

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2018SWC017
<b>DA Number</b>	DA 1103/2018/JP
<b>LGA</b>	The Hills Shire Council
<b>Proposed Development</b>	Demolition of existing structures, construction of local roads and 78 townhouses.
<b>Street Address</b>	Lot 86 DP 10157 No. 29 Hynds Road Box Hill
<b>Applicant/Owner</b>	J S Architects Pty Ltd S and H Evagelakos
<b>Consultant/s</b> Architect: Town Planner: Acoustics: Arborist: Environmental Investigation: Engineering: Traffic: Surveyor: Archaeology: Quantity Surveyor:	J S Architects Pty Ltd Tudor Planning and Design Rodney Stevens Acoustics MacKay Tree Management  Geotesta Pty Ltd Indesco EB Traffic Solutions Pty Ltd AB Dimensions Baker Archaeology RIC-QS Pty Ltd
<b>Date of DA lodgement</b>	7 December 2017
<b>Number of Submissions</b>	1 <sup>st</sup> notification – 2 submissions received 2 <sup>nd</sup> notification – 1 submission received 3 <sup>rd</sup> notification – 1 submission received
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	CIV exceeding \$20 million (\$22,349,495) (Lodged prior to 1 March 2018)
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 11 The Hills Growth Centre Precinct Plan</li> <li>• State Environmental Planning Policy No 55 — Remediation of Land.</li> <li>• Sydney Region Environmental Plan No. 20 (Hawkesbury-Nepean River) No. 2 – 1997.</li> <li>• State Environmental Planning Policy – Building Sustainability Index (BASIX) 2009.</li> <li>• Draft Amendment to SEPP (Sydney Region Growth Centres) 2006 (North West Priority Growth Area Land Use and Infrastructure Implementation Plan).</li> <li>• Central City District Plan.</li> <li>• Box Hill Development Control Plan 2018</li> <li>• Environmental Planning and Assessment Act Regulation 2000</li> </ul>
<b>List all documents submitted with this</b>	Submissions (4) from two landowners

<b>report for the Panel's consideration</b>	
<b>Clause 4.6 requests</b>	Nil
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Consent from adjoining land owner not obtained (for access, road construction and drainage).</li> <li>• Density and amenity.</li> <li>• Inadequacy of plans.</li> </ul>
<b>Report prepared by</b>	Kate Clinton, Senior Town Planner
<b>Report date</b>	17 September 2020

#### **Summary of s4.15 matters**

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

#### **Legislative clauses requiring consent authority satisfaction**

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

#### **Clause 4.6 Exceptions to development standards**

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

#### **Special Infrastructure Contributions**

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

#### **Conditions**

Have draft conditions been provided to the applicant for comment? **N/A**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.*

<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>NA</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	<b>Yes</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>NA</b>

## EXECUTIVE SUMMARY

- The key issues that need to be considered by the Panel in respect of the development application are:
  - Whether the site is suitable for the development and whether it provides acceptable residential amenity;
  - Adequacy of consent letters from adjoining landowners in relation to the construction of local roads;
  - Proposed density with respect to draft amendments to SEPP (Sydney Region Growth Centres) 2006;
  - Variations to the Box Hill Development Control Plan 2018 with respect to the indicative layout plan, cut and fill, adaptable housing, site coverage and car parking.
  - Orderly development, and amenity impacts on adjoining land and future residents of the subject site resulting from the amended design of development;
  - Whether the proposed parking arrangements are suitable for the proposed dwelling types in relation to bedroom numbers and adaptable housing;
  - Inadequacy of the submitted plans and information;
  - The inability to provide Section 7.11 Contributions as a result of errors in the plans;
  - Issues raised in submissions.
- Assessment of the application against the relevant planning framework and technical matters (waste, engineering, health, land information, developer contributions, landscaping) has identified outstanding information and issues that have not been satisfied.
- The Development Application is not considered satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.
- This report recommends that the Panel refuse the application subject to the reasons for refusal listed in Recommendation No. 1 of this report.

## **BACKGROUND**

The site is located at No. 29 Hynds Road, Box Hill, legally known as Lot 86 DP 10157, and has a total area of 20,230m<sup>2</sup>. The site is located in the Sydney Region Growth Centres Box Hill Precinct and is located on the northern side of Hynds Road. The site slopes north to south, towards Hynds Road.

The site is zoned R3 Medium Density Residential pursuant to Appendix 11 The Hills Growth Centre Precincts Plan of SEPP (Sydney Region Growth Centres) 2006. Future roads as shown in the Box Hill Development Control Plan 2018 Indicative Layout Plan are located either wholly within, partially within, or adjacent to the site (Zaniah Street, Aurora Street and Sagitta Street respectively). The site is currently accessed via Hynds Road and future access to Hynds Road is not denied by the DCP.

A small-lot housing development and subdivision was approved by the Land and Environment Court on adjoining land to the east (Development Consent No. 1184/2018/ZE, No. 27 Hynds Road, 9 July 2019). This approval included a variation to the position of Zaniah Street, such that it will now be constructed directly adjacent to the eastern boundary of the subject site. Partial width construction of Zaniah Street within the subject site was approved with the application on No. 27 Hynds Road (Refer Attachment 16).

The subject Development Application was lodged on 7 December 2017. The application as originally lodged proposed the subdivision of the site into three allotments, and the construction of 84 town houses with individual garages and additional at-grade parking. Access to dwellings was proposed from roads on all four sides of the development, including future Sagitta Street which is wholly located in the adjoining property to the west (No. 31 Hynds Road). The consent of that landowner has not been obtained.

On 8 March 2018, a letter was sent to the applicant requesting additional information addressing the proposed density, orderly development and subdivision, clarification of works proposed, adjoining owners consent, road construction and a traffic safety report, stormwater management, vehicular access and car parking, waste management, property numbering, contamination, dam dewatering report, arborist report, and adaptable housing certification.

On 27 March and 4 April 2018, correspondence was sent to the applicant requesting additional information to address further engineering comments.

On 29 March 2018, the applicant requested a time extension in providing additional information by 27 April 2018. This time extension was granted. Further extensions of time were granted until 25 May 2018.

On 25 June 2018 the applicant submitted additional information and amended plans which were renotified. The number of dwellings was reduced from 84 to 78. Dwellings proposed adjacent to the western boundary were proposed to have access to future Sagitta Street which is located on adjoining land at No. 31 Hynds Road.

Following a meeting with the applicant and Council Officers, correspondence was sent to the applicant on 29 October 2018, requesting additional information addressing orderly development, owners consent, environmental health comments, waste management comments, tree and landscaping comments, property numbering and engineering comments relating to new roads, stormwater drainage, vehicular access and carpark and subdivision plan.

The applicant was requested on 14 December 2018 to provide an update on progress of amended plans. On 30 and 31 January and 20 February 2019, the applicant submitted a revised staging plan and amended architectural plans with the same number of dwellings



proposed. The plans illustrated four stages of development, still proposing dwellings accessed via future Sagitta Street without the consent of the adjoining landowner.

The applicant was requested on 21 February 2019 to submit evidence from water and electricity suppliers that the site can be serviced. It was noted that owner's consent and a Detailed Site Investigation report remained outstanding.

On 13 March 2019 the Site Investigation Report was submitted. On 8 August 2019 an updated Landscape Plan was submitted. The applicant was advised that Drains and MUSIC models remained outstanding for engineering assessment.

On 6 September 2019, comments on the Landscape Plan were sent to the applicant. The applicant advised that the issue of orderly development in relation to access to the adjoining land was under review.

On 7 November 2019 the applicant was advised of all outstanding matters including owner's consent, adaptable housing certification, waste management arrangements, detail on plans including levels and retaining walls, staging issues, car parking numbers, landscaping, first floor living areas capable of conversion to bedrooms, and building separation.

On 20 November 2019 the applicant was provided with further feedback on waste and engineering matters. The applicant was asked to consider withdrawing the application due to the outstanding information and issues.

The applicant liaised with Council's Resource Recovery Officer in December 2019 regarding waste servicing of the development.

The applicant's Engineer met with Council's Senior Subdivision Engineer on 26 February 2020 to discuss outstanding engineering matters and the requirements for amended civil engineering plans.

A letter was sent to the applicant on 13 May 2020 requesting an update on outstanding matters within 14 days. The applicant advised that Land and Environment Court proceedings are currently underway in relation to a nearby property at No. 17-21 Mason Road which is seeking to force an easement over the subject site or adjoining land at No. 31 Hynds Road. The applicant requested that an extension be granted until the matter is resolved.

A 14 day letter was sent to the applicant on 19 June 2020 following a resolution of the above matter whereby an easement benefitting No. 17-21 Mason Road would not be required on the subject site.

Amended architectural and engineering information was submitted on 3 July 2020. Amended Landscape Plans were submitted to Council on 10 August 2020. Whilst the number of proposed dwellings remains the same (78), the development has been amended to provide a combination of at-grade and basement parking. Basement parking is proposed to service the dwellings adjacent to the western boundary that adjoin the neighbouring property No. 31 Hynds Road and future Sagitta Street. These dwellings are not intended to have vehicular access to Sagitta Street, however the dwellings are proposed to address the western boundary as though it were a street frontage, with a footpath proposed within the site boundary. No indication of fencing to the western boundary is shown on the plans. The submitted Landscape Plans show street trees within No. 31 Hynds Road. Whilst the Architectural Plans show no works on No. 31 Hynds Road, the engineering plans illustrate civil works including stormwater infrastructure on that land, upon which the subject development would rely.

The amended plans and information were renotified and one submission was received.

An assessment of the submitted information has found that some requested information remains outstanding. Furthermore, the plans contain inaccuracies and are generally inadequate. Given the significant amount of time the application has been under assessment, the requests for information and issues that remain unresolved, it is recommended that the application be refused.

## DETAILS AND SUBMISSIONS

Owner:	S and H Evagelakos
Zoning:	R3 Medium Density Residential
Area:	20,230sqm
Existing Development:	Two dwellings and ancillary structures
Section 7.11 Contribution	Unable to be calculated <b>(Refer Section 12 of this report)</b>
Exhibition:	Not required
Notice Adj Owners:	Yes, 14 days
Number Advised:	Fourteen (14)
Submissions Received:	First notification – Two (2) submissions Second notification – One (1) submission Third notification – One (1) submission

## PROPOSAL

The Development Application, as amended, is for the demolition of existing structures and construction of multi dwelling housing comprising 78 dwellings, construction of new roads (Zaniah Street and partial width Aurora Street) associated civil engineering works, including a temporary detention basin, and landscaping.

The amended Subdivision Plan no longer indicates that the site is intended to be subdivided into three development lots. The amended Staging Plan indicates that the development is intended to be completed in two stages.

### Stage 1

- 32 town houses comprising:  
15 x 2 bedrooms plus “upper living” area  
17 x 3 bedrooms
- Bin storage area, one common outdoor area including a splash pool.
- Construction of Zaniah Street and part of Aurora Street.
- Internal road/driveways and at-grade parking.

It is assumed the temporary drainage basin is to be constructed in Stage 1.

### Stage 2

- 46 town houses (including 16 adaptable dwellings) comprising:  
11 x 2 bedrooms plus “upper living” area  
18 x 3 bedrooms  
17 x 4 bedrooms
- 25 of the above town houses have no driveway or garage.
- Basement car parking comprising 38 car spaces, two lifts and two storage areas.
- Additional at-grade parking spaces and internal road/driveway.
- Construction of part of Aurora Street.
- Bin storage bay and three common areas including a second splash pool.

## ISSUES FOR CONSIDERATION

### 1. Environmental Planning and Assessment Regulation 2000

#### a) Owners' Consent

Clause 49(1) of the Environmental Planning and Assessment Regulation 2000 states the following:

***“49 Persons who can make development applications***

*(1) A development application may be made:*

- (a) by the owner of the land to which the development application relates, or*
- (b) by any other person, with the consent in writing of the owner of that land.”*

The proposed development relies on direct public road access from Hynds Road (existing) as well as two proposed new roads, being Zaniah Street to the east (wholly located within the subject site), and Aurora Street to the north (located on both the subject site and Nos. 21 and 23 and 23A Mason Road Box Hill).

Originally, the application also proposed vehicular access via a future road Sagitta Street (wholly located within adjoining land No. 31 Hynds Road). However, since owner's consent has not been obtained from No. 31 Hynds Road for the partial width construction of Sagitta Street to enable access to the subject site, the proposed plans have been amended to propose a basement car park for dwellings on the western side of the proposed development.

Consent is therefore only required from the landowners of Nos. 21, 23 and 23A Mason Road for the partial width construction of Aurora Street. Adequate evidence of owner's consent has not been provided.

A landowner letter concerning the subject site and Nos. 23 and 23A Mason Road did not explicitly grant consent to allow the partial width construction of Aurora Street within the adjoining land. It granted consent in relation to Zaniah Street only. No consent letter has provided from landowners of No. 21 Mason Road for the partial width construction of Aurora Street in that land.

Letters of agreement between Nos. 23 and 23A Mason Road, No. 25 and No. 27 Mason Road, and a letter from the owner of No. 31 Mason Road were also submitted. These are irrelevant to the subject application.

The application has therefore not provided adequate evidence of consent from the landowners of No. 21 Mason Road and Nos. 23 and 23A Mason Road to enable the partial width construction of Aurora Street on the northern side of the site. In addition, the civil engineering plans (Refer Attachment No. 15), also indicate that the development is reliant on civil works (ie. stormwater) located within the adjoining land at No. 31 Hynds Road for which consent has not been granted.

### 2. State Environmental Planning Policy (State and Regional Development) 2011

The development application was lodged in December 2017. At that time, development with a capital investment value of more than \$20 million was classified in Schedule 4A of the Environmental Planning and Assessment Act 1979 as regionally significant development.

The proposed development has a Capital Investment Value of \$22,349,495 thereby requiring referral to and determination by the SCCPP. The capital investment referral criteria was increased to \$30 million on 1 March 2018.

### 3. State Environmental Planning Policy (Sydney Region Growth Centres) 2006

#### a. Permissibility

The land is zoned R3 Medium Density Residential under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The proposal is defined as 'Multi dwelling housing' as follows:

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

In view of the above, it is considered that the proposed development satisfies the provisions for permissibility with respect to SEPP (SRGC) 2006.

#### b. Development Standards

The following addresses the principal development standards of SEPP (SRGC) 2006:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for development	Multi Dwelling Housing – 1,500m <sup>2</sup>	Total Site Area: 20,233.477m <sup>2</sup> .	Yes
4.1B Residential Density	Minimum residential densities  18 dwellings per hectare	38.56 dwelling p/ha (78 dwellings)	Yes
4.3 Height	Maximum 14 metres	Maximum 10.6 metres (estimated)*	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	N/A	N/A

*\*Whilst it is clear from the submitted plans that the development is within the 14 metre height limit. No maximum height measurements were provided.*

#### c. Clause 5.10 – Heritage Conservation

Clause 5.10 of the SEPP requires the consent authority to be satisfied that proposals do not significantly or adversely impact upon known European or Aboriginal items or places of heritage significance. The subject site does not contain any European heritage items nor is it located within the immediate vicinity of any heritage items or conservation areas.

The northern half of the site is mapped as "moderate" sensitive Aboriginal archaeological areas under the Box Hill DCP. The applicant submitted a letter from the Deerubbin Local Aboriginal Land Council stating that an Aboriginal cultural heritage assessment was undertaken to evaluate the likely impact the proposed development has on the cultural heritage of the land. No Aboriginal cultural materials were found during the assessment and no objections were raised to the proposed development.

Due to the past land clearing, levelling and landscaping for the existing house on the site it is concluded that the site therefore has no Aboriginal heritage constraints, and low to nil archaeological potential to retain any extant archaeological sites, objects, PAD or Places.

Were the application recommended for approval, conditions of consent would be recommended which require that all work cease on the site should an unexpected item of Aboriginal (or European) heritage be found at the site.

**d. Clause 6.1 - Public Utility Infrastructure**

Clause 6.1 Public Utility Infrastructure states that development consent must not be granted unless Council is satisfied that any public utility infrastructure (water, electricity and sewage) that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

In April 2019, the applicant submitted a Notice of Requirements from Sydney Water, and a Technical Review from Endeavour Energy. Sydney Water advised that a water main extension would be required for water and waste water. The stated requirements were to be satisfied by March 2020, therefore a new Notice of Requirements must now be obtained.

Endeavour Energy advised that at the present time there is capacity in the network to supply 78 townhouses. A new padmount substation would be required to be installed on the site. 24/7 unrestricted access shall be provided to the new substation directly from a public road. An easement for the substation (2.75m x 5.5m) must be created in favour of Endeavour Energy. The amended plans have not accounted for the provision of an easement or padmount substation on the site.

Whilst updated advice should be obtained, it is considered that sufficient information has been provided to demonstrate compliance with Clause 6.1 – Public Utility Infrastructure of the SEPP (SRGC) 2006.

**4. Draft Amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

In May 2017, the Department of Planning released the draft North West Land Use and Infrastructure Implementation Plan. In addition to a new growth centres structure plan and an infrastructure schedule the package proposes a draft amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated draft changes to the DCP. The proposed changes include the introduction of density bands (rather than only minimum density) and reinstatement of minimum lot sizes for all residential areas (that were removed as part of the 2014 Housing Diversity changes).

The Explanation of Intended Effect states that *“a consent authority is not required to apply the provisions of the Explanation of Intended Effects to a DA lodged before May 22 2017”*. The subject Development Application was lodged on 7 December 2017. The proposed amendments are required to be taken into consideration pursuant to Section 4.15 of the EP&A Act, being a *“proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority ...”*

Clause 4.1B ‘Residential Density’ in Appendix 11 ‘The Hills Growth Centres Precinct Plan’ of the SEPP (SRGC) 2006 states the following:

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

*(a) to establish minimum density requirements for residential development within the Box Hill Precinct or Box Hill Industrial Precinct,*

- (b) *to ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing,*
- (c) *to ensure that the scale of residential development is compatible with the character of the precincts and adjoining land.*
- (3) *The density of any development to which this clause applies is not to be less than the density shown on the Residential Density Map in relation to that land.*
- (4) *In this clause:*

**density** means the net developable area in hectares of the land on which the development is situated divided by the number of dwellings proposed to be located on that land.

**net developable area** means the land occupied by the development, including internal streets plus half the width of any adjoining access roads that provide vehicular access, but excluding land that is not zoned for residential purposes.”

Clause 4.1B is proposed to be amended to introduce a minimum and maximum density band. The ‘Explanation of Intended Effect’ published by the Department of Planning which accompanies the proposed amendments to the Growth Centres SEPP states the following proposed density bands in the Box Hill and Box Hill Industrial Precincts:

Zone	Existing minimum density (dw/ha)	Proposed minimum density (dw/ha)	Proposed maximum density (dw/ha)
R1	-	20	80
R2	5	-	-
This applies to a defined area along Old Pitt Town Road. Density is controlled by the 2000m <sup>2</sup> minimum lot size requirement therefore, the minimum density requirement will be removed.			
R2	15	15	20
R3	18	15	30
R4	20	20	80
This range would be applied in the R4 zoned land around the neighbourhood centre. This proposed density range reflects the lower height and floor space ratio controls in this area.			
R4	30	30	100

Appendix 1 of the ‘Explanation of Intended Effect’ provides an amended Residential Density Map for the North West Priority Land Release Area, which confirms that the subject site is to be located in the 15 – 30 dwelling density range per hectare (land zoned R3 Medium Density).

The Growth Centres SEPP currently specifies a minimum density provision of 18 dwellings per hectare. The draft amendment to impose a maximum density range of between 15 – 30 (for land zoned R3 Medium Density) which equates to a minimum of 30.34 and a maximum of 60.69 dwellings being permitted on the development site.

The proposed development results in a density of 38.56 dwellings per hectare. Whilst this is above the proposed maximum density under the draft SEPP amendments, when compared with other approved, similar developments in the vicinity of the site shown in the following table, the proposed density is considered reasonable:

<b>Town houses</b>			
<b>Property / Application</b>	<b>Dwellings</b>	<b>Density p/ha</b>	<b>Status / Approval</b>
31 Mason Road <b>2023/2017/JP</b>	55 town houses	46.35	Approved (Land & Environment Court), 3 August 2018
47 Hynds Road <b>709/2017/JP</b>	90 town houses	53.8	Approved (SCCPP), 12 January 2018
19 Hynds Road <b>606/2018/HA</b>	30 town houses	28.2	Approved (Delegated Authority), 19 March 2018
29 Mason Road <b>79/2017/JP</b>	40 town houses	46	Approved (Former JRPP), 30 July 2018
17-21 Mason Road <b>1951/2017/JP</b>	111 town houses	40.14	Approved (Land & Environment Court), 8 August 2018
39-43 Hynds Road <b>896/2018/JPZ</b> -Stage 1	46 town houses	28.48	Approved (Delegated Authority), 1 May 2019
21 Terry Road <b>1252/2018/JPZ</b> - Stage 2	67 town houses	30.03	Approved (SCCPP), 20 June 2019
39-43 Hynds Road <b>984/2018/JP</b> - Stage 3	110 town houses	65.3	Approved (SCCPP), 20 June 2019
		Average: 41.27	

27 Hynds Road <b>1184/2018/ZE</b>	14 detached dwellings and 28 semi-detached dwellings	32.5	Approved (Land & Environment Court), July 2019
47 Hynds Road <b>709/2017/JP/A</b>	81 town houses	48.4	Approved (SCCPP), 16 April 2020
27 Mason Road <b>1545/2018/JP</b>	41 town houses	45.76	Approved (SCCPP), 30 June 2020
<i>Average Density (approved) = 42.49 dwellings p/ha</i>			

The proposed development is considered to be generally consistent with the draft density control and the density objectives (b) and (c) of Clause 4.1B of the Growth Centres SEPP since the proposed development makes efficient use of land and infrastructure, contributes to the availability of new housing, and within the context of approved developments in the vicinity, the scale of the proposed development is generally consistent with the desired character of the precinct.

The assessment of residential density against the draft provisions introduced in May 2017 also has regard to the status of the draft legislation which has been under review by the Department of Environment and Planning for a significant amount of time.

## 5. State Environmental Planning Policy No. 55 Remediation of Land

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

Clause 7 of the SEPP states:-

- 1) *A consent authority must not consent to the carrying out of any development on land unless:*
  - (a) *it has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

### **Comment:**

A Stage 1 Preliminary Environmental Investigation Report and Detailed Site Investigation Report prepared by Geotesta Pty Ltd, dated 5 December 2017 and 7 March 2019 were submitted in support of the application. Council's Environmental Health Officer reviewed the reports and raised no objection to the proposal subject to conditions of consent.

## 6. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004. This Policy provides State-wide planning controls to promote and guide the achievement of energy efficiency and ecological sustainability in all new development.

A BASIX Certificate was submitted with the development application when first lodged in December 2017. Amended plans submitted in July 2020 have changed the configuration of the development and require a new BASIX certificate which has not been provided.



Insufficient information has therefore been provided to confirm the proposed multi dwelling housing will meet the NSW government's requirements for sustainability.

## **7. Sydney Region Environmental Plan No. 20 (Hawkesbury-Nepean River) No. 2 - 1997**

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. Subject to appropriate conditions of development consent, the development is unlikely to have detrimental impacts on the health of the environment of the Hawkesbury and Nepean River system.

## **8. A Metropolis of Three Cities – the Greater Sydney Region Plan**

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

- A City for People
  - Planning Priority C3 - Providing services and social infrastructure to meet people's changing needs.
  - Planning Priority C4 - Fostering healthy, creative, culturally rich and socially connected communities.

Liveability is about people's quality of life. Maintaining and improving liveability requires housing, infrastructure and services that meet people's needs; and the provision of a range of housing types in the right locations. Liveability is about creating and renewing great places, neighbourhoods and centres, and providing services and social infrastructure to meet people's changing needs.

- Housing the City
  - Planning Priority C5 - Providing housing supply, choice and affordability with access to jobs, services and public transport.

Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. Housing affordability is also a challenge that can affect job and lifestyle choices.

- A City of Great Places
  - Planning Priority C6 – Creating and renewing great places and local centres, and respecting the District's heritage.

The creation and renewal of great places for people, together with better local accessibility through walking and cycling, will achieve local liveability that attracts and retains residents and workers. Great places exhibit design excellence and start with a focus on open spaces and a people-friendly realm.

### **Comment:**

The Central City District Plan seeks to provide housing supply which is diverse and affordable and which meets the needs of residents and which bring people together. The plan seeks to provide housing in locations which are easily accessible by public transport to reduce commuting time. Housing should be located in places which are liveable, walkable and cycle friendly. Housing should also respond to the changing needs of residents and consider single person and aging households. Great places are defined as areas which have a unique combination of local people, built form and natural features which reflect shared community values and which attract residents, workers and visitors.

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

- The proposal will provide a range of town houses (2, 3 and 4 bedrooms) which will assist in meeting housing demands;
- Being located within 550 metres of the B2 Local Centre zone, the proposed development will contribute to the viability of a future local centre in Box Hill;
- The site is located in an area to be increasingly serviced by public transport (buses); and
- A total of sixteen (16) accessible town houses are provided within the proposed development (subject to confirmation with an Accessibility Report).

However, as outlined in this report, various aspects of the development are questioned in relation to overall residential amenity outcomes.

## 9. Compliance with the Box Hill Development Control Plan 2018

The proposal has been assessed against the provisions of The Box Hill Development Control Plan and the following addresses the relevant development controls of the DCP.

Specific objectives are provided for multi dwelling housing in Section 5.3 of the DCP as follows:

- To ensure that the design of multi-dwelling housing is consistent with the character of residential areas within the Precinct.*
- To ensure that the quality of multi-dwelling housing is of a high quality and contributes to the amenity of residents.*

DEVELOPMENT STANDARD	DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
<b>2.0 – Vision and Character</b>			
Indicative Layout Plan	All development is to be undertaken generally in accordance with the Indicative Layout Plan.	Sagitta Street is proposed to be located to the east of the alignment in the ILP.	No. Refer comments below.
<b>3.0 – Land Development</b>			
Street Network, Design and Hierarchy	The street network and road hierarchy is to be provided generally in accordance with Figure 14 and Table 9.	The application seeks to realign proposed Sagitta Street.	No. Refer comments below.
<b>5.0 – Additional Controls For Certain Development Types – Multi Dwelling Housing</b>			
Site Coverage (maximum)	50% (max)	Not provided	No. Refer comments below.
Landscaped Area (minimum)	30% (min)	30.63%	Yes
Private Open Space (minimum)	16m <sup>2</sup> with 3m dimension	Between 19.15m <sup>2</sup> and 70.98m <sup>2</sup> provided.	Yes
	10m <sup>2</sup> per dwelling if provided as balcony or rooftop with 2.5m dimension.	Not applicable	NA

DEVELOPMENT STANDARD	DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
Front setback (minimum)	4.5m to building façade line; and  3m articulation zone	Min. 4.5m setbacks with min. 3.028m articulation (Hynds Road).  Min. 6m setbacks with min. 4.278m articulation (Zaniah Street).  Min. 5m setback with min. 3.38m articulation (Aurora Street).	Yes
Corner lots secondary setbacks	2m	Not applicable	NA
Side setback (minimum)	900mm	Min. 4m provided	Yes
Rear setback (minimum)	4.0m	Not applicable	NA
Internal building separation (minimum)	5m (unless dwellings are attached by a common wall)	Min. 5m provided.	Yes
Car parking	1 space per dwelling plus 0.5 spaces per 3 or more bedroom.  Visitor – 1 per 5 units  Disabled parking	<b>Required:</b> 78 x 1 plus 52 x 0.5 = 104 resident spaces and 16 visitor spaces (120 total)	Yes
		<b>Total provided:</b> 159 spaces  <b>Required per stage:</b>  <b>Stage 1</b> (32 dwellings): Resident: 41 spaces Visitor: 7 spaces <b>Total required:</b> 48  <b>Provided:</b> Garage and parking spaces in front of garages: 55 At-grade parking spaces: Designated resident – 10 Visitor - 5 Disabled - 6 <b>Total provided:</b> 76  <b>Stage 2</b> (46 dwellings): Resident: 64 spaces Visitor: 10 spaces	Yes

DEVELOPMENT STANDARD	DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
		<p><b>Total required: 74</b></p> <p><b>Provided:</b>  Garage and parking spaces in front: 28  At-grade parking spaces (17):  Designated resident – 12  Visitor - 3  Disabled – 2  Basement parking spaces (38):  Designated resident: 26  Visitor – 8  Disabled - 4  <b>Total provided: 83</b></p>	
	Car parking spaces to be behind the building line OR garages fronting the street to be set back 1m behind the front building line.	Garages fronting proposed public roads are set back 5.5 or 6 metres. Garages are positioned in front of the primary building setback which is 6 or 6.5 metres, but are least 1.2m behind two storey articulated elements.	Yes  <b>No. Refer comments below.</b>
	Where garages front the street, the max width of a garage door is 6m and each garage is to be separated by a dwelling façade or landscaped area.	Adjoining single garages are separated by a solid wall and are no more than 6 metres wide in total.	Yes
Garages and car parking dimensions	<p>1-2 bedrooms will provide at least 1 car space</p> <p>3 or more bedrooms will provide at least 2 car spaces.</p>	<p>All two bedroom dwellings provided with at least 1 car space.</p> <p>3 and 4 bedroom units are not clearly allocated at least 2 car spaces.</p>	<b>No. Refer comments below.</b>

DEVELOPMENT STANDARD	DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
<b>4.0 – Residential Development</b>			
4.1.1 Cut and Fill	<p>Retaining walls within residential allotments are to be no greater than 500 mm high at any point on the edge of any residential allotment. A combined 1 m maximum retaining wall height is permissible between residential lots (2 x 500 mm).</p> <p>All retaining walls for the site are to be identified.</p>	<p>The development is stepped in response to the slope of the site and incorporates retaining walls up to 1.91m (rear of townhouse Nos. 74-78. Not all retaining walls have been identified on the plans.</p>	<p><b>No, refer comments below.</b></p>
<b>5.5 Adaptable Housing</b>			
Adaptable Housing	<p>10% of all multi dwelling housing are to be designed to be capable of adaptation for disabled or elderly residents. Dwellings must be designed in accordance with the Australian Adaptable Housing Standard (AS 4299-1995).</p> <p>Certification from an accredited Access Consultant confirming compliance with the Australian Adaptable Housing Standard (AS 4299-1995).</p> <p>Car parking and garages allocated to adaptable dwellings must comply with the requirements of the relevant Australian Standard for disabled parking spaces.</p>	<p>Required: 8 Provided: 16</p> <p>Not provided</p> <p>Inadequate disabled parking spaces provided in basement parking related to adaptable dwellings. Allocation of parking not specified.</p>	<p>Yes</p> <p><b>No. Refer comments below.</b></p> <p><b>No. Refer comments below.</b></p>

**a. Indicative Layout Plan and Land Development**

Section 2.2 of The Box Hill DCP prescribes the Indicative Layout Plan (ILP) for the Box Hill Growth Centre Precincts (Refer Attachment 5).

The proposed development as amended, relies on direct public road access from Hynds Road as well from as two proposed new roads (Zaniah Street to the east and Aurora Street to the north). Aurora Street is located both within the site and adjoining land at Nos. 21 and 23/23A Mason Road, and Zaniah Street is wholly located within the subject site.

As stated in the background to this report, a variation to the ILP in relation to the position of Zaniah Street was approved under Development Application No. 1184/2018/ZE for adjoining property No. 27 Hynds Road (Refer Attachment 16). The subject application therefore seeks to replicate the variation to the ILP with respect to the location of Zaniah Street as approved under DA No. 1184/2018/ZE to enable its construction under this application.

Partial width construction of Zaniah Street within the subject site was approved with the application on No. 27 Hynds Road. As Zaniah Street remains wholly within the subject site, the consent of the adjoining landowner is not required.

## **b. Site Coverage**

The DCP allows 50% site coverage. Site coverage is defined in the SEPP (Growth Centres) as:

*“the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage—*

- (a) any basement,*
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,*
- (c) any eaves,*
- (d) unenclosed balconies, decks, pergolas and the like.”*

### **Comment:**

The compliance table submitted as part of the Architectural Plans advises a proposed “building envelope” of 22.18%. It is assumed this refers to the actual footprint of the proposed dwellings only. No site coverage diagram has been provided to demonstrate compliance with the site coverage control. Driveways, bin storage areas and parking areas should also be included in site coverage.

Insufficient information has been provided to demonstrate compliance with the site coverage control. Site coverage could be further minimised by the reduction of proposed paving in common open space areas which consist of predominately hard surfaces.

## **c. Cut and Fill**

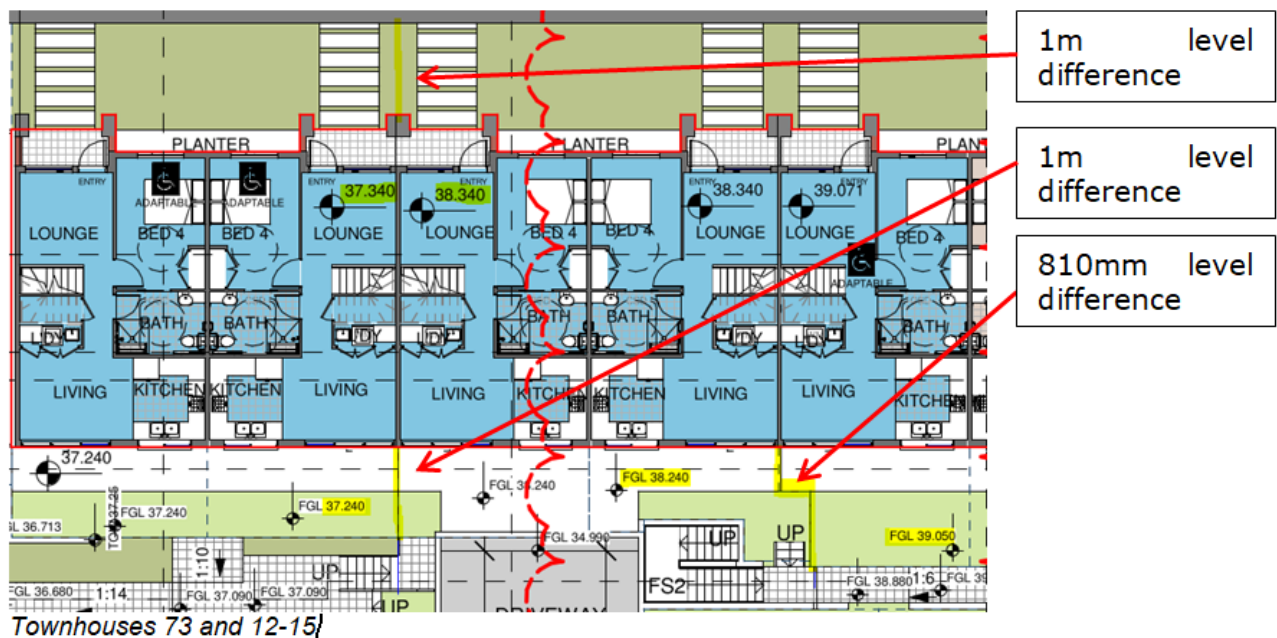
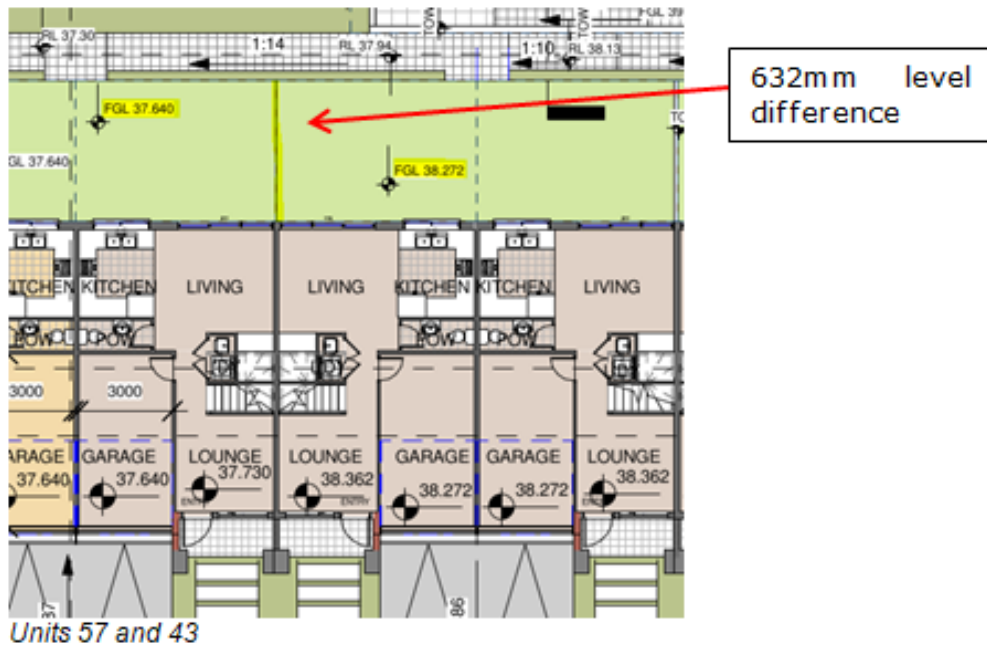
The Box Hill Development Control Plan specifies that retaining walls within residential allotments are to be no greater than 500 mm high at any point on the edge of any residential allotment. A combined 1 m maximum retaining wall height is permissible between residential lots (2 x 500 mm).

The objectives of the control are as follows:

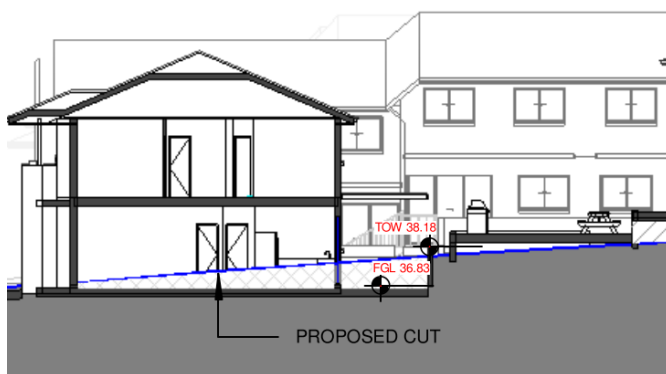
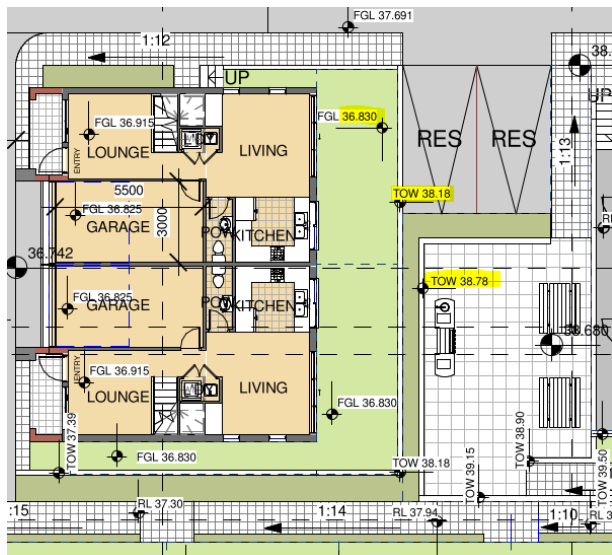
- a. To minimise the extent of cut and fill within residential allotments.*
- b. To protect and enhance the aesthetic quality of the area by controlling the form, bulk and scale of land forming operations.*
- c. To ensure that filling material is satisfactory and does not adversely affect the fertility or salinity of soil, or the quality of surface water or ground water.*
- d. To ensure that the amenity of adjoining residents is not adversely affected by any land forming operation.*

**Comment:**

The site slopes steadily from north to south with a difference of 14 metres between the northern and southern ends of the site. The architectural plans illustrate a development that is stepped in response to the slope of the site and incorporates some retaining walls. The DCP requires that all retaining walls are shown on the plans. Whilst some walls and wall heights have been provided on the plans, proposed differences in levels shown on the plans suggest that more retaining walls than are shown on the plans are required. Examples include the following:

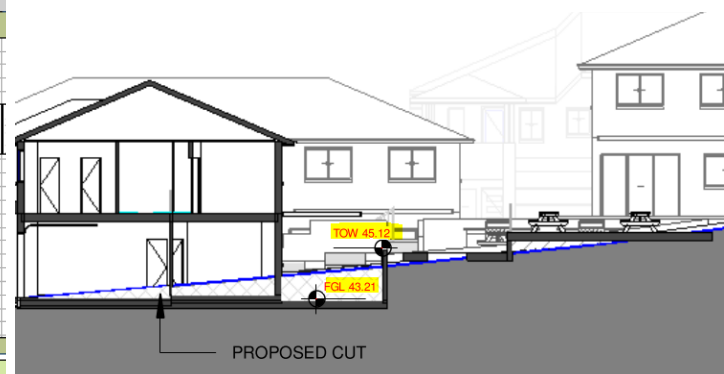
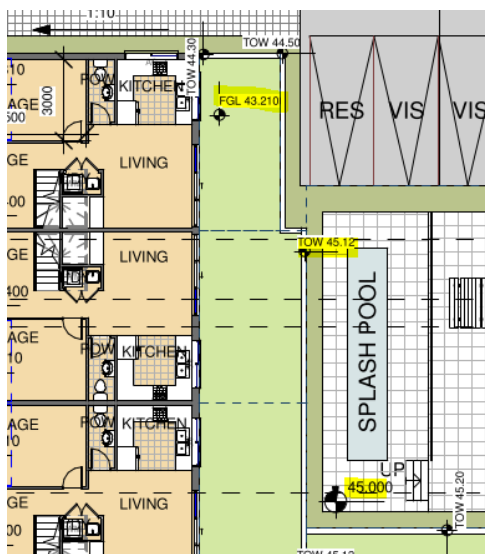


In addition to the plans lacking detail, there is some proposed stepping and use of retaining walls within the site that is considered to result in undesirable outcomes for future residents.



Townhouses 60 and 61 and corresponding section

A 1.95m difference between a common open space area and immediately adjacent private open space is the result of proposed cut at the rear of townhouse Nos. 60 and 61. It is noted that the retaining walls have been tiered however with a dividing fence proposed on the lower tier, will result in overlooking from the common open space to private open space, in addition to a total 3.15m combined wall and fence height to the private open space which is unacceptable.



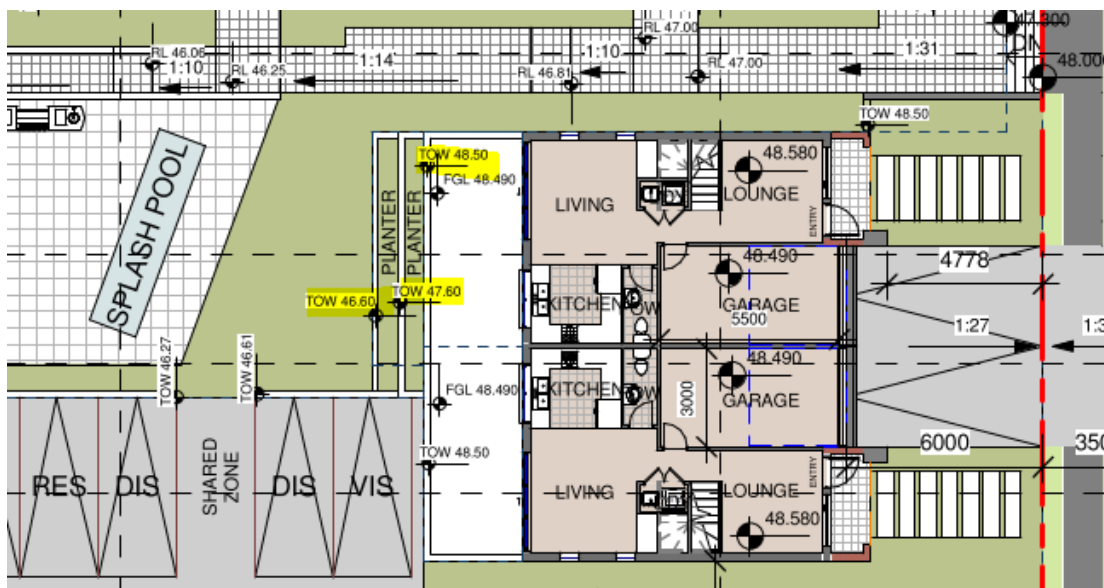
Townhouses 74-76 and corresponding section



A 1.79m difference between the common open space area, including pool, and private open space area is the result of proposed cut at the rear of townhouse Nos. 74-76 and between townhouse Nos. 77-78 and 35. A retaining wall of 1.91m is proposed. The pool line is located approximately 1.6m from the private open space fence line. Together with a fence of up to 1.8m, the private open space may have a rear wall height of up to 3.71 metres. Whilst the actual cut proposed is reasonable within the context of the sloping site, the management of this cut with a single retaining wall, the nature of the proposed private and common open space interfaces and proposed total fence heights will not result in an acceptable amenity outcome for residents.

Elsewhere within the site, differences in levels are considered reasonable and are generally no more than 1 metre. However, the plans still lack detail in that not all retaining walls or the proposed levels around the perimeter of the site (front setbacks and proposed road reserve) are shown. The provided Section Plans show a line of natural ground level, however no spot levels have been provided for reference on the architectural plans, particularly to enable a thorough understanding of the proposed outcome or assessment of the impacts on the adjoining land at No. 31 Hynds Road.

The application is therefore unsatisfactory with respect to Section 4.1.1 Cut and Fill since the plans do not provide sufficient details of all retaining walls, and since some of the outcomes (ie. un-tiered retaining walls and private/common open space interfaces) are not considered to protect or enhance the aesthetic quality of some parts of the development as required by objective (b) of the controls. More consideration should have been given to the interface of the identified common and private open spaces as identified above, and to allowing for larger private open space areas to accommodate landscaped terracing to reduce impacts of wall heights. This has been provided elsewhere in the site at the rear of townhouse Nos. 27 and 30 as illustrated below.



*Sufficient space provided for terracing to rear of POS to townhouse No. 27.*

Furthermore, insufficient spot levels have been provided on the plans to enable a complete assessment of the impacts on the adjoining land to the west and proposed road reserves to all other boundaries in conjunction with the Section Plans.

#### **d. Adaptable Housing**

The DCP requires 10% of dwellings to be capable of adaptation for disabled or elderly residents. Where provided in association with a basement, lift access must provide access from the basement to allow access for people with disabilities. The development application

must be accompanied by certification from an accredited Access Consultant confirming that the adaptable dwellings are capable of being modified to comply with the Australian Adaptable Housing Standard (AS 4299-1995). Car parking and garages allocated to adaptable dwellings must comply with the requirements of the relevant Australian Standard for disabled parking spaces.

The objectives of the control are as follows:

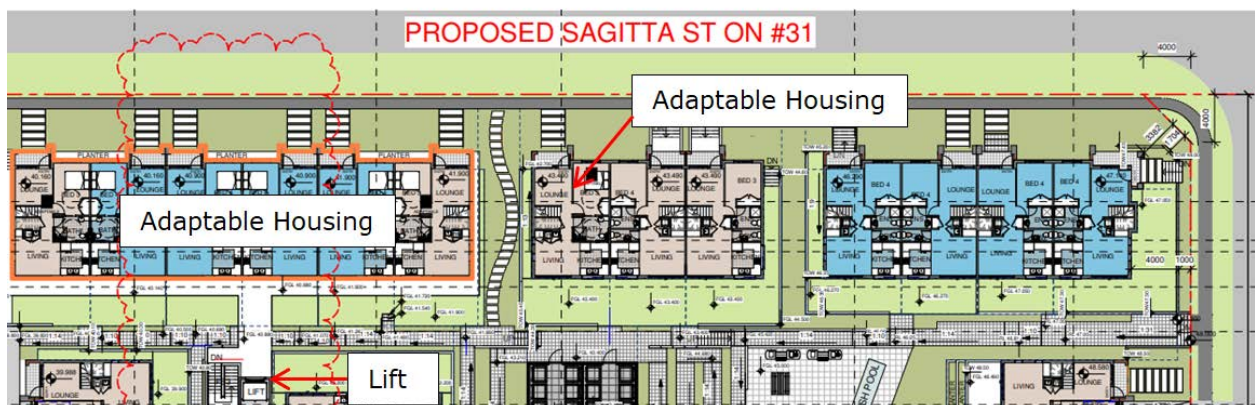
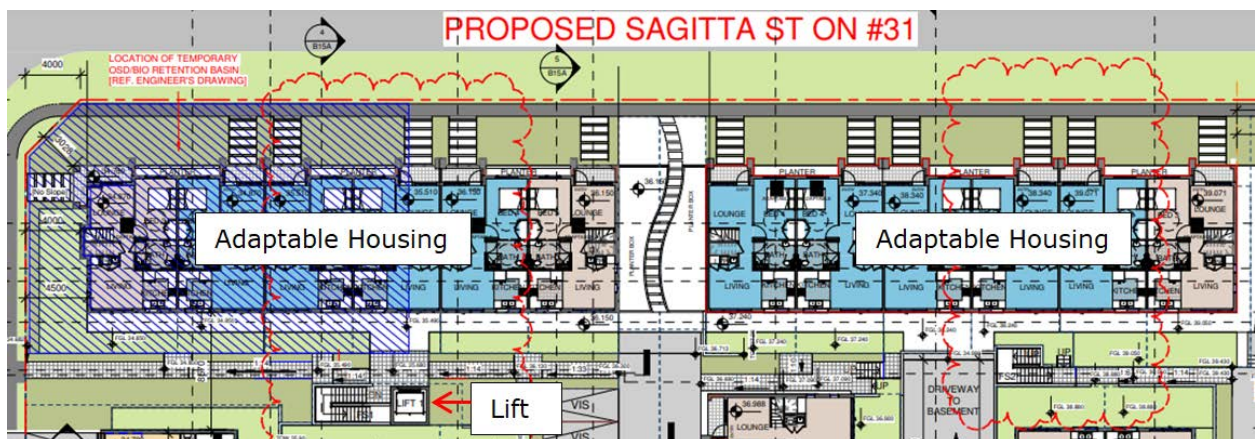
- a. *To ensure a sufficient proportion of dwellings include accessible layouts and features to accommodate changing requirements of residents.*
- b. *To ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant.*

The application has allocated 20%, being a total of 16 dwellings as adaptable dwellings. Only 10%, being a total of 8, are required to be adaptable in accordance with the Box Hill DCP.

#### **Comment:**

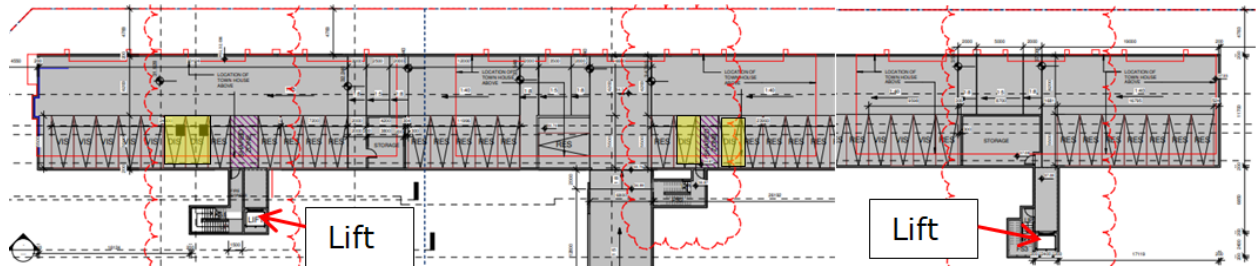
The provision of more than the minimum required adaptable dwellings is not an issue. The matter for consideration is whether the adaptable dwellings are provided with appropriate allocated car parking and whether appropriate access to the dwellings from the allocated parking is provided.

All adaptable dwellings are proposed to be located on the western side of the site. Since no vehicular access to the site is available via future Sagitta Street, no garages are provided to these dwellings. The dwellings are proposed to be provided with basement car parking only, accessible via two lifts which surface within the outdoor circulation/common areas of the development. Residents are then required to access their dwelling via pathways to the rear of the dwelling / private open space and the living room/sliding door.



Proposed location of lifts in relation to adaptable housing

Furthermore, only four spaces have been provided as designated as disabled parking spaces within the basement. Two of the designated basement disabled spaces have not been provided with the required shared area, and two are not positioned in the most convenient position adjacent to a lift. A further 8 disabled parking spaces are provided within the development, however the majority of these are not located in close proximity to the adaptable dwellings.



*Plan of basement showing proximity of disabled parking to lifts and shared zones.*

The applicant was requested to provide a report from an Access Consultant to confirm the site complies with Adaptable Housing Standard (AS 4299-1995). No report has been submitted in support of the proposed adaptable housing and parking arrangement.

Whilst more than the number of required allocated adaptable dwellings is shown to be accommodated within the development, evidence has not been provided to demonstrate that these dwellings and associated parking comply with the relevant standards. It is considered however, that each adaptable dwelling should be provided with a compliant disabled parking space within the basement parking area. The method of access for disabled persons to gain access to their dwelling, via an external lift through common and private open space areas to the rear of the home is considered to be inappropriate and does not provide a reasonable level of amenity for residents that are in most need of convenience. The location of bin storage areas in relation to the adaptable units is also considered unreasonable and evidence of a compliant path of travel has not been submitted.

The adaptable housing and associated parking arrangement within the development is considered to be unacceptable and does not meeting objective (b) of Section 5.5 Adaptable Housing of the DCP.

#### **e. Car Parking**

The relevant objectives of Section 4.2.8 Garages, Storage, Site Access and Parking are as follows:

- a. To control the number, dimensions and location of vehicle access points. To reduce the visual impact of garages, carports and parking areas on the streetscape.*
- b. To provide safe, secure and convenient access to parking within garages, carports and parking areas, with casual surveillance of private driveways from dwellings and from the street.*
- c. To minimise conflict between pedestrians and vehicles at the junction of driveways and footpaths.*
- d. To provide predominantly on-site parking for residents.*

#### **i. Setbacks**

The DCP requires car parking spaces to be behind the building line OR garages fronting the street to be set back 1m behind the front building line.

The plans indicate that garages fronting the proposed public roads are set back either 5.5 or 6 metres. Garages are positioned in front of the primary building setback which is 6 or 6.5metres, but are least 1.2m behind two storey articulated elements.

Although the DCP specifies that garages should be located behind the building line, the proposed development has positioned the building line of the townhouses at least 6 or 6.5 metres from the property boundary, well in excess of the required 4.5 metre minimum. Two storey articulated elements / verandahs are projected forward of both the proposed building line and garages by at least 1.2 metres. This provides adequate variation to the street frontages of the development and is considered to be a reasonable variation of the control in this instance.

## **ii. Car parking numbers and distribution**

The introduction of a basement parking area to provide parking for dwellings adjacent to the western site boundary was first proposed in amended plans submitted in July 2020. Prior to this the development either proposed access and parking via Sagitta Street or internally within the site with up to four stages to manage the construction process.

Table 18 of The Box Hill DCP requires multi dwelling housing to provide:

- 1 car parking space per dwelling; plus
- 0.5 spaces per 3 or more bedroom dwelling; plus
- 1 visitor space per 5 dwellings.

The DCP also states the following with reference to garages and parking:

- 1-2 bedrooms will provide at least 1 car space
- 3 or more bedrooms will provide at least 2 car spaces.

The applicant has advised in the compliance table attached to the architectural plans that a total of 118.1 car parking spaces are required, and that a total of 130 parking spaces have been provided.

According to the architectural plans however, and as detailed in the compliance table to this report, the number of required and provided parking spaces is summarised in the following table. Overall, the development provides more than the required number of car parking spaces.

<b>STAGE</b>	<b>Required Car Parking</b>	<b>Provided Car Parking</b>	<b>Compliance</b>
Resident (incl. disabled)	41	71	Yes
Visitor	7	5	No*
<b>Stage 1 Total</b>	<b>48</b>	<b>76</b>	<b>Yes</b>
Resident (incl. disabled)	64	72	
Visitor	10	11	Yes
<b>Stage 2 Total</b>	<b>74</b>	<b>83</b>	<b>Yes</b>
<b>Total</b>	<b>122</b>	<b>159</b>	<b>Yes</b>

*\* Able to comply if reallocated from residential/disabled parking.*

It is recognised that the additional DCP controls with respect to parking spaces seem to conflict with the specified parking rates. However, the additional parking space controls area useful for the purpose of determining and examining the distribution of parking spaces within a development. For example, it is more appropriate for a 3 or 4 bedroom townhouse to be provided with two parking spaces (ie. double garage or single garage and parking space in



front), than a 2 bedroom townhouse as is proposed in the submitted plans (Refer Attachment 9 (Ground Floor Plans)).

Therefore, despite the numerical compliance and exceedance of the required parking rates, the proposed car parking arrangements on the site are not considered appropriate in relation to the distribution of the various townhouse types within the development. Parking on the site includes a range of garages, parking in front of garages, designated at-grade resident, visitor and disabled parking spaces in addition to basement parking for residents, visitors and disabled.

Specific concerns that have arisen in relation to the proposed parking arrangement on the site are:

- the suitability of basement parking and external lift / pathway access arrangements for designated adaptable dwellings, particularly when not supported by evidence of compliance with relevant access standards;
- the proposed location of at-grade disabled parking spaces in relation to allocated adaptable townhouses (these are distributed throughout the site and only 4 are proposed in the basement which is associated with the adaptable townhouses);
- whether the total number of parking spaces provided within the basement which services 25 townhouses is sufficient, and adequately provides for disabled spaces/ shared required zones for adaptable units (38 parking spaces should be provided for residents alone based on 25 x 1.5 parking spaces and if associated with adaptable housing are to demonstrate the required shared areas are accommodated);
- whether it is appropriate for townhouses without a garage to be located up to 75 metres away from the nearest lift that provides access to the basement car park (ie. townhouse No.26), and the likely impacts on both residential amenity, and possibly reliance on street parking as an alternative;
- the proposed provision of two parking spaces (ie. garage with space in front) to two bedroom townhouses only, which should more appropriately be provided for 3 or 4 bedroom townhouses;
- the application has not detailed how parking spaces in the common at-grade areas or in the basement would be allocated to townhouses within the site by marking on the plans which townhouses will use which parking spaces; and
- No details have been provided to demonstrate how the basement parking area would be secured (ie. intercom, roller door etc).

The introduction of basement parking as a solution to the inability to rely upon vehicular access via Sagitta Road in the foreseeable future, appears to have been undertaken without adequate consideration of implications for parking distribution and dwelling types within the development.

In the absence of supporting documentary evidence, it is considered that adaptable dwellings should not be associated with basement car parking where convenient access is not provided between the basement and the dwelling. The existing basement does not provide adequate parking spaces for the proposed 16 (or required 8) adaptable dwellings. It is also considered inappropriate to expect any resident to travel up to 75 metres through common areas to access a lift to the basement.

The proposed development does not meet objective (b) of Section 4.2.8 Garages, Storage, Site Access and Parking of the DCP which is to provide safe, secure and convenient access to parking within garages, carports and parking areas, with casual surveillance of private driveways from dwellings and from the street. The proposed parking arrangement does not provide adequate levels of amenity for future residents, has not clearly allocated parking to particular townhouses or provided sufficient allocated parking for designated adaptable

townhouses, does not address security for the basement, and is likely to result in a reliance on street parking due to inconvenience.

**f. Solar Access**

The Box Hill DCP does not specify solar access standards for multi dwelling housing and does not refer to the provisions of The Hills DCP 2012 for multi dwelling housing, therefore solar access within the development is to be assessed on merit, with reference to similar controls.

Under The Hills DCP 2012, 80% of town houses in a multi dwelling development are required to achieve 3 hours of sunlight to 50% of required private open space areas in mid-winter.

**Comment:**

Hourly shadow diagrams have been provided by the applicant, however a table detailing the solar access received by each private open space area has not been provided to accompany the diagrams. It is difficult therefore to assess the percentage of townhouses that receive 3 hours of sunlight.

Due to the slope of the land (14 metres from north to south), the orientation of the site, and the terracing of land required to accommodate the proposed dwellings, it is challenging for the development to achieve reasonable solar access. As outlined in relation to cut and fill and retaining walls, some private open space areas will not provide adequate amenity for residents due to wall heights. Better outcomes could have been achieved for these units through better management of cut and fill and an increase in private open space areas to allow for terracing of retaining walls for example. It is noted however that the development does provide private open space areas that are all in excess of the minimum (ranging from 19.15m<sup>2</sup> to 70.98m<sup>2</sup>).

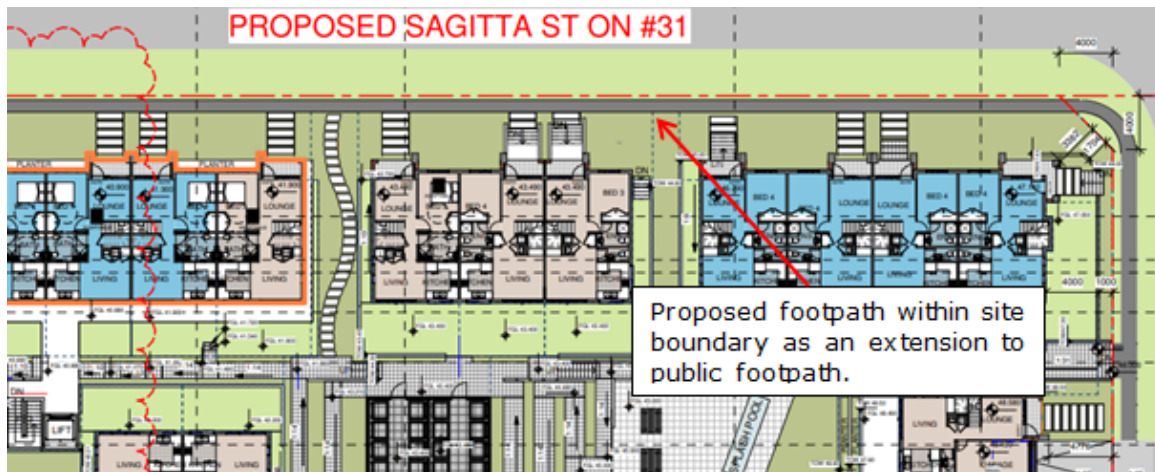
Insufficient information has been provided to enable a full assessment of solar access to private open space areas.

**10. Other matters for consideration**

**a. Orderly Development and Privacy**

The applicant's solution to the inability to achieve vehicular access to the site via Sagitta Street has resulted in the proposed basement parking solution for townhouses on the western boundary. These dwellings are still designed to address a future street frontage in anticipation of the future construction of Sagitta Street. This particular element of the design is supported, however the proposal raises other orderly development and privacy concerns.

The plans do not indicate whether a boundary fence is proposed along the western boundary and no dividing fences are proposed within the front setback to separate each front setback. A pathway is proposed within the site for the length of the western boundary, and links to public footpaths to be provided as part of the road reservation on Aurora Street and Hynds Road.



The purpose of this pathway is unclear however it appears to be intended for public access. It has not been included in the plan of subdivision to indicate any public access, and no levels are provided to indicate whether any stepping would be required on this pathway.

The proposed pathway is not supported since it raises security concerns both in relation to the adjoining land at No. 31 Hynds Road and to the townhouses which would have it located within their front setback. Regardless of the pathway, concern is also raised with regard to the function of the front setback to these dwellings whereby no fencing is provided. It is assumed that until such time as Sagitta Street is constructed, the front setback would function as quasi private open space areas.

The treatment of the setback to the western boundary does not satisfy objective (ii) of Section 5.3 Multi-Dwelling Housing of the DCP which is to ensure that the quality of multi-dwelling housing is of a high quality and contributes to the amenity of residents.

#### **b. Common Open Space and Residential Amenity**

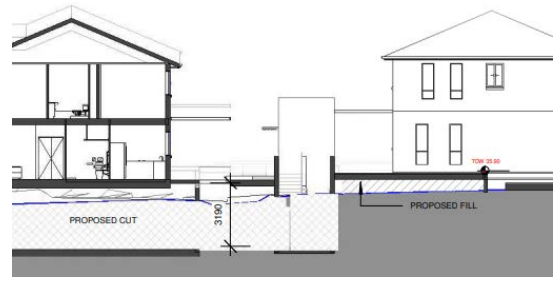
The development proposes four common open space areas. Two small areas are located within the southern half of the development and propose a paved area with fixed seating and barbecues. Two larger common areas in the north both propose a “splash pool”, barbecue area and fixed seating. No shade is proposed to any common area.

The relationship of the common open space / pool area with private open space at the rear townhouse Nos. 74-76, and common open space to the rear of townhouse Nos. 60 and 61 has been outlined in Section 10(c) of this report with regard to proximity and level differences which result in high walls and loss of amenity to the private open space.

In general, inadequate consideration has been given to the provision of quality common areas for residents of the development. The provision of two splash pools within 30 metres of one another is unnecessary and is not supported. One of two barbecue areas in the southern part of the site is poorly positioned directly adjacent to a large bin bay, and both of these common areas position barbecues on the common fence of adjacent private open space.

The proposed common open space areas have not been designed to maximise residential amenity and soft landscaping, or to provide a variety of uses within the development. Common open spaces do not achieve objective (b) of Section 5.3 Multi-Dwelling Housing of the DCP with respect to residential amenity.

Concern is also raised in relation to the visual impacts of proposed lift shafts within the development both within common circulation areas and in relation to adjacent private open space areas. The provided Sections indicate that the lift shafts will be imposing structures.



*Proposed Lift Shafts*

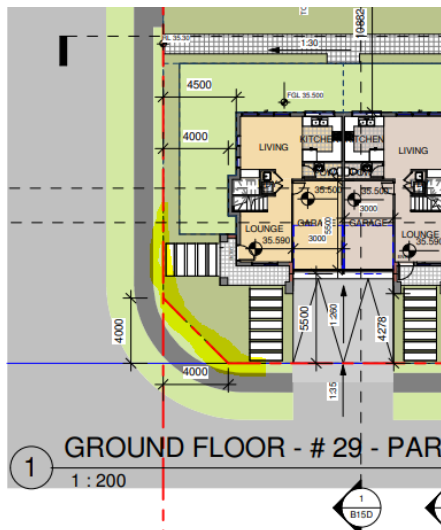
### c. Storage

The DCP contains no controls with respect to storage. Two common storage areas are proposed within the basement parking area. No details have been provided as to the function of these storage areas in relation to the townhouses that may have use of them and how separate, secure areas would be provided within them.

### d. Plans

The submitted plans contain various errors and omissions which has hindered the assessment of the application, including:

- Spot levels are not provided in the front setback areas and road reserves;
- Section plans and proposed spot levels indicate that that retaining walls will be required between some private open space and front setback areas which are not shown on the plans. For example, on the Hynds Road and Zaniah Street boundaries of the site adjacent to Townhouse No. 49, between Townhouses 32 and 33 (front setback), between Townhouses 57 and 43);



*Lack of spot levels and no retaining wall shown as required according to street elevation.*





<p>The adjoining land owner at No. 31 Hynds Road has not given consent for access or for the construction of Sagitta Road and associated drainage on their land.</p>	<p>The application originally proposed access to dwellings on the western part of the site via Sagitta Street which is to be located on No. 31 Hynds Road. As no agreement to allow the construction of this road was obtained from the owner of No. 31 Hynds Road, the most recent amendment has deleted individual garages to dwellings that would otherwise have had vehicular access to Sagitta Street, instead proposing basement parking. The amended Architectural plans indicate that no works are proposed on the adjoining land. The Landscape Plans show that street trees will be provided, assumed to be upon the construction of Sagitta Street in the future. Plans do not indicate boundary fencing to the western boundary adjoining No. 31 Hynds Road. A pathway is proposed to be placed parallel to the western boundary within the subject site. Although the Architectural Plans show no works on No. 31 Hynds Road, the concept civil engineering plans show that the development is dependent on works (including stormwater) on that land (Refer Attachment No. 15).</p>
<p>The proposed alignment of Zaniah Street is inconsistent with the Indicative Layout Plan.</p>	<p>A small-lot housing development and subdivision was approved on adjoining land to the east (Development Consent No. 1184/2018/ZE, No. 27 Hynds Road, 9 July 2019). This approval included a variation to the position of Zaniah Street, such that it will now be constructed directly adjacent to the eastern boundary of the subject site. The proposed alignment of Zaniah Street is consistent with the alignment approved in relation to the development of the adjoining land at No. 27 Hynds Road.</p>
<p>Documentation submitted with the application shows differing widths of proposed roads (both 19 metres and 18 metres).</p>	<p>Amended plans show the correct road widths (full and partial) for Zaniah and Aurora Street. If approved, any discrepancies on the concept plan would be corrected in a condition of consent.</p>
<p>No details have been provided for drainage easements over No. 31 Hynds Road and there has been no provision for on-site detention on the development site.</p>	<p>The application proposes a temporary detention basin in the southwestern corner of the site in Stage 1. Contrary to the Architectural Plans, the amended civil engineering plans suggest that the development is dependent on works located on No. 31 Hynds Road which is not acceptable without obtaining owner's consent.</p>
<p>The proposed density should be amended from 40 dwellings p/ha in line with proposed draft densities (max. 30 dwellings p/ha). This will provide consistent development in the area, more open space and will not detract from other developments. If this site is approved at 40 dwellings p/ha then</p>	<p>The proposed density of 38.56 dwellings per hectare is consistent with similar development which has been approved in the vicinity of the site and is considered reasonable. The average approved density of townhouses in the vicinity is 42.9 dwellings per hectare.</p>

surrounding developments should also have the same density since developments that comply will be reduced in value if they are located closer to higher densities.	
The development is 24 dwellings over the proposed density. A preferred outcome would be to reduce the number of dwellings with a greater mix of development which would result in more sunlight and better amenity for the residents.	The proposed number of townhouses was reduced from 84 to 78. A mix of 2, 3 and 4 bedroom units are proposed. Residential amenity within the development is addressed in Sections 9 and 10 of this report.
Increased density will result in greater traffic congestion getting in and out of Hynds Road.	The proposed density of the development is consistent with similar development approved in the vicinity. Townhouse developments are permitted in the R3 Medium Density Residential zone. The development proposes to construct the roads (Aurora and Sagitta Streets) which have been planned for in the Precinct Plan for Box Hill. The development is not considered likely to generate an unreasonable amount of traffic congestion on Hynds Road.

## 12. Referrals

### a) External Referrals

#### NSW POLICE COMMENTS

The application was referred to the NSW Police when first lodged. No objections were raised to the proposal. The most recently submitted plans were not referred to NSW Police for comment.

### b) Internal Referrals

#### SUBDIVISION ENGINEERING COMMENTS

The application was referred to Council's Subdivision Engineering Section. Council's Senior Subdivision Engineer provides the following comments:

- 1. Local road network (full width and partial width) to be provided within the development sites and outside the development has not been sufficiently in the form of Civil Engineering drawings and owners' consent for the construction and dedication of the roads at no cost to council.*
- 2. Proposed stormwater works including improvement on existing street drainage on new roads and the temporary detention basin proposed within the development have not been adequately detailed.*
- 3. A traffic safety report prepared by an appropriately experienced professional supporting the partial width construction of Aurora Street is still lacking.*

#### **Vehicular Access and Carpark**

- 4. Submitted design information including vehicular access circulation, slip lane, dimensions and the swept path turning templates are not adequately detailed to ensure the design*

*compliance of relevant Australian Standards including AS 2890.1:2004, AS 2890.6:2009, AS 2890.2:2002 and Council's Driveway Specifications.*

- 5. Amended longitudinal driveway profiles of the common driveways and individual town houses demonstrating the design compliance of relevant Australian Standards are still lacking.*
- 6. Refer to the comments provided by the Resource recovery relating to the turning templates relating to garbage collection. (Note: they are critical).*

### **Subdivision Plan**

- 7. Amended Subdivision Concept plan prepared by a registered surveyor detailing the proposal, and the documentation with regards to annotation on the subdivision plan and undertaking construction and dedication of new roads at no cost to council is still lacking for assessment.*

In this regard, the proposal has not adequately addressed the information requests or concerns raised by Council's Senior Subdivision Engineer.

### **LANDSCAPING COMMENTS**

The application was referred to Council's Landscape Assessment Officer. The submitted Landscape Plans were found to be inadequate.

The development application cannot be supported due to the following outstanding matters:

- 1. Further site levels are required to all external areas as there are many areas which are currently unresolved. Additional retaining walls and steps are required and resolution of pedestrian circulation to cater for level changes between units, driveways and communal open space. Top off wall levels are required to all retaining walls and paths in addition to proposed levels to boundaries in accordance with road design. Internal landscaping Section Plans are required to demonstrate treatment of level changes and planting is to be adjusted in accordance with retaining walls and levels. Tier walling where required to reduce the impact of high walls with fences on top. A 3.1m high wall and fence structure to courtyards is not acceptable.*
- 2. Replace Viola (VH) proposed to western boundary with DSS or GT as too hot for the shade species Viola.*
- 3. Placement of BBQs in close proximity to private open space is not recommended. BBQ's are to be relocated off boundary fences. Review an option for a large turfed open space area where suitable to provide a variety of communal areas as all are paved.*
- 4. Stormwater design, lines and pits are not shown on Landscape Plans as required.*
- 5. Street Trees to Sagitta Street are to be amended to Eucalyptus haemastoma as per the larger variety as per Box Hill Street Tree Masterplan due to the pedestrian paths for the street being within the boundary.*
- 6. Retaining wall materials for the site have not been specified. Timber retaining walls will not be supported.*

7. *There are significant areas of garden which are hatched in brown with no associated hatch in the legend. These areas appear to be mulched. Areas of mulch, including to frontages of units are to be planted, rather than only provided with mulch.*
8. *There are also areas depicted in white, which correlates with mulch in the legend. These areas are to be planted, with spaced stepping stones provided if required.*
9. *Bin storage areas are not clearly identified on the Landscape Plans (shown only as tiled areas) and do not show proposed walls and doors as identified on the Architectural Plans.*

The proposal has not adequately addressed concerns raised by Council's Landscape Assessment Officer on previous occasions, and the most recent plans cannot be supported for the reasons outlined above.

## **HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

The application was referred to Council's Environment and Health Section. Council's Environmental Health Officer has reviewed the proposal and raises no objections subject to conditions of consent.

## **WASTE MANAGEMENT COMMENTS**

Council's Resource Recovery Project Officer has reviewed the most recent plans and made the following comments:

1. *Resource Recovery requirements for multi-unit housing developments of this scale are to provide adequate manoeuvring space for Council's (or its Contractor's) waste collection vehicles. Waste collection vehicles must be able to travel in a forward direction at all times with no need for reversing. The swept turning paths overlaid on the architectural plan (drawing title 'Site Plan - # 29') show the standard 12.5m long heavy Rigid Vehicle (AS2890.2) reversing into position at the slip lane adjacent to Bin Area 1. This is not supported. Amended plans must be submitted showing vehicular access and loading facilities that ensure waste collection vehicles (standard 12.5m long Heavy Rigid Vehicle AS2890.2) can travel in a forward direction at all times, with no reversing at any time. Swept turning paths must also be submitting demonstrating the standard 12.5m long Heavy Rigid Vehicle travelling in a forward direction at all times.*
2. *Vehicular access for waste collection vehicles must not impede upon general access to, from or within the site. The swept turning paths overlaid on the architectural plan (drawing title 'Site Plan - # 29') show the standard 12.5m long Heavy Rigid Vehicle (AS2890.2) utilising the entire width of internal driveways when entering and exiting the site. This is not supported. Amended plans and swept turning paths must be submitted showing that waste collection vehicles do not conflict with oncoming traffic when entering and exiting the site. Swept turning paths must demonstrate that two-way traffic flow can be achieved between the standard 12.5m long Heavy Rigid Vehicle (AS2890.2) and the standard B99 passenger vehicle (AS2890.1) at the entrances/exits to/from the site.*
3. *Swept turning paths must be submitted demonstrating all required manoeuvres waste collection vehicles must undertake for waste collection purposes. The swept turning paths overlaid on the architectural plan (drawing title 'Site Plan - # 29') do not show the waste collection vehicle entering the slip lane adjacent to Bin Area 2. Submitted swept turning paths only show the waste collection vehicle exiting the slip lane adjacent to Bin Area 2. Swept turning paths must be submitted demonstrating all required manoeuvres the standard 12.5m long Heavy Rigid Vehicle (AS2890.2) must undertake for waste collection purposes, including entering the slip lane adjacent to Bin Area 2.*

The applicant was previously advised of these requirements in correspondence with Council's Resource Recovery Officer on 3 and 11 December 2019. The application is not able to be supported from a waste management perspective.

## **SECTION 7.11 CONTRIBUTION COMMENTS**

The application was referred to the Forward Planning Team for calculation of Section 7.11 Contributions for infrastructure.

Due to the errors in the floor plans as described in Section 11(d) of this report, Section 7.11 could not be calculated.

## **CONCLUSION**

The Development Application has been assessed under the relevant head of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Sydney Region Growth Centres) 2006, Box Hill Development Control Plan 2018 and is considered unsatisfactory.

The proposed development has been amended on a number of occasions in an attempt to resolve the issue of how the western side of the site can be developed without vehicular access from future Sagitta Street, to be positioned on the adjoining land, and to address issues raised by Council's planning, engineering, waste and landscaping staff.

Throughout the course of the application's assessment, the applicant has failed to provide adequate plans and requested information, such as a revised BASIX certificate, adaptable housing certification, adjoining landowners' consent, sufficient detailed information on plans such as levels and retaining walls, adequate waste management and revised civil engineering plans. The most recently submitted plans have significantly changed the proposal, with the introduction of a basement parking area and have resulted in additional issues being raised. Errors in the plans have prevented the complete assessment of the application.

Submissions received raised concerns relating to density, traffic, road widths, easements and vehicular access. The number of town houses in the development was reduced from 84 to 78, and the proposed density of 38.56 dwellings per hectare is below the average approved density (42.9) for town houses in the Box Hill Precinct. The proposed density cap of 30 dwellings per hectare is a draft amendment which has been taken into consideration. Amended plans have sought to address the issue of vehicular access via the adjoining land and Sagitta Street, however uncertainty remains with plans showing that the development is reliant upon civil works on the adjoining land without consent of the landowner. Proposed road widths are satisfactory, and likely traffic generation is consistent with expected outcomes in the R3 Medium Density Residential zone.

Whilst the proposal complies with key planning provisions including building height, and proposes an appropriate density, the amended design of the development, information that remains outstanding and the inadequate plans has resulted in an outcome that is unable to be supported. Given the significant amount of time that the application has been under consideration, and the various opportunities given to the applicant to resolve issues raised, it is considered necessary to now recommend the application for refusal.

## **IMPACTS:**

### **Financial**

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

### **The Hills Future - Community Strategic Plan**

The proposed development is inconsistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for urban growth which would result in adverse environmental and amenity impacts.

### **RECOMMENDATION**

(i) The Development Application be refused as follows:

- 1) The proposal has not provided evidence of the consent of adjoining landowners (Nos. 21, 23 and 23A Mason Road, Box Hill and No. 31 Hynds Road, Box Hill) to enable the partial construction of Aurora Street or proposed civil works on which the development is shown to depend.  
(Section 4.15(a)(iv) and (e) of the Environmental Planning and Assessment Act, 1979).
- 2) The application, as amended, is not supported by a revised BASIX certificate as required pursuant to State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.  
(Section 4.15(a)(i) of the Environmental Planning and Assessment Act, 1979).
- 3) The proposed development does not satisfy the requirements of the Box Hill Development Control Plan 2018 with respect to cut and fill, adaptable housing, and car parking in Sections 4.1.1 – Cut and Fill, 5.2.8 Garages, Storage, Site Access and Parking and Table 18, 5.5 Adaptable Housing.  
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
- 4) Insufficient evidence has been provided to demonstrate compliance with the requirements of the Box Hill Development Control Plan 2018 with respect to site coverage controls in Table 18 – Key controls for multi dwelling housing.  
(Section 4.15(1)(a)(iii), (b) and (c) of the Environmental Planning and Assessment Act, 1979).
- 5) The proposal will not provide a reasonable level of amenity for future residents of the development or the adjoining landowners, particularly in relation to adaptable housing, proposed retaining walls, car parking, quality of common open space areas, relationship of private and communal open spaces and the western boundary setback to adjoining land.  
(Section 4.15(1)(a)(iii), (b) and (c) of the Environmental Planning and Assessment Act, 1979).
- 6) The proposed adaptable housing solution is not supported by certification from a suitably qualified Adaptable Housing Consultant to demonstrate compliance with Adaptable Housing Standard (AS 4299-1995).  
(Section 4.15(1)(a)(iii) and (c) of the Environmental Planning and Assessment Act, 1979).
- 7) The proposal has not adequately addressed landscaping, subdivision engineering, and waste management concerns previously raised by Council Officers, and additional concerns are raised in relation to the most recent plans which have prevented the approval of the application.  
(Section 4.15(1)(a)(i) and (iii), (b) and (c) of the Environmental Planning and Assessment Act, 1979).
- 8) The submitted plans are inadequate and contain errors which have prevented a complete assessment of the application.  
(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).

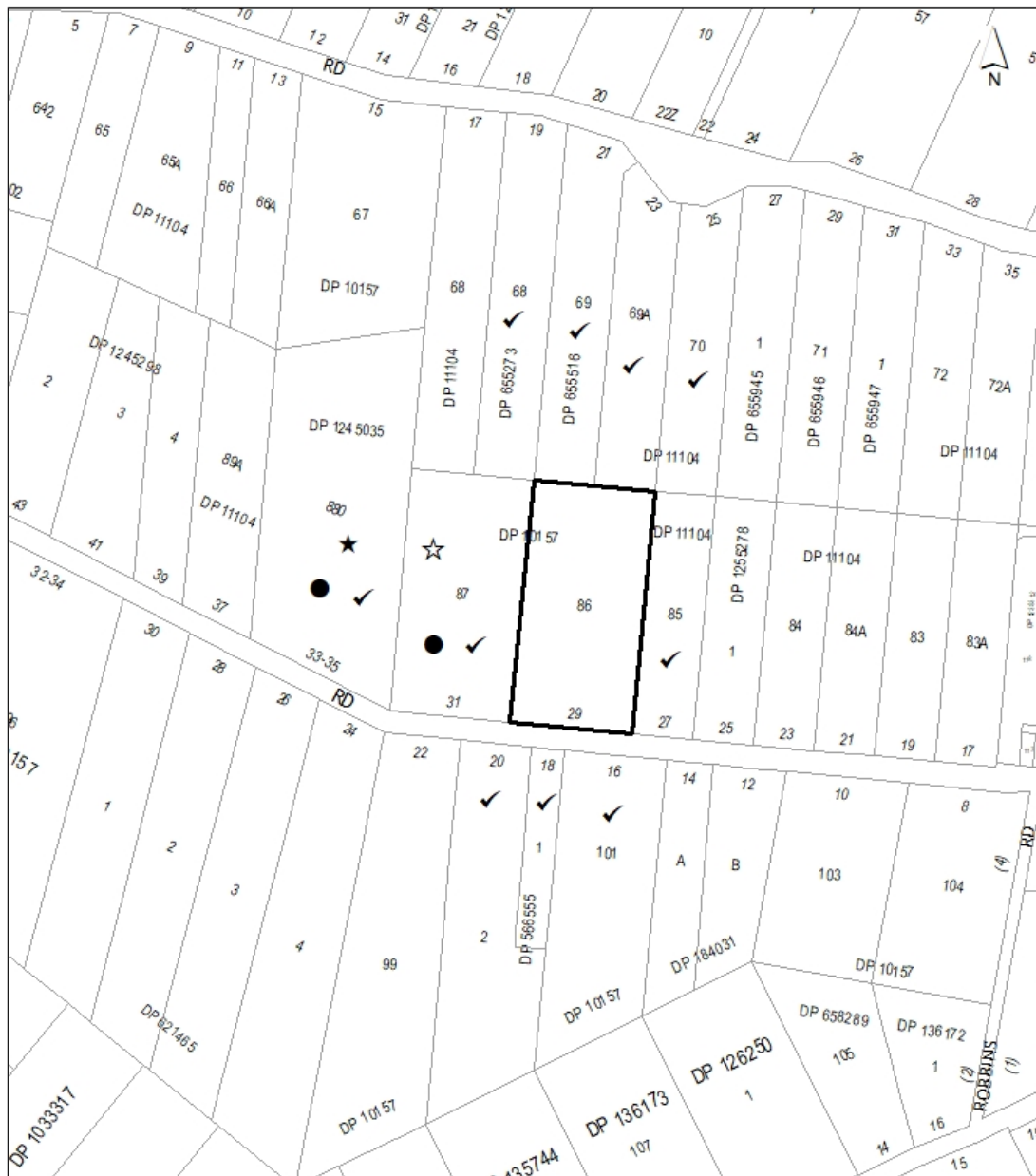
- 9) The proposal is not in the public interest since it does not provide an appropriate interface with adjoining land at No. 31 Hynds Road, the consent of the adjoining land owners at No. 21 and Nos 23/23A Mason Road has not been obtained in relation to the partial construction of Aurora Street, the adaptable housing and car parking arrangement on site is unsuitable and may result in a reliance on street parking, and due to its departure from the requirements under the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and the Box Hill Development Control Plan 2018.  
(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979).
- (ii) Council staff be delegated authority to defend a Land and Environment Court appeal should one be lodged.

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Photograph
3. SREP (SRGC) Zoning Map
4. SREP (SRGC) Height of Buildings Map
5. SREP (SRGC) Indicative Road Layout Plan
6. Plan of Subdivision
7. Site Plan
8. Basement Plans
9. Ground Floor Plans
10. First Floor Plans
11. Elevations
12. Sections
13. Shadow Diagrams
14. Landscape Plans
15. Concept Civil Engineering Plan
16. Approved Plan (DA No. 1184/2018/ZE)



## ATTACHMENT 1 – LOCALITY PLAN



- |                          |                     |   |                      |
|--------------------------|---------------------|---|----------------------|
| <input type="checkbox"/> | SUBJECT SITE        |   | SUBMISSIONS RECEIVED |
| ✓                        | PROPERTIES NOTIFIED | ● | 1ST NOTIFICATION     |
|                          |                     | ★ | 2ND NOTIFICATION     |
|                          |                     | ☆ | 3RD NOTIFICATION     |

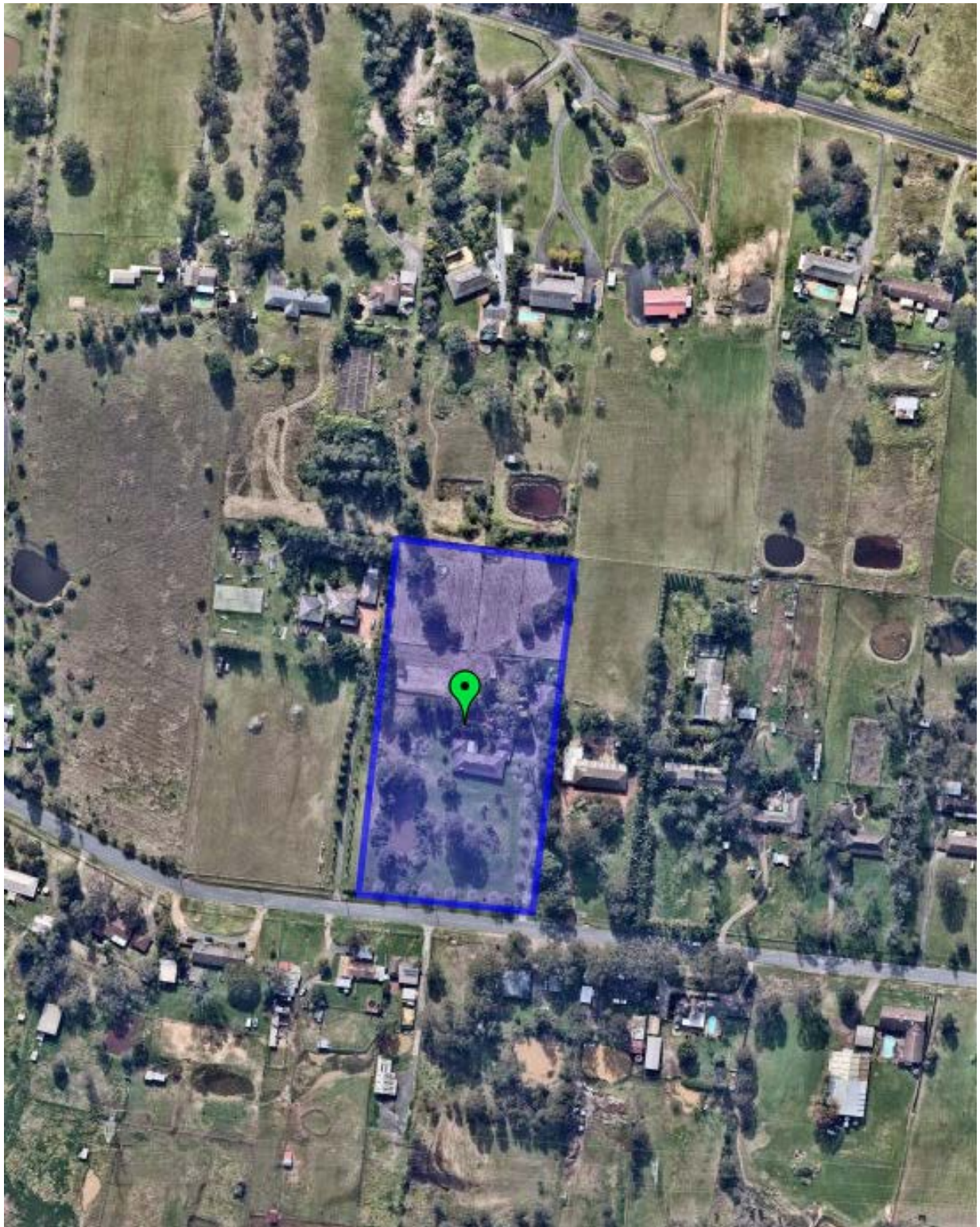
**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**

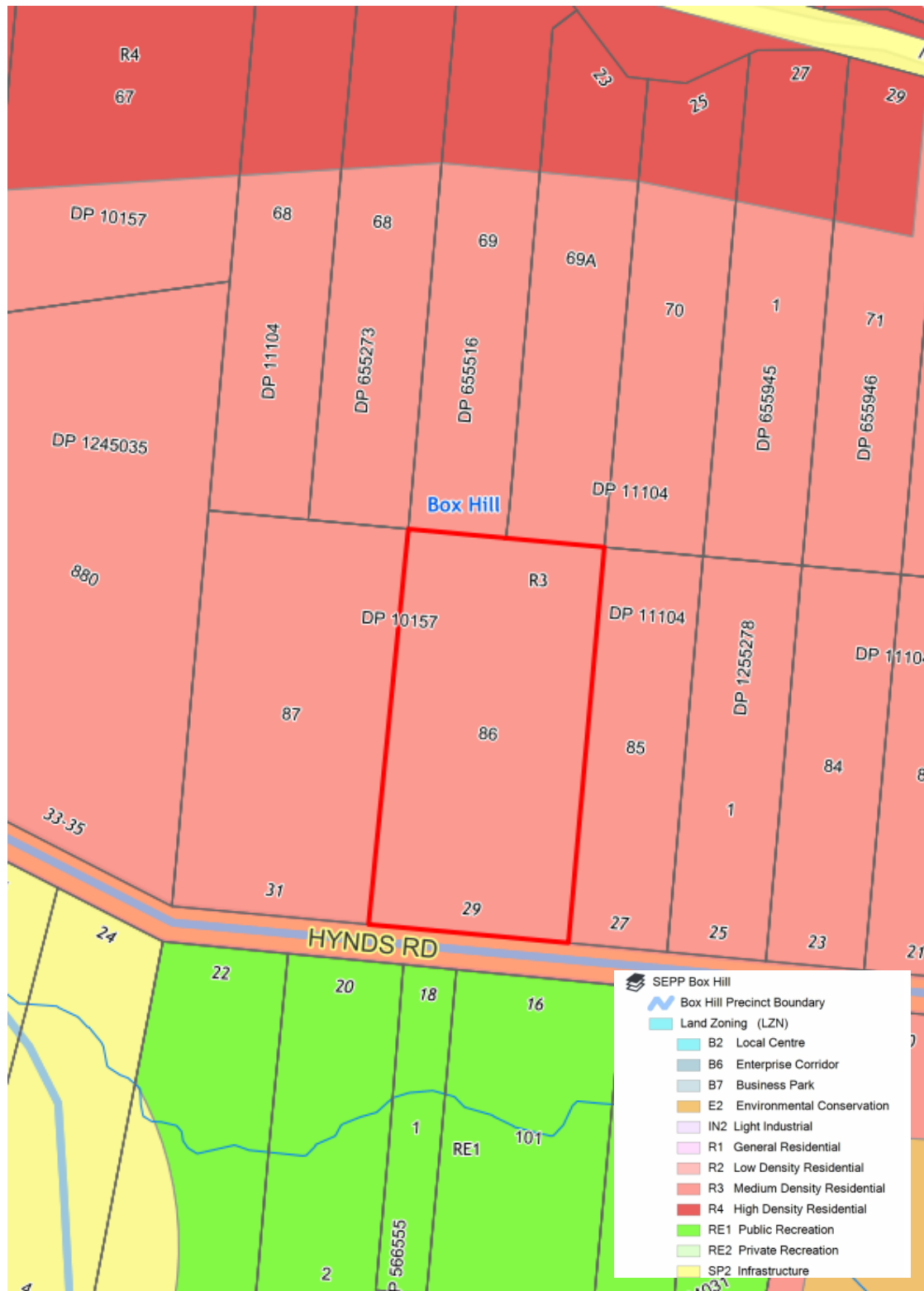
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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

ATTACHMENT 2 – AERIAL PHOTOGRAPH

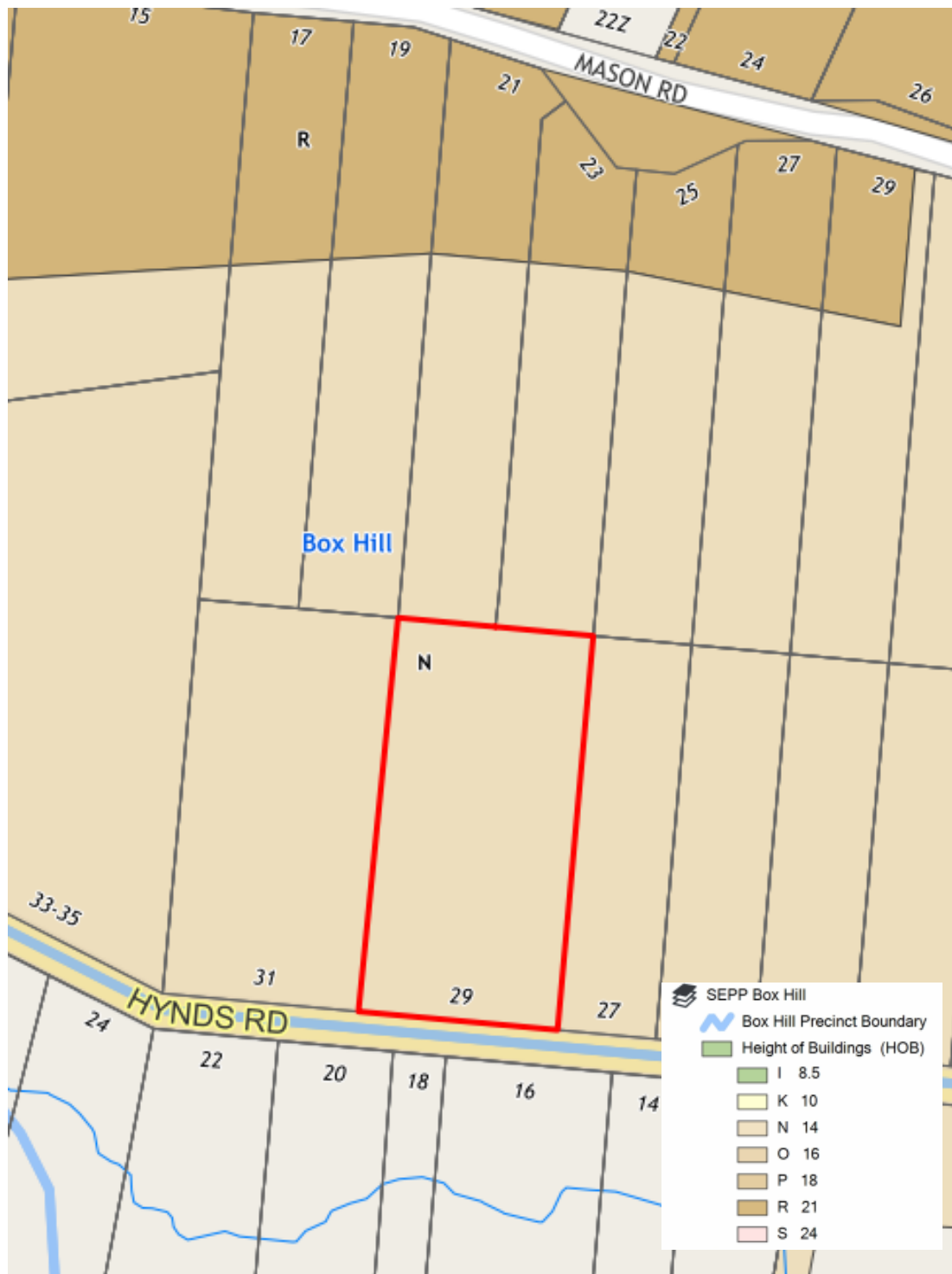


## ATTACHMENT 3 – ZONING MAP





## ATTACHMENT 4 – BUILDING HEIGHT MAP



ATTACHMENT 5 – INDICATIVE ROAD LAYOUT PLAN

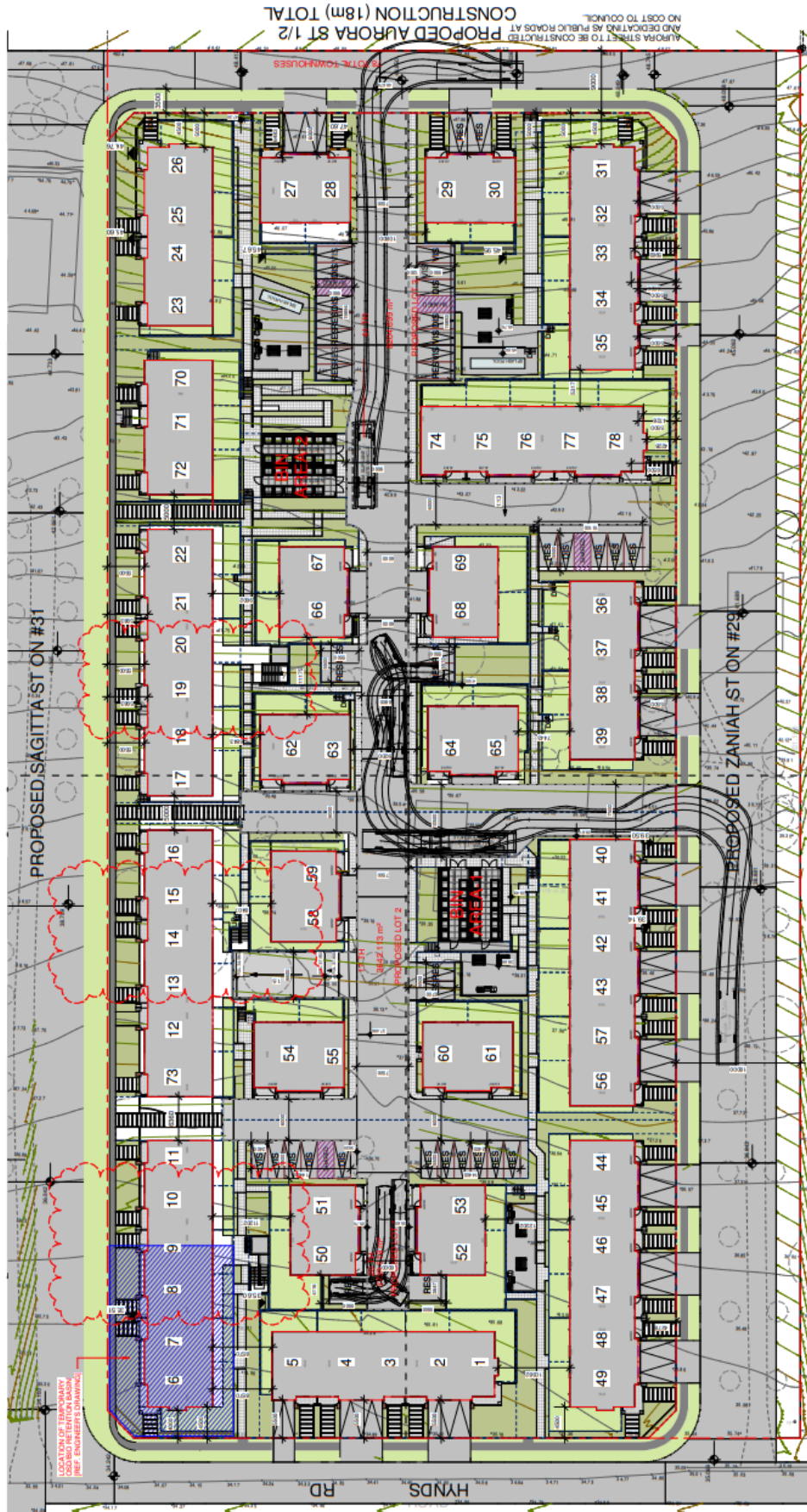


# ATTACHMENT 6 – PLAN OF SUBDIVISION



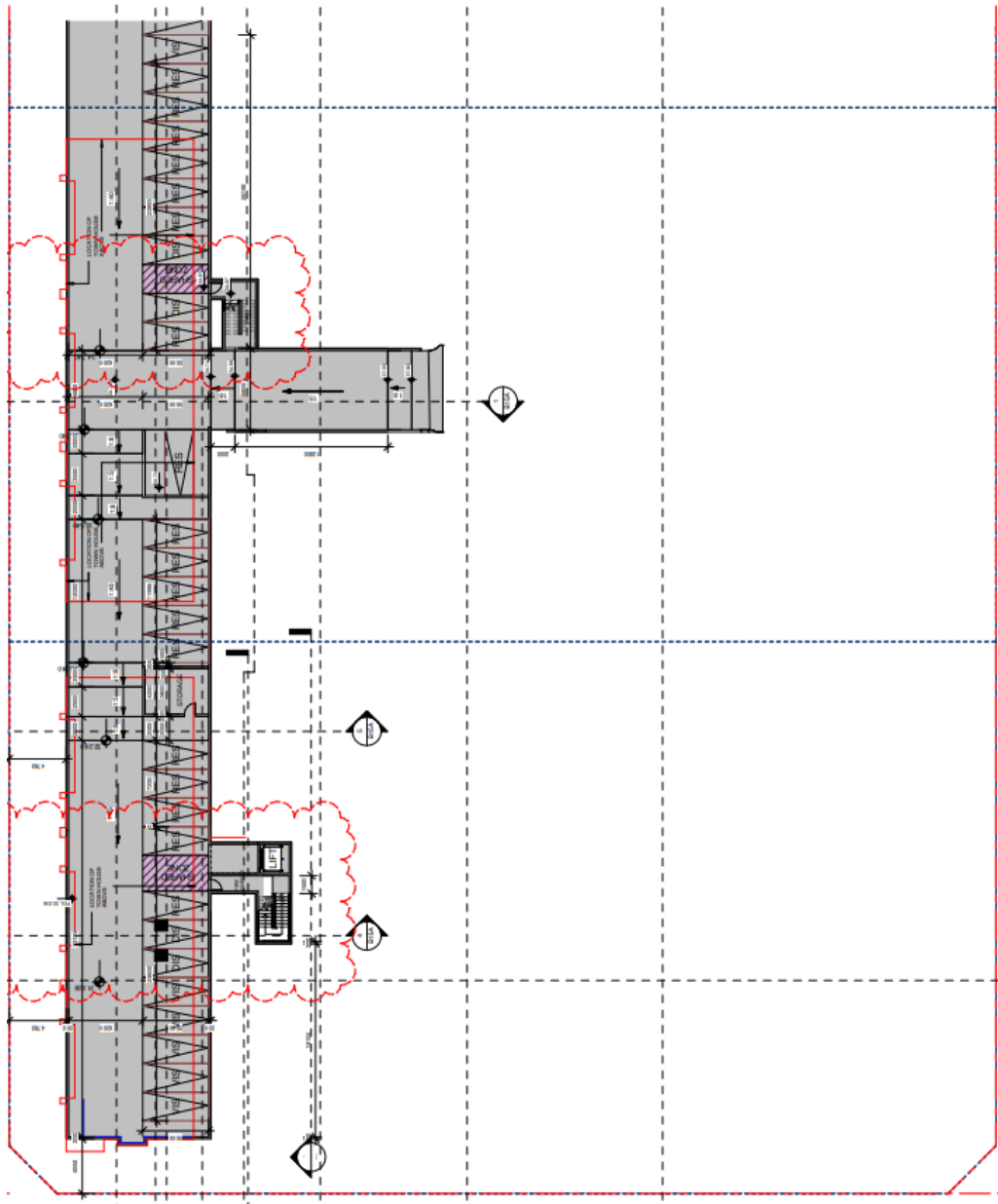


# ATTACHMENT 7 – SITE PLAN



**NOTE:** All the new roads forming part of the subject development are to be constructed to full width Local Road design standards and dedicated as public roads reserve at no cost to Council.

ATTACHMENT 8 – BASEMENT (PART 1)

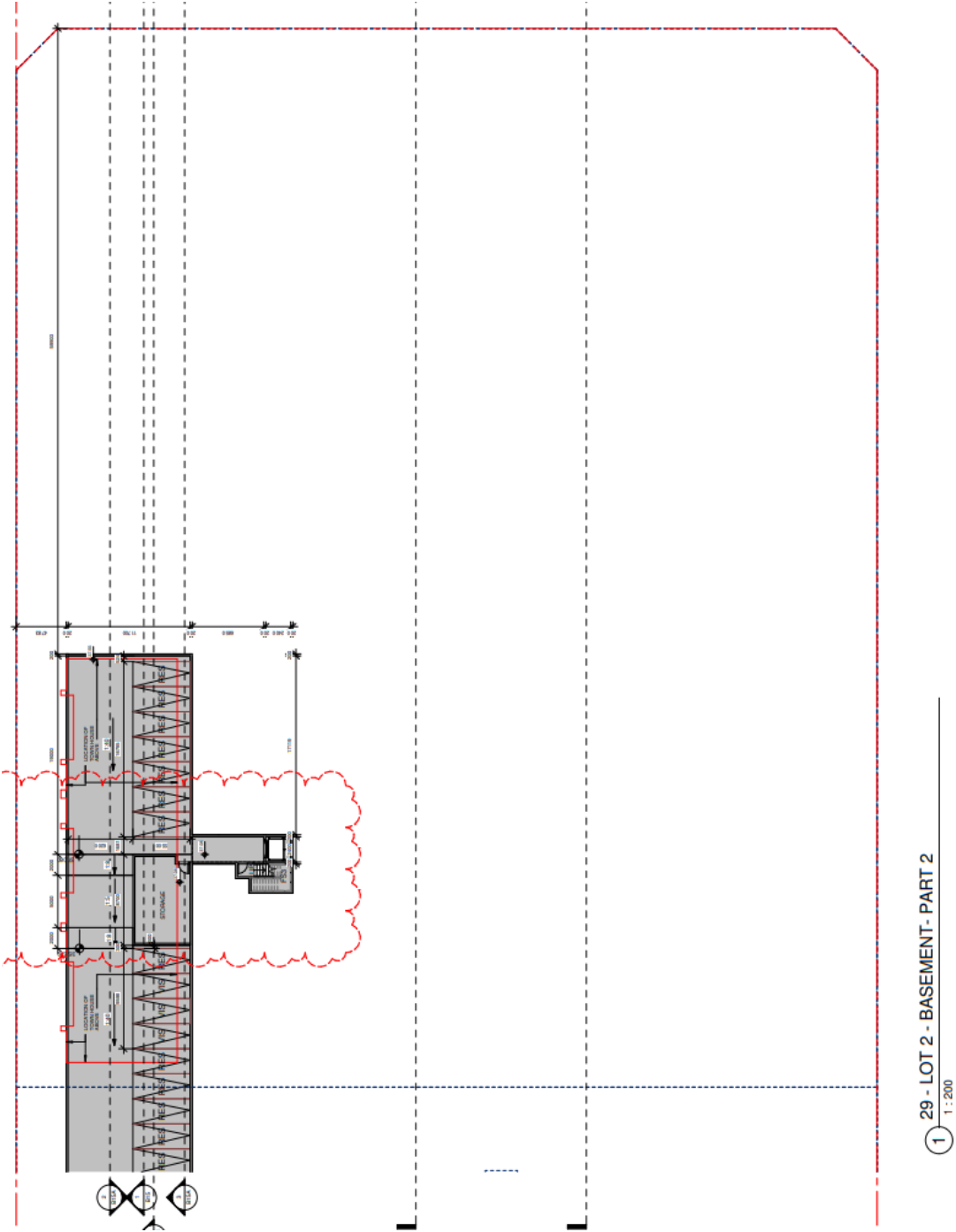


1 29 - LOT 2 - BASEMENT- PART 1

1:200

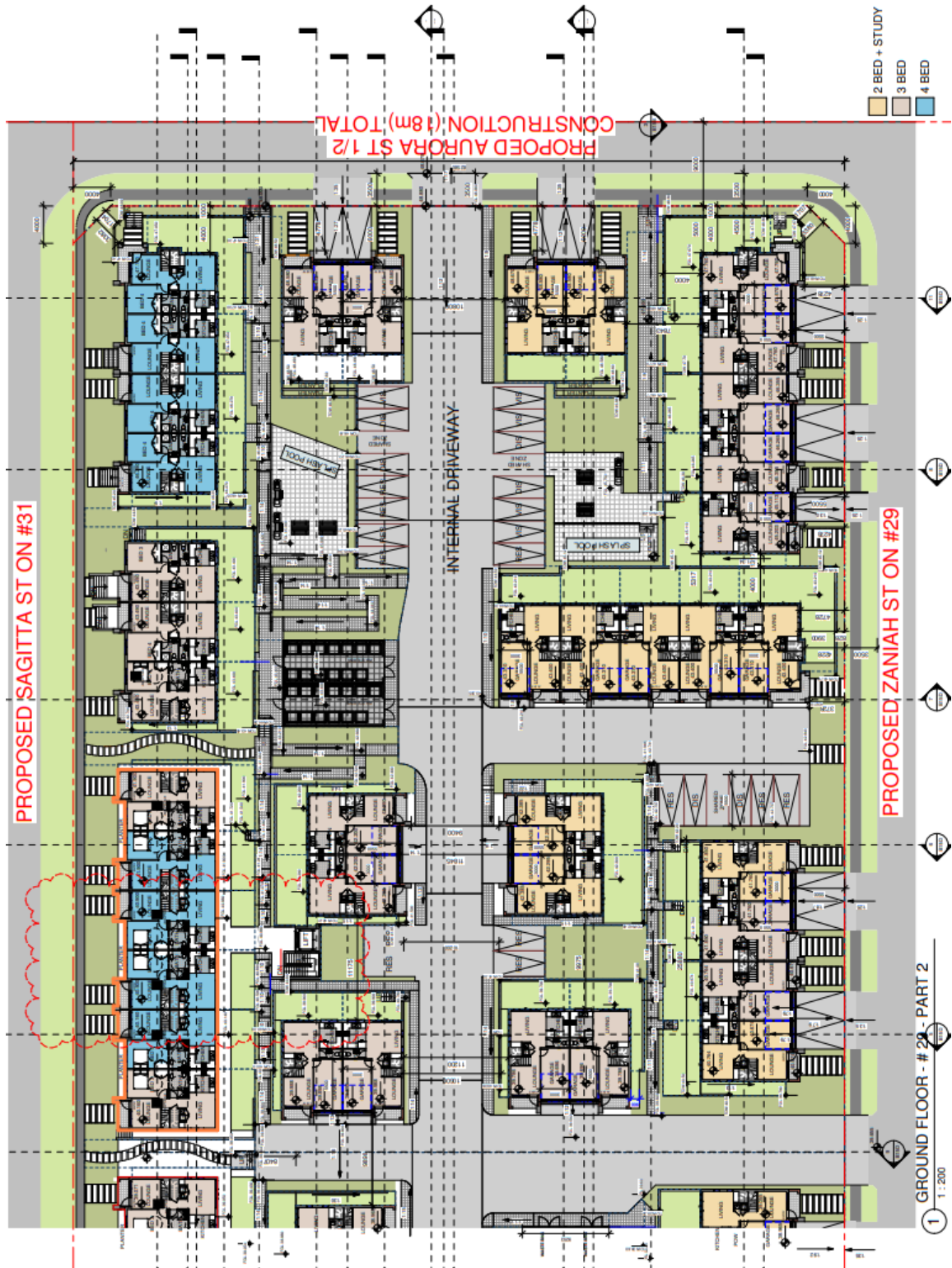


ATTACHMENT 8 – BASEMENT (PART 2)

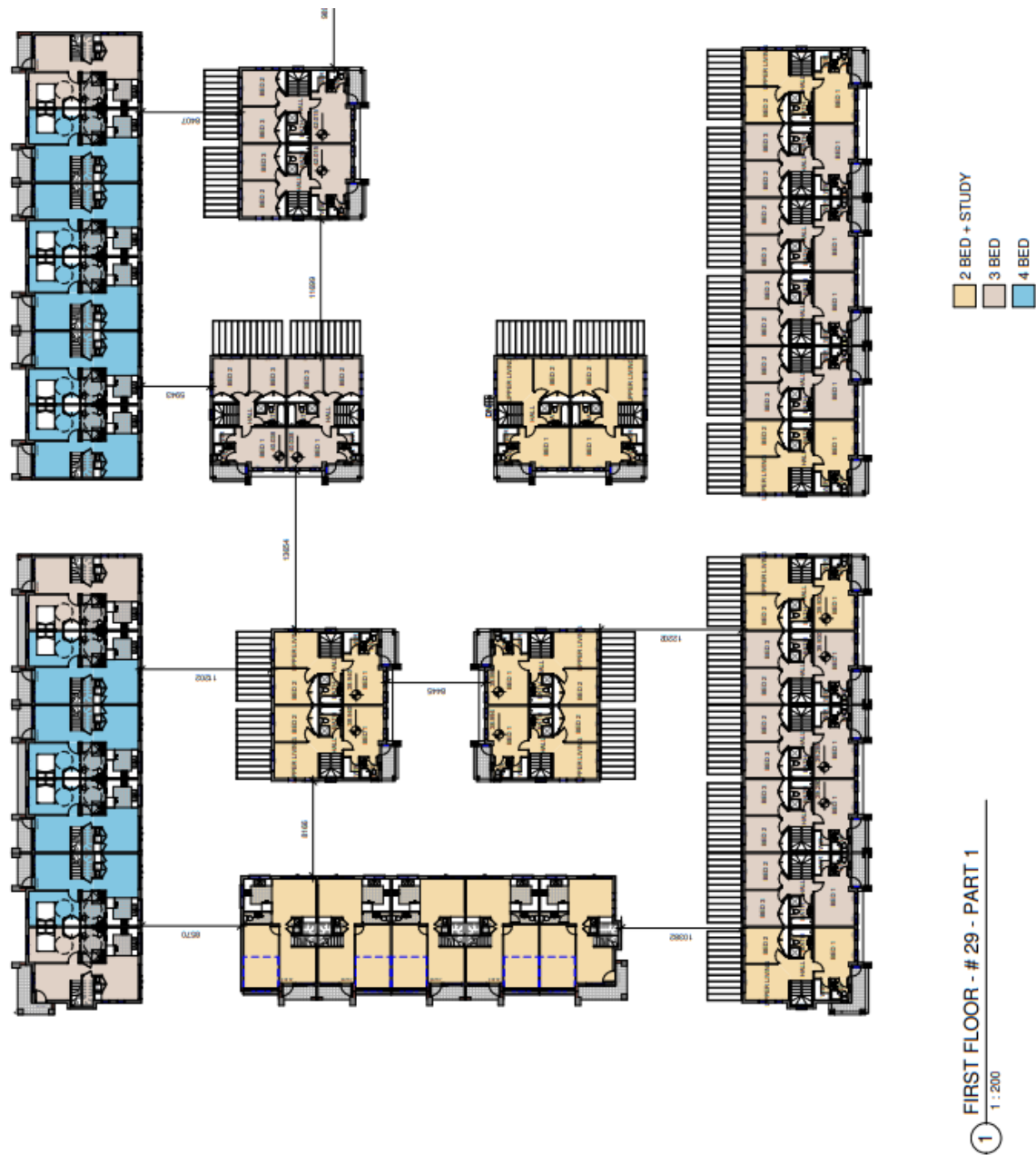


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# ATTACHMENT 9 – GROUND FLOOR (PART 2)



ATTACHMENT 10 – FIRST FLOOR (PART 1)



1 FIRST FLOOR - # 29 - PART 1  
1 : 200



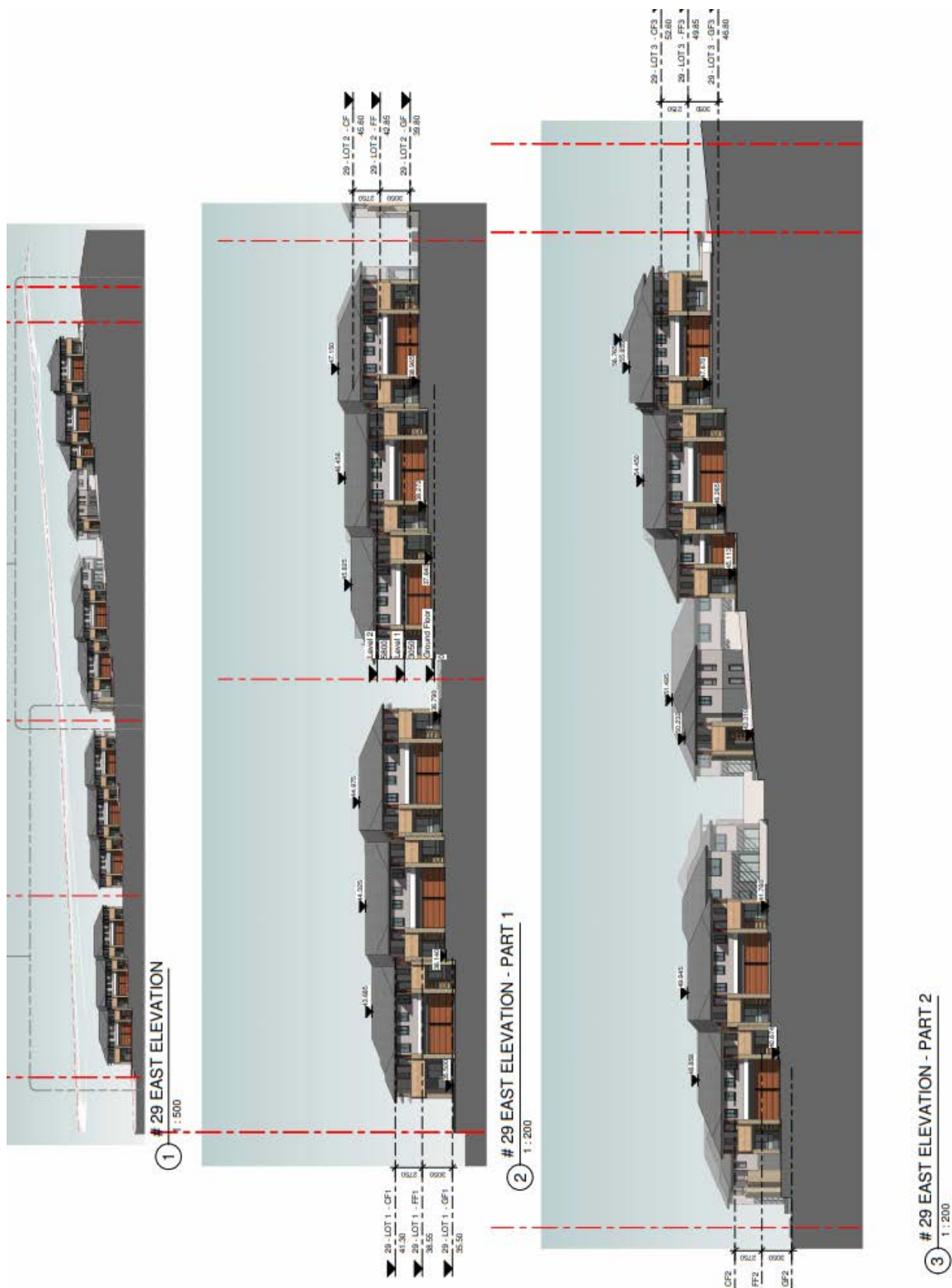
The floor plan shows a symmetrical layout with a central staircase and multiple rooms. The rooms are color-coded according to the legend: yellow for 2 BED + STUDY, light blue for 3 BED, and dark blue for 4 BED. The plan includes a legend for room types: 2 BED + STUDY (yellow), 3 BED (light blue), and 4 BED (dark blue).

1 : 200

2 #29 WEST ELEVATION - PART 1  
1:200



## ATTACHMENT 11 – ELEVATIONS (2)

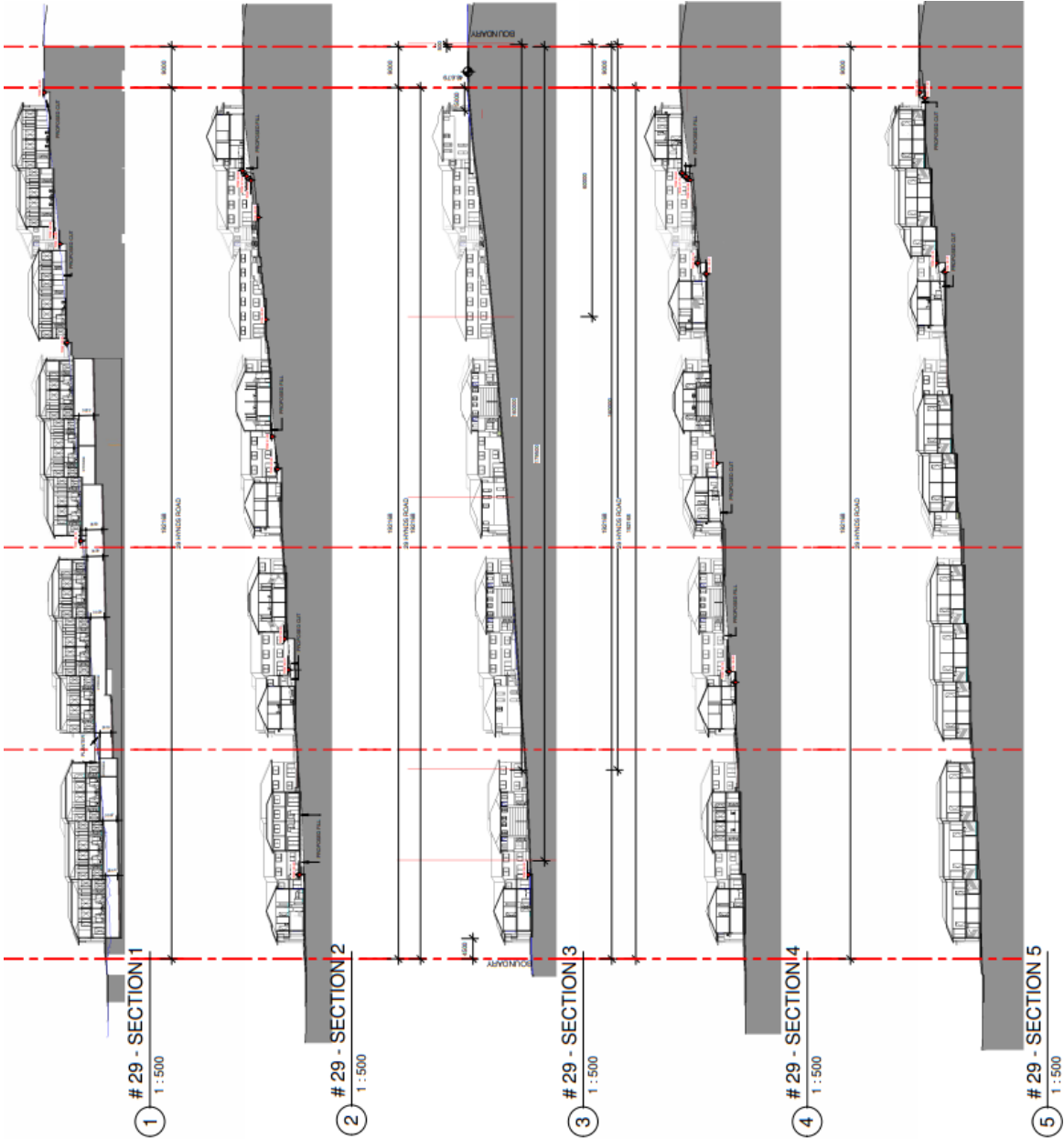


ATTACHMENT 11 – ELEVATIONS (3)

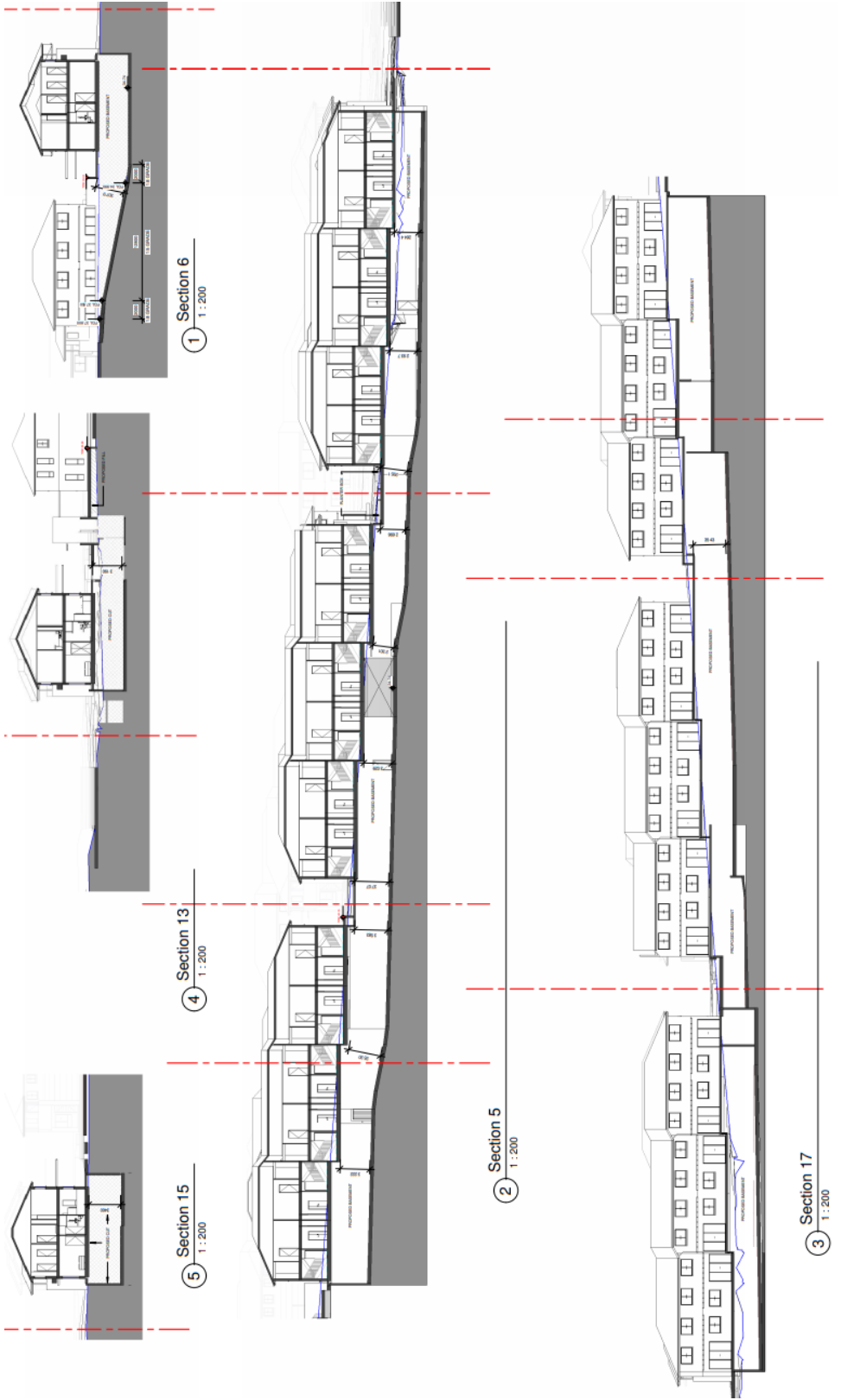




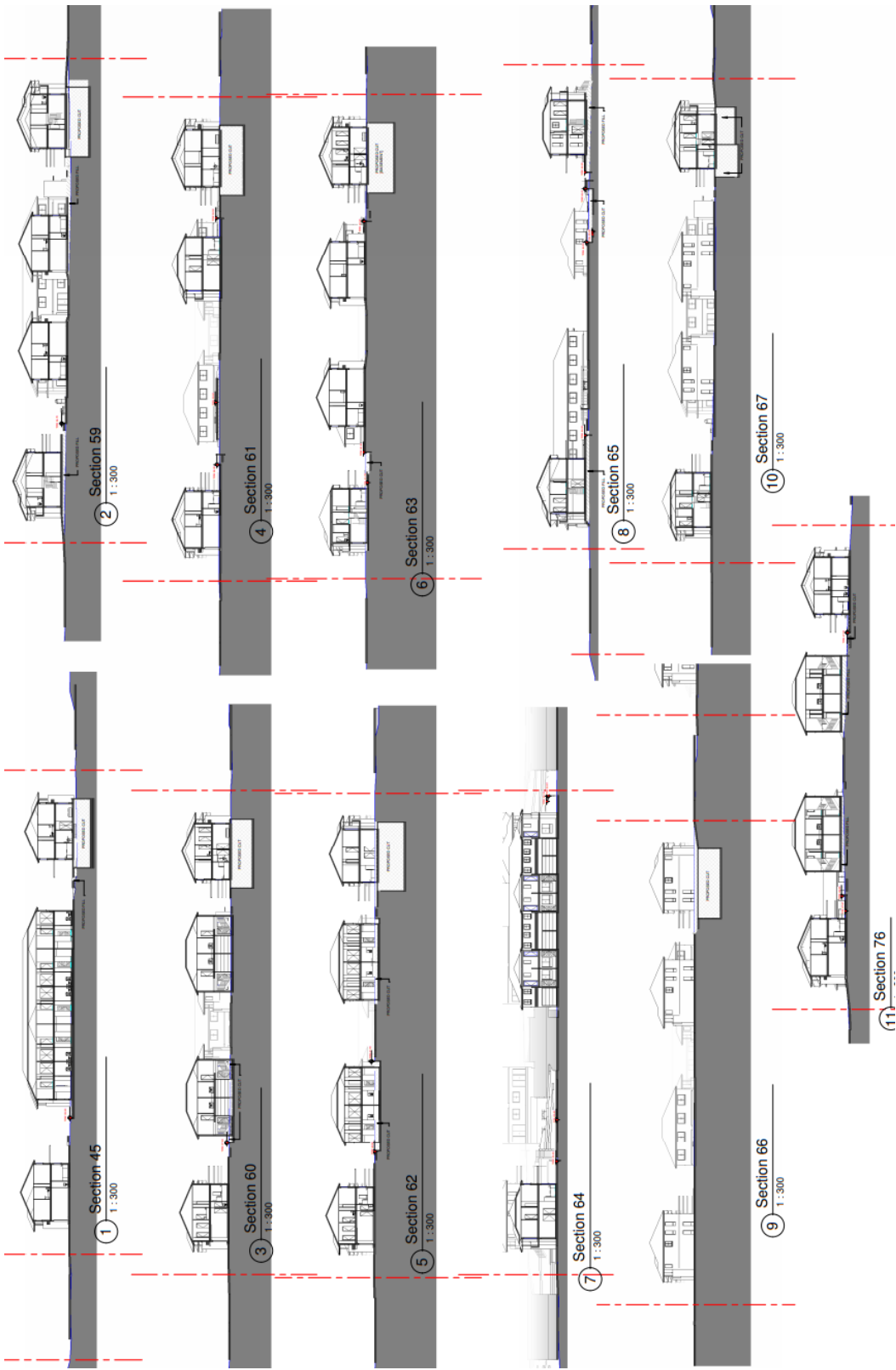
ATTACHMENT 12 – SECTIONS (1)



ATTACHMENT 12 – SECTIONS (2)



ATTACHMENT 12 – SECTIONS (3)

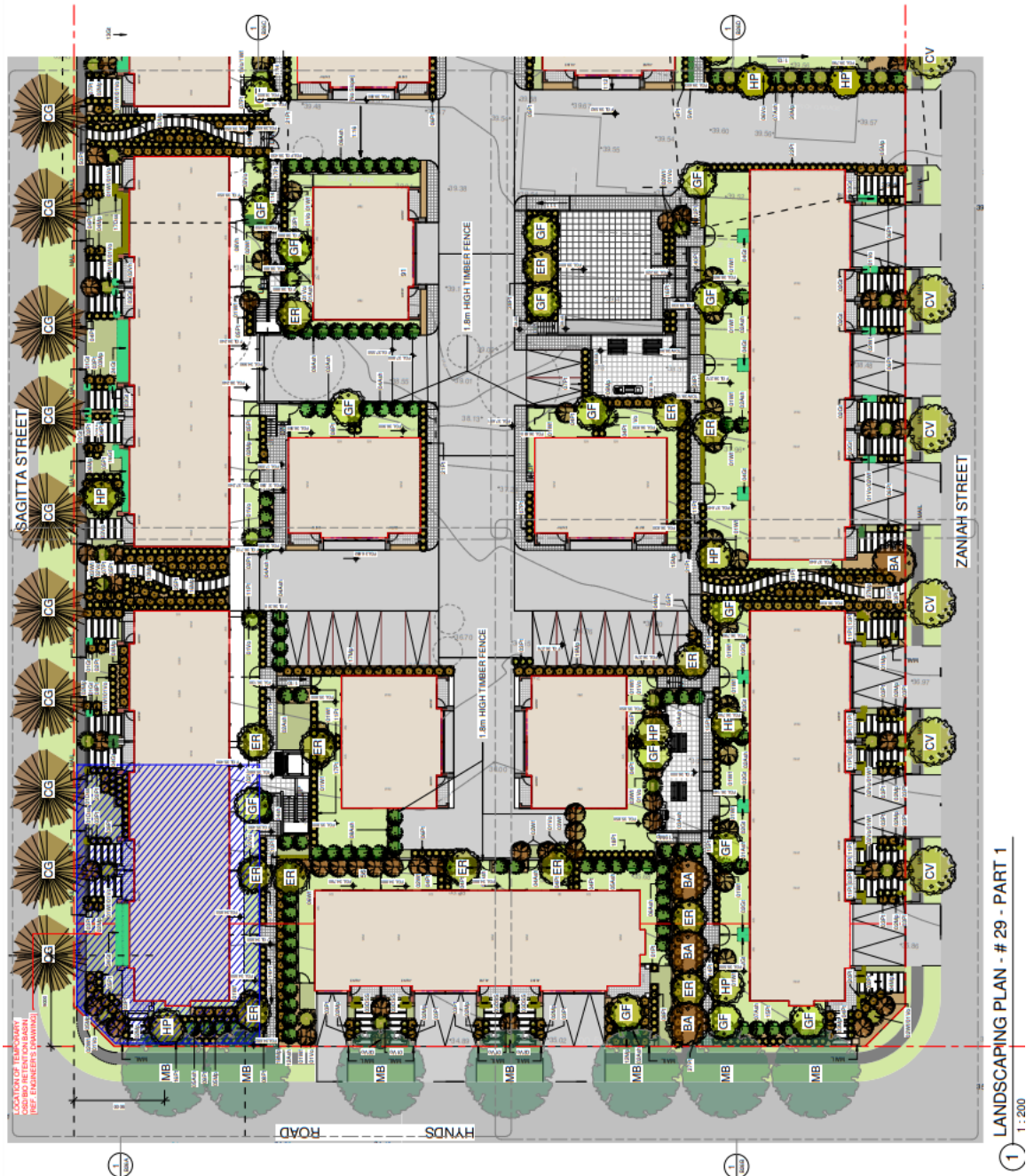


## ATTACHMENT 13 – SHADOW DIAGRAMS





# ATTACHMENT 14 – LANDSCAPE PLAN (1)



## ATTACHMENT 14 – LANDSCAPE PLAN (2)





[illegible]

**ATTACHMENT 16 – APPROVED SITE PLAN (1184/2018/ZE, NO. 27 HYNDSD ROAD)**

