

## COUNCIL ASSESSMENT REPORT

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|---|---|
| <b>Panel Reference</b>  | PPSSCC-313  |
| <b>DA Number</b>  | DA 859/2022/JP  |
| <b>LGA</b>  | The Hills Shire Council   |
| <b>Proposed Development</b>   | Southern Housing Precinct for the construction of 60 integrated attached and detached dwellings, individual lot subdivision and associated lot civil works and associated landscape works.  |
| <b>Street Address</b>   | Lot 61 DP 737386 No. 55 Coonara Avenue West Pennant Hills   |
| <b>Applicant</b>  | Mecone Pty Ltd  |
| <b>Consultant/s</b>   | Planning - Mecone<br>Urban Design / Architect - Mirvac Design<br>Traffic - PTC<br>Survey - Craig and Rhodes<br>Geotechnical - Douglas Partners<br>Bushfire - Building Code & Bushfire Hazard Solutions<br>Ecologist - Keystone Ecological<br>Landscaping Turf Design Studio<br>Arborist - Footprint Green<br>Vegetation Management - Cumberland Ecology<br>Construction Noise and Vibration Management Plan - Acoustic Logic<br>Construction Traffic Management Plan - PTC<br>European Heritage - Maxim<br>Aboriginal Heritage - McCardle Cultural Heritage<br>Contamination - JBS&G<br>Waste - Mirvac<br>Site Auditor - Senversa<br>Stormwater Engineer - Northrop<br>Civil Engineer - Northrop<br>Accessibility - ABE Consulting<br>Geotechnical – Douglas Partners<br>Sustainability - Cundall |
| <b>Date of DA lodgement</b>   | 30 November 2021  |
| <b>Number of Submissions</b>  | 669   |
| <b>Recommendation</b>   | Approval  |
| <b>Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021)</b> | CIV exceeding \$30 million (\$41,671,190.00)  |
| <b>List of all relevant s4.15(1)(a) matters</b>                                       | <ul style="list-style-type: none"> <li>• Section 4.15 (EP&amp;A Act)</li> <li>• Biodiversity Conservation Act 2016</li> <li>• Rural Fires Act 1997</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Building Sustainability Index) BASIX 2004</li> <li>• The Hills Local Environmental Plan 2019</li> <li>• DCP 2012 Part C Section 1 – Parking</li> <li>• DCP 2012 Part C Section 3 – Landscaping</li> <li>• DCP 2012 Part C Section 4 – Heritage</li> </ul>  |

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|--|--|
|  | <ul style="list-style-type: none"> <li>• DCP 2012 Part C Section 6 – Flood Controlled Land</li> <li>• Section 7.12 Contribution</li> <li>• Voluntary Planning Agreement (VPA)</li> </ul>     |
| <b>List all documents submitted with this report for the Panel's consideration</b> | <ul style="list-style-type: none"> <li>• Clause 4.6</li> <li>• Submissions</li> <li>• Site Specific Design Guidelines</li> <li>• Voluntary Planning Agreement (as executed)</li> </ul>       |
| <b>Clause 4.6 requests</b>   | <ul style="list-style-type: none"> <li>• The Hills LEP 2019 Clause 4.3 Height of Buildings</li> <li>• Clause 4.6 written submission</li> <li>• R3 Medium Density Residential Zone</li> </ul> |
| <b>Summary of key submissions</b>  | <ul style="list-style-type: none"> <li>• Non-compliance with building height, privacy and amenity impacts, tree retention, environmental sustainability</li> </ul>                           |
| <b>Report prepared by</b>  | Sanda Watts – Development Assessment Coordinator   |
| <b>Report date</b>   | 27 October 2022  |

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

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

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

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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

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

#### **Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### **Conditions**

Have draft conditions been provided to the applicant for comment? **Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*



## EXECUTIVE SUMMARY

The key issues that need to be considered by the Panel in respect of this application are:

- The site is subject to a Planning Proposal which was approved by the Department of Planning, Industry and Environment to rezone the site from B7 Business Park to part R3 Medium Density Residential, part R4 High Density and part C2 Environmental Conservation zone. As part of the re-zoning, a maximum of 600 dwellings were permitted on the site. Maximum height limits of 9, 12 and 22 metres were also introduced, as well as minimum lot sizes of 86m<sup>2</sup> (attached or semi-detached dwellings) and 180m<sup>2</sup> for detached dwellings.
- The subject application known as 'Housing South' seeks approval for the construction of 60 attached and detached dwellings with individual lot subdivision, and associated landscape and stormwater works.
- The two separate Development Applications were lodged concurrently with the Housing South DA, being:
  - DA 860/2022/JP – The Concept/Civil DA is made pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. The concept master plans seeks approval for 417 dwellings (165 dwelling houses and 252 apartments) and associated internal road and superlot arrangement, and civil works including tree removal, earthworks and new road construction.
  - DA 861/2022/JP - Apartment Precinct for 252 dwellings contained in four residential flat buildings, basement car parking for 456 vehicles, associated earthworks and landscaping.
- In addition to the three applications above, a subdivision application (DA 1414/2022/ZB) was lodged with Council for the subdivision of the site into 5 lots to facilitate future development on the site. Three of the five lots (which are zoned C2 Environmental Conservation) are to be dedicated to Forestry Corporation NSW. This application is listed for determination by the Local Planning Panel on 19 October 2022.
- This application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. Clause 4.3 of LEP 2019 limits the height of the development site (R3 Medium Density Residential zoned portion of the site) to 9 and 12 metres. Overall, the maximum exceedance in building height for the subject application is Dwelling 10.7, located in Superlot 10. The maximum height limit under LEP 2019 is 9 metres and the maximum dwelling height proposed for Dwelling 10.7 is 13.34m, a 48.22% variation to the development standard. It is considered that strict compliance is unreasonable and unnecessary in this instance and the variation can be supported. Overall, the proposed two and three storey dwellings provide for a suitable residential dwelling outcome and will not result in any significant adverse impacts. All non-compliances are 'internal' to the site and will not impact existing neighbouring dwellings.
- The site is located on land identified as bushfire prone "Category 1" and 'Vegetation Buffer'. Pursuant to Section 4.46 of the EP&A Act 1979, development that requires authorisation under section 100B of the Rural Fires Act, 1997 is defined as Integrated Development. Section 100B identifies subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes as development which requires a bush fire safety authority. The subject application includes subdivision, therefore Section 100B of the Rural Fire Act, 1997 applies. The application was referred to NSW Rural Fires Services (RFS) for review.

NSW RFS have issued General Terms of Approval, and have provided a Bush Fire Safety Authority for the development.

- The site and the subject application is subject to the Voluntary Planning Agreement (VPA) and relevant conditions of consent have been recommended.
- The application was notified on two occasions, and in total 669 submissions to the proposal were received. The bulk of the concern relates related to the concept plan (DA 860/2022/JP which have been addressed in that report), however, the submission directly relating to the subject application included non-compliance with building height, privacy and amenity impacts, tree retention and environmental sustainability. These issues have been satisfactorily addressed and do not warrant refusal of the application.

The application is recommended for approval subject to conditions.

## **PLANNING PROPOSAL BACKGROUND**

The background of the Planning Proposal 1/2018/PLP is discussed in further detail in the SCCPP report for 860/2022/JP.

## **VOLUNTARY PLANNING AGREEMENT**

The Voluntary Planning Agreement (VPA) is discussed in further detail in the SCCPP report for 860/2022/JP.

As the VPA is imminent, a condition of consent has been recommended for the VPA payment.

## **DEVELOPMENT APPLICATION BACKGROUND**

The subject Development Application was lodged on 30 November 2021 for 'Housing South' seek approval for the construction of 61 attached and detached dwellings, with individual lot subdivision, and associated landscape and stormwater works. The proposal was placed on exhibition between 15 December 2021 to 7 February 2022. Overall, a total of 669 submissions were received.

The concept plan which included details of the Housing South Precinct was considered at the Design Excellence Panel on 8 December 2021. It is noted that the Panel previously reviewed the concept plans for this development at the pre-lodgement stage on 10 May 2021. The Panel made a number of design recommendations to the proposal. The Panel concluded that if the Applicant addresses the matters identified in the report to the satisfaction of the assessing officer, the project need not return to the Panel for further consideration.

On 23 December 2021 a 'Stop The Clock' letter was issued to the applicant requesting additional information on waste management and landscape details. On 28 January 2022 the applicant requested to 're-start the clock'. On 3 February 2022 the applicant provided a response to the letter dated 23 December 2021.

Council officers briefed the SCCPP on 17 March 2022 (in addition to DAs 859/2022/JP and 861/2022/JP).

A further request for information was sent to the applicant on 13 March 2022 requesting additional information on engineering and flooding matters, landscape matters, tree management details and amendment of the Site Specific Design Guidelines.

On 19 April 2022, the applicant provided a response to the submissions. On 22 April 2022 and 9 June 2022 the applicant provided a response to the issued raised from Council staff and provided amended details and plans. This response also included a detailed response to the matters raised by Design Excellence Panel.

In response to the matters raised by Council staff and the Design Excellence Panel the proposal, including the concept plan was amended to provide for 417 dwellings (165 dwellings and 252 apartments), a reduction of one dwelling from the original application. The housing South Precinct was amended to 60 dwellings (from 61 dwellings).

The amended application was renotified for 21 days from 28 June 2022 to 19 July 2022. Further submissions were received during/after the second notification period.

On 5 August 2022 Council issued a further request for information in relation to landscape comments and engineering matters and a requested updated cost of works.

On 12 August 2022 the applicant provided a response to the engineering matters raised. On 16 August 2022 the applicant provided a response to the remaining outstanding issues Council raised in the letter dated 5 August.

On 19 August 2022 an updated cost summary report was provided.

On 26 August 2022 a further letter to the applicant was sent regarding the remaining outstanding matters including tree matters, landscape comments and engineering details.

The applicant provided updated arboricultural impact assessment details on 2 September 2022. On 9 September 2022 outstanding engineering details were provided. The applicant provided updated architectural plans and landscape plans on 15 and 23 September 2022.

In total 669 submissions to the application have been received.

## DETAILS AND SUBMISSIONS

|                                   |  |
|-----------------------------------|--|
| Owner:                            | Mirvac Projects (Retail & Commercial) Pty  |
| Zoning:                           | R3 Medium Density Residential, R4 High Density Residential and C2 Environmental Conservation |
| Area:                             | Existing site area is 258,700m <sup>2</sup> , or 25.87ha                                     |
| Existing Development:             | Former IBM Business Park (currently being demolished under DA 585/2021/JP)                   |
| Section 7.12 Contribution and VPA | \$412,146.35 + VPA \$291,866.03<br>Total: \$704,012.38                                       |
| Exhibition:                       | Yes, 61 days   |
| Notice Adj Owners:                | Yes, on two occasions  |
| Number Advised:                   | 695  |
| Submissions Received:             | 669  |

## PROPOSAL

The proposed Southern Housing Precinct development seeks consent for the following:

- Installation of safety fencing and signage, construction of temporary works, utilisation and modification of existing Concept/Civil DA stormwater erosion and sedimentation protection measures as works progress;
- Installation and servicing of temporary site facilities;

- Individual lot civil works including minor lot earthworks and shaping to ready pad for slab construction, interlot retaining wall construction and provision of individual lot stormwater and services including sewer, electrical, gas, water and telecommunications
- Construction of 60 attached and detached dwellings;
- Subdivision of individual dwelling lots;
- Construction of minor landscape retaining walls;
- Construction of hard and softscape landscaping within each lot and to back of kerb;
- Minor earthworks and shaping of public open spaces within defined boundary;
- Landscaping of public open spaces including retaining walls, irrigation, hard and softscape works, paths and handrails, lighting, furniture, topsoiling, turfing, mulching, planting – ‘Forest Fringe Park and Housing Central Park’;
- Landscaping of streetscapes; and
- Removal of temporary road pavements and final road embellishment of feature paving areas.

The Southern Housing Precinct comprises of 7 superlots, identified as Superlots 6, 7, 8, 9, 10, 11 and 12 (refer figure 1 below). Each of these lots is to be accessed from the existing southern driveway from Coonara Avenue (which is to be retained) and the embellished perimeter road.



Figure 1: Superlot arrangement. Source: Turf Design Studio

The construction of dwellings and associated subdivision has been integrated due to the small lot sizes proposed (154m<sup>2</sup> to 425m<sup>2</sup>). It should be noted that the proposed lot sizes are larger than the lot size development standards specified in THLEP 2019 (86m<sup>2</sup> and 180m<sup>2</sup> for attached and detached dwellings respectively).

Figure 2 below illustrates the location of the Housing South Precinct within the site





Figure 2: Location of Housing South Precinct within the site. Source: Turf Design Studio

## STRATEGIC CONTEXT

### Greater Sydney Region Plan – A Metropolis of Three Cities

The Greater Sydney Region Plan, *A Metropolis of Three Cities* has been prepared by the NSW State Government to set a 40 year vision and established a 20 year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. The Plan sets a new strategy and actions to land use and transport patterns to boost Greater Sydney's liveability, productivity and sustainability by spreading the benefits of growth. The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). The subject site is located within 800m of the Cherrybrook Metro Station which opened on 26 May 2019.

A key objective within the Greater Sydney Region Plan which is relevant to the subject Development Application is 'Objective 10 Greater housing supply'. The Greater Sydney Region Plan highlights that providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. The Plan also notes that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. To achieve this objective, planning authorities will need to ensure that a consistent supply of housing is delivered to meet the forecast demand created by the growing population.

The proposed development is considered to be consistent with this objective as it will assist in maximising housing supply within the Cherrybrook Station Precinct which will have direct access to high frequency public transport services.

### Central City District Plan

The Plan is a guide for implementing the Sydney Region Plan at a district level and is a bridge between regional and local planning. The plan requires integration of land use planning and transport to facilitate walkable 30-minute cities amongst the 34 strategic centres identified.

The relevant Planning Priority of the Central City District Plan is Priority C5 which seeks to provide housing supply, choice and affordability and ensure access to jobs, services and

public transport. The proposed development will assist in increasing housing supply in a location which will have access to high frequency public transport services. The development proposal is considered to be consistent with the Central City District Plan.

### **Cherrybrook Station Precinct**

The 2013 North West Rail Link Cherrybrook Station Structure Plan identified the site as a significant site subject to further consideration and collaboration with stakeholders, to determine its likely role in the future. The Cherrybrook Station Structure Plan was released as part of the North West Rail Link Corridor Strategy, which guides development of land around the eight Sydney Metro Northwest stations.

Three separate (but related) plans were exhibited for public comment from 22 July to 28 August 2022, being:

- The Cherrybrook Precinct Place Strategy, exhibited by the Department, which will help guide the development of the wider Cherrybrook Precinct and inform future rezoning.
- Landcom is exhibiting a rezoning proposal for the Cherrybrook Station State Significant Precinct (SSP), which covers government-owned land next to the metro station.
- The Department is also exhibiting an amendment to State Environmental Planning Policy (SEPP) Planning Systems, to enable the Cherrybrook Station government land to be listed as a State Significant Development (SSD) site.

The subject site is located within the area mapped as the Cherrybrook Station Precinct Draft Place Strategy. The Strategy will enable up to 3,200 homes, 140 new jobs, 2.37ha of extra open space and new walking and cycling paths. Land around the existing Cherrybrook Metro Station has been recommended to be re-zoned medium density residential, and have a maximum building height of 5 storeys. The Plan does not provide for recommended building heights, FSR or minimum lot sizes for the subject site, as the site is located outside of the mapped area for these controls.

### **Local Strategic Planning Statement – Hills Future 2036**

The Plan sets planning priorities and corresponding actions that will provide for more housing, jobs, parks and services for the growing population. The Plan is supported by six strategies which provide a guide to planning in The Hills. The relevant strategy of the Local Strategic Planning Statement is the Productivity and Centres Strategy which establishes the basis for strategic planning of employment lands and centres in the Shire.

Located in Cherrybrook Metro Station Precinct, the proposal will provide for variety of housing types and associated open space to assist in the growth of area in close proximity to public transport. The proposal will assist in the creation of jobs both within the construction and education industries in line with the projected population growth, and in a location near transport infrastructure and other employment areas of the Castle Hill and Norwest strategic centres. The development proposal is considered to be consistent with the Local Strategic Planning Statement.

## **ISSUES FOR CONSIDERATION**

### **1. Biodiversity Conservation Act, 2016**

The Biodiversity Conservation Act, 2016 (BC Act) and Biodiversity Conservation (BC) Regulation, 2017 establishes the requirements for the protection of biodiversity, outlines the requirements for the regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities.

DA 860/2022/JP which is the application that seeks consent for the removal of vegetation provides a full assessment in relation to the BC Act, including a recommended condition of consent for offsets.

## **2 Rural Fire Services Act, 1997**

The site is located on land identified as bushfire prone “Category 1” and ‘Vegetation Buffer’. Pursuant to Section 4.46 of the EP&A Act 1979, development that requires authorisation under section 100B of the Rural Fires Act, 1997 is defined as Integrated Development. Section 100B identifies subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes as development which requires a bush fire safety authority. The subject application includes subdivision, therefore Section 100B of the Rural Fire Act, 1997 applies. The application was referred to NSW Rural Fires Services (RFS) for review. NSW RFS have issued General Terms of Approval, and have provided a Bush Fire Safety Authority for the development, and have been included as condition 31, and a copy is also included as Attachment 11.

## **3. Compliance with State Environmental Planning Policy (Planning Systems) 2011**

Schedule 6, subclause 2 of SEPP (Planning Systems) 2021 specifies the referral requirements for regionally significant development.

### *2 General development over \$30 million*

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

The proposed development has a Capital Investment Value of \$41,671,190 and therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

## **4. State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 of 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 4.6 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.*

A Detailed Site Investigation (DSI) and accompanying letter, prepared by JBS & G and a Site Audit Report and accompanying letter prepared by Seversa was submitted with the application, which identified the potential of contamination on the site, and whether or not the proposed future uses are suitable on the land.



The DSI concluded that *“there is no contamination on the site that represents an unacceptable risk to human or ecological receptors when considered against the most conservative land use as per NEPC 2013 – Residential with accessible soils and the site is suitable for the proposed [future] redevelopment for mixed land use including residential (townhouses and apartments buildings ranging from 2 storeys to 6 storeys) and recreational/open space land use.”* The Site Audit Report also confirmed that based on the information presented in JBS&G reports and observations made on site, and following the Decision-Making Process for Assessing Urban Redevelopment Sites in NSW EPA (2017) Guidelines for the NSW Site Auditor Scheme, the Auditor concludes that the site is suitable for the purposes of (future) residential with gardens and accessible soil. A condition of consent has been recommended in relation to contamination and ground conditions (refer to condition no. 83).

In this regard, it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP Resilience and Hazards.

## **5. Compliance with SEPP (Building Sustainability Index: BASIX) 2004**

That application has been accompanied by BASIX Certificates for the subject development (refer condition no. 76)

## **6. The Hills Local Environmental Plan 2019**

### **(i) Permissibility**

The site has multiple zones being, C2 Environmental Conservation, R3 Medium Density Residential and R4 High Density Residential under The Hills Local Environmental Plan 2019.

The subject application is located in the portion of the site zoned R3 Medium Density Residential.

The proposed seek approved for the attached and detached dwellings which are permissible in the R3 Medium Density Residential zone.

### **(ii) Compliance with LEP 2019 – Zone Objectives**

The portion of the site subject to the application is zoned R3 Medium Density Residential under The Hills Local Environmental Plan 2019. The objectives of the 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 encourage medium density residential development in locations that are close to population centres and public transport routes.*

The proposal is considered to be consistent with the stated objectives of the zone, in that the proposal will provide for medium density development to meet the housing and facility needs of the community. A variety of housing forms are proposed as part of the application including attached and detached dwelling with a mix of 3, 4 and 5 bedroom dwellings.

**(iii) The Hills LEP 2019 - Development Standards**

The following addresses the principal development standards of the LEP relevant to the subject proposal:

| <b>CLAUSE</b>   | <b>REQUIRED</b>  | <b>PROVIDED</b>  | <b>COMPLIES</b>                 |
|---|--|--|---------------------------------|
| 4.1 Minimum Lot Size                                      | 700m <sup>2</sup> , 1,800m <sup>2</sup> , 6,000m <sup>2</sup> and 2ha.   | Integrated development with community title subdivision, and individual lots proposed. Refer Clause 7.15 below. Superlot subdivision proposed under DA 1414/2022/ZB. | Yes – refer below.              |
| 4.3 Building Height                                       | The R3 Medium Density Residential zoned portion of the site is subject to a maximum height of 9m and 12m.  | The maximum exceedance in dwelling height is Dwelling 10.7 at 13.34m, a 48.22% variation to the 9 metre building height standard.                                    | No, refer to discussion below.  |
| 4.4 Floor Space Ratio                                     | Not applicable to the site.  | N/A  | N/A.                            |
| 4.6 Exceptions to development standards                   | Exceptions will be considered subject to appropriate assessment.   | A variation to Clause 4.3 Height of Buildings is proposed and addressed below.   | Yes, refer to discussion below. |
| 5.10 Heritage   | The site is located on land adjoining a heritage item (Clause 5.10 (5)(c)), being the Local Item A26, archaeological site - site Cumberland State Forest, Bellamy Quarry and Sawpit located to the east of the site. | A Heritage Impact Statement has been provided with the application which addresses the impact of the proposal on the adjoining heritage item.                        | Yes                             |
| 5.21 Flood Planning                                       | Refer below  |  | Yes                             |
| 7.2 Earthworks  | Refer below  |  | Yes                             |
| 7.7 Design Excellence                                     | Development consent must not be granted unless the development exhibits design excellence.   | Proposal referred to Design Excellence Panel. The proposal has addressed concerns raised by the Panel.   | Yes, refer to discussion below. |
| 7.15 Development at 55 Coonara Avenue, West Pennant Hills | Refer below  |  | Yes                             |
| Schedule 1  | Use of certain land at   | The uses for those   | Yes                             |

|                                     |  |  |  |
|-------------------------------------|--|--|--|
| Additional Permitted Uses Clause 17 | <p>55 Coonara Avenue – Items 24 and 25.</p> <p>2) Development for the purposes of recreation areas or recreation facilities (indoor) is permitted with development consent on the land shown as “Item 23”.</p> <p>(3) Development for the following purposes is permitted with development consent on the land shown as “Item 24”—</p> <p>(a) building identification signs,</p> <p>(b) kiosks,</p> <p>(c) recreation areas,</p> <p>(d) restaurants or cafes, but only if the gross floor area of any restaurant or cafe on the land does not exceed 50 square metres.</p> | items will be subject to a separate (future) DA. |  |
|-------------------------------------|--|--|--|

### **Variation to Clause 4.3 Height of Buildings**

This application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. Clause 4.3 of LEP 2019 limits the height of the development site (R3 Medium Density Residential zoned portion of the site) to 9 and 12 metres.

Figure 3 below shows the location of the 9 and 12 metre height limits in associated with the proposed works.



Figure 3: Superlot numbering and red dash line showing location of 9m and 12m height limit (Source: Mirvac Design)

The proposal seeks to vary the maximum building height for 37 of the 60 dwellings that form the subject application.

The applicant has grouped the height variations into four (4) groups, being:

1. Building height variations resulting from the erection of dwellings over the location of an existing basement excavation (19 variations);
2. Building height variations within superlot 10 directly adjoining the existing retained Perimeter Road (6 variations);
3. Building height variations within the building height standard transition area between 12m and 9m (6 variations); and
4. Minor building height variations across superlot's 7, 8, 9 and 11 due to design articulation (6 variations).

Overall, the maximum exceedance in building height for the subject application is Dwelling 10.7, located in Superlot 10. The maximum height limit is 9 metres and the maximum dwelling height for Dwelling 10.7 is 13.34m, a 48.22% variation to the development standard. It is noted that this dwelling when measured from the future or proposed ground level complies with the maximum building height.

A summary of the dwellings exceeding the maximum height limit have been detailed below.

The applicant has provided a Clause 4.6 Variation which is provided at Attachment 9.

Clause 4.6 Exceptions to Development Standards states:

*(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 Secretary has been obtained.*
- (5) *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.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living 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,
- (ca) clause 6.2 or 6.3,
- (caa) clause 5.5,
- (cab) (Repealed)
- (ca) clause 6.2 or 6.3,
- (cb) clause 7.11,
- (cc) clause 7.15.

In determining the appropriateness of the variation request, a number of factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. The applicant has advised that the contraventions proposed are generally a result of:

- The existing site being located on extremely challenging natural topography that was heavily modified in the 1980's to suit the requirements of a large office complex with a B7 Business Park zoning.
- The requirement to redevelop the existing, redundant B7 Business Park office complex and surrounding carparking to provide a family friendly residential development within the framework of R3 and R4 residential zoning
- The environmentally led design approach to the concept plan to protect, as practically as possible, the high value biodiversity elements of the site that centre around the retention and upgrade of the existing perimeter ring road that abuts BGHF and STIF which acts as a physical delineation point between existing remnant forested areas and the previously disturbed portion proposed for redevelopment
- The challenges of designing a new civil solution for the site, working with the surrounding fixed points and constraints of the perimeter ring road and site entry levels along Coonara Avenue, and balancing infrastructure servicing requirements of the site including stormwater management;
- The proposed retention and upgrading of the existing perimeter ring road and internal roads are required to generally comply with Australian design standards for road safety which limit the ability to quickly and safely transition the geometry of the roads to follow the current topography which was heavily modified from natural, as well as achieve a functional urban design outcome;
- Designing housing and using existing topography as the baseline, particularly when the existing topography was highly modified and bespoke to suit IBM's development of the site in the 1980s. The IBM development included excavation for the construction of basements, which significantly altered the previous natural existing ground level to service the requirements of a now-redundant B7 Business Park, and are now considered "existing ground levels" for the purpose of this DA;
- Minor architectural elements, such as parapets and skylights, associated with the detailed design of the 2 and 3 storey housing as is normal during the detailed design phases of a project;
- Ensuring appropriate design allowances such as ceiling heights and equipment servicing is appropriate for the proposed housing;
- Ensuring the development exhibits THSCLEP Clause 7.7 requirement for Design Excellence; and
- In keeping with the neighbourhood character of the surrounding proposed development product and delivering housing as was envisaged by the rezoning.

### **Comment:**

As identified above, the subject application has been lodged with the Concept Development Application (DA 860/2022/JP) which includes civils works, including bulk earthworks and proposing new site levels. Final detailed lot civil works are proposed as part of this Southern Housing Precinct DA. If the subject Southern Housing Precinct was lodged following completion of the detailed earthworks proposed as part of concept DA, the predicted height departures would reduce from 37 dwellings to 6 dwellings, all within the 9m height portion of the site.

The applicant has provided a Clause 4.6 variation that considers the existing ground levels, in accordance with the definition provided in THLEP, and also identifies the proposed finished ground levels, subject of this Southern Housing DA, which will become the existing ground levels at the time the dwellings within the Southern Housing Precinct are constructed. The applicant has referred to the ground level subject to approval with the subject DA as the *"Finished Ground Levels"*.

The proposal seeks to vary the maximum building height for 37 of the 60 dwellings that form the subject application.

The applicant has grouped the variations into four (4) groups, being:

1. Building height variations resulting from the erection of dwellings over the location of an existing basement excavation (19 variations) (Table 1);
2. Building height variations within superlot 10 directly adjoining the existing retained Perimeter Road (6 variations) (Table 2);
3. Building height variations within the building height standard transition area between 12m and 9m (6 variations) (Table 3); and
4. Minor building height variations across superlot's 7, 8, 9 and 11 due to design articulation (6 variations) (Table 4).

The specific heights for the proposed buildings are summarised in the below tables:

#### **1. Building height variations resulting from existing basement levels**

Table 1 provides a summary of the 19 dwellings within the precinct that provide a variation to the building height standard as a direct result of the location over existing basement or passageway excavation that is associated with the previous IBM development.

| <b>Dwelling</b> | <b>Maximum Building height (metres)</b> | <b>Proposed Building Height (metres)</b> | <b>Encroachments percentage (%)</b> |
|-----------------|---|--|-------------------------------------|
| 7.02            | 12m                                     | 12.22                                    | 1.83                                |
| 7.03            | 12m                                     | 12.73                                    | 6.08                                |
| 7.04            | 12m                                     | 13.07                                    | 8.92                                |
| 7.05            | 12m                                     | 13.41                                    | 11.75                               |
| 7.06            | 12m                                     | 13.59                                    | 13.25                               |
| 7.07            | 12m                                     | 13.84                                    | 15.33                               |
| 7.08            | 12m                                     | 14.19                                    | 18.25                               |
| 7.09            | 12m                                     | 14.36                                    | 19.67                               |
| 8.03            | 12m                                     | 13.93                                    | 16.08                               |
| 8.04            | 12m                                     | 14.7                                     | 22.5                                |
| 8.05            | 12m                                     | 15.24                                    | 27                                  |
| 8.06            | 12m                                     | 15.82                                    | 31.83                               |
| 9.02            | 12m                                     | 13.02                                    | 8.5                                 |
| 9.03            | 12m                                     | 12.66                                    | 5.5                                 |



|       |     |       |       |
|-------|-----|-------|-------|
| 11.07 | 12m | 14.91 | 24.25 |
| 11.08 | 12m | 15.83 | 31.92 |
| 11.09 | 12m | 16.63 | 38.58 |
| 11.10 | 12m | 16.38 | 36.5  |
| 11.11 | 12m | 15.66 | 30.5  |

Table 1: Building height variations resulting from existing basement levels



Figure 4: Lots shown in red exceed the maximum height limit, dashed line shows boundary of 9m and 12m height limits. (Source: Mirvac Design)

The applicant has detailed the use of extrapolated ground levels, as identified in *Bettar vs Council of the City of Sydney [2014] NSWLEC 1070* in relation to the consideration of “ground level (existing)” and the calculation of building height. The applicant advised that “upon finalisation of the rezoning, further detailed studies and detailed design were undertaken. When the detailed design process occurred, it was found that the topography was significantly more challenging than indicated during the PP stage, particularly with regard to the existing areas of basement excavation and the fall across the R4 portion of the site, in the location of the IBM buildings. Due to the site’s modified topography, we consider the calculation of building height should consider the “existing ground level” of the site prior to excavation that has previously occurred in relation to construction of the existing commercial building, in the location of the proposed Apartments Precinct.”

The applicant’s Clause 4.6 Written Request found it appropriate “to consider and measure the building height from adjacent and/or interpolated ground levels. These levels bear a direct relationship between the height of the development as viewed from neighbouring properties and the height as it relates to the existing and desired future character of the area and therefore considered a more appropriate reference point for assessing whether the objectives of the standard are satisfied. It is considered that the prescriptive building height standard should be considered based on a merit assessment.”

## 2. Building height variations within Superlot 10

Table 2 provides a summary of the six dwellings that result in a variation to the height of building standard as a result of their location adjacent to, and connection with, the existing retained perimeter road on Superlot 10.

| Dwelling | Maximum Building height (metres) | Proposed Building Height (metres) | Encroachments percentage (%) – Existing ground levels | Encroachments percentage (%) – Finished ground levels |
|----------|----------------------------------|-----------------------------------|---|---|
| 10.01    | 9m                               | 12.03                             | 33.67   | -   |
| 10.03    | 9m                               | 9.92                              | 10.22   | -   |
| 10.04    | 9m                               | 11.21                             | 24.56   | -   |
| 10.05    | 9m                               | 11.94                             | 32.67   | -   |
| 10.06    | 9m                               | 12.61                             | 40.11   | -   |
| 10.07    | 9m                               | 13.34                             | 48.22   | -   |

Table 2: Building height variations for Superlot 10



Figure 5: Lots shown in green exceed the maximum 9m height limit, dashed line shows boundary of 9m and 12m height limits. (Source: Mirvac Design)

## 3. Building height variations between the transition area between the 9m and 12m height limit

Table 3 provides a summary of the six (6) dwellings that result in a variation to the building height standard as a result of their lot location being in the in the 9m and 12m transition area.

| Dwelling | Maximum Building height (metres) | Proposed Building Height (metres) | Encroachments percentage (%) – Existing ground levels | Encroachments percentage (%) – Finished ground levels |
|----------|----------------------------------|-----------------------------------|---|---|
| 6.01     | 9m                               | 9.96                              | 10.67   | 11.78   |
| 6.02     | 9m / 12m                         | 9.90                              | 10  | 12.00   |

|       |          |       |       |       |
|-------|----------|-------|-------|-------|
| 6.03  | 9m / 12m | 9.42  | 4.67  | 11.89 |
| 11.01 | 9m       | 12.89 | 43.22 | 10.44 |
| 11.02 | 9m / 12m | 13.41 | 49    | 11.75 |
| 11.03 | 9m / 12m | 13.25 | 47.22 | 10.42 |

Table 3: Building height variations for lots within the transition area between the 9m and 12 metre height limit.



Figure 6: Lots shown in yellow exceed the maximum height limit, dashed line shows boundary of 9m and 12m height limits. (Source: Mirvac Design)

#### 4. Building Height variations across Superlots 7, 8, 9, and 11 due to design articulation

Table 4 provide a summary of the six dwelling in superlots 7, 8, 9 and 11 that exceed the maximum height standard due to design articulation.

| Lot   | Maximum Building height (metres) | Proposed Building Height (metres) | Encroachments percentage (%) – Existing ground levels | Encroachments percentage (%) – Finished ground levels |
|-------|----------------------------------|-----------------------------------|---|---|
| 7.01  | 12m                              | 12.41                             | 3.42  | -   |
| 8.01  | 12m                              | 12.77                             | 6.42  | -   |
| 9.01  | 12m                              | 12.77                             | 6.42  | -   |
| 11.04 | 12m                              | 12.86                             | 7.17  | -   |
| 11.05 | 12m                              | 12.14                             | 1.17  | -   |
| 11.06 | 12m                              | 13.5                              | 12.5  | -   |

Table 4: Dwellings in superlots 7, 8, 9 and 11 that exceed the maximum height standard





Figure 6: Lots shown in purple exceed the maximum height limit, dashed line shows the boundary of the 9m and 12m height limits (Source: Mirvac Design)

The objective of Clause 4.3 'Building Height' is to ensure that the height of buildings is compatible with that of adjoining development and the streetscape. Additionally, the building height development standard aims to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas. As such, the development standard for building height and the development controls for building setbacks, building design, solar access and overshadowing have been considered with respect to the merits of a variation pursuant to Clause 4.6.

Although the proposal seeks to vary the maximum building height for 37 of the 60 dwellings that form the subject application, dwellings along Superlot 12 which have an interface to existing dwelling to the west (The Glade) achieve compliance with building height. All dwellings which exceed the maximum height are 'internal' to the site. Overall, the housing south development provides for 2 and 3 storey dwellings which were envisaged with the 9 and 12 metre height limit.

The applicant has adequately demonstrated that the proposed development is in the public interest and is consistent with the objectives of Clause 4.3 'Building Height' and the R3 Medium Density Residential zone. The variation to building height will not create buildings of excessive height, bulk or scale nor will it cause undue impacts upon the amenity of adjoining residential properties. A variation to the building height in this instance is considered to be satisfactory and can be supported.

Specifically, in relation to recent judgments of the Land and Environment Court, for the reasons identified in this report and the Applicant's Clause 4.6 Variation Request, it is considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R3 Medium High Density zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention;

- Strict compliance with the building height development standard is considered unreasonable and unnecessary in this instance; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development is well founded. In relation to the 'five part test' the objection to the building height is well founded on Part 1 of the test as the objectives of these standards are achieved notwithstanding non-compliance with the standards.

It is also noted that in accordance with the Departments Circular PS 18-003 that Director General's concurrence can be assumed in respect of any Environmental Planning Instrument that adopts Clause 4.6 Exceptions to Development Standards of the Standard Instrument or a similar clause.

### **Clause 5.21 - Flood planning**

The objectives of this clause are as follows:

- *to minimise the flood risk to life and property associated with the use of land,*
- *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

**Comment:** Currently, a natural watercourse traversing the site diagonally from east to west conveys stormwater runoff from the upstream catchment and merges with a minor tributary conveying the site, ultimately discharging at the south-western boundary. As a result, the site and properties downstream in the locality are identified as flood control lots.

As part of 860/2022/JP, the application seeks approval for the infrastructure works including road and drainage works, earthworks and stormwater management works. The applicant has provided multiple reports and supporting documentation to address flooding and stormwater management measures for the site, to facilitate the future development.

Overall, the proposal has demonstrated appropriate and sufficient flood and stormwater measures to ensure no adverse impacts result from the proposal.

### **Clause 7.2 Earthworks**

The relevant objective of this clause is:

- *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land*

**Comment:** Bulk earthworks for the proposal for part of DA 860/2022/JP. Minor earthworks are proposed to facilitate the construction of the Housing South Precinct, with limited earthworks proposed within the vicinity of neighbouring properties to the west (in The Glade). These works will not have detrimental impacts and are consistent with the clause above.

## Clause 7.7 Design Excellence

The Design Excellence of the proposal is further assessed in the SCCPP report for DA 860/2022/JP.

The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) whether the development detrimentally impacts on view corridors,*
- (d) whether the development detrimentally impacts on any land protected by solar access controls established under a development control plan,*
- (e) the requirements of any development control plan to the extent that it is relevant to the proposed development,*
- (f) how the development addresses the following matters:*
  - (i) the suitability of the land for development,*
  - (ii) existing and proposed uses and use mix,*
  - (iii) heritage issues and streetscape constraints,*
  - (iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - (v) bulk, massing and modulation of buildings,*
  - (vi) street frontage heights,*
  - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
  - (viii) the achievement of the principles of ecologically sustainable development,*
  - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,*
  - (x) the impact on, and any proposed improvements to, the public domain,*
  - (xi) the configuration and design of public access areas, recreation areas and communal open space on the site and whether that design incorporates exemplary and innovative treatments,*
- (g) the findings of a panel of 3 or more persons that has been convened by the consent authority for the purposes of reviewing the design excellence of the development proposal.*

It should also be noted that Clause 7.15 (4) of the LEP states that:

*(4) Clause 7.7 (other than clause 7.7(4)(g)) extends to development on the subject land involving the erection of a new building, or external alterations to an existing building, of any height.*

Noting the above clause, any development at 55 Coonara Avenue is to demonstrate design excellence, however not always required to be subject to review of the Design Excellence Panel. In this instance, both the both the concept application and the residential flat building were presented at the DEP meeting, as these two applications proposed development of 25 metres or more.

With regard to Clause 7.7(4)(a), the design has been amended to ensure that the standard of design, building materials, building type and location is consistent with the context of the site and the surrounding bushland.

With regard to Clause 7.7(4)(b), the high level of architectural design ensures that the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain.

With regard to Clause 7.7(4)(c), the Applicant has adequately demonstrated that there would be negligible impacts to view corridors from both the public domain and internal view corridors have been considered.

With regard to Clause 7.7(4)(d), the proposal results in no significant impact on adjoining properties in terms of overshadowing.

With regard to Clause 7.7(4)(e), the proposed development has been assessed in detail and addressed in this report.

With regard to Clause 7.7(4)(f), subclauses (i) to (xi) the applicant has adequately demonstrated that the development satisfactorily addresses the matters noted in the clause.

With regard to Clause 7.7(4)(g), the findings of Council's Design Excellence Panel have been considered and the concerns raised have been satisfactorily addressed.

In this regard, the proposal satisfies the provisions of Clause 7.7 of LEP 2019.

#### **Clause 7.15 Development at 55 Coonara Avenue, West Pennant Hills**

Clause 7.15 specifies the following:

- (1) This clause applies to land at 55 Coonara Avenue, West Pennant Hills, being Lot 61, DP 737386 (the subject land).*
- (2) Development consent may be granted to a single development application for development on the subject land in Zone R3 Medium Density Residential or Zone R4 High Density Residential that is both of the following—*
  - (a) the subdivision of land into 2 or more lots,*
  - (b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—*
    - (i) for the erection of a dwelling house—180 square metres, or*
    - (ii) for the erection of an attached dwelling or a semi-detached dwelling—86 square metres.*

**Comment:** With respect to Clause 7.15 (2)(a) the application includes subdivision of the individual lots in the R3 Zone, with dwellings houses having lots of 180m<sup>2</sup> or greater, and attached dwellings having lots 86m<sup>2</sup> or greater. As identified in the table below, for the Southern Housing Precinct, the minimum lot size for an attached or semi-detached dwelling is 154.6m<sup>2</sup> and the minimum lot size for a detached dwelling is 313.1m<sup>2</sup>, both meeting the minimum lot sizes of 86m<sup>2</sup> and 180m<sup>2</sup> respectively.

| Lot Number | Dwelling Type | Lot Size (m <sup>2</sup> ) | Compliance |
|------------|---------------|----------------------------|------------|
| 9          | Semi-detached | 346.6                      | Yes        |
| 10         | Attached      | 210.4                      | Yes        |
| 11         | Attached      | 225.5                      | Yes        |
| 12         | Attached      | 233.1                      | Yes        |



| Lot Number | Dwelling Type       | Lot Size (m²) | Compliance |
|------------|---------------------|---------------|------------|
| 13         | Semi-detached       | 313.2         | Yes        |
| 14         | Semi-detached       | 313.2         | Yes        |
| 15         | Attached            | 233.4         | Yes        |
| 16         | Attached            | 233.4         | Yes        |
| 17         | Attached            | 233.4         | Yes        |
| 18         | Attached            | 233.4         | Yes        |
| 19         | Semi-detached       | 315           | Yes        |
| 20         | Semi-detached       | 321.6         | Yes        |
| 21         | Attached            | 160           | Yes        |
| 22         | Attached            | 160           | Yes        |
| 23         | Attached            | 160           | Yes        |
| 24         | Attached            | 160           | Yes        |
| 25         | Semi-detached       | 253.5         | Yes        |
| 26         | Semi-detached       | 255.1         | Yes        |
| 27         | Attached            | 163.9         | Yes        |
| 28         | Attached            | 167.7         | Yes        |
| 29         | Attached            | 172.7         | Yes        |
| 30         | Semi-detached       | 339.8         | Yes        |
| 31         | Semi-detached       | 344.8         | Yes        |
| 32         | Attached            | 254           | Yes        |
| 33         | Semi-detached       | 237           | Yes        |
| 34         | Semi-detached       | 237           | Yes        |
| 35         | Attached            | 210           | Yes        |
| 36         | Attached            | 210           | Yes        |
| 37         | Semi-detached       | 298.1         | Yes        |
| 38         | Semi-detached       | 300.3         | Yes        |
| 39         | Attached            | 254           | Yes        |
| 40         | Semi-detached       | 235           | Yes        |
| 41         | Semi-detached       | 235           | Yes        |
| 42         | Attached            | 210           | Yes        |
| 43         | Attached            | 210           | Yes        |
| 44         | Semi-detached       | 341.2         | Yes        |
| 45         | Semi-detached       | 310.2         | Yes        |
| 46         | Attached            | 270           | Yes        |
| 47         | Attached            | 272.2         | Yes        |
| 48         | Semi-detached       | 291           | Yes        |
| 49         | Semi-detached       | 247.4         | Yes        |
| 50         | Attached            | 270.3         | Yes        |
| 51         | Semi-detached       | 315.1         | Yes        |
| 52         | Semi-detached       | 243.4         | Yes        |
| 53         | Attached            | 157.5         | Yes        |
| 54         | Attached            | 158.5         | Yes        |
| 55         | Attached            | 157.3         | Yes        |
| 56         | Attached            | 154.6         | Yes        |
| 57         | Semi-detached       | 180           | Yes        |
| 58         | Semi-detached       | 181.5         | Yes        |
| 59         | Attached            | 155.4         | Yes        |
| 60         | Attached            | 157.1         | Yes        |
| 61         | Attached            | 156.6         | Yes        |
| 62         | Attached            | 154.1         | Yes        |
| 63         | Semi-detached       | 185.6         | Yes        |
| 64         | Dwelling - detached | 369.8         | Yes        |
| 65         | Dwelling - detached | 313.1         | Yes        |

| Lot Number | Dwelling Type       | Lot Size (m²) | Compliance |
|------------|---------------------|---------------|------------|
| 66         | Dwelling - detached | 314           | Yes        |
| 67         | Dwelling - detached | 315.1         | Yes        |
| 68         | Dwelling - detached | 425.1         | Yes        |

*(3) Development consent must not be granted to development on the subject land unless the building setback of any building resulting from the development is equal to, or greater than, 11 metres from Coonara Avenue, West Pennant Hills.*

**Comment:** As part of the subject Southern Housing Precinct application, only one dwelling has frontage (side boundary) to Coonara Avenue. This dwelling (dwelling 12-05 of Superlot 12) has been set back greater than 11m from Coonara Avenue. Compliance with this standard is achieved.

*(4) Clause 7.7 (other than clause 7.7(4)(g)) extends to development on the subject land involving the erection of a new building, or external alterations to an existing building, of any height.*

**Comment:** Refer above.

*(5) Development consent must not be granted to development on the subject land unless the consent authority is satisfied that the development—*  
*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*  
*(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*  
*(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

**Comment:** On-site detention tanks have been designed and incorporated into the development as part of DA 860/2022/JP to ensure stormwater is management, to ensure no adverse flood risks caused by the subject development over the downstream properties, . and to incorporate Water Sensitive Urban Design Measures (WSUD) to comply with the achievement of water quality treatment targets. The reports and civil plans provided with the application confirm that the subject development does not change the existing flood behaviour within the subject site, as well as downstream properties within the locality. Stormwater management has been satisfactorily addressed and the proposal will not result in significant stormwater impacts

*(6) Development consent must not be granted to development that results in more than 600 dwellings on the subject land.*

**Comment:** The subject application seeks approval for 60 dwellings (which forms part of the approved master plan for the site which is for 417 dwellings), which is below the maximum 600 dwellings permitted on the site.

## 7. Compliance with Site-Specific Design Guidelines

Draft THDCP Part D Section 19, related to the proposed redevelopment of 55 Coonara Avenue and was exhibited with the Planning Proposal from 30 April 2019 to 31 May 2019. Whilst Council officers recommended the Planning Proposal for approval, the Draft DCP Section was not endorsed by Council on 26 November 2019 and as a consequence of that

document not being adopted, THDCP does not contain any controls which relate to dwelling lots of 180m<sup>2</sup> for detached dwellings or 86m<sup>2</sup> for an attached dwelling. These are the minimum lot sizes that apply to the site, pursuant to Clause 7.15 of THLEP 2019.

In order to address the lack of relevant development controls within THDCP which are applicable to the site as a result of the rezoning, the DA is supported by Site Specific Design Guidelines. The Site Specific Design Guidelines are intended to act in place of a site specific DCP and provide a series of objectives and controls that will guide future development of the site consistent with this housing development.

An assessment of the proposed housing south against the controls within the Site-Specific Design Guidelines has been provided in the table below:

| DEVELOPMENT STANDARD                              | GUIDELINE REQUIREMENTS  | PROPOSED DEVELOPMENT  | COMPLIANCE |
|---|---|---|------------|
| <b>Part 2 – Vision and Character</b>              |   |   |            |
| 2.1 Vision and Development Objectives             | <p>Objectives</p> <p>a. To accommodate the new residential population, in a manner which responds to environmental constraints.</p> <p>b. To protect remnant forest areas.</p> <p>c. To encourage a variety of housing types and densities.</p> <p>d. To promote economically viable development.</p> <p>e. To provide an appropriate and suitable built form urban response to the Site.</p> | The proposed development is consistent with the objectives outlined with respect to the vision and character of the site.   | Yes        |
| <b>Part 3 - Site Specific Development Control</b> |   |   |            |
| 3.1 Dwelling Site and Mix                         | A maximum of 20% of all dwellings on the land are to be 1-bedroom dwellings.  | Overall, the development will achieve compliance with the control. Only 38 x 1 bedroom units are provided as part of DA 861/2022/JP, the RFB DA. No single bedroom dwellings are proposed as part of DA 859/2022/JP (southern precinct)<br>38 of 417 dwellings = 9% | Yes        |
|   | At least 40% of all dwellings on the land are to be 3-bedroom dwellings (or larger).  | A minimum of 167 of the 418 dwellings are required to achieve compliance with this control. All 60 dwellings of DA 589/2022/JP are 3 bedrooms or more, and 78 of the 252 units (DA  | Yes        |

| DEVELOPMENT STANDARD          | GUIDELINE REQUIREMENTS  | PROPOSED DEVELOPMENT   | COMPLIANCE   |
|-------------------------------|---|--|--|
|                               |   | 860/2022/JP) are 3 bedroom or larger<br>60 + 78 = 138 dwellings of the 312 dwellings = 76% of dwellings currently under assessment are 3 bedrooms or larger. more. Compliance with this control will be re-assessed once the DAs have been lodged. Details in the Urban Design Report prepared by the applicant advised that the northern and central housing precincts subject to a separate DA will be a mix of 3, 4 and 5 bedrooms. |  |
|                               | At least 40% of all 3-bedroom dwellings (or larger) on the land will have a minimum internal floor area of 135m2.   | All the dwellings in the southern housing precinct achieve compliance with control. Once the housing north/central precinct are lodged, confirmation of compliance will be re-assessed.  | Yes, it is anticipated that all future application(s) will achieve compliance with this control. |
| 3.2 Streetscape and Character | Future development should provide landscaping within the housing lots and apartment development which includes a diversity of local native species at a scale which compliments the built form. | Provided   | Yes  |
|                               | High quality landscaping is to be provided for all street reserves, including landscaped verges, public spaces and communal areas.  | Provided   | Yes  |
|                               | Native street trees are to be provided within the landscaped verges.  | Provided where possible.   | Yes  |
|                               | Street trees are to be sited in consideration of driveways and infrastructure and to allow adequate sight lines in proximity to intersections.  | Provided where possible  | Yes  |
|                               | Plant selection is to consider sight lines so as not to obstruct views where  | Satisfactory   | Yes  |

| DEVELOPMENT STANDARD | GUIDELINE REQUIREMENTS  | PROPOSED DEVELOPMENT   | COMPLIANCE |
|----------------------|---|--|------------|
|                      | vehicular sight lines are required to be maintained   |  |            |
|                      | Colours and materials shall be of natural, earthy tones that are compatible with the landscape.   | Satisfactory   | Yes        |
| 3.3 Access           | Future development on the site shall be publicly accessible from Coonara Avenue   | Subject application is accessed from the southern (existing) entrance on Coonara Avenue.   | Yes        |
|                      | Waste collection is to be undertaken from the rear laneway, where applicable.   | Satisfactory   | Yes        |
|                      | Each dwelling requires at least 1.6m clear dedicated space along the kerbside for bin presentation (clear of tree pits and other obstructions).   | Provided   | Yes        |
|                      | No building element (such as eaves, balconies, gutters and the like) shall encroach into the rear laneway reservation area (carriageway plus verge).  | Not applicable to subject application.   | N/A        |
|                      | Garbage bin storage for the houses is to be screened or concealed from view from the street. For detached or semi-detached dwellings with side access this may be behind fences. For attached dwellings, bin storage may be within a dedicated, screened bin enclosure, which may be located within the building setback. | Satisfactory   | Yes        |
|                      | Apartment garbage loading will be via a basement loading area suitable for access by Councils garbage collection vehicle.   | Refer to DA 861/2022/JP  | N/A        |
|                      | Driveway crossover width shall be designed in consideration of the streetscape and landscaping.   | Satisfactory   | Yes        |
| 3.4 Vegetation       | Future development on the site should include the provision of a Vegetation Management Plan (VMP) in accordance with Council's Vegetation Management Plan Guidelines, except where the  | Approval of the VMP forms part of DA 860/2022/JP.<br><br>Dedication of land on the site is not a matter for consideration as part of | Yes        |

| DEVELOPMENT STANDARD                            | GUIDELINE REQUIREMENTS  | PROPOSED DEVELOPMENT   | COMPLIANCE |
|---|---|--|------------|
|   | land is to be dedicated to a State Government agency.   | the subject application  |            |
| 3.5 Parking Attached and semi-detached dwelling | 2 spaces per dwelling. A minimum 40 visitor car parks are to be provided through a combination of on-street parking through the provision on internal roads with a minimum carriageway of 8.1 metres including parking bays | Each dwelling is provided is with either a single or double garage. Where a single garage is provided, a car can be parked within the driveway, therefore each dwelling provided with a minimum of 2 car parking spaces. 20 of the 40 visitor spaces are provided as part of the subject DA. The remaining visitor spaces will be provided under future housing precinct applications. | Yes        |
| <b>4. Dwelling House Design Controls</b>        |   |  |            |
| 4.2 Building Length                             | The maximum building length is 50m (block of dwellings).  | Yes, maximum is Superlot 11 (east block) which is 47.27m   | Yes        |
| 4.3 Lot Dimensions                              | Lot sizes are to comply with the minimum lot sizes prescribed in the Hills Local Environmental Plan 2019.   | Dwellings houses have lots of 180m <sup>2</sup> or greater and attached dwellings having lots 86m <sup>2</sup> or greater. 859/2022/JP)  | Yes        |
| <b>4.3 Minimum lot dimensions</b>               |   |  |            |
| 2 storey front loaded (detached)                | Minimum lot width – 9m<br>Minimum lot depth – 20m   | All 2 storey front loaded (detached) meet minimum lot width and depth requirements   | Yes        |
| 2 storey front loaded (attached, semi-detached) | Minimum lot width – 5m<br>Minimum lot depth – 20m   | All 2 storey front loaded (attached, semi-detached) meet minimum lot width and depth requirements  | Yes        |
| 2 & 3 storey rear loaded (attached)             | Minimum lot width – 5.4m<br>Minimum lot depth – 20m   | All 2 & 3 storey rear loaded (attached) meet the minimum lot width and depth requirements.   | Yes        |
| 3 storey front loaded (attached, semi-detached) | Minimum lot width – 6m<br>Minimum lot depth – 20m   | All 3 storey front loaded (attached, semi-detached) meet the minimum lot width and dept requirements.  | Yes        |
| <b>4.4 Building Setbacks</b>                    |   |  |            |
| Front Loaded single garage                      | Front setback – 4m<br>Garage setback – 5.5m<br>Rear setback – 3m  | Required setbacks provided.  | Yes        |
| Front loaded double garage                      | Front setback – 2.5m<br>Garage setback – 3.5m   | Required setbacks provided.  | Yes        |

| DEVELOPMENT STANDARD      | GUIDELINE REQUIREMENTS  | PROPOSED DEVELOPMENT   | COMPLIANCE |
|---------------------------|---|--|------------|
|                           | Rear setback – 3m   |  |            |
| Rear loaded single garage | Front setback – 2m<br>Garage setback – 5.5m from rear lane<br>Rear setback – 2m   | Required setbacks provided.  | Yes        |
| Rear loaded double garage | Front setback – 2m<br>Garage setback – 0.5m from rear lane<br>Rear setback – 2m   | Required setbacks provided.  | Yes        |
| Articulation Zone         | Minor façade elements such as balconies, porches or verandahs may be 1.5m forward of front building line or within the rear setback to provide articulation. On corner blocks the articulation zone may be extended along the secondary frontage for a max of 3m or 25% of façade length with a min. of 1m setback from boundary. | Reasonable articulation provided in accordance with the articulation zone requirement which provides some architectural relief and flexible with the setback controls. | Yes        |
| Side Setbacks (varies)    | 0m between dwellings<br>900mm from detached boundary lines (end of block) and through site links<br>1.5m from side boundaries fronting roadways and laneways<br>Note: Where lots are irregular in shape, variations to the front, garage and rear setbacks may be permitted   | Required setbacks provided with appropriate articulation as required.  | Yes        |
| Wall length               | The maximum allowable lot wall length is equal to the maximum lot length minus the front and rear articulation setbacks.  | Satisfactory   | Yes        |
| 4.5 Garage design         |   |  |            |
| Single garage             | 5.5m x 3m minimum internal dimension<br>Garage door – no more than 2.5m wide  | Provided   | Yes        |
| Double garage             | 5.5m x 5.4m minimum internal dimension<br>Garage door – no more than 5m wide  | Provided   | Yes        |
| 4.6 Private Open Space    | Each dwelling shall have access to an area of private open space that is directly accessible from primary living area   | Provided   | Yes        |
|                           | Private open space shall be fenced to provide protection  | Provided   | Yes        |



| DEVELOPMENT STANDARD                                     | GUIDELINE REQUIREMENTS   | PROPOSED DEVELOPMENT   | COMPLIANCE |
|--|--|--|------------|
|  | of wildlife through separation from domestic pets. Variable fence heights are required to respond to the location and interface  |  |            |
| Minimum area of private open space (total combined area) | Detached – private open space at ground level – 25m <sup>2</sup>   | Provided   | Yes        |
|  | Attached, semi-detached<br>Where private open space located at ground level – 15m <sup>2</sup><br>Where secondary private open space is provided and located above ground level – 8m <sup>2</sup>                                  | Provided   | Yes        |
| 4.7 Solar Access   | A minimum of 2 hours sunlight between 9 am and 3pm on 21 June, shall be achieved to at least 50% of the required private open space in at least 80% of all dwellings   | Provided   | Yes        |
| 4.8 Landscaped Area                                      | Front setbacks are to maximise any opportunity for soft landscaping, taking into consideration the requirement for any services, including fencing and letterboxes.  | Provided   | Yes        |
|  | A minimum of 80% of dwellings to ensure that a minimum 20% of the area forward of the main building line is landscaped area. This landscaped area can include services, fencing, letterboxes and paved steppers.                   | Calculation provided on landscape plans provided ensure compliance, with 51 of the 60 dwellings achieving compliance (or 85%). | Yes        |
|  | Where lot depth is equal to or greater than 25m in length, the private open space area shall have a minimum softscape landscaping area equivalent to 50% of the minimum ground level private open space area requirement.          | Provided for lots with a depth greater than 25m  | Yes        |
|  | Where lot depth is less than 25m in length, the private open space area shall have a minimum softscape landscaping area equivalent to 30% of the minimum ground level private open space area. This may be reduced further where a | Provided.  | Yes        |

| DEVELOPMENT STANDARD | GUIDELINE REQUIREMENTS   | PROPOSED DEVELOPMENT  | COMPLIANCE |
|----------------------|--|---|------------|
|                      | dwelling's private open space backs directly onto public open space.   |   |            |
|                      | Clothes drying device is to be provided within private open space areas  | Provided  | Yes        |
|                      | Where practicable, planting to be provided between the driveway and side fence.  | Provided where possible.  | Yes        |
|                      | Where practicable, front gardens are to include a small tree.  | Provided where possible.  | Yes        |
|                      | Irregular shaped lot landscape design is generally required to achieve the above, however may be required to be assessed on merit.   | Corner lot landscape provisions are reviewed to ensure a suitable landscape outcome is provided.  | Yes        |
| 4.9 Privacy          | Private open space areas and habitable rooms of adjacent dwellings should be reasonably protected from overlooking.  | Dwellings have been designed to provide for mutual privacy.   | Yes        |
|                      | Windows of living rooms with direct outlook to any living room of any proposed or existing dwelling within 9 metres should:<br>- Be offset a minimum of 1 metre from the edge of one window to the edge of another, or<br>- Have a minimum sill height of 1.5m above finished floor level, or<br>- Provide fixed obscure glazing to a height of 1.5 metres above finished floor level. | Designed measures incorporated to ensure privacy is maintained.   | Yes        |
|                      | Where new dwellings adjoin an existing dwelling, screening landscaping with a minimum dimension of 1.5 metres is to be planted along the boundary between the dwellings.   | Dwellings in Superlot 12 have been provided with a planter box with a minimum dimension of 1.8m wide which provides for screen planning to the dwelling to the west (from The Glade). | Yes        |

## 8. Compliance with The Hills Council Development Control Plan 2012

The proposed development has been assessed against the relevant development controls under:

- Part C Section 1 – Parking
- Part C Section 3 – Landscaping
- Part C Section 4 – Heritage
- Part C Section 6 – Flood Controlled Land

The proposal achieves compliance with the relevant requirements of the development controls.

## 9. The Hills Development Control Plan Part B Section 9 Small Lot Housing (Integrated)

This DCP applies to development for the purposes of front-loaded detached or attached dwellings under Clause 4.1B (small lot housing). The proposal is not seeking approval for small lot housing under Clause 4.1B of the LEP which requires lots to have an area resulting in lot equal or greater to 240m<sup>2</sup>. Subdivision of the attached and detached dwelling of the subject application are pursuant to Clause 7.15(2) of the LEP (specific to 55 Coonara Avenue) which sets a minimum lot size of 180m<sup>2</sup> for a dwelling house and 86m<sup>2</sup> for an attached or semi-detached dwelling.

## 10. Low-Rise Housing Diversity Guide

The Design Excellence Panel reviewed the pre-lodgement plans for a concept Development Application on 10 March 2021. The Panel recommended adherence to the Low Rise Housing Diversity Design Guide for the small lot housing/medium density component. This was also conveyed in the pre-lodgement meeting for the housing south precinct pre-lodgement meeting on 16 July 2021.

The applicant failed to address the relevant provisions of the Guide as requested by Council staff, and this was further highlighted to the applicant after the development applications were lodged.

The DEP further made comment in relation to the Low Rise Housing Diversity Guide in their meeting noted, and stated:

*The Panel advises AMCORD provides design guidance on lot arrangement and reiterates the advice provided previously, "At a minimum, the Panel recommends adherence with the Low Rise Housing Diversity Guide for the small lot housing component, noting the site has been rezoned without an applicable DCP. A design statement indicating how this has been successfully achieved should be provided to the DA officer as per the guideline recommendation."*

The applicant provided legal advice in relation to the application of the Low Rise Housing Diversity Guide with respect to the re-development of the site, which concluded that

*Accordingly, there is no legal requirement to consider the Design Guide because it doesn't apply as per the Regulation and as per the definitions in the Design Guide.*

*To the extent that the DEP is seeking to apply the Design Guide because there is no applicable DCP, we say:*

- a) The DEP shouldn't be using the Design Guide where it clearly doesn't apply to this form of housing; and*

- b) *If the DEP is seeking to set an appropriate framework to guide future development of the Site, that can be done through the site specific design guidelines in the Concept DA which the Act recognises as an appropriate method to do so in lieu of a DCP.*

A copy of the Legal Advice prepared by Addisons Lawyers is provided as an attachment that forms part of DA 860/2022/JP.

## 11. Issues Raised in Submissions

The application was notified on two occasions. A total of 669 submission have been received, with some of the objectors providing multiple submissions.

**NOTE:** The submission table below only relates to matters raised in relation to the subject application for the Housing South Precinct development. Submissions in relation to the concept master plan have been addressed under the SCCPP report for DA 860/2022/JP.

| ISSUE/OBJECTION  | COMMENT   | OUTCOME           |
|--|---|-------------------|
| Various amendments to the objectives and controls in the Site Specific Design Guidelines are to be made as the current Guidelines result in a lack of design excellence. | The Site Specific Design Guidelines (SSDG) are based on the draft site specific DCP (that was not adopted as part of the planning proposal approval). The current SSDG have been reviewed by Council staff and amendments have been made, and a condition of consent is recommended as part of DA 860/2022/JP for future application to have regard to the SSDG.          | Issue addressed.  |
| Do not want to have the 'backside' of houses facing Coonara Avenue.  | Dwelling 12.05 of Superlot 12 is the only dwelling of the subject DA that fronts Coonara Avenue. The north-western side elevation of the dwelling is closes to Coonara Avenue which benefits from the 8m wide landscape buffer, as well as internal landscaping to the site. The dwelling is setback a minimum (as required by the LEP) of 11 metres from Coonara Avenue. | Issue addressed.  |
| Light coloured roofs must be used to reduce urban temperatures.  | The colours and finishes for the housing south precinct are neutral and earthy tones. The dark roofs (which also provides for solar panels) are considered appropriate in this instance as dark roofs are less reflective and are more recessive and tend to blend into the background/landscape, and are less intrusive than light coloured roofs.                       | Issued addressed. |
| The dwelling houses in the development should be provided with rainwater tanks greater than the 1,500L tanks stipulated.   | The dwellings have been provided with a minimum of 1,500L rainwater tanks which meets the requirement under BASIX provisions for this development.  | Issue addressed.  |
| The dwellings should comply with the 40% landscape requirement.  | The landscape provisions of the Residential DCP Part B Section 2 are not applicable in this instance as the lot sizes are not 700m <sup>2</sup> . Overall, the  | Issue addressed   |

| ISSUE/OBJECTION  | COMMENT  | OUTCOME          |
|--|--|------------------|
|  | Superlots have a soft landscape area ranging from 11% (Superlot 6) to 34% (Superlot 12).   |                  |
| The Clause 4.6 variation to the 9 and 12 metre height limit should not be supported. Objection to the further height increase with the amended plans. The dwellings heights should be reduced, not increased.  | <p>The variation to the LEP height development standard is addressed in the report and is considered satisfactory. In relation to the Clause 4.6 written submission, it is considered that the Applicant's request is well founded, and the proposed variation results in a development that is consistent with the relevant objectives, and compliance with the height development standard is considered unreasonable and unnecessary in this instance. The proposal results in a desirable urban design and planning outcome as outlined in this report.</p> <p>The further increase in the maximum building height was a result of the introduction of a pop-up skylight windows/roof feature (as recommended by the Design Excellence Panel) to allow for greater solar penetration of the dwellings.</p>                                 | Issue addressed. |
| The height exceedances for the southern housing precinct should not be approved, and if approved should not be a precedent for future DAs.   | Refer comment above. Each application is assessed on its own merit, and it is not considered that the building heights of the subject DA will not set an undesirable precedent.  | Issue addressed. |
| Allowing Superlot 12.01 property boundary to extend 2.5m across my property will unreasonably interfere with the outlook, security and privacy of my property. The 2 storey house will have direct visibility into the backyard including the swimming pool area from both the house and the yard There is a potential adverse impact on the existing pool fence and compliance with pool fence regulations. It would also be inconsistent with the remaining portion of the boundary on my property which has been arranged to have minimal visual impact on the bush outlook. The overall result will be unsightly from both the perspective of the dwelling on the Mirvac property and my own outlook. This will significantly impact on the amenity and value of my property. Given the significant impact the proposed Mirvac Development is likely to have on my property, I | <p>The first floor of dwelling 12.01 is setback 6.95m to the common boundary with landscaping proposed to the rear boundary, which provides satisfactory separation and screening to assist in the mitigation of privacy concerns. The dwelling complies with the building height and setback controls.</p> <p>The neighbour has requested the boundary of 12.01 align with the boundary between 10 and 14 The Glade. It is considered that the proposed lot and boundary arrangement, will not unreasonably impact on the amenity of the adjoining dwelling, noting that the shared boundary is approximately (3 metres in length).</p> <p>Pool fence compliance is the responsibility of the owner. Furthermore, any proposed fencing along the shared boundary is a civil matter, and compliance with pool fencing is to be considered.</p> | Issue addressed. |

| ISSUE/OBJECTION   | COMMENT   | OUTCOME |
|---|---|---------|
| <p>request that the Council require the southern extend of the Mirvac "Superlot 12" be aligned to the existing boundary line of 10/14 The Glade. In the circumstances I submit that such a requirement is both reasonable and necessary to maintain the privacy, visual appearance, amenity, and ultimately, the value of my property.</p> <p>Tree 3516 (to be retained) is already heavily pruned and located too close my property. It does not comply with current regulations for trees located near for residential pools. This tree must be removed. Tree 3512 has significant overhang over my property which may result in pruning that could result is imbalance growth or threaten the survival of the tree. Tree 3512 is located very close to the water tank that is to be removed during as part of the demolition work currently in progress. There is a high risk that damage to the root system during the demolition will kill the tree.</p> | <p>The submission requests the removal of Trees 3512 and 3516 due to concerns over their health and overhang of the swimming pool. The applicant has advised that these trees have been deemed satisfactory and worthy of retention by the project arborist. Should the subject trees be considered a risk to human life or property as separate application can be pursued for the removal of these trees.</p> |         |

## 11. External Referrals

The application was referred to the following external authorities:

### ENDEAVOUR ENERGY COMMENTS

The development application was referred to Endeavour Energy and no objection was raised to the application subject to conditions.

### SYDNEY WATER COMMENTS

The proposal was referred to Sydney Water. No objections were raised to the proposal. Standard conditions have been imposed.

### NSW RURAL FIRE SERVICE

The site is located on land identified as bushfire prone "Category 1" and 'Vegetation Buffer'. Pursuant to Section 4.46 of the EP&A Act 1979, development that requires authorisation under section 100B of the Rural Fires Act 1997 is defined as Integrated Development. Section 100B identifies subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes as development which requires a bush fire safety authority. The subject application includes subdivision, therefore Section 100B of the Rural Fire Act 1997 applies. The application was referred to NSW Rural Fires Services (RFS) for review. NSW RFS have issued General Terms of Approval, and have provided a Bush Fire Safety Authority for the development, and have been included as condition 31, and a copy is also included as Attachment 11).

## **12. Internal Referrals**

### **SUBDIVISION ENGINEERING COMMENTS**

No objection is raised to the proposal subject to conditions.

### **TRAFFIC MANAGEMENT COMMENTS**

Council's Traffic Section concludes that the development will have marginal impacts in terms of its traffic generation potential on the local road network, and sufficient parking has been provided for the development and confirmed that there are no objections to this development from a traffic perspective.

### **LANDSCAPE COMMENTS**

No objection is raised to the proposal subject to conditions.

### **TREE MANAGEMENT COMMENTS**

No objection is raised to the proposal subject to conditions.

### **HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

No objection is raised to the proposal subject to conditions.

### **WASTE MANAGEMENT COMMENTS**

No objection is raised to the proposal subject to conditions.

### **HERITAGE COMMENTS**

No objection is raised to the proposal subject to conditions.

### **FORWARD PLANNING COMMENTS**

No objection is raised to the proposal subject to conditions.

### **LAND INFORMATION SYSTEMS COMMENTS**

No objection is raised to the proposal subject to conditions.

## **CONCLUSION**

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP (Transport and Infrastructure) 2021, SEPP No. 65, SEPP (Resilience and Hazards) 2021, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered satisfactory.

The variation to the LEP Height development standard is addressed in the report and is considered satisfactory. In relation to the Clause 4.6 written submission, it is considered that the Applicant's request is well founded, and the proposed variation results a development that is consistent with the relevant objectives, and compliance with the standard is considered unreasonable and unnecessary in this instance, and the proposal results in a desirable urban design and planning outcome as outlined in this report.

The issues raised in the submissions have been addressed in the report and do not warrant refusal of the application.

Accordingly, approval is recommended subject to conditions.



## IMPACTS:

### Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

## Local Strategic Planning Statement – Hills Future 2036

The Plan sets planning priorities and corresponding actions that will provide for more housing, jobs, parks and services for the growing population. The Plan is supported by six strategies which provide a guide to planning in The Hills. The relevant strategy of the Local Strategic Planning Statement is the Productivity and Centres Strategy which establishes the basis for strategic planning of employment lands and centres in the Shire.

Located in Cherrybrook Metro Station Precinct, the proposal will provide for variety of housing types and associated open space to assist in the growth of area in close proximity to public transport. The proposal will assist in the creation of jobs both within the construction and education industries in line with the projected population growth, and in a location near transport infrastructure and other employment areas of the Castle Hill and Norwest strategic centres. The development proposal is considered to be consistent with the Local Strategic Planning Statement.

## RECOMMENDATION

The Development Application be approved subject to the following conditions.

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Buildings and the R3 Medium Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention;
- The site is considered suitable for the development; and
- The proposal is in the public interest.

## GENERAL MATTERS

### 1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

## REFERENCED PLANS AND DOCUMENTS

| DRAWING NO.  | DESCRIPTION  | REVISION | DATE       |
|--------------|--|----------|------------|
| -----        | Street Numbering Plans (9 Pages – for numbering purposes only) | -----    | -----      |
| Sheet 1 of 5 | Deposited Plan Administrative Sheet                            | 01       | 20/05/2022 |
| Sheet 2 of 5 | Deposited Plan Administrative Sheet                            | 01       | 20/05/2022 |
| Sheet 3 of 5 | Deposited Plan Administrative Sheet                            | 01       | 20/05/2022 |
| Sheet 3 of 5 | Deposited Plan Administrative Sheet                            | 01       | 20/05/2022 |
| Sheet 4 of 5 | Deposited Plan Administrative Sheet                            | 01       | 20/05/2022 |

|              |                                       |    |            |
|--------------|---------------------------------------|----|------------|
| Sheet 5 of 5 | Deposited Plan Administrative Sheet   | 01 | 20/05/2022 |
| Sheet 1 of 3 | Draft Precinct Plan 1                 | 01 | 20/05/2022 |
| Sheet 2 of 3 | Draft Precinct Plan 1                 | 01 | 20/05/2022 |
| Sheet 3 of 3 | Draft Precinct Plan 1                 | 01 | 20/05/2022 |
| Sheet 1 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 2 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 3 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 4 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 5 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 6 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |
| Sheet 7 of 7 | Precinct Subdivision Sequencing Plans | 02 | 20/05/2022 |

### Super Lot 06

| DRAWING NO. | DESCRIPTION  | REVISION | DATE       |
|-------------|--|----------|------------|
| 000         | Cover Sheet  | F        | 12/09/2022 |
| 001         | Locality & Site Analysis                                   | F        | 12/09/2022 |
| 100         | Lot Layout & Siting Plan – Lots 6-01_6-06                  | F        | 12/09/2022 |
| 101         | Lot Layout & Siting Plan – Lots 6-07_6-12                  | F        | 12/09/2022 |
| 110         | Erosion, Sediment Control & Benching Plan – Lots 6-01_6-06 | F        | 12/09/2022 |
| 111         | Erosion, Sediment Control & Benching Plan – Lots 6-07_6-12 | F        | 12/09/2022 |
| 120         | Hydraulic Concept Plan – Lots 6-01_6-06                    | F        | 12/09/2022 |
| 121         | Hydraulic Concept Plan – Lots 6-07_6-12                    | F        | 12/09/2022 |
| 200         | Lower Ground Floor Plan – Lots 6-01_6-03                   | F        | 12/09/2022 |
| 201         | Lower Ground Floor Plan – Lots 6-04_6-06                   | F        | 12/09/2022 |
| 202         | Lower Ground Floor Plan – Lots 6-07_6-09                   | F        | 12/09/2022 |
| 203         | Lower Ground Floor Plan – Lots 6-10_6-12                   | F        | 12/09/2022 |
| 210         | Ground Floor Plan – Lots 6-01_6-03                         | F        | 12/09/2022 |
| 211         | Ground Floor Plan – Lots 6-04_6-06                         | F        | 12/09/2022 |
| 212         | Ground Floor Plan – Lots 6-07_6-09                         | F        | 12/09/2022 |
| 213         | Ground Floor Plan – Lots 6-10_6-12                         | F        | 12/09/2022 |
| 220         | First Floor Plan – Lots 6-01_6-03                          | F        | 12/09/2022 |
| 221         | First Floor Plan – Lots 6-04_6-06                          | F        | 12/09/2022 |
| 222         | First Floor Plan – Lots 6-07_6-09                          | F        | 12/09/2022 |
| 223         | First Floor Plan – Lots 6-10_6-12                          | F        | 12/09/2022 |
| 250         | Roof Plan  | F        | 12/09/2022 |
| 251         | Roof Plan  | F        | 12/09/2022 |

|     |  |   |            |
|-----|--|---|------------|
| 252 | Roof Plan                                  | F | 12/09/2022 |
| 253 | Roof Plan                                  | F | 12/09/2022 |
| 260 | Elevations                                 | F | 12/09/2022 |
| 261 | Elevations                                 | F | 12/09/2022 |
| 262 | Elevations                                 | F | 12/09/2022 |
| 263 | Elevations                                 | F | 12/09/2022 |
| 264 | Elevations                                 | F | 12/09/2022 |
| 265 | Elevations                                 | F | 12/09/2022 |
| 266 | Coloured Elevations                        | F | 12/09/2022 |
| 267 | Coloured Elevations                        | F | 12/09/2022 |
| 268 | Coloured Elevations                        | F | 12/09/2022 |
| 269 | Coloured Elevations                        | F | 12/09/2022 |
| 270 | Coloured Elevations                        | F | 12/09/2022 |
| 271 | Sections                                   | F | 12/09/2022 |
| 272 | Sections                                   | F | 12/09/2022 |
| 273 | Sections                                   | F | 12/09/2022 |
| 274 | Sections                                   | F | 12/09/2022 |
| 275 | Sections                                   | F | 12/09/2022 |
| 276 | Sections                                   | F | 12/09/2022 |
| 277 | Site Section / Corner Lots                 | F | 12/09/2022 |
| 410 | Private Open Space and Permeable Area Plan | F | 12/09/2022 |
| 720 | BASIX Requirements                         | F | 12/09/2022 |
| 721 | BASIX Requirements                         | F | 12/09/2022 |

### Super Lot 07

| DRAWING NO. | DESCRIPTION                               | REVISION | DATE       |
|-------------|---|----------|------------|
| 000         | Cover Sheet                               | F        | 12/09/2022 |
| 001         | Locality & Site Analysis                  | F        | 12/09/2022 |
| 100         | Lot Layout & Siting Plan                  | F        | 12/09/2022 |
| 110         | Erosion, Sediment Control & Benching Plan | F        | 12/09/2022 |
| 120         | Hydraulic Concept Plan                    | F        | 12/09/2022 |
| 210         | Ground Floor Plan – Lots 7-01_7-04        | F        | 12/09/2022 |
| 211         | Ground Floor Plan – Lots 7-05_7-08        | F        | 12/09/2022 |
| 212         | Ground Floor Plan – Lots 7-09_7-11        | F        | 12/09/2022 |
| 220         | First Floor Plan – Lots 7-01_7-04         | F        | 12/09/2022 |
| 221         | First Floor Plan – Lots 7-05_7-08         | F        | 12/09/2022 |
| 222         | First Floor Plan – Lots 7-09_7-11         | F        | 12/09/2022 |

|     |                          |   |            |
|-----|--------------------------|---|------------|
| 250 | Roof Plan Lots 7-01_7-04 | F | 12/09/2022 |
| 251 | Roof Plan Lots 7-05_7-08 | F | 12/09/2022 |
| 252 | Roof Plan Lots 7-09_7-11 | F | 12/09/2022 |
| 260 | Elevations               | F | 12/09/2022 |
| 261 | Elevations               | F | 12/09/2022 |
| 262 | Elevations               | F | 12/09/2022 |
| 263 | Elevations               | F | 12/09/2022 |
| 266 | Coloured Streetscapes    | F | 12/09/2022 |
| 267 | Coloured Streetscapes    | F | 12/09/2022 |
| 270 | Sections                 | F | 12/09/2022 |
| 271 | Sections                 | F | 12/09/2022 |
| 272 | Sections                 | F | 12/09/2022 |
| 273 | Sections                 | F | 12/09/2022 |
| 274 | Sections                 | F | 12/09/2022 |
| 275 | Sections                 | F | 12/09/2022 |
| 276 | Sections                 | F | 12/09/2022 |
| 410 | Private Open Space       | F | 12/09/2022 |
| 720 | BASIX Requirements       | F | 12/09/2022 |
| 721 | BASIX Requirements       | F | 12/09/2022 |

### Super Lot 08

| DRAWING NO. | DESCRIPTION                               | REVISION | DATE       |
|-------------|---|----------|------------|
| 000         | Cover Sheet                               | E        | 20/05/2022 |
| 001         | Locality & Site Analysis                  | E        | 20/05/2022 |
| 100         | Lot Layout & Siting Plan                  | E        | 20/05/2022 |
| 110         | Erosion, Sediment Control & Benching Plan | E        | 20/05/2022 |
| 120         | Hydraulic Concept Plan                    | E        | 20/05/2022 |
| 210         | Ground Floor Plan – Lots 8-01_8-02        | E        | 20/05/2022 |
| 211         | Ground Floor Plan – Lots 8-03_8-05        | E        | 20/05/2022 |
| 212         | Ground Floor Plan – Lots 8-06_8-07        | E        | 20/05/2022 |
| 220         | First Floor Plan – Lots 8-01_8-02         | E        | 20/05/2022 |
| 221         | First Floor Plan – Lots 8-03_8-05         | E        | 20/05/2022 |
| 222         | First Floor Plan – Lots 8-06_8-07         | E        | 20/05/2022 |
| 250         | Roof Plan Lots 8-01_8-02                  | E        | 20/05/2022 |
| 251         | Roof Plan Lots 8-03_8-05                  | E        | 20/05/2022 |
| 252         | Roof Plan Lots 8-06_8-07                  | E        | 20/05/2022 |
| 260         | Elevations                                | E        | 20/05/2022 |

|     |                       |   |            |
|-----|-----------------------|---|------------|
| 261 | Elevations            | E | 20/05/2022 |
| 262 | Elevations            | E | 20/05/2022 |
| 263 | Elevations            | E | 20/05/2022 |
| 264 | Coloured Streetscapes | E | 20/05/2022 |
| 270 | Sections              | E | 20/05/2022 |
| 271 | Sections              | E | 20/05/2022 |
| 272 | Sections              | E | 20/05/2022 |
| 273 | Sections              | E | 20/05/2022 |
| 410 | Private Open Space    | E | 20/05/2022 |
| 720 | BASIX Requirements    | E | 20/05/2022 |
| 721 | BASIX Requirements    | E | 20/05/2022 |

### Super Lot 09

| DRAWING NO. | DESCRIPTION                               | REVISION | DATE       |
|-------------|---|----------|------------|
| 000         | Cover Sheet                               | F        | 12/09/2022 |
| 001         | Locality & Site Analysis                  | F        | 12/09/2022 |
| 100         | Lot Layout & Siting Plan                  | F        | 12/09/2022 |
| 110         | Erosion, Sediment Control & Benching Plan | F        | 12/09/2022 |
| 120         | Hydraulic Concept Plan                    | F        | 12/09/2022 |
| 210         | Ground Floor Plan – Lots 9-01_9-02        | F        | 12/09/2022 |
| 211         | Ground Floor Plan – Lots 9-03_9-05        | F        | 12/09/2022 |
| 212         | Ground Floor Plan – Lots 9-06_9-07        | F        | 12/09/2022 |
| 220         | First Floor Plan – Lots 9-01_9-02         | F        | 12/09/2022 |
| 221         | First Floor Plan – Lots 9-03_9-05         | F        | 12/09/2022 |
| 222         | First Floor Plan – Lots 9-06_9-07         | F        | 12/09/2022 |
| 250         | Roof Plan Lots 9-01_9-02                  | F        | 12/09/2022 |
| 251         | Roof Plan Lots 9-03_9-05                  | F        | 12/09/2022 |
| 252         | Roof Plan Lots 9-06_9-07                  | F        | 12/09/2022 |
| 260         | Elevations                                | F        | 12/09/2022 |
| 261         | Elevations                                | F        | 12/09/2022 |
| 262         | Elevations                                | F        | 12/09/2022 |
| 263         | Elevations                                | F        | 12/09/2022 |
| 264         | Coloured Streetscapes                     | F        | 12/09/2022 |
| 270         | Sections                                  | F        | 12/09/2022 |
| 271         | Sections                                  | F        | 12/09/2022 |
| 272         | Sections                                  | F        | 12/09/2022 |
| 273         | Sections                                  | F        | 12/09/2022 |

|     |                    |   |            |
|-----|--------------------|---|------------|
| 410 | Private Open Space | F | 12/09/2022 |
| 720 | BASIX Requirements | F | 12/09/2022 |
| 721 | BASIX Requirements | F | 12/09/2022 |

### Super Lot 10

| DRAWING NO. | DESCRIPTION                               | REVISION | DATE       |
|-------------|---|----------|------------|
| 000         | Cover Sheet                               | F        | 12/09/2022 |
| 001         | Locality & Site Analysis                  | F        | 12/09/2022 |
| 100         | Lot Layout & Siting Plan                  | F        | 12/09/2022 |
| 110         | Erosion, Sediment Control & Benching Plan | F        | 12/09/2022 |
| 120         | Hydraulic Concept Plan                    | F        | 12/09/2022 |
| 210         | Ground Floor Plan – Lots 10-01_10-03      | F        | 12/09/2022 |
| 211         | Ground Floor Plan – Lots 10-04_10-06      | F        | 12/09/2022 |
| 212         | Ground Floor Plan – Lots 10-07            | F        | 12/09/2022 |
| 220         | First Floor Plan – Lots 10-01_10-03       | F        | 12/09/2022 |
| 221         | First Floor Plan – Lots 10-04_10-06       | F        | 12/09/2022 |
| 222         | First Floor Plan – Lots 10-07             | F        | 12/09/2022 |
| 250         | Roof Plan Lots 10-01_10-03                | F        | 12/09/2022 |
| 251         | Roof Plan Lots 10-04_10-06                | F        | 12/09/2022 |
| 252         | Roof Plan Lots 10-07                      | F        | 12/09/2022 |
| 260         | Elevations                                | F        | 12/09/2022 |
| 261         | Elevations                                | F        | 12/09/2022 |
| 262         | Elevations                                | F        | 12/09/2022 |
| 263         | Elevations                                | F        | 12/09/2022 |
| 264         | Coloured Streetscapes                     | F        | 12/09/2022 |
| 265         | Coloured Streetscapes                     | F        | 12/09/2022 |
| 270         | Sections                                  | F        | 12/09/2022 |
| 271         | Sections                                  | F        | 12/09/2022 |
| 272         | Sections                                  | F        | 12/09/2022 |
| 273         | Sections                                  | F        | 12/09/2022 |
| 410         | Private Open Space                        | F        | 12/09/2022 |
| 720         | BASIX Requirements                        | F        | 12/09/2022 |
| 721         | BASIX Requirements                        | F        | 12/09/2022 |

### Super Lot 11

| DRAWING NO. | DESCRIPTION | REVISION | DATE       |
|-------------|-------------|----------|------------|
| 000         | Cover Sheet | G        | 12/09/2022 |

|     |  |   |            |
|-----|--|---|------------|
| 001 | Locality & Site Analysis                                     | G | 12/09/2022 |
| 100 | Lot Layout & Siting Plan                                     | G | 12/09/2022 |
| 110 | Erosion, Sediment Control & Benching Plan – Lots 11-01_11-06 | G | 12/09/2022 |
| 111 | Erosion, Sediment Control & Benching Plan – Lots 11-07_11.12 | G | 12/09/2022 |
| 120 | Hydraulic Concept Plan Lots 11-01_11-06                      | G | 12/09/2022 |
| 121 | Hydraulic Concept Plan Lots 11-07_11-12                      | G | 12/09/2022 |
| 200 | Lower Ground Floor Plan – Lots 11-01_11-03                   | G | 12/09/2022 |
| 201 | Lower Ground Floor Plan – Lots 11-04_11-06                   | G | 12/09/2022 |
| 202 | Lower Ground Floor Plan – Lots 11-07_11-09                   | G | 12/09/2022 |
| 203 | Lower Ground Floor Plan – Lots 11-10_11-12                   | G | 12/09/2022 |
| 210 | Ground Floor Plan – Lots 11-01_11-03                         | G | 12/09/2022 |
| 211 | Ground Floor Plan – Lots 11-04_11-06                         | G | 12/09/2022 |
| 212 | Ground Floor Plan – Lots 11-07_11-09                         | G | 12/09/2022 |
| 213 | Ground Floor Plan – Lots 11-10_11-12                         | G | 12/09/2022 |
| 220 | First Floor Plan – Lots 11-01_11-03                          | G | 12/09/2022 |
| 221 | First Floor Plan – Lots 11-04_11-06                          | G | 12/09/2022 |
| 222 | First Floor Plan – Lots 11-07_11-09                          | G | 12/09/2022 |
| 223 | First Floor Plan – Lots 11-10_11-12                          | G | 12/09/2022 |
| 250 | Roof Plan Lots 11-01_11-03                                   | G | 12/09/2022 |
| 251 | Roof Plan Lots 11-04_11-06                                   | G | 12/09/2022 |
| 252 | Roof Plan Lots 11-07_11-09                                   | G | 12/09/2022 |
| 253 | Roof Plan Lots 11-10_11-12                                   | G | 12/09/2022 |
| 260 | Elevations   | G | 12/09/2022 |
| 261 | Elevations   | G | 12/09/2022 |
| 262 | Elevations   | G | 12/09/2022 |
| 263 | Elevations   | G | 12/09/2022 |
| 264 | Elevations   | G | 12/09/2022 |
| 265 | Elevations   | G | 12/09/2022 |
| 266 | Coloured Streetscapes  | G | 12/09/2022 |
| 267 | Coloured Streetscapes  | G | 12/09/2022 |
| 268 | Coloured Streetscapes  | G | 12/09/2022 |
| 270 | Sections   | G | 12/09/2022 |
| 271 | Sections   | G | 12/09/2022 |
| 272 | Sections   | G | 12/09/2022 |
| 273 | Sections   | G | 12/09/2022 |
| 274 | Sections   | G | 12/09/2022 |



|     |                                     |   |            |
|-----|-------------------------------------|---|------------|
| 275 | Sections                            | G | 12/09/2022 |
| 276 | Sections                            | G | 12/09/2022 |
| 277 | Sections                            | G | 12/09/2022 |
| 278 | Site Section / Corner Lots          | A | 12/09/2022 |
| 410 | Private Open Space Lots 11-01_11-04 | G | 12/09/2022 |
| 411 | Private Open Space Lots 11-05_11-08 | G | 12/09/2022 |
| 412 | Private Open Space Lots 11-09_11-12 | G | 12/09/2022 |
| 720 | BASIX Requirements                  | G | 12/09/2022 |
| 721 | BASIX Requirements                  | G | 12/09/2022 |

### Super Lot 12

| DRAWING NO. | DESCRIPTION                               | REVISION | DATE       |
|-------------|---|----------|------------|
| 000         | Cover Sheet                               | F        | 12/09/2022 |
| 001         | Locality & Site Analysis                  | F        | 12/09/2022 |
| 100         | Lot Layout & Siting Plan                  | G        | 12/09/2022 |
| 110         | Erosion, Sediment Control & Benching Plan | G        | 12/09/2022 |
| 120         | Hydraulic Concept Plan                    | G        | 12/09/2022 |
| 200         | Ground Floor – Overall                    | G        | 12/09/2022 |
| 201         | First Floor – Overall                     | F        | 12/09/2022 |
| 211         | Lot 12.01 – Ground & First Floor Plans    | F        | 12/09/2022 |
| 212         | Lot 12.02 – Ground & First Floor Plans    | F        | 12/09/2022 |
| 213         | Lot 12.03 – Ground & First Floor Plans    | F        | 12/09/2022 |
| 214         | Lot 12.04 – Ground & First Floor Plans    | F        | 12/09/2022 |
| 215         | Lot 12.05 – Ground Floor Plan Lot         | G        | 12/09/2022 |
| 216         | Lot 12.05 – First Floor Plan Lot          | F        | 12/09/2022 |
| 250         | Roof Plan – Overall                       | F        | 12/09/2022 |
| 251         | Roof Plan - Lots 12.01_12.03              | F        | 12/09/2022 |
| 252         | Roof Plan - Lots 12.04_12.05              | F        | 12/09/2022 |
| 261         | Elevations - Lot 12.01                    | F        | 12/09/2022 |
| 262         | Elevations - Lot 12.02                    | F        | 12/09/2022 |
| 263         | Elevations - Lot 12.03                    | F        | 12/09/2022 |
| 264         | Elevations - Lot 12.04                    | F        | 12/09/2022 |
| 265         | Elevations - Lot 12.05                    | F        | 12/09/2022 |
| 266         | Coloured Streetscapes                     | F        | 12/09/2022 |
| 267         | Coloured Streetscapes                     | G        | 12/09/2022 |
| 271         | Sections – Lot 12.01                      | F        | 12/09/2022 |
| 272         | Sections – Lot 12.02                      | F        | 12/09/2022 |

|     |  |   |            |
|-----|--|---|------------|
| 273 | Sections – Lot 12.03                       | F | 12/09/2022 |
| 274 | Sections – Lot 12.04                       | F | 12/09/2022 |
| 275 | Sections – Lot 12.05                       | F | 12/09/2022 |
| 410 | Private Open Space and Permeable Area Plan | G | 12/09/2022 |
| 720 | BASIX Requirements                         | F | 12/09/2022 |

### Civil Engineering Drawings

| DRAWING NO. | DESCRIPTION   | REVISION | DATE       |
|-------------|---|----------|------------|
| C-HS-8250   | Cover Sheet, Drawing Schedule and Locality Plan               | P4       | 1/06/2022  |
| C-HS-8251   | Specification Notes   | P4       | 1/06/2022  |
| C-HS-8255   | Bulk Earthworks Cut and Fill Plan                             | P5       | 16/09/2022 |
| C-HS-8256   | Bulk Earthworks Cut and Fill Sections – Sheet 01              | P4       | 1/06/2022  |
| C-HS-8257   | Bulk Earthworks Cut and Fill Sections – Sheet 02              | P4       | 1/06/2022  |
| C-HS-8261   | Siteworks and Stormwater Management Plan – Superlot 6         | P4       | 16/09/2022 |
| C-HS-8262   | Siteworks and Stormwater Management Plan – Superlot 7 and 8   | P5       | 16/09/2022 |
| C-HS-8263   | Siteworks and Stormwater Management Plan – Superlot 9 and 10  | P5       | 16/09/2022 |
| C-HS-8264   | Siteworks and Stormwater Management Plan – Superlot 11 and 12 | P6       | 16/09/2022 |
| C-HS-8268   | Stormwater Longitudinal Sections – Sheet 01                   | P4       | 1/06/2022  |
| C-HS-8269   | Stormwater Longitudinal Sections – Sheet 02                   | P4       | 1/06/2022  |
| C-HS-8270   | Stormwater Longitudinal Sections – Sheet 03                   | P4       | 1/06/2022  |
| C-HS-8271   | Stormwater Longitudinal Sections – Sheet 04                   | P4       | 1/06/2022  |
| C-HS-8273   | Stormwater Pit Schedule                                       | P4       | 1/06/2022  |
| C-HS-8277   | Retaining Wall Alignment Control Plan                         | P5       | 16/09/2022 |
| C-HS-8278   | Retaining Wall Elevations – Sheet 01                          | P5       | 16/09/2022 |
| C-HS-8279   | Retaining Wall Elevations – Sheet 02                          | P4       | 1/06/2022  |
| C-HS-8280   | Retaining Wall Elevations – Sheet 03                          | P4       | 1/06/2022  |
| C-HS-8285   | Stormwater Catchment Plan                                     | P4       | 1/06/2022  |
| C-HS-8287   | Details Sheet 01  | P4       | 1/06/2022  |
| C-HS-8288   | Details Sheet 02  | P4       | 1/06/2022  |
| C-HS-8289   | Details Sheet 03  | P4       | 1/06/2022  |

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

### **2. Planting Requirements**

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.  
Groundcovers are to be planted at 5/m<sup>2</sup>.

### **3. Approved Subdivision Plan**

The subdivision component of the development must be carried out in accordance with the approved plan of subdivision prepared by Tasy Moraitis of Craig and Rhodes Drawing Reference 011-18G Revisions 01 and 02, dated 20/05/2022 except where amended by other conditions of consent.

### **4. Protection of Public Infrastructure**

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for inspecting the public infrastructure for compliance with this condition before an Occupation Certificate or Subdivision Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

### **5. Structures Adjacent to Piped Drainage Easements**

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

### **6. Requirements for Council Drainage Easements**

No works are permitted within existing or proposed public drainage easements unless approved by Council. Where works are permitted, the following requirements must be adhered to:

- Provision for overland flow and access for earthmoving equipment must be maintained.
- The existing ground levels must not be altered. No overland flow is to be diverted out of the easement.
- No fill, stockpiles, building materials or sheds can be placed within the easement.
- Open style fencing must be used. New or replacement fencing must be approved by Council.

### **7. Vehicular Crossing Request (Public Roads)**

Any new driveway on an existing public road requires the lodgement of a separate vehicular crossing request accompanied by the applicable fee as per Council's Schedule of Fees and Charges. The vehicular crossing request must be lodged before an Occupation Certificate is issued. The vehicular crossing request must nominate a contractor and be accompanied by a copy of their current public liability insurance policy. Do not lodge the vehicular crossing request until the contractor is known and the driveway is going to be constructed.

### **8. Flood Control System**

The development is required to ensure the protection of the subject site and downstream properties in the locality from flood risks during all storm events, and throughout the subject development. Given this sensitive nature, the construction activities including earth works changing the terrain, road network and stormwater management are to ensure no additional runoff is directed towards downstream properties.

It must be confirmed that prior to commencement of construction or earth works throughout the development, necessary flood control system (respective Onsite Stormwater Detention Systems) and/ or alternative equivalent temporary detention systems have been in place onsite ensuring the hydraulic compliance intended in the Flood Analysis, the latest response by Northrop dated 05/09/2022 and other references.

The proposed integrated Onsite Stormwater Detention and Water Sensitive Urban Design systems 3 and 4 shown on the Stormwater Catchment Plan – OSD drawing C-MP-8372 and the Stormwater Catchment Plan – WSUD drawing C-MP-8373 Revision P5 dated 16/09/2022 form part of the Conceptual Master Plan Stage 01 Civil Works prepared by Northrop (pursuant

to the DA 860/2022/JP) cater the Apartment precinct and the Southern precinct, the subject development.

Separate Compliance Certificates must be approved for the construction of either interim or permanent Flood Control System required.

Copies of work as drawings of such interim flood control systems, and structural certificates and hydraulic compliance certificates issued by respective accredited engineers are to be provided to the Principal Certifying Authority, and a copy of such must be kept on site.

The flood control systems are to be maintained throughout, all phases of the development.

### **9. Security Bond Requirements**

A security bond may be submitted in lieu of a cash bond. The security bond must:

- Be in favour of The Hills Shire Council;
- Be issued by a financial institution or other accredited underwriter approved by, and in a format acceptable to, Council (for example, a bank guarantee or unconditional insurance undertaking);
- Have no expiry date;
- Reference the development application, condition and matter to which it relates;
- Be equal to the amount required to be paid in accordance with the relevant condition;
- Be itemised, if a single security bond is used for multiple items.

Should Council need to uplift the security bond, notice in writing will be forwarded to the applicant 14 days prior.

### **10. Subdivision Certificate Preliminary Review**

Prior to the submission of a Subdivision Certificate application a draft copy of the final plan, administration sheet and Section 88B instrument (where included) must be submitted in order to establish that all conditions have been complied with.

Street addresses for the lots within this subdivision will be allocated as part of this preliminary check process, for inclusion on the administration sheet.

### **11. Proposed Street Naming**

The proposed street naming is required under this consent must be consistent with Conceptual Master Plan Street network pursuant to the DA 860/2022/JP.

A written application for street naming must be submitted to Council for approval, along with the applicable fee as per Council's Schedule of Fees and Charges. The street names proposed must comply with requirements of the NSW Geographical Names Board and Council.

The application must nominate three suggested names per street, in order of preference, and the source of the names proposed.

### **12. Street Trees**

Street trees must be provided for the internal private roads within the development spaced between 7m and 10m apart and with a minimum of one tree per lot frontage. For corner lots, except with separately approved, there should be one tree on the primary frontage and two trees on the secondary frontage. The location of street trees must be considerate of driveways, services, drainage pits and sight lines at intersections. The species and size of street trees must comply with the requirements of Council. This includes a street tree masterplan where one exists (check Council's website for details). A street tree planting plan demonstrating compliance with the above must be submitted for written approval before any street trees are planted.

The establishment of street tree planting is included in the maintenance bond required to be paid. Alternatively, street trees can be planted by Council subject to payment of the applicable fee as per Council's Schedule of Fees and Charges.

### **13. Process for Council Endorsement of Legal Documentation**

Where an encumbrance on the title of the property is required to be released or amended and Council is listed as the benefiting authority, the relevant release or amendment documentation must be submitted along with payment of the applicable fee as per Council's Schedule of Fees and Charges. Sufficient time should be allowed for the preparation of a report and the execution of the documents by Council.

### **14. Road Opening Permit**

Should the subdivision/ development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

### **15. Subdivision Works Approval**

The Civil works required under this consent must be consistent with Conceptual Master Plan Stage 01 Civil Works pursuant to the DA 860/2022/JP.

Before any works are carried out a Subdivision Works Certificate must be obtained, and a Principal Certifier appointed. The plans and accompanying information submitted with the Subdivision Works Certificate must comply with the conditions included with this consent.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

### **16. Construction Certificate**

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or a Registered Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

### **17. Building Work to be in Accordance with BCA**

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

### **18. Contamination**

Any new information, that may come to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council's Manager – Environment and Health.

### **19. Air Conditioner Location**

The air-conditioning unit location is to be as shown on the approved plans or is to comply with the criteria of exempt development as outlined in the SEPP - Exempt & Complying Development Codes 2008.

You are reminded that the air conditioning must be designed so as not to operate:

- (i) Between 7am and 10pm — at a noise level that exceeds 5 dB(A) above the ambient background noise level measured at any property boundary, or
- (ii) Between 10pm and 7am — at a noise level that is audible in habitable rooms of adjoining residences.

### **20. Acoustic Requirements**

The recommendations of the Acoustic Assessment and Report prepared by Acoustic Logic,

referenced as (Project ID20201245), dated 1 October 2021 and submitted as part of the Development Application are to be implemented as part of this approval. In particular:

- a) Noise and vibration controls detailed in sections 10 to 13.
- b) Ecological noise control measures for endangered nesting Powerful Owl species, including -
  - i. Hours of work will be restricted within 100m during the breeding season (March – September) and to commence 1 hour after sunrise (8.00am) and finish before 4.00pm; and
  - ii. Noise monitoring to be established during the breeding period in these areas.

## **21. Retention of Trees**

All trees not specifically identified for removal in the Arboricultural Impact Assessment – Part 3 prepared by Footprint Green Pty Ltd, dated 12 September 2022 (Rev. 12 – Dwg. No. aiacc 3.01) shall be retained and protected strictly in accordance with the imposed Conditions of the subject Development Consent and the Australian Standard (AS4970-2009) Protection of trees on development sites.

No additional vegetation (trees and understorey) shall be removed for the creation of an Asset Protection Zone or otherwise without prior consent from Council.

## **22. Control of early morning noise from trucks**

Trucks associated with the construction of the site that will be waiting to be loaded must not be brought to the site prior to 7am. To protect the amenity of neighbouring residents, construction vehicles are not permitted to queue outside of the site, along Coonara Avenue before 7:00am.

Out of hours deliveries for oversize vehicles where required, are to be managed in accordance with TfNSW approvals.

## **23. Provision of Kitchen Waste Storage Cupboard**

Waste storage facility must be provided in each dwelling to enable source separation of recyclable and food organic material from residual garbage. Each dwelling must have a waste storage cupboard provided in the kitchen with at least 3 removable indoor bins with a minimum capacity of 15 litres each or similar. The bins provided should allow convenient transportation of waste from the kitchen to the main household bins or waste disposal point. The Principal Certifying Authority must visually confirm in person, or receive photographic evidence validating this requirement, prior to the issue of any Occupation Certificate.

## **24. Management of Construction and/or Demolition Waste**

Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. This includes waste materials such as paper and containers which must not litter the site or leave the site onto neighbouring public or private property. A separate dedicated bin must be provided onsite by the builder for the disposal of waste materials such as paper, containers and food scraps generated by all workers. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place.

Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. The separation and recycling of the following waste materials is required: metals, timber, masonry products and clean waste plasterboard. This can be achieved by source separation onsite, that is, a bin for metal waste, a bin for timber, a bin for bricks and so on. Alternatively, mixed waste may be stored in one or more bins and sent to a waste contractor or transfer/sorting station that will sort the waste on their premises for recycling. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the

movement of waste using their WasteLocate online reporting tool [www.wastelocate.epa.nsw.gov.au](http://www.wastelocate.epa.nsw.gov.au).

## **25. Disposal of Surplus Excavated Material**

The disposal of any material requiring removal from the site must be in accordance with NSW Waste (2014) Waste Classification guidelines, POEO Act and/or and EPA exemption. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

## **26. Commencement of Domestic Waste Service**

A domestic waste service must be commenced with Council and its Contractor. The service must be arranged no earlier than two days prior to occupancy and no later than seven days after occupancy of the development. All requirements of Council's domestic waste management service must be complied with at all times. Contact Council's Resource Recovery Team on (02) 9843 0310 to commence a domestic waste service.

## **27. Provision of Domestic Waste Storage Areas**

A bin storage area sized for a minimum of 3 x 240 litre bins must be provided within each lot boundary. The areas must be screened from view from public land and neighbouring residential property and are to be located behind the building line in the rear courtyard, side access path or a dedicated area in the garage (Super Lot 6). A flat or ramped bin transfer path must be provided leading directly from the bin storage areas to the approved bin collection point along the kerbside. The path must have a minimum clear floor width of 820mm, must not exceed a grade of 7% (1:14), be free of steps and must be external to the dwelling (excludes garage). An associated clear nature strip length of 1.66m must be dedicated along the kerbside for each dwelling for bin presentation. The dimensions of a 240 litre bin are 735mm deep, 580mm wide and 1080mm high.

## **28. Property Numbering and Cluster Mail Boxes for Multi Dwelling Housing, Residential Flat Buildings, Mixed Use Development, Commercial Developments and Industrial Developments**

The responsibility for property numbering is vested solely in Council under the *Local Government Act 1993*.

**The overall property address for this development is: - 55 Coonara Avenue, West Pennant Hills NSW 2125**

Approved street numbering is as per plans submitted marked as Precinct Subdivision Sequencing Plans Dated 20/05/2022 as Detail Plans x 2 Rev 01; Sheets 1 to 7 Rev 02 and marked up as 'Numbering Plans' by Council's Land Information Team within consent documentation; and as follows:

| Lot # | Street # | Road Name Ref |
|-------|----------|---------------|
| 9     | 46       | Road #4       |
| 10    | 44       | Road #4       |
| 11    | 42       | Road #4       |
| 12    | 40       | Road #4       |
| 13    | 38       | Road #4       |
| 14    | 36       | Road #4       |
| 15    | 34       | Road #4       |
| 16    | 32       | Road #4       |
| 17    | 30       | Road #4       |

| Lot # | Street # | Road Name Ref |
|-------|----------|---------------|
| 39    | 11       | Road #5       |
| 40    | 9        | Road #5       |
| 41    | 7        | Road #5       |
| 42    | 5        | Road #5       |
| 43    | 3        | Road #5       |
| 44    | 1        | Road #5       |
| 45    | 14       | Road #1       |
| 46    | 12       | Road #1       |
| 47    | 10       | Road #1       |



|    |    |         |
|----|----|---------|
| 18 | 28 | Road #4 |
| 19 | 26 | Road #4 |
| 20 | 21 | Road #4 |
| 21 | 19 | Road #4 |
| 22 | 17 | Road #4 |
| 23 | 15 | Road #4 |
| 24 | 13 | Road #4 |
| 25 | 11 | Road #4 |
| 26 | 9  | Road #4 |
| 27 | 7  | Road #4 |
| 28 | 5  | Road #4 |
| 29 | 3  | Road #4 |
| 30 | 1  | Road #4 |
| 31 | 14 | Road #5 |
| 32 | 12 | Road #5 |
| 33 | 10 | Road #5 |
| 34 | 8  | Road #5 |
| 35 | 6  | Road #5 |
| 36 | 4  | Road #5 |
| 37 | 2  | Road #5 |
| 38 | 13 | Road #5 |

|    |    |         |
|----|----|---------|
| 48 | 8  | Road #1 |
| 49 | 6  | Road #1 |
| 50 | 4  | Road #1 |
| 51 | 2  | Road #1 |
| 52 | 2  | Road #4 |
| 53 | 4  | Road #4 |
| 54 | 6  | Road #4 |
| 55 | 8  | Road #4 |
| 56 | 10 | Road #4 |
| 57 | 12 | Road #4 |
| 58 | 14 | Road #4 |
| 59 | 16 | Road #4 |
| 60 | 18 | Road #4 |
| 61 | 20 | Road #4 |
| 62 | 22 | Road #4 |
| 63 | 24 | Road #4 |
| 64 | 9  | Road #1 |
| 65 | 7  | Road #1 |
| 66 | 5  | Road #1 |
| 67 | 3  | Road #1 |
| 68 | 1  | Road #1 |

The proposed three road name extents and approved property numbering is based on overall Concept Master Plan under DA 860/2022/JP. Three proposed road names are to be submitted to Council's Subdivision Team as required.

These addresses shall be used for all correspondence, legal property transactions and shown on the final registered Deposited Plan/Strata Plan lodged with Land Registry Services NSW as required.

Under no circumstances can numbering be repeated or skipped throughout the development.

Approved numbers, unless otherwise approved by Council in writing, are to be displayed clearly to ensure that all numbering signage throughout the development is clear to assist emergency service providers locate a destination easily & quickly.

#### Mailboxes

Australia Post requires mailboxes to be near the footpath or road and within easy reach for the postal delivery officer. For resident's useability and convenience, they are to be located close to relevant pedestrian entry points.

The number of mailboxes to be provided is to be equal to the number of dwellings plus one (1) for the proprietors of the development and be as per Australia Post size requirements. The proprietor's additional mailbox is to be located within Coonara Avenue with the address of 55 Coonara Avenue, West Pennant Hills NSW 2125.

Approval of delivery services to individual mailboxes is to be approved by Australia Post. Approved Numbering Plans are to be provided to Gregory Dimmock at the Seven Hills

Delivery Centre via email [Gregory.dimmock@auspost.com.au](mailto:Gregory.dimmock@auspost.com.au) or phone 02 9674 4027. Australia Post approval is required to be provided to Council.

### Strata Developments

All approved developments that require subdivision under a Strata Plan, must submit a copy of the final strata plan to Council's Land Information Section before it is registered for the approval and allocation of final property and unit numbering. This applies regardless of whether the PCA is Council or not.

It is required that Lot numbers within the proposed strata plan are not duplicated, and all run sequentially within the same level, commencing from the lowest level upwards to the highest level within the development.

Please call 9843 0555 or email a copy of the final strata plan before it is registered at Land Registry Services NSW to [council@thehills.nsw.gov.au](mailto:council@thehills.nsw.gov.au) for the approval of final Property and Unit numbering with corresponding Lot Numbers now required to be included within the registered Strata Administration sheet.

Under no circumstances is the Strata Plan to be lodged with Land Registry Services NSW before Council has approved all final addressing.

### **29. External Finishes**

External finishes and colours shall be in accordance with the details submitted with the development application and approved with this consent.

### **30. Planning Agreement**

The obligations in the Planning Agreement between Mirvac Projects (Retail and Commercial) Pty Ltd and The Hills Shire Council, adopted by Resolution 443 of Council's Ordinary Meeting of 27 September 2022, or any future amendment / variation of this Planning Agreement, must be satisfied in accordance with the terms of the Planning Agreement. See 'Prior to the Issue of Construction Certificate' Section for further details.

### **31. Compliance with NSW Rural Fire Service Requirements**

Compliance with the requirements of the NSW Rural Fire Service – General Terms of Approval, attached to this consent and dated 2 August 2022.

### **32. Services Screening**

All services and service provision visible from the street, public domain and nearby taller buildings are required to be carefully and substantially screened in a manner to match the aesthetic of the approved development.

## **PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **33. Flood Control System - Stormwater Management (Southern Precinct)**

Flood Control System (Interim and Permanent) and Onsite Stormwater Detention (OSD) are to be provided in accordance with the Flood Analysis submitted with the application is to ensure no additional runoff generated from the site is directed over to the downstream properties, which are flood sensitive.

The construction details must be in accordance with the Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The proposed OSD 3 and OSD 4 shown on the Concept Stormwater Catchment Plan – OSD drawing C-MP-8372 Revision P5 dated 16/09/2022 form part of the Conceptual Master Plan Stage 01 Civil Works prepared by Northrop is for development application purposes only and are not to be used for construction.

The detailed design must reflect the set of documentation listed below also prepared by Northrop submitted with the application:

- a) Civil Engineering Assessment Report Revision 13 dated 1st June 2022
- b) Northrop's letter Response to Request for Information dated 10/08/2022
- c) Addendum for Civil Engineering Assessment Report dated 02/09/2022 and
- d) Response to Request for Information dated 05/09/2022

The integrated Water sensitive urban design elements are to be located generally in accordance with the Stormwater Catchment Plan – WSUD drawing C-MP-8373 Revision P dated 16/09/2022 and information submitted with the application.

Detailed DRAINS model (consolidated network of all outlets) supporting the drainage network reflecting to every stage used in calculating the flood control system/ the OSD in the analysis.

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must demonstrate a reduction in annual average pollution export loads from the development site in line with the following environmental targets:

- 90% reduction in the annual average load of gross pollutants
- 85% reduction in the annual average load of total suspended solids
- 65% reduction in the annual average load of total phosphorous
- 45% reduction in the annual average load of total nitrogen

All model parameters and data outputs are to be provided.

The design and construction of the stormwater management system must be approved by either Council or an accredited certifier. A Compliance Certificate certifying the detailed design of the stormwater management system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate:

- Design/ construction plans prepared by a hydraulic engineer.
- Soft copy of DRAINS model (saved with the results) used in the flood analysis.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

### **34. Works in Existing Easement**

All adjoining properties either benefited or burdened by the existing easement must be notified of the proposed works within the easement in writing, including commencement and completion dates, before a Construction Certificate or Subdivision Works Certificate is issued.

### **35. Security Bond – Road Pavement and Public Asset Protection**

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$780,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the road frontage of the subject site plus an additional 50m on either side (640m) multiplied by the width of the road (13m).

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these costs.

### **36. Security Bond – External Works**

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The bond amount must be confirmed with Council prior to payment. The tendered value of the work must be provided for checking so the bond amount can be confirmed.

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being completed to Council's satisfaction.

### **37. Engineering Works**

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Engineering works can be classified as either "subdivision works" or "building works".

Works within an existing or proposed public road or works within an existing or proposed public reserve can only be approved, inspected and certified by Council.

Depending on the development type and nature and location of the work the required certificate or approval type will differ. The application form covering these certificates or approvals is available on Council's website and the application fees payable are included in Council's Schedule of Fees and Charges.

All the engineering design works for the subject development must be referred to the set of Master Plan Stage 01 Civil Works prepared by Northrop drawing C-MP-8200 Revision 5 dated 16/09/2022 approved under the DA 860/2022/JP.

The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

#### **a) Full Width Road Construction (Private Roads)**

The full width construction of the roads listed below is required, including footpath paving, indented carpark and other ancillary work to make this construction effective:

|                                    |  |
|------------------------------------|--|
| Road Name                          | Formation:<br>(Footpath/ Carriageway/ Footpath) (Total width m)  |
| R3 - Road 3<br>(R3-1 With Parking) | Road Type: Community Road<br>Typical Road Section: Drawing R3-1 – C-MP-8222 Rev P4<br>(Footpath/ Carriageway Footpath) (Total width m)<br>1.6m/ 6m/ 2.1m/ 2m (11.7m)<br>Pavement Design:<br>Access Road (Design Guidelines Section 3.12)           |
| R3 - Road 3<br>(R3-3 With Parking) | Road Type: Community Road<br>Typical Road Section: Drawing R3-3 – C-MP-8223 Rev P4<br>(Footpath/ Parking/ Carriageway/ Footpath) (Total width m)<br>2m/ 2.1m/ 6m/ 1.6m (11.7m)<br>Pavement Design:<br>Access Road (Design Guidelines Section 3.12) |
| R3 - Road 3                        | Road Type: Community Road  |

|   |   |
|---|---|
| (R3-4 Without Parking)                        | <p>Typical Road Section: Drawing R3-4 – C-MP-8223 Rev P4<br/>(Footpath/ Carriageway Footpath) (Total width m)<br/>1.85m/ 2.25m/ 6m/ 1.6m (11.7m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p>   |
| R3 - Road 3<br>(R3-5 With Parking)            | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing R3-5 – C-MP-8223 Rev P4<br/>(Footpath/ Carriageway/ Parking/ Footpath) (Total width m)<br/>1.6m/ 6m/ 2.1m/ 2m (11.7m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p>  |
| R3 - Road 3<br>(R3-6 Without Parking)         | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing R3-6 – C-MP-8222 Rev P4<br/>(Footpath/ Carriageway Footpath) (Total width m)<br/>1.6m/ 6m/ 4.1m (11.7m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p>                |
| R4 - Road 4<br>(R4-1 With Parking)            | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing R4-1 – C-MP-8224 Rev P4<br/>(Footpath/ Carriageway/ Parking/ Footpath) (Total width m)<br/>2m / 2.1m/ 6m/ 1.6m (11.7m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p> |
| R4 - Road 4<br>(R4-2 Without Parking)         | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing R4-2 – C-MP-8224 Rev P4<br/>(Footpath/ Carriageway Footpath) (Total width m)<br/>4.1m / 6m/ 1.6m (11.7m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p>               |
| P1 – Perimeter Road<br>(P1-2 Without Parking) | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-2 – C-MP-8226 Rev P4<br/>(Verge/ Carriageway Footpath) (Total width m)<br/>0.45m/ 8m/ 2.1m (10.55m)</p> <p>Pavement Design:<br/>Access Road (Design Guidelines Section 3.12)</p>                 |
| P1 – Perimeter Road<br>(P1-1 With Parking)    | <p>Road Type: Community Road</p> <p>Typical Road Section: Drawing P1-1 – C-MP-8226 Rev P4<br/>(Verge/ Carriageway/ Verge) (Total width m)</p>   |

|  |  |
|--|--|
|  | 1.6m/ 8m/ 2.1m/ 2m (13.7m)<br>Pavement Design:<br>Access Road (Design Guidelines Section 3.12) |
|--|--|

Except where a one-way cross fall is required all roads are to have a two-way cross fall with a crown in the middle of the carriageway.

With respect to private roads, the intersection needs to delineate the public road from the private road using a gutter crossing rather than kerb returns, pavement threshold treatment or similar.

The above listed works must be completed unless provided under the master plan DA 860/2022/JP or pursuant to other approvals issued for the site.

#### **b) Temporary Turning Heads - Staged Activities**

A temporary turning head is required if construction staging of the road network if terminates at the end of any proposed road/s. The cul-de-sac must have a minimum diameter of 19m measured from the edge pavement.

A turning head is required at the northern end of P1- Perimeter Road.

#### **c) Street Lighting**

The development is required to provide street lighting in the vicinity of the development, specifically at the entrances of the private road intersections. Street lights will also be required in the vicinity of the required access ramps, subject to the approval of the Local Traffic Committee.

The installation of street lighting must be completed at the construction of first stage of this master plan.

#### **d) Signage and Line Marking Requirements/ Plan**

A signage and line marking plan must be submitted with the detailed design. This plan needs to address street name signs and posts, regulatory signs and posts (such as no parking or give way signs), directional signs and posts (such as chevron signs), speed limit signs and posts and line marking, where required.

Thermoplastic line marking must be used for any permanent works. Any temporary line marking must be removed with a grinder once it is no longer required, it cannot be painted over.

Details for all signage and line-marking must be submitted to Council's Construction Engineer for checking prior to new road works commencing. For existing public roads, signs and line marking may require separate/ specific approval from the Local Traffic Committee.

Street name signs and posts must be provided in accordance with the above documents and Council's Standard Drawing 37. With respect to street name signs specifically, all private roads must include a second sign underneath which reads "private road".

#### **e) Footpath Verge Formation**

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

The design must take consideration to protect the existing trees within the footpath verge.

#### **f) Concrete Footpath**

A 1.5m wide concrete footpath, including access ramps at all intersections, must be provided across frontage of the site unless provided under separate approvals. The footpath must be provided on the eastern side of E1-Entry driveway and the western side of E2-Entry driveway in order to protect the existing trees between the E1 & E2 driveways.

The construction must be completed with the subject development unless provided under other approvals issued for the site.

**g) Gutter Crossings**

Gutter crossings to each of the proposed new lots are required.

**h) Disused Layback/ Driveway Removal**

All disused laybacks and driveways must be removed and replaced with full kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.

**i) Service Conduits**

Service conduits to each of the proposed new lots, laid in strict accordance with the relevant service authority's requirements, are required. Services must be shown on the engineering drawings.

**j) Stormwater Drainage – Public Drainage Extension**

The Coonara Avenue Street drainage required under this consent is to be integrated with the internal drainage network through the subject site, along with the development works.

The street drainage extended across the site frontage must incorporate adequate kerb inlet pits, and the pipe extension must be located under the kerb required to be provided.

The extension of pipe system must be completed with the construction of the subject development unless provided under other approvals issued for the site.

**k) Stormwater Drainage – Creek Outlets**

Piped stormwater outlets/ connections to a natural watercourse must comply with the requirements of Council, the Natural Resources Access Regulator (even where the receiving waterbody is not a natural watercourse) and Sydney Water, in the case of stormwater management land.

**l) Inter-allotment Stormwater Drainage**

Piped inter-allotment stormwater drainage catering for the entire area of each lot must be provided. Each lot must be uniformly graded to its lowest point where a grated surface inlet pit must be provided. All collected stormwater is to be piped to an approved constructed public drainage system.

Where Onsite Stormwater Detention is required, a minimum level difference of 800mm measured between the surface level and the invert of the outlet pipe must be provided.

**38. Earth Works and Retaining Structures**

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

**a) Design and Construction Details**

The detailed design and construction of Earth Works and Retaining Structures must be reflective to the Stage 01 Civil Works drawings C-MP-8290, C-MP-8291, C-MP-8292 and C-MP-8293 form part of Conceptual Master Plan development consent DA 860/2022/JP, and outlined in Condition No. 1 above, they are approved for development application and consent purposes only and is not to be used for construction.

Detailed design and construction drawings must be endorsed by the geotechnical engineer confirming the design compliance of a detailed Geotechnical Report.



#### **b) Construction Verification Plan**

A construction verification plan shall be developed as part of the projects Quality Management Plan (QMP) to confirm that the works are carried out to relevant standards.

The QMP shall include the requirement for the site inspection to be undertaken by a Geotechnical Engineer.

#### **c) Construction Risk Management Plan**

A detailed risk management plan shall be prepared to identify hazards, risk level and appropriate controls during the construction process. The plan shall include:

- Trigger levels/criteria in relation to monitoring and earthworks control.
- Actions and controls to be taken.
- Surface and groundwater management and materials management in the event of significant wet weather events.

#### **d) Stormwater Drainage**

The entire site area must be graded, collected and drained by pits and pipes to a suitable flood control system and also to be consistent to the recommendation of the detailed Geotechnical report required.

#### **e) Erosion and Sediment Control**

Erosion and sedimentation control is to be provided in accordance with Council's "Works Specifications - Subdivisions/Developments" (November 2001). Details are to be shown on the engineering plans and all devices are to be established prior to the commencement of engineering works and maintained for a minimum period of six (6) months after the date of issue of a Subdivision Certificate. Periodic maintenance of the erosion and sedimentation control devices is to be undertaken to ensure their effectiveness.

#### **f) Geotechnical and Structural Certification**

All the detailed design and construction documentation required under this consent must be certified by the geotechnical or structural engineer.

### **39. Construction Management Plan – Major Subdivision Works**

Prior to the issuing of a Subdivision Works Certificate a Construction Management Plan must be submitted to Council's Manager – Subdivision and Development Certification for approval. The Construction Management Plan must specifically address each of the following matters:

- Construction traffic (internal).
- Traffic control (external). This needs to consider road closures and delivery routes with respect to the surrounding road network as separately conditioned.
- Public asset protection.
- Dust management as separately conditioned.
- Sediment and erosion control as separately conditioned.
- Stockpiles.
- Noise; outside of standard work hours for float deliveries will need to have written Transport for NSW approval and Council and affected neighbours must be notified in writing.
- Working hours; including plant warming up and/ or noise above conversation levels before the nominated starting time.
- Tree/ vegetation protection.
- Fauna protection, recovery and relocation (including fauna habitat)

#### **40. Landscape Plan**

An amended Landscape Plan (to scale) for the landscaping of the precinct is to be prepared by a suitably qualified landscape architect or landscape designer and submitted to the satisfaction of Council's Manager - Environment and Health.

The plan must indicate the following:

- a) proposed levels and propose contour lines; and
- b) all trees, grassed areas, landscape features and main structures on the site (buildings, car parking, driveways, walls, fences, paving, storage areas, etc); and
- c) a schedule of proposed planting, including botanical names, common names, quantities, pot size, expected mature height and staking requirements; and
- d) A minimum of 1 tree provided in each front garden: and
- e) bin storage areas for Superlot 6 and 7 and incorporated into landscape structures such as behind feature front fences to maximise landscape area, and avoid bin storage areas abutting front porches and being overly prominent within the front garden spaces; and
- f) 1.8m high fencing on corner lots not extending more than 50% of the secondary street boundary; and
- g) 1.8m high Private Open Space fencing areas of solid construction. Open style (such as palisade style) rear fencing may be considered where rear boundaries interface with Communal Open Space areas, or the Perimeter Road; and
- h) reduced hard surface within the landscaping of lots to achieve the Landscape Area controls within the Site-Specific Design Guidelines; and
- i) landscape area calculations and diagrams for each lot: and
- j) letterboxes integrated into front fencing to maximise landscaping; and
- k) double driveways and crossovers are to be minimised to maximise landscape area, such as to dwellings in Superlot 6 and 8; and
- l) retaining wall heights and materials. These are to be high quality materials to match the dwellings, such as rendered and painted masonry, or face brick etc. Other plans such as Civil and Architectural plans are to be made consistent with the landscape plans; and
- m) landscape levels between Superlot 7 and 8, and between 9 and 10 are resolved utilising terraced walling solutions to provide a maximum single retaining wall height of 1m (for example, the plans propose a concrete sleeper retaining wall of approximately 2.25m high on rear boundary of Lot 9-07 and 10-07 which is not supported). Plans which clearly indicate the levels interfaces between these adjoining Superlots are to be provided; and
- n) garden edging locations and materials; and
- o) landscape planting which is considerate of aspect and overshadowing; and
- p) planting species to Forest Fringe adjacent existing bushland amended to ensure that planting is considerate of the locally native vegetation communities; and
- q) verge planting considerate of bin presentation areas for each dwelling; and
- r) verge planting considerate of the locally native vegetation communities and of hardy species appropriate for occasional foot traffic.

#### **41. Section 7.12 Contribution**

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$412,146.35** shall be paid to

Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

You are advised that the maximum percentage of the levy for development under section 7.12 of the Act having a proposed construction cost is within the range specified in the table below;

| Proposed cost of the development | Maximum percentage of the levy |
|----------------------------------|--------------------------------|
| Up to \$100,000                  | Nil                            |
| \$100,001 - \$200,000            | 0.5 %                          |
| More than \$200,000              | 1%                             |

As per Council's exhibited Fees and Charges effective from 1 July 2022, **Council will no longer accept payments by cash or by cheque.** Payments will be accepted via Debit or Credit Card or Direct Debit from a bank account.

#### **42. Internal Pavement Structural Design Certification**

Prior to a Construction Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded 12.5m long heavy rigid waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

#### **43. Construction Management Plan (Staged Applications)**

A construction management plan must be submitted demonstrating how the potential for conflict between resident and construction traffic is to be minimised and managed throughout all stages of the development. The construction management plan must be submitted before a Construction Certificate is issued and complied with for the duration of works.

#### **44. Irrigation**

An automatic watering system is to be installed as a minimum to the H South Parks (Forest Fringe and H Central Park). Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or Private Certifier prior to issue of the construction certificate.

#### **45. Planning Agreement**

The obligations in the Planning Agreement between Mirvac Projects (Retail and Commercial) Pty Ltd and The Hills Shire Council, adopted by Resolution 443 of Council's Ordinary Meeting of 27 September 2022, or any future amendment / variation of this Planning Agreement, must be satisfied in accordance with the terms of the Planning Agreement.

As specified in Schedule 2 of the Planning Agreement, the following monetary contributions must be paid to Council:-

| Contribution          | Timing of Payment  | Purpose: <i>'Housing South Precinct'</i>   | Total Contribution |
|-----------------------|--|--|--------------------|
| Dwelling Contribution | Prior to or concurrent with the issue of the first Construction Certificate. | 15% of Total Dwelling Yield (60 Dwellings) | \$291,866.03       |

The contributions above are applicable at the time this consent was issued. In accordance with the provisions of the Voluntary Planning Agreement, contributions are indexed annually and will be updated at the time of payment.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0555.

As per Council's exhibited Fees and Charges effective from 1 July 2022, **Council will no longer accept payments by cash or by cheque.** Payments will be accepted via Debit or Credit Card or Direct Debit from a bank account.

## **PRIOR TO WORK COMMENCING ON THE SITE**

### **46. Sydney Water Building Plan Approval**

A building plan approval must be obtained from Sydney Water Tap in™ to ensure that the approved development will not impact Sydney Water infrastructure.

A copy of the building plan approval and receipt from Sydney Water Tap in™ (if not already provided) must be submitted to the Principal Certifier upon request prior to works commencing.

Please refer to the website <http://www.sydneywater.com.au/tapin/index.htm>, Sydney Water Tap in™, or telephone 13 20 92.

### **47. Tree Protection Fencing**

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. In order of precedence the location of fencing shall be: a) In accordance with the 'Detail Tree Retention & Tree Protection Plans' prepared by Footprint Green Pty Ltd, dated 12 September 2022 (Rev. 12 – Dwg. No. atrpd 3.00); or b) As per directed by a AQF Level 5 (or greater) Project Arborist; or c) In accordance with the Tree Protection Zone (TPZ) as calculated under AS4970 (2009) Protection of trees on development sites. Note: Any variations to the Standards shall be documented and certified by the Project Arborist.

The erection of a minimum 1.8m chain-wire fence to delineate the TPZ is to stop the following occurring:

- Excavation, installation of services or other works within the TPZ;
- Stockpiling of materials within TPZ;
- Placement of fill within TPZ;
- Parking of vehicles within the TPZ;
- Compaction of soil within the TPZ;
- Cement washout and other chemical or fuel contaminants within TPZ; and
- Damage to tree crown.

Where the provision of the tree protection fencing is impractical due to its proximity to the proposed development footprint, trunk protection shall be erected around nominated trees to avoid accidental damage. The trunk protection shall consist of a layer of carpet underfelt (or similar) wrapped around the trunk, followed by 1.8m metre lengths of softwood timbers (90 x 45mm in section) aligned vertically and spaced evenly around the trunk at 150mm centres (i.e. with a 50mm gap) and secured together with galvanised hoop strap.

All areas within the root protection zone shall be mulched with composted leaf mulch to a depth of no less than 100mm as outlined in the mulching condition of this Consent.

Documentation relating to the implementation of the subject tree protection measures (including certification of supervision) by a Project Arborist shall be provided to Council as outlined in this Consent and/or upon request by the Consent Authority.

### **48. Tree Protection Signage**

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with Australian Standard – AS1319).

Signs identifying the TPZ shall be placed around the edge of the TPZ and be visible from within the development site.

Access to this area can only be authorised by the Project Arborist or Site Manager. All activities within this area shall be documented by the Project Arborist.

#### **49. Mulching within Tree Protection Zone**

Prior to any works commencing on site all areas within the Tree Protection Zone (TPZ) are to be mulched with composted leaf mulch to a depth of 100mm. The material of the mulch shall consist of approximately 75% leaf litter and 25% fine woodchip as certified to Australian Standard (AS 4454-2012) Composts, Soil Conditioner and Mulches.

Mulch shall be spread to cover the entire TPZ of the trees to be retained or to the discretion of an AQF Level 5 Project Arborist and shall be maintained for the duration of the works.

#### **50. Trenching and Excavation within Tree Protection Zone**

Any trenching and excavation for installation of drainage, sewerage, irrigation or any other services, and/or for construction of driveways and roads, and/or any ancillary structures shall not occur within the Tree Protection Zone (TPZ) of any trees identified for retention unless under supervision and certification of a suitably qualified AQF Level 5 (or greater) Project Arborist.

Certification of supervision by a Project Arborist must be provided to Council within 14 days of completion of trenching works and/or upon request by the Consent Authority.

The installation of the stormwater drainage system and/or sewerage drainage system, the construction of driveways and roads, and/or the construction of any ancillary structures within the TPZ of trees on site and/or on any adjacent sites identified to be retained shall be carried out by adopting sensitive construction methods under the supervision of the Project Arborist.

The installation of underground services shall be undertaken by adopting non-destructive excavation techniques such as horizontal directional drilling (trust boring) and hydro & vacuum excavation. Where the method of trust boring is selected the directional drilling bore shall be at least 600mm deep and the pilot bore pits for the machinery should be out of the TPZ of any trees to be retained. Note, prior to the adoption of trust boring practice the Project Arborist shall adequately assess the species and dimension of the tree/s to be preserved, the root structure and associated level of tolerance to soil disturbances, topography of the site and condition of the soil. Accordingly, where necessary the minimum depth (600mm) of the directional drilling bore shall be increased.

Demolition, construction, or any form of earth works within the Tree Protection Zone of trees identified for retention shall be carried out so as to avoid damage to the tree roots. Manual excavation shall be carried out under the supervision of the Project Arborist. Manual excavation may include the use of pneumatic and hydraulic tools. Note, mattocks and axes shall not be used.

Where roots within the Tree Protection Zone are exposed by excavation, temporary root protection should be installed to prevent them drying out. This may include jute mesh or hessian sheeting as multiple layers over exposed roots and excavated soil profile, extending to the full depth of the root zone. Root protection sheeting should be pegged in place and kept moist during the period that the root zone is exposed.

Root pruning should be avoided, however where necessary, all cuts shall be clean cuts made with sharp tools such as secateurs, pruners, handsaws, chainsaws or specialised root pruning equipment. Where possible, the roots to be pruned should be located and exposed using minimally destructive techniques such as hand-digging, compressed air or water-jetting, or non-destructive techniques. No roots larger than 40mm in diameter shall be cut without Project Arborist advice and supervision. All root pruning must be done in accordance with Section 9 of Australia Standard 4373-2007 Pruning of Amenity Trees.

### **51. Completion of Flood Control System (Interim/Permanent OSD Basin)**

No construction activity or earth works is to commence until the interim flood control system or permanent OSD 3 and OSD 4 catering the Apartment precinct catchment (the subject development) is completed to ensure the downstream flood behaviour is not adversely affected.

Documentation required must be provided to the Principal Certifying Authority prior to commencement of other activities.

### **52. Property Condition Report – Public Assets**

A property condition report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. This includes, but is not limited to, the road fronting the site along with any access route used by heavy vehicles. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

- Planned construction access and delivery routes; and
- Dated photographic evidence of the condition of all public assets.

### **53. Dust Management Plan – Major Subdivision Works**

A site specific dust management plan must be developed to proactively address the issue of dust during construction. This plan must be submitted to Council's Manager – Subdivision and Development Certification for written approval before works commence. The plan must address/ include the following matters, where relevant:

- Water carts must be used to regularly wet down exposed areas. The number of water carts required on site (at all times, and with additional carts available on demand) must be nominated and justified.
- Additives that can be mixed with the water to aid dust suppression.
- A dust cloth must be installed along the perimeter of the site.
- Where required, a sprinkler/ misting system along the perimeter of the site.
- Dust control at source, such as machine mounted sprinklers, ground mounted water cannons where material is being excavated, loaded and placed and measures to ensure loads are covered.
- Speed control on haul routes.
- Stockpile management such as location, orientation, volume and height to minimise impacts on neighbouring properties. Covering of stockpiles with tarpaulins or vegetation should also be considered where warranted by the duration of the stockpile. Stockpiles expected to be in place for longer than 14 days are considered non-temporary.
- Interim seeding and/ or hydro-mulching of exposed areas as work progresses.
- Final topsoil placement and planting or seeding exposed areas as soon as possible.
- Jute matting of the core riparian zone within any creeks/ riparian corridors.
- Weather forecast systems to predict adverse weather conditions and allow for early action for dust management and to avoid dust generating activities when weather conditions are unfavourable.
- Education of all site personnel on reducing dust.
- Community engagement plan and complaints management system demonstrating how dust complaints will be received, recorded, resolved and responded to.
- How the dust management controls will be monitored, reviewed and revised on a regular basis to ensure their ongoing effectiveness.

#### **54. Traffic Control Plan**

A Traffic Control Plan is required to be prepared and approved. The person preparing and approving the plan must have the relevant accreditation to do so. A copy of the approved plan must be submitted to Council before being implemented. Where amendments to the plan are made, they must be submitted to Council before being implemented.

A plan that includes full (detour) or partial (temporary traffic signals) width road closure requires separate specific approval from Council. Sufficient time should be allowed for this to occur.

#### **55. Erection of Signage – Supervision of Subdivision Work**

In accordance with the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- The name, address and telephone number of the Principal Certifier (Council);
- The name and telephone number (including after hours) of the person responsible for carrying out the works;
- That unauthorised entry to the work site is prohibited.

This signage must be maintained while the subdivision work is being carried out and must be removed upon completion.

As per the Environmental Planning and Assessment Act 1979, only Council can issue a Subdivision Certificate which means only Council can be appointed as the Principal Certifier for subdivision works.

#### **56. Contractors Details**

The contractor carrying out the subdivision works must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

#### **57. Erosion and Sediment Control/ Soil and Water Management**

The approved ESCP or SWMP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

#### **58. Service Authority Consultation – Subdivision Works**

Before subdivision works commence documentary evidence must be submitted confirming that satisfactory arrangements have been made for:

- The provision of electrical services for the non-residue lots created by the subdivision. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council.
- The provision of water and sewerage facilities.
- The provision of telecommunication services for the non-residue lots created by the subdivision, typically requiring the installation of pits and pipes complying with the standard specifications of NBN Co current at the time of installation. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council. The Telecommunications Act 1978 (Cth) specifies where the deployment of optical fibre and the installation of fibre-ready facilities is required.

#### **59. Pavement Design**

A pavement design based on Austroads (A Guide to the Structural Design of Road Pavements) and prepared by a geotechnical engineer must be submitted to Council for approval before the commencement of any pavement works.

The pavement design must be based on sampling and testing by a NATA accredited laboratory of the in-situ sub-grade material and existing pavement material. Details of the

pavement design and all tests results, including design California Bearing Ratio values for the subgrade and design traffic loadings, are to be provided.

#### **60. Management of Building Sites**

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and telephone number.

#### **61. Consultation with Service Authorities**

Applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.

Applicants are advised to consult with the relevant electricity authority with respect to electricity supply and connection points to the site, or any other electrical infrastructure located in close proximity to the proposed works. Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

#### **62. Stabilised Access Point**

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

#### **63. Details and Signage - Principal Contractor and Principal Certifier**

##### **Details**

Prior to work commencing, submit to the Principal Certifier notification in writing of the principal contractor's (builder) name, address, phone number, email address and licence number.

Before work commences, details of the Principal Certifier, in accordance with Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, is to be lodged on the NSW Planning portal.

##### **Signage**

A sign is to be erected in accordance with Section 70 of the Environmental Planning and Assessment Regulation 2021. The sign is to be erected in a prominent position on the site before the commencement of the work, and show –

- a) the name, address and telephone number of the Principal Certifier,
- b) the name and a telephone number on which the principal contractor/person responsible for the work may be contacted outside working hours.

The sign must state that unauthorised entry to the work site is prohibited.

#### **64. Engagement of a Project Arborist**

Prior to works commencing, a Project Arborist (minimum AQF Level 5) is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health:

- a) Name:
- b) Qualification/s:
- c) Telephone number/s:
- d) Email:

If the Project Arborist is replaced, Council is to be notified in writing of the reason for the change and the details of the new Project Arborist provided within 7 days.



#### **65. Erosion and Sedimentation Controls**

Erosion and sedimentation controls shall be in place prior to the commencement of site works and maintained throughout construction activities, until the site is landscaped and/or suitably revegetated. These requirements shall be in accordance with *Managing Urban Stormwater – Soils and Construction (Blue Book)* produced by the NSW Department of Housing.

This will include, but not be limited to a stabilised access point and appropriately locating stockpiles of topsoil, sand, aggregate or other material capable of being moved by water being stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

#### **66. Erosion & Sediment Control Plan Kept on Site**

A copy of the Erosion and Sediment Control Plan must be kept on site at all times during construction and available to Council on request.

#### **67. Construction Waste Management Plan Required**

Prior to the commencement of works, a Waste Management Plan for the construction and/ or demolition phases of the development must be submitted to and approved by the Principal Certifying Authority. The plan should be prepared in accordance with The Hills Development Control Plan 2012 Appendix A. The plan must comply with the waste minimisation requirements in the relevant Development Control Plan. All requirements of the approved plan must be implemented during the construction and/ or demolition phases of the development.

#### **68. Protection of Tree Canopy and Ground Protection within Tree Protection Zone**

Care shall be taken when operating cranes, drilling rigs and similar equipment near trees to avoid damage to tree canopies (foliage and branches). Under no circumstances shall branches be torn-off by construction equipment. Where there is potential conflict between tree canopy and construction activities, the advice of the Project Arborist must be sought.

Where scaffolding is required, it should be erected outside the TPZ. Where it is essential for scaffolding to be erected within the TPZ, branch removal shall be minimised or avoided. This can be achieved by designing to avoid branches or tying back branches. The ground below the scaffolding shall be protected by boarding such as scaffold board or plywood sheeting. Boarding shall be placed over a layer of mulch and impervious sheeting to prevent soil contamination. The boarding shall be left in place until the scaffolding is removed.

In the event of any tree becoming damaged for any reason during the construction period the Project Arborist shall be engaged to inspect and provide advice on any remedial action to minimise any adverse impact. Such remedial action shall be implemented as soon as practicable and certified by the Project Arborist.

The removal of a small portion of the crown (foliage and branches) is generally tolerable provided that the extent of pruning required is within 10% of the total foliage volume of the tree and the removal of branches does not create large wounds or disfigure the natural form and habit of the tree. All pruning cuts must be undertaken in accordance with the Australian Standard of Pruning of Amenity Tree (AS 4373-2007).

If any construction access or works is required within the TPZ of any tree/s identified for retention ground protection measures shall be required.

Ground protection shall include temporary access for machinery, vehicular and foot traffic within the TPZ of trees on the site and/or on adjoining Council site/s.

The measures may include a permeable membrane such as geo-textile fabric beneath a layer of mulch or crushed rock below rumble boards as per Clause 4.5.3 Ground protection AS4970-2009 Protection of trees on development sites.

Any site activity within the Tree Protection Zone and Structural Root Zone of the tree/s to be preserved must have elevated protection installed clear of the ground to avoid compaction and damage to roots. Protection may comprise of timber planks or metal decking supported on scaffolding or the like.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of no less than 100mm as outlined in the mulching condition of this Consent.

Documentation relating to the implementation of the subject tree protection measures (including certification of supervision) by a Project Arborist shall be provided to Council as outlined in this Consent and/or upon request by the Consent Authority.

#### **69. Tree Irrigation / Watering Maintenance**

The Project Arborist shall regularly monitor the levels of soil moisture within the TPZ of any trees identified to be retained.

Temporary irrigation system or manual watering may be required within the TPZ of the trees to the discretion of the Project Arborist.

Where practicable an above ground irrigation system shall be installed and maintained by a competent individual under direction and supervision of the Project Arborist.

### **DURING CONSTRUCTION**

#### **70. Standard of Works**

All work must be carried out in accordance with Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works, including public utility relocation, must incur no cost to Council.

#### **71. Critical Stage Inspections – Subdivision Works**

The subdivision works must be inspected by Council in accordance with the schedule included in Council's Works Specification Subdivisions/ Developments. A minimum of 24 hour's notice is required for inspections. No works are to commence until the first inspection has been carried out.

#### **72. Documentation – Civil works (All Stages)**

A copy of the following certified documents must be kept on site and made available upon request:

- a) Design and Construction Plans (Construction Certificate Documentation)
- b) Construction Management Plans
- c) Construction Verification Plan
- d) Construction Risk Management Plan
- e) Sediment and Erosion Control Plan.
- f) Details of Flood Control Systems provided (Interim/Permanent)
- g) Stormwater Management Documentation & Certifications

#### **73. Site Inspection – Bulk Earth Works**

All site works must be carried out under the supervision of suitably qualified geotechnical engineer confirming the works are carried out in accordance with the requirements of Geotechnical Report issued with the Construction Certificate.

#### **74. Hours of Work**

Work on the project to be limited to the following hours: -

**Monday to Saturday - 7.00am to 5.00pm;**

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

#### **75. Survey Report and Site Sketch**

A survey report and site sketch signed and dated (including contact details) by the registered land surveyor may be requested by the Principal Certifier during construction. The survey shall confirm the location of the building/structure in relation to all boundaries and/or levels.

As of September 2018 the validity of surveys has been restricted by legislation to 2 years after issue.

#### **76. Compliance with BASIX Certificate**

Under Section 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this Development Consent that all commitments listed:

Superlot 6 BASIX certificate number: 1213923M\_04

Superlot 7 BASIX certificate number: 1204975M\_06

Superlot 8 BASIX certificate number: 1205022M\_03

Superlot 9 BASIX certificate number: 1208430M\_04

Superlot 10 BASIX certificate number: 1208306M\_05

Superlot 11 BASIX certificate number: 1221200M\_02

Superlot 12 BASIX certificate number: 1213622M\_04

are to be complied with. Any subsequent version of these BASIX Certificates will supersede all previous versions of the certificate.

#### **77. Stockpiles**

Stockpiles of topsoil, sand, aggregate or other material capable of being moved by water shall be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.

#### **78. Dust Control**

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

#### **79. Dust Control**

The emission of dust must be controlled to minimise nuisance to the occupants of the surrounding premises. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:

- Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the construction work;
- All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and
- All stockpiles of materials that are likely to generate dust must be kept damp or covered.

#### **80. Project Arborist**

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites.

All tree work on site including removal shall be also supervised by the Project Arborist.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to Council within 14 days of completion of the works and/or upon request by the Consent Authority.

#### **81. Rock Breaking Noise**

Upon receipt of a justified complaint in relation to noise pollution emanating from rock breaking as part of the excavation and construction processes, rock breaking will be restricted to between the hours of 9am to 3pm, Monday to Friday.

Details of noise mitigation measures and likely duration of the activity will also be required to be submitted to Council's Manager – Environment and Health within seven (7) days of receiving notice from Council.

#### **82. Construction Noise**

The emission of noise from the construction of the development shall comply with the *Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)*.

#### **83. Contamination**

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works may continue in accordance with the Contaminated Land Management Act 1997 under the guidance of a suitably qualified environmental consultant, however, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The report is to be submitted to Council's Manager – Environment and Health.

#### **84. Confirmation of Compliance with Zero Lot Line**

Prior to the installation of the external roof tiles/sheeting, a survey certificate signed and dated (including contact details) from a registered land surveyor may be requested by the Principal Certifier stating that the as constructed guttering and fascia to the wall on the zero lot line is located wholly within the property boundary.

#### **85. Location of Dwelling(s)**

The proposed construction of the dwelling(s) (inclusive of any services, equipment and/or utilities) is to be located wholly within the confines of the subject properties boundaries and clear of the total extent of the easement for access and maintenance that is adjacent to the property boundary.

#### **86. Critical Stage Inspections and Inspections Nominated by the Principal Certifier**

Section 6.6 of the Environmental Planning and Assessment Act 1979 requires critical stage inspections to be carried out for building work as prescribed by Section 61 of the Environmental Planning and Assessment (Development Certification and fire Safety) Regulation 2021. Prior to allowing building works to commence the Principal Certifier must give notice of these inspections pursuant to Section 58 of the Environmental Planning and Assessment (Development Certification and fire Safety) Regulation 2021.

An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspection or other inspection required by the Principal Certifier is not carried out. Inspections can only be carried out by the Principal Certifier unless agreed to by the Principal Certifier beforehand and subject to that person being a registered certifier.

#### **87. Roof Water Drainage**

Gutter and downpipe and/or rainwater tank overflow, to be provided and connected to an approved lawful discharge point (ie. kerb, inter-allotment drainage easement or OSD) upon installation of roof coverings.

### **PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE**

#### **88. Section 73 Certificate must be submitted to the Principal Certifier before the issuing of an Occupation Certificate**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.

**The Section 73 Certificate must be submitted to the Principal Certifier before occupation of the development/release of the plan of subdivision.**

#### **89. Landscaping Prior to Issue of any Occupation Certificate**

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan (pursuant to condition 39 of this consent) by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

#### **90. Project Arborist Final Certification Prior to Issue of any Occupation Certificate**

Prior to the issue of an Occupation Certificate the Project Arborist shall provide final documentary evidence and certification together with photographs of all points of supervision including but not limited to the following hold points:

- a) Prior to installation of tree protection measures;
- b) Prior to and during the tree removal work being carried out;
- c) Following installation of tree protection measures, including ground protection, canopy protection, irrigation maintenance within the TPZ and prior to any works commencing on site (including demolition, earth work and construction);
- d) During all works within the TPZ of any trees to be retained on site and on any adjacent sites;
- e) Monthly inspections by site arborist from commencement of works until completion of works; and
- f) At completion of all works including landscaping (i.e. retaining walls, installation of lighting and irrigation, topdressing, planting, paving, etc.).

Any changes in tree health, condition of growing environment or potential damage to trees during construction shall be documented and discussed, and any ongoing tree management recommendations including any taken remedial action shall be provided. The above certification and documentation shall be submitted to the satisfaction of Council's Manager – Environment and Health prior to the issue of an Occupation Certificate.

Note, documentation relating to the implementation of any required tree protection measures including certification of supervision by the Project Arborist of the tree removal work and any form of work undertaken within the TPZ of trees identified to be retained shall be provided to Council during the stages of the development as described under the relevant conditions of Consent and/or upon request by the Consent Authority.

#### **91. Completion of Engineering Works**

An Occupation Certificate must not be issued for a relevant stage of works prior to the completion of all engineering works covered by this consent relevant to that stage, in accordance with this consent.

#### **92. Property Condition Report – Public Assets**

Before an Occupation Certificate is issued, an updated property condition report must be prepared and submitted to Council. The updated report must identify any damage to public assets and the means of rectification for the approval of Council.

### **93. Stormwater Management Certification**

The stormwater management system must be completed to the satisfaction of the Principal Certifier prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the stormwater management system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- For Onsite Stormwater Detention (OSD) systems, a certificate of hydraulic compliance (Form B.11) from a hydraulic engineer verifying that the constructed OSD system will function hydraulically;
- For OSD systems, a certificate of structural adequacy from a structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime;
- Records of inspections; and
- An approved operations and maintenance plan.

Where Council is not the Principal Certifier a copy of the above documentation must be submitted to Council.

### **94. Certifications Bulk Earth Works & Retaining Structures (All Stages)**

Certifications from Geotechnical and Structural Engineers confirming the works have been completed in accordance with the geotechnical investigation reports and certifications issued for the construction.

### **95. Completion of Subdivision Works/ Satisfactory Final Inspection**

A Subdivision Certificate and Occupation Certificate cannot be issued for a relevant stage of the works prior to the completion of all subdivision works relevant to that stage covered by this consent. A satisfactory final inspection by Council's Construction Engineer is required.

### **96. Compliance with Natural Resources Access Regulator Requirements**

If applicable, a letter from the Natural Resources Access Regulator must be submitted confirming that all works associated with the Controlled Activity Authority have been completed to their satisfaction.

### **97. Compliance with Sydney Water Requirements**

A letter from Sydney Water must be submitted confirming the relevant works have been completed to their satisfaction.

### **98. Subdivision Works – Submission Requirements**

Once the subdivision works are complete the following documentation (where relevant/ required) must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments and submitted to Council's Construction Engineer for written approval:

- Works as Executed Plans
- Stormwater Drainage CCTV Recording
- Stormwater Management (Flood control system) certification
- Pavement Density Results
- Street Name/ Regulatory Signage Plan
- Pavement Certification
- Public Asset Creation Summary
- Concrete Core Test Results
- Site Fill Results
- Structural Certification

The works as executed plan must be prepared by a civil engineer or registered surveyor. A copy of the approved detailed design must underlay the works as executed plan so clearly show any differences between the design and constructed works. The notation/ terminology used must be clear and consistent too. For bonded/ outstanding work the works as executed plan must reflect the actual work completed. Depending on the nature and scope of the bonded/ outstanding work a further works as executed plan may be required later, when that work is completed.

All piped stormwater drainage systems and ancillary structures which will become public assets must be inspected by CCTV. A copy of the actual recording must be submitted electronically for checking.

A template public asset creation summary is available on Council's website and must be used.

#### **99. Performance/ Maintenance Security Bond**

A performance/ maintenance bond of 5% of the total cost of the subdivision works is required to be submitted to Council. The bond will be held for a minimum defect liability period of six months from the certified date of completion of the subdivision works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council and is subject to a final inspection.

#### **100. Confirmation of Pipe Locations**

A letter from a registered surveyor must be provided with the works as executed plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

#### **101. Provision of Electrical Services**

Submission of a notification of arrangement certificate confirming satisfactory arrangements have been made for the provision of electrical services. The certificate must refer to this development consent and all of the lots created.

#### **102. Registration of Preceding Subdivision**

A Subdivision Certificate cannot be issued for this subdivision before the preceding stage/ subdivision creating the superlots pursuant to Development Consent DA 1414/2022/ZB has been registered.

#### **103. Provision of Telecommunication Services**

The developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

The installation of fibre-ready facilities to all individual lots and/ or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and

The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/ or premises in a real estate development project demonstrated through an agreement with a carrier.

Real estate development project has the meanings given in Section 372Q of the Telecommunications Act 1978 (Cth).

For small developments, NBN Co will issue a Provisioning of Telecommunications Services – Confirmation of Final Payment. For medium and large developments, NBN Co will issue a Certificate of Practical Completion of Developers Activities.

For non-fibre ready facilities, either an agreement advice or network infrastructure letter must be issued by Telstra confirming satisfactory arrangements have been made for the provision of telecommunication services. This includes the undergrounding of existing overhead services, except where a specific written exemption has been granted by Council.

A copy of the works as executed (WAE) plans for the telecommunications infrastructure must also be submitted.

#### **104. Final Plan and Section 88B Instrument**

The final plan and Section 88B Instrument must provide for the following. Council's standard recitals must be used.

##### **a) Easement – Public Stormwater Drainage**

Drainage easements must be created over all stormwater drainage pipelines and structures which convey public stormwater runoff, in accordance with the requirements of Council. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

##### **b) Easement – Private Stormwater Drainage**

Inter-allotment drainage easements must be created to ensure each and every lot is provided with a legal point of discharge. Easement widths must comply with Council's Design Guidelines Subdivisions/ Developments.

##### **c) Easement – Overhanging/ Encroaching Structure**

Where an encroaching or overhanging structure has been approved across a proposed boundary, an easement must be created over the affected part of the burdened lot.

##### **d) Easement – Repairs/ Zero Lot Line Dwellings**

A 900mm wide (minimum) easement for repairs is required over those lots adjacent to the zero-lot line dwellings identified on the approved plan using the "zero lot line dwellings" terms included in the standard recitals.

##### **e) Restriction – Rainwater Tanks**

All residential lots must be burdened with a restriction using the "rainwater tanks" terms included in the standard recitals.

##### **f) Restriction – Residue Lots**

Lot 5 must be burdened with a restriction using the "residue lots" terms included in the standard recitals.

##### **g) Restriction – Bedroom Numbers**

All lots that contain a new dwelling home/ attached dwelling must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

##### **h) Covenant – Waste Collection/ Bin Presentation**

Lots 52-63, 20-30, 31-37, 9-19, 64-68 must be burdened with a positive covenant requiring 400mm clearance for lots fronting a 1.6m verge using the "waste collection/ bin presentation" terms included in the standard recitals.

##### **i) Covenant – Onsite Waste Collection**

Association lot one must be burdened with a positive covenant relating to onsite waste collection using the "onsite waste collection" terms included in the standard recitals.

##### **j) Restriction/ Covenant – Onsite Stormwater Detention**

Lot 5 must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.

##### **k) Restriction/ Covenant – Water Sensitive Urban Design**

Lot 5 must be burdened with a restriction and a positive covenant that refers to the WSUD elements referred to earlier in this consent using the "water sensitive urban design elements" terms included in the standard recitals.

##### **l) Restriction/ Covenant – Asset Protection Zone**

Lots identified in the NSW Rural Fire Service - General Terms of Approval letter dated 2 August 2022, under headings Asset Protection Zones and Construction Standards must be



burdened with a restriction and a positive covenant using the “bushfire requirements/ asset protection zone” terms included in the standard recitals:

- Lots required to be managed as an asset protection zone require a positive covenant affecting the entire lot.
- Lots with a defined asset protection zone measured to a boundary or restricted development area (see below) require a restriction and a positive covenant that refers to an area defined on the plan.
- Lots with a defined approved dwelling footprint require a separate restriction (see above) within the nominated asset protection zone.
- The restriction and positive covenant must specifically identify that the asset protection zone referred to earlier has been determined based on a performance based solution as noted in the Rural Fire Service comments attached to this consent.

#### **m) Restriction / Covenant - Keeping of Domestic Animals**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat or bushland, on the site or surrounding properties or reserves.

#### **105. Subdivision Certificate Application**

When submitted, the Subdivision Certificate application must include:

- a) One copy of the final plan.
- b) The original administration sheet and Section 88B instrument.
- c) All certificates and supplementary information required by this consent.
- d) An AutoCAD copy of final plan (GDA2020/ MGA Zone 56).

#### **106. Internal Pavement Construction**

Prior to any Occupation Certificate being issued for a relevant stage, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement for that stage has been constructed in accordance with the approved plans and is suitable for use by a 12.5m long waste collection vehicle when fully laden (i.e., 28 tonnes gross vehicle mass).

### **THE USE OF THE SITE**

#### **107. Waste and Recycling Management**

To ensure the adequate storage and collection of waste from the occupation of the premises, all garbage and recyclable materials emanating from the premises must be stored in the designated waste storage areas, which must include provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. All waste storage areas must be screened from view from any adjoining residential property or public place. Waste storage areas must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.

#### **108. Visitor Parking Spaces**

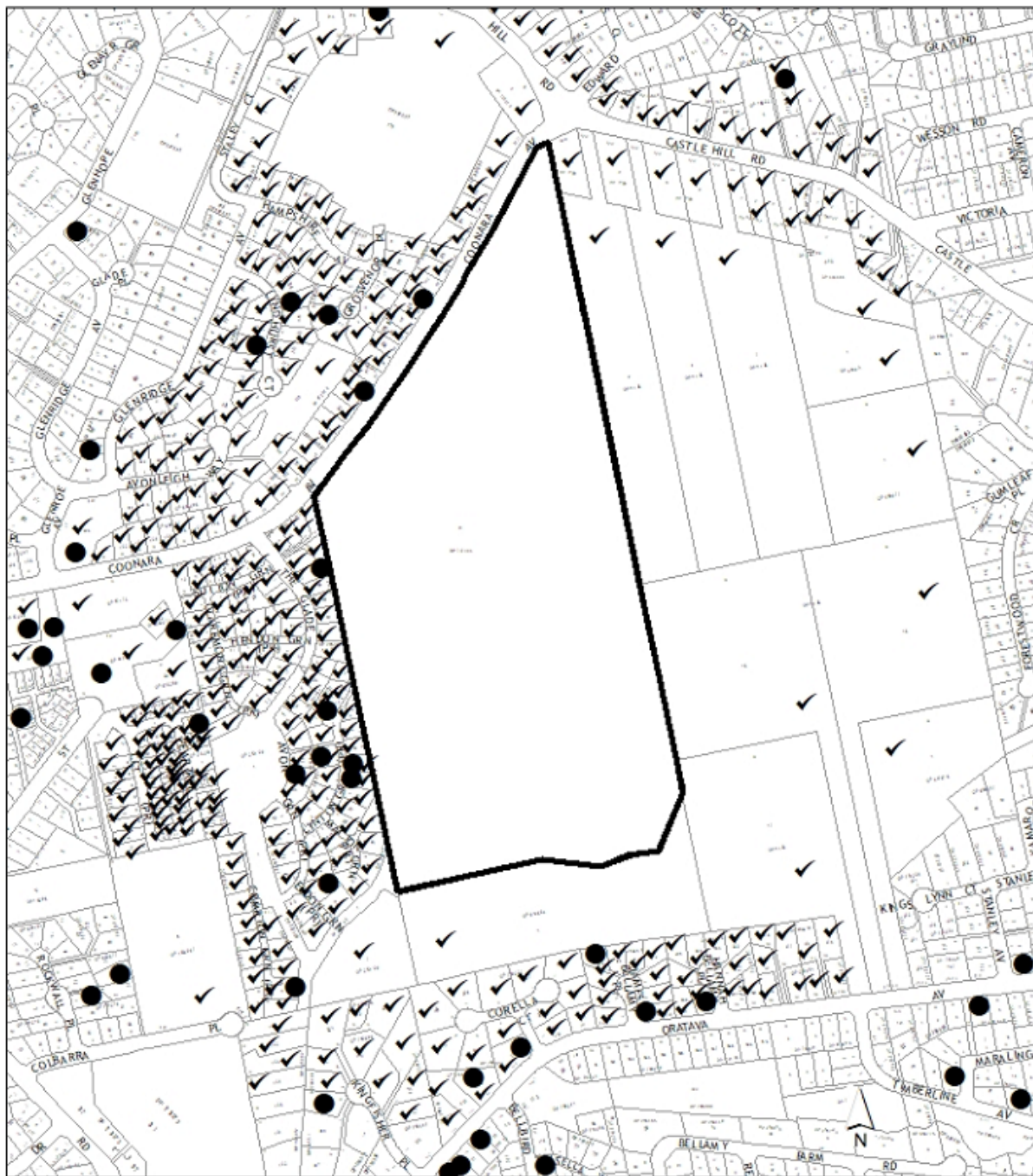
The Housing South Precinct is to provide for 20 on-street visitor spaces.

### **ATTACHMENTS**

1. Locality Plan
2. Aerial Photography
3. Zoning Plan

4. Building Height Map
5. Site Plan
6. Superlot Arrangement
7. Superlot 6
8. Superlot 12
9. Clause 4.6 Written Submission
10. Subdivision Plan
11. RFS – General Terms of Approval

## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ☒ PROPERTIES NOTIFIED
- ☒ SUBMISSIONS RECEIVED

**NOTE: THE REMAINDER OF THE  
SUBMISSIONS OUTSIDE THE  
SCOPE OF THIS MAP**

**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**


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

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



## ATTACHMENT 2 – AERIAL MAP



 SUBJECT SITE

**THE HILLS**  
Sydney's Garden Shire

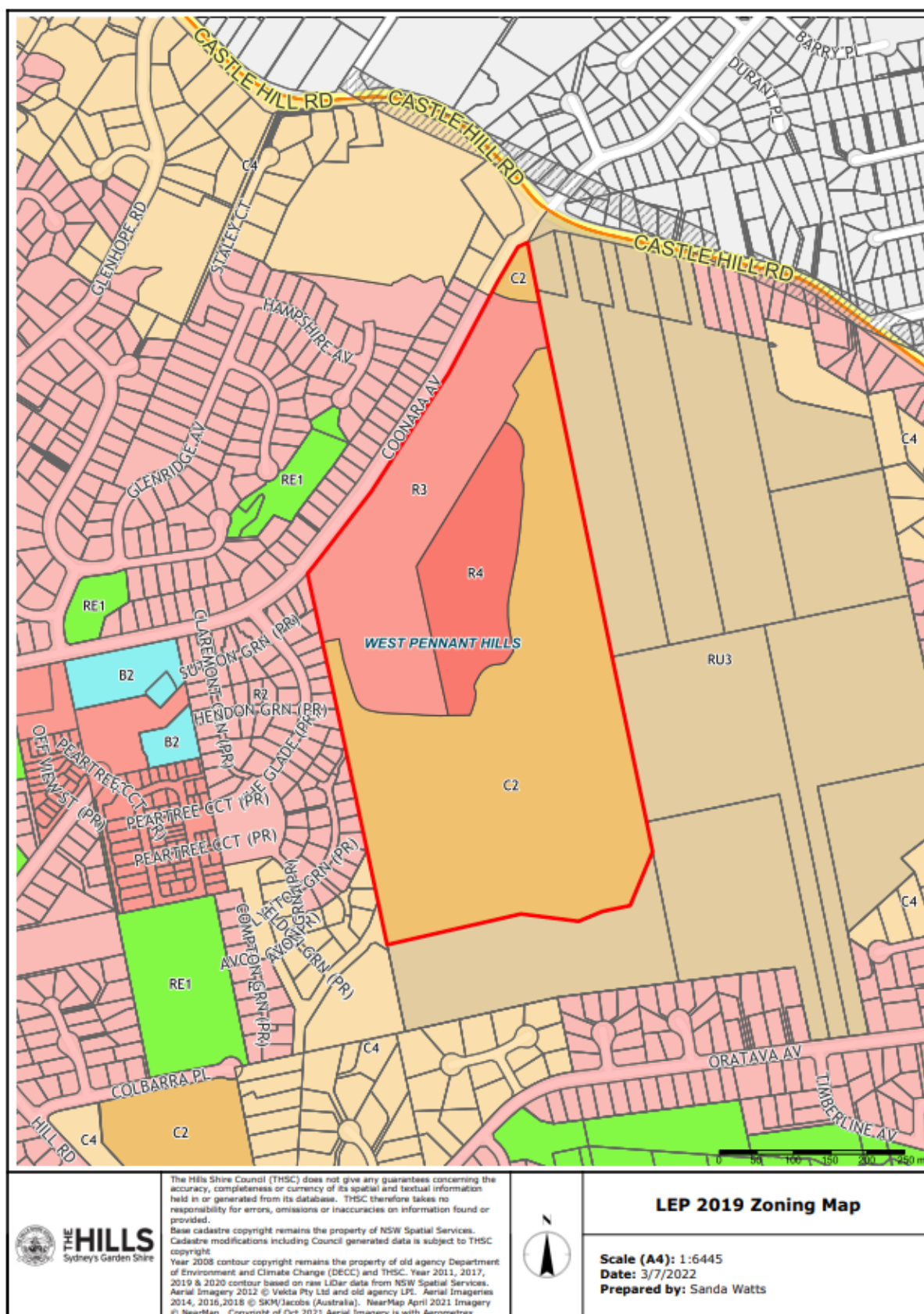
### THE HILLS SHIRE COUNCIL

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

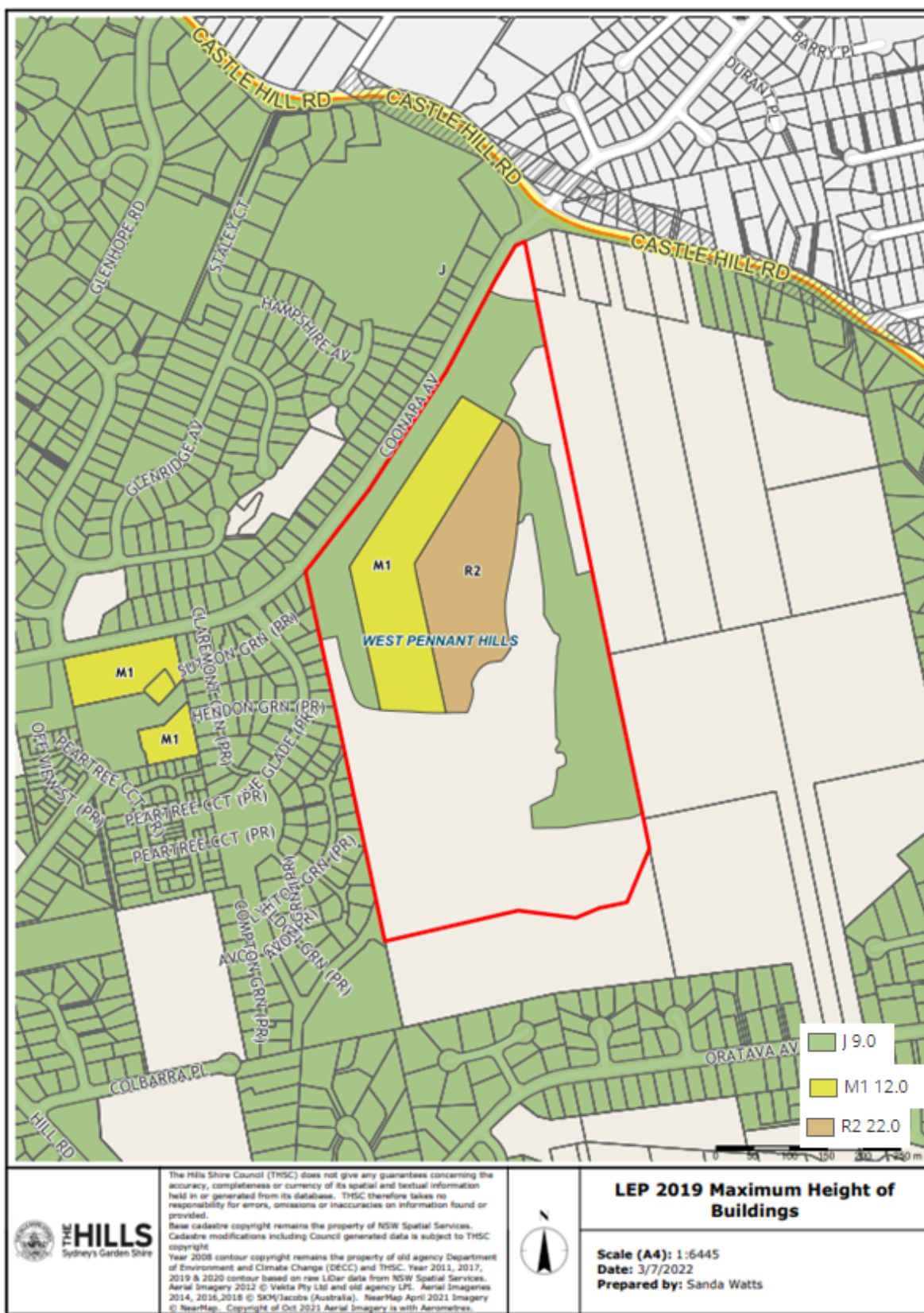
BASECADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LP). CADASTRE UPDATE INCLUDING CO UNCIL GENERATED DATA IS SUBJECT TO THSC COPYRIGHT.



## ATTACHMENT 3 – ZONING PLAN



## ATTACHMENT 4 – BUILDING HEIGHT MAP





## ATTACHMENT 5 – SITE PLAN





ATTACHMENT 6 – SUPERLOT ARRANGEMENT

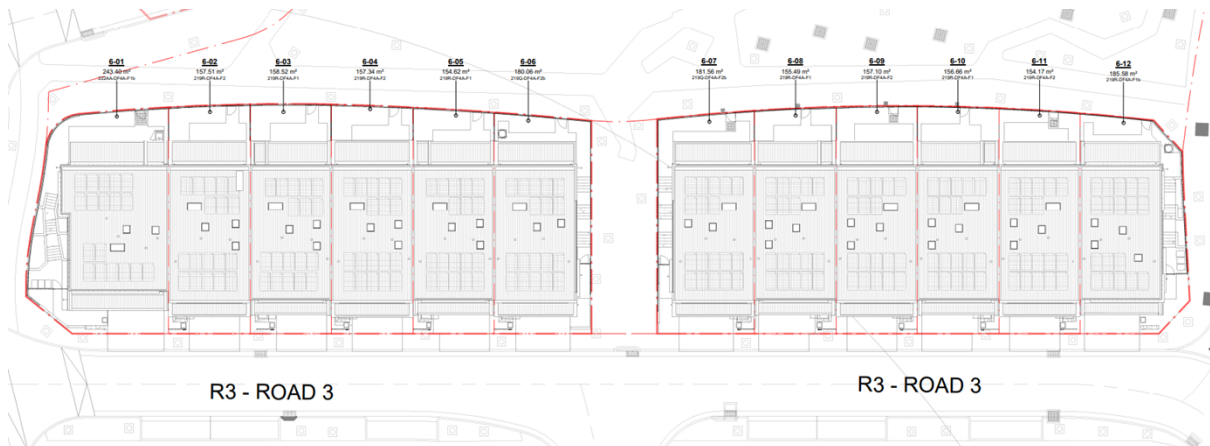




## ATTACHMENT 7 – SUPERLOT 6 – ELEVATIONS AND ROOF PLAN



① FRONT COLOURED STREETSCAPE SITE 06 LOTS 01 - 03



## ATTACHMENT 8 – SUPERLOT 12 – ELEVATIONS AND ROOF PLANS

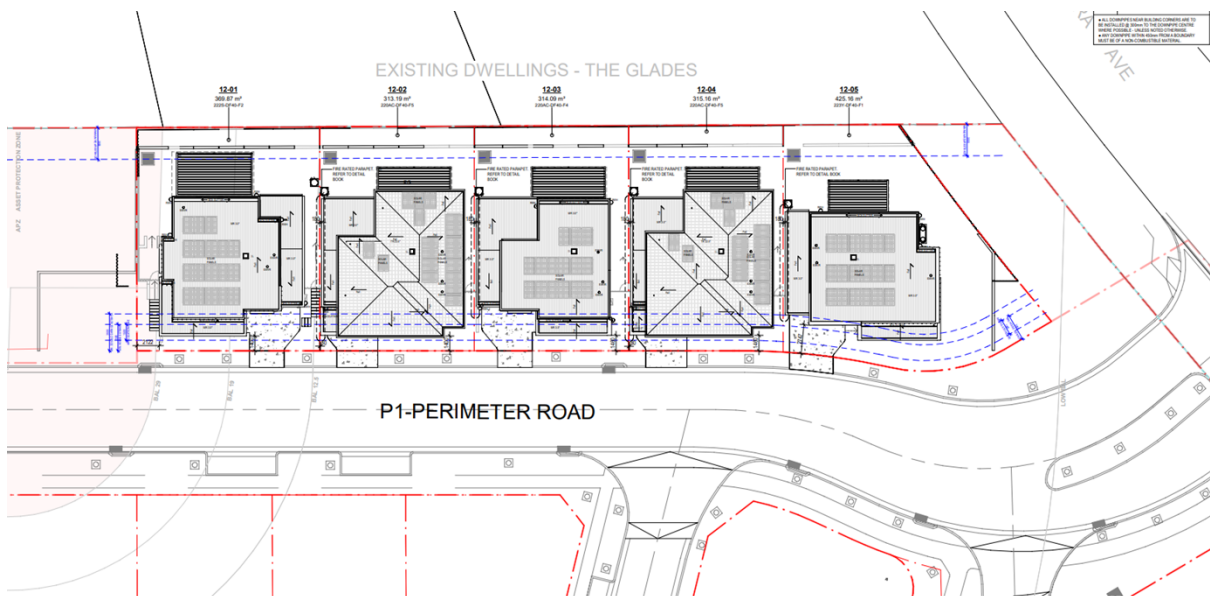


① FRONT ELEVATION LOTS 12.01-12.03-COLOURED STREETSCAPE



② FRONT ELEVATION LOTS 12.04-12.05-COLOURED STREETSCAPE

NOTE:



## 55 Coonara Avenue, West Pennant Hills

Clause 4.6 Written Request – Building Height (Southern Housing Precinct)

On behalf of  
Mirvac  
June 2022

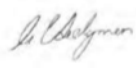
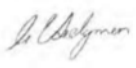


## Project Director

Georgia Sedgmen

## Project Planner

Hugh Halliwell

| Revision | Revision Date  | Status | Authorised |   |
|----------|----------------|--------|------------|---|
|          |                |        | Name       | Signature   |
| A        | 8 October 2021 | Final  | G. Sedgmen |  |
| B        | 23 June 2022   | Final  | G. Sedgmen |  |

\* This document is for discussion purposes only unless signed and dated by the persons identified. This document has been reviewed by the Project Director.

## Contact

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## 1 Executive Summary

This amended Clause 4.6 Written Request for Building Height has been prepared on behalf of Mirvac in support of a Development Application (DA) for the first stage of housing at 55 Coonara Avenue, West Pennant Hills. This DA follows the submission of a Concept DA that includes the detailed first stage comprising the civil works which sets the framework for the proposed development including a concept plan for the building developable areas and a site-specific design guideline. This DA proposes the development of 60 dwellings comprised of 55 attached and 5 detached 2 and 3 storey dwelling houses in the R3 zoned land (refer **Figure 4**), with a height of buildings control of 9m and 12m as depicted in **Figure 5**. The housing precinct comprising this DA is known as the 'Southern Housing Precinct'.

This amended Clause 4.6 Written Request for Building Height has been prepared at the request of The Hills Shire Council to address minor amendments made to Superlot 11. These amendments have been made as a consequence of feedback received from the Design Excellence Panel. This feedback noted the east-west orientation of the lots in Superlot 11, resulting in south facing internal living areas. To address, skylights have been incorporated into the design of the fully attached dwellings in Superlot 11, resulting in a minor additional building height to these dwellings. Aside from these skylights, the dwellings remain materially the same with the skylights having no discernible impact with the skylights being largely imperceptible from nearby dwellings and from within the public domain.

In addition to the introduction of skylights, a dwelling has been removed from Superlot 11 to create a view corridor from Road 4 to the forest to the south. As well as this, the removal of a dwelling assists in breaking up the building length along Road 3, resulting in an improved streetscape outcome. This results in a reduction of proposed yield in the Southern Housing Precinct from sixty one (61) down to sixty (60), and proposed number of contraventions of the height standard from thirty eight (38) down to thirty seven (37).'

This document has been prepared in accordance with the provisions under Clause 4.6 of The Hills Local Environmental Plan (THLEP) 2019.

The site was rezoned in June 2020 from B7 Business Park that applied across the entire site, to a combination of R3 Medium Density Residential, R4 High Density residential, and E2 Environmental Conservation. The E2 Environmental Conservation zoning was sought during the rezoning process to provide the highest form of environmental protection to the critically endangered ecological communities in the Blue Gum High Forest (BGHF) and the Sydney Turpentine Ironbark Forest (STIF) that are located within the site near the proposed development footprint. The rezoning process also changed the maximum permitted building height from 22m across the site, to 9m, 12m, and 22m. The rezoning enables the site to be redeveloped into a new residential development with a maximum number of dwellings capped at 600.

The planning proposal process that led to the rezoning was a lengthy process that thoroughly considered the site in particular key important aspects such as bushfire, ecological, and transport matters. However, the proposed design and resulting height departures referenced in this clause 4.6 objection have been driven by the unfavourable topography. The subject DA relates to the R3 portion of the site and

includes the 9m and 12m prescribed building height standard. The history of the site and alteration of its landscape is further demonstrated in **Figure 1**



**Figure 1:** Historic aerial photographs highlighting the extent of forest clearing and disturbance of the site over the years. (Source: Mirvac Design)



The proposed height of buildings and contraventions relate to 37 of the 60 dwellings and are detailed in **Table's 1, 2, 3 and 4.**

The contraventions proposed are primarily a result of;

- The existing site being located on extremely challenging natural topography that was heavily modified in the 1980's to suit the requirements of a large office complex with a B7 Business Park zoning.
- The requirement to redevelop the existing, redundant B7 Business Park office complex and surrounding carparking to provide a family friendly residential development within the framework of R3 and R4 residential zoning
- The environmentally led design approach to the concept plan to protect, as practically as possible, the high value biodiversity elements of the site that centre around the retention and upgrade of the existing perimeter ring road that abuts BGHF and STIF which acts as a physical delineation point between existing remnant forested areas and the previously disturbed portion proposed for redevelopment
- The challenges of designing a new civil solution for the site, working with the surrounding fixed points and constraints of the perimeter ring road and site entry levels along Coonara Avenue, and balancing infrastructure servicing requirements of the site including stormwater management;
- The proposed retention and upgrading of the existing perimeter ring road and internal roads are required to generally comply with Australian design standards for road safety which limit the ability to quickly and safely transition the geometry of the roads to follow the current topography which was heavily modified from natural, as well as achieve a functional urban design outcome;
- Designing housing and using existing topography as the baseline, particularly when the existing topography was highly modified and bespoke to suit IBM's development of the site in the 1980s. The IBM development included excavation for the construction of basements, which significantly altered the previous natural existing ground level to service the requirements of a now-redundant B7 Business Park, and are now considered "existing ground levels" for the purpose of this DA;
- Minor architectural elements, such as parapets and skylights, associated with the detailed design of the 2 and 3 storey housing as is normal during the detailed design phases of a project;
- Ensuring appropriate design allowances such as ceiling heights and equipment servicing is appropriate for the proposed housing;
- Ensuring the development exhibits THSCLEP Clause 7.7 requirement for Design Excellence; and
- In keeping with the neighbourhood character of the surrounding proposed development product and delivering housing as was envisaged by the rezoning.

As previously mentioned, a Concept Development Application including a detailed first stage comprising civil works has been lodged for this site (Concept DA). Aside from setting the site wide development envelopes for the site, the detailed first stage also includes the civil component of the masterplan, including bulk earthworks and

proposed new site civil levels. Final detailed lot civil works are proposed as part of this Southern Housing Precinct DA.

If this DA for the Southern Housing Precinct was lodged following completion of the detailed earthworks proposed as part of this DA, the predicted height departures would reduce from 37 dwellings to 6 dwellings, all within the 9m height overlay, remaining a function of steep topography that necessitates 2 to 3 storey split level housing product to work with the ground levels that abuts the existing retained perimeter ring road.

This submission considers the existing ground levels, in accordance with the definition provided in THLEP and also identifies the proposed finished ground levels, subject of this Southern Housing DA, which will become the existing ground levels at the time the dwellings within the Southern Housing Precinct are constructed. In this document, we refer to the ground level subject to approval with this DA as the "Finished Ground Levels".

The following tables provide a summary of the proposed height of building contraventions when considered against the existing ground levels at the time of writing.

For simplicity purposes, this document has been structured to provide a summary of the building height contraventions in four (4) distinct areas of the precinct. **Table's 1 – 4** correspond to each area. These areas are summarised, as follows:

1. Building height contraventions resulting from the erection of dwellings over the location of an existing basement excavation;
2. Building height contraventions within superlot 10 directly adjoining the existing retained Perimeter Road;
3. Building height contraventions within the building height standard transition area between 12m and 9m; and
4. Minor building height contraventions across superlot's 7, 8, 9 and 11 due to design articulation.

**Table 1** Summary of building height contraventions resulting from existing basement levels

| No. | Lot  | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|------|---------------------------------------|---------------------|--|--|
| 1   | 7.02 | 12                                    | 12.22               | 1.83                                     | -  |
| 2   | 7.03 | 12                                    | 12.73               | 6.08                                     | -  |
| 3   | 7.04 | 12                                    | 13.07               | 8.92                                     | -  |
| 4   | 7.05 | 12                                    | 13.41               | 11.75                                    | -  |
| 5   | 7.06 | 12                                    | 13.59               | 13.25                                    | -  |
| 6   | 7.07 | 12                                    | 13.84               | 15.33                                    | -  |



**Table 1** Summary of building height contraventions resulting from existing basement levels

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 7   | 7.08  | 12                                    | 14.19               | 18.25                                    | -  |
| 8   | 7.09  | 12                                    | 12.07               | 17.91                                    | -  |
| 9   | 8.03  | 12                                    | 13.93               | 16.08                                    | -  |
| 10  | 8.04  | 12                                    | 14.7                | 22.5                                     | -  |
| 11  | 8.05  | 12                                    | 15.24               | 27.0                                     | -  |
| 12  | 8.06  | 12                                    | 15.82               | 31.83                                    | -  |
| 13  | 9.02  | 12                                    | 13.02               | 8.5                                      | -  |
| 14  | 9.03  | 12                                    | 12.66               | 5.5                                      | -  |
| 15  | 11.07 | 12                                    | 14.91               | 24.25                                    | -  |
| 16  | 11.08 | 12                                    | 15.83               | 31.92                                    | -  |
| 17  | 11.09 | 12                                    | 16.63               | 38.58                                    | -  |
| 18  | 11.10 | 12                                    | 16.38               | 36.5                                     | -  |
| 19  | 11.11 | 12                                    | 15.66               | 30.5                                     | -  |

**Table 2** Summary of building height contraventions in superlot 10 adjoining the existing retained Perimeter Road

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 10.01 | 9                                     | 12.03               | 33.67                                    | -  |
| 2   | 10.03 | 9                                     | 9.92                | 10.22                                    | -  |
| 3   | 10.04 | 9                                     | 11.21               | 24.56                                    | -  |
| 4   | 10.05 | 9                                     | 11.94               | 32.67                                    | -  |
| 5   | 10.06 | 9                                     | 12.61               | 40.11                                    | -  |
| 6   | 10.07 | 9                                     | 13.34               | 48.22                                    | -  |

**Table 3** Building height contraventions within the building height standard transition area between 12m and 9m; and

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 6.01  | 9                                     | 9.96                | 10.67                                    | 11.78                                    |
| 2   | 6.02  | 9                                     | 9.90                | 10.0                                     | 12.0                                     |
| 3   | 6.03  | 9                                     | 9.42                | 4.67                                     | 11.89                                    |
| 4   | 11.01 | 9                                     | 12.89               | 43.22                                    | 10.44                                    |
| 5   | 11.02 | 9                                     | 13.41               | 49                                       | 11.75                                    |
| 6   | 11.03 | 9                                     | 13.25               | 47.22                                    | 10.42                                    |

**Table 4** Minor building height contraventions across superlots 7, 8, 9 and 11 due to design articulation

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 7.01  | 12                                    | 12.41               | 3.42                                     | -  |
| 2   | 8.01  | 12                                    | 12.77               | 6.42                                     | -  |
| 3   | 9.01  | 12                                    | 12.77               | 6.42                                     | -  |
| 4   | 11.04 | 12                                    | 12.86               | 7.17                                     | -  |
| 5   | 11.05 | 12                                    | 12.14               | 1.17                                     | -  |
| 6   | 11.06 | 12                                    | 13.5                | 12.5                                     | -  |

Notwithstanding the contraventions identified above, the objectives of clause 4.3 of THLEP 2019 and the R3 zone are satisfied by providing a well-considered built form commensurate with the character anticipated by a medium density residential community, while providing for an appropriate housing typology as envisaged within a medium density setting.

The dwellings have been designed to ensure any visual impact associated with the proposed built form, including that above the height standard, have been minimised. The proposal has retained the high value biodiversity forest setting of the site, where practicable, in addition to providing further landscaping to assist with screening the built form, as viewed from within the site, the public domain and adjoining properties.

The Southern Housing Precinct subject to this clause 4.6 written request is highlighted in **Figures 2 and 3**.

## 2 Height of Buildings

### 2.1 Introduction

This Clause 4.6 Written Request has been prepared on behalf of Mirvac (the applicant) to support a development application (DA) for the Southern Housing Precinct submitted to The Hills Shire Council (Council) relating to the land at 55 Coonara Avenue, West Pennant Hills (the site).



**Figure 2:** Indicative rendered aerial image of the site (white dashed line) proposed development and Southern Housing Precinct (red line). (Source: Mirvac Design)



**Figure 3:** Enlarged indicative rendered aerial image of Southern Housing Precinct (red line) (Source: Mirvac Design)

The Southern Housing Precinct DA proposes the development of 60 dwellings, comprising detached and attached dwellings, minor earthworks, construction of retaining walls, embellishment of private community road pavements, associated landscaping, including of public open spaces and streetscapes.

This report has been prepared to request a contravention to the building height standard under clause 4.3 of THLEP 2019. This request is being made pursuant to clause 4.6 of the THLEP 2019.

This clause 4.6 written request has been prepared having regard to the Land and Environment Court judgements in the matters of:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48],
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248,
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118,
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189
- *Nicola v Waverley Council* [2020] NSWLEC 1599 and *Bettar v City of Sydney* [2014] NSWLEC 1070

### 3 The Hills Local Environmental Plan 2019

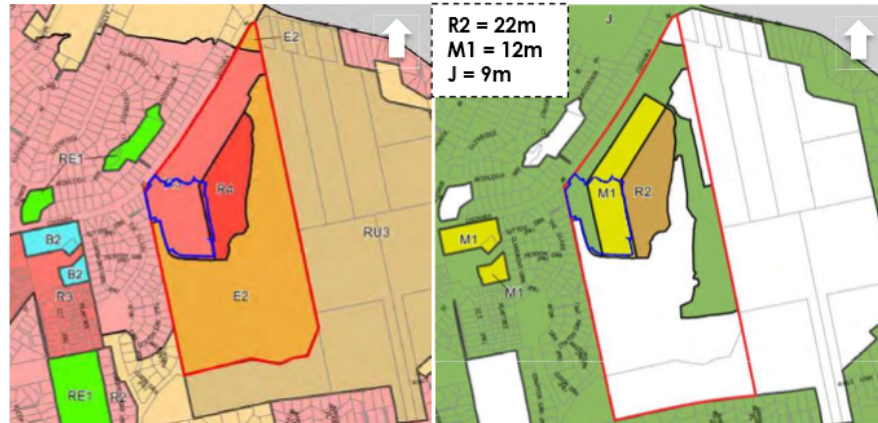
#### 3.1 Clause 4.3 – Height of Buildings

Pursuant to clause 4.3 of THLEP 2019 the maximum building height for development within the R3 zone is 9m and 12m (refer to **Figure 5**). The stated objectives of this standard are as follows:

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

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

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



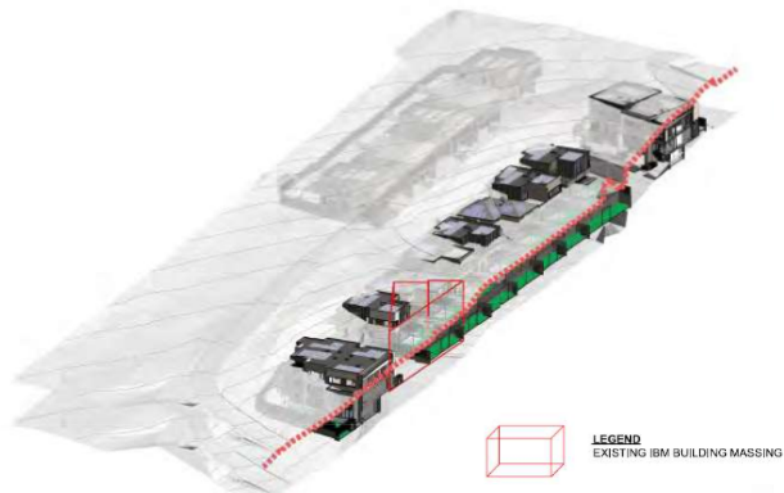
**Figure 4.** Zoning map with approximate Southern Housing Precinct overlay (blue line) (Source: The Hills LEP 2019)

**Figure 5.** Height of buildings map with approximate Southern Housing Precinct overlay (blue line) (Source: The Hills LEP 2019)

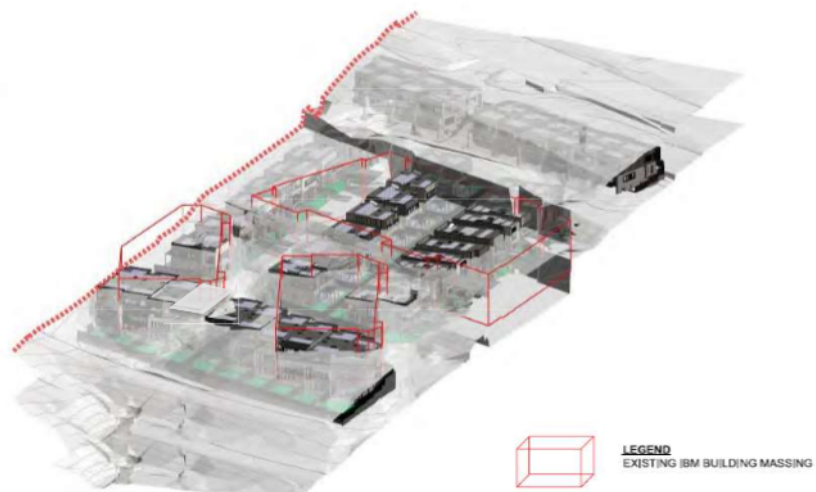
**Figures 6 - 8** depict the proposed development with a height blanket applied across the precinct. The 9m height blanket is shown in **Figure 7**, while the 12m height blanket is shown in **Figure 8**. These two height blankets align with the height standard areas as provided within the LEP map extract that is indicated at **Figure 5**. The figures also offer a comparison of the existing IBM buildings, which demonstrate a reduced visual bulk and scale from the existing buildings to proposed dwellings and a reduced contravention of the existing height standard applying to the precinct.



**Figure 6:** Figure 7 and 8 perspective key plan (red arrow) with superlot numbering. Red dashed line indicates delineation point between 9m and 12m height planes (source: Mirvac Design)



**Figure 7:** 9m height blanket from ground level (existing) (Source: Mirvac Design)



**Figure 8:** 12m height blanket from ground level (existing) (Source: Mirvac Design)



### 3.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of THLEP 2019 provides:

- 1) *The objectives of this clause are:*
  - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
  - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision handed down by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of Initial Action the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in Initial Action is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of THLEP 2019 provides:

- 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.*

This clause applies to the clause 4.3 Height of buildings Development Standard.

Clause 4.6(3) of THLEP 2019 provides:

- 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.*

The proposed development proposes a contravention to the height of buildings provision of clause 4.3 of THLEP 2019, which specifies a maximum building height, however strict compliance is considered to be unreasonable or unnecessary in the

circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of THLEP 2019 provides:

- 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.*

In Initial Action the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (Initial Action at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (Initial Action at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (Initial Action at [28]).

Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of THLEP 2019 provides:

- 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*



## 4 Relevant Case Law

In Initial Action, the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (*Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827) continue to apply as follows:

- 1) *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- 2) *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
- 3) *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
- 4) *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- 5) *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary; Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
- 6) *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

- 1) Is clause 4.3 of THLEP 2019 a development standard?
- 2) Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - a) compliance is unreasonable or unnecessary; and
  - b) there are sufficient environmental planning grounds to justify contravening the development standard

- 3) Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.6 and the objectives for development in the zone?
- 4) Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5) Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of THLEP?

## 5 Written Request – Building Height

### 5.1 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

For simplicity and clarity purposes, the thirty-seven (37) building height contraventions that are the subject of this clause 4.6 written request have been separated into four (4) distinct groups within the Southern Housing Precinct. These groupings are summarised as follows:

1. Building height contraventions resulting from the erection of dwellings over the location of an existing basement excavation (19 contraventions) (**Table 5**);
2. Building height contraventions within superlot 10 directly adjoining the existing retained Perimeter Road (6 contraventions) (**Table 6**);
3. Building height contraventions within the building height standard transition area between 12m and 9m (6 contraventions) (**Table 7**); and
4. Minor building height contraventions across superlot's 7, 8, 9 and 11 due to design articulation (6 contraventions) (**Table 8**).

The commonly adopted approach in order for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary is set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first way is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

#### 5.1.1 Building height contraventions resulting from existing basement levels

Table 5 provides a summary of the 19 dwellings within the precinct that provide a contravention to the building height standard as a direct result of the location over existing basement or passageway excavation that is associated with the previous development of the site for the IBM office facilities.

**Table 5** Summary of building height contraventions resulting from existing basement levels

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|
| 1   | 7.02  | 12                                    | 12.22               | 1.83                                     |
| 2   | 7.03  | 12                                    | 12.73               | 6.08                                     |
| 3   | 7.04  | 12                                    | 13.07               | 8.92                                     |
| 4   | 7.05  | 12                                    | 13.41               | 11.75                                    |
| 5   | 7.06  | 12                                    | 13.59               | 13.25                                    |
| 6   | 7.07  | 12                                    | 13.84               | 15.33                                    |
| 7   | 7.08  | 12                                    | 14.19               | 18.25                                    |
| 8   | 7.09  | 12                                    | 14.36               | 19.67                                    |
| 9   | 8.03  | 12                                    | 13.93               | 16.08                                    |
| 10  | 8.04  | 12                                    | 14.7                | 22.5                                     |
| 11  | 8.05  | 12                                    | 15.24               | 27                                       |
| 12  | 8.06  | 12                                    | 15.82               | 31.83                                    |
| 13  | 9.02  | 12                                    | 13.02               | 8.5                                      |
| 14  | 9.03  | 12                                    | 12.66               | 5.5                                      |
| 15  | 11.07 | 12                                    | 14.91               | 24.25                                    |
| 16  | 11.08 | 12                                    | 15.83               | 31.92                                    |
| 17  | 11.09 | 12                                    | 16.63               | 38.58                                    |
| 18  | 11.10 | 12                                    | 16.38               | 36.5                                     |
| 19  | 11.11 | 12                                    | 15.66               | 30.5                                     |



**Figure 9:** Nineteen (19) lots (red hatch) subject to contraventions due to their location over existing basement and passageway excavation shown within the 12m height plane. Delineation between 9m and 12m height planes is shown as a red dashed line (Source: Mirvac Design)

#### **Consistency with objectives of the height of buildings standard**

An assessment as to the consistency of the proposed heights when assessed against the objectives of the standard is as follows:

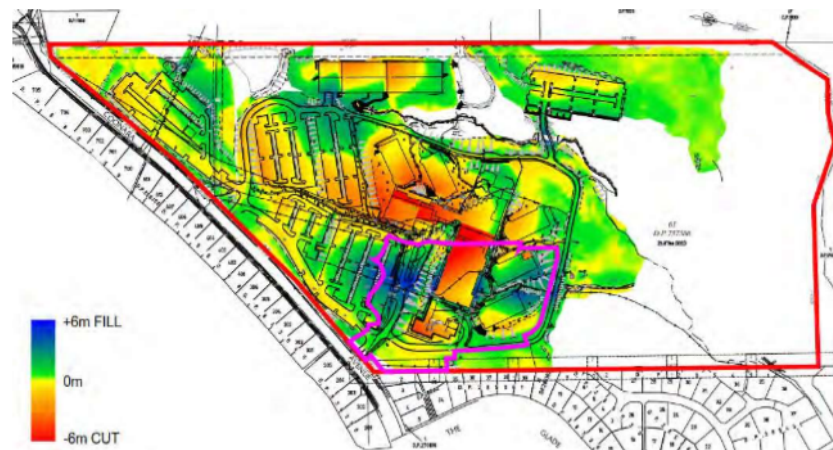
- a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,**

**Response:** Mirvac has extensively considered how to best provide a built form that responds to the undulating topography, existing fixed points of Coonara Avenue and the site, including the Perimeter Road and its entry points off Coonara Avenue, that need to be maintained in order to minimise impact to the surrounding forest, existing excavation on site, and the relationship with adjoining development and streetscape when preparing the masterplan which will guide future development of this site.

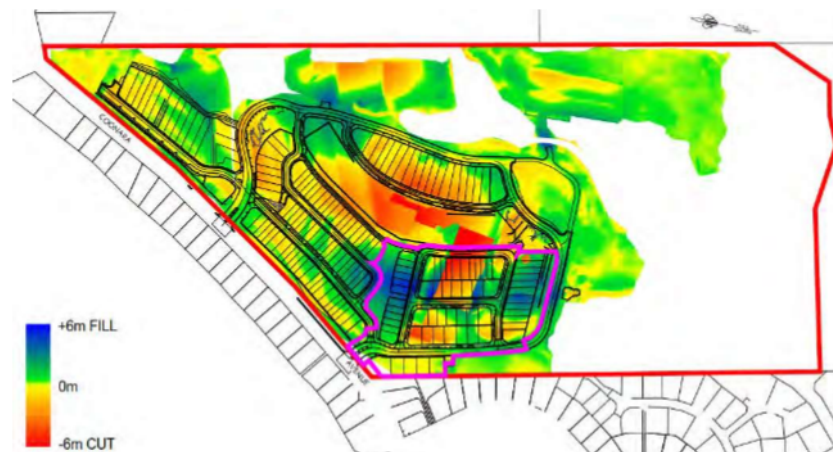
The proposed masterplan is the subject of a concept DA which includes the proposed detailed first stage, comprising the civil works. The civil works seek to restore the heavily modified portions of the site and provide a site grading more conducive to redevelopment of the site for a new residential community and associated infrastructure including roads, as permitted by the new zoning and standard. The proposal is intended to positively respond to existing neighbourhood development and streetscape and minimise impact on the adjoining high value biodiversity land.

Due to the site constraints, most notably the complex topography depicted at **Figures 10 – 12**, we contend the “existing ground levels” of the site are highly modified to suit a bespoke commercial development purpose-built for IBM, that are inconsistent with the current zoning. The existing ground levels include out of line instances such as loading dock entries, extensively and artificially flattened pads to

site large office buildings, steep batters, large retaining walls, and basement excavation etc. These bespoke levels for commercial purposes do not provide consistent existing surface levels that are compatible for the proposed medium and high-density residential uses, and they are inconsistent and varied in nature to be assessed against.



**Figure 10** – heat map indicating significant modification of natural topography to create the B7 Business Park existing ground level with existing site survey linework, site boundary (red line) and Southern Housing Precinct (magenta line) (Source: Craig and Rhodes)



**Figure 11** – heat map indicating significant modification of natural topography to create the B7 Business Park existing ground level with proposed indicative masterplan linework, site boundary (red line) and Southern Housing Precinct (magenta line) (Source: Craig and Rhodes)





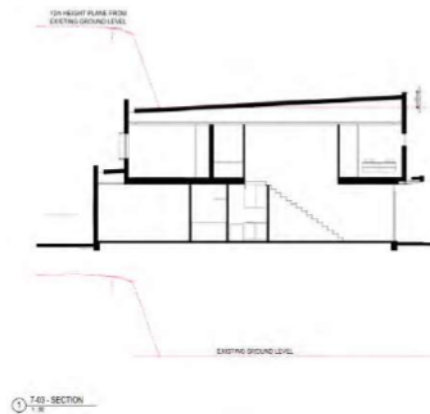
**Figure 12:** Plan with lot numbers and Section A-A taken through superlots 6, 9 and 11 highlighting the transition of existing topography and proposed finished ground level of the site. (Source: Mirvac Design)

If we consider the nineteen (19) proposed dwellings in **Table 5** and the sections shown in **Figures 13 – 16**, it is evident that these contraventions do not result from the dwellings not being designed to conform with the 12m height of building standard. Instead, these contraventions can be attributed entirely to the existing building basement and associated accessway excavation that occurred on the site as a result of the IBM development in the 1980s.

Only 5 of these 19 dwellings propose a two to three storey split level form, despite the 12m height standard in this location anticipating a three storey design. The remaining 14 dwellings which provide a non-compliance in this precinct are a result of being sited over existing building basement and associated accessway excavation are proposing only two storey designs within a 12m height standard and still result in non-compliances due to the highly modified existing ground levels.

If the development of two storey dwellings had to comply with the existing ground levels, the result would be subterranean dwellings, in order to achieve numeric compliance, based on the definition of building height contained within THLEP.

The intent of the rezoning was clearly to permit new two and three storey dwelling houses. It is a site specific issue as a result of the highly modified IBM development levels that existing ground levels skew the perception of compliance with the 9 & 12m height standard.



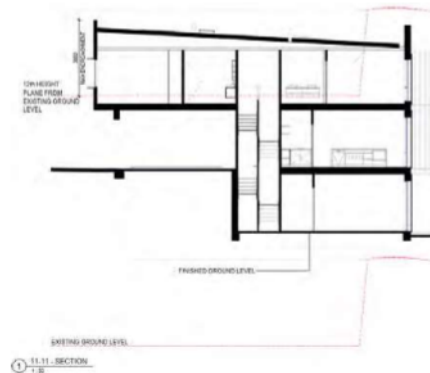
**Figure 13.** Proposed dwelling 7-03 section depicting existing ground level and 12m height overlay (red dashed lines)



**Figure 14.** Proposed dwelling 8-06 section depicting existing ground level and 12m height overlay (red dashed lines)



**Figure 15.** Proposed dwelling 9-03 section depicting existing ground level and 12m height overlay (red dashed lines)



**Figure 16.** Proposed dwelling 11-11 section depicting existing ground level and 12m height overlay (red dashed lines)

Siting of these dwellings within the location of basement and building excavations would not achieve the objective to provide a height of buildings that actually works and is compatible with that of adjoining development and the overall streetscape.

In relation to the calculation of building height, the principal case authority which considers the definition of “ground level (existing)” is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. This was subsequently followed in the more recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

In *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189, the Court followed the rationale adopted in *Bettar*. This confirmed that “ground level (existing)” must relate to the levels of the site, and not to the building presently located on the site, or in this particular case, not the artificially modified levels of the site as a result of excavation to accommodate the existing buildings on site.

Responding to this, the Court preferred the Council’s method to determining the “ground floor (existing)” from which building height should be measured. Council’s approach required that the proposed height be measured from the ground level of the site, where known, and from the footpath level at the site boundaries extrapolated across the site, as this would reflect the sloping topography of the land, consistent with the approach adopted in *Bettar*.

Notwithstanding the limited survey information available for the site, the Court was satisfied that there was enough information to determine the “ground level (existing)” for the site based on actual and surveyed levels in the public domain (footpaths), and unmodified levels around the perimeter of the property, which could be extrapolated across the site. In summary, the Court has confirmed that the definition of “ground level (existing)” from which building height should be measured:

- is **not** to be based on the floor levels of an existing building located on a site or artificially modified levels associated with excavation.
- is to be based on the existing surveyed surface of the ground. For sites where access to the ground surface is restricted, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels in the public domain (footpaths) and unmodified levels around the perimeter of the property.

If we consider the position of the Court in *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 then we should be directed to disregard the floor level of the existing building for those 19 lots which site dwellings directly above a basement or associated areas of cut to provide basement access that was undertaken as part of the IBM development. Instead, it would be more appropriate to apply a ground level and associated height overlay derived by extrapolating existing ground levels around the building footprint across each basement excavation.

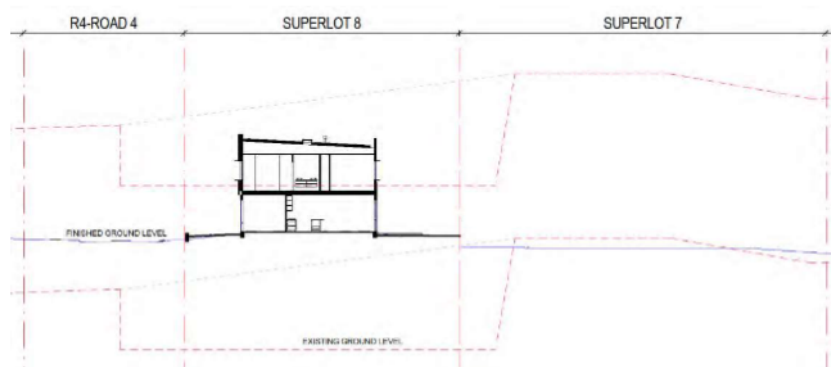
The architectural plans which are attached to this report and marked **Appendix 1** provide extensive detail in relation to each of the 37 contraventions to the height of buildings standard including an extrapolated ground level in relation to each of the 19 dwellings identified in **Table 5**.

The following extracts (**Figures 17 – 20**) depict some of those dwellings in superlots 7, 8, 9 and 11 that provide dwellings which comply with the development standard, when an extrapolated ground level is provided as directed by the Court in *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189. Detailed plans in relation to all 19 dwellings are contained within the architectural drawings at **Appendix 1**.





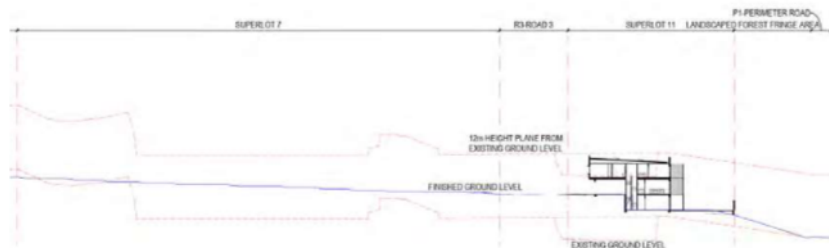
**Figure 17:** Extended section of 7-03 depicting extrapolated ground level across existing building basement location (grey dashed line. Source: Mirvac Design)



**Figure 18:** Extended section of 8-06 depicting extrapolated ground level and 12m height plane across existing building basement location (grey dashed line. Source: Mirvac Design)



**Figure 19:** Extended section of 9-03 depicting extrapolated ground level and 12m height plane across existing building basement location (grey dashed line. (Source: Mirvac Design)



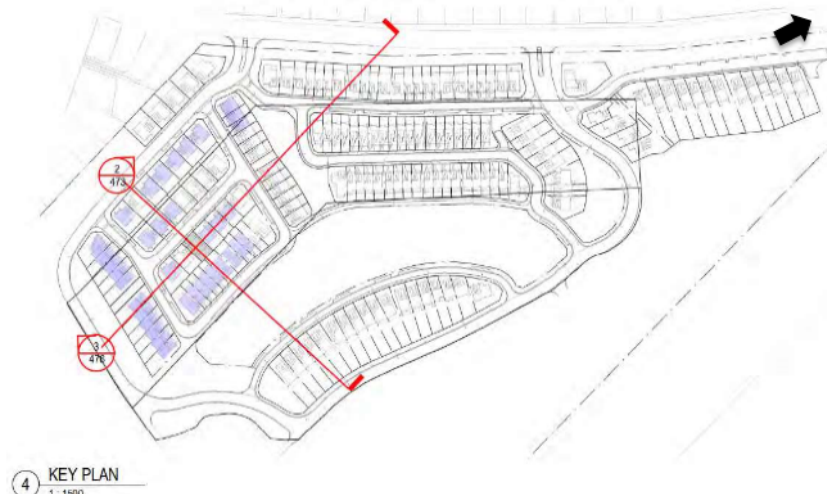
**Figure 20:** Extended section of 11.11 depicting extrapolated ground level and 12m height plane across existing building basement location (grey dashed line. Source: Mirvac Design)

In addition to the position of the Court, which confirmed that the definition of “ground level (existing)” from which building height should be measured is **not** to be based on the floor levels of an existing building located on a site or artificially modified levels associated with excavation, we note the relevance of the proposed finished ground level (blue line Figures 17 - 20).

Extrapolating the ground level across the basement excavation and utilising this to create a revised 12m height plane generally removes the height contravention for each of these nineteen (19) dwellings with the exception of minor articulation contraventions in some instances of superlot 11.

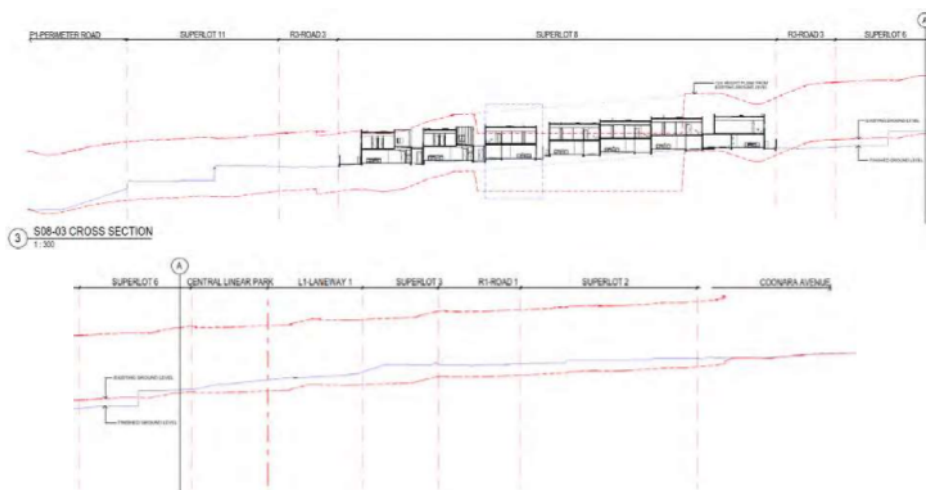
When we consider the objective of the standard “to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,” the finished ground level will result in a development that is able to produce a series of two and three storey housing consistent with the intended rezoning outcome for this precinct and consistent with adjoining development and the overall streetscape.

The existing ground levels across the site have been highly modified by the 1980s IBM development (refer **Figures 21 and 22**) and any proposal to redevelop the site in line with the existing ground levels, would result in a streetscape that is heavily stepped and would provide for some subterranean dwellings in the location of basements with adjoining dwellings creating significant overshadowing impacts when located on adjoining ground levels around 8m higher than the excavated ground levels.



4 KEY PLAN  
1:1500

**Figure 21:** Extended cross section key plan of superlot 8 shown from the existing retained Perimeter Road (fixed level) through to Coonara Avenue (fixed level) (Source: Mirvac Design)



3 S08-03 CROSS SECTION  
1:300

**Figure 22:** Extended cross section of superlot 8 shown from the existing retained Perimeter Road (fixed level) through to Coonara Avenue (fixed level) depicting existing ground level and 12m height overlay (red dashed lines) against the proposed finished ground level (blue line) across the basement location extrapolated ground level around basement shown as grey dashed line (Source: Mirvac Design)

A numerically compliant development would result in an impractical site outcome and very poor amenity outcome for residents which would require a range of compromised housing products, a disconnected urban landscape, paired with large retaining walls that present significant overshadowing impacts across the precinct.

The precinct including these 19 dwellings identified above at **Table 5** have been carefully designed to provide a built form outcome that responds to the site constraints and achieves the objective of the standard.

**a) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.**

As detailed above, the 19 dwellings identified within Table 5 are found to be compliant when considered against an extrapolated ground level in each of the 19 locations, where these dwellings are sited over existing basement excavation associated with the IBM development.

The lots located over the existing basement do not result in an adverse impact in relation to overshadowing, visual impact and loss of privacy on adjoining properties.

If we consider the location of these dwellings from properties on the other side of Coonara Avenue or within the adjoining dwellings at The Glade, we find them to be imperceptible from outside the site. This is due to the dwelling location set back within the site and at a lower ground level than adjoining development and the proposed retention of the existing tree buffer along the Coonara Avenue frontage of the site, as well as trees along the western boundary shared with the adjoining dwellings at The Glade.

There is a small section of shared boundary with The Glade, where the Southern Housing Precinct proposes five (5) detached dwellings. These two storey dwellings all comply with the 9m height standard and will further add to the imperceptibility of any height contraventions set further within the site.

These 5 detached two storey dwellings, while lower than their immediate neighbouring dwellings at The Glade, are sited at an elevated position around the edge of the site when compared to the balance of dwellings proposed within Housing South.

With the significant fall across the site from north to south and east to west, the site falls quickly from higher levels adjoining Coonara Avenue further minimising any potential for overshadowing, visual impact and loss of privacy on adjoining properties.

**Figure 23** depicts the view of the Southern Housing Precinct when observed from the southern entry roadway of Coonara Avenue and depicts the proposed dwellings within superlot 6 and superlot 10.

The 19 dwellings proposed over basement locations are located within superlot 7, 8, 9 and 11 and are not visible when viewed from the southern Coonara Avenue entry given these lots are located deeper within the site from Coonara Avenue, screened behind superlots 6 and 10 which are not the subject of height contraventions as a result of siting over the existing basements. Their contraventions are discussed further in this report.



**Figure 23:** View from Southern entry driveway at Coonara Avenue depicting minor contraventions within superlot 6 and superlot 10 unrelated to contraventions associated with the dwellings sited over the existing basements (Source: Mirvac Design)

**Figure 24** depicts superlot 7 and provides for a street of two storey dwellings within an R3 portion of the site providing for a 12m height standard. Within this superlot containing 11 dwellings, 8 of the 11 proposed dwellings provide for a technical non-compliance as a result of existing basement excavation. Any attempt to redevelop the land for the purpose of residential dwellings requires the proposed bulk earthworks to produce an acceptable site access gradient and built form outcome.

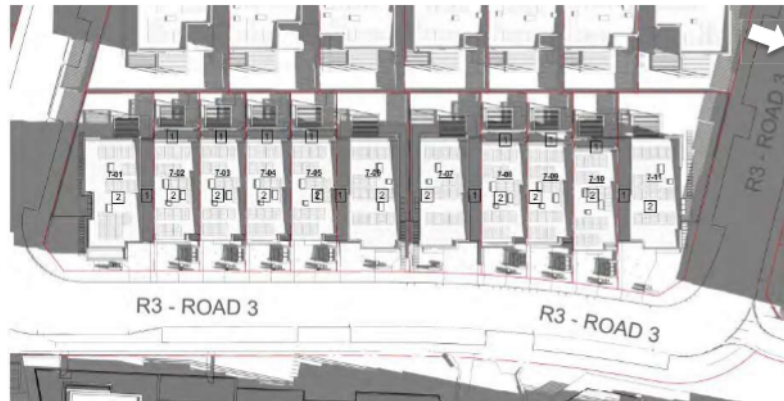


**Figure 24:** View of superlot 7 depicting the 8 dwellings within this superlot located over basement excavation (Source: Mirvac Design)

Notwithstanding the numerical contravention, this two storey built form provides an optimal outcome for overshadowing with solar access continuing to be provided to each lot, including areas of private open space. Nearby areas of open space will remain unaffected by the contraventions (refer to **Figure 25 – 27**).



**Figure 25:** Superlot 7 diagram, 9am. The overshadowing of Superlot 7 shown is a result of the morning sun over the Apartment buildings (Source: Mirvac Design)



**Figure 26:** Superlot 7 shadow diagram, 12pm (Source: Mirvac Design)



**Figure 27:** Superlot 7 shadow diagram, 3pm (Source: Mirvac Design)



The visual impact of these lots is mitigated by the considered design and articulation methods proposed. Coupled with this, the compatible two-storey built form offers a sympathetic bulk and scale that is commensurate with a medium density development. Therefore, it is considered any visual impact created by the areas of contravention are negligible.

Privacy concerns from these contraventions are minimal with no windows located above the height contravention that will overlook areas of private open space or principal living areas. Windows are largely orientated east and towards Road 3, therefore not giving rise to overlooking.

The 8 dwellings within superlot 7 that contravene the height standard provide an example of the entirely appropriate height of development, providing only two storey dwellings, where the standard envisaged three storey dwellings.

There is no impact associated with overshadowing, visual impact or loss of privacy on adjoining properties and open space areas, as a consequence of the proposed development as the Southern Housing Precinct has been designed holistically to ensure a positive amenity outcome for all existing and proposed dwellings, and public open space areas.

**Figure 24** shows unreasonable visual impact is avoided from the existing surrounding neighbourhood. This is in large part due the southern housing precinct being generally lower than existing surrounding levels, which is demonstrated by the highest point of all housing south dwellings being lot 6.01. This point represents the most prominent corner and presents as compliant within the 9m height plane when viewed from the southern site entry from Coonara Avenue.

**Figure 24** is typical of how visual impact is avoided within the site given considered siting of dwellings relative to one another. This is also evident in **Figure 37** which shows the lowest point of the Precinct being the planted landscape 'forest fringe' embankment that due to topography constraints is not proposed as flat 'useable' publicly accessible open space

Referring to **Figures 37 – 39**, these images show visual impact is mitigated as viewed from the Perimeter Road being the lowest point of the precinct. The Perimeter Road at this location and the adjacent planted landscape 'forest fringe' embankment, due to topography constraints, is not proposed as flat 'useable' publicly accessible open space. As such, the forest fringe provides significant landscape setback and screening and, as a result, the visual impact of the built form is softened and largely indiscernible as viewed from the Perimeter Road at this point.

Privacy impacts have been considered in the design of the dwellings. The design has ensured sufficient setbacks, appropriate level transitions between neighbouring properties and publicly accessible open spaces, well-considered window placement, and inclusion of privacy elements in the lot design, dense landscaping, and various articulation measures. Notwithstanding the height contraventions, no dwelling is sited disproportionately above another dwelling or a publicly accessible open space in response to the height standard that would create overlooking issues.

Overshadowing impacts are avoided on existing neighbouring properties to the west given the distance those properties are from dwellings the subject of this clause 4.6. Similarly, to privacy, overshadowing impacts between adjacent proposed dwellings is avoided given the holistic nature of the Housing South precinct design that considers levels, building locations, retention, and set downs between properties that avoids excessive overshadowing and is in accordance with the standard of the site-specific design guidelines provided as part of the Concept DA (refer **Figures 28 – 36** for superlot 8, 9 and 11 shadow diagrams).



The potential for impacts has been managed through the proposed built form outcome, with dwellings that have been meticulously architecturally designed and considered, to ensure the materiality, articulation, streetscape impact and screening of the built form is appropriately undertaken. Each dwelling offers a high-quality material and colour palette with a particular focus on high visibility areas such as street corners and those abutting public open spaces.

The Southern Housing Precinct layout has been informed by the forest location and provides contextual streetscapes with variety and interest.

Notwithstanding the technical departures, importantly, the built form has been guided by the rezoning process, which anticipates building heights and housing scale varying from two to three storeys depending on the topographical challenges of the site. The proposal includes a complementary scale to the neighbouring context.

The height contravention does not result in the unreasonable overshadowing of adjoining properties, including open space areas. The precinct is able to provide for adequate solar access in line with the supporting site-specific design guideline.



**Figure 28:** Superlot 8 shadow diagram, 9am (Source: Mirvac Design)



**Figure 29:** Superlot 8 shadow diagram, 12pm (Source: Mirvac Design)



**Figure 30:** Superlot 8 shadow diagram, 3pm (Source: Mirvac Design)



**Figure 31:** Superlot 9 shadow diagram, 9am (Source: Mirvac Design)



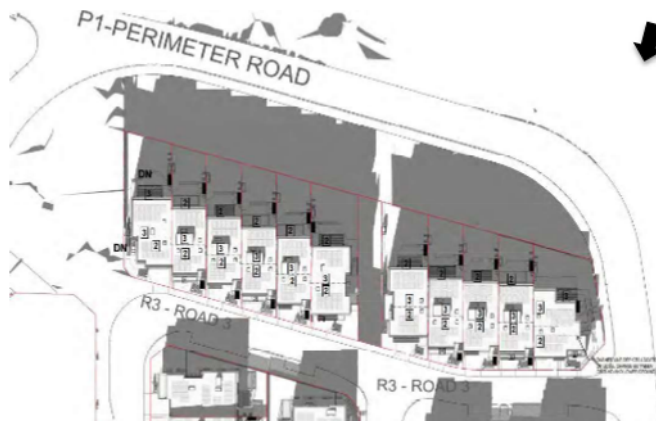
**Figure 32:** Superlot 9 shadow diagram, 12pm (Source: Mirvac Design)



**Figure 33:** Superlot 9 shadow diagram, 3pm (Source: Mirvac Design)



**Figure 34:** Superlot 11 shadow diagram, 9am (Source: Mirvac Design)



**Figure 35:** Superlot 11 shadow diagram, 12pm (Source: Mirvac Design)



**Figure 36:** Superlot 11 shadow diagram, 3pm (Source: Mirvac Design)



**Figure 37:** Streetscape perspective of superlot 11 showing height contraventions in red as viewed from the low point of the Perimeter Road back across the 'forest fringe' planted landscape embankment (Source: Mirvac Design)



**Figure 38:** Proposed planting plan of 'forest fringe' planted landscape embankment (Source: Turf Design Studio)



**Figure 39:** 'Forest fringe' planted landscape embankment view from the Perimeter Road (Source: Turf Design Studio)



### 5.1.2 Building height contraventions within superlot 10

**Table 6** provides a summary of the six (6) dwellings within the Southern Housing Precinct that provide a contravention to the height of building standard as a direct result of their location adjacent to, and connection with, the existing retained Perimeter Road on superlot 10.

The Perimeter Road was constructed as part of the IBM development during the 1980's to service the office complex and surrounding carpark providing the ingress and egress points to the site from Coonara Avenue. The outer kerb alignment, for the most part, follows the delineation point between the E2 Environmental Conservation zone (containing STIF and BGHF) and the R3 Medium and R4 High Density Residential zoned areas of the site.

Mirvac's environmentally led approach to the proposed masterplan is anchored to the retention of this road kerb alignment as practically as possible and reconstructing the road inwards to provide sufficient carriageway to satisfy bushfire and emergency service requirements, whilst minimising construction, and any potential impact on the E2 forest. Superlot 10 dwellings are proposed to be serviced off the Perimeter Road, however its location coincides with the existing IBM building service yard and associated access ramp, which consists of a steep curved driveway down to a large flat bitumen area sited between 2-7m below the adjacent Perimeter Road. This significant fall from the Perimeter Road and resultant level change provide a 9m building height that is located only slightly higher than the adjacent existing Perimeter Road when measured from the existing modified ground level.

As a result, 6 of the 7 dwellings within superlot 10, while providing only two storey dwellings and building heights less than 9m, contravene the height standard when measured from the existing ground level (refer **Figure 40**).

**Table 6** Summary of building height contraventions in superlot 10 adjoining the existing retained Perimeter Road

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 10.01 | 9                                     | 12.03               | 33.67                                    | -  |
| 2   | 10.03 | 9                                     | 9.92                | 10.22                                    | -  |
| 3   | 10.04 | 9                                     | 11.21               | 24.56                                    | -  |
| 4   | 10.05 | 9                                     | 11.94               | 32.67                                    | -  |
| 5   | 10.06 | 9                                     | 12.61               | 40.11                                    | -  |
| 6   | 10.07 | 9                                     | 13.34               | 48.22                                    | -  |



**Figure 40:** Six (6) lots subject to contravention within superlot 10 (green hatch) shown within the 9m height plane. Delineation between 9m and 12m height planes is shown as a red dashed line (Source: Mirvac Design)

#### **Consistency with objectives of the height of buildings standard**

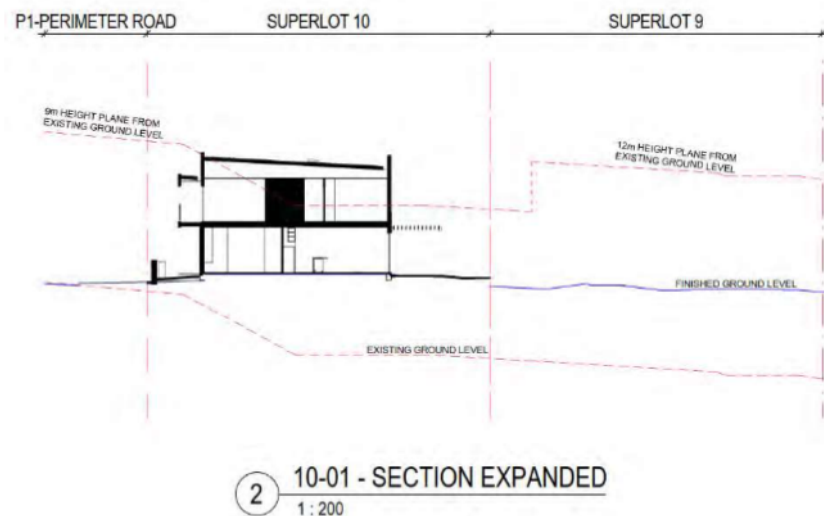
An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

As identified above, the building height contraventions identified in **Table 6** are a direct result of the levels required to be maintained in relation to the existing Perimeter Road.

Due to the existing levels and fixed points at the southern entrance from Coonara Avenue and around the Perimeter Road, proposed finished ground levels cannot transition away sufficiently from this point to allow for a lower road level, and therefore a lower building height.





**Figure 41:** Cross section of lot 10.03 depicting existing ground level fall from existing Perimeter Road (Source: Mirvac Design)

As depicted in **Figure 41** the existing ground level falls rapidly from the existing Perimeter Road and a review of the cross section indicates that numeric compliance with the 9m building height in this location would either require a significant lowering of the existing road or siting of housing below street level which would severely restrict solar access to any dwelling or ground level open space.

Reducing the level of the existing Perimeter Road is not possible as it would result in damage to the root zone of significant trees identified by the Project Ecologist as STIF that are located within the E2 forested areas adjoining the Perimeter Road in this location. The vegetation is identified within the Biodiversity Development Assessment Report and Aboriginal Impact Assessment submitted with this development application.

As the dwellings within superlot 10 are constrained by the Perimeter Road, the design of each dwelling and the height contraventions have been carefully considered in relation to achieving a compatible streetscape character and relationship with adjoining development. The design of each dwelling has been guided by the supporting site-specific design guidelines, which outline the controls, including setbacks, private open space, and solar access.

It is important to note in relation to superlot 10, the height contraventions will be barely discernible from the Perimeter Road, given the extent of the contravention is located to the rear of the dwellings as a result of the existing ground level falling rapidly from the front boundary to the rear. Therefore, any visual impact created by the building height to the streetscape is negligible. These dwellings will present as two storey dwellings to the street, which is consistent with the character anticipated by the established character of the surrounding area, as well as the character anticipated by the Planning Proposal which envisaged a two and three storey-built form on the site and implemented height standard consistent with this approach. The dwellings will present as compatible two storey dwellings, consistent with the adjoining development within the site, as well as along The Glade and Coonara Avenue.

Overall, the dwellings and height contraventions within superlot 10 provide for a sympathetic street interface with considered design strategies implemented, including landscaped verges, consistent tree planting, and well-articulated building facades, offering a visually appealing and welcoming streetscape character. Further, these front-loaded lots provide extensive design considerations in relation to various elements, façade articulation and modulation, materiality and landscaping to reduce any potential for visual dominance of the dwellings (refer to **Figure 42**). With regard to the above, it is found that the proposal satisfies the objective of the standard.



**Figure 42:** Perspective of superlot 10, as viewed from the Perimeter Road showing landscaped verges and tree planting (Source: Mirvac Design)



**Figure 43:** Perspective of superlot 10, as viewed from the Perimeter Road showing landscaped verges, tree planting and well-articulated facades (Source: Mirvac Design)

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

Superlot 10 is favourably orientated to ensure maximum solar access is achieved to each dwelling, in addition to surrounding development, including areas of private open space. The height contraventions, which are located to the rear of the dwellings will not contribute to any overshadowing of the lots to the rear, with these dwellings receiving compliant solar access as per the site-specific design guideline, and the POS being largely only overshadowed from 2pm onwards mid-winter (refer to **Figure 44 – 46**). Areas of open space will be unimpacted by the height contraventions. Areas of open space, including the pocket park to the north

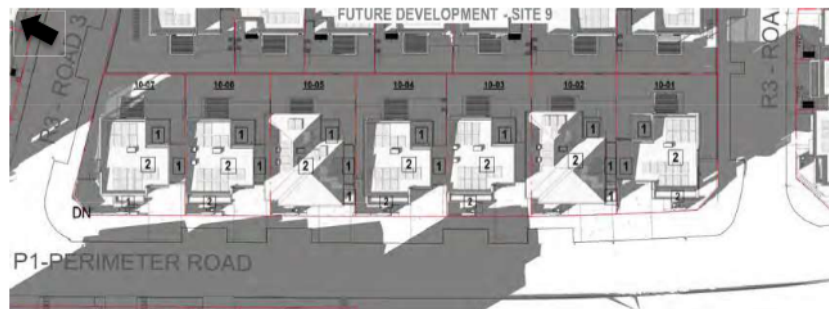
adjoining superlot 6 and E2 zoned areas to the south, will be sufficiently located away, thereby minimising any impact.



**Figure 44:** Superlot 10 shadow diagrams, 9am (Source: Mirvac Design)



**Figure 45:** Superlot 10 shadow diagrams, 12pm (Source: Mirvac Design)



**Figure 46:** Superlot 10 shadow diagrams, 3pm (Source: Mirvac Design)

The visual impact of these dwellings, in particular the areas of height contraventions are mitigated by incorporating suitable building separation and setting back of the dwellings from the adjoining development to the rear. Doing so, provides visual relief from the built form. As above, the dwellings are two-storey to the rear as well as the front, presenting as a compatible built form and consistent with desired character of the site and surrounding area. The contraventions at the rear do not give rise to unreasonable visual impact and provide for a high degree of visual privacy and solar access.

As stipulated in section 5.1.1 the height contraventions of the Southern Housing Precinct, including superlot 10, will be imperceptible from outside the site due to the

dwelling location set back within the site and at a lower ground level than adjoining development. This also ensures no loss of privacy or overshadowing to existing adjoining development.

It is regarded that the proposal satisfactorily addresses the objective in relation to minimising the impact of overshadowing, visual impact and loss of privacy.

### 5.1.3 Building height contraventions within the building height standard transition area between 12m and 9m

**Table 7** and **Figure 47** provide a summary of the six (6) dwellings within the Southern Housing Precinct that provide a contravention to the height of building standard as a direct result of their location within a row of attached dwellings within the transition between the 12m and 9m height of building standard.

While not serviced directly from the Perimeter Road, the dwellings in these superlots are serviced from Road 3 which connects to the Perimeter Road. This, paired with the steep topography on which they are sited, necessitates their design to be that of a 2 to 3 storey split level product to assist in level transition through the proposed development.

These two factors when combined create a situation in which the proposed dwellings consist of a 3-storey element within the 9m height plane that is sited where levels cannot be quickly transitioned down beneath the 9m existing ground height plane.

The alternative of siting 2 storey product would necessitate the split being replaced with a 3m retaining wall on one side of these lots creating a poor urban design outcome and urban landscape connectivity issues with potential solar access and overshadowing non-compliances, which is deemed to be a far inferior outcome.

**Table 7** Building height contraventions within the building height standard transition area between 12m and 9m

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 6.01  | 9                                     | 9.96                | 10.67                                    | 11.78                                    |
| 2   | 6.02  | 9                                     | 9.90                | 10                                       | 12.00                                    |
| 3   | 6.03  | 9                                     | 9.42                | 4.67                                     | 11.89                                    |
| 4   | 11.01 | 9                                     | 12.89               | 43.22                                    | 10.44                                    |
| 5   | 11.02 | 9                                     | 13.41               | 49                                       | 11.75                                    |
| 6   | 11.03 | 9                                     | 13.25               | 47.22                                    | 10.42                                    |





**Figure 47:** Six (6) lots (yellow hatch) subject to contravention within the 9m height of buildings standard for 2 to 3 storey split level dwellings in areas of steep topography adjacent the existing retained Perimeter Road. Delineation between 9m and 12m height standards is shown as a red dashed line. The Asset Protection Zone (APZ) is shown as a grey hatch (Source: Mirvac Design)

#### **Consistency with objectives of the height of buildings standard**

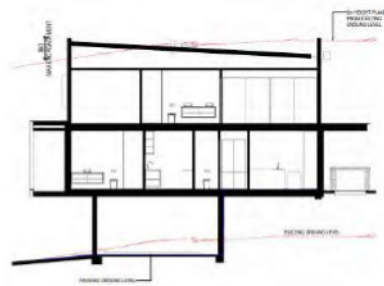
An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

The location of the six lots are situated at the intersection of the transition between the height of buildings standard from 9m to 12m

With regard to superlot 6, the proposed building height contraventions across the three (3) lots consist predominately of the upper portions of facades and minor architectural elements, including parapets, as seen in **Figures 48 – 53**.

Notwithstanding the building height contraventions, the built form, as viewed from Coonara Avenue will remain a compatible, predominately two-storey built form, commensurate with the established character along Coonara Avenue. Any departure to the height, as measured from Existing Ground Level will have no discernible impact, as viewed from the southern entry to the site (refer to **Figure 51**).



**Figure 48:** Lot 6.01 showing a minor variation



**Figure 49:** Lot 6.03 showing a minor variation



**Figure 50:** Streetscape perspective of Lots 6.01 – 6.03 demonstrating extent of height contraventions in red as viewed from Road 3 (Source: Mirvac Design)



**Figure 51:** Extent of height contravention to dwelling 6.01 (shown in red on closest dwelling) as viewed from the southern entrance of Coonara Avenue (Source: Mirvac Design)



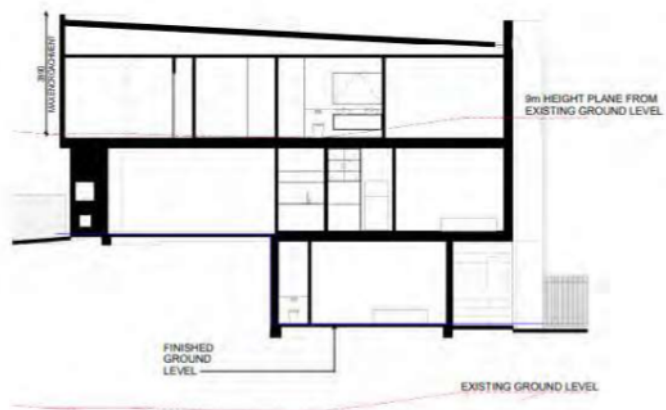
**Figure 52:** Extent of height contraventions to dwelling 6.01, 6.02 and 6.03 (in red), as viewed from Road 3 (Source: Mirvac Design)



**Figure 53:** Streetscape perspective of superlot 6 (Source: Mirvac Design)

The three (3) proposed superlot 11 building height contraventions proposed under section 5.1.3 of this Clause 4.6 Written Request provide for a more significant contravention, but as discussed previously this is a function of the lot siting within the 9m existing ground height plane, the fixed existing ground levels of the adjacent Perimeter Road, and the complexity of topography requiring 2 to 3 storey split level dwellings to transition proposed finished ground levels cross the site as demonstrated in **Figures 54 - 56**.

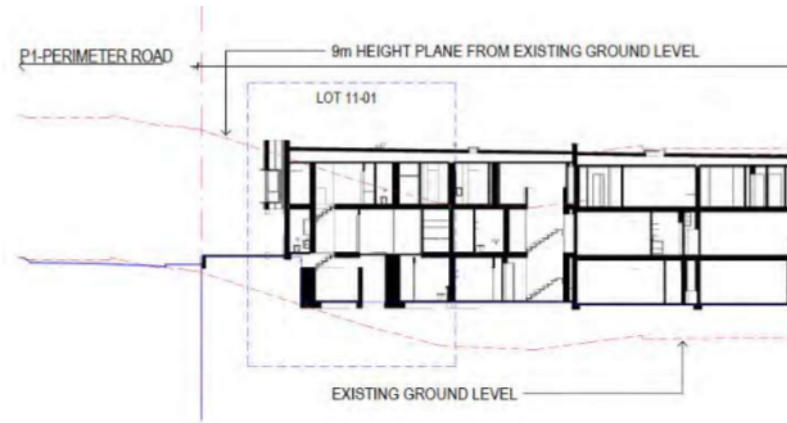




**Figure 54:** Section through lot 11.01 showing proposed ground levels relative to the existing ground level and contravention with the 9m existing ground height standard (red dashed lines) (source: Mirvac Design)



**Figure 55:** Extended long section through Lot 11.01 showing the transition from the existing Perimeter Road to the south through to superlot 10 which, previously discussed, is serviced by, and thus fixed to, the existing retained Perimeter Road to the west (source: Mirvac Design)



**Figure 56:** Extended cross section through superlot 11 (lot 11.01 highlighted by the blue dashed line) demonstrating the sharp transition of existing levels from the adjacent Perimeter Road resulting in the building height standard contraventions.



**Figure 57:** Streetscape perspective of Lots 11.01 – 11.03 demonstrating height contraventions in red as viewed from the Perimeter Road (Source: Mirvac Design)



**Figure 58:** Streetscape perspective of superlot 11 as observed from the entry to Road 3 off the existing retained Perimeter Road (Source: Mirvac Design)



**Figure 59:** Streetscape elevation of superlot 11 showing a consistent two storey character (Source: Mirvac Design)

The six dwellings, notwithstanding the proposed height contraventions, have been architecturally designed to ensure consistency with the desired rezoning outcome to provide two and three storey housing and, minimise any visual impact associated with the built form. The height contraventions associated with superlot 6 encompass predominantly parapet structures which present minimal bulk and scale, as viewed from street level within and outside the site. The three (3) height departures for superlot 11 under this section, though numerically larger, are consistent with the bulk and scale of the balance of the attached dwellings within superlot 11. The concept plan has retained the landscape setting of the site, where practicable, in addition to providing extensive landscaping to assist with screening the built form, as viewed from within the site and from the public domain, including along Coonara Avenue.

The proposed dwelling designs have a high visual quality, enhancing the streetscape and complementing the surrounding development. Together with the existing vegetation within the site, the proposed landscaping within the public domain, once established, will assist in visually reducing the built form with the additional height being imperceptible, as viewed from the public domain or

adjoining sites. The proposed contraventions are entirely consistent with the intended two and three storey housing development from the street and help to reinforce the desired future neighbourhood character.

In order to achieve a numerically compliant development in relation to these six dwellings, the three dwellings within superlot 6 and the three dwellings within superlot 11 would need to be reduced by a storey to present as single storey at one frontage and two storeys at the other frontage, or else the dwellings would need to be sunk below ground level, to provide numeric compliance, resulting in a poor amenity outcome.

Each of these dwellings' forms part of a row of six attached dwellings and each form a streetscape which comprises a superlot consisting of two rows of six attached dwellings.

If each of the subject dwellings within these rows of attached dwellings were reduced to provide a two storey design, to provide strict numeric compliance the urban design outcome would be compromised.

At present, the built form provides a consistent streetscape outcome across the length of the street. As the height standard transitions from 12m to 9m at the edge of the third dwelling in each location (i.e., at lots 6.03 and 11.03), a numerically compliant design would result in an attached row of dwellings providing three one to two storey split level designs attached to three two to three storey split level designs.

It is evident from **Figure 58** that this was not, and could not, be anticipated at the time of rezoning in June 2020 given the complexity of the existing topography and the continued refinement of the proposed masterplan at that time. It would also be completely inconsistent with the proposed intent of the 9m and 12m height planes, the balance of the Southern Housing Precinct dwellings, and the wider concept plan for the proposed development.

A one to two storey split level design would present as a single storey to Road 3 due to the proposed required level change-of up to 6m across the length of these three lots from Road 3 down to the retained existing Perimeter Road.

With respect to the three superlot 11 lots, the built form in this location is informed by the fixed location of the existing Perimeter Road to the west and south, and the provision of the required Bushfire Asset Protection Zone (APZ) within the rear portion of all lots within superlot 11.

One to two storey rear loaded split level product with the garage downstairs creating a full floor of living under the 9m height plane is not possible in this location due to road sight line safety concerns of an intersection on the steep bend of the Perimeter Road, the steep topography and the required APZ, and as a consequence all lots are accessed from Road 3.

Notwithstanding the proposed contravention from the standard, the streetscape and urban design outcome are superior and allow a consistent built form which presents as a row of attached three storey dwellings from the low side of each superlot and an attached row of two storey dwellings from the high side of each superlot.

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

The design of the built form elements which are proposed departures to the height, as depicted in the above figures, have been carefully assessed in relation to their impact on residential amenity and general visual impact. Should these dwellings be redesigned to meet the height standard significant redesign of each dwelling would

be required, including a substantial step in the design to accommodate for the topography and level changes. In doing so, it would result in inconsistency with the rezoning intent for 2 and 3 storey housing and a poor design and amenity outcome. The proposed design provides for a continuation and consistency in streetscape character that is argued to provide for a far superior architectural outcome.

Overshadowing will be minimised to the areas of open space, specifically the proposed pocket park to the north of superlot 6, shown in **Figures 60 – 62** below. In doing so, residential amenity will remain unaffected by the development, in particular the height contraventions in lots 6.01 – 6.03 highlighted in red below.

Opportunity for uninhibited passive recreation, fitness, play, gathering and seating will be provided. Any overshadowing created by the contravention areas will be to Road 3 to the south, therefore not impacting on areas of open space or adjoining properties.



**Figure 60:** Superlot 6 shadow diagram, 9am (showing Lots 6.01 – 6.03 highlighted in red). The pocket park to the north will be unaffected by overshadowing due to its northerly orientation. Overshadowing is limited to the road reserves with some minor overshadowing of a portion of the end lots of superlots 7-10 (Source: Mirvac Design)



**Figure 61:** Superlot 6 shadow diagram, 9am (showing Lots 6.01 – 6.03 highlighted in red). (Source: Mirvac Design)





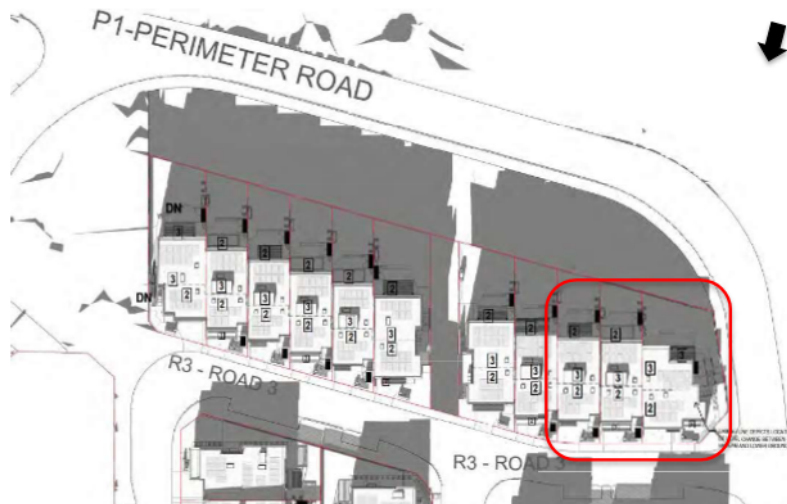
**Figure 62:** Superlot 6 shadow diagram, 9am (showing Lots 6.01 – 6.03 highlighted in red).  
(Source: Mirvac Design)

The height contraventions within superlot 11 are located to the rear and separated from the Perimeter Road and the E2 zoned land to the south by a substantial setback, as a result of the APZ, reducing the perceived visual impact of the built form. When viewed from Road 3, although providing a numeric non-compliance, these dwellings will present as two-storey housing in keeping with surrounding Southern Housing Precinct superlots 7, 8, 9, 10 and 12.

Solar access to the dwellings and their private open space will remain unaffected by the contravention providing the ability for the proposed masterplan to achieve the requisite 80% of all dwellings to receive the minimum 2 hours of solar access between 9am and 3pm on 21 June to 50% of the required private open space area, in line with the site-specific design guideline. No perceivable increase to overshadowing will result in relation to adjoining property or public domain as a consequence of the departures (refer **Figures 63 – 65** below). On this basis, it is considered the minor non-compliances will not prove detrimental to the amenity received to each residential property. In addition to this, the height contraventions will not result in unreasonable overshadowing of adjoining areas of open space, including the E2 to the south with generous separation and setbacks provided from the dwellings to these areas.



**Figure 63:** Superlot 11 shadow diagram, 9am (showing Lots 11.01 – 11.03 highlighted in red). overshadowing from superlot 11 is limited to the 'forest fringe' planted embankment, the perimeter road and a small portion of the E2 zoned forest area (Source: Mirvac Design)



**Figure 64:** Superlot 11 shadow diagram, 12pm (showing Lots 11.01 – 11.03 highlighted in red). (Source: Mirvac Design)

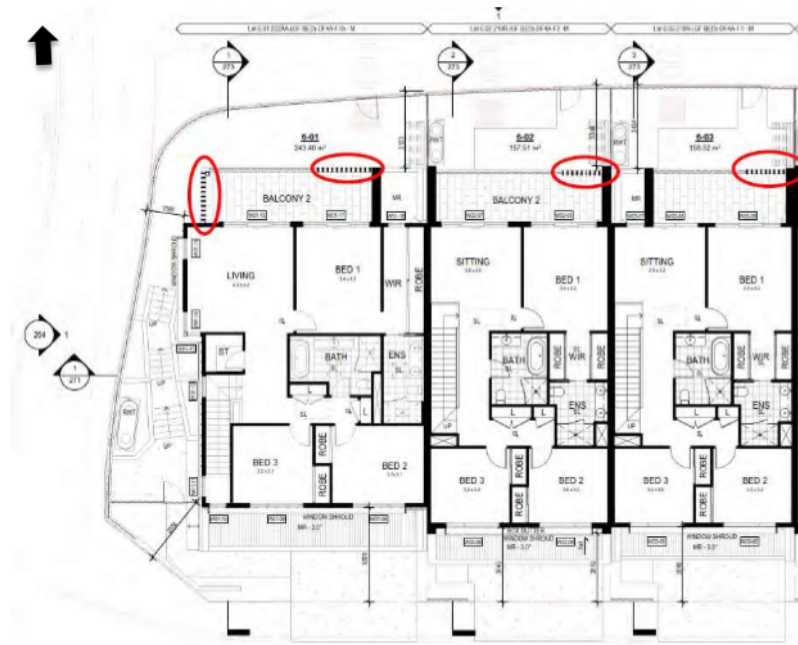


**Figure 65:** Superlot 11 shadow diagram, 3pm (showing Lots 11.01 – 11.03 highlighted in red). (Source: Mirvac Design)

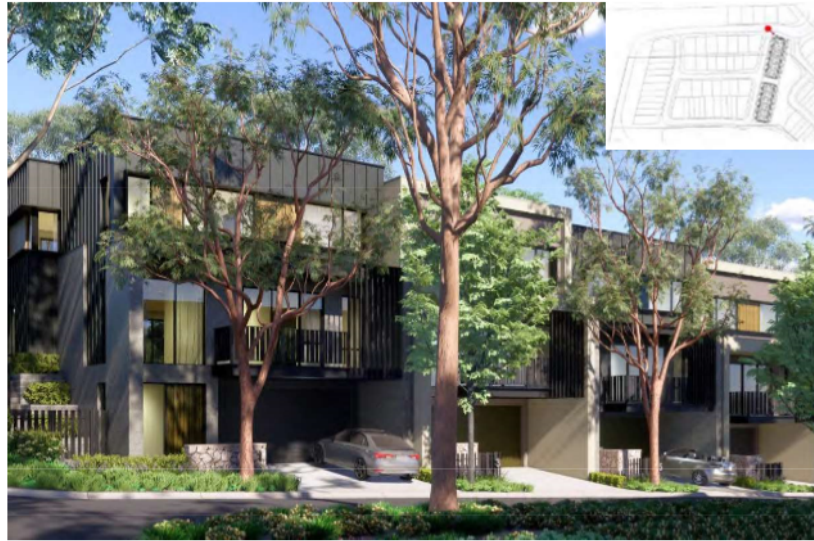
For superlot 6, privacy to each dwelling, its private open space, and public open space areas in the immediate vicinity will be unaffected by the elements of the buildings non-compliance. This is evidenced by the architectural plans as areas of non-compliance are limited to roof articulation including parapets, not windows or



balconies where opportunities for overlooking would arise. The proposal includes suitable design and privacy measures to reduce the impact on privacy to each of those areas. The proposal nonetheless provides for privacy measures at various locations of the dwelling to prevent opportunity for overlooking, as evidenced in **Figure 66**.

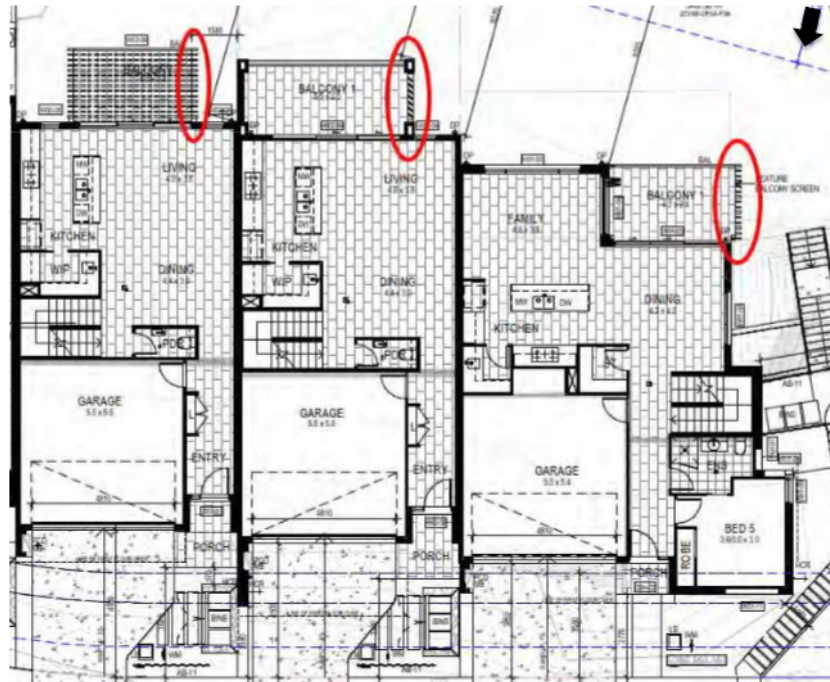


**Figure 66:** Ground floor plan of Lots 6.01 to 6.03 showing privacy measure, including privacy screening on balconies overlooking the pocket park to the north highlighted red (Source: Mirvac Design)



**Figure 67:** Streetscape render of Lots 6.01 to 6.03 and beyond from Perimeter Road towards Road 3 (Source: Mirvac Design)

For superlot 11, privacy to each dwelling and its private open space will be unaffected by the elements of these building contraventions. This is evidenced by the fact the height contraventions are a numerical non-compliance and in keeping with the design and proposed finished ground level of their attached counterparts within the 12m height plane. With respect to the surrounding public open space areas in the immediate vicinity, the front of the subject dwellings are two storey overlooking Road 3 and further beyond to superlots 10 and 9 which sit higher than superlot 11. To the rear is the vegetation buffer which consists of a steep planted batter that does not function as useable public open space, and beyond that, the Perimeter Road and forested E2 land. The proposal nonetheless provides for privacy measures at various locations of the dwelling to prevent opportunity for overlooking, as evidenced in **Figure 68**.



**Figure 68:** Ground floor plan of Lots 11.01 to 11.03 showing privacy measure, including privacy screening on balconies overlooking the vegetation buffer and Perimeter Road highlighted in red (Source: Mirvac Design)



**Figure 69:** Streetscape render of Lots 11.01 to 11.03 and beyond from Perimeter Road towards Road 3 (Source: Mirvac Design)

#### 5.1.4 Minor building height contraventions across superlots 7, 8, 9 and 11 due to design articulation

**Table 8** and **Figure 70** provide a summary of the remaining six (6) dwellings within the Southern Housing Precinct proposing to vary the height of building standard. Although less in numeric value, these departures are a direct result of the location of dwellings adjacent to the unavoidable contraventions detailed above and relating to existing basement excavation.

There are several considerations in regard to these contraventions, as the dwellings have been designed to provide consistency with the surrounding streetscape both in appearance and bulk and scale. To achieve numeric compliance would require a compromised amenity outcome through various means, such as; architectural design (reduced floor to ceiling heights), access (steeply graded roads and/or lots), function (less functional space / downstream lots sited below a road that facilitates stormwater flows), or a combination of all of the above.

We note that three (3) of the six (6) dwellings provide for two storey designs within a 12m height standard and three (3) of the dwellings provide for a three storey design within a 12m height standard. The intention of the 12m height standard was to accommodate three storey dwellings and yet the topographical challenges of the site mean that three (3) of these dwellings are non-compliant at only two storeys.

The contravention in relation to these six (6) dwellings does not result from an inappropriate dwelling height, of which all comprise less than 12m. The contravention results from the location of the existing ground level and the requirement to undertake bulk earthworks to resolve historic excavation areas undertaken as part of the IBM development.

**Table 8** Minor building height contraventions across superlots 7, 8, 9 and 11 due to design articulation

| No. | Lot   | Maximum permitted building height (m) | Building height (m) | Contravention Existing Ground Levels (%) | Contravention Finished Ground Levels (%) |
|-----|-------|---------------------------------------|---------------------|--|--|
| 1   | 7.01  | 12                                    | 12.41               | 3.42                                     | -  |
| 2   | 8.01  | 12                                    | 12.77               | 6.42                                     | -  |
| 3   | 9.01  | 12                                    | 12.77               | 6.42                                     | -  |
| 4   | 11.04 | 12                                    | 12.86               | 7.17                                     | -  |
| 5   | 11.05 | 12                                    | 12.14               | 1.17                                     | -  |
| 6   | 11.06 | 12                                    | 13.5                | 12.5                                     | -  |



**Figure 70:** Minor building height contraventions across superlots 7, 8, 9 and 11 due to design articulation (highlighted blue) shown within the 12m height plane. Delineation between 9m and 12m height planes is shown as a red dashed line (Source: Mirvac Design)

### Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

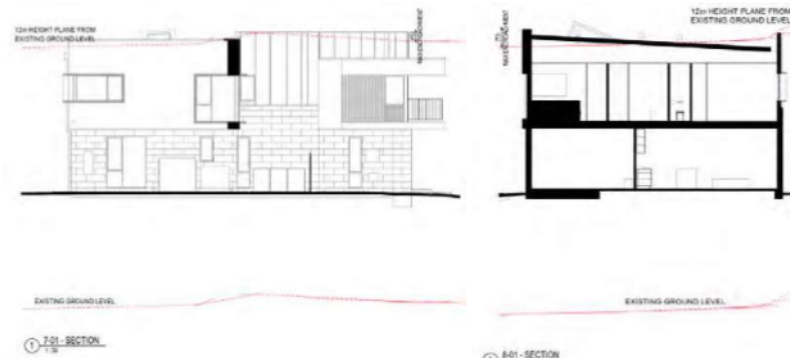
The remaining contraventions across superlots 7, 8, 9 and 11, as shown in **Table 8** above, consist of predominately minor architectural elements (i.e., parapets and skylights) and the upper most portions of external walls to upper floors (refer to **Figures 71 - 74**).



These lots are all sited significantly higher than existing levels for reasons outlined in previous sections of this report. Lots 7-01, 8-01 and 9-01, while not sited over the existing basement areas, are sited on volatile existing surface levels. The lots are attached to the row of dwellings the subject of this clause 4.6 section relating to building height contraventions resulting from existing basement levels.

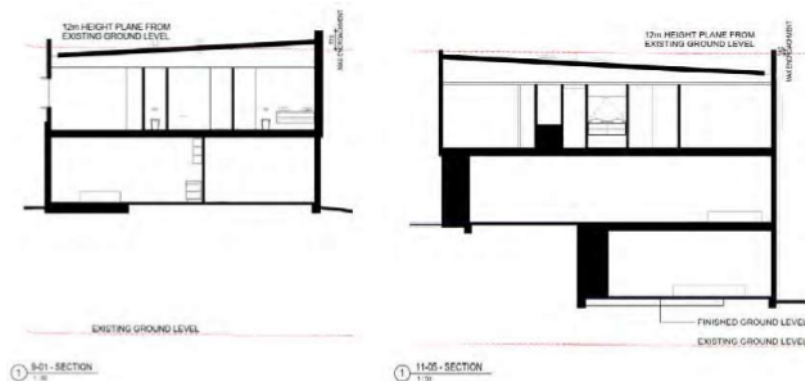
Lots 11-04 to 11-06 are the balance of lots within superlot 11 that are attached to lots with building height contraventions within the building height standard transition area between 12m and 9m (lots 11-01 to 11-03). With regard to lots 11-07 to 11-11, the building height contraventions result from existing basement levels.

Notwithstanding, the dwellings comprise of low-scale, two and three storey-built form, with the scale and height complementing the existing suburban neighbourhood character. Floor to ceiling heights are typically 2.7m, which is a suitable domestic scale, and reducing this height would compromise the amenity and comfort for future residents.



**Figure 71:** Lot 7.01 showing a minor contravention

**Figure 72:** Lot 8.01 showing a minor contravention



**Figure 73:** Lot 9.01 showing a minor contravention

**Figure 74:** Lot 11.05 showing a minor contravention

The architectural language offers contemporary and articulated building forms with a palette of materials, finishes and colours informed by the forest location. The architectural expression provides contextual streetscapes that harmonise with the

surroundings and offer visual interest and variety. Through this articulation, as well as considered setbacks, and product selection, the concept plan will maximise streetscape planting opportunities to frame built form within the context of the surrounding existing bushland. The streetscape planting will align with the existing bushland setting of adjoining development along Coonara Avenue and surrounding neighborhood (refer **Figure 76**). The dwellings with minor height contraventions are not distinguishable in their context and seamlessly blend with adjoining dwellings to create a consistent visual experience within the public domain.



**Figure 75:** View of superlot 7 (lot 7-01 being the closest dwelling) depicting the minor height contravention as a result of being sited on volatile existing surface levels and attached to the dwellings located over basement excavation (Source: Mirvac Design)



**Figure 76:** Streetscape render of superlot 7 (lot 7.01 being the closest dwelling) showcasing the high quality architectural composition and quality in keeping with its proposed surrounding neighbourhood context (source: Mirvac Design)



Buildings with height contraventions are in keeping with the bulk, scale and height of neighbouring and attached dwellings within each superlot. Each dwelling façade is architecturally designed to provide a well-balanced and visually interesting streetscape with fenestrations and openings to encourage passive surveillance, activation, and safety.

Overall, it is argued that the proposal will achieve a built form commensurate with the character anticipated with a medium-density community. Careful consideration has been given to the established character in the surrounding area, including Coonara Avenue. Considering the above, it is argued that these minor contraventions will not give rise to adverse impacts on the compatibility with that of adjoining development and overall streetscape.

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

Notwithstanding, the contraventions do not give rise to adverse impacts on solar access, visual impact and privacy on adjoining properties and open space areas.

The proposal is consistent with the Concept Plan which demonstrates sufficient solar access in line with Part 4.7 of the supporting site-specific design guideline, which outlines a minimum of 80% of all housing dwellings within the development must achieve a minimum of 2 hours sunlight between 9am and 3pm on 21 June to at least 50% of the required private open space (refer to drawings 401-403 of architectural drawings for shadow diagrams). Regarding public areas, given the minor nature of these height contraventions, overshadowing impacts are also minimal and generally localised to Road 3 (lots 7-01, 8-01 and 9-01), with lots 11-04 to 11-06 overshadowing the steep 'forest fringe' planted embankment and the Perimeter Road (refer to drawings 401-403 of architectural drawings for shadow diagrams).

The visual impact created by the minor contraventions is argued to be imperceptible, as viewed from adjoining properties and open space areas. The visual impact has been mitigated through implementation of appropriate architectural measures, as discussed above. Suitable articulation of the facades, materials and finishes, in addition to landscaping have provided a high-quality and engaging streetscape.

To further mitigate any potential for visual impact generated by the development, in particular the areas of contravention, the proposal has adopted several design strategies to achieve this, including landscape verges, tree planting bays, and well-articulated building facades (refer to **Figure 78**). The areas of contravention are appropriately recessed through well-considered design measures and materiality suitable to the landscaped setting. These design measures have also helped by ensuring garages and parking areas do not dominate street frontages, while ensuring streets perform as pedestrian friendly places.



**Figure 77:** View of superlot 8 (lot 8-01 being the closest dwelling) depicting the minor height contravention as a result of being sited on volatile existing surface levels and attached to the dwellings located over existing basement excavation. (Source: Mirvac Design)



**Figure 78:** Streetscape render of superlot 8 (8.01 being the closest dwelling) demonstrating a varied and well-articulated building façade that includes privacy mechanisms such as operable louvres to the front window (Source: Mirvac Design)

The visual privacy to adjoining properties and open space areas has been carefully considered through the implementation of appropriate privacy mechanisms to reduce opportunity for overlooking. Such measures include operable vergolas over rear patios, window shrouds, considered window locations, significant and mature

landscaping, operable louvres, and privacy screening (refer to **Figures 79 and 80**) and offsetting of windows and limiting windows on side elevations (refer to **Figure 81**).



**Figure 79.** Proposed privacy screening on Lot 11.06 (circled red) (Source: Mirvac Design)



**Figure 80.** Proposed operable vergolas over rear patios on Lot 7.01 and 7.02 (circled red) (Source: Mirvac Design)



**Figure 81.** First floor plans of Lots 8.01 and 8.02 showing limited windows on side elevations to reduce overlooking. A single window is provided to Lot 8.01 (circled red) and no windows to Lot 8.02 (Source: Mirvac Design)



**Figure 82.** Streetscape perspective of Lots 11.01 – 11.03 demonstrating location of privacy screening to minimise overlooking. These areas are located beneath the height standard (Source: Mirvac Design)

Overall, the extent to which the built form varies beyond the prescribed building height standard, will not result in unreasonable overshadowing, visual impact or loss of privacy to adjoining properties and open space areas. Design measures have been incorporated into the design to minimise impact on the above.

#### 5.1.5 Consistency with zone objectives

The subject site is zoned R3 – Medium Density Residential pursuant to THLEP 2019. THLEP 2019 permits attached and detached dwellings on lots down to 86m<sup>2</sup>, which are not typical lot sizes within the Hills. The Site envisages a greater housing diversity, as the proposed lot sizes are not typical in the Hills. The objectives of this zone are as follows:

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

The proposal will provide for much needed housing in the area, as well as a greater diversity of housing to the community, which largely consists of free-standing four (4) or more bedroom homes on blocks over 700m<sup>2</sup>, in the form of attached and detached, medium-density housing, consistent with the zoning.

In light of the complex topography, the proposed design of each dwelling has been carefully considered. The height contravention is a result of the need-to-provide housing that works in its context, together with functional, accessible, and suitable room dimensions and general residential amenity for the occupants. Should the design of the dwellings be amended to achieve compliance with the building height standard, dwellings would require a significant step in the design to accommodate for the level changes, severely compromising the amenity for residents and also resulting in an outcome which is inconsistent with what was envisaged at the rezoning phase. Therefore, it is contended that the housing needs of the future community are consistent with the precinct and the site objectives.



The proposal is considered to satisfy this objective with regard to housing needs of the community and will still have the character of a medium-density residential environment.

- **To provide a variety of housing types within a medium density residential environment.**

The proposal seeks to provide a greater variety of housing typologies, in the form of 3 - 5 bedroom attached and detached, terrace-style dwellings that will provide greater housing choice for prospective residents. The proposed housing types within the R3 zone will complement the site and are consistent with the character and rezoning envisaged for the site. Furthermore, the housing types are consistent with existing medium density, attached and detached housing products to the south-west located nearby to the Coonara Shopping Village.

The proposed housing types seek to capitalise on the geographical area, in relation to the nearby Coonara Shopping Village, Cherrybrook Metro Station and bus routes along Coonara Avenue and Castle Hill Road.

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

The proposal will offer a greater diversity of land uses through extensive open space areas and forest areas for the benefit of future residents and the surrounding community. The site is currently private property and not permeable in the context of the surrounding locality. Redevelopment of the site in accordance with the concept plan will allow for public access of the site and permit use by surrounding residents, including access to the existing forest, as well as the proposed open space/ parks proposed within the masterplan.

The proposal is found to satisfy the zoning objective by providing other land uses to meet the day to day needs of residents.

- **To encourage medium density residential development in locations that are close to population centres and public transport routes.**

As previously noted, the site is strategically located within close proximity to existing transport infrastructure with bus routes along Coonara Avenue and Castle Hill Road, in addition to the Cherrybrook Metro Station. The proposed medium-density residential development will take advantage of this along with the existing local commercial centre at Coonara Shopping Village, 400m from the site. It is also noted that the site is located within proximity to a current rezoning proposal being undertaken by Landcom, as part of the Cherrybrook Station State Significant Precinct which is intended to provide for 600 dwellings.

The site and proposed medium-density development are well located and close to existing population centres and public transport routes, therefore, consistent with the zone objective.

## 5.2 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

*23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter,*

scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

25. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to rationalise the contraventions.

Due to the topographical constraints including but not limited to existing levels of the site, such as the basement excavation, building height contraventions are unavoidable. However, when considered from the ground level (finished), the extent of contravention reduces from 37 dwellings to only 6 dwellings. These remaining 6 dwellings, cannot be designed to comply with the building height from the finished ground level without significant impacts on residential amenity through substantial stepping of the design within a row of six attached dwellings. In this latter case, it is the inherent sloping nature of the site that creates the environmental planning ground.

Notwithstanding the above, the proposed housing types with the height exceedance are consistent with the typology envisaged at the rezoning phase and compatible with the site and its contextual constraints, notably its topography, as well as the wider, geographical area, in relation to the nearby Coonara Shopping Village, Cherrybrook Metro Station and bus routes along Coonara Avenue and Castle Hill Road.

The housing type and heights will ensure consistency with nearby residential development along Coonara Avenue, providing a sympathetic transition of built form from the R3 zoned land to the south of Coonara Avenue to the R2 zoned land to the north. Further, the dwellings at these heights will provide a logical transition from the R4, higher-density zoned land further to the east and south deeper within the site. The houses adjacent to Coonara Avenue will present as 1-2 storey dwellings, providing a sympathetic design response to the streetscape along Coonara Avenue.

The aim of the development is to facilitate family friendly dwelling in an ecologically sustainable development by integrating relevant economic, environmental and social considerations. The site is strategically located and maximises its location relative to existing transport infrastructure and proximity to nearby centres. Further, the development intends to promote the orderly and economic use and development of the land by way of its strategic location in proximity to nearby transport and social infrastructure and strategic centres.



Should the development be required to comply with the prescribed building height standard, it is likely to lead to a detrimental environmental impact by further eroding the ecological values of the site, including further clearing of land and site disturbance if the existing location of the Perimeter Road was to be amended or significantly regraded. As such, it is found that the development of the site, in particular the Southern Housing Precinct achieves a desired outcome by protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.

It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

### 5.3 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R3 Medium Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

This request has demonstrated that the proposed development is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

It is our opinion that the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

## 5.4 Secretary's concurrence

By Planning Circular dated 5 May 2020 No. PS 20-002, the Secretary of the Department of Planning, Industry & Environment advised that consent authorities can assume concurrence to a clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings where the development is local and regionally significant development;
- Contraventions exceeding 10% where the decision is to be made by a delegate of a local Council; and
- Contraventions to non-numerical development standards where the decision is to be made by a delegate of a local Council.

Given, this application is subject to determination by the Sydney Central City Planning Panel, the Secretary's concurrence may be assumed even for those contraventions that exceed 10%.

## 5.5 Conclusion

Having regard to the clause 4.6 contravention provisions we have formed the considered opinion:

- a) that the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above, compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- g) Concurrence of the Secretary can be assumed by the Planning Panel as the determining authority in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- 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.*

In conclusion, we believe that working with the detailed constraints of the site and creating a new residential outcome, the proposed building height contraventions are consistent with the intent of the rezoning and present a superior planning and design outcomes than those alternate options which have been explored through the design process. Further, we have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a building height

contravention in this instance. As such, we believe the proposal should be approved for those reasons outlined above.



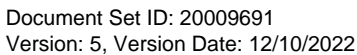
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## Appendix 1 – Sectional drawings



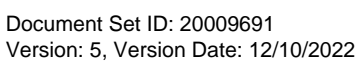




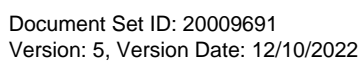








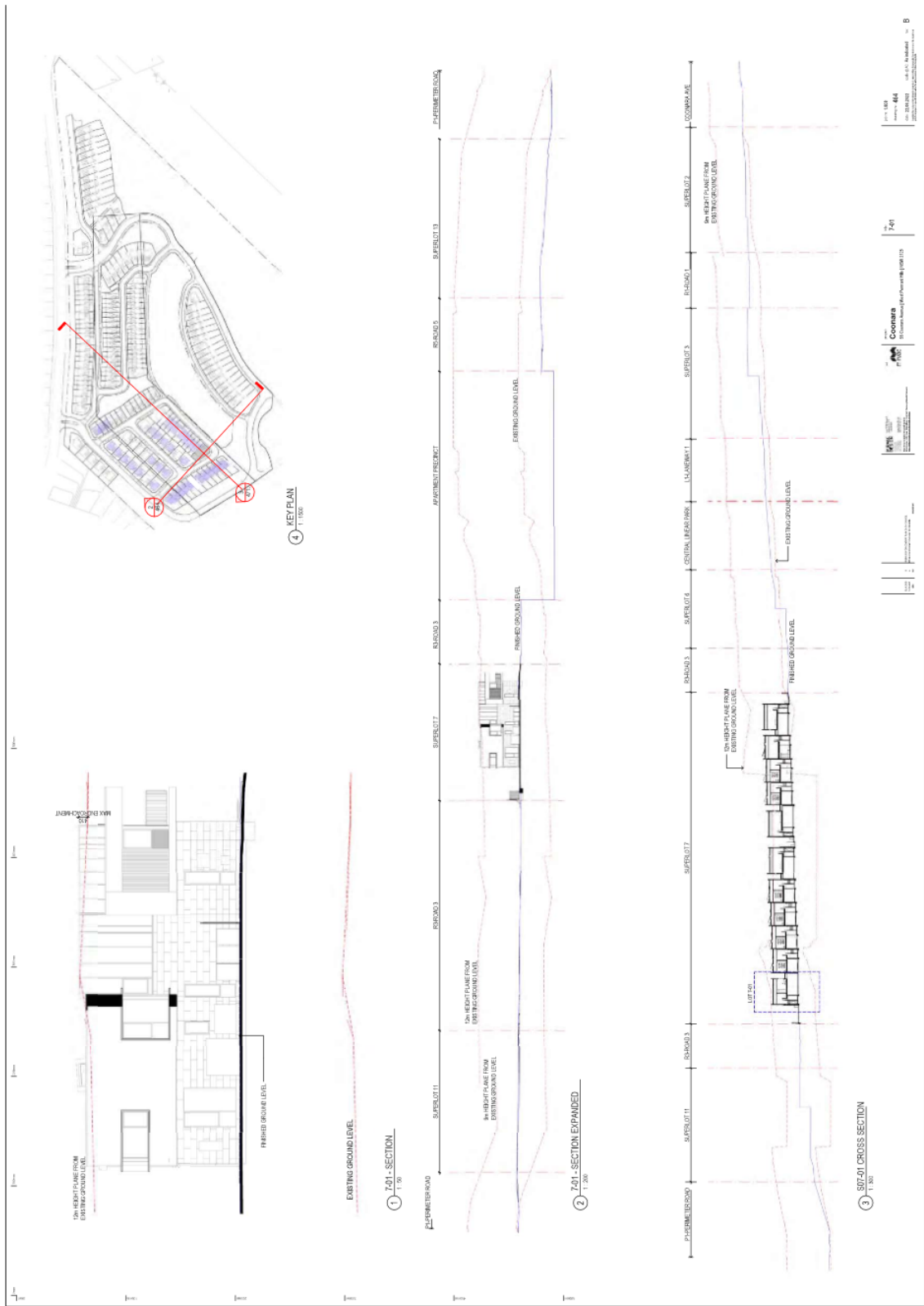


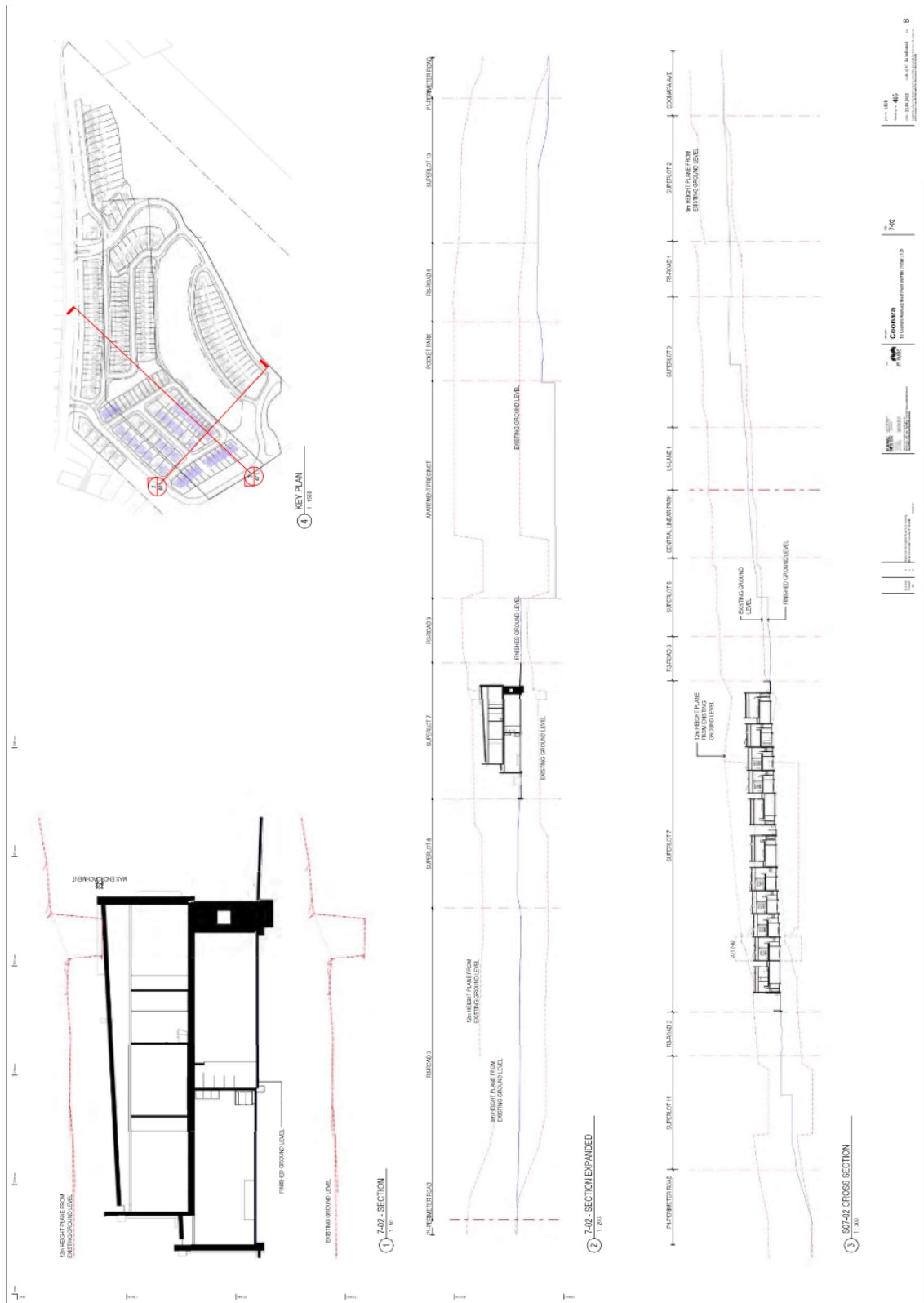










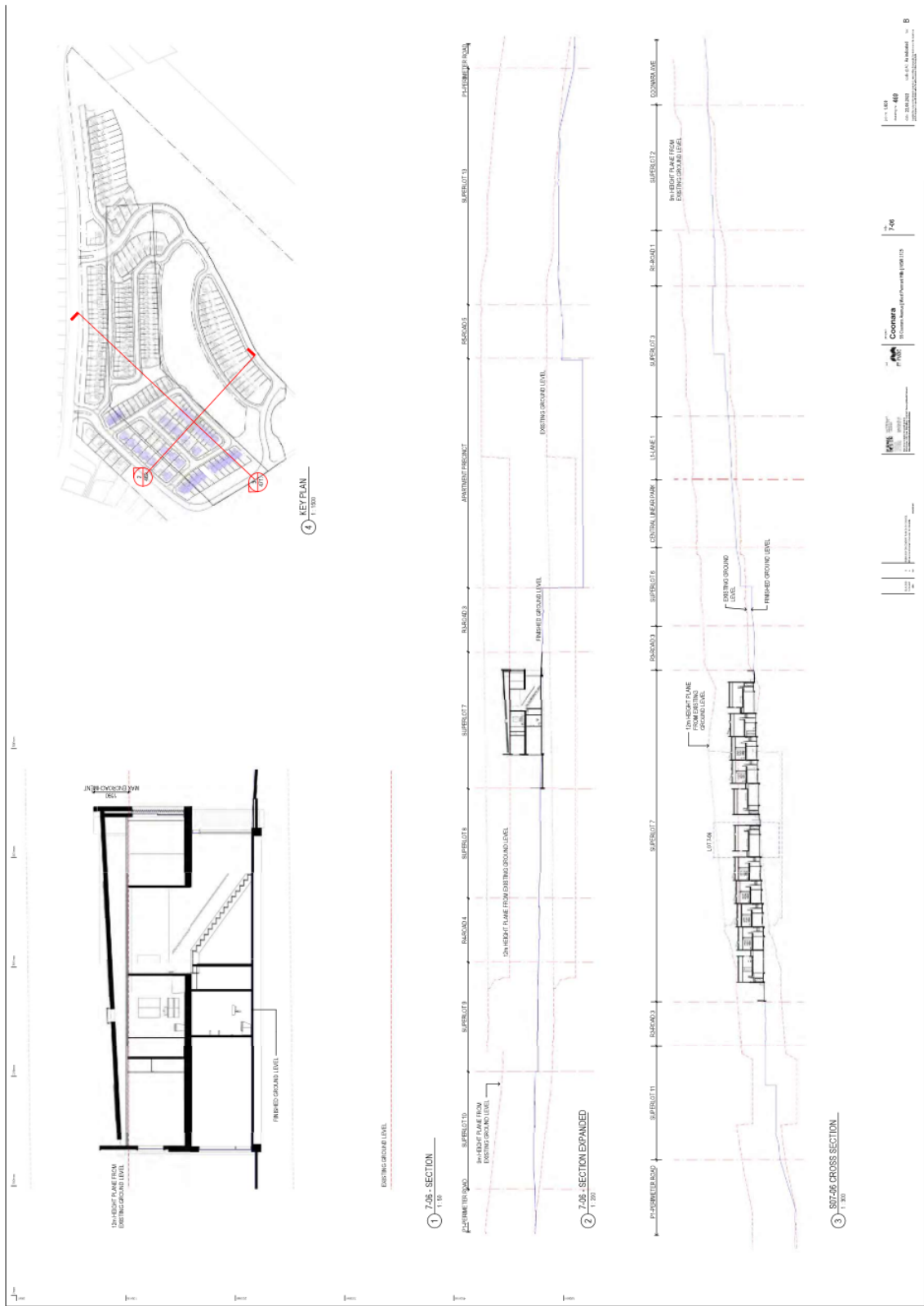




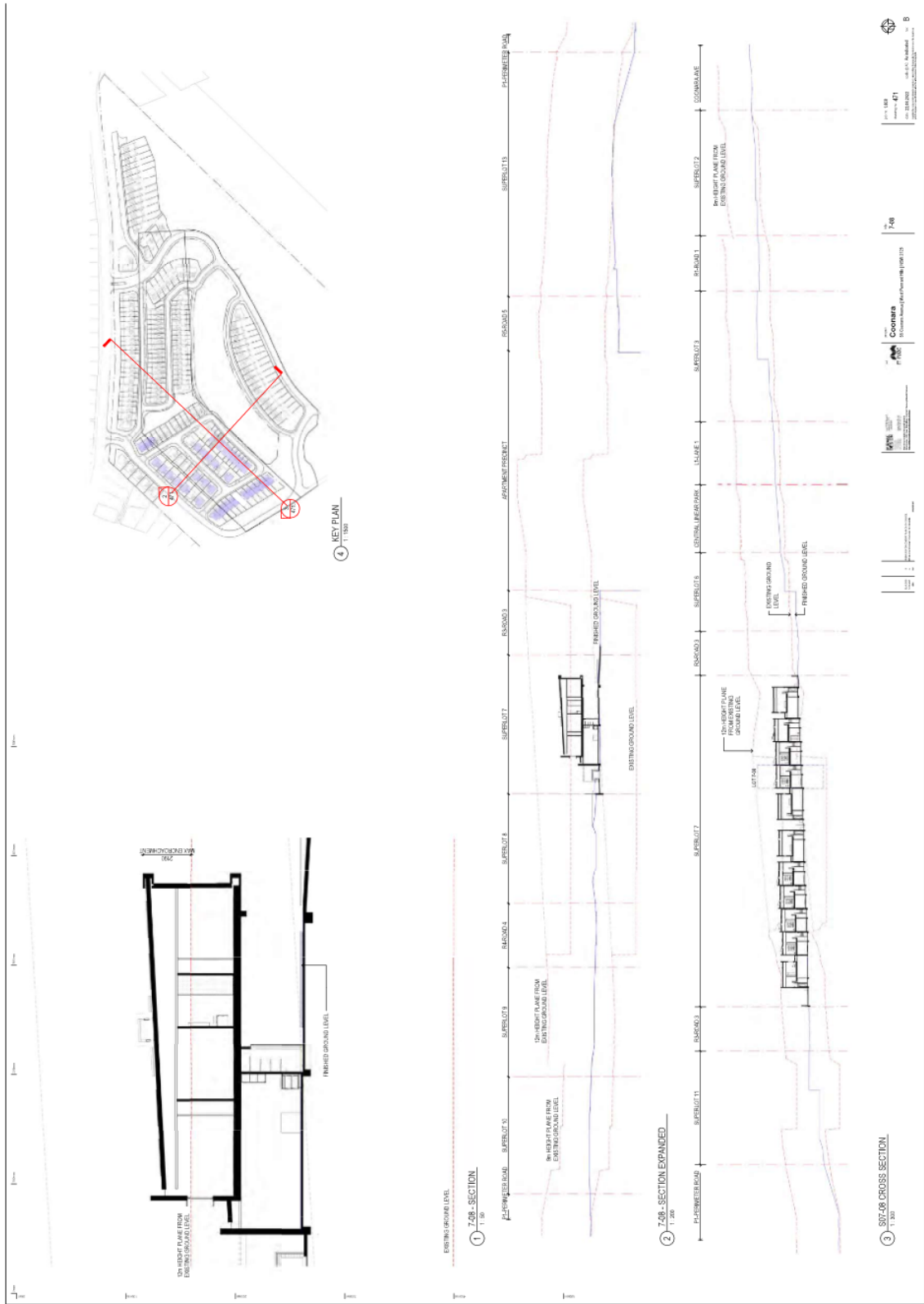




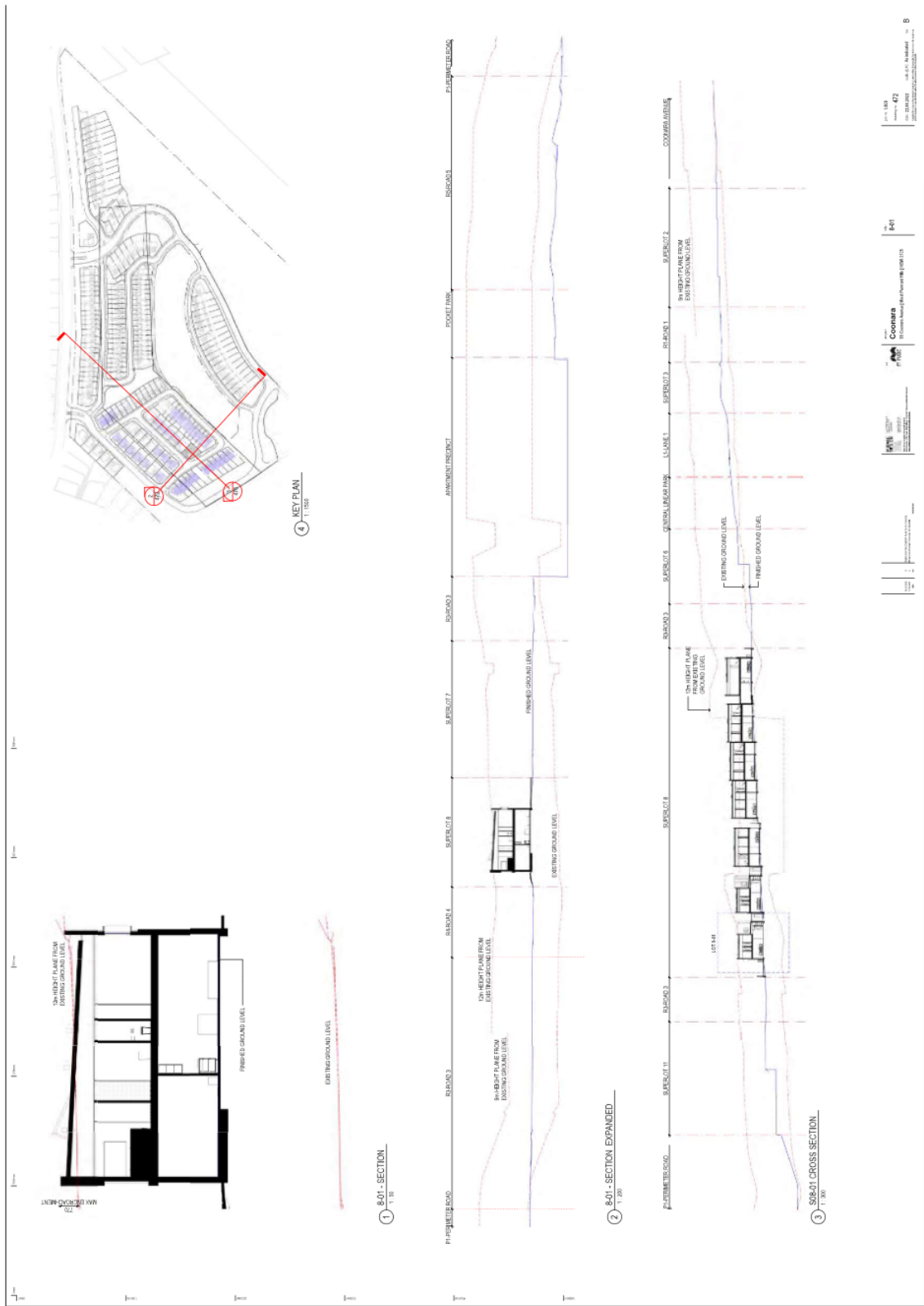




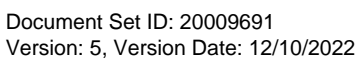


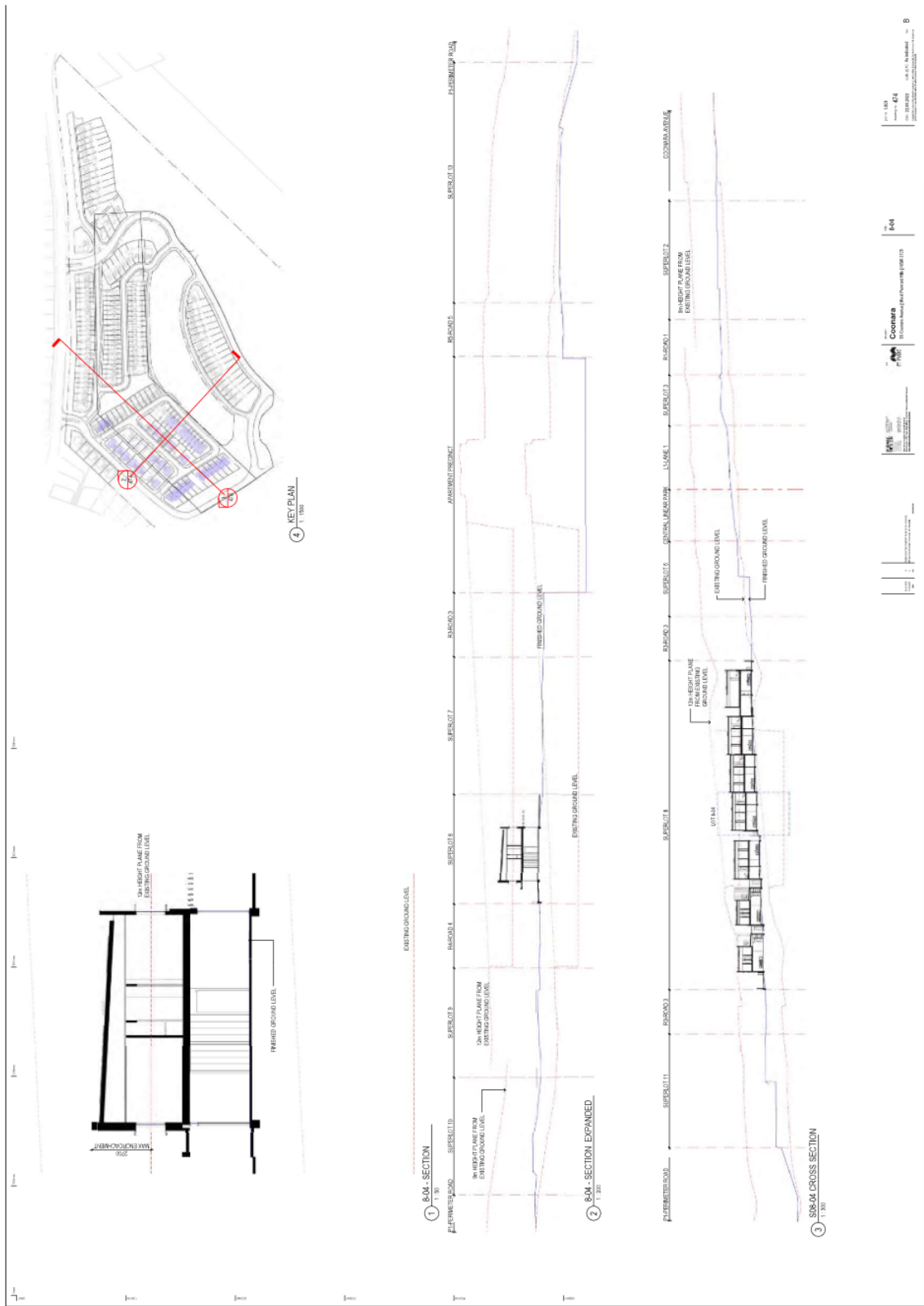


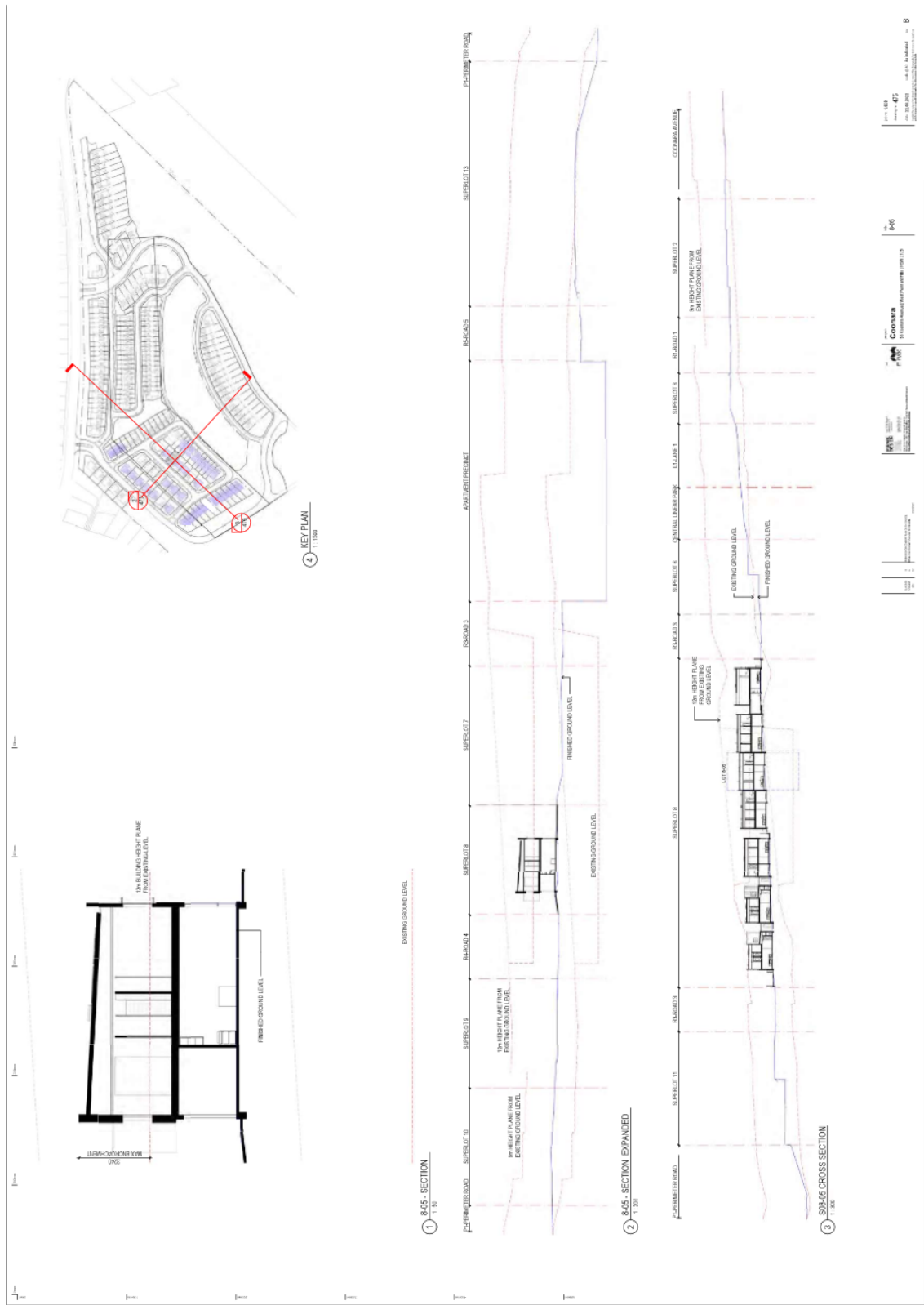


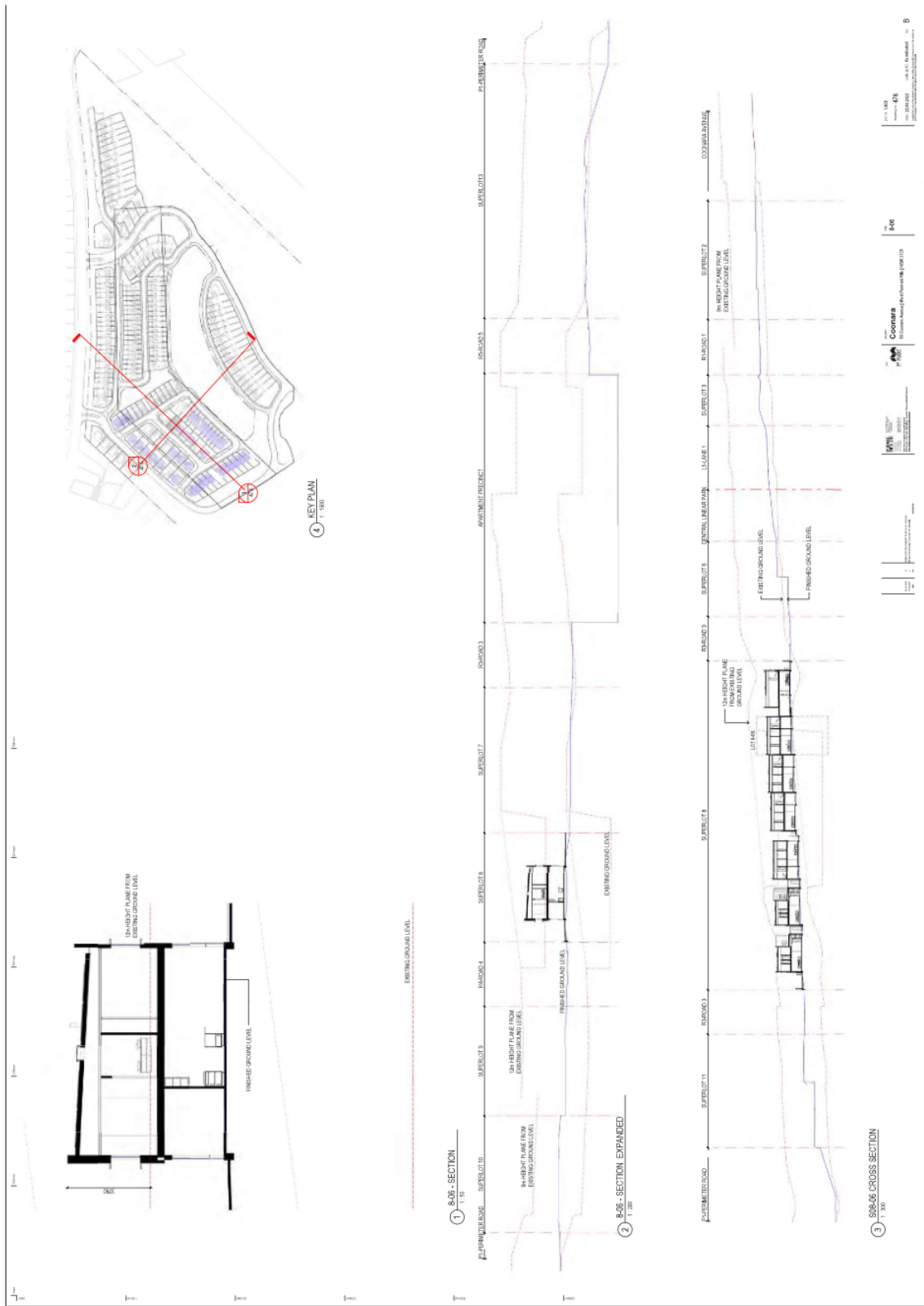




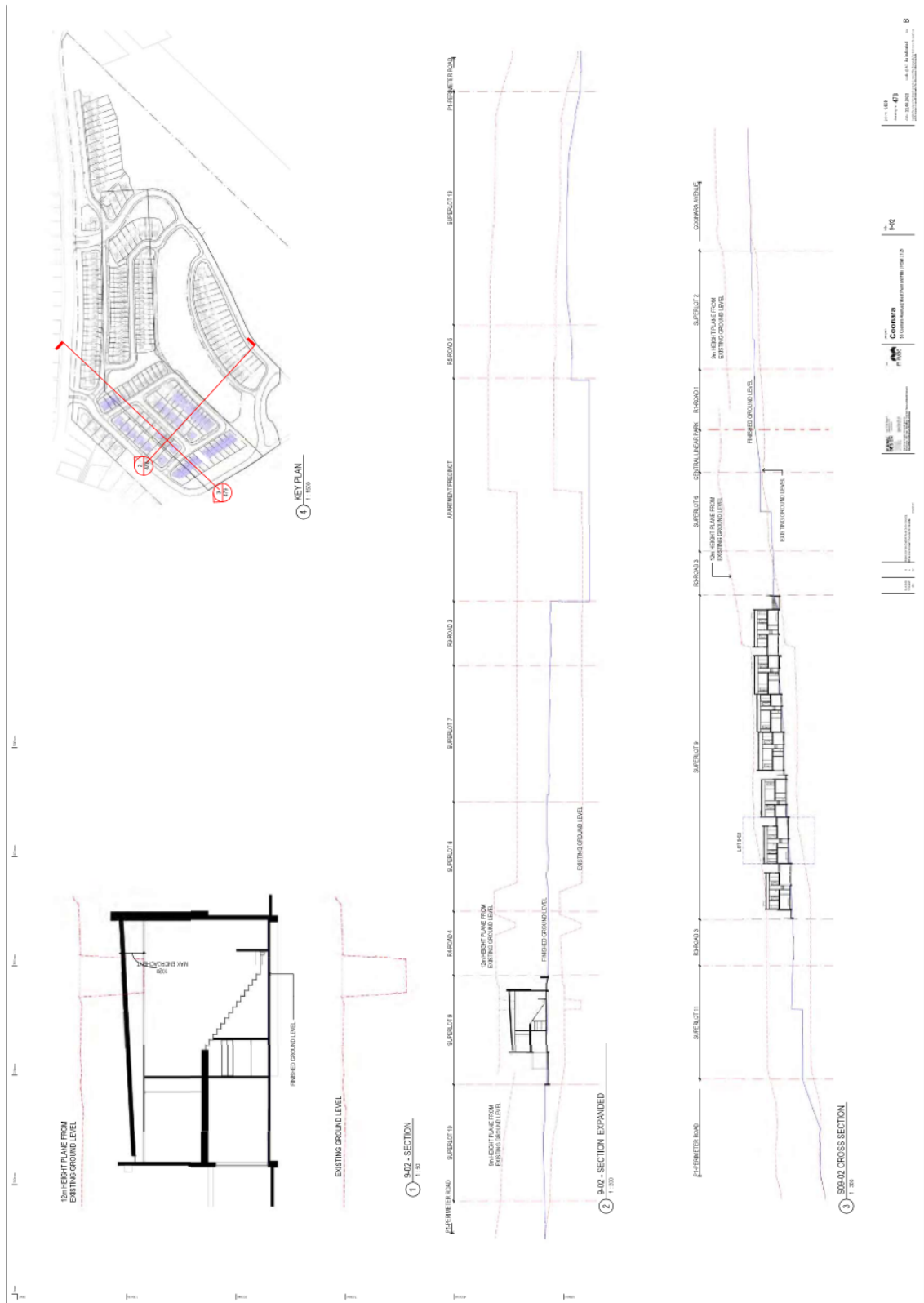




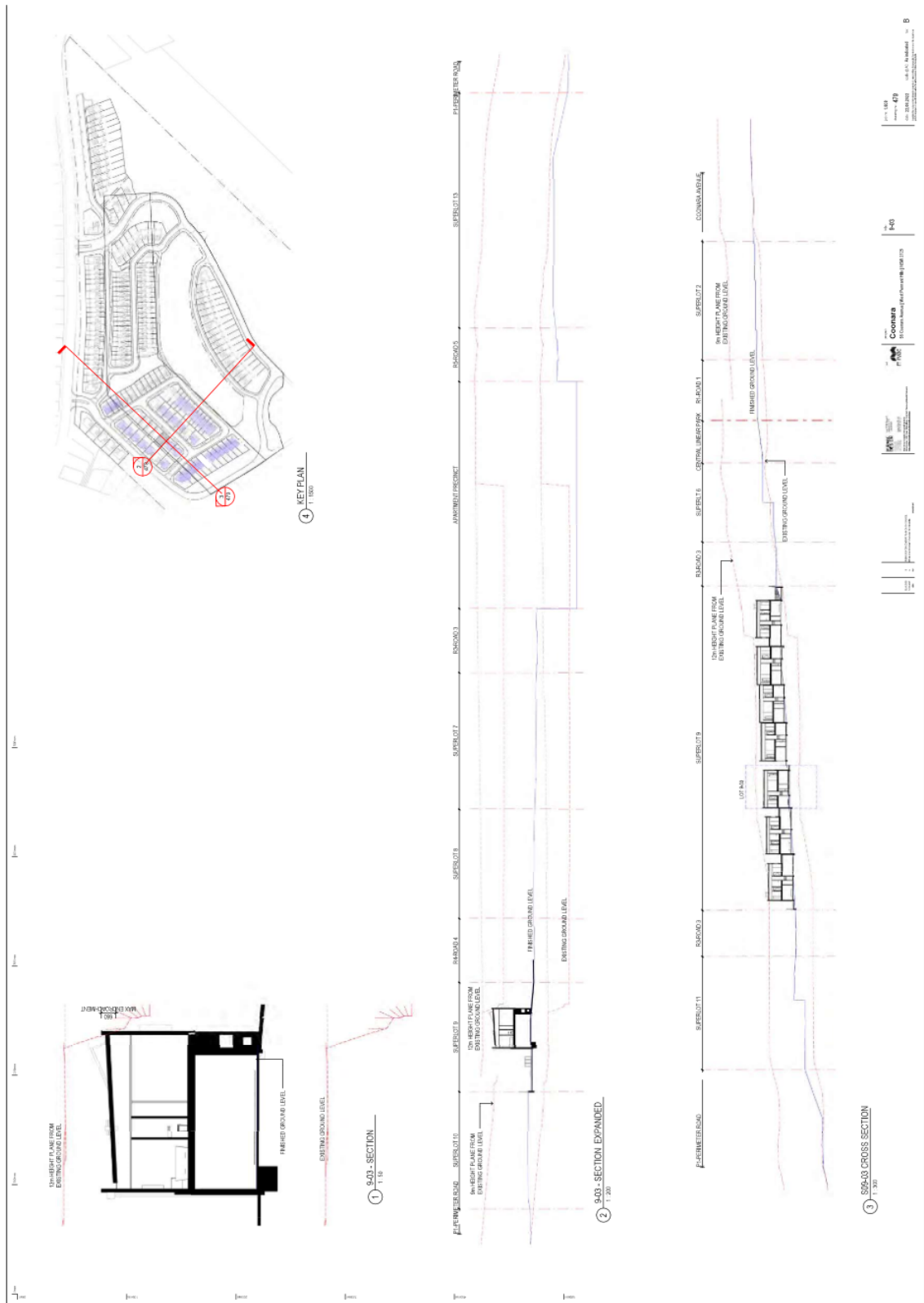


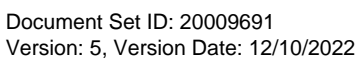






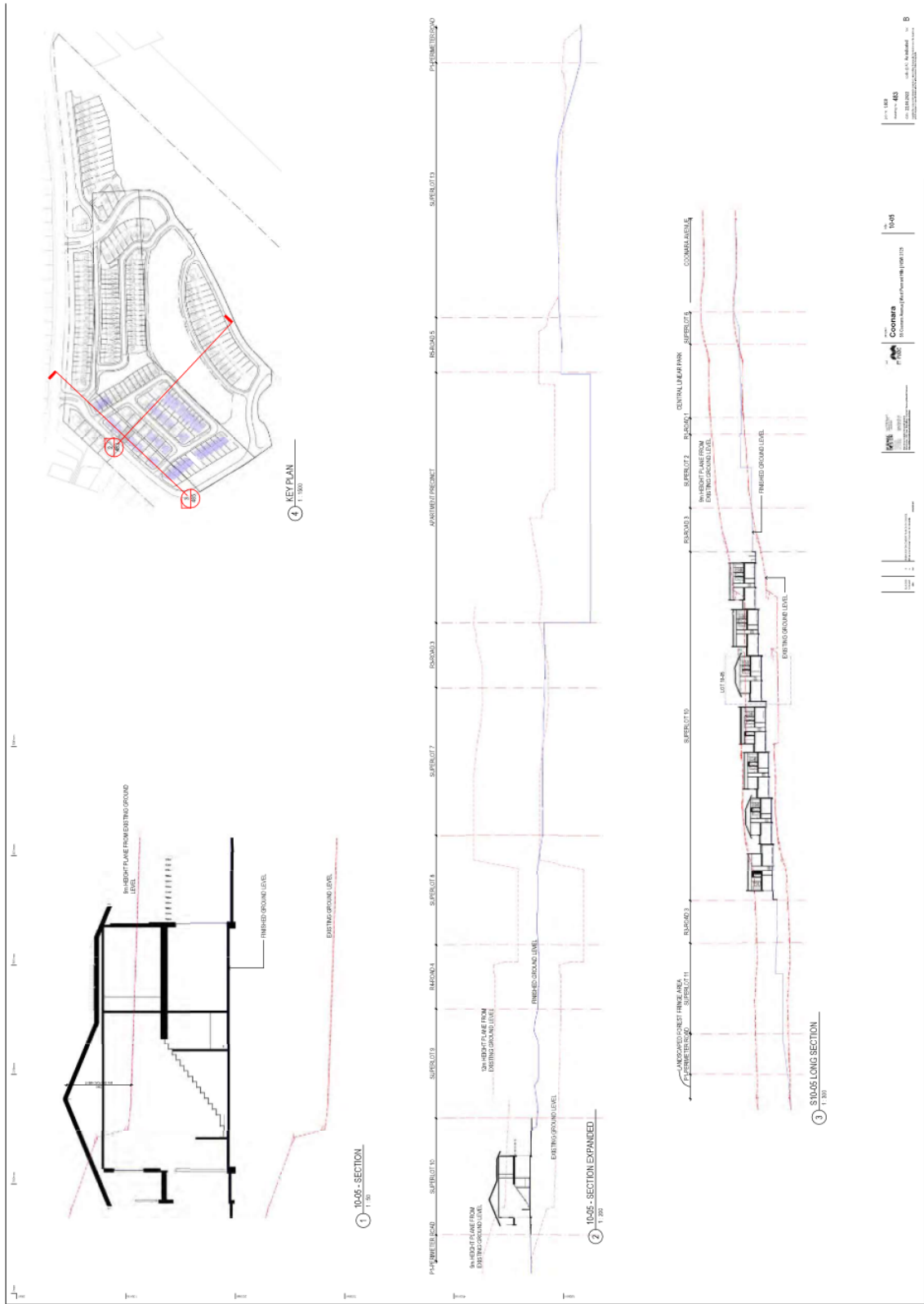






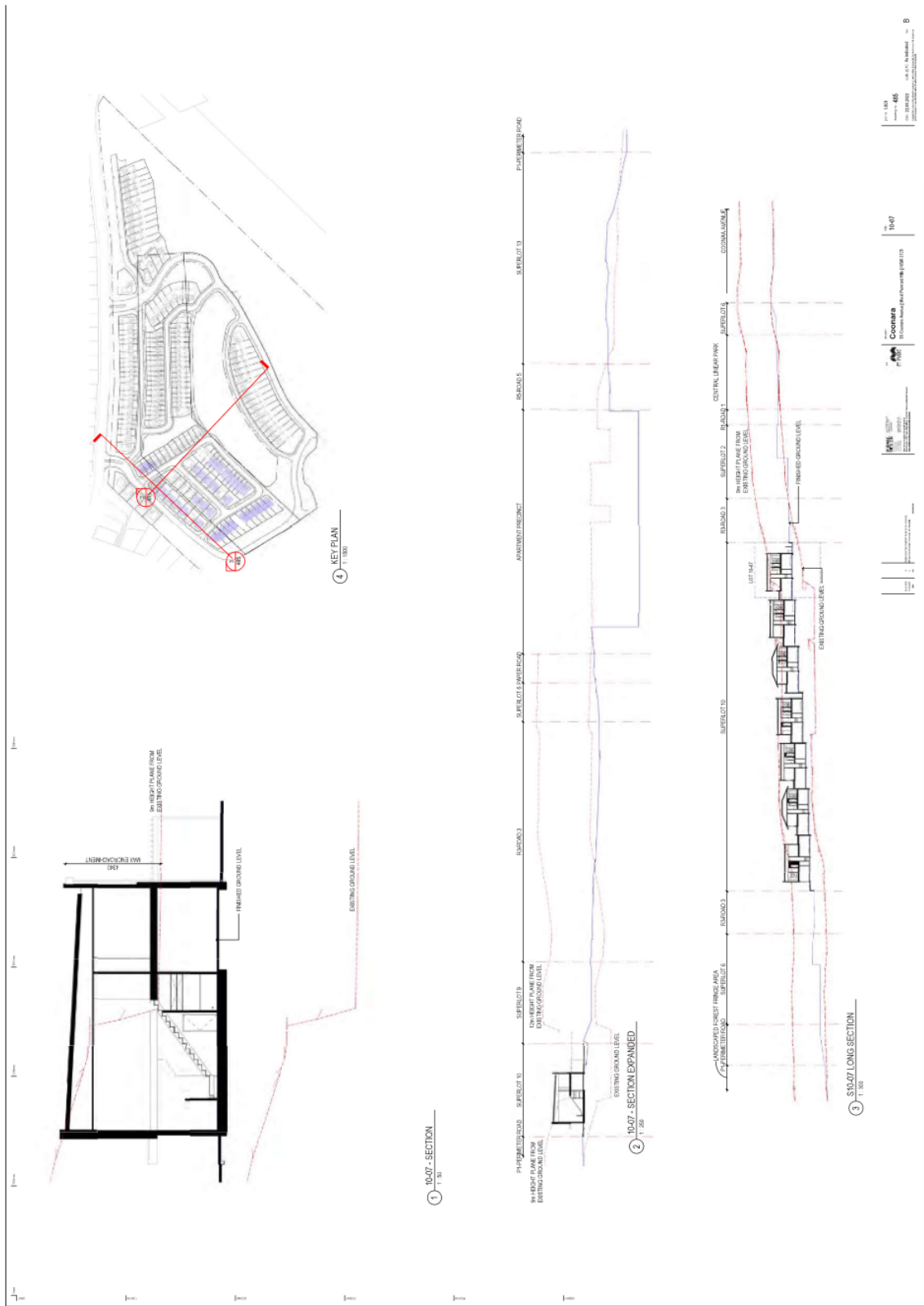


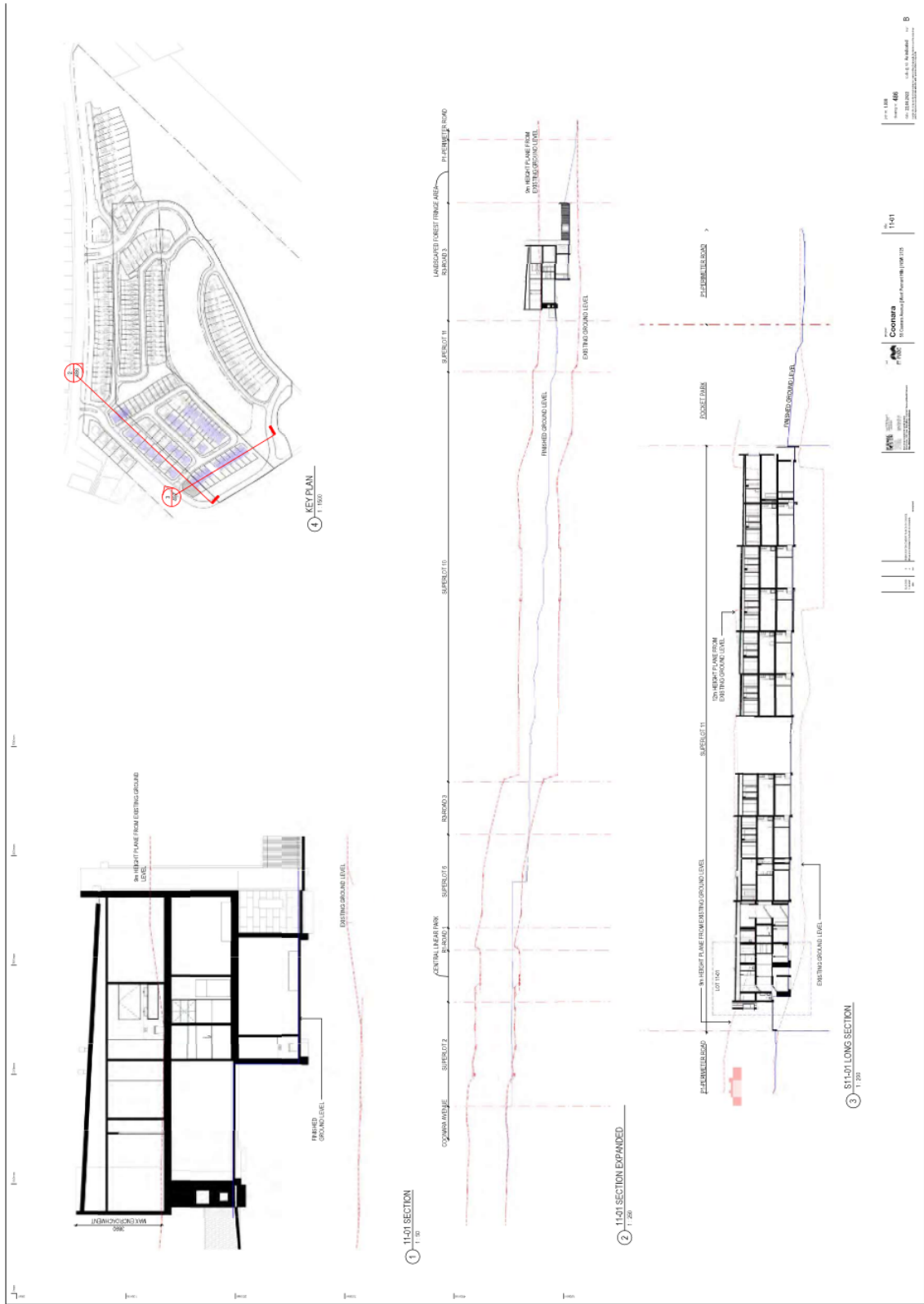




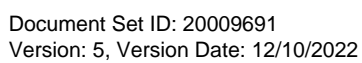


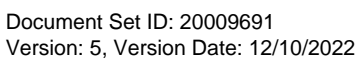






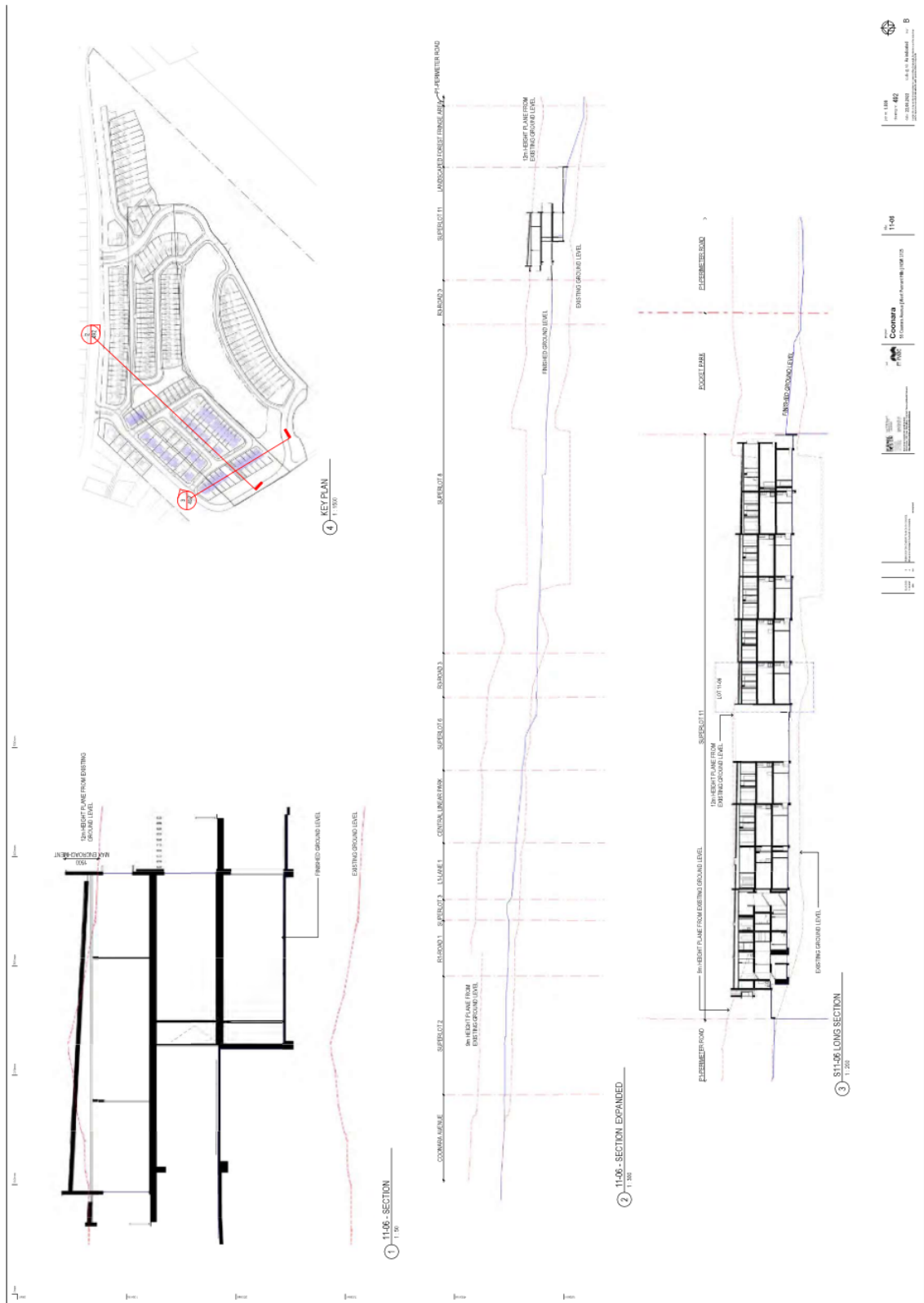


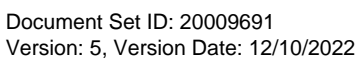






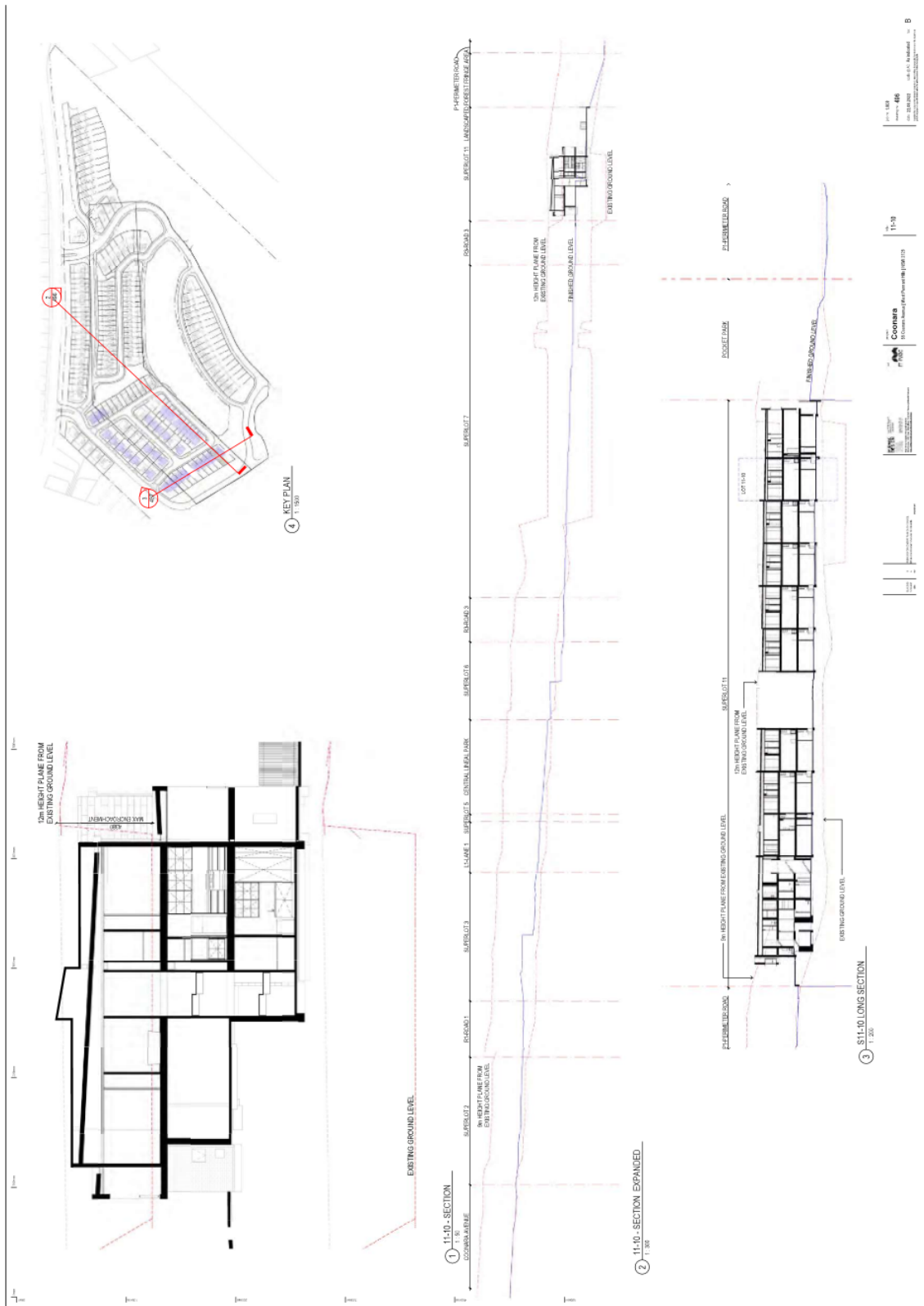


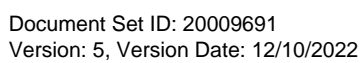






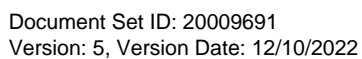




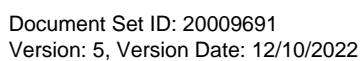


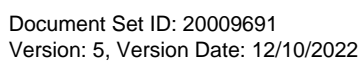


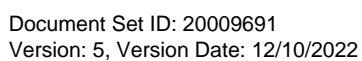
## Appendix 2 – Perspectives



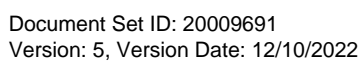




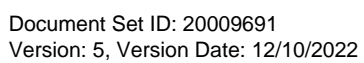














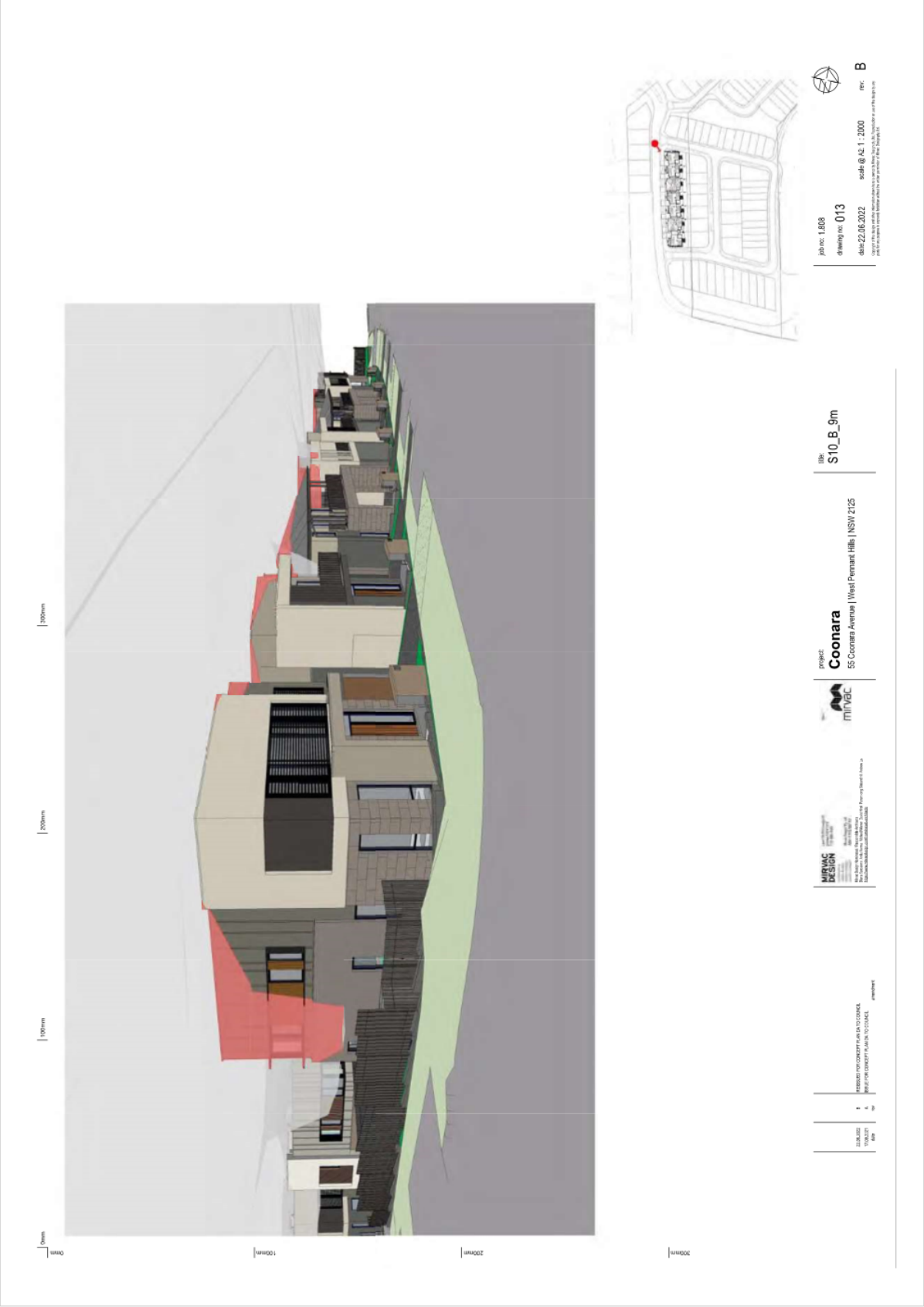




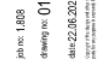












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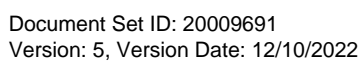
project:  
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55 Coonara Avenue | West Pennant Hills | NSW 2125



|            | DATE | BY | REVISION                              |
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| 17.08.2021 |      |    | ISSUED FOR CONCEPT PLAN DA TO COUNCIL |

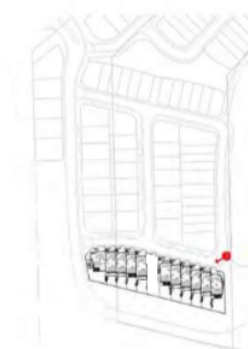








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| Date        | By |   | Required for Concept Plan A to Council<br>Brief for Concept Plan B to Council | member |
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| 06 JUL 2002 | A. | B |   |        |

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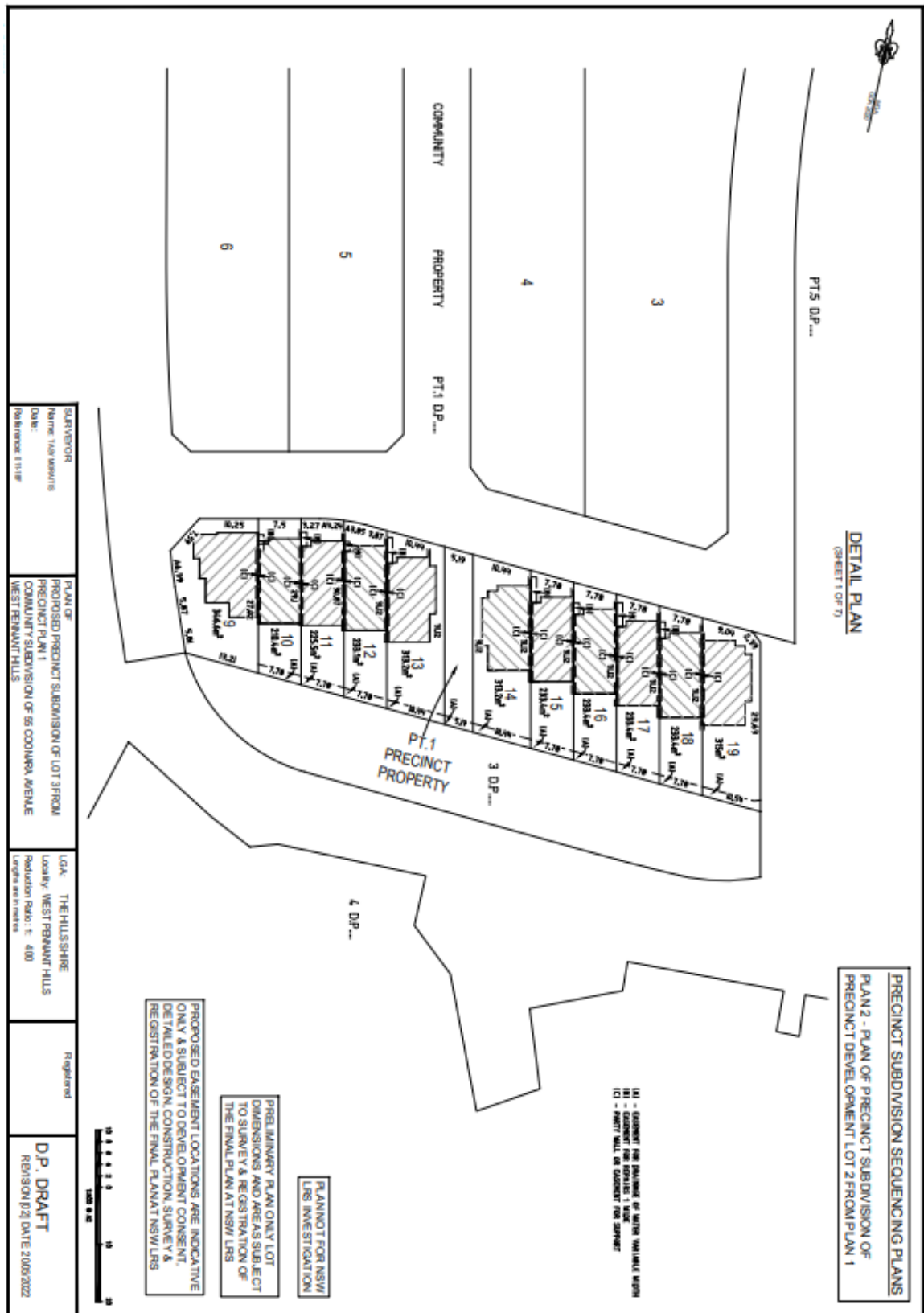
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55 Coonara Avenue

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 rev. B  




# ATTACHMENT 10 – SUBDIVISION PLANS

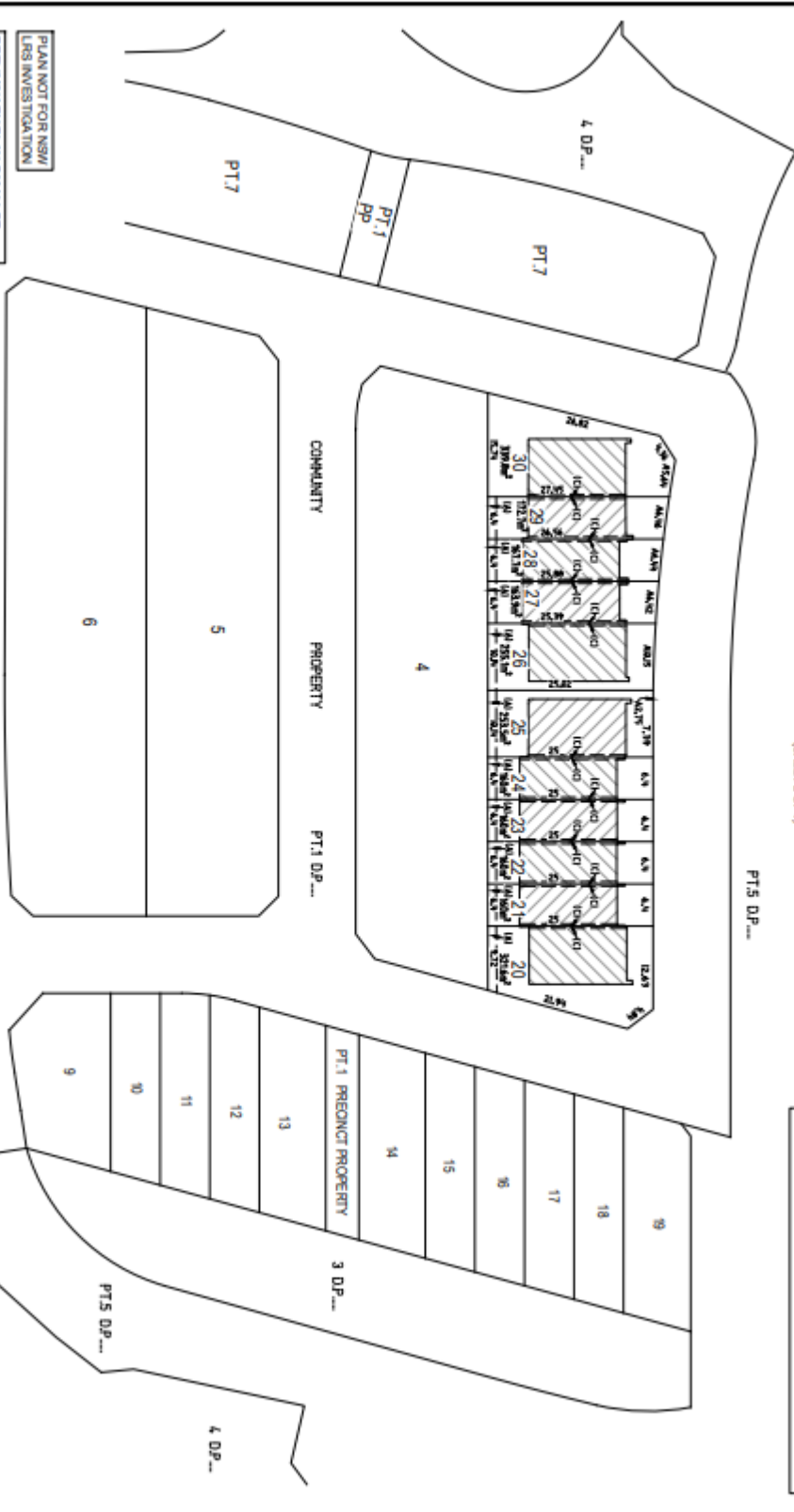




# DETAIL PLAN (SHEET 2 OF 7)

PT.5 D.P.---

PRECINCT SUBDIVISION SEQUENCING PLANS  
PLAN 3 - PLAN OF PRECINCT SUBDIVISION OF  
PRECINCT DEVELOPMENT LOT 3 FROM PLAN 1



PLAN NOT FOR NSW  
LRS INVESTIGATION

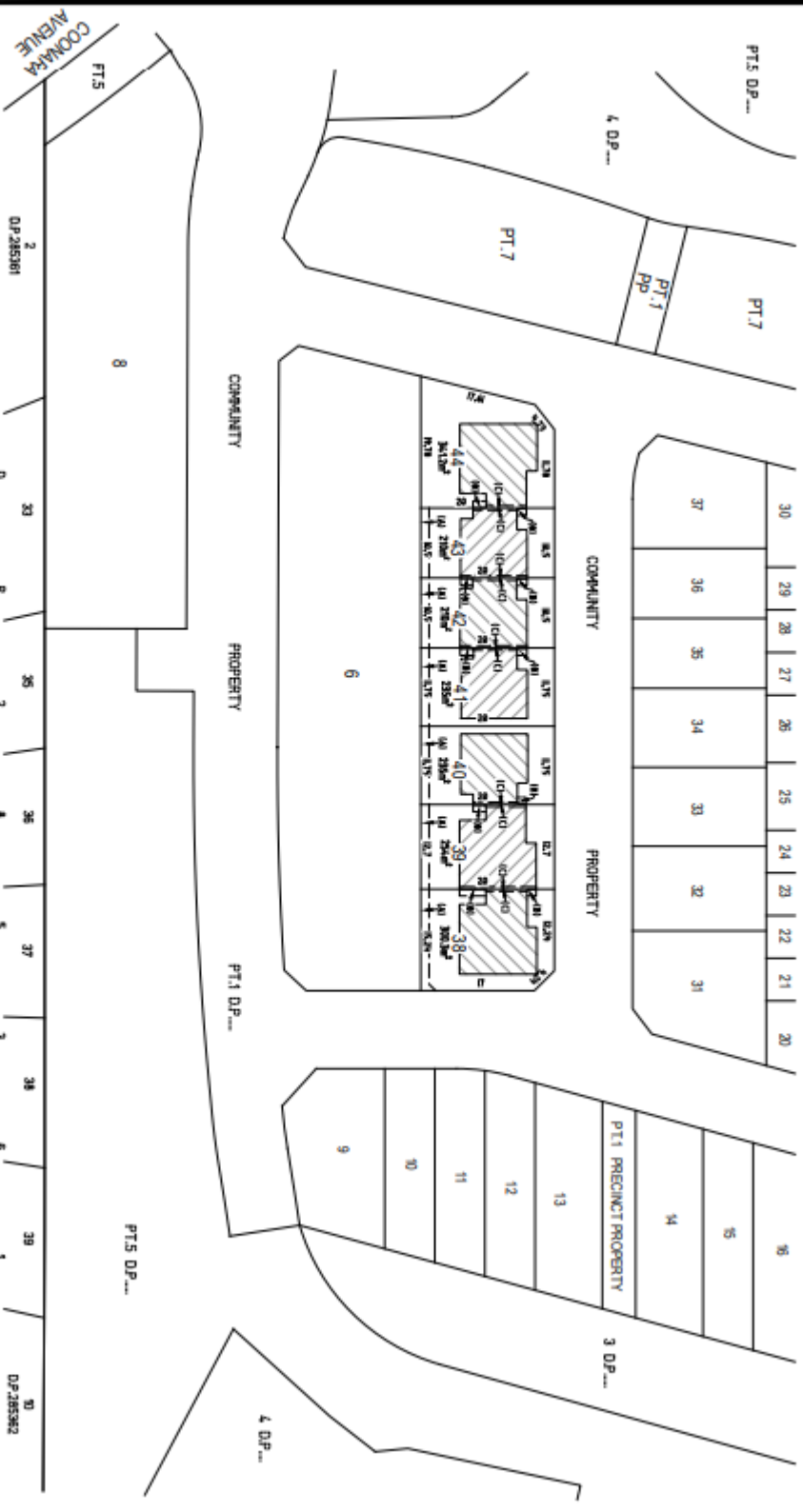
PRELIMINARY PLAN ONLY LOT  
DIMENSIONS AND AREAS SUBJECT  
TO SURVEY & REGISTRATION OF  
THE FINAL PLAN AT NSW LRS

PROPOSED EASEMENT LOCATIONS ARE INDICATIVE  
ONLY & SUBJECT TO DEVELOPMENT CONSENT,  
DETAILED DESIGN, CONSTRUCTION, SURVEY &  
REGISTRATION OF THE FINAL PLAN AT NSW LRS

| SURVEYOR   | PLAN OF  | LOCALITY   | Registered | D.P. DRAFT                  |
|--|--|--|------------|-----------------------------|
| NAME: TASH BOWEN<br>DATE: 15/11/22<br>REFERENCE: 8111/22 | PROPOSED PRECINCT SUBDIVISION OF LOT 3 FROM<br>PRECINCT PLAN 1<br>COMMUNITY SUBDIVISION OF 55 COOMERA AVENUE<br>WEST PENNANT HILLS | LOCALITY: WEST PENNANT HILLS<br>SECTION: 1, 400<br>LENGTH: 100 TO 1000 M |            | REVISION D/2 DATE 2005/2022 |



**PRECINCT SUBDIVISION SEQUENCING PLANS**



PRELIMINARY PLAN ONLY LOT DIMENSIONS AND AREAS SUBJECT TO SURVEY & RECONSTRUCTION OF THE FINAL PLAN AT NSW LRS

PROPOSED EASEMENT LOCATIONS ARE INDICATIVE ONLY & SUBJECT TO DEVELOPMENT CONSENT, DETAILED DESIGN, CONSTRUCTION, SURVEY & REGISTRATION OF THE FINAL PLAN AT NSW LRS

PLAN NOT FOR NSW  
LRS INVESTIGATION

**SURVEYOR**  
Planned: TONY MORRIS  
Date:  
Reference: 111111

PLAN OF  
PROPOSED PRE-CHART SUBDIVISION OF LOT 5 FROM  
PRE-CHART PLANT  
COMMUNITY SUBDIVISION OF 55 CO. QUARA AVENUE  
WEST PENNA. T.H.S.

LGA: THE HILLS SHIRE  
 Locality: WEST PENARANT HILLS  
 Production Rate @ 1: 400  
 Length for use in minutes

### Registered

D.P., DRAFT

REVISION [02] DATE 2005/2022



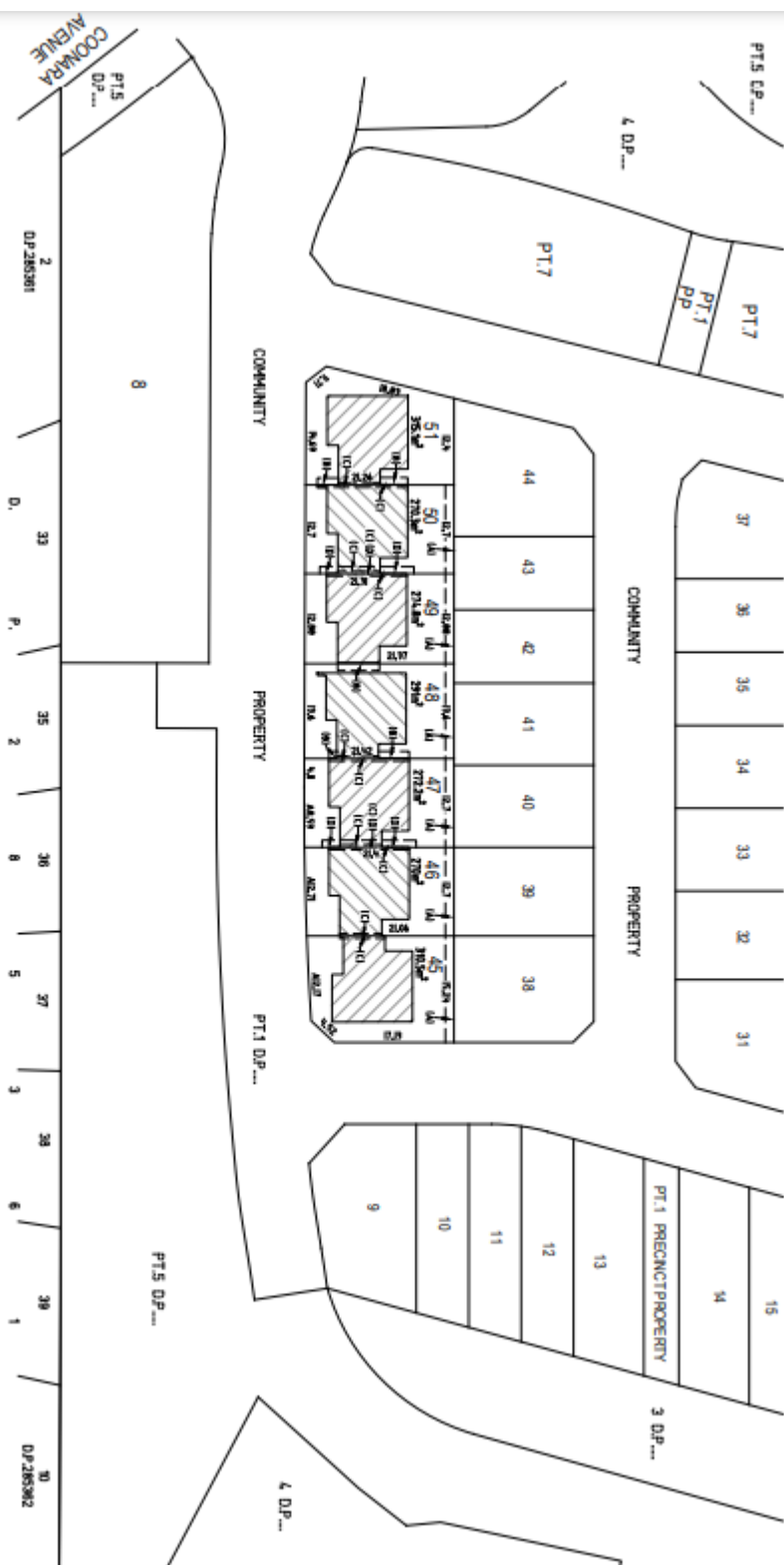


**DETAIL PLAN**  
(SHEET 6 OF 7)

(SHEET 6 OF 7)

### PRECINCT SUBDIVISION SEQUENCING PLANS

PLAN 6 - PLAN OF PROPOSED SUBDIVISION OF PRECINCT DEVELOPMENT LOT 6 FROM PLAN 1



PRELIMINARY PLAN ONLY LOT DIMENSIONS AND  
AREAS SUBJECT TO SURVEY & REGISTRATION OF  
THE FINAL PLAN AT NSWLRB

PROPOSED EASEMENT LOCATIONS ARE INDICATIVE ONLY & SUBJECT TO DEVELOPMENT CONSENT. DETAILED DESIGN CONSTRUCTION, SURVEY & REGISTRATION OF THE FINAL PLAN AT NSW LRS

PLAN NOT FOR NSW  
LRS INVESTIGATION

SUBJECT: TASH MUSA  
DATE: 11-11-11  
REFERENCE: 11-11-11

PROPOSED PRECINCT SUBDIVISION OF LOT 6 FROM  
PRECINCT PLAN 1  
COMMUNITY SUBDIVISION OF 55 COONARA AVENUE  
WEST PENNANT HILLS

UGA: THE HILLS SHIRE  
 Locality: WEST PEVARIANT HILLS  
 Production Ratio: 1: 400  
 Lengths are in metres

### Registration

D.P. DRAFT  
REASON [p2] ON

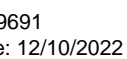
DATE 2005/2002

PP - DENOTES PRECINCT PROPERTY

- (A) - CASSETTE FOR DRAINAGE OF WATER MAINLINE WITH
- (B) - CASSETTE FOR SEWERS 1 WIDE
- (C) - PARTY WALL OR CASSETTE FOR SUPPORT
- (D) - CASSETTE FOR OVERHANG 1 WIDE

[illegible]







# **DETAIL PLAN** (SHEET 7 OF 7)

**PRECINCT SUBDIVISION SEQUENCING PLANS**  
PLAN 8 - PLAN OF PROPOSED SUBDIVISION OF  
PRECINCT DEVELOPMENT LOT 8 FROM PLAN 1



PLAN NOT FOR NSW  
LRS INVESTIGATION

PRELIMINARY PLAN ONLY LOT  
DIMENSIONS AND AREAS SUBJECT  
TO SURVEY & REGISTRATION OF  
THE FINAL PLAN AT NSW LRS

PROPOSED EASEMENT LOCATIONS ARE INDICATIVE  
ONLY & SUBJECT TO DEVELOPMENT CONSENT,  
DETAILED DESIGN, CONSTRUCTION, SURVEY &  
REGISTRATION OF THE FINAL PLAN AT NSW LRS

|   |   |  |                   |   |
|---|---|--|-------------------|---|
| <p><b>SUPERVISOR</b><br/>Name: TIA WRIGHT<br/>Date: 15/11/22<br/>Reference: 81118</p> | <p><b>PLAN OF</b><br/>PROPOSED PRECINCT SUBDIVISION OF LOT 8 FROM<br/>COMMUNITY SUBDIVISION OF 55 COOMARA AVENUE<br/>WEST PENNANT HILLS</p> | <p><b>LGA:</b> THE HILLS SHIRE<br/>Locality: WEST PENNANT HILLS<br/>Population Ratio: 1: 400<br/>Lengths are in metres</p> | <p>Registered</p> | <p><b>D.P. DRAFT</b><br/>REVISION P2 DATE 2009/2022</p> |
|---|---|--|-------------------|---|

LI - EXISTING LOT BOUNDARY OF WATER TREATMENT  
LI - EXISTING LOT BOUNDARY OF WATER TREATMENT

PP - DENOTES PRECINCT PROPERTY

## ATTACHMENT 11 – NSW RFS - GTAs



### NSW RURAL FIRE SERVICE

The Hills Shire Council  
PO Box 7064  
BAULKHAM HILLS BC NSW 2153

Your reference: 859/2022/JP (CNR-32683)  
Our reference: DA20211221005636-CL55-1

**ATTENTION:** Sanda Watts

Date: Tuesday 2 August 2022

Dear Sir/Madam,

**Integrated Development Application**  
**s100B – Subdivision – Torrens Title Subdivision**  
**55 COONARA AVENUE WEST PENNANT HILLS 2125, 61//DP737386**

I refer to your correspondence dated 20/06/2022 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the submitted amended information. General Terms of Approval are now re-issued, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions.

#### **Asset Protection Zones**

***The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:***

1. From the start of building works, the site must be managed as an inner protection area (IPA) within the area marked 'APZ - Asset protection zone' on the H South Precinct Masterplan prepared by Turf Design Studio Issue B - June 2022 with reference L-DA-10. The IPA must comprise:

- Minimal fine fuel at ground level;
  - Grass mowed or grazed;
  - Trees and shrubs retained as clumps or islands and do not take up more than 20% of the area;
  - Trees and shrubs located far enough from buildings so that they will not ignite the building;
  - Garden beds with flammable shrubs not located under trees or within 10 metres of any windows or doors;
  - Minimal plant species that keep dead material or drop large quantities of ground fuel;
  - Tree canopy cover not more than 15%;
  - Tree canopies not located within 2 metres of the building;
  - Trees separated by 2-5 metres and do not provide a continuous canopy from the hazard to the building;
- and,

1

#### **Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### **Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

Document Set ID: 20251071  
Version: 1, Version Date: 03/08/2022

- Lower limbs of trees removed up to a height of 2 metres above the ground.

#### **Construction Standards**

***Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities. To achieve this, the following conditions shall apply:***

Note: The Lot numbers used in the following conditions are as per the *Southern Housing Precinct with APZ and BAL Rating Overlay* prepared by Mirvac Design (job no 1.808, dwg no A1.1.2, dated 7/06/22).

2. Construction on the following lots and elevations must comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*:

- All construction on lot 11-01;
- The western, eastern, and southern elevations, and the roof, of lots 11-02 to 11-11, and 12-01;
- The western, northern, and southern elevations, and the roof, of lots 10-01 to 10-3; and,
- The southern, and western elevations, and the roof, of lot 10-04.

3. Construction on the following lots and elevations must comply with section 3 and section 6 (BAL 19) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*:

- The northern elevations of lots 11-02 to 11-11, and 12-01;
- The eastern elevations of lots 10-01 to 10-3;
- The northern and eastern elevations of lot 10-04; and,
- The southern, and western elevations, and the roof, of lot 10-05.

4. Construction on the following lots and elevations must comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2018 *Construction of buildings in bush fire-prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas – 2014* as appropriate and Section 7.5 of *Planning for Bush Fire Protection 2019*.

- The northern, and eastern elevations of lot 10-05.
- All construction on lots 6-01 to 6-09, 7-01 to 7-11, 8-01 to 8-07, 9-01 to 9-07, 10-06 to 10-07, 12-02 to 12-05

5. The proposed rear balconies of the dwellings within lots 11-01 to 11-11 must be separated from the existing dwelling by a fire rated wall as per option (b) or (c) of Section 3.2.3 of AS3959-2018 *Construction of buildings in bush fire-prone areas*, and constructed entirely from non-combustible materials.

#### **Water and Utility Services**

***The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:***

6. The provision of water, electricity and gas must comply with the following in accordance with Table 5.3c of *Planning for Bush Fire Protection 2019*:

- reticulated water is to be provided to the development;
- fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;
- hydrants are not located within any road carriageway;
- reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
- fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;
- all above-ground water service pipes are metal, including and up to any taps;

- where practicable, electrical transmission lines are underground;
- where overhead, electrical transmission lines are proposed as follows:
  - lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
  - no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;
- reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;
- all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- connections to and from gas cylinders are metal; polymer-sheathed flexible gas supply lines are not used; and
- above-ground gas service pipes are metal, including and up to any outlets.

#### **Landscaping Assessment**

***The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:***

7. Before the start of building works, a Vegetation Management Plan (VMP) that can be legally and practically enforced for the life of the development must be produced for the management of the entire site outside of the IPA specified in Condition 1 above. The VMP must be certified by an accredited bushfire consultant to ensure that landscaping is designed and managed to ensure that the land does not become a bushfire hazard.

This letter is in response to an assessment of the application based on the submitted further information and supersedes our previous general terms of approval dated 05/04/2022.

For any queries regarding this correspondence, please contact Alastair Patton on 1300 NSW RFS.

Yours sincerely,

Nika Fomin  
**Manager Planning & Environment Services**  
**Built & Natural Environment**





NSW RURAL FIRE SERVICE

# BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision  
55 COONARA AVENUE WEST PENNANT HILLS 2125, 61//DP737386  
RFS Reference: DA20211221005636-CL55-1  
Your Reference: 859/2022/JP (CNR-32683)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority supersedes the previous Bush Fire Safety Authority DA20211221005636-Original-1 issued on 05/04/2022 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

**Nika Fomin**

Manager Planning & Environment Services  
Built & Natural Environment

Tuesday 2 August 2022

Document Set ID: 20251071  
Version: 1, Version Date: 03/08/2022