JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	2014SYW055
DA Number	1238/2014/JP
Local Government Area	THE HILLS SHIRE COUNCIL
Proposed Development	A MIXED USE DEVELOPMENT INCLUDING DEMOLITION OF AN EXISTING DWELLING AND CONSTRUCTION OF A MEDICAL CENTRE, A RESIDENTIAL FLAT BUILDING CONTAINING FIFTY NINE (59) APARTMENTS, ONE (1) DUAL OCCUPANCY AND FOUR (4) INTEGRATED DWELLINGS AND CONSTRUCTION OF A ROAD.
Street Address	LOT 1 DP 23258 NO. 15 WITHERS ROAD, KELLYVILLE
Applicant/Owner	DFP PLANNING CONSULTANTS MR & MRS D KHAN
Number of Submissions	TWO
Regional Development Criteria (Schedule 4A of the Act)	GENERAL DEVELOPMENT WITH A CIV OF OVER \$20 MILLION
List of All Relevant s79C(1)(a) Matters	 SEPP SYDNEY REGION GROWN CENTRES 2006 NORTH KELLYVILLE PRECINCT DCP SEPP 55 - REMEDIATION OF LAND SEPP 65 - DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT DRAFT SEPP 65 SEPP INFRASTRUCTURE 2007 RESIDENTIAL FLAT DESIGN CODE THE HILLS DCP 2012
List all documents submitted with this report for the panel's consideration	Submissions
Recommendation	Deferral
Report by	Senior Town Planner Sanda Watts

EXECUTIVE SUMMARY

The Development Application is for the demolition of the existing dwelling, construction of a mixed use development consisting of a medical centre and 59 residential units, construction of a dual occupancy and 4 integrated dwellings and construction of a road. The existing child care centre on site is to be retained. The Capital Investment Value is \$22,148,047.

The subject site is located on land zoned R2 Low Density and R3 – Medium Density Residential under Sydney Region Growth Centres SEPP 2006 and has a height limit of 9 metres and 16 metres respectively. The proposal exceeds the 16m height limit in the R3 zone by a maximum of 350mm or 2.2%.

The proposed development includes a front setback variation to the North Kellyville DCP of up to a maximum of 1.5m into the 6 metre setback. The design complies with recommended building setbacks other than minor encroachments discussed in this report.

In conjunction with the landscaping, a reasonable streetscape is provided and impacts of the built form are minimised. There will be no unreasonable loss of privacy or amenity as a result of the variation.

The setback variation is minor and only relates to balconies. The variation does not result in any significant amenity impacts given the balconies front Withers Road. The variation is reasonable and can be supported.

The application was advertised and notified for a period of 30 days and two submissions were received raising issues relating to the impact of the development on the existing child care and permissibility of the medical centre and associated pharmacy.

Under the provisions of clause 1.3 of the North Kellyville Development Control Plan, The Hills Development Control Plan 2012 Part B Section 5 Residential Flat Buildings does not apply to the subject site. However the proposal has been reviewed against Section 3.11 Unit Layout and Design and fails to meet the requirement of unit mix and typology (size). Nevertheless, a merit based assessment of the Residential Flat Design Code has been undertaken which reveals that the proposed unit mix is not appropriate in terms of the social dimensions of the wider area and is not in keeping with the desired future character of the Hills Shire.

It is recommended that the matter be deferred to allow the applicant to amend the plans to comply with Council's unit mix and size controls which would better reflect the needs of the community. Furthermore, the applicant is requested to address the appropriateness of the proposed hours of the medical centre which are 7:00am to 10:00pm, 7 days a week, and any amenity potential impacts within the R3 Medium Density Zone.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	Mr Qamarul Aqmar Khan and Mrs Duree Shahwar Khan	1.	Section 79C (EP&A Act) - Satisfactory
Zoning:	R2 Low Density, R3 Medium Density and SP2 Local Road Widening	2.	SEPP Sydney Region Grown Centres 2006 – Variation, see report.
Area:	10,120m ²	3.	<u>SEPP 65 – Design Quality of</u> <u>Residential Flat Development</u> – Satisfactory

		4.	Amended (Draft) SEPP 65 - Satisfactory	
Existing Development:	Single dwelling house and child care centre	5.	<u>SEPP 55 — Remediation of Land</u> - Satisfactory	
		6.	<u>SEPP Infrastructure 2007</u> - Satisfactory	
		7.	North Kellyville DCP – Variation, see report.	
		8.	The Hills DCP 2012 - Part B Section 6 - Business - Appendix E - Child Care Centres - Variations, see report.	
		9.	The Hills DCP 2012 Part C Section 3 - Landscaping - Satisfactory	
		10.	<u>Section 94 Contribution</u> – Stage 1 – \$30,000 Stage 2 – \$1,070,437.56	
		11.	<u>Capital Investment Value:</u> \$22,148,047	

SUBMISSIONS

REASONS FOR REFERRAL TO JRPP

1. Exhibition:	Yes, 30 days	1.	Capital Investment Value in excess of \$20 million pursuant to SEPP (Major Development) 2005.
Notice Adj Owners: Number Advised:	Yes, 30 days		(Major Development) 2003.
4. Submissions Received:	2		

HISTORY 10/04/2014	Subject Development Application lodged.		
13/05/2014	Subject Development Application notified to surrounding properties.		
14/05/2014	Letter sent to the applicant requesting further information in relation to engineering matters, kiosk details and waste management details.		
26/05/2014	General Terms of Approval received from the Rural Fire Service.		
07/08/2014	Briefing to JRPP Panel Members.		
16/09/2014	Correspondence sent to the applicant requesting justification in relation to the proposed pharmacy specifically whether it is ancillary to the medical centre.		
07/11/2014	Correspondence sent to the applicant requesting outstanding information be submitted in relation to the letter from Council staff dated 14/05/2014.		
07/11/2014	Response received from applicant outlining reason for delay.		
27/01/2015	Letter sent to the applicant requesting the outstanding information be provided within 14 days.		

19/02/2015	Outstanding information submitted.		
20/04/2015	Correspondence sent to the applicant requesting further details relating to engineering matters		
21/05/2015	Outstanding information submitted.		
12/06/2015	Correspondence sent to applicant requesting further details relating to engineering matters.		
30/06/2015	Response received from applicant regarding outstanding engineering matters.		
09/07/2015	Further correspondence sent to the applicant requesting further engineering details.		
20/07/2015	Outstanding information submitted.		

PROPOSAL

The Development Application is for a staged development for the demolition of the existing dwelling, construction of a mixed use development consisting of a medical centre and 59 residential units, construction of a dual occupancy and 4 integrated dwellings and construction of a road. The existing child care centre on site is to be retained. Specifically, the stages proposed are as follows:

Stage 1

- Demolition of the existing dwelling.
- Construction of a new three storey medical centre with ground floor pharmacy.
- Proposed hours of operation for the medical centre are 7:00am to 10:00pm, 7 days per week.
- At grade parking for 26 vehicles for the medical centre.
- Construction of the dual occupancy and temporary road to access dual occupancy.
- Construction of partial local road to access medical centre parking area with temporary cul-du-sac.
- Construction half width road construction of Barry Road

Stage 2

- Construction of part 4 part 5 storey residential flat building containing 59 units, having a mix of 39 x 1 bedroom, 18 x 2 bedroom and 2 x 3 bedroom with basement parking.
- Construction of Nightcap Street (DCP fixed road)
- Revised car park layout for existing child care centre
- Construction of remainder of new local road providing access to the residential flat building and connecting to Nightcap Street.
- Construction of 4 x 4 bedroom integrated dwellings.

The proposed residential flat building is part 4 and 5 storeys, and exceeds the maximum height prescribed by the Sydney Region Growth Centres SEPP 2006. The building height limit is 16m and the maximum proposed building height is 16.350m. The Development Application is accompanied by a written justification to Clause 4.6 to vary the building height standard.

The proposal is defined as 'Integrated Development' under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979 as the proposal requires approval from the Rural Fire Service (RFS) under the provisions of the Rural Fire Services Act. The RFS have provided their General Terms of Approval for the development.

The proposed development has a Capital Investment Value of \$22,148,047.

SUBJECT SITE

The site is an irregular rectangle with an area of 10,012m². The property has a frontage of 71.02 metres to Withers Road, 134.72 metres to Barry Road with a rear boundary dimension 77.15 metres and side boundary dimension of 140.82 metres. The northern portion of the site is zoned R2 Low Density and the southern portion of the site is zoned R3 Medium Density. Nightcap Street, a fixed DCP road is proposed between the R2 and R3 zoned land, and provides access from Barry Road. A non-fixed DCP road, Littabella Lane is located in the centre of the R3 land, however, does not form part of this application. A small portion of the site, along Withers Road is zoned SP2 Local Road Widening.

ISSUES FOR CONSIDERATION

1. 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 \$22,148,047 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.

2. Compliance with Requirements of SEPP (Sydney Region Growth Centres) 2006

(i) Permissibility

The development site is zoned R2 Low Density, R3 Medium Density and SP2 Infrastructure zone – local road widening.

R2 Low Density Zone

"dual occupancy" means 2 dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan o community scheme), but does not include a secondary dwelling.

"dwelling" means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Dual occupancies and dwellings are permissible with consent in the R2 Low Density Zone.

R3 Medium Density Zone

"residential flat building" means a building containing 3 or more dwellings, but does not include an attached dwelling, a manor home or multi dwelling housing.

"child care centre" means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,

but does not include:

- (c) a building or place used for home-based child care, or
- (d) an out-of-home care service provided by an agency or organisation accredited by the Children's Guardian, or
- (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or
- (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or
- (h) a service that is concerned primarily with the provision of:
- (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
- (ii) private tutoring, or
- (i) a school, or
- (j) a service provided at exempt premises (within the meaning of section 200 of the <u>Children and Young Persons (Care and Protection) Act 1998</u>), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

Residential flat buildings and child care centres are permissible in the R3 Medium Density Zone.

"medical centre" means business premises used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals, and may include the ancillary provision of other health services.

Pursuant to SEPP Infrastructure 2007, medical centres are permissible with consent in the R3 Medium Density Zone.

(ii) Development Standards

The following addresses the relevant principal development standards of the SEPP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1AB Minimum	Single dwelling – 360m ²	360.4m ²	Yes
lot sizes	Dual Occupancy – 600m ²	600.2m ²	Yes
	Residential flat building – 2,000m²	6503.8m ²	Yes
4.1B Residential density	R2 – Minimum 10 dwellings	23.7 dwellings per hectare	Yes
	R3 - Minimum 20 dwellings per hectare.	63.4 dwellings per hectare	Yes
4.3 Height of buildings	R2 – 9 metres	7.4 metres	Yes
	R3 - 16 metres	16.350m	No – see comments below.

4.6 Exceptions to	Exceptions will be	Variations proposed to	Yes
development	considered subject to	height are addressed	
standards	appropriate	below.	
	assessment.		

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 <u>State Environmental Planning Policy (Building Sustainability Index: BASIX)</u>
 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.

a. Variation to Height

SEPP Sydney Region Growth Centres 2006 limits the height of the development to 16 metres. The proposal has a maximum height of 16.350m, a non-compliance of 350mm.

The applicant has reviewed this matter and has concluded that:

"Parts of the residential flat building, specifically the lift motor rooms and architectural façade features will exceed the 16m height limit. Pursuant to Clause 4.6 of the Growth Centres SEPP, and exception to this development standard in regards to building height is sought as part of this application.

The extent of the non-compliance is in the order of 350mm. The elements that extend above the 16m height limit include the lift motor room and architectural features on the internal elevations of the building.

The locations of the lift motor rooms are such that they will not result in any additional overshadowing onto the adjoining property to the west as the shadows from the lift motor room will be wholly contained within the building shadows at 9am on the day of the winter solstice. Similarly, the architectural façade features are open structures; their purpose being to define the entries of the building. These features are located internally to the development and therefore will not result in any increase overshadowing to the adjoining property to the west.

It is not considered that the encroachment of the building height control by these components of the residential flat building development will result in any adverse environmental impact and therefore a relaxation of the height of building controls in this instance is warranted."

Comment:

The objectives of Clause 4.3 of the SEPP are:

- (a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,
- (b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,
- (c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,
- (d) to provide appropriate height controls for commercial development,
- (e) to restrict the height of buildings within the curtilage of heritage items.

The non-compliance in height generally relates the lift overrun and architectural features on the facade. The non-compliance does not result in any adverse amenity impacts and does not result in a detrimental impact on the streetscape.

The proposed height of the buildings is considered satisfactory given the site's corner location, and the minor nature of the non-compliance (350mm). The shadow impact from the development is considered reasonable, with the majority of the shadowing falls onto Withers Road. The separation to adjoining future development will reduce the potential for overlooking and privacy impacts.

The urban form is considered to be appropriate for the area and the development of a residential nature. The proposal incorporates a variety of finishes and colours and will result in an appropriate urban outcome.

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.

3. SEPP 55 - Remediation of Land

Clause 7 (Contamination and remediation to be considered in determining development application) of SEPP 55 – Remediation of Land, states:

- "(1) A consent authority must not consent to the carrying out of any development on land unless:
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."

A Preliminary Contamination Assessment report has been prepared by Coffey Environmental Australia Pty Ltd, dated 16 August 2013. The report has identified the following source of contamination at the site:

- Use of pesticides; and
- Hazardous building materials, particularly asbestos, released during demolition of former site structures.

The report states:

"Based on review of the site history and observations made during the site walkover, it is considered that the potential sources of contamination pose a low to moderate likelihood of contamination Evidence of potential sources of contamination, such as large scale or bulk storage of chemicals and the presence of fill material, were not identified.

Based on the above, Coffey recommends that limited sampling and analysis of surface soil samples be undertaken in the vicinity of the former buildings and orchard historically located on-site. Coffey considers that this could be undertaken as part of the preconstruction phase of works following removal of the turf from the surface of the site as required."

The report concludes that the site is suitable for the proposed mixed use pending the results of the recommended sampling program.

4. Compliance with North Kellyville DCP 2014

The proposal has been assessed against the provisions of The North Kellyville Development Control Plan. The proposed development achieves compliance with the relevant requirements of the North Kellyville Development Control Plan with the exception of the following:

DEVELOPMENT CONTROL	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Section 4.3.4 – Table 19 Front Setbacks Minimum	Front Setback Minimum – 6 metres Balconies and other articulation may encroach into the setback to a maximum of 4.5 metres from the boundary for the first 3 storeys and for a maximum of 50% of the façade length.	1.5 metre encroachment fronting Withers Road. The extent of the breach is 100% of the total façade length fronting Withers Road.	No, encroachment of front setback, refer below.

a) Setbacks

Section 4.3.4 – Table 19 of The North Kellyville DCP requires that residential flat buildings are to have a minimum front setback of 6 metres, balconies and other articulation may encroach into the setback to a maximum of 4.5 metres from the boundary for the first 3 storeys and for a maximum of 50% of the façade length.

The extent of the breach is 100% of the total façade length fronting Withers Road for the first three storeys. The development includes minor encroachments of 1.5m into front setback on the fourth and fifth storey. The encroachments relate to the balcony only.

The objectives of this section of the DCP are:

- a) To establish a high quality residential environment where all dwellings have a good level of amenity.
- b) To ensure a variety of housing forms within residential areas.
- c) To ensure the provision of the housing that will, in its adaptable features, meet the access and mobility needs of any occupant.

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

In the circumstances this minor reduction in setback is considered reasonable for the following reasons:

- The southern elevation of the residential flat building incorporates an open walkway with glazed balustrade. The main wall of the building will be setback a further 2m from the (new) Withers Road frontage. The reduced setback will result in unacceptable bulk and scale as the glazed balustrade will provide articulation and modulation of the southern elevation.
- The southern elevation of the medical centre incorporates a significant number of windows which assist in breaking up the southern wall of the building.
- As evidenced in the photograph attached, there are a number of significant mature trees located along the verge of Withers Road. Whilst some of these may be required to be removed in order to construct Withers Road to the standard required, it is anticipated that many will be retained. These trees will assist in screening the bulk of the buildings on the site from the public domain.
- The landscaping plan identifies trees to be retained and new landscaping works to be undertaken within the setback to Withers Road. The additional trees proposed to be planted will supplement the existing trees within the verge of Withers Road and assist in screening the bulk of the building.

Comment:

The setback variation is considered to be minor and relates to the balconies only, with the external wall of the building complying with the setback requirements. The encroachment of the balconies do on result in any overlooking or overshadowing impacts as the balconies front Withers Road to the south. Architectural elements are proposed which provides visual relief of the building façade. It is considered that the variation can be supported in this instance.

b) Sub-precincts - Road Layout

Development sub-precincts are areas generally bounded by fixed roads as indicated in Figure 20 of the DCP. Withers Road, Barry Road and Nightcap Street are fixed roads. The DCP shows a non-fixed road (Littabella Lane) through the centre of the development site. The development does not provide for this non-fixed road. The applicant has provided letters from the owners of the properties to the west (nos. 17 and 19 Withers Road) stating that they agree to the removal of laneway. The non-provision of Littabella Lane is not considered to be a variation given the non-fixed status of the future road. It is considered that the deletion of the laneway does not impede the orderly development of the land or surrounding sites. Furthermore, the development complies with the maximum block dimension which is not to exceed 85 metres x 220 metres.

5. Compliance with The Hills Development Control Plan 2012

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

- Part B Section 6 Business (Appendix E Child Care Centres)
- Part C Section 3 Landscaping

The proposed development achieves compliance with the DCP with the minimum car parking setback requirement:

DEVELOPMENT CONTROL	THDCP Part B SECTION 6 BUSINESS REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part B Section 6 Business – Clause E2.4 (e) Setbacks	In residential zones, a minimum 5 metre setback from the front boundary is required for car parking.	The amended car parking layout provides 0.6m to 1.8m setback to Barry Road.	
Part B Section 6 Business – Clause E2.4 (f) Setbacks	The front setback areas are to include landscaping with a minimum width of two metres to screen vehicles from view from the street and surrounding properties.	Refer above.	Refer above.

e) Setbacks

Clause E2.4(e) of THDCP Part B Section 6 - Business requires that;

"In residential zones, the minimum car park setback requirement is a minimum of 5 metres from the front boundary."

The amended car parking layout provides 0.6m to 1.8m setback to Barry Road.

Clause E2.4(f) of THDCP Part B Section 6 - Business requires that;

"The front setback areas are to include landscaping with a minimum width of two metres to screen vehicles from view from the street and surrounding properties.."

The amended car parking layout provides 0.6m to 1.8m setback to Barry Road.

The relevant objective of this clause of the DCP are:

- (i) To ensure that setbacks are consistent with the locality and achieve development that is complimentary to the streetscape.
- (ii) To provide sufficient separation between development to maintain privacy, health, safety, and amenity, and minimise overshadowing of adjoining properties.
- (iii) To allow adequate space for vehicle manoeuvring.
- (iv) To ensure that adequate area is provided to permit high-quality landscape planting for the development.

Comment:

The amended car parking layout will result in a setback to Barry Road of 0.6 to 1.8 metres, which will allow for some landscaping (amended in red on the plans). This is considered acceptable in this instance given the constraints of the site with the retention of the child care centre and the existing front setback. If the proposal were to increase the setback to Barry Road, the aisle width would be less than 5 metres which would be unacceptable in this instance given the close proximity of driveway and the entrance of the child care centre.

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

6. 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 North Kellyville Release Area. The development conforms to the future desired character of the area.

(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.

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.

(iv) Density

The proposal provides an appropriate built form outcome, and meets the minimum density identified for the site.

(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 has been developed to provide for the amenity of the occupants as well as the public domain. The key elements of the building design incorporates satisfactory access and circulation, apartment layouts, ceiling heights, private open space, common open space, energy efficiency rating, adaptability and diversity, safety, security and site facilities. However, it is considered that the proposed unit sizes are not in keeping with the desired needs of future residents.

(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. However, the large percentage of one bedroom units, and small number of 2 and 3 bedroom units are not reflective of the social context of the local community and will not meet the needs of existing and future residents of the Hills Shire.

(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 palette for the entire site.

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 however the proposal meets the minimum density controls that apply to the site.	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 2.7m.	Yes	
Building Depth	In general, apartment building depth of 10-18 metres is appropriate. Developments that propose depth greater than 18 metres must demonstrate how satisfactory daylighting and natural ventilation are to be achieved.	The proposed maximum building depth is 17.5m.	Yes	
Building Separation	Up to 4 storeys 12 m between habitable rooms/balconies 9m between habitable rooms/balconies and non-habitable rooms; 6m between non-habitable rooms. Five to eight storeys/up to 25 metres 18m between habitable rooms/balconies 13m between habitable rooms/balconies and non-habitable rooms	Adequate building separation between the residential flat building and the child care centre (20 metres).	Yes.	

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	9 metres between non-habitable rooms Design and test building separation controls in plan and section. - Test building separation controls for daylight access to buildings and open spaces. - Building separation		
	controls may be varied in response to site and context constraints. - 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).		
Street Setback	Identify the desired streetscape character, the common setback of buildings in the street, the 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.	The development is located in a new release area. The street setback is considered acceptable. The proposal provides for a minimum 4.5 metre setback to Barry Road.	Yes
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.	The development provides for a suitable rear setback, being 6 metres, this allows for a distance of separation of 12 metres with any potential residential flat building on adjoining land. The secondary front setback to Withers Road allows for deep soil planting.	Yes

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Floor Space Ratio	Test the desired built form outcome against proposed floor space ratio to ensure consistency with: - Building height - Building footprint - The three dimensional building envelope - Open space requirements	N/A, no FSR control however the proposal meets the minimum density controls that apply to the site.	N/A
Part 2: Site Design			
Deep Soil Zones	A minimum of 25% of the open space area of a site should be a deep soil zone.	Deep soil zones equates to 30% of the landscaped area for the residential flat building development.	Yes
Open Space	The area of communal open space required should generally be at least 25-30% of the site area.	The development provides for an open space area being 35% of the site area for the residential flat development.	Yes
	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 ² .	Each unit at ground level is provided with a private open space area of at least 11m^2 .	the units are
Pedestrian Access	Identify the access requirement from the street or car parking area to the apartment entrance.	Pedestrian access is provided from the street or car parking area to the apartment entrance. Entrance and access to the basement parking is achieved via the internal stairs and elevators.	Yes
	Provide barrier free access to at least 20% of dwellings in the development.	Barrier free access is provided to at least 20% of units.	
Vehicular Access	Generally limit the width of driveways to a maximum of 6m.	The maximum width of the driveway is 6.3 metres.	Yes
	Locate vehicle entries away from main pedestrian entries and on secondary frontages.		Yes

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part 3: Building Do		-	
Apartment Layout	Single aspect apartments should be limited to 8 metres from a window.	Single aspect units are 8 metre from a window.	Yes
Apartment size	Minimum apartments sizes: 1 bedroom – 50m ² 2 bedroom – 70m ² 3 bedroom – 95m ²	All units comply with the minimum apartment size requirements, being a minimum of: 1 bedroom - 58m ² 2 bedroom - 83m ² 3 bedroom - 114m ²	Yes
Apartment Mix	Provide a diversity of apartment types to cater for different household requirements.		No, the development does not provided for an appropriate mix.
Balconies	Provide primary balconies for all apartments with a minimum depth of 2 metres	All balconies provide useable areas with a minimum depth of 2 metres.	Yes
Ceiling heights	Minimum floor to ceiling height for habitable rooms is 2.7m and 2.4m for nonhabitable.	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. terrace, garden).	Ground floor apartments are proposed, however separate entries are not proposed. A total of 6 units are nominated as adaptable.	Yes
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 6 units per floor.	Yes
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: - Studio – 6m3 - 1 bed – 6m3 - 2 bed – 8m3 - 3 bed+ - 10m3	Separate storage closets are provided in each unit in addition to storage areas in the basement car park.	Yes

DEVELOPMENT STANDARD	SEPP 65 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
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.	>70% 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.	90% of units achieve cross flow ventilation.	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 asbestoscement roofs. Normal guttering is sufficient for water collections.	The development will collect rainwater and stormwater and will be stored for re-use on the site.	Yes

An assessment was also undertaken against the provisions of the Draft SEPP 65 amendment together with the new Apartment Design Guide (replacing the Residential Flat Design Code). The proposed amendments were exhibited in October 2014 and adopted on 17 July 2015. The amended SEPP and Apartment Design Guide do not apply to the development application as it was lodged in April 2014. Nevertheless, the proposal is considered satisfactory with respect to compliance with the draft amendment and Apartment Design Guide.

7. The Hills Development Control Plan 2012 - Part B Section 5 Residential Flat Buildings

Under the provisions of clause 1.3 of the North Kellyville Development Control Plan, The Hills Development Control Plan 2012 Part B Section 5 Residential Flat Buildings does not apply to the subject site. However the proposal has been reviewed against Section 3.11 Unit Layout and Design.

Unit No.	No. of Beds	Size (m ²)	DCP Typology	SEPP 65 Building Configuration
1	2	85	1	Complies
2	1	78	3	Complies
3	1	74	2	Complies
4	1	74	2	Complies
5	3	114	1	Complies
6	1	74	2	Complies
7	3	114	1	Complies
8	2	86	1	Complies
9	2	84	1	Complies
10	2	96	1	Complies
11	1	74	2	Complies
12	1	74	2	Complies

12	1	ГО	1	Camardiaa
13	1	59	1	Complies
14	2	82	1	Complies
15	1	74	2	Complies
16	1	59	1	Complies
17	2	83	1	Complies
18	2	83	1	Complies
19	1	66	2	Complies
20	1	58	1	Complies
21	1	58	1	Complies
22	1	58	1	Complies
23	1	58	1	Complies
24	2	84	1	Complies
25	2	96	2	Complies
26	1	71	2	Complies
27	1	71	2	Complies
28	1	59	1	Complies
29	2	83	1	Complies
30	1	71	2	Complies
31	1	59	1	Complies
32	2	83	1	Complies
33	2	83	1	Complies
34	1	66	2	Complies
35	1	58	1	Complies
36	1	58	1	Complies
37	1	58	1	Complies
38	1	58	1	Complies
39	2	84	1	Complies
40	2	96	2	Complies
41	1	71	2	Complies
42	1	71	2	Complies
43	1	59	1	Complies
44	2	83	1	Complies
45	1	71	2	Complies
46	1	59	1	Complies
47	2	83	1	Complies
48	2	83	1	Complies
49	1	66	2	Complies
50	1	58	1	Complies
51	1	58	1	Complies
52	1	58	1	Complies
53	1	58	1	Complies
54	2	83	1	Complies
55	1	66	1	Complies
56	1	58	1	Complies
57	1	58	1	Complies
58	1	58	1	Complies
59	1	58	1	Complies
JJ	T	J0	±	Compiles

The development comprises 39×1 bedroom (66.1%), 18×2 bedroom (30.5%) and 2×3 bedroom (3.4%). The development does not comply with the control which states that no more than 25% of the dwelling yield is to comprise of one bedroom apartments and no less than 10% of the units are to comprise 3 or more bedrooms.

Of the 59 proposed units, 41 units (69.5%) fall under 'Type 1', 17 units (28.8%) fall under 'Type 2' and 1 unit (1.7%) falls under 'Type 3' apartment sizes. The DCP states that Type 1 apartments shall not exceed 30% of the total units in the development, Type 2 units shall not exceed 30% of the total units in the development, and the remaining units are to

comply with Type 3 apartment sizes. The development does not conform to the unit size typology requirement in the apartment DCP.

Apartment Size Category	Apartment size
Type 1	50m ²
1 bedroom	70m ²
2 bedrooms	95m²
3 or more bedrooms	
Type 2	
1 bedroom	65m ²
2 bedrooms	90m²
3 or more bedrooms	120m ²
Type 3	
1 bedroom	75m²
2 bedrooms	110m ²
3 or more bedrooms	135m²

Although the development does not meet the requirements of the DCP, the proposal complies with SEPP 65 requirements in terms of minimum unit sizes, however concern is raised regarding the large percentage of one bedroom units, and low percentage of 2 and 3 bedroom units within the development, thereby not providing an appropriate mix in accordance with the Residential Flat Design Code. Clause 30A of SEPP 65 states that a consent authority must not refuse consent to a development application for the carrying out of residential flat development 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 (the table on page 69) of the Residential Flat Design Code.

However, given the proposal's significant departure from Council's unit mix and typology controls which are considered commensurate with The Hills demographics and lifestyle aspirations and reflective of the intent of the Residential Flat Design Code, the application is recommended to be deferred to allow the applicant to redesign the development to comply with these controls and provide a better development more suited to the social dimensions of the Shire.

8. Issues Raised in Submissions

The application was advertised and notified for a period of thirty days and two submissions were received. The issues raised in the submissions are addressed below.

ISSUE/OBJECTION	COMMENT	OUTCOME
The existing child care is approved to provide care for 59 children per day. It is my understanding that according to council's records the centre is approved for 58 places.	alterations and additions to the existing child care centre to permit an increase in child	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	no. 8 states "the submission of a	
	License issued by the	
	Department of Community	
	Services to operate a Child Care	
	Centre catering for up to 58	
	children to Council, prior to the	
	issuing of the Occupation	
	Certificate / commencement of	
The child care centre	the enlarged Child Care Centre." Condition No. 5 of DA	Issue addressed.
currently provides 18 car	3072/2001/HA states "the	issue addressed.
parking spaces, under	provision and maintenance	
Council's current controls, a	thereafter of 18 off-street car	
total of 22 spaces are	parking spaces." The applicant	
required. The proposal	has amended the proposal to	
seeks to reduce the parking	include 18 car parking spaces as	
on site to 12 spaces.	per the requirement of DA	
	3072/2001/HA. As the proposal	
	does not seek to alter the child	
	numbers, it would be considered	
	unreasonable to require the applicant to increase the parking	
	numbers to comply with current	
	requirements.	
The proposed parking layout	The amended car parking layout	Issue addressed.
does not provide for a 5	will allow for 0.6 to 1.8 metres of	15545 444.5554.
metre landscape setback as	landscaping (amended in red on	
per Council controls.	the plans) which is considered	
	acceptable in this instance given	
	the constraints of the site with	
	the retention of the child care	
	centre and the existing front	
The proposed parking is a	setback. The proposed car parking	Issue addressed.
The proposed parking is a more dangerous layout and	The proposed car parking arrangement is considered	issue addressed.
does not allow for the safe	satisfactory, and is not dissimilar	
movement of children to and	to existing one way system in	
from the centre (i.e. parents	which drivers enter and exit in a	
reversing out of the spaces	forward direction.	
into the immediate direction		
of the entrance).		
The application states the	The applicant has advised that	Issued addressed.
development will be	no changes to the leased area of	
conducted over a 3 years	the child care centre can be	
period. No consideration has	implemented until the current	
been granted as to how this	lease has expired. This includes	
development will affect the child care centre, the safety	the proposed changes to the parking and access	
of the children or the families	arrangement. Furthermore, a	
and staff who use the	construction management plan	
services of the child care	has been provided with the	
centre.	subject application.	
	A condition of consent has been	
	recommended stating that the	
	child care centre is not to be in	
	operation during the proposed	
	works.	

ISSUE /ORIECTION	COMMENT	OUTCOME
The SEE states that the	The application proposes	OUTCOME Issue addressed.
proposed development does not include any modifications to the operation of the child care centre, or the building within which the child care centre operates. This is incorrect, as the application proposes to relocate and modify the parking, as well as modify the outdoor play area.	modifications to the access and parking arrangements of the child care centre as well as the outdoor play area.	Issue dudi esseu.
The construction stage will affect my legal enjoyment of the land as per my lease agreement.	As stated above, the applicant has advised that no changes to the leased area of the child care centre can be implemented until the current lease has expired. In terms of the construction of stage 1, if the lease arrangement is being broken by some means, that is considered to be a legal manner between the owner and the lease holder.	Issued addressed.
Services (i.e. sewer and water) that are joined with the existing dwelling houses will be affected when the house is demolished.	The subject site is now serviced by Sydney Water, therefore once the dwelling house and waste water system is demolished, the centre will be required to connect to Sydney water services.	Issued addressed, can be conditioned.
The construction will impact on the ability of the children to sleep, rest and learn, as well as effect the ability of the parents and staff to enter, park and leave the building in a safe manner.	No changes to the child care centre are proposed as part of stage 1, however construction is proposed in close proximity of the child care as part of stage 1. The construction management plan submitted with the application has identified that a noise barrier will be provided around the existing child care fence to assist in the mitigation of noise.	Issue addressed.
Changes to the existing child care centre will result in it being required to be brought up to the current regulations which will include a staff room. This will impact child place numbers as there is not enough room in the centre to provide a staff room under Regulation 107 of the Education and Care Services National Regulations.	This is an issue for the owner of the centre to rectify, and not a consideration at development application stage as no physical works to the child care centre building are proposed.	Issue addressed.

TOCHE (ORIECTION	COMMENT	OUTCOME
Changes to the playground	COMMENT With the changes to the parking	OUTCOME Issue addressed.
Changes to the playground need to comply with the Regulations (i.e. space requirements, outdoor space Regulation 108 and shade Outdoor space shade Regulation 114 of the Education and Care Services National Regulations.	With the changes to the parking area, and the adjustment of the area of the child care centre, a portion of the outdoor play area will be reduced in the western corner. The regulations state that 7m² of outdoor play space is required per child. Therefore a total of 406m² of outdoor space is required. Approximately 500m² of outdoor space is available at the rear, and to the sides of the existing child care centre, which meets the regulations requirements.	
Under Regulation 115 of the Education and Care Services national Regulations, the approved provider must ensure that the premises are designed to facilitate supervision, it is a legal requirement that the approved provider ensure that the education and care services premises are designed and maintained in a way that facilitates supervision of children at all times. Where will the children play while the playground is being relocated?	A condition of consent can be recommended stating that the child care centre is not to be in operation during the proposed works.	Issue addressed, can be conditioned.
Where are the storage sheds	No details have been provided in relation to the relocation of the storage shed, however it is considered that there is sufficient space on site for its relocation.	Issue addressed.
Where are the shade structures required under Regulation 114? Where is the sand pit going to be relocated to?	There is sufficient space to provide for shade structures and a new sandpit.	Issue addressed.
Where will the children go (safely) in the case of an emergency, or when this procedure is practiced quarterly?	The child care centre will be located on site with an area of 1,571m² (which meets the DCP requirement), it is considered that there is sufficient area for emergency evacuation.	Issue addressed.
The proposed medical centre is not an appropriate land use in terms of the location considering its close proximity to the North	Medical Centres are permitted under SEPP Infrastructure 2007 in the R3 Medium Density zone. In terms of the location of the medical centre being in close	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
Kellyville Local Centre.	proximity to the local centre, the proposed use is considered acceptable in this instance.	
The proposed pharmacy as a retail use within the medical centre is not permissible in the R3 Medium Density land use zone.	It is considered that the pharmacy is an ancillary use to the medical centre and no issue is raised with its permissibility or location.	Issue addressed.
The proposed medical centre is defined as a business premises in SEPP Sydney Regional Growth Centre 2006. Business premises are prohibited in the R3 Medium Density zone.	Medical Centres are permitted under SEPP Infrastructure 2007 in the R3 Medium Density zone.	Issue addressed.
The proposed pharmacy and medical centre are a business premise and should be located with the local centre B2 zone.	Refer to above.	Issue addressed.
The urban design elements are not appropriate or suitable for the landmark location the development is situated.	Regarding design as per SEPP 65, the proposed urban design elements are considered satisfactory.	Issue addressed.

SUBDIVISION ENGINEERING COMMENTS

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

TRAFFIC MANAGEMENT COMMENTS

No objection raised to the proposal.

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.

NSW RURAL FIRE SERVICE

The proposal is defined as 'Integrated Development' under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979 as the proposal requires approval from the Rural Fire Service under the provisions of the Rural Fire Services Act. The RFS have provided General Terms of Approval which have been included as Appendix 1 of the consent.

CONCLUSION

The Development Application has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the Sydney Region Growth Centres SEPP 2006, The North Kellyville Precinct Development Control Plan, and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

It is recommended that the Development Application be deferred to allow the applicant to address the following outstanding issues:

- i. Unit mix to comply with The Hills DCP 2012 Part B Section 5 Residential Flat Buildings, SEPP 65 and Residential Flat Design Code.
- ii. Unit typology to comply with The Hills DCP 2012 Part B Section 5 Residential Flat Buildings, SEPP 65 and Residential Flat Design Code.
- iii. Address the proposed hours of operation of the medical centre, and any potential amenity impacts to the residential zone.

IMPACTS:

Financial

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

The Hills Future - Community Strategic Plan

The proposed development is consistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for the satisfactory growth without adverse environmental or social amenity impacts.

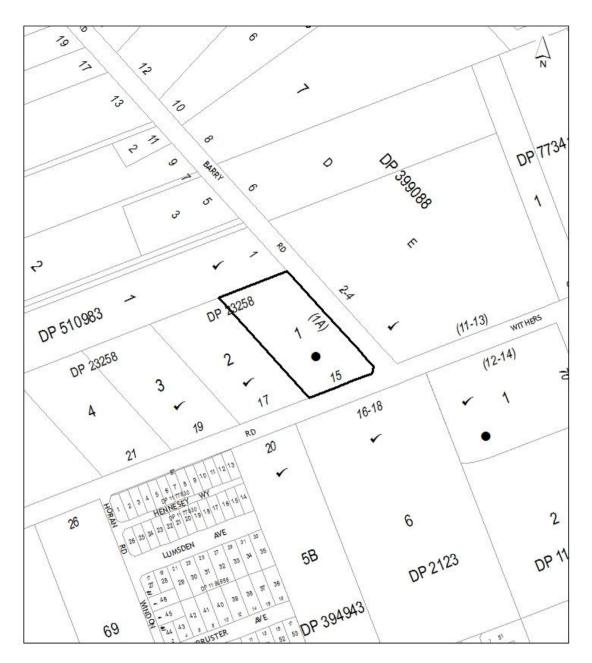
RECOMMENDATION

The Development Application be deferred to allow the applicant to provide unit sizes and bedroom mixes that reflect the desired character of the area and to further consider the hours of the medical centre.

ATTACHMENTS

- 1. Locality Plan
- 2. Aerial Photograph
- 3. SEPP Zoning Map
- 4. Site Plan
- 5. Elevations
- 6. Photomontages
- 7. Landscape Plan

ATTACHMENT 1 - LOCALITY PLAN



- SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED



THE HILLS SHIRE COUNCIL

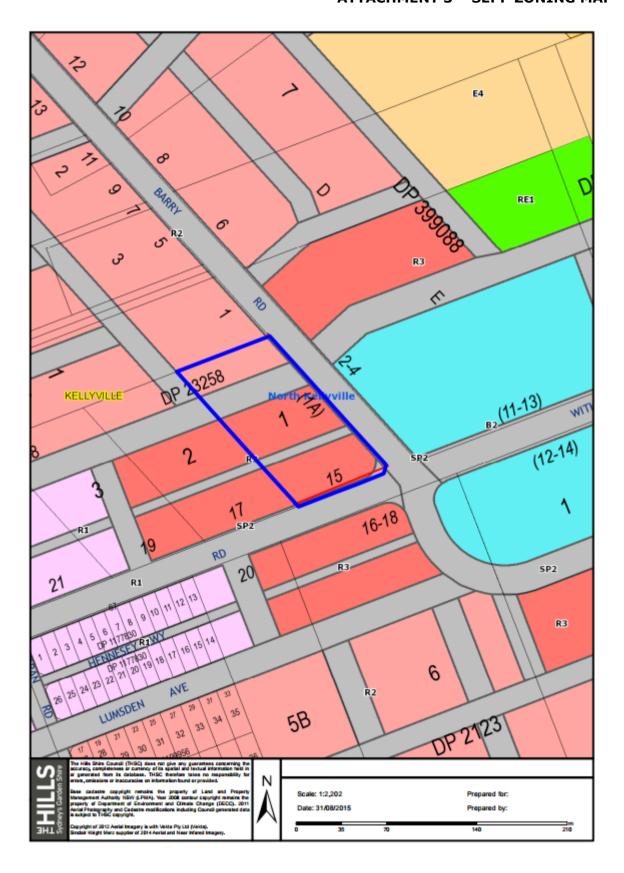
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ATTACHMENT 2 - AERIAL PHOTOGRAPH



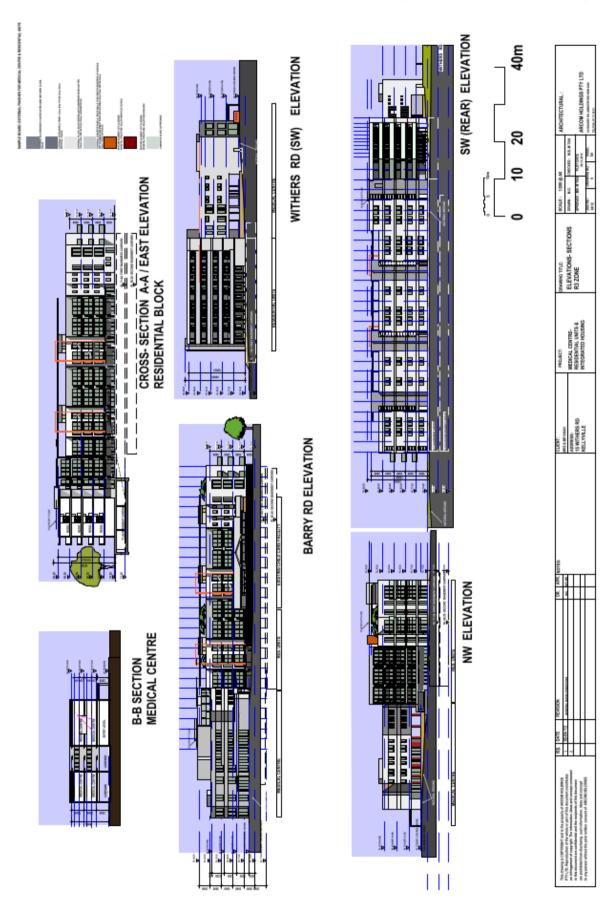
ATTACHMENT 3 - SEPP ZONING MAP

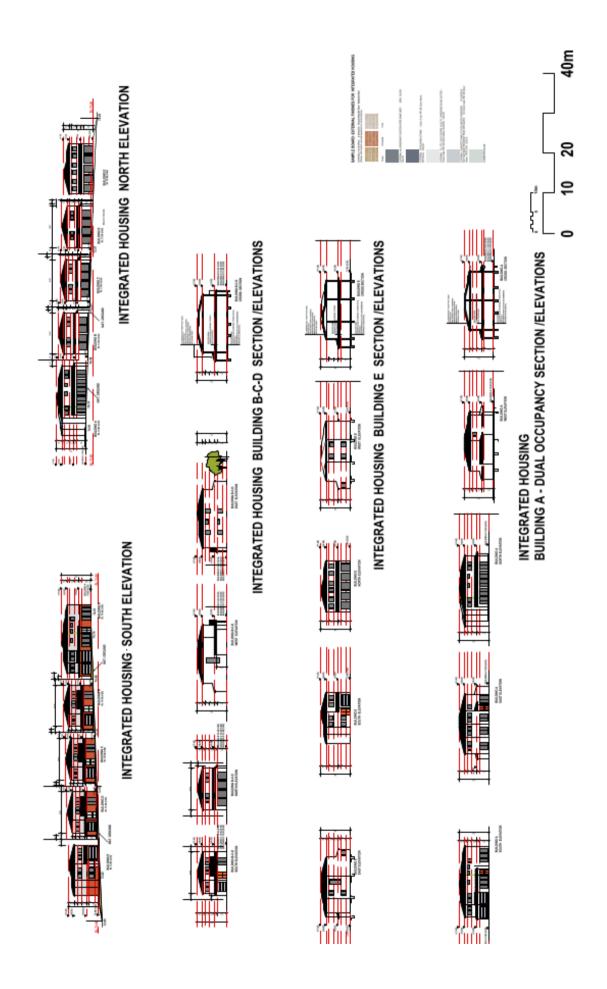


ATTACHMENT 4 - SITE PLAN



ATTACHMENT 5 - ELEVATIONS





ATTACHMENT 6 - PHOTOMONTAGES







ATTACHMENT 7 - LANDSCAPE PLAN

