

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

NOTE: ONE SUBMISSION RECEIVED
OUTSIDE SCOPE OF MAP

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

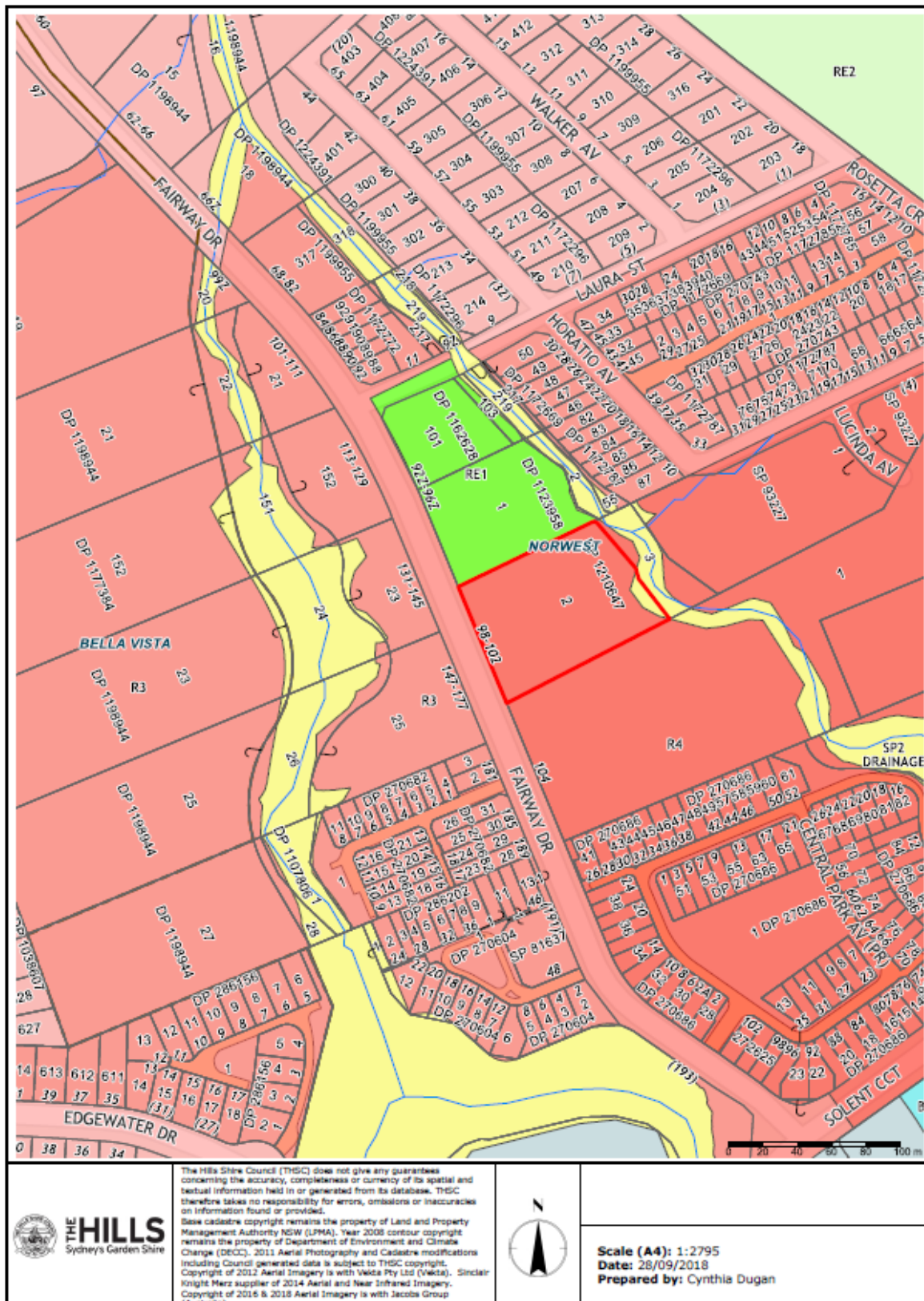
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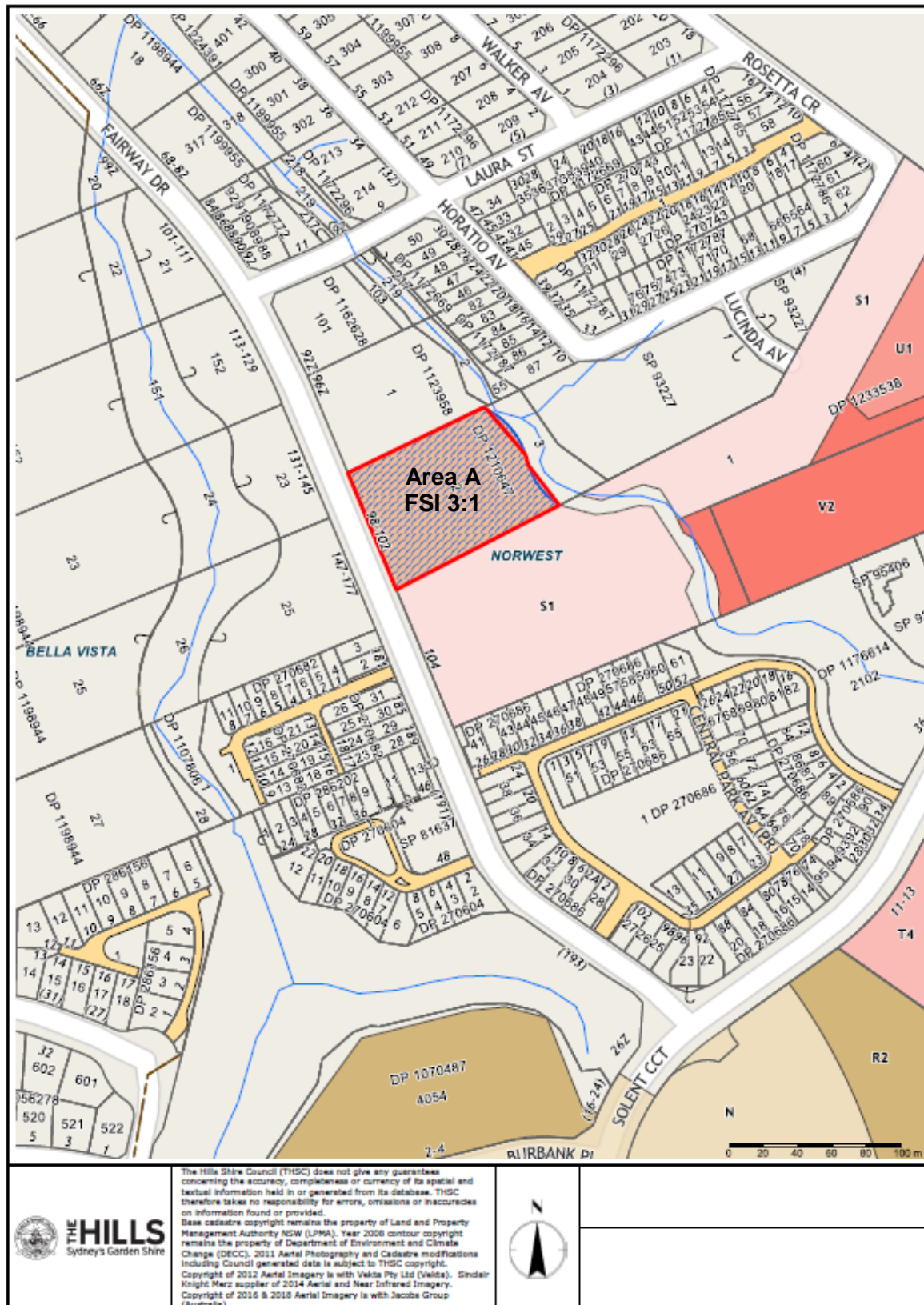
ATTACHMENT 2 – AERIAL PLAN



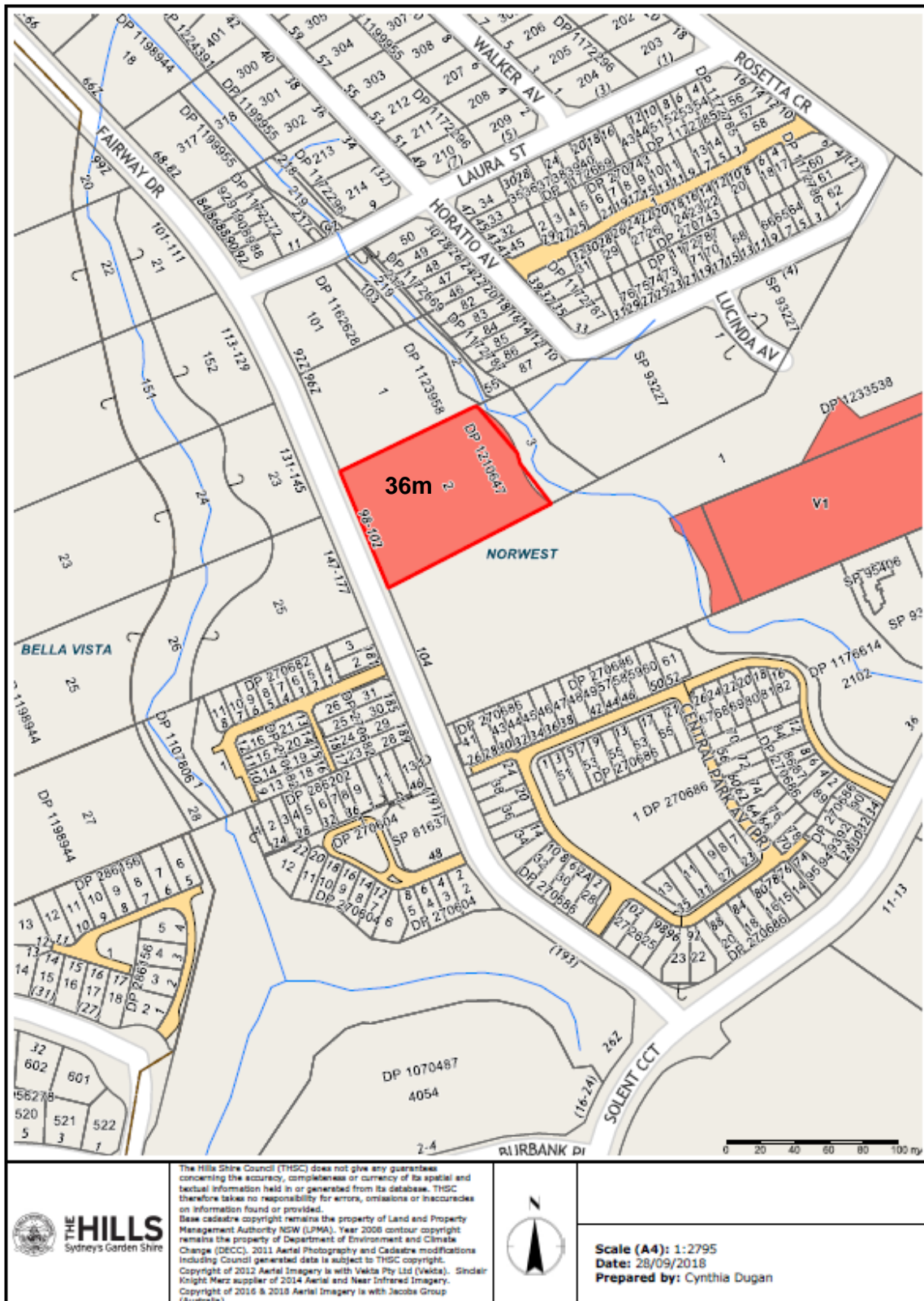
ATTACHMENT 3 – LEP ZONING MAP



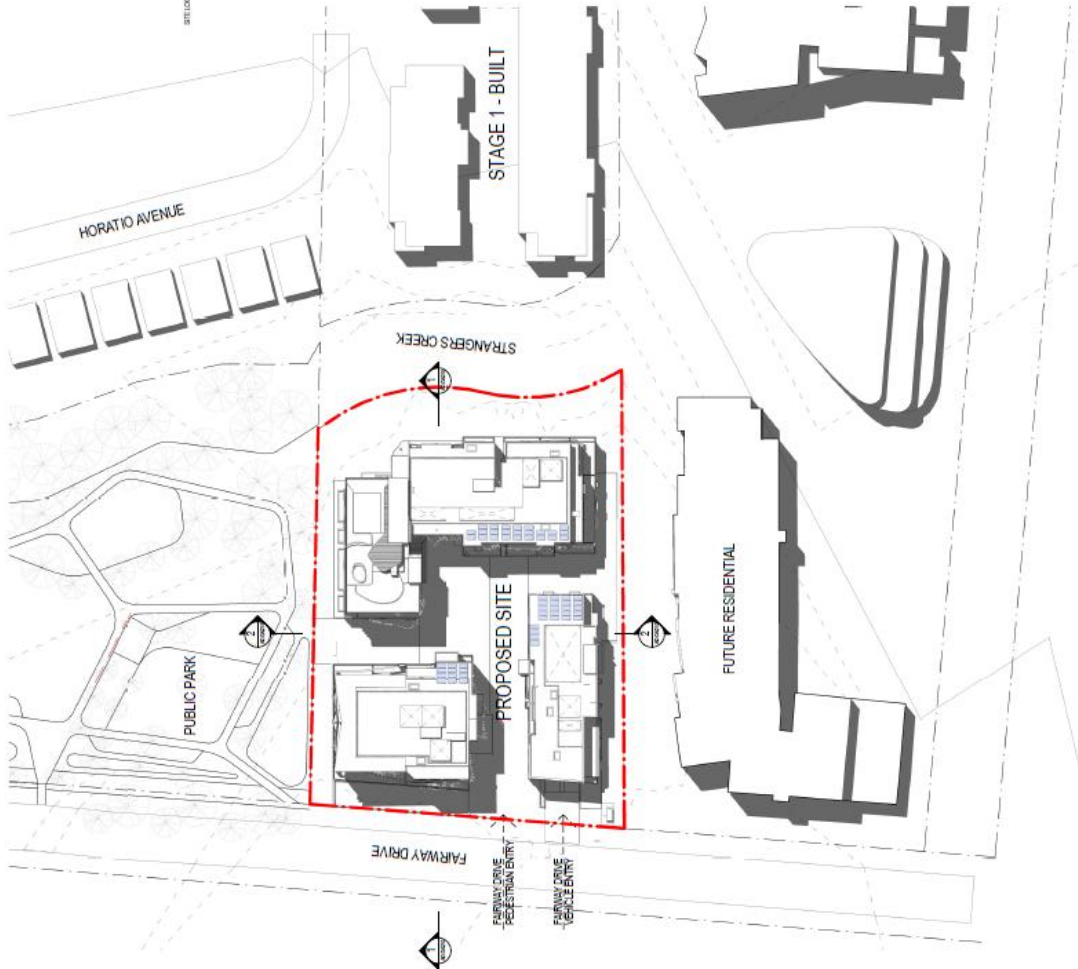
ATTACHMENT 4 – LEP FLOOR SPACE RATIO MAP



ATTACHMENT 5 – LEP HEIGHT OF BUILDINGS MAP



ATTACHMENT 6 – SITE PLAN

[illegible]

ATTACHMENT 7 – FLOOR PLANS



Rev	Description	Date	By
1	FOR APPROVAL	27/07/2018 2:31:08 PM	DOUG SOUTHWELL
2	FOR APPROVAL	27/07/2018 2:31:08 PM	DOUG SOUTHWELL
3	FOR APPROVAL	27/07/2018 2:31:08 PM	DOUG SOUTHWELL

FOR APPROVAL
DOUG SOUTHWELL
7/5/22

27/07/2018 2:30:27 PM

Sheet: (Sheeted)
X 14.000000
0.000000

History
Date: (Date)
User: (User)



100 FAIRWAY DRIVE, NORWEST
ARDEN [CH] PTY LTD

20160076

AD-DA103

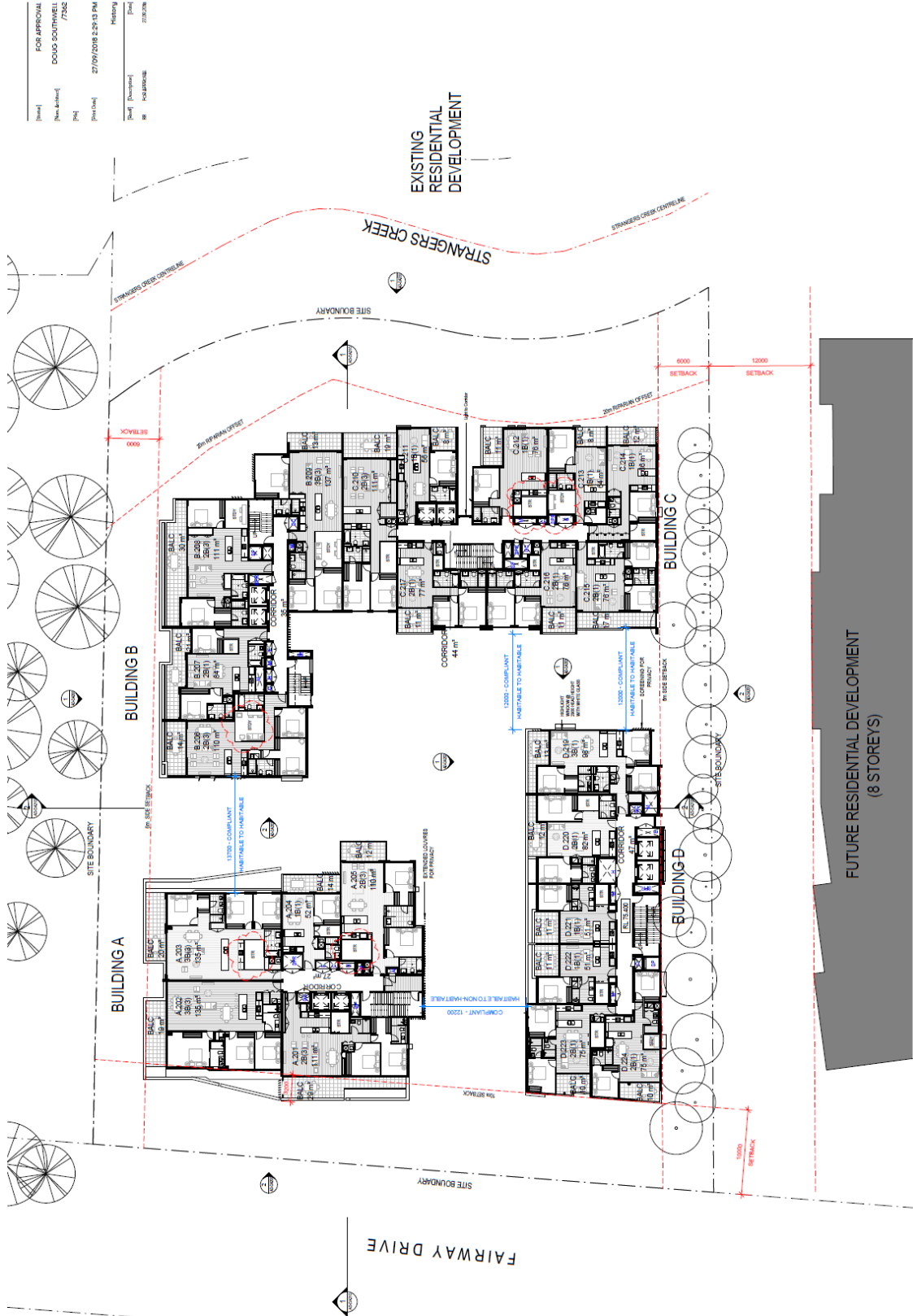
V

1 : 200 @ A1

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Level One One Cliffig Square Sydney NSW 2000 Australia
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Drawn	FOR APPROVAL
Rev. 001	DOUG SOUTHALL
Rev. 002	7/202
Rev. 003	27/09/2018 2:20:13 PM
Rev. 004	History
Rev. 005	20/09/2018
Rev. 006	20/09/2018
Rev. 007	20/09/2018
Rev. 008	20/09/2018
Rev. 009	20/09/2018
Rev. 010	20/09/2018
Rev. 011	20/09/2018
Rev. 012	20/09/2018
Rev. 013	20/09/2018
Rev. 014	20/09/2018
Rev. 015	20/09/2018
Rev. 016	20/09/2018
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Rev. 100	20/09/2018

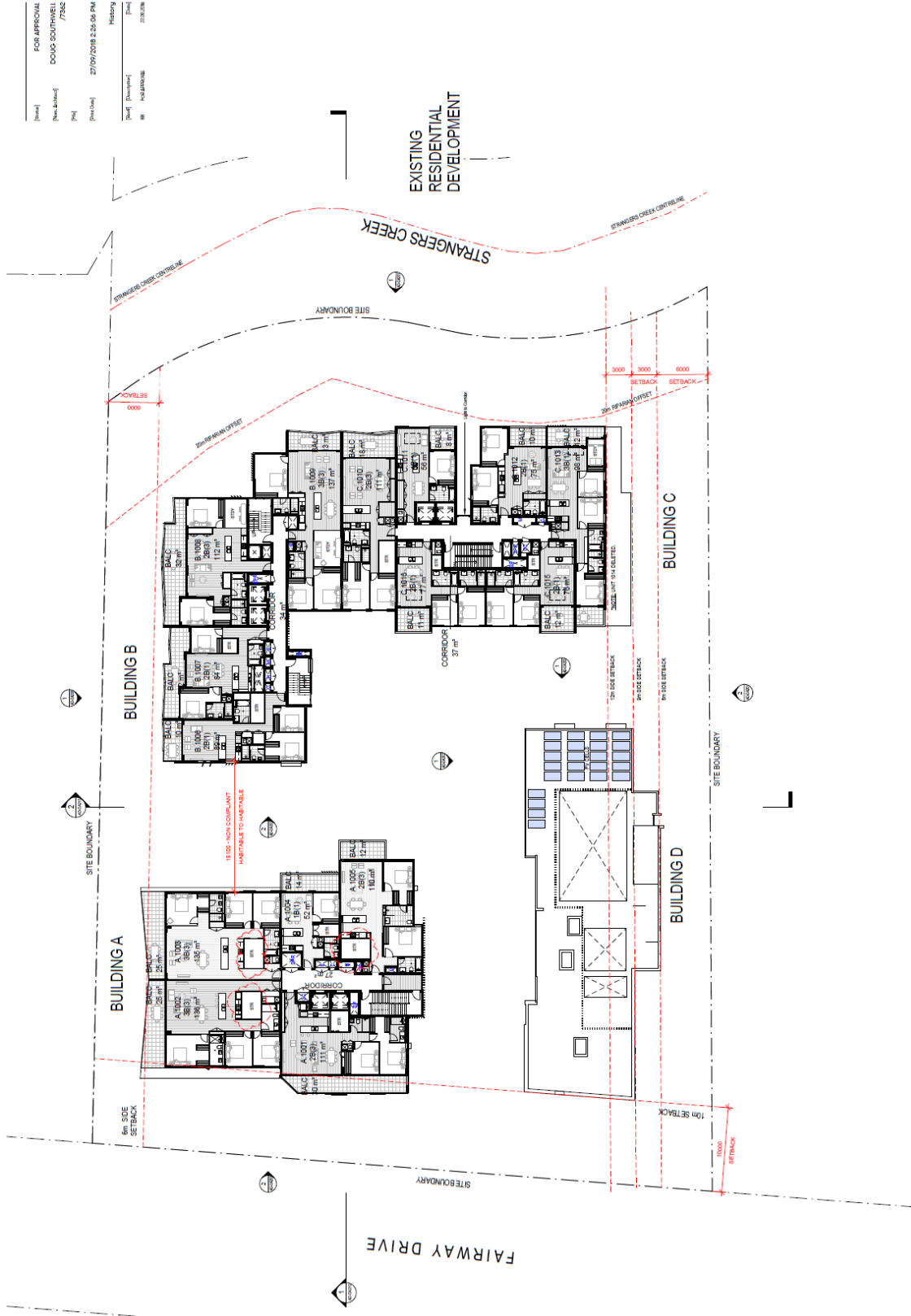


The site plan illustrates the layout of the Future Residential Development, consisting of four buildings (A, B, C, and D) situated within a defined site boundary. The plan includes detailed floor plans for each building, showing room layouts, dimensions, and area calculations. Key features include setbacks (e.g., 10m, 15m, 1000, 1200, 1500, 3000, 6000, 12000), site boundaries, and various setbacks (e.g., 10m, 15m, 1000, 1200, 1500, 3000, 6000, 12000). The plan also shows the location of Strangers Creek and the Fairway Drive. Building A is located on the left side of the site, Building B is in the center, Building C is on the right, and Building D is at the bottom. The plan includes a north arrow and a scale bar.

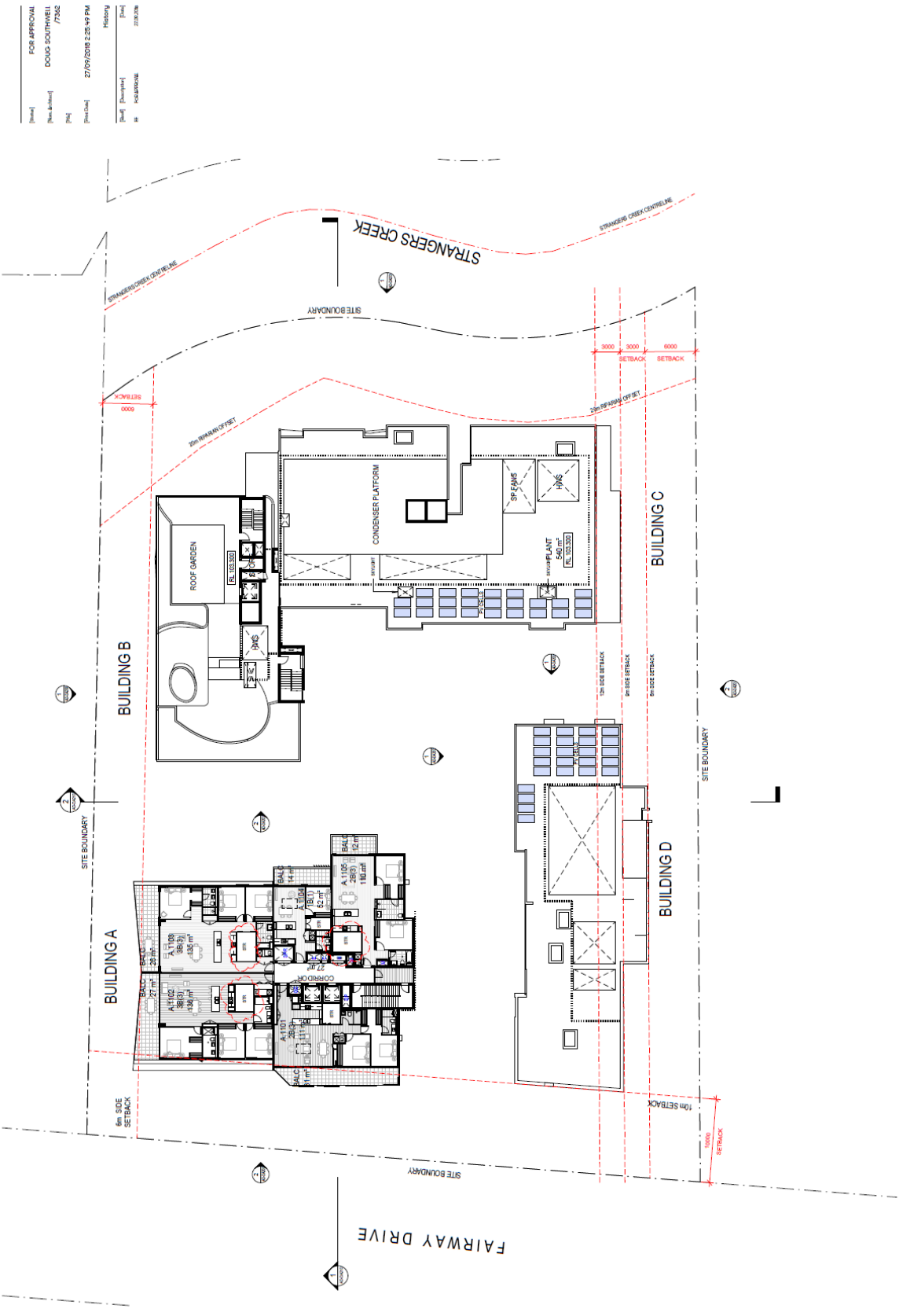


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[P#]	77362	
[Date Date]	27/09/2018 2:27:35 PM	
History		
[Rev]	[Description]	[Date]
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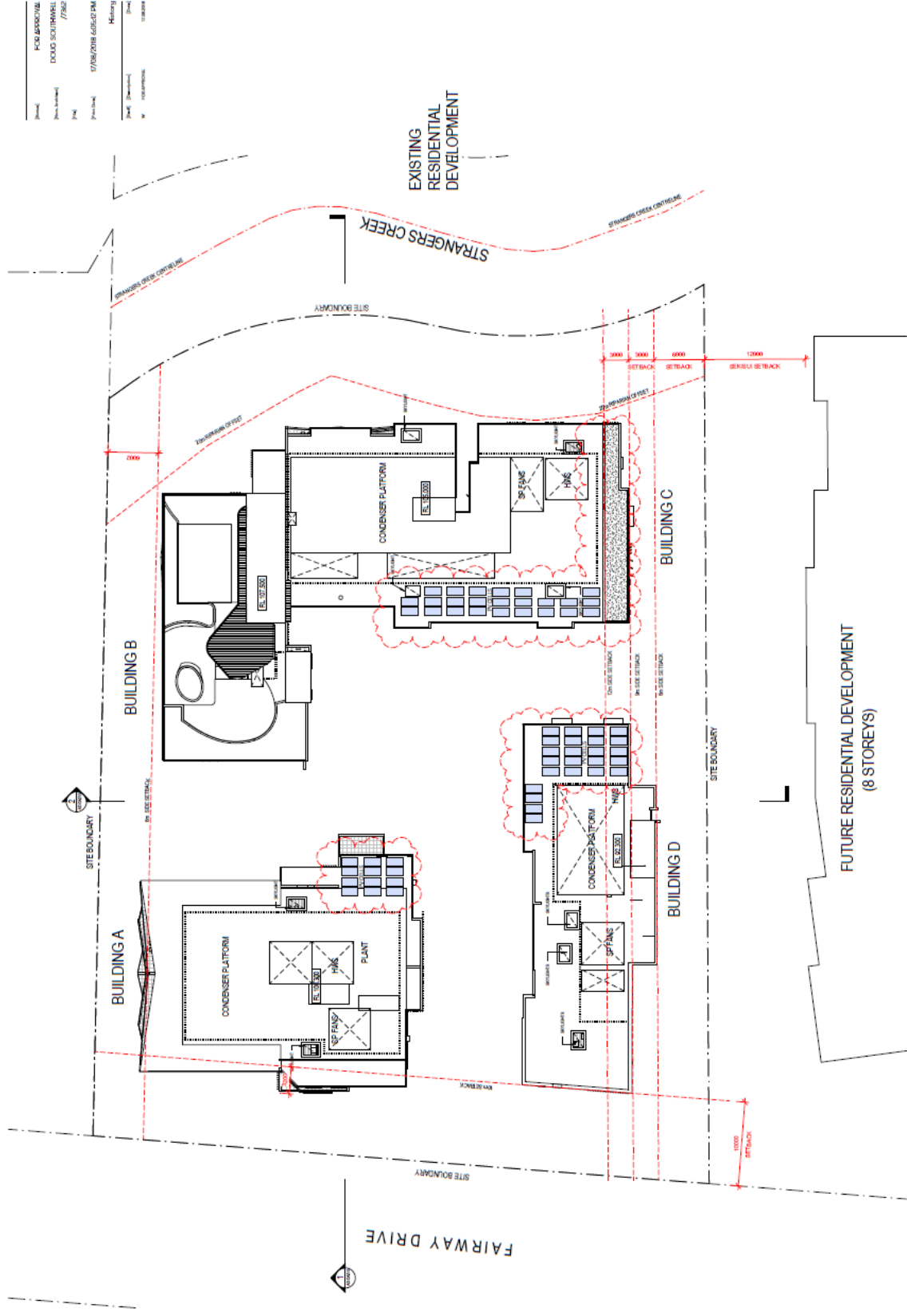




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Rev. 001	DOUG SOUTHGATE
Rev. 002	7/2022
Rev. 003	27/07/2018 2:28:06 PM
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Rev. 005	27/07/2018 2:28:06 PM
Rev. 006	27/07/2018 2:28:06 PM
Rev. 007	27/07/2018 2:28:06 PM
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Rev. 010	27/07/2018 2:28:06 PM

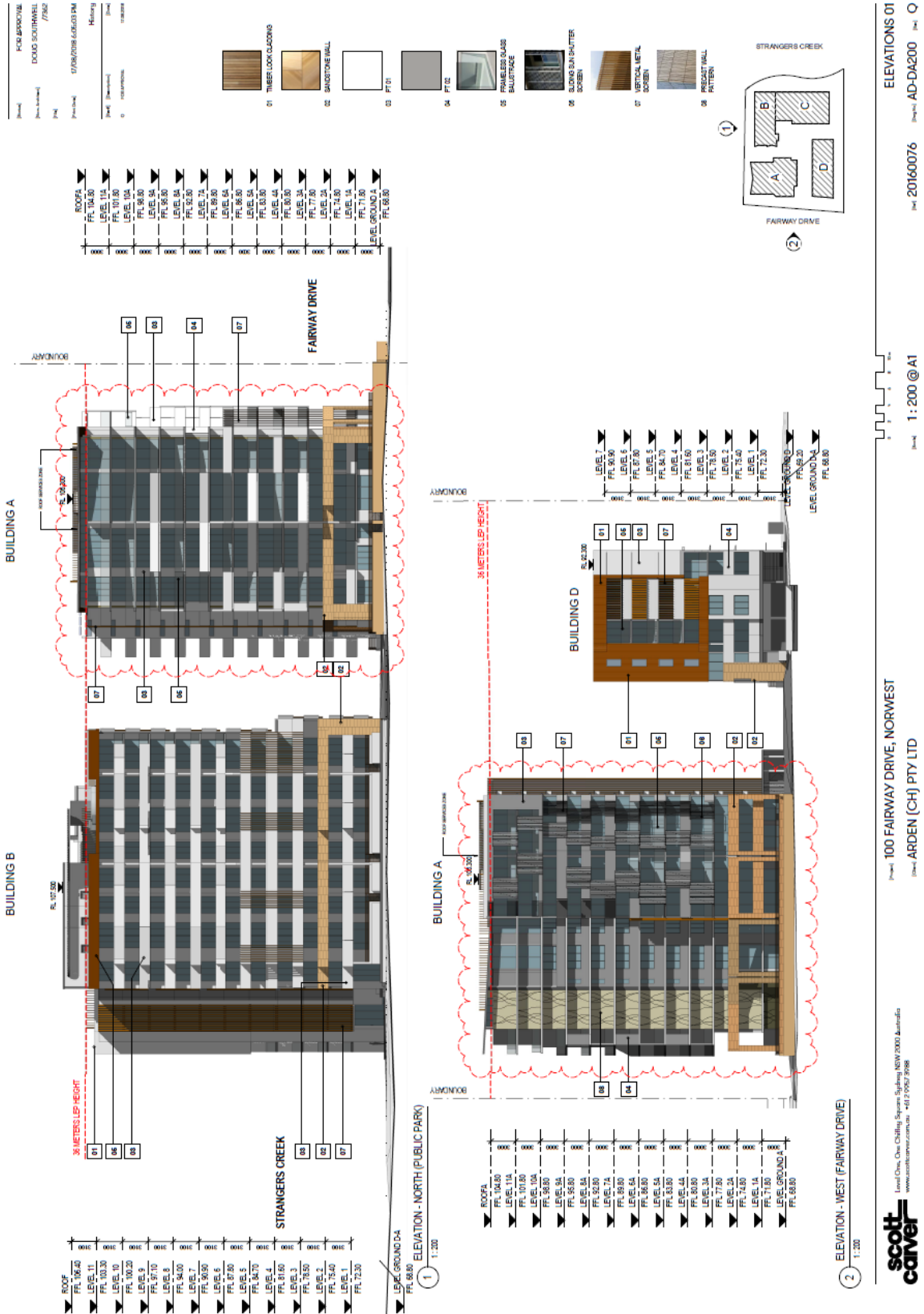


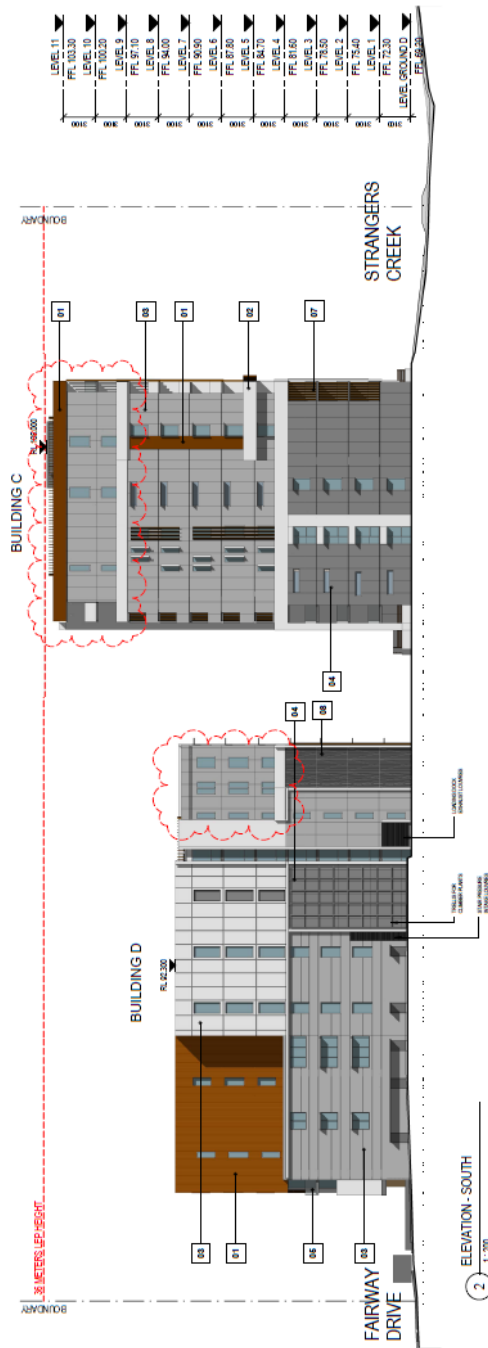
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7/202	7/202
27/09/2018 2:25:47 PM	27/09/2018 2:25:47 PM
22/09/2018	22/09/2018








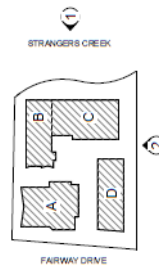
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File	07/06/2018 4:05:03 PM
Author	History
Drawn	Drawn
W	W

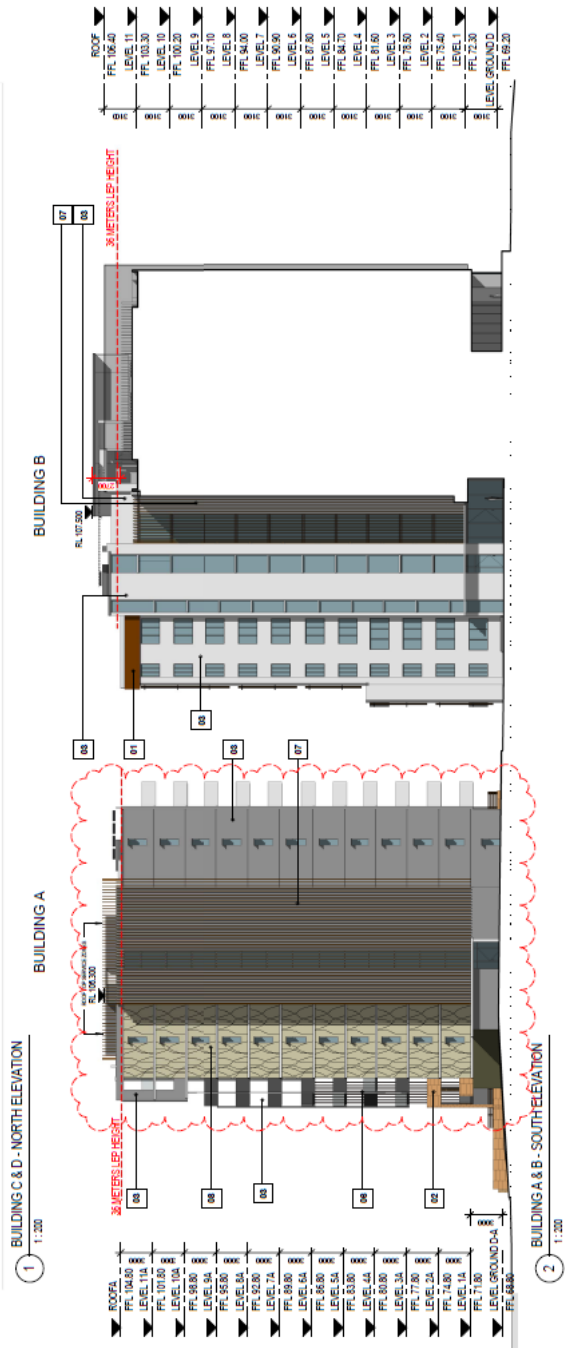
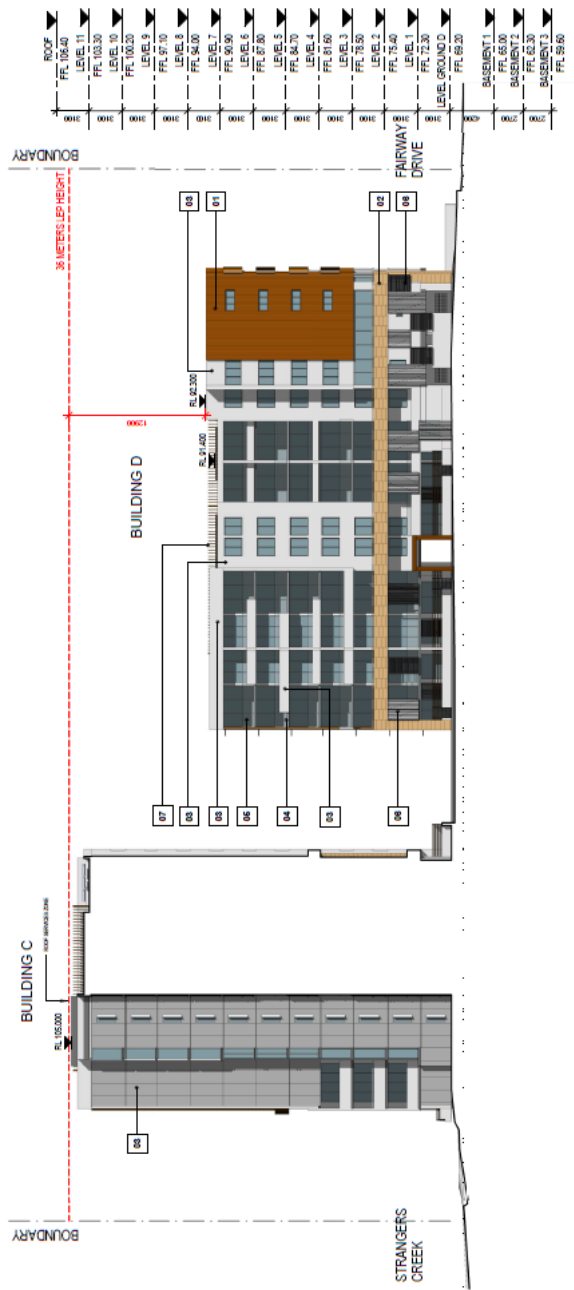
ATTACHMENT 8 – ELEVATIONS



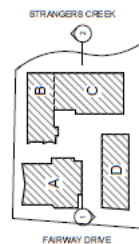
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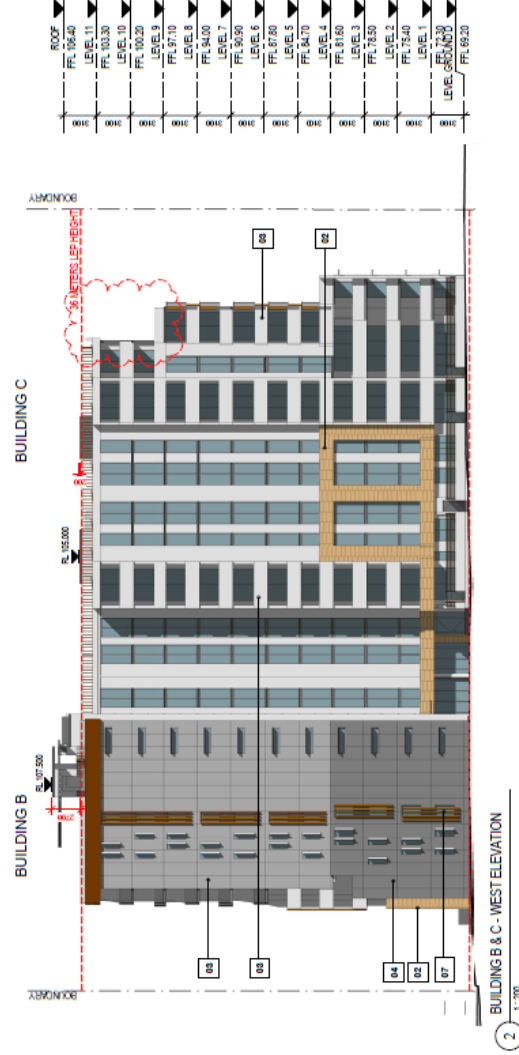
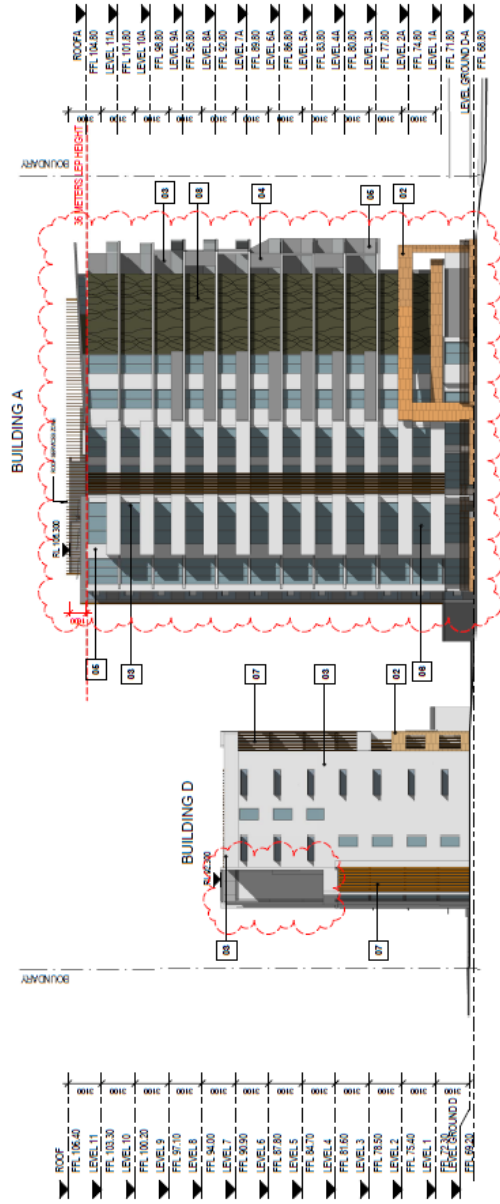
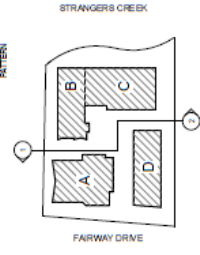
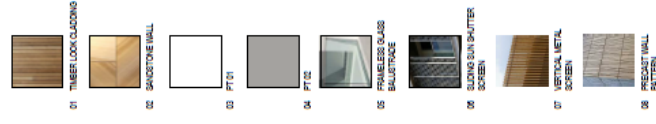
- | | | |
|--|----|----------------------------|
|  | 01 | TIMBER LOOK CLADDING |
|  | 02 | SANDSTONE WALL |
|  | 03 | FLAT |
|  | 04 | SOLID |
|  | 05 | FRAMELESS GLASS BALUSTRADE |
|  | 06 | SLIDING SUN BLUTTER SCREEN |
|  | 07 | VERTICAL METAL SCREEN |
|  | 08 | PNEUMATIC WALL |



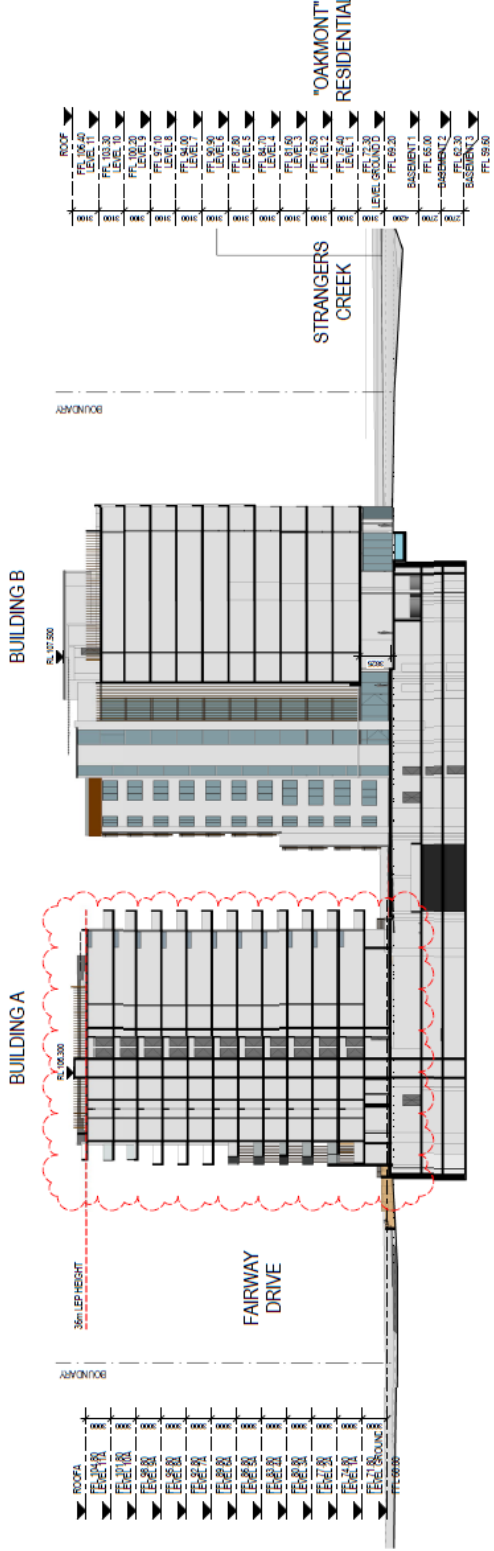


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State Authority	DOUG SOUTHWELL /7362
Date	11/08/2018 6:03:45 PM
State Date	History
Date	Date
FOR APPROVAL	11/08/2018

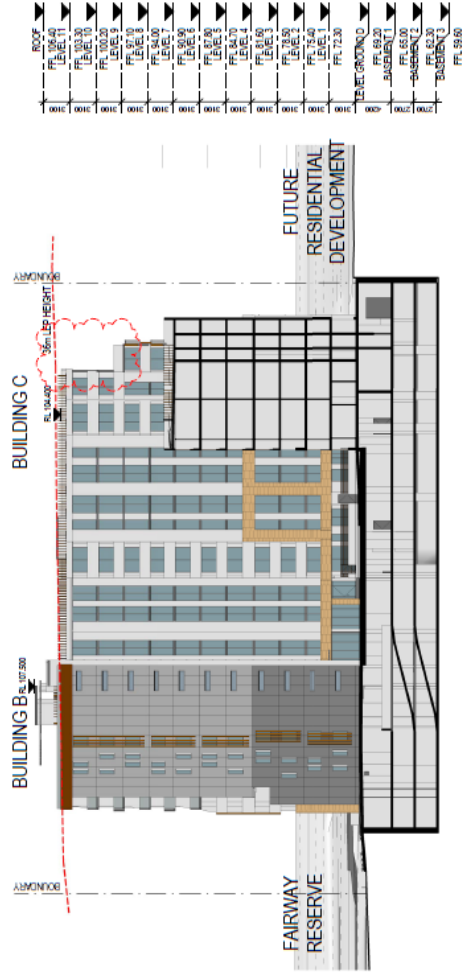


[illegible]

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File	17182
Project Name	17182/2016 650318 DA
Project Number	17182
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Project Number	17182
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Project Number	17182

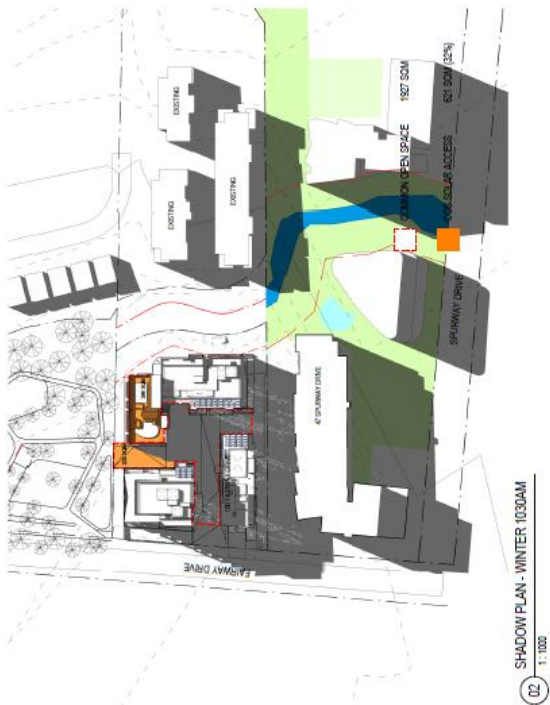
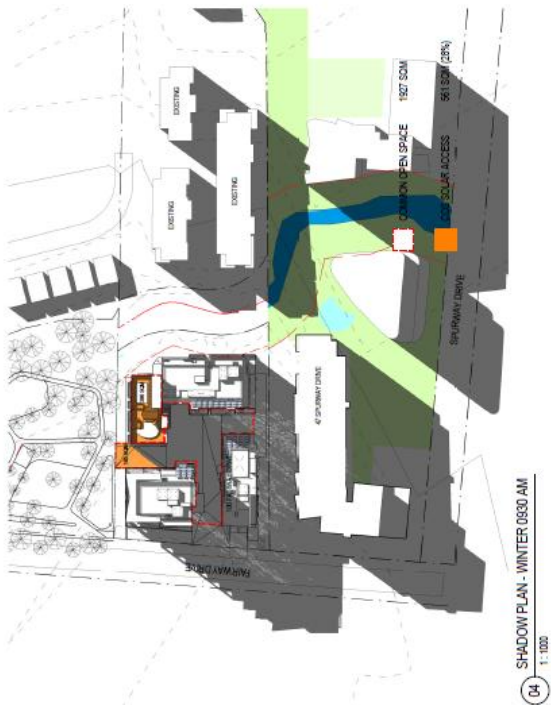


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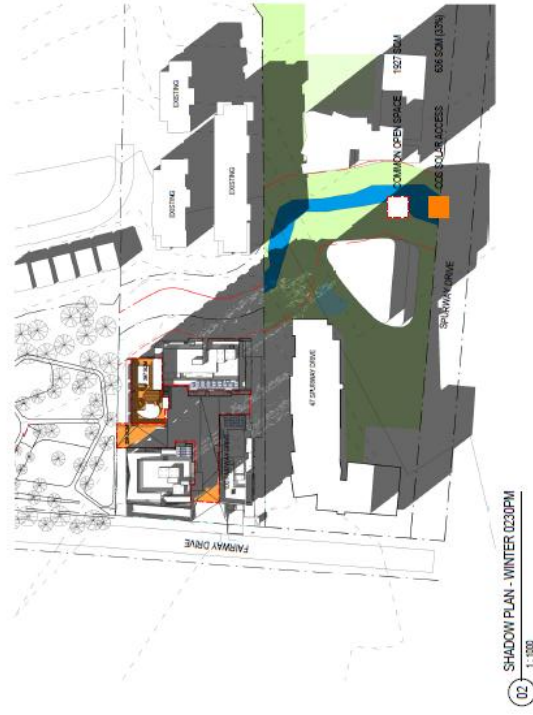
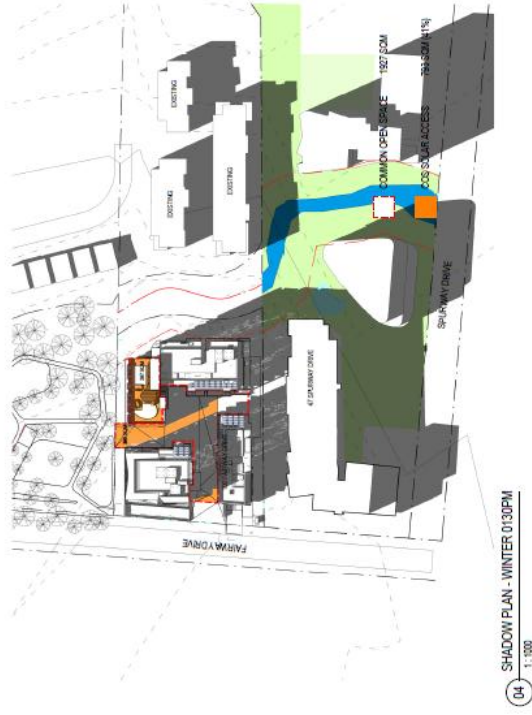
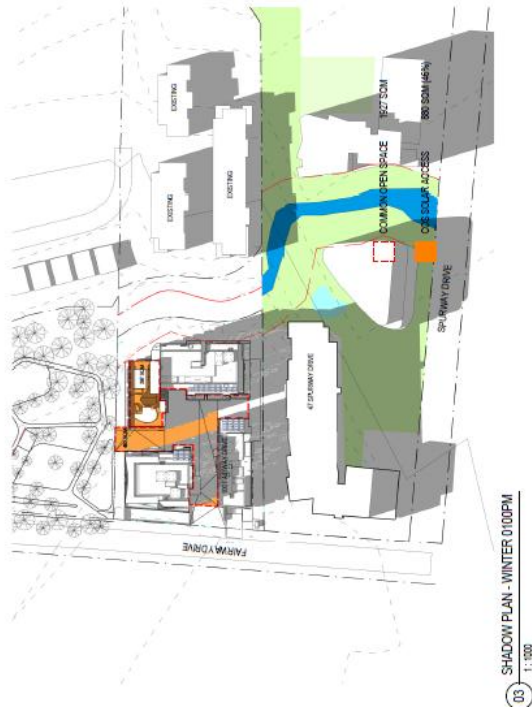


2 DA SITE SECTION 2
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ATTACHMENT 10 – SHADOW DIAGRAMS



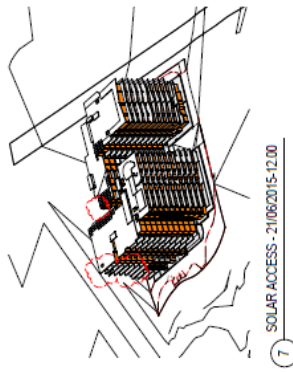
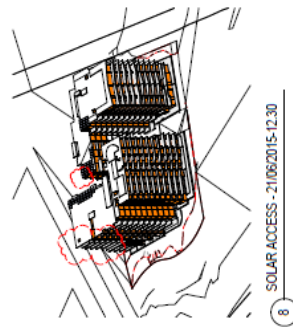
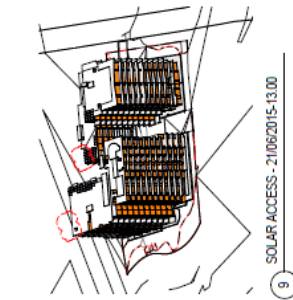
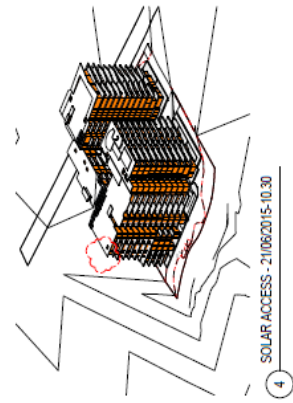
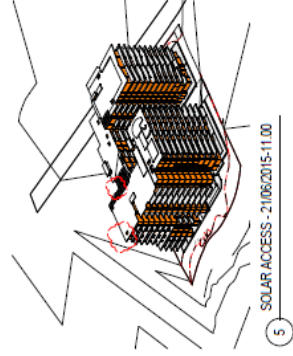
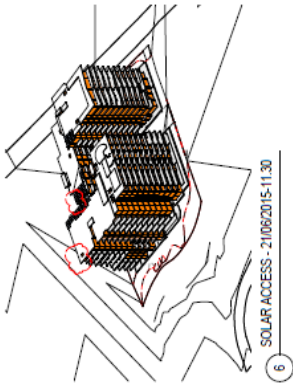
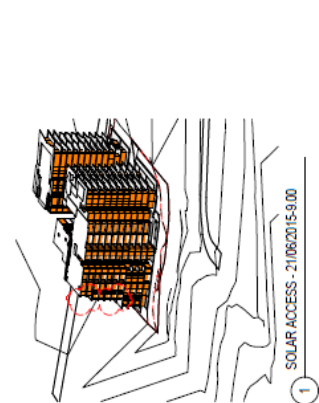
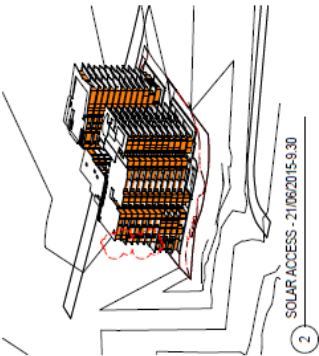
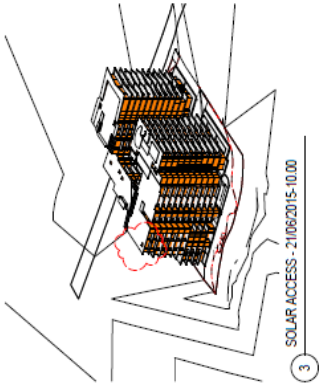
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Client	DOUG SOUTHWELL
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Drawn	Hedley
Check	17/06/2018



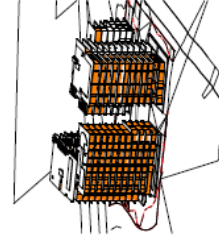
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DOUG SCOTT	11/08/2018	17:52	DOUG SCOTT
DOUG SCOTT	11/08/2018	17:52	DOUG SCOTT

ATTACHMENT 11 – SOLAR VIEWS

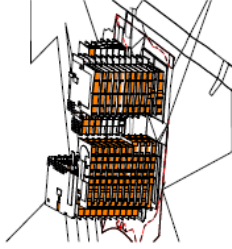
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Drawn (checked)	DOLLS SOUTHWAHL
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Project (date)	17/06/2018 5:44:53 PM
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Drawn (checked)	
File	17/06/2018



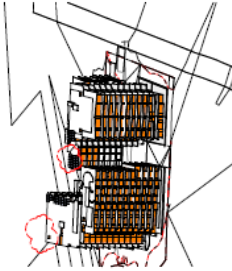
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Client	DOUG SOUTHWELL
Phase	7/2015
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Design	SCOTT CARVER
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Notes	100 FAIRWAY DRIVE, NORWEST



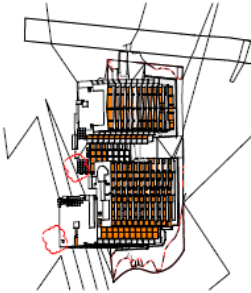
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3 SOLAR ACCESS - 21/06/2015-14:30



2 SOLAR ACCESS - 21/06/2015-14:00



1 SOLAR ACCESS - 21/06/2015-13:30

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Client	DOUG SOUTHWELL
Phase	7/2015
Location	100 FAIRWAY DRIVE, NORWEST
Design	SCOTT CARVER
Scale	1:100
Notes	100 FAIRWAY DRIVE, NORWEST

Project	20160076
Client	AD-DAH0
Phase	K

Project	@ A1
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Project	
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Project	100 FAIRWAY DRIVE, NORWEST
Client	DOUG SOUTHWELL
Phase	7/2015
Location	100 FAIRWAY DRIVE, NORWEST
Design	SCOTT CARVER
Scale	1:100
Notes	100 FAIRWAY DRIVE, NORWEST

Project	100 FAIRWAY DRIVE, NORWEST
Client	DOUG SOUTHWELL
Phase	7/2015
Location	100 FAIRWAY DRIVE, NORWEST
Design	SCOTT CARVER
Scale	1:100
Notes	100 FAIRWAY DRIVE, NORWEST

Project	100 FAIRWAY DRIVE, NORWEST
Client	DOUG SOUTHWELL
Phase	7/2015
Location	100 FAIRWAY DRIVE, NORWEST
Design	SCOTT CARVER
Scale	1:100
Notes	100 FAIRWAY DRIVE, NORWEST

ATTACHMENT 12 – PERSPECTIVES



BUILDING A AS VIEWED FROM WEST



Project	PCB 20160076
Client	DOUG SCOTTMILL
File	77002
Project	17/06/2018 6:00:25 PM
Author	Henry
Drawn	
Check	
Scale	1:10000000
Scale	1:10000000

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100 FAIRWAY DRIVE, NORWEST
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Section
@ A1



BUILDINGS B&C FROM NORTH
20160076 AD-DA003 B



Project	PCB 20160076
Client	DOUG SCOTTMILL
File	77002
Project	17/06/2018 6:00:25 PM
Author	Henry
Drawn	
Check	
Scale	1:10000000
Scale	1:10000000

scott carver
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100 FAIRWAY DRIVE, NORWEST
ARDEN (CH) PTY LTD

Section
@ A1



BUILDINGS B&C FROM EAST
20160076 AD-DA004 B



Drawn:	PCB 6/20/2018
Check:	DOUG SCHRAMM
File:	7/16/2
Project:	100 FAIRWAY DRIVE, NW
Drawn:	PCB 6/20/2018
Check:	DOUG SCHRAMM
File:	7/16/2

scott carver
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 www.scottcarver.com.au +61 2 9557 3938

100 FAIRWAY DRIVE, NORWEST
 ARDEN (CH) PTY LTD

Scale: 1:100
 @ A1



BUILDING C FROM SOUTH EAST
 20160076 AD-DA005 B



Drawn:	PCB 6/20/2018
Check:	DOUG SCHRAMM
File:	7/16/2
Project:	100 FAIRWAY DRIVE, NW
Drawn:	PCB 6/20/2018
Check:	DOUG SCHRAMM
File:	7/16/2

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100 FAIRWAY DRIVE, NORWEST
 ARDEN (CH) PTY LTD

Scale: 1:100
 @ A1



BUILDING D6A FROM SOUTHWEST
 20160076 AD-DA006 B

ATTACHMENT 13 – DESIGN EXCELLENCE PANEL MINUTES



MEETING MINUTES DESIGN EXCELLENCE PANEL

Date:	22/01/18	Time:	11am-5pm
Location of Meeting:	Community Rooms 1+2		
Panel Members:	Chairperson - Stewart Seale, Manager Forward Planning, THSC Panel Member - Tony Caro, Independent Design Expert Panel Member - Mark Colburt, Group Manager THSC		
Councillors:	None in attendance		
Council Staff:	Paul Osbourne, Marika Hahn, Cynthia Dugan, Henry Burnett		
Guests:	Doug Southwell - Scott Craver (architect) Charlie Robinson - Scott Carver (Landscape Architect) Henry See - Scott Carver Mathew Frederick - Arden Group Tim Lakes - Arden Group Nathan Sercombe - Arden Goup Jocelyn McDowell - Urbis Shaun de Smeth - Urbis Joseph Arnott - Urbis		

BUSINESS ITEM AND MEETING MINUTES

1. Welcome and Opening

The Hills Shire Council is committed to achieving design excellence in the built form environment and ensuring new high density buildings are of a high quality design.

The Hills Shire Design Excellence Panel (The Panel), is an advisory panel which provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in it's consideration for development application.

The Panel provides recommendations on the following:

- any development which contains a building with a height of 25 metres or more; or
- Any strategic planning matters for which design excellence is relevant.

The role of the Panel is to evaluate and critique design aspects of proposed development and provide recommendations on whether development exhibits "Design Excellence".

The Design Excellence Panel is an Independent Panel, not a SEPP 65 Panel and the absence of comment with reference to matters pertaining to SEPP 65 does not mean that matters assessed under SEPP 65 have been satisfactorily addressed.

2. Declaration of interest

"Nil"

3. Confirmation of previous minutes

NA

4 Presentations

Item 4.3	3.15pm-4.20pm
DA Number	DA 282/2018/JP
Property Address	98 Fairway Drive Kellyville
Proposal	DA 282/2018/JP – 98 Fairway Drive Kellyville Construction of four residential flat buildings known as Building A (12 storeys), Building B (11 storeys), Building C (8 storeys) and Building D (12 storeys). The residential flat building development contains a total of 244 residential apartments and a common basement carpark (292 residential car spaces and 49 visitor spaces).
Applicant representative address to the design review panel	Doug Southwell (Architect) – Design presentation Charlie Robinson (Landscape Architect) Landscape Design presentation
Background	The site was inspected by the panel:10.20am - 10.40am February 22/02/18 (adjacent to item 4.2)
Key Issues	<ul style="list-style-type: none">• Encroachment of built form into Riparian zone.• Built form does not sufficiently build upon the overall vision for the transforming identity of the Garden Shire of buildings within a generous landscaped setting.• Lack of relationship to existing context and natural systems.• Numerous non-compliances with ADG and DCP controls• Equity issues with access to communal facilities• Solar amenity to communal open space and individual building blocks is poor.

PANEL COMMENT

1. The justification for the substantial encroachment into Riparian zone is not convincing or acceptable. The panel recommends that there should not be any significant encroachment of built form into the corridor and this matter must be agreed with relevant authorities before further design development occurs.
2. Selected plant species are not native species and schedule/drawings must be amended. Conflict in information shown between different landscape documents.
3. Drawings are missing legible dimensions indicating setbacks between all building blocks and boundaries.
4. Incentivised bonuses that are available to this development do not justify compromise on design quality and amenity. The built form currently presents as an overdevelopment of the site.
5. All height control lines are to be shown on elevations and sections indicating allowable LEP height.
6. Internal amenity of some apartment blocks is poor with long internalised corridors that have no access to sunlight. Refer to section 4F of the ADG for design guidance.
7. Large areas of blank walls as a result of building separation non-compliance, creates unacceptable urban design and amenity outcomes to neighbours and in highly visible public locations.
8. Whilst mitigation of these problems through material detail or additional façade modulation might improve matters to some extent, the fundamental underlying issue is that achieving the maximum FSR allowable on this site with ADG high level compliance, acceptable design quality and environmental amenity is proving to be exceedingly difficult.
9. Fixed screens to bedroom windows on south facades demonstrate the same problem, resulting in habitable rooms with poor internal amenity. Compliance with the required ADG setbacks is recommended, as this will allow for appropriate façade design and introduction of more generous landscape in the setback zone.
10. Communal courtyard amenity and function is compromised by its small footprint and the imposing scale of surrounding built form, resulting in a vertical shaft-like character with poor solar access and ventilation.
11. The central courtyard is primarily an access space and has poorly located items such as BBQ equipment and shade structure in path of main access to building block C and ground floor communal amenities. Further consideration as to the appropriate location of such facilities is required.
12. The proposed community garden is minimal at best, and would be better placed on roof top where full access to sunlight is obtainable.
13. Single roof top area to be accessed by all residents may place an undue burden upon amenity of residents of Building block B. It is recommended that one elevator be designated for residents of Building block B only.
14. The general architectural form and presentation to the northern public domain is reasonable in principle, however the panel recommended that the detailed fenestration is overworked and a calmer, more restrained approach will result in a better long term outcome. The perspective view illustrates the impact of the high blank walls resulting from inadequate separation between buildings.

RECOMMENDATION

Note: The proposal has been designed to maximise the available floor space, and in doing so has created a range of significant design quality and amenity issues. The panel recommends that the scheme is re-designed to be more compliant with the key controls, recognising that this may result in a loss of development yield.

The key issues are:

- respecting the riparian zone corridor
- providing increased setback to south boundary
- opening up central court more to north and possible view corridor through to riparian zones

The proposal does not meet the requirements of design excellence.

5. Next Design Excellence Panel meeting to be held on March 29th 9am -3pm

6. Close

MEETING MINUTES DESIGN EXCELLENCE PANEL

Date:	13/06/18	Time:	1.30pm
Location of Meeting:	BAL 2 meeting rooms 1+2		
Panel Members:	Chairperson - Stewart Seale, Manager Forward Planning, THSC Panel Member - Tony Caro, Independent Design Expert Panel Member - Steve Coleman, Acting Group Manager THSC Apologies -		
Councillors:	None in Attendance		
Council Staff:	Paul Osborne, Cynthia Dugan, Marika Hahn, Cameron McKenzie		
Guests:	John Ferres - Scott Craver (architect) Charlie Robinson - Scott Carver (Landscape Architect) Jocelyn McDowell - Urbis Derek Williams - Arden Group Martin Mambraku - Arden Group Lindsay Gregory - Arden Goup		

BUSINESS ITEM AND MEETING MINUTES

1. Welcome and Opening

The Hills Shire Council is committed to achieving design excellence in the built form environment and ensuring new high density buildings are of a high quality design.

The Hills Shire Design Excellence Panel (The Panel), is an advisory Panel which provides an opportunity for applicants to receive expert design feedback on their developments and to provide comments to assist The Hills Shire Council in it's consideration for development application.

The Panel provides recommendations on the following:

- any development which contains a building with a height of 25 metres or more; or
- Any strategic planning matters for which design excellence is relevant.

The role of the Panel is to evaluate and critique design aspects of proposed development and provide recommendations on whether development exhibits "Design Excellence".The Design

Excellence Panel is an Independent Panel, not a SEPP 65 Panel and the absence of comment with reference to matters pertaining to SEPP 65 does not mean that matters assessed under SEPP 65 have been satisfactorily addressed.

2. Declaration of interest

"Nil"

3. Confirmation of previous minutes

Confirmed

4. Presentations

Item 4.2	1.30am – 3.0pm
DA Number	DA 282/2018/JP
Property Address	98-102 Fairway Drive Kellyville
Proposal	Key summary of proposal
Applicant representative address to the design review panel	John Ferres (Architect) – Design presentation Charlie Robinson (Landscape Architect) Landscape Design presentation
Background	The site was inspected by the panel at 10am on 13/06/18 This is the second time the project has been presented to the design review Panel. The first Panel hearing was on February 22nd 2018. At this time the panel made the following recommendation: The proposal does not meet the requirements of design excellence.
Key Issues	<ul style="list-style-type: none">• Continued encroachment of built form into riparian zone.• Built form does not sufficiently build upon the overall vision for the transforming identity of the Garden Shire of buildings within a generous landscaped setting.• Numerous non-compliances with ADG and DCP controls• Solar amenity to communal open space and individual building blocks is poor.

INTRODUCTION

The Panel thanks the applicant for the presentation of the development proposal. The proposal was first presented to the Panel in February on the 22nd. The Panel report provided a number of recommendations within the comments in addition to a final recommendation as follows:

Note: The proposal has been designed to maximise the available floor space, and in doing so has created a range of significant design quality and amenity issues. The panel recommends that the scheme is re-designed to be more compliant with the key controls, recognising that this may result in a loss of development yield.

The key issues are:

- respecting the riparian zone corridor
- providing increased setback to south boundary
- opening up central court more to north and possible view corridor through to riparian zones

The proposal does not meet the requirements of design excellence.

SUBJECT SITE BACKGROUND SUMMARY

The subject site is on the northern most periphery of the Norwest Station Precinct identified in the North West Rail Link Corridor Strategy of 2013, *'It is anticipated that under the vision and Structure Plan, this residential area will evolve to accommodate multi-dwelling housing only where the site is an appropriate size to deliver a high amenity for the existing and future residents. This could comprise 7-12 storey apartment buildings, carefully master planned around communal open spaces and incorporating landscaped setbacks to existing streetscapes. Pg 28'*

The applicant has an existing Development Application for this site DA 824/2013/JP comprising 7 x four storey residential flat of which 4 have been built on the eastern portion of the site (on the other side of the creek). The applicant has since sought approval for a staged construction of the development which was granted. The subject site 98-102 is stage two of the development.

The planning proposal to change LEP controls to allow increased development on the site was granted via gateway determination on the 2nd November 2016. As a part of the planning proposal process the applicant provided a concept design in which it was stated to be able comply with SEPP 65, stated FSR and height control increases (1:1-3:1 and 16m - 36m respectively), whilst being able to accommodate the Hills Shire Council Housing Diversity requirements which are conditioned as a part of the Gateway determination.

The applicant has since changed the concept plan building configuration since the planning proposal application.

The applicant has attended two pre-lodgement meetings with members of The Hills Shire Council.



Applicant's original concept (left) submitted for gateway and current DA concept based on increased FSR (right)

Source: Post-exhibition Planning Proposal and Voluntary Planning agreement - Lot 2 DP 1210647 Report to Council dated 28 March 2017

PANEL COMMENTS

DA 282/2018/JP 98-102 Fairway Drive, Kellyville

1. The Design Excellence Panel session began with the Panel suggesting to the applicant that a means by which they could proceed would be to go over the items listed at the panel consideration of February 22 2018 and discuss how each of these items had been addressed.

ADDRESSING OF THE PANEL COMMENTS FROM FEBRUARY 22nd 2018

1. *The justification for the substantial encroachment into Riparian zone is not convincing or acceptable. The panel recommends that there should not be any significant encroachment of*

built form into the corridor and this matter must be agreed with relevant authorities before further design development occurs.

- The applicant has removed a portion of the building from the riparian zone resulting in the removal of 11 apartments. The Panel noted that the built form however still intrudes into the Riparian zone and how this is addressed was not articulated by the applicant. The applicant argued for an “averaged” intrusion, however the Panel is yet to be convinced that this is a sound strategy for maintaining a riparian corridor of even minimum width.
 - The Riparian offset indicated in the
 - Reference to correspondence with the Office of Water was made by the Landscape Architect however permissibility of this intrusion has not been established.
2. *Selected plant species are not native species and schedule/drawings must be amended. Conflict in information shown between different landscape documents.*
- The Landscape Architect stated that 70% of the plant species are native. However the council landscape architect advised that a full planting plan has not been provided.
 - In addition the council landscape architect requires that the stormwater, architectural and landscape drawings be fully co-ordinated so that potential conflicts are resolved.
3. *Drawings are missing legible dimensions indicating setbacks between all building blocks and boundaries.*
- Legible dimensions have been provided as requested.
4. *Incentivised bonuses that are available to this development do not justify compromise on design quality and amenity. The built form currently presents as an overdevelopment of the site.*
- The proposal fails to comply with ADG building separation and with DCP street setbacks. The ADG non-compliance ranges from 3-6m, demonstrating that the density as presented represents an overdevelopment of the site. In addition, whilst fixed screens have been provided to ‘mitigate privacy concerns and overlooking, this has not been accounted for nor identified in the sun-vent diagrams and sun access plans.
5. *All height control lines are to be shown on elevations and sections indicating allowable LEP height.*
- Height control lines have been provided as requested.
6. *Internal amenity of some apartment blocks is poor with long internalised corridors that have no access to sunlight. Refer to section 4F of the ADG for design guidance.*
- This has been addressed. Long internalised corridors have been provided with sunlight access.
7. *Large areas of blank walls as a result of building separation non-compliance, creates unacceptable urban design and amenity outcomes to neighbours and in highly visible public locations.*
- The applicant has improved this with inclusion of windows, shading devices, applied screens, score lines in the concrete and a tonal change in paint colour.
8. *Whilst mitigation of these problems through material detail or additional façade modulation might improve matters to some extent, the fundamental underlying issue is that achieving the maximum FSR allowable on this site with ADG high level compliance, acceptable design quality and environmental amenity is proving to be exceedingly difficult.*
- The built form has changed in minor ways since the last Panel hearing. The Panel advised that the correct process of design was not to maximise the FSR and then justify why controls could not be complied with. Rather design within codes and given site constraints in order to produce a development of high architectural quality with comfortable and appropriate residential amenity.

9. *Fixed screens to bedroom windows on south facades demonstrate the same problem, resulting in habitable rooms with poor internal amenity. Compliance with the required ADG setbacks is recommended, as this will allow for appropriate façade design and introduction of more generous landscape in the setback zone.*
- ADG compliant setbacks have been provided to the adjacent property. Privacy screens have been able to be removed as a result of providing the correct setback allowing for view and daylight access.
10. *Communal courtyard amenity and function is compromised by its small footprint and the imposing scale of surrounding built form, resulting in a vertical shaft-like character with poor solar access and ventilation.*
- The placement of the highest built form to the north of the communal open space and development in general continues to create poor amenity within the courtyard.
 - The Landscape architect stated the internal courtyard measured 26m by 26m. The internal courtyard is largely in shadow during winter.
 - The comment by the Panel stands.
11. *The central courtyard is primarily an access space and has poorly located items such as BBQ equipment and shade structure in path of main access to building block C and ground floor communal amenities. Further consideration as to the appropriate location of such facilities is required.*
- The Panel felt the re-arrangement of the internal communal facilities and re-location of the BBQ was an improvement. The more identifiable address and entry to each development block is an improvement although a clearly legible address to the street is more desirable.
 - It is noted that the solar diagrams include the side setback as part of the principal communal open space provision.
12. *The proposed community garden is minimal at best, and would be better placed on roof top where full access to sunlight is obtainable.*
- The Landscape Architect stated that they chose to leave the communal garden unchanged, as the take up of community gardens is unpredictable and if in the future the residents enjoy the garden as a source of recreation they can expand the location at a later date.
 - The Panel suggested that the garden shed be better located so that it does not present as an object cluttering the narrow space within which the garden was located and could be better integrated into the built form.
13. *Single roof top area to be accessed by all residents may place an undue burden upon amenity of residents of Building block B. It is recommended that one elevator be designated for residents of Building block B only.*
- The applicant has reviewed this and advised that the lift level of service is acceptable.
14. *The general architectural form and presentation to the northern public domain is reasonable in principle, however the panel recommended that the detailed fenestration is overworked and a calmer, more restrained approach will result in a better long term outcome. The perspective view illustrates the impact of the high blank walls resulting from inadequate separation between buildings.*
- The applicant has provided more articulation to the blank wall as shown in the following imagery.
 - The overall imagery appears more constrained however the Panel's previous comments stand.

- The panel recommended that a condition of the DA is that the materials as illustrated and notated in the DA drawings are not to be changed without explicit approval from Council.

GENERAL PANEL COMMENTS

1. As the applicant has received considerable uplift as a result of the incentive clause the Panel asked the applicant to more carefully consider the objective of the incentivised FSR, which is to provide for viable apartment living alternative for families or those downsizing from a large house.
 - If apartment living is to be a significant part of the future for Sydney living then better amenity and more diverse choice in apartment layout needs to be provided.
 - The Panel commented that the proposed larger apartments required by Council appear to offer no additional amenity when compared to standard size apartments. It was suggested that the substantial additional area allocated to a large 2 and 3 bedroom units should be used to provide more flexibility and variety – for example a second living area for children, a dedicated office/media room, an enlarged dedicated laundry area, expanded storage and the like.
2. The Panel commented that the internal arrangement of the units could be more carefully considered with respect to privacy and outlook. With minimal effort and no change to the floor area it is possible in a number of the dwellings to be able to provide views from primary living areas into gaps between buildings rather than onto a blank wall or another building directly opposite. This would significantly improve the amenity and design quality of the development.
3. The Panel questioned why there was no delineation between the private and public realm in the address to the Park.
 - Generally council does not permit direct entry from a development into a park in this manner. This is because the park tends to become privatised by the residents of the development.
 - A proper boundary needs to be established between the park and the development to ensure privacy and safety for the residents and restrict access into the private communal open space by the general public. The current arrangement poses some CPTED issues which have not been adequately addressed.
 - The path into the park from the development indicated in the plans is subject to Development approval, note.

SEPP 65 items to be clarified and or amended:

It is noted that the architect presenting is different to the nominated design architect who presented at the last Panel consideration. Whilst both architects are registered SEPP 65 explicitly states that the design architect is to be a nominated person who carries the design through from concept through to documentation.

The application still presents significant ADG non-compliance. Whilst notated as a council matter in the design report submitted by the applicant, as design excellence considers the external appearance including bulk and scale, and environmental considerations, all of which are covered in the ADG as minimum criteria to be achieved, compliance with the ADG is required for design excellence.

The immediately apparent ADG non-compliances to be further reviewed by the council officer are:

- 3C Public domain interface, objectives 3C-1 and 3C-2
The interface with Fairway Drive Reserve is undefined and requires further detail.
- 3E Deep soil zones
Nominated deep soil zones are also identified as being Riparian offset.
- 2F Building separation
Building separation within the development is non-compliant. Dimensions are required to shown from habitable space to habitable space this include balconies.

- 3F Visual Privacy, objectives 3F-1, 3F-2
Building separation within the development is non-compliant.
- 4A Solar and daylight access
Screening and blade walls to mitigate inadequate building separation prevents solar access to main living spaces in a number of apartments indicated as receiving solar access.
- 4B natural ventilation, a review of the floor plans indicates the following:
BLD - A 40% ventilation
BLD -B 66% ventilation
BLD - C 50% ventilation
BLD - D 44% ventilation

Consolidated equals 48%
- 4D Apartment size and layout, objective 4D-2
In some open plan apartments the room depth is greater than 8m

SPECIFIC CLAUSE 7.7 Part 4 Matters for Consideration

External appearance

Refer to Panel comments no. 14

Built form

The bulk and scale of the built form has not been sufficiently demonstrated as being well integrated into either the existing and likely future urban context. The Panel suggests that it is in the proponents best interests to consider likely built form on adjacent sites and to demonstrate to Council how this proposal will successfully integrate with it.

The Panel notes that Council previously identified this site as a "gateway" site to the precinct. The height/form on the north-west corner achieves this and enables this sense of threshold entry into the Norwest Strategic Centre.

Visual Impact

The development creates a significant visual impact resulting from the proposed height, mass bulk and scale. Refer to Panel comments no. 14

Solar Access Impact

The development does not overshadow the adjacent park. The Panel recommends staff review the proposed apartment compliance with ADG solar and cross ventilation standards.

Adherence to Council DCP controls

Refer to DA officer's assessment

In summary pertinent non-compliances include:

3.3 Setbacks - Building Zones, Primary frontage setback of 10m. The proposed development does not provide a 10m setback to Fairway Drive in keeping with the adjacent development.

The architect addressed concerns which had been brought up during a council review regarding street setbacks. The architect stated that as the road has inconsistent setbacks along it they could see no reason as to why they had to comply with a DCP requirement stating that the undulating shape of the balconies which intruding into the setback offered future residents improved amenity and outlook.

Note: Council's reason for setback compliance is that the adjacent similarly scaled development at 104 Fairway Drive complies with the 10 street setback and there is good reason to apply similar requirements here, to ensure adequate space for large tree plantings to mitigate the scale of these

large buildings. This also allows for the provision of a human scale to the street edge as this development is significantly larger than the two storey dwellings on the other side of the road and an address to context and scale would be in keeping with the principles of Transit Orientated Development. The balcony intrusion into the setback zone is again the consequence of maximising the FSR at the expense of overall amenity.

How does the development address the following matters:

i) the suitability of the land for development,

The land is suitable for residential uses.

ii) existing and proposed uses and use mix,

The proposed uses are appropriate subject to the provision of good residential amenity

iii) heritage issues and streetscape constraints,

The proposal does not have any heritage constraints. RE: streetscape as previously addressed.

iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

The applicant is advised by the Panel to demonstrate consistency with the setbacks established by the adjacent development which are in compliance the THSC DCP 2012.

v) bulk, massing and modulation of buildings,

The bulk and massing of the development has raised concern with the Panel members refer to Panel comment 4, 8 and 10.

vi) street frontage heights,

The street frontage is defined in part by a two storey podium treatment. This is a standalone feature set out from the building façade. It is recommended that the podium feature as detailed and illustrated be provided as a DA condition. The podium as illustrated provides a more human scaled address to the Fairway Drive and helps to mitigate the bulk and scale of the development.

vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

The development does not identify what sustainable measures were being implemented above what is required by legislation.

viii) the achievement of the principles of ecologically sustainable development,

For DA purposes it is assumed by the Panel that Basix compliance will be achieved and SEPP 65 compliance will be realised.

Deep soil planting zones are essential in the front setback. The current car parking provision is well above what is required and the lack of deep soil planting in the front setback as a result of the car parking basement extending to the front boundary does not meet the principles of ecologically sustainable development.

ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

- Pedestrian circulation within the development and communal open courtyard has been slightly modified resulting in providing much better amenity for all residents.
- Bicycle provision to be addressed by council.
- Adequate pedestrian circulation and pedestrian access to the waste collection to be addressed by council during assessment.

x) the impact on, and any proposed improvements to, the public domain,

- The Panel requests that the substation and any visible service provision be screened in a manner to match the aesthetic of the proposed development. This includes the notated FBV which could be arranged perpendicular to the street and integrated into the entry wall adjacent the drive.

- Refer to Ku-ring-gai Council document, "Thinking Outside 'The Box' " for suitable examples. http://www.kmc.nsw.gov.au/Plans_regulations/Building_and_development/Town_Planning_Documents/Design_Guide_-_Thinking_Outside_The_Box
- The Panel suggests that a DA condition be applied to the screening of any service provision on Fairway drive so as to not detract from the visual appearance from the public domain.
- The public domain as indicated in the street section to Fairway Drive needs to be modified to comply with Council's typical street layout. Street trees in verges are generally adjacent the carriageway. Consult with Council.

xi) the configuration and design of public access areas, recreation areas and communal open space on the site and whether that design incorporates exemplary and innovative treatments,

Refer to Panel comment numbers 10, 11. The development meets minimum requirements only.

SUMMARY OF PANEL RECOMMENDATIONS

- Align street setback to match that provided on 104 Fairway Drive.
- Refine car parking basements and provide for deep soil planting provision in the front setback.
- Further refine the site layout, bulk, scale and massing of the development proposal to address comments made in this report
- Address outstanding SEPP 65 non-compliances in discussion with Council staff.
- Consider more family efficient internal planning of required larger apartments.

Council officer to place DA conditions on:

- Screening of service provision from any public frontage this includes Fairway Drive, Fairway Drive Reserve, and the riparian corridor.
- Provision of fencing to Fairway Reserve to clearly demarcate the boundary to the development and provide internal security for the residents. Details of proposed fencing are to be provided to the Council officer and landscape architect for approval prior to construction.
- The provision of the materials as illustrated and notated in the DA drawings including the sandstone podium treatment to Fairway Drive and Fairway Drive Reserve.

Note: further information may be required by the Development Assessment team to aid with their assessment of the development.

PANEL CONCLUSION

The Panel notes that there have been some improvements in the revised proposal, however there are outstanding matters that have not been addressed.

The key issue remains the proposed density of development on this site, which is creating compromises in both integration with likely future built form context and amenity outcomes for both residents and the public.

The Panel recommends that the comments from both DEP meetings are further considered in order to achieve a uniformly high quality outcome. It is noted that the Panel is advisory and the applicant may elect to proceed with the DA application without further consideration of the Panel comments.

5. Next Design Excellence Panel meeting to be held on July 11th, 9am - 5pm

6. Close

ATTACHMENT 14 – APPLICANT’S CLAUSE 4.6 VARIATION REQUEST



**TOWER 2, LEVEL 23
DARLING PARK, 201 SUSSEX ST
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

28 August 2018

General Manager
The Hills Shire Council
3 Columbia Court
Baulkham Hills NSW 2153

Dear General Manager,

CLAUSE 4.6 - REQUEST TO VARY A DEVELOPMENT STANDARD - CLAUSE 4.3 OF THE HILLS LEP 2012 - HEIGHT OF BUILDINGS

This Clause 4.6 variation request has been provided to accompany the development application, prepared over land at 28 Fairway Drive, Kellyville.

The variation request has been prepared to address the proposed variation to the height of building development standard contained within *The Hills Local Environmental Plan 2012* (THLEP 2012) to be amended in accordance with the Council endorsed Planning Proposal for 28 Fairway Drive, Kellyville.

1. OVERVIEW

This clause 4.6 request forms a variation to the applicable building height standard. It has been prepared with regard to the following considerations:

- Clause 4.6 of THLEP 2012;
- The objectives of Clause 4.3, as amended, being the development standard to which a variation is sought;
- Relevant case law specifically addressing the considerations for assessing development standards set out in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118; and
- "Varying Development Standards: A Guide" published by the Department of Planning and Infrastructure (August 2011).

The variation provides an assessment of the development standards and the extent of variation proposed to the standard. The variation is then assessed in accordance with the principles set out in the *Wehbe*.

2. THE DEVELOPMENT STANDARD

Clause 4.3(2) of THLEP 2012 specifies the following:

"(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."

Building height is defined by THLEP 2012 as follows:

"building height (or height of building) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

2.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD?

The maximum height of building control prescribed under Clause 4.3 of the THLEP 2012 is a development standard capable of being varied under Clause 4.6 of THLEP 2012.

2.2. IS THE DEVELOPMENT STANDARD EXCLUDED FROM THE OPERATION OF CLAUSE 4.6?

The proposed variation is not excluded from the operation of Clause 4.6 as it does not comprise any of the matters listed within Clause 4.6(6), Clause 4.6(7) or Clause 4.6(8) of THLEP 2012.

2.3. WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of the height standard as per THLEP 2012 is as follows:

The objectives of Clause 4.3 Height of Buildings are as follows:

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

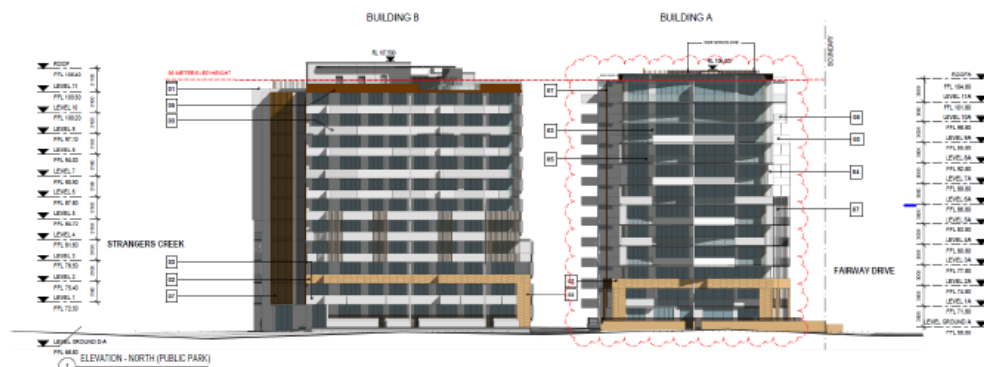
(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas

The underlying object or purpose of the development standard is therefore to provide a built form that is compatible with the site, the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

3. EXTENT OF VARIATION TO DEVELOPMENT STANDARD

The relevant Height of Buildings Map, as amended, nominates a height limit of 36m for the site. The proposed development incorporates a maximum height of 38.7m, approximately 7.5% (or 2.7m) over the 36m height standard. The extent of the proposed variation is illustrated on the in Figures 1-4.

Figure 1 – Building A and Building B North Elevation



Source: Scott Carver Architects

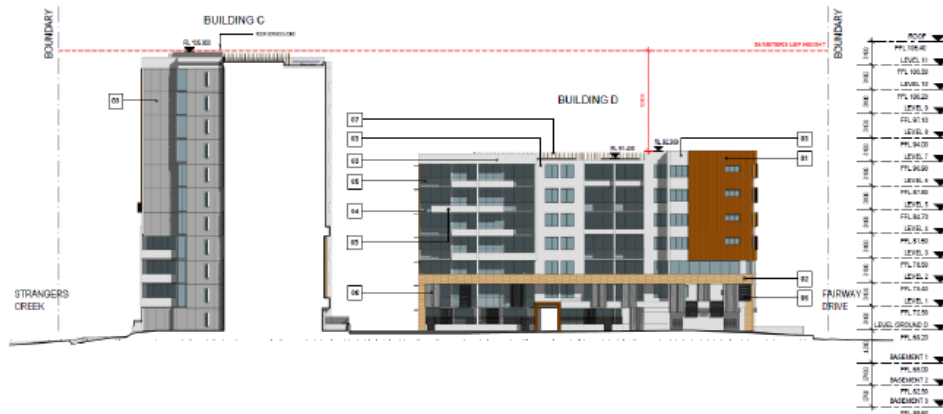
Figure 2 – Building A and Building D West Elevation



Figure 3 – Building B and Building C – South Elevation



Figure 4 - Building C and Building D – North Elevation



Source: Scott Carver

4. PRINCIPLES OF EXCEPTION TO DEVELOPMENT STANDARDS

4.1. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

"(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..."

(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:

(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..."

Accordingly, justification is set out in the following assessment for the departure from the height control applicable under the LEP. The purpose of the information provided is to demonstrate that strict compliance with the height standard under the LEP is unreasonable or unnecessary in the circumstances of this particular case. It also provides sufficient environmental planning grounds to justify the departure from the height controls specified in the LEP.

4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

The Land and Environment Court judgement which provides guidance on the interpretation and application of Clause 4.6 is *Wehbe v. Pittwater Council* [2007] NSWLEC 827.

Wehbe v. Pittwater Council [2007] NSWLEC 827 establishes a number of ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

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

Whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions.*

Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*
15. *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

25. *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*
26. *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*
27. *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
28. *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the*

matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].

5. **CLAUSE 4.3: BUILDING HEIGHT**

The following sections of the provide an assessment of the request to vary the development standards relating to the maximum building height in accordance with Clause 4.6 of THLEP 2012. Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

5.1. **CLAUSE 4.6(3)(A) – COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE**

Clause 4.6(3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In the Wehbe judgement Preston CJ set out five ways in which a strict application of a development standard can be deemed unreasonable or unnecessary, as listed in 4.4.2 above.

In this instance the first of the means identified by his Honour if of relevance, that is it can be demonstrated that the objectives of the height standard can be achieved notwithstanding non-compliance. The compliance of the proposed development and building height variation with the objectives of the height standard in Clause 4.3 of the LEP is demonstrated below.

The objectives of Clause 4.3 Height of Buildings 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.*
- The site is identified as being suitable to accommodate high density development not only under the existing LEP 2012 controls (which zone the site R4 High Density Residential), the LEP 2012 as amended by the site-specific planning proposal, and also under the strategic planning work completed to date for the Norwest Precinct including the NSW Government's Northwest Rail Link Corridor Strategy (2013) and The Hills Corridor Strategy (2015). Under the Northwest Rail Link Corridor Strategy, the whole site was identified by the NSW Government for high density

apartment living in seven (7) to 12 storey buildings with a floor space ratio of 3:1 to 4:1 across the whole site. The proposed development seeks to comply with the maximum of 12 storeys. It is considered that this minor departure from the control is still compliant with the NSW Government's strategy that considers a building height of 12 storeys appropriate across the whole site.

- The additional building height has been strategically located on the site to respond to the surrounding context.
 - The orientation of density and built form across the site seeks to reduce potential overshadowing impacts and maximise solar access within the site, and to the proposed residential development to the south.
 - The additional height Building A is limited to rooftop services. This building assists in defining the building's role as an iconic landmark to the site and broader Norwest redevelopment area, and satisfies the objective of limiting loss of visual impact and privacy to adjoining residential properties.
 - The additional height on Building A has limited impacts in terms of overshadowing and solar access to the surrounding residential development, as services are located centrally on the rooftop.

The additional height on Building B is strictly limited to rooftop services and the provision of a functional rooftop garden that contributes to the high amenity offering of communal open space for the development.
 - Given the setback location the rooftop awning and services, and the proportion of the additional height of Building B to a compliant height, the variation will not be perceivable from Fairway Reserve.
 - The additional height will assist in accommodating an open-planned communal rooftop on Building B, that will seek to provide residents with additional communal open space, as well as provide casual surveillance to Fairway Reserve.
 - Similarly, the additional height will not be perceivable from the Oakmont Stage 1 residential development to the east, given the proportion of the additional height in context to a compliant height, and the site is separated by a 40 metre wide riparian corridor.
 - Buildings C and D which are located in closest proximity to existing and future residential development to the east and south, provide compliant building heights, and are not subject to this Clause 4.6 request. Importantly, the minor additional height to Building A and B enable Buildings C and D to limit the loss of privacy and visual impact to any adjoining residential development.
- The site is located within a 36 metre building height control context. The existing character of the locality is rapidly changing with multiple high density residential developments proposed or currently under construction in preparation for the opening of the Sydney Metro Northwest railway in 2019. Over time, buildings of similar scale to this proposal will become abundant, refer to Figure 5.

Figure 5 – Anticipated Future Built Form



Source: Scott Carver

Despite the technical departure from the relevant height standard, the proposed development achieves the objectives of Clause 4.3 of THLEP 2012 and therefore it is demonstrated that strict compliance with the height standard in this instance is unreasonable and unnecessary and the objection can be considered well founded.

5.2. CLAUSE 4.6(3)(B) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. *Four2Five* requires that the applicant demonstrate this in light of environmental planning grounds particular to the circumstances of the site.

In this instance the following environmental planning grounds particular to the site support of the building height variation:

- The North West Rail Link Corridor Strategy specifically identifies the site as a short term opportunity site for high density residential of between 7 and 12 storeys based on the proximity to the future Norwest Station.
- Despite the additional height, the scale of development around the Norwest Station precinct (completed, proposed or currently under construction) will be comparable, thus creating a unified scale in this part of the Norwest precinct.
- In this instance, it is considered that removal of the upper floor level/s to achieve strict compliance would not result in an improved planning outcome. Given the departure to the height control applies to the buildings in the north-western portion of the site, the uppermost floor level/s do not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain.
- The additional height of the buildings have been designed with an architectural response to ensure that no material impact will result to neighbouring properties over and above that which would result from a complying scheme.
- Exceeding the maximum height limit, within the context of a buildings with a maximum of 12 storeys is considered a site specific design response which aims to optimise the site's development potential, in a manner that is consistent with the building height objectives to encourage a high quality built form.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the height standard.

5.3. CLAUSE 4.6(4)(A)(II) – WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND OBJECTIVES FOR DEVELOPMENT WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is proposed to be carried out.

It is considered that the proposed height variation will not be contrary to the public interest. This section demonstrates that the proposal is consistent with the objectives of the building height standard.

There will be no offsite impact resulting to neighbouring properties or buildings resulting from the lift overrun and communal open space being above the height standard. The design of the structure will complement the design of the overall building and will not add any significant scale or bulk to the proposed building, increase overshadowing or present visual impact to surrounding properties.

It is considered that the proposal will remain consistent with the objectives of the R4 High Density Residential zone, being:

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

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

Additionally, the proposed diversity of housing and family friendly unit mix will seek to satisfy demand for affordable and high amenity housing.

Given the scale of the development and height variation being limited to a rooftop garden and building services, the proposed non-compliance will be unperceived from the public domain and not adversely impact amenity.

5.4. CLAUSE 4.6(5)(A) - WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The proposed non-compliance with the maximum height of building development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals

5.5. CLAUSE 4.6(5)(B) - IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?

The proposed development achieves the objectives of the building height development standard and the land use zoning objectives despite the non-compliance.

It has been demonstrated that the proposed variation arises from seeking to provide appropriate massing across the site whilst proposing diversity of housing and family friendly unit mix that seeks to satisfy demand for affordable and high amenity housing strategically identified in the THLEP 2012.

There will be no offsite impact resulting to neighbouring properties or buildings resulting from the lift overrun and communal open space being above the height standard. The design of the structure will complement the design of the overall building and will not add any significant scale or bulk to the proposed building, increase overshadowing or present visual impact to surrounding properties.

Overall, it is considered that the variation to height will result in a superior development outcome for the site and surrounding land. As such, there would be no public benefit in maintaining the development standard in this case.

6. CONCLUSION

A variation to the strict application of Council's height of building development standard is considered appropriate for the subject site as 28 Fairway Drive, Kellyville.



The proposed height results in an optimum outcome for the site and is considered to have negligible impact above those caused by a compliant height and exhibits design excellence.

The proposal meets the intent of Council's height of building development standard and in accordance with Clause 4.6, demonstrates that the development standard is unreasonable or unnecessary in this case. As such, the proposed variation should be supported as part of the assessment of this development application.

Yours sincerely,

A handwritten signature in black ink that reads "Stephen White". The signature is written in a cursive, flowing style.

Stephen White
Director

ATTACHMENT 15 – DEPARTMENT OF PRIMARY INDUSTRIES WATER – GENERAL TERMS OF APPROVAL



Department of
Primary Industries
Water

BATCH NO:
TIME:

20 NOV 2017

NSW Department of Industry Crown Lands and Water Division

THE HILLS SHIRE COUNCIL

Our ref: IDAS1101520
Your ref: DA2018/282

General Manager
The Hills Shire
PO Box 7064
Baulkham Hills BC NSW 2153

Dear Sir/Madam

Integrated Development Referral – General Terms of Approval

Dev Ref: DA2018/282

Description: Construction of Residential Flat Building

Location: 98-102 Fairway Drive, KELLYVILLE NSW 2155 (Lot 2 DP 1210647)

I refer to integrated Development Application (DA2018/282) proposed for the above location. Attached, please find the Crown Lands and Water Division's (CLW), formally DPI Water General Terms of Approval (GTA) for part of the proposed development requiring a Controlled Activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 91A (3) of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, CLW requests these GTA be included (in their entirety) in Council's development consent. Please also note DPI Water requests notification:

- if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities (i) in the bed of any river, lake or estuary; (ii) on the banks of any river lake or estuary; (iii) on land within 40 metres of the highest bank of a river lake or estuary; or (iv) any excavation which interferes with an aquifer.

CLW will ascertain from the notification if the amended plans require review of or variation/s to the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.

- if Council receives an application under s96 of the EPA Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.
- of any legal challenge to the consent.

As the proposed work or activity cannot commence before the applicant applies for and obtains an approval, CLW recommends the following condition be included in the development consent:

The attached GTA issued by CLW do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to CLW for a Controlled Activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity.

A completed application form must be submitted to CLW together with any required plans, documents, application fee, security deposit or bank guarantee (if required) and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Application forms are available from the CLW website at: www.water.nsw.gov.au/water/licensing/approvals.

CLW requests that Council provide a copy of this letter to the development consent holder. CLW also requests a copy of the determination for this development application be provided by Council as required under section 91A (6) of the EPA Act.

I refer to the basement in the development. It is unclear whether or not the information provided will intercept ground water. It is recommended that a Geo-technical ground water report identifying existing groundwater levels and whether ground water is likely to be intercepted. Should ground water be intercepted, a ground water licence may be required from WaterNSW. WaterNSW can be contacted on 1300 662 077 or customer.helpdesk@water.nsw.gov.au in this regard.

I refer to the watercourse named Strangers Creek within the property. If you have not done so already, it is recommended that the matter be referred to the Department of Primary Industries Fisheries (DPI Fisheries) for assessment and to clarify their potential requirements. Please contact DPI Fisheries information on 1300 550 474 for your local office contact.

Should you require assistance understanding this letter please contact me on 024224 9743, alternatively by email at mark.rich@dpi.nsw.gov.au.

Yours sincerely



Mark Rich
Water Regulation Officer

17 November 2017



General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number: IDAS1101520
Issue date of GTA: 17 November 2017
Type of Approval: Controlled Activity
Description: Construction of Residential Flat Building
Location of work/activity: 98-102 Fairway Drive Kellyville NSW 2155
DA Number: DA2018/0
LGA: The Hills Shire Council
Water Sharing Plan Area: Greater Metropolitan Region Unregulated River Water Sources

The GTA issued by DPI Water do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to DPI Water for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.

Condition Number	Details
Design of works and structures	
GT0009-00004	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Crown Lands and Water Division, and obtained, for a controlled activity approval under the Water Management Act 2000.
GT0019-00001	Any proposed excavation on waterfront land must be undertaken in accordance with a plan submitted as part of a controlled activity approval, to be approved by DPI Water.
Erosion and sediment controls	
GT0014-00003	A. The consent holder must ensure that any proposed materials or cleared vegetation, which may: i. obstruct water flow, or ii. wash into the water body, or iii. cause damage to river banks, are not stored on waterfront land, unless in accordance with a plan held by Crown Lands and Water Division as part of a controlled activity approval. B. When the carrying out of the controlled activity has been completed, surplus materials must be removed from waterfront land.
GT0021-00004	The proposed erosion and sediment control works must be inspected and maintained throughout the construction or operation period of the controlled activity and must not be removed until the site is fully stabilised.
Plans, standards and guidelines	
GT0002-00062	A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application 2018.282 provided by Council to Crown Lands and Water Division. B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Crown Lands and Water Division, Wollongong Office, must be notified in writing to determine if any variations to the GTA will be required.
GT0003-00022	The application for a controlled activity approval must include the following document(s): - structural design and specifications; Erosion and Sediment Control Plan; Vegetation Management Plan.
GT0004-00002	A. A security deposit must be provided, if required by Crown Lands and Water Division. B. The deposit must be: i. a bank guarantee, cash deposit or equivalent, and ii. equal to the amount required by Crown Lands and Water Division for that controlled activity approval.



General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number:	IDAS1101520
Issue date of GTA:	17 November 2017
Type of Approval:	Controlled Activity
Description:	Construction of Residential Flat Building
Location of work/activity:	98-102 Fairway Drive Kellyville NSW 2155
DA Number:	DA2018/0
LGA:	The Hills Shire Council
Water Sharing Plan Area:	Greater Metropolitan Region Unregulated River Water Sources
GT0005-00017	A. The application for a controlled activity approval must include the following plan(s): <ul style="list-style-type: none">- Erosion and sediment control plan, soil and water management plan. B. The plan(s) must be prepared in accordance with Crown Lands and Water Division's guidelines located on the website http://www.water.nsw.gov.au/water-licensing/approvals/controlled-activity .
GT0010-00003	All documents submitted to Crown Lands and Water Division as part of an application for a controlled activity approval must be prepared by a suitably qualified person.
GT0012-00002	Any proposed controlled activity must be carried out in accordance with plans submitted as part of a controlled activity approval application, and approved by Crown Lands and Water Division.
Rehabilitation and maintenance	
GT0007-00003	When the proposed controlled activity is completed, and the rehabilitation plan has been implemented, maintenance of the site must be carried out for a period of 2 years in accordance with that rehabilitation plan submitted as part of the controlled activity approval, and approved by Crown Lands and Water Division.
Reporting requirements	
GT0015-00006	A. A written report must be provided on the controlled activity carried out under a controlled activity approval to Crown Lands and Water Division, Wollongong Office. B. Each report must: <ul style="list-style-type: none">i. address the implementation requirements of the plan(s) being submitted as part of the controlled activity approval, andii. be submitted at the interval(s) specified in the plan(s). C. The report must be approved by Crown Lands and Water Division before the controlled activity can commence.

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by DPI Water for integrated development associated with DA2016/0 as provided by Council:

- • Design Report
- • Flora and Fauna Assessment
- • Landscape Plan
- • Water Sensitive Urban Report
- • Survey Plan
- • Site Plan
- • Site Based Stormwater Management Plan
- • Sectional Plan



**Natural Resources
Access Regulator**

Natural Resources Access Regulator
Locked Bag 5123,
Parramatta NSW 2124
T 1800 633 362
www.industry.nsw.gov.au/nrar

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

Our ref: S961109940
Your Ref: DA282/2018

13 September 2018

Attention: Cynthia Dugan,

Dear Cynthia

Re: Proposed modification to integrated development - DA282/2018
At: 98-102 Fairway Drive NORWEST

I refer to the Council's letter dated 29 August 2018 advising of the proposed modification or amendment to an integrated development proposal for the above-mentioned property.

Based on a review of the information provided, NRAR confirms the existing General Terms of Approval (for work or activity requiring an approval under the Water Management Act 2000), issued on 17 November 2017 remain valid for the amended proposal and no amendments to the existing General Terms of Approval are necessary.

NRAR reserve the right to require changes to the treatment of the riparian area that will be included as part of the required vegetation management plan before issuing the controlled activity approval (CAA).

NRAR should be notified if any further amendments result in more than minimal change to the proposed development or if additional works or activities are proposed

Please direct any questions regarding this correspondence to Mohammed Ismail by email to moahammed.ismail@nrar.nsw.gov.

Further information on approvals required under the Water Management Act 2000 is located at: www.industry.nsw.gov.au ♦ [Water](#) ♦ [Licensing & Trade](#) ♦ [Approvals](#).

Yours sincerely

Mohammed Ismail M

Mohammed Ismail
Water Regulation Officer
Natural Resources Access Regulator NRAR