

Planning and Assessment

IRF20/4177

Gateway determination report

LGA	Liverpool
PPA	Liverpool Council
NAME	Pleasure Point dwelling density (4 homes, 0 jobs)
NUMBER	PP_2020_LPOOL_004_00
LEP TO BE AMENDED	Liverpool Local Environmental Plan 2008
ADDRESS	71-86 Pleasure Point Road, Pleasure Point
DESCRIPTION	<div> <div> <u>Site 1 (southern most):</u> Lot 71-74, DP 1134477; </div> <div> <u>Site 3 (north of Site 2):</u> Lot 5, DP 239468. </div> </div> <div> <div> <u>Site 2 (just north of Site 1):</u> Lot 75,77-78, DP 1134478; Lot 761-762, DP 1217961 </div> <div> <u>Site 4 (northern most):</u> Lot 83-86, DP 1134481; </div> </div>
RECEIVED	1 September 2020
FILE NO.	IRF20/4177
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The site consists of four parent allotments (Sites 1 to 4) which are subject to Clause 7.12 of the Liverpool Local Environmental Plan 2008 (LLEP). Each site may be subdivided at present to form a maximum of four lots per site under the LEP's Dwelling Density Map.

The planning proposal (PP) seeks to increase the subdivision density to a maximum of five lots per site. The increase in the yield potential of these lots is to formalise a previously approved five-lot subdivision (DA-180/2015) on Site 2, and to provide the same potential on other sites.

These other lots are:

- No. 76 Pleasure Point Road (in Site 1);
- Lot 5 Pleasure Point Road (all of Site 3); and
- No. 46 Pleasure Point Road (in Site 4).

1.2 Site description

The PP lies near the eastern edge of Liverpool Local Government Area, is southeast of Holsworthy Village and northwest of Sandy Point (**Figure 1**). The East Hills train line crosses the Georges River north of the site. The river forms the boundary between Liverpool and Canterbury-Bankstown LGAs in this vicinity.

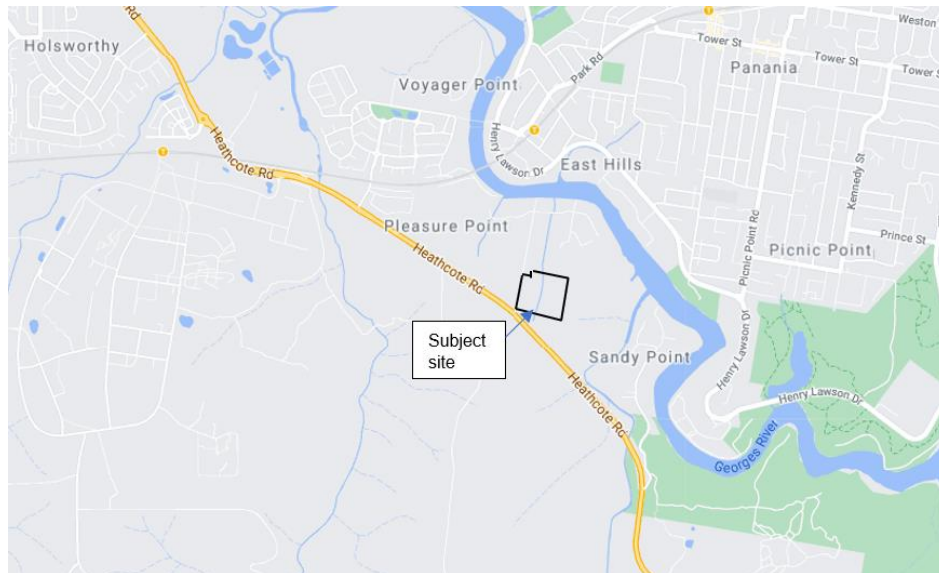


Figure 1. 71-86 Pleasure Point Road, Pleasure Point.

An unnamed creek which runs through part of the four sites is not flood prone according to information on Liverpool Council's website but is a recognised Class 1 riparian corridor. Riparian land is subject to the Water Management Act. Council would need to include its statutory considerations in any future development assessment phase.

An informal unsealed fire trail is located along the rear of the R5 zone segment of the individual lots. This is protected under section 2.6 of Part 2.13 of the Liverpool Development Control Plan 2008 (LDCP, 2008) (**Figure 2**). The LDCP requires a fire trail that runs behind the existing development and parallel with Pleasure Point Road. Council has stated that any future additional lots facilitated by the proposed amendment will be required to include this bushfire trail and ensure that it is accessible to the RFS (**Attachment A**, page 29).

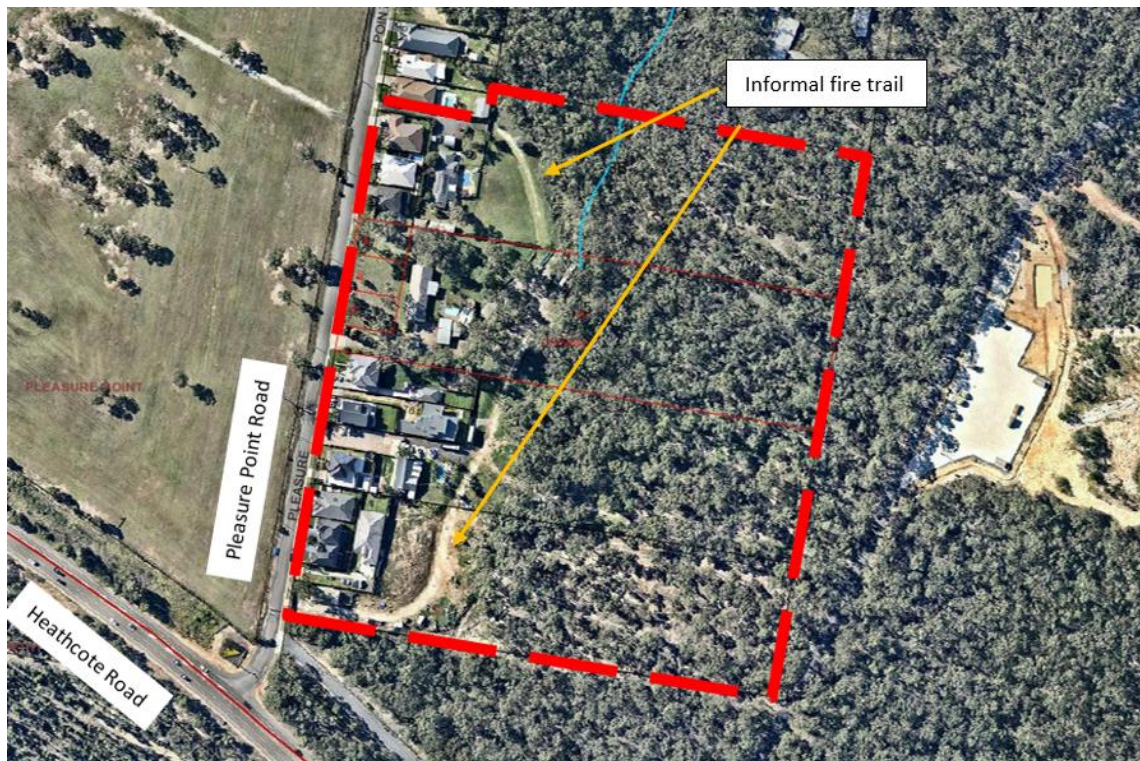


Figure 2. Sites 1 to 4 (south to north) along Pleasure Point Road with informal fire trail.

The terrain gently slopes to the north except for the northern most site (Site 4) which is affected by a steeper gradient developed along an unnamed creek subsidiary to the Georges River (**Figure 3**).

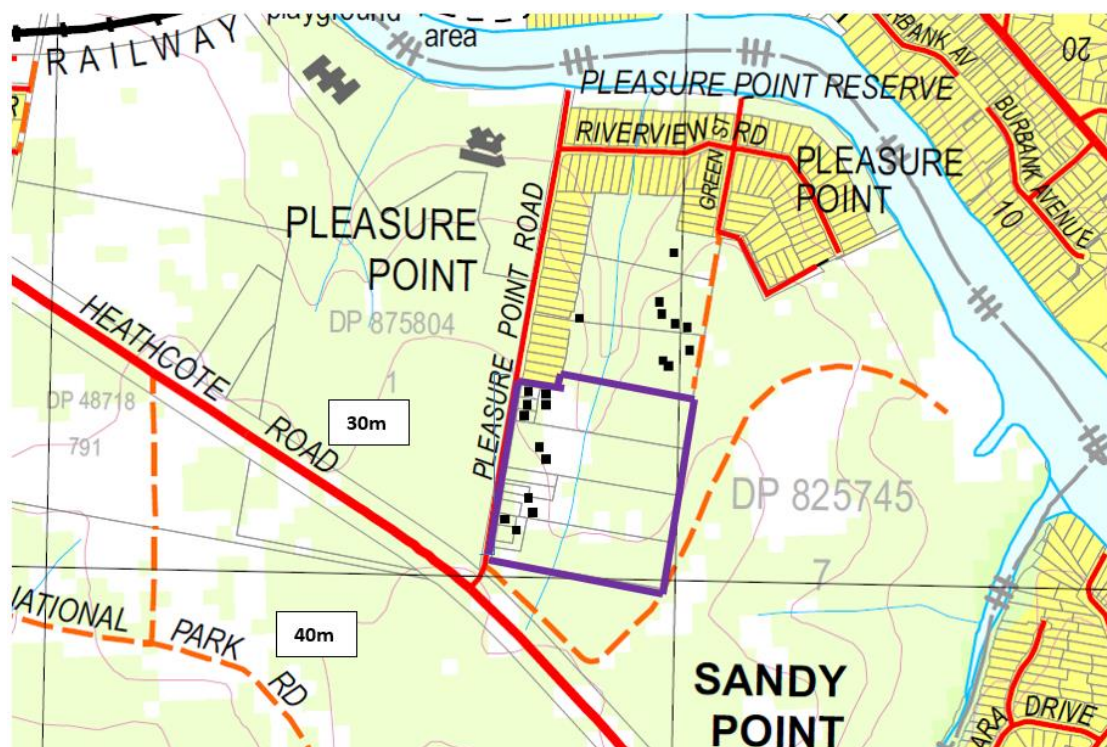


Figure 3. Northernmost site affected by steeper terrain from the unnamed creek line. The 30 and 40m contours AHD are shown (Liverpool Topographic Map)

1.3 Relevant development approval history

On 8 June 2008, consent was granted for DA-1915/2005 to permit the subdivision of the original broad lot to create four residential lots.


Site 1 contains an undivided dual occupancy development which may be considered for subdivision at some time in the future (**Table 1**).

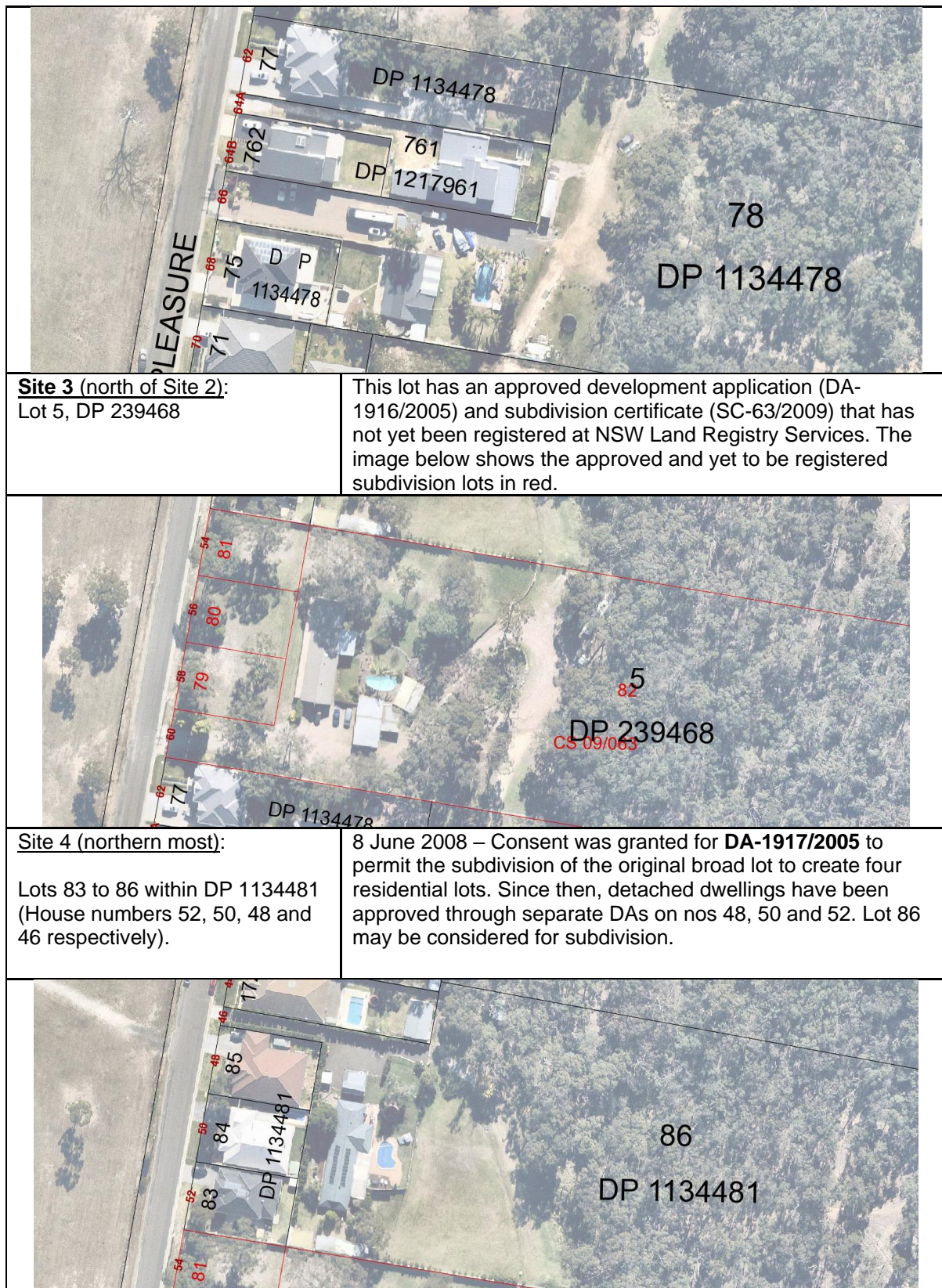
Site 2 was divided into 5 lots through a subdivision application applying a clause 4.6 variation in 2015 (DA 180/2015). Within Site 1, consent to subdivide lot 74 was sought in 2016 (DA 724/2016) to provide five lots. This DA also applied clause 4.6 and was ultimately refused. The Land and Environment Court (LEC) dismissed a Class 1 appeal regarding the application.

A review of the appeal decision was underway when it was agreed that a PP would be prepared to remove the current four lot restriction, formalise the existing five lot development and facilitate development on the other sites (**Attachment A**).

The following table summarises the existing lot configuration from south to north and the development relevant to this PP (**Table 1**).

Table 1. Summary of lot distribution from south to north and development relevant to this proposal.

Site	Development
<p>Site 1 (southern most):</p> <p>Lots 71-74 within DP 1134477 (House numbers 70, 72, 74, 76 respectively);</p>	<p>Of relevance here are</p> <p>DA-88/2017 – Dual occupancy development (no. 72, lot 72); and</p> <p>DA-438/2019 – <i>Pre fabricated garden shed under assessment (no. 76, Lot 74).</i></p>
	
<p>Site 2 (just north of Site 1):</p> <ul style="list-style-type: none"> o Lots 75, 77, 78 within DP 1134478 (House numbers 68, 62 and 66 respectively); o Lots 761 and 762 within DP 1217961 (House numbers 64a) and 64b respectively). 	<p>DA-180/2015 – Two lot Torrens title subdivision (no.64, lot 76) to create no. 64a (lot 761) and no. 64b (lot 762);</p> <p>DA-9/2016 – Two-storey residential dwelling and pool (no. 64A, lot 761); and</p> <p>DA-809/2016 – Two-storey residential dwelling (no. 64B, lot 762).</p> <p>These resulted in a five lot subdivision of the original Site 2.</p>



Site 3 (north of Site 2):
Lot 5, DP 239468

This lot has an approved development application (DA-1916/2005) and subdivision certificate (SC-63/2009) that has not yet been registered at NSW Land Registry Services. The image below shows the approved and yet to be registered subdivision lots in red.

Site 4 (northern most):

Lots 83 to 86 within DP 1134481 (House numbers 52, 50, 48 and 46 respectively).

8 June 2008 – Consent was granted for **DA-1917/2005** to permit the subdivision of the original broad lot to create four residential lots. Since then, detached dwellings have been approved through separate DAs on nos 48, 50 and 52. Lot 86 may be considered for subdivision.

1.4 Existing planning controls

The site is subject to the lot density clause 7.12 of the LLEP and has a restricted yield of 4 lots per parent allotment (**Figure 4**).



Figure 4. Map accompanying clause 7.12 of the LLEP.

This clause currently enables each of the four sites to be subdivided into four (4) lots. The Site 2, second from the southernmost site (Site 1) has previously been subdivided into 5 lots to provide different parcels for a dual occupancy development (**Figure 5** below).

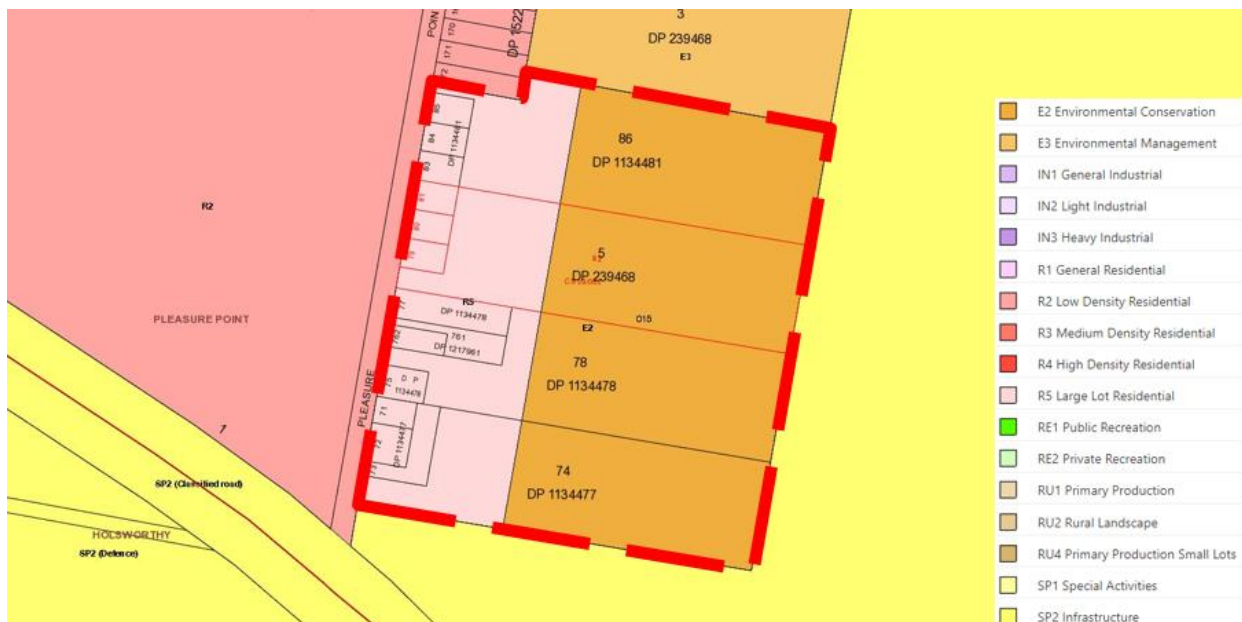


Figure 5. Current subdivision pattern of lots within the parent allotments.

A split zoning occurs over each lot. The portion of the lots adjoining Pleasure Point Road is zoned R5 Large Lot Residential and the back (eastern) portion of the lots is zoned E2 Environmental Conservation (**Figure 6** below).

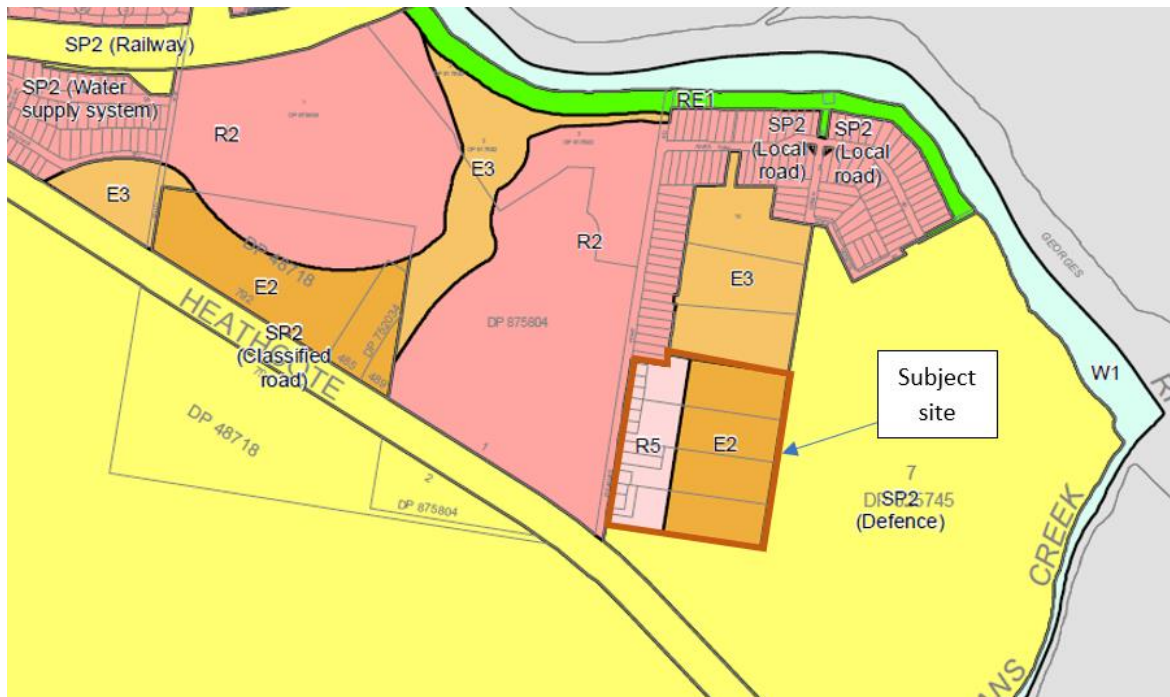


Figure 6. Split zoning over the allotments.

Zone R5 currently permits dwelling houses and dual occupancies through the LLEP. Zone E2 does not permit residential development. A Class 1 riparian corridor is located through the centre of Sites 3 and 4, running down the slope northwards to the Georges River.

The LLEP includes principal development standards for minimum lot size, floor space ratio and maximum building height over the sites. These are not affected by this PP.

The portion of the site which is zoned E2 Environmental Conservation is also designated environmentally significant land in the LLEP through clause 7.6. The PP is unlikely to affect this land. Similarly, while State Environmental Planning Policy – Koala Habitat Protection (Koala SEPP) applies to this land, the PP is unlikely to change this classification.

The PP lies in a designated bushfire prone area according to RFS mapping (**Figure 7**). This will be addressed under section 4.3 below.

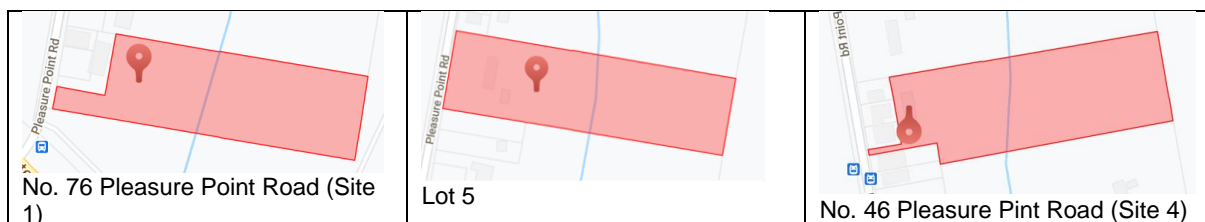


Figure 7 showing distribution of designated bushfire prone land on the lots

1.5 Surrounding area

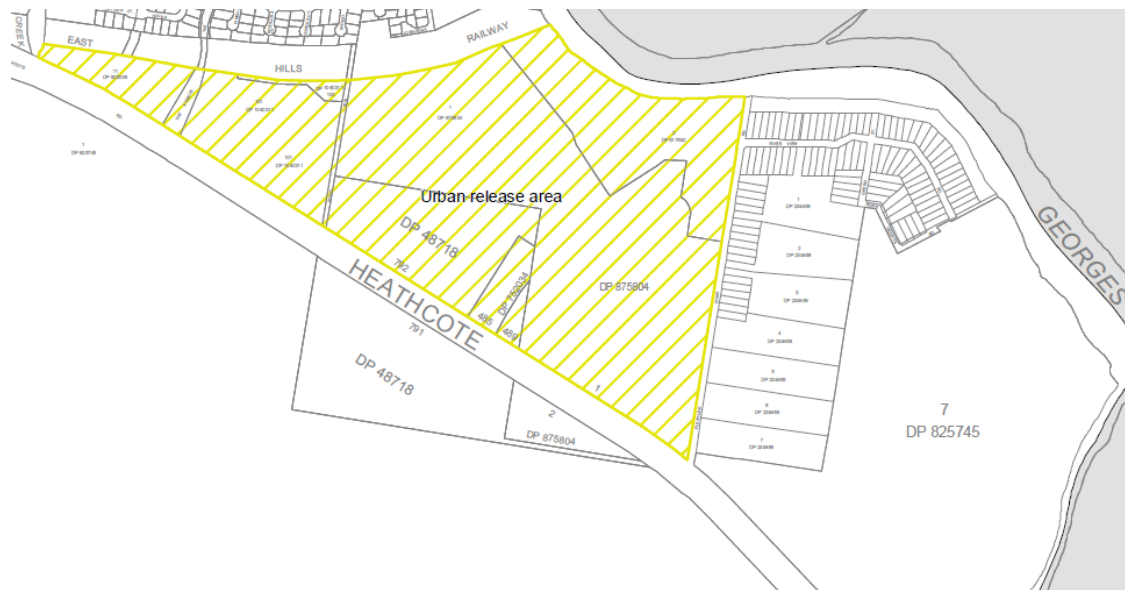


Figure 8. Urban release area identified in LLEP.

The land adjoins an urban release area to which Part 6 of the LLEP applies (**Figure 8**). The PP sites provide a buffer between the urban release area and the bush.

Drainage in the vicinity is to the north, feeding into the Georges River, south of East Hills.

1.6 Summary of recommendation

It is recommended that the PP proceed subject to conditions as it will in part formalise an existing 5 lot subdivision and potentially enable the equitable development potential of the other sites and further investigate their development potential (in the context of their location as bushfire prone). The PP has general strategic and local merit in relation to the Western City District Plan and Council's Local Strategic Planning Statement. The inconsistency with Ministerial Direction 4.4 is capable of being addressed through further consultation with the Rural Fire Service and the PP is recommended for a gateway determination on this basis.

2. PROPOSAL

2.1 Objectives or intended outcomes

The proposal seeks to amend the lot density 5 lots per parent site from the current 4 lots per parent site. This would formalise the existence of a five-lot subdivision that had been approved previously.

2.2 Explanation of provisions

The PP seeks to amend the existing lot density map from four to five lots per each of Sites 1 to 4 (**Figure 9**).



Figure 9. Proposed lot density

The PP would involve updating the Dwelling Density map associated with the LLEP's clause 7.12 Maximum number of lots. This is the only change proposed.

2.3 Mapping

The PP will amend the Dwelling Density map (sheet DWD-015) for the LLEP (**Figure 9** above).

The maps to be presented for exhibition are recommended to be accurate in identifying where cadastral boundaries lie in relation to the planning layers. The set of maps required for consultation should be consistent with the cadastre.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a strategic study or report. It arises from a landowner's request to formalise one subdivision and address an application where both subdivisions relate to an increase to 5 lots per parent site.

Whereas the need to formalise the already subdivided lot (Site 2) is included in this PP, this approach to land management is not ideal as it removes the opportunity to assess the best configuration over land with identified constraints.

In relation to Site 1, this site already has five dwellings and any subdivision which would lead to six lots is not the intended outcome of the subject proposal. A gateway condition is recommended that prior to public exhibition, Council must address the issues raised by the RFS. The Gateway determination also requires consultation with Sydney Water and other relevant agencies.

4. STRATEGIC ASSESSMENT

4.1 District

Western City District Plan

The Western City District Plan (WCDP) is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It is a guide for implementing the Greater Sydney Region Plan, A Metropolis of Three Cities, at a district level and is a bridge between regional and local planning.

The PP area lies outside Liverpool's section of the Western Parkland City Metropolitan Cluster and the land is outside the Metropolitan Rural Area (MRA). The PP lies outside areas of priority in the district plan. The PP is considered to be consistent with the WCDP in that it would provide potential for a maximum increase of four dwellings dependent on the suitability of the land for this increase. Minimal housing diversity would be achieved since the dwelling types permitted are limited to single dwellings and dual occupancies.

4.2 Local

Liverpool Community Strategic Plan

Council's Our Home, Liverpool 2027 is a Community Strategic Plan (CSP) provides strategic directions that have been identified by the community and the measures that will allow Council to determine progress towards achieving them. The four key directions are:

- creating connection,
- strengthening and protecting our environment,
- generating opportunity and,
- leading through collaboration.

The proposal aligns with Direction 3 (generating opportunity) which aims to meet the challenges of Liverpool's growing population. It proposes to increase the lot yield from four lots to five per site which will provide additional housing, where appropriate.

Liverpool Local Strategic Planning Statement (LSPS)

The LSPS is Council's long-term plan to shape Liverpool's future which will help guide the development of Liverpool's suburbs and balance the need for housing, jobs and services as well as parks, open spaces and the natural environment. It identifies Pleasure Point as an area for protecting and enhancing the established residential area (LSPS map, page 21). It is consistent with Planning Priority 8 *Community focused low scale suburbs where our unique local character and heritage are respected*. The PP does not rezone land and is generally consistent with this priority in the LSPS.

Local Planning Panel

The Liverpool Local Planning Panel (LLPP) report stated that the PP had strategic and site specific merit and it noted the site is constrained in regard to water servicing, bushfire threat and because of the existence of significant bushland. The report also stated the relevant 9.1 Ministerial Directions and State Environmental

Planning Policies had been considered to confirm consistency (**Attachment 2**). No details for these are provided.

The LLPP advice noted the Rural Fire Service's concern about re-subdivision of Lot 86 DP1134481, but agreed with Council officers that this lot should be included in the planning proposal at the Gateway request stage. The Panel considered that the PP exhibited strategic and site-specific merit and recommended that Council resolve to progress the planning proposal to a gateway determination (**Attachment 3**).

4.3 Section 9.1 Ministerial Directions

The section 9.1 Directions relevant to the proposal options are as follows:

Direction 2.1 Environment Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas. This Direction applies to land within an environment protection zone being E2 Environmental Conservation.

The PP does not propose to change the E2 zoned portion of the land and the E2 zoning is supported by the environmentally significant land clause 7.6 in the LLEP. The proposal is consistent with this Direction.

Direction 3.1 Residential Zones

The objective of this Direction is to encourage housing diversity, make efficient use of infrastructure and services and minimise the impact of residential development on the environment and resources. The Direction applies when a PP will affect land within an existing residential zone and the proposal must include provisions that reduce the consumption of land for housing and associated urban development on the urban fringe and be of good design.

This Direction is relevant to the servicing of the allotments required in relation to water and access. Council will need to either demonstrate consistency with this direction or that the inconsistency is justified by a study prepared in support of the PP which gives consideration to the objective of this direction, or the inconsistency is of minor significance.

Given the nature of the PP, the inconsistency with Direction 3.1 is considered to be a minor. The Gateway condition requires consultation with Sydney Water and other relevant utility providers to confirm the serving requirements that support the proposal at the rezoning stage.

Direction 4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils (ASS). The proposal is over mapped Class 5 ASS.

The LLEP contains a provision to address ASS (clause 7.7) to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. This matter needs to be addressed in any proposed subdivision of the sites at the future development application stage.

Direction 4.4 Planning for Bushfire Protection

The sites are identified as a designated bushfire prone area according to RFS mapping (**Figure 7 above**). The Direction's objectives are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of

incompatible land uses in bushfire prone areas, and to encourage sound management of these areas. The Direction applies when a PP will affect or is in The proposal is inconsistent with Direction 4.4 as the PP lies in a designated bushfire prone area and RFS has unresolved concerns in the early phase of consultation.

A PP may be inconsistent with this direction only if the Planning Proposal Authority can satisfy the Secretary of the Department (or his delegate) that the council has obtained written advice from the RFS, to the effect that, notwithstanding the non-compliance, the RFS does not object to the progression of the planning proposal.

A PP must introduce controls that avoid placing inappropriate developments in hazardous areas, contain provisions for access for fire trails and adequate water for fire fighting and ensure that bushfire hazard reduction is not prohibited within the APZ as well as addressing requirements in the relevant PBP.

Sites 1 to 4 vary in their capacity to deliver an additional lot. This difference in capacity needs to be further considered and assessed by Council and the RFS.

In relation to specific sites:

- Site 1 – this site already contains five dwellings including a dual occupancy development on one lot. The southwest segment of Site 1 does not meet Sydney Water's minimum water pressure requirement. Sydney Water stated that no dwelling should be built on this property, unless there is an alternate arrangement to provide water services (**Attachment 5**). Also, RFS has identified the need for the construction of a designated perimeter road and provision of the asset protection zone (APZ) under Planning for Bush Fire Protection (PBP) 2019 (**Attachment 4**).
- Site 2 – it contains an existing fire trail at the rear of the segment zoned R5. This is to remain, be maintained and be accessible to the RFS (**Attachment 4**).
- Site 3 – a subdivision to five lots on Site 3 has the potential not to meet APZ and other RFS requirements. A suitable lot reconfiguration may be necessary to give the requisite protection from bushfire and it must include provision of a formalised bushfire trail to meet RFS and LDCP requirements. The RFS recommended a non-perimeter road along the northern boundary of Site 3 to connect to Pleasure Point Road and the perimeter road in accordance with section 5.3.2 of PBP 2019 (**Attachment 4**).
- Site 4 – the RFS noted that development on Site 4 may be possible if significant lot reconfiguration occurred. Access would need to be upgraded to a perimeter road with an 8m carriageway. This requirement cannot be satisfied with the existing lot orientation within Site 4 (**Attachment A**). Access could be provided from Site 3 should an agreement be reached with the adjoining landowner. However, without a reconfiguration, RFS did not support an increase in yield on this lot due its steeper slope requiring a minimum APZ of 36m which would involve extensive clearing and encroachment on E2. RFS recommended that this site be excluded from the PP (**Attachment 4**).

Department Comment:

The RFS recommended that a suitably qualified person prepare a bush fire report to assist Council in determining the feasibility based on the constraints and the available developable area. This should also include addressing section 4 of PBP 2019 (**Attachment 4**).

The Department agrees that a Bushfire Report is required at the post-Gateway stage, prior to community consultation and provided to the RFS as part of this consultation to address the Direction. The Department needs to be advised of the outcomes of post-gateway consultation with RFS and Sydney Water in accordance with Direction 4.4 as conditioned in the Gateway Determination.

In accordance with this direction council is required to obtain written advice from RFS that RFS does not object to the progression of the PP, prior to public exhibition to address the unresolved inconsistency with this Direction.

In support of access to the eastern part of the sites for bushfire protection purposes, the Liverpool Development Control Plan (DCP) shows a bushfire trail which skirts the edged of the allotments in a rectangular pattern (**Figure 10**). The LDCP requires the four parent lots to provide a fire trail parallel to Pleasure Point Road with any subdivision and states that the trail is to meet requirements for bushfire protection.

Since the LDCP was finalised, the RFS has released PBP 2019. Hence, formalising and locating the bushfire protection trail in the R5 portion of the allotments needs to be resolved in line with the PBP requirements. The RFS identified the need to update the LDCP in tandem to reflect the new perimeter and non-perimeter roads to be consistent with RFS road widths and design (**Attachment 4**).

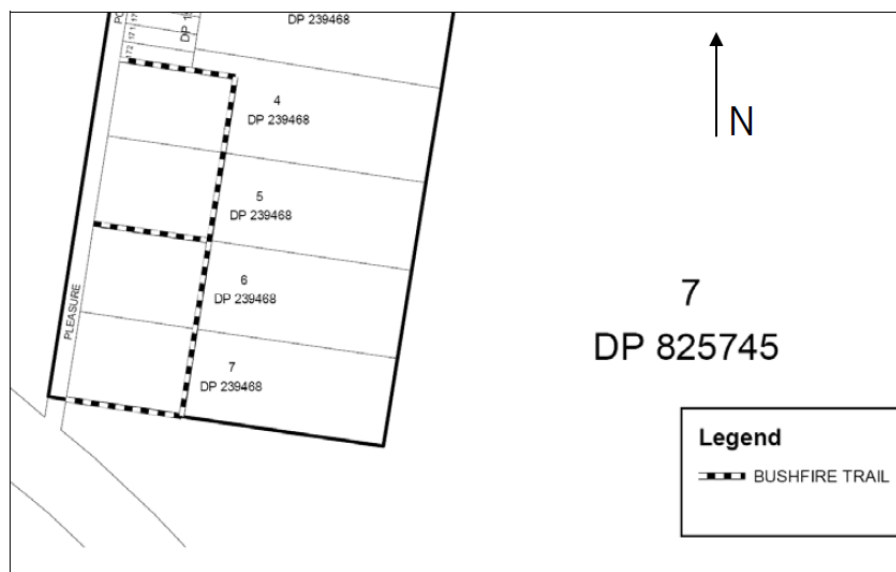


Figure 10. Route of fire trail shown in LDCP 2008.

4.4 State environmental planning policies (SEPPs)

State Environmental Planning Policy – Koala Habitat Protection

The proposal area is located within the Koala Development Application Map area associated with State Environmental Planning Policy – Koala Habitat Protection (Koala SEPP) (**Figure 13**). The proposals appear to be less than the 1 ha area

captured by clause 9(1)(b) of the SEPP. However, the SEPP may be applicable at DA stage.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The social impacts of the proposal relate mainly to providing bushfire protection measures on the R5 zoned land. This relates to the final configuration of the proposed lots and provision of dedicated access routes as part of the proposal.

Not providing adequate safety measures would affect not only the lots in this proposal but also on the residential development to the north of these sites. The western side of Pleasure Point Road is identified as an urban release area in the LLEP and Sites 1 to 4 represent a buffer to that area (**Figure 2**). There is also an opportunity to provide measures which will reduce bush fire risks to the area.

5.2 Environmental

The proposal is compatible, largely, with existing and future uses. Council will need to address consistency with requirements of the Koala SEPP and respond appropriately to issues raised by RFS and Sydney Water.

5.3 Economic

The proposal resulting in four additional lots would have minor impact on the capacity of services in the area providing adequate bushfire protection measures in the form of appropriate lot configuration and access are provided. However, as recognised in section 2.2, Sydney Water has recognised that water pressure constraints apply as well as significant bushfire risk to the proposal.

Sydney Water has stated that water mains pressures are insufficient for the subdivision of the southernmost parent allotment (Site 1). The RFS has already recommended bushfire protection measures for all the sites and the PP needs to have provided a consistent and concerted approach to bushfire protection. Further consultation with Sydney Water and RFS is conditioned in the Gateway Determination.

6. CONSULTATION

6.1 Community

Council has proposed a community consultation period of 14 days which is considered appropriate for the nature of the PP.

Affected landowners would be considered to include the owners of other lots subdivided from the parent lot and the owners of the lots to the north of the proposal on Pleasure Point Road.

6.2 Agencies

Consultation is recommended with

- Sydney Water;
- Department of Planning, Industry and Environment – Environment, Energy and Science Group (Formerly OE&H);
- NSW Rural Fire Service;
- State Emergency Services; and
- Endeavour Energy and Jemena Gas Works (NSW) Limited.

7. TIME FRAME

Council proposes a timeframe of 12 months to finalise this planning proposal. A 12-month timeframe is supported to allow for preparation of the Bushfire Report in consultation with RFS.

8. LOCAL PLAN-MAKING AUTHORITY

Council has sought the authority of plan making functions pursuant to Section 3.36 of the Environmental Planning and Assessment Act 1979. Given the nature of the PP and the minor inconsistency of section 9.1 Directions and avenues to resolve inconsistencies, it is recommended that Council is authorised to be the local plan-making authority.

9. CONCLUSION

The planning proposal is supported to proceed with conditions, as it is considered to have strategic and site-specific merits and has the potential to give effect to the Western City District Plan.

The proposal seeks to increase the maximum dwelling density per lot in the subject land to facilitate a four additional dwelling lot yield in the existing large lot residential context.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that any inconsistency with section 9.1 Direction 3.1 Residential Zones is of minor significance.
2. Note that the consistency with Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, Council is required to prepare a bush fire report in consultation with the Rural Fire Service, and update the planning proposal to address the unresolved inconsistency with Section 9.1 Direction 4.4 Planning for Bushfire Protection.
2. The planning proposal should be made available for community consultation for a minimum of **14 days**.
3. Consultation is required with the following public authorities:
 - Sydney Water;
 - Department of Planning, Industry and Environment – Environment, Energy and Science Group;
 - NSW Rural Fire Service;
 - State Emergency Services; and
 - Endeavour Energy and Jemena Gas Works (NSW) Limited.

4. The public authorities are to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
5. The time frame for completing the LEP is to be **12 months** from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council is to be the local plan-making authority.
7. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing.



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