

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SWC010
DA Number	DA 970/2017/JP
LGA	The Hills Shire Council
Proposed Development	Demolition of Existing Structures and Construction of a Shopping Centre and Public Roads
Street Address	Lots 7 & 8 DP 1128575, Lot 2 DP 1087781, Lot 103 DP 1195876 and Lot 2 DP 1131540 - 2-2A Hector Court, Kellyville
Applicant/Owner	Fabcot Pty Ltd c/ Higgins Planning Pty Ltd
Consultants	<p>Marian Higgins, Higgins Planning Pty Ltd – Town planning consultant Dickson Rothschild – Architect (initial scheme) Nettleton Tribe – Architect (amended scheme) Colston Budd Rogers & Kafes Pty Ltd – Traffic consultant Reverb Acoustics – Acoustic consultant Morris Goding Access Consulting – Access consultant Northrop – BCA (energy efficiency) consultant Steve Watson & Partners – BCA consultant JK Geotechnics – Geotech consultant Site Image – Landscape Architect LTS Lockley – Subdivision consultant Henry & Hymas - Engineering consultant Andrew Scales – Arboricultural consultant Exova Warringtonfire Aus Pty Ltd – Fire safety engineering consultant Back Schwartz Vauhan, Lawyers – Liquor license consultant</p>
Date of DA lodgement	20 December 2016
Number of Submissions	<p>1st Notification - Twenty (20) submissions received including a petition containing 55 signatures. 2nd Notification – Four (4) submissions received.</p>
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	<p>General development with a capital investment value (CIV) over \$20 million.</p> <p>N.B.: The DA has a CIV of \$20,724,410 at the time of lodgement of this DA hence it was referred to the Regional Planning Panel for determination per Planning Circular PS 10-008. On 10 August 2017, the threshold for general development has been increased from a CIV of more than 20 million to a threshold of more than \$30 million.</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development 2011) • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 64 – Advertising and Signage • State Environmental Planning Policy (Infrastructure) 2007 • The Hills Local Environmental Plan 2012 • DCP 2012 Part D Section 7 – Balmoral Road Release Area • DCP 2012 Part B Section 6 - Business • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 2 - Signage • DCP 2012 Part C Section 3 – Landscaping

List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Submissions • Clause 4.6 written justification
Report prepared by	CLARO PATAG DEVELOPMENT ASSESSMENT CO-ORDINATOR
Report date	30 JULY 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
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

EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and construction of a shopping centre and associated signage. The proposed shopping centre is two storeys in height and includes 7,860m² of commercial gross floor area. The shopping centre will consist of a Woolworths Supermarket, BWS liquor store, specialty/retail tenancies, a kiosk and commercial tenancies with associated at grade and upper level car park comprising 312 car parking spaces. Access to the shopping centre is proposed via Severn Vale Drive and Hector Court.

The proposal also includes the construction and dedication of public roads, being the construction and dedication of Severn Vale Drive and the reconstruction of Hector Court at no cost to Council.

The Development Application seeks a variation to the building height development standard under LEP 2012 and is accompanied by a written request (refer Attachment 18) that seeks to justify the contravention of the building height development standard pursuant to Clause 4.6 (3) of LEP 2012. The proposed building height variation is considered satisfactory.

The proposal generally complies with The Hills DCP 2012 with the exception of building setbacks, car parking, landscaping on driveways and car park and height of pylon signs. The variations to these development controls are addressed in the report and considered satisfactory.

The Development Application was notified and publicly exhibited between 16 January to 20 February 2017 and received twenty submissions which included a petition containing 55 signatures. A Conciliation Conference between the applicant and residents was held on 27 April 2017 as a result of the number of submissions received. The key issues discussed relate to traffic, building setback and visual and acoustic amenity impacts discussed.

On 22 June 2017, a briefing was conducted by Council staff with the Sydney Central City Planning Panel. The application was delayed due to the lack of progress of the discussions between the applicant and the RMS in relation to the Memorial Avenue upgrade and the unresolved issue of the proposed access arrangement. Through the request of the applicant, a further briefing was conducted by Council staff with the Panel on 11 April 2018 outlining the delays that have been caused to the assessment of the application due to the unresolved issues with the RMS. In order not to cause further delay the applicant has decided to amend their application by removing the realignment of Hector Court as a temporary access to Memorial Avenue and deleting the medical centre, child care and gymnasium components from their application. Amended plans and supporting documentation were received on 30 November 2018 which was notified to adjoining and surrounding properties including previous objectors. Four submissions were received to the amended plans which included two letters in support of the application.

Assessment of the application was further delayed due to outstanding issues identified by relevant Council staff in the assessment of the submitted plans and documentation in relation to environmental health, landscaping and engineering matters. Outstanding issues were also raised by Sydney Water to the submitted amended drawings in relation to stormwater connection points and the applicant has resolved this matter directly with Sydney Water.

The Development Application is recommended for approval subject to conditions including a deferred commencement condition requiring the registration of a Deed between the applicant and Council in relation to the land swap / closure of Hector Court reported to Council on 26 July 2016.

BACKGROUND

The subject site comprises five parcels of land which include Lot 2 DP 1131540 which portion is subject of a land swap offer by Woolworths with Council in their application to close part of Hector Court to incorporate into their development site for car parking. This road closure and realignment application was the subject of a report considered by Council at its meeting held on 26 July 2016. The report advised, in part:

“On the 22nd March 2016 Fabcot Pty Ltd (Woolworths) lodged a road closure / land exchange application for closure of part Hector Court to incorporate into their development site for car parking. In exchange Woolworths propose to dedicate to Council part Lot 2 DP 1131540, as a temporary public road connecting to Memorial Avenue which will be converted to a landscaped cycleway connecting Hector Court onto Memorial Avenue after construction of Severn Vale Drive. This report recommends that apart road closure and land exchange proceed on the terms detailed in this report.”

The report concluded:

“It is recognised that there is an improved development outcome for Fabcot Pty Ltd with the inclusion of the road closure within their development for car parking but there is also a benefit to Council as summarised below:

- 1. Significantly improved safety for road users with the creation of a realigned 90 degree T-intersection with Memorial Avenue;*
- 2. Access arrangements being maintained throughout the duration of the widening of Memorial Avenue until Severn Vale Drive and associated traffic signalised intersection works are completed; and*
- 3. Creation of a connection into the cycleway system along Hector Court without Council acquiring land for this purpose.*
- 4. This part of Hector Court was proposed to be closed with the future development of the surrounding areas in keeping with Council's Development Control Plan for this area. The land only has value to the adjoining owner for any future development.*

After allowance for the embellishment works at a cost of \$345,590 there is a net compensation differential to Council in the amount of \$349,410 GST Exclusive.

It is recommended that the road closure/land exchange proceed on the terms outlined. A Road Closure Application will be forwarded to Crown Lands NSW for determination and all costs to facilitate the road closure/land exchange including, but not limited to; survey, plan registration, transfer, legal, stamp duty, Crown Lands road closure application fee and advertising will be borne by the applicant. In accordance with Crown Lands procedures the proposed road closure will be advertised following receipt of the application, and submissions may be received up to 28 days from the date of advertisement.

Subject to Council approval of the land exchange a Deed will be entered into between the parties to formalise the proposal and associated costs.”

Council resolved the following:

“Council approve the road closure and land exchange as detailed in this report with the Plan of Road Closure, Deed, Request Documents, Transfer Granting Easement, Section 88B Instrument, Road Closure Application to Crown Lands NSW, Contract & Transfer documents be authorised for execution under seal.”

It should be noted that the process for the preparation and execution of Deed is separate to this Development Application. The process of the land swap deal with Council concerning Hector Court relied on Hector Court being reconfigured/relocated and used as a temporary access to Memorial Avenue. However, the amended scheme seeks to resolve the RMS concurrence issue and no longer proposes any temporary relocation of Hector Court. Attachment 13 shows the plan of subdivision for road dedication which the amended scheme demonstrates. The future upgraded Memorial Avenue roadway not only will be widened and raised in height but has always required the closure of Hector Court. Even if this Development Application was not lodged there would be a problem if Council sought to keep Hector Court open as the road gradients between existing Hector Court and the future upgraded Memorial Avenue do not match. Effectively, this Development Application as amended presents the opportunity for the Council, RMS and Woolworths to work cooperatively in the provision of a significant road infrastructure not only for this development but also for the public benefit of the wider local community. Should this development application be approved the RMS will need to be definitive on their timing of the upgrade of Memorial Avenue given the commitment by the applicant to construct the remaining portion of Severn Vale Drive as part of their application. This is the alternate to relocating Hector Court as Severn Vale Drive will provide access not only to this development but also to the wider local community within the Balmoral Road Release Area as envisaged in the DCP.

On 28 June 2016, a prelodgement meeting was held with the applicant and discussed an early concept design for a proposed village centre development on the subject site. The proposal tabled at the meeting had explored a design option which included a residential component within the development. However, due to the maximum building height control (which was also subject to a draft LEP Amendment to further reduce the building height control), and that Woolworths joint venture partner for the residential component pulled out of the project, the current design does not include any residential component.

The Development Application was lodged on 20 December 2016 and was advertised in the local paper and notified to adjoining and surrounding properties for a period of 31 days. Twenty submissions including a petition containing 55 signatures were received during the exhibition and notification period.

A letter was sent to the applicant dated 17 March 2017 raising a number of issues as a result of Council's staff's preliminary assessment of the Development Application.

As a result of the number of submissions received to the application, a Conciliation Conference was held between the applicant and objectors on 27 April 2017. The issues discussed at the conference were related to traffic, building setback and visual and acoustic amenity impacts. The notes of the conference were sent to the applicant and objectors on 4 May 2017.

A letter was sent to the applicant on 11 October 2017 advising that additional information and amendments requested on 17 March 2017 remain outstanding. The issues and outcomes discussed at the Conciliation Conference were also reiterated and the applicant was requested to advise Council of the status of the requested information and their intent on how they wish to proceed with the application.

A meeting was held with the applicant on 19 October 2017 and discussed the status of the application which was followed up by another meeting on 30 October 2017. At these two meetings, the applicant briefed Council staff of their ongoing discussions with the NSW Roads and Maritime Services regarding the proposed access arrangements associated with their design. The applicant also advised that they escalated this matter to the Roads Minister's Office due to the length of time and stagnation of the project within the RMS. The

applicant in their letter dated 8 November 2017 requested Council to place the Development Application in abeyance as the discussions with the RMS were ongoing.

A meeting was held between Council staff and applicant on 8 February 2018 with the applicant providing an update on progress of their discussions with RMS and suggestions on possible solutions in relation to the proposed access arrangement.

On 2 March 2018, an email was received from the applicant requesting Council staff to brief the Sydney Central City Planning Panel (SCCPP) on the proposal's current design and to advise the Panel regarding Council staff's concerns with the lack of progress with the RMS associated with the Memorial Avenue upgrade works.

A further briefing was held with the SCCPP on 11 April 2018 and discussed a number of issues including the ongoing discussions between the applicant and RMS with Council staff outlining the delays that have been caused to the assessment of the application by the unresolved issue of the proposed access arrangements. The panel advised they will write to RMS to see ascertain the nature of the delay.

On 17 April 2018, the SCCPP acting chair wrote to the chief executive of the RMS seeking assistance on how the outstanding matter relating to access arrangements off Memorial Avenue, the subject of the ongoing discussions between RMS and the applicant can be resolved. The acting chair also wrote to the applicant advising the outcome of the briefing by Council staff and advised that they have written to RMS seeking a resolution to the access arrangement issue.

A follow-up meeting was held with the applicant on 4 May 2018 providing an update of their ongoing discussions with RMS and the status of outstanding information requested previously by Council staff.

On 17 July 2018, the RMS responded to SCCPP advising they have reviewed the matter and would consider left in/left out access arrangement to the site on Severn Vale Drive subject to intersection analysis and amended plans be provided to RMS for further review. The RMS recommends the access to the development site be located as far away as possible to the future traffic signals on Memorial Avenue. The RMS advised that the submitted intersection modelling shows the proposed roundabout (on Severn Vale Drive which is the main access to the site) in close proximity to the future signals will compromise the efficiency of the State Road. This concern was previously raised by RMS with the applicant and Council staff and they requested alternative options be investigated for access arrangements to the site.

Amended plans and additional information were submitted by the applicant on 30 November 2018 together with a written request under clause 4.6 of LEP 2012 to vary the building height standard. The amended plans included the removal of the medical centre, child care centre and gymnasium components from the proposal. The amended plans were exhibited and notified between 4 December 2018 to 31 January 2019. Four submissions including 2 letters in support of the application were received during the exhibition and notification period.

DETAILS AND SUBMISSIONS

Owner:	Fabcot Pty Ltd
Zoning:	Part B2 Local Centre Part SP2 Infrastructure Part R4 High Density Residential
Area:	23,609m ²

Existing Development:	Existing detached dwelling houses and outbuildings
Section 7.12 Contribution:	\$275,189.70
Exhibition:	Yes, 31 days (on 2 occasions).
Notice Adj Owners:	Yes, 31 days (on 2 occasions)
Number Advised:	1 st Notification – 105 2 nd Notification – 109 (including previous objectors)
Submissions Received:	1st Notification - 20 submissions including a petition containing 55 signatures 2 nd Notification – 4 submissions

PROPOSAL

The Development Application initially proposed for the demolition of existing structures and construction of a two storey shopping centre with associated signage which includes 8,026.55m² of commercial gross floor area comprising of a Woolworths supermarket, 5 specialty stores including a BWS liquor store, medical centre, gymnasium, child care centre and two office premises. A portion of the subject site within Lot 2 DP 1131540 is the subject of a land swap offer by the applicant with Council in their application to close part of Hector Court to incorporate into their development site for car parking purposes. This road closure and realignment application was the subject of a report considered by Council at its meeting of 26 July 2016.

The Development Application has been amended in response to issues raised by Council staff which no longer includes the medical centre, child care centre and gymnasium components. Also, the amended application no longer proposes the realignment of Hector Court in a temporary manner eliminating the RMS concurrence as required under the State Environmental Planning Policy (Infrastructure) 2007.

The amended proposal results in the reduction of commercial gross floor area from 8,026.55m² to 7,860m² (a reduction of 166.5m²) which comprises a Woolworths supermarket, BWS liquor store, specialty/retail tenancies, a kiosk and commercial tenancies. The proposed shopping centre will include at grade and upper level car park comprising 312 car parking spaces. The amended proposal however results in a variation to LEP 2012 building height standard as the overall height of the building exceeds the 12m maximum height limit as shown on the Height of Buildings Map in LEP 2012 by 1.05m. The amended application is accompanied by a written request (refer Attachment 18) that seeks to justify the contravention of the building height development standard pursuant to Clause 4.6 (3) of LEP 2012, which is further discussed in Section 4 (c) in this report.

The proposed trading hours are as follows:

- Woolworths supermarket - between 7am and 10pm, seven days a week
- BWS liquor store – between 9am and 10pm Mondays to Saturdays and 10am and 10pm on Sundays

The hours for the individual tenancies (commercial and retail) are not nominated in this application and will be subject to separate approval.

ISSUES FOR CONSIDERATION

1. Compliance with SEPP (State and Regional Development) 2011

At the lodgement of the Development Application, referral to a Joint Regional Planning Panel (now referred to as the Sydney Central City Planning Panel) was required for a development that has a capital investment value (CIV) of more than \$20 million. The proposed development at lodgement has a CIV of \$20,724,410 and therefore the application was referred to the Planning Panel for determination. The SEPP has since been amended which requires DA referral to the relevant joint regional planning panel for determination with a CIV greater than \$30 million, however as the CIV of this development at lodgement was greater than \$20 million, determination of this application will still be by the Sydney Central City Planning Panel.

2. Compliance with SEPP No. 55 – Remediation of Land

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

Clause 7 of the SEPP states:

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

(a) it has considered whether the land is contaminated, and

(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is:

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital - land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Council's Environmental Health Officer has reviewed the Stage 2 Environmental Site Assessment prepared by Environmental Investigation Services (ref. E28883KMrpt_rev2) dated 5 December 2016 submitted with the application. The report concluded that the site is suitable for the proposed use subject to a hazardous materials assessment for the existing buildings to be undertaken prior to the commencement of demolition works. The report also recommended that a further round of ground water analysis is to be undertaken to determine if the originally sampled traces of hydrocarbons are an anomaly.

In this regard, it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP 55. Nonetheless, a condition of consent is recommended to ensure that the ground conditions are monitored during construction and should evidence of imported fill and/or inappropriate waste disposal are found to indicate presence of contamination on site, works are to cease and that a site contamination is to be carried out in accordance with the SEPP (refer Condition No. 73).

3. State Environmental Planning Policy No. 64 – Advertising and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish.

The SEPP was amended in August 2007 to permit and regulate advertisements on road and railway corridors and provide appropriate design and safety controls for these advertisements.

Further changes were made in late 2017 to improve road safety and reduce driver distraction through State Environmental Planning Policy No. 64 – Advertising and Signage (Amendment No 3) and updated Transport Corridor Outdoor Advertising and Signage Guidelines (November 2017) which outlines the best practice for the planning and design of outdoor advertisements in transport corridors such as along or adjacent to classified roads, transitways, railway corridors and rail overpasses.

The proposed business identification signage component comprises a total of 43 signs which include 2 x 12m high pylon signs for Woolworths Supermarket. The first pylon sign will be located on the corner of Severn Vale Drive and Memorial Avenue and the second pylon sign will be adjacent to the driveway exit off Severn Vale Drive which identifies the names and logos of the businesses who are confirmed to occupy the major tenancies within the new centre being the Woolworths supermarket and BWS liquor store. The application also seeks approval for the location and size of signage associated with future tenancies of the centre. A number of signage zones for these future tenancies are shown on the amended plans which form part of this application. These signs will be visible from the car park but are not directly visible from the street. No specific tenants are identified at this stage.

All of the proposed signage is defined as a business identification sign under SEPP 64 as follows:

business identification sign means a sign:

(a) *that indicates:*

(i) the name of the person or business, and

(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

The proposed signs are considered to be consistent with the above definition.

The proposed development is consistent with the assessment criteria included in Schedule 1 of SEPP 64. An assessment of the proposal against these criteria is provided in the following table.

Assessment Criteria	Proposal	Compliance
Character of the Area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	<p>The proposed signage is compatible with the existing and desired future character of the area. The subject site is zoned B2 Local Centre which permits this type of development. The area is characterised by a mix of medical, educational and residential uses.</p> <p>The proposed signage consists of flush wall signs to display business identification signage for tenants of the proposed building on the subject site. The proposed signage will be of a high-quality finish and will complement the existing signage located within the surrounding area and the materials and colours used for the proposed building. The proposed signage will provide visual interest and is consistent with the bulk and scale of other flush wall signs used for similar purposes in nearby shopping centres such as in Wrights Road.</p>	Yes
Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open	It is considered that the proposed signage within the subject site zoned as B2 Local Centre will not detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas,	Yes

space areas, waterways, rural landscapes or residential areas?	<p>waterways, rural landscapes or residential areas.</p> <p>The subject site is not identified as an environmentally sensitive area. The residential areas west and south of the site are unlikely to be impacted by the proposal given the location of the building which serves as a buffer and that no signage faces south of the site.</p>	
<p>Views and vistas</p> <p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>The proposed signage will not obscure or compromise any important views or vistas from or to the site given their location. The proposed height of the pylon sign complies with the LEP maximum building height control. The pylon sign's location is at the same level as that of the at-grade car parking area which will be some 4m lower than the proposed new finished levels of Memorial Avenue due to the need to create a bridge over the trunk drainage to the east of the site (Strangers Creek). It is considered that if the pylon signs were capable of being provided at the same level as that of Memorial Avenue it would be compatible with the building height anticipated along Memorial Avenue and allowing for the signage to be read by passing vehicles as a wayfinding mechanism to the proposed development.</p> <p>The location and scale of the proposed signage will not block the line of sight of any existing advertising and will not be visually dominant.</p>	Yes
<p>Streetscape, setting or landscape</p> <p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p>	<p>The scale, proportion and form of the proposed signage is appropriate for the streetscape as envisaged in the B2 Local Centre zone.</p> <p>The proposed sign will contribute to the visual interest of the</p>	Yes

<p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p>	<p>streetscape, as the signage will be of a high-quality design and appearance and will complement the existing signage located within the surrounding area.</p> <p>The proposed signage will not protrude above buildings, structures or tree canopies in the area and will not require ongoing vegetation management.</p>	
<p>Site and building</p> <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposed signage will be compatible in terms of scale and proportion with the proposed shopping centre and other existing buildings in the area.</p> <p>The proposed signage demonstrates innovation in design thought, by optimising the location with view corridors along Memorial Avenue, Hector Court and Severn Vale Road, whilst not impacting on traffic movements into and out of Kellyville and not impacting on the advertising opportunities of other businesses.</p> <p>The proposed signage has been designed to respect important features of the site and existing buildings in Kellyville through appropriate height and simple design.</p>	Yes
<p>Associated devices and logos with advertisements and advertising structures</p>	<p>The proposed signage contains a backlight to illuminate LED and these backlights have been designed as an integral part of each signage structure. The illumination of the signage is not considered likely to impact on residential properties as the signs do not face to the south of the site.</p>	Yes
<p>Illumination</p>	<p>The subject site is located land opposite Strangers Creek, a</p>	Yes

<p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Is the illumination subject to a curfew?</p>	<p>townhouse development in Hector Court and roadways. As such, the locations of illumination of the proposed signage will be designed so as not to detract from the amenity of any residences. All illumination will comply with the light emission criteria of SEPP 64 and has been designed in accordance with Australian Standards for illumination. Furthermore, the illumination of the proposed signage is not considered likely to adversely impact on adjoining properties.</p>	
<p>Safety</p> <p>Would the proposal reduce the safety for any public road?</p> <p>Would the proposal reduce the safety for pedestrians or bicyclists?</p> <p>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</p>	<p>The location of the signage will not reduce the safety of motorists and pedestrians along Memorial Avenue, and as such, traffic movements to and from the site and surrounding the site will not be affected by the proposed signage.</p> <p>The proposed signage has been designed to avoid any potential issues relating to the safety of pedestrian vehicular traffic and will not obstruct driver sightlines or pedestrian view lines. Furthermore, the construction and installation of the signage will be structurally sound.</p>	<p>Yes</p>

4. Compliance with The Hills Local Environmental Plan 2012

(a). Permissibility

The majority of the subject land is zoned B2 Local Centre with a small portion along the Memorial Avenue frontage partly zoned SP2 Infrastructure (Classified Road) and R4 High Density Residential the under LEP 2012. The proposed shopping centre with associated signage, car parking and retail/commercial tenancies is permissible with consent in the B2 Local Centre zone. The small portion of the land partly zoned SP2 Infrastructure forms part of the proposed Severn Vale Drive connection and new road and includes batters and retaining walls which are works permitted without consent in SP2 Infrastructure zone.

A portion of the land along the southern boundary is zoned R4 High Density Residential. The amended application redesigned the commercial building so as to be clear of the southern boundary for all works by at least 6m, which meant that the amended design is clear of the R4 High Density residential zoned land under the THLEP, except the ground floor level of the supermarket within the commercial premises which extends underground towards the southern boundary and which intrudes into the R4 zoned area of the site. In this regard, the

intrusion of the building into the R4 zone will render this development prohibited in this zone, however LEP 2012 includes provisions under Clause 5.3 to allow “development near zone boundaries” to allow flexibility and to be able to set aside the prohibition in certain circumstances.

The applicant has provided the following commentary addressing the provisions in Clause 5.3:

“5.3 Development near zone boundaries

(1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

Comment: In the circumstances of this case, a flexible approach can be allowed as the amended design as proposed will enable a compatible development in both zones and a proposed development which is consistent with the planning objectives and adjoining approved land use.

(2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 20 metres.

Comment: The portion of the ground floor level supermarket is well less than 20m into the R4 zoned land, and therefore complies with Clause 5.3(2) above.

(3) This clause does not apply to:

(a) land in Zone RE1 Public Recreation, Zone E1 National Parks and Nature Reserves, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone W1 Natural Waterways, or

(b) land within the coastal zone, or

(c) land proposed to be developed for the purpose of sex services or restricted premises.

Comment: The site does not involve land which is listed in Clause 5.3(3)(a) or (b) or (c) as detailed above.

(4) Despite the provisions of this Plan relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that:

(a) the development is not inconsistent with the objectives for development in both zones, and

(b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.

Comment: As detailed below in Table 2 the proposed development is not inconsistent with the objectives of the R4 zone under THLEP. The proposed development is not inconsistent with the objectives of the B2 zone under THLEP. As such the proposal complies with Clause 5.3(4)(a) above.

Comment:

The amended design is a suitable outcome on the portion of the land which is zoned R4 for the following reasons:

- It is located below the existing ground level and will not adversely impact on the amenity of the adjoining apartment development to the immediate south in terms of solar access, privacy and views and therefore it is considered a compatible land use;
- The subject site has access to sufficient energy, water, sewer, road and communication requirements to support the proposed development and therefore has adequate infrastructure capacity; and
- Utilising the provisions of Clause 5.3 of THLEP in this instance will enable the efficient and timely development of the land for the envisaged Memorial Avenue Village Centre which will support the new residential neighbourhood within the Balmoral Road Release Area in which it is situated.

The proposal is considered to be consistent with the relevant objectives of the aforementioned zones, in that it will provide a development which is considered to be the desired outcome in this location of the Balmoral Road Release Area as envisaged in the Development Control Plan. The development has been designed to ensure connectivity and activation of the street edges and frontages. In terms of bulk and scale it will be consistent with the desired built form character of retail/commercial development in this particular location. The proposed development will complement and contribute to the mixture of land uses already present and will enable the creation of a new shopping centre with revitalised streetscapes including a retail supermarket, liquor store, commercial premises and specialty shops.

The proposed development will provide employment opportunities associated with the proposed retail and commercial uses.

The subject site is accessible by public transport and the development proposes on-site bicycle racks, new footpath and bicycle ways network.

The proposal is considered satisfactory in respect to the LEP 2012 objectives and the relevant objectives of B2 Local Centre, SP2 Infrastructure (Classified Road) and R4 High Density Residential zones in this regard.

(b). LEP 2012 – Development Standards

The following addresses the relevant development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.3 Building Height	12 metres	13.05 metres	No, variation proposed. See Clause 4.6 discussion below.
4.4 Floor Space Ratio	1:1	0.517:1	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	A variation to Clause 4.3 Height of Buildings development standard is proposed and addressed below.	Yes

5.1A Reservation Acquisition Map	Land	Portion of the site along its Memorial Avenue frontage is affected by road widening (see Attachment	The proposed development involves batters and retaining walls associated with the proposed Severn Vale Road connection and new road which are "roads" permitted without consent. However, there no works proposed in the portion of the site zoned SP2 and as such the proposed development is considered to be consistent with the SP2 zone objectives.	Yes
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Building Height

As shown in the table above, the proposed development exceeds the maximum building height prescribed in LEP 2012 Height of Building Map for the subject site by 1.05m.

Clause 4.6 of LEP 2012 provides exceptions to development standards. Subclause 4.6(1) of the LEP states the objectives of this clause as follows:

"(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."

Comment:

In *Initial Action Pty Ltd v Woollahra Municipal Council* Preston CJ ruled that applications do not need to be consistent with these objectives.

Subclause 4.6(2) provides that:

(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.

Comment:

Clause 4.3 Height of Buildings development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

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

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

(a) 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.”

A written request has been submitted by the applicant pursuant to the above subclause (refer Attachment 18 for a full copy of the Clause 4.6 variation request). The applicant has advised that in preparing the Clause 4.6 variation regard has been given to the New South Wales Department of Planning and Infrastructure's Varying Development Standards: A Guide, August 2011 and has incorporated the relevant principles identified in the applicable Case law, (established tests) in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1')*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*
- *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*
- *Ex Gratia P/L v Dungog Council [2015] (NSWLEC 148)*

Details of the applicant's written request and comments are as follows:

The applicant has provided the following comments addressing Clause 4.6(3)(a) and (b), i.e.:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Applicant's Comment:

Strict application of the development standard is considered to be unreasonable and unnecessary as the proposed development will be consistent with the stated aims of Clause 4.3 of THLEP:

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

- *In light of the objectives, above which encourage a flexible approach to compliance with design principles where the design of the development responds to the site and its form, strict compliance with the standard under Clause 4.3 is unnecessary because:*
 - i. *The 12m control was created to assist with ensuring future development of the site does not result in an abrupt transition between the R4 High Density Residential zone to the south which permits a building up to 16m in height;*
 - ii. *The design seeks a minor variation of 1.05m or 8.75%;*

- iii. *Strict compliance with the height control will not enable the upgrade and creation of the road infrastructure as proposed to be implemented as part of the project on the site – refer to the reasons listed in Paragraphs 15 a, b, c, d, e, f, g and h;*
 - iv. *The design of the building results in a better outcome particularly as the building allows for disabled access throughout without resulting in unacceptable streetscape presentations, retaining existing perimeter landscaping and allowing for new landscaping;*
 - v. *The design provides for an improved public domain which has involved setting back the proposal at the Hector Court frontage to enable a high-quality landscaped setting to be created, and a substantial landscaped setback with integrated at-grade parking to the Severn Vale Drive road frontage;*
 - vi. *The proposed development does not result in an unacceptable significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties;*
 - vii. *The proposal minimizes building bulk by designing to include an enclosed loading dock area and as such is compatible with the height, bulk and scale of the existing and desired future character of the locality; and*
 - viii. *The proposal will provide a high quality urban form with transitions to its edges and appropriate land use intensity as the proposal complies with the maximum gross floor area permitted for commercial and retail development.*
- *Strict compliance with the development standard is unnecessary as the development will still achieve the environmental and planning objectives of Clause 4.3, as discussed above.*
 - *Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development standard and would not bring about a good planning outcome, on the following grounds:*
 - i. *The height of the proposed development is consistent with the objectives of the control and overall the development is less than the maximum HOB control for the remainder of the land of 12m, the building generally has a maximum height of 11.4m which is consistent with the character of the B2 zone;*
 - ii. *The proposed development is considered to be compatible with the streetscape along its upgraded Hector Court frontage and the new streetscape to be created to Severn Vale Drive;*
 - iii. *The proposed development will provide a number of direct public benefits in the provision of upgraded and widened Hector Court, new cycleway, new accessible pathways, new roundabout at the intersection of Grace Crescent and new road infrastructure to service the wider precinct being the enhanced collector road Severn Vale Drive;*
 - iv. *The development during its construction phase will generate a number of direct job and in-direct jobs, and when operational the businesses to be operated by Woolworths Group will provide ongoing employment opportunities where limited opportunities for local retail jobs exist;*
 - v. *The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscapes or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscapes; and*
 - vi. *The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible.*

For these reasons it is considered that strict application of the HOB control in Clause 4.3 is unreasonable and unnecessary in this circumstance, particularly given that the non-compliance is minor and there are no impacts flowing from the non-compliance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

Applicant's Comment:

The exceedance of the development standard for the lift and associated plant enclosure is a very minor part of the proposed built form change, as the design seeks the inclusion of lift access to allow for maintaining existing landscaped areas while providing accessibility throughout the existing building and land. The minor non-compliance with the development standard is far outweighed by the development achieving the aims in Clause 4.3 in promoting the principles outlined in the Greater Sydney Region Plan – A Metropolis of Three Cities. For example, the development promotes a new centre development with housing stock in a new low density residential urban area which supports:

- Existing urban housing; and
- Improving access within existing residential housing stock and choice.

In this regard, the development is also consistent with the State and regional objectives.

The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of the criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although in the circumstance of this case, the absence of any environmental impact, the request is of considerable merit.

The proposed variation from the development standard is assessed below against the accepted "5 Ways" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46. Whilst the principle applied to SEPP 1, it has been generally applied in the consideration of a request under Clause 4.6 of THLEP, as confirmed in *Four2Five*.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the variation. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).

The five ways described in *Wehbe* are therefore appropriately considered in this context, as follows:

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

Clause 4.3 does have stated objectives, and it is considered that the variation still achieves the stated objectives of the development standard as detailed previously in Table 2 above:

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

The proposed development achieves the above stated objectives for the reasons stated in Table 2, notwithstanding the minor increase in the non-compliances with the HOB standard.

25. The breach of the HOB standard does not cause inconsistency with the objectives, and therefore the intent of clause 4.3 of THLEP is also achieved.

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

There are stated objectives of the standard in Clause 4.3 and as discussed above, the objectives of Clause 4.3 are relevant to the development and can be maintained by the proposed variation.

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

As the stated previously the objectives of the standard can still be maintained, and therefore the purpose will not be defeated or thwarted by the variation requested and strict compliance is unreasonable.

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

It is noted that Council has varied the HOB standard from time to time based on the merits of each case.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Not applicable.

Sufficient environmental planning grounds to justify the contravention

The Statement of Environmental Effects prepared for this Development Application provides a comprehensive environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There are robust justifications throughout the SEE and Addendum SEE and accompanying documentation to support the proposed development and contend that the outcome is appropriate on environmental planning grounds.

The particular circumstances of this case distinguish it from others as detailed above.

Is the variation in the public interest?

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

The objectives of the standard have been addressed in Table 3 and are demonstrated to be satisfied. The proposal is consistent with the zone objectives and permissible in the zone. Each of the objectives of the zone are addressed below.

“To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.”

Comment:

The proposed development involves a building, which includes proposed uses which are considered to be compatible with other desired and earmarked land uses of nearby land.

The proposed development is compatible with other land uses as it is permissible, has been designed to ensure connectivity and activation of the street edges and frontages. In terms of bulk and scale, the proposal is consistent with the desired built form character of retail/commercial development in this location of the Balmoral Road Release Area.

The proposed development will complement and contribute to the mixture of land uses already present and will enable the creation of a new much needed proposed Memorial Avenue Village Centre Kellyville development in the Balmoral Road Release Area at Kellyville by providing new streetscapes including, retail supermarket, liquor store, commercial premises which include specialty shops.

“To encourage employment opportunities in accessible locations.”

Comment:

The proposed development will ensure that the new commercial and retail uses / activity are complementary to the existing approved nearby development within Kellyville.

The proposed Woolworths retail uses within the development (supermarket and BWS) will employ approximately 200 people inclusive of the creation of a number of trainee positions and apprenticeship positions; and

The potential for another 80 jobs associated with the office/commercial premises and specialty shops.

The proposed development will have several positive social and economic effects in the locality, which are considered to mitigate any adverse economic impacts, including

- meets consumer demand from the growing community of Kellyville;
- provide shopping facilities and a wide range of retail products, choices and price competition in The Hills Shire LGA;
- generates permanent employment with direct jobs on-site in the retail/commercial use development and indirect flow-on jobs;
- generates construction employment with direct and indirect jobs; and
- provides for a new streetscape and location for social activity that contributes to building a sense of place, identity, community and social cohesion.

“To maximise public transport patronage and encourage walking and cycling.”

Comment:

The proposed development will contribute to the desired future character of the Balmoral Road Urban Release Area and proposed Memorial Avenue Village Centre Kellyville development will support the needs of the local community in a location close to public transport, while at the same time providing new patronage opportunities. The site proposes on-site bicycle rails and new footpath connects where no exist today to the local bicycle and footpath network.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the HOB standard is in the public interest.

Matters of State or Regional Significance (Cl.4.6(5)(A))

Clause 4.6(5) of THLEP states:

(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.*

The matters for consideration in Clause 4.6(5) have been addressed below.

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning”

Comment:

The minor non-compliance with the development standard does not raise any matters of significance for State or regional planning as the development meets the underlying objectives of the development standard.

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

Comment:

As the development substantially complies with the stated objectives of the development standards, there is little utility in requiring strict compliance with the development standard for an otherwise compliant development. There is no public benefit of maintaining the development standard in this circumstance.

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

Comment:

It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately addressed as part of this Clause 4.6 variation request.

There is no prejudice to planning matters of State or Regional significance resulting from varying the development standard as proposed by this application.

The public benefit of maintaining the standard (Cl.4.6(5)(B))

Pursuant to Ex Gratia P/L v Dungog Council (NSWLEC 148), the question that needs to be answered is “whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standards, whilst better planning outcomes are achieved.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.3 of the THLEP, that:

- a) Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;*
- b) There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this case;*
- c) The development meets the objectives of the development standard and where relevant, the objectives of the B2 zone, notwithstanding the variation;*
- d) The proposed development is in the public interest and there is no public benefit in maintaining the standard;*
- e) The proposal results in a better planning outcome in that a compliant scheme would result in a loss of access throughout the existing site which does not impact adjoining properties or result in a loss of at surface landscaping;*
- f) The non-compliance with the HOB does not result in any unreasonable environmental impact or adverse impacts on adjoining occupiers. It is considered the proposed height is appropriate for the orderly and economic use of the land and is consistent with character of this location; and*
- g) The contravention does not raise any matter of State or Regional significance.*

Comment:

The above Clause 4.6 variation request to Clause 4.3 of LEP 2012 is supported as it has demonstrated that the strict application of the development standard to the development is both unreasonable and unnecessary given that:

- The 12m control was created to assist with ensuring future development of the site does not result in an abrupt transition between the R4 High Density Residential zone to the south which permits a building up to 16m in height;
- The design seeks a minor variation of 1.05m or 8.75%;

- Strict compliance with the height control will not enable the upgrade and creation of the road infrastructure as proposed to be implemented as part of the project on the site;
- The design of the building results in a better outcome particularly as the building allows for disabled access throughout without resulting in unacceptable streetscape presentations, retaining existing perimeter landscaping and allowing for new landscaping;
- The design provides for an improved public domain which has involved setting back the proposal at the Hector Court frontage to enable a high-quality landscaped setting to be created, and a substantial landscaped setback with integrated at-grade parking to the Severn Vale Drive road frontage;
- The proposed development does not result in an unacceptable significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties;
- The proposal minimizes building bulk by designing to include an enclosed loading dock area and as such is compatible with the height, bulk and scale of the existing and desired future character of the locality;
- The proposal will provide a high quality urban form with transitions to its edges and appropriate land use intensity as the proposal complies with the maximum gross floor area permitted for commercial and retail development;
- The height of the proposed development is consistent with the objectives of the control and overall the development is less than the maximum HOB control for the remainder of the land of 12m, the building generally has a maximum height of 11.4m which is consistent with the character of the B2 zone;
- The proposed development is considered to be compatible with the streetscape along its upgraded Hector Court frontage and the new streetscape to be created to Severn Vale Drive;
- The proposed development will provide a number of direct public benefits in the provision of upgraded and widened Hector Court, new cycleway, new accessible pathways, new roundabout at the intersection of Grace Crescent and new road infrastructure to service the wider precinct being the enhanced collector road Severn Vale Drive;
- The development during its construction phase will generate a number of direct job and in-direct jobs, and when operational the businesses to be operated by Woolworths Group will provide ongoing employment opportunities where limited opportunities for local retail jobs exist;
- The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscapes.

5. Compliance with The Hills Development Control Plan 2012

The Development Application has been assessed against the relevant parts and sections of The Hills Development Control Plan 2012, as follows:

(A). Part D Section 7 – Balmoral Road Release Area

The proposed development has been assessed against Section 8.6 which applies to land at the junction of Memorial Avenue, Hector Court and Severn Vale Drive as shown in Figure 8 below.

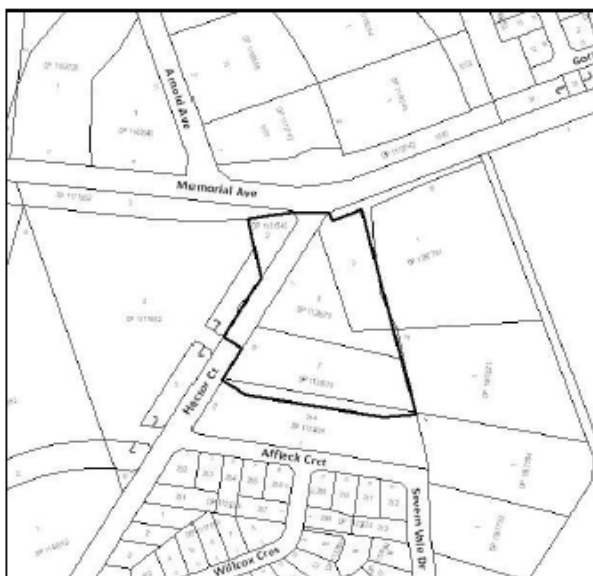


Figure 8 Memorial Avenue Village Centre location

This Section is to be read in conjunction with other relevant Sections of The Hills DCP including Part D Section 7 – Balmoral Road Release Area and Part B Section 6 – Business.


Village centres are an important part of the overall hierarchy of centres in the Shire. The objectives of such centres is to provide a range of retail and other uses to meet the weekly convenience shopping needs of residents. The scale of such centres is to be in keeping with surrounding residential character. The village centre environment should provide residents with a place to meet. It should be easily walkable, located close to dwellings and accessible by public transport.

The objectives and development controls prescribed in the DCP aim to promote retail/commercial development that focus on creating a vibrant and connected village centre.

Assessment against the relevant requirements in this section of the DCP is shown in the table below:

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
8.6 Memorial Avenue Village Centre, Kellyville			
8.6.1 Site Requirements	(a) The village centre is to be developed as a single amalgamated site, incorporating the entire land zoned B2 Local Centre as outlined in Figure 8.	The proposed development is located wholly within the site as outlined in Figure 8. A land swap is proposed for the north western portion of the site in a separate application lodged by Woolworths with Council to	Yes

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>close part of Hector Court to incorporate into the development site for car parking. Council has resolved to approve the road closure and land exchange at its meeting held on 26 July 2016.</p> <p>(b) Consent may not be granted to an application that isolates an area of land that is not capable of being developed in a manner that achieves a cohesive outcome for the centre.</p> <p>(c) Where a development application seeks to develop only part of the village centre land evidence will need to be submitted to demonstrate:</p> <ul style="list-style-type: none"> • All reasonable attempts have been made to secure the entire land; and • Land not included in the development proposal will not be isolated and is capable of being developed in a manner that achieves a cohesive outcome for the centre. 	<p>The process for the preparation and execution of the Deed is a separate matter to this application.</p> <p>No portion of the land identified in Figure 8 will be isolated.</p> <p>No isolated sites are involved or will be created.</p>	<p>Yes</p> <p>Not relevant</p> <p>Yes</p>
8.6.2 Function and Uses	<p>(a) Provision of a range of supporting commercial uses is encouraged within the village centre such as child care, health care, ATM.</p> <p>(b) Retail uses are to be</p>	<p>A range of commercial uses such as a supermarket, liquor store and retail and commercial tenancies are proposed in this application.</p>	<p>Yes</p> <p>Yes</p>

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>located on ground level and primarily fronting Severn Vale Drive. A reduced setback to a minimum of 2 metres will be considered to activate the Severn Vale Drive frontage.</p> <p>(c) Ground level uses must provide active frontages with facades glazed in a 'shop front' manner. The following are also encouraged in these locations:</p> <ul style="list-style-type: none"> • Café or restaurant • Outdoor dining • Active office uses such as reception on ground floor. 	<p>Setback from Severn Vale Road is 17.5m to allow for parking, circulation, landscaping and presentation of shop fronts facing Severn Vale Road, which will be capable of accommodating a wide range of uses such as cafes', and restaurants, and other similar retail uses.</p>	
8.6.3 Accessibility	<p>(a) The development connecting to Memorial Avenue is to have regard to the Roads and Maritime Services Strategic Design Plan (draft concept) for the upgrade of Memorial Avenue as shown below:</p>  <p>Figure 9 Extract RMS Strategic Design Plan in vicinity of village centre.</p> <p>(b) The development is required to demonstrate that adequate arrangements have been made to the satisfaction of Council and the Roads and Maritime Services to assist the provision of traffic signals at the Memorial Avenue and Severn Vale Drive intersection.</p>	<p>The proposal has been designed and guided by the RMS drawings for the widening of Memorial Avenue.</p> <p>The RMS in their letter dated 17 April 2019 does not support the application in its current form due to the proposed roundabout's close proximity to the future traffic</p>	<p>Yes</p> <p>No. This matter is discussed below.</p>

DEVELOPMENT STANDARD	DCP REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	<p>(c) A pedestrian connection is to be established through the development between Hector Court and Severn Vale Drive. The development is also to incorporate pedestrian connection to the open space link alongside Hector Court and the cycle way link alongside the storm water management land to the east.</p>	<p>signals on Memorial Avenue in that it will compromise the efficiency of the State Road network.</p> <p>The proposed site development allows for a pedestrian connection through the retail development along its frontage internally.</p>	<p>Yes</p>
<p>8.6.4 Public Domain</p>	<p>(a) A central space should be incorporated into the design to encourage social interaction.</p> <p>(b) Development shall capitalise on views across the site, particularly to Kellyville Memorial Park.</p> <p>(c) Public domain elements such as street trees, paving, street furniture, lighting and signage are to be consistent and create local character.</p>	<p>The proposed development includes a central space at both levels capable of allowing people to gather for social interaction, being the forecourt.</p> <p>The first floor level will have views over Strangers Creek reserve and filtered views to Kellyville Memorial Park to the east.</p> <p>The proposed development seeks to provide for a new public domain and as a landmark in this part of the Balmoral Road Release Area as a new village shopping centre envisaged in both LEP and DCP.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

General Development Controls			
<p>4. Roads</p> <p>4.1 Local Road Hierarchy</p>	<p>(a) The street and road network should conform to the pre-planned road layout as shown on the accompanying development control plan map.</p> <p>(b) Internal intersections are to be T-junctions, roundabouts or controlled by other appropriate traffic management treatments to slow and control traffic.</p> <p>(c) An Acoustic Report prepared by a suitably qualified consultant is to be submitted with all development applications for land adjacent to existing or proposed arterial roads or bus transit way and should comply with the Department of Environment Climate Change and Water publication "Environmental Criteria for Road Traffic Noise" (May, 1999).</p> <p>(d) For roads that cross natural drainage lines, the construction of bridges with raised approaches is preferred to culverts in order to maintain stream corridor function. Any works within, or alterations to, natural drainage systems will require the necessary approvals of the Office of Water as well as consideration of the Fisheries Management Act 1944 for dredging or reclamation works.</p> <p>(e) Roads constructed across waterways are to be designed and constructed with reference to the Department of Primary Industries preferred waterway crossing design documented in "Why do Fish Need to Cross the Road? Fish Passage</p>	<p>Satisfactory</p> <p>Satisfactory</p> <p>Satisfactory</p> <p>Approval from the Officer of Water (now referred to as the NRAR) is not required as per the agency's advice dated 13 March 2019.</p> <p>Not relevant</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p>

	<p>Requirements for Waterway Crossing” (NSW Fisheries 2003).</p> <p>(f) Where culverts are required to be constructed across natural drainage lines, light wells are to be provided in the centre of the road.</p> <p>(g) Direct vehicular access to arterial roads will not be permitted where alternate access is available. Access will not be restricted to any property with existing access from arterial roads until such time as alternate access is available.</p> <p>(h) Wherever shown on the BRR map and wherever else possible, roads are to be located along and adjacent to public open space, drainage lands or other public lands. Where roads front open space, drainage land or riparian corridor land, the costs associated with their construction is the responsibility of the developer.</p> <p>(i) Driveway access should be avoided within 30 metres of signalised intersections.</p> <p>(j) Street networks are to conform to the requirements set out in Table 1: Street Types.</p>	<p>Not relevant</p> <p>Vehicular access points are through Severn Vale Drive and Hector Court. No direct access to Memorial Avenue.</p> <p>The applicant is proposing to construct and dedicate Severn Vale Drive within the development at no cost to Council.</p> <p>Driveway access is approximately 100m away from the proposed signalised intersection of Memorial Avenue and Severn Vale Drive.</p> <p>Satisfactory</p>	<p>N/A</p> <p>Yes</p> <p>Yes, conditions applied. See Condition Nos. 23 and 91.</p> <p>Yes</p> <p>Yes</p>
4.2 Road Design and Construction	<p>(a) Any development connecting to Memorial Avenue is to have regard to the Roads and Maritime Services Strategic Design Plan (draft</p>	<p>The proposal has been designed having regard to the RMS Strategic Design Plan.</p>	<p>Yes</p>

	concept) for the upgrade of Memorial Avenue as contained in Appendix A.		
	(b) On collector roads that function as two-way bus routes, a travelled way allowing unobstructed movements in both directions is required. Safety at bus stops, particularly the overtaking of stationary buses, is also an important design consideration. Speed control through design is a fundamental principle of this Section of the. Unobstructed movement in one lane as well as passing opportunities.	Not relevant	N/A
	(d) The design of the carriageway is to discourage motorists from travelling above the intended speed by reflecting the functions of the street in the network. In particular the width and horizontal and vertical alignment is not to be conducive to excessive speeds.	Not relevant	N/A
	(e) Roundabouts, street cross falls, longitudinal gradient, vehicle-turning movements and sight distances are to comply with Council's Design Guidelines Subdivisions/Developments (June 1997)	Satisfactory	Yes
	(f) Carriageway widths for each type of street are to be as specified in Table 1: Street Types.	Satisfactory	Yes
	(g) Minimum verge widths for each street type and footpath links are to be as specified in Table 1: Street Types.	Satisfactory	Yes
	(h) Any allotment created on Lot 1 DP 261750 adjacent to Memorial Avenue is to be accessed via a minimum 4	N/A	N/A

	<p>metre wide access handle constructed parallel to Memorial Avenue from the proposed cul-de-sac road. Access to allotments immediately adjoining Memorial Avenue is prohibited from the enhanced collector road.</p>		
	<p>(i) Construction of roads and footpath/cycle paths fronting Open Space or Trunk Drainage as shown on the BRRA map are at the developer's expense</p>	<p>The applicant proposes to construct and dedicate Severn Vale Drive within the development at no cost to Council.</p>	<p>Yes, see Condition Nos. 23 and 91.</p>
	<p>(j) No retaining walls are to be constructed along the edge of roads fronting future or existing public open space, drainage areas or riparian corridor land.</p>	<p>Satisfactory</p>	<p>Yes</p>
	<p>(k) Street trees are to be provided in all subdivisions and will be required to be planted at the time of subdivision construction. Street trees will be protected with tree guards and a 12-month bond will be imposed for each tree.</p>	<p>Satisfactory</p>	<p>Yes</p>
	<p>(l) Street tree planting is to be provided to all streets with a spacing of between 7 and 10 metres, with a minimum of one tree per lot frontage. Corner lots will have a minimum of two street trees and normally three trees. The location of street trees must complement proposed driveway locations.</p>	<p>Satisfactory</p>	<p>Yes</p>
	<p>(m) Street tree planting will only be permitted, within roads that are to be dedicated to Council as public road.</p>	<p>Satisfactory</p>	<p>Yes</p>
	<p>(n) Street tree species must be in accordance with Council's Street Tree Planting map as shown in Figure 4. Refer to Part C Section 3 – Landscaping for appropriate</p>	<p>Satisfactory</p>	<p>Yes</p>

	<p>street tree species along 'Access Streets'. Also refer to Part C Section 3 – Landscaping for general guidance on street tree planting.</p>		
	<p>(o) All enhanced collector roads are to be planted with a consistent species of tree in order to provide a boulevard treatment of the streetscape.</p>	Satisfactory	Yes
	<p>(p) All plans documenting proposed street tree planting must indicate the location of Sydney Water sewer and water pipes including where they enter a public road reservation.</p>	Satisfactory	Yes
	<p>(q) Landscape works in roundabout islands may include low-maintenance groundcover planting and native grasses with a mature height of up to 0.5 metres as well as clear-stemmed tree planting. A metered water supply point and subsurface drainage is required in all small island planter beds.</p>	Satisfactory	Yes
	<p>(r) Access streets located adjacent to arterial roads are to include landscape treatment of the verge adjoining the arterial road. Road verges provide opportunities for unifying the appearance and landscape character of the area and should be provided as a continuous design feature along the length of the arterial road.</p>	N/A	N/A
	<p>(s) Partial width road construction is permitted subject to the following criteria being satisfied:</p> <ul style="list-style-type: none"> ➤ The site(s) located opposite the proposed partial road are zoned for residential use and 	N/A	N/A

	<p>are not in public ownership or identified for acquisition, that is, the site(s) opposite are not zoned for Open Space, Trunk Drainage, Transport Corridor or Educational Establishment;</p> <ul style="list-style-type: none"> ➤ A minimum trafficable road width of 6.0m is provided to cater for two-way traffic, and a 3.5m verge on one side as a minimum; ➤ The development potential of all adjoining allotments is maintained. The proposed development shall not, in the opinion of the consent authority, render any allotment adjoining or opposite the site of the proposed development incapable of development for the purpose of residential development because the allotment would not meet minimum DCP or LEP development standards; ➤ The safety of all road users including service and passenger vehicles, pedestrians and cyclists is not compromised by the proposed partial road construction; and ➤ The final road configuration is consistent with the pre-planned road layout and road type as shown on the accompanying development control plan map. 		
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	<p>Note. In some circumstances where proposed partial width roads straddle existing boundaries, the alignment of the road may need to be slightly offset to ensure the partial road is wholly contained on the applicant's land.</p> <p>(t) Temporary public roads are permitted subject to the following criteria being satisfied:</p> <ul style="list-style-type: none"> ➤ The temporary public road is to be constructed upon a minimum of two (2) residential development lots, except as provided for below; ➤ The temporary public road is not to be constructed upon land zoned for Business, Open Space, Trunk Drainage, Transport Corridor or Educational Establishment, except where the land zoned Open Space is in private ownership. Where a temporary public road is proposed to be constructed on private land zoned Open Space, the applicant will be required to enter into an agreement with Council that the temporary public road be removed and the land reinstated when alternate road access becomes available; ➤ A minimum trafficable width of 6.0m is provided to cater for two-way traffic with 3.5m wide verges on both sides; 	Not relevant	N/A
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	<ul style="list-style-type: none"> ➤ The allotment layout associated with temporary public road construction does not result in the creation of undevelopable residue allotments; ➤ The temporary public road does not compromise the safety of all road users including service and passenger vehicles, pedestrians and cyclists; ➤ The temporary public road is to be constructed to a standard in accordance with BHSC Design Guidelines for Subdivisions/Developments (section 5.07); and <p>The final road configuration is consistent with the pre-planned road layout and road type as shown on the accompanying development control plan map.</p> <p>(a) The village centre is to be developed as a single amalgamated site, incorporating the entire land zoned B2 Local Centre as outlined in Figure 8.</p> <p>(b) Consent may not be granted to an application that isolates an area of land that is not capable of being developed in a manner that achieves a cohesive outcome for the centre.</p> <p>(c) Where a development application seeks to develop only part of the village centre land evidence will need to be submitted to demonstrate:</p> <ul style="list-style-type: none"> • All reasonable attempts 	<p>Satisfactory</p> <p>Satisfactory. Condition is recommended for the consolidation of the lots into a single development lot.</p> <p>No sites will be isolated.</p> <p>Part of the site is subject to a land swap with Council to be used for parking purposes.</p>	<p>Yes</p> <p>Yes, condition applied – see Condition No. 23.</p> <p>Yes</p> <p>Yes</p>
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	<p>have been made to secure the entire land; and</p> <ul style="list-style-type: none"> Land not included in the development proposal will not be isolated and is capable of being developed in a manner that achieves a cohesive outcome for the centre. 		
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(i) Clause 8.6.3 (b) – Arrangements with the RMS and Council re. Traffic Signals at the Memorial Avenue and Severn Vale Drive Intersection

As noted in the table above, the Roads and Maritime Services in their letter dated 17 April 2019 (refer Attachment 17) in response to Council's referral of the Development Application have raised concerns to the proposed roundabout's close proximity to the future traffic signals on Memorial Avenue as it will compromise the efficiency of the State Road network. The RMS has requested that the proposed roundabout should be relocated further away from the future signals (southernmost property boundary) or the access to be restricted to left in/left out access arrangement only. This response was forwarded to the applicant and discussions between the relevant RMS officer and the applicant's traffic consultant have been held. Revised plans have been requested from the applicant's traffic consultant directly by the relevant RMS officer to address the concerns raised in their letter. Such requested revised plans have not been submitted to the RMS at the time of writing this report and the RMS do not support the Development Application in its current form.

Council's Manager – Infrastructure & Transport Planning has reviewed the RMS comments and provided the following comments:

1. When the RMS carried out extensive investigations into the upgrade of Memorial Avenue including SIDRA modelling of the intersection at Severn Vale Drive, they were provided with the relevant zoning plans and lot yields for the Balmoral Road Release Area. Therefore they were aware of the intended development of a shopping centre site on the corner, and they knew it would be either Woolworths or Coles. The RMS consultants based their calculations of intersection performance on this information, and I do not accept that the subsequent submission of the DA then allowed the RMS a second opportunity to decide that the shopping centre would have a detrimental effect on the intersection. I therefore conclude that there is no need for any changes to the design of the Memorial Avenue intersection at Severn Vale Drive - and I note that the RMS have not asked for any change.

2. Severn Vale Drive is a local road under the care and control of The Hills Shire Council, and there is nothing in the Roads Act 2003 that permits the RMS to require works or amendments to proposed works on a local road without Council consent as the Road Authority. In this case I dispute the RMS conclusions, based predominantly of my comments in point 1 above, and advise that no change is needed in the location of the roundabout relative to the signals at Memorial Avenue.

(ii) Section 4.2(i) - Construction of roads and footpath/cycle paths fronting Open Space or Trunk Drainage

Section 4.2(i) of the DCP states that "construction of roads and footpath/ cycle paths fronting Open Space or Trunk Drainage as shown on the BRR map are at the developer's expense."

The development application includes the reconstruction of Hector Court fronting the subject site and the construction and dedication of Severn Vale Drive within the subject site neither of which is covered by the Contribution Plan. Therefore these roads are required to be constructed and dedicated to Council at no cost. The applicant submitted a statement with the development application regarding road construction and dedication which confirms this:

As discussed we confirm that we will build and dedicate back to council Severn Vale Drive. Access to Memorial Avenue will be via Severn Vale Drive but this access will be subject to gaining agreement from the RMS and may occur during the construction of Memorial Avenue.

On the basis of this statement it is clear that the applicant is proposing to construct and dedicate Severn Vale Drive within the development. This statement is quoted in the recommended conditions (refer Condition Nos. 23 and 91).

The construction and dedication of these roads to Council is a fundamental aspect of the development application as they provide access to the proposed development. Without this component forming part of the development application, the development application would otherwise be recommended for refusal.

(B). Part B Section 6 - Business

The proposed development has been assessed against the relevant requirements prescribed in Part B Section 6 – Business as shown in the table below:

CLAUSE	DCP STANDARD	REQUIRED	PROPOSED	COMPLIANCE
2.1	Precinct Plans	Refer to Appendix A – Precinct Plan Maps Sheets 1 – 15.	Not included in the Precinct Plan Maps.	N/A
2.2	Site Analysis	<p>Land with a slope greater than 20% is not suitable for development.</p> <p>Development applications for proposals on land with a slope of between 15-20% must be accompanied by a geotechnical report.</p> <p>Disturbance to existing natural features is to be minimised.</p> <p>Development on land adjoining bushland reserves should incorporate measures (such as greater setback buffers) to prevent any impacts.</p>	Satisfactory	Yes
2.3	Development Sites	The minimum site frontage	Exceeds 60m	Yes

		<p>requirement is 18 metres except Balmoral Road Release Area where the minimum is 60m.</p> <p>Consent may not be granted to an application that isolates an area of land that does not meet the minimum site area requirements.</p> <p>Ensure adequate provision of services has been made (water, sewer, energy, telecommunications and drainage).</p>		
2.4	Floor Space Ratio	<p>Refer to Clauses 4.4 and 4.5 of LEP 2012 and Floor Space Ratio Maps.</p> <p>1:1</p>	0.517:1	Yes
2.5	Setbacks	<p>Single and two storey retail / commercial development located along a public road may utilise a zero setback, other than in those site specific areas specified on the precinct plan maps.</p>	<p>A zero setback is proposed on the western boundary which contains the Woolworths supermarket and associated plant room, toilet facilities and a specialty shop on the ground floor and a commercial tenancy on the first floor fronting Hector Court.</p>	Yes
		<p>For buildings greater than two storeys or 8 metres in height, the remaining storeys are to be set back within a building height plane of 45° starting from a height of 8 metres.</p>	<p>The proposal comprises two storeys. The middle section of the building exceeds 8m but is adequately set back within the prescribed building height plane.</p>	Yes
		<p>6m setback if opposite or adjacent to Residential, Special Uses or Open Space</p>	<p>The ground floor which contains a plant room,</p>	No, variation discussed below.

		zones or as specified on the precinct plan maps in Appendix A. This area can only be used for landscaping and screening purposes or protection of ecological communities.	offices and amenities of the supermarket partly abuts the southern boundary (refer Attachment 7).	
		Redevelopment of any commercial / retail development, operating under existing use rights in a residential zone shall comply with the residential setback applying to the locality.	N/A	N/A
		Written consent is required from Integral Energy for developments proposed within an electricity easement.	N/A	N/A
		Minimum 40m from the top of the bank of the creek or otherwise to the requirements of the relevant concurrence authority.	Subject site is located within 40m of Strangers Creek.	The Development Application has been referred to the Natural Resources Access Regulator (former Office of Water) as an integrated development and advised that a Controlled Activity approval under the Water Management Act 2000 will not be required and no further assessment by NRAR is needed.
		For development affected by a road widening proposal, the minimum setback is measured from the new alignment.	The proposal has been designed and guided by the RMS drawings for the	Yes

			widening of Memorial Avenue.	
2.6	Building Height	Refer to Clause 4.3 and 5.6 of Local Environmental Plan 2012 and Building Height Mapping Sheets for maximum building height requirements.	The proposal exceeds the 12m building height limit and the application is accompanied by a Clause 4.6 variation request which is addressed in Section 4 above.	No. Refer Clause 4.6 discussion in Section 4 above.
		The maximum height of buildings within the B2 Local Centre zone shall be 3 storeys or as specified on the precinct plan maps contained in Appendix A to this Section of the DCP.	The proposal comprises two storeys.	Yes
		For development not in the B2 Local Centre zone, the maximum height of buildings shall be 2 storeys.	N/A	N/A
		For development within the B7 Business Park zone, located in Coonara Avenue, West Pennant Hills, identified on Sheet 4 of the precinct plan maps, no building shall have more than 4 floors.	N/A	N/A
2.7	Building Design & Materials	<p>All external walls of buildings shall be constructed of brick, glass, pre-cast exposed aggregate panels of similar material. However, use of new materials that generate a lower environmental cost will be considered on their merits.</p> <p>Under no circumstances will masonry block work be permitted on external walls.</p> <p>Balconies/terraced areas adjacent to residential zones shall be suitably screened to prevent overlooking and privacy impacts on adjoining properties.</p>	Satisfactory	Yes

		<p>All roof ventilators, exhaust towers and plant equipment is not to be visible from the public domain or residential area.</p> <p>Materials:</p> <ul style="list-style-type: none"> • Use low reflectivity materials on facades. • Avoid materials that contribute to poor internal air quality. • Preference should be given to materials derived from renewable sources or those that are sustainable and generate a lower environmental cost, recycled material or materials with low embodied energy, better lifecycle costs and durability. • Designed in accordance with "Designing Safer Communities Guidelines" with visible entrances, no entrapment spaces and utilise anti-graffiti surfaces. Lighting should be unobstructed, appropriate and vandal proof. • Schedule of external finishes, perspective and landscaping details to be submitted with the DA. 		
2.8	Signage	Refer to Part C Section 2 – Signage of The Hills DCP 2012.	Addressed in sub-section (D) below. The two pylon signs exceed the maximum 10m height limit and the total signage area on the north elevation exceeds the maximum allowed signage area.	No, variation is addressed in sub-section (D) below.
2.9	Hours of Operation	Assessed on merit but must	Woolworths	A condition is

		take into account the operation of loading docks, waste collection services and the use of cleaning/maintenance vehicles, out of hours.	<p>Supermarket – 7am to 10 pm seven days a week.</p> <p>BWS Liquor Store – 9am to 10pm Mondays to Saturdays and 10am to 10pm on Sundays</p> <p>The hours of operation for all the loading dock facilities are proposed from 6.30am to 10.30pm.</p>	recommended by Council's Environmental Health Team to restrict the operation of the loading docks between 6.30am to 10pm Monday to Saturday and between 7am to 10pm Sunday and public holidays. See Condition No. 100.
2.10	Energy Efficiency	<p>The design of all buildings shall demonstrate passive solar design principles:-</p> <ul style="list-style-type: none"> • Window placement; • Building orientation; • Shading; • Insulation; • Thermal mass; • Ventilation; and • Incorporation of suitable landscaping. <p>Min 4 star greenhouse rating</p>	Satisfactory	Yes
2.11	Biodiversity	Refer to Clause 7.4 – Biodiversity (Terrestrial) of LEP 2012.	Not relevant	N/A
2.12	Erosion and Sediment Control	<p>Erosion and Sedimentation Control Plans / measures to be considered.</p> <p>The DA is to be accompanied with an Erosion and Sediment Control Plan (ESCP) prepared in accordance with “Managing Urban Stormwater - Soils and Construction” produced by the NSW Department of Housing.</p>	Satisfactory	Yes
2.13	Fencing	No fencing other than low	No fencing	N/A

		<p>ornamental type may be erected.</p> <p>Fencing along rear boundaries adjacent to drainage or open space shall be integrated with the landscaping.</p> <p>All chain-wire fencing is to be black or dark green.</p> <p>Pre-painted solid metal fencing is not acceptable.</p> <p>Fencing immediately adjacent to Bella Vista Farm Park conservation area shall be simple, low level, rural type timber construction.</p>	details shown on the plan.	
	Landscaping and Tree Preservation	<p>Existing trees, shrubs and groundcovers to be preserved where possible.</p> <p>Landscaping is to harmonise with building designs and consist of trees, shrubs, ground covers and grass (Kikuyu is prohibited in landscaped or lawn area).</p> <p>Landscaping is to be provided in accordance with Part C, Section 3 – Landscaping.</p> <p>Grassed embankments are not to exceed 1:6.</p> <p>All landscaped areas are to have a minimum width of 2.0m.</p> <p>Endangered ecological communities to be preserved and maintained in accordance with a Vegetation Management Plan.</p>	<p>Satisfactory</p> <p>Small sections of the ground level car park have less than 2m wide landscaped setback.</p>	<p>Landscaping conditions recommended.</p> <p>No, variation is discussed in sub-section (C) below.</p>
2.14	Clause Repealed			

2.15	Vehicular Access	<p>Access to a main road is not permitted where alternative access is available or can be acquired.</p> <p>Entry and exit in a forward direction</p> <p>Design to comply with Council's Work Specifications, BHDCP Part C, Section 1 - Parking and the Australian Standards.</p> <p>Driveways from public roads are to be:</p> <ul style="list-style-type: none"> perpendicular to the road within the building setback; separated or divided at the property boundary for ingress and egress movements; sight distances are to be in accordance with Part D, Section 1 – Parking and Council's Design Guidelines for Subdivisions / Developments. 	<p>No direct vehicular access is proposed to and from Memorial Avenue.</p> <p>Vehicular access is through Severn Vale Drive and Hector Court.</p>	Yes
2.16	Car Parking	<p>Address THDCP Part C, Section 1 – Parking.</p> <p>All driveway and parking areas to be screened by a minimum 2m wide landscaped strip.</p> <p>Parking areas are to have 2m wide landscaping strips at a rate of 1 for every 10 car parking spaces and between parking aisles.</p> <p>Stacked car parking will not be included in the assessment of the number of car parking spaces.</p> <p>Parking provision for parents</p>	<p><u>Requirement:</u></p> <p>1 space per 18.5m² gross leasable floor area (GLA)</p> <p>1 space per 25m² gross floor area (GFA)</p> <p>Total parking required – 360 spaces (252 retail and 78 commercial spaces)</p> <p>Total parking proposed – 312 parking spaces</p>	No, variation is discussed in sub-section (C) below.

		<p>with prams is to be provided in accordance with the requirements of THDCP Part C Section 1 – Parking.</p> <p>Disabled parking provision is to be provided in accordance with the requirements of Part D Section 1 – Parking and Council policy entitled “Making Access for All 2002”.</p>		
2.17	Bicycle Parking	<p>Bicycle: 2 spaces plus 5% of total spaces where the development exceeds 5,000m² (either new development or alterations and additions).</p> <p>Bicycle parking should be located in close proximity to the building’s entrance and clustered in lots not exceeding 16 spaces.</p> <p>Each bicycle parking space shall be not less than 1.8 metres in length and 600mm in width and shall have a bicycle rack system.</p> <p>Bicycle parking facilities within car parking areas shall be separated by a physical barrier to protect bicycles from damage by cars, such as curbs, wheel stops or other similar features.</p> <p>Consideration should be given to providing staff change rooms and washing facilities.</p>	<p><u>Requirement:</u></p> <p>Bicycle parking – 17 spaces</p> <p>8 bicycle parking spaces are shown on the revised plans, however there are still available spaces/areas to make it comply..</p>	<p>Will be conditioned to comply with the required bicycle parking spaces. See Condition No. 2.</p>
2.18	Loading Docks	<p>Not visible from public domain and must provide buffer landscaping treatments.</p> <p>Not visible from adjoining residential areas.</p> <p>Loading docks are not to transmit excessive noise.</p>	<p>Satisfactory.</p> <p>Conditions are recommended to mitigate noise impacts from the loading docks.</p>	<p>Yes, conditions applied. Refer Condition Nos. 9, 78 and 95.</p>

		The number of required loading docks for certain development types is outlined within THDCP Part C, Section 1 – Parking. For all other development, a minimum of 1 loading dock space is required.		
2.19	Pedestrian Access and Movement	<p>Pathways and ramps to conform to AS 1428 – 1 – 1998 Design for Access and Mobility.</p> <p>All surfaces should be stable, even and non slip.</p> <p>Street furniture and obstructions should be kept clear of pathways, while overhanging objects should not be lower than 2100mm above pathways.</p>	Satisfactory	Yes
2.20	Parenting Facilities	Parenting rooms are required for new retail developments or extensions of existing retail developments which exceed 3,000m ² in gross floor area.	Provided	Yes
2.21	Stormwater Management	<p>Two WSUD principles must be implemented into the development. These measures are:-</p> <ul style="list-style-type: none"> • M1 Low Impact Building Design • M2 Low Impact Landscape Design • M3 Porous Paving • M4 Rainwater Utilisation – toilet, hot water • M5 Grey Water Utilisation – toilet • M6 On-site Infiltration System • M7 Stormwater Treatment System • M8 Infiltration or Retention Basin • M9 Stormwater Utilisation – irrigation • M10 Grey Water Utilisation – irrigation <p>Details on the actions</p>	Satisfactory	Yes

		<p>required to implement these measures are included in Appendix B – Water Sensitive Urban Design of the DCP.</p> <p>Consider satisfactory stormwater collection, discharge and drainage system design against Council's Work Specifications.</p> <p>Development proposals should not result in the filling of flood liable land or the erection of buildings on flood liable land.</p> <p>Reference should be made to the Restriction As to User on the title of the land, or the development consent to which the development is proposed in relation to requirements for on-site detention.</p>		
2.22	Waste Management – Storage and Facilities	<p>All waste areas to be screened from the street and adjoining properties.</p> <p>Adequate storage for waste materials must be provided on site and are not to restrict access to parking spaces.</p> <p>Waste storage areas to be kept clean and tidy.</p>	Satisfactory	Yes, relevant waste management conditions applied. Refer Condition Nos. 11, 12, 13, 37, 55, 101, 102 and 103.
2.23	Waste Management	WMP required to be submitted and address demolition, construction and ongoing use requirements.	Satisfactory	Yes
2.24	Heritage	All development should be in accordance with Part C Section 4 – Heritage and Clause 5.10 <i>Heritage Conservation</i> of The Hills LEP 2012.	N/A	N/A

2.25	Development Contributions	Address Council's Section 94 Contributions Plans.	To be conditioned.	Condition applied. Refer Condition No. 35.
2.26	Site Investigation	<p>A contamination assessment report is to be submitted with any Development Application for the Wrights Road Precinct as referred to on Sheet 12 in Appendix A 1.to this Section of the DCP.</p> <p>A validation report will be required at the completion of works to ensure the remediation is sufficient to enable appropriate use of the site.</p>	Satisfactory. Condition recommended to require a site contamination investigation should evidence of inappropriate	Condition applied. Refer Condition No. 73.
2.27	Pollution Control	<p>The use of mechanical plant and equipment may be restricted where sites are located near existing and proposed residential areas.</p> <p>Any machinery or activity considered to create a noise nuisance must be adequately soundproofed in accordance with the provisions of the Protection of the Environment Operations Act 1997.</p> <p>Incinerators are not permitted for waste disposal.</p>	Satisfactory, Conditions recommended to ensure compliance.	Yes, condition applied. Refer Condition Nos. 9, 74, 78, 83, 95, 96 and 98.
2.28	Bulky Goods Premises- Additional Controls	<p>An individual tenancy within a bulky goods premises development is to have a sales floor area accessible to the public of greater than 500sqm.</p> <p>Bulky goods premises developments are to be designed in accordance with Clause 2.28(b)</p> <p>Flexible design to cater for different future uses.</p> <p>If the development has a boundary with residential land</p>	N/A	N/A

		<p>a 15m wide landscaped buffer must be provided containing acoustic treatment.</p> <p>All loading and unloading activity is to be contained within the building to minimise impacts on residential dwellings.</p> <p>Public toilets are to be provided in a bulky goods premises development at the minimum rate of: -1 male toilet per 1,200 customers visiting the site per day; -1 male urinal per 600 customers visiting the site per day; -1 female toilet per 300 customers visiting the site per day; and -1 unisex disabled toilet.</p> <p>Pick-up areas are to be provided.</p> <p>Provide sufficient manoeuvring areas on site to accommodate large truck movements.</p>		
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(i) Southern Side Setback

The DCP requires a 6m setback if opposite or adjacent to Residential, Special Uses or Open Space zones or as specified on the precinct plan maps and that this area can only be used for landscaping and screening purposes or protection of ecological communities. The proposal does not fully comply with this requirement as the southern side of the ground floor which contains a plant room, offices and amenities of the supermarket partly abuts the southern boundary (refer Attachment 7).

The applicant has provided the following justification for this variation:

“The amended design includes a minimum setback of 6m at surface level from the southern boundary and western boundary, with the supermarket floor being located below, while at the same time allowing for a deep soil planting zone and any proposed retaining wall being off-set from the boundary.”

Comment:

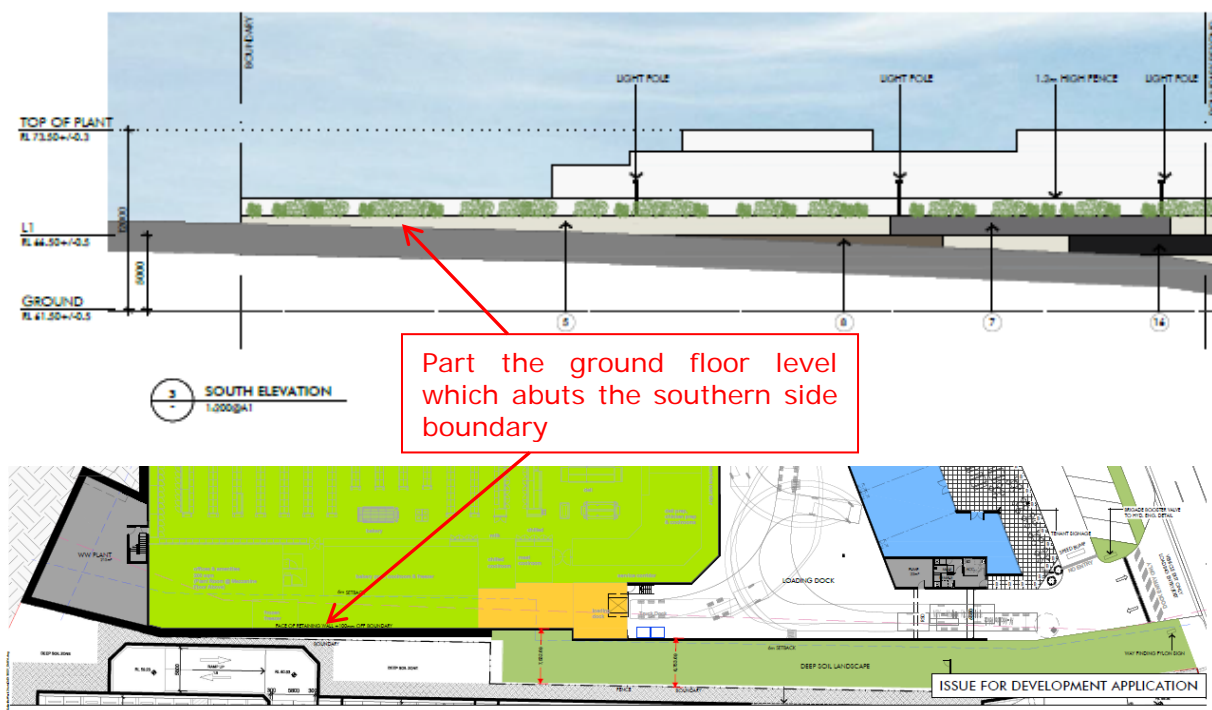
The abutment of the ground floor section of the supermarket which contains a plant room, offices and amenities to the southern boundary is considered acceptable as this section of

the building is not visible from the adjoining property being fully underground and it is unlikely to impact upon the amenity of the future occupants of the adjoining apartment building currently under construction. The variation is compensated by larger setbacks for the remainder of the ground floor level which range from 6.7m to 7.5m and will be provided with deep soil planting (see diagram below which show part of the Southern Elevation and section of the ground floor level). The landscaping plans have been amended providing additional trees along the southern boundary to provide adequate landscape buffer at interface with the adjoining apartment development (refer Attachment 16).

The variation satisfies the following objectives of the setback control:

1. To provide an attractive streetscape and substantial areas for landscaping and screen planting.
2. To ensure adequate sight distance is available for vehicles entering and leaving the site.
3. To minimise overshadowing of adjoining properties.
4. To protect privacy and amenity of any adjoining land uses.
5. To provide a desirable and aesthetically pleasing working environment.
6. To ensure endangered ecological communities are protected.

The variation is supported in this regard.



(C).Part C Section 1 – Parking & Part C Section 3 - Landscaping

(i). Amount of Car Parking Provision

The proposed development has been assessed against the parking requirements set out in DCP 2012 Part C Section 1 Parking as follows:

- Retail – 1 space per 18.5m² GLA
- Commercial – 1 space per 25m² GFA

Applying the above rates, the proposed development would require 360 spaces (252 retail and 78 commercial). It is proposed to provide 312 parking spaces (190 spaces on the ground level car park, 108 spaces on Level 1 car park and 14 at-grade spaces adjacent to Severn Vale Drive), a shortfall of 48 spaces.

The applicant's traffic consultant has provided the following justification for the proposed variation to Council parking requirements, as follows:

"It is noted that parking requirements for similar developments within the Northwest Growth Centre (such as set out in the Kellyville North DCP also located with The Hills LGA) are:

- 1 space per 25m² GFA for supermarkets;
- 1 space per 50m² GFA for other retail; and
- 1 space per 50m² GFA for commercial

Retail GLA is typically at least 75% of GFA. Thus applying the Kellyville North DCP rates (with GLA 75% of GFA), the proposed development would require 277 spaces (198 for the supermarket, 40 for the specialty shops and 39 for the commercial).

By way of comparison RMS guidelines suggest the following rates:

- 4.2 spaces per 100m² GLA for supermarkets;
- 4.5 spaces per 100m² GLA for specialty retail; and
- 1 space per 40m² GFA for commercial.

Applying the RMS rates, the proposed development would require 272 spaces (156 for the supermarket, 67 for the specialty shops and 49 for the commercial). This is a similar parking requirement to that required by the North Kellyville DCP.

Based on the above, provision of some 280 spaces is considered appropriate for the proposed development (based on satisfying the RMS Guidelines and Kellyville North DCP rates). The proposed provision of 298 spaces satisfies this requirement and is considered appropriate.

Comment:

Having regard to the written justification provided by the applicant as outlined in the traffic report submitted with the application, it is considered that the proposed variation is warranted and that the proposed parking provision is appropriate in this instance. It is noted that the site area for the project is diminished by the provision of the new public collector road of Severn Vale Drive and the upgrade of Hector Court roadway. The proposed variation will not set an undesirable precedent because of the public benefit associated with the new public infrastructure which will not be delivered by other land in this location. The variation does not undermine the objectives of the DCP in that satisfactory access, adequate parking provisions, circulation and goods loading and delivery facilities will be provided within the development, and will ensure the efficient flow of traffic through the car parks to minimise the potential for pedestrian and vehicle conflict. It is considered that adequate parking will be provided for the convenient use of employees, patrons and visitors of the development. The variation to car parking is supported in this regard. The required number of bicycle and motorcycle parking, which are not nominated on the plans will be conditioned to comply with the DCP requirements, noting that there are available spaces/areas within the site to accommodate the required amount of spaces.

(ii). Landscape Areas Within the Car Park

Both Part B Section 1 – Parking and Part C Section 3- Landscaping require all driveways and parking areas to be screened by a 2m wide landscape strip. Additionally, the DCP requires car parking areas to have a 2m wide landscaping bay at a rate of 1 for every 10 car parking spaces and between parking aisles.

The proposed car park design does not comply with the landscape requirements of the DCP as there are a few sections within the ground level car park that do not strictly meet the minimum 2m landscaped setback and that there are no landscape bays provided for every 10 parking spaces. The applicant seeks a variation to these requirements and provides the following justification:

The amended architectural drawings include the provision of widened landscaped bays which at the northern and southern “ends” of the central aisle which are well greater than 2m in width in order to off-set the requirement in the DCP seeking the inclusion of a landscaped bay for every 10 parking spaces. Instead of landscaped bays the design includes solar panels on the proposed shade structures in order for the development to provide for additional ESD measures while at the same time mitigating against sun damage.

In addition, at the central circulation break of these aisles landscaped bays of at least 2m in width at the ends of car parking aisles are included.

The design seeks to avoid the inclusion of landscaped bays in location which will enable the planting of replacement trees and also allow for shade sails to be included.

Comment

The objective of the controls is to soften the appearance of extensive hardstand areas and to provide shading within the car park. The provision of widened landscaped bays at the northern and southern ends of the central aisle satisfies the objective and it is considered satisfactory. The shortfall to the required 2m landscaped setback is compensated by larger landscaped setbacks around the ground level car park which range from 4m to 10m. The variation is supported in this regard.

(D). Part C Section 2 – Signage

The Development Application also seeks approval for 43 signs which include 2 pylon signs measuring 12m (height) x 3m (width), the first sign is located at the corner of Memorial Avenue and the future Severn Vale Drive and the second sign is near the entry roundabout from the future Severn Vale Drive. The rest of the signs are a mix of façade, fascia, top hamper, loading dock and directional signs (refer Attachment 13 – Signage Plan). Of the 43 signs, 11 signs will be directly visible from the surrounding streets and the rest will be viewed from the car park as shown on the Signage Elevation – North in Attachment 13.

Total Signage Area on the Northern Façade

Clause 2.4 (Signs in Business Zones Excluding B7 Business Park Zone) in the DCP provides that *the combined sign area of all business and building identification signs located on the frontage of a building or premises will be determined on the basis of 0.5m² of sign per one metre lineal frontage of the building.* The site has frontages to Memorial Avenue, Severn Vale Drive and Hector Court. The signs facing towards these three frontages comply with the above requirement with the exception of the signs facing towards the car park located between Memorial Avenue and the shopping centre on the North Elevation which has a total area of 55.49m². The total length of the building frontage on this elevation is 47.5m which allows a maximum signage area of 23.75m², hence a variation of 31.74m². The applicant seeks a variation to this control and provided the following justification:

“The information below advises, the length of building frontage along ground level northern elevation internally facing towards at-grade car park 47.5m or 23.75m². The total area of signs on this elevation is 55.49m² and does not comply.

It appears that part of the reason for limiting signage along each elevation of a building under the DCP is so as not to distract road users with a proliferation of signs. In this regard, the northern elevation of the proposed shopping centre building is over 90m from the existing and future Memorial Avenue public roadway, which is a sign posted speed limit of 70km/h, and the proposed signage will unlikely be capable of being readable or viewed from that distance and speed. Therefore, it would not be possible for the signage to be distracting to road users of Memorial Avenue and therefore not capable of being considered a proliferation of signage when viewed from a public road.

The intention of the proposed signage is to enable customers who enter the low speed car parking area, particularly along the entry route into the site from Severn Vale Road, and when walking towards the shopping centre from a parked car, to be able to view the details of tenants in the proposed specialty shops. Each future specialty shop tenant has been allocated 1 top hamper sign and 1 under awning sign above entry doorways as shown in the amended architectural drawings.

Comment:

The proposed variation to the maximum signage area allowed on the North Elevation does not undermine the objectives of the Signage DCP in that it does not impact on the existing and future amenity of the streetscape given its location and distance from Memorial Avenue and will not detrimentally obstruct motorists' or pedestrians' vision on any public road.

Height of Pylon Signs

Clause 2.1(f) in the DCP requires that a free-standing pylon sign shall not exceed 10 metres in height, measured from the existing ground level to the top of the structure. The 2 pylon signs proposed near the intersection of Memorial Avenue and the future Severn Vale Drive and near the entry roundabout from the future Severn Vale Drive exceed the 10m height limit. The applicant has provided the following justification in this regard:

“The location and design of the pylon signs is considered to be consistent with the requirement of Council's DCP in Part C Section 2 Signage at 2.4(h), given:

- *The site topography relative to the future roadway of Memorial Avenue also required careful consideration of the position of signs so as to be visible as well. The design, orientation and location of the proposed signage and the type of development requires the business details/information contents of the signs to be readily identifiable from the future public roadway to enable wayfinding to each tenant. The signage is not orientated towards any residential premises where it would cause an impact to residential amenity and will include information only about each future tenant of the building;*
- *the location of the solar panels on the shade structures over the at-grade parking area; and*
- *the proposed pylon signs and locations are consistent with each of the objectives for signs in business zones, which state:*
 - (i) *To provide the opportunity for an approved use to adequately identify the nature of the business conducted on the premises.*
 - (ii) *To ensure through design controls that the signage proposed is in sympathy with the design and architectural treatment of the building.*

(iii) To limit the total advertising area of signage in proportion to the building design.

This variation is requested due to the future reconstructed Memorial Avenue roadway being raised by approximately 5m to enable a bridge to be constructed over the trunk drainage system known as Strangers Creek, to the east of the site when compared to the existing level of Memorial Avenue. The proposal seeks to provide the shopping centre car parking area with minimal changes to existing ground levels adjacent to its northern boundary while also accommodating disabled access throughout the site and seeking to ensure trolleys can be used adjacent to vehicles where the car parking has a 1:40 gradient, therefore the finished level of the proposed car parking area will be some 5m below the level of the new roadway. The purpose of the proposed pylon signs is to assist with wayfinding for vehicles approaching the site and act as markers for entry points, which require the sight distances for approaching customers to be available from the raised roadway. This is reflected in the lower half of each pylon sign not including any signage and effectively raising the visible display areas of the proposed pylon signage by 6m. Any lowering of the proposed signage will impact of the available sight lines and be counter productive for the reasons for their inclusion.

It is noted that the proposed pylon signs are not located adjacent to any residential properties and unlikely to result in any unacceptable impacts on amenity from illumination, and the proposed pylon signs height when viewed from the future reconstructed level of Memorial Avenue will be effectively 6 to 7m.

Comment:

The proposed variation to the maximum 10m height for the pylon signs is considered acceptable in this instance having regard to the topography of the site as highlighted in the applicant's justification. It is considered that the pylon sign will adequately identify the nature of the proposed development and will be sympathetic with the design of the building. The variation is supported in this regard.

6. Issues Raised in Submissions

The application was initially notified and exhibited for 31 days. Twenty submissions including a petition containing 55 signatures were received during the first notification. Given the number of submissions, a Conciliation Conference was held between the applicant and objectors on 27 April 2017.

The application was amended in response to the issues raised at the Conciliation Conference and Council staff in the assessment of the initial proposal. The amended application was re-notified and re-exhibited for a period of 31 days and four submissions including 2 letters in support were received during the notification period.

The issues raised in the submission are summarised below:

ISSUE/OBJECTION	COMMENT	OUTCOME
The proposal will result in increased traffic generation impacts upon low density residential areas to the south of the development. The application does not outline the impacts to surrounding streets such as Florence Avenue, Wilcox Crescent, Pupple Street, Affleck	Council's Principal Roads and Transport Coordinator has reviewed the traffic report submitted with the application. The proposed development is expected to see an increase in traffic generation potential, however following the RMS upgrade of Memorial Avenue,	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
Circuit and the top section of Hector Court. These streets are too narrow and do not allow for a high volume of traffic when vehicles are parked on either side of the street.	the road network is expected to satisfactorily accommodate traffic from the proposed development. No objection is raised from a traffic engineering perspective in this regard.	
Concern was raised regarding access to Memorial Avenue being retained via Hector Court. The application details access from Hector Court to Memorial Avenue will be left in and left out. The Balmoral Road DCP shows Hector court closed into a cul-de-sac and the main arterial traffic pathway to become Seven Vale Drive. This master plan had a major influence in the purchase of our land and building of our house. We strongly oppose Hector Court remaining open as the traffic flows we see now are excessive and the introduction of a shopping complex will only make this situation worse. Hector Court should be closed.	The application has been amended which no longer proposes temporary access via Hector Court.	Issue addressed.
The existing intersection of Hector Court is dangerous particularly for vehicles turning right onto Memorial Avenue.	The application has been amended which no longer proposes temporary access via Hector Court.	Issue addressed.
The driveway entries via Hector Court will increase the traffic volume in particular on Florence Avenue.	The proposed development is expected to see an increase in traffic generation in the area however following the RMS upgrade of Memorial Avenue, the road network is expected to satisfactorily accommodate traffic from the proposed development. No objection is raised from a traffic engineering perspective in this regard.	Issue addressed.
The proposed street parking on Hector Court will not be aesthetically pleasing and will increase noise and air pollution to the community's detriment.	The plans have been amended and street parking on Hector Court is no longer proposed.	Issue addressed.
The upgrade of Memorial Avenue	It is anticipated that the	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>should occur first to ease traffic flows. The traffic report only shows weekday traffic movements. On a weekend at peak shopping times Memorial Ave is a complete car park from end to end. So entering and exiting the shopping centre would be a complete bottle neck if it opened its doors today.</p>	<p>upgrade of Memorial venue will occur prior to this proposed development project being implemented.</p>	
<p>The traffic flow calculations appear to be based on current traffic. A majority of the vacant land left in the Balmoral estate is now registered and ready for building on. As a home can be built in 6-12 months there will be a much larger volume of traffic by the time the shopping centre opens.</p>	<p>Council's Principal Roads and Transport Coordinator has reviewed the traffic report submitted with the application. The proposed development is expected to see an increase in traffic generation potential however following the RMS upgrade of Memorial Avenue, the road network is expected to satisfactorily accommodate traffic from the proposed development. No objection is raised from a traffic engineering perspective in this regard.</p>	<p>Issue addressed.</p>
<p>Arnold Avenue East (McCausland Place) cannot be left in/out only. The road is already very dangerous for people living in Arnold Avenue and the western side of the Balmoral Estate.</p>	<p>This intersection is located on the other (northern) side of Memorial Avenue and is a matter for the RMS to consider as part of the proposed upgrade of Memorial Avenue.</p>	<p>Issue addressed.</p>
<p>With the construction of Rutherford Park (which is directly opposite us) it will see residents park their cars in Florence Avenue to enjoy the park which will create more congestion.</p>	<p>The proposed development is expected to see an increase in traffic generation potential however following the RMS upgrade of Memorial Avenue, the road network is expected to satisfactorily accommodate traffic from the proposed development.</p>	<p>Issue addressed.</p>
<p>There is no provision for residents on Arnold Avenue side of Memorial Ave to access new shops which will only further increase traffic volume on the Hector Court side (and immediate surrounding streets) off Memorial Avenue.</p>	<p>Following the RMS upgrade of Memorial Avenue, the road network is expected to satisfactorily accommodate traffic from the proposed development.</p>	<p>Issue addressed.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>The proposed setback to the southern boundary does not comply with Clause 2.5(c) of the DCP and does not meet the objectives of the control. Part B Section 6 of the DCP applies to all Business zoned land. Clause 2.5(c) of this section requires that 'where business zoned land is opposite or adjacent residential development, the building should be setback a minimum of 6 metres'. The proposed development provides a primarily zero setback to its southern boundary which adjoins residential zoned land and accordingly is inconsistent with the DCP.</p> <p>The height along the southern boundary combined with the non-existent side boundary setback does little to minimise overshadowing, visual impact and loss of privacy. The blank walls on the boundary are not compatible with the adjoining residential development and create a significant adverse visual impact.</p>	<p>The proposal has been amended which includes a minimum setback of 6m at surface level from the southern boundary and western boundary, with the supermarket floor being located below, while at the same time allowing for a deep soil planting zone and any proposed retaining wall being off-set from the boundary.</p>	<p>Issue addressed.</p>
<p>The submitted shadow diagrams indicate that the position of the buildings on the site and the lack of setback will completely remove all solar access to the northern communal and private open space of 2B Hector Court.</p>	<p>The shadow diagrams submitted with amended plans indicate that the apartment development to the south of the site will not be adversely impacted and can maintain solar access to the principal communal open space area for at least 4 hours.</p>	<p>Issue addressed.</p>
<p>The development will impact upon the privacy of adjoining residential properties.</p>	<p>The 6m southern setback area will be suitably landscaped with screen plantings to create a visual buffer.</p>	<p>Issue addressed.</p>
<p>The acoustic impact of the supermarket must consider the proximity to the adjacent residential zone. The noise generating aspects of the supermarket should be located at the central or northern end of the</p>	<p>A supplementary acoustic impact assessment report has been submitted which indicates that the noise control detailed in the report will ensure noise levels from loading dock activities will be</p>	<p>Issue addressed. Conditions applied – see Condition Nos. 9, 78, 83, 96 and 98.</p>

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>site to provide sufficient physical separation to minimise the impact.</p> <p>The location of the loading dock will create unreasonable impact on the adjoining residential zoned land at 2B Hector Court. The non-compliant setback combined with the acoustic report recommendations, demonstrate that the building location is inappropriate.</p>	<p>compliant with the criteria within residential apartments. Additional proposed noise control modifications detailed in the report will result in further noise level reductions of more than 5dB(A) within residential apartments. The report concludes that the noise levels within residential apartments are not expected to exceed 35dB(A), subject to the recommended modifications outlined in the acoustic report being implemented.</p> <p>Given that acoustic treatments will be applied to both the transmission path (Woolworths acoustic barrier) and receiver (acoustic windows to all residential apartments), a considerable measure of conservatism will apply, ensuring compliance with all assessed criteria during the day, evening and night when the loading dock may be active. The report concludes that the proposed loading dock hours of 6.30am-10.00pm are considered acceptable.</p> <p>Council's Environmental Health Officer has reviewed the submitted acoustic report and considered the commercial nature and the justification from the acoustic consultant., and the fact that the loading dock has been enclosed along with the removal of the rear rooftop carpark has also been considered.</p> <p>It is recommended that the operation of the loading dock be Monday to Saturday – 6.30am to 10pm and Sunday and public holidays – 7.00am – 10.00pm.</p>	

ISSUE/OBJECTION	COMMENT	OUTCOME
	The proposal has been amended providing a compliant 6m setback to the southern boundary.	
<p>2nd Notification:</p> <p>Objection is raised to the height as it is over the height limit for the area.</p>	The applicant has addressed the building height variation pursuant to Clause 4.6 of LEP 2012. The variation is considered acceptable and is supported in this regard.	Issue addressed.
<p>Supports this development application as it would provide a range of basic shops within walking distance. At the moment, they have to cross the very busy Windsor Road for even the smallest requirement, usually from the Wrights Road shopping village. Their only concerns are for efficient traffic management, especially when the development of unit blocks along Affleck Circuit is taken into account. This has the potential to make the intersections at Hector Court/Affleck and Severn Vale Road/Affleck quite busy.</p>	Following the RMS upgrade of Memorial Avenue, the surrounding road network is expected to satisfactorily accommodate traffic from the proposed development.	Issue addressed.
<p>No objection is raised in principle against the overall development. However, concern is raised that building and construction continues in the area without the proper upgrade of roads. Since Balmoral Road has been reopened the traffic has substantially increased with early morning commuters using the street as a back way to Fairway Drive to reach Bella Vista, due to the congestion in Bella Vista with the roadworks underway. Vehicles are over-speeding in Balmoral Road during the morning and evening traffic and no action has been taken by Council / the relevant traffic authority.</p>	As noted above, following the RMS upgrade of Memorial Avenue, the surrounding road network is expected to satisfactorily accommodate traffic from the proposed development. It is anticipated that the upgrade works to Memorial Avenue will occur first prior to the implementation of this development.	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
<p>With the constant congestion on Memorial Avenue (which we do not have any firm date on the upgrade) even more traffic will use Balmoral Road if Hector Court is to be closed. It is essential that Memorial Road is upgraded before this development is allowed to commence. It is already congested in the morning and evening in the area raising safety concerns for motorists and pedestrians using Memorial Avenue as access.</p> <p>Hector Court should not be closed until the proper access from Severn Vale Drive is in place.</p>		
<p>They support this application; however their only concern was that Hector Court would be left as a thoroughfare. As Council have confirmed and the applicants have agreed that it will indeed become a cul-de-sac as originally proposed they are more than happy to support the building of this shopping centre and look forward to its arrival.</p>	<p>The application has been amended which no longer proposes temporary access via Hector Court.</p>	<p>Issue addressed.</p>

7. External Referrals

The application was referred to the following external authorities:

- NSW Roads and Maritime Services
- Sydney Water
- Endeavour Energy
- NRAR (former Office of Water)
- NSW Police

NSW ROADS AND MARITIME SERVICES COMMENTS

The Development Application was referred to Roads and Maritime Services (RMS) for comment in accordance with the State Environmental Planning Policy (Infrastructure) 2007. The RMS has reviewed the submitted documentation and advised they do not accept the submitted SIDRA modelling and associated results as it does not comply with their modelling requirements.

The RMS raised concerns regarding the proposed roundabout's close proximity to the future traffic signals on Memorial Avenue as it will compromise the efficiency of the State Road

network. The RMS in their letter dated 17 April 2019 has requested the applicant that the proposed roundabout should be relocated further away from the future signals (southernmost property boundary) or the access to be restricted to left in/left out access arrangement.

It was requested that the requested amendments be forwarded to the RMS for further review and assessment prior to the determination of the application. No response has been received from the applicant at the time of writing this report.

The applicant relies on the amended scheme which no longer proposes any works at the intersection of Hector Court with Memorial Avenue or Arnold Avenue with Memorial Avenue (which previously under the Roads Act did trigger a concurrence from the Roads and Maritime Services (RMS)). In this regard, the applicant suggests that the amended proposal does not involve works to a classified road, and the trigger for a concurrence under the provisions of the Infrastructure SEPP is no longer required.

Council's Manager – Infrastructure & Transport Planning has also reviewed the RMS comments and provided the following response:

1. When the RMS carried out extensive investigations into the upgrade of Memorial Ave, including SIDRA modelling of the intersection at Severn Vale Drive, they were provided with the relevant zoning plans and lot yields for the Balmoral Road Release Area. Therefore they were aware of the intended development of a shopping centre site on the corner, and they knew it would be either Woolworths or Coles. The RMS consultants based their calculations of intersection performance on this information, and I do not accept that the subsequent submission of the DA then allowed the RMS a second opportunity to decide that the shopping centre would have a detrimental effect on the intersection. I therefore conclude that there is no need for any changes to the design of the Memorial Avenue intersection at Severn Vale Drive - and I note that the RMS haven't asked for any change.

2. Severn Vale Drive is a local road under the care and control of The Hills Shire Council, and there is nothing in the Roads Act 2003 that permits the RMS to require works or amendments to proposed works on a local road without Council consent as the Road Authority. In this case I dispute the RMS conclusions, based predominantly of my comments in point 1 above, and advise that no change is needed in the location of the roundabout relative to the signals at Memorial Avenue.

NSW POLICE COMMENTS

The proposal was referred to the NSW Police. No objections were raised to the proposal. A number of Crime Prevention Through Environmental Design (CPTED) conditions of consent have been recommended to ensure that the site is appropriately protected (refer Condition No. 30).

ENDEAVOUR ENERGY COMMENTS

The proposal was referred to Endeavour Energy. No objections were raised to the proposal subject to conditions outlined in their letter dated 13 December 2018 (refer Attachment 18 and Condition No. 31).

SYDNEY WATER COMMENTS

The proposal was referred to Sydney Water. No objections were raised to the proposal. Standard conditions have been imposed (refer Condition Nos. 47 and 82).

8. Internal Referrals

The application was referred to the following sections of Council:

- Subdivision Engineering
- Environmental Health
- Resource Recovery
- Traffic
- Tree Management/Landscaping
- Section 7.12 Contributions

No objection is raised to the proposal subject to conditions.

DISTRICT PLAN

The Central City District Plan contains 'Directions for Productivity' which include:

- A well-connected city – Planning Priority C7 - Growing a stronger and more competitive Greater Parramatta
- Jobs and skills for the city – Planning Priority C10 - Growing investment, business opportunities and jobs in strategic centres.

The plan seeks to ensure that major projects such as the light rail will deliver faster links between business and improved connections for the workforce and visitors. The plan also acknowledges that strong road links and the ease of parking can reduce impacts on road congestion and improve accessibility for works and visitors, along with walking and cycling links.

The plan also seeks to encourage economic growth through retail expansion in key strategic centres which creates economic and employment growth and also results in places which are community gathering spaces, recreation spaces, cultural and leisure spaces.

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 6: *A Metropolis of Three Cities* requires a well-connected Greater Sydney with new jobs, shops and services in well-located centres with efficient transport connections and safe and convenient walking and cycling routes. This creates a 30-minute city.

A well-connected city will be measured against the outcomes achieved by improved access to metropolitan, strategic and local centres.

Potential indicators: Percentage of dwellings located within 30 minutes by public transport of a metropolitan centre/cluster; Percentage of dwellings located within 30 minutes by public transport of a strategic centre.

Direction 7: Greater Sydney's population growth needs to be supported by economic growth that enhances its productivity, export sectors and global competitiveness.

Jobs and skills for the city will be measured against the outcomes achieved by increased business growth and investment, improved transport connections, economic agglomerations and target sectors.

Potential indicator: Increased jobs in metropolitan and strategic centres.

The proposed development meets the intent of the Plan as follows:

- The proposal will meet the demand for retail and complementary uses within the B2 Local Centre zone where such type of development is envisaged to cater for the daily shopping needs of residents within the Balmoral Road Release Area;
- The proposal will result in increased local employment opportunities during both the construction and operation of the development;
- The proposal has a high level of accessibility given the existing bus stops along Memorial Avenue, proximity to North West Metro Rail stations, upgrade works to Memorial Avenue and local roads;

The proposal is considered satisfactory in regard to the Central City District Plan.

CONCLUSION

The Development Application has been assessed against Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy No. 64 – Advertising and Signage, The Hills Local Environmental Plan 2012 and Development Control Plan 2012 and is considered satisfactory.

The application seeks a variation to Council's LEP 2012 in relation to building height and is accompanied by a written request from the applicant to vary this standard. The Clause 4.6 variation request has been assessed having regard to the relevant principles identified in the applicable case laws in a number of Court judgements discussed in the report, and is supported as it has demonstrated that strict compliance with the development standard is considered unreasonable and unnecessary in this instance. The proposal also seeks a variation to DCP 2012 in terms of rear setback, landscaping and car parking. The variations have been addressed in the report and considered acceptable having regard to the site constraints and the public benefit this development will provide to the wider local community.

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

Overall, the proposed development is consistent with the aims and objectives of the B2 Local Centre, SP2 (Infrastructure) and R4 High Density Residential zones and is in keeping with the desired future development envisaged within the Balmoral Road Release Area.

The Development Application is recommended for approval subject to conditions including a deferred commencement condition in relation to the finalisation and registration of the Deed for the land exchange.

IMPACTS:

Financial

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

The Hills Future - Community Strategic Plan

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

RECOMMENDATION

The Development Application be approved subject to the following conditions.

Deferred Commencement – Registration of Deed

- A. Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979 deferred commencement consent is granted subject to:
1. The registration of Deed between the applicant and Council in relation to the road closure and land exchange as detailed in the report to Council on 26 July 2016.
- B. The applicant must provide Council with written evidence demonstrating that the matters listed under Part A1 above have been satisfactorily addressed no later than four weeks before the notice of expiry date.
- C. Upon compliance with the requirements of Part A1, a full consent will be issued subject to the following conditions:

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

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

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	SHEET	REVISION	DATE
10531_DA005	Demolition Plan	-	A	23/11/2018
10531_DA007	Site Plan	-	A	23/11/2018
10531_DA011	General Arrangement Plan Ground Floor	-	A	23/11/2018
10531_DA012	General Arrangement Plan Level 1	-	A	23/11/2018
10531_DA013	General Arrangement Plan Roof Plan	-	A	23/11/2018
10531_DA014	Ground Floor Plan Part 1	-	A	23/11/2018
10531_DA015	Ground Floor Plan Part 2	-	A	23/11/2018
10531_DA016	Level 1 Plan Part 1	-	A	23/11/2018
10531_DA017	Level 1 Plan Part 2	-	A	23/11/2018
10531_DA021	Elevations	1	A	23/11/2018
10531_DA022	Elevations	2	A	23/11/2018
10531_DA031	Sections	-	A	23/11/2018
10531_DA051	Perspectives	-	A	23/11/2018
10531_DA061	Signage Plan	-	A	23/12/2018
000	Landscape Plan Coversheet	-	F	05/03/2019
001	Landscape Masterplan	-	F	05/03/2019
101	Landscape Plan Ground	1	F	05/03/2019
102	Landscape Plan Ground	2	F	05/03/2019
103	Landscape Plan Ground	3	E	16/11/2018
104	Landscape Plan Level 1	4	F	05/03/2019
501	Landscape Details	-	C	21/06/2018

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. Provision of Parking Spaces

The development is required to be provided with 312 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

The development shall also provide the required bicycle and motorcycle parking spaces based on the following rates:

- Bicycle spaces: 2 spaces plus 5% of the total number of car spaces
- Motorcycle spaces: 1 motorcycle parking space for every 50 car parking spaces or part thereof.

3. External Finishes

External finishes and colours shall generally be in accordance with the details submitted with the development application and the drawings provided by Buchan and approved with this consent.

4. Separate application for other signs

A separate application is required to be submitted to, and approved by Council prior to the erection of any advertisements or advertising structures other than the sign(s) approved in this consent.

5. Access to Australia Post

Both pedestrian and vehicle access is to be available to Australia Post at all times, including the loading dock/parking area off Severn Vale Drive and Hector Court.

6. Site Cleanliness

The site is to be kept in a clean and tidy manner at all times.

7. 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.

8. 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.

9. Acoustic Requirements

The recommendations of the Revised noise impact assessment proposed retail development intersection Memorial Avenue, Hector Court and Severn Vale Drive Kellyville, prepared by Reverb Acoustics Pty Ltd, referenced as 16-2021-R3 and dated December 2016 and submitted as part of the Development Application are to be implemented as part of this consent. In particular:

1. Section 4.1 noise control recommendations
 - a. 4.1.3 Ground level plant room
 - b. 4.1.4 Acoustic louvres
 - c. 4.1.5 Acoustic barriers for plant
 - d. 4.1.6 Roof top exhaust plant
 - e. 4.1.7 Substation kiosk
 - f. 4.1.10 Loading dock enclosure
 - g. 4.1.11 Ceiling in loading dock
 - h. 4.1.12 Acoustic barrier for boundaries

10. Ventilation for basement carpark

The basement car park is to be provided with ventilation in accordance with Australian / New Zealand Standard AS/NZS 1668.2 2012.

Any exhaust system from the basement carpark shall be positioned so as to not cause a nuisance due to odour or noise to an occupier of any residential premises.

11. Management of Construction and/or Demolition Waste

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

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

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

12. 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.

13. Construction of Waste Storage Areas

All work involving construction of the waste storage area must comply with the requirements of Council's 'Commercial/Industrial Waste Storage Area Specifications'. A copy of the specifications is available at www.thehills.nsw.gov.au

14. Waste and Recycling Collection Contract

There must be a contract with a licenced contractor for the removal of all waste generated on site. Written evidence of a valid and current collection contract must be held on site at all times and produced in a legible form to any authorised officer of the Council who asks to see it.

15. Tree Removal

Approval is granted for the removal of Trees numbered 1-46, 49 – 53 in Arboricultural Impact Appraisal and Method Statement prepared by Naturally Trees dated 7 November 2016.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

16. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m².

17. Retention of Trees

All trees not specifically identified on the approved plans for removal are to be retained with remedial work to be carried out in accordance with the Arborist report prepared by Naturally Trees dated 7 November 2016 and the following requirements:

- Item 4. Arboricultural Method Statement regarding protection of neighbouring tree 47

18. Construction Certificate – Subdivision Works

Before any works are carried out a Construction Certificate must be obtained and a Principal Certifying Authority appointed. The plans and accompanying information submitted with the Construction Certificate must comply with the conditions included with this consent.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifying Authority for subdivision works.

19. Street Trees

Street trees must be provided for the section of Hector Court and Severn Vale Drive within or fronting the development site spaced between 7m and 10m apart. 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. This includes the street tree masterplan included with the DCP. 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.

20. Recycled Water – Rouse Hill/ Sydney Water

The subject site must be connected to Sydney Water's Rouse Hill Recycled Water Scheme.

21. Water Sensitive Urban Design Requirements

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

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

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

22. 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.

23. Subdivision Requirements

The development relies upon:

- The closure of Hector Court adjacent to Memorial Avenue (as per the planned deed between the developer and Council relating to this matter).
- The extension of the open space link along the north-western edge of Hector Road between the current northern extent of this open space link and Memorial Avenue (as per the planned deed between the developer and Council relating to this matter).
- The construction and dedication to the public of the section Severn Vale Drive within the subject site extending from Affleck Circuit to Memorial Avenue at no cost to Council as per the statement/ undertaking to this effect from the applicant submitted with the development application and dated 05/07/2019.
- The consolidation of the remaining parts of the subject site into a single larger development lot.

A separate development application for subdivision addressing all four matters must be submitted and approved before a Construction Certificate can be issued for the development.

There are separate requirements relating to the timing of the closure of Hector Court and the opening of Severn Vale Drive based on the planned upgrade of Memorial Avenue by the RMS that need to be considered as conditioned also in this consent.

24. Staging Requirements

Elements of the approved works must occur in sequence so as to comply with the following requirements:

- Hector Court cannot be closed at Memorial Avenue until such time as Severn Vale Drive is constructed and connected/ opened to Memorial Avenue (the details of which must be to the satisfaction of both the RMS and Council relative to the planned upgrade of Memorial Avenue by the RMS). This is to ensure the catchment/ area to the south of the subject site maintains road access to/ from Memorial Avenue.
- An Occupation Certificate must not be issued for the development until access to/ from Memorial Avenue is provided via Severn Vale Drive (the details of which must be to the satisfaction of both the RMS and Council relative to the planned upgrade of Memorial Avenue by the RMS).
- All other subdivision works must be completed before an Occupation Certificate is issued (the reconstruction of Hector Court fronting the site and the construction of Severn Vale Drive within the site from Affleck Circuit to Memorial Avenue).

25. 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.

26. Protection of Public Infrastructure

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for

inspecting the public infrastructure for compliance with this condition before an Occupation Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

27. Structures Adjacent to Piped Drainage Easements

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

28. Requirements for Council Drainage Easements

No works are permitted within existing or proposed public drainage easements unless approved by Council. Where works are permitted, the following requirements must be adhered to:

- Provision for overland flow and access for earthmoving equipment must be maintained.
- The existing ground levels must not be altered. No overland flow is to be diverted out of the easement.
- No fill, stockpiles, building materials or sheds can be placed within the easement.
- Open style fencing must be used. New or replacement fencing must be approved by Council.

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 must be provided:

- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

30. Compliance with the NSW Police Requirements

The applicant shall consider the recommendations of the NSW Police as outlined below:

- The car parking area in the basement be painted white to help reflect light.
- Vegetation on site including shrubs and shade trees are to be kept trimmed at all times. Lower tree limbs should be above average head height and shrubs should not provide easy concealment.
- 3-5 metres of cleared space is to be located either side of residential pathways and bicycle routes.

- Communal areas are to be well supervised, by allowing natural surveillance of these sites.
- Lighting should meet minimum Australian standards. Special attention should be made to lighting the entry and exit points from the buildings, car park and access/exit driveways. The access/exit driveways need to be adequately lit to improve visibility and increase the likelihood that offenders will be detected and apprehended. At the same time throughout the site transition lighting is needed to reduce vision impairment, i.e. reducing a person walking from dark to light places.
- Use of a CCTV system to monitor the common open spaces throughout the development, especially if no access control to the area is provided and to monitor access/exit driveway of the lower basement car park, entrances to the tenancies and communal facilities within the site such as in the lifts, in the stairwells, covering the disabled parking and the motorcycle/bike parking. All relevant staff should be trained on how to use the CCTV cameras.
- Implementation of height indicator stickers on the entrance/exit doors. These used in conjunction with CCTV, can give police an indication of an offender's height as they enter or exit, and in turn may assist in the identification of possible offenders.
- Many graffiti vandals favour porous building surfaces, as 'tags' are difficult to remove. Often a ghost image will remain even after cleaning. Easily damaged building materials may be less expensive to purchase initially, but their susceptibility to vandalism can make them a costly proposition in the long term, particularly in at-risk areas. This should be considered when selecting materials for construction.
- All areas of the development not open to the public need to have clear indications of this. Any areas that are restricted should have a sign present so that criminals have no excuse to being in an area they are not supposed to.
- Warning signs should be strategically posted around the building to warn intruders of what security treatments have been implemented to reduce opportunities for crime. E.g. *"Warning, trespasser will be prosecuted."* or *"Warning, these premises are under electronic surveillance."*
- Ensuring the section of the security roller shutter near the manual door release is solid, improved strength to garage doors and better quality locking mechanism would reduce the incidence of crime.
- Magnetic door locking systems linked to Fire Sprinkler alarms ensure that fire exits are used for emergencies only. All fire doors are to be alarmed so that no unauthorised access is permitted. A magnetic strip is also recommended so that the door will shut closed. Signage is recommended on all fire doors to show that doors are alarmed and to only be used in emergencies.
- The development should avoid creating outer ledges capable of supporting hands/feet and balustrades should not provide anchor points for ropes. Also, for any fencing proposed for the development, it is recommended that palings are placed vertically to stop unauthorised access by persons using horizontally placed palings as a ladder to access ground floor units. If spacing is left between each paling, it should be at a width that limits physical access.
- Recommends the use of security sensor lights and a security company to monitor the site while construction is in progress.
- Recommends high quality letterboxes that meet the Australian standards - ISO9001:2008.

31. Compliance with Endeavour Energy

Compliance with the requirements of Endeavour Energy as outlined in their letter dated 13 December 2018 (refer Appendix A).

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

32. Shopping Trolley Management

A geospatial fenced trolley containment system is required to be installed within the proposed and existing centre. All new trolleys are to be fitted with a wheel lock that is enabled before leaving a geospatial area (no access to public land). Details are to be submitted to the PCA prior to issue of the Construction Certificate.

33. 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.

34. Principal Certifying Authority

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

35. Section 7.12 Contribution

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$275,189.70** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

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

You are advised that the maximum percentage of the levy for development under section 7.12 of the Act having a proposed construction cost is within the range specified in the table below;

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

36. Erosion & Sediment Control Plan

Submission of an Erosion and Sediment Control Plan to the Principal Certifying Authority, including details of:

- a) Allotment boundaries
- b) Location of the adjoining roads
- c) Contours
- d) Existing vegetation
- e) Existing site drainage
- f) Critical natural areas
- g) Location of stockpiles
- h) Erosion control practices
- i) Sediment control practices
- j) Outline of a maintenance program for the erosion and sediment controls

(NOTE: For guidance on the preparation of the Plan refer to 'Managing Urban Stormwater Soils & Construction' produced by the NSW Department of Housing).

37. Operational Waste Management Plan

Prior to a Construction Certificate being issued, an Operational Waste Management Plan must be resubmitted to and approved by Council's Resource Recovery Project Officer. The plan must address estimated garbage and recycling generation rates, bin numbers, bin sizes, bin collection frequencies and so on for the Woolworths supermarket and specialty stores. The above must be calculate in conjunction with the estimated commercial and retail waste generation rates found in the NSW EPA's Better Practise Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities.

38. 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.

39. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$150,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated based on the public road frontage of the subject site and the scale of development but paired back in response to the fact the Hector Court and Severn Vale Drive frontages are to be reconstructed/ constructed as part of the approved works and the Memorial Avenue frontage is being reconstructed by the RMS separately.

The bond must be lodged with Council before a Construction Certificate is issued for the building works.

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.

40. Security Bond – External Works

In accordance with Section 4.17(6) 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 for the building works.

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

41. Erosion and Sediment Control/ Soil and Water Management Plan

The detailed design must be accompanied by an Erosion and Sediment Control Plan (ESCP) or a Soil and Water Management Plan (SWMP) prepared in accordance with the Blue Book and Council's Works Specification Subdivision/ Developments.

A SWMP is required where the overall extent of disturbed area is greater than 2,500 square metres, otherwise an ESCP is required.

An ESCP must include the following standard measures along with notes relating to stabilisation and maintenance:

- Sediment fencing.
- Barrier fencing and no-go zones.
- Stabilised access.
- Waste receptacles.
- Stockpile site/s.

A SWMP requires both drawings and accompanying commentary (including calculations) addressing erosion controls, sediment controls, maintenance notes, stabilisation requirements and standard drawings from the Blue Book.

A SWMP is required for this development because of the size of the site/ disturbed area and sensitive area (Strangers Creek) immediately adjacent.

42. Works on Adjoining Land

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

Specifically this relates to the batter and stormwater outlet within the stormwater management zoned land owned by Sydney Water on the south-eastern side of Severn Vale Drive.

Although not included/ required based on the concept subdivision works plan by Henry and Hymas Revision 05 dated 21/06/2019 should the works associated with the roundabout planned at Hector Court/ Grace Crescent need to extend into Grace Crescent (which is a private road belonging to the community plan opposite) then consent for those works must be obtained before a Construction Certificate can be issued as per this condition.

Similarly the construction of Severn Vale Drive within the subject site extending south to Affleck Circuit does not rely on any works within the adjacent development site to the south based on the concept subdivision works plan by Henry and Hymas Revision 05 dated 21/06/2019 however should the need for works upon that neighboring property arise through the detailed design then consent for those works must be obtained before a Construction Certificate can be issued as per this condition.

No works are to occur within the Memorial Avenue road corridor without consent from the RMS beforehand.

43. Stormwater Discharge Acceptance

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

Specifically this relates to the batter and stormwater outlet within the stormwater management zoned land owned by Sydney Water on the south-eastern side of Severn Vale Drive.

44. 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". Works within an existing or proposed public road, or works within an existing or proposed public reserve can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively.

The engineering works must be carried out generally in accordance with the concept subdivision works plan by Henry and Hymas Revision 05 dated 21/06/2019 and the following additional requirements:

- The northern extent of construction in Severn Vale Drive will need to be resolved in coordination with the RMS with respect to their planned upgrade of Memorial Avenue.
- The southern extent of construction in Severn Vale Drive must be extended all the way to Affleck Circuit within the subject site. There is no adjacent development/ development works to the south of the subject site that completes the section of this road greyed out on the concept subdivision works plan.
- The reconstruction of Hector Court must include the removal of the partially constructed cul-de-sac turning head on the northern edge of these works fronting the site.
- The line-marking in Hector Court must exclude the marked parallel/ kerb side parking spaces shown on the concept subdivision works plan.
- The roundabout at Hector Court/ Grace Crescent must be contained wholly to the existing road reserve.
- The design of this roundabout must consider the fourth leg leading to the Level 1 car park and include sufficient detail (including a long-section) showing the levels match the approved architectural plans referred to in Condition 1.
- The verge formation/ batter treatment between Hector Court and the adjacent open space link (and cycleway) must be resolved at the detailed design stage in consultation with Council's Manager – Subdivision and Development Certification.
- The street drainage/ stormwater line at the northern end of Hector Court must be extended north through the planned open space link adjacent to the western site boundary (as adjusted according to the planned deed between the developer and Council conditioned earlier) to Memorial Avenue. The connection to the street drainage in Memorial Avenue must be coordinated with the RMS with respect to their planned upgrade of Memorial Avenue. In addition to the piped drainage a 5m wide overland flow path must be provided along the same alignment so that runoff from Hector Court is contained to the public area and not directed into the ground floor car park.
- The batter and stormwater outlet from Severn Vale Drive near the planned roundabout extending into the stormwater management zoned land owned by Sydney Water (and containing Strangers Creek) must be designed and constructed in accordance with the requirements of Sydney Water and the Natural Resources Access Regulator.

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)
Severn Vale Drive	Road Type: DCP Enhanced Collector Road 4.5m/ 12m/ 3.5m (20m) Pavement Design: Enhanced Collector (Design Guidelines Section 3.12)
Hector Court	Road Type: DCP Access Street 3.5m/ 8.5m/ 3.5m (15.5m) 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 wider 4.5m verge must be located on the eastern side of Severn Vale Drive facing Strangers Creek.

In Hector Court where the existing road reserve width (20.115m) exceeds that required to be provided (15.5m) the additional width is to be evenly distributed on either side of the road carriageway to provide for a wider footpath verge matching the existing section of this road already reconstructed to the south-west.

Roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

All roads are to have a two-way cross fall with a crown in the middle of the carriageway.

With respect to private roads and access driveways the intersection needs to delineate the public road from the private roads and access driveways.

b) Roundabouts

Two roundabouts are required (one each on Hector Court and Severn Vale Drive) generally as shown on the the concept subdivision works plan by Henry and Hymas Revision 05 dated 21/06/2019. A deeper pavement is required under the roundabouts as required by the above documents.

c) Signage and Line Marking Requirements/ Plan

A signage and line marking plan must be submitted with the detailed design. This plan needs to address street name signs and posts, regulatory signs and posts (such as no parking or give way signs), directional signs and posts (such as chevron signs), speed limit signs and posts and line marking, where required.

Thermoplastic line marking must be used for any permanent works. Any temporary line marking must be removed with a grinder once it is no longer required, it cannot be painted over.

Details for all signage and line-marking must be submitted to Council's Construction Engineer for checking prior to works commencing. For existing public roads, signs and line marking may require separate/ specific approval from the Local Traffic Committee.

Street name signs and posts must be provided in accordance with the above documents and Council's Standard Drawing 37. With respect to street name signs specifically private roads must include a second sign underneath which reads private road.

d) Concrete Footpath

A 1.2m wide concrete footpath, including access ramps at all intersections, must be provided on the south-eastern side of Hector Court fronting the site in accordance with the DCP and the above documents.

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided on the western side of Severn Vale Drive fronting the site in accordance with the DCP and the above documents.

e) 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.

f) Stormwater Drainage – Creek Outlets

The piped stormwater outlets/ connection to Strangers Creek must comply with the requirements of Council, the Natural Resources Access Regulator and Sydney Water.

g) Water Sensitive Urban Design Elements

Water sensitive urban design elements consisting of no less than 30 stormfilter PSORB SW360 cartridge systems (or an approved equivalent) as included on the concept subdivision works plan by Henry and Hymas Revision 05 dated 21/06/2019 are to be located generally in accordance with the plans and information submitted with the application. No proprietary products (including pit inserts and the like) are to be constructed within the public roads or other public areas. The need for a gross pollutant trap at the piped stormwater outlets/ connection to Strangers Creek will need to be resolved in consultation with Sydney Water at the detailed design stage.

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.

PRIOR TO ANY WORK COMMENCING ON SITE

45. 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.

46. 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.

47. Consultation with Service Authorities

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

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

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

48. 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.

49. Erosion and Sedimentation Controls

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

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

50. Site Water Management Plan

A soil and water management plan is to be prepared and submitted to the Principal Certifying Authority. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction"* (Blue Book) produced by the NSW Department of Housing.

The plan is to include a documented process for the management, treatment and discharge of stormwater accumulated in open excavations. Water containing suspended solids greater than 50 mg/L shall not be discharged to the stormwater system.

A copy of the plan is to be kept on site at all times and made available upon request. The plan is to be implemented throughout the excavation and construction stages of the development.

51. Erosion & Sediment Control Plan Kept on Site

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

52. 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.

53. 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 offsite 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 must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Asbestos removal must be carried out in accordance with the SafeWork NSW, 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.

54. 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.

55. 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 resubmitted to and approved by The Principal Certifying Authority. 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.

56. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. In order of precedence the location of fencing shall be a) As per Tree Protection Plan as per Arborist report for project or b) Tree Protection Zone (TPZ) as calculated under AS4970 (2009) Protection of trees on development sites c) A minimum of 3m radius from trunk.

The erection of a minimum 1.8m chain-wire fence to delineate the TPZ is to stop the following occurring:

- Stockpiling of materials within TPZ;
- Placement of fill within TPZ;
- Parking of vehicles within the TPZ;
- Compaction of soil within the TPZ;
- Cement washout and other chemical or fuel contaminants within TPZ; and
- Damage to tree crown.

57. Tree Protection Signage

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with AS1319). Access to this area can only be authorised by the project arborist or site manager.

58. Mulching within Tree Protection Zone

Prior to any works commencing on site all areas within the Tree Protection Zone are to be mulched with composted leaf mulch to a depth of 100mm.

59. 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.

60. Erosion and Sediment Control/ Soil and Water Management

The approved ESCP or SWMP measures 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.

61. 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.

62. Roads and Maritime Services Design Approval

The design and construction of the relevant works must be approved by the Roads and Maritime Services before any works commence on that road. A copy of the Roads and Maritime Services stamped approved construction plans must be submitted to Council.

63. Erection of Signage – Supervision of Subdivision 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.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifying Authority for subdivision works.

64. Contractors Details

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.

65. 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 1978 (Cth) specifies where the deployment of optical fibre and the installation of fibre-ready facilities is required.

66. Pavement Design

A pavement design based on Austroads (A Guide to the Structural Design of Road Pavements) and prepared by a suitably qualified and experienced civil or geotechnical engineer must be submitted to Council for approval before the commencement of any pavement works.

The pavement design must be based on sampling and testing by a NATA accredited laboratory of the in-situ sub-grade material and existing pavement material. Details of the pavement design and all tests results, including design California Bearing Ratio values for the subgrade and design traffic loadings, are to be provided.

67. Property Condition Report – Public Assets

A property condition 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.

68. Dilapidation Survey

Prior to work commencing a practicing professional structural engineer shall carry out a dilapidation survey of the adjoining property at Lot 1 DP 1246678 Affleck Circuit, Kellyville NSW 2155 and submit a copy of the survey both to Council and the property owner.

DURING CONSTRUCTION

69. Hours of Work

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

Monday to Saturday - 7.00am to 5.00pm;

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

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

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

70. Roof Water Drainage

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

71. 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.

72. Salinity Requirements

The recommendations of the Salinity Assessment for proposed mixed use development at corner Memorial Avenue and Hector Court, Kellyville, prepared by Environmental Investigation Services, referenced as E28883KMrpt-SAL and dated 23 August 2018 are to be complied with as part of this consent. In particular the following is to be complied with:

1. Section 8 Salinity Management Plan
 - a. 8.1 Earthwork recommendations
 - b. 8.2 Site drainage, surface water and stormwater runoff
 - c. 8.3 Design of build structures

73. 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.

Note: Contaminated soil, soil for which the contamination status is unknown, waste (including but not limited to concrete / bricks / demolition material) is prohibited from being buried, capped, contained or similar onsite (including under public or private roads and land which will become public).

74. Rock Breaking Noise

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

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

75. Removal of Septic Tank and Effluent Disposal Area

The existing subsurface effluent disposal area and any associated wastewater infrastructure is to be removed and back filled with Excavated Natural Material (ENM).

Any redundant septic tank, collection well or aerated wastewater treatment system is to be removed or reused in accordance with NSW Health "Advisory Note 3- Revised January 2017 – Destruction, Removal or Reuse of Septic Tanks, Collection Wells and Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)" available from the NSW Health website (<http://www.health.nsw.gov.au/>).

Note: Methods 1.1 & 2.1 (Demolition) are not permissible.

76. 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.

77. Dust Control

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. A dust management plan is to be developed with a copy submitted to Council.

In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- 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;
- All exposed / disturbed areas which is not an active work area is to be sealed by way of hydro-seeding, hydro-mulching or other soil binding product or turfed; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

The dust management plan must be implemented until the site works are completed and the site is stable and covered in either vegetation or bonding agent. The dust management plan must be provided to any contractor involved in the demolition, excavation, provision of fill or any other dust generating activity.

78. Acoustic – Construction Plans

Prior to the issue of the Construction Certificate a qualified acoustic consultant is to review the construction plans to ensure that all acoustic attenuation components have been included on the plans as per the report: Revised noise impact assessment proposed retail development intersection Memorial Avenue, Hector Court and Severn Vale Drive Kellyville, prepared by Reverb Acoustics Pty Ltd, referenced as 16-2021-R3 and dated December 2016. In particular the following are to be checked.

1. Section 4.1 noise control recommendations
 - a. 4.1.3 Ground level plant room
 - b. 4.1.4 Acoustic louvres
 - c. 4.1.5 Acoustic barriers for plant
 - d. 4.1.6 Roof top exhaust plant
 - e. 4.1.7 Substation kiosk
 - f. 4.1.10 Loading dock enclosure
 - g. 4.1.11 Ceiling in loading dock
 - h. 4.1.12 Acoustic barrier for boundaries

The Principal Certifying Authority is to ensure that this has occurred.

79. Project Arborist

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the PCA within 14 days of completion of the works.

80. 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.

81. 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.

PRIOR TO THE ISSUE OF OCCUPATION OR SUBDIVISION CERTIFICATE

82. Section 73 Certificate

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

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Development and Plumbing section of the web site www.sydneywater.com.au and then refer to Water Servicing Co-ordinator under "Developing Your Land" or telephone 13 20 92 for assistance.

83. Acoustic Compliance Report

The acoustic consultant shall progressively inspect the installation of the required acoustic attenuation components as recommended in the report: Revised noise impact assessment proposed retail development intersection Memorial Avenue, Hector Court and Severn Vale Drive Kellyville, prepared by Reverb Acoustics Pty Ltd, referenced as 16-2021-R3 and dated December 2016. Written certification of its correct installation is to be provided to Council's Manager – Environment and Health prior to the issue of an Occupation Certificate.

84. Loading Dock Stormwater and Wastewater Compliance Report

A detailed report confirming the location of all stormwater drains, wastewater drains and all associated pipework within the loading dock is to be submitted to Council's Manager - Environment and Health prior to the issue of an Occupation Certificate. This report shall include a clear site plan of the loading dock showing all drains that discharge to stormwater and all drains that discharge to the reticulated sewerage system of Sydney Water. The

report shall also include confirmation by an appropriately qualified person that all drains within the loading dock are connected to the appropriate water disposal mechanism.

85. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of any Occupation Certificate (within each stage if applicable). The Landscaping shall be either certified to be in accordance with the approved plan by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

86. Shopping Trolley Management Plan

A Shopping Trolley Management Plan shall be implemented to ensure the effective management of shopping trolley collection. The supermarket retailer shall:-

- Install a geospatial fenced trolley containment plan. All new trolleys are to be fitted with a wheel lock that is enabled before leaving a geospatial area (no access to public land).
- Provide to The Hills Shire Council a list of contacts for the store;
- Ensure that all trolleys are easily identifiable by Council staff;
- Ensure that trolley collection services are sufficiently resourced to enable collection within agreed timeframes and at all times, including after hours;
- Ensure that trolleys reported as posing risk or nuisance are collected immediately on notification;
- Ensure that all trolleys reported are collected within the time frame agreed by Council;
- Inform customers (through clearly visible signage and other means) that trolleys should not be removed from the premises or abandoned, and that penalties apply for the dumping of trolleys outside the retail outlet/complex;
- Provide suitable, well signed trolley bays at exit points; and
- Provide to Council, on request, an up to date map showing usual trolley collection routes and schedules.

87. 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.

88. Property Condition Report – Public Assets

Before an Occupation Certificate is issued, an updated property condition 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.

89. Subdivision Works – Submission Requirements

Once the subdivision works are complete the following documentation (where relevant/ required) must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments and submitted to Council's Construction Engineer for written approval:

- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- Pavement Density Results
- Street Name/ Regulatory Signage Plan
- Pavement Certification
- Public Asset Creation Summary
- Concrete Core Test Results
- Site Fill Results
- Structural Certification

The works as executed plans must be prepared by a suitably qualified engineer or registered surveyor.

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.

A template public asset creation summary is available on Council's website and must be used.

90. 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.

91. Public Road Dedication

An Occupation Certificate must not be issued until Severn Vale Drive is dedicated to the public as road in accordance with the undertaking submitted relating to dedication from the applicant submitted with the development application dated 05/07/2019.

92. 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.

93. Creation of Restrictions/ Positive Covenants

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

a) Restriction/ Positive Covenant – Water Sensitive Urban Design

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

94. Final Dilapidation Survey

On completion of the excavation, the structural engineer shall carry out a further dilapidation survey at the properties referred to in Condition 68 above and submit a copy of the survey both to Council and the property owner.

USE OF THE SITE

95. Acoustic – Maintenance

All approved acoustic attenuation measures installed as part of the development are to be maintained at all times in a manner that is consistent with the approved acoustic report and the consent so that the noise attenuation effectiveness is maintained. This includes but is not limited to:

- Acoustic barriers for mechanical plant and boundaries
- Loading dock enclosure including the ceiling construction
- Vibration isolated stormwater grates used in carparks, on ramps and within the loading dock.

An independent assessment is to be undertaken on sound barriers other than masonry barriers as timber and other materials may warp or be damaged. The independent assessment is to be undertaken every five years with a report kept on site for review by Council officers in the event of complaints relating to noise.

96. Acoustic Operation Requirements

The project specific acoustic criteria for the operation of all mechanical equipment / air conditioning units (whether operating individually or simultaneously) and the loading dock, measured at the boundary of any residential premises are:

Time period	Criteria dB(A)Leq(15min)
Day (7.00am – 6.00pm)	44
Evening (6.00pm – 10.00pm)	44
Night (10.00pm – 7.00am)	39

97. Lighting

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

98. Offensive Noise - Acoustic Report

The 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.

99. Hours of Trading

The trading hours shall be restricted to the following times:

- Woolworths Supermarket - between 7am and 10pm, seven days a week
- BWS Liquor Store – between 9am and 10pm Mondays to Saturdays and 10am and 10pm on Sundays;

The trading hours of individual tenancies (retail and commercial) shall be subject to separate approval, and will be considered on merit depending on the nature of the business.

A separate Development Application will be required for occupation of the retail and commercial tenancies.

100. Hours of operation for waste collection, delivery / dispatch of goods

All delivery / dispatch of goods along with waste collection for the site are restricted to the following times:

Monday to Saturday – 6.30am to 10pm

Sunday and public holidays – 7.00am – 10.00pm

101. Waste and Recycling Management

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

102. Servicing of Bins

Private garbage and recycling contract collection vehicles servicing the development are not permitted to reverse in or out of the site. Collection vehicles must be travelling in a forward direction at all times to service bins.

103. Waste and Recycling Collection

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

104. Compliance with Shopping Trolley Management Plan

At all times shopping trolleys shall be managed in accordance with the implemented Shopping Trolley Management Plan required under Condition No. 86 of this consent,

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Survey Plan
4. LEP 2012 Zoning Map
5. LEP 2102 Height of Building Map
6. Site Plan
7. Ground Floor Plan
8. Level 1 Plan
9. Roof Plan
10. Elevations
11. Sections
12. Signage Plan (2 pages)
13. Plan of Proposed Boundary/Road Re-alignment of Hector Court
14. Perspectives
15. Mid-Winter Shadow Diagrams
16. Landscape Masterplan & Landscaping Along the Southern Boundary
17. RMS Letter dated 17 April 2019
18. Endeavour Energy's Letter Dated 13 December 2018 (7 pages)
19. Clause 4.6 Variation Request (15 pages)

ATTACHMENT 1 – LOCALITY PLAN



□ SUBJECT SITE

✓ PROPERTIES NOTIFIED

NOTE: ONE SUBMISSION RECEIVED
OFF THE SCOPE OF THIS MAP

● SUBMISSIONS RECEIVED -
1ST NOTIFICATION

▲ SUBMISSIONS RECEIVED -
2ND NOTIFICATION

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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

ATTACHMENT 2 – AERIAL PHOTOGRAPH



THE HILLS
Sydney's Garden Shire

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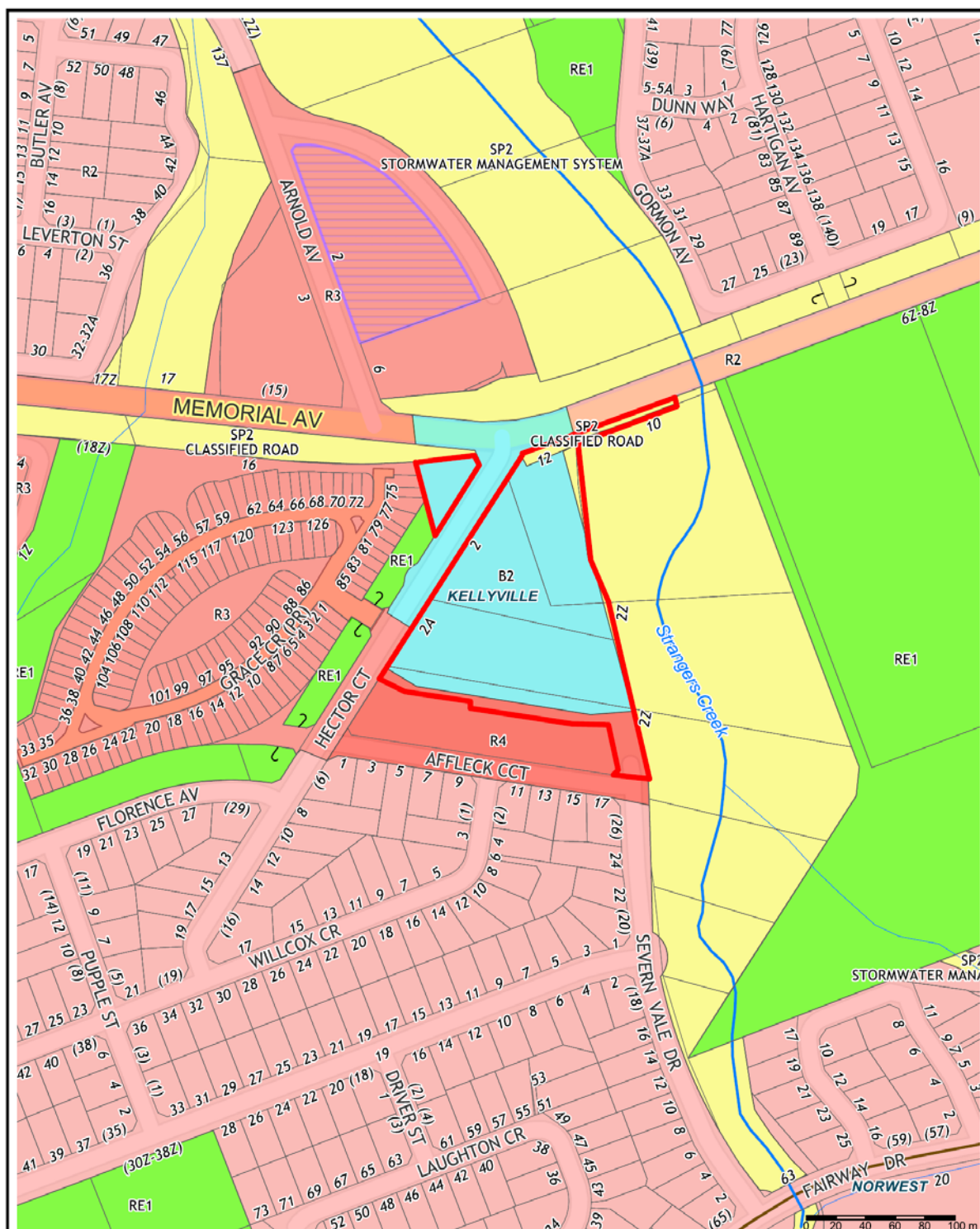
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Copyright of 2012 Aerial Imagery is with Vektia Pty Ltd (Vektia). Sinclair Knight Merz supplier of 2014 Aerial and Near Infrared Imagery. Copyright of 2016 & 2018 Aerial Imagery is with Jacobs Group (Australia).



Scale (A4): 1:3380
Date: 4/05/2019
Prepared by: Claro Patag

ATTACHMENT 4 – LEP 2012 ZONING MAP



THE HILLS
Sydney's Garden Shire

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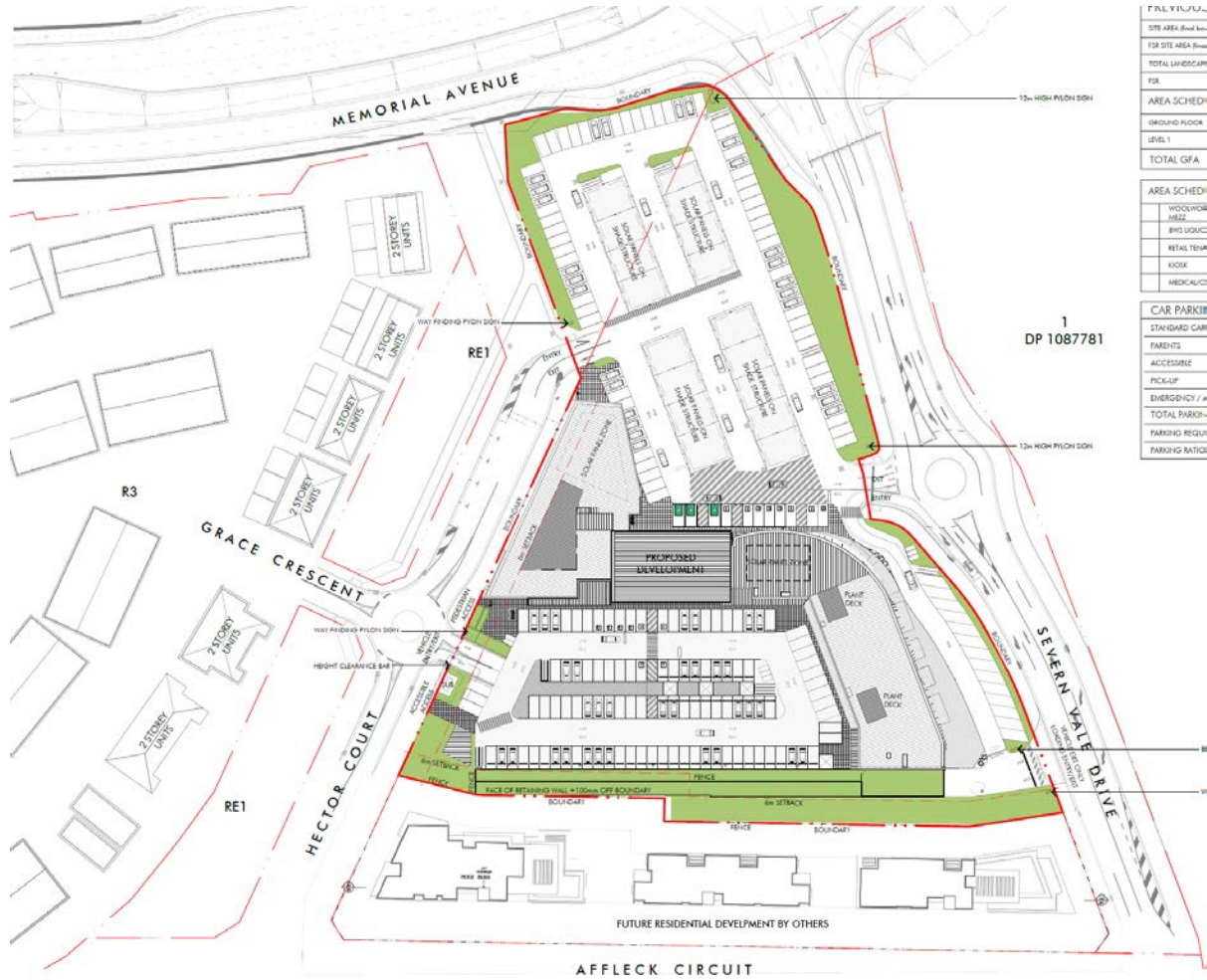
ZONING MAP Part B2, SP2 & R4

Scale (A4): 1:3513
Date: 30/06/2019
Prepared by: Claro Patag

ATTACHMENT 5 – LEP 2012 HEIGHT OF BUILDING MAP



ATTACHMENT 6 – SITE PLAN



FINAL YIELD
SITE AREA (ha)
FOR SITE AREA (ha)
TOTAL LANDSCAPE
FOR
AREA SCHEDULE
GROUND FLOOR
LEVEL 1
TOTAL GFA
AREA SCHEDULE
WOODWORK
MEZZ
BRG USUCL
RESTAL TERM
KIOSK
MEDICAL
CAR PARKING
STANDING CAR
PARENTS
ACCESSIBLE
PICK-UP
EMERGENCY /
TOTAL PARKING
PARKING REQUIREMENTS
PARKING RATIO

The site plan illustrates the proposed development at 1087781, situated between Memorial Avenue to the north, Affleck Circuit to the south, and Hecor Court to the west. The site is bounded by a red line indicating the property boundary. The plan shows a large central area designated for a 'SUPERMARKET' (R-1, 81,800 sq ft) and a 'DEEP SOIL LANDSCAPE' area. Other labeled areas include 'SPECIALTY' (R-1, 30,000 sq ft), 'AIRLOCK', 'BWS Liquor Store', 'LOADING DOCK', and 'WV PLANT'. The plan also shows existing '2 STORY UNITS' and '100' ON SPACES'. A '12m HIGH PLYTH SIGN' is indicated on the eastern boundary. The plan includes a north arrow and a scale bar (0 to 100 feet). The site is adjacent to 'SEVERN VALE DRIVE' and 'AFFLECK CIRCUIT'. A 'FUTURE RESIDENTIAL DEVELOPMENT BY OTHERS' is shown to the south. The plan is labeled '1 DP 1087781'.

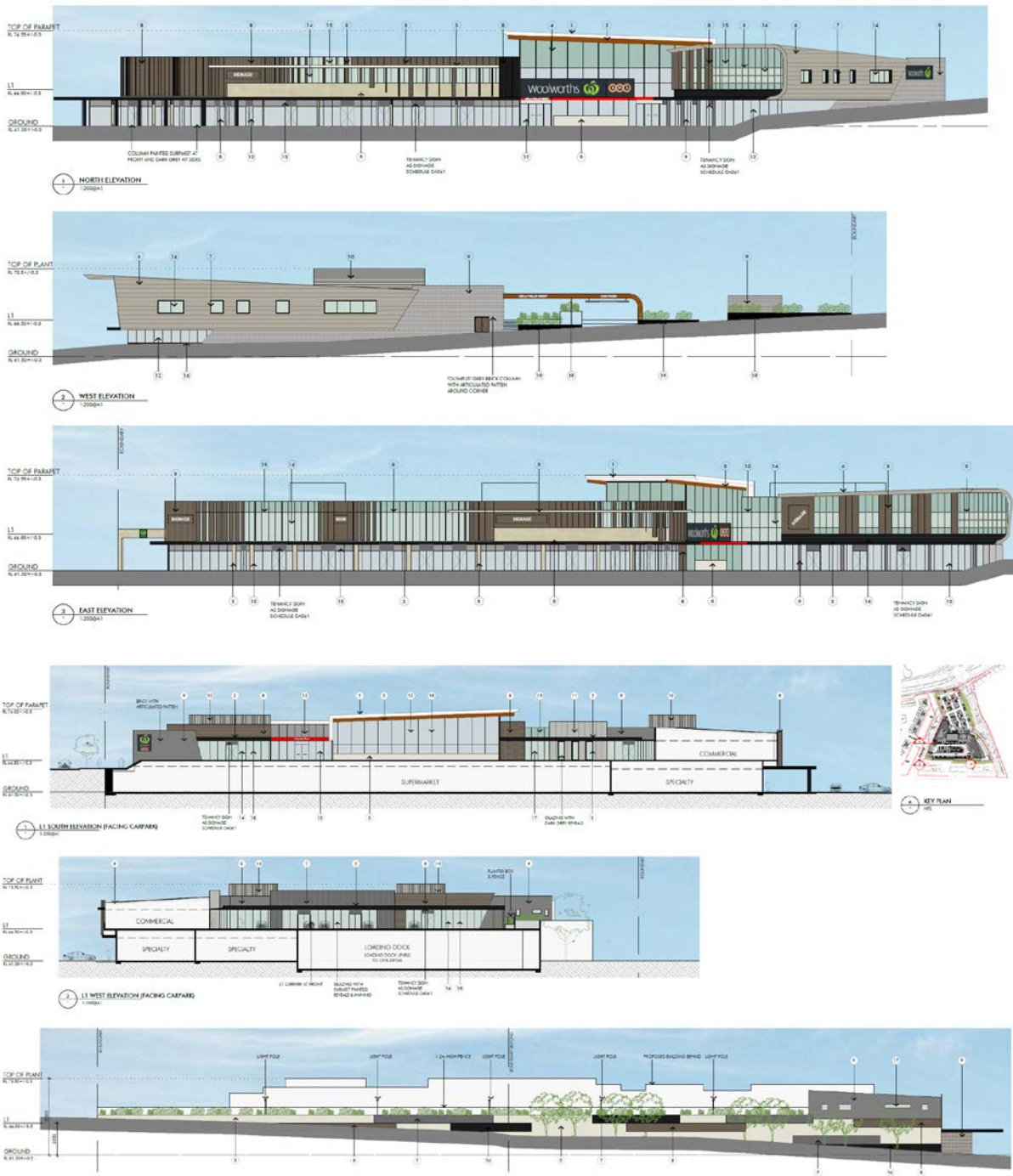
ATTACHMENT 8 – LEVEL 1 PLAN



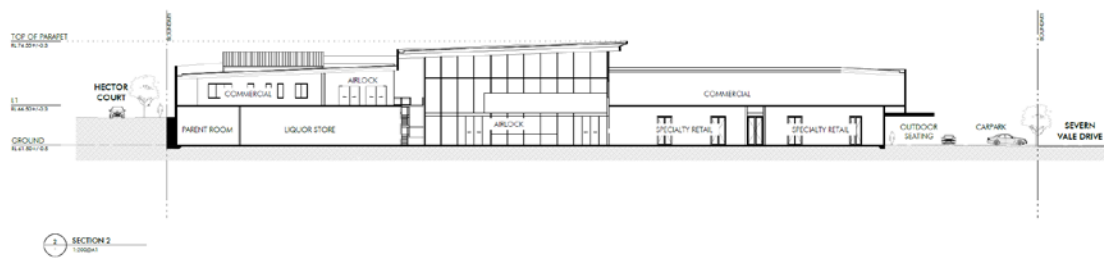
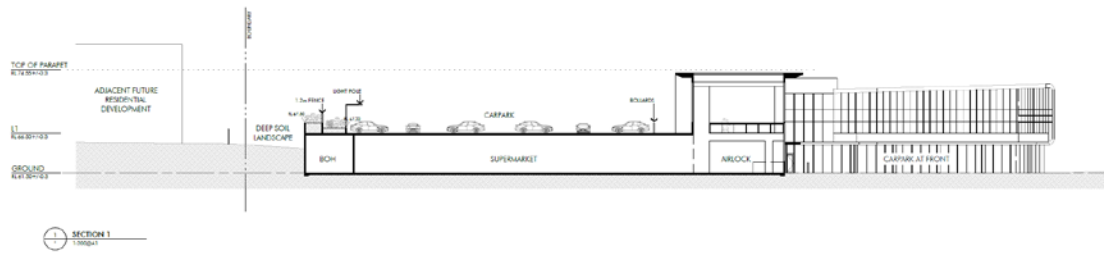
ATTACHMENT 9 – ROOF PLAN



ATTACHMENT 10 – ELEVATIONS

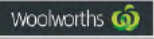











ATTACHMENT 11 – SECTIONS



ATTACHMENT 12 – SIGNAGE PLAN (2 PAGES)



SIGN NO	IMAGE	DESCRIPTION	MEASUREMENTS
SIGN 01		Woolworths External Facade Sign - Horizontal - Single-Sided Illuminated	11,700mm wide X 2,500mm high
SIGN 02		BWS External Facade Sign - Horizontal - Single-Sided Illuminated	3,800mm wide X 2,500mm high
SIGN 03	No longer in use	No longer in use	No longer in use
SIGN 04		Woolworths External Facade Sign - Vertical - Single-Sided Illuminated	2,143mm wide X 1,929mm high
SIGN 05		BWS External Facade Sign - Horizontal - Single-Sided Illuminated	2,140mm wide X 660mm high
SIGN 06		Pylon Sign - Double-Sided Illuminated	3,000mm wide X 12,000mm high above footpath
SIGN 07		Cafe & Entry Sign - Double-Sided Illuminated	1,000mm wide X 2,000mm high
SIGN 08		Tenancy External Facade Sign - Horizontal - Internally Illuminated	7,000mm wide X 1,200mm high

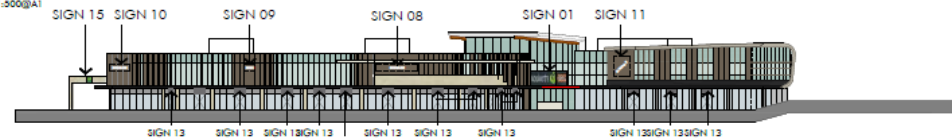
SIGN NO	IMAGE	DESCRIPTION	MEASUREMENTS
SIGN 09		Tenancy External Facade Sign - Horizontal - Internally Illuminated	3,500mm wide X 1,200mm high
SIGN 10		Tenancy External Facade Sign - Horizontal - Internally Illuminated	1,800mm wide X 1,200mm high
SIGN 11		Tenancy External Facade Sign - Vertical - Internally Illuminated	2,800mm wide X 3,500mm high
SIGN 12		Tenancy External Signage - Horizontal Blade - Internally Illuminated	600mm wide X 600mm high
SIGN 13		Around Tenancy Top Header Signage - Horizontal - Internally Illuminated	1940mm wide X 900mm high
SIGN 14		L/T Tenancy Top Header Signage - Horizontal - Internally Illuminated	1940mm wide X 900mm high
SIGN 15		Loading Dock Signage - Non Illuminated	900mm wide X 1200mm high
SIGN 16		Loading Dock Pylon Signage - Non Illuminated	900mm wide X 1300mm high



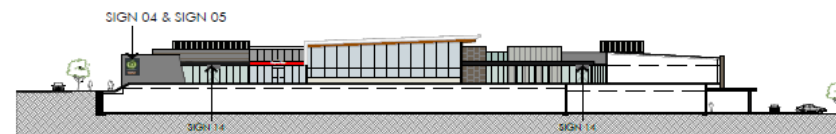
2 SIGNAGE ELEVATION - NORTH
1:500@A1



3 SIGNAGE ELEVATION - WEST
1:500@A1



4 SIGNAGE ELEVATION - EAST
1:500@A1



5 SIGNAGE ELEVATION - SOUTH
1:500@A1



6 SIGNAGE ELEVATION - WEST
1:500@A1

ISSUE FOR DEVELOPMENT APPLICATION

[illegible]

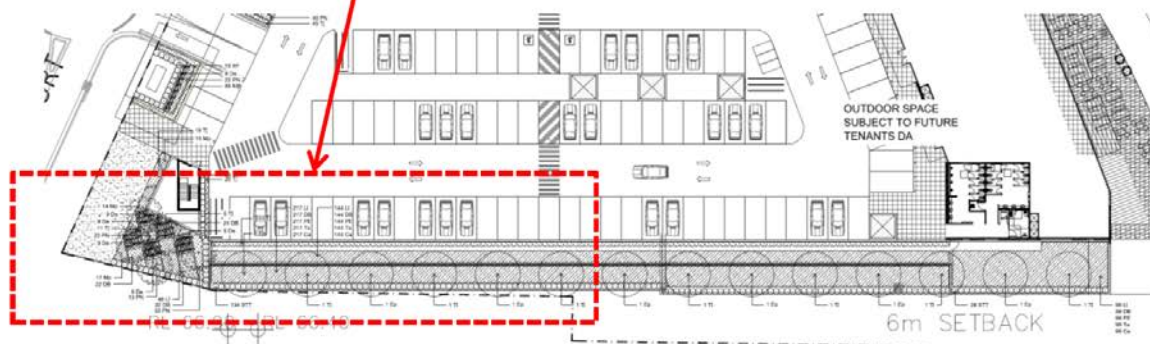
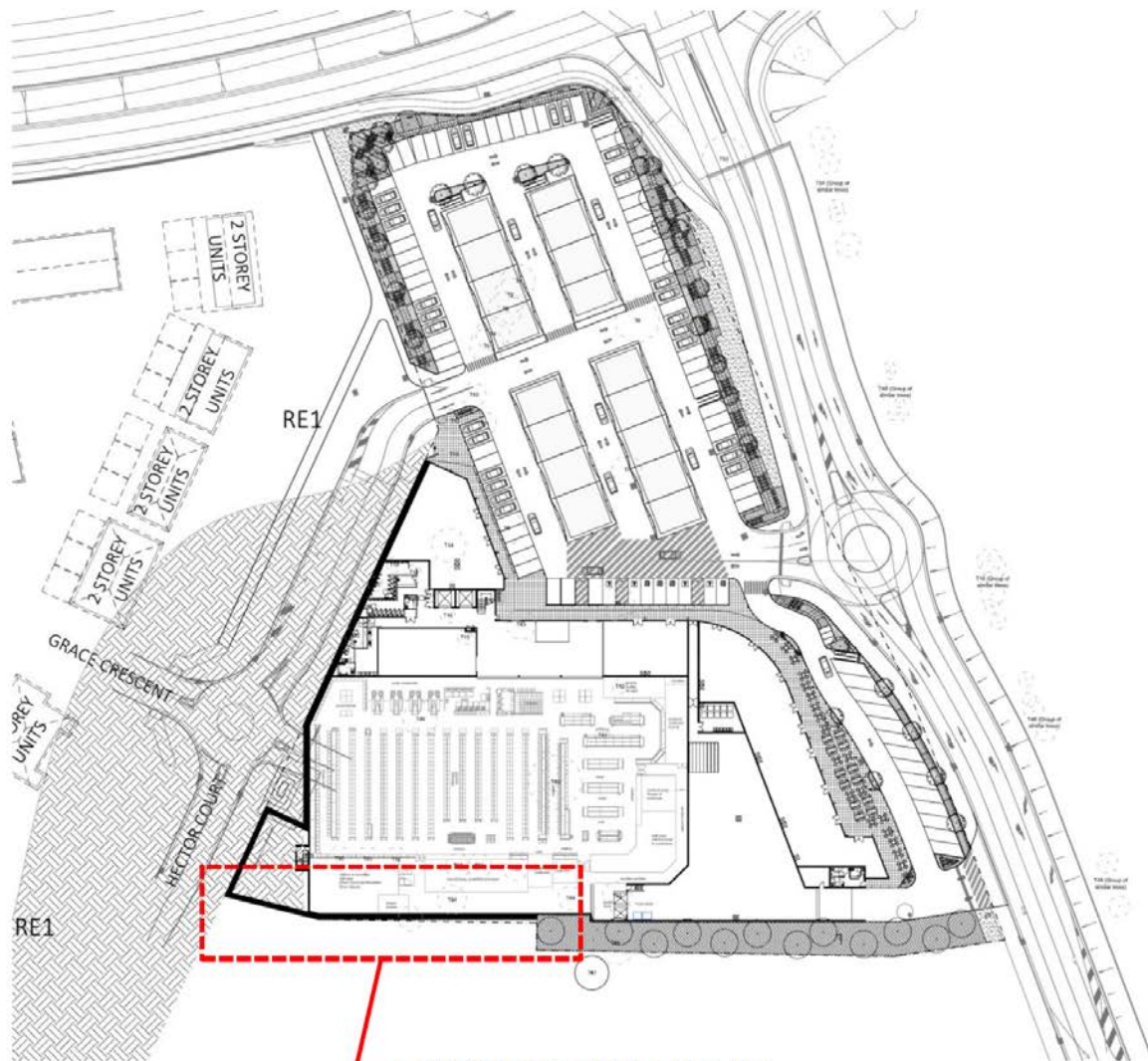
ATTACHMENT 14 – PERSPECTIVES



ATTACHMENT 15 – MID-WINTER SHADOW DIAGRAMS



ATTACHMENT 16 – LANDSCAPE MASTERPLAN & LANDSCAPING ALONG THE SOUTHERN BOUNDARY



LANDSCAPING ALONG THE SOUTHERN BOUNDARY AT LEVEL 1

ATTACHMENT 17 – RMS LETTER DATED 17 APRIL 2019



Transport
Roads & Maritime
Services

17 April 2019

Our Reference: SYD17/00052/13 (A27038674)
Council Ref: DA 970/2017/JP

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

Attention: Claro Patag

Dear Mr Edgar,

**ADDITIONAL INFORMATION FOR PROPOSED CONSTRUCTION OF A SHOPPING CENTRE
AND PUBLIC ROADS – 2-2A HECTOR COURT, KELLYVILLE**

Reference is made to Council's letter dated 25 March 2019, regarding the abovementioned application which was referred to Roads and Maritime Services (Roads and Maritime) for comment in accordance with Schedule 3 of the *State Environmental Planning Policy (Infrastructure) 2007*.

Roads and Maritime has reviewed the submitted documentation and does not accept the submitted SIDRA modelling and associated results as it does not comply with the Roads and Maritime modelling requirements.

Roads and Maritime has concerns the proposed roundabout in close proximity to the future signals on Memorial Avenue will compromise the efficiency of the State Road network. Roads and Maritime requests that the proposed roundabout should be relocated further away from the future signals (southernmost property boundary) or the access to be restricted to left in/left out access arrangement.

Roads and Maritime requests the above amendments for further review and assessment prior to the determination of the application. Upon receipt of the above information, Roads and Maritime will undertake an assessment and provide response accordingly.

Any inquiries in relation to this application can be directed to Zhaleh Alamouti on 8849 2331 or by email at development.sydney@rms.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Pahee Rathan'.

Pahee Rathan
Senior Land Use Assessment Coordinator
North West Precinct

Roads and Maritime Services

27-31 Argyle Street, Parramatta NSW 2150 |
PO Box 973 Parramatta NSW 2150 |

www.rms.nsw.gov.au | 131 782

ATTACHMENT 18 – ENDEAVOUR ENERGY'S LETTER (7 PAGES)

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•
•



The General Manager
The Hills Shire Council

13 December 2018

ATTENTION: Claro Patag DEVELOPMENT ASSESSMENT

Dear Sir or Madam

I refer to Council's letter of 4 December 2018 regarding Development Application 970/2017/JP at 2 & 2A Hector Court, KELLYVILLE NSW 2155 (Lots 7 & 8 DP 1128575) for 'Demolition of Existing Structures and Construction of a Shopping Centre and Public Roads'. Submissions need to be made to Council by 25 December 2018.

As shown in the below site plan from Endeavour Energy's G/Net master facility model (and extract from Google Maps Street View) there are:

- No easements over the site benefitting Endeavour Energy (active easements are indicated by red hatching).
- Low voltage overhead power lines to the road verge / roadway.
- Low voltage overhead service conductors to the customer connection points for the two existing lots, with Lot 7 having an extended service with a customer owned pole (indicated by the green circle) which will become redundant assets.
- Low voltage and 11,000 volt / 11 kV high voltage underground cables to the opposite side of the road.

Please note the location, extent and type of any electricity infrastructure, boundaries etc. shown on the plan is indicative only. Generally (depending on the scale and/or features selected), low voltage (normally not exceeding 1,000 volts) is indicated by blue lines and high voltage (normally exceeding 1,000 volts but for Endeavour Energy's network not exceeding 132,000 volts / 132 kV) by red lines (these lines can appear as solid or dashed and where there are multiple lines / cables only the higher voltage may be shown). This plan only shows the Endeavour Energy network and does not show electricity infrastructure belonging to other authorities or customers owned electrical equipment beyond the customer connection point / point of supply to the property. This plan is not a 'Dial Before You Dig' plan under the provisions of Part 5E 'Protection of underground electricity power lines' of the Electricity Supply Act 1995 (NSW).

Subject to the following recommendations and comments Endeavour Energy has no objection to the Development Application.

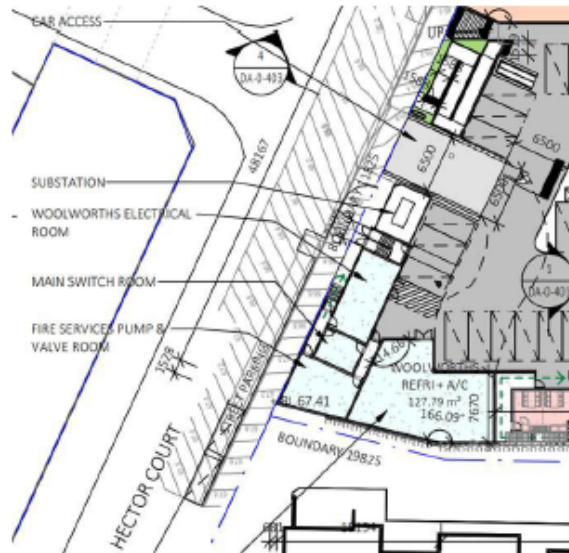
- Network Capacity / Connection

Endeavour Energy has noted that the Statement of Environmental Effects does not appear to address the suitability of the site for the development in regards to whether utility services are available and adequate for the development.

3.14 UTILITIES

The site has access to connections to existing utility service infrastructure including water, sewer, gas, electricity and telecommunications which can be augmented, as required. Please refer to the information contained at **Appendix F** on utilities.

Appendix F Infrastructure Availability Statements of Water, Sewer, Gas and Electricity includes a copy of Connection Offer – Standard Connection Service Endeavour Energy Ref: UCL8379 – 2016/05477/001 of 5 October 2016 which is valid for three (3) months from the date of issue. The Supply Offer indicates that there is both a requirement for high voltage feeder and a padmount substation. Endeavour Energy has noted that as shown in the following extract of the Notification Plan that provision has been made for a substation site.



In due course the applicant for the proposed development will need to submit an application for connection of load via Endeavour Energy's Network Connections Branch to carry out the final load assessment and the method of supply will be determined. Depending on the outcome of the assessment, any required indoor / chamber or padmount substation/s will need to be located within the property (in a suitable and accessible location) and be protected (including any associated cabling) by an easement and associated restrictions benefiting and gifted to Endeavour Energy. Please refer to Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights'. Further details are available by contacting Endeavour Energy's Network Connections Branch via Head Office enquiries on telephone: 133 718 or (02) 9853 6666 from 8am - 5:30pm or on Endeavour Energy's website under 'Home > Residential and business > Connecting to our network' via the following link:

<http://www.endeavourenergy.com.au/>.

Updated / current advice on the electricity infrastructure required to facilitate the proposed development (including asset relocations ie. Endeavour Energy has noted the proposed road closure and realignment of Hector Court at the intersection with Memorial Avenue) can be obtained by submitting a Technical Review Request to Endeavour Energy's Network Connections Branch, the form for which FPJ6007 is attached and further details (including the applicable charges) are available from Endeavour Energy's website under 'Our connection services'. The response to these enquiries is based upon a desktop review of corporate information systems, and as such does not involve the engagement of various internal stakeholders in order to develop a 'Connection Offer'. It does provide details of preliminary connection requirements which can be considered by the applicant prior to lodging a formal application for connection of load.

Alternatively the applicant should engage a Level 3 ASP approved to design distribution network assets, including underground or overhead. The ASP scheme is administered by NSW Planning & Environment and details are available on their website via the following link or telephone 13 77 88:

<https://www.energy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works> .

That provision is being made for the substation is a positive. Substations are to be located on the ground floor / street level with direct access from a public road. The proposed substation location will require a detailed assessment to consider the suitability of access, safety clearances, fire ratings. Generally it is the Level 3 Accredited Service Provider's (ASP) responsibility (engaged by the developer) to make sure that the substation location and design complies with Endeavour Energy's standards. As a condition of the Development Application consent Council should request the submission of documentary evidence from Endeavour Energy confirming that satisfactory arrangements have been made for the connection of electricity and the design requirements for the substation, prior to the release of the Construction Certificate / commencement of works.

- Location of Electricity Easements / Prudent Avoidance

The incorporation of electricity easements into privately owned lots is generally problematic for both Endeavour Energy and the future landowners and requires additional easement management to ensure no uncontrolled activities / encroachments occur within the easement area. Accordingly Endeavour Energy's recommendation is that whenever reasonably possible, easements be entirely incorporated into public reserves and not burden private lots (except where they are remnant lots or not subject to development).

Where easements are incorporated into private lots Endeavour Energy's preference is to have access by the most direct and practicable route with the easement area kept to a minimum eg. padmount substations are located at the front boundary to avoid the need to have the associated cables extend into the property which then also require an easement.

The location of electricity infrastructure should also avoid the creation of easements or restrictions on the adjoining site. The development shown in the following extract of Google Maps Street View is of a site at 18 Copeland Street Liverpool required the installation of a fire wall next to the padmount substation. Whilst meeting the fire rating requirements etc. from an aesthetics perspective this is not an attractive outcome. An alternative location for the padmount substation and/or building design could have avoided the need for the fire wall but generally needs to be considered in the early design stages of the development.



Fire wall constructed for padmount substation at 18 Copeland Street Liverpool. Source: Google Maps Street View.

The foregoing is also in keeping with a policy of prudent avoidance by the siting of more sensitive uses away from any electricity infrastructure to minimise exposure to electric and magnetic fields (EMF), noise etc. associated with the 24/7/365 (all day, every day of the year) operation of the electricity network.

Please find attached a copy of Energy Networks Association's 'Electric & Magnetic Fields – What We Know, January 2016' which can also be accessed via the Energy networks Australia website at <https://www.energynetworks.com.au/electric-and-magnetic-fields> and provides the following advice:

Electric fields are strongest closest to their source, and their strength diminishes rapidly as we move away from the source.

The level of a magnetic field depends on the amount of the current (measured in amps), and decreases rapidly once we move away from the source.

Exposure to electric and magnetic fields (EMF) may be encountered in specific situations such as near substations, underground cables, specialised electrical equipment, or at elevated locations near lines. However, as the strengths of EMFs decrease rapidly with distance from the source, typical exposure associated with Endeavour Energy's activities and assets given the required easement widths, safety clearances etc. and having a maximum voltage of 132,000 volt / 132 kV, will with the observance of these separation distances should not exceed the recommended public exposure limits.

- **Streetlighting**

With the significant increase in both vehicular and pedestrian traffic, given the existing streetlighting is designed for a low density residential environment, the lighting for the proposed development and should be reviewed and if necessary upgraded to comply with the series of standards applying to the lighting of roads and public spaces set out in with Australian/New Zealand Standard AS/NZS 1158: 2010 'Lighting for roads and public spaces' as updated from time to time.

Whilst the determination of the appropriate lighting rests with the road controlling authority, Endeavour Energy as a Public Lighting Service Provider is responsible for operating and maintaining the streetlights on behalf of local councils, Roads and Maritime Services and other utilities in accordance with the NSW Public Lighting Code, January 2006 (Code). Endeavour Energy recognises that well designed, maintained and managed Public Lighting offers a safe, secure and attractive visual environment for pedestrians and drivers during times of inadequate natural light.

For any Code implementation and administration / technical matters please contact Endeavour Energy's Substation Mains Assets Section via Head Office enquiries on telephone: 133 718 or (02) 9853 6666 from 8am - 5:30pm or email mainsenquiry@endeavourenergy.com.au.

- **Earthing**

The construction of any building or structure (including fencing, signage, flag poles etc.) whether temporary or permanent that is connected to or in close proximity to Endeavour Energy's electrical network is required to comply with Australian/New Zealand Standard AS/NZS 3000:2018 'Electrical installations' as updated from time to time. This Standard sets out requirements for the design, construction and verification of electrical installations, including ensuring there is adequate connection to the earth. Inadequate connection to the earth to allow a leaking/fault current to flow into the grounding system and be properly dissipated places persons, equipment connected to the network and the electricity network itself at risk from electric shock, fire and physical injury.

- **Vegetation Management**

The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure. Larger trees should be planted well away from electricity infrastructure and even with underground cables, be installed with a root barrier around the root ball of the plant. Landscaping that interferes with electricity infrastructure could become a potential safety risk, restrict access, reduce light levels from streetlights or result in the interruption of supply may become subject to Endeavour Energy's Vegetation Management program and/or the provisions of the Electricity Supply Act 1995 (NSW) Section 48 'Interference with electricity works by trees' by which under certain circumstances the cost of carrying out such work may be recovered.

In regards to the padmount substation required to facilitate the proposed development, please find attached for the applicant's reference a copy Endeavour Energy's 'Guide to Fencing, Retaining Walls and Maintenance Around Padmount Substations'.

- **Dial Before You Dig**

Before commencing any underground activity the applicant is required to obtain advice from the *Dial Before You Dig* 1100 service in accordance with the requirements of the Electricity Supply Act 1995 (NSW) and associated Regulations. This should be obtained by the applicant not only to identify the location of any underground electrical and other utility infrastructure across the site, but also to identify them as a hazard and to properly assess the risk.

- **Demolition**

Demolition work is to be carried out in accordance with Australian Standard AS 2601—2001: 'The demolition of structures' as updated from time to time. All electric cables or apparatus which are liable to be a source of danger, other than a cable or apparatus used for the demolition works shall be disconnected ie. the existing customer service lines will need to be isolated and/or removed during demolition. Appropriate care must be taken to not otherwise interfere with any electrical infrastructure on or in the vicinity of the site eg. streetlight columns, power poles, overhead power lines and underground cables etc.

- **Public Safety**

Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. I have attached Endeavour Energy's public safety training resources, which were developed to help general public / workers to understand why you may be at risk and what you can do to work safely. The public safety training resources are also available via Endeavour Energy's website via the following link:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures> .

If the applicant has any concerns over the proposed works in proximity of the electricity infrastructure, as part of a public safety initiative Endeavour Energy has set up an email account that is accessible by a range of multiple stakeholders across the company in order to provide more effective lines of communication with the general public who may be undertaking construction activities in proximity of electricity infrastructure such as builders, construction industry workers etc. The email address is Construction.Works@endeavourenergy.com.au .

- **Emergency Contact**

In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note the Emergencies Telephone is 131 003 which can be contacted 24 hours/7 days.

I appreciate that not all the foregoing issues may be directly relevant or significant to the Development Application. However, Endeavour Energy's preference is to alert proponents / applicants of the potential matters that may arise should development within closer proximity of the existing and/or required electricity infrastructure needed to facilitate the proposed development on or in the vicinity of the site occur.

Could you please pass on a copy of this submission and the attached resources to the applicant? Should you wish to discuss this matter, or have any questions, please do not hesitate to contact me or the contacts identified above in relation to the various matters. Due to the high number of development application / planning proposal notifications submitted to Endeavour Energy, to ensure a response contact by email to property.development@endeavourenergy.com.au is preferred.

Yours faithfully

Cornelis Duba

Development Application Specialist

Network Environment & Assessment

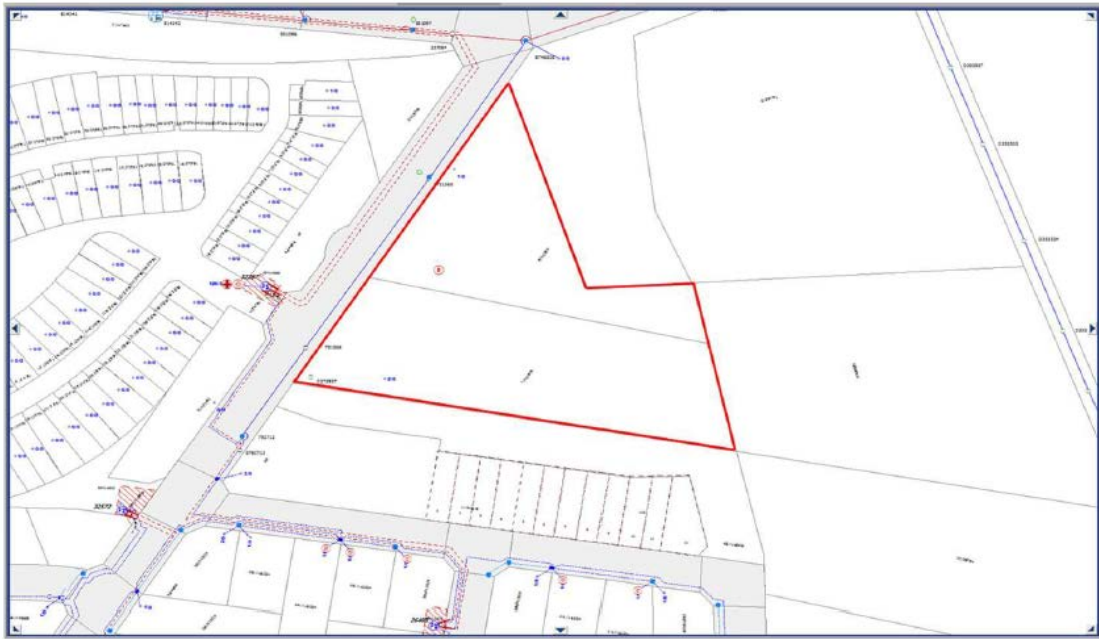
T: 9853 7896

E: cornelis.duba@endeavourenergy.com.au

51 Huntingwood Drive, Huntingwood NSW 2148

www.endeavourenergy.com.au





ATTACHMENT 19 – CLAUSE 4.6 JUSTIFICATION (15 PAGES)



30 November 2018

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

Attn: Mr Claro Patag, Development Assessment Coordinator

Dear Sir/Madam,

Re: DEVELOPMENT APPLICATION NO. 970/2017/JP – 2 AND 2A HECTOR COURT KELLYVILLE
AMENDED DEVELOPMENT APPLICATION

REQUEST UNDER CLAUSE 4.6 OF THE HILLS LOCAL ENVIRONMENTAL PLAN 2012 TO VARY THE
DEVELOPMENT STANDARD FOR HEIGHT OF BUILDINGS UNDER CLAUSE 4.3 OF THE HILLS
LOCAL ENVIRONMENTAL PLAN 2012

INTRODUCTION

1. This letter has been prepared on behalf of the applicant Fabcot Pty Ltd (Fabcot) to further assist with the consideration of the Amended Development Application (Amended DA) for the proposed Memorial Avenue Village Centre Kellyville commercial development and the variation sought to Clause 4.3 of *The Hills Local Environmental Plan 2012* (THLEP).
2. As detailed in the Addendum Statement of Environmental Effects (SEE) letter which accompanies the Amended DA, the design of the proposed development has had consideration of the Height of Building (HOB) standard contained in Clause 4.3 of THLEP, as the proposal will result in a minor variation to the HOB standards in Clause 4.3 of THLEP Height of Building Mapping.
3. The permitted 12m HOB standard under Clause 4.3 of THLEP applies as the land under the HOB Map, for the land at 2 and 2A Hector Court, Kellyville.
4. Therefore, this request is to vary THLEP HOB standards under the provisions of Clause 4.6 of THLEP.
5. This Clause 4.6 variation request has been prepared having regard to:
 - The NSW Department of Planning & Environment's Guideline *Varying Development Standards: A Guide*, August 2011, and
 - has incorporated as relevant principles identified in the applicable Case law, (established tests) in the following judgements:
 - *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
 - *Wehbe v Pittwater Council* [2007] NSWLEC 827
 - *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
 - *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
 - *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
 - *Moskovich v Waverley Council* [2016] NSWLEC 1015
 - *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191
 - *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148)

Page 1

Higgins Planning Pty Ltd ABN 75 607 855 336

Phone	(02) 9929 4044
Email	admin@higginsplanning.com.au
Address	Suite 305, Level 3, 26 Ridge Street North Sydney NSW 2060
Postal	PO Box 1269 QVB NSW 1230

6. This letter explains how flexibility is justified in relation to the matters explicitly required to be considered and addressed under Clause 4.6 in a written request from the applicant. This letter also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising the discretion afforded by Clause 4.6 and the assumed concurrence of the Secretary.

WHAT IS THE ENVIRONMENTAL PLANNING INSTRUMENT (EPI) APPLICABLE?

7. The Environmental Planning Instrument (EPI) to which this variation relates is The Hills Local Environmental Plan 2012 (THLEP).

WHAT IS THE ZONING OF THE LAND?

8. In accordance with Clause 2.2 of THLEP the site is zoned B2 Local Centre.

WHAT ARE THE OBJECTIVES OF THE ZONE?

9. The land use table to Clause 2.2 of THLEP provides the following objectives for the B2 Local Centre zoning:

Zone B2 Local Centre

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?

10. The development standard being varied is the "Height of Building" (HOB) standard shown in the THLEP HOB Map.

UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE EPI?

11. The development standard being varied is prescribed under Clause 4.3 of THLEP. Clause 4.3 is detailed below. THLEP HOB Map identifies the subject site with the designation 'M1 = 12.0m', see Figure 1. The land is zoned B2 under THLEP zoning map. Therefore, under Clause 4.3, THLEP HOB Map and this clause apply.

4.3 Height of buildings

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

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

(2) 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.

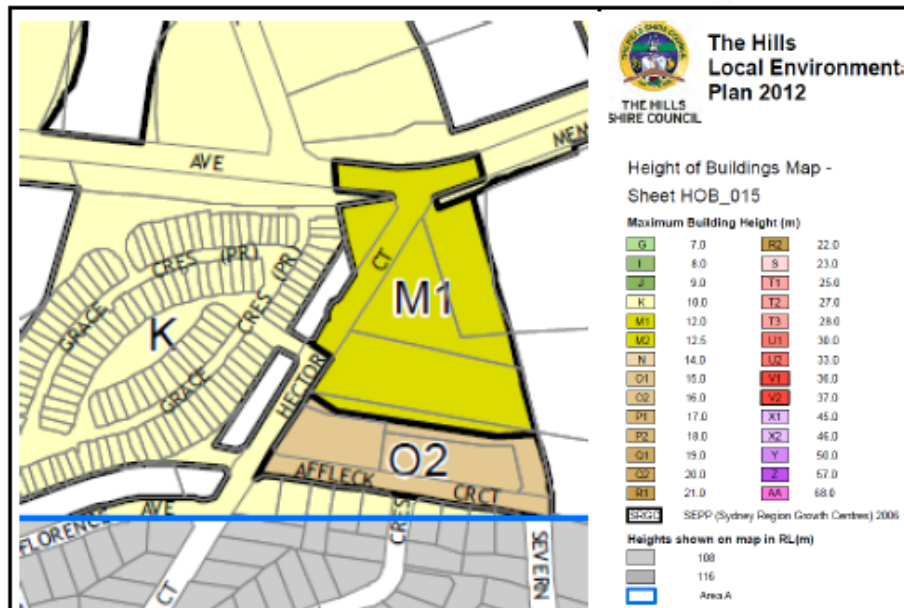


Figure 1: Extract from THLEP 2012 HOB map showing 2 & 2A Hector Court M1 = 12m HOB control
Source: NSW Legislation

WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

12. The objectives in Clause 4.3 of the THLEP, are as follows:

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

WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE EPI?

13. An extract of THLEP HOB map is shown in Figure 1. The map prescribes the site being within 'M1 = 12m' for the subject site.

WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DA AND THE VARIATION PROPOSED?

14. The design of the building involves 2 levels with a height at its highest point the top of the roof over the lift overrun, being RL74.55 to natural ground level RL61.50. The height of this building is outside the 12m limit at 13.05m and does not comply.
15. There are a number of reasons for the non-compliance with Clause 4.3(2) of the HLEP and these factors when combined, have contributed to the amended design:
 - a. The site topography along its existing frontage to Hector Court (which is to be upgraded along the frontage to the western boundary) to the eastern boundary with the new road

infrastructure of Severn Vale Drive represents a change in grade of approximately 6m or more than the height of the ground floor level through the site adjacent to its southern boundary;

- b. The proposal requires the grades of Hector Court to remain nearly the same, achieve the appropriate grades onto level 1 in order that disabled access is available to the proposed lift, and then from the ground floor level provide disabled access to the east, and to match the grades along the new Severn Vale Drive connection to Memorial Avenue, which has meant that the building cannot be “sunk” too deep into the site;
- c. The amended design seeks to strike the right balance between the amount of cut and fill associated with the project, while accommodating disabled access throughout a building which provides for commercial floor space over two levels;
- d. The amended design seeks to provide for a streetscape presentation to each of its frontages, which enables suitable universal access to the building from each frontage;
- e. The amended design includes lift access between level 1 and the ground floor level. The inclusion of the lift results in the lift overrun protruding through the 12m height control as a result of the proposed roof structure and associated plant enclosure area;
- f. In order to achieve equitable access throughout the building the lift overrun extend through the permitted building height;
- g. The majority of the amended design is below the 12m HOB control; and
- h. It is noted that, the approved residential buildings on the southern side of the property boundary at 2B Hector Court, will not be adversely impacted by any shadow cast by the location of the breach of the height control.

MATTERS TO BE CONSIDERED UNDER CLAUSE 4.6

16. Clause 4.6 of THLEP states:

4.6 Exceptions to development standards

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

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

Page 8

Higgins Planning Pty Ltd ABN 75 607 855 336

Phone	(02) 9929 4044
Email	admin@higginsplanning.com.au
Address	Suite 305, Level 3, 26 Ridge Street North Sydney NSW 2060

- (a) the consent authority is satisfied that:
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (ca) clause 6.1 or 6.2,
 - (cb) clause 7.12.

17. Table 1 below provides a summary of the key matters for consideration under Clause 4.6 of THLEP and response to each consideration.

Table 1: Matters for Consideration under Clause 4.6

Clause 4.6 Consideration	Response
<p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>The objectives of this clause expressly indicate a degree of flexibility should be applied "in particular circumstances". This is such a circumstance to enable a flexible approach to the outcome sought by this DA.</p>
<p>(2) Development consent may, subject to this clause, be granted for development even though the development</p>	<p>The Height of Building (HOB) standard is not excluded from operation of this clause.</p>

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Clause 4.6 Consideration	Response
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.	
<p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> <ul style="list-style-type: none"> 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. 	<p>The Addendum Statement of Environmental Effects submitted with the DA indicates a specific request is included with the application to seek a variation of the HOB development standard. This letter is the applicant's formal written request. Refer to table 2 below for an assessment under Clause 4.6(3)(a) and (b).</p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <ul style="list-style-type: none"> a. the consent authority is satisfied that: <ul style="list-style-type: none"> 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. 	<p>This written request addresses all requirements of subclause (3). As set out in paragraph 20 and table 2 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard (refer to table 2) and the objectives for the zones (refer to table 3). Concurrence is assumed but is a matter to be determined by the Consent Authority.</p>
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p> <ul style="list-style-type: none"> 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. 	<p>Potential matters of significance for State or regional environmental planning is addressed in paragraphs 38 and 39, and table 4. The minor non-compliances with the development standard does not raise any matters of significance for State or regional planning as the development meets the stated objective of the development standard. Consideration of whether there is any public benefit in maintaining the development standard is considered in paragraphs 41, 42 and 43. As the development substantially complies with the stated objective of the development standards, there is little utility in requiring strict compliance with the development standard for an otherwise compliant development. There is no public benefit of maintaining the development standard in this circumstance. It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately</p>

Clause 4.6 Consideration	Response
	addressed as part of this Clause 4.6 variation request.
<p>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:</p> <p>(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</p> <p>(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.</p> <p>Note. When this Plan was made it did not include all of these zones.</p>	The provisions of Clause 4.6(6) do not apply to the subject site and proposed development in this DA.
<p>(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).</p>	The Consent Authority must keep a record after determining this DA.
<p>(a) This clause does not allow development consent to be granted for development that would contravene any of the following:</p> <p>(a) a development standard for complying development,</p> <p>(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,</p> <p>(c) clause 5.4,</p> <p>(ca) clause 6.1 or 6.2,</p> <p>(cb) clause 7.12.</p>	This subclause does not affect the subject site.

18. Table 2 below provides an assessment against Clause 4.6(3):

Table 2: Clause 4.6(3) assessment

Objective	Comment
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of	<p>Strict application of the development standard is considered to be unreasonable and unnecessary as the proposed development will be consistent with the stated aims of Clause 4.3 of THLEP:</p> <p>(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,</p> <p>(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</p>

Objective	Comment
<i>the case</i>	<ul style="list-style-type: none"> In light of the objectives, above which encourage a flexible approach to compliance with design principles where the design of the development responds to the site and its form, strict compliance with the standard under Clause 4.3 is unnecessary because: <ul style="list-style-type: none"> I. The 12m control was created to assist with ensuring future development of the site does not result in an abrupt transition between the R4 High Density Residential zone to the south which permits a building up to 16m in height; II. The design seeks a minor variation of 1.05m or 8.75%; III. Strict compliance with the height control will not enable the upgrade and creation of the road infrastructure as proposed to be implemented as part of the project on the site – refer to the reasons listed in Paragraphs 15 a, b, c, d, e, f, g and h; IV. The design of the building results in a better outcome particularly as the building allows for disabled access throughout without resulting in unacceptable streetscape presentations, retaining existing perimeter landscaping and allowing for new landscaping; V. The design provides for an improved public domain which has involved setting back the proposal at the Hector Court frontage to enable a high-quality landscaped setting to be created, and a substantial landscaped setback with integrated at-grade parking to the Severn Vale Drive road frontage; VI. The proposed development does not result in an unacceptable significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties; VII. The proposal minimizes building bulk by designing to include an enclosed loading dock area and as such is compatible with the height, bulk and scale of the existing and desired future character of the locality; and VIII. The proposal will provide a high quality urban form with transitions to its edges and appropriate land use intensity as the proposal complies with the maximum gross floor area permitted for commercial and retail development. Strict compliance with the development standard is unnecessary as the development will still achieve the environmental and planning objectives of Clause 4.3, as discussed above. Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development standard and would not bring about a good planning outcome, on the following grounds: <ul style="list-style-type: none"> I. The height of the proposed development is consistent with the objectives of the control and overall the development is less than the maximum HOB control for the remainder of the land of 12m, the building generally has a maximum height of 11.4m which is consistent with the character of the B2 zone; II. The proposed development is considered to be compatible with the streetscape along its upgraded Hector Court frontage and the new streetscape to be created to Severn Vale Drive; III. The proposed development will provide a number of direct public benefits in the provision of upgraded and widened Hector Court, new cycleway, new accessible pathways, new roundabout at the intersection of Grace Crescent and new road infrastructure to service the wider precinct being the enhanced collector road Severn Vale Drive; IV. The development during its construction phase will generate a number of direct

Objective	Comment
	<p>job and in-direct jobs, and when operational the businesses to be operated by Woolworths Group will provide ongoing employment opportunities where limited opportunities for local retail jobs exist;</p> <p>V. The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscapes or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscapes; and</p> <p>VI. The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible.</p> <p>For these reasons it is considered that strict application of the HOB control in Clause 4.3 is unreasonable and unnecessary in this circumstance, particularly given that the non-compliance is minor and there are no impacts flowing from the non-compliance.</p>
<i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</i>	<p>The exceedance of the development standard for the lift and associated plant enclosure is a very minor part of the proposed built form change, as the design seeks the inclusion of lift access to allow for maintaining existing landscaped areas while providing accessibility throughout the existing building and land. The minor non-compliance with the development standard is far outweighed by the development achieving the aims in Clause 4.3 in promoting the principles outlined in the Greater Sydney Region Plan – A Metropolis of Three Cities. For example, the development promotes a new centre development with housing stock in a new low density residential urban area which supports:</p> <ul style="list-style-type: none"> Existing urban housing; and Improving access within existing residential housing stock and choice. <p>In this regard, the development is also consistent with the State and regional objectives.</p>

19. The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of the criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although in the circumstance of this case, the absence of any environmental impact, the request is of considerable merit.
20. The proposed variation from the development standard is assessed below against the accepted "5 Ways" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46. Whilst the principle applied to SEPP 1, it has been generally applied in the consideration of a request under Clause 4.6 of THLEP, as confirmed in *Four2Five*.

HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

21. The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the variation. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).
22. The five ways described in *Wehbe* are therefore appropriately considered in this context, as follows:

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

23. Clause 4.3 does have stated objectives, and it is considered that the variation still achieves the stated objectives of the development standard as detailed previously in Table 2 above:

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

24. The proposed development achieves the above stated objectives for the reasons stated in Table 2, notwithstanding the minor increase in the non-compliances with the HOB standard.

25. The breach of the HOB standard does not cause inconsistency with the objectives, and therefore the intent of clause 4.3 of THLEP is also achieved.

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

26. There are stated objectives of the standard in Clause 4.3 and as discussed above, the objectives of Clause 4.3 are relevant to the development and can be maintained by the proposed variation.

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

27. As the stated previously the objectives of the standard can still be maintained, and therefore the purpose will not be defeated or thwarted by the variation requested and strict compliance is unreasonable.

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

28. It is noted that Council has varied the HOB standard from time to time based on the merits of each case.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

29. Not applicable.

SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY THE CONTRAVENTION

30. The Statement of Environmental Effects prepared for this Development Application provides a comprehensive environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

31. There are robust justifications throughout the SEE and Addendum SEE and accompanying documentation to support the proposed development and contend that the outcome is appropriate on environmental planning grounds.

32. The particular circumstances of this case distinguish it from others as detailed in Table 2 above.

IS THE VARIATION IN THE PUBLIC INTEREST?

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

34. The objectives of the standard have been addressed in Table 3 and are demonstrated to be satisfied. The proposal is consistent with the zone objectives and permissible in the zone. Each of the objectives of the zone are addressed in Table 3 below.

Table 3: Assessment of the proposed development against the zone objectives – B2 Local Centre zone under the THLEP

B2 Local Centre zone - objectives	Comment
<ul style="list-style-type: none"> <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i> 	<p>The proposed development involves a building, which includes proposed uses which are considered to be compatible with other desired and earmarked land uses of nearby land.</p> <p>The proposed development is compatible with other land uses as it is permissible, has been designed to ensure connectivity and activation of the street edges and frontages. In terms of bulk and scale, the proposal is consistent with the desired built form character of retail/commercial development in this location of the Balmoral Road Release Area.</p> <p>The proposed development will complement and contribute to the mixture of land uses already present and will enable the creation of a new much needed proposed Memorial Avenue Village Centre Kellyville development in the Balmoral Road Release Area at Kellyville by providing new streetscapes including, retail supermarket, liquor store, commercial premises which include specialty shops.</p>
<ul style="list-style-type: none"> <i>To encourage employment opportunities in accessible locations.</i> 	<p>The proposed development will ensure that the new commercial and retail uses / activity are complementary to the existing approved nearby development within Kellyville.</p> <p>The proposed Woolworths retail uses within the development (supermarket and BWS) will employ approximately 200 people inclusive of the creation of a number of trainee positions and apprenticeship positions; and</p> <p>The potential for another 80 jobs associated with the office/commercial premises and specialty shops.</p> <p>The proposed development will have several positive social and economic effects in the locality, which are considered to mitigate any adverse economic impacts, including:</p> <ul style="list-style-type: none"> meets consumer demand from the growing community of Kellyville;

B2 Local Centre zone - objectives	Comment
	<ul style="list-style-type: none"> provide shopping facilities and a wide range of retail products, choices and price competition in The Hills Shire LGA; generates permanent employment with direct jobs on-site in the retail/commercial use development and indirect flow-on jobs; generates construction employment with direct and indirect jobs; and provides for a new streetscape and location for social activity that contributes to building a sense of place, identity, community and social cohesion.
<ul style="list-style-type: none"> To maximise public transport patronage and encourage walking and cycling. 	<p>The proposed development will contribute to the desired future character of the Balmoral Road Urban Release Area and proposed Memorial Avenue Village Centre Kellyville development will support the needs of the local community in a location close to public transport, while at the same time providing new patronage opportunities. The site proposes on-site bicycle rails and new footpath connects where no exist today to the local bicycle and footpath network.</p>

35. The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the HOB standard is in the public interest.

MATTERS OF STATE OR REGIONAL SIGNIFICANCE (CL.4.6(5)(A))

36. Clause 4.6(5) of THLEP states:

(5) In deciding whether to grant concurrence, the Director-General must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- the public benefit of maintaining the development standard, and
- any other matters required to be taken into consideration by the Director-General before granting concurrence.

37. The matters for consideration in Clause 4.6(5) have been addressed in Table 4 below.

Table 4: Clause 4.6(5) assessment

Matter of Consideration	Comment
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning	The minor non-compliance with the development standard does not raise any matters of significance for State or regional planning as the development meets the underlying objectives of the development standard.

Matter of Consideration	Comment
<i>(b) the public benefit of maintaining the development standard</i>	As the development substantially complies with the stated objectives of the development standards, there is little utility in requiring strict compliance with the development standard for an otherwise compliant development. There is no public benefit of maintaining the development standard in this circumstance.
<i>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence</i>	It is considered that all matters required to be taken into account by the Director-General before granting concurrence have been adequately addressed as part of this Clause 4.6 variation request.

38. There is no prejudice to planning matters of State or Regional significance resulting from varying the development standard as proposed by this application.

THE PUBLIC BENEFIT OF MAINTAINING THE STANDARD (CL.4.6(5)(B))

39. Pursuant to *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development".
40. There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standards, whilst better planning outcomes are achieved.
41. We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

IS THE VARIATION WELL FOUNDED?

42. This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.3 of the THLEP, that:
- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
 - There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this case;
 - The development meets the objectives of the development standard and where relevant, the objectives of the B2 zone, notwithstanding the variation;
 - The proposed development is in the public interest and there is no public benefit in maintaining the standard;
 - The proposal results in a better planning outcome in that a compliant scheme would result in a loss of access throughout the existing site which does not impact adjoining properties or result in a loss of at surface landscaping;
 - The non-compliance with the HOB does not result in any unreasonable environmental impact or adverse impacts on adjoining occupiers. It is considered the proposed height is appropriate for the orderly and economic use of the land and is consistent with character of this location; and
 - The contravention does not raise any matter of State or Regional significance.

CONCLUSIONS

43. This Clause 4.6 variation request to Clause 4.3 of THLEP should be supported on the basis that the strict application of the development standard to the development is both unreasonable and unnecessary given that:

- i. The 12m control was created to assist with ensuring future development of the site does not result in an abrupt transition between the R4 High Density Residential zone to the south which permits a building up to 16m in height;
- ii. The design seeks a minor variation of 1.05m or 8.75%;
- iii. Strict compliance with the height control will not enable the upgrade and creation of the road infrastructure as proposed to be implemented as part of the project on the site – refer to the reasons listed in Paragraphs 15 a, b, c, d, e, f, g and h;
- iv. The design of the building results in a better outcome particularly as the building allows for disabled access throughout without resulting in unacceptable streetscape presentations, retaining existing perimeter landscaping and allowing for new landscaping;
- v. The design provides for an improved public domain which has involved setting back the proposal at the Hector Court frontage to enable a high-quality landscaped setting to be created, and a substantial landscaped setback with integrated at-grade parking to the Severn Vale Drive road frontage;
- vi. The proposed development does not result in an unacceptable significant adverse impact in terms of loss of solar access, loss of privacy or loss of views from adjoining properties;
- vii. The proposal minimizes building bulk by designing to include an enclosed loading dock area and as such is compatible with the height, bulk and scale of the existing and desired future character of the locality;
- viii. The proposal will provide a high quality urban form with transitions to its edges and appropriate land use intensity as the proposal complies with the maximum gross floor area permitted for commercial and retail development;
- ix. The height of the proposed development is consistent with the objectives of the control and overall the development is less than the maximum HOB control for the remainder of the land of 12m, the building generally has a maximum height of 11.4m which is consistent with the character of the B2 zone;
- x. The proposed development is considered to be compatible with the streetscape along its upgraded Hector Court frontage and the new streetscape to be created to Severn Vale Drive;
- xi. The proposed development will provide a number of direct public benefits in the provision of upgraded and widened Hector Court, new cycleway, new accessible pathways, new roundabout at the intersection of Grace Crescent and new road infrastructure to service the wider precinct being the enhanced collector road Severn Vale Drive;
- xii. The development during its construction phase will generate a number of direct job and in-direct jobs, and when operational the businesses to be operated by Woolworths Group will provide ongoing employment opportunities where limited opportunities for local retail jobs exist;
- xiii. The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscapes



or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscapes; and

- xiv. The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible.
44. For the reasons set out above, the development should be approved with the minor exception to the numerical HOB standard in Clause 4.3. Importantly, the development as proposed achieves the stated objectives of the standard and zone despite the minor numerical non-compliance with the development standard.

Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on (02) 9929 4044.

Yours faithfully,

Marian Higgins
Planning Manager
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