

COUNCIL ASSESSMENT REPORT

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-320 – DA-140/2023 (PAN-313849)
PROPOSAL	<p>Demolition all existing structures, dam dewatering, tree and vegetation removal, bulk earthworks, remediation works, civil and road works, and Torrens title subdivision into 58 lots with integrated housing to construct a mix of 54 two storey dwellings.</p> <p>The development is identified as Nominated Integrated under the Water Management Act 2000 requiring approval from the NSW Department of Planning and Environment - Water.</p> <p>The development is identified as Integrated Development under the Rural Fires Act 1997 requiring approval from NSW Rural Fire Service.</p>
ADDRESS	280 Fifth Avenue, Austral & 62 Kelly Street, Austral Lot 1125 DP 2475 & Lot 3 Sec 3 DP 2756
APPLICANT	FIFTH AVENUE ESTATES NO 1 PTY LTD
OWNER	MATAUTIA DEVELOPMENTS PTY LTD and SOLSTICE PROPERTY CORPORATION PTY LTD
DA LODGEMENT DATE	20 March 2023
APPLICATION TYPE	Integrated Development
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development over \$30m
CIV	\$31,567,585 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Precincts – Western Parkland City) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Hazards and Resilience) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021.

	<ul style="list-style-type: none"> State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Planning Systems) 2021.
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	1
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural Plans include – <ul style="list-style-type: none"> New Living Homes Floor and Landscape Plans Creation Homes Floor and Landscape Plans Civil and Stormwater Plans Staging Plan
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Yes
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	15 April 2024
PLAN VERSION	11 November 2023 Version No. - various revisions noted on plans
PREPARED BY	Nabil Alaeddine
DATE OF REPORT	8 April 2024

1. EXECUTIVE SUMMARY

The development application DA-140/2023 seeks consent for the demolition all existing structures, dam dewatering, tree and vegetation removal, bulk earthworks, remediation works, civil and road works, and Torrens title subdivision into 58 lots with integrated housing to construct a mix of 54 two storey dwellings with 5 studio dwellings (Studios above detached garages as a fifth bedroom) over part of Lot 1125 in Deposited Plan 2475 at 280 Fifth Avenue, Austral and part of Lot 3 Section 1 in DP 2756 at 62 Kelly Street, Austral (“the site”).

The proposal is considered as Nominated Integrated development seeking general terms of approval from NSW Department of Planning and Environment – Water under the Water Management Act 2000 and is also identified as Integrated Development under the Rural Fires Act 1997 requiring approval from NSW Rural Fire Service.

It is noted that NSW Department of Planning and Environment – Water (formerly Natural Resource Access Regulator) has indicated that a works approval is not required for the for

the proposed Dam-Dewatering and the general terms of approval from RFS NSW has been issued.

The land is zoned R3 – Medium Density Residential under State Environmental Planning Policy (Precincts – Western Parkland City) 2021 with part of the land for the road works occurring over SP2 – Infrastructure (Classified Road) land. The proposal is permissible with consent under the SEPP. The proposal is compliant on merit with the applicable planning provisions and is consistent with the medium density residential zone.

There is a minor portion zoned R2 Low Density Residential located on the northern portion of 62 Kelly Street portion of the site. This portion is entirely going to be utilised for the construction of the local roads. No dwellings are proposed to be constructed on this portion of R2 zoned land.

Existing development on the site consists of a number of buildings associated with rural residential living and farm shed outbuildings. All are proposed to be demolished. The site is transitioning from rural residential farmland to residential.

On 7 August 2023 a request for additional information as made which requested the follows:

- Streetscape and increase the setbacks to corner dwellings,
- Urban Design and Public Domain matters relating to general amenity, streetscape, and the bike network considerations, built form variations, sustainability, and lack of public domain plan.
- Tree removal and lack of Arborist Report,
- Environmental Health matters,
- Flooding matters,
- Traffic and Transport matters
- NSW RFS matters,
- Endeavour Energy matters relating to construction under the electrical easement, and
- A request for a Voluntary Planning Agreement was made (Note accepted by Council).

Key issues raised included the proposed construction of road under the electrical easement and Transport for NSW not supporting the construction of the SP2 road. Both matters were resolved after further discussion and correspondence with the agency and the applicant.

In addition, the additional information requested a variation of the DCP relating to site coverage for Lot 10 (1%) and 22 (7%) relating to the 5th bedroom proposed above the detached rear loaded garages. The justification for the variation has been provided and the minor variations are supported in this instance and are further discussed in the key issues section of the report.

In accordance with the provisions of the Liverpool Community Participation Plan 2022, the proposal was notified and advertised between 29 March 2023 to 26 April 2023. One submission was received for this development application which raised concern relating to the lack of recreation space in Austral.

The principal planning controls relevant to the proposal include State *Environmental Planning Policy (Precincts—Western Parkland City)* 2021, *State Environmental Planning Policy (Planning Systems)* 2021, *State Environmental Planning Policy (Resilience and Hazards)* 2021, *State Environmental Planning Policy (Industry and Employment)* 2021, *State Environmental Planning Policy (Transport and Infrastructure)* 2021, *State Environmental Planning Policy (Biodiversity and Conservation)* 2021, *State Environmental Planning Policy (Building Sustainability Index: BASIX)* 2021, and the *Liverpool Growth Centres Development Control Plan* 2021 ('DCP').

2. THE SITE AND LOCALITY

The subject site incorporates two lots which are currently known as Lot 1125 in DP 2475 at 280 Fifth Avenue, Austral and Lot 3 Section 1 in DP 2756 at 62 Kelly Street, Austral. An aerial photograph of the subject site is provided below in Figure 1.



Assessment Report: [title of Project]

280 Fifth Avenue, Austral

280 Fifth Avenue is legally referred to as Lot 1125 DP 2475 and is a rectangular shaped allotment with a site area of approximately 17,770 sqm and includes a boundary to Fifth Avenue, Livestock Street and Crop Avenue. The site has a slope down from the south-west corner RL 86.99 to the north-east corner RL 79.21 of approximately 7.78 meters across a distance of approximately 225 meters. The site has the following area and dimensions:

Area – 17,770 square metres (1.777 Ha)
Fifth Avenue Frontage (North) – 117.995 metres
Crop Avenue Rear & Boundary (South) – 117.57 metres.
Livestock Street (East) – 150.875 metres
Boundary (West) – 150.92 metres

The site is zoned R3 Medium Density Residential.

62 Kelly Street, Austral

Part of 62 Kelly Street is legally referred to Lot 2 DP 1257931 and is an irregular shaped allotment with a site area of approximately 8,905 sqm. It shares a minor boundary to the corner to Fifth Avenue and Warrawal Avenue. The site has a slope from the south-west corner RL 87.97 to the north-east corner RL 83.07 of approximately 4.9 meters across a distance of 160 meters. The site has the following area and dimensions:

Area – 8,905 square metres
Boundary (North) – 84.075 metres
Boundary (South) – 83.23 metres
Part Fifth Avenue Boundary (East) – 120.675 metres
Boundary (West) – 89.58 metres, 12.62 metres (angle) and 28.515 metres (angle).

The site is zoned R3 Medium Density Residential. There is a minor portion in the north of site zoned R2 Low Density Residential. However, the majority the R2 portion of the land accommodates road works, and no dwellings are proposed in this area.

The surrounding properties are also zoned R3 Medium Density Residential and R2 Low Density Residential.

The subject site currently includes three dwellings, sheds, ancillary structures, with three driveways and a dam.

2.2. The Locality

The site and the immediate locality in the southern part of Austral (future suburb of Leppington North and west of the future Leppington Major Centre District), is mostly semi-rural in nature, but is zoned R3 - Medium Density Residential under SEPP (Precincts-Western Parkland City) 2021, and due to a number of approved and executed subdivision developments, is considered land in transition. The site is in the local catchment Bonds Creek and the Kemps

Creek/South Creek system, which is a tributary to the Hawkesbury River. The site is therefore within the Nepean-Hawkesbury catchment.

The site will have a primary road frontage to a new Collector Road which is zoned SP2 to be dedicated to Transport for NSW. Bringelly Road which is a State Classified Road is located 165 meters to south of the subject site. Keely Street is located approximately 262 meters to the west and Fourth Avenue is approximately 484 meters to the east. The site fronts Fifth Avenue to the north and has boundary to the existing Livestock Street to the east. Edmondsosn Avenue is approximately 1.2km to east of the subject site and Leppington Heavy Railway Station is approximately 1.3Km to the south-west of the site.

The site is located in a rural area which is subject to ongoing significant change as per the South West Growth Area which includes predominantly increased density comprising of single and two storey dwellings, semi-attached dwellings, and multi-dwelling housing.

Adjoining the site to the north and east are recently developed single and two storey dwellings with some semi-attached dwellings.

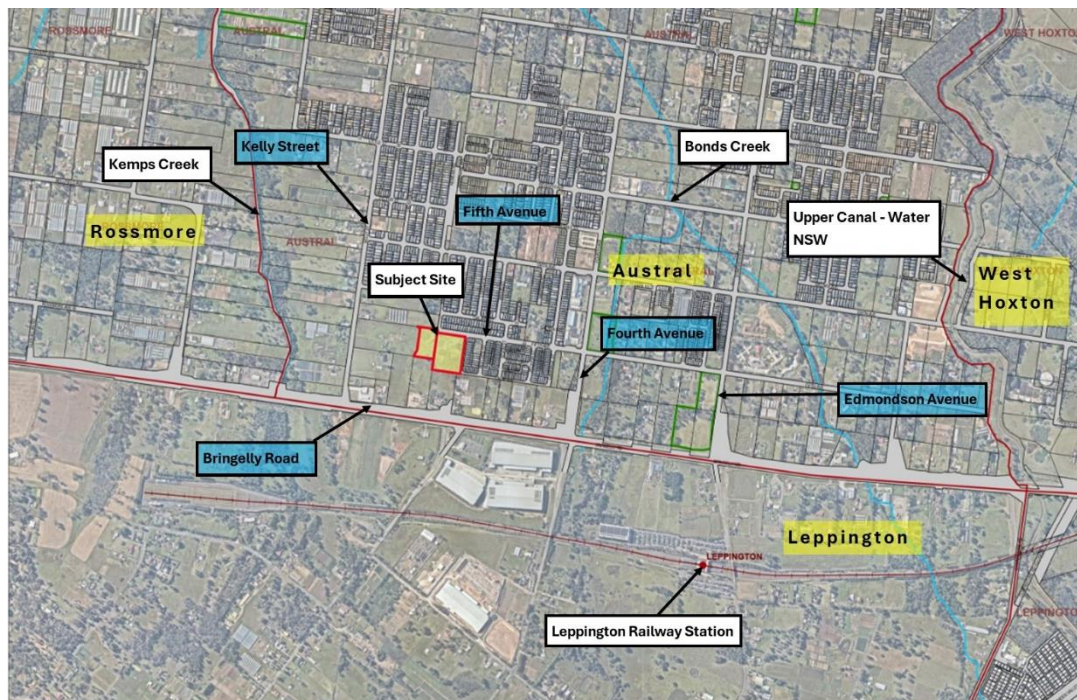


Figure 2: Locality surrounding the proposed development.

2.3. Site Constraints

Potential Site Constraints: <ul style="list-style-type: none"> • Bushfire • Flooding • Heritage Items • Aboriginal heritage • Environmentally Significant Land • Threatened Species/ Flora/ Habitat/ Critical Communities • Acid Sulphate Soils • Aircraft Noise • Flight Paths • Railway Noise • Road Noise/ Classified Road • Significant Vegetation • Contamination 	Site Constraints: <ul style="list-style-type: none"> • Bushfire • Contamination • Road Noise • Future Access denied off Bringelly Road • Aboriginal cultural heritage
Are there any restrictions on title?	Nil

3. THE PROPOSAL AND BACKGROUND

3.1. The Proposal

The proposed development consists of the demolition all existing structures, dam dewatering, tree and vegetation removal, bulk earthworks, remediation works, civil and road works, and Torrens Title subdivision into 58 lots and the construction of 54 dwellings. The development is proposed to be undertaken over the following stages:

- Stage 1 – Site preparation including demolition of structures, tree removal, remediation of land followed by site wide earthworks and civil works to deliver the road and drainage network, including the temporary detention/bioretention basin. At conclusion, the subdivision will be registered that will create 31 residential lots (Lot 24 to 53 and 58), 1 residue lot for temporary stormwater basin (shown as Lots 54 to 57) and 1 residue lot for residential development on the western part of the Collector Road. The subdivision will also dedicate the collector road, the eastern part of Fifth Avenue, Livestock Street, Road No. 3 and Laneway 1. Following registration of lots integrated housing to construct 29 detached dwellings and 2 abutting dwelling houses in accordance with the approved plans.
- Stage 1A – When Council has delivered the regional stormwater management basin for this catchment and connection is available, the temporary basin will then be decommissioned and made good to accommodate dwelling houses. The subdivision to create 4 residential lots (Lot 54-57) and will be registered.
- Stage 2 – Subdivision of the western part of the Site contained within the residue lot created in Stage 1 to create 20 residential lots and 1 residue lot for future Lots 8, 9 and 10. This subdivision will dedicate roads including the western section of Fifth

Avenue, Road 5 and Laneway 2. Following registration of lot integrated housing to construct 20 detached dwelling in accordance with the approved plans.

- Stage 2A – Subdivision of the residue lot created in Stage 2 to create 1 residential lot (Lot 10) and 1 residue lot. This will only occur once the temporary APZ over Lot 10 is removed (i.e. when the adjoining property to the south has been developed). Following registration of Lot 10, a detached dwelling in accordance with the approved plans will be constructed over Lot 10.
- Stage 2B – Subdivision of the residue lot created in Stage 2A to create 1 residential lot (Lot 8 and 9. This subdivision will dedicate Road 4. Following registration of the subdivision, a detached dwelling house is to be constructed over Lot 9 in accordance with the approved plans. It will be necessary for the temporary easement to maintain Lot 8 as an APZ to continue until the bushfire hazard to the immediate west is removed (i.e. under DA118/2022).
- Stage 2C – When there is no longer a requirement to maintain the APZ over Lot 8, the easement will be extinguished, and a detached dwelling house will be constructed over Lot 8 in accordance with the approved plans. Refer to Figure 3 and table 1 below for breakdown of stages and lots.

The development specially proposes the following:

- Demolition of all existing structures on site including tree removal of all trees on site and dam-dewatering.
- Earthworks including site remediation and road construction.
- Subdivision of the two allotments into 58 Torrens Title allotments as per Table 1 below.
- Construction of 54 Integrated dwellings which include five above garage bedrooms on lots 1, 10, 22, 42 & 53 as per Table 1 below. *(Note: It is noted that these lots will be conditioned to ensure that the dwelling cannot be utilised as separate domiciles as no access to the rear lane is provided. The applicant indicate that they are to be used as a 5th bedroom to the primary dwelling)*
- Retention of lots 54 to 57 as a Drainage Basin.

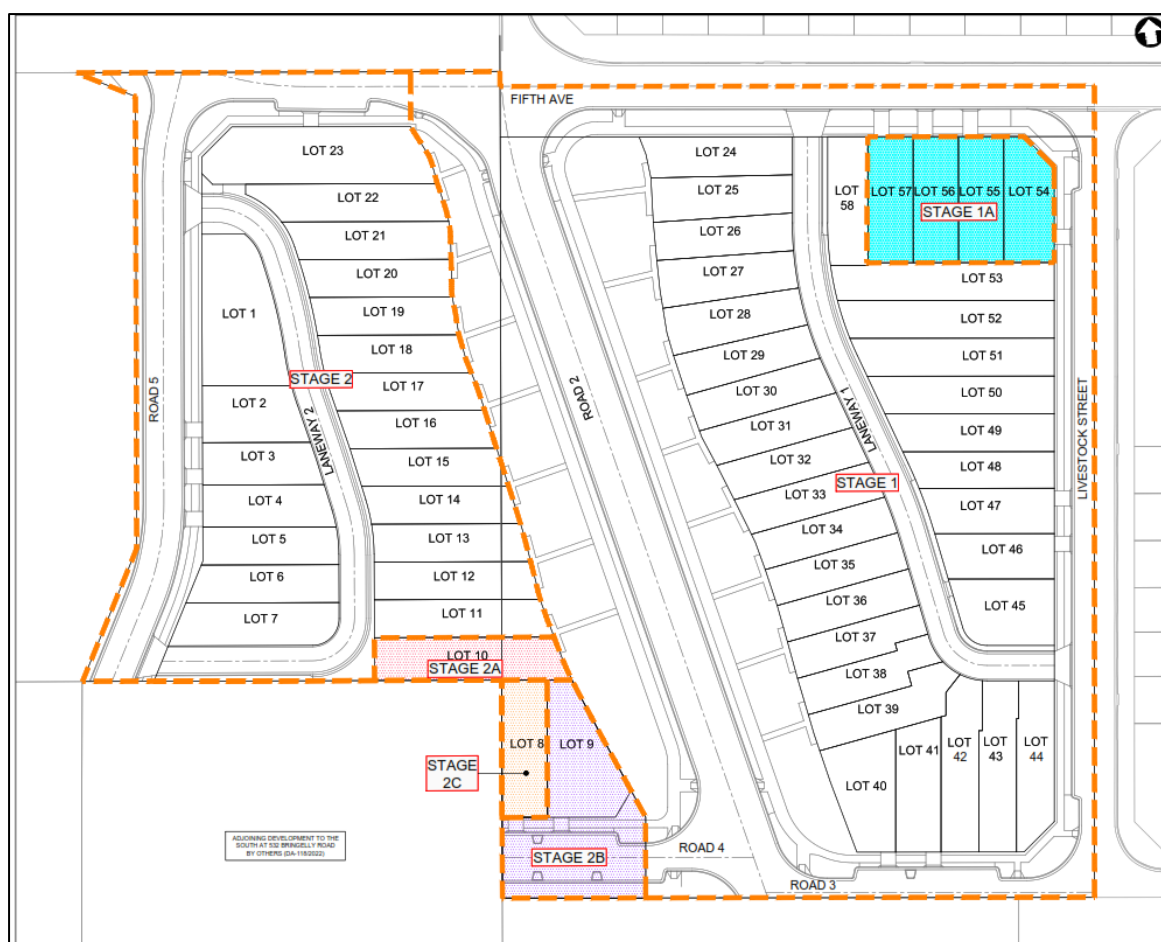


Figure 3: Proposed Staging Plan

The proposed lot sizes and associated dwelling style are described on the table 1 below.

Table 1: Summary of Proposed Development

Lot	Lot Size (m ²)	Frontage (m)	Dwelling Style/s associated with DA / (other use) / Access	Staging
1	430	30.05 (Road 5), 8.50 & 31.82 (Secondary to Rear Laneway)	Detached Dwelling Detached Studio Above Garage Rear Access	Stage 2
2	220	11.27 (Road 5), 11.87 (Secondary to Rear Laneway)	Detached Dwelling Front Access	Stage 2
3	191	8.39 (Road 5), 8.82 (Secondary to Rear Laneway)	Detached Dwelling Front Access	Stage 2
4	213	8.39 (Road 5), 8.73 & 8.82 (Secondary to Rear Laneway)	Detached Dwelling Front Access	Stage 2
5	202	6.72 & 0.84 (Road 5), 7.53	Detached Dwelling Detached Single Garage	Stage 2

		(Secondary to Rear Laneway)	Rear Access	
6	217	8.11 (Road 5), 7.50 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
7	267	9.19 (Road 5), 28.62, 8.33 & 3.20 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
8	245	9.00 (Road 4)	Detached Dwelling Front Access	Stage 2C
9	315	13.50 (Road 4), 30.90 (Secondary to Collector Road)	Detached Dwelling Front Access	Stage 2B
10	317	9.25 (Collector Road), 8.50 (Secondary to Rear Laneway)	Detached Dwelling Detached Studio Above Garage Rear Access	Stage 2A
11	257	7.98 (Collector Road), 7.50 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
12	240	7.62 (Collector Road), 7.50 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
13	227	7.88 (Collector Road), 7.53 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
14	219	7.85 (Collector Road), 7.76 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
15	219	7.83 (Collector Road), 7.83 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
16	219	7.89 (Collector Road), 7.93 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
17	220	7.95 (Collector Road), 7.87 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
18	214	7.90 (Collector Road), 7.63 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2

19	211	7.62 (Collector Road), 7.66 (Secondary to Rear Laneway)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
20	219	7.51 (Collector Road), 7.79 (Secondary to Rear Laneway 2)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
21	236	7.53 (Collector Road), 8.28 (Secondary to Rear Laneway 2)	Detached Dwelling Detached Single Garage Rear Access	Stage 2
22	271	7.83 (Collector Road), 9.13 (Secondary to Rear Laneway 2)	Detached Dwelling Detached Studio Above Garage Rear Access	Stage 2
23	486	12.60 (Collector Road), 35.51 (Secondary to Fifth Ave), and 8.48, 3.23 & 3.60 to Road 5.	Detached Dwelling Detached Single Garage Secondary Street Access	Stage 2
24	228	8.49 (Collector Road), 7.55 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
25	228	8.84 (Collector Road), 7.56 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
26	206	7.59 (Collector Road), 7.48 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
27	232	9.56 (Collector Road), 7.48 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
28	234	9.62 (Collector Road), 7.52 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
29	209	8.29 (Collector Road), 7.04 (Secondary to	Detached Dwelling Detached Single Garage Rear Access	Stage 1

		Rear Laneway 1)		
30	208	7.53 (Collector Road), 7.60 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
31	211	7.63 (Collector Road), 7.61 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
32	209	7.63 (Collector Road), 7.61 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
33	207	7.66 (Collector Road), 7.61 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
34	205	7.55 (Collector Road), 7.53 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
35	204	7.51 (Collector Road), 7.50 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
36	206	7.50 (Collector Road), 7.50 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
37	194	7.50 (Collector Road), 6.00 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
38	200	7.50 (Collector Road), 6.27 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
39	233	7.51 (Collector Road), 4.29 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
40	232	7.70 (Road 3),	Detached Dwelling Front Access	Stage 1

		21.43 (Secondary to Collector Road)		
41	230	9.00 (Road 3)	Detached Dwelling Front Access	Stage 1
42	256	7.50 (Road 3), 4.67 (Secondary to Rear Laneway 1)	Semi-Attached Dwelling Detached Studio Above Garage Rear Access	Stage 1
43	251	7.50 (Road 3), 7.19 (Secondary to Rear Laneway 1)	Semi-Attached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
44	233	1.50 & 8.49 (Road 3), 27.94 (Secondary to Livestock Street), and 7.06 (to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
45	249	13.19 (Livestock Street), 13.39, 6.40 & 10.02 (Secondary to Rear Laneway 1) (Secondary to Livestock Street), and 7.06 (to Rear Laneway 1)	Detached Dwelling Rear Access	Stage 1
46	202	9.00 (Livestock Street), 9.39 (Secondary to Rear Laneway 1)	Detached Dwelling Front Access	Stage 1
47	227	9.00 (Livestock Street), 9.52 (Secondary to Rear Laneway 1)	Detached Dwelling Front Access	Stage 1
48	206	7.52 (Livestock Street), 7.94 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
49	239	7.50 (Livestock Street), 8.29 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
50	265	7.50 (Livestock Street), 8.29 (Secondary to	Detached Dwelling Detached Single Garage Rear Access	Stage 1

		Rear Laneway 1)		
51	292	7.50 (Livestock Street), 8.24 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1
52	314	7.50 (Livestock Street), 7.90 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Single Garage (Zero Lot) Rear Access	Stage 1
53	325	7.50 (Livestock Street), 7.08 (Secondary to Rear Laneway 1)	Detached Dwelling Detached Studio Above Garage (Zero Lot) Rear Access	Stage 1
54	232	4.02 & 8.48 (Fifth Ave), 19.00 (Secondary to Livestock Street)	Detention Basin	Stage 1A
55	225	9.00 (Fifth Ave)	Detention Basin	Stage 1A
56	225	9.00 (Fifth Ave)	Detention Basin	Stage 1A
57	225	9.00 (Fifth Ave)	Detention Basin	Stage 1A
58	202	7.97 (Fifth Ave), 25.58 (Secondary to Laneway 1)	Detached Dwelling Detached Single Garage Rear Access	Stage 1

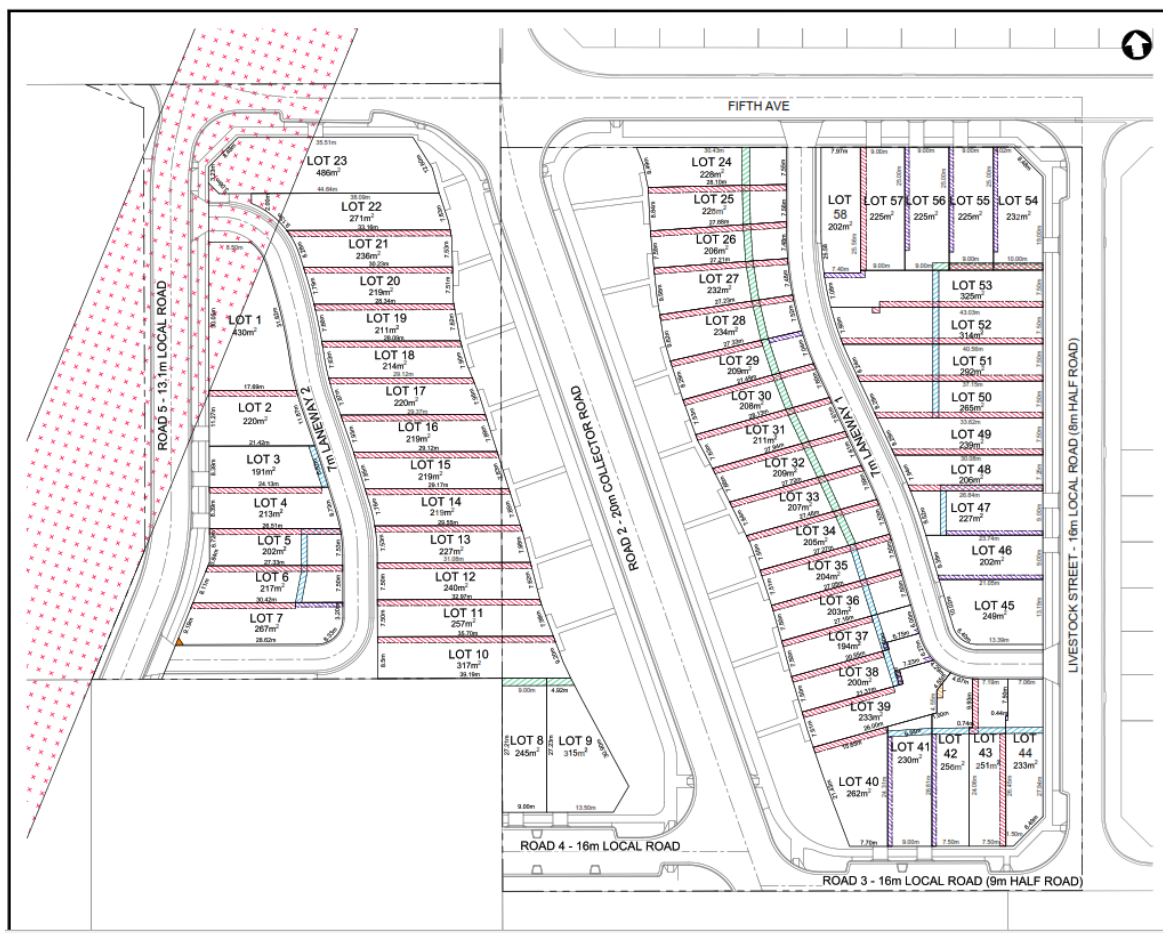


Figure 4: Proposed Subdivision Pattern

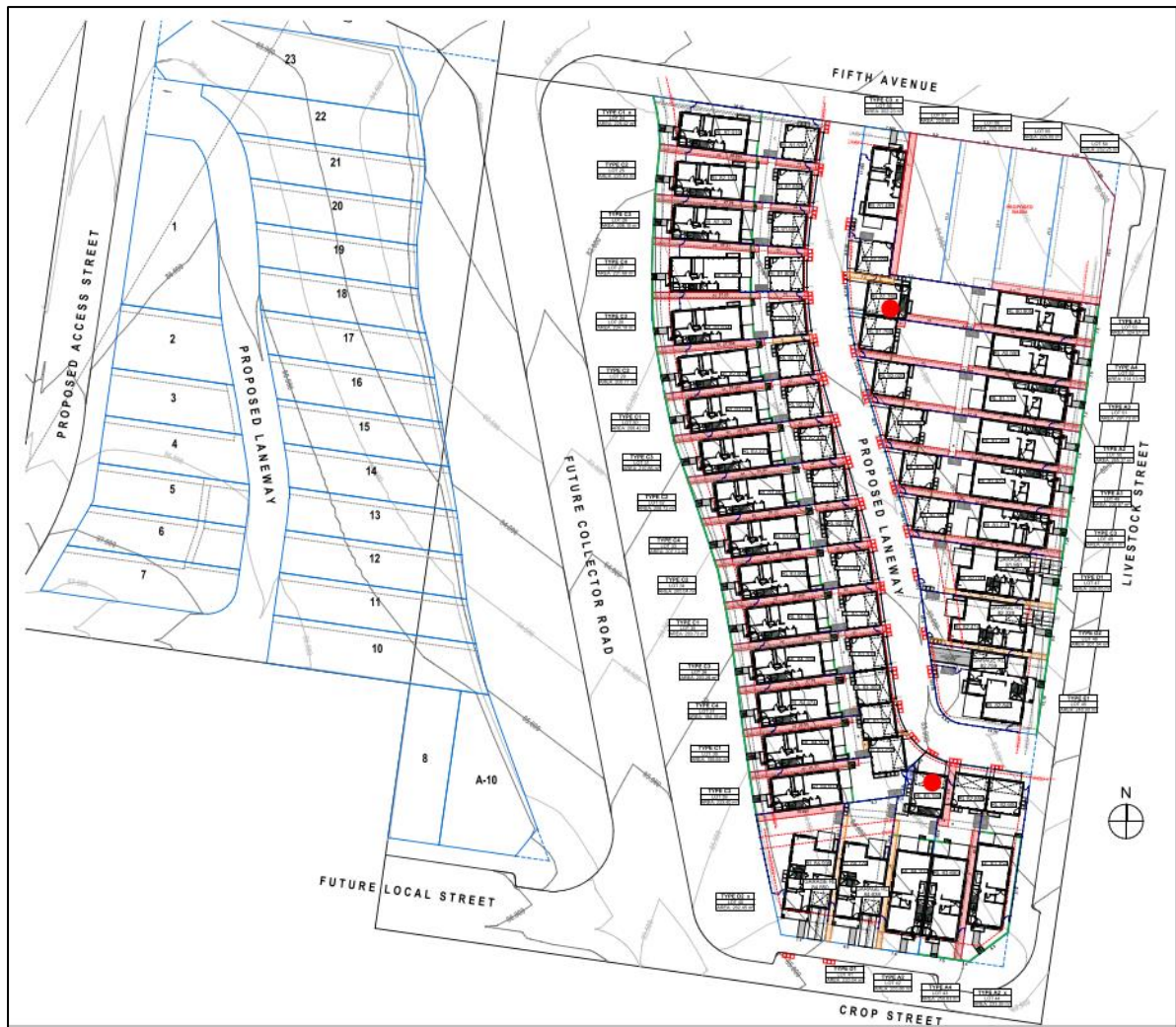


Figure 5: Stage 1 – Ground Floor Plans - Eastern Allotment (**Source:** Creation Homes)



Figure 6: Stage 1 – First Floor Plans - Eastern Allotment (**Source:** Creation Homes)



Figure 7: Streetscape Elevations - Collector Road - Eastern Allotment (**Source:** Creation Homes)



Figure 8: Streetscape Elevations – Crop Street - Eastern Allotment (**Source:** Creation Homes)



Figure 9: Streetscape Elevations – Livestock Street - Eastern Allotment (**Source:** Creation Homes)



Figure 10: Streetscape Elevations – Laneway West - Eastern Allotment (**Source:** Creation Homes)



Figure 11: Streetscape Elevations – Laneway East - Eastern Allotment (**Source:** Creation Homes)

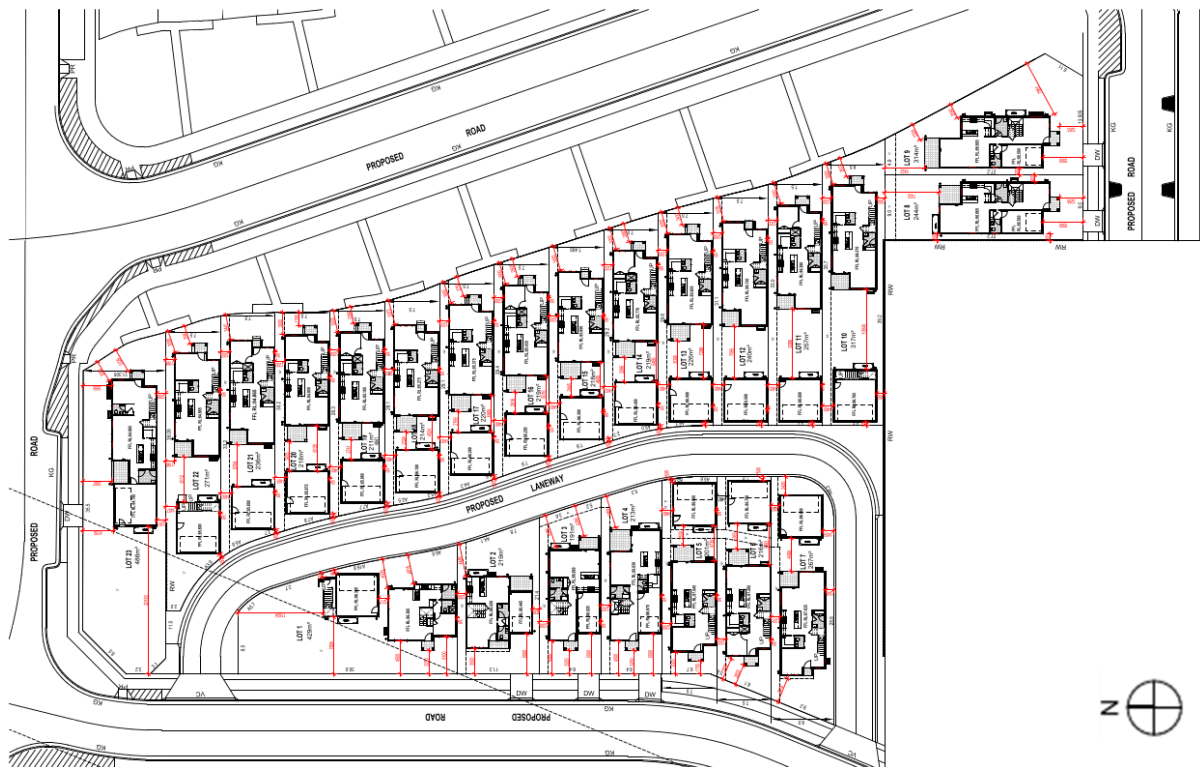


Figure 12: Stage 2 - Ground Floor Plans - Western Allotment (**Source:** New Living Homes)

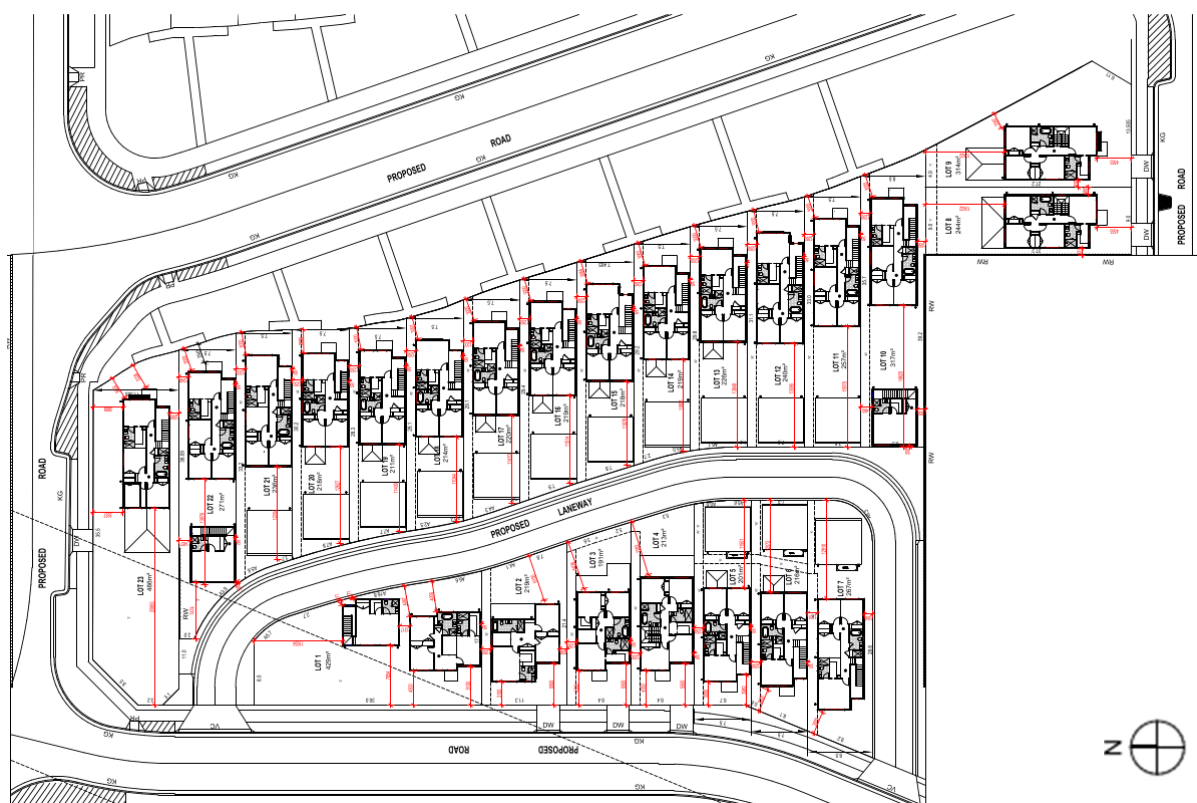


Figure 13: Stage 2 – First Floor Plans - Western Allotment (Source: New Living Homes)



Figure 14: Streetscape Elevations Lots 1-7 & 8-9 (Source: New Living Homes)



Figure 15: Streetscape Elevations Lots 10-23. (Source: New Living Homes)

Table 2: Development Data

Control	Proposal
Site area	1.78 ha (17,770sqm) (280 Fifth Ave) 0.8905 ha (8,905sqm) (62 Kelly Street)

	Combined area of 26,675 sqm
GFA	N/A
FSR (retail/residential)	N/A No FSR for the Site
Clause 4.6 Requests	No
No of apartments	Nil
Max Height	7.8m (max.)
Landscaped area	All landscape compiles per lot
Car Parking spaces	All lots comply with the minimum requirements. <i>Refer to attachment A, DCP Table assessment for details.</i>
Setbacks	All setbacks comply with the minimum requirements. <i>Refer to attachment A, DCP Table assessment for details.</i>

3.2. Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 12 October 2022 where various issues were discussed. The Pre-DA was for *Integrated housing and subdivision to create:*

- 50 residential lots, associated dwellings, 2 residue lots,
- temporary stormwater detention, construction of laneways (7m wide).

The development application was lodged on **15 March 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the DA

Date	Event
15 March 2023	DA lodged
22 March 2023	The application was placed on Notification and Advertising as an integrated Development from 29 March 2023 to 26 April 2023 Exhibition of the application.
	The DA was referred to internal Council departments and officers as follows: <ul style="list-style-type: none"> - Land Engineers - Flood Engineers - Traffic and Transport - Landscape Officer

	<ul style="list-style-type: none"> - Environmental Health - Urban Design & Public Domain - Contributions Team - Strategic Planning - Heritage Officer - Natural Environment
12 April 2023	<p>DA referred to external agencies from between 12 April 2023 and 8 June 2023 as follows:</p> <ul style="list-style-type: none"> - Water NSW - NSW RFS (Integrated Development) - NSW Department of Planning, Environment, and Infrastructure (Nominate Integrated Development) - Endeavour Energy - Transport for NSW (Roads and Maritime) - Sydney Water <p>Endeavour Energy raised concerns with the proposal and its proximity to their electrical overhead easement. <i>Refer to agency's sections below for further details.</i></p> <p>This was resolved with the submission of the revised scheme on 15 November 2023.</p> <p>In the revised Scheme TfNSW raised concerns relating to the construction of the proposed collector road in the SP2 zoned corridor. They did not support works on their site which is known as 520 Bringelly Road, located immediately to the south of the subject site. <i>Refer to agency's referral section below for further details.</i></p> <p>TfNSW matter was resolved because TfNSW did not provide and amended draft or approved scheme as an alternative. They specifically noted they did not want to construct the SP2 road on their site. The applicant did not want to make changes and chose to proceed with the application as current. Based on the lack of draft or approved scheme stating otherwise, the application is considered consistent with the existing road layout as per the relevant indicative layout plan (ILP) and therefore supported.</p> <p>Amended Plans were provided on 15 November 2023 and the application was Re-referred to all external agencies as above.</p>
7 August 2023	Request for Information from Council to applicant. RFI response received 15 November 2023.
15 May 2023	Panel briefing
15 November 2023	Amended plans lodged. Minor changes to the setbacks to dwellings of corner allotments was made to comply with the DCP.

	Re-referrals to
--	-----------------

3.3. Site History

DA Number	Proposal	Status
DA-284/2016	62 Kelly Street was previously approved for subdivision under DA-284/2016 to subdivide the existing allotment into two Torrens title lots. The subdivision was to reflect the excision of R3 Medium Density Residential zone land and the RE1 Public Recreation zone, refer to Figure 4. A Subdivision Certificate	Rejected
DA-1200/2021	The demolition of an existing free-standing house, subdivision of the land to create 45 Torrens title residential lots, and development of 23 Integrated dwellings.	Rejected
DA-118/2022	Demolition of existing structures, removal of trees and vegetation, remediation of land, bulk earth works and associated civil works, stormwater drainage and installation of services. Staged residential subdivision to create 45 Torrens title lots and integrated housing comprising the construction of 9 attached dwellings, 8 semi-detached dwellings, 3 abutting dwelling houses, 1 detached dwelling house and 2 secondary dwellings. <i>(It is noted that this DA is located at 532 Bringelly Road, Austral which abuts the subject site to the south-west)</i>	Approved 11 February 2022
DA-140/2023	<i>Demolition all existing structures, dam dewatering, tree and vegetation removal, bulk earthworks, remediation works, civil and road works, and Torrens title subdivision into 58 lots with integrated housing to construct a mix of 54 two storey dwellings. The development is identified as Nominated Integrated under the Water Management Act 2000 requiring approval from the NSW Department of Planning and Environment - Water. The development is identified as Integrated Development under the Rural Fires Act 1997 requiring approval from NSW Rural Fire Service</i>	<i>Subject of this Application</i>

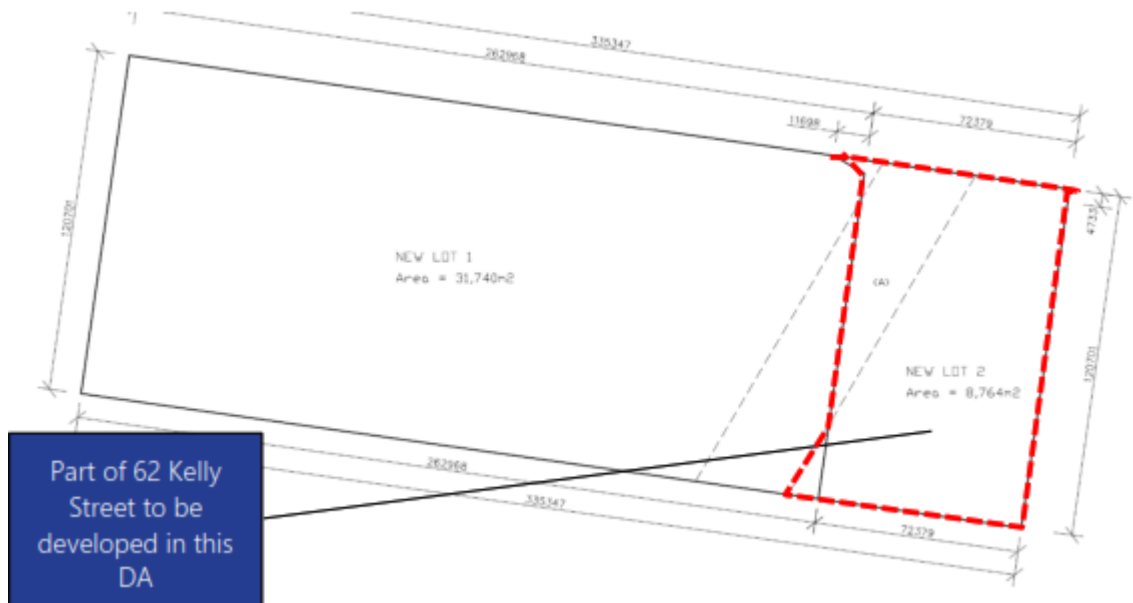


Figure 16: Historical DA location

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*

(e) *the public interest.*

The following planning instruments and policies have been considered in the planning assessment of the subject Development Application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Liverpool Growth Centres Development Control Plan 2021.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)

5. 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 2021, and includes Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations as considered below:

5.1. Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

(a) State Environmental Planning Policy (Precincts – Western Parkland City) 2021

(i) Zoning

The development site is zoned R3 – Medium Density Residential pursuant to State Environmental Planning Policy Precincts—Western Parkland City) 2021 – Chapter 3 Sydney Region Growth Centres – Appendix 4 Liverpool Growth Centres Precinct Plan.

Part of the land for the temporary access road over 280 Fifth Avenue is zoned SP2 – Infrastructure (Classified Road). An extract of the zoning map is seen in the figure below.

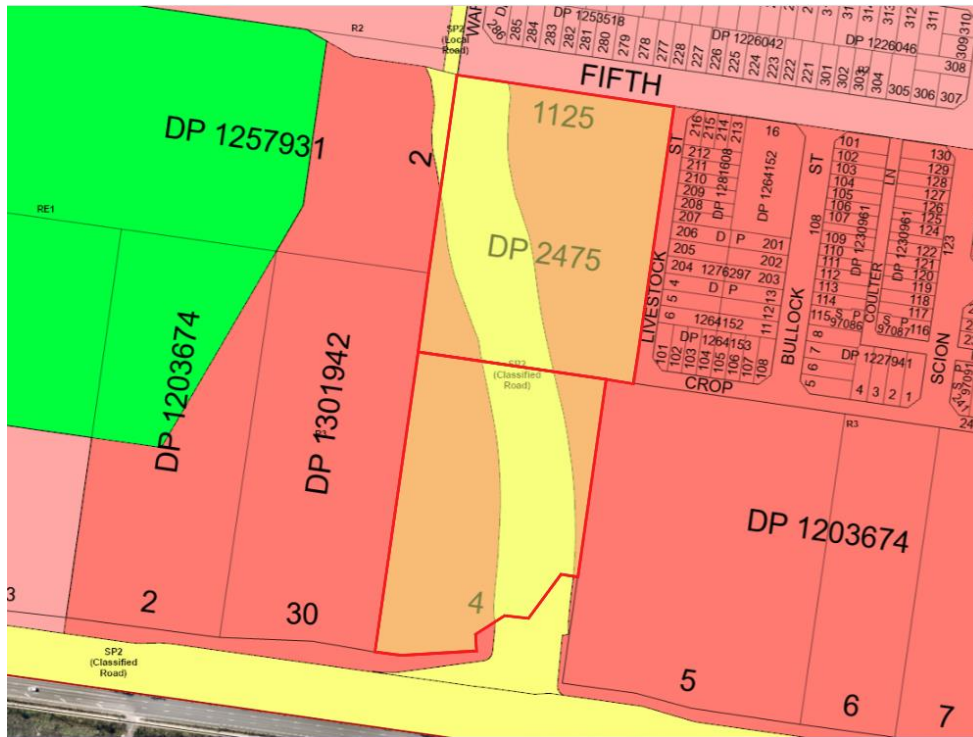


Figure 17: Zoning Map Extract. (Source: GeoCortex Data, April 2024)

(ii) Permissibility

The location of the proposed development is within the R3 zone with a minor portion of the land being R2 zoned which will primarily include a road. The development is categorised as *subdivision* and the construction of *dwelling houses*, *attached dwellings*, *semi-detached dwellings* and *secondary dwellings* which are permissible pursuant to the relevant Clauses of Appendix 4 of the SEPP (Precincts—Western Parkland City) 2021. *Roads* are also permissible in the SP2 zone. Dwelling house, semi-detached dwelling and secondary dwelling are defined below:

- **dwelling house** means a building containing only one dwelling.
- **semi-detached dwelling** means a dwelling that is on its own lot of land and is attached to only one other dwelling.
- **secondary dwelling** means a self-contained dwelling that—
 - (a) is established in conjunction with another dwelling (the principal dwelling), and
 - (b) is on the same lot of land as the principal dwelling, and
 - (c) is located within, or is attached to, or is separate from, the principal dwelling.

(iii) Objectives of the zone

The objectives of the **R3 Medium Density Residential Zone** are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

The proposed subdivision will achieve the objectives of the R3 zone in that it will contribute to the provision of housing to meet the needs of the community within an area of Liverpool LGA designated for future residential development growth. The proposed allotments vary in size (between 191sqm and 486sqm) and meet the minimum allowed allotment size, such that they will facilitate the delivery of a diverse range of viable housing types to cater for the various needs of the community.

The objectives of the **R2 Low Density Residential Zone** are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low density residential environment.*

The proposed roads to be built in the R2 portion of the site are permissible with consent in the zone.

The objectives of the **SP2 Infrastructure zone** are:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

The proposed works in the SP2 zone are to facilitate a Collector Road, which is in alignment with the Indicative Layout Plan in the DCP for local roads and as such, the roads provided are considered to be acceptable and compatible with the future delivery of infrastructure in the locality.

(iv) Summary of Relevant SEPP (Precincts – Western Parkland City) 2021 Provisions

The SEPP (Precincts – Western Parkland City) 2021 contains a number of provisions which are relevant to the proposal. Assessment of the application against the applicable provisions is provided below. The proposal generally demonstrates compliance with these provisions.

Note: The Liverpool Local Environmental Plan does not apply to this proposal as the land is located within a Growth Centre Precinct and the SEPP prevails over the LEP. It is instead assessed against the SEPP and the Liverpool Growth Centre Precincts DCP 2021.

Clause	Provision	Proposed	Comment
4.1.AA Subdivision resulting in lots between 225-300sqm	The consent authority must be satisfied that any lot between 225-300sqm will contain a sufficient envelope to enable the erection of a dwelling house on the lot.	Lots less than 300sqm (Lots 1, 9, 10, 23, 52, & 53) provide for a building envelope plan. Building Envelope Plans have been submitted in support of the application to Council's satisfaction and conditions of consent will be applied to incorporate restrictions on the titles for the BEPs.	Complies with condition
4.1AB Minimum lot sizes for residential development in Zone R2 & R3	The site is subject to minimum lot size of 300sqm as the site is in the 25 dwelling/hectare area.	Lots 1, 9, 10, 23, 52, & 53 are all above the minimum lot size of 300sqm required. It is also noted that Lots 1, 9, 10, 23, 52 & 53 propose to have an integrated housing design, be it detached or semi-detached dwellings. All other lots are below 300sqm and either provide an integrated housing design with the application or a building envelope plan which will form restrictions on the title of the property.	Complies with condition
	The minimum lot size for a semi-detached dwelling is 125m ² if the dwelling density is in the 25 dwelling/hectare area.	Semi-detached dwellings are proposed on Lots 42-43 and are all on lots above 125sqm.	Complies
	The minimum lot size for attached dwellings is 375m ² if the dwelling density is in the 20 or 25 dwelling/hectare area.	No Attached dwellings are proposed.	N/A
4.1AC Minimum lot sizes for secondary dwellings in Zone R2 Low Density Residential and Zone R3 Medium Density Residential	The minimum lot size for a secondary dwelling on land in Zone R3 Medium Density Residential is the minimum lot size for the principal dwelling in conjunction with which the secondary dwelling is established, determined in accordance with clause 4.1AB, 4.1AD or 4.1AF if the dwelling density (per hectare) shown in the Residential Density Map for the land is 25.	Site is identified to have a dwelling density of 25 lots per hectare. 5 secondary dwellings are proposed on Lots 1, 10, 22, 42 & 53 and secondary dwellings are permissible on the lots which also meet the minimum lot size requirements. It is noted that Lots 1, 10, 22, 42 & 53 are noted as only bedrooms above the rear accessed garage and are not self-contained dwellings.	Complies
4.1AD Exceptions to minimum lot sizes for dwelling houses	(1) This section applies to the following— (c) a lot in Zone R3 Medium Density Residential that has an area less than 300m ² (but not less than 225m ²). (2) Despite section 4.1AB(3), development consent may be granted to the erection of a dwelling	The proposal is for subdivision and construction of housing on lots within the R3 zone. Detached abutting dwelling houses are to be constructed over proposed Lots 42 & 43 which are below 300sqm but greater than 225sqm.	Complies

	house on a lot to which this section applies if (b) the development application is a single development application for development consisting of both of the following— (i) the subdivision of land into 2 or more lots, (ii) the erection of the dwelling house on one of the lots resulting from the subdivision.		
4.1AF Exceptions to minimum lot sizes for dwelling houses on small lots	This clause applies to lots in Zone R3 Medium Density Residential that has an area less than 225m ² (but not less than 125m ²). Consent may be granted to the erection of a dwelling house on a small lot if the development application is a single development application that is both of the following; a) The subdivision of land into 2 or more lots, b) The erection of the dwelling house on one of the lots resulting from the subdivision	The proposal is for subdivision and construction of housing on lots within the R3 zone. This section only applies to the lots containing dwelling houses on lots below 225sqm and above 125sqm. Lots 1-6, 14-20, 26, 29-38, 46, 48 & 58 fall within this criteria and dwelling is proposed as of this application.	Complies
4.1B Residential Density	The site is subject to a dwelling density of 25dw/ha.	Site Area = 26,675sqm (2.6675ha) 25hw/ha = 50.5 lots required. 58 lots achieved which is a density of 28.7dw/ha.	Complies
4.3 Height of Buildings (as per HOB Map)	12m for this site.	All dwellings proposed are well below the 12m height of buildings, being two storeys in structure. The highest dwelling is proposed to be a maximum of 7.8m high.	Complies
5.1 Relevant Acquisition Authority	Land to be acquired, as identified on Land Reservation Acquisition Map.	No Land Acquisition Identified for the site. The proposed works in the SP2 zone to facilitate a temporary access road, which is in alignment with the Indicative Layout Plan in the DCP for local roads, is deemed to be consistent with the acquisition of the land for the purposes of a road.	Complies
5.9 Preservations of trees or vegetation	Provided when consent is required to be granted subject to the provision of this cluse to remove trees or vegetation.	The subject site is identified as Biodiversity Certified lands pursuant to the Sydney Region Growth Centres 2006 Biodiversity Certification Order which aligns with the updated SEPP (Precincts – Western Parkland City) 2021 amended.	Complies

5.10 Heritage conservation	Conservation of environmental heritage and consent requirements.	<p>The Applicant provided an Aboriginal Due Diligence Assessment with the application and No Aboriginal artefacts were identified on-site.</p> <p>The application was referred to Council's Heritage Officer who deemed the development to be satisfactory subject to conditions in the event artefacts are found during works.</p>	Complies with conditions
6.1 Public Utility Infrastructure	The consent authority must not grant development consent to development on land to which this Precinct Plan applies unless it is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.	<p>Referral comments have been received from Sydney Water, which advises that wastewater servicing to the site is existing.</p> <p>The requirements of Endeavour Energy as provided to Council, will be made as conditions of consent of any approval.</p> <p>Council will apply standard conditions regarding the supply of water, wastewater, telecommunications, and electricity to be satisfied prior to the issue of a Subdivision Certificate for each allotment.</p>	Complies with conditions
6.3 Development Controls – Existing Native Vegetation	The consent authority must not grant development consent for development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995).	The site is not identified as within a native vegetation retention area on the Native Vegetation Protection Map, or within an existing native vegetation retention area on the Native Vegetation Protection Map.	Not Applicable
6.7 Studio Dwellings	<p>(1) Development consent must not be granted to development for the purposes of studio dwellings unless the consent authority is satisfied—</p> <p>(a) the garage above which the studio dwelling will be erected is located at the rear of the lot, and</p> <p>(b) there will be direct access to the studio</p>	The proposed above garage rooms will be erected at the rear of the lot and include garage below fronting the laneway. Direct access to the studio from the street or lane is not provided as the applicant's justification is that no kitchenette is provided therefore the dwellings are not to be utilised as secondary dwellings in the sense of the definition of a secondary dwelling being a separate domicile, but rather a fifth bedroom to the primary dwelling. In that regard a condition of consent will be imposed to ensure that the studio cannot be utilised as	Complies on merit

	dwelling from a street or lane. (2) In deciding whether to grant development consent, the consent authority must consider the visual impact of the studio dwelling on the surrounding streetscape.	secondary dwelling and also cannot be strata subdivided.	
--	---	--	--

Having regard to the above assessment, the proposal is permissible, is considered consistent with the objectives of the zones and complies with relevant development standards in the SEPP.

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

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

The objectives of Chapter 4 of the SEPP 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 clause 4.6 of the SEPP, the consent authority 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.

The applicant submitted a Phase 1 and Phase 2 contamination investigation and remediation action plan to Council for review. The reports were prepared or reviewed by an accredited consultant, that has the necessary qualifications under the Environment Institute of Australia and New Zealand - Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)); or Soil Science Australia- Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

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

Clause 4.6 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The land has contaminated soils as reports submitted by the applicant identify.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The RAP was submitted as part of this application. The land is considered suitable for its proposed residential use, subject to remediation works carried out in accordance with the contamination assessment and RAP, and subject to conditions of consent, as recommended by Council's Environmental Health Section.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	Conditions of any consent shall require the remediation of the land as per recommendations in the submitted contamination assessment and RAP.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP (Resilience and Hazards) 2021 Chapter 4 Remediation of Land, and the consent authority can be satisfied that the subject site is suitable for the proposed development.

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

The subject land is located within the Hawkesbury-Nepean Catchment and as such Chapter 9 – Hawkesbury-Nepean River of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, formerly the Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997), applies to the application.

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 generally aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

When a consent authority determines a development application, planning principles are to be applied (Clause 9.3). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 9.4 and Clause 9.5), and compliance with such is provided below.

Clause 9.4 General Planning Considerations	Comment
(a) the aims of this plan,	The plan aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
(b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy	The strategies are applied to this planning assessment in the table under Clause 9.5.
(c) whether there are any feasible alternatives to the development or other proposal concerned	The proposed subdivision, road construction, stormwater works, demolition and dwelling construction are appropriate, and no alternatives need to be considered.

(d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored	A Stormwater concept plan was submitted and reviewed by Council's land development and floodplain engineers. Conditions of consent applied aim to improve the quality of expected stormwater discharge from the site.
Clause 9.5 Specific Planning Policies and Recommended Strategies	Comment
(1) Total catchment management	Environmental Planning consideration through SEPP (Precincts—Western Parkland City) 2021 has considered the impact of the residentially zoned land within the catchment.
(2) Environmentally sensitive areas	The location of works is not part of an Environmentally Sensitive area as defined in this plan. The site is identified as Biodiversity Certified land.
(3) Water quality	Council's development and floodplain engineers have provided conditions of consent aimed to improve the quality of expected stormwater discharge from the site.
(4) Water quantity	Council's development and floodplain engineers have provided conditions of consent aimed to reduce the impact from the expected storm-water runoff and flow characteristics through the site, on down-stream aquatic ecosystems.
(5) Cultural heritage	Aboriginal artefacts were identified on-site, and an AHIP is required to be obtained prior to the commencement of works, as identified by an ACHAR, which was submitted to Heritage NSW pursuant to the National Parks and Wildlife Act 1974. Heritage NSW have provided General Terms of Approval which would form part of a development consent. Council's Heritage Officer has also reviewed the application and is deemed to be satisfactory subject to conditions.
(6) Flora and fauna	The site is identified as Biodiversity Certified land and otherwise not requiring further assessment on threatened species of flora and fauna.
(7) Riverine scenic quality	Not applicable.
(8) Agriculture/aquaculture and fishing	Not applicable.
(9) Rural residential development	Not applicable.
(10) Urban development	The site has been rezoned to residential and the subdivision proposal provides variable lot sizes. Further, Council's Engineers have provided conditions for any consent, to manage erosion and sediment erosion and loss, and to improve the quality of expected stormwater discharge from the site.
(11) Recreation and tourism	Not applicable.
(12) Metropolitan strategy	The proposal is consistent with the Metropolitan Strategy by contributing to greenfield development in the South West Growth Centre.

It is considered that the proposal satisfies the provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021, subject to appropriate sedimentation and erosion controls being implemented during construction.

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

Bringelly Road is a classified road. The provision of the SEPP (Transport and Infrastructure) 2021 are to be considered in respect of Clause 2.122 – Traffic-generating development.

Considerations	Comments
Clause 2.122 Traffic-generating development	
<p>(1) This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—</p> <p>(a) new premises of the relevant size or capacity, or</p> <p>(b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.</p> <p>(2) In this section, relevant size or capacity means—</p> <p>(a) in relation to development on a site that has direct vehicular or pedestrian access to any road (except as provided by paragraph (b))—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or</p> <p>(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.</p> <p>(3) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this section applies that this Chapter provides may be carried out without consent unless the authority or person has—</p> <p>(a) given written notice of the intention to carry out the development to TfNSW in relation to the development, and</p> <p>(b) taken into consideration any response to the notice that is received from TfNSW within 21 days after the notice is given.</p> <p>(4) Before determining a development application for development to which this section applies, the consent authority must—</p> <p>(a) give written notice of the application to TfNSW within 7 days after the application is made, and</p> <p>(b) take into consideration—</p> <p>(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and</p> <p>(ii) the accessibility of the site concerned, including—</p> <p>(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and</p> <p>(B) the potential to minimise the need for travel by car and to maximise</p>	<p>A referral was made to NSW Roads and Maritime under the provisions of this Clause as the site is on a site zoned SP2 (Future Collector Road) and in close proximity to Bringelly Road. The development does not propose access to or from Bringelly Road.</p> <p>TfNSW did not raised any issues in their initial correspondence. This was followed up with two further referrals where TfNSW also did not raise any concerns.</p> <p>However, further correspondence was received by Council's Contribution's Team advised that TfNSW did not want to construct the SP2 road on their site located to the south of the subject site.</p> <p>This raised concerns in relation to the future need and acquisition of the SP2 corridor. Irrespective of the late concerns raised by TfNSW, no legislated requirement was presented, nor was a draft road layout provided to support TfNSW reluctance to construct the road. Therefore, the existing Indicative layout Plan will be relied upon for the assessment. In this regard, the proposal is supported as per the amended scheme.</p> <p>Conditions will apply in regard to the construction of the dwellings.</p>

<p>movement of freight in containers or bulk freight by rail, and</p> <p>(iii) any potential traffic safety, road congestion or parking implications of the development.</p> <p>(5) The consent authority must give TfNSW a copy of the determination of the application within 7 days after the determination is made.</p>	
---	--

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

There are currently no draft planning instruments that would be applicable to the proposal.

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

(a) Liverpool City Council Growth Centre Precincts Development Control Plan

The application has been considered against the controls contained in the Liverpool Growth Centre Precincts Development Control Plan (DCP) in particular:

- Part 2: Precinct Planning Outcomes;
- Part 3: Neighbourhood and Subdivision Design; and
- Part 4: Development in the Residential Zones.

The proposal is considered to be consistent with the key controls outlined in the Liverpool City Council Growth Centre Precincts Development Control Plan (DCP) and all relevant compliance tables for the DCP can be found in Report Attachment A.

(b) Liverpool Contributions Plan 2014 – Austral Leppington North

In accordance with Liverpool Contributions Plan 2018 – Austral, a Section 7.11 contribution of (**\$ TBA - Pending calculation from contributions team**) has been applied and included the recommended draft consent conditions.

5.4. Section 4.15(1)(a)(iv) –The Regulations

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

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

(a) Natural Environment

Impacts on the natural environment have been assessed as part of the development application. It was found that the proposal is unlikely to create any detrimental impact on the natural environment surrounding the subject site, or to any endangered and non-endangered species of flora and fauna, consistent with the assessment process undertaken in creating the State Environmental Planning Policy (Precincts—Western Parkland City) 2021 in particular Chapter 3 - Sydney Region Growth Centres and the Biodiversity Certification Order.

(b) Built Environment

The proposed development is unlikely to create any adverse impacts on the surrounding built environment. The proposed development is considered to be of an appropriate scale and unlikely to create any detrimental impacts on the adjoining properties, or the locality as a whole. The proposal will facilitate residential development consistent with the desired future built character of the locality, and by following the ILP, will enable adjoining landowners to coherently develop their sites in accordance with the road layout plan.

(c) Social Impacts and Economic Impacts

The proposed subdivision would result in a positive economic impact in the locality through the capital investment value of the development and is unlikely to generate any identifiable detrimental social impacts.

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

The proposed development is generally considered to be suitable for the site. The development complies with the relevant provisions of the SEPP (Precincts – Western Parkland City) 2021 and Liverpool Growth Centre Precincts DCP 2021 and will facilitate the future residential development of the land consistent with the desired future built character of the locality.

5.7. Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

5.8. Section 4.15(1)(e) - Public interest

The proposal **is** in the public interest for the following reasons:

- Potential impacts are mitigated at the site, as demonstrated in the Part 5 assessment below.
- The proposal is generally consistent with the applicable EPIs which relate to the development as demonstrated in Part 3 above; and

- The proposal provides economic benefit at the site through the creation of jobs during construction, creation of jobs during operation, generation of new much needed in the Liverpool locality.

On balance the proposal is consistent and consider in the public interest.

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 4: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Chapter 3: Koala Habitat Protection 2020 Chapter 4: Koala Habitat Protection 2021 Chapter 6: Bushland in Urban Areas Chapter 8: Sydney Drinking Water Catchment Chapter 9: Hawkesbury-Nepean River	Y
BASIX SEPP	A BASIX Certificate as provided for the proposed dwellings under Certificate Number 1374931S. No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises of development with a capital investment value of greater than \$30m	Y
State Environmental Planning Policy (Precincts—Western Parkland City) 2021	Based on geographical location.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Section 2.122 - Traffic-generating development	Y
Proposed Instruments	No compliance issues identified.	Y

DCP	Minor variation requested. Refer to Key issues section for discussion.	Y
-----	--	---

6. REFERRALS AND SUBMISSIONS

6.1. Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

The outstanding issues raised by Agencies are considered in the Key Issues section of this report which are primarily with Electrical Easement traversing the site by Endeavor Energy and Transport for NSW.

Table 1: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	N/A	N/A	N/A
Rail authority for the rail corridor	N/A	N/A	N/A
Referral/Consultation Agencies			
Electricity supply authority (Endeavour Energy)	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	The application was referred to Endeavour Energy on two occasions. Initially they did not support the construction of road under their electrical easement. Further clarification sought from Endeavour and the applicant consulted further during the RFI process. Endeavour Energy confirmed they would support the development of roads under the easement, provided conditions are imposed. In this regard conditions have been imposed accordingly.	Y

Transport for NSW	Section 2.123 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	The application was referred to TfNSW on three occasions. TfNSW initially supported the development, but later changes their position. The noted that the Collector Road, which is currently zoned as SP2, is no longer required, and is not going to be constructed by TfNSW. Refer to Key Issuers section below for further details.	Y
Sydney Water	Sydney Water Act 1994 – Section 78	The application as referred to Sydney Water and they confirmed that Water Services are partially available to the site and will be further assessed under the Section 73 application with Sydney Water. It was noted that Wastewater Servicing is available to the site.	Y
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The application was referred to RFS on two occasions. The initial lodgement DA was not supported due to lack of information, which was included in the request for information by Council. The RFI response was referred to RFS and General Terms of approval was provided on 19 February 2024.	Y
NSW Department of Planning, Industry & Environment - Water (Natural Resources Access Regulator)	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The DA was referred to NSW DPIE – Water as Integrated development due to the large natural dam located on site. The regulator confirmed that Controlled Activity Approval was not required.	Y
Water NSW	S89-91 – <i>Water Management Act 2000</i>	DA was referred to Water NSW and they responded on 9 June 2023 advising that no GTAs are required to be issued to the development.	Y

6.2. Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 2: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Yes
Flooding		
Traffic	<p>Council's Traffic Engineering Officer reviewed the proposal and raised concerns in relation to Safety Audit to be provided for the intersection of Fifth Aven and he proposed Laneway 1.</p> <p>Further analysis and discussion with the Traffic engineer resulted in a condition of consent being imposed to address the safety audit, therefore the matter can be addressed during the lodgement of the detailed road design to the traffic committee. Therefore, the matter has been satisfactory addressed by conditions.</p>	Yes (Conditions)
Environmental Health	Council's Environmental Health Officer reviewed the amended documentation and was satisfied with the information submitted and has imposed conditions to address the Remediation Action Plan. Therefore, the development is deemed satisfactory in this instance.	Yes
Landscaping	The amended scheme as referred to Council's Landscape Officer who was satisfied with the amendments made.	Yes
Heritage	Council's Heritage Officer/Consultant reviewed the submitted amended plans and raised no concern subject to the conditions recommended to be imposed.	Yes (Conditions)
Natural Environment	The proposed works are within biocertified land. Therefore, no further assessment of biodiversity matters is considered pertinent.	Yes
Urban Design and Public Domain	The amended scheme as referred to Council's Urban Design Unit who was satisfied with the amendments made.	Yes
Strategic Planning	The amended scheme as referred to Council's Strategic Planning Unit who was satisfied with the amendments made.	Yes
Contributions Planning	A referral to the Contributions Team was made because the applicant proposed a VPA agreement for the contribution of the SP2 road. Council's Contribution Units did not agree to enter into a VPA and confirmed that the contributions can be dealt with via a WIKA.	Yes

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

6.3. Community Consultation

The proposal was notified and advertised in accordance with the Council's Community Participation Plan from 29 March 2023 until 26 April 2024. The notification included the following:

- A sign placed on the site;
- Notification on a website;
- Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
- Notification on the Council's website.

The Council received a total of 1 unique submission objecting to the development. The issues raised in the submission is considered in **Table 7** below.

Table 3: Community Submissions

Issue	No of submissions	Council Comments
<p>Lack of Recreational Land</p> <p>Submissions raised concern that there is not enough recreational land in the area and that Council should get developers to put aside land.</p>	1	<p>The subject site is note zoned for recreational purposes. The recent SEPP was gazetted in 2021 and there was consideration for recreational land under the SEPP. Land has been zoned and put aside for recreational purposed under the SEPP, however, currently the area is still rural residential in nature.</p> <p>As other sites develop, those zoned for recreational purposes will be made available to community. Council is unable to enforce or oblige a landowner to develop the land under the current legislated instruments.</p>

7. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

(a) Transport for NSW – Late Submission

The Application was referred to TfNSW under Clause 2.122 Traffic Generating Development of the SEPP (Transport and Infrastructure) on three occasions as follows:

- Referral 1 - 14 May 2023
 - o Response received 5 June 2023
 - o TfNSW noted that the road network is to be constructed to the satisfaction of Council and no further comments were to be made.

- Referral 2 – 22 November 2023, for the purpose of amended information received in response to the request for information from Council.
 - o TfNSW noted that a previous response was given on 5 June 2023 and that it was not clear what changes have occurred with the additional information. TfNSW failed to review the application's request for information response which included a summary of the changes.
 - o TfNSW was advised to refer to the response to the RFI letter and the application was referred back to TfNSW.

- Referral 3 – 19 February 2024 – 1st Response
 - o A response was received 8 March 2024.
 - o TFSW note that the proposed changes are minor.
 - o TfNSW responded by noting that no further comments were to be made.

- Referral 3 – 19 February 2024 – 2nd Response
 - o A second respond was received on 14 March 2024 for the referral 3 that was setup on 19 February 2024.
 - o TfNSW objected to any works being undertaken via a VPA on TfNSW land.
 - o TfNSW was advised that no works are proposed on their land known as 520 Bringelly Road.
 - o TfNSW accepted a condition of consent to be imposed ensuring that no works are to be undertaken on their land without TfNSW approval.
 - o It was understood that the matter was resolved as above.

Further TfNSW matters raised following the above concurrence.

TfNSW advised Council's Contributions Unit (Not related to the above concurrence) that the proposed SP2 Zoned Collector Road shown on the zoning and indicative layout plan (ILP) for the roads (Figure 16 below), was not required to be constructed on TfNSW land therefore resulting in the portion of the SP2 road on the subject site being surplus road.

This raised concerns for the developer at a late stage of the assessment. TfNSW did not provide any amended road layout scheme or any draft plans supporting the change in position and the non-support of the Collector Road.

Based on the updated information received from TfNSW, Council's Strategic Planning Team will be making changes to the Indicative Layout Plan and re-zoning the SP2 road in future changes to the legislation.

Resolution: The issue has been resolved through discussions with the applicant resulting in the developer advising Council to continue with the current arrangement because they have invested significant time and money to get to this position.

The applicant advised that should approval be given; they will review the proposal in future provided the land gets re-zoned, will amend their development through the relevant process at that time.

Therefore, this report has been prepared with a recommendation based on all the current legislation and information at the time of assessment and is recommended for approval.

(b) Site Coverage for dwellings with Studios – Check RFI Response for justification

The development proposes a minor variation to the site coverage control for Lot 10 (1%) and 22 (7%). The justification provided by the applicant is that the variation is sought to accommodate the 5th bedroom for these two lots and that the variation is necessary to provide a variation of building type.

Lots 10 and 22 provide a fifth bedroom located above the detached rear loaded garage but is not accessible from the rear lane. In this regard, the applicant has clearly stated that dwellings that include a room above the rear garage is a 5th bedroom and is primary for the use of the main dwelling and is not intended to be a separate studio or secondary dwelling. Therefore, a condition of consent is imposed ensuring that the bedrooms cannot be converted in future for separate domicile and a condition will be imposed as a restriction on title.

8. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

the proposed development is considered satisfactory with the following matters noted:

- The proposed development complies with the relevant provisions of the SEPP (Precincts—Western Parkland City) 2021 and Liverpool Growth Centre Precincts DCP 2021.
- Conditions of consent will be imposed to minimise any potential negative environmental impacts resulting from the development.
- The proposed development is appropriate for the site and approval is in the public interest.
- Developer contributions have been applied to the development in accordance with the Liverpool City Council Section 7.11 – Austral and Leppington North Contributions Plan 2021.
- A Special Infrastructure Contribution Condition has been imposed.

9. RECOMMENDATION

That the Development Application DA-140/2023 for Demolition all existing structures, dam dewatering, tree and vegetation removal, bulk earthworks, remediation works, civil and road works, and Torrens title subdivision into 58 lots with integrated housing to construct a mix of 54 two storey dwellings and 5 studios above garages at 280 Fifth Avenue and 62 Kelly Street, Austral be **APPROVED** pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Tables of Compliance – DCP (CM TRIM: 119069.2024)
- Attachment B: Conditions of Consent – Draft Notice of Determination
- Attachment C: Architectural Plans (CM TRIM: 114494.2024)
- Attachment D: Civil & Stormwater Plans (CM TRIM: 114493.2024)
- Attachment E: Staging Plan (CM TRIM: 114491.2024)
- Attachment F: Public Domain & Landscape Plans (CM TRIM: 118290.2024)