

## JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	<b>2015SYW014</b>
DA Number	<b>799/2015/JP</b>
Local Government Area	<b>THE HILLS SHIRE COUNCIL</b>
Proposed Development	<b>SUBDIVISION (38 LOTS) AND A MIXED USE DEVELOPMENT INCLUDING SHOP TOP HOUSING (209 RESIDENTIAL UNITS), RETAIL SPACE, AND PARKING FOR 493 VEHICLES.</b>
Street Address	<b>LOT 22 DP 1071637 AND LOT 4 DP 241932 – NOS. 133-149 SAMANTHA RILEY DRIVE AND NO. 12 HEZLETT ROAD, KELLYVILLE</b>
Applicant/Owner	<b>COMBINED PROJECTS (KELLYVILLE) PTY LTD</b>
Number of Submissions	TWO PLUS A PETITION WITH TWENTY-TWO SIGNATURES
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	<ul style="list-style-type: none"> <li>• SEPP SYDNEY REGION GROWN CENTRES 2006</li> <li>• NORTH KELLYVILLE DCP 2008</li> <li>• SEPP 65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT</li> <li>• RESIDENTIAL FLAT DESIGN CODE</li> </ul>
List all documents submitted with this report for the panel's consideration	COPY OF SUBMISSIONS AND PETITION
Recommendation	APPROVAL
Report by	DEVELOPMENT ASSESSMENT COORDINATOR ROBERT BUCKHAM

## **EXECUTIVE SUMMARY**

The Development Application is for the demolition of the existing dwellings and associated structures and the construction of a mixed use development comprising subdivision (38 Lots) and a mixed use development including shop top housing, retail space (including 13 specialty shops and a supermarket of 1,580m<sup>2</sup>), parking and landscaping. The application includes 209 residential units 13 x 1 bedroom (6.2%), 162 x 2 bedroom (77.6%) and 34 x 3 bedroom (16.2%) and parking for 493 vehicles.

The site subject is zoned B1 Neighbourhood Centre, R1 General Residential and R2 Low Density Residential and is within the Hezlett Road Neighbourhood Centre identified in the North Kellyville DCP.

The proposal seeks to vary the building height of 16 metres identified in SEPP Sydney Region Growth Centres 2006 under Clause 4.6 of the SEPP. The proposal has a maximum height encroachment of 9m or 56.25% with a proposed maximum building height of 25m. The variation to the height is attributed to site constraints, changes to road levels in and around the site and a redistribution of residential apartments on the site to better relate to the context of other approved or envisaged developments in the precinct.

The density, bulk and scale of the proposal has been clustered in certain locations rather than being spread out across the whole development site which would otherwise potentially impact more adjoining residents. Specifically the development has limited part of the site (Lot 2) to a retail pad site that will facilitate a future development application for a drive-thru restaurant. The applicant has modelled a potential residential built form on this part of the site that would equate to approximately 5,600m<sup>2</sup> of residential floor space. Some of this floor space has been utilised within the footprints of Buildings A, B and C on the site. This has allowed the applicant to provide a built form outcome that is similar to the service station identified in the indicative Hezlett Road Centre design shown in the DCP. It is considered that this form of development provides a better transition to the residential land to the south of Samantha Riley Drive rather than the 'highest and best' use permissible on the site. To further balance the bulk and scale of the proposed buildings, the application also provides an open retail plaza that is north facing and activates the centre from the activity spine of the precinct (Hezlett Road). An open landscaped communal podium is provided above the retail shops providing useable open space that contributes to streetscape and lessens the bulk and scale of the development on existing residents adjacent to the north eastern part of the development site.

The alternative built form outcome proposed from that identified in the North Kellyville DCP generally results in a reduction in impacts to surrounding properties and an improved internal amenity for future residents. It is considered reasonable to accommodate additional height given the proposal has been specifically designed to the sites opportunities and constraints, is consistent with the built form expected by the planning controls for the site, mitigates impacts on future surrounding developments and results in an appropriate density across the development site.

A number of other variations are proposed including setbacks and access, and other general precinct controls pertaining to the Hezlett Road Neighbourhood Centre. The proposal is consistent with the future character envisaged for the Release Area and is considered to be appropriately designed.

The proposal was notified to adjoining and surrounding properties and two submissions and a petition were received. The submissions raise concerns with traffic, and impacts associated with the adjoining substation site.

On 19 June 2015 the applicant filed a Class 1 Application with the Land and Environment Court, appealing against the deemed refusal of the subject development application. The proceedings are listed for first call over on 17 July 2015. The deemed refusal does not include the latest amendments to common open space areas which include further embellishment of the podium and central common open space areas and two additional common roof top areas on Buildings B and C.

It is recommended that the Development Application be approved subject conditions.

In the absence of the JRPP process, this matter would be determined at an Ordinary meeting of Council.

## BACKGROUND

## MANDATORY REQUIREMENTS

Owner:	Mr and Mrs Elias, Mr Chan and Memgild Pty Ltd.	1.	<u>SEPP Sydney Region Growth Centres (North Kellyville) 2006</u> – Variation required, see report.
Zoning:	B1 Neighbourhood Centre, R1 General Residential, R2 Low Density Residential	2.	<u>SEPP 65 Design Quality of Residential Flat Buildings</u> – Satisfactory.
Area:	1.77Ha	3.	<u>SEPP Building Sustainability Index BASIX 2004</u> – Satisfactory.
Existing Development:	Dwelling and ancillary structures	4.	<u>SEPP 55—Remediation of Land</u> – Satisfactory
		6.	<u>DCP North Kellyville</u> – Variations, see report.
		6.	<u>Section 79C (EP&amp;A Act)</u> – Satisfactory.
		7.	<u>Section 94 Contribution</u> – Yes, currently \$5,785,336.04

## SUBMISSIONS

## REASON FOR REFERRAL TO JRPP

1. Exhibition:	Yes, 30 days	1.	Capital Investment Value in Excess of \$20 million (\$110,000,000).
2. Notice Adj Owners:	Yes, 30 days		
3. Number Advised:	42		
4. Submissions Received:	Two plus a petition with 22 signatures.		

## HISTORY

**12/12/2014**

Subject Development Application lodged.

**05/02/2015**

Briefing of Joint Regional Planning Panel.

**10/03/2015**

Letter sent to applicant requesting additional information in relation to the application being integrated development and requiring referral to the Rural Fire Service, Height Variation, SEPP 65 Compliance, Servicing, Plan Detail, Contamination, Acoustics, Waste and Engineering Matters.

<b>26/03/2015</b>	Bushfire report submitted.
<b>07/04/2015</b>	Additional information submitted in relation to letter dated 10 March 2015.
<b>04/05/2015</b>	Meeting with Council staff and applicant in relation to height variation justification and cross ventilation required under the Residential Flat Design Code.
<b>06/05/2015</b>	Further additional information submitted in relation to matters discussed at meeting with Council staff.
<b>14/05/2015</b>	Bushfire Safety Authority received from the NSW Rural Fire Service.
<b>18/06/2015</b>	Draft landscape plans tabled for discussion detailing further embellishment of common open space areas and additional roof top communal areas.
<b>19/06/2015</b>	Amended architectural and landscaping plans formally submitted.
<b>19/06/2015</b>	<p>Class 1 Application lodged with the Land and Environment Court, appealing against the deemed refusal of the subject development application. The proceedings are listed for first call over on 17 July 2015.</p> <p>The deemed refusal does not include the latest amendments to common open space areas which include further embellishment of the podium and central common open space areas and two additional common roof top areas on Buildings B and C lodged with Council on the same day.</p>
<b>25/06/2015</b>	Further briefing to JRPP given the applicant lodged a Class 1 Application with the Land and Environment Court, appealing against the deemed refusal of the subject development application.

## **PROPOSAL**

The Development Application is for subdivision (38 Lots) and a mixed use development including shop top housing, retail space, parking and landscaping. The application includes 209 residential units (13 x 1 bedroom (6.2%), 162 x 2 bedroom (77.6%) and 34 x 3 bedroom (16.2%) and parking for 493 vehicles.

### Subdivision and Civil Works

The proposal involves the consolidation of two existing allotments and creation of 38 allotments (refer Attachment 5) which are described as:

Lot 1 – Retail and Residential (shop top housing and residential units) – 12,147.7m<sup>2</sup>;  
 Lot 2 – Retail Pad site (drive thru restaurant subject to further application) – 2,403.6m<sup>2</sup>;  
 Lots 3-32 – Vacant land Lot 375m<sup>2</sup> – 600.7m<sup>2</sup>; and  
 Lots 33-38 – Integrated Housing Lots (Approval Pathway A2 Building Envelope Plan) Lots 242-259.8m<sup>2</sup>.



The development also includes the construction either in part or full and dedication to Council of five new Roads within the development site. Hezlett Road is captured by the Contributions Plan and is not required to be upgraded by this Development Application.

#### Built Form

Building A is on the eastern side of proposed "Lot 1" with frontage to Hezlett Road and Beaton Road. The development comprises a shop top housing building with ground floor retail space incorporating a supermarket, liquor store and specialty retail and restaurant tenancies. On the north eastern corner of the site is an open plaza area which is intended to be used for outdoor dining. Ninety apartments are proposed within Building A. A common open space area is proposed on the podium level.

Building B and C are located on the western side of proposed "Lot 1" and contain 119 apartments. Roof top common open space is provided for these buildings.

#### Land Use

The application seeks in principle approval for proposed "Lot 2" as a future development site for a future application. The application is likely to seek approval for a drive-thru restaurant. Access from Samantha Riley Drive is sought as part of this application.

Hours of operations are sought for the specialty retail uses being 7.00am to 10.00pm seven days a week and 7.00am to midnight seven day a week for the supermarket.

The hours of operation sought for the loading dock are from 6.00am to 10.00pm seven days a week.

#### Applicant's Justification

The proposal provides for mixed use development with an active retail frontage that predominantly addresses Hezlett Road. This is an appropriate location for ground level retail given the high visibility catchment of Hezlett Road for passing traffic.

A north facing plaza provides for a variety of vibrant retail uses such as cafes and restaurants on a prominent but protected corner of the development.

The proposal also provides an appropriate transition to lower scale residential neighbours by reducing the visual and traffic impacts compared to the DCP where the dominance of retail uses with vehicle oriented frontages (servicing) would have more of a negative visual and transitional impact from the 'local' street. The development includes internalised servicing located 'mid-block' between the proposed development and existing substation facility is appropriate given the use and low visual quality of the existing substation.

The development improves the legibility of the Neighbourhood Centre from that identified in the DCP and provides a clear transition avoiding long building lengths that would have negatively impacted on the public domain by substantial overshadowing.

Further to the above comments, the applicant has provided the following comments specifically in relation to the social and economic impacts in the locality for the subject site:

- *The development will contribute to the provision of new social infrastructure including a new neighbourhood centre which will provide local scale retail facilities to meet the day-to-day convenience needs of the local community.*
- *The delivery of a good quality development will act as a precedent and stimulate further development and growth in the area. Those investing in North Kellyville will have confidence in the commitment to the development of the area.*

- *It will positively impact on the supply of residential land as it will increase the quantity and diversity of new dwellings North Kellyville. New residential apartments will add to the range of housing types and prices available within the area. Additionally, opportunities for new detached residential stock for which there is known demand within the locality, will be created through the proposed residential subdivision.*
- *The project will deliver benefits to the local economy through the additional population and associated expenditure that will support local businesses within the locality.*
- *Section 94 contributions payable in respect of the proposed development will contribute to the introduction of new infrastructure to support the release area.*
- *This proposal would stimulate the local economy through the capital investment spending in the order of \$110 million.*
- *The proposal will create a significant number of new jobs to service the retail spaces as well as indirect jobs and revenues to service the multi-unit residential strata units.*
- *It will enhance the amenity and desirability for pedestrians walking along the surrounding streets with improvements to the footpaths and active ground level uses.*

## **ISSUES FOR CONSIDERATION**

### **1. Compliance with Requirements of SEPP (Sydney Region Growth Centres) 2006**

#### **a. Permissibility**

The subject site is located within the North Kellyville Precinct, and is zoned pursuant to SEPP (Sydney Region Growth Centres) 2006. The development site is located on land zoned B1 Neighbourhood Centre, R1 General Residential and R2 Low Density Residential.

The proposal is defined as the following:

#### **B1 Neighbourhood Centre**

**“Shop top housing”** means one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.

**“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.

The zoning table identifies that a residential flat building is classified as prohibited development, however the table includes in brackets after the landuse “residential flat building **(other than as a component of a mixed use development)**”. As such Building B and C which do not contain ground floor retail or business uses are permissible and have been classified as residential flat buildings as they are located within a mixed use development. The development has been assessed on this basis.

It is considered that Buildings B and C would also satisfy the SEPP definition of shop top housing. The shop top housing definition allows dwellings to be otherwise attached to ground floor retail or business premises rather than only above. By virtue of being within

the same development site and being connected by various pathways throughout the site and therefore could also be considered as a component of shop top housing.

It should be noted that the definition of shop top housing in the SEPP differs from the Standard Instrument definition subject to a recent decision in the Land and Environment Court (*Hrsto v Canterbury City Council*). In this case, the Council successfully argued that the part of the development that contained 'residential accommodation' on the ground floor level of the building could not be characterised as 'shop top housing' and was therefore prohibited. The standard Instrument definition states; "one or more dwellings located above ground floor retail or business premises".

The application also includes the following uses which are permissible in the zone.

"Retail premises"

"Business premises"

"Food and drink premises"

#### R1 General Residential and R2 Low Density Residential

The subdivision components of the development are permissible and the specific standards addressed within the development standards section below.

#### **b. Development Standards**

The following addresses the principal development standards of the SEPP:

<b>CLAUSE</b>	<b>REQUIRED</b>	<b>PROVIDED</b>	<b>COMPLIES</b>
4.1AA Subdivision resulting in lots between 225-300m <sup>2</sup>	Development consent may be granted to the subdivision of land to which this clause applies resulting in the creation of a lot that has an area of less than 300m <sup>2</sup> (but not less than 225m <sup>2</sup> ) if the consent authority is satisfied that the lot will contain a sufficient building envelope to enable the erection of a dwelling house on the lot.	Minimum lot size is 242m <sup>2</sup> . A building envelope plan and public domain plan have been provided.	Yes
4.1A Minimum lot sizes for development in Zone B1 Neighbourhood Centre and Zone B2 Local Centre	Residential flat building – 4,000m <sup>2</sup>	12,147.7m <sup>2</sup>	Yes
4.1AB Minimum lot size for residential development in certain residential zones	R2 Low Density Residential Zone: Minimum lot size 360m <sup>2</sup> for properties with a residential density of 10 dwelling per net hectare.	Minimum lot size 375m <sup>2</sup>	Yes
4.1B Residential	Minimum residential		Yes

Density	<p>densities</p> <p>R1 General Residential - 12.5 dwelling per hectare</p> <p>R2 Low Density Residential – 10 dwelling per net hectare</p>	<p>R1 – 19.3 dwellings per net hectare</p> <p>R2 – 15 dwellings per net hectare</p>	
4.3 Height of buildings	16 metres	Components of the buildings exceed 16 metres in height. Encroachments of up to 9 metres.	No – see comments below.
4.4 Floor space ratio	<p>0.5:1</p> <p>Note: Despite any other provision of this Precinct Plan, any part of a building in Zone B1 Neighbourhood Centre or Zone B2 Local Centre used for residential accommodation is not to be included in the calculation of floor space ratio.</p>	0.24:1 (excluding retail pad site which will provide for approximately 500m <sup>2</sup> which would equate to an anticipated floor space ratio of 0.28:1 across the site)	Yes
4.5A Business, office and retail floor area	The total gross floor area used for the purposes of business, office and retail premises on all land in Zone B1 Neighbourhood Centre must not exceed 4,000 square metres.	3,498m <sup>2</sup> plus an anticipated 500m <sup>2</sup> within the retail pad site, subject to a future development application.	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	Variations proposed to height are addressed below.	Yes

### c. 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 25 metres a variation of 9 metres or 56.25% is sought:

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 9.

Clause 4.6 Exceptions to Development Standards states:

(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.*

All three buildings exceed the 16m height limit from natural ground level. The proposed height variation varies across the development site with the maximum exceedence located centrally on Building A. The exceedence at its highest point relates to the lift over-run and would not be visible from any public space. The exceedences to building's B and C relate to the roof terraces and upper floor units which again are primarily centrally located and will not be visible from a public space.

The specific heights for the proposed buildings are:

Building A	18.55m to 24.89m
Building B	20.31m
Building C	21.34m

In determining the appropriateness of the variation request a number of factors have been taken into consideration to determine whether the variation is supportable in this instance. They include:

#### Measurement of building height

The SEPP defines building height as:

**"building height** (or **height of building**) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The site has a fall of approximately of 14m from the north eastern corner of the site towards Samantha Riley Drive. It is also noted that the ground levels surrounding the site relating to future roads and associated infrastructure will be raised by up to 1.5m in accordance with Council's design for the reconstruction of Hezlett Road and Samantha Riley Drive. The applicant has provided levels from future footpath levels to provide a perspective of the height for when the development is completed. Using these levels; would still result in a variation to the 16m standard so this constraint alone is not considered a reason to support the variation.

#### Site Characteristics

As identified above the variation is considered satisfactory given that the site is surrounded by existing and proposed future roads and lower density land controlled by the developer for which approval is also sought as part of this application. As such future residents to the north and west that adjoin the site will be aware of what development outcome is expected when purchasing. In relation to the sites to the east across Hezlett Road, it is noted that these sites are part of the Hezlett Road Centre and also have a 16m height standard. These site are also located higher than the subject site therefore lessening the impact of the development. Lot 201 DP 1187326 has a shop top housing development approved. The development is identified in the elevations and section drawings. When the two developments are considered in context of one another the built form and scale is consistent.

#### Impacts

The shadow impact from the development is considered reasonable and will fall primarily onto the substation site to the south and retail pad site which is part of this application. The separation to adjoining future development will reduce the potential for overlooking and privacy impacts.

#### Density

In assessing the appropriateness of the height variation it needed to be demonstrated and justified that the proposal was not an over development and the additional height was not as a result of the developer wanting to increase yield. The subject site is not

identified within the minimum density maps contained within the SEPP. It is considered that this is the case to allow business zoned land to be developed as retail only and not as a shop-top housing development.

In order to quantify an appropriate residential yield the Residential Density Guide for Landcom that is referred to in the Growth Centres DCP has been used as a guide. The guide provides a range of development scenarios and anticipated density for certain development types. The guide identifies a large density band of 60 to 120 dwellings per net hectare for apartment developments of 3 or more storeys. The development site (1.94Ha when calculated as per the net developable area) would be capable of supporting 116 to 232 dwellings. The development provides 209 dwellings.

#### Built Form

The applicant has sought to locate the areas of greater height exceedence centrally within the buildings and away from the lower density residential zones. The greatest variation is located on Building A which is located adjacent to the substation site and the eastern side of the Hezlett Road Neighbourhood Centre which will have a similar built form outcome.

The urban form is considered to be appropriate for the area and the development of a modern mixed use development. The proposal incorporates a variety of finishes and colours and will result in an appropriate urban outcome. The provision of the northern plaza provides an activation point that is north facing and located along Hezlett Road, the main activity spine in the precinct.

The proposal comprises an alternative built form rather than buildings arranged around the perimeter of the site as envisaged under the *North Kellyville Development Control Plan* for the Hezlett Road Neighbourhood Centre. The amended built form generally results in a reduction in impacts to surrounding properties and in improved internal amenity.

To further support the variation the applicant has provided a series of drawings (refer Attachment 8) that model the built form in comparison to planning controls relating to the subject site, provide context with adjoining approved and proposed built form and demonstrate visually where the development exceeds the height plane from existing natural ground level and the future ground levels around the site.

The density, bulk and scale of the proposal has been clustered in certain locations rather than being spread out across the whole development site which would potentially otherwise impact more adjoining residents. Specifically the development has limited part of the site (Lot 2) to a retail pad site that will facilitate a future development application for a drive-thru restaurant. A condition is recommended that will place a restriction on Lot 2 to limit further residential development. The applicant has modelled a potential residential built form on this part of site that would equate to approximately 5,600m<sup>2</sup> of residential floor space. Some of this floor space has been utilised within the footprints of Buildings A, B and C on the site. This has allowed the applicant to provide a built form outcome that is similar to the service station identified in the indicative Hezlett Road Centre design shown in the DCP. It is considered that this form of development provides a better transition to the residential land to the south of Samantha Riley Drive rather than the 'highest and best' use permissible on the site. To further balance the bulk and scale of the proposed buildings, the application also provides an open retail plaza that is north facing and activates the centre from the activity spine of the precinct (Hezlett Road). An open landscaped communal podium is provided above the retail shops providing useable open space that contributes to streetscape and lessens the bulk and scale of the development on existing residents adjacent to the north eastern part of the development site.



Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

Further to the above comments a specific address of the zone objectives and Height of Building Clause objectives is provided below:

#### B1 Zone Objectives

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To ensure the scale and type of business development is compatible with the amenity of surrounding areas.
- To allow for residential development that contributes to the economic and social vitality of the neighbourhood centre.
- To ensure that residential development does not preclude the provision of active retail, business and community uses at street level.
- To ensure that residential development does not detract from the primary function of the zone which is to provide for retail, business and convenience uses to serve the community.
- To promote retail activities in accessible locations that encourage walking.
- To promote a sense of place and focal points for the local community.
- To ensure retail development does not adversely impact on the viability of retail development in the Local Centre Zone.

**Comment:** The development satisfies the zone objectives by providing accessible retail uses that are located to minimise impacts on adjoining residential land whilst providing residential uses on the site that contribute to the social vitality of the neighbourhood centre. The commercial floor spaces proposed on the site are well below the allowed 0.5:1 FSR and therefore the proposal will not adversely impact on the viability of the Local Centre.

#### Clause 4.3 Height of Buildings Objectives:

- (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.*

**Comment:** The development has been designed to provide a built form outcome that responds to the sites opportunities and constraints. The development facilitates higher densities in the neighbourhood centre and minimises impacts on surrounding residential



land. The height variation does not result in any further detrimental impacts on adjoining developments in terms of solar access or bulk and scale.

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.

## **2. Compliance with the North Kellyville Development Control Plan 2008**

The proposal has been assessed against the requirements of the North Kellyville Development Control Plan.

The DCP identifies that the Hezlett Road Centre will provide residents in the precinct and residents on the southern side of Samantha Riley Drive a convenient centre for retail and grocery shopping. The form of development envisaged will be urban and compact in character with no front or side setbacks. Ground floor premises including shops, restaurants and cafes will encourage street interaction. Commercial uses and apartments will be located on the upper floors. It is considered that the development meets the vision of the plan.

Section 4 of the DCP provides development controls that specifically relate to shop top housing and residential flat building developments. Building A has been assessed against the shop top housing controls and Buildings B and C have been considered against the residential flat building controls. The development is compliant with the exception of some front setbacks. The development generally provides setbacks greater than the DCP requirements however to provide an articulated façade, a variation to the setback controls is proposed. This is addressed in detail below.

Section 5.2.1 of the DCP provides a set of site specific controls for the Hezlett Road Neighbourhood Centre. The controls relate to the provision of active street frontages, awnings, signage, parking and site servicing. The proposed development has active street frontages which promote pedestrian activity and casual surveillance. The design incorporates a number of features to provide an attractive street address with awnings and shop fronts provided to ensure passive and active use. The application does not include any signage and as such a condition of consent has been recommended requiring a further application for signage. Adequate parking and servicing arrangements have also been provided for the development. A variation is proposed to this section of the DCP which is addressed in detail below.

The proposal includes the following variations to the DCP.

### **a. Hezlett Road Neighbourhood Centre - Indicative Layout**

The Hezlett Road Neighbourhood Centre indicative layout plan as shown in the North Kellyville Precinct DCP. The applicant has undertaken an urban design analysis against the indicative layout provided in the DCP and the subject proposal to quantify and qualify the variation (Refer Attachment 10).

#### **Comment:**

The relevant objectives of clause 5.2.1 are as follows:

- 1. To create a vibrant, mixed use Neighbourhood Centre that provides a range of small-scale retail, business and community uses which serve the needs of people who live in the surrounding neighbourhood.*

2. *To ensure that the detailed design of the neighbourhood centre is undertaken in a co-ordinated manner in order to achieve a high quality urban design outcome.*
3. *To provide opportunities for medium density housing.*

The proposal comprises a single development rather than multiple buildings arranged and a U shaped mixed use building as envisaged under the *North Kellyville Development Control Plan* for the Hezlett Road Neighbourhood Centre. The development internalises parking and servicing which generally results in a reduction in impacts to surrounding properties and improved internal amenity. The key planning principles are provided being active street frontages and a range of uses to ensure the vitality of the centre.

## **b. Function and Uses**

This clause specifies that the neighbourhood centre will provide up to a maximum of 3,000m<sup>2</sup> of retail floor space including a small supermarket with a maximum floor space of 1,500m<sup>2</sup> (identified in the Hezlett Road neighbourhood Centre Vision Statement). It is noted that the DCP is inconsistent with the SEPP which permits 4000m<sup>2</sup> of retail or commercial floor space. Given that the proposal is consistent with the provision of the SEPP the variation to the DCP is considered supportable.

The proposal incorporates a future supermarket and integrated liquor store among the retail tenancies proposed within the podium of the mixed use building. The tenancy comprises floor space of 1,580m<sup>2</sup>, exceeding the maximum allowable floor space for supermarkets within the B1 zone (1,500sqm) under the DCP. The exceedance is minor (80m<sup>2</sup>), notwithstanding this it is anticipated that the liquor store component of the tenancy will occupy floor space of more than 80m<sup>2</sup>. The supermarket component of the tenancy would therefore occupy floor space of less than 1,500m<sup>2</sup>.

## **c. Building Height**

The DCP also requires that development provide a range of building heights up to four storeys. The Development Application proposes primarily a five storey built form with a small sixth storey pop up located centrally for each of the buildings. As identified in Section 1 of this report the variation to height has been assessed against the site specific opportunities and constraints, impacts and density.

## **d. Parking and Access**

Clause 5.2.1 seeks to prevent access to parking, loading docks and waste collection areas from Hezlett Road. All servicing to the shopping centre will be from Hezlett Road via a dedicated driveway. This approach has been selected as it will reduce adverse amenity impacts (specifically noise) on future residential properties. The approach is also preferred as it reduces potential conflicts between servicing vehicles and residential traffic using Beaton Road. Given the indicative layout plan contradicts this access restriction it is considered reasonable for the reasons above and is supported.

## **e. Front Setback**

The DCP requires all retail and commercial buildings in the centres to have a zero front setback. The DCP also requires mixed use buildings to have the residential floors setback in accordance with Figure 26 that illustrates the residential levels must be setback 4 metres from the retail levels that have a zero setback. Residential flat buildings are required to have a setback of 4.5m. The development is generally set back beyond the 4.5m, however does encroach into the Beaton Road setback by 1.2m (3.3m) and 200mm (4.3m) into the Winning Street setback.

The applicant has justified the front setback variation on the basis it does not result in any privacy or overshadowing impacts.

The applicant has suitably addressed the variation through articulated built form. The building will also be screened with street landscaping to maintain compliance with the DCP objectives and is therefore considered satisfactory in this instance.

### 3. Compliance with State Environmental Planning Policy (SEPP) No. 65

A Design Verification Statement has been prepared. This statement has addressed the ten (10) matters for consideration under SEPP 65. The relevant rules of thumb of the Residential Flat Design Code are addressed below:

DEVELOPMENT CONTROL	SEPP 65 REQUIREMENTS (Rules of Thumb)	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.	There is no FSR control for residential component of the site.	NA.
	Test heights against the proposed number of storeys and the minimum ceiling heights for the desired building use.	<p>The proposed ceiling heights for each residential storey are 2.7m and 5.8m for the non-residential ground floor.</p> <p>There is a variation to building height. The variation is supported as the development generally results in a reduction in impacts to surrounding properties and in improved internal amenity. In this regard the proposal responds well to the local context.</p>	
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 8m to 16m. It is demonstrated that sufficient natural ventilation and satisfactory daylight are provided. The building is generally orientated north / south which provides appropriate solar access to all units.	Yes

<b>DEVELOPMENT CONTROL</b>	<b>SEPP 65 REQUIREMENTS (Rules of Thumb)</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
		<p>The proposed ceiling heights for each residential storey are 2.7m which exceeds the minimum required 2.4m.</p> <p>Each unit contains at least one sliding door and to the attached balcony to provide adequate natural ventilation.</p>	
Building Separation	<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>	The development meets the separation controls or where the separation is less than the recommended building separation additional screening has been provided to protect the amenity of residents.	Yes
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.	These setbacks provide for active street frontage and maximum use of the land for the mixed use development.	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	The development is isolated from adjoining sites. The proposed setbacks are considered acceptable for a Local	Yes.

DEVELOPMENT CONTROL	SEPP 65 REQUIREMENTS (Rules of Thumb)	PROPOSED DEVELOPMENT	COMPLIANCE
	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.	Centre development.	
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>	No residential FSR control for the subject 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.	The majority of at ground common open space 31.2% is deep soil. Additional common open space is provided on the roof top.	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 will provide communal open space areas of 3150m <sup>2</sup> . The combined communal areas represent 25.9% of the site area.  Due to the NKDCP controls no apartments are provided on the ground level. All units are provided with a balcony.	Yes  Yes
Pedestrian Access	Identify the access requirement from the street or car parking area to the apartment entrance.	Pedestrian access is provided from all three street frontages. Entrance and access to the basement parking is	Yes

<b>DEVELOPMENT CONTROL</b>	<b>SEPP 65 REQUIREMENTS (Rules of Thumb)</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
	Provide barrier free access to at least 20% of dwellings in the development.	achieved via the internal stairs and elevators.  Barrier free access is provided to the building with 22 units being nominated as adaptable units.	Yes
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 Hezlett Road and the secondary frontage on Winning Street and is suitably separated from the pedestrian access.	Yes  Yes
<b>Part 3: Building Design</b>			
Apartment Layout	Single aspect apartments should be limited to 8 metres from a window.	Single aspect apartments are included on each of the residential levels. The maximum depth is 8m from a window.	Yes
Apartment Mix	Provide a diversity of apartment types to cater for different household requirements.	The proposal provides for 13 x 1 bedroom (6.2%), 162 x 2 bedroom (77.6%) and 34 x 3 bedroom (16.2%) 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.	Ground floor apartments are proposed on Winning Street and Beaton Street. Mixed use ground floor	Yes

<b>DEVELOPMENT CONTROL</b>	<b>SEPP 65 REQUIREMENTS (Rules of Thumb)</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
	Provide ground floor apartments with access to private open space (i.e. terrace, garden).	provided in other areas in accordance with the DCP.	
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.	Corridors and lobbies service 6 units each.	Yes
Storage	In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: <ul style="list-style-type: none"> <li>- Studio – 6m<sup>2</sup></li> <li>- 1 bed – 6m<sup>2</sup></li> <li>- 2 bed – 8m<sup>2</sup></li> <li>- 3 bed+ - 10m<sup>2</sup></li> </ul>	Separate storage closets are provided in each unit in addition to storage areas in the basement car park either adjacent to resident spaces or within the locker area on Level B3.	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.	71% of the units receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter.	Yes
Natural Ventilation	Building depths, which supports natural ventilation typically range from 10 to 18 metres.  60% of residential units should achieve natural cross flow ventilation.	Max building depth 28m however the maximum unit depth is 19m in opposite aspect facing units that allow cross ventilation for the entire unit.  60.3% units achieve cross flow ventilation. Units without dual orientations are provided with cross over vents.	Yes  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	The development will be connected to the	Yes

<b>DEVELOPMENT CONTROL</b>	<b>SEPP 65 REQUIREMENTS (Rules of Thumb)</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
	with lead or bitumen-based paints or from asbestos-cement roofs. Normal guttering is sufficient for water collections.	Rouse Hill reticulated alternative water supply to be used for landscape irrigation and car washing and will also provide rainwater tanks for water reuse on site.	

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

**(i) Context**

The development responds to the anticipated context of the North Kellyville Growth Centre release area. The DCP identifies that the Hezlett Road Centre will provide residents in the precinct and residents on the southern side of Samantha Riley Drive a convenient centre for retail and grocery shopping. The form of development envisaged will be urban and compact in character. Ground floor premises including shops, restaurants and cafes will encourage street interaction. Commercial uses and apartments will be located on the upper floors. It is considered that the development meets the anticipated context for the locality.

**(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 proposed development adopts the principles found within the Development Control Plan provisions.

The spatial relationship of buildings has been considered. The proposed buildings will maintain adequate separation with appropriate distances between buildings. The building separations and setbacks will provide a sufficient degree of separation and landscaping to ensure privacy and solar access is maintained.

The proposed street setbacks establish the front building alignment and contribute to the public domain by defining and enhancing the streetscape. The street setbacks provide for continuity of the street facades and enhance the setting for the building.

The setbacks allow for landscape areas, entrances and some deep-soil zones. The proposed setbacks have been developed to provide a satisfactory distance from surrounding boundaries, to form active street frontages. The proposal addresses matters such as privacy, acoustic impact 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 by creating active retail uses, with the residential floors above. The selection of colours and materials enhances the segmented appearance and provides distinct yet harmonious building facades.



#### **(iv) Density**

The proposed density has been determined by a number of design factors contained in the planning controls. In assessing the appropriateness of the height variation it needed to be justified that the proposal was not an over development and that the additional height was not as a result of the developer wanting to increase yield. The subject site is not identified within the minimum density maps contained within the SEPP so to allow business zoned land to be developed as retail only and not as a shop-top housing development.

In order to quantify an appropriate residential yield the Residential Density Guide for Landcom that is referred to in the Growth Centres DCP has been used as a guide. The guide provides a range of development scenarios and anticipated density for certain development types. The guide identifies a large density band of 60 to 120 dwellings per net hectare for apartment developments of 3 or more storeys. The development site (1.94Ha when calculated as per the net developable area) would be capable of supporting 116 to 232 dwellings. The development provides 209 dwellings.

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

The demolition and building construction phase will utilise appropriate waste management controls. 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 low-maintenance environment. 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 incorporate satisfactory access and circulation, apartment layouts, floor areas, ceiling heights, private open space, common open space, energy efficiency rating, adaptability and diversity, safety, security and site facilities.

#### **(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.

The NSW Police have reviewed the Development Application and outlined a number of Crime Prevention Through Environmental Design (CPTED) recommendations to ensure that the site is appropriately protected.

**(ix) Social Dimensions**

The location of this development provides dwellings with architectural style and character within a precinct that will provide in the future, a range of retail and support services.

**(x) Aesthetics**

The proposal integrates a number of recesses and projections into the facades of the structure to articulate the overall mass and form into smaller segments. The bulk of the overall building works and height is reduced by the articulation of the facades, creating smaller segments in order to minimise the overall bulk and scale of the development. The design is modern in style and appropriate for the area.

**4. 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. The development complies 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 comprise 3 or more bedrooms. The development comprises 13 x 1 bedroom (6.2%), 162 x 2 bedroom (77.6%) and 34 x 3 bedroom (16.2%). Of the 209 proposed units, 96 units (46%) fall under 'Type 1', 105 units (or 50.2%) fall under 'Type 2' and 8 units (3.8%) fall under 'Type 3' apartment sizes. The development does not conform to the unit size typology requirement in the DCP.

Although the development does not meet the requirements of the DCP, the proposal complies with SEPP 65 requirements in terms of minimum unit sizes. 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.

**5. Residential Amenity and Common Open Space**

The proposal provides for 3,150m<sup>2</sup> of common open space areas that are provided in four locations being on the podium level of building A, centrally between building A and buildings B and C, and on the rooftop of buildings B and C in two separate areas. The DCP requires that the site be provided with common open space areas totalling 15% of the site area (1,822m<sup>2</sup>). The development provides for common areas totalling 25.9% of the site area. The areas have been embellished to a high level as detailed on the landscape plans (refer Attachment 13).

The facilities provided include:

- Children's play area with mounded soft fall finishes comprising slides, sandpits and interpretive play equipment;
- 4 pergola areas with bbq facilities and large dining areas;
- Two community garden areas; and
- Outdoor rooftop cinema.

These areas are further embellished by high quality landscaping, raised planters, screening and green walls and raised deck pods and seating areas throughout the development.

## 6. Issues Raised in Submissions

The application was placed on public notification for a period of thirty days and two submissions and a petition were received. One of the submissions was received from Endeavour Energy who owns the adjoining substation site. The issues raised by Endeavour Energy are addressed separately below. A petition with twenty two signatures was also recently received. The issues raised in the petition are also addressed below.

ISSUE/OBJECTION	COMMENT	OUTCOME
Hezlett Road is not developed enough to sustain the increased traffic that will result from the development leading to more than the anticipated traffic levels in surrounding neighbourhoods.	The traffic generation from the proposed development is consistent with intent of the North Kellyville DCP. The proposed access is off the adjoining side streets of Goodison Street and Carisbrook Street and suitably located to provide sufficient sight distance for vehicles entering and exiting the property. Any traffic facility improvements in the vicinity of the property are accommodated within the provisions of the Section 94 Contributions plan.	Issue addressed.
The petition raised concern with the variations proposed to SEPP Growth Centres and the North Kellyville DCP. The petition states that only a complying development should be allowed.	The merits of the application in particular the variations to the SEPP Growth Centres and North Kellyville DCP are addressed in detail in the report.	Issues addressed. Refer Sections 1 and 2 of this report.

### ENDEAVOUR ENERGY COMMENTS

A submission was received from Endeavour Energy who own the adjoining substation. The matters raised in the submission that relate to the Development Application are addressed in detail below. Some of the comments made in the submission relate to concerns regarding the zoning and expected development outcomes in the DCP not the application. Endeavour Energy was consulted during the rezoning process and preparation of the DCP, no objections were raised by Endeavour Energy at that time in relation to the matters raised in the current submission. Council staff and the applicant have attempted to contact the writer to discuss the issues raised in the submission but these attempts have been unsuccessful. The applicant has increased the setback from the substation site in an attempt to further mitigate impacts between the development site and the substation. The amended details were forwarded to Endeavour Energy however it is unknown whether these changes satisfy Endeavour Energy staff. Comments in the submission relating to electricity supply and infrastructure are addressed by standard conditions of consent.

The comments related to the original proposal relate to noise and security and future upgrading of the substation.

#### Noise

The submission raises concern with the noise impacts associated with the substation. An acoustic report was submitted by the applicant that specifically addressed the noise impacts associated with the substation. The report has been assessed by Council staff

and it considered reasonable that recommendations of the report, that align with road traffic noise requirements would provide an appropriate level of amenity for future residents.

#### Security

The submission identifies that fencing may be increased given the redevelopment of the subject proposal on the adjoining site. These comments are noted and would not appear to have a direct impact on the current proposal.

#### Future Upgrading to Substation

Given that any upgrading of the substation in the future is likely to result in the site featuring an enclosed building in a form similar to other redeveloped substations in the Sydney area, the development is considered to provide an appropriate interface with the substation both now and into the future. Specifically the loading dock façade will provide a secure interface that will provide some screening to the substation. The residential units above have been assessed from an electromagnetic radiation perspective and are deemed to be safe. The height of these units above natural ground level will provide an appropriate level of amenity for residents based on the current substation, or if it is redeveloped in the future.

### **ROADS & TRAFFIC AUTHORITY COMMENTS**

The application was referred to RMS in accordance with Schedule 3 of SEPP Infrastructure 2007. Below are RMS's comments on the subject application:

*Roads and Maritime recommends that all access to the "Retail Pad Site" to be from the proposed "Winning Street" in order to maintain the efficiency of the road network.*

*As discussed with Robert Buckham from The Hills Shire Council, Roads and Maritime would be supportive of Council's intention to prevent additional street accesses to Samantha Riley Drive in this area.*

*The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2-2002 for heavy vehicle usage.*

*A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate.*

Discussions with RMS staff after receipt of the comments in relation to the retail pad site confirmed that if Council would support access from the retail pad site in accordance with the Hezlett Road Indicative Layout Plan no objection would be raised. This issue will be ultimately assessed as part of a future application for proposed Lot 2. Access onto Samantha Riley Drive may be supported in order to improve the amenity of future residents in Winning Street.

### **ENGINEERING COMMENTS**

No objection raised to the proposal. Relevant conditions of consent are included in the recommendation.

### **TRAFFIC COMMENTS**

The traffic generation from the proposed development is consistent with intent of the North Kellyville DCP. The proposed access is suitably located to provide sufficient sight

distance for vehicles entering and exiting the property. Any traffic facility improvements in the vicinity of the property are accommodated within the provisions of the Section 94 Contributions plan.

### **TREE MANAGEMENT COMMENTS**

No objection is raised to the proposal subject to conditions.

### **ENVIRONMENT AND HEALTH COMMENTS**

The subject application has been assessed by Council's Environmental and Health Section. The following comments were provided and no objection was raised to the proposal subject to the recommended conditions.

#### **Electromagnetic Field Analysis**

The *Report on Radiation levels* prepared by JHA dated 20 November 2014 has been reviewed by Environment and Health. The report was based on the Kellyville Zone Substation, containing 2 x 25MVA transformers. JHA have concluded with the following summary from their investigation:

*Using current guidelines based on current medical knowledge, the electromagnetic field exposure of residents anywhere (and at any level) on this site will be to field levels below (at least by a factor of 100) any safety threshold set by the public safety authority charged with nominating safe exposure levels. These levels in turn, are significantly below levels known to have health impacts.*

No further information is requested regarding Electromagnetic Radiation and no conditions are required to be provided.

#### **Contamination**

Environment and Health has reviewed the submitted site investigation report and further information that was provided in response to Council staff's request for additional sampling on No. 12 Hezlett Road, Kellyville due to it being identified as an Area of Environmental Concern (AEC) in the North Kellyville DCP.

The applicant has provided a response justifying their sampling regime for the site and made the following statement on 27 March 2015 *'Based on the results of our initial assessment we were able to conclude that the site is suitable for the proposed residential and commercial redevelopment. If there were any significant gaps in our assessment record we would not have been able to make such a firm conclusion without risking our professional reputation and exposing us to liability'* the following statement was also made *'With regards to the sampling strategy we implemented was suitable to determine the nature and extent of the soil impacts at the property based on the following... We do not believe that a DSI is required in this instance'*.

Based on the response made by the consultant and a review of the Preliminary *Site Investigation Land at 12 Hezlett Road and 133 Samantha Riley Drive, Kellyville* prepared by SMEC Testing Services Pty Ltd Project Number 19708/4463C and dated October 2014 the requirement for additional sampling has been removed and a condition will be provided for any unexpected finds. No remediation works are required to be undertaken.

#### **Acoustics**

*Noise Assessment Report* prepared by Acoustic Noise and Vibration Solutions Pty Ltd referenced as 2014-476R1, dated December 2014 has made a number of recommendations for noise attenuation. The recommendations of this report are included in conditions.

## RESOURCE RECOVERY COMMENTS

Residents have access to garbage chutes which enable chute disposal of both garbage and recycling. The garbage chutes terminate in basement level garbage rooms. A caretaker is required to exchange full bins with empty bins. Surplus bins are stored within a garbage hold area. The garbage hold area contains direct lift access to the loading dock. Both commercial and residential bins will be serviced from the loading dock. Commercial waste will be managed within the loading dock.

## CONCLUSION

The proposal has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, SEPP Sydney Region Growth Centres and the North Kellyville Development Control Plan and is considered satisfactory.

The issues raised in the submissions and petition have been addressed in the report. Further amendment or refusal is not warranted.

Accordingly approval subject to conditions is recommended.

## IMPACTS

### Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

### 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 satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

## RECOMMENDATION

The Development Application be approved subject to the following conditions of consent.

## GENERAL MATTERS

### 1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

#### REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	SHEET	REVISION	DATE
77953.01.P02	Plan of Subdivision	1 of 1	D	25/11/2014
DEI00314	Cover Sheet	DA.001	B	09/12/2014
DEI00314	Building Envelope Plan	DA.015	C	30/06/2015
DEI00314	Public Domain Plan	DA.016	C	30/06/2015
DEI00314	Level B4	DA.096	A	09/12/2014
DEI00314	Level B3	DA.097	B	25/03/2015
DEI00314	Level B2	DA.098	D	18/06/2015

DEI00314	Level B1	DA.099	D	18/06/2015
DEI00314	Level 1 (Retail)	DA.100	B	25/03/2015
DEI00314	Level 2	DA.101	C	23/04/2015
DEI00314	Level 3 (Podium)	DA.102	D	18/06/2015
DEI00314	Level 4	DA.103	D	18/06/2015
DEI00314	Level 5	DA.104	C	23/04/2015
DEI00314	Level 6	DA.105	C	23/04/2015
DEI00314	Roof Level	DA.106	B	23/04/2015
DEI00314	Adaptable Apartment Units	DA.130	A	09/12/2014
DEI00314	Sections A and B	DA.200	C	23/04/2015
DEI00314	Sections C and D	DA.201	C	23/04/2015
DEI00314	Ramp 1 Details (Loading Bay)	DA.250	A	09/12/2014
DEI00314	Ramp 2 Details (Public Carpark)	DA.251	A	09/12/2014
DEI00314	Ramp 3 Details (Residential Entry)	DA.252	A	09/12/2014
DEI00314	Elevations	DA300	D	18/06/2015
DEI00314	Elevations	DA301	D	18/06/2015
DEI00314	Elevations	DA.302	C	23/04/2015
DEI00314	External Finishes Schedule	DA.915	A	11/12/2014
20140112	Landscape Concept Package	LD-DA000 – LD-DA601	-	18/06/2015
2450-14DP	Stratum Plans Package	-	4	10/06/2015

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

## **2. Construction Certificate**

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

## **3. Building Work to be in Accordance with BCA**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

## **4. Demolition Notification**

Both Council and any adjoining properties must be notified in writing five days before demolition works commence.

## **5. External Finishes**

External finishes and colours shall be in accordance with the details submitted with the development application and approved with this consent.

## **6. Compliance with NSW Rural Fire Service Requirements**

Compliance with the requirements of the NSW Rural Fire Service attached as Appendix A to this consent and dated 14 May 2015



## **7. Separate Development Application for Proposed Lot 2**

A separate development application is required for the development of Proposed Lot 2.

## **8. Separate Development Application for Occupations**

A separate development application is required for the occupation of the approved tenancies (excluding the supermarket and liquor shop) unless allowed by the provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Where a Development Application is required, the application is required to provide assessment against:

- Local Environmental Plan 2012; and
- Baulkham Hills Development Control Plan 2012

The above assessment should specifically address the following:

- Proposed use and its Permissibility
- Hours of Operation
- Delivery Details
- Staff Numbers
- Signage, and
- Parking Provision

## **9. Separate application for signs**

A separate application is to be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.

## **10. Tree Removal**

Approval is granted for the removal of all trees located within the development site and trees affected by proposed roads and services.

## **11. Property Numbering**

The responsibility for property numbering is vested solely in Council.

The property addresses for this development are:

### **Residential Dwelling Houses**

Lot	Street No	Street Name	Street Type	Locality
3	2	Winning	Street	Kellyville
4	4	Winning	Street	Kellyville
5	6	Winning	Street	Kellyville
6	8	Winning	Street	Kellyville
7	10	Winning	Street	Kellyville
8	12	Winning	Street	Kellyville
9	14	Winning	Street	Kellyville
10	16	Winning	Street	Kellyville
11	18	Winning	Street	Kellyville
12	20	Winning	Street	Kellyville
13	8	Beaton	Road	Kellyville
14	10	Beaton	Road	Kellyville



15	12	Beaton	Road	Kellyville
16	14	Beaton	Road	Kellyville
17	19	Treweek	Avenue	Kellyville
18	17	Treweek	Avenue	Kellyville
19	15	Treweek	Avenue	Kellyville
20	13	Treweek	Avenue	Kellyville
21	11	Treweek	Avenue	Kellyville
22	9	Treweek	Avenue	Kellyville
23	7	Treweek	Avenue	Kellyville
24	5	Treweek	Avenue	Kellyville
25	3	Treweek	Avenue	Kellyville
26	1	Treweek	Avenue	Kellyville
27	15	Beaton	Road	Kellyville
28	13	Beaton	Road	Kellyville
29	11	Beaton	Road	Kellyville
30	9	Beaton	Road	Kellyville
31	7	Beaton	Road	Kellyville
32	5	Beaton	Road	Kellyville
33	5	Messenger	Street	Kellyville
34	3	Messenger	Street	Kellyville
35	1	Messenger	Street	Kellyville
36	Lot 36*	Hezlett	Road	Kellyville
37	Lot 37*	Hezlett	Road	Kellyville
38	Lot 38*	Hezlett	Road	Kellyville

\*Hezlett Road is subject to re-numbering

Residential Units, Supermarket and specialty Retail plans to be submitted to Land Information Prior to Issue of an Occupation Certificate for numbering and approval. Numbering will be determined based on main pedestrian and vehicular entry points and position of letterboxes.

Retail Pad Site (Lot 2) numbering will be determined by main entry/access point.

## **12. Planting Requirements**

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m<sup>2</sup>.

## **13. Acoustic Requirements**

The recommendations of the *Noise Assessment Report* prepared by Acoustic Noise and Vibration Solutions Pty Ltd referenced as 2014-476R1, dated December 2014 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- Part 1: Traffic Noise Assessment
- Part 2: Noise Impact of Existing Substation
- Part 3: Mechanical Plant and Equipment Noise Assessment

- Part 4: Car Park Noise Assessment
- Part 5: Outdoor Seating Noise Assessment
- Part 6: Loading Dock Noise Assessment
- Part 7: Inter tenancy Acoustic Privacy
- Part 8: Noise Control Recommendations
- Part 9: Construction Noise Management Plan

#### **14. Control of early morning noise from trucks**

Trucks associated with the construction on the site that will be waiting to be loaded must not be brought to the site prior to 7am.

#### **15. Salinity Requirements**

The recommendations of the *Geotechnical and Salinity Assessments 12 Hezlett Road and 133 Samantha Riley Drive Kellyville* prepared by SMEC Testing Serviced Pty Ltd, Project number 19708/4321C and dated June 2014 are to be implemented as part of this approval.

#### **16. Subdivision Certificate Pre-Lodgement Meeting/ Check**

Prior to the submission of a Subdivision Certificate application a draft copy of the final plan, administration sheet and Section 88B instrument (where included) must be submitted in order to establish that all conditions have been complied with.

Street addresses for the lots within this subdivision will be allocated as part of this preliminary check process, for inclusion on the administration sheet.

#### **17. Approved Street Naming**

Street naming must comply with Council's approved map which can be found on Council's website.

#### **18. Street Trees**

Street trees must be provided for the section of Messenger Street, Beaton Road, Treweek Avenue and Winning Sytreet within or fronting the development site spaced between 7m and 10m apart and with a minimum of one tree per lot frontage. The location of street trees must be considerate of driveways, services, drainage pits and sight lines at intersections. The species and size of street trees must comply with the requirements of Council. Details demonstrating compliance with the above must be submitted for approval before any street trees are planted.

The establishment of street tree planting is included in the maintenance bond required to be paid. Alternatively, street trees can be planted by Council subject to payment of the applicable fee as per Council's Schedule of Fees and Charges.

#### **19. Recycled Water**

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme, unless written evidence from Sydney Water is submitted advising that this service is not available.

#### **20. Water Sensitive Urban Design Handover Process**

An operations and maintenance plan must be prepared for all WSUD proposals. The operations and maintenance plan must include:

- a) The location and type of each WSUD element, including details of its operation and design;
- b) A brief description of the catchment characteristics, such as land uses, areas etc;
- c) Estimated pollutant types, loads and indicative sources;
- d) Intended maintenance responsibility, Council, landowner etc;
- e) Inspection method and estimated frequency;
- f) Adopted design cleaning/ maintenance frequency;

- g) Estimate life-cycle costs;
- h) Site access details, including confirmation of legal access, access limitations etc;
- i) Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
- j) Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
- k) Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
- l) A work method statement;
- m) A standard inspection and cleaning form.

All constructed WSUD elements within public areas, being roads or drainage reserves, are to be transferred to Council at the end of the project. The following is required in order to facilitate this handover process:

- n) The developer will be responsible for the maintenance of the item for a defined maintenance period agreed to by Council. For example, the consultation draft document entitled Managing Urban Stormwater: Urban Design prepared by the SMCMA and the then NSW DECCW suggests that the developer maintain WSUD elements within a subdivision until a given proportion of the dwellings on the lots created, say 80%, are erected and occupied.
- o) The operations and maintenance plan for this element (above) is submitted to Council for review/ revision and subsequent approval.
- p) Council staff inspects the WSUD measure to confirm that it is being maintained in accordance with the approved maintenance plan.
- q) A whole of life assessment is provided for the WSUD measure which is based upon the expenses incurred during the maintenance period, and documentation is provided to confirm these expenses.
- r) WAE drawings and any required engineering certifications are provided to Council.
- s) Where water quality monitoring has been determined by Council as being required, monitoring results must be submitted to Council for review.
- t) Details of all incidents including OHS incidents, public safety, WSUD performance and complaints received should be provided.

If Council determines that the WSUD measure is not complying with the conditions of this approval or monitoring identifies that it is not performing as anticipated, Council may request that alterations be made to the WSUD element prior to transfer.

For the purposes of complying with the above a WSUD treatment system is considered to include all functional elements of the system as well as any landscaped areas directly surrounding the system.

## **21. Road Opening Permit**

Should the subdivision/ development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

## **22. Separate Application for Strata Subdivision**

In relation to strata subdivision of the residential flat building units - a separate application must be submitted for any proposed strata titled subdivision of the approved development.

### **23. Protection of Public Infrastructure**

Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.

### **24. Vehicular Access and Parking**

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps are required, with their design and construction complying with:

- a) AS/ NZS 2890.1
- b) AS/ NZS 2890.6
- c) AS 2890.2
- d) Council's DCP Part C Section 1 – Parking
- e) Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- i. Shared zones adjacent to accessible car parking spaces are required as per AS 2890.6.
- ii. Where security shutters are installed and restrict visitors from entering the residential car parking spaces, provision is to be made to allow visiting cars who do not gain access to the car parking area to turn and enter back onto the street in a forward direction.
- iii. All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- iv. All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- v. All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site. In rural areas, all driveways and car parking areas must provide for a formed all weather finish.
- vi. All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

### **25. Excavation/ Anchoring Near Boundaries**

Earthworks near the property boundary must be carried out in a way so as to not cause an impact on adjoining public or private assets. Where anchoring is proposed to sustain excavation near the property boundary, the following requirements apply:

- Written owner's consent for works on adjoining land must be obtained.
- For works adjacent to a road, anchoring that extends into the footpath verge is not permitted, except where expressly approved otherwise by Council, or the RMS in the case of a classified road.
- Where anchoring within public land is permitted, a bond must be submitted to ensure their removal once works are complete. The value of this bond must relate to

the cost of their removal and must be confirmed by Council in writing before payment.

- All anchors must be temporary. Once works are complete, all loads must be removed from the anchors.
- A plan must be prepared, along with all accompanying structural detail and certification, identifying the location and number of anchors proposed.
- The anchors must be located clear of existing and proposed services.

Details demonstrating compliance with the above must be submitted to the Principal Certifying Authority and included as part of any Construction Certificate or Occupation Certificate issued.

## **26. Adherence to Waste Management Plan**

All commitments of the Waste Management Plan submitted to and approved by Council must be implemented during construction of the development, except where amended by other conditions of consent. The information submitted can change provided that the same or a greater level of reuse and recycling is achieved as detailed in the plan. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

## **27. Management of Construction and/ or Demolition Waste**

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/ sorting station that will sort the waste on their premises for recycling. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

## **28. Surplus Excavated Material**

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the formal approval of Council prior to works commencing onsite. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

## **29. Commencement of Domestic Waste Service (Residential Units)**

The property owner or agent acting for the owner must ensure to arrange the commencement of a domestic waste service with Council. The service is to be arranged no earlier than two days prior to occupancy and no later than two days after occupancy of the development. All requirements of Council's domestic collection service must be complied with at all times. Please telephone Council on (02) 9843 0310 for the commencement of waste services.

### **30. Construction of Separate Garbage Rooms**

The development must incorporate separate garbage rooms constructed in accordance with Council's 'Bin Storage Facility Design Specifications', to facilitate the separation of commercial waste and recycling from residential waste and recycling. Residential storage facility must be provided for a minimum of 19 x 660L bulk garbage bins and 38 x 660L bulk recycling bins. The residential garbage chutes must divert garbage into a 4 x 660L carousel with compactor and recycling into a 3 x 660L linear track without compactor. Garbage must not be compacted at a ratio greater than 2:1. The measurements of a 660L bin are as follows: 850mm (d) 1370mm (w) 1250mm (h).

### **31. Floor Level Bin Cupboards**

A lockable cupboard must be provided adjacent to or near every chute opening on the residential floor levels. The cupboard must be sized to store 1 x 240L bin. This is to ensure that there is an immediate disposal option for items unsuitable for chute disposal. The measurements of a 240L bin are 735mm (d) 580mm (w) 1080mm (h). Contact the Resource Recovery Department if further clarification is required.

### **32. Supply of Bin Moving Equipment**

A mechanical bin tug or towing device must be purchased by the developer for the development and is required to be permanently stored at the development. This is to assist building management move bins around the development for collection purposes. The equipment should be chosen in consultation with a reputable waste equipment provider. The equipment must be suitable for 660L bulk bins and must have the capacity to move full bins over all slopes and ramps between the garbage rooms and loading dock. The equipment must be provided prior to the issue of a final Occupation Certificate.

## **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **33. Design Verification**

Prior to the release of the Construction Certificate design verification is required from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in SEPP65.

### **34. Special Infrastructure Contribution – Growth Centres**

The applicant is to make special infrastructure contribution in accordance with any determination by the Minister administering the Environmental planning and Assessment Act 1979 under Section 94EE of the Act that is in force on the date of this consent, and must obtain a certificate to that effect from the Growths Centres Commission before a Construction certificate or subdivision certificate is issued in relation to any part of the development to which this consent relates

More information on the Special Infrastructure Contribution can be found at the Growth Centres Commission's website at [www.gcc.nsw.gov](http://www.gcc.nsw.gov)

To obtain an estimate of the Special Infrastructure Contribution that may be payable for the application please email [infrastructurecontribution@gcc.nsw.gov.au](mailto:infrastructurecontribution@gcc.nsw.gov.au)

### **35. Notice of Requirements**

The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

### **36. Section 94 Contribution – North Kellyville**



The following monetary contributions must be paid to Council in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments comprise of the following:-

	<b>No. of Lots: 36</b>	<b>No. of 1 Bedroom Units: 13</b>	<b>No. of 2 Bedroom Units: 162</b>	<b>No. of 3 Bedroom Units: 34</b>	<b>No. of Credits: 2</b>	<b>Total S94</b>
Open Space - Land	\$ 500,701.68	\$ 76,114.48	\$ 1,660,271.58	\$ 472,884.92	\$ 27,816.76	\$ <b>2,682,155.90</b>
Open Space - Capital	\$ 78,221.16	\$ 11,890.84	\$ 259,373.34	\$ 73,875.54	\$ 4,345.62	\$ <b>419,015.26</b>
Transport Facilities - Land	\$ 39,574.80	\$ 6,016.01	\$ 131,224.86	\$ 37,376.20	\$ 2,198.60	\$ <b>211,993.27</b>
Transport Facilities - Capital	\$ 294,612.12	\$ 44,785.65	\$ 976,900.50	\$ 278,244.78	\$ 16,367.34	\$ <b>1,578,175.71</b>
Water Management - Land	\$ 73,287.36	\$ 11,140.87	\$ 243,012.96	\$ 69,215.84	\$ 4,071.52	\$ <b>392,585.51</b>
Water Management - Capital	\$ 32,211.00	\$ 4,896.58	\$ 106,808.22	\$ 30,421.50	\$ 1,789.50	\$ <b>172,547.80</b>
Community Facilities - Land	\$ 16,717.68	\$ 2,541.37	\$ 55,433.16	\$ 15,788.92	\$ 928.76	\$ <b>89,552.37</b>
Community Facilities - Capital	\$ 40,727.88	\$ 6,191.25	\$ 135,048.06	\$ 38,465.22	\$ 2,262.66	\$ <b>218,169.75</b>
Administration	\$ 3,946.32	\$ 599.95	\$ 13,086.36	\$ 3,727.08	\$ 219.24	\$ <b>21,140.47</b>
<b>Total</b>	<b>\$ 1,080,000.00</b>	<b>\$ 164,177.00</b>	<b>\$ 3,581,159.04</b>	<b>\$ 1,020,000.00</b>	<b>\$ 60,000.00</b>	<b>\$ 5,785,336.04</b>

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0268. Payment must be made by cheque or credit/debit card. Cash payments will not be accepted.

This condition has been imposed in accordance with Contributions Plan No. 13.

Council's Contributions Plans can be viewed at [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au) or a copy may be inspected or purchased at Council's Administration Centre.

### **37. Dam Dewatering**

The survey indicates that a dam was present on the site known as 12 Hezlett Road, Kellyville however; recent aerial imaging has revealed that the dam may have been decommissioned. Written confirmation is to be provided prior to the Construction Certificate being issued as to whether a dam remains on site. Should the dam require decommissioning a dam dewatering report is to be prepared and submitted to Council's Manager – Environment and Health for review, comment and approval. The dam dewatering report is to reflect this and include the following information:

1. Volume of water held by the dam;
2. Work method procedure;
  - a. Site plan showing irrigation area, erosion controls (specific details to prevent water from entering nearby local waterway)
  - b. Timeline of the dam dewatering process
  - c. The provision of a designated person to monitor, oversee and manage the dewatering process and to implement or intervene in the event of a problem;
  - d. Inflow / outflow diversion details (flow rates per day, soil saturation levels); and
  - e. Any contingencies that may be required to be implemented in the event of a problem.
3. Sediment remediation and / or removal.

No dam decommissioning works are to occur on the dam without the written approval from Council's Manager - Environment and Health.

### **38. Bank Guarantee Requirements**

Any bank guarantee submitted in lieu of a cash bond must comply with the following:

- a) Have no expiry date;
- b) Be sent to Council direct from the bank;
- c) Reference the development application, condition and matter to which it relates;
- d) The amount must match that required to be paid;
- e) If a single bank guarantee is used for multiple bonds, it must be itemised.
- f) Should Council need to uplift the bank guarantee, notice in writing will be forwarded to the applicant 14 days beforehand.

### **39. Separate Approval for WIK/ MPB Agreement**

Separate approval is required where a works in kind (WIK) or material public benefit (MPB) is proposed in lieu of the part or full payment of either a monetary contribution or the dedication of land. Any WIK or MPB application must be made in writing. Contact Council to ascertain the information required to accompany any such application.

The WIK or MPB agreement must be finalised before a Construction Certificate is issued.

Once the WIK or MPB agreement has been finalised an application must be submitted to modify the Section 94 Contribution amount identified in this consent, unless it is agreed that the difference can be reimbursed after payment is made.

### **40. Sediment and Erosion Control Plan**

A sediment and erosion control plan prepared in accordance with Council's Works Specification Subdivision/ Developments must be submitted. The plan must include:

- a) Allotment boundaries;
- b) Adjoining roads;
- c) Contours;
- d) Existing vegetation;
- e) Existing site drainage;
- f) Critical natural areas;
- g) Location of stockpiles;
- h) Erosion control practices;
- i) Sediment control practices; and
- j) A maintenance program for the erosion and sediment controls.

### **41. Onsite Stormwater Detention – Hawkesbury River Catchment Area**

Onsite Stormwater Detention (OSD) is required generally in accordance with the plans and information prepared by Australian Consulting Engineers Pty Ltd (as amended) and submitted with the development application.

The stormwater concept plan prepared by Australian Consulting Engineers Pty Ltd Drawings D14 – D16 Revision B dated 23/03/2015 are for development application purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and the following necessary changes:

- a) The base of the HED chamber is to have mass concrete benching to the invert level of the orifice plate.

Comprehensive design plans showing full construction details must be prepared by an accredited OSD designer and submitted with:

- A completed OSD Drainage Design Summary Sheet;
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes;
- A completed OSD Detailed Design Checklist;
- A maintenance schedule.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:



- i. A completed application form;
- ii. Four copies of the design plans and specifications;
- iii. Payment of the applicable application and inspection fees.

#### **42. Stormwater Pump/ Basement Car Park Requirements**

The stormwater pump-out system must provide for the following:

- a) A holding tank sized to store the runoff from a 12 hour, 1 in 100 year design storm event;
- b) An alternating two pump system capable of emptying the holding tank at either the Permissible Site Discharge rate or the rate of inflow for a five hour, 1 in 5 year design storm event, whichever is lower;
- c) An alarm system to alert a pump failure;
- d) 100mm freeboard to all nearby parking spaces;
- e) The system must be connected to the Onsite Stormwater Detention system before being discharged to the street along with the remaining site runoff, under gravity.

All plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming compliance with the above requirements.

#### **43. Works on Adjoining Land**

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

#### **44. Stormwater Discharge Acceptance**

Where the engineering works included in the scope of this approval necessitate the discharge of stormwater onto adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

#### **45. Draft Legal Documents**

Where an encumbrance on title is required to be created as part of this consent, draft copies of all legal documents must be submitted to Council for checking before a Construction Certificate is issued.

#### **46. Security Bond – Road Pavement and Public Asset Protection**

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$229,500 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the rate of \$85.00 per square metre based on the road frontage of the subject site (300m) multiplied by the width of the road (9m).

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these costs.

#### **47. Security Bond – External Works**

In accordance with Section 80A(6)(b) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The

minimum bond amount is \$10,000.00. The bond amount must be confirmed with Council prior to payment.

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.

#### **48. Engineering Works and Design**

The design and construction of the engineering works listed below must be provided for in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

Variation from these documents can only be approved by Council's Manager – Subdivision and Development Certification.

Engineering works can be classified as either "subdivision works" or "building works" as categorised below:

1. Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively. For Council to issue this approval the following must be provided:

- a) A completed application form.
- b) An electronic copy of the design plans and accompanying documentation.
- c) Payment of the applicable application and inspection fees.
- d) Payment of any required security bonds.

2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flow path within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/maintenance liability with respect to these assets once completed.

A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" can be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction, a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.

3. Works within the development site, or adjoining private properties, that do not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so.

This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

The following engineering works are required:

### **i. Full Width Road Construction**

The full width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Beaton Road	Road Type: DCP Local Street 3.5m/ 5.3m/ 4m/ 5.3m/ 3.5m (21.6m Total) Pavement Design: Access/ Local (Design Guidelines Section 3.12)
Messenger Street	Road Type: DCP Minor Street 3.5m/ 8.3m/ 4m/ 2m (17.8m Total) Pavement Design: Access/ Local (Design Guidelines Section 3.12)
Winning Street	Road Type: DCP Minor Street 3.5m/ 8.3m/ 4m/ 2m (17.8m Total) Pavement Design: Access/ Local (Design Guidelines Section 3.12)
Churchill Way	Road Type: DCP Laneway 0.75m/ 5.5m/ 0.75m (7m Total) Pavement Design: Access/ Local (Design Guidelines Section 3.12)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

With respect to "minor street" and "street along riparian corridor/ park" roads:

- The roadside swale needs to be provided on the low side of these roads, as they have a one way cross fall, to limit the earthworks associated with their construction.
- A concrete pad 1.7m wide and 0.8m deep must be provided behind the kerb and adjacent to the driveways that cross the swale to access the lots on the low side of these roads.
- Driveways that cross the swale to access the lots on the low side of these roads must be constructed with the subdivision works, along with all ancillary drainage work necessary to make the construction effective. Adjacent lots should have their driveways grouped together to limit the number of "breaks" in the swale. These driveways should be 4m wide with a 1m wide grassed verge separating them, located 500mm on either side of the property boundary, making the total "gap" in the swale 9m wide.

### **ii. Partial Width Road Construction**

The partial width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Treweek Avenue	Road Type: DCP Minor Street 3.5m/ 8.3m/ 4m/ 2m (17.8m Total) Pavement Design: Access/ Local (Design Guidelines Section 3.12)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

Where partial width construction exists opposite, the completed road must comply with the overall requirements outlined in the table above. Where partial width construction does not exist opposite, you will be responsible for the formation of the footpath verge, kerb and gutter and the construction of 6m of road pavement. This will involve works on adjoining land.

Any requirements relating to partial width road construction from the relevant section of Council's DCP must also be complied with. All works must be carried out in accordance with the submitted traffic safety statement.

With respect to "minor street" and "street along riparian corridor/ park" roads:

- The roadside swale needs to be provided on the low side of these roads, as they have a one way cross fall, to limit the earthworks associated with their construction.
- A concrete pad 1.7m wide and 0.8m deep must be provided behind the kerb and adjacent to the driveways that cross the swale to access the lots on the low side of these roads.
- Driveways that cross the swale to access the lots on the low side of these roads must be constructed with the subdivision works, along with all ancillary drainage work necessary to make the construction effective. Adjacent lots should have their driveways grouped together to limit the number of "breaks" in the swale. These driveways should be 4m wide with a 1m wide grassed verge separating them, located 500mm on either side of the property boundary, making the total "gap" in the swale 9m wide.

### iii. Temporary Turning Heads

Temporary turning heads on shown in the concept engineering plans are not supported as they are located on adjoining land, however such turning heads are not required. Bin collection for lots 27 and 32 – 38 will be via Beaton Road hence there is no requirement for a waste vehicle to traverse Churchill Way or Messenger Street to service such lots at this point in time.

### iv. Street Names Signs

Street name signs and posts are required in accordance with the above documents and Council's Standard Drawing 37. Details for all signage and line-marking must be submitted to Council for checking prior to works commencing.

### v. Footpath Verge Formation

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All

retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

**vi. Concrete Footpath**

A 1.2m wide concrete footpath, including access ramps at all intersections, must be provided on both sides of all Minor and Local Streets in accordance with the DCP and the above documents.

**vii. Gutter Crossings**

Gutter crossings to each of the proposed new lots are required.

With respect to "minor street" and "street along riparian corridor/ park" roads:

- A concrete pad 1.7m wide and 0.8m deep must be provided behind the kerb and adjacent to the driveways that cross the swale to access the lots on the low side of these roads.
- Driveways that cross the swale to access the lots on the low side of these roads must be constructed with the subdivision works, along with all ancillary drainage work necessary to make the construction effective. Adjacent lots should have their driveways grouped together to limit the number of "breaks" in the swale. These driveways should be 4m wide with a 1m wide grassed verge separating them, located 500mm on either side of the property boundary, making the total "gap" in the swale 9m wide.

**viii. Disused Layback/ Driveway Removal**

All disused laybacks and driveways must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.

**ix. Service Conduits**

Service conduits to each of the proposed new lots, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown on the engineering drawings.

**x. Earthworks/ Site Regrading**

Earthworks are limited to that shown on the approved plans. Where earthworks are not shown on the approved plan the topsoil within lots must not be disturbed.

Batters from the verge into the front setback of residential lots is to be graded at 20% maximum to allow for compliant driveway grades at the future dwelling application stage.

**xi. Stormwater Drainage – Temporary Works**

Tail out drains over adjoining properties are required to be provided, where necessary, of sufficient length and width to dissipate stormwater flows to an acceptable level from the end of all stormwater outlets.

Grassed swale drains or temporary piped drainage must be installed to intercept, control and redirect surface stormwater runoff from upstream undeveloped properties.

**xii. Inter-allotment Stormwater Drainage (North Kellyville)**

Rain gardens and rainwater reuse tanks are required for each lot as per this consent. To allow for these rain gardens, the following requirements apply:

1. For those lots that fall away from the street, piped inter-allotment stormwater drainage catering for the entire area of each lot must be provided. Each lot must be uniformly graded to its lowest point where a grated surface inlet pit must be

provided. All collected stormwater is to be piped to an approved constructed public drainage system.

2. For those lots that fall towards the street, direct connections to the kerb are not permitted. Each lot must be uniformly graded to its lowest point where a grated surface inlet pit must be provided. This pit must be connected to the street drainage under the kerb fronting the lot, not the kerb opposite. For roads with a one-way cross fall, this will require road drainage and kerb inlet pits on both sides of the road. Direct individual connections or a combined inter-allotment drainage connection are permissible.

A minimum level difference of 800mm measured between the surface level and the invert of the outlet pipe must be provided in the stormwater pit on each lot to allow for the required rain garden.

### **xiii. Water Sensitive Urban Design Elements (North Kellyville)**

Water sensitive urban design elements, consisting of bio-retention swales in roads, rain gardens, rainwater reuse tanks within lots, proprietary stormwater quality treatment products and detention storage are required generally in accordance with the plans and information submitted with the application. The bio-retention swales in roads are to be provided as part of the subdivision works and the rain gardens and rainwater reuse tanks when the lots are developed. For integrated housing developments both are required.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The following requirements apply:

#### R1 zoned lots

1. Each of the lots 33-38 must provide a rain garden with a storage volume of 0.892m<sup>3</sup> and a surface area of 6.067m<sup>2</sup> based on a residential net developable area of 0.28ha and the requirements applying to the Smalls Creek catchment area from Section 6.1 of the North Kellyville DCP.

#### R2 zoned lots

2. Each of the lots 3-32 must provide a rain garden with a storage volume of 1.211m<sup>3</sup> and a surface area of 8.233m<sup>2</sup> based on a residential net developable area of 1.9ha and the requirements applying to the Smalls Creek catchment area from Section 6.1 of the North Kellyville DCP.

#### All residential zoned lots

3. Each of the lots 3-38 must provide for a 3,000L (minimum) rainwater reuse tank that must be plumbed specifically for washing machine use. External use is also permitted however the recycled water system supplied by Sydney Water must be connected to all toilets for flushing purposes, and at least one external tap as per Section 6.1 of the North Kellyville DCP.
4. The bio-retention swales in roads must be 4m wide and yield a detention volume of 0.75m<sup>3</sup> per linear metre.

All calculations are to be provided, and in regards to the biofiltration swales proposed on site the following are to be provided:

- Final design drawings are to include design detail of the biofiltration swales as per the properties applied in the MUSIC model, included in the Stormwater Drainage Report, March 2015.

- Greater than 50% of the plants installed in the biofiltration swales are to be made up of one or more of the following species: Carex, Juncus, Melaleuca and Goodenia ovata.
- Biofiltration swales are to be installed with a plant density of 6-10 plants per square metre.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to, the following:

- Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

The rain gardens and rainwater reuse tanks are required to be constructed in accordance with the following documents and requirements:

- Council's Typical Rain Garden Plan and Details (Standard Drawing 44)
- Council's Rain Garden Installation Guide and Specifications

#### **xiv. Amendments to Concept Plans**

The stormwater pit shown in the middle of Churchill Way is to be deleted as there is no swale in this location.

#### **49. Internal Pavement Structural Design Certification (Loading Dock)**

Prior to a Construction Certificate being issued, a Certified Practising Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded heavy rigid waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

### **PRIOR TO WORK COMMENCING ON THE SITE**

#### **50. Principal Certifying Authority**

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

#### **51. Builder and PCA Details Required**

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

#### **52. Management of Building Sites – Builder's Details**

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

#### **53. Approved Temporary Closet**



An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

#### **54. Stabilised Access Point**

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

#### **55. Erosion and Sedimentation Controls**

Erosion and sedimentation controls shall be in place prior to the commencement of site works and maintained throughout construction activities, until the site is landscaped and/or suitably revegetated. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

This will include, but not be limited to a stabilised access point and appropriately locating stockpiles of topsoil, sand, aggregate or other material capable of being moved by water being stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

#### **56. Site Water Management Plan**

A Site Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction" (Blue Book)* produced by the NSW Department of Housing. The plan is to be kept on site at all times and made available upon request.

#### **57. Notification of Asbestos Removal**

Prior to commencement of any demolition works involving asbestos containing materials, all adjoining neighbours and Council must be given a minimum five days written notification of the works.

#### **58. Traffic Control Plan**

A Traffic Control Plan is required to be prepared and submitted to Council for approval. The person preparing the plan must have the relevant accreditation to do so. Where amendments to the plan are required post approval, they must be submitted to Council for further approval prior to being implemented.

A plan that includes full (detour) or partial (temporary traffic signals) width road closure requires separate specific approval from Council. Sufficient time should be allowed for this to occur.

#### **59. Erection of Signage – Supervision of Work**

In accordance with Clause 98A(2) of the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- a) The name, address and telephone number of the Principal Certifying Authority;
- b) The name and telephone number (including after hours) of the person responsible for carrying out the works;
- c) That unauthorised entry to the work site is prohibited.

This signage must be maintained while the subdivision work is being carried out and must be removed upon completion.

#### **60. Contractors Details**

In accordance with Section 109E(3) of the Environmental Planning and Assessment Act 1979, the contractor carrying out the subdivision works must have a current public

liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

#### **61. Service Authority Consultation – Subdivision Works**

Before subdivision works commence:

- a) Documentary evidence must be submitted confirming that satisfactory arrangements have been made for the relocation, undergrounding and/ or provision of electrical services for the non-residue lots created by the subdivision.
- b) Documentary evidence, including a notice of requirements from Sydney Water, must be submitted confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.
- c) Consultation with the relevant telecommunications provider authorised under the Telecommunications Act regarding the installation of telephone conduits is required. The design and construction of these works must comply with current NBN standards, where applicable.

#### **62. Separate OSD Detailed Design Approval**

No work is to commence until a detailed design for the OSD system has been approved by either Council or an accredited certifier.

#### **63. Public Infrastructure Inventory Report**

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in Hezlett Road and Samantha Riley Drive. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

- a) Planned construction access and delivery routes; and
- b) Dated photographic evidence of the condition of all public assets.

### **DURING CONSTRUCTION**

#### **64. Hours of Work**

Work on the project to be limited to the following hours: -

**Monday to Saturday - 7.00am to 5.00pm;**

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act, in the event that the building operations cause noise to emanate from the property on Sunday or Public Holidays or otherwise than between the hours detailed above.

#### **65. Dust Control**

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

#### **66. Compliance with BASIX Certificate**

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 586478M, 587811M and 586295M be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

A Section 96 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 96 Application **will** be required for a BASIX Certificate with a new number.

#### **67. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority**

Section 109E(3)(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

**NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.**

#### **68. Construction Noise**

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*.

#### **69. Removal of Septic Tanks and Effluent Disposal Areas**

The existing subsurface effluent disposal areas and any associated wastewater infrastructure are to be removed and back filled with Excavated Natural Material (ENM).

#### **70. Contamination**

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works are to cease, Council's Manager- Environment and health is to be notified and a site contamination investigation is to be carried out in accordance with *State Environmental Planning Policy 55 – Remediation of Land*.

The report is to be submitted to Council's Manager – Environment and Health for review prior to works recommencing on site.

#### **71. Stockpiles**

Stockpiles of topsoil, sand, aggregate or other material capable of being moved by water shall be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

#### **72. Standard of Works**

All work must be carried out in accordance with Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works, including public utility relocation, must incur no cost to Council.

#### **73. Critical Stage Inspections – Subdivision Works**

The subdivision works must be inspected by Council in accordance with the schedule included in Council's Works Specification Subdivisions/ Developments. A minimum of 24 hour's notice is required for inspections. No works are to commence until the first inspection has been carried out.

#### **74. Demolition Works and Asbestos Management**

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials offsite are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Asbestos removal must be carried out in accordance with the WorkCover, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

#### **75. Discontinuation of Domestic Waste Service**

Prior to the commencement of any demolition works, and where the site ceases to be occupied during works, the property owner or site manager must notify Council to discontinue the domestic waste service and to collect any garbage and recycling bins from any dwelling/ building that is to be demolished. Construction and/ or demolition workers are not permitted to use Council's domestic waste service for the disposal of any waste. Please telephone Council on (02) 9843 0310 for the discontinuation of waste services.

#### **76. Waste Management Details Required**

Prior to the commencement of works, the location of waste disposal and recycling for all construction and/ or demolition waste materials (bricks, concrete, timber and so on) must be submitted to and approved by the Principal Certifying Authority. Alternatively, details of an appropriately licensed skip bin hire company or site clean company can be provided where the company is engaged to undertake all works during construction of the development (collection, transportation and disposal).

#### **77. Subdivision Earthworks – Lot Topsoil**

Where earthworks are not shown on the engineering drawings, the topsoil within lots must not be disturbed. Where earthworks are shown, a 150mm deep layer of topsoil must be provided, suitably compacted and stabilised in accordance with Council's Works Specification Subdivisions/ Developments.

### **PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE**

#### **78. Internal Pavement Construction**

Prior to an Occupation Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a loaded heavy rigid waste collection vehicle.

#### **79. Final Inspection of Waste Storage Areas**

Prior to an Occupation Certificate being issued, a final inspection of the waste storage areas and management facilities must be arranged by the Principal Certifying Authority and must be undertaken by Council. This is to ensure compliance with Council's design specifications and that necessary arrangements are in place for waste collection by Council. The time for the inspection must be arranged with Council at least 48 hours prior to the Principal Certifying Authority's suggested appointment time.

#### **80. Waste and Recycling Collection Contract (Commercial)**

Prior to an Occupation Certificate being issued, the building owner must ensure that there is a contract with a licenced contractor for the removal of all waste generated on site. Written evidence of a valid and current collection contract must be held on site at all times and produced in a legible form to any authorised officer of the Council who asks to see it.

#### **81. Agreement for Onsite Waste Collection**

Prior to an Occupation Certificate being issued, an Indemnity Agreement is to be obtained from Council, completed, signed and two original copies sent to Council for approval. This is to enable Council and its contractor to enter onto private property with its collection vehicles to enable it to collect waste and recyclables.

**82. Section 73 Certificate must be submitted to the Principal Certifying Authority before the issuing of an Occupation Certificate**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.

**The Section 73 Certificate must be submitted to the Principal Certifying Authority before occupation of the development/release of the plan of subdivision.**

**83. Landscaping Prior to Issue of Occupation Certificate**

Landscaping of the site shall be carried out prior to issue of the Final Occupation Certificate (within each stage if applicable) in accordance with the approved plan. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

**84. Design Verification Certificate**

Prior to the release of the Occupation Certificate design verification is required from a qualified designer to confirm that the development has been constructed in accordance with approved plans and details and has satisfied the design quality principles consistent with that approval.

**85. Acoustic Compliance Report**

An acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in report *Noise Assessment* prepared by Acoustic Noise and Vibration Solutions Pty Ltd referenced as 2014-476R1 and dated December 2014. Certification is to be provided to Council's Manager – Environment and Health to confirm that the recommendations provided in Part 1 through to Part 8.

**86. Occupational Hygienist Report for Asbestos Removal**

On completion of the asbestos removal works an Occupational Hygienist shall provide documentation in the form of an asbestos clearance certificate to the Principal Certifying Authority.

**87. Completion of Subdivision Works**

A Subdivision Certificate cannot be issued prior to the completion of all subdivision works covered by this consent.

**88. Works as Executed Plans**

Works as executed (WAE) plans prepared by a suitably qualified engineer or registered surveyor must be submitted to Council when the subdivision works are completed. The WAE plans must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments.

The plans must be accompanied by pavement density results, pavement certification, concrete core test results, site fill results, structural certification, CCTV recording, signage details and a public asset creation summary, where relevant.

**89. Performance/ Maintenance Security Bond**

A performance/ maintenance bond of 5% of the total cost of the subdivision works is required to be submitted to Council. The bond will be held for a minimum defect liability

period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

#### **90. Confirmation of Pipe Locations**

A letter from a registered surveyor must be provided with the WAE plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

#### **91. Provision of Electrical Services**

Submission of a notification of arrangement certificate confirming satisfactory arrangements have been made for the provision of electrical services. This must include the under-grounding of the existing electrical services fronting the site and removal of all redundant poles and cables, unless otherwise approved by Council in writing. The certificate must refer to this development consent and all of the lots created.

#### **92. Provision of Telecommunication Services**

Submission of a telecommunications infrastructure provisioning confirmation certificate issued by the relevant telecommunications provider authorised under the Telecommunications Act, or a design compliance certificate and an as-built compliance certificate from the company engaged to design and construct the pit and pipe infrastructure, confirming satisfactory arrangements have been made for the provision, or relocation, of telecommunication services including telecommunications cables and associated infrastructure. This must include the under-grounding of the existing telecommunication services fronting the site and removal of all redundant poles and cables, unless otherwise approved by Council in writing. The certificate must refer to this development consent and all of the lots created.

#### **93. Subdivision Certificate Application**

When submitted, the Subdivision Certificate application must include:

- a) Three copies of the final plan.
- b) The original administration sheet and Section 88B instrument, along with one copy of each.
- c) All certificates and supplementary information required by this consent.
- d) An AutoCAD copy of final plan (GDA 1994 MGA94 Zone56).

#### **94. Site/Lot Classification Report**

A site/lot classification report prepared by a suitably qualified geotechnical engineer must be prepared and submitted following the completion of all subdivision works confirming that all residential lots are compliant with AS 2870 and are suitable for development. The report must be accompanied by a table which summarises the classification of all lots created as part of the subdivision.

#### **95. Stormwater CCTV Recording**

All piped stormwater drainage systems and ancillary structures which will become public assets must be inspected by CCTV. A copy of the actual recording must be submitted electronically for checking.

#### **96. Public Asset Creation Summary**

A public asset creation summary must be submitted with the WAE plans. A template is available on Council's website.

#### **97. Building Adjacent to Proposed Boundary**

Where any part of an existing/ partially constructed building is located within 2m of a proposed boundary the location of such must be determined by a registered surveyor and shown on the final plan.

#### **98. Building Services**

A letter from a registered surveyor must be submitted certifying that all facilities servicing the existing/ partially constructed buildings are located wholly within their respective lot or are otherwise contained within a suitable easement.



## **99. Final Plan and 88B Instrument**

The final plan and Section 88B Instrument must provide for the following. Council's standard recitals must be used.

### **i. Dedication – New Road**

The dedication of the proposed public roads must be included on the final plan in accordance with the undertaking submitted relating to dedication.

### **ii. Easement – Private Stormwater Drainage**

Inter-allotment drainage easements must be created to ensure each and every lot is provided with a legal point of discharge. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

### **iii. Easement – Temporary Public Stormwater Drainage/ Outlet**

Temporary drainage easements, minimum 5m wide and 30m long, must be created over all temporary outlets within the property or on adjoining land using the "temporary public stormwater outlet" terms included in the standard recitals.

### **iv. Easement – Repairs/ Zero Lot Line Dwellings/Garages**

A 900mm wide (minimum) easement for repairs is required over those lots adjacent to the zero-lot line dwellings or garages identified on the approved plan using the "zero lot line dwellings" terms included in the standard recitals.

### **v. Restriction – Lot 2 No further residential development**

Lot 2 is to be burdened with a restriction limiting no further residential development. The Lot is to be developed for purposes consistent with a retail pad site in accordance with the documentation submitted with Development Application 799/2015/JP by Nordon Jago Architects and Urbis.

### **vi. Restriction – Restricted Access**

Lots 3 and 26 must be burdened with a restriction precluding access to Samantha Riley Drive using the "restricted access" terms included in the standard recitals.

Lots 36-38 must be burdened with a restriction precluding access to Hezlett Road using the "restricted access" terms included in the standard recitals.

### **vii. Restriction – Rainwater Tanks**

All residential lots must be burdened with a restriction using the "rainwater tanks" terms included in the standard recitals.

### **viii. Restriction – Bedroom Numbers (Lot 1)**

Lot 1 must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

### **ix. Restriction – Acoustic Treatment**

Lots 1 must be burdened with a restriction that refers to the acoustic report submitted with the development application using the "acoustic requirements" terms included in the standard recitals.

### **x. Positive Covenant – Waste Collection/ Bin Presentation**

Lots 27, 32-38 must be burdened with a positive covenant requiring that bins are presented to Beaton Road using the "waste collection/ bin presentation" terms included in the standard recitals.

### **xi. Restriction/ Positive Covenant – Onsite Stormwater Detention**

Lot 1 must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.



**xii. Restriction/ Positive Covenant – Rain Gardens (North Kellyville)**

All residential lots must be burdened with a restriction and a positive covenant that refers to the volume/ area referred to earlier in this consent using the “rain gardens” terms included in the standard recitals.

**xiii. Restriction/ Positive Covenant – Water Sensitive Urban Design**

Lot 1 must be burdened with a restriction and a positive covenant that refers to the WSUD elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.

**100. Completion of Engineering Works**

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

**101. Public Infrastructure Inventory Report - Post Construction**

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any damage to public assets and the means of rectification for the approval of Council.

**102. Pump System Certification**

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a suitably qualified hydraulic engineer.

**103. OSD System Certification**

The Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA) prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:

- a) Works as executed plans prepared on a copy of the approved plans;
- b) A certificate of hydraulic compliance (Form B.11) from a suitably qualified engineer or surveyor verifying that the constructed OSD system will function hydraulically;
- c) A certificate of structural adequacy from a suitably qualified structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

**104. Water Sensitive Urban Design Certification**

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- a) WAE drawings and any required engineering certifications;
- b) Records of inspections;
- c) An approved operations and maintenance plan; and
- d) A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

**105. Timing of Occupation Certificate and Subdivision Certificate**

No form of Occupation Certificate (interim, final or other) can be issued for the retail, mixed use or residential flat building until the subdivision certificate is released for the residential lots and the public roads are dedicated to Council.

## **THE USE OF THE SITE**

### **106. Shopping Trolley Management**

A Shopping Trolley Management Plan shall be implemented to ensure the effective management of shopping trolley collection. The supermarket retailer shall:-

- Install a geospatial fenced trolley containment area. All new trolleys are to be fitted with a wheel lock that is enabled before leaving a geospatial area (no access to public land). Details are to be submitted and approved by Council's Manager Development Assessment.
- Provide to The Hills Shire Council a list of contacts for the store;
- Ensure that all trolleys are easily identifiable by Council staff;
- Ensure that trolley collection services are sufficiently resourced to enable collection within agreed timeframes and at all times, including after hours;
- Ensure that trolleys reported as posing risk or nuisance are collected immediately on notification;
- Ensure that all trolleys reported are collected within the time frame agreed by Council;
- Inform customers (through clearly visible signage and other means) that trolleys should not be removed from the premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet/complex;
- Provide suitable, well sign posted trolley bays at exit points; and
- Provide to Council, on request, an up to date map showing usual trolley collection routes and schedules.

### **107. Hours of Operation**

The hours of operation being restricted to the following: -

- Specialty retail uses: 7.00am to 10.00pm seven days a week; and
- Supermarket and Liquor Store: 7.00am to midnight seven day a week
- Outdoor dining area: 7.00am to 6.00pm Monday to Saturday and 8.00am to 6.00pm Sunday and Public Holidays. Further approval from Council and an updated acoustic report would be required to utilise this area during the night time period.
- Loading Dock: 6.00am to 10.00pm seven days a week.

Any alteration to the above hours of operation will require the further approval of Council.

### **108. Waste and Recycling Caretaker**

A caretaker must be engaged to move all bins to and from the waste storage areas and the collection points on the allocated day of collection as determined by Council. Other responsibilities of the caretaker are specified within the Waste Management Plan submitted to and approved by Council.

### **109. Waste and Recycling Management**

To ensure the adequate storage and collection of waste from the occupation or use of the premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area, which includes provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage.

Under no circumstances should waste storage containers be stored in locations that restrict access to any of the car parking spaces provided onsite.

**110. Waste and Recycling Collection**

All waste generated onsite must be removed at regular intervals and not less frequent than once weekly for garbage and once fortnightly for recycling. The collection of waste and recycling must not cause nuisance or interfere with the amenity of the surrounding area. Garbage and recycling must not be placed on public property for collection without the formal approval of Council. Waste collection vehicles servicing the development are not permitted to reverse in or out of the site.

**111. Lighting**

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 Control of Obtrusive Effects of Outdoor Lighting*.

**112. Final Acoustic Report**

Within three months from the issue of an Occupation Certificate, an acoustical compliance assessment is to be carried out by an appropriately qualified person, in accordance with the NSW EPA's - Industrial Noise Policy and submitted to Council's Manager - Environment and Health for consideration.

This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the activities does not give rise to "offensive noise" as defined under the *Protection of the Environment Operation Act 1997*.

**113. Offensive Noise - Acoustic Report**

The proposed use of the premises and/or machinery equipment installed must not create offensive noise so as to interfere with the amenity of the neighbouring properties.

Should an offensive noise complaint be received and verified by Council an acoustic assessment is to be undertaken (by an appropriately qualified consultant), and an acoustic report is to be submitted to Council's Manager – Environment and Health for review. Any noise attenuation recommendations approved by Council must be implemented.

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Photograph
3. SEPP Zoning and DCP Road Layout Map
4. SEPP Height Limit Map
5. Site Plan
6. Floor Plans
7. Elevations and Sections
8. Analysis of Height and Scale Drawings
9. Applicant's Clause 4.6 Variation – Amended
10. Applicant's Hezlett Road Indicative Layout Variation
11. Photomontage Images
12. RFS Bushfire Safety Authority
13. Communal Open Space Landscape Plans

## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE                      ● SUBMISSIONS RECEIVED  
☒ PROPERTIES NOTIFIED          ✱ PROPERTIES OF SIGNATORIES TO PETITION

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**

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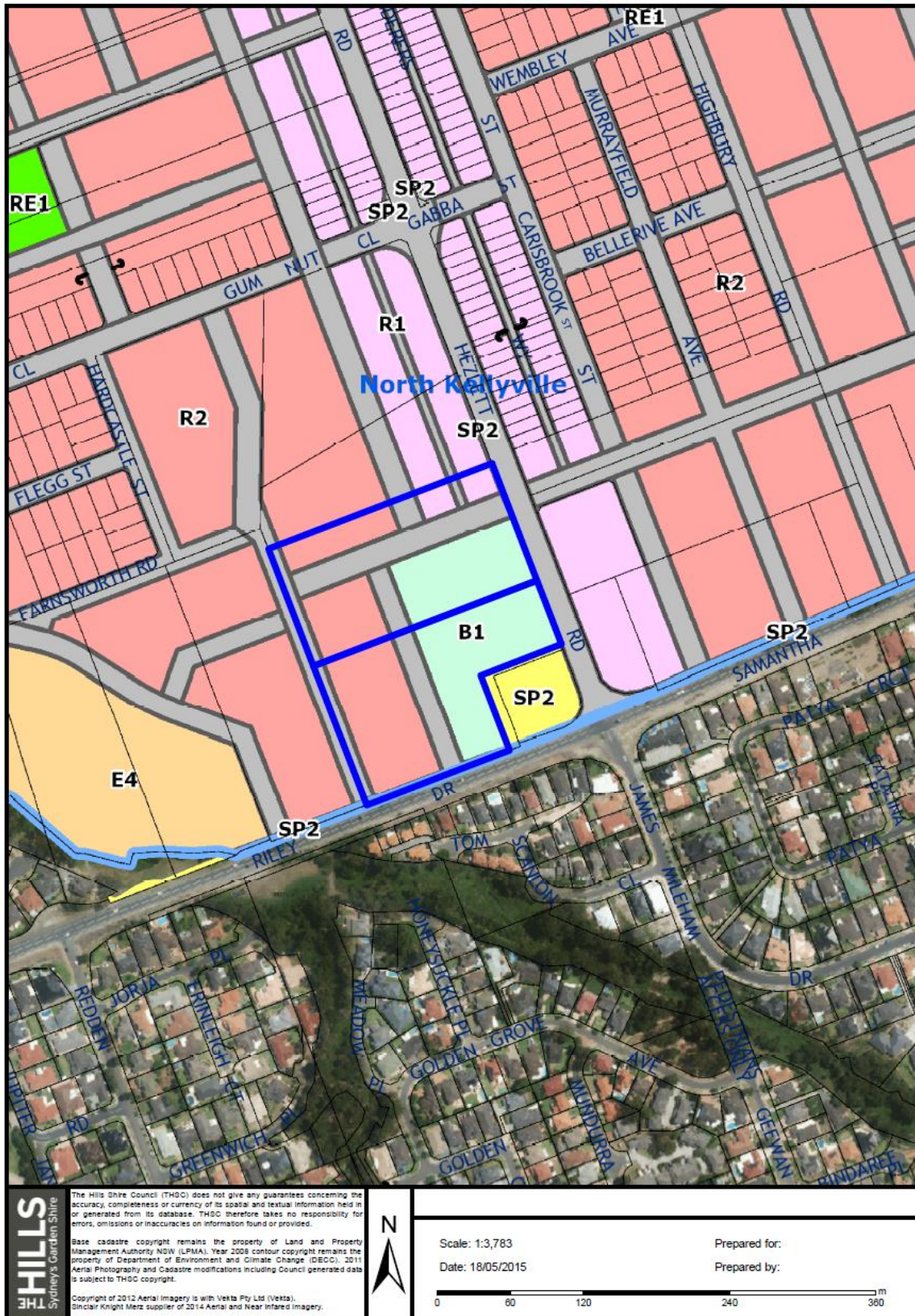


## ATTACHMENT 2 – AERIAL PHOTOGRAPH



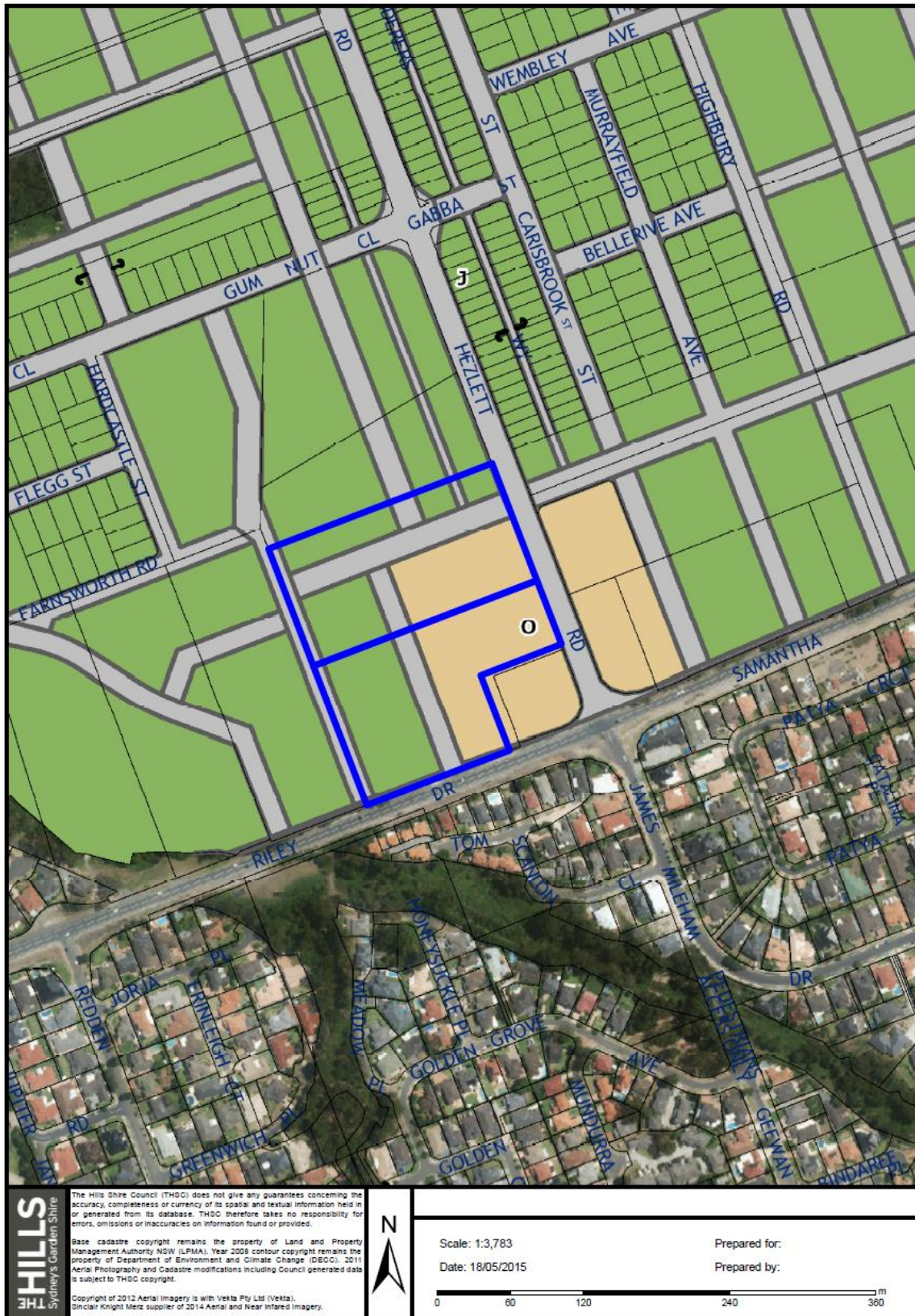


# ATTACHMENT 3 – SEPP ZONING AND DCP ROAD LAYOUT MAP



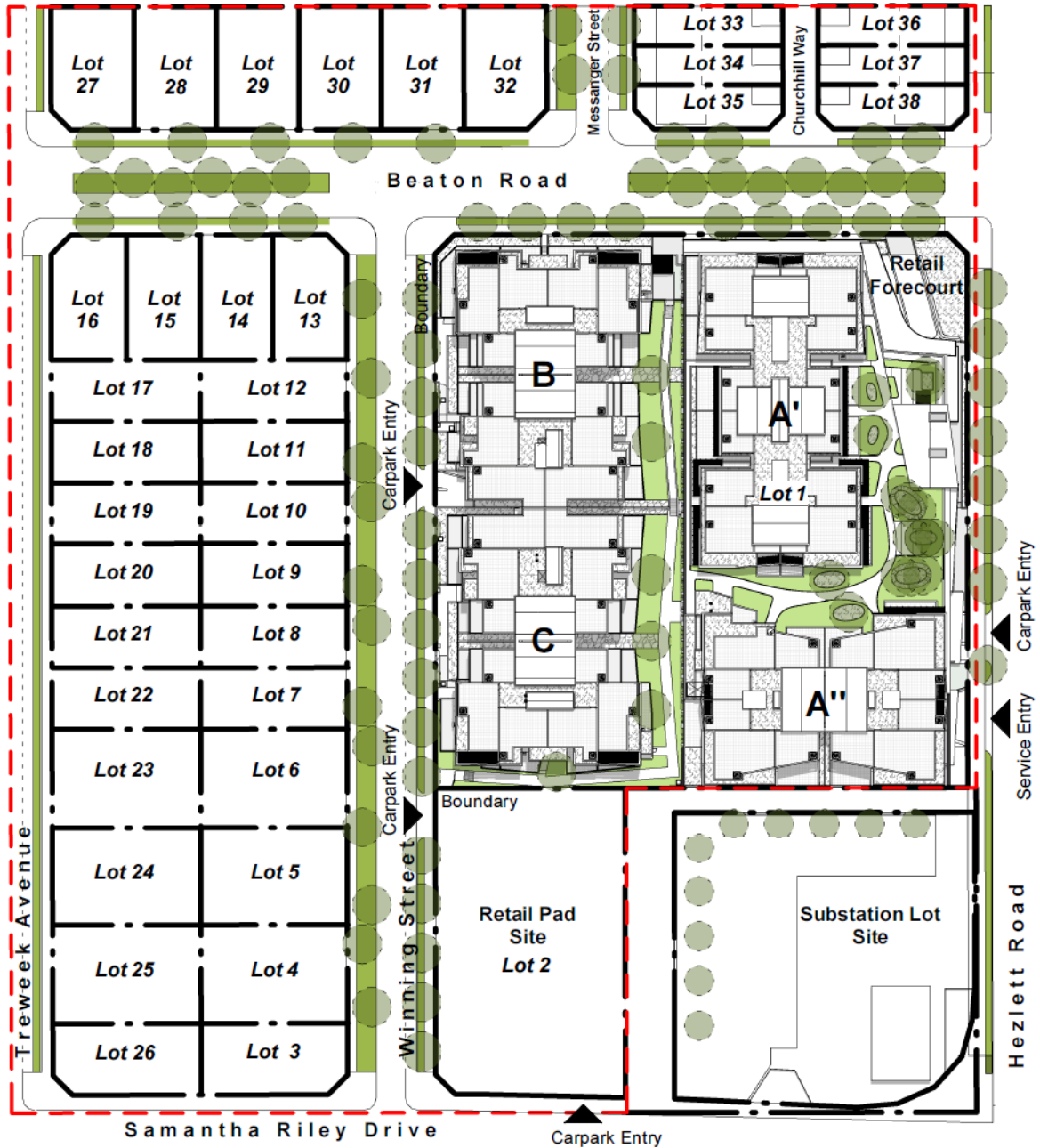


## ATTACHMENT 4 – SEPP HEIGHT MAP

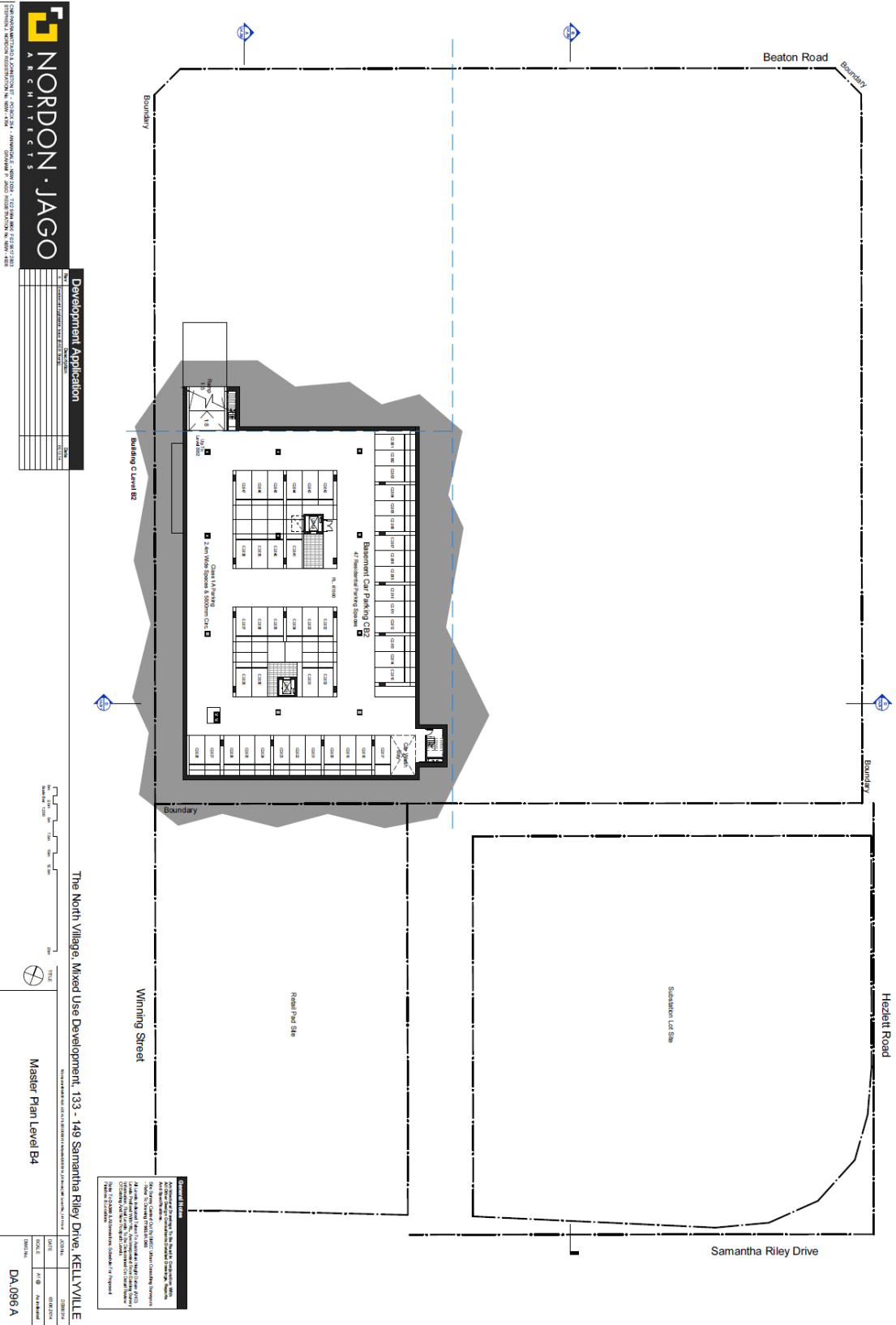


## ATTACHMENT 5 – SITE PLAN

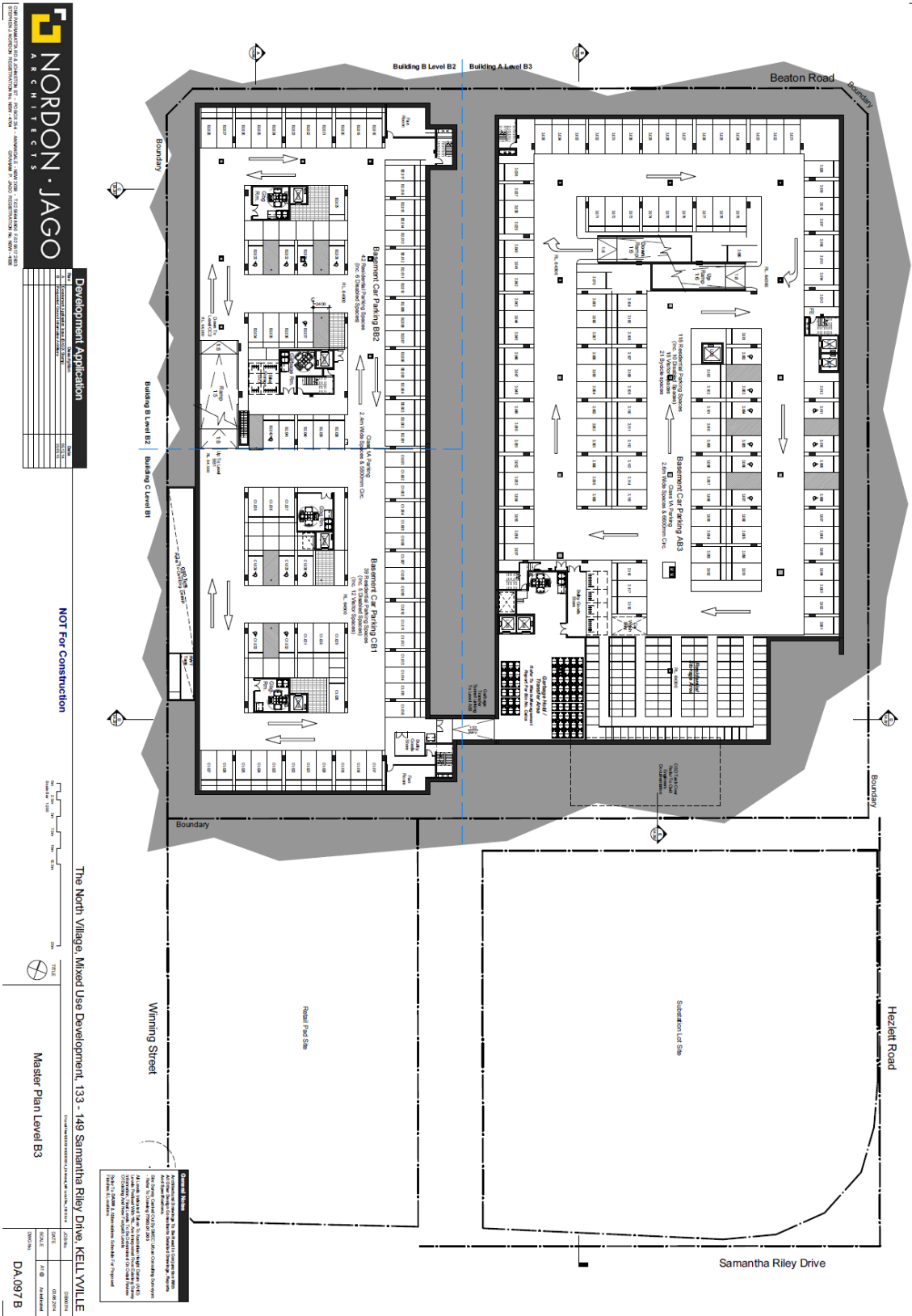
Site Extents - broken red line



ATTACHMENT 6 – FLOOR PLANS

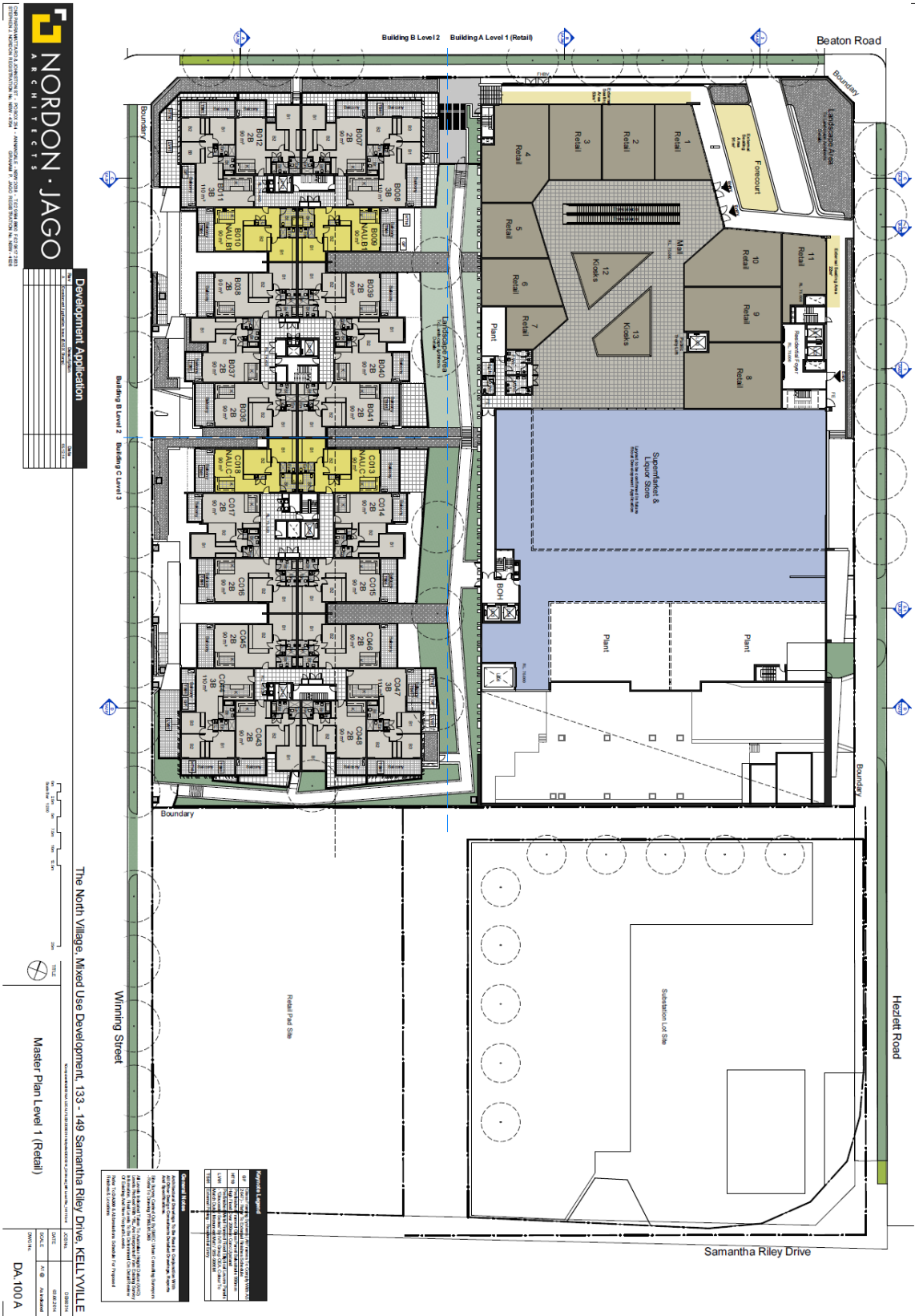






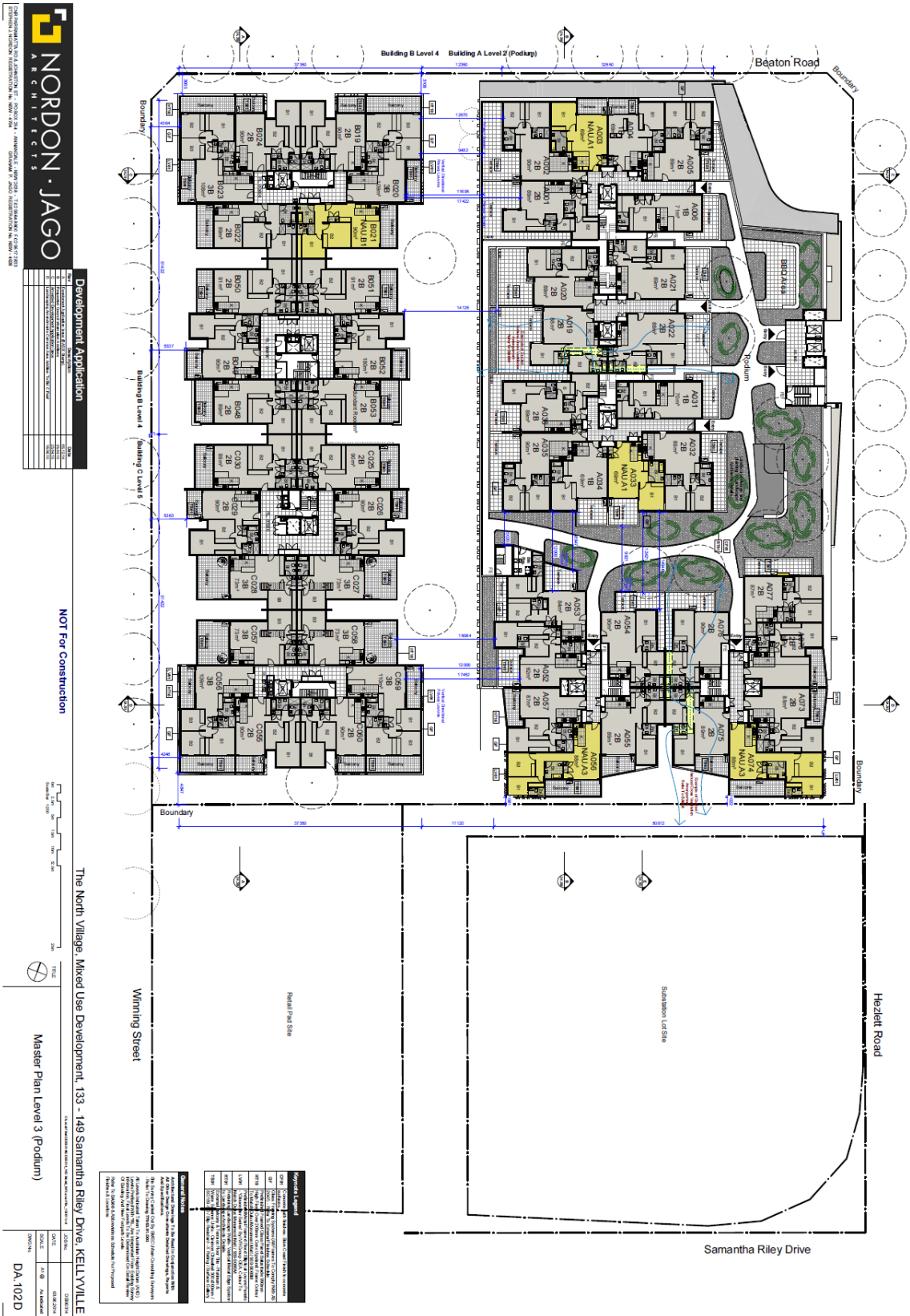


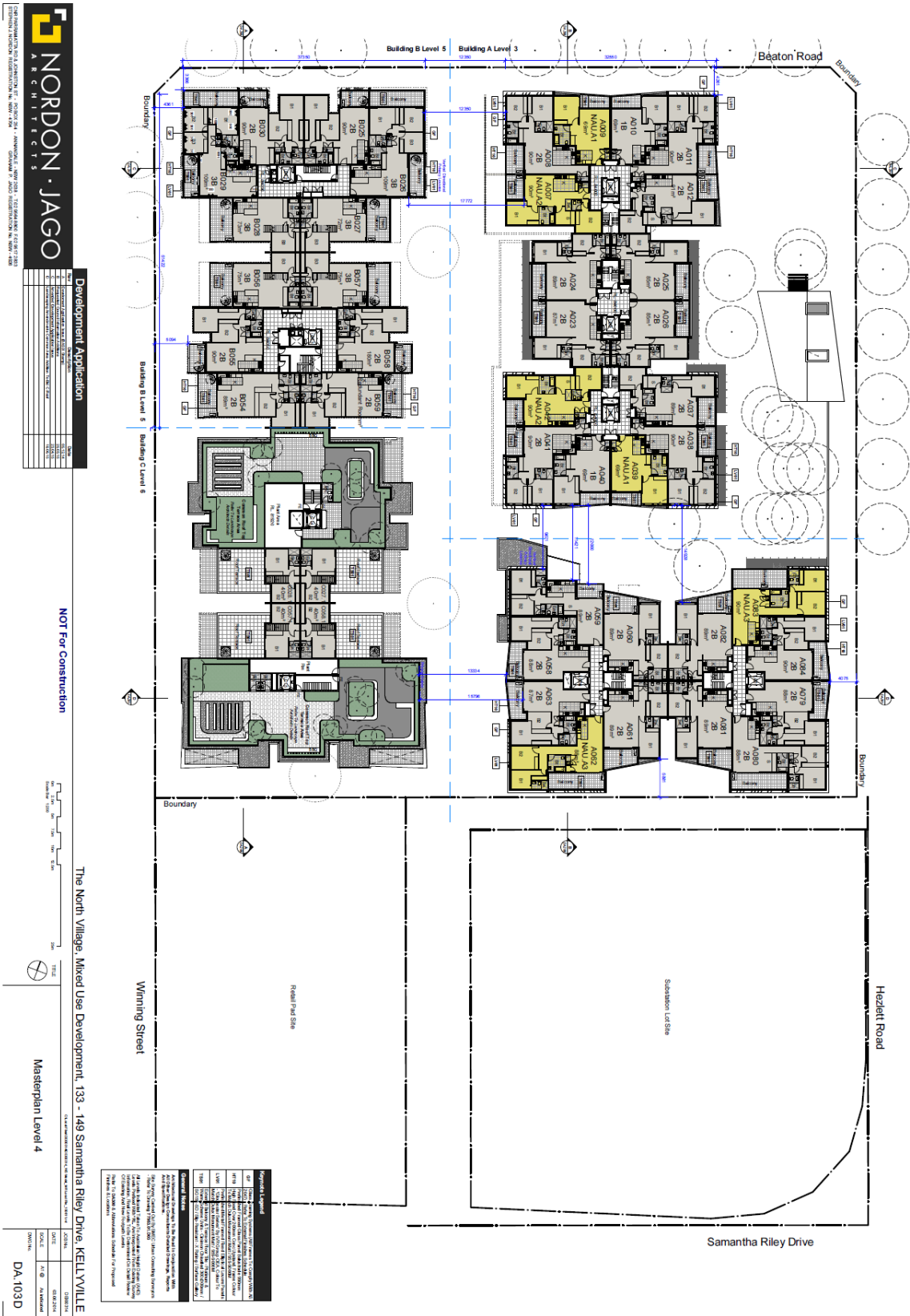




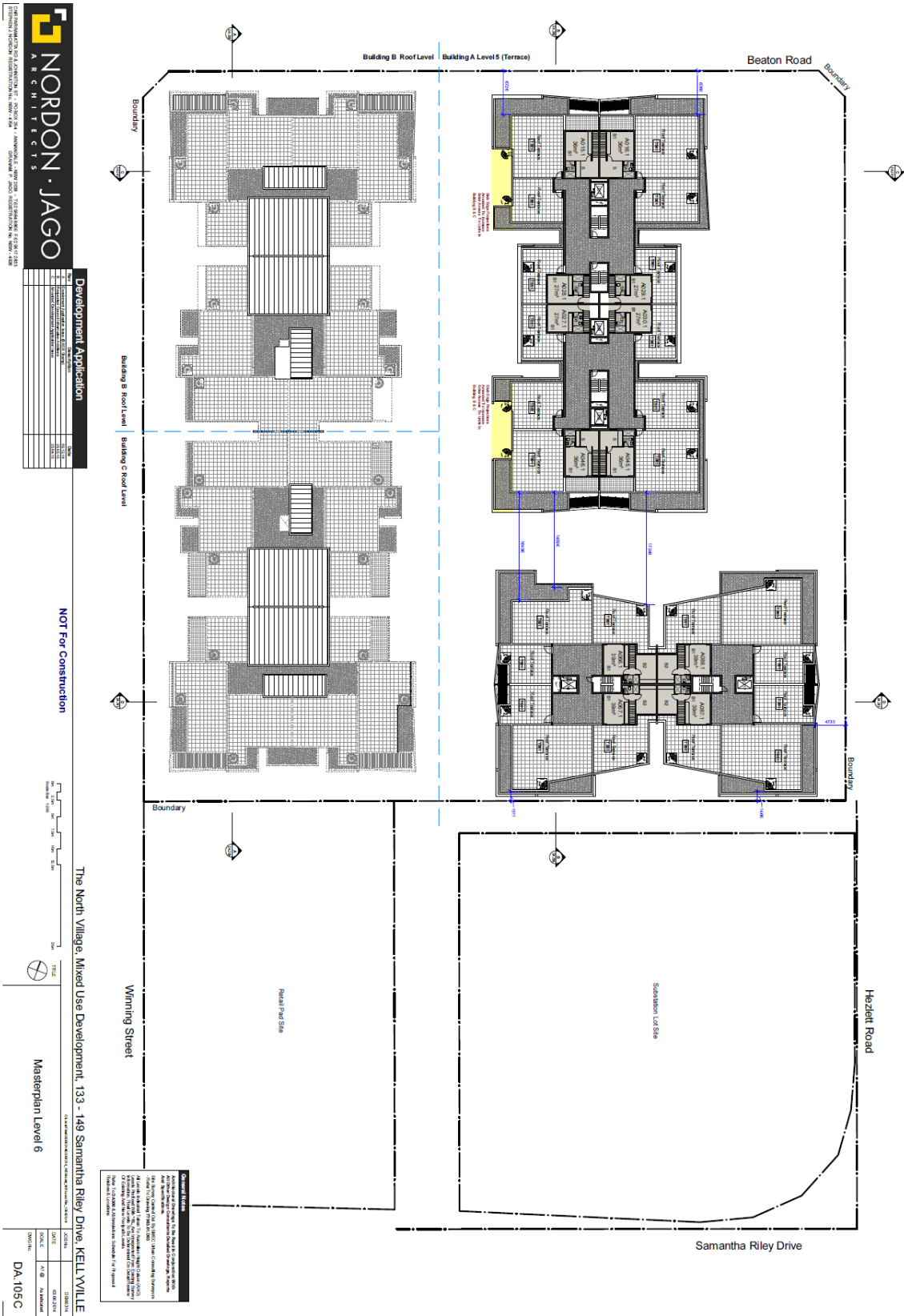










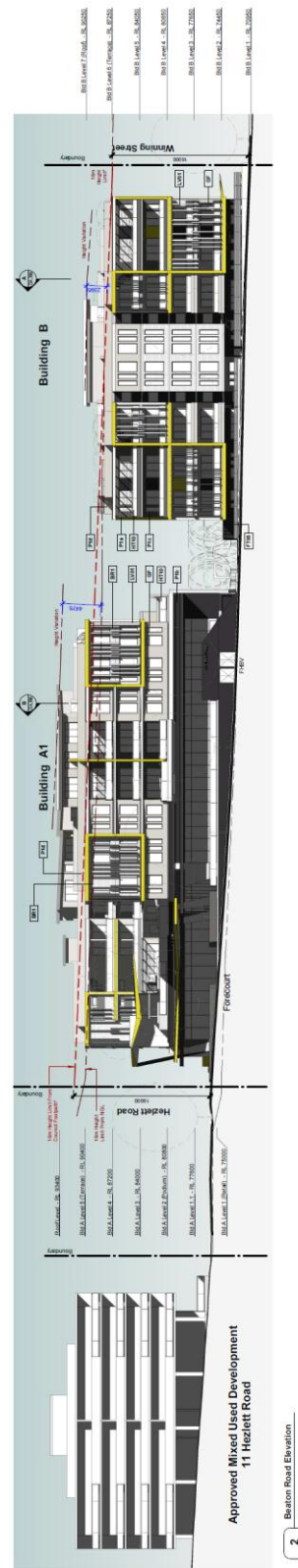




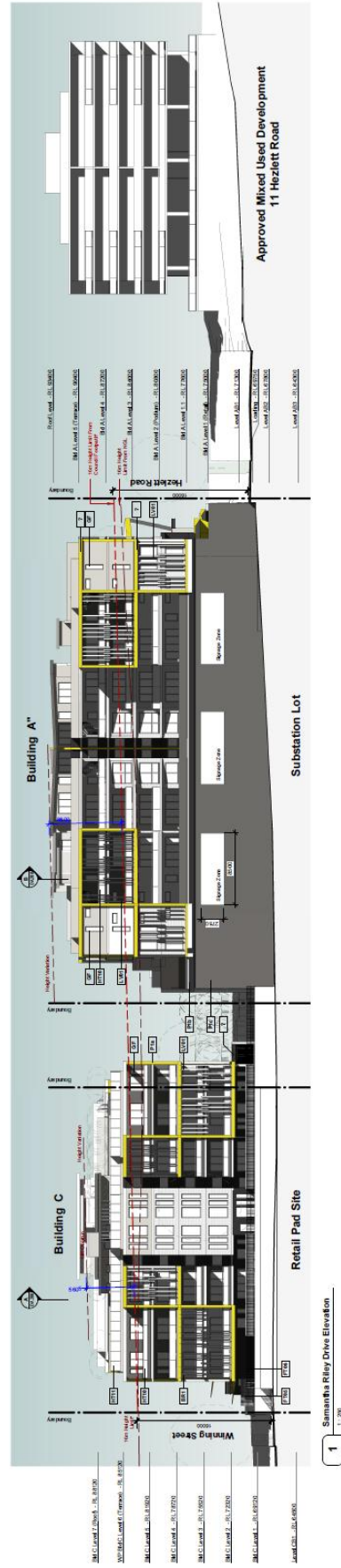
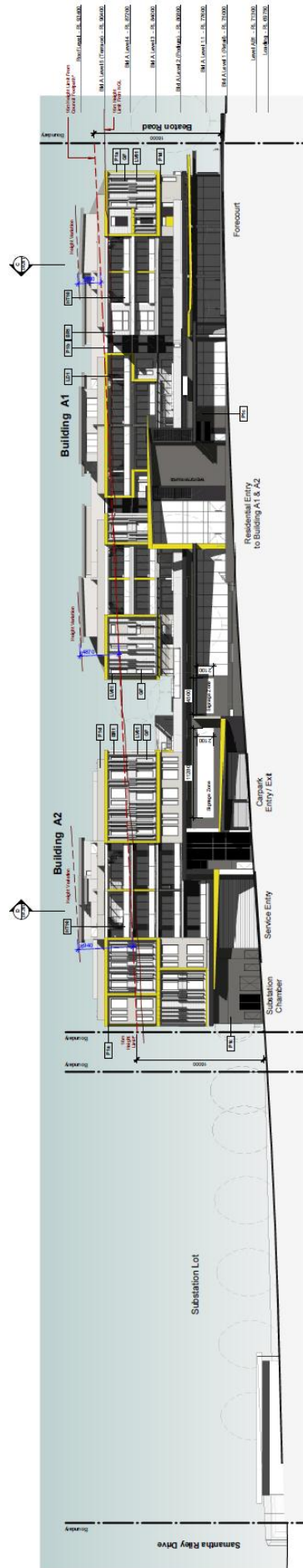
## ATTACHMENT 7 – ELEVATIONS AND SECTIONS



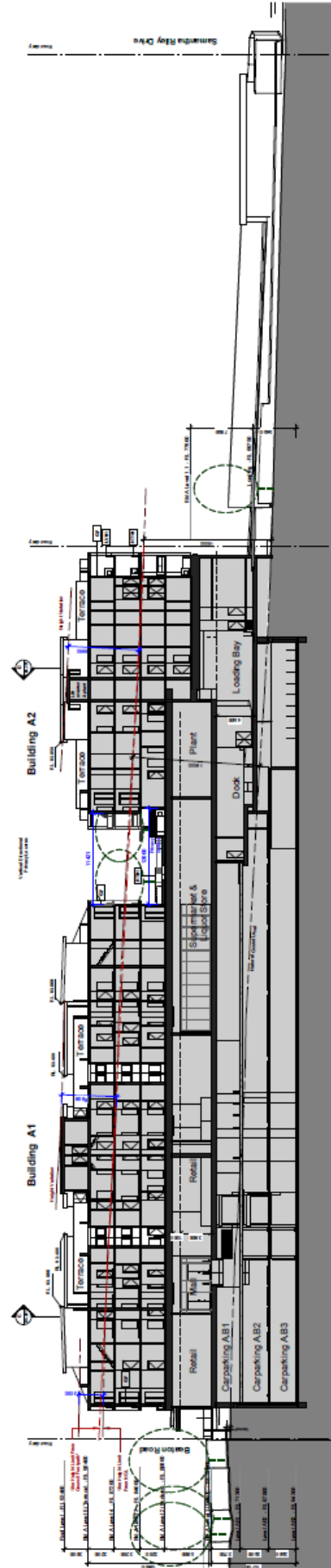
1 Winning Street Elevation  
1:500

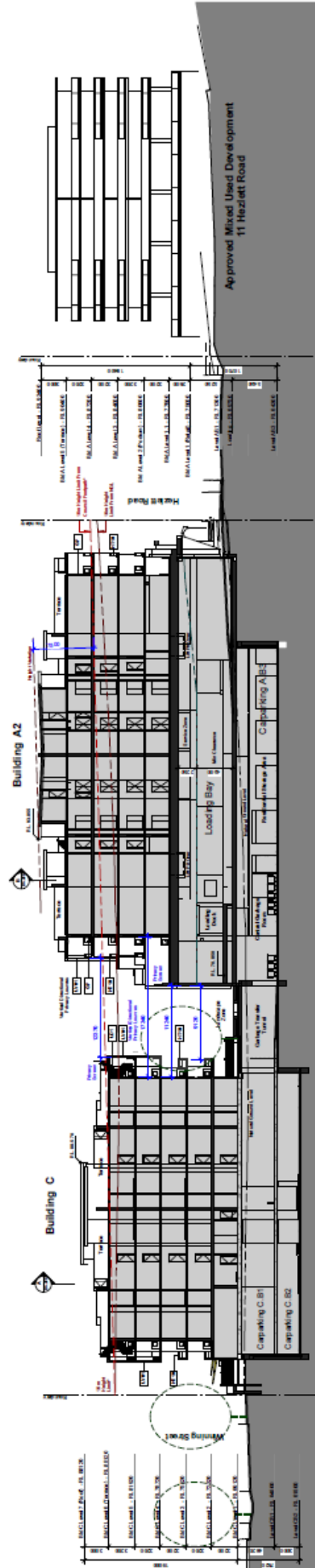
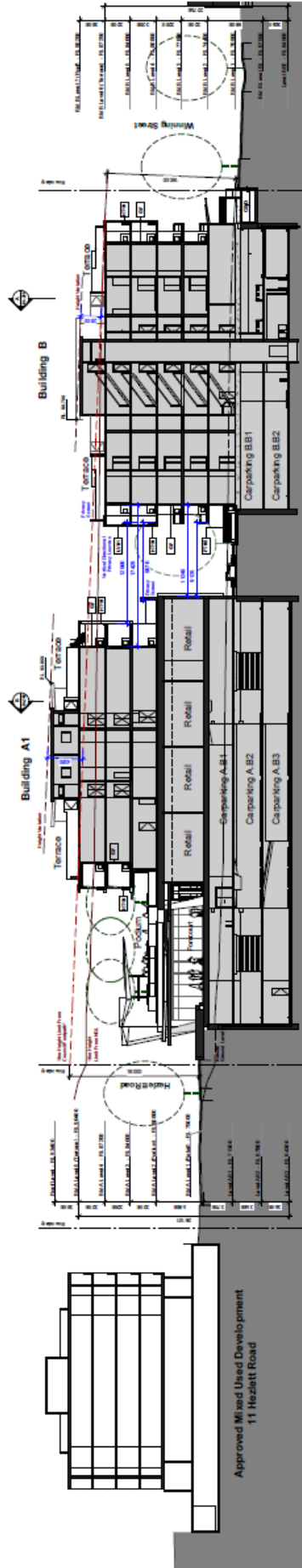


2 Baton Road Elevation  
1:500

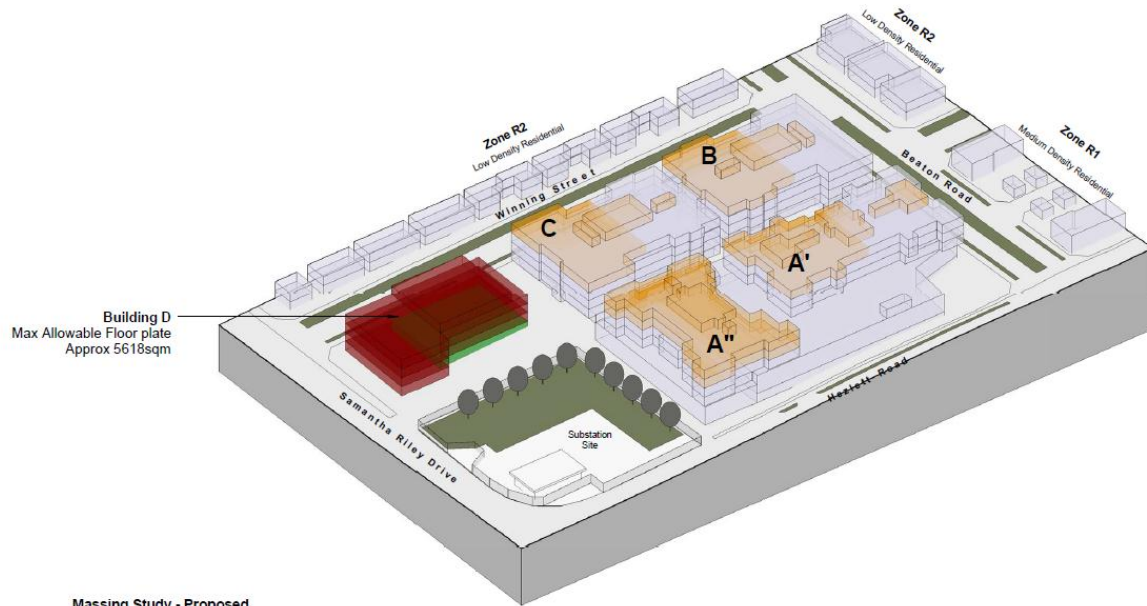




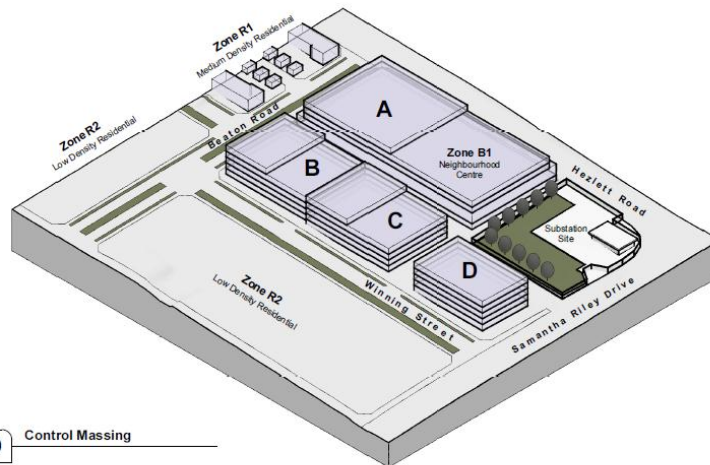




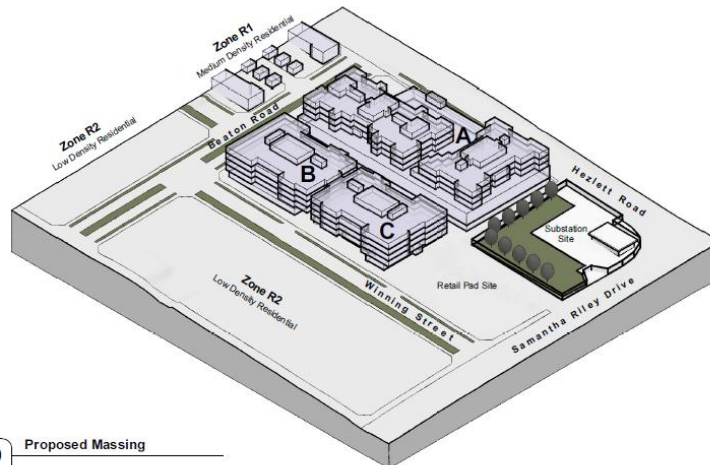
## ATTACHMENT 8 – ANALYSIS OF HEIGHT AND SCALE



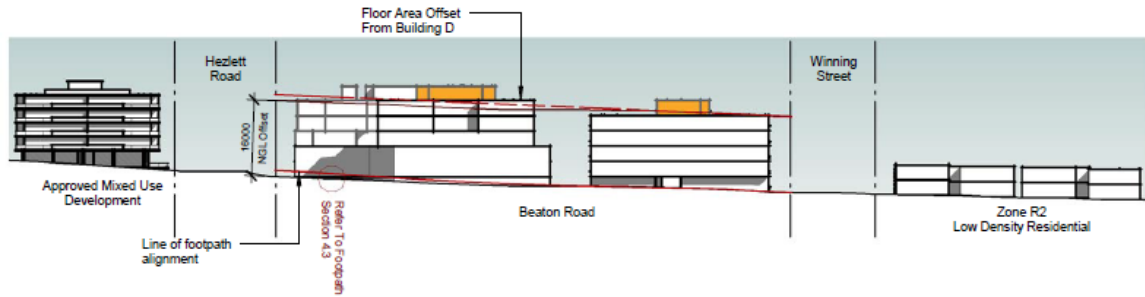
Massing Study - Proposed



1.0 Control Massing

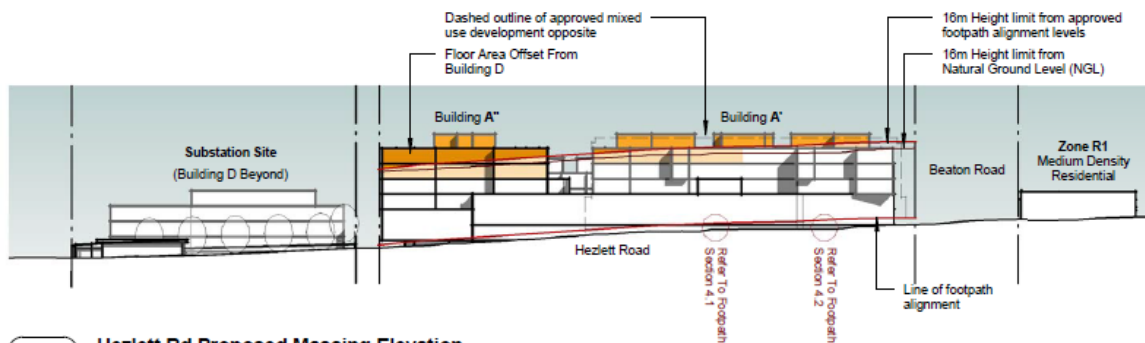


2.0 Proposed Massing



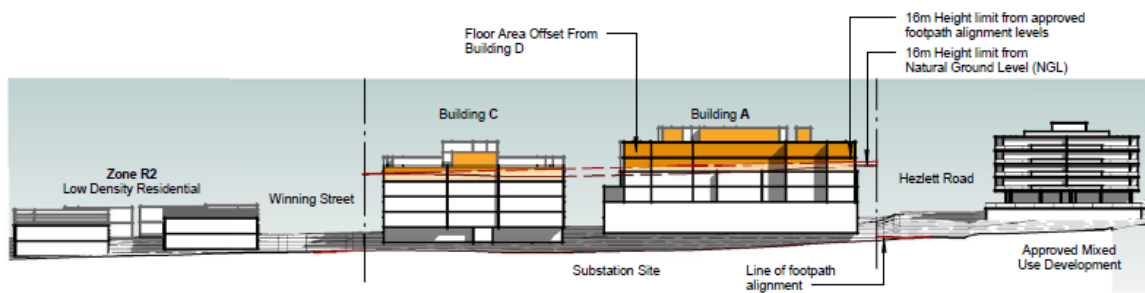
### 3.1 Beaton Rd Proposed Massing Elevation

1 : 1000



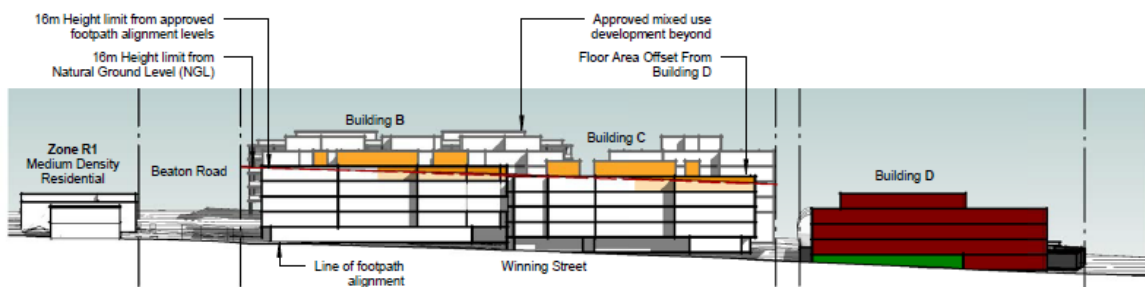
### 3.2 Hezlett Rd Proposed Massing Elevation

1 : 1000



### 3.3 Adjoining Boundary Proposed Massing Elevation

1 : 1000



### 3.4 Winning Street Proposed Massing Elevation

1 : 1000



Red band indicates 16m height limit from natural ground level\*



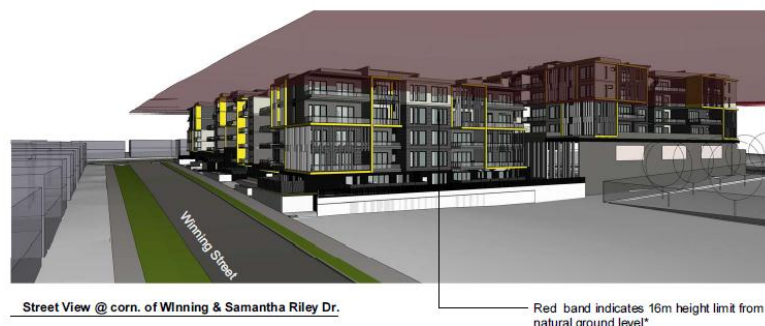
\* 16m Height plane indicated has been taken from existing ground level survey. Refer to Drawing DA.020 for detailed study of height plane comparison between natural ground levels and Councils proposed footpath alignment levels.



Red band indicates 16m height limit from natural ground level\*



\* 16m Height plane indicated has been taken from existing ground level survey. Refer to Drawing DA.020 for detailed study of height plane comparison between natural ground levels and Councils proposed footpath alignment levels.



Red band indicates 16m height limit from natural ground level\*





Street View @ corner of Beaton & Winning

Purple band indicates 16m height limit from council approved footpath level\*



Street View @ corner of Hezlett & Beaton

\* 16m Height plane indicated has been taken from Councils approved footpath levels. Refer to Drawing DA-020 for detailed study of height plane comparison between natural ground levels and Councils proposed footpath alignment levels.



Street View @ corner of Hezlett & Samantha Riley Dr.

Purple band indicates 16m height limit from council approved footpath level\*



Street View along Samantha Riley Dr.

\* 16m Height plane indicated has been taken from Councils approved footpath levels. Refer to Drawing DA-020 for detailed study of height plane comparison between natural ground levels and Councils proposed footpath alignment levels.



Street View @ com. of Winning & Samantha Riley Dr.

Purple band indicates 16m height limit from council approved footpath level\*

## ATTACHMENT 9 – APPLICANTS CLAUSE 4.6 VARIATION(AMENDED)



4 May 2015

Robert Buckham  
Development Assessment Officer  
The Hills Shire Council  
3 Columbia Court  
BAULKHAM HILLS NSW 2153

Dear Robert,

### Application No. 799/2015/JP: 133-149 Samantha Riley Drive, North Kellyville

We write on behalf of *Combined Projects (Kellyville) Pty Ltd* in relation to Application No. 799/2015/JP, lodged with The Hills Shire Council in December 2014. The application seeks consent for the redevelopment of land at 133-149 Samantha Riley Drive, North Kellyville for a mixed use development known as the "North Village", comprising retail and residential land uses, as well as associated ancillary works.

The proposed mixed-use development includes two distinct building components described as follows:

- Building A – a six-storey mixed use building comprised of a ground floor retail podium, with provision for a new supermarket and liquor store, retail tenancies, loading dock and public plaza, and 90 residential apartments.
- Building B and C - two six-storey interconnected residential flat buildings, with provision for 119 residential apartments.

The height of the proposed buildings, when measured from natural ground level, varies from 18.5 metres to 25 metres, which represents a departure from the Clause 4.3 – Height of Buildings control under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. As such, a formal variation to this development standard was sought under Clause 4.6 – Exceptions to Development Standards at Section 5 of the Statement of Environmental Effects (December 2014).

Following Council's initial assessment of the application and briefing with the Joint Regional Planning Panel, Council advised that further embellishment of the Clause 4.6 variation was required in order to enable further processing of the application. In particular, Council stated:

*"...The panel and Council staff request further embellishment of the Clause 4.6 Variation in terms of the justification provided. It is also requested that further justification be provided to demonstrate that the height exceedance does not result in an overdevelopment of the site. It is noted that you have provided massing diagrams showing a compliant building envelope however this does not clearly outline that the proposed density is not excessive. Given this site does not have a residential floor space ratio control or density control for this part of the development site further justification is required in this regard."*

SYDNEY  
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201 Sussex Street  
Sydney NSW 2000 Australia

t 02 8233 9900 f 02 8233 9966 e info@urbis.com.au w urbis.com.au Urbis Pty Ltd ABN 50 105 256 228

LETTER\_CLAUSE 4.6 VARIATION\_MAY 2015

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*Further to the justification requested above, it is requested that a number of drawings be prepared to the height encroachment similar to those submitted as part of the pre-lodgement process. It is requested that the drawings show the height plane and views above and below the height plane. It also requested that you confirm that the height variation is exactly 9 metres. Scaling of the plans would appear to show a slightly higher exceedance."*

Accordingly, this letter provides further justification for the proposed variation to the 'Height of buildings' development standard under SEPP (Sydney Region Growth Centres) 2006, against the provisions of Clause 4.6.

This letter should be read in conjunction with the Architectural Plans prepared by *Nordon Jago Architects*, as well as the Statement of Environmental Effects (December 2014), Urban Design Report (December 2014), and other supporting documentation submitted to Council.

#### Clause 4.6 – Exceptions to Development Standards: State Environmental Planning Policy (Sydney Region Growth Centres) 2006 - Clause 4.3 Height of Building

##### 1 Introduction

This written request seeks a variation to the development standard under Clause 4.6 - Exceptions to Development Standards of the SEPP (Sydney Region Growth Centres) 2006 in relation to Clause 4.3 Height of Building.

As shown in Figure 1, the built-form component of the proposed development is within the O area and has a maximum building height of 16 metres. The proposed development will exceed the maximum 16m height control imposed by Clause 4.3 of SEPP (Sydney Region Growth Centres) 2006. As such the development requests a variation of the development standard from 16m to 25m.

FIGURE 1 – EXTRACT FROM HEIGHT OF BUILDING MAP



LETTER\_CLAUSE 4.6 VARIATION\_MAY 2015

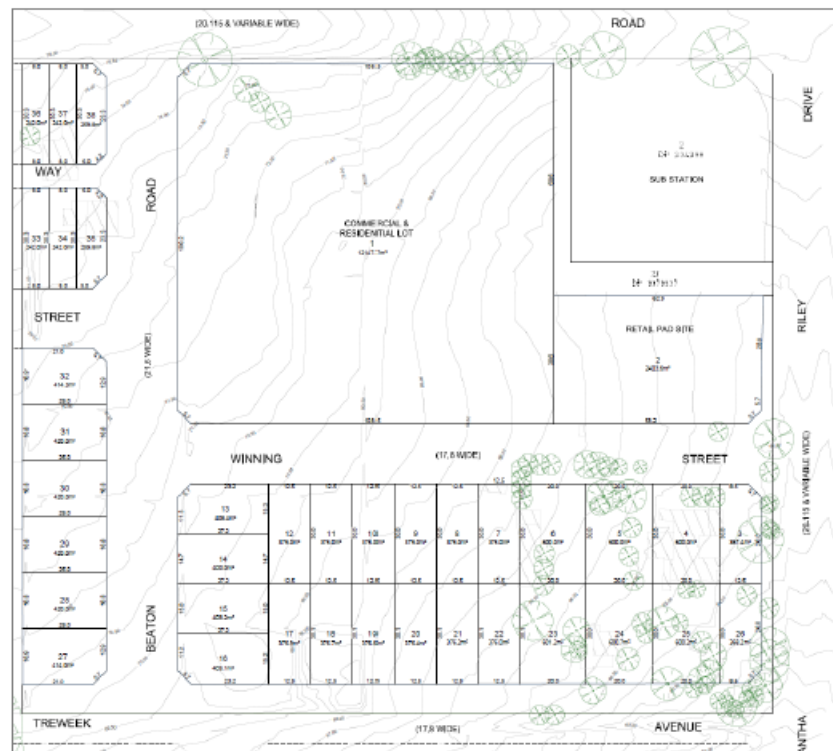
PAGE 2

## 2 The Proposed Development

Application No. 799/2015/JP seeks consent for the redevelopment of land at 133-149 Samantha Riley Drive, North Kellyville for the "North Village", a mixed use development comprising retail and residential land uses with associated ancillary works, including new road infrastructure, site preparation / earthworks, stormwater, servicing and landscaping. The proposal also includes subdivision of the site into 38 Torrens title lots to support the following land uses:

- Lot 1: Mixed use development, known as "North Village", incorporating residential and retail uses across three five-six storey buildings, with access from Hezlett Road and Winning Street.
- Lot 2: Retail pad site accommodating a future drive-thru restaurant with access from Samantha Riley Drive and Winning Street.
- Lots 3-38: Residential lots to accommodate future dwelling houses.

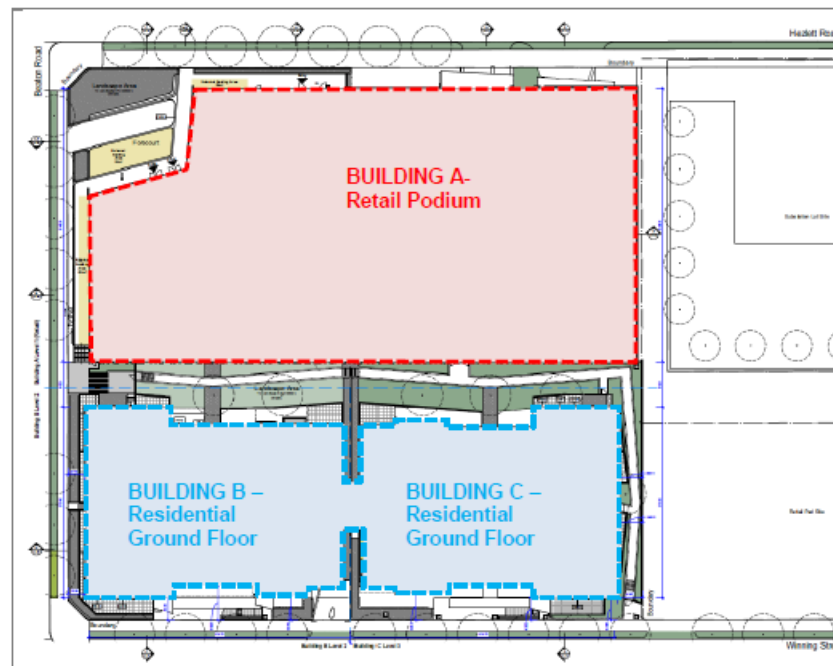
FIGURE 2 – DRAFT PLAN OF SUBDIVISION



The built-form component of the proposal includes the construction of a mixed-use development comprising the following buildings and associated infrastructure:

- **Building A** - six-storey building consisting of a podium accommodating a neighbourhood scale shopping centre (small supermarket and liquor store and 13 speciality retail tenancies), with five levels of residential apartments above, and three basement levels accommodating car parking, servicing and storage areas.
- **Building B and C** - two interconnected five storey residential flat buildings, with three basement levels accommodating car parking, storage and servicing areas.

FIGURE 3 – GROUND FLOOR PLAN



### 3 Height of Buildings

All three of the proposed buildings project above the 16 metre building height limit to varying degrees. The greatest variation occurs on Building A, which sits at the lowest point of the site and accommodates the retail podium and loading area. Building A exceeds the 16m height of buildings development standard by approximately nine metres, with a maximum height of 25 metres. Notably this is the worst case scenario.

With respect to Buildings B and C the height exceedance largely relates to the buildings' roof terrace elements which project above the 16 metre height limit. Both buildings exceed the 16 metre height limit by approximately four metres, with a maximum height of 20 metres.

The proposed building heights are detailed in Table 1 below.

TABLE 1 – PROPOSED BUILDING HEIGHTS

BUILDING	HEIGHT IN METRES	HEIGHT IN RL
<b>Building A</b> (Shop-top Housing)	18.55m to 24.89m	RL 93.870 Max
<b>Building B</b> (Residential Flat Building)	20.31m	RL 90.700 Max
<b>Building C</b> (Residential Flat Building)	20.31m	RL 88.570 Max

It is important to note that the height of buildings has been measured from the existing or natural ground level, as per the definition provided in *SEPP (Sydney Region Growth Centres) 2006*, which states:

*Building height (or height of building) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

As shown in the Architectural Drawings, the existing ground levels of the site vary from a high point of RL76.00 in the north-west corner to a low point of RL62.00 in the south east corner, representing a fall of approximately 14 metres. Accordingly, existing ground levels require substantial modification to create a suitable building platform for the development.

The proposed ground levels for the development will respond to the topography surrounding the site, in particular the approved new road infrastructure and upgrade to Hezlett Road, which is to be raised by approximately two metres at the interface of the north-eastern portion of the site.

Accordingly, the approved ground levels will vary from a high point of RL75.72 at the Hezlett Road interface in the north-east portion of the site, to RL67.50 at the Winning Street interface in the south-west portion of the site.

This significant variation between existing and approved ground levels is an important consideration for the Clause 4.6 variation request to vary the development standard, particularly given the importance of integrating the proposed development with the surrounding pedestrian and road network.

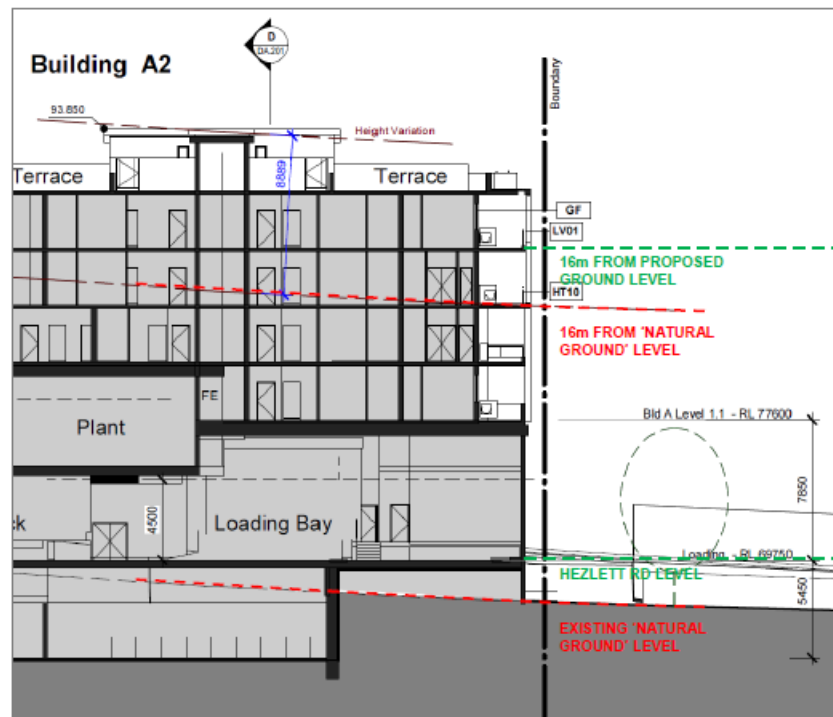
A comparison of the existing 'natural ground' levels and the approved ground levels at the Council footpath interface are provided in Table 2 below.

TABLE 2 – EXISTING AND APPROVED GROUND LEVELS

ROAD / BOUNDARY	EXISTING GROUND LEVEL	APPROVED GROUND LEVEL (COUNCIL FOOTPATH LEVELS)
<b>Hezlett Road</b> (North-east site boundary)	RL 74.330 RL 69.505	RL 75.720 (+1.390m) RL 70.440 (+0.935m)
<b>Beaton Road</b> (Northern site boundary)	RL 74.245 RL 71.135	RL 75.615 (+1.370m) RL 71.200 (+0.065m)
<b>Winning Street</b> (North-west site boundary)	RL 71.000 RL 67.410	RL 70.975 (-0.025m) RL 67.505 (+0.095m)

The above points can be best demonstrated by analysing the Hezlett Road interface on the north-east portion of the site, which represents the greatest variation to the maximum 'height of buildings' development standard (refer Figure 3).

FIGURE 4 – BUILDING A HEIGHT ANALYSIS





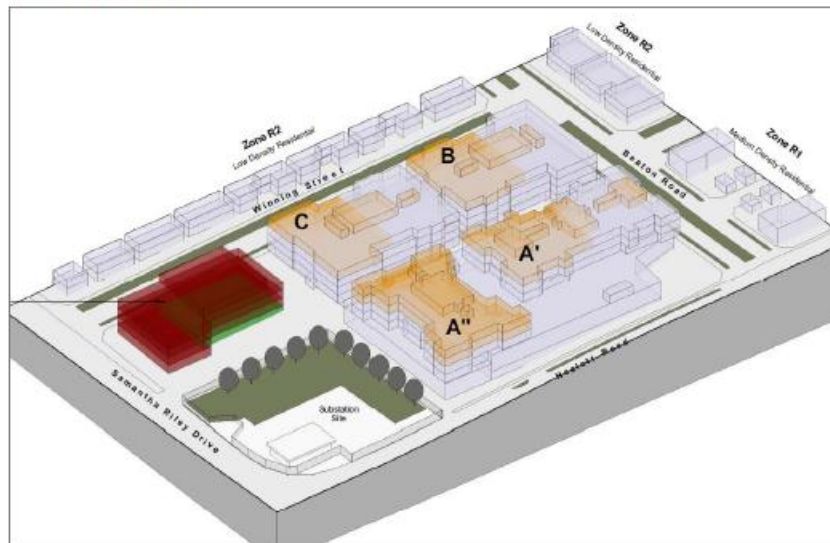
#### 4 Concept Development & Building Massing

The proposed development has been designed with regard to the existing and likely future site constraints. In particular, Samantha Riley Drive and the existing electrical substation site, which could have significant acoustic, visual privacy, access, and traffic impacts if not well mitigated. As such, the development proposes to consolidate retail and residential floor space on the northern portion of the site, described as Lot 1 (North Village). This proposed massing arrangement has allowed for the southern portion of the site, described as Lot 2 (Retail Pad), to be reserved for a future drive-thru restaurant.

As demonstrated within the Statement of Environmental Effects and the Urban Design Study this proposed massing arrangement presents a superior urban design outcome and improves potential traffic, access, acoustic, privacy, overlooking, and overshadowing impacts.

Figure 5 below has been prepared to demonstrate and explore the massing arrangement for a compliant five-storey mixed-use development on Lot 2 (Retail Pad). The diagram identifies, in orange, the areas of Buildings A, B and C which project above the 'height of buildings' line. A comparison of the two massing scenarios indicates that the arrangement proposed within the development application ultimately results in a net loss of gross floor area across the combined development site.

FIGURE 5 – MASSING STUDY



## 5 Principles of Exceptions to Development Standards

Clause 4.6 of *SEPP (Sydney Region Growth Centres) 2006* provides flexibility in the application of planning controls by allowing the Consent Authority to approve a development application that does not comply with a development standard, where it can be shown that flexibility in particular circumstances achieve better outcomes for and from the development. Subclauses (3), (4), (5), and (8) from Clause 4.6 of *SEPP (Sydney Region Growth Centres) 2006* are extracted below:

*(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.*

*(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 Department of Planning and Infrastructure's Guidelines for varying development standards advises that Clause 4.6 was modelled along the lines of *State Environmental Planning Policy No. 1 Development Standards* (SEPP 1). As such the principles for assessment and determination of applications to vary development standards are relevant. In this regard the decision of Justice Lloyd in *Winten v North Sydney Council* identifies the principles for which a SEPP 1 objection must be made. These are:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case; and
- Is the objection is well founded.

The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* has since expanded the considerations of a SEPP 1 objection and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose would be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable.

The following section addresses the local provisions of Clause 4.6 of *SEPP (Sydney Region Growth Centres) 2006* together with the principles of *Winten v North Sydney Council* and the expanded 5 part test established by *Wehbe V Pittwater [2007] NSW LEC 827*.

#### 5.1 IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

The planning control in question is Clause 4.3 of *SEPP (Sydney Region Growth Centres) 2006*. Clause 4.3 nominates a maximum building height of 16 metres on the subject site. The building height control is a development standard capable of being varied under the provisions of Clause 4.6 of *SEPP (Sydney Region Growth Centres) 2006*.

#### 5.2 WHAT IS THE UNDERLYING OBJECTIVE OF THE STANDARD?

The objectives of Clause 4.3 of *SEPP (Sydney Region Growth Centres) 2006* are outlined below. Despite the non-compliance with the numerical development standard, the proposal is considered to be entirely consistent with the objectives of the standards as described below.

- *To preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,*

The proposed development has been carefully designed to minimise potential impacts on existing and proposed adjoining developments. Adequate separation distances are provided between the subject site and adjoining properties, the closest of which are located opposite Samantha Riley Drive. These separation distances ensure there are no overlooking, overshadowing or privacy issues. Shadow diagrams were provided with the Development Application, illustrating the impact of the proposed building forms. These diagrams confirm that adverse impacts will not arise as a result of the additional height proposed.

- *To provide for a range of residential building heights in appropriate locations that provide a high quality urban form,*

The proposal provides a range of residential building heights across the site, which provides an appropriate transition of bulk and scale in the context of the surrounding locality. The proposal incorporates taller gateway buildings within the B1 Neighbourhood Centre zone, and lower building forms on the R1 General Residential and R2 Low Density Residential zones. The surrounding land is expected to be developed to accommodate two-storey dwellings.

- *To facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,*

The proposed design provides an appropriate balance between achieving a more intensive development on the site, whilst ensuring that unreasonable amenity impacts do not arise as a result of the additional building height now proposed. The site is well separated from other residential properties and the new development will not result in overlooking, overshadowing or privacy issues.

- *To provide appropriate height controls for commercial development,*

The retail component of the development consists of a single storey podium element with provision for a small supermarket and liquor store and thirteen retail and restaurant tenancies.

- *To restrict the height of buildings within the curtilage of heritage items.*

There are no heritage items within the vicinity of the subject site.

In addition to the above, the proposal is considered to be entirely consistent with the objectives of the B1 Neighbourhood Centre zone, as outlined below.

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

The proposal includes a new neighbourhood shopping centre with the provision for a new supermarket and liquor store, retail and restaurant tenancies. The shopping centre will provide opportunities for retail and business uses that will serve the needs of people living and working in the local area.

- *To ensure the scale and type of business development is compatible with the amenity of surrounding areas.*

The proposed neighbourhood scale shopping centre will serve the local catchment area of North Kellyville. It has been demonstrated in the Statement of Environmental Effects and supporting technical documentation that the proposed development will not result in adverse amenity impacts and thus is compatible with the surrounding areas.

- *To allow for residential development that contributes to the economic and social vitality of the neighbourhood centre.*

The proposal maximises retail and residential opportunities in a new neighbourhood centre, which will contribute greatly to the economic and social vitality of North Kellyville. It will generate new employment and housing opportunities creating more than 163 permanent new jobs and approximately 209 new dwellings in a location that is highly accessible to major employment, retail, health and education facilities and excellent public transport connectivity.

- *To ensure that residential development does not preclude the provision of active retail, business and community uses at street level.*

The proposal has been carefully designed to include active shopfronts and a public plaza in an accessible and appropriate location on the site. The inclusion of above ground residential uses does not preclude the provision of active retail, business, and community uses at street level. Furthermore, it has been demonstrated in the Statement of Environmental Effects and supporting technical documentation that potential conflicts between retail and residential uses have been appropriately mitigated and can be suitably managed.

- *To ensure that residential development does not detract from the primary function of the zone which is to provide for retail, business and convenience uses to serve the community.*

As described above, it has been demonstrated in the Statement of Environmental Effects and supporting technical documentation that potential conflicts between retail and residential uses have been appropriately mitigated and can be suitably managed. As such, the inclusion of residential development on the subject site will not detract from the primary function of the zone.

- *To promote retail activities in accessible locations that encourage walking.*

The proposed neighbourhood scale shopping centre will provide facilities and services for existing and future planned residential properties within walking distance of the site. Improvements to the pedestrian environment in the vicinity of the site, as well as the inclusion of a public plaza, will encourage people to walk to and from the centre.



- *To promote a sense of place and focal points for the local community.*

The proposal includes a new public plaza that will help to define the entrance to the new neighbourhood shopping centre. Additionally, the strong design of the building will ensure that it becomes a local landmark and is clearly identifiable as a neighbourhood centre.

- *To ensure retail development does not adversely impact on the viability of retail development in the Local Centre Zone.*

The proposed neighbourhood scale shopping centre incorporates a small supermarket and liquor store and thirteen retail tenancies, with a combined gross floor area of 3,498m<sup>2</sup>. This proposed quantum of retail floor space is consistent with the cap imposed by Clause 4.5A of SEPP (Sydney Region Growth Centres) 2006, which limits the total gross floor area of business, office and retail premises within a B1 Neighbourhood Centre zone to 4,000m<sup>2</sup>. It is therefore considered that the proposed development will not adversely impact on the viability of retail development in the Local Centre zone.

5.3 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD CONSISTENT WITH THE AIMS OF THE POLICY, AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARD TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE EP&A ACT?

The aims and objectives of State Environmental Planning Policy No.1 – Development Standards are as follows:

*"...to provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or necessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."*

The objects set down in section 5(a)(i) and (ii) of the EP&A Act are as follows:

*(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

- The proposed will result in the redevelopment of a large portion of underutilised and well located land, designated for urban uses, that benefits from access to well-established and future planned public transport, services and infrastructure;
- The proposed development will facilitate construction of the Hezlett Road Neighbourhood Centre and will encourage future development of the surrounding semi-rural properties, as envisaged by the North West Growth Centre Structure Plan;
- The proposal delivers a coordinated development response to a key site located at a key gateway to the North Kellyville Precinct;

- The development will provide for active uses including a small supermarket and liquor store, retail and restaurant tenancies, which will provide for the daily needs of residents and employees within the immediate context; and
- The development will deliver 209 new residential dwellings within an identified urban environment supported by well-established and future planned public transport, services and infrastructure associated with the North West Growth Centre, whilst also providing for suitable residential facilities and amenity.

#### 5.4 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance based on the following:

- **The proposed development is entirely consistent with State Government policy objectives.** As set out the Sydney Metropolitan Strategy 'A Plan for Growing Sydney' the proposal will increase housing densities in centres with good access to services and public transport infrastructure. Furthermore, the project will help to support patronage and thereby reinforce the viability of the Kellyville train station by increasing the residential population within the vicinity.
- **The proposed development is consistent with the objectives of the B1 Neighbourhood Centre zone.** The proposal provides a neighbourhood scale shopping centre with provision for a small supermarket and liquor store, retail and restaurant tenancies, which will serve the needs of the surrounding catchment. Both the retail and residential components of the development will contribute to the economic and social vitality of the area.
- **The proposed building heights are consistent with the underlying objectives of the Clause.** In particular, the proposal facilitates the development of a higher density neighbourhood centre while minimising impacts on adjacent residential areas. It has been demonstrated that the proposal will preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale.
- **The proposal responds to and builds upon the North Kellyville Precinct Development Control Plan.** The proposed development has been rationalised to respond to the objectives and principles of the Hezlett Road Neighbourhood Centre, by providing a concentration of building mass and height, and creating a visible gateway to the North Kellyville Precinct.
- **The proposal maximises retail and residential opportunities in a new neighbourhood centre.** It will generate new employment and housing opportunities creating more than 163 permanent new jobs and approximately 209 new dwellings in a location that is highly accessible to major employment, retail, health and education facilities and excellent public transport connectivity.
- **The proposal will contribute to the diversity of housing product available within the locality.** Increasing the height buildings allows for the introduction of a greater number of residential dwellings, which will contribute to the diversity of housing product available within the locality and will improve housing affordability in the area, consistent with the desired future character of the North Kellyville Precinct.
- **The proposal achieves a high level of residential amenity.** The proposed development has been designed in accordance with *State Environmental Planning Policy 65 - Design Quality of Residential Flat Development* and the NSW Residential Flat Design Code 'rules of thumb'. The proposed development provides a minimum of 2 hours solar access to 71.3% (149) of apartments, while 65-70% of apartments are cross ventilated.

- **The proposal has been carefully designed to mitigate potential conflicts between retail and residential land uses.** The inclusion of residential land uses on the site does not preclude the provision of active retail, business, and community uses due to the careful consideration and mitigation of potential land use conflicts, particularly in relation to privacy, noise, traffic and access.
- **The proposed development is compatible with the height, bulk and scale of the surrounding development.** In particular, the proposal is consistent with the building height of the adjacent approved development on Hezlett Road. The development has been articulated with stepped facades and recessed breaks, which reduce the scale of the development and reflects the desired fine grain scale of the locality. Furthermore, the proposed building heights provide an appropriate transition in built form and land use.
- **The proposal has been carefully designed to minimise potential impacts on adjoining properties.** In particular, the non-compliant building heights do not result in a loss of amenity to adjacent properties. The proposed design achieves an appropriate balance between achieving a more intensive development on the site, whilst ensuring that unreasonable amenity impacts do not arise as a result of the additional building height now proposed. The site is well separated from other residential properties and the new development will not result in overlooking, overshadowing or privacy issues.
- **Overall the proposal provides net positive urban design outcomes for the Neighbourhood Centre.** The proposed development has been peer reviewed by Carlos Frias, Director, Urban Design, Urbis who has concluded that in urban design terms, the proposal is suitable, in particular that:
  - The proposed variation in height is justified based on the urban design merits of the development layout;
  - The proposed site layout has been rationalised to minimise traffic and visual impacts by consolidating vehicular access and servicing;
  - Land uses have been combined to create a vital mixed use development that activates ground level edges on Hezlett Road with retail;
  - Residential use is proposed to provide an appropriate transition on the western portion of the site on Winning Street;
  - The proposed development provides a clear identity for Hezlett Road as a sub-arterial/town centre road with an activated retail edge and clearly articulated Centre entrance;
  - The proposed development improves the legibility of the Neighbourhood Centre and provides a clear transition from Hezlett Road and Winning Road and beyond with appropriate uses;
  - The proposed development provides a rationalised built form reflecting this transition; and
  - The proposal provides an appropriate bulk and massing by avoiding long building lengths that would have negatively impacted on the public domain by substantial overshadowing.

5.5 IS A DEVELOPMENT WHICH COMPLIES WITH THE DEVELOPMENT STANDARD  
REASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

As outlined in point 3.4 above, the nature of the variation sought will not give rise to unreasonable impacts on adjoining or adjacent land uses. Strict technical, numerical compliance with the building height control would not contribute to an improved urban outcome. As such it is considered that a compliance with the control is neither reasonable nor necessary in circumstances of this case.

5.6 IS THE OBJECTION WELL FOUNDED?

Based on those matters outlined in this request the objection is considered to be well founded.

5.7 WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR  
REGIONAL PLANNING?

The non-compliance will not raise any matter of State or Regional Significance. Rather it would be viewed that the variation contributes to the provision of new housing, employment and services within a walking catchment of an identified 'neighbourhood centre' and within close proximity to a range of well-established and future planned infrastructure (including public transport networks) associated with the delivery of the North West Growth Centre.

The proposed development is entirely consistent with the State Government's *'Plan for Growing Sydney'* and in particular the priorities for the 'West Central' subregion.

Furthermore, the proposed development will facilitate the delivery of the Hezlett Road Neighbourhood Centre in accordance with the North West Growth Centre Structure Plan and North Kellyville Development Control Plan. The proposed development will contribute to the range of facilities available within the region and will stimulate demand for the new facilities and infrastructure envisaged for the area.

5.8 IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL  
STANDARD?

The height of building variation will facilitate (in part) the redevelopment of the site, resulting in a net public benefit through the delivery of the Hezlett Road Neighbourhood Centre and North Kellyville residential precinct.

The redevelopment will generate new employment and housing opportunities creating more than 163 permanent new jobs and 209 new dwellings in a location that is highly accessible to major employment, retail, health and education facilities and excellent public transport connectivity.

## 6 Conclusion

Development standards are a means of implementing planning purposes for a development or area. Clause 4.6 seeks to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A development strictly complying with the numerical height control standard would not significantly improve the amenity of surrounding land uses. In the context of the locality it would be unreasonable for strict compliance to be enforced, as the density and scale of the proposed development is compatible with surrounding likely future development.

The variation of the height control will result in a better urban design outcome for the site and provide greater visual interest, better street scale and better outlook and amenity for the apartments in the development.

On the basis of reasons provided within this written request it is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.

Urbis

May 2015



## ATTACHMENT 10 – HEZLETT ROAD CENTRE DCP LAYOUT VARIATION

### 3.2 Hezlett Road Neighbourhood Centre

Located at the southern entry to the Precinct at the intersection of Hezlett Road and Samantha Riley Drive, the Hezlett Road Neighbourhood Centre is envisioned to provide a convenient retail focus for the Precinct. Specifically, the precinct is proposed to provide:

- Convenience retail and grocery shopping to passing traffic and residents on either side of Samantha Riley Drive, without undermining the retail offered at North Kellyville Local Centre or Wrights Road retail centre.
- Retail and commercial uses, comprising one small supermarket and a small range of specialty shops such as a newsagency, bakery, pharmacy, and may include a service station.
- Built form that is urban and compact in character with no front or side setbacks. Ground floor premises will be characterised by shops, restaurants and cafes that will encourage street interaction and contribute to the life of the streets and public spaces. Commercial uses and apartments will be located on the upper floors.
- The existing substation will be screened with landscaping and surrounded by parking areas, creating a more pleasant interface and not detracting from the character of the neighbourhood centre.
- The centre will be surrounded by development that is more residential in character with either residential flat buildings or multi dwelling housing. Development around the existing substation could potentially comprise car parking and/or a service station.
- Public art and landscape elements such as sandstone walls, seating areas and bus shelters are encouraged at the north west intersection of Hezlett Road and Samantha Riley Drive to improve the visual character of the southern entry to the North Kellyville Precinct.
- A park will be located along Hezlett Road north of the centre to provide for passive recreational uses for the neighbourhood centre.

#### 3.2.1 OBJECTIVES

- To create a vibrant, mixed use Neighbourhood Centre that provides a range of small-scale retail, business and community uses which serve the needs of people who live and work in the surrounding neighbourhood.
- To ensure that the detailed design of the neighbourhood centre is undertaken in a co-ordinated manner in order to achieve a high quality urban design outcome.
- To provide opportunities for medium density housing.

#### 3.2.2 CONTROLS

- The Hezlett Road Neighbourhood Centre is to be located generally in accordance with Figure 2.
- The Neighbourhood Centre is to be consistent with the indicative layout shown in Figure 45 and the following principles.

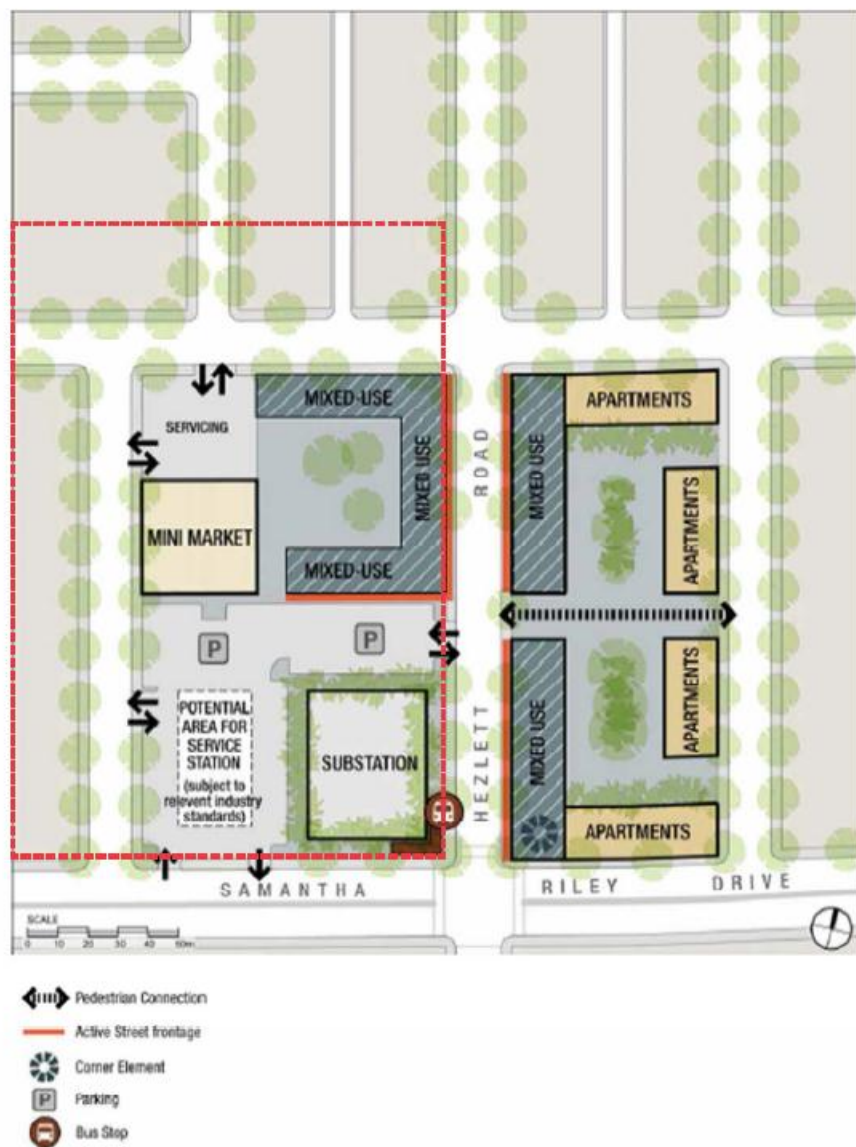


FIGURE 3.2.4(e): Indicative Layout Plan for Hezlett Road Neighbourhood Centre

### 3.2.3 PRINCIPLES

#### Built form:

- Provide a range of building heights, up to a maximum of 4 storeys.
- Buildings are to define the entry to the residential areas and open spaces adjacent to the neighbourhood centre and are to be generally built to the street edge.
- Avoid blank walls visible from principal street and the public domain. Large format retail premises are to be sleeved where appropriate with active uses.
- Residential and mixed use development is to be consistent with the guidelines and principles outlined in SEPP No. 65 – Residential Flat Development and the Residential Flat Design Code (Urban Design Advisory Service and Planning NSW 2002).
- Establish a high quality built form and energy efficient architectural design that promotes a 'sense of place' and modern character for the Neighbourhood Centre.

#### Parking and access:

- Access to parking, loading docks and waste collection areas must not be provided from Hezlett Road.
- Locate at grade parking areas generally behind building lines and screened from streets and public open space.
- Opportunities for shared parking provision for complementary uses within the local centre are to be provided.
- On-street parking is to be provided within the Centre and designed in accordance with AS 2890.5-1993.

#### Public domain:

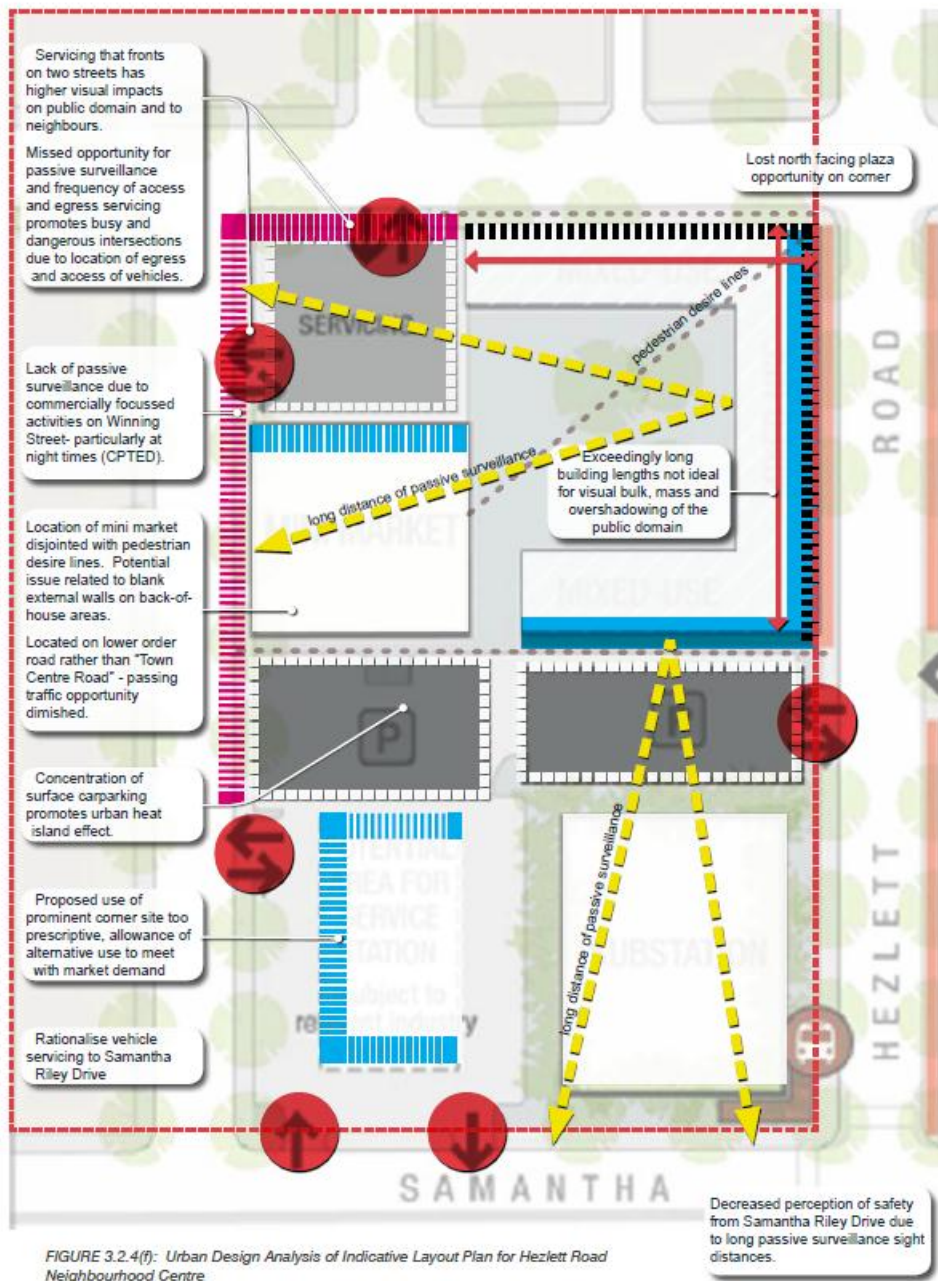
- Provide a high quality landscape design including a co-ordinated package of street furniture and lighting that enhances the character of the Centre.
- Provide street tree and open space planting that establishes generous shade for pedestrians.
- Incorporate the principles of Crime Prevention through Environmental Design (CPTED) and Safer by Design (NSW Police) into all development within the Neighbourhood Centre.
- Site servicing and loading facilities, waste storage and other infrastructure is to be designed to minimise visual impact on the public domain and impacts on neighbours.

### 3.2.4 ANALYSIS OF INDICATIVE LAYOUT PLAN FOR HEZLETT ROAD NEIGHBOURHOOD CENTRE

Demonstrated in the following analysis overlay of the Indicative Layout Plan for the Hezlett Road Neighbourhood Centre, particular issues that conflict with the written principles set out in the DCP have been highlighted. In rationalising the site to the principles set out in the ILP, the proposed development has departed from physical layout set out in the Plan in order to improve upon key urban design considerations in relation to the site and context.

Some issues identified in the analysis include:

- Frequency and location of vehicular service entries and exits
- Lost passive surveillance opportunities due to single land-use fronting Winning Street;
- Diminished legibility of layout as a Neighbourhood Centre;
- Intensity of surface car parking;
- Excessively long building lengths;





## 4.0 THE PROPOSAL

### 4.2.1 BASIS FOR THE PROPOSED MODIFICATIONS

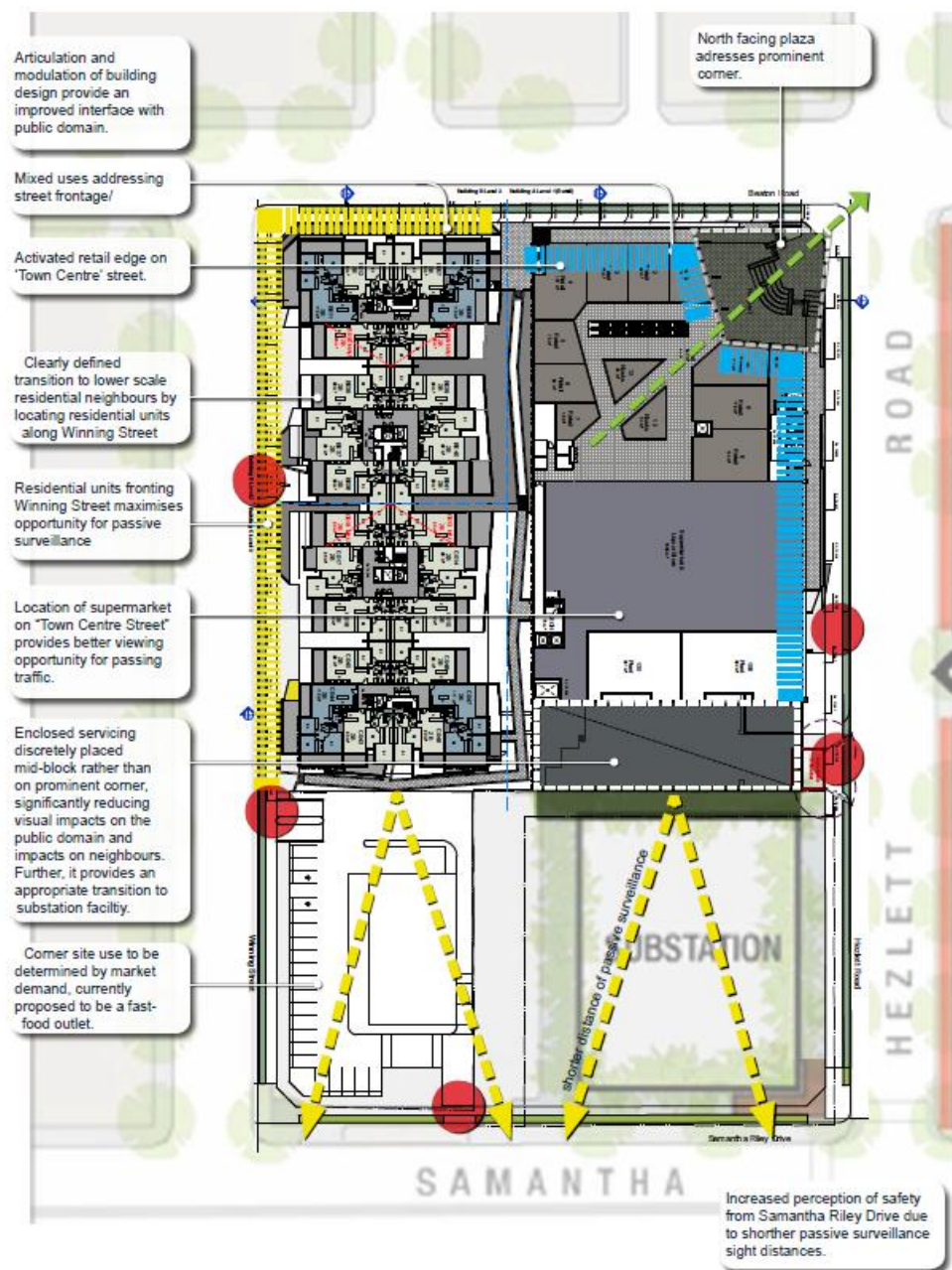
The proposed development has been rationalised to respond to the objectives and principles of the Hezlett Road Neighbourhood Centre. It can be demonstrated that negative impacts (if any) from the physical variation of the proposal from the NKDCP 2008 layout has been outweighed on the balance of positive impacts of the proposal.

The physical variation of the proposal from the NKDCP 2008 demonstrates an overall improved rationalisation of the indicative layout has been outweighed on the balance of positive impacts of the proposal.

The rationalisation of the site whilst departing from the physical layout provided in the Indicative Layout Plan for HRNC is as follows:

- Mixed use and retail activation predominantly addresses the 'Town Centre Street' or 'Sub-arterial Road', being Hezlett Road. This is an appropriate location for ground level retail given the high visibility catchment of Hezlett Road for passing traffic;
- A north facing plaza articulates a clearly defined commercial entrance to the centre, providing greater opportunity for a variety of vibrant retail uses such as cafes and restaurants on a prominent but protected corner of the development;
- Provision of clear pedestrian desire lines expressed internally within the centre and along the street has been defined with landscaping and articulation for legible territorial boundaries between public and private interfaces;
- A clearly defined transition to lower scale residential neighbours by locating the majority of residential apartments on the western boundary of Stage 1 is a sound response given the potential to maximise passive surveillance on the new local street. Further, it significantly reduces visual and traffic impacts compared to the 2008 plan where the dominance of retail uses with vehicle oriented frontages (servicing) would have more of a negative visual and transitional impact from the 'local' street.
- Internalised servicing located 'mid-block' between the proposed development and existing substation facility is appropriate given the use and low visual quality of the existing substation. Further, reducing surface servicing and carparking minimises urban heat island effect and visual dominance of bland, unappealing bitumen areas.
- A fast-food outlet is proposed for the corner site fronting Samantha Riley Drive. Given the proximity of other petrol stations in the area, current market realities, and potential contamination issues associated with petrol station use, the variation of this use from the 2008 plan is acceptable. Further it is noted, that the proposed use in the 2008 plan is shown as "Indicative".







## ATTACHMENT 11 – PHOTOMONTAGE IMAGES



Image 1: View Northwest from Hezlett Road towards development site



Image 2: View Southwest from future Beaton Road towards development site

## ATTACHMENT 12 – RFS BUSHFIRE SAFETY AUTHORITY

All communications to be addressed to:

Headquarters  
15 Carter Street  
Lidcombe NSW 2141

Telephone: 1300 NSW RFS  
e-mail: [csc@rfs.nsw.gov.au](mailto:csc@rfs.nsw.gov.au)

Headquarters  
Locked Bag 17  
Granville NSW 2142

Facsimile: 8741 5433



The General Manager  
The Hills Shire Council  
PO Box 7064  
BAULKHAM HILLS BC NSW 2153

Your Ref: 799/2015/JP  
Our Ref: D15/0900  
DA15040896425 GB

ATTENTION: Robert Buckham

14 May 2015

Dear Sir/Madam

**Integrated Development for 22//1071637 4//241932 133-149 Samantha Riley Drive & 12 Hezlett Road Kellyville NSW 2155**

I refer to your letter dated 31 March 2015 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

**Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

**Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

ID:96425/90019/5

Page 1 of 2

2. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

**Access**

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

3. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

**General Advice – consent authority to note**

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Garth Bladwell on 1300 NSW RFS.

Yours sincerely



Jason Maslen

**A/Team Leader, Development Assessment and Planning**

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.



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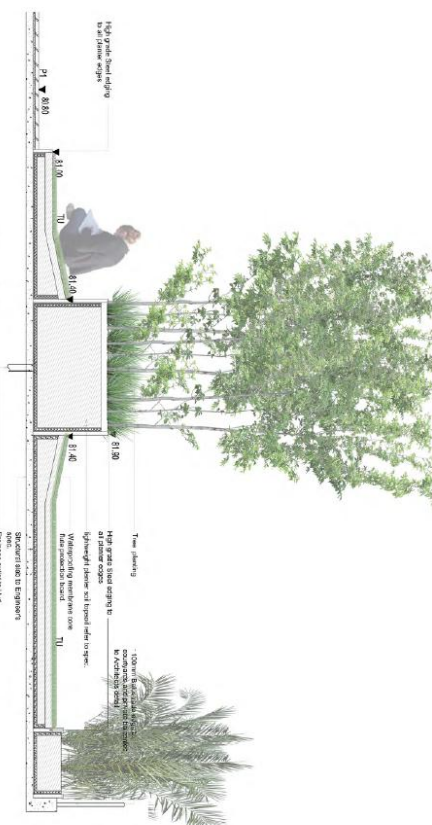






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Status	
Non-Architect	Id: Andrew Turnbull
Print Date	18 June 2015
Rev	Description Date
A	ISSUED FOR DA 27.11.14
B	ISSUED FOR DA 05.12.14
C	ISSUED FOR DA 18.06.15

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**Scott  
Carver**

Scott Carter Pty Ltd  
Level 8, 71 Macquarie Street  
Sydney NSW 2000 Australia  
Tel: +61 2 9957 3988  
holio@scottcarter.com.au  
www.scottcarter.com.au

**Project** 133-149 Samantha Riley Drive, Kellyville  
**Client** Deicorp Construction NSW Pty Ltd



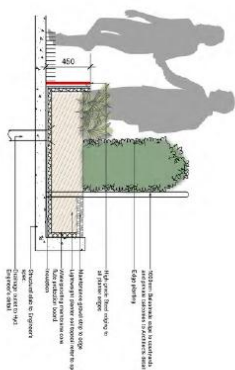
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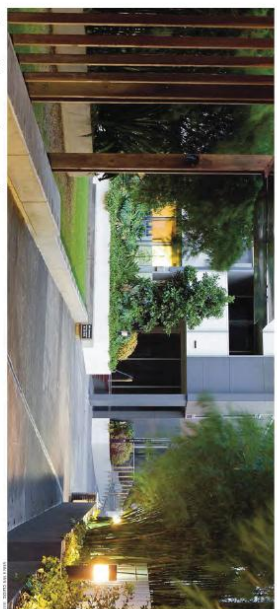
Graphs: Maximum Spanning Tree
  - 

Graphs: Minimum Spanning Tree
  - 

Graphs: Maximum Spanning Tree
  - 

Graphs: Minimum Spanning Tree
  -

## GROUND FLOOR / STREETSCAPE



Status		FOR DA
Nom. Architect		RLA Andrew Turnbull
Print Date		18 June 2015
Rev	Description	Date
A	ISSUED FOR DA	18.06.15

## PODIUM LANDSCAPE



## ROOFTOP TERRACE



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NOT TO SCALE

PRECEDENT / MATERIALS			Title
Reference No.	Discipline	Drawing No.	Rev
20140112	LD	602	A