

SYDNEY WEST CENTRAL PLANNING PANEL

Panel Reference	2016SYW233
DA Number	735/2017/JP
LGA	THE HILLS SHIRE COUNCIL
Proposed Development	DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A MULTI DWELLING HOUSING DEVELOPMENT OF 110 TOWNHOUSE STYLE DWELLINGS COMPRISING 8 X 2 TWO BEDROOM TOWNHOUSES, 91 X 3 THREE BEDROOM TOWNHOUSES AND 11 X 4 FOUR BEDROOM TOWN HOUSES IN 3 STAGES
Street Address	PROPOSED LOTS 51 AND 52 IN A SUBDIVISION OF LOT 101 DP 1199554 - 1 HILLVIEW ROAD, KELLYVILLE
Applicant/Owner	COMBINED PROJECTS (KELLYVILLE) NO 2 PTY LTD/ MR J AND MRS M VELLA
Date of DA lodgement	7 NOVEMBER 2016
Number of Submissions	NIL
Recommendation	APPROVAL SUBJECT TO CONDITIONS
Regional Development Criteria (Schedule 4A of the EP&A Act)	CIV EXCEEDING \$20 MILLION
List of all relevant s79C(1)(a) matters	• SEPP (Sydney Region Growth Centres) 2006 • SEPP (State and Regional Development) 2011 • SEPP No. 55 — Remediation of Land • Draft Amendment to SEPP (Sydney Region Growth Centres) 2006 (North West Priority Growth Area Land Use and Infrastructure Implementation Plan) • North Kellyville DCP 2008 • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 3 – Landscaping
List all documents submitted with this report for the Panel's consideration	Clause 4.6 Variation Request
Report prepared by	Senior Town Planner Sanda Watts
Report date	E-Determination

Summary of S.79C matters Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Yes
Conditions Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report	Yes

EXECUTIVE SUMMARY

The Development Application is for subdivision, demolition of existing structures and the staged construction of a multi dwelling housing development consisting of 110 townhouse dwellings and basement carparking for 220 resident vehicles and 26 at grade visitor spaces located on private roads. The development comprises 8 x 2 two bedroom townhouses, 91 x 3 three bedroom townhouses and 11 x 4 four bedroom townhouses.

The site is known as proposed Lot 51 and 52 in a subdivision of Lot 101 DP 1199554, No. 1 Hillview Road, and is zoned R1 General Residential, R2 Low Density Residential and B1 Neighbourhood Centre under Sydney Region Growth Centres (SRGC) SEPP 2006. The multi dwelling development is located on the R1 General Residential zoned land. The development site is located on the northern side of Hillview Road and has an area of 17,137m², and will have frontages to future roads of Kumbatine Crescent, Butterleaf Way and Warrabah Road. The site has a cross fall of approximately 12.5 metres from the eastern boundary down to the north-western corner of the site.

A subdivision of the site into two allotments (Lots 51 and 52) has been approved (DA1279/2016/ZB) which separates the residential zoned land and business zoned land. This subdivision was a 'paper subdivision' with no physical works proposed and was undertaken by the applicant for contractual purposes.

The proposal involves the re-subdivision of the two approved allotments to create two new allotments described as Lot 1 which is the location of the proposed multi dwelling housing development and Lot 2 which is a Residue Lot of the B1 zoned Land. The proposed subdivision includes the road widening of Warrabah Road (R2 zoned land), and Hillview Road. The boundary between Lots 1 and 2 otherwise matches the boundary between Lots 51 and 52. The proposal includes the construction and dedication to

Council of full road width construction of Butterleaf Way and half road width construction for Hillview Road, Warrabah Way and Kumbatine Crescent.

The development includes a variation to SEPP Sydney Region Growth Centres 2006 which limits the height of the development to 9m. The proposed maximum height is 10.91m which is a variation of 21.2%. The variation is related to dwellings at the lower end of the site, being the north-western corner, on the Kumbatine Street frontage. The height variation primarily relates to the existing site topography and the construction of basement car parking which results in a portion of the roof form and the basement exhaust risers encroaching into the 9 metre height limit. Overall, the development provides for a 2 storey presentation to all streets in accordance with the envisaged scale of development for the site by the planning controls and is consistent with recently approved developments in the vicinity of the site. The application is accompanied by a Clause 4.6 variation to the height control. The non-compliance with the height control improves the urban form of development as it allows a consistent two storey development across the site. The 4.6 variation is therefore well-founded and leads to a better planning outcome.

The proposal also seeks to vary the landscape area, the rear setback controls, as well as the Indicative Layout Plan (ILP) in the North Kellyville DCP. The proposal seeks to replace the non-fixed central DCP public road running north south through the site, with two private roads also running north south. It is considered that the replacement of the single public road with two private roads will not adversely impact on traffic flow, and is consistent with the intent of the ILP by providing a north-south access way through the site.

The overall landscape scheme for the development results in a high quality landscape outcome for the site, despite the shortfall of 3.4% with respect to the DCP requirement of 20%. Suitable private and common open space have been provided within the development which allows for passive outdoor recreation. The proposed rear setbacks for 4 townhouses on the northern boundary do not comply with the 4 metre rear setback requirement, ranging from 3.068m to 5.526m. The non-compliances generally relate to non-habitable floor area on the ground level and first floor being a stairway which would have limited overlooking, with the other openings at the upper level on the rear elevation being ensuites/bathrooms. No significant adverse impacts result from the non-compliances with the DCP.

The application is recommended for approval subject to conditions.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	Mr J and Mrs M Vella	1.	<u>Section 79C (EP&A Act) – Complies.</u>
Zoning:	R1 General, R2 Low Density Residential and B1 Neighbourhood Centre	2.	<u>SEPP Sydney Region Growth Centres 2006 – Variation, see report.</u>
Area:	17,137m ²	3.	<u>SEPP Building Sustainability Index BASIX 2004 – Complies.</u>
Existing Development:	Dwelling and Outbuilding	4.	<u>State Environmental Planning Policy No 55 – Remediation of Land – Complies.</u>
			<u>Draft SEPP Sydney Region Growth Centres 2006 – Not Applicable</u>
			<u>North Kellyville DCP – Variations, see report.</u>

			Section 94 Contribution - \$3,206,847.36
			Capital Investment Value: \$32,420,121.

SUBMISSIONS

REASONS FOR REFERRAL TO SWCPP

1. Exhibition:	Not required.	1.	Capital Investment Value in Excess of \$20 million.
2. Notice Adj Owners:	Yes, 14 days		
3. Number Advised:	29		
4. Submissions Received:	Nil		

HISTORY

10/06/2016	Subdivision Consent No. 1279/2016/ZB granted under Delegated Authority for the creation of 2 residue lots. A Subdivision Certificate has not yet been released.
07/11/2016	Subject Development Application 735/2015/JP lodged.
16/02/2017	SWCPP briefing meeting held.
23/02/2017	Letter sent to the applicant requesting additional information in regards to setbacks, private open space, landscaping, bushfire details and engineering details.
17/03/2017	Drainage Details provided (MUSIC model)
27/03/2017	Bushfire Report and Subdivision plan provided by applicant.
31/03/2017	Amended plans submitted addressing the issues raised in Council's letter dated 23 February 2017 in relation to setbacks, private open space and landscaping.
12/05/2017	Advice provided to the applicant in regards to non-compliance with parking aisles and drainage in basement levels and compliance with RFS and parking/road design.
15/05/2017	Further basement drainage details provided.
17/05/2017	Applicant provided comments in relation to parking aisles and advised that a condition of consent can be included to ensure compliance.
22/05/2017	Amended plan provided demonstrating compliance with Rural Fire Service General Terms of Approval (at grade parking dimensions).

BACKGROUND – NORTH KELLYVILLE PRECINCT PLAN

The North Kellyville Precinct Plan was gazetted by The Department of Planning in December 2008. The gazetted plan provided for approximately 4,500 homes, a local

centre, two neighbourhood centres, a primary school, community facilities and approximately 40 hectares of public open space.

The precinct was envisaged to comprise low and medium density housing forms including detached housing, dual occupancies, multi dwelling housing, attached dwellings and small lot integrated housing. Higher density forms such as residential flat buildings and shop top housing were envisaged in areas close to commercial and community facilities and public transport, specifically in the local and neighbourhood centres. Larger residential lots were intended around the edges of the precinct to protect and enhance environmentally sensitive areas.

At the time density for subdivision was primarily controlled within the DCP where density ranges were outlined for each of the zones within the precinct. These were identified as:

R1 Zone: 12.5 to 25 dwellings per hectare;
R2 Zone: 10 to 20 dwelling per hectare;
R3 Zone: Minimum of 20 dwelling per hectare; and
E4 Zone: Maximum of 7.5 dwellings per hectare

In 2014, Housing Diversity amendments to the Growth Centres SEPP came into force. The Housing Diversity package made significant amendments to the controls and permissible land uses within the SEPP and DCP.

The amendments have had a significant impact on the planning controls, particularly by replacing density bands in the North Kellyville DCP with a minimum residential density map within the SEPP. The above-mentioned density section of the DCP was replaced with minimum density targets consistent with the SEPP. A further section in the DCP identifies a range of density bands and corresponding streetscape characteristics that reference a Residential Structure Figure. The Residential Structure Figure does not exist. These controls were applied across all Growth Centres DCP's. It is considered that these controls have no direct correlation to the zones or the minimum densities within the planning controls and therefore cannot be utilised to adequately control densities within the precinct.

Since the Housing Diversity amendments were made the controls to limit development yield have primarily been the built form controls of the SEPP and DCP. Significantly given that the precinct also has no Floor Space Ratio Control, development yield has been primarily limited only by the SEPP height control. Consequently given the controls that have been in force since 2014 any refusal based on density was unsustainable. This has resulted in examples of proposals exceeding 100 dwellings per hectare where densities of 12.5 dwellings per hectare were initially planned.

In May 2017 the Department of Planning released the draft North West Land Use and Infrastructure Implementation Plan. In addition to a new growth centres structure plan and an infrastructure schedule the package proposes a draft amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated draft changes to the DCP. The proposed changes include the introduction of density bands (rather than only minimum density) and reinstatement of minimum lot sizes for all residential areas (that were removed as part of the 2014 Housing Diversity changes). The draft changes and how they relate to the subject proposal are discussed further in this report, however it should be noted that the amendments include a savings provision which states that a consent authority is not required to the apply draft amendments to Development Applications lodged before 22 May 2017.

PROPOSAL

The Development Application is for subdivision, demolition of existing structures and the staged construction of a multi dwelling housing development consisting of 110 townhouse dwellings and basement carparking for 220 resident vehicles and 26 at grade visitor spaces located on private roads. The development comprises 8 x 2 two bedroom townhouses, 91 x 3 three bedroom townhouses and 11 x 4 four bedroom townhouses.

Subdivision and Civil Works

The proposal involves the re-subdivision of the two approved allotments (Lots 51 and 52) to create two new allotments being:

Lot 1 – Proposed Multi Dwelling Housing Development – 17, 137m²;
Lot 2 – Residue Lot (B1 Zoned Land) – 2,527m².

The development also includes the construction and dedication to Council of the following parcels to Council:

- Full road width construction of Butterleaf Way
- Half road width construction for Hillview Road, Warrabah Way and Kumbatine Crescent.

Staging of the Development

Stage 1:

- Demolition of existing structures on site.
- Construction of Stage 1 basement.
- Construction of Blocks F, G and H, with a total of 34 dwellings.
- Construction of new internal road linking Hillview Road and Kumbatine Crescent.
- Half road construction for Hillview Road, Butterleaf Way and Kumbatine Crescent.
- Construction of the lane between the subject site and the land located to the east that is zoned B1.

Stage 2:

- Construction of Stage 2 basement.
- Construction of Blocks C, D, E, J and I with a total of 47 dwellings.
- Construction of new internal road linking Hillview Road and Kumbatine Crescent.

Stage 3:

- Construction of Stage 3 basement.
- Construction of Blocks A, B and K with a total of 29 dwellings.

Built Form

The proposed development is comprised of one public road being Butterleaf Way and two internal private roads which create a series of multi dwelling blocks which accommodate two storey townhouse style developments with direct internal access to basement car parking. Each dwelling is provided with two basement car parking spaces, while the 26 visitor parking spaces are provided at grade, along the two internal private roads. This solution ameliorates having garages dominate the street frontages and ensures that every dwelling has a direct street frontage.

Each dwelling has its own private open space, either at the rear or within a front courtyard. Small pockets of common open space have been scattered throughout the development which will soften the built form and provide a pleasant landscaped setting for residents.

ISSUES FOR CONSIDERATION

1. SEPP State and Regional Development 2011

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

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

The proposed development has a Capital Investment Value of \$32,420,121 thereby requiring referral to and determination by the SWCPP. The application was referred to and listed with the SWCPP for determination.

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

(i) Permissibility

The proposal is defined as multi dwelling housing:

"multi dwelling housing" means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building or a manor home.

Pursuant to the Land Use Table in Appendix 2 of Growth Centres SEPP, multi dwelling housing is permitted with consent within the R1 General Residential zone.

(ii) Development Standards

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

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1AB Minimum lot sizes for development	Multi dwelling – 1,500m ²	17,151m ²	Yes
4.1B Residential Density	Minimum residential density - 12.5 dwellings per hectare	64.2 dwellings per hectare	Yes
4.3 Height of buildings	9 metres	10.91m	No – Clause 4.6 Variation
4.4 Floor space ratio	N/A	N/A	N/A

(iii) Variation to Height

Clause 4.6 Exceptions to Development Standards states as follows:

(1) *The objectives of this clause are:*

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

- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land within Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated listed in the table to this clause,
 - (c) clauses 4.1A, 4.1B, 5.4, 6.2 and 6.4 of this Precinct Plan.

SEPP Sydney Region Growth Centres 2006 has a 9m height limit and the maximum height of the development is 10.91m which is a variation of 21.2%. The height of the dwellings is 6.08 metres to 9.41 metres, with the basement exhaust riser being at a maximum height of 10.91 metres, which results in exceeding the height control by 1.91m.

The applicant has submitted a Clause 4.6 Variation, which is summarised as follows:

- The proposed variations are minor point encroachments as a result of the fall of the land from east to west, with the majority of the development well below the 9 metre height control.
- The development provides for a 2 storey scale to all streets in accordance with the envisaged scale of development for the site by the planning controls and is consistent with recently approved developments in the vicinity of the site.
- The majority of the development is well below the 9 metre height control with the dwellings located on the higher portions of the site having a ridge height of 6.08 metres.
- Any reduction in the height of the development to achieve a compliant building height would likely necessitate additional excavation for the basement car park and an associated lowering of the dwellings which would negatively impact on the relationship that is achieved between the future public domain and the ground floor plane of the buildings.
- The non-compliance with the height control ultimately improves the urban form of the development as it allows a consistent 2 storey development across the entire site and facilitates an efficient form of development for the site which responds appropriately to the topography of the site.
- There are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance.
- All dwellings within the development are provided with a high level of amenity and will be set within high quality landscaped surrounds.
- The proposed variation allows for the most efficient and economic use of the land.
- Strict compliance of the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Having regard to the planning principle established in the matter of *Project Venture Development v Pittwater Council* [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

The height objectives of the SEPP are:

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

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

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

Comment:

The height of the development is satisfactory as it is appropriately separated from any adjoining development and the shadow impact does not adversely impact on the amenity

of adjoining low density residential dwellings to the north, south and west. This separation will reduce the potential for overlooking and any adverse privacy impacts.

The height variation is due to the fall of the land and the construction of the basement car park. The variation into the 9 metre height limit of a portion of the roof form and the basement exhaust risers are point encroachments only. Overall, the development provides for a 2 storey scale to all streets in accordance with the envisaged scale of development for the site by the planning controls and is consistent with recently approved developments in the vicinity of the site.

The development incorporates a variety of finishes/colours to reduce the perceived bulk of the development and will result in appropriate urban outcomes. The non-compliance does not result in any adverse amenity or streetscape impacts. Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

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

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

Accordingly, the proposed height is considered satisfactory and can be supported in this instance. In accordance with the Department's Circular PS 08-003 the Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument.

(iv) Draft Amendment to SEPP (Sydney Region Growth Centres) 2006

In May 2017 the Department of Planning released the draft North West Land Use and Infrastructure Implementation Plan. The amendments are on exhibition from 15 May 2017 to 27 June 2017. In addition to a new growth centres structure plan and an infrastructure schedule the package proposes a draft amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated draft changes to the DCP. The proposed changes include the introduction of density bands (rather than only minimum density) and reinstatement of minimum lot sizes for all residential areas (that were removed as part of the 2014 Housing Diversity changes). The subject site will be affected by the replacement of the minimum density provision with a density band. The R1 zoned portion of the site currently has a minimum density of 12.5 dwelling per hectare, this to be amended to a minimum density of 15 dwellings per hectare and a maximum density of 35 dwellings per hectare. The subject proposal has a density of 64.2 dwellings per hectare.

It should be noted that the Explanation of Intended Effects includes a savings provision that identifies that a consent authority is not required to apply the draft provisions for Development Applications lodged prior to 22 May 2017.

3. SEPP 55 - Remediation of Land

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

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

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

An investigation of the site has been undertaken and a Contamination Assessment Report (Phase 2) prepared by Environmental Investigations Australia accompanies the development application. The report recommends that:

- *Based on the findings and with consideration of the Statement of Limitations, it is concluded that widespread contamination was not identified at the site. Concentrations exceeding human health based SILs (asbestos) were identified within the central portion of the site. It is concluded that the site can be remediated to allow the site to be used for residential purposes as outlined in the proposed development plans following demolition of the buildings and in accordance with a remedial action plan to address the identified asbestos contamination.*
- *Prior to demolition, carry out a Hazardous Materials Survey on existing site structures to identify potentially hazardous building products that may be released to the environment during demolition;*
- *Preparation and implementation of a Remedial Action Plan (RAP).*

In summary the report recommends that site remediation be undertaken. Hence, this will be required to be undertaken to ensure the provisions of SEPP 55 can be met. A condition has been recommended to be imposed in this regard (refer Condition No. 10).

4. Compliance with the North Kellyville Development Control Plan

(i) Character Area

The subject site is located in the Smalls Creek Character Area. The DCP states the following in respect to the character area:

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

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

Lower residential densities in this character area will be located in the northern section of the Smalls Creek Character Area (north of Withers Road) due to the steeper slopes. Higher residential densities in this character area will be located in the area south of Withers Road, due to gentler slopes and its proximity to Rouse Hill Regional Centre and Hezlett Road. Small lot/attached housing will be encouraged along Hezlett Road and bus stops.

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

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

The majority of the site is level, with no significant environmental features. The development site is adjacent to land zoned B1 Neighbourhood Centre and is serviced by public transport and meets the minimum density.

(ii) Indicative Layout Plan

There is a proposed change to the Indicative Layout Plan (ILP) within the North Kellyville Development Control Plan. The proposal seeks to replace the non-fixed central DCP public road running north south through the site, with two private roads also running north south.

It is considered that the replacement of the single public road with two private roads will not adversely impact on traffic flow, and is consistent with the intent of the ILP by providing a north-south access way through the site.

(iii) Development Controls

The following table addresses the relevant development controls of the DCP for multi dwelling housing (table 19):

DEVELOPMENT CONTROL	PROPOSED	COMPLIANCE
50% site cover	42% site coverage proposed	Yes
30% landscaped area	26.6% landscaped area	No
POS – 16m ² with 3m dimension 10m ² per dwelling if provided as balcony or rooftop with 2.5m dimension	All dwelling have 16m ² of useable space	Yes
Front setback – 4.5m to building façade line and 3m articulation zone	Min 4.5m building façade zone to all external roads and >3m for articulation zone.	Yes
Corner lots secondary setbacks 2m	2m from dwellings to all external roads	Yes
Side setback – 0.9m ground floor and upper floor	2.45m	Yes
Rear setback – 4m	3.068m min (four units only)	No
Internal building separation – 5m	8.149m	Yes

Car parking – 1 space per dwelling plus 0.5 spaces per 3 or more bedroom Visitor – 1 per 5 units Therefore 161 resident and 22 visitor spaces required.	Proposed - 220 residents spaces and 26 visitor's spaces provided.	Yes
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Landscaped Area

The DCP requires a minimum landscaped area of 30% of the site area. The proposal provides for 26.6% (4,566.7m²), a short fall of 3.4% or 574.4m².

The applicant has provided the following justification in relation to the non-compliance with landscaped area:

- *The actual site coverage is significantly less than the maximum 50% and the landscaping provision on the site has been influenced by the desire to provide increased amenity with a private street frontage for every dwelling as well as having streets which extend completely through the site for maximum connectivity.*
- *Notwithstanding, the visitor parking areas within the streets are designed with permeable driveway pavers which support rainwater retention and soften the appearance of the internal roads through the site and contribute to the landscape quality of the development. These areas contribute a further 2.7% landscaped area.*
- *The Landscape Design Report and Landscape Master Plan and prepared by Scott Carver that accompanies the application details the comprehensive landscape scheme proposed for the site that will enhance the amenity and liveability for residents and visitors and the proposal will result in a new development within a generously landscaped setting, notwithstanding the minor variation.*
- *The landscape design includes the use of robust materials and treatments and will incorporate water saving strategies by providing a swale and hardy low water demand plantings.*
- *The landscaping proposed will integrate and compliment the public domain areas surrounding the site and will provide landscaping elements to soften the built form and will contribute positively to the streetscape.*

In conclusion, notwithstanding the minor variation to landscaped area, the proposed development will achieve a very high quality landscaped outcome for the future residents with useable area and an attractive outcome.

Comment:

The overall landscape scheme for the development results in a high quality landscape outcome for the site, despite the non-compliance in minimum landscaped area. The shortfall, being 3.4% is negligible for the site and does not compromise the amenity of the residents within the development. Suitable private and common open space have been provided within the development which allow for passive outdoor recreation. Notwithstanding, a public reserve, the Stringer Road Sports Complex is located approximately 100 metres to the east of the development site which will provide residents further outdoor recreation opportunities. Furthermore, at the request of Council staff, the overall landscape area has been increase from 25% when the Development Application was lodged. Overall, the proposed landscape area is considered satisfactory, and the non-compliance is supported in this instance.

Rear Setback

The DCP requires a minimum rear setback of 4 metres. The proposal provides for a minimum rear setback of 3.068 metres.

The applicant has provided the following justification in relation to the non-compliance with rear setback:

The proposed development only shares a rear setback with adjacent property at the northern corner of the site. In this location there is a predominant rear setback of greater than 4 metres which reduces to 3.1-3.8 metres where there is a splayed boundary for three of the townhouses. This setback is generally consistent with the DCP suggested setback of 4m at the ground level and whilst the first floor maintains the same setback.

Comment:

The proposed rear setbacks for 4 townhouses on the northern boundary do not comply with the 4 metre rear setback requirement. The dwellings are articulated at the rear which results in varied rear setbacks ranging from 3.068m to 5.526m (refer to figure 1 below). The non-compliances generally relate to non-habitable floor area on the ground level and first floor being a stairway which would have limited overlooking, with the other openings at the upper level on the rear elevation being ensuites/bathrooms.

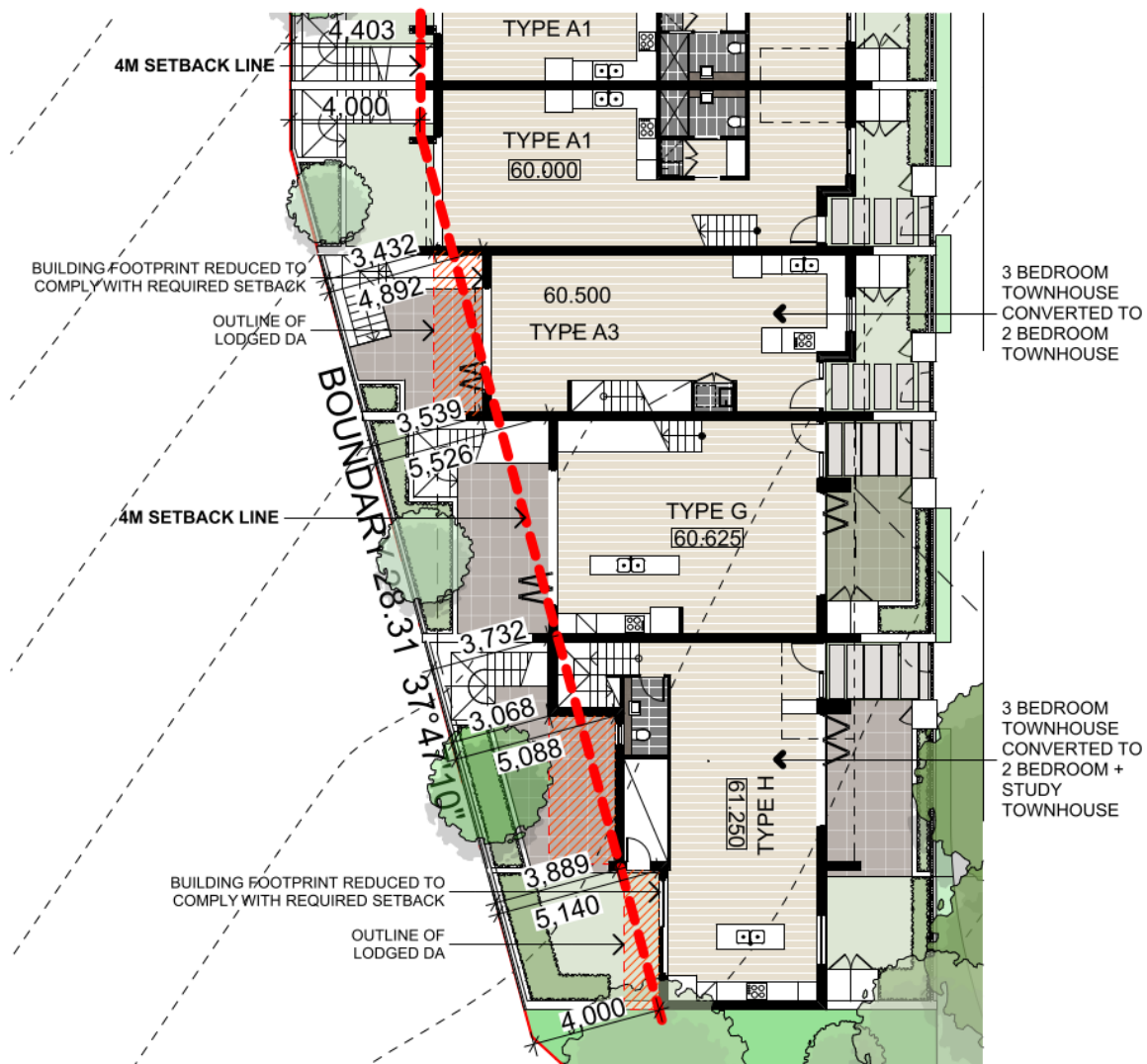


Figure 1: Diagram illustrating non-compliance with rear setback

The non-compliances will not result in any adverse overshadowing impacts on neighbouring properties as the non-compliances are on the northern portion of the site and the shadows fall within the site.

NEW SOUTH WALES RURAL FIRE SERVICE

NSW Rural Fire Service has reviewed the Development Application and has issued General Terms of Approval for the development (refer Appendix 1 of the draft conditions).

SUBDIVISION ENGINEERING COMMENTS

No objections are raised to the proposal subject to conditions.

TREE MANAGEMENT COMMENTS

No objections are raised to the proposal subject to conditions.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objections are raised to the proposal subject to conditions.

WASTE MANAGEMENT COMMENTS

No objections are raised to the proposal subject to conditions.

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Sydney Region Growth Centres) 2006, State Environmental Planning Policy No. 55 – Remediation of Land and the North Kellyville Development Control Plan and is considered satisfactory.

In relation to the Clause 4.6 Variation request, it is considered that the Applicant's request is well founded, and the proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R1 zone objectives. Compliance with the standard is unnecessary in this instance, and the proposal results in a better planning outcome as outlined in this report.

The variations to the height, landscaped area, and rear setback controls have been addressed and it is considered that the application is worthy of support. The proposal is recommended for approval subject to conditions.

IMPACTS:

Financial

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

The Hills Future - Community Strategic Plan

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

RECOMMENDATION

The Development Application be approved subject to the following conditions.

GENERAL MATTERS

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

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

The amendments in red include: - Refer to Plan DA2403 C dated 19/05/2017 for parking, verge and footpath dimensions.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO	DESCRIPTION	REVISION	DATE
DA2000 C	Master Plan	C	24/03/2017
DA2001 B	Allotment Plan	B	24/03/2017
DA2002 B	Basement Plan	B	24/03/2017
DA2010 A	Basement Plan Block A & B	A	30/03/2017
DA2011 A	Basement Plan Block D & E Part 1	A	30/03/2017
DA2012 A	Basement Plan Block D & E Part 2	A	30/03/2017
DA2013 A	Basement Plan Block G & F	A	30/03/2017
DA2014 A	Basement Plan Block H	A	30/03/2017
DA2015 A	Basement Plan Block K & J & I	A	30/03/2017
DA2016 A	Townhouses 107 to 110 Boundary Setback	A	24/03/2017
DA2100 A	Street Elevation – Hillview Road	A	28/10/2016
DA2101 A	Street Elevation – Warrabah Road	A	28/10/2016
DA2102 A	Street Elevation – Kumbatine Crescent	A	28/10/2016
DA2200 A	Internal Roadway Details	A	01/11/2016
DA2201 A	Courtyard Details	A	01/11/2016
DA2300 B	Type A	B	24/03/2017
DA2301 B	Type A1	B	24/03/2017
DA2302 B	Type A2	B	24/03/2017
DA2303 B	Type B	B	24/03/2017
DA2304 B	Type B1	B	24/03/2017
DA2305 B	Type C – Pre Adaptable	B	24/03/2017
DA2306 B	Type C – Post Adaptable	B	24/03/2017
DA2307 B	Type C1 – Pre Adaptable	B	24/03/2017
DA2308 B	Type C1 – Post Adaptable	B	24/03/2017
DA2309 B	Type D	B	24/03/2017
DA2310 B	Type D1	B	24/03/2017
DA2311 B	Type E	B	24/03/2017
DA2312 B	Type F	B	24/03/2017

DA2313 B	Type G	B	24/03/2017
DA2314 B	Type H	B	24/03/2017
DA2402 B	Bin Collection Plan	B	24/03/2017
DA2405 B	Basement Entry Driveway and Longitudinal Sections	B	24/03/2017
DA2403 C	Typical Bin Collection Plan - Detail	C	19/05/2017
DA2500 A	External Finishes – Hillview Road	A	28/10/2016
DA101	Landscape Master Plan	2	28/03/2017
DA102	Detail Plan 1	2	28/03/2017
DA103	Detail Plan 2	2	28/03/2017
DA2800	Staging Plan	A	28/10/2016

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

2. Compliance with NSW Rural Fire Service Requirements

Compliance with the requirements of NSW Rural Fire Service attached as Appendix 1 to this consent and dated 19 April 2017.

3. 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.

4. 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.

5. External Finishes

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

6. Provision of Parking Spaces

The development is required to be provided with 220 off-street car parking spaces for residents and 26 visitor spaces. These car parking spaces shall be available for off street parking at all times.

7. Demolition Notification

Both Council and any adjoining properties must be notified in writing five days before demolition works commence.

8. Tree Removal

Approval is granted for the removal of trees numbered 1-78, 83 and 85 – 129 as described in the Arboricultural Impact Assessment prepared by The Ents Tree Consultancy dated 9 March 2017 and as marked on the site survey prepared by daw& Walton Consulting Surveyors dated 01-03-16.

Trees numbered 79-82 and 84 are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

9. Acoustic Requirements

The recommendations of the Acoustic Assessment and Report prepared by Koikas Acoustics Pty Ltd, referenced as 3015R20161102mfc1AHillviewRdKellyville, dated 3 November 2016 and submitted as part of the Development Application are to be implemented as part of this approval.

10. Contamination Assessment & Site Remediation

The recommendations of the Site Assessment and Report prepared by eiaustralia Pty Ltd, referenced as E22952AA_Rev 0, dated 19 May 2015 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- Prior to demolition, carry out a Hazardous Materials Survey on existing site structures to identify potentially hazardous building products that may be released to the environment during demolition;
- Preparation and implementation of a Remedial Action Plan (RAP), which shall:
 - Design supplementary investigations to close remaining data gaps including the delineation of impacted soils across the site;
 - Preparation of an Asbestos Management Plan if widespread asbestos is identified during data gap closure investigations;
 - Outline the remediation requirements for contamination identified during this DSI and other contamination that may be identified during the data gap closure investigations;
 - Provide the requirements and procedures for waste classification assessment of soil earmarked for excavation during basement and other construction, in order to identify soils suitable for reuse on site or requiring disposal off-site, in accordance with the Waste Classification Guidelines (EPA, 2014); and
 - Provide a SAQP for the validation of remediation activities performed on-site.
- Preparation of a final site validation report by a suitably qualified environmental consultant, certifying site suitability of soils and groundwater for the proposed land use.

11. 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.

12. 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.

13. Air Conditioning Unit Acoustic Levels

Any air conditioning unit on the property must be designed so as not to operate:

- (i) During peak time-at a noise level that exceeds 5 dB(A) above the ambient background noise level measured at any property boundary, or
- (ii) During off peak time-at a noise level that is audible in habitable rooms of adjoining residences.

14. 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.

15. 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.

16. Commencement of Individual Domestic Waste Services

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

17. Construction of Bin Cupboards

Each property requires a bin cupboard in the front entry area. The cupboard must be sized to store 2 x 240 litre bins. The design must ensure that bins are easily manoeuvrable in and out of the cupboard. Finishes and colours are to compliment the design of the development. Additionally, bins must be able to be wheeled directly to the approved collection point over flat or ramped surfaces and not over steps or kerbs, excluding rolled kerbs.

240 litre bin measurements: 735mm d, 580mm w and 1080mm w (lid closed).

NOTE: A clear length of 1660mm is required at the kerbside for bin presentation for each unit. Bin presentation must be in accordance with the Bin Collection Plan (drawing numbers DA2402 revision B and DA2403 revision B).

18. Access for Waste Collection

Minimum vehicle access must be provided and designed in accordance with Australian standard 2890.2-2002 for the standard 12.5m long Heavy Rigid Vehicle. The following additional requirements are applicable:

- a) Reversing is not permitted. Waste collection vehicles servicing the development must be able to enter and leave the site to collect bins in a forward direction with no need for reversing.
- b) Access to restricted sites (i.e. gated communities or sites with roller shutter doors, boom gates or similar) must be via scanning from the cab of heavy vehicles, remote access or other measure to ensure there is no requirement for collection contractors to exit the cab. Note heavy waste collection vehicles are left hand drive. Copies of scan cards or remotes must be provided to Council upon the commencement of waste services.

19. Provision of No Parking Signs

The internal road network and Butterlea Way are to be prominently and permanently signposted and maintained to ensure there is no kerbside parking, with exception to the recessed car parking areas. No parking at any time must be enforced.

20. Property Numbering for Integrated Housing, Multi Unit Housing, Commercial Developments and Industrial Developments

The responsibility for property numbering is vested solely in Council.

The property addresses for this development are as follows:

Block A - commencing at the intersection with Hillview Rd	1-23 Warrabah Road
Block B - commencing at the intersection with Hillview Rd	2-16 Proposed Rd #1
Block C - Hillview Rd (Road to be renumbered)	
Block D - commencing rear Block C	1-25 Proposed Rd #1
Block E - commencing rear Block C	2-22 Proposed Rd #2
Block F - commencing at intersection with Hillview Rd	1-25 Proposed Rd #2
Block G -commencing at intersection with Hillview Rd	2-22 Butterleaf Way
Block H	6-24 Kumbatine Cres
Block I	24-38 Proposed Rd #2
Block J	27-41 Proposed Rd #1
Block K	18-34 Proposed Rd #1

Internal private roads must be named. These names must be approved via normal process through Subdivision Section.

Should further landscape details include solid/security fencing; this numbering will be reviewed by Land Information Section of Council.

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. It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed.

21. Approved Subdivision Plan

The subdivision component of the development must be carried out in accordance with the approved plan of subdivision prepared by John Walton except where amended by other conditions of consent. The approved plan is that which shows the widening of Warrabah Road and Hillview Road, the two proposed development lots (numbered one and two) and a right of carriageway proposed for Butterleaf Way within development lot two.

With respect to this plan, the portion of the right of carriageway planned to be created under the previous plan approved by 1279/2016/ZA affected by the road widening along Hillview Road will need to be released before the road widening can be dedicated over the top.

The subdivision plan will need to be registered once the related subdivision works are complete and before an Occupation Certificate is issued for the building works.

22. Street Naming

A written application for the street naming of the two new private/ internal roads must be submitted to Council for approval, along with the applicable fee as per Council's Schedule of Fees and Charges. The street names proposed must comply with requirements of the NSW Geographical Names Board and Council.

The application must nominate three suggested names per street, in order of preference, and the source of the names proposed. There is already an established theme for this part of the release area which needs to be followed.

The other roads, namely Hillview Road, Warrabah Road, Butterleaf Way and Kumbatine Crescent need to comply with Council's approved road names map, which can be found on Council's website.

23. Street Trees

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

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

24. Recycled Water

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme, unless written evidence from Sydney Water is submitted advising that this service is not available.

25. Process for Council Endorsement of Legal Documentation

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

26. 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.

27. 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. The separate application needs to address the planned staging of the development by the inclusion of strata development lots and a development contract relating to the same.

28. 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.

29. 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 additional requirements apply:

- 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.
- No service vehicles (anything larger than a B99 design vehicle) are to access the basement car parking areas.
- Within the basement carpark; the required parking aisle width is 5.8m. However, where there is a wall or other vertical obstruction on one side/ opposite a row of parking spaces, the width needs to increase by 300mm to 6.1m as per the Standard. The detailed design/ Construction Certificate plans must be amended to comply. Drawings DA2010, DA2011, DA 2012, DA2013, DA2014 and DA2015 are affected by this matter.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

30. Special Infrastructure Contribution – Growth Centres

A special infrastructure contribution is to be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011, as in force when this consent becomes operative.

Information about the special infrastructure contribution can be found on the Department of Planning and Environment website:

<http://www.planning.nsw.gov.au/>

Please contact the Department of Planning and Environment regarding arrangements for the making of a payment.

31. Landscape Plan

Prior to the issue of the Construction Certificate, A Landscape Planting Plan (to scale) for the landscaping of the site is to be prepared by a suitably qualified landscape architect or horticulturalist and submitted to the satisfaction of Council's Manager - Environment and Health.

The plan must be in accordance with the approved Landscape Design Report and Masterplan prepared by Scott Carver Pty Ltd. The plan is to provide details of plant species, numbers and planting location.

32. Section 94 Contribution – North Kellyville

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

Payments comprise of the following:-

	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	Purpose: 4 bedroom unit	Purpose: Credit	No. of 2 Bedroom Units: 8	No. of 3 Bedroom Units: 91	No. of 4 Bedroom Units: 11	No. of Credits: 1	Total S94
Open Space - Land	\$ 10,248.59	\$ 13,908.38	\$ 13,908.38	\$ 13,908.38	\$ 81,988.72	\$ 1,263,662.58	\$ 152,392.18	\$ 13,908.38	\$ 1,486,735.10
Open Space - Capital	\$ 1,691.07	\$ 2,172.81	\$ 2,172.81	\$ 2,172.81	\$ 12,808.56	\$ 197,725.71	\$ 23,900.91	\$ 2,172.81	\$ 232,262.37
Transport Facilities - Land	\$ 810.03	\$ 1,099.30	\$ 1,099.30	\$ 1,099.30	\$ 6,480.24	\$ 100,036.30	\$ 12,092.30	\$ 1,099.30	\$ 117,509.54
Transport Facilities - Capital	\$ 6,030.25	\$ 8,183.67	\$ 8,183.67	\$ 8,183.67	\$ 48,242.00	\$ 744,713.97	\$ 90,020.37	\$ 8,183.67	\$ 874,792.67
Water Management - Land	\$ 1,500.08	\$ 2,035.76	\$ 2,035.76	\$ 2,035.76	\$ 12,000.64	\$ 185,254.16	\$ 22,393.36	\$ 2,035.76	\$ 217,612.40
Water Management - Capital	\$ 659.31	\$ 894.75	\$ 894.75	\$ 894.75	\$ 5,274.48	\$ 81,422.25	\$ 9,842.25	\$ 894.75	\$ 95,644.23
Community Facilities - Land	\$ 342.18	\$ 464.38	\$ 464.38	\$ 464.38	\$ 2,737.44	\$ 42,258.58	\$ 5,108.18	\$ 464.38	\$ 49,539.82
Community Facilities - Capital	\$ 833.63	\$ 1,131.33	\$ 1,131.33	\$ 1,131.33	\$ 6,669.04	\$ 102,951.03	\$ 12,444.63	\$ 1,131.33	\$ 120,933.37
Administration	\$ 80.78	\$ 109.62	\$ 109.62	\$ 109.62	\$ 646.24	\$ 9,975.42	\$ 1,205.82	\$ 109.62	\$ 11,717.86
Total	\$ 22,105.92	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 176,847.36	\$ 2,730,000.00	\$ 330,000.00	\$ 30,000.00	\$ 3,206,847.36

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

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

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

33. 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.

34. Engineering Works and Design

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.

Engineering works can be classified as either "subdivision works" or "building works" as categorised below:

1. Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively.
2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flow path within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/ maintenance liability with respect to these assets once completed. A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" can be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction, a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.
3. Works within the development site, or adjoining private properties, that do not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so. This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

The following engineering works are required:

a) Full Width Road Construction

The full width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Butterleaf Way	Road Type: DCP Laneway 0.75m/ 5.5m/ 0.75m (7m) Pavement Design: Local/ Access (Design Guidelines Section 3.12)
Road 1	Road Type: Private Road 1.2m/ 2.6m/ 6m/ 1.7m (11.5m) Pavement Design: Local/ Access (Design Guidelines Section 3.12)
Road 2	Road Type: Private Road 1.2m/ 2.6m/ 6m/ 1.7m (11.5m) Pavement Design: Local/ Access (Design Guidelines Section 3.12)

At Butterleaf Way/ Kumbatine Crescent and Butterleaf Way/ Hillview Road the design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

With respect to the two private roads, the intersections at either end (four in total) need to delineate the public road from the private road using a gutter crossing rather than kerb returns, pavement threshold treatment or similar.

The works are to be designed and constructed generally in accordance with the concept plan prepared by ACE Revision A2 dated 13/03/2017. The following additional requirements or changes also apply:

- The formation of both private roads differs from that shown on the ACE concept plan. The formation has changed as a result of needing to provide a wider parking lane/ bay to comply with the requirements of the RFS. The required formation of both roads needs to reflect the amended section drawing prepared by JPRA Revision C dated 19/05/2017.

b) Partial Width Road Construction

The partial width construction of the roads listed below is required, including footpath paving and other ancillary work to make this construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Warrabah Road	Road Type: DCP Minor Street

	3.5m/ 8.3m/ 4m/ 2m (17.8m) Pavement Design: Local/ Access (Design Guidelines Section 3.12)
Kumbatine Crescent	Road Type: DCP Minor Street with Cycleway (amended) 3.5m/ 8.3m/ 4m/ 4.5575m (20.3575m) Pavement Design: Access/ Local (Design Guidelines Section 3.12)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

The partial width construction of Kumbatine Crescent is underway opposite; which means the completed road must comply with the overall requirements outlined in the table above.

The partial width construction of Warrabah Crescent already exists opposite; which means the completed road must comply with the overall requirements outlined in the table above.

With respect to "minor street" roads:

- The roadside swale needs to be provided on the low side of these roads, as they have a one way cross fall, to limit the earthworks associated with their construction.
- A concrete pad 1.7m wide and 0.8m deep must be provided behind the kerb and adjacent to the driveways that cross the swale to access the lots on the low side of these roads.
- Driveways that cross the swale to access the lots on the low side of these roads must be constructed with the subdivision works, along with all ancillary drainage work necessary to make the construction effective. Adjacent lots should have their driveways grouped together to limit the number of "breaks" in the swale. These driveways should be 4m wide with a 1m wide grassed verge separating them, located 500mm on either side of the property boundary, making the total "gap" in the swale 9m wide.

c) Partial Width Road Reconstruction

The partial width reconstruction of the existing roads listed below is required, including any necessary service adjustments and ancillary work required to make the construction effective:

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Hillview Road	Road Type: DCP Park Street (amended) 3.5m/ 2m/ 10.6m/ 2m/ 4.5 m (22.6m) Pavement Design: Access/ Local (Design Guidelines Section 3.12)

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

As partial width reconstruction exists opposite, the completed road must comply with the overall requirements outlined in the table above.

The wider 4.5m verge must be located on the southern side of Hillview Road correlating with the cycleway required at this location.

With respect to these works:

- A 2m narrowed roadside swale needs to be provided on both sides. The road carriageway needs to have a two way cross fall to match existing.
- A concrete pad 1.7m wide and 0.8m deep must be provided behind the kerb and adjacent to the driveways that cross the swale to access the lots on the low side of these roads.
- Driveways that cross the swale to access the lots must be constructed with the subdivision works, along with all ancillary drainage work necessary to make the construction effective.

d) Street Names Signs

Street name signs and posts are required in accordance with the above documents and Council's Standard Drawing 37. Details for all signage and line-marking must be submitted to Council for checking prior to works commencing.

All private roads must include a second sign underneath which reads "private road".

e) Concrete Footpath

A 1.2m wide concrete footpath, including access ramps at all intersections, must be provided on both Hillview Road and Warrabah Road fronting the site in accordance with the DCP and the above documents.

Both private roads must have a 1m wide footpath on one side (facing the 2.6m wide parking bays) and a 1.5m wide footpath on the other.

f) Concrete Cycleway/ Shared Path

A 2.5m wide concrete cycleway/ shared path, including access ramps at all intersections, must be provided on the southern side of Kumbatine Crescent fronting the site in accordance with the DCP and the above documents.

g) Disused Layback/ Driveway Removal

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

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.

i) 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.

Retaining walls are limited to those locations and heights shown on the concept engineering plan prepared by ACE Revision A2

j) Stormwater Drainage – Temporary Works

Tail out drains over adjoining properties are required to be provided, where necessary, of sufficient length and width to dissipate stormwater flows to an acceptable level from the end of all stormwater outlets.

Grassed swale drains or temporary piped drainage must be installed to intercept, control and redirect surface stormwater runoff from upstream undeveloped properties.

k) Water Sensitive Urban Design Elements – External

Water sensitive urban design elements, consisting of bio-retention swales in roads, are required generally in accordance with the plans and information submitted with the application. The bio-retention swales in roads are to be provided as part of the subdivision works.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The following requirements apply:

- The bio-retention swales in roads must be 4m wide and yield a detention volume of 0.75m³ per linear metre.
- The only exception to this is the narrowed 2m swale along Hillview Road.

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

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

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

I) Water Sensitive Urban Design Elements – Internal

Water sensitive urban design elements, consisting of two detention basins, 22 SW360 filter cartridges (or an approved equivalent), a single stormwater pump and associated tank are to be located generally in accordance with the plans and information submitted with the application, specifically the concept plan prepared by ACE Revision D dated 20/03/2017.

The concept plan must be amended to remove the two stormwater pumps and associated tanks under Blocks A, B and H. These basement levels are able to be drained to the street via gravity. The other stormwater pump and associated tank under Block K is needed.

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

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

All model parameters and data outputs are to be provided.

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

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

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

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. 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.

38. 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 \$100,000.00 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 bond amount takes into account the roads being reconstructed or constructed as part of these works, and only relates to the existing sections of these (or other) roads.

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.

39. Security Bond – External Works

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

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

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

PRIOR TO WORK COMMENCING ON THE SITE

40. Principal Certifying Authority

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

41. 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.

42. 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.

43. 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.

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. 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 and receipt from Sydney Water Tap in™ (if not already provided) 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.

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. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

49. 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 shall include the management, treatment and disposal of water that collects in the excavation for the basement carpark. Water contaminated with suspended sediment greater than 50mg/L must not be discharged to the stormwater system. The plan is to be kept on site at all times and made available upon request.

50. 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.

51. 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.

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.

52. 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.

53. Demolition and Construction 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.

54. 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.

55. Erection of Signage – Supervision of Work

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

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

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

56. Contractors Details

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

57. Sediment and Erosion Control

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

works, these measures must be maintained for a minimum period of six months following the completion of all works.

58. Service Authority Consultation – Subdivision Works

Before subdivision works commence documentary evidence must be submitted confirming that satisfactory arrangements have been made for:

- The provision of electrical services for the non-residue lots created by the subdivision. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council.
- The provision of water and sewerage facilities.
- The provision of telecommunication services for the non-residue lots created by the subdivision, typically requiring the installation of pits and pipes complying with the standard specifications of NBN Co current at the time of installation. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council. The Telecommunications Act 19978 (Cth) specifies where the deployment of optical fibre and the installation of fibre-ready facilities is required.

59. 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.

60. Public Infrastructure Inventory Report

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

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

DURING CONSTRUCTION

61. 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.

62. 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.767485M 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.

63. 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.

64. 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 may 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.

65. 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)*.

66. Contamination

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

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

67. 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.

68. 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.

69. Further contamination assessment

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

70. 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.

71. Critical Stage Inspections – Subdivision Works

The subdivision works must be inspected by Council in accordance with the schedule included in Council's Works Specification Subdivisions/ Developments. A minimum of 24 hour's notice is required for inspections. No works are to commence until the first inspection has been carried out.

72. Working Hours

All work must be restricted to between the hours of 7:00am and 5:00pm, Monday to Saturday. No work can occur outside the hours specified above on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff. Requests to carry out roadworks on existing public roads during the night in order to avoid local traffic impacts will also be considered based on the circumstances of the site and must be approved in writing by Council's Manager – Subdivision and Development Certification.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

73. Landscaping Prior to Issue of Occupation Certificate

Landscaping of the site shall be carried out to the satisfaction of Council's Manager - Environment and Health prior to issue of the Final Occupation Certificate. The landscaping is to be in accordance with the approved Landscape Masterplan prepared by Scott Carver Pty Ltd and the Landscape planting plan required by this consent. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

74. Validation report

A validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following:

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

75. 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.

76. Final Inspection of Bin Cupboards

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

77. Completion of Subdivision Works

A Subdivision Certificate cannot be issued prior to the completion of all subdivision works covered by this consent.

78. 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.

79. 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.

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. Performance/ Maintenance Security Bond

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

82. Section 73 Compliance Certificate

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

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

83. Provision of Electrical Services

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

84. Provision of Telecommunication Services

For a fibre-ready facility, written certification from a qualified installer must be submitted confirming that the telecommunications infrastructure has been installed in accordance with the following requirements:

- The Telecommunications Act 1978 (Cth).
- The standard specifications of NBN Co current at the time of installation.
- All telecommunications infrastructure must be undergrounded.

The Telecommunications Act 1978 (Cth) specifies where the deployment of optical fibre and the installation of fibre-ready facilities is required.

In all other cases (non-fibre ready facilities), either an agreement advice or network infrastructure letter must be issued by Telstra confirming satisfactory arrangements have been made for the provision of telecommunication services. This includes the

undergrounding of existing overhead services, except where a specific written exemption has been granted by Council.

A copy of the works as executed (WAE) plans for the telecommunications infrastructure must also be submitted.

85. Subdivision Certificate Application

When submitted, the Subdivision Certificate application must include:

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

86. 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.

87. Public Asset Creation Summary

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

88. Prior or Concurrent Registration of Preceding Subdivision

A Subdivision Certificate cannot be issued for this subdivision before the preceding stage/ subdivision pursuant to 1279/2016/ZB has been registered, unless the two are registered concurrently.

89. Final Plan and Section 88B Instrument

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

a) 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.

b) Easement – Temporary Public Access

A temporary public access easement must be created over Butterleaf Way using the "temporary public access easement" terms included in the standard recitals, unless this easement is created beforehand/ with the preceding subdivision.

90. Public Road/ Road Widening Dedication

Any Occupation Certificate must not be issued until the proposed public roads/ road widening have been dedicated in accordance with the undertaking submitted relating to dedication.

91. 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.

92. 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.

93. 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.

94. Creation of Restrictions / Positive Covenants

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

a) Restriction – Bedroom Numbers

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

b) 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.

c) Restriction/ Positive Covenant – Water Sensitive Urban Design

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

d) 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.

e) 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.

THE USE OF THE SITE

95. Offensive Noise - Acoustic Report

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

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

96. Waste and Recycling Collection

Bins must be presented out for collection in accordance with the approved bin presentation plans, unless otherwise determined by Council.

APPENDIX 1 –NSW RURAL SERVICE REQUIREMENTS

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Facsimile: 8741 5433



The General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS BC NSW 2153

Your Ref: 735/2017/3P
Our Ref: D17/1022
DA17040506730 BB

ATTENTION: Sanda Watts

19 April 2017

Dear Sir/Madam

Integrated Development for 101//1199554 1 Hillview Road Kellyville NSW 2155

I refer to your letter dated 28 March 2017 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

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

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. The provision of water, electricity and gas shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

3. Public road access shall comply with the following requirements of section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.
 - public roads are two wheel drive, all weather roads with a minimum paved carriageway of 6 metres kerb to kerb and are sign posted as "no parking".
 - traffic management devices are constructed to facilitate access by emergency services vehicles.
 - public roads have a cross fall not exceeding 3 degrees.
 - all roads are through roads. Dead end roads are not recommended, but if unavoidable, dead ends are not more than 200 metres in length, incorporate a minimum 12 metres outer radius turning circle, and are clearly sign posted as a dead end and direct traffic away from the hazard.
 - curves of roads (other than perimeter roads) are a minimum inner radius of six metres and minimal in number, to allow for rapid access and egress.
 - the minimum distance between inner and outer curves is six metres.
 - maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient.
 - there is a minimum vertical clearance to a height of four metres above the road at all times.
 - the capacity of road surfaces and bridges is sufficient to carry fully loaded firefighting vehicles (approximately 15 tonnes for areas with reticulated water, 28 tonnes or 9 tonnes per axle for all other areas). Bridges clearly indicate load rating.
 - parking bays where provided shall be a minimum of 2.6 metres wide from kerb edge to road pavement. No services or hydrants shall be located within the parking bays.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

4. All new construction associated with Block H, J and K within Hillview Gardens as shown on the Master Plan prepared by JPR Architects Pty Ltd, referenced 2016020, dated 02/11/2016, shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

Boundary fences for properties determined to be BAL 12.5 or BAL 19 may be constructed using hardwood where there is a minimum 1 metre separation from a dwelling. Where there is less than 1 metre separation or for properties determined to be BAL 29, BAL 40 or BAL FZ, non-combustible materials shall be used. No brushwood fencing shall be used.

For any queries regarding this correspondence please contact Bradley Bourke on 1300 NSW RFS.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'J.M.L.', with a stylized, cursive-like font.

Jason Maslen

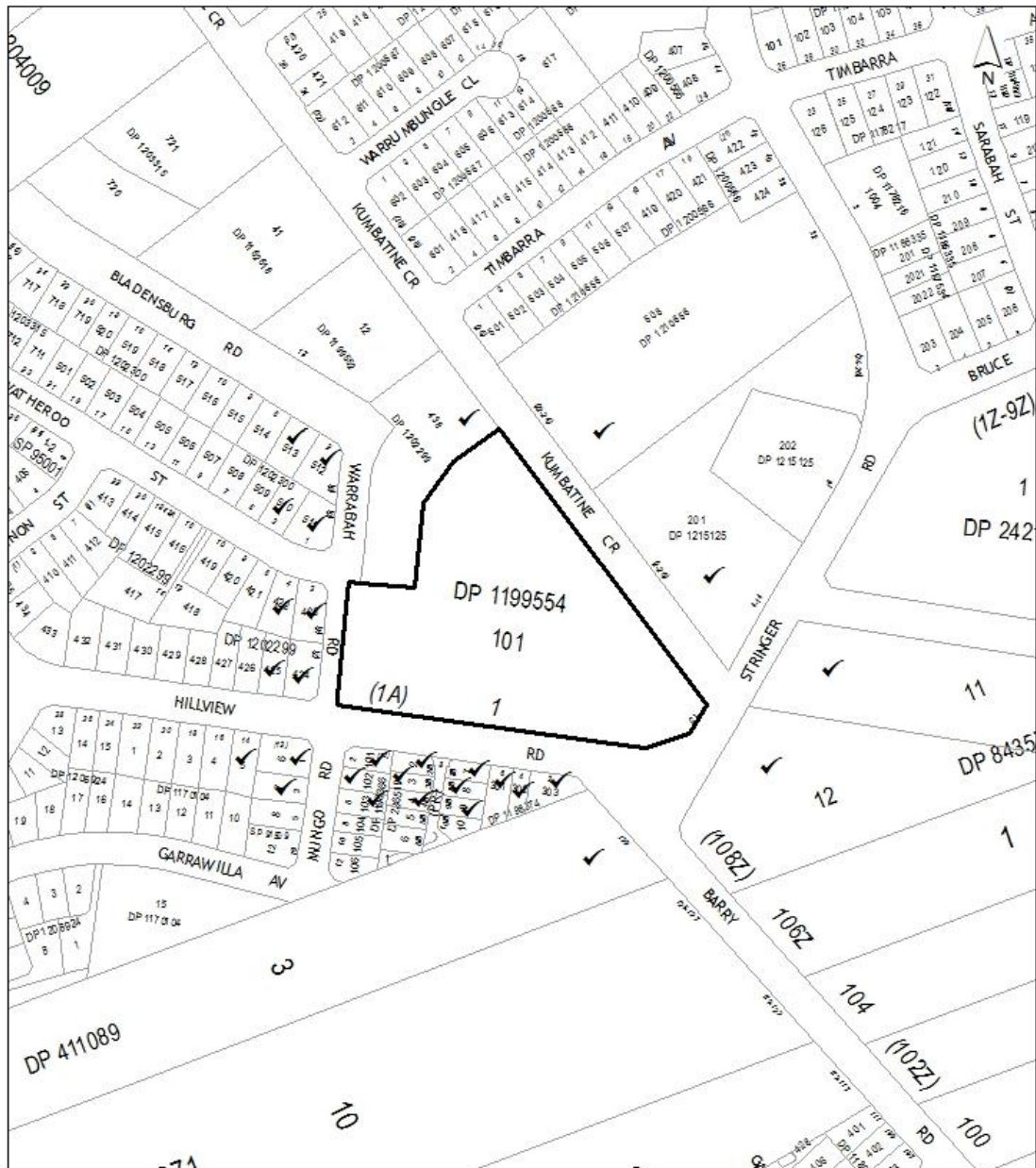
Acting Manager - Planning and Environment Services (East)

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. SEPP Zoning Map
4. SEPP Height Control Limit and DCP Road Layout Map
5. SEPP Density Map
6. Approved Subdivision Plan
7. Proposed Subdivision Plan
8. Basement Plan
9. Site Plan
10. Elevations and Sections
11. Landscape Plan
12. Clause 4.6 Variation to Height
13. Photomontages

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED

THE HILLS
Sydney's Garden Shire

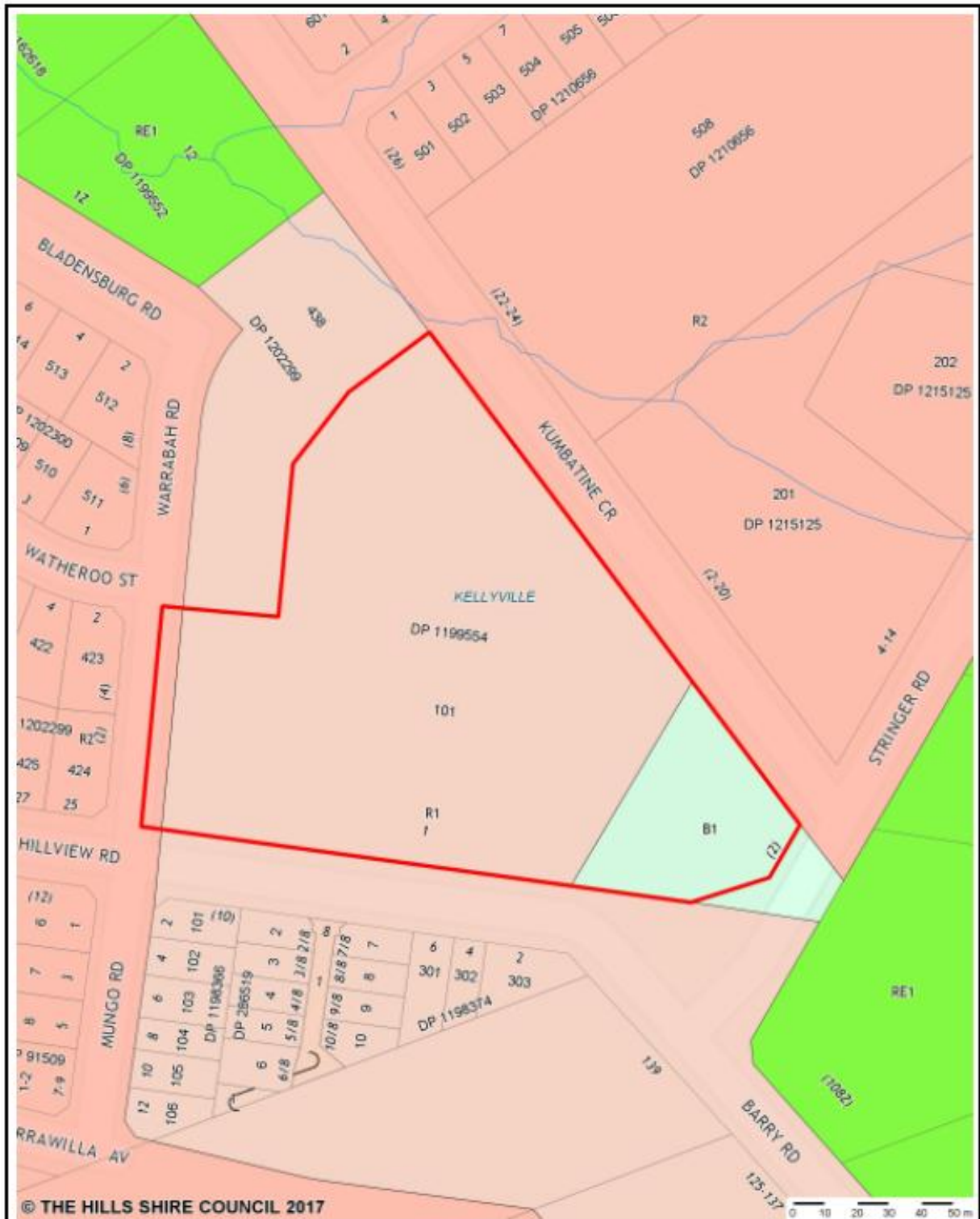
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ATTACHMENT 2 – AERIAL PHOTOGRAPH



ATTACHMENT 3 – SEPP ZONING MAP



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THE HILLS
Shire
Sydney's Garden Shire

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Scale (A4): 1:1573
Date: 30/06/2017
Prepared by: Sandra Watts

ATTACHMENT 4 – SEPP HEIGHT CONTROL LIMIT AND DCP ROAD LAYOUT MAP



ATTACHMENT 5 – SEPP DENSITY MAP



THE HILLS
Sydney's Garden Shire

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Scale (A4): 1:2238
Date: 8/06/2017
Prepared by: Sandra Watts

ATTACHMENT 6 – APPROVED SUBDIVISION PLAN

Sheet 1 of 1 sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

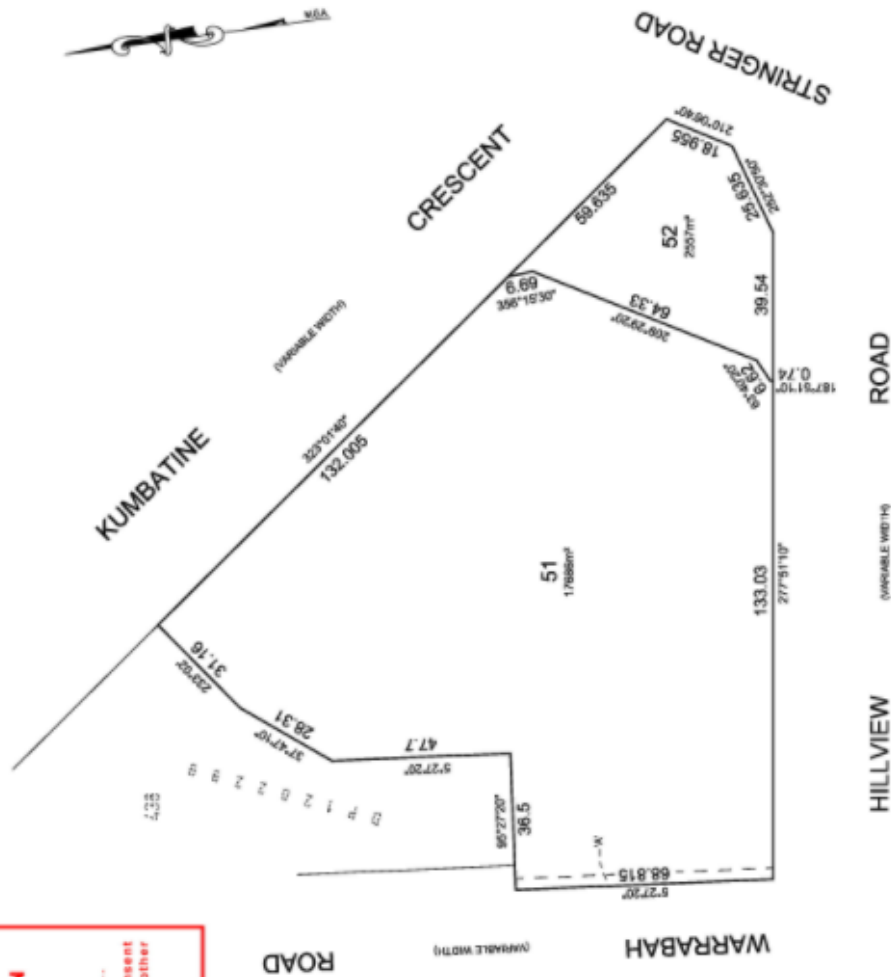
PLAN FORM 2 (A2)

THE HILLS SHIRE COUNCIL
APPROVED DEVELOPMENT PLAN

DEVELOPMENT CONSENT NO.

1279/2016/ZB

Please refer to conditions of Development Consent for the details of the required inspections and other matters which must be complied with.



X' DENOTES EXISTING EASEMENT FOR PUBLIC ACCESS 3 MIDE (NDEDP198954)

SURVEYOR: JOHN WALTON
DATE OF SURVEY: FEB 2016
SURVEYOR'S REF: 3077-16DP

PLAN OF: PROPOSED SUBDIVISION
OF LOT 101 IN DP198954

LGA: THE HILLS SHIRE
LOCALITY: KELLYVILLE
SUBDIVISION No:
Lengths are in metres. Reduction Ratio: 1 : 800

DRAFT DP

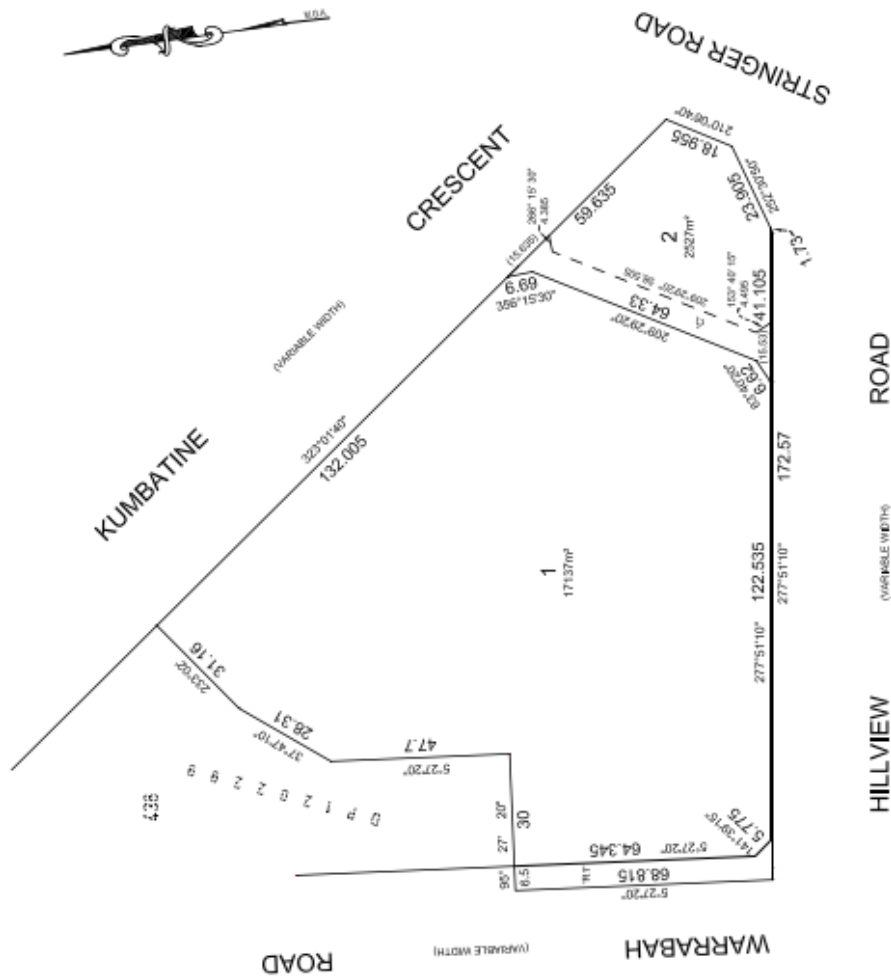
100 200 300 400 500 600 700 800 900 1000 1100 1200 1300 1400 1500

ATTACHMENT 7 – PROPOSED SUBDIVISION PLAN

Sheet 1 of 1 sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)

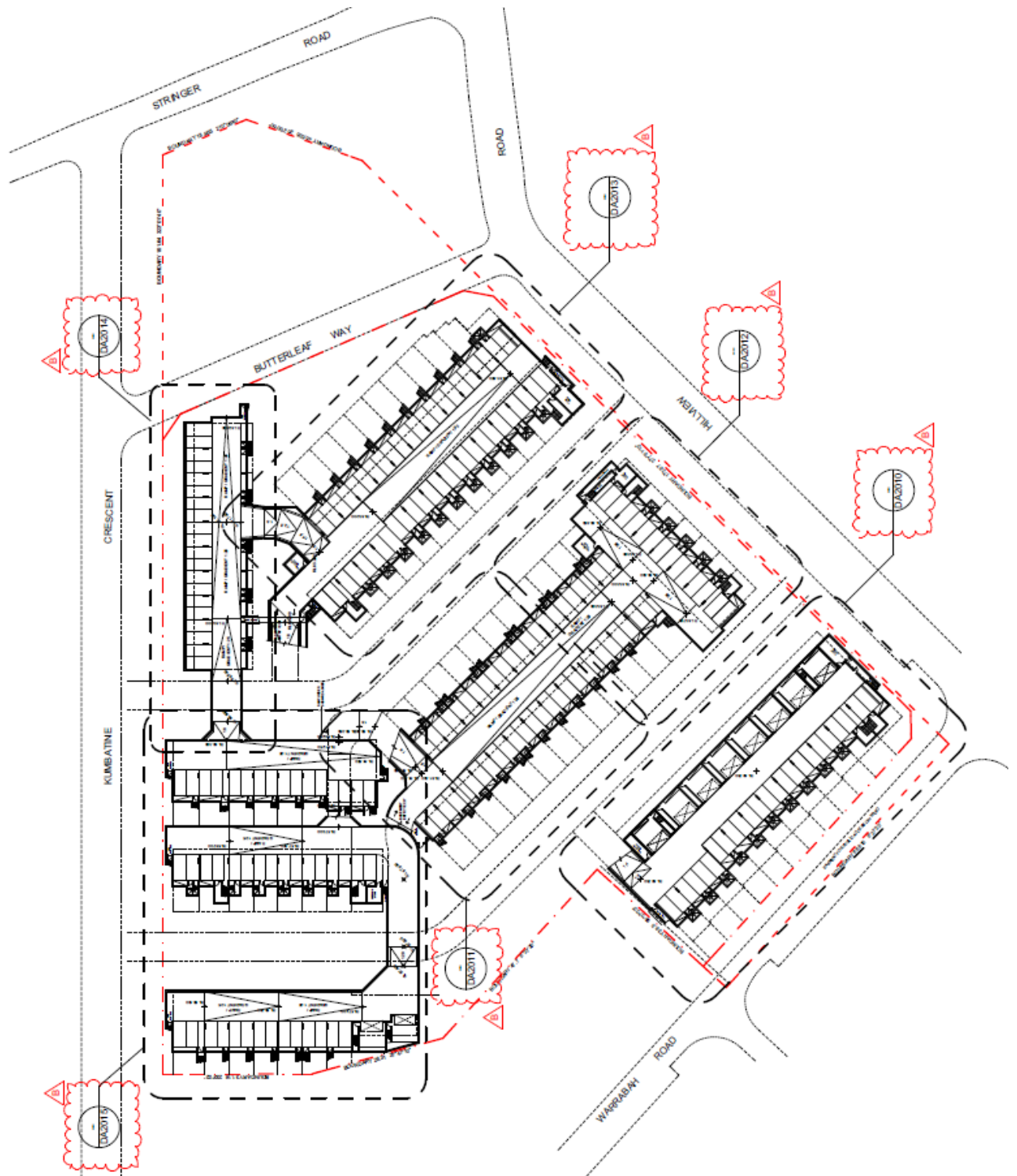


RT: DENOTES ROAD WIDTHS (RTW+1)
C: DENOTES RIGHT OF CARRIAGEWAY, 7 MILE AND VARIABLE (NDE DP)

SURVEYOR: JOHN WALTON DATE OF SURVEY: FEB 2016 SURVEYOR'S REF: 3077-16DP	PLAN OF: PROPOSED SUBDIVISION OF LOTS 51 & 52 IN DP	LGA: THE HILLS SHIRE LOCALITY: KELLYVILLE SUBDIVISION: Lengths are in metres. Resolution Scale 1: 800	REGISTERED:	DRAFT DP
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10 20 30 40 50 60 70 80 90 100 110 120 130 140 150

ATTACHMENT 8 – BASEMENT PLAN



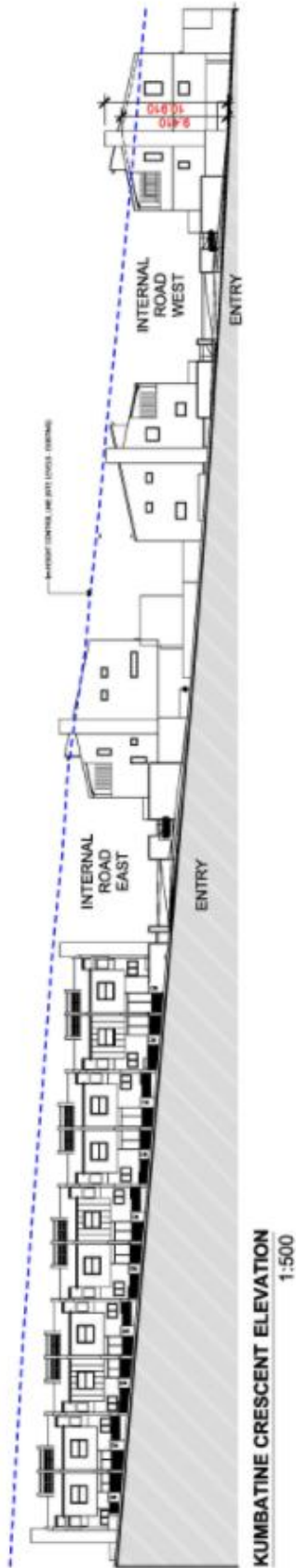
ATTACHMENT 9 – SITE PLAN

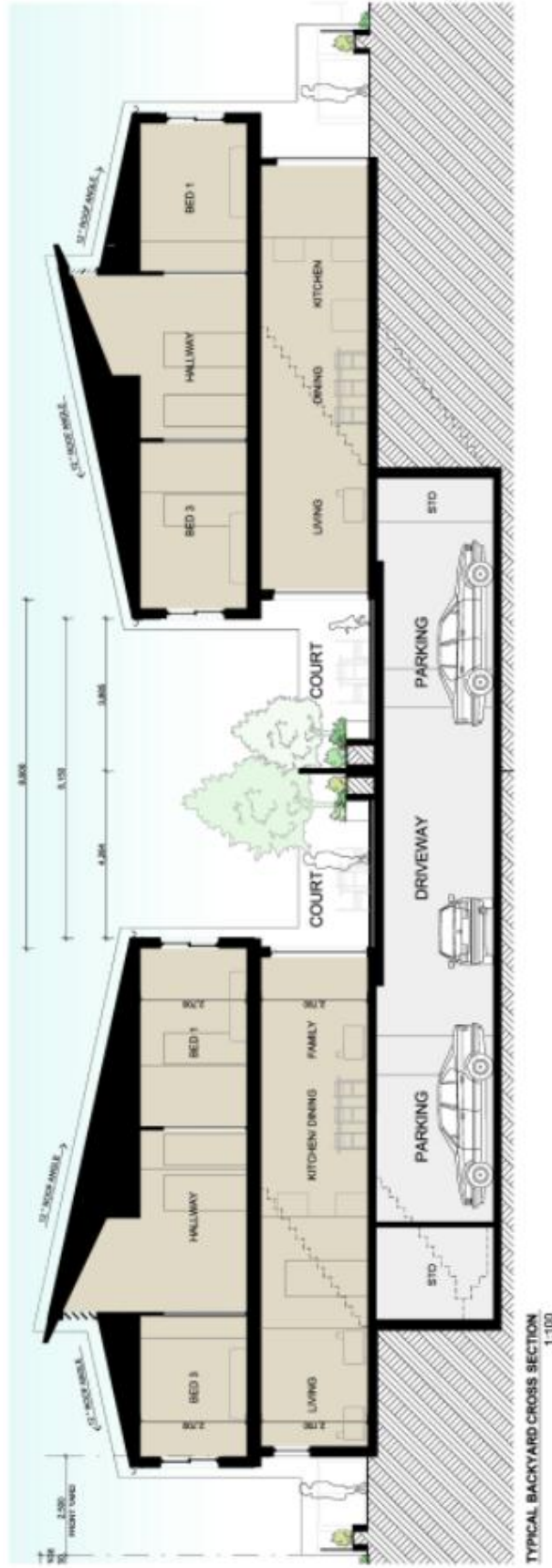


ATTACHMENT 10 – ELEVATIONS AND SECTIONS



WARRABAH ROAD ELEVATION - TECHNICAL ELEVATION





TYPICAL BACKYARD CROSS SECTION
1:100

ATTACHMENT 11 – LANDSCAPE PLAN



ATTACHMENT 12 – CLAUSE 4.6 VARIATION

REQUEST FOR AN EXCEPTION TO THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Introduction

This request for an exception to a development standard is submitted in respect of the development standard contained within Clause 4.3 of Appendix 2 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The request relates to an application for the staged construction of a multi dwelling development at 1 Hillview Road, Kellyville.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of Appendix 2 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 provides that development consent may be granted for development even though the development would contravene a development standard imposed by Appendix 2 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006, or any other environmental planning instrument.

However, clause 4.6(3) states that 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 requires a qualitative merit assessment based on evaluative questions that are specific to each particular development application, and which must be assessed against the context of that particular site. It advocates an entirely performance-based approach to the assessment of each application, based upon the “the circumstances of the case”, and whether compliance is subjectively considered by the consent authority to be “unreasonable or unnecessary” in the particular circumstances.

Clause 4.6 does not provide any quantitative or numerical limitation to cap the extent of non-compliance that may be approved. This conclusion has been confirmed by the Courts on a number of occasions such as the Court upheld decision of North Sydney Council to approve a building where the applicable FSR control was 3.5:1 and the approved FSR was 15:1 and the applicable height control was five storeys whereas the approved height was 17 storeys: *Legal and General Life v North Sydney MC*. (1989) 68 LGRA 192. Similarly, in another matter the Court approved an FSR of 5:1 on a site where the allowable FSR was 1:1: *Hosking Munro Pty Limited v City of Sydney Council* [2008] NSWLEC 1485.

In accordance with clause 4.6(3) the applicant requests that the height of buildings development standard be varied.

Development Standard to be varied

Clause 4.3 states:

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

(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,

(b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,

(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,

(d) to provide appropriate height controls for commercial development,

(e) to restrict the height of buildings within the curtilage of heritage items.

(2) Except as provided by this clause, the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Building height (or height of building) is defined as the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The maximum height shown for the land on the Map for the site to which the proposed development relates is 9 metres.

Extent of Variation to the Development Standard

The extent of variation to the building height control is illustrated in the table below:

SEPP Height	Ridge	Variation	Basement Exhaust Riser	Variation
9 metres	6.08 – 9.41m	0.41m	10.91m	1.91m

Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

The Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 has recently required additional ways of establishing that compliance is unreasonable or unnecessary beyond consistency with the standard and zone objectives to be established. For completeness, this request addresses the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

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

The specific objectives of the building height development standard, as specified in clause 4.3 of Appendix 2 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 are identified below. A comment on the proposal's consistency with each objective is also provided.

- (a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,

The proposed 2 storey scale across the site results in a visual impact which is anticipated by the height control and will be in harmony with surrounding development. The buildings are stepped across the site to respond to the sloping topography, reducing the height, massing and visual bulk of the development. The proposed development will have no adverse impacts in terms of overshadowing, views, visual and acoustic privacy impacts to surround development and each dwelling within the development will be provided with a high level of amenity. Both existing and future anticipated development that adjoins the site will have or be capable of having a high level of amenity.

- (b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,

The architectural package prepared by JPR Architects which accompanies the subject application demonstrates a high quality outcome for the site which properly deals with the fall across the site to ensure that a suitable relationship is achieved between the future public domain and the ground floor plane of the buildings. The package also demonstrates that the buildings are frequently stepped to respond to the fall of the site. The proposed variations to the height control will achieve a better outcome for the development because it will ensure that practical buildings can be constructed on the site which will achieve a 2 storey scale as anticipated by the height control.

- (c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,

The proposed multi dwelling development is consistent with the vision for the North Kellyville Precinct expressed within the North Kellyville Precinct Development Control Plan 2008. Careful consideration has been given to the location, size and design of the proposed development to ensure that a high quality outcome will be achieved which will sit comfortably within the surrounding streetscapes and be consistent with the emerging character of development within the vicinity of the site. The proposed development will have no unreasonable adverse impacts in terms of overshadowing, views, visual and acoustic privacy impacts to surround development and each dwelling within the development will be provided with a high level of amenity.

- (d) to provide appropriate height controls for commercial development,

Commercial development is not proposed.

- (e) to restrict the height of buildings within the curtilage of heritage items.

The site is not an identified heritage item nor is it located in the vicinity of any heritage items.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objectives and purpose of the height control are relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed height is compatible with the existing and future scale of the surrounding buildings and will sit comfortably within the context of the site with no significant adverse impacts to adjacent properties.

The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The underlying objective of the height control is to achieve an appropriate height on the site which is compatible with the emerging context of the site. Due to the design, location and configuration of the proposed development, it successfully achieves these objectives. Strict compliance with the height control would not reduce the impact of the development on the streetscape and would provide reduced amenity to occupants of the development. Accordingly, it is considered that strict compliance would likely result in the defeat of the underlying object and purpose of the height control because it would encourage a less desirable outcome.

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Council has historically adopted a relatively flexible approach to the implementation of the height control in circumstances where the objectives of the control are achieved, particularly where the variation is minor and can be attributed to the slope of the land.

The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The proposed zoning of the land is considered to be reasonable and appropriate.

The proposed variation to the building height development standard is reasonable and necessary in the circumstances of the case in that:

- The proposed variations are minor point encroachments as a result of the fall of the land from east to west, with the majority of the development well below the 9 metre height control.
- The development provides for a 2 storey scale to all streets in accordance with the envisaged scale of development for the site by the planning controls and is consistent with recently approved developments in the vicinity of the site.
- The majority of the development is well below the 9 metre height control with the dwellings located on the higher portions of the site having a ridge height of 6.08 metres.
- Any reduction in the height of the development to achieve a compliant building height would likely necessitate additional excavation for the basement car park and an associated lowering of the dwellings which would negatively impact on the relationship that is achieved between the future public domain and the ground floor plane of the buildings.
- The non-compliance with the height control ultimately improves the urban form of the development as it allows a consistent 2 storey development across the entire site and facilitates an efficient form of development for the site which responds appropriately to the topography of the site.

- There are no unreasonable impacts in terms of overshadowing, views, visual and acoustic privacy to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance.
- All dwellings within the development are provided with a high level of amenity and will be set within high quality landscaped surrounds.
- The proposed variation allows for the most efficient and economic use of the land.
- Strict compliance of the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Having regard to the planning principle established in the matter of Project Venture Development v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

As the proposal is consistent with the objectives of the height of buildings control, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

The proposed distribution of built form and massing of the buildings across the site is the result of a considered analysis of the irregular shaped allotment, the fall of the site, the applicable building controls, the vision for the North Kellyville Precinct and the desire to deliver a positive urban design outcome.

The proposal has been specifically designed as a robust architectural solution for the site which will result in a high quality medium density residential development that will sit comfortably within the surrounding streetscapes and be consistent with the emerging character of development within the vicinity of the site.

The scale of the development does not result in any unreasonable impacts on the surrounding properties in terms of views, loss of privacy or visual impact. The architectural package includes a solar access analysis which demonstrates that the proposed scale of the development will not unreasonably overshadow development on surrounding properties.

The scale of the buildings will not be perceived as jarring or antipathetic in the future streetscape and urban design context which will develop in the area.

Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and in this particular circumstance there are sufficient environmental planning ground to warrant the proposed variation to the 9 metre height control.

Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

Whilst the objectives of the development standard have already been addressed previously in this written request, for the purpose of completeness these objectives are again considered below in specific reference to Clause 4.6(4)(a)(ii).

Objective of the Development Standard

The specific objectives of the building height development standard, as specified in clause 4.3 of Appendix 2 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 are identified below. A comment on the proposal's consistency with each objective is also provided.

A comment on the proposal's consistency with each objective is also provided.

- (a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,

The proposed 2 storey scale across the site results in a visual impact which is anticipated by the height control and will be in harmony with surrounding development. The buildings are stepped across the site to respond to the sloping topography, reducing the height, massing and visual bulk of the development. The proposed development will have no adverse impacts in terms of overshadowing, views, visual and acoustic privacy impacts to surround development and each dwelling within the development will be provided with a high level of amenity. Both existing and future anticipated development that adjoins the site will have or be capable of having a high level of amenity.

- (b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,

The architectural package prepared by JPR Architects which accompanies the subject application demonstrates a high quality outcome for the site which properly deals with the fall across the site to ensure that a suitable relationship is achieved between the future public domain and the ground floor plane of the buildings. The package also demonstrates that the buildings are frequently stepped to respond to the fall of the site. The proposed variations to the height control will achieve a better outcome for the development because it will ensure that practical buildings can be constructed on the site which will achieve a 2 storey scale as anticipated by the height control.

(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,

The proposed multi dwelling development is consistent with the vision for the North Kellyville Precinct expressed within the North Kellyville Precinct Development Control Plan 2008. Careful consideration has been given to the location, size and design of the proposed development to ensure that a high quality outcome will be achieved which will sit comfortably within the surrounding streetscapes and be consistent with the emerging character of development within the vicinity of the site. The proposed development will have no adverse impacts in terms of overshadowing, views, visual and acoustic privacy impacts to surround development and each dwelling within the development will be provided with a high level of amenity.

(d) to provide appropriate height controls for commercial development,

Commercial development is not proposed.

(e) to restrict the height of buildings within the curtilage of heritage items.

The site is not an identified heritage item nor is it located in the vicinity of any heritage items.

Objective of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R1 General Residential zone which has the following objectives:

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

The proposed development provides for residential accommodation in the form of multi dwelling housing which provides for the housing needs of the community within a medium density residential environment. A variety of housing types are provided within the development including adaptable housing that will meet the changing needs of the resident population. The site is located within close proximity to land zoned for open space as well as public transport that is located within Springer Road. The overall development includes a comprehensive landscape scheme that will enhance the amenity and livability for residents and visitors and support the well being of the community. For the reasons

given the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

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

The architectural package prepared by JPR Architects which accompanies the subject application demonstrates a high quality outcome for the site which properly deals with the fall across the site to ensure that a suitable relationship is achieved between the future public domain and the ground floor plane of the buildings. The package also demonstrates that the buildings are frequently stepped to respond to the fall of the site. The proposed variation to the height control will achieve a better outcome for the development because it will ensure that practical buildings can be constructed on the site which will achieve a 2 storey scale as anticipated by the height control.

Requiring strict compliance with the height of buildings development standard on the subject site would result in an inferior built form that would contextually be no different from the proposed development and would not result in any benefit to the streetscape or the amenity of adjoining properties. In this regard requiring compliance would not deliver a better development outcome.

Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objectives 1(a) and Clause 4.6 in that allowing flexibility in relation to the height of buildings development standard will achieve a better urban design outcome in this instance in accordance with objective 1(b).

Conclusion

Strict compliance with the height of buildings development standard contained within clause 4.3 of Appendix 2 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 has been found to be both unreasonable and unnecessary in the circumstances of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the height of buildings development standard to the extent proposed in this circumstance.

ATTACHMENT 13 – PHOTOMONTAGES



VIEW FROM HILLVIEW ROAD - ENTRY TO INTERNAL ROAD EAST



VIEW SHOWING OPEN SPACE ALONG INTERNAL ROAD WEST



VIEW SHOWING TOWNHOUSES AND STREETScape ALONG INTERNAL ROAD WEST