

IDAP REPORT

Property:	16 Wentworth Street, Greenacre Lot 3 DP 36122 DA2021.103
Proposal:	Construction of 2 swimming pools, 2 garden storage rooms and alterations to the driveway and terraces.
Applicant:	ZTA Group
Owner:	Zakariah Abdul Rahman
Date of lodgement:	26 May 2021
Notification period:	02 June 2021 to 16 June 2021
Submissions received:	One
Assessment officer:	P Santos
Estimated cost of works:	\$60,073.00
Zoning:	R2 - Low Density Residential - SLEP 2012
Flood affected:	Yes
RECOMMENDATION OF OFFICER:	REFUSAL

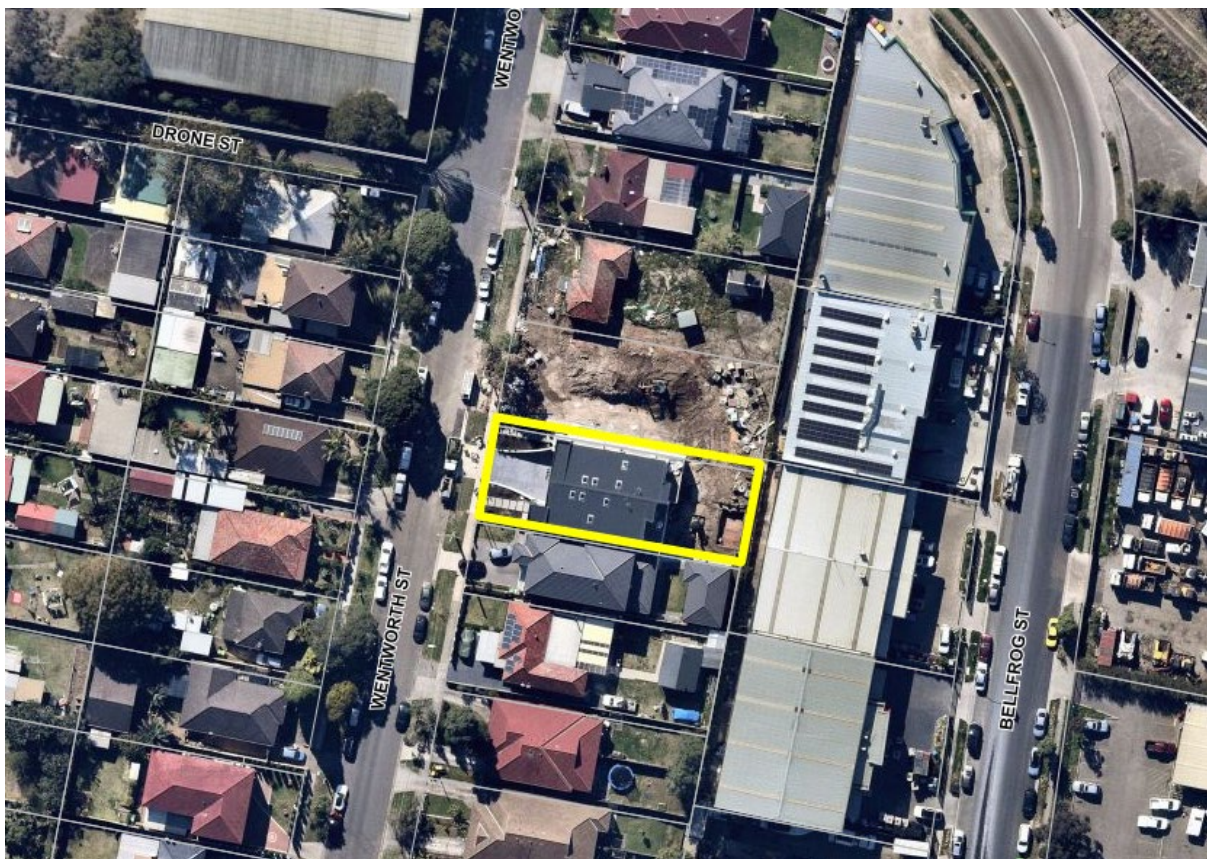


Figure 1. Aerial imagery of the subject site (outlined) and the immediate locality.

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the construction of two swimming pools, two garden storage rooms and alterations to the terraces.

Site and Locality

The subject site is legally described as Lot 3 DP 36122 and commonly known as 16 Wentworth Street, Greenacre. It is located off the eastern side of Wentworth Street, with the nearest cross section being Drone Street.

The site is regular in shape and has an area of 767.3m² with the dimensions 16.78m in width and 45.75m in depth

Strathfield Local Environmental Plan

The site is zoned R2-Low Density Residential under the provisions of Strathfield LEP 2012 and the proposal is a permissible form of development with Council's consent.

The proposal does not satisfy the aims and provisions under Clause 5.21 Flood Planning.

Development Control Plan

The proposed development does not satisfy the objectives in Sections 1.2 and 2.7 of Part B Dual Occupancy Housing in the SCDCP 2005.

Notification

The application was notified in accordance with Council's Community Participation Plan from 02 June 2021 to 16 June 2021, where one submission was received, raising the following concerns:

- Rail noise and vibration.

Issues

- Landscaping

Conclusion

Having regards to the heads of consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979*, Development Application 2021/103 is recommended for refusal subject to attached reason of refusal.

REPORT IN FULL

Proposal

Council has received an application for the construction of two swimming pools, two garden storage rooms and alteration to the terraces on both dwellings in the approved dual occupancy in DA2019/198 and as amended in DA2019/198/2.

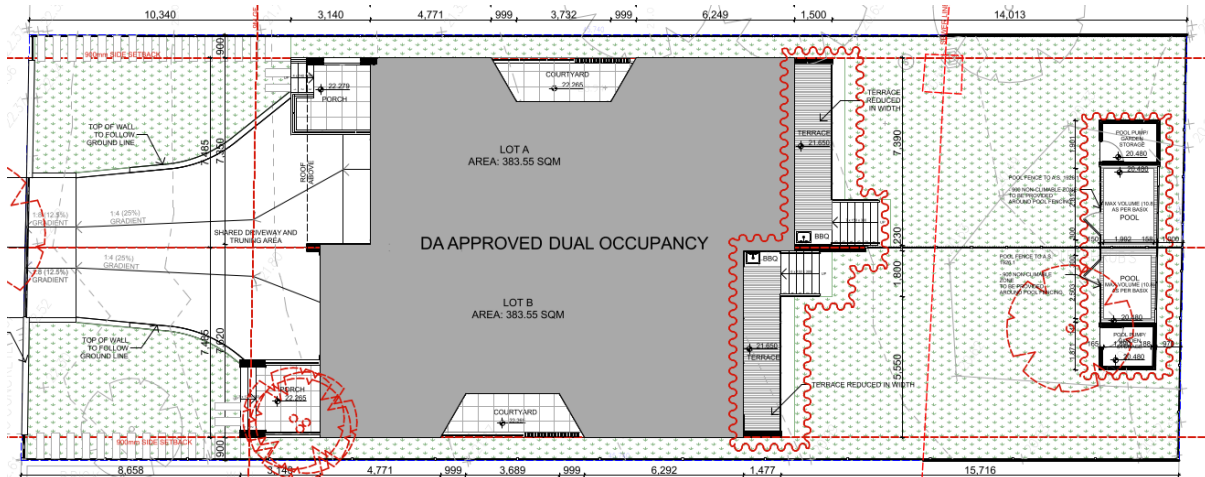


Figure 2. Extract of the proposed site plan, drawing # A100, issue C, dated 01/07/2021.

Note that initially, the application involved an alteration to the driveway to a more narrow design as shown in Figure 3 below. This was the design the applicant provided in DA2019/198 when turntables were proposed in the basement of each dwelling. The narrow driveway and turntables were requested to be removed and the driveway approved in DA2019/198/2 reinstated. For completeness, the driveway was redesigned back to the approved driveway in the most recent modification application (DA2019/198/2) and does not form part of the current proposal anymore.

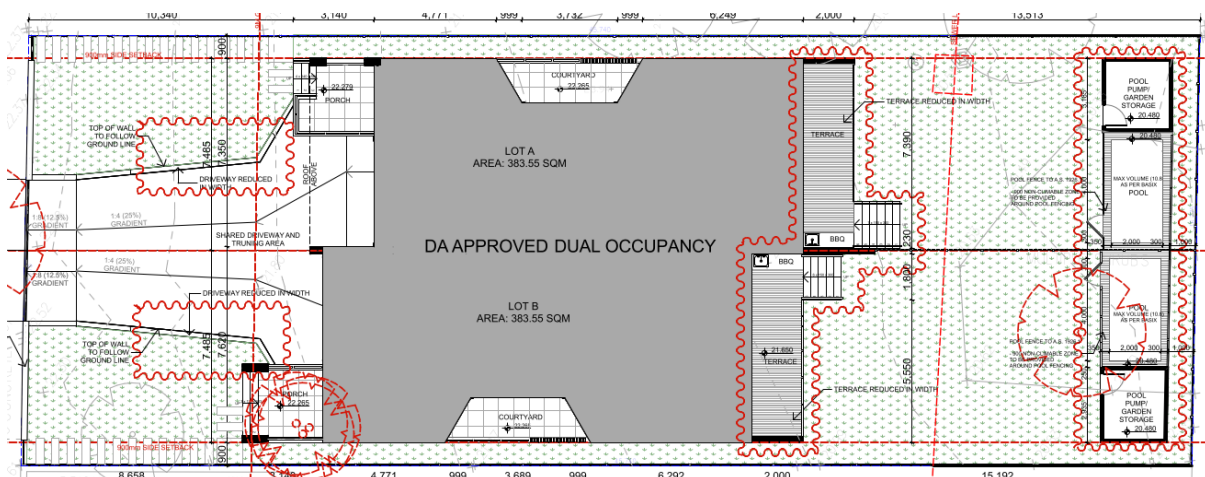


Figure 3. Extract of the initial proposed site plan, drawing #A100, issue B, dated 10 May 2021.

The Site and Locality

The subject site is legally described as Lot 3 DP 36122 and commonly known as 16 Wentworth Street, Greenacre. It is located off the eastern side of Wentworth Street, with the nearest cross section being Drone Street.

The site is regular in shape and has an area of 767.3m² with the dimensions 16.78m in width and 45.75m in depth.

The site is currently a construction site with the works for the approved dual occupancy development undertaking.

The immediate locality is characterised by single to double-storey dwelling houses or dual occupancy developments.



Figure 3. Façade of the dual occupancy development currently being constructed on the site.

Background

02 April 2020	A consent was granted by the Strathfield Local Planning Panel to DA2019/198 for the purpose of construction an attached dual occupancy with basement level parking.
21 August 2020	A modification to DA2019/198 (DA2019/198/2) was granted consent by Council's Internal Development Assessment Panel to remove the basement turntable for each dwelling and a wider driveway.
26 May 2021	The subject development application was lodged.
02 June 2021	The application was put on neighbour notification / public exhibition until 16 June 2021. Council received one submission during this period. The concerns raised in the submission is discussed under the assessment section of the report.
11 June 2021	Council's Planner carried out a site visit.

28 June 2021	<p>Additional information request letter was issued via the NSW Planning Portal, raising the following concerns:</p> <ul style="list-style-type: none">• Reinstate the driveway design approved in DA2019/198/2,• Landscaping compliance, and• Landscape plan amendments.
06 July 2021	<p>The additional information was provided by the applicant via the NSW Planning Portal.</p>
12 August 2021	<p>The application was referred to Council's Compliance Officer to investigate that no further works were carried out on the site in relation to the swimming pool after the aerial imagery captured on 06 August 2021 revealed that excavation works for the swimming pool were already undertaken.</p>
13 August 2021	<p>An email from the owner was received by Council's Compliance Officer stating the following:</p> <p><i>"...Yes I have started before approval just to get ahead I only dug out the swimming pools for now but now I am not concreting them until approval is sent over to me sorry for the problems I caused."</i></p>
16 August 2021	<p>Further additional information request was issued via the NSW Planning Portal, raising the following concerns:</p> <ul style="list-style-type: none">• New pavers that have been put in the front yard are to be reflected in the site plan and landscape plan.

Referrals – Internal and External

Stormwater

The application was referred to Council's Development Engineer who offered no objection, subject to the imposition relevant conditions.

Traffic

The application was referred to Council's Traffic Manager who offered objection to the initial driveway design as shown in Figure 3. In particular, Council's Traffic Manager provided the following comment –

"The basement and the associated driveway must be reverted to the original design as approved under DA2019/198/2 to enable adequate vehicle manoeuvring."

This concern was relayed to the applicant through the first additional information request.

Compliance

The aerial imagery shown in Figure 4 below and Council's most recent site visit triggered the referral of the application to Council's Compliance Officer. Based on the imagery, works were undertaken without Council's consent (i.e. swimming pool excavation) and some structures were placed and resulted to inconsistency to the proposal (i.e. pavers claiming to be landscaping on the plans).

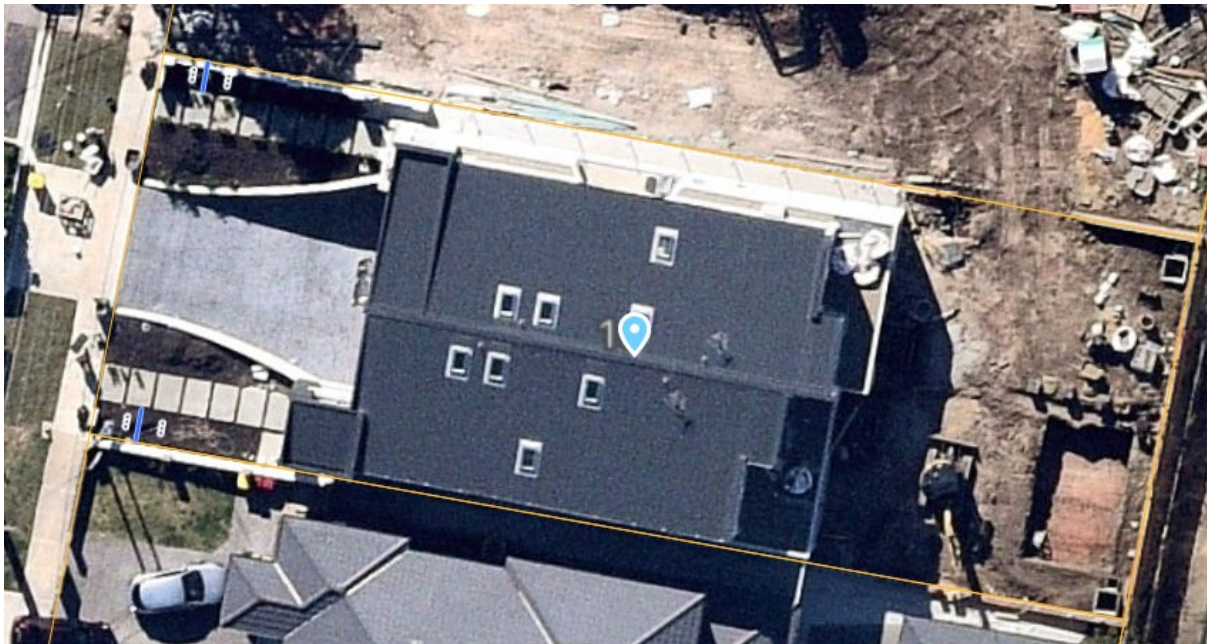


Figure 4. Aerial imagery of the site captured on 6/08/2021.

Due to NSW government Health Order following the COVID-19 outbreak in greater Sydney, Council Officers were unable to attend the site and subsequently requested explanation from the owner whether further works apart from the excavation were carried out.

As previously discussed, the owner admitted that apart from the excavation, no other works were undertaken.

The confirmation from the owner was accepted for the purpose of progressing with the assessment of the application.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*.

(1) *Matters for consideration – general*

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
- (i) any environmental planning instrument,**

Strathfield Local Environmental Plan

The development site is subject to the Strathfield Local Environmental Plan 2012

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The subject site is zoned R2-Low Density Residential and the proposal is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

Applicable SLEP 2012 Clause	Development Standards	Development Proposal	Compliance/ Comment
4.3 Height of Buildings	9.5m	2.65m	Yes
4.4C Exceptions to floor space ratio	0.575:1 (441m ²)	0.56:1 (431m ²)	Yes

Floor Space Ratio

The proposal does not involve internal changes to the approved dual occupancy development in DA2019/198 and as amended in DA2019/198/2. The approved FSR in the most recent consent is 0.55:1 (425.4m²). The proposed modification involves a slight increase in gross floor area and FSR due to the inclusion of areas comprising the new outbuildings (i.e. garden storage rooms). The proposed modification demonstrates compliance with the maximum FSR provision under Clause 4.4C as it results in an FSR of 0.56:1 (431m²).

The proposed modification is acceptable in this regard.

Part 5 – Miscellaneous Provisions

Flood Planning

The subject site has been identified as being at or below the flood planning level. The application has been reviewed by Council's Engineer who has advised that subject to suitable conditions, the development is considered compatible with the flood hazard of the land.

Despite the above, the responsible officer is of the opinion that the insufficient landscaping on the site is unacceptable and will present adverse environmental impact, in particular, flooding, as the amount of pervious area on the site has not been maximised. More on landscaping discussion under the DCP assessment section of this report.

Note that the proposal does not fully satisfy the objectives of Clause 5.21 Flood Planning. In particular Subclause (1)(c), where the proposal is considered to have potential adverse or cumulative impacts on flood behaviour and the environment as it effectively reduces the amount of pervious area on the site.

Further to the above, Clause 5.21(3)(d) of the SLEP 2012 requires Council to take into consideration the possibility of modifying, relocating or removing buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion. In this regard, due to flooding, it is believed that landscaping on the site should be maximised to avoid unnecessary adverse flooding impact on to the site and neighbouring properties that are equally flood affected.

As such, the proposal is deemed unacceptable under the provisions of this clause.

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils but is not located within 500m of a Class 1, 2 3 or 4 soils. Therefore, development consent under the provisions of this section is not required and as such an Acid Sulfate Soils Management Plan is not required.

Earthworks

The proposal does not include any significant excavation or basement works. Any excavation for footings or levelling of the site is considered to be minor and will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Essential Services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development.

It is considered that the proposed development satisfies the aims, objectives and development standards, where relevant, of the Strathfield LEP 2012.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND (SEPP 55)

SEPP 55 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of the available history for the site gives no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations.

The objectives outlined within SEPP55 are considered to be satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of SLEP 2012 relating to the preservation of trees and vegetation.

The intent of this SEPP is consistent with the objectives of the repealed Standard where the primary aims/objectives are related to the protection of the biodiversity values of trees and other vegetation on the site.

The proposed development does not result in the removal or loss of any trees or vegetation subject to the provision of this SEPP.

The aims and objectives outlined within the SEPP are considered to be satisfied.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

There are no draft planning instruments that are applicable to this site.

(iii) any development control plan,

The proposed development is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

Applicable DCP Controls	DCP Controls	Development Proposal	Compliance/ Comment
Site Coverage	65% (498.6m ²)	61.2% (469.7m ²)	Yes Approved in DA2019/198/2 = 60% (460m ²)
Built-upon Area in the Front	50% or 90m ² , whichever is lesser	54% (94.5m ²)	No Front area = Area = 175m ² Approved in DA2019/198/2 = 49%
Side & Rear Boundary Setbacks	3m high = 0.9m	Side – 3.5m Rear - 1m	Yes Yes
Landscaping			
Landscaping/Deepsoil Provisions:	40% (306.84m ²)	38.76% (297.4m ²)	No

Built-upon Area

The SCDCP 2005 requires that the frontage of the site must comprise of no more than 50% or 90m² built-upon area. It is noted that a built-upon area is defined as land between the front of the building and street. As such, the frontage is measured as 175m² and the built-upon area is a non-compliant 54% or 94.5m².

While it appears that the variation is minimal, it can be noted that the pavers installed within the frontage as revealed in Council's site visit and Figure 4 have bigger dimensions and smaller gaps in-between resulting to a greater built-upon area as oppose to what has been demonstrated on the most recent set of plans provided to Council. Figure 5 below. Note that an opportunity was provided to the applicant to provide amended plans showing the currently installed pavers.

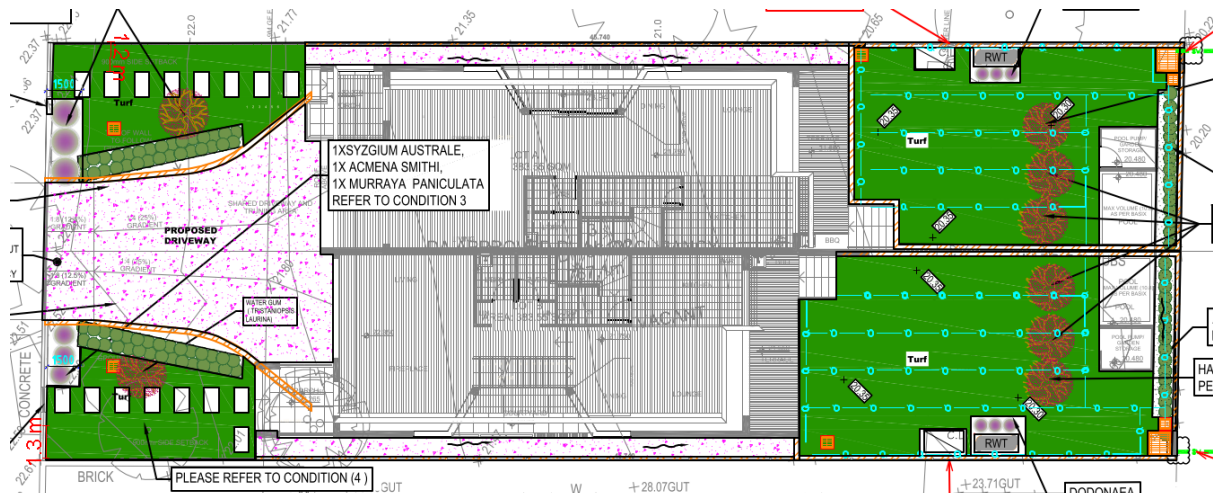


Figure 5. Extract of the Landscape Plan, drawing #LP100, received by Council on 26/08/2021 via the NSW Planning Portal.

As a result of the above, Council cannot assess the built-upon area due to inadequate information provided. Further, this matter will be referred to Council's Compliance Team to ensure that no breach of development consent DA2019/198/2 has been undertaken.

Landscaping

The SCDGP 2005 requires a landscaping of 40% (306.84m²). Notwithstanding the issue with the inconsistent pavers installed within the frontage, the current proposal does not satisfy Council's landscaping requirements for a site occupied by a dual occupancy development. The proposed landscaping is 38.76% (297.4m²), which presents a shortfall of 9.44m².

Note that the site is flood affected and hence, the area that is landscaped should be maximised to provide pervious area for the flood water in the event of flooding.

Similar with the built-upon area, due to the installation of pavers on the site, Council is unable to determine the landscaping. The applicant was afforded the opportunity to demonstrate accurately on the plans the pavers installed on the site.

The applicant then responded and sent to Council's Planner the images below.



Figure 4. Synthetic turf appears to be covering the subject pavers.

Firstly, synthetic turfs are not accepted as landscaping and do not satisfy the definition of landscaping in the SLEP 2012 and SCDCP 2005. Secondly, it appears that the outline of the pavers are underneath the synthetic turf and will not be removed. As a result, the landscaping cannot be supported in merit. The proposed outbuilding and swimming pool will not be supported in this regard.

In order to ensure that adequate landscaping is to be provided to the site,

Cut and fill

Notwithstanding the landscaping deficiency, the proposed excavation in relation to the swimming pool is acceptable and is deemed to have no adverse amenity impact. In this regard, the proposed earthworks are acceptable.

Water and Soil Management

The proposed development satisfies the relevant objectives and controls of the SCDCP 2005 and complies with Council's Stormwater Management Code. A soil erosion plan has been submitted with the application to prevent or minimise soil disturbances during construction.

ANCILLARY STRUCTURES

Outbuildings

The proposed development satisfies the relevant objectives and controls the SCDCP 2005 complying with the height, setbacks and floor space controls.

Swimming Pools, Spas & Associated Enclosures

The proposed development satisfies the relevant objectives and controls with SCDCP 2005. The pool has been adequately setback from all adjoining boundaries, allowing for screen

planting if required. The swimming pool fence/enclosure will comply with the swimming pools act and relevant standards.

PART H – Waste Management (SCDCP 2005)

In accordance with Part H of Strathfield CDCP 2005, a waste management plan was submitted with the application. The plan details measure for waste during demolition and construction, and the on-going waste generated by the development during its use. It is considered that this plan adequately address Part H and considered satisfactory.

(iv) *Any matters prescribed by the regulations, that apply to the land to which the development application relates,*

The requirements of Australian Standard AS2601–1991: *The Demolition of Structures* is relevant to the determination of a development application for the demolition of a building.

The proposed development does not involve the demolition of a building. Should this application be approved, appropriate conditions of consent may be imposed to ensure compliance with the requirements of the above standard.

(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,*

The deficient landscaping which is envisaged to be worse than how it is depicted on the plans, will have adverse environmental impact due to a larger impervious surface area that is not acceptable, especially in flood affected properties.

(c) *the suitability of the site for the development,*

The proposed development is not considered suitable on the site as the structures fail to demonstrate that these are sensitively designed with regard to the flood-affectation of the site and do not provide an adequate and safe vehicular access and parking arrangement for future occupants.

(d) *any submissions made in accordance with this Act or the regulations,*

In accordance with the provisions of Councils Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. One submission was received raising the following concerns:

1. Noise and Rail Vibration

A concern was raised regarding the potential impact on rail noise and vibration of the operations of the Enfield Inermodal Logistics Centre to residential developments located in close proximity to the railway. While it is considered a good initiative from the objector to think about the well-being and amenity of near residential accommodations, the proposed development is for non-habitable buildings and structures.

As such, it is deemed that consideration of the 'Development Near Rail Corridors and Busy Roads – Interim Guidelines' is not applicable in this regard.

(e) *the public interest.*

The proposed development is considered not to be in the public interest as it does not satisfy the objectives of Clause 5.21 Flood Planning of the SLEP 2012 and the landscaping objectives and controls of the SCDCP 2005.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. This section prescribes in part as follows:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

With the recommendation of the application to be refused, no contributions will be imposed in the application.

Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, the provisions of the SLEP 2012 and SCDCP 2005.

Following detailed assessment it is considered that Development Application No. 2021/103 should be refused.

Signed:

Date: 31 August 2021

**P Santos
Development Assessment Planner**

- ☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position.
- ☒ I have reviewed the details of this development application and I also certify that Section 7.11/7.12 Contributions are not applicable to this development.

Report and recommendations have been peer reviewed and concurred with.

Signed:

Date: 31 August 2021

**Miguel Rivera
Senior Planner**

REFUSAL REASONS

Under Section 4.16(1)(b) of the Environmental Planning and Assessment (EP&A Act, 1979, this consent is REFUSED for the following reason;

1. Refusal Reason – Environmental Planning Instrument

Pursuant to Section 4.15 (1)(a)(i) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the relevant environmental planning instruments in terms of the following:

- (a) Clause 1.2(2)(h) – the insufficient landscaping or greater built-upon area is considered an incompatible development especially in flood affected areas.
- (b) Clause 5.21(1)(c) – the lack of landscaping or pervious surface in a flood affected area that enables absorption of water in an event of flooding does not avoid adverse or cumulative impacts on flood behaviour and the environment.
- (c) Clause 5.21(3)(d) – the excessive amount of built structures in a flood impacted area does not maximise the amount of pervious surfaces that can aid in absorption of flood water.

2. Refusal Reason - Development Control Plan

Pursuant to Section 4.15 (1)(a)(iii) of the [Environmental Planning and Assessment Act 1979](#), the proposed development does not comply with the following sections of the Strathfield Consolidated Development Control Plan 2005 in terms of the following:

- (a) Section 2.2 – Frontage – in that the proposed built-upon area of 54% (94.5m²), and deemed built-upon area when the correct dimensions of the pavers installed within the frontage is considered is greater than the allowable 50% (87.5m²).
- (b) Section 2.7(1) – Open Space and Landscaping – in that the proposed landscaping of 38.76% (297.4m²) and the deemed landscaped area when the correct dimensions of the pavers installed within the frontage is considered, is less than the required 40%
- (c) Section 2.7(a) – Open Space and Landscaping – in that this objective of the section is not satisfied as the proposal involves inadequate land to be provided around the building.

3. Refusal Reason – Impacts on the Environment

Pursuant to Section 4.15 (1)(b) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is likely to have an adverse impact on the following aspects of the environment:

- (a) Natural environment – in that the proposal with inadequate landscaping, which could be further reduced when the correct dimensions of pavers are considered, presents less pervious area that could aid with the absorption of flood water in the event of flooding in a flood impacted area.

4. Refusal Reason – Public Interest

Pursuant to Section 4.15 (1)(e) of the [Environmental Planning and Assessment Act 1979](#), the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

5. Refusal Reason – Suitability of Site

Pursuant to Section 4.15 (1)(c) of the [Environmental Planning and Assessment Act 1979](#), the site is not considered suitable for the proposed development for the following reasons:

The proposed development is not considered suitable on the site as the structures fail to demonstrate that these are sensitively designed with regard to the flood-affectation of the site and do not provide an adequate and safe vehicular access and parking arrangement for future occupants.