



# 2018

CAMPBELLTOWN CITY COUNCIL

24 October 2018

## **MEETING NOTICE**

### **Campbelltown City Council Local Planning Panel**

The meeting of the Campbelltown City Council Local Planning Panel will be held in Civic Centre, Campbelltown on Wednesday, 24 October 2018 at 3.00pm.

## **MEETING AGENDA**

### **1. ACKNOWLEDGEMENT OF LAND**

I would like to acknowledge the Traditional Custodians, the Dharawal people, whose Lands we are now meeting on. I would like to pay my respects to the Dharawal Elders, past and present and all other Aboriginal people who are here today.

### **2. APOLOGIES**

### **3. DECLARATIONS OF INTEREST**

### **4. REPORTS**

**5**

4.1 Demolition of existing structures, removal of all trees and subdivision into 3 Torrens title allotments - 8 Figtree Crescent, Glen Alpine

**5**

4.2 Control and Direction Delegation

**29**

### **General Information**

Submissions by the applicant and concerned parties will be considered at the hearing. A concerned party is deemed to be a person who has made a written submission in respect to the application. The panel shall, upon request, hear submissions from persons who identify prior to a hearing that they wish to make a submission to be considered by the panel. Presentations to the panel by the applicant and concerned parties shall be restricted to five minutes each. The panel Chairperson has the discretion to extend the period if considered appropriate.

Members of the public, who have registered to speak at the meeting, will be invited to address the panel by the Chairperson during the meeting.

### **Recommendations of the Panel**

The reports are presented to the Local Planning Panel for its consideration, advice and determination if the report is for a development application.

After the panel has considered submissions made by interested parties, the panel will make recommendations to the Council if the report relates to a planning proposal and determination if the report relates to a development application. The panel's recommendations/determinations become public by 4.30 the Friday following the Local Planning Panel meeting.

### **Information**

Should you require information about the panel or any item listed on the agenda, please contact Council's City Development department on 4645 4575 between 8.30am and 4.30pm.

The following reports are referred to the Local Planning Panel Panel for its consideration and recommendation.

Lindy Deitz  
General Manager

## 4. REPORTS

### 4.1 Demolition of existing structures, removal of all trees and subdivision into 3 Torrens title allotments - 8 Figtree Crescent, Glen Alpine

#### Community Strategic Plan

| Objective                               | Strategy  |
|---|---|
| 1 Outcome One: A Vibrant, Liveable City | 1.8 - Enable a range of housing choices to support different lifestyles |

#### Referral Criteria

Contentious Development – the application has received more than 10 unique objections.

#### Executive Summary

- This application proposes the demolition of all existing structures and removal of all trees at 8 Figtree Crescent, Glen Alpine, and subdivision of the site into three Torrens title allotments. The proposed development does not include the construction of buildings.
- The application complies with the relevant provisions of the Campbelltown Local Environmental Plan 2015 and the Campbelltown Sustainable City Development Control Plan 2015.
- The application was notified to nearby and adjoining residents. Council has received submissions from the residents of 15 properties, objecting to the application.
- It is recommended to the Panel that the application be approved subject to the attached recommended conditions of consent.

#### Officer's Recommendation

That development application 1203/2018/DA-SW for the demolition of existing structures, removal of all trees and subdivision into 3 Torrens title allotments at No. 8 Figtree Crescent Glen Alpine be approved subject to the attached conditions.

|                             |   |
|-----------------------------|---|
| <b>Property Description</b> | Lot 913 DP 791145 8 Figtree Crescent, Glen Alpine |
| <b>Application No</b>       | 1203/2018/DA-SW                                   |
| <b>Applicant</b>            | Parkes Holdings (NSW) Pty Ltd                     |

|                      |   |
|----------------------|---|
| <b>Owner</b>         | Mrs Ivanka Grgic  |
| <b>Provisions</b>    | Campbelltown Local Environmental Plan 2015<br>Campbelltown Sustainable City Development Control Plan 2015 |
| <b>Date Received</b> | 19 April 2018   |

## History

At its meeting in July 2017, Council refused development application 943/2016/DA-RS, which proposed the demolition of the existing dwelling and ancillary structures, construction of four dwellings and subdivision into four Torrens title allotments. The application received significant community opposition, and the primary reason for its refusal was that it would cause a reduction of large-lot low-density residential living opportunities; be inconsistent with the Council's desire to have a diversity in housing and accommodation typologies across the LGA; would reduce the stock of large lot housing within a CBD context, across the wider Macarthur area; and would and would pose an irretrievable risk to the long-term preservation of the underlying and defining character of the suburb of Glen Alpine which itself holds a particular level of importance due to its singular uniqueness, when set against the various and broader suburban forms across the Campbelltown and Macarthur area.

## Report

This application proposes the demolition of all existing structures and removal of all trees at 8 Figtree Crescent, Glen Alpine, and subdivision of the site into three Torrens title allotments. The size and dimensions of the proposed allotments are listed in the table below:

| Allotment | Size     | Width at Front Building Line | Depth        |
|-----------|----------|------------------------------|--------------|
| Lot 1     | 500.4sqm | 17.4 metres                  | 28.35 metres |
| Lot 2     | 500.2sqm | 17.8 metres                  | 27.69 metres |
| Lot 3     | 503.3sqm | 18.7 metres                  | 27.1 metres  |

Whilst the subdivision plan includes indicative building layouts to assist with the understanding of how a dwelling might sit on the land, the proposed development does not include any building works.

The subject site is located on a right angle bend in Figtree Crescent near its intersection with Gonyah Place. The land is generally rectangular in shape with a splayed corner, and has an area of 1,504sqm. The land has a frontage to a 90 degree bend in Figtree Crescent, and given the nature of the bend, is positioned similar to a corner allotment at a normal road intersection. The resultant street fronting boundary dimensions of the land are 50 metres along one part of the Figtree Crescent, and 23 metres along the other. The site slopes six metres from west to east, and contains a two-storey dwelling, outbuildings, an in ground swimming pool, and several trees.

Figtree Crescent is characterised by large-lot low-density residential development, with allotment sizes generally ranging from approximately 1000sqm to 2500sqm. There are however, four allotments in close proximity to the site (with Gonyah Place) that range in sizes of between 602sqm and 627sqm.

## 1. Planning Provisions

The development has been assessed in accordance with the heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters the following issues have been identified for further consideration.

### 1.1 Campbelltown Local Environmental Plan 2015

The subject site is zoned R2 Low Density under the provisions of Campbelltown Local Environmental Plan 2015. The objectives of the R2 zone are:

- 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 enable development for purposes other than residential only if that development is compatible with the character of the living area and is of a domestic scale.
- To minimise overshadowing and ensure a desired level of solar access to all properties.
- To facilitate diverse and sustainable means of access and movement.

The proposed development would not be inconsistent with these objectives to the extent of their applicability, noting that only a subdivision of land is proposed. Importantly, the proposed development is not determined to be inconsistent with these objectives.

#### Minimum subdivision lot size

The objectives of Council's minimum lot size clause are as follows:

- (a) to ensure that the density of development is compatible with the capacity of existing and proposed infrastructure,
- (b) to ensure that the density of settlement will be compatible with the objectives of the zone,
- (c) to limit the density of settlement in environmentally, scenically or historically sensitive areas,
- (d) to ensure lot sizes are compatible with the conservation of natural systems, including waterways, riparian land and groundwater dependent ecosystems,
- (e) to facilitate viable agricultural undertakings,
- (f) to protect the curtilage of heritage items and heritage conservation areas,
- (g) to facilitate a diversity of housing forms

Of the objectives above, objectives (a), (b), (c) and (g) are relevant to this application. With regard to objective (a), the proposed creation of two additional allotments to Figtree Crescent would not have a significant impact on existing infrastructure. The proposed development would require augmentation of the existing electrical, water, sewer and stormwater infrastructure within the street, and when considered purely as an application for subdivision, any resulting subdivision of the land would have a negligible impact on the current level of service of Figtree Crescent and/or the surrounding road network, or generally speaking, the amenity of the area. However, when considering the reason for the subdivision of the land (to provide land for dwelling houses), with the erection of the dwellings comes an element of change for residents that currently enjoy the amenity they are used to. The elements of change to the area would include visual, perceived character, population, perceived safety and presumably number vehicles and movements. Although the change will have some level

of impact on the current amenity of the area, the actual level impact that arrives with the erection of two additional dwellings in the street, is not considered to be significant and when built, is unlikely to cause an significantly adverse impact on the current level of service of Figtree Crescent nor the functioning amenity of the area.

With regard to objective (b), the density of the proposed development is consistent with the objectives of the R2 zone in that it would continue to provide for the housing needs of the community within a low density residential environment, and would allow for allotment sizes/configurations that would allow adequate solar access to proposed and existing allotments.

With regard to objective (c), whilst homes in Glen Alpine are generally of a higher aesthetic quality than Campbelltown in general, and the area holds a level of importance across the wider Macarthur area due to its rarity as a suburb and the valuable contribution it makes to maintaining and upholding a diversity of housing typologies across the Campbelltown/Macarthur area, the suburb could not be described as an environmentally, scenically or historically sensitive area in the purist sense of the words. However, the suburb does hold high value to the council and the community due to its rarity of suburban character; its residential offering to those who have a desire or reason to live on larger allotments; its unique visual context and street character; as well as its historical uniqueness.

With regard to objective (g), the proposed subdivision is unlikely to hinder a greater diversity of housing forms within Glen Alpine.

The minimum lot size applicable to the subject site is 500sqm. Each of the proposed allotments would exceed 500sqm and therefore the proposed development complies with this standard.

### **Essential services**

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water
- (b) the supply of electricity
- (c) the disposal and management of sewage
- (d) stormwater drainage or on-site conservation
- (e) suitable road and vehicular access
- (f) telecommunication services
- (g) the supply of natural gas

All of the above services are available within Glen Alpine, and the developer will be required to augment some of these services to accommodate the proposed development. Recommended conditions of consent require approvals from the relevant authorities.

### **Suspension of covenants, agreements and instruments**

The subject property, as do many properties within Glen Alpine, has a series of restrictions on its title, which were registered by the developer of the estate. Of relevance to the subject application, one of the registered restrictions states "No lot shall be subdivided", with Council being the authority empowered to release, vary or modify the restriction.

However, despite the presence of this restriction, Council's Local Environmental Plan states:

For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Accordingly, as the restriction would have the effect of preventing a subdivision of land that is in accordance with the relevant provisions of the LEP, it has no legal effect and would not require the consent authority to refuse this application.

## 1.2 Campbelltown (Sustainable City) Development Control Plan 2015

The general provisions of Part 2 of the Plan apply to all types of development. Compliance with the relevant provisions of Part 2 of the Plan is discussed as follows:

**Stormwater Drainage** – The proposed allotments would drain via an inter-allotment stormwater drainage system to the kerb in Figtree Crescent. Council's Development Engineer has reviewed the proposed development and advised that it is satisfactory from a drainage perspective, subject to the imposition of certain conditions of consent, which have been included within the attached recommended conditions.

### Part 3 – Low and Medium Density Residential Development and Ancillary Residential Structures

Part 3 of the SCDP sets out development standards for certain residential development within the City of Campbelltown. An assessment of the proposed development against the relevant development standards is detailed below:

| Control                        | Required  | Proposed  | Compliance |
|--------------------------------|---|---|------------|
| <b>Allotment configuration</b> | Subdivision shall have appropriate regard to orientation, slope, aspect and solar access.   | Each proposed allotment would have an orientation, slope and aspect that would facilitate the provision of a range of housing types with adequate solar access.           | Yes        |
|                                | Residential subdivision shall be designed to address the public domain. Wherever possible, subdivision design shall avoid the creation of allotments that have rear boundaries (and fencing) that adjoin the public domain. | All of the proposed lots would face the public domain, and would allow for dwellings that face the public domain without proliferation of fencing along street frontages. | Yes        |
| <b>Allotment</b>               | Any residential   |   |            |



|                   |   |   |     |
|-------------------|---|---|-----|
| <b>dimensions</b> | allotment created by Torrens Title subdivision for the purpose of a dwelling house in areas zoned R2 shall satisfy the following standards: |   |     |
|                   | i) a minimum width of 15 metres measured along the side boundaries at a distance of 5.5 metres from the front property boundary;            | All of the proposed allotments would have a width of at least 15 metres at a point 5.5 metres from the front property boundary.         | Yes |
|                   | ii) a minimum width of 7 metres measured between the extended property side boundaries where they intersect with the kerb line; and         | All of the proposed allotments would have a width between their extended side property boundaries at the kerb of greater than 7 metres. | Yes |
|                   | iii) a minimum depth of 25 metres.  | All proposed allotments would have a depth of at least 25 metres.   | Yes |

## Part 11 – Vegetation and Wildlife Management

Part 11 of the SCDCP requires that an arborist report be provided where trees are proposed to be removed, and accordingly, an arborist report was submitted with the application. The report indicates that none of the trees on the site are native and none have any ecological significance. Accordingly, there are no planning reasons that would prevent the removal of all of the trees on the site.

### 2. Public Participation

The application was notified to nearby and adjoining residents. Council has received objections to the application from the residents of 15 properties. The objections raise the following issues:

#### Issue 1

Several residents purchased their properties in Glen Alpine at a premium because of the prevailing large-lot low-density character and its prestigious lifestyle, and development such as this would create a precedent and lead to the erosion of that character. There are other suburbs within the Macarthur area where higher density development can and should occur.

**Comment**

Glen Alpine was created as a large-lot estate, with a particular character and the developer sought to enforce this character with the use of private covenants, which are not enforceable by Council or the Local Planning Panel. As the minimum lot size applicable to Glen Alpine (500sqm) is vastly different to the prevailing lot sizes within Glen Alpine, most of which are at least 800sqm and some much larger, it is correct that under the current planning controls, the character of Glen Alpine would change over time. The only way to consistently maintain Glen Alpine's character would be to increase the minimum lot size, however with regard to the current application, there is currently no provision within Campbelltown Local Environmental Plan 2015 that requires the size of proposed allotments to be in accordance with those of existing allotments in a locality.

**Issue 2**

There have been several near misses at the intersection of Figtree Crescent and Gunyah Place. On-street car parking associated with the proposed allotments would create blind spots for vehicles entering and exiting from Gunyah Place to Figtree Crescent and for vehicles travelling along Figtree Crescent.

**Comment**

This matter was referred to Council's traffic engineers, who advised that the road adjacent to the site is a low speed traffic environment, since the road adjacent to the site is only 7.5 metres wide with provision for car parking on both sides of the street, leaving only one through lane when cars are parked on both sides of the street.

Council's traffic engineers advised that on-street car parking near the 90deg bend in Figtree Crescent (opposite Gunyah Place) could be problematic the parking of cars along the bend could make it difficult for garbage trucks to pass when cars are parked on both sides of the street. Accordingly, Council's traffic engineers recommended the painting of yellow "No-stopping" lines on the road within close proximity of the bend and intersection, as well as the installation of a "Give Way" sign post for traffic exiting Gunyah Place, as shown in the attached diagram. Council's traffic engineers advised that these enhancements would improve sight lines through the bend in the road.

**Issue 3**

Council should enforce the private covenants within Glen Alpine to protect Glen Alpine from this type of development.

**Comment**

The Campbelltown Local Environmental Plan 2015 states:

For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Accordingly, as the restriction would have the effect of preventing a subdivision of land that is in accordance with the relevant provisions of the LEP, it has no legal effect and would not require the consent authority to refuse this application. Council is therefore legally unable to

enforce the private covenants within Glen Alpine, and could only prevent this type of development by amending the planning controls that apply to Glen Alpine.

**Issue 4**

The block sizes proposed are inconsistent with the current block sizes in Glen Alpine. Council should review its planning controls for Glen Alpine to protect the suburb's existing character.

**Comment**

It is acknowledged that the proposed allotment sizes (approximately 500sqm) are smaller than the prevailing allotment sizes in Glen Alpine, the average allotment size being in the order of 850sqm. However, there is no provision within Campbelltown Local Environmental Plan 2015 that requires the size of proposed allotments to be in accordance with those of existing allotments in a locality. Rather, it is only the minimum lot size map that regulates the size of new allotments, and the map indicates a minimum lot size of 500sqm applies to all of Glen Alpine.

**Issue 5**

The proposed development would reduce the value of surrounding properties.

**Comment**

Whilst this may or may not be the case, no evidence has been provided to substantiate this claim.

**Issue 6**

The proposed driveway to lot 3 would cause traffic problems.

**Comment**

The application does not propose the construction of driveways, and at present it is not known where driveways to the proposed allotments would be located.

**Issue 7**

Proposed lot 3 has a depth of less than 25 metres and therefore does not comply with Council's Development Control Plan.

**Comment**

The depth of an allotment is the distance between the front and rear property boundaries. In this regard, proposed lot 3 would have a depth of 27 metres. The splayed corner of proposed lot 3 would give its eastern property boundary a length of 23 metres, however its actual depth within the buildable part of the proposed allotment would be 27 metres, which complies with Council's Development Control Plan.

## Conclusion

Having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, it is considered that the application is consistent with the relevant planning legislation. In particular, the application is considered to be fully compliant with the provisions of the Campbelltown Local Environmental Plan 2015 and the Campbelltown Sustainable City Development Control Plan 2015. The application would have no significant impacts with regard to the natural or built environments, beyond those envisaged by the prevailing development standards. Whilst several objections to the application have been received, their content relates primarily to residents' desire for the character of Glen Alpine to not change substantially, as would be the case under the present planning controls. These are strategic planning considerations rather than matters relevant to a development application, which seeks approval to develop land in accordance with the current planning controls.

With regard to strategic planning considerations, over the years there has been a significant level of community opposition to development proposals within Glen Alpine that have sought to deviate from the prevailing large-lot low-density character of the suburb. These applications have been able to be lodged and considered because the minimum lot size standard that has been applicable to Glen Alpine for several years (500sqm) is much less than the prevailing allotment sizes in Glen Alpine, most of which are at least 800sqm.

Accordingly, it is recommended that the development application be approved.

## Attachments

1. Recommended conditions of consent (contained within this report)
2. Existing Plan (contained within this report)
3. Proposed Subdivision (contained within this report)
4. Notification Plan - confidential due to privacy reasons (distributed under separate cover)

## Reporting Officer

Executive Manager Urban Centres

**1203/2018/DA-SW**  
**Recommended Conditions of Consent**

**GENERAL CONDITIONS**

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land.

For the purpose of these conditions, the term 'applicant' means any person who has the authority to act on or benefit of the development consent.

**1. Approved Development**

The development shall be carried out in accordance with the approved plans and documents listed in the table below, and all associated documentation supporting this consent, except as modified in red by Council and / or any conditions within.

| Plan/<br>Document No. | Version/<br>Revision | Prepared by                                  | Date          |
|-----------------------|----------------------|--|---------------|
| 5306 Sheets 1 and 2   | A                    | Macarthur Architectural<br>Drafting Services | 27 March 2018 |

**2. Building Code of Australia**

All building work must be carried out in accordance with the provisions of the *Building Code of Australia*. In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

**3. Engineering Design Works**

The design of all engineering works shall be carried out in accordance with the requirements set out in the *Campbelltown (Sustainable City) DCP (as amended)* and *Campbelltown City Council Engineering Design for Development (as amended)*.

**4. Shoring and Adequacy of Adjoining Property**

If the development referred to in this development consent involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must at the person's own expense:

- a. Protect and support the adjoining premises from possible damage from the excavation, and
- b. Where necessary, underpin the adjoining premises to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**5. Construction Certificate**

Prior to the commencement of any works that require a construction certificate:

- a. the applicant shall obtain a construction certificate for the particular works;
- b. the applicant shall appoint a principal certifying authority; and
- c. the private certifying authority shall notify Council of their appointment no less than two days prior to the commencement of any works.

## PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate by either Campbelltown City Council or an accredited certifier. All necessary information to comply with the following conditions of consent must be submitted with the application for a construction certificate.

### 6. Utility Servicing Provisions

Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall obtain a letter from both the relevant electricity authority and the relevant telecommunications authority stating that satisfactory arrangements have been made to service the proposed development.

*Note: The applicant should also contact the relevant water servicing authority to determine whether the development will affect the authorities water or sewer infrastructure.*

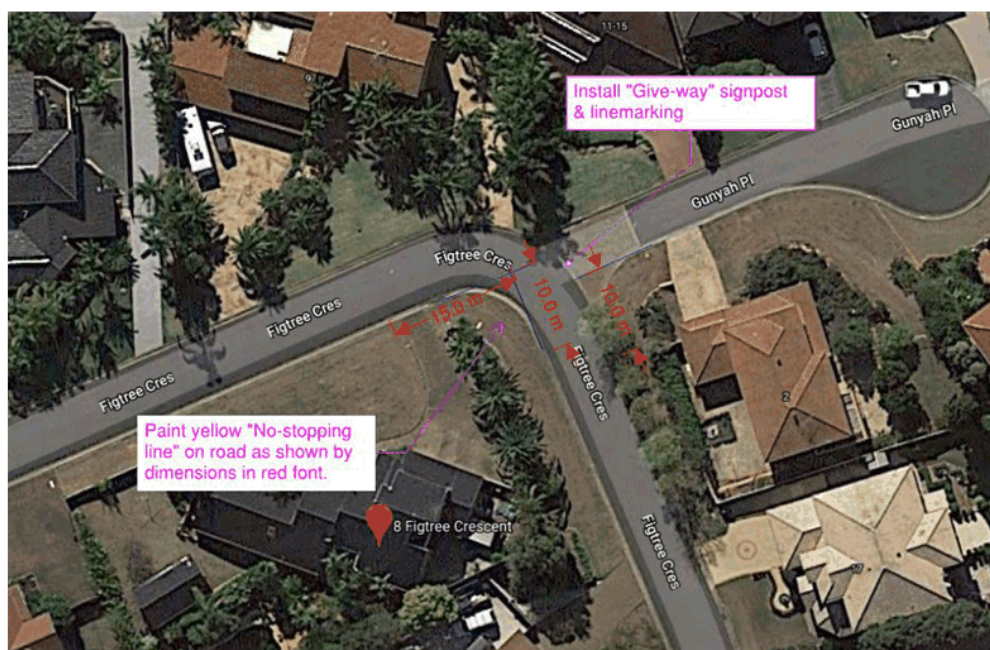
### 7. Soil and Water Management Plan

Prior to Council or an accredited certifier issuing a construction certificate, a detailed soil and water management plan shall be submitted for approval.

### 8. Traffic Committee

Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall submit plans and obtain approval from Council's Local Traffic Committee for any proposals for the construction of prescribed traffic control devices and traffic control facilities and all associated line marking and/or sign posting.

The following road treatments are required to be provided, in order to mitigate the risk of vehicular collision and conflict in the vicinity of the site:



**9. Traffic Control Plans**

Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall prepare and obtain approval from an accredited person, a Traffic Control Plan (TCP) in accordance with the State Roads Authority manual "*Traffic Control at Work Sites*" and *Australian Standard AS 1742.3 (as amended)*. A copy of the approved TCP shall be kept on site for the duration of the works in accordance with *Work Cover Authority* requirements. A copy shall be submitted to Council for its records.

**10. Stormwater Management Plan (Subdivision)**

Prior to Council or an accredited certifier issuing a construction certificate, a plan indicating all engineering details and calculations relevant to the site regrading and the collection and disposal of stormwater from the site, building/s and adjacent catchment, shall be submitted for approval.

Stormwater shall be conveyed from the site to the nearest downstream drainage system under Council's control by gravity. In this regard, the applicant shall construct a drainage system in Figtree Crescent comprising of 375mm diameter class 3 reinforced concrete pipes and Council standard pit/s. Detailed engineering plans for the drainage works proposed in Figtree Crescent road reserve shall be submitted to Council with S138 application for approval prior to issue of any construction certificate.

All proposals shall comply with the requirements detailed in the *Campbelltown (Sustainable City) DCP (as amended)* and *Campbelltown City Council Engineering Design for Development (as amended)*.

**11. Inter-Allotment Drainage**

Inter-allotment drainage and associated easement shall be provided for all residential lots that are unable to directly be drained to the Council drainage system by gravity. Inter-allotment drainage system shall be designed in accordance with the requirements detailed in Council's *Specification for Construction of Subdivisional Road and Drainage Works (as amended)*, *Campbelltown (Sustainable City) DCP(as amended)* and *Campbelltown City Council Engineering Design for Development (as amended)*. Detailed plan shall be submitted for approval.

**12. Work on Public Land**

Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall obtain written approval from Council for any proposed work on public land. Inspection of this work shall be undertaken by Council at the applicant's expense.

**13. Civil Works under S138 Roads Act**

Prior to Council or an accredited certifier issuing any construction certificate, a S138 Roads Act application, including payment of plan assessment and inspection fees shall be lodged with Campbelltown City Council for construction of stormwater drainage system in Figtree Crescent road reserve and any associated civil works.

Detailed engineering plans for the proposed works in the road reserve shall be submitted to Council for approval. All works shall be carried out in accordance with Roads Act approval including the stamped approved plans and Council specifications.

**14. Section 94A Developer Contribution - Community Facilities and Services**

Prior to Council or an accredited certifier issuing a Complying Development Certificate or a Construction Certificate (or where a Construction Certificate is not required, a Subdivision Certificate), the applicant shall provide a receipt for the payment to Council of a community facilities and services contribution in accordance with the provisions of the *Campbelltown City Council Section 94A Development Contributions Plan*.

For the purposes of calculating the required S94A contribution, where the value of the total development cost exceeds \$100,000, the applicant is required to include with the application for the respective certificate, a report setting out a cost estimate of the proposed development in accordance with the following:

- where the value of the proposed development is greater than \$100,000 but less than \$500,000, provide a Cost Summary Report by a person who, in the opinion of the Council, is suitably qualified to provide a Cost Summary Report (Cost Summary Report Template 1). All Cost Summaries will be subject to indexation on a quarterly basis relative to the *Consumer Price Index - All Groups* (Sydney) where the contribution amount will be based on the indexed value of the development applicable at the time of payment; or
- where the value of the proposed development is \$500,000 or more, provide a detailed development cost report completed by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors (Quantity Surveyors Estimate Report Template 2). Payment of contribution fees will not be accepted unless the amount being paid is based on a Quantity Surveyors Estimate Report (QS Report) that has been issued within 90 days of the date of payment. Where the QS Report is older than 90 days, the applicant shall provide an updated QS Report that has been indexed in accordance with clause 25J(4) of the Environmental Planning and Assessment Regulation 2000 to ensure quarterly variations in the *Consumer Price Index All Group Index Number for Sydney* have been incorporated in the updated QS Report.

Copies of the Cost Summary Report - Template 1 and the Quantity Surveyors Estimate Report - Template 2 are located under "Developer Contributions" on Council's web site ([www.campbelltown.nsw.gov.au](http://www.campbelltown.nsw.gov.au)) or can be collected from Council's Planning and Environment Division during normal business hours.

On calculation of the applicable contributions, all amounts payable will be confirmed by Council in writing.

Payment of Section 94A Developer Contributions will only be accepted by way of Cash, Credit Card or Bank Cheque issued by an Australian bank. Payment by any other means will not be accepted unless otherwise approved in writing by Council.

**Note: This condition is only applicable where the total development value exceeds \$100,000.**

**15. Telecommunications Infrastructure**

- a. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and
- b. The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.



**16. Sydney Water**

Prior to Council or an accredited certifier issuing a construction certificate, the approved plans must be submitted to Sydney Water via the Sydney Water Tap In service, to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easements, and if any requirements need to be met.

An approval receipt will be issued if the building plans have been approved. The approval receipt shall be submitted to the Principal Certifying Authority prior to issue of a construction certificate.

The Sydney Water Tap In service can be accessed at [www.sydneywater.com.au](http://www.sydneywater.com.au).

**17 Replacement Tree Planting**

In accordance with Section 11.3 Clause 11.3.6 of Campbelltown (Sustainable City) DCP, prior to the issue of a Construction Certificate, a fee shall be paid to Council for replacement tree planting prior for any tree that shall not be replaced on site.

**PRIOR TO THE COMMENCEMENT OF ANY WORKS**

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with prior to the commencement of any works on site.

**18. Erosion and Sediment Control**

Prior to the commencement of any works on the land, adequate/approved erosion and sediment control measures shall be fully installed/implemented.

**19. Erection of Construction Sign**

Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:

- a. Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours
- b. Stating that unauthorised entry to the work site is prohibited
- c. Pollution warning sign promoting the protection of waterways (issued by Council with the development consent)
- d. Stating the approved construction hours in which all works can occur
- e. Showing the name, address and telephone number of the principal certifying authority for the work.

Any such sign/s is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**20. Toilet on Construction Site**

Prior to the commencement of any works on the land, toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part thereof. Each toilet provided must be a standard flushing toilet and be connected to:

- a. A public sewer, or

- b. If connection to a public sewer is not practicable, to an accredited sewage management facility approved by Council, or
- c. If connection to a public sewer or an accredited sewage management facility is not practicable, to some other management facility approved by Council.

**21. Trade Waste**

Prior to the commencement of any works on the land, a trade waste facility shall be provided on-site to store all waste pending disposal. The facility shall be screened, regularly cleaned and accessible to collection vehicles.

**22. Vehicular Access during Construction**

Prior to the commencement of any works on the land, a single vehicle/plant access to the site shall be provided, to minimise ground disturbance and prevent the transportation of soil onto any public road system. Single sized aggregate, 40mm or larger placed 150mm deep, extending from the kerb and gutter to the property boundary, shall be provided as a minimum requirement.

**23. Public Property**

Prior to the commencement of any works on site, the applicant shall advise Council of any damage to property which is controlled by Council which adjoins the site, including kerbs, gutters, footpaths, and the like. Failure to identify existing damage may result in all damage detected after completion of the development being repaired at the applicant's expense.

**24. Demolition Works**

Demolition works shall be carried out in accordance with the following:

- a. Prior to the commencement of any works on the land, a detailed demolition work plan designed in accordance with Clause 1.7.3 of Australian Standard AS 2601-2001 – The Demolition of Structures, prepared by a suitably qualified person with suitable expertise or experience, shall be submitted to and approved by Council and shall include the identification of any hazardous materials, method of demolition, precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- b. Prior to commencement of any works on the land, the demolition Contractor(s) licence details must be provided to Council.
- c. The handling or removal of any asbestos product from the building/site must be carried out by a NSW Work Cover licensed contractor irrespective of the size or nature of the works. Under no circumstances shall any asbestos on site be handled or removed by a non-licensed person. The licensed contractor shall carry out all works in accordance with NSW Work Cover requirements.
- d. An appropriate fence preventing public access to the site shall be erected for the duration of demolition works
- e. Immediately prior to the commencement of the demolition or handling of any building or structure that contains asbestos, the applicant shall request that the principal certifying authority attend the site to ensure that all appropriate safety measures are in place. The applicant shall also notify the occupants of the adjoining premises and Workcover NSW prior to the commencement of any works.

**25. Hoarding / Fence**

Prior to the commencement of any works, a hoarding or fence must be erected between the work site and a public place if the work involved in the development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or if the building involves the enclosure of a public place in accordance with *Work Cover* requirements.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

A separate land use application under Section 68 of the Local Government Act 1993 shall be submitted to and approved by Council prior to the erection of any hoarding on public land.

**26. Fencing**

An appropriate fence preventing public access to the site shall be erected for the duration of construction works.

**DEVELOPMENT REQUIREMENTS DURING CONSTRUCTION**

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. These conditions are to be complied with during the construction of the development on site.

**27. Construction Work Hours**

All work on site shall only occur between the following hours:

|                            |                  |
|----------------------------|------------------|
| Monday to Friday           | 7.00am to 6.00pm |
| Saturday                   | 8.00am to 5.00pm |
| Sunday and public holidays | No Work.         |

**28. Erosion and Sediment Control**

Erosion and sediment control measures shall be provided and maintained throughout the construction period, in accordance with the requirements of the manual – *Soils and Construction (2004) (Bluebook)*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sedimentation control devices shall remain in place until the site has been stabilised and revegetated.

**Note: On the spot penalties up to \$8,000 will be issued for any non-compliance with this requirement without any further notification or warning.**

**29. Work Zones**

All loading, unloading and other activities undertaken during construction shall be accommodated on the development site.

Where it is not practical to load, unload or undertake specific activities on the site during construction, the provision of a 'Work Zone' external to the site may be approved by Council following an application being submitted to Council's Traffic Unit outlining the proposal for the work zone. The application is required to be made prior to the commencement of any works and is to include a suitable 'Traffic / Pedestrian Management and Control Plan' for the area of the work zone that will be affected. All costs of approved traffic / pedestrian control measures, including relevant fees, shall be borne by the applicant.

**30. Excavation and Backfilling**

All excavations and backfilling associated with the approved works must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.

If an excavation associated with the approved works extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a. Must preserve and protect the building from damage; and
- b. If necessary, must underpin and support the building in an approved manner, and
- c. Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

**31. Dust Nuisance**

Measures shall be implemented to minimise wind erosion and dust nuisance in accordance with the requirements of the manual – *'Soils and Construction (2004) (Bluebook)*. Construction areas shall be treated/ regularly watered to the satisfaction of the principal certifying authority.

**32. Excess Material**

All excess material is to be removed from the site. The spreading of excess material or stockpiling on site will not be permitted without prior written approval from Council.

**33. Public Safety**

Any works undertaken in a public place are to be maintained in a safe condition at all times. The applicant shall ensure that traffic control is undertaken and maintained strictly in accordance with Australian Standard AS 1742.3, the requirements set out in the RMS manual *Traffic Control at Work Sites (as amended)*, all applicable Traffic Management and/or Traffic Control Plans. The contractor shall also ensure that all *Work Cover Authority* requirements are complied with. Council may at any time and without prior notification make safe any such works Council considers to be unsafe, and recover all reasonable costs incurred from the applicant.

**34. Compliance with Council Specification**

All design and construction work shall be in accordance with:

- a. Council's specification for Construction of Subdivisional Road and Drainage Works (as amended);
- b. *Campbelltown (Sustainable City) DCP (as amended) & Campbelltown City Council Engineering Design for Development (as amended)*;
- c. *'Soils and Construction (2004) (Bluebook)*; and
- d. Relevant Australian standards and State Government publications.

**35. Footpath**

The footpath adjoining the subject land shall be regraded, topsoiled and turfed. The footpath formation may need to be extended beyond the site boundaries, to provide an acceptable transition to existing footpath levels.

**36. Associated Works**

The applicant shall undertake any works external to the development, that are made necessary by the development, including additional road and drainage works or any civil works directed by Council, to make a smooth junction with existing work.

**37. Completion of Construction Works**

Unless otherwise specified in this consent, all construction works associated with the approved development shall be completed within 12 months of the date of the notice of the intention to commence construction works under Section 81A of the Act.

In the event that construction works are not continually ongoing, the applicant shall appropriately screen the construction site from public view with architectural devices and landscaping to Council's written satisfaction.

**PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

The following conditions of consent must be complied with prior to the issue of a subdivision certificate by either Campbelltown City Council or an accredited principal certifying authority. All necessary information to comply with the following conditions of consent must be submitted with the application for a subdivision certificate.

**38. Section 73 Certificate – Subdivision Only**

Prior to the principal certifying authority issuing a subdivision certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Early application for the certificate is suggested as this can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator.

For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

The Section 73 Certificate must be submitted to Council prior to the release of the subdivision certificate.

**39. Subdivision Certificate**

Prior to the principal certifying authority issuing a subdivision certificate, a final occupation certificate is required to be issued for the stormwater drainage works.

**40. Inter-Allotment Drainage Easement**

Prior to the principal certifying authority issuing a subdivision certificate, an inter-allotment drainage easement shall be provided for all lots that are unable to directly be drained to the Council drainage system by gravity. Easement width shall be complied with *Campbelltown City Council Engineering Design for Development (as amended)*.

**41. Compliance Certificate**

Prior to the principal certifying authority issuing a subdivision certificate, the applicant shall obtain a compliance certificate from Council approving all the works carried out in public area.

**42. Maintenance Security Bond**

Prior to the principal certifying authority issuing a subdivision certificate, a maintenance security bond of 5% of the contract value or \$5000, whichever is the greater, shall be lodged with Council for works in public area. This security will be held in full until completion of maintenance and full establishment of vegetation to the satisfaction of Council, or for a period of six months from the date of release of the subdivision certificate, whichever is the longer. All bonds are to be provided in the form of Cash or a written Bank Guarantee from an Australian Banking Institution.

The applicant is responsible for applying to Council for the return of the bond. Should no request be made to Council for the return of the bond six years after the issue of the subdivision certificate, Council will surrender the bond to the *Office of State Revenue*.

**43. Classification of Residential Lots (Development without dwelling construction)**

Prior to the principal certifying authority issuing a subdivision certificate, all proposed residential lots are to be individually classified in accordance with guidelines contained in the Australian Standard for Residential Slabs and Footings - *AS2870.1996 (as amended)*.

**44. Works as Executed Plans**

Prior to the principal certifying authority issuing a subdivision certificate the applicant shall submit to Council two copies of a work as executed (WAE) plan, certified by a qualified surveyor, which has been prepared in accordance with the requirements detailed in Council's *Specification for Construction of Subdivisional Road and Drainage Works (as amended)* and the *Campbelltown City Council Engineering Design for Development (as amended)*. WAE information of all completed works within the site and public area shall be shown on the WAE plan.

**45. Restoration of Public Roads**

Prior to the principal certifying authority issuing a subdivision certificate, the restoration of public road and associated works required as a result of the development shall be carried out by Council and all costs shall be paid by the applicant.

**46. Public Utilities**

Prior to the principal certifying authority issuing a subdivision certificate, any adjustments to public utilities, required as a result of the development, shall be completed to the satisfaction of the relevant authority and at the applicant's expense.

**47. Service Authorities**

Prior to the principal certifying authority issuing a subdivision certificate, two copies of all servicing plans shall be forwarded to Council in accordance with the following:

Written advice from *Sydney Water*, *Integral Energy*, Telecommunication and where applicable the relevant gas company, shall be submitted, stating that satisfactory arrangements have been made for the installation of service conduits for the proposed lots. All construction work shall conform to the relevant authority's specification/s.

**48. House Numbers**

Prior to Council issuing a subdivision certificate all house numbers shall be stencilled onto the kerb at appropriate locations with black letters/numbers 75mm high on a white background using approved pavement marking grade paint.

For all new additional lots created, please contact Council's Land Information Unit on 4645 4465 to ensure the correct house number is stencilled.

**49. Line Marking / Sign Posting Documentation (subdivision)**

Prior to the principal certifying authority issuing a subdivision certificate, the applicant shall submit to Council, for the Local Traffic Committee's records, two copies of the work as executed plans for the line marking / sign posting in relation to the subdivision. The information shown on the plan shall be in accordance with the recommendations of the Traffic Committee and shall note the date/s of installation.

**50. Council Fees and Charges**

Prior to Council issuing a subdivision certificate, the applicant shall obtain written confirmation from Council that all applicable Council fees and charges associated with the development have been paid in full. Written confirmation will be provided to the applicant following Council's final inspection and satisfactory clearance of the public area adjacent the site.

**ADVISORY NOTES**

The following information is provided for your assistance to ensure compliance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, other relevant Council Policy/s and other relevant requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

**Advice 1. Environmental Planning and Assessment Act 1979 Requirements**

The Environmental Planning and Assessment Act 1979 requires you to:

- a. Obtain a construction certificate prior to the commencement of any works. Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 4645 4000.
- b. Nominate a principal certifying authority and notify Council of that appointment prior to the commencement of any works.
- c. Give Council at least two days notice prior to the commencement of any works.
- d. Have mandatory inspections of nominated stages of the construction inspected.
- e. Obtain an occupation certificate before occupying any building or commencing the use of the land.

**Advice 2. Inspections – Civil Works**

Where Council is nominated as the principal certifying authority for civil works, the following stages of construction shall be inspected by Council.

- a. EROSION AND SEDIMENT CONTROL –
  - i. Direction/confirmation of required measures.
  - ii. After installation and prior to commencement of earthworks.

- iii. As necessary until completion of work.
- b. STORMWATER PIPES – Laid, jointed and prior to backfill.
- c. SUBSOIL DRAINS
- d. FINAL INSPECTION – All outstanding work.

**Advice 3. Inspection within Public Areas**

All works within public areas are required to be inspected at all stages of construction and approved by Council prior to the principal certifying authority releasing the Subdivision Certificate.

**Advice 4. Linen Plan and Copies**

An original linen plan, administration sheet and if required 88B Instrument together with thirteen copies, including all service certificates, cover letter and, copy of contents on a USB shall be submitted to Council prior to the release of the subdivision certificate.

Note the administration sheet is required to include a schedule of lots and addresses in accordance with Section 60(c) SSI Regulation 2012.

**Advice 5. Linen Plan Checking Fee**

Where Council is the principal certifying authority a linen plan checking fee is payable on submission of the linen plan of subdivision to Council. The exact amount will be calculated at the rate applicable at the time of release of the linen plans for each lot of the subdivision including any residue lots.

**Advice 6. Salinity**

Please note that Campbelltown is an area of known salinity potential. As such any salinity issues should be addressed as part of the construction certificate application. Further information regarding salinity management is available within *Campbelltown (Sustainable City) DCP (as amended)* and *Campbelltown City Council Engineering Design for Development (as amended)*.

**Advice 7. Asbestos Warning**

Should asbestos or asbestos products be encountered during construction or demolition works you are advised to seek advice and information prior to disturbing the material. It is recommended that a contractor holding an asbestos-handling permit (issued by Work Cover NSW), be engaged to manage the proper disposal and handling of the material. Further information regarding the safe handling and removal of asbestos can be found at:

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)  
[www.nsw.gov.au/fibro](http://www.nsw.gov.au/fibro)  
[www.adfa.org.au](http://www.adfa.org.au)  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Alternatively, call Work Cover Asbestos and Demolition Team on 8260 5885.

**Advice 8. Bonds and Bank Guarantees**

All bonds are to be provided in the form of Cash or a written Bank Guarantee from an Australian Banking Institution. Bonds will not be accepted in any other form or from any other institution.



**Advice 9. Dial before you Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before you dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

**Advice 10. Telecommunications Act 1997 (Commonwealth)**

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any persons interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

**END OF CONDITIONS**

NOTES:  
 1. LEVELS SHOWN ARE APPROX. ONLY AND SHOULD BE VERIFIED BY THE BUILDER.  
 2. FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALING.  
 3. ALL MEASUREMENTS ARE IN METRES UNLESS OTHERWISE STATED.  
 4. WINDOW SIZES ARE NOMIN BY BUILDER.  
 FINAL WINDOW SCHEDULE BY BUILDER

7/1 MacArthur Drive  
 15306 - FIGTREE CRES - SAMARQ, QLD  
 15306 - FIGTREE CRES - SAMARQ, QLD

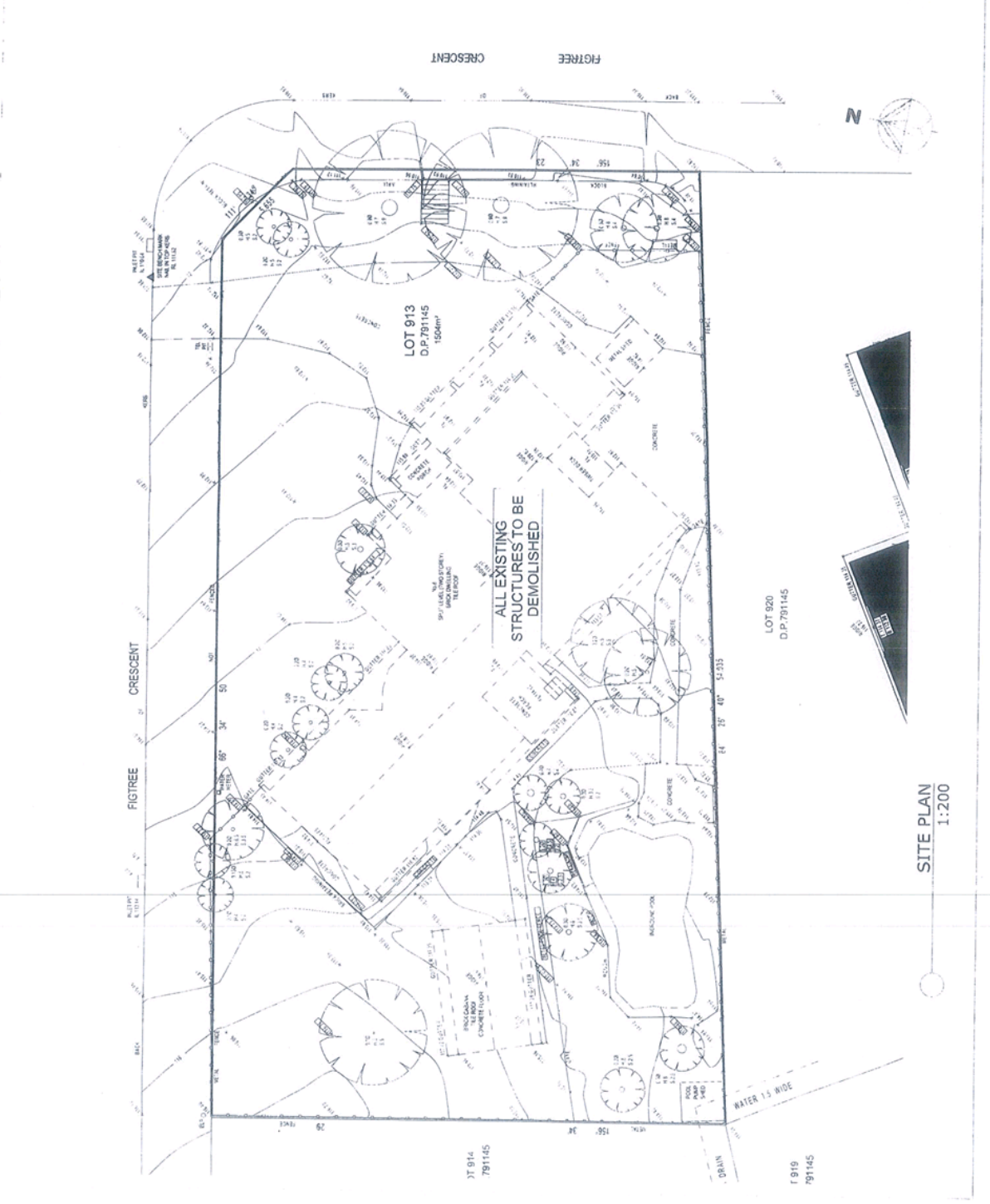
NOTES

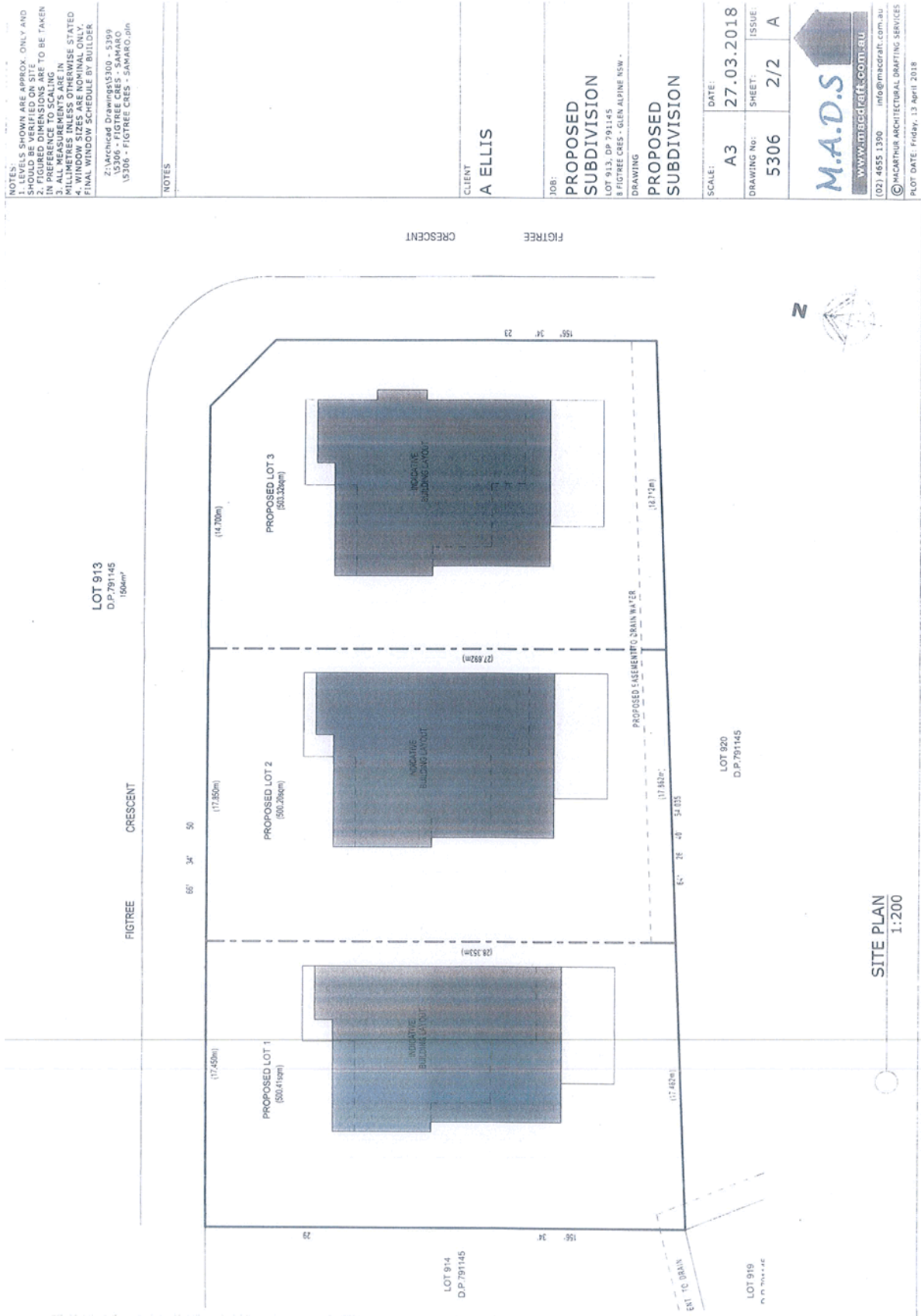
CLIENT  
 A ELLIS

JOB:  
**PROPOSED  
 SUBDIVISION**  
 LOT 913, DP 791145  
 8 FIGTREE CRES - GLEN ALPINE NSW.  
 DRAWING  
**EXISTING PLAN**

|             |      |        |            |
|-------------|------|--------|------------|
| SCALE:      | A3   | DATE:  | 27.03.2018 |
| DRAWING No: | 5306 | SHEET: | 1/2        |
|             |      | ISSUE: | A          |

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 PLOT DATE: Friday, 13 April 2018





## 4.2 Control and Direction Delegation

### Community Strategic Plan

| Objective                               | Strategy  |
|---|---|
| 1 Outcome One: A Vibrant, Liveable City | 1.8 - Enable a range of housing choices to support different lifestyles |

### Executive Summary

- Due to recent amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act), the Local Planning Panel currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the Local Planning Panel.
- Recent advice issued by the Department of Planning and Environment advises that each Local Planning Panel should have a clear process for management of appeals against the decision of the panel.
- Section 2.20(8) of the EP&A Act allows Local Planning Panels to delegate any of their functions to the General Manager.
- To ensure the orderly and cost effective management of judicial review proceedings relating to a determination of the Panel, it is recommended the Local Planning Panel delegate its functions under section 8.15(4) of the EP&A Act, to the General Manager.

### Officer's Recommendation

That the Local Planning Panel delegate its functions as referred to in Part 8 Division 8.3 Section 8.15(4) of the *Environmental Planning and Assessment Act 1979* to the General Manager in accordance with the instrument of delegation provided in attachment 2. It is also recommended that the instrument of delegation on this matter be published on Council's website.

### History

On 23 February 2018, the NSW Minister for Planning issued the Local Planning Panels Direction – Development Applications pursuant to section 9.1 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act)(the Direction).

The Direction identifies the types of development applications that must be considered by Council's Local Planning Panel (LPP). A copy of the Direction is provided in attachment 1.

Following the amendment to the EP&A Act on 1 March 2018, the LPP has the control and direction of the conduct of an appeal commenced pursuant to sections 8.7, 8.8 and 8.9 of the EP&A Act and any subsequent appeal arising from a decision in those proceedings that relates to an application that was determined by the LPP pursuant to the Direction.

Prior to the amendments to the EP&A Act, senior council staff were delegated with the authority to manage Planning Appeals and to give instructions with respect to resolving or defending matters.

Recent advice issued by the Department of Planning and Environment advises that each LPP should have a clear process for management of appeals against the decision of the panel. To this end, a number of LPPs have already resolved to delegate control and direction in relation to legal appeals to avoid ad hoc resolutions being made suited only to particular circumstances.

## Report

This report requests that the LPP delegate their functions of control and direction of Planning Appeals to the General Manager to allow for the efficient and cost effective conduct of proceedings.

The Department advises that resolutions on delegating the Panels functions to council staff should be broad enough to cover all circumstances allowing clear, transparent and timely responses by staff without the need to revert to the panel for additional instructions. section 8.15(4) of the EP&A Act now provides that:

- (4) *If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is the subject of the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.*

Council's position is that section 8.15(4) of the EP&A Act does not apply to deemed refusals because a LPP is not defined as a consent authority under section 4.5 of the EP&A Act. Further, following consultation with the Department, Council's view is that Planning Appeals relating to decisions made by the LPP before 1 March 2018 are saved and are not subject to section 8.15(4) of the EP&A Act.

Although Council is the respondent in any appeal to the Court, in Planning Appeals that relate to a determination of the LPP, Council's conduct of the class 1 proceedings is subject to the control and direction of the LPP. This means that appeals to which section 8.15(4) applies will need to be reported to and instructions obtained from the LPP. By reason of section 2.20(8) of the EP&A Act, the LPP cannot delegate its functions to a single Panel member and therefore a decision of the full Panel is required before solicitors are provided with any instructions.

Such a process is cumbersome and unlikely to work in practice. Furthermore, the provision makes it difficult for Council to comply with the Court's requirements that:

*The parties are to participate, in good faith, in the conciliation conference (s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference (Paragraph 47 Practice Note – Class 1 Development Appeals)*

In order to ensure that Council can continue to conduct Planning Appeals in the most efficient manner, it is appropriate that the LPP delegate its functions under the section 8.15(4) to the General Manager, on the condition that in the case of a Planning Appeal relating to a decision of the Panel that is contrary to the recommendation of the development assessment report, the General Manager will consult with the Chair of the Panel that made the relevant decision, as to the conduct of the Planning Appeal within seven days of Council being served with the Appeal.

Section 2.20(8) of the EP&A Act allows LPPs to delegate any of their functions to the General Manager. Such a delegation does not require a resolution of the Council under section 381 of the *Local Government Act 1993*.

It is normal that following the LPPs delegation, that the General Manager sub-delegate the Functions under the delegation to senior Council staff including the Director of Development, the Executive Managers for Urban Development and Urban Release and Engagement and other officers of Council with current delegations that allow them to make particular decisions in line with this delegation.

The requirement for the General Manager (or the delegate of the General Manager) to consult with the Chair of the Panel about the conduct of the appeal means that the Panel can be satisfied that Council will conduct the appeal with the LPP's decision in mind. If the LPP was concerned that an appeal was not being conducted in a manner consistent with its determination, the LPP could resolve to revoke the delegation in that specific matter.

A copy of the proposed delegation for the adoption by the LPP is provided in attachment 2. Any judicial review proceedings relating to a determination of the Panel are not the subject of section 8.15(4) of the EP&A Act and Council will have the control and direction of such proceedings. Nevertheless, Council would notify the LPP in the event that judicial review proceedings of an LPP decisions arte commenced.

### **Financial and other Impact**

Should the delegation not be provided to the General Manager, additional legal costs may be incurred associated with the management of legal proceedings as well as additional time being wasted in having to adjourn the proceedings or conciliation conferences proposed by the Court due to the need to seek the separate authority of the LPP to accept possible amendments to an application.

### **Conclusion**

Due to recent amendments to the EP&A Act, the LPP currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the LPP. Due to the practical realities of conciliation conferences and the need for instructions at short notice, together with the clear advantages of having an officer present at the conciliation with delegation to give instructions with respect to settlement or the defense of a Planning Appeal, it is appropriate for the LPP to delegate its functions under section 8.15(4) of the EP&A Act to the General Manager

### **Attachments**

1. Section 9.1 Direction (contained within this report)
2. Local Planning Panel - Instrument of Delegation (contained within this report)

**Reporting Officer**

Executive Manager Urban Release and Engagement

**LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS**

I, the Minister for Planning, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.

**Signature removed**

Dated: 23/2/2018

**Objective**

The objective of this direction is to identify the development applications that are to be determined by local planning panels on behalf of councils in the Greater Sydney Region and Wollongong.

**Application**

This direction applies to councils in the Greater Sydney Region and Wollongong. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979*.

**Interpretation**

A word or expression used in this direction has the same meaning as it has in the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

**Direction**

Local planning panels of councils in the areas identified in the Table below are to determine development applications involving development of a kind specified in the Schedule to this direction that is identified in the Table below.

Note: Councils can make arrangements for the determination of applications for the modification of development consents by either the local planning panel or council staff.

Table

| Council   | Development |
|---|-------------|
| Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel constituted under the EP&A Act | Schedule 1  |
| Blacktown, Canterbury-Bankstown, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong   | Schedule 2  |
| City of Sydney  | Schedule 3  |



This direction takes effect on 1 March 2018 and applies to development applications made but not determined before 1 March 2018.

If a council to which this direction applies has not delegated the function of determining a development application to an officer or employee of the council, then the local planning panel is to determine the development application.

## SCHEDULE 1

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

**3. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

**SCHEDULE 2****1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

**3. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

### SCHEDULE 3

#### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

#### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

#### 3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard imposed by an environmental planning instrument by 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

**Instrument of Delegation****Environment Planning and Assessment Act 1979****Delegation of Functions from Campbelltown City Council Local Planning Panel to General Manager**

Pursuant to s2.20(8) of the Act and a resolution passed at a duly convened meeting of the Campbelltown City Council Local Planning Panel held on 24 October 2018, the Panel delegates the General Manager of the Council, in accordance with this instrument of delegation, the Functions specified or described in Schedule 1, subject to the conditions and limitations specified or described in Schedule 2.

.....

By resolution of the Panel dated 24 October 2018

**1. Definitions****1.1** In this instrument:

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

**Council** means Campbelltown City Council.

**Function** means a function of the Local Planning Panel within the meaning of Act.

**General Manager** means the person appointed by the Council pursuant to c334 of the Act to the position of general manager, and a person appointed by the Council pursuant to s336 of the Act to act in the vacant position of general manager.

**Panel** means Campbelltown Local Planning Panel.

**Planning Appeal** means an appeal commenced pursuant to ss 8.7, 8.8, 8.9 of the Act and any subsequent appeal arising from a decision in those proceedings.

**2. Commencement****2.1** The delegations conferred on the General Manager by this instrument of delegation commence immediately.

**ACKNOWLEDGEMENT**

I, Lindy Deitz, General Manager of Council, acknowledge receipt of, and understand, the terms of this instrument of delegation.

.....

Signature

GENERAL MANAGER

Dated:

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**Schedule 1**

**Functions Delegated**

1. The function of the Panel as referred to in Part 8 Division 8.3 Section 8.15 (4) of the Act.

Note: This schedule must be read in conjunction with Schedule 2.

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**Schedule 2**

**Conditions & Limitations Applying to Delegated Functions**

1. In the case of a Planning Appeal relating to a decision of the Panel that is contrary to a development assessment report, the General Manager will within seven (7) days of Council being served with the appeal, consult the Chair of the Panel that made the relevant decision, as to the conduct of the Planning Appeal.
2. The Council is to give notice of a Planning Appeal (to which section 8.15(4) of the Act applies) to the Panel within seven (7) days of being served with the appeal.