not elevated into the SIA recommendations. The omission is addressed in Section 2.4 above.

### **Under local economy and employment opportunities:**

---

<sup>28</sup> *Ibid*, Table 3

<sup>29</sup> *Ibid*, Table 3

<sup>30</sup> *Ibid*, Table 3

<sup>31</sup> *Ibid*, Table 3

*It is reasonable to suggest [sic] will be employment provided for those living in the surrounding residential areas as local employment generated by the total proposal has been estimated at 714 full time equivalent jobs. However, it is unclear if these jobs are counted during the construction or operational phases of the project*<sup>32</sup>

The jobs are in the operation phase. Section 10.1 states that most of these will be in retail (83%), with 9% in commercial, 3% in medical and the balance (5%) in community, entertainment and childcare.

*Area too expensive to accommodate works – the meaning of this likely adverse impact is unclear*<sup>33</sup>

The Review has misread “workers” as “works” hence the confusion.

*Omitted potential adverse impact regarding effect of increase in retail and the impact on economic livelihoods of surrounding local businesses from competition with MG town centre*<sup>34</sup>

This is a substantive comment as this impact was not identified or considered in the SIA. The omission is addressed in Section 2.5 above.

#### **Under urban sustainability:**

*It is correct that people who work in the new town centre can also live in the local area, although this [sic] this needs further clarification to provide context and meaning for the reader*<sup>35</sup>

Commuting is discussed in Section 10.5 of the SIA.

*The claim that residents would be able to obtain their needs with minimal travel is unclear as it does [sic?] indicate what needs those are. Additionally, this also contradicts what has previously been said by JSA, in Section 7.4.2 it states that “it is likely that residents will rely on Liverpool City (and Leppington major Centre when complete) for many of their needs”*<sup>36</sup>

This appears to be a fine point and based on a selective reading of Section 7.4.2.

*It is unclear as to why the development of a new town centre would increase commuting. This needs more clarification on who and how commuters would be affected*<sup>37</sup>

Commuting is discussed in Section 10.5 of the SIA.

#### **Under amenity impacts:**

*It is correct that public spaces will enhance the amenity of Middleton Grange suburb, although this is not a social impact. A social impact would be how those spaces impact residents in either a positive or negative way*<sup>38</sup>

Again, an obscure point regarding classification. Changes in amenity are widely accepted as being a legitimate social impact.

---

<sup>32</sup> *Ibid*, Table 3

<sup>33</sup> *Ibid*, Table 3

<sup>34</sup> *Ibid*, Table 3

<sup>35</sup> *Ibid*, Table 3

<sup>36</sup> *Ibid*, Table 3

<sup>37</sup> *Ibid*, Table 3

<sup>38</sup> *Ibid*, Table 3

*High rise having an impact on the character and amenity of nearby residential areas is a legitimate potential social impact. Tall buildings have the potential to affect people's perception of overcrowding and overdevelopment but most of all it affects the 'local character' or people's 'way of life'<sup>39</sup>*

The relevance of this comment is not clear. It seems to be additional commentary. These impacts are identified in the executive summary of the SIA under the heading "Summary of Potential Adverse Impacts of the Proposal".

#### **Under services and amenities:**

*Increase in the amenity of the shopping centre including more shops, restaurants and other recreational spaces, and enhanced public space is not a social impact in itself, rather it is the activity that causes the social impact. Further analysis from JSA is required here<sup>40</sup>*

Again this is an obscure point regarding classification. Changes in amenity are widely accepted as being a legitimate social impact.

### **4.3.5 Comments on Community Consultation**

The comments on Community Consultation show a fundamental lack of understanding on the part of Elton Consulting as to:

- The purpose of Community Consultation when preparing an SIA to address the requirements of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*; and
- relevant case law.

The purpose of Community Consultation is to assist in scoping potential social impacts, both positive and adverse, and to understand how people currently perceive their community. As part of the SIA process, it is then important to understand the rational basis of any impacts identified.<sup>41</sup> Contrary to the statements by Elton Consulting, the purpose of community

---

<sup>39</sup> *Ibid*, Table 3

<sup>40</sup> *Ibid*, Table 3

<sup>41</sup> The reasonableness and factual basis of community concerns is also important to the proper assessment of social impacts in a given locality, so that the subjective concerns or fears of residents needs to be balanced against the extent to which such fears are reasonably or factually based. I am guided in my assessment of social impacts in this respect by Lloyd J in *New Century Developments Pty Limited v Baulkham Hills Shire Council* [2003] NSWLEC 154 who noted that:

*The consent authority must not blindly accept the subjective fears and concerns expressed in the public submissions. Whilst such views must be taken into consideration, there must be evidence that can be objectively assessed before a finding can be made of an adverse effect upon the amenity of the area...*

*A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact ... Where there is no evidence to support a rational fear it will be irrelevant that members of the community may have modified their behaviour arising from such an unjustified fear.*

consultation is not to determine whether “residents in Middleton Grange actually support the revised PP”.<sup>42</sup> This is supported by case law as cited above.

The Liverpool City Council *Social Impact Assessment Policy* states at Section 10.1:

*After completion of the SIC Initial Assessment Form, a process of community consultation should be undertaken. The information contained in the SIC Initial Assessment Form should be used to help determine what kind of community consultation should be undertaken. **The scale of community consultation that needs to be undertaken and the method used to consult depends on a number of factors** [emphasis added], including:*

- a) The community who are likely to be most affected*
- b) The significance of the potential social impacts*
- c) The duration of the impact*
- d) The likely beneficiaries of the proposed development*
- e) Those likely to be most negatively affected*

It is evident that the community consultation to be undertaken is a matter of professional judgement based on the circumstances of the proposal.

The discussion in the Review is confusing, referring to a Table 4 identifying the different engagement objectives of various sources. The actual Table 4 in the Review is a table of consultation techniques showing which techniques out of a possible 12 techniques were used by JSA. While providing an impressive visual prop, the inference in the table is that effective community consultation would use all techniques and engage every community. This assumption is at odds with Section 10.1 of the Liverpool City Council *Social Impact Assessment Policy*.

Comments by Elton Consulting around sample size and the number of people who viewed the proposal positively are not supported by sampling theory.<sup>43</sup> For a population of 135 (the households immediately surrounding the proposed development), a sample of 59 means that a

---

(New Century Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 154 revised - 5/09/2003, [61-63]; Citing Dixon & Anor v Burwood Council [2002] NSWLEC 19, Newton v Wyong Shire Council, NSWLEC, McClelland J, 6 September 1983, unreported, Jarasius v Forestry Commission of New South Wales (1990) 71 LGRA 79 at 93 per Hemmings J; Perry Properties Pty Ltd v Ashfield Municipal Council (2000) 110 LGERA 345 at 350 per Cowdroy J.)

This judgment has been recently cited by Moore J in *Mawad Investments Pty Limited v Council of City of Ryde* [2017] NSWLEC 100,

*...not be taken to be reflecting in any way on the genuineness of the concerns that have been expressed by the residents in the vicinity; however, the position that this Court must take is that, absent credible evidence that such fears, as are genuinely held, are realistically likely to be causing the feared effect on the local community, there is no basis simply on the grounds of fear to refuse a development application*

(*Mawad Investments Pty Limited v Council of City of Ryde* [2017] NSWLEC 100, [14-15])

<sup>42</sup> Page16 par 1 of the Review.

<sup>43</sup> The analysis uses the normal approximation to the hypergeometric distribution.

variable measured at 45% has a 95% confidence interval of +/-10% i.e. we can be 95% confident that 35% - 55% of households in nearby streets saw the development positively.<sup>44</sup>

At best there is a difference of professional opinion between JSA and Elton Consulting as to the adequacy of the community consultation undertaken. The rationale provided by Elton Consulting is based on a misreading of Section 10.1 of the Liverpool City Council *Social Impact Assessment Policy*, and no other evidence is provided in support of engaging in other forms of community consultation.

#### 4.3.6 Comments on Conclusion

No substantive critique is provided regarding the conclusions drawn in the SIA, and no alternative conclusions, supported or otherwise, are offered by Elton Consulting.

#### 4.3.7 S94 Contributions Scheme

Elton Consulting is in agreement with the assessment of S94 Contributions Scheme by JSA. Elton Consulting notes at a number of points that it disagrees with normative standards used by Liverpool City Council for the sizing of community facilities.

#### 4.3.8 Conclusions of the Assessment

A number of conclusions are reached by Elton Consulting. Of these, one is substantive, as the SIA did not contain an outline of the methodology used to conduct the CSIA as required by Section 9.1 of Council's *Social Impact Assessment Policy*. This omission is addressed in Section 2.2 above.

As discussed above, the balance of the conclusions are not substantiated. They are based on:

- A selective reading and misreading of various documents, some of which are outdated, and some of which are not referenced or have no status or relevance with respect to assessment under Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* or the circumstances of the proposed development;
- A misreading of, the ignoring of substance, and a failure to engage with, or read and understand, the SIA. Many of the statements by Elton Consulting relating to the SIA are incorrect as set out above;
- A focus on fine points without obvious meaning or relevance and a confusion or misunderstanding of technical terms; and
- A “tick a box” approach by Elton Consulting, where any and all concerns are uncritically given equal weight, rather than being *proportionate and tailored to suit the project’s context and the nature and scale of its impacts*.<sup>45</sup>

---

<sup>44</sup> More precisely, if the survey was carried out 20 times, on one of those times a result outside the range of 35-55% would be expected.

<sup>45</sup> NSW Planning and Environment (2017) *Social impact assessment guideline For State significant mining, petroleum production and extractive industry development* page 1.

Elton Consulting has a fundamental misunderstanding of the SIA process in stating that *the findings within the JSA SIA do not adequately support the development of a much larger town centre than is already proposed*.<sup>46</sup> The author does not appear to understand the requirements of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*. This section requires the consent authority to consider the “likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”, rather than some alternative development. One of the purposes of Social Impact Assessment is to identify potential social impacts associated with the development and recommend appropriate mitigation. The degree to which mitigation is taken up or not is a matter for the consent authority in discharging their duty under Section 4.15(1)(b) of the Act.

Liverpool Social Impact Assessment Policy states (at section 7.3.1) that “A CSIA is an in-depth assessment of the potential social impacts of a development proposal.” Mitigation measures are required under section 9.5. An SIA is not a **justification or a support** of the proposal.

---

<sup>46</sup> Elton Consulting Review, page 20, par 3.