# **COUNCIL ASSESSMENT REPORT**

Panel Reference	PPSSCC-333		
DA Number	1021/2022/JPZ		
LGA	Hills Shire Council		
Proposed Development	Small lot housing development and subdivision creating 48 community title residential lots/ dwellings, one association lot and one road widening lot including new road, demolition, contamination remediation and dam dewatering accompanied by an application to vary a		
	development standard (maximum building height)		
Street Address	Lot 42 DP 662070 – 65 Windsor Road, Norwest Lot 1 DP 518740 – 67 Windsor Road, Norwest		
Applicant	Landen Property Pty Ltd		
Consultant/s	Orion Group – Planner Orion Group – Engineer Orion Group – Survey KFW Infrastructure Professionals – Survey A&N Design Group – Architects Conzept Landscape Architects – Landscape Architect MCG Quantity Surveyors – Quantity Surveyor Geotest Services – Contamination Remediation Geotest Services – Geotechnical McCardle Cultural Heritage – Aboriginal Heritage Eco Logical Australia – Ecology Axiom Arbor Tree Services – Arborist Amber Organisation – Traffic Day Design Pty Ltd – Acoustics		
Date of DA lodgement	24 December 2021		
Number of Submissions	One		
Recommendation	Deferral		
Regional Development	CIV exceeding \$30 million (\$30,933,891.80)		
Criteria - Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021	Civ exceeding \$30 million (\$30,933,691.60)		
List of all relevant s4.15(1)(a) matters	<ul> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>The Hills Local Environmental Plan 2019</li> <li>The Hills Development Control Plan 2012</li> <li>Part D Section 7 – Balmoral Road Release Area</li> <li>Part B Section 9 – Small Lot Housing (Integrated Housing)</li> </ul>		
List all documents	Architectural Plans		
submitted with this report for the Panel's consideration	Clause 4.6 Variation		
Clause 4.6 requests	The Hills Local Environmental Plan 2019		

	Clause 4.3 Height of buildings	
	R3 Medium Density Residential	
	SP2 Infrastructure	
Summary of key	Traffic/ access concerns	
submissions		
Report prepared by	Natalie Kastoun – Senior Town Planner	
Conflict of Interest	None declared	
Declaration		
Report date	30 April 2023 (electronic determination)	

### Summary of s4.15 matters

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

# 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)?

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

Yes

#### **Conditions**

Have draft conditions been provided to the applicant for comment?

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

NA

#### **EXECUTIVE SUMMARY**

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

- The Sydney Central City Planning Panel (SCCPP) is requested to defer the determination of the matter until the last quarter of 2023, given the site constraints which include the vegetation on site which is of ecological value, flood modelling issues due to the site being undulating and acoustic matters given that the site is located on an arterial road (Windsor Road). Other issues include planning issues which include non-compliance with building height pursuant to the LEP, non-compliance with impervious area on site and non-compliance with landscape requirements on site, waste collection issues, privacy and overlooking.
- On 10 February 2022, the SCCPP held a kick off briefing for the subject Development Application to discuss the matters for the proposal which were discussed in Council's Stop the Clock letter dated 21 January 2022 and the Request for Additional Information letter dated 27 January 2022. After this time, amended information was provided to Council on 1 June 2022. A Request for Additional Information (RFI) letter dated 25 July 2022 with the majority of the issues mentioned in first two letters sent to the applicant. A meeting was held with the applicant on 29 July 2022 to discuss the matters required to be addressed in order for Council staff to recommend approval for the SCCPP. The key issue for the subject site relates to the Ecology matters on site. A concept plan was provided for Council's Ecology Team to review. The applicant provided amended information on the 14 and 16 of December 2022 as well as the 4 of January 2023 for re-assessment. On 1 February 2023, a RFI pertaining to the Ecology and Landscape Management matters were sent to the applicant. A further RFI was sent to the applicant on 15 February 2023 pertaining to the planning, environmental health and waste matters. On 17 March 2023, a second meeting was held in person with the applicant to discuss the matters to be addressed. Clarity was sought regarding waste collection for the site and the requirement of a 2m verge of either side of the proposed private road. Clarity was also sought regarding the retention and removal of certain trees on site. After the meeting, Council staff discussed the matters and provided clarification via email related to waste collection on 20 March 2023 and 28 March 2023 for the retention/ removal of trees on site. The amended information for review still remains outstanding.
- The subject site has existing vegetation on site comprised of the Cumberland Plain Woodland. Originally, the development application proposed to remove 137 trees on site. These trees include clearing all areas of PCT 849 Grey Box – Forest Red Gum grassy woodland on the flats of the Cumberland Pain, Sydney Basin Bioregion, located on the subject property (identified as TEC Cumberland Plain Woodland in the Sydney Basin Bioregion. This area is an entity at risk of Serious and Irreversible Impacts (SAII) the removal of this vegetation is not supported. The applicant has amended the proposed design to remove six residential community title lots in order to maintain a portion of the vegetation of the mapped SAII entity. The proposed changes to the design require amendments to the Biodiversity Development Assessment Report (BDAR), documenting reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat and must document and justify how the design avoids or minimises impacts. Justification for the removal of the SAII entitle, Cumberland Woodland Plain is required. The area of habitat and/ or location of individual flora species which are mapped in accordance with the Biodiversity Assessment Method (BAM) and reported in the BDAR must be used by the proposant to avoid impacts. The applicant is currently working on this to submit for re-assessment.
- The proposal does not comply with the maximum height requirement of 10m pursuant to The Hills Local Environmental Plan 2019 for a number of the proposed dwellings. Further

to this, there are inconsistencies on the revised architectural plans related to the building height. The submitted table with Drawing AND-33784 Sheet 1 Revision G dated 18 November 2022 states that there are four lots that do not comply. There are some inconsistencies between the overall plans and the individual dwelling plans provided. In addition to this, the percentage variation for the proposed non-compliant units is incorrect. An example of this is Lot/ Dwelling 43 which states that a variation of 12.58% is proposed. This is not correct, the proposed variation for the height for the subject lot/ dwelling is 25.8% which is considered excessive nature despite the undulating site. This is important as the Clause 4.6 written submission needs to be updated to properly quantify and subsequently address the variation. Concerns are also raised that there are more than four lot/ dwellings are proposed with this non-compliance and is required to be addressed by the applicant.

- There are significant impacts to the trees within the Windsor Road widening setback and proposed excavation within the Structural Root Zone of trees which are to be retained. An example of this is tree No. 59 which is a Eucalyptus tereticornis. Amendments to the design shall be made in order to integrate the proposal with the existing vegetation on Windsor Road. Further to this, there are encroachments within the Tree Protection Zones of trees which are to be retaining as a result of the proposed retaining walls for cut to the rear of the private open space for dwellings facing Windsor Road.
- The proposed development will impact on trees located within the adjoining property, Lot 40, DP 551631, 69 Windsor Road, Norwest. The vegetation proposed for removal within the neighbouring property is identified in the BDAR as PCT 849 (CPW). The Arboricultural Impact Assessment must be amended to include all impacts on neighbouring trees. Where tree removal is proposed on neighbouring land, the application must also be supported with written consent, from the property owner.
- Retaining walls continue to be lacking detail, and not be terraced to minimise amenity impacts or located to minimise impacts on trees. The retaining wall plan/ Interface plan provide spot maximum height of walls, however does clearly indicated the wall heights across the site, or the proposed visual impact of boundary walls on neighbouring properties such as for the proposed fill to the POS areas of Lot 09 and others which interface with RMB 69 Windsor Road. Please note that boundary fencing has not been indicated on sections, and therefore the resultant height of the barrier is the height of the wall (between 1.5m-2m according to the site regrading plan) plus a 1.8m POS fence over.
- There are several trees proposed to be removed that are to be retained, for example Tree 8 and 61 with A1 and A2 retention value. Amendments are also required for sustainable encroachments into their TPZs.
- Proposed stormwater impacts from proposed swale locations and stormwater easement
  are to be avoided. The proposed swale within the TPZ of trees to be retained in the road
  widening setback is not supported. Please investigate options to avoid these impacts,
  including impacts to Tree 1 (Eucalyptus tereticornis) within the SP2 land which would
  require its removal for the easement.
- The DCP requires that hard space areas be limited to no more than 15% of the site area. This was raised previously and is responded to in the RFI response letter dated 12/12/2022. The letter refers to a table include on sheet eight of the landscape plans which demonstrates each lot complies. The table included on sheet nine shows compliance but does not explain how the areas have been measured. The areas noted do not match our calculations as per the following examples. There are also inconsistencies between the

architectural and landscape plans still relating to this. For example, the hardstand area in the front setback for units 34 and 35.

Lot	Landscape Plan	Council
3	34.9m2 (10.04%)	86.9m2 (25%)
4	33.3m2 (12.96%)	53.46m2 (20.8%)
12	29.8m2 (11.6%)	49.86m2 (19.4%)
14	22.7m2 (6.41%)	61.99m2 (17.5%)
16	28.9m2 (10.24%)	52.19m2 (18.5%)

- There is a zero lot line easement missing from lot 52 associated with the unit on lot 13 with a nil setback to that common boundary.
- Units 4 to 12, 16 to 20, 30 to 31 and 44 to 51 have a split level on the ground floor whilst units 13 to 15, 21 to 29 and 36 to 43 include a basement level aimed responding to the slope of the site. Units 2 to 3 and 32 to 35 facing Stone Mason Drive are largely flat however this is deemed okay given the interface/ level difference with units 4, 36 and 51 behind. The interface/ level difference between units 29, 30 and 31 remains a concern given it is some 3.7m currently. This could be resolved by lowering unit 29 relative to unit 28 (noting they are almost level now) or amending the design for units 30 and 31 to include a proper split level/ basement like units 13 to 15, 21 to 29 and 36 to 43.
- The landscape plan shows a set of stairs between the alfresco and POS for unit 2. The architectural plans do not. Based on the levels noted on both plans there is no level difference/ need for stairs here? If there is a level difference the rear of this unit should be stepped to sit level with the POS.
- The floor plans and elevation drawings are inconsistent with respect to the treatment of the walls around the alfresco areas. Refer to units two and three for examples of this. The floor plans suggest the side and back are open to the POS however the elevations show them as enclosed areas/ additional rooms which is not supported. In the meeting that was held on 17 March 2023, the applicant confirmed that the alfresco areas are open and this will be made clearer on the architectural plans.
- Retaining walls and fencing had not been considered with the shadow diagrams. We also raised concern with the fact some units were noted as complying when the diagrams showed otherwise. There are still several lots which show the POS is overshadowed for hours where the table states that it is compliant as follows. Whilst the information provided demonstrates that most of the units achieve a minimum of two hours the table and the plans must be amended to address the retaining walls/ fencing and the table updated accordingly.
- Privacy and overlooking concerns are a concern on site, examples of these are as follows:
  - a) The DCP requires that overlooking into living areas and private open spaces of adjoining properties is minimised using measures such as window placement, screening devices and landscaping where appropriate. This is still a concern based on the following examples.
  - b) Unit 6 Bedroom 2 faces the hall and ensuite window for Unit 5 on the first floor. This has not been addressed as previously requested. The hall window located on the first floor of Lot 5 has a sill height of 1300mm. This shall be amended to 1500mm. The ensuite window has a sill height of 900mm. This shall be amended to an 1800mm sill height window.

- c) Lot 7 Bedroom 3 looks into bathroom for Lot 6 on the first floor. An 1800mm sill height window for the bathroom on the first floor of Lot 6 is needed.
- d) Lot 7 bathroom looks into stairs window for Lot 6. A 1800mm sill height window for the hallway/ stairs on the first floor for Lot 6 is needed.
- The DCP requires that single-width garages are setback 1.5m behind the building entry.
  This was not addressed in the RFI response letter dated 12/12/2022. Most of the garages
  are setback 1m behind the front of the porch/ articulation zone level with the building entry,
  except for the units facing Stone Mason Drive where the driveways are forward of the
  building entry. This needs to be addressed.
- A schedule of materials and finishes has not been provided and is required. The elevation drawings defer to the streetscape plans for full details however they include little detail relating to this.
- There are inconsistencies between the Traffic Noise Assessment Report by Day Deign Pty Ltd, Report Number 7244-3.1R dated 27 January 2023 when compared to the architectural plans detailing the acoustic barrier proposed with particular reference with the dog leg within lot 13. Clarification of the material for the 1.8m fence will need to be constructed along lots 12 and lot 13 to separate these lots from lot 52. Clarification is sought whether consent is sought for all air conditioning units under this application (and not just lots 13 to 20 as required by the acoustic consultant). If this is the case, the acoustic consultant is to review the proposed location of the outdoor condenser units to ensure that their operation will not give rise to offensive noise. A statement is to be provided in the acoustic report detailing the assessment and plans reviewed. The submitted architectural plans include the proposed location of the outdoor condenser unit for every unit.
- With respect to engineering, the plans do not show work over No. 69 Windsor Road and a letter of owner's consent has not been provided. In addition to this, two retaining walls shown on the plans. The interface section plan shown on Drawing 010 Revision 01 and the concept engineering plans Revision C are required to be consistent with this. Further to this, the site section drawings need to be amended to include chainages for key locations (such as the site boundary at either end). The section drawings refer to a diversion bund however the plan shows a swale. A swale is needed. The plans need to be amended to be consistent.
- Amendments to the retaining walls and batters are required for the proposed design.
  Further to this a copy of the DRAINS and MUSIC Models must be provided with a
  catchment plan matching the drains model is required. In addition to this, the OSD design
  must be submitted and prepared using the UPRCT OSD Handbook subject to the
  amended/ calculated discharge rates.
- The application was notified for 14 days and one submission were received during the
  notification period. The concerns raised primarily relate to traffic concerns, inadequate
  infrastructure and ingress/ egress for the proposed development. Given the imposition of
  the construction of Stone Mason Drive and the proposed private road proposed as part of
  the design, the above concerns do not warrant refusal of the application.

Given that the proposal is generally satisfactory with the exception of the ecology/ tree matters. The applicant has amended the design previously to attempt to satisfy these matters and is currently working to further amend the design to satisfy these matters. It is considered appropriate to defer determination of the development application until July 2023 to allow for

the Applicant to respond to the matters raised and enable continued assessment by Council staff. However, if the Panel is of a mind to determine the application based on current merit, the application should be refused given the concerns raised have not been adequately addressed. Reasons for refusal are provided (Attachment 11).

#### **BACKGROUND**

#### Balmoral Road Release Area

The subject site is located within the Balmoral Road Release Area/ Precinct.

The character of the locality is as follows.

- The site to the south-east has an approved development for three residential lots/ dwellings, 21 community title residential lots/ dwellings with associated road widening and road construction under Development Consent No. 709/2016/ZE. That development is partially constructed and includes the extension of Stone Mason Drive to the boundary with the subject site.
- The site to the south-west has a partially constructed multi-dwelling housing development containing 61 residential units approved by Development Consent 1706/2018/HA.
- Further east is the Castle Hill Country Club (golf course) and Castle Pines seniors living development.
- The northern side of Windsor Road is predominantly zoned R2 Low Density Residential and consists of single lots/ dwellings.
- To the east on the opposite side of Windsor Road is land zoned SP2 Infrastructure containing a museum storage facility.
- On the south-eastern side of Windsor Road south of Showground Road is land zoned IN2 Light Industrial.



Figure `1: Locality Plan

The subject site is known as 65-67 Windsor Road, Norwest; formally Lot 1 DP 518740 and Lot 42 DP 662070. The subject site is comprised of two regular shaped lots zoned part R3 Medium Density Residential and part SP2 Infrastructure pursuant to The Hills Local Environmental Plan 2019. The SP2 zoned is located on the north-eastern boundary of the subject site and is related to the planned widening of Windsor Road by Transport for NSW.

The subject site is boundary by an arterial road to the north-east (Windsor Road). Along the south-western boundary of the subject site, under the Indicative Layout Plan (ILP) included as part of The Hills Development Control Plan (DCP), is a planned road (Stone Mason Drive) which exists in sections to the north and south of the site as shown in Attachment 1 below.

The existing site contains one dwelling on each existing allotment of land (total of two dwellings) with ancillary structures. The site slopes from the eastern corner to the western corner of the subject site.



Figure 2: Aerial Photograph of Site (Source: Nearmaps – 10 February 2021)

# **Prelodgement Meetings**

A pre lodgement meeting was held on 8 February 2021 (94/2021/PREZ) for the proposal of a small lot housing development and subdivision creating 25 community title residential lots/dwellings/ dwellings, one association lot and one road widening lot including new road and demolition. The prelodgement notes were issued to the Applicant identifying that the development has existing vegetation of ecological significance which form part of the Cumberland Plain Woodland. A due diligence assessment was required in the preliminary design phase in order to ascertain the reporting requirements for the proposed development. In addition to this, Council staff also requested an Arboricultural Impact Assessment (Arborist Report)

It was also required that the proposal is required to avoid SAII as part of any development application and as a minimum a Flora and Fauna Assessment Report is required to be prepared by a suitably qualified ecological consultant and submitted with the application.

# **Development Application**

Development Application 1021/2022/JPZ was lodged on 24 December 2021.

A kick-off briefing to the SCCPP was held on 10 February 2022. As part of this briefing the panel noted that key issues identified for consideration:

- Ecology impacts and biodiversity offsets relating to clearing of all vegetation, in particular Cumberland Plan Woodland. The proposed methodologies do not yet meet standards relating to BDAR. Should trees be required to be retained, the proposal may require a re-design.
- Insufficient information submitted regarding to building heights and related impacts.
- Clarification sought on zero lot lines and 'detached' dwellings.

### Planning Concern, Environmental Health, Resource Recovery and Engineering Matters

A request for additional information letter was sent to the Applicant on 21 January 2022 regarding planning, heritage, environmental health, resource recovery (waste) and engineering matters. The planning matters include non-compliance with the building height pursuant to the LEP and the lack of detail provided in order to conduct a detailed assessment. Other planning issues include the Applicant required to provide a Heritage Aboriginal Due Diligence Assessment, compliance with zero lot lines, hard stand area, private open space on ground level, maximum length of upper storey, solar access, garages, insufficient information pertaining to elevations and sections, subdivision plan prepared by a Registered Surveyor, materials and finishes schedule, cut and fill details and the proposed masonry wall.

With regard to Environmental Health matters an amended Traffic Noise Assessment was required in order to address mechanical ventilation and acoustic attenuation methods.

With regard to Waste, concerns were raised with regard to vehicular access and kerb side waste collection given that a 2m wide verge was not provided on both sides of the street and only on one side. In addition to this, concerns were raised with regard to bin presentation along the street.

Engineering raised concerns with regard to the stormwater, civil and traffic matters on site.

Amended information was provided by the Applicant for review on 1 June 2022.

On 25 July 2022, a further request for additional information letter was provided regarding planning, environmental health, resource recovery and engineering concerns that had not been previous addressed.

Specifically for planning, the main matter to be addressed being the building height is as follows:

A Clause 4.6 Variation to the Development Standard has been submitted in relation to varying Clause 4.3 Height of Buildings. The variation to the height of buildings is not supported based on the information provided. As previously advised in the request for additional information letter dated 21 January 2022, the submitted architectural documentation prepared by A&N Design Group Sydney does provide adequate details of the height of the buildings, therefore the impact is not accurately shown on the plan. It is noted that a table has been provided as well as ridge and finished levels on some of the elevations, natural ground levels have not been provided and the height calculations do not coincide with one another. An example of this is lot/ dwelling 45. The table states that the maximum height for this is 12.76m. When reviewing the elevations for Lot 45, the height of the dwelling equates to 12.637m when subtracting the FBL from the fill level. For the purposes of clarity and in order for Council to conduct a detailed assessment, ridge levels, natural ground levels and proposed levels (clearly showing the cut and fill) shall be shown on all elevations. It is noted that the ridge levels is only provided on two of the four elevations provided and a section elevation has not been provided for this dwelling which was previously requested.

These levels and detail must be included on the elevation plans within the architectural plans and not only on the "typical plans".

It was previously requested that section elevations for all dwellings be provided. This has not been submitted as part of the amended documentation. One section elevation has been proposed showing four dwellings only, with two dwellings both being labelled as dwelling "24". Furthermore, there is no line on the architectural plan indicating the location of this section. As previously requested, please provide sections detailing the levels for all dwellings. The engineering plans include more site sections however between the two we still do not have enough information to properly assess the impacts. For example, the sections included with the engineering plans suggest the wall along the south-eastern side boundary varies in height up to a maximum of 2.4m. Similarly, the wall along the north-western boundary varies in height up to a maximum of 1.8m. Based on the plans submitted it is unclear where these maximum heights are located or what the impacts are (noting too there is a development consent over the property to the south-east that has to be considered here as below).

A streetscape elevation has been provided however only details the proposed dwellings on site and does not provide details of the adjoining lots. While it is noted that the lot to the northwest is vacant, an approval for a development on the lot to the south-east has been made under Development Consent No. 709/2016/ZE. You need to provide a streetscape elevation to demonstrate the future character of the site. These elevations shall clearly show ridge levels, natural ground and proposed ground levels in order to determine the impact to the approved lot/ dwellings to the south-east.

Given the limited details as listed above, Council is unable to support the submitted Clause 4.6 Variation to the Development Standard in relation to the Height of Buildings. Whilst the significant site constraints relating to slope are acknowledged there are related DCP variations (as below) that contribute to this too. The actual location/ extent and height of the breach is not clear either as above. We cannot properly turn out minds to the appropriateness of the variation being sought and make an informed recommendation to the Panel without knowing this missing detail (which has been requested previously).

Other matters were also required to be addressed such as acoustic issues and waste collection issues.

On 12 December 2022, the Applicant provided the following documentation:

- Letter to Council
- Amended Architectural Plans (whole Site)
- Amended Architectural Plans (individual Lots)
- Amended Engineering Plans
- Amended Detail survey (showing additional trees together with the walls constructed on the neighbouring Site to the East)
- Tree numbering Plan
- Amended Arborists Report
- Amended Dam Dewatering Assessment
- Amended Landscape Plans
- Amended Subdivision Plan
- Amended Drains and MUSIC Models

Further to this, on 2 January 2023, the Applicant provided the following documentation:

Letter to Council

- Sketch of retaining wall heights
- Sketch of retaining wall long sections

On 3 January 2023 the Applicant provided the following information:

- Letter to Council
- Amended BDAR

On 30 January 2023 the Applicant provided the following information:

Acoustic Report

On 15 March 2023, planning, engineering and waste comments were sent to the Applicant with the same comments previously requested to be addressed.

# **Ecology and Landscaping**

A request for additional letter was sent on 27 January 2022 related to Ecology and Landscaping matters. With regard to the Ecology matters, an amended BDAR was required to address SIAI and apply with hierarchy of avoiding and minimising impacts on biodiversity before considering offsetting residual impacts.

With regard to the Landscape Management matters, the lack of tree retention was not supported given that the proposal initially proposed to retain zero trees both on site and within the SP2 land proposed for future road widening. Further to this, level details on the landscape plan are considered insufficient in order to conduct a detailed assessment.

On 25 July 2022, a further request for additional information letter was provided regarding Ecology matters that had not been previously addressed. A BDAR was prepared however the following items were required to be addressed:

- a) <u>Planted Native Vegetation:</u> Trees identified as planted native vegetation in the BDAR, that are consistent with the dominant canopy species of PCT 849 (such as Eucalyptus tereticornis), must be allocated to PCT 849 and the Biodiversity Assessment Method (BAM) must be applied;
- b) <u>GIS files:</u> Digital GIS files must be provided with a development application, for all maps and spatial data in a format that can be analysed in accordance with Table 27 of the BAM (Minimum information requirements for BDAR: Streamlined assessment module small area Appendix L, Table 27 of the BAM);
- c) <u>Subject Land:</u> The term 'development site' and 'subject land' must be correctly used in accordance with the BAM and the Subject Land must be accurately identified in the BDAR in accordance with the definitions provided in the BAM.

The 'development site' is defined in the BAM as:

'An area of land that is subject to a proposed development under the EP&A Act. The term development site is also taken to include clearing site, except where the reference is to a small area development or a major project development'.

And the 'subject land' is defined in the BAM as:

'Land subject to a development, activity, clearing, biodiversity certification or biodiversity stewardship proposal. It excludes the assessment area which surrounds the subject land (i.e. the area of land in the 1500m buffer zone around the subject land or 500m buffer zone for linear proposals)'. The subject land is where Stage 1 of the

BAM is applied to assess the biodiversity values of the land. The subject land must include the operational footprint and construction footprint (including clearing associated with temporary/ancillary construction facilities and infrastructure). The total area of all components of the proposed development must be identified as the subject land. A general description of the subject land, including topographic and hydrological setting, geology, soils and current and previous land use, must be provided in the BDAR.

#### d) Vegetation Extent within the Subject Land:

The entire subject land has not been sampled. A site inspection of the property, in June 2020, revealed the native vegetation extent on the subject land has not been accurately mapped.

Large areas of native ground cover containing a high abundance of Microlaena stipoides has not been accurately assessed in the BDAR and some areas within the northern extent of Lot 1 DP 518740 (67 Windsor Road) contain regenerating eucalyptus saplings amongst native grasses/groundcovers that require consideration in the BDAR.

The assessor must map the native vegetation extent on the subject land in accordance with section 4.1 of the BAM, including native ground cover. All areas of native vegetation cover within the assessment area must be shown on the Location Map (s3.1.3, BAM) and the assessor must map areas of non-native vegetation, cleared land and areas of vegetation that are visible on the aerial imagery but have subsequently been cleared. All parts of the subject land that do not contain native vegetation must be clearly shown on the Site Map and justification as to why these areas do not support native any native vegetation must be provided in the BDAR (s4.1.2, BAM). Areas of land that do not contain native vegetation must still be assessed for threatened species habitat in accordance with Chapter 5 of the BAM and prescribed biodiversity impacts in accordance with Chapter 6 of the BAM (s9.3, BAM).

The assessor must identify and map the distribution of PCTs, or the most likely PCTs and all TECs on the subject land (and show these on the Site Map) and the assessor must identify the most likely PCTs where vegetation on the subject land is missing structural layers; or has no distinct linear boundary to determine differences between PCTs; or includes planted native vegetation (unless eligible to be assessed in accordance with Appendix D of the BAM) (s4.2, BAM).

The map of PCTs used in the BDAR must delineate the distribution of the PCTs on the subject land based on the data collected in Section 4.1, Section 4.2 and Subsection 4.2.1 of the BAM.

# e) <u>Environmental Variation, Broad Condition States and Vegetation Zones:</u>

The plot-based vegetation survey of the subject land must be stratified and targeted to assess the expected environmental variation and address any areas with gaps in existing mapping and information (s4.2.1, BAM).

The assessor must delineate areas of each PCT that are in different broad condition states, into separate vegetation zones. Disturbance to growth form groups for tree, shrub and ground cover or extent of exotics (or combinations of these) can be used to identify areas of similar condition (s4.3.1, BAM).

The minimum number of plots must be sampled by the assessor for each vegetation zone. Where the broad condition state of vegetation varies across the zone, additional plots may be needed to ensure a representative sample is taken for the vegetation zone (s4.3.2, BAM).

A vegetation zone may have discontinuous (fragmented) patches of vegetation, provided the vegetation within the discontinuous areas are the same PCT and in a similar condition state (s4.3.1, BAM).

#### f) Direct and indirect impacts:

The assessor must determine the full extent of direct impacts on threatened entities and their habitat.

The direct impacts of the proposal on native vegetation, TECs and threatened species habitat, must be accurately documented in the BDAR, including impacts on native vegetation within neighbouring lots from stormwater infrastructure, demolition of existing structures, earthworks and installation of fencing etc.

g) The assessor must describe and assess the indirect impacts of the proposal on TECs/PCTs and threatened species and their habitat, beyond the development footprint, including but not limited to; all inadvertent impacts on adjacent habitat and vegetation (including indirect impacts from proposed fill and stormwater runoff). The assessment of indirect impacts must describe the nature, extent duration of short-term and long-term impacts; identify the native vegetation, threatened species, TECs and their habitats likely to be affected and the type of indirect impact that is likely to occur. Indirect impacts on connectivity, erosion etc. must be adequately considered in accordance with the BAM.

Abiotic factors, such as alterations of surface water patterns requires further consideration, noting the proposed changes to the natural form of the landscape and drainage patterns within the landscape will be impacted by proposed earthworks. Furthermore, the indirect impacts associated with dewatering of the dam and direct & indirect impacts from the removal of existing structures, such as the existing driveway and fences, must also be considered in the BDAR.

Further consideration of both direct and indirect impacts must be provided in the BDAR and the assessor must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design (s7.1.2, BAM). Justification for the decisions when determining the final location must be based on considerations in accordance with subsection 7.1.1(4) of the BAM and decisions about the location of the proposal must be informed by knowledge of biodiversity values. In particular the proposals clearing footprint should be located in areas that avoid habitat for species and vegetation that has a high threat status (e.g. an endangered ecological community (EEC) or critically endangered ecological community (CEEC)) or is an entity at risk of a Serious and Irreversible Impact (SAII). The BDAR must clearly document and justify efforts that avoid or minimise impacts through design, noting that the proposal must be designed to avoid or minimise direct and indirect impacts on native vegetation, threatened species, threatened ecological communities and their habitat by reducing the proposal's clearing footprint and by minimising the number and type of facilities (s7.1.2, BAM). Justification for a proposal location should identify any other site constraints and the assessor must document and justify all efforts to avoid, then document the reasonable measures proposed to minimise indirect and prescribed impacts when choosing the proposal location. A genuine effort to avoid impacts must be identified in the BDAR.

Areas of native vegetation identified for retention and protection must be located and coordinated on all relevant plans.

h) <u>Avoiding Impacts:</u> Section 6.12(c) of the Biodiversity Conservation Act 2016 (NSW) (BC Act), requires that a BDAR "set out the measures that the proponent

of the proposed development... proposes to take to avoid or minimise the impact of the proposed development". Section 5 of the BDAR refers to an area of approximately 0.05ha of vegetation within PCT849\_poor, that is proposed to be avoided, citing that 'further avoidance of this vegetation was not possible due to the site's steep topography', however a genuine effort to avoid impacts on areas containing PCT 849 outside of SP2 land, must be provided in the BDAR. It is expected that the design of the development is informed by the biodiversity values of the land. A conclusion that ecological impacts are "unavoidable" or have been avoided as far as practicable must be supported with evidence identifying the analysis and assessment undertaken that supports this conclusion. The evidence must clearly demonstrate that the proposal's biodiversity impacts could not be avoided.

Candidate SAII Entity - The Subject land contains the TEC Cumberland Plain Woodland in the Sydney Basin Bioregion. Cumberland Plain Woodland (CPW) is listed as Critically Endangered under the BC Act. Section 5 of BDAR discusses the actions proposed to avoid clearing of 0.05ha of CPW, The BDAR was reviewed and considered in accordance with the Framework for Decision-Making in Determining SAII Impacts (OEH 2019), including the scale of the proposed impact, the potential to avoid and mitigate the impact within the context of the SAII principles, the supporting criteria, the list of entities at risk of an SAII that are impacted on by the proposal, and the extent of the residual impact after measures to avoid, or mitigate have been taken. A SAII threshold has not been published for Cumberland Plain Woodland; therefore any impact on candidate entities that have no listed threshold is likely to be Serious and Irreversible. Section 7.16 of the Biodiversity Conservation Act 2016, states that "the consent authority must refuse to grant consent ....if it is of the opinion that the proposed development is likely to have a serious and irreversible impact on biodiversity values". In this regard, the application is required to avoid SAII in the first instance. Further information is to be provided that justifies avoidance measures have been appropriately considered.

The proposed retention of 0.05ha of Cumberland Plain, within land zoned SP2, will be affected by a road proposal for the future widening of Windsor Road and, in accordance with the response from Transport for NSW dated 5 April 2022, the proposed development must be clear of land required for road and Windsor Road boundary. When considering the future integrity of retained vegetation, the proposed area of clearing has not been designed with a genuine consideration of avoiding impacts on biodiversity values given the development will impact on a threatened entity at risk of SAII and the application of the precautionary principle guided by careful evaluation to avoid, wherever practicable, serious and irreversible damage to the environment, and thoughtfully apply the risk-weighted consequences of various options must be considered. Knowledge of the future road widening should be considered during the planning process and therefore efforts to avoid impacts on biodiversity values must not be limited to land zoned SP2 but must also avoid impacts on biodiversity values within areas of the subject land zoned R3, by retaining PCT 849.

Point 4b of Table 20 in the BDAR suggests that 8.4ha of TEC remain within the development footprint however, a review of Council's interactive mapping identified the remaining areas of CPW within the development footprint is limited to approximately 3.4ha. Therefore, the assumption that 8.5ha of native vegetation remain within the 500m buffer, is incorrect.

Vegetation proposed to be retained must be clearly identified and mapped in the BDAR. Plans must be coordinated to identify areas of native vegetation (PCT 849) proposed to be retained.

Areas of PCT 849 proposed to be retained and protected must be managed under a VMP as a protected area and must not be designed as a landscaped area.

*j)* Adding THSC as a case party in BOAMS: The Accredited Assessor is advised to manually add The Hills Shire Council as a new Case Party in BOAMS.

Other matters were also addressed in the request for additional information letter related to landscaping were also requested in this letter.

On 18 October 2022, the Applicant provided an amended concept plan with an amended design removing four lots in order to satisfy the ecology concerns.

On 19 January 2023, Council and the Applicant had a meeting to discuss the Ecology matters.

On 1 February 2023, a request for additional information letter was sent through to the applicant pertaining to Ecology and Landscape Management matters. The matters are as follows:

# 1. Ecology Matters

In the context of Part 4 local development, the serious and irreversible impacts threshold provides guidance as to the level of impact that could be sustained by a threatened entity, beyond which a proposed impact is likely to contribute significantly to the risk of extinction. The threshold identified in BioNet for the entity, Cumberland Plain Woodland, is currently zero, therefore any impacts on the SAII entity could be serious and irreversible.

Previous correspondence dated 21 October 2022, to Landen and Orion Consulting, suggested that vegetation within proposed Lots 12 -17 (now identified as proposed lots 52, 13 and 14) should be retained and protected as an avoidance measure. The proponent has proposed to retain a portion of the mapped SAII entity Cumberland Plain Woodland (CPW) within proposed Lot 52, however retention and protection of the SAII entity within proposed Lots 13 and 14 should also be included as part of the conservation area (inclusive of the tree identified as Tree No. 61 and No. 1 that is proposed for removal). The adequate protection and retention of the remnant vegetation zones within the subject land identified in the BDAR as Zone 1 PCT 849 (degraded) and Zone 2 PCT 849 (Derived native Grassland), must be considered. It is noted that vegetation mapped in the BDAR as PCT 849 derived native grasslands, has shown signs of regeneration in response to ceased mowing activity.

In accordance with section 7.1.2 of the BAM; the BDAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design and must document and justify efforts to avoid or minimise impacts through design. Justification for the removal of the SAII entity, Cumberland Plain Woodland must be provided. The area of habitat and/or location of individual flora species, mapped in accordance with the BAM and reported in the BDAR, must be used by the proponent to avoid impacts.

The proposed Stormwater infrastructure has been located within areas containing native vegetation identified as a SAII entity (inclusive of impacts to the tree identified as Tree numbered 1, Eucalyptus terreticornis, in the Arborist Report prepared by Axiom Arbor dated Oct/Nov 2022). Stormwater infrastructure must be located to avoid impacts on biodiversity values, in the first instance. Where that cannot be achieved, reasonable justification must be

provided in the BDAR in accordance with the BAM. Furthermore, the proposed swale should be located so that it is outside areas containing high biodiversity values.

The consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.

Information on the viability of the entity at the local, IBRA and subregional/regional and state scales, is used to decide if the proposal is likely to increase the extinction risk, if any, of the SAII entity and whether impacts/ losses/declines are likely to be serious and irreversible.

Section 7.1 (4b.) of the BDAR considers the size of any remaining, but now isolated areas of TECs within 500m of the development footprint. However further discussion on the amount of the SAII entity (Cumberland Plain Woodland) within an area of 1,000ha and 10,000ha surrounding the proposed development footprint, has not been adequately provided in the assessment of SAII, and further information must be provided on whether impacts on the SAII entity within the subject land would increase the fragmentation of the remaining CPW in the locality (note: loss of CPW within areas identified as biodiversity certified land must assume that vegetation is removed)

The long-term loss of biodiversity at all levels arises mainly from the accumulation of losses and deletions of populations at the local level (NSW Dept of Primary Industries 2008 Threatened Species Assessment Guidelines). CPW is listed a SAII due to Principle 1 – species or ecological community in a rapid rate of decline, therefore the BDAR must consider and provide an assessment of the impact at the local level i.e., the local occurrence of the entity being impacted and provide details on how the results are calculated.

#### 2. Tree/ Landscape Management Matters

# 1. Trees

a) Development impacts to trees must be further avoided. For example, as per previous comments, the retaining walls for cut to the rear of the Private Open Space (POS) areas of dwellings abutting Windsor Road must be relocated further away from the Windsor Road boundary to allow minimise encroachments into Tree Protection Zones of trees to be retained;

Major impacts remain proposed to tree within the Windsor Road widening setback, and proposed excavation within the Structural Root Zone of trees to be retained, such as tree 59 – Eucalyptus tereticornis. The Arborist is to liaise with the architect, engineer, and ecologist ensure that any required alteration/s to the current design are accordingly integrated on all the plans. See THDCP Part D Section 7 – Balmoral Road Release Area Section 8.5.1 Building Setbacks for controls relating to setbacks from protected trees;

2. Trees proposed for removal and retention within the Arborist Report (amended report dated Oct/Nov 2022) appear to be inconsistent. For example, Tree 59 is indicated on the Tree Removal and Protection Plan as to be retained, while is recommended for removal in the Impact Assessment Schedule. Trees indicated for retention and removal on the Landscape Plan between the plan and the Tree Survey Legend is also incorrect. Please ensure that recommendations are consistent;

- **3.** Trees such as 8 and 61 with A1 and A2 retention value are to be retained, with amendments made to allow for sustainable encroachments in to their TPZs;
- 4. Proposed stormwater impacts from proposed swale locations and stormwater easement are to be avoided. The proposed swale within the TPZ of trees to be retained in the road widening setback is not supported. Please investigate options to avoid these impacts, including impacts to Tree 1 (Eucalyptus tereticornis) within the SP2 land which would require its removal for the easement;
- **5.** Additional trees are to be retained such as Tree 61 in line with Councils' Ecology comments:
- **6.** Street Tree species to Stone Mason Drive are now consistent with the Balmoral Road Release Area DCP. The planting to the south of the road is expected to be in the location of a cycle way and is to be removed;
- 7. The material of the acoustic wall to be supplied between the 2m landscape corridor and the individual lots on Windsor Road is to be consistent between plans. The construction must be such that allows for pier construction, rather than hebel block as indicated on the landscape and architectural plans, in order to protect the roots of trees to be retained; and
- 8. Further detail of the planting to the Windsor Road setback has been provided. Please indicate what is proposed within the Windsor Road setback forward of the 2m landscape corridor. There is existing landscape planting, fencing, and weeds within the area. Are all fences and vegetation under the trees to be removed and provided with turf? Please indicate on plans.

# 2. Landscaping

- 1. The landscape area calculations remain unclear. Please provide a landscape area diagram which clearly indicates what has been included as landscape area for the site. A minimum of 40% of the whole site is to be landscaped. All landscaped areas are to have a minimum width of 2m. Hard surface within POS areas can be included so long as the hard stand within the lot does not exceed 15% of the lot area:
- **2.** As per previous comments, please indicate terraced walls where walls are over approx 1m to resolve the landscape levels and provide as much visual amenity as possible;
- 3. Walls must be clearly located on all plans, such as those which are required between lots and to boundaries, and additional walls provided where required to create usable spaces. Retaining walls remain insufficiently detailed. High blank walls remain proposed such as the following between Lot 36 and Lot 34. See levels below indicating a 1.8m wall which would have a 1.8m fence over, equating to a combined wall/barrier of 3.6m. As per previous comments, it is also noted that the shade that would be generated into the POS area (falls to the south) of lot 34 has not been taken into consideration of the shadow diagrams which have not modelled the fencing or retaining walls;
- 4. Retaining walls continue to be lacking detail, and not be terraced to minimise amenity impacts or located to minimise impacts on trees. The retaining wall plan/ Interface plan provide spot maximum height of walls, however, does clearly indicated the wall heights across the site, or the proposed visual impact of boundary walls on neighbouring properties such as for the proposed fill to the POS areas of Lot 09 and others which interface with RMB 69 Windsor Road. Please note that boundary fencing has not been indicated on sections, and therefore the resultant height of the barrier is the height of the wall (between 1.5m-2m according to the site regrading plan) plus a 1.8m POS fence over;

- 5. Further finer resolution of retaining walls within front setbacks appears to be required. Please see examples below where retaining walls appear to require returning. Where this is to be provided, please set walls back a min of 500mm to allow for planting forward of the wall to either soften it (for walls for fill), or provide planting at the street grade (for walls for cut);
- 6. Please indicate garden edging where front gardens meet the verge turf;
- 7. The following wall is approximately 2m max height and would be prominent from within the site and potentially from Stone Mason Drive. Please indicate planting in the green area to soften the wall, and also provide access (such as stairs) ensuring that the Restricted Development Area to be managed under a VPM is accessible for regular maintenance;
- **8.** Please substitute Bursaria spinosa where indicates alongside pedestrian paths due to their sharp spines.

# 3. Impacts on Trees within Adjoining Properties

The proposed development will impact on trees located within the adjoining property, Lot 40, DP 551631, 69 Windsor Road, Norwest. The vegetation proposed for removal within the neighbouring property is identified in the BDAR as PCT 849 (CPW). The Arboricultural Impact Assessment must be amended to include all impacts on neighbouring trees. Where tree removal is proposed on neighbouring land, the application must also be supported with written consent, from the property owner.

#### **DETAILS AND SUBMISSIONS**

Owner:	Landen Property
Zoning:	R3 Medium Density Residential
Area:	2.145 ha (21450000m²)
Existing Development:	2 dwellings and associated structures
Section 7.11 Contribution	\$34,371,102.00
Exhibition:	Not required
Notice Adj Owners:	Yes
Number Advised:	112
Submissions Received:	1

#### **PROPOSAL**

The proposed development seeks consent for the following works:

Small lot housing development and subdivision creating 54 community title residential lots/ dwellings and one association lot including new road, demolition, contamination remediation and dam dewatering accompanied by an application to vary a development standard (maximum building height)

- Demolition of existing structures;
- Construction of a small lot housing development comprised of 50 dwellings including a variation to a development standard (maximum building height);
- 50 community title residential lots and one association lot;

- Construction of public road (Stone Mason Drive) and new private road as part of the community title subdivision;
- · Contamination remediation; and
- Dam dewatering.

#### STRATEGIC PLANNING FRAMEWORK

# a. Sydney Region Plan – A Metropolis of Three Cities

The Greater Sydney Region Plan, *A Metropolis of Three Cities* has been prepared by the NSW State Government to set a 40 year vision and established a 20 year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters.

The Plan sets a new strategy and actions to land use and transport patterns. The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). To achieve this, the Plan seeks to develop a network of 34 strategic centres, one of which is Norwest, and incorporates the subject site. The Plan aims to ensure economic corridors are better connected and more competitive.

The subject site is located within 1.5km from Norwest Metropolitan Station (approximately 18 minute walk). There are several bus stops located within close proximity to the subject site, with the closest located approximately 108m south-east of the subject site at the intersection of Windsor Road and Showground Road. A key objective within the Greater Sydney Region Plan which is relevant to the subject Development Application is 'Objective 10 Greater housing supply'. The Greater Sydney Region Plan highlights that providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. The Plan also notes that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. To achieve this objective, planning authorities will need to ensure that a consistent supply of housing is delivered to meet the forecast demand created by the growing population. The proposed development is consistent with this objective as it will assist in maximising housing supply within a Precinct which will have direct access to high frequency public transport services.

The Plan also seeks to reduce exposure to natural and urban hazards such as flooding (Objective 37). To achieve this, the Plan includes strategies to avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing urban areas most exposed to hazards. The Plan also notes that District Plans will set out more detailed planning principles for addressing flood risk.

Subject to resolution of the flood planning matters, the development proposal would be consistent with the Sydney Region Plan.

# b. Central City District Plan

The Plan is a guide for implementing the Sydney Region Plan at a district level and is a bridge between regional and local planning.

Planning Priority C5 seeks to provide housing supply, choice and affordability and ensure access to jobs, services and public transport. The proposed development will assist in increasing housing supply within the strategic centre of Norwest that benefits from nearby employment, services and public transport. The delivery of medium-density residential development within 1.5km distance of the Norwest Metro Station and approximately 106m to a major bus interchange will facilitate an increase in the choice of housing and support employment growth in Castle Hill as a strategic centre.

Planning Priority C20 seeks to adapt the impacts of urban and natural hazards and climate change with the objectives for people and places to adapt to future stresses and reduce their exposure to natural and urban hazards. The Plan notes that flood constraints exist in the areas in the district which are undergoing significant growth and redevelopment and recommends that planning for growth in flood-prone areas, must recognise the exceptional risk to public safety and consider appropriate design measures to strengthen the resilience of buildings and the public domain in a flood event. Planning principles including avoiding intensification and new urban development on land below the current one in 100 chance per year flood event, applying flood related development controls on land between the one in 100 chance per year flood level and the probable maximum flood (PMF) level, provide less intensive development in areas of higher risk, avoiding alterations to flood storage capacity of the floodplain and flood behaviour through filling and excavation and applying more flood-compatible building techniques for greater resilience to flooding.

Subject to resolution of the flood planning and engineering matters, the development proposal would be consistent with the Central City District Plan.

# c. Local Strategic Planning Statement

The Hills Future 2036 Local Strategic Planning Statement was made on 6 March 2020. The proposal has been considered against the outcomes planned within the Local Planning Strategic Planning Statement and Implementation Plan.

Planning Priority 8 seeks to plan for a diversity of housing with access to jobs and services. It is envisaged that the Castle Hill North Precinct would provide approximately 2,100 additional dwellings by 2036. The Norwest Precinct provides for a housing diversity clause under The Hills LEP which promotes family friendly dwellings within the Precinct. The proposal meets this housing diversity clause by lots/ dwellings that meet the LEP and Council's DCP requirements. Further to this, the proposal provides an additional 50 community residential lots to the emerging precinct.

#### **ISSUES FOR CONSIDERATION**

1. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment. Clause 4.6 of the SEPP states:

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

#### Comment:

Preliminary and Detailed Site Investigation Report for 65 and 67 Windsor Road, Norwest prepared by Geotest Services Pty Ltd, referenced as P33134.1\_R01 and dated 8 April 2021 has been reviewed.

- 85 investigation locations / 1 water (dam) / 60 soil samples
- Bonded asbestos as ACM within 4 samples from 3 test pit locations (TP44, TP49 & TP55)
- Foreign material in soils TP 29, 30, 39. 43, 46, 49 & 55
- Recommendations RAP, hazardous building material survey
- Section 4.4 5 x 20L plastic fuel containers
- A number of data gaps identified in section 9.2

Remedial Action Plan for 65 and 67 Windsor Road, Norwest prepared by Geotest Serviced Pty Ltd referenced as P33134.1 R02 V1 and dated 31 August 2021 has been reviewed.

- No burial proposed as part of remediation
- Proposal for investigations to close identified data gaps
- Validation report required standard condition can be recommended.

Standard condition to comply with Remediation Action Plan can be recommended. Conditions have not yet been provided by Council's Environmental Health Team given that there are other outstanding items the Applicant is required to address, relating particularly to Acoustic requirements.

A Preliminary Site Investigation has been undertaken by EI Australia. The investigation found that the site has been continuously used for low density residential purposes since 1968 and prior to this the land was used for farming (grazing) purposes. The site was free of statutory notices and licensing agreements issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997. Visual and

olfactory evidence of contamination was not encountered on any part of the site. The Conceptual Site Model to appraise the potential for contamination on the site, concluded the potential for soil and groundwater contamination was low and that the site was deemed suitable for the proposed residential development.

In this regard, if consent was granted to the development application, a condition could be imposed in the development consent to ensure that the site is suitable for the proposed development relating to land contamination and the provisions of SEPP (Resilience and Hazards) 2021.

# 2. 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. If development consent was granted to the application, the commitments as detailed in the amended BASIX Certificates could be imposed as a condition of consent.

#### 3. The Hills Local Environmental Plan 2019

### a. Permissibility

The land is zoned R3 Medium Density Residential under Local Environmental Plan 2019. The proposal comprises uses defined as follows:

**Dwelling house** means a building containing only one dwelling.

The proposed uses are permitted within the R3 Medium Density Residential zone under the provisions of LEP 2019.

# b. Development Standards

The following addresses the principal development standards of the LEP:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
2.6 Subdivision – Consent Requirements	<ul> <li>(1) Land to which this Plan applies may be subdivided, but only with development consent.</li> <li>(2) Development consent must not be</li> </ul>	proposed as part of the	Yes

	granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.		
2.7 Demolition Requires Development Consent	The demolition of a building or work may be carried out only with development consent.	Demolition is proposed as part of the Development Application. A demolition plan has been provided within the Engineering Documentation prepared by Orion Consulting, Project No. 21-0003, Set 03, Plan 003, Revision C, dated 9 December 2022.	Yes
4.1 Minimum Subdivision Lot Size	<ul> <li>(1) The objectives of this clause are as follows— <ul> <li>(a) to provide for the proper and orderly development of land,</li> <li>(b) to prevent fragmentation or isolation of land,</li> <li>(c) to ensure that the prevailing character of the surrounding area is maintained.</li> <li>(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.</li> <li>(3) The size of any lot resulting from a subdivision of land to</li> </ul> </li></ul>	In accordance with The Hills LEP 2019, the minimum lot size is 700m². The proposed residential lots range from 257m²-360.9m² and do not comply with the minimum lot size. The Applicant proposes to use Clause 4.1B of The Hills LEP 2019.	No

	which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.  (4) This clause does not apply in relation to the subdivision of any land— (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or  (b) by any kind of		
	subdivision under the Community Land Development Act 2021.		
4.1B Exceptions to Minimum Lot Sizes for Certain Residential Development	<ul> <li>(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.</li> <li>(2) This clause applies to development on land in the following zones—</li> <li>(a) Zone R3 Medium Density Residential,</li> </ul>	The site proposes to subdivide 50 lots and exceeds 240m². The proposed lots range between 257m²-360.9m² and is therefore considered acceptable.	Yes
	(b) Zone R4 High Density Residential.		
	(3) Development consent may be granted to a single development application for development to which this clause applies that is both of the following—  (a) the subdivision of land into 3 or more lots,		
	(b) the erection of an attached dwelling or a dwelling house on each lot resulting from the subdivision, but only if the size of each lot is equal to or greater than 240 square metres.		
	(4) Development consent must not be		

- granted to development to which this clause applies for the purposes of dwelling houses or attached dwellings unless the consent authority is satisfied that—
- (a) the form of the proposed buildings is compatible with adjoining buildings in terms of their elevation relative to the street and building height, and
- (b) the design and location of rooms. windows and balconies proposed the buildings, and the open space to be provided, ensures acceptable acoustic and visual solar privacy and access, and
- (c) all dwellings are designed to minimise energy needs and use passive solar design principles, and
- (d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas, and
- (e) there is pedestrian access to each dwelling from the main street frontage.
- (5) Despite subclause (3), development must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that the subdivision is appropriate having regard to the impact on

	the residential amenity and streetscape in the area.		
4.3 Height	(1) The objectives of this clause are as follows— (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape, (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.  (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.	Clause 4.3 of the LEP establishes that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum height of any building on the subject site as shown on the Height of Buildings Map is not to exceed 10 metres. At least four dwellings exceed the maximum height requirements.	No
Clause 4.6 – Exceptions to Development Standards	4.6 Exceptions to development standards  (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	A variation to Clause 4.3 in relation to the building height is proposed.  There are still inconsistencies on the revised architectural plans relating to building height. The table included with Drawing AND-33784 Sheet 1 Revision G dated 18/11/2022 notes there are four lots that do not comply. There are some inconsistencies between the overall plans and the individual unit plans.  The percentage variation stated for the	Yes, refer to discussion below.

- planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- Development consent must not be granted for development contravenes development standard unless the consent authority has considered a written request from the applicant that seeks 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

four non-compliant units is incorrect. For lot 43 for example the variation is 25.8% not 12.58%. This is important as the Clause 46 written submission needs to be updated to properly quantify subsequently address the variation. The regional panel will interrogate the Clause 4.6 written submission The closely. single biggest argument you have for the noncompliance is the fill needed to respond to the site slope (see Drawing 003 from the engineering plans and Sections C-C and D-D from the architectural plans). This is where the Clause 4.6 written submission needs to speak to the FGL relative to the NGL noted above and below. That said it is noted that units 40, 41, 42 and 43 all have 2.6m or 2.7m floor to ceiling heights and pitches roofs. There is more you can do from a design perspective to minimise or remove the non-compliance By comparison units 7 and 8 have flat roofs seemingly linked to achieving compliance with the maximum building height.

There is a concern there are more than four non-compliant

- the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be under this granted clause for a subdivision of land in Zone RU1 Primary Production, RU2 Zone Rural Landscape, Zone RU3 Zone Forestry, RU4 Production Primary Small Lots, Zone RU6 Transition, Zone Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if— (a) the subdivision will result in 2 or more lots of

less than the minimum

units. It is required that the overall plans and the individual unit plans are required to be consistent in order to confirm this detail. For example, Lot 15 states the maximum height is 9.99m which incorrect. Based on the individual plans and sections, the height is 10.03m either 10.035m which both do not comply. lt required that the details are clear in order to conduct а detailed Given assessment. that the proposal does not comply with a development standard, it is required that these details and compliances be clearly detailed in order to determine the impacts to the adjoining lots as well as the proposed internal lots/dwellings.

- 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, with connection 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 situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (cab) (Repealed)
- (ca) clause 6.2 or 6.3,

	(cb) clause 7.11,		
	(cc) clause 7.15.		
5.10 Heritage Conservation	(1) Objectives The objectives of this clause are as follows— (a) to conserve the environmental heritage of The Hills, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance. (2) Requirement for consent Development consent is required for any of the following— (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)— (i) a heritage item, (ii) an Aboriginal object, (iii) a building, work, relic or tree within a heritage conservation area, (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,	The site is in the vicinity of locally listed heritage items I125— House and I28 - Windsor Road. The house is located (approximately 200 metres west from the subject site) on Rosette Crescent and I28 seeks to preserve the location of Windsor Road along the ridgeline. No objections have been raised. Conditions have not yet been provided.	Yes

- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, damaged moved, destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land—
- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land—
- (i) on which a heritage item is located or that is within a heritage conservation area, or
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (3) When consent not required However, development consent under this clause is not required if—
- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the

proposed development—

- (i) is of a minor nature or is for the maintenance of the heritage item. Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
- (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development—
- (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
- (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.
- (4) Effect of proposed development on

#### heritage

significance The consent authority must, before granting consent under this clause in respect of a heritage item heritage or area, conservation consider the effect of the proposed development the heritage on significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a conservation heritage management plan is submitted under subclause (6).

- (5) Heritage
  assessment The
  consent authority may,
  before granting consent
  to any development—
  (a) on land on which a
  heritage item is located,
  or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require heritage а management document to be prepared that assesses the extent to which the carrying out of proposed development would affect heritage the significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation

# management

plans The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

## (7) Archaeological

sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies)—

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

# (8) Aboriginal places of heritage

significance The consent authority must, before granting consent under this clause to the carrying out development an in Aboriginal place of heritage significance— (a) consider the effect of the proposed development on the heritage significance of place and any Aboriginal object known or reasonably likely to be

	located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and  (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.		
6.2 Arrangements for Designated State Public Infrastructure	(1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.  (2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than—  (a) in relation to land shown as "Existing Urban Release" on the Urban Release Area Map—40 hectares, or  (b) in any other case—the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area,	Clause 6.1 relates to arrangements for designated State public infrastructure. The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes. A condition will be recommended in the draft consent for payment of a Special Infrastructure Contribution.	Yes

unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute provision of to the designated State public infrastructure in relation to that lot.

- (3) Subclause (2) does not apply to—
- (a) any lot identified in the certificate as a residue lot, or
- (b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or
- (c) any lot that is proposed in the development application to be reserved dedicated for public open space, public public utility roads, undertakings, educational facilities or any other public purpose, or
- (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) This clause does not apply to a development application to carry out development on land in an urban release area if all or any part of the land to which the application applies in a special contributions area (as defined by section 7.1 of the Act).

6.3 Public Utility Infrastructure	(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.  (2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.	Clause 6.3 requires that development consent must not be granted unless the Council is satisfied that public utilities are available for future development. Services are available in the locality with modification to the local network required. Conditions of consent have been recommended requiring a certificate from each service provider confirming that they are satisfied that the services have been provided to their requirements.	Yes
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## 6. Compliance with The Hills Development Control Plan 2012

The proposal has been assessed against the relevant provisions of The Hills Development Control Plan 2012 including the following sections:

- Part B Section 9 Small Lot Housing
- Part D Section 7 Balmoral Road Release Area

THE HILLS DEVELOPMENT CONTROL PLAN 2012 - PART B SECTION 9 – SMALL LOT HOUSING				
Complies:		No. See di	iscussion	below
The following controls from the Sr	The following controls from the Small Lot Housing DCP apply.			
Site Planning				
Development Standard	Proposed [	Developme	nt	Compliance
Minimum Site Depth 25 metres	The site approximate		•	Yes
4.5 metres except where an existing setback is already established proposed. consistent adjoining not developme		front setba This appea with the im- oulti-dwelling ont to the s coses a se ely 5.5m.	rs to be mediately housing outh-east	

Secondary Street Setback	Not applicable	Not applicable
2 metres		
Side Setback (Detached) 1.2 metres 0 metres on zero lot line	All lots comply with the side setback controls.	Yes
Rear Boundary 1 storey – 6 metres 2 storey – 8 metres	All lots comply with rear setback controls for the ground and first floor.	Yes
<ul> <li>Zero Lot Line Housing</li> <li>Shall only be permitted for detached housing.</li> <li>Shall only be permitted on the southern side boundary of east west allotments and either side boundary (not both) of north south allotments.</li> <li>Zero Lot Line must not be proposed on the end dwelling that adjoins other development.</li> <li>Must not abut another zero lot line wall.</li> <li>Must not have windows along boundary wall.</li> <li>Must be constructed of maintenance free materials such as face brick or masonry.</li> <li>Gutters, eaves and fascia's are to be constructed of colorbond steel or similar with no visible downpipes.</li> <li>A restriction as to user is created for one metre wide maintenance easement over the adjoining property.</li> </ul>	There is a zero lot line easement missing from lot 52 associated with the unit on lot 13 with a nil setback to that common boundary.	No
Private Open Space  - Minimum area of 20% of each allotment area of the individual dwellings, with a minimum area of 24m² and have a minimum dimension of 4m  - Private open space shall be provided at ground level and shall be directly	A private open space area of 6 metres by 4 metres is provided for each dwelling. POS is at ground level and is accessible from living areas. A mixture of soft landscaping and alfresco/paved areas is included. POS is located with a northerly aspect wherever possible; however the slope of the site restricts full solar access to the POS of all dwellings.	Yes

- accessible from the primary living areas
- May comprise a combination of paved and non-paved areas however hard space areas are to be limited to 15% of the site area
- Located and oriented to ensure it is not directly overlooked from adjoining lots or buildings.
- Located on relatively flat land to ensure it is useable as open space.
- 50% of the private open space is to receive 2 hours of direct sunlight between 9am and 3pm on 21 July.

## **Landscaped Open Space**

- Minimum 40% of the site is to be landscaped.
- All landscaped areas are to have a minimum width of 2m.
- Landscaped open space can be considered as part of private open space calculation, however hard surfaces are to be limited to 15% of the site area.
- All paved surfaces are to be of a light or neutral colour.
- Existing trees are to be preserved where possible.
- Where practicable, front gardens are to include a minimum of two small trees between 8 and 15 metres at maturity.
- Rear gardens are to include a minimum of one large deciduous tree. Lots in excess of 30m depth to have a minimum of two large deciduous trees in the rear garden.
- Garden beds to be provided between driveway and side fence.

The amended consolidated plans include a lot data table (sheet one) which shows that each lot provides for a minimum 40% landscaped area. The table does not explain how the areas have been measured. The areas noted do not match our calculations (specifically units 4, 12 and 14).

The DCP requires that hard space areas be limited to no more than 15% of the site area. This was raised previously and is to in the RFI responded letter dated response 12/12/2022. The letter refers to a table include on sheet eight of landscape plans which the demonstrates each lot complies. The table included on sheet nine shows compliance but does not explain how the areas have been measured. The areas noted do not match our calculations as per the following examples. There are also inconsistencies between the architectural and landscape plans still relating to this. For example the hardstand area in No

		the front setback for units 34 and 35.			
		Lot	Landscape Plan	Council	
		3	34.9m2 (10.04%)	86.9m2 (25%)	
		4	33.3m2 (12.96%)	53.46m2 (20.8%)	
		12	29.8m2 (11.6%)	49.86m2 (19.4%)	
		14	22.7m2 (6.41%)	61.99m2 (17.5%)	
		16	28.9m2 (10.24%)	52.19m2 (18.5%)	
Other Controls  - Applications for small lot housing should be accompanied by a streetscape plan and typical street elevations.		Streets have b accept	een provided.	•	Yes
- Larger dwellings are preferable for north-south allotments.					

## **Building Design and Streetscape**

Development Standard	Proposed Development	Compliance
Maximum Building Height 2 storeys	Dwellings up to two storeys in height are proposed.	Yes
Minimum Lot Width Attached = 8m Detached = 9m	All lots comply exceeding 9 metres.	Yes
Maximum Building Block Length (Attached Dwellings) 50 metres 4 metre gap between frontages 2 metre side setback to adjoining property	Two-storey detached dwellings are proposed.	Not applicable
Maximum Length of Upper Storey 10 metres	The upper storey for all proposed dwellings exceed 10 metres in depth for the first floor. Lot 20 proposes a maximum upper	shadow diagrams

	storey of 15.7m. The upper	minimum 2 hour
	storey of 15.7m. The upper storeys range from approximately 14.3m-10.8m.	minimum 2 hour requirement.
Individual Street Entries  - Each dwelling is to provide individual access from the main street frontage and be integrated with building façade design	Each dwelling is provided with individual access at street level.	Yes
Streetscape	A suitable streetscape is	Yes
<ul> <li>Development is to address the public road frontage and side boundaries with a building form compatible with adjoining development in terms of street elevation, bulk and scale, quality materials and finishes.</li> <li>The following design elements can be included along street frontages:         <ul> <li>Verandas;</li> <li>Gables;</li> <li>Vertical elements to reduce the horizontal emphasis of the façade;</li> <li>Entry feature or portico;</li> <li>Balcony/window boxes or similar elements; and</li> <li>Landscaping/fencing compatible with the frontage status of elevation.</li> </ul> </li> </ul>	provided with a range of design elements including porches, balconies, entry features, landscaping and a range of colours/ materials.	
Visual Privacy	The DCP requires that	No
<ul> <li>Dwellings shall minimise overlooking into living areas and private open spaces of adjoining properties using measures such as window placement, screening devices and landscaping where appropriate.</li> <li>First floor balconies will not be permitted where they overlook living areas or private open spaces of</li> </ul>	overlooking into living areas and private open spaces of adjoining properties is minimised using measures such as window placement, screening devices and landscaping where appropriate. This is still a concern based on the following examples.  Unit 6 Bedroom 2 faces the hall	
adjoining properties.	and ensuite window for Unit 5 on the first floor. This has not been	

	addressed as previously requested. The hall window located on the first floor of Lot 5 has a sill height of 1300mm. This shall be amended to 1500mm. The ensuite window has a sill height of 900mm. This shall be amended to an 1800mm sill height window.	
	Lot 7 Bedroom 3 looks into bathroom for Lot 6 on the first floor. An 1800mm sill height window for the bathroom on the first floor of Lot 6 is needed.	
	Lot 7 bathroom looks into stairs window for Lot 6. A 1800mm sill height window for the hallway/ stairs on the first floor for Lot 6 is needed.	
Acoustic Privacy  - Dwellings shall limit potential for noise transmission to the living and sleeping areas within the development as well as adjacent existing and future development.	The applicant is requested to submit consistent plans and elevations showing the retaining walls and acoustic barriers along with notations of the proposed construction materials as determined by the acoustic consultant.	Yes
- Consideration shall be given to the location of airconditioning systems, swimming pools, entertaining areas and the like to minimise the impact on the amenity of adjoining properties.		
Solar Access	It has been previously raised	Yes
<ul> <li>Dwellings should be sited to allow adequate provision of direct sunlight to the private open space of adjacent properties.</li> </ul>	concern with the fact retaining walls and fencing had not been considered with the shadow diagrams. We also raised concern with the fact some units	
- At least 50% of the private open space within the subject property shall receive direct sunlight for a minimum of 2 hours	were noted as complying when the diagrams showed otherwise. There are still several lots which show the POS is overshadowed for hours where the table states	

-	between 9am and 3pm on 21 June. Collapsible or permanent clothes drying device is to be provided within private open space areas and located to maximise	that it is compliant as follows. Whilst the information provided demonstrates that most of the units achieve a minimum of two hours the table and the plans must be amended to address the retaining walls/ fencing and the table updated accordingly.	
- -	Dark roof colours are to be avoided.  Eaves to be a minimum of 450mm from external wall except where walls are built to the boundary/zero lot line.	Dark roofs have been proposed as shown on the colour schedule submitted. Eaves are provided for dwellings excluding the zero lot lines. This is considered acceptable given that the overall façade design is cohesive with the proposal of the dark roofs.	No. Consider acceptable for reasons explained
100	ess and Parking		
De	evelopment Standard	Proposed Development	Compliance
- -	Minimum width of internal roadways 6m Internal roadways should be separated from any adjoining property boundaries by a landscaped verge at least 2m in width Internal roadway design shall make provision for service vehicles	Proposal of 4.5m driveway. Roadway not proposed.	Not applicable
Ga	nrages	The DCP requires that single-	No
-	Garage doors are not to exceed 2.4m in height. Garages on corner lots to be accessed from the	width garages are setback 1.5m behind the building entry. This was not addressed in the RFI response letter dated 12	
-	secondary street.  Garages facing a public place are to extend less than 50% of the property frontage.	December 2022. Most of the garages are setback 1m behind the front of the porch/ articulation zone level with the building entry, except for the units facing Stone Mason Drive where the	
-	Double garages will not be permitted for attached dwellings.	driveways are forward of the building entry. This needs to be addressed.	
	Double garages will only be		i

Double garages will only be permitted for detached dwellings where they do not

extend more than 50% of the property frontage.

<ul> <li>Single-width garages must be setback 1.5m behind building entry.</li> <li>Garages are not permitted to adjoin each other.</li> </ul>		
Car Parking Rates - 1 space per dwelling	Two parking spaces have been provided for each dwelling.	Yes
Visitor Parking  - Minimum carriageway width of 8.5m where visitor parking is dedicated.	No visitor parking is required.	Yes

## THE HILLS DEVELOPMENT CONTROL PLAN 2012

## - PART D SECTION 7 - BALMORAL ROAD RELEASE AREA

Complies: No. See discussion below	
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Part D Section 7 – Balmoral Road Release Area of the DCP applies to the subject site. However, that DCP does not envisage this form of development (small lot housing/ Clause 4.1B) and so includes little/ no controls relating to the same.

The objectives and controls outlined in Part D Section 7 – Balmoral Road Release Area establish the character of the locality such as front and side building setbacks (on public roads) and site coverage. The table below outlines the controls that are applicable to the proposed development and address the non-compliances with the Small Lot Housing DCP above.

Development Standard	Proposed Development	Compliance
Section 4 – Roads	Roads is existing and in accordance with the Balmoral Road Release Area.	Yes
Section 5 – Stormwater	Stormwater has been designed in accordance with the DCP. The subject site carries stormwater to a low point at the northern corner and discharges onto the adjoining property which is an approved multi-dwelling housing development.	Yes
Section 6 – Provision and Location of Utilities	Conditions are recommended requiring the installation of services in accordance with the relevant authority's requirements.	Yes

## Section 7 – Public Recreation, Trunk Drainage and Riparian Corridors

The subject site does not contain any land for public recreation, trunk drainage or riparian corridors. Notwithstanding, public recreation exists toward the eastern side of Windsor Road along President Road as well as Memorial Avenue which is located approximately 182m southwest of the subject site.

Yes

# Section 8 – Building Design

Front setback - 6 metres

Rear setback - 4 metres for 1 storey and 6 metres for 2 or more storeys

Site coverage – 65% for single dwellings and 60% two or more storeys

Cut and fill – no more than 0.5m cut and 0.5m fill, or the dwelling is to be designed with split level. Consideration may be given to levels greater than 0.5 metres where a two car garage is provided inground with a stairway to the dwelling only.

The front setback proposed along Stone Mason Drive complies with the 6m requirement. These lots (2, 3, 30, 31, 33 and 34) range from 6m-7.5m with an articulation zone ranging from 5.050m-6.670m.

The proposal exceeds the site coverage for the all of the proposed lots. An example of this is shown in Lot 30 below:

Lot 30

GF: 137.4sqm

FF: 112.6sqm

250sqm / 322.5sqm x 100 = 77.5%

Units 4 to 12, 16 to 20, 30 to 31 and 44 to 51 have a split level on the ground floor whilst units 13 to 15. 21 to 29 and 36 to 43 include a basement level aimed responding to the slope of the site. Units 2 to 3 and 32 to 35 facing Stone Mason Drive are largely however this is deemed okay given the interface/ level difference with units 4, 36 and 51 behind. The interface/ level difference

No

between units 29, 30 and 31 remains a concern given it is some 3.7m currently. This could be resolved lowering unit 29 relative to unit 28 (noting they are almost level now) amending the design for units 30 and 31 to include a proper split level/ basement like units 13 to 15, 21 to 29 and 36 to 43.

The landscape plan shows a set of stairs between the alfresco and POS for unit 2. The architectural plans do not. Based on the levels noted on both plans there is no level difference/ need for stairs here? If there is a level difference the rear of this unit should be stepped to sit level with the POS.

## Section 9 – Special Provisions

Land adjoining existing golf course – landscaping, safety and stormwater must be addressed.

Aboriginal Heritage – a report must be prepared.

Land adjoining Windsor Road – a high standard of landscaping and fencing is to be provided. The site is located on Windsor Road and a landscape buffer between the fencing facing Windsor Road is proposed to be heavily landscaped in order to soften the appearance of a 1.8m high fence to the road. Dwellings do not front Windsor Road

A Due Diligence report was not submitted with the Development Application. Notwithstanding, Council's Heritage Branch reviewed the submitted documentation and concluded that the proposed works will not adversely affect the heritage significant of Windsor Road and that the proposal is considered appropriate from a heritage perspective.

Considered acceptable subject to conditions of development consent.

Conditions are recommended requiring a high standard of fencing and landscaping to Windsor Road. In addition, condition related to Aboriginal heritage will be imposed stating that if during activities involving earthworks/ soil disturbance, any evidence of Aboriginal an archaeological site or relic is found, all works on site are to cease and Heritage NSW be notified must immediately.

## 7. Issues Raised in Submissions

ISSUE/OBJECTION	COMMENT			
Traffic				
As more people move into this part of Norwest, I would expect an increase of traffic over time passing through this part of Stone mason Drive behind The Hills Shire Council office, as this is the only way in or out.	<ul> <li>A Traffic Report prepared by Amber Organisation, Reference Number 192, dated 27 April 2022 was submitted with the application and states the following:         <ul> <li>The development will generate approximately 53 vehicle movements during the morning and evening peak periods which can be readily accommodated on the road network.</li> </ul> </li> <li>The internal loop road has been provided with a carriageway width of 6.0 metres which provides suitable simultaneous two-way vehicle movement, and is also provided with a footpath on one side of the road to accommodate pedestrian movements.</li> <li>The internal accessways that provides access to the north-eastern and north-western lots is also provided with a carriageway width of 6.0 metres which allows suitable vehicle access.</li> </ul>			

ISSUE/OBJECTION	COMMENT
	Suitable sight distance is provided at the individual accesses to allow safe vehicle movement to/from the road network. Overall, it is concluded that the proposed subdivision is in a form that meets the objectives of the Development Control Plan, and the car parking and traffic demands generated by the site can be readily accommodated on the surrounding and internal road network. Further, the proposal is expected to provide a safe road environment for all future users of the site and the surrounding road network.
With the number of new townhouses being developed on the northern end of Stone Mason Drive, will there be new roads built to allow other points of ingress/egress into this area. If so, what are the current plans?	The development has been reduced in scale from 54 community residential dwellings to 50. Notwithtanding, the report still accounts for 54 dwellings which is considered acceptable given that it demonstrates that this level of traffic is deemed acceptable. The development proposes to construction Stone Mason Drive, along with a proposed private road which forms part of the community title subdivision.
	A Traffic Report prepared by Amber Organisation, Reference Number 192, dated 27 April 2022 was submitted with the application and states the following:
	Stone Mason Drive will be constructed within the site as part of the proposal in order to allow site traffic to access the wider road network.
	In this regard, the development is considered acceptable.

#### 8. **External Referrals**

The Development Application was referred to the following external agencies:

- Sydney WaterTransport for NSW

No objections were raised to the proposal subject to conditions if consent was granted to the application.

#### 9. Internal Referrals

The Development Application was referred to the following sections of Council:

- Engineering
- Traffic
- Tree Management
- Landscape Management
- Resource Recovery
- Environmental Health
- Ecology
- Certification
- Developer Contributions

The following objections were raised:

#### **ENGINEERING COMMENTS**

Insufficient information has been provided to address outstanding concerns from Council's Engineering Team regarding stormwater drainage, retaining wall levels and On Site Detention (OSD) as detailed below:

The plans show work over 69 Windsor Road. You need to provide written owners consent for this.

There are two retaining wall plans. The interface section plan Drawing 010 Revision 01 and the concept engineering plans Revision C need to match.

The site section drawings need to be amended to include chainages for key locations (such as the site boundary at either end). The section drawings refer to a diversion bund however the plan shows a swale. A swale is needed. The plans need to be amended to be consistent.

The subdivision plan includes a 2m wide easement along the Windsor Road boundary. What is the purpose of this?

The proposed temporary batter 1:1 exceeds the desirable maximum slope of 1:4 as stated in our design guidelines. If a 1:1 temporary batter is necessary, please provide details on how the batter will be stabilised. Should a retaining wall be necessary for stabilisation then full engineering details of the proposed structure, including a typical cross-section should be provided.

Where a retaining wall is proposed at the property boundary, the retaining wall shall be designed such that it accepts and caters for any surface runoff from the upslope property. No diversion or concentration of stormwater surface flows will be permitted. This requirement shall be clearly shown on the plan.

Details of the proposed swales must be provided. It is assumed that the swale will collect the 1% AEP and the proposed easement (A) will act as an overland flow path? Units 14 and 15 must be 300mm above the TWL within easement (A).

Typical details/ cross-section of the retaining wall shall be provided on the civil plans and architectural plans. Stepped/ tiered walls must be clearly identified also.

Where retaining walls are located near or adjacent to zero lot line dwellings this needs to be detailed. Some of the walls are quite high and the inclusion of the temporary 1:1 batter referred to earlier means it is assumed the units will be constructed after the subdivision works.

A soft copy of the DRAINS and MUSIC models must be provided.

A catchment plan matching the MUSIC model must be provided.

The site stormwater discharge must be controlled equivalent to the pre-development runoff across a range of storms including 2, 5, 10, 20, 50 and 100 year events. The OSD design must be prepared using the UPRCT OSD handbook (subject to the amended/ calculated discharge rates).

WSUD is required addressing the water quality targets below.

- 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

The previous RFI raised concern with the design and DRAINS model being affected by tailwater effect/ submerged and still needs to be addressed as discussed previously. Runoff from Stone Mason Drive needs to bypass the OSD/ filter chamber to separate public and private runoff. The design of the internal water treatment shall be upsized to comply with the water quality targets for the whole site including the bypassed area/ Stone Mason Drive.

The stormwater pipe collecting public stormwater shall be relocated away from the OSD (the pipe can be located outside the OSD).

The only water quality that will be considered for the public roads/ Stone Mason Drive is a GPT.

OSD shall attenuate the runoff up to the 1% AEP as above. The two overflow from OSD are almost half the pipe capacity which is not supported.

The overflow is unsafe and has incorrect parameters. This needs to be redesigned.

The invert and surface levels of the pit along Stone Mason Drive shall be provided (only the pit where the outlet pipe form the OSD is discharging to) to ensure the OSD outlet is not impacted by tailwater effect/ submerged. Refer to effects of downstream drainage on outlets from the OSD handbook for details. The OSD configuration might need to be redesigned.

#### **ECOLOGY COMMENTS**

Council's Ecology reviewed the amended information and raise the following concerns to be addressed prior to further consideration:

In the context of Part 4 local development, the serious and irreversible impacts threshold provides guidance as to the level of impact that could be sustained by a threatened entity, beyond which a proposed impact is likely to contribute significantly to the risk of extinction. The threshold identified in BioNet for the entity, Cumberland Plain Woodland, is currently zero, therefore any impacts on the SAII entity could be serious and irreversible.

Previous correspondence dated 21 October 2022, to Landen and Orion Consulting, suggested that vegetation within proposed Lots 12 -17 (now identified as proposed lots 52, 13 and 14) should be retained and protected as an avoidance measure. The proponent has proposed to retain a portion of the mapped SAII entity Cumberland Plain Woodland (CPW) within proposed Lot 52, however retention and protection of the SAII entity within proposed Lots 13 and 14 should also be included as part of the conservation area (inclusive of the tree identified as Tree No. 61 and No. 1 that is proposed for removal). The adequate protection and retention of the remnant vegetation zones within the subject land identified in the BDAR as Zone 1 PCT 849 (degraded) and Zone 2 PCT 849 (Derived native Grassland), must be considered. It is noted that vegetation mapped in the BDAR as PCT 849 derived native grasslands, has shown signs of regeneration in response to ceased mowing activity.

In accordance with section 7.1.2 of the BAM; the BDAR must document the reasonable measures taken by the proponent to avoid or minimise clearing of native vegetation and threatened species habitat during proposal design and must document and justify efforts to avoid or minimise impacts through design. Justification for the removal of the SAII entity, Cumberland Plain Woodland must be provided. The area of habitat and/or location of individual flora species, mapped in accordance with the BAM and reported in the BDAR, must be used by the proponent to avoid impacts.

The proposed Stormwater infrastructure has been located within areas containing native vegetation identified as a SAII entity (inclusive of impacts to the tree identified as Tree numbered 1, *Eucalyptus terreticornis*, in the Arborist Report prepared by Axiom Arbor dated

Oct/Nov 2022). Stormwater infrastructure must be located to avoid impacts on biodiversity values, in the first instance. Where that cannot be achieved, reasonable justification must be provided in the BDAR in accordance with the BAM. Furthermore, the proposed swale should be located so that it is outside areas containing high biodiversity values.

The consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.

Information on the viability of the entity at the local, IBRA and subregional/regional and state scales, is used to decide if the proposal is likely to increase the extinction risk, if any, of the SAII entity and whether impacts/ losses/declines are likely to be serious and irreversible.

Section 7.1 (4b.) of the BDAR considers the size of any remaining, but now isolated areas of TECs within 500m of the development footprint. However further discussion on the amount of the SAII entity (Cumberland Plain Woodland) within an area of 1,000ha and 10,000ha surrounding the proposed development footprint, has not been adequately provided in the assessment of SAII, and further information must be provided on whether impacts on the SAII entity within the subject land would increase the fragmentation of the remaining CPW in the locality (note: loss of CPW within areas identified as biodiversity certified land must assume that vegetation is removed)

The long-term loss of biodiversity at all levels arises mainly from the accumulation of losses and deletions of populations at the local level (NSW Dept of Primary Industries 2008 Threatened Species Assessment Guidelines). CPW is listed a SAII due to Principle 1 – species or ecological community in a rapid rate of decline, therefore the BDAR must consider and provide an assessment of the impact at the local level i.e., the local occurrence of the entity being impacted and provide details on how the results are calculated.

#### TREE MANAGEMENT/LANDSCAPING COMMENTS

### 1. Trees

a) Development impacts to trees must be further avoided. For example, as per previous comments, the retaining walls for cut to the rear of the Private Open Space (POS) areas of dwellings abutting Windsor Road must be relocated further away from the Windsor Road boundary to allow minimise encroachments into Tree Protection Zones of trees to be retained;

Major impacts remain proposed to tree within the Windsor Road widening setback, and proposed excavation within the Structural Root Zone of trees to be retained, such as tree 59 – Eucalyptus tereticornis. The Arborist is to liaise with the architect, engineer, and ecologist ensure that any required alteration/s to the current design are accordingly integrated on all the plans. See THDCP Part D Section 7 – Balmoral Road Release Area Section 8.5.1 Building Setbacks for controls relating to setbacks from protected trees;

- b) Trees proposed for removal and retention within the Arborist Report (amended report dated Oct/Nov 2022) appear to be inconsistent. For example, Tree 59 is indicated on the Tree Removal and Protection Plan as to be retained, while is recommended for removal in the Impact Assessment Schedule. Trees indicated for retention and removal on the Landscape Plan between the plan and the Tree Survey Legend is also incorrect. Please ensure that recommendations are consistent;
- c) Trees such as 8 and 61 with A1 and A2 retention value are to be retained, with amendments made to allow for sustainable encroachments in to their TPZs;
- d) Proposed stormwater impacts from proposed swale locations and stormwater easement are to be avoided. The proposed swale within the TPZ of trees to be retained in the road widening setback is not supported. Please investigate options to avoid these impacts, including impacts to Tree 1 (Eucalyptus tereticornis) within the SP2 land which would require its removal for the easement;
- e) Additional trees are to be retained such as Tree 61 in line with Councils' Ecology comments;
- f) Street Tree species to Stone Mason Drive are now consistent with the Balmoral Road Release Area DCP. The planting to the south of the road is expected to be in the location of a cycle way and is to be removed;
- g) The material of the acoustic wall to be supplied between the 2m landscape corridor and the individual lots on Windsor Road is to be consistent between plans. The construction must be such that allows for pier construction, rather than hebel block as indicated on the landscape and architectural plans, in order to protect the roots of trees to be retained; and
- h) Further detail of the planting to the Windsor Road setback has been provided. Please indicate what is proposed within the Windsor Road setback forward of the 2m landscape corridor. There is existing landscape planting, fencing, and weeds within the area. Are all fences and vegetation under the trees to be removed and provided with turf? Please indicate on plans.

## 2. Landscaping

- a) The landscape area calculations remain unclear. Please provide a landscape area diagram which clearly indicates what has been included as landscape area for the site. A minimum of 40% of the whole site is to be landscaped. All landscaped areas are to have a minimum width of 2m. Hard surface within POS areas can be included so long as the hard stand within the lot does not exceed 15% of the lot area;
- b) As per previous comments, please indicate terraced walls where walls are over approx 1m to resolve the landscape levels and provide as much visual amenity as possible;
- c) Walls must be clearly located on all plans, such as those which are required between lots and to boundaries, and additional walls provided where required to create usable

spaces. Retaining walls remain insufficiently detailed. High blank walls remain proposed such as the following between Lot 36 and Lot 34. See levels below indicating a 1.8m wall which would have a 1.8m fence over, equating to a combined wall/barrier of 3.6m. As per previous comments, it is also noted that the shade that would be generated into the POS area (falls to the south) of lot 34 has not been taken into consideration of the shadow diagrams which have not modelled the fencing or retaining walls;

- d) Retaining walls continue to be lacking detail, and not be terraced to minimise amenity impacts or located to minimise impacts on trees. The retaining wall plan/ Interface plan provide spot maximum height of walls, however does clearly indicated the wall heights across the site, or the proposed visual impact of boundary walls on neighbouring properties such as for the proposed fill to the POS areas of Lot 09 and others which interface with RMB 69 Windsor Road. Please note that boundary fencing has not been indicated on sections, and therefore the resultant height of the barrier is the height of the wall (between 1.5m-2m according to the site regrading plan) plus a 1.8m POS fence over;
- e) Further finer resolution of retaining walls within front setbacks appears to be required. Please see examples below where retaining walls appear to require returning. Where this is to be provided, please set walls back a min of 500mm to allow for planting forward of the wall to either soften it (for walls for fill), or provide planting at the street grade (for walls for cut);
- f) Please indicate garden edging where front gardens meet the verge turf;
- g) The following wall is approximately 2m max height and would be prominent from within the site and potentially from Stone Mason Drive. Please indicate planting in the green area to soften the wall, and also provide access (such as stairs) ensuring that the Restricted Development Area to be managed under a VPM is accessible for regular maintenance; and
- h) Please substitute Bursaria spinosa where indicates alongside pedestrian paths due to their sharp spines.

#### **3.** Impacts on Trees within Adjoining Properties

The proposed development will impact on trees located within the adjoining property, Lot 40, DP 551631, 69 Windsor Road, Norwest. The vegetation proposed for removal within the neighbouring property is identified in the BDAR as PCT 849 (CPW). The Arboricultural Impact Assessment must be amended to include all impacts on neighbouring trees. Where tree removal is proposed on neighbouring land, the application must also be supported with written consent, from the property owner.

#### **ENVIRONMENTAL HEALTH COMMENTS**

Council's Environmental Health Branch has reviewed the application and raises the following matters to be addressed prior to further consideration:

Traffic Noise Assessment Report for proposed residential subdivision 65-67 Windsor Road, Norwest NSW prepared by Day Design Pty Ltd, report number 7244-3.1R dated 27 January 2023 has been reviewed by Environmental Health. Clarity is required regarding the following:

- 1. Review the 'dog leg' that is within Lot 13 with regards to proposed 2m acoustic barrier along Windsor Road this is inconsistent with 7244-3 Appendix C1 of the Acoustic report.
- 2. Clarify what material the 'standard 1.8m fence' will need to be constructed of along Lot 12 and Lot 13 to separate it from Lot 52.
- 3. The applicant is requested to clarify whether consent is sought for all air conditioning units under this application, not just Lots 13-20 as required by the acoustic consultant. If this is the case, the acoustic consultant is to review the proposed location of the outdoor condenser units to ensure that their operation will not give rise to offensive noise. A statement is to be provided in the acoustic report detailing the assessment and plans reviewed. Noting, the most recently submitted architectural plans include the proposed location of the outdoor condenser unit for every townhouse.

The applicant is requested to submit consistent plans and elevations showing the retaining walls and acoustic barriers along with notations of the proposed construction materials as determined by the acoustic consultant.

#### RESOURCE RECOVERY COMMENTS

Council's Resource Recovery Team have reviewed the amended documentation and raise the following matters for consideration:

Amended plans must be submitted showing the provision of adequate bin presentation space along the front kerb of lots 36 to 51. A clear 2m verge must be provided from the 6m carriageway to the boundary lines of lots 36 to 51.

#### CONCLUSION

The application has not provided sufficient information to demonstrate compliance with the Ecology, Tree/ Landscape Management, Environmental Health, Waste and Planning matters. In this regard, the Clause prohibits development consent to be granted to development on the land.

Notwithstanding, the Applicant is seeking to address this outstanding issue with the submission of flood modelling, amended Ecological documentation, an amended acoustic report and amended plans. Should these assessments demonstrate that the above is satisfied and all above matters are resolved, the application can ultimately be recommended for approval.

#### **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.

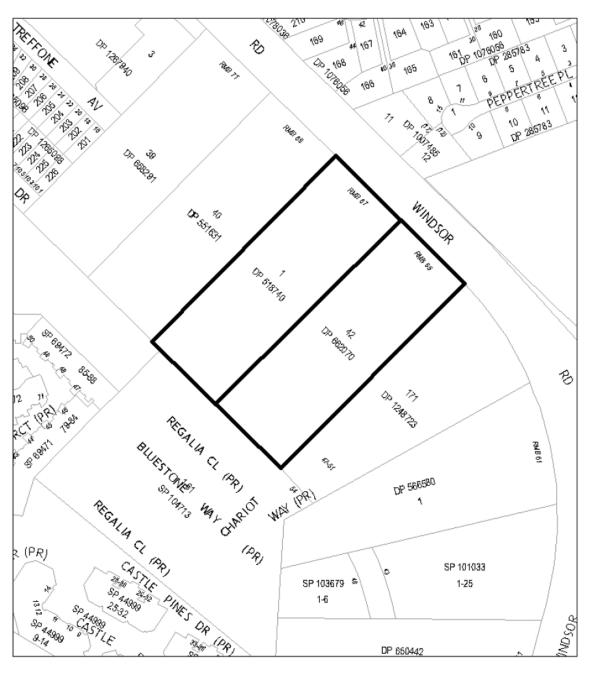
#### **RECOMMENDATION**

Given the proposal is generally satisfactory except for the matters raised in relation to planning, engineering and landscaping, environmental health and resource recovery it is considered appropriate to defer determination of the development application until the third quarter in 2023, to allow the Applicant to respond to the issues raised and enable continued assessment by Council staff. A report for determination of the application will be prepared for the August 2023 meeting of the Panel.

## **ATTACHMENTS**

- Locality Plan 1.
- Aerial Map 2.
- LEP 2019 Zoning Map Site Plan 3.
- 4.
- Floor Plans 5.
- 6. Elevations
- Sections 7.
- 8. Landscape Plans
- 9.
- Shadow Diagrams Clause 4.6 Written Submission 10.
- Reasons for Refusal 11.

#### ATTACHMENT 1 - LOCALITY PLAN



SUBJECT SITE



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## **ATTACHMENT 2 – AERIAL MAP**



SUBJECT SITE

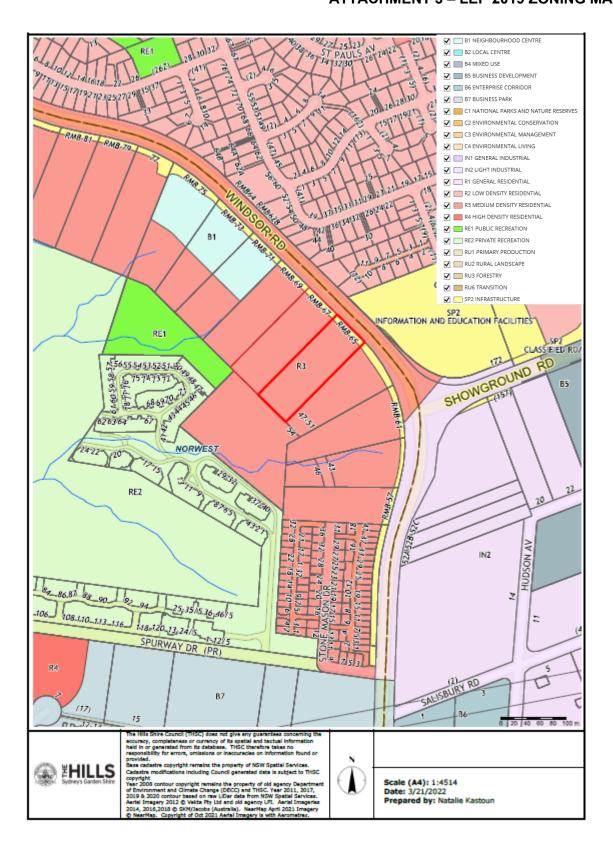


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## **ATTACHMENT 3 - LEP 2019 ZONING MAP**



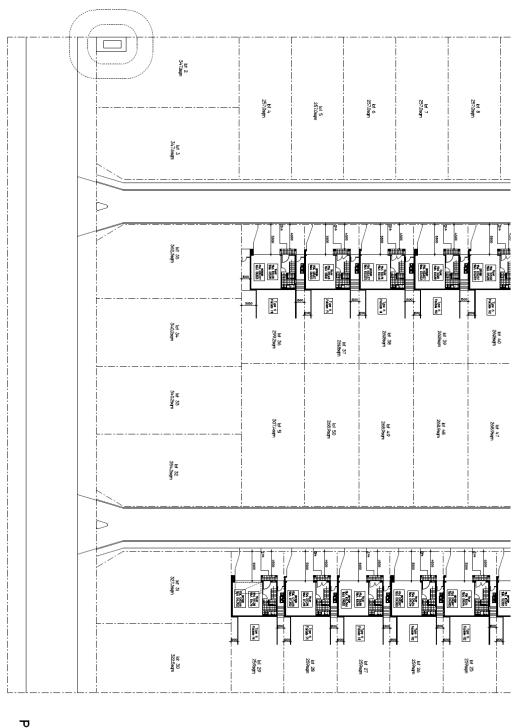
## **ATTACHMENT 4 - SITE PLAN**

#### Windsor Road



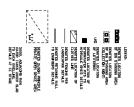
OVERALL SITE PLAN 1:400

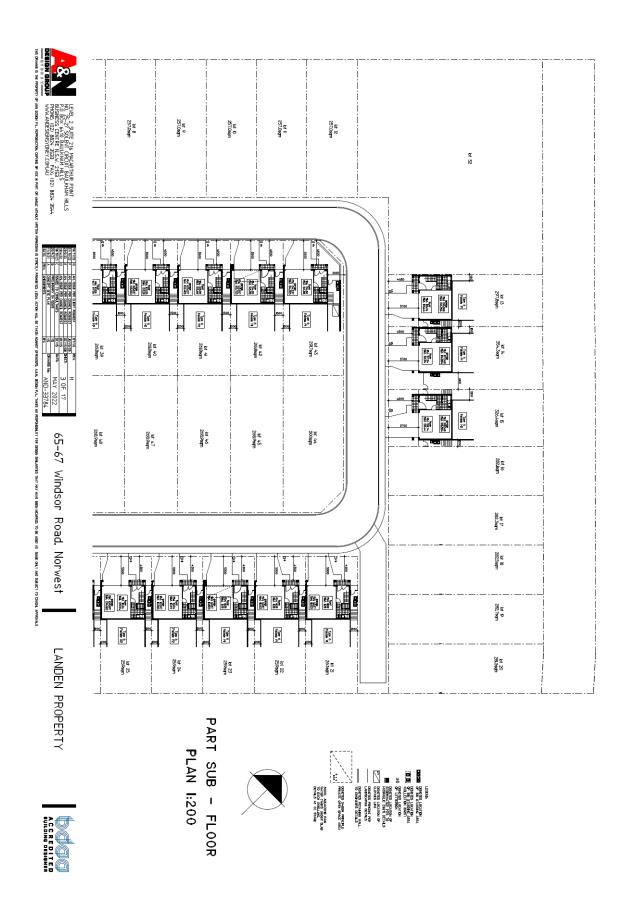
ATTACHMENT 5 - FLOOR PLANS

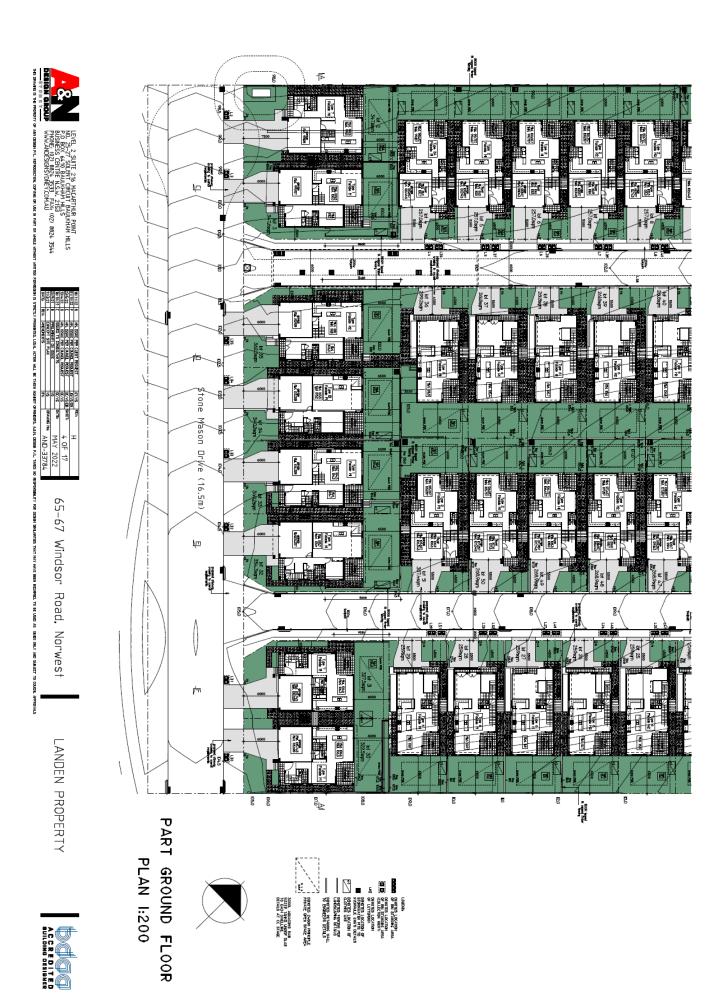


PART SUB - FLOOR PLAN 1:200



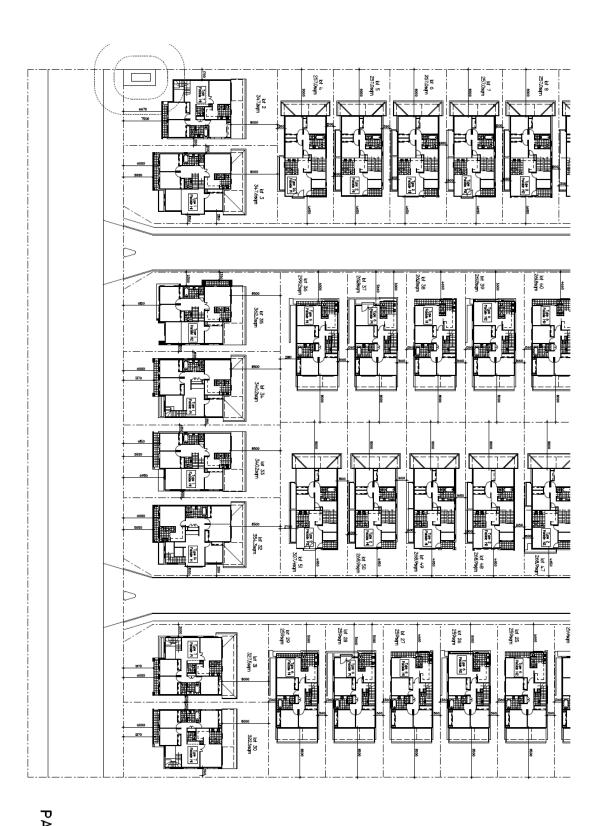




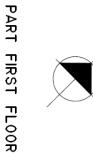








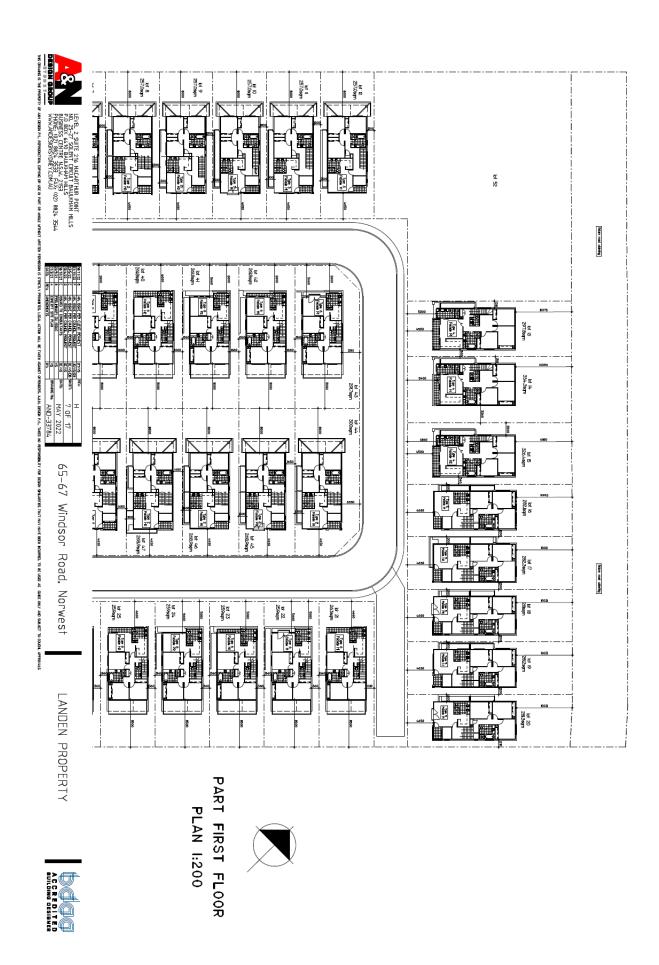
PLAN 1:200



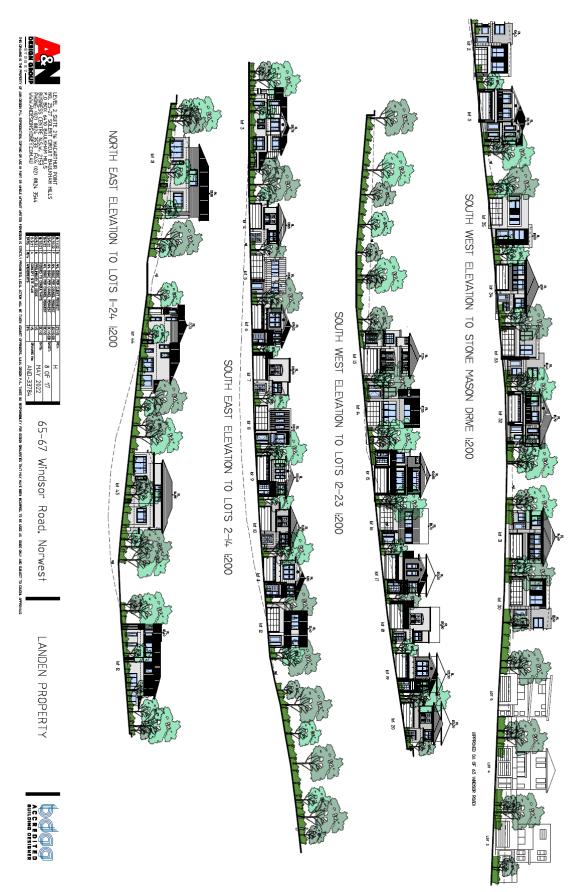


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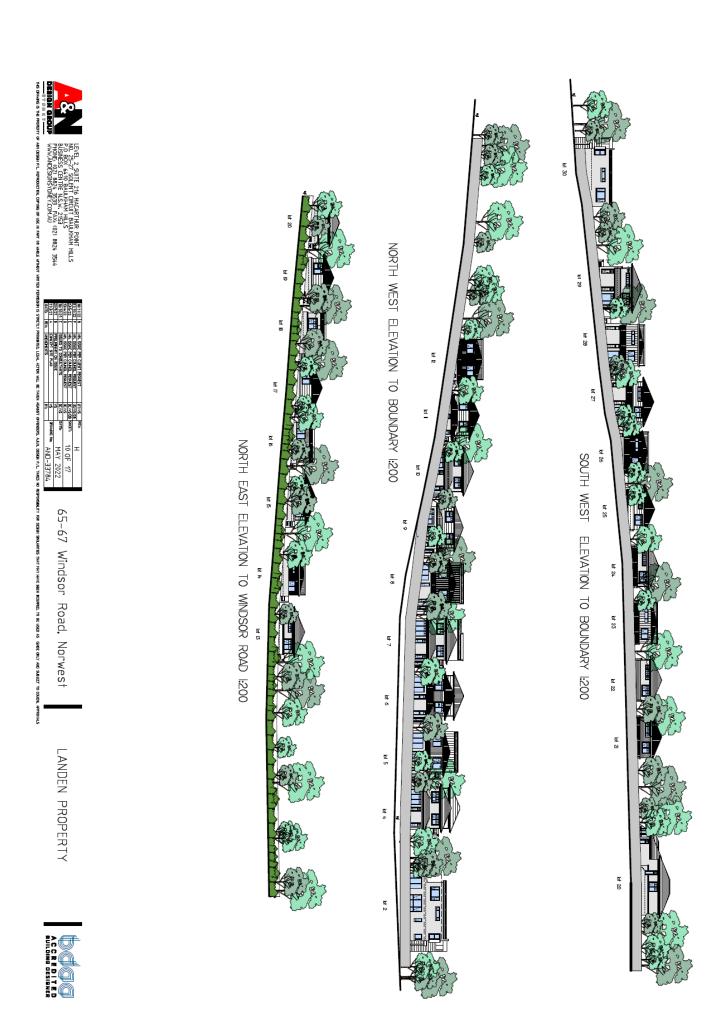
LANDEN PROPERTY



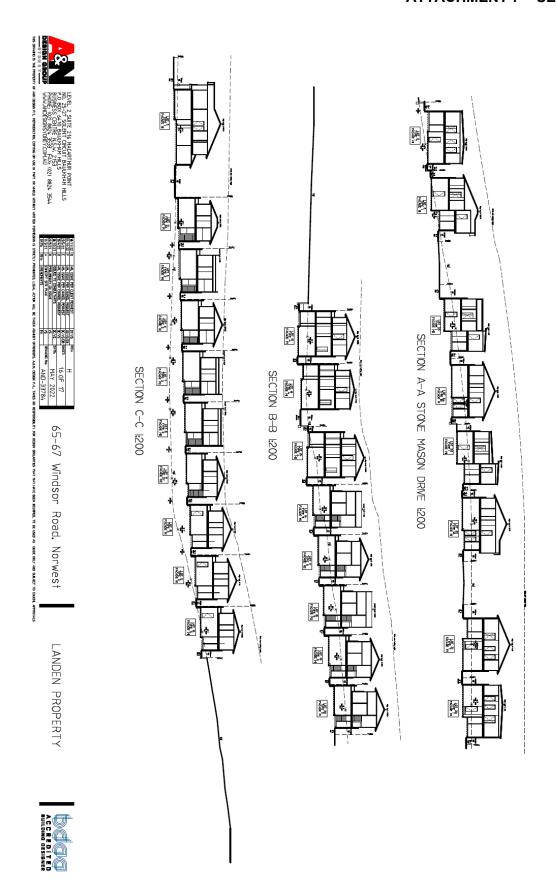
## **ATTACHMENT 6 - ELEVATIONS**



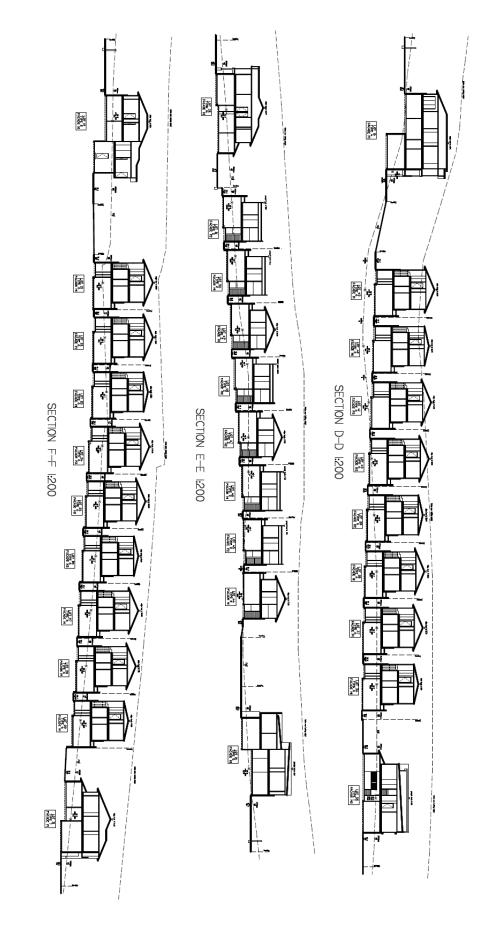




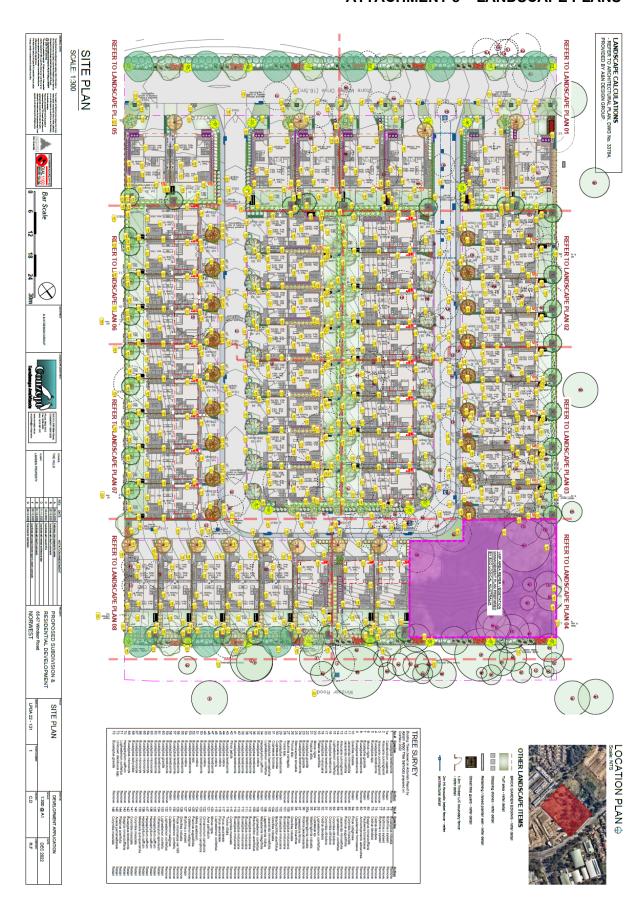
## **ATTACHMENT 7 - SECTIONS**

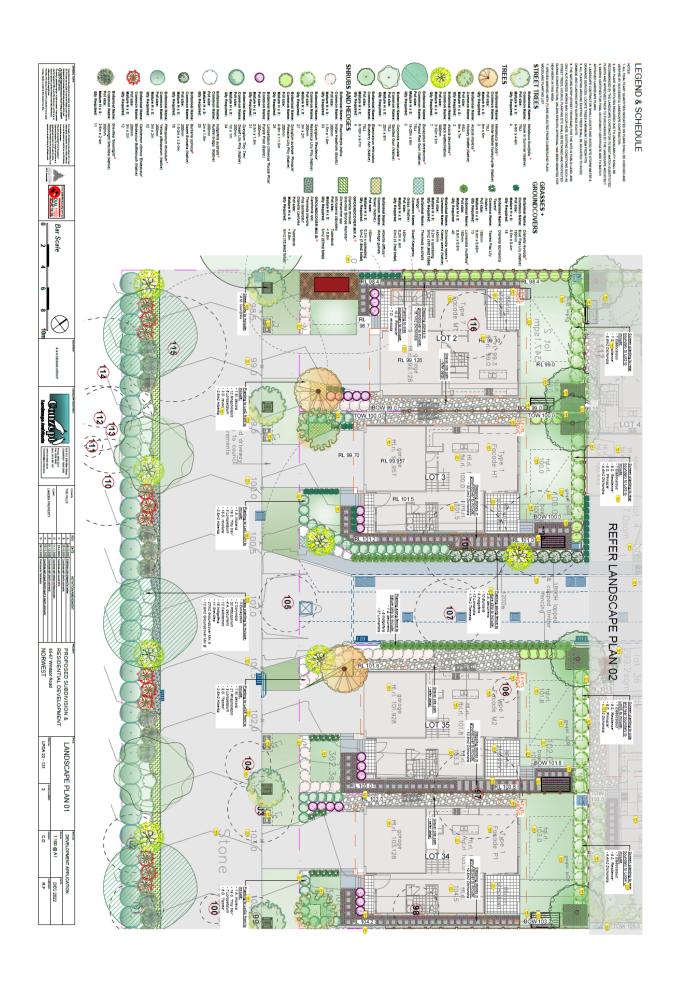






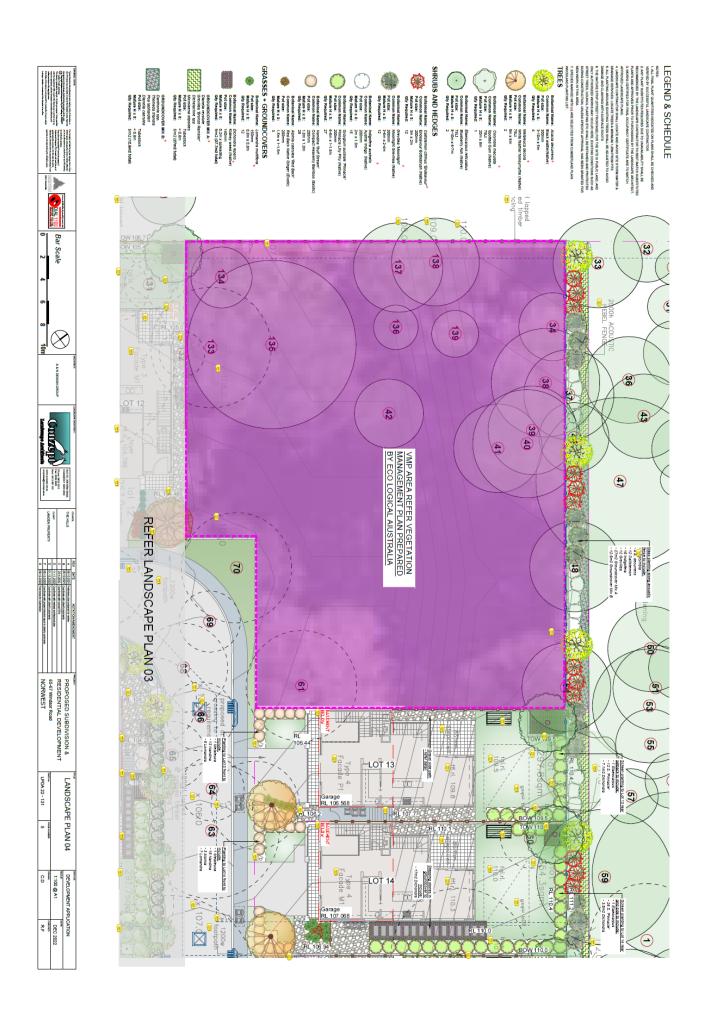
## **ATTACHMENT 8 - LANDSCAPE PLANS**

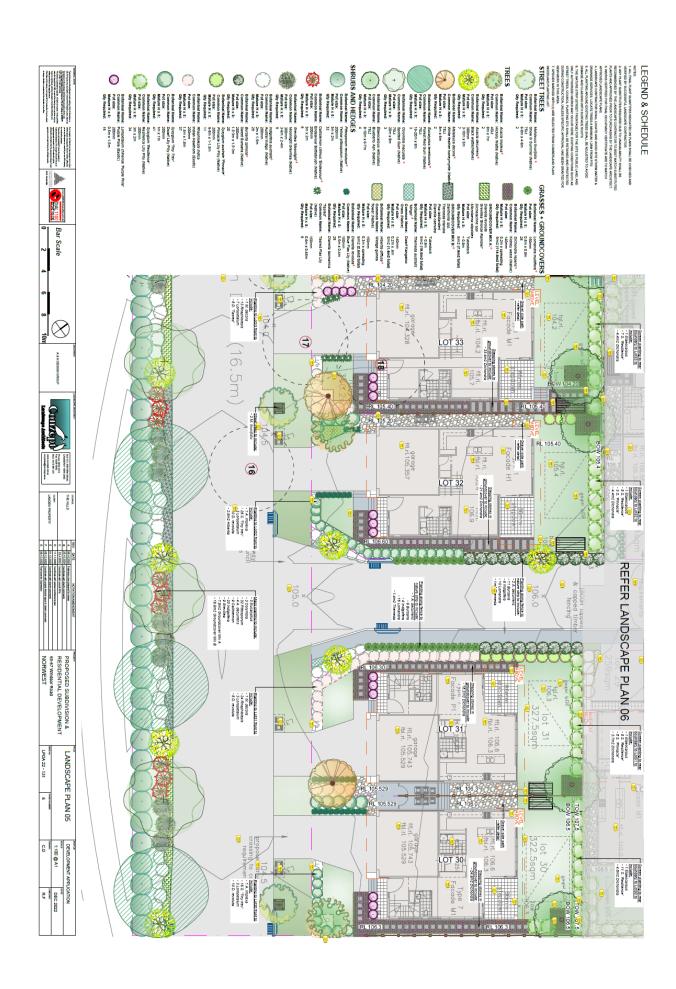


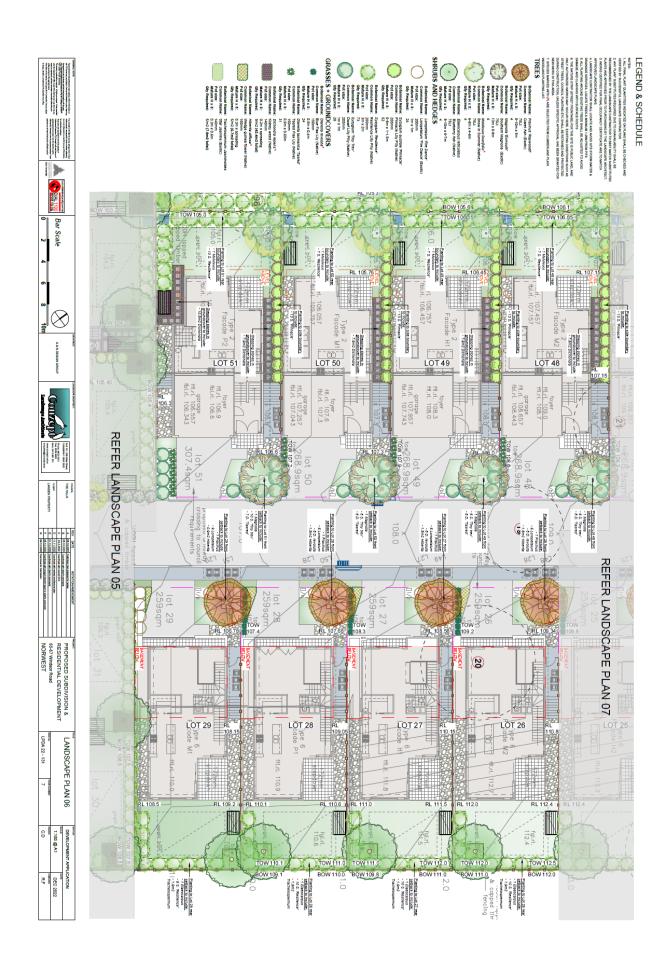






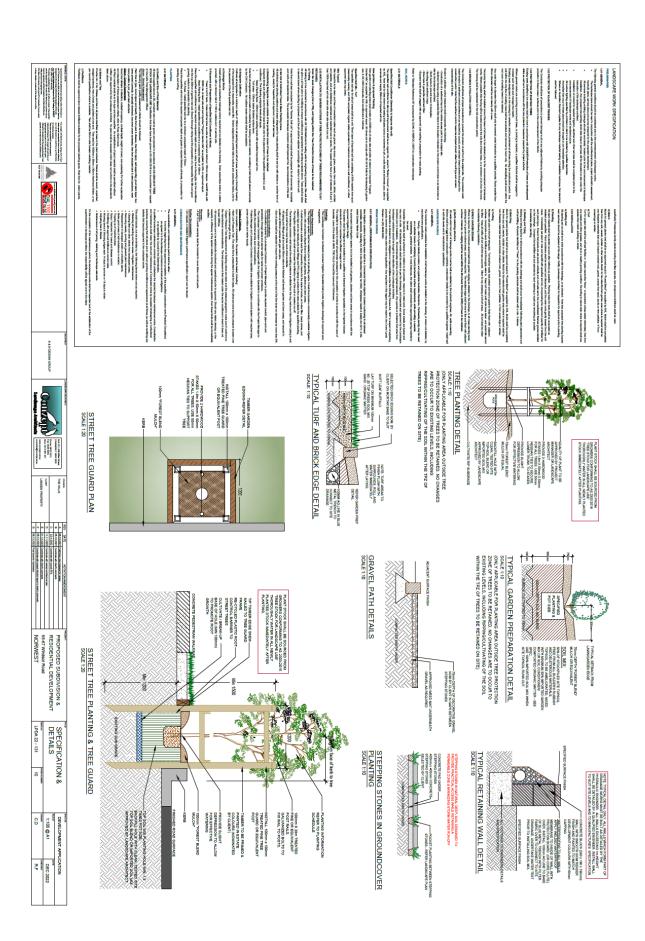




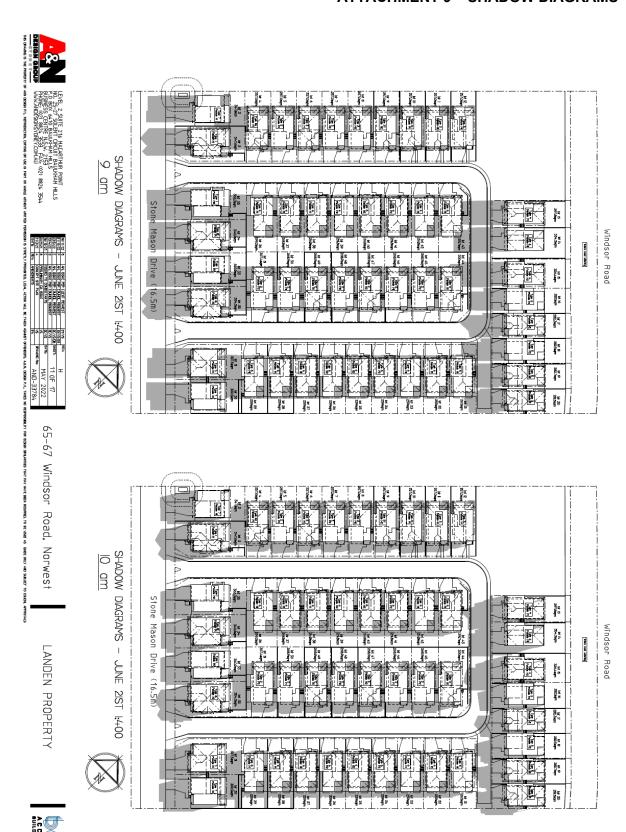








## ATTACHMENT 9 - SHADOW DIAGRAMS





LEVEL 2 SUITE 216 MACARTHUR POINT NO. 25-27 SOLERT CIRCUIT BAULKHAM HILLS P.D BOX 64:70 BAULKHAM HILLS BUSINESS CENTRE N.S.W. 2153 BUSINESS CENTRE N.S.W. 2153 PHONE. 1023 8824, 333 FAX. WAW.ANDESIGNSTONEY.COM.AU

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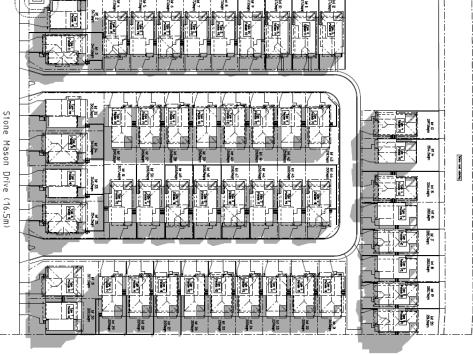
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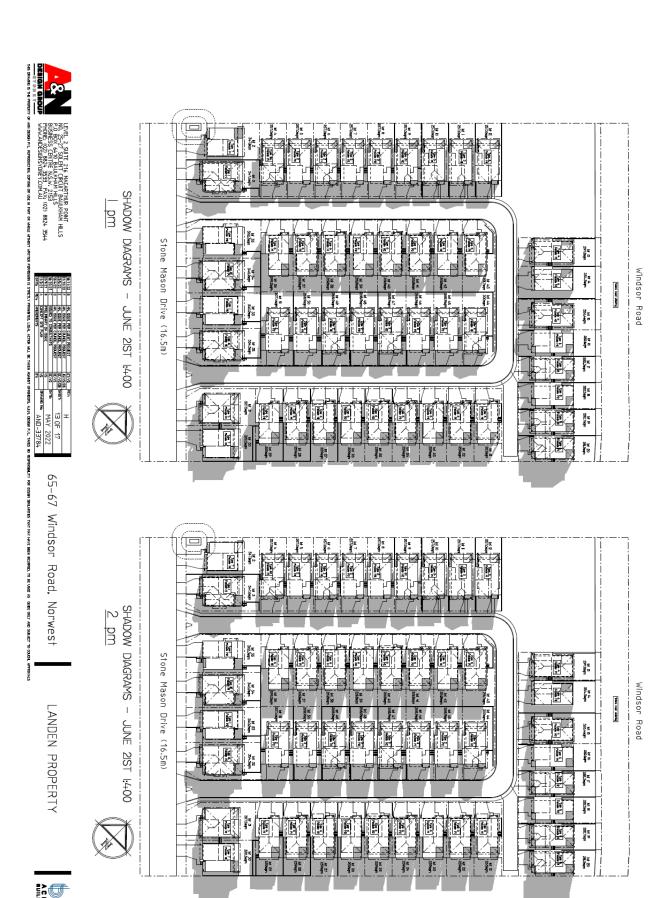
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65-67 Windsor Road, Norwest

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65-67 Windsor Road, Norwest

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Windsor Road





## **ATTACHMENT 10 - CLAUSE 4.6 WRITTEN SUBMISSION**



orionconsulting.com.au info@orionconsulting.com.au (02) 8660 0035

# CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD – HEIGHT OF BUILDINGS 65-67 WINDSOR ROAD, NORWEST





November 2021

**Prepared for Landen Property** 



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Clause 4.6 Variation 70 Outback Street, Box Hill Orion Consulting

# **Executive Summary**

This report has been prepared by Orion Consulting (Orion) to accompany a Development Application for 65-67 Windsor Road, Norwest (Orion ref.: 21-0003).

The Development Application proposes a departure from the maximum height of buildings development standard under Clause 4.3 of The Hills Local Environmental Plan 2019.

This report constitutes a written request from the applicant to  $contravene\ a\ development\ standard\ within$  the meaning of Clause 4.6 (3) of The Hills Local Environmental Plan 2019.

It describes the departure from the development standard, addresses the requirements of Clause 4.6 of The Hills Local Environmental Plan 2019 and provides justification for the departure from the development standard.

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## 1 Introduction

This section of the report sets out the background to the development including related development applications and the purpose of this report.

#### 1.1 Purpose of this Report

This Clause 4.6 Variation has been prepared to be submitted to The Hills Shire Council as part of a Development Application and forms part of a Statement of Environmental Effects (SEE) in accordance with Schedule 1 of the Environmental Planning & Assessment Regulation 2000 (EP&A Regulation).

It is a written request within the meaning of Clause 4.6(4)(a)(i) of The Hills Local Environmental Plan 2019 that provides justification under Clause 4.6(3) of the LEP for the *contravention of a development standard* being the maximum height of buildings and comprises an assessment of the development including:

- the objectives of Clause 4.6 Clause 4.6(1);
- whether Clause 4.6 applies to the circumstances of the Development Application Clause 4.6(2);
- demonstration that the development standard is unnecessary and unreasonable Clause 4.6(3)(a);
- the sufficiency of the environmental planning grounds required to justify contravening the development standard - Clause 4.6(3)(b),
- an assessment of the public interest in the context of the objectives of the development standard and the objectives of the zone - Clause 4.6(4)(a)(ii);
- matters relevant to obtaining the concurrence of the Secretary of the Department of Planning, Industry and Environment (formerly the Director General) - Clause 4.6(4)(b) & 4.6(5).
- exclusions to the operation of Clause 4.6 Clause 4.6(6) & 4.6(8); and
- an assessment of the 'five part test' established by the Land & Environment Court.

This request addresses recent Land and Environment Court cases including, Micaul Holdings Pty Ltd v Randwick City Council, Moskovich v Waverley Council and Initial Action Pty Ltd v Woollahra Municipal Council.

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;
- When pursuing a clause 4.6 variation request it is appropriate to demonstrate that there are sufficient
  environmental planning grounds to justify contravening the development standard, and
- The proposal is required to be in 'the public interest'.

The Chief Judge of the Land and Environment Court in Initial Action Pty Ltd v Woollahra Municipal Council (2018) has further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

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# 2 Proposed Development

This section of the report describes the proposed development.

## 2.1 Integrated Housing Development

The Development Application seeks approval for a small lot integrated housing development:

- Demolition of all existing structures and improvements
- Removal of vegetation including 137 trees on the site.
- Subdivision of Lot 42 in DP 662070 and Lot 1 in DP 518740 to create 54 residential lots including a new private road, and demolition.
- Construction of 54 residential dwellings as small lot housing on each new lot.
- Construction of roads, drainage and utility infrastructure.
- Associated street landscaping works.

The site plan is illustrated in Figure 1.

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## Windsor Road

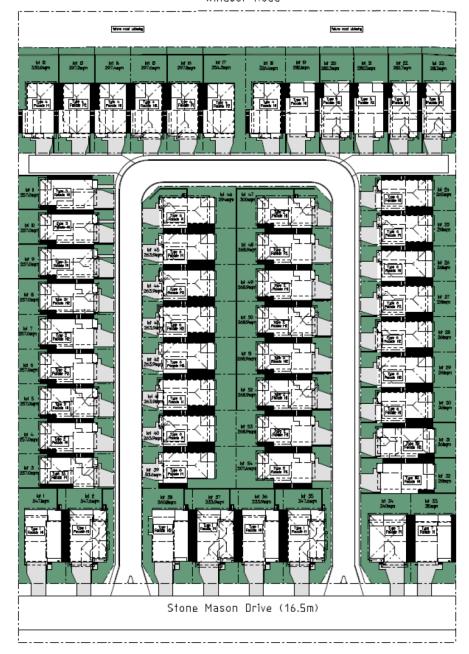




Figure 1 - Proposed Site Plan

Reference: A&N Design Architectural Plans

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# 3 Legislative Framework

This section of the report assesses the variation to the development standard against the planning framework and planning controls. This report should be read in conjunction with the Statement of Environmental Effects.

#### 3.1 Development Standard

A development standard is defined in Clause 1.4 of the *Environmental Planning and Assessment Act 1979* as a provision of an environmental planning instrument (or a regulation) which relates to the carrying out of development and which specifies requirements or standards in respect of any aspect of that development. Maximum height of buildings is expressly identified as a development standard at Clause 1.4(e).

The Development Application proposes a departure from the *maximum height of buildings* development standard under the Hills Local Environmental Plan 2019 which provides:

## 4.3 Height of Buildings

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map provides the maximum building height for the site as 10m and is illustrated in Figure 2. This report seeks to vary this development standard.

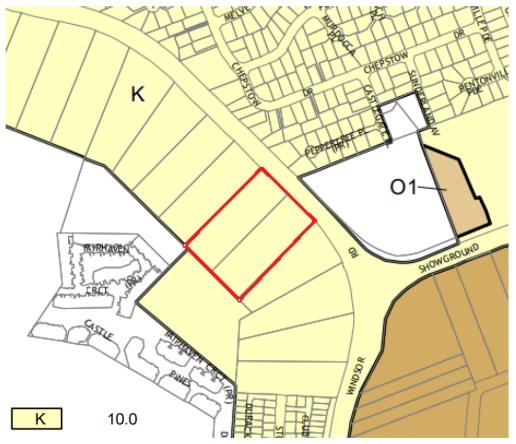


Figure 2 – Maximum Height of Buildings

Reference: NSW Government

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## 3.2 Development Application

## 3.2.1 Variation Proposed

The Development Application includes the construction of dwelling houses which form part of the small lot integrated housing development. The definitions contained within the Standard Instrument defines building height as the following:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Using this methodology, the development application proposes a maximum building height of 12.76m which exceeds the maximum height of buildings development standard and represents a departure of 27.6%. As discussed in the following sections of this report the numerical departure is a function of the structure of the Development Application and earthworks required to provide appropriate grading for development on the site. This departure will be reduced or non-existent on the completion of earthworks on the site, particularly the filling of the dam.

The maximum height of buildings is illustrated in Figure 3 and the Architectural Plans attached at Appendix E of the Statement of Environmental Effects.

RIDGE HEIGHT TABLE	RIDGE	HEIGHT	TABLE
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BUILDING HEIGHT SUMMARY								
LOT	RIDGE HEIGHT	NGL* (UNDER RIDGE/ PARAPET)	MAX. HEIGHT	LOT RIDGE HEIGHT		NGL* (UNDER RIDGE/ PARAPET)	MAX. HEIGHT	
П	RLI07.00	RL99.0	8.00M	28	RLI20.68	RLI2.40	8.28M	
2	RLI08.78	RLI00.6	8.I8M	29	RLI9.56	RLII.40	8.I6M	
3	RLI08.I5	RLI00.0	8.I5M	30	RLI9.38	RLI0.30	9.08M	
4	RLI08.I0	RL99.8	8.30M	31	RLII7.50	RLI0.30	7.20M	
5	RLI09.03	RL99.2	9.83M	32	RLI5.90	RLI08.70	7.20M	
6	RLI08.90	RL99.4	9.50M	33	RLI3.30	RLI3.30 RLI06.40		
7	RLI09.05	RL99.0	10.05M	34	R∐I4.39	RLI07.40	6.99M	
8	RLI0.13	RL99.5	10.63M	35	RLI4.18	RLI07.10	7.08M	
9	RLII0.80	RLI00.80	I0.00M	36	RLI20.40	RLI06.00	6.40M	
10	RLII.80	RLI05.00	8.80M	37	RLIII.78	RLI05.45	6.33M	
Ш	RLI2.40	RLI04.00	8.40M	38	RLIKI.00	RLI0.00 RLI04.00		
12	R∐17.64	RLI08.40	9.24M	39	RLI2.16 RLI03.80		8.36M	
13	RLI6.66	RLI07.80	8.86M	40	R∐I2.78	RLI04.50	8.28M	
14	RLI6.06	RLI07.50	8.56M	41	RLII3.08	RLI03.20	9.88M	
15	RLI6.64	RLI07.80	8.84M	42	RLI2.96	RLI03.20	9.76M	
16	RLI7.24	RLI07.80	9.44M	43	RLII3.88	RLI02.90	I0.98M	
17	RLI7.36	RLI06.50	10.86M	44	RLI4.28	RLI02.60	II.68M	
18	RLI19,24	RLI08.50	10.74M	45	RLI4.06	RLI01,30	12.76M	
19	RLII8.70	RLI0.75	7.95M	46	RLI4.88	RLI02.30	12.58M	
20	RLI20.30	RLI2.90	7.40M	47	RLII7.73	RLI09,80	7.93M	
21	RLI20.80	RLII3.45	7.35M	48	RLII7.50	RLII0.70	6.80M	
22	RLI22.30	RLI5.00	7.30M	49	RLII7.IO	RLIII.40	5.70M	
23	RLI23.30	RLI6.00	7.30M	50	RLI17.13	RLII.60	5.53M	
24	RLI21,88	RL13.00	8.88M	51	RLII5.75	RLII.30	4.45M	
25	RLI21.88	R∐I3.60	8.28M	52	RLII5.73	RLII0.00	5.73M	
26	RLI2LI6	RLI12.80	8.36M	53	RLI4.40	RLI08.90	5.50M	
27	RLI2I.38	RLI3.05	8.33M	54	RLI3.90	RLI08.25	5.65M	

<sup>\*</sup> NGL TAKEN AT LOWEST POINT

Figure 3 - Height of Buildings

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Reference: A&N Design Architectural Plans

### 3.2.2 Reason for Variation

The Development Application incorporates the subdivision of land, completion of the local road network and bulk earthworks in addition to the construction of residential dwellings on a site which currently incorporates an 18m cross fall and a decommissioned dam. For this reason, the site requires large scale bulk earthworks which results in an exceedance to the development standard due to the mechanism in which height of buildings is calculated.

The mechanism to calculate height of buildings is based off the definition contained within the standard instrument and is taken from the existing ground level on site to the ridge height of any building or structure. As a result, the building height in this instance is required to take the existing ground level prior to bulk earthworks and re-grading on the site rather than the newly proposed established natural ground level which further exacerbates the non-compliance. If it were not for the integrated nature of the application and the bulk earthworks had been undertaken prior to the lodgment of a Development Application for the dwellings on the site, the height of buildings on the site would be reduced by more than 20% of the development standard.

This has been represented in figure 4 below, which indicates the height of buildings from the newly established street level upon completion of the bulk earthworks and filling of the dam.

RIDGE	HEIGHT	TABLE
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				В	JILDING HEK	SHT SU	IMMARY				
<b>∟0</b> ⊤	RIDGE HEIGHT	NGL* (UNDER RIDGE/ PARAPET)	MAX. HEIGHT	FGL* (UNDER RIDGE/ PARAPET)	MAX. HEIGHT	L <b>0</b> ⊺	RIDGE HEIGHT	NGL* (UNDER RIDGE/ PARAPET)	MAX. HEIGHT	FGL* (UNDER RDGE/ PARAPET)	MAX. HEIGHT
- 1	RLI07.00	RL99.00	8.00N			28	RLI20.68	RLII2.40	8.28M		
2	RL/08.78	RLI00.60	8.I8M			29	RL19.56	RLII.40	8.I6M		
3	RLI08.15	RLI00.00	8.I5M			30	RL19.38	RLII0.30	9.08M		
4	RLI08.I0	RL99.80	8.30M			31	RLI7.50	RLII0.30	7.20M		
5	RLI09.03	RL99.20	9.83M			32	PLI5.90	RLI08.70	7.20M		
6	RLI08.90	RL99.40	9.50M			33	RL13.30	RLI06.40	6.90M		
7	RLI09.05	RL99.0	IO.05M	RLIGI.80	7.25M	34	RL14.39	RLI07.40	6.99M		
8	RLII0.13	RL99.5	10.63M	RLI02.40	7.73M	35	RLII4.18	RLI07.I0	7.08M		
9	RLII0.80	RLI00.80	M00.0I			36	RL120.40	R∐06.00	6.40M		
10	RLIII,80	RLI03.00	8.80H			37	RLIII.78	RLI05.45	6.33M		
I	RLII2.40	RLI04.00	8.40M			38	RLII0.00	RLI04.00	6.00M		
12	RL17.64	RLI08.40	9.24M			39	RLII2.I6	RLI03.80	8.56M		
13	RLI6.66	RLI07.80	8.86N			40	RLI12,78	RLI04.50	8.28M		
14	RLI6.06	RLI07.50	8.56M			41	PLI3.08	RLI03.20	9.88M		
15	RLI6.64	RLI07.80	8.84M			42	RL12.96	RLI03.20	9.76M		
15	RLII7.24	RLI07.80	9.44M			43	PLI3.88	RLI02,90	ID.98M	RLI03.20	10.68M
17	RLI17.36	RLI06.50	IO.86M	RLI07.40	9.96M	44	RLI4.28	RLI02.60	II.68M	RLI03.75	10.53M
18	RL19.24	RLI08.50	IO.74M	RLI08.75	ID.49M	45	RL14.06	RLIOL30	I2.76M	RLI03.90	M3I.0I
19	RLII8.70	RLII0.75	7.95M			46	RLII4.88	RLI02.30	I2.58M	RLI04.75	10.13M
20	RLI20.30	RLII2.90	7.40M			47	RLI7.73	RLI09.80	7.93M		
21	RLI20.80	RLII3.45	7.35M			48	RLI7.50	RLII0.70	6.80M		
22	RLI22.30	RLII5.00	7.30M			49	RLII7.I0	RLII.40	5.70M		
23	RLI23,30	RLII6.00	7,30M			50	RLII7.I3	RLII,60	5.53M		
24	RLI2I.88	RLII3.00	M88.8			51	RLII5.75	RLII.30	4.45M		
25	RL121.88	RLII3.60	8.28M			52	RLII5.73	RLII0.00	5.73M		
26	RLI2IJ6	RLII2.80	8.36M			53	RL14.40	RLI08.90	5.50M		
27	RLI21.38	RLII3.05	8.33M			54	RLI3.90	RLI08.25	5.65M		

\* NGL TAKEN AT LOWEST POINT

COMPLIANT NON-COMPLIANT

Figure 4 – Height of Buildings Post Earthworks

Reference: A&N Design Architectural Plans

This is discussed in more detail in Section 3.3 of this report.

# 3.3 Exception to the Development Standard

Development standards are a means to achieving an environmental planning objective. Clause 4.6 recognises that some developments may achieve planning objectives despite not meeting a required development standard. The planning system provides flexibility to allow these objectives to still be met by varying development standards in exceptional cases.

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## 3.3.1 Objectives of Clause 4.6

Clause 4.6(1) of the LEP provides the objectives of Clause 4.6:

#### 4.6 Exceptions to development standards

- (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.

Clause 4.6 of the LEP aims to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for and from development by allowing flexibility.

The land occupied by this Development Application (i.e. the extent of works) encompasses both the residential lots, earthworks, roads and built form component. Together they make up the height of buildings and are therefore included in the calculation of the building heights across the development site.

The site is currently characterized by a large cross fall of approximately 18m traversing from east to west with a decommissioned dam located to the north-east of the site. As a result, large scale bulk earthworks are required on the site in order to provide an appropriate subdivision layout, feasible road networks and achievable building platforms on individual lots. The dam on the site is also required to be filled in.

In this instance, bulk earthworks on the site will provide for a newly established natural ground level over the site which is consistent with works and contouring established on the adjoining developments. The re-grading and bulk earthworks will provide for the appropriate subdivision layout, feasible road network and establish appropriate building platforms. However, the primary contributing factor to the non-compliance with the development standard is the manner in which building height is measured. In this instance, as the bulk earthworks and built form is proposed under the same DA, the building height is to be measure from the existing ground level currently on site and prior to the bulk earthworks, rather than what will be the newly established natural ground level once bulk earthworks on site have been completed.

In the case of the proposed Development Application, there are 8 instances of non-compliances on the site with different degree of variation for each building. In each instance, the buildings have been taken from the current natural ground level and are located on areas of the site that require fill of up to 3m, which has been included in the height of buildings. Figure 4 above demonstrates that once earthworks have been completed and the new street levels established, three dwellings will be compliant with the remaining 5 non-compliances reduced from a maximum of 27.6% to a maximum of 6.8%.

It is appropriate therefore, given the circumstances of this site and this Development Application, to apply a degree of flexibility to the development standard as the building height calculated is not an accurate reflection of the height of the building from the natural ground level as the buildings will not be constructed until the new natural ground level has been established.

The proposed integrated housing development has been designed to ensure consistency with the existing streetscape and character established throughout the Balmoral Road Release Precinct, particularly medium density residential development located on Stone Mason Drive. Development within the precinct and on adjoining sites incorporates two and three storey residential dwellings which respond to the large slope traversing through the sites from Windsor Road to the east to the Castle Hill Country Club to the west.

Residential Dwellings on these sites have been designed to be two and three storey dwellings to accommodate large cross falls through individual sites. Three storey dwellings have been incorporated in many instances where sites slope from the rear to the street in order to provide a subfloor level, generally accommodating off street parking. Given that the slope of the site does not provide the opportunity for large sub-floor levels, three storey dwellings in these instances are required in order to facilitate adequate living areas and private open space. These designs are site responsive and provide a more desirable outcome than benching individual sites which would result in intrusive retaining walls up to 3-4m to the perimeter of the site and at the street frontage.

Given the above, it is deemed that the design of the residential subdivision and dwellings on site is consistent with development within the Stone Mason Drive corridor and provides for a design that is site responsive. Flexibility in these circumstances ensures that a better outcome for the site is provided and maintains consistency with the existing streetscape and character of Stone Mason Drive.

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### 3.3.2 Application of Clause 4.6

Clause 4.6(2) of the LEP provides that development consent may be granted for development that contravenes a development standard and the circumstances under which Clause 4.6 may not be used:

#### 4.6 Exceptions to development standards

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

This report seeks consent for a variation to the maximum height of buildings development standard pursuant to this Clause. This development standard is not excluded from the operation of Clause 4.6.

## 3.3.3 The Development Standard is Unnecessary and Unreasonable

Clause 4.6(3)(a) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be unreasonable or unnecessary:

#### 4.6 Exceptions to development standards

- (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

In Wehbe v Pittwater Council [2007] NSWLEC 827 the Land and Environment Court set out a five-part test to determine whether an objection to a development standard is well founded:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard
  - See Section 3.3.5.1 of this report. Compliance with the development standard is unreasonable and unnecessary.
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
  - Justification on this basis is not asserted by the Applicant.
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The bulk and scale of the proposed development is considered to be appropriate for the intended character of the area given the planning controls in place. The proposed variation to the building height standard when assessed in context with the site constraints, proposed earthworks, surrounding development, future streetscape and character of the area provides a greater outcome than what would be achieved if compliance was required. It is considered that the scale of the building is suitably mitigated by the split-level design of dwellings and through its integration with the surrounding landscape.

Within the scope of the current extent of works, in order to achieve compliance with the development standard, the development would require an entirely different approach to design requiring larger scale earthworks and benching of the site which would result in the following:

- Inconsistency with the established streetscape, character and design within the Stone Mason Drive medium residential density corridor;
- Cut and fill on the site in excess of 5m;
- Intrusive retaining walls to the perimeter to individual sites and street frontage creating additional visual, solar access and privacy impacts; and
- Promote design which is not site responsive.

Given the above, the proposed variation provides a greater outcome for the site than that of which would result from strict compliance with the control. Notwithstanding, the development achieves the objectives of the height of buildings development standard notwithstanding the numerical noncompliance;

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Strict compliance with the building height standard is unreasonable and unnecessary in the circumstances of the case given that compliance with the zone and development standard objectives is achieved. The proposal is consistent with the relevant objectives and will be a better planning outcome for the site.

For this reason, compliance with the development standard 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

Justification on this basis is not asserted by the Applicant.

The zoning of particular land is unreasonable or inappropriate so that a development standard
appropriate for that zoning is also unreasonable or unnecessary as it applied to that land and that
compliance with the standard in that case is also be unreasonable or unnecessary

Justification on this basis is not asserted by the Applicant.

In the context of *Wehbe v Pittwater Council [2007] NSWLEC 827* in the circumstances of this site and this Development Application the development standard is unreasonable and unnecessary, and the Clause 4.6 Variation is well-founded.

### 3.3.4 Environmental Planning Grounds

Clause 4.6(3)(b) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless there are enough environmental planning grounds to justify the departure:

#### 4.6 Exceptions to development standards

- (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—
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is consistent with the following objects under Section 1.3 of the Environmental Planning & Assessment Act:

(g) to promote good design and amenity of the built environment.

The Development Application proposes building heights and built forms which consistent with the remainder of the Stone Mason Drive medium density residential precinct and moreover is consistent with the broader Balmoral Road Release Area Precinct and the residential density development standard.

In order to establish feasible building platforms, road gradients and civil works, cut and fill on the site is required up to 3m in many instances. Moreover, even with cut and fill to this extent, the site will still maintain a significant slope and will not be benched in its entirety. In this regard, lots and dwellings across the development have been designed to incorporate split levels, sub floor areas and inter-allotment retaining walls to ensure sufficient internal and external living areas are provided for each lot and dwelling house.

As previously identified, the extent of the non-compliance is a result of the mechanism in which building height is calculated and the structure of the application to incorporate the subdivision of the land, earthworks, civil works and the built form in one application. In this instance, building height is to include the extensive earthworks on the site that are required to provide for a feasible development. Due to this, earthworks such as fill has been included in the height calculation even though the fill does not form part of any building or structure. When considering the impacts of earthworks and its inclusion in the building height, the extent of variation increases from 6.8% to 27.6%.

When considering the extent of variation, if the building height was to be calculated from the newly established natural ground level after the completion of the bulk earth works, the variation to the development standard would be minor in nature with a variation of 6.8% or 0.68m to the development standard. In addition, three of the

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eight dwellings would be complaint with the development standard with 5 remaining non-complaint from a range of 1.3% to 6.8%.

For reasons previously outlined within section 3.3.1 and 3.3.3 of this report, the design of the small lot housing development on site is consistent with adjoining developments within the Stone Mason Drive corridor and provides for a better planning outcome than what would be achieved if strict compliance with the control was required. The development facilitates design that is site responsive, reduces overall impact to residents and enhances amenity through the delivery of development consistent with the existing streetscape and character established within the area.

When viewed in this context there are no sensible environmental planning grounds on which to justify not contravening the development standard in this circumstance on this site under this Development Application.

### 3.3.5 Assessment of the Public Interest

#### 3.3.5.1 The Objectives of the Development Standard

Clause 4.6(4)(a)(ii) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be consistent with the objectives of the development standard:

#### 4.6 Exceptions to development standards

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

(a) the consent authority is satisfied that—

...

(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

Clause 4.3 of the LEP provides the objectives of the development standard:

### 4.3 Height of Buildings

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

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

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

Despite the departure from the development standard proposed by this Development Application the overall development seeks to maintain consistency with the built form, streetscape, amenity and character implemented on the adjoining properties and throughout the Stone Mason Drive corridor.

Development along the Stone Mason Drive corridor is characterised by medium density developments consisting of two and three storey residential dwellings. As previously outlined, residential Dwellings on these sites have been designed to be two and three storey dwellings to accommodate large cross falls through individual sites. Three storey dwellings have been incorporated in many instances where sites slope from the rear to the street in order to provide a subfloor level, generally accommodating off street parking, in these instances, while the dwellings are three storeys in appearance from the streetscape, the contouring of the land results in a two storey development to the rear.

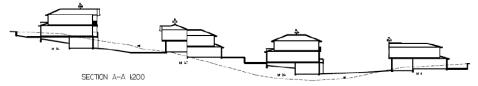


Figure 4 - Typical Cross Section

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Given that the slope of the site does not provide the opportunity for large sub-floor levels, three storey and split-level dwellings facilitate the delivery of sufficient living areas and private open space while reducing impacts on over shadowing and visual impact and loss privacy to developments.

The design scheme has been adopted from adjoining medium density residential developments, where cut and fill has implemented a balanced approach across the site with the individual lots and dwellings designed to be responsive to the site constraints. This approach reduces the necessity for large scale bulk earthworks creating benched sites with extensive retaining walls. While such approach may deliver a numerically compliant development in relation to the development standard, this would result in a development in which overshadowing, visual and privacy impacts would be detrimental on the subject site and all adjoining properties and open spaces.

The development has been designed to ensure a scheme that is compliant with overshadowing, visual impact and privacy provisions as outlined within the relevant Environmental Planning Instruments subject to the site. As a result, the non-compliance with building height does not result in any privacy, overlooking or overshadowing impacts to the development site, opens spaces, public domain or adjoining properties. It is considered that the scale of residential development proposed therefore is both consistent and compatible with the character of both the adjoining land and the broader Balmoral Road Release Area Precinct and is therefore consistent with the objectives of clause 4.3.

## 3.3.5.2 The Objectives of the Zone

Clause 4.6(4)(a)(ii) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes a development standard unless the departure is demonstrated to be consistent with the objectives of the zone:

#### 4.6 Exceptions to development standards

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

(a) the consent authority is satisfied that—

•••

(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

The site is zoned R3 Medium Density Residential (R3 zone). Clause 2.3 of the LEP provides the objectives of the R3 zone:

## Zone R23 Medium Density Residential

- 1 Objectives of zone
- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage medium density residential development in locations that are close to population centres and public transport routes.

The Development Application seeks to provide for the housing needs of the community through the subdivision of land. Housing stock and product availability is a key issue in the local community and across the whole of Sydney, and the site seeks to provide a variety of medium density lot types and dwellings at the more affordable range and suited to the demands of the market. The proposal seeks approval for the subdivision of 54 residential lots as small lot housing to cater for the housing needs of the community. The Development Application is therefore consistent with the first and second Objective.

The Development Application seeks to contribute to the availability of new housing through the subdivision of land. The Development Application proposes to complete the network of local roads including those that form the boundary between the residential land and also roads that service the development of residential lots on the neighbouring property.

The range of other permissible services, facilities and activities are not precluded by the proposal and would be pursued by future owners either with or without consent as permitted by the LEP. The Development Application is therefore consistent with the third Objective.

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The proposed development of the land for residential purposes will provide further housing within the locality consistent with the State Governments intentions for the land. The site is well connected to future retail, employment, education, community services, parks and open spaces due to its close proximity to Norwest Business Park and Castle Hill Industrial Area. The site is located 1.8km north-east from the Norwest Station approximately 25 minutes walking distance. Norwest Station Is serviced by the North West rail line which will connect with the train stations at Epping, Macquarie Park, Wynyard, Town Hall and Central. The site adjoins Windsor Road to the east, which is identified as an RMS classified road and a key transport link incorporating major public transport routes such as bus, car and bicycle routes. As such, the Development Application is consistent with the fourth Objective.

Given it is precisely this form of land use proposed by this Development Application the departure from the development standard isn't inconsistent with the inherent aim of the LEP for development to occur in the manner envisaged by the Balmoral Road Release Precinct Plan.

#### 3.3.6 Exclusions to the Operation of Clause 4.6

#### 3.3.6.1 Certain Land

Clause 4.6(6) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes a development standard on certain land:

#### 4.6 Exceptions to development standards

- (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.

None of the land is within this zone therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

#### 3.3.6.2 Certain Development Standards

Clause 4.6(6) of the LEP provides a prohibition on the consent authority granting consent to development that contravenes certain development standards:

## 4.6 Exceptions to development standards

- (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,

The Development Application is not for complying development therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

#### 3.3.6.3 Compliance with BASIX

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes BASIX commitments:

#### 4.6 Exceptions to development standards

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

The Development Application does not propose built form thus no BASIX requirements are applicable therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

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Clause 4.6 Variation 70 Outback Street, Box Hill Orion Consulting

### 3.3.6.4 Miscellaneous Permissible Uses

Clause 4.6(6) of the SEPP provides a prohibition on the consent authority granting consent to development that is for certain uses:

### 4.6 Exceptions to development standards

- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
  - ... (c) clause 5.4.

The Development Application is not for bed and breakfast accommodation, home businesses, home industries, industrial retail outlets, farm stay accommodation, kiosks, neighbourhood shops, roadside stalls or secondary dwellings therefore this Clause is irrelevant to the consideration of this Clause 4.6 variation.

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# 4 Consent Authority

## 4.1 Local Planning Panels

The Hills is a Schedule 2 Council under the Local Planning Panels Direction.

The Development Application proposes a departure from the height of buildings development standard of more than 10%.

However, given that the Capital Investment Value exceeds \$30 million the Application is required to be referred to the Sydney Central City Planning Panel for determination in accordance with SEPP (State and Regional Development) 2011.

## 4.2 Concurrence of the Secretary

### 4.2.1 Is Concurrence Required?

Clause 4.6(4)(b) of the SEPP requires the concurrence of the Secretary of the Department of Planning, Industry and Environment (the Secretary, formerly the Director General) to be obtained prior to the granting of consent for development that contravenes a development standard:

#### 4.6 Exceptions to development standards

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

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

Planning Circular PS 18-003 provides that all consent authorities may assume the Secretary's concurrence under Clause 4.6 however the assumed concurrence is subject to conditions.

Concurrence may not be assumed by a delegate of council when the development contravenes a numerical standard by greater than 10%.

This restriction does not apply to decisions made by the Regional Planning Panel, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council.

## 4.2.2 Concurrence Considerations

In assuming concurrence, the Council must consider the matters that would have been considered by the Secretary.

#### 4.2.2.1 State or Regional Planning

Clause 4.6(5) of the SEPP provides for the consideration of any State or regional planning significance as a result of the departure from the development standard:

## 4.6 Exceptions to development standards

- (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

Matters of significance for State and regional planning are most appropriately explored within the context of the planning strategies that guide the development of the State.

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

A Metropolis of Three Cities – the Greater Sydney Region Plan (the Region Plan) sets out a vision to rebalance growth more equally and equitably to residents across Greater Sydney.

The Region Plan was prepared concurrently with Future Transport 2056 and the State Infrastructure Strategy, aligning land use, transport and infrastructure planning to reshape Greater Sydney as three unique but connected cities.

The site is within the Western Parkland City and identified as a Land Release Area. In the context of the city this departure from the development standard is insignificant.

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#### 4.2.2.1.2 Western City District Plan

The District Plans for the Sydney Metropolitan area were finalised on 21 November 2016. They guide the implementation of A Metropolis of Three Cities – The Greater Sydney Region Plan across the five Districts that form the metropolitan area.

These 20 year plans are a bridge between regional and local planning. They inform local environmental plans, community strategic plans and the assessment of planning proposals. The District Plans help councils to plan and deliver for growth and change, and to align their local planning strategies to place-based outcomes.

The Western City District Plan (the District Plan) sets out a vision, priorities and actions for the development of the Western City of Greater Sydney in which the site is located. The District Plan identifies the Box Hill Precinct as part of the North West Growth Area.

Planning Priority W5 of the District Plan seeks to provide housing supply, choice and affordability, with access to jobs, services and public transport.

The Development Application seeks to provide housing and in the context of the district this departure from the development standard is insignificant.

#### 4.2.2.2 Public Benefit

Clause 4.6(5) of the SEPP provides for the consideration of the public benefit of maintaining the development standard:

#### 4.6 Exceptions to development standards

- (5) In deciding whether to grant concurrence, the Director-General must consider—
  - (b) the public benefit of maintaining the development standard, and

The departure from the development standard in this circumstance results in a better planning outcome for the site and adjoining properties than what would have been achieved through strict compliance with the development standard.

The contravention of the development standard in this circumstance is the result of the mechanism in which building height is measured under the definition of the Standard Instrument and the manner in which the proposal incorporates the subdivision of the site, bulk earthworks and the construction of the built form under one application. In any other instance where the subdivision of the site and the earthworks had preceded the built form works, the non-compliance to the development standard would be relatively minor resulting from the constraints associated with developing the site.

As such the departure from the development standard should be viewed under the circumstance of the site rather than setting any precedent and does certainly not present a watering down of the development standard. There is no public benefit in maintaining the development standard in this specific circumstance on this site as the height of buildings is consistent and compatible with development throughout the Balmoral Road Release Area and the Stone Mason Drive medium density residential corridor.

#### 4.2.2.3 Any Other Matters

Clause 4.6(5) of the SEPP provides for the consideration of any other matters:

## 4.6 Exceptions to development standards

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

- (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.

There are no further matters to be taken into consideration that have not already been identified in this report.

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Clause 4.6 Variation 70 Outback Street, Box Hill Orion Consulting

# 5 Conclusion

This report has provided a detailed assessment of the proposed variation against the LEP and the relevant case law within the context of the development and the site.

The proposed variation to the development standard achieves the purpose of the standard without complying with the numerical development standard. As the development is consistent with the purpose of the standard, and with the broader planning objectives for the locality, strict compliance with the development standard has been demonstrated to be unreasonable and unnecessary.

The proposed variation will not preclude the achievement of the zone or development standard objectives. The proposed development will not give rise to any adverse impacts and is suitable for the site and is in the public interest.

### 5.1 Recommendation

The variation to the development standard should be supported and the proposal should be granted consent subject to the appropriate standard conditions of consent.

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### ATTACHMENT 11 - REASONS FOR REFUSAL

# PPSSCC-333 1201/2022/JPZ Lot 42 DP 662070 – 65 Windsor Road, Norwest Lot 1 DP 518740 – 67 Windsor Road, Norwest

The Development Application be refused for the following reasons:

- 1. The application does not currently satisfy Part 7 of the Biodiversity Conservation Act 2016 or Section 6.7 of the Biodiversity Conservation Regulation 2017. The applicant has amended the proposed design to remove six lots to maintain a portion of the vegetation of the mapped entity. The changes to design require amendments to the Biodiversity Development Assessment Report (BDAR) to justify removal of the entity. (Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).
- 2. Insufficient information has been provided to properly assess engineering, waste, trees and landscaping concerns raised by Council staff (Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979).
- 3. The proposal is not in the public interest due to its departure from the height of building development standard under The Hills Local Environmental Plan 2019. The variation is not adequately supported by a 4.6 submission. (Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act, 1979).