

SYDNEY CENTRAL CITY PLANNING PANEL

Panel Reference	2016SWC003
DA Number	736/2017/JP
LGA	The Hills Shire Council
Proposed Development	Concept Masterplan encompassing 10 buildings with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre building, civil works, internal roads and landscaping over 5 stages.
Street Address	Lot 101 DP 1176747 and Lot 1 DP 1233538, RMB 47 Spurway Drive, Baulkham Hills and 104 Fairway Drive, Kellyville
Applicant/Owner	Sekisui House Australia Pty Ltd / SH Orchards Pty Ltd
Date of DA lodgement	8 November 2016
Number of Submissions	First Notification: Three including a petition with 60 signatures Second Notification: Two including a petition with 33 signatures
Recommendation	Approval
Regional Development Criteria	CIV exceeding \$30 million
List of all relevant S4.15(1)(a) matters	<ul style="list-style-type: none"> • 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 Environmental Plan 2012 • The Hills Development Control Plan 2012
List all documents submitted with this report for the Panel's consideration	Submissions
Report prepared by	Development Assessment Co-ordinator Robert Buckham
Report date	11 April 2018

Summary of S4.15 matters Have all recommendations in relation to relevant S4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes

Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)?	N/A The application does not involve the carrying out of work
Conditions Have draft conditions been provided to the applicant for comment?	Yes

EXECUTIVE SUMMARY

The Development Application Concept Masterplan encompasses 10 buildings with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre building, civil works, internal roads and landscaping over 5 stages.

The site was subject to a site specific Planning Proposal that amended The Hills Local Environmental Plan 2012 (LEP) as follows:

- Increased the maximum building height from 16 metres to heights ranging between 18 metres and 36 metres;
- Applied a maximum floor space ratio ranging from 1.5:1 to 3.2:1;
- Identified the site as "Area B" within the Key Sites Map; and
- Included a new local provision which ensures that future development on the site does not exceed a yield of 1,300 dwellings and that, in order to achieve this yield, development must comply with Council's standards for apartment mix, apartment size and car parking.

Associated amendments to The Hills Development Control Plan 2012 (Part D Section 7 – Balmoral Road Release Area) also came into force. The amendments included the upgrade and inclusion of the existing portion of Spurway Drive (currently private) as a public road to connect to the existing planned local road network within the Balmoral Road Release Area (from Windsor Road to Fairway Drive).

The application seeks approval for redistribution of building height and floor space across the site compared to that identified within the LEP amendment. The masterplan provides indicative details of each of the buildings which will be further detailed within future Development Applications. The purpose of this application is to demonstrate how the site will be developed in its entirety and to provide an assessment framework for future detailed development applications for individual buildings.

This application is accompanied by a request to vary development standards pursuant to Clause 4.6 of The Hills Local Environmental Plan 2012 (LEP). The proposal seeks to vary Clause 4.3 Building Height, Clause 4.4 Floor Space Ratio and Clause 7.11 which specifies a mix of apartment typologies and parking requirements for the subject site should it be developed to its maximum yield of 1300 dwellings.

The variation to height is attributed to three reasons. These include the redistribution of built form on the central northern part of the site, height attributed to an alternate built form provided on the western part of the site to improve the amenity of adjoining land, and design matters in terms of the numbers of storeys identified within the planning proposal, increased floor to ceiling heights, site topography and lift overruns.

The floor space ratio is not exceeded when the site is considered in totality. The variation to FSR is attributed to a redistribution of built form on the central northern part of the site. The additional built form is provided in an area nominated as 1.5:1 FSR. The proposal provides an FSR of 1.58:1. The built form in this area occupies less footprint than what could be provided within a compliant scheme, allowing for the retention of more landscaping including Cumberland Plain Woodland vegetation.

The proposed development also seeks a variation to the mix of apartment typologies and car parking. The variations have been assessed and it is considered the proposal provides appropriate amenity for future residents and sufficient parking given the site's proximity to the future Norwest station. The parking provision exceeds the Road and Maritime Service rates for sites within 800m of a railway station. The site is located approximately 650m walking distance from the future Norwest Station.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report it is considered that the variations can be supported as:

- The Applicant's request is well founded;
- The proposed variations result in a development that is consistent with the objectives of Clause 4.3 Height of Building, Clause 4.4 FSR and 7.11 and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

The application was advertised and notified on two occasions. The second notification was undertaken following amendments made on the western portion of the site to provide an alternate built form to reduce the amenity impacts on residents. Although the residents of the Central Park Estate do not generally support the original or modified proposal it is considered that the proposal as amended is satisfactory and reasonable amenity is provided in relation to privacy and solar access particularly given the modified proposal now provides each of the townhouses along the boundary with 4 hours of solar access mid-winter to their courtyards. The remaining issues are addressed in this report. However, it is noted that the proposal is generally consistent with the outcomes envisaged as part of the planning proposal.

The application is recommended for approval subject to conditions.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	Devus Pty Ltd	1.	<u>LEP 2012</u> – Variation required, see report.
Zoning:	R4 High Density Residential	2.	<u>The Hills DCP 2012</u> – Satisfactory
Area:	79,420m ²	3.	<u>Section 4.15 (EP&A Act)</u> – Satisfactory.
Existing Development:	Seven storey building under construction	4.	<u>SEPP 55 — Remediation of Land</u> – Satisfactory.
		5.	<u>SEPP 65 Design Quality of Residential Flat Buildings</u> – Satisfactory.

SUBMISSIONS		REASONS FOR REFERRAL TO SCCPP	
1. Exhibition:	Yes 31 days	1.	Capital Investment Value in Excess of \$30 million (\$448,450,000).
2. Notice Adj Owners:	Yes 31 days		
3. Number Advised:	1 st Notificaiton:623 2 nd Notification:623		
4. Submissions Received:	1 st Notification: Three including a petition with 60 signatures 2 nd Notification: Two including a petition 33 signatures		

HISTORY

The site was subject to a Planning Proposal (10/2013/PLP) to amend the Hills Local Environmental Plan 2012. Amendment No. 32 for the site was notified on the NSW legislation website (Notification No. 210) on 29 April 2016.

The Hills Local Environmental Plan 2012 was amended as follows:

- Increased the maximum building height from 16 metres to heights ranging between 18 metres and 36 metres;
- Applied a maximum floor space ratio ranging from 1.5:1 to 3.2:1;
- Identified the site as "Area B" within the Key Sites Map; and
- Included a new local provision which ensures that future development on the site does not exceed a yield of 1,300 dwellings and that, in order to achieve this yield, development must comply with Council's standards for apartment mix, apartment size and car parking.

Associated amendments to The Hills Development Control Plan 2012 (Part D Section 7 – Balmoral Road Release Area) also came into force on 29 April 2016. The amendments will facilitate the upgrade and inclusion of the existing portion of Spurway Drive (currently private) as a public road to connect to the existing planned local road network within the Balmoral Road Release Area (from Windsor Road to Fairway Drive).

The Planning Proposal was primarily predicated on The NWRL Corridor Strategy which identifies that an additional 4,350 dwellings can be accommodated within the Norwest Station Precinct. The Norwest Structure Plan identifies approximately 19.1ha of land that may be capable of accommodating *"7-12 storey apartment buildings carefully master planned around communal open spaces incorporating landscaped setbacks to existing streetscapes"*. The site (with an area of approximately 6.5ha excluding the Spurway Drive access handle) represents approximately 34% of the total area identified as being capable of accommodating 7-12 storey apartments.

A number of Development Applications have been approved on the site they include:

- Development Application 779/2017/JP was approved by the Panel on 20 July 2017 to construct two seven-storey residential flat buildings comprising a total of 121 apartments (30 x 1 bedroom, 79 x 2 bedroom, 10 x 3 bedroom and 2 x 4 bedroom), landscaping, car parking for 199 vehicles over three levels of basement car park, and subdivision. The application was amended to provide for the assessment of biodiversity impacts separate to the Masterplan Application given the limited impact on vegetation

on this development site. The application proposed the retirement of 4 ecosystem credits (HN528). The building is currently under construction.

- Subdivision and early works Development Application (DA 634/2017/ZB) approved by Council's Development Assessment Unit on 29 August 2017, which sought to expedite the delivery of utility servicing and local road construction including Spurway Drive, Lucinda Avenue and Horatio Avenue as identified within the Development Control Plan. The application also assessed the deletion of Rosetta Crescent.
- Temporary display suite for the marketing and sales has been constructed fronting Fairway Drive (DA 60/2017/HA). The display suite will be demolished prior to the construction of the final stage of development.
- Consents for the demolition of all structures across the site have been approved across four separate DAs (610/2015/LA, 611/2015/LA, 612/2015/LA and 58/2017/HA).

The Development Application was briefed to the then Sydney West Central Planning Panel on 15 December 2016. Two other Development Applications relating to the site have also been lodged and are under assessment. Development Application 46/2018/JP was lodged on 11 July 2017 and has a CIV of \$114,463,017. The application is for the construction of a 12-13 Storey Residential Flat Building Development (Stage 2 – Building B1) comprising three hundred and thirty units (330) with basement parking for 539 vehicles and associated Community Title Subdivision. This application will be report to the panel for determination. A Development Application 417/2018/HC has also been lodged for Drainage and Vegetation Restoration Works in the Strangers Creek Corridor. This application is likely to be amended given Sydney Water's intention to now acquire SP2 land on the site.

PROPOSAL

The Application does not seek consent for any physical works to be carried out on site. The Masterplan application is a concept development application pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. Section 4.22 of the Act States;

4.22 Concept development applications

- (1) *For the purposes of this Act, a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
 - (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site,*
 - or*

(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

Planning circular PS10-008 (New definition of capital investment value) states;

"When calculating the CIV for a staged development, the CIV of the separate applications comprising the overall staged development must be considered in determining the CIV for that development". The development of the site has a CIV of approximately \$488 million, and therefore the SCCPP is the appropriate determining authority.

The Concept Masterplan encompasses 10 buildings with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre building, civil works, internal roads and landscaping over 5 stages.

The masterplan provides indicative details of each of the buildings which will be further detailed within future Development Applications for individual stages. The application seeks approval for redistribution of building height and floor space across the site to what has been identified within the LEP amendment. The purpose of this application is to demonstrate how the site will be developed in its entirety and to provide an assessment framework for future detailed Development Applications for individual buildings.

The application also seeks to deal with the assessment of the ecology impacts across the site. The masterplan seeks to rely on a biobanking assessment report (BAR), Red Flag Variation (RFV) and application for a biobanking statement for the remainder of the site (including Spurway Drive along the southern boundary). It has been determined that 50 HN528 ecosystem credits to offset the impact to Cumberland Plain Woodland and 7 HN526 ecosystem credits to offset the impact to River flat Eucalypt forest in the riparian area. A biobanking assessment report has been completed and submitted to Office of Environment and Heritage for separate approval. This masterplan is considered an appropriate application to capture this assessment. Consent for the specific physical vegetation removal works will be captured by future development applications.

ISSUES FOR CONSIDERATION

1. Compliance with The Hills Local Environmental Plan 2012

a. Permissibility

The land is zoned R4 High Density Residential under Local Environmental Plan 2012. The proposal is a residential flat building development which is permissible in the zone. Other uses such as 'retail' spaces included in Buildings A3 and D3 will be assessed under future built form applications.

b. Zone Objectives

The site is zoned R4 High Density Residential under The Hills LEP 2012. The objectives of the zone are:

R4 High Density Residential Objectives

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposal is considered to be consistent with the stated objectives of the zone, in that the proposal will provide for a land use to meet the needs of the surrounding residents and is also considered to provide an alternative housing option for future residents.

As such the proposal is considered satisfactory in respect to the LEP 2012 objectives.

c. Clause 7.11 - Residential development yield on certain land

Clause 7.11 of the THLEP 2012 includes requirements specific to the subject site. The clause enables the consent authority to grant consent to the erection of residential flat buildings with a maximum of 1,300 dwellings. The clause requires that where more than 600 dwellings are proposed, the development must provide a specific mix, unit sizes and parking. The proposal is the first stage of development on the site and does not exceed 600 dwellings; however it forms part of a master planned outcome that will comprise 1,300 dwellings once fully developed. The clause in its entirety states:

"(1) The objectives of this clause are as follows:

- (a) to ensure the provision of a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets,*
- (b) to ensure that development for residential flat buildings does not place an unreasonable burden on the provision of services, facilities and infrastructure in the area to which this clause applies,*
- (c) to provide opportunities for suitable housing density that is compatible with existing development and the future character of the surrounding area,*
- (d) to promote development that accommodates the needs of larger households, being a likely future residential use.*

(2) This clause applies to land identified as "Area B" on the Key Sites Map.

(3) The consent authority may consent to the erection of residential flat buildings on the land containing a maximum of 1,300 dwellings.

(4) If development under this clause will result in no more than 600 dwellings in residential flat buildings, development consent may be granted for the development only if the height of each residential flat building does not exceed 16 metres.

(5) If development under this clause will result in more than 600 dwellings in residential flat buildings, development consent may be granted for the development only if:

- (a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development are studio or 1 bedroom dwellings, or both, and*
- (b) at least 10% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development are 3 or more bedroom dwellings, and*
- (c) the development comprises the following:*

- (i) Type 1 apartments—up to 30% of the total number of dwellings (to the nearest whole number of dwellings), and
- (ii) Type 2 apartments—up to 30% of the total number of dwellings (to the nearest whole number of dwellings), and
- (iii) Type 3 apartments, and
- (d) the following minimum number of car parking spaces are provided in the development:
 - (i) for each 1 bedroom dwelling—1 car parking space, and
 - (ii) for each 2 or more bedroom dwelling—2 car parking spaces, and
 - (iii) for every 5 dwellings—2 car parking spaces, in addition to the car parking spaces required for the individual dwelling.

(6) In this clause:

Type 1 apartment means:

- (a) a studio or 1 bedroom apartment with an internal floor area of at least 50m² but less than 65m², or
- (b) a 2 bedroom apartment with an internal floor area of at least 70m² but less than 90m², or
- (c) a 3 or more bedroom apartment with an internal floor area of at least 95m² but less than 120m².

Type 2 apartment means:

- (a) a studio or 1 bedroom apartment with an internal floor area of at least 65m² but less than 75m², or
- (b) a 2 bedroom apartment with an internal floor area of at least 90m² but less than 110m², or
- (c) a 3 or more bedroom apartment with an internal floor area of at least 120m² but less than 135m².

Type 3 apartment means:

- (a) a studio or 1 bedroom apartment with a minimum internal floor area of 75m², or
- (b) a 2 bedroom apartment with a minimum internal floor area of 110m², or
- (c) a 3 or more bedroom apartment with a minimum internal floor area of 135m².

internal floor area does not include the floor area of any balcony.”

The applicant proposes to vary the unit sizes and parking requirements of the Clause by way of a Clause 4.6 Variation. This is addressed below.

d. Development Standards

The following table addresses the principal development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.3 Height	Building A1 - 18 metres	29.8 metres (65.5%)	Variations are sought, with the exception of Building C4
	Building A3 - 18 metres	30.7 metres (70.5%)	
	Building B1 - 18 and 36 metres	43.4 metres (141.1%)	
	Building C1 - 18 and 36 metres	43.3 metres (140.5%)	
	Building C2 - 27 metres	32.5 metres (20.3%)	
	Building C3 - 27 metres	33.9 metres (25.5%)	

	Building C4 - 18 and 36 metres	8.2 metres	
	Building D1 - 21 metres	26.1 metres (Approved) (24.2%)	
	Building D2 - 21 metres	27.5 metres (Approved) (30.9%)	
	Building D3 - 21 metres	28.1 metres (33.8%)	
4.4 Floor Space Ratio	Area 1 - 1.5:1 - 21,705m ²	21,705m ²	Yes
	Area 2 - 1.5:1 - 15,198m ²	16,030m ² - 1.58:1 (8%)	No
	Area 3 - 3.2:1 - 49,328m ²	49,090m ²	Yes
	Area 4 - 2.6:1 - 35,659m ²	35,065m ²	Yes
	Area 5 - 1.5:1 - 16,110m ²	16,110m ²	Yes
	Total - 138,000m ² Note: Areas nominated by Applicant in Clause 4.6 Variation request	138,000m ²	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	Variations proposed to height are addressed below.	Yes
7.11 Residential development yield on certain land	Where development exceeds 600 dwellings certain the development must provide a specific mix, unit sizes and parking.	The masterplan is predicated on 1300 dwellings. Variations are proposed to unit sizes and carparking	No

e. Variation to Height

LEP 2012 limits the height of the development site from 18 metres to 36 metres. The proposal has sought to vary height across the site as addressed in the table in Section 2(d) above:

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 11.

Clause 4.6 Exceptions to Development Standards states:

(1) The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

- (2) Development 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) Development 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) Development 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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or 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 development 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,

- (c) clause 5.4,
- (ca) clause 6.1 or 6.2,
- (cb) clause 7.12.

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

- *The development is consistent with the objectives of the development standard as provided in Clause 4.3(1) of THLEP 2012 as discussed above.*
- *The proposed development seeks to vary the maximum building height controls for the site on the premise that the development would achieve the maximum number of storeys as intended as part of the Planning Proposal.*
- *The built form in the central northern part of the site offset by larger setbacks.*
- *The buildings on the western portion of the site have been amended including an increase in height to eight storeys instead of six in order to improve separation, privacy impacts and improve solar access.*
- *The proposed built form responds to the topographical constraints of the site.*
- *The proposal has been designed to comply with the floor to ceiling height requirements specified in the Apartment Design Guide.*

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 close to the Norwest station and centre.

It is considered that the height variation does not result in any further detrimental impacts on adjoining developments in terms of solar access or bulk and scale. The site was identified with the planning proposal to cater for 6-12 storeys and the proposal is generally consistent with these outcomes. The modifications on the western and central northern parts of the site are generally in response to providing alternate planning outcomes that lessen impacts on adjoining properties. In both instances greater separation and open space is provided adjacent to the boundary in excess of that required under the DCP with compliant schemes.

On the western portion of the site, the applicant has amended the proposal which originally provided a six storey building (Building A2) adjacent to the majority of townhouses backing onto the development site. This building has now been deleted with the floor space from this building offset by providing an additional two storeys (providing built for up to 8 storeys) on Building A1 fronting Fairway Drive and adjacent to the northern boundary where LEP controls for the site adjoining known as Nos. 98-102 Fairway Drive have been amended after lodgement of this application and now have a 36 metre (12 storey) building height control rather than a 16 metre height control. An additional two storeys have also been provided on Building A3 (providing built for up to 8 storeys). The built form has been staggered to lessen the impact of the upper storeys on residents to the south. The lower three storeys are set back 6 metres, storeys 4-6 are set back 12 metres and the upper two storeys are set back 22 metres from the future Spurway Drive frontage. The Spurway Drive road reserve is 22.5 metres in width. To further assist in the transition in this location the Applicant has proposed an alternate verge configuration on Spurway Drive as shown at Attachment 10. The DCP requires a shared path width a minimum width of 2.5 metres which has been approved under DA 634/2017/ZB (Option A) for site infrastructure works. This outcome has limited landscaping opportunities. The applicant proposes a modified southern verge (Option B) with a narrower 2 metre shared path that would facilitate street tree planting in the verge. It is recommended that this outcome be used to provide an improved transition between both sites.

It should be noted that although the impacts of this proposal have only been considered on the basis of the existing two storey development adjacent, it is noted that adjoining site is zoned R4 High Density Residential and is currently subject to a height control (RL

116) that would facilitate approximately 12 storeys. It is considered that the modified proposal provides an appropriate transition to adjoining properties.

The applicant has also provided a solar analysis (Attachment 9) to quantify the impact of the development on the townhouses backing onto the development site. Council's DCP Part B Section 5 Residential Flat Building requires that buildings must be designed to ensure that adjoining residential buildings and the major part of their landscaped area receive at least four hours of sunlight between 9am and 3pm on 21 June. As demonstrated in the solar analysis all 14 units receive 4 hours direct sunlight between 9am and 3pm on 21 June. Although it is acknowledged that these units currently enjoy uninterrupted solar access throughout the day it would be unreasonable to expect that any development on the subject development site would not diminish existing solar access conditions. The impacts relating to solar access are reasonable and do not warrant any further amendments.

In addition to the matters above it is noted that building height and number of storey identified in the Planning Proposal was based on a floor to floor height of 3 metres. The masterplan proposal exceedance is also attributed to site topography, lift over runs and minimum floor to ceiling heights in the ADG of 3.1 metres.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

It is also noted that in accordance with the Departments Circular PS 18-003 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.

f. Variation to Floor Space Ratio

LEP 2012 limits the FSR of the development site from 1.5:1 to 2.6:1. Across the site floor space ratio is not exceeded. The variations to FSR are attributed to a redistribution built form on the site. The additional built form is provided on the central northern part of the site in an area nominated as 1.5:1 FSR. The proposal provides an FSR of 1.58:1. The built form in this area is affectively higher however occupies less footprint than what could be provided with a compliant scheme.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 11.

Clause 4.6 Exceptions to Development Standards is quoted in the Section 1(e) in this report.

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

- *The development is consistent with the objectives of the development standard as provided in Clause 4.4(1) of THLEP 2012 as discussed above.*
- *The scale and mass of the buildings is compatible with the established built form within the immediate context of the site.*
- *Floor space ratio across the site is not exceeded.*
- *The redistribution of FSR maximises tree and vegetation retention.*

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 close to the Norwest station and centre. The floor space ratio variation in the central northern part of the site does not result in any further detrimental impacts on adjoining developments.

The alternate built form across the site complies with the total floor space permitted on the site and results in vegetation including Cumberland Plain Woodland on the site being retained.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.4 Floor Space Ratio and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

It is also noted that in accordance with the Departments Circular PS 18-003 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.

g. Variation to Clause 7.11 - Residential development yield on certain land

As identified above, Clause 7.11 of the THLEP 2012 includes requirements specific to the subject site. The clause enables the consent authority to grant consent to the erection of residential flat buildings with a maximum of 1,300 dwellings across the site, however if development will results in more than 600 dwellings, the development must provide a specific mix, unit sizes and parking.

In summary the following tables detail the applicable planning controls:

Apartment Mix	LEP Standard	Development	Proposal	Compliance
One Bedroom	25% (Maximum)		25%	Yes
Three/Four Bedroom	10% (Minimum)		11%	Yes

Apartment Typology	LEP Standard	Development	Proposal	Compliance
Type 1 Apartments	<30%		57%	No
Type 2 Apartments	<30%		20%	Yes
Type 3 Apartments	N/A		23%	N/A

Parking Type	LEP Standard	Development	Proposed Rate	RMS Requirements
1 Bedroom	1 car space		1 car space	0.6
2 Bedroom	2 car spaces		1.5 car spaces	0.9
3 & 4 Bedroom	2 car space		2 car spaces	1.40
Visitor	2 spaces per 5 units		1 space per 5 units	1 space per 5 units

Clause 4.6 Exceptions to Development Standards is quoted in the Section 1(e) in this report.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 11.

Apartment Size

The proposed development will result in greater than 30% of apartments being classified as Type 1 under the sizes specified in Clause 7.11(5). While the proposed varies from the required typology mix by 27%, the apartment sizes for Type 2 and 3 apartments are less than the requirements by between 2m² to 8m² (2-7%).

The applicant considers that the proposed apartment sizes, which are generally much larger than ADG requirements are appropriate and outline that residents will also have access to a range of high quality facilities which will be delivered in future stages of the masterplan, including a fitness centre, outdoor swimming pool, indoor cinema, multi-purpose room and extensive open space areas. They believe the extent of facilities provided will set a new standard for the amenity of developments in the surrounding area and will promote social interactions and lifestyle choices for future residents.

The objectives of the clause to provide a mix of dwelling types, providing housing choice for different demographics, living needs and household budgets, as well as to promote development that accommodates the needs of larger households, are maintained. The extent of variation to the apartment sizes (between 2 - 8m²) is minimal and considered reasonable given the facilities and open space which will be provided.

Car Parking

The development provides a total of 2,174 car parking spaces within the basement carpark. Based on strict compliance with the car parking rates specified under Clause 7.11, the proposal would require 2,797 spaces.

While the development will provide 623 fewer basement spaces, the car parking provided is in excess of the 1,398 spaces specified by the RMS' *Guide to Traffic Generating Development* for developments within 800 metres of a railway station. The subject site is within 650m walking distance to Norwest Station.

The proposal specifically identifies a reduction in parking for 2 bedroom apartments to a rate of 1 to 1.5 spaces. The Applicant has identified that under this strategy, smaller 2 bedroom units would receive 1 parking space while larger units would receive 2 spaces.

To support the reduction in parking for 2 bedroom apartments the applicant has proposed the use of car share vehicles from the outset of the development. Four vehicles will be provided. Two spaces/vehicles will be provided for this development under this application.

The application also includes the reduction in visitor parking to 1 per 5 apartments. It is noted that the above 2 bedroom rate (1.5 spaces per 2 bedroom unit) approved for the Norwest Town Centre Residential Precinct – East immediately to the south of the site.

The variation to the carparking development standard is considered reasonable given the proposed provision is far in excess of the RMS requirements and given the car-share scheme proposed.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 7.11 and the R4 High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

It is also noted that in accordance with the Departments Circular PS 18-003 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.

h. 7.7 Design Excellence

On 17 November 2017, The Hills LEP 2012 (Amendment No. 43) amended Clause 7.7 Design Excellence. Clause 7.7 of the LEP specifies an objective to deliver the highest standard of architectural and urban design and applies to development involving the erection of a new building or external alterations to an existing building if the building has a height of 25 metres or more. The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors,*
- (d) whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,*
- (e) the requirements of any development control plan to the extent that it is relevant to the proposed development,*
- (f) how the development addresses the following matters:*
 - (i) the suitability of the land for development,*
 - (ii) existing and proposed uses and use mix,*
 - (iii) heritage issues and streetscape constraints,*
 - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
 - (v) bulk, massing and modulation of buildings,*
 - (vi) street frontage heights,*
 - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) the achievement of the principles of ecologically sustainable development,*
 - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) the impact on, and any proposed improvements to, the public domain,*
 - (xi) the configuration and design of public access areas, recreation areas and communal open space on the site and whether that design incorporates exemplary and innovative treatments,*
- (g) the findings of a panel of 3 or more persons that has been convened by the consent authority for the purposes of reviewing the design excellence of the development proposal.*

Comment:

The masterplan includes a number of buildings that will exceed 25 metres in height. All built form development applications that meet this criteria will also be required to be assessed against this clause and referred to the panel. The design excellence of the proposal was considered at a Design Excellence Panel meeting convened by Council and held on 22 February 2018. The meeting minutes of the Design Excellence Panel are included at Attachment 12. The comments made to the application included:

1. *The overall urban design approach in relation to variety of height, communal open space, site permeability and intent to have different development parcels designed by different groups of architects has been well considered, and is generally supported by the panel.*
2. *Treatment of the riparian corridor was respectful of context and natural systems. The 10m setback is supported in principle.*
3. *The Panel is concerned however that solar access to north facing units of an approved development on the adjacent site will be reduced as a result of noncompliant street setback and recommend that the applicant review how this can be addressed.*
4. *The Panel made a general comment in relation to the nexus between height and density. Residential FSRs of 2.5:1 and higher are generally best resolved with more flexibility in relation to height, particularly if the overall urban design vision is for buildings set within a generous landscape setting. The current height controls mean that built form will inevitably be compacted to achieve the target density, with central courtyards surrounded by dense, unbroken built form. The environmental amenity of these spaces is questionable in terms of privacy, and access to natural light and ventilation in the context of global warming.*
5. *This proposal is reflective of this, however it was noted by the panel that the architects have provided a well-resolved and highly competent scheme that complies with the controls.*

The masterplan was generally supported by the design excellence panel. In relation to comments relating to solar access to north facing units of an approved development on the adjacent site will be reduced as a result of noncompliant street setback, these comments related to the development known as 'Watermark' at No. 38 Solent Circuit. The Applicant has undertaken a solar analysis which identified that 70% of the units on the northern facade of this building will continue to achieve at least 2 hours of solar access to living spaces and private open space areas. A further detailed analysis will be undertaken with each of the built form development applications. It is recommended as part of this report that the 6 metre front setback proposed under this masterplan is not supported at this stage.

i. Other Provisions

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

- 5.9 Preservation of trees or vegetation;
- 5.10 Heritage Conservation
- 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

2. State Environmental Planning Policy No. 55 Remediation of Land

This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment.

Clause 7 of the SEPP 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.

Comment:

A Stage 1 Preliminary Site Investigation been undertaken by SLR Consulting Australia Pty Ltd. The investigation found that the potential for low-level and isolated contamination to be present on the site, as a result of past and present land use activities, is considered to be low to moderate.

However, given the extent of the excavations and the nature of landscaping works anticipated with the proposed development, any contamination that may be present on site is likely to be removed offsite or covered by the landscaped material. This will eliminate potential exposure pathway between the contamination source and the receptor.

The investigation also found that potential asbestos impacted soil (if any) is likely to be excavated as part of the basement excavation, cleared as part of the site clearance work or covered with landscaping material as part of the proposed development. As such, asbestos contamination, if present, is unlikely to pose an unacceptable risk to future site users.

In this regard, it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP 55. Appropriate conditions will form part of future applications.

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

A Design Verification Statement was prepared by Turner Architects. Although the subject application does not include built form, the application includes sufficient detail to allow an assessment against the relevant design quality principles contained within SEPP 65;

Principle 1: Context and neighbourhood character

The proposal is compatible with the existing and desired context and neighbourhood character of the precinct. The proposal seeks to respond to and contribute to the context of Norwest both in its present state as well as the desired future character.

The locality is comprised of a mixture of existing residential buildings, low to medium and high density, multi-residential and single dwellings, with the future vision of the area zoned to encourage an increased scale of high density residential development adjacent to the site.

Principle 2: Built form and scale

The proposal is consistent with the requirements of the The Hills Council LEP, and is appropriately articulated to minimise the perceived scale. Generous setbacks, separation and variety along the elevations and layering of façade elements assist in creating expressive street frontages and enhancing the developments relationship with the public domain.

Principle 3: Density

The subject proposal provides for 1300 dwellings across the development site. The density complies and is appropriate for the site and precinct.

Principle 4: Sustainability

The design achieves natural ventilation and solar access as required by the Apartment Design Guidelines. The incorporation of 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.

Principle 5: Landscape

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

Principle 6: Amenity

Future building design has been developed to provide for the amenity of the occupants as well as the public domain. The proposed units are designed with appropriate room dimensions and layout to maximise amenity for future residents. The proposal incorporates good design in terms of achieving natural ventilation, solar access and acoustic privacy. All units incorporate balconies accessible from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas. Storage areas and laundries have been provided for each unit. The proposal would provide convenient and safe access to lifts connecting the basement and all other levels.

Principle 7: Safety

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. All future building applications will be referred to The NSW Police.

Principle 8: Housing diversity and social interaction

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

Principle 9: Aesthetics

All future applications will address the aesthetics principle.

Apartment Design Guidelines

In accordance with Clause 30(2) of SEPP 65, a consent authority in determining a Development Application for a residential flat building is to take into consideration the Apartment Design Guidelines. Each of the building applications will provide an assessment of the proposal against the Design Criteria provided in the Apartment Design Guidelines.

4. Compliance with The Hills Development Control Plan 2012

The proposal has assessed been against the relevant provisions of The Hills Development Control Plan 2012 noting that some controls such as density, number of storeys, unit typology and parking are superseded by the site specific provisions in the LEP.

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

DEVELOPMENT CONTROL	THDCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Part B Section 5 Residential Flat Buildings - Clause 3.3(2)(a)	Front Setback 10m	Setback to Spurway Drive east of Stranger's Creek - 6m	No

a) Front Setback

The DCP requires a front setback for residential flat buildings of 10 metres. The subject development is set back 6 metres to Spurway Drive.

The relevant objectives of this clause of the DCP are:

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

The applicant has provided the following justification for the variation.

"The proposed master plan seeks to retain the 6 metre setback to Spurway Drive on the basis that it will:

- Allow the preservation of a large number of significant and mature trees along the northern boundaries.*
- Facilitate the provision of a publicly accessible, 20 metre wide and 1.4 hectare linear park.*
- Achieve satisfactory levels of solar access to the existing dwellings on Central Park Avenue and future development at 38 Solent Circuit.*
- Provide an attractive landscaped streetscape along Spurway Drive."*

Comment:

The development site is located on Fairway Drive and the future Spurway Drive extension. The locality will comprise a number of residential flat buildings on both the northern and southern sides of Spurway Drive. The application seeks to establish a 6m setback along Spurway Drive. The applicant proposes a 10 metre setback to Fairway Drive. A secondary setback is permitted to be 6 metres. It is considered that Building A3 which is located over a basement shared with Building A1 can utilise the secondary setback of 6 metres. It is noted that the built form for Building A3 has been staggered to lessen the impact of the upper storeys. The lower three storeys are set back 6 metres, storey 4-6 are set back 12 metres and the upper two storeys are set back 22 metres from the future Spurway Drive frontage. The Spurway Drive is road reserve is 22.5 meters in width.

In relation to the remaining buildings along Spurway Drive it is considered appropriate to assess this matter with each of the future built form applications however it is noted that

there is a recently completed development that fronts Solent Circuit (No. 38 Solent Circuit), and will adjoin the future Spurway Drive at the rear of this building. This building has a northern setback of 6 metres to the podium which is up to 3 metres above natural ground level and 8.5 metres to the building. Also under construction at No 40 Solent Circuit is a 12 storey residential flat building which has a 6 metre setback to the future Spurway Drive.

In addition, comments were provided by Council's Design Excellence Panel identified earlier in this report relating to solar access to north facing units of an approved development on the adjacent site known as 'Watermark' at No. 38 Solent Circuit that will be reduced as a result of noncompliant street setback. The Applicant has undertaken a solar analysis which identified that 70% of the units on the northern facade of this building will continue to achieve at least 2 hours of solar access to living spaces and private open space areas. A further detailed analysis will be undertaken with each of the built form development applications. Again it is recommended as part of this report that the 6 metre front setback proposed under this masterplan is not supported at this stage.

5. Issues Raised in Submissions

The application was advertised and notified on two occasions. The second notification was in response to the submission of amended plans from the applicant which resulted in a modified built form on the western part of the site.

In order to detail the concerns in relation to the specific amendments made to the plans the submission table has been divided into two sections to specify the amendments made at that time by the applicant and any objections received. In summary the objections raised to each notification period are as follows:

1st Notification

ISSUE/OBJECTION	COMMENT	OUTCOME
The final part of Horatio Avenue roadworks should be completed as part of Stage 1 construction and make that section of road a 'No Standing' zone so adjoining residents can see into the linear parklands which makes it inviting for all to use	It is considered reasonable that the roads works on Horatio Avenue which front Stage 3 be completed prior to the Occupation Certificate for this stage. This sequencing is logical and corresponds with the development activity on the site. The provision of regulatory signage zones will be reviewed by Council's Local Traffic Committee once works have been completed.	Issue addressed.
The building heights for stage 3 should be reduced to 6 storeys as 9 storeys seem excessive. We want total privacy from this building.	The matters relating to building height have been addressed in Section 1 of this report. It is considered that the alternate built form provides greater separation and allows the retention of more existing trees and vegetation adjacent to existing residents in this part of the site.	Issue addressed.

The linear park needs to be regenerated and the planting of extra native trees to eliminate privacy issues.	This area will be subject to a Vegetation Management Plan and will be embellished with additional plantings.	Issue addressed.
All apartments must be given sufficient parking according to the amount of bedrooms. For example, 1 bedroom, 1 car park spaces, 2 bedrooms, 2 car parking spaces etc.	The matters relating to parking have been addressed in Section 2 of this report. Given the proximity to the future Norwest station is considered that the parking provided is sufficient.	Issue addressed.
Council has already stipulated the floor space ratio and thus the developer should comply	The matters relating to Floor Space Ratio have been addressed in this report. The Variation on the central northern part of the site is considered reasonable give the built form outcomes proposed.	Issue addressed.
<p>The expectation of the Central Park community was that there would be low rise development directly behind us ranging from two or three storeys fronting Spurway Drive and then stepping back in height towards the north of the site to four or maybe five or six storeys.</p> <p>To compensate for a reduced number of units in this area, greater density and heights of buildings would be permitted in other stages. To now see the current masterplan proposal looking to locate three large bulky six storey buildings directly behind our development being a two storey low density development is not only disappointing but also flies in the face of previous amendments albeit by a different developer.</p>	The proposal has been modified to provide a modified built form adjacent to Central Park. The applicant has deleted a six storey building adjacent to the majority of units backing onto the development site. This has been offset by providing an additional two storeys fronting Fairway Drive and adjacent to the northern boundary which was rezoned after lodgement of this application to facilitate built for up to 36 metres. An additional two storeys have also been provided on the building A3. The built form has been staggered to lessen the impact of the upper storeys. The lower three storeys are set back 6 metres, storey 4-6 are set back 12 metres and the upper two storeys are set back 22 metres from the future Spurway Drive frontage. The Spurway Drive road reserve is 22.5 meters in width. The built form proposed is considered satisfactory.	Issue addressed.
The current applicant appears to indicate in their Statement of Environmental Effects and summary of outcomes report that they have had a number of meetings with Council's staff and Councillors. If this is the	The applicant is able to meet with Council staff prior to lodging an application. Council staff encourage prelodgement meetings prior to lodgement. The merits of the application are addressed in this report.	Issue addressed.

case, Central Park residents are being let down by both council officers and elected officials in what appears to be a total disregard for amenity of existing residents.		
The Sydney Metro North West (SMNW) provides the opportunity to plan for and build liveable centres around each station through the creation of sustainable, well designed higher density mixed use precincts connected by frequent rail and bus services. The strategy also indicates the SMNW will support positive changes in travel behaviour i.e. the use of rail and a shift from road. The principle of Transit Oriented Development is to maximise the goal of positive change in travel behaviour not to provide for "out-dated" development controls that increase road congestion.	The matters relating to parking have been addressed in Section 2 of this report. Given the proximity to the future Norwest station it is considered that the parking provided is appropriate.	Issue addressed.
Council's DCP provides for a setback of 10 metres from the primary frontage and 6 metres from the secondary frontage for corner blocks. Building A1 on the corner of Fairway and Spurway Drive may comply with this control given it could be argued which is the primary frontage. However, the rest of the buildings are not corner blocks and do not comply with the DCP.	The matters relating to setbacks in Spurway Drive are addressed in Section 4 of this report. A secondary setback is permitted to be 6 metres. It is considered that Building A3 which is located over a basement shared with Building A1 can utilise the secondary setback of 6 metres. It is recommended that all other buildings fronting Spurway drive be assessed for each built form application.	Issue addressed.
This development forms part of wider development of the area. Whilst this development may create minor impacts (and we contend that they will be major impacts), the traffic and transport impacts for the overall development will cumulatively provide adverse conditions for residents.	The traffic impacts for the locality do not directly relate to this application. They are a matter for Council and the Roads and Maritime Service.	Issue addressed.

<p>The proposed connection of Spurway Drive between Fairway Drive and Windsor Road will create an alternative access for motorists trying to avoid Norwest Boulevard.</p> <p>Whilst it is understood Council has proposals to improve conditions on Norwest Boulevard, residents are yet to see funding or timeframe commitment to the upgrades. Delays in these upgrades will affect conditions in local streets, particularly where alternative connections are developed as is the case with this road and development.</p>	<p>The Spurway Drive connection to Fairway Drive is a pre-planned component of the overall Balmoral Road Release Area street network that was introduced into the DCP as a direct consequence of the planning proposal relating to this site.</p> <p>The upgrading and eventual dedication of Spurway Drive is a critical piece of road infrastructure that is essential to the precinct as a result of its linking of Fairway Drive to Windsor Road.</p> <p>The retention of the existing left in/ left out restriction at the Spurway Drive/ Windsor Road intersection will assist in limiting the desirability of this route as an alternative to the road network servicing Norwest Business Park.</p> <p>The underlying planning proposal was forwarded to the Roads and Maritime Services and Transport for NSW for comment. Both agencies deemed that future development on the site is unlikely to have any unacceptable traffic implications in terms of road network capacity.</p>	<p>Issue addressed.</p>
<p>The masterplan SOEE states that "the original masterplan has been amended in response to the issues raised by the residents to the south of the site (Central Park Ave). The top two levels of the three buildings to the north of Central park Ave (Buildings A1, A2 and A3) have been setback to provide a stepped building (ranging in height from four-six storeys). "</p> <p>Firstly, we the residents are not happy with the amendment, if you can classify it as amendment in response to our objections. Lowering a small portion (4</p>	<p>The applicant has made further amendments to the built form on the western portion of the site as outlined in this report.</p>	<p>Issue addressed.</p>

metres) to four storeys is a veiled attempt which achieves nothing. The applicant is treating us with contempt and not making any attempt to transition building heights to address our amenity concerns.		
<p>We believe the applicants approach to design is by ensuring the two storey dwellings receiving the required amount of sunlight required in Councils DCP. A constant connection between validating the design, setbacks and amenity is based around the buildings compliance with shadow and its impact on those dwellings.</p> <p>The impact of shadow and our expectation around solar access are not the only impacts that need to be addressed. These buildings are six storeys, designed to provide amenity to the proposed new residents, and does not take into account the amenity of existing residents which is of real concern.</p>	The impacts associated with the height of the development on the western portion of the site are addressed in Section 2 of this report. The amended design outcomes are considered satisfactory.	Issue addressed.
The applicant acknowledges that the Central Park development was constructed prior to the announcement of the Norwest Station and if it were to be developed today as a greenfield site it would more than likely to be high rise. We agree, however we are not a high rise development, we are 2 storeys low density located right next to their proposed development and must be treated and respected as such. The applicant believes that we the residents of Central Park Avenue will retain a suitable level of amenity.	The application has been assessed on the basis of existing adjoining residents. The amended masterplan proposal is considered satisfactory.	Issue addressed.

As previously stated, it would make more sense to include a portion of the open space linear park on the boundary with the Central Park development as that will achieve a natural transition from low density to high density, and work in with the existing park currently in place between the Central Park development and the Watermark development.	The subject proposal seeks to provide the linear park in a location that will facilitate the retention of a stand of Cumberland Plain Woodland. The location of the linear park is supported for this reason.	Issue addressed.
Should the extension of Spurway Drive occur it is essential that a noise wall be constructed at the rear of the Central park properties backing on to the proposed extension and this must be for the full length from Fairway Drive to the last 2 storey residence. This wall needs to be constructed prior to any work commencing on the site in relation to road works or building construction. Residents of Central Park and particularly those affected need to be consulted in relation to the location and design of the wall.	State Environmental Planning Policy (Infrastructure) 2007 identifies that the consent authority consider whether residential development is likely to be adversely affected by road noise or vibration where the road has an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of RMS). The need for acoustic fencing is not considered necessary however it is noted that the Central Park development was considerate of this planned road in orientating dwellings along this boundary and through the construction of a fixed lapped and capped timber fence along this boundary. As part of the proposed works this fence will need to be retained and protected.	Issue addressed.

2nd Notification Period

ISSUE/OBJECTION	COMMENT	OUTCOME
The amended submission is unclear as to what is being proposed in respect of the landscaping along Spurway Drive. Many of the plans indicate landscaping to both sides of Spurway Drive to the North of Central Park Ave, however, insufficient area has been allowed to achieve landscaping that is consistent with the landscaping found in the Norwest precinct. The landscaping must include tall canopy trees so the positioning of these tall	To assist in the transition in this location the applicant has proposed an alternate southern verge configuration on Spurway Drive as shown at Attachment 10. The DCP requires a shared path width a minimum width of 2.5metres. This would limit landscaping opportunities. The applicant proposes a modified verge with a 2 metre shared path that would facilitate street tree planting in the verge. It is recommended that this outcome be provided.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>canopy trees is extremely important. These trees cannot be along the fence line of the homes that run along Central Park Ave as the rear of the houses are circa two metres from the fence line, positioning these trees that close to the fence line will also interfere with the landscaping along the fence line in backyards, will damage fences and be too close to actual homes. Having tall canopy trees so close to fence lines (one plan showed a 300 mm allowance for tall canopy trees right on the fence) is also, once again, inconsistent with the landscaping of the Norwest precinct.</p>		
<p>We note that the applicant's architect has indicated various widths of the shared pathway and are curious as to their motive and require more clarity around what is actually being proposed to ensure it is actually practical and achievable. It may be that no footpath is placed along the Central Park Ave side, but rather it is completely dedicated to landscaping (without any loss of distance from the fence to the road). This is also consistent with the Norwest precinct where only one side of a road typically has a footpath.</p>	<p>The DCP requires that a 2.5 metre wide shared path be located along the southern verge of Spurway Drive. As identified above, the applicant proposes a modified verge with a 2 metre shared path that would facilitate street tree planting in the verge. It is recommended that this outcome be provided.</p>	<p>Issue addressed.</p>
<p>We have continually raised concerns with the issue of traffic noise and fine dust and the impact these will have on our residences backing onto the proposed extension of Spurway Drive. One of our residents has been told by the applicant that they are not going to provide any fencing that will deliver both acoustic treatment and fine dust protection because they are not required to.</p>	<p>As addressed above the applicant is not required to provide an acoustic fence in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007. Future built form applications will require appropriate dust mitigation measures on site during construction.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
The residents ask for clarity around the applicant's intention in respect of appropriate fencing.	The applicant is not proposing any new fencing adjacent to Spurway Drive.	Issue addressed.
Again, the applicant has chosen to ignore the DCP requirements of Council and only provide a six metre setback to the buildings along Spurway Drive instead of the minimum setback requirement of 10 metres.	The matters relating to setbacks in Spurway Drive are addressed in Section 4 of this report. A secondary setback is permitted to be 6 metres. It is considered that Building A3 which is located over a basement shared with Building A1 can utilise the secondary setback of 6 metres. It is recommended that all other buildings fronting Spurway drive be assessed for each built form application.	Issue addressed.
In this regard, we are appealing to impose the minimum setback of 10 metres to building A3 given that it is being proposed as being eight storeys in height.	Building A3 has been staggered to lessen the impact of the upper storeys. The lower three storeys are set back 6 metres, storey 4-6 are set back 12 metres and the upper two storeys are set back 22 metres from the future Spurway Drive frontage. The Spurway Drive road reserve is 22.5 metres in width.	Issue addressed.
We are extremely concerned about the entry/exit point to the underground parking for buildings A1 and A3 being approximately 40 metres from the intersection of Fairway Drive and Spurway Drive. How is it possible to locate such an important and busy entry/exit point for at least 600 plus vehicles at such a location?	The location of the entry/exit driveway identified in the submission is not considered unreasonable. A detailed analysis will be undertaken as part of the future built form Development Applications.	Issue addressed.
As Spurway Drive enters Fairway Drive close to the Fairway Drive <i>and</i> Solent Circuit roundabout, this will also cause considerable traffic congestion as the cars bank up during peak traffic at the roundabout. This will create difficulties for cars entering Fairway Drive from both Central Park Ave and Spurway Drive.	<p>The Spurway Drive connection to Fairway Drive is a pre-planned component of the overall Balmoral Road Release Area street network that was introduced into the DCP as a direct consequence of the planning proposal relating to this site.</p> <p>The upgrading and eventual dedication of Spurway Drive is a critical piece of road infrastructure that is essential to the precinct as a result of its</p>	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
	<p>linking of Fairway Drive to Windsor Road.</p> <p>The underlying planning proposal was forwarded to the Roads and Maritime Services and Transport for NSW for comment. Both agencies deemed that future development on the site is unlikely to have any unacceptable traffic implications in terms of road network capacity.</p>	
<p>Each free-standing house along Central Park Ave (14 in total) have bedrooms and living areas to the rear of their house, as such, the proposed location of the entry/exit point to the underground car park will create additional noise and lighting issues (from traffic) for residents. This is of extreme concern to the Community.</p>	<p>The location of the entry/exit driveway identified in the submission is not considered unreasonable. A detailed analysis will be undertaken as part of the future built form Development applications.</p>	<p>Issue addressed.</p>
<p>We are asking that the maximum height of building A3 be four storeys with the additional density being added to the height of buildings further east along Spurway Drive (Buildings C1 to C4 and D1 to D3).</p>	<p>The height of Building A3 has been assessed in Section 1 of this report. Building A3 has been staggered to lessen the impact of the upper storeys. The lower three storeys are set back 6 metres, storey 4-6 are set back 12 metres and the upper two storeys are set back 22 metres from the future Spurway Drive frontage. The Spurway Drive is road reserve is 22.5 meters in width. The built form proposed is considered reasonable.</p>	<p>Issue addressed.</p>
<p>The applicant in their recent submission has indicated that our Community will be redeveloped in the future and therefore our concerns are really only short term and therefore should be completely ignored. How dare they suggest that because our parcel of land is zoned R4 that a developer will come along in the future and convince every homeowner to sell their</p>	<p>The impacts of this proposal have only been considered on the basis of the existing two storey development adjacent however for context it is noted that the adjoining site is zoned R4 High Density Residential and is currently subject to a height control (RL 116) that would facilitate approximately 12 storeys. It is considered that the modified proposal provides and appropriate transition to existing adjoining properties.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>property which is required under our charter. This assumption and statement is a joke and offensive to us, the residents of the Community. Further, this development completed in 2015. Council should never have approved this development if they thought it would only be relevant for five to 10 years. This development will endure for at least 100 years, which is at it should be if we are to be environmentally responsible.</p>		
<p>The applicant has indicated that increasing the height of buildings C1 to C4 and D1 to D3 east along Spurway Drive will impact on residents to the south of those buildings. This land is owned by Mulpha and has yet to be developed. The applicant even shows these buildings to be low rise townhouses, highly unlikely given Watermark is circa eight storeys in height and Haven is circa 12 storeys in height. It is more than likely that Mulpha will continue to develop apartments to the East of Haven, increasing in height as they move along the site. So, it is our view that given the uplift in zoning this area will also be developed with high rise buildings in the future. Their basis for not wanting to increase the height is therefore unjustified. In fact, to ensure the transition from low/medium density to high density it makes complete sense for height to increase in that area.</p>	<p>The built form and heights proposed are considered to be appropriate for the context of the locality particularly considering the height control that applies to the adjoining sites (RL 116) which the development is reasonably consistent with.</p>	<p>Issue addressed.</p>
<p>It is also amusing on one hand they are seeking increases in heights for buildings A1, A3 and B1, which obviously suits their purpose, and yet are reluctant to increase the</p>	<p>Addressed above.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
heights on buildings C1 to C4 and D1 to D3 to address the issues raised by the Community.		
The low/medium density residents to the North of C1 to C4 and D1 to D3 will have no shadow impact from these buildings as they are to the north of this area of the site. As such, the extreme disadvantage that the Sekisui House Development is having on the Central Park Community from a shadow impact perspective will not be an issue in this area of the site. Once again, making sense to increase height in this area.	The masterplan is generally consistent with the building heights approved under the planning proposal. The amenity impacts are considered reasonable and do not warrant further modification of the application.	Issue addressed.
The height of Building B1 should be in line with Watermark, as such, no higher than circa eight storeys.	The masterplan and height of Building B1 are consistent with the building heights approved under the planning proposal.	Issue addressed.
The applicant has made it very clear it does not intend to submit a complying development application. All the Community asks is that it looks to undertake its non-compliance in areas that minimise its impact on the Community and creates a development that flows with the existing communities around the Sekisui House Development.	The variations of the application are addressed in this report. The built form proposed across the site is considered satisfactory.	Issue addressed.
The café proposed for building A3, is that to be licenced? What will the operating hours be? Where will people park to access the café? Residents already have issues with the general public parking in its Community visitor parking bays (roads which are the full financial responsibility of the Community).	The details surrounding the café will form part of a future built form application. It would be appropriate that any use provide appropriate parking on the development site.	Issue addressed.
With the lower height of building A3 being requested, it does not make sense to include a cafe/retail on the ground floor of this building.	The details surrounding the café will form part of a future built form application.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>Mulpha has included retail community shopfronts on the ground floor of Haven. It makes more sense for the applicant to include its cafe /retail community shopfronts in the buildings C1 to C4. There is also a road being constructed to the East of Haven connecting Solent Circuit and Spurway Drive. This will give easy access to the area for non-residents, and retain the precinct to the West of Strangers Creek as purely residential.</p>	<p>Addressed above.</p>	<p>Issue addressed.</p>
<p>The applicant has clearly dismissed any intent to address this important government strategy around the metro system and the reason for the uplift in zoning. Simply saying they have reduced car parking and they are in line with general requirement of the DCP is just "waffle".</p>	<p>The matters relating to parking have been addressed in Section 1 of this report. Given the proximity to the future Norwest station it is considered that the parking provided is appropriate.</p>	<p>Issue addressed.</p>
<p>The Community is concerned about this vision and how communities like ours will suffer at the hands of large developers who's vision maybe entirely different to the residents and communities who live in the area.</p>	<p>Addressed above.</p>	<p>Issue addressed.</p>
<p>In the applicant's submission named 'The Orchards-Masterplan 47 Spurway Drive, Baulkham Hills, Clause 4.6 Request HOB Addendum, January 2018', page 10 of that submission notes very different information in respect of winter solar access.</p>	<p>The purpose of the information identified in the submission is to demonstrate that a compliant built form would result in less solar access being provided to adjoining residents.</p>	<p>Issue addressed.</p>
<p>It continues to be the Community's position that absolutely maximising winter solar access is critical to the amenity and wellbeing of residents. Further, if the applicant amends the Sekisui House Development as per</p>	<p>It is considered that the solar access provided by the amended proposal is satisfactory and does not warrant further modification.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
above, it will result in a great outcome for all members of the community, not just our Community		
<p>The Community is clear in its understanding that Development Consent has been given for the Spurway Drive Extension. However, it wants to take this opportunity to reiterate that cutting through Strangers Creek with Spurway Drive is a huge mistake. Strangers Creek is everything the NSW Government's Greener Places policy is talking about, tall canopy trees, a connector between the communities of Central Park, The Orchard, Watermark, Haven, etc, and, most importantly, a very important nature corridor. Prior to the Community moving in to live in the precinct, it may not have been fully appreciated how important Strangers Creek is to the ecosystem and the wellbeing of the communities surrounding it in general. We must all remember that this whole precinct was undeveloped land not that long ago. Making irreversible decisions prior to really understanding a site is never good practice.</p>	<p>As addressed in the report The Spurway Drive connection to Fairway Drive is a pre-planned component of the overall Balmoral Road Release Area street network that was introduced into the DCP as a direct consequence of the planning proposal relating to this site.</p>	<p>Issue addressed.</p>
<p>Once again, the Community appeals to Council and the applicant to reconsider Spurway Drive. Spurway Drive to the East of Strangers Creek will connect to Solent Circuit via the new road being built to the East of Haven, and Spurway Drive can connect to Fairway Drive through the existing road networks via Lucinda Ave. This means that traffic from the Sekisui House Development will be dispersed, with residents in buildings A1 and A3 accessing Fairway Drive,</p>	<p>Addressed above.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
residents in building B1 accessing Solent Circuit, and residents in building C1 to C4 and D1 to D3 accessing Windsor Rd, Solent Circuit or Fairway Drive.		
This will have the least impact on the entire community and will encourage kids and entire communities to really enjoy the Strangers Creek nature corridor. Everyone will be able to easily walk to the new Metro Station at Norwest, it will provide safe pedestrian access for all. Spurway Drive, as it stands today, will split the communities completely, removing the natural flow and any incentive to get our communities outside and walking to the public transport hubs.	Addressed above.	Issue addressed.
If the Spurway Drive extension is to proceed, it should not be constructed until the sites to the east of Strangers Creek have completed construction, as expediting construction of Spurway Drive from Fairway Drive to the east of Strangers Creek now is purely to bring in heavy construction vehicles, this completely goes against commitments made to the Community by the applicant and the Community is very aware that the applicant will have no regard to our wellbeing and amenity during this time.	Development Application 634/2017/ZB has approved the civil works and timing associated with Spurway Drive. The western portion of Spurway Drive from Fairway Drive to the entrance to the existing flat building (779/2017/JP) under construction will form Stage 1. A condition was imposed on that consent that required that no Occupation Certificate can be issued until Spurway Drive extending from Fairway Drive to the eastern boundary of proposed development lot two has been dedicated as public road. Under no circumstances will residential access be permitted from the eastern end of Spurway Drive.	Issue addressed.

ROADS & MARITIME SERVICE COMMENTS

The State Environmental Planning Policy – Infrastructure 2009 requires development to be referred to the NSW Roads and Maritime Service where the development results in 200 or more vehicles with access to any road. The application was referred to the RMS as the application incorporates parking for 2,174 vehicles and proposes a variation to parking rates and cumulative parking across the development site.

The NSW Roads and Maritime Service identified that Council should undertake an assessment on the traffic impacts on the locality given the creation of the link between Windsor Road and Fairway Drive. It is noted that this link is a pre-planned link contained within the Balmoral Road DCP. Although the densities have increased above what was initially planned concerns were not raised by the RMS during the planning proposal stage.

It is considered that this link will provide permeability through to Norwest Business Park and the higher density residential areas on the edge of the business park. Additionally, Council's Principal Traffic & Transport Coordinator has reviewed the proposal and raised no objection with respect to traffic generation.

SUBDIVISION ENGINEERING COMMENTS

No objections are raised to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the proposal subject to conditions.

WASTE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

RESOURCE RECOVERY COMMENTS

No objection is raised to the proposal subject to conditions.

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP 65, SEPP 55, LEP 2012 and The Hills Development Control Plan and is considered satisfactory.

The variations to the LEP Height control, FSR and unit size and parking are addressed in the report and are considered satisfactory.

In relation to the Clause 4.6 Variation requests, it is considered that the Applicant's request is well founded, and the proposed variation results in a development that is consistent with the relevant objectives, and compliance with the standard are unnecessary in this instance, and the proposal results in a better planning outcome as outlined in this report.

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

Accordingly approval subject to conditions is recommended.

RECOMMENDATION

The Development Application be approved subject to the following conditions.

GENERAL MATTERS

1. Development in Accordance with Submitted Plans (as amended)

The development being carried out in accordance with the approved plans and details submitted to Council, as amended in red, stamped and returned with this consent.

The amendments in red include: -

- The 6 metre setback for all buildings east of Stranger's Creek is not approved as part of this application. All future built form applications east of Stranger's Creek shall address the Development Control Plan and justify any setback encroachments.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	SHEET	REVISION	DATE
MP-000-005	Masterplan Setbacks	-	C	12 December 2017
MP-000-006	Masterplan Building Envelope	-	E	12 December 2017
MP-250-010	North Envelope Elevation - Linear Park	-	C	12 December 2017
MP-250-020	South Envelope Elevation - Spurway Drive	-	C	12 December 2017
MP-250-040	West Envelope Elevation - Fairway Drive	-	C	12 December 2017
MP-350-001	GA Section Envelope Section 01	-	E	12 December 2017
MP810-001	Staging Stage 1	-	D	21 March 2017
MP810-002	Staging Stage 2	-	D	21 March 2017
MP810-003	Staging Stage 3	-	D	21 March 2017
MP810-004	Staging Stage 4	-	D	21 March 2017
MP810-005	Staging Stage 5	-	E	13 December 2017
512SL	Landscape Masterplan - 2m Shared Path	25	J	24 April 2017
512SL	Landscape Sections	28	A	13/12/2017

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. Compliance with Masterplan

Approval is granted for the proposed Masterplan in accordance with the plans and details provided with the application to provide guidance for future development of the site. All Stages of works the subject of the Masterplan will require the submission and approval by the relevant authority of an application as required by the relevant legislation including all external authorities with the exception of the Office of Environment and Heritage in relation to flora and fauna impacts which are required to be offset in accordance with Condition 3.

3. Ecology Requirements

i. Biodiversity Impact Mitigation Requirements

To mitigate the potential impacts of construction, the developer must comply with the conditions in Schedule 1 On-site Measures set out in Biobanking Statement ID 49 issued by the NSW Office of Environment & Heritage under the Masterplan development. The site-specific Construction Environmental Management Plan must be prepared taking into

account conditions 1.2 to 1.14 of Schedule 1. The CEMP must be submitted to The Hills Shire Council and approved by the Manager – Environment and Health prior to issue of a Construction Certificate.

ii. Biodiversity Offsetting Requirements

To offset the loss of biodiversity from the site the developer must comply with all of the credit retirement conditions in Schedule 2 of Biobanking Statement ID 49 issued by the NSW Office of Environment & Heritage under the Masterplan development. The biodiversity credits must be retired prior to any physical works commencing for each stage of the development. Evidence of retirement of ecosystem credits in accordance with the Biobanking Statement conditions must be submitted to The Hills Shire Council's Manager – Environment and Health.

4. Southern Road Verge – Spurway Drive

All future Applications and construction works involving the southern verge of Spurway Drive west of the golf course entrance driveway shall incorporate a 2 metre wide shared path and street tree landscaping in accordance with Landscape Section 'Option B' Project No. 512SL Sheet No. 28 Revision A.

5. Engineering Works Requirements

a) Road Formation

Roads are to be delivered as per the early works/ infrastructure development application over the site (DA 634/2017/ZB), complying specifically with the following configurations:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Spurway Drive	Road Type: Collector Road w/ cyclepath 3.5m/ 9.5m/ 3.5m (16.5m) Pavement Design: Collector Road (Design Guidelines Section 3.12)
Stone Mason Drive	Road Type: Collector Road w/ Cyclepath 3.5m/ 9.5m/ 3.5m (16.5m) Pavement Design: Collector Road (Design Guidelines Section 3.12)
Lucinda Avenue	Road Type: Access Street 3.5m/ 8.5m/ 3.5m (15.5m) Pavement Design: Access/ Local (Design Guidelines Section 3.12)
Castle Pines Drive	Road Type: Private Road 0m/ 7.0m/ 0m (7.0m) Pavement Design: Private (Design Guidelines Section 3.12)
Private Road (MC02)	Road Type: Private Road 0m/ 6.0m/ 0m (6.0m) Pavement Design: Private (Design Guidelines Section 3.12)

b) Stormwater & Water Sensitive Urban Design

All future development applications are to generally comply with the following, along with any other requirements of Council at the time:

- Flood Study Report prepared by Northrop dated 2 September 2016
- Water Sensitive Urban Design (WSUD) Strategy prepared by Alluvium dated September 2016 and their subsequent response memorandum dated 3 March 2017;

The following design requirements also apply:

- Runoff from each of the sites it to be treated and is to meet the following targets for nutrient and sediment removal:
 - o 95% reduction in the annual average load of gross pollutants
 - o 85% reduction in the annual average load of total suspended solids
 - o 65% reduction in the annual average load of total phosphorous
 - o 45% reduction in the annual average load of total nitrogen
- The bio-retention treatment systems (Basins 3 and 4) within the linear park are not to treat stormwater runoff from the public trunk drainage line. Public easements are to be created over private land.
- Gross Pollutant Traps (GPTs) are not to be located within any public trunk drainage lines or on public land. Any proposed GPT's are to be located within private land only.

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:

- 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/>

6. Acoustic Requirements

The recommendations of the *Masterplan DA Acoustic Assessment* for 47 Spurway Drive, Baulkham Hills, prepared by Acoustic Logic, project number 20160992.1, dated 22/02/2017 and submitted as part of the concept masterplan are to be complied with. In particular, site specific acoustic assessments are to be submitted for every stage (sections 4.3 and 5.3). The acoustic assessment is to address internal noise levels, mechanical plant and construction noise management.

The following overall project specific criterion is to be achieved at every stage of the development to prevent background creep.

- Day 0700-1800: 50dB(A)_{leq15min}
- Evening 1800-2200: 45dB(A)_{leq15min}
- Night 2200-0700: 40dB(A)_{leq15min}

7. Contamination Requirements

The recommendations of the *Detailed Site Investigation* for 47 Spurway Drive, Baulkham Hills prepared by EI Australia, referenced as E23307 AA_Rev0, dated 6 April 2017 and submitted as part of the concept masterplan are to be implemented as conditioned in each approved stage of the development.

A validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council) prior to the subdivision certificate being issued. The validation report must reference the *Detailed Site Investigation* for 47 Spurway Drive,

Baulkham Hills prepared by EI Australia, referenced as E23307 AA_Rev0, dated 6 April 2017 and include the following:

- The degree of contamination originally present;
- The type of remediation that has been completed; and
- A statement which clearly confirms that the land is suitable for the proposed use.

8. Waste Management Plans Required

All future built form applications must be accompanied by a construction and operational waste management plan. The built form designs must be generally in accordance with the details provided in the Master Plan. Built form designs are subject to a further detailed assessment.

9. Aboriginal Archaeological Sites or Relics

If, during activities involving earthworks and soil disturbance, any evidence of an Aboriginal archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage must be notified immediately.

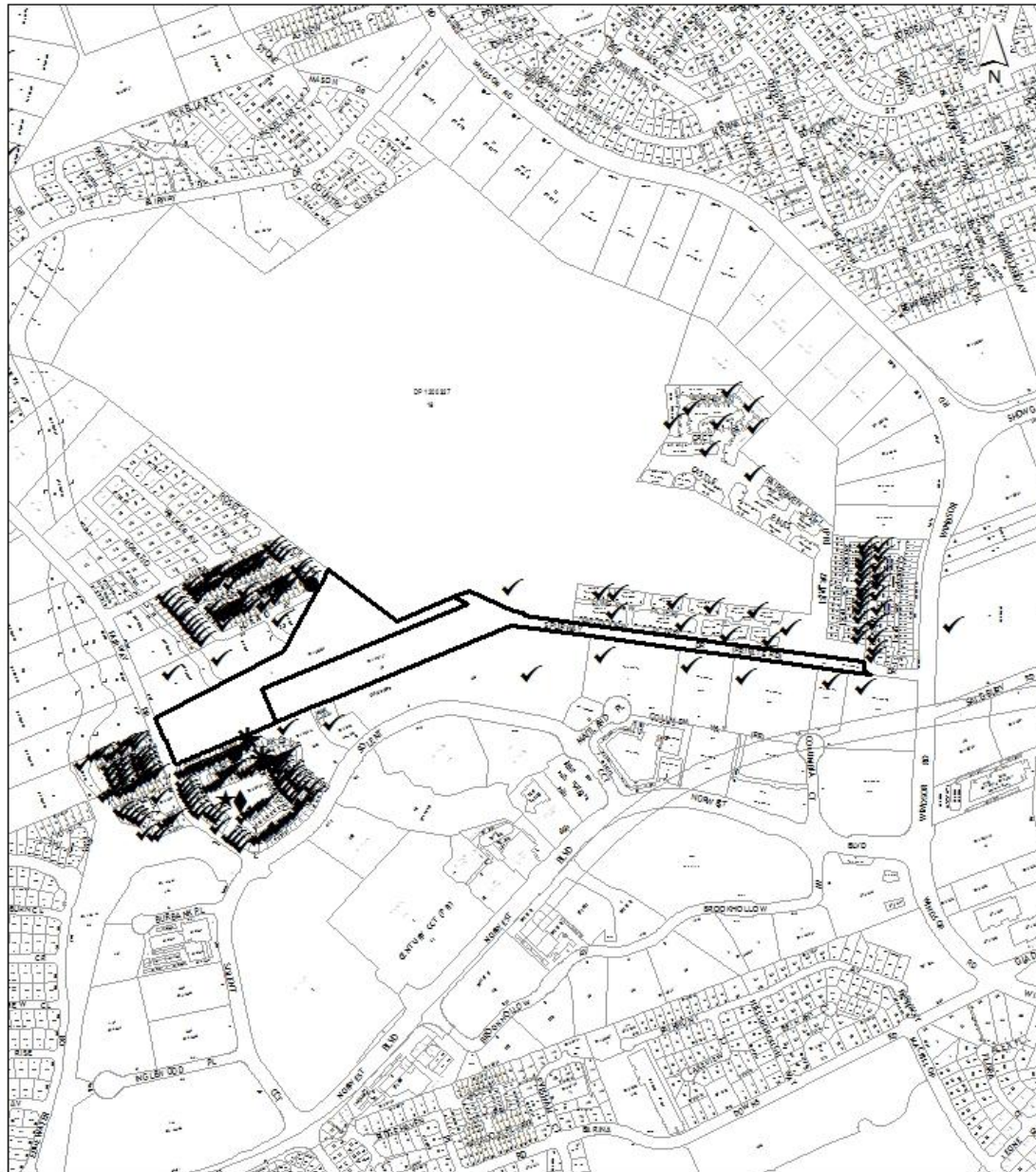
10. European Sites or Relics

If, during the earthworks, any evidence of a European archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage be contacted immediately. All relics are to be retained in situ unless otherwise directed by the Office of Environment and Heritage.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Zoning Map and DCP Road Layout
4. Floor Space Ratio Map
5. Height of Building Map
6. Masterplan Building Envelope Plan
7. Masterplan Elevations and Sections
8. Shadow Diagrams
9. Solar Analysis Central Park
10. Landscape Sections
11. Clause 4.6 Variation Request and Addendum
12. Design Excellence Panel Minutes

ATTACHMENT 1 – LOCALITY PLAN



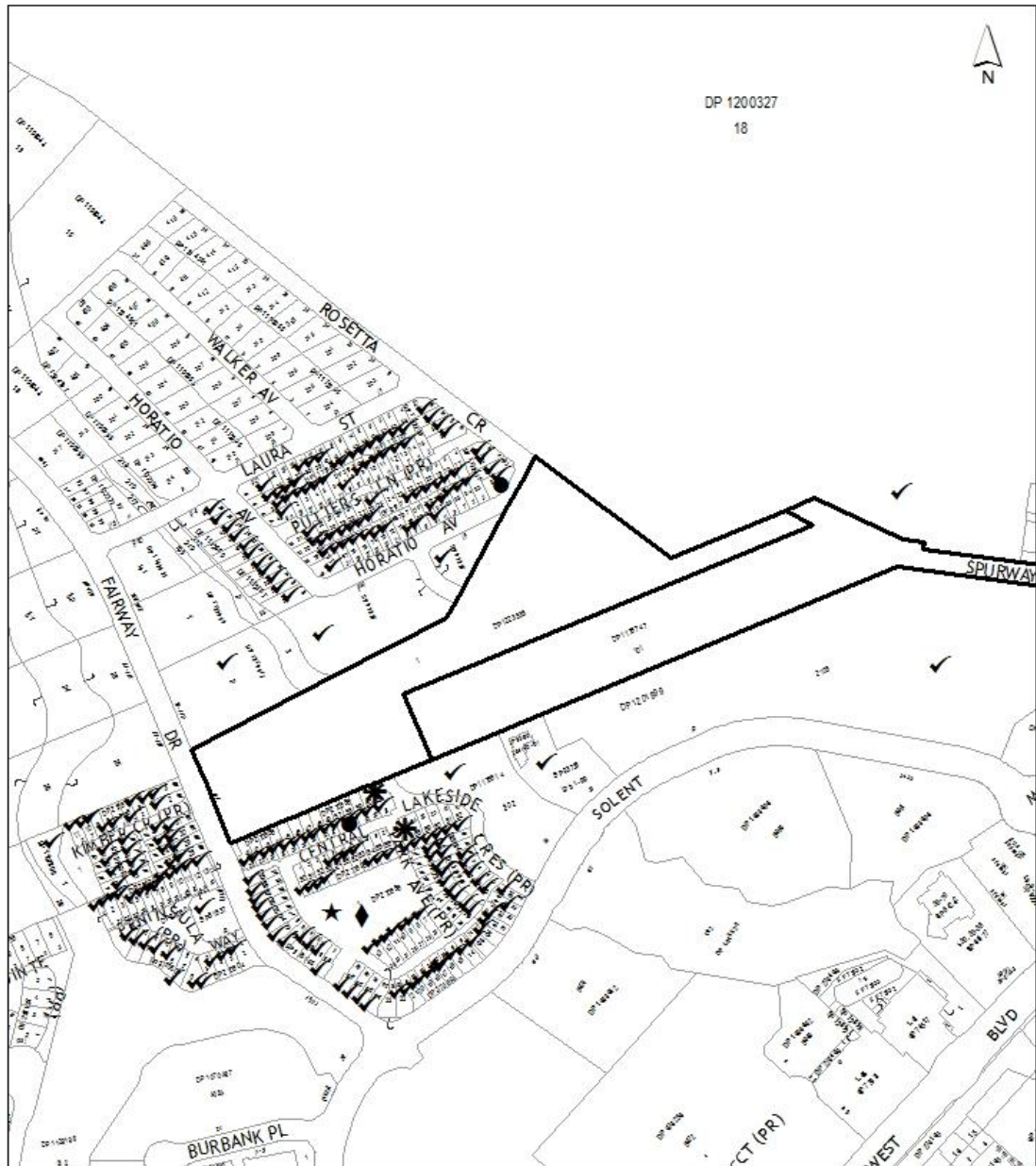
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| <input type="checkbox"/> | SUBJECT SITE | * | INDIVIDUAL SUBMISSION RECEIVED
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| ✓ | PROPERTIES NOTIFIED | ★ | SUBMISSION RECEIVED WITH PETITION
FIRST NOTIFICATION |
| ● | INDIVIDUAL SUBMISSION RECEIVED
FIRST NOTIFICATION | ◆ | SUBMISSION RECEIVED WITH PETITION
SECOND NOTIFICATION |
| THE HILLS SHIRE COUNCIL | | NOTE: HILLS DISTRICT HISTORICAL SOCIETY
ALSO NOTIFIED | |

THE HILLS
Sydney's Garden Shire

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□ SUBJECT SITE

✓ PROPERTIES NOTIFIED

● INDIVIDUAL SUBMISSION RECEIVED
FIRST NOTIFICATION

* INDIVIDUAL SUBMISSION RECEIVED
SECOND NOTIFICATION

★ SUBMISSION RECEIVED WITH PETITION
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SECOND NOTIFICATION

NOTE: HILLS DISTRICT HISTORICAL SOCIETY
ALSO NOTIFIED

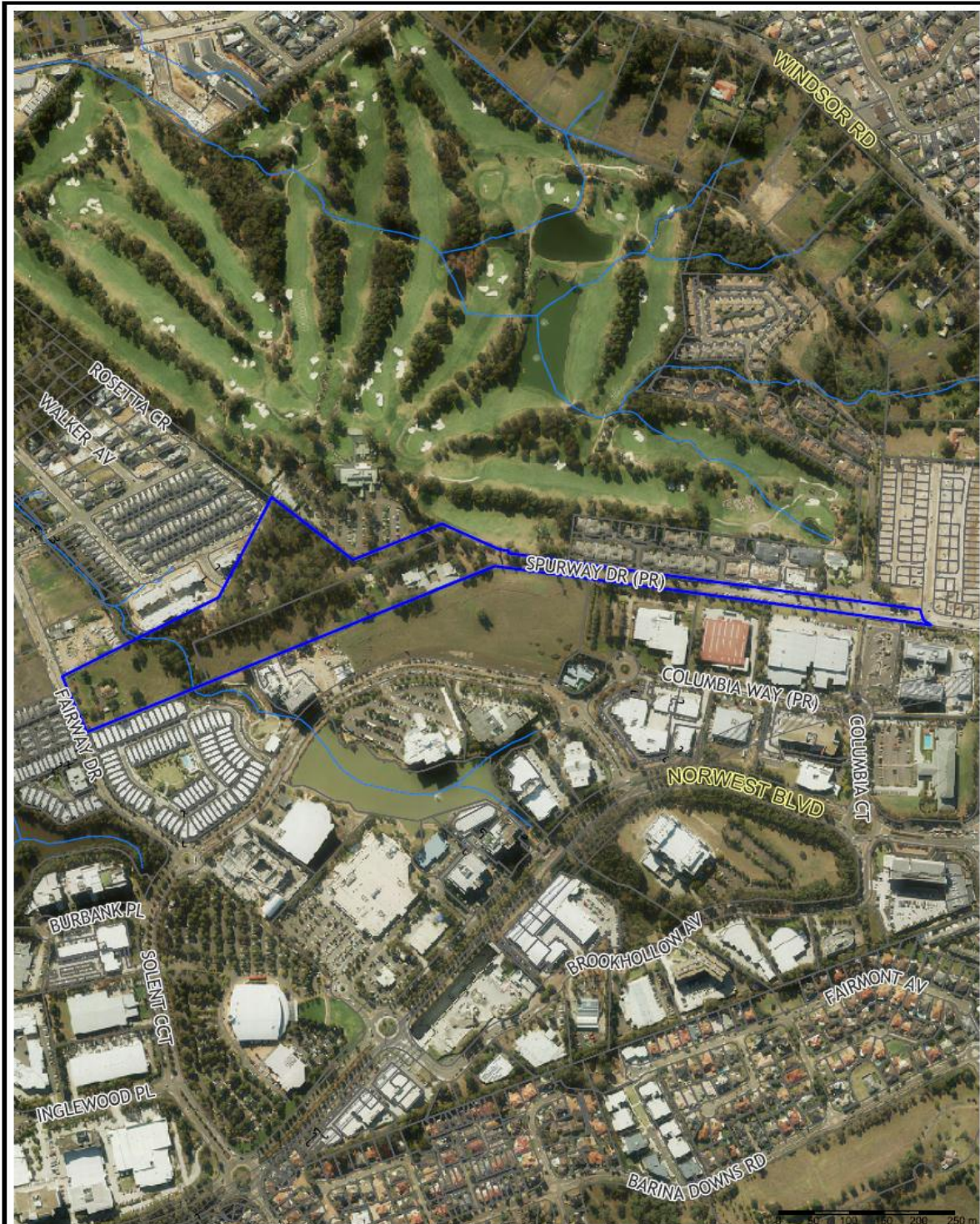
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ATTACHMENT 2 – AERIAL PHOTOGRAPH



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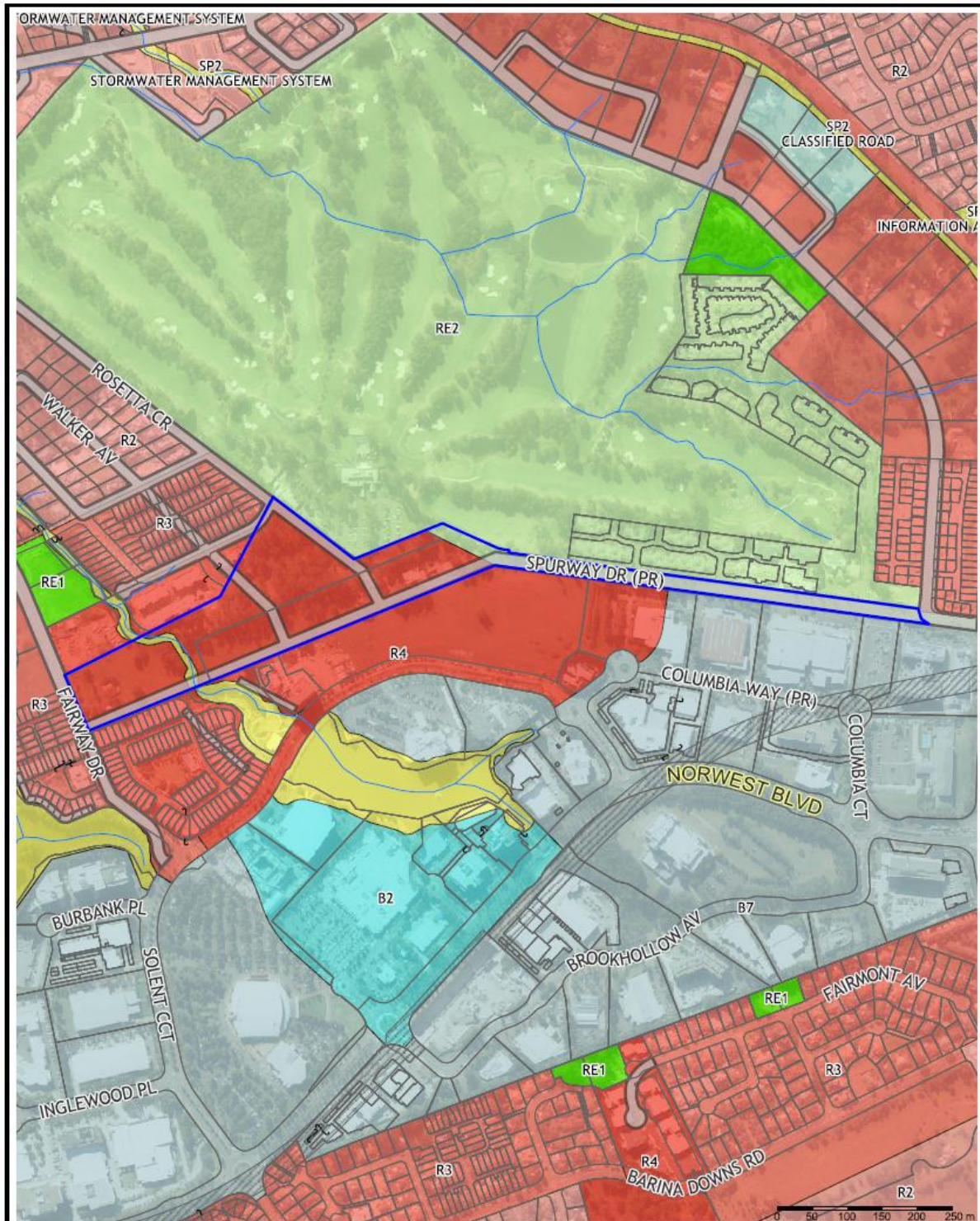
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ATTACHMENT 3 – ZONING MAP AND DCP ROAD LAYOUT



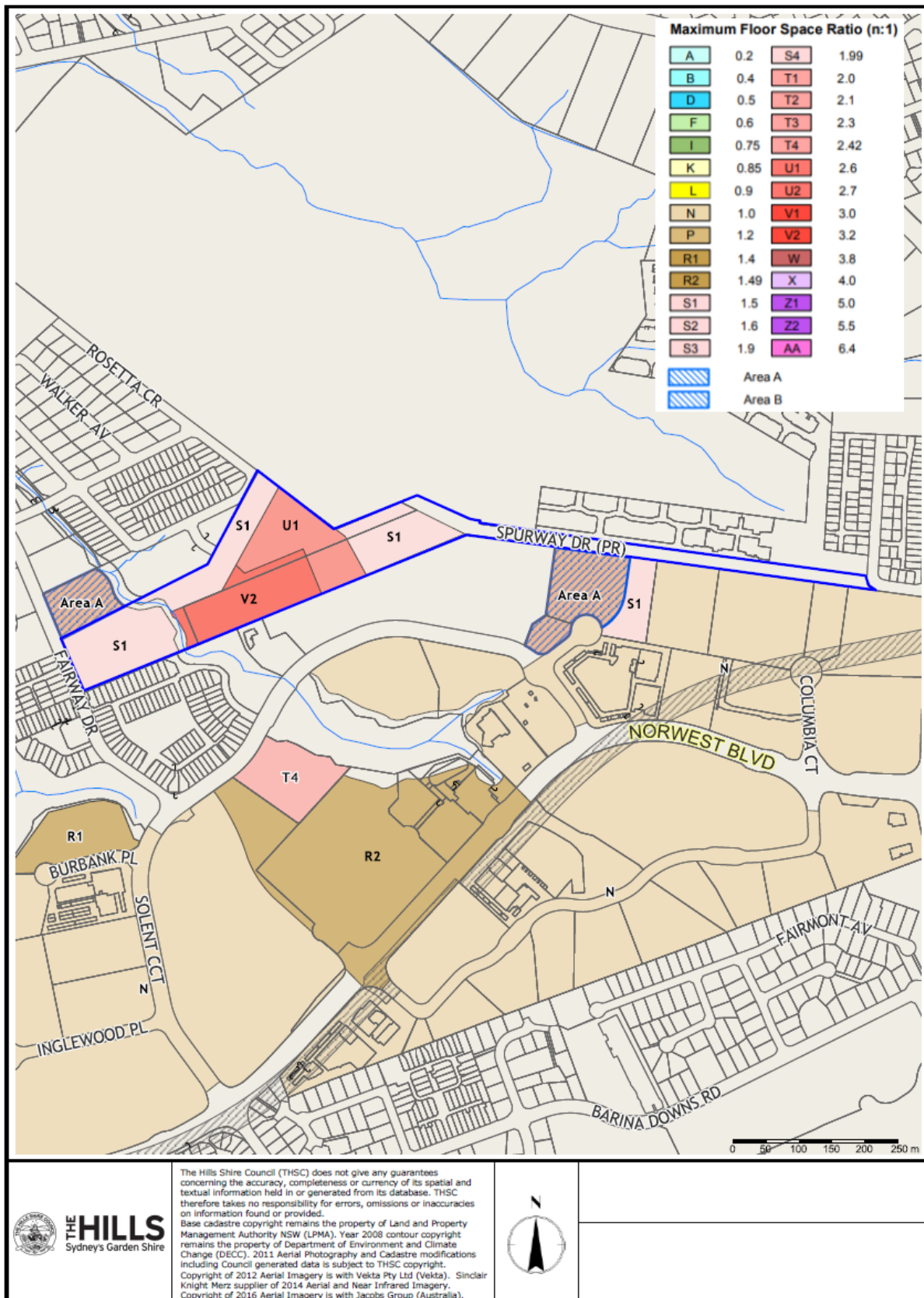
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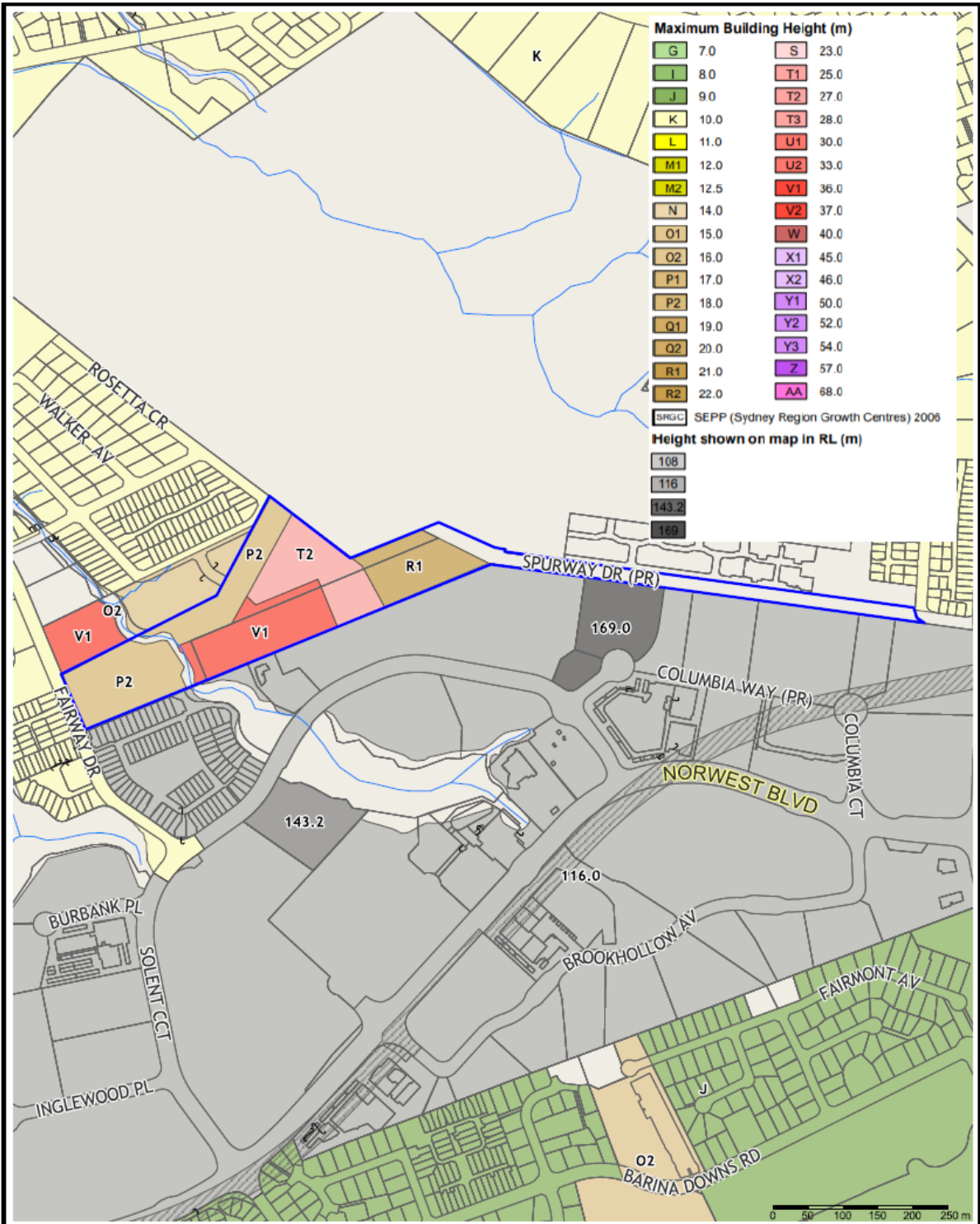
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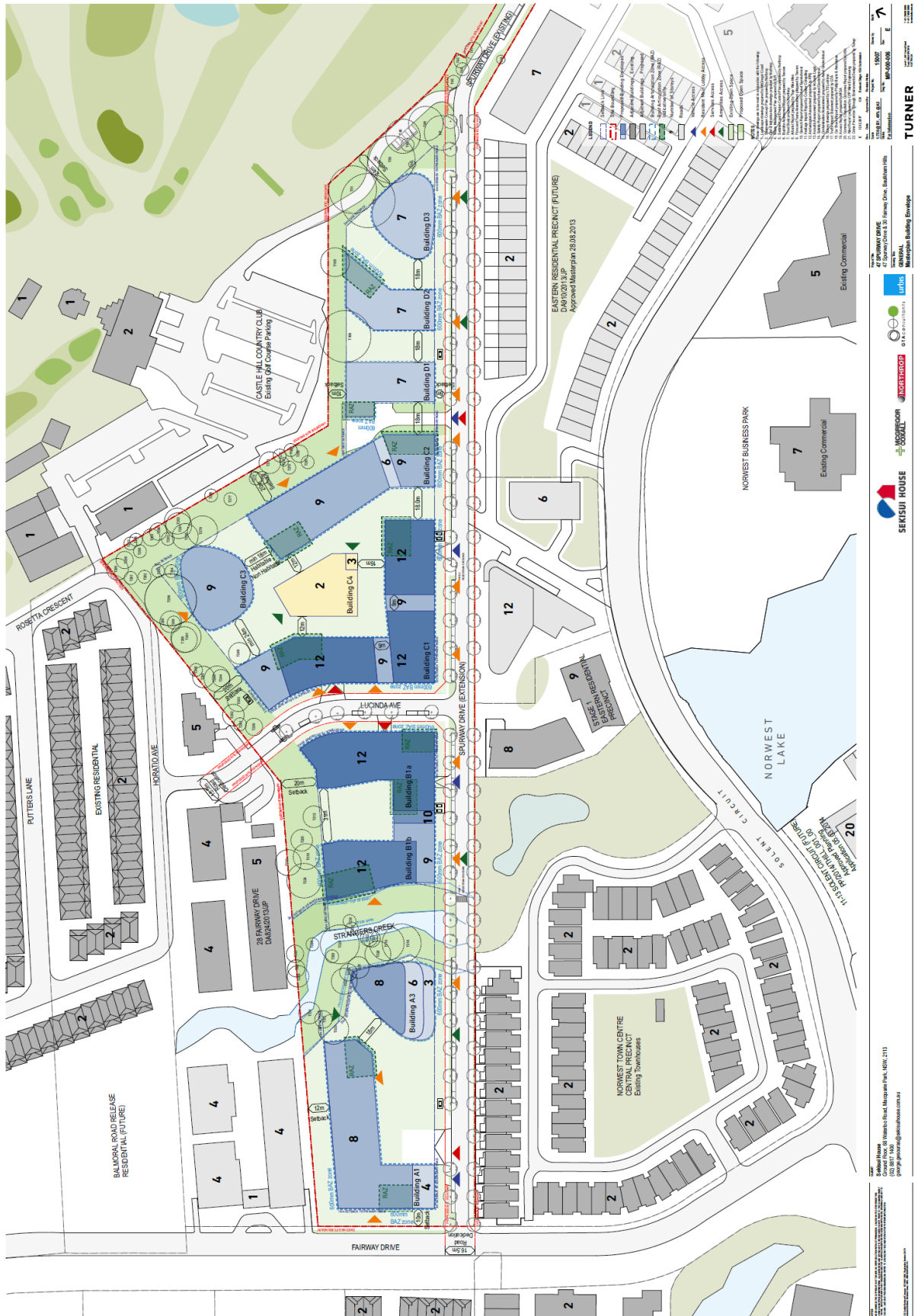
ATTACHMENT 4 – FLOOR SPACE RATIO MAP

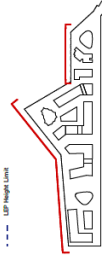
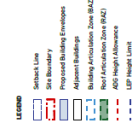


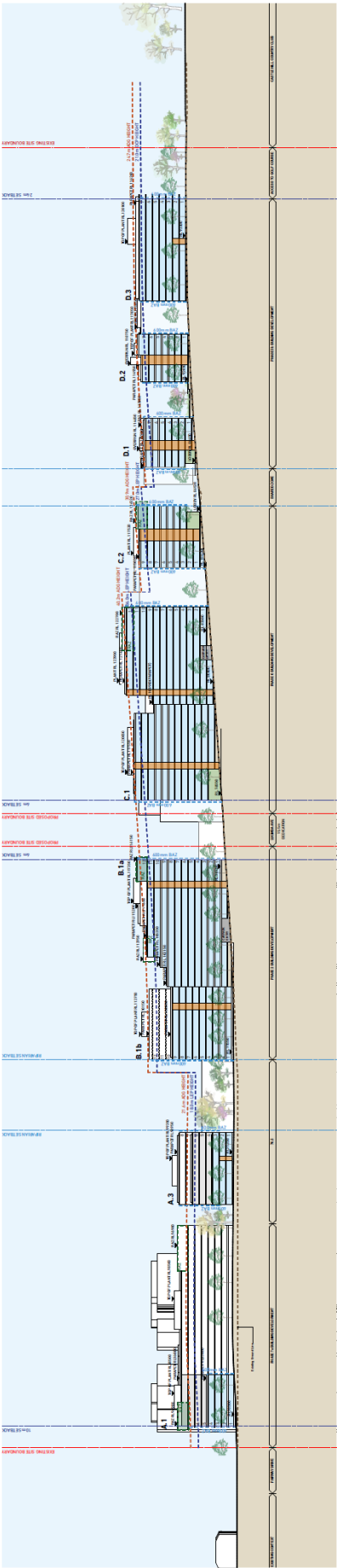
ATTACHMENT 5 – HEIGHT OF BUILDING MAP



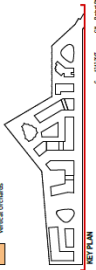
ATTACHMENT 6 – MASTERPLAN SITE PLAN



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- LEGEND**
- Setback Line
 - Site Boundary
 - Proposed Building Envelopes
 - Adjacent Buildings
 - Building Articulation Zone (BAZ)
 - Roof Articulation Zone (RAZ)
 - Landscaping Zone
 - LEP Regard Lines
 - Vertical Circuits

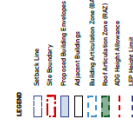
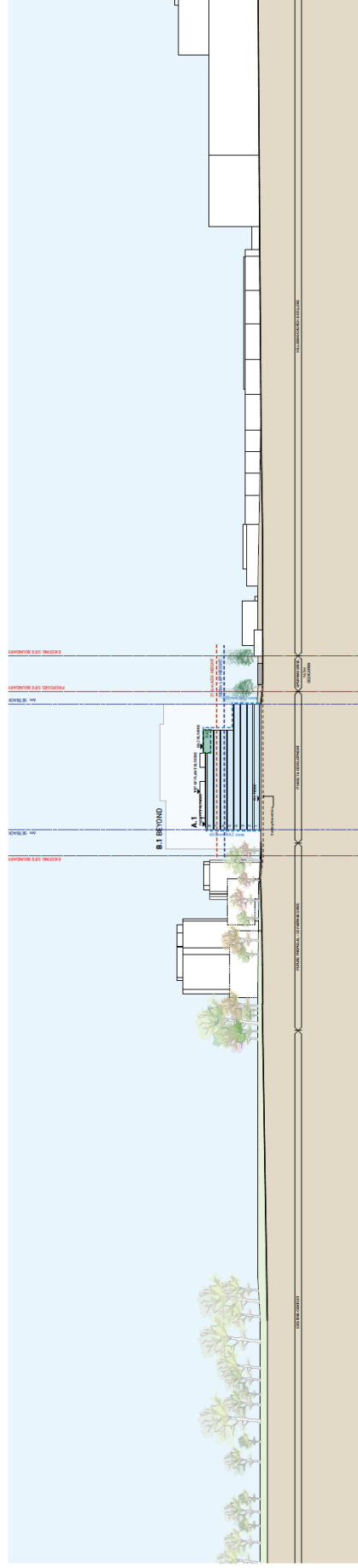


SEKISUI HOUSE
VICTORIA'S REGIONAL MANUFACTURING PARK, M207, 2113
(03) 8877 1400
group@sekiushouse.com.au

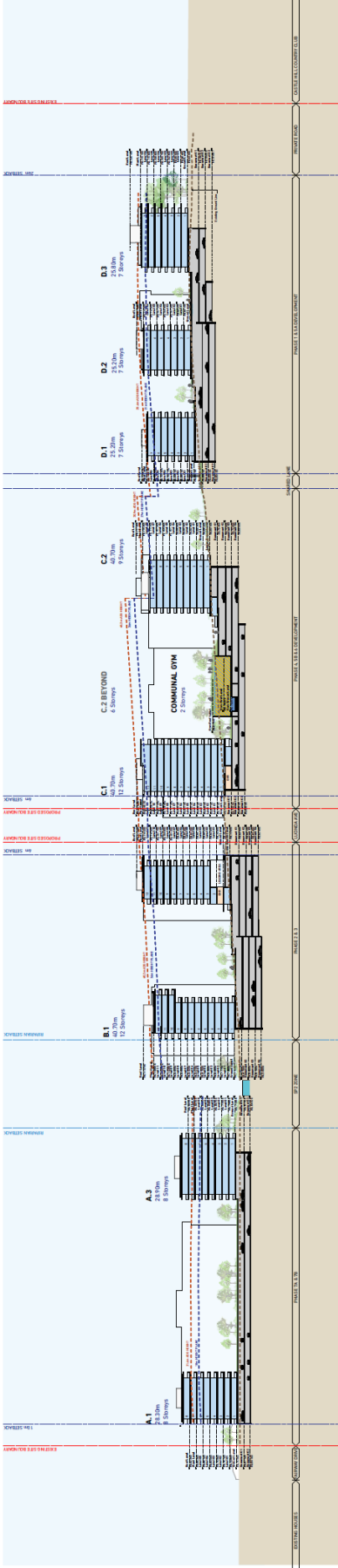
TURNER
South Coast Regional Development - Spring Drive

LEGEND
47 BURNHAM DRIVE
Spring Drive, Burnham Hills
DA: Burnham
South Coast Regional Development - Spring Drive

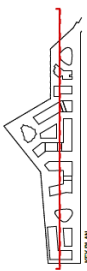
LEGEND
47 BURNHAM DRIVE
Spring Drive, Burnham Hills
DA: Burnham
South Coast Regional Development - Spring Drive

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TURNER



- LEGEND**
- Service Line
 - Structural Wall
 - Structural Column
 - Proposed Building Envelope
 - Adjacent Building
 - Building Activation Zone (BAZ)
 - Neighborhood Activation Zone (NAZ)
 - ASD Height Allowance
 - UP Height Limit



SEKISUI HOUSE
42 SPURWAY DRIVE
SPURWAY DRIVE & S. J. PARKWAY DRIVE, BATHURST NSW
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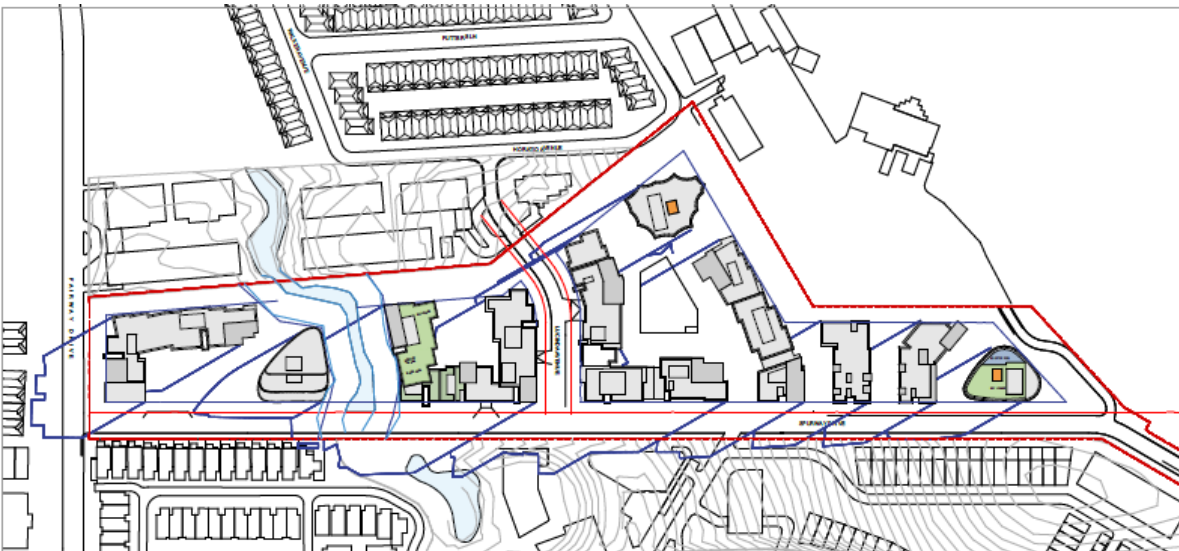
TURNER
42 SPURWAY DRIVE
SPURWAY DRIVE & S. J. PARKWAY DRIVE, BATHURST NSW
2763
02 9371 1400
group@sekisuihouse.com.au

SEKISUI HOUSE
42 SPURWAY DRIVE
SPURWAY DRIVE & S. J. PARKWAY DRIVE, BATHURST NSW
2763
02 9371 1400
group@sekisuihouse.com.au

ATTACHMENT 8 – SHADOW DIAGRAMS



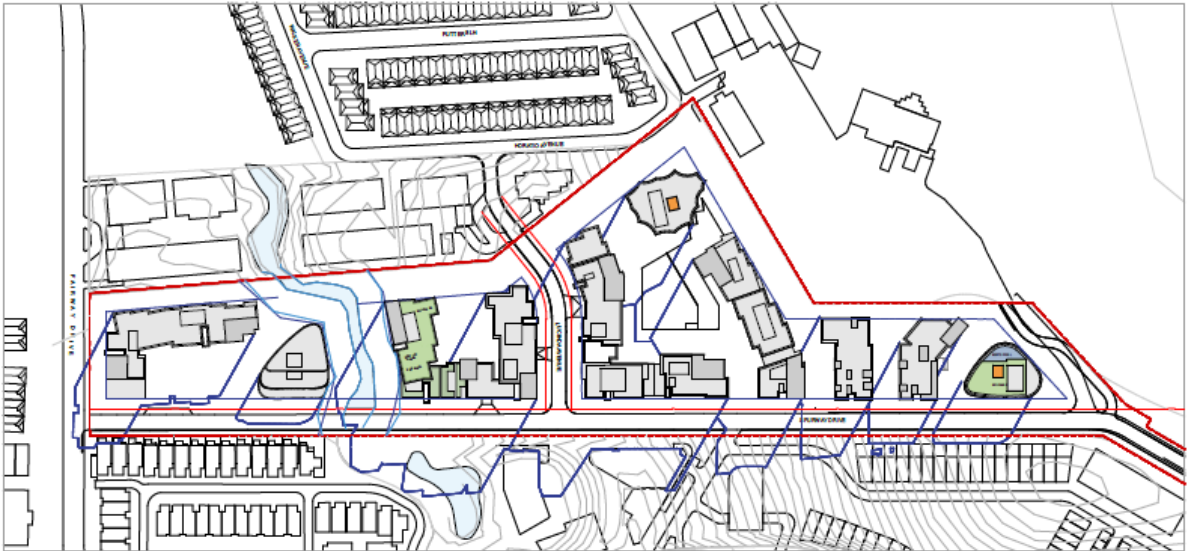
SOLAR ACCESS AT 9.00 AM



SOLAR ACCESS AT 10.00 AM



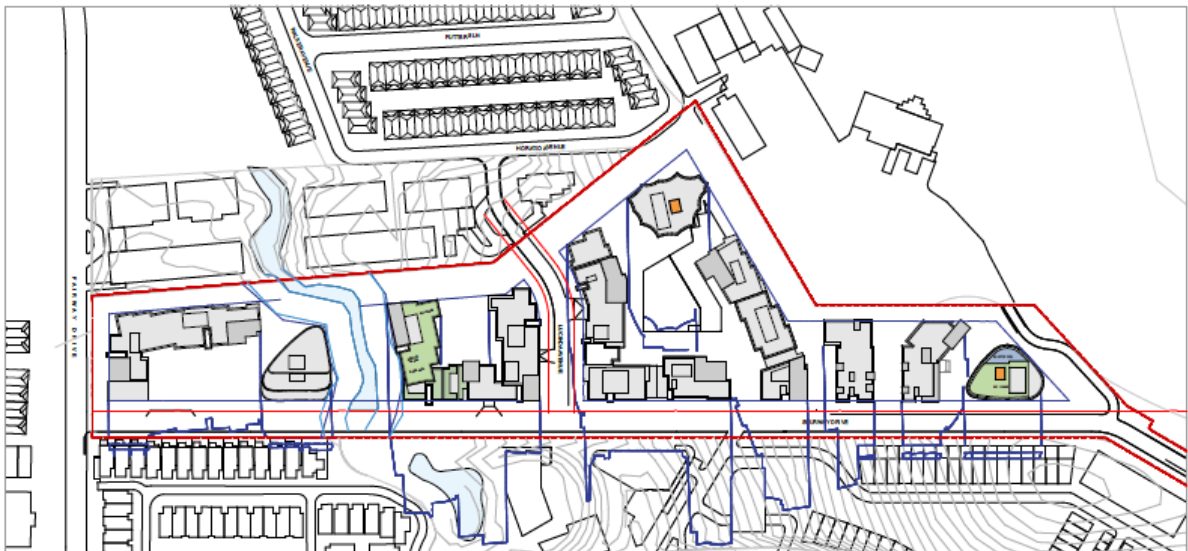
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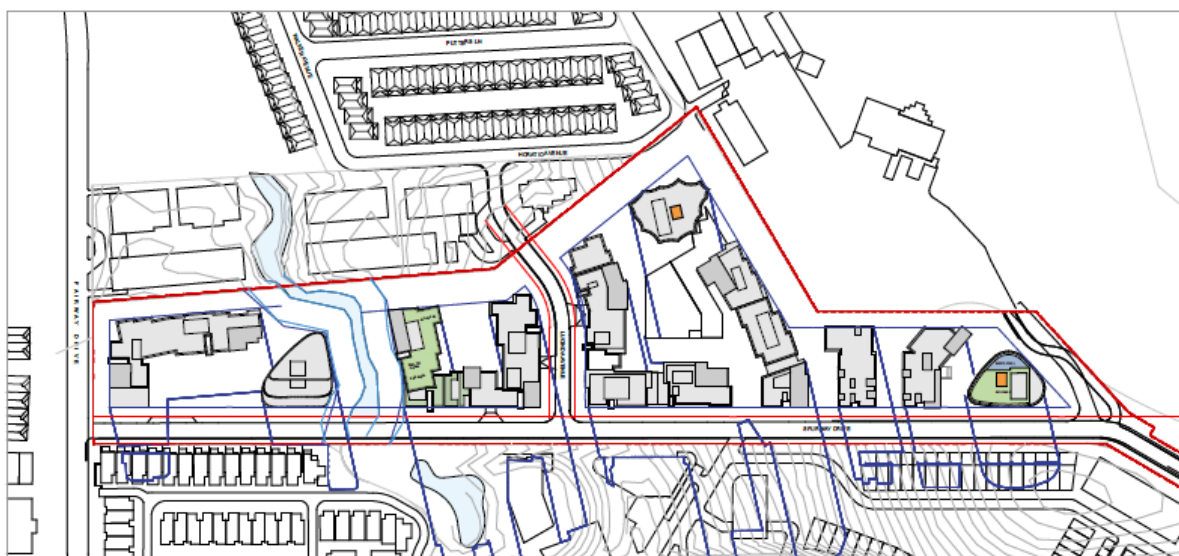
SOLAR ACCESS AT 12.00 PM



SOLAR ACCESS AT 1.00 PM

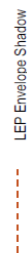


SOLAR ACCESS AT 2.00PM




SOLAR ACCESS AT 3.00PM

SK-121



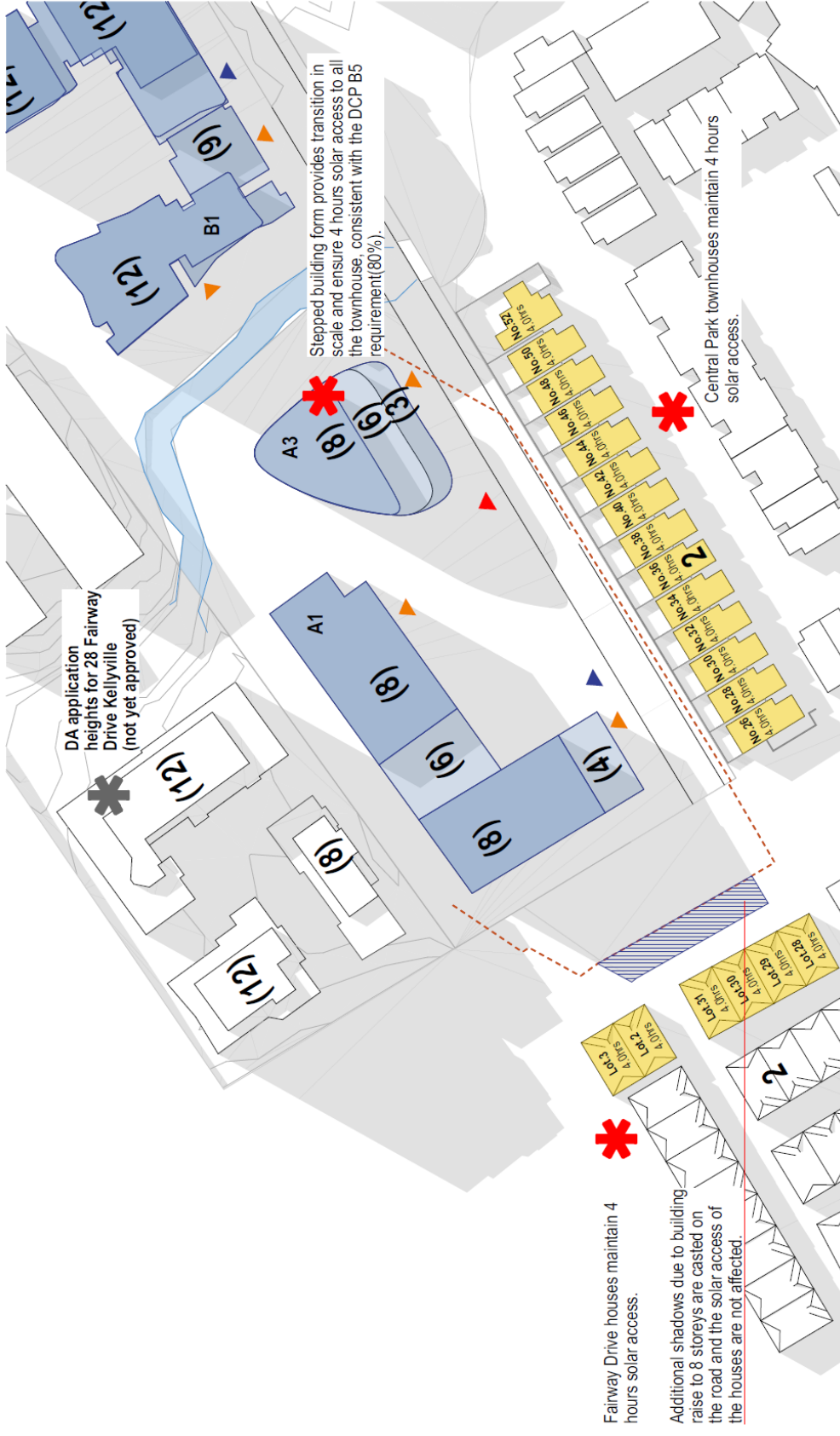
**Proposed Option 2
Solar Access to Adjacent Context
June 21st 9am**


 Project No. 15007 Rev. A Client Issue - 09.03.18
 Scale 1:500 @ A1, 50% @ A3

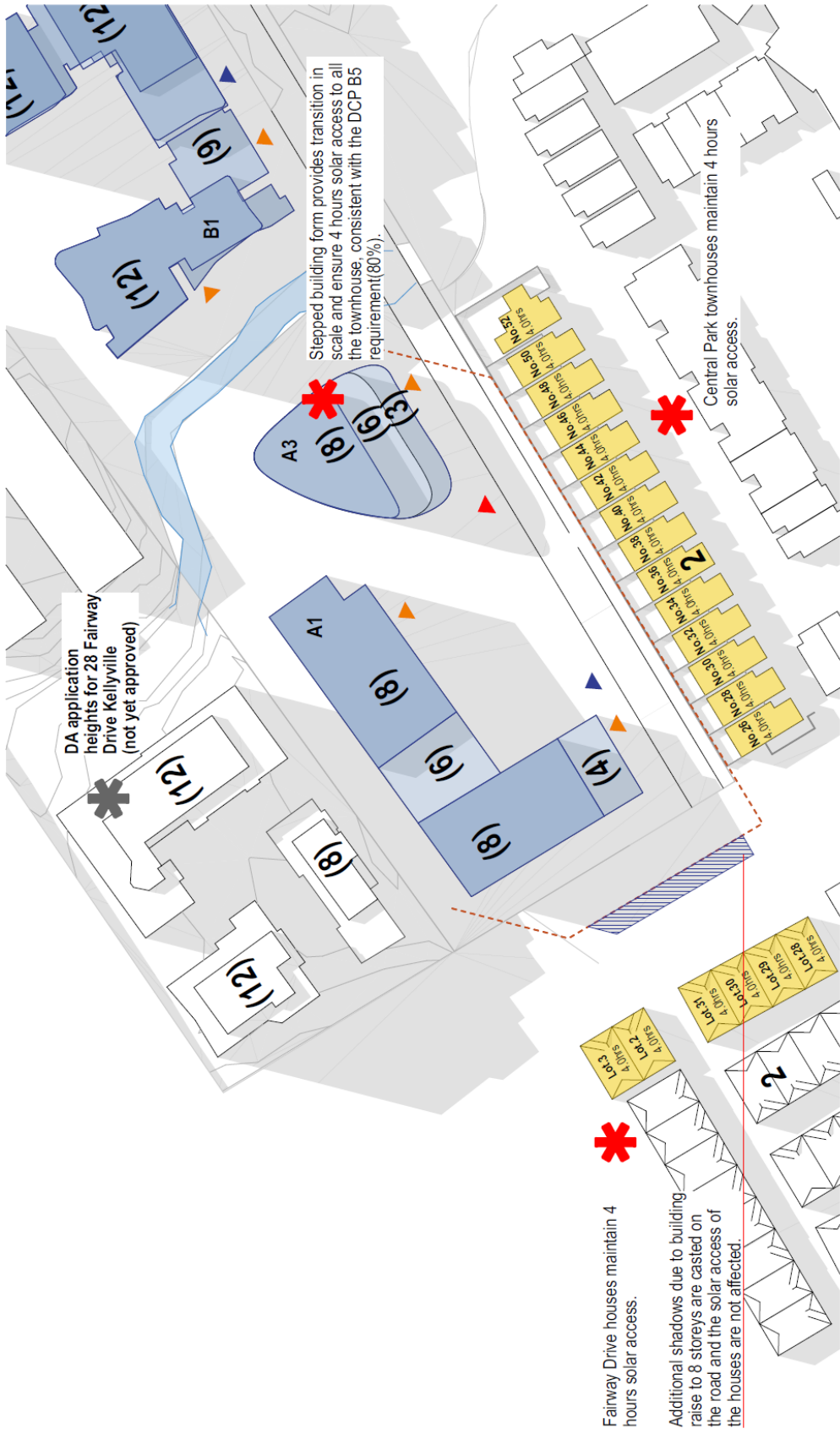
TURNER

SPURWAY DRIVE  SERIKUI HOUSE

SK-121



Proposed Option 2
Solar Access to Adjacent Context
June 21st 10am

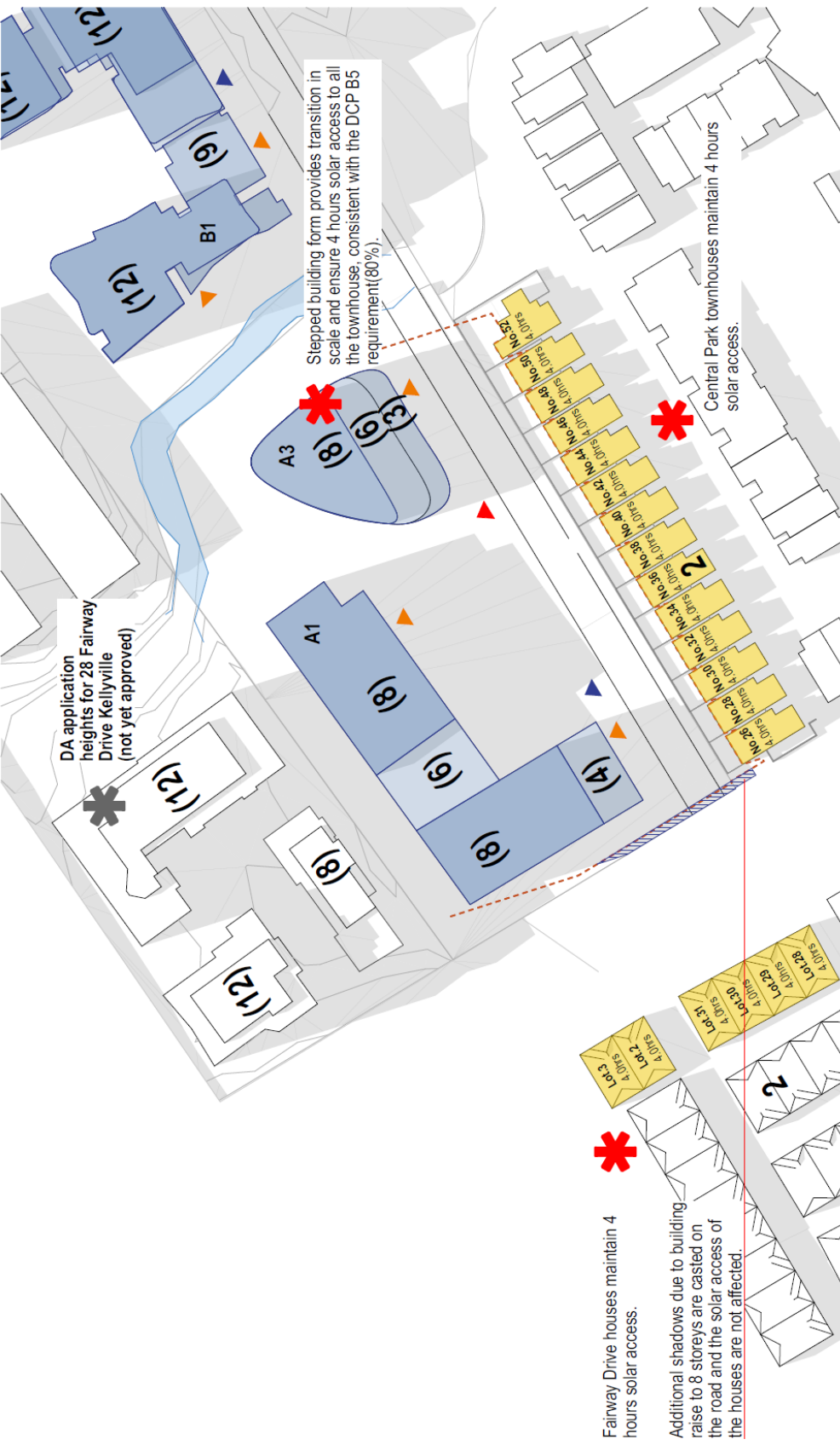


Proposed Option 2
Solar Access to Adjacent Context
June 21st 11am

Project No. 15007 Rev.A Client Issue - 21.03.18
 Scale: 1:500 @A1, 50% @ A3
 TURNER



Proposed Option 2
Solar Access to Adjacent Context
June 21st 12pm



Proposed Option 2
Solar Access to Adjacent Context
June 21st 1pm





Proposed Option 2
Solar Access to Adjacent Context
June 21st 3pm

Programme	1	2	3	4	5	6
1	Strategic Change	Human Capital	Customer Engagement	Marketplace (e.g. Channel management – supported by Product, Marketing, Sales, HR, Procurement, Finance)	IT	NOTE: Retail market is increasingly data driven and is expected to be linked also geographically
2	Operational Efficiency	Financial Performance	Customer Engagement	Product, Customer and Order Systems	IT	
3	Marketing System	Financial Performance	Customer Engagement	Product, Customer and Order Systems	IT	
4	Lowest Unit Costs	Financial Performance	Customer Engagement	Product, Customer and Order Systems	IT	
5	Building Customer Relationships	Financial Performance	Customer Engagement	Product, Customer and Order Systems	IT	
6	Lowest Total Costs	Financial Performance	Customer Engagement	Product, Customer and Order Systems	IT	

Drying COWWEE moss

Drying Hairywort

Drying Broomrape moss

Peatbog COWWEE moss

Peatbog Chick moss

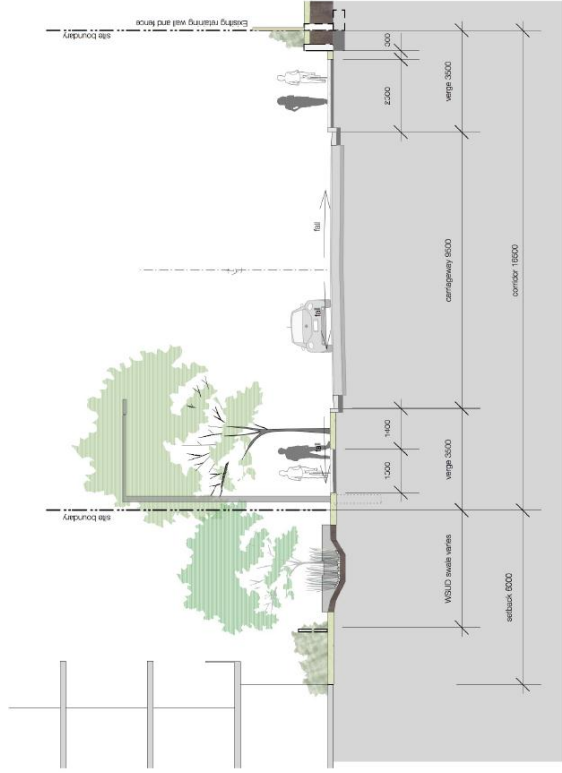
Peatbog Sheep moss

Stone walls	Concrete wall
Stone tile	Stone flat landscape vegetation
Timber deckboards	Lawn
Asphalt concrete	Grassland shrub and flower plants
Water surface	Oxidation area

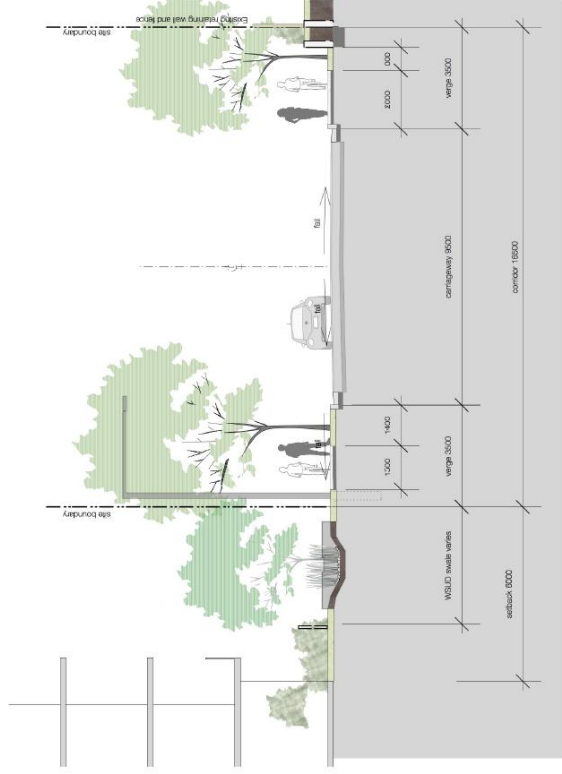
Legend

- 15% Boundary
- Floating Cracks
- 100% up Flood Line
- 100% up Flood Line
- Carbon seeping
- Easing level
- Project impact level

<div>Client</div> <div>Sekaiu House Australia Pty Ltd</div>		<div>Project No. 9125L</div> <div>47 Spurway Drive</div>		<div>Key Plan</div>		<div>Scale & Orientation</div> <div>1: 1000 @ A1</div> <div></div>		<div>Revision Log</div> <table><tr><th>Rev</th><th>Revision Description</th><th>By/Checked</th><th>Date</th></tr><tr><td>J</td><td>Revised DA Submission</td><td>McMGR</td><td>24/04/17</td></tr></table>		Rev	Revision Description	By/Checked	Date	J	Revised DA Submission	McMGR	24/04/17	<div>Sheet Title</div> <div>Masterplan - 2m Shared Path</div>	
Rev	Revision Description	By/Checked	Date																
J	Revised DA Submission	McMGR	24/04/17																
<div>McGREGOR & COXALL</div> <div>McGregor Coastal Pty Ltd, 42N/082 33A 290 Sydney - +61 2 8677 3455 Melbourne - +61 3 9999 1008 Email: mcgregor@mcgregorcoxall.com Web: www.mcgregorcoxall.com</div>		<div>Address</div> <div>47 Spurway Drive, Baulkham Hills, NSW 2153</div> <div>Phase</div> <div>Development Application</div>		<div>Sheet No.</div> <div>25</div>		<div>Rev</div> <div>J</div>													



A SPURWAY DRIVE EXTENSION
2.5m Shared Path



B SPURWAY DRIVE EXTENSION
2.0m Shared Path

1. EXECUTIVE SUMMARY

This Clause 4.6 request has been prepared to accompany a staged Development Application (DA) for a concept masterplan for a residential development located at 47 Spurway Drive, Baulkham Hills (the site). The written request seeks to vary development standards relating to building height, floor space ratio (FSR), dwelling sizes and car parking requirements specific to the site contained under Clauses 4.3, 4.4 and 7.11 of *The Hills Local Environmental Plan 2012* (THLEP 2012).

The site is located within the Balmoral Road Release Area and in close proximity to the future Norwest Metro Station and Norwest Business Park. The staged DA seeks approval for a master planned, residential apartment development for a total of 1,300 dwellings, with a mix of 1, 2, 3 and 4 bedroom apartments across 10 buildings. In addition, the development will include associated car parking, roads, neighbourhood shops, amenities and landscaping.

The development standards identified under Clauses 4.3 and 4.4 of THLEP 2012 were designed to reflect a previous concept design prepared with A Planning Proposal for *The Hills Local Environmental Plan 2012 (Amendment No 32)*. The principles of the building height and floor space controls are to locate taller buildings in the south-central portion of the site, with smaller scale buildings in the eastern, northern and western portions of the site. These provisions aim to achieve a development that is sensitive to existing and proposed developments in the surrounding area.

Amendment No 32 of THLEP 2012 also introduced Clause 7.11 which provides a maximum dwelling cap of 1,300 apartments subject to site specific dwelling mix and car parking rates. The Clause provides a dwelling mix with a maximum of 25% of studio or 1-bedroom apartments, a minimum of 10% of apartments being 3-bedrooms or more, and that residences achieve a high degree of amenity where more than 600 dwellings are proposed on the site. The Clause also specifies that car parking be provided at a rate of one space per studio/1-bedroom apartment, 2 spaces per 2+ bedroom apartment and 2 visitor spaces per 5 dwellings.

The proposed masterplan maintains the principles of building mass being centred in the site and providing a high level of amenity to future residents of the development. The proposal is also consistent with the objectives of the relevant State Environmental Planning Policies, THLEP 2012 and The Hills Development Control Plan 2012.

The Clause 4.6 assessment has been prepared to demonstrate the merits of varying the development standards using the relevant criteria within the Department of Planning & Environment's document, '*Varying Development Standards: A Guide, August 2011*', as well as recent case law from the NSW Land and Environment Court.

It is considered that the proposal will not have any significant adverse social, environmental or economic impacts. The proposal provides additional residential accommodation in an accessible location and will provide localised employment benefits through the construction and building maintenance stage.

On this basis, it is recommended that the Clause 4.6 and associated staged DA be supported and approved.

2. PROPOSED VARIATIONS

The proposed masterplan seeks to vary the prescribed development standards relating to:

- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio; and
- Clause 7.11 - Residential development yield on certain land.

The extent of non-compliance is detailed in the following subsections.

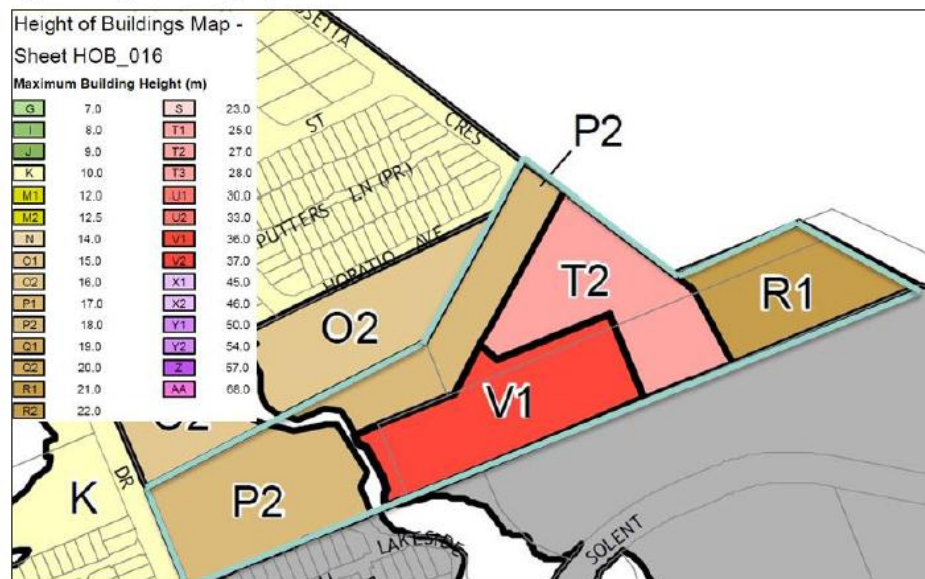
2.1. CLAUSE 4.3 – HEIGHT OF BUILDINGS

This request seeks to vary the Height of Buildings development standard contained in Clause 4.3(2) of The Hills LEP 2012, which states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on Height of Building Map.

The maximum building height shown for the subject site on the Height of Building Map ranges from 18 metres to 36 metres (**Figure 1**).

Figure 1 – Height of Building Map

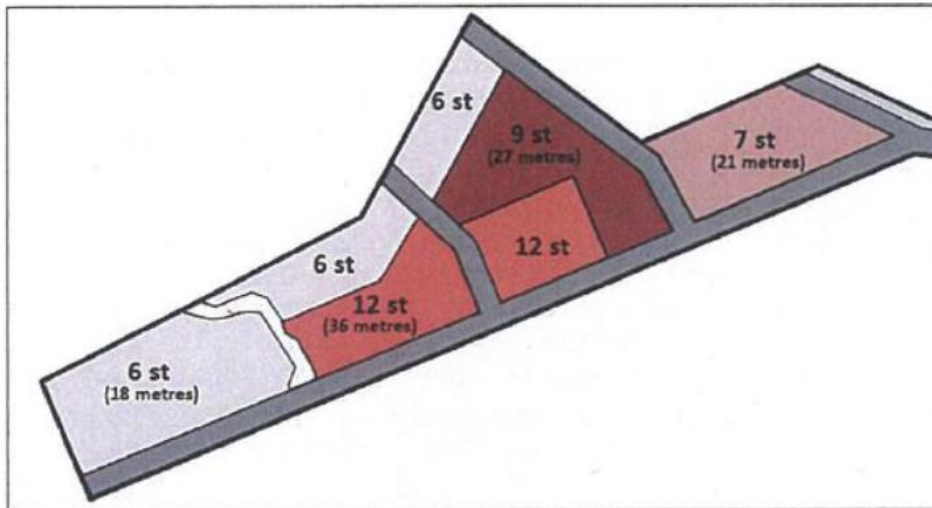


Source: The Hills LEP 2012

The building height development standards are defined in metres. However, the development standards have been driven by an indicative height in storeys map as recommended at the 28 July 2015 Council Meeting which discussed Amendment No 32 of THLEP 2012 (**Figure 2**).

The assigned building heights in metres indicate an average floor-to-floor height of three metres, with no consideration for changes in topography, lift overruns or the minimum floor-to-floor height of 3.1 metres under the *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* and the Apartment Design Guide.

Figure 2 – Recommended Height of Buildings in Storeys



Source: The Hills Shire Council Ordinary Meeting Minutes (28 July 2015)

The proposed master plan is generally consistent with the recommended built form outcome shown in **Figure 2** by providing buildings ranging in height from six, seven, nine and 12 storeys, with taller buildings located in the centre of the site.

A summary of the proposed maximum height in metres of each building in the master plan is provided in **Table 1** on the following page. A diagram is provided which indicates the locations where the proposed buildings will protrude through the height plane of the LEP development standards, as well as an adjusted height plane which takes into consideration the 3.1 metre floor-to-floor height of the ADG and a two metre lift overrun (**Figure 3**).

The diagram shows that where the height plane is adjusted to account for the requirements of the ADG and lift overruns, there are limited areas where the proposal would protrude above the LEP control. The areas of protrusion are generally limited to:

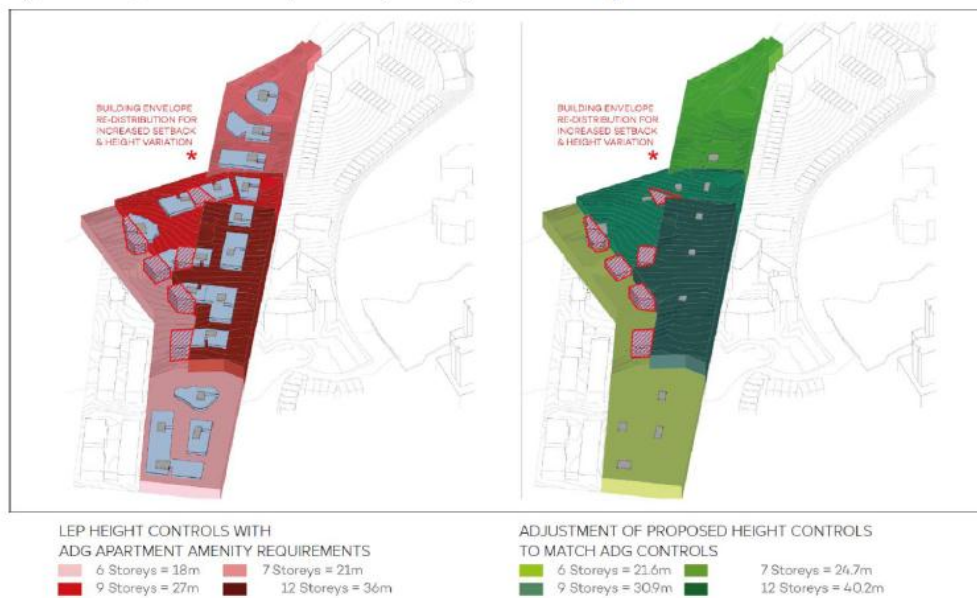
- **The top of lift overruns:** which will not cause any additional overshadowing and are generally not visible from the public domain; and
- **The northern part of buildings located towards the northern boundary:** the maximum height has been increased to transfer building mass away from the northern boundary by an increased setback. The redistribution of building mass along the northern portion of the site enabled the delivery of a publicly accessible linear park, which will provide a meaningful contribution to the relaxation and recreation amenity of residents in the subject site and surrounding area. The increased setback will also allow the retention of a significant number of trees and increased building separation from the proposed buildings to properties to the north.

The proposed variation to the height of building development standards will not compromise the amenity of dwellings in the surrounding area as all buildings will comply with required building separation distances under the ADG and provide a good level of solar access to living rooms and private open spaces of adjoining buildings (see **Section 4.6** below for further discussion).

Table 1 – Height of Buildings Breakdown

Building	Development Standard	Proposed Height
Building A.1	18 metres	23.5 metres
Building A.2	18 metres	24.6 metres
Building A.3	18 metres	24.3 metres
Building B.1	36 metres & 18 metres	43.4 metres
Building C.1	36 metres & 18 metres	43.3 metres
Building C.2	27 metres	32.5 metres
Building C.3	27 metres & 18 metres	33.9 metres
Building C.4	36 metres & 18 metres	8.2 metres
Building D.1	21 metres	26.1 metres
Building D.2	21 metres	27.5 metres
Building D.3	21 metres	28.1 metres

Figure 3 – Comparison of LEP Heights and Adjusted Heights for ADG Compliance



Source: Turner

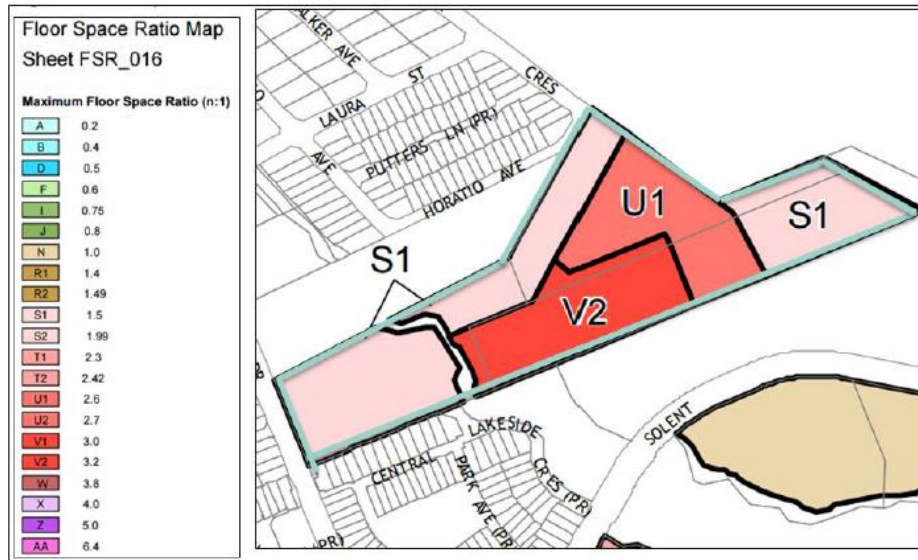
2.2. CLAUSE 4.4 – FLOOR SPACE RATIO

This request seeks to vary the Floor Space Ratio development standard contained in Clause 4.4(2) of The Hills LEP 2012, which states:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The maximum FSR permitted varies across the site and ranges from 1.5:1 metres to 3.2:1 under the Floor Space Ratio Map (see **Figure 4**).

Figure 4 – Floor Space Ratio



Source: THLEP 2012

It is understood that the Planning Proposal which prescribed the amended FSR development standards (10/2013/PLP) did not envisage the development of the site by a single proponent and in a holistic, master planned manner. Rather, it assumed that certain development sites could be developed separately.

Based on the areas of each FSR category, it has been calculated that there is a maximum permissible gross floor area of 138,000m² across the site. The proposed master plan aims to redistribute this gross floor area to achieve a better urban design outcome, with the net gross floor area staying within the maximum 138,000m².

A breakdown of the gross floor area within each FSR category boundary is provided in **Figure 5** and **Table 2** on the following page.

Figure 5 – FSR Areas Map



Table 2 – FSR Breakdown by Area

Area	Development Standard	Site Area	Permissible GFA	Proposed GFA
Area 1	1.5:1	14,470m ²	21,705m ²	21,705m ²
Area 2	1.5:1	10,132m ²	15,198m ²	16,030m ²
Area 3	3.2:1	15,415m ²	49,328m ²	49,090m ²
Area 4	2.6:1	13,715m ²	35,659m ²	35,065m ²
Area 5	1.5:1	10,740m ²	16,110m ²	16,110m ²
Total	–	64,472m²*	138,000m²	138,000m²

*excludes Strangers Creek and the existing Spurway Drive road reserve

2.3. CLAUSE 7.11 – RESIDENTIAL DEVELOPMENT YIELD ON CERTAIN LAND

Clause 7.11 of the THLEP 2012 includes dwelling typology and car parking provisions that are specific to the subject site (**Figure 6**). Legal advice provided by Mills Oakley has confirmed that the Clause is a development standard and not a prohibition. Accordingly, the provisions of Clause 7.11 may be varied pursuant to Clause 4.6 of THLEP 2012.

Figure 6 – Urban Release Area and Area B



Source: The Hills LEP 2012

The Cause enables the consent authority to grant consent to the erection of residential flat buildings with a maximum of 1,300 dwellings across the site. However, if development will result in more than 600 dwellings, the development must provide the following mix of apartment typologies:

- (a) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development are studio or 1 bedroom dwellings, or both, and
- (b) at least 10% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development are 3 or more bedroom dwellings, and
- (c) the development comprises the following:
 - i. Type 1 apartments—up to 30% of the total number of dwellings (to the nearest whole number of dwellings), and
 - ii. Type 2 apartments—up to 30% of the total number of dwellings (to the nearest whole number of dwellings), and
 - iii. Type 3 apartments, and
- (d) the following minimum number of car parking spaces are provided in the development:
 - i. for each 1 bedroom dwelling—1 car parking space, and
 - ii. for each 2 or more bedroom dwelling—2 car parking spaces, and

- iii. for every 5 dwellings—2 car parking spaces, in addition to the car parking spaces required for the individual dwelling.

Under the Clause, the apartment typologies are defined as having the internal floor areas (excluding balconies) shown in the following table:

Table 3 – Clause 7.11 Apartment Typologies

Apartment Size	Type 1	Type 2	Type 3
Studio or 1 bedroom	50-65m ²	65-75m ²	>75m ²
2 bedroom	70-90m ²	90-110m ²	>110m ²
3+ bedroom	95-120m ²	120-135m ²	>135m ²

2.3.1. Apartment Sizes

Based on the typologies specified under Clause 7.11(5), the proposed development would result in the following dwelling mix:

Table 4 – Clause 7.11 Apartment Size Compliance

Typology	Development Standard	Proposed
Type 1 apartments	≤30%	57%
Type 2 apartments	≤30%	20%
Type 3 apartments	N/A	23%

The proposal has 25% of apartments being one bedroom and 10% being three or four bedrooms, complying with Clauses 7.11(5)(a) and (b).

2.3.2. Car Parking

The concept masterplan provides a total of 2,174 car parking spaces within the basement car parks, plus 78 on-street spaces along Spurway Drive and Lucinda Avenue for a total provision of 2,257 spaces. The car parking provided will also be supplemented by four car share spaces on private/community land, with a commitment received by GoGet to provide these vehicles.

The proposed car parking provisions vary from the rates specified under Clause 7.11 of THLEP 2012 as specified in the following table:

Table 5 – Clause 7.11 Car Parking Compliance

Apartment Size	LEP Requirement	Proposed
1 Bedroom	1 space per unit	1 space per unit
2 Bedroom	2 space per unit	1.5 spaces per unit
3+ Bedroom	2 space per unit	2 spaces per unit
Visitors	2 spaces per 5 units	1 space per 5 units

Based on strict compliance with the car parking rates specified under Clause 7.11, the proposal would require 2,797 spaces. The RMS rates specified under the *Guide to Traffic Generating Development* recommend that 1,398 spaces be provided.

3. NSW LAND AND ENVIRONMENTAL COURT CASE LAW

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

3.1.1. Winten v North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to *State Environmental Planning Policy – Development Standards* (SEPP 1) and was subsequently updated to address Clause 4.6 of the *Standard Instrument templates*.

The principles for assessment and determination of applications to vary development standards are relevant and include the following five questions:

1. Is the planning control in question a development standard?
2. What is the underlying objective or purpose of the standard?
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?
4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?
5. Is the objection well founded?

3.1.2. Wehbe V Pittwater

The decision of Justice Preston in *Wehbe V Pittwater* [2007] NSW LEC 827 expanded on the findings in *Winten v North Sydney Council* and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

1. Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
5. 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.

3.1.3. Four2Five Pty Ltd v Ashfield Council

More recently in the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP; and
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);

3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.

3.1.4. Bates Smart Pty Ltd v Council of the City of Sydney

In Bates Smart Pty Ltd v Council of the City of Sydney, Commissioner Brown outlined that Clause 4.6 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development:

1. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
2. The second precondition requires the Court to be satisfied that the proposed development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(4)(a)(ii)),
3. The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a)) and cl 4.6(4)(a)(i)), and
4. The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

4. CONSIDERATIONS OF PLANNING PARTICULARS

The following section addresses the local provisions of Clause 4.6 of SLEP 2012 together with principles of *Winten v North Sydney Council* as expanded by the five part test established by *Wehbe v Pittwater [2007]* NSW LEC 827 and refined by the judgement of *Four2Five Pty Ltd v Ashfield Council [2015]* NSW LEC.

4.1. IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

The proposal seeks to vary Clauses 4.3, 4.4 and 7.11 of THLEP 2012. Supported by legal advice from Mills Oakley, all planning controls are identified as development standards capable of being varied under the provisions of Clause 4.6 of THLEP 2012.

4.2. WHAT IS THE UNDERLYING OBJECTIVE OF THE STANDARD?

4.2.1. Height of Building

The general underlying intent of Clause 4.3 is to ensure delivery of development which has an appropriate height relative to the condition of the site and its context and promotes site sensitive transition to protect and reference the natural topography.

The development is consistent with the objectives of Clause 4.3 as summarised in the following table.

Table 6 – Height of Building Objectives

Objective	Assessment
(a) <i>to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,</i>	The proposed masterplan aligns with Council's vision of buildings ranging in height of 6, 7, 9 and 12 storeys, with taller buildings being centred in the site. The proposed built form will provide a transition in scale from the adjoining medium to high density zoned land to the north, medium density zoned land to the west, high density zoned land to the south and the Country Club to the east.
(b) <i>to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</i>	The proposed built form will provide the required solar access and building separation to buildings within the site and adjoining properties in accordance with the relevant controls of THDCP and the ADG (see Section 4.6 below).

4.2.2. Floor Space Ratio

The general underlying intent of Clause 4.4 is to ensure the delivery of floor space sufficient to meet demand balanced against the capacity of existing and planned infrastructure. Furthermore the development, with respect to bulk and mass should respect local character and minimise negative impacts on amenity including vehicle and pedestrian congestion.

The development is consistent with the objectives of Clause 4.4 as summarised in the following table.

Table 7 – Floor Space Ratio Objectives

Objective	Assessment
(a) <i>to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,</i>	The built form, height and scale of the proposed development have been resolved by a thorough evaluation of the site's surrounding contexts, with an emphasis on design excellence and residential amenity for future residents and surrounding

Objective	Assessment
	<p>properties.</p> <p>The proposed built form follows the principles of the FSR Map, with higher densities located towards the south-central portion of the site. While the distribution of floor area across the site differs slightly from the FSR Map, the proposal will not exceed the maximum permissible gross floor area across the entire site.</p>
<i>(b) to provide for a built form that is compatible with the role of town and major centres.</i>	<p>The site is located within the Balmoral Road Release Area as identified in The Hills Development Control Plan; the vision of the area is to create <i>a high quality, integrated and ecologically sustainable urban environment integrated with good public transport accessibility, open space, community facilities and employment opportunities.</i></p> <p>The proposal is consistent with this vision as it will provide a new standard in architectural design and amenity for future residents. The proposal has incorporated a number of ESD principles in its design and will provide housing and open space within in close proximity to the new Norwest Metro Station and Norwest Business Park.</p>

4.2.3. Residential Development Yield on Certain Land

The underlying intent of Clause 7.11 is to ensure the proposed redevelopment of the site for residential apartments developments responds to the future needs of The Hills local government area, provides opportunities for suitable density and provide a range of housing choices for different ranges of demographics and budgets.

The development is consistent with the objectives of the Clause 7.11 as summarised in the following table.

Table 8 – Residential Development Yield on Certain Land

Objective	Assessment
<i>(a) to ensure the provision of a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets,</i>	<p>The proposal will provide a mix of dwellings that responds to a range of different demographics, living needs and household budgets. The proposal will have a maximum of 25% of apartments having one bedroom, with 10% of apartments having three bedrooms.</p>
<i>(b) to ensure that development for residential flat buildings does not place an unreasonable burden on the provision of services, facilities and infrastructure in the area to which this clause applies,</i>	<p>The proposal will not cause an unreasonable burden on local service utilities, with details of connections provided in the Service Utility Infrastructure Report prepared by Northrop and submitted with the DA.</p> <p>The proposal will deliver significant, publicly-accessible open space to encourage relaxation and recreation. Section 94 contributions generated by the development will contribute to the delivery of additional facilities and infrastructure in the surrounding area.</p>

Objective	Assessment
(c) <i>to provide opportunities for suitable housing density that is compatible with existing development and the future character of the surrounding area,</i>	The subject site is located within the Balmoral Road Release Area, which is identified to provide <i>high quality, integrated and ecologically sustainable urban environmental integrated with good public transport accessibility, open space, community facilities and employment opportunities</i> . The proposal will deliver housing in accordance with this vision, while ensuring that surrounding properties receive suitable amenity through solar access, privacy and views.
(d) <i>to promote development that accommodates the needs of larger households, being a likely future residential use.</i>	The proposed development will deliver apartments which are generally in excess of ADG required minimum sizes and have efficient and versatile layouts. The development will provide 130x 3-and-4-bedroom apartments with sizes up to 185m ² (excluding balconies).

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

The proposal satisfies the applicable R4 High Density Residential zone objectives for the reasons outlined in **Table 9** below.

Table 9 – R4 High Density Residential Objectives

Objective	Assessment
<i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposal will provide additional housing stock in a high density residential scale and will integrate within the surrounding area. The proposal aligns with the vision of the area to create a high quality, integrated and ecologically sustainable urban environment integrated with good public transport accessibility, open space, community facilities and employment opportunities.
<i>To provide a variety of housing types within a high density residential environment.</i>	The proposal includes a variety of housing types with 1, 2, 3 and 4 bedroom options provided with a mix of layouts and sizes.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The masterplan will provide a variety of amenities including a resident fitness centre and outdoor swimming pool, multi-purpose room, neighbourhood shops and open space areas. The technical non-compliance will not impact on the ability for facilities and services to be provided in the area to meet the needs of residents.
<i>To encourage high density residential development in locations that are close to</i>	The subject site is located within 500 metres from the Norwest Business Park and approximately 600 metres from the future Norwest Metro Station. The station design also includes bus zones

Objective	Assessment
population centres and public transport routes.	for 4 bus bays and 30 bicycle storage areas.

The objects set down in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* are as follows:

- “(a) to encourage
- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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 development is consistent with the objectives of the Act with regards to the following:

- The proposal will rehabilitate Strangers Creek and associated riparian corridor. The ownership of the creek will remain within the Community Title and will be subject to an ongoing maintenance programme.
- The proposal will retain 99 mature and significant trees, which will be facilitated by the increased setback along the northern boundary.
- The communal resident facilities provided will encourage social interactions and promote healthy lifestyle choices.
- The development will provide an efficient use of land by providing additional housing stock of a high density scale within close proximity to employment opportunities and public transport networks.

4.4. IS THE 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 circumstances based on the following:

4.4.1. Height of Buildings

- The development is consistent with the objectives of the development standard as provided in Clause 4.3 (1) of THLEP 2012. Refer to the discussions in **Section 4.2.1** above.
- The proposed development seeks to vary the maximum building height controls for the site on the premise that the development would achieve the maximum number of storeys as intended as part of the Planning Proposal.
- The scale and mass of the buildings is compatible with the established built form within the immediate context of the site that is defined by buildings up to nine storeys.
- The increased setback to the northern boundary will allow for the retention of a number of trees to provide a visual buffer between the development and adjoining properties.
- The proposed built form responds to the topographical constraints of the site.
- The masterplan has been refined based on community consultation through the design phase. The masterplan has been amended to recess top floors of buildings to the north of the dwellings in Central Park Avenue to ensure they receive suitable solar access.
- The proposal has been designed to comply with the floor to ceiling height requirements specified in the Apartment Design Guide.

4.4.2. Floor Space Ratio

- The development is consistent with the objectives of the development standard as provided in Clause 4.4 (1) of THLEP 2012. Refer to the discussions in **Section 4.2.2** above.
- Based on the areas of each FSR category, it has been calculated that there is a maximum permissible gross floor area of 138,000m² across the site. The proposed master plan aims to redistribute the gross floor area across the site in order to achieve a better urban design outcome, with the net gross floor area staying within the 138,000m² permissible.
- The re-distribution of FSR maximises the number of existing significant trees retained and provides greater open spaces opportunities at ground level by reducing building footprints.
- The proposed distribution of floor space is in accordance with the principles of the FSR Map by providing greater densities within the central portion of the site.

4.4.3. Residential Development Yield on Certain Land

Apartment Sizes

The proposed development will result in greater than 30% of apartments being classified as Type 1 under the sizes specified in Clause 7.11(5). However, while the proposed mix varies from the required typology mix, the non-compliance is minor when the numerical size of each typology is refined as per below:

Table 10 – Proposed Apartment Typologies

Typology	LEP Size	Proposed Size
Type 1		
1 Bedroom	50-65m ²	55m ²
2 Bedroom	70-90m ²	79m ²
3 Bedroom	95-120m ²	110m ²
Type 2		
1 Bedroom	65-75m ²	65m ²
2 Bedroom	90-110m ²	88m ²
3 Bedroom	120-135m ²	120m ²
Type 3		
1 Bedroom	75m ²	75m ²
2 Bedroom	110m ²	102m ²
3 Bedroom	135m ²	130m ²
4 Bedroom	135m ²	185m ²

When viewed in this context, it is evident that the apartment sizes for Type 2 and 3 apartments only differ by between 2m² to 8m² (or 2-7%). When considered that the difference in areas could be as small as a redundant corridor or similar, the apartments are not considered to diminish any internal amenity. The proposed Type 1 apartments will all have sizes in excess of the minimum requirements.

In addition to the proposed apartment sizes, which are generally much larger than ADG requirements, the proposal will also provide residents with a range of high quality facilities include a fitness centre, outdoor swimming pool, indoor cinema, multi-purpose room and extensive open space areas. The extent of facilities

provided will set a new standard for the amenity of developments in the surrounding area and will promote social interactions and lifestyle choices for future residents.

The objectives of the Clause to provide a mix of dwelling types, providing housing choice for different demographics, living needs and household budgets, as well as to promote development that accommodates the needs of larger households, are maintained. Accordingly, strict compliance with the specified apartment sizes under each typology is considered unreasonable and unnecessary.

Car Parking:

The concept masterplan provides a total of 2,174 car parking spaces within the basement car parks, plus 78 on-street spaces along Spurway Drive and Lucinda Avenue for a total provision of 2,257 spaces. Based on strict compliance with the car parking rates specified under Clause 7.11, the proposal would require 2,797 spaces.

While the development will provide 623 fewer basement spaces, the car parking provided is well in excess of the 1,398 spaces specified by the RMS' *Guide to Traffic Generating Development* for developments within 800 metres of a railway station.

The proposed car parking rates have been established in response to the contextual issues of the site, which include:

- Reinforcing the variety in housing diversity, including affordability of housing at different price points.
- Reducing traffic congestion in the local area, which is a significant concern of the surrounding community.
- Recognising the proximity of the site to the new Norwest Metro Station.
- Recognising the modal shift in transport opportunities in the future.
- Environmental considerations associated with the construction of deep basement parking structures.
- Consistency with parking provisions of surrounding developments.
- The provision of car share as an integrated part of the development to enhance sustainable transport modes and to support a reduction in residential car parking spaces.

During the community consultation process, car dependency and associated traffic generation were key concerns raised by the local community. As noted in a Car Share and Parking Analysis report prepared by Phillip Boyle & Associates, buildings that encourage high car ownership and use through over provision of parking (for residents and visitors) can have the unintended consequence of increasing dependency on car use resulting in increased traffic congestion in the local area.

The amount of parking proposed in the development, in conjunction with provision of car share vehicle and suggested restrictions to on-street parking adjacent to the project, serves to address these concerns and provide a response to the changing nature of the surrounding area.

Initiatives employed in the proposal to reduce congestion and encourage the use of public transport within the context of the Metro Northwest are summarised below:

- Reduce parking for 2-bedroom apartments to a rate of 1 to 1.5 spaces per apartment across the development. Under this strategy, smaller 2-bedroom units would receive 1 parking space while larger units would receive 2 spaces. Consistent with Council's objectives, this will offer residents greater choice, flexibility and affordability in the type of housing available.
- Support the reduction in parking for 2-bedroom apartments by providing car share vehicles from the outset of the development. Four vehicles will be provided by a reputable car share company which has made a commitment to the development. The number of vehicles provided will adequately service residents' needs in the community.
- Reduce visitor parking to 1 per 5 apartments to avoid significant levels of overprovision. Visitor parking spaces impose additional costs (upfront and ongoing) on local residents in the community with typically low utilisation rates across the day. With convenient access to high quality public transport including the Metro Northwest, not all visitors will travel to the development by car.
- Provide "supportive buildings" by:

- Ensuring a high level of pedestrian connectivity on site so that walking trips are competitive with alternatives.
- Providing bicycle parking in secure cages.
- Ensuring that taxis and delivery services can easily find the buildings and have suitable places to park.
- Providing a public transport 'departure board' in the foyer and/or lifts of the buildings linked to key bus and train departure times.
- Recruiting owner-occupiers to car share and the Opal card before they move in and considering usage incentives.
- Install in-ground sensors and parking meters in the on-street parking bays to ensure that they are not used by apartment owners, train passengers and centre workers to store their vehicles during the day.

A commitment has been made by car share provider, GoGet, to meet the residents' needs from the development's opening. Four car share vehicles will be provided at various locations within the masterplan, with two spaces being provided with the first stage of construction. This will accommodate all residents in the two-bedroom-one-car-space units (or approximately 1 car share space per 100 two-bedroom-one-car-space dwellings) to be regular users of the car share vehicles.

The provision of car sharing, coupled with the proposed provision of car parking and the delivery of the Norwest Metro Station, will ensure an adequate level of accessibility is provided to residents across a number of different travel options. Accordingly, strict compliance with the development standard under Clause 7.11 are considered unreasonable and unnecessary.

4.5. IS THE DEVELOPMENT STANDARD PERFORMANCE BASED CONTROL?

No. The development standard is not a performance based control.

4.6. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The built form, apartment sizes and car parking of the proposed development have been resolved by a thorough evaluation of the site's surrounding context, with an emphasis on excellent amenity for future residents.

Matters related to streetscape appearance, solar access, internal amenity and car parking are considered to be most sensitive to the proposed variations to the development standards. The impacts associated with each of these are discussed separately below.

4.6.1. Streetscape Impact

The proposal will not have a detrimental impact on the streetscape as follows:

- The proposed 6, 7 9 and 12 storey built form is consistent with the desired building height plan in storeys recommended under the Planning Proposal.
- The proposed setback strategy has been developed to preserve the existing natural features of the site, including the retention of 99 mature trees along the northern boundary.
- Road reserves will provide shared pedestrian/cycle paths and landscaping with bio-retention zones and street tree plantings (up to 15 metres tall).
- The proposal includes a variety of built forms, including three feature buildings which have been designed to create visual intrigue and pay homage to the history and context of the site.
- Vehicle access points to basements have been minimised through the consolidation of basements across multiple buildings, creating a more pleasant and safe environment for pedestrians and cyclists.

4.6.2. Solar Access

The proposed built form has been refined based on extensive solar access analysis. The level of solar access provided to residents within the proposed development and adjoining properties is separately discussed below.

Within the Proposed Development

The ADG includes a design criterion that 70% of apartments in residential flat developments are to receive at least two hours of direct solar success to the private open space and living areas between 9am and 3pm at the winter solstice, and that a maximum of 15% of apartment receive no solar access.

At least 70% of apartments within each of the buildings will receive at least two hours of solar access mid-winter, with no more than 15% of apartments in each receiving no solar access (refer to **Table 11** for details).

Table 11 – Solar Access per Building (2 hours of solar access)

Building	Number of Apartments	Percentage
Building A.1	93 of 127	73%
Building A.1	26 of 37	70%
Building A.1	32 of 46	70%
Building B.1	233 of 330	71%
Building C.1	238 of 332	72%
Building C.2	123 of 176	70%
Building C.3	57 of 75	76%
Building D.1	43 of 60	72%
Building D.2	50 of 61	82%
Building D.3	39 of 56	70%

The ADG includes a design criterion that at least 50% of the principal usable part of the communal open space should receive at least 2 hours of sunlight between 9am and 3pm at the winter solstice.

The communal open space will receive at least 2 hours of sunlight to 72.4% of the total area, as shaded yellow in **Figure 7** below. The proposed linear park is considered to be the principle usable part of the communal open space for the development, with other areas considered as additional or secondary. Almost all of the entire length of the linear park will receive at least 2 hours of solar access between 9am and 3pm, mid-winter.

Figure 7 – Communal Open Space Solar Access



Source: Turner

Adjoining Properties

A detailed analysis has been undertaken to understand the impacts of the proposed development, particularly the residential properties to the south.

The detailed analysis assessed the properties in three groups:

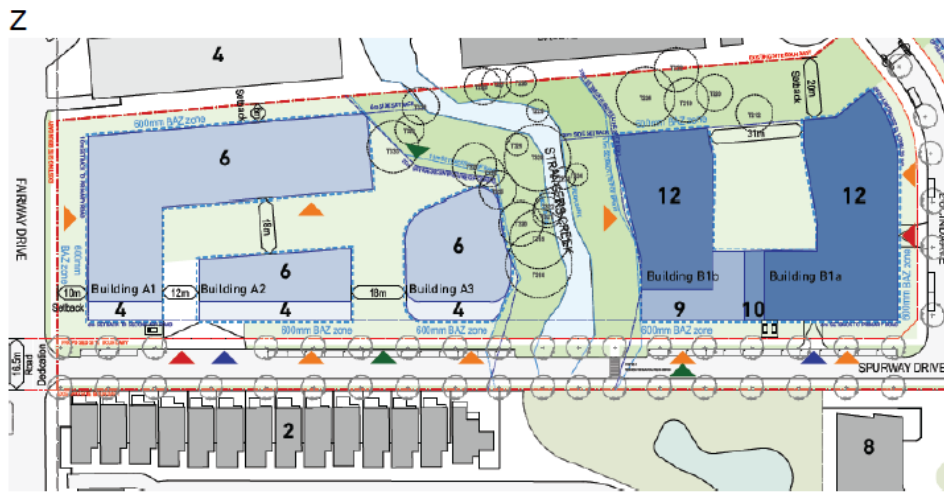
- The low density residential dwellings on Central Park Avenue, immediately to the south of Spurway Drive.
- The residential flat buildings developed and proposed by Mulpha (known as Watermark and Haven), located to the south of Stages 2 and 3 of the proposed development.
- The townhouses identified in the approved master plan directly to the south of Stages 1 and 4 of the proposed development.

The impacts associated with each of these groups are addressed separately below.

Central Park Avenue Dwellings

- The low density residential dwellings located on Central Park Avenue were approved and constructed prior to the announcement of the Norwest Metro Station and the increase to residential densities within walking distance to the station. If the site were to be redeveloped today, residential flat buildings are the most likely development type. However, careful consideration has been taken to ensure the residents of the existing medium density dwellings will retain a suitable level of amenity.
- To maximise the solar access provided to the private open spaces and north-facing living rooms of these dwellings, the top floors of the buildings in Stage 5 have been recessed by four metres, and the south-eastern corner of Building B.1 has been reduced to nine storeys (see **Figure 8**).
- These design implementations have resulted in all 14 dwellings backing onto Spurway Drive receiving at least four hours of sunlight access between 9am and 3pm, mid-winter to 50% of their required private open space area, complying with the development control under Part B Section 2 of the THLEP 2012.

Figure 8 - Building Heights Adjacent to Central Park Avenue Dwellings

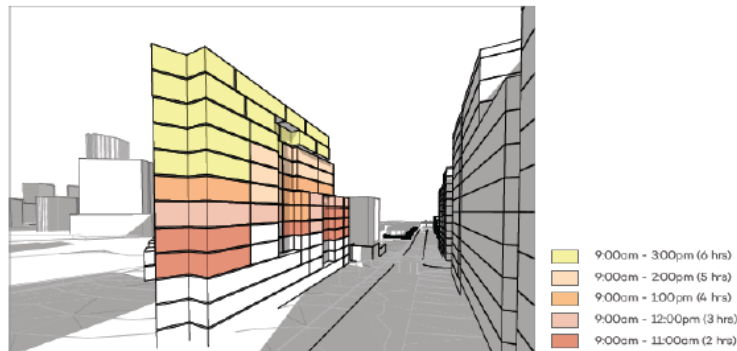


Mulpha Residential Flat Buildings

Directly to the south of buildings proposed as part of Stages 2 and 3 is a residential flat building development which has been recently completed (Watermark), as well as a residential flat building currently under assessment (Haven).

When the impacts of the subject development were analysed against both these developments, it was found that at least 70% of the apartments will achieve at least two hours of solar access to north facing living rooms and private open spaces, with many receiving up to six hours (see **Figure 9**).

Figure 9 - Solar Access Impacts to 'Haven' Building



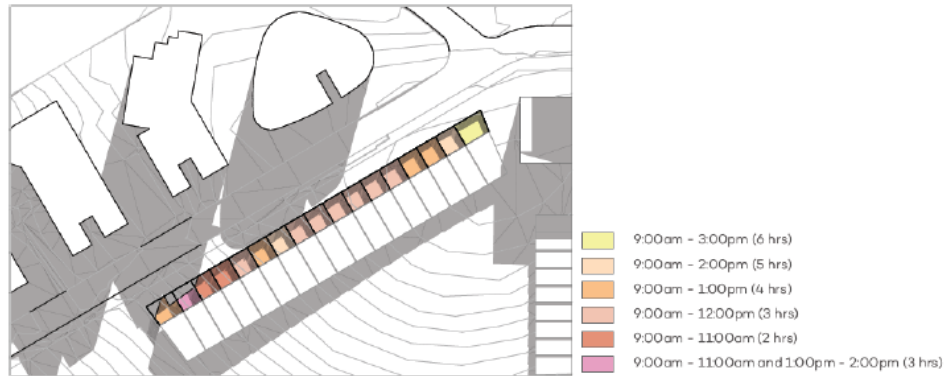
Concept Approved Townhouses

While currently vacant, concept approval has been granted for townhouses opposite Stages 1 and 4 of the subject development, to the south of Spurway Drive (DA Nos. 910/2013/JP and 934/2014/JP).

The solar access impacts to the townhouse development concept have been assessed which found that these dwellings would receive between 3 - 6 hours of solar access to the open space area and 4-6 hours of solar access to north-facing living rooms.

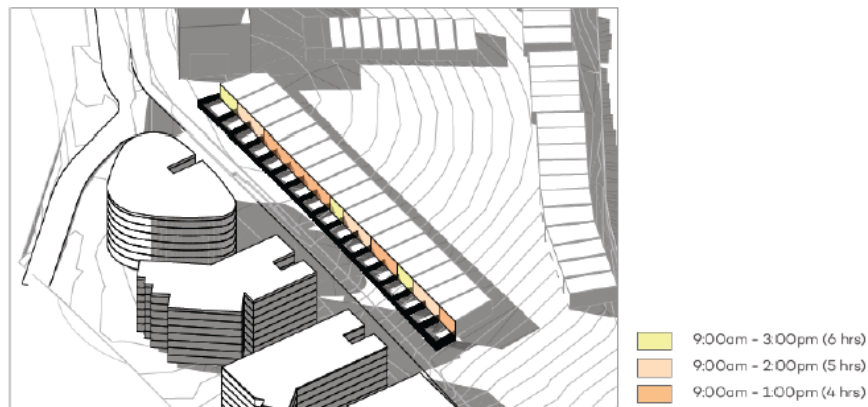
It is understood that the owner of this site is exploring the opportunity for residential flat buildings in light of the strategic location of the site in proximity to the Norwest Metro Station. Notwithstanding, the solar access impacts to this site are considered reasonable based on the context of the site.

Figure 10 - Solar Access Impacts to Townhouse Concept Private Open Space



Source: Turner

Figure 11 - Solar Access Impacts to Townhouse Concept Living Rooms



Source: Turner

4.6.3. Internal Apartment Sizes

The internal amenity of apartments is not considered to be diminished, based on the minor numerical non-compliance of Clause 7.11 of THLEP 2012, as follows:

- The internal apartment and balcony sizes all exceed the minimum requirements of the Apartment Design Guide.
- The proposed apartment layouts have used an efficient use of space and allow for a flexible use of areas to suit the individual needs of residents.

- A variety of small, medium and large options are provided across 1, 2 and 3-bedroom apartment sizes to suit a range of lifestyles and household budgets, with 4-bedroom units introduced to offer greater choice for larger families.
- All buildings comply with the minimum requirements for solar access and natural ventilation.
- All buildings will have access to multiple communal open spaces and additional amenities, including the fitness centre, outdoor swimming pool, multi-purpose communal room and neighbourhood shops.

4.6.4. Car Parking

The proposed provision of car parking has been discussed above under **Section 2.3.2**. In summary, the proposal is considered to provide sufficient car parking based on the following:

- The proposal is well in excess of the car parking recommended under the RMS' *Guide to Traffic Generating Development*.
- Car parking will be supplemented by four car share spaces.
- The construction of the Norwest Metro Station will see a shift in transport choices from private vehicles to public transport.
- The proposal responds to concerns of surrounding property owners that unnecessary excess provision of car parking will have impacts on the local road network.

4.7. IS THE OBJECTION WELL FOUNDED?

The proposed exception to the building height development standard will facilitate the delivery of additional residential housing located within an established urban area with close proximity to public transport connections and services. The development does not result in any unreasonable or significant adverse environmental (social, economic or biophysical) impacts. In particular, the variation does not diminish the development potential or amenity of any adjoining land.

As outlined in **Section 4.2**, despite the numerical non-compliances, the development is consistent with the objectives of the development standards.

Strict compliance of the numerical controls in this circumstance would not improve the development outcome. Rather it would result in additional trees being removed to relocate floor space and would diminish the open space provided on site.

The development would:

- Provide a high level of amenity for future residents;
- Provide a varied built form to avoid a monotonous streetscape appearance;
- Not create any unreasonable impacts to adjoining properties; and
- Provide a variety of housing options in the area, in accordance with the objectives of Clause 7.11 of THLEP 2012.

Accordingly, the objection is considered to be well founded.

4.8. WOULD NON-COMPLIANCE RAISE ANY MATTERS OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance will not raise any matters of State or Regional Significance. The proposal is consistent with the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* and previous DA approvals.

4.9. IS THERE PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL SYSTEM?

The numerical non-compliance is not considered to be contrary to the public's benefit for the following reasons:

- The proposal is consistent with the objectives of the relevant planning controls.
- The proposal is consistent with Council's vision to transform area into a high quality, high density residential neighbourhood within close proximity to the future Norwest Metro Station.
- The proposal achieves a high level of compliance with the detailed design requirements. Where the proposal departs from numerical compliance, adequate justification and satisfaction with the control's objective has been provided.
- The amenity of surrounding properties has been carefully considered in the design of the masterplan.
- The proposal will generate a positive economic impact by creating employment opportunities throughout construction of the development and provide additional personnel within the catchment of local businesses.

5. CONCLUSION

The proposed development provides a built form that is generally consistent with the potential outcome envisaged under the Planning Proposal. The non-compliances with the development standards are considered to be relatively minor and will not result in any unacceptable impacts to adjoining properties or diminish the amenity provided to future residents of the development.

Taking into account the particular circumstances of this development, strict compliance with the numerical standard in this instance would be unnecessary owing to the following:

- The proposal meets the objectives of the relevant development standards.
- The proposed redistribution of floor space and height across the site aligns with the building massing principle of locating greater densities and height in the centre of the site and will not result in additional yield.
- The proposed development responds to the topographical constraints of the site and complies with the minimum floor-to-ceiling heights specified under the Apartment Design Guide.
- The increased northern setback will facilitate delivery of a 1.4 hectare linear park and allow for the retention of 99 mature trees across the site and will rehabilitate and provide on-going management of Strangers Creek.
- The proposed built form will provide a good level of solar access to dwellings and open spaces within the proposed development and adjoining properties.
- All apartments are provided with internal and balcony sizes in excess of the requirements of the Apartment Design Guide, with a variety of small, medium and large options for 1, 2, 3 and 4-bedroom apartments provided for different household sizes and budgets.
- The amenity of residents will be complemented by a range of additional facilities include a fitness centre, outdoor swimming pool, multi-purpose communal room and neighbourhood shops.
- The proposed car parking provided will sufficiently serve the residents and visitors of the development, with additional accessibility provided by car share vehicles and the future Norwest Metro Station.

For these reasons, it is concluded that the proposed variation of the development standards is well founded and the particular circumstances warrant flexibility in the application of the development standard.



The Orchards - Masterplan
47 Spurway Drive, Baulkham Hills
Clause 4.6 Request HOB Addendum

Prepared on behalf of Sekisui House

January 2018

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1 Introduction

This report has been prepared to supplement the Clause 4.6 request accompanying the staged Development Application (DA) for a concept masterplan for a residential development located at 47 Spurway Drive, Baulkham Hills (the site).

That written request sought to vary development standards relating to height of building (HOB), floor space ratio (FSR), dwelling sizes and car parking requirements specific to the site contained under Clauses 4.3, 4.4 and 7.11 of The Hills Local Environmental Plan 2012 (THLEP 2012).

This addendum describes and provides planning justification for an amendment to the variation in response to community consultation, to the HOB controls as proposed for buildings A1, A2 and A3 on the western most parcel of the land bound by Fairway Drive, the Spurway Road extension and Strangers Creek.

The amendment to the proposed heights in this parcel of the site is a result of changes to the masterplan in response to community submissions to the exhibition of the development application and Council's subsequent assessment.

For completeness, this assessment includes consideration of the proposed departure to the building setback to Spurway Drive, within Section 3.3, Part C Section 7 – Residential Flat Building of The Hills DCP 2012 as it relates to the effects of building heights on neighbouring properties.

1.1 CASE LAW

This addendum has been prepared under Clause 4.6 of THLEP 2016 to justify the departures from development standards for the height of building within clauses 4.3 as it applies to the amended proposed buildings A1 and A3.

The request meets the objectives of clause 4.6(1),

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

and demonstrates for the purpose of clause 4.6(3):

- (a) that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standards.*

Case law (*Winten V North Sydney Council*, *Wehbe V Pittwater*, *Four2five V Ashfield Council*) provides guidance when considering an exception to development standards as follows:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?

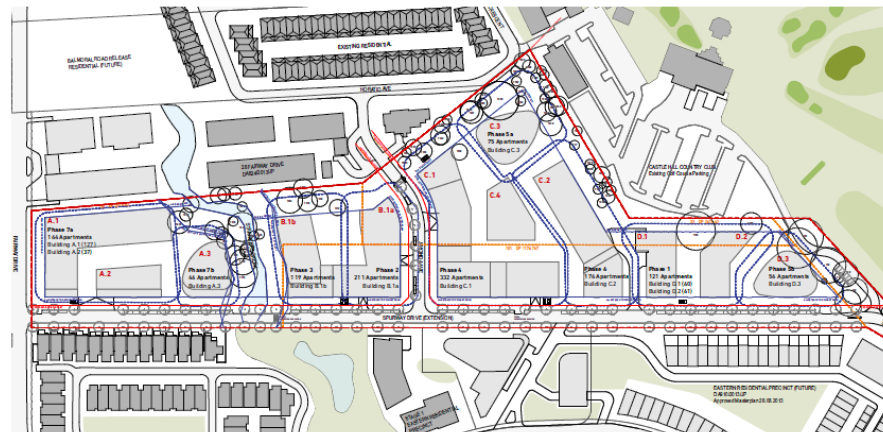
- *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives.*
- *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;*
- *Would the underlying objective or purpose 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.*
- Is compliance with the development standard consistent with the aims of Clause 4.6?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Are there sufficient environmental planning grounds (specific to the site and particular to the circumstances of the proposed development) to justify contravening the development standard and therefore is the objection well founded?

Recent case law (*Micaul Holdings v Randwick City Council*, *Moskovich v Waverley Council*) has also established that:

- the written request has to adequately address everything necessary in clause 4.6(3), rather than the consent authority being “satisfied directly”;
- the consent authority must be personally satisfied that development will be “consistent with” the objectives of the zone and the development standard;
- being “consistent with” these objectives is not a requirement to “achieve” them but that development be “compatible” with them or “capable of existing together in harmony”;
- establishing that “compliance with the standard is unreasonable or unnecessary” does not always require that the objectives of the standard are achieved but also that it may not be achieved or would be thwarted by a complying development;
- when a clause 4.6 variation request is being pursued, it is best to demonstrate how the proposal achieves a better outcome than a complying scheme.

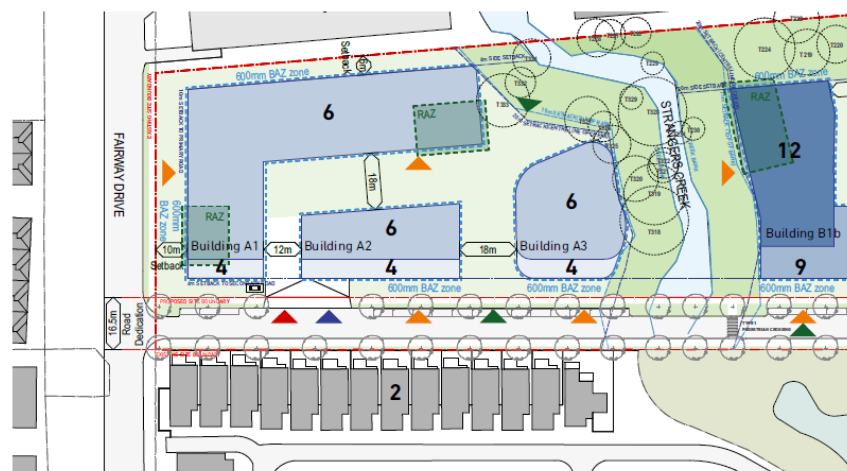
2 Masterplan Amendment

The staged development application for the masterplan (736/2017/JP) is being assessed by Council and provides the framework for the coordinated approvals and construction of subsequent phases of development with staged applications.



Extract from the submitted master plan showing phases and building numbers for reference.

The extent of buildings A1, A2 and A3 as originally proposed is shown on the masterplan extract above and below where the height of buildings as measured in storeys is shown. Issues raised to the proposed masterplan by residents of the low scale townhouses to the south-west of the property included privacy and mid-winter solar access concerns.



Extract from the submitted master plan showing proposed heights of buildings A1, A2 and A3.

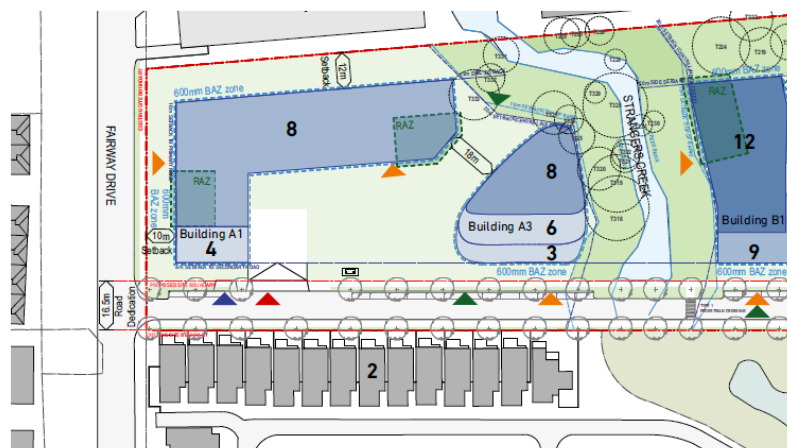
As a consequence of community consultation with residents immediately south of this parcel, as well as Council support for a proposal for taller buildings immediately north

this parcel, the proposed masterplan has been amended by the removal of building A2 and the re-massing the building envelopes towards the north of the site.

As shown in the extract of the amended masterplan below, this creates an open space area on the site opposite the town houses which will provide for public access for local passive recreation as an additional community benefit.

It is considered that the re-massing as shown results in:

- an improved open space outlook and amenity with a lesser extent of shadowing towards the townhouses to the south of the site;
- a matching of scale to, and appropriate separation from, future development to the north of the site;
- continued compatibility with the proposed Site and Massing Strategies as presented in the Design Report which forms the basis of the overarching Clause 4.6 request.



Extract of Site Analysis Plan (and indicating photo locations section 2.5. (Source Turner)

The Height of Building control for this part of the site is 18m under the Hill LEP 2012. The originally proposed and resultant height of buildings from the masterplan amendment are set out below.

Building	Development Standard	Originally Proposed Height	Amended Proposed Height
Building A.1	18 metres	23.5 metres	29.8 metres
Building A.2	18 metres	24.6 metres	removed
Building A.3	18 metres	24.3 metres	30.7 metres

The change in height results in lesser site coverage so as to extend the amount of open space to provide an enhanced outlook from the southern townhouses and results in a better planning, design and community outcome.

3 Clause 4.6 Assessment

The Masterplan seeks to vary the prescribed development standards within THLEP 2012 relating to Clause 4.3 – Height of buildings (amongst other things).

The variations to standards adopted the masterplan are described and considered in the report *Clause 4.6 Request To Vary Development Standards Masterplan DA - 47 Spurway Drive, Baulkham Hills* prepared by Urbis.

This report addresses the requirements of Clause 4.6 as it applies to the amended height variations for buildings A1, A2, and A3.

Since the effect of the variation to building height is related to the building setback to Spurway Drive, this report also addresses this development control within Section 3.3, Part C Section 7 – Residential Flat Building of The Hills DCP 2012.

3.1 SPURWAY DRIVE SETBACK

The masterplan provide for a 6m setback to Spurway Drive in the context of the setback strategy set out in page 21 of the Design Statement (below) Cascading rain gardens will be provided in the setback with defined 'bridge' entries for each building along the Drive which will produce a high quality, consistent landscape outcome.

In line with the DCP objectives, the proposed setbacks have been developed to:

- *Complement the setting and contribute to the streetscape and character of the street by providing for greater separation of the proposed building envelopes adjacent to existing low rise development to the north and south;*
- *Allow flexibility in siting of buildings;*
- *Preserve the existing natural features of the site.*

The proposed variation to setbacks have been carefully considered.

- *The 20m setback to the north boundary allows for retention of an additional 93 existing trees.*
- *The wider road dedication (from 15.5m to 16.5m) provided for Spurway Drive remains consistent with Council's strategy*
- *The reduced street setback to Spurway Drive will still provide building separation distances in excess of the required minimum from the boundaries.*
- *The proposed setback of 6m to the Spurway Drive extension allows landscaping that will complement the building form and enhance the character of the street through the provision of a landscaped bio-retention zone that runs the length of the proposed road extension.*

In particular, the increased setback to the north (6m to 20m) will allow for the provision of a new publicly accessible linear park with a range of spaces to promote active and passive uses on the northern side of the buildings. It will also provide greater separation from existing low rise residential to the north and retain existing significant trees.

The reduced setback to Spurway Drive is marginal and is reflective of a more urban context within the catchment of the new rail station and higher density area, and is appropriate for the street which has a moderate function despite its adoption of a DCP collector road width and standards.

The adopted setback will have minimal impact to the solar access of adjacent existing and future high density residential and retain a significant streetscape character. It should also be noted that the effect of the adopted setback is mitigated by the widening of the street from 15.5m to 16.5m.

Under the adopted setbacks, building separation between the proposed Masterplan and the adjacent residential development to the north and south will meet or exceed the minimum requirements of the ADG.

It is considered that the setback to Spurway Drive will meet the DCP's objectives of the under 3.3. Setbacks

- (i) *To provide an open streetscape with substantial areas for landscaping and screen planting.*
- (ii) *To minimise overshadowing of adjoining properties.*
- (iii) *To protect privacy and amenity of any adjoining land uses in accordance with Council's ESD objective 7.*
- (iv) *To ensure developments are compatible with the character of surrounding housing areas in respect of the quantity and quality of open space.*

The approach to setbacks is also consistent with the Baulkham Hills Multi-Unit Housing – Urban Design Guidelines, which in regard to setbacks states, “Some variety in certain areas and situations enriches the streetscape and assists in creating open spaces that can be utilised for public purposes and accommodate various activities.”

3.2 ARE THE PLANNING CONTROLS A DEVELOPMENT STANDARD?

The planning controls in Clauses 4.3 relating to maximum building height is a development standard under the definition within the *Environmental Planning and Assessment Act 1979*.)

3.3 THE NATURE OF THE CONTRAVENTION OF THE STANDARDS

The subject parcel site is subject to height of buildings development standards of 18 metres under clause 4.3 (categories P2 on the LEP HOB Map). The proposed buildings will have maximum heights of generally 30.7 metres but excluding the plant room, rooftop garden shelter and some lift overruns in accordance with the masterplan.

As set out in the masterplan design strategy, the modification to building heights across the whole site result from allowances for changes in topography, lift overruns and the floor-to-ceiling heights required under the ADG as well as responding to site conditions including for the retention of vegetation and the creation of public access ways and a linear park through re-massing the permitted floor area.

3.4 ASSESSMENT AGAINST THE PURPOSE/OBJECT OF THE STANDARD

3.4.1 Height of Building

The objectives of the height of building development standard under clause 4.3 are:

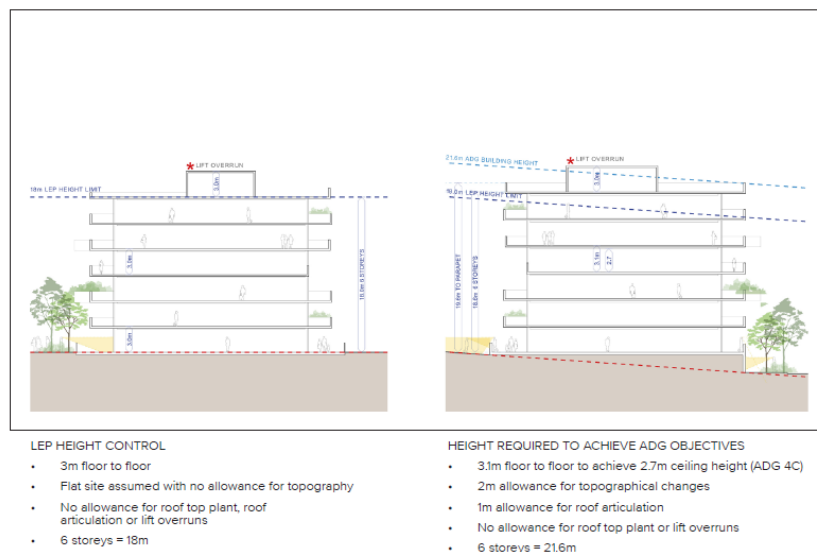
- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
- (b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The objectives of the height of building controls will be satisfied by implementing the original concept which informed the Planning Proposal and subsequent masterplan. This provided for 6 and 12 storey buildings which has remained in most circumstances.

The design strategies within the masterplan architectural statement also set out the reasoning for further variations to the height standard in the distribution, site coverage and massing of floor area in order to achieve improved planning and design outcomes from the redevelopment as described.

The height and envelope strategies for the masterplan took into consideration the compatibility of heights with adjoining development and overall streetscapes as well as shadowing, visual, and privacy impacts on adjoining properties and open space areas.

In particular, underlying the height variation is the need to accommodate floor to ceiling height to achieve ADG requirements while also allowing for adjustments resulting from the slope of the land and necessary earth works altering the existing ground levels as shown in the following extract from the design statement.



Extract from Masterplan Design Statement explaining need to adjust building height (Source: Turner)

Detailed discussion on the effect of the now proposed height of buildings A1 and A2 on shadowing is provided at section 4.6.

3.5 IS COMPLIANCE CONSISTENT WITH THE REQUIREMENTS OF CL 4.6?

The aims of Clause 4.6 are:

- (c) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (d) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

When the development is tested against the underlying objectives of the standard, compliance would not be inconsistent with the aims of the clause because the proposed height is a reflection of a considered masterplan design strategy for the entire development parcel that in turn is a response to the characteristics of the site and its context as well as community consultation.

The proposed development is therefore a case where flexibility in the application of the development standards is justified in order to implement the objectives and intent of THLEP 2012, remain consistent with the proposed masterplan site and massing strategies and respond to community submissions to the masterplan development application.

3.6 IS COMPLIANCE UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES?

Strict compliance with the relevant provisions of THLEP 2012 is considered unreasonable and unnecessary in the circumstances of the case as it would impede the considered implementation of the LEP Amendment that facilitated an accepted design concept and the impending staged development consent in which the subject land is included. Compliance would also impede the achieving of a better planning and design outcome for the site as represented by the adopted design strategy under the masterplan as well as consideration of formal public input and mitigation of potential impacts on residents.

3.7 ARE THERE SUFFICIENT GROUNDS TO JUSTIFY CONTRAVENTION?

3.7.1 Building Height

As discussed above, the contravention of the building height standard results from two separate requirements.

The first requirement is the need to adjust building heights to achieve ADG floor to floor height guidelines and the practical consequences of a sloping site and alteration to existing ground levels. This contravention occurs in implementing the number of storeys and massing adopted for the concept which informed the Planning Proposal and subsequent drafting of the amendment to THLEP 2012.

Accordingly, the prescribed height of building standards did not adequately allow for these practical and foreseeable consequences for development, and accordingly sufficient grounds exist to the contravention this height standard on this basis.

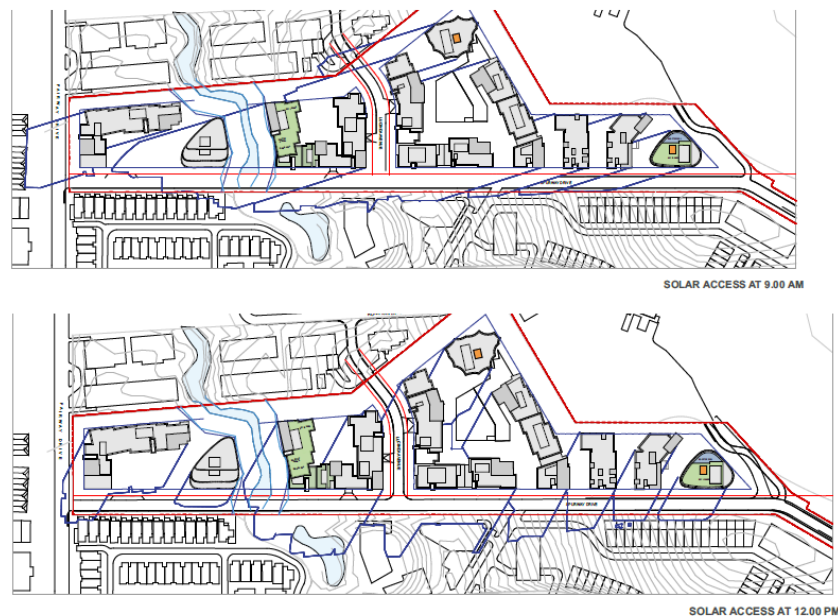
The second requirement derives from applying well-reasoned design strategies for massing, as set out on the Design Statement to the masterplan as modified to take account of community consultation in the assessment of the development application.

This has been undertaken in order to achieve better planning and design outcomes for the site as described, and includes better building relationships between adjoining sites, the greater retention of significant trees and the provision of a publically accessible linear park and open space on Spurway Drive.

It is acknowledged that the variation in building heights has an indirect potential effect on the solar access from overshadowing to townhouses to the south-west of the site.

The design strategies incorporate mitigation by way of setbacks to upper storeys to minimise the shadowing impacts and this has further mitigated by the removal of building A2 and the re-massing of A1 and A3 in the western most parcel.

The degree of effect and justification is considered below in the context of cumulative shadowing that would occur for the implementation the masterplan as currently proposed.



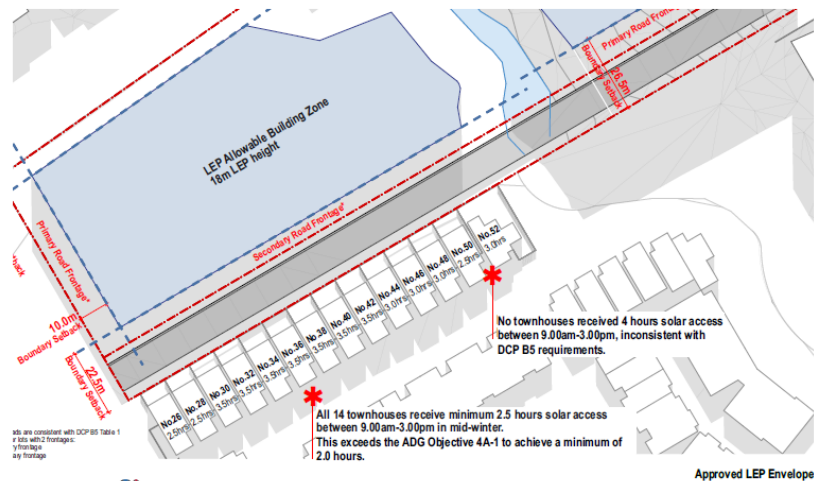
The cumulative effect of shadowing townhouses to the south-west from the masterplan, i.e., when buildings B1 and B2 from Phase 2/3 are combined with the revised buildings A1 and A3, is shown on the Shadow Diagrams MP-710-10 and MP-710-002 issue C re-logged for the Staged development application (extracts above and below).



Shadow Diagrams MP-710-10 and MP-710-002 Issue C (Source: Turner)

In regard to the townhouses, the masterplan responded to shadowing and outlook concerns by removing the middle building A2, re-massing buildings A1 and A3 and setting back the upper levels of the buildings, and a portion of the twelfth storey of the Phase 2/3 development, which in effect 'lowers' the buildings in terms of mid-winter shadowing potential.

An analysis undertaken by Turner below compared the shadowing that would occur to the townhouses under the THLEP 2012 height of building controls and with the proposed variations to demonstrate that this substantially mitigates potential shadowing impacts.



Townhouse solar access analysis based on complying building envelope. (Turner)

The solar access analysis based on complying building envelope (above) shows that the 14 townhouses would receive between 2.5 to 3.5 hours of mid-winter solar access but none would receive the minimum 4 hour mid-winter solar access as per the THDCP B5 requirement. The street setback reduction of 3m to the 10m DCP provision as applied to a local road width of 15.5m would only have a modest improved effect on the shadowing outcome.

The solar access analysis based on the amended masterplan building envelopes as described demonstrate that townhouses will receive at least 4 hour mid-winter solar access as per the DCP B5 requirement.

The shadowing effect on these townhouses is therefore better than what would result from the inevitable reduction in solar access from the THLEP 2012 amendment and consequential higher densities. In this regard, it is noted that the density of the Central Park Avenue precinct will no doubt undergo redevelopment in the long term in response to the new mass transit infrastructure and accompanying planning renewal strategies.

Accordingly, given the minimal shadowing effect on adjoining townhouses when taking into account the cumulative effect from the masterplan, it is considered that shadowing impacts do not undermine the sufficient grounds which exist to contravene the height standard in this circumstance.

3.8 IS THE REQUEST WELL FOUNDED?

This request under clause 4.6 of THLEP 2012 is considered to be well founded for the following reasons.

- The proposed development remains consistent with the objectives, nature and intent of THLEP 2012 and the masterplan staged development application in general.
- The development as proposed is based on a well-reasoned masterplan design strategy to achieve better planning and design outcomes appropriate in this location and provides for an appropriate response to the site, its context and community participation.
- Strict compliance with the height of building controls in the circumstance would result in an unnecessary design limitations and a consequent diminished urban outcome especially for adjoining townhouse residents.
- The variation to height of building controls allows for ADG requirements while mitigating shadowing impacts as well as responding to site conditions including for the retention of vegetation and the creation of public access ways and a linear park as well as an improved outlook from the south west townhouses.
- The proposed development is wholly consistent with the underlying objectives of the height of building development standard.
- The proposed variations do not add significantly to the overall impact to adjoining land uses and activities.
- Consequently, the non-compliances do not result in any additional adverse environmental impacts on the amenity of the surrounding area in general.

4 Conclusion

It is concluded from the strategies and assessments within and referenced in this report, that the proposed contraventions to the height of building development standard as described, do not undermine or frustrate the underlying objectives to those standards.

The non-compliances do not give rise to any significant additional adverse environmental impacts but provides for a better urban planning and design outcome as demonstrated by a well-reasoned masterplan design strategy and amendments resulting from community consultation.

Compliance with the standards would likely result in a diminished planning and design outcome.

It is therefore considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstance of the case and that that there are sufficient environmental planning grounds to justify contravening the development standards as proposed.

Further, this written request has adequately addressed the matters required to be demonstrated in establishing the above and that the proposed development will be in the public interest because it is consistent the objectives of the standards and the objectives for development within the respective zone, and has responded to matters raised as a result of community consultation.

It is also considered appropriate to provide the required flexibility in applying the development standards to achieve better outcomes for and from development as proposed for The Orchards site by allowing this flexibility in this particular circumstance.

Accordingly, the consent authority should find that it is able to support the requested exception to development standards under clause 4.6 of The Hills LEP 2012.

For the purpose of the delegated concurrence of the Secretary General, it is not considered that contravention of the development standard raises any matter of significance for State or regional environmental planning. Further, there are public benefits of not maintaining the development standard in this circumstance in order to better implement the urban renewal strategies adopted in response to the major community investment in mass transit at Norwest.

ATTACHMENT 12 – DESIGN EXCELLENCE PANEL MINUTES



MEETING MINUTES DESIGN EXCELLENCE PANEL

Date:	22/01/18	Time:	11am - 5pm
Location of Meeting:	Community Rooms 1+2		
Panel Members:	Chairperson - Stewart Seale, Manager Forward Planning, THSC Panel Member - Tony Caro, Independent Design Expert Panel Member - Mark Colburt, Group Manager THSC		
Councillors:	None in attendance		
Council Staff:	Paul Osborne, Robert Buckham, Marika Hahn, Ashley Cook, Nicholas Carlton, Megan Munari, Rebecca Templeman,		
Guests:	Dan Szwaj – Turner Studio (architect) Greg Dowling – Dowling Urban (town planner) Matt Ritson – McGregor Coxall (Landscape Architect) George Gesouras – Sekisui House (Developer) Daniel Rainone – Sekisui House (Developer) Edward Natour – Sekisui House (Developer) Peter Valleau – Sekisui House (Developer)		

BUSINESS ITEM AND MEETING MINUTES

1. Welcome and Opening

The Hills Shire Council is committed to achieving design excellence in the built form environment and ensuring new high density buildings are of a high quality design.

The Hills Shire Design Excellence Panel (The Panel), is an advisory panel which provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in its consideration for development application.

The Panel provides recommendations on the following:

- any development which contains a building with a height of 25 metres or more; or
- Any strategic planning matters for which design excellence is relevant.

The role of the Panel is to evaluate and critique design aspects of proposed development and provide recommendations on whether development exhibits "Design Excellence".

The Design Excellence Panel is an Independent Panel, not a SEPP 65 Panel and the absence of comment with reference to matters pertaining to SEPP 65 does not mean that matters assessed under SEPP 65 have been satisfactorily addressed.

2. Declaration of interest

"Nil"

3. Confirmation of previous minutes

NA

4 Presentations

Item 4.2	1.30pm-3.0pm
DA Number	DA 46/2018/JP – 47, DA 736/2017/JP
Property Address	47 Spurway Drive Baulkham Hills
Proposal	DA 46/2018/JP – 47 Spurway Drive Baulkham Hills A 12-13 Storey Residential Flat Building Development (Stages 2 and 3) comprising three hundred and thirty units (330) with basement parking for 539 vehicles and associated Community Title Subdivision. DA 736/2017/JP – 47 Spurway Drive Baulkham Hills. Concept Masterplan encompassing 10 residential flat buildings ranging between 4-12 storeys in height with a total of 1,300 dwellings, associated car parking, neighbourhood shops, fitness centre building, civil works, internal roads and landscaping over 5 stages.
Applicant representative address to the design review panel	Dan Szwaj – Turner Studio (architect)
Background	The site was inspected by the panel: 9.55am - 10.20am February 22/02/18
Key Issues	DA 736/2017/JP – 47 Spurway Drive Baulkham Hills. <ul style="list-style-type: none">• Departure from approved planning proposal masterplan• Street setbacks of 6m in lieu of 10m compromises solar amenity of existing built residential flat buildings to the south of the development.• Presentation not reflective of application sought DA 46/2018/JP – 47 Spurway Drive Baulkham Hills <ul style="list-style-type: none">• Overshadowing of proposed development to south and nearby existing residential flat buildings.• Some ADG non-compliances

PANEL COMMENT

DA 736/2017/JP – 47 Spurway Drive Baulkham Hills.

1. The overall urban design approach in relation to variety of height, communal open space, site permeability and intent to have different development parcels designed by different groups of architects has been well considered, and is generally supported by the panel.
2. Treatment of the riparian corridor was respectful of context and natural systems. The 10m setback is supported in principle.
3. The Panel is concerned however that solar access to north facing units of an approved development on the adjacent site will be reduced as a result of non-compliant street setback and recommend that the applicant review how this can be addressed.
4. The Panel made a general comment in relation to the nexus between height and density. Residential FSRs of 2.5:1 and higher are generally best resolved with more flexibility in relation to height, particularly if the overall urban design vision is for buildings set within a generous landscape setting. The current height controls mean that built form will inevitably be compacted to achieve the target density, with central courtyards surrounded by dense, unbroken built form. The environmental amenity of these spaces is questionable in terms of privacy, and access to natural light and ventilation in the context of global warming.
5. This proposal is reflective of this, however it was noted by the panel that the architects have provided a well-resolved and highly competent scheme that complies with the controls.

DA 46/2018/JP – 47 Spurway Drive Baulkham Hills

1. The panel raised concerns about the development overshadowing itself.
2. The break- down of built form massing through architectural articulation was commended.
3. The panel queried a number of ADG compliance issues however the applicant was of the view they all required controls have been addressed.
Some concerns were:
 - Equity of access to the communal open space on the rooftop.
 - Some corridors in south eastern portion of development are excessive in length and do not meet the design guidelines 4F in the ADG.
 - Visual privacy between apartments within the development at internal courtyard corners
 - Overshadowing of the ground level communal open space and facilities by the north east development block.
 - Solar access compliance was not clearly demonstrated for this development.
4. The development has increased the setback to the north and decreased the street frontage setback to the street. This inevitably increases overshadowing of Spurway Drive and the residential flat development to the immediate south of the proposal.

RECOMMENDATION

DA 736/2017/JP – 47 Spurway Drive Baulkham Hills

That the panel recommendations be considered and the masterplan variation does not need to return to the panel.

DA 46/2018/JP – 47 Spurway Drive Baulkham Hills

If the DA officer is satisfied that the applicant has addressed the concerns of the panel, the project need not return to the panel for further consideration.

5. Next Design Excellence Panel meeting to be held on March 29th 9am -3pm

6. Close