

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-319
DA Number	DA 694/2017/JP/B
LGA	The Hills Shire Council
Proposed Development	Section 4.55(2) Modification to an Approved Residential Flat Building Development
Street Address	7-9 Terry Road Box Hill
Applicant	Universal Property Group Pty Ltd
Consultant/s	Town Planner – Think Planners Architects – AVA Architects Landscape Architect – Paul Scrivener Landscapes Traffic – Varga Traffic Planning Acoustic Report – Rodney Stevens Acoustics BASIX Report – SLR Consulting Access Review – Ergon Consulting Stormwater Concept – Mance Arraj Engineers Quantity Surveyors – Tom Lander
Date of DA lodgement	15 December 2021
Number of Submissions	Nil
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Modification of an approved Development Application that was originally approved by the regional panel as General Development with a CIV of over \$30. The modification contravenes a development standard by more than 10%.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Section 4.15 (EP&A Act) • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy - Building Sustainability Index (BASIX) 2004 • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (Central – River City Precinct) 2021 (formerly SEPP (SGRC) 2006) • Central City District Plan • Apartment Design Guide • Environmental Planning and Assessment Regulation 2021
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Clause 4.6 Written Submission
Clause 4.6 requests	<ul style="list-style-type: none"> • State Environmental Planning Policy (Central – River City Precinct) 2021 (formerly SEPP (SGRC) 2006)

	<ul style="list-style-type: none"> The development standard the clause 4.6 application relates to is Clause 4.3 maximum height of buildings
Summary of key submissions	N/A
Report prepared by	Eamon Murphy – Senior Town Planner
Report date	2 June 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)? **Yes, applied on original consent**
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:

- This Section 4.55(2) Modification Application is to an approved development for the demolition of existing structures and construction of a 7 storey residential flat building containing 103 units comprising of 14 x 1 bedroom units, 81 x 2 bedroom units and 8 x 3 bedroom units and basement parking for 128 cars.
- The original Development Application was approved by the Joint Regional Planning Panel (JRPP) on 6 September 2017.
- The proposed changes are as follows:
 - Increase the number of units from 103 to 104;
 - Amend the unit mix to 17 x 1 bedroom units, 67 x 2 bedroom units and 20 x 3 bedroom units
 - Alteration to the internal layout of the units;
 - Reconfiguring of the basement carpark layouts and introducing an addition seven (7) car spaces resulting in a total of 135 car spaces;
 - Minor changes to the external footprint;
 - Increase the approved floor space ratio (FSR) from 1.82:1 to 1.88:1;
 - Refinement of the façade design of the building to reflect the changes to the internal layout of the apartments and location of windows, doors and balconies and;
 - Increasing the overall height of the development by 1.3m from 23.38m to 24.68m.
- This application is accompanied by a request to vary Clause 4.3 Building Height development standard pursuant to Clause 4.6 of State Environmental Planning Policy (Central – River City Precinct) 2021. Clause 4.3 of SEPP (CRCP) 2021 limits the height of the development to 21 metres. The proposed development will have a maximum building height of 24.68 metres. A Clause 4.6 written submission has been prepared and submitted with the application. It is considered strict compliance is unreasonable and unnecessary in this instance and the variation can be supported.
- Assessment of the application against the relevant planning framework and consideration by technical staff (waste, engineering, health, developer contributions and landscaping) has not identified any issues of concern that cannot be dealt with by conditions of consent.
- The application was notified to adjoining and surrounding owners and no submissions were received.
- This report recommends that the Panel approve the application subject to the recommended conditions.

BACKGROUND

The site is within the Box Hill Growth Centre Precinct. The site is zoned R4 High Density Residential under State Environmental Planning Policy (Precincts – Central River City) 2021.

The original Development Application was approved by the regional panel on 6 September 2017. The application was approved as a deferred commencement consent subject to the registration of a drainage easement over downstream properties. On 24 June 2021 the drainage easement was registered. The full operative consent was issued on 14 September 2021. A Section 4.55(1) modification was approved on 14 January 2022 to amend a minor misdescription in the development description.

The subject Section 4.55(2) modification application was lodged on 15 December 2021. The proposal was notified and no submissions were received. The Sydney Central City Planning Panel was briefed on the proposal on 17 March 2022. The main issues discussed were the proposed height variation, issues with the waste collections arrangements, landscaping, and external colours and materials. The Panel advised that it would consider Council's assessment of the proposed modifications, in particular to confirm that there is proper planning justification to support the height variation. A request for further information in respect to above matters was sent to the applicant on 31 March 2022. Amended plans and additional information were received on 2 May 2022. The amended plans and additional information was referred to relevant staff for further review. A number of minor issues were not addressed. On 12 May 2022, outstanding landscaping and waste matters were requested. Amended plans and additional information was received on 18 May 2022 and these plans are subject to this assessment.

DETAILS AND SUBMISSIONS

Zoning:	R4 High Density Residential
Area:	4,783m ²
Existing Development:	Previous dwelling house and outbuildings have been demolished.
Section 7.11 Contribution	\$ 2,804,753.38
Exhibition:	N/A
Notice Adj Owners:	Yes, 14 days
Number Advised:	34
Submissions Received:	Nil

PROPOSAL

This Section 4.55(2) Modification Application is to an approved development for the demolition of existing structures and construction of a 7 storey residential flat building containing 103 units comprising of 14 x 1 bedroom units, 81 x 2 bedroom units and 8 x 3 bedroom units and basement parking for 128 cars. The proposed changes are detailed within the executive summary of this report.

It is noted that the approved development varied the 21m SEPP height control by 11.3% or 2.38m providing a total approved height of 23.38m. It is proposed to further increase the overall height of the development by 1.3m from 23.38m to 24.68m floor to facilitate the provision of 2700mm floor to ceiling heights and sprinklers to habitable areas by providing a total of 3.1m floor to floor heights. This results in a total height variance of 3.68m or 17.5%.

The site is zoned R4 High Density and the development complies with the development standards contained within the SEPP Growth Centres in relation to floor space ratio and minimum density.

Vehicle access is provided from Terry Road to the west and a future DCP road (Brookline Crescent) to the east. Full road width construction and dedication of the new road, is required. It is noted that approximately 1,050m² of land will be dedicated to Council to facilitate the provision of the future DCP road. Brookline Crescent which will be a loop road, will separate the development site from the existing public open space currently known as Turnbull Reserve. Until such time that Brookline Crescent can be constructed and dedicated, access to the site must be via the temporary access driveway on Terry Road, subject to compliance with the requirements of the RMS relating to the same. This access is temporary only, and must be removed once alternate access is made available via Brookline Crescent at the rear of the site. This is predicated on the prior or concurrent development of one or more adjoining sites to the north or south to connect this road to the existing public road network (Alan Street).

Currently, the immediate area is characterised in part by single rural style dwellings, market gardens, plant nurseries and similar low scale activities, however recent activity related to a

number of approved subdivisions and Development Application lodged and approved for medium and high density developments has occurred. The context will change further over the coming years as more development occurs in the Precinct.

ISSUES FOR CONSIDERATION

1. **State Environmental Planning Policy (Planning Systems) 2021** - *(Formerly State Environmental Planning Policy (State and Regional Development) 2011)*

The original Development Application had a Capital Investment Value of \$27,580,631 requiring referral to and determination by the Planning Panel.

As this is a modification of the original determination and approval by the Planning Panel, the following applies for referral back to the Planning Panel in the case of modification applications:

Clause 275 of the Environmental Planning and Assessment Regulations 2021 specifies *functions exercisable by council on behalf of Sydney district or regional planning panel*.

It states the following:

- (1) *The determination of an application to modify a development consent under the Act, section 4.55 is prescribed as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area, except as provided by subsection (2).*
- (2) *A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the **Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents** published on the NSW planning portal on 30 June 2020.*

The *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* specifies the following modification applications that cannot be determined by Council:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards (See Schedule 1 below).

Schedule 1

1. Conflict of interest

Development for which the applicant or landowner is: (a) the council, (b) a councillor, (c) a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979, (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or (e) a relative (within the meaning of the Local Government Act 1993) of a person referred to in (b) to (d).

2. Contentious development

Development that is the subject of 10 or more unique submissions by way of objection. A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

In this instance Schedule 1, Part 3 is applicable as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% with a proposed 17.5% variation to Clause 4.3 height of SEPP (CRCP) 2021 therefore requires referral to, and determination by, the Sydney Central City Planning Panel.

2. Compliance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment (EP&A) Act, 1979, a consent authority may, in response to an application, modify a consent if,

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed modifications are considered to be of minimal environmental impact and are therefore acceptable. It is satisfied that the proposed modifications are substantially the same development as the development for which consent was originally granted under Development Application No. 694/2017/JP.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.

N/A

- (c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Application notified as per the regulations.

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

No submissions were received during the notification period. .

Commentary from the applicant:

The application is substantially the same as the approved development, with the provision of an additional unit and refinement of the unit mix. The changes to the plans are reasonably and appropriately considered 'substantially the same development' when having regard to case law set down by the Land and Environment Court.

Land and Environment Court Judgments

The question as to whether a modified proposal is 'substantially the same' as that originally approved has been an ongoing issue dealt with in the Land and Environment Court. It is also important to note that the Court has consistently described the Section 4.55-modification provision of the Act as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; "It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision" (see *North Sydney Council v Michael Standley & Associates Pty Limited* [1998]). As demonstrated below the change to an approval can be substantial without the amended proposal failing the 'substantially the same' test. By way of example, and relevant to the current proposal, the following cases were considered in the Court and found to be substantially the same development, with this extract contained in a *Gadens Publication* dated 17 June 2012:

Bassett and Jones Architects Pty Limited v Waverley Council (No 2) [2005]:

The modification application sought an additional storey to the approved front building of a mixed commercial and residential development, which would alter the building from three-storeys to four-storeys; and the provision of a zero side setback for a part of the external side walls at all three levels. This resulted in an increase in floor space of 112 square metres, being a 20 per cent increase in floor space, and a 28 per cent increase in height (both of which exceeded the applicable council controls). The Court found that the test was satisfied albeit only on "a very fine balance". The Court noted however that the modified design might give rise to privacy impacts that may warrant refusal of the application when the merits of the change are assessed. The application was later refused on its merits, but not before passing the "substantially the same" threshold test.

Davi Developments Pty Ltd v Leichhardt Council [2007]:

A modification application sought to change consent for a seven storey residential flat building with two levels of basement parking. There was to be a reduction of one floor, but an increase in the main parapet height by 900mm, and the substantial reconfiguration of the unit mix such that the numbers reduced from 42 to 30, with a rearrangement of the car park plan such that it was "entirely different". The Court nevertheless considered that the fundamental characteristics and essence of the building would remain essentially the same.

Bathla Investments Pty Limited v Blacktown City Council [2008]:

The original approval was for eight townhouses presenting as four, single-storey buildings. Some of the townhouses were attached. The modification application sought to change some of the townhouses to two storeys, and also sought to separate the dwellings and made changes to the garage designs and parking layout. The Court noted that there were "numerous differences" between the schemes, however, the townhouse development presented as materially and essentially the same development.

As can be seen above, particularly in *Bathla v Blacktown*, the Court noted that despite there being "numerous differences" the development presented as materially and essentially the same development. Having regard to the series of minor amendments proposed in this application, it is noted that the proposal remains materially and essentially the same development.

Therefore, the proposal is considered to be in essence substantially the same development as that originally approved.

Section 4.55(3) of the act requires a consent authority to consider:

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also

take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The minutes for the approval of the parent development application by the Sydney Central City Planning Panel are outlined as:

REASONS FOR THE DECISION

The Panel determined the application by way of deferred commencement approval for the following reasons:

- 1. The Panel approves the variations to the building height controls for the site, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of 'Appendix 11 The Hills Growth Centre Precincts Plan' of State Environmental Planning Policy (Sydney Region Growth Centres) 2006, and 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.*
- 2. Apart from the above height exceedance, the development is generally compliant with the relevant controls and planning instruments.*
- 3. The development is consistent with the planned future character of the area.*
- 4. The development will add to the supply and availability of housing in the West Central District and The Hills local government area, and will therefore contribute to housing affordability.*
- 5. With the imposition of the proposed conditions of consent, the development will have no unacceptable adverse impacts on the natural or building environments, including the amenity of nearby residential premises, or the operation of the local road system.*
- 6. In consideration of conclusions 2 – 5 above, and with the approval of the variation request, the Panel considers that the proposed development is a suitable use of the site and approval of the proposal is in the public interest*

This modification does not undermine the reasons for approval and remains consistent with them.

Comment:

The application, as demonstrated in this report and attached plans, is considered substantially the same as originally approved. This is considered acceptable and satisfactory in this instance. Accordingly, no objection is raised to the proposal under the provisions of Section 4.55(2) of the EP&A Act, 1979.

3. State Environmental Planning Policy (Resilience and Hazards) 2021 - (Formerly State Environmental Planning Policy No. 55 Remediation of Land)

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

Clause 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.*

Council's Environmental Health section has reviewed the amended proposal and raises no objections. As part of the original Development Application a preliminary investigation of the site was undertaken and a Phase 1 Contamination Assessment Report prepared by GeoEnviro Consultancy Pty Ltd was submitted and reviewed by Council's Environmental Health section at that time. The original report concluded that the risk of significant soil chemical contamination within the site to be generally low and therefore the site is suitable for the proposed development. A condition of consent was imposed in the original consent which required compliance with the above mentioned report. No changes to this original condition of consent are recommended. Subject to compliance with the original condition of consent, the site is suitable for its intended use.

4. Compliance with Requirements of SEPP (Central – River City Precinct) 2021

(i) Permissibility

The proposal is defined as a residential flat building:

“residential flat building” means a building containing three or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Pursuant to the SEPP (Central – River City Precinct) 2021, a residential flat building is permitted with consent within the R4 High Density Residential zone.

(ii) Development Standards

The following addresses the relevant principal development standards of the SEPP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for development	Residential flat building – 1,000m ²	4,790m ²	Yes
4.1B Residential Density	Minimum residential densities 30 dwelling per hectare	217 dwellings per hectare	Yes
4.3 Height of buildings	21 metres	Original approved height: 23.38m Proposed modified height: 24.68m	No – see comments below.
4.4 Floor space ratio	2:1	Original: 1.82:1 Proposed modified FSR: 1.88:1 (as a result of the additional unit)	Yes

(iii) Other Provisions

The proposal has been considered against the relevant provision of the SEPP. Specific regard has been given to Clauses:

- 5.9 Preservation of trees or vegetation; and
- 6.1 Public utility infrastructure;

The proposal has been considered against these provisions and satisfies each of the standards and objectives relating to each of the clauses.

(iv) Variation to Height

Clause 4.6 Exceptions to Development Standards states as follows:

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

(6) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

SEPP (Precincts – Central River City) 2021 limits the height of development to 21m and the maximum height of the development is 24.68m, a variation of 3.68m or 17.5%.

The applicant has submitted a Clause 4.6 Variation (refer to Attachment 12) and is summarised as follows:

a) The proposal is in close proximity to the Rouse Hill Town Centre and the extent of non-compliance represents an appropriate higher density on the site as the extent of variation and also provide a 1.88:1 FSR that is less than the maximum permitted FSR.

b) The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas with the extent of overshadowing is not unreasonable for density envisaged of this scale within the Box Hill precinct;

c) The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting the uneven topography is the key driver of the height variation rather than a desired to achieve greater yield on the site;

d) The proposal has no impact on heritage or other views; and e) The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Box Hill Precinct.

Comment:

The height objectives of the SEPP are:

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

The height of the development is satisfactory given that it is appropriately separated from any adjoining development and the shadow impact is expected given the scale and high density zoning of the area. The overall maximum variation of 3.68 metres is a result of the lift overrun that provides access to the roof top terrace, and to enable the provision of 2700mm floor to ceiling heights and sprinklers to habitable areas by providing a total of 3.1m floor to floor heights. The overall height of the northern part of the building exceeds the maximum height limit by 700mm and the southern part of the building by 1300mm to 24.68m (a overall variation of 17.5%) to the top of the highest lift overrun. It is noted that the original approval varied the height to 23.38m or 11.3% variation.

All habitable floor areas are under the 21 metre height limit, and the development remains a 7 storey development in accordance with the envisaged scale of the development site by the planning controls. The development is comparable in scale with recently approved residential flat building developments in the locality.

Overall, the proposal responds to the existing topography of the site within its context and the development incorporates a variety of finishes/colours and will result in an appropriate urban outcome. The non-compliances do not result in any significant adverse amenity impacts and will not result in a detrimental impact on the streetscape.

It is considered that the variation results in a better planning outcome as the maximum exceedance in height is for the lift overrun which provide access to the roof top gardens and provides for a higher level of amenity for future residents. The roof top garden has barrier free access and provides for a passive recreational area which includes, seating areas and a barbeque for residents to enjoy. Lowering of the building to facilitate full compliance with the height limit would lower habitable floor to ceiling heights, reducing internal amenity for residents and resulting in non-compliance with SEPP 65 requirements.

Recent changes to the National Construction Code (2019) state that a Class 2 or 3 residential building with a rise in storeys of four or more (and an effective height of 25 metres or less) is to have a sprinkler system. Lowering the building would result in non-compliance with the National Construction Code (NCC) requirements for the provision of sprinklers.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- 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 R4 High Density Residential zone objectives;

- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

Accordingly, the proposed height is considered satisfactory and can be supported in this instance. In accordance with the Departments Circular PS 08-003 the 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.

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

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

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

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

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

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

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

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

Comment:

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

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

- The proposal will provide a range of units types (1, 2 and 3 bedrooms) which will assist in meeting housing demands;

- The high density development is located in close proximity to the B2 Local Centre and B7 Business Park, and will contribute to the viability of the Box Hill Precinct;
- The site is located in close proximity to RE1 Public Recreation zoned land providing residents greater access to open space for enjoyment;
- To cater for the changing needs of residents and aging households, 11 units (10.5%) are capable of adaptation for access by people with all levels of mobility.

The proposal is considered satisfactory with regard to the Central City District Plan.

6. Compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The subject modification application has been assessed against the relevant provisions of SEPP No. 65 – Design Quality of Residential Apartment Development and The Apartment Design Guide (ADG). It is considered the proposed development as amended is compliant with the SEPP and ADG requirements.

The required Design Verification Statement was prepared by Architect Katherine Davies, Registered No. 6363, of AVA Architects.

The modification achieves a development outcome which will achieve a high level of residential amenity to the residents of the development. Overall, the proposed development (as modified) continues to adequately address the relevant provisions of the SEPP and ADG and is consistent with the design outcome as previously approved, nevertheless while this is only a modification application an assessment against the relevant design quality principles contained within SEPP No. 65 is still provided below:

Principle 1: Context and neighbourhood character

- 7-9 Terry Road forms part of the Box Hill Precinct under the North West Growth Centre that is being progressively developed by individual lots.
- Box Hill is a semi rural and low density residential area that is being progressively transitioning into a new residential neighbourhood that is part of the North West Growth Area.
- The approved plan incorporates a new street network. The approved building is set in landscaped communal areas within the subject site.
- The site is located near the future Box Hill Town Centre that will provide the retail and community focus for the Box Hill Precinct.
- The locality is an R4 zoning and it is expected that the surrounding low density residential and rural properties will be redeveloped for higher densities over the next decade.
- A number of nearby sites, 11-15 Terry Road, 4 Alan Street and 11 Alan Street have recently approved residential flat buildings of 6 and 7 stories.

Principle 2: Built form and scale

- The Deferred Commencement approval 694/2017/JP approved 103 apartments on the site. The modification seeks to increase the number of units to 104 which remains consistent with the density objectives of the local Council.
- The building form and scale of the modification is consistent with the approval 694/2017/JP and reflects the approved 7 story heights of the buildings.
- There is no adjustment to the number of stories in either the lower or upper building however modification to the height of the upper portion of the building has been raised in order that, structure, mechanical exhaust and clearance into the car park in accordance with 2890.1 can be achieved.
- The building separation and configuration is consistent with the approval 694/2017/JP and the SEPP 65 / Apartment Design Guide.

- The external appearance of the building is proposed to express a more streamlined and horizontal appearance. A mix of solid and glass balustrades create a distinct banding in combination with curved balconies

Principle 3: Density

- The Deferred commencement approval 694/2017/JP approved 103 units with a gross floor area of 8,707.5m² on a gross site area including the future road of 4790 m².
- The modification proposes 104 units with a gross floor area of sqm on a net site area of 3,621sqm.
- The surrounding lots are being concurrently developed and are of a comparative density consistent with the intent of the masterplan.
- Direct connections to nearby regional transport hubs.

Principle 4: Sustainability

- The development is design to embrace ESD principles, especially passive solar design. The use of appropriate built form with multiple cores and corner apartments generates natural cross ventilation. The massing and orientation provides good natural day lighting and solar access into the primary living spaces and external living areas.
- Energy efficient appliances and water efficient devices will be specified to minimize water consumption of resources.
- Deep soil planting is provided in street setbacks.
- A BASIX Certificate accompanies the Development Application submission and indicates that the development will meet the NSW Governments requirements for sustainability.

Principle 5: Landscape

- The total development provides generous open landscape areas as required by the DCP comprising of communal open areas, landscape street setback, ground level courtyards and roof terraces.
- There are many layers of open space providing a hierarchy that responds to the need for a variety of different activities to occur within the site.
- Set backs to the surrounding streets provide for generous deep soil planting, trees and planted entry forecourts.
- Communal open space are around each building and located on the roofs of the lower building providing BBQ facilities for residents.
- Each apartment will have a balcony of generous depth that has been located to maximise light and outlook while considering privacy.
- On completion the development will provide 27% of the site as open space and 7.1% deep soil which is above the minimum requirements of the ADG.

Principle 6: Amenity

- The organization of built form and open space is laid out in response to the proposed urban morphology and the intrinsic opportunities and the constraints of the site.
- The modification provides 70% solar access and 60% natural cross ventilation to living areas of apartments and private open space.
- Privacy is maintained between apartments through building separation orientation and internal layouts.
- There is good outlook to a range of green, open spaces.
- 11 adaptable apartments are located throughout the buildings to different unit types to offer variety to potential purchasers.

Principle 7: Safety

- Safe access is achieved by a number of primary clear pedestrian access points. Individual apartments at ground level to the street will also have opportunity for direct access, providing further street activation.

- Passive surveillance is afforded by balconies and windows at the higher level taking in all aspects.
- The new street network, when seen as part of the wider subdivision includes no cul-de-sacs so the streets themselves will remain active with through traffic.
- The areas that are of a more restricted communal nature are clearly identified through their detailing and secure boundaries

Principle 8: Housing diversity and social interaction

- The proposal provides a range of unit types and sizes that shall appeal to different price points.
- There are 104 apartments with a mix of, 17 1 bed (16.3%), 67, 2 bed (62.6%) and 20, 3 bed (19.2%).
- The area of Box Hill is a new growth area that will attract residents from a wide range of backgrounds and age groups.
- The communal open spaces are located between the two buildings and on the roof of the lower building.
- The communal open spaces are designed to engender community spirit for residents within the development.

Principle 9: Aesthetics

- The building aesthetic that was established with the deferred commencement approval utilised a complex mix of materials and colours. The approval has been purchased by a new developer who seeks a simplified and more contemporary aesthetic.
- The building materials are to be amended to a Hebel Power Panel Façade with glazing. The palette of the building is limited to 3 colours to allow elements to be strongly contrasting to create a fresh contemporary aesthetic that can showcase a landscape design to all boundaries of the site.
- An awning has been introduced to clearly identify entry points. The fencing to private courtyards will be powder coated vertical slat on masonry upstands where internal drainage flows are not required.
- Window proportions and configuration have been amended to provide exhaust, and better satisfy natural ventilation requirements.

Apartment Design Guidelines

In accordance with Clause 30(2) of SEPP 65, a consent authority in determining a Development Application for a residential flat building is to take into consideration the Apartment Design Guidelines. The following table is an assessment of the proposal against the Design Criteria provided in the Apartment Design Guidelines.

Clause	Design Criteria	Compliance
Siting		
Communal open space	25% of the (developable portion of the) site, with 50% of the area achieving a minimum of 50% direct sunlight for 2 hours midwinter.	<p>933.25m² required</p> <p>The modified development provides 979m² of communal open space that equates to 26.2% of the site area.</p> <p>Yes, receives minimum 2 hrs to 50% in mid winter.</p>

Deep Soil Zone	7% of site area. On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1500m ² and 15% for sites greater than 1500m ² .	Yes The modified development provides 257.25m ² of deep soil that equates to 7% of the site.
Separation	For habitable rooms, 12m for 4 storeys, 18m for 5-8 storeys and 24m for 9+ storeys.	Yes, provided.
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Yes, provided.
Carparking	Carparking to be provided based on proximity to public transport in metropolitan Sydney. For sites within 800m of a railway station or light rail stop, the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is: Metropolitan Sub-Regional Centres: 0.6 spaces per 1 bedroom unit. 0.9 spaces per 2 bedroom unit. 1.40 spaces per 3 bedroom unit. 1 space per 5 units (visitor parking).	Not Applicable - Not located within a metropolitan sub-regional centre. The proposed 135 car parking spaces meet the minimum DCP car spaces requirement.
Designing the Building		
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.	Yes, 73 of 104 units or 70.1% receive required solar access.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	No change to originally approved provision of solar access.
Natural ventilation	At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.	No change to originally approved provision of natural ventilation.
Ceiling heights	For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where it's area does not exceed 50% of the apartment area. For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope. If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.	Yes Complies, as all levels achieve a minimum of floor to ceiling height of 2.7m.

Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m² 1 bedroom – 50m² 2 bedroom – 70m² 3 bedroom – 90m²</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	<p>Yes</p> <p>All units comply with many units exceeding.</p>
Apartment layout	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	<p>Yes</p> <p>All units comply.</p>
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m² with no minimum depth 1 bedroom – 8m² with a minimum depth of 2m 2 bedroom – 10m² with a minimum depth of 2m 3 bedroom – 12m² with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m² with a minimum depth of 3m is required.</p>	<p>Yes</p> <p>All units comply with the minimum balcony or POS areas.</p>
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m³ 1 bedroom – 6m³ 2 bedroom – 8m³ 3+ bedrooms – 10m³</p> <p>At least 50% of the required storage is to be located within the apartment.</p>	<p>Yes</p> <p>All units provide the required storage.</p> <p>Storage is provided within the basement/ground floor and within the units themselves, with a minimum of 50% of storage to be provided within each individual unit. The proposed development is considered to offer storage space in excess of the provisions of the ADG.</p>

Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	17 x 1 bedroom = 16% 67 x 2 bedroom = 64% 20 x 3 bedroom = 20% The proposed unit mix will offer a variety of housing choice. The proposal is designed with a mix of units to provide a variety of housing choices, noting that the bedroom numbers and size of units are varied that will provide for a range of sizes to meet the needs of occupants.
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7. Compliance with State Environmental Planning Policy (BASIX) 2004

State Environmental Planning Policy (BASIX) 2004 applies to the proposed development and aims to reduce the consumption of mains-supplied water, reduce emissions of greenhouse gases and improve the thermal performance of the building.

A BASIX assessment has been undertaken and indicates that the development will achieve the required targets for water reduction, energy reduction and measures for thermal performance. The commitments as detailed in the amended BASIX Certificates will be imposed as a condition of consent (refer to amended Condition 62).

8. Compliance with the Box Hill Development Control Plan 2017

The proposed development achieves compliance with the relevant requirements of the development controls and does not alter compliance with, or change the original assessment of the proposal against, the relevant DCP controls.

It is noted that an additional unit is provided and 7 extra car spaces. In this regard, and to demonstrate the proposal still complies, a brief assessment against DCP parking requirements is below:

DCP rate for Residential Flat Buildings

Car parking spaces: 1 per unit plus 0.5 per 3 bed

84 units x 1 and 2 bed = 84 spaces required

20 units x 3 bed = 30 spaces required

1 visitor space per 5 units = 20.8 (21)

Total required = 135

Total provided = 135

The development requires 135 car parking spaces on site. The proposal provides 135 car parking spaces, comprising of 114 residential car parking spaces and 21 visitor car parking spaces and as such complies with Council's car parking provisions.

SUBDIVISION ENGINEERING COMMENTS

No objection raised to the proposal. The original deferred commencement requirements have been satisfied as the easement has been registered and a full operative consent has been issued. All previous conditions are still applicable with the exception of conditions Nos. 34 and 35 which have been amended to reflect updated engineering plans.

LANDSCAPING AND TREE MANAGEMENT COMMENTS

No objection raised to the proposal. All previous conditions are still applicable with the exception of conditions nos. 7, 48 and 77, which have been amended to reflect updated plans. New conditions 23c, 60a and 73a have been added.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection raised to the proposal. The conditions recommended previously are still relevant and a small change is recommended to conditions 29 and 30, which relate to acoustics, to reflect the modified proposal.

WASTE MANAGEMENT COMMENTS

No objection raised to the proposal. The conditions recommended previously are still relevant. Minor changes have been made to condition No. 21. Condition No. 40 has been deleted. New conditions 23a, 23b, 97a, 97b, 97c and 97d have been added.

CONCLUSION

The proposal has been assessed having regard to the provisions of Section 4.15 and 4.55 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Central – River City Precinct) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and is considered satisfactory.

The proposed development responds and contributes to the context of the built environment surrounding it. The proposal will be in context with the surrounding developments and consistent with the zoning based on future desired outcomes for this region. The bulk, scale and height of the proposed development has been modelled to ensure compatibility with other existing and proposed buildings in the immediate and surrounding locality. The proposed building is in keeping with the bulk and scale of the precinct whilst taking into consideration the current existing form of various neighbouring properties.

Accordingly approval subject to conditions is recommended.

IMPACTS:

Financial

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

The Hills Future - Community Strategic Plan

The proposed development is consistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for satisfactory urban growth without adverse environmental or social amenity impacts and ensures a consistent built form is provided with respect to the streetscape and general locality.

RECOMMENDATION

The Section 4.55 application for modification of Development Consent Number 694/2017/JP be approved as follows:

CONDITIONS OF CONSENT

1. Condition Nos. 1, 5, 7, 21, 26, 29, 30, 34, 35, 48, 62 and 77 to be **deleted** and **replaced** as follows:

GENERAL MATTERS

1. Development in Accordance with Submitted Plans (as Amended)

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

Amendments in red: Substitute timber boardwalk with concrete fire egress path

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	ISSUE	DATE
03	Site Plan	A	22/10/2021
04	Basement 2	A	22/10/2021
05	Basement 1	C	17/05/2022
06	Lower Ground – Access from Terry Road	E	17/05/2022
07	Lower Ground – Access from Future Road	D	17/05/2022
08	Ground Floor	D	17/05/2022
09	Level 1 – Level 2	A	22/10/2021
10	Level 3	A	22/10/2021
11	Level 4 – Level 5	A	22/10/2021
12	Level 6	A	22/10/2021
13	Roof Plan	A	22/10/2021
14	Elevations	B	27/04/2022
15	Elevations	B	27/04/2022
16	Sections (B)	A	22/10/2021

16	Sections (A)	A	22/10/2021
17	Sections (C)	A	22/10/2021
17	Sections (D)	A	22/10/2021
18	Adaptable Unit	A	22/10/2021
19	Adaptable Unit	A	22/10/2021
20	Typical Liveable Unit	A	22/10/2021
21	Detail Ramp Sections	A	22/10/2021
22	Driveway Ramp Section	A	22/10/2021
1 of 4	Landscape Site Plan	C	17/05/2022
2 of 4	Level 6 Landscape Plan	C	16/05/2022
3 of 4	Planting Plan	C	16/05/2022
4 of 4	Details and Notes	C	16/05/2022
29	Artists Impression	A	27/04/2022
-	Street/Unit Numbering Plans (7 Pages – for numbering purposes only)	-	-

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.

5. Provision of Parking Spaces

The development is required to be provided with 135 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

7. Tree Removal

Approval is granted for the removal of trees numbered 2, 3, 4 and 10-17 as detailed in the Arboricultural Impact Assessment prepared by Redgum Horticultural dated 10 August 2016, and for trees as listed on the provided written concurrence from Jacs Angels Pty Ltd, dated 18 May 2022, approving the removal of trees prior to works commencing.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

21. Construction of Bin Room

All work involving construction of the bin room must comply with the requirements below. Minimum storage facility must be provided for 12 x 1100 litre garbage bins and 12 x 1100 litre recycling bins.

1. The layout of the bin room must ensure that each bin is easily accessible and manoeuvrable in and out of the bin room with minimal or no manual handling of other bins.
2. The walls of the bin room must be constructed of brickwork.
3. The floor of the bin room must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer.
4. The bin room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. When access from Terry Road is terminated, and the temporary truck loading bay is relocated, a waste servicing door must be provided which opens directly onto the rear of the new truck loading bay. Acceptable waste servicing doors are single or double swinging doors and roller doors.

5. The bin room must have a suitable resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors.
6. All doors of the bin room, when fully opened, must be flush with the outside wall and must not block or obstruct passageways. All doors must be able to be fixed in position when fully opened.
7. The bin room must be adequately ventilated (mechanically).
8. The bin room must be provided with a hose tap, connected to a water supply, to facilitate bin washing. If the tap is located inside the bin room, it is not to conflict with the space designated for the placement of bins.
9. The bin room must be provided with an internal light (artificial) such as an automatic sensor light.
10. The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance are these grades to be exceeded. Bins must be accessible by collection contractors via ramped access only. A platform lift or stairs are not acceptable.
11. The bin room must contain a caged area for the interim storage and management of unwanted bulky goods. The minimum floor area required is 8m².
12. The bin room must have appropriate signage, provided by Council, mounted in a visible location on an internal wall and is to be permanently maintained by the Owners Corporation.
13. Finishes and colours of the bin room are to complement the design of the development.

Bin Measurements (mm)

660L: 850 (d) 1370 (w) 1250 (h) 1100L: 1245 (d) 1370 (w) 1470 (h)

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

26. Section 7.11 Contribution

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

Payments comprise of the following:-

	Purpose: 1 bedroom unit	Purpose: 2 bedroom unit	Purpose: 3 bedroom unit	Purpose: Credit
Open Space - Land	\$ 5,625.33	\$ 5,956.24	\$ 6,640.98	\$ 6,640.98
Open Space - Capital	\$ 7,066.72	\$ 7,482.42	\$ 8,342.61	\$ 8,342.61
Transport Facilities - Land	\$ 545.27	\$ 577.35	\$ 643.72	\$ 643.72
Transport Facilities - Capital	\$ 4,665.63	\$ 4,940.07	\$ 5,508.00	\$ 5,508.00
Water Management - Land (KCP)	\$ 2,073.98	\$ 2,195.97	\$ 2,448.43	\$ 2,448.43
Water Management - Capital (KCP)	\$ 5,214.34	\$ 5,521.07	\$ 6,155.78	\$ 6,155.78
Administration	\$ 220.64	\$ 233.62	\$ 260.47	\$ 260.47
Total	\$ 25,411.91	\$ 26,906.73	\$ 30,000.00	\$ 30,000.00

No. of 1 Bedroom Units: 17	No. of 2 Bedroom Units: 67	No. of 3 Bedroom Units: 20	Sum of Units	No. of Credits: 2	Total \$94
\$ 95,630.62	\$ 399,067.78	\$ 132,819.66	\$ 634,159.03	\$ 13,281.95	\$ 620,877.07
\$ 120,134.32	\$ 501,321.84	\$ 166,852.26	\$ 796,651.03	\$ 16,685.23	\$ 779,965.80
\$ 9,269.67	\$ 38,682.45	\$ 12,874.38	\$ 61,470.22	\$ 1,287.45	\$ 60,182.77
\$ 79,315.65	\$ 330,984.75	\$ 110,159.99	\$ 525,968.39	\$ 11,016.00	\$ 514,952.39
\$ 35,257.59	\$ 147,130.30	\$ 48,968.62	\$ 233,804.94	\$ 4,896.86	\$ 228,908.08
\$ 88,643.72	\$ 369,911.46	\$ 123,115.67	\$ 587,826.63	\$ 12,311.57	\$ 575,515.06
\$ 3,750.91	\$ 15,652.34	\$ 5,209.43	\$ 24,873.15	\$ 520.94	\$ 24,352.21
\$ 432,002.47	\$ 1,802,750.91	\$ 600,000.00	\$ 2,864,753.38	\$ 60,000.00	\$ 2,804,753.38

The contributions above are applicable at the time this consent was issued. Please be aware that Section 7.11 contributions are updated at the time of the actual payment in accordance with the provisions of the applicable plan.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0555. Payment must be made by cheque or credit/debit card. Cash payments will not be accepted.

This condition has been imposed in accordance with Contributions Plan No 15.

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.

29. Acoustics – Mechanical Ventilation

Prior to any Construction Certificate being issued an acoustic report is to be prepared by a suitably qualified acoustic consultant for any mechanical ventilation proposed to service the basement carpark (exhaust), garbage room or the like. The acoustic report is to provide recommendations for any acoustic attenuation measures; provide a justified project specific criteria and include plans and elevations showing the proposed finish.

The acoustic report is to be submitted to Council's Manager – Environment and Health for review and if satisfactory, written acceptance will be provided in support of a Construction Certificate being issued.

30. Acoustics – Construction Noise Management Plan

Prior to the issue of any Construction Certificate a Construction Noise Management Plan (CNMP) is to be prepared by a suitably qualified acoustic consultant and submitted to Council's Manager – Environment and Health for review and if satisfactory, written acceptance will be provided in support of a Construction Certificate being issued. The CNMP is to demonstrate how compliance with the *Interim Construction Noise Guideline* published by the Department of Environment and Climate Change, 2009 can be achieved and specifically address potential noise and vibration impacts due to rock breaking for the basement carpark.

34. Engineering Works and Design

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" as categorised below:

1. Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively.
2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flow path within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/ maintenance liability with respect to these assets once completed. A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" can be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction, a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction

Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.

3. Works within the development site, or adjoining private properties, that do not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so. This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

The following engineering works are required:

a) Terry Road Frontage

Design levels across Terry Road frontage must be consistent with the final Terry Road design being carried out by Council. If any retaining structures required to be provided, it must be located within the site.

b) Full Width Road Construction

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

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Brookline Crescent (Proposed Loop Road)	Road Type: DCP Local Street 3.5m/ 11m/ 3.5m (18m) Pavement Design: Local (Design Guidelines Section 3.12)

Detailed design must be reflective of a set of Civil Engineering Concept plans (2173 – DA) Issue A dated 17/10/2016 prepared by Mance Arraj Engineers and associated drawings submitted with the application are considered concept only.

The full width construction of Brookline Crescent requires Council's concurrence being the owner of adjoining Turnbull Reserve to the south-east of the development site. The applicant must contact Council's Property Manager on this matter in advance to organise the approvals.

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

Except where a modified kerb treatment is required (such as for roadside bio-retention swales) roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

c) Terry Road - Improvement Works

Improvement of road shoulder fronting the development to trafficable standards must be carried out until the Brookline is complete and to provide permanent access to the development.

d) Street Names Signs

Street name signs and posts are required in accordance with the above documents and Council's Standard Drawing 37. Details for all signage and line-marking must be submitted to Council for checking prior to works commencing.

e) Footpath Verge Formation

The grading, trimming, topsoiling and turfing of the footpath verge of Brookline Crescent and Terry Road within and 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.

f) Concrete Footpath

A 1.2m wide concrete footpath, including access ramps at all intersections, must be provided on southern side of Brookline Crescent in accordance with the DCP and the above documents.

g) 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.

h) 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.

i) Stormwater Drainage – Temporary Works

Temporary Stormwater Drainage works must be carried out within the Inter Allotment Drainage Easement be created over the downstream properties as required in this consent to the requirements of the affected property owner.

j) Stormwater Drainage – Pipe Extension

Construction of new kerb inlet pits in Alan Street fronting the property where drainage easement is created over and the street drainage extended to connect it to the existing drainage pipe downstream. The pipe extension must be located under the existing/future kerb requiring the removal and reconstruction of the kerb and gutter and road shoulder.

The pipe extension shall be generally in accordance with the Stormwater concept plan prepared by MANCE ARAJ CIVIL AND STRUCTURAL ENGINEERS Revision A Dated 16/09/2021.

35. Integrated Site Stormwater Management

Temporary and Permanent Stormwater Management measures in the form of Rainwater Tank (permanent), Onsite Stormwater Detention System (temporary) and Storm Filter cartridges must be provided with the development in accordance with Stormwater concept plan prepared by MANCE ARAJ CIVIL AND STRUCTURAL ENGINEERS Revision A Dated 16/09/2021 and associated Stormwater Quality Management report, all documents prepared by Mance Arraj engineers.

The purpose of the temporary stormwater management measures is to ensure there is no impact downstream between the pre-development and post development conditions, both with respect to the volume and quality of runoff, for a range of storm events. The cost of removing these temporary stormwater management measures and all associated re-work to pits and pipes must be determined at the detailed design stage, with a bond for 150% of the cost of these works submitted to ensure this occurs when the permanent basin/ rain garden planned further north-east (KC01) on the Box Hill contribution plan is constructed and runoff from the subject site is/ can be connected to the same via the development of the intermediary properties downstream. The bond amount must be confirmed with Council prior to payment.

Where the design of any temporary stormwater management measure relies on steep batters; the design must incorporate whatever stabilisation methods are recommended by a geotechnical engineer in consultation with Council's Construction Engineer.

Detailed plans for the water quality design elements must be reflective of the approved concept plans. 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 associated models and data outputs, and electronic copies of DRAINS and MUSIC models are to be provided.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to:

Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>

Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

The design and construction of the Integrated OSD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:

- i. A completed application form;
- ii. Electronic copy of MUSIC model to be compatible with final drainage design;
- iii. A maintenance schedule.
- iv. Electronic copies of the design plans and specifications;
- v. Payment of the applicable application and inspection fees.

PRIOR TO WORK COMMENCING ON THE SITE

48. Protection of Existing Trees

The trees that are to be retained are to be protected during all works strictly in accordance with AS4970- 2009 Protection of Trees on Development Sites

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the tree protection zone,
- Placement of fill within the tree protection zone,
- Parking of vehicles within the tree protection zone,
- Compaction of soil within the tree protection zone.

All areas within the tree protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

DURING CONSTRUCTION

62. Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 1243456M are to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

A Section 96 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 96 Application **will** be required for a BASIX Certificate with a new number.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

77. Landscaping Prior to Issue of 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 Landscape plan by Paul Scrivener Landscape Issue C dated 17/05/22 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.

2. The **addition** of the following conditions.

GENERAL MATTERS

23a. Provision of Kitchen Waste Storage Cupboard

Waste storage facility must be provided in each unit/dwelling to enable source separation of recyclable material from residual garbage. Each unit/dwelling must have a waste storage cupboard provided in the kitchen with at least 2 removable indoor bins with a minimum capacity of 15 litres each. 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.

23b. Provision of Bulky Goods Storage Area

A separate room or caged area for unwanted bulky goods must be provided that opens directly onto the designated waste service bay. The area must be designed and constructed in accordance with the following requirements.

- The area must have a minimum floor area of 4m² per 50 apartments. Floor space must be rounded up to the nearest 50 apartments for best operational outcome
- The floor of the area must be constructed of concrete with a smooth non-slip finish.
- The area must have a suitable resident access door, with a minimum clear floor width of 2m (to allow access for large items). Suitable resident access doors are single or double swinging doors.
- The resident access door, when fully open, must be flush with the outside wall and must not block or obstruct car park aisles or footways. The door must be able to be fixed in position when fully opened.
- The area must be provided with lighting, such as automatic sensor lights.

23c. Planting Requirements

Trees planted as part of the approved Landscape Plans prepared by Paul Scrivener Landscape Issue C dated 17/05/22 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/m².

For all planting on slab and planter boxes the following minimum soil depths must be provided:

- 1.2m for large trees, 1m for medium trees or 800mm for small trees;
- 650mm for shrubs;
- 300-450mm for groundcover; and
- 200mm for turf.

Note: this is the soil depth alone and *not* the overall depth of the planter.

23d. Property Numbering and Cluster Mail Boxes for Residential Flat Buildings

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

The overall property address for this development is: - 7 Terry Road, Box Hill

Approved unit numbering is as per plans submitted marked as Project 21014, DWG No S4.55_00; S4.55_06; S4.55_08 – S4.55_012; Rev A Dated 22/10/2021 and marked up as 'Numbering Plans' by Council's Land Information Team within consent documentation; and as follows:

Level	Building A	Building B
Lower Ground	NIL	LG01 - LG08
Ground	G09 – G12	G01 - G08
One	109 – 116	101 – 108
Two	209 – 216	201- 208
Three	309 – 316	301 – 308
Four	409 – 415	401 – 408
Five	509 – 515	501 – 508
Six	601 – 606	NIL

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 unit numbering be repeated or skipped throughout the development regardless of the building name or number.

Approved numbers, unless otherwise approved by Council in writing, are to be displayed clearly on all door entrances including stairwells, lift and lobby entry doors.

External directional signage is to be erected on site at driveway entry points and on buildings to ensure that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination easily & quickly.

Mail Boxes

Australia Post requires cluster mail boxes to be as close to the footpath or road as possible.

Locations as provided on plans Project 21014, DWG No S4.55_06 and S4.55_08; Rev A Dated 22/10/2021 are to be approved by Australia Post for mail delivery. Plans are to be provided to Gregory Dimmock at the Seven Hills Delivery Centre via email

Gregory.dimmock@auspost.com.au or phone 02 9674 4027. Australia Post approval is required to be provided to Council.

The number of mail boxes to be provided is to be equal to the number of units plus one (1) for the proprietors of the development and be as per Australia Post size requirements.

The proprietor's additional mail box is to be located within the cluster located at Building B.

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 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.

PRIOR TO WORKS COMMENCING

60a. 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.

DURING CONSTRUCTION

73a. 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.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the PCA within 14 days of completion of the works.

PRIOR TO THE ISSUE OF A FINAL OCCUPATION CERTIFICATE

97a. Provision of Signage for Waste Storage Areas

Prior to any Occupation Certificate being issued, a complete full set of English and traditional Chinese waste education signage (garbage, recycling and no dumping) must be installed in a visible location on every internal wall of all waste storage areas. The signage must meet the minimum specifications below and must be designed in accordance with Council's approved

artwork. Waste signage artwork can be downloaded from Council's website; www.thehills.nsw.gov.au.

1. Flat size: 330mm wide x 440mm high
2. Finished size: 330mm wide x 440mm high. Round corners, portrait
3. Material: Aluminium / polyethylene composite sheet 3.0mm, white (alupanel)
4. Colours: Printed 4 colour process one side, UV ink
5. Finishing: Over laminated gloss clear. Profile cut with radius corners and holes.

97b. Domestic Waste Collection Risk Assessment

Prior to any Occupation Certificate being issued, a risk assessment must be undertaken on site by Council's Coordinator Resource Recovery. The time for the assessment must be arranged when clear unobstructed circulation in and out of the site is available for Council's Domestic Waste Contractor to perform a mock collection run at the site.

97c. Installation of Master Key System to Waste Collection Room

Before the issue of an Occupation Certificate, the site project manager must organise with Council's contractor to install a lock box fitted with Council's Waste Management Master Key System 'P3520', to provide access to the waste storage area for collection. The lock box must be fitted to the wall outside the waste storage area at the cost of the developer. Please contact Council's Resource Recovery Assessment Officer to organise the installation.

97d. Insect and Odour Control

Before the issue of an occupation certificate, Council's Resource Recovery Assessment Officer must be satisfied with the installation of an insect control system provided in the waste holding or collection room. The equipment installed must be an ultraviolet fly trap with a UV lamp of at least 20W or higher or similar. The fly trap should be an electric-grid style and mounted to an internal wall or attached to the ceiling. In addition, an adequate air deodoriser must be installed to help prevent offensive odours.

3. The **deletion** of the following condition.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

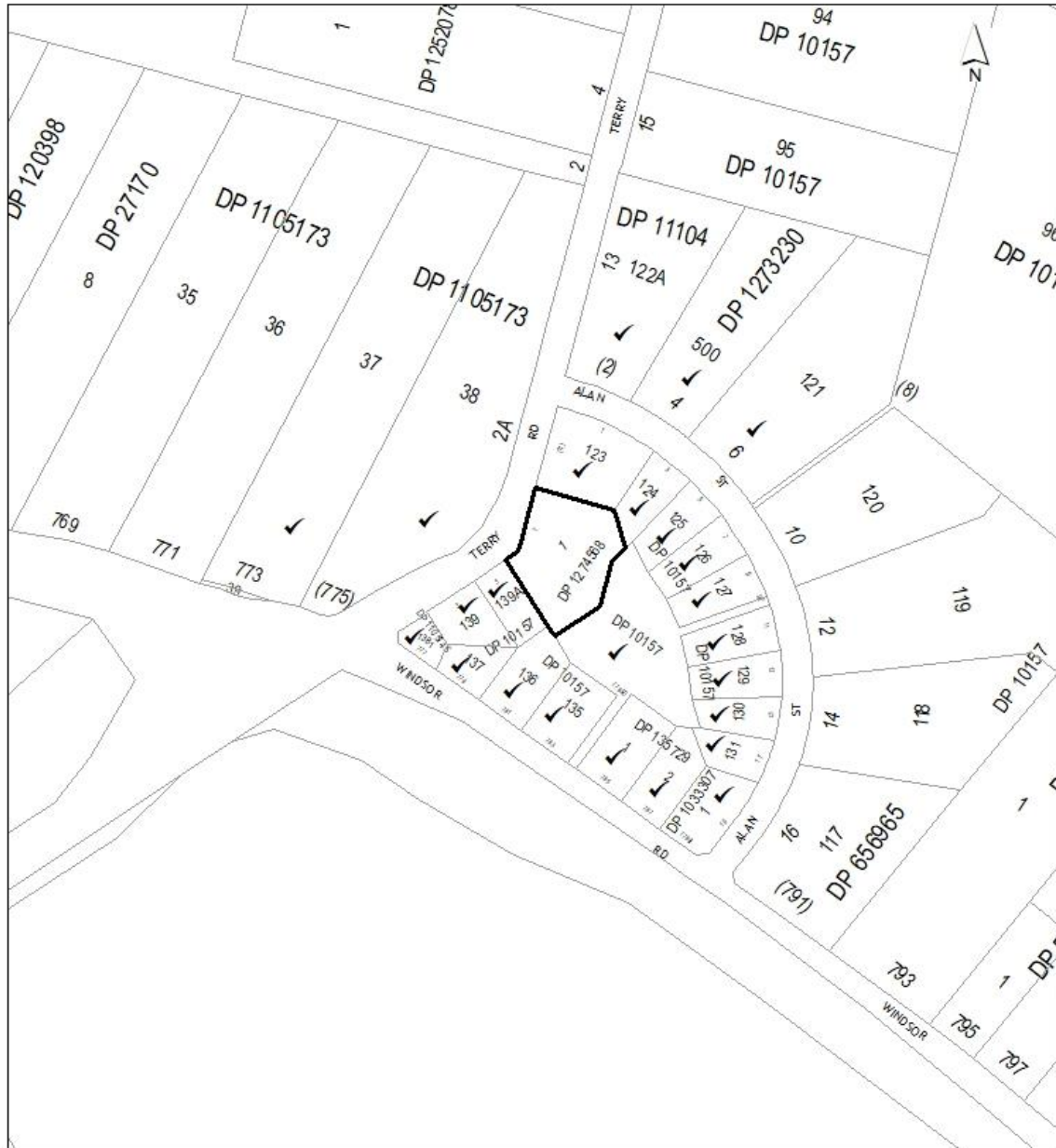
40. Redesigned Bin Room Required

Prior to a Construction Certificate being issued, amended plans must be submitted to and approved by Council showing a revised bin room design. The revised bin room design must ensure that bins are accessible by collection contractors via ramped access only. The maximum ramped gradient acceptable is 5%. Additionally, the bin room design must comply with the requirements specified in the Condition titled 'Construction of Bin Room'.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Zoning Map
4. Zoning Map with DCP Roads
5. Height Map
6. Site Plan
7. Elevations
8. Landscape Plan
9. Perspectives
10. Shadow Diagrams
11. Height Plane Diagram
12. Clause 4.6 Variation
13. Original Development Consent

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED


THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT 2 – AERIAL PHOTOGRAPH



 SUBJECT SITE

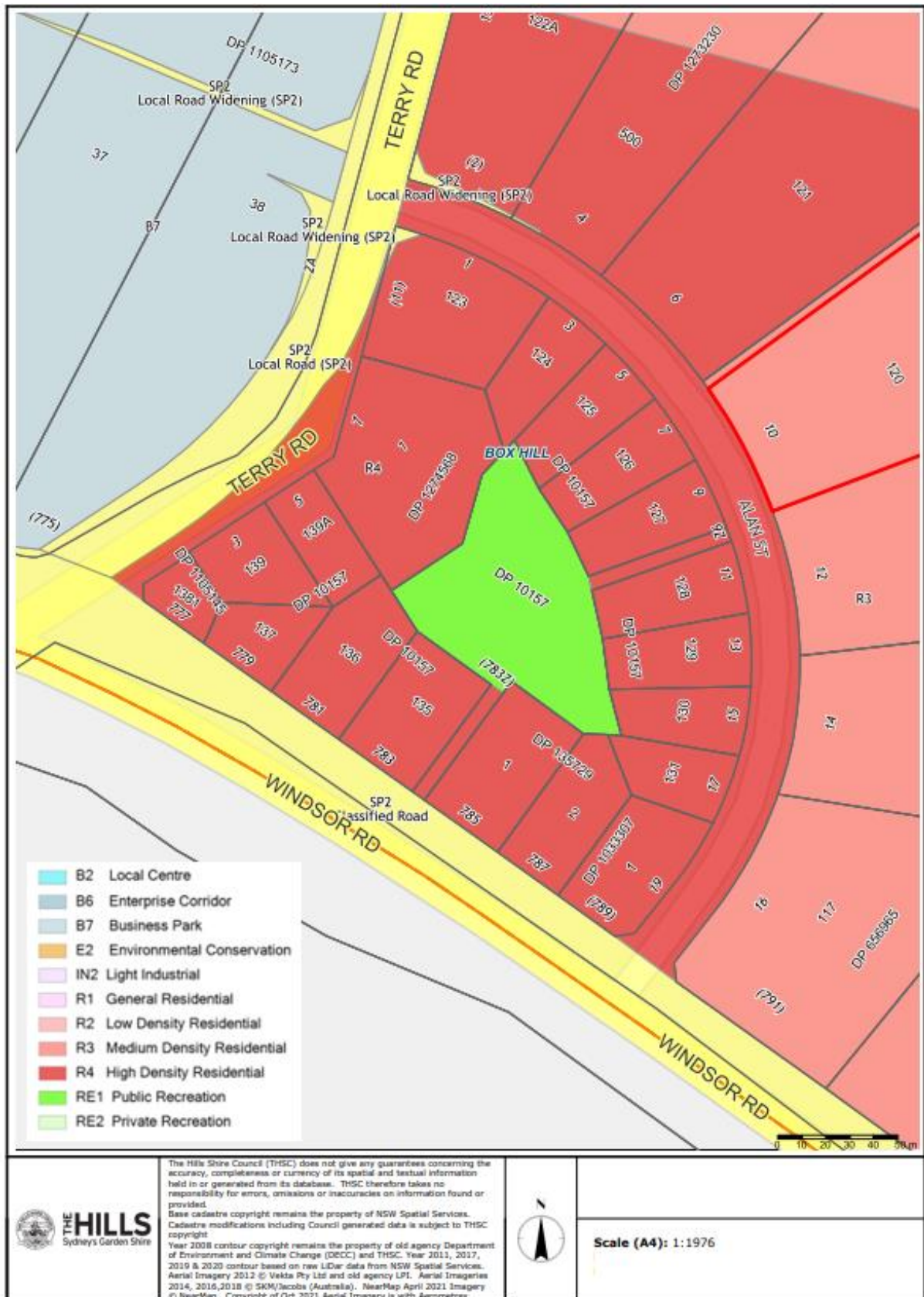
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

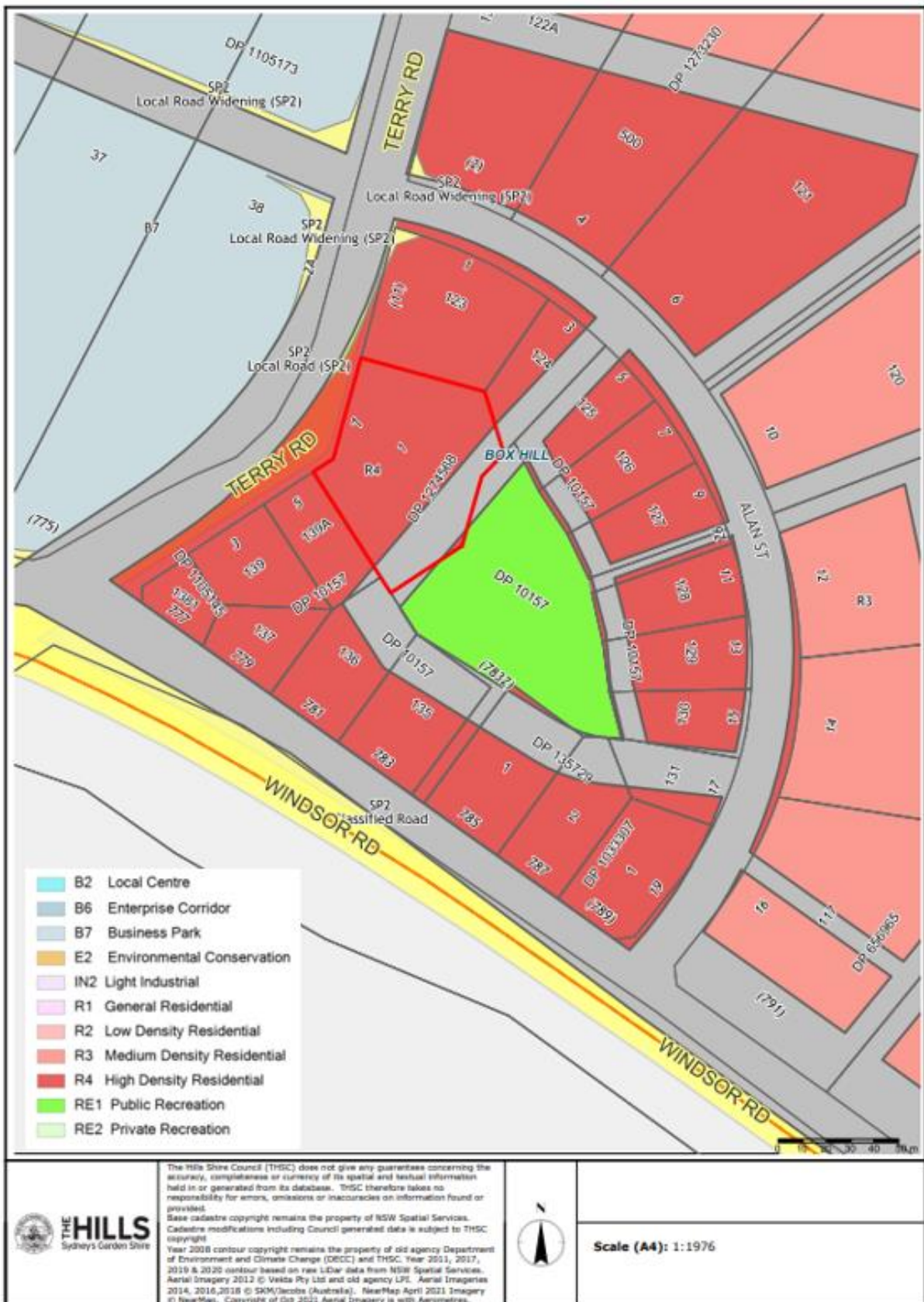
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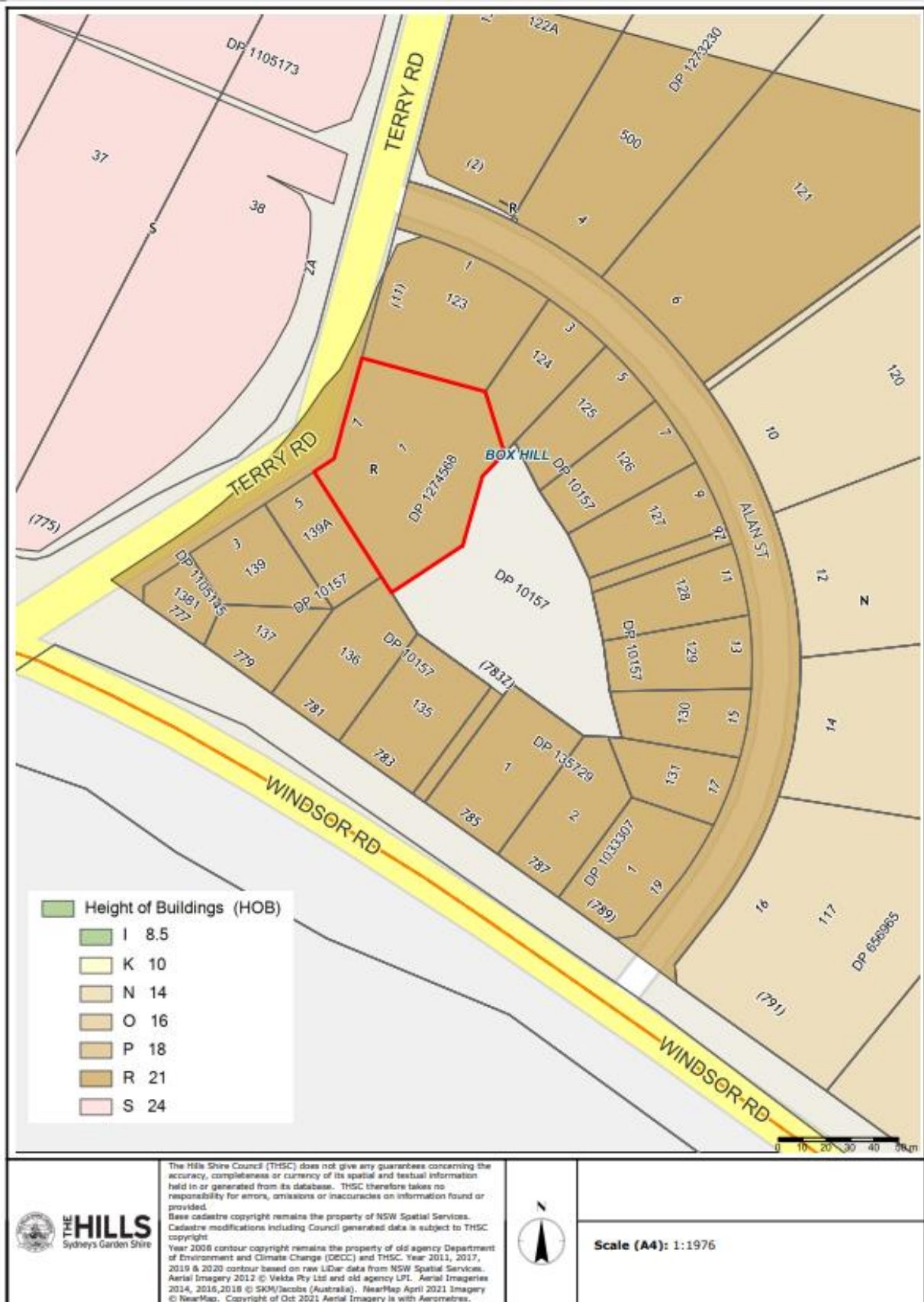
ATTACHMENT 3 – ZONING MAP



ATTACHMENT 4 – ZONING MAP WITH DCP ROADS



ATTACHMENT 5 – BUILDING HEIGHT MAP



ATTACHMENT 6 – SITE PLAN



ATTACHMENT 7 – ELEVATIONS



[illegible]

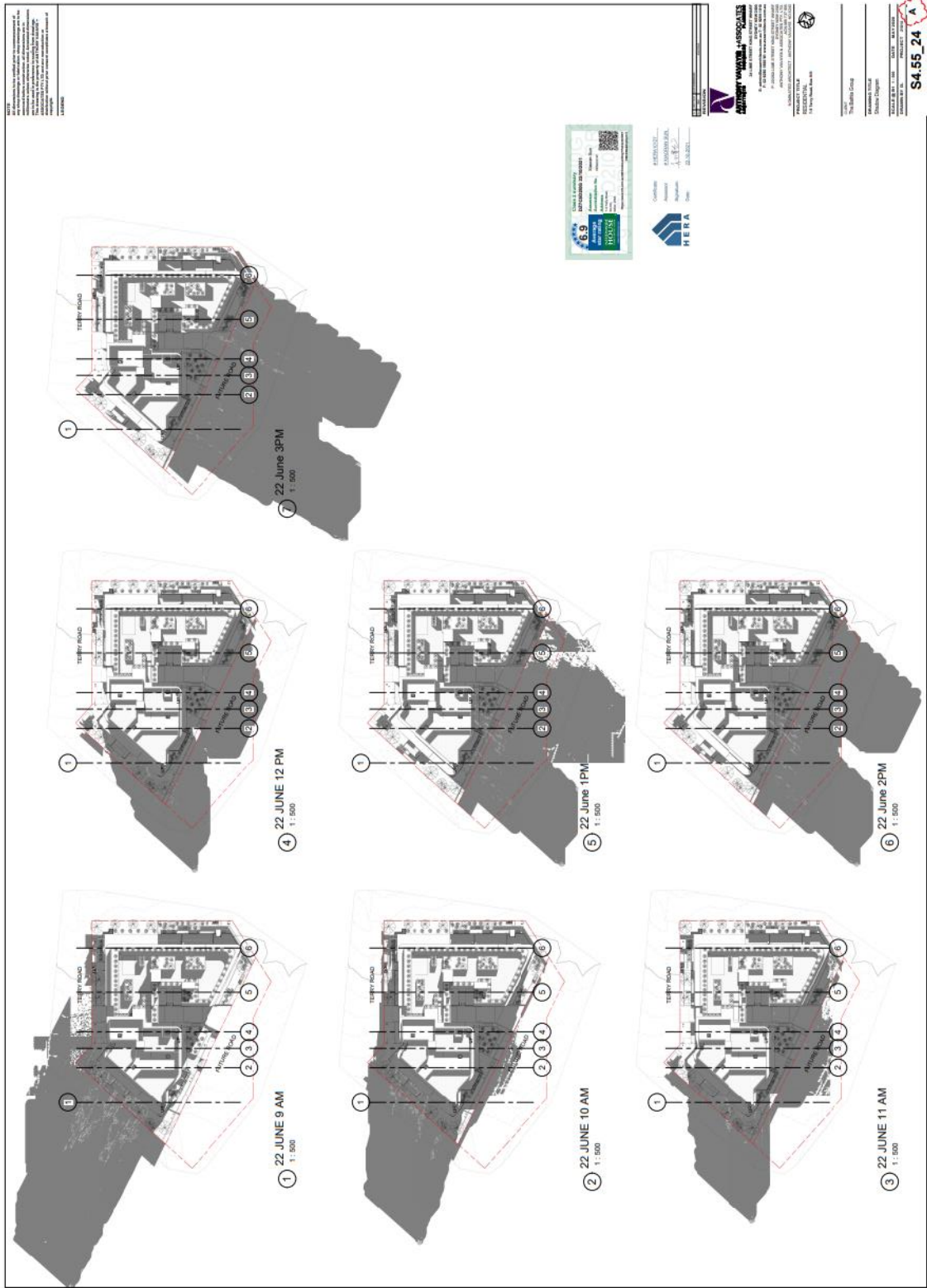
ATTACHMENT 9 – PERSPECTIVES



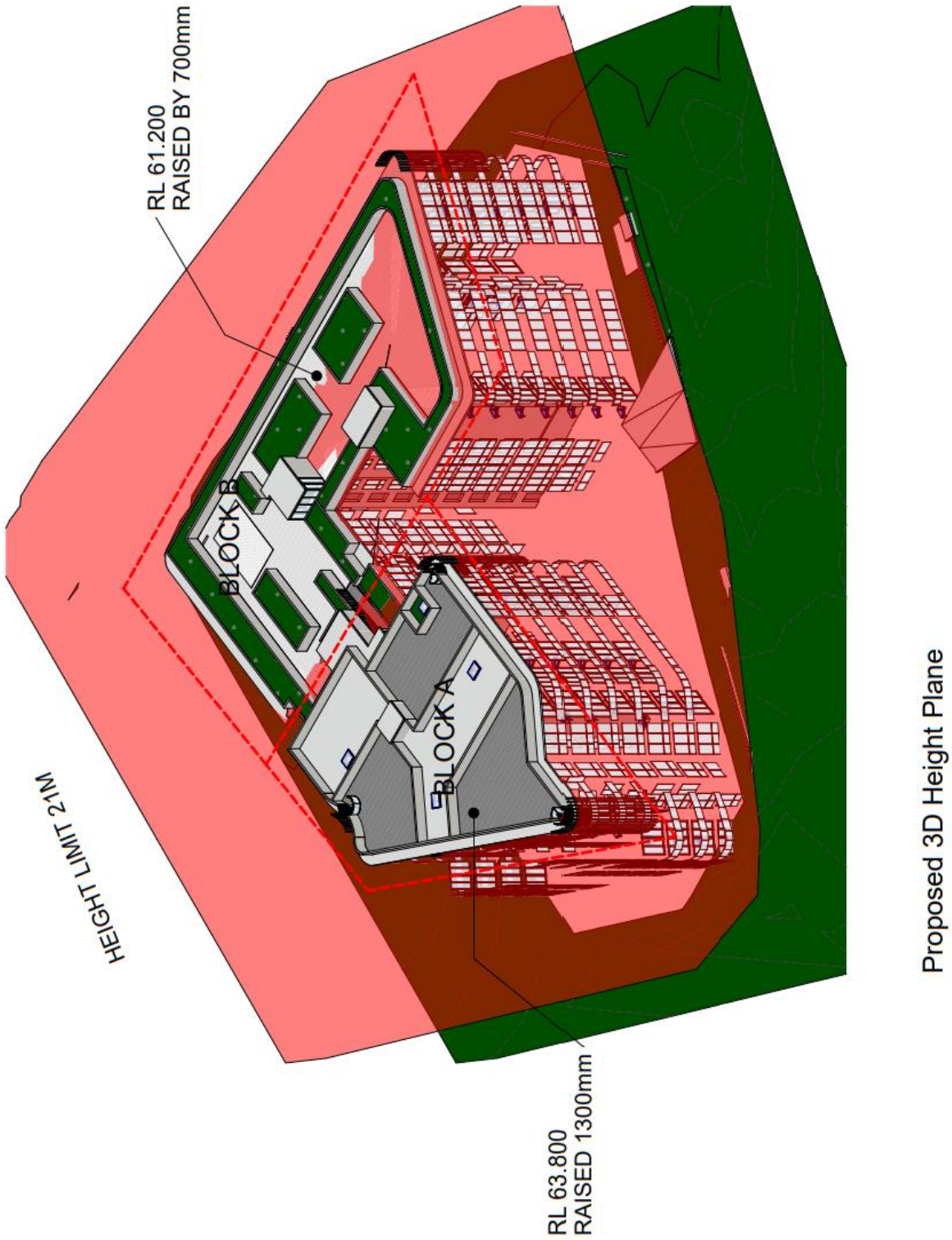




ATTACHMENT 10 – SHADOW DIAGRAM



ATTACHMENT 11 – HEIGHT PLANE DIAGRAM



ATTACHMENT 12 – CLAUSE 4.6 VARIATION

ANNEXURE 1: CLAUSE 4.6 VARIATION: BUILDING HEIGHT

Although not technically required as this is a modification, the development concept results in the height of the proposal further exceeding the 21m permissible height as shown on the LEP height map, noting that the proposal is predominantly compliant with the maximum building height.

As illustrated by the LEP 3D height plane below, small portions of the modified buildings vary the 21m height control.

Figure 1: 3D Height Blanket (Source: Anthony Vavayis Architects)



The approved development varied the 21m SEPP height control with an approved height of 23.38m to the highest lift overrun.

This modification seeks approval for increasing the floor to floor height of all levels from 3000mm to 3100mm to appropriately facilitate the provision of 2700mm floor to ceiling heights to habitable areas as well as increasing head height for manoeuvring in the carpark. As a result of these change the overall height of the northern part of the building increases by 700mm and the southern part of the building by 1300mm to 24.68m to the top of the highest lift overrun

The non-compliance is a result of the topography with the development designed to follow the natural contours of the site as well as the new NCC controls for sprinklers. The development remains consistent with Council's FSR Control and will align with the desired future character of the locality.

The provisions of Clause 4.6 of the SEPP are addressed below in order to permit Council to vary the SEPP requirement given the minor nature of the departure meaning it is not easily 'read' at street level- particularly once taking into account the finished ground levels.

RELEVANT CASE LAW

There are a number of recent Land and Environmental case including *Four 2 Five v Ashfield* and *Micaul Holdings Pty Ltd v Randwick City Council* and *Moskovich v Waverley Council*, as well as *Zhang v Council of the City of Ryde*.

In addition, a recent judgement in *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard. Therefore, this must be considered when evaluating the merit of the building height departure.

In particular a recent judgement in *Ricola Pty v Woollahra Municipal Council [2021] NSWLEC 1047* the emphasised on whether the impact anticipated by the numerical control is comparable to the impacts associated with the non-compliance, which in this case is against the height standards. This is closely link to the establishment of sufficient environmental planning grounds to justify the contravention.

Detailed comparison of the potential overshadow impacts from the proposal as compared to a fully compliant scheme are provided in the architectural package provided with the revised submission. The results reveal there is little difference in the overshadow impacts results from the comparison of the two schemes.

The visual impact of a compliant scheme as compared to the proposal results in no material effects on the existing dwelling to the east of the site. This is mainly due to the careful design of the areas where there is height protrusion in that these spaces are recessed behind the main building line thus there is no visual impact to the dwelling that sits to the east of the site. Noting also there are no tangible views that are impacted

as a result of the proposed height variation as compared to a full height compliant scheme.

An assessment of the loss of privacy of the proposed scheme as compared to a full height compliant scheme reveals also there are not material effects. The building has been designed cognisant of the need to ensure the privacy of the dwelling at the east of the site is maintained. Through careful window placement the privacy of the adjoining site is maintained with not resulting privacy concerns.

Further a decision in *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* has adopted further consideration of this matter, requiring that a consent authority must be satisfied that:

- The written request addresses the relevant matters at Clause 4.6 (3) and demonstrates compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds; and
- The consent authority must consider that there are planning grounds to warrant the departure in their own mind and there is an obligation to give reasons in arriving at a decision.

Accordingly, the key tests or requirements arising from the above judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be compatible with the objectives, rather than having to 'achieve' the objectives.
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- There are planning grounds to warrant the departure, and these planning grounds are clearly articulated as reasons in arriving at a decision.
- The proposal is required to be in 'the public interest'.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the maximum building height control and on that basis that compliance is unreasonable or unnecessary;

- Demonstrating that the impact anticipated by the numerical control is comparable to the impacts associated with the non-compliance
- Demonstrating consistency with the R4 zoning;
- Establishing compliance is unreasonable and unnecessary;
- Demonstrating there are sufficient environmental planning grounds to justify varying the standard; and

Satisfying the relevant provisions of Clause 4.6.

Clause 4.6(3)

In *Wehbe v Pittwater* [2007] NSWLEC 827 ('**Wehbe**'), Preston CJ identified a variety of ways in which it could be established demonstrated that compliance with a development standard is unreasonable or unnecessary in the case. This list is not exhaustive. It states, inter alia:

"An objective under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish the compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

While *Wehbe* relates to objection made to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the reasoning can be similarly applied to variations made under Clause 4.6 of the standard instrument.

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objectives is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are at least 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1, 2 and 3 for the purposes of this Clause 4.6 variation [our underline]):

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

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

It is sufficient to demonstrate **only one** of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22], *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

The objectives of the standard are to be achieved notwithstanding non-compliance with the standard

This Clause 4.6 variation statement establishes that compliance with the maximum building height development standard is considered unreasonable or unnecessary in the circumstances of the proposed development because the underlying objectives of the standard are achieved despite the non-compliance with the numerical standard

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved.

The objectives of the height of buildings development standard are stated as:

- (a) to establish the maximum height of buildings on land within the Area 20 Precinct,
- (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,
- (c) to facilitate higher density development in and around commercial centres and major transport routes.

The development proposal is consistent with the above objectives based on the following:

- a) The proposal is in close proximity to the Rouse Hill Town Centre and the extent of non-compliance represents an appropriate higher density on the site as the extent of variation and also provide a 1.88:1 FSR that is less than the maximum permitted FSR.
- b) The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas with the extent of overshadowing is not unreasonable for density envisaged of this scale within the Box Hill precinct;
- c) The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting the uneven topography is the key driver of the height variation rather than a desired to achieve greater yield on the site;
- d) The proposal has no impact on heritage or other views; and
- e) The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Box Hill Precinct.

As outlined above the proposal remains consistent with the underlying objectives of the controls and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the height control. In addition the proposal is consistent with the objectives of the zone.

The proposal provides for the housing needs of the community and contributes to a variety of housing forms within a high density residential environment. The development site is in close proximity to public transport and the design concept recognises the key site attributes and provides for an attractive built form that relates to the existing and future site context.

CONCURRENCE OF THE SECRETARY

As addressed it is understood the concurrence of the Secretary may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal given that the non-compliance has no discernible impact upon the public streetscape. The departure from the control is acceptable in the circumstances given that the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality given the unique site constraints (topography) and the implications of the RE1 zoned land and land dedications that affects the delivery of an appropriate yield on the site.

Strict compliance with the prescriptive height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts. The proposal will not have any adverse effect on the surrounding locality.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed to the maximum height control.

CONCLUSION

For the reason set out above, the Applicant says that:

- 1. the matters canvassed in this request have adequately addressed the requirements of Clause 4.6(3) and
- 2. The Consent Authority should be satisfied that the proposed development is in the public interest, as it is consistent with both the objectives of the development standard, and the objective of the R4 zone.

The variation is well founded and should be upheld.

ATTACHMENT 13 – ORIGINAL DEVELOPMENT CONSENT



14 September, 2017

Zhinar Architects
Level 2 Suite 1/2 Rowe St
EASTWOOD NSW 2122

Ref No. 694/2017/JP
SWCPP: 6 September 2017

Dear Sir/Madam

DEFERRED COMMENCEMENT CONSENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 **NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979, notice is hereby given of the determination by Sydney West Central Planning Panel of the Development Application referred to herein.

This consent is a **DEFERRED COMMENCEMENT** Consent under S80(3) of the Environmental Planning and assessment Act 1979 and shall become effective from the endorsed date of Notice. The application has been determined by the granting of Consent subject to the conditions referred to in this Notice.

The conditions of the Consent referred to herein are deemed necessary by The Hills Shire Council, pursuant to Part 4, Division 2 of the Environmental Planning and Assessment Act, 1979.

Right of Review

Section 82A of the Environmental Planning and Assessment Act 1979 confers on the applicant the right of review of determination, subject to such request being made within six (6) months of the determination date and accompanied by a fee as prescribed in clause 257 of the Environmental Planning and Assessment Regulation 2000. For development applications lodged before 28 February 2011, the statutory timeframe for review is twelve (12) months from the determination date.

Section 82(A)(1) of the Environmental Planning and Assessment Act 1979 does not permit a review of determination in respect of:

- a) Designated development, or
- b) Integrated development, or
- c) An application by the Crown determined by Council under section 116(E).

Right of Appeal

Section 97 of the Environmental Planning and Assessment Act 1979 confers on the applicant who is dissatisfied with the determination of a consent authority, a right of appeal to the NSW Land and Environment Court exercisable within six (6) months after receipt of this notice. For development applications lodged before 28 February 2011, the statutory timeframe for appeal is twelve (12) months from the determination date.

APPLICANT:	Zhinar Architects
OWNER:	Moore United Group Pty Ltd and Mr M K Barnes and Mrs S L Barnes
PROPERTY:	Lot 139B DP 10157, Lot 139C DP 10157 7-9 Terry Road, Box Hill
DEVELOPMENT:	Residential Flat Building Containing 103 Residential Units and Basement Parking for 128 Vehicles
ENDORSED DATE OF CONSENT	6 September 2017

CONDITIONS OF CONSENT

DEFERRED COMMENCEMENT:

Deferred Commencement – Registration of Easement

A. Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 deferred commencement consent is granted subject to:

1. The registration of a 1.2m wide (minimum) drainage easement over the downstream property/ies Lot 123, Lot 124 or Lot 125 DP10157 (1-5 Alan Street, Box Hill).
- B. The applicant must provide Council with written evidence demonstrating that the matters listed under Part A1 above have been satisfactorily addressed no later than four weeks before the notice of expiry date.
- C. Upon compliance with the requirements of Part A1, a full consent will be issued subject to the following conditions:

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	ISSUE	DATE
-	Cover Page	-	-
DA01	Location Analysis	B	03/03/2017
DA02	Site Analysis	B	03/03/2017
DA03	Site Plan	B	03/03/2017
DA04	Basement 2	B	03/03/2017
DA05	Basement 1	B	03/03/2017
DA06	Lower Ground – Access from Terry Road	B	03/03/2017
DA07	Lower Ground – Access from Future Road	B	03/03/2017
DA08	Ground Floor	B	03/03/2017
DA09	Level 1 – Level 2	B	03/03/2017

DA10	Level 3	B	03/03/2017
DA11	Level 4 – Level 5	B	03/03/2017
DA12	Level 6	B	03/03/2017
DA13	Roof Plan	B	03/03/2017
DA14	Section	B	03/03/2017
DA15	Elevation	B	03/03/2017
DA16	Elevation	B	03/03/2017
DA19	Material Schedule	B	03/03/2017
Sheet 1 of 3	Landscape Site Plan	C	27/03/2017
Sheet 2 of 3	Level 6 & Calculations Plan	C	27/03/2017
Sheet 3 of 3	Planting Plan	C	27/03/2017

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. 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 an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

3. 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.

4. Compliance with NSW Police Force Requirements

The following conditions are required by the NSW Police or as otherwise agreed by NSW Police and Council in writing: -

Surveillance:

- CCTV coverage is required to be installed to monitor all common areas and entry/exits points. Use of height indicator stickers on entrance/exit doors is required on entry/exit doors.
- Paint the basement white to reflect light.
- Vegetation to be kept trimmed at all times.
- Installation of a security intercom system is required to access the residential parts of the basement car park and main lobbies. Each unit is to contain an intercom system to enable access for visitors to the basement car park and lobby. Security access is to be utilised at the entrance of the basement.

Lighting:

- Lighting is to meet minimum Australian Standards. Special attention is to be made to lighting at entry/exit points from the building, the car park and driveways.

Environmental Maintenance:

- Use of anti-graffiti building materials.
- High fencing during construction is to be used.
- Use of security sensor lights and a security company to monitor the site during construction phase are required.

Access Control:

- Ground level units are required to have upgraded security measures in place such as doors/ windows being alarmed, thickened glass and sensor lights.
- High quality letter boxes that meet AS ISO9001:2008 are required and are only to be accessed via within the unit complex by residents.
- Lift from car park into the residential part of the building to be used with a fob or pin code is required.

- Entry into car park to be secured by a fob, remote/code access and camera are required.
- Ensure improved strength to security roller shutters/garage doors is used.
- Caged storage units are to be built up to the ceiling with a door with better quality locking mechanism are to be used.
- Fire doors are to be alarmed and a magnetic strip is required so that the door will shut closed.
- External doors that can be used to enter the car park or into the complex are required to have a plate installed to the door.
- Devices are to be fitted to enable windows to be locked at 12.5cm when the devices are engaged.

5. Provision of Parking Spaces

The development is required to be provided with 128 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.

6. External Finishes

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

7. Tree Removal

Approval is granted for the removal of trees numbered 2, 3, 4 and 10-17 as detailed in the Arboricultural Impact Assessment prepared by Redgum Horticultural dated 10 August 2016.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

8. Contamination Assessment

The recommendations of the *Phase 1 Contamination Assessment (and Geotechnical Investigation)* for proposed residential apartment building at 7-9 Terry Road, Box Hill, prepared by GeoEnviro Consultancy Pty Ltd, referenced as JC16270A, dated September 2016 and submitted as part of the Development Application are to be implemented as part of this approval. In particular: section 8.1: contamination which states that all fill material requiring off-site disposal should be laboratory tested and characterised in accordance with NSW EPA Guidelines.

9. Approved Street Naming (Box Hill)

Street naming must comply with Council's approved map which can be found on Council's website.

10. Street Trees

Street trees must be provided for the section of Brookline Crescent within or fronting the development site spaced between 7m and 10m apart and with a minimum of one tree per lot 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. Details demonstrating compliance with the above must be submitted for 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.

11. Subdivision – Brookline Crescent Dedication

The subdivision component of the development must be carried out in accordance with the approved plan of subdivision prepared by Gary Edwards Drawing 6889 Revision A dated 2/6/2017 along with the undertaking relating to the dedication of this proposed public road referenced on the same plan.

12. 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.

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. Separate Application for Strata Subdivision

The strata title subdivision of the development is not included. A separate development application or complying development certificate application is required.

15. 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.

16. Protection of Public Infrastructure

Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.

17. Vehicular Access (Temporary and Permanent) and Parking

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps are required, with their design and construction complying with:

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2
- DCP Part C Section 1 – Parking
- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

18. Management of Construction and 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.

19. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on site. 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.

20. Commencement of Domestic Waste Service

A domestic waste service must be commenced with Council. The service must be arranged no earlier than one week prior to occupancy and no later than two days post occupancy. All requirements of Council's domestic waste collection service must be complied with at all times. Contact Council's Resource Recovery Team to commence the waste service.

21. Construction of Bin Room

All work involving construction of the bin room must comply with the requirements below. Minimum storage facility must be provided for 12 x 1100 litre garbage bins and 12 x 1100 litre recycling bins or 19 x 660 litre recycling bins.

1. The layout of the bin room must ensure that each bin is easily accessible and manoeuvrable in and out of the bin room with minimal or no manual handling of other bins.
2. The walls of the bin room must be constructed of brickwork.
3. The floor of the bin room must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer.
4. The bin room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. When access from Terry Road is terminated, and the temporary truck loading bay is relocated, a waste servicing door must be provided which opens directly onto the rear of the new truck loading bay. Acceptable waste servicing doors are single or double swinging doors and roller doors.
5. The bin room must have a suitable resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors.

6. All doors of the bin room, when fully opened, must be flush with the outside wall and must not block or obstruct passageways. All doors must be able to be fixed in position when fully opened.
7. The bin room must be adequately ventilated (mechanically).
8. The bin room must be provided with a hose tap, connected to a water supply, to facilitate bin washing. If the tap is located inside the bin room, it is not to conflict with the space designated for the placement of bins.
9. The bin room must be provided with an internal light (artificial) such as an automatic sensor light.
10. The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance are these grades to be exceeded. Bins must be accessible by collection contractors via ramped access only. A platform lift or stairs are not acceptable.
11. The bin room must contain a caged area for the interim storage and management of unwanted bulky goods. The minimum floor area required is 8m².
12. The bin room must have appropriate signage, provided by Council, mounted in a visible location on an internal wall and is to be permanently maintained by the Owners Corporation.
13. Finishes and colours of the bin room are to complement the design of the development.

Bin Measurements (mm)

660L: 850 (d) 1370 (w) 1250 (h) 1100L: 1245 (d) 1370 (w) 1470 (h)

22. Access and Loading for Waste Collection

Minimum vehicle access and loading facilities (for both access phases) must be provided and designed in accordance with Australian Standard 2890.2-2002 for the standard 8.8m long Medium Rigid Vehicle, with the exception that the minimum clear vertical clearance is 3.5m. The following additional requirements are applicable:

1. All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading and traffic circulation is appropriately controlled.
2. Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
3. The requirement for reversing is limited to a single reverse entry manoeuvre into the designated service bay (known as truck loading bay on Development Application plans). The service bay must have appropriate signage such as no parking at any time.
4. All manoeuvring areas where the clear headroom is less than 3.5m must have flexible striker bars and warning signs as per Australian standard 2890.1 to warn waste collection contractors of the low headroom area. Note all manoeuvring areas for waste collection vehicles must have minimum clear headroom of 3.5m.
5. The loading area must have a sufficient level of lighting, and allow additional space for access and loading (e.g. wheeling a bulk bin to the back of the collection vehicle for rear load collection).
6. Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of medium and heavy vehicles,

remote access or other measure to ensure there is no requirement for collection contractors to exit the cab. Remote access is preferred.

23. Communal Composting Areas

An area shall be incorporated in the landscape design of the development for communal composting. Whilst the operation of such a facility will depend upon the attitudes of occupants and their Owners Corporation, the potential to compost should exist.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

24. Design Verification

Prior to the release of the Construction Certificate design verification is required from a qualified designer to confirm the development is in accordance with the approved plans and details and continues to satisfy the design quality principles in SEPP65.

25. Special Infrastructure Contribution – Growth Centres

A special infrastructure contribution is to be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011, as in force when this consent becomes operative.

Information about the special infrastructure contribution can be found on the Department of Planning and Environment website:

<http://www.planning.nsw.gov.au/>

Please contact the Department of Planning and Environment regarding arrangements for the making of a payment.

26. Section 94 Contribution

The following monetary contributions must be paid to Council in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, to provide for the increased demand for public amenities and services resulting from the development.

Payments comprise of the following:-

	Purpose 1 bedroom unit	Purpose 2 bedroom unit	Purpose 3 bedroom unit	Purpose 4 Credit	No. of 1 Bedroom Units - 1A	No. of 2 Bedroom Units - 2A	No. of 3 Bedroom Units - 3	No. of Credit - 2	Total \$94
Open Space - Land	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Open Space - Capital	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Waste Facility - Land	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Waste Facility - Capital	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Water Management - Land (MSF)	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Water Management - Capital (MSF)	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Recreation	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00
Total	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	1	10,700.00	1	11,200.00	\$ 26,700.00

The contributions above are applicable at the time this consent was issued. Please be aware that Section 94 contributions are updated quarterly.

Prior to payment of the above contributions, the applicant is advised to contact Council's Development Contributions Officer on 9843 0268. Payment must be made by cheque or credit/debit card. Cash payments will not be accepted.

This condition has been imposed in accordance with Contributions Plan No 15.

Council's Contributions Plans can be viewed at www.thehills.nsw.gov.au or a copy may be inspected or purchased at Council's Administration Centre.

27. Erosion & Sediment Control Plan

Submission of an Erosion and Sediment Control Plan to the Principal Certifying Authority, including details of:

- Allotment boundaries
- Location of the adjoining roads
- Contours
- Existing vegetation
- Existing site drainage

- f) Critical natural areas
- g) Location of stockpiles
- h) Erosion control practices
- i) Sediment control practices
- j) Outline of a maintenance program for the erosion and sediment controls

(NOTE: For guidance on the preparation of the Plan refer to 'Managing Urban Stormwater Soils & Construction' produced by the NSW Department of Housing).

28. Acoustics - Protection of Internal Noise Levels

An acoustic statement is required to be submitted to Council's Manager - Environment and Health prior to the issue of a Construction Certificate certifying that the design of the development on the construction plans does ensure the following noise levels will be achieved:

- 35 dB (A) in any bedroom between 10pm and 7am.
- 40dB (A) anywhere else (other than garage, kitchen, bathroom and hallway) at any time.

In particular the acoustic statement shall detail that all recommendations contained within the *Proposed Residential Development; 7-9 Terry Road, Box Hill, Road Traffic Noise Impact Assessment*, prepared by Rodney Stevens Acoustics, referenced as 160344R1 and dated 27 July 2016, have been included in the construction plans of the development.

29. Acoustics - Mechanical Ventilation

Prior to any Construction Certificate being issued an acoustic report is to be prepared by a suitably qualified acoustic consultant for any mechanical ventilation proposed to service the basement carpark (exhaust), garbage room or the like. The acoustic report is to provide recommendations for any acoustic attenuation measures; provide a justified project specific criteria and include plans and elevations showing the proposed finish.

The acoustic report is to be submitted to Council's Manager - Environment and Health for review and if satisfactory, written approval will be provided in support of a Construction Certificate being issued.

30. Acoustics - Construction Noise Management Plan

Prior to the issue of any Construction Certificate a Construction Noise Management Plan (CNMP) is to be prepared by a suitably qualified acoustic consultant and submitted to Council's Manager - Environment and Health for review and if satisfactory, written approval will be provided in support of a Construction Certificate being issued. The CNMP is to demonstrate how compliance with the *Interim Construction Noise Guideline* published by the Department of Environment and Climate Change, 2009 can be achieved and specifically address potential noise and vibration impacts due to rock breaking for the basement carpark.

31. Temporary Access Arrangements - Security Bond and Positive Covenant

a) Scope of Works/ Bond:

Until such time that Brookline Crescent can be constructed and dedicated, access to the site must be via the temporary access/ driveway on Terry Road, subject to compliance with the requirements of the RMS relating to the same. This access is temporary only, and must be removed once alternate access is made available via Brookline Crescent at the rear of the site. This is predicated on the prior or concurrent development of one or more adjoining sites to the north or south to connect this road to the existing public road network (Alan Street).

The full width construction and dedication of Brookline Crescent fronting the site is the responsibility of the developer. This must require Council's concurrence for the works within Council's reserve.

At the detailed design stage, and before a Construction Certificate is issued, the exact extent of rework required to eventually relocate the site's access must be detailed and the cost of these works quantified. A bond to the value of 150% of this work will need to be paid to Council to ensure these works are carried out once access via Brookline Crescent is available. The actual bond amount payable must be agreed to/ confirmed by Council prior to payment.

b) Positive Covenant:

Before any Construction Certificate can be issued a positive covenant must be created on the title of the subject site that requires the completion of the bonded works and the removal of the temporary access to Terry Road, once access via Brookline Crescent is available. The terms of the positive covenant must be agreed to by Council.

c) Timing:

Upon the receipt of written notice from Council, the applicant will be required to commence construction of these works no later than three months of the date of the notice. The written notice referred to the bonded works will come as a result of alternate access being made available via the construction of Brookline Crescent on one or more adjacent sites, connecting this road to the existing public road network.

32. 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 is issued.

33. Works on Adjoining Land

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

34. Engineering Works and Design

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" as categorised below:

1. Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively.
2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flow path within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/ maintenance liability with respect to these assets once completed. A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" can be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction, a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 can be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.

3. Works within the development site, or adjoining private properties, that do not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so. This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

The following engineering works are required:

a) Terry Road Frontage

Design levels across Terry Road frontage must be consistent with the final Terry Road design being carried out by Council. If any retaining structures required to be provided, it must be located within the site.

b) Full Width Road Construction

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

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Brookline Crescent (Proposed Loop Road)	Road Type: DCP Local Street 3.5m/ 11m/ 3.5m (18m) Pavement Design: Local (Design Guidelines Section 3.12)

Detailed design must be reflective of a set of Civil Engineering Concept plans (2173 – DA) Issue A dated 17/10/2016 prepared by Mance Arraj Engineers and associated drawings submitted with the application are considered concept only.

The full width construction of Brookline Crescent requires Council's concurrence being the owner of adjoining Turnbull Reserve to the south-east of the development site. The applicant must contact Council's Property Manager on this matter in advance to organise the approvals.

The design must incorporate a standard kerb return radius of 7.5m based on a 4m splay corner unless otherwise directed by Council.

Except where a modified kerb treatment is required (such as for roadside bio-retention swales) roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

c) Terry Road - Improvement Works

Improvement of road shoulder fronting the development to trafficable standards must be carried out until the Brookline is complete and to provide permanent access to the development.

d) Street Names Signs

Street name signs and posts are required in accordance with the above documents and Council's Standard Drawing 37. Details for all signage and line-marking must be submitted to Council for checking prior to works commencing.

e) Footpath Verge Formation

The grading, trimming, topsoiling and turfing of the footpath verge of Brookline Crescent and Terry Road within and 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.

f) Concrete Footpath

A 1.2m wide concrete footpath, including access ramps at all intersections, must be provided on southern side of Brookline Crescent in accordance with the DCP and the above documents.

g) 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.

h) 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.

i) Stormwater Drainage – Temporary Works

Temporary Stormwater Drainage works must be carried out within the Inter Allotment Drainage Easement be created over the downstream properties as required in this consent to the requirements of the affected property owner.

j) Stormwater Drainage – Pipe Extension

Construction of new kerb inlet pits in Alan Street fronting the property where drainage easement is created over and the street drainage extended to connect it to the existing drainage pipe downstream. The pipe extension must be located under the existing/future kerb requiring the removal and reconstruction of the kerb and gutter and road shoulder.

The pipe extension shall be generally in accordance with the Stormwater Concept Layout Drawing 2173-DA SW 032 Issue A dated 05/04/2017 prepared by Mance Arraj Engineers.

35. Integrated Site Stormwater Management

Temporary and Permanent Stormwater Management measures in the form of Rainwater Tank (permanent), Onsite Stormwater Detention System (temporary) and Storm Filter cartridges must be provided with the development in accordance with Stormwater Drainage Works Drawing 2173-DA SW 030 (Revision C dated 05/04/2017) and Drawing 2173-DA SW 031 (Revision B dated 27/10/2016), and associated Stormwater Quality Management report, all documents prepared by Mance Arraj engineers.

The purpose of the temporary stormwater management measures is to ensure there is no impact downstream between the pre-development and post development conditions, both with respect to the volume and quality of runoff, for a range of storm events. The cost of removing these temporary stormwater management measures and all associated re-work to pits and pipes must be determined at the detailed design stage, with a bond for 150% of the cost of these works submitted to ensure this occurs when the permanent basin/ rain garden planned further north-east (KC01) on the Box Hill contribution plan is constructed and runoff from the subject site is/ can be connected to the same via the development of the intermediary properties downstream. The bond amount must be confirmed with Council prior to payment.

Where the design of any temporary stormwater management measure relies on steep batters; the design must incorporate whatever stabilisation methods are recommended by a geotechnical engineer in consultation with Council's Construction Engineer.

Detailed plans for the water quality design elements must be reflective of the approved concept plans. 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 associated models and data outputs, and electronic copies of DRAINS and MUSIC models are to be provided.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to:

Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>

Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

The design and construction of the Integrated OSD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:

- i. A completed application form;
- ii. Electronic copy of MUSIC model to be compatible with final drainage design;
- iii. A maintenance schedule.
- iv. Electronic copies of the design plans and specifications;
- v. Payment of the applicable application and inspection fees.

36. Stormwater Pump/ Basement Car Park Requirements

The stormwater pump-out system must be designed and constructed in accordance with AS/ NZS 3500.3:2015 - Plumbing and Drainage - Stormwater drainage. The system must be connected to the Onsite Stormwater Detention system before runoff is discharged to the street (or other point of legal discharge) along with the remaining site runoff, under gravity. All plans, calculations, hydraulic details and manufacturer specifications for the pump must be submitted with certification from the designer confirming compliance with the above requirements.

37. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$146,000.00 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 rate of \$85.00 per square metre based on the road frontage of the subject site plus an additional 50m on either side 156m multiplied by the width of the road 11m.

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.

38. Security Bond – External Works

In accordance with Section 80A(6)(b) 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

minimum bond amount is \$10,000.00. The bond amount must be confirmed with Council prior to payment.

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.

39. 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 heavy rigid waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

40. Redesigned Bin Room Required

Prior to a Construction Certificate being issued, amended plans must be submitted to and approved by Council showing a revised bin room design. The revised bin room design must ensure that bins are accessible by collection contractors via ramped access only. The maximum ramped gradient acceptable is 5%. Additionally, the bin room design must comply with the requirements specified in the Condition titled 'Construction of Bin Room'.

PRIOR TO WORK COMMENCING ON THE SITE

41. Principal Certifying Authority

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

42. Builder and PCA Details Required

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

43. Approved Temporary Closet

An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

44. Management of Building Sites – Builder's Details

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. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

45. 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.

Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

46. 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).

47. 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 Certifying Authority 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.

48. Protection of Existing Trees

The trees that are to be retained are to be protected during all works strictly in accordance with AS4970- 2009 Protection of Trees on Development Sites and the approved Arboricultural Impact Assessment prepared by Redgum Horticultural dated August 2016.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

49. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

50. 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.

51. Site Water Management Plan

A Site Water Management Plan is to be prepared. The plan shall be in accordance with *"Managing Urban Stormwater - Soils and Construction" (Blue Book)* produced by the NSW Department of Housing. The plan is to be kept on site at all times and made available upon request.

52. 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.

53. Notification of Asbestos Removal

Prior to commencement of any demolition works involving asbestos containing materials, all adjoining neighbours and Council must be given a minimum five days written notification of the works.

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 Work

In accordance with Clause 98A(2) of 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 Certifying Authority;
- 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.

56. Contractors Details

In accordance with Section 109E(3) of the Environmental Planning and Assessment Act 1979, 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. Public Infrastructure Inventory Report

A public infrastructure inventory 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.

58. Demolition Works and Asbestos Management

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials from the site are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence. All demolition works involving the removal and disposal of asbestos (of an area more than 10 square metres) must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. 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. Asbestos removal must be carried out in accordance with the WorkCover, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to

be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

59. Discontinuation of Domestic Waste Services

Council provides a domestic waste service to the property subject to this Development Application. This service must be cancelled prior to demolition of the existing dwelling or where the site ceases to be occupied during works, whichever comes first. You will continue to be charged where this is not done. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council. To satisfy this condition, the Principal Certifying Authority must contact Council on (02) 9843 0310 at the required time mentioned above to arrange for the service to be discontinued and for any bins to be removed from the property by Council.

60. Construction and Demolition Waste Management Plan Required

Prior to the commencement of works, a Waste Management Plan for the construction and 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 demolition phases of the development.

DURING CONSTRUCTION

61. 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.

62. Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 755091M_02 are to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

A Section 96 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 96 Application **will** be required for a BASIX Certificate with a new number.

63. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority

Section 109E(3)(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.

64. Classification and disposal of fill

As per the recommendations of the *Phase 1 Contamination Assessment (and Geotechnical Investigation)* for proposed residential apartment building at 7-9 Terry Road, Box Hill, prepared by GeoEnviro Consultancy Pty Ltd, referenced as JC16270A and dated September 2016; prior to bulk excavation works commencing, soil is to be sampled, tested and classified a prior to reuse or disposal.

65. Removal of Septic Tank and Effluent Disposal Area

The existing subsurface effluent disposal area and any associated wastewater infrastructure is to be removed and back filled with Excavated Natural Material (ENM).

Any redundant septic tank, collection well or aerated wastewater treatment system is to be removed or reused in accordance with NSW Health "Advisory Note 3- Revised January 2017 – Destruction, Removal or Reuse of Septic Tanks, Collection Wells and Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)" available from the NSW Health website (<http://www.health.nsw.gov.au/>).

Note: Methods 1.1 & 2.1 (Demolition) are not permissible.

66. 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 may be restricted to between the hours of 9am to 3pm, Monday to Friday (subject to negotiations and recommendations from the construction noise management plan).

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

67. 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 are to cease, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with *State Environmental Planning Policy 55 – Remediation of Land*.

The report is to be submitted to Council's Manager – Environment and Health for review prior to works recommencing on site.

68. 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.

69. Asbestos Removal

Asbestos containing material, whether bonded or friable, shall be removed by a licenced asbestos removalist. A signed contract between the removalist and the person having the benefit of the development application is to be provided to the Principle Certifying Authority, identifying the quantity and type of asbestos being removed. Details of the landfill site that may lawfully receive the asbestos is to be included in the contract.

Once the materials have been removed and delivered to the landfill site, receipts verifying the quantity received by the site are to be provided to the Principle Certifying Authority.

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.

70. 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.

71. 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.

72. 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 hours' notice is required for inspections. No works are to commence until the first inspection has been carried out.

73. Working Hours

All work must be restricted to between the hours of 7:00am and 5:00pm, Monday to Saturday. No work can occur outside the hours specified above on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff. Requests to carry out roadworks on existing public roads during the night in order to avoid local traffic impacts will also be considered based on the circumstances of the site and must be approved in writing by Council's Manager – Subdivision and Development Certification.

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

74. Section 73 Certificate must be submitted to the Principal Certifying Authority 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 > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.

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

75. Provision of Electricity Services

Submission of a compliance certificate from the relevant service provider confirming satisfactory arrangements have been made for the provision of electricity services. This includes undergrounding of existing and proposed services where directed by Council or the relevant service provider.

76. Provision of Telecommunications Services

The submission of a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This

includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.

77. Landscaping Prior to Issue of Occupation Certificate

Landscaping of the site shall be carried out prior to issue of the Final Occupation Certificate in accordance with the approved plan prepared by Paul Scrivener Landscape Architecture dated 27.03.2017 (Issue C). All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

78. Acoustics - Compliance Report

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components as recommended in the acoustic report *Proposed Residential Development*; 7-9 Terry Road, Box Hill, Road Traffic Noise Impact Assessment, prepared by Rodney Stevens Acoustics, referenced as 160344R1 and dated 27 July 2016 and any acoustic report accepted by Council's Manager – Environmental Health. Certification is to be provided.

79. Subdivision Certificate Application

When submitted, the Subdivision Certificate application must include:

- One copy of the final plan.
- The original administration sheet and Section 88B instrument.
- All certificates and supplementary information required by this consent.
- An AutoCAD copy of final plan (GDA 1994 MGA94 Zone56).

80. Completion of Subdivision Works

A Subdivision Certificate cannot be issued prior to the completion of all subdivision works covered by this consent.

81. Completion of Engineering Works

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

82. Works as Executed Plans

Works as executed (WAE) plans prepared by a suitably qualified engineer or registered surveyor must be submitted to Council when the subdivision works are completed. The WAE plans must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments.

The plans must be accompanied by pavement density results, pavement certification, concrete core test results, site fill results, structural certification, CCTV recording, signage details and a public asset creation summary, where relevant.

83. 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.

84. Confirmation of Pipe Locations

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

85. Stormwater CCTV Recording

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.

86. Public Asset Creation Summary

A public asset creation summary must be submitted with the WAE plans. A template is available on Council's website.

87. Adjoining Property Dilapidation Report Post Construction

Before a Subdivision Certificate is issued, an updated dilapidation report must be prepared and submitted to Council. The updated report must identify any damage to adjoining properties and the means of rectification for the approval of Council.

88. Public Infrastructure Inventory Report - Post Construction

Before an Occupation Certificate is issued, an updated public infrastructure inventory 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.

89. Public Road Dedication

An Occupation Certificate must not be issued until the proposed public road has been dedicated in accordance with the undertaking submitted relating to dedication Brookline Crescent.

90. OSD System Certification

The Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA) prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- A certificate of hydraulic compliance (Form B.11) from a suitably qualified engineer or surveyor verifying that the constructed OSD system will function hydraulically;
- A certificate of structural adequacy from a suitably qualified 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.

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

91. Pump System Certification

Certification that the stormwater pump system has been constructed in accordance with the approved design and the conditions of this approval must be provided by a suitably qualified hydraulic engineer.

92. Water Sensitive Urban Design Certification

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- WAE drawings and any required engineering certifications;
- Records of inspections;
- An approved operations and maintenance plan; and
- A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

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

93. Consolidation of Allotments

All allotments included in this consent must be consolidated into a single allotment before an Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

94. 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.

i. Dedication – New Road

The dedication of the proposed public roads must be included on the final plan in accordance with the undertaking submitted relating to dedication of Brookline Crescent.

ii. Restriction – Restricted Access

The subject site must be burdened with a restriction precluding access to Terry Road once access via Brookline Crescent is available using the "restricted access" terms included in the standard recitals.

iii. Easement – Removal Driveway Access

A temporary public access easement must be created over the temporary driveway access, where required.

iv. Restriction – Bedroom Numbers

The subject site must be burdened with a restriction using the "bedroom numbers" terms included in the standard recitals.

v. Restriction/ Positive Covenant – Water Sensitive Urban Design

The subject site must be burdened with a restriction and a positive using the "basement stormwater pump system" terms included in the standard recitals.

vi. Restriction/ Covenant – Water Sensitive Urban Design

Lot 1 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.

vii. Restriction/ Covenant – Temporary Stormwater Management (Box Hill)

Lot 1 must be burdened with a restriction and a positive covenant that refers to the temporary stormwater management measures referred to earlier in this consent using the "temporary stormwater management" terms included in the standard recitals.

viii. Positive Covenant – Stormwater Pump

Lot 1 must be burdened with 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.

95. Internal Pavement Construction

Prior to an Occupation Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a loaded heavy rigid waste collection vehicle.

96. Final Inspection of Bin Room

Prior to an Occupation Certificate being issued, a final inspection of the bin room and management facilities must be undertaken by Council. This is to ensure compliance with Council's design specifications as per other conditions of this consent and that necessary arrangements are in place for domestic waste collection by Council. The time for the inspection should be arranged with Council at least 48 hours prior to the suggested appointment time.

97. Design Verification Certificate

Prior to the release of the Occupation Certificate design verification is required from a qualified designer to confirm that the development has been constructed in accordance with approved plans and details and has satisfied the design quality principles consistent with that approval.

THE USE OF THE SITE

98. Offensive Noise - Acoustic Report

The proposed use of the premises and/or machinery equipment installed must not create offensive noise so as to interfere with the amenity of the neighbouring properties.

Should an offensive noise complaint be received and verified by Council staff, an acoustic assessment is to be undertaken (by an appropriately qualified consultant) and an acoustic report is to be submitted to Council's Manager - Environment and Health for review. Any noise attenuation measures directed by Council's Manager - Environment and Health must be implemented.

99. Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 Control of Obtrusive Effects of Outdoor Lighting*.

100. 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 bin room, which includes provision for the storage of all waste generated on the premises between collections. A caretaker must be appointed by the Owners Corporation to undertake all instructions issued by Council to enable waste collection. Additionally, responsibilities for cleaning the bin room and the bins on a regular basis must be established.

ATTACHMENT: DEVELOPMENT ADVISORY NOTES

Pursuant to Section 80A of the Environmental Planning and Assessment Act, the reasons for the conditions imposed on this application are as follows:-

1. To facilitate the orderly implementation of the objects of the Environmental Planning and Assessment Act, 1979 and the aims and objectives of Council's planning instrument.
2. To ensure that the local amenity is maintained and is not adversely affected, and that adequate safeguards are incorporated into the development.
3. To ensure the development does not hinder the proper and orderly development of the subject land and its surrounds.
4. To ensure the relevant heads of consideration under Section 79C of the Environmental Planning and Assessment Act 1979 are maintained.

Should you require any further information please contact Sanda Watts on 9843 0352.

Yours faithfully



Paul Osborne

MANAGER-DEVELOPMENT ASSESSMENT