

**From:** [Bertha Gunawan](#)  
**To:** ["Operations Manager"](#); [Nasr Atie](#); [Noy Santiago](#); [danny@planningdirection.com.au](mailto:danny@planningdirection.com.au)  
**Cc:** [Judith Portelli](#); [Alan Middlemiss](#)  
**Subject:** HPE CM: RE: HPE CM: RE: Electronic Determination - 2017SWC068 - Blacktown - DA17-00007, Address - 59 Cudgegong Rd, Rouse Hill  
**Date:** Thursday, 26 September 2019 12:11:20 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image002.png](#)

---

Dear Ray and Danny,

I have reviewed the amended plans and provide the following comments, for your attention:

1. For the purpose of resolving the panel's concern on deep soil zone provision, it is noted that the proposed development area outside the electrical easement area is 4,836m<sup>2</sup>. Therefore, the Apartment Design Guide (ADG) requires that a minimum deep soil area of 725m<sup>2</sup> (15% of the development area and having the minimum dimensions of 6m x 6m) shall be provided on the site. The proposed deep soil increase as shown in the amended plans, provides only a total of 175m<sup>2</sup> of deep soil area within the development area, or 3.6%. Together with the proposed deep soil area not complying with the minimum 6m x 6m dimensions (but capable for canopy trees as indicated in your landscape plan), the overall total deep soil provision is 589m<sup>2</sup>, which is still 136m<sup>2</sup> under the minimum requirement of the ADG.
2. The additional deep soil area promotes the loss of 8 car parking spaces (or 4 spaces on each basement floor x 2), therefore reducing the overall car parking surplus to 38 spaces. Further, your response made the note of an approved development with surplus parking at 44 – 56 Cudgegong Road, Rouse Hill – this development however, provided the minimum deep soil requirement according to the ADG.

Based on the above findings, I highly doubt that the Panel is going to be satisfied with your current response and could just proceed to refuse the DA and we do not want this to happen. On this basis we strongly recommend that you urgently consider an additional reduction of at least 10 car parking spaces on basement level 1 or approximately additional deep soil area of 160m<sup>2</sup> that is complying with the 6m x 6m dimensions as required by the ADG.

This amount, together with the overall 589m<sup>2</sup> of deep soil area already proposed on the plans, even though it does not strictly comply with the minimum 6m x 6m dimensions, will numerically achieve the 15% requirement.

Please explore my suggested advice urgently, and a prompt response will be much appreciated so I can send it back to the Panel asking them to support your amendments

Thank you for your attention on this matter.

Sincerely,



**Bertha Gunawan**  
**Assistant Coordinator Planning Assessments**

9839 6000  
Bertha.Gunawan@blacktown.nsw.gov.au  
PO Box 63 Blacktown NSW 2148  
[blacktown.nsw.gov.au](http://blacktown.nsw.gov.au)

Follow us on social media

---

**From:** Operations Manager [mailto:manager@wickwood.com.au]  
**Sent:** Tuesday, 24 September 2019 3:36 PM  
**To:** Alan Middlemiss; Nasr Atie; Noy Santiago; danny@planningdirection.com.au  
**Cc:** Judith Portelli; Bertha Gunawan  
**Subject:** RE: HPE CM: RE: Electronic Determination - 2017SWC068 - Blacktown - DA17-00007, Address - 59 Cudgegong Rd, Rouse Hill

Hi Alan

Further to our conversation of yesterday we here in submit our response to the Planning Panels request for consideration of additional deep soil planting and reduction in car spaces.

The response consists of a short report from our planning consultant and amended architectural plans of the basement carparking, ground floor site plan layout which highlights the increased deep soil landscaped areas.

We trust that these attachments are made available to the Panel for consideration at the earliest time and trust that they are satisfactory to enable this application to be approved .

We look forward to your positive response.

Regards,

Raymond Haddad  
Development Manager  
The Wickwood Property Group Pty Ltd  
E: [manager@wickwood.com.au](mailto:manager@wickwood.com.au)  
M: +61 412478363

---

**From:** Alan Middlemiss <[Alan.Middlemiss@blacktown.nsw.gov.au](mailto:Alan.Middlemiss@blacktown.nsw.gov.au)>  
**Sent:** Friday, 20 September 2019 11:25 AM  
**To:** Operations Manager <[manager@wickwood.com.au](mailto:manager@wickwood.com.au)>; Nasr Atie <[nasr@cadplans.net.au](mailto:nasr@cadplans.net.au)>;

Noy Santiago <[noysworks@hotmail.com](mailto:noysworks@hotmail.com)>; [danny@planningdirection.com.au](mailto:danny@planningdirection.com.au)

**Cc:** Judith Portelli <[Judith.Portelli@blacktown.nsw.gov.au](mailto:Judith.Portelli@blacktown.nsw.gov.au)>; Bertha Gunawan  
<[Bertha.Gunawan@blacktown.nsw.gov.au](mailto:Bertha.Gunawan@blacktown.nsw.gov.au)>

**Subject:** FW: HPE CM: RE: Electronic Determination - 2017SWC068 - Blacktown - DA17-00007,  
Address - 59 Cudgegong Rd, Rouse Hill

Please find below some comments from the panel for your consideration and action.

These were sent to me in the last few minutes.

Alan



**Alan Middlemiss**  
**Coordinator Planning Assessment**

9839 6146

[Alan.Middlemiss@blacktown.nsw.gov.au](mailto:Alan.Middlemiss@blacktown.nsw.gov.au)  
PO Box 63 Blacktown NSW 2148  
[blacktown.nsw.gov.au](http://blacktown.nsw.gov.au)

Follow us on social media

---

**From:** Suzie Jattan [<mailto:Suzie.Jattan@planning.nsw.gov.au>]

**Sent:** Friday, 20 September 2019 11:21 AM

**To:** Bertha Gunawan; Judith Portelli; Alan Middlemiss

**Subject:** FW: HPE CM: RE: Electronic Determination - 2017SWC068 - Blacktown - DA17-00007,  
Address - 59 Cudgegong Rd, Rouse Hill

Dear Bertha, Judith and Alan

**Panel comments for your urgent response**

2017SWC068 - Blacktown – DA17-00007

Address – 59 Cudgegong Rd, Rouse Hill, Proposed Lot 1 in subdivision of Lot 74 DP208203

Description – Construction of 2 x 8 storey residential flat buildings comprising 163 apartments,  
229 car parking spaces in 2 basement levels and associated civil and landscaping works.

The Panel notes the recommendation in the Council's Supplementary Assessment Report to grant consent to the proposed development, as amended, for the reasons outlined in the original Assessment Report and subject to the revised Council conditions. The Panel also notes that no height or FSR variation is required under clause 4.6 of the SEPP.

However, they are concerned that the proposal now provides 46 car spaces in excess of the Council's requirements and yet remains deficient in deep soil landscaped area. They thought that there must be scope to reduce the size of the basement and thereby increase the extent of deep soil landscaping, particularly between the buildings. They accept that the revised application provides an improved outcome and goes a long way towards addressing the

deficiencies identified at the meeting of 24 April 2019. However, they would like the staff to investigate and discuss options with the applicant to improve deep soil landscape area by reducing the number of car parking spaces given the site's access to new transport infrastructure.

Your earliest response would be appreciated so we can finalise this matter.

**Suzie Jattan**  
**Senior Project Officer**  
**Planning Panels Secretariat**  
**320 Pitt Street, Sydney | PO Box 39 Sydney NSW 2001**  
**T 02 8217 2063**  
**M 0467 816 701**  
**E [suzie.jattan@planning.nsw.gov.au](mailto:suzie.jattan@planning.nsw.gov.au)**



\*Class 1 Appeals - Notification to the Planning Panel Secretariat must be made no more than seven days after Council receives notice of an appeal in relation to a Planning Panel matter.

\*\*\*\*\*

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been swept for the presence of computer viruses.

\*\*\*\*\*



***Planning Direction Pty. Ltd.***  
***Town Planning & Development Services***

**Blacktown Council  
62 Flushcombe Road  
Blacktown  
NSW 2153**

**30th September 2019**

**Development Application  
59 Cudgegong Road Rouse Hill Site 1  
DA SPP-17- 400007  
Attention: Alan Middlemiss**

Dear Alan

I refer to the email that was received from Bertha Gunawan dated 26th September 2019 relating to deep soil provision on the site.

At no stage during the 2 plus years of refining this development in consultation with Council has it ever been suggested that the deep soil calculation is based on what has now been referred to as the 'developable area' rather than the actual site area. This suggestion is simply incorrect from a town planning viewpoint and completely inconsistent with the manner in which both Council planners and the Panel have applied the deep soil guidelines on other sites in the immediate locality.

There is absolutely no reason why the transmission easement area cannot be included as part of the site area for the purposes of calculating deep soil. There are no planning controls or definitions (LEP, SEPP, ADG or DCP) that require the portion of a site that is affected by an easement to be excluded from calculation of deep soil (such that the calculation should only be undertaken in reference to what you term the 'developable areas'). The approach that has been suggested in Councils recent email is fundamentally flawed.

Further, such an approach is grossly inconsistent with the way in which 'deep soil' has been calculated by Council officers (and accepted by the Panel) in respect of 'like' developments in the immediate vicinity of the site. The applicant has a reasonable expectation that both Council officers and the Panel will be consistent (rather than site/applicant selective) in the interpretation and application of planning controls.

Of particular relevance is the approved development at No 65 Cudgegong Road that is located immediately to the north of the subject site. The development that was approved on this site is directly comparable to the proposed development at No 59 Cudgegong Road particularly noting that:

- The parent allotment was in effect subdivided into two allotments by new internal roads (essentially creating two distinct development allotments being an 'eastern' and 'western' allotment).
- The created 'eastern' allotment was affected by the same transmission easement as No 59 Cudgegong Road.)

It is noted that the ADG assessment report for No 65 Cudgegong Road (**extract below**) advised that the No 65 Cudgegong Road site complied with the deep soil requirements. The report summary table referenced 3m and 6m dimension requirements and gave two different figures (8.6% and 14%) for the deep soil calculation. It is understood that the report considered both the 'eastern' and 'western' allotments of No 65 Cudgegong Road in unison when calculating the deep soil.

## ATTACHMENT 5

### Assessment of compliance with SEPP 65: Design Quality of Residential Flat Development and the Apartment Design Guide

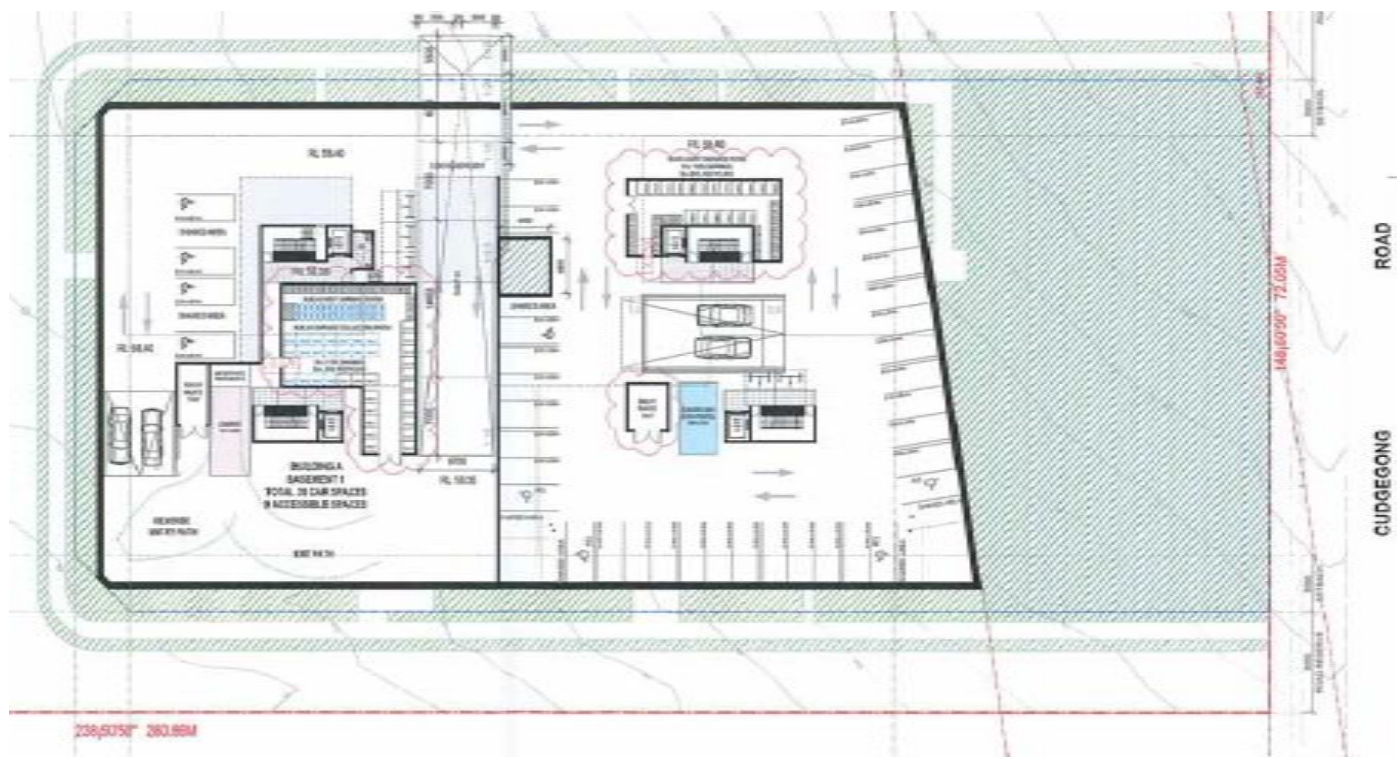
#### SEPP 65: Design Quality of Residential Flat Development

<b>3E Deep Soil Zones</b> Minimum area = 7% of site area. Preferred area = 15%. If the site is between 650 to 1500 sqm then minimum dimensions of 3m. If over 1500 sqm then min dimensions of 6m.	8.6%. 14% or 1,738 sqm provided. Suitable dimensions of deep soil zone are provided.	Yes
---	--	-----

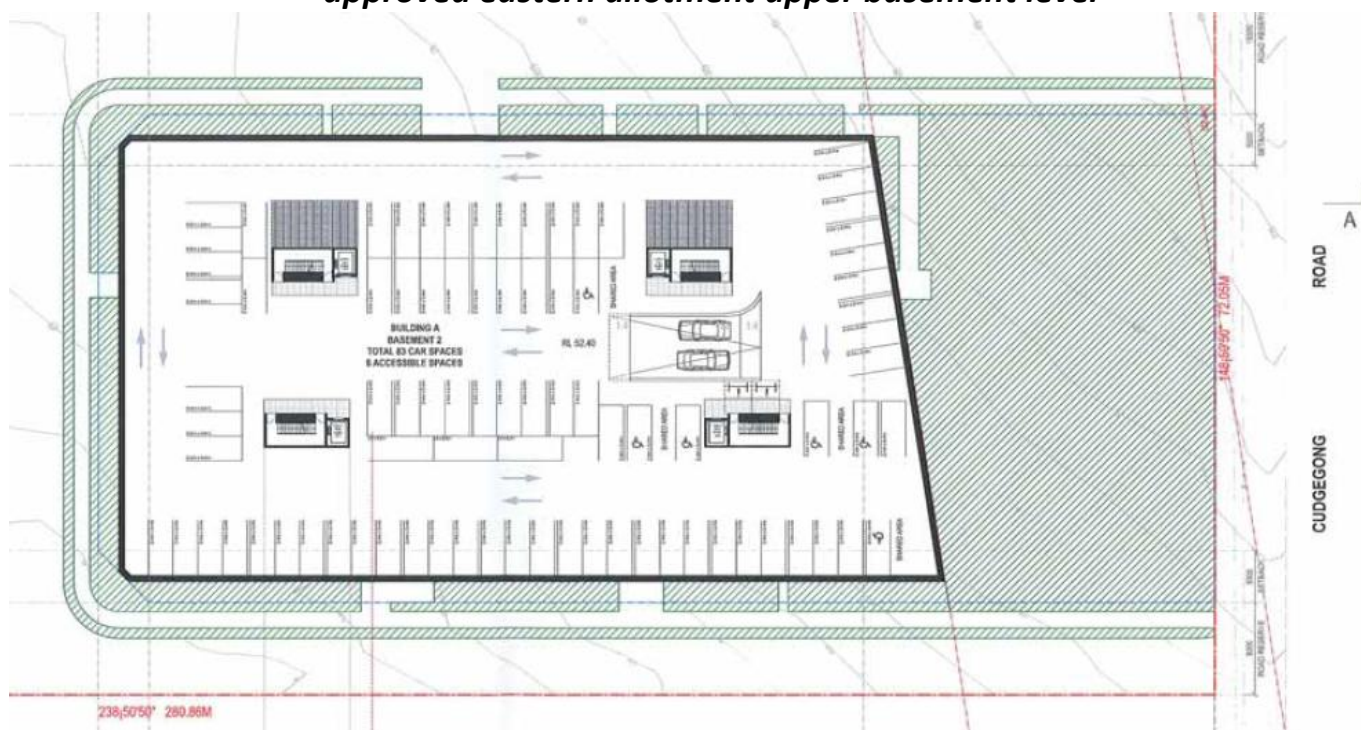
**Provided below are copies of the approved basement plans for both the ‘eastern’ and ‘western’ allotments for the development site at No 65 Cudgegong Road. From perusal of the plans it is clearly obvious (and unarguable) that the area of the easement must have been included in the deep soil calculation. If the transmission line easement area had been excluded from the calculation then the provided deep soil would have been nowhere near compliant.**

In respect of the ‘eastern’ allotment No 65 Cudgegong Road the following matters are noted:

- The basement on the ‘eastern’ allotment is setback 2m from the property boundaries – the setback areas to the street frontages do not satisfy the 6m dimension requirement for inclusion in the deep soil calculation.
- The small centrally located landscaped ‘pocket’ on the ‘eastern’ site depicted on the upper basement level does not extend through the lower basement level and is thus not deep soil (rather it is ‘planting on structures’). Further this area has a dimension of less than 6m. The ‘pocket’ does not satisfy the requirements to be included in the deep soil calculation.
- Other than the 2m street setbacks, and the area of the transmission line easement the two basement levels on the ‘eastern’ allotment covered the entire site. The only part of the ‘eastern’ allotment that was deep soil (having a dimension of 6m or more and not being ‘planting on structures’) was in fact the area of the easement.



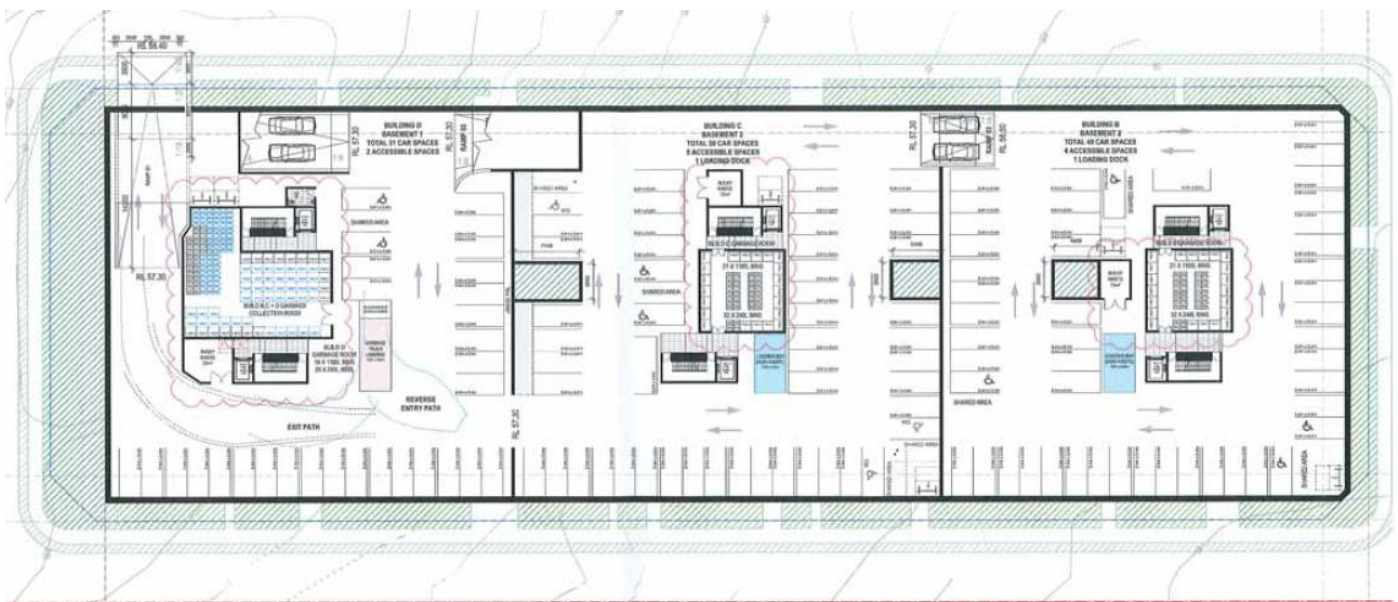
***Approved development at No 65 Cudgegong Road  
- approved eastern allotment upper basement level***



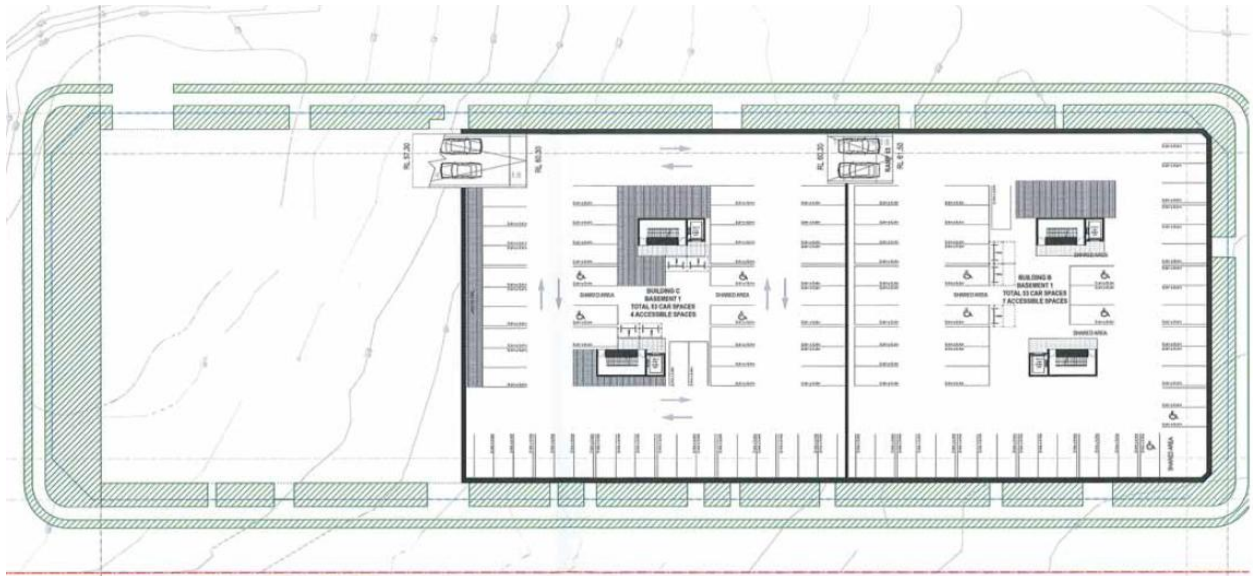
***Approved development at No 65 Cudgegong Road  
- approved eastern allotment lower basement level***

In respect of the 'western' allotment No 65 Cudgegong Road the following matters are noted:

- The basement on the 'western' allotment is setback 2m from the property boundaries – the setback areas to the street frontages do not satisfy the 6m dimension requirement for inclusion in the deep soil calculation.
- The basement covers the entire allotment other than the 2m street setbacks and a wider deep soil strip to the western street frontage.
- The internal landscaped 'pockets' shown on the approved basement plans do not extend through both basement levels and are thus are not deep soil, rather they are 'planting on structures'. Further these pocket areas have a dimension of less than 6m. The pockets do not satisfy the requirements to be included in the deep soil calculation.
- The only part of the 'western' allotment that was deep soil (having a dimension of 6m or more and not being 'planting on structures') was in fact the strip of land adjacent to the western road frontage.



***Approved development at No 65 Cudgegong Road  
- approved western allotment upper basement level***



***Approved development at No 65 Cudgegong Road  
- approved western allotment lower basement level***



***Deep soil- No 65 Cudgegong Road western allotment***

Areas with a dimension of less than 6m and 'planting on structures' cannot be included in the deep soil calculation; they can however be considered as supplementary landscape elements in a merit based assessment.

The only deep soil with a dimension of 6m or greater on the No 65 Cudgegong Road site is:

- the area of the transmission line easement (located on the 'eastern' allotment) that has an area of 1,417sqm, and
- the strip of land along the western road site frontage (located on the 'western' allotment) that has an area of approximately 230sqm.

The current suggestion in Council's email is that the area of transmission line easement will not be accepted as being deep soil. If precisely the same approach is applied to deep soil calculations for the approved 65 Cudgegong Road site then the deep soil provision falls well short of the 7% ADG requirement and well short of the 15% 'desired' provision for greenfield sites (being the requirement that you are now seeking to impose on the development at No 59 Cudgegong Road as a 'mandatory minimum' provision). In this respect the following calculations would apply:

- The deep soil provision for the 'eastern' allotment - 65 Cudgegong Road is nil or 0% as the only deep soil area with a dimension of 6m on that allotment is the transmission line easement area.
- The deep soil provision for the 'western' allotment - 65 Cudgegong Road is limited to the strip of land along the western road frontage that has an area of 230sqm. The area of the western allotment is 6,845.5sqm. The area of deep soil provided on the 'western' allotment relative to its site area therefore equates to 3.3%.
- The 'eastern' allotment has an area of 5,151sqm. The 'western' allotment has an area of 6,845.5sqm. The total site area is therefore 11,996.5sqm. The deep soil provision for the 'overall development' is 2% for the combined allotments, comprising of only the 230sqm strip adjacent to the western road frontage.

As previously noted the ADG assessment report for No 65 Cudgegong Road advised that the No 65 Cudgegong Road site complied with the deep soil requirements. The report summary table referenced 3m and 6m dimension requirements and gave two different figures (8.6% and 14%) for the deep soil calculation. The calculations were accepted by the Panel.

To achieve the above percentages Council must have included the area of the transmission line in the calculation of deep soil. Doing so results in the following calculations for the overall site:

Site area: 11,996.5sqm

Deep soil: 1,417sqm (the area of the transmission line easement located on the 'eastern' allotment) PLUS 230sqm (the area strip of land along the western road site frontage on the 'western' allotment) = 1,647sqm

Percentage provision:  $1,647\text{sqm}/11,996.5\text{sqm} = 13.7\%$  (rounded up to the 14% noted in the Council assessment report)

Further, in respect of the approved No 65 Cudgegong Road development it is noted that:

- The deep soil was not distributed evenly over the two allotments. The only deep soil provision was located at the eastern extremity (under the transmission line easement) and the western extremity (the western road frontage) of the site.
- Of the total deep soil provision of 1,647sqm the vast majority (1,417sqm or 86%) comprised the transmission line easement area.
- There was no deep soil whatsoever provided in the central 'developable' areas of the site.
- The approved development on the 'western' allotment relied extremely heavily on the deep soil that was located under the transmission line easement that (that has no practical or physical connection to the 'western' allotment).
- The development complied with the ADG 7% requirement only if the area of the transmission line was included in the calculation.

- The development did not achieve the 15% guideline that Council is now seeking to impose as a mandatory minimum standard on the 59 Cudgegong Road development. Even to get to 13.7% the area of the transmission line was included in the calculation.

### **Inconsistency in the Application of Controls**

It is noted that the following town planning compliance ‘concessions’ were granted in respect of the approved development at No 65 Cudgegong Road:

- A variation to the height control was accepted. The applicant for No 59 Cudgegong Road was advised that under no circumstances would any variation be considered in respect of the site.
- Building and apartment separation of between 9m and 12m (maximum) on all floor levels was accepted notwithstanding such being non compliant with the ADG requirements. The applicant for No 59 Cudgegong Road was required to modify plans on a number of occasions to achieve an ADG compliant/acceptable building separation solution.



***Approved section - No 65 Cudgegong Road depicting the approved 12m separation at all floor levels***

- Building setbacks to the street of 5m and basement setbacks of 2m were accepted. This was done on the basis of that Council increased the required road width from 16m to 18m. Notwithstanding precisely the same circumstances applying to No 59 Cudgegong Road the required setbacks for the development on the site were 6m to the building and 2m to the basement.
- As detailed previously in this correspondence the deep soil calculation included that part of the site affected by the transmission line easement. The calculation was undertaken on the basis of the entire allotment areas. The applicant for No 59 Cudgegong Road is now being advised that the easement will not be included as deep soil and that the deep soil will be calculated on the basis of the 'developable area'.
- In respect of deep soil, if the aforementioned restrictions that are now being suggested for the development at No 59 Cudgegong Road had been imposed on the development at No 65 Cudgegong Road then the deep soil provision for the development was only 2% of the total site area. Notwithstanding the fact that the development at No 65 Cudgegong Road provided on site car parking well in excess of the minimum planning requirements there was no requirement for the on-site car parking to be reduced to increase deep soil provision. The applicant for No 59 Cudgegong Road has been requested to further reduce parking to increase the already compliant deep soil provision.

It is beyond reasonable planning comprehension as to why the assessment of the very comparable sites at No 65 Cudgegong Road and No 59 Cudgegong Road has been undertaken in such a different manner by both Councils officers and the Panel particularly as precisely the same planning controls prevail.

### **The Proposed Deep Soil**

In specific reference to deep soil provision the following should be noted:

- The applicant has undertaken further amendments to increase deep soil and reduce on site car parking as requested by the Panel.

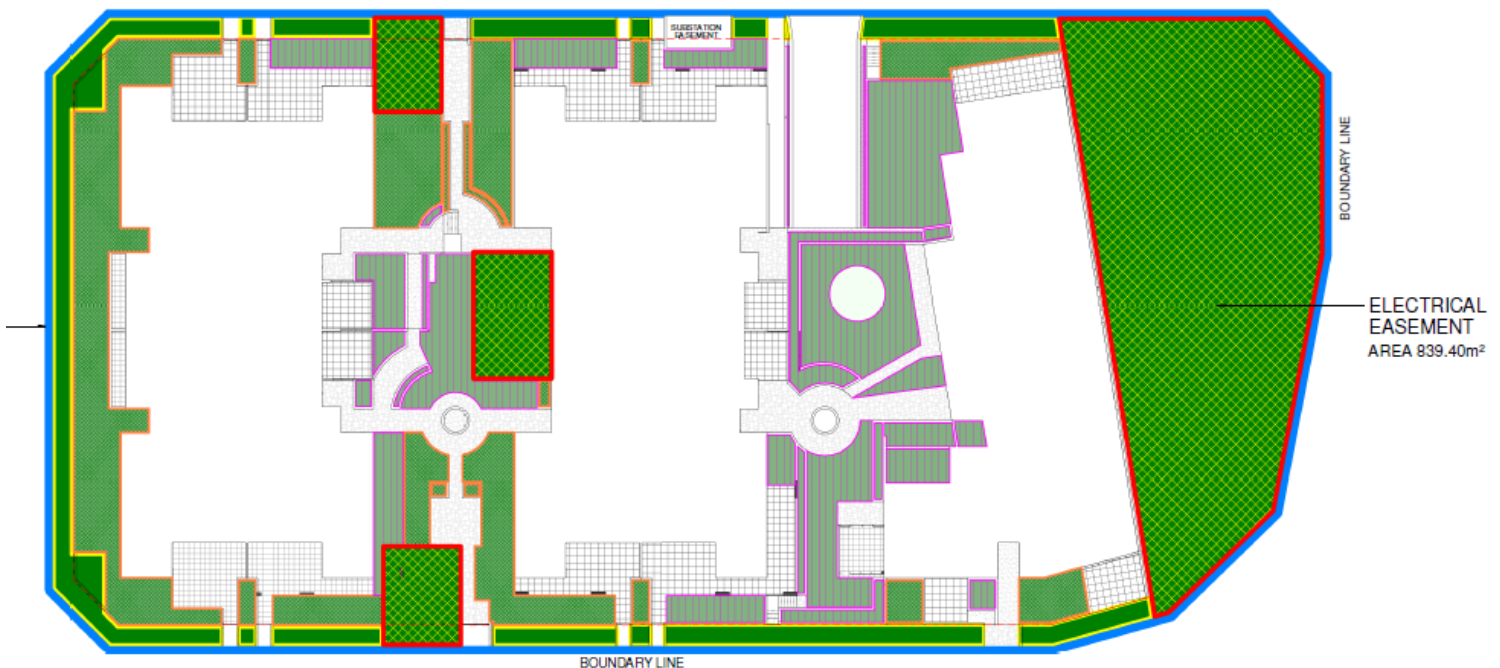
- The deep soil provision under the amended proposal more than complies with the deep soil requirements of the ADG well exceeding the 7% standard and more exceeding the 15% guideline. The calculations are as follows.

**Site area: 5,674.9sqm**

**Provided deep soil with a dimension of greater than 6m - 1,017sqm or 17.9% of the site area.**

**Additional deep soil with a dimension of less than 6m (essentially being the street setbacks): 384sqm or 6.77% of the site area**

**Additional planting on structures (soil depth 1m or more): 537sqm or 9.46% of the site area.**



DEVELOPABLE SITE AREA = 5674.90m<sup>2</sup>  
 SITE AREA EXCLUDING EASEMENT = 4835.50m<sup>2</sup>

	DEEP SOIL AREA Only areas of natural deep soil	1401.00m <sup>2</sup>	- 24.69%		Less than 1m deep planting on structure	550.00m <sup>2</sup>	- 9.70%
	Deep soil zones with a minimum of 6m in any directions	1017.00m <sup>2</sup>	- 17.92%		More than 1m deep planting on structure	537.00m <sup>2</sup>	- 9.46%
	Additional deep soil zones with a dimension of less than 6m	384.00m <sup>2</sup>	- 6.77%				

- Further reduction in on site car parking to increase deep soil is unreasonable and unnecessary because:

-The proposal complies with the on-site car parking requirements of the ADG. Pursuant to the provision of SEPP 65 an application cannot be refused for the reasons of car parking if compliance is achieved.

-The development provides deep soil landscaping well in excess of the 7% required by the ADG. The proposal even exceeds the 15% 'desirable' provision for development on Greenfield sites (noting that the comparable development at No 65 Cudgegong Road did not achieve this standard).

-Unlike, and far superior to the approved development at No 65 Cudgegong Road, the provided deep soil areas include consolidated areas with the central areas of the site. Large consolidated deep soils zones have been provided adjacent to the building entries and within the central common open space area.

-The approval of developments that provide on-site car parking provision well in excess of the 'minimum' requirement has been commonly approved in the immediate locality; the developments at No 65 Cudgegong Road and 44-56 Cudgegong Road are prominent examples. The proposed car parking is not excessive and must be maintained to enable the development to be 'market competitive' by providing a 'comparable level of car parking service' as other developments in the locality. Otherwise the applicant developer will be at a severe disadvantage at the marketing stage.

- The overall site landscaping on this development is substantial; the buildings will sit in very well landscaped grounds - the design incorporates a high proportion of natural deep soil of various dimensions supplemented by planting on structures. The overall site landscaping is well crafted.
- There is absolutely no town planning basis for Council to exclude the area of the easement from the deep soil calculation. Doing such is contrary to planning definitions and grossly inconsistent with the application and interpretation of the deep soil requirements in respect of very like sites in the immediate locality (Refer to No 65 Cudgegong Road).

### **Conclusion**

As you would appreciate the applicant is extremely frustrated with the continual delays and inconsistencies on this project; they are fully aware of the comparatively sub-standard and non compliant developments that have been approved in the immediate locality in far shorter time frames. My clients have expressed their concerns that this development has, and continues to be treated far more harshly by Councils planners and the Panel than other comparable developments.

In respect of the current status of the development at No 59 Cudgegong Road the applicant has worked tirelessly to achieve the requirements of Council as expressed in numerous correspondence and meetings to achieve a well founded development outcome for the site.

The only outstanding matter relates to deep soil; the proposal more than complies with the ADG deep soil requirements.

**Council has advised the Panel on two occasions that the proposed development is compliant with deep soil requirements. We reasonably expect that Council planners maintain that advice to the Panel and further advise the Panel in their report that:**

- **The applicant has further amended the plans to reduce car parking and increase deep soil as requested by the Panel. The applicant has positively responded to the Panels request.**

- The deep soil provision under the amended proposal more than complies with deep soil requirements of the ADG and is greater than that provided by the No 65 Cudgegong Road development. The total deep soil area (including only areas with a dimension of 6m or more in any direction) is 17.9% of the site area. A further 384sqm or 6.77% of deep soil or 6.77% of the site area comprising areas with a dimension of less than 6m (specifically the street setback areas) is provided. In addition 537sqm or 9.46% of the site area planting on structures is provided.
- The overall site landscaping on this development is substantial; the buildings will sit in very well landscaped grounds - the design incorporates a high proportion of natural deep soil of various dimensions supplemented by planting on structures. The overall site landscaping is well crafted.
- With a view to maintaining consistency in the interpretation and application of controls it is reasonable for consideration to be given to the assessment/determination of 'like' development sites in the immediate locality and under the same planning regime.
- Further to the above point, Council officers and the Panel have previously supported and approved a development on a very comparable site (No 65 Cudgegong Road –located immediately to the north) that had less deep soil provision than the proposed development at No 59 Cudgegong Road. In the assessment of the No 65 Cudgegong Road development Councils planners and the Panel agreed that the area of the transmission easement could be included in the deep soil calculation. Had the easement area been excluded from the deep soil calculation for No 65 Cudgegong Road then the development would have only provided 2% of the site area as deep soil.
- Any further reduction in on site car parking would be unreasonable and unnecessary because:
  - The proposal complies with the on-site car parking requirements of the ADG. Pursuant to the provision of SEPP 65 an application cannot be refused for the reasons of car parking if compliance is achieved.

**-The development provides deep soil landscaping well in excess of the 7% required by the ADG. The proposal even exceeds the 15% 'desirable' provision for development on greenfield sites (noting that the comparable development at No 65 Cudgegong Road did not achieve this standard).**

**-Unlike, and far superior to the approved development at No 65 Cudgegong Road, the provided deep soil areas include consolidated areas with the central area of the site. Deep soils zones have been provided adjacent to the building entries and within the central common open space area.**

**-The approval of developments that provide on-site car parking provision well in excess of the 'minimum' requirement has been commonly approved in the immediate locality; the developments at No 65 Cudgegong Road and 44-56 Cudgegong Road are prominent examples. The proposed car parking is not excessive and must be maintained to enable the development to be 'market competitive' by providing a 'comparable level of car parking service' as other developments in the locality. Otherwise the applicant developer will be at a severe disadvantage at the marketing stage.**

**Having regard to the above approval of the application is recommended.**