

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SWC069
DA Number	DA 1894/2018/JP
LGA	The Hills Shire Council
Proposed Development	Demolition of existing structures, subdivision of land into three lots, construction of local and temporary roads, construction of a residential flat building comprising 50 units and two multi dwelling housing developments totalling 40 townhouses, with basement parking.
Street Address	Lot 70 DP 11104 25 Mason Road, Box Hill
Applicant/Owner	J S Architects Pty Ltd Mr and Mrs Chang
Consultant/s Architect: Town Planner: Acoustics: Arborist: Environmental Investigation: Engineering: Traffic: Surveyor: Archaeology: Quantity Surveyor: Accessibility:	J S Architects Pty Ltd DDC Planning Rodney Stevens Acoustics MacKay Tree Management Geotesta Pty Ltd Indesco EB Traffic Solutions Pty Ltd C and A Surveyors NSW PL Baker Archaeology RIC-QS Pty Ltd JS Architects
Date of DA lodgement	24 April 2018
Number of Submissions	Nil
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV exceeding \$30 million (\$35,616,865)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Sydney Region Growth Centres) 2006 - Appendix 11 The Hills Growth Centre Precinct Plan • State Environmental Planning Policy No 55 — Remediation of Land. • State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development. • State Environmental Planning Policy – Building Sustainability Index (BASIX) 2009. • Draft Amendment to SEPP (Sydney Region Growth Centres) 2006 (North West Priority Growth Area Land Use and Infrastructure Implementation Plan). • Central City District Plan. • Box Hill Development Control Plan 2018. • Environmental Planning and Assessment Act Regulation 2000.
List all documents submitted with this	<ul style="list-style-type: none"> • Clause 4.6 Variation • Owner's Consent letters

report for the Panel's consideration	
Report prepared by	Kate Clinton, Senior Town Planner
Report date	15 October 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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Yes
Conditions Have draft conditions been provided to the applicant for comment?	NA

EXECUTIVE SUMMARY

- The key issues that need to be considered by the Panel in respect of the development application are:
 - Adequacy of consent letters from adjoining landowners in relation to the construction of local and temporary roads, associated earthworks and drainage;
 - Proposed density with respect to draft amendments to SEPP (Sydney Region Growth Centres) 2006;
 - Proposed variation to the building height control in relation to the residential flat building and uncertainty of the maximum height proposed due to inconsistencies in plans;
 - Variations to the Apartment Design Guide with respect to separation, apartment size and layout, and balcony areas;
 - Variations to the Box Hill Development Control Plan 2018 for the residential flat building with respect to cut and fill, site coverage, landscaped area, private open space, setbacks and adaptable housing;
 - Orderly development in relation to adjoining land zoned R4 High Density Residential, turning circles and temporary roads;
 - Inadequacy of the submitted plans and information including lack of detailed plans and evidence of site servicing and revised BASIX certification.
- Assessment of the application against the relevant planning framework and technical matters (waste, engineering, landscaping) has identified outstanding information and issues that have not been satisfied.
- The development application is related to an application on the adjoining land at No. 23-23A Mason Road, Box Hill. It is proposed to share a temporary access road between the proposed multi dwelling housing developments on each property, and both seek to rely upon access via Zaniah Street which is approved but not yet constructed on No. 29 Hynds Road.

4. The Development Application is not considered satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979.
5. 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. 25 Mason Road, Box Hill which is legally known as Lot 70 DP 11104 and as a total area of 12,200m². The site is located in the Sydney Region Growth Centres Box Hill Precinct and is located on the southern side of Mason Road.

The site is zoned R4 High Density Residential and R3 Medium Density Residential pursuant to Appendix 11 of The Hills Growth Centre Precincts Plan of SEPP (Sydney Region Growth Centres) 2006. The site is subject to a 21 metre and 14 metre height limit (R4 and R3 zoned land respectively) and a maximum FSR of 2.0:1 (R4 zoned land only). Future roads (full width of Tucana Street and Aries Way and half width of Aurora Street) as shown in the Box Hill Development Control Plan 2018 Indicative Layout Plan traverse the site in an east/west direction (see Attachment 7).

The site adjoins and is currently accessed via a road reservation adjacent to Mason Road which is zoned R4 High Density Residential. The area of that land is approximately 2,700m² (accounting for future widening of Mason Road) (see Attachment 2). Mason Road is identified as a sub-arterial road in the Box Hill DCP. Vehicular access to future development from sub-arterial roads is prohibited by the DCP, therefore the proposed development is required to have access via alternate means.

The site is proposed to be subdivided into three development lots (Lots 1, 2 and 3) accommodating a residential flat building and two multi dwelling housing developments.

A number of developments are either proposed or approved on land adjoining or in the vicinity of the site (refer to Attachment 7). To the east, the subdivision of land into three allotments, construction of local roads, a residential flat building and town houses have been approved on both Nos. 27 and 29 Mason Road (Development Consent Nos. 1545/2018/JP and 79/2017/JP/A respectively). Access to those development sites is gained via Ursa Street (off Mason Road), Tucana Street, Aries Way and Aurora Street. When constructed, these roads will provide access into the subject site.

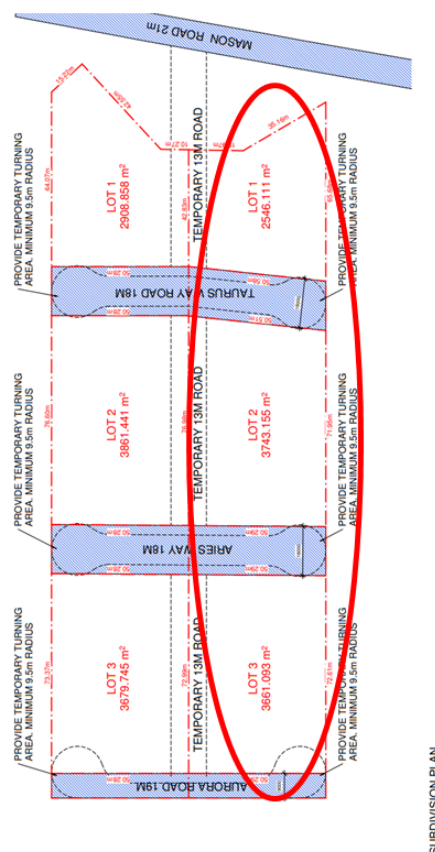
To the west, the subdivision of land into three allotments, construction of local roads, a residential flat building and town houses is also proposed on No. 23-23A Mason Road (Development Application No. 1895/2018/JP) and is directly associated with the subject development due to the proposal for shared temporary road access as outlined in this report. Further to the west, a residential flat building development, local road construction (Tucana Street, Aries Way, Aurora Street, Sagitta Street and Cosmos Way) and town houses are approved on Nos. 17-21 Mason Road (Development Consent Nos. 1984/2017/JP and 1951/2017/JP).

A small lot housing development including new road (Zaniah Street) is approved on adjoining land to the south at No. 27 Hynds Road (Development Consent No. 1184/2018/ZE). The alignment of Zaniah Street was relocated adjacent to the western boundary of that site as part of the approval and will be constructed wholly on No. 29 Hynds Road. To the south east at No. 25 Hynds Road, Deferred Commencement Consent No. 790/2020/ZE includes the construction of Nova Street off Hynds Road and small lot housing. To the south west, a development application for multi dwelling housing on No. 29 Hynds Road was refused by the Panel on 17 September 2020 (Development Application No. 1103/2018/JP).

The subject Development Application was lodged on 24 April 2018 following a prelodgement meeting in March 2018. At the prelodgement meeting the issue of orderly development in relation to the public road reserve on the Mason Road frontage of the site was raised with the applicant. The applicant was advised that a temporary driveway/road from Mason Road would not be supported as this will inhibit orderly development at a future date for this land. The applicant was advised to discuss possible purchase of the road reserve with Council's Property team, and to liaise with adjoining landowners with respect to access and road construction.

The application as originally lodged proposed the demolition of existing structures, subdivision of land into three allotments and the construction of a residential flat building (56 units) and two multi dwelling housing developments (20 townhouses each). The proposed density for the residential flat building and multi dwelling housing development sites was 186.59 and 43 and 43.8 dwellings per hectare respectively.

A 13 metre wide temporary access road was proposed to straddle the western boundary of the site, shared with No. 23-23A Mason Road and would provide access to all three development lots via Mason Road. Taurus Way, Aries Way and the partial width of Aurora Street were also proposed, with turning circles at either end.



Original Plan of Subdivision (2018) with temporary access road between Nos. 23-23A and 25 Mason Road to Mason Road

The proposed maximum building height of the residential flat building was up to 23.2m for the primary built form and 23.9m and 24.1m (maximum RL80.70) for the lift shafts according to the provided Building Height Plane and Elevations. A Clause 4.6 variation request was submitted in support of the proposed variation to the 21 metre height limit. The proposed townhouses were below the 14 metre height permitted under the SEPP.

The application was notified in May 2018 and no submissions were received.

On 29 August 2018, correspondence was sent to the applicant requesting that the proposal be significantly redesigned to address the building height non-compliance, proposed density, owners' consent in relation to roads, and comments from Council's engineering, landscaping, waste management and land information teams. A road network masterplan was requested to demonstrate that proposed roads would be consistent with those proposed on adjoining land. Amended civil works and stormwater plans were requested to be consistent with the masterplan. The applicant was advised that temporary access from Mason Road is not supported and the public road reserve on Mason Road should be incorporated into the development site.

On 26 October 2018 the applicant requested an extension of time to submit outstanding information by the end of November 2018. On 22 January 2019, an email was sent to the applicant requesting that the additional information be submitted within 14 days. Amended plans were then submitted by the applicant reducing the number of residential flat building units from 56 to 50 with the number of townhouses remaining the same. Height was shown to have increased from RL80.70 to RL81.95 (lift shaft) with the top of level 5 for example, increased from RL75.6m to RL76.85 according to the Elevation Plans. The amended Building Height Plane diagram reflected the amended built form however showed a maximum encroachment of 3.1m to a lift shaft as it did on the Building Height Plane lodged with the original application. It is concluded therefore that either the original or amended building height plane diagram is incorrect. The temporary access road from Mason Road through the adjacent road reserve was deleted, effectively isolating the development sites from Mason Road until such time as access would be available via adjoining land to Tucana Street, Aries Way and Aurora Street.

On 15 February 2019, correspondence was sent to the applicant requesting a written response to the issues raised on 29 August 2018 in order to explain the amendments made to the plans. The amended plans were referred to Council's Subdivision Engineer, Landscape Assessment Officer, Waste Management and Land Information staff. The amended plans did not satisfy engineering, landscaping and waste matters raised in initial comments in August 2018.

On 14 May 2019 a cover letter was received from the applicant in relation to Council's comments from August 2018, together with amended architectural and engineering plans and revised Statement of Environmental Effects and Clause 4.6 variation request. The applicant advised that the landowners were not willing to purchase the road reserve adjacent to Mason Road.

In response to the amended plans the applicant was advised that key matters raised in August 2018 have not been resolved, including the issue of orderly development in relation to the R4 zoned land / road reserve fronting Mason Road and the consent of adjoining landowners. The applicant was advised that the application could not be supported and it was suggested the application be withdrawn.

On 3 June 2019 the applicant advised that it was intended to gain access to the site via Hynds Road and Zaniah Street (approved on No. 29 Hynds Road under a development consent for No. 27 Hynds Road 1184/2018/ZE)). A consent letter between the owners of No. 23-23A Mason Road (not No. 25, the subject site) and No. 29 Hynds Road was submitted. The letter gave consent for the owners of No. 23-23A to access their land via proposed Zaniah Street off Hynds Road through No. 29 Hynds Road. The letter did not clearly state that Zaniah Street would be constructed by the owner of the subject site, nor was permission granted to the owner of the subject site. Furthermore, the letter was signed by only one of two owners of No. 29 Hynds Road. Also submitted was a revised statement of environmental effects and revised Clause 4.6 variation request.

In March 2020 the applicant was advised of outstanding matters including building height, orderly development, town house balconies / privacy, site coverage, details lacking from plans, DCP and SEPP 65 (ADG) compliance matters, demonstrated compatibility with proposed adjoining development, and waste, engineering and landscaping matters.

A meeting was held with the landowners and applicant on 8 May 2020 to discuss the outstanding matters. In June 2020, a preliminary set of amended plans was submitted by the applicant to address building separation from the adjoining R4 zoned road reserve, town house privacy and common open space embellishment. All other matters remain outstanding. In relation to the adjoining R4 zoned land, the applicant proposed the provision of a private road access to the adjoining land and suggested that a Voluntary Planning Agreement or reduction to developer contribution costs through a mediation process be offered, however no specific details were provided in relation to this.

The Panel were briefed on the status of the application on 16 July 2020. Key issues considered by the Panel were orderly development concerning the future development potential of the adjoining road reserve including vehicular access arrangements and ADG considerations, evidence prior to DA determination, of adjoining landowner's consent for temporary access to the development site, proposed density of the residential flat buildings in the context of the draft SEPP and other recently approved densities in the locality, proposed variations to height for the residential flat building. Noting the extent of time since submission of the DA, the Panel recommended that it would be appropriate for the assessment report for the applications to be reported to the Panel for determination. A copy of the Panel meeting notes were provided to the applicant.

On 28 August 2020 the applicant verbally requested that no further requests for information be sent and for the application to be determined.

DETAILS AND SUBMISSIONS

Owner:	Mr and Mrs Chang
Zoning:	R3 Medium Density Residential R4 High Density Residential
Area:	12,200m ²
Existing Development:	Dwelling and outbuildings
Section 7.11 Contribution	\$3,926,597.90 (paid prior to July 2021) \$4,495,053.04 (paid from 1 July 2021)
Exhibition:	Not required
Notice Adj Owners:	Yes, 21 days
Number Advised:	Thirteen (13)
Submissions Received:	Nil

PROPOSAL

The proposed development is for the demolition of existing structures, subdivision of land into three allotments, the full, partial and temporary construction of roads and construction of a residential flat building and two multi dwelling housing developments consisting of:

Proposed Lot 1 – 6-7 storey Residential Flat Building:

- 50 units (7 x studios, 6 x 1 bedrooms, 27 x 2 bedrooms and 10 x 3 bedrooms).
- Three level basement parking for 89 cars (72 resident, 6 disabled and 11 visitor parking spaces).
- Rooftop common open space.
- 5 adaptable units.
- Vehicular access from Tucana Street.
- Provision for half of a 13 metre wide temporary road adjacent to the western boundary.

Proposed Lot 2 – 3 storey multi dwelling housing

- 20 townhouses (3 x 3 bedrooms, 17 x 4 bedrooms).
- Basement parking for 40 cars (including 36 resident, 2 disabled and 2 visitor parking spaces).
- 2 adaptable townhouses
- Vehicular access from Aries Way.

Proposed Lot 3 – 3 storey multi dwelling housing

- 20 townhouses (4 x 3 bedrooms and 16 x 4 bedrooms)
- Basement parking for 40 cars (including 36 resident, 2 disabled and 2 visitor parking spaces)
- 2 adaptable townhouses
- Vehicular access from Aurora Street.

Three planned roads traverse the site in an east/west direction (Aurora Street, Aries Way and Tucana Street). Access to the site (to be shared with the adjoining development site at No. 23-23A Mason Road), was originally proposed via a temporary road through the middle of the road reserve from Mason Road. At the request of Council staff this was amended, and access is now proposed from Hynds Road, via a proposed road (Zaniah Street) through adjoining land at No. 29 Hynds Road, and a temporary road between the proposed town house sites, along the common boundary of Nos. 23 and 23A and No. 25 Mason Road. Access to each site may also be available via development on adjoining land at Nos. 17-21 Mason Road, or Nos 27 and 29 Mason Road.

A dam shared with No. 23-23A Mason Road is located on the site and is proposed to be dewatered. A report for decommissioning of the dam prepared by Geotesta (4 March 2018) was submitted with the application.

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.”

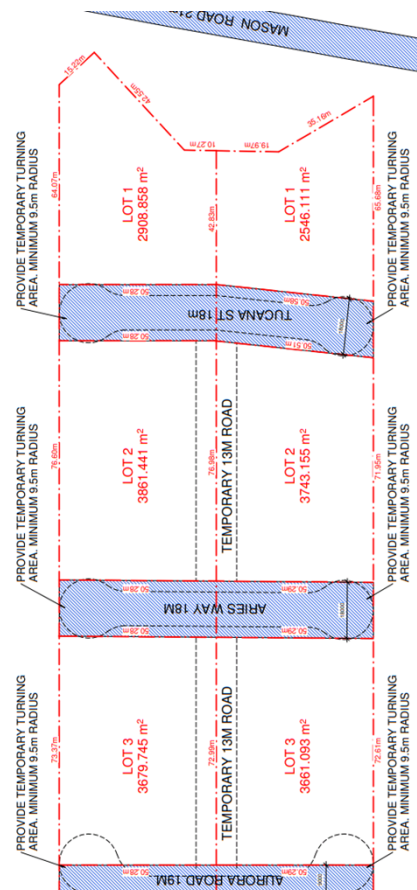
The subject site is currently accessed from Mason Road via a loop road within an adjacent road reserve which is also zoned R4 High Density Residential. Proposed Lots 1, 2 and 3 rely on vehicular access via roads that are not yet constructed on adjoining land. The future road layout is illustrated on the Indicative Layout Plan in Attachment 7.

Future access to proposed Lot 1 from Mason Road is denied by the Box Hill DCP since it is a sub-arterial road. Therefore proposed development Lot 1 must only be accessed via future Tucana Street. Proposed development Lots 2 and 3 are currently isolated, since future roads proposed to provide access (Aurora Street and Aries Way) are not yet constructed through the adjoining land.

In the event that access to the site is not available through adjoining properties to the east and west of the site, the applicant advised that access to the site will be gained via Zaniah Street

which is planned to be constructed on No. 29 Hynds Road between Aurora Street and Hynds Road, with a temporary road on the western boundary, shared with the adjoining proposed development site. The approved location of Zaniah Street differs from the Indicative Layout Plan in that it is to be constructed directly adjacent to the eastern boundary of No. 29 Hynds Road (under Development Consent No. 1184/2018/ZE for No. 27 Hynds Road).

It is then proposed to access proposed Lots 1, 2 and 3 via a 13 metre wide temporary road (consistent with Box Hill DCP requirements) which would be located equally on the subject site and adjoining land at No. 23-23A Mason Road. Importantly, the full 13 metre width of the temporary road is required to be provided even if only one site is developed (either No. 25 or 23-23A Mason Road).



Plan of Subdivision (May 2019) with temporary access road between Nos. 23-23A and 25 Mason Road to Tucana Street. Access to Mason Road deleted.

Since Aurora Street is located half within the subject site and half within the adjoining land at No. 27 Hynds Road, the consent of land owner is required to enable the partial width (9.5m) construction of that road which would provide 2-way vehicular access.

Alternatively, access to the site could be obtained via adjoining properties to the east or west of the site from Mason Road via Ursa Street, Cosmos Way or Sagitta Street.

The applicant was requested to demonstrate that the consent of the appropriate landowners was obtained to enable the planned access arrangements. Consent from the following landowners is required:

- No. 27 Hynds Road - for the partial width construction of Aurora Street, associated earthworks and drainage;

- No. 29 Hynds Road - for the full width construction of Zaniah Street (as approved under Development Consent No. 1184/2018/ZE), and partial width of Aurora Street which will connect Zaniah Street to the temporary road, associated earthworks and drainage;
- No. 23-23A Mason Road – for construction of the proposed shared temporary road and partial width of Aurora Street between the temporary road and Zaniah Street, associated earthworks and drainage, and filling of dam which straddles the boundary; and
- No. 25 Hynds Road – For the drainage connection to Hynds Road along the natural depression, the lowest point of the locality.
- Alternatively, consent of landowners to the east or west if access is to be sought via other future roads from Mason Road.

The applicant and landowner have submitted a number of consent letters (see Attachment 18) from:

- No. 27 Hynds Road;
- No. 29 Hynds Road;
- No. 23-23A Mason Road;
- No. 27 Mason Road

It is considered that the intent of the consent letters is to cooperate and facilitate the works required to enable the proposed development to occur, however the letters are overly descriptive and do not clearly outline what is being consented to. It is preferable for the applicant to submit new letters that clearly outline the works required as stated above.

In addition to landowner's consent, concept engineering plans must show these works as being proposed as part of the subject development application. It is not appropriate to approve a development unless the plans show an engineering concept for the civil works upon which the development relies. This matter is addressed in Section 13(b) of this report in relation to outstanding engineering matters.

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

Clause 20 and Schedule 7 of SEPP (State and Regional Development) 2011 provides the following referral requirements to a Joint Regional Planning Panel:-

Development that has a capital investment value of more than \$30 million.

The proposed development has a capital investment value of \$35,616,865 thereby requiring referral to, and determination by, a Regional Planning Panel.

In accordance with this requirement the application was referred to, and listed with, the Sydney Central City Planning Panel for determination.

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

a. Permissibility

The land is zoned R3 Medium Density Residential and R4 High Density Residential under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The proposal is defined as "Residential flat building" and 'Multi dwelling housing' as follows:

"Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, a manor home or multi dwelling housing."

“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.”

The proposed development satisfies the provisions for permissibility with respect to SEPP (SRGC) 2006.

b. Zone Objectives

The site is zoned R3 Medium Density Residential and R4 High Density Residential under SEPP (SRGC) 2006.

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal satisfies the R3 Medium Density Residential and R4 High Density Residential objectives under SEPP (SRGC) 2006.

c. Development Standards

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

Land zoned R4 High Density Residential (Lot 1)

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for development	Residential flat building – 1,000sqm	Total Site Area: 2,546.11sqm (Lot 1)	Yes
4.1B Residential Density	Minimum residential densities 30 dwellings per hectare	166.59 dwellings per hectare	Yes
4.3 Height	Maximum 21 metres	23.9 - 24.1 metres (lift shafts)* 21.8 – 22.2 metres (roof structure) (reduced from max. 23.2 and 23.1m for roof structure)	No – see comments below

4.4 Floor Space Ratio	Maximum 2:1 5,092.22sqm	1.61:1 4,098.59sqm** (reduced from 1.8:1)	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	A variation to Clause 4.3 Height of Buildings development standard is proposed and addressed below.	No – see comments below

*According to Building Height Plane diagram. Refer to Section 4 Variation to Building Height regarding discrepancy in height measurements.

**Based on Architectural Plans submitted May 2019.

Land zoned R3 Medium Density Residential (Lots 2 and 3)

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for development	Multi Dwelling Housing – 1,500sqm	Total Site Area: 3,743.16sqm (Lot 2) 3,661.09sqm (Lot 3)	Yes
4.1B Residential Density	Minimum residential densities 18 dwellings per hectare	43 dwellings per hectare (Lot 2) 43.8 dwellings per hectare (Lot 3)	Yes
4.3 Height	Maximum 14 metres	Maximum 10.1 metres*	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	N/A	N/A

* Based on Architectural Plans submitted May 2019 (last elevations/sections submitted). June 2020 Building Height Plane indicates full compliance with 14 metre height limit.

d. 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 southern-most extent of the site (part of proposed Lot 3 and Aurora Street) is mapped as a “moderate” sensitive Aboriginal archaeological area under the Box Hill DCP.

An Aboriginal due diligence assessment was undertaken by Baker Archaeology. The report concluded that no Aboriginal objects have been previously identified on the land, no Aboriginal objects were observed on the land in a site inspection and no Aboriginal objects are considered likely to occur undetected on the land. There is no identified Aboriginal heritage constraint to proceed with proposed development. Based on the findings of this assessment there is no justification for further archaeological assessment or monitoring.

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.

e. 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.

The applicant has not submitted any evidence from water or electricity providers to demonstrate that the proposed development can be serviced and what infrastructure may be required. Therefore insufficient information has been provided to demonstrate compliance with Clause 6.1 – Public Utility Infrastructure of the SEPP (SRGC) 2006.

4. Variation to Building Height

Clause 4.6 Exceptions to Development Standards states as follows:

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

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

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

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

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the Director-General has been obtained.

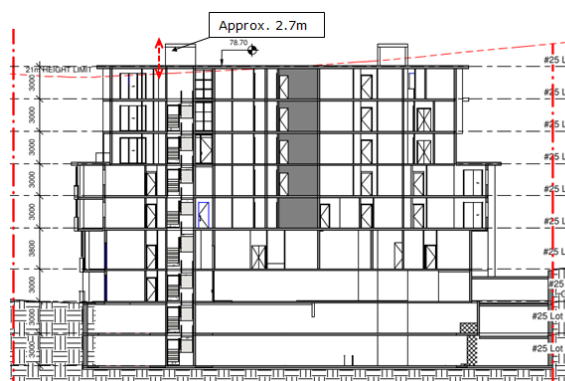
(5) In deciding whether to grant concurrence, the Director-General must consider:

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

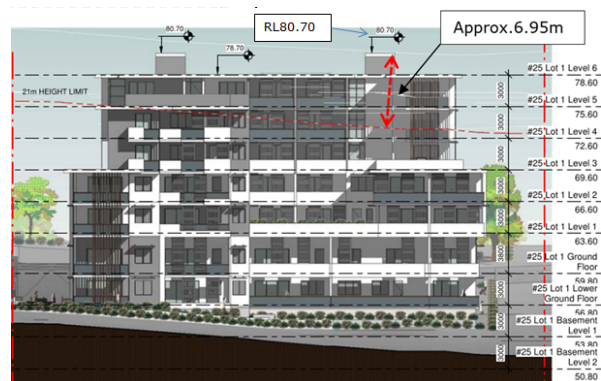
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Clause 4.3 of SEPP (SRGC) 2006 prescribes a maximum height of 21 metres for the R4 High Density Residential zoned part of the site on which the residential flat building is proposed.

Originally, the application proposed a maximum height of RL80.70 to a lift shaft according to the notations on Elevation Plans submitted in April 2018. A Section is not provided through either lift shaft so the following Section plan is shown measured below for illustration. The Northern Elevation is highlighted below since it provides the RL, and is measured to provide a visual illustration of height above natural ground level only for comparison to amended plans.

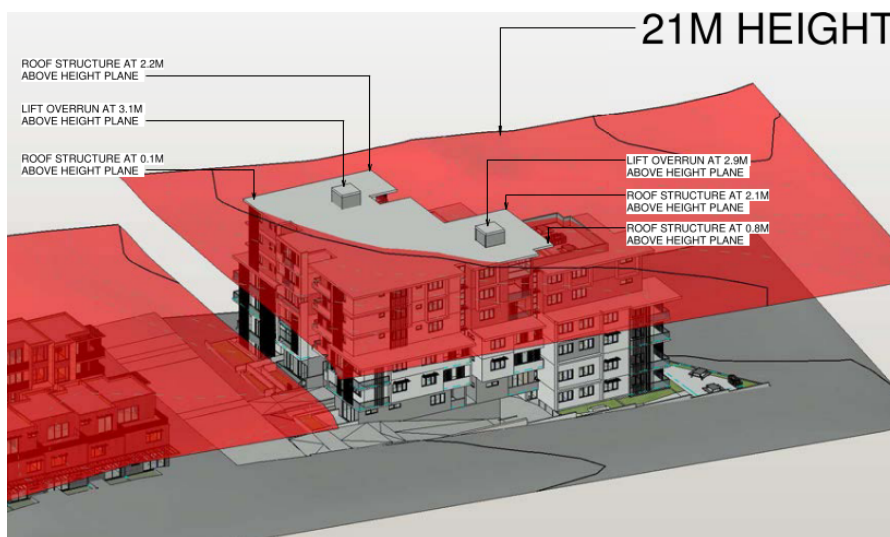


East/West Section (3) – April 2018



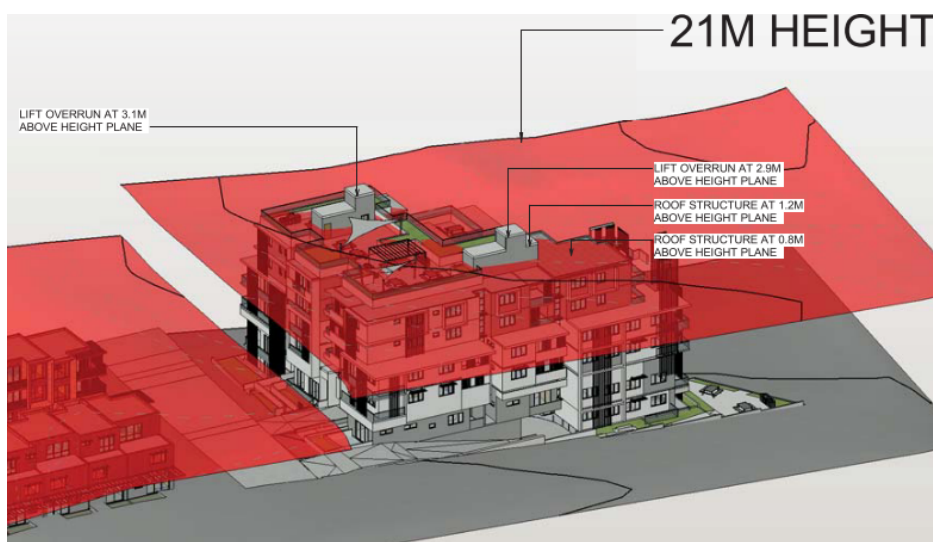
North Elevation - April 2018

The Building Height Plane indicated that the shafts were 2.9 metres and 3.1 metres above the permitted height of 21 metres, being a maximum height of 24.1 metres. The roof structure was shown on the Building Height Plane to be a maximum height of between 21.1 to 23.2 metres.



Building Height Plane – April 2018

Following the deletion of the 7th storey, the amended Building Height Plane (below) still indicates a maximum height of 23.9 and 24.1 metres (showing encroachments of 2.9 and 3.1m to the lift shafts), but has reduced the height of roof structures to between 21.8 and 22.2 metres (encroachments of 0.8 to 1.2 metres).

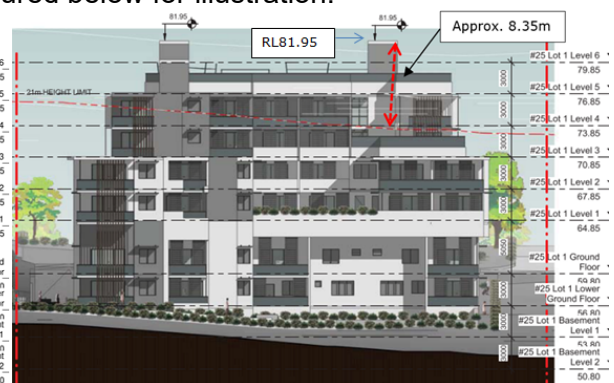


Amended Building Height Plane - June 2020

However, the amended Elevations show an *increase* in the lift shaft heights from RL80.70 in the original plans to RL 81.95. A revised Section Plan was not submitted in June 2020 therefore the Section from May 2019 is measured below for illustration.



North Elevation – June 2020



East/West Section (3) – May 2019

Therefore, since RL's are not provided on the Building Height Plane and since amended Sections and Elevations indicate an increase in building height, the applicant is required to clarify the maximum height of the lift shafts / roof structures and the resulting variation of the 21m height plane.

In the applicant's amended justification pursuant to Clause 4.6 – Exceptions to development standards submitted in relation to the May 2019 plans, a maximum building height variation of 3.1 metres (14.76%) was addressed. This would require revision if the height is in fact greater than that. According to the Building Height Plane a variation of 1.2 metres (5.7%) is sought for the highest part of the roof structure.

The applicant's justification pursuant to Clause 4.6 (see Attachment No. 17) is summarised as follows:

- *The proposal provides residential accommodation which is consistent with the intent of the land use zone.*
- *The site is uniquely setback further from Mason Road and offers a greater setback to the road reserve.*
- *No loss of light or privacy will result from the presence of the roof terrace or the structures required supporting it.*
- *Strict compliance serves no great benefit in terms of reduced impacts.*
- *A complying development would weaken the building in an urban design sense and result in a somewhat 'flattened' building.*
- *The roof elements create a more elegant building form and the functionality of an active roof space.*
- *Visual amenity will be improved by the varied roof heights and added interest of rooftop features.*
- *The added building bulk remains in line with the character of similar sized buildings and the upper levels taper back from the levels below.*
- *The elevations are misleading and the height plane better shows the nature of the height exceedances.*
- *The proposal does not generate any significant adverse impacts on surrounding properties.*

The objectives of Clause 4.3 Height of Buildings of SEPP (SRGC) 2006 are as follows:

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

The objectives of Clause 4.6 Exceptions to Development Standards are as follows:

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

The relevant objectives of the R4 High Density Residential zone are as follows:

- a) to provide for the housing needs of the community within a high density residential environment.
- b) to provide a variety of housing types within a high density residential environment.
- c) to enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

There is uncertainty as to the extent of the height variation. According to the Building Height Plane diagram but subject to confirmation, the building is at least a maximum of 24.1 metres with a variation of 14.76%.

The proposed variation to the height standard has been reviewed with regard to the objectives of the applicable standards and of the R4 High Density Residential zone, the suitability of the development in its context, its bulk and scale and its compatibility with the surrounding land and the built form and density of approved development in the vicinity.

A number of other development applications for residential flat buildings have been approved in the vicinity of the subject site. The outcomes of these applications are summarised below and are compared to the subject development application.

Residential Flat Buildings						
Development Application	FSR (2:1)	Height (21m)	Density p/ha (Min. 30)	No. Units	Approval	Lodged Pre or Post density band draft (May 2017)
29 Mason Road 79/2017/JP	1.38:1	22.86 metres	179.4	71	SCCPP 30 July 2018	Pre
27 Mason Road 1545/2018/JP	1.5:1	21.8 metres	146.5	59	SCCPP 30 June 2020	Post
17-21 Mason Road 1984/2017/JP	-	22.8	153.5	255	Land and Environment Court 27 February 2019	Post (June 2017)
13 Mason Road 1038/2018/JP	1.76:1	20.9 metres	138.1	97	Approved SCCPP November 2019	Post
Subject DA 1894/2018/JP	1.61:1*	24.1 metres**	166.59	50	-	Post
Mason Road average density: 154.66 (146 approved post draft density band amendment)						
Mason Road average height: 22.09m (21.83m approved post draft density band amendment)						

*May 2019 Architectural Plans

** To be confirmed.

There is a link between height and density. The proposed density of the development (166.59 dwellings per hectare) is excessive and is not supported. The deletion of 6 units from the development and reduction of the rooftop common open space is supported, however the proposed height of the lift shafts and building is still unacceptable. The average approved height of development in the vicinity of the site approved following the introduction of the draft density band amendment is 21.83 metres.

The bulk and scale of the development is unacceptable and as outlined in relation to compliance with the Apartment Design Guide and Box Hill DCP controls in Sections 10 and 11 of this report, it does not comply with the required building separation and setbacks. The development has been somewhat stepped down (ie. on the western wing), however as illustrated on the Section and Elevation Plans (see Attachment 12) the overall bulk and scale, and the lift shafts in particular, is excessive. The submitted plans indicate that the basement level will protrude from the ground level in the north western portion of the building, within the northern setback. There is scope to better designed the building better in response to the

slope of the site to reduce its overall bulk and scale and to achieve compliance with the building height standard.

Whilst rooftop common open space can provide additional amenity and interest to a development, it is not specifically required by the Apartment Design Guide or the Box Hill DCP. It is considered that the development can accommodate sufficient common open space at ground level within the northern setback, and on the other two rooftop areas proposed to the first and third floors without reliance on a rooftop area at the expense of additional bulk and scale.

In addition to there being uncertainty of the actual maximum height, it is considered that the proposal has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard to the degree that is proposed. The development proposes an unacceptable density, variations to setbacks and building separation, and it is considered that the extent of the proposed variation in height is excessive and is not compatible with the scale of recently approved residential flat building developments in the vicinity which have been approved with lesser variations or full compliance.

The development is not considered to result in an appropriate outcome in regard to public interest due to the excessive density proposed, the cumulative impacts of which affect the Box Hill Precinct as a whole. It is also considered the extent of the height variation together with the various non-compliances with the Apartment Design Guide and Box Hill DCP, results in a visual impact that is not compatible with the desired future character of the area.

The submitted plans and the associated Clause 4.6 variation request have not adequately demonstrated that the compliance with the building height standard is unreasonable and unnecessary in this instance.

5. 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 24 April 2018. 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:*

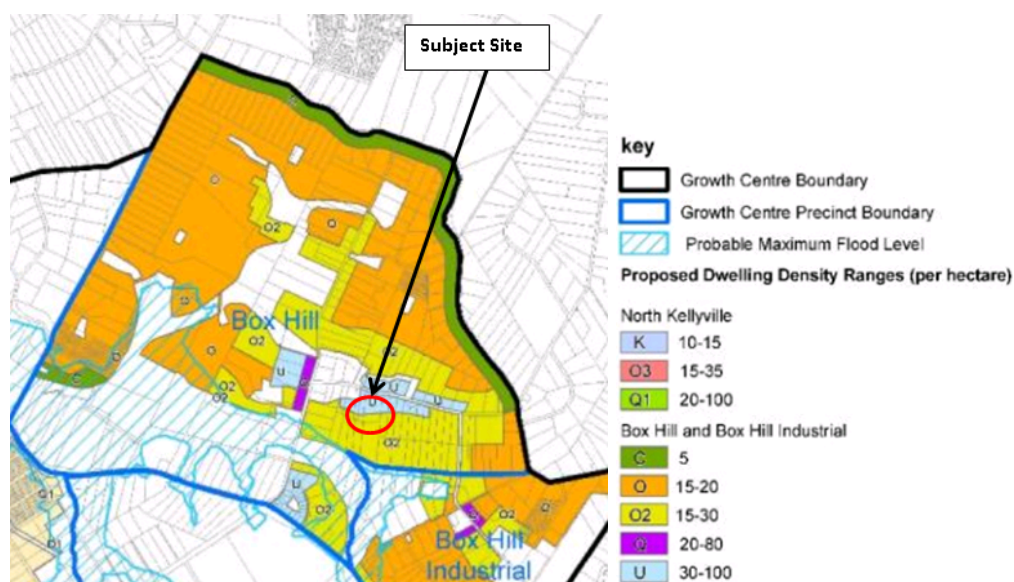
density means the net developable area in hectares of the land on which the development is situated divided by the number of dwellings proposed to be located on that land.

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 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 and 30-100 dwelling density range per hectare for the land zoned R3 Medium Density and R4 High Density Residential respectively.



The Growth Centres SEPP currently specifies a minimum density provision of 18 and 30 dwellings per hectare for the R3 and R4 zoned land respectively. The draft amendment to impose a maximum density range of between 15 – 30 and 30-100 dwellings per hectare equates to the following for each of the proposed development sites:

Residential Flat Building (Lot 1): Minimum of 9 and maximum of 30 units
 Multi dwelling housing (Lot 2): Minimum of 6.97 and maximum of 13.95 townhouses
 Multi dwelling housing (Lot 3): Minimum of 6.85 and maximum of 13.7 townhouses

The proposed development results in the following densities:

Residential Flat Building (Lot 1) (50 units): 166.59 dwellings per hectare
 Multi dwelling housing (Lot 2) (20 townhouses): 43 dwellings per hectare
 Multi dwelling housing (Lot 3) (20 townhouses): 43.8 dwellings per hectare

Whilst the proposed townhouse densities are above the proposed maximum density band under the draft SEPP amendments, when compared with other approved, similar developments in the vicinity of the site shown in the following tables and the Box Hill overall average of 42.49 dwellings per hectare for this form of development, the proposed townhouse densities are considered reasonable.

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

Stage 2 39-43 Hynds Road 984/2018/JP - Stage 3	110 town houses	65.3 Average: 41.27	Approved (SCCPP), 20 June 2019
27 Hynds Road 1184/2018/ZE	14 detached dwellings and 28 semi-detached dwellings	32.5	Approved (Land & Environment Court), July 2019
47 Hynds Road 709/2017/JP/A	81 town houses	48.4	Approved (SCCPP), 16 April 2020
27 Mason Road 1545/2018/JP	41 town houses	45.76	Approved (SCCPP), 30 June 2020
<i>Average Density (approved) = 42.49 dwellings p/ha</i>			

The proposed residential flat building density of 166.59 dwellings per hectare is excessive. As shown in the following tables, the approved average densities for residential flat buildings in Box Hill (pre and post draft density band amendments) are 159.74 and 141.77 respectively.

Residential Flat Buildings							
Development Application	FSR (2:1)	Height (21m)	Density p/ha (Min. 30)	No. Units	Approval	Lodged or density draft (May 2017)	Pre Post band (May 2017)
29 Mason Road 79/2017/JP	1.38:1	22.86 metres	179.4	71	SCCPP 30 July 2018	Pre	
27 Mason Road 1545/2018/JP	1.5:1	21.8 metres	146.5	59	SCCPP 30 June 2020	Post	
17-21 Mason Road 1984/2017/JP	-	22.8	153.5	255	Land and Environment Court 27 February 2019	Post	(June 2017)
13 Mason Road 1038/2018/JP	1.76:1	20.9 metres	138.1	97	Approved SCCPP November 2019	Post	
Mason Road average density: 154.66 (146 approved post draft density band amendment)							
Mason Road average height: 22.09m (21.83m approved post draft density band amendment)							
17 Nelson Road 337/2017/JP	1.25:1	17.6 metres	80.4	155	SCCPP 15 January 2018	Pre	
7 – 9 Terry Road 694/2017/JP	1.82:1	23.38 metres (11.33% variation)	215	103	Former SWCPP 6 September 2017 (Deferred commencement)	Pre	
4 Alan Street 1631/2015/JP	1.9:1	20.87 metres	194	93	Former JRRP 16 December 2015	Pre	
17-19 Alan Street 1230/2018/HA	1.52:1	21 metres	129	54	Land and Environment Court 5 December 2018	Post	
13 Terry Road 846/2016/JP	1.97:1	21.8 metres (3.8% variation)	222	121	Former SWCPP 1 December 2016	Pre	
13-15 Alan Street 2003/2017/JP	2:1	22.3 metres (lift overrun) (6.1% variation)	150	53	Land and Environment Court 8 March 2018	Pre	
11 Alan Street 479/2018/HA	1.77:1	21 metres	149.2	31	Delegated Authority 16 February 2018	Pre	
Box Hill total average density: 159.74 (141.77 approved post draft density band amendment)							
Box Hill total average height: 21.48 (21.625 approved post draft density band amendment)							

The proposed residential flat building is inconsistent with density objective (c) of Clause 4.1B of the Growth Centres SEPP as the scale of the proposed development is inconsistent with the desired character of the precinct and the approved average density of residential flat buildings in the vicinity, both pre and post draft density band amendments.

The proposed development does not comply with the maximum density permitted under the draft amendments to the Growth Centres SEPP and Box Hill DCP 2018 and is considered unacceptable with regard to density.

6. 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 and report for decommissioning of the dam prepared by Geotesta Pty Ltd, dated 2 April and 4 March 2018 respectively, have been reviewed by Council's Environmental Health Officer. No objections were raised subject to conditions of consent.

7. 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 March 2018. Amended plans 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 and residential flat building will meet the NSW government's requirements for sustainability.

8. 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.

9. A Metropolis of Three Cities – the Greater Sydney Region Plan

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 units and town houses which will assist in meeting housing demands;
- 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
- Adaptable dwellings are provided within the proposed development (subject to confirmation with an Accessibility Report).

10. Compliance with State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development

The proposal was accompanied by a Design Verification Statement prepared by JS Architects with regard to the provisions of SEPP 65. The proposal has been assessed against the provisions of the Apartment Design Guidelines (ADG) as outlined below:

Clause	Design Criteria	Compliance
Siting		
Communal open space	25% of the site with 50% of the area to achieve a minimum of 50% direct sunlight for 2 hours at midwinter.	Yes, communal open space – 37.44% including 12.69% (ground level) plus 24.75% (1 st and 3 rd floors and rooftop). Receives minimum 2 hrs to 50% in midwinter.
Deep Soil Zone	7% of site area with minimum dimensions of 6m.	Yes, 9.88% with minimum dimensions of 6m.
Separation / Visual Privacy	For habitable rooms and balconies, 12m (6m setback from boundary) up to 4 storeys, 18m (9m setback from boundary) between 5 and 8 storeys.	No. A number of units, the podium and rooftop common open space areas do not comply. See comments below.
Designing the Building		
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.	Yes, 88%*

Natural ventilation	At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.	Yes, 76%
Ceiling heights	For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where it's area does not exceed 50% of the apartment area. For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope. If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.	Yes, 2.7m
Apartment size	Apartments are required to have the following internal size: Studio – 35m ² 1 bedroom – 50m ² 2 bedroom – 70m ² 3 bedroom – 90m ² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.	No, Units 103 and 203 do not comply. See comments below.
Apartment layout	Habitable rooms are limited to a maximum depth of (2.5 x the ceiling height). In open plan layouts (combined living, kitchen, dining) the maximum habitable room depth is 8m from a window.	No, Units 110, 211, 308 and 408 do not comply. See comments below.
Balcony area	The primary balcony is to be: Studio – 4m ² with no minimum depth 1 bedroom – 8m ² with a minimum depth of 2m 2 bedroom – 10m ² with a minimum depth of 2m 3 bedroom – 12m ² with a minimum depth of 2.4m For units at ground or podium levels, a private open space area of 15m ² with a minimum depth of 3m is required.	No, Units LG05, G06, G03, 102, 103, 105, 107, 109, 202, 203, 208, 210 do not comply. See comments below.
Storage	Storage is to be provided as follows: Studio – 4m ³ 1 bedroom – 6m ³ 2 bedroom – 8m ³ 3+ bedrooms – 10m ³	Yes

	At least 50% of the required storage is to be located within the apartment.	
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	Yes, 7 x studios 6 x 1 bedrooms 7 x 2 bedrooms 10 x 3 bedrooms

**Based on May 2019 plans*

a) Separation

The ADG requires that for habitable rooms and balconies, the required setbacks are 12m (6m setback from boundary) up to 4 storeys and 18m (9m setback from boundary) between 5 and 8 storeys.

The aims of the separation controls are to:

- *ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings.*
- *assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook.*
- *provide suitable areas for communal open spaces, deep soil zones and landscaping.*

The following units, balconies and common open space areas do not provide the required separation/ boundary setback.

Basement Level One protrudes from the ground such that it appears as a level on the northern elevation (see Elevations and Perspectives, Attachments 12 and 13). Without finished levels indicated in the northern setback on the Lower Ground Floor Plan it is difficult to ascertain the exact level of the basement in relation to the finished ground. For the purposes of setback / separation measurements, Basement Level 1 is considered a storey on the north western side of the building. Detailed levels, Sections and Elevations are required to clarify.

Tucana Street boundary

Unit	Setback
<i>6 metre setback required:</i>	
LG01	5.59m to 6.5m
G01	4.69m to 5.38m (balcony) 5.59m to 6.5m (unit)
G03	4.575m to 5.31m (private open space) 5.67m to 6.42m (unit)
G08	2.33m to 2.9m (private open space)
101	4.58m to 5.37m (balcony) 5.5m to 6.7m (unit)
104 and 105	4.55m to 5.25m (balcony) 5.63m to 6.28m (Unit 104 only)
109	5.07m to 6m (balcony)
201	4.5m to 5.4m (balcony) 5.5m to 6.7m (unit)
204	4.58m to 5.24m (balcony) 5.63m to 6.28m (Unit 204 only)
210	5.17m to 6.012m (balcony)
211	5.65 – 6.2m (balcony)
302 and 303	4.5m to 5.18m (balcony)

	5.69m to 6.34m (unit)
308	5.5m to 6.15m (balcony) 6.74m to 11.4m (unit)
<i>9 metre setback required:</i>	
301	5.824m to 6.63m (unit)
401	5.824m to 6.61m (unit)
402 and 403	4.5m to 5.16m (balcony) 5.7m to 6.42m (unit)
407	6.198m to 6.734m (unit)
408	5.517m to 6.198m (balcony) 6.78m to 11.4m (unit)
Roof Common Open Space	5.71m and 5.815m minimum.

Eastern boundary

Unit	Setback
<i>6 metre setback required:</i>	
Basement levels	1.271m
107	5.75m (balcony)
109	5.5m (balcony)
201	5.5m (balcony)

Western boundary

Unit	Setback
<i>6 metre setback required:</i>	
101	5.6m (balcony)
201	5.5m (balcony)
<i>9 metre setback required:</i>	
202	6m (unit)
203	6m (unit)
Podium common open space	7.695m

Northern boundary

Unit	Setback
<i>6 metre setback required:</i>	
202	8m (unit), 6m (balcony)
203	8m (unit), 6m (balcony)
<i>9 metre setback required:</i>	
Podium common open space	7.695m

Comment:

The Statement of Environmental Effects (May 2019) stated that the development complies with this control, however according to the plans, numerous variations to the building separation controls are proposed, particularly in relation to the Tucana Street boundary, and due to the protrusion of the basement level above ground, the northern boundary also. The applicant amended the building setbacks on the northern boundary to adjoining R4 zoned road reserve with the intention of achieving full compliance with the separation controls, however the plans indicate that Basement Level 1 may be considered a full storey above ground in the north western section of the building. Therefore units 202 and 203 should be set back 9 metres, not 6 metres.

A proposed basement setback of 1.271m to the eastern boundary, with 1.721m to the driveway, will not provide sufficient landscaping in the eastern side setback.

The proposed residential flat building will be located opposite a proposed multi dwelling housing development on Tucana Street. Whilst the slope of the land assists somewhat in mitigating the impacts at the interface between the two types of development, no grounds for justification of units and balconies that encroach within the front setback by up to 4.5m (ie. balcony to Unit 402) have been provided.

Without justification, insufficient information has been submitted to satisfy Council Officers that the proposal will be able to achieve compliance with the provisions and intent of the minimum building separation controls under the Apartment Design Guide.

b) Apartment size

The ADG specifies that a 2 bedroom unit shall have a minimum area of 70m², and a 2 bedroom unit with additional bathroom shall have a minimum area of 75m². Objective No. 4D-1 states:

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.

Unit 103 is proposed to be 68.84m² and Unit 203 with second bathroom is proposed to be 74.62m².

Comment:

No justification is provided for the non-compliance. All units should meet the minimum area requirements stipulated in the Apartment Design Guide.

c) Apartment Layout

The ADG specifies that the depth of a room shall not exceed 2.5 x the ceiling height. Objective No. 4D-2 states:

Environmental performance of the development is maximised.

The proposed ceiling height is 2.7 metres, therefore a maximum room depth is 6.75 metres. The maximum unit depth is exceeded in the following units:

Units 110, 211, 308 and 408 – depth of 10.4 metres.

Unit 105 – depth of 7.8m.

Comment:

No justification is provided for the non-compliance. All units should comply with the maximum room depth stipulated in the ADG for environmental performance and residential amenity reasons. Insufficient information has been submitted to satisfy Council Officers that the proposal will be able to achieve compliance with the provisions and intent of the maximum room depth requirements under the Apartment Design Guide.

d) Balcony Area

The design criteria under Objective 4E-1 of The Apartment Design Guide state that all apartments are required to have primary balconies as follows:

Dwelling Type	Minimum Area	Minimum Depth
Ground /Podium level	15m ²	3m

Studio apartments	4m ²	-
1 bedroom apartments	8m ²	2m
2 bedroom apartments	10m ²	2m
3 bedroom apartments	12m ²	2.4m

The minimum balcony depth to be counted as contributing to the balcony area is 1m.

The following units do not comply with the minimum balcony requirements:

Unit No.	Dwelling Type	Minimum Area / Depth Required	Area / Depth Proposed
LG05	3 bedrooms (ground level unit)	15m ² / 3m	10.99m ² / 2m
G03	2 bedrooms (ground level unit)	15m ² / 3m	33.25m ² / 1.2m – 1.5m
G06	3 bedrooms	12m ² / 2.4m	10.20m ² / 2m
102	2 bedrooms	10m ² / 2m	9.32m ² / 2.083m
103	2 bedrooms	10m ² / 2m	8.93m ² / 2m
104	2 bedrooms (podium unit)	15m ² / 3m	10.58m ² / 2.45m
105	3 bedrooms (podium unit)	15m ² / 3m	9.51m ² / 2.45m
107	3 bedrooms	12m ² / 2.4m	10.638m ² / 2m
109	3 bedrooms	12m ² / 2.4m	11.6m ² / 3m
202	2 bedrooms	10m ² / 2m	9.60m ² / 2m
203	2 bedrooms	10m ² / 2m	9.80m ² / 2m
208	3 bedrooms	12m ² / 2.4m	10.638m ² / 2m
210	3 bedrooms	12m ² / 2.4m	11.6m ² / 3m
301	2 bedrooms (podium unit)	15m ² / 3m	12.93m ² / 2.8m

Objective 4E-1 of the Apartment Design Guide requires that *apartments provide appropriately sized private open space and balconies to enhance residential amenity.*

Comment:

No justification is provided for the non-compliance. All units should meet the minimum balcony area requirements stipulated in the ADG. However, the proposed variation to Units 109 and 210 are reasonable since the minimum dimension is 3 metres, the size is only 0.4m² short, and a second minor balcony is also provided to bedrooms 1 and 2. Notwithstanding this, the proposed residential flat building is unacceptable with respect to balcony areas.

Design Quality Principles

The proposed residential flat building has been assessed against the relevant design quality principles contained within the SEPP 65 as outlined below:

(i) Context and Neighbourhood Character

Currently, the immediate area is characterised by single rural style dwellings and similar low scale rural-residential activities. The site is one of six residential flat building developments approved or proposed within this area of Mason Road and would contribute to the gradual redevelopment of what was previously rural / residential land. The future context and neighbourhood character of the immediately surrounding area will be characterised by residential flat buildings and townhouses.

The future context and neighbourhood character with respect to residential flat buildings is to be characterised by development with a maximum height of 21m, or as approved with variations of up to only 22.86 metres at No. 29 Mason Road, or an approved overall average

height of 22.09m (21.83m approved post draft density band amendment) on Mason Road. The proposal seeks approval for development of up to 24.1 metres (possibly more subject to clarification).

The application is inconsistent with the desired future context and neighbourhood character and is therefore inconsistent with Principle 1: Context and neighbourhood character of SEPP 65.

(ii) Built Form and Scale

The height of the development is inconsistent with the desired future scale and character of the site and surrounding area. The development proposes a maximum height of 24.1 metres which results in a 14.76% or 3.1 metre variation to the development standard. Furthermore, proposed variations to building setbacks and separation requirements serve to increase the overall bulk and scale of the development without adequate justification. The basement level appears to protrude above ground level in the northern setback which indicates that there is further scope to better integrate the development with the slope of the site. The required common open space should be able to be provided at ground level and at other locations within the building as proposed to the first and third floors without necessitating additional bulk and scale.

The proposal does not achieve a scale, bulk and height that is appropriate to the desired future character and is therefore inconsistent with Principle 2: Built form and scale of SEPP 65.

(iii) Density

SEPP (Growth Centres) 2006 has a minimum density provision of 30 dwellings per hectare and the draft amendment to the SEPP (Growth Centres) 2006 which was introduced in May 2017 seeks to impose a maximum density range on the R4 zoned portion of the site of between 30-100 dwellings per hectare which equates to a maximum of 30 dwellings being permitted on Lot 1. Lot 1 exceeds the proposed maximum density for the site by 20 dwellings (density of 166.59 dwelling per hectare). The variation to the draft density controls is excessive and does not provide an appropriate built form outcome.

The proposal is inconsistent with Principle 3: Density of SEPP 65.

(iv) Sustainability

Amended Architectural Plans have been submitted however an amended BASIX certificate has not been submitted. A number of units within the development do not comply with the maximum room depth requirements of the ADG.

Insufficient information has been received to ensure compliance with Principle 4: Sustainability of SEPP 65.

(v) Landscape

An amended landscape plan is required to be submitted and information remains outstanding as requested by Council's Tree and Landscape Officer.

Insufficient information has been received to ensure compliance with the landscape principles under SEPP 65.

(vi) Amenity

The building design accommodates the required solar access and ventilation and provides a number of open space areas for residents, although variety in embellishment, quality landscaping and shading is lacking. However, the development proposes a number of variations to unit sizes, balconies, separation and room depth which undermine residential amenity.

The proposal is therefore inconsistent with Principle 6: Amenity of SEPP 65.

(vii) Safety

The development has been designed with safety and security concerns in mind. The ground level common open space is within direct view of occupants to allow passive surveillance. Common areas are accessible to all residents. Private spaces are clearly defined with walls or landscaping. The basement car parks have been appropriately designed and appropriate conditions of consent can be imposed to further assist in the promotion of safety and security.

The proposal therefore provides a satisfactory response to Principle 7: Safety of SEPP 65.

(viii) Housing Diversity and Social Interaction

The location of this development provides dwellings within a precinct that will provide in the future, a range of support services. The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings provides development standards in relation to unit mix. Although these controls do not apply to the site, it is noted the development complies with the control which states that no more than 25% of the dwelling yield is to comprise of one bedroom apartments. The proposed development includes 7 x studio units (14%), 6 x 1 bedroom (12%), 27 x 2 bedroom (14%) and 10 x 3 bedroom units (20%).

The proposal therefore provides a satisfactory response to Principle 8: Housing Diversity and Social Interaction of SEPP 65.

(ix) Aesthetics

The submitted perspectives indicate a variation in colours and some architectural features. It is considered however that the development could incorporate further articulation and variation in materials, stepping in response to the slope of the site, together with compliant setbacks which would reduce the bulk and scale and improve the aesthetics of the development. Basement levels should be accommodated below ground level so as to reduce bulk and scale and impacts on landscaped setbacks.

The proposal does not provide a satisfactory response to Principle 9: Aesthetics of SEPP 65.

11. Compliance with the Box Hill Development Control Plan 2018

The Box Hill Growth Centres Precincts Development Control Plan (Box Hill DCP) applies to the subject site. Specifically, Parts 2 and 3 of the DCP address vision and character and land development, Part 4 establishes controls for residential development and Part 5 provides specific controls for multi dwelling housing and residential flat buildings.

a) All Development Sites

The following controls relate to the entire development site.

DEVELOPMENT STANDARD	DCP REQUIREMENT	PROPOSED DEVELOPMENT	COMPLIANCE
2.0 – Vision and Character			
Indicative Layout Plan	All development is to be undertaken generally in accordance with the Indicative Layout Plan.	Roads are proposed as per the IPL	Yes
3.0 – Land Development			
Street Network, Design and Hierarchy	The street network and road hierarchy is to be provided generally in accordance with Figure 14 and Table 9.	Roads are proposed as per the DCP with the addition of a temporary road.	Yes
4.0 – Residential Development			
4.1.1 Cut and Fill	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). All retaining walls for the site are to be identified.	Not all retaining walls have been identified on the plans.	No, refer comments below.

i. Cut and Fill

Development applications are to illustrate where it is necessary to cut and fill land. 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 1m maximum retaining wall height is permissible between residential lots (2 x 500 mm). Terraced walls are to have a minimum of 500mm between each step.

The objectives of the cut and fill controls 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 Box Hill DCP requires that all retaining walls are shown on the plans. The proposed residential flat building and town houses are stepped to a degree, in response to the site which slopes both to the north and south. Insufficient Section Plans, finished spot levels and natural ground lines have been provided to enable a complete assessment of the impacts within the site (ie. in setback areas, within and between private open space areas of townhouses, on the adjoining land to the east, west and proposed temporary and permanent road reserves etc). Whilst some spot levels, 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. Private open space to townhouses appears to be atop the basement, which in some cases protrudes above the ground level which has implications for how private open space areas relate to landscaping and may have privacy implications for adjoining land. Additional levels and detailed Sections are required. Insufficient detail on plans is discussed further in Section 12(b) of this report.

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.

b) Residential Flat Building (Lot 1)

The relevant objectives of Section 5.4 – Controls for residential flat buildings, manor home and shop top housing are:

- a. To establish a high quality residential environment where all dwellings have a good level of amenity.*
- b. To encourage a variety of housing forms within residential areas.*
- c. To ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant.*

The following table addresses the relevant development controls of the DCP for residential flat building developments with identified variations addressed in the following Section:

5.4 – Additional Controls For Certain Development Types – Residential Flat Buildings				
Site Coverage (maximum)	50%	56.78% (not including required driveway easement to adjoining land).	No.	See comments below
Landscaped Area (Minimum)	30% (at ground level)	25.21%	No.	See comments below.
Communal Open Space	15%	37.44% (12.69% at ground level).	Yes,	however Basement Level 1 would impact upon ground level common open space in northern setback and should be below ground level.
Principal Open Private Space (Minimum) 10m ² per dwelling with min. dimension of 2.5m	10m ² per dwelling with min. dimension of 2.5m	Units LG01, LG02, LG03, LG04, LG05, G01, G02, G03, G05, G07, G08, 101, 102, 103, 104, 105, 106, 107, 108, 201, 202, 203, 204, 205, 206,	No.	See comment below

		207, 208, 209, 302, 303, 304, 305, 306, 402, 403, 404, 405, 406 do not comply.	
Front Setback (Minimum) – 6m to building façade. Balconies may encroach to 4.5m (first 3 storeys) for a max. of 50% façade length		Units LG01, G01, G03, 101, 104, 201, 204, 301, 302, 308, 401, 402, 408 and the rooftop common open space do not comply.	No. See comment below
Secondary Setback (Minimum)	6 metres	No secondary setback	N/A
Side setback (Minimum)	Buildings up to 3 storeys: 3m Buildings above 3 storeys: 6m	Basement – 1.271m Lower ground – 6.5m and 6m Ground – 6.5m and 6m Level 1 – 5.6m and 5.5m Level 2 – 5.5m and 5.5m Level 3 – 7.695m and 9m Level 4 – 9m and 9m Level 5 – 9m and 12m	No Yes Yes No. See comment below. No. See comment below. Yes Yes Yes
Rear setback (Minimum)	6m	Minimum 6 metres to residential component. Basement levels are set back a minimum of 2.557m.	No. See comment below.
Habitable Room Separation (Minimum)	12m	Not applicable	N/A
Car parking	1 space per dwelling plus 0.5 spaces per 3 or more bedroom Visitor – 1 per 5 units	Required resident: 55 Required visitor: 10 Provided resident: 72 Provided visitor: 11 Disabled: 6	 Yes Yes Yes
5.5 Adaptable Housing			
Adaptable Housing	10% of all units 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).	Required: 5 Provided: 5	Yes

	<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>Updated report required.</p> <p>6 adaptable spaces provided.</p>	<p>No. Refer comments below.</p> <p>Yes</p>
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i. 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 plans submitted in May 2019 detail a site coverage of 48.05%. This measurement has included only the building footprint and has not accounted for driveways. The building footprint and driveways were therefore calculated from the current plans, giving a total site coverage of approximately 56.78%. The calculated site coverage has not included land along the western boundary which is required to accommodate a future driveway to adjoining R4 zoned land.

No justification has been provided by the applicant. The proposed residential flat building is therefore unacceptable with respect to site coverage.

ii. Landscaped Area

The DCP requires 30% of the site to be landscaped area. Landscaped area is defined in the DCP to be “an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted areas and the like”.

Comment:

Based on the Landscape Diagram plan (May 2019) the site is provided with 25.21% landscaped area at ground level. Including landscaped areas on the rooftop and podiums, the total landscaped area is said to be 34.37%. Included in the ground floor landscaped area calculation is the western setback which is required to accommodate an easement for driveway access to the adjoining R4 zoned land. Therefore the total landscaped area at ground level would be less than 25.21%.

Plans submitted in June 2020 increased ground level setbacks to the northern boundary which should increase landscaped area. However, the plans also indicate that Basement Level One would protrude above ground level in the northern setback (minimum 2.557m setback). As the Low Ground Floor Plan lacks finished levels in the western part of the northern setback, it is difficult to ascertain the extent of the protrusion, however this would impact upon landscaped area if the basement is not below ground level.

Measurements based on the June 2020 plans, and including a 2 metre wide landscaped strip for the length of the western boundary (attributing a nominal 4m for a future driveway easement), resulted in a ground floor landscaped area of approximately 507.6m² which is only 19.93% of the site. Depending on the basement impacts this percentage would be further reduced.

The proposed residential flat building is therefore unacceptable with respect to landscaped area both in respect of plans submitted in May 2019 and June 2020.

iii. Private Open Space

The DCP requires the principle private open space to have an area of 10m² per dwelling with minimum dimension of 2.5 metres.

Section 4.2.7 of The Box Hill DCP contains the following objectives:

- a. *To provide a high level of residential amenity with opportunities for outdoor recreation and relaxation.*
- b. *To enhance the spatial quality, outlook, and usability of private open space.*
- c. *To facilitate solar access to the living areas and private open spaces of the dwelling.*

The following units do not comply with the required minimum area of 10m² per dwelling and / or minimum dimension of 2.5m.

Unit No.	Dwelling Type	Minimum Area	Minimum Depth
LG01	2 bedrooms	18.14m ²	2m
LG02	2 bedrooms	11.03m ²	2.163 m
LG03	3 bedrooms	13.2m ²	2.471m
LG04	1 bedroom	8.22m ²	2m
LG05	3 bedrooms	10.99m ²	2m
G01	2 bedrooms	18.14m ²	2m
G02	2 bedrooms	10.4m ²	2.163m
G03	2 bedrooms	33.25m ²	1.2m – 1.5m
G05	1 bedroom	8.22m ²	2m
G06	3 bedrooms	10.2m ²	2m
G07	Studio	4.5m ²	1m
101	3 bedroom	21.65m ²	2.4m
102	2 bedrooms	9.32m ²	2.083m
103	2 bedrooms	8.93m ²	2m
104	2 bedrooms	10.58m ²	2.45m
105	3 bedrooms	9.51m ²	2.45m
106	2 bedrooms	10.16m ²	2.485m
107	3 bedrooms	10.638m ²	2m
108	1 bedroom	8.36m ²	2m
201	2 bedrooms	21.65m ²	2.4m
202	2 bedrooms	9.60m ²	2m
203	2 bedrooms	9.80m ²	2m
204	2 bedrooms	10.81m ²	2.4m
205	2 bedrooms	9.73m ²	2.4m

206	Studio	4.23 m ²	1m
207	2 bedrooms	10.16m ²	2.485m
208	3 bedrooms	11.23m ²	2m
209	1 bedroom	8.36m ²	2m
302	2 bedrooms	10.81m ²	2.3m
303	2 bedrooms	9.73m ²	2.3m
304	Studio	4.23m ²	1m
305	Studio	8.18m ²	2m
306	1 bedroom	8m ²	2m
402	2 bedrooms	11.28m ²	2.4m
403	2 bedrooms	10.15m ²	2.4m
404	Studio	4.23m ²	1m
405	Studio	8.18m ²	2m
406	1 bedroom	8m ²	2m

Comment:

Units LG01, LG02, LG03, LG04, LG05, G01, G02, G03, G05, G06, G07, 101, 102, 103, 104, 105, 106, 107, 108, 201, 202, 203, 204, 205, 206, 207, 208, 209, 302, 303, 304, 305, 306, 402, 403, 404, 405 and 406 (a total of 38 units) do not provide either the minimum area or depth. Comparatively, a total of 17 units do not comply with the minimum balcony requirements of the Apartment Design Guide which takes precedence over the DCP controls. Justification has not been provided by the applicant for the above variations. Balconies should at a minimum, comply with the requirements of the ADG.

iv. Front Setback

The DCP stipulates a 6 metre front setback (ie. to Tucana Street) with balconies permitted to encroach to 4.5m for 50% of the building façade for the first 3 storeys only.

The proposed balcony setbacks for the first three storeys are compliant (minimum 4.5m), however the unit facades are not setback a minimum of 6 metres as follows:

Unit	Setback
Unit LG01	5.59m to 6.5m
Unit G01	5.59m to 6.5m
Unit G03	5.67m to 6.42m
Unit 101	5.5m to 6.7m
Unit 104	5.63m to 6.28m
Unit 201	5.5m to 6.7m
Unit 204	5.63m to 6.28m

From the third floor, all balconies and the façade are to be set back a minimum of 6 metres. The following balconies and unit facades do not comply:

Unit	Setback
Unit 301	5.824m to 6.63m
Units 302 and 303	5.69m to 6.34m (unit) and 4.46m to 5.18m (balcony)
Unit 308	5.5m to 6.15m (balcony)
Unit 401	5.824m to 6.61m
Units 402 and 403	5.7m to 6.42m (unit) and 4.51m to 5.16m (balcony)
Unit 408	5.517m to 6.198m (balcony)
Roof	5.71m and 5.815m minimum

The applicant has submitted the following statement in support of the variation:

“The irregular shape of the front boundary creates some minor encroachments to the 6m setback for the front corners of the buildings, however this rapidly increases to be well beyond the 6m. Given the site is uniquely setback from the main road reserve of Mason Road, the proposed arrangement is logical and appropriate.”

Section 5.4 of The Box Hill DCP contains the following objectives:

- a. *To establish a high quality residential environment where all dwellings have a good level of amenity.*
- b. *To encourage a variety of housing forms within residential areas.*
- c. *To ensure the provision of housing that will, in its adaptable features, meet the access and mobility needs of any occupant.*

The building setbacks to Tucana Street are inadequate and inconsistent with the requirements of the Box Hill DCP 2018 and the ADG, and are therefore inconsistent with the desired future streetscape. It is apparent from the Applicant's justification that the front setback was intended to be the Mason Road frontage, however the front setback is Tucana Street. Notwithstanding this, a 6 metre setback would apply if the Tucana Street frontage were considered a rear setback.

v. Side setback

Buildings above three storeys are required to have 6 metre side setbacks. Side setbacks to Level 1 and level 2 (Units 101, 107, 109, 201, 208, 210) propose minor variations in the form of a 500mm deep side return to balconies, with a 6m setback to the building line. The basement levels are proposed to be set back only 1.271m from the side (eastern) boundary).

Comment:

The proposed variation to the side setbacks is the result of balcony returns with only 500mm depth. The proposed variation to these units is considered reasonable as the balcony space does not form part of the primary balcony space. A setback of only 1.271 metres is proposed to the eastern boundary to the basement levels. This will not allow sufficient room to provide landscaping in the remaining setback area. Without finished levels in the side setback area on the plans, the visual impact of this setback is unable to be assessed. The variation to the basement side setback is not supported.

vi. Rear setback

Plans were amended to provide the required 6m minimum setback to the rear (northern boundary). The habitable levels of the building are compliant, however, Basement Levels 1 and 2 are set back a minimum of 2.557m from the northern boundary, with Basement Level 1 appearing to be partially above ground.

Comment:

The development should be designed to better accommodate basement levels below ground to ensure that landscaping and common open space areas within setbacks will not be adversely affected, and to reduce the overall bulk and scale of the building. The proposed setback to Basement Level 1 on the northern boundary is not supported.

vii. 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.*

Comment:

The proposed residential flat building includes provision for 5 adaptable units and 6 disabled parking spaces.

Due to amended plans, the applicant was requested to provide an updated report from an Access Consultant to confirm the site complies with Adaptable Housing Standard (AS 4299-1995). An updated report has not been provided.

c. Multi dwelling Housing (Lots 2 and 3)

The objectives of Section 5.3 - Multi dwelling housing of the DCP are:

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

The following table addresses the relevant development controls of the DCP for multi dwelling housing developments:

5.3 - Multi Dwelling Housing				
Site Coverage (maximum)	50%	Lot 2: 36.31% (1359.17m ²) Lot 3: 37.36% (1,367.93m ²)	Yes	Yes
Landscaped Area (minimum)	30%	Lot 2: 31.18% (1,167.24m ²) Lot 3: 32.2% (1,179m ²) Both calculated post-temporary road closure.	Yes	
Private Open Space (minimum)	16m ² with 3m dimension 10m ² per dwelling if provided as balcony or rooftop with 2.5m dimension.	Lot 2: 22m ² min. Lot 3: 22m ² min. Not applicable	Yes NA	
Front setback (minimum)	4.5m to building façade line; and	Lot 2: 4.993m (Tucana Street) and 4.599m to	Yes	

	3m articulation zone	Aries Way) Lot 3: 4.5m (Aurora Street) and 4.959m to Aries Way).	
Corner lots secondary setbacks	2m	Not applicable	NA
Side setback (minimum)	900mm	Not applicable	NA
Rear setback (minimum)	4.0m	Lot 2: 6.5m to temporary road (west) and 4m (east) Lot 3: 6.5m to temporary road (west) and 4m (east)	Yes Yes
Internal building separation (minimum)	5m (unless dwellings are attached by a common wall)	Lot 2: 13.05m Lot 3: 12.96m	Yes Yes
Car parking	1 space per dwelling plus 0.5 spaces per 3 or more bedroom. Visitor – 1 per 5 units Disabled parking	Lot 2: Required: 30 residential spaces and 4 visitor spaces Provided: 36 residential spaces, 2 visitor spaces and 2 disabled spaces. Lot 3: Required: 30 residential spaces and 4 visitor spaces Provided: 36 residential spaces, 2 visitor spaces and 2 disabled spaces.	Yes, however see comment below. Yes, however see comment below.
5.5 Adaptable Housing			
Adaptable Housing	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). Certification from an accredited Access Consultant confirming compliance with the	Lot 2: Required: 2 Provided: 2 Lot 3: Required: 2 Provided: 2 Inadequate	Yes Yes No. See comment below.

	<p>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>Double garage spaces allocated to adaptable units are able to be utilised as a single disabled garage if required.</p>	<p>Yes</p>
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i. Car parking numbers and distribution

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.

Each proposed townhouse development has 20 dwellings and requires 30 parking spaces plus 4 visitor spaces, one of which must be for disabled persons. The parking arrangement must also allow for the parking associated with adaptable dwellings to comply with standards for disabled parking.

The basement levels to both proposed Lots 2 and 3 are each provided with 36 residential car spaces, 2 visitor spaces and 2 disabled parking spaces, totalling 40 spaces. An extra 6 residential parking spaces have been provided within each development. Stacked parking is proposed in relation to three units in proposed Lot 2 and four units in proposed Lot 3. If these parking spaces were single only, the number of residential parking spaces would still comply.

Two designated visitor spaces are provided in each development however four are required. One of the two designated disabled parking spaces should be provided as a standard visitor space, leaving only one disabled parking space as a fourth visitor space.

In relation to parking associated with adaptable dwellings, the double car garage could revert to a single disabled garage space. Due to the overall surplus of residential parking spaces, the development would still comply even if stacked parking spaces are also not counted.

Overall, provided one disabled parking space is changed to a standard visitor space, the proposed parking numbers are satisfactory for both Lots 2 and 3.

ii. 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.*

Comment:

Two units (10%) are provided in each town house development. The applicant submitted an Accessibility and BCA Compliance Report dated 24 April 2018, signed by an Access Consultant under JS Architects. The report concludes that the development satisfies the relevant standards. Following amendments to the plans the applicant was requested to provide an updated report. This has not been provided.

It is noted that no bathrooms are provided on the ground floor of any of the four proposed adaptable townhouses where it is assumed that an accessible bedroom would be accommodated.

In the absence of ground floor bathrooms and an updated Accessibility Report, the proposed multi dwelling housing developments (Lots 2 and 3) are considered to be unacceptable and do not meet objective (b) of Section 5.5 Adaptable Housing of the DCP.

12. Other matters for consideration

a. Orderly Development

The site is constrained in that, if redeveloped, it is effectively land-locked until such time as future roads are developed. This is since access to Mason Road will no longer be available due to its status as a sub-arterial road, and since the adjoining road reserve zoned R4 High Density Residential is not proposed to be incorporated into the site. The matter of owners consent with regard to alternate access to the site has been addressed in Section 1(a) of this report.

The other matter relating to orderly development is concerning the adjoining land to the north of the site which is currently an area of road reserve, zoned R4 High Density Residential and with an area of approximately 2,700m² (excluding Mason Road widening). The size of this land means it is capable of future development for a residential flat building if not incorporated into the subject site.

Any development of that land would first require a road closure and change in its status to create a development lot. Access to a public road is required for all development lots, however access is denied to this land from Mason Road by the Box Hill DCP. Therein lies the difficulty in ensuring the orderly development of this land. If access is not permitted via Mason Road, alternate access must be provided otherwise its development potential may be reduced.

The applicant was requested to demonstrate that this land could accommodate a satisfactory built form outcome if not incorporated into the development site. The applicant has not provided this information, however, amended plans submitted in June 2020 increased setbacks to the northern boundary with this land to ensure that the required building separation under the Apartment Design Guide was provided on the subject site. The amended plans indicate the provision of a 13 metre road access on the western boundary, shared equally with the adjoining development site (6.5m on either side). The proposed width is compliant with the temporary road requirements of the DCP. No further details of this road have been provided.

Council staff have been advised that the landowners do not wish to purchase the site, however no official contact with Council staff has been made to enquire as to the possible costs or terms of purchase.

On this matter, the applicant provided the following response on 5 June 2020:

1. *Council either directly or indirectly has managed to create a land lock situation;*
2. *Council as I understand been working directly with the NSW government thought strategic planning in preparation of the Growth Centres DCP and understood the implications itself created;*
3. *We also believe that Council has been co-ordinating with Traffic department committee on traffic matters relating to Council's property ie (access / egress from the subject site);*
4. *We also understand that the Mason Road is Council's Asset;*
5. *And Council created and accepted the DCP policy to block access to Mason Road;*
6. *DCP or GCDGP does not show any indicative proposed future roads to Council asset property through 23-23a & 25;*
7. *At pre DA meeting there was also no mention of such proposal;*

Given that the RFB buildings can be withdrawn at any time from the current application, for Council to obtain any future road access would need to do the following;

1. *Approach land owners of 23-23a & 25 to request road/drainage easement /access of consent thought VPA or compensation for loss of potential unit yield and/or Land value;*
2. *Entertain processes to amend the DCP to propose Exit to Mason Road, thought council gazettal and or mediation thought RMS, which council indicated would be an unlikely event;*
3. *LEC Appeal Process which would lead to point 1;*
4. *Sell the land which will have sale implications due to land locking scenario;*

Therefore in identifying these options we conclude the viable options for our owners would be as follows;

- *In accordance with the Growth Centres DCP; the new private road of 13m would be structured in the following way (7m wide road between the towers plus 3m Council asset verge to either side to the boundary line);*
- *RFB Buildings to be altered to cater for the new road width;*
- *Height and Density as proposed would be considered as per revised plans;*
- *Propose the future road as requested by Council and / Drainage Easement through a VPA or reduction to Contribution Costs thought mediation process.*

Comment:

The following matters should be considered in relation to the R4 zoned land:

- i. Allow the development to proceed with no provision for future access to adjoining R4 zoned land. The implication of this is that it assumes that access to that land could be obtained via Mason Road as a variation to the Development Control Plan. It is not appropriate to assume this outcome when the land is not yet officially a development lot and no plans have been prepared for its development.
- ii. The provision of a public road (18 metres) to access the R4 land from Tucana Street equally shared by the subject site and adjoining land at No. 23-23A Mason Road. It is not appropriate to require the applicant to provide and construct a public road that is not planned for in the Indicative Layout Plan in order to provide access to a development lot that technically does not yet exist.
- iii. The provision of an easement for a future private driveway to access the R4 land. It is suggested that an 8 metre wide easement should be required (4 metres on the subject

site, 4 metres on the adjoining site). The easement would need to be in favour of “the public” rather than being attributed to a particular allotment, since the R4 zoned road reserve is not yet a development lot. This width would allow for a 6 metre wide driveway and an additional 2 metres to allow for a footpath and additional width which may be required as a result of walls in order to ensure unimpeded access for service vehicles. The negative of this option is that it determines the point of vehicular access into the future adjoining development site.

If (iii) above was pursued, building setbacks to the private driveway easement would need to be assessed on merit, and the applicant would need to demonstrate an appropriate built form interface, residential amenity and landscaping could be achieved.

The applicant has not satisfactorily addressed the matter of orderly development with respect to the adjoining R4 zoned land.

The applicant has also failed to address orderly development insofar as demonstrating that appropriate stormwater arrangements have been made to drain to Hynds Road and Mason Road.

b. Plans

It is acknowledged that plans submitted in June 2020 were intended by the applicant to be preliminary in nature in order to address some issues raised such as building separation from adjoining R4 zoned land, the provision of access to the same, townhouse privacy with deletion of upper floor rear balconies and the like. Those plans are lacking updated Elevations (multi dwelling housing), Sections (multi dwelling housing and additional residential flat building sections), Landscape Plans and Civil Engineering drawings. In general however, the previously submitted plans (April 2018, May 2019), in addition to the June 2020 amended plans do not provide sufficient detail as follows:

i. Levels

Plans do not provide sufficient detail with respect to levels (existing and proposed) throughout the development sites including all private open space, ground floor unit balconies and common areas, setbacks, within road reserves, and in relation to the existing and proposed or approved development (built form and finished ground levels) and roads on adjoining land. Natural ground level is not noted on all Elevations and Sections.

ii. Sections and Interface with adjoining land / approved development

The Section plans that have been provided since lodgement do not show how the proposed development relates to approved development at No. 27 Mason Road (Development Consent No. 1545/2018/JP) or proposed development on No. 23 – 23A Mason Road (DA No. 1895/2018/JP). Therefore, the relationship of the development site with adjoining land cannot be assessed. It is critical to understand the interface of the development site both with existing natural ground levels, and with proposed or approved development and roads on adjoining land to ensure that a compatible built form and site levels are achieved. Retaining walls may be required on boundaries and impacts with respect to fences and privacy in relation to adjoining dwellings and private open space must be considered.

iii. Turning Circles and Temporary Road

The Subdivision Plan proposes a temporary road and temporary turning circles (see Attachment 9) in the event that Aurora Street, Aries Way and Tucana Street are not constructed beyond the site to the east and west. Turning circles on Aurora Street would impact upon the built form since they encroach upon proposed Lot 3. Similarly, turning circles on Tucana Street and Aries Way would impact upon the road reserve.

The Architectural Plans do not show turning circles, and do not show the development following the removal of the temporary road. The Landscape Plans do not show the development with temporary road between Aurora Street and Tucana Street and turning circles. Engineering Plans do not adequately address these arrangements either.

As a result of the above a full assessment of the plans is unable to be undertaken.

13. 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:

New Roads

1. The local road network (full width and partial width) to be provided within the development sites and outside the development has not been sufficiently addressed in the form of Civil Engineering drawings and owners' consent for the construction and dedication of the roads at no cost to Council. The design was requested to be considerate to the approved master plan for the locality pursuant to various development applications in the vicinity.

Subdivision

2. All proposed new roads as per the Indicative Layout Plan and any temporary roads are required to be designed, constructed and dedicated as public road reserve at cost to Council. Subdivision plan supported by written undertaking of the road construction and dedication are still lacking.

Stormwater Management

3. Stormwater Management measures incorporating temporary detention basins and water quality treatment measures in accordance with the integrated stormwater Management requirements. Details are still lacking to ensure the design compliance.

Vehicular Access and Carpark

4. Submitted design information including vehicular access circulation within the development, 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 design information including longitudinal driveway profiles demonstrating the design compliance of relevant Australian Standards are still lacking.

6. Reference is made to comments provided by Council's Resource Recovery staff relating to the turning templates relating to garbage collection. (Note: they are critical).

Architectural Plans

7. All the plans including Architectural, Landscape and Engineering are to be consistent. Lack of amended information does not enable the completion of the assessment.

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:

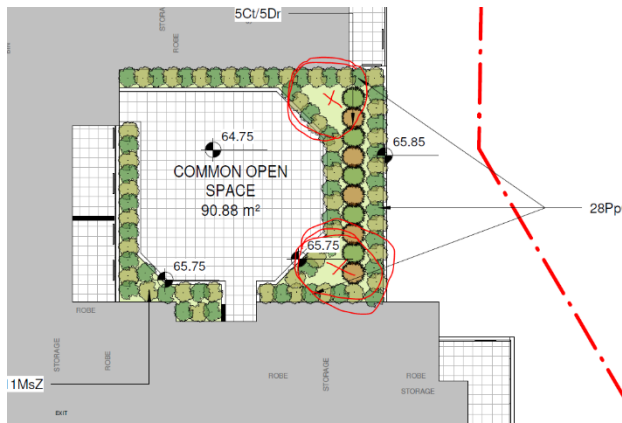
Residential Flat Building

1. Landscaped area at ground level is still below the 30% requirement.
2. Landscape Plans are to be prepared by a qualified Landscape Architect or Landscape Designer and indicate the following;
 - Provide large canopy trees to deep soil zones, particularly to the west and provide additional trees within other deep soil areas within the site. Canopy trees include species as follows:

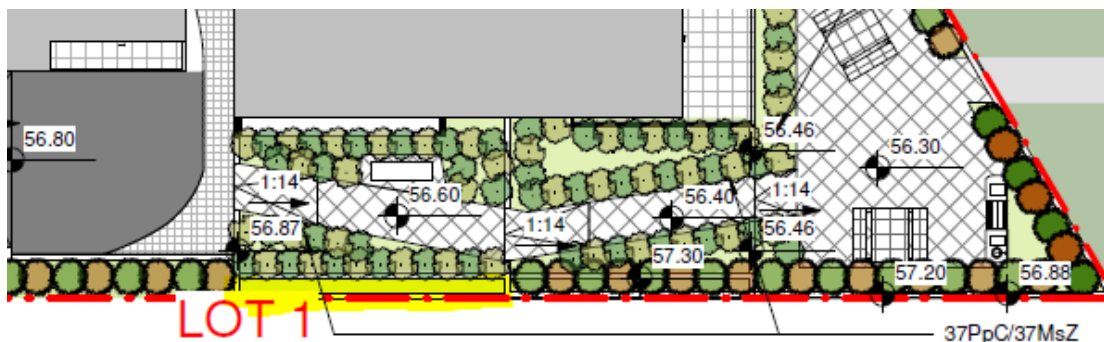
Eucalyptus crebra	Narrow-Leaved Ironbark
Eucalyptus eugenoides	Thin-Leaved Stringybark
Eucalyptus fibrosa	Broad-Leaved Stringybark
Eucalyptus moluccana	Grey Box
Eucalyptus tereticornis	Forest Red Gum

Additional tree cover is required to provide privacy between balconies and common open space, enhance streetscape and increase biodiversity of the area.

- Provide screen planting to boundaries and in front of ground floor units. Currently the ground floor landscaping consists of two species of groundcovers, two species of grasses and 9 trees.
- Screen planting to boundaries to be minimum 2m wide and species that will reach a minimum height of 3m at maturity.
- Additional variety of tree, shrub and groundcover species is to be included in the planting palette for a development of this size. Plant species selected are also to be suitable to microclimatic conditions created by the built form. In particular, the southern boundaries which will be heavily shaded. Fifth floor landscaping lacks variety and planting to be enhanced with feature planting. The 1st floor open space would benefit from the addition of trees eg Pyrus, Magnolia, Elaeocarpus.



- All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size and plant spacings to be between 500mm to 2m depending on species. Groundcovers are to be planted at 5/m². The proposed densities of planting are to be amended.
- Central driveway to be landscaped either side of driveway. Reduce pedestrian entry path width to east of driveway to allow for landscaping. To western side relocate pedestrian access to Unit G03 and allow to landscape adjacent to driveway.
- Provide screen planting to top of proposed wall to eastern boundary.



- Remove small areas of turf indicated on plans as inaccessible and difficult to maintain and inappropriate locations for scale of development.
 - Remove the six listed species in Plant schedule that are not used within design. Only include species used in design in Plant Schedule.
- On site detention tank is to be located under proposed paved area so as not to impact on planting and landscape areas. However if location cannot be changed the tank detail is to be amended to allow for minimum soil depth to allow for proposed planting. Location and shape to be reviewed to allow for screen planting between tank and ground floor balcony of Unit LG04 and maintain screen planting between tank and northern boundary. The proposed tree cannot be planted over tank and is to be relocated. Tank location is to be indicated on Landscape Plan.
 - Indicate stormwater on Landscape Plans to avoid conflict with proposed planting.
 - Retaining wall depths, planting, and surfaces are to be provided for the Fifth Floor Rooftop.

Multi dwelling housing

1. Landscape Plans are to be prepared by a qualified Landscape Architect or Landscape Designer and indicate the following;
 - All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size and plant spacings to be between 500mm to 2m depending on species. Groundcovers are to be planted at 5/m². The proposed densities of planting are to be amended.
 - Additional variety of tree, shrub and groundcover species is to be included in the planting palette for a development of this size. Plant species selected are also to be suitable to microclimatic conditions created by the built form. In particular, the southern boundaries which will be heavily shaded.
 - Remove small areas of turf indicated on plans as inaccessible and difficult to maintain and inappropriate locations for scale of development. Ensure street frontages are fully landscaped.
 - Planting species to boundaries be replaced with planting suitable to provide screening height of minimum 3m at maturity. Allow to plant screen planting in front of fences to western rear courtyards.
 - Additional tree cover is required to provide privacy between units in common open space, enhance streetscape and to side boundaries.
2. Depth of planters have been provided however the deep planters are to be utilised for trees and large shrubs and not just turf and one or two accent plants. Review planting to central courtyards in relation to available soil depths and a good design to enhance the useability of the areas and improve the amenity and provide privacy between public and private areas. For example picnic tables adjacent your living room could be screened with planting to provide a physical and visual separation. Soil depths as follows can support the following planting:
 - 1.2m for large trees or 800mm for small trees;
 - 650mm for shrubs;
 - 300-450mm for groundcover; and
 - 200mm for turf.
3. Provide design of rear courtyards including, finishes, planting, fencing, paving walling etc. Maximise deep soil areas for tree planting. Indicate retaining walls where required.
4. Provide minimum 2m wide landscaping to either side of driveways.
5. Indicate finished road levels to northern and southern boundaries in accordance with civil plans and review retaining wall requirements and path layout to enhance streetscape and increase landscaping.
6. Indicate exiting levels and label contours to eastern boundary and proposed levels to western boundary to assess boundary fencing and walling requirements to cater for level changes, over a metre in some areas.
7. Review planting design to help integrate lifts into communal open space.

Items specifically relating to Lot 2

1. Provide separation between TH20 and communal pedestrian entry path to south eastern access from Aries Way.
2. Consolidate entry stairs to southern boundary and remove one set of stairs leading directly to TH01 and retain adjacent stair and ramp entry.
3. Demonstrate how 1.1m variation in height plus fencing to rear courtyards is to be dealt with between TH18 and TH19 to provide privacy and amenity to TH19.

Items specifically relating to Lot 3

1. Underground onsite detention tank design to Lot 3 to be redesigned to allow for landscaping over and beside tank.
2. Demonstrate how 1.9m variation in height plus fencing to rear courtyards is to be dealt with between TH07 and TH06 to provide privacy and amenity to TH06, as well as 1.35m variation between TH09 and TH08, 1.3m variation between TH18 and TH19, and 1.7m variation between TH13 and TH14.
3. Review planting and possible use of additional walling to add amenity to area adjacent central lift where 3m high walling to communal open space results.

The proposal has not adequately addressed concerns raised by Council's Landscape Assessment Officer on previous occasions.

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:

Residential Flat Building

1. It is noted that the bin carousel system previously shown within the bin storage room on the Lot 1 Ground Floor plan has been deleted. However, the plan still indicates a 'chute' within the bin room. A residential flat building of this scale does not require a chute system to be proposed. Amended plans must be submitted showing the deletion of the 'chute' indicated in the bin storage room on the ground floor level. Additionally, the residential floor levels above the ground floor do not show a chute core. If a chute core was to be provided to line up with the chute termination point indicated within the bin room, the core will be located within the units.
2. Plans show bin rooms within corridors on all residential floor levels with 2 x 240L bins within them. Note that the site will be serviced by 1100L bins that will be permanently stored within the bin collection room(s) on the ground floor level. Residents will be required to access the bin collection room(s) to dispose of all waste directly into the 1100L bins. Council will not provide 240L bins to the site. There are no objections if the bin cupboards are maintained to facilitate onsite operations should the site source their own bins, however it is requested that amended plans are submitted showing the deletion of the bin cupboards on all residential floor levels.

3. Lot 1 Ground Floor Plan shows that the resident access door from the western corridor is proposed to be a roller door. Resident access doors to bin rooms must be wheelchair accessible and not roller doors. Amended plans must be submitted showing the resident access door to the bin storage room as a single or double swinging door.
4. Further clarification is sought on how future residents from the units that are accessible by the eastern corridor will access the bin storage room(s). These units do not have direct access to the western corridor which provides access to the resident access door shown on plans. Amended plans must be submitted showing the travel path residents will be required to take to access the resident access door. Alternatively, if residents are required to walk across the driveway, amended plans must show a line-marked pedestrian pathway and the provision of a separate resident access door.

Multi dwelling housing

1. The swept turning paths overlaid on the basement plans for both townhouses show waste collection vehicles entering the loading area in a forward direction and reversing onto a trafficable internal carpark aisle. This raises vehicular conflict concerns as waste collection vehicles will not have the best visibility whilst performing this manoeuvre. Swept turning paths must be submitted and overlaid on the proposed car park design showing the standard 8.8m long Medium Rigid Vehicle (AS2890.2) reversing into the loading area from an internal turning bay.
2. The swept turning paths overlaid on the basement plans for both townhouses show waste collection vehicles entering the site(s) at a perpendicular angle. Swept turning paths must be submitted demonstrating the standard 8.8m long Medium Rigid Vehicle (AS2890.2) turning into the site(s) from the future roads (Aries Way and Aurora Street), and turning out of the site(s) onto the future roads. Swept turning paths must also demonstrate that two-way traffic flow can be achieved between waste collection vehicles and the standard B99 passenger vehicle (AS2890.1) at the footpath crossover and driveway when collection vehicles enter and exit each site. Waste collection vehicles must not encroach onto the oncoming traffic lane.
3. Lots 2 and 3 Basement Plans show 4 x 660L bins stored in open space at the loading area. This is not supported. Bins must be stored in a designated storage room. Amended plans must be submitted showing the provision of a central bin collection room at the rear of the loading area for each site. The room(s) must be adequately sized to store the minimum number of bins required to service each site. Current Resource Recovery standards are for 1100L bins to be allocated to developments of this scale. The total minimum number of bins for Lots 2 and 3 townhouses is 3 x 1100L garbage bins and 3 x 1100L recycling bins for each site. The room(s) must have a servicing door that opens directly on the loading area with a minimum clear floor width of 1.5m, and must also have a separate resident access door. Resident access to the bin room should not be from the loading area.

Bin dimensions: 1100L: 1245mm deep, 1370mm wide and 1470mm high.

The application is not able to be supported from a waste management perspective in its current form.

SECTION 7.11 CONTRIBUTION COMMENTS

The application was referred to the Forward Planning Team for calculation of Section 7.11 Contributions for infrastructure. The following contributions would apply to the proposed development:

The following monetary contributions must be paid to Council in accordance with Section 7.11 of the Environmental Planning and Assessment Act 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments Made Prior to 1 July 2021

In accordance with the Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2020, if the contribution is paid prior to 1 July 2021, the following monetary contributions must be paid:

	Purpose: Subdivision	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	Purpose: 4 bedroom unit	Purpose: Credit
Open Space - Land	\$ 18,708.85	\$ 13,596.33	\$ 14,396.12	\$ 18,708.85	\$ 18,708.85	\$ 18,708.85
Open Space - Capital	\$ 9,241.33	\$ 6,715.97	\$ 7,111.03	\$ 9,241.33	\$ 9,241.33	\$ 9,241.33
Transport Facilities - Land	\$ 1,909.27	\$ 1,387.53	\$ 1,469.14	\$ 1,909.27	\$ 1,909.27	\$ 1,909.27
Transport Facilities - Capital	\$ 5,413.73	\$ 3,934.33	\$ 4,165.77	\$ 5,413.73	\$ 5,413.73	\$ 5,413.73
Water Management - Land (KCP)	\$ 276.34	\$ 5,375.57	\$ 5,691.78	\$ 7,396.90	\$ 7,396.90	\$ 7,396.90
Water Management - Capital (KCP)	\$ 7,396.90	\$ 5,126.06	\$ 5,427.59	\$ 7,053.58	\$ 7,053.58	\$ 7,053.58
Administration	\$ 7,053.58	\$ 200.83	\$ 212.64	\$ 276.34	\$ 276.34	\$ 276.34
Total	\$ 50,000.00	\$36,336.62	\$38,474.06	\$50,000.00	\$50,000.00	\$50,000.00

No of Lots: 3	No. of 1 Bedroom Units: 13	No. of 2 Bedroom Units: 30	No. of 3 Bedroom Units: 14	No. of 4 Bedroom Units: 33	Sum of Units	No. of Credits: 1	Total \$7.11
\$ 56,126.55	\$ 176,752.25	\$ 431,883.47	\$ 261,923.90	\$ 617,392.05	\$ 1,487,951.67	\$ 18,708.85	\$ 1,469,242.82
\$ 27,723.99	\$ 87,307.66	\$ 213,330.83	\$ 129,378.62	\$ 304,963.88	\$ 734,980.99	\$ 9,241.33	\$ 725,739.66
\$ 5,727.80	\$ 18,037.84	\$ 44,074.26	\$ 26,729.74	\$ 63,005.81	\$ 151,847.64	\$ 1,909.27	\$ 149,938.37
\$ 16,241.19	\$ 51,146.31	\$ 124,973.04	\$ 75,792.20	\$ 178,653.04	\$ 430,564.58	\$ 5,413.73	\$ 425,150.86
\$ 829.03	\$ 69,882.40	\$ 170,753.35	\$ 103,556.65	\$ 244,097.82	\$ 588,290.22	\$ 7,396.90	\$ 580,893.31
\$ 22,190.71	\$ 66,638.82	\$ 162,827.75	\$ 98,750.09	\$ 232,768.07	\$ 560,984.73	\$ 7,053.58	\$ 553,931.16
\$ 21,160.73	\$ 2,610.76	\$ 6,379.16	\$ 3,868.81	\$ 9,119.33	\$ 21,978.06	\$ 276.34	\$ 21,701.72
\$150,000.00	\$ 472,376.05	\$ 1,154,221.85	\$ 700,000.00	\$ 1,650,000.00	\$ 3,976,597.90	\$ 50,000.00	\$ 3,926,597.90

Payments Made 1 July 2021 or After

In accordance with the Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2020, if the contribution is not paid prior to 1 July 2021, the following monetary contributions must be paid:

	Purpose: Subdivision	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	Purpose: 4 bedroom unit	Purpose: Credit
Open Space - Land	\$ 27,192.65	\$13,596.33	\$14,396.12	\$19,994.60	\$24,793.30	\$ 24,793.30
Open Space - Capital	\$ 13,431.95	\$6,715.97	\$7,111.03	\$9,876.43	\$12,246.77	\$ 12,246.77
Transport Facilities - Land	\$ 2,775.05	\$1,387.53	\$1,469.14	\$2,040.49	\$2,530.19	\$ 2,530.19
Transport Facilities - Capital	\$ 7,868.66	\$3,934.33	\$4,165.77	\$5,785.78	\$7,174.36	\$ 7,174.36
Water Management - Land (KCP)	\$ 401.66	\$5,375.57	\$5,691.78	\$7,905.25	\$9,802.51	\$ 9,802.51
Water Management - Capital (KCP)	\$ 10,751.14	\$5,126.06	\$5,427.59	\$7,538.32	\$9,347.53	\$ 9,347.53
Administration	\$ 10,252.13	\$200.83	\$212.64	\$295.34	\$366.21	\$ 366.21
Total	\$ 72,673.23	\$36,336.62	\$38,474.06	\$53,436.21	\$66,260.88	\$66,260.88

No of Lots: 3	No. of 1 Bedroom Units: 13	No. of 2 Bedroom Units: 30	No. of 3 Bedroom Units: 14	No. of 4 Bedroom Units: 33	Sum of Units	No. of Credits: 1	Total \$7.11
\$ 81,577.95	\$ 176,752.23	\$ 431,883.46	\$ 279,924.39	\$ 818,179.04	\$ 1,706,739.12	\$ 24,793.30	\$ 1,681,945.82
\$ 40,295.84	\$ 87,307.65	\$ 213,330.83	\$ 138,270.05	\$ 404,143.44	\$ 843,051.96	\$ 12,246.77	\$ 830,805.19
\$ 8,325.16	\$ 18,037.84	\$ 44,074.26	\$ 28,566.81	\$ 83,496.37	\$ 174,175.27	\$ 2,530.19	\$ 171,645.08
\$ 23,605.99	\$ 51,146.31	\$ 124,973.03	\$ 81,000.90	\$ 236,754.02	\$ 493,874.27	\$ 7,174.36	\$ 486,699.90
\$ 1,204.97	\$ 69,882.39	\$ 170,753.34	\$ 110,673.56	\$ 323,482.82	\$ 674,792.11	\$ 9,802.51	\$ 664,989.60
\$ 32,253.41	\$ 66,638.82	\$ 162,827.74	\$ 105,536.54	\$ 308,468.46	\$ 643,471.57	\$ 9,347.53	\$ 634,124.04
\$ 30,756.38	\$ 2,610.76	\$ 6,379.16	\$ 4,134.71	\$ 12,085.00	\$ 25,209.62	\$ 366.21	\$ 24,843.41
\$218,019.69	\$ 472,376.00	\$ 1,154,221.82	\$ 748,106.96	\$ 2,186,609.15	\$ 4,561,313.92	\$ 66,260.88	\$ 4,495,053.04

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, State Environmental Planning Policy No. 65 and the Apartment Design Guidelines and Box Hill Development Control Plan 2018 and is considered to be unsatisfactory.

The proposed development has been amended on a number of occasions to reduce density, address setbacks and privacy for example. Throughout the course of the application's assessment, the applicant has failed to provide adequate plans and requested information,

including a revised BASIX certificate, revised adaptable housing certification, adequate adjoining landowners' consent, evidence of servicing, sufficient detailed information on plans such as levels, acceptable landscape plans and revised civil engineering plans. The applicant has not demonstrated that the site will be compatible with adjoining approved development. The issue of the orderly development of adjoining land zoned R4 High Density Residential remains unresolved.

No engineering plans have been submitted since May 2019. The applicant has not adequately addressed new roads, subdivision, vehicular access via adjoining land or drainage in engineering plans.

The proposed multi dwelling housing developments are compliant with the key SEPP and DCP controls. However, plans do not detail the development once a temporary road is no longer required and concern is raised with regard to levels in private open space and the interface with adjoining development since adequate information has not been provided to enable assessment. Disabled parking arrangements require amendment and the functionality of designated adaptable dwellings is questioned with regard to the lack of a bathroom on the ground floor.

The proposed residential flat building is unacceptable in terms of building height, density and variations to the Apartment Design Guide and Box Hill Development Control Plan 2018 with respect to unit areas and layout, balconies, separation, setbacks, site coverage and landscaping. In general, plans are insufficient with respect to levels and demonstrated compatibility with approved development on adjoining land. Additional Section Plans are required. The proposed basement level adds bulk and scale to the development, restricts landscaping opportunities, and separates units from finished ground level.

Clarification is required to understand the proposed height of the residential flat building since it appears to have increased in height and yet the amended Clause 4.6 justification refers to the previously proposed maximum height. The Clause 4.6 variation has been reviewed and it is considered that the request does not adequately demonstrate that compliance with the height development standard is unreasonable or unnecessary, or that there are adequate environmental planning grounds to justify contravening the standard. Rooftop common open space is not required for compliance with the Apartment Design Guide or DCP. The proposed variation is considered to be excessive and contributes to the unacceptable density, bulk and scale of the development. It is considered that there is scope to design a more favourable outcome on the site within the given height limit, which reduces the overall bulk and scale of the development.

Information requested by Council's Subdivision Engineering and Landscaping Assessment staff has not been provided.

Given the significant amount of time that the application has been under consideration, and the outstanding matters remaining, it is considered necessary to now recommend the application for refusal.

The Development Application is recommended 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 proposed development is inconsistent with the planning principles, vision and objectives outlined within “Hills 2026 – Looking Towards the Future” as the proposed development will not ensure a consistent built form is provided with respect to the streetscape and character of the locality.

RECOMMENDATION

- (i) The Development Application be refused as follows:
- 1) The proposal has not provided adequate evidence of the consent of adjoining landowners at No. 23-23A Mason Road, No. 27 Hynds Road, No. 29 Hynds Road or No. 25 Hynds Road.
(Section 4.15(a)(iv) and (e) of the Environmental Planning and Assessment Act, 1979).
 - 2) The proposed development exceeds the draft maximum residential density controls under the proposed amendments to the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and to The Box Hill Development Control Plan 2018.
(Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979).
 - 3) The proposed development proposes an unacceptable variation to the height of buildings control in relation to Clause 4.3 Height of Buildings of Appendix 11, State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
 - 4) The Clause 4.6 variation request has not demonstrated that compliance with the development standard is unreasonable or unnecessary or that there is adequate environmental planning grounds to justify contravening the development standard.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
 - 5) The proposal has not satisfied the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development with respect to context and neighbourhood character, built form and scale, density, sustainability, landscaping and amenity.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
 - 6) The proposal does not satisfy the provisions of the Apartment Design Guidelines with respect to building separation, unit size, unit layout and balcony areas.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
 - 7) The proposed multi dwelling housing developments do not satisfy the requirements of the Box Hill Development Control Plan 2018 with respect to cut and fill and adaptable housing.
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
 - 8) The proposed residential flat building does not satisfy the requirements of the Box Hill Development Control Plan 2018 with respect to cut and fill, site coverage, landscaped area, private open space, setbacks and adaptable housing.
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
 - 9) 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).
 - 10) The proposal has not satisfied the requirements of Clause 6.1 – Public Utility Infrastructure of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 since evidence that the site can be serviced for electricity has not been submitted.

(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

- 11) 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.
(Section 4.15(1)(a)(i) and (iii), (b) and (c) of the Environmental Planning and Assessment Act, 1979).
 - 12) The submitted plans are inadequate and lack detail which has prevented a complete assessment of the application.
(Section 4.15(1)(b) and (c) of the Environmental Planning and Assessment Act, 1979).
 - 13) The proposal is not in the public interest since it has not adequately resolved the issue of the future orderly development of the adjoining R4 zoned land and since it is not demonstrated that the development is compatible with the surrounding context and approved development.
(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 and detail of road reserve
3. SEPP (SRGC) Zoning Map
4. SEPP (SRGC) Height of Buildings Map
5. SEPP (SRGC) Floor Space Ratio Map
6. SEPP (SRGC) Residential Density Map
7. SEPP (SRGC) Indicative Road Layout Plan and Approved Cadastre
8. Overall Site Plan
9. Subdivision Plan
10. Residential Flat Building Basement Plans
11. Residential Flat Building Floor Plans
12. Residential Flat Building Elevations
13. Residential Flat Building Perspectives
14. Lot 2 Townhouse Plans
15. Lot 3 Townhouse Plans
16. Landscape Plans
17. Clause 4.6 Variation Request (May 2019)
18. Landowner consent letters

ATTACHMENT 1 – LOCALITY PLAN



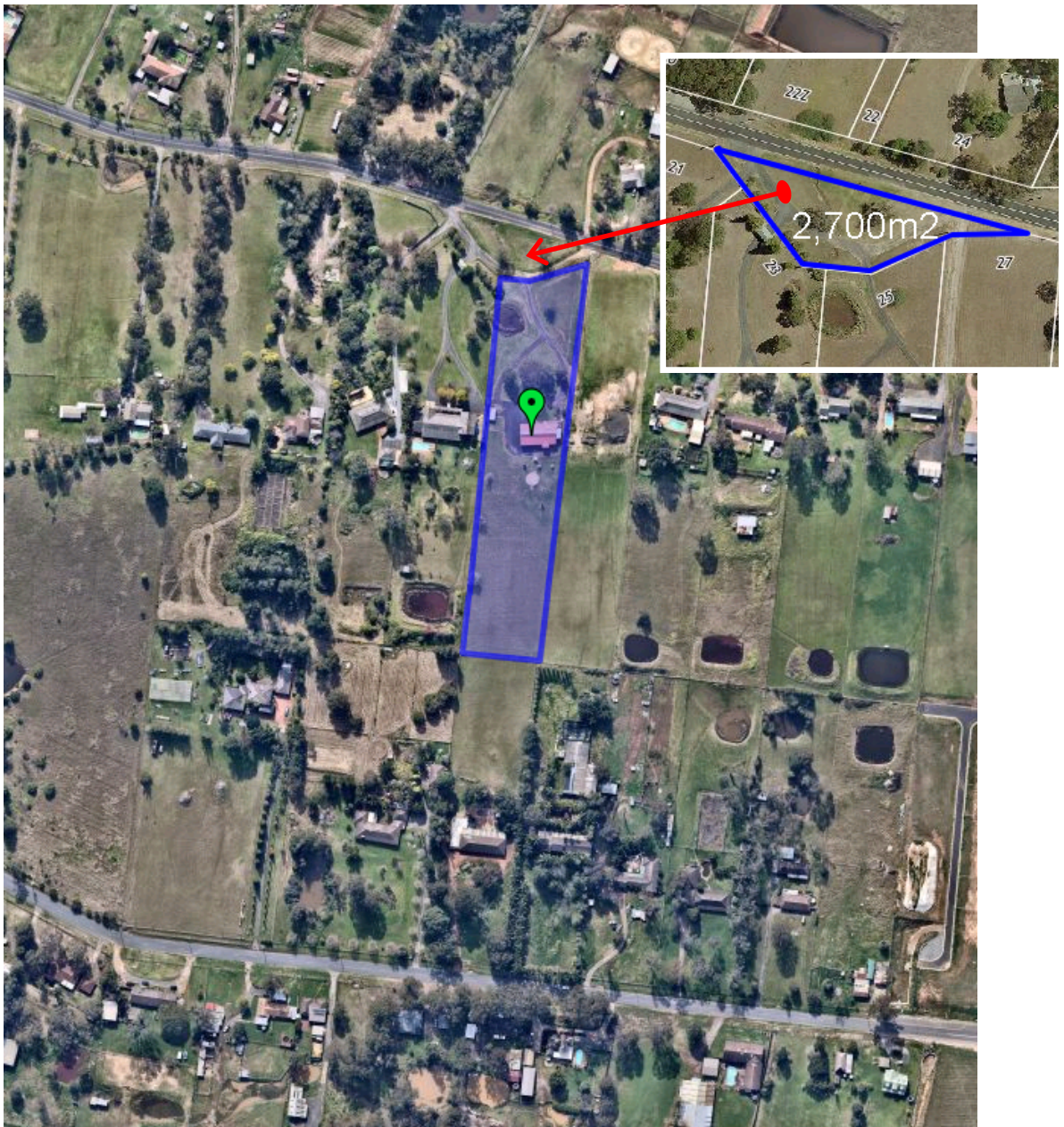
- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED

THE HILLS
Sydney's Garden Shire

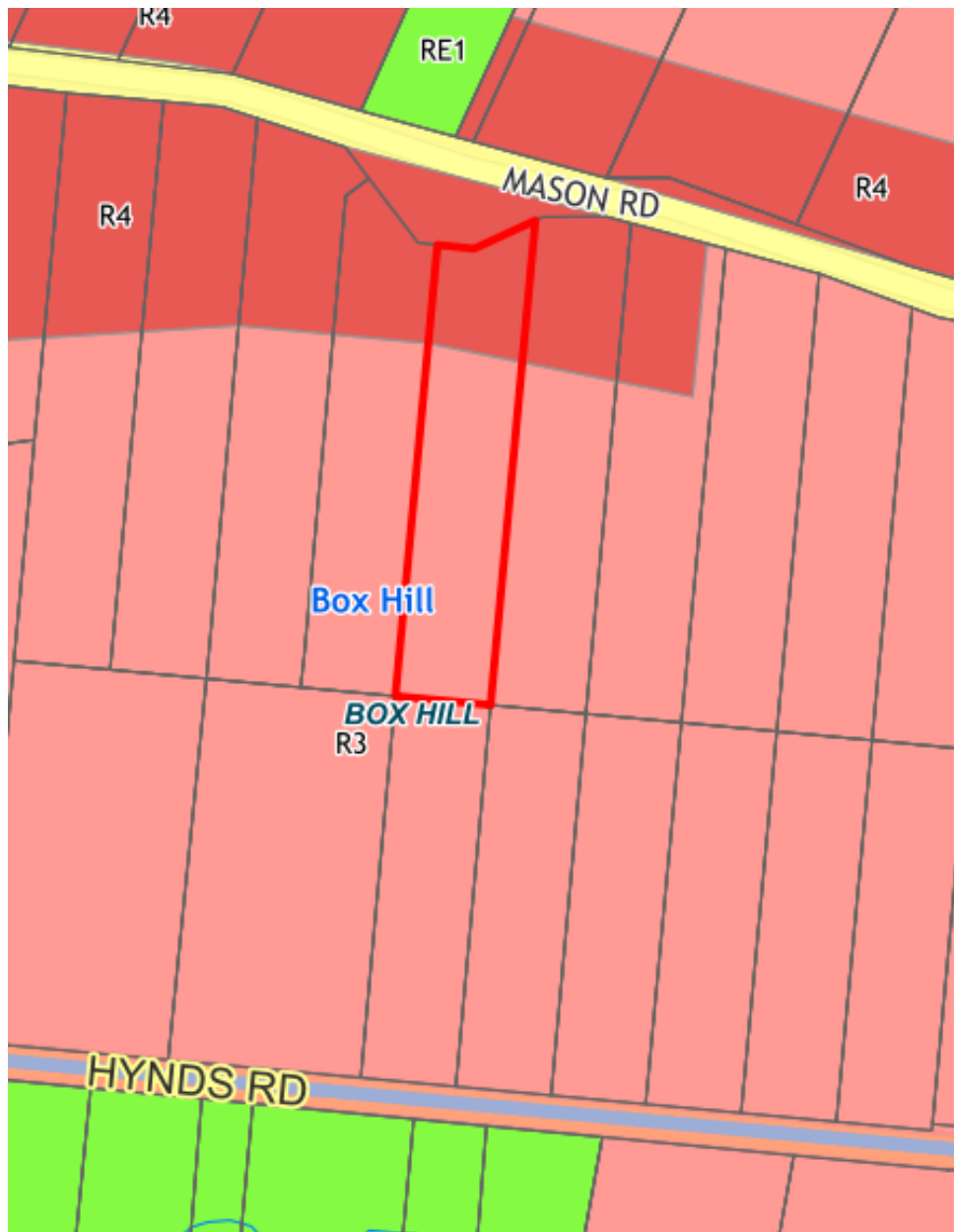
THE HILLS SHIRE COUNCIL

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 (LP); CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.

ATTACHMENT 2 – AERIAL PHOTO

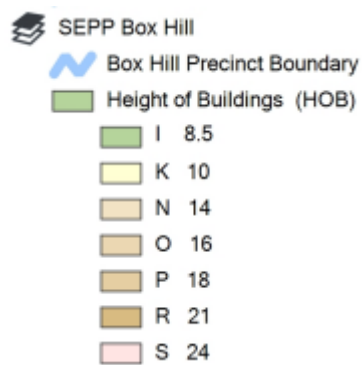


ATTACHMENT 3 – ZONING MAP

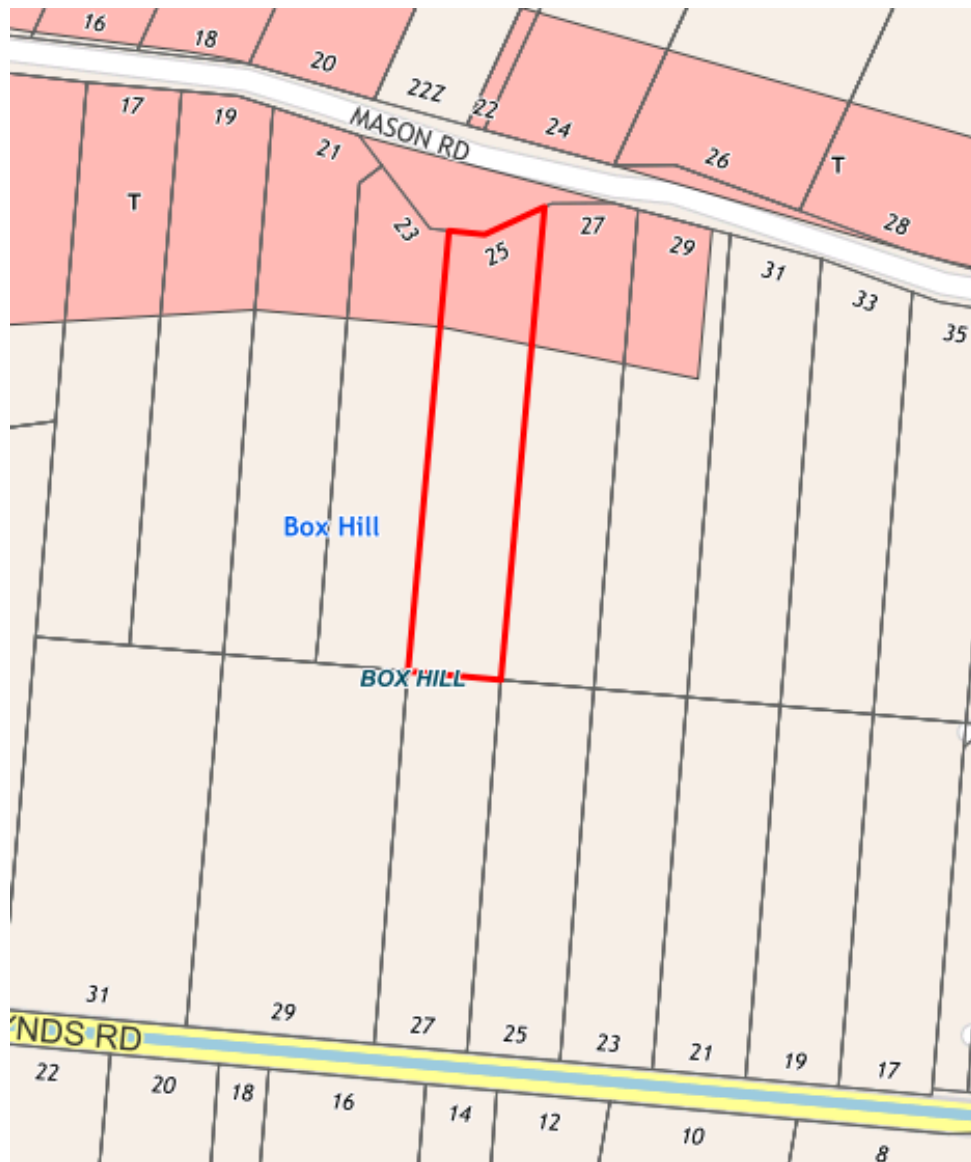


- SEPP Box Hill
- Box Hill Precinct Boundary
- Land Zoning (LZN)
- B2 Local Centre
 - B6 Enterprise Corridor
 - B7 Business Park
 - E2 Environmental Conservation
 - IN2 Light Industrial
 - R1 General Residential
 - R2 Low Density Residential
 - R3 Medium Density Residential
 - R4 High Density Residential
 - RE1 Public Recreation
 - RE2 Private Recreation
 - SP2 Infrastructure

ATTACHMENT 4 – HEIGHT OF BUILDINGS MAP



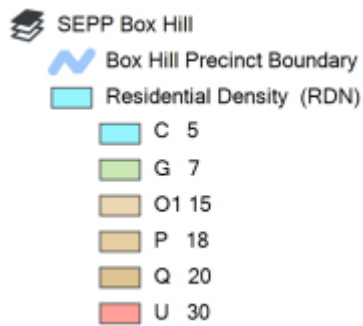
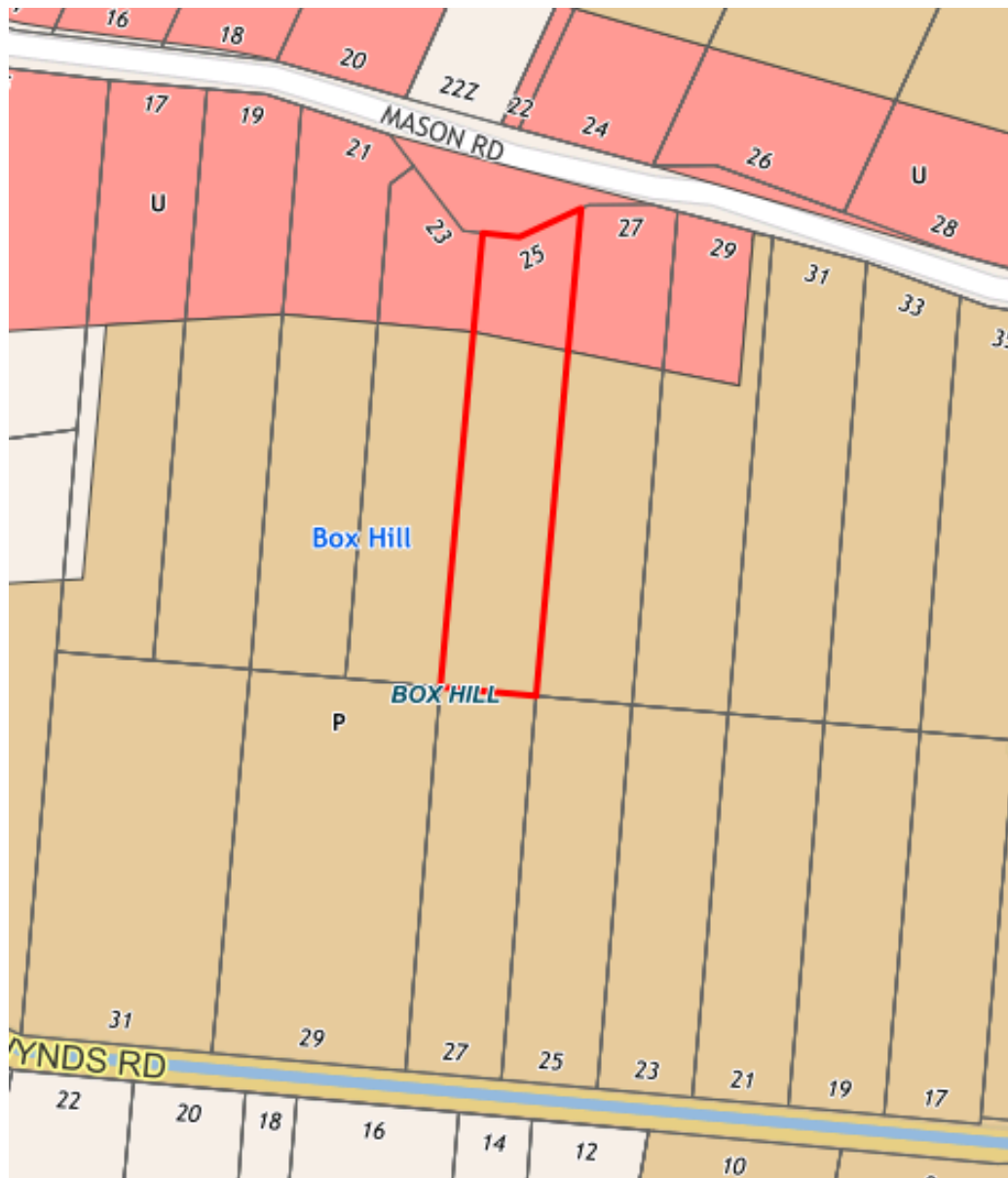
ATTACHMENT 5 – FLOOR SPACE RATIO MAP



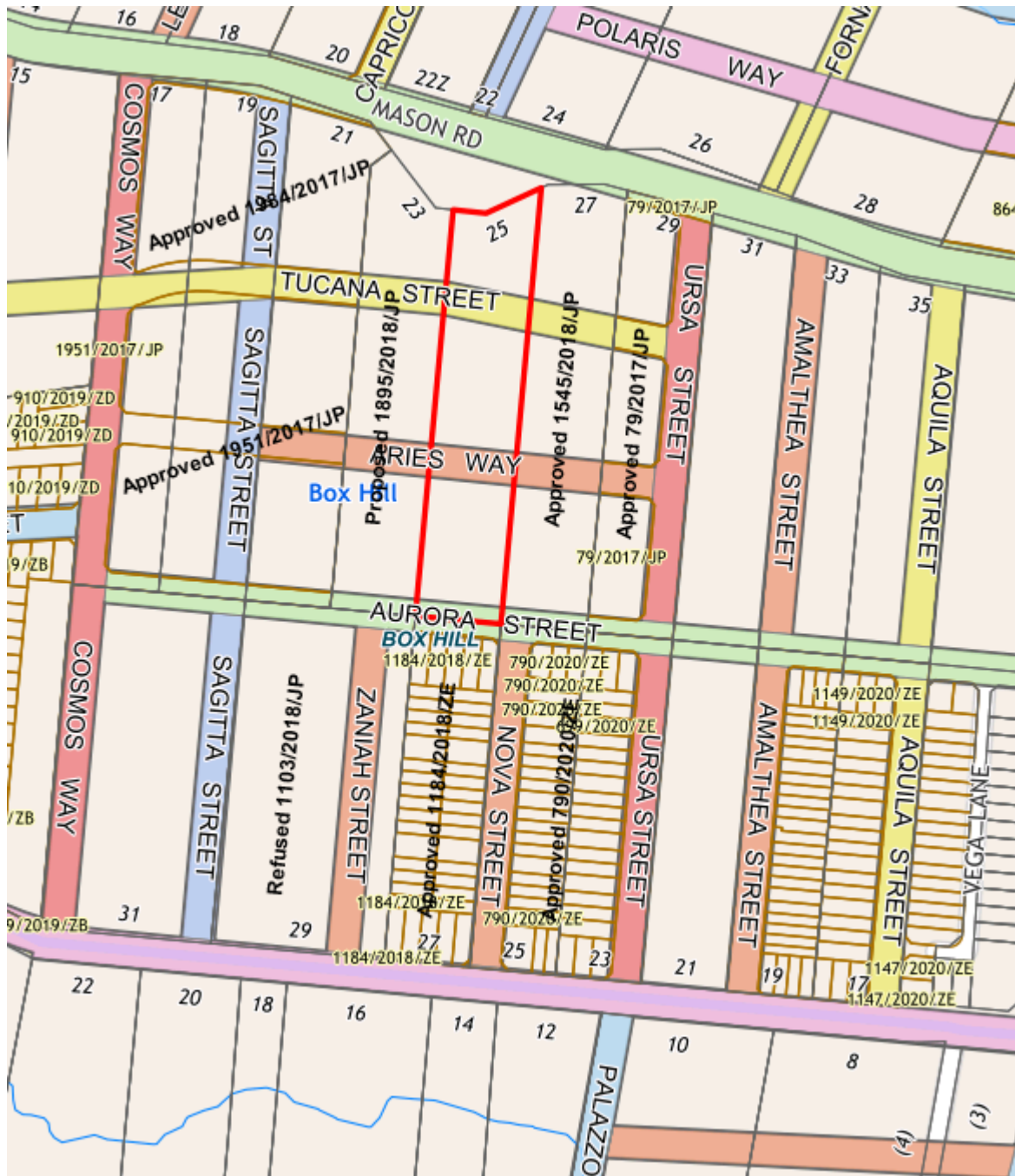
FSR - Maximum Floor Space Ratio (n:1)

- D 0.5
- H 0.7
- N 1.0
- P 1.25
- T 2.0

ATTACHMENT 6 – RESIDENTIAL DENSITY MAP

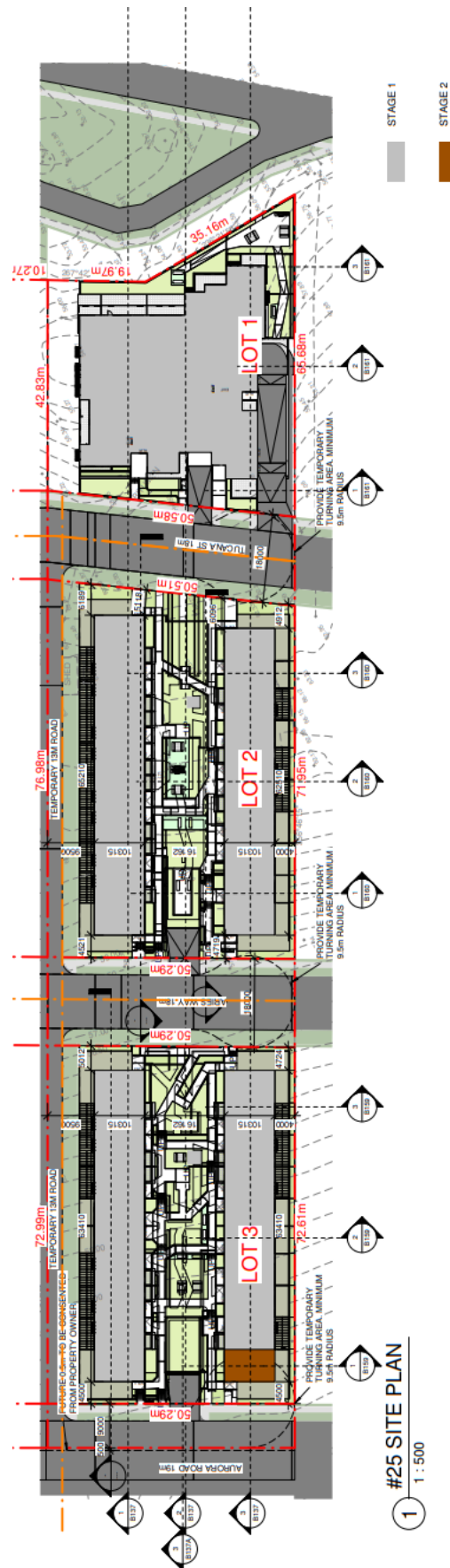


ATTACHMENT 7 – INDICATIVE LAYOUT PLAN AND APPROVED CADASTRE



- Proposed Cadastre
- Az Proposed Road Names
- DA - Parcels
- Proposed Road Name Section
- 0
- 1
- 2
- 3
- 4
- 5
- 6

ATTACHMENT 8 – OVERALL SITE PLAN (MAY 2019)



[illegible]

1 SUBDIVISION PLAN
1 : 500

[illegible]

ATTACHMENT 11 – RFB FLOOR PLANS (LOWER GROUND)



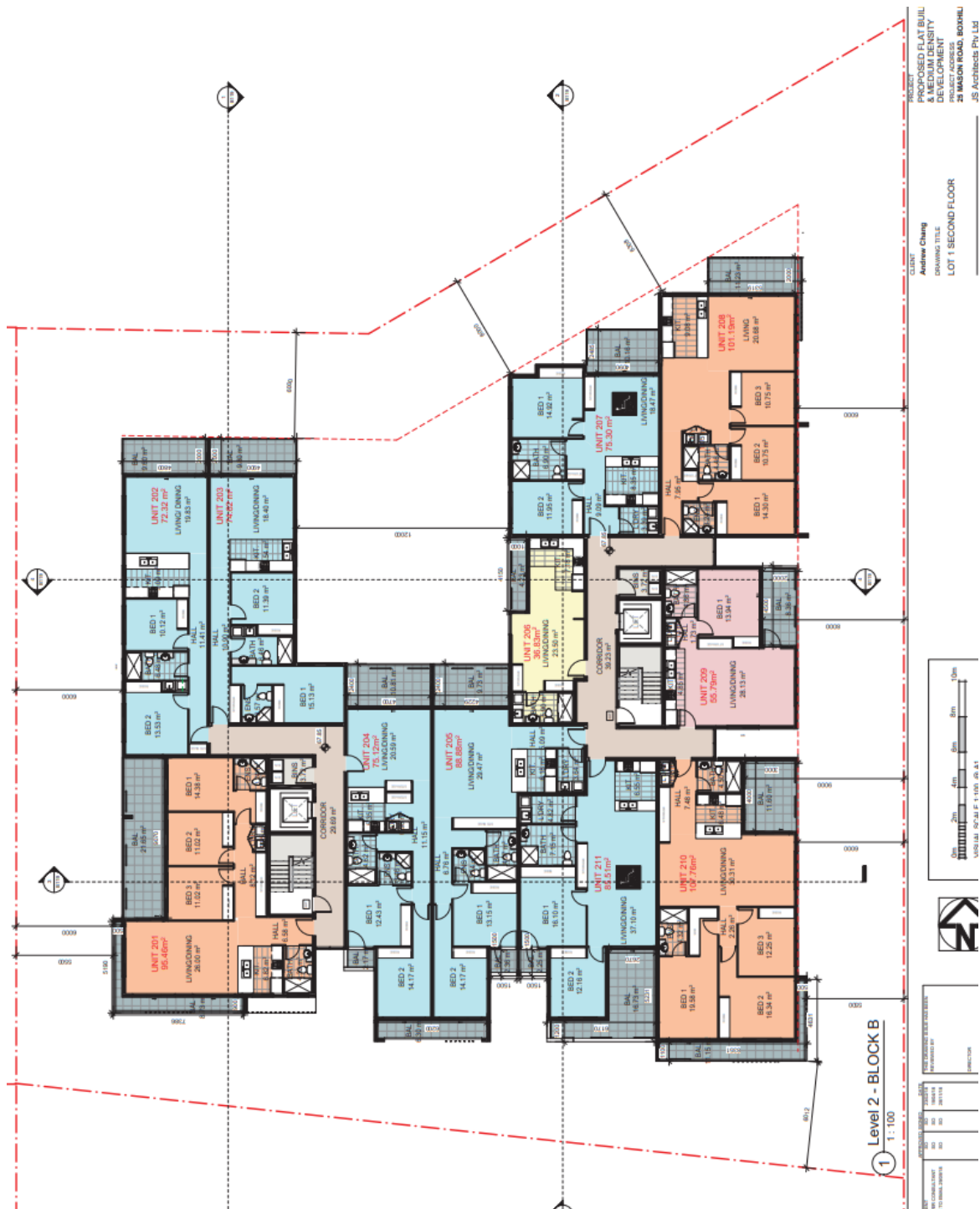
ATTACHMENT 11 – RFB FLOOR PLANS (GROUND)



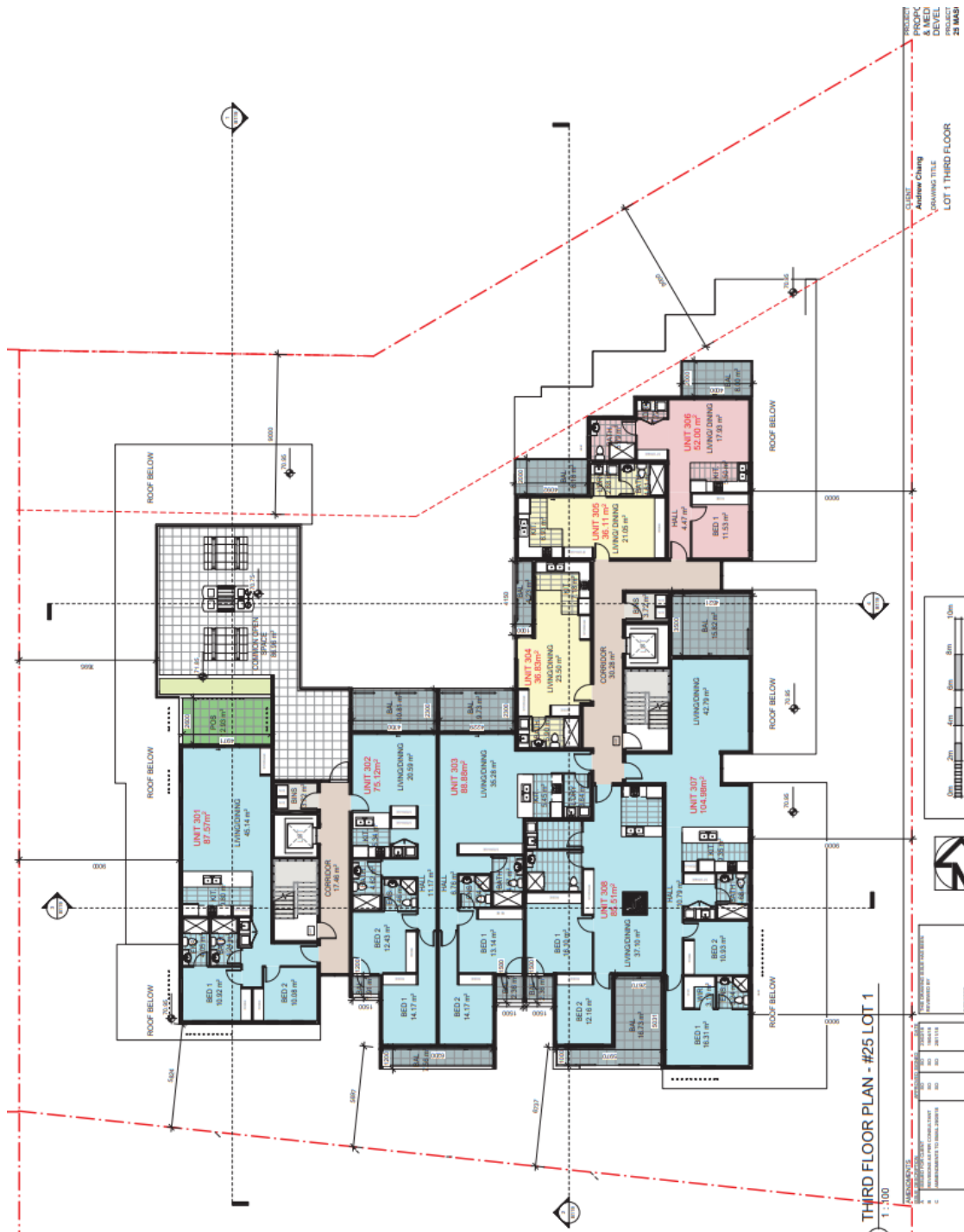
ATTACHMENT 11 – RFB FLOOR PLANS (LEVEL 1)



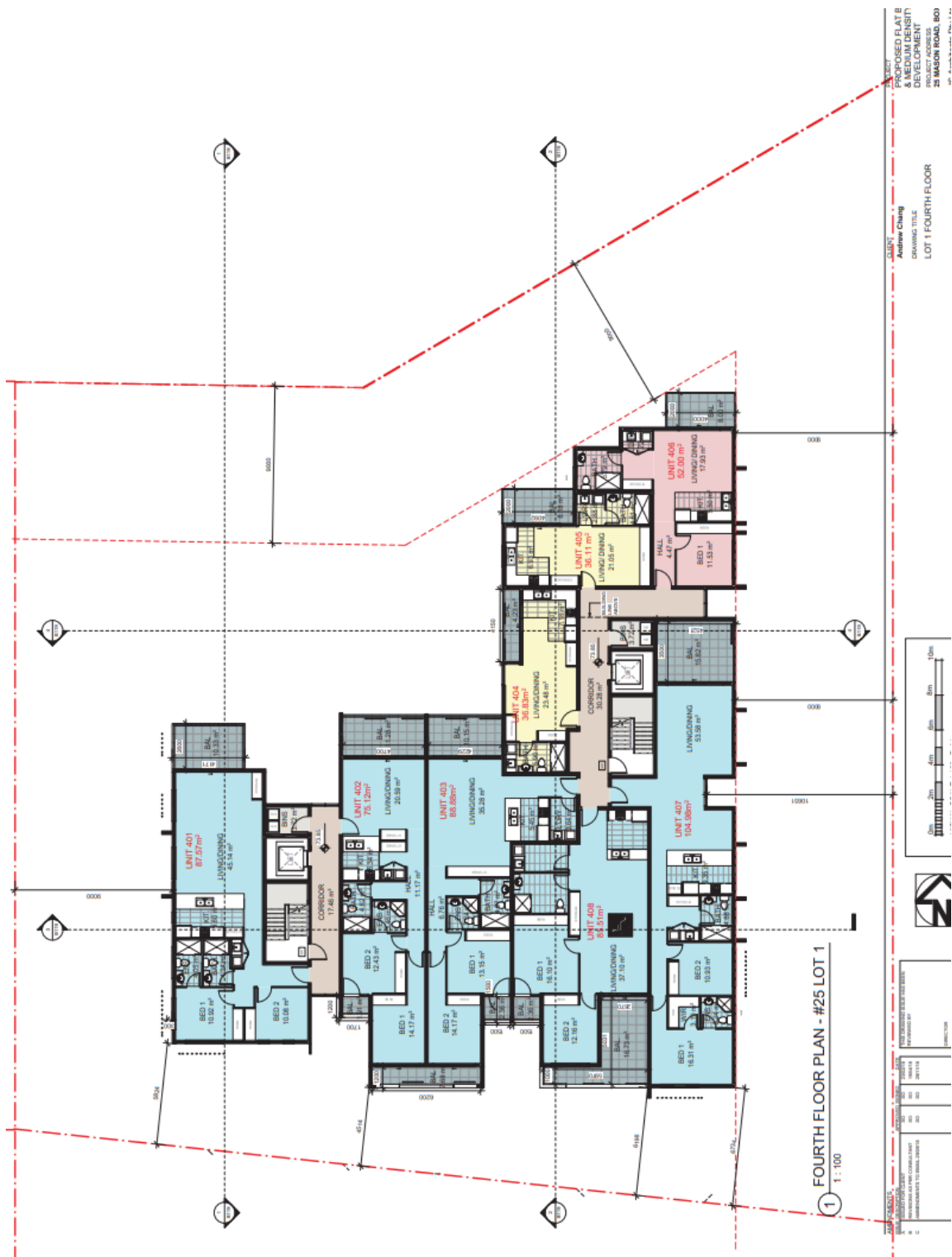
ATTACHMENT 11 – RFB FLOOR PLANS (LEVEL 2)



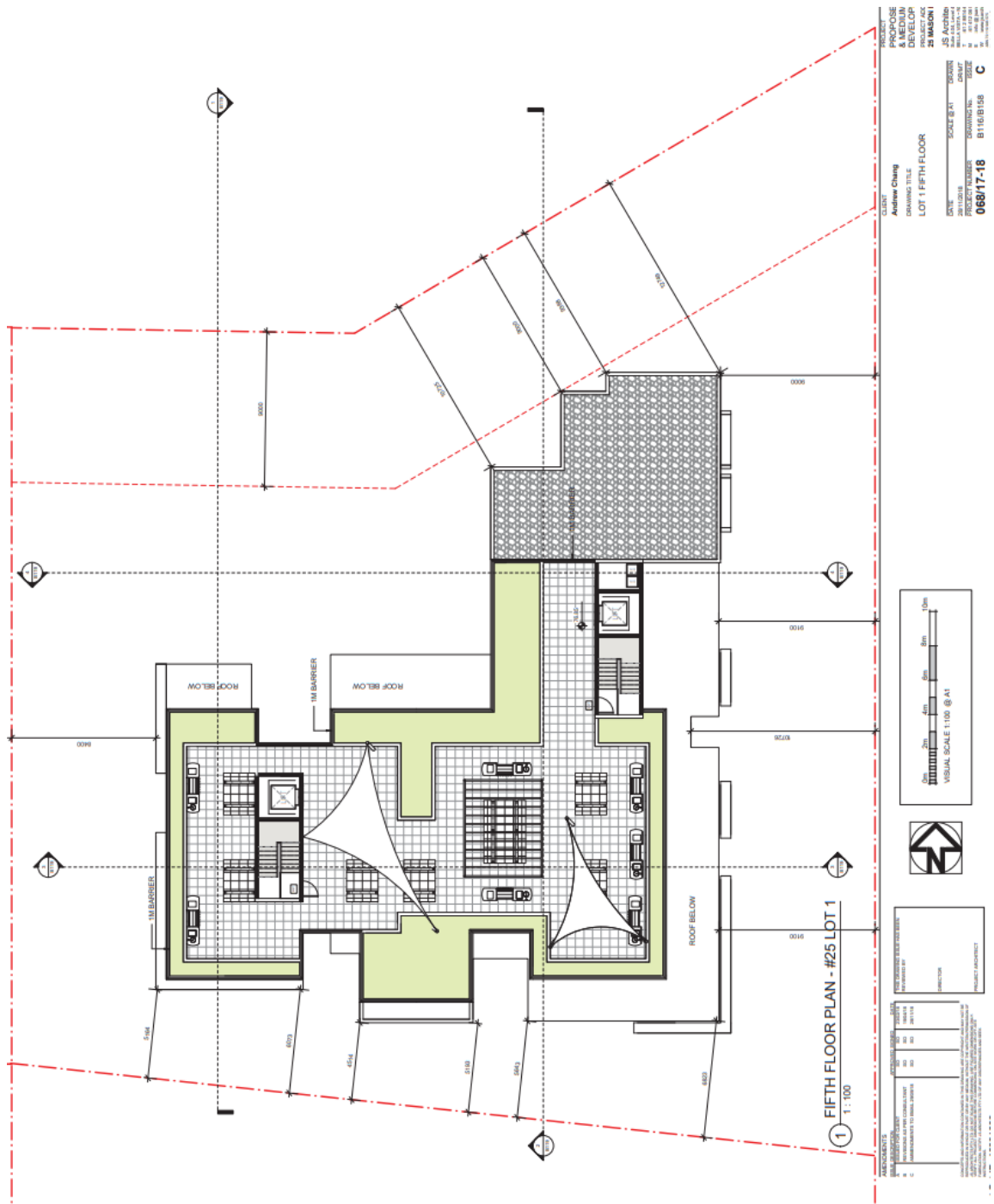
ATTACHMENT 11 – RFB FLOOR PLANS (LEVEL 3)



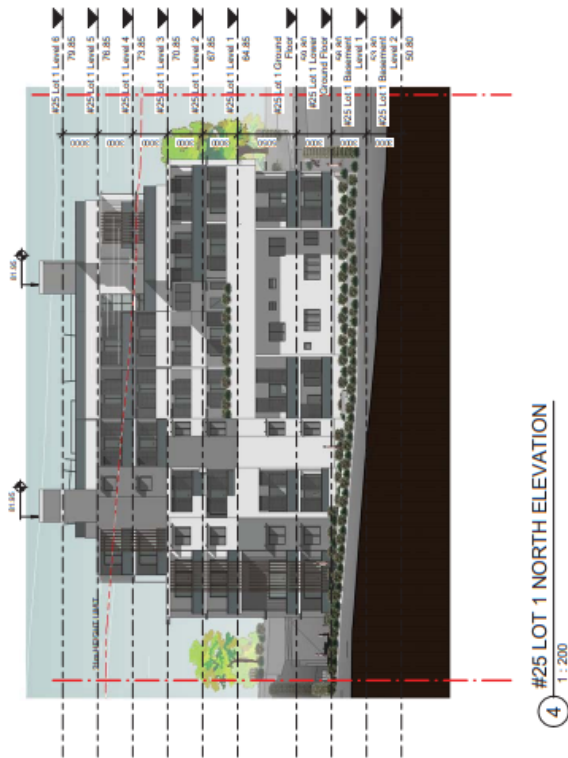
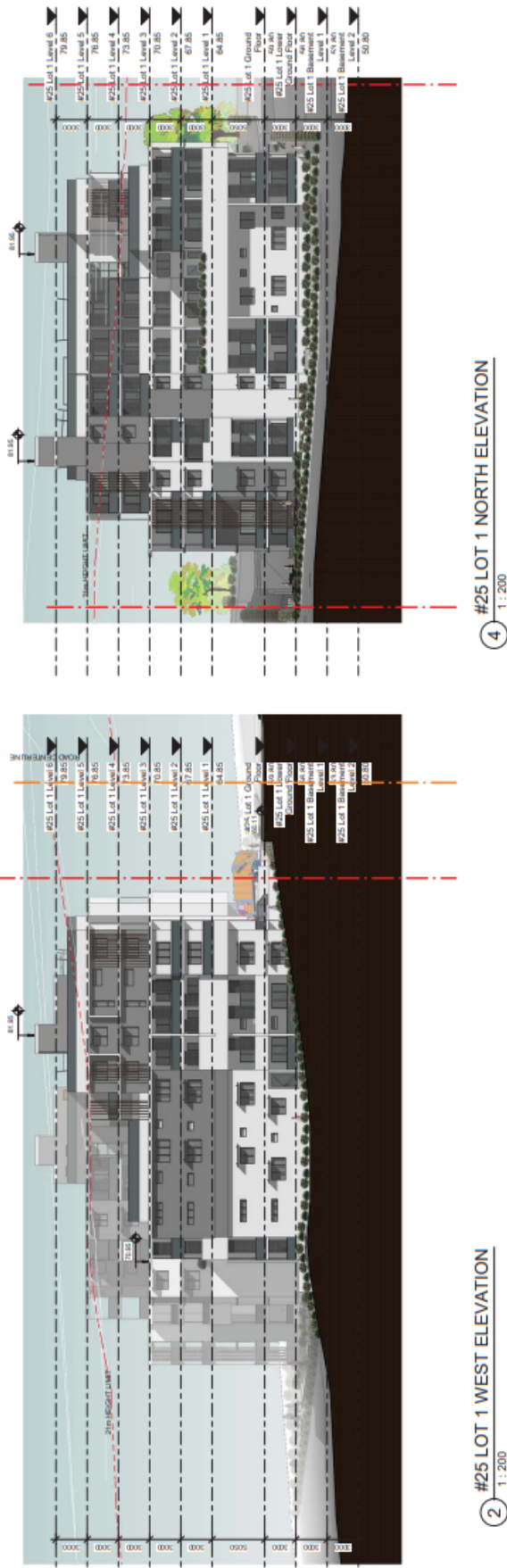
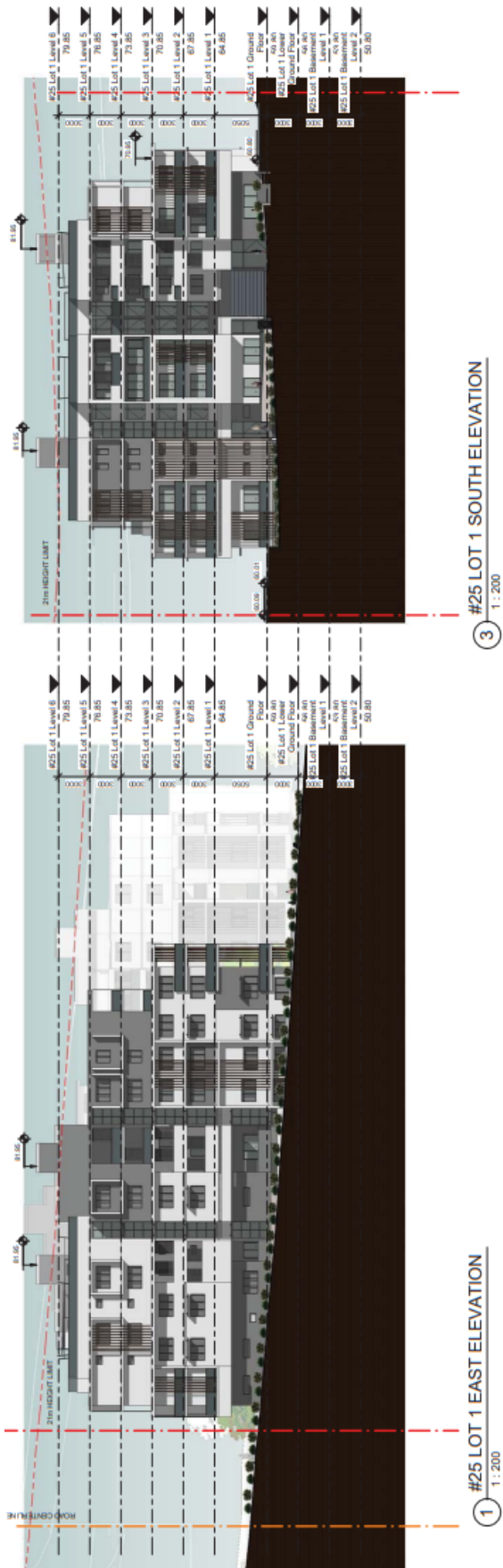
ATTACHMENT 11 – RFB FLOOR PLANS (LEVEL 4)



ATTACHMENT 11 – RFB FLOOR PLANS (LEVEL 5 ROOF)



ATTACHMENT 12 – RFB ELEVATIONS



ATTACHMENT 13 – RFB PERSPECTIVES



① #25 LOT 1 PERSPECTIVE 01



② #25 LOT 1 PERSPECTIVE 02

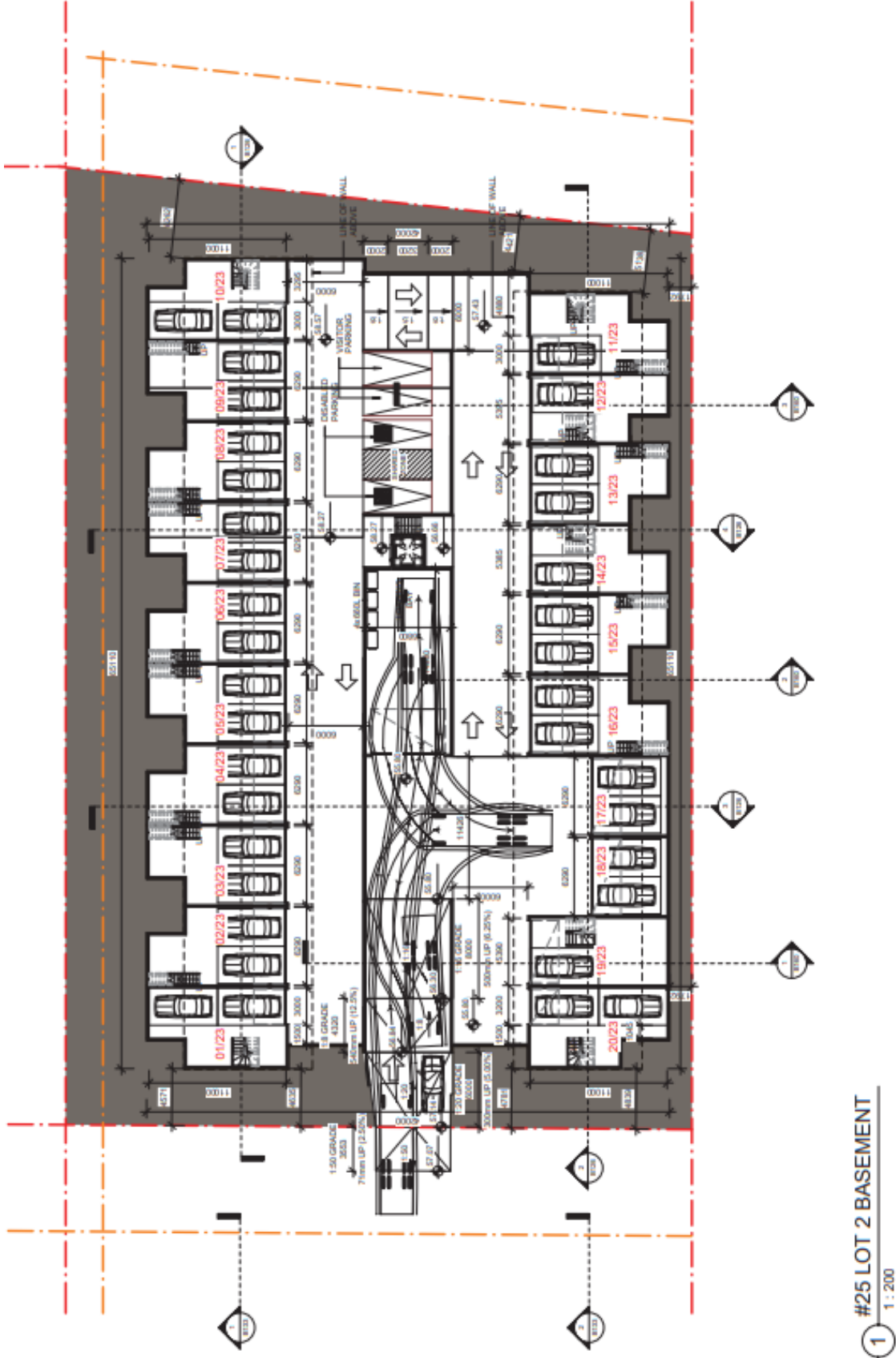


③ #25 LOT 1 PERSPECTIVE 03

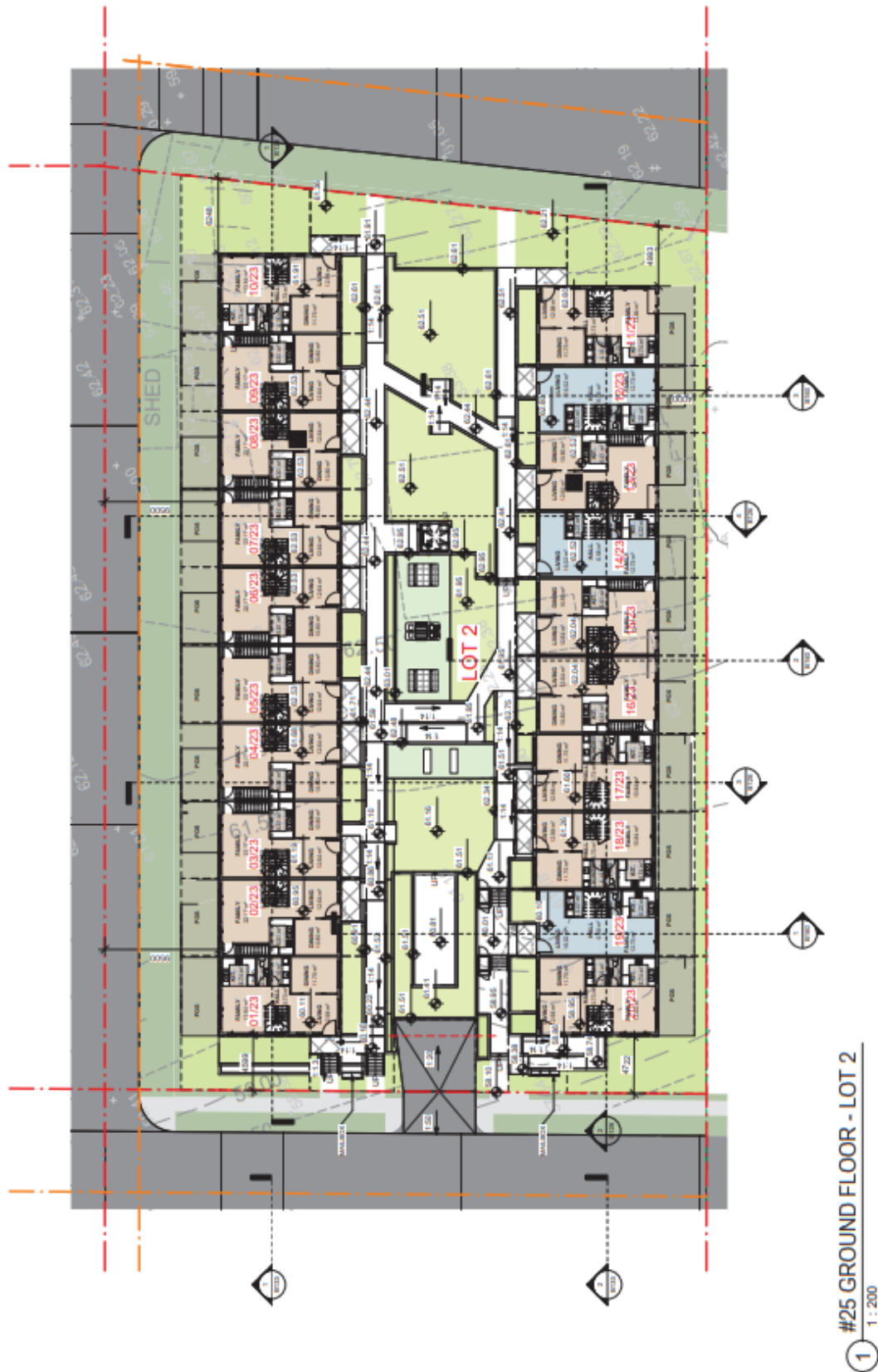


④ #25 LOT 1 PERSPECTIVE 04

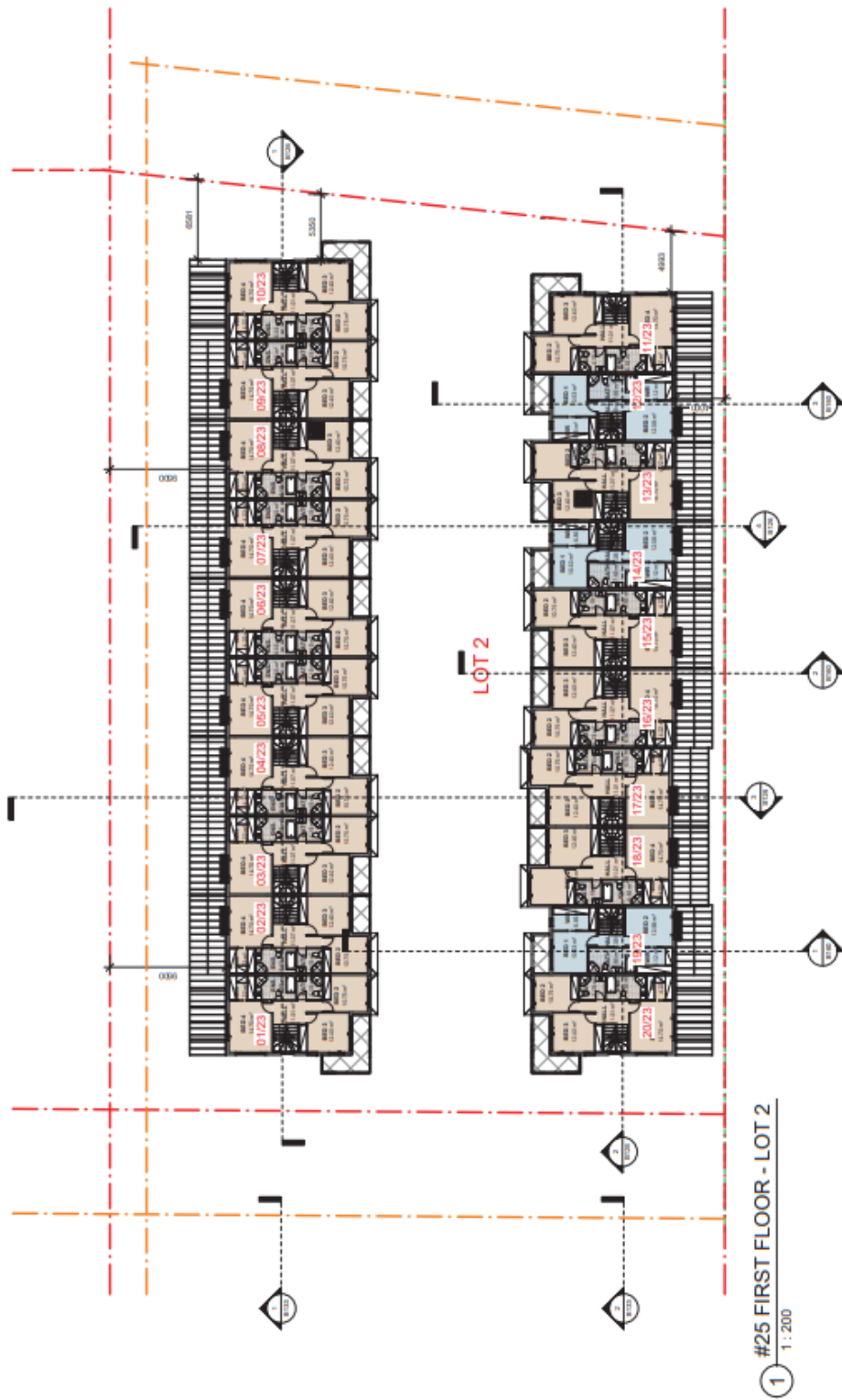
ATTACHMENT 14 – LOT 2 TOWNHOUSE PLANS (BASEMENT)



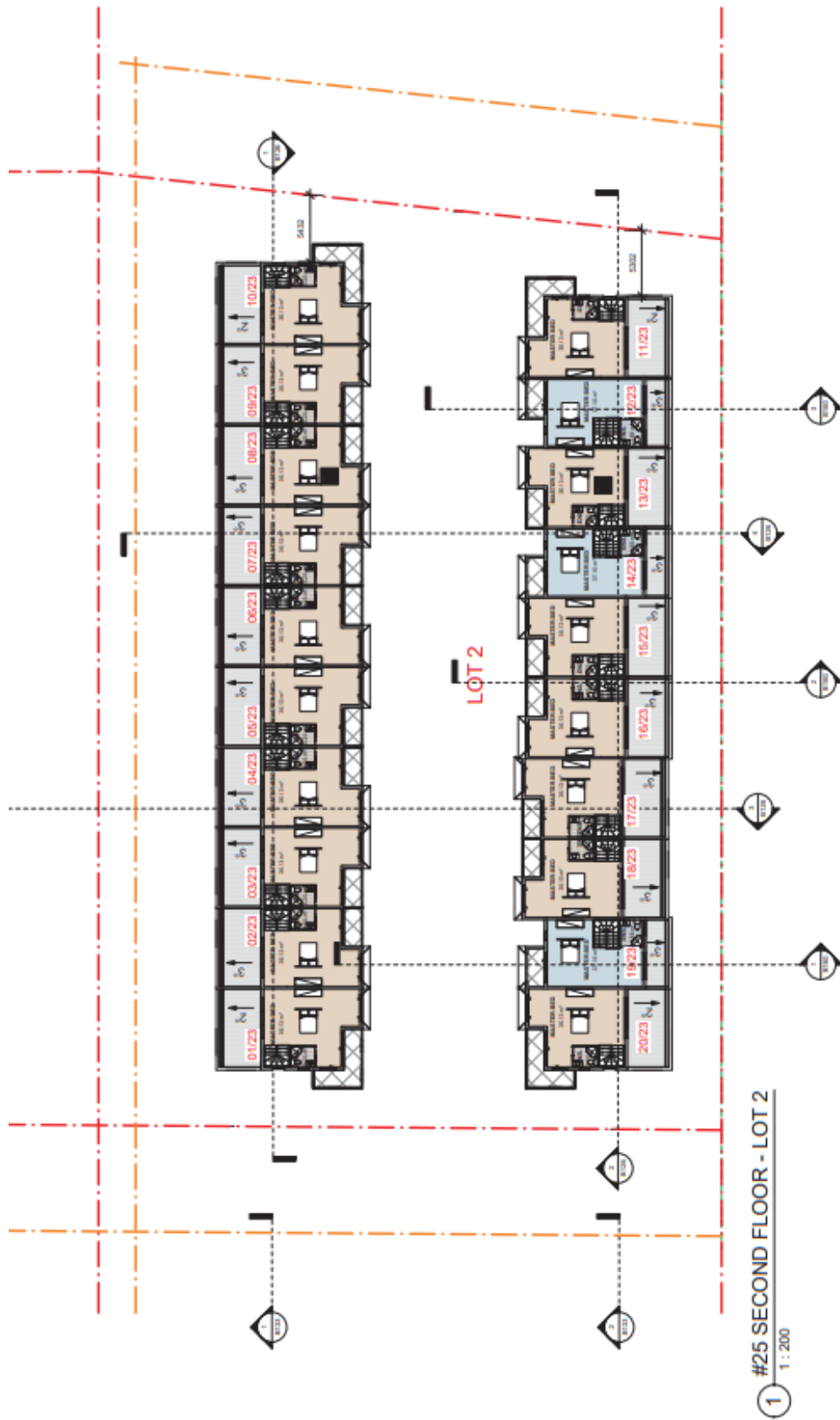
ATTACHMENT 14 – LOT 2 TOWNHOUSE PLANS (GROUND)



ATTACHMENT 14 – LOT 2 TOWNHOUSE PLANS (FIRST FLOOR)



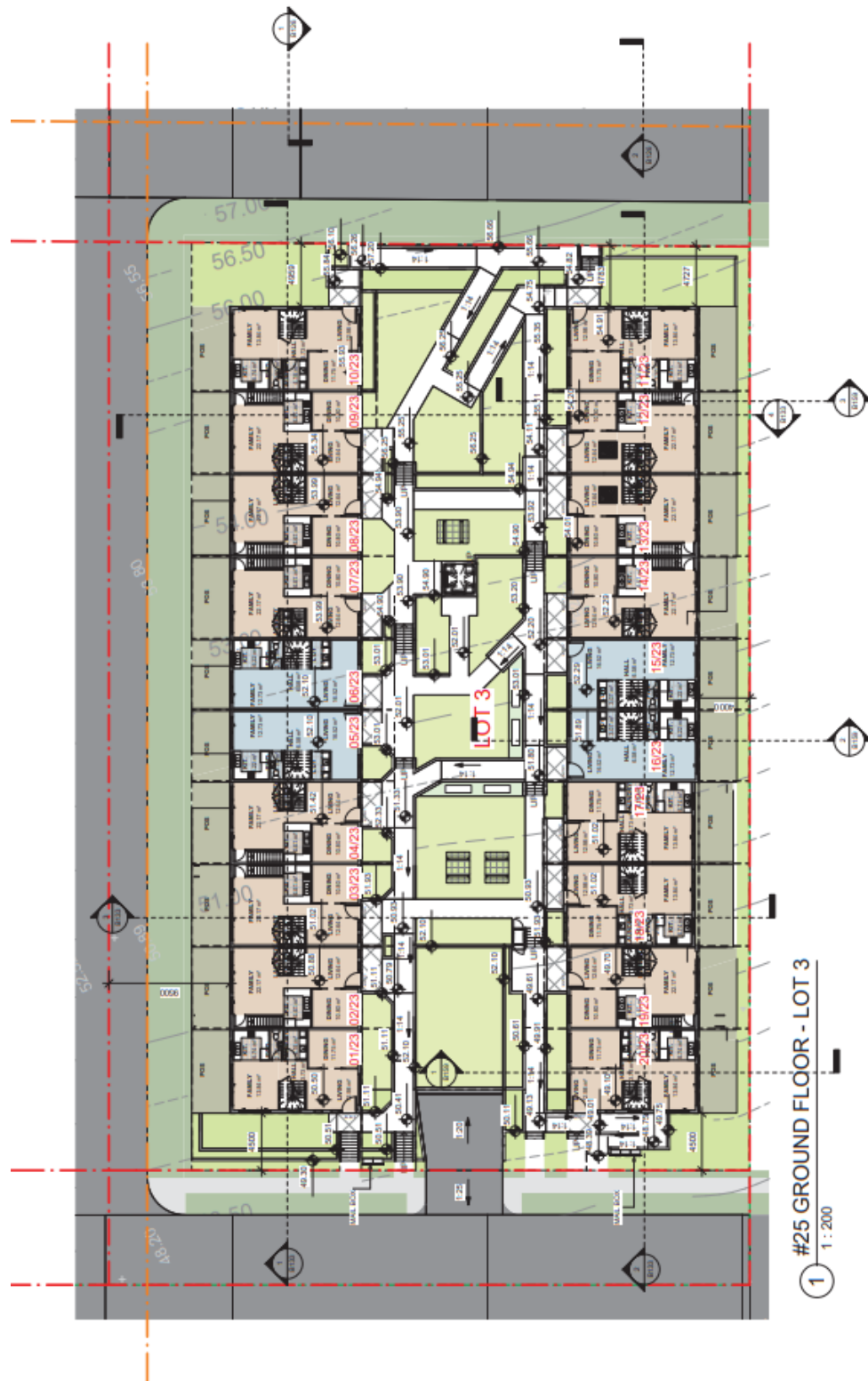
ATTACHMENT 14 – LOT 2 TOWNHOUSE PLANS (SECOND FLOOR)



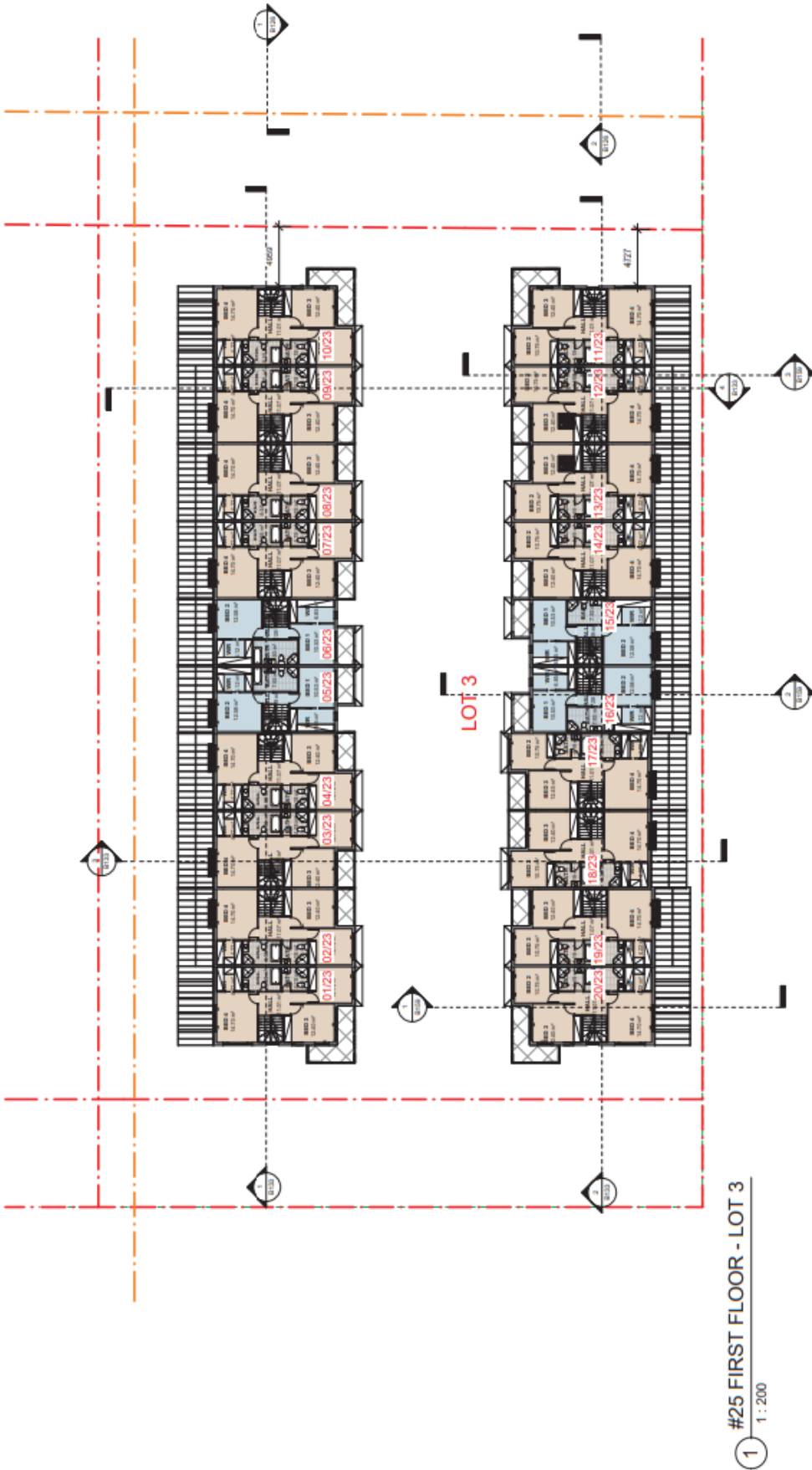
#25 LOT 3 BASEMENT

1:200

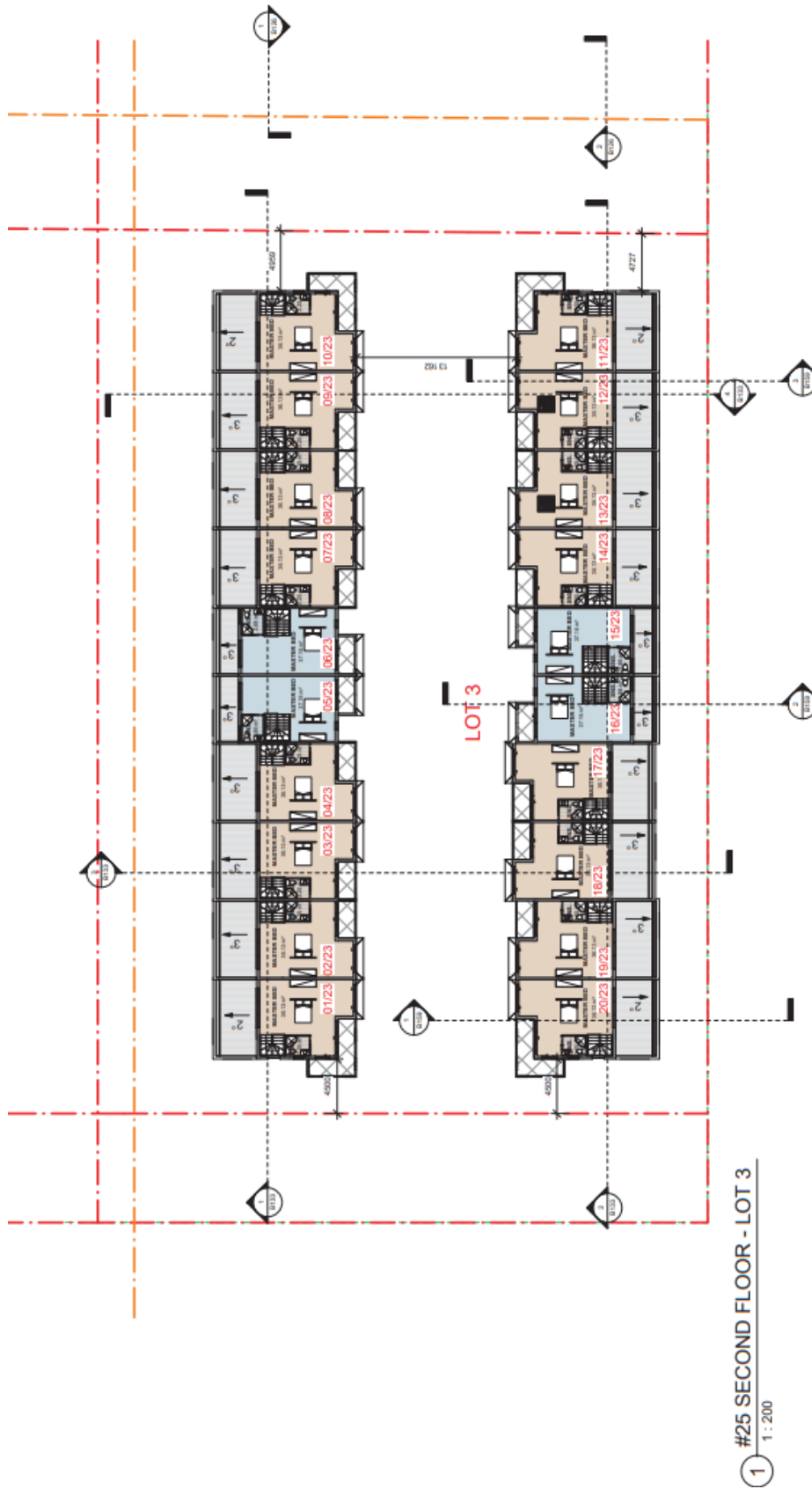
ATTACHMENT 15 – LOT 3 TOWNHOUSE PLANS (GROUND)



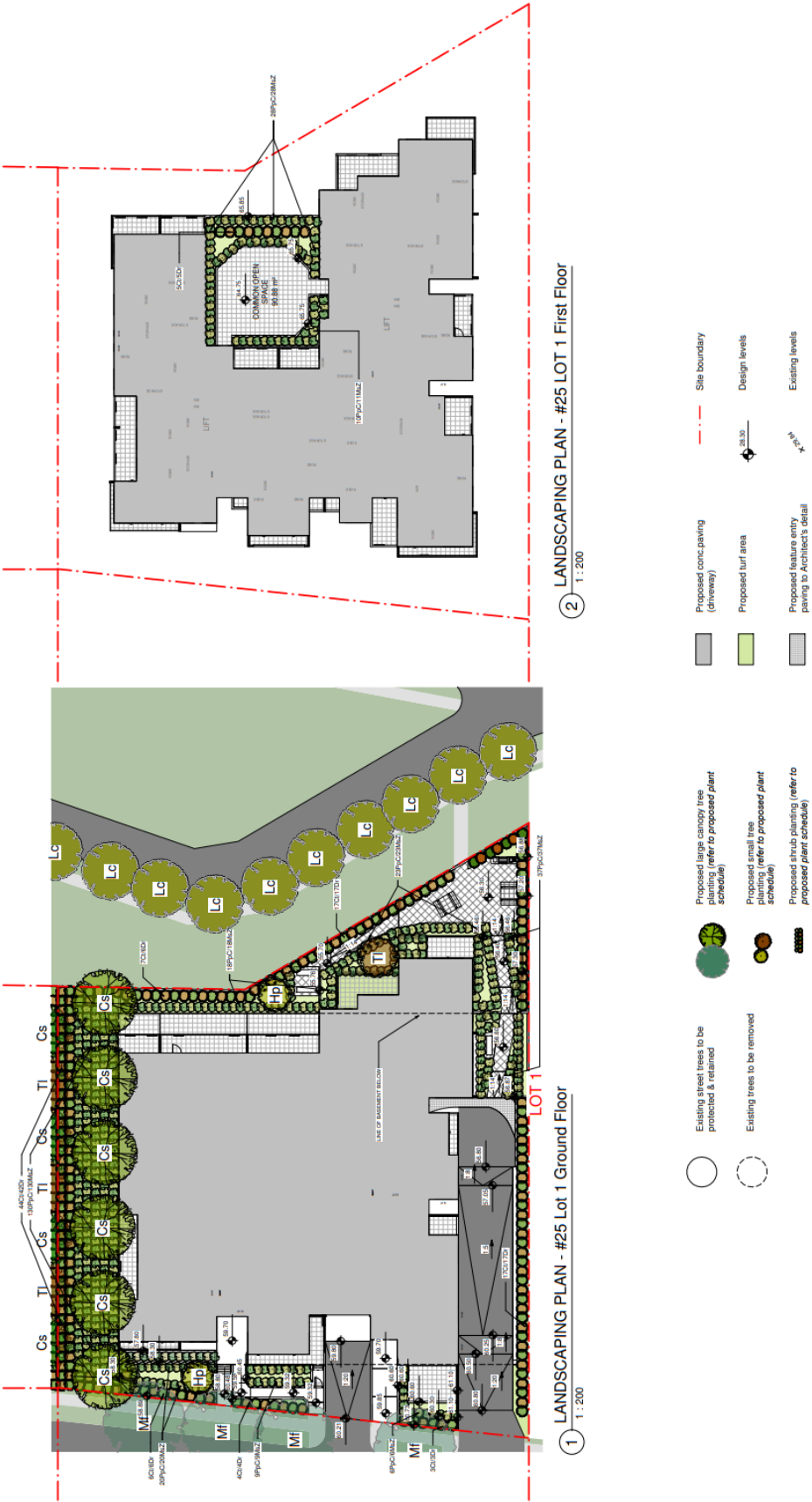
ATTACHMENT 15 – LOT 3 TOWNHOUSE PLANS (FIRST FLOOR)



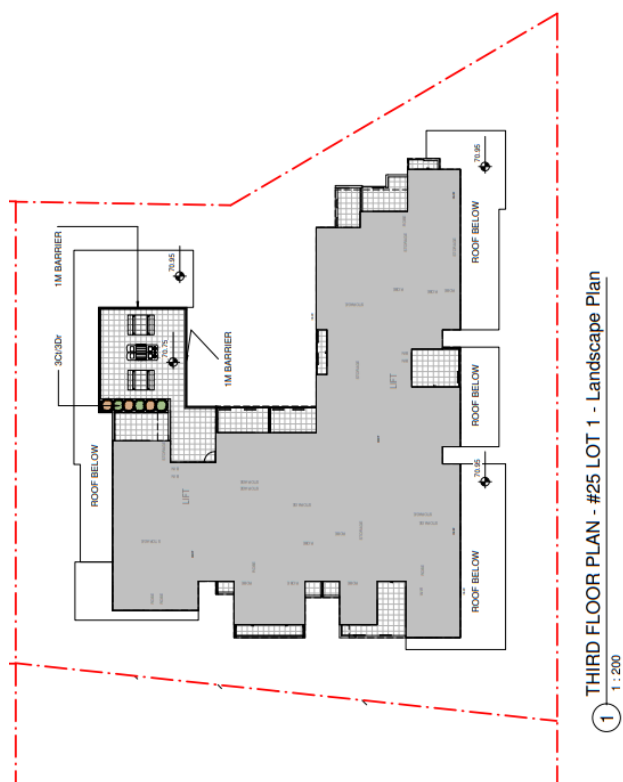
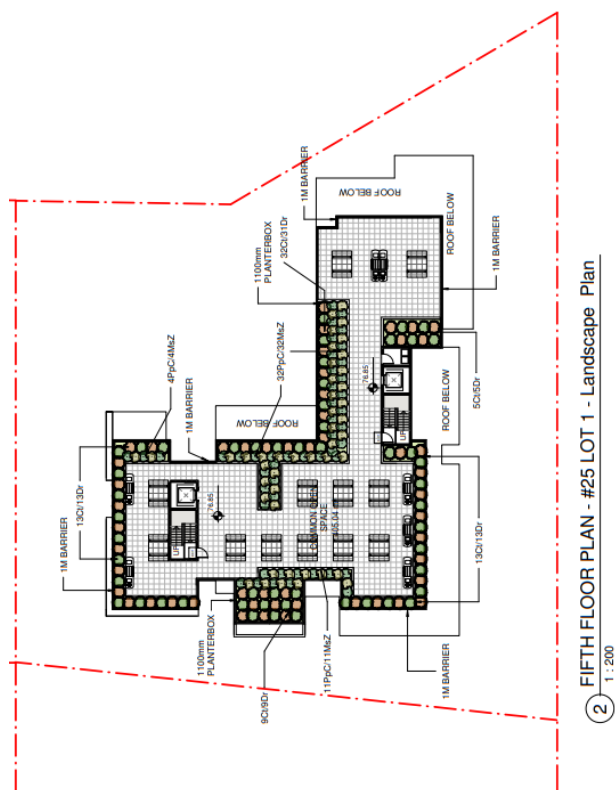
ATTACHMENT 15 – LOT 3 TOWNHOUSE PLANS (SECOND FLOOR)



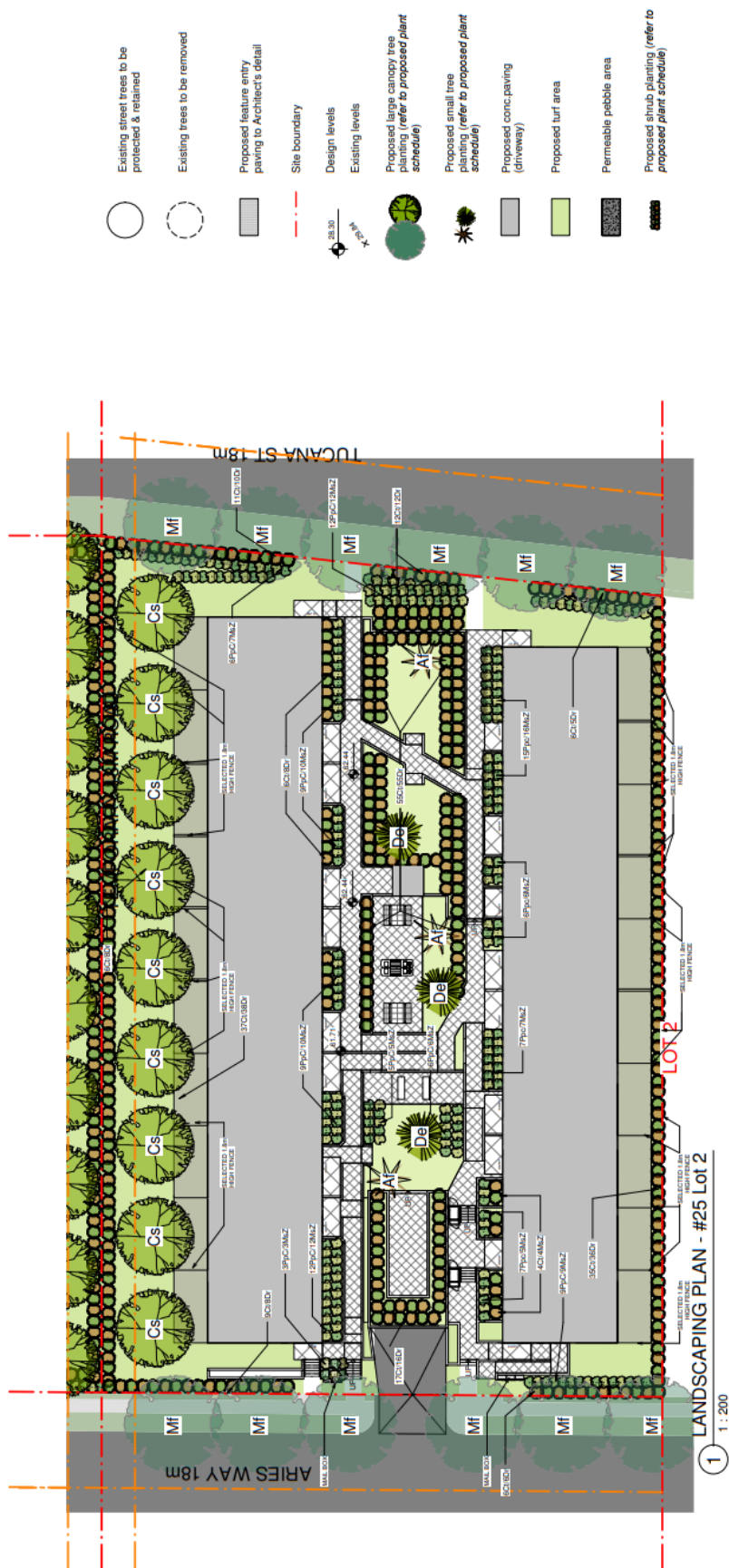
ATTACHMENT 16 – LANDSCAPE PLANS (RFB GROUND AND FIRST FLOOR, MAY 2019)



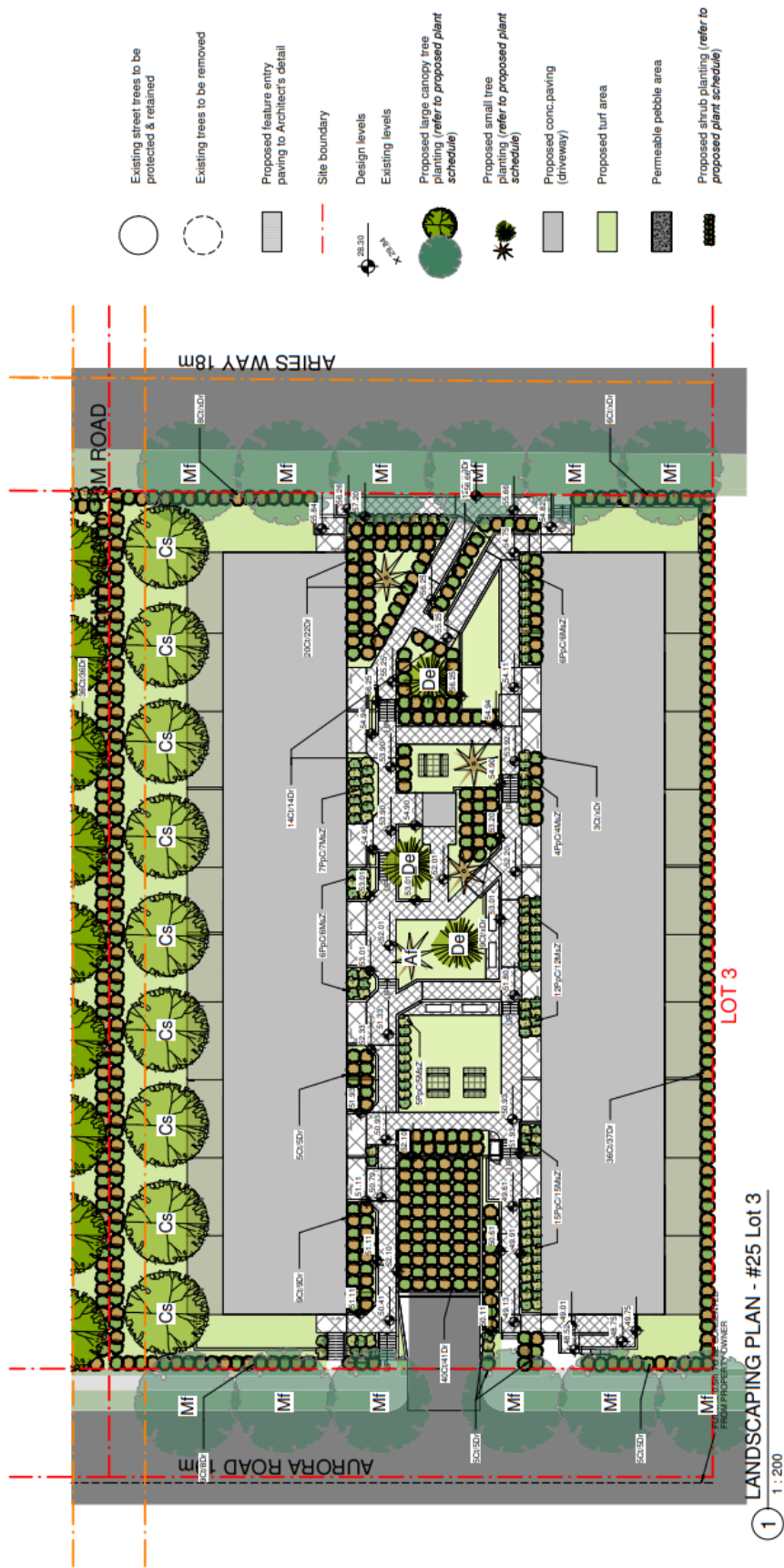
ATTACHMENT 16 – LANDSCAPE PLANS (RFB THIRD FLOOR AND ROOF, MAY 2019)



ATTACHMENT 16 – LANDSCAPE PLANS (LOT 2 TOWNHOUSES, MAY 2019)



ATTACHMENT 16 – LANDSCAPE PLANS (LOT 3 TOWNHOUSES, MAY 2019)



ATTACHMENT 17 – CLAUSE 4.6 VARIATION REQUEST

CLAUSE 4.6 - EXCEPTIONS TO DEVELOPMENT STANDARDS

1. INTRODUCTION

This is a written request to seek an exception to a development standard under Clause 4.6 – Exceptions to Development Standards within Appendix 11 – Hills Growth Centres Precinct Plan within State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

The development standard for which the variation is sought is Clause 4.3 (Height of Building) pursuant to the SEPP. The Building Height Map (HOB) prescribes a maximum height for the site of 21m.

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines and has incorporated relevant principles identified in the following recent Land and Environment Court decisions.

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248
- *Moskovich v Waverley Council* [2016] NSWLEC 1015
- *Randwick City Council v Micaul Holdings Ltd* [2016] NSWLEC 7
- *Mount Annan 88 Pty Ltd v Camden Council* [2016] NSWLEC 1072

This request is made on the basis that:

- a) compliance with the development standard is unreasonable and unnecessary in the circumstances of the case,
- b) that there are sufficient environmental planning grounds to justify contravening the development standard,
- c) it is consistent with the objectives of the SEPP, the particular standard and the zone in which the development is proposed to be carried out, and
- d) it is in the public interest to allow a departure from the numerical standard in this case.

These relevant matters are set out in this submission.

2. DESCRIPTION OF PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

Summary of Legal Context and Proposed Variation	
Address:	25 Mason Road, Box Hill
Proposal:	To subdivide the main allotment into three allotments. Demolition of all existing structures and the development of Lot 1 for a residential flat buildings containing 50 dwellings above basement car parking.
Zoning:	R4 High Density Residential.
EPI applicable:	Appendix 11 of the Hills Growth Centres Precinct Plan within State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
Standard being varied:	Height of Building (Clause 4.3)
Numeric measure of variation:	Allowed: 21m Proposed max: 3.1m (lift overruns)
Percentage of variation:	3.1m (or 14.76% for lift overrun breach).

3. OVERVIEW OF PROVISIONS

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards under the SEPP.

The Objectives of Clause 4.6 are as follows:

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

Clause 4.6(3)(a) and 4.6(3)(b) require that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

Clause 4.6(5) requires that the in deciding whether to grant concurrence, the Secretary must consider:

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

Sub-clause 4.3(1) outlines the objectives in relation to the height of building controls. They are as follows:

- (a) to establish the maximum height of buildings,*
- (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- (c) to facilitate higher density development in and around commercial centres and major transport routes.*

4. ASSESSMENT OF PROPOSED VARIATION

4.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

4.1.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

The topography means that the building does transition down the site. The activation of the roof terrace for common open space means that greater lift overruns are required. The main building is below the height limit with very minor exceptions.

The amended plans involve the removal of certain units. Roof structures are well setback from the edges of the building and soften the rooftop without adding bulk. It is contended that the setbacks and size of the site are adequate for such a form.

Strict compliance serves no great benefit in terms of reduced impact. The proposed variation is presented to Council on its merits. A complying development would weaken the building in an urban design sense and result in a building that looks somewhat 'flattened'. It would also make it effectively impossible to activate the rooftop open space. It is compatible with other forms being proposed in the locality. The overall aim of the building form is to transition with the topography. This results in some minor areas that exceed the limit. Refer to Appendix 1 diagram.

A development which strictly complies with the standard is unreasonable and unnecessary in this case.

4.1.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The objectives (noted earlier in Section 3) would generally not be comprised by strict compliance. However, the objectives essentially call for compatible heights with a town centre while minimising impacts to adjoining lands, particularly in terms of solar access. The proposed form is appropriate for a future local centre and is what is being proposed in the vicinity.

The complying main building form and lift overrun setbacks ensures there will be no additional overshadowing to any southern neighbour. Side setbacks and favourable orientation means there are no major impacts arising due to the height. The resulting form

is a matter for Council to consider in the context. The elevations are misleading and the height plane at Appendix 1 better shows the nature of the height exceedances.

Further height reductions would flatten the building form and thwart the attainment of height objective (c) and serves no significant value to objective (b).

The legibility of the Town Centre is enhanced by a strong buildings. Similar buildings around the town centre will all provide visual focus points for the community. Strict compliance would erode this feature.

4.1.3 Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard?

Similar variations to roof features are being approved in the north-west region.

4.1.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is appropriate.

4.2 Are there sufficient environmental grounds to justify contravening the development standard?

Yes. A good test of justification relates to understanding any benefit when weighed against any impacts.

The roof elements creates a more elegant building form and the functionality of an active roof space. Roof terraces are an attractive addition to residential buildings and they add great amenity to future residents. Strict compliance would result in a building that could appear somewhat 'flattened' and unresponsive to natural topography.

There are sufficient environmental grounds to justify contravening the development standard, given the entire site is being developed in conjunction with lands to the south.

4.3 Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

4.3.1 Objectives of the Height of Building standard

Comments supporting the proposal's consistency with each of the objectives are addressed below:

Objective (a)

to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,

Noted.

Objective (b)

to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space.

Visual amenity will be improved by the varied roof heights and added interest of rooftop features. The added building bulk remains in line with the character of similar sized buildings and the upper levels taper back from the levels below.

They will not cause any adverse additional overshadowing to adjoining neighbours or any public space. The roof design and building separations ensure no loss of privacy, as there is a new road proposed around all edges of the site. This is a stand-alone development on its own block. Street planting will also eventually integrate and soften the total building form.

Objective (c)

to facilitate higher density development in and around commercial centres and major transport routes.

The residential building achieves this objective. Reducing the elements would require losing an entire floor of the building at the north which would restrict a building on a significant site. Alternatively, it would result in a loss of the roof terrace which would reduce residential amenity and compromise the objectives of the ADG. This would undermine the principles of good planning.

The proposed development is consistent with the objectives of the standard.

4.3.2 Objectives of the Zone

The objectives of the R4 High Density Residential zone are as follows:

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

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

The proposed development demonstrates consistency with the zone objectives by:

- The proposal offers residential accommodation, which meets the future housing needs of the area. It also provides a type of the development that is consistent with the intent of the land use zone;
- The proposal offers units with excellent residential amenity in well sized apartments with attractive outlooks;
- The site is uniquely setback further from Mason Rd and offers a greater setback to the road reserve;
- The proposal does not generate any significant adverse impacts on surrounding properties; and
- The proposal is located near the Town Centre and close to future public transport services, recreational reserves and likely school sites.

Greater densities are now well understood to significantly stimulate new business and community transformation and such developments are critical to the stimulation of new centres to support new infrastructure.

The proposal will have no negative impact on natural areas. The proposal is consistent with the zone objectives and also supports the Plan objectives. The nature of such a significant change in the environment allows for densities to be maximised, particular where there is no change in building footprint.

4.4 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

4.5 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The objects specified in Section 1.3 of the Act are as follows:

"to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral,*

- economic welfare of the community and a better environment.*
- (ii) The promotion and coordination of the orderly and economic use and development of land..."*

The proposed development is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act.

4.6 Is there public benefit in maintaining the development standard?

A development that is in the public interest should demonstrate that it is consistent with the objectives of the particular standard and the objectives for development in that particular zone. This has been demonstrated. It then remains to examine any tangible benefits as well as any impacts that may result.

Strict compliance, in this circumstance, would result in a lesser design outcome for the building where there are no significant impacts arising. A range of building heights make for more interest in an urban centre. Having every building in the R4 zone look identical is not desirable. Topography and unique site opportunities afford minor variations such as those proposed.

No public benefit would result from strict compliance with the standard in this instance. The matter of the final building form and its acceptability is a matter for the consent authority in terms of character, as there are no significant impacts.

5 CONCLUSION

5.1 Is the objection well founded?

The objection is well founded in this instance and has clearly looked at the benefits and any impacts. It has examined compliance with all relevant objectives of the standard, the zone, the LEP and the Act. The granting of an exception to the development standard can be supported in the circumstances of this case, as there are no obvious reasons to refuse it. Refusal would have to be based on the desire for compliance just for the sake of compliance and would hamper a good project in an emerging area. This application recognises that some flexibility is required to build good cities and support organic communities.

5.2 Final remarks

Recent case law (Moskovich and Micaul) has clearly established that the consent authority has a broad discretion under clause 4.6(4) as to the degree of satisfaction required by that clause. For this reason, strict compliance with the development standard is unreasonable and unnecessary and its is available to Council in this instance.

The main arguments supporting flexibility are summarised below:

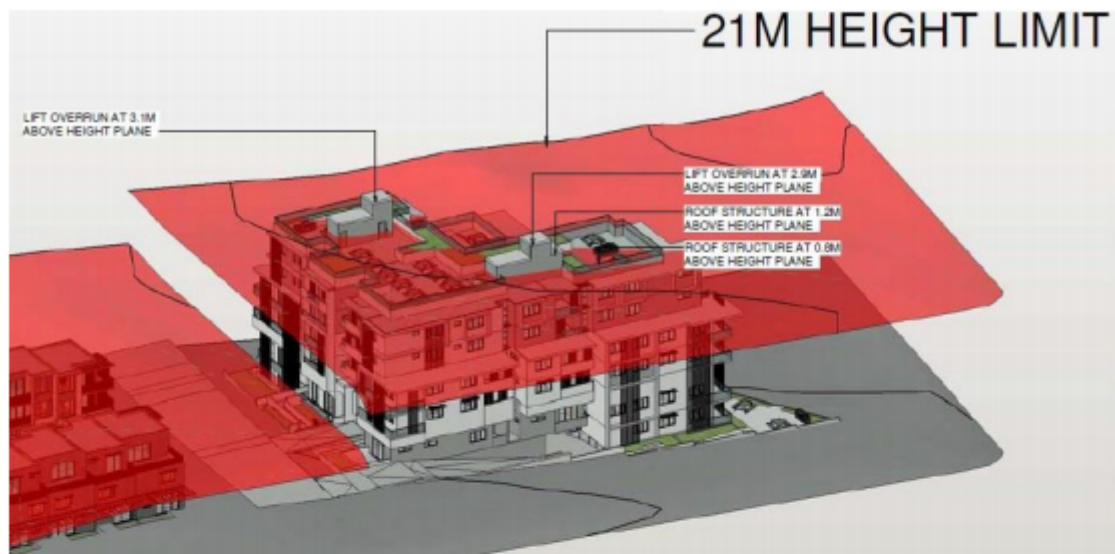
- The site will be generally surrounded by roads in addition to building setbacks. No loss of light or privacy will result from the presence of the roof terrace or the structures required to support it. Main building increases are very minor.
- The roof element design of the upper level and strong northern presentation creates a more attractive building and support the hierarchy of buildings nearer the future town centre.
- There is no change in building footprint meaning the site is used efficiently to provide new housing in the town centre.

For these reasons, the variation will allow for a better planning outcome. Strict compliance would serve no environmental ground and make no meaningful improvement to any planning issue. Council would need to content that the resulting character alone was so inappropriate that refusal would be required. The character and general scale of this proposal and a complying building are identical.

Indeed, given the minimal impact demonstrated in this submission, the only reason that could be given for refusal is that numeric compliance simply **MUST** be adhered to. This view however, contravenes the intent of flexible planning provisions and fails to acknowledge that building communities and cities is not about mathematics but is a rich tapestry of social sciences and organic building expressions.

For the reasons noted above and to assist government in achieving its future vision, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 can be supported in this instance.

Appendix 1 – Height variation diagram



ATTACHMENT 18 – OWNERS CONSENT LETTERS

19/12/18

FROM: Andrew & Candice Chang
25 Mason Road
Box Hill NSW 2765

TO: Owners of: 27 Hynds Road, Box Hill NSW

RE: REQUEST FOR PERMISSION FOR ACCESS, USE & EGRESS TO CONDUCT WORKS
ON NEW NAMED STREETS AT BOX HILL NSW

A Development Application has been lodged with The Hills Shire Council for 25 Mason Road Box Hill.

A new roadway named Aurora Street is proposed to our rear boundary of 25 Mason Road. Each owner will contribute half road construction. The first development to construct will require an additional 0.5m of land from neighbour in order to meet half road compliance with Australian Standards for two way traffic (9.5m roads as per DCP) and it to be constructed at the developers cost vice versa.

I am the owner of 25 Mason Road Box Hill.

I seek consent and grant consent for the following works:

- Request for permission for access to conduct works on Aurora Street;
- Request for permission to conduct construction works and use as access and egress through the new created roads to either Aurora Street, Nova Street & Zanah Street we also acknowledge the roads will be dedicated to council during construction; *Zanah & H.J*
- Access to excavate and/or fill to the required level as approved by council and retain the earth; and
- Provide temporary drainage add security fencing for the duration of the works (subject to review of concept drainage plans).
- Permission to access thought Aurora Street onto *Zanah* Street or Nova Street to construct half road by developers own cost to be transferred to council assets if not constructed when #25 Mason Road development commences and to use the road as access for #25 Mason Road, Box Hill *H.J*

We hereby formally request consent from 27 Hynds Road Box Hill for the above;

AND

We hereby grant consent to 27 Hynds Road Box Hill for the above;

I HENRY JAMES Sole director of Javian Developments Pty Ltd
owner of 27 Hynds Road Box Hill grant the owners of 25 Mason Road Box Hill consent to perform the
works noted above.

1/2 H.J. J

Address: 27 Hynds Rd

Box Hill

Signature: 

Date: 19/12/18

Witness Name: Ruby Serdian

Witness Signature: 

Date: 19-12-18

1. ANDREW CHANG & CANDICE CHANG

owner of 25 Mason Road Box Hill grant the owners of 27 Hynds Road Box Hill consent to perform the works noted above.

Address: 25 MASON RD

BOX HILL

Signature: 

Date: 19/12/18

Witness Name: SIMON OCTUPZANT

Witness Signature: 

Date: 19.12.18

2/2

HO- 

Andrew and Candice Chang
25 Mason Road
Box Hill NSW 2765

Paul and Mary Galea
27 Mason Road
Box Hill NSW 2765

To the owners of 25 & 27 Mason Road Box Hill NSW.

RE; REQUEST FOR PERMISSION FOR ACCESS AND EGRESS TO CONDUCT WORKS ON 25&27 MASON ROAD, BOX HILL NSW.

Development Applications have been lodged with The Hills Shire Council (THSC) for both 25 Mason Road Box Hill and 27 Mason Road Box Hill.

New roadways, Tucana Street, Aries Way and Aurora Street, are proposed as part of the Development Applications of 25 and 27 Mason. These roads are proposed to run East/West through No 29, 27 & 25 Mason Road.

It is my understanding that the Development Applications for 25 & 27 Mason Road rely on the proposed levels of Tucana Street, Aries Way and Aurora Street.

Whichever site is developed first, will be required to construct full width roads and provide turning heads for the proposed new roads within the adjoining property.

The proposed works will involve the full width construction of Tucana Street, Aries Street, and the half width of Aurora Street within the site.

Furthermore, we also grant and request consent for the construction of the proposed temporary turning head provisions within 25 Mason Road and or 27 Mason Road, whichever comes first.

We are the owners of 25 Mason Road Box Hill.

We seek consent and grant consent for the following works:


- To be granted access to 25/27 Mason Road to construct works, full road width including the temporary turning head for the proposed roads, Tucana Street, Aries Way and Aurora Street, adjoining our common boundaries.
- Access to excavate and/or fill to the required level and retain the earth.
- Continual temporary drainage and security fencing for the duration of the works.

We hereby formally request consent from the owners of 27 Mason Road for the above. AND

We hereby grant consent to the owners of 27 Mason Road for the above.


We Paul and Mary Galea, the owners of 27 Mason Road Box Hill grant the owners of 25 Mason Road Box Hill consent to perform the works noted above.

Paul Galea  Mary Galea 

Witness Name & Address Charles Galea  Witness Signature
37 Mason Rd Box Hill NSW 2765

We Andrew and Candice Chang the owner of 25 Mason Road Box Hill grant the owners of 27 Mason Road Box Hill consent to perform the works noted above.

Andrew Chang  Candice Chang 

Witness Name & Address Charles Galea  Witness Signature
37 Mason Rd Box Hill NSW 2765

25/May/2020

FROM: Andrew & Candice Chang
25 Mason Road
Box Hill NSW 2765

TO: Owners of: 23 Mason Road, Box Hill NSW
RE: REQUEST FOR PERMISSION FOR ACCESS & EGRESS TO CONDUCT WORKS
ON NEW AURORA STREET, ARIES WAY & TAURUS WAY BOX HILL NSW

A Development Application has been lodged with The Hills Shire Council for 25 Mason Road Box Hill.

A new roadways named Aurora Street, Aries Way & Taurus Way is proposed to our adjacent boundary of 25 Mason Road. These new roads will run through our property and 23 Mason Road Box Hill. Each owner will contribute half road construction. The first development to construct will require an additional 0.5m of land from neighbour in order to meet half road compliance with Australian Standards for two way traffic (5.5m roads as per DCP) and it to be constructed at the developers cost vice versa.

I am the owner of 25 Mason Road Box Hill.

I seek consent and grant consent for the following works:

- Request for permission for access to conduct works on Aurora Street, Aries Way & Taurus Way;
- Request for permission to conduct construction works and use as access and egress through the new created roads to either Aurora Street, Aries Way & Taurus Way, we also acknowledge the roads will be dedicated to council during construction;
- Access to excavate and/or fill to the required level and retain the earth; and
- Continual temporary drainage add security fencing for the duration of the works (subject to review of concept drainage plans).

We hereby formally request consent from 23 Mason Road Box Hill for the above;

AND

We hereby grant consent to 23 Mason Road Box Hill for the above;

I ROBERT YEE AND KAREN YEE
owner of 23 Mason Road Box Hill grant the owners of 25 Mason Road Box Hill consent to perform the works noted above.

Address: 23 MASON RD Witness Name: Mary Gaba
BOX HILL NSW 2765

Signature: Karen Yee Witness Signature: [Signature]
Date: 22/4/18 Date: 22nd April 2018

I Andrew Chang & Candice Chang
owner of 25 Mason Road Box Hill grant the owners of 23 Mason Road Box Hill consent to perform the works noted above.

Address: 25 Mason Road Witness Name: Mary Gaba
Box Hill NSW 2765

Signature: [Signature] Witness Signature: [Signature]
Date: 22/4/18 Date: 22nd April 2018