

**SYDNEY WESTERN CITY PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	2019WCI032
DA Number	DA-64/2007/B
LGA	Liverpool City Council
Proposed Development	Modification to DA-64/2007 under section 4.55(2) of the Environmental Planning & Assessment Act. The modification proposes the realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts.
Street Address	Lots 1, 3 & 4 Seventeenth Avenue East, 60 Hall Circuit and Lots 2, 5, 6 & 102 Sixteenth Avenue East, Middleton Grange (Lot 1 DP 1078564, Lot 2, 3, 4, 5 & 6 DP 1207518, Lot 12 DP 1108343, Lot 102 DP 1128111)
Applicant	Pacific Planning Pty Ltd
Land Owners	Manta Group Pty Ltd De Angelis Investments Pty Ltd Al-Somai Developments Pty Ltd Liverpool City Council
Date of DA Lodgement	27-Sep-2018
Number of Submissions	1
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011).	The Sydney Western City Planning Panel is the determining authority as the modification application is regionally significant development under clause 3 of Schedule 7 to the State Environmental Planning Policy (State and Regional Development) 2011. This clause designates development with a capital investment value (CIV) of more than \$5 million on any land owned by Council as regionally significant development.
List of all relevant s4.15(1)(a) matters	<p>1) <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i></p> <ul style="list-style-type: none"> • State Environmental Planning Policy No.55 – Remediation of Land. • State Environmental Planning Policy (State and Regional Development) 2011. • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment • Liverpool Local Environmental Plan 2008 <p>2) <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)</i></p>

	<ul style="list-style-type: none"> Liverpool Local Environmental Plan 2008 (Amendment 63) <p>3) <i>List any relevant development control plan: s4.15(1)(a)(iii)</i></p> <ul style="list-style-type: none"> Liverpool Development Control Plan 2008 Part 1: General Control for all Development; and Part 2.5: Land Subdivision and Development in Middleton Grange <p>4) <i>List any relevant planning agreement that has been entered into under section 7.32, or any draft planning agreement that a developer has offered to enter into under section 7.32: s4.15(1)(a)(iv)</i></p> <ul style="list-style-type: none"> No planning agreement relates to the site or proposed development. <p>5) <i>List any relevant regulations: s4.15(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288</i></p> <ul style="list-style-type: none"> Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC)
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> Draft Conditions (Without Prejudice) Survey Plan Civil Plans Statement of Environmental Effects Traffic Impact Assessment Stormwater Management Strategy Original Notice of Determination (DA-64/2007) Modification A Notice of Determination (DA-64/2007/A) Council's Report for planning proposal Council Resolution
Report prepared by	Akshay Kumar – Development Assessment Planner
Report date	08 July 2019

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part</i>	Not Applicable

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel is the determining authority as the modification application is regionally significant development under clause 3 of Schedule 7 to the State Environmental Planning Policy (State and Regional Development) 2011. This clause designates development with a capital investment value (CIV) of more than \$5 million on any land owned by Council as regionally significant development.

1.2 The proposal

The application seeks consent for a modification to DA-64/2007 pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979. Development Consent No. DA-64/2007 granted approval to *Subdivision of existing lots into eight (8) lots Torrens title, four public reserve and 3 residue and associated roads and drainage works.*

The modification proposes the realignment of internal roads, additional intersection and widening, redesign of Rene Ave, creation of Bravo Ave, reconfiguration of open space and pedestrian linkages and change trunk drainage from channel to box culverts.

1.3 The site

The subject site is identified as Middleton Grange Town Centre and comprises eight (8) lots, which are legally described as follows:

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

The subject site has a total area of 69,040m² with a frontage of 200.5m to Seventeenth Avenue East and 220m to Sixteenth Avenue.

1.4 The issues

The main issues are identified as follows:

- (i) In accordance with the existing Land Reservation for Acquisition map applying to the site, the proposed road (Road 3) to the east of the site would pass right through land reserved for community facilities, which would be in breach of clause 5.1A of Liverpool Local Environment Plan 2008. Therefore, the modification application DA-64/2007/B is inconsistent with the provisions of LLEP 2008.
- (ii) The proposed road modification is not consistent with the road network depicted in Part 2.5 of the Liverpool Development Control Plan 2008. Rather, the proposed modifications would have significant implications upon the locality, neighbouring properties and achieving the intent of the ILP. It is considered that the proposed modification is not of a minor nature and would require a formal amendment to LDGP 2008.

- (iii) It is also noted that there is a Planning Proposal before Council associated with the subject site. It is apparent that the application is presupposing gazettal of LLEP 2008 (Amendment 63). Notwithstanding this, no consideration can be given to an amendment to Part 2.5 of LDCP 2008 until a decision is made regarding LLEP 2008 (Amendment 63).
- (iv) It is considered that the proposed development is not substantially the same development as that originally proposed given the major departure from the original scheme both in terms of the scope of works as well as the addition of land that was not subject of the original development consent.

1.5 Exhibition of the proposal

The modification application was notified for a period of 14 days from 29 October 2018 until 12 November 2018. One submission was received during this period. The main concerns raised as part of the submission are as follows:

- Existing traffic congestion issues with non-residents needing access to the school located immediate east of the subject site.
- No provision for residents to have quick and easy access in or out from the suburb as traffic will need to pass through the future centre or be forced onto to back streets, which will trigger traffic issues.
- Inconsistency with “Smart Growth Model”.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application it is recommended that the application be refused.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Middleton Grange Town Centre and comprises eight (8) lots, which are legally described as follows:

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

The subject site has a total area of 69,040m² with a frontage of 200.5m to Seventeenth Avenue East and 220m to Sixteenth Avenue.

The site is consists of five residential dwellings. Three of the five dwellings are located along Southern Cross Avenue on the northern portion of the site and the other two dwellings are located along Flynn Avenue on southern portion of the site.

An aerial photograph of the site is in Figure 1 below.



Figure 1: Site Location Map

2.2 The locality

Currently the surrounding locality is a combination of large rural holdings as well as low density residential. The large rural lots are intended for future residential/commercial/recreational development under the provisions of the Liverpool Local Environmental Plan 2008 and the supporting Development Control Plan 2008.

The subject site naturally drains to Southern Creek which transverse through the development site, a tributary to Hinchinbrook Creek, located in the Georges River Catchment. West of the site is an existing medium density residential development.

The site is located 380m west of the M7 motorway, and 320m west of Cowpasture Road. The lands North of the subject site are primarily large rural residential allotments zoned R1 General Residential. Directly east of the subject site along Hall circuit is the Middleton Grange Public School.

The subject site consists of four different zoning, the western portion of the site is zoned R1 General Residential, whereas most of the central portion of the site is zoned B2 Local centre, and small portions of the site are zoned RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008.



Figure 2: Locality Map

2.3 Site affectations

2.3.1 Flooding

The site is located on Southern Creek floodplain in Middleton Grange, which transverse through the centre of the subject site. The centre portion of the site is subject to low to high flood risk category and affected by the floodway of the Creek. The flood waters travel from south west to east across the centre of the development site as indicated in the figure below.

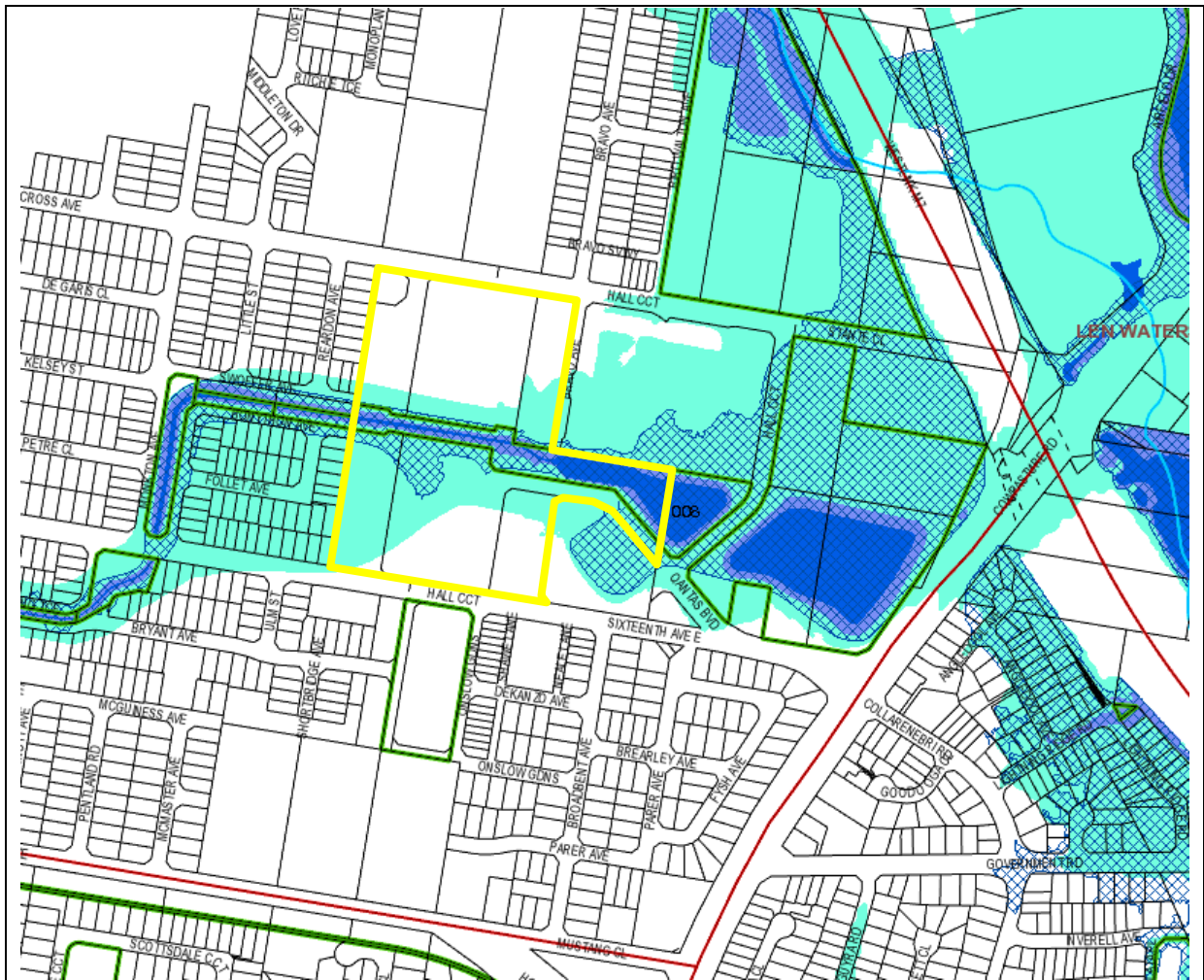
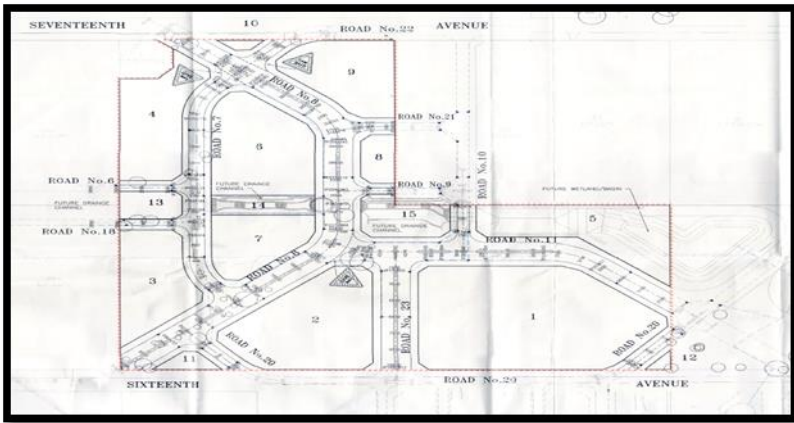
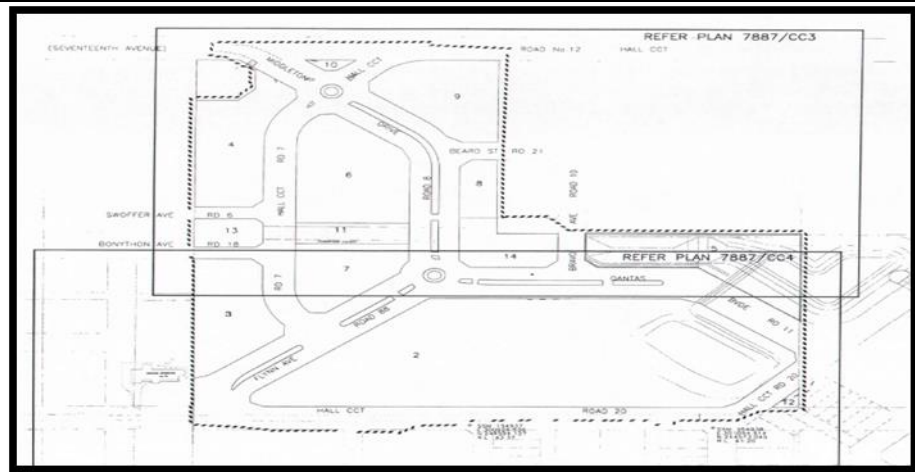


Figure 3: Flood Affectation

3. BACKGROUND

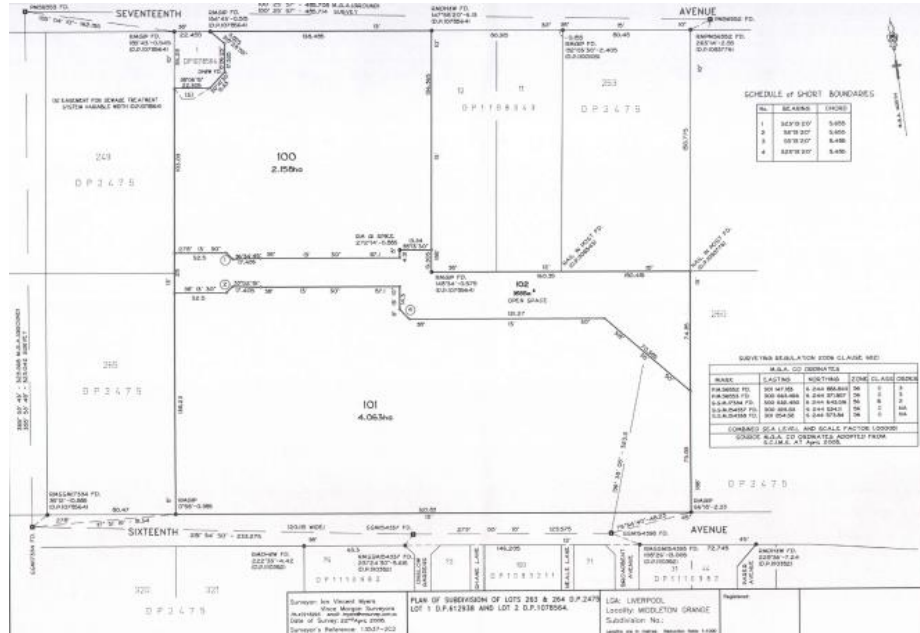
3.1 Related applications

Application No.	Description
DA-67/2007 Approved on 5 October 2006	Subdivision of existing lots into eight (8) lots Torrens title, four public reserve and 3 residue and associated roads and drainage works. 
DA-67/2007/A Approved on 1 February 2008	Subdivision of existing lots into Seven (7) Torrens title, four Public reserve and 2 residue and associated roads, intersection and pedestrian treatment and drainage works



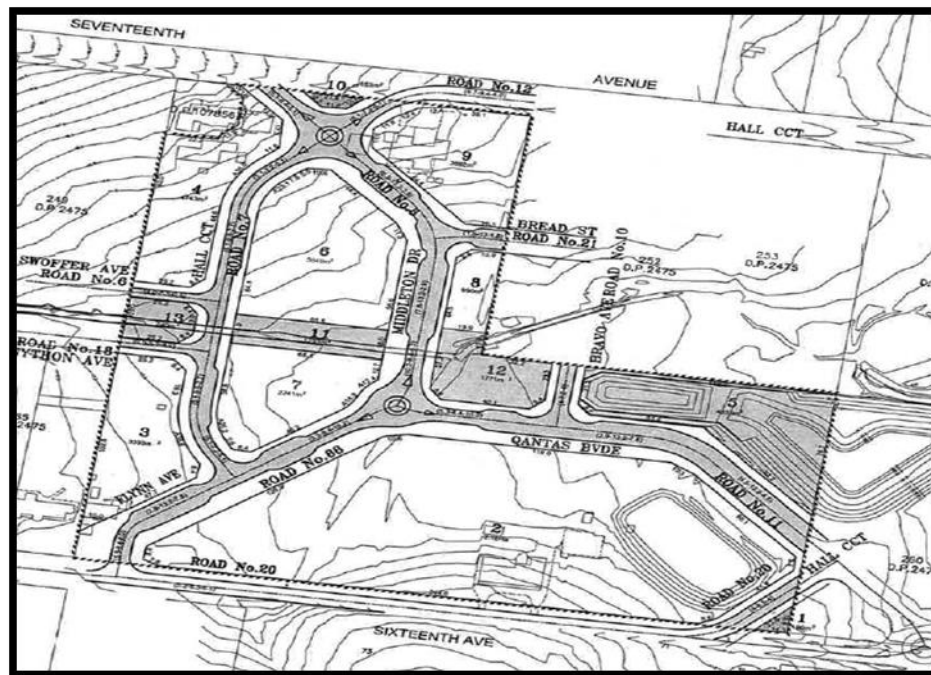
DA-1179/2008
Approved on 30
May 2008

Resubdivision of 4 Lots Into 3 Lots



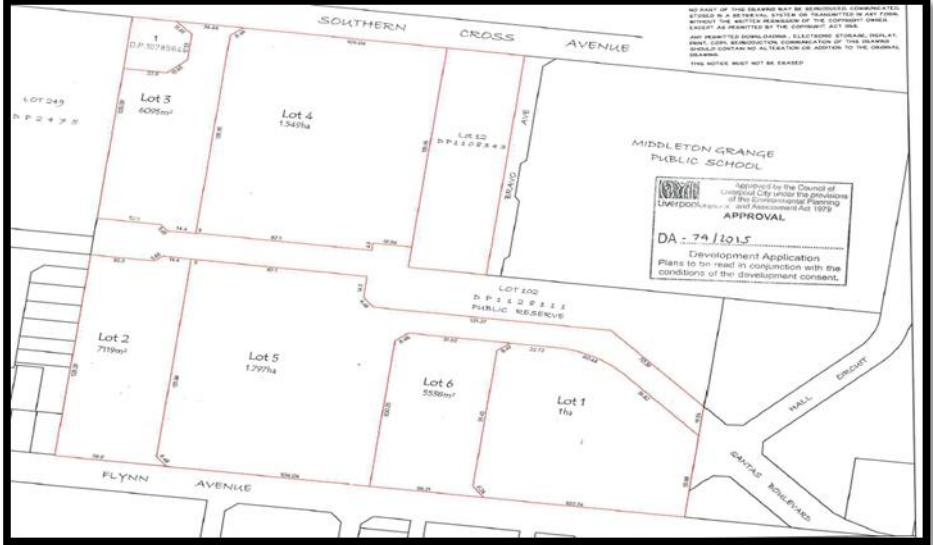
DA-1248/2011
Approved on
26 April 2012

Subdivision of Existing Lots into Twelve (12) Lots with Associated Road Construction.



DA-74/2015

Subdivision of existing lots into eight Torrens title lots

<p>Approved on 1 April 2015</p>	
<p>DA-74/2015/A Approved on 14 April 2015</p>	<p>Section 96(1) modification to amend the proposal's description to read as follows: Torrens title subdivision of the existing lots into six (6) and the retention of two (2) lots.</p>

3.2 Validation of Consent DA-64/2007:

A letter from surveyor, a soil testing report and a copy of CCE-31/2008 (construction certificate) has been submitted in support of the argument that Development Consent DA-64/2007 was acted upon prior to the lapsing date, however, no formal letter from the PCA was provided as an evidence to prove that works were actually physically commenced prior to the lapsing date.

3.3 Issues Identified in Initial Assessment

The applicant was advised that Lots 2, 3, 4, 5 and 6 in DP 1207518, Lot 1 DP 1078564 & Lot 12 DP 1108343 (lots which form part of the subject site) are burdened by an 88B restriction imposed under DA-74/2015. The restriction reads as follows;

'Development Application shall not be considered or determined on the burdened lots until such time Council (and other relevant authorities) have approved a Planning Proposal for a rezoning and revised street network layout for the Middleton Grange Town Centre. The revised street network layout shall include a link road (north-south direction) connecting Flynn Avenue and Southern Cross Avenue.'

This restriction clearly indicates that Council would not consider a Development Application on burdened lots, the subject of this application, until such time that a Planning Proposal has been approved for the rezoning and revised street network. No Planning Proposal has been approved for the rezoning and revised street network for Middleton Grange Town Centre.

Notwithstanding this, the applicant was advised that Council could not support the modification application due mainly to the following deficiencies with the modification application:

- *In accordance with the existing Land Reservation for Acquisition map applying to the site, the proposed road (Road 3) to the east of the site would pass right through land reserved for community facilities, which would be in breach of clause 5.1A of Liverpool Local Environment Plan 2008. Therefore, the modification application DA-64/2007/B is inconsistent with the provisions of LLEP 2008.*

- The proposed road modification is not consistent with the road network depicted in Part 2.5 of the Liverpool Development Control Plan 2008. Rather, the proposed modifications would have significant implications upon the locality, neighbouring properties and achieving the intent of the ILP. It is considered that the proposed modification is not of a minor nature and would require a formal amendment to LDCP 2008.
- It is also noted that there is a Planning Proposal before Council associated with the subject site. It is apparent that the application is presupposing gazettal of LLEP 2008 (Amendment 63). Notwithstanding this, no consideration can be given to an amendment to Part 2.5 of LDCP 2008 until a decision is made regarding LLEP 2008 (Amendment 63).

Given the above, the modification application cannot be supported in its current form, the applicant was therefore advised to withdraw the application. In response, the applicant updated the CIV associated with the modification application from \$0.0 to \$16.7 million and requested the application to be determined by Sydney Western City Planning Panel.

4. DETAILS OF THE PROPOSAL

Development consent is sought for the modification of DA-64/2007, which approved the following;

Subdivision of existing lots into eight (8) lots Torrens title, four public reserve and 3 residue and associated roads and drainage works.

An extract of approved plan is shown below:

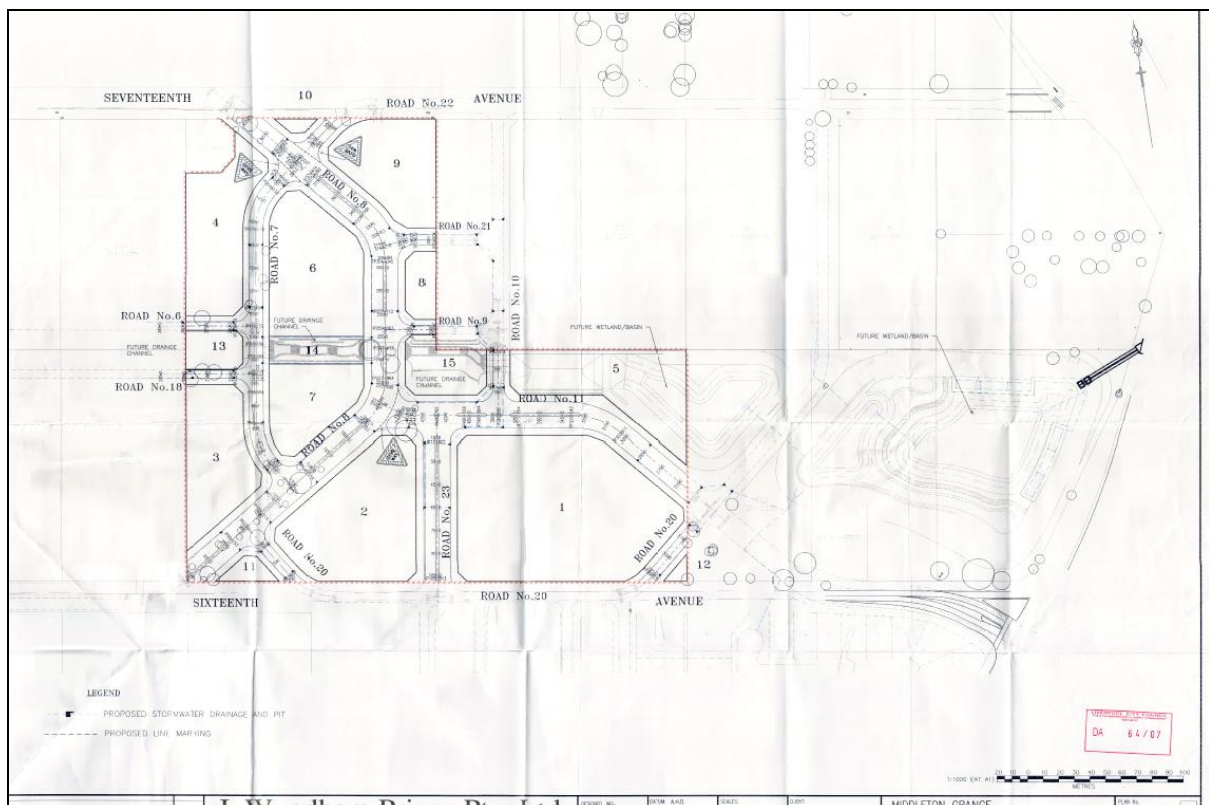


Figure 4: Approved Roads and Stormwater Drainage Layout

DA-64/2007 granted development consent to Lots 263 & 264 DP 2475, Lot 1 DP 612938 & Lot 2 DP 1078564, Middleton Grange. The same lots were the subject of Modification Application No. 64/2007/A. These lots have been the subject of separate subdivision

applications and are now considered to be historic. Having regard to the modification application, it is noted the submitted SEE identifies the following lots that is land that was subject of DA-64/2007:

- Lot 102 DP 1128111; and
- Lot 2, 3, 4, 5 & 6 DP 1207518.

The modification application identifies the following lots in the SEE that are part of the subject site yet were not the subject of DA-64/2007:

- Lot 1 DP 1078564; and
- Lot 12 DP 1108343.

The modification application proposes works on the following lots that are not identified in the SEE yet are the subject of DA-64/2007:

- Lot 1 DP 1207518;

The modification application proposes works on the following lots that are not identified in the SEE nor are they the subject of DA-64/2007:

- Lot 2 DP 1141036; and
- Lot 3 DP 1141036.

Given the above, of the 11 lots that the modification application comprises, only 7 lots comprises of land that was subject of DA-64/2007. Notwithstanding this, as part of the modification application the applicant proposes the following works on all 11 lots that are subject of the modification application;

- Realignment of internal roads
- Additional intersection and widening
- Redesign of Rene Ave, creation of Bravo Ave,
- Reconfiguration of open space and pedestrian linkages; and
- Change trunk drainage from channel to box culverts.

For more details on the amendments to the development approved under DA-64/2007, particularly, amendments to the approved road network and drainage system refer to figure 5.



Figure 5: Proposed Road Layout

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy No.55 – Remediation of Land.
- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment
- Liverpool Local Environmental Plan 2008

Draft EPI's

- Liverpool Local Environmental Plan 2008 (Amendment 63)

Development Control Plans

- Liverpool Development Control Plan

- Part 1: General Control for all Development; and
- Part 2.5: Land Subdivision and Development in Middleton Grange

5.2 Zoning

The subject site consists of four different zonings. The western portion of the site is zoned R1 General Residential, whereas most of the central portion of the site is zoned B2 Local centre, and small portions of the site are zoned RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008.

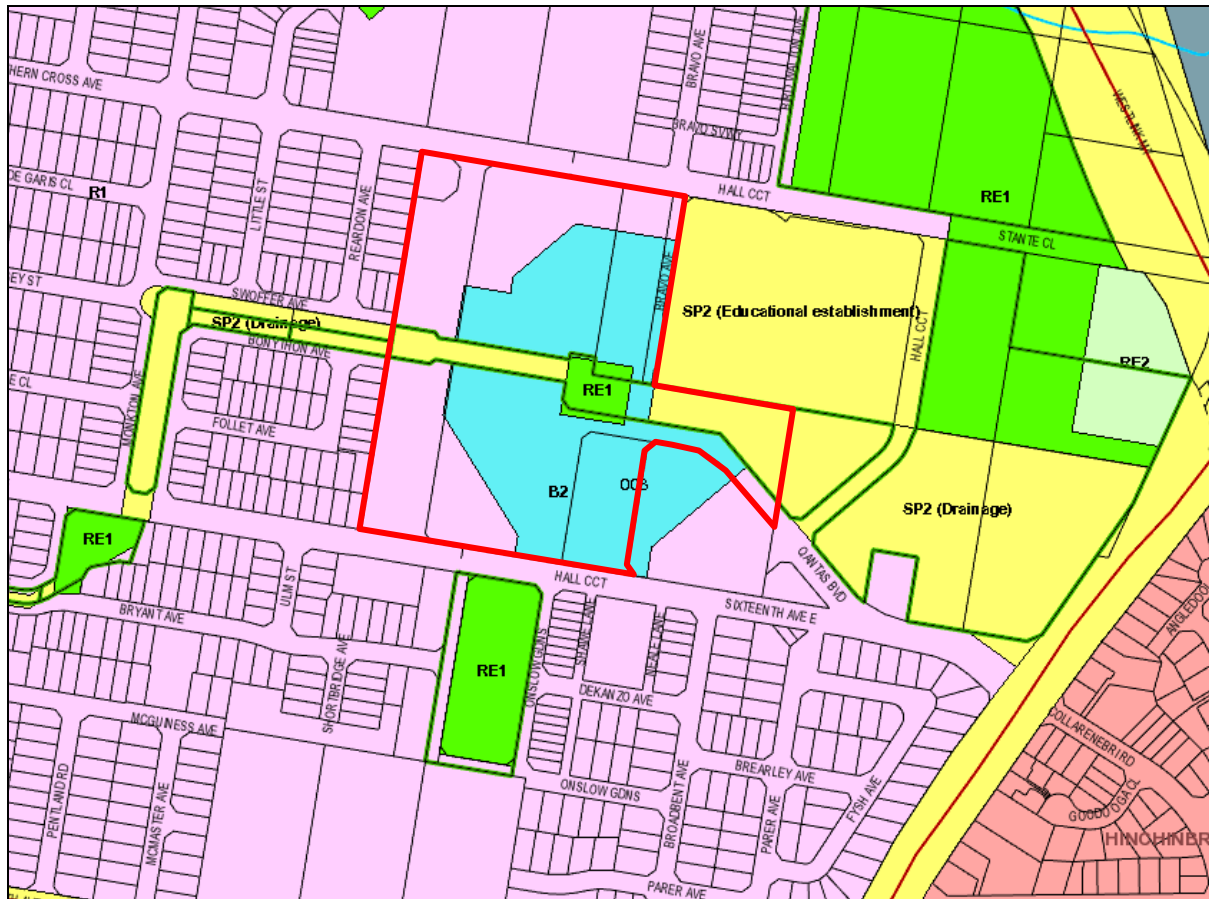


Figure 6: Zoning Map

5.3 Permissibility

Roads are permissible form of development in R1 General Residential, B2 Local Centre, RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008.

6. ASSESSMENT

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

6.1 Section 4.55(2) of the Environmental Planning and Assessment Act 1979

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The modification application proposes major amendments to the road configuration for which consent was originally granted. In its original form, the road configuration is consistent with Part 2.5 of LDCP 2008 which is not the case with the proposed modifications. The amendments proposed are considered to mark a significant departure from what was originally approved. Therefore, it is considered that the proposed modification is not substantially the same development as the development for which consent was originally granted.

In addition, Council's Strategic Planning Department have reviewed the application and advised that the amendments proposed is not consistent with the Principal Standards of LLEP 2008. The proposed road 3 would transverse right through land reserved for community facilities. In accordance with clause 5.1A of LLEP 2008, only earthworks are permitted on the land which is intended to be acquired for community facilities. It should be noted that the proposed development, in its original form, is consistent with clause 5.1A of LLEP 2008.

It is considered that the proposed development is not substantially the same development as that originally proposed given the major departure from the original scheme not only in terms of the scope of works but also with the addition of land that was not subject of the original development consent. As discussed previously, the modification application seeks consent to carry out works on land that was not the subject of the original development application

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comment: Consultation under Division 4.8 is not required for this application

- (c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The section 4.55 application was notified from a period of 14 days from 29 October 2018 until 12 November 2018. One submission was received during this period.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: One submission was received during the notification period. The main concerns raised as part of the submission are as follows:

- Existing traffic congestion issues with non-residents needing access to the school located immediate east of the subject site.

- No provision for residents to have quick and easy access in or out from the suburb as traffic will need to pass through the future centre or be forced onto to back streets, which will trigger traffic issues.
- Inconsistency with “Smart Growth Model”.

As a result of the above concerns raised by the objector and a review of submission by Council’s departments, it is considered that the proposed modification application is not in public interest.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance of the development, the subject of the application.

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

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

(a) State Environmental Planning Policy (State and Regional Development) 2011

Clause 5 of Schedule 7 in this SEPP states:

Development that has a capital investment value of more than \$5 million if:

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or*
- (b) the council is the owner of any land on which the development is to be carried out, or*
- (c) the development is to be carried out by the council, or*
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

As the proposed development has a capital investment value of \$16,700,000 and Council is the owner of some of the land on which the development is to be carried out, the proposal is considered to be regionally significant development and will need to be determined by the Sydney Western City Planning Panel.

(b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The objectives of SEPP 55 are:

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

Pursuant to the above SEPP, Council must consider:

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

It is acknowledged that matters of consideration under this SEPP were satisfied with the original application. However, after a review of the modification application, it is revealed that the modification application includes land that was not the subject of DA-64/2007. No

documents have been provided to satisfy the consent authority that land which is the subject of the modification application would be suitable for development purposes.

Therefore, it is considered that the modified proposal is inconsistent with the relevant objectives and provisions of SEPP 55 and should be refused.

(c) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now deemed SEPP).

The GMREP is a deemed SEPP that applies to all of Liverpool LGA, as the LGA forms the region that is part of the Georges River catchment. The general aims of the GMREP are to maintain and improve the water quality and river flows of Georges River and its tributaries.

The proposed modification is seeking to alter the flood way of Southern Creek. After the review of modification it is concluded that insufficient information has been provided to enable Council assess the potential impacts of proposed development on the water quality and river flow. Therefore, it is considered that the modified proposal is inconsistent with the aims and objectives, as well as the general principles of the Plan.

(d) Liverpool Local Environmental Plan 2008:

(i) Permissibility

The subject site consists of four different zoning. The western portion of the site is zoned R1 General Residential, whereas most of the central portion of the site is zoned B2 Local centre, and small portions of the site are also zoned RE1 Public Recreation and SP2 Infrastructure (Drainage) pursuant to the Liverpool Local Environmental Plan 2008. The proposed road and drainage works are permissible form of development in their respective zones.

(ii) Objectives of the zone

R1 General Residential:

The proposed modification to the development consent no. DA-64/2007 fails to achieve the objectives of the zone as one of the proposed roads would transverse through land reserved for community facilities. Therefore, it considered that the proposed modification would not facilitate for the development of social and community infrastructure to meet the needs of future residents.

B2 Local Centre:

The proposed modification to the development consent no. DA-64/2007 fails to achieve the objectives of the zone as one of the proposed roads would transverse through land reserved for community facilities. Therefore, it considered that the proposed modification would result in negative impact on identified future community uses that serve the needs of the people who would live in, work in and visit the local area.

RE1 Public Recreation:

The proposed modification to the development consent no. DA-64/2007 fails to achieve the objectives of the zone as the proposed road layout would take over significant amount of land zoned RE1 Public recreation. Therefore, it considered that the proposed modification fails to provide sufficient and equitable distribution of public open space to meet the need of the residents.

SP2 Infrastructure:

The proposed modification to the development consent no. DA-64/2007 fails to achieve the objectives of the zone as the proposed drainage works is considered to detract from the provision of infrastructure.

Overall, the proposed modification fails to achieve objectives of the above mentioned zones and the modification application therefore be refused.

(iii) Principal Development Standards

Clause 5.1A of LLEP 2008 relevantly states;

- (1) *The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.*
- (2) *This clause applies to land shown on the [Land Reservation Acquisition Map](#) and specified in Column 1 of the Table to this clause and that has not been acquired by the authority of the State specified opposite that land in Column 2 of the Table.*
- (3) *Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 3 of the Table to this clause.*

The table referenced in Clause 5.1A of LLEP 2008 provides the following table:

Column 1	Column 2	Column 3
Land	Authority	Development
Zone RE1 Public Recreation and marked "Local open space"	Council	Earthworks; Recreation areas
Zone RE1 Public Recreation and marked "Regional open space"	The corporation constituted under section 8 of the Act	Earthworks; Recreation areas
Zone B2 Local Centre and marked "Community facilities"	Council	Earthworks; Community facilities

The Land Reservation Map indicates that the site contains land that is subject to Land Reservation Acquisition Clause as it contains both RE1 Public Recreation and marked "Local open space" and B2 Local Centre and marked "Community facilities". See Figure 7 below.

The proposed road layout does not comply with the existing Clause 5.1A of LLEP 2008 as the proposed road (Road 3) to the east of the site would pass right through land reserved for "community facilities". In this case, the modification application DA-64/2007/B renders the original development inconsistent with the provisions of LLEP 2008.



Figure 7: Land Reservation for Acquisition Map

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

Liverpool Local Environmental Plan 2008 (Amendment 63)

A Planning proposal for rezoning of lots 1, 2,3,4,5 and 6 in DP 1207518; lot 1 in DP 1078564; and Lot 12 in DP 1108343 was lodged with Council on 15/07/2016. A gateway determination was issued on 15/08/2016 by Department of Planning & Environment and subsequently the planning proposal was placed on exhibition from 29/08/2018 to 26/10/2018 for public consultation. Since the planning proposal has been the subject of public consultation it becomes a draft planning instrument.

An assessment of the proposed amendment (subject of this modification application) to the road layout has been conducted against the proposed zoning in LLEP 2008 (Amendment 63). It is noted that the amended road layout aligns with the proposed land zoning map as depicted in the draft instrument (refer to figure 8 below). Therefore, were the planning proposal to be adopted in the form proposed, it is likely to alleviate issues relating to Zoning and Land Reservation for Acquisition as discussed in the body of this report.

Notwithstanding this, LLEP 2008 (Amendment 63) was considered at a Council meeting held on 12 December 2018. Council resolved to withdraw support for the proposal (refer to Attachment 9). Given the circumstances, it is not considered appropriate to give LLEP 2008 (Amendment 63) any determining weight as there is no certainty that it will be supported by the Minister of Planning. Also, even in the event that the LLEP 2008 (Amendment 63) is adopted, a formal amendment to the road configuration depicted in Part 2.5 of LDCP 2008 would be required before any application could be considered for the subject site.

In view of the above, it is considered that a consent cannot be granted unless and until LLEP 2008 (Amendment 63) is adopted and the street network layout for the Middleton Grange Town Centre in Part 2.5 of the LDCP has been revised via a DCP Amendment.

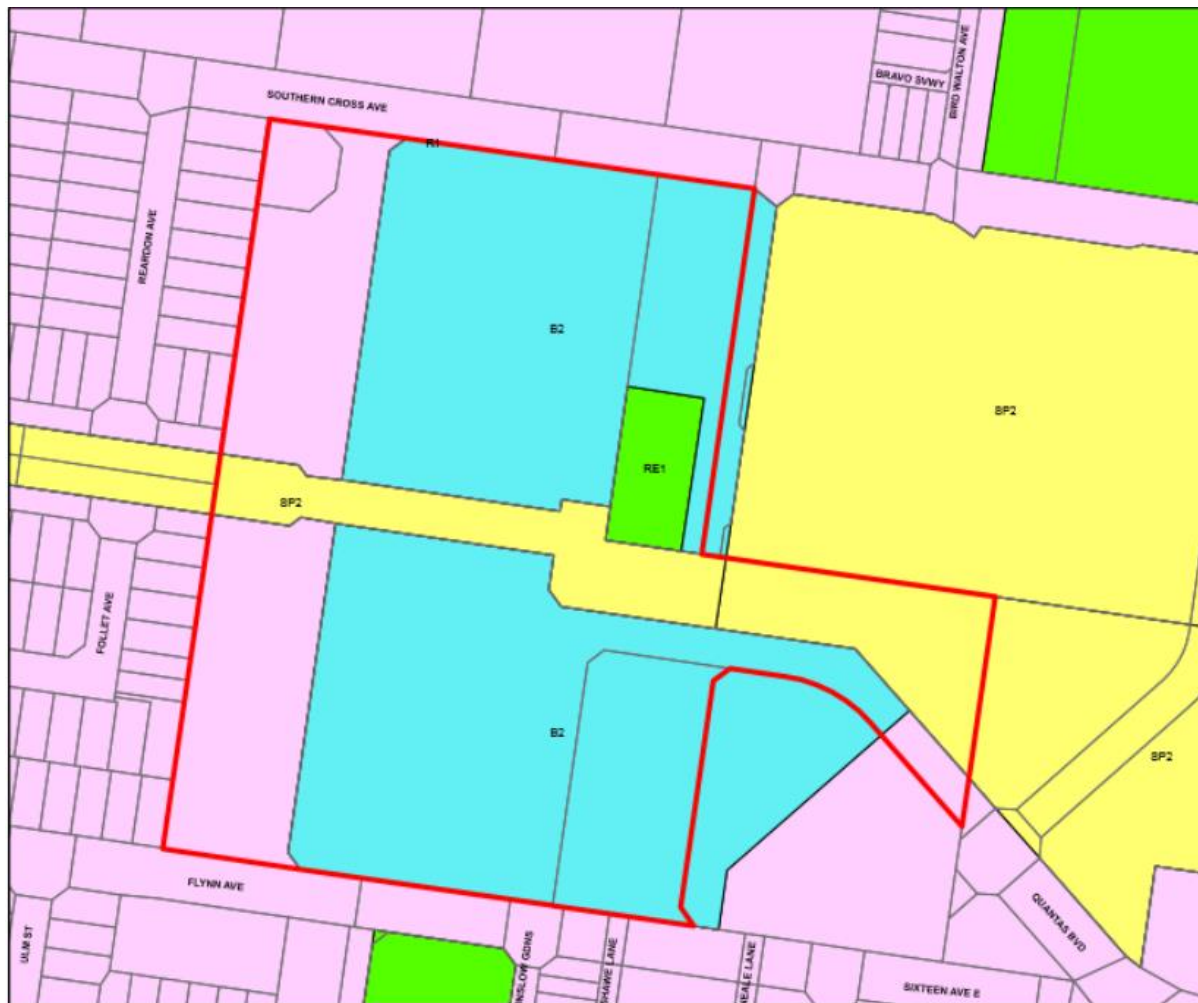


Figure 8: Land Zoning Map LLEP 2008 (Amendment 63)

6.4 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

Liverpool Development Control Plan

The modified application has been considered against the controls contained in the Liverpool Development Control Plan (LDCP) in particular:

- Part 1: General Control for all Development; and
- Part 2.5: Land Subdivision and Development in Middleton Grange

The assessment has identified that the proposal does not comply with the key controls outlined in part 2.5 of LDCP 2008. An assessment of the relevant controls is provided below.

Consideration of LDCP 2008, Part 1: General Controls for All Development

Development Control	Provision	Comment
Section 6. Water Cycle Management	Stormwater runoff shall be connected to Council's drainage system by gravity means. A stormwater drainage concept plan is to be submitted.	Does not comply This aspect has been reviewed by Council's Land Development Engineers as well as flood plain engineer, who advised that the flooding assessment cannot be undertaken due to insufficient information.

Development Control	Provision	Comment
Section 9. Flooding Risk	Provisions relating to development on flood prone land.	Does not Comply The site is subject to low to high flood risk category and affected by the floodway of the Creek. A flood impact assessment has been supplied along with the modification application. Council's Floodplain engineer has reviewed the Flood assessment and requested additional information be submitted.
Section 18. Notification of Applications	Provisions relating to the notification of applications.	Complies The application was notified for a duration of 14 days from 29/10/2018 to 12/11/2018 in accordance with the LDCP 2008.

Consideration of LDCP 2008, Part 2.5: Development in Middleton Grange

Development Control	Provision	Comment
Section 2.1 Street Network	The subdivision of land, design and layout of streets shall be in accordance with the indicative Layout Plan	Does not comply The proposed road modification is not consistent with the road network depicted in this control of the Liverpool Development Control Plan 2008. Additionally, variation to this control of part 2.5 of LDCP 2008 results in variation to other subsequent controls outlined under the same part such as <i>Stormwater Management</i> and <i>Creek Zone Management</i> . Rather, the proposed modifications would have significant implications upon the locality, neighbouring properties and achieving the intent of the ILP. Therefore, it is considered that the proposed modification is not of a minor nature and would require a formal amendment to LDCP 2008.

6.5 Section 4.15(1)(a)(iia) - Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

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

The application is consistent with the regulations.

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

The proposed modification is seeking to amend the road layout depicted in Part 2.5 of LDCP. It is considered that amending the road layout would have significant impact on the surrounding locality and adjoining properties. Therefore, the modification does not maintain a design that is in accordance with the street network depicted in Part 2.5 of Liverpool Development Control Plan. Additionally, one of the proposed roads would transverse through a land to be acquired by Council for community facilities, which would result in negative social impact.

The proposed modification is also considered to have negative impact on the natural environment. As the modification is proposing to alter natural flood way on Southern Creek and failed to demonstrate compliance to the controls for Creek Zone Management outlined under Part 2.5 of LDCP 2008. Therefore, it is considered that the proposed modification

would have significant impact on the built environment and should be refused.

6.8 Section 4.15(1)(c) – The Suitability of the Site for the Development

The proposed modification application proposes to amend road configuration depicted in part 2.5 of LDCP 2008, and the amendments proposed is significantly different from what was originally approved. Therefore, it is considered that the proposed modification is not substantially the same development as the development for which consent was originally granted and would require formal amendment to Part 2.5 of LDCP 2008.

Additionally, Council’s Strategic Planning Department have reviewed the application and advised that the amendments proposed is not consistent with the Principal Standards of LLEP 2008. The proposed road 3 would transverse right through land reserved for community facilities and would therefore be in breach of clause 5.1A of LLEP 2008. The site therefore, is not considered suitable for the modified development.

6.9 Section 4.15(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The application has been referred to the following internal departments for comment:

Department	Response
Flooding Engineers	Application deferred due to insufficient information.
Development Engineering	Recommended additional conditions of consent
Strategic Planning	Application deferred until such time as the Department finalise its opinion with regard to Amendment 63, or else refused.
Transport and Traffic	Application deferred due to following reasons: <ul style="list-style-type: none"> • <i>Revised traffic report addressing the intersection control issues</i> • <i>Enter into agreement with Council regarding developer contributions towards required road improvements on the outskirts of the development site.</i> • <i>Agreement with a bus operator to provide 5-year shuttle bus service between Middleton Grange Town Centre and Liverpool CBD.</i>

(b) Community Consultation

The development application was notified from 29 October 2018 to 12 November 2018 in accordance with the LDCP 2008. One submission was received during the notification period raising the following concerns:

- Existing traffic congestion issues with non-residents needing access to the school located immediate east of the subject site.
- No provision for residents to have quick and easy access in or out from the suburb as traffic will need to pass through the future centre or be forced onto to back streets, which will trigger traffic issues.

- Inconsistency with “Smart Growth Model”.

As a result of the above concerns raised by objector and advised received from Council’s departments, it is considered that the proposed modification application is not in public interest.

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

As indicated previously in this report, the proposed modified development is not consistent with the current zoning applicable to the site and would result in a road layout which is not consistent with the road configuration depicted in Part 2.5 of LDCP 2008.

In addition, Council’s Transport and Traffic Section have reviewed the application and advised that the rezoning process for the site has not been completed. It is therefore premature to consider proposed amendments prior to the completion of the rezoning of the site and without revising the road configuration in Part 2.5 of LDCP 2008.

Due to the above mentioned reasons it is considered that approving the subject modification would not be in the public interest.

7 CONCLUSION

The proposed modification to Development Consent No. DA-64/2007 is identified as being inconsistent with the provisions of LLEP 2008, SEPP 55, GMREP No. 2- Georges River Catchment and LDCP 2008. Having regard to the issues raised within this report, it is recommended that the subject modification application DA-64/2007/B be refused.

8 RECOMMENDATION

THAT pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979, Modification Application DA-64/2007/B be refused for the following reasons;

1. The proposed modification is inconsistent with clause 1.3(c) of the Environmental Planning and Assessment Act 1979, as the modification proposed does not promote the orderly and economic use and development of land within Middleton Grange.
2. The proposed modification is inconsistent with clause 5.1A of Liverpool Local Environmental Plan 2008 in that the proposed road 3 would pass right through land reserved for community facilities and is not considered to give regard to the requirements specified in table to clause 5.1A, pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
3. The proposed modification is inconsistent with clause 7 of State Environmental Planning Policy No- 55 as the consent authority is not satisfied that the subject site is free from contamination and will be suitable for the proposed development, pursuant to the provision of 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
4. The proposed modification is not substantially the same development to which the consent was originally granted with regards to both the scope of works that is proposed to be carried out with the modification as well as the land that is the subject of the proposed modification.
5. The proposed modification is inconsistent with clause 2.1 in Part 2.5 of Liverpool Development Control Plan 2008 - in that road layout of the proposed modification is not considered consistent with the Indicative Layout Plan and would also require formal amendments to Part 2.5 of LDCP 2008., pursuant to the provisions of Section

4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.

6. Insufficient information has been submitted to allow Council to carry out a full assessment of the application, particularly having regard to Clause 7.8 of Liverpool Environment Plan 2008, Clauses 8 and 9 of Greater Metropolitan Regional Environmental Plan no. 2 – Georges River Catchment (deemed SEPP) and Section 2 in Part 2.5 of Liverpool Development Control Plan 2008. Therefore, the likely impact of the development in accordance with Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 cannot be considered by the consent authority.
7. The proposed modification is not considered to be acceptable having regard to the concerns raised from internal departments and public submission, pursuant to the provisions of Clause 4.15(1)(d) of the Environmental Planning and Assessment Act 1979.
8. Due to the above reason, approval of the proposed development would not be in the public's interest, pursuant to the provisions of Clause 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

9 ATTACHMENTS

- 1. Draft Conditions (Without Prejudice)**
- 2. Survey Plan**
- 3. Civil Plans**
- 4. Statement of Environmental Effects**
- 5. Traffic Impact Assessment**
- 6. Stormwater Management Strategy**
- 7. Original Notice of Determination (DA-64/2007)**
- 8. Modification A Notice of Determination (DA-64/2007/A)**
- 9. Council's Report for planning proposal**
- 10. Council Resolution**