

SYDNEY WEST CENTRAL PLANNING PANEL

SWCPP No	2016SWY095
DA Number	DA 1650/2016/JP
Local Government Area	THE HILLS SHIRE COUNCIL
Proposed Development	RESIDENTIAL FLAT BUILDING DEVELOPMENT
Street Address	LOT 136 DP 1191927, WITHERS ROAD, KELLYVILLE
Owner	HOOP PINE HOLDINGS PTY LTD
Number of Submissions	First Notification: Three Second Notification: Nil Third Notification: Nil
Recommendation	Approval of the application
Regional Development Criteria (Schedule 4A of the Act)	CIV EXCEEDING \$20 MILLION
List of All Relevant s79C(1)(a) Matters	• SEPP (Sydney Region Growth Centres) 2006 • SEPP (State and Regional Development) 2011 • SEPP No. 55 — Remediation of Land • SEPP No. 65 — Design Quality of Residential Apartment Development • North Kellyville DCP 2008 • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 3 – Landscaping
Does the DA require Special Infrastructure Contributions conditions (s94EF)?	Yes
List all documents submitted with this report for the panel's consideration	Clause 4.6 Variation Request
Report prepared by	Principal Executive Planner Kristine McKenzie
Report date	16 March 2017

Summary of S.79C matters Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Conditions Have draft conditions been provided to the applicant for comment?	Yes

EXECUTIVE SUMMARY

The Development Application is for a residential flat building development containing 95 apartments. The units comprise 21 x 1 bedroom, 58 x 2 bedroom and 16 x 3 bedroom apartments. The proposal also includes basement parking for 190 vehicles comprising 171 resident spaces and 19 visitor spaces. The site fronts Withers Road, Horan Road and Lumsden Avenue.

The development includes a variation to SEPP Sydney Region Growth Centres 2006 which limits the height of the development to 9 metres. The proposed maximum height is 10.11 metres which is a variation of 12.3%. The height variation will not create an unreasonable impact on streetscape or result in unreasonable privacy or solar access impacts. The applicant has submitted a Clause 4.6 variation request.

The development includes variations to the North Kellyville DCP in respect to private open space in regard to balcony area for some one bedroom units. The proposed design is considered satisfactory and the variations are minor in nature. The proposed balcony areas comply with the SEPP and Apartment Design Guideline requirements.

The proposal was exhibited and notified to adjoining property owners. The proposal was also renotified to adjoining property owners and those who had made a submission upon the receipt of amended plans. A third notification period was undertaken to the six properties to the west due to the recent subdivision of that site. Three submissions were received during the first notification period and no submissions were received to the second or third notification period. The issues raised relate to concerns regarding height, form of development and character of the area. The development is considered satisfactory in terms of its height and character. The development is permissible within the zone and is located in close proximity to the North Kellyville Local Centre. The development is considered to be appropriately located and will not unreasonably impact on streetscape or character.

The proposal is recommended for approval subject to conditions.

In the absence of the SWCPP process, this matter would be determined by Council due to the variation to height exceeding 10%.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	M Eleisawy	1.	<u>SEPP Sydney Region Growth Centres 2006</u> – Permissible with consent. Variation to height limit.
Zoning:	R1 General Residential	2.	<u>SEPP 55 Contamination of Land</u> – Satisfactory.
Area:	9324m ² (8913m ² excluding the public road)	3.	<u>SEPP No. 65 Design Quality of Residential Apartment Development</u> – Satisfactory.
Existing Development:	Vacant	4.	<u>North Kellyville DCP</u> - Variations required, see report.
		5.	<u>Section 79C (EP&A Act)</u> – Satisfactory.
		6.	<u>Section 94 Contribution</u> – Yes, currently \$1,997,352.36

SUBMISSIONS

REASON FOR REFERRAL TO SWCPP

1. Exhibition:	Yes, thirty days.	1.	CIV exceeds \$20 million.
2. Notice Adj Owners:	Yes, 30 days for first notification period and 14 days for second notification period.		
3. Number Advised:	First Notification: 23 Second Notification: 42 Third Notification: Six Note: notification varies due to registration of subdivision.		
4. Submissions Received:	First Notification: Three Second and Third Notification: Nil		

HISTORY

02/02/2015

Development Application 574/2015/ZB approved under Delegated Authority for the subdivision of the site into 35 residential lots, one residue lot, one road widening lot, one open space lot and one stormwater management lot including a new road. The works the subject of this application are located on proposed Lot 138 (now known as Lot 136).

23/12/2015

Modification Application 574/2015/ZB/B approved under Delegated Authority for the deletion of Hennessey Way. The approval included a condition of consent which requires the

imposition of a restriction on Lot 138 for the extension/ completion of the laneway (formerly Hennessey Way) as it extends into the site from 30 Withers Road to the west.

11/05/2016	Subject Development Application lodged.
01/06/2016	Letter sent to the applicant requesting additional information regarding bushfire impact, BASIX Certificate, Clause 4.6 variation, compliance with the DCP, drainage, vehicle access and parking, waste and landscape works.
05/08/2016	Additional information submitted by the applicant.
05/09/2016	Email sent to the applicant requesting additional information regarding setbacks, waste, drainage, vehicle access and parking.
20/10/2016	Additional information submitted by the applicant.
08/11/2016	Email sent to the applicant requesting additional information regarding setbacks, Clause 4.6 variation, site coverage, waste, and drainage.
18/11/2016	Additional information submitted by the applicant.
30/11/2016	Amended basement plan submitted by the applicant.
25/01/2017	Meeting held with the applicant to discuss the SEPP height variation, vehicle access and interface with properties to the west.
10/02/2017	Amended plans and information submitted by the applicant. The amended plans reduced the development by one unit to 95 units (original proposal was for 96 units), reconfigured units in the western corner of the building (adjacent to Withers Road and the western boundary) and reinstated the vehicle access point directly to Lumsden Avenue.

PROPOSAL

The Development Application is for a three storey residential flat building development of two buildings which contain 95 apartments (comprising 21 x 1 bedroom, 58 x 2 bedroom and 16 x 3 bedroom). The proposal also includes basement parking for 190 vehicles comprising 171 resident spaces and 19 visitor spaces.

The residential flat buildings will contain the following:

Building A – 47 units.

Building B – 48 units.

There are 12 adaptable units proposed.

The site is bound by Withers Road, Horan Road and Lumsden Avenue (all existing). It may be noted that Hennessey Way (a laneway) was also constructed centrally though the site as part of the approved subdivision, however as the laneway is not required, the

proposed works will be constructed over the laneway, with a new access road constructed to provide vehicle access to the remainder of Hennessey Way. This concept has been approved as part of Modification Application 574/2015/ZB/B and has been imposed as a restriction on the 88B Instrument.

The proposal includes face bricks, light weight panels, sliding shutters and metal roofing. The colour scheme includes browns, creams/whites and grey and orange features. The external materials and finishes are in keeping with the modern character of the area.

Vehicle access is provided from Lumsden Avenue via the laneway extension of Hennessey Way and a central vehicle access directly from Lumsden Avenue.

The site is located within the North Kellyville Release Area which is an area which is undergoing change from a rural area to a residential area. The immediate area is currently characterised by a mix of single dwellings, integrated housing, and some remaining 'rural' style uses. To the east of the site, two Development Consents have been granted for the North Kellyville Local Centre, one of which is under construction for a supermarket and specialty shops. There are also two Development Applications for apartment developments on land to the north (across Withers Road) which have not yet been determined. The area is described as one which is undergoing significant change.

ISSUES FOR CONSIDERATION

1. SEPP State and Regional Development 2011

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

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

The proposed development has a Capital Investment Value of \$29,969,037 thereby requiring referral to, and determination by, a Planning Panel. In accordance with this requirement the application is referred to the SWCPP for determination.

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

(i) Permissibility

The site is zoned R1 General Residential under SEPP Sydney Region Growth Centres 2006.

The proposal is defined as a residential flat building development as follows:

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

Pursuant to the Land Use Table in Appendix 2 North Kellyville Precinct Plan, a residential flat building is permitted with consent within the R1 General Residential zone.

(ii) Development Standards

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

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot size for certain development	4000m ²	9324m ²	Yes
4.1B Residential density	Minimum 12.5 dwellings per hectare.	84.7 dwellings per hectare.	Yes
4.3 Height of buildings	9 metres	10.11 metres (maximum).	No – see comments below.
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	Variations proposed to height are addressed below.	Yes

Clause 4.6 Exceptions to Development Standards states as follows:

- (1) *The objectives of this clause are:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Consent must not be granted under this clause for a subdivision of land within Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated listed in the table to this clause,
 - (c) clauses 4.1A, 4.1B, 5.4, 6.2 and 6.4 of this Precinct Plan.

a. Variation to Height

SEPP Sydney Region Growth Centres 2006 limits the height of the development to 9 metres. The proposed maximum height is 10.11 metres. This is a variation of 12.3%.

The applicant has provided a detailed justification (See Attachment 12) and has concluded as follows:

DFP has assessed the proposed residential apartment building development against the relevant statutory provisions of Clause 4.6 of the SEPP SRGC 2006 and prepared this written request which provides written justification that compliance with the 9 metre height of building development standards is unreasonable and unnecessary in this circumstance.

The non-compliance with the building height limit is generated by a combination of factors including:

- *the slope of the land,*
- *the clearance height for the basement for service vehicles,*
- *the desire to minimise the extent of basement excavation,*
- *minimising the number of level changes throughout the buildings which would make accessibility difficult*
- *maximising on site landscaping; and*
- *providing an appropriate streetscape outcome.*

The proposed development is consistent with the objectives of the R1 zone and the exceedance of the building height limit does not affect the proposal's consistency with the zone objectives. Similarly, the proposed development satisfies the objectives of the building height development standard under the LEP.

The exceedance of the building height limit by a maximum of 0.87m for Building A and 1.1m for Building B does not generate any unreasonable amenity impacts on the future residents of the proposed development or adjoining development and accordingly it is considered that the proposal is in the public interest. Furthermore, compliance with the development standard would likely reduce the number of homes that would be provided in a location proximate to the proposed North Kellyville Local Centre and a bus route connecting residents to the Rouse Hill town centre and future railway station, and Parramatta.

The justification within this written request is considered to be well founded and the proposed development worthy of approval.

Comment:

The objectives of the SEPP are:

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

The objectives of the DCP in regard to residential flat buildings are:

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

Attachment 6 shows the proposed exceedances to the SEPP height limit. The maximum exceedance is 1.11 metres.

The proposed height of the buildings is considered satisfactory given that the site is surrounded by proposed and future roads, with the exception of part of the western boundary which adjoins an approved integrated housing development which is currently under construction. The height exceedance adjacent to the integrated housing development is a maximum of 870mm. As such the development is separated from adjoining sites in terms of its location. The shadow impact from the development is considered reasonable given the form of the development. The separation to adjoining future development will reduce the potential for overlooking and privacy impacts.

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

The development includes a large central area of open space which can be accessed by all residents. Landscape works are also proposed to enhance the development for both future residents and from a streetscape perspective.

A high level of amenity is provided to the units given the area of landscape provided as part of the development site, the proximity to the future local centre, future public transport and the variety of unit types available. There are also 12 adaptable units proposed which will assist in providing housing choice within the area.

A local heritage item ('Yalta') is located at 45 Hezlett Road (approximately 625 m to the east of the subject site) however there is sufficient separation between the development site and the local heritage item to ensure that there will not be an adverse impact to the local heritage item.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- The applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R1 General Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

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

It is also noted that in accordance with the Departments Circular PS 08-003 that Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument or a similar clause.

3. SEPP 55 – Remediation of Land

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

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

A Stage 1 Preliminary Site Investigation report was undertaken with the preceding subdivision application. The report identified that the risk of significant soil contamination was low however the area where a shed was previously located required additional sampling and analysis which was required to be undertaken after the shed was demolished. This was undertaken and the site is suitable for the residential use.

The proposal is considered satisfactory in regard to the requirements of SEPP 55.

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

The proposal has been accompanied by a Design Verification Statement by a chartered architect which confirms that the proposal is satisfactory with regard to the provisions of SEPP 65.

The proposal has been assessed against the provisions of the Apartment Design Guidelines (ADG) as outlined below:

Clause	Design Criteria	Compliance
Siting		
Communal open space	25% of the site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	27.4% (2440m ²) of the site is communal open space. Adequate solar access is provided.
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 ² and 15% for sites greater than 1500m ² .	20.4% (1820m ²) of the site is deep soil zone.
Separation	For habitable rooms, 6m for 4 storeys, 9m for 5-8 storeys and 12m for 9+ storeys.	The separation between the buildings is 12 metres.
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Appropriate visual privacy is achieved through window placement, use of balustrades and screens and separation between buildings.
Carparking	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 with the RMS Guide to Traffic Generating Development which is: Metropolitan Sub-Regional Centres: 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).	The site is not within 800m of a railway station or a light rail stop so this provision does not apply. Parking has been provided in accordance with the DCP requirements.
Designing the Building		
Solar and daylight access	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.	70.5% of the units receive a minimum three hours solar access.
Direct Sunlight	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.	6.2% of apartments receive no direct sunlight.
Natural ventilation	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.	75.8% of apartments are naturally cross ventilated.
Ceiling heights	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	All ceiling heights are 2.7 metres.

	floor, where it's 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.	
Apartment size	Apartments are required to have the following internal size: Studio – 35m² 1 bedroom – 50m² 2 bedroom – 70m² 3 bedroom – 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	All units comply with the required minimum sizes.
Apartment layout	Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height. In open plan layouts the maximum habitable room depth is 8m from a window.	The proposed units comply with the depth requirements.
Balcony area	The primary balcony is to be: Studio – 4m² with no minimum depth 1 bedroom – 8m² with a minimum depth of 2m 2 bedroom – 10m² with a minimum depth of 2m 3 bedroom – 12m² with a minimum depth of 2.4m For units at ground or podium levels, a private open space area of 15m² with a minimum depth of 3m is required.	All balconies areas comply with the minimum area requirements.
Storage	Storage is to be provided as follows: Studio – 4m³ 1 bedroom – 6m³ 2 bedroom – 8m³ 3+ bedrooms – 10m³ At least 50% of the required storage is to be located within the apartment.	Storage is provided in both the basement parking and within the units to meet the requirements.
Apartment mix	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.	A variety of units sizes, layout and designs are provided.

(i) Context and Neighbourhood Character

The site is located in the North Kellyville Release Area and the development is consistent with the future desired character of the area. The site is separated by existing roads on three sides. The surrounding properties are zoned R1 General Residential to the north-east, east and west. To the north-west, properties are zoned E4 Environmental Living, and to the south, properties are zoned R2 Low Density Residential. There are two Development Applications under assessment for a residential flat building development to the north-east at Lot 42 Withers Road (DA 1666/2016/HB) and 19 Withers Road (DA 1667/2016/HB).

The area can be described as one which is undergoing significant change. This context is likely to evolve further over time as adjoining and surrounding sites are to be developed.

(ii) Built Form and Scale

The design of the building elements are of a contemporary style with a number of elements being used. Articulation of the elevations, the selection of appropriate materials and high quality landscaping are achieved. The height of the development is acceptable in terms of solar access and amenity impacts. The proposal responds to the existing topography of the site. The height ensures that the development responds to the desired future scale and character of the site where the proposal is consistent with other recent approved developments in the precinct.

The setbacks allow for sufficient landscape areas, entrances and deep-soil zones. The proposed setbacks provide for satisfactory distances to boundaries, to form active street frontages and adequate open space areas for recreation. The proposed development addresses both privacy and open space provisions.

(iii) Density

The proposal provides an appropriate built form outcome which achieves the minimum density requirements of 12.5 dwellings/hectare required under the SEPP. The proposed density is 84.7 dwellings/hectare and the proposal is consistent with other similar development within the area. The proposed development is suitable given the zoning and location close to a town centre.

(iv) Sustainability

The design achieves good natural ventilation and will contribute significantly to the reduction of energy consumption, use of valuable resources and costs. A BASIX certificate has been lodged and the energy rating of the residential units satisfies the BASIX requirements.

(v) Landscape

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

(vi) Amenity

The building design has been developed to provide for the amenity of the occupants as well as the public domain. The key elements of the design incorporates satisfactory access/circulation, apartment layouts, ceiling heights, private open space, common open space, energy efficiency rating, adaptability, safety, security and site facilities.

(vii) Safety

The development has been designed with safety and security concerns in mind. The common open spaces allow for passive surveillance. Open spaces are accessible to all residents and visitors whilst maintaining a degree of security. Private spaces are clearly defined and screened. The basement car parks have been appropriately designed and appropriate conditions of consent are imposed to further assist in the promotion of safety/security.

(viii) Housing Diversity and Social Interaction

The development provides for a diverse range of units within a new precinct. The proposal provides a mix of unit sizes and also provides 12 adaptable units. The proposal is considered satisfactory in terms of the provision of a variety of unit layouts.

(ix) Aesthetics

An appropriate composition of building elements, material textures and colours has been used. The proposal integrates a number of recesses and projections into the facades of the structure to articulate the overall mass into smaller segments. The bulk of the overall building is reduced by the articulation of the facades, creating smaller segments in order to minimise the overall scale of the development. The design is modern in style and appropriate for the area.

5. Compliance with the North Kellyville Development Control Plan

i. DCP Provisions

There are no applicable residential flat building development standards under the North Kellyville DCP for this form of development within the R1 General Residential zone. As a guide, the residential flat building controls for the R3 Medium Density Residential and R4 High Density Residential zones have been used for assessment purposes. The following addresses the relevant development controls of the DCP:

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED	COMPLIANCE
Minimum Frontage	30m	All site frontages exceed 30m in length.	Yes
Minimum Adaptable Dwellings	10%	Based on 95 dwellings, 10 units are required to be adaptable. There are 12 adaptable units proposed (12.6%).	Yes
Minimum Landscape Area	30%	36.1%	Yes
Maximum Site Coverage	50%	44.2%	Yes
Minimum Communal Open Space	15%	27.4%	Yes
Minimum Private Open Space	10m ²	Six x 1 bedroom units have a balcony of 8m ² rather than 10m ² of private open space.	No – see comments below

Minimum Front Setbacks	Front setback – 6m. Balconies and other articulation may encroach into the setback to a maximum of 4.5m from the boundary for the first 3 storeys and for a maximum of 50% of the façade length.	The front boundary of the site is considered to be Withers Road. The main building wall complies, with some units providing an articulation zone within the setback for less than 50% of the façade length.	Yes
Minimum Corner Lots Secondary Street Setback	6m	Both Horan Road and Lumsden Avenue are considered to be secondary frontage. The main building wall fronting Horan Road complies, with some units providing an articulation zone within the setback for less than 50% of the façade length.	Yes
Side/Rear Setback	6m	Minimum 10m to the western boundary.	Yes
Minimum Habitable Room Separation.	12m	12 metres	Yes
Minimum Car Parking	1 space per dwelling plus 0.5 spaces per 3 or more bedroom dwelling	Based on 21 x 1 bedroom, 58 x 2 bedroom and 16 x 3 bedroom: Required: 103 spaces Provided: 171 resident spaces	Yes
Visitor Parking	Visitor spaces – 1 per 5 units	Required: 19 visitor spaces Provided: 19 visitor spaces	Yes
Bicycle Parking	Bicycle spaces – 1 per 3 dwellings	Required: 32 bicycle spaces Provided: 35 bicycle spaces	Yes
Garage Dominance	A maximum of two garage doors per 20m of lot frontage facing any one street frontage.	There are two basement entry points proposed, one via the laneway off Lumsden Avenue and one directly from Lumsden Avenue. The entry from the laneway is screened from the street by its location.	Yes

a. Private Open Space

The DCP requires that a minimum 10m² of private open space is provided for each unit. Six of the one bedroom units have a private open space area of 8m².

In addition, the ADG requires the following:

- 1 bedroom – 8m² with a minimum depth of 2m
- 2 bedroom – 10m² with a minimum depth of 2m
- 3 bedroom – 12m² with a minimum depth of 2.4m

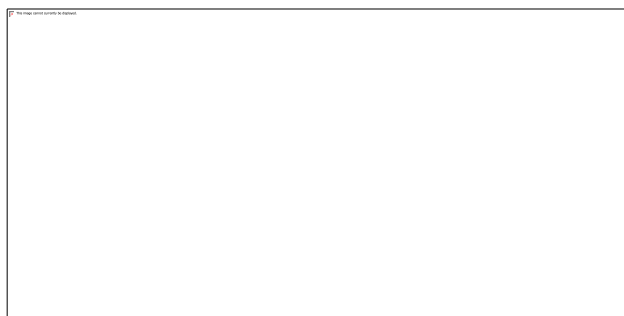
For units at ground or podium levels, a private open space area of 15m² with a minimum depth of 3m is required.

The following applies:

Unit	DCP Requirement	Provided	Complies	ADG Requirement	Provided	Complies
A114, B119, B127, A214, B219 and B227	10m ²	8m ²	No	8m ² (one bedroom units)	8m ²	Yes

The applicant has submitted the following as justification:

We have used the ADG provision of 8m² per 1 bedroom apartment.



We note that The Hills DCP does not apply in North Kellyville and there are no development controls for RFBs in the R1 zone in the North Kellyville DCP therefore it would seem appropriate to apply the ADG standard in this instance.

Comment:

The DCP contains the following objectives:

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

The proposed design provides a reasonable level of amenity for future residents. The units have direct access from the living areas to the balcony and receive a satisfactory level of solar access. A high level of residential amenity is provided, with the provision of a pool within the common open space area.

The units also comply with the ADG provision which requires a private open space area of 8m² for a one bedroom unit.

The units also have a high level of access to the common open space immediately surrounding the development and to Council's future public park which is also located on Horan Road/Windon Avenue. As such the proposal is considered to have a high level of access to both private and public open space.

The proposed variations to the private open space areas are satisfactory and can be supported.

ii. Indicative Layout Plan

In addition to the above, the proposal is considered to be generally consistent with the road layout plans within the DCP (See Attachment 5). It is noted that part of Henessey Lane will be built over, however the applicant has proposed a new laneway which will service the properties to the west. This concept has been approved as part of Modification Application 574/2015/ZB/B and has been imposed as a restriction on the 88B Instrument. The proposed roads continue to be consistent with the DCP road layout plan and are considered satisfactory.

iii. Character Area

The subject site is located in the Smalls Creek Character Area. The DCP describes this area as follows:

The Smalls Creek Character Area is a residential area that will take advantage of the gentler slopes along Smalls Creek. In comparison to Cattai Creek, the gentler slopes along Smalls Creek have greater development potential with good access to Smalls Creek and the riparian corridors, which will be publicly accessible. This location will also provide views over urban areas and the Blue Mountains to the west. On the eastern side of the Smalls Creek Character Area along Hezlett Road, rural landscape views to the east may be achievable.

The Smalls Creek Character Area has been divided into two areas (north and south) bisected by Withers Road, which respond more specifically to the topography and landscape features of that area.

Lower residential densities in this character area will be located in the northern section of the Smalls Creek Character Area (north of Withers Road) due to the steeper slopes.

Higher residential densities in this character area will be located in the area south of Withers Road, due to gentler slopes and its proximity to Rouse Hill Regional Centre and Hezlett Road. Small lot/attached housing will be encouraged along Hezlett Road and bus stops.

Smaller lots are encouraged along the riparian corridors to take advantage of the amenity of Smalls Creek and its tributaries. Small lot/attached housing is also encouraged along Hezlett Road and Withers Road to take advantage of this main transport route and its links to areas outside of the Precinct, such as Rouse Hill Regional Centre. All other areas will be characterised by detached housing.

Riparian corridors are one of the key elements in the open space network in this character area, which will be characterised by linear parks that provide opportunities for passive recreation, such as walking tracks, cycle ways and picnic areas, as well as visual amenity.

Comment:

The proposal is for a residential flat building development which satisfies the above clause that refers to the provision of higher densities south of Withers Road. The site is located on the ridge, and along with the proposed height, will allow views across the area and surrounds.

Public access will be available in a number of areas to the riparian zone. This will allow greater passive recreation opportunities.

The site is also located approximately 365 metres from the North Kellyville Local Centre. The proximity to the local centre will allow improved access to retail and commercial activities. In addition, Withers Road will include improved bus services in the future which will increase access and public transport options.

The proposal is considered satisfactory in regard to the character area.

6. DCP Part B Section 5 Residential Flat Buildings Unit Size and Mix

Under the provisions of Clause 1.3 of the North Kellyville Development Control Plan, DCP Part B Section 5 Residential Flat Buildings does not apply to the subject site. Nevertheless the proposal has been reviewed against Section 3.11 Unit Layout and Design as follows:

Apartment Mix

- (a) No more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments.
- (b) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.

Residential Flat Development (30 or more units)

- (d) The minimum internal floor area for each unit, excluding common passageways, car parking spaces and balconies shall not be less than the following:

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

- (e) Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- (f) Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- (g) All remaining apartments are to comply with the Type 3 apartment sizes.

The following is proposed:

21 x 1 bedroom, 58 x 2 bedroom and 16 x 3 bedroom

Apartment Mix:

- (a) No more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments – there are 21 x 1 bedroom units (22.1% of the total).
- (b) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms – there are 16 x 3 bedroom units (16.8% of the total).

Proposed Unit Sizes are:

Unit Type	Size	No. of Units	Type
1 bedroom	57m ²	3	Type 1
	65 - 72m ²	13	Type 2
	75 - 78m ²	5	Type 3
2 bedroom	83 - 86m ²	5	Type 1
	90 - 109m ²	53	Type 2
3 bedroom	117m ²	1	Type 1
	129 - 132m ²	15	Type 2

- (e) Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments – there are 9 x Type 1 apartments (9.5% of the total).
- (f) Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments - there are 81 x Type 2 apartments (85.3% of the total).
- (g) All remaining apartments are to comply with the Type 3 apartment sizes ie: 40% - there are 5 x Type 3 apartments (5.2% of the total).

Although the development does not meet the requirements of the DCP in regard to unit sizes, the proposal complies with SEPP 65 requirements in terms of minimum unit sizes. The proposal also meets the objective of the ADG in regard to unit mix which requires 'A range of apartment types and sizes is provided to cater for different household types now and into the future'.

Clause 30(1)(b) of SEPP 65 states that a consent authority must not refuse consent to a development application for the carrying out of residential flat development if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide. The units all meet the minimum internal area specified in the ADG.

The proposal complies with the intent of SEPP 65 and the proposal cannot be refused on apartment sizes if compliance is achieved. The SEPP also requires that the development demonstrates that the proposal has had adequate regard to the Design Quality Principles and the objectives of the ADG. The application has been assessed having regard to the design quality principles outlined in SEPP 65 and is considered satisfactory.

The proposal is considered satisfactory in regard to the proposed unit sizes and mix. The development provides a range of unit types and layouts to meet the needs of future residents.

7. Submissions

The proposal was exhibited and notified to residents at the time of lodgement of the application and three submissions were received. The proposal was renotified to residents and those who made a submission on receipt of amended plans and information and no submission were received. The following concerns were raised by residents during the first notification period.

ISSUE	COMMENT	OUTCOME
The proposal exceeds the height limit. The proposal should be redesigned to comply with the height limit as the applicant's comment that the site is sloping is justification. If the site is not suitable, the development should be relocated to a more appropriate lot. The site is higher than surrounding properties and this exacerbates the height.	The proposed height variation is considered minor and is supported – see comments in Section 2 above. The proposed development is a permissible use within the R1 General Residential zone. The site is considered suitable for the proposed use.	Issue addressed.
The height exceedance will impact on the approved development to the west, creating shadow and reducing privacy and amenity.	The shadow diagrams submitted by the applicant have been reviewed and indicate that the properties to the west will be overshadowed at 9am, however there is no shadow impact from the development from 11am to 3pm (see Attachment 8). Given the separation of the development due to the driveway access/laneway which is 10 metres (minimum), the proposal will not result in unreasonable impacts on solar access, privacy or amenity. It may be noted that the applicant amended the proposal during the assessment process to delete one unit and reconfigure the adjoining units adjacent to the western boundary to reduce the height exceedance. This has resulted in two units having larger balconies which face towards the western boundary. Planter boxes are proposed around the balconies to minimise views to the west.	Issue addressed.
The proposal does not satisfy the DCP requirements that development of this nature not impact on amenity, overshadowing, visual impact and privacy.	The proposal is considered to be a suitable built form outcome. The site, with the exception of the adjoining sites to the west, fronts public roads and as such is separated from existing/future residential development. The	Issue addressed.

	proposal will not unreasonably impact on solar access, privacy or amenity.	
The development is surrounded by 1-2 storey development and is therefore out of place with the streetscape.	It is acknowledged that the proposal will differ from the existing single dwellings, however an apartment development is a permissible use in the R1 General residential zone. However, there are approved and proposed apartment and mixed use development to the east further along Withers Road. The proposed development will be satisfactory in regard to streetscape.	Issue addressed.
The proposal will block light to nearby properties.	The proposal is appropriately separated from adjoining properties and will not result in unreasonable impact to natural light.	Issue addressed.
Privacy impacts.	The proposal is located a minimum of 10 metres from the western boundary. There are balconies which face towards this boundary, however the proposed separation is considered satisfactory and will not result in an unreasonable loss of privacy to the adjoining western properties. Landscape works are proposed along the common boundary and setback area comprising a mix of a tree species which will reach a height of 13m and shrubs which will reach a height of 3m. It is noted that the ADG requires a minimum side setback of 6m for development up to 12m (4 storeys) to habitable rooms and balconies.	Issue addressed.
The DCP states that residential flat development should be located near Neighbourhood Centres. The site is not adjacent to a Neighbourhood Centre and has low rise residential buildings between it and the Neighbourhood Centre. It is therefore out of place with the vision and character set by the DCP. As there are still available lots near Neighbourhood Centres, the development should be relocated to one of these sites.	The proposed development is a permissible use within the R1 General Residential zone. The proposal is located approximately 365 metres from the North Kellyville Local Centre. There are approved and proposed apartment and mixed use development to the east further along Withers Road. The proposal is considered to be in keeping with the future character of the area.	Issue addressed.
The proposal is inconsistent with the North Kellyville Indicative Layout Plan due to the removal of the laneway. This will impact on the approved dwellings to the west as	The preceding subdivision application (574/2015/ZB/B) permitted the removal of the central laneway subject to the extension/completion of the	Issue addressed.

they were designed on the basis of the laneway and its continuation to Horan Drive.	laneway to allow access to the properties to the west. This application was approved on 23 December 2015.	
The deletion of the central laneway will result in the creation of two corner lots. These lots will be subject to adverse impacts such as noise and additional traffic. The proposed development should mitigate these impacts.	Approximately 40m of the laneway entry to the basement parking will be dedicated as public road. This results in No. 6 Lumsden Avenue being a corner lot, however the dwelling on that property has been approved as part of an integrated housing development which is currently under construction. The adjoining property will be separated from the proposed development with fencing and landscape screen works to mitigate impacts.	Issue addressed.
Additional traffic will use the laneway to access the site which was not envisaged. The main driveway access should be off Lumsden Avenue to remove noise associated with garbage truck and general car noise.	The proposal provides two driveway access points. At the completion of the works, the western driveway off the extension of Hennessey Way will be used for access to the visitor spaces and for garbage/service vehicle access. The main entry directly from Lumsden Avenue will be used for resident access. A condition has been imposed to this effect. Council's Manager Infrastructure and Transport Planning has reviewed the proposal and raised no objection to the proposed vehicle access arrangements or traffic generation.	Condition imposed – see Condition 18(a).
The proposal is inconsistent with the planned residential character along Withers Road. The DCP envisages small lot/attached housing with a lower density. This results in an overdevelopment of the site. The DCP does not intend to encourage residential flat building development along Withers Road.	The proposed development is a permissible use within the R1 General Residential zone. There are approved and proposed apartment and mixed use development to the east further along Withers Road. The proposal is considered to be in keeping with the future character of the area.	Issue addressed.
Request that the number of units proposed be reduced.	The proposal is considered satisfactory with regard to the applicable SEPP and DCP requirements. During the assessment process, the applicant deleted one unit. The further reduction of units is not warranted in this instance.	Issue addressed.
Request that the development be reduced in height from three to two storeys along the western boundary	The proposed height variation is considered minor and is supported – see comments in Section 2	Issue addressed.

due to overshadowing and privacy impacts.	above. Given the separation of the development due to the driveway access/laneway which is 10 metres (minimum), the proposal will not result in unreasonable impacts on solar access, privacy or amenity. It is noted that the applicant has deleted one unit and reconfigured units which adjoined the western boundary to reduce any potential amenity impacts.	
Landscape works should be increased along the northern boundary to reduce impacts on adjoining properties. This will provide a buffer to the driveway/laneway.	The landscape plans provide a variety of tree, shrub and groundcovers/grasses between the western boundary and the proposed building. The planting includes Photinia along the common boundary which has a mature height of 3m and Watergums which have a mature height of 13m. The proposed landscape works are considered appropriate and will provide an effective landscape screen.	Issue addressed.
The proposed bulk and scale is not sympathetic to the adjoining low density residential development.	The proposed development is a permissible use within the R1 General Residential zone. The proposal is considered to be in keeping with the future character of the area.	Issue addressed.
Request that the substation be relocated away from immediately adjoining the common boundary as its location will restrict building works in the vicinity of the substation and will require easements to support the substation on the adjoining property.	The applicant has relocated the substation to a minimum 3.5m from the western boundary. In addition, further screen planting has been provided around the substation.	Issue addressed.

POLICE COMMENTS

The proposal was referred to the Police in accordance with the requirements of "Safer by Design Guidelines" and the Protocol between The Hills Shire Council and Castle Hill Police.

The Police have raised no objection to the proposal subject to a condition of consent (see Condition No. 9).

RMS COMMENTS

The proposal was referred to RMS for review and comment. RMS raised no concerns with the proposal and required no conditions.

SUBDIVISION ENGINEERING COMMENTS

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

TRAFFIC MANAGEMENT COMMENTS

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

TREE MANAGEMENT COMMENTS

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

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

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

WASTE MANAGEMENT COMMENTS

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

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, SEPP Sydney Region Growth Centres 2006, SEPP 55 Contamination of Land, SEPP No. 65 Design Quality of Residential Apartment Development and North Kellyville DCP and is considered satisfactory. The proposed variation to the SEPP height limit and the variations to the North Kellyville DCP in respect to front and corner lot setbacks and private open space and also to SEPP 65 – Design of Residential Flat Buildings and the Apartment Design Guidelines in relation to private open space and common open space have been assessed and are considered to be supportable. The objections received to the proposal have been reviewed and do not warrant refusal of the application.

The proposal is recommended for approval subject to conditions.

IMPACTS:

Financial

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

The Hills Future - Community Strategic Plan

The Hills Future Community Strategic Plan outlines the aspirations of community residents for The Hills Shire region. Desired community outcomes include balanced urban growth, vibrant communities and a protected environment. The social and environmental impacts have been identified and addressed in the report.

RECOMMENDATION

The Development Application be approved subject to the following conditions.

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

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

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	DATE
DA01	Proposed Development	April 2016 Rev. D
DA02	Location Plan and View on Withers Rd to East	06/02/17 Issue D
DA03	Site & Roof Plan	06/02/17 Issue D
DA04	Site Analysis Plan	12/10/16 Issue C
DA05	Aerial View from North	12/10/16 Issue C
DA06	Ground Floor Plan	03-02-17 Issue D
DA07	First Floor Plan	03-02-17 Issue D
DA08	Second Floor Plan	03-02-17 Issue D
DA09	Basement 1 Floor Plan	03-02-17 Issue E
DA10	Basement 2 Floor Plan	03-02-17 Issue D
DA11	North and South Elevations	02/06/17 Issue D
DA12	East and West Elevations	02/06/17 Issue D
DA13	Section AA and Section CC	02/06/17 Issue D
DA14	Section BB and Section DD	12/10/16 Issue C
DA15	Section EE and Section FF	12/10/16 Issue C
DA16	Shadow Diagrams	02/06/17 Issue D
DA17	Adaptable Apartments	12-10-16 Issue C
DA18	Materials Selection	06/02/17 Issue D
DA19	View from Central Courtyard	12/10/16 Issue C
DA20	View from Eastern Courtyard	12/10/16 Issue C
DA21	View on Lumsden Avenue to North	12/10/16 Issue C
HP	Height Plane Analysis	06/02/17 Issue D
--	Height Plane Analysis 2	06/02/17 Issue D
---	Deep Soil	03-02-17 Issue D
---	Communal Open Space	03-02-17 Issue D
---	Landscaped Areas	03-02-17 Issue D
000	Landscape Coversheet	05.10.2016 Issue E
001	Landscape Masterplan	02.02.17 Issue H
101	Landscape Detail Plan	05.10.2016 Issue E
401	Landscape Softworks Plan	05.10.2016 Issue C
402	Landscape Softworks Plan	05.10.2016 Issue B
403	Landscape Softworks Plan	02.02.17 Issue C
404	Landscape Softworks Plan	02.02.17 Issue C
405	Landscape Softworks Plan Level 2	02.02.17 Issue A
501	Landscape Details	05.10.2016 Issue C

601	Landscape Sections	05.10.2016 Issue D
602	Landscape Sections	05.10.2016 Issue D
701	Landscape Areas	02.02.17 Issue F

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

2. Driveway Use

On completion of the development, the western driveway (off the extension of Hennessey Way) is required to be limited in use to service/garbage vehicles and visitors to the site. The main driveway directly off Lumsden Avenue is required to be used to access residential parking spaces.

3. Resident and Visitor Parking Spaces and Bicycle Parking

The provision and maintenance thereafter of:

171 resident spaces;

19 visitor spaces;

A bike rack accommodating a minimum 35 bicycles.

All residential units are to be allocated a minimum of one parking space.

4. 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.

5. 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.

6. Tree Removal

Approval is granted for the removal of all trees on site.

Suitable replacement trees are to be planted upon completion of construction.

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.

For all planting on slab and planter boxes allow the following minimum soil depths:

- 1.2m for large trees or 800mm for small trees;
- 650mm for shrubs;
- 450-300mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and *not* the overall depth of the planter.

8. Bushfire Requirements - BAL 12.5 – Residential

i) Asset Protection Zone

At the commencement of building works and in perpetuity the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection* 2006 and the NSW Rural Fire Service's document *Standards for asset protection zones*.

The Inner Protection Area shall comprise of the following:

- minimal fine fuel at ground level;
- vegetation that does not provide a continuous path to building/s for the transfer of fire;
- shrubs and trees that do not form a continuous canopy and vegetation is planted/cleared into clumps rather than continuous rows;
- species that retain dead material or deposit excessive quantities of ground fuel are avoided;
- shrubs and trees are pruned or removed so they do not touch or overhang the building/s; and
- vegetation is located far enough away from the building/s so that plants will not ignite the building/s by direct flame contact or radiant heat emission.

ii) Water and Utilities

- a) Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection* 2006.
- b) Where the rear or most distant part of the building is greater than 70 metres from the nearest hydrant, a new hydrant is required to be installed as per Australian Standard AS 2419.1- 2005 '*Fire Hydrant Installations*'. Locations of fire hydrants are to be delineated by blue pavement markers offset 150mm from the centre of the road. The direction of offset shall indicate on which side of the road the hydrant is located.

iii) Design and Construction

- a) New construction shall comply with section 5 (BAL 12.5) Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" and section A3.7 Addendum Appendix 3 of "Planning for Bush fire Protection".

iv) Landscaping

Landscaping to the site is to comply with the principles of Appendix 5 of *Planning for Bush Fire Protection* 2006. In this regard the following landscaping principles are to be incorporated into the development:

- Grassed areas/mowed lawns/ or ground cover plantings being provided in close proximity to the building;
- Restrict planting in the immediate vicinity of the building which may over time and if not properly maintained come in contact with the building;
- Planting should not provide a continuous canopy to the building (i.e. trees or shrubs should be isolated or located in small clusters);
- When considering landscape species consideration needs to be given to estimated size of the plant at maturity;
- Avoid species with rough fibrous bark or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;

- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Use of low flammability vegetation species.

9. Property Numbering

The responsibility for property numbering is vested solely in Council.

1. As the letterboxes for this development are positioned on Withers Road, the primary address for this site must be to Withers Road.
2. The southern side of Withers Road is to be totally renumbered in the near future; therefore original numbers of 26-28 Withers Road must not be used.
3. Council will advise as soon as a street number can be applied.

Approved Amended Unit numbering:

Level	Building A	Building B
Ground	G01 – G16	G17 – G32
First	101 – 116	117 – 132
Second	201 – 215	216 – 231

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.

10. Compliance with Police Requirements

Compliance with the requirements of NSW Police – Local Area Command as outlined in their letter dated 15 June 2016:

Surveillance

- During the construction phase security sensor lights be used and security guards are to monitor the site.
- Paint the basement white to reflect light.
- All vehicle and resident/visitor access points are required to have secure access.
- CCTV is required to be installed at entry/exit points to the carpark, within the basement carparking and common areas. Height stickers are also required on entry/exit doors.
- Vegetation is to be maintained at all times to allow natural surveillance and reduce opportunities for concealment.

Lighting and Technical Supervision

- Lighting is to be utilised within the site in accordance with Australian Standards.

Environmental Maintenance

- Materials chosen are to have regard to the potential for graffiti.

Access Control

- Fencing is required to be vertical style to stop unauthorised access, with spaces left between vertical elements to limit physical access.
- The ground floor units are required to have upgraded security measures, such as alarmed doors and windows, thickened glass and sensor lights.
- Signage is to be erected to ensure that people are aware they are entering private property. The signage is also required to include details of what security treatment has been implemented.

- Ensure that the section of the security roller shutter near the manual door release is solid, that garage shutter doors are strong and that good-quality locking mechanisms are used.
- Letterboxes and caged storage areas are to have good-quality locking mechanisms and be secure.

11. Proposed Street Naming

Hennesey Way to the west of the subject site is required to be re-named due to the deletion of a section of this road. A written application for street naming must be submitted to Council for approval, along with the applicable fee as per Council's Schedule of Fees and Charges. The street names proposed must comply with requirements of the NSW Geographical Names Board and Council.

The application must nominate three suggested names per street, in order of preference, and the source of the names proposed.

12. Street Trees

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

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

13. Water Sensitive Urban Design Handover Process

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

- The location and type of each WSUD element, including details of its operation and design;
- A brief description of the catchment characteristics, such as land uses, areas etc;
- Estimated pollutant types, loads and indicative sources;
- Intended maintenance responsibility, Council, landowner etc;
- Inspection method and estimated frequency;
- Adopted design cleaning/ maintenance frequency;
- Estimate life-cycle costs;
- Site access details, including confirmation of legal access, access limitations etc;
- Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
- Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
- Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
- A work method statement;
- A standard inspection and cleaning form.

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

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

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

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

14. 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.

15. Separate Application for Strata Subdivision

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

16. 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.

17. 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.
- Any grade change of more than 2% but less than or equal to 6.25% shall take place over a distance not less than 7m.

18. 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) Driveway Requirements

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's Driveway Specifications. The proposed driveways must be built to Council's heavy duty standard.

Both driveways must be a minimum of 6m wide for the first 6m into the site, measured from the boundary.

Both driveways must be delineated from the public road network (namely, the laneway to be named and Lumsden Avenue) via a gutter crossing and layback, rather than splay corners. The subdivision works plan must reflect this arrangement. The width of the angled driveway in the laneway needs to account for the swept turning path of the design service/ waste collection vehicle. The driveway on Lumsden Avenue must be 7m wide at the kerb.

A sign must be installed (within the private property) at each driveway delineating the intended/ approved use of each, namely:

- "Service vehicles (including waste collection) and unsecured visitor parking only"
- "Resident and secured visitor parking only"

This arrangement also needs to be included as part of any management plan associated with a future/ separate strata subdivision of the buildings.

The "roller door" at the bottom of the ramp associated with the driveway on Lumsden Avenue needs to be relocated/ replaced with two separate roller doors on either side of the west-east circulation roadway immediately north of this point to provide an area for a vehicle to turn around and exit the site in a forward direction if they are unable to access the basement as intended by/ explained in the revised Statement of Environmental Effects dated 09/02/2017.

A separate driveway application fee is payable as per Council's Schedule of Fees and Charges.

b) Disused Layback/ Driveway Removal

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

c) Removal of Hennessey Way / Construction Works - Horan Road

Hennessey Way within the subject site it to be removed along with any existing kerb returns, pram ramps, and road etc. connecting Hennessey Way and Horan Road. The kerb and gutter and full width verge along Horan Road is to be reinstated to match with the existing levels and alignment within Horan Road. Any ancillary drainage work necessary to make the construction effective is to be provided along Horan Road. The full width verge of along Horan Road is to consist of a 4m wide swale along with a 1.2m wide footpath. The swale and footpath is to match the existing verge for Horan Road in terms of both levels and alignment and is to be constructed in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments. The road pavement along Horan Road is to be reinstated where required in order to tie into the existing road pavement.

The remaining portion of Hennessey Way located within the adjacent site to the west is to remain and is not to be removed. A lane way containing a minimum width of 5.5m is to be constructed through the subject site which connects Hennessey Way to Lumsden Avenue, to be in accordance with Drawing No. DA-C5.01 Revision 8 dated 28 November 2016.

d) Construction Works - Lumsden Avenue / Within Subject Site

Any existing interallotment pits, pipes, kerb inlet pits as well as any other stormwater structures no longer required within the subject site are to be removed in accordance with Drawing No. DA-C5.01 Revision 8 dated 28 November 2016 prepared by Northrop. The proposed laneway and driveway will require amendment to the existing roadside bio-retention swale on Lumsden Avenue. The section of swale affected must be removed and the swale re-constructed as per Council's Design Guidelines Subdivisions/ Developments, Works Specifications Subdivisions/ Developments and Drawing No. DA-C5.01 Revision 8 dated 28 November 2016. A new raised inlet pit it to be provided at either end of the re-constructed swale along with any ancillary drainage work required which is to connect the existing stormwater network to the re-constructed swale on Lumsden Avenue.

The road pavement along Lumsden Avenue is to be reinstated to match the existing road levels.

e) Concrete Footpath Paving

A 1.2m wide concrete footpath paving, must be provided for the section of Horan Road fronting the development site transitioning into the existing footpath adjacent in accordance with the above documents.

f) 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.

g) Site Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

h) Earthworks/ Site Regrading

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

i) Service Conduits

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

j) Water Sensitive Urban Design Elements

Water sensitive urban design elements, consisting of road side swales, three raingardens, Psorb storm filter cartridges, enviro pod filter baskets, an OSD system, and a rainwater tank are to be located generally in accordance with Drawing No. DA-C5.01 revision 8 dated 28 November 2016 and the remainder of the latest revision of civil plans prepared by Northrop (amended to reflect the revised/ approved architectural plans that include the additional driveway on Lumsden Avenue).

Detailed plans must ensure the provision of the following:

- a) All-weather access is designed and constructed for the maintenance of the Storm filter, Enviropod and Bio retention basins.
- b) The applicant is to install effective nutrient removing plants in the proposed bio-retention basins. Greater than 50% of plants installed are to be made up of Carex, Juncus, Melaleuca and Goodenia ovata species and be planted with a minimum density of 6 plants per square meter.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must demonstrate a reduction in annual average pollution export loads from the development site in line with the following environmental targets:

- 90% reduction in the annual average load of gross pollutants
- 85% reduction in the annual average load of total suspended solids
- 65% reduction in the annual average load of total phosphorous
- 45% reduction in the annual average load of total nitrogen

All model parameters and data outputs are to be provided.

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

Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>

Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

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

k) Onsite Stormwater Detention

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The stormwater concept plan prepared by Northrop Drawing DA-C5.01 Revision 8 dated 28 November 2016, Drawing DA-C10.02 Revision 4 dated 16 November 2016 and the remainder of latest revised drawings that form part of the Concept Stormwater Management and Civil Engineering Package also prepared by Northrop is for development application purposes only and is not to be used for construction.

The detailed design must incorporate the following necessary changes:

- a) Provision of adequate access in accordance with the section 4.2.8 of the OSD Handbook.
- b) All the drainage pits including collection pits, discharge control pit and the tank must provide mass concrete benching to the invert of the outlet/orifice to avoid sumps.
- c) Any relief drains proposed in the drainage pits must be deleted.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate:

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

19. 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.

20. 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.

21. Commencement of Domestic Waste Service

A domestic waste service must be commenced with Council. The service is to be arranged no one week prior to occupancy and no later than two days post occupancy. All requirements of Council's domestic collection service must be complied with at all times. Please telephone Council on (02) 9843 0310 for the commencement of waste services.

22. Construction of Garbage Rooms

The garbage rooms must be designed and constructed in accordance with the requirements below. Additionally, minimum bin storage is required for:

Main Bin Storage Room: 11 x 1100 litre bulk garbage bins and 18 x 660 litre bulk recycling bins.

Garbage Holding Room 1: 8 x 1100 litre bulk bins.

Garbage Holding Room 2: 4 x 1100 litre bulk bins.

Garbage Holding Room 3: 4 x 1100 litre bulk bins.

Garbage Holding Room 4: 6 x 1100 litre bulk bins.

1. The layout of the rooms must ensure that each bin is easily accessible and manoeuvrable in and out of the rooms with minimal or no manual handling of other bins.
2. The walls of the rooms must be constructed of brickwork.
3. The floor of the rooms must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer.
4. The rooms must have a waste servicing door, with a minimum clear floor width of 1.5m. Acceptable waste servicing doors are single or double swinging doors and roller doors.
5. The rooms must also have a suitable resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors. In some situations, the resident access door can double up as the waste servicing door provided that it meets the purpose of both doors.
6. All doors of the rooms, when fully opened, must be flush with the **outside wall** and must not block or obstruct loading areas or footways. All doors must be able to be fixed in position when fully opened.
7. The rooms must be adequately ventilated (mechanically). Ventilated rooms should not be connected to the same ventilation system supplying air to the units.
8. The rooms must be provided with a hose tap (hot and cold mixer), connected to a water supply, to facilitate bin washing. If the tap is located inside the rooms, it is not to conflict with the space designated for the placement of bins.
9. The rooms must be provided with an automatic sensor light.

10. The rooms must have appropriate signage, provided by Council, mounted in a visible location on an internal wall and is to be maintained by the Owners Corporation.
11. Finishes and colours of the rooms are to complement the design of the development.

Bin Measurements (mm)

660L: 850 (d) 1370 (w) 1250 (h) **1100L:** 1245 (d) 1370 (w) 1470 (h)

23. Construction of Bulky Goods Room (Large Item Store)

The bulky goods room must be designed and constructed in accordance with the following requirements. The minimum floor area required is 8 metres squared (standard ceiling heights).

12. The walls must be constructed of brickwork.
13. The floor must be constructed of concrete with a smooth non-slip finish.
14. The room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to open directly onto the truck service bay. Acceptable waste servicing doors are single or double swinging doors and roller doors.
15. The room must have a suitable resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors. In some situations, the resident access door can double up as the waste servicing door provided that it meets the purpose of both doors.
16. All doors of the room, when fully opened, must be flush with the **outside wall** and must not block or obstruct the truck service bay or footway. All doors must be able to be fixed in position when fully opened.
17. The room must be provided with an automatic sensor light.
18. The room must have appropriate signage, provided by Council, mounted in a visible location on an internal wall and is to be maintained by the Owners Corporation.
19. Finishes and colours of the room are to complement the design of the development.

24. Access and Loading for Waste Collection

Minimum vehicle access and loading facilities must be provided and designed in accordance with Australian standard 2890.2-2002 for the standard 8.8m long Medium Rigid Vehicle, with the exception that the minimum clear vertical clearance is 3.5m. The following additional requirements are applicable:

- a. All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading and traffic circulation is appropriately controlled.
- b. Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
- c. The requirement for reversing is limited to a single reverse entry maneuver into the designated service bay. The service bay must allow additional space for access and loading and have appropriate signage such as no parking at any time.

- d. All manoeuvring areas where the clear headroom is less than 3.5m must have flexible striker bars and warning signs as per Australian standard 2890.1 to warn waste collection contractors of the low headroom area. Note all manoeuvring areas for waste collection vehicles must have minimum clear headroom of 3.5m. However, 3.8m is preferred where practicable.
- e. The loading area must have a sufficient level of lighting, and allow additional space for access and loading (e.g. wheeling a bulk bin to the back of the collection vehicle for rear load collection).
- f. Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via remote access or other measure to ensure there is no requirement for collection contractors to exit the cab. Copies of scan cards or remotes must be provided to Council upon the commencement of waste services.

25. Communal Composting Areas

An area shall be incorporated in the landscape design of the development for communal composting. Whilst the operation of such a facility will depend upon the attitudes of occupants and their Owners Corporation, the potential to compost should exist.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

26. Easement for Substation

The proposed substation shown adjacent to Withers Road is required to be located to ensure that all easements that relate to the substation are contained on the subject site. Details are to be provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

27. Special Infrastructure Contribution – Growth Centres

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

More information on the Special Infrastructure Contribution can be found at the Growth Centres Commission's website at www.gcc.nsw.gov

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

28. Section 94 Contribution – North Kellyville

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

Payments comprise of the following:-

	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	Purpose: Credit	No. of 1 Bedroom Units: 21	No. of 2 Bedroom Units: 58	No. of 3 Bedroom Units: 16	No. of Credits: 1	Total S94
Open Space - Land	\$ 5,854.96	\$ 10,248.59	\$ 13,908.38	\$ 13,908.38	\$ 122,954.16	\$ 594,418.22	\$ 222,534.08	\$ 13,908.38	\$ 925,998.08
Open Space - Capital	\$ 914.68	\$ 1,601.07	\$ 2,172.81	\$ 2,172.81	\$ 19,208.28	\$ 92,862.06	\$ 34,764.96	\$ 2,172.81	\$ 144,662.49
Transport Facilities - Land	\$ 462.77	\$ 810.03	\$ 1,099.30	\$ 1,099.30	\$ 9,718.17	\$ 46,981.74	\$ 17,588.80	\$ 1,099.30	\$ 73,189.41
Transport Facilities - Capital	\$ 3,445.05	\$ 6,030.25	\$ 8,183.67	\$ 8,183.67	\$ 72,346.05	\$ 349,754.50	\$ 130,938.72	\$ 8,183.67	\$ 544,855.60
Water Management - Land	\$ 356.99	\$ 1,500.08	\$ 2,035.76	\$ 2,035.76	\$ 17,898.78	\$ 87,004.64	\$ 32,572.16	\$ 2,035.76	\$ 135,537.83
Water Management - Capital	\$ 376.66	\$ 659.31	\$ 894.75	\$ 894.75	\$ 7,909.86	\$ 38,239.98	\$ 14,316.00	\$ 894.75	\$ 59,571.09
Community Facilities - Land	\$ 195.49	\$ 342.18	\$ 464.38	\$ 464.38	\$ 4,105.29	\$ 19,846.44	\$ 7,430.08	\$ 464.38	\$ 30,917.43
Community Facilities - Capital	\$ 476.25	\$ 833.63	\$ 1,131.33	\$ 1,131.33	\$ 10,001.25	\$ 48,350.54	\$ 18,101.28	\$ 1,131.33	\$ 75,321.74
Administration	\$ 46.15	\$ 80.78	\$ 109.62	\$ 109.62	\$ 969.15	\$ 4,685.24	\$ 1,753.92	\$ 109.62	\$ 7,298.69
Total	\$ 12,629.00	\$ 22,105.92	\$ 30,000.00	\$ 30,000.00	\$ 265,209.00	\$ 1,282,143.36	\$ 480,000.00	\$ 30,000.00	\$ 1,997,352.36

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

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

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.

29. Planter Boxes and Privacy Screens

- a. The planter boxes for Units A202 and A207 are to have a total height from the balcony floor of 1.2 metres. The planter boxes are to be a masonry construction to match the external materials of the building.
- b. Planting is required to be undertaken within the planter (along the full extent) which reaches a minimum mature height of 400mm.
- c. A permanent (not operable) privacy screen is to be erected on the western end of the balcony for Unit A101 which has a minimum height of 1.8 metres.

Details of the above are required prior to issue of the Construction Certificate.

30. 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 SEPP 65.

31. Acoustic Report

Prior to the issue of any construction certificate a site specific acoustic report is to be prepared and submitted to Council's Manager – Environment and Health for review. The acoustic report is to include (but not be limited to) a construction noise management plan, mechanical plant and equipment assessment and recommendations for noise suppressant components. The construction certificate is not to be issued until written approval is received from Council's Manager – Environment and Health.

32. 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.

33. Stormwater Pump/ Basement Car Park Requirements

The stormwater pump-out system must be designed and constructed in accordance with AS/ NZS 3500.3:2015 - Plumbing and Drainage - Stormwater drainage. The system must be connected to the Onsite Stormwater Detention system before runoff is discharged to the street (or other point of legal discharge) along with the remaining site runoff, under gravity. All plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming compliance with the above requirements.

34. 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 \$150,000.00 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 (360m) multiplied by the width of the road.

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.

35. Water Sensitive Urban Design Elements – Rain Garden and Rainwater Reuse Tank (North Kellyville)

The construction certificate issued for this development must include the rain garden and rainwater reuse tank conditioned earlier in this consent.

36. 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

37. Principal Certifying Authority

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

38. 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.

39. 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.

40. 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.

41. 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).

42. 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.

43. Erosion & Sediment Control Plan Kept on Site

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and available to Council on request.

44. 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 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.

45. Erection of Signage – Supervision of Work

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

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

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

46. Contractors Details

In accordance with Section 109E(3) of the Environmental Planning and Assessment Act 1979, the contractor carrying out the subdivision works must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

47. Sediment and Erosion Control

The approved sediment and erosion control measures, including a stabilised all weather access point, must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

48. Separate OSD Detailed Design Approval

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

49. 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.

DURING CONSTRUCTION

50. 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.

Any variation sought to the hours of work above, for exceptional circumstances, will require the approval of Council's Manager Regulatory Services. Should approval for works beyond the hours specified above be granted, written notification must be provided to neighbouring properties at least 48 hours in advance of work commencing.

51. 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.

52. 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. 701617M_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.

53. 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.

54. Roof Water Drainage

Gutter and downpipes to be provided and connected to an approved drainage system upon installation of the roof covering.

55. 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.

56. 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.

57. Rock Breaking Noise

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.

58. 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)*.

59. Contamination

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

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

60. Aboriginal Archaeological Sites or Relics

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

61. Historic Sites or Relics

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

62. 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.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

63. Compliance with Requirements of Development Consent

Compliance with all conditions of approval of the Development Consent on the subject property.

64. 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.

65. 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.

66. Acoustic Compliance Report

An acoustic consultant shall progressively inspect the installation of any required noise suppressant components as recommended in any acoustic report that has been accepted or amended by Council's Manager – Environment and Health. Certification is to be provided in writing to Council's Manager – Environment and Health which clearly states that the approved or amended recommendations have been achieved prior to the occupation certificate being issued.

67. Works as Executed Plans

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

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

68. Performance/ Maintenance Security Bond

A performance/ maintenance bond of 5% of the total cost of the works is required to be submitted to Council. The bond will be held for a minimum defect liability period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

69. Confirmation of Pipe Locations

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

70. Stormwater CCTV Recording

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

71. Public Asset Creation Summary

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

72. 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.

73. 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.

74. 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.

75. 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.

76. 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 – Restricted Access

The subject site must be burdened with a restriction precluding access to Withers Road using the "restricted access" terms included in the standard recitals.

b) Restriction – Bedroom Numbers

The subject site must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

c) Restriction/ Positive Covenant – Onsite Stormwater Detention

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

d) 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.

e) 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.

f) 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.

77. Water Sensitive Urban Design Certification

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

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

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

78. Rain Garden/ Rainwater Tanks (North Kellyville)

An Occupation Certificate must not be issued prior to the completion of the rain garden and rainwater reuse tank required by this consent.

79. Final Inspection of Garbage Rooms

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

80. Procurement of Mechanical Bin Mover

Prior to an Occupation Certificate being issued, a mechanical bin mover, suitable for 660 and 1100 litre bins must be purchased and delivered to the site. The equipment procured must have capacity to move multiple full bins over all ramps and slopes between the garbage holding rooms and main bin storage room. All waste moving equipment must be lawfully handed into the ownership of the Owners Corporation. A dedicated storage area must be allocated on the site for the equipment.

81. Risk Assessment – Domestic Waste Collection

Prior to an Occupation Certificate being issued, an onsite risk assessment relating to waste collection from the site must be undertaken by Council and its contractor. The time for the assessment must be arranged with Council when clear unobstructed circulation in and out of the basement is available for Council and its contractor to perform a mock collection run. The final approved method for waste collection from the site is at the discretion of Council on satisfactory completion of this risk assessment.

THE USE OF THE SITE

82. 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*.

83. Offensive Noise - Acoustic Report

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

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

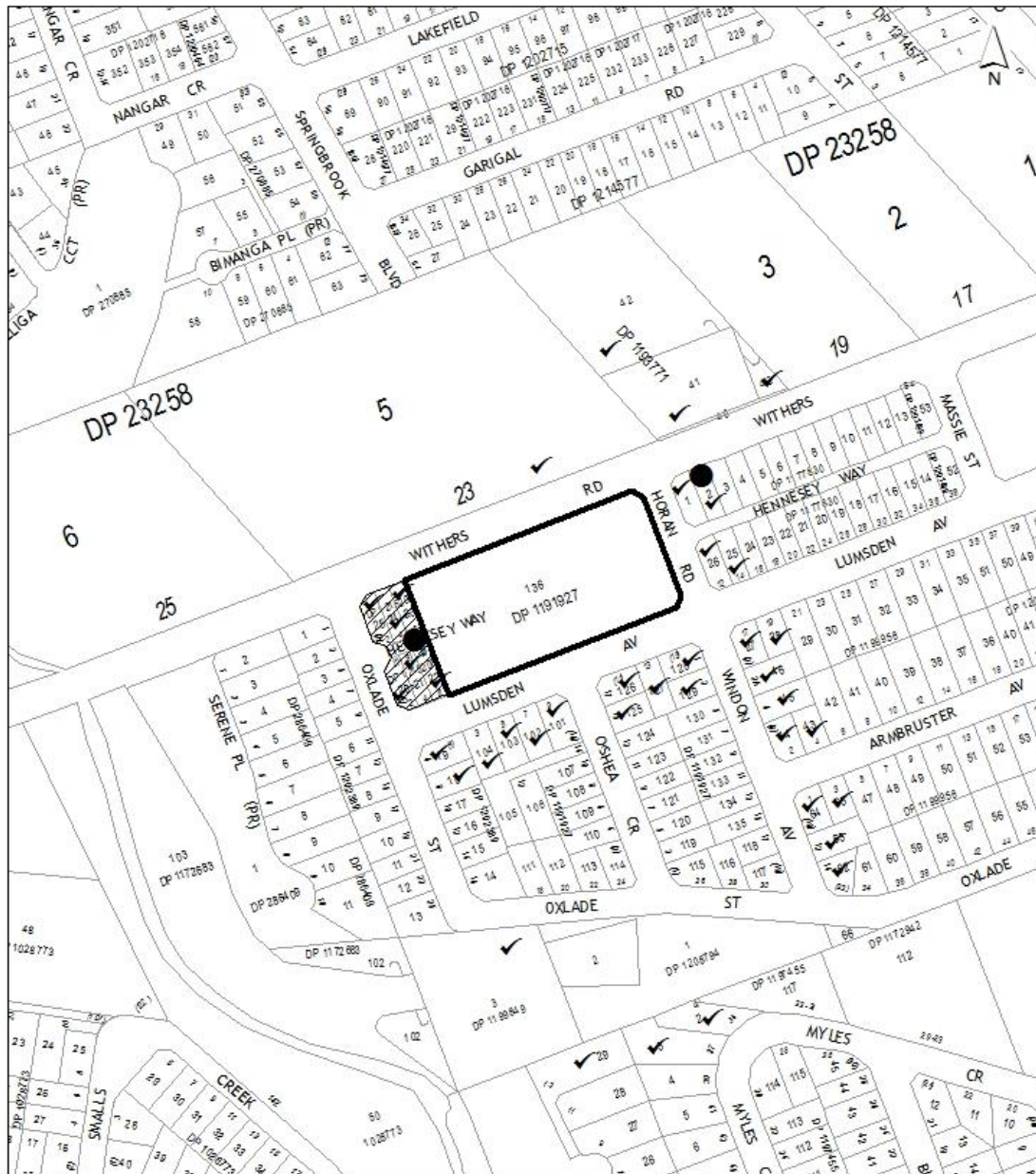
84. Waste and Recycling Management

A caretaker must be appointed by the Owners Corporation to undertake all instructions issued by Council to enable waste collection. Additionally, responsibilities for cleaning waste storage areas and bins on a regular basis must be established.

ATTACHMENTS

1. Locality Plan
2. Aerial Photo
3. SEPP Zoning Plan
4. SEPP Height Map
5. DCP Road Layout Plan
6. Proposed Height Plan
7. Site Plan
8. Shadow Diagrams
9. Elevations
10. Landscape Plan
11. Perspectives
12. Clause 4.6 Variation Request

ATTACHMENT 1 – LOCALITY PLAN



- SUBJECT SITE
- ✓ PROPERTIES NOTIFIED - 2ND NOTIFICATION
- OBJECTION

NOTE: ONE OBJECTOR OFF THE SCOPE OF THE MAP

- ▨ OBJECTION RECEIVED PRIOR TO REGISTRATION OF SUBDIVISION

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

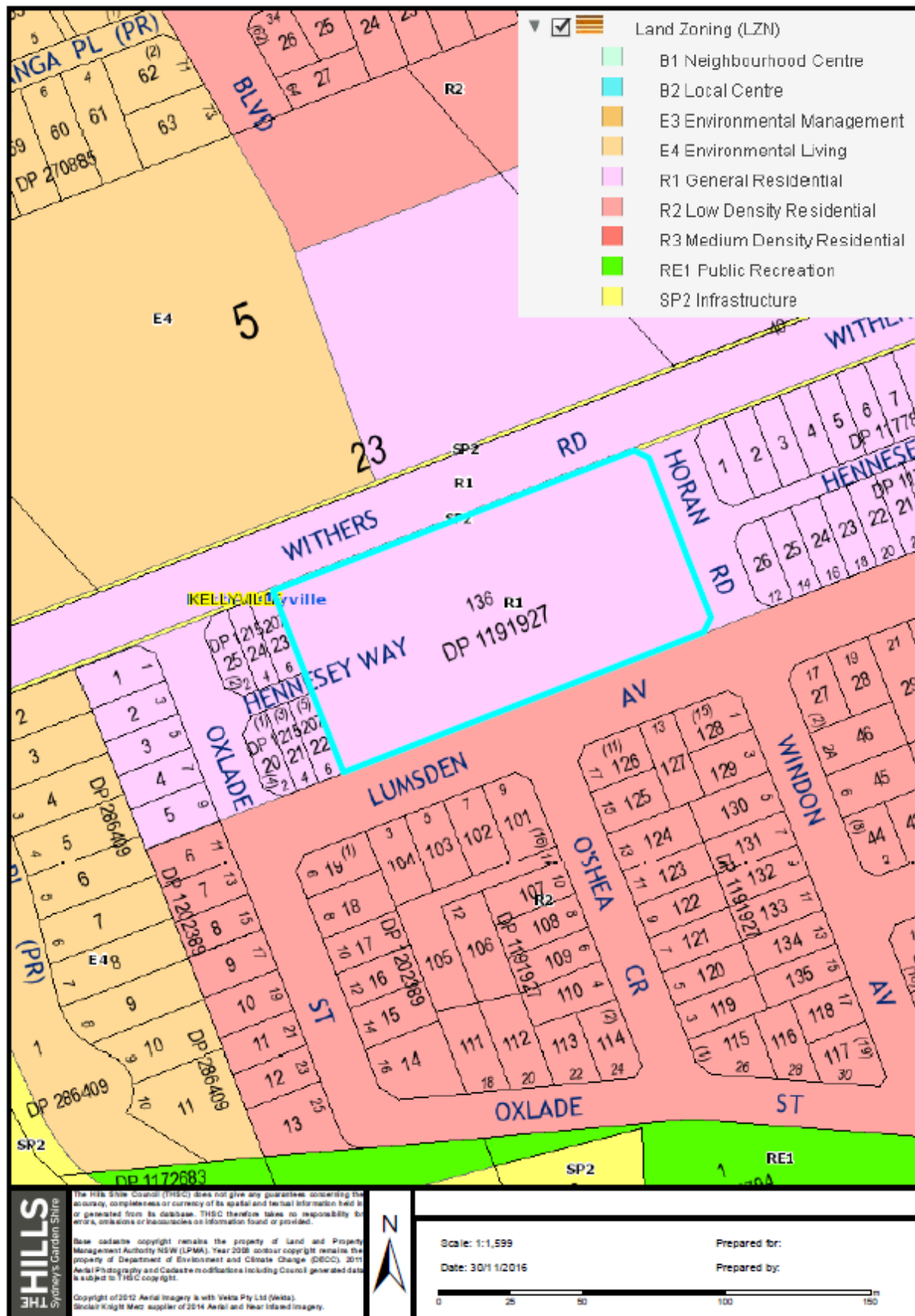
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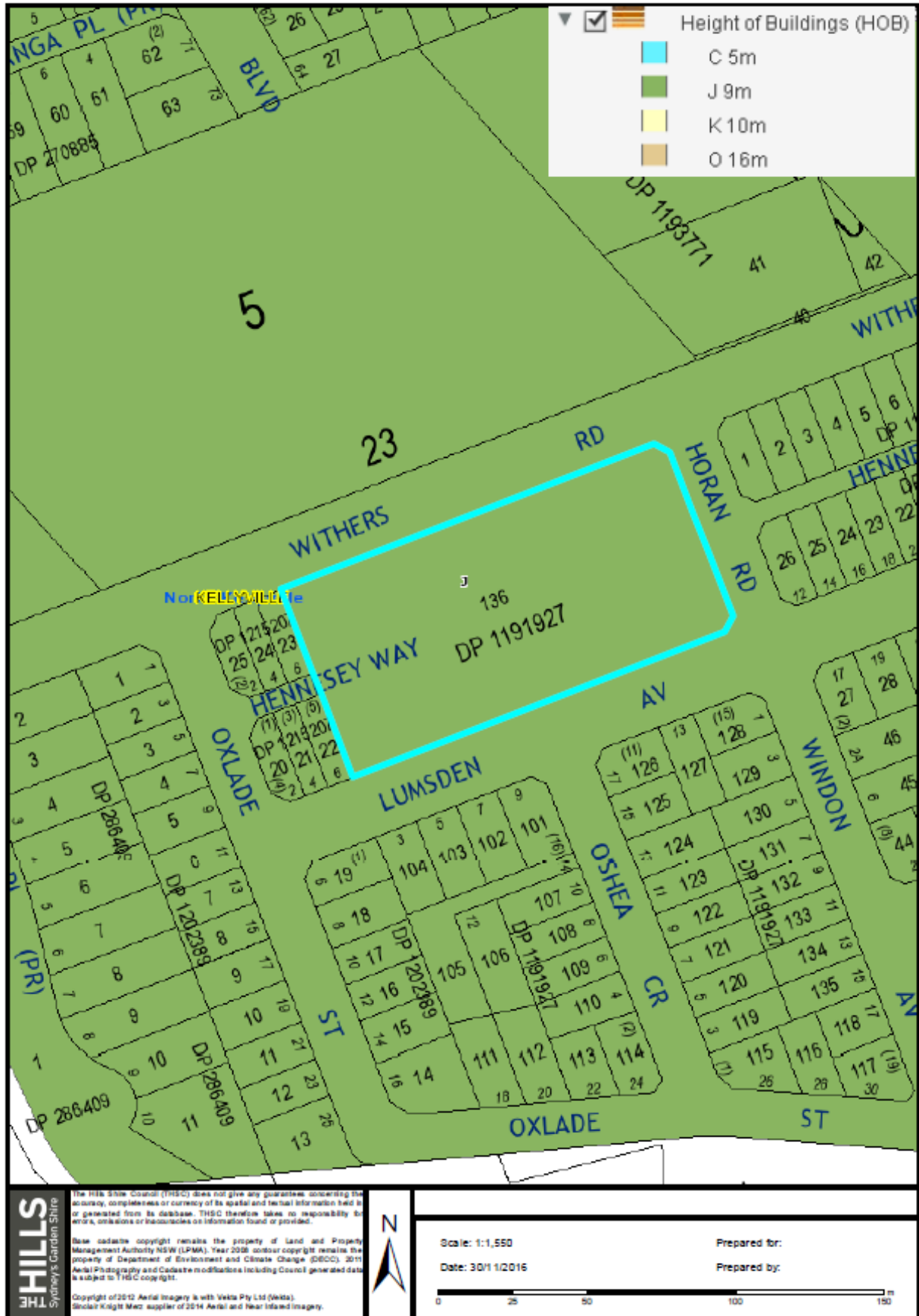
ATTACHMENT 2 – AERIAL PHOTOGRAPH



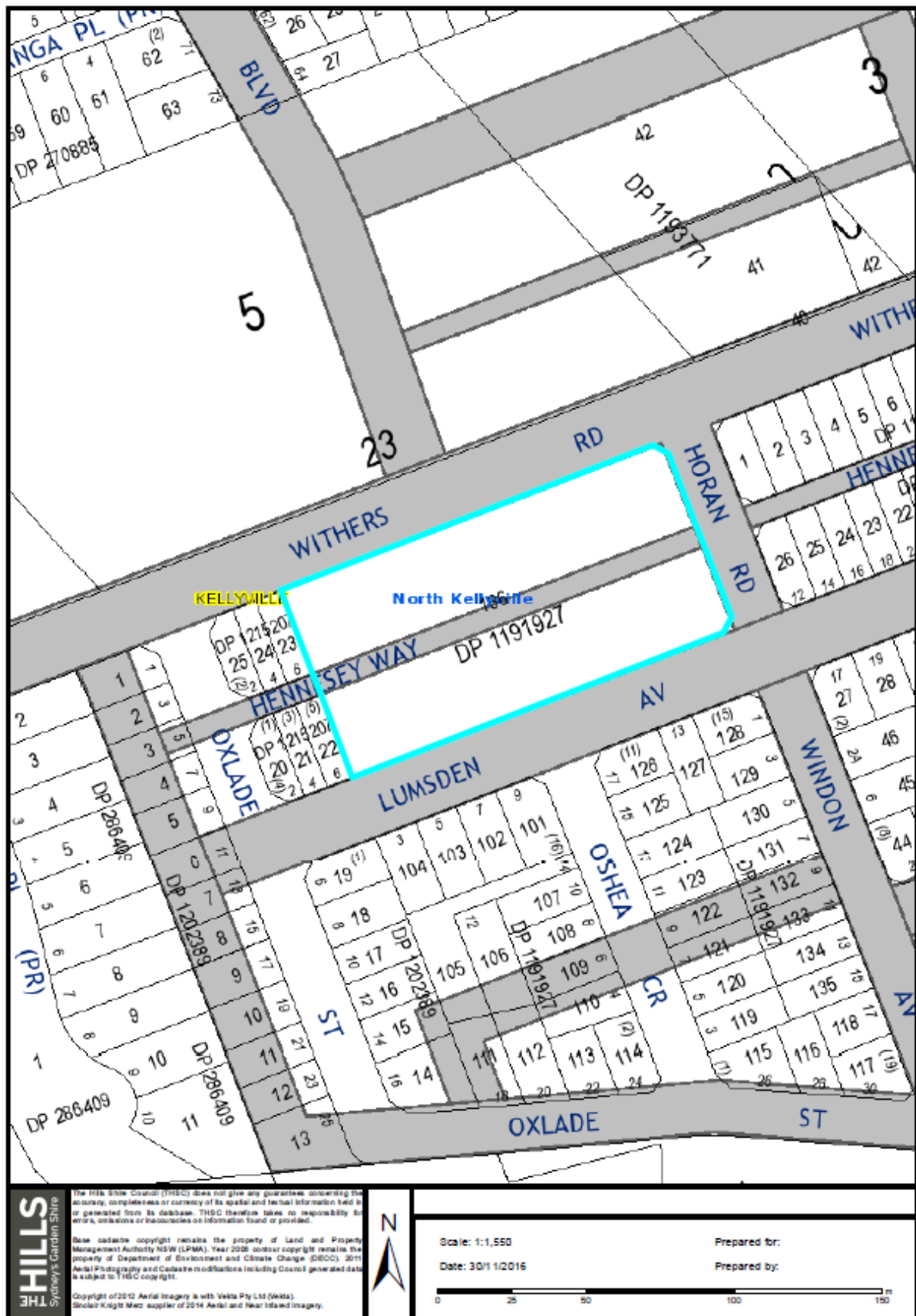
ATTACHMENT 3 – SEPP ZONING PLAN



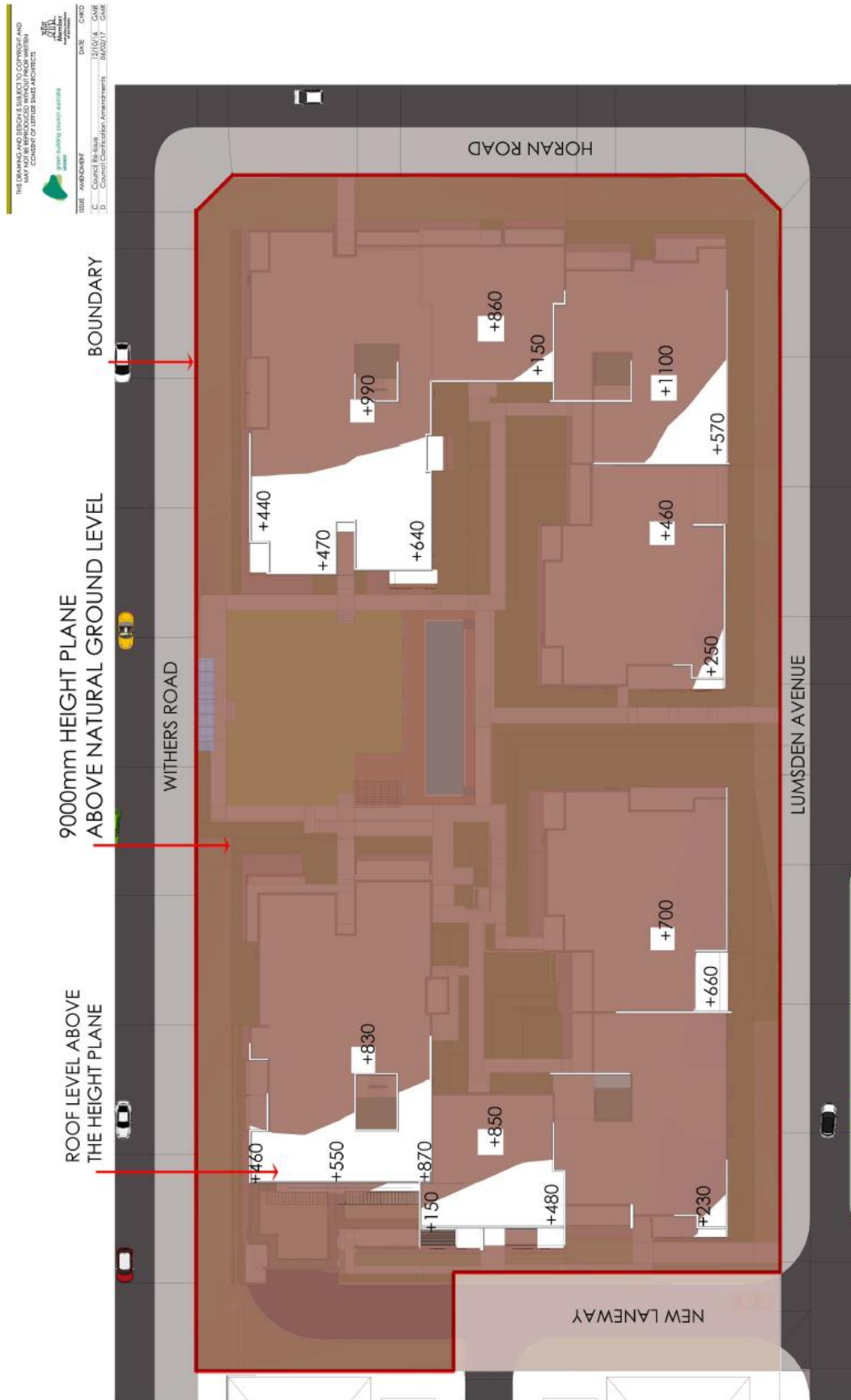
ATTACHMENT 4 – SEPP HEIGHT PLAN



ATTACHMENT 5 – DCP ROAD LAYOUT PLAN

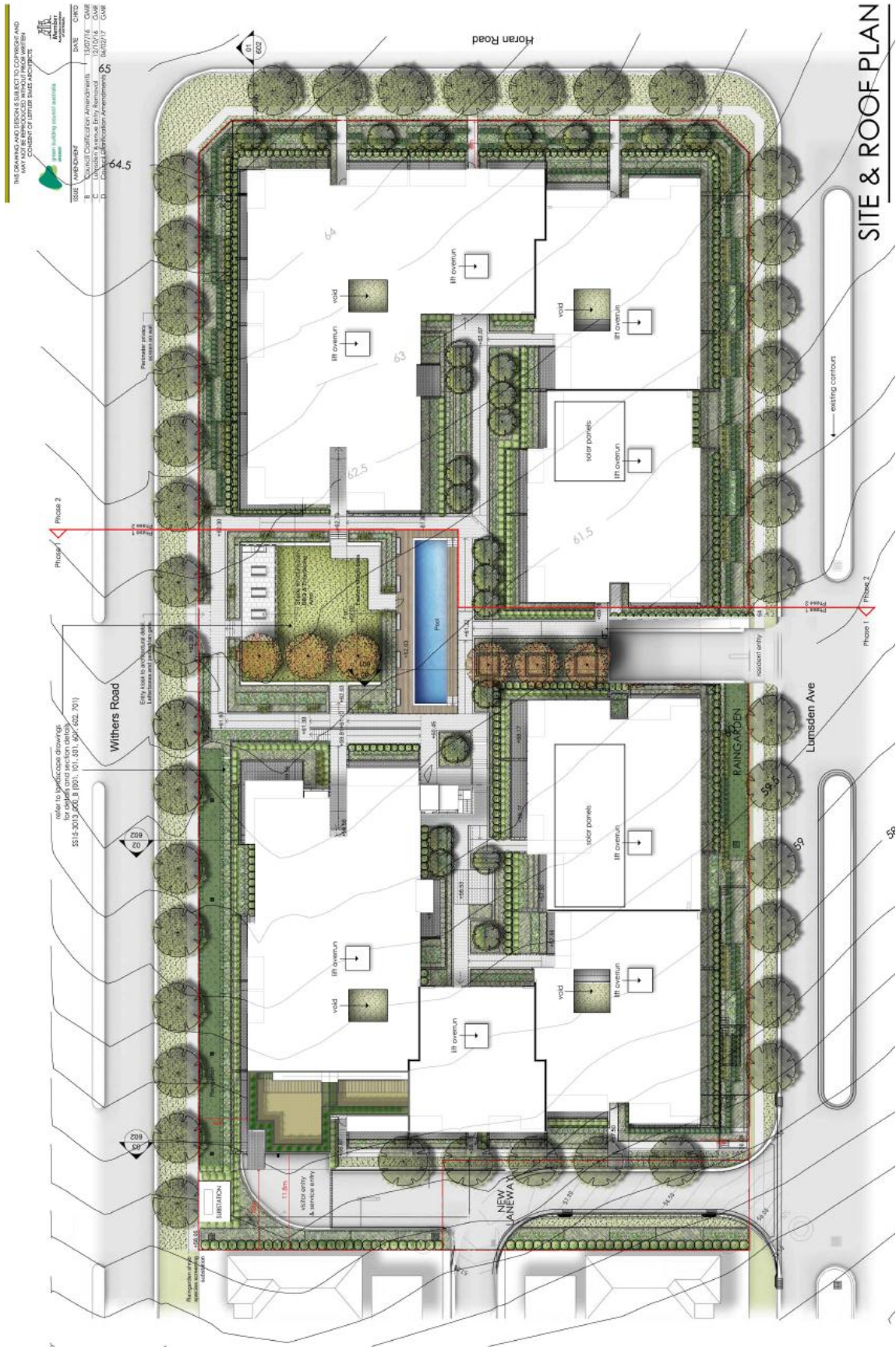


ATTACHMENT 6 – PROPOSED HEIGHT PLAN

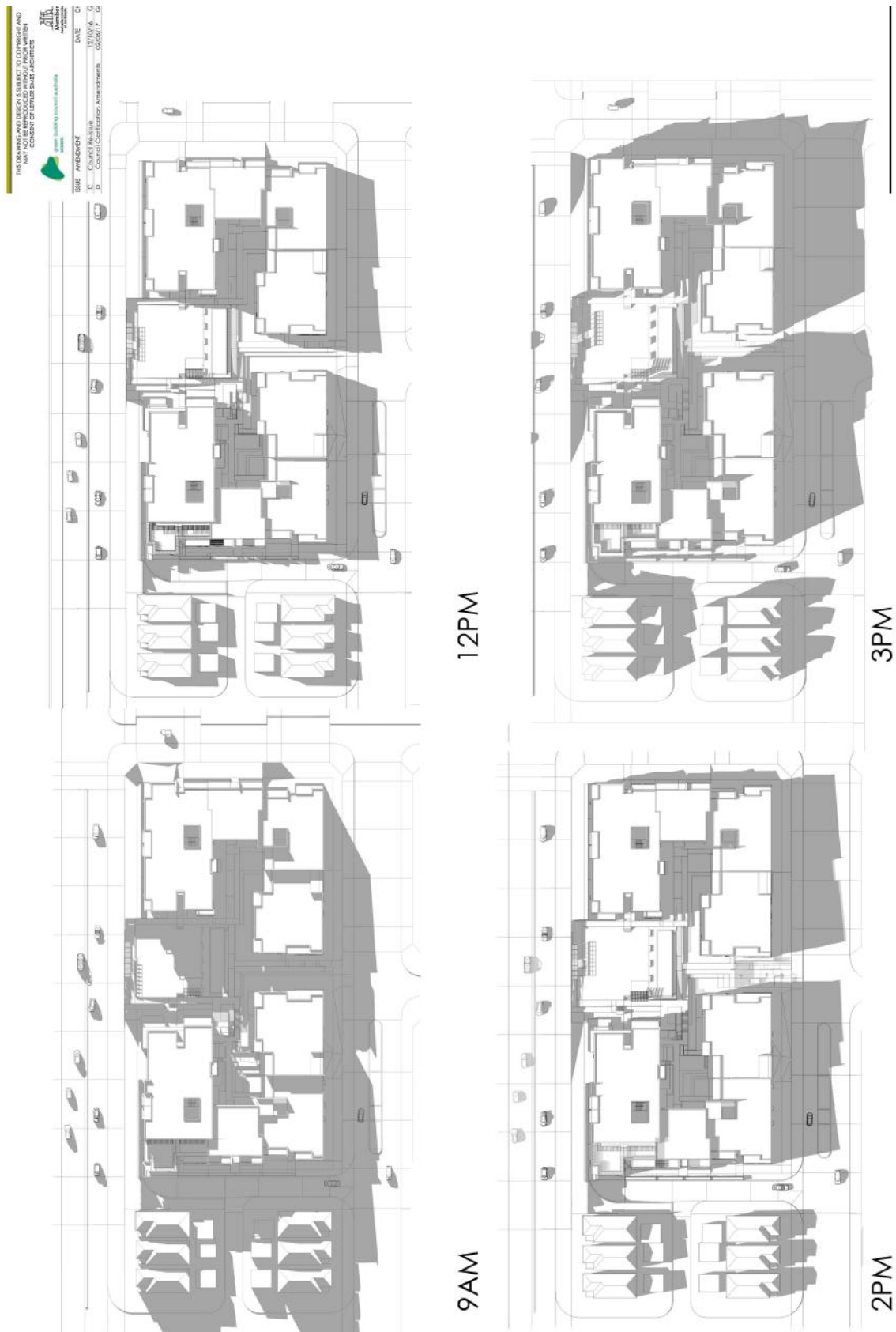


HEIGHT PLANE ANALYSIS

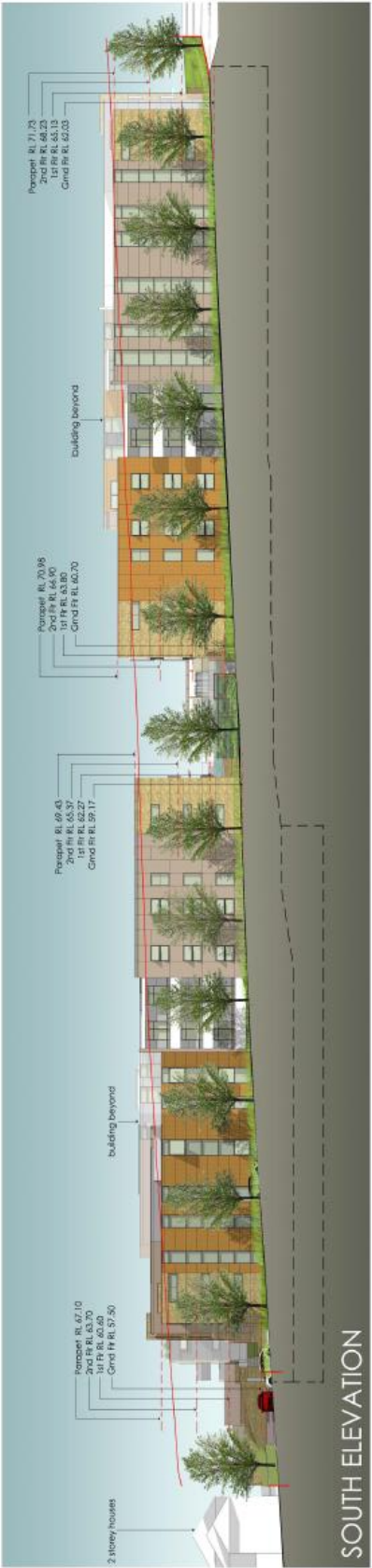
ATTACHMENT 7 – SITE PLAN



ATTACHMENT 8 – SHADOW DIAGRAM



ATTACHMENT 9 - ELEVATIONS





ATTACHMENT 10 – LANDSCAPE PLAN



ATTACHMENT 11 – PERSPECTIVES

VIEW ON WITHERS RD TO EAST



AERIAL VIEW FROM NORTH



VIEW ON LUMSDEN AVENUE TO NORTH

ATTACHMENT 12 – CLAUSE 4.6 VARIATION REQUEST



planning consultants

9 February 2017

Attachment 2 Revised Clause 4.6 Request to Vary Development Standard_February 2017.docx

Proposed Residential Apartment Buildings at 26-28 Withers Road, Kellyville

Written request for exception to a Development Standard

**Clause 4.3 Height of Buildings Development Standard
North Kellyville Precinct Plan
State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

1.0 Introduction

DFP has been commissioned by Hoop Pine Pty Ltd to prepare a Statement of Environmental Effects (SEE) for two proposed residential apartment buildings at 26-28 Withers Road, Kellyville.

The proposal breaches the building height limit specified at Clause 4.3 of the North Kellyville Precinct Plan (NKPP) in State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP SRGC 2006) and accordingly this is a request to vary the development standard pursuant to Clause 4.6 of the SEPP SRGC 2006. The maximum height of the proposed development exceeds the 9m building height limit by a maximum of 0.87m for Building A and 1.1m for Building B.

This Clause 4.6 Variation request prepared by DFP should be read in conjunction with the SEE for the proposed residential development and have regard to the revised plans prepared by Leffler Simes Architects submitted with our letter dated 9 February 2017.

2.0 Proposed Development

The proposed development consists of two x three storey residential apartment buildings comprising 95 residential units and 190 car parking spaces in two basement levels.

3.0 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

3.1 Clause 4.3 Height of Buildings

Clause 4.3 Height of Buildings states:

- 1) *The objectives of this clause are as follows:*
 - (a) *to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,*
 - (b) *to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,*



- (c) *to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,*
 - (d) *to provide appropriate height controls for commercial development,*
 - (e) *to restrict the height of buildings within the curtilage of heritage items.*
- (2) *The height of the building on any land is not to exceed the maximum height for the land on the Height of Buildings Map."*

The Height of Buildings Map indicates that the maximum height limit for that part of the site on which the development is proposed is 9 metres. *Building Height* is defined in the dictionary of the SEPP (Sydney Region Growth Centres) 2006 as follows:

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

3.2 Height of the Proposed Development

Buildings A and B are both 3 storeys in height and present a consistent building height to Withers Road, Horan Road and Lumsden Avenue. The majority of the buildings are within the 9m height limit, however due to the slope of the site, sections of the western components of the buildings exceed the building height limit by a maximum of 0.87m for Building A and 1.1m for Building B.

The height plane drawings at **Figures 1 and 2** illustrate the variations to building heights and illustrates that the breaches are limited to isolated components of the buildings.

3.3 Clause 4.6 Exceptions to Development Standards

Sub-clause 1 and 2 of Clause 4.6 state the following:

- (1) *The objectives of this Clause are as follows:*
 - (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this Clause does not apply to a development standard that is expressly excluded from the operation of this Clause.*

Variation to the building height limit is not expressly excluded from the operation of this Clause and accordingly Council has the power to vary the standard.



HEIGHT PLANE ANALYSIS

Figure 1 Building Height Plane Analysis



HEIGHT PLANE ANALYSIS 2

Figure 2 Height Plane Analysis Plan 2



3.4 Sub Clause 4.6(3) – Written Request

Sub-Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and,*
 - (b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

As noted above the proposed development does not comply with the Height of Buildings Development Standard pursuant to Clause 4.3 of the SEPP SRGC 2006 as the proposed development exceeds the maximum building height limit. Strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as discussed below.

With respect to Clause 4.6(3), this request has also had regard to the principles identified in *Four2Five Pty Ltd v Ashfield Council*, as to whether there are sufficient environmental planning grounds particular to the site to justify contravention of the development standard. The environmental planning grounds particular to the site and proposed development are outlined below:

- It is predominantly the sloping topography of the site that generates the non-compliance with the 9m height limit. The majority of the development is within the 9m height plane as shown in **Figures 1 and 2** above.
- Minimising the extent of excavation and the amount of excavated material to be removed off-site is considered to achieve a better overall environmental outcome for the site as there are no unreasonable environmental impacts associated with the additional building height.
- Reducing the overall height of the building by lowering the basement and ground levels would result in poorer amenity outcomes for the ground floor and lower level apartments at the eastern ends of the building as they would effectively be below ground level adjoining the site.
- The basement height of the proposed development also influences ground levels. The height of Basement 1 provides the required clearance levels to allow for entry by waste collection vehicles. The collection of waste on site is considered to be a preferable outcome to bins being collected from the street.
- The building design has sought to avoid variations in floor level (i.e. stepped floor levels) in an effort to ensure the site and buildings are fully accessible.
- Non-compliance with the standard does not contribute to unreasonable environmental impacts in terms of overshadowing, visual impacts or view loss, nor does it generate any adverse amenity impacts on the future residents of the development.

In this regard, the north western corner of Building A has been modified to reduce the building height in this corner to a maximum of two storeys with the third level set back from the edge of the building to provide a scale transition and to minimise impacts on adjoining properties to the west.

- The minimal exceedances of the height limit will not affect the way in which the building is perceived from public places and it is considered that the proposed residential buildings are consistent with the desired future character of the locality.



- Building footprints have been minimised in preference to lower building heights. This has allowed for a better design outcome in terms of:
 - Landscaped area 36.1% vs the 30% required in the DCP;
 - Site coverage 44.2% compared to a maximum 50% as per the DCP;
 - Communal open space 27.4% of site area vs 15% in the DCP; and
 - Deep soil zones 20.4% achieved vs 7% in the ADG. This will allow substantial trees to be planted on site which will provide a balance to the buildings.
- The proposed bulk and scale of the development is also considered appropriate.
- The proposal satisfies the R1 zone objectives and the objectives of the building height standards.
- A 9m height limit allows 3 storey buildings with floor to floor heights of 3m. The proposal is for 2 x 2/3 storey apartment buildings which is consistent with the desired future character. Strict compliance would result in either additional excavation and/or spilt floor levels.

3.5 Sub-Clause 4.6(4) – Justification

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that:*
 - (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by Sub-Clause (3), and*
 - (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *The concurrence of the Director-General has been obtained.*

Furthermore, Sub-Clause 4.6(5) provides that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *Whether contravention of the development standard raises any matter of significance for State Environmental Planning, and*
- (b) *The public benefit of maintaining the development standard, and*
- (c) *Any other matters required to be taken into consideration by the Director-General before granting concurrence.*

These matters are discussed in Section 4.

4.0 Justification for the exceedance of the 9 metre Building Height Development Standard

The Department of Planning and Environment guidelines on varying development standards recommend consideration of the provisions of Clause 4.6 and the five part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;



2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.
That is, the particular parcel of land should not have been included in the particular zone.

Test 1 is particularly relevant to the proposed development. Tests 2, 3, 4 and 5 are not directly relevant to the proposed development as it is our opinion that the height standard is relevant and that the R1 zone is appropriate for the site. It is noted that Council and the JRPP recently supported height variations up to 6m on a nearby site at 2-4 Barry Road, Kellyville, however it is not considered that Council has abandoned the development standard, but rather in that instance it considered compliance unnecessary and unreasonable.

Clause 4.6(4)(a)(ii) requires the objectives of the height development standard and zone to be considered. These are discussed below together with the relevant Wehbe tests.

4.1 Zone Objectives

The subject site is zoned R1 General Residential and the zone contains the following zone objectives:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage medium density housing in locations of high amenity adjoining open space and accessible transport corridors.*
- *To support the well being of the community, including educational, recreational, community, religious and other activities and, where appropriate, neighbourhood shops if there will be no adverse effect on the amenity of proposed or existing nearby residential development.*
- *To allow for low intensity tourist and visitor accommodation that does not interfere with residential amenity.*
- *To provide for a variety of recreational uses within open space areas.*

The proposed development is considered to be consistent with relevant the zone objectives as:

- 95 apartments will be provided to meet current and future housing demand.
- The site is proximate to the proposed North Kellyville centre which will provide facilities and services for the future residents of the development.
- Non-residential uses are not proposed.
- The development will provide a mix of dwelling types, which provides diversity of dwelling types, including adaptable dwellings.
- The proposed development comprises a residential flat building development in the vicinity of other developments which provide a range of housing types including small lot



housing and potentially terrace style housing as well as other residential flat buildings and accordingly, the proposal will contribute to the variety of housing types within the locality.

- The development proposal will assist in providing housing for the growing community of the North Kellyville Precinct and The Hills Shire.
- The site is adjacent to a bus stop providing public transport access to the Rouse Hill town centre and future railway station, and Parramatta.

Accordingly, it is considered that the development proposal is consistent with the objectives of the R1 zone and the exceedance of the height limit does not affect the proposal's consistency with the zone objectives.

4.2 Objectives of the Height Development Standard

The objectives of the Height Clause are detailed below.

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

The proposed development is considered to be consistent with the objectives of the building height standard as:

- The front and side setbacks and the roads to the north, east and south provide a physical separation between the site and adjoining future residential development to the east, south and north of the site.
- The setback to the west varies along the western elevation of the building. The setback to the two storey component at the north western corner is 11.8m. This increases to 19.5m to the 3 storey element in the north western corner where the height variation is between 0.46m and 0.87m.

The reduction in building height in this location will ensure that there is a transition in scale and that the development presents as a two storey scale when viewed from adjoining residences. In addition, the reduction in height in this corner and increased setback to the 3 storey component will result in potential impacts such as overlooking and overshadowing being minimised.

- Appropriate separation from development to the west is provided by virtue of the provision of the link between Hennessey Way and Lumsden Avenue and the access to the basement car park. Both the laneway link and the driveway have landscaped setbacks of 4.0m and 2.4m respectively to the adjoining property boundaries.
- The shadow drawings included with the amended architectural plans demonstrate that the properties on the southern side of Lumsden Avenue will not be affected by overshadowing from the proposed development until 3pm on the day of the winter solstice.
- The modified development has reduced the overshadowing impacts on the eastern dwelling on the northern side of Hennessey Way (i.e. the integrated housing development to the west of the site).

The shadow diagrams below demonstrate that the rear yard of the adjoining property will not be affected by overshadowing from the proposed development from 10.30am on June 21



Figure 3 Shadow diagram for 10.30am on June 21

The shadow diagrams above and at Attachment 1 demonstrate that the rear yard of the adjoining integrated housing dwelling to the west:

- Will receive sunlight between 10.30am and 12.45pm which exceeds the 2 hour minimum requirement.
- The northern elevation of this property will be unaffected by overshadowing from the proposed development.
- Much of the overshadowing of the rear yard of this property is a consequence of the development on the property itself and not as a result of the proposed development.

The minor non-compliance with the height limit still affords satisfactory solar access to adjoining properties.

- The proposed residential buildings are set back 6m from the frontages to Withers Road, Horan Road and Lumsden Avenue and 11.8m from the western property boundary to the two storey element of the building. The setbacks to the three storey component to the western boundary vary from 19.5m (in the north western corner) to 14m (for the central section) to 15m for the south western corner. The building separation distances to neighbouring buildings to the west exceed those required by the DCP. It is considered that there will not be any adverse amenity impacts in terms of privacy as a result of the additional height due to the larger than required setbacks provided.

- The bulk and scale of the proposed development is consistent with other development occurring along Withers Road, including developments at 15 Withers Road, 17 Withers Road and 16-20 Withers Road. These developments also included buildings that provide for a minor variation to the building height limit.
- The development has been designed to provide a larger than required separation between the buildings along the Withers Road frontage. This has the effect of breaking up the bulk of the building along this elevation and allows for the landscaping associated with the central communal open space area to be viewed from the public domain areas along Withers Road. A development which complies with the height limit could utilise some of the common open space area but to the detriment of an improved streetscape outcome.
- The large communal open space area, which includes deep soil zones, will allow for trees with a mature height in excess of 9m to be established which will assist in ensuring the height of the buildings does not dominate the streetscape and providing for a better planning outcome.

The greatest extent of the building height variations is towards the north western end of the site due to the sloping nature of the site, with the variation to the height limit receding towards the southwest. Notwithstanding, the maximum extent of variation in the north western corner is only 0.87m.

The 9m building height should allow development up to three storeys to be provided however, due to the topography of the site, components of a three storey building will extend above 9m. In order to minimise impact on adjoining properties to the west, the north western corner of Building A has been reduced to two storeys. However, overall, the additional height does not result in an additional storey being provided.

The additional building height at the western end of the buildings is not inappropriate in terms of bulk or scale and is consistent with the scale and height of other nearby developments and the emerging character in the locality.

4.3 The Grounds of the Objection to the Building Height Limit

The proposed variation to the Height of Buildings development standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the reasons discussed below.

Whilst parts of the buildings are greater than 9m in height, minimising the extent of excavation and removal of excavated material off-site is considered to achieve better overall environmental outcome for the site as there are minimal environmental impacts associated with the additional building height. In addition, the building footprint has been minimised to maximise the extent of landscaped areas. In this regard, the deep soil areas provided are greater than that required by the NKDCP and the ADG. The site area is large and can absorb the additional building height proposed.

The site is bound by streets on its northern, eastern and southern boundaries and the intervening streets provide ample separation between the proposed development and other surrounding developments which comprise a variety of residential styles and densities.

The development site is separated from the adjoining integrated housing development to the west by the link extension of Hennessey Way and the driveway access to the basement, together with landscaped setbacks. These features ensure there is significant separation between the proposed development and the adjoining integrated housing development.

These separations, which exceed the minimum setbacks requirements of the DCP, together with a reduction in height in the north western corner to two storeys, ensure that the development responds well to the character of the surrounding area as there is sufficient area in which to plant screen landscaping that will assist in moderating the bulk and scale of the development and provide a transition area between the proposed buildings and adjoining development.

The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and will provide a positive contribution to the streetscape. The proposed development also achieves the desired urban character for the site and locality and as discussed above the proposal satisfies the planning objectives for the R1 zone. Exceedance of the building height limit will not be discernible when viewed from the street.

The exceedance of the building height limit does not result in unacceptable amenity impacts for future residents of the proposed development or future adjoining residential development and the building height is appropriate for the site given its proximity to the North Kellyville Local Centre and the significant separations to adjoining developments. Accordingly, as demonstrated above, strict compliance with the height standard is both unreasonable and unnecessary in this instance.

4.4 Director-General's Consideration

As indicated above, Sub-Clause 4.6(5) of the SEPP (Growth Centres) 2006 also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

“(a) Whether contravention of the Development Standard raises any matters of significance for State Environmental Planning”

The breach of the building height limit is not of state or regional significance.

“(b) The public benefit of maintaining the development standard”

There will be no adverse impacts on public benefit in allowing the proposed development to proceed as the building heights do not result in unreasonable impacts on surrounding sites or on the locality and the objectives of the development standard and R1 zone can be satisfied.

A compliant development would also result in an increase in the building footprint and a consequent reduction in the landscaped area which would not achieve the same amenity and streetscape outcomes. Essentially, therefore, in order to maintain the yield proposed, which is not unreasonable given the zoning of the site and the site area, there would need to be a redistribution of development across the site which would result in an inferior design outcome for the sake of numerical compliance.

It is not in the public interest to increase the cost of housing in a growth centre where there is substantial demand.

“(c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.”

Reducing the height of the buildings would likely result in a reduction in the number of residential apartments and would not assist in providing residential units in a locality close to future public transport options and the new town centre development and would not be in the interest of housing affordability.



5.0 Conclusion and Recommendation

DFP has assessed the proposed residential apartment building development against the relevant statutory provisions of Clause 4.6 of the SEPP SRGC 2006 and prepared this written request which provides written justification that compliance with the 9 metre height of building development standards is unreasonable and unnecessary in this circumstance.

The non-compliance with the building height limit is generated by a combination of factors including:

- the slope of the land,
- the clearance height for the basement for service vehicles,
- the desire to minimise the extent of basement excavation,
- minimising the number of level changes throughout the buildings which would make accessibility difficult
- maximising on site landscaping; and
- providing an appropriate streetscape outcome.

The proposed development is consistent with the objectives of the R1 zone and the exceedance of the building height limit does not affect the proposal's consistency with the zone objectives. Similarly, the proposed development satisfies the objectives of the building height development standard under the LEP.

The exceedance of the building height limit by a maximum of 0.87m for Building A and 1.1m for Building B does not generate any unreasonable amenity impacts on the future residents of the proposed development or adjoining development and accordingly it is considered that the proposal is in the public interest. Furthermore, compliance with the development standard would likely reduce the number of homes that would be provided in a location proximate to the proposed North Kellyville Local Centre and a bus route connecting residents to the Rouse Hill town centre and future railway station, and Parramatta.

The justification within this written request is considered to be well founded and the proposed development worthy of approval.