

## JOINT REGIONAL PLANNING PANEL (Sydney West Region)

<b>JRPP No</b>	2014SYW023 DA
<b>DA Number</b>	579/2014/JP
<b>Local Government Area</b>	THE HILLS SHIRE COUNCIL
<b>Proposed Development</b>	CONSTRUCTION OF SEVEN (7) RESIDENTIAL FLAT BUILDINGS CONTAINING TWO HUNDRED AND TWENTY SIX (226) DWELLINGS AND ASSOCIATED WORKS
<b>Street Address</b>	LOT 39 DP 10702 BALMORAL ROAD, KELLYVILLE
<b>Applicant/Owner</b>	MERFAD GROUP HOLDINGS
<b>Number of Submissions</b>	NA
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	GENERAL DEVELOPMENT WITH A CIV OF OVER \$20 MILLION
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• The Hills LEP 2012</li> <li>• The Hills DCP 2012</li> <li>• SEPP No. 65 – Design Quality of Residential Flat Development</li> <li>• Residential Flat Design Code</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	NIL
<b>Recommendation</b>	DEFERRAL
<b>Report by</b>	DEVELOPMENT ASSESSMENT COORDINATOR ROBERT BUCKHAM

### BACKGROUND

### MANDATORY REQUIREMENTS

Owner:	Mr R. P. H. and Mrs K. Y. Chu	1.	<u>Section 79C (EP&amp;A Act)</u> - Satisfactory
Zoning:	R4 – Residential , SP2 – Infrastructure and RE1 Public Recreation	2.	<u>The Hills LEP 2012</u> – Clause 4.6 Variation to LEP 16m Height Limit (9.3%).
Area:	2.84Ha	3.	<u>SEPP 65 – Design Quality of Residential Flat Development</u> – Unsatisfactory
Existing Development:	Dwelling	4.	<u>DCP Part D Section 7 – Balmoral Road Release Area</u> – Variation, see report
		5.	<u>DCP Part B Section 5 – Residential Flat Buildings</u> – Variation, see report
		6.	<u>DCP Part C Section 1 – Parking</u> – Satisfactory

		8.	Capital Investment Value: \$49,976,832
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## SUBMISSIONS

## REASONS FOR REFERRAL TO JRPP

1. Exhibition:	The submitted information was not submitted in accordance with Council's lodgement requirements (floor plans within reports). In addition a building was proposed within the RE1 Public Recreation zone. Given the issues that remained outstanding and the applicant's intention to submit further amended plans notification and advertising is still to be undertaken.	1.	Capital Investment Value in excess of \$20 million pursuant to SEPP (Major Development) 2005.
2. Notice Adj Owners:	Refer above		
3. Number Advised:	Refer above		
4. Submissions Received:	Refer above		

## EXECUTIVE SUMMARY

The development application proposes the construction of seven (7) residential flat buildings containing a total of 210 dwellings with on-site basement parking for 472 vehicles, including 381 resident and 91 visitor spaces. The proposal incorporates 50 x 1 bedroom units, and 160 x 2 bedroom units. The Capital Investment Value is \$49,976,832.

The proposal includes a variation to the LEP Height Control Map. The site has a 16 metre height limit, a maximum of 17.5 metres is proposed. The variation is 1.5 metres or 9.3%. The height variation relates to lift over runs and portions of the upper storeys buildings F and G located adjacent to an existing natural depression on the site.

The proposed development includes variations to The Hills DCP Part B Section 5 – Residential Flat Buildings in respect to building setbacks, building height, building separation, density, unit sizes and maximum site area. The variations to density and building separation are not supported.

During the briefing of the matter, the panel requested that the applicant be provided with only one opportunity to amend the proposal. The applicant has provided amended plans and a response however and has since identified that they are intending to make further amendments knowing they did not have the support of Council staff. The applicant intends to amend the development to comply with the density and building separation controls.

This report has been prepared to provide the panel with the opportunity to determine the matter if they wish. Council staff recommend that the matter be deferred to allow the applicant to address all outstanding issues. The report has been based on the set of plans before Council staff at the time of writing this report which was non-compliant with Council's LEP and DCP. The variations to density and density and building separation are not supported as they would result in an overdevelopment of the site.

## **HISTORY**

<b>06/11/2013</b>	Subject Development Application lodged.
<b>31/01/2014</b>	Amended Concept Plans submitted identifying the land zone RE1 Public Recreation as part of the site. A nil setback was provided to this land.
<b>06/02/2014</b>	Briefing to JRPP Panel members.
<b>14/02/2014</b>	Letter sent to applicant requesting additional information in relation to Impact on RE1 zoned land; <ul style="list-style-type: none"><li>• Setbacks;</li><li>• Building Separation;</li><li>• Unit size;</li><li>• Density;</li><li>• Parking;</li><li>• Site stormwater management and site drainage.</li><li>• Road Details</li><li>• Waste Management</li></ul>
<b>03/04/2014</b>	Fourteen day letter sent to applicant.
<b>11/06/2014</b>	Additional information submitted.
<b>03/07/2014</b>	Meeting with applicant. It was identified that the proposal could not be supported based primarily on the density and building separation variations proposed.
<b>08/07/2014</b>	Report considered at Council's Ordinary Meeting which recommend amendments to Council's DCPs to insert amended/additional criteria regarding apartment sizes and mix of unit sizes.  It was resolved that:  <i>The Draft The Hills Development Control Plan 2012 (Part B Section 5 – Residential Flat Buildings, Part D Section 6 – Rouse Hill Regional Centre, Part D Section 8 – Norwest Residential Precinct, Part D Section 12 – Carlingford Precinct, Part D Section 14 – Target Site Corner Windsor Road and Seven Hills Road, Baulkham Hills) be publicly exhibited.</i>
<b>09/07/2014</b>	Applicant's consultant advised the amended plans are being prepared.

## **PROPOSAL**

The Development Application proposes the construction of seven (7) residential flat buildings containing a total of 210 dwellings with on-site basement parking for 472

vehicles, including 381 resident and 91 visitor spaces. The proposal incorporates 50 x 1 bedroom units, and 160 x 2 bedroom units.

The proposal involves a series of 4-5 storey residential flat buildings across the site, with the majority adopting a 'U' configuration to provide landscaped courtyards and opportunities for communal open space areas.

The proposal also includes the construction of a new collector road that connects Balmoral Road with the existing portion of Hodges Street to the north of the site.

The proposal includes a variation to the LEP Height Control Map. The site has a 16 metre height limit. The variation is a maximum of 1.5 metres or 9.3%.

The original proposal lodged with Council overlooked land on the site zoned RE1 Public Recreation. The original proposal included part of building located within the RE1 zone. The RE1 zoned land is approximately 20m wide adjacent to the northern boundary (Hodges Road). Subsequent plans were submitted appropriately identified this land however concern remained with site density and building separation and these were conveyed to the applicant. The applicant advised that they were undertaking modifications to the proposal to comply with density and building separation.

These plans had not received at the time of writing this report however if these matters are addressed the application will be likely to be supported.

## **1. Current Proposal and Amendments Identified by the Applicant**

The applicant lodged amended plans on 11 June 2014 in respect to the issues raised in Council's original letter dated 14 February 2014. The additional information included legal advice in relation to Council's DCP density control. Subsequent discussions between Council staff and the applicant's consultants identified that the applicant would make further amendments to the proposal.

The proposal was considered unsatisfactory for advertising and notification given the initial issues in relation to the RE1 zone being overlooked. The submitted information was also not in accordance with Council's lodgement requirements (floor plans within reports). Given the issues that remained outstanding and the applicant's intention to submit further amended plans notification and advertising is still to be undertaken.

During the briefing of the matter, the panel requested that the applicant be provided with only one opportunity to amend the proposal. The applicant has provided a response and has since identified that they are intending to make further amendments knowing they did not have the support of Council staff.

This report has been prepared to provide the panel with the opportunity to determine the matter if they wish. Council staff recommend that the matter be deferred to allow the applicant to address all outstanding issues. The remainder of the report has been based on the set of plans before Council staff at the time of writing this report which was non-compliant in terms of density and building separation and considered to be an overdevelopment of the site.

## **2. SEPP State and Regional Development 2011**

Clause 20 of SEPP (State and Regional Development) 2011 and the Schedule 4A of the Environmental Planning and Assessment Act, 1979 provides the following referral requirements to a Joint Regional Planning Panel: -

*Development that has a capital investment value of more than \$20 million.*

The proposed development has a Capital Investment Value of \$49,976,832 thereby requiring referral to, and determination by, a Joint Regional Planning Panel. In accordance with this requirement the application was referred to, and listed with, the JRPP for determination.

### **3. Compliance with The Hills Local Environmental Plan 2012**

#### **(i) Permissibility**

The proposal is defined as a residential flat building:

**“residential flat building”** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

A residential flat building is permitted within the R4 High Density Residential zone.

#### **(ii) The Hills LEP 2012 - Development Standards**

The following addresses the principal development standards of the LEP relevant to the subject proposal:

<b>CLAUSE</b>	<b>REQUIRED</b>	<b>PROVIDED</b>	<b>COMPLIES</b>
4.3 Height of buildings	16 metres	Components of the buildings exceed 16 metres to a maximum of 17.5 metres	No – see comments below.

The variation to height is addressed below:

#### **(ii) Variation to Height**

The LEP limits the height of the development to 16 metres. The proposal has a maximum height of 17.5 metres a variation of 1.5 metres or 9.3%.

Clause 4.6 Exceptions to Development Standards states as follows:

- (1) The objectives of this clause are:
  - a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
  - b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

- (4) Consent must not be granted for development that contravenes a development standard unless:
- a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - b) the public benefit of maintaining the development standard, and
  - c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land within Zone E4 Environmental Living if:
- a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
- a) a development standard for complying development,
  - b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated listed in the table to this clause,
  - c) clauses 4.1A, 4.1B, 5.4, 6.2 and 6.4 of this Precinct Plan.

The applicant has reviewed this matter and has concluded that:

- The proposal is in close proximity to the Kellyville Railway Station and the extent of non-compliance does not permit any additional yield on the site as the extent of variation relates to less than 10% of the standard and the proposal retains the desired 4-5 storey built form on the site.
- The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas.
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally.
- The proposal has no impact on heritage or other views; and
- The proposal is not located within a low density residential area and the proposed building height is compatible with that of adjoining development sites.

**Comment:**

The height objectives of the LEP are:

- a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
- b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The height variation relates to lift over runs and portions of the upper storeys buildings F and G located adjacent to an existing natural depression on the site.

The proposed height of the buildings is considered satisfactory given the variation is minor. The urban form is considered to be appropriate for the area and the development of a modern development.

The design of the proposed development, particularly in terms of the materials, colours, and articulation as well as the building configuration provide appropriate articulation and modulation of the building mass. The proposal presents as a compatible element within the existing the streetscape and the future desired character of the locality

There will be no unreasonable loss of privacy or amenity as a result of the variation. Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

It is also noted that in accordance with the Departments Circular PS 08-003 that Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument or a similar clause.

#### **4. Compliance with The Hills Development Control Plan**

The proposal has been assessed against the provisions of The Hills Development Control Plan (THDCP) particularly:-

- Part B Section 5 – Residential Flat Buildings
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping
- Part D Section 7 – Balmoral Road Release Area

The proposed development achieves compliance with the relevant requirements of the above with the exception of the following:

<b>DEVELOPMENT STANDARD</b>	<b>THDCP REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Part B Section 5 – Clause 3.3 (d) Setbacks	No balcony shall protrude into the setback area	Balconies protrude into all setback areas	No, however the protrusions are minor.
Part B Section 5 – Clause 3.4 (c) Building Heights	No building shall contain more than 4 storeys above natural ground level	The development incorporates a 5 storey element	No, the development exceeds the maximum storey control by 1 storey.
Part B Section 5 - Clause 3.5 (a) Building Separation and	The minimum separation between buildings is 12 metres	Balconies encroach within the 12m building separation measure.	No, the variation results in unacceptable privacy impacts.

DEVELOPMENT STANDARD	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Treatment			
Part B Section 5 – - Clause 3.10(a) - Density	The maximum density permitted is 175 persons per hectare.	The development provides a density of 192.3 persons per hectare.	No, the proposal is considered an over development of the site.
Part B Section 5 – Clause 3.11(a) – Unit Layout and Design	The minimum internal floor area for each unit; 1 bedroom - 75m <sup>2</sup> 2 bedroom - 110m <sup>2</sup>	The proposal incorporates the following 1 bedroom – 64.38m <sup>2</sup> to 90.9m <sup>2</sup> 2 bedroom - 94.37m <sup>2</sup> to 130m <sup>2</sup>	Unit sizes do not comply with the DCP however comply with the provisions of the Residential Flat Design Code.
Part D Section 7 – Clause 3.2.2.2(c) – Minimum lot width and lot road frontage	The maximum lot size for residential flat buildings is 5,000m <sup>2</sup> .	The development site has an area of 14,510m <sup>2</sup> , plus 6,486m <sup>2</sup> for local roads.	No, however the site area is considered reasonable.

#### a) Setbacks

Clause 3.3(d) of THDCP Part B Section 5 requires that;

“No balcony shall protrude into the setback area”

The proposed development has numerous balconies encroaching within setback areas.

The relevant objectives of this clause of the DCP are:

- i. *To provide setbacks that complement the setting and contributes to the streetscape and character of the street while allowing flexibility in siting of buildings.*
- ii. *To ensure that the space in front of the building is sufficient to permit landscaping that will complement the building form and enhance the landscape character of the street.*
- iii. *Side and rear setbacks are to be proportioned to the slope of the site having regard to the height and relationship of the buildings on adjoining properties.*
- iv. *The setbacks of proposed buildings are to minimise any adverse impacts such as overshadowing and privacy on adjacent and adjoining properties.*
- v. *To ensure placement of buildings takes into account the retention and protection of existing trees.*

The applicant in justifying the proposed variation to the Development Standards states that:-

*“The minor encroachment of balconies is considered acceptable as it provided for additional articulation of the building and will not generate unreasonable privacy impacts given the likely forms of development to the north and the fact the land to the south is a drainage channel which means the development will continue to be viewed within a landscape setting.”*



**Comment:**

The encroachment of balconies with the setback areas is considered acceptable in this instance as they primarily adjoin public land. The eastern setback adjoins private property and a proposal of similar scale is currently under assessment. The proposed setbacks will still allow for the development to meet the 12m building separation requirement

Accordingly the proposal is considered to be satisfactory in regard to the provisions of the DCP.

**b) Building Height**

Clause 3.4(d) of BHDGP Part B Section 5 requires that;

“No building shall contain more than 4 storeys above natural ground level”

The development includes a number of buildings all 5 storey.

The relevant objectives of this clause of the DCP are:

- i. *To ensure that buildings reflect the existing landform of the neighbourhood, including ridgelines and drainage depressions.*
- ii. *To protect privacy and amenity of surrounding allotments and residential development in accordance with Council's ESD objective 7.*
- iii. *To minimise overshadowing of adjoining properties.*

The applicant in justifying the proposed variation to the Development Standards states that:-

*“The proposal is generally consistent with the maximum height requirements under The Hills LEP control 2012, noting the minor variation to lift overruns and a small portion of the upper level roof forms to Building A, E and G. The non-compliance with the 4 storey height control is considered acceptable given the majority of the proposal complies with the 16m height control contained within the LEP that enables 5 storey residential flat buildings and noting that the LEP prevails over the DCP to the extent of the inconsistency between the controls. It is further noted that the site to the north accommodates a five (5) storey residential flat buildings. (Seniors Living Development)”*

**Comment:**

The proposed variation is relevant to the LEP height variation addressed in Section 3 of this report. The proposal is considered consistent with the relevant objectives of the DCP in that adequate area remains for landscaping and screen planting.

In this regard, the variation to the height control is considered satisfactory.

**c) Building Separation**

Clause 3.5(a) of BHDGP Part B Section 5 requires that;

“The minimum separation between buildings is 12m”

The development includes a number balconies within the 12m of individual buildings.

The relevant objectives of this clause of the DCP are:

- i. *To ensure privacy within buildings.*

- ii. *To avoid overlooking of living spaces and private open space.*
- iii. *To minimise the visual impact of residential flat building developments by minimising the bulk and scale of residential flat buildings and promoting suitable landscaping between buildings.*

The applicant in justifying the proposed variation to the Development Standards states that:-

"Building Separation is designed to align with the RFDC, noting minor non compliances to the physical separation distance between the ends of the 'U' of the buildings that are addressed through alternate means including minimising direct windows and ensuring the areas of non-compliance do not relate to living areas or windows. As shown on the submitted plans the proposal has been designed to mitigate privacy impacts through ensuring that there are no direct facing windows within the 12m separation distance. In the majority of cases the walls to the southern edge of the 'U's is provided with limited, if any, windows to ensure there is no cross-viewing. Therefore the technical non-compliance is considered acceptable, noting that adequate building separation is provided and the 'U' configuration provides for a series of internal landscaped courtyards to provide an appropriate setting for future residents."

**Comment:**

The proposed variation to building separation is as a result of overdevelopment relating to the non-compliance of density. The variation results in unacceptable privacy impacts and bulk and scale.

The proposed variation is not supported.

**d) Density**

Clause 3.10(a) of THDCP Part B Section 5 requires that;

*"The maximum density permitted is 175 persons per hectare."*

The applicant proposes a density of 192.3 persons per hectare.

The relevant objectives of this clause of the DCP are:

- i. *To ensure residential flat building development does not over-tax existing services and facilities.*
- ii. *To provide opportunities for a suitable density housing form that is compatible with the existing surrounding development.*

The applicant in justifying the proposed variation to the Development Standards states that:-

*"The proposal sits within the desired density across the entire site, with a departure from the maximum range when only considering the R4 zoned land. In this instance it is considered most appropriate that the entire allotment size is utilised given there is no delineation in the DCP and the fact the site is within a release area that necessitates substantial infrastructure delivery. To simply excise off 5000m<sup>2</sup> of the allotment with no concession for the increased cost in delivering the development is considered unreasonable.*

*In particular it is noted that the proposal is consistent with the maximum building height (with exception of lift overruns), landscaped area, setbacks, and open space that indicates that the proposal is of an appropriate scale.*

*Finally given the proximity to the future Kellyville Railway Station the proposed density is considered appropriate."*

**Comment:**

It is considered that the use of the entire development site, 2.84Ha, for calculating density is not appropriate. The land zoned SP2 Infrastructure and RE1 Public Recreation will be acquired by the relevant acquisition authority. The applicant is effectively double dipping in that they are increasing yield for the R4 zoned part of the site and will ultimately be paid for the land to be acquired not part of the development site. This leads to an over development of the site resulting in a number of variations.

Accordingly the variation to density is not supported.

**e) Unit Floor Areas**

Clause 3.11(a) of THDCP Part B Section 5 requires that;

*"The minimum internal floor area for each unit, excluding common passageways, car parking spaces and balconies shall not be less than the following;*

*1 bedroom unit – 75m<sup>2</sup>  
2 bedroom unit – 110m<sup>2</sup>  
3 bedroom unit – 135m<sup>2</sup>"*

The proposal incorporates the following range of dwelling sizes:

1 bedroom: 64.38m<sup>2</sup>- 90.9m<sup>2</sup>  
2 bedroom: 94.37m<sup>2</sup>- 130m<sup>2</sup>

The proposal involves minor variations to the controls noting that the dwelling sizes align with the provisions of the RFDC.

The relevant objectives of this clause of the DCP are:

- i. *To ensure that individual units are of a size suitable to meet the needs of residents.*
- ii. *To ensure the layout of units is efficient and units achieve a high level of residential amenity.*
- iii. *To ensure designs utilise passive solar efficient layouts and maximise natural ventilation.*

The applicant in justifying the proposed variation to the Development Standards states that:-

*The proposal involves variation to the internal apartment sizes identified in the DCP, namely to the 1 bedroom and 2 bedroom units. 1 bedroom units require 75m<sup>2</sup> under the DCP and only 50m<sup>2</sup> in the RFDC, whilst 2 bedroom units require 110m<sup>2</sup> versus the 70m<sup>2</sup>- 80m<sup>2</sup> in the RFDC.*

*Dwelling sizes of the proposed units vary from:*

- *64.38m<sup>2</sup> - 90.9m<sup>2</sup> for 1 bedroom units; and*
- *94.37m<sup>2</sup> -130m<sup>2</sup> for 2 bedroom units.*

*The design concept seeks to provide a balance between the objectives of the DCP to provide apartments of a size that meet the needs of the community and achieve high levels of residential amenity, are generally consistent with the guiding policies of the*

*Residential Flat Design Code and assist in meeting the overall objectives of the DCP to provide various densities across the residential area that relate to existing and future adjoining development.*

*It is further noted that Clause 30A of SEPP 65 provides:*

*(1) A consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:*

*(b) **apartment area:** if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code.*

*It is reinforced that the units exceed the minimum internal and external areas contained in the RFDC. A discussion of the key rationale behind the variation is provided below.*

#### *Transit Oriented Development*

*The proximity of the site to the future Kellyville railway station ensures that this site enjoys the best and most advantageous conditions to develop a community that integrates seamlessly with the commercial town centre. Accordingly, the site has all the hallmarks and preconditions of a "transit oriented development" comprising:*

- increasing residential densities (medium to high density)*
- increasing the viability of public transport investment*
- near to, and part of, a mix of retail, employment, commercial and civic development (future)*
- enhanced accessibility via walking and cycling*
- within close proximity of a transport / transit node*
- open and green space accessible to the community*
- housing mix and diversity*

#### *Metro Plan for Sydney 2036*

*The development proposal is consistent with numerous elements of the Metropolitan Plan for Sydney 2036. The proposal focuses urban development around planned transport capacity and provides for a mix and diversity of housing consistent with the role and size of the Balmoral release area.*

#### *Proposed Apartment Sizes*

*A range of apartment sizes have been modelled and the minimum apartment size requirements of the Hills Council substantially exceeds that identified in the Residential Flat Design Code (RFDC). Therefore the variation to the DCP control should be supported.*

#### **Comment:**

The apartments meet the minimum unit sizes required by SEPP 65. In this regard, SEPP 65 contains the following minimum apartment sizes:

- 1 bedroom unit – 50m<sup>2</sup>
- 2 bedroom unit – 70m<sup>2</sup>
- 3 bedroom unit – 95m<sup>2</sup>

It is also noted that Clause 30A of SEPP 65 'Standards that cannot be used as grounds to refuse development consent for residential flat buildings' states that apartment size cannot be a reason for refusal if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code. The apartment sizes all exceed the minimum requirements of the SEPP.

A report was considered by Council on 8 July 2014 outlining intended amendments to Council's relevant Development Control Plans in relation to unit floor areas. Council resolved as follows:

*"The Draft The Hills Development Control Plan 2012 (Part B Section 5 – Residential Flat Buildings, Part D Section 6 – Rouse Hill Regional Centre, Part D Section 8 – Norwest Residential Precinct, Part D Section 12 – Carlingford Precinct, Part D Section 14 – Target Site Corner Windsor Road and Seven Hills Road, Baulkham Hills) be publicly exhibited."*

The recommended controls are as follows:

Apartment Size Category	Apartment Size	Source
Type 1		
1 bedroom	50m <sup>2</sup>	Affordable Housing (SEPP 65)
2 bedroom	70m <sup>2</sup>	
3 or more bedrooms	95m <sup>2</sup>	
Type 2		
1 bedroom	65m <sup>2</sup>	Mid-Point
2 bedroom	90m <sup>2</sup>	
3 or more bedrooms	120m <sup>2</sup>	
Type 3		
1 bedroom	75m <sup>2</sup>	The Hills DCP 2012
2 bedroom	110m <sup>2</sup>	
3 or more bedrooms	135m <sup>2</sup>	

- Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- All remaining apartments are to comply with the Type 3 apartment sizes.
- No more than 25% of the dwelling yield is to comprise either studio or one (1) bedroom apartments; and
- No less than 10% of the dwelling yield is to comprise apartments with three (3) or more bedrooms.

Council resolved that the amendments be publicly exhibited.

An assessment of the proposal against the draft controls finds that 6 of the 210 units (3%) are the type 1 apartment size category, 185 of the 210 units (88%) are the type 2 apartment size category. and 19 of the 210 units (9%) are the type 3 apartment size category. No units comprise three or more bedrooms and 24% of units are one bedroom.

Whilst these are draft controls only, the applicant has been encouraged to comply with the draft amendments before submitting the amended plans.

#### **f) Maximum Site Area**

Clause 3.2.2.2(c) of THDCP Part D Section 7 requires that;

*"The maximum lot size for residential flat buildings is 5,000m<sup>2</sup>."*

The proposed development site has an area of 14,510m<sup>2</sup>.

The relevant objectives of this clause of the DCP are:

- i. *To ensure that development lots have sufficient areas to provide adequate access, parking, landscaping and building separation.*

The applicant in justifying the proposed variation to the Development Standards states that:-

“The 'maximum' lot size exceeds 5000m<sup>2</sup> however the proposal involves a series of residential flat buildings across the site that aligns with the objectives of the control.”

**Comment:**

The development of a site in excess of 5000m<sup>2</sup> is considered reasonable as it does not result in any orderly development issues in the Balmoral Road Release Area. Accordingly the proposal is considered to be satisfactory in regard to the provisions of the DCP.

**5. Compliance with State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Buildings**

The subject Development Application has been assessed against the relevant design quality principles contained within the SEPP as follows:

**(i) Context**

The development responds and reflects the context into which it is placed. The site is located in the Balmoral Road Release Area. The development conforms to the future desired character of the area. The context is likely to change over as adjoining sites are developed in context with the new zonings.

**(ii) Scale**

The height of the development overall is acceptable in terms of solar access and residential amenity impacts. The proposal responds to the existing topography of the site within its context. The height generally ensures that the development responds to the desired future scale and character of the site however concern has been raised in relation to density which results in an overdevelopment.

The setbacks allow for landscape areas, entrances and deep-soil zones. The proposed setbacks have been developed to provide a satisfactory distance from surrounding boundaries, to form active street frontages and adequate open space areas for communal recreation spaces. The proposal addresses matters such as privacy and open space matters.

**(iii) Built Form**

The design of the building elements are of a contemporary style with a number of elements being used to provide an architectural character. The ultimate form of development is achieved in the articulation of the elevations, the selection of colours and materials and high quality landscaped setting. However concern has been raised in relation to density which results in an overdevelopment.

**(iv) Density**

The proposed development is considered to be an overdevelopment. The development does not comply with Council's numerical density controls and this results in an unacceptable built form outcome.

**(v) Resources, Energy and Water Efficiency**

The design achieves natural ventilation and insulation will minimise the dependency on energy resources in heating and cooling. The achievement of these goals then contributes significantly to the reduction of energy consumption, resulting in a lower use of valuable resources and the reduction of costs.

The energy rating of the residential units has been assessed and the accompanying ratings indicate an achievement of the minimum points being scored.

**(vi) Landscape**

The landscape plan indicates that all open spaces will be appropriately landscaped with native trees and shrubs to provide a high quality finish. The proposed landscaping integrates with the overall appearance of the development.

**(vii) Amenity**

The building design compromises privacy of future residents given the building separation standards are not met.

**(viii) Safety and Security**

The development has been designed with safety and security concerns in mind. The common open spaces are within direct view of occupants to allow passive surveillance. Open spaces are designed to provide attractive areas for recreation and entertainment purposes. These open spaces are accessible to all residents and visitors whilst maintaining a degree of security. Private spaces are clearly defined and screened.

**(ix) Social Dimensions**

The location of this development provides dwellings within a precinct that will provide in the future, a range of support services.

**(x) Aesthetics**

The building mass is articulated to provide smaller scale forms, with variable setbacks, using natural material colours, and a diversity of material textures to provide visual relief and strengthen the rural character of the architectural language.

The choice of materials will be from a limited thematic palette for the entire site. Each building and pavilion, has been designed with its own distinctive character reflecting the function of that building.

The relevant provisions of the Residential Flat Design Code are addressed below:

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part 1 – Local Context – Primary Development Controls			
Building Height	Where there is an FSR requirement, test height controls against it to ensure a good fit.	No FSR control	NA.
	Test heights against the proposed number of storeys and the minimum ceiling heights for the desired building use.	The proposed ceiling heights for each residential storey are 3m.	
Building Depth	In general, apartment building depth of 10-18 metres is appropriate. Developments that propose depth greater than 18	The proposed building depth is between 10m and 20m. Appropriate solar access is	No, however the variation is minor.



DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	metres must demonstrate how satisfactory daylighting and natural ventilation are to be achieved.	provided to all units.	
Building Separation	<p><u>Up to 4 storeys</u></p> <p>12 m between habitable rooms/balconies</p> <p>9m between habitable rooms/balconies and non-habitable rooms; 6m between non-habitable rooms.</p> <p><u>Five to eight storeys/up to 25 metres</u></p> <p>18m between habitable rooms/balconies</p> <p>13m between habitable rooms/balconies and non-habitable rooms</p> <p>9 metres between non-habitable rooms</p> <p>Design and test building separation controls in plan and section.</p> <ul style="list-style-type: none"> <li>- Test building separation controls for daylight access to buildings and open spaces.</li> <li>- Building separation controls may be varied in response to site and context constraints.</li> <li>- Developments that propose less than the recommended distances apart must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved (see Daylight Access, Visual Privacy and Acoustic Privacy).</li> </ul>	<p>The development provides unacceptable building separation.</p> <p>The development provides unacceptable building separation.</p>	<p>No, the variation to building separation is not supported.</p> <p>No, the variation to building separation is not supported.</p>
Street Setback	Identify the desired streetscape character, the common setback of buildings in the street, the	The development is located in a new release area. The street setback is	Yes



DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	accommodation of street tree planting and the height of buildings and daylight access controls. Identify the quality, type and use of gardens and landscaped areas facing the street.	considered acceptable.	
Side and rear setback	Relate side setback to existing streetscape patterns. Test side and rear setback with building separation, open space and deep soil zone requirements (see Building Separation, Open Space and Deep Soil Zones). Test side and rear setbacks for overshadowing of other parts of the development and/or adjoining properties, and of private open space.	Side setbacks are either provided by generous landscaped setback areas or access driveways.	Yes.
Floor Space Ratio	Test the desired built form outcome against proposed floor space ratio to ensure consistency with: <ul style="list-style-type: none"> <li>- Building height</li> <li>- Building footprint</li> <li>- The three dimensional building envelope</li> <li>- Open space requirements</li> </ul>	NA, no FSR control.	NA.
<b>Part 2: Site Design</b>			
Deep Soil Zones	A minimum of 25% of the open space area of a site should be a deep soil zone.	The majority open space is provided around the buildings. Deep soil zones equate to 35%.	Yes
Open Space	The area of communal open space required should generally be at least 25-30% of the site area.  The minimum recommended area of private open space for each apartment at ground level or similar space on a structure (i.e. podium, car park) is 25m <sup>2</sup> .	The development provides for a range of open space areas.  Each unit is provided with a balcony or terrace area of at least 20m <sup>2</sup> .	Yes  Yes
Pedestrian Access	Identify the access requirement from the street or car parking area to the	Pedestrian access is provided from the street or car parking	Yes

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	apartment entrance.  Provide barrier free access to at least 20% of dwellings in the development.	area to the apartment entrance. Entrance and access to the basement parking is achieved via the internal stairs and elevators.	
Vehicular Access	Generally limit the width of driveways to a maximum of 6m.  Locate vehicle entries away from main pedestrian entries and on secondary frontages.	The maximum width of the driveway is 6 metres.  Vehicular access is from Free Settlers Drive and is suitably separated from the pedestrian access.	Yes  Yes
Part 3: Building Design			
Apartment Layout	Single aspect apartments should be limited to 8 metres from a window.	Areas over 8m from a window are kitchens, laundries, bathrooms and study areas. These are not the primary habitable rooms and the wet areas and kitchen can be ventilated using the required BASIX ducted fans.	Yes
Apartment Mix	Provide a diversity of apartment types to cater for different household requirements.	The proposal provides for 48 x 1 bedroom units and 178 x 2 bedroom units.	Yes
Balconies	Provide primary balconies for all apartments with a minimum depth of 2 metres	All balconies provide useable areas with a depth of 2.5 metres.	Yes
Ceiling heights	Minimum floor to ceiling height for habitable rooms is 2.7m and 2.4m for non-habitable.	Minimum 2.7 metres.	Yes
Ground floor apartments	Optimise the number of ground floor apartments with separate entries and consider requiring an appropriate percentage of accessible units.  Provide ground floor apartments with access to private open space (i.e.	Ground floor apartments are proposed.	N/A

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	terrace, garden).		
Internal Circulation	In general, where units are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor should be limited to eight.	There are a maximum of 7 units per floor.	Yes
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: - Studio – 6m <sup>3</sup> - 1 bed – 6m <sup>3</sup> - 2 bed – 8m <sup>3</sup> - 3 bed+ - 10m <sup>3</sup>	Separate storage closets are provided in each unit in addition to storage areas in the basement car park exceeding 10m <sup>3</sup> .	Yes
Daylight Access	Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter.	82% of the units receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter.	Yes
Natural Ventilation	60% of residential units should achieve natural cross flow ventilation.	63% of units achieve cross flow ventilation. The remaining units are single aspect. Mechanical ventilation is used in all units allowing ventilation to be achieved.	Yes
Waste Management	Supply waste management plans as part of the DA as per the NSW Waste Board.	A satisfactory waste management plan was submitted with the application.	Yes
Water Conservation	Rainwater is not to be collected from roofs coated with lead or bitumen-based paints or from asbestos-cement roofs. Normal guttering is sufficient for water collections.	The development will be connected to recycled water to be used for landscape irrigation and car washing.	Yes

#### SUBDIVISION ENGINEERING COMMENTS

It is imperative that the design surface level of the road remains higher than the flood level of the creek. The flood levels interpolated onto the engineering drawings have increased. The 100 year flood levels are higher than the proposed design surface level of the road. The resulting flood water entering onto the road is unacceptable. On this basis the proposal cannot be supported.

**TREE MANAGEMENT COMMENTS**

No objection raised to the proposal. Relevant conditions can be recommended.

**HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

No objection raised to the proposal. Relevant conditions can be recommended.

**WASTE MANAGEMENT COMMENTS**

No objection raised to the proposal. Relevant conditions can be recommended.

**CONCLUSION**

The proposed development has been assessed against the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions of THDCP Part B Section 5 – Residential Flat Buildings, Part C Section 1 Parking, Part C Section 3 Landscaping and Part D Section 7 – Balmoral Road Release Area.

This report has been prepared to provide the panel with the opportunity to determine the matter if they wish. Council staff recommend that the matter be deferred to allow the applicant to address all outstanding issues. At the time of writing this report the proposal before Council staff was non-compliant and the variations to density and building separation were considered to result in an overdevelopment of the site.

**RECOMMENDATION**

The Development Application be deferred to allow the applicant to address the outstanding matters.

**ATTACHMENTS**

1. Locality Plan
2. Aerial Photograph
3. Zoning Plan and DCP Road Layout
4. Site Analysis Plan
5. Basement Plans
6. Part Ground Floor Plans
7. Part Upper Floor Plans
8. Elevations and Section
9. Shadow Diagrams
10. Site Calculations

## ATTACHMENT 1 – LOCALITY PLAN



☐ SUBJECT SITE

**THE HILLS**  
Sydney's Garden Shire

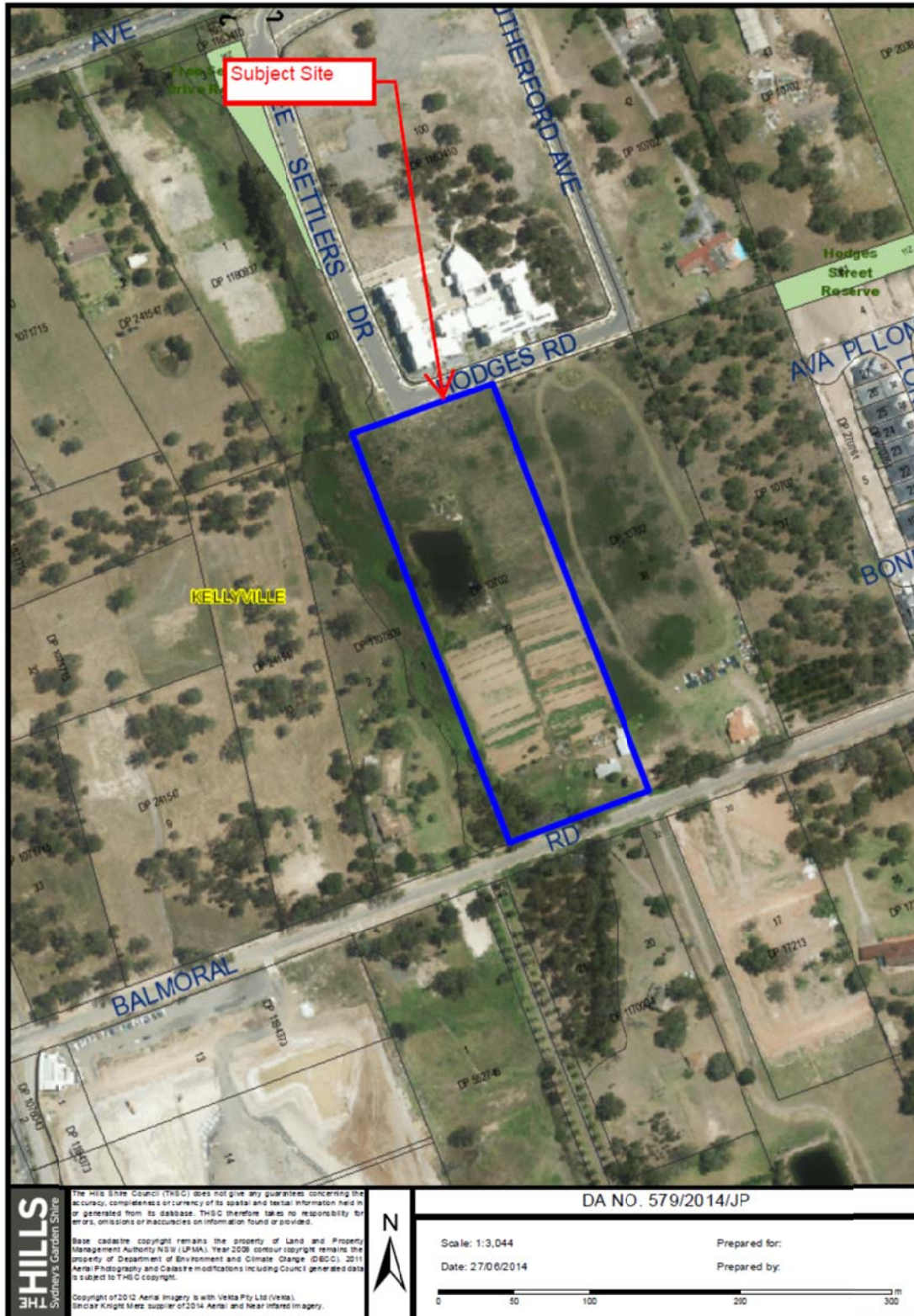
### THE HILLS SHIRE COUNCIL

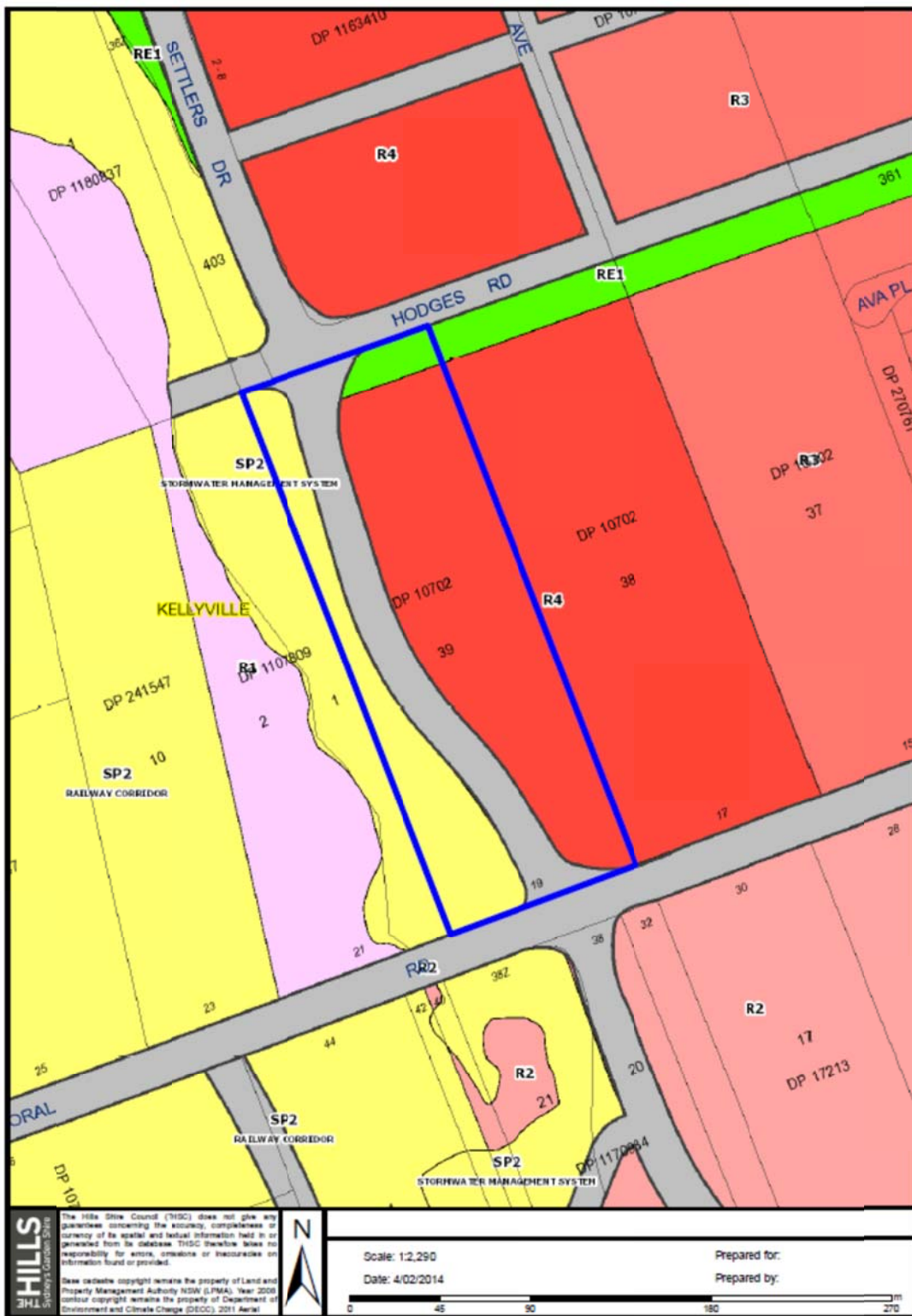
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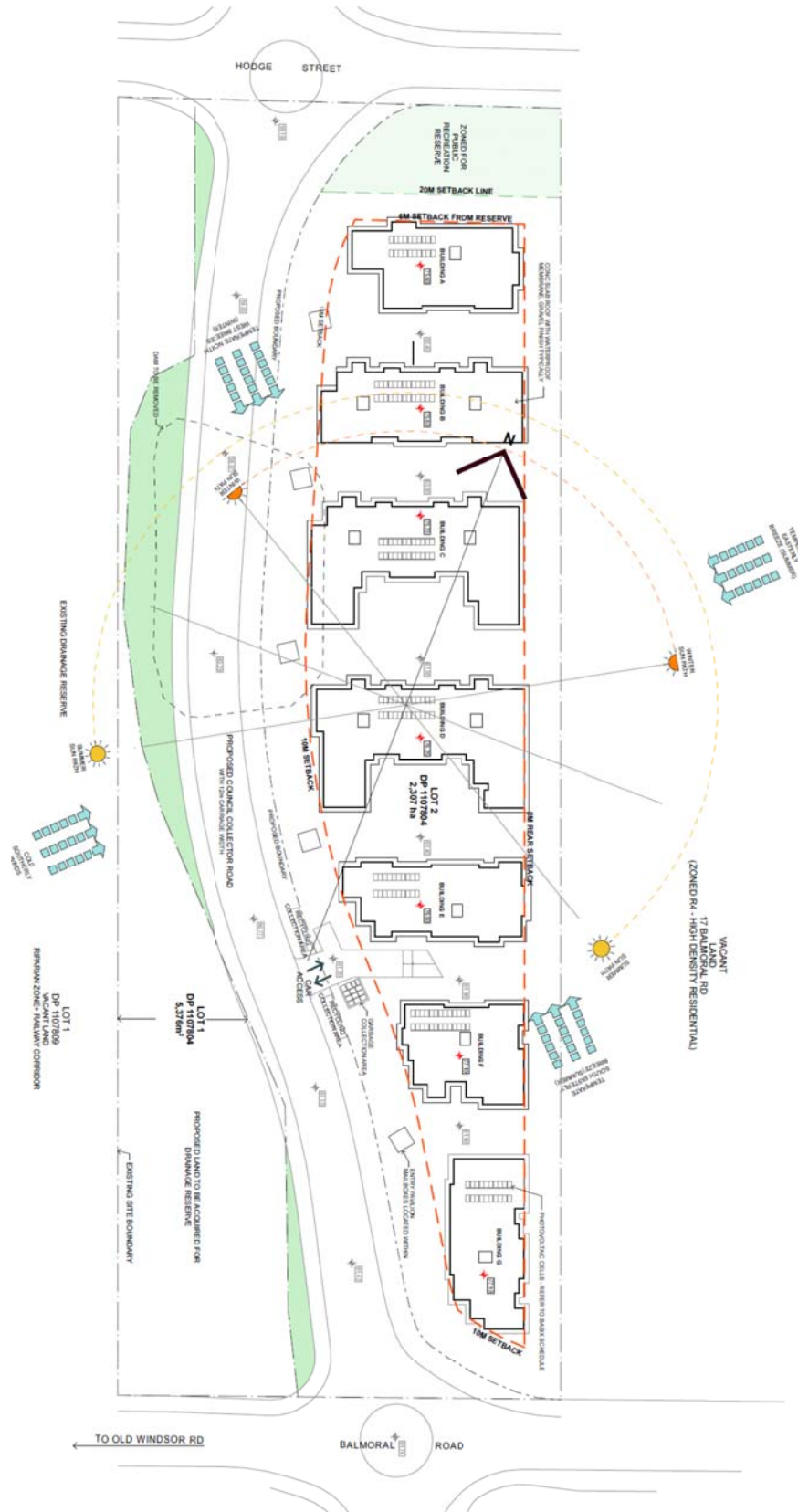


## ATTACHMENT 2 – AERIAL PHOTOGRAPH





## ATTACHMENT 4 – SITE ANALYSIS PLAN







# ATTACHMENT 6 – PART GROUND FLOOR PLANS







## ATTACHMENT 7 – PART UPPER FLOOR PLANS

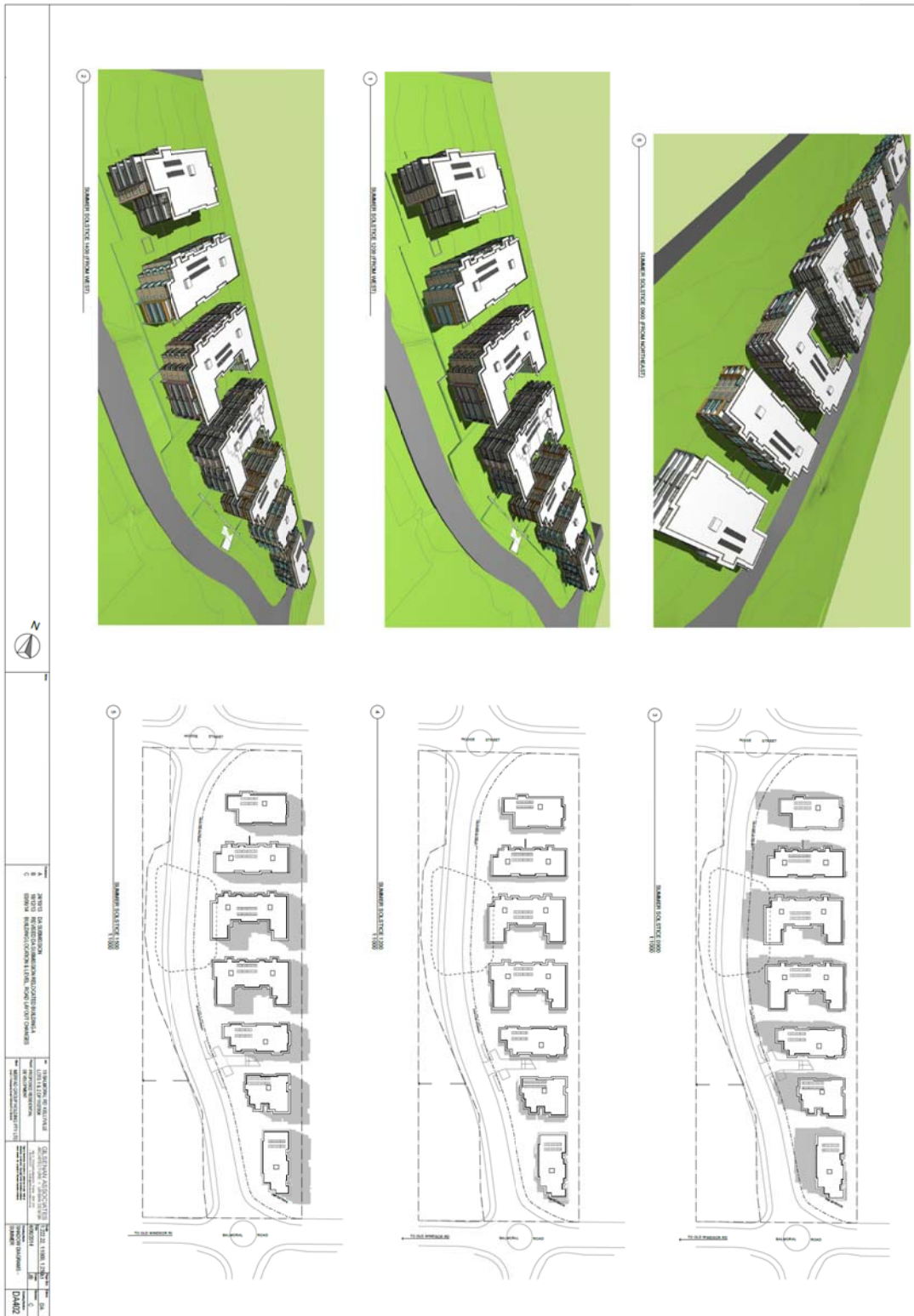




## ATTACHMENT 8 – ELEVATIONS AND SECTION



# ATTACHMENT 9 – SHADOW DIAGRAMS



## ATTACHMENT 10 – SITE CALCUALTIIONS

