

**JOINT REGIONAL PLANNING PANEL**  
**(Sydney West)**

JRPP No	2016SYW033
DA Number	1146/2016/JP
Local Government Area	<b>THE HILLS SHIRE COUNCIL</b>
Proposed Development	<b>DEMOLITION OF EXISTING STRUCTURES, EARTHWORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT WITH COMMUNITY TITLE SUBDIVISION.</b>
Street Address	<b>LOT 11 DP 1026150 – 105 BELLA VISTA DRIVE, BELLA VISTA</b>
Applicant	<b>RESTIFA &amp; PARTNERS PTY LTD</b>
Number of Submissions	Ninety-Two (92) submissions and a Petition containing 13 signatories
Regional Development Criteria (Schedule 4A of the Act)	CIV Over \$20 Million – General Development
List of All Relevant s79C(1)(a) Matters	<p>List all of the relevant environmental planning instruments (s79C(1)(a)(i)):</p> <ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• The Hills Local Environmental Plan 2012</li> </ul> <p>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority (s79C(1)(a)(ii)):</p> <ul style="list-style-type: none"> <li>• Draft The Hills Local Environmental Plan 2012</li> </ul> <p>List any relevant development control plan (s79C(1)(a)(iii)):</p> <ul style="list-style-type: none"> <li>• DCP 2012 Part B Section 6 – Business</li> <li>• DCP 2012 Part C Section 1 – Parking</li> <li>• DCP 2012 Part C Section 3 – Landscaping</li> </ul> <p>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F (s79C(1)(a)(iv)):</p> <ul style="list-style-type: none"> <li>• Nil</li> </ul> <p>List any coastal zone management plan: s79C(1)(a)(v)</p> <ul style="list-style-type: none"> <li>• Nil</li> </ul> <p>List any relevant regulations (s79C(1)(a)(iv)):</p> <ul style="list-style-type: none"> <li>• Nil</li> </ul>

Does the DA require Special Infrastructure Contributions conditions (s94EF)?	No
List all documents submitted with this report for the panel's consideration	Submissions and Clause 4.6 Written Request
Recommendation	APPROVAL
Report by	SENIOR TOWN PLANNER  HENRY BURNETT
Report date	17 NOVEMBER 2016

<b>Summary of S.79C matters</b> Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	Yes
<b>Legislative clauses requiring consent authority satisfaction</b> 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 summarised, in the Executive Summary of the assessment report?	Yes
<b>Clause 4.6 Exceptions to development standards</b> 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
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	Yes

## EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and the construction of a mixed used development containing 25 residential units (6 x 1 bedroom and 19 x 2 bedroom), 11 attached dwellings (11 x 3 bedroom), ground floor retail and 2 levels of parking providing 146 car parking spaces. The Capital Investment Value (CIV) of the development is \$21,381,000.

The application is accompanied by a request to vary a development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2012 (LEP). Clause 4.3 of the LEP prescribes a maximum building height of 9 metres for the subject site. The application proposes a maximum building height of 18.5 metres which represents a variation of 105.5%. However this is a technical interpretation of building height which has been calculated from the bottom of the existing basement car park. If calculated from the previous natural ground level the maximum height would be 13 metres.

The building height is considered reasonable in this instance as the proposal is respectful of adjoining development at the boundary interface being primarily three storeys, the technical building height calculation includes basement levels which do not contribute to the perceivable bulk and scale of the development, the proposal will not result in

significant overshadowing or privacy impacts to adjoining development. Further, the proposal is not an overdevelopment of the site with respect to the maximum permitted Gross Floor Area. The LEP Floor Space Ratio Map prescribes a maximum FSR of 1:1 to the subject site. The proposed FSR is 0:82:1.

The proposal has been assessed against the relevant provisions of SEPP 65 – Design Quality of Residential Flat Development. Variations to communal open space, internal building separation and solar access to living rooms and private open space have been identified. The variations are addressed in the body of the report and are considered to be satisfactory.

The proposal has been assessed against the relevant provision of the Hills Development Control Plan 2012 (DCP). Variations to the front building setback have been identified. The variations are addressed in the body of the report and are considered to be satisfactory.

The proposal was exhibited on one occasion and notified on two occasions. In response, 66 submissions and a petition were received during the first exhibition and notification period, 16 submissions were received at the Conciliation Conference and 27 submissions were received during the second notification period. The issues raised in the submissions primarily relate to building height, character, traffic and parking, apartment design, acoustic impacts, the reduction in the retail floor space and construction. The applicant amended the proposal after the conciliation conference in response to the concerns raised. Amendments included a reduction in building height, reduction in density and further articulation of the façade. The matters raised in the submissions have been reviewed and do not warrant refusal of the application.

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

The proposal is considered to provide a respectful interface to adjoining properties, street activation to the local centre, housing choice to the locality and is of a contemporary design that has had sufficient regard to the character of the area.

The proposal is recommended for approval subject to conditions.

## BACKGROUND

## MANDATORY REQUIREMENTS

Owner:	Nicom Holdings Pty Ltd	1.	<u>Section 79C (EP&amp;A Act) – Satisfactory</u>
Zoning:	B1 Neighbourhood Centre	2.	<u>SEPP 65 – Design Quality of Residential Apartment Development – Variation, see report.</u>
Area:	5264.9 m <sup>2</sup>	3.	<u>SEPP (State &amp; Regional Development) 2011 – Satisfactory</u>
Existing Development:	Retail Development	4.	<u>LEP 2012 – Variation, see report.</u>
		5.	<u>The Hills DCP 2012 - Variation, see report.</u>
		6.	<u>Section 94A Contribution - \$235,191.00</u>

<b>SUBMISSIONS</b>		<b>REASONS FOR REFERRAL TO JRPP</b>		
1. Exhibition and Notice Adj Owners:	14 days	1.	Capital Investment Value in excess of \$20 million	
2. Number Advised:	170			
3. Notification of amendments to adj. owners and objectors:	14 days			
4. Number Advised:	264			
5. Submissions Received:	66 submissions and a petition with 13 signatories were received during the first exhibition and notification period. 16 submissions were received at the conciliation conference. 27 submissions were received during the second notification period. In total, 92 individual submissions and a petition were received.			

## **HISTORY**

<b>08/12/1999</b>	Development Application No. D154/98 approved at an Ordinary Meeting of Council for a Residential, Retail and Childcare Development. The development has subsequently been subdivided and the residential component is known as No. 107 Bella Vista Drive, the childcare development as No. 109 Bella Vista Drive and the retail development as No. 105 Bella Vista Drive.
<b>13/11/2015</b>	Pre-lodgement meeting held.
<b>10/02/2016</b>	Subject Development Application lodged.
<b>25/02/2016</b>	The applicant was requested to provide additional information in relation to planning, environmental health, engineering and tree management matters.
<b>13/04/2016</b>	Conciliation Conference held.
<b>05/05/2016</b>	Meeting held with applicant to discuss the outcomes of the Conciliation Conference and outstanding information in relation to planning, environmental health, engineering and tree management matters.
<b>08/07/2016</b>	The applicant submitted amended plans and additional information. The amendments included a reduction in building height, a reduction in retail floor space to 865m <sup>2</sup> , a reduction in the number of apartments from 26 to 25 and a change in unit mix from 4 x 1 bedroom units and 22 x 2 bedroom units, to 6 x 1 bedroom units and 19 x 2 bedroom units.

<b>29/07/2016</b>	The applicant was requested to provide amended subdivision plans incorporating Community Title subdivision for the proposed attached dwellings.
<b>26/08/2016</b>	The applicant submitted amended subdivision plans.
<b>13/09/2016</b>	The applicant was requested to provide additional information in relation to planning and subdivision/engineering matters.
<b>26/09/2016</b>	Additional information submitted including a revised acoustic report and subdivision/engineering details.

## **SITE DESCRIPTION**

The development site is known as Lot 11, DP 1026150, No. 105 Bella Vista Drive, Bella Vista. The allotment has an irregular shape with a frontage of 107 metres to Bella Vista Drive. The site topography falls away from Bella Vista Drive towards Bella Vista Village Green Reserve. The cross-fall from Bella Vista Drive to Bella Vista Green Reserve is approximately 7.5 metres. The cross-fall within the site is approximately 6 metres.

The existing retail development was constructed as part of a development approved by Council in 1999 known as Bella Vista Village Centre which also included a medium density residential development and childcare centre (See Attachment 14 and 15). The existing retail development was approved with a total retail floor area of 1,330m<sup>2</sup> and parking for 90 vehicles split between basement and at-grade parking with a requirement to provide 19 of those spaces for use by the child care centre and community meeting room.

The Bella Vista Village Centre development was subsequently subdivided which resulted in the separate titling of the child care centre and medium density residential development. The childcare centre (and community meeting room) is known as No. 109 Bella Vista Drive and the residential dwellings are known as No. 103 and 107 Bella Vista Drive. The development site is burdened by a right of carriageway facilitating vehicular access to No. 107 and 109 Bella Vista Drive along a shared driveway and a right of footway facilitating pedestrian access between Bella Vista Drive and Bella Vista Village Green Reserve along the southern boundary.

The development site is adjoined by the components of the Bella Vista Village Centre development as described above being a duplex development to the north, childcare and community centre to the east and townhouse development to the south. The site fronts Bella Vista Drive and single detached dwellings to the west.

## **PROPOSAL**

The Development Application is for the demolition of an existing retail development and construction of a mixed use development. The mixed use development comprises attached dwelling, retail and shop top housing components with two levels of basement parking.

The attached dwelling component comprises 11 x 3 bedroom dwellings adjacent to the existing shared driveway. The floor area of each dwelling ranges between 127m<sup>2</sup> and 135m<sup>2</sup> with a median size of 128m<sup>2</sup>. Each dwelling is three storeys with the exception of Dwelling 7 which is two storeys. Private open space is provided to each dwelling through a combination of courtyard areas and balconies. The external materials and finishes for the attached dwellings include spotted gum cladding and louvres, glass balustrades and Hebel panelling painted in a neutral colour palette. The attached dwellings are proposed to be subdivided as part of a Community Title subdivision scheme.

The shop top housing component includes 25 units comprising 6 x 1 bedroom units and 19 x 2 bedroom units. The 1 bedroom units range in size from 51m<sup>2</sup> to 60m<sup>2</sup> with a median size of 58m<sup>2</sup>. The 2 bedroom units range in size from 73m<sup>2</sup> to 99m<sup>2</sup> with a median size of 84m<sup>2</sup>. The apartments are accessed via two lift cores with a range of 6 to 7 units per circulation core. The external materials and finishes include spotted gum cladding and louvres, glass balustrades and Hebel panelling painted in a neutral colour palette. The shop top housing is not proposed to be strata subdivided as part of this application.

The retail component fronts Bella Vista Drive and comprises a single level of retail floor area with 865m<sup>2</sup> of retail floor area split across four tenancies. There is an additional 350m<sup>2</sup> of floor area on the same level including lift lobby, storage and sanitary facility areas. The proposal raises the floor level of the retail area, when compared to the existing shops by approximately 3 metres, to be similar to street level. A forecourt is proposed between the retail façade and the front boundary with an awning provided over a majority of the area. Ramps and stairs are provided from Bella Vista Drive down to the forecourt area, articulated by landscaping, for the level difference of up to 600mm from street level.

Common open space is provided for use by the attached dwellings and apartments within a central courtyard area above the basement level. The common open space area is accessible from the Bella Vista Drive forecourt, internal stairs/lift core and the footway between Bella Vista Drive and Bella Vista Green Reserve. The common open space area includes seating and grass areas articulated by planter boxes with shrub and tree plantings.

Parking is proposed to be provided across two levels of basement parking with parking for 146 vehicles comprising the following:

- 60 spaces for retail and childcare centre use;
- 66 spaces for residential use;
- 15 residential visitor spaces;
- 1 car wash bay; and
- 4 unallocated spaces

The loading dock for commercial and residential waste servicing and commercial deliveries is proposed to be located along the existing shared driveway. Commercial and residential waste contracting will occur separately. Commercial waste collection and commercial deliveries are proposed to be restricted to occur only between 7:00am and 6:30pm.

The proposal was accompanied by landscaping plans detailing a landscaping scheme for the site. Landscaping is proposed along the edge of the proposed building works including along the southern edge of the shared driveway, adjacent to the forecourt, along the north-western edge of the footway and within the common open space area.

The proposal includes works within the existing right of footway including encroachment of the building platform, landscaping and replacement of the entry feature adjacent to Bella Vista Drive. The existing footpath and associated ramps within the easement are not altered by the proposal.

## **CONCILIATION CONFERENCE**

A Conciliation Conference was held on 13 April 2016 due to the number of submissions received to the proposal. Approximately 75 residents were in attendance. Issues discussed at the conference included:

- Building height
- Compatibility of design with locality
- Impact on existing shop tenants
- Traffic, parking and access

- Amenity impacts including privacy, overshadowing and noise.
- Apartment design

The following outcomes were achieved as a result of the Conciliation Conference:

- 3D digital model to be provided and made publically available showing adjoining development, height breach and shadow cast.
- Building height remains a key issue to be further considered by the applicant.
- The acoustic report should be updated to specifically address the concerns raised in the submissions.
- Council's Traffic Engineer will review the issues raised in the submissions.
- Solar access details to be provided to demonstrate compliance with all relevant environmental planning instruments and Development Control Plans.

Subsequent to the Conciliation Conference, amended plans and documentation were lodged which included additional 3D perspectives, additional shadow diagrams and a revised acoustic report. The amendments to the proposal included:

- A reduction in building height of 700mm by reducing floor to ceiling heights;
- A reduction in proposed retail floor area from 900m<sup>2</sup> to 865m<sup>2</sup>;
- A reduction in the number of apartments from 26 to 25 and a change in unit mix from 4 x 1 bedroom units and 22 x 2 bedroom units, to 6 x 1 bedroom units and 19 x 2 bedroom units; and
- Changes to the façade including further articulation and variation in external colours and finishes.

The amendments to the proposal were re-notified for a period of 14 days. In response, 27 submissions were received.

## 1 STRATEGIC PLANNING FRAMEWORK

### 1.1 North West Rail Link and Corridor Strategy

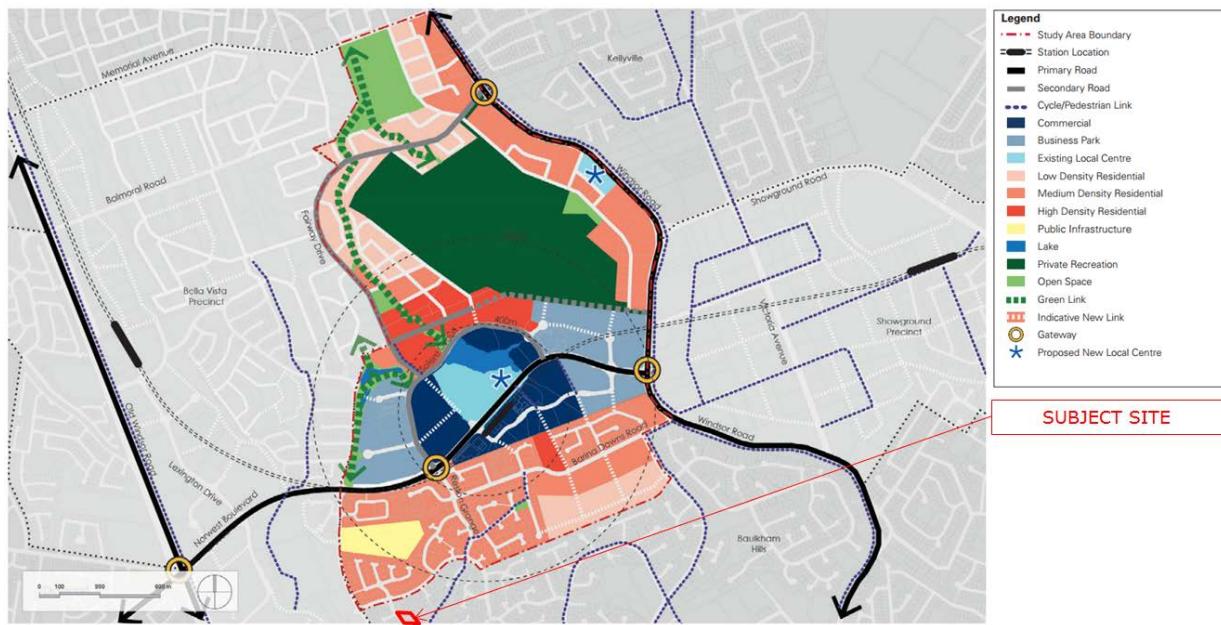
The North West Rail Link (NWRL) has been identified by the NSW Government as a priority transport infrastructure project which will consist of a heavy rail line extending from Epping, through the North West Growth Centre, to Cudgegong Road. The North West Rail Link will support metropolitan planning objectives by putting in place a key transport project which extends the connectivity of the existing rail network and will support future growth within North West Sydney.

To ensure that future development supports the public transport infrastructure, a precinct planning process for the North West Rail Link Corridor has been undertaken by the NSW Department of Planning & Infrastructure.

The North West Rail Link Corridor Strategy provides a vision for how the eight precincts surrounding the proposed railway stations could be developed to integrate with the new rail link.

The Corridor Strategy includes a structure plan for each station precinct to inform appropriate zonings and amendments to built form controls and to guide the assessment of major projects and development applications within the corridor.

The development site is situated 980 metres south of Bella Vista Station and 75 metres from the edge of the Precinct as detailed in Figure 1 below. It is noted that the draft Precinct Plan includes changing the zoning of the southern part of the Precinct from low density residential to medium density residential. If gazetted, the change in zoning will change the future desired character of the locality from predominantly low density residential to a greater proportion of medium density residential development.



**Figure 1: Norwest Station Corridor Strategy (2013)**

## 1.2 Local Strategy

### 1.2.1 Centres Direction

The Centres Direction was adopted by Council on 23 June 2009 with the aim to achieve the creation of vibrant and accessible centres that meet community needs and guide the preparation of The Hills Local Environmental Plan 2012.

The key directions and objectives of the Centres Direction are as follows:

- *Create vibrant centres that meet the needs of the community.*
- *Make centres more attractive places to visit.*
- *Make centres accessible to the community.*
- *Improve the functioning and viability of existing centres.*
- *Plan for centres in new areas.*

The Centres Direction contains a Centres Hierarchy which allows for the identification of each centre in terms of its size, geographic area of influence, role and function in relation to other centres. Bella Vista Centre is listed within the Centres Hierarchy as a neighbourhood centre. An excerpt of the relevant part of the Hierarchy is provided in Table 1 below.

Centre Type	Typology	LEP Objectives/Zone Criteria
Neighbourhood Centre	<p><i>Local bus stop</i></p> <p><i>Low scale strip retailing. Retail meets daily needs on a small scale. Medium to large supermarkets are not appropriate.</i></p> <p><i>Low density residential development.</i></p> <p><i>Services include post box, public phone, public open space.</i></p> <p><i>Child care centre, primary school,</i></p>	<p><i>Permit neighbourhood shops and shop top housing. Supporting uses in adjoining zones might include schools, child care centres, health care premises and community facilities.</i></p> <p><i>Height and FSR to be appropriate to the surround residential character.</i></p>

	<i>general practitioner, community centre/facility within vicinity of centre.</i>	
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**Table 1: Excerpt from Centres Hierarchy**

The proposal seeks to demolish the existing shopping centre and construct a mixed used development including a retail component. The existing shops have a gross leasable floor area of 1,330m<sup>2</sup> and the proposed retail component has a gross leasable floor area of 865m<sup>2</sup>.

The proposal provides four tenancies. It is noted that the proposal does not include the occupation and fitout of any tenancy. Separate applications would need to be made for individual uses and any further division of tenancies. The four larger tenancies provide appropriate flexibility in this regard.

The proposal was accompanied by an Economic Impact Assessment prepared by Location IQ. The report examines whether the reduction in leasable floor area is justifiable with reference to the geographic context of the site and other neighbourhood centres within The Hills Shire Council. The report includes the following findings:

- *The Bella Vista Village Centre is one of the largest Neighbourhood Centres at 1,304m<sup>2</sup> and is too large given the competitive environment within which the centre sits with larger Coles and Woolworths anchored shopping centres at Norwest and Circa retail in close proximity to the site.*
- *The redeveloped centre at approximately 900m<sup>2</sup> would have little to no adverse impact on competing centres while still able to appropriately fulfil the needs of the community within the retail hierarchy.*
- *Smaller sized tenancies with exposure to Bella Vista Drive would have greater efficiency and ability to trade at higher levels than the existing centre, supporting a similar number of stores from the smaller amount of floor space.*

The proposed redevelopment of the Bella Vista neighbourhood centre is satisfactory with regards to the typology of retailing envisaged within Centres Direction. The proposal provides low scale strip retailing to the majority of the sites frontage to Bella Vista Drive. The change in levels proposed by the development will also result in a higher level of exposure to Bella Vista Drive which in effect provides activation of the streetscape.

The larger size of the existing Bella Vista Village Centre in relation to other neighbourhood centres is acknowledged as detailed within Table 3.2 of the Economic Impact Assessment. The proposal provides a floor area that is commensurate with other neighbourhood centres whilst still facilitating the provision of the desired typology being low scale strip retailing.

The proximity of the site to Norwest Marketown and Circa Precinct negatively impacts upon the viability of the centre to maintain a supermarket. Notwithstanding, the proposed floor layout does facilitate the potential for a small-sized supermarket which is consistent with the Centres Direction typology for Neighbourhood Centres.

The proposal is considered satisfactory with respect to the Centres Direction.

### **1.2.2 Residential Direction**

The Residential Direction was adopted by Council on 10 June 2008 aims to give Council, the community and developers a clear strategy for the future planning and management of residential development and growth to 2031.

The four key directions of the Residential Direction are as follows:

- *Accommodate population growth.*
- *Respond to changing housing needs.*
- *Provide a sustainable living environment.*
- *Facilitate quality housing outcomes.*

The Metropolitan Strategy includes a target to locate 80% of new dwellings within different centre types including small Neighbourhood Centres. Providing capacity for new dwellings within centres is consistent with the principle of providing proximity to shops, services and public transport.

The development will contribute to a diversification of housing typology and size within the locality which will assist in changing housing needs and providing more affordable housing options when compared to the dominant housing type within Bella Vista being single detached dwellings.

The proposal is considered satisfactory with respect to the Residential Direction.

## **2 STATUTORY MATTERS FOR CONSIDERATION**

### **2.1 SEPP (State and Regional Development) 2011**

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

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

The proposed development has a capital investment value of \$21,381,000.00 thereby requiring referral to, and determination by, a Joint Regional Planning Panel.

In accordance with this requirement the application was referred to, and listed with, the JRPP for determination.

### **2.2 SEPP 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 historical investigation into previous land uses and potential sources of contamination has been carried out. The site was part of a large parcel of undeveloped vacant land which

may have been used as an orchard prior to 1950. The site then remained vacant until it was developed in its current form.

The Development Application was accompanied by a Preliminary Site Investigation prepared by Douglas Partners Pty Ltd and dated December 2015. The report recommends that further testing and remediation be undertaken concurrently in the demolition/excavation phase.

Council's Senior Environmental Health Officer has reviewed the proposal and concurs with the findings and recommendations of the Preliminary Site Investigation. Accordingly, appropriate conditions of consent have been recommended to ensure that the recommendations of the report are implemented during the course of construction (See condition nos. 21 and 74).

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.

### **2.3 SEPP (BASIX) 2004**

State Environmental Planning Policy (BASIX) 2004 applies to the proposed development and aims to reduce the consumption of mains-supplied water, reduce emissions of greenhouse gases and improve the thermal performance of the building.

A BASIX assessment has been undertaken and indicates that the development will achieve the required targets for water reduction, energy reduction and measures for thermal performance. The commitments as detailed in the BASIX Certificate are recommended as a condition of consent (See condition 68).

### **2.4 SEPP 65 - Design Quality of Residential Apartment Development**

SEPP 65 – Design Quality of Residential Apartment Development applies to this development as far as it is specified in Clause 4 – Application of Policy:

#### Clause 4 - Application of Policy

*(1) This Policy applies to development for the purpose of a residential flat building, **shop top housing** or mixed use development with a residential accommodation component if:*

*(a) the development consists of any of the following:*  
*(i) the erection of a new building,*  
*(ii) the substantial redevelopment or the substantial refurbishment of an existing building,*  
*(iii) the conversion of an existing building, and*

*(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*

*(c) the building concerned contains at least 4 or more dwellings.*

*(2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.*

*(3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.*

(4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.

The proposal is a mixed use development with a shop top housing component. The proposal includes two storeys of apartments above a single storey of retail floor area which meets the criteria specified under Clause 4(1)(b) above.

Clause 4(3) states that SEPP 65 does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia. The attached dwellings are classified as class 1 dwellings under the BCA as follows:

*One of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, townhouse or villa unit.*

Accordingly the application of SEPP 65 relates to the development with the exception of the attached dwellings.

Clause 28(2) of SEPP 65 states the following:

*In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

The proposal has been assessed against the Apartment Design Guide and the design quality principles as detailed below. A design review panel is not required in this instance.

#### 2.4.1 Design Criteria

The relevant provisions of the Apartment Design Code are addressed below:

Clause	Design Criteria	Compliance
<b>Siting</b>		
Communal open space	25% of the site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	Variation. (Refer Section 2.4.1(a) below) 1,166m <sup>2</sup> (22%) proposed.
Deep Soil Zone	7% of site area. On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m <sup>2</sup> and 15% for sites greater than 1500m <sup>2</sup> .	Complies. 7.57% of the site area has been dedicated to deep soil zone. The proposal increases the amount of landscaping from the existing situation.

Separation	<p>For habitable rooms, 6m for 4 storeys, 9m for 5-8 storeys and 12m for 9+ storeys.</p>	<p>Complies.</p> <p>6.7 metres to northern side boundary.</p> <p>5 metres to southern side boundary however there are no openings to habitable rooms on the adjoining property (min. 3 metres specified in ADG).</p>
	<p>Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p>	<p>Variation. (Refer Section 2.4.1(b) below)</p> <p>Minimum 9 metres provided between habitable rooms of units and attached dwellings where 12 metres is required.</p>
Visual privacy	<p>Visual privacy is to be provided through use of setbacks, window placements, screening and similar.</p>	<p>Complies.</p> <p>The visual privacy of the development has been duly considered with the placement of windows and balconies. Separation distances between habitable / non habitable spaces are considered to be adequate. Screening devices set at oblique angles have been incorporated where the potential for overlooking is evident. The proposed development is considered to afford a reasonable degree of privacy for future residents and adjoining properties.</p>
Carparking	<p>Carparking to be provided based on proximity to public transport in metropolitan Sydney. For sites within 800m of a railway station or light rail stop, the parking is required to be in accordance</p>	<p>N/A – Complies</p>

	<p>with the RMS Guide to Traffic Generating Development which is:</p> <p>Metropolitan Sub-Regional Centres:</p> <p>0.6 spaces per 1 bedroom unit. 0.9 spaces per 2 bedroom unit. 1.40 spaces per 3 bedroom unit. 1 space per 5 units (visitor parking).</p>	
<b>Designing the Building</b>		
Solar and daylight access	<p>Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.</p>	<p>Variation. (Refer Section 2.4.1(c) below)</p> <p>68% of apartments.</p>
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>Complies.</p> <p>All apartments receive some direct sunlight between 9am and 3pm at mid-winter.</p>
Natural ventilation	<p>At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>Complies.</p> <p>The proposed development will achieve natural ventilation for 84% of units.</p>
Ceiling heights	<p>For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where its area does not exceed 50% of the apartment area. For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope. If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.</p>	<p>Complies.</p> <p>Floor to ceiling height approximately 2.7 metres for all apartments.</p> <p>Ground floor: 3.3 metres</p>
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m<sup>2</sup> 1 bedroom – 50m<sup>2</sup> 2 bedroom – 70m<sup>2</sup> 3 bedroom – 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms</p>	<p>Complies.</p> <p>One Bedroom: 51m<sup>2</sup> to 66m<sup>2</sup></p> <p>Two Bedroom: 73m<sup>2</sup> to 99m<sup>2</sup></p>

	<p>increase the minimum internal areas by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	
Apartment layout	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	<p>Complies.</p> <p>The maximum habitable room depth is 8 metres from a window.</p>
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m<sup>2</sup> with no minimum depth</p> <p>1 bedroom – 8m<sup>2</sup> with a minimum depth of 2m</p> <p>2 bedroom – 10m<sup>2</sup> with a minimum depth of 2m</p> <p>3 bedroom – 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	Complies.
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m<sup>3</sup></p> <p>1 bedroom – 6m<sup>3</sup></p> <p>2 bedroom – 8m<sup>3</sup></p> <p>3+ bedrooms – 10m<sup>3</sup></p> <p>At least 50% of the required storage is to be located within the apartment.</p>	Complies.
Apartment mix	<p>A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.</p>	<p>Satisfactory.</p> <p>The development provides in total 6 x 1 bedroom units, 19 x 2 bedroom units and 11 x 3 bedroom attached dwellings.</p>

The proposal complies with the relevant design criteria within the Apartment Design Guide with the exception of communal open space, internal building separation and solar access to living rooms and private open space. The variations are addressed as follows:

**a. Communal Open Space**

The applicant has submitted the following justification for the variation:

*The minor variation is attributed to the inability for inclusion of the forecourt areas of the development which serve and provide amenity for the retail components of the development. The non-inclusion is despite the fact that such areas are available for, and anticipated to be used by, residents of the site, by virtue of the high amenity afforded by this area and close proximity*

*With regard to the design guidelines within Part 3D, the Apartment Design Guide provides concession to compliance with this requirement where developments demonstrate "good proximity to public open space and facilities". On this basis the communal open space provided is considered acceptable, in context of the significant additional forecourt areas available for use by both residents and retail customers, other areas of communal open space provide on site as well as the close proximity of Bella Vista Green Reserve which has both playground facilities and large expanses of grass.*

*The walk form the furthest residential unit is a maximum 100m, with connectivity between these spaces being maximised to promote an efficient development with high amenity for both residents and visitors alike. On this basis the proposed development is considered acceptable with regard to Part 3D on planning merit.*

**Comment:**

The Apartment Design Guide requires 25% of the site to be provided as communal open space. The proposal provides 1,166m<sup>2</sup> (22%).

The primary communal open space area provided by the development is approximately 7 metres wide and 56 metres in length at the podium level above the basement car park. The area exceeds the minimum width of 3 metres specified in the Apartment Design Guide. The space incorporates satisfactory design elements to promote the use of the area including bench seating, turfed and tiled areas. The space is well articulated by landscaping beds that vary in depth to break-up the communal open space providing separate areas for use by residents.

The desired typology of neighbourhood centres includes proximity to public open space. The development has direct access to Bella Vista Green Reserve via the public footway wholly contained on the development site. The communal open space has a direct connection via stairs and a gate leading to the public footway. Residents of the development will therefore have access to Bella Vista Green Reserve as an extension of the private communal open space.

The proposed communal open space area is considered satisfactory in this instance as it provides an area for passive recreation whilst providing good access to Bella Vista Green Reserve which will allow for more active recreation.

**b. Internal Building Separation**

The Apartment Design Guide requires a combined building separation of 12 metres between the habitable rooms of different buildings on the same site. The proposal provides a building separation of between 9 and 10 metres between the bedrooms of the attached dwellings and the units.

The design was amended to incorporate privacy screens to all openings on the south-facing façade of the attached dwellings (See Attachment 10). The proposed measures provide a satisfactory level of privacy. The privacy screens do not adversely impact the amenity of each attached dwelling as the openings are south facing and not a source of direct solar access. Each attached dwelling has a northern orientation which will provide satisfactory levels of direct solar access to primary living areas and private open space.

Further the common open space area is suitably landscaped so as to diffuse the sight-lines between the buildings.

The on-site building separation is considered satisfactory in this instance.

### **c. Solar Access to Living Rooms and Private Open Space**

The Apartment Design Guide requires that a minimum 70% of apartments are to receive 2 hours solar access to living rooms and private open space between 9am and 3pm at mid-winter. The proposal provides the required direct solar access to 68% of apartments being a variation of 2% (or 0.5 apartments).

Three of the units which do not receive the required solar access are provided with skylights. Design guidance within Objective 4A-2 of the Apartment Design Guide states the following:

*Courtyards, skylights and high level windows (with sills of 1500mm or greater) are used only as a secondary light source in habitable rooms.*

The proposed development will achieve 2 hours solar access during 9am and 3pm at mid-winter for 80% of units when including these units.

Given the minor departure from the 70% minimum (0.5 of an apartment) and the SEPP allowing skylights as a light source, albeit secondary, a variation is considered satisfactory in this instance. .

#### **2.4.2 Design Quality Principles**

The proposal was accompanied by the required statement from a registered architect, being Anthony Merlin, of i2C Design and Management Pty Ltd, stating that he is qualified designer within the meaning of the Environmental Planning and Assessment Regulations and that the design is satisfactory with regard the design quality principles and the objectives of Part 3 and 4 of the Apartment Design Guide.

The consent authority is also required to evaluate the design against the nine design quality principles. An assessment against each of the principles (italicised) is provided as follows:

##### ***Principle 1: Context and neighbourhood character***

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

##### **Comment:**

Whilst distinct, the proposed design responds to its context. The design has had satisfactory regard to the area and sought to provide an adequate relationship to the existing natural and built features of the area at the boundary interfaces.

The proposed development type is unique and as such providing a design that is the same as the low density single detached residential form is not feasible. Notwithstanding, the design has sought to be compatible with the existing locality. The proposal is a maximum of three storeys on the boundary interfaces which appropriately interfaces with the predominantly two storey multi dwelling housing developments to the north and south of

the subject site. The interface is considered satisfactory. It is also noted that there are examples of three storey single detached dwellings within the wider locality of Bella Vista.

The materials and finishes, including external wood grain, and landscaping, soften the concrete form and changes in roof form are used to articulate the otherwise flat roof design.

The proposal has incorporated sufficient design elements to make an alternative built-form fit within its context.

### ***Principle 2: Built form and scale***

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

#### **Comment:**

The design of the building elements are of a contemporary style with a number of elements being used to provide a suitable architectural character. The ultimate form of development is achieved in the articulation of the elevations, the selection of colours and materials and good quality landscaped setting. The built form defines the active street frontage area as well as promoting use of, and maintaining access to, public open space.

The Apartment Design Guide provides the following objectives and design guidance for mixed use development in relation to built-form.

#### Objective 4S-1

*Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.*

#### Design Guidance

*Mixed use developments positively contribute to the public domain. Design solutions may include:*

- *Development addresses the street*
- *Active frontages are provided*
- *Avoiding blank walls at ground level*

The proposed design addresses the street, provides an active frontage to Bella Vista Drive and avoids blank walls at ground level where fronting the street. The proposed design has had satisfactory regard to the built-form envisaged for mixed use development as detailed within the Apartment Design Guide.

### ***Principle 3: Density***

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

**Comment:**

The proposed development for 36 units is considered to be appropriate for the site and locality and within the Floor Space Ratio limit for the site. The LEP applies an FSR limit of 1:1 to the site. The proposed FSR is 0.82:1.

**Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes.*

*Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.*

**Comment:**

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

The energy rating of the residential units has been assessed and the accompanying BASIX Certificate will be recommended as a condition of consent to ensure the commitments are fulfilled.

**Principle 5: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.*

*Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*

**Comment:**

The landscape plan indicates that all open spaces will be appropriately landscaped with endemic trees and shrubs to provide a high quality finish. The proposed landscaping integrates with the overall appearance of the development and positively contributes to private, communal and public areas.

**Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

**Comment:**

The building design has been developed to provide for the amenity of the occupants as well as neighbours. The building design incorporates satisfactory access and circulation, apartment layouts, floor areas, ceiling heights, private open space, common open space, the required number of adaptable units and site facilities for the enjoyment of residents.

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.

The proposed design clearly separates the public and private domains through design measures, building layout and landscaping providing a high level of amenity to both areas.

**Principle 7: Safety**

*Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

**Comment:**

The development has been designed with safety and security concerns in mind having regard to the principles of Crime Prevention through Environmental Design. The common open spaces, balconies and windows provide opportunities for 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 open spaces are clearly defined and screened.

The NSW Police have reviewed the Development Application and outlined a number of CPTED recommendations. Compliance with NSW Police recommendations is recommended as a condition of consent (See condition 6).

**Principle 8: Housing diversity and social interaction**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.*

*Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.*

**Comment:**

The proposal provides a mix of apartment sizes across 6 x 1 bedroom units and 19 x 2 bedroom units. The one bedroom units range in size from 51m<sup>2</sup> to 60m<sup>2</sup> and the 2 bedroom units range in size from 73m<sup>2</sup> to 99m<sup>2</sup>. The range in unit sizes will provide housing choice for different demographics, living needs and household budgets.

The apartment sizes comply with, or are greater than, the minimum apartment sizes specified in the design criteria contained within the Apartment Design Guide.

The development as a whole also provides for 11 x 3 bedroom attached dwellings. The provision of the attached dwellings offset there being no 3 bedroom units.

The communal space provides segmented areas to allow different people to use the same space providing opportunities for social interaction among residents.

The residential component of the shop top housing development will add to the amount of social interaction around the neighbourhood centre and will increase the vibrancy and viability of retail/business premises being established for the locality within the centre.

#### **Principle 9: Aesthetics**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

*The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

#### **Comment:**

The architectural treatment of the building incorporates indentations and projections in the exterior walls with balcony projections to articulate the facades. The roof is flat to minimise building height.

The bulk of the overall building and height is reduced by the articulation of the facades, creating smaller segments in order to minimise the overall bulk and scale of the development.

The design utilises a range of materials, colours and textures which provides a modern appearance whilst responding to and referencing the local context.

## **2.5 The Hills Local Environmental Plan 2012**

### **2.5.1 Permissibility**

The site is zoned B1 Neighbourhood Centre under The Hills Local Environmental Plan 2012. The proposal is defined as shop top housing and attached dwellings.

Shop top housing is defined as follows:

***shop top housing*** means one or more dwellings located above ground floor retail premises or business premises.

Development for the purpose of shop top housing is permissible within the B1 Neighbourhood Centre zone. The report for the sake of brevity refers to the proposed floor area below the shop top housing as retail floor area. However, the permissible forms of land use under shop top housing are broader as detailed here for absolute clarity. The apartments are situated above floor area designated for use as permissible forms of retail or business premises and as such satisfies the definition. Ground floor retail or business premises will be subject to further consideration under separate Development Applications and will need to be commensurate with the definition of shop top housing.

The proposal incorporates an attached dwelling component which is defined as follows:

***attached dwelling*** means a building containing 3 or more dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land, and
- (c) none of the dwellings is located above any part of another dwelling.

The proposal was amended to include a community title subdivision which would result in each of the 11 attached dwellings being sited on their own lot of land.

Accordingly, the proposal is considered permissible with consent under LEP 2012.

### **2.5.2 Floor Space Ratio**

The LEP Floor Space Ratio Map is shown in Attachment 5 and prescribes a maximum FSR of 1:1 to the subject site. The proposed FSR is 0:82:1 which is within the maximum FSR and therefore satisfactory.

### **2.5.3 Minimum Lot Size**

The LEP Minimum Lot Size Map is shown in Attachment 6 and prescribes a minimum lot size of 600m<sup>2</sup> to the subject site. In accordance with Clause 4.1 and 4.1AA of the LEP, the minimum lot size does not apply to community title subdivision within the B1 Neighbourhood Centre Zone. Accordingly, the community title lots created as a result of this development, though less than 600m<sup>2</sup>, are satisfactory with respect to the LEP.

### **2.5.4 Building Height**

The LEP Building Height Map is shown in Attachment 4 and prescribes a maximum building height of 9 metres to the subject site.

LEP defines building height as follows:

***building height (or height of building)*** means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The maximum building height in this instance is the vertical distance from the existing basement car park to the plant and lift overrun.

The maximum building height proposed is 18.5 metres where the LEP development standard is a maximum of 9 metres.

The proposal was accompanied by a written request to vary the maximum permissible building height under Clause 4.6 of the LEP. The merits of the request are addressed in Section 2.5.5 of this report.

### **2.5.5 Clause 4.6 - Exceptions to Development Standards**

The applicant has provided the following written request seeking a Clause 4.6 variation to the development standard for building height. A summary of the applicant's justification is provided as follows:

- *The building height is measured from the existing basement level. However, Bella Vista Village Centre when constructed included excavation for the basement carpark. Accordingly, the historic natural ground level is higher than existing. When taking in to account the historic natural ground level the maximum height proposed is 13 metres a difference of 3.9 metres from the technical calculation.*

- *The basement car park has a height of 6.4 metres which is entirely contained below street level and does not contribute to the perceived physical bulk of the development.*
- *The sloping topography of the site and the existing excavation for the basement garage result in unique conditions for the site that necessitate a stepped development.*
- *The proposal was amended to reduce the floor to ceiling height of the ground floor by 300mm and the floor to ceiling heights of each level of shop top housing by 200mm being a total reduction of 700mm. The floor to ceiling heights are the minimum permissible under the Building Code of Australia.*
- *The overshadowing does not adversely impact adjoining properties. No. 103 Bella Vista Drive is most impacted by overshadowing however still receives DCP compliant solar access between 9:00am and 1:00pm at mid-winter.*
- *The height breaches have been appropriately setback to minimise the visual impact on adjoining properties. The proposal has been designed so that the height breach is generally contained to the centre of the site.*
- *Privacy has been considered with no primary living areas on key interfaces, landscaping and an appropriate consideration of the design of adjoining residential development.*
- *Height perspectives have been provided using the historic natural ground level. When measured in this way, the majority of the development is compliant and the impact of the physical bulk of the development above 9 metres is minimal.*
- *A site zoned B1 Neighbourhood Centre is expected to provide commercial floor space and residential accommodation at a higher density than the surrounding area to supported the expected intensity of activity within a Neighbourhood Centre.*

**Comment:**

The objectives of Clause 4.3 Height of Buildings of the LEP are:

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

The objectives of Clause 4.6 of the LEP are:

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

Clause 4.6(3) of the LEP 2012 states:

*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:*

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) of LEP 2012 states:

*Development consent must not be granted for development that contravenes a development standard unless:*

*(a) The consent authority is satisfied that:*

*(i) The applicant has adequately addressed the matters required to be demonstrated by subclause (3)*

Comment: The applicant has adequately addressed the matters required to be demonstrated by subclause (3).

*(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 development is proposed to be carried out, and*

Comment:

The proposed development comprises a building height of 18.5 metres which exceeds the LEP development standard of 9 metres by 105.55%.

LEP defines building height as follows:

***building height (or height of building) means:***

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

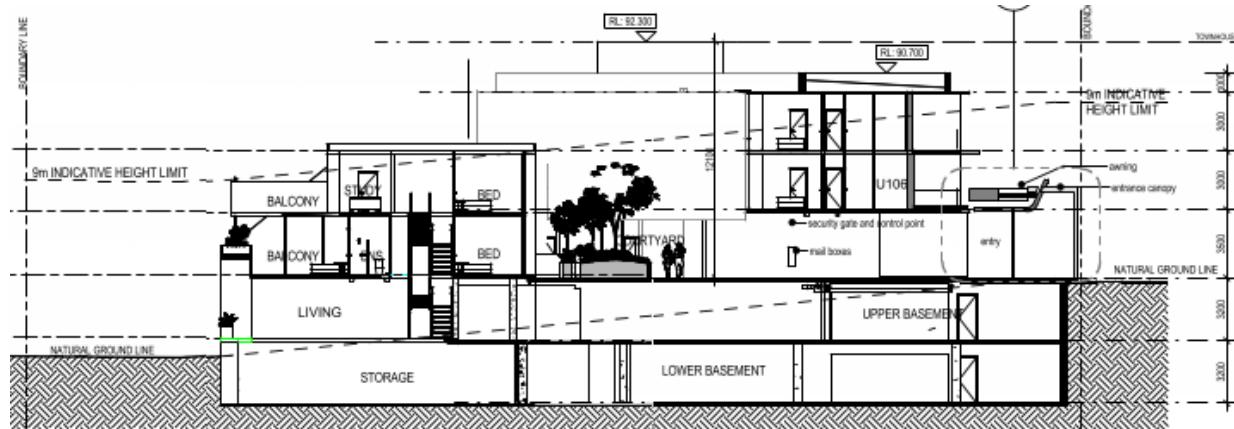
*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The building height has been measured from the existing basement level to the top of the plant/lift overrun. As detailed by the applicant the existing basement level is the result of historic excavation when the existing Bella Vista Village Centre development was constructed. Prior to the excavation the natural ground level was an even slope falling from Bella Vista Drive to Bella Vista Green Reserve. This is shown within the Section drawings provided for the original application shown in Attachment 15 of this report which show a cross-fall of 6 metres along a gradual slope which is equivalent to the existing benched cross-fall.

When taking in to account the historic natural ground level the maximum building height measurement is reduced by approximately 4 metres. It is considered unreasonable to include an existing basement car parking level as contributing to building height from points where it would not be perceived as contributing to the physical bulk of the building. In this instance the basement car park does not readily contribute to bulk and scale when viewed from Bella Vista Drive.

The proposed development includes two plant/lift overruns. The plant/lift overruns have a height of 2.6 metres. The plant/lift overruns are set back 17-18 metres from Bella Vista Drive. The northern most overrun is located 17.7 metres from the northern property boundary and No. 107 Bella Vista Drive. The southern-most overrun is 12 metres from the southern boundary and 16.5 metres from the nearest adjoining residential receiver. The

setback of the overruns does reduce their perceivable contribution to building height. Further, the overrun areas as detailed on the plans have a total area of 120m<sup>2</sup> which is approximately 2% of the site area. Further, the recommended conditions of consent include screening of the plant areas with timber louvres or similar which will reduce the aesthetic impact of the overrun as it will provide a higher level of integration in to the overall building design.



**Figure 2: Proposed Section B-B**

The proposal was accompanied by shadow diagrams which demonstrate the extent of shadow impact as a result of the proposal (See Attachment 13). The additional building height is not considered to result in any adverse overshadowing impact on adjoining properties. The northern adjoining townhouses are not impacted by overshadowing from the proposal between 9:00am and 3:00pm mid-winter. The southern adjoining townhouses receive satisfactory solar access between 9:00am and 1:00pm mid-winter. It is noted that the portion of the proposed shop top housing development in excess of 9 metres is set back a minimum of 8.59 metres from the southern boundary. This was achieved through a design amendment to increase the habitable room set back of the upper floor of the shop top housing development.

The applicant made amendments to the plans to reduce the height of the building when viewed from Bella Vista Drive being a total reduction of 700mm by providing minimum floor to ceiling heights. The amendments limit the extent of the building above the historic natural ground level when viewed from Bella Vista Drive is limited to the parapet and overrun as shown in Attachment 11 and 12.

The proposed development is considered respectful of adjoining development at the interfaces as follows:

- The proposed attached dwellings are three storeys in height and interface townhouses to the north which are two storeys. The attached dwellings will not overshadow the northern adjoining townhouses between 9:00am and 3:00pm mid-winter and are primarily below the 9 metre height limit as detailed within Figure 2.
- The proposed shop top housing component also interfaces with the townhouses to the north. The shop top housing component is primarily three storeys from the shared driveway though it is noted additional height is required for the provision of a loading dock. Design amendments were made to improve the interface including removing line of sight windows/glazing to the retail component, setting back living areas and introducing planter boxes to soften the interface.
- The shop top housing component is three storeys at the interface with Bella Vista Drive and the western adjoining single detached dwellings. As discussed above the portion of the building above the pre-excavation/historic 9 metre height line is limited to the parapet and overrun when viewed from Bella Vista Drive as a result of amendments to

floor to ceiling heights made by the applicant. A single storey transition is considered reasonable to the western adjoining development.

- The proposed shop top housing component and attached dwellings interface with the southern adjoining townhouse development separated by the public footway on the subject site. The proposal is perceived as three storeys along the interface. As discussed above, the additional building height will not result in any significant overshadowing and building height in excess of 9 metres is set back a minimum of 8.59 metres from the southern boundary.

It is noted the existing lower basement level will be reduced by approximately 0.7 metres (RL 94.5 to RL93.8). This further demonstrates that the proposal has sought to minimise the bulk and scale where possible.

The proposal is not an overdevelopment of the site with respect to the maximum permitted Gross Floor Area. The LEP Floor Space Ratio Map prescribes a maximum FSR of 1:1 to the subject site. The proposed FSR is 0:82:1 which is within the maximum FSR.

The LEP objectives for building height are as follows:

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

The applicant has provided sufficient justification to demonstrate that the proposal is satisfactory with respect to the above objectives. The proposal provides a compatible step in scale from the immediately adjacent R3 Medium Density Residential zoned areas and the proposal has minimised the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open spaces through design measures.

The objectives of the B1 Neighbourhood Centre zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure the scale and type of development is compatible with the character and amenity of a neighbourhood centre.*
- *To allow for residential development that contributes to the economic and social vitality of the neighbourhood centre and does not detract from the primary objective of the zone.*
- *To promote commercial activities in locations that encourage walking and cycling to and from the neighbourhood centre.*

The proposal maintains a small-scale retail and business strip and a residential scale that is a reasonable transition in scale that remains compatible with the character and amenity of a neighbourhood centre. As discussed in Section 1.2 of this report the proposal does not unreasonably detract from the primary objective of the zone.

The applicant has adequately demonstrated that the proposed development is in the public interest and is consistent with the objectives of Clause 4.3 'Building Height and the B1 Neighbourhood Zone. In this regard, the variation to building height will not create a building of excessive height, bulk or scale nor will it cause undue impacts upon the amenity of adjoining residential properties.

A variation to the building height in this instance is considered to be satisfactory given that the application of the development standard in this instance is considered to be both unreasonable and unnecessary. In this regard, the variation can be supported.

## **2.6 Draft Amendment to LEP 2012 for Shop Top Housing**

Council resolved to prepare a planning proposal to amend The Hills Local Environmental Plan 2012. The planning proposal was exhibited between 28 June 2016 and 29 July 2016. The planning proposal was re-exhibited until the 11 November 2016. The matter will be reported to Council in the near future and if adopted forwarded to the Department of Planning for finalisation.

The subject application was lodged on 10 February 2016 prior to the exhibition of the proposed amendment. As a result, the amendment was not considered within the original documentation submitted by the applicant.

Section 79C(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979 states:

*In determining a development application, a consent authority is to take into consideration the provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority.*

The key changes within the amendment include a limitation on the maximum height and residential floor space within shop top housing and mixed use developments in neighbourhood zones.

A summary of the proposed changes to the LEP for the B1 Neighbourhood Centre zone is provided as follows:

- A maximum building height of 7 metres for shop top housing developments; and
- A requirement that at least 50% of the total floor area within new shop top housing developments must comprise non-residential uses.

Given the lodgement date and the current status of the planning proposal it is not considered that the draft should be given determinative weight.

## **2.7 The Hills Development Control Plan 2012**

The proposal has been assessed against the relevant parts of The Hills Development Control Plan 2012 including the following:

- Part B Section 6 – Business
- Part C Section 1 – Parking
- Part C Section 3 – Landscaping

The shop top housing component has been assessed against DCP Part B Section 6 – Business and the Apartment Design Guide. DCP Part B Section 5 – Residential Flat Buildings does not apply to the site as residential flat buildings are not permitted in the B1 Neighbourhood Centre zone. Notwithstanding, the local apartment size provisions contained within DCP Part B Section 5 – Residential Flat Buildings have been considered on merit.

There is no specific development control plan for the attached dwelling component. A merit assessment has been undertaken against the relevant parts of the attached dwelling controls contained within DCP Part D Section 5 – Kellyville/Rouse Hill Release Area so far as they are relevant to a neighbourhood centre context.

### 2.7.1 Part B Section 6 – Business

The proposal has been assessed against the relevant controls of Part B Section 6 – Business as detailed in the table of compliance below:

CLAUSE	DCP STANDARD	REQUIRED	PROPOSED	COMPLIANCE
2.1	Precinct Plans	Refer to Appendix A – Precinct Plan Maps Sheets 1 – 15.	There is no precinct plan applicable to the subject site.	N/A
2.3	Development Sites	The minimum site frontage requirement is 18 metres.	Existing: 107 metres	Complies.
		6m setback if opposite or adjacent to Residential. This area can only be used for landscaping and screening purposes.	5.53 metres from the front boundary to the retail building line;  6.7 metres to northern side boundary; and  5 metres to southern side boundary.	Variation. (Refer Section 2.7.1(a) below)
2.7	Building Design & Materials	All external walls of buildings shall be constructed of brick, glass, pre-cast exposed aggregate panels or similar material.  Balconies/terraced areas adjacent to residential zones shall be suitably screened to prevent overlooking and privacy impacts on adjoining properties.  All roof ventilators, exhaust towers and plant equipment is not to be visible from the public domain or residential area.  Materials have low reflectivity, promote internal air quality, have a lower environmental cost, discourage graffiti and provide a safe environment.	Materials proposed of the envisaged quality and finish.  Retail interface wholly contained to Bella Vista Drive and adequately screened by landscaping and retaining walls.  Acoustic screening forms recommended conditions of consent (See condition 33).  The materials are consistent with the criteria of the DCP.	Complies.  Complies.  Complies.  Complies.

2.9	Hours of Operation	<p>Assessed on merit but must take into account the operation of loading docks, waste collection services and the use of cleaning/maintenance vehicles, out of hours.</p> <p>Hours of operation of loading dock subject to recommended conditions of consent from Council's Environmental Health Section (See condition 104).</p> <p>Hours of operation for retail floor area to be considered under separate applications.</p>		Complies.
2.10	Energy Efficiency	<p>The design of all buildings shall demonstrate passive solar design principles: -</p> <ul style="list-style-type: none"> <li>• Window placement;</li> <li>• Building orientation;</li> <li>• Shading;</li> <li>• Insulation;</li> <li>• Thermal mass;</li> <li>• Ventilation; and</li> <li>• Incorporation of suitable landscaping.</li> </ul> <p>Min 4 star greenhouse rating</p>	<p>The proposal was accompanied by a BASIX Certificate and Section J Report that demonstrates the development as a whole meets legislated sustainability targets.</p>	Complies.
2.12	Erosion and Sediment Control	Erosion and Sedimentation Control Plans / measures to be considered.	Sufficient control measures proposed and contained within the recommended conditions (see condition 59).	Complies.
2.13	Fencing	<p>No fencing other than low ornamental type may be erected.</p> <p>Fencing along rear boundaries adjacent to drainage or open space shall be integrated with the landscaping.</p>	<p>Fencing proposed to attached dwellings is low and ornamental.</p> <p>Fencing adjacent to the public footway is masonry and appropriately softened by, and integrated in to the, landscaping.</p>	Complies.

	Landscaping and Tree Preservation	Landscaping is to harmonise with building designs and consist of trees, shrubs, ground covers and grass (Kikuyu is prohibited in landscaped or lawn area).	Landscaping harmonises with the building design and incorporates a range of trees, shrubs and ground covers including the inclusion of native species.	Complies.
2.15	Vehicular Access	<p>Entry and exit in a forward direction</p> <p>Design to comply with Council's Work Specifications, BHDCP Part C, Section 1 - Parking and the Australian Standards.</p> <p>Driveways from public roads.</p>	<p>Provided.</p> <p>Subject to conditions from Council's Engineering Section.</p> <p>Existing approved driveway with separated entry and exit lanes and slip-lane from Bella Vista drive to be retained.</p>	Complies.
2.16	Car Parking	Address THDCP Part C, Section 1 – Parking.	See Part 2.7.4 of this report.	See Part 2.7.4 of this report.
2.18	Loading Docks	<p>Not visible from public domain and must provide buffer landscaping treatments.</p> <p>Not visible from adjoining residential areas.</p> <p>Loading docks are not to transmit excessive noise.</p>	Satisfactory subject to conditions from Council's Environmental Health Section (see conditions 20, 99, 104 and 108).	Complies.
2.19	Pedestrian Access and Movement	<p>Pathways and ramps to conform to AS 1428 – 1 – 1998 Design for Access and Mobility.</p> <p>All surfaces should be stable, even and non-slip.</p> <p>Street furniture and obstructions should be kept clear of pathways, while overhanging objects should not be lower than 2100mm</p>	The Access Review report prepared by Morris Goding Accessibility Consulting provides recommendations to ensure compliance is achieved. The recommendations of the report are	Complies.

		above pathways.	included as recommended conditions of consent (See condition 34).	
2.21	Stormwater Management	<p>Two WSUD principles must be implemented into the development. These measures are:</p> <ul style="list-style-type: none"> <li>• M1 Low Impact Building Design</li> <li>• M2 Low Impact Landscape Design</li> <li>• M3 Porous Paving</li> <li>• M4 Rainwater Utilisation – toilet, hot water</li> <li>• M5 Grey Water Utilisation – toilet</li> <li>• M6 On-site Infiltration System</li> <li>• M7 Stormwater Treatment System</li> <li>• M8 Infiltration or Retention Basin</li> <li>• M9 Stormwater Utilisation – irrigation</li> <li>• M10 Grey Water Utilisation – irrigation</li> </ul> <p>Consider satisfactory stormwater collection, discharge and drainage system design against Council's Work Specifications.</p>	Satisfactory subject to conditions from Council's Subdivision/Engineering Section.	Complies.
2.22	Waste Management – Storage and Facilities	<p>All waste areas to be screened from the street and adjoining properties.</p> <p>Adequate storage for waste materials must be provided on site and are not to restrict access to parking spaces.</p> <p>Waste storage areas to be kept clean and tidy.</p>	Waste storage is provided for in the basement and is adequately screened. The designation and upkeep of waste storage areas are appropriately controlled through recommended conditions of consent.	Complies.
2.26	Site Investigation	A contamination assessment report is to be submitted with any Development Application for the Wrights Road Precinct	Preliminary Site Investigation prepared by Douglas Partners Pty Ltd and dated	Complies.

		as referred to on Sheet 12 in Appendix A 1.to this Section of the DCP.	December 2015 concludes site is suitable for use subject to remediation during construction.	
2.27	Pollution Control	<p>The use of mechanical plant and equipment may be restricted where sites are located near existing and proposed residential areas.</p> <p>Any machinery or activity considered to create a noise nuisance must be adequately soundproofed in accordance with the provisions of the Protection of the Environment Operations Act 1997.</p>	Satisfactory subject to conditions from Council's Environmental Health Section.	Complies.

#### a. Front Setback

The DCP stipulates that where a proposed development is opposite or adjacent to Residential zones the building shall be set back a minimum of 6 metres and that the area be used exclusively for landscaping or screening purposes.

The proposal provides a minimum front setback of 5.53 metres to the retail building line, a minimum side setback 6.7 metres to northern side boundary and 5 metres to southern side boundary.

#### Comment:

The relevant objectives of the Business DCP with regard to building setbacks are as follows:

- (i) *To provide an attractive streetscape and substantial areas for landscaping and screen planting.*
- (ii) *To ensure adequate sight distance is available for vehicles entering and leaving the site.*
- (iii) *To minimise overshadowing of adjoining properties.*
- (iv) *To protect privacy and amenity of any adjoining land uses.*
- (v) *To provide a desirable and aesthetically pleasing working environment.*

The building setback encroachments towards the front boundary relate to point encroachments that serve to provide articulation to the building which contributes to an attractive streetscape. The point encroachments are not inconsistent with the DCP objectives.

It is noted that there are no openings to the retail floor area interfacing with the southern side boundary and as such the proposed encroachment does not result in the loss of privacy to the amenity of adjoining townhouses as a result of the one metre encroachment.

The variation to building setbacks are considered satisfactory in this instance.

## 2.7.2 Part B Section 5 – Residential Flat Buildings

The shop top housing component has been assessed against DCP Part B Section 6 – Business and the Apartment Design Guide. DCP Part B Section 5 – Residential Flat Buildings does not apply to the site as residential flat buildings are not permitted in the B1 Neighbourhood Centre zone. Notwithstanding, the local apartment size provisions contained within Clause 3.11 of DCP Part B Section 5 – Residential Flat Buildings are considered on merit as follows:

CLAUSE	DCP STANDARD	PROPOSED	COMPLIANCE
3.11 Unit Layout and Design <b>(Less than 30 Units)</b>	<u>Unit Size</u>  1 bedroom – 75m <sup>2</sup> 2 bedroom – 110m <sup>2</sup> 3 bedroom – 135m <sup>2</sup>	One Bedroom: 51m <sup>2</sup> to 66m <sup>2</sup>  Two Bedroom: 73m <sup>2</sup> to 99m <sup>2</sup>	Variation.
	<u>Unit Mix</u>  No more than 25% 1 bedroom.  No less than 10% 3 bedroom.	Unit mix:  6 x 1 bedroom (24%) 19 x 2 bedroom (76%) 0 x 3 bedroom (0%)	Complies.  Variation.

### Unit Size

Clause 3.11(c) of DCP Part B Section 5 - Residential Flat Buildings stipulates the following minimum apartment sizes for developments less than 30 units:

- 1 bedroom – 75m<sup>2</sup>
- 2 bedroom – 110m<sup>2</sup>
- 3 bedroom – 135m<sup>2</sup>

The proposal includes 6 x 1 bedroom apartments ranging in internal size from 51m<sup>2</sup> to 66m<sup>2</sup> and 19 x 2 bedroom apartments ranging in internal size from 73m<sup>2</sup> to 99m<sup>2</sup>.

The following table includes a summary assessment of the proposal against the provisions of Clause 3.11(d) (developments greater than 30 units) for comparison:

Apartment Size Category	Apartment Size	DCP Maximum (%)	Proposed Units (Number)	Proposed Units (%)	Compliance
<b>1 Bedroom</b>					
Type 1	50m <sup>2</sup>	30%	5	83%	No
Type 2	65m <sup>2</sup>	30%	1	17%	Yes
Type 3	75m <sup>2</sup>	-	-	-	N/A
<b>Total (1 Bedroom)</b>			6		
<b>2 Bedroom</b>					
Type 1	70m <sup>2</sup>	30%	16	84%	No
Type 2	90m <sup>2</sup>	30%	3	16%	Yes

Type 3	110m <sup>2</sup>	-	-	-	N/A
<b>Total (2 Bedroom)</b>			19		

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

The Apartment Design Guide specifies the following minimum apartment sizes:

- 1 bedroom – 50m<sup>2</sup>
- 2 bedroom – 70m<sup>2</sup>
- 3 bedroom – 90m<sup>2</sup>

The proposal provides a range of unit sizes that exceed the ADG minimums including a median 1 bedroom unit size of 58m<sup>2</sup> being 8m<sup>2</sup> above the minimum, and a median 2 bedroom unit size of 84m<sup>2</sup> being 14m<sup>2</sup> above the minimum.

The proposed apartment sizes are considered satisfactory in this instance.

#### Unit Mix

The proposed apartment mix is considered satisfactory in context of the development as a whole which also provides for 11 x 3 bedroom attached dwellings.

#### **2.7.3 Attached Dwelling – Merit Assessment**

The proposed attached dwellings have been assessed on merit against the relevant parts of the attached dwelling controls contained within DCP Part D Section 5 – Kellyville/Rouse Hill Release Area so far as they are relevant to a neighbourhood centre context. The attached dwellings are provided with satisfactory internal and external living areas, solar access, visual and acoustic privacy, car parking, positively contribute to the overall visual quality of the mixed use development and do not adversely impact any adjoining properties. The attached dwellings on merit are considered satisfactory.

#### **2.7.4 Part C Section 1 – Parking**

The proposed development has been assessed against the parking rates contained within DCP 2012 as detailed in the following table of compliance:

COMPONENT	DCP STANDARD	PROPOSED	COMPLIANCE
Shop top housing	1 space per 1 bedroom unit	1 space per 1 bedroom unit	Complies.
	2 spaces per 2 bedroom unit	2 spaces per 2 bedroom unit	
Attached Dwellings	2 spaces per dwelling	2 spaces per dwelling	Complies.
Residential Visitor Parking	2 spaces per 5 units for shop top housing.	Required: 10 spaces Proposed: 15 spaces	Complies.

	No visitor parking is required for attached dwellings.	N/A	
Retail Floor Area	1 space per $18.5m^2$ of Gross Leasable Floor Area.	GLFA: $865m^2$ Required: 47 spaces Proposed: 60	Complies.

### Stack Parking

Clause 2.1.1 of DCP Part C Section 1 – Parking states the following:

*Stack parking will not be included in the assessment of the number of car parking spaces for retail, commercial, medium density residential and industrial development and the like.*

The proposal provides stack parking for 6 out of 19 units and 10 of 11 attached dwellings being 64% of the units/dwellings proposed. The applicant has provided sufficient detail on the submitted plans demonstrating that the stack parking is functional for the portion of residential development provided with two car parking spaces in a stack arrangement. Retail spaces, residential visitor spaces and childcare centre spaces are not provided in a stack arrangement. Given the higher density proposed stack parking for a portion of the residential component is satisfactory in this instance and not inconsistent with the Parking DCP.

### Child Care Centre Parking

Development Consent D154/98 approved at the Ordinary Meeting of Council on 8 December 1999 for a Residential, Retail and Childcare Development included the requirement to provide 19 spaces for the use of the childcare and community meeting room development. The requirement to provide the 19 car spaces was not transferred on a restriction on title at the time of subdivision however the applicant has agreed to continue to provide parking for the childcare centre and community meeting room. The arrangement is considered satisfactory and is appropriately controlled through recommended conditions of consent including a restriction on title (see conditions 31 and 846).

### **2.7.5 Draft Amendment to DCP 2012 for Shop Top Housing**

Amendments to Development Control Plan 2012 are being exhibited concurrently with the planning proposal. The changes apply to all land where shop top housing is a permissible use, including zones that are not subject to the above planning proposal changes.

The proposed controls primarily relate to building height, setbacks, common open space, landscaping and access. Existing controls from Council's Development Control Plan 2012, in particular the Residential Flat Building section, are also proposed to apply including unit size/mix, parking, visual privacy, solar access, private open space, ventilation and storage.

An assessment of the proposal has been assessed against the draft shop top housing controls where they do not duplicate controls within DCP Part B Section 5 – Residential Flat Buildings:

CLAUSE	DCP STANDARD	PROPOSED	COMPLIANCE
Building and Ceiling Height	<u>Building Height</u> 7 metres – 2 storeys <u>Ceiling Height</u> 3.3 metres for commercial floors 2.7 metres for residential floors	3 storeys Provided. Provided.	Variation. (Refer Section 2.7.5(a) below) Complies. Complies.
Setbacks	<u>Front</u> Zero setback if active frontage provided. 3 metres for residential floors above. <u>Side and Rear</u> 3 metres where not adjoining low density residential development.	Minimum 5.5 metres provided. Minimum 3.65 metres to balcony above. Satisfactory.	Complies. Complies. Complies.
Deep Soil	15% of site area.	7.57%	Variation. (Refer Section 2.7.5(b) below)
Awnings	Awnings are to be provided along streets where active frontages are provided.	Provided to Bella Vista Drive.	Complies.

#### a. Building Height

Building height is a proposed LEP development standard. See previous discussion under Section 2.6 and 2.5.5 of this report.

#### b. Deep Soil

The proposal provides deep soil in compliance with the SEPP 65 Apartment Design Guide. The deep soil provision is an improvement on the existing situation. The proposal includes an increase in the extent of landscaping at the proposed podium level, along the shared driveway and as part of the proposed active street frontage.

### 3 ISSUES FOR CONSIDERATION

#### 3.1 Issues Raised in Submissions

Public consultation was undertaken in accordance with Council policy. The proposal was exhibited on one occasion, notified on two occasions and was the subject of a Conciliation Conference.

In response to public consultation, 66 submissions and a petition were received during the first exhibition and notification period, 16 submissions were received at the Conciliation Conference and 27 submissions were received during the second notification period.

The issues raised in the submissions received are summarised and addressed in the following table:

ISSUE/OBJECTION	COMMENT	OUTCOME
First Notification Period		
<b>Building Height</b>		
During the development proposal stage for the existing shopping centre a similar proposal was put forward which also varied building height. This was objected to by local residents and ultimately the development did not proceed.	The locality has undergone a transition from the time of the original development. The proposed built form is considered satisfactory within the local context as detailed within this report. (Refer Section 2.4.2)	Issue addressed.
The current proposal does not comply with the objectives of LEP 2012 and is driven by profit.	<p>The objectives of building height have been addressed in this report.</p> <p>The economic feasibility or the financial outcomes of the development are not a planning consideration.</p>	
The building height should be limited to 9 metres to protect the existing character established around the Village Green. The proposed height is out of character with the locality.	The proposal provides a site responsive design that complies with the LEP objectives for building height as addressed in Section 2.5.5 of this report which includes consideration of the compatibility with the locality.	Issue addressed.
The building height will impact the privacy of existing residents.	The proposal incorporates suitable building separation or privacy measures at boundary interfaces and will not adversely impact the privacy of existing residents.	Issue addressed.
The high part of the building will be directly opposite 1-4/107 Bella Vista Drive and will block views from balconies and be invasive to privacy.	<p>The upper levels of the proposal are separated from habitable rooms of the adjoining properties at No. 107 Bella Vista Drive by a minimum of 15 metres from the edge of the nearest balcony.</p> <p>It is also noted the proposal was subsequently amended to remove a large window to</p>	Issue addressed.

	<p>the shop component facing No. 107 Bella Vista Drive and planter box landscaping was introduced (See North Elevation, Drawing No. DA09, Attachment 10).</p> <p>The proposed separation and design measures implemented are considered to adequately reduce the privacy impact of the proposed dwelling.</p>	
<p>The building height will reduce solar access to properties at No. 103 and 107 Bella Vista Drive.</p>	<p>The submitted shadow diagrams (Attachment 13) detail the proposed overshadowing.</p> <p>The proposal will not overshadow No. 107 Bella Vista Drive between 9:00am to 3:00pm mid-winter.</p> <p>Solar access to No. 103 Bella Vista Drive will not be adversely impacted by the proposal. The common open space of the development will retain compliant solar access between 9:00am and 1:00pm.</p> <p>It is noted that the portion of the proposed shop top housing development in excess of 9 metres is set back a minimum of 8.59 metres from the southern boundary.</p> <p>This was achieved through a design amendment to increase the habitable room set back of the upper floor of the shop top housing development.</p> <p>The additional overshadowing created by the non-compliant building height will not result in any adverse additional impact.</p>	<p>Issue addressed.</p>
<p>The detail on overshadowing of the western side of Bella Vista Drive is incomplete. Detail should be provided outside the specified</p>	<p>Additional detail was provided as part of submitted plans and is detailed within Attachment</p>	<p>Issue addressed.</p>

<p>minimum standards.</p>	<p>13 of this report. The overshadowing of the western side of Bella Vista Drive will primarily occur prior to 9:00am.</p> <p>It is noted that the western adjoining residential properties are upslope of the subject site and their principal private open space areas are located to the rear of the dwellings.</p> <p>The impact to solar access on the western adjoining properties is considered satisfactory.</p>	
<p>Raising the commercial premises to street level with two levels of residential above and reducing the setback to Bella Vista Drive is a significant change from the existing shops that are set back and below street level.</p>	<p>Raising the development to the street-level will provide activation to shop frontages which is part of the envisaged character of neighbourhood centres to provide low-scale strip retailing and the Apartment Design Guide for mixed use development.</p> <p>The impact of the additional height resulting from the two levels of apartments is discussed above in relation to the western, northern and southern adjoining properties and is not considered to result in any adverse impacts given the transition in height and suitable design measures</p>	<p>Issue addressed.</p>
<p>The building height will reduce views of the Village Green.</p>	<p>It is that the views lost are primarily from properties to the western side of Bella Vista Drive based on the topography of the locality.</p> <p>The NSW Land and Environment Court has established a planning principle for views from private property in <i>Tenacity Consulting v Warringah Council [2004] NSWLEC 140</i>.</p> <p>The views to the Bella Vista</p>	<p>Issue addressed.</p>

	<p>Village Green Reserve are not considered to be iconic which is the first test contained within the NSW LEC planning principle for views as established in <i>Tenacity Consulting v Warringah Council [2004]</i> NSWLEC 140.</p> <p>The views are obtained either from the rear yard or front of the dwelling depending on which property you obtain the view from. No detail has been provided on where the view is lost to/from.</p> <p>The fourth step is to consider the reasonableness of the proposal that is causing the impact. As discussed, the proposal provides a reasonable transition in scale being primarily a three storey development at the property interfaces and is within the maximum Floor Space Ratio for the site.</p> <p>Further, the current situation is unusual in that the shops are provided below street level. As indicated within the report the proposal provides street activation which is reasonably anticipated given the B1 Neighbourhood Centre zoning of the site.</p> <p>The proposal cannot be refused on the grounds of view loss.</p>	
<p>The Village Green is valued by existing residents for its open feeling and a whole block of apartments would close off an entire section of the park. Concern is raised that the proposal will block the sunset over the playgrounds and greatly impact the visual landscape.</p>	<p>Despite the variation to building height, the design steps with the topography of the site and will not adversely overshadow Bella Vista Village Green Reserve. That is, the submitted shadow diagrams demonstrate that the proposal does not overshadow the Reserve</p>	<p>Issue addressed.</p>

	between 9:00am and 3:00pm at mid-winter.	
<b>Traffic and Parking</b>		
The proposal will result in an increase in traffic flow through Bella Vista Drive which is already congested particularly in the morning peak.	The proposal will not result in an increase in the number of trips to/from the site as detailed within comments from Council's Roads and Transport Section below.	Issue addressed.
The existing width of Bella Vista Drive cannot cope with an increased number of cars and will result in increased noise and pollution.	The existing carriageway width of 11 metres has been reviewed by Council's Roads and Transport Section and is considered satisfactory for the classification of Bella Vista Drive being a minor collector road in front of the subject site.	Issue addressed.
Increasing the number of vehicle movements in and out of the site will increase the risk to children who access the bus stop on Bella Vista Drive.	<p>The number of vehicle movements is not considered to result in any substantial increase to the existing risk level.</p> <p>Traffic generation has been reviewed by Council's Roads and Transport Section and was considered to be satisfactory.</p>	Issue addressed.
Increasing the number of vehicle movements on the shared driveway will reduce existing resident and pedestrian safety as there are no speed limits or traffic calming devices on the driveway and pedestrian access is not clearly delineated.	See above. The proposal includes two lift cores within the basement car park which will encourage residents to internally access their apartments and will limit the pedestrian movement along the shared driveway. Notwithstanding, pedestrian routes are clearly defined as detailed on the submitted plans.	Issue addressed.
Increasing the number of vehicle movements on the shared driveway will increase noise impacts to the existing townhouse development.	<p>The noise impacts have been addressed by the applicant and reviewed by Council's Environmental Health Services Section and are considered within acceptable limits.</p> <p>Conditions are recommended to ensure suitable acoustic measures are in place and specified</p>	Issue addressed. See conditions 20, 33, 37, 99, 101, 103, 104, 107 and 109.

	levels are achieved.	
Increasing the number of truck movements on the narrow shared driveway will reduce existing resident and pedestrian safety.	The commercial waste and delivery vehicles are proposed to be limited to Small Rigid Vehicles and day time collection. The restrictions are considered to adequately limit use of the driveway by larger vehicles.	Issue addressed. See condition 104 and 107.
Delivery and garbage trucks will be more frequent and enclosure of the loading bay will amplify the noise of braking, reversing and accelerating trucks.  Concern is raised that deliveries will arrive early in the morning or late in the evening to avoid peak traffic. The noise will negatively impact residents from the adjoining properties.	The operation of the loading bay is considered to be appropriately managed as detailed within the submitted acoustic report so as to suitably mitigate noise levels to be within suitable levels. The proposed operation of the loading dock was reviewed by Council's Environmental Health Services Section and no objection was raised subject to recommended conditions of consent to control the operation of the loading dock including loading dock operation hours and the preparation of a management plan for use of the loading dock.	Issue addressed. See condition 20, 99 and 108.
It has not been demonstrated that traffic control during construction will maintain adequate sight lines and access to the driveways of adjoining properties.	The concerns are acknowledged. A condition of consent is recommended requiring the provision of a Traffic Control Plan to be prepared to the satisfaction of Council's Roads and Transport Section prior to works commencing on site. The Traffic Control Plan will be required to consider access and sightlines.	Issue addressed. See condition 51.
Concern is raised that access to the pedestrian walkway providing access to the Village Green and Bella Vista Drive will be compromised during construction for residents of No. 103 Bella Vista Drive.	The terms of the easement for the footway require that access is maintained to the footway at all times, including during construction.  Notwithstanding, a condition of consent is recommended to ensure compliance.	Issue addressed. See condition 77.

<p>Southbound vehicles entering the site from Bella Vista Drive have to take a sharp left with little or no visibility of pedestrians.</p>	<p>Council's Roads and Transport Section have reviewed the sightlines and have raised no objection. It is noted there is a slip-lane when travelling southbound which will aid deceleration of vehicles turning in to the site.</p>	<p>Issue addressed.</p>
<p>Concern is raised that retail customers will park on surrounding streets and not utilise the car parking provided as the proposal includes street-level shops. It is unclear what measures are proposed to prevent customers from parking in surrounding streets.</p>	<p>The proposed design provides satisfactory measures to provide direct access from basement parking areas to the street-level shops including two lift cores.</p> <p>The on-site parking provision complies with the DCP and it is anticipated that there will be minimal impact on street parking.</p>	<p>Issue addressed.</p>
<p>Once parking is allocated to the residential units, only a limited number of parking spaces will remain for commercial use being a significant reduction from the existing situation. This will contribute to an increased likelihood of overflow parking spilling to Bella Vista Drive and the surrounding street network.</p>	<p>The proposal provides for adequate parking for all components of the proposal as detailed within Section 2.7.4 of this report.</p>	<p>Issue addressed.</p>
<p>The applicant's traffic report fails to recognise that commercial developments in the Norwest Business Park that were built to the recommendation of other traffic reports have inadequate parking provision when built and in practice.</p>	<p>The traffic report has been reviewed by Council's Roads and Transport Section and the recommendations are considered to be conservative and reasonably made.</p> <p>The on-site parking provision complies with the DCP and it is anticipated that there will be minimal impact on street parking.</p>	<p>Issue addressed.</p>
<p>The parking provided is inadequate during the peak drop-off and pick-up times of the child care centre.</p>	<p>The proposal formally reinstates 19 car parking spaces for use by the child care centre within a larger lower basement level. The provision is likely to improve the current situation.</p>	<p>Issue addressed.</p>
<p>It is unclear what parking is</p>	<p>The restriction on title to</p>	<p>Issue addressed.</p>

provided for the community centre.	provide parking to the child care centre will also apply to the community meeting room.	See condition 31 and 86.
Consideration of the existing infrastructure problems does not form part of the application. Consideration should be given to designated bus bays, a raised pedestrian crossing along Bella Vista Drive and increasing the width of the shared driveway.	<p>Council's Roads and Transport Section have reviewed the current and proposed traffic generation and concluded that an increase in traffic generation is unlikely to occur based on the applicable RMS rates.</p> <p>Therefore, any improvements to reduce the impact on the environmental capacity issues currently in existence on Bella Vista Drive needs to be considered on a precinct basis and cannot be solely attributed to this development.</p>	Issue addressed.
The traffic report does not adequately detail the true average number of vehicle movements from Hindle Terrace.	The nature of the existing traffic situation and impact on the traffic environment is detailed within this report and does not warrant refusal of the application.	Issue addressed.
The construction of this development prior to the rail infrastructure being available will result in adverse traffic impacts.	The proposal does not rely on the rail for any concessions and the traffic impacts are considered satisfactory as detailed in this report.	Issue addressed.
<b>Construction</b>		
Concern is raised that the shared driveway would be blocked during construction preventing property access to the existing development at No. 107 Bella Vista Drive.	Access to the shared driveway is required to be maintained throughout construction. A condition of consent is recommended to ensure compliance.	Issue addressed. See condition 77.
<p>Concern is raised that construction will impact the basement walls and foundations of No. 103 Bella Vista Drive.</p> <p>Vibrations from construction will impact the structural integrity of adjoining properties.</p>	<p>The basement parking area is in close proximity to the boundary of the development site.</p> <p>Structural integrity concerns are noted.</p> <p>Accordingly, dilapidation reports are warranted in this instance and form part of</p>	Issue addressed. See conditions 64 and 100.

	the recommended conditions of consent.	
Safety of the residents along the shared driveway will be compromised during construction.	Appropriate construction management will be required during construction to include maintaining safe access to residents at all times. This is reinforced through recommended conditions of consent.	Issue addressed. See condition 51 and 77.
Noise and dust from construction would impact the amenity and health of adjoining property owners and reduce the ability to use private open space areas.  Noise and dust from construction would impact the health of the children using the existing child care centre.	Noise and dust during construction is appropriately controlled through recommended conditions of consent.  Noise and dust during construction is appropriately controlled through recommended conditions of consent however it is noted that the external play area for the child care centre is located adjacent to Bella Vista Green Reserve.	Issue addressed. See conditions 66, 73 and 75.
It is unclear how access to the community centre and childcare centre will be impacted during construction.	The applicant has submitted a Construction Management Plan detailing how access to the community centre and childcare centre in addition to temporary parking will be maintained throughout construction.	Issue addressed. See condition 78.
There are sinking issues in some of the townhouses which may be exacerbated by the construction of the proposed development.	As discussed previously, dilapidation reports are recommended to form conditions of this consent.	Issue addressed. See conditions 64 and 100.
Environmental Pollutants from construction would impact on the ecology of the Village Green.	Conditions have been recommended to reduce the potential for offsite impacts during the construction process.	Issue addressed. See condition 59, 60, 71 and 73.
<b>Character</b>		
The proposed 26 apartments and 11 townhouses are an unacceptable contrast to the free-standing houses that characterise the perimeter of the Village Green and Bella Vista in general.	The proposed form of development is permissible with consent under LEP 2012.  The site is immediately adjoined by R3 Medium Density Residential zoned land to the north and south.	Issue addressed.

	The proposed built-form appropriately responds to its context as outlined within this report and is not considered out of character with the locality.	
The character is predominantly free standing single residences with some duplexes and a few terrace-style townhouse developments.	The B1 Neighbourhood Centre zone permits shop top housing which is a different form of development to the adjoining sites where shop top housing is not permissible. The proposal is considered to be compatible with the existing character of the area.	Issue addressed.
Concern is raised that Point 9 of the SEPP 65 statement incorrectly states that the future character of Bella Vista is for apartments.	The character in terms of the design principles of SEPP 65 has been addressed within this report and is considered satisfactory.	Issue addressed.
Another example of an attempt to turn The Hills Shire and Bella Vista in to a high-rise area.	The proposal does not alter the surrounding zoning of land which prohibits shop top housing.	Issue addressed.
The development will have the character of an office development.	The proposal is considered to have the character of a mixed use development as proposed. The proposal will provide an active street frontage and provides sufficient architectural articulation of the upper levels when viewed from the street to both function as a neighbourhood centre strip-retailing and contribute to the residential character of the locality.	Issue addressed.
The townhouses are not of an architectural style consistent with the Norwest locality as they are crammed close together along a narrow entry path.	The form of development, being attached dwellings, is permissible in the zone.	Issue addressed.
The architectural style is box-like which is out of character for the area.	The architectural style of the area is varied and the different type of built-form proposed (shop top housing versus a dwelling house) necessitates a different design. The architectural	Issue addressed.

	style is not out of character noting the contemporary nature of the design is not inconsistent with newer dwelling designs within the area. The architectural style is not considered to warrant refusal of the application.	
The development is excessive given the small size of the site.	The scale of the development is considered appropriate for the site. The retail component has been redesigned to be commensurate with other neighbourhood centres and the Floor Space Ratio is within the maximum permitted for the site.	Issue addressed.
Covenant requiring a minimum size of housing and a certain appearance not being adhered too.	Suspension of the private covenant under Clause 1.9A of the LEP is warranted in this instance.	Issue addressed.
<b>Retail</b>		
There is uncertainty of the types of shops proposed in the retail spaces. Concern is raised that pubs, liquor stores and other uses may be proposed and that the medical centre will not be reinstated.	It is acknowledged that the future tenants of the site are unknown at this stage. Tenants would require separate approval prior to any occupation and/or fitout.	Issue addressed.
The reduction in retail area does not include a consideration of the current access issues to other shopping centres at Norwest and Circa including traffic congestion and unsafe pedestrian access.	<p>The current traffic environment is acknowledged in addition to future road upgrades particularly along Norwest Boulevarde that are yet to be completed.</p> <p>The Economic Impact Assessment is considered to be well-founded and consistent with Council's Centres Direction.</p> <p>The Economic Impact Assessment demonstrates that suitable access to a range of retail precincts are provided in close proximity to the site and general locality.</p>	Issue addressed.
The existing shopping centre has adequate facilities to serve the	The Economic Impact Assessment has considered	Issue addressed.

<p>local area and the shops that are currently there do not get much business and are constantly changing hands. Circa, Norwest, Baulkham Hills and Winston Hills are all nearby and we do not need any more shops in the area. There is no need for shops within the middle of a residential area.</p>	<p>the proposed shop floor area for the development and concludes that the proposed floor area is sustainable within the immediate locality.</p>	
<p>It is unclear what is happening with existing businesses during the transition and what is being done to guarantee the return of long supported services.</p>	<p>The site is a single allotment and each tenancy is not individually owned.</p> <p>Contractual lease arrangements are not a planning consideration rather a matter between the parties who have entered into that contract.</p> <p>There is no requirement to maintain continuity of existing services in the redevelopment for a mixed use development.</p>	<p>Issue addressed.</p>
<p>A reduction in retail floor area does not provide revitalisation to the centre.</p>	<p>The Economic Impact Assessment submitted with the Development Application has considered the proposed shop floor area for the development and finds that the proposed floor area is sustainable within the immediate locality.</p> <p>Further, the proposal provides good street activation and residential accommodation that will promote use of the retail services and provide for revitalisation of the centre.</p>	<p>Issue addressed.</p>
<p><b>Apartment Design</b></p>		
<p>The apartment sizes are significantly less than Council's DCP.</p>	<p>The apartment sizes are equal to or greater than the minimums stated within SEPP No. 65. Under present legislation the development cannot be refused on the basis of apartment size if it meets the minimum size stated within the legislation.</p>	<p>Issue addressed.</p>
<p>Three bedroom units should be included in the plan given the</p>	<p>The overall dwelling/unit mix proposed is considered</p>	<p>Issue addressed.</p>

family demographics of the area.	satisfactory as outlined within the report.	
Boxed-in design will create internal ventilation and temperature issues for occupants.	<p>The apartment design including the internal layout is considered to be satisfactory with adequate natural ventilation, mechanical ventilation and solar access provided to each unit.</p> <p>It is also noted that the proposal also complies with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 which includes an aim of improving the thermal performance of buildings.</p>	Issue addressed.
Westerly aspect of the building will expose inhabitants to full sun from 12pm until sunset.	See above.	Issue addressed.
Sub-standard design without consideration of environmental and social impact on the community of Bella Vista.	The proposal has had sufficient regard to the legislative requirements including those that relate to social and environmental impact as detailed throughout this report.	Issue addressed.
<b>Other</b>		
Providing a larger number of residences in a small area with little benefit to the existing community is not satisfactory.	The form and scale of the development is considered consistent with the objectives of the B1 Neighbourhood Centre zone. Shop top housing will provide for a different form of housing to the predominant single detached dwellings within the locality.	Issue addressed.
The need for apartments is provided for in other developments in Norwest, Bella Vista Waters and Baulkham Hills areas.	The form of development, being shop top housing, is permissible in the zone.	Issue addressed.
Concern is raised that the scale of the development is purely to take the determination of the development away from Council.	Clause 20 of SEPP (State and Regional Development) 2011 and the Schedule 4A of the Environmental Planning and Assessment Act, 1979 provides the following referral requirements to a	Issue addressed.

	<p>Joint Regional Planning Panel:-</p> <p><i>Development that has a capital investment value of more than \$20 million.</i></p> <p>The proposed development has a capital investment value of \$21,381,000.00 as confirmed within a submitted cost summary prepared by a suitably qualified quantity surveyor.</p> <p>The CIV requires referral to, and determination by, a Joint Regional Planning Panel.</p>	
<p>Existing air-conditioning and other equipment are a severe noise issue. Concern is raised that new mechanical systems will also result in unacceptable acoustic impacts.</p>	<p>Mechanical ventilation and air-conditioning noise will be regulated through recommended conditions of consent.</p>	<p>Issue addressed. See condition 20 and 103.</p>
<p>The area is not large enough to support all the facilities proposed. Currently there are issues regarding pest controls and rubbish management. The bins are not cleared regularly at the front of the existing shops and cause a bad odour impacting adjoining properties. A larger centre will result in bigger problems.</p>	<p>Residential waste collection will be managed by Council and collected weekly.</p> <p>Commercial collection will be privately arranged however the size of the centre is reduced and the proposed dock and storage areas are within the basement and are proposed to be adequately sealed and ventilated.</p>	<p>Issue addressed.</p>
<p>Concern is raised the development will be low quality and devalue surrounding properties.</p>	<p>The proposed design is not considered to be of a low quality as detailed within the report. Notwithstanding, property value is not a planning consideration.</p>	<p>Issue addressed.</p>
<p>The driveway and paths around the site are damaged and need repair.</p>	<p>The proposal includes substantial improvement works that will benefit the public domain and the subject site including new connections to the public footpath along Bella Vista Drive.</p> <p>Any damage to public infrastructure caused during construction will be required</p>	<p>Issue addressed.</p>

	to be repaired.	
Concern is raised that a Section 96 application may be undertaken resulting in an even more intrusive development taking place with little protection for residents.	Any Section 96 Application will be assessed on merit if it is made.	Issue addressed.
The increased number of residents will increase the use of the public footway between Bella Vista Drive and the Village Green. This may result in the need to upgrade security to the existing adjoining development at No. 103 Bella Vista Drive.	<p>The proposal provides improved passive surveillance of the footway through balconies and windows which have views on to the footway.</p> <p>The proposal was referred to the NSW Police who have assessed the proposal against Crime Prevention through Environmental Design principles.</p> <p>NSW Police raise no objections subject to recommendations relating to surveillance, lighting and technical supervision, territorial reinforcement, environmental maintenance and access control which have been included as recommended conditions of consent</p>	Issue addressed. See condition 6.
The proposal will adversely impact upon the enjoyment of the Village Green.	New residents will likely increase the level of social interaction at the Village Green.	Issue addressed.

#### Second Notification Period

##### **Building Height**

The height of the proposed development will impose/impact on surrounding homes, the park the privacy of the townhouses on the north and the south sides and on the homes to the west.	The impact has been quantified within the proposal and is not considered to warrant refusal of the application. The matters are addressed in more detail within the first notification period responses.	Issue addressed.
A height restriction of 7 metres should be enforced for mixed used developments.	See Section 2.6 of this report for further discussion.	Issue addressed.
The amended height of the building is misleading as it does not use the existing ground level.	The submitted Clause 4.6 identifies the building height in accordance with the LEP	Issue addressed.

The back of the structure will stick out well above 12 metres.	definition as well as providing an argument for consideration of the pre-excavated levels. Both are considered within Section 2.5.5 of this report.	
<b>Traffic and Parking</b>		
The proposal will increase the amount of traffic in an already traffic grid-locked area in peak traffic periods.	The traffic report has been reviewed by Council's Road and Transport Section. The findings of the report are considered conservative and result in a minor increase in the number of trips from the site. A review of the number of trips by Council's Roads and Transport Section indicated there may even be a minor reduction in the number of trips as a result of the development.	Issue addressed.
Lack of parking is a serious concern.	The proposal was amended to reduce the extent of retail floor area, increase the number of one bedroom units, and decrease the number of two bedroom units whilst maintaining the same level of parking.  As a result, parking is considered satisfactory with respect to The Hills DCP Part C Section 1 – Parking.	Issue addressed.
Stack parking is not permitted to be included in the parking calculation.	The departure from The Hills DCP Part C Section 1 – Parking is acknowledged and is addressed within Section 2.7.4 of this report. The stack parking is functional and is not considered warrant refusal of the application.	Issue addressed.
The proposed retail location at street level will increase the chance of accidents in and around the driveway and bus-stop.	The submission is not substantiated. The proposal provides a good level of street activation with appropriate design measures providing a buffer to the street-level shops.	Issue addressed.
The street level retail location is a major departure from the current arrangement. It will lead to on-	If street-parking becomes an issue and on-site parking is under-utilised, the matter	Issue addressed.

<p>street parking on Bella Vista Drive as it is easier than parking 1 or 2 levels down in the basement and then walking upstairs or waiting for a lift.</p> <p>On-street parking is already a problem within Archdall Grove and surrounding streets.</p> <p>The occupants of the residential accommodation proposed would experience unacceptable delays in exiting the site and as such they would resort to parking on the surrounding streets as is occurring on Barina Downs Road.</p> <p>The evening would see north bound residents unreasonably delayed by high volume south bound flow.</p>	<p>can be referred to Council's Local Traffic Committee.</p> <p>The parking proposed meets the need of the use proposed.</p> <p>Bella Vista Drive is a loop road that contains a number of roundabouts which can operate to provide alternative vehicle routes an opportunities to turnaround should traffic congestion be an issue.</p>	
<p>The existing shared driveway is already narrow. More dwellings will make it worse.</p>	<p>The proposal does not alter the existing shared driveway width.</p>	Issue addressed.
<p>The proposal is not provided with the associated infrastructure to support the increase in vehicular traffic.</p>	<p>The proposal will provide Section 94 Contributions which will be used for local infrastructure improvements.</p>	Issue addressed.
<b>Character</b>		
<p>The building is of a modernist/minimalist style and is out of character with surrounding federation architecture.</p>	<p>The matters raised have been addressed within the first notification period section of this report.</p>	Issue addressed. Refer above.
<p>This type of housing is a contradiction to the high standard of housing which is a characteristic of the entire suburb of Bella Vista.</p> <p>The existing residences throughout the suburb had to be built according to strict covenants.</p> <p>The high standard has kept the value of our homes high over many years.</p>	<p>The matters raised have been addressed within the first notification period section of this report.</p>	Issue addressed. Refer above.
<p>The bulk and scale of the development is incompatible with the surrounding high quality residential precinct</p>	<p>The bulk and scale of the development is considered reasonable when considered against the objectives of LEP 2012, DCP 2012 and the principles contained within SEPP 65.</p>	Issue addressed.

<b>Retail</b>		
The retail space will be smaller, and will not offer an equal amenity to the residents. Long serving facilities such as the local medical practice and hairdresser will likely be lost if the proposal goes ahead.	The matters raised have been addressed within the first notification period section of this report.	Issue addressed. Refer above.
Bella Vista will lose the community medical practice which has been located on the site for more than 10 years.	This is not a planning consideration as discussed below.	Issue addressed.
The Prime Minister held a press conference at the medical centre at Bella Vista Drive on 24 August 2016. The centre is selected as being one of two hundred centres nation-wide to take part in the trial. The significance of the medical centre should be considered as part of any report on the application.	<p>The ongoing use of the subject site by the medical centre is subject to a contractual lease agreement between the parties privy to that lease and is not a planning consideration.</p> <p>The significance of the trial is noted however an alternative premise can be sought by the business noting that there are likely to be existing leasable space available within the nearby business park.</p>	Issue addressed.
The existing food tenancy is closer to 500 square metres than 300 square metres as stated in the submitted documentation.	The supermarket as originally approved was 300 square metres. However, the supermarket has expanded to absolve a number of other tenancies. Notwithstanding, the overall floor area of the existing retail development is consistent with the original approval and does not impact the overall findings of the Economic Impact Assessment.	Issue addressed.
Existing retail services in the Centre are heavily patronised and there is no pressing need to "revitalise" the retail area.	There is opportunity for existing services to return if they so wish to do so.	Issue addressed.
The aim of shop top housing is to take advantage of airspace above shops not reducing the shops by two-thirds and then filling the top and sides with housing.	The reduction in retail floor area is addressed in this report and considered to be reasonable in this instance.	Issue addressed.
<b>Apartment Design</b>		
Lowered ceiling heights will further	The proposed floor to ceiling	Issue addressed.

reduce the quality of the proposed apartments.	heights of approximately 2.7 metres within the apartments will provide suitable amenity and are above the minimum 2.4 metre floor to ceiling height specified by the BCA.	
<b>Other</b>		
Shop top housing is in contravention to local planning regulations and the recent decision to not allow shop top housing in Rouse Hill.	Shop top housing is permissible with consent in the B1 Neighbourhood Centre zone.  Any variations to applicable controls are addressed in this report and are not considered grounds to refuse the application.	Issue addressed.
<p>A Council Notice was published in the Hills Shire Times on the 12<sup>th</sup> of July 2016. The Notice is entitled, "Planning Changes for Shop Top Housing and Mixed-Use Developments Across the Hills Shire." It states, <i>inter alia</i>, "It is also proposed to prohibit shoptop housing in low and medium density residential zones in the Box Hill Release Area."</p> <p>As, Bella Vista is comprised of mostly low and to a lesser extent medium density residential zones, the residents are being discriminated against.</p> <p>The Hills Shire Council should have prohibited shop top housing in Bella Vista in its original local environment plan and development control plan for the suburb about twenty or thirty years ago.</p> <p>If Council can prohibit shop top housing for low and medium density residential zones in the Box Hill Release Area, it can do the same for Bella Vista.</p> <p>Therefore, it is imperative that Council prohibit shop top housing in Bella Vista immediately, and, thus, render the original application and amended application null and void.</p>	The site is zoned B1 Neighbourhood Centre. Shop top housing is already prohibited in the R2 and R3 zones within Bella Vista.	Issue addressed.

<p>Council is proposing to either restrict or prohibit shop top housing in the North Kellyville and Box Hill release areas. (Council Notices – Hills Shire Times, 12.7.16) Bella Vista residents are being discriminated against other neighbouring areas.</p>	<p>The proposed changes to shop top housing applying to the subject site are addressed in this report (See Section 2.6) and do not warrant refusal of the application.</p>	<p>Issue addressed.</p>
<p>The B1 Neighbourhood Centre zone envisages a community facility with ancillary residential use, whereas the proposal demonstrably envisages commercial/retail use as ancillary to the residential use. The primary objective of the zoning has been turned on its head.</p>	<p>The proposal provides low scale strip retailing appropriate for a B1 Neighbourhood Centre zone.</p> <p>The proposed residential density is considered satisfactory as outlined within the report.</p>	<p>Issue addressed.</p>
<p>The bulk and scale of the development is incompatible with a Neighbourhood Centre.</p>	<p>The bulk and scale of the development is considered reasonable when considered against the objectives of LEP 2012, DCP 2012 and the principles contained within SEPP 65.</p>	<p>Issue addressed.</p>
<p>There is no provision for a children's play area.</p>	<p>The provided common open space area is sufficiently articulated and landscaped to encourage use by future residents.</p>	<p>Issue addressed.</p>
<p>The requirement for deep soil planting within designated areas has not been met.</p> <p>Much of the landscaping proposed relies on shallower planter boxes.</p>	<p>The deep soil area complies with the minimum specification within SEPP 65. Further, the proposal will result in an increase in deep soil area when compared to existing. The proposed deep soil area is not considered grounds for refusal of the application.</p>	<p>Issue addressed.</p>
<p>The DA does not comply with minimum building setbacks.</p>	<p>The variations to building setbacks are addressed within Section 2.7 of this report.</p>	<p>Issue addressed.</p>
<p>There is an encroachment on the easement to the south of the proposed development. This is a reduction in the present amenity.</p>	<p>The proposal will maintain the full function of the public footway and includes reinstated landscaping around the part being encroached. There is not considered to be a reduction in the amenity of the footway.</p>	<p>Issue addressed.</p>

The applicant should not be permitted to rely on the Reserve to vary open space provision for the attached dwellings.	The applicant provides a functional and useable open space which is shared between the attached dwellings and shop top housing.	Issue addressed.
Apartment dwelling backing the park will no doubt increase vandalism and destruction of the park swings, slides, and pergola, which will cause a safety issue and expenses for the Council.	Submission substantiated with any evidence.	Issue addressed.
Noise was not measured at 107 Bella Vista Drive. Due to being relatively enclosed this area is more likely to suffer from increased noise.	An amended report was submitted including a measurement at No. 107. The acoustic impacts are considered to be appropriately addressed and managed through recommended conditions of consent.	Issue addressed.
With so many apartments already being built in Baulkham Hills and everywhere, this development is definitely not required. It will prompt others everywhere in Bella Vista to combine couple of houses and put in an application for a high rise building.	As previously discussed, shop top housing is not permitted on R2 or R3 land which is the predominant zoning of the locality.	Issue addressed.
Areas closer to the rail link corridor are more suitable for high density development.	Higher density developments than that proposed will likely characterise areas around the rail corridor.  The proposed development is considered suitable for the locality as detailed within this report.	Issue addressed.
Infrastructure of the park cannot cope with the entry of so many residents. The open atmosphere and extra space will be lost.	The park is adequate in size to cater for the proposed development.	Issue addressed.
The loss of the child care centre and community centre would be widely felt if they were to go.	The centres are on a separate allotment and do not form part of the proposal.  The proposal includes provision to maintain a supply of parking for the centre which will contribute to their functionality going	Issue addressed.

	forward.	
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### 3.2 Referral Comments

#### 3.2.1 Internal Referral Comments

##### 3.2.1.1 Environmental Health

The subject development is adjacent to a row of townhouses that share the common driveway with the existing shopping centre. The applicant provided an acoustic report with the application. The report was assessed and additional information sought along with clarification from the acoustic consultants. This resulted in amended reports and additional, more stringent recommendations for the management of the site and particularly operation of the loading dock.

The acoustic consultant has assured Council officers that the assessment and results meet the requirements of the Industrial Noise Policy. Conditions are recommended to minimise acoustic impacts including; restricted hours of operation, management plans for the operation of the loading dock and waste storage areas, sound attenuation for the loading dock, acoustic treatment for mechanical plant, management of truck movements, and a final acoustic report to validate the noise predictions.

##### 3.2.1.2 Property

Council's Property Section raises no objection to the encroachment on the public footway easement as long as access to the Village Green (Public Reserve) is maintained.

If the proposal receives development consent then a simultaneous release of easement and new 88B should be lodged at LPI so that access is maintained at all times.

##### 3.2.1.3 Roads and Transport

###### i) Existing Traffic Environment

This application proposes to modify an existing 1,510m<sup>2</sup> retail development at 105 Bella Vista Drive, Bella Vista and provide 865m<sup>2</sup> of retail, 6 x 1 bedroom apartments, 19 x 2 bedroom apartments and 11 x 3 bedroom attached dwellings. A traffic report prepared by Colston Budd Rogers and Kafes has been submitted in support of the application.

Bella Vista Drive is a 1800m long 11.0m wide loop road intersecting with Providence Drive at its southern extremity and Reston Grange to the north. Bella Vista Drive is classified as a major collector road within Council's Road Hierarchy and experiences a reasonably high level of through vehicle movements during the morning and afternoon peaks as a short cut to and from the Norwest Business Park.

Whilst the Environmental Capacity of Bella Vista Drive hasn't been identified in the *Residential Development and Traffic Study* undertaken by TAR Technologies on behalf of Council in August 2005, roads having similar characteristics typically have an Environmental Capacity (EC) of around 400 vehicles per hour (vph).

The traffic counts submitted with the traffic report indicates that certain sections of Bella Vista Drive such as south of Coach House Place currently experiences almost double the EC in the order of 775 vph during the morning peak hours.

###### ii) Proposed Development - Traffic Generation

The Roads and Maritime Services (RMS) *Guide to Traffic Generating Developments* provides average traffic generation rates for a range of different land uses. The guidelines

provide peak hour vehicle trips (phvt) generated by the proposed development and can be broken down into the following components:-

- 6 one bedroom apartments @ 0.29 vph = 1.74 trips
- 19 two bedroom units @ 0.4 vph = 7.6 trips
- 11 three bedroom town houses @ 0.65 = 7 trips
- 865m<sup>2</sup> retail @ 46 trips/1000m<sup>2</sup> for Specialty Shops = 39.79 trips  
Or/ 865m<sup>2</sup> @ 50 trips/1000m<sup>2</sup> for Restaurants = 43.25 trips

**Total Trips = 56 to 60 trips**

The existing 1510m<sup>2</sup> retail development based on the above specialty shop retail rate should typically generate around 69 trips resulting in an overall **decrease of around 12 peak hour trips**.

The traffic consultant has predicted there will be an overall increase of around 15 peak hour trips but does not elaborate on the specific rates used.

iii) Cumulative Impact in Locality – Bella Vista Drive

The following table contains traffic volumes for Bella Vista Drive and the decrease attributed to the proposed development during the AM peak period.

Traffic Movements AM Peak Hour	Environmental Capacity EC v/h	Existing Volumes v/h	% Existing relative to EC	Prop Decrease v/h	% Decrease relative to existing volume	% Decrease Relative to EC
Bella Vista Drive	400	775	193%	12	-1.5%	-3.0%

The net 7.3% decrease of potential traffic generated by the proposed development being distributed to Bella Vista Drive is relatively minor compared to existing traffic volumes. Similarly the decrease comparative to the extent the existing volumes exceed the Environmental Capacity is relatively minor.

iv) Need for Traffic Improvements in the Locality

As a result of the net reduction any improvements to reduce the impact on the environmental capacity issues currently in existence on Bell Vista Drive needs to be considered on a precinct basis and not attributed to this development.

v) Traffic egress/ingress to arterial/sub-arterial roads

The relatively minor 57 peak hour vehicle trips for a net reduction of 12 peak hour trips will not alter the levels of service for the surrounding road network or nearby intersections.

vi) Sight distance and other safety issues

Sight distance when entering or exiting the proposed access driveways to the property exceeds the minimum safe intersection sight distance standards required under the Austroads Standards for vehicles traveling at 50km/h.

### **3.2.2 External Referral Comments**

#### 3.2.2.1 Police Comments

The proposal was referred to The Hills Local Area Command, NSW Police in accordance with the requirements of "Safer by Design Guidelines" prepared by the NSW Police in conjunction with the Department of Planning and the in accordance with the memorandum of understanding between the Hills Shire Council and The Hills Local Area Command, NSW Police.

No objection was raised subject to comments and recommendations from the NSW Police which form part of the recommended conditions of consent.

### **CONCLUSION**

The Development Application has been assessed against the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, The Hills Local Environmental Plan 2012, The Hills Development Control Plan 2012, and State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development and is considered satisfactory.

The proposal will provide additional housing choice for residents of the Shire. The external and internal design of the development is satisfactory and will result in an appropriate streetscape outcome for the locality.

The request to vary the building height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2012 (LEP) is considered satisfactory in this instance as outlined within the report.

The proposal was advertised and notified to adjoining property owners and 92 submissions and one petition were received which have been addressed in the report but not warrant amendments to, or refusal of, the Development Application.

The proposal is recommended for approval subject to conditions.

### **RECOMMENDATION**

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

### **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. 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.

The amendments in red require a storage area to be for retail/business premises use and the provision of timber screens to the outside of the acoustic screen for the roof plant overrun.

### **REFERENCED PLANS**

<b>DRAWING NO</b>	<b>DESCRIPTION</b>	<b>REVISION</b>	<b>DATE</b>
DA03	Lower Basement Level	I	22/09/2016
DA04	Upper Basement Plan	J	22/09/2016
DA05	Ground Floor Plan	G	07/06/2016

DA06	Level 1 Floor Plan	I	22/09/2016
DA07	Level 2 Floor Plan	I	22/09/2016
DA08	Roof Plan	G	07/06/2016
DA09	Elevations	G	21/06/2016
DA9.A	Elevations	F	07/06/2016
DA9.B	Site Sections	E	07/06/2016
DA10	Adaptable/Accessible Units	H	22/09/2016
DA14	Materials and Finishes	F	21/06/2016
001	Landscape Masterplan	E	30/05/2016
002	Landscape Masterplan Render	E	30/05/2016
101	Landscape Plan Ground Floor	E	30/05/2016
102	Landscape Plan Basement Upper	E	30/05/2016
103	Landscape Plan Basement Lower	E	30/05/2016
401	Landscape Courtyard Sections	E	30/05/2016
501	Landscape Details	E	30/05/2016
502	Landscape Specification and Plant Schedule	E	30/05/2016
-	Construction Management and Childcare Parking Staging Plan	-	07/2016

## **2. Construction Certificate**

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

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

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

## **4. External Finishes**

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

## **5. Tree Removal**

Approval is granted for the removal of fifteen (15) trees as shown on the Landscape Masterplan issue E prepared by Site Image, dated 30.05.2016.

All other trees are to remain and are to be protected during all works.

## **6. Compliance with NSW Police Requirements**

Compliance with the requirements of the NSW Police attached to this consent and dated 15 March 2016. These requirements relate to the following:-

- Surveillance
- Lighting and Technical Supervision
- Territorial Reinforcement
- Environmental Maintenance
- Access Control

## **7. Planting Requirements**

All planting installed as part of the approved landscape plan are to be the following minimum pot sizes:

- All trees are to be minimum 75 litre pot
- All shrubs are to be minimum 200mm pot
- All grasses and groundcovers are to be minimum 140mm pot.

## **8. Provision of Parking Spaces**

The development is required to be provided with one hundred and forty-six (146) off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

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

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

## **10. Approved Community Title Subdivision Plan**

The community title subdivision component of the development must be carried out in accordance with the approved plans of subdivision prepared by RPS Group Drawing PR132228-DP3 Sheets 1 -5 (DRAFT) dated 19/09/2016 except where amended by other conditions of consent.

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

The strata title subdivision of the development (lot 13) is not included. A separate development application or complying development certificate application is required.

## **12. Protection of Public Infrastructure**

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

## **13. Structures Adjacent to Piped Drainage Easements**

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

## **14. Vehicular Access and Parking**

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

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2
- DCP Part C Section 1 – Parking
- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.

- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

## **15. Minor Engineering Works**

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Works on existing public roads or any other land under the care and control of Council must be approved and inspected by Council in accordance with the Roads Act 1993 or the Local Government Act 1993. A separate minor engineering works application and inspection fee is payable as per Council's Schedule of Fees and Charges.

### **a) Public Pathway Link**

The existing public pathway must be retained in the location shown on the approved plan. Where a building encroachment is proposed (front part of the link), the pathway must be reconstructed a minimum 5m wide. The design of this pathway link must comply with the above documents.

### **b) Footpath Verge Formation**

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

### **c) Disused Layback/ Driveway Removal**

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

### **d) Site Stormwater Drainage**

The existing site drainage network must be reconstructed ensuring that the peak flow from the site is maintained to the present condition.

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

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

- Written owner's consent for works on adjoining land must be obtained.
- For works adjacent to a road, anchoring that extends into the footpath verge is not permitted, except where expressly approved otherwise by Council, or the RMS in the case of a classified road.
- Where anchoring within public land is permitted, a bond must be submitted to ensure their removal once works are complete. The value of this bond must relate to the cost of their removal and must be confirmed by Council in writing before payment.
- All anchors must be temporary. Once works are complete, all loads must be removed from the anchors.
- A plan must be prepared, along with all accompanying structural detail and certification, identifying the location and number of anchors proposed.
- The anchors must be located clear of existing and proposed services.

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

### **17. Subdivision Certificate Preliminary Review**

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

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

### **18. Process for Council Endorsement of Legal Documentation**

Where an encumbrance on the title of the property is required to be released or amended and Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges. Sufficient time should be allowed for the preparation of a report and the execution of the documents by Council.

### **19. Road Opening Permit**

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

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

### **20. Acoustic Requirements**

The recommendations of the Acoustic Assessment and Report prepared by Acoustic Logic Consultancy Pty Ltd, referenced as 20151705.1/1810A/R8/BW, dated 18/10/2016 and submitted as part of the Development Application are to be implemented as part of this approval unless amended by other conditions of consent. In particular the recommendations found in:

Section 6 Mechanical Plant Treatments

Section 8.3 Recommended Loading Dock Development Controls to the Loading Dock

- Bail and/or garbage compactors are to be used only within the loading dock areas.
- Loading dock perimeter walls to fully enclosed from external environment access doors will be opened only for deliveries entry and exit and will be closed while unloading.
- Neoprene rubber buffers should be installed on the vertical face of the loading dock where vehicles park to absorb impacts.
- A detailed assessment of noise emissions from plant and equipment associated with the loading dock is required to be conducted prior to installation in conjunction with Hills Shire council requirements.
- A solid roller/panel door to the loading dock should be installed which is closed during periods when trucks are being loaded and unloaded.
- Vehicles associated with the loading dock should not be parked within the vicinity of the loading dock.
- Vehicle engines should be switched off during loading and unloading within the dock.

Section 11.2 Compliance with Internal Noise Levels

Section 11.3 Typical External Glass Selection

Section 12 Carpark Entrance

## **21. Contamination Assessment & Site Remediation**

The recommendations of the Site Assessment and Report prepared by Douglas Partners Pty Ltd, referenced as 85233.00, dated December 2015 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

Section 13 Conclusions and Recommendations:

- An intrusive investigation in the form of a detailed site investigation (DSI) including sampling and analysis of soil and groundwater is recommended to assess the nature and extent of contamination (if present) and review the exposure risks to receptors in order to inform remediation and / or management requirements (if required). Due to current restricted access conditions, a DSI would be best conducted following demolition of the existing building and removal of the hardstand. The DSI should include a preliminary waste classification for the disposal of soils proposed for excavations
- A hazardous building materials assessment is also recommended prior to demolition of the building.

## **22. Retention of Trees**

All trees not specifically identified for removal on the approved Landscape Plans, prepared by Site Image and dated 30.05.2016, are to be retained and protected in accordance with the Hills Shire Council's **Protection of Existing Trees** condition.

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

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

## **24. Control of Noise from Trucks**

The number of trucks waiting to remove fill from the site must be managed to minimise disturbance to the neighbourhood. No more than one truck is permitted to be waiting in any of the streets adjacent to the development site.

## **25. Construction of Separate Garbage Storage Rooms**

The building must incorporate separate garbage storage rooms constructed in accordance with the specifications contained within the Waste Management Plan submitted as part of the Development Application (4.6 Design of Waste Storage Areas), to facilitate the separation of commercial waste and recycling from residential waste and recycling. The residential garbage storage room must provide minimum bin storage provision for 11 x 240L and 5 x 660L garbage bins, 11 x 240L and 5 x 660L recycling bins and 8 x 240L garden organics bins. Commercial bin storage provision is to be in line with that specified in the abovementioned plan.

## **26. Adherence to Construction and Demolition Waste Management Plan**

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

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

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place. Any material moved offsite is to be

transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/sorting station that will sort the waste on their premises for recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

### **28. Disposal of Surplus Excavated Material**

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

### **29. Commencement of Residential Waste Services**

A private waste contractor is not permitted to service the residential apartments and townhouses, unless otherwise determined by Council. A service is to be provided by Council. The service is to be arranged prior to occupancy of the development and not sooner than two weeks before this time. All requirements of Council's waste service must be complied with at all times. Please telephone Council on (02) 9672 1112 for the commencement of waste services.

### **30. Property Numbering for Integrated Housing, Multi Unit Housing, Commercial Developments and Industrial Developments**

The responsibility for property numbering is vested solely in Council.

The property address for this development is: - 105 Bella Vista Drive, Bella Vista

Approved Numbering is as per Plans submitted marked as Issue 'I' DA03 – DA07.

Townhouses 01 – 11, Shop 01 – 04, Units Level 1 101 – 113 & Units Level 2 201 – 212.

These numbers, unless otherwise approved by Council in writing, are to be displayed clearly on all door entrances.

Clear and accurate external directional signage is to be erected on site at driveway entry points and on buildings. Unit numbering signage is also required on all lift wells, stairway access doors and lobby entry doors. It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed.

### **31. Community and Childcare Centre Parking**

A restriction on title is to be created to allow use of nineteen car parking spaces by Lot 12 DP 1026150. The car parking spaces designated for use are detailed on the lower basement floor plan approved by this consent (See condition no. 1).

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

A separate development application is required for the occupation of the approved commercial tenancies. This application is required to provide assessment against:

- The Hills Local Environmental Plan 2012; and
- The Hills Development Control Plan 2012.

The above assessment should specifically address the following:

- Proposed use and its Permissibility

- Hours of Operation
- Delivery Details
- Staff Numbers
- Signage, and
- Parking Provision

### **33. Acoustic Screening**

In addition to full height acoustic screening of the roof top plant and lift overrun (to RL 92.3), a further architectural screen is to be provided to the same height, on the outside of the acoustic screen (abutting), being "Innowood spotted gum louvres" or similar to provide a higher visual quality to the building.

### **34. Access Report**

The recommendations contained within Access Review prepared by Morris Goding Accessibility Consulting and dated 6 July 2016 are to be incorporated into the design of the development.

### **35. Communal Open Space Area**

The communal open space area is to be made available for use by all future residents of the development approved by this consent being the 11 attached dwellings and 25 units.

### **36. Basement Carpark Ventilation**

The basement carparks are to be provided ventilation in accordance with the Australian Standard AS 1668.2. Certification of compliance is to be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

### **37. Surface of Carparks**

The surface of the car parks is to be finished with a surface that minimises tyre squeal. Information on the adopted finish is to be provided to the Certifying authority.

### **38. Commercial Waste and Recycling Contract**

A private waste contractor is required to service the retail commercial units. There must be a contract with a licenced contractor for the removal of all waste emanating from said units. Written evidence of a valid and current collection contract must be held on site at all times and produced in a legible form to any authorised officer of the Council who asks to see it.

### **39. Provision of Residential Bulky Goods Area**

A room or caged area (minimum floor area 4m<sup>2</sup>) is required for the interim management and storage of unwanted bulky goods. The area should be directly and easily accessible from the loading bay. It can be located within the residential garbage storage room provided it does not conflict with the space designated for the placement of bins.

### **40. Provision for Onsite Waste Collection**

Vehicle access and loading facilities are required to be designed and constructed in accordance with AS2890.2-2002 for the standard Medium Rigid Vehicle. A reduced clear vertical clearance of no less than 3.5m is required for all manoeuvring areas. Loading bays are to allow additional space for access and loading. Collection vehicles servicing the development are not permitted to reverse in or out of the site.

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

### **41. Design Verification**

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

### **42. Works in Existing Easement**

All adjoining properties either benefited or burdened by the existing easement must be notified of the proposed works within the easement in writing, including commencement and completion dates, before a Construction Certificate is issued.

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

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

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

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$193,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the rate of \$85.00 per square metre based on the road frontage of the subject site plus an additional 50m on either side (207m) multiplied by the width of the road (11m).

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

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

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

In accordance with Section 80A(6)(b) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The minimum bond amount is \$10,000.00. The bond amount must be confirmed with Council prior to payment.

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

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

### **46. Security Bond Requirements**

A security bond may be submitted in lieu of a cash bond. The security bond must:

- Be in favour of The Hills Shire Council;
- Be issued by a financial institution or other accredited underwriter approved by, and in a format acceptable to, Council (for example, a bank guarantee or unconditional insurance undertaking);
- Have no expiry date;
- Reference the development application, condition and matter to which it relates;
- Be equal to the amount required to be paid in accordance with the relevant condition;
- Be itemised, if a single security bond is used for multiple items.

Should Council need to uplift the security bond, notice in writing will be forwarded to the applicant 14 days prior.

### **47. Section 94A Contribution**

Pursuant to section 80A (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 94A Contributions Plan, a contribution of **\$235,191.00** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 94A Contributions Plan.

The contribution is to be paid prior to the issue of the Construction Certificate or Complying Development Certificate.

You are advised that the maximum percentage of the levy for development under section 94A of the Act having a proposed construction cost is within the range specified in the table below;

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 %
More than \$200,000	1%

#### **48. Internal Pavement Structural Design Certification**

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

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

##### **49. Protection of Existing Trees**

The trees that are to be retained are to be protected during all works strictly in accordance with AS4970- 2009 Protection of Trees on Development Sites.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

##### **50. Public Infrastructure Inventory Report**

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. This includes, but is not limited to, the road fronting the site along with any access route used by heavy vehicles. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

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

##### **51. Traffic Control Plan**

A Traffic Control Plan is required to be prepared and approved. The person preparing and approving the plan must have the relevant accreditation to do so. A copy of the approved plan must be submitted to Council and endorsed by Council's Principal Coordinator – Roads and Transport, before being implemented. Where amendments to the plan are made, they must be submitted to Council before being implemented.

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

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

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

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

## **53. Consultation with Service Authorities**

Applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.

Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

The building plans must be submitted to the appropriate Sydney Water office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the building plans will be stamped indicating that no further requirements are necessary.

## **54. Principal Certifying Authority**

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

## **55. Approved Temporary Closet**

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

## **56. Stabilised Access Point**

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

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

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

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

## **58. Notification of Asbestos Removal**

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

## **59. Erosion and Sedimentation Controls**

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

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

## **60. Site Water Management Plan**

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

The Plan is to include consideration for the management, treatment and disposal of water accumulated in excavations which maybe polluted with suspended solids.

Water polluted with suspended solids must not be discharged to the stormwater if the water contains 50mg/L or greater suspended solids.

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

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials from the site are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos (of an area more than 10 square metres) must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au). Asbestos removal must be carried out in accordance with the WorkCover, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

## **62. Discontinuation of Domestic Waste Services**

Council provides a domestic waste service to the property subject to this Development Application. This service must be cancelled prior to demolition of the existing dwelling or where the site ceases to be occupied during works, whichever comes first. You will continue to be charged where this is not done. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council. To satisfy this condition, the Principal Certifying Authority must contact Council on (02) 9843 0310 at the required time mentioned above to arrange for the service to be discontinued and for any bins to be removed from the property by Council.

## **63. Sydney Water Building Plan Approval**

A building plan approval must be obtained from Sydney Water Tap in™ to ensure that the approved development will not impact Sydney Water infrastructure.

A copy of the building plan approval receipt from Sydney Water Tap in™ must be submitted to the Principal Certifying Authority upon request prior to works commencing.

Please refer to the website <http://www.sydneywater.com.au/tapin/index.htm>, Sydney Water Tap in™, or telephone 13 20 92.

## **64. Adjoining Property Dilapidation Report (Pre-Construction)**

A dilapidation report must be prepared and submitted to Council, the Principal Certifying Authority and affected property owners by a structural engineer recording the condition of any dwelling or ancillary structures on 103, 107 and 109 Bella Vista Drive or within the likely zone of influence from any excavation, dewatering or construction induced vibration.

## **DURING CONSTRUCTION**

### **65. Standard of Works**

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

## **66. Hours of Work**

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

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

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

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

## **67. Survey Report**

Survey Certificate to be submitted to the Principal Certifying Authority at footings and/or formwork stage. The certificate shall indicate the location of the building in relation to all boundaries, and shall confirm the floor level prior to any work proceeding on the building.

## **68. Compliance with BASIX Certificate**

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 699931M\_02 and 693350M\_02 are to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

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

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

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

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

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

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

## **70. Roof Water Drainage**

Gutter and downpipe and/or rainwater tank overflow, to be provided and connected to an approved lawful discharge point (ie. kerb, inter-allotment drainage easement or OSD) upon installation of roof coverings.

## **71. Stockpiles**

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

## **72. Asbestos Removal**

Asbestos containing material, whether bonded or friable, shall be removed by a licenced asbestos removalist. A signed contract between the removalist and the person having the benefit of the development application is to be provided to the Principle Certifying Authority, identifying the quantity and type of asbestos being removed. Details of the landfill site that may lawfully receive the asbestos is to be included in the contract.

Once the materials have been removed and delivered to the landfill site, receipts verifying the quantity received by the site are to be provided to the Principle Certifying Authority.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding

the movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

### **73. Dust Control**

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

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

### **74. Further contamination assessment**

A contamination assessment of the soils shall be carried out in areas that were inaccessible at the time of the initial contamination assessment. A copy of the assessment shall be submitted to Council's Manager – Environment & Health.

### **75. Construction Noise**

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

### **76. Car Wash Bay**

If a car wash bay is provided the bay must not drain to the stormwater system. The carwash bay is to be drained to the sewer in accordance with any Sydney Water requirements. Details of the drainage for a car wash bay are to be provided to the certifying authority.

### **77. Use of the Right of Carriageway and Footway**

Use of the right of carriageway (by all benefitting allotments) and footway (by the public) is to be maintained at all times during construction.

### **78. Construction Management Plan**

Compliance with the Construction Management and Childcare Parking Staging Plan prepared by Restifa and Partners and dated July 2016 (Ref to condition no. 1).

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

#### **79. Design Verification Certificate**

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

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

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

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

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

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

## **81. Landscaping Prior to Issue of Occupation Certificate**

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

## **82. Completion of Engineering Works**

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

## **83. Public Infrastructure Inventory Report - Post Construction**

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

## **84. Pump System Certification**

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

## **85. OSD System Certification**

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

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

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

## **86. Creation of Restrictions / Positive Covenants**

Before an Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via a request document, Section 88B instrument associated with a plan or the like. Council's standard recitals must be used.

### **a) Restriction – Bedroom Numbers**

The proposed residential units within the development lot 13 must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

### **b) Restriction/ Positive Covenant – Water Sensitive Urban Design**

The subject site must be burdened with a positive covenant that refers to the WSUD elements referred to earlier in this consent using the "water sensitive urban design elements" terms included in the standard recitals.

### **c) Positive Covenant – Stormwater Pump**

The subject site must be burdened with a restriction and a positive using the "basement stormwater pump system" terms included in the standard recitals.

### **d) Positive Covenant – Onsite Waste Collection**

The subject site must be burdened with a positive covenant relating to onsite waste collection using the "onsite waste collection" terms included in the standard recitals.

### **e) Restriction – Acoustic Treatment**

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

**f) Covenant – Parking Spaces – Access/ Dual Use**

The car parking spaces designated CC on the approved lower basement floor plan must be burdened with a positive covenant enabling their use by Lot 12 DP 1026150. The spaces are also permitted to be used as retail parking spaces for the development approved by this consent.

**g) Restriction – Common Open Space**

The common open space approved within Lot 13 is to be available for use by the dwellings on Lot 1 to 12 approved by this consent (the attached dwellings) in addition to the units within the shop top housing development approved by this consent.

**87. Works as Executed Plans**

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

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

**88. Section 73 Compliance Certificate (Community Title Lots)**

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. The certificate must refer to this development consent and all of the lots created.

Sydney Water's guidelines provide for assumed concurrence for the strata subdivision of a development approved by an earlier consent covered by a compliance certificate.

**89. Provision of Electrical Services (Community Title Lots)**

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

**90. Prior or Concurrent Registration of Preceding Subdivision**

A Subdivision Certificate cannot be issued for Strata subdivision of the lot 13 before the preceding stage/ Community Title Subdivision pursuant to this consent DA 1146/2016/JP has been registered, unless the two are registered concurrently.

**91. Notice of Privately Issued Strata Certificate**

Should the Strata Certificate be issued by a certifier other than Council a copy of the strata certificate, along with all supporting documentation relied upon as part of the same, must be submitted to Council within seven days.

**92. Provision of Telecommunication Services (Community Title Lots)**

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

### **93. Final Plan and Section 88B Instrument (Community Title Subdivision)**

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

#### **a) Restriction – Bedroom Numbers**

Proposed Community Title residential lots PT 2 – PT 12 must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

#### **b) Positive Covenant – Maintenance/ Repair of Retaining Wall**

A positive covenant must be placed on the title of proposed lots PT1 and PT13 to ensure the maintenance/ repair of the existing retaining wall that supports the public Road Bella Vista Drive using the "maintenance/ repair of shared access" terms included in the standard recitals.

#### **c) Positive Covenant – Maintenance/ Repair of Shared Driveway**

A positive covenant must be placed on the title of proposed lot PT1 to ensure the maintenance/ repair of the shared driveway using the "maintenance/ repair of shared access" terms included in the standard recitals.

#### **d) Positive Covenant – Maintenance/ Repair of Shared Public Access Link**

A positive covenant must be placed on the title of proposed lot PT1 to ensure the maintenance/ repair of the shared driveway using the "maintenance/ repair of shared access" terms included in the standard recitals.

### **94. Subdivision Certificate Application**

When submitted, the Subdivision Certificate application must include:

- One copy of the final plan.
- The original administration sheet and Section 88B instrument.
- All certificates and supplementary information required by this consent.
- An AutoCAD copy of final plan (GDA 1994 MGA94 Zone56).

### **95. Amendment of Existing Easements**

The existing easement of 8.675m Right of Footway registered under the DP 1012575, currently benefitting the Council must be amended. Where Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges.

### **96. Internal Pavement Construction**

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

### **97. Final Inspection of Garbage Storage Rooms**

Prior to an Occupation Certificate being issued, a final inspection of the garbage storage rooms and management facilities must be undertaken by Council. This is to ensure compliance with design specifications as per other conditions of this consent and that all necessary arrangements are in place for waste collection by Council. The time for the inspection must be arranged with Council at least 48 hours prior to the suggested appointment time.

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

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

## **99. Development of a Management Plan for the Operation of the Loading Dock and Waste storage areas**

Prior to the issue of any form of occupation certificate a plan of management for the operation of the loading dock and waste storage area, to minimise noise and nuisance from activities within the dock and waste storage area on the occupants of residential premises is to be submitted to the Manager – Environment and Health of The Hills Shire Council for review and acceptance.

The plan is to incorporate methods to insure that trucks reverse into the loading dock as quickly and safely as possible to minimise the time the reversing siren is sounding.

The plan is to incorporate methods to prevent trucks queuing in the driveway or idling in the common driveway.

The plan is to incorporate methods to insure that the roller door to the loading dock is closed prior to the operation of loading or unloading.

The plan is to incorporate methods to insure that the roller door to the loading dock is closed prior to the operation of any activities which could create noise or the use of any equipment such as pallet jacks, waste compactors or compressors.

The plan is to incorporate methods to insure that late night depositing of waste particularly solid waste such as glass bottles into metal bins is controlled and noise is prevented after 6:30pm or prior to 7:00am.

## **100. Adjoining Property Dilapidation Report (Post-Construction)**

A post-construction dilapidation report must be prepared and submitted to Council, the Principal Certifying Authority and affected property owners prior to the issue of the Final Occupation Certificate, by a structural engineer recording the condition of any dwelling or ancillary structures on 103, 107 and 109 Bella Vista Drive or within the likely zone of influence from any excavation, dewatering or construction induced vibration.

## **THE USE OF THE SITE**

### **101. Offensive Noise**

The use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provisions of the *Protection of the Environment Operation Act 1997*.

### **102. Lighting**

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

### **103. Final Acoustic Report**

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

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

### **104. Hours of operation of the loading dock**

Delivery of goods (both residential and commercial) and commercial waste collection shall be restricted to the following times;

- Monday to Saturday: 7.00am to 6:30pm

## **105. Waste and Recycling Management**

To ensure the adequate storage and collection of waste from the occupation or use of the premises, all garbage and recyclable materials emanating from the premises must be stored in a designated waste storage area, which includes provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. All waste storage areas must be screened from view from any adjoining residential property or public place. Under no circumstances should waste storage containers be stored in locations that restrict access to any of the car parking spaces provided onsite.

## **106. Waste and Recycling Collection**

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

## **107. Commercial Waste Collection and Deliveries**

Commercial waste collection and deliveries are limited to Small Rigid Vehicles (SRV).

## **108. Management Plan for the Operation of the Loading Dock**

The approved Management plan for the operation of the loading dock is to be implemented and appropriate signage provided for staff operating within the dock and for truck and van drivers entering the driveway and loading dock area.

A copy of the management plan is to be kept in the dock area and provided to all users of the loading dock.

Any new tenant or user must be provided with a copy of the management plan.

## **109. Bin Storage for Attached Dwellings**

The residential garbage storage room is sized to store all bins associated with the residential apartments and attached dwellings. All bins, particularly those of the attached dwellings are to be permanently stored in the residential garbage storage room, unless previous written approval is obtained from Council.

## **ATTACHMENTS**

1. Locality Plan (1 Page)
2. Aerial Photograph (1 Page)
3. Zoning Map (1 Page)
4. LEP Building Height Map (1 Page)
5. LEP Floor Space Ratio Map (1 Page)
6. LEP Minimum Lot Size Map (1 Page)
7. Site Analysis Plan (1 Page)
8. Landscape Plan (1 Page)
9. Floor Plans (3 Pages)
10. Elevations (3 Pages)
11. Sections (2 Pages)
12. Building Height Perspectives (2 Pages)
13. Shadow Diagrams (2 Pages)
14. Historic Site Plan (1 Page)
15. Historic Section Plan (1 Page)
16. Perspectives (4 Pages)

## ATTACHMENT 1 – LOCALITY PLAN



- SUBJECT SITE
- PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

NOTE : 9 SUBMISSIONS RECEIVED  
OFF THE SCOPE OF THIS MAP  
12 EMAIL SUBMISSIONS ALSO  
RECEIVED



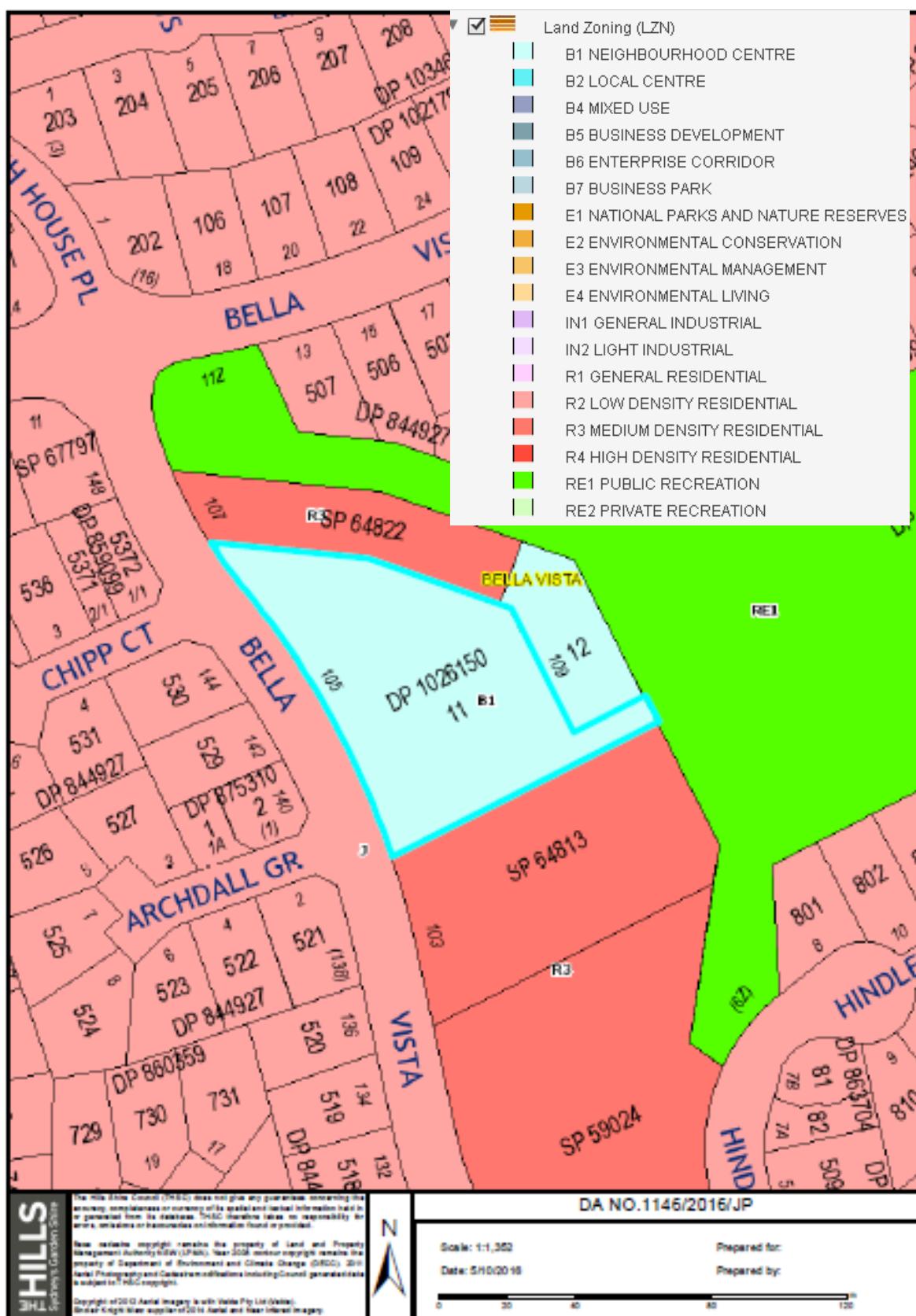
### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE  
TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE  
BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT  
TO THSC COPYRIGHT.

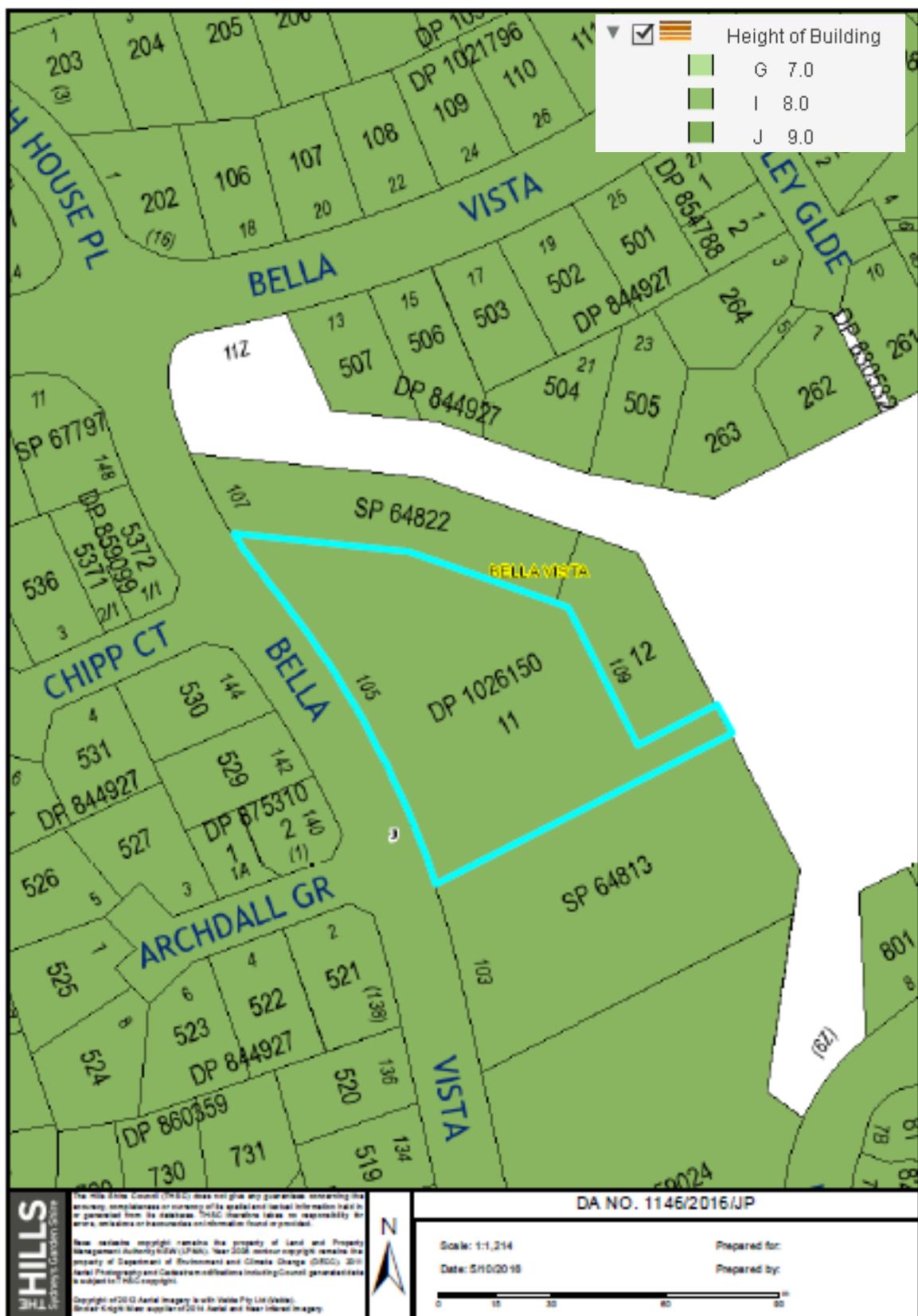
ATTACHMENT 2 – AERIAL PHOTOGRAPH



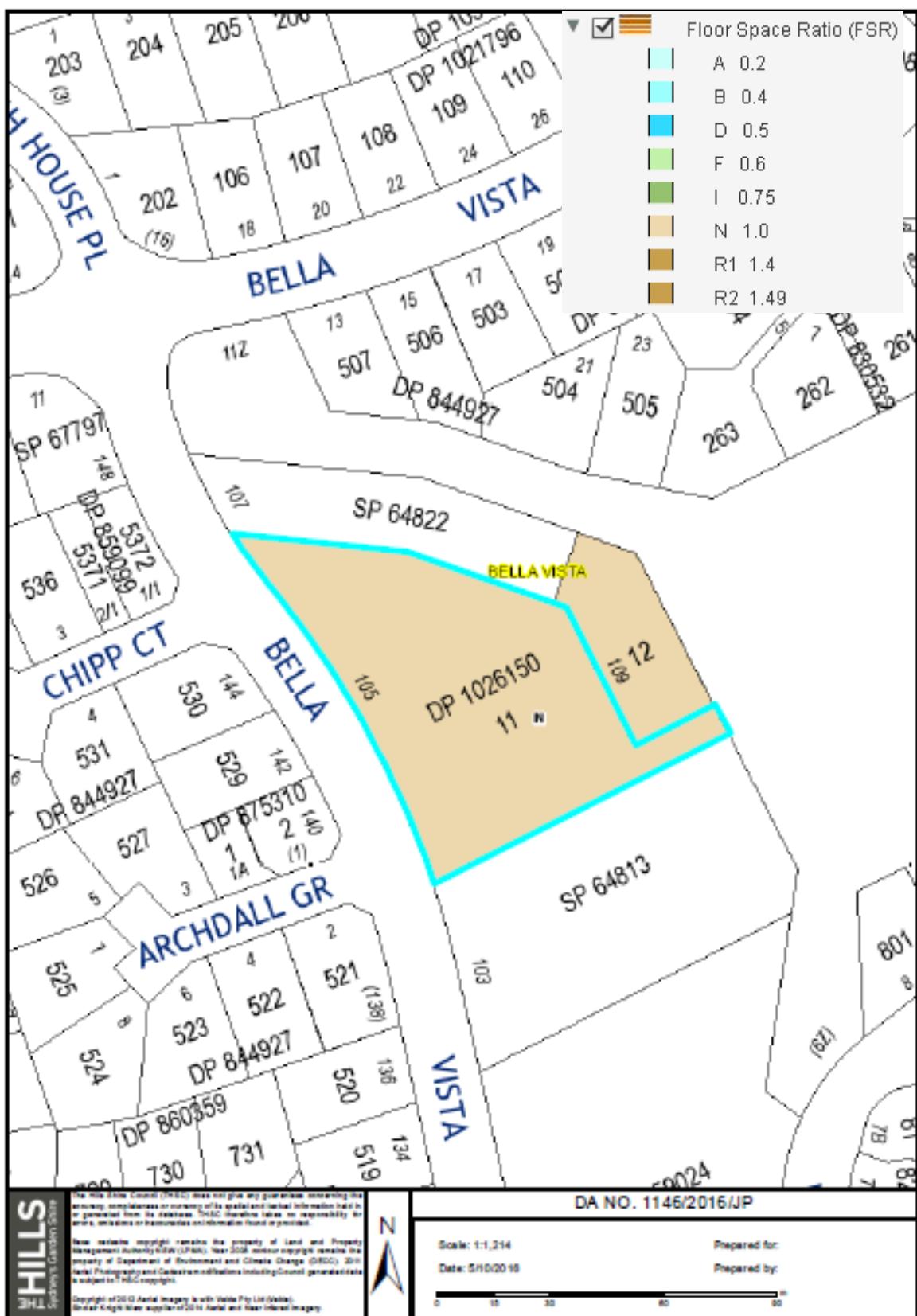
### ATTACHMENT 3 – ZONING MAP



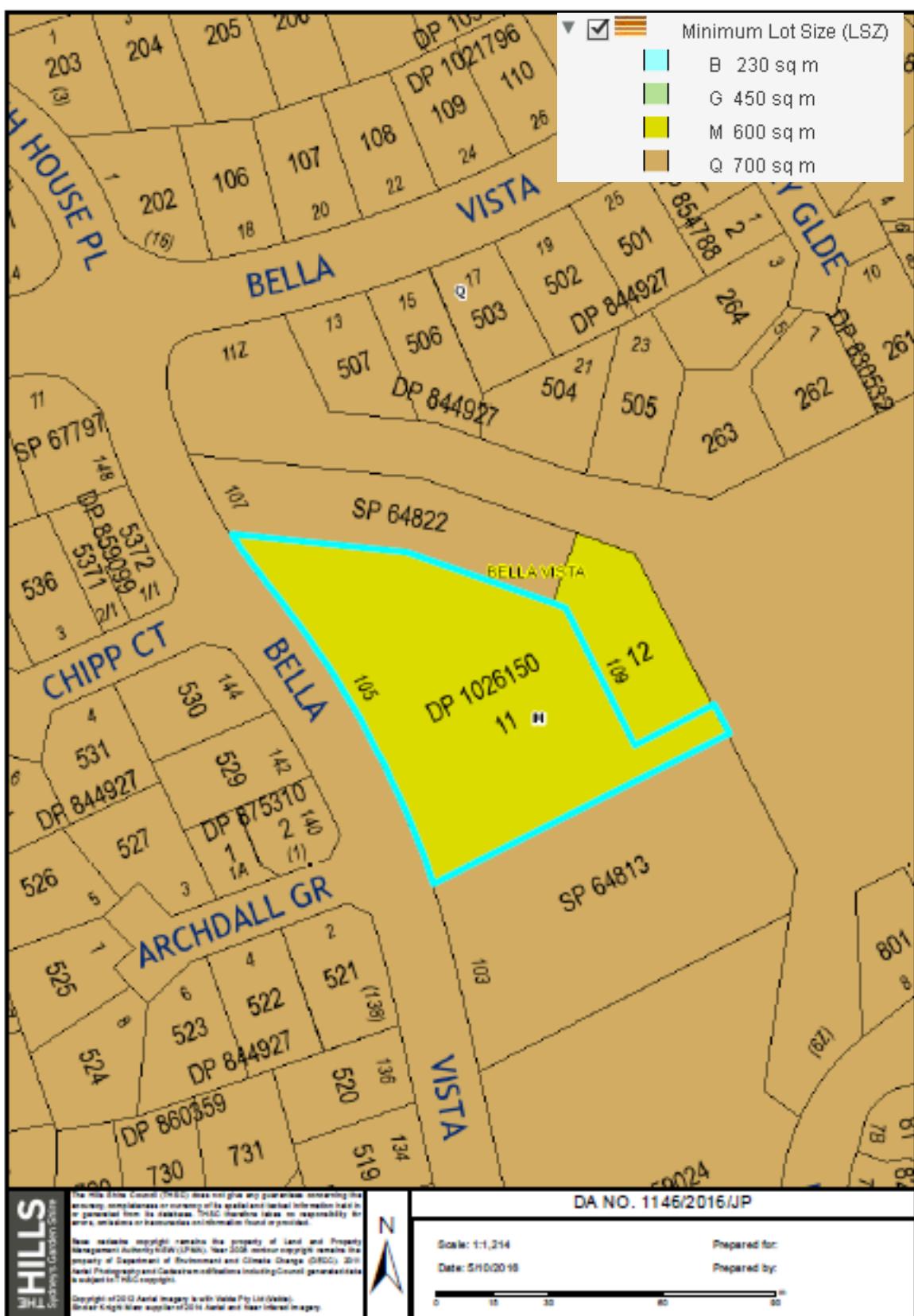
ATTACHMENT 4 - LEP BUILDING HEIGHT MAP



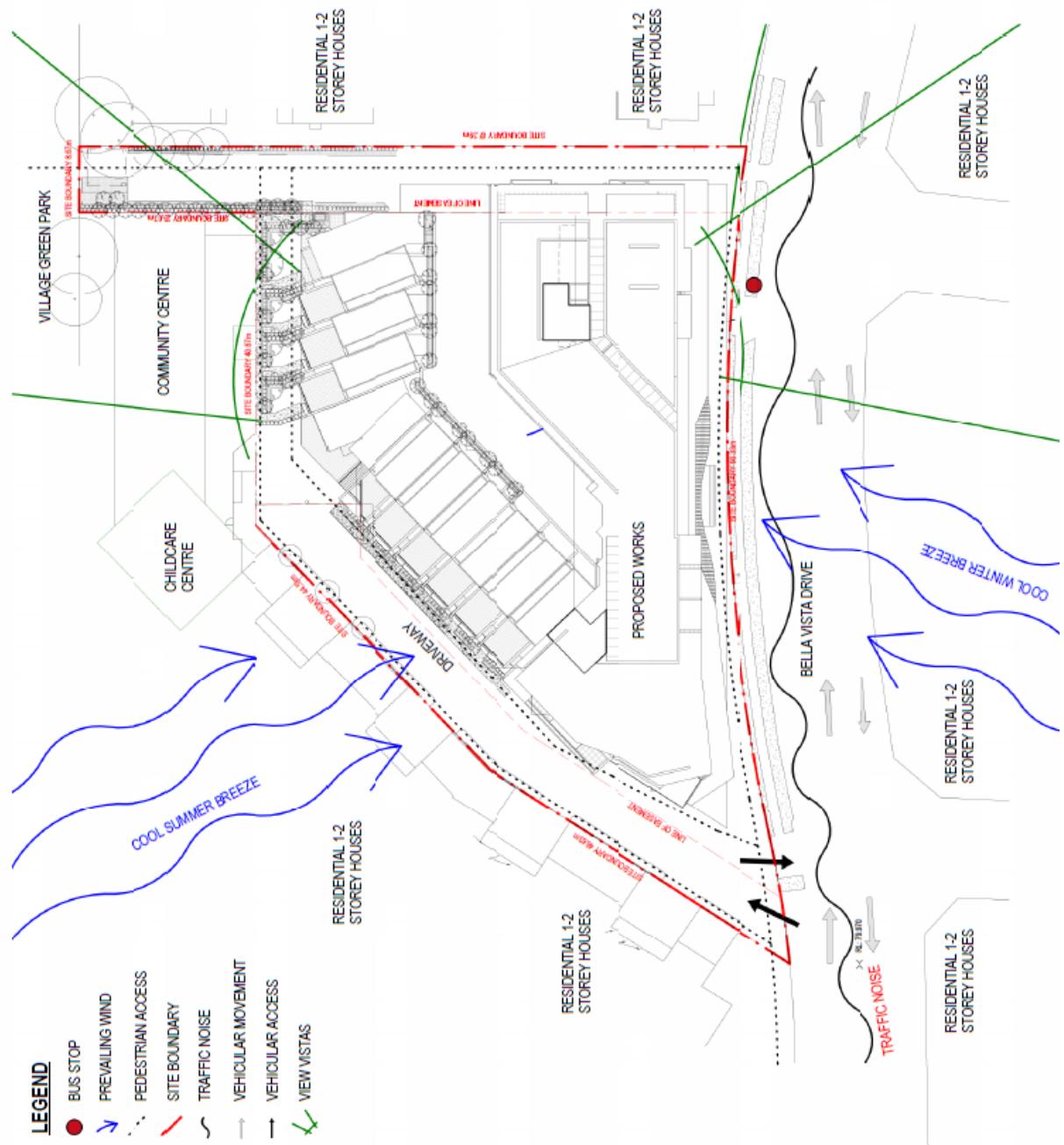
## ATTACHMENT 5 – LEP FLOOR SPACE RATIO MAP



ATTACHMENT 6 – LEP MINIMUM LOT SIZE MAP



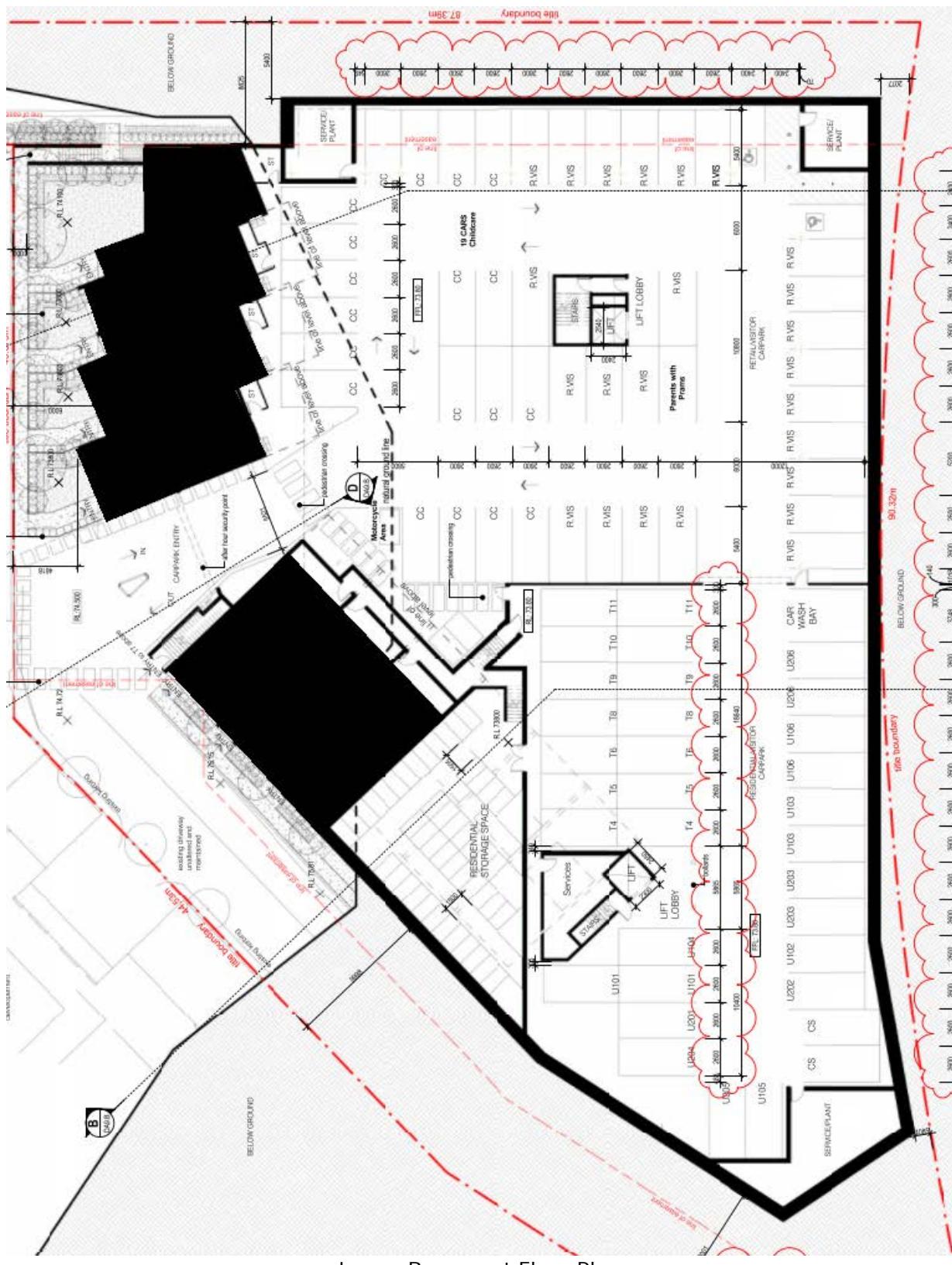
## ATTACHMENT 7 – SITE ANALYSIS PLAN



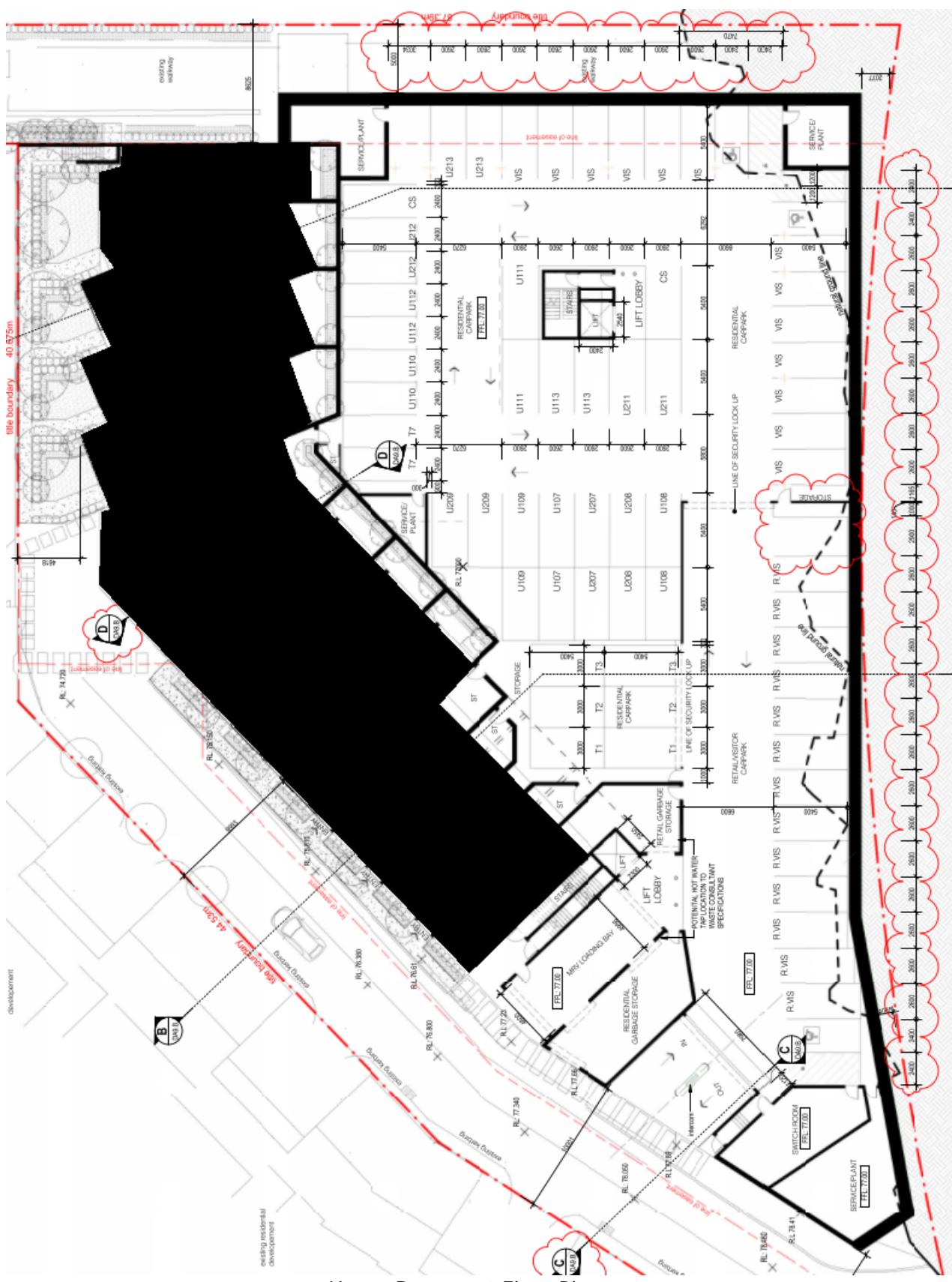
## ATTACHMENT 8 –LANDSCAPE PLAN



## **ATTACHMENT 9 –FLOOR PLANS**



## Lower Basement Floor Plan

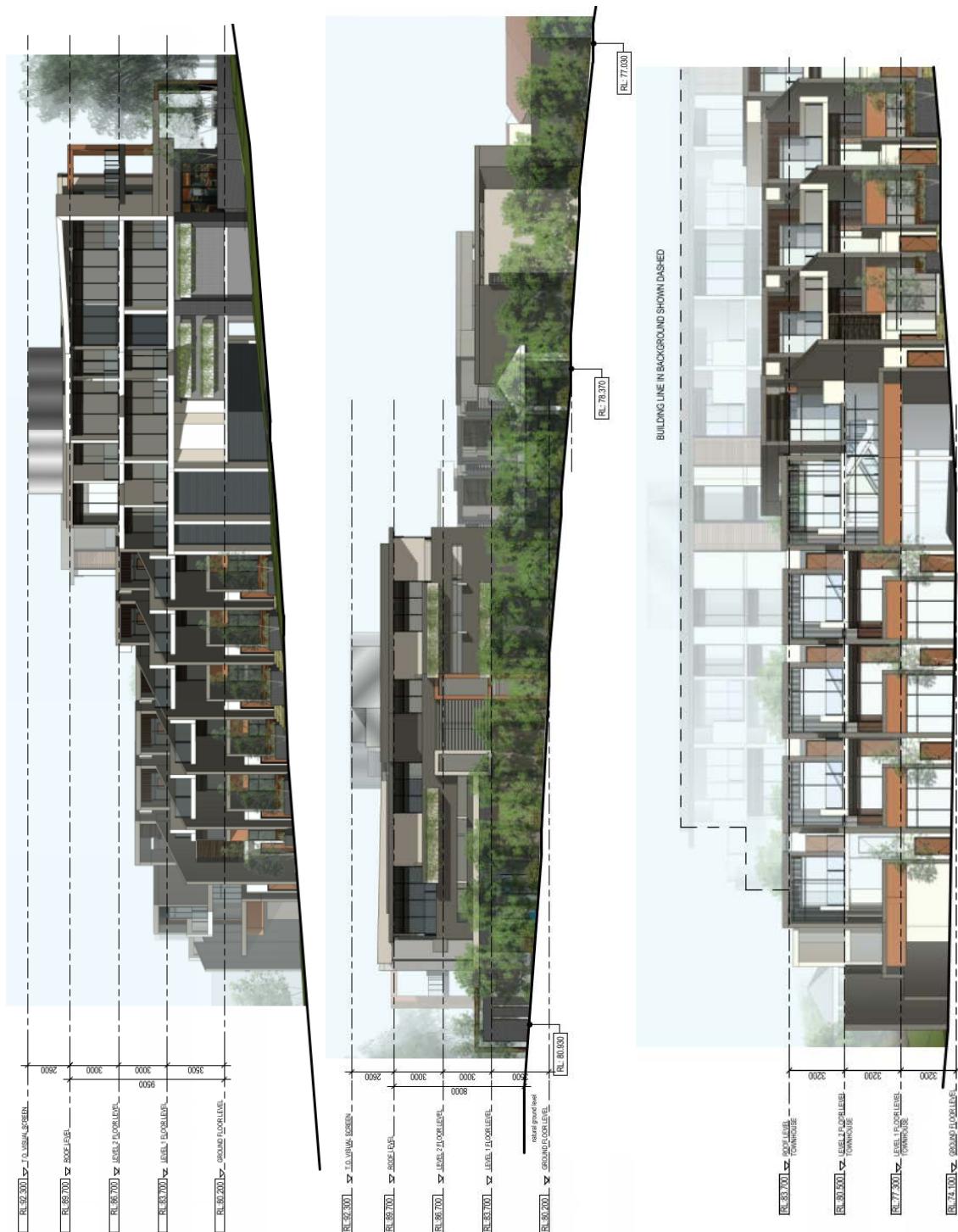


## Upper Basement Floor Plan



## Ground Floor Plan

## ATTACHMENT 10 - ELEVATIONS



North-West Elevation (Left) to Upper Shared Driveway, South-East Elevation (Middle) Adjacent to Public Footway and North-East Elevation (Right) to Lower Shared Driveway



South West Elevation (Left) to Bella Vista Drive and North Elevation (Right) to Shared Driveway

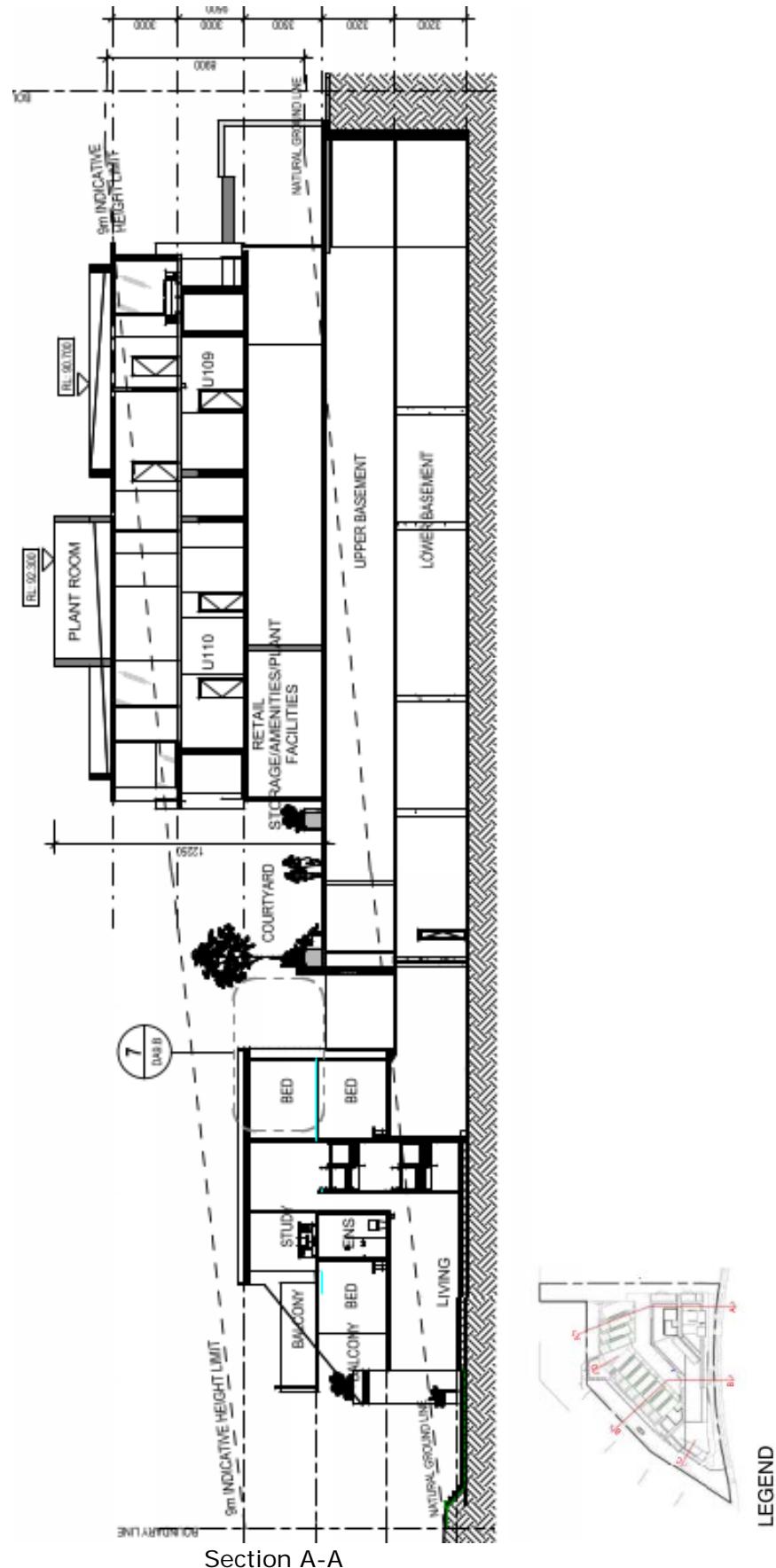


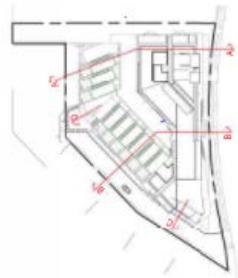
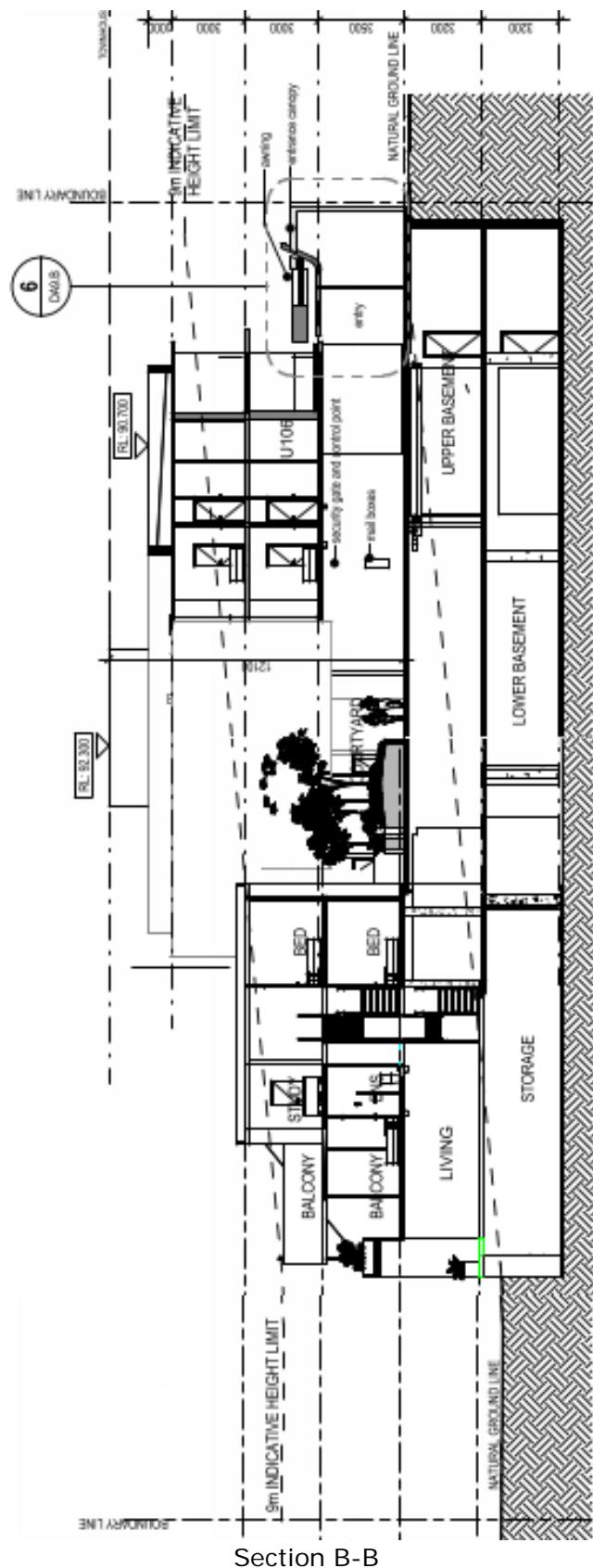
Internal Podium Elevations: A, B, C, D (From Top to Bottom) see Legend Below



LEGEND

## **ATTACHMENT 11 – SECTIONS**





## LEGEND

## ATTACHMENT 12 – BUILDING HEIGHT PERSPECTIVES



**HEIGHT PERSPECTIVE 1**

IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO BASEMENT LEVEL.



**HEIGHT PERSPECTIVE 2**

IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO BASEMENT LEVEL.



**HEIGHT PERSPECTIVE 3**

IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO BASEMENT LEVEL.

Height Perspectives Showing Breach Relative to Basement Level



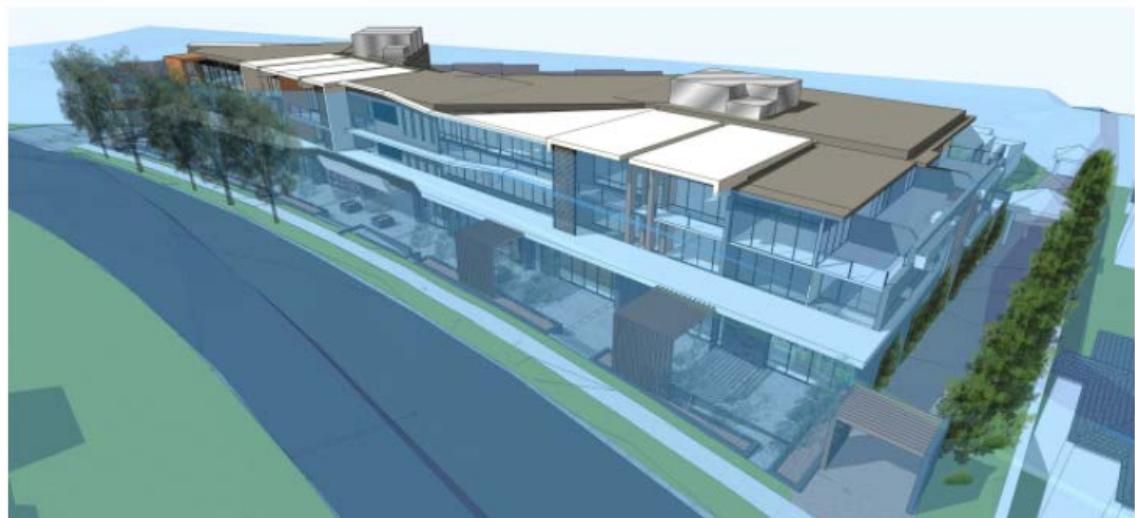
### HEIGHT PERSPECTIVE 1

(IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO NATURAL GROUND LINE)



### HEIGHT PERSPECTIVE 2

(IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO NATURAL GROUND LINE)

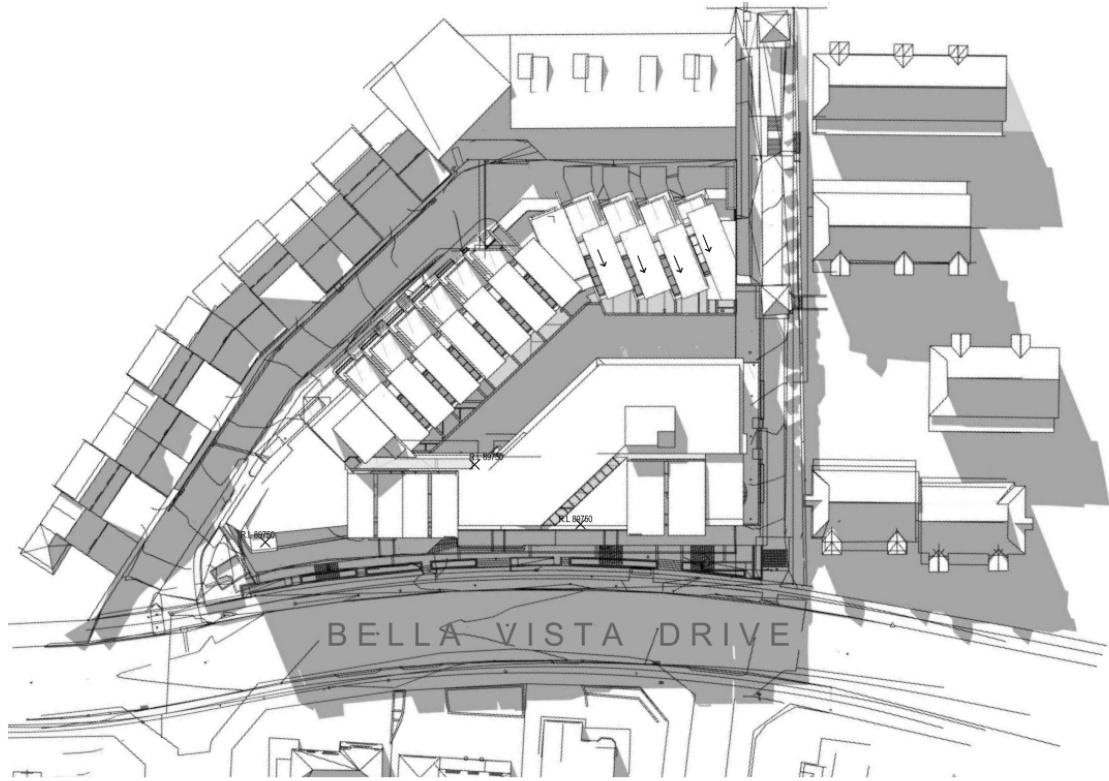


### HEIGHT PERSPECTIVE 3

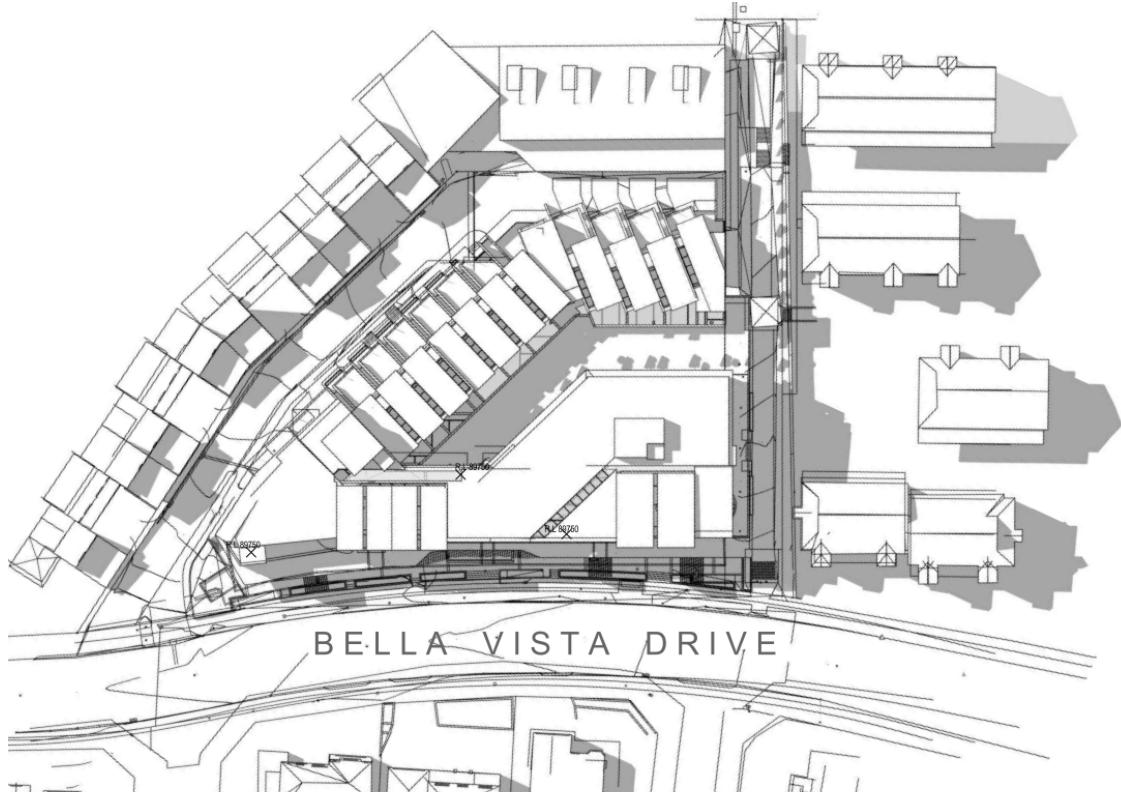
(IMAGE ABOVE DISPLAYING BUILDING ELEMENTS OVER THE 9m HEIGHT LIMIT RELATIVE TO NATURAL GROUND LINE)

Height Perspectives Showing Breach Relative to Historic Natural Ground Level

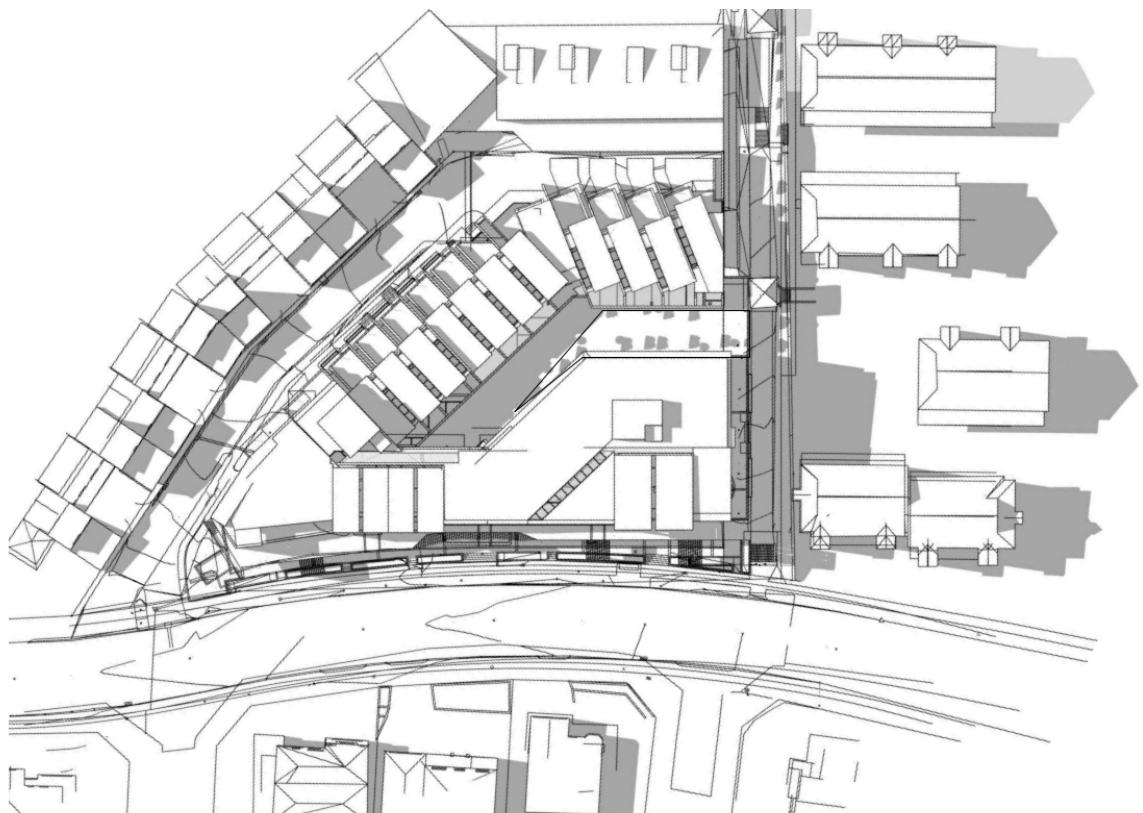
**ATTACHMENT 13 – SHADOW DIAGRAMS**



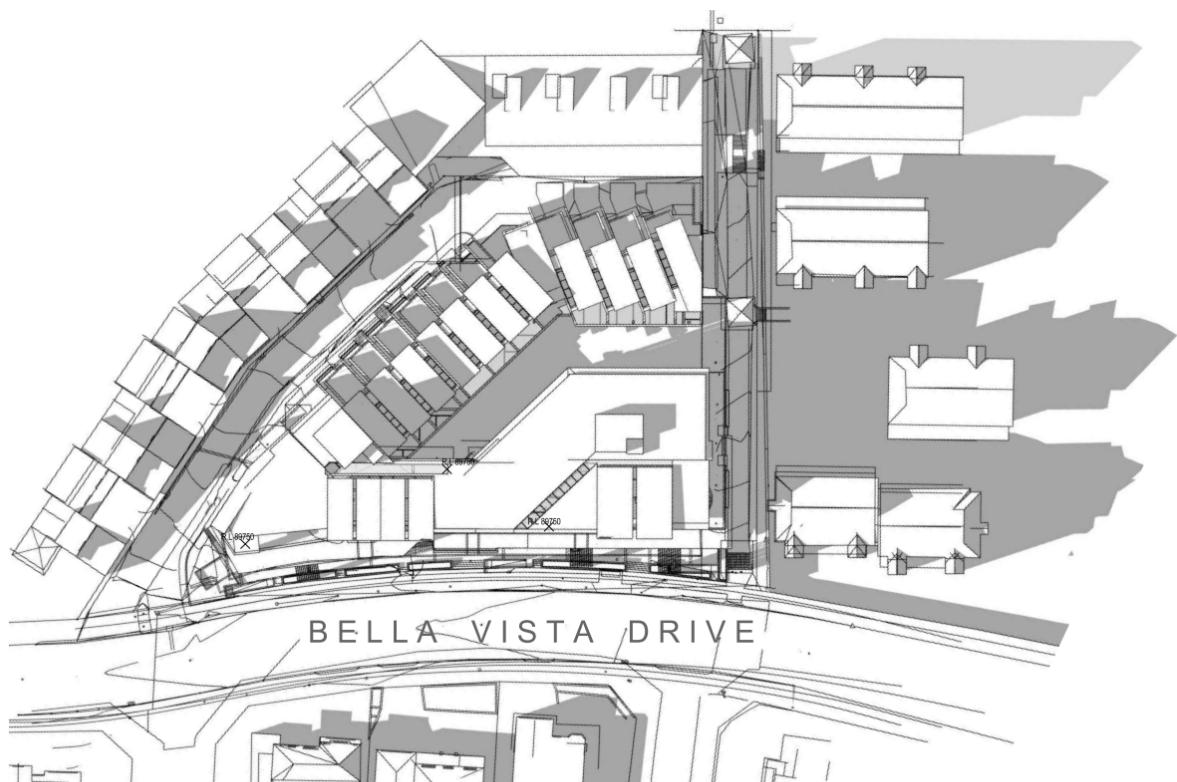
SHADOW DIAGRAM - 21 JUNE - 09AM



SHADOW DIAGRAM - 21 JUNE - 12NOON

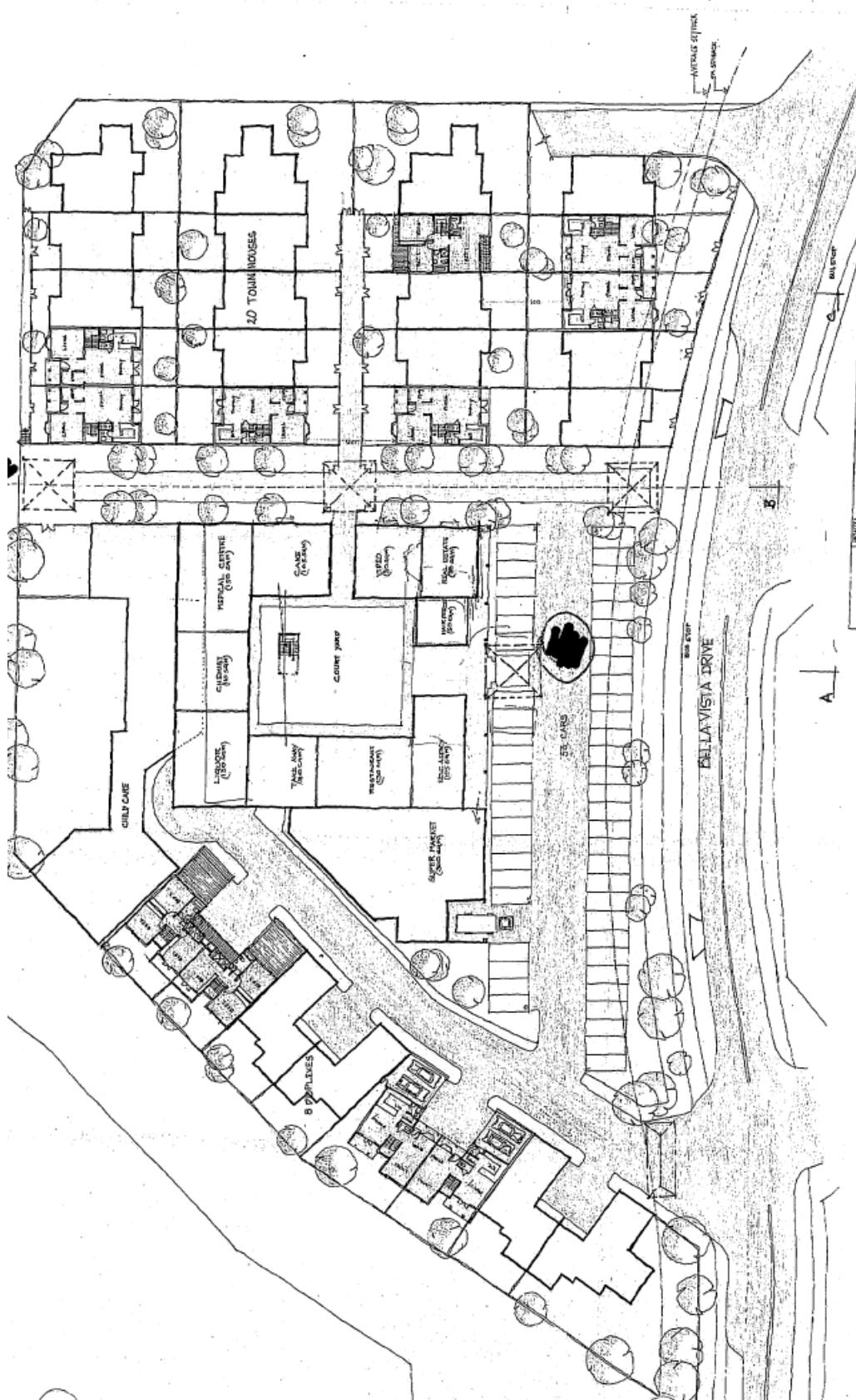


SHADOW DIAGRAM - 21 JUNE - 01PM

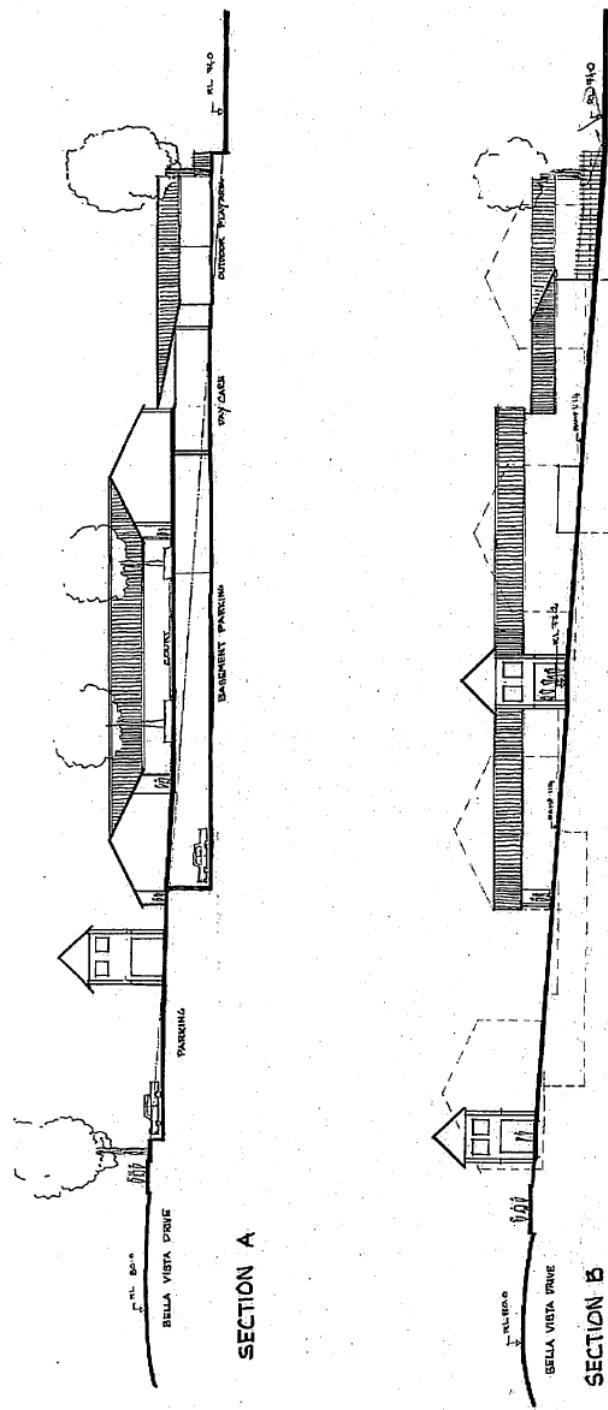


SHADOW DIAGRAM - 21 JUNE - 03PM

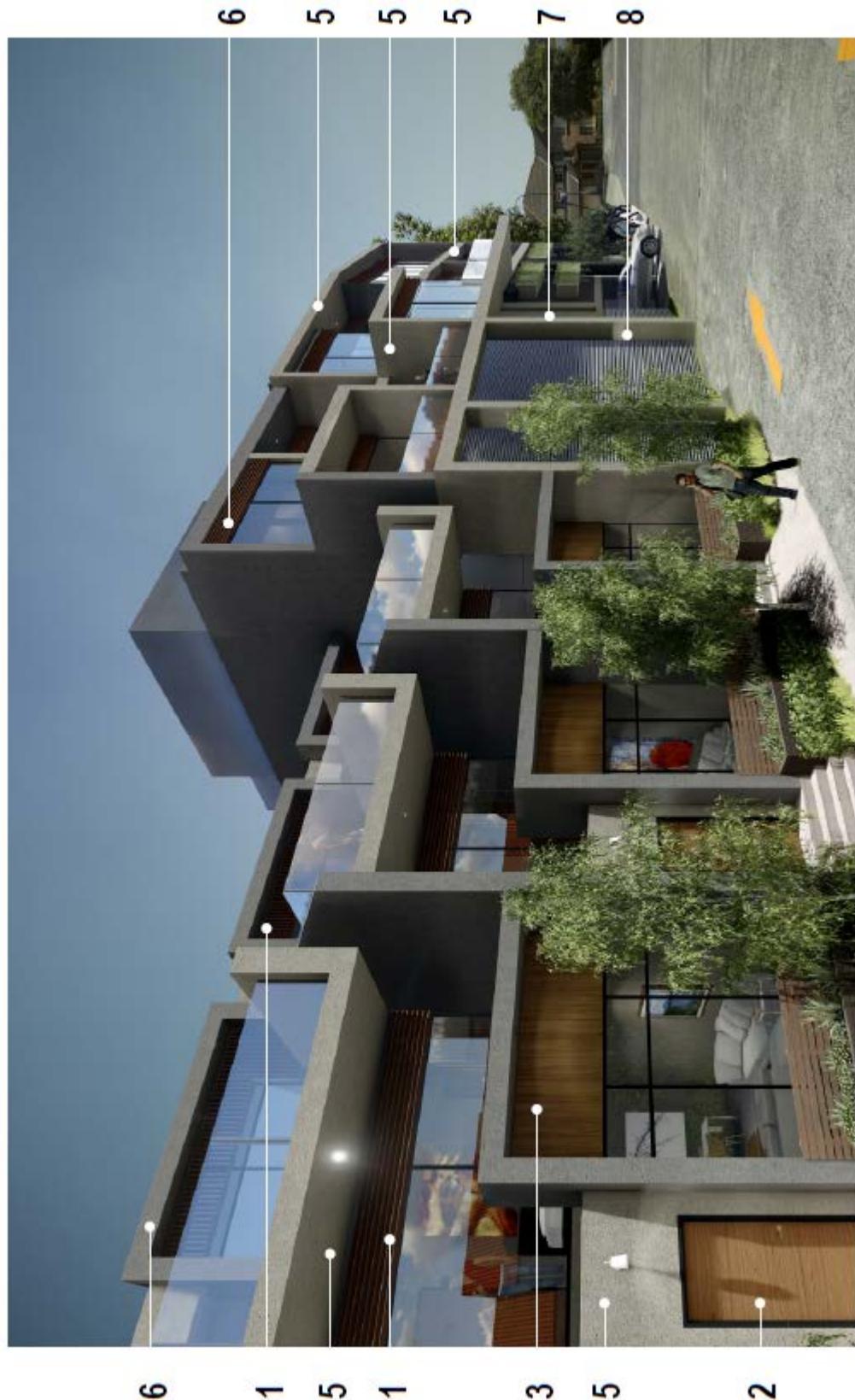
## ATTACHMENT 14 - HISTORIC SITE PLAN



ATTACHMENT 15 – HISTORIC SECTION



ATTACHMENT 16 - PERSPECTIVES



View from Shared Driveway looking towards Bella Vista Drive



**View from Bella Vista Drive looking North**



**View from Shared Driveway looking South**

MATERIAL AND FINISHES SCHEDULE		
ITEM	DESCRIPTION	MANUFACTURER
1	INNOWOOD SPOTTED GUM	INNOWOOD
2	CABOT'S EBONY EXTERIOR WOOD STAIN	CABOT
3	INNOWOOD SPOTTED GUM CLADDING	INNOWOOD
4	CABOT'S EBONY EXTERIOR WOOD STAIN	CABOT
5	DULUX PAINT COLOUR PLoughED EARTH	DULUX
6	DULUX PAINT COLOUR SANDY DAY	DULUX
7	PGH BLACK BEAUTY DRY BRICK	PGH
8	PGH PEBBLE DRY BRICK	PGH
9	DULUX TEXTURE TAVERN PAINT	DULUX



INNOWOOD SPOTTED GUM CLADDING



CABOT'S EBONY EXTERIOR WOOD STAIN



DULUX PAINT COLOUR PLoughED EARTH

DULUX PAINT COLOUR SANDY DAY



PGH BLACK BEAUTY DRY BRICK

PGH PEBBLE DRY BRICK



DULUX TEXTURE TAVERN PAINT