

JOINT REGIONAL PLANNING PANEL (Sydney West Region)

JRPP No	2015SYW140
DA Number	159/2016/JP
Local Government Area	THE HILLS SHIRE COUNCIL
Proposed Development	SHOP TOP HOUSING, RETAIL SPACE, PARKING AND LANDSCAPING. THE APPLICATION INCLUDES 162 RESIDENTIAL UNITS, 30 BUSINESS/RETAIL TENANCIES AND PARKING FOR 610 VEHICLES.
Street Address	LOT 13 DP 833069 – NO. 332-334 ANNANGROVE ROAD, ROUSE HILL
Applicant/Owner	ABAX CONTRACTING PTY LTD
Number of Submissions	TWO (1 IN SUPPORT, 1 OBJECTION)
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	• List all of the relevant environmental planning instruments: s79C(1)(a)(i) - State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development - State Environmental Planning Policy (State and Regional Development) 2011 - State Environmental Planning Policy Infrastructure 2008 - State Environmental Planning Policy No 55 – Remediation of Land - The Hills Local Environment Plan 2012 • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) -Nil • List any relevant development control plan: s79C(1)(a)(iii) - DCP 2012 Part B Section 6 – Business - DCP 2012 Part B Section 7 - Industrial - DCP 2012 Part C Section 1 – Parking - DCP 2012 Part C Section 3 – Landscaping • List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv) -Nil • List any coastal zone management plan: s79C(1)(a)(v) - Nil

	- List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 - Environmental Planning and Assessment Act Regulation 2000
List all documents submitted with this report for the panel's consideration	Submissions
Recommendation	Refusal
Report by	Development Assessment Co-ordinator Robert Buckham

EXECUTIVE SUMMARY

The development application is for a Shop Top Housing development, Retail space, parking and landscaping. The application includes 162 residential units, 30 business/retail tenancies and parking for 610 vehicles.

The subject site is zoned B6 Enterprise Corridor under The Hills Local Environmental Plan 2012. The proposal does not meet the definition of shop top housing. The residential component of the proposal does not entirely sit directly above the retail/business component of the development and the building fronting Annangrove Road contains ground floor residential accommodation. A shop top housing development is defined in LEP 2012 as "*one or more dwellings located above ground floor retail premises or business premises*". Each of the four residential buildings are partly located above large residential storage areas, residential garbage rooms, loading docks and retail parking. The development also does not provide for active ground level street frontages which are typical characteristics of shop top housing development particularly the building fronting Annangrove Road, which presents as a residential flat building when viewed from Annangrove Road.

In addition concern is raised with the ground floor which incorporates 30 separate business / retail tenancies ranging in areas from 100m² to 889m². The development application does not seek consent to the use of the individual tenancies. In the B6 Enterprise Corridor Zone business premises and office premises are permitted. Retail premises, with the exception of neighbourhood shops (which are limited to a floor area of 100m²) are prohibited in the zone. As such concern is raised with the intended use of the ground floor and the associated economic impacts of providing floor space surplus to any realistic demand.

In addition to the current LEP issues above, a Council initiated planning proposal which in part seeks to prohibit shop top housing in the B6 Enterprise Corridor zone was adopted by Council on 28 July 2015 (the same day the subject application was lodged). The proposed amendments to the LEP have now been forwarded to the Department of Planning and Environment for finalisation.

The purpose of the prohibition of shop top housing and the associated objective is to minimise potential land use conflicts between residential and employment uses in the B6 Enterprise Corridor zone. The prohibition of shop top housing will also address the misuse of this term where applicants seek to provide significant residential densities in commercial / industrial areas well beyond the scope of what was intended for shop top housing and where significant residential densities were neither anticipated nor required. The amendment is considered imminent and certain.

Concern is raised that a site containing 162 residential units in a B6 Enterprise Corridor zone will inhibit investment in, and the development of adjoining land for, industrial and commercial purposes due to land use conflict concerns. Concerns are also raised regarding the impact of odour on proposed residential units on the site due to its proximity to Sydney Water's sewage treatment plant off Mile End Road. The applicant has submitted odour assessment but the assessment is considered inadequate both by Sydney Water and by Council's health staff. The information provided is insufficient. A phase 2 Odour assessment has been requested.

During the notification period one submission was received in support and one objection from Sydney Water which identifies that residential uses within the buffer area are not supported. This plant is likely to expand in the future and the buffer area protects Sydney Water's ability to service the area. Critical infrastructure should be protected to service the planned growth for the North West Growth Centre and North West Rail Link Corridor.

A Class 1 appeal has been lodged in the NSW Land and Environment Court against the deemed refusal of the application.

The application is recommended for refusal.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	Abax Contracting Pty Ltd.	1.	<u>LEP 2012</u> – Unsatisfactory.
		2.	<u>Draft LEP</u> – Prohibited.
Zoning:	B6 Enterprise Corridor and SP2 Infrastructure (Local Road Widening)	3.	<u>The Hills DCP 2012</u> – Satisfactory.
Area:	2.69Ha	4.	<u>Section 79C (EP&A Act)</u> – Unsatisfactory, see Report.
Existing Development:	Vacant	5.	<u>SEPP Building Sustainability Index BASIX 2004</u> – Satisfactory.
		6.	<u>SEPP 55 – Remediation of Land</u> – Satisfactory.
		7.	<u>SEPP 65 Design Quality of Residential Flat Buildings</u> – Unsatisfactory.
			<u>SEPP Infrastructure 2007</u> – Satisfactory.
		8.	<u>Section 94 Contribution</u> – \$3,235,691.95

SUBMISSIONS

REASONS FOR REFERRAL TO JRPP

1. Exhibition:	Yes, 31 days	1.	Capital Investment Value (CIV) exceeds \$20 million.
2. Notice Adj Owners:	Yes, 31 days		
3. Number Advised:	24		
4. Submissions Received:	Two (1 in support 1 objection)		

HISTORY

09/12/2014	Council resolved to exhibit a (Council initiated) planning proposal which in part sought to prohibit shop top housing in the B6 Enterprise Corridor zone.
05/03/2015	Gateway determination issued.
09/12/2014	Council resolved to exhibit the planning proposal, draft Development Control Plan amendments and draft Public Domain Plan for the North Rocks Employment Precinct.
12/06/2015	Prelodgement meeting held. The applicant was advised that the proposed development was not supported.
28/07/2015	Council adopted a (Council initiated) planning proposal which in part sought to prohibit shop top housing in the B6 Enterprise Corridor zone. The planning proposal has now been forwarded to the Department of Planning and Environment for finalisation.
28/07/2015	Subject Development Application Lodged.
28/08/2015	Briefing of Joint Regional Planning Panel and site inspection.
08/10/2015	Letter sent to applicant identifying issues related to the draft LEP amendment being imminent and certain, permissibility, economic impacts, landscaping, acoustics, odour, flora and fauna servicing, and engineering matters. The applicant was advised to withdraw the development application or have the application determined based on the submitted information.
08/10/2015	General Terms of Approval received from Office of Water.
16/11/2015	Class 1 application lodged with the Land and Environment Court.

PROPOSAL

The development application is for a shop top housing development. The development will consist of 30 business/retail tenancies within a ground level and 162 dwellings within 4 residential blocks. The development will be provided with car parking areas within 2 basements and a ground level open parking area from Withers Road.

Retail / Business

The ground floor of the development will consist of 30 separate business / retail tenancies ranging in areas from 100m² to 889m². The development application does not seek consent to the use of the individual tenancies.

Residential

The residential component of the development includes 4 residential blocks each 5 stories in height. The proposed residential blocks will contain a total of 162 units comprising 30 x 1 bed, 96 x 2 bedroom and 36 x 3 bedroom units.

Parking

Off street parking is provided for all residential units within the basement levels. A total of 610 spaces are proposed, as follows:

- 312 spaces for residents;
- 38 spaces for residential visitors; and
- 260 customer staff spaces.

The proposal is defined as 'Integrated Development' under the provisions of Section 91 of the Environmental Planning and Assessment Act, 1979 as the proposal requires approval from the Office of Water under the Water Management Act 2000.

ISSUES FOR CONSIDERATION

1. Compliance with The Hills Local Environment Plan 2012

(i) Permissibility

Shop Top Housing Definition

LEP 2012 defines Shop Top Housing as follows:

"One or more dwellings located above ground floor retail premises or business premises"

Shop-top housing is currently permitted in the B6 Enterprise Corridor Zone, however it is considered that the proposal does not meet the definition of shop top housing. The residential component of the proposal does not entirely sit directly above the retail/business component of the development and the Building fronting Annagrove Road contains ground floor residential accommodation. As stated above, a shop top housing development is defined in LEP 2012 as *"one or more dwellings located above ground floor retail premises or business premises"*. Each of the four residential buildings are partly located above large residential storage areas and garbage rooms. The development also does not provide for active ground level street frontages which are typical characteristics of shop top housing development particularly the building fronting Annangrove Road, which presents as a residential flat building when viewed from Annangrove Road.

In *Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121*, Canterbury City Council successfully argued that the part of the development proposed that contained 'residential accommodation' on the ground floor level of the building could not be characterised as 'shop top housing'.

The subject proposal contains residential units on the ground floor which are located above basement retail parking and therefore does not provide for active ground level street frontages which are typical characteristics of shop top housing development.

In contrast, the subject proposal in part provides residential levels above subterranean retail premises and parking. In this regard, it is considered that the proposal fails the test of shop top housing.

Retail and Business Uses

The ground floor incorporates 30 separate business / retail tenancies ranging in areas from 100m² to 889m². The development application does not seek consent to the use of the individual tenancies. In the B6 Enterprise Corridor Zone business premises and office premises are permitted. Retail premises, with the exception of neighbourhood shops which are limited to a floor area of 100m² are prohibited in the zone. As such concern is raised with the intended use of the ground floor and the associated economic impacts of providing floor space above any realistic demand.

(ii) Objectives of the Zone

The current objectives of the B6 Enterprise Corridor zone in LEP 2012 are as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*

- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To provide for residential uses, but only as part of a mixed use development*

It is considered that the proposal is inconsistent with objectives 1 to 3. It is noted that objective 4 is proposed to be deleted as part of Council adopted planning proposal which in part seeks to prohibit shop top housing in the B6 Enterprise Corridor zone. The planning proposal has now been forwarded to the Department of Planning and Environment for finalisation.

It is considered that the uses proposed within the development will create land use conflicts between residential and employment uses within the subject site and in the B6 Enterprise Corridor zone. The development application provides a development that is primarily focussed on housing and will degrade opportunities for commercial and industrial business investment in the locality given the potential for land use conflict will be significantly increased.

(iii) Development Standards

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

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1 Minimum Lot Size	4,000m ²	2.69Ha (Existing)	Yes
4.3 Height of buildings	16 metres	16m	Yes
4.4 Floor space ratio	1:1	0.97:1	Yes

(iv) Other LEP Provisions

The proposal has been considered against the relevant provision of the SEPP. Specific regard has been given to Clauses:

- 5.1 Relevant acquisition authority;
- 5.1A Development on land intended to be acquired for public purposes;
- 5.4 Controls relating to miscellaneous permissible uses;
- 5.9 Preservation of trees or vegetation;
- 6.2 Public utility infrastructure; and
- 7.2 Earthworks

The proposal has been considered against these provisions and satisfies each of the standards and objectives relating to each of the clauses with the exception of Clause 5.4 relating the floor area of neighbourhood shops and 6.2 relating to servicing.

Clause 5.4 of the LEP limits the floor area of 'neighbourhood shops' to 100m². In the B6 Enterprise Corridor Zone business premises and office premises are permitted. Retail premises, with the exception of neighbourhood shops which are limited to a floor area of 100m² are prohibited in the zone. The ground floor incorporates 30 separate business / retail tenancies ranging in areas from 100m² to 889m². The development application does not seek consent to the use of the individual tenancies.

Clause 6.2 of the LEP requires that 'adequate arrangements' have been made for the proposed development for servicing. It is noted that no specific correspondence has been submitted from Sydney Water or Endeavour Energy in relation to serving the proposed development. Please provide advice demonstrating adequate arrangements have been made in relation to servicing.

2. Draft LEP

On the day that the application was lodged (28 July 2015) Council adopted a (Council initiated) planning proposal which in part seeks to prohibit shop top housing in the B6 Enterprise Corridor zone. The planning proposal has now been forwarded to the Department of Planning and Environment for finalisation.

The purpose of the proposed prohibition of shop top housing and the associated objective is to minimise land use conflicts between residential and employment uses in the B6 Enterprise Corridor zone. The prohibition of shop top housing will ensure that the focus of the B6 Enterprise Corridor zone is on employment rather than housing and will further support commercial and industrial business investment in these areas since potential for land use conflict will be significantly reduced.

The making of the draft instrument should therefore be considered imminent and certain and therefore the application cannot be supported.

3. Economic Impact

The development application is not supported by an economic report and does not address Council's hierarchy of centres as detailed in the Centres Direction, nor the impacts on existing retail development in the area, including the Rouse Hill village shops location at Mile End Road and Windsor Road. The permissibility of the proposed retail components are also questionable. Further specific details regarding the permissibility of the uses are have been requested.

The application states that "the proposed development will not affect the economic strength of established retail centres in the locality, such as the Rouse Hill Town Centre. The proposed development will provide services for the day to day needs of nearby residents, rather than to provide businesses in competition with nearby retailers". The application advises that it "will have a positive social and economic impact in the locality of Rouse Hill. The development would see a substantial increase in the local population which will in turn support local service providers and businesses, as well as supplementing those services with a further 30 business / retail tenancies".

An objective of the B6 Enterprise Corridor zone is to maintain the economic strength of centres by limiting retail activity. In providing 30 retail / business tenancies ranging in size from 100m² – 889m², the subject development will effectively constitute a local centre and is beyond the scope of the envisaged retail potential of a B6 Enterprise Corridor zone, particularly in a single location. The development will have direct impacts on the operations of nearby retail developments such as the Rouse Hill village shops, which are located less than 2kms from the site. Furthermore, land zoned B2 Local Centre in the Box Hill release area to the north which is yet to be developed is located only 830m from the site.

A Key Direction of the Centres Direction is to improve the functioning and viability of existing centres (C4) and includes guiding, facilitating and promoting the revitalisation and redevelopment of existing centres. The Centres Hierarchy provides a framework for the scale, location and objectives of centres. This approach ensures that the population has access to centres that meet their needs. A centres hierarchy is important for the achievement of orderly and sustainable development throughout the Shire, and the development of centres that are appropriate in scale and design for their location. It aims to achieve centres that are vibrant, viable and diverse, with minimal impacts on surrounding land uses.

The development is inconsistent with Council's Centres Direction and centres hierarchy and therefore has the potential to undermine the existing and planned centres in the locality.

LEP 2012 prohibits retail premises as a group term in the B6 Enterprise Corridor zone together with shops, providing a reasonable indication of the intended role of retail functions in employment areas as opposed to designated retail centres. The zone does permit neighbourhood shops, office premises and business premises in addition to food and drink premises. The purpose of a neighbourhood shop is to provide for the day to day needs of people who live or work in the local area and is not to exceed 100m² in size. It is noted that the smallest tenancy proposed is 100m². A business premises is intended for occupations to provide a service directly to members of the public and includes such activities as banks, post offices etc. Such services are generally well distributed throughout employment and retail areas rather than concentrated in a single complex of multiple tenancies. The proposed retail component of the development, in terms of the number of shops is considered to be well beyond the intended role of business and neighbourhood shop services in employment areas and inconsistent with the objectives of the B6 Enterprise Corridor zone.

The development is inappropriate for this location. The proposed uses are inconsistent with the intentions for B6 zoned land provided in the zone objectives.

4. Compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)

A Design Verification Statement has been prepared. This statement has addressed the nine (9) matters for consideration under SEPP 65 and the Apartment Design Guidelines. Concern is raised that the proposal fails to appropriately consider the following Principles of SEPP 65

Principle No. 1 – Context and Neighbourhood Character;
Principle No. 2 – Built Form and Scale;
Principle No. 3 – Density; and
Principle No. 6 – Amenity

The proposal does not provide a development that responds to the desired future context and character of the locality. The development seeks to provide a built form that will respond to the Enterprise Corridor and instead provides a de-facto local centre that will adversely impact upon the existing and future Rouse Hill Town Centre and Rouse Hill Village. The site will be unable to sustain the proposed population due to limited infrastructure, public transport and access to local services. The proposal will result in poor amenity for residents being located within a site containing numerous business tenancies, and open carpark and will result in undesirable odour impacts associated with Sewerage Treatment Plant given the location and design of the proposal.

5. Compliance with The Hills DCP 2012

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

- Part B Section 6 – Business
- Part B Section 7 – Industrial (Edwards Road Precinct)
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping

DCP Part B Section 5 Residential Flat Buildings does not apply to the development. The proposal is a 'shop top housing' development and therefore provisions of this section of the DCP do not apply based on the provisions of Part 1.1 which provides:

"This Section of the DCP applies to land where, under the provisions of The Hills Local Environmental Plan (LEP) 2012, residential flat buildings are a permissible use.

As residential flat buildings are not permitted in the B6 zone this section of the DCP does not apply.

Although the proposal is generally not supported the development achieves compliance with the relevant requirements of the DCP.

6. SEPP 55 - Remediation of Land

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

"(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."*

The application has identified that a further contamination assessment is recommended by their consultant Compaction & Soil Testing Services Pty Ltd (CSTS) in report (Doc Ref 166-E1036-AA) dated June 2015. Given the findings in terms of contamination, minor remediation is likely.

7. Issues Raised in Submissions

The application has been exhibited and notified to adjoining property owners. Two submissions were received. One submission was received in support of the application. The submission identified that the application was enterprising and positive for the area.

An objection was also received from Sydney Water who are an adjoining land owner and operate Rouse Hill Waste water Recycling Plant. Their comments are included below:

Sydney Water Comments

Sydney Water does not support residential development within close proximity of the Rouse Hill Wastewater Recycling Plant (WRP).

Between 2008 and 2010, Sydney Water worked with The Hills Shire Council to develop and agree upon compatible land use zonings for the buffer around the existing plant. The subject site is within this agreed buffer area. The buffer zone agreed to is bounded by:

- Annangrove Road*
- Withers Road*
- Mile End Road, and*
- a line extending from the junction of Annangrove Road and Edward Road and the junction of Second Ponds Creek and the yet unformed Hillview Road (northern end of Mile End Road)*

In terms of the accuracy of the odour assessment submitted by the proponent, we note that separate modelling has not been carried out and that the assessment relies upon 2005 historical data provided by Sydney Water in relation to measured odour emissions for the existing plant and wind data. The assessment concludes that adverse odour impacts are not likely and even if they do occur, a complaint is unlikely. Sydney Water is concerned that the proposed residential use is not compatible with the adjacent plant and will most likely result in complaints given our experience in other parts of Sydney.

Sydney Water's Rouse Hill Water Recycling Plant (WRP) is critical infrastructure which provides essential wastewater and recycled water services to homes and businesses in Bella Vista, Kellyville, Kellyville Ridge, Rouse Hill, Stanhope Gardens and The Ponds. The plant also services parts of the North West Growth Centre and North West Rail Link renewal corridor. Population growth within the plant's catchment is predicted to increase substantially. Considering current forecasts, the WRP will require amplification within 5 to 10 years. Given the critical and strategic importance of the Rouse Hill WRP and our focus on maintaining compatible uses within close proximity of the plant, Sydney Water believes that the proposed development is inappropriate and therefore we object to the proposal.

NSW OFFICE OF WATER

The application includes works within 40 metres of defined watercourses namely Second Ponds Creek. The Office of Water's comments are included at Attachment 7. No objection was raised.

ROADS & TRAFFIC AUTHORITY COMMENTS

The application was referred to Roads & Traffic Maritime Services in accordance with Schedule 3 of SEPP Infrastructure 2007. No objection was raised to the proposed development.

NSW POLICE

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.

SUBDIVISION ENGINEERING COMMENTS

The proposal has been assessed by Council's Subdivision Engineer. Additional information has been requested from the applicant to address.

- A subdivision plan has not been provided and is required as the development includes creation of a lot for future acquisition. The layout of the future road lot will likely require discussion with the RMS as the road widening in this area is believed to be for bus lane/ bus stop.
- The swept turning paths provided for the HRV's are all on one drawing and as a result are unclear. The following swept turning paths for the HRV are required:
 - Two HRV's crossing paths at the corner of the service road (use different colours for different vehicles)
 - An HRV utilising each of the turning bays with another HRV in the adjacent loading bay(s)
 - An HRV entering and exiting a loading bay
 - An HRV entering and exiting the site from Withers Rd
- Where swept turning paths overlap and are not required to be shown on the same drawing, separate drawings are to be provided.
- The car parking spaces are to be clearly marked as either residential, visitor, retail or disabled. Typical dimensions for each use is to be provided and is to be in accordance with AS 2890.1 and AS 2890.6.
- Council's Parking DCP notes that '*In larger developments loading and delivery areas should operate independently of other parking areas*' (See Section 2.9). Technically both car parking areas which are accessed via the service road are non-compliant. Considering the 'Retail Staff Parking' area is an isolated area away from truck movements this area can be accepted however the 14 'Staff Parking' spaces which are along the service road are not supported and are to be removed.

- No stormwater plan has been provided and is required.
- The stormwater plans should show the on-site infiltration system which has been nominated as part of the WSUD measures being implemented.

TRAFFIC MANAGEMENT COMMENTS

No objection is raised to the proposal on traffic grounds.

TREE MANAGEMENT COMMENTS

A Tree Management Statement or Arboricultural impact Report is to be prepared by a suitably qualified Australian Qualification Framework Level 5 Arborist. This must address the impact of the proposal on neighbouring trees, including those that form part of Cumberland Plain Woodland along the road verge of Withers Road. The following information should be provided:

- Identify all existing trees including species, condition, height and spread;
- Identify whether trees are to be removed, replanted or retained; and
- Details of how those trees to be retained will be protected during construction.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

Odour

The application was notified to Sydney Water given the site's proximity to the Rouse Hill Water Recycling Plant. Sydney Water's comments are attached for your review. Council staff concur with the comments provided by Sydney Water.

The report prepared by Pacific Environmental Limited dated 26 July 2015 provides revised 2005 modelling results based on meteorological inputs alone. This is not a sufficient assessment of the current odour emissions from the Rouse Hill WWTP.

A Level 2 Impact Assessment is requested in compliance with *Approved Methods for the Modelling and Assessment of Air Pollutions in New South Wales* by the Department of Environment and Conservation (August 2005) is to be prepared. The assessment is to take into consideration the height of the development.

Salinity

The *Desktop Review of Site Contamination Status* (Ref: 166-E1036-AA) prepared by C.S.T.S. dated June 2015 states that discrete samples taken onsite were analysed for heavy metals as well as salt content to determine the salinity classification of the site, however no results were discussed relating to salinity.

The *Salinity Potential in Western Sydney 2002 Map* by the Department of Infrastructure, Planning and Natural Resources (March 2003) indicates the site may have a high salinity potential. A salinity assessment is to be undertaken to identify the salt content within the depths of the proposed basement car parks and recommendations are to be made accordingly.

Acoustic Assessment

A review of the acoustic assessments prepared by Atkins Acoustic & Associates Pty Ltd (Ref: 45.7000.R1.Rev00:CFCD7 & 45.7000.R2.Rev00:CFCD7) dated 27 July 2015. A number of matters that have not been adequately addressed.

Road Traffic Noise Assessment (45.7000.R1.Rev00:CFCD7)

The Road Traffic Noise Assessment rightfully assesses the impact of road traffic noise on the proposed residential dwellings however does not take into consideration the following noise sources onsite that could also contribute to offensive noise;

- Vehicle movements (including starting vehicles and opening/closing doors) within the retail car parking area, and

- Truck movements within the 6 separate loading docks (including noise generated by reversing beepers).

No noise predictions or attenuation methods have been provided with relation to the above noted noise sources. The predicted noise levels from such noise sources are to be assessed and, for design purposes, recommendations on the methods of attenuation to satisfy the following internal noise levels for the apartments is required;

- (a) In any bedroom in the building: 35dB(A) at any time between 10:00pm and 7:00am;
- (b) Anywhere else in the building (other than a garage, kitchen, bathroom or hallway): 40dB(A) at any time.

Loading Docks and Retail Carpark Hours of Operation

No details have been provided with respect to the proposed hours of operation for the loading docks and the retail car park. Council staff are aware that the occupancies of the retail units is unknown, however the acoustic consultants are able to model the impact of noise sources generated onsite in a 'worst case scenario' capacity.

For example, 2 'mini major' stores may require regular deliveries by heavy rigged vehicles and waste collection by contractors is a noise source that will also need to be considered. The noise levels predicted may restrict the times the loading docks and the retail carpark is utilised.

Loading Dock and Carpark Access Plan of Management

Information is required to be submitted to address access issues to the loading dock so as to ensure that trucks cannot enter the loading dock after the approved hours. Details of the mechanism proposed to block access to the loading dock is required to be submitted as well as a plan of management for ensuring the loading dock is run according to the approved hours of operation.

Site Noise Exposure Assessment (Ref: 45.7000.R1.Rev00:CFCD7)

The difficulty in assessing the potential noise impacts to the site from surrounding sites is that a number of the surrounding rural blocks are currently vacant. Given the site is zoned IN2 light industrial, noise generating activities are likely to be permitted in the zone. The noise generated by such activities cannot be predicted as it is unknown what they will be.

A review of the noise exposure from surrounding land uses has been undertaken and deemed acceptable by the acoustic consultant. However I raise concern with the aural observation confirming that a consistent 'pump/aeration/blower' and 'water flow' was audible at approximately 120m from the Rouse Hill Water Recycling Plant. I feel that this may be a contributing factor to the uncharacteristically high background noise readings recorded by the acoustic consultant. Furthermore, should this plant increase in size in the future this may have an impact on the residents.

Predicted Noise Levels Produced by Cafes/ Restaurants on site

It would be prudent to assume that one or more of the retail units will be occupied by late night operating food premises. Given the close proximity of balconies to the open carpark and possibly outdoor seating areas, consideration is to be made to the predicted noise levels from businesses operating late at night.

Should the applicants not wish to consider late night operations, then a general condition restricting business to operate till 10pm can be added to the consent if the application is seen as favourable.

Irrespective, the applicant is to provide comments with regards to the impact late night trade may have on the residents and whether further attenuation methods are required.

Mechanical Plant/s

The submitted plans do not indicate the locations of the mechanical plant and thus the acoustic consultant has not assessed the likely noise impact. Noise attenuation methods may be required to ensure the plant does not cause a noise nuisance. As a result further information on the location of the mechanical plant is required and noise attenuation recommendations are to be provided if required.

Internal Residential Noise Levels

The applicant is to provide comments confirming that the design of the development will be acoustically treated where necessary so as to achieve the following noise levels;

- (a) In any bedroom in the building: 35 dB(A) at any time between 10:00pm and 7:00am;
- (b) Anywhere else in the building (other than a garage, kitchen, bathroom or hallway): 40 dB(A) at any time.

Details on materials to be utilised for noise attenuation, where recommend, is to be provided.

RESOURCE RECOVERY COMMENTS

No objection is raised to the proposal.

NSW POLICE COMMENTS

No objection is raised to the proposal.

CONCLUSION

The application has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Local Environmental Plan 2012 and The Hills Development Control Plan 2012 and is considered unsatisfactory.

The proposed development is considered to be inconsistent with the objectives of the zone and does not meet the intent of shop top housing as defined in the LEP. The development does not provide for active frontages such as retail uses which is required in shop top housing development at street level.

Accordingly, the application is recommended for refusal

IMPACTS:

Financial

Costs will be incurred as the applicant has lodged an appeal with the NSW Land and Environment Court.

The Hills Future - Community Strategic Plan

The social and environmental impacts have been identified and addressed in the report. The proposal conflicts with the development objectives of the LEP and Business and Parking DCP. It is considered unsatisfactory with regard to The Hills Future Community Strategic Plan.

RECOMMENDATION

The Development Application be refused on the following grounds:

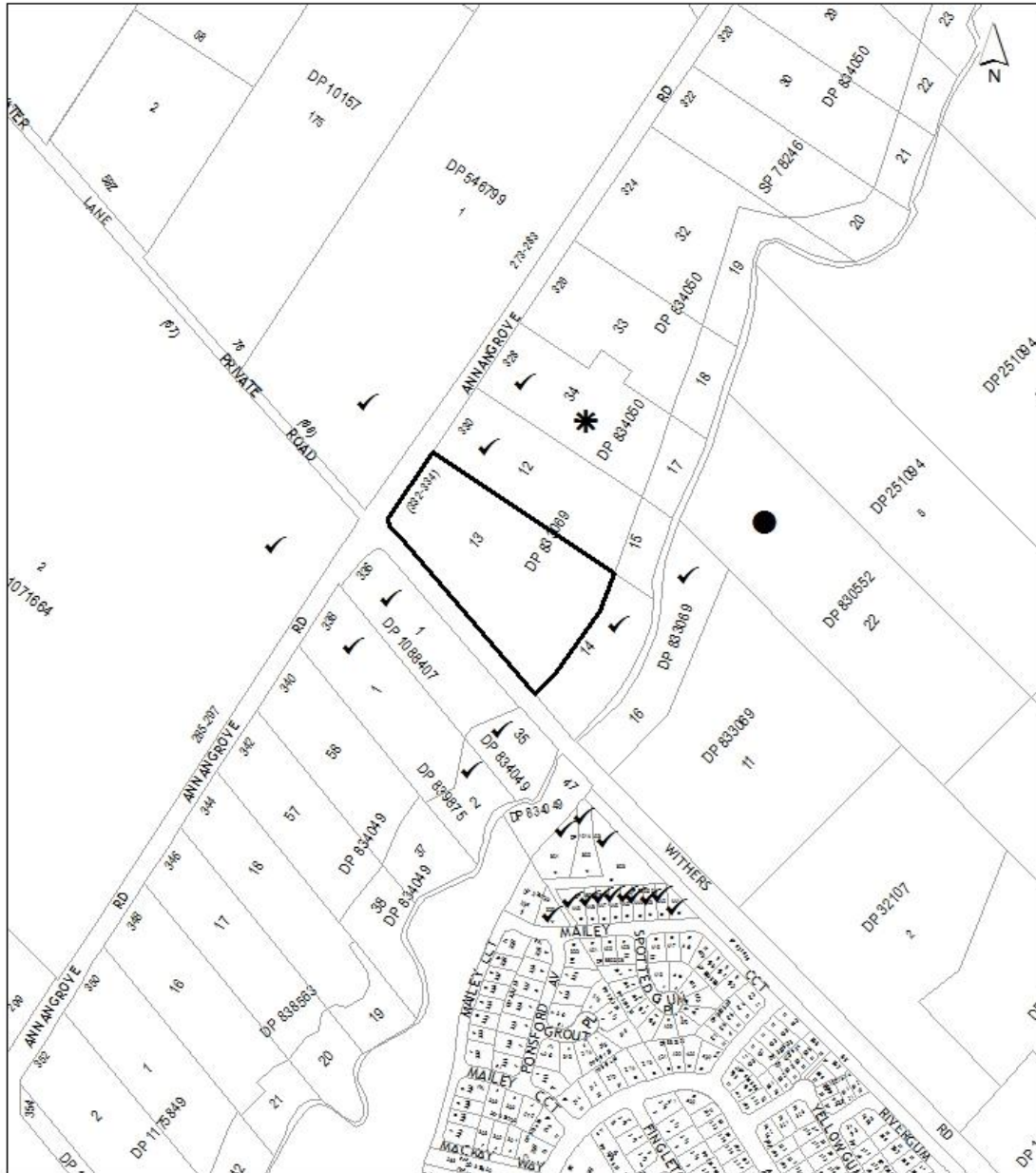
1. The proposal does not satisfy the definition of shop top housing nor the objectives of the B6 Enterprise Corridor zone as provided in The Hills Local Environmental Plan 2012. The residential component of the proposal does not sit truly above the retail component. Shop top housing is defined in LEP 2012 as "*one or more dwellings located above ground floor retail premises or business premises*".
(Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979).

2. The proposal includes retail spaces that are either not permitted or exceed the neighbourhood shops floor area requirement of 100m² required under Clause 5.4 – Controls relating to miscellaneous permissible uses of The Hills LEP 2012.
(Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979).
3. The proposed development does not comply with the objectives of the B6 Enterprise Corridor zone under The Hills Local Environment Plan 2012 as it is considered that the uses proposed within the development will create land use conflicts between residential and employment uses within the subject site and in the B6 Enterprise Corridor zone. The development application provides a development that is primarily focussed on housing and will degrade opportunities for commercial and industrial business investment in the locality given the potential for land use conflict will be significantly increased.
(Section 79C 1(a)(i) of the NSW Environmental Planning and Assessment Act 1979).
4. The proposal is inconsistent with The Hills LEP 2012 Draft Amendment (11/2015/PLP) which in part seeks to prohibit shop top housing in the B6 Enterprise Corridor zone and remove an objective which states *"To provide for residential uses, but only as part of a mixed use development."*
(Section 79C 1(a)(ii) of the NSW Environmental Planning and Assessment Act 1979).
6. The proposal does not comply with the Design Principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development in terms of:
 - Principle No. 1 – Context and Neighbourhood Character;
 - Principle No. 2 – Built Form and Scale;
 - Principle No. 3 – Density; and
 - Principle No. 6 – Amenity
(Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979).
7. The proposed development is contrary to the provisions of Clause 50 of the NSW Environmental Planning and Assessment Regulations 2000, which requires the applicant to provide all the necessary and requested information to Council to allow for a proper assessment of the application, including the submission of information including a servicing, economic impact, engineering matters, landscaping, tree management, ecology, odour and salinity.
(Section 79C 1(a)(iv) of the NSW Environmental Planning and Assessment Act, 1979).
8. The impacts of the development on both the natural and built environments in the locality are unacceptable.
(Section 79C 1(b) of the NSW Environmental Planning and Assessment Act 1979).
9. The development is not considered to be suitable for the site as it is an overdevelopment in terms of scale and intensity.
(Section 79C 1(c) of the NSW Environmental Planning and Assessment Act 1979).
10. The development is considered not to be in the public interest.
(Section 79C 1(e) of the NSW Environmental Planning and Assessment Act 1979).

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Site Plan
4. Retail Floor Plan
5. Elevations
6. Photomontage Image
7. Office of Water – General Terms of Approval
8. Zoning Map

ATTACHMENT 1 – LOCALITY PLAN



□ SUBJECT SITE

✓ PROPERTIES NOTIFIED

● SUBMISSION RECEIVED
FROM SYDNEY WATER

* SUBMISSION IN SUPPORT

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

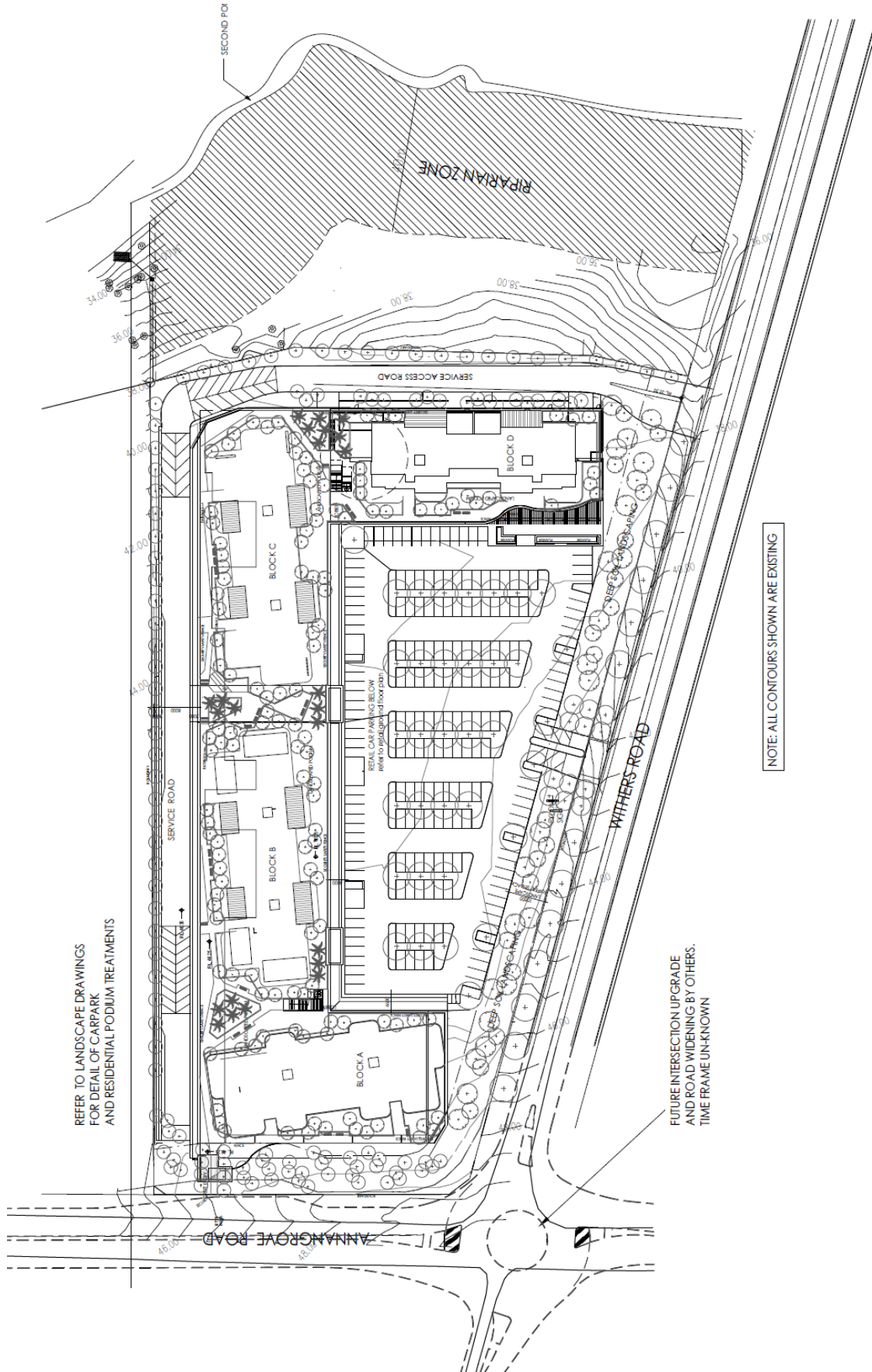
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE COPY RIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPY RIGHT.

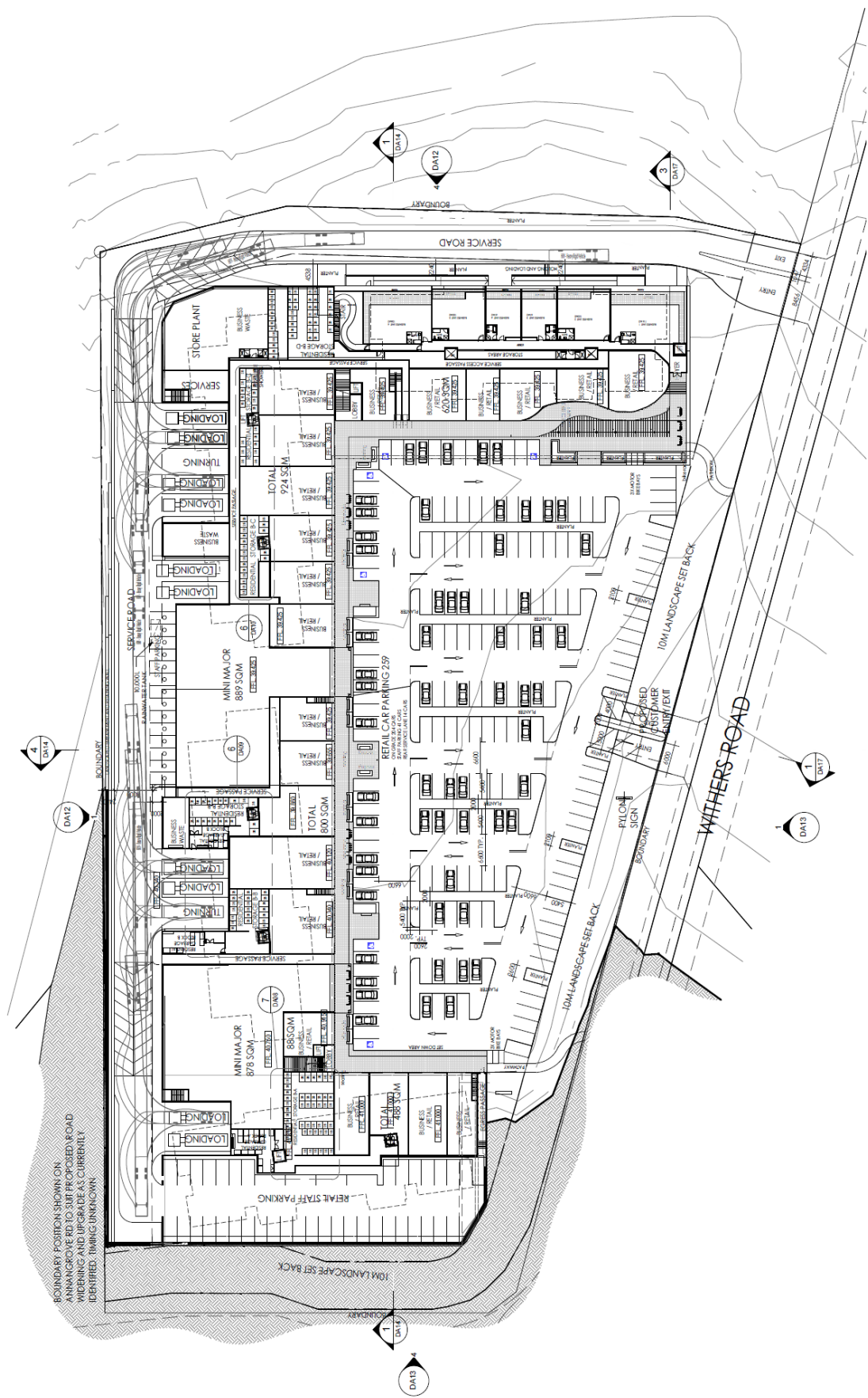
ATTACHMENT 2 – AERIAL PHOTOGRAPH



ATTACHMENT 3 – SITE PLAN



ATTACHMENT 4 – RETAIL FLOOR PLAN



ATTACHMENT 5 - ELEVATIONS



ATTACHMENT 6 – PHOTOMONTAGE IMAGE



Corner of Annangrove Road and Withers Road

ATTACHEMENT 7 – OFFICE OF WATER GTA'S



Department of
Primary Industries
Water

Contact: Gina Potter
Phone: 02 8838 7566
Fax: 02 8838 7554
Email: Gina.Potter@dpi.nsw.gov.au
Our ref: 10 ERM2015/0720
Our file:
Your ref: DA2016/159/JP

BATCH NO:
TIME:

08 OCT 2015

The General Manager
The Hills Shire Council
PO Box 75
Castle Hill NSW 1765

Attention: Robert Buckham

THE HILLS SHIRE COUNCIL

6 October 2015

Dear Sir/Madam

Re: Integrated Development Referral – General Terms of Approval

Dev Ref: DA2016/159/JP

**Description of proposed activity: Shop top housing development containing
basement residential parking and at grade retail parking**

Site location: 332-334 Annanagrove Road Rouse Hill

I refer to your recent letter regarding an integrated Development Application (DA) proposed for the subject property. Attached, please find DPI Water's (formerly the NSW Office of Water) General Terms of Approval (GTA) for works requiring a controlled activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 91A (3) of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, DPI Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- DPI Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii) the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).
- Once notified, DPI Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed works are part of Council's proposed consent conditions and do not appear in the original documentation.

www.water.nsw.gov.au

Macquarie Tower, 10 Valentine Avenue, Parramatta NSW 2150 | Locked Bag 5123, Parramatta NSW 2124 | e

water.enquiries@dpi.nsw.gov.au

Template Ref: CAA04, Version 1.2 – July 2015

- DPI Water should be notified if Council receives an application to modify the development consent and the modifications change any activities on waterfront land.
- DPI Water requests notification of any legal challenge to the consent.

As the controlled activity to be carried out on waterfront land cannot commence before the applicant applies for and obtains a controlled activity approval, DPI Water recommends the following condition be included in the development consent:

"The Construction Certificate will not be issued over any part of the site requiring a controlled activity approval until a copy of the approval has been provided to Council".

The attached GTA are not the controlled activity approval. The applicant must apply (to DPI Water) for a controlled activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity on waterfront land.

Finalisation of a controlled activity approval can take up to eight (8) weeks from the date DPI Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form for a controlled activity approval together with any required plans, documents, the appropriate fee and security deposit or bank guarantee (if required by the Office or Water) and proof of Council's development consent.

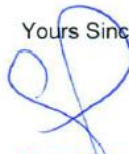
Application forms for the controlled activity approval are available from the undersigned or from DPI Water's website:

www.water.nsw.gov.au [Water licensing](#) > [Approvals](#) > Controlled activities

DPI Water requests that Council provide a copy of this letter to the applicant.

DPI Water also requests that Council provides DPI Water with a copy of the determination for this development application as required under section 91A (6) of the EPA Act.

Yours Sincerely



Gina Potter

Water Regulation Officer

Water Regulatory Operations, WR Operations - Hunter, Sydney & South Coast

NSW Department of Primary Industries – DPI Water

ATTACHMENT 8 – ZONING MAP

