

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED

NOTE: BLACKTOWN CITY COUNCIL AND
RMS NOTIFIED

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

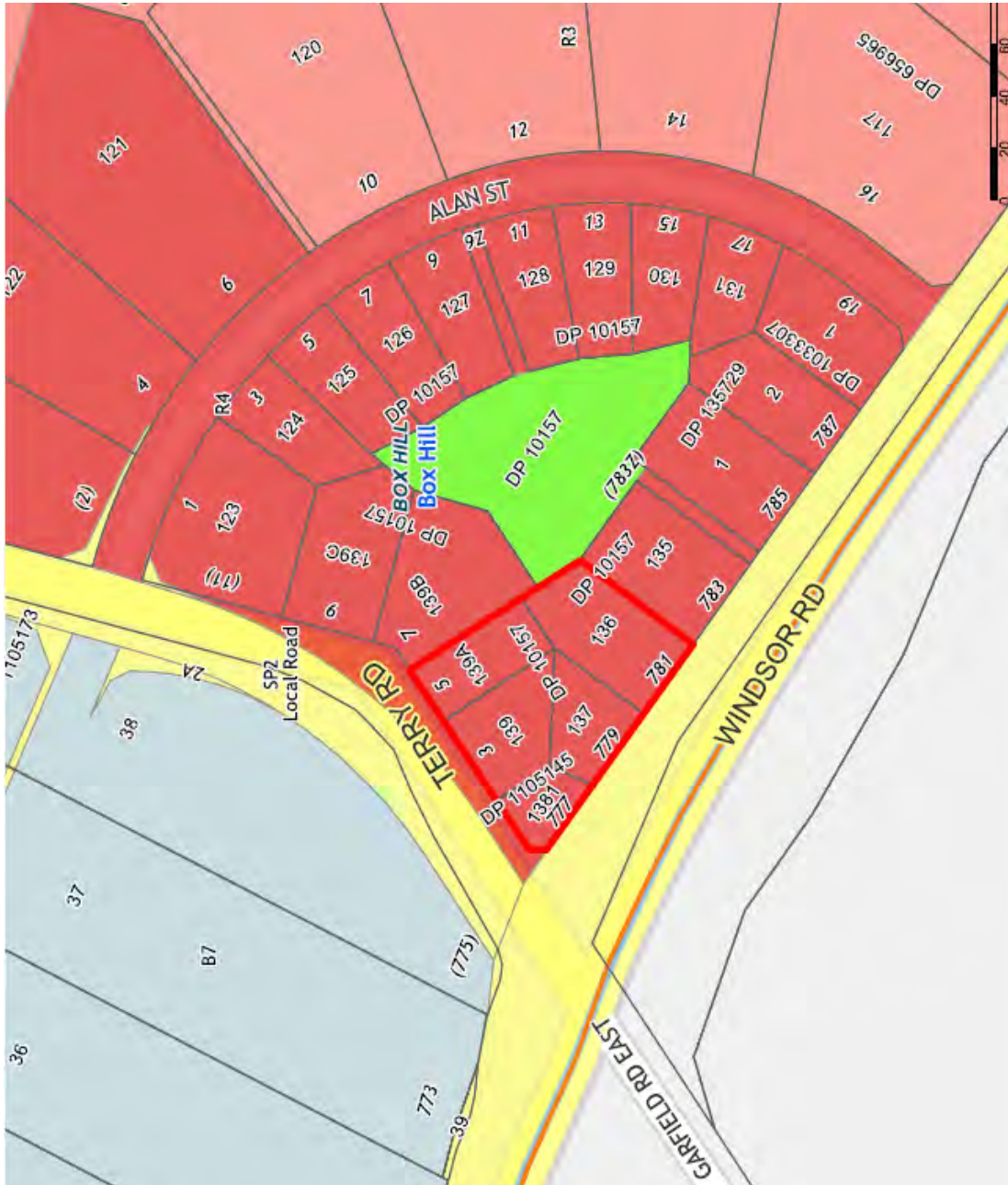
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ATTACHMENT 2 – AERIAL PHOTOGRAPH



SUBJECT SITE

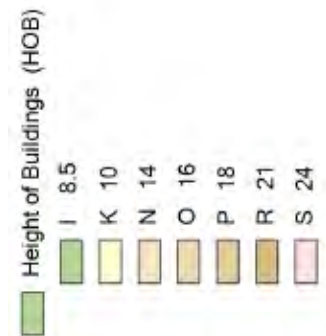
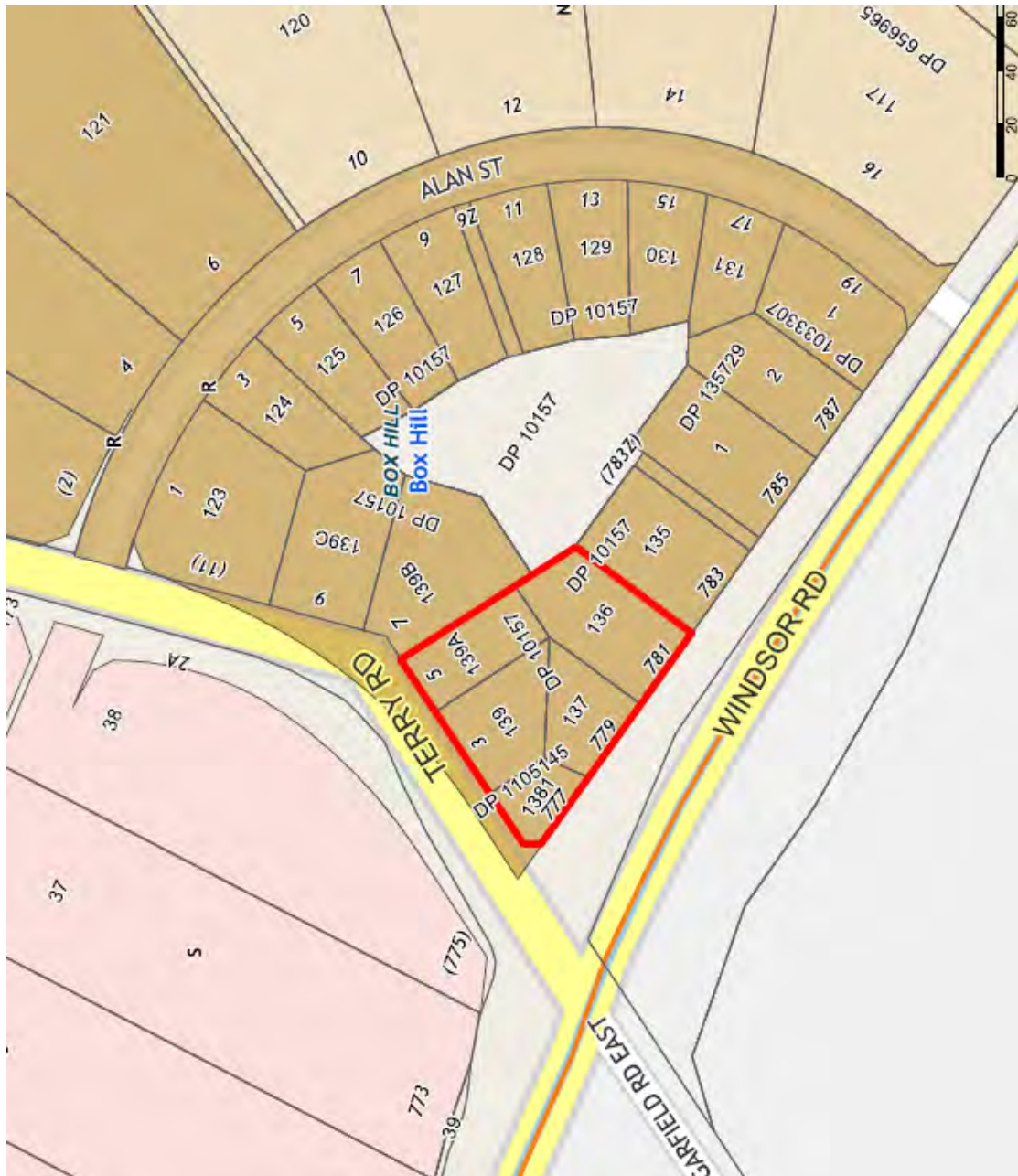
ATTACHMENT 3 - SEPP (SRGC) ZONING MAP



Land Zoning (LZN)

B2	Local Centre
B6	Enterprise Corridor
B7	Business Park
E2	Environmental Conservation
IN2	Light Industrial
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R4	High Density Residential
RE1	Public Recreation
RE2	Private Recreation

ATTACHMENT 4 - SREP (SRGC) HEIGHT OF BUILDINGS MAP



ATTACHMENT 5 - SEPP (SRGC) FLOOR SPACE RATIO MAP

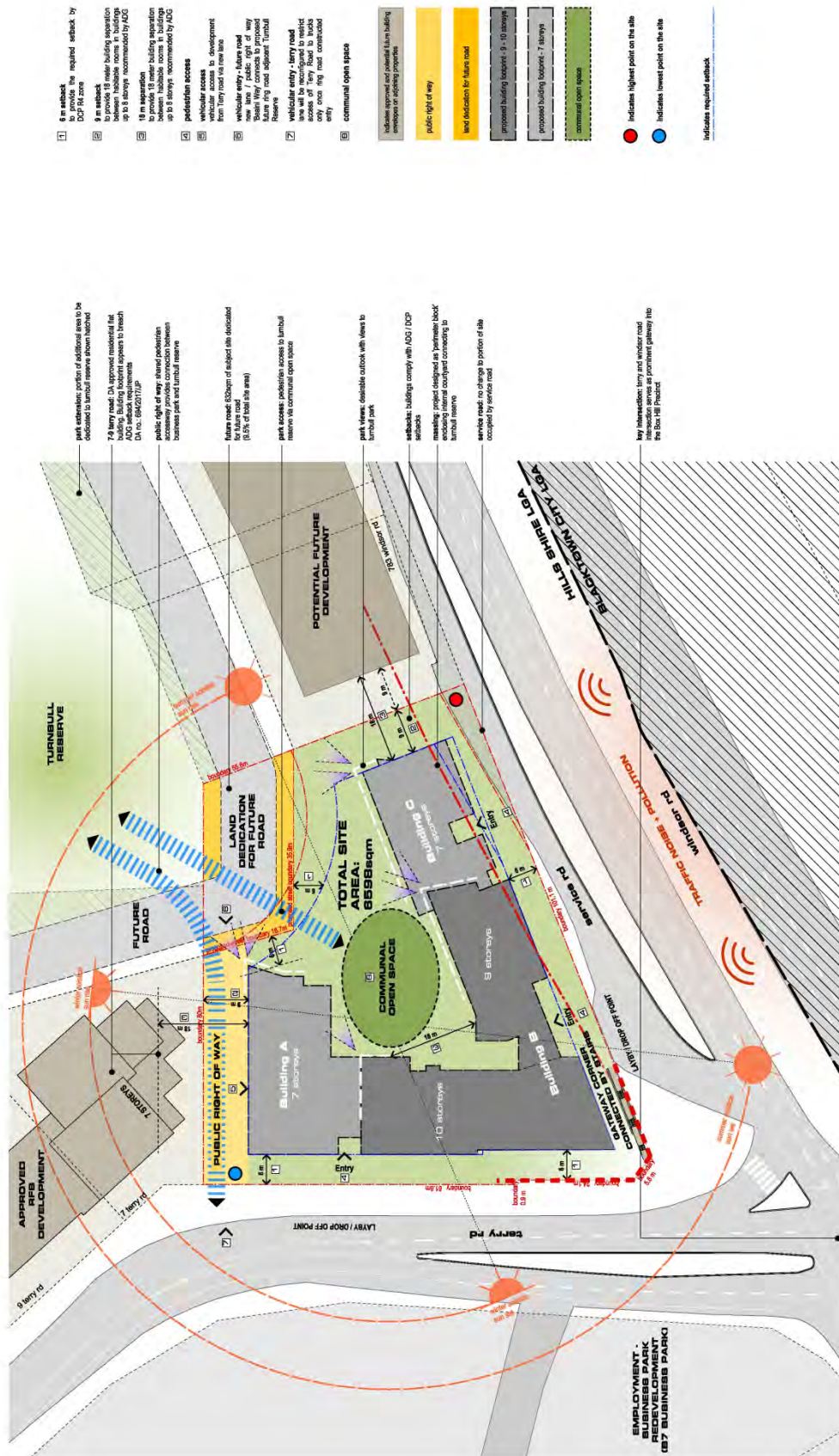


The map displays a residential area with the following features:

- Streets:**
 - ALAN ST** (top horizontal street)
 - TERRY RD** (left vertical street)
 - WINDSOR RD** (right vertical street)
 - GARFIELD RD EAST** (bottom diagonal street)
- Highlighted Area:** A red rectangle outlines a residential block located between Terry Rd, Windsor Rd, and Garfield Rd East.
- Lot Numbers:** Various lot numbers are visible, including 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793,

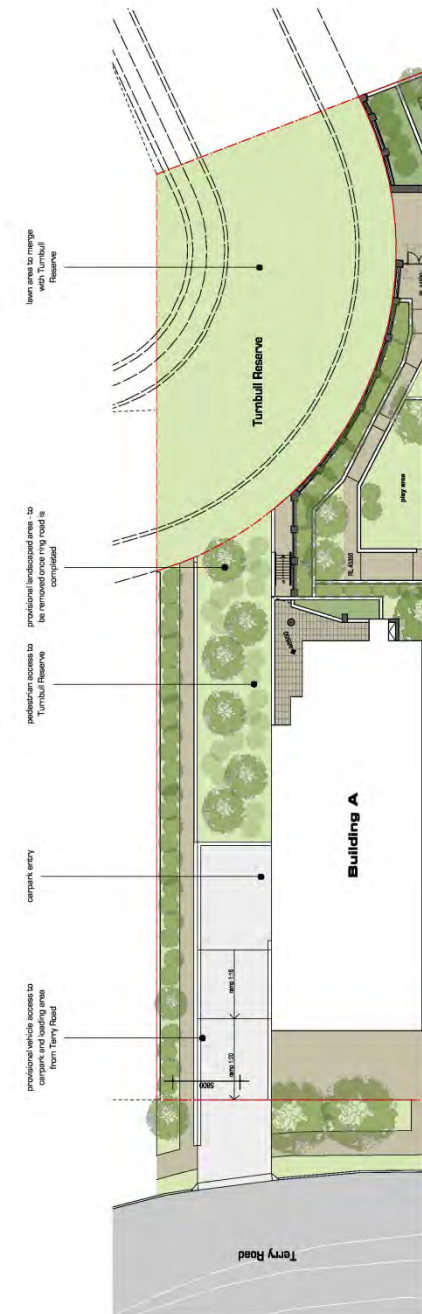
SEPP Box Hill
Box Hill Precinct Boundary
DCP Proposed Roads

ATTACHMENT 7 - SITE PLAN

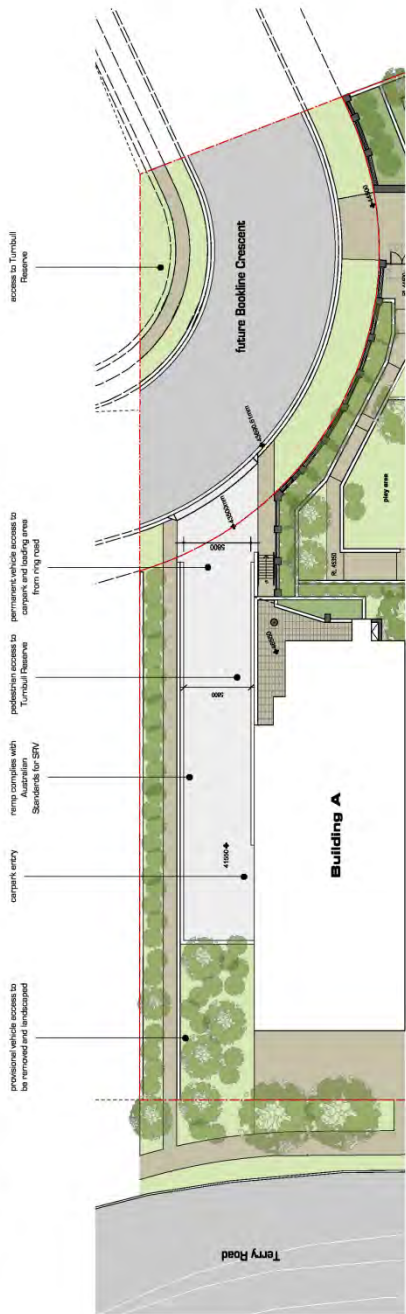


design analysis 1

ATTACHMENT 8 – TEMPORARY AND FUTURE SITE ACCESS



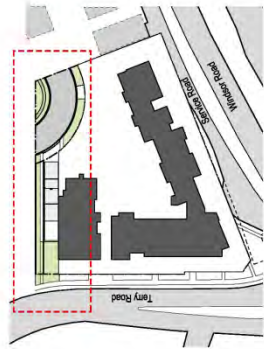
vehicular access - prior to park road opening



vehicular access - post park road opening



design analysis 3



key

The drawing shows a detailed parking layout for level -02. It includes a north arrow pointing towards the top right. The layout is divided into several sections, with room numbers ranging from 0.001 to 0.090. A central area is labeled 'Carpark level -02 - Residential' and '90 spaces (8 accessible)'. The drawing also shows a 'Bicycle parking (24 spaces)' area. Dimensions are provided for various sections, including a 10.0m wide section and a 10.0m deep section. The drawing is titled 'proposed level -02' and is located at the bottom right of the page.

proposed level -02

1-5 terry road and 779,781 windson road, BOX HILL

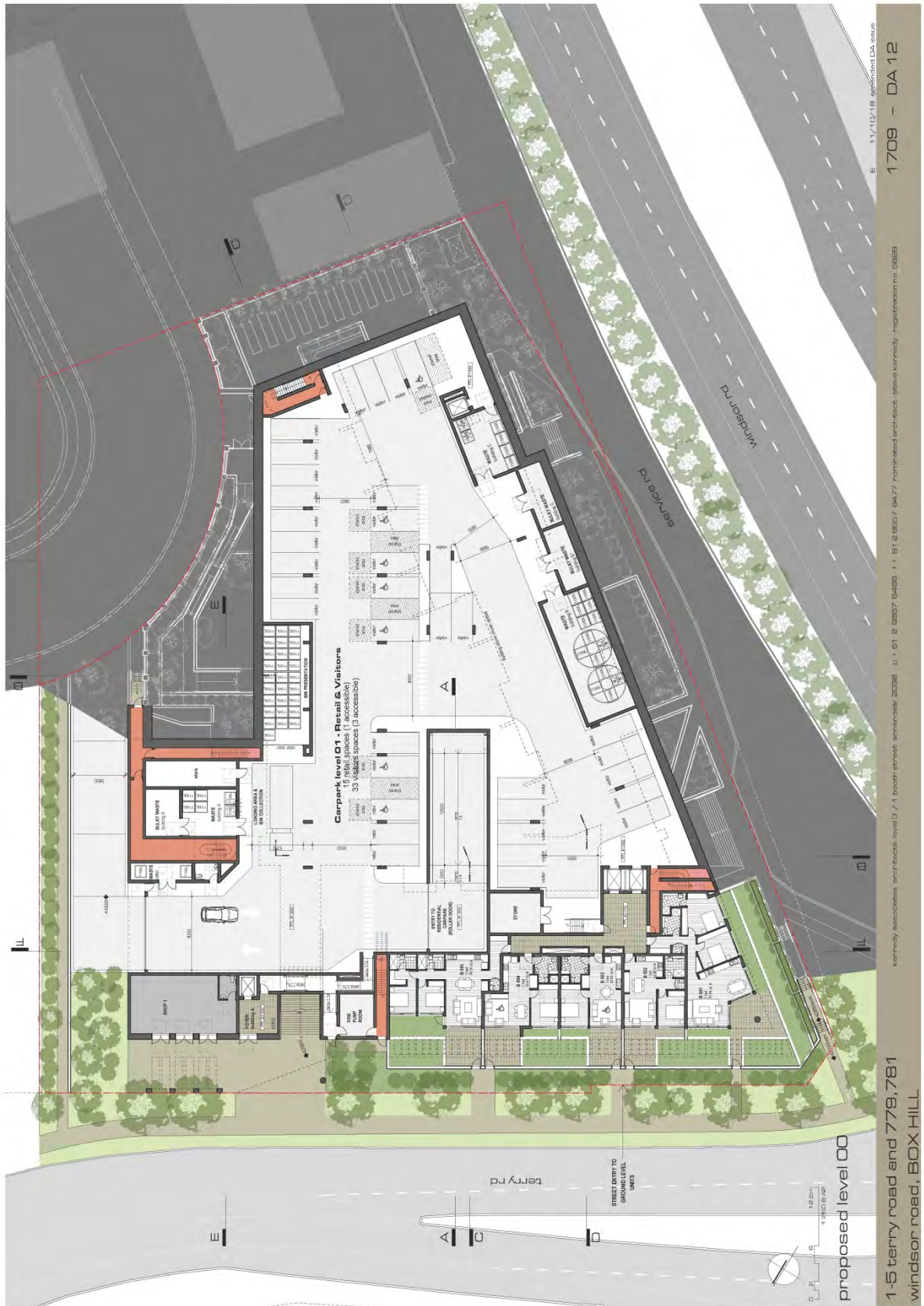
Kennedy Associates Architects level -02 / 1 floor above ground level 2020 p. 81 2 0557 6465 r. 81 2 0557 6467 r. 81 2 0557 6469 r. 81 2 0557 6477 r. 81 2 0557 6479 r. 81 2 0557 6481 r. 81 2 0557 6483 r. 81 2 0557 6485 r. 81 2 0557 6487 r. 81 2 0557 6489 r. 81 2 0557 6491 r. 81 2 0557 6493 r. 81 2 0557 6495 r. 81 2 0557 6497 r. 81 2 0557 6499 r. 81 2 0557 6501 r. 81 2 0557 6503 r. 81 2 0557 6505 r. 81 2 0557 6507 r. 81 2 0557 6509 r. 81 2 0557 6511 r. 81 2 0557 6513 r. 81 2 0557 6515 r. 81 2 0557 6517 r. 81 2 0557 6519 r. 81 2 0557 6521 r. 81 2 0557 6523 r. 81 2 0557 6525 r. 81 2 0557 6527 r. 81 2 0557 6529 r. 81 2 0557 6531 r. 81 2 0557 6533 r. 81 2 0557 6535 r. 81 2 0557 6537 r. 81 2 0557 6539 r. 81 2 0557 6541 r. 81 2 0557 6543 r. 81 2 0557 6545 r. 81 2 0557 6547 r. 81 2 0557 6549 r. 81 2 0557 6551 r. 81 2 0557 6553 r. 81 2 0557 6555 r. 81 2 0557 6557 r. 81 2 0557 6559 r. 81 2 0557 6561 r. 81 2 0557 6563 r. 81 2 0557 6565 r. 81 2 0557 6567 r. 81 2 0557 6569 r. 81 2 0557 6571 r. 81 2 0557 6573 r. 81 2 0557 6575 r. 81 2 0557 6577 r. 81 2 0557 6579 r. 81 2 0557 6581 r. 81 2 0557 6583 r. 81 2 0557 6585 r. 81 2 0557 6587 r. 81 2 0557 6589 r. 81 2 0557 6591 r. 81 2 0557 6593 r. 81 2 0557 6595 r. 81 2 0557 6597 r. 81 2 0557 6599 r. 81 2 0557 6601 r. 81 2 0557 6603 r. 81 2 0557 6605 r. 81 2 0557 6607 r. 81 2 0557 6609 r. 81 2 0557 6611 r. 81 2 0557 6613 r. 81 2 0557 6615 r. 81 2 0557 6617 r. 81 2 0557 6619 r. 81 2 0557 6621 r. 81 2 0557 6623 r. 81 2 0557 6625 r. 81 2 0557 6627 r. 81 2 0557 6629 r. 81 2 0557 6631 r. 81 2 0557 6633 r. 81 2 0557 6635 r. 81 2 0557 6637 r. 81 2 0557 6639 r. 81 2 0557 6641 r. 81 2 0557 6643 r. 81 2 0557 6645 r. 81 2 0557 6647 r. 81 2 0557 6649 r. 81 2 0557 6651 r. 81 2 0557 6653 r. 81 2 0557 6655 r. 81 2 0557 6657 r. 81 2 0557 6659 r. 81 2 0557 6661 r. 81 2 0557 6663 r. 81 2 0557 6665 r. 81 2 0557 6667 r. 81 2 0557 6669 r. 81 2 0557 6671 r. 81 2 0557 6673 r. 81 2 0557 6675 r. 81 2 0557 6677 r. 81 2 0557 6679 r. 81 2 0557 6681 r. 81 2 0557 6683 r. 81 2 0557 6685 r. 81 2 0557 6687 r. 81 2 0557 6689 r. 81 2 0557 6691 r. 81 2 0557 6693 r. 81 2 0557 6695 r. 81 2 0557 6697 r. 81 2 0557 6699 r. 81 2 0557 6701 r. 81 2 0557 6703 r. 81 2 0557 6705 r. 81 2 0557 6707 r. 81 2 0557 6709 r. 81 2 0557 6711 r. 81 2 0557 6713 r. 81 2 0557 6715 r. 81 2 0557 6717 r. 81 2 0557 6719 r. 81 2 0557 6721 r. 81 2 0557 6723 r. 81 2 0557 6725 r. 81 2 0557 6727 r. 81 2 0557 6729 r. 81 2 0557 6731 r. 81 2 0557 6733 r. 81 2 0557 6735 r. 81 2 0557 6737 r. 81 2 0557 6739 r. 81 2 0557 6741 r. 81 2 0557 6743 r. 81 2 0557 6745 r. 81 2 0557 6747 r. 81 2 0557 6749 r. 81 2 0557 6751 r. 81 2 0557 6753 r. 81 2 0557 6755 r. 81 2 0557 6757 r. 81 2 0557 6759 r. 81 2 0557 6761 r. 81 2 0557 6763 r. 81 2 0557 6765 r. 81 2 0557 6767 r. 81 2 0557 6769 r. 81 2 0557 6771 r. 81 2 0557 6773 r. 81 2 0557 6775 r. 81 2 0557 6777 r. 81 2 0557 6779 r. 81 2 0557 6781 r. 81 2 0557 6783 r. 81 2 0557 6785 r. 81 2 0557 6787 r. 81 2 0557 6789 r. 81 2 0557 6791 r. 81 2 0557 6793 r. 81 2 0557 6795 r. 81 2 0557 6797 r. 81 2 0557 6799 r. 81 2 0557 6801 r. 81 2 0557 6803 r. 81 2 0557 6805 r. 81 2 0557 6807 r. 81 2 0557 6809 r. 81 2 0557 6811 r. 81 2 0557 6813 r. 81 2 0557 6815 r. 81 2 0557 6817 r. 81 2 0557 6819 r. 81 2 0557 6821 r. 81 2 0557 6823 r. 81 2 0557 6825 r. 81 2 0557 6827 r. 81 2 0557 6829 r. 81 2 0557 6831 r. 81 2 0557 6833 r. 81 2 0557 6835 r. 81 2 0557 6837 r. 81 2 0557 6839 r. 81 2 0557 6841 r. 81 2 0557 6843 r. 81 2 0557 6845 r. 81 2 0557 6847 r. 81 2 0557 6849 r. 81 2 0557 6851 r. 81 2 0557 6853 r. 81 2 0557 6855 r. 81 2 0557 6857 r. 81 2 0557 6859 r. 81 2 0557 6861 r. 81 2 0557 6863 r. 81 2 0557 6865 r. 81 2 0557 6867 r. 81 2 0557 6869 r. 81 2 0557 6871 r. 81 2 0557 6873 r. 81 2 0557 6875 r. 81 2 0557 6877 r. 81 2 0557 6879 r. 81 2 0557 6881 r. 81 2 0557 6883 r. 81 2 0557 6885 r. 81 2 0557 6887 r. 81 2 0557 6889 r. 81 2 0557 6891 r. 81 2 0557 6893 r. 81 2 0557 6895 r. 81 2 0557 6897 r. 81 2 0557 6899 r. 81 2 0557 6901 r. 81 2 0557 6903 r. 81 2 0557 6905 r. 81 2 0557 6907 r. 81 2 0557 6909 r. 81 2 0557 6911 r. 81 2 0557 6913 r. 81 2 0557 6915 r. 81 2 0557 6917 r. 81 2 0557 6919 r. 81 2 0557 6921

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1-5 terry road and 779,781
windsor road, BOX HILL

[illegible]

ATTACHMENT 9 - FLOOR PLANS (GROUND FLOOR)



[illegible]

E 11/10/18 amended DA issue

1709 - DA 13

1-5 terry road and 779,781
windsor road, BOX HILL

11/10/18 appended DA issue

1709 - DA 14

kennedy associates architects level 3 / 1 booth street annandale 2038 p 61 2 9557 6495 f 61 2 9607 6477 nominated architect: steve kennedy registration no. 6828

1-5 terry road and 779,781
windsor road, BOX HILL

100

1709 - DA 15

kennedy associates architects level 15 / 1 booth street annandale 2038 p + 61 2 9557 6456 f + 61 2 9557 6477 nominated architect : steve kennedy : registration no. 99289

1-5 terry road and 779,781
windsor road, BOX HILL

Architectural site plan for proposed level 04. The plan shows a large building complex with multiple wings and internal courtyards. The building is outlined in red. Surrounding the building are parking areas, landscaped zones with trees, and roads. Key roads include Windsor Rd to the north and Perry Rd to the east. The plan also shows existing buildings and infrastructure. A north arrow and scale bar (0 to 10m) are located in the bottom right corner. The text 'proposed level 04' is written vertically on the right side. The plan is dated 11/10/18 and is a preliminary design.

1709 - DA 16

kennedy nasolabial archwire(s) level 3 / 4 both strands appendicle 2038 p + 61 2 6257 5466 f + 61 2 6357 / 6477 nonmagnetized archwire(s) active kennedy : negative/neutral no 19428

1-5 terry road and 779,781
windsor road, BOX HILL

1709 - DA 17

1-5 terry road and 779,781

windsor road, BOX HILL

proposed level 06

1:2500

1:2500

Terry Rd

Windsor Rd

Service Rd

Section markers: A, B, C, D, E, F

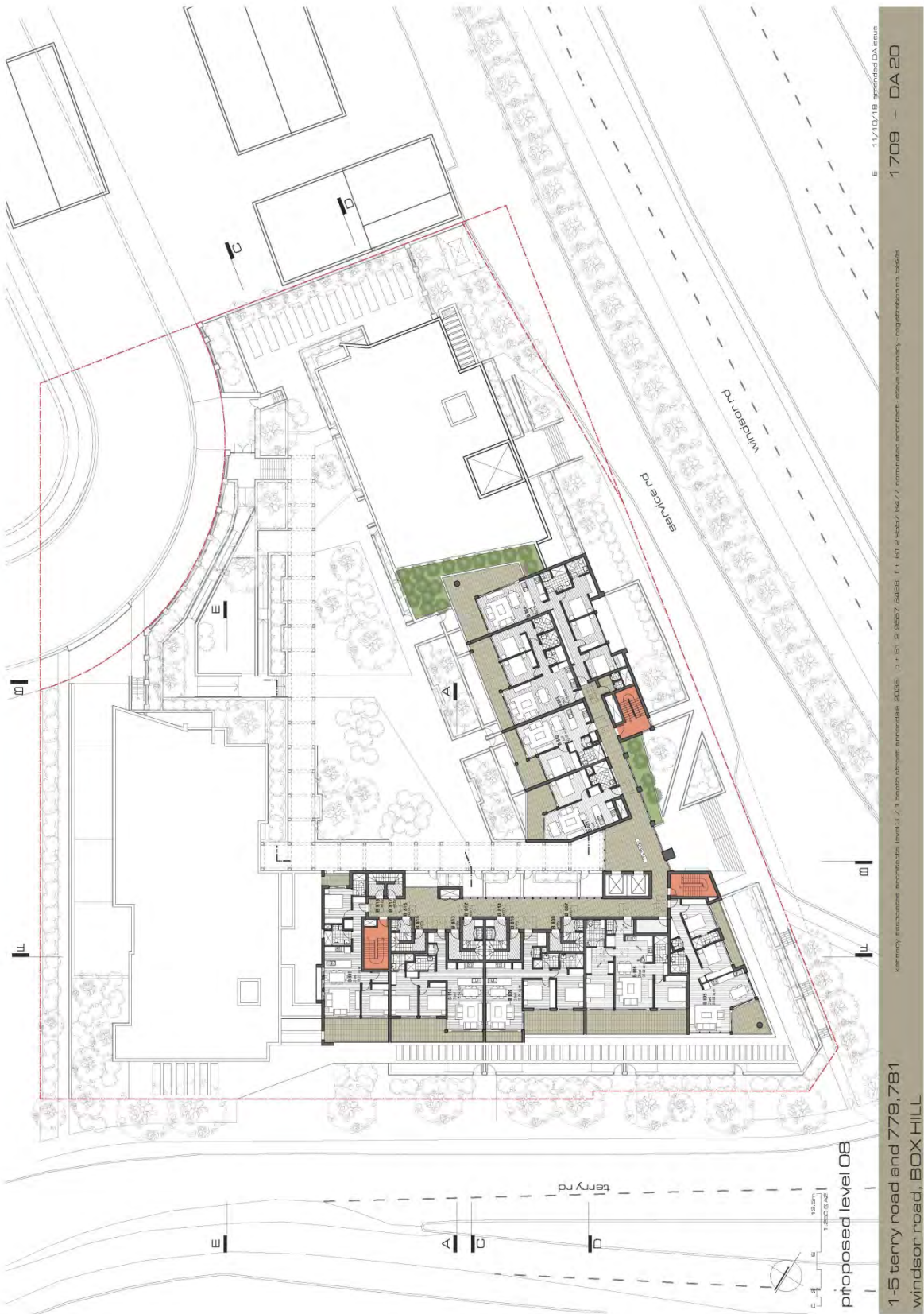
1-5 terry road and 779,781
windsor road, BOX HILL

kennedy associates architects level 3 / 1 booth street merriden 2038 p + 61 2 9557 6486 f + 61 2 9557 6477 nominated architect: evele kennedy - registration no. 53628

ATTACHMENT 9 - FLOOR PLANS (LEVEL 7)



ATTACHMENT 9 - FLOOR PLANS (LEVEL 8)



[illegible]

1-5 terry road and 779,781
windsor road, BOX HILL

kennedy associates architects level 3 / 1 boord street amherst 2038 p * 61 2 957 5499 f * 61 2 937 8477 northrup architect; stave kennedy; registration no. 0928

1709 - DA 21

E 11/10/18 amended DA 6605

1709 - DA 22

kennedy associates architects level 3 / 1 booth street-savannah 30308 p + 61 2 9557 6486 f + 61 2 9557 6477 nominated architect - stove kennedy - registration no. 59288

1-5 terry road and 779,781
windsor road, BOX HILL

ATTACHMENT 10 – ELEVATIONS (NORTH WEST/TERRY ROAD ELEVATION)



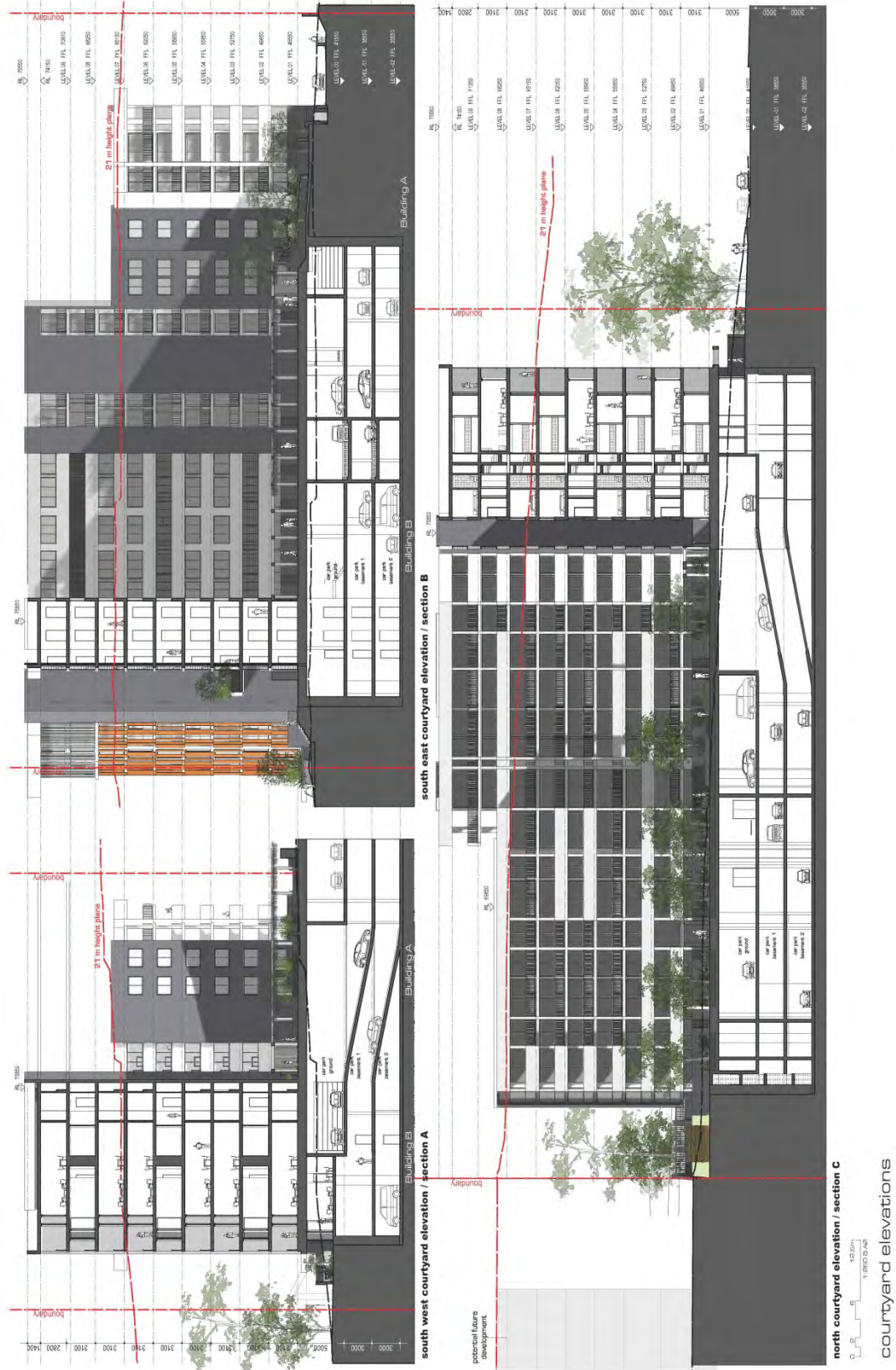
ATTACHMENT 10 – ELEVATIONS (SOUTHERN/WINDSOR ROAD ELEVATION)



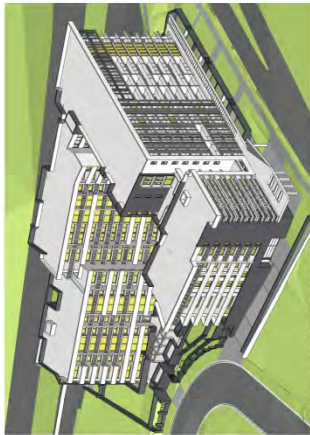
ATTACHMENT 10 – ELEVATIONS (EAST/NORTH EAST ELEVATION)



ATTACHMENT 10 – ELEVATIONS (COURTYARD ELEVATIONS)



ATTACHMENT 11 – SOLAR AND DAYLIGHT ANALYSIS



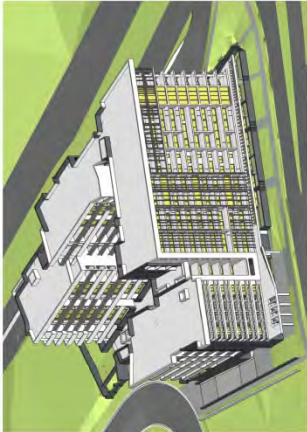
WINTER SUN 11 AM



WINTER SUN 2 PM



WINTER SUN 10 AM



WINTER SUN 1 PM



WINTER SUN 9 AM



WINTER SUN 12 PM



WINTER SUN 3 PM

ADG solar & daylight analysis

ATTACHMENT 12 - PERSPECTIVE



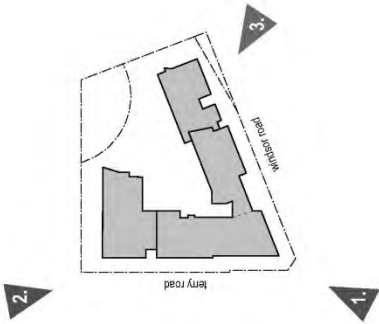
1. view from windsor and terry road intersection



2. view approaching from terry road



3. view approaching from windsor road



perspective views

ATTACHMENT 13 - APPLICANT'S CLAUSE 4.6 VARIATION REQUEST

20 December 2017
Our Ref: 9679C_CL4.6



planning consultants

APPENDIX 15

WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD MAXIMUM BUILDING HEIGHT DEVELOPMENT STANDARD

PROPOSED RESIDENTIAL FLAT BUILDING DEVELOPMENT 1-5 TERRY ROAD & 779-781 WINDSOR ROAD, BOX HILL

1.0 Introduction

DFP has been commissioned by Box Hill Property Trust to prepare a request pursuant to Clause 4.6 of Appendix 11 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP SRGC) in respect of the proposed residential flat building development at 1-5 Terry Road and 779-781 Windsor Road, Box Hill.

This request for an exception to the height development standard concludes that the breach to the height limit will result in a better built form outcome than what would be achieved if the height limit was complied with. The proposed height provides a gateway entry into the Box Hill Precinct and is able to achieve this by redistributing the built form to the corner and complies with the floor space ratio (FSR) development standard.

1.1 The Nature of the Variation

Clause 4.3 of SEPP SRGC Appendix 11 sets out the building height limit as follows:

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,*
 - (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
 - (c) to facilitate higher density development in and around commercial centres and major transport routes.*
- (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."*

The height map indicates that the site has a maximum height limit of 21 metres.

The SEPP defines building height as follows:

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

The proposal seeks to breach the maximum building height by up to 10.65 metres. This breach occurs at the corner of Windsor Road and Terry Road, which also coincides with the point of

lowest ground level. Figures 1 and 2 below show the height breach of 10.65 metres above the maximum height plane of 21 metres.



Figure 1: Terry Road elevation showing extent of height breach



Figure 2: Windsor Road elevation showing extent of height breach



The proposal provides a maximum height of 31.65 metres, which is a breach of 50.7% above the maximum height limit of 21 metres. The height breaches relate to topography, where the existing ground level is lower the building height breach is greater.

Maximum heights at each boundary are as follows:

- Terry Road (north west elevation): 31.65 metres
- Windsor Road (south elevation): 31.65 metres
- South East Elevation: 21.84 metres
- North East Elevation: 23.58 metres

The building located adjacent to the north eastern elevation (7-9 Terry Road) was approved with a 23.67 metre height limit.

The additional height does not result in a breach to the FSR development standard or any other development standard.

2.0 SEPP SRGC, Appendix 11, The Hills Growth Centre Precincts Plan

The following provides an assessment of the proposed breach to the maximum Height development standard in accordance with Clause 4.6 of Appendix 11 of SEPP SRGC.

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the LEP states the objectives of the clause as follows:

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

This Clause 4.6 variation request seeks flexibility to the Maximum Building Height development standard on the grounds of providing a better built form outcome to Terry Road and Windsor Road. The proposal has been designed to emphasise the corner and the significance of the intersection, which provides the primary vehicle entry into Box Hill.

The site has a significant fall of approximately 6 metres from the eastern high point of the site (Windsor Road frontage) to the low point of the site at the western corner. It is the western end of the site that represents the gateway to the Box Hill locality and a poor planning and urban design outcome would occur if the future building was visually 5 storeys lower at the prominent intersection.

To ensure the corner is emphasised and the site acts as a gateway into Box Hill it is necessary to design the built form to:

- Maintain the height around the side boundaries to ensure the proposal compliments surrounding future developments.
- Create a corner element to the western corner of the building (adjacent to the intersection corner), with an additional three storeys.
- An additional two storeys are located on the centre portion of the building to ensure the building appropriately tapers down from the corner to the 21 metre height limit.



An additional three storeys above the height limit is essential as the western corner of the building (corner of Terry Road and Windsor Road) has an existing ground level which is 2 storeys lower than the existing ground level of the eastern side of the Windsor Road frontage. The built form of the building's western corner is 2 storeys below the ground floor level of the eastern side of the façade and also provides 2 storeys above the RL of the top of the eastern sides façade.

This gives the appearance of the corner being two storeys higher than the eastern portion of the Windsor Road facing building. The additional storeys are also proposed on the Terry Road façade which provides a transition down to northern corner.

The variation to height limit in this circumstance provides a better outcome from the development as it will result in a far superior urban design outcome, where the significance of this corner as the key entry into Box Hill is appropriately emphasised.

The height breach does not result in any adverse amenity impacts to neighbouring sites as additional overshadowing from the building height will either fall on the surrounding roads or on the development. In addition, the additional height will not generate any privacy impacts to neighbouring sites.

With regard to better outcomes for the site, the additional height allows for the site to provide over and above the requirements of the Apartment Design Guide (ADG) and the Development Control Plan (DCP). For example:

- An additional 364m² of deep soil areas, 87% more than required is provided;
- An additional 337m² of communal open space, 23% more than required is provided;
- The development provides 403m², (14%) less site coverage areas than the maximum; and
- 88.1% of apartments receive more than 2 hours of sunlight which is 45 apartments more than the minimum requirement, which is 47% more than required.

The additional height clearly provides better amenity for residents, without hindering the amenity of adjoining sites.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

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

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

2.3 Subclause 4.6(3) – Written Request

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

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



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

The proposed development does not comply with the Building Height development standard pursuant to Clause 4.3 of SEPP SRGC Appendix 11 however, strict compliance is considered to be unnecessary in the circumstances of this case as justified in this written request.

2.3.1 Compliance is unreasonable or unnecessary

Compliance with the Building Height controls would result in a very poor built form outcome. A development which complies with the 21 metre height limit, providing 7 storeys when measured from existing ground would taper down along Windsor Road from the eastern to the western corner of the building. The corner would be usually three storeys lower than the eastern side of the building facing Windsor Road.

This result in a weak and recessive built form outcome to the corner of Terry Road and Windsor Road as the proposal would not highlight the significance of the site as a main gateway entry into Box Hill.

In addition, if the development complied with the height the development would not reap the benefits of a taller building as the development would likely have a greater site coverage, less units receiving 2 or more hours of solar access, less communal open space and less deep soil zones.

Due to the benefits, both for the development and from the development it is evident that compliance with the Building Height in this instance is unnecessary as a better development outcome results from non-compliance.

2.3.2 Planning Grounds to Justify the Contravention

There are sufficient environmental planning grounds to justify the proposed Height, these are discussed below:

- Compliance with the Height would require having a building which appears 2 storeys lower at the corner of the site than at the side boundary. The corner would have an RL of 65.15, while the eastern side boundary would have an RL of 69.35.
- Compliance with the Height standards would not adequately emphasise or convey the significance of this intersection as the primary entry into the Box Hill Precinct.
- Compliance with the Height standard would mean less units would receive solar access.
- Compliance with the Height standard would mean less deep soil zones and communal open space.
- Compliance with the Height standard would result in a greater site coverage.
- Compliance with the Height standard would likely result in negative impacts on the amenity of adjoining lots, as built form would be more spread out around the site, likely resulting in impacts to solar access and privacy.
- Compliance with the Height standard would not result in improved amenity outcomes for the subject site or the surrounding sites. The additional height does not result in any



overshadowing of neighbouring sites and does not result in privacy impacts to adjoining sites.

2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- “(a) the consent authority is satisfied that:
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.”

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the Director-General must consider:

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

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the LEP.

2.4.1 The Objectives of the Development Standard

Clause 4.3 of the SEPP SRGC states the objectives of the Building Height development standard as follows:

- “(a) to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct”

Comment:

The proposal seeks to retain the established maximum building height around the side boundaries to ensure the development matches the adjoining developments.

- “(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space”

Comment:

The additional height proposed does not result in any adverse visual or amenity impacts. The additional height will have a positive visual impact by creating a gateway into Box Hill, emphasising the corner of Windsor Road and Terry Road, which will assist in conveying its significance.

The additional height will not result in any overshadowing of the adjoining sites and in fact will have a lesser impact than what a compliant development would have, which would likely concentrate more development around the side boundaries, resulting in more overshadowing.

"(c) to facilitate higher density development in and around commercial centres and major transport routes."

Comment:

The site is located adjacent to the future Box Hill business park and is adjacent to the bus services that run along Windsor Road. The site will have ample access to both jobs and transport and is therefore appropriate for higher density development.

2.4.2 The Objectives of the Zone

Pursuant to Clause 2.2 of SEPP SRGC the site is located within the R4 High Density Residential Zone. Pursuant to Clause 4.6(4) in order for Council to grant consent to a development that contravenes a development standard, Council must be satisfied that the proposed development is in the public interest as it is consistent with the objectives of the zone in which the site is located. The following section provides an assessment of the proposals compliance with the objectives of the R4 Zone.

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

Comment:

The proposal is for a residential flat building, providing 160 new units. The development complies with the maximum FSR control.

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

Comment:

The proposal provides 1, 2 and 3 bedroom units, ranging in size from 50.38m² to 108.87m². The range of unit types and sizes will provide future residents with a variety of housing choices to suit their own needs.

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

Comment:

A retail shop is also provided in the development, the shop is likely to be a convenience store, café or restaurant and will serve the day to day needs of future residents.

2.4.3 Director-General's Considerations

As indicated above, subclause 4.6(5) of the LEP also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

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

The breach of the Building Height standard will not result in any matter of significance for State or Regional Environmental Planning.

"(b) the public benefit of maintaining the development standard."

In this circumstance there is no public benefit of maintaining the Building Height standard. The development will have a positive public impact by emphasising the corner of Terry Road and Windsor Road. This will act as a visual cue, assisting in identifying the Terry Road as a key entry into Box Hill.

The additional height provides visual interest and strong corner features are a typical urban design feature used to signify and demonstrate important nodes.

The additional height does not result in additional overshadowing and will not result in privacy impacts to neighbouring sites. In addition, the additional height is not a result of additional floor area above what is allowed under the FSR controls, rather it is a result of redistributing floor area to the corner of the site, rather than around the boundaries of the site.

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

There are no other matters that are required to be taken into consideration by the Director-General.

2.5 The Department of Planning Guidelines on Varying Development Standards

The Department of Planning Guidelines on varying development standards recommends consideration of the provision of Clause 4.6 and the Five Part Test established in *Whebe v Pittwater Council* [2007] NSW LEC 827. The five part test includes:

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 objective of the 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 Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or reasonable; and*
5. *The zoning of the particular land is unreasonable or inappropriate so that the 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 have been included in the particular zone."*

In this instance, it is evident that part 3 relates to this Clause 4.6. The objectives of the height standard are not only achieved in this instance, but breaching the height standard in fact allows for the objectives to be achieved in a better manner.

The proposed development with its height breach results in less overshadowing than would likely be the case with a compliant development, thereby achieving objective b of the Building Height standard. The additional height is located on the south western corner of the site, where the majority of overshadowing falls on Windsor Road or the service road.

A development where the height is compliant would likely result in more development along the eastern boundary. Buildings along the eastern boundary towards the rear of the site would result in additional overshadowing to 783 Windsor Road, which is located south east of the site.

In the Court case *Four 2 Five Pty Ltd v Ashfield Council*, the Court held that in order to support a Clause 4.6 variation it was necessary to ensure that the development was consistent with the zone objectives and also that the variation was in the public interest because it was consistent with the objectives of the standard. The Court also held that consideration also needs to be given to whether there are sufficient environmental planning grounds to justify contravening the development standard. The outcome of this Court case was that it is not a valid argument to



simply state that providing additional housing or employment opportunities delivered by a development that contravening the development standard was acceptable.

In this instance, the breach of Building Height standard does not increase density on the site, as the proposal remains compliant with the FSR controls, but rather ensures relocates the built form to the corner of the site. This in turn allows the development to better achieve the objectives, while also providing a better urban design outcome for the public.

This Clause 4.6 Variation has addressed the Building Height objectives, the objectives of the R4 Zone and the provisions of Clause 4.6 of the SEPP SRGC above and concludes that the proposed development is consistent with these objectives.

It cannot be argued that the proposal is an overdevelopment of the site when the FSR of the development complies with the maximum FSR for the site. All units will be afforded with ample amenity, including access to communal open space, varied unit sizes and large private open spaces.

3.0 Conclusion and Recommendations

We have assessed the proposed residential flat building against the relevant statutory provisions of clause 4.6 of SEPP SRGC and prepared this written request which provides justification that compliance with the Building Height development standard is unreasonable or unnecessary in the circumstances of the case.

The non-compliance is a direct result of aiming to provide a positive urban design outcome for the site. The additional height is not considered to be an overdevelopment of the site as the proposal complies with the FSR standard. The breach of the height control is due to redistributing the floor area to the corner from the northern portion of the site. This redistribution is shown graphically in the architectural plans at **Appendix 6** of the SEE. The development recognises the significance of the site as the entry into Box Hill and therefore seeks to provide a built form gateway which provides a corner element where the building acts as a visual cue of the entry into the precinct.

The aim of creating this built form gateway also results in positive impacts both for the future development and from the development. If the development complied with the height the development would not reap the benefits of a taller building and the development would likely have a greater site coverage, less units receiving 2 or more hours of solar access, less communal open space and less deep soil zones. In addition, a compliant development would result in a weak built form outcome to the corner of Terry Road and Windsor Road as the proposal would not highlight the significance of the site as a main gateway entry into Box Hill and also would likely result in more overshadowing of neighbouring sites and privacy impacts to neighbours.

The justification within this written request is considered to be well founded and the proposed development worthy of consent.