

## SYDNEY WEST CENTRAL PLANNING PANEL

JRPP No	<b>2016SYW151</b>
DA Number	<b>173/2017/JP</b>
Local Government Area	<b>THE HILLS SHIRE COUNCIL</b>
Proposed Development	<b>DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING INCLUDING IN-FILL AFFORDABLE RENTAL HOUSING UNDER THE PROVISIONS OF STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009</b>
Street Address	<b>LOTS 1-3 DP 28954 – 41-45 YATTENDEN CRESCENT, BAULKHAM HILLS</b>
Applicant/Owner	<b>PROCON CIVIL PTY LTD &amp; LEADS CONCRETE NSW PTY LTD / TAO XU &amp; QUN WU</b>
Number of Submissions	<b>1<sup>ST</sup> NOTIFICATION (ORIGINAL SCHEME) – TEN (10)</b> <b>2<sup>ND</sup> NOTIFICATION (AMENDED SCHEME) – TWO (2)</b>
Regional Development Criteria (Schedule 4A of the Act)	<b>CIV OVER \$5 MILLION – PRIVATE INFRASTRUCTURE AND COMMUNITY FACILITIES (AFFORDABLE RENTAL HOUSING)</b>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>• List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> <li>- State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development</li> <li>- State Environmental Planning Policy (State and Regional Development) 2011</li> <li>- State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>- The Hills Local Environment Plan 2012</li> </ul> </li> <li>• List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) <ul style="list-style-type: none"> <li>- Nil</li> </ul> </li> <li>• List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> <li>- DCP 2012 Part B Section 5 – Residential Flat Buildings</li> <li>- DCP 2012 Part C Section 1 – Parking</li> <li>- DCP 2012 Part C Section 3 – Landscaping</li> </ul> </li> <li>• List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F:</li> </ul>

	s79C(1)(a)(iv) <ul style="list-style-type: none"> <li>○ Nil</li> </ul> <ul style="list-style-type: none"> <li>• List any coastal zone management plan: s79C(1)(a)(v) <ul style="list-style-type: none"> <li>○ Nil</li> </ul> </li> <li>• List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <ul style="list-style-type: none"> <li>- Environmental Planning and Assessment Regulation 2000</li> </ul> </li> </ul>
Does the DA require Special Infrastructure Contributions conditions (s94EF)?	No
List all documents submitted with this report for the panel's consideration	SUBMISSIONS
Recommendation	APPROVAL
Report by	DEVELOPMENT ASSESSMENT COORDINATOR CLARO PATAG
Report date	15 DECEMBER 2016

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

## EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and the construction of a part 4 part 5 storey residential flat building under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. The development comprises 45 residential units containing a mix of 14 x 1 bedroom, 24 x 2 bedroom and 7 x 3 bedroom units with associated basement car parking containing 52 car parking spaces accessed from Yattenden Crescent via a driveway located towards the eastern side boundary. Twenty-one or 47% of the units are to be dedicated as affordable rental housing under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Clause 13 of the SEPP requires that a minimum of 20% of the gross floor area of the development is to be used for the purpose of affordable housing. An increased percentage up to a maximum of 50% is allowed in circumstances where the existing maximum floor space ratio is 2.5:1 or less. In the absence of a floor space ratio control applicable to the land under The Hills LEP 2012, the applicant used the population density control prescribed in Council's DCP for residential flat buildings and combined it with the minimum unit mix and size controls as a guide in calculating and determining the maximum permissible floor area for the site and has determined an FSR of 0.93:1 on this basis. The proposal seeks to provide for a total habitable floor area of 3,496m<sup>2</sup> which equates to a total FSR of 1.4:1. On this basis, 21 dwellings with a total floor area of 1,644m<sup>2</sup> or 47% of the total proposed habitable floor space are proposed to be allocated as affordable rental housing for a period of 10 years in accordance with Clause 13(2) of the SEPP.

The proposal exceeds the maximum allowable building height of 16 metres prescribed in The Hills Local Environmental Plan 2012 by a maximum of 616mm or 3.85%. The application is accompanied by a written request made under clause 4.6 of The Hills Local Environmental Plan 2012 that seeks to justify the contravention of the development standard. The non-compliance is primarily associated with the lift overrun and elements which are set in from the perimeter of the building (see Attachment 4 for the extent of the variation). The proposed height variation is considered insignificant as it does not cause adverse impacts on properties located on the other side of Yattendon Crescent in terms of privacy and overshadowing. The variation is supported.

The overall design of the residential flat building is compatible with the future character envisaged in R4 High Density Residential Zone which is situated in close proximity to the Baulkham Hills Town Centre and is in keeping with the aims and objectives of R4 zone as outlined in LEP 2012.

The proposal complies with the minimum site area, landscaped area, deep soil zone, solar access, car parking and dwelling size requirements under SEPP (ARH) 2009, and therefore cannot be refused on this basis.

The application was notified to adjoining and surrounding properties on two separate occasions. The second notification was undertaken due to the external façade changes and the raising of the floor level of two ground floor units by 1.5m to provide a satisfactory driveway gradient as a result of the boundary adjustment to allow the dedication of land for road widening purposes and to meet the Australian Standards for medium rigid vehicles to access the basement level for garbage collection. The first notification received ten (10) submissions including two (2) late submissions whilst the second notification received two (2) submissions. The issues raised in the submissions relate to non-compliance with the accessible area definition in the SEPP, incompatibility with the character of the local area, traffic, parking, overdevelopment, floor space ratio/density, setbacks, landscaping, unit layout, solar access, building height, overshadowing, privacy, property devaluation, drainage, tree removal, lack of public transport, noise and impact on school catchment. These issues have been addressed in the report and do not warrant refusal of the application.

In the absence of the Greater Sydney Commission - Sydney West Central Planning Panel, this matter would be determined by Council's Development Assessment Unit.

## BACKGROUND

## MANDATORY REQUIREMENTS

Owner:	Procon Civil Pty Ltd, Leads Concrete NSW Pt Ltd and Tao Xu & Qun Wu	1.	<u>SEPP (Affordable Rental Housing) 2009</u> – Satisfactory
Zoning:	R4 High Density Residential	2.	<u>LEP 2012</u> – Variation – see Report.
Area:	2,498m <sup>2</sup>	3.	<u>The Hills DCP 2012 Part B – Section</u>

			5 - Residential Flat Buildings - Variation - see Report
Existing Development:	Three dwellings and associated outbuildings	4.	Section 79C (EP&A Act) - Satisfactory
			Section 94 Contribution - \$90,220.60

## SUBMISSIONS

## REASONS FOR REFERRAL TO SWCPP

1. Exhibition:	Not required to be advertised.	1.	CIV - exceeds \$5 million - Private Infrastructure and Community Facilities
2. Notice Adj Owners:	Yes Ist Notification - 14 days 2 <sup>nd</sup> Notification - 14 days		
3. Number Advised:	Thirty (30)		
4. Submissions Received:	Ist Notification - Ten (10) 2 <sup>nd</sup> Notification - Two (2)		

## HISTORY

<b>29/07/2016</b>	Subject Development Application lodged.
<b>04/08/2016</b>	Letter sent via email to the applicant requesting submission of a Capital Investment Value (CIV) cost summary report and advising that the consent authority for this form of development with a CIV of over \$5 million will be the NSW Government's Joint Regional Planning Panel.
<b>04/08/2016</b>	Applicant contacted, clarification requested regarding density and average unit floor area used in the floor space ratio calculations.
<b>09/08/2016</b>	Written clarification on the density and average unit floor area calculations provided by the applicant.
<b>12/08/2016 to 31/08/2016</b>	Development Application notified to adjoining and surrounding properties.
<b>12/08/2016</b>	Revised quantity surveyor's report which includes CIV calculations submitted by the applicant.
<b>15/08/2016</b>	Site inspection conducted.
<b>25/08/2016</b>	Letter sent to the applicant requesting additional information in relation to landscaping, waste management, parking, driveway width and gradient, stormwater drainage, required road widening of Yattenden Crescent, non-compliance with building height, insufficient shadow diagrams and non-compliance with common open space.

<b>01/09/2016</b>	Additional information in response to the letter from Council staff dated 25/08/2016 submitted by the applicant. The applicant advised that the requested M.U.S.I.C. model was being prepared.
<b>02/09/2016</b>	A copy of the bus timetables referenced in the Statement of Environmental Effects forwarded by the applicant to demonstrate the frequency of bus service that has at least one bus per hour servicing the bus stop within 400m walking distance from the subject site between 6am and 9pm each day from Monday to Friday and between 8am and 6pm on each Saturday and Sunday.
<b>07/09/2016</b>	MUSIC model submitted by the applicant.
<b>14/09/2016</b>	Additional documentation submitted by the applicant in response to the issues raised in the residents' submissions including a survey report confirming that the development is within 400m walking distance of a bus stop as required under clause 4(1)(c) of the SEPP (Affordable Rental Housing) 2009.
<b>15/09/2016</b>	Briefing held on site with the Joint Regional Planning Panel members.
<b>29/09/2016</b>	Letter sent to the applicant requesting further information in relation to the MUSIC model, stormwater network, on-site detention, garbage service bay, driveway section, on-site waste collection within the basement and issues raised by the JRPP members at the on-site briefing.
<b>10/10/2016</b>	Additional information received from the applicant in response to the letter from Council staff dated 29/09/2016.
<b>13/10/2016</b>	Email sent to the applicant advising that as a result of the proposed widening of the northern side of Yattendon Crescent, dedication of a strip of land within the property for a width of between 1.7m to 2m is required for additional footpath reservation.
<b>20/10/2016</b>	Email sent to the applicant raising concerns in relation to the proposed 6m rear setback which was also a concern raised by the JRPP members during their site inspection.
<b>21/10/2016</b>	Email sent by Council's Development Engineer to the applicant's engineering consultant requesting submission of amended stormwater plans.
<b>25/10/2016</b>	Amended plans and supplementary statement addressing the 6m rear setback received from the applicant.
<b>26/10/2016</b>	Letter received from the applicant's urban design consultant addressing the concerns of Council staff in relation to the rear setback.
<b>01/11/2016</b>	Letter received from the applicant enclosing a copy of a Class 1 Application lodged in the Land and Environment Court appealing against Council's deemed refusal of the Development Application.

- 02/11/2016** Letter received from the applicant attaching copy of plans amending the driveway gradient reflecting the proposed road widening and amended elevation drawings highlighting changes in materials and finishes and window sizes and locations. It was requested that these materials and finishes be put forward in any report to the Panel and referred to in any condition of consent. A letter from the applicant's urban design consultant dated 01/11/2016 was attached addressing the changes to the façade of the building.
- 03/11/2016 to 24/11/2016** Amended plans notified to neighbouring properties including residents who made previous submissions.
- 04/11/2016** Letter received from the applicant advising that the plans forwarded by email on 02/11/2016 are not to be relied on and do not form an amendment to the plans which form part of the DA. The decision not to include these plans was in response to the notification of the amended plans.
- 08/11/2016** Letter received from the applicant advising withdrawal of their email dated 04/11/2016 in relation to notifying the amended plans and confirming that they formally amend the application and rely on the amended plans Revision B dated 04 October 2016 forwarded to Council on 2 November 2016.

## **THE SITE**

The subject site is a rectangular shaped allotment with a splayed western boundary which comprises three parcels of land known as 41-45 Yattenden Crescent each containing a dwelling house and ancillary structures.

The site is located on the northern side of Yattenden Crescent to the east of the intersection of Arthur Street. The development site has a frontage to Yattenden Crescent of 65.15m and variable depths of 44.005m to the east and 43.56m to the west. The rear northern boundary has a length of 48.49m. The subject site has a total site area of 2,498m<sup>2</sup>.

The site gradually falls from the rear north-western corner through to the front south-eastern corner of the site by approximately 6m or 10%.

All stormwater from the site is currently directed to Yattenden Crescent and it is proposed to continue to be discharged to the existing system via an on-site stormwater detention system.

The subject site together with the other properties to the north of Yattenden Crescent are zoned R4 High Density Residential whilst the properties to the south of the road are zoned R3 Medium Density Residential (refer Attachment 4 – Zoning Map). The area surrounding the site has been rezoned to support medium and high density development.

The subject site is adjoined to the west by a recently constructed townhouse development which was approved under the provisions of the Affordable Rental Housing SEPP by the Land and Environment Court. Directly opposite the site is a townhouse development at Nos. 28-30 Yattenden Crescent which comprises 6 attached dwelling houses of up to two storeys. There are a number of other medium and high density residential developments generally comprising townhouses/villas and residential flat buildings in close proximity to the site (refer Attachment 2 – Aerial Photograph). In particular, the properties to the north (rear) of the site at Nos. 22-24 Seven Hills Road contain 2 storey townhouses comprising 11 attached dwellings. Also to the north, at Nos. 18-20 Seven Hills Road a residential flat building incorporating 18 self-contained dwellings exists.

As noted above, under the provisions of DCP 2012 Part D Section 14 – Target Site – Corner of Windsor Road and Seven Hills Road, Baulkham Hills, dedication of land 1.7m wide along the frontage of the site for additional footpath reservation will be required as a result of the widening of the carriageway of Yattenden Crescent on the northern side. The road works are required to be delivered by the developer of the above Target Site as part of development consent (DA 1278/2012/JP).

## **PROPOSAL**

The Development Application is for the demolition of existing structures and the construction of a 5-storey residential flat building under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009. The development comprises 45 residential units containing a mix of 14 x 1 bedroom, 24 x 2 bedroom and 7 x 3 bedroom units with associated basement car parking containing 52 car parking spaces accessed from Yattenden Crescent via a driveway located towards the eastern side boundary.

The proposal seeks to provide for a total habitable floor area of 3,496m<sup>2</sup> which equates to a habitable FSR of 1.4:1. This is less than 0.5:1 above the 0.93:1 maximum floor space ratio allowed on the site which the applicant has calculated based on population density, apartment size and unit mix controls prescribed in Council's DCP 2012 Part B Section 5 – Residential Flat Buildings. On this basis, 21 dwellings with a total floor area of 1,644m<sup>2</sup> or 47% of the total proposed habitable floor space are proposed to be allocated as affordable rental housing for a period of 10 years in accordance with Clause 13(2) of the SEPP. If the proposal is to be assessed against the density control for residential flat buildings, it will exceed two times the maximum allowed density of 175 persons per hectare, i.e. at 350.28 person per hectare. As the density is to be assessed against FSR, the applicant's FSR calculation based on population density, apartment size and unit mix was undertaken to demonstrate compliance with the SEPP density requirement.

The proposal is set back 10m from Yattenden Crescent with side and rear setbacks of 6m. The setback to Yattenden Crescent will be reduced to 8m should dedication of a 2m wide strip of land along the site's frontage occur in the future as a result of the required widening of the Yattenden Crescent carriageway to be delivered by the developer of the Target Site on the corner of Seven Hills Road and Windsor Road as part of their development approval (DA 1278/2012/JP). This is to maintain the existing 3.5m footpath reserve on this side of Yattenden Crescent to comply with Council's standard footpath reservation widths and significantly improve the streetscape and pedestrian connectivity to the Baulkham Hills Town Centre.

The Development Application is accompanied by a written request to vary the building height standard in The Hills Local Environmental Plan 2012. The proposal breaches the 16m building height control applicable to the site by a maximum of 616mm and is primarily associated with the lift overrun and elements which are set in from the perimeter of the building (see Attachment 4).

## **ISSUES FOR CONSIDERATION**

### **1. State Environmental Planning Policy (State and Regional Development) 2011**

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

*Development for Private Infrastructure and Community Facilities that has a capital investment value of more than \$5 million.*

The proposed development contains 47% of units to be allocated as affordable rental housing which is defined as community facilities under the SEPP. The total capital investment value



of the development (excluding GST) is \$11,492,922 thereby requiring referral to, and determination by the Greater Sydney Commission – Sydney West Central Planning Panel. In accordance with this requirement the application was referred to and listed with the SWCPP for determination.

## 2. Compliance with SEPP (Affordable Rental Housing) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 provides for affordable rental housing to be developed on any residential zoned allotment on which residential flat buildings are permissible. The Policy provides incentives for the development of affordable rental housing, including relaxation of development standards and increased floor space ratio provisions.

The SEPP includes the requirement that the subject site is within 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 6am and 9pm each day from Monday to Friday and between 8am and 6pm on each Saturday and Sunday. The applicant has provided a survey report demonstrating that the subject site satisfies these requirements.

The Development Application is made under Part 2 Division 1 of the SEPP (In-fill Affordable Housing).

The proposal has been assessed against the relevant controls prescribed in the SEPP for in-fill affordable housing and the following table shows the development's performance against the relevant controls of the Policy.

DEVELOPMENT STANDARD (CLAUSE NO.)	SEPP (ARH) 2009 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Clause 8 – Relationship with other environmental planning instruments	If there is an inconsistency between this Policy and any other environmental planning instrument, where made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.	The proposal demonstrates compliance with all relevant provisions of the SEPP and where inconsistencies with the Hills LEP 2012 occur, this Policy prevails.	Yes
Part 2 New affordable rental housing  Clause 10(1) land to which this division applies	Applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if the development concerned is permitted with consent under another environmental planning instrument and is on land that does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register under the <i>Heritage Act 1977</i> .	The proposal is permissible in the zone and the land does not contain a heritage item.	Yes



<b>DEVELOPMENT STANDARD (CLAUSE NO.)</b>	<b>SEPP (ARH) 2009 REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Clause 10(2) Public transport	<p>Clause 10(1) does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.</p> <p>Accessible area as defined in Clause 4 means land that is within:</p> <p>(a) 800 metres walking distance of a public entrance to a railway station or a wharf where a Sydney Ferries ferry service operates, or</p> <p>(b) 400 metres walking distance of a public entrance to a light rail station or in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or</p> <p>(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of <i>Passenger Transport Act 1990</i>) that has at least one bus per hour servicing the bus stop between 06:00 and 18:00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	The subject site is located within 400 metres walking distance to a bus stop located near the intersection of Windsor Road and Old Northern Road (see Attachment 14).	Yes, see discussion below.
Clause 13(1) Development to which Division applies	If the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20%.	<p>The proposal contains 47% affordable housing (21 of 45 units).</p> <p>The affordable housing units are: G.01, G.03, G.04, G.06, G.09, G.10, 1.01, 1.02, 1.03, 1.04, 1.05, 1.08, 1.09, 2.01, 2.03, 2.04, 2.09, 3.01, 3.03, 3.04 and 3.09.</p>	Yes

<b>DEVELOPMENT STANDARD (CLAUSE NO.)</b>	<b>SEPP (ARH) 2009 REQUIREMENTS</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Clause 13(2) Maximum floor space ratio	The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus: Y:1 (if the percentage of the gross floor area of the development that is used for affordable housing is less than 50%), under the following equation: AH - % of gross floor area to be used as affordable housing $Y = AH / 100$	Proposed nominated affordable housing gross floor area is 1,644m <sup>2</sup> . The total gross floor area is 3,496m <sup>2</sup> . Therefore; $Y = 1,644 / 3,496$ $= 47 / 100$ or 0.47:1 additional permitted + 0.93:1 which is the maximum FSR calculated for the site using Council's RFB density, unit size and mix controls as a guide. Max FSR proposed is 1.4:1.	Yes
Clause 14 (2) Standards that cannot be used to refuse consent	General – A consent authority must not refuse consent to development to which this Division applies on any of the following grounds: (a)(ii) parking – at least 0.5 spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms.  (b) dwelling size must have a gross floor area of at least: (i) 35m <sup>2</sup> for a bedsitter or studio (ii) 50m <sup>2</sup> for a 1 bedroom (iii) 70m <sup>2</sup> for a 2 bedroom (iv) 95m <sup>2</sup> for a 3 bedroom	Parking – 52 car parking spaces provided.  The proposal consists of 14 x 1 bedroom units and 24 x 2 bedroom units and 7 x 3 bedroom units. Therefore 41.5 or 42 car parking spaces are required.  Minimum GFA for a 1 bedroom unit is 53m <sup>2</sup> Minimum GFA for a 2 bedroom unit is 73m <sup>2</sup> Minimum GFA for a 3 bedroom unit is 95m <sup>2</sup>	Yes – exceeds SEPP requirement by 10 spaces.  Yes – all units meet minimum required GFA.
Clause 16 Continued application of SEPP 65	Nothing in this Policy affects the application of SEPP 65 to any development to which this Division applies.	Refer to SEPP 65 - ADG compliance table.	Generally compliant with SEPP 65 requirements – see Section 3 below.

DEVELOPMENT STANDARD (CLAUSE NO.)	SEPP (ARH) 2009 REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
Clause 16A Character of local area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	The design of the development is compatible with the existing and future character of the local area.	Yes, see comments below.
Clause 17 Must be used for affordable housing for 10 years	(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that: (a) for 10 years from the date of the issue of the occupation certificate: (i) the dwellings proposed to be used for the purpose of affordable housing will be used for the purposes of affordable housing, and (ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and (b) a restriction will be registered before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.	To be imposed in any consent.	Yes, condition recommended - see Condition 3.

As outlined above, the proposal complies with the requirements of the SEPP (ARH) 2009. Further discussion with respect to the proposal's compliance with the accessible area definition and character is provided below.

#### **a) Accessible Area**

Clause 10(2) of the SEPP (Affordable Rental Housing) 2009 states "*Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.*" This issue was raised at the on-site briefing held with the Joint Regional Planning Panel on 15 September 2016 and as a result further information was requested to demonstrate compliance with access to bus stop requirement including distance, gradient and surface treatment.

The applicant in response provided the following:

*"We enclose copy of the Land and Environment Court decision of Fobitu Pty Ltd v Marrickville Council [2012] NSW LEC 1251 ("Fobitu").*

*The issues raised by the JRPP are all dealt with conclusively by the Court's decision. The applicant relies on the survey information which identifies, consistent with the State Environment Planning Policy (Affordable Rental Housing) ("SEPP"), that part of the development is within an accessible area. We note the Panel are of the opinion "that the intent of the accessible area definition is that walking distance should be measured from the access point of the development to the nearest bus stop."*

*The Fobitu case, at paragraphs 15-30, addresses the issues raised by the JRPP and considers Clause 10(2) of the SEPP. The first issue is the appropriate measurement point at the site. The Court heard arguments from Mr Hemmings SC and Mr Galasso SC for the parties and considered what 'all or part of the development site' meant.*

*Mr Hemmings for the Council argued that it should be the main entrance to the development. In that case any variation to the measurement point from the nearest corner would have resulted in a breach of the 400m requirement, as is the case with the development before the JRPP.*

*The Court determined at paragraph 21 the following:-*

*"I see no reason why the words 'all or part of the development site' should not be given their ordinary meaning. The location of the measurement point at the most southerly end of the Denison Road frontage is clearly part of the site. If the draft person meant to provide a greater specificity or include qualitative criteria, in the manner suggested by Mr Hemmings, then this could have easily formed part of Clause 10(2)(c)."*

*In that case Craig McLaren (Traffic Engineer) gave evidence on behalf of the applicant. Mr McLaren provided evidence that the terms 'bus stop' and 'bus zone' are interchangeable based on Clause 104 of the Passenger Transport Regulation 2007. The evidence was that the terms are interchangeable as they are used in different circumstances but largely perform the same function. A 'bus stop' (or a single point) is generally more appropriate in a residential environment where as a 'bus zone' (or area between two points) is likely to be more appropriate in a busy location such as a commercial area. It is relevant to note that the bus stop, which the applicant relies on, is a very busy bus stop which collects a large catchment area being the second last bus stop before the M2 motorway.*

*The Bus Stop Insulation Guide for Local Councils identifies a bus stop as being the entire area between the two sign posted ends of the bus zone, not merely the spot identification sign designating the particular bus stop. The measurements undertaken by the applicant's surveyor are to the bus stop and, therefore in this regard, are conservative. In the morning peak period, the particular bus zone relied on often stretches (that is the queue) for between 40-50m. The Bus Stop Insulation Guide for Local Councils demonstrates that the bus stop comprises the entire designated bus zone and a particular "stop identification sign" does not equate to the bus stop.*

*The Court determined at paragraph 26 the following:-*

*"Clause 10(2)(c) uses the words 'a bus stop used by regular bus service'. Bus stop has a particular meaning in Clause 10(2)(c) with a specific reference to Passenger Transport Act 1990 and consequently the Passenger Transport Regulation 2007... I accept that the reference to a "bus stop" is a reference to a "bus zone", this being an area between signs 1 and 2 and occupying an area of the footpath."*

*Council's correspondence identifies that in the Panel's opinion, a section of the route along the lane way towards Seven Hills Road diagonally traversing the driveway to an approved*

*mixed use development currently under construction is considered unsafe. The route between the site and the bus stop is defined in Clause 10(2)(4) "the walking distance firstly has to be the shortest distance, secondly able to be safely walked by a pedestrian and thirdly using, as far as reasonably practicable, public footpaths and pedestrian crossings". The Court went on to consider "where the roads were crossed at angle of 50 or 200 and whether the defined path touched corners or were clear of corners. The route proposed is the shortest distance, is direct and in the applicants opinion is able to be safely walked by a pedestrian. The specific diagonal traversing of a public road (not a driveway) could not be reasonably considered to be unsafe. The road is a dead end and access to the basement for the mixed use development on the corner of Windsor Road and Seven Hills Road is from Yattenden Crescent".*

*Is Clause 10(2) of the SEPP a development standard or a prohibition?*

*The applicant has received advice from Mr Galasso that, in his opinion, Clause 10(2) of the SEPP is a development standard and, hence, amenable to a Clause 4.6 application. It is relevant to note that Commissioner Brown accepted into evidence a precautionary SEPP I as set out in paragraph 17 of the decision in Fobitu, however, we acknowledge the point was not finally determined. The reasoning supporting this conclusion is set out below:-*

- 1. Part 2 Division 1 of the SEPP is a facultative document in that it does not operate, permit or prohibit development as such but rather operates to regulate the form in which the development to which this applies. This particular division of the SEPP is not at all concerned with the concept of permissibility instead being concerned with the application of certain development standards.*
- 2. The reference in the definition of the development standards in the provision falls within at least two of the elements of the definition of development standards. Element (a) is 'the distance of any land... from any specified point' and also element (m) 'the provision of services and facilities and amenities demanded by the development'.*
- 3. The relevant provision specifies a requirement or fixes a standard in relation to the aspect of the proposed development, namely, a distance requirement, which in itself then operates to permit or provide for a standard in relation to other aspect or the proposed development. Either way, it does not operate to prohibit the development.*
- 4. It is relevant to note that the wider context, in particular the reference to Clause 10(1)(a), establishes elsewhere the applicability of the SEPP and the issue of permissibility, and the provision lies within the context of carrying out that type of development.*
- 5. The provision does not prohibit development of the SEPP under any circumstance.*
- 6. The requirements within the provision are external to the development, once defined.*
- 7. The provision is identifying a relevant aspect of the development, in particular its distance from a specified point, inter alia.*

*Relevantly, Chief Judge McLellan in Georgakis v North Sydney Council dealing with Clause 12 of SEPP 5, which was determined to be a development standard and was for a distance requirement held as follows:-*

*"It follows that although the development is not absolutely prohibited by a combination of Clause 12(1) and (2) of SEPP 5 it is subject to requirement that access to the relevant facilities be within 400m. This is an aspect of the development, and accordingly, a development standard amenable to dispensation pursuant to SEPP 1."*

*It was Mr Galasso's opinion that there is little, if any scope for any argument, that it operates as a prohibition and hence, for the reason set out above. In my opinion, the proper construction is that it is a development standard.*

*The applicant is willing to provide a precautionary SEPP 1 should the panel require it.*

**Comment:**

The proposal satisfies the accessible area definition in the SEPP having regard to the above case law referenced by the applicant.

**b) Compatibility with the Character of the Local Area**

Clause 16A of SEPP (ARH) 2009 prescribes that a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The applicant has provided the following character statement:

*"In response to this requirement it is submitted that the subject site is located within the R4 - High Density Residential zone under the provisions of The Hills Local Environmental Plan 2012.*

*Under the R4 zone a range of land uses are permissible with the consent of the Council including dwelling houses, multi-dwelling housing, boarding houses and residential flat buildings.*

*As a consequence the area surrounding the subject site comprises of a range of built forms ranging from one and two storey detached dwelling houses, two storey attached townhouse development and 4 storey residential flat buildings.*

*It is considered that the proposal provides for an outcome which would be consistent with both the existing character of the local area as well as with the desired future character envisaged by the Council through its existing controls.*

*It is therefore submitted that on this basis that the proposal which provides for a residential flat building represents development compatible with the character of the local area.*

*In addition to the above it is also submitted that the design of the development is compatible with the character of the local area for the following reasons:*

- 1. The proposal is provided with ample front, side and rear setbacks to ensure appropriate visual separation and complement the setbacks provided to similar forms of surrounding development.*
- 2. The proposal provides for a well-articulated façade to Yattenden Crescent. It is noted that the properties on the northern side of this portion of Yattenden Crescent are zoned R4 and as such it is anticipated that similar forms of development will be part of the future character of the locality.*
- 3. The proposal provides for a landscape outcome commensurate with the requirements of the Council.*
- 4. The proposal is to incorporate colours and materials reflective of surrounding development.*
- 5. The proposal provides for the provision of significant replenishment vegetation in order to maintain the landscape character of the locality.*

*For the reasons as detailed above it is my opinion that the revised proposal provides for an outcome whereby the design of the development is compatible with the character of the local area."*



**Comment:**

The site is located in close proximity to the Baulkham Hills Town Centre Precinct. The proposal responds to the desired future character of the area as envisaged in Council's LEP 2012 which rezoned this northern side of Yattenden Crescent to R4 High Density and the southern side to R3 Medium Density Residential anticipating a mix of townhouse and residential flat development to occur in the vicinity. The proposal will integrate with the surrounding sites and will be in keeping with the anticipated future urban form. The proposed building will respond and contribute to the identity and future character of the precinct and its context.

Whilst the existing area is predominantly low density, Council's future intent for the locality (including the subject site) is for the built form to reflect a transition of scale between apartment buildings to the north and multi dwelling housing in the form of townhouses to the north of Yattenden Crescent. A number of residential flat buildings have been approved and constructed within the vicinity of the site fronting Seven Hills Road.

The proposed development generally complies with the maximum height restriction of 16m with a minor variation of 616mm which is primarily associated with the lift overrun. The SEPP (ARH) 2009 provides incentives for the development of affordable rental housing, including increased floor space ratio provisions. In this regard, an additional bonus of a maximum of 0.5:1 floor space ratio can be applied under SEPP (ARH) 2009.

The SEPP (ARH) does not place restrictions on where the additional Gross Floor Area (GFA) must be placed, relying instead on the design principles and controls contained in the SEPP 65 Apartment Design Guide (ADG) to achieve the required planning outcomes. The proposal complies with the design principles and controls in SEPP 65 – ADG.

It is considered that the proposal is of a design and form that would be in harmony with the existing and future developments around it and meets Council's future intent for the local area and is therefore supported.

**3. Compliance with SEPP 65 – Design Quality of Residential Apartment Development**

As required by Clause 16 of the SEPP (ARH) 2009, the proposal has been assessed against the relevant Design Principles and controls prescribed by SEPP 65.

The subject development has been assessed against the relevant design quality principles under Schedule 1 of the SEPP as follows:

**Principle 1: Context and neighbourhood character**

The site is located within an area zoned for R4 High density developments incorporating residential flat buildings in close proximity to the Baulkham Hills Town Centre Precinct. The proposal responds to the desired future character of the area as envisaged in Council's LEP 2012. The proposal would integrate with the surrounding sites and would be in keeping with the future urban form. The proposed building would respond and contribute to the identity and future character of the precinct and its context.

**Principle 2: Built form and scale**

The scale, bulk and height of the development is appropriate for the desired future character of residential flat building development in the R4 High Density Residential zone. The proposed building is under the allowable height plane for most of its bulk. It is 5 storeys tall and stepped to accommodate the sites contours. The proposed building generally complies with the height and setbacks prescribed within the DCP. The proposed front and side setbacks comply with both Council's DCP and SEPP 65 requirements. These setbacks control the desired built form and scale of the building when viewed from the public domain. The rear setback of 6m complies with SEPP 65 but not with the 8m requirement by Council's DCP. The proposed setbacks create a scale of the building that is appropriate for the long-term development prospects of the area. The objective of the DCP is to ensure buildings reflect the



existing landform including ridgelines, protect privacy and amenity of the surrounding allotments and minimise overshadowing.

The proposal seeks a variation to the DCP's 4 storey maximum height limit. The 5 storey part is stepped having regard to the topography of the site. The concentration of the proposed units on the 5th storey is on the higher northern side where the land slopes upward to northern neighbours reducing the extent of overlooking.

The proposal incorporates high quality facades with a balanced composition of varied building elements and achieves an appropriate built form for the site and its purpose, in terms of building alignments, proportions, and the manipulation of building elements.

#### Principle 3: Density

The proposal complies with the floor space ratio requirements under SEPP (ARH) 2009. The proposed density is considered to be sustainable as it responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and is acceptable in terms of density.

#### Principle 4: Sustainability

The application includes good sustainable design with 90% of units having two aspects to encourage cross ventilation. It also provides passive thermal design including a rooftop communal open space area. The applicant has also submitted a BASIX Certificate for the proposed development. In achieving the required BASIX targets for sustainable water use, thermal comfort and energy efficiency, the proposed development would achieve efficient use of natural resources, energy and water throughout its full life cycle, including demolition and construction.

The windows are oriented north, east and west for good solar access. Solar access is controlled with louvers and large overhangs to avoid dependence on mechanical ventilation, heating and cooling.

#### Principle 5: Landscape

The development is accompanied by a landscape concept design which indicates deep soil planting around the perimeter of the site. The front setback area provides an opportunity for planting and softening the impact of the street elevation with new trees. The proposed landscaping will enhance the existing streetscape.

It is proposed to place the communal open space on the roof. This space besides being private and secure will receive satisfactory solar access. The paved areas on the roof will be softened by planters which are distributed around the edges of the building to centralise the usable area and prevent or minimise overlooking and privacy issues.

#### Principle 6: Amenity

The unit designs are SEPP 65 compliant with appropriate room dimensions and shapes to maximise amenity for future residents of all age groups and degrees of mobility. Southern facing units will enjoy views across Sydney.

The proposal incorporates good design in terms of achieving natural ventilation, solar access, visual and acoustic privacy. All units incorporate adequate indoor and outdoor spaces with balconies accessible from living areas and privacy has been achieved through appropriate design and orientation of balconies and living areas. The proposal would provide efficient and safe access to service areas and all residential units via a central lift connecting the basement and all other levels.

#### Principle 7: Safety

The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points are secured and visually prominent from Yattenden Crescent.

All building entrances, pathways and driveway will have automatic night lighting. The basement and stairwell will have timer controlled on demand/movement triggered lighting as the case requires. This will optimise safety, security and energy efficiency in those areas.

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

The proposal incorporates a range of unit sizes to cater for different demographics, living needs and household budgets. The development provides a component of adaptable housing and a mix of 1, 2 and 3 bedroom dwellings. The affordable housing units will be part of the variety of housing types available in the area which already includes standard units, town houses and individual houses.

The proposal responds to the social context in terms of providing a range of dwelling sizes with good access to social facilities and services as the site is located in an accessible area within 400m walking distance of a bus stop used by a regular bus service as required in the SEPP. A variety of communal spaces including children play area and outdoor seats and tables provide opportunities for social interaction amongst residents.

The external circulation provided between lifts and units has been designed to allow the occupants to view each other in a semi-public setting and help promote a sense of community within the development.

The locality has easy access to a wide range of shops, schools, clubs, parks, restaurants, medical/health care facilities and bus stops within walking distance. The development will allow more people easy access to these services.

#### Principle 9: Aesthetics

The architectural treatment of the building incorporates indentations and projections in the exterior walls with balcony projections to articulate the facades and landscaping is provided on the ground and roof level to soften the appearance of the building. The articulation of the building, composition of building elements, textures, recycled materials and colours would achieve a built form generally consistent with the design principles contained within the Apartment Design Guideline and the desired future character envisaged in the R4 High Density Residential zone.

The design of the ground floor open spaces incorporated walls and fences that give the building a base that steps with the site contours and provides detail and texture. Sun shading and fenestration add to the level of detail and texture of the proposed building. The external detailing makes an individual statement of the building. Balconies are open and glazed.

The building elements, materials and colours to be used are consistent with those generally found in quality developments of this type. The materials schedule demonstrates that the texture of the materials to be used, as well as the materials themselves and their colouring, are consistent with one another and are an improvement on those found in the immediate area.

The following table shows the development's performance against the relevant controls of the Policy.

#### **APARTMENT DESIGN GUIDE (ADG) REQUIREMENTS**

<b>Clause</b>	<b>SEPP Requirements – 65 ADG Design Criteria</b>	<b>Proposed Development</b>	<b>Compliance</b>
<b>Siting</b>			
Communal open space	25% of the site, with a minimum of 50% direct sunlight to the principal usable part of the	The communal open space provided is over 25% of the site area and receives	Yes

	communal open space for 2 hours midwinter.	uninterrupted sunlight all year round.	
Deep Soil Zone	<p>7% of site area.</p> <p>On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1,500m<sup>2</sup> and 15% for sites greater than 1,500m<sup>2</sup>.</p>	<p>The site area is 2,498m<sup>2</sup>. The required deep soil generally is 175m<sup>2</sup>. As the site is greater than 1,500m<sup>2</sup>, 15% of the site or 375m<sup>2</sup> may be required. The deep soil provided within the front setback area alone is over 300m<sup>2</sup> with the remainder located within the side and rear setback areas, and therefore the total deep soil provision is well over 375m<sup>2</sup>.</p>	Yes
Separation	<p>Minimum separation distances for buildings:</p> <p>Up to 4 storeys - 6-12m Up to 8 storeys - 9-18m</p> <p>When applying separation to buildings on adjoining sites, apply half the minimum separation distance measured to the boundary. This distributes the building separation equally between sites.</p>	<p>The proposal complies with the required 6m setback for Levels 1 to 4.</p> <p>In relation to Level 5 of the proposal, it is provided with setbacks identical to the levels below from the northern (rear) boundary and which are a minimum of 6m measured to the edge of the balcony.</p>	No, however a written justification is provided by the applicant addressing this variation – see discussion below and further discussion in Section 6(c).
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Visual privacy provided through reasonable setbacks, window placements, use of blade walls and louvres towards views and sunlight and away from neighbouring properties.	Yes
Carparking	<p>For development on the following locations:</p> <ul style="list-style-type: none"> <li>on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan</li> </ul>	The subject site is not on these identified locations. The parking provision is based on the requirements for affordable housing under the SEPP (ARH)	Yes. Clause 14 of the Affordable Rental Housing SEPP provides that a consent authority must not refuse consent to

	<p>Area; or</p> <ul style="list-style-type: none"> <li>on land zoned, and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>2009.</p> <p>The amount of off-street parking provision exceeds the required number of parking spaces for affordable housing, which is:</p> <p>0.5 space per 1 bedroom dwelling 1 space per 2 bedroom Dwelling 1.5 spaces per 3 plus bedroom dwelling</p> <p>The proposed unit mix is as follows:</p> <p>14 x 1 bedroom = 7 spaces 24 x 2 bedroom = 24 spaces 7 x 3 bedroom = 11 spaces</p> <p>Total spaces required = 42 spaces</p> <p>Total spaces proposed = 52 spaces including 8 visitor spaces</p>	<p>development on parking grounds. The proposal complies with the ARH SEPP's parking requirements.</p>
<b>Designing the Building</b>			
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 mid-winter.	Living rooms and private open spaces of 70% of the apartments would receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	<p>A maximum of 15% of the apartment would receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter.</p> <p>50% of the units have a north aspect. No units have a single aspect facing south. All units with a north aspect have living rooms and balconies with a north aspect. All</p>	Yes

		apartments have shallow layouts to maximise natural light and solar access.	
Natural ventilation	<p>At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>80% of apartments are naturally cross ventilated.</p> <p>None of the proposed apartments are deeper than 18m.</p>	Yes
Ceiling heights	<p>For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where 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.</p>	The drawings submitted indicate that the finished floor level to finished floor level is 3m for all habitable rooms. It is fair to assume that the concrete slab for each floor level would be less than 300mm which would result in a floor to ceiling height of 2.7m which complies with the control.	Yes
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m<sup>2</sup> 1 bedroom – 50m<sup>2</sup> 2 bedroom – 70m<sup>2</sup> 3 bedroom – 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional</p>	<p>The sizes for each unit type are as follows:</p> <p>1 bedroom: 53m<sup>2</sup> – 72m<sup>2</sup></p> <p>2 bedroom: 73m<sup>2</sup> – 89m<sup>2</sup></p> <p>3 bedroom: 95m<sup>2</sup> – 102m<sup>2</sup></p>	Yes, the sizes for each unit comply with the minimum internal areas as required.

	<p>bathrooms increase the minimum internal areas by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>		
Environmental Performance of Apartments	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	<p>All habitable rooms proposed have a depth of 2.5 x 2.7 (ceiling height) = 6.75m<sup>2</sup>. All habitable room depths are less than 2.7 x 2.5 = 6.7 5m. None of the open plan living layouts are deeper than 8m. Bathrooms and laundries contain external operable windows where possible. Living and bedroom areas are located on the external face of the building. The main living spaces are oriented away from noise sources.</p>	Yes
Apartment Layouts	<p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>All master bedrooms have a minimum area greater than 10m<sup>2</sup>. All other bedrooms have a minimum area of 9m<sup>2</sup>.</p> <p>All bedrooms have a min dimension of 3m.</p> <p>All 1-bedroom apartments have a minimum width of 3.6m.</p> <p>All 2 and 3 bedroom units have a minimum dimension of 4m.</p> <p>Bedrooms, bathrooms and laundries do not give direct access to living areas. All bedroom robes are more than 1.5m long. All main bedroom robes are greater than 1.8m long in their non-adapted form. The</p>	

		apartment layouts allow for flexible furnishing and contain efficient circulation.	
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m<sup>2</sup> with no minimum depth  1 bedroom – 8m<sup>2</sup> with a minimum depth of 2m  2 bedroom – 10m<sup>2</sup> with a minimum depth of 2m  3 bedroom – 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	<p>All 1 bedroom apartments have balcony areas greater than 8m<sup>2</sup>.</p> <p>All 2-bedroom apartments have balcony areas greater than 10m<sup>2</sup>.</p> <p>All 3-bedroom apartments have balcony areas greater than 12m<sup>2</sup>.</p> <p>All balconies have a minimum depth greater than 2m.</p> <p>All ground level or podium units have a minimum balcony area of 15m<sup>2</sup> and minimum depth of 3m.</p>	Yes
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m<sup>3</sup>  1 bedroom – 6m<sup>3</sup>  2 bedroom – 8m<sup>3</sup>  3+ bedrooms – 10m<sup>3</sup></p> <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>50% or more of the minimum storage requirement has been provided within the apartments.</p> <p>Storage is accessible from living and circulation areas. The additional storage required is provided in the basement and allocated to individual units.</p>	Yes
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and	The proposal includes a variety of apartment types including 47% in-fill affordable units, 11% accessible/adaptable units, 31% 1 bedroom	Yes



	stages of life.	units, 53% 2 bedroom units and 16% 3 bedroom units.  The apartment mix is appropriate taking into consideration the distances to shops and transport, the scale of the proposed development and the current demand for this type of housing.	
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As outlined above, the proposal generally complies with the requirements of SEPP 65 with the exception of building separation.

#### **a) Building Separation**

The separation distance requirement for buildings up to 4 storeys is 6-12m and for buildings up to 8 storeys the required separation distance is 9-18m. As noted in the table above, the proposal complies with the required 6m setback for Levels 1 to 4, whilst Level 5 is also set back identical to the levels below from the northern (rear) boundary and which are a minimum of 6m measured to the edge of the balcony.

The applicant has provided the following statement addressing the variation to the above control:

*"The proposed building technically comprises of 5 storeys and as such should be provided with a 6m setback to Levels 1 to 4 and a 9m setback for Level 5. The proposal complies with the required 6m setback for Levels 1 to 4.*

*In relation to Level 5 of the proposal it is noted that it is provided with setbacks identical to the levels below from the northern (rear) boundary and which are a minimum of 6m measured to the edge of the balcony.*

*It is acknowledged that this is a technical non-compliance. In support of this non-compliance it is noted that the presentation of the building to the rear boundary whilst being 5 storey by definition has an effective height of 4 storeys due to the cutting in of the rear of the built form. On this basis it is my opinion that the proposal provides for an outcome consistent with that envisaged by the ADG."*

#### **Comment:**

The aims of the building separation requirements in the Apartment Design Guide are as follows:

- *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings*
- *assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook*
- *provide suitable areas for communal open spaces, deep soil zones and landscaping.*

It is considered that the proposal satisfies the aim of the separation distance standard in the ADG as it does not adversely impact upon the amenity of adjoining properties in term of visual and acoustic privacy and will not result in any overshadowing of adjoining properties due to its orientation. The proposed variation is supported in this regard.

#### **4. Compliance with SEPP 55 – Remediation of Land**

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

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

The likelihood of encountering contaminated soils on the subject site is low given the site has been historically used for residential purposes. Potential land contaminated activities, such as those listed in Table 1 and Appendix A of the Contaminated Land Planning Guidelines of SEPP 55, are unlikely to have been carried out on the site or adjoining properties. The site is not identified under the LEP as constituting contaminated land or land that must be subject to site audit statement and is not subject to legal notice for a matter listed under Section 59(2) of the Contaminated Land Management Act 1997. Given the above factors, no further investigation of land contamination is warranted in this case. The site is suitable in its present state for the continued use of residential purposes.

#### **5. Compliance with The Hills Local Environmental Plan 2012**

##### **i) Permissibility**

The subject site is zoned R4 High Density Residential under the Hills LEP 2012. The proposed residential flat building is permitted within the R4 High Density Residential zone under the Hills LEP 2012. The proposed development satisfies the following objectives of the R4 High Density Residential zone:

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

The proposed development seeks consent to consolidate four lots totalling an area of 2,498m<sup>2</sup> which does not meet the 4,000m<sup>2</sup> minimum lot size development standard for residential flat buildings under Clause 4.1A in LEP 2012. However, as the application is lodged pursuant to the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, the site area requirement of 450m<sup>2</sup> prescribed in the SEPP prevails. Clause 14 of the SEPP states that a consent authority must not refuse consent to development if the site area complies with the minimum site area requirement of 450m<sup>2</sup>.

##### **ii) Development Standards**

The proposal has been assessed against the LEP 2012 Map Sheets as follows:-

LEP 2012 MAPPING - DEVELOPMENT STANDARDS			
STANDARD	REQUIRED	PROPOSED	COMPLIANCE
Floor Space Ratio	Nil	1.4:1	Not applicable, however it satisfies SEPP (ARH) 2009
Allotment Size	4,000m <sup>2</sup>	2,498m <sup>2</sup>	Not applicable, however it exceeds the minimum site area requirement of the SEPP (ARH) 2009.
Building Height	16m	Max. 16.616m	No, see comments below.

### **Building Height**

As shown on the above table, the proposal exceeds the maximum height control of 16 metres applicable to the site as shown in the Height of Buildings Map referenced under Clause 4.3 in LEP 2012 by a maximum of 616mm and is primarily associated with the lift overrun and elements which are set in from the perimeter of the building (see Attachment 4 for the extent of the variation).

The applicant seeks a variation to the above building height standard pursuant to clause 4.6 of LEP 2012 which allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

The objectives of the building height standard under Clause 4.3 are as follows:

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

Clause 4.6 of LEP 2012 provides a mechanism to allow a consent authority to consider variations to LEP development standards. Clause 4.6(3) of LEP 2012 reads as follows:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

The applicant has submitted a written request that seeks to justify the contravention of the building height standard as follows:

*"The following is an assessment of the proposal against the relevant provisions of the LEP.*

*Clause 4.3 - Height of Buildings*

*The subject site is located within the "02" height area and as such is subject to a maximum building height of 16m.*

*As detailed on the Height Plane Diagram on Drawing No. DA-22 of the Architectural Plans it is submitted that the proposal breaches the 16m building height control applicable to the site.*

*The proposed breach is a maximum of 616mm and is primarily associated with the lift overrun and elements which are set in from the perimeter of the building and which in my opinion will not be visible from the public domain.*

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

*The proposed development will result in a built form which has a height in excess of the 16m height of building control as required by Clause 4.3 of the Hills Local Environmental Plan 2012.*

*The proposal will result in a maximum building height of 16.616m noting that the non-compliance is for parts of the building rather than the entire built form. The non-compliant portion of built form has an area of 16m<sup>2</sup> and which represents 1.6% of the overall building footprint.*

*Given that the proposal does not comply with the maximum height control and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.*

*This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court including Starby P/L v The Hills Shire Council.*

*It is submitted that the variation is well founded and is worthy of the support of the Council.*

*The following is an assessment of the proposed variation against the requirements of Clause 4.6.*

- 1. What are the objectives of Clause 4.6 and is the proposal consistent with them.*

*The objectives of Clause 4.6 of the LEP 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.*

*It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.*

- 2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.*

*Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.*

*It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.*

*On this basis it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.*

3. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.*

*It is my opinion that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:*

- The proposed non-compliance (up to 616mm) is considered to be minor in nature.*
- The proposed non-compliance applies to 13m<sup>2</sup> or 1.6% of the overall building footprint which once again is considered to be of a minor nature.*
- The proposed non-compliant sections of the building are set in from the external perimeter of the building and will not in my opinion be visible or discernible from the public domain.*
- The proposal in my opinion will not result in any unreasonable impacts upon either adjoining properties or the streetscape as a result of the non-compliance.*

*On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.*

4. *Are there sufficient environmental planning grounds to justify contravening the development standard.*

*It is considered that a contravention of the development standard is justified given that it is of a minor nature, does not result in any unreasonable impacts and importantly will facilitate the provision of affordable rental housing upon the subject site.*

5. *Is the proposed development 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.*

*The proposed development is in my opinion in the public interest because it will provide for 21 affordable dwellings upon the site in a manner which is compliant with the requirements of the SEPP, the applicable zone objectives and the objectives of the particular standard.*

*In this regard it is submitted that in relation to the objectives for the R4 - High Density Residential zone in that:*

- To provide for the housing needs of the community within a high density residential environment.*

*Comment*

*The proposal seeks to provide for a total of 45 dwellings upon the site of which 21 dwellings will be dedicated as affordable rental housing dwellings.*

- To provide a variety of housing types within a high density residential environment.*

*Comment*

*The proposal seeks to provide for a total of 45 dwellings upon the site of which 21 dwellings will be dedicated as affordable rental housing dwellings. Of the 45 dwellings proposed there will be 14 x 1 bed dwellings, 24 x 2 bed dwellings and 7 x 3 bed dwellings.*

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

*Comment*

*Not applicable.*

- To encourage high density residential development in locations that are close to population centres and public transport routes.*

Comment

*The subject site is considered to be appropriately located in relation to access to public transport and the centre of Baulkham Hills.*

*The proposal is also considered to be consistent with the objectives of Clause 4.3 - Height of Buildings in that:*

- The proposed building when viewed from the perimeter of the site will present as having 4 storeys and a compliant height consistent with the requirements of the Council.*
- The proposal will not result in any unreasonable impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

*6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.*

*It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.*

*7. What is the public benefit of maintaining the development standard.*

*It is my opinion that there is no public benefit in maintaining the development standard in this instance given the public benefit provided and the absence of any unreasonable detrimental impacts.*

Conclusion

*It is therefore my opinion based upon the content of this submission that a variation of the height requirements of Clause 4.3 of The Hills LEP 2012 is appropriate in this instance."*

**Comment:**

The proposed building height will not result in any significant adverse impacts on the amenity of the neighbouring buildings in terms of overshadowing, privacy, outlook and amenity. The buildings are appropriately sited, generally observing setbacks and building separation to ensure the privacy of adjoining properties is maintained.

Clause 4.6 (4) of LEP 2012 states:

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

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Comment: As detailed above, the proposal is an appropriate development outcome and is consistent with the objectives of the R4 High Density Residential zone.

- (b) the concurrence of the Director-General has been obtained.*

Comment: Council has assumed concurrence under the provisions of Circular PS 08-003 issued by the Department of Planning and Infrastructure.

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 R4 High Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

In view of the above, it is considered that the variation to the building height standard satisfies Clause 4.6 of LEP 2012.

## **6. Compliance with DCP 2012 Part B Section 5 – Residential Flat Building**

The proposed development has been assessed against the relevant development standards and objectives of The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings and is considered satisfactory with the exception of the maximum number of storeys, common open space, rear setback and apartment mix.

### **a) Building Height – Number of Storeys**

Section 3.4(c) of DCP 2012 Part B Section 5 – Residential Flat Building requires that no building shall contain more than 4 storeys above natural ground level. The proposal exceeds the four storey limit as it proposes a five storey building. The applicant has provided the following justification:

*"The proposal seeks approval for the construction of a residential flat building having a height which in part exceeds 16m in height and which contains 5 storeys.*

*In response to the non-compliant building height reference is made to the Clause 4.6 submission contained within the original Statement of Environmental Effects.*

*In relation to the proposed non-compliance with Council's 4 storey height limit it is submitted that:*

- *The proposed fifth storey is wholly located within the 16m height control.*
- *The fifth storey is generally not visible from the public domain.*
- *The proposed fifth storey will not in my opinion result in any unreasonable amenity impacts upon adjoining properties.*
- *The proposed fifth floor will facilitate the provision of additional affordable housing upon the site.*

*In summary, the objectives of Clause 4.3 - Building Heights as set out in the DCP in relation to overshadowing, privacy and amenity impacts on surrounding allotments are achieved.*

### **Comment:**

The objectives of the building height control within the Residential Flat Building DCP are as follows:

- To ensure that buildings reflect the existing landform of the neighbourhood, including ridgelines and drainage depressions;*
- To protect privacy and amenity of surrounding allotments and residential development in accordance with Council's ESD objective 7;*
- To minimise overshadowing of adjoining properties.*

The predominant height of the residential flat building is generally four storeys when viewed from the public domain with the fifth storey component being a recessive element when



viewed from Yattenden Crescent. Given the site's topography, location and nature of surrounding development, the proposal is unlikely to adversely affect any significant views. The shadow diagrams submitted indicate that adequate solar access would be provided to residential properties across the road and future residential flat buildings on adjoining lots.

The proposed variation to the maximum allowed number of storeys is considered acceptable as the proposal achieves the objectives of the building height standard outlined above. Having regard to the R4 High Density Residential zoning of the site and immediate adjoining properties, it is considered that the proposed development will be consistent in terms of built form and scale. The variation is considered satisfactory in this regard.

## **b) Common Open Space**

Section 3.13 - Common Open Space of the Residential Flat Building DCP requires that the common open space area is to be provided in a singular large parcel, centrally located and equivalent to the rate of 20m<sup>2</sup> per dwelling. The proposed common open space areas are in parts provided at the ground level and top floor level of the development. At the ground level, 537m<sup>2</sup> of common open space is proposed and 342m<sup>2</sup> at the top floor level, a total combined area of 879m<sup>2</sup>. The proposal does not comply with the above controls in terms of size and location. The applicant has provided the following justification in this regard.

*"The proposed residential flat building is surrounded by common open space amounting to an area of 537m<sup>2</sup>. There are a variety of different landscaping opportunities. For example, adjoining G04 at the ground level is a densely landscaped area with stepping stones. To the north of G05, G06, G07, G08 and to the west of G08 there are turf areas with substantial tree planting and associated amenity landscaping along the boundary. The area directly adjoining G07 has a table and bench seat, which could accommodate up to 8 people. There are a variety of seats facing the north, east and west of the site (within the children's play area). These seats have been particularly located in an area where there is the opportunity for privacy and reflection. As described above, there are areas for both groups and individuals to gather, seating areas, a playground area for children's play and turf areas. These amendments and response to Council's request comply with Clause 3.12 of Council's DCP Common Open Space Objective.*

*The landscape plan prepared by Vision Dynamics now clearly provides for a number of large usable common open space areas at Level 4. These areas will have outstanding views over the Sydney basin and excellent solar access. As requested by Council there is a shaded pergola structure in the eastern most common open area (228m<sup>2</sup>). There is also a shaded area over the barbeque and the seating area (to the north of the chestboard) which respond to Council's request. Planters have been deepened and additional planter put in the centre of the common open space with steps to provide for a seated area where people can gather for both social interaction and reflection.*

*We understand that you have calculated that 879m<sup>2</sup> of common open space being provided, which is 21m<sup>2</sup> below the DCP requirement of 900m<sup>2</sup>. We do not intend to amend the plans to comply with this DCP numerical requirement. In the context of this being an Affordable Rental Housing development, where a significant number of additional units are proposed, we consider that the building will be in a landscaped setting and is consistent with Council's objectives for apartment design and landscaping within R4 zones."*

### **Comment:**

The objectives of the common open space control within the Residential Flat Building DCP are as follows:

- (i) *To provide a functional open space area within the development for the informal recreation of all residential flat building residents and children's play.*
- (ii) *To provide opportunities for additional landscaping and retention of any significant features that add to the amenity of the site in accordance with Council's ESD objective 4.*

The overall size of the common open space area to be provided is considered large enough to allow for a range of activities. The common open space provided at ground level within the building's boundary setbacks will be consistent with the pattern to be generated by development in accordance with the future character of the area.

It is noted that the amount of common open space provided is over 25% of the site area and will receive uninterrupted sunlight all year round compliant with the design criteria in the SEPP 65 - Apartment Design Guide.

Council's Tree/Landscape Officer has assessed this aspect of the proposal as being satisfactory. The proposed variation is considered satisfactory in this regard as the proposal satisfies the above objectives.

### **c) Rear Setback**

The proposal does not comply with the 8m rear setback control prescribed under Section 3.3 of the Residential Flat Building DCP. The applicant has addressed this variation mainly in relation to the variation to the 9m setback required for Level 5 (refer to discussion in Section 3 under the ADG Compliance Table. A further statement addressing this variation has been provided by the applicant, as follows:

*"The proposed building technically comprises of 5 storeys and as such should be provided with a 6m setback to Levels 1 to 4 and a 9m setback for level 5. The proposal complies with the required 6m setback for Levels 1 to 4.*

*In relation to Level 5 of the proposal it is noted that it is provided with setbacks identical to the levels below from the northern (rear) boundary and which are a minimum of 6m measured to the edge of the balcony.*

*It is acknowledged that this is a technical non-compliance. In support of this non-compliance it is noted that the presentation of the building to the rear boundary whilst being 5 storey by definition has an effective height (presentation) of 4 storeys due to the cutting in of the rear of the built form. On this basis it is my opinion that the proposal provides for an outcome consistent with that envisaged by the ADG."*

### **Comment:**

The objectives of the setback controls in the Residential Flat Building DCP are as follows:

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

The proposed variation to the required 8m setback to the northern (rear) boundary is considered to be reasonable given the adequate separation distance provided to Levels 1 to 4 as per the Apartment Design Guide and topography of the site. The proposed rear setback is considered satisfactory as it will not result in any adverse impacts to the adjoining properties in terms of overshadowing given its orientation and privacy on adjacent properties. As noted in the applicant's statement in relation to the ADG separation requirements the additional 2m

would not reduce the level of external and internal privacy as the adjoining development does not have any windows at that same level as it is only 2 storeys high, and therefore the upper floors of the proposed development look only onto the roof of the adjoining property. The proposed variation is supported in this regard.

#### **d) Apartment Mix**

The Residential Flat Building DCP requires that no more than 25% of the dwelling yield is to comprise either studio or one bedroom apartments and that no less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.

The proposed 1 bedroom units exceeds the maximum 25% allowed by 3 units which constitute 31% of the dwelling yield whilst the number of 3 bedroom units is compliant as it exceeds the 10% minimum.

The objectives of the apartment mix control are as follows:

- (i) To ensure that individual units are of a size suitable to meet the needs of residents.*
- (ii) To ensure the layout of units is efficient and units achieve a high level of residential amenity.*
- (iii) To provide a mix of residential flat types and sizes to accommodate a range of household types and to facilitate housing diversity.*
- (iv) Address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.*
- (v) To ensure designs utilise passive solar efficient layouts and maximise natural ventilation.*

#### **Comment:**

The variation to Council's apartment mix control prescribed in the Residential Flat Building DCP is considered satisfactory as the proposed development overall provides a good variety and mix of apartment types. The proposed mix is considered appropriate taking into consideration the distances to shops and transport and the scale of the proposed development. It is noted that the unit size exceeds the requirements of the Apartment Design Guide and satisfies Objectives 4K-1 and 4K-2 outlined in the ADG, i.e. a range of apartment types and sizes is provided to cater for different household types now and into the future and that the apartment mix is distributed to suitable locations within the building.

#### **e) Front Setback**

The proposal is set back 10m from Yattenden Crescent. This in effect will be reduced as Council will require dedication of around 1.7m to 2m wide strip of land along the site's frontage for additional footpath reservation as a result of the required widening of the carriageway to be delivered by the developer of the target site on the corner of Seven Hills Road and Windsor Road as part of their development approval (DA 1278/2012/JP). Such a dedication is required to maintain the existing 3.5m footpath reserve on this side of Yattenden Crescent to comply with Council's standard footpath reservation widths and significantly improve the streetscape and pedestrian connectivity to the Baulkham Hills Town Centre. As a result of this 2m wide strip dedication the front setback will be reduced to 8 metres. The reduced setback is considered appropriate and satisfactory in this instance due to the positive impact and public benefit associated with the land dedication.

### **7. Issues Raised in Submissions**

The Development Application was notified in two separate occasions. The second notification was a result of the amendments to the façade treatment of the building and raising of the floor levels of two units at the ground floor to provide a satisfactory driveway gradient as a result of the boundary adjustment to allow the dedication of land for road widening purposes and meet the Australian Standards for medium rigid vehicles entering the basement level. Ten (10) submissions were received during the first notification and two submissions during

the second notification period. The following issues raised in the submissions are addressed in the table below.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>Proposal is not in keeping with the character of the streetscape and locality.</p>	<p>This area located on the northern side of Yattenden Crescent is zoned R4 High Density Residential which allows this type of residential development.</p> <p>The proposed development fits with the desired future character of the area.</p>	<p>Issue addressed.</p>
<p>Property values will be adversely affected.</p>	<p>No evidence is provided to substantiate this claim.</p>	<p>Issue addressed.</p>
<p>The 5-storey development will overshadow adjoining properties and block the sunlight and views of surrounding houses.</p>	<p>Shadow diagrams submitted with the application indicate that the front yard of properties to the south of the site (across the road) will be partially affected by the development from 1pm onwards during midwinter and that majority of shadows will fall within the road reserve from 9am till 12pm. At least 4 hours of direct sunlight will be available to these properties during midwinter.</p>	<p>Issue addressed – see Attachment 12.</p>
<p>The street is very narrow and on-street parking is already a problem. The carriageway is just wide enough to cater one-way traffic with the current resident population. This building will add at least 20 tenant/owner vehicles to the area in addition to another 200 vehicles from the 200 unit building being built 100m down the road. For many years, residents have been waiting for traffic lights at Seven Hills Road and Arthur Street despite all the accidents. A 45-unit development will only add to the traffic problem. The area can only sustain low-rise 2 storey development.</p> <p>This will only worsen the situation if an emergency situation such as fire, accidents, etc. occurs.</p>	<p>Yattenden Crescent is required to be widened as a condition of consent to the mixed use development approved by the Joint Regional Planning Panel at the corner of Seven Hills Road and Windsor Road. Council's Principal Coordinator – Transport &amp; Traffic has assessed the proposal and no objection is raised to the proposal on traffic grounds subject to a condition requiring a dedication of between 1.7m to 2m strip of land on the subject property for road widening purposes.</p> <p>There is sufficient parking provision on site in compliance with the SEPP requirements.</p>	<p>Issue addressed. Condition applied in relation to road widening. Refer Condition 13(f).</p>

<b>ISSUE/OBJECTION</b>	<b>COMMENT</b>	<b>OUTCOME</b>
No on-street parking enforcement by Council. Tradies park all day in restricted areas from 7am.	This issue is not relevant to the application, however this matter has been referred to Council's Development Monitoring Team for investigation and action.	Issue addressed.
Why is this northern side of Yattenden Crescent zoned to allow 4 storeys and the southern side only 2 storeys.	The height limit is to respond to the interface and to serve as a transition between high density and medium density residential zones.	Issue addressed.
Loss of privacy as a result of the development's non-compliance with density and building height.	The proposal satisfies the SEPP's density control and the variation to building height has been addressed in the report and is considered supportable.	Issue addressed.
Parking within the proposed development is insufficient.	The proposal complies with the parking requirements of the SEPP.	Issue addressed.
The demand for affordable rental housing in this area is questionable considering the high rise buildings along Seven Hills Road and the construction project at the corner of Windsor Road.	The application is lodged pursuant to the SEPP (Affordable Rental Housing) 2009 and this type of development is permissible in the R4 zone and satisfies the accessible area criteria of the SEPP.	Issue addressed.
The floor space ratio of the proposed development exceeds Council's control: 1.4:1 vs. 0.93:1. To avoid the Council's standard, the project will convert 47% of floor space into affordable rental housing. This is an obvious unethical trick.	The FSR calculations carried out by the applicant is considered reasonable having regard to the maximum density and unit size controls that apply to similar residential flat buildings within the Shire.	Issue addressed.
<p>The traffic report is flawed as the traffic generation, noise pollution, and possible impact on local road network are underestimated.</p> <p>The peak hour rate of 0.19 per unit used in the traffic report is questionable. In the RMS Guide to Traffic Generating Developments 2002, the rate is 0.29 trips per unit (page 3-3). The total impact should be assessed in conjunction with the development at the corner of Seven Hills Road</p>	<p>Council's Principal Coordinator – Transport &amp; Traffic has assessed the proposal and in particular the traffic report submitted with the application. No objection is raised on traffic grounds.</p> <p>Council's DCP 2012 Part C Section 1 - Parking requires that motorcycle parking is to be provided for all developments with on-site parking of more than 50 car parking spaces, at a rate of 1 motorcycle parking space for every 50 car parking spaces or part thereof. In this regard, at least 2 spaces will be</p>	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>and Windsor Road. The rate used in the traffic report is for the Metro CBD and not for the Metro Sub Regional.</p> <p>The report mentions unrestricted kerbside parking on both sides of Yattenden Crescent, but south side is restricted parking, so assessment is based on wrong facts.</p> <p>Motorcycle parking as per Council DCP is not complied with.</p>	<p>required. However, the SEPP (ARH) 2009 does not require the provision of motorcycle parking.</p> <p>Nonetheless, this can be accommodated by reconfiguring the bicycles area within the basement levels (see Attachment 5).</p>	
<p>Significant trees will be removed on the site with replacement of short young trees, which will impact on the privacy of neighbouring properties.</p>	<p>Council's Tree Management Officer has assessed the proposal including the arborist report submitted with the application and raised no objection to the removal of those trees subject to conditions.</p>	<p>Issue addressed.</p>
<p>Proposed development has no comments on the possible effect on school zoning and change of catchment.</p>	<p>This issue is not relevant to the application and is considered a strategic planning matter.</p>	<p>Issue addressed.</p>
<p>The BCA Assessment report listed 11 design defects of the building against the Building Code. Most of the defects are safety and assessment related.</p>	<p>A condition will be imposed in any consent requiring compliance with the BCA.</p>	<p>Issue addressed. See Condition 16.</p>
<p>The solar access of 12 units in the proposed project will be less than 3 hours of sun per day. While the AHSEPP 2009 NSW requires at least 3 hours direct sunlight in mid-winter.</p>	<p>Living rooms and private open spaces of 70% of the apartments will receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter in compliance with SEPP 65.</p> <p>A maximum of 15% of the apartments will receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter, hence at least 85% of the apartments will receive more than 2 hours of direct sunlight.</p>	<p>Issue addressed.</p>
<p>The 14 x 1 bedroom units are only suitable to young single individuals without family. This will put local</p>	<p>This is not a matter for consideration in the application.</p>	<p>Issue addressed.</p>



ISSUE/OBJECTION	COMMENT	OUTCOME
community on safety risks.		
<p>At mid-winter, the properties on the southern side of Yattenden Crescent are unlikely to get any sun after 11 or 12am. The shadow diagram provided in the architectural plan has following flaws:</p> <p>a. Does not provide Overshadowing/Solar Access report to assess the effect on key neighbours on the other side of the Yattenden Crescent.</p> <p>b. Shadow diagram shown is as on 21st July, it should have few diagrams for peak winter day.</p>	<p>The applicant has submitted an amended shadow diagram which shows that majority of shadows will fall within the road reserve between 9am to 12pm at midwinter.</p>	Issue addressed.
<p>This neighbourhood (Yattenden Crescent, Charles Street, John Street, Arthur Street) does not have any building more than 2 storeys except for one recent development at the corner of Yattenden Crescent and Arthur Street which is 2-3 storeys only. The 5 storey building will adversely impact upon the streetscape.</p>	<p>The proposal exceeds the 4-storey requirement prescribed in Council's Residential Flat Building DCP and it is considered that the proposed 5 storey building will not adversely impact upon the amenity of adjoining properties in terms of visual privacy and overshadowing.</p> <p>The proposed development will present as a 4 storey building to Yattenden Crescent with the 5th storey element being recessed further to the rear.</p>	Issue addressed.
<p>The proposal does not comply with Council's DCP in relation to rear setback, landscape area, density, unit size and mix, solar access and building height.</p>	<p>This variation to Council's controls has been addressed in the report and is considered satisfactory and does not warrant refusal of the application.</p>	Issue addressed.
<p>This development being 30 kms. away from the city should not be permitted as there is no current or proposed rail service in the area.</p>	<p>The proposal satisfies the accessible area definition of the SEPP.</p>	Issue addressed.
<p>Why does this area require affordable housing when the suburb is already expensive</p>	<p>This type of development is permissible in the R4 High Density Residential zone and</p>	Issue addressed.



ISSUE/OBJECTION	COMMENT	OUTCOME
compared to western and south-western suburbs? What are the norms regarding location of affordable housing?	complies with the SEPP as it is located within an accessible area.	
Proposed parking provision is 24 parking spaces deficient based on Council's parking rates for 1, 2 and 3 bedroom units. Resident cars will be parked outside on the street if sufficient parking spaces are not provided inside the proposed development.	The proposal complies with the parking requirements of the SEPP (ARH) 2009.	Issue addressed.
Conversion of 3 houses to 45 apartments is going have adverse impact on noise levels during and post construction.	Conditions are recommended to be imposed in any consent to address this concern.	Issue addressed. See Conditions 66, 67 and 84.
A considerable number of private balconies are north facing and would directly overlook properties across the road and would negatively impact on the property values.	Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal privacy.	Issue addressed.
The proposed development does not comply with the required rear setback to the northern boundary having regard to the adjoining townhouse complex at 22-24 Seven Hills Road. When this is considered in conjunction with the concerns regarding building height and balconies the impact upon the adjoining townhouse complex is magnified. The existing regulations regarding these setbacks should be maintained and adhered to.	The proposed variation to the required 8m setback to the rear boundary is considered to be reasonable given the adequate separation distance provided to Levels 1 to 4 as per the Apartment Design Guide and topography of the site. The proposed rear setback is considered satisfactory as it will not result in any adverse impacts to the adjoining properties in terms of overshadowing given its orientation and privacy on adjacent properties.	Issue addressed.
The proposal includes removal of a Norfolk Island Pine that is identified in the arborists report as being in good condition. It has a height of 20m and a canopy spread of 8m. This tree should be retained in order for the proposed	Council's Tree Management Officer has assessed the proposal and raised no objection subject to conditions.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
development on a lot less than 4,000m <sup>2</sup> to be justified. However, the proposal is seeking dispensation under SEPP ARH 2009.		
The development application cannot be made pursuant to ARH SEPP 2009 because the subject site is not within an "accessible area".	The proposal satisfies the accessible area definition in the SEPP as discussed in the report.	Issue addressed.
<p>The front, north-facing living room wall of 32 Yattenden Crescent will be overshadowed. In that regard, the level of the proposed building at its 10 metre setback line is RL111.660. The roadway level in front of the building is around RL95.00 - the living room at 32 Yattenden Crescent is approximately at that level. The distance to the existing dwelling at 32 Yattenden Crescent from the proposed 10 metre setback line is around 34 metres.</p> <p>At midday midwinter in Sydney shadows are approximately double the length of the casting structure. Therefore, at midday the shadow from the proposed wall would reach to approximately the floor level of the front wall of the dwelling at 32 Yattenden Crescent. That represents the part of the day when the sun is at its highest point - at other times of the day the sun is lower and the shadow would be cast into the living room. The living room would not receive two hours midwinter solar access in those circumstances.</p> <p>The submitted west elevation shows that there is another wall that is 2.92 metres higher than the wall at the 10 metre setback line. That wall is set back only three</p>	Revised shadow diagrams were submitted by the applicant showing the shadow impact on the properties to the south of Yattenden Crescent, which show that shadows will generally fall within the road reserve between 9am-12pm during midwinter. The properties to the south of Yattenden Crescent will receive at least 4 hours of direct sunlight in midwinter. Refer Attachment 12 - Shadow Diagram.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>metres further than the 10 metre setback line. That wall would cast an additional 2.8 metre length of shadow to that described above. Therefore, even at midday the shadow would extend well into the living area at 32 Yattenden Crescent.</p> <p>The overshadowing impacts of the proposal to 32 Yattenden Crescent are therefore unreasonable and excessive.</p> <p>There would be similar overshadowing issues for other properties between 28-36 Yattenden Crescent.</p>		
<p>The Apartment Design Guide which must be complied with under State Environmental Planning Policy 65 would require a setback to side and rear boundaries of 9 metres for a fifth storey element and of 6 metres for a fourth storey element. The proposed fifth floor level clearly does not comply.</p>	<p>The proposal satisfies the aim of the separation distance standard in the ADG as it does not adversely impact upon the amenity of adjoining properties in term of visual and acoustic privacy and will not result in any overshadowing of adjoining properties due to its orientation.</p>	<p>Issue addressed.</p>
<p>Clause 16A of SEPP ARH 2009 requires consideration of whether the proposal is compatible with the character of the local area. This would entail consideration of the likely future character of the locality. The proposal is seeking to avail itself of bonus floor space and to be carried out on a lot that is smaller than normally permitted. The submitted statement of environmental effects does not reconcile those departures from the normal planning controls with the future character of the locality.</p>	<p>The proposal is of a design and form that would be in harmony with the existing and future developments around it and meets Council's future intent for the local area.</p> <p>The proposed development will present as a 4 storey building to Yattenden Crescent with the 5th storey element being recessed further to the rear.</p>	

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>A more reliable way of calculating a base density would be to identify the normally permitted soft landscaping requirement, height and setbacks and to calculate the density that would result and to apply the bonus density to that. The proponent has not provided such an analysis.</p>	<p>The development has been designed to comply with Council's envelope controls to ensure that the proposal is consistent with the emerging or desired future character.</p> <p>The density calculation expressed in floor space ratio undertaken by the applicant is based on Council's maximum allowed population density and unit size standards for residential flat buildings and is considered appropriate in this regard. The proposal provides satisfactory deep soil landscaping in accordance with the SEPP and generally complies with Council's building height and setback requirements as discussed in the report.</p>	<p>Issue addressed.</p>
<p>On the available evidence, the subject site is more than 400 metres from the nearest bus stop having the required number of buses - being bus stop 2153226. The measurement must be taken to the actual pylon that is the bus stop. On careful measurement, having regard to the features of the pedestrian environment and taking the shortest possible route, the distance is at least 409 metres and does not comply with the 400 metre requirement applicable to an accessible area.</p>	<p>The applicant submitted a survey report which demonstrates that the subject site is within 400m walking distance to the nearest bus stop located near the corner of Old Northern Road and Windsor Road (see Attachment 14).</p> <p>A further statement was provided by the applicant citing a case law (Fobitu Pty Ltd v Marrickville Council [2012] NSW LEC 1251) on how accessible area is measured as discussed in this report.</p>	<p>Issue addressed.</p>
<p>Confirmation is sought as to whether Council will be taking 1-2 metres of land to widen the street.</p>	<p>A condition is recommended requiring dedication of 1.7m strip of land along the frontage of the subject property for road widening purposes and similarly this will also be conditioned in any development approval within the R4 zone to the north of Yattenden Crescent.</p>	<p>Issue addressed. Condition applied – refer Condition 13(f).</p>

## ENGINEERING COMMENTS

Council's Development Engineer has assessed the proposal and raised no objection subject to conditions.

## **TRAFFIC COMMENTS**

Council's Principal Coordinator – Road and Transport has assessed the proposal and provided the following comments:

*I have examined the traffic report prepared by Craig McLaren. Using RMS trip generation rates of 0.19 trips/unit the proposed 45 apartment affordable housing development is expected to generate 9 AM peak hour trips less the 3 peak hour trips from the existing three detached houses results in an overall net increase of 6 AM peak hour trips. The expected increase in traffic generation will have minimal impact on the surrounding road network.*

*To improve vehicular access when commuters are parked on both sides of the street, the northern side of Yattendon Crescent, including the frontage of this development, is to be widened by Dyldam as part of their conditions of consent.*

*Therefore no additional traffic related conditions to be imposed other than the usual Section 94a contributions.*

No objection is raised to the proposal on traffic grounds.

## **TREE MANAGEMENT COMMENTS**

Council's Tree Management Officer has assessed the proposal and raised no objection subject to conditions.

## **HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

Council's Health & Environmental Protection Officer has assessed the proposal and raised no objection subject to conditions.

## **WASTE MANAGEMENT COMMENTS**

Council's Resource Recovery Project Officer has assessed the proposal and raised no objection subject to conditions.

## **CONCLUSION**

The Development Application has been assessed against Section 79C of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, The Hills Local Environmental Plan 2012 and Development Control Plan 2012 and is considered satisfactory.

The proposal includes variations to Council's Residential Flat Building DCP in relation to building height (number of storeys), common open space, rear setback and apartment mix. However, the proposed development demonstrates compliance with the relevant standards under State Environmental Planning Policy (Affordable Rental Housing) 2009 and SEPP 65 – Apartment Design Guide requirements.

The issues raised in the submissions are addressed in this report and do not warrant refusal of the application.

Overall, the proposed development is consistent with the aims and objectives of the R4 High Density Residential zone and is in keeping with the desired future character envisaged for the area. The proposal will provide a high quality apartment development for the amenity of future occupants which is conveniently located to public transport, amenities and community services. The proposal will provide a good mix of housing choice for future residents, as well as providing 21 units as affordable rental housing for 10 years.

The Development Application 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 proposed development is consistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

## **RECOMMENDATION**

The Development Application be approved subject to the following conditions.

## **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**

<b>DRAWING NO.</b>	<b>DESCRIPTION</b>	<b>REVISION</b>	<b>DATE PRINTED</b>
DA-01	Site Plan	C	25/10/2016
DA-02	Basement 2 Plan	C	25/10/2016
DA-03	Basement 1 Plan	C	25/10/2016
DA-04	Ground Floor Plan	B	27/10/2016
DA-05	First Floor Plan	B	27/10/2016
DA-06	Second Floor Plan	B	27/10/2016
DA-07	Third Floor Plan	B	27/10/2016
DA-08	Fourth Floor/Roof Plan	B	27/10/2016
DA-09	Unit Types 1, 2 & 3	C	25/10/2016
DA-10	Unit Types 4, 5 & 6	C	25/10/2016
DA-11	Unit Types 6, 7, 8 & 9	C	25/10/2016
DA-12	Unit Types 10 & 11	C	25/10/2016
DA-13	Unit Types 13 & 14	C	25/10/2016
DA-14	North and South Elevation	B	27/10/2016
DA-15	East and West Elevation	B	27/10/2016
DA-16	Section	C	25/10/2016
DA-17	Section	C	25/10/2016
DA-18	Driveway Details	C	25/10/2016
DA-25	Views	A	27/10/2016
16017 DA 1/3	Landscape Concept Plan	E	05/10/2016
16017 DA 2/3	Landscape Concept Plan	E	05/10/2016

16017 DA 3/3	Landscape Concept Plan	E	05/10/2016
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No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

## **2. Construction Certificate**

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

## **3. Compliance with SEPP (Affordable Rental Housing) 2009**

The following units are required to be dedicated to affordable rental housing:

- Ground Floor - G.01, G.03, G.04, G.06, G.09, G.10
- First Floor - 1.01, 1.02, 1.03, 1.04, 1.05, 1.08, 1.09
- Second Floor - 2.01, 2.03, 2.04, 2.09
- Third Floor - 3.01, 3.03, 3.04 & 3.09

The affordable housing component of the approved development is required to comply with the following requirements pursuant to SEPP (Affordable Housing) 2009 –

- (a) The household / occupants have a gross income that is less than 120 per cent of the median household income for the time being for the Sydney Statistical Division (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or
- (b) The household occupants are eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.
- (c) For 10 years from the date of the issue of the occupation certificate:
  - i. the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and
  - ii. all accommodation that is used for affordable housing will be managed by a registered community housing provider.

## **4. External Finishes**

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

## **5. Provision of Parking Spaces**

The development is required to be provided with 52 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

## **6. Tree Removal**

Approval is granted for the removal of eight (8) trees, as numbered 1, 2, 4, 5, 6, 7, 8 and 9 on the Landscape Concept Plan produced by Vision Dynamics Landscape Design, dated 31.08.16.

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

## **7. Planting Requirements**

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

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

## **8. Street Trees - Planting Requirements**

Street trees must be provided along Yattendon Crescent.



These trees are to be spaced between 7 and 10m apart. The location of street trees must be considerate of driveways, services, drainage pits and sight lines at intersections. The location, species and size of street trees is to be in accordance with *The Hills Development Control Plan 2012- Part C Section 3*. Trees are to be surrounded with a 75mm deep mulch zone for an area with a minimum radius of 450mm from the tree trunk of the tree. Timber edging is to define this mulch zone.

Details demonstrating compliance with the above must be submitted for approval before any street trees are planted.

#### **9. 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.

#### **10. 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.

#### **11. 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.
- For the driveway leading from Yattenden Crescent to the basement car park, the ramp grade is to be no greater than 15.4% for a MRV. The rate of change of grade associated with ramp transitions for the subject development is to be no greater than 6.25% over a minimum distance of 7m of travel for an MRV.

#### **12. Gutter and Footpath Crossing Application**

Each driveway requires the lodgement of a separate gutter and footpath crossing application, accompanied by the applicable fee as per Council's Schedule of Fees and Charges.

#### **13. 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.

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

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) 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.

#### **d) Stormwater Management**

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

The stormwater pits, treatment chamber, OSD system etc. which form part of the subject development site, aside from the street drainage provided in Yattenden Crescent, must be located behind any future proposed boundary line for Yattenden Crescent.

#### **e) Stormwater Drainage – Pipe Extension**

A new kerb inlet pit must be provided along Yattenden Crescent in front of the subject site and new street drainage must be constructed along Yattenden Crescent for an approximate length of 20m. A stormwater pipe is to be provided from the new kerb inlet pit (to be located in front of 41 Yattenden Crescent) to the existing pit downstream on Yattenden Crescent. The pipe construction must be located under the existing kerb requiring the removal and reconstruction of the kerb and gutter as well as the road pavement.

Provided that the road re-construction of Yattenden Crescent and street drainage along Yattenden Crescent occurs prior the development of the subject site then street drainage will not be required to be provided as the stormwater network will already exist. However, if the proposed street drainage design along Yattenden Crescent does not allow for a kerb inlet pit to be located in front of the development site (that will be able to drain treated stormwater from the site under gravity from the lowest outlet pit), a new kerb inlet pit is to still be provided which fronts the subject site. The kerb inlet pit fronting the site is to be located in such a position that all treated stormwater from the site is able to drain under gravity from the lowest outlet pit within the site.

#### **f) Partial Width Road Reconstruction - Yattenden Crescent Road Widening**

The carriageway of Yattenden Crescent is to be widened by others by 1.7 metres which will result in the verge along the northern side of Yattenden Crescent to be shifted by 1.7m to the north. This includes any necessary service adjustments and ancillary work required to make the construction effective. Even though as part of this development application you are not required to undertake the widening works in Yattenden Crescent, the proposed development

must tie in with the future road/ verge levels of Yattenden Crescent, while still complying with grades and clearance heights in accordance with AS 2890.1 and 2890.2.

The road widening must be generally in accordance with the Site Plan drawing DA-01 Revision C dated 24 October 2016.

#### **g) 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.

#### **h) Service Conduits**

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

#### **14. Street Trees**

Street trees must be provided for the section of public roads 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.

#### **15. 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.

#### **16. 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.

#### **17. Contamination**

Any new information, that may come to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council's Manager – Environment and Health.

#### **18. Acoustic Requirements**

The recommendations of the Acoustic Assessment and Report prepared by Rodney Stevens Acoustics Pty Ltd, referenced as 160044R1, dated 8<sup>th</sup> July 2016 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- Section 6.1 Glazing Requirements
- Table 6.1 In-principle Glazing Recommendations

#### **19. Retention of Trees**

All trees not specifically identified for removal on the approved Landscape Concept Plan are to be retained and protected in accordance with the Hills Shire Council's **Protection of Existing Trees** condition.

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

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

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

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

## **22. 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.

## **23. Management of Construction and Demolition Waste**

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

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

## **24. 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.

## **25. Commencement of Domestic Waste Service**

The property owner or agent acting for the owner must commence a domestic waste service with Council. The service is to be arranged no earlier than one week prior to occupancy and no later than two days post occupation. 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.

## **26. Construction of Garbage Room**

The garbage room must be designed and constructed in accordance with the following requirements. Minimum storage facility is required for 23 x 240 litre garbage bins and 23 x 240 litre recycling bins.

1. The layout of the room must ensure that each bin is easily accessible and manoeuvrable in and out of the room with minimal or no manual handling of other bins.
2. The walls of the room must be constructed of brickwork.
3. The floor of the room must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer.
4. The room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to the end of the garbage room to allow the most

direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors.

5. 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.
6. All doors of the room, when fully opened, must be flush with the **outside wall** and must not block or obstruct the service bay or footway. All doors must be able to be fixed in position when fully opened.
7. The room must be adequately ventilated (mechanically). Ventilated room should not be connected to the same ventilation system supplying air to the units.
8. The room 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 room, it is not to conflict with the space designated for the placement of bins.
9. The room must be provided with an internal automatic sensor light.
10. The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance are these grades to be exceeded. They are to allow safe manoeuvring and servicing of the full bins by waste collection operators.
11. 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.
12. Finishes and colours of the room are to complement the design of the development.

#### **Bin Measurements (mm)**

**240L:** 735 (d) 580 (w) 1080 (h) **660L:** 850 (d) 1370 (w) 1250 (h) **1100L:** 1245 (d) 1370 (w) 1470 (h)

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

The responsibility for property numbering is vested solely in Council.

#### **The approved property address is: - 41 Yattenden Crescent Baulkham Hills**

Approved unit numbering is as per plans submitted marked as Drawing Number DA04 – DA08 dated 27 July 2016. Unit numbering is as follows:

Level

Ground	G01–G10
First	101-110
Second	201-210
Third	301-310
Fourth	401-405

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 stairway access doors and lift/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.

#### **28. Softfall**

A softfall surface, such as mulch or rubber softfall, it to be provided within the Children Play area in accordance with AS 4685:2014 - Playground Equipment and Surfacing.

#### **29. Construction of Bulky Goods Room**

The bulky goods room must be designed and constructed in accordance with the following requirements. The minimum floor area required is 4 cubic metres. 8 cubic metres is preferred.

1. The walls of the room must be constructed of brickwork.
2. The floor of the room must be constructed of concrete with a smooth non-slip finish.
3. The room must have an access door, with a minimum clear floor width of 1.5m. Acceptable access doors are single or double swinging doors.
4. All doors of the room, when fully opened, must be flush with the **outside wall** and must not block or obstruct the carpark aisles, service bay or footway. All doors must be able to be fixed in position when fully opened.
5. The room must be provided with an internal automatic sensor light.
6. 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.
7. Finishes and colours of the room are to complement the design of the development.

### **30. 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:

1. 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.
2. 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.
3. 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 signage at all times.
4. 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.
5. The loading area must have a sufficient level of lighting.
6. Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of medium and heavy vehicles, remote access or other measures 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.

### **31. Safety and Crime Prevention**

#### **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.
- CCTV shall 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**

- The ground floor units shall be provided with 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.
- Provision of a security roller shutter to the basement level is recommended.
- Letterboxes and caged storage areas are to have good-quality locking mechanisms and be secure.

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

### **32. Onsite Stormwater Detention & Water Sensitive Urban Design Elements**

Combined Onsite Stormwater Detention (OSD) system and Water Sensitive Urban Design Elements are required to be provided with the development.

The detailed design must be substantially in accordance with the Stormwater Concept Plans prepared by Lomford Engineers Page No. 101 Revision B, Page No. 201 Revision L, Page No. 301 Revision B, Page No. 401 Revision B and Page No. 501 Revision E.

#### **i) Onsite Stormwater Detention System**

The OSD must be in accordance with Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The above mentioned stormwater concept plans prepared by Lomford Engineers is for development application purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and the following necessary changes:

- a) The OSD system must provide a total storage volume of 120m<sup>3</sup>.
- b) A minimum of 85% of the site area is required to drain to the OSD system.
- c) All grated surface inlet pits are required to have a minimum size of 450mm x 450mm.
- d) The weep holes shown at the base of the HED chamber are to be replaced with mass concrete benching to the invert level of the orifice plate.
- e) No filter media from the garden beds is to enter the OSD system through the grates located within the garden beds. The garden beds are to be designed in such a way to ensure that no filter media/ debris from the garden bed enter the OSD system.

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

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

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



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

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

## **ii) Water Sensitive Urban Design Elements**

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

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

The stormwater concept plan referred to earlier in this consent is for DA purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and shall include:

- a) WSUD elements as per the MUSIC Model, minimum of:
  - X2 5kL Rainwater Tanks;
  - Water Treatment Chamber containing 3 x 690mm Psorb (MCC)
  - Enviropods within pits

Detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure.

The detailed design must be accompanied, informed and supported by detailed water quality and quantity modelling. All model parameters, data outputs and electronic copies 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, the following:

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

The 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.

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

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

## **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 \$75,000.00 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 (149m) multiplied by the width of the road (6m).

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. 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.

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

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

- Lot boundaries;
- Roads;
- Contours;
- Existing vegetation;
- Existing site drainage;
- Critical natural areas;
- Location of stockpiles;
- Erosion control practices;
- Sediment control practices; and
- A maintenance program.

### **37. 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.

### **38. Section 94 Contribution**

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: 14	No. of 2 bedroom units: 24	No. of 3 bedroom units: 7	Sum of Units	No. of Credits: 3	Total S94
Community Facilities - Capital	\$ 85.10	\$ 117.76	\$ 176.70	\$ 229.05	\$ 1,191.40	\$ 2,826.24	\$ 1,236.90	\$ 5,254.54	\$ 687.15	\$ 4,567.39
Community Facilities - Land	\$ 6.36	\$ 8.80	\$ 13.20	\$ 17.11	\$ 89.04	\$ 211.20	\$ 92.40	\$ 392.64	\$ 51.33	\$ 341.31
Open Space - Capital	\$ 120.97	\$ 167.41	\$ 251.11	\$ 325.48	\$ 1,693.58	\$ 4,017.84	\$ 1,757.77	\$ 7,469.19	\$ 976.44	\$ 6,492.75
Open Space - Land	\$ 1,422.82	\$ 1,970.06	\$ 2,955.10	\$ 3,830.66	\$ 19,919.48	\$ 47,281.44	\$ 20,685.70	\$ 87,886.62	\$ 11,491.98	\$ 76,394.64
Roads & Traffic - Capital	\$ 45.15	\$ 62.53	\$ 93.75	\$ 121.52	\$ 632.10	\$ 1,500.72	\$ 656.25	\$ 2,789.07	\$ 364.56	\$ 2,424.51
<b>Total</b>	<b>\$ 1,680.40</b>	<b>\$ 2,326.56</b>	<b>\$ 3,489.86</b>	<b>\$ 4,523.82</b>	<b>\$ 23,525.60</b>	<b>\$ 55,837.44</b>	<b>\$ 24,429.02</b>	<b>\$ 103,792.06</b>	<b>\$ 13,571.46</b>	<b>\$ 90,220.60</b>

The contributions above are applicable at the time this consent was issued. Please be aware that Section 94 contributions are updated quarterly.

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 7.

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

### **39. 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.

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

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

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

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

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

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

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

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

### **42. 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.

### **43. Principal Certifying Authority**

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

#### **44. 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.

#### **45. 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).

#### **46. 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.

#### **47. Protection of Existing Trees**

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

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

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

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

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

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

#### **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.

#### **50. 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.

### **51. 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.

### **52. Site Water Management Plan**

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

### **53. 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.

### **54. Notification of Asbestos Removal**

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

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

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

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

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

### **57. Construction and Demolition Waste Management Plan Required**

Prior to the commencement of works, a Waste Management Plan for the construction and demolition phases of the development must be submitted to and approved by Council. The plan should be prepared in accordance with The Hills Development Control Plan 2012 Appendix A. The plan must comply with the waste minimisation requirements in the relevant Development Control Plan. All requirements of the approved plan must be implemented during the construction and demolition phases of the development.

## **DURING CONSTRUCTION**

### **58. 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.

### **59. 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.712474M\_03 dated 21 July 2016 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.

### **60. 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.**

### **61. 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.

### **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.

### **63. 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.

### **64. Asbestos Removal**

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

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



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

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

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

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

#### **66. 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.

#### **67. 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)*.

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

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

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

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

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

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

#### **69. Provision of Electricity Services**

Submission of a compliance certificate from the relevant service provider confirming satisfactory arrangements have been made for the provision of electricity services. This includes undergrounding of existing and proposed services.

#### **70. Provision of Telecommunications Services**

The submission of a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.

#### **71. 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 Landscape Concept Plan prepared by Vision Dynamics Landscape Design, dated 31.08.16. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved Landscape Concept Plan.

#### **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. Public Road/ Road Widening Dedication**

An Occupation Certificate must not be issued until the proposed public roads/ road widening (Yattenden Crescent fronting the site) have been dedicated in accordance with the undertaking submitted relating to dedication.

#### **75. Consolidation of Allotments**

All allotments included in this consent must be consolidated into a single allotment before an Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

#### **76. 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.

#### **77. 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.

#### **78. 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 INSERT 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 – Affordable Rental Housing**

Units G.01, G.03, G.04, G.06, G.09, G.10, 1.01, 1.02, 1.03, 1.04, 1.05, 1.08, 1.09, 2.01, 2.03, 2.04, 2.09, 3.01, 3.03, 3.04 & 3.09 on the subject site must be burdened with a

restriction using the "SEPP Affordable Rental Housing 2009" terms included in the standard recitals.

**d) Dedication – Road Widening**

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

**e) Restriction – Rainwater Tanks**

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

**f) 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.

**g) Restriction/ Covenant – Water Sensitive Urban Design**

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

**h) 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.

**i) 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.

**79. 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.

**80. 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.

**81. 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.

**82. 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.

### **83. Public Asset Creation Summary**

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

### **84. Acoustic Compliance Report**

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in report titled Report 160044R1 prepared by Rodney Stevens Acoustics dated 8<sup>th</sup> July 2016. Certification is to be provided.

### **85. Internal Pavement Construction**

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

### **86. Final Inspection of Garbage Room**

Prior to an Occupation Certificate being issued, a final inspection of the garbage room and associated 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 Principal Certifying Authority's suggested appointment time.

### **87. 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 the risk assessment. The assessment should be arranged one week prior to the suggested appointment time.

### **88. 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.

## **THE USE OF THE SITE**

### **89. 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*.

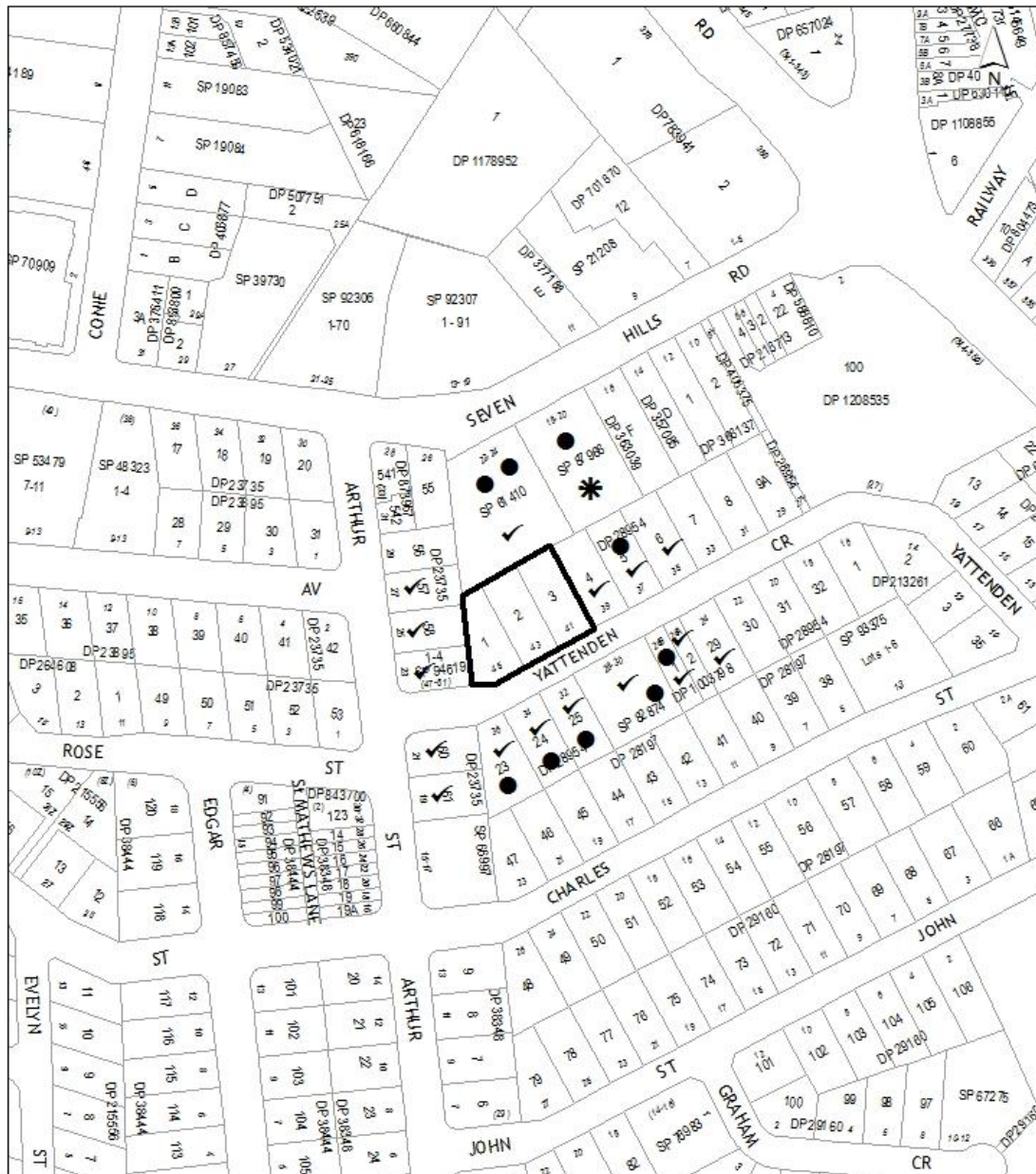
### **90. Waste and Recycling Management**

A caretaker must be appointed by the Owners Corporation (where applicable) 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 Photograph
3. Site Plan / Zoning Map
4. Building Height Map / Extent of Height Variation
5. Basement Plans
6. Ground & First Floor Plans
7. Second & Third Floor Plans
8. Fourth Floor / Roof Plan
9. Elevations
10. Sections
11. Landscape Plans
12. Shadow Diagram
13. Perspectives
14. Survey Showing Distances to Existing Bus Stops

## ATTACHMENT 1 – LOCALITY PLAN



**SUBJECT SITE**



**PROPERTIES NOTIFIED**



**SUBMISSIONS RECEIVED -  
1ST NOTIFICATION  
ONE SUBMISSION RECEIVED  
OFF THE SCOPE OF THIS MAP**



**SUBMISSIONS RECEIVED -  
2ND NOTIFICATION  
ONE SUBMISSION RECEIVED  
OFF THE SCOPE OF THIS MAP**

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**

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

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

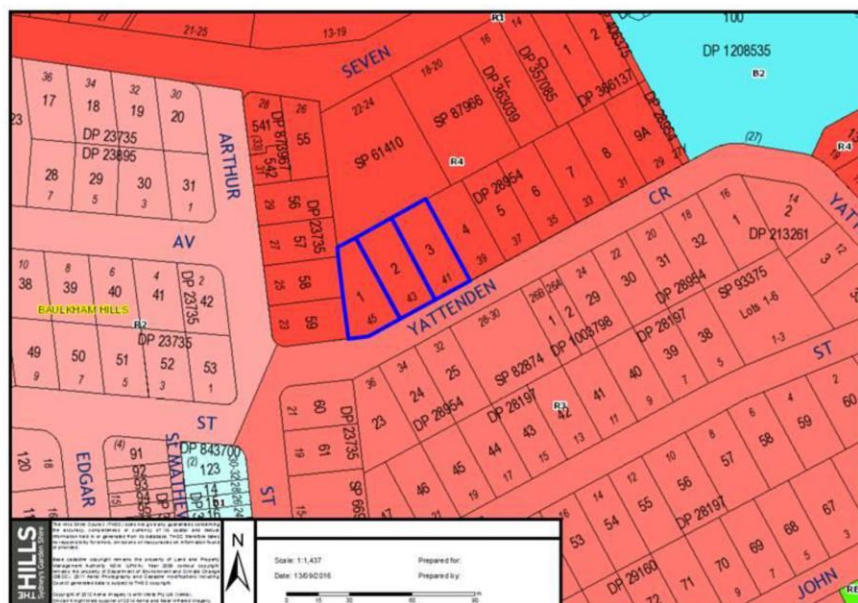
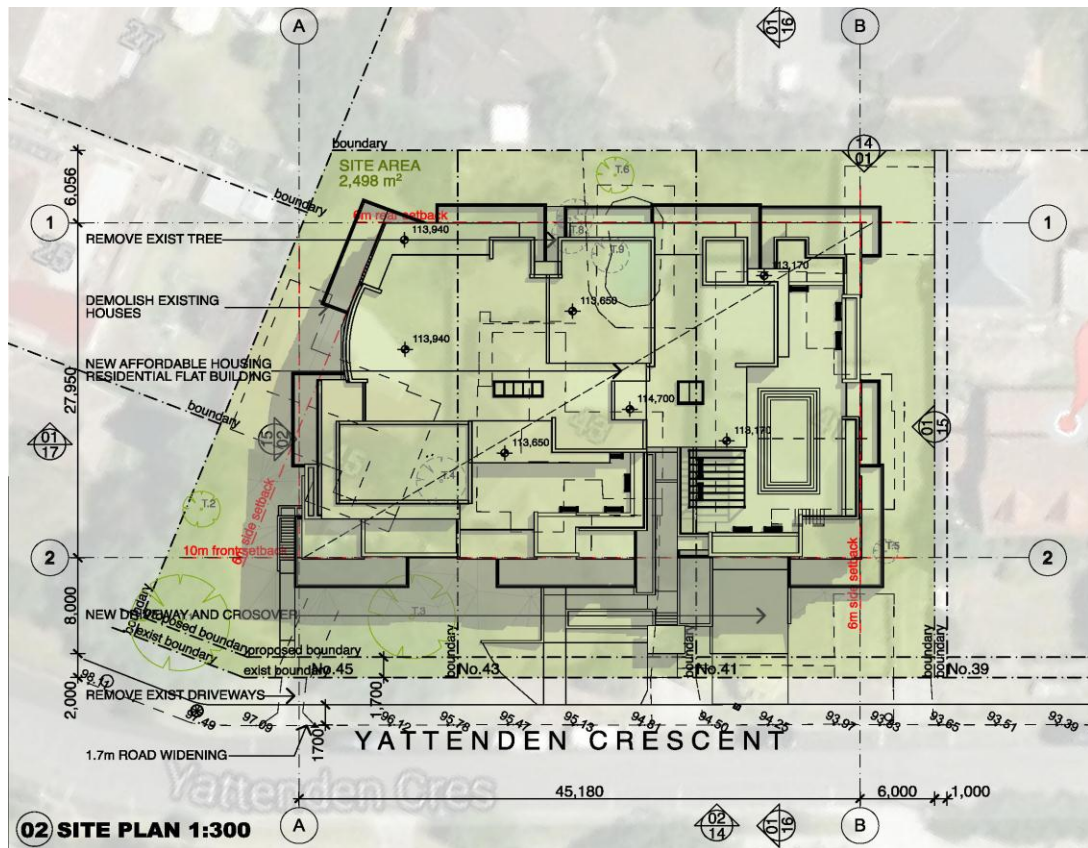


## ATTACHMENT 2 – AERIAL PHOTOGRAPH



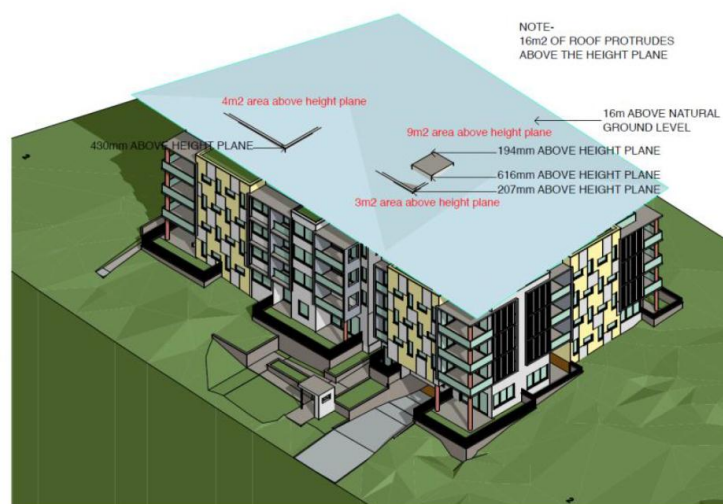
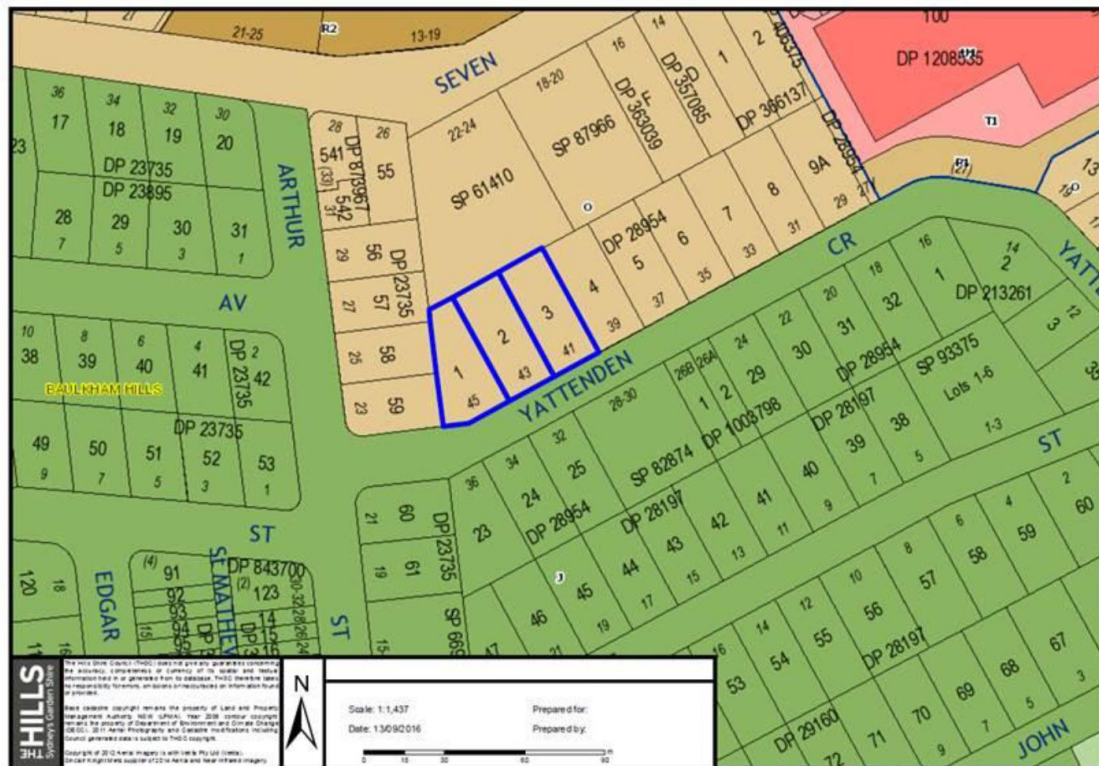


## ATTACHMENT 3 – SITE PLAN / ZONING MAP



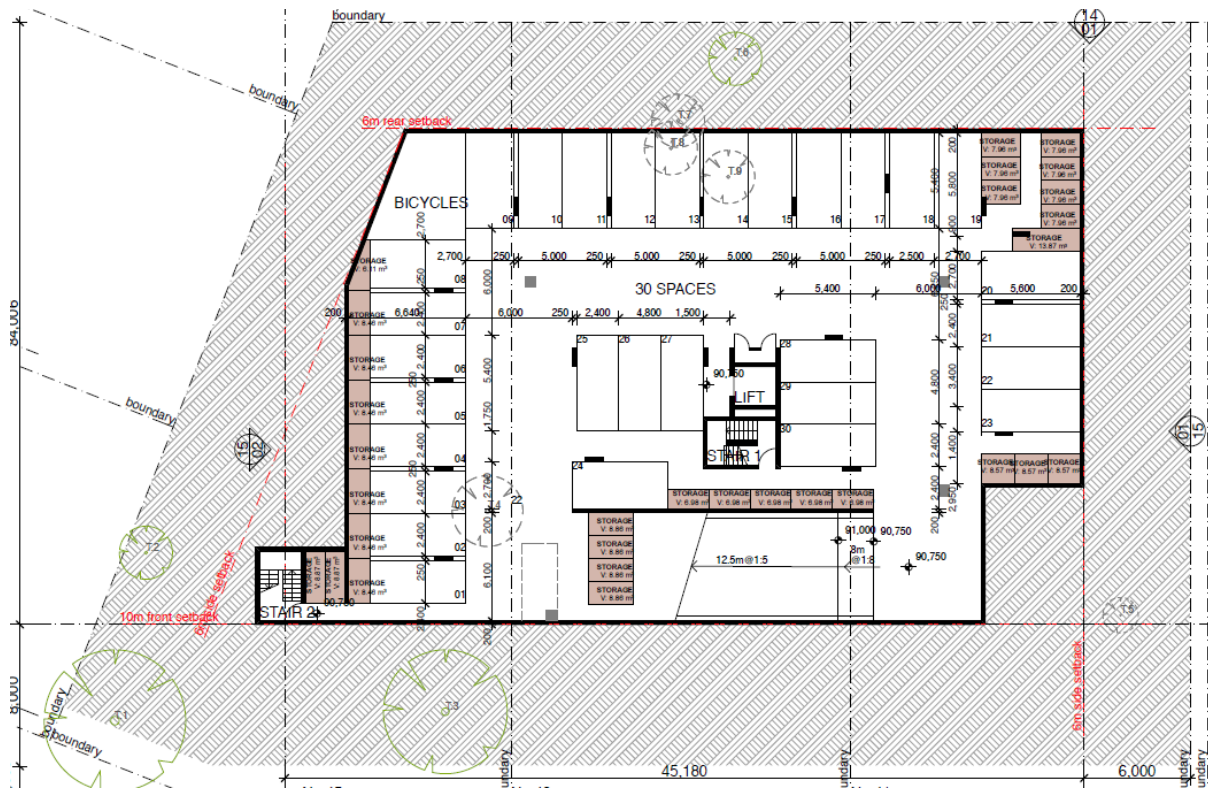


## ATTACHMENT 4 – BUILDING HEIGHT MAP / EXTENT OF HEIGHT VARIATION

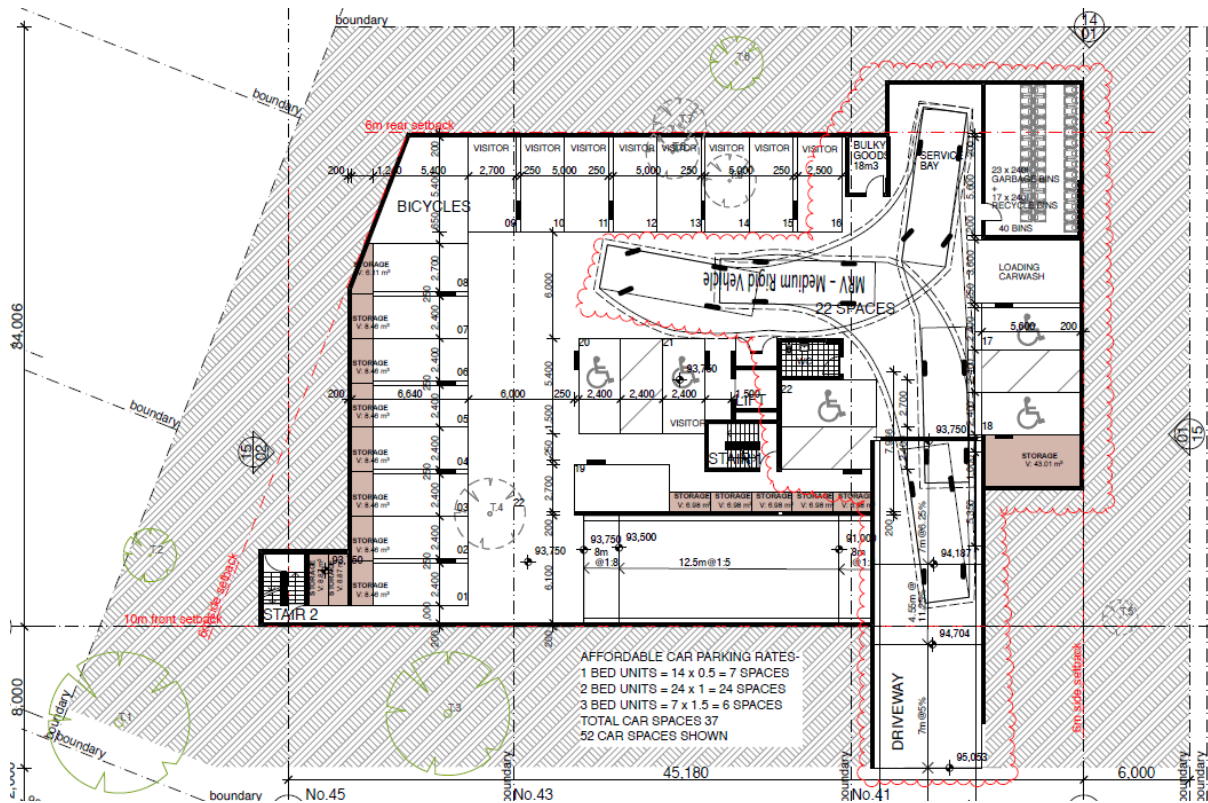


**01 16m HEIGHT PLANE**

## ATTACHMENT 5 – BASEMENT PLANS



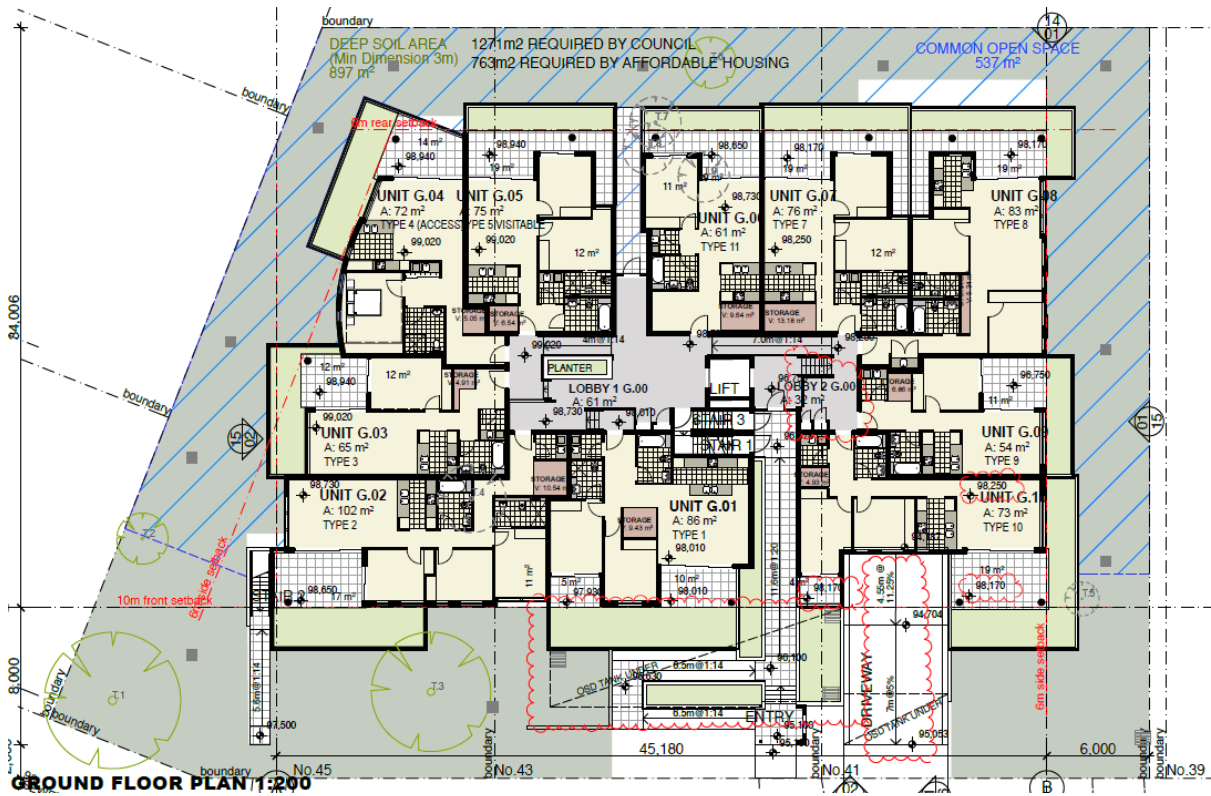
LOWER BASEMENT LEVEL



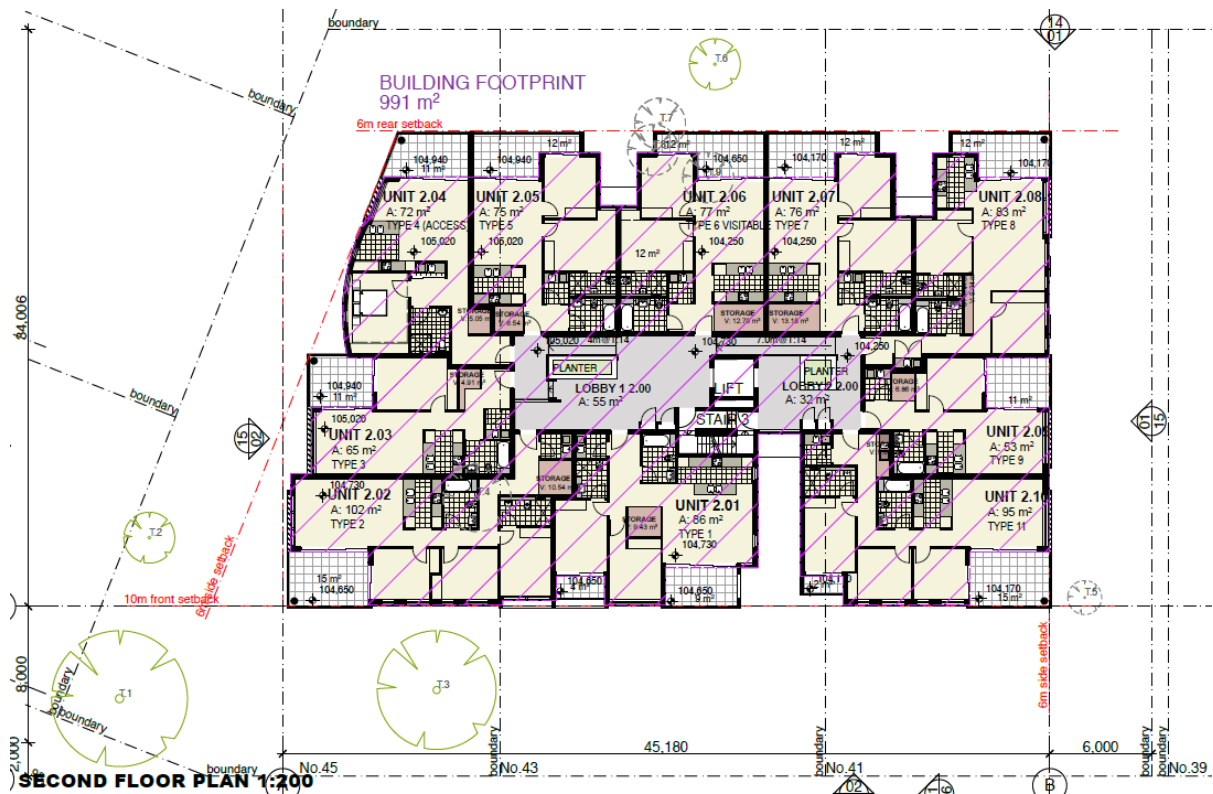
UPPER BASEMENT LEVEL



## ATTACHMENT 6 – GROUND & FIRST FLOOR PLANS



## ATTACHMENT 7 – SECOND & THIRD FLOOR PLANS



**FOURTH FLOOR / ROOF PLAN 1:200**

**Units and Areas:**

- UNIT 4.01: A: 69 m<sup>2</sup>, TYPE 13
- UNIT 4.02: A: 72 m<sup>2</sup>, TYPE 4 (ACCESS TYPE 5)
- UNIT 4.03: A: 75 m<sup>2</sup>, TYPE 5
- UNIT 4.04: A: 77 m<sup>2</sup>, TYPE 6 VISITABLE
- UNIT 4.05: A: 84 m<sup>2</sup>, TYPE 14

**Common Open Spaces:**

- COMMON OPEN SPACE 11.40
- COMMON OPEN SPACE 11.41
- COMMON OPEN SPACE 11.42

**Other Areas:**

- LOBBY 14.00: A: 49 m<sup>2</sup>
- LOBBY 14.00: A: 41 m<sup>2</sup>
- STAIR 3
- STAIR 4
- STAIR 5
- STAIR 6
- STAIR 7
- STAIR 8
- STAIR 9
- STAIR 10
- STAIR 11
- STAIR 12
- STAIR 13
- STAIR 14
- STAIR 15
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- STAIR 94
- STAIR 95
- STAIR 96
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- STAIR 98
- STAIR 99
- STAIR 100

**Setbacks:**

- 6m rear setback
- 10m front setback
- 6m side setback

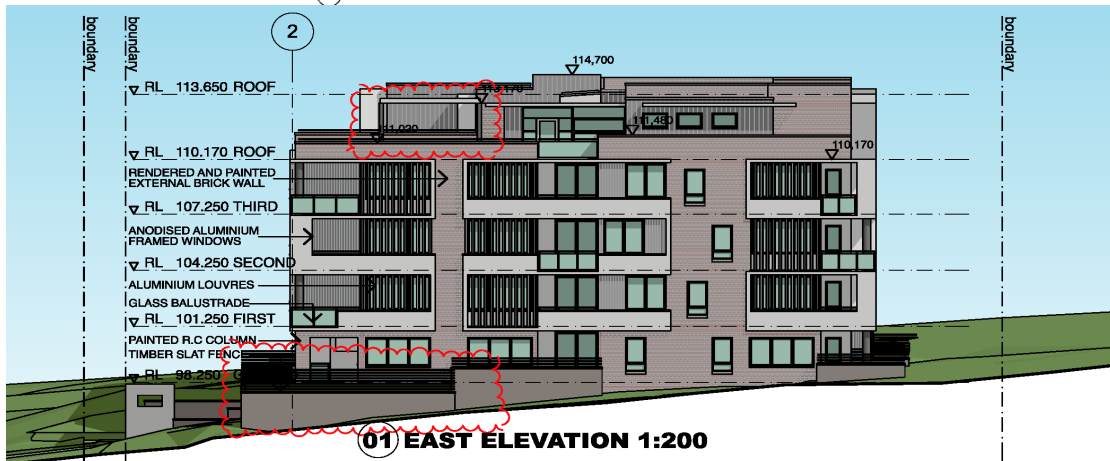
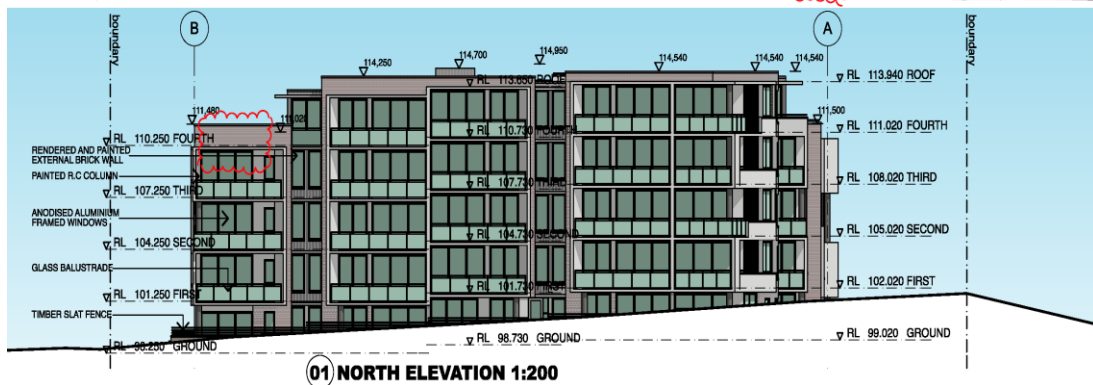
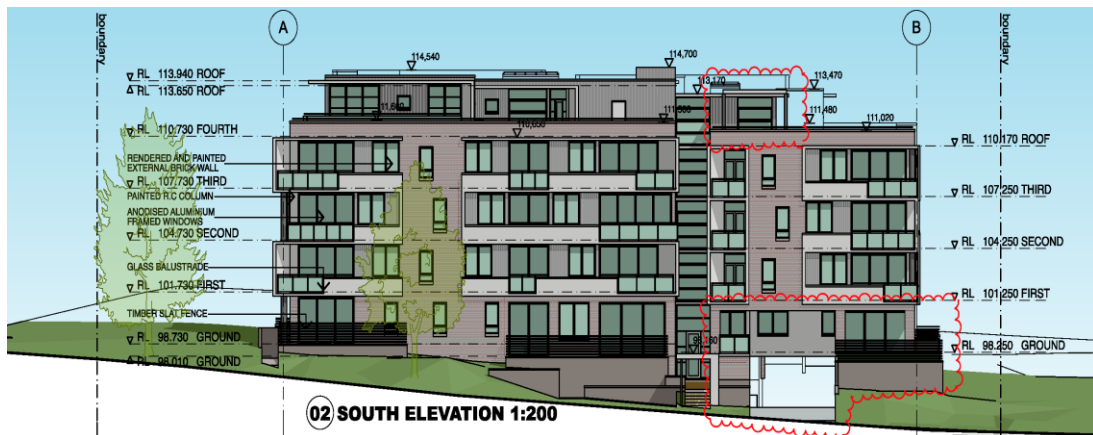
**Dimensions:**

- 84.006
- 8.000
- 2.000
- 45.180
- 6.000

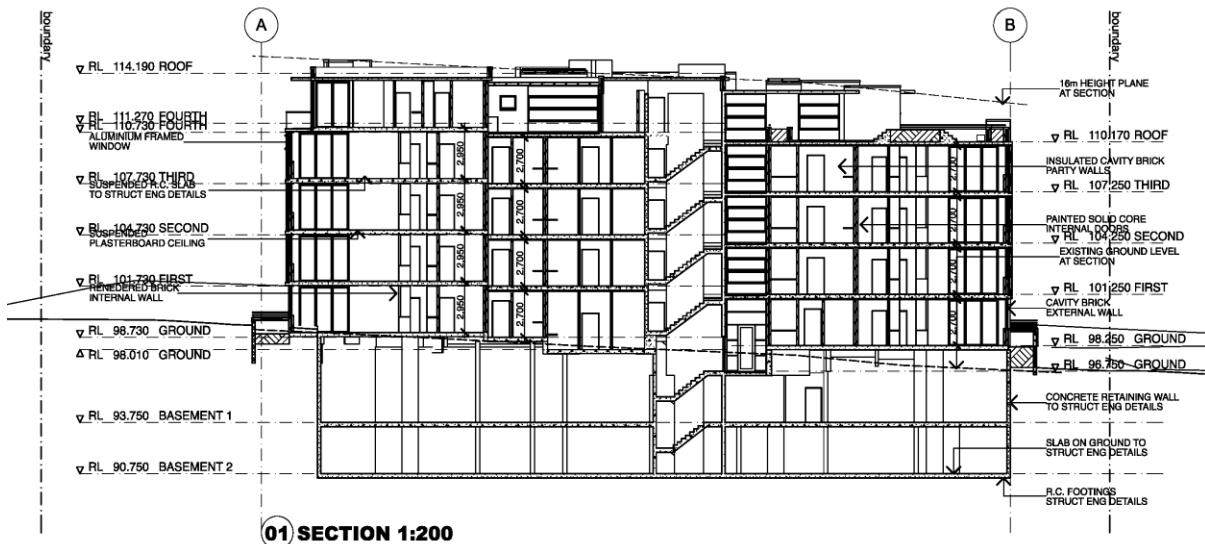
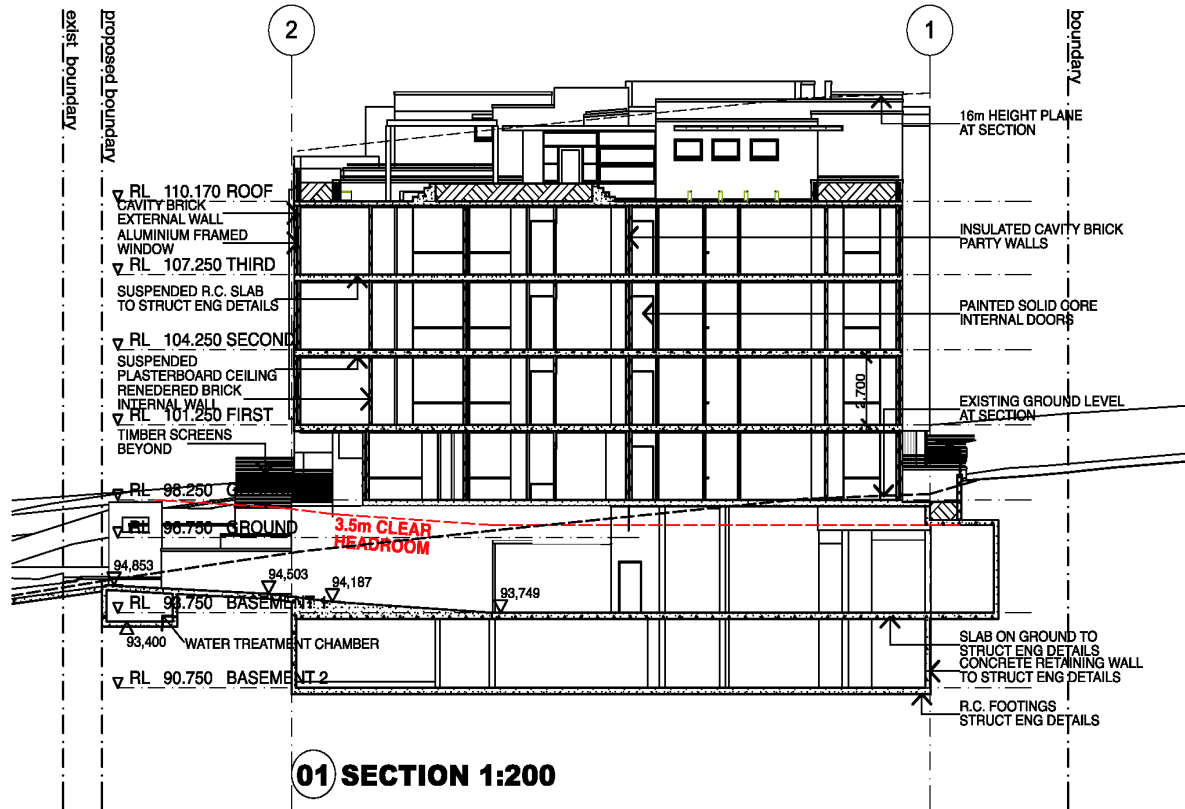
**Other Labels:**

- boundary
- COMMON OPEN SPACE REQUIRED = 45 X 20m2 = 900m2
- UNIT 4.01
- UNIT 4.02
- UNIT 4.03
- UNIT 4.04
- UNIT 4.05
- LOBBY 14.00
- LOBBY 14.00
- STAIR 3
- STAIR 4
- STAIR 5
- STAIR 6
- STAIR 7
- STAIR 8
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- STAIR 100

## ATTACHMENT 9 – ELEVATIONS

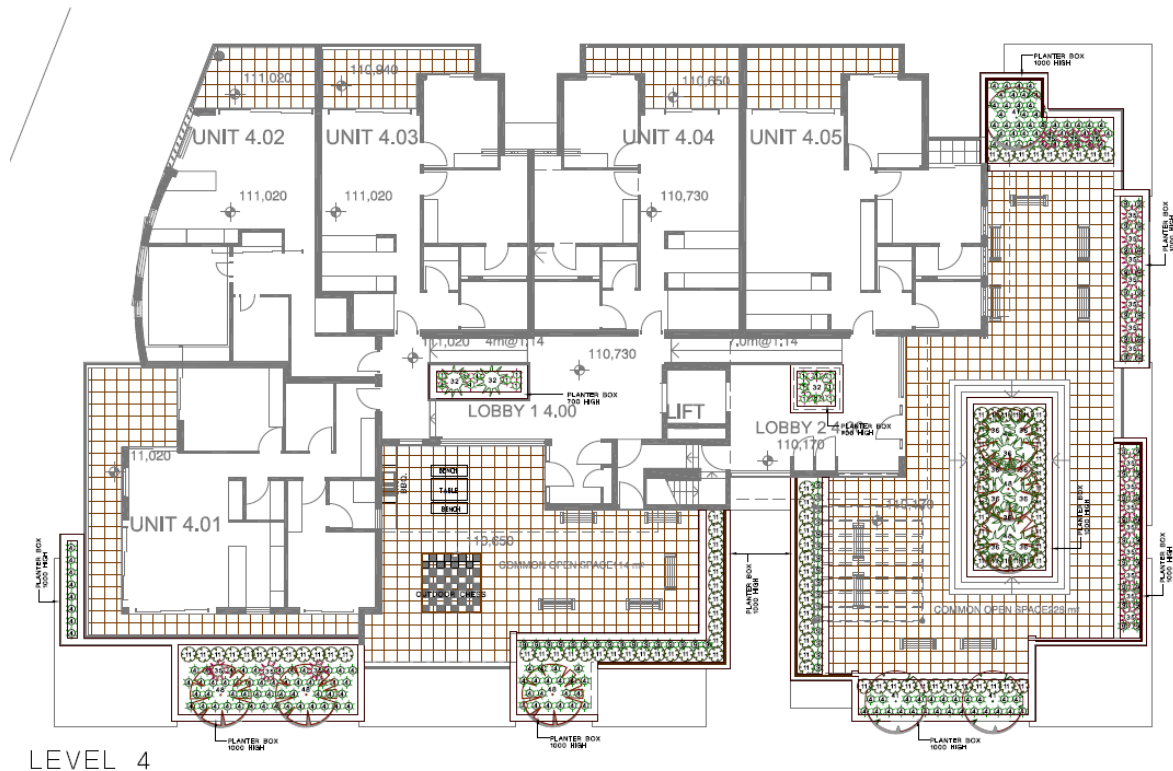
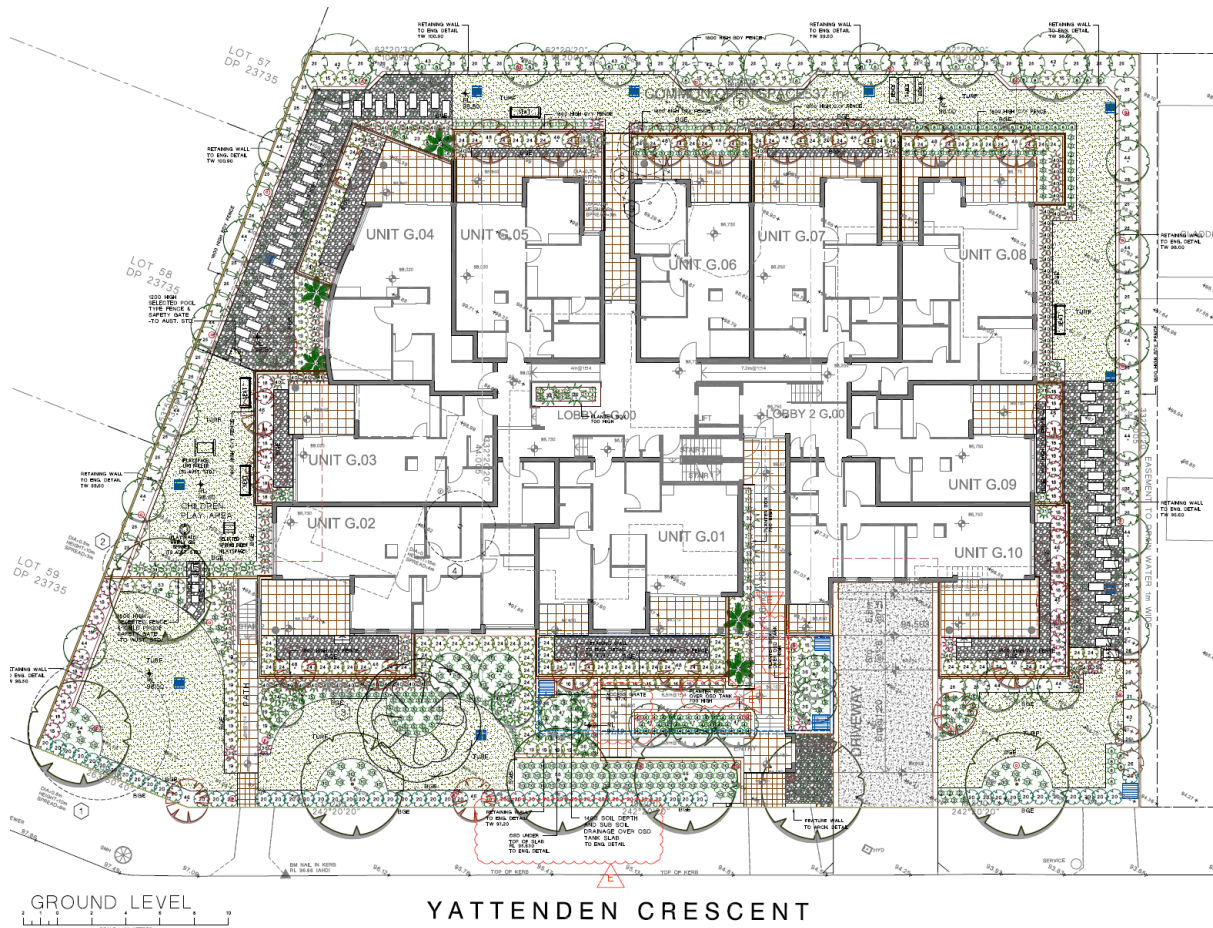


## ATTACHMENT 10 – SECTIONS

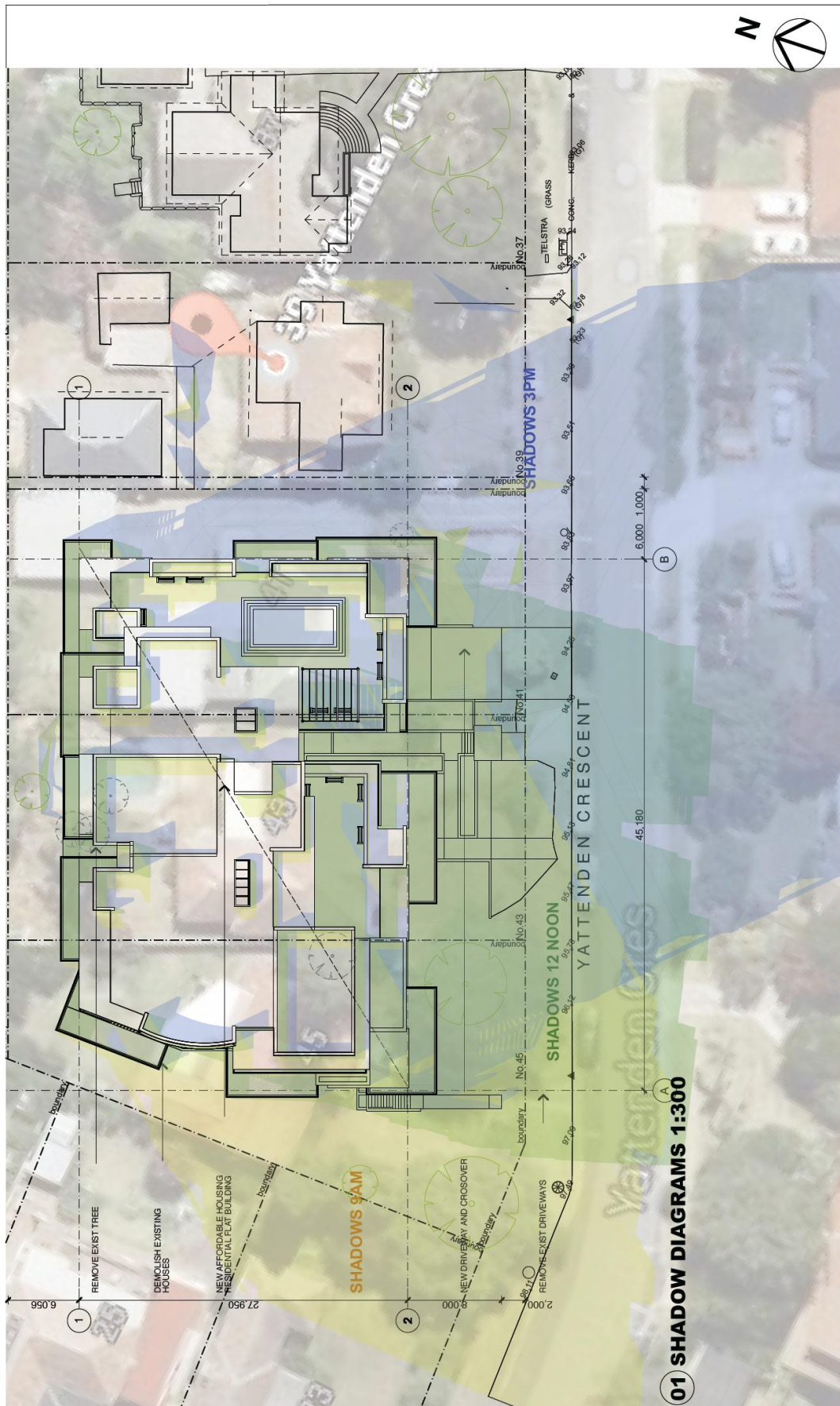




## ATTACHMENT 11 – LANDSCAPE PLANS



## ATTACHMENT 12 – SHADOW DIAGRAM





**ATTACHMENT 13 – PERSPECTIVES**



**01 VIEW 1**



**02 VIEW 2**



**03 VIEW 3**



**04 VIEW 4**

## ATTACHMENT 14 – SURVEY SHOWING DISTANCES TO EXISTING BUS STOPS



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