

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-333 – DA 1021/2022/JPZ
PROPOSAL	Small lot housing development and subdivision creating 48 community title residential lots/ dwellings, one community association lot and one road widening lot over two stages including new road, demolition, contamination remediation and dam dewatering accompanied by an application to vary a development standard (maximum building height)
ADDRESS	Lot 42 DP 662070 – RMB 65 Windsor Road, Norwest Lot 1 DP 518740 – RMB 67 Windsor Road, Norwest
APPLICANT	The Trustee for Landen Dev No. 5 Trust
OWNER	Landen Dev No. 5 Pty Ltd
DA LODGEMENT DATE	24 December 2021
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of the Planning Systems SEPP: CIV > \$30 million
CIV	\$30,933,891.80
CLAUSE 4.6 REQUESTS	Clause 4.3 Height of Buildings – The Hills Local Environmental Plan 2019 R3 Medium Density Residential and SP2 Infrastructure zoning
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • The Hills Local Environmental Plan 2019 • The Hills Development Control Plan 2012
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS UNIQUE KEY IN	One submission received. Concerns raised regarding general traffic generation and access in and out of precinct.

<p>DOCUMENTS SUBMITTED CONSIDERATION</p> <p>FOR</p>	<p>Statement of Environmental Effects prepared by Orion Consulting dated 24/11/2021</p> <p>Detailed Survey Plans prepared by K.F. Williams & Associates Pty Ltd Revision 2 dated 15/02/2021</p> <p>Subdivision Plan (Stage 1) prepared by Orion Consulting Revision 01 dated 28/04/2023</p> <p>Subdivision Plan (Stage 2) prepared by Orion Consulting Revision 02 dated 28/04/2023</p> <p>Civil Engineering Plans prepared by Orion Consulting Revision F dated 19/07/2023</p> <p>Architectural Plans prepared by A&N Design Revision I dated 06/04/2023</p> <p>Landscape Plans prepared by Conzept Landscape Architects Revision H dated 26/06/2023</p> <p>Landscape Hardscape Plans prepared by Conzept Landscape Architects Revision H dated 26/06/2023</p> <p>Aboriginal Heritage Due Diligence Assessment prepared by McCardle Cultural Heritage Pty Ltd dated 03/03/2021</p> <p>Traffic Noise Assessment Report prepared by Day Design Pty Ltd Revision B dated 18/05/2023</p> <p>Arboricultural Impact Assessment Report prepared by Axiom Arbor Tree Services Revision 3 dated April 2023</p> <p>BASIX Certificates</p> <p>Biodiversity Development Assessment Report prepared by Ecological Australia Revision 7 dated 06/04/2023</p> <p>Clause 4.6 Variation Report prepared by Orion Consulting Revision 2 dated 28/04/2023</p> <p>Preliminary and Detailed Site Investigation Report prepared by Geotest Services Revision 1 dated 08/04/2021</p> <p>Remedial Action Plan prepared by Geotest Services Revision 2 dated 31/08/2021</p> <p>Quantity Surveyors Report prepared by MCG Quantity Surveyors dated 16/11/2021</p> <p>Preliminary Geotechnical Investigation prepared by Geotest Services dated 30/04/2021</p> <p>Heritage Impact Statement prepared by Maxim Archaeology Heritage dated 12/04/2022</p> <p>Materials and Colour Schedule prepared by North Homes</p> <p>Stormwater Management Report prepared by Orion Consulting Revision B dated 10/05/2023</p> <p>Vegetation Management Plan prepared by Ecological Australia Revision 3 dated 28/03/2023</p> <p>Dam Dewatering Plan prepared by Ecological Australia dated 20/10/2022</p> <p>Aquatic Fauna Relocation Plan prepared by Ecological Australia dated 05/11/2021</p> <p>Traffic Report prepared by Amber Organisation dated 27/04/2022</p>
---	--

	Waste Management Plan Owners Consent letters
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	The proposed development is subject to the payment of a Special Infrastructure Contribution under Section 7.24 of the EP&A Act 1979. A condition of consent has been imposed requiring payment of the contribution prior to the issue of a Construction Certificate or Subdivision Works Certificate (whichever comes first).
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	Electronic
PLAN VERSION	6 April 2023 Version I
PREPARED BY	Jacob Kiner
DATE OF REPORT	31 July 2023

EXECUTIVE SUMMARY

Development Application 1021/2022/JPZ seeks consent for a small lot housing development and subdivision creating 48 community title residential lots and subsequent dwellings, one community association lot and one road widening lot over two stages. The application also seeks consent for the construction of Stone Mason Drive fronting the site and a private road, demolition of the existing structures on site, contamination remediation and dam dewatering. The application is accompanied by an application to vary a development standard relating to maximum building height.

The subject site is identified as Lot 42 DP 662070, known as RMB 65 Windsor Road, Norwest, and Lot 1 DP 518740, known as RMB 67 Windsor Road, Norwest. The site comprises two large residential lots and contains two dwelling houses. The subject site is 2.145 hectares in area and currently obtains access from Windsor Road. There is an existing portion of Stone Mason Drive which could provide access to the rear of 65 Windsor Road.

The site is located within the Balmoral Road Release Area which is currently experiencing development and transition from low to medium density residential areas. There are several proposed and approved residential subdivisions to the east and west of the site that are reflective of the future intended use of the site.

The site is predominately located in the R3 Medium Density Residential zone pursuant to Clause 2.2 of The Hills Local Environmental Plan 2019. A portion of the site fronting Windsor Road is zoned SP2 Infrastructure and will be subject to future acquisition by Transport for NSW to allow for upgrades and widening of Windsor Road.

The proposed development is defined as 'subdivision', 'demolition' and 'dwelling houses' under the LEP. Subdivision and demolition are permitted with development consent under Clause 2.6 and Clause 2.7 of the LEP respectively. Dwelling houses are permissible with consent in the R3 Medium Density Residential zone.

The principle planning controls relevant to the proposal include The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 (DCP), in particular Part B Section 9 – Small Lot Housing and Part D Section 7 – Balmoral Road Release Area. The proposed development is considered to be generally consistent with the controls outlined within both instruments.

The application has been referred to the Sydney Central City Planning Panel (Panel) as the proposal is identified to be regionally significant development pursuant to Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as the proposal is for a development with a capital investment value of more than \$30 million.

The key issues associated with the proposal included:

1. *Maximum Building Height* – Three of the proposed residential dwellings exceeded the maximum 10m building height limit established under Clause 4.3 of the LEP. The application was accompanied by a Clause 4.6 variation seeking to vary the development standard. The proposal seeks consent for a maximum building height of 10.71m (7.1%), 12.01m (20.1%) and 11.81m (18.1%) for proposed dwellings on lots 39, 40 and 41 respectively. The variations occur as a result of the existing topography of the site and localised filling of the existing depression located where proposed lots 39-41 are situated. The Clause 4.6 variation is well-founded and recommended for acceptance in this instance.
2. *Ecological Impacts* – The proposed development initially sought the removal of all of the critically endangered ecological community, Cumberland Plain Woodland, located on site and had not adequately demonstrated that serious and irreversible impacts had been mitigated or avoided. The ecological impacts have otherwise been resolved through the amendment to the subdivision layout and design and the recommended conditions of consent including the retirement of Biodiversity Offset Credits.
3. The application also contains variations to both Part B Section 9 and Part D Section 7 of the DCP pertaining to hardscaped areas, building heights, maximum length of upper floor and garage dominance which are considered acceptable.

Following consideration of the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the requirements and obligations under the Biodiversity Conservation Act 2016, the provisions of the relevant State Environmental Planning Policies, the LEP and the DCP, the proposal is recommended for approval. The proposed development is generally consistent with the provisions of the LEP and the DCP, in which the site is suitable for its intended residential use as outlined by the zoning of the site and the objectives of the DCP.

The proposed variation to Clause 4.3 of the LEP is well-founded and is considered reasonable in this instance. The proposed development is likely to generate negligible impacts on the natural and built environments (subject to the proposed conditions) and is in the public interest. The proposal is recommended for approval subject to the recommended conditions of consent contained in Attachment A of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is known as 65-67 Windsor Road, Norwest (Lot 1 DP 518740 and Lot 42 DP 662070). The overall site has an area of 2.145 hectares. The overall site has a frontage of approximately 121.9m to Windsor Road, which each site currently gains access from. 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 existing site contains a dwelling and ancillary structures on each existing allotment of land. The site generally slopes from the eastern corner at Windsor Road to the western corner at the rear of the subject site.

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.



Figure 1. Aerial photograph of Site (Source: Nearmaps, 11/04/2023)

1.2 The Locality

The subject site is located within the Balmoral Road Release Area. The immediate locality is largely undeveloped, however there are several approved/ developed subdivisions and multi-dwelling housing developments to the west and south of the site that are typical of the

future character of the area. Further to the south and west of the site is the Castle Hill Country Club (golf course) and Castle Pines seniors living development.

The site is accessed via Windsor Road, which is identified as an arterial road. The northern side of Windsor Road is predominantly zoned R2 Low Density Residential and contains single and two storey dwellings. The site is also within proximity of the Castle Hill Industrial Precinct which contains a mix of industrial, commercial and retail uses.

The adjoining site, being RMB 63 Windsor Road, 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 under construction and includes the extension of Stone Mason Drive to the boundary with the subject site.

Several bus stops are located along Windsor Road, with the nearest bus stops located at the front of RMB 61 and RMB 69 Windsor Road for west bound traffic, and at the intersection of Showground Road and Windsor Road for east bound traffic. The subject site is located approximately 1.9km from the Norwest Metro Station and approximately 2.3km from the Hills Showground Metro Station.



Figure 2. Locality Plan

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a 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.

Specifically, the proposal involves:

- Demolition of the existing dwellings and ancillary structures on site
- Full width construction of Stone Mason Drive and a new private road.

- Subdivision creating 48 community title residential lots, one community association lot and one road widening lot.
- Construction of 48 dwelling houses, comprising of a mix of two and three stories, and associated landscaping.
- Civil/ subdivision works relating to earthworks and stormwater infrastructure.
- Remediation of the site.
- Dewatering/ filling of the existing dam located on RMB 65 Windsor Road.
- Removal of 94 Trees on site.
- Staging of the development over two stages

The proposal is also accompanied by an application to vary a development standard, specifically the maximum building height control. Several of the proposed dwellings exceed the maximum building height of 10m applying to the site under Clause 4.3 of The Hills Local Environmental Plan 2019. The variation to the control is assessed in further detail later in this report. The application also contains variations to both Part B Section 9 and Part D Section 7 of the DCP pertaining to hardscaped areas, building heights, maximum length of upper floor and garage dominance.

Table 1: Development Data

Control	Proposal
Site area	2.145 hectares
FSR (retail/residential)	No FSR applies to the site.
Clause 4.6 Requests	Yes – Clause 4.3 Maximum Height of Buildings under The Hills Local Environmental Plan 2019
No. of Dwellings	48
Max Height	4.45m to 12.01m (variation proposed)
Landscaped area	102.8sqm to 181sqm (min 40%)
Car Parking spaces	Minimum two off-street parking spaces provided per dwelling.
Lot Size	257 square metres to 360.9 square metres (residential)

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 23 February 2021 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Minimum lot size/ requirement for dwellings under Clause 4.1B
- Landscape Corridor
- Tree Removal
- Flora and Fauna/ Ecology matters
- Temporary site access
- Acoustic requirements
- Waste collection
- Salinity and contamination
- Stormwater Design/ Overland flow path

The development application was lodged on 24 December 2021. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
24 December 2021	DA lodged
10 January 2022	DA referred to external agencies.
10 January 2022	Exhibition of the application
21 January 2022	Request for additional information issued relating to planning, heritage, environmental health, waste and engineering matters.
27 January 2022	Request for additional information issued relating to ecology and tree/landscape management matters.
10 February 2022	Kick-off briefing meeting held with Panel.
24 March 2022	Briefing held with Panel
1 June 2022	Additional plans and documentation submitted relating to the additional information requested on 21 January and 27 January 2022.
25 July 2022	Request for additional information issued relating to planning, ecology, environmental health, waste and engineering and tree/ landscape management matters.
12 December 2022	Additional plans and documentation submitted relating to the additional information requested on 25 July 2022.
1 February 2023	Request for additional information issued relating to ecology and tree/ landscape management matters.
13 February 2023	Request for additional information issued relating to planning, environmental health and engineering matters.
24 April 2023	Additional plans and documentation submitted relating to the additional information requested on 1 February and 13 February 2023.
1 May 2023	Additional plans and documentation submitted relating to the additional information requested on 1 February and 13 February 2023.
18 May 2023	Meeting held with Panel for deferral of determination.
14 June 2023	Request for additional information issued relating to tree/ landscape management matters.

26 June 2023	Additional plans and documentation submitted relating to the additional information requested on 14 June 2023.
---------------------	--

2.3 Site History

No previous development proposals have been lodged/ approved over the site other than for the existing dwellings on the properties and alterations/ additions to these dwellings.

The following applications have been approved for sites immediately adjoining the subject site:

- 709/2016/ZE – RMB 63 Windsor Road, Norwest – Integrated housing development and subdivision creating four residential lots/ dwellings, 21 community title residential lots/ dwellings, one road widening lot and one community association lot including new road and demolition over two stages.
- 1706/2018/HA – 54 Stone Mason Drive, Norwest – Construction of Multi-dwelling Housing for 61 Dwellings

The following applications have been lodged with Council for sites to the immediately west of the subject site and have yet to be determined:

- 236/2023/ZE – RMB 69 Windsor Road, Norwest – Small lot housing development and subdivision creating seven residential lots/ dwellings, 18 community title residential lots/ dwellings and one association lot including new road and demolition.
- 651/2023/ZE – RMB 71 Windsor Road, Norwest – Small lot housing development and subdivision creating 11 residential lots/ dwellings, one residue lot and one road widening lot including new road and demolition.

3. STATUTORY CONSIDERATIONS

Environmental Planning and Assessment Act 1979

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be Integrated Development (s4.46) which is considered further in this report.

Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 (BCA) establishes the requirements for the protection of biodiversity, outlines the requirements for the regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities. Part 7 of the BCA sets out the requirements for biodiversity assessment and sets out significant impact threshold criteria that trigger entry into the Biodiversity Offset Scheme. The proposal as amended seeks to retain (BOS).

Development or an activity is likely to significantly affect threatened entities if:

1. The amount of native vegetation being cleared exceeds clearing thresholds; or
2. The development is “likely to significantly affect threatened species” using the test of significance in Section 7.3 of the BCA; or
3. The development has any impact within an area mapped on the Biodiversity Values Map; or
4. The development is to be carried out in a declared Area of Outstanding Biodiversity Value.

The BOS must be applied to applications under Part 4 Environmental Planning and Assessment Act 1979 wherever the project is likely to have a ‘significant impact’ on threatened biodiversity based on the criteria outlined above.

The subject site contains a critically endangered ecological community being Cumberland Plain Woodland (CPW). The proposed development has been designed to include avoidance measures to retain and protect the CPW where possible, however the development requires the removal of some vegetation on site.

The proposal includes clearing of more than 0.5 hectares of native vegetation and therefore triggers entry into the Biodiversity Offset Scheme (BOS).

The application is supported by a Biodiversity Development Assessment Report (BDAR) which establishes the offset requirements for the proposed development. The proposal has adequately demonstrated that the proposal has minimised and avoided impacts wherever possible. Council’s Senior Biodiversity Officer has reviewed the proposal and raises no objections to the development; subject to the developer meeting the credit offset obligation and complying with the conditions outlined in this report.

3.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *The Hills Local Environmental Plan 2019*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies
(Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
Planning Systems SEPP	<ul style="list-style-type: none"> • Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6. 	Y
BC SEPP	<ul style="list-style-type: none"> • Section 6.13 – the impacts of the proposed development have been considered with regards to the environment of the Hawkesbury-Nepean River Catchment and are considered to have no adverse impact on the system, subject to conditions. 	Y
RH SEPP	<ul style="list-style-type: none"> • Clause 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
Transport and Infrastructure SEPP	<ul style="list-style-type: none"> • Clause 2.119 – Development with frontage to classified road • Clause 2.122 – Traffic-generating development. The initial proposal included more than 50 residential lots and the site has access to a classified road. 	Y
BASIX SEPP	BASIX certificates have been provided for the development.	Y
LEP	<ul style="list-style-type: none"> • Clause 4.1B - lot sizes comply. • Clause 4.3 – height of buildings – variation sought. • Clause 4.4 – floor space ratio – N/A. • Clause 4.6 – variation to height of buildings sought. • Clause 5.1 – TfNSW are the relevant acquisition authority for the SP2 zoned land. • Clause 5.10 – in vicinity of heritage item, unlikely to generate any impacts. • Clause 6.2 – satisfactory arrangements subject to conditions. • Clause 6.3 – Public utility infrastructure subject to conditions. 	N
DCP	<p>The following DCP non-compliances have been identified:</p> <p><u>Part B Section 9 – Small Lot Housing</u> Section 1 – Private Open Space and Landscaped Open Space Section 2 – maximum building height and maximum length of upper floor Section 3 – garage width/ streetscape</p> <p><u>Part D Section 7 – Balmoral Road Release Area</u> Section 8.1.4 – Cut and Fill</p>	N

State Environmental Planning Policy (Planning Systems) 2021

The proposed development is for a 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). The proposed development has a capital investment value (CIV) of \$30,933,891.80. Accordingly, the proposed development is identified as 'regionally significant development' under Clause 2 of Schedule 6 of the Planning Systems SEPP as the development by or on behalf of the Crown and has a capital investment value of more than \$30 million. The Sydney Central City Planning Panel are therefore the nominated consent authority for the application.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) have been considered in the assessment of the development application. Section 6.13 of the SEPP establishes general planning considerations for proposed developments within the Hawkesbury-Nepean River catchment area and aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The proposed development is not considered to create anything but negligible impacts on the river system as it will facilitate future residential uses that are unlikely to generate any significant impacts. Conditions of consent are recommended to be imposed that require an erosion and sediment plan to be prepared and utilised throughout all stages of works to ensure that the works do not have any adverse impact on the Hawkesbury-Nepean River catchment.

State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) have been considered in the assessment of the development application. Clause 4.6 of RH SEPP requires consent authorities to consider whether the land is contaminated, and 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.

A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) were prepared for the site to consider the provisions of the SEPP. The DSI identified the need for remediation of the site to ensure it was suitable for its intended residential use. The RAP has been prepared and reviewed by Council's Environmental Health department and is deemed acceptable subject to conditions. Following remediation of the site and satisfactory compliance with the recommended conditions of consent, the site will be suitable for its intended residential use from a contamination perspective and therefore satisfy the objectives and requires of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The subject site has existing access to Windsor Road and is considered to be Development with frontage to a classified road under Section 2.119 of the Transport and Infrastructure SEPP. Section 2.119 of the SEPP states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of –*

- i. *the design of the vehicular access to the land, or*
 - ii. *the emission of smoke or dust from the development, or*
 - iii. *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

With respect to point (a), the proposed development does not seek temporary or permanent access via Windsor Road, rather access to the proposed lots will be via Stone Mason Road and the new private road.

With respect to point (b), as the proposed development does not seek access from Windsor Road, the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development given alternative access is provided to the proposed lots.

With respect to point (c), the development has considered the acoustic impacts of traffic noise along Windsor Road through the implementation of the recommendations of the acoustic report submitted with the application and has further provided adequate separation from Windsor Road to the proposed dwellings.

Considering the above, the proposed development is considered to be satisfactory with respect to Section 2.119 of the SEPP.

The initial application was lodged for a small lot housing development and subdivision creating 54 community title residential lots/ dwellings and one association lot including new road, demolition, contamination remediation, dam dewatering accompanied by an application to vary a development standard (maximum building height). Accordingly, the development was considered to be traffic-generating development under Section 2.122 of the SEPP by virtue of it being a subdivision of 50 or more allotments with access to a classified road or to road that connects to a classified road. The application was therefore referred to Transport for NSW for comment. Concurrence was received from Transport for NSW (TfNSW) on 5 April 2022 providing conditions. The TfNSW have been incorporated into the recommended conditions of consent and are attached to the consent as Attachment B.

The application was amended during the evaluation stage to reduce the number of lots. The proposal is now for a 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). Accordingly, the proposal is no longer considered to be traffic-generating development as per Section 2.122 of the SEPP. Regardless, the conditions of consent recommended by Transport for NSW relate primarily to the interface with Windsor Road and are considered to remain relevant. The conditions of consent have therefore been included as part of the recommended consent.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by several BASIX Certificates committing to environmental sustainable measures. The Certificates demonstrate the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

The Hills Local Environmental Plan 2019

The relevant local environmental plan applying to the site is *The Hills Local Environmental Plan 2019* ('the LEP'). The aims of the LEP include the following:

- *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- *to guide the orderly and sustainable development of The Hills, balancing its economic, environmental and social needs,*
- *to provide strategic direction and urban and rural land use management for the benefit of the community,*
- *to provide for the development of communities that are healthy, connected and inclusive and that have services and facilities that meet their needs,*
- *to provide for well planned and liveable neighbourhoods through efficient and safe transport infrastructure, a range of housing options, and a built environment that is compatible with the cultural and natural heritage of The Hills,*
- *to preserve and protect the natural surroundings of The Hills and to identify environmentally significant land for the benefit of future generations,*
- *to contribute to the development of a prosperous local economy through the identification and management of land to promote employment opportunities, rural productivity and tourism.*

The proposal is consistent with these aims as the proposal seeks to develop the site in an orderly manner whilst balancing economic, environmental and social needs, and further provides opportunity to deliver additional housing types within a built environment that is compatible with the surrounding transport infrastructure.

Zoning and Permissibility (Part 2)

The site is zoned part R3 Medium Density Residential and SP2 Infrastructure under Clause 2.2 of the LEP.

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of 'dwelling houses' which is a permissible use with consent in the Land Use Table in Clause 2.3.

The proposal is also defined as 'subdivision' and is permissible with development consent in accordance with Clause 2.6 of the LEP.

The proposal is also defined as 'demolition' and is permissible with development consent in accordance with Clause 2.7 of the LEP.

The objectives of the R3 Medium Density Residential zone include the following (pursuant to the Land Use Table in Clause 2.3):

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

The proposal is consistent with the objectives of the R3 zone for the following reasons:

- The proposed development will facilitate additional housing opportunities within the context of the medium density residential environment.
- The proposed development contributes to a variety of housing types within the context of the Balmoral Road Release Area and is considerate of the medium density residential character.
- The proposed development provides additional housing opportunities within proximity to population centres and public transport routes.

The objectives of the SP2 Infrastructure zone include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

The proposed development has considered the SP2 zoning along Windsor Road and has excised this area into a separate lot in order to facilitate the future acquisition and development of this area for the purposes of road widening and upgrades. The proposed development therefore does not prevent the provision of infrastructure and is consistent with the objectives of the SP2 zone.

General Controls and Development Standards (Part 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

The proposal does not comply with the development standard specified under Clause 4.3 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum building height.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	700 square metres	The proposal is sought under Clause 4.1B, therefore the provisions of this clause do not apply.	N/A
Exceptions to minimum lot sizes for certain residential development (CI 4.1B)	240 square metres	257 square metres to 360.9 square metres	Yes
Height of buildings (CI 4.3(2))	10 metres	4.45m to 12.01m	No
FSR (CI 4.4(2))	N/A	There is no FSR applying to the site.	N/A
Land acquisition (CI 5.1)	SP2 Classified Road – TfNSW	The SP2 land has been separated to facilitate acquisition by TfNSW.	Yes
Heritage (CI 5.10)	2 (f) – Development consent is required for subdividing land on which a heritage item is located or that is within a heritage conservation area, or on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance	No heritage items are identified on the site. The site is within proximity to the heritage items I25 (Castle Hill Country Club) and I28 (Windsor Road). The proposed development is unlikely to impact on the condition or view corridors of the heritage items.	Yes
Arrangements for designated State public infrastructure (CI 6.2)	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	Conditions of consent have been recommended for the payment of a Special Infrastructure Contribution.	Yes

	<p>Area Map—40 hectares, or</p> <p>(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,</p> <p>unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.</p>		
Public Utility Infrastructure (CI 6.3)	<p>(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.</p>	<p>Conditions of consent have been recommended for the provision of utility services to the proposed development (water, sewer, gas, electricity, telecommunications).</p>	Yes

The proposal is considered to be generally consistent with the LEP, with the exception of the variation to Clause 4.3 relating to the maximum height of buildings. The variation to Clause 4.3 is considered below.

Clause 4.6 Request

Clause 4.3 of LEP 2019 limits the height of the development site to 10 metres. The proposal seeks consent for a maximum building height of 10.71m, 12.01m and 11.81m for proposed dwellings on lots 39, 40 and 41 respectively, representing variations of 7.1% (710mm) for lot/

dwelling 39, 20.1% (2.01m) for lot/ dwelling 40 and 18.1% (1.81m) for lot/ dwelling 41. The applicant has provided a Clause 4.6 Variation which is provided at Attachment H.

Clause 4.6 allows consent to be granted for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 – Exceptions to Development Standards states:

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
 - (b) the concurrence of the 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 granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**

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

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

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

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (ca) clause 6.2 or 6.3,*
- (cb) clause 7.11.*

In determining the appropriateness of the variation request, a number of factors identified by the Applicant have been taken into consideration to ascertain whether the variation is supportable in this instance. They include:

- The nature of the non-compliance is technical departure only and the proposed lots would otherwise comply with the maximum permitted building height if based on design levels, rather than the natural ground level.*
- The variation arises from the design response to the site's terrain, as filling of the existing depression where lots 39-41 are proposed is required to ensure that the lots are suitable for their residential purpose.*
- If bulk earthworks were had been undertaken prior to the lodgement of a Development Application for the dwellings on site, the height of buildings would be reduced such that the buildings would comply with the 10m height limit.*
- The extent of the roof form which breaches the building height development standard is located behind the front building line and does not impact on the amenity of adjoining dwellings*
- The environmental amenity impacts of the proposal are either minor such that the proposal will not impact surrounding private or public land; and*
- The characteristics and design requirements cannot be modified any further to reduce the building height without compromising the aesthetic and functional qualities of the proposed built form.*

Comment:

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

Lot/ Dwelling	Maximum LEP height	Maximum height to top of roof
39	10m	10.71m
40	10m	12.01m
41	10m	11.81m



Figure 3. North-west elevation showing dwellings where height limit is exceeded.



Figure 4. North-east elevation showing view towards lot/ dwelling 41.

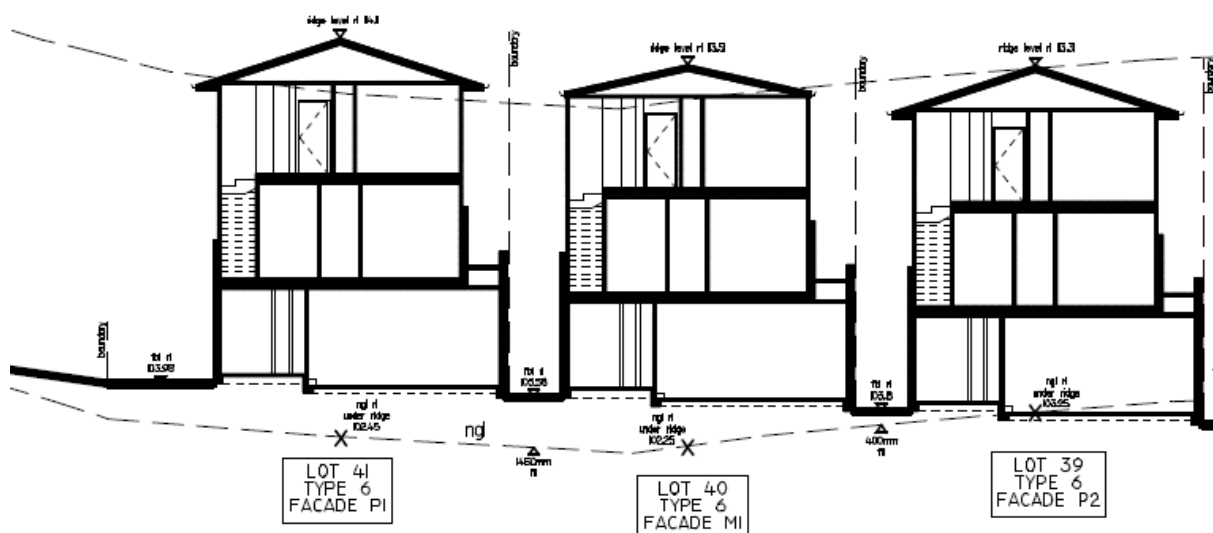


Figure 5. Section of Lots/ Dwellings 39-41 including height plane

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

The proposed departure to the building height development standard is limited predominantly to the roof form of all three dwellings exceeding the height limit and will not cause adverse impacts on the amenity of adjoining properties with respect to overshadowing, privacy, view loss and perceived bulk and scale.

The site is graded from the eastern corner near Windsor Road to the western corner near Stone Mason Drive. The development has been designed to respond to the topography

ensuring the proposed earthworks are responsive to the slope and constraints of the site. The section of the site where lots 39-41 are proposed is located over an existing depression, with the earthworks designed to ensure that a consistent grade is provided for the residential lots and proposed private road.

When considering the height of the dwellings based off the design levels, the proposed dwellings otherwise comply with the maximum height plane. The non-compliance is mostly limited to the roof structure, with a small part of the upper floor for lots 40 and 41 exceeding the maximum height plane. The applicant has reduced the height of the dwellings by reducing the ceiling heights for each floor to a maximum of 2.7m. Notwithstanding, no additional storeys or floor area are proposed within the area of the height exceedance.

Lot/ Dwelling	Maximum LEP height	Maximum height to top of roof based on design levels (FGL)
39	10m	9.81m
40	10m	9.76m
41	10m	9.86m

The built form responds to the desired future character of the Balmoral Road Release Area and small lot housing developments as approved under similar applications on adjoining sites. The proposed dwellings are consistent with those proposed under the remainder of the application and does not result in any considerable overshadowing or privacy impacts on the adjoining lots/ dwellings. The height exceedance has negligible impacts on the streetscape given the dwellings are of consistent scale and bulk to the remainder of the lots/ dwellings proposed under the application and along the private road. The proposed dwellings otherwise comply with the relevant setback and private open space requirements. The adjoining lots (i.e. Lot 38 and lots 42-45) achieve adequate solar access as a result of the separation distances and site orientation. The building form and massing is considered appropriate in this context given compliance with the development controls for solar access and overshadowing.

The development has been designed to consider the medium density context of the immediate locality and provide a built form outcome which responds to the residential zoning. Notwithstanding the building height non-compliance, the height and scale of the proposed development will remain consistent with the remainder of the built form proposed under this application. Landscaping and the use of complementary colours and materials soften the built form and maintain a consistent streetscape character.

The variations to the height standard are considered negligible when viewed from the public domain. In this regard, there are sufficient environmental planning grounds to justify the contravention.

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

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

- The Applicant's request is well founded;

- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Buildings and the R3 Medium Density Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention; and
- The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

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

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

3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the Environmental Planning and Assessment Act 1979 that are relevant to the proposal.

3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *The Hills Development Control Plan 2012*
 - *Part B Section 9 – Small Lot Housing*
 - *Part D Section 7 – Balmoral Road Release Area*

A summary of key controls/ non-compliances is provided below. A detailed compliance table is attached to this report as Attachment C.

Part B Section 9 – Small Lot Housing

Part B Section 9 – Small Lot Housing within The Hills Development Control Plan 2012 establishes site planning controls to ensure that small lot housing developments provide an attractive and pleasant streetscape through the coordinated siting of building whilst ensuring that they are designed and sited to have regard to the amenity of adjoining development and include outdoor living spaces with usable dimensions and high-quality landscaping and privacy.

Section 1 – Site Planning

Under Section 1, controls relating to private open space and landscaped open space are established which apply to dwellings proposed as part of small lot housing developments. As part of this section, controls have been included to ensure that hard space areas are limited as much as possible to allow for larger areas of landscaping to improve the amenity of such small lot housing developments.

The proposed development includes variations to two specific controls relating to hard scaped areas under Section 1 as follows:

- Private open space may compromise a combination of paved and non-paved areas however hard space areas are to be limited to 15% of the site area.
- 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.

The applicant has requested a variation to this control by which areas less than 2m wide have been excluded from the hardscaped/ impervious areas on the basis that Section 1 further stipulates that all landscaped areas are to have a minimum width of 2m. The interpretation of this suggests that the side setbacks are not typically defined as landscaped areas.

If the side setbacks were included as part of the hardscaped area calculations, several lots would exceed the maximum 15% stipulated under Section 1. If the side setbacks are not included in the impervious area calculations, all lots would otherwise comply with these controls and provide no more than 15% of the site area as impervious area. A table of hardscaped/ impervious area calculations for each lot (excluding side setback areas) has been included below:

Lot No.	Lot Area	Impervious Area	%
2	347.2	39.49	11.37%
3	347.7	33.65	9.68%
4	257.1	29.47	11.46%
5	257.1	29.76	11.58%
6	257.1	29.58	11.51%
7	257.1	29.57	11.50%
8	257.1	29.61	11.50%
9	257.1	27.86	11.52%
10	257.1	27.2	10.84%
11	257.1	27.29	10.58%
12	257	27.4	10.62%
13	316.1	30.25	8.67%
14	282.2	28.57	10.12%
15	282.3	28.58	10.12%
16	342	27.17	7.94%
17	282.8	28.65	10.13%
18	289.1	28.69	9.92%
19	263.6	24.91	9.45%
20	259.6	24.95	9.61%
21	259.6	24.56	9.46%
22	259.6	24.87	9.58%
23	259.6	24.39	9.40%
24	259.5	24.64	9.50%
25	259.5	24.31	9.37%
26	259.5	24.29	9.36%
27	259.5	25.85	9.96%

28	316.6	32.75	10.34%
29	335	32.82	9.80%
30	347.7	33.2	9.55%
31	334.1	31.55	9.44%
32	334.1	33.29	9.96%
33	360.9	32.21	8.92%
34	299.3	26.14	8.73%
35	261.9	25.28	9.65%
36	261.9	24.77	9.46%
37	261.9	25.11	9.59%
38	261.9	25.46	9.72%
39	261.9	25.45	9.72%
40	261.9	24.9	9.51%
41	289.4	23.08	7.98%
42	297.5	28.43	9.56%
43	269	30.19	11.22%
44	269	30.01	11.16%
45	269	30.67	11.40%
46	269	30.34	11.28%
47	269	30.59	11.37%
48	269	30.46	11.32%
49	307.4	32.38	10.53%

Given that the side setbacks areas are not typically used for significant landscaping and gravel paths have been provided along the sides of all dwellings, the proposed exclusion of the side setback areas less than 2m wide to calculate hardscaped areas is considered reasonable in this instance. Accordingly, the proposed development would otherwise comply with the hardscaped area controls based on this interpretation of the definition of hardscaped areas.

Section 2 – Building Design and Streetscape

Under Section 2, controls relating to the dwelling design are established to ensure that the dwellings are consistent with the characteristics and objectives of small lot housing. Of particular note, the proposed development seeks variations to the maximum building height and maximum length of upper storey controls.

Section 2 stipulates that the maximum building height permitted is two storeys and the maximum length of the upper storey is 10m.

With respect to the maximum building height, 17 of the 48 proposed dwellings are three storeys in height and do not comply with this control. For such dwellings, the dwellings comprise of a basement level consisting of a garage and foyer which therefore results in a non-compliance with the maximum building height control. The basement levels are not in cut and are at street level.

As noted earlier in this report, all proposed dwellings except for those on lots 39-41 comply with the maximum building height outlined under Clause 4.3 of the LEP. The proposed dwellings on lot 39-41 otherwise comply with the 10m height limit when considering the design levels. Given that the proposed lots are within the maximum permitted height limit set by the

LEP when considering the design levels, the proposed use of a third storey is not considered unreasonable in this instance.

Further to this, the proposed use of a third storey is considered site responsive due to the significant slope of the site. The third storeys are located on the low side of the lot to save the need for further earthworks or retaining walls between lots.

The proposed dwellings where the third storey is included are located internal to the site and are accessed via the private road. The proposed dwellings will not impact on the streetscape of Stone Mason Drive or any other public road.

The proposed variation to the maximum building height with respect to the DCP is considered acceptable in this instance.

With respect to the maximum length of upper storey, none of the proposed dwellings comply with this control. All dwellings provide an upper storey length ranging from 11 metres to 15.15 metres.

Notwithstanding the non-compliance, all of the proposed dwellings otherwise comply with the setback requirements stipulated under both the Small Lot Housing DCP and Balmoral Road Release Area DCP. The proposed dwellings have been designed to avoid privacy issues (i.e. window location, glazing, etc) in lieu of the upper length control being complied with. Given this, the variation to the maximum length of the upper storey for each dwelling is considered acceptable.

Section 3 – Access and Parking

Under Section 3, controls relating to access and parking are established to ensure that small lot housing has sufficient on-site parking areas which do not impact on the streetscape. This section stipulates requirements for garage size with respect to the dwelling design. The proposed development seeks a variation to the width of the garage in relation to the property frontage. Section 3 of the DCP specifically states that garages facing a public place are to extend less than 50% of the property frontage and that double garages will only be permitted for detached dwellings where they do not extend more than 50% of the property frontage.

A majority of the proposed dwellings have double garages proposed and several of the proposed dwellings have the garage width exceeding more than 50% of the property frontage. However, only eight of the dwellings front a public place (i.e. front onto Stone Mason Drive) with all other lots fronting a private road.

Notwithstanding this, the proposed dwellings have sought to include design elements to offset the visual prominence of the garages and reduce its impact on the streetscape. The dwellings have included a mixture of verandas, vertical elements, entry features, balconies and landscaping features to reduce the visual dominance. The proposed variation is considered acceptable in this instance.

Part D Section 7 – Balmoral Road Release Area

Part D Section 7 – Balmoral Road Release Area within The Hills Development Control Plan 2012 (BRRA DCP) establishes controls for the Balmoral Road Release Area relating primarily to residential development. The BRRA DCP aims to create sustainable residential neighbourhoods consisting of a mix of housing types and support such residential neighbourhoods with a range of urban support uses/ services whilst protecting, rehabilitating and conserving areas of environmental sensitivity or significance.

Whilst the proposed development is defined as small lot housing and has been primarily considered against the objectives and controls of the Small Lot Housing DCP, the proposed development has also been considered against the objectives and controls of the BRRA DCP given the site is located within the Balmoral Road Release Area. The main controls relating to the subdivision layout and dwelling design have been primarily assessed against the Small Lot Housing DCP as the BRRA DCP does not contain any specific controls relating to small lot housing. Notwithstanding this, the BRRA DCP has been utilised in the event of any inconsistencies or where the Small Lot Housing DCP does not address any part of the development.

As the Small Lot Housing DCP does not contain any controls relating to cut and fill, the BRRA DCP has been relied upon in this instance. However, the BRRA DCP does not provide any specific controls for earthworks relating to subdivision works, but instead has controls for residential dwellings which are intended to be considered as part of the construction of a dwelling house. Notwithstanding this, in lieu of there being controls for earthworks, section 8.1.4 of the BRRA DCP has been considered in this instance.

Section 8.1.4 of the BRRA DCP outlines the following:

- (a) Maximum filling above natural ground level: 0.5 metres.
- (b) Maximum cut below natural ground level: 0.5 metres.

The proposed development seeks approval for fill up to 2.5m and cut up to 2.5m.

The site generally slopes from the eastern corner at Windsor Road to the western corner at the rear of the subject site. There is an existing depression through the middle of the site and existing dam to which a majority of the fill is proposed.

The proposed earthworks are considered to respond to the constraints of the site and do not result in any significant level differences with adjoining properties. There is presently an application with Council for assessment over RMB 69 Windsor Road, being DA 236/2023/ZE, which will ensure there is a reasonable transition between the two sites along the western boundary once approved and constructed. The proposed development is mostly within cut along the eastern boundary, which will ensure that there are no privacy or overshadowing issues with the approved development under DA 709/2016/ZE over RMB 63 Windsor Road.

Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *The Hills Contributions Plan No. 12 – Balmoral Road*

This Contributions Plan has been considered and included the recommended draft consent conditions.

The proposed development is also subject to the North West Growth Area Special Infrastructure Contribution under Section 7.24 of the EP&A Act 1979 which has also been considered in the recommended conditions.

3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, comprising the following:

- The provisions of AS 2601 – the demolition of structures.

These provisions have been considered and addressed in the draft conditions (where necessary).

Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposed development is considered to be generally consistent with the objectives of the Balmoral Road Release Area and design controls associated with small lot housing. The proposed development will facilitate the provision of additional housing opportunities and types within the context of the R3 Medium Density Residential environment. The design, scale and mass of the built form component of the development is generally consistent with other integrated housing developments proposed and approved along Stone Mason Drive and within the Balmoral Road Release Area.
- Access and traffic – The proposed development is not considered to be traffic generating development given its residential use and is not anticipated to generate any further traffic other than typical residential movements. Each dwelling provides a double garage and has sufficient room to park additional vehicles within the driveway. The proposed dwellings therefore have sufficient off-street parking and will unlikely impact on trafficable width of Stone Mason Drive.

The proposed development will otherwise construct the portion of Stone Mason Drive within the subject site, which will contribute to the extension of the public road towards Fairway Drive. The proposed dwellings are in proximity to bus and Metro services.

- Public Domain – The site forms part of the Balmoral Road Release Area. Public domain works such as street tree planting are proposed as part of the development and are likely to improve the existing public domain of the release area. Consequently, the proposed development is unlikely to generate any negative impacts on the existing public domain.
- Utilities – Conditions of consent have been imposed requiring adequate servicing arrangements to be available to proposed development. The conditions of consent stipulate that water, electrical and telecommunication services will need to have

satisfactory arrangements for the provision of these services prior to the issue of a subdivision certificate.

- Heritage – The site is not identified to contain any items or places of heritage significance, however is within proximity to the heritage items I25 (Castle Hill Country Club) and I28 (Windsor Road). The proposed development is unlikely to impact on the condition or view corridors of the heritage items.

Conditions of consent have been imposed for any unexpected finds during activities involving earthworks and soil disturbance. The conditions stipulate that all work must cease if any unexpected sites or relics are uncovered during works, and must comply with Part 6 of the National Parks and Wildlife and the Office of Environment and Heritage to be contacted immediately.

- Water Catchment – The subject site is located within the Hawkesbury-Nepean River Catchment and is subject to the provisions of the BC SEPP. In order to ensure that the subdivision works do not generate any runoff or pollution in the catchment, conditions of consent have been imposed requiring a Soil and Water Management Plan to be prepared and approved prior to the issue of a Subdivision Works Certificate that must also be in place prior to works commencing and maintained during construction. The Soil and Water Management Plan will ensure that any sediment or waste generated by the works will be controlled within the site so as not to impact on the water catchment.
- Air Impacts – The subdivision works for the proposed development may generate dust due to the earthworks and other ground disruption required to facilitate the works. In addition to the Soil and Water Management Plan, a condition of consent has been imposed require dust control measures to be in place during constructions. These measures may include the likes of dust screens, water spraying devices to wet down dusty surfaces, and covering of stockpiles that may generate dust. The dust control measures will ensure that any adjoining residents are not impacted by the subdivision works.
- Flora and fauna impacts – The proposed development been designed to retain and protect a portion of the Cumberland Plain Woodland located in the north-western portion of the site. The retained section of CPW will form part of the community association property and also as a separate restricted development area to ensure that the vegetation is not removed in the future. Notwithstanding this, the proposed development requires the removal of a number of trees on site and has triggered entry into the Biodiversity Offset Scheme. Accordingly, a condition of consent has been recommended for the development to retire seven biodiversity credits in order to offset the impact of the development.
- Natural environment – The proposed development requires extensive earthworks to ensure that the proposed lots are suitable for the construction of the proposed dwellings. The proposed earthworks fill the existing depression and dam located on the site in order to facilitate the further residential works. The proposed earthworks/ changes to contours are deemed necessary in order to match the intended future levels of the area and enable the provision of lots suitable for residential development.
- Noise and vibration – The subdivision works relating to road construction and earthworks may be noise-generating sources due to the equipment, vehicles and machinery generally required for such activities. A condition of consent has been recommended requiring all works to be restricted to between the hours of 7:00am and

5:00pm, Monday to Saturday in order to mitigate noise impacts for surrounding properties/ dwellings. The condition further specifies that the hours may be reduced if traffic impacts arise.

The subdivision works and earthworks may use equipment that may have vibration impacts on adjoining properties. Conditions of consent have been recommended for property condition reports to be prepared for both public and private assets. The developer will be responsible for the rectification of any damages to public or private assets that are damaged as a result of the construction works.

- Bushfire - The subject site is not identified as being bushfire prone and therefore any future residential development on the proposed development lots are unlikely to place future residents at risk with respect to any potential bushfire threat.
- Social impact – The proposed development is not required to provide any public communal open space, noting the site does not contain any RE1 Public Recreation zoned land. Notwithstanding this, the subdivision is proposed under a community title scheme and includes a community association lot. The community association lot contains a parcel of vegetation that is to be retained and can function as communal open space in addition to the private open space provided for each proposed dwelling, therefore providing additional amenity to future residents.

The proposed development is otherwise not considered to generate any negative social impacts.

- Economic impact – The proposed development is considered to generate positive economic impacts through the generation of employment opportunities within the construction industry. The proposed dwellings may also be utilised for future home businesses, therefore providing additional on-going opportunities for employment.
- Site design and internal design – The proposed development is considered to be a site responsive design as it ties into the existing infrastructure and matches the levels set by adjoining developments. The proposed subdivision layout and dwellings have been designed so as to minimise impacts on existing and proposed dwellings with respect to solar access and privacy.

The proposed development has further considered the existing vegetation on site, specifically the Cumberland Plain Woodland, and has been designed to mitigate and avoid impacts to the vegetation where possible. A portion of the Cumberland Plain Woodland has been maintained within the community association property and will be covered by a Restricted Development Area so as to protect the vegetation.

- Cumulative impacts – The proposed development is for residential development and is not considered to be of a use that would generate any on-going impacts in its current form. The proposed dwellings do not contain any uses that will cause any further impacts (i.e. traffic, dust, noise, etc).

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.6 Section 4.15(1)(c) - Suitability of the site

The proposed development is generally consistent with the intended character of the Balmoral Road Release Area and objectives of small lot housing within the context of the medium density residential environment.

The proposed development is required to provide adequate services to the lots and dwellings to ensure that sufficient amenity and services are available to the future residents. The recommended conditions of consent will ensure that water, sewer, telecommunications and electrical services are available to the proposed dwellings.

The proposed development has been designed with consideration to the existing constraints of the site, namely the topography. The proposed subdivision works are site responsive to allow suitable lots to be created for residential dwellings without compromising the amenity of adjoining lots and developments.

The site is not considered to adjoin any existing uses that are prohibitive of the proposal. The proposed development is otherwise consistent with adjoining proposed and approved residential developments within the Balmoral Road Release Area.

3.7 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.8 Section 4.15(1)(e) - Public interest

The proposed development is not considered to generate any significant impacts that would otherwise impact on the public. The proposed development is generally consistent with the provisions and objectives of The Hills LEP and DCP and most importantly is consistent with the intended future character of the Balmoral Road Release Area.

The proposed development will provide additional housing opportunities within the context of the medium density residential environment.

Given this, the proposal is considered to be within the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Transport for NSW	Section 138 Road Acts 1993 S2.122 SEPP (Transport and Infrastructure) 2021	The proposed development is no longer considered as “traffic generating development” under s2.122 of the SEPP as discussed earlier in this report. The recommended conditions of consent from TfNSW have been included as part of the recommended conditions of consent.	Y

4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	No objections, subject to recommended conditions.	Yes (conditions)
Certification/ Building	No objections, subject to recommended conditions.	Yes (conditions)
Environmental Health	No objections, subject to recommended conditions.	Yes (conditions)
Landscape Management	No objections, subject to recommended conditions.	Yes (conditions)
Tree Management	No objections, subject to recommended conditions.	Yes (conditions)
Ecology	No objections, subject to recommended conditions.	Yes (conditions)
Resource Recovery	No objections, subject to recommended conditions.	Yes (conditions)
Heritage	No objections – the proposed development is not considered to impact on the heritage value of Windsor Road or the Castle Hill Country Club.	Yes

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was exhibited in accordance with Section 7 under Schedule 1 of the Environmental Planning and Assessment Act 1979 from 10 January 2022 until 7 February 2022. The proposal was also notified to surrounding properties in accordance with Council's Community Participation Plan.

Council received one unique submission (objection) against the proposal. The issues raised in this submission is considered in **Table .**

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Traffic and Access Submission raised concern with regards to the provision of roads within the area with respect to increased development.	1	<p>The application proposes the full width construction of Stone Mason Drive within the site. The remainder of Stone Mason Drive that is not yet constructed to the north-west will be constructed once such adjoining properties are developed. Once constructed, Stone Mason Drive will link Spurway Drive and Fairway Drive which serve as access points to Windsor Road.</p> <p>The submission raised concerns with ingress/ egress to the area more broadly and did not raise any specific concerns with the proposal.</p> <p>Outcome: This issue has been satisfactorily addressed and does not warrant further consideration.</p>

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Building Height

The proposal includes a variation to the maximum building height for proposed lots/ dwellings 39-41 as discussed in Section 3.1 of this report. The proposal seeks consent for a maximum building height of 10.71m, 12.01m and 11.81m for proposed lots/ dwellings 39, 40 and 41 respectively, representing variations of 7.1% (710mm) for lot/ dwelling 39, 20.1% (2.01m) for lot/ dwelling 40 and 18.1% (1.81m) for lot/ dwelling 41.

The variation arises as a result of the existing topography of the site and the definition of building height as defined under the LEP. Given there is an existing depression, the natural ground level is considerable lower than the proposed design levels, therefore resulting in a variation to the building height. As discussed in Section 3.1 of this report, the proposed earthworks are required to fill the existing depression to ensure that the earthworks are site responsive and facilitate a consistent grade for the residential lots. If the earthworks were undertaken prior to this application, the proposed dwellings would otherwise comply with the height control.

During the assessment of the application, the applicant amended the ceiling heights of the proposed dwellings so that the height of each dwelling was reduced where possible. Accordingly, the proposed ceiling heights of 2.7m mean that mostly the roof structures exceed the height limit.

The proposed dwellings otherwise do not impact on the amenity of the adjoining proposed lots/ dwellings and still achieve compliance with the relevant setback and private open space controls outlined in the DCP.

The variation to the building height is considered acceptable in this instance as discussed in Section 3.1 of this report.

5.2 Critically Endangered Ecology Community – Cumberland Plain Woodland

The subject site contains a critically endangered ecological community being Cumberland Plain Woodland (CPW). Given the proposed development seeks consent for small lot housing and subdivision, a number of existing trees on the site are required to be removed to facilitate the residential lots and new road including those that form part of the CPW. Accordingly, the proposal includes clearing of more than 0.5 hectares of native vegetation (being CPW) and therefore triggers entry into the Biodiversity Offset Scheme (BOS).

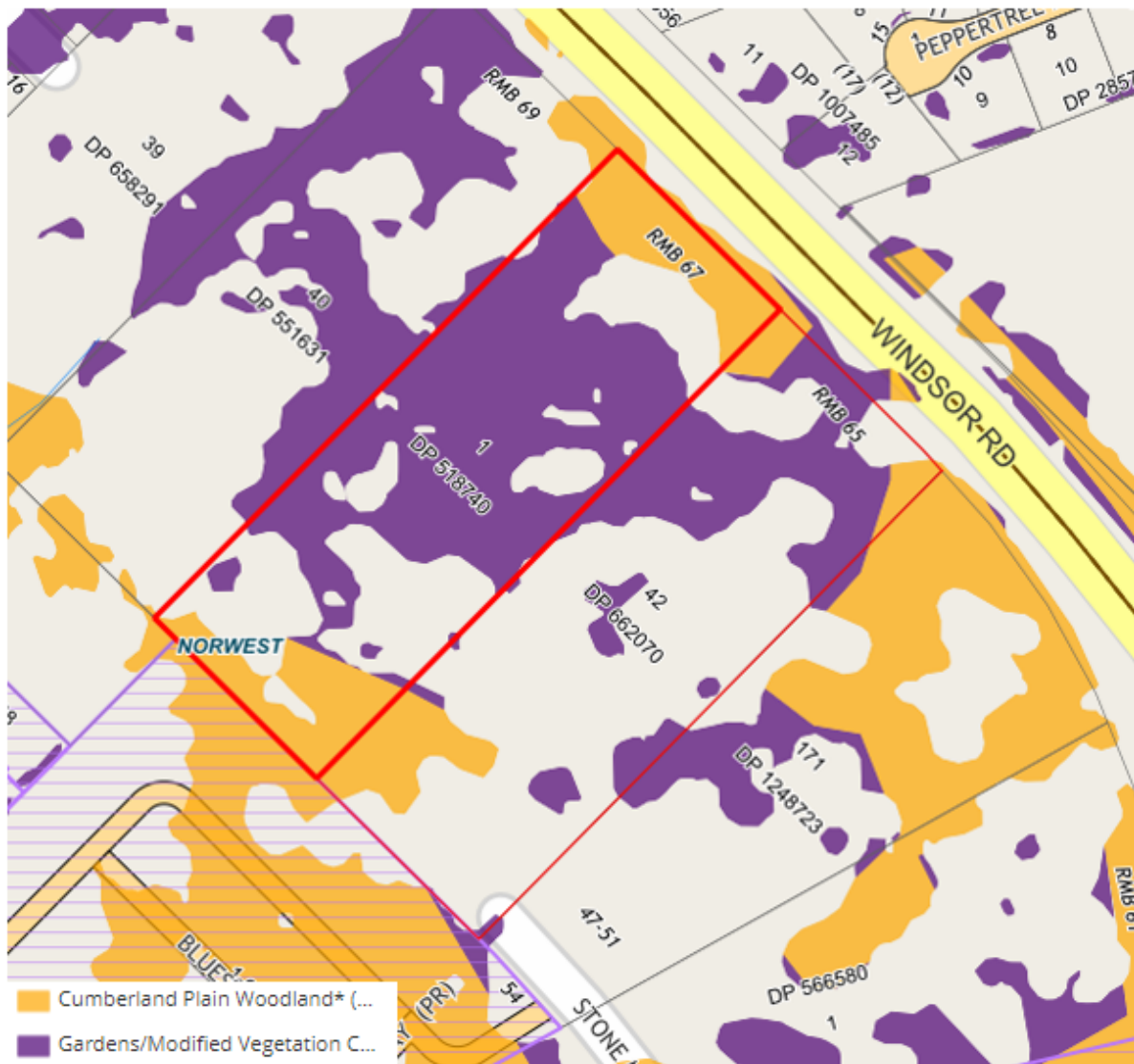


Figure 6. Cumberland Plain Woodland extent on subject site

As part of the assessment of the Development Application concern was raised with respect to the impacts of the proposed development on the critically endangered ecological community on site. The application was supported by a Biodiversity Development Assessment Report (BDAR) to ascertain the extent of serious and irreversible impact on the CPW. The initial proposal did not adequately demonstrate that the development was designed to avoid or minimise the impact to the CPW and accordingly the applicant was requested to ensure the design of the development was informed by the biodiversity values of the land.

The initial application included residential lots along the entirety of the northern section of the site, where a majority of the CPW is located. In order to minimise impacts to the CPW, the proposed development was amended to remove six residential lots and incorporate this area into the community association lot so that a portion of the CPW was retained. The retained area of CPW will be subject to a restricted development area to ensure its on-going retention. The amendment to the proposal therefore demonstrates that the proposal has been designed to avoid and minimise impact to the CPW where possible.

Notwithstanding this, the proposed development still requires the removal of some CPW within the site. The BDAR submitted with the application has established the offset requirements for the proposed development. In order to offset the cleared area, a total of seven Biodiversity Offset Credits would need to be retired. Council's Senior Biodiversity Officer has reviewed the proposal and raises no objections to the development; subject to the developer meeting the credit offset obligation and complying with the recommended conditions outlined in this report.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The proposed development is generally in accordance with the provisions of the LEP and both the Small Lot Housing DCP and Balmoral Road Release Area DCP. The proposed development will create additional housing opportunities within the context of the medium density residential environment and is considered to be consistent with the intended future character of the Balmoral Road Release Area.

The proposed variation to the maximum building height has been addressed in the report and is considered well-founded and recommended for approval. The variation to the maximum building height does not warrant refusal of the application.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/ or in the recommended draft conditions at Attachment A.

7. RECOMMENDATION

Development Application DA 1021/2022/JPZ be approved pursuant to Section 4.16(1)(a) and 41.6(3) of the *Environmental Planning and Assessment Act 1979* with the proposed draft conditions of consent attached to this report as Attachment A.

The Clause 4.6 Variation request is approved as it is well-founded, and the proposed variation results in a development that is consistent with the relevant objectives, compliance with the standard is unreasonable and unnecessary in this instance, and the proposal results in a better planning outcome as outlined in this report.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: General Terms of Approval from TfNSW
- Attachment C: Tables of Compliance
- Attachment D: Subdivision Plans
- Attachment E: Architectural Plans
- Attachment F: Civil Engineering Plans
- Attachment G: Landscape Plans
- Attachment H: Clause 4.6 Request

ATTACHMENT A: DRAFT CONDITIONS OF CONSENT

GENERAL MATTERS

1. Approved Plan

The development must be carried out in accordance with the approved plans and other supporting documentation listed below, except where amended by other conditions of consent:

Drawing:	Description:	Prepared:	Sheet:	Revision:	Date:
21-0003	Plan of Subdivision – Facilitating Stage (Stage One)	Orion Consulting	013	01	28/04/2023
21-0003	Plan of Subdivision (Stage Two)	Orion Consulting	012	02	28/04/2023
AND-33784	Architectural Plans	A&N Design	1-10, 15-17	I	06/04/2023
LPDA22-131	Landscape Plans	Conzept Landscape Architects	LP-200 – LP210	H	26/06/2023
LPDA22-131	Landscape Hardscape Plans	Conzept Landscape Architects	LP100- LP107	H	26/06/2023

Where a Construction Certificate or Subdivision Works Certificate is required, no work is to be undertaken before it has been issued.

The following additional requirements apply:

- The stormwater drainage easement within the subject site shall be amended to comply with the requirements of this consent as part of the Subdivision Works Certificate and Subdivision Certificate.
- The positive covenant associated with the onsite detention tank within the subject site shall be amended to comply with the requirements of this consent as part of the Subdivision Works Certificate and Subdivision Certificate.
- The dwelling on lot 49 does not rely on a zero lot line. The easement for repairs benefitting lot 49/ burdening lots 30 and 31 is to be removed on the final plan.
- The repairs for easement burdening the rear boundary of lots 2 and 28 are not required and are to be removed on the final plan.

2. Compliance with Integrated Development/ Concurrence Referrals

Compliance with the requirements of Transport for NSW throughout all stages of the subdivision as outlined in their letter dated 5 April 2022 Reference SYD21/00247/02 attached to this consent as Appendix A or as otherwise agreed to between the applicant and Transport NSW with evidence provided to Council.

3. Subdivision Certificate Preliminary Review

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

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

4. Process for Council Endorsement of Legal Documentation

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

5. External Finishes

External finishes and colours must comply with the details submitted with the development application and approved with this consent.

6. Building Work to be in Accordance with BCA

All building work must be carried out in accordance with the provisions of the Building Code of Australia as referenced by Section 69 of the Environmental Planning and Assessment Regulation 2021.

7. Construction Certificate

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

8. Zero Lot Line Dwellings – Easement Encroachment

No element of those dwellings located on the boundary line with an adjoining lot (zero lot line dwellings) can be located within that adjoining lot. Construction tolerances should be accounted for when surveying and constructing these dwellings.

Similarly, the dwellings on the lots adjacent, being those lots burdened by an easement for repair; must be located wholly outside of the easement except where it is shown on the approved plans that the encroaching eaves/ guttering does not impede maintenance access to either dwelling and that the encroachment is no closer than 450mm to the boundary.

9. Retaining Walls

Retaining wall locations (excluding those required for road construction) are to be as per the Hardscape Plan prepared by Conzept dated June 2023. Walls within the front setbacks of lots are to be set back behind landscaping as per the approved Landscape Plans.

The materials for retaining walls within front setbacks are to be painted and rendered concrete block as specified in the Approved Landscape Plan. Retaining walls alongside and rear boundaries that aren't visible to the street can be masonry or concrete sleeper.

10. Subdivision Works Approval

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

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

11. Road Opening Permit

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

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

12. Protection of Public Infrastructure

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

13. Structures Adjacent to Piped Drainage Easements

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

14. Requirements for Council Drainage Easements

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

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

15. Vehicular Crossing Request Fronting public road only

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

16. Proposed Street Naming

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

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

17. Approved Street Naming

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

18. Australia Post Mailbox Requirements

Australia Post has specific requirements for mail deliveries on private roads. Separate approval from Australia Post is required before installing individual mailboxes for this development.

The association lot will be allocated a separate specific street address by Council as part of this preliminary check process (above), and a physical mailbox must be installed as part of the subdivision works for that address to enable the delivery of mail to the site.

19. Tree Removal

Approval is granted for the removal of ninety-four (94) trees numbered and located as 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 95a, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134 and 146 on the Tree Location Plan within the Arboricultural Impact Assessment Report prepared by Axiom Arbor dated Mar/April 2023.

The removal of tree 146 located at 69 Windsor Road Norwest is approved in accordance with the Tree Consent Letter dated 14/06/23 signed on behalf of Style up Developments and New Design Developments.

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

20. Retention of Trees

All trees not specifically identified on the approved plans for removal are to be retained with remedial work to be carried out in accordance with the Arboricultural Impact Assessment Report prepared by Axiom Arbor dated Mar/April 2023 and the following additional requirements:

- To retain neighbouring trees 111, and 112, a retaining wall to support the required cut for road construction is to be located on edge of the roadway, and not on the boundary with the neighbouring property to limit cut within the Tree Protection Zone of the neighbouring trees between the boundary and the roadway as per the Site Regrading Plan – Inset A prepared by Orion Consulting, Rev F, dated 19/07/2023. Any excavation within the Tree Protection Zones of these trees must be supervised by the Project Arborist.
- Excavation works for the construction of retaining walls and stormwater trenching within the tree protection zones of all trees to be retained are to be undertaken using tree sensitive excavation/trenching methods, and be supervised by the Project Arborist to aid in their successful retention.

21. Protection of Existing Trees and Native Vegetation

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

22. Secure Properties and Maintain Vegetation

Prior to demolition the house or houses that are currently located on the development site are to be made secure so that there is no unauthorised access to the house or the dumping of rubbish on the land. Throughout the development process until the issue of an occupation certificate or subdivision certificate, the vegetation on the property is to be maintained and controlled so that the property does not become overgrown and thus creating an unsafe and / or unhealthy environment.

23. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m².

All existing weeds and shrubs within Windsor Rd the road widening area are to be removed and provided with turf under. Trees identified for retention in this area must be retained and protected.

24. Demolition Notification

Both Council and any adjoining properties must be notified in writing five days before demolition works commence.

25. Demolition Inspections (Subdivision Applications)

Before demolition works commence a pre-demolition inspection must be arranged with Council's Construction Engineer. All conditions required to be addressed before works commence must be satisfied. Once demolition works are complete, a post demolition inspection must be arranged with Council's Construction Engineer.

26. Air Conditioner Location

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

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

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

27. Acoustic Requirements

The recommendations of the Acoustic Assessment (Traffic Noise Assessment Report including Air-conditioning Noise Assessment) Report prepared by Day Design Pty Ltd, referenced as 7244-3.1R Rev B, dated 18 May 2023 and submitted as part of the Development Application are to be implemented as part of this approval.

Air-conditioning units are to be located at the rear of the dwellings as stated in the acoustic report, Section 8.1.

28. Contamination Assessment & Site Remediation

The recommendations of the Remedial Action Plan prepared by Geotest Services Pty Ltd, referenced as P33134.1_R02_V1, dated 31 August 2021 and submitted as part of the Development Application are to be implemented as part of this approval.

There is to be no disposal of contaminated soil, soil for which the contamination status is unknown or waste materials on land or under roads either private roads or roads that will become public land under the control of Council.

29. Dam Dewatering Requirements

- a. The dam shall be dewatered through the controlled release of the water and disposed of on-site unless an assessment of the water quality has been undertaken and submitted to Council for approval. The discharge of water must be managed to ensure the water does not flow beyond the site boundaries and does not cause erosion or scouring.
- b. The dam wall shall not be breached without the dam having first being dewatered.
- c. Water from the dam shall not be discharged to any watercourse or placed in a position where it will wash or percolate to a watercourse.

Polluted water is defined in the dictionary of the Protection of the Environment Operations Act 1997 and includes that matter as prescribed by Schedule 5 of the Protection of the Environment Operations (General) Regulation 2009.

30. Salinity Requirements

The recommendations of the Salinity Assessment prepared by Goetest Services Pty Ltd, referenced as 33134.2, dated 8 April 2021 and submitted as part of the Development Application are to be implemented as part of this approval.

31. Provision of Kitchen Waste Storage Cupboard

Waste storage facility must be provided in each unit/dwelling to enable source separation of recyclable material from residual garbage. Each unit/dwelling must have a waste storage cupboard provided in the kitchen with at least 2 removable indoor bins with a minimum capacity of 15 litres each. The bins provided should allow convenient transportation of waste from the kitchen to the main household bins or waste disposal point. The Principal Certifying Authority must visually confirm in person, or receive photographic evidence validating this requirement, prior to the issue of any Occupation Certificate.

32. Adherence to Waste Management Plan

All requirements of the Waste Management Plan submitted as part of the Development Application must be implemented except where contrary to other conditions of consent. The information submitted regarding construction and demolition wastes can change provided that the same or a greater level of reuse and recycling is achieved as detailed in the plan. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act 1997 and only to a place that can lawfully be used as a waste facility. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them. Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool

www.wastelocate.epa.nsw.gov.au.

33. Access and Loading for Waste Collection

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2 for the standard 12.5m long Heavy Rigid Vehicle (minimum 4.5m clear vertical clearance).

34. Management of Construction and/or Demolition Waste

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

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

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

35. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on site. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

36. Commencement of Domestic Waste Service

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

37. Provision of Domestic Waste Storage Area(s)

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

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE/ SUBDIVISION WORKS CERTIFICATE

38. Engineering Works

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

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

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

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

The concept engineering plan prepared by Orion Consulting, Project No. 21-0003 is for development application purposes only and is not to be used for construction. The design and construction of the engineering works listed below must reflect the concept engineering plan and the conditions of consent.

a) Full Width Road Construction

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

Road Name:	Formation: (Footpath/ Carriageway/ Footpath) (m)
Stone Mason Drive	Road Type: DCP Collector Road with Cycleway and Landscaping 3.5m/ 9.5m/ 3.5m (16.5m) Pavement Design: Collector Road (Design Guidelines Section 3.12)

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

Roll kerb is to be used for all roads other than sub-arterial roads or roads fronting a park or creek corridor.

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

All civil infrastructure (roads, stormwater drainage and the like) should be built for saline soils. Where any existing trees along the south-eastern side of Stone Mason Drive, a secondary retaining wall to max depth of 0.4m can be proposed under the cycleway. Install 1300mm high galvanised pedestrian fence powered coated clack along the top or the retaining wall shall be provided. Concrete shall be provided between the cycleway and the back of kerb.

The road design of Stone Mason Drive shall be extended on the adjoining lots/sites to match with the existing road levels on both sides of Stone mason drive.

Barrier fence as shown on the civil plans is not approved and barrier fence is only required as per Australian standard and when is exceeding 500mm above the natural ground

b) Temporary Turning Heads

A temporary cul-de-sac turning head must be provided at the end of all roads that will be extended into adjoining properties if/ when they are developed. The cul-de-sac must have a diameter of 19m measured from the edge pavement.

A temporary turning head is required at the north-eastern end of Stone Mason Drive extending into existing lot 40 within DP551631 adjacent.

c) Signage and Line Marking Requirements/ Plan

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

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

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

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

With respect to "local street" and "park street" roads in North Kellyville specifically, the parking lane on either side must be line marked to ensure the full width of the single trafficable lane is kept clear at all times.

d) Footpath Verge Formation

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

e) Concrete Footpath

A 1.2 wide concrete footpath, including access ramps at all intersections, must be provided on one side of private road no. 1/driveway in accordance with the DCP and the above documents.

A 1.5 wide concrete footpath, including access ramps at all intersections, must be provided on one side of Stone Mason Drive in accordance with the DCP and the above documents.

f) Concrete Cycleway/ Shared Path

A 2.5m wide concrete cycleway/ shared path, including access ramps at all intersections, must be provided on the South-Eastern side of Stone Mason Drive in accordance with the DCP and the above documents.

g) Gutter Crossings fronting public road only

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

Gutter crossings are not required where roll kerb has been provided/ permitted.

h) Disused Layback/ Driveway Removal

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

i) Service Conduits

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

j) Earthworks/ Site Regrading

Earthworks and retaining walls are limited to those locations and heights shown on the concept engineering plan prepared by Orion Consulting, Project No. 21-0003, Drawing 003, Revision F, dated 19/07/2023. Where earthworks are not shown on the approved plan the topsoil within lots must not be disturbed. Retaining walls between lots must be located on the high side lot that is being retained, save the need for easements for support on the low side lot adjacent.

The proposed retaining wall shall be designed to such that it accepts and caters for any surface runoff from the up slope adjoining land in a 'failsafe' manner without affecting any other property. No diversion or concentration of stormwater surface flows will be permitted. The proposed retaining wall including footing and subsoil drain shall be design and constructed fully inside the property boundary

k) Stormwater Drainage – Temporary Works

Tail out drains over adjoining properties are required to be provided, where necessary, of sufficient length and width to dissipate stormwater flows to an acceptable level from the end of all stormwater outlets.

Grassed swale drains or temporary piped drainage must be installed to intercept, control and redirect surface stormwater runoff from upstream undeveloped properties.

39. Onsite Stormwater Detention – Hawkesbury River Catchment Area

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the rural portion of the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters to ensure the pre-development and post development discharge rates are the same for all storms up to and including the 1 in 100 year design storm event.

The stormwater concept plan prepared by Orion Consulting, Project No. 21-0003, Drawing 200, Revision F, dated 19/07/2023 is for development application purposes only and is not to be used for construction. The detailed design must reflect the stormwater concept plan and the following necessary changes:

- a) The drainage pipe from Stone Mason Drive shall be sized/cater for the 100 year ARI
- b) OSD Tank/TWL shall consider the drowned outlet condition. 150mm below the surface can be used as a tailwater level near Treffone Avenue.
- c) Volume of the OSD will need to be increased to allow for the external catchment from Windsor Road.
- d) The proposed acoustic wall over proposed lots 13 – 18 included must have 100mm gap under the acoustic wall to allow the surface runoff to flow through these lots. Proposed lots 13 – 18 included must have 600mm sqm pit at the rear of the lots to collect the surface runoff from Windsor road
- e) The pipe sizing from Stone Mason Drive shall be sized/calculated and shown on the plan until the proposed headwall near sag point fronting Treffone Avenue.
- f) The public stormwater from Windsor Road draining through the site shall bypass the OSD and proposed 3m wide easement shall be created over this pipe. No drainage pipe is allowed to run parallel over the public stormwater pipe. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement. Proposed stormwater pits over the public stormwater shall be sealed lids.
- g) The music model must be revised to comply with the environmental targets outlined below.
- h) Stone Mason Drive shall be modelled as bypass catchment within the MUSIC model. Only GPT will be permitted along Stone Mason Drive.

Water sensitive urban design elements, consisting of filters, Oceanguard, rainwater Tanks and 1 GPT, are to be located generally in accordance with the plans and information submitted with the application.

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

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

- 65% reduction in the annual average load of total phosphorous
- 45% reduction in the annual average load of total nitrogen

All model parameters and data outputs are to be provided.

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

- Design/ construction plans prepared by a hydraulic engineer.
- A completed OSD Drainage Design Summary Sheet.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

40. Works in Existing Easement

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

41. Works on Adjoining Land

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

42. Stormwater Discharge Acceptance

Where the engineering works included in the scope of this approval necessitate the discharge of stormwater onto adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate or Subdivision Works Certificate is issued.

43. Registration of Drainage Easement

A 3m wide drainage easement must be created over the downstream property known as Lot 40 within DP551631, prior to a Construction Certificate or Subdivision Works Certificate being issued in accordance with the letter of authority from the downstream property owner. The width of the drainage easement must comply with Council's Design Guidelines Subdivisions/ Developments and the terms must nominate each lot burdened and benefited. A copy of the registered easement plan and associated documents must be submitted to Council.

44. Internal Pavement Structural Design Certification

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

45. Security Bond Requirements

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

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

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

46. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 4.17(6) of the Environmental Planning and Assessment Act 1979, a security bond of \$100,000.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the per square metre rate set by Council's Schedule of Fees and Charges, with the area calculated based on the road frontage of the subject site plus an additional 50m on either side (200m) multiplied by the width of the road (9.5m).

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

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

47. Security Bond – External Works

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

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

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

48. Construction Management Plan

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

- Construction traffic (internal).
- Traffic control (external). This needs to consider road closures and delivery routes with respect to the surrounding road network as separately conditioned.
- Public asset protection.
- Dust management as separately conditioned.
- Sediment and erosion control as separately conditioned.
- Stockpiles.

- Noise; outside of standard work hours for float deliveries will need to have written Transport for NSW approval and Council and affected neighbours must be notified in writing.
- Working hours; including plant warming up and/ or noise above conversation levels before the nominated starting time.
- Tree/ vegetation protection.
- Fauna protection, recovery and relocation (including fauna habitat)

49. Construction Management Plan

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

50. Erosion and Sediment Control/ Soil and Water Management Plan

The detailed design must be accompanied by an Erosion and Sediment Control Plan (ESCP) or a Soil and Water Management Plan (SWMP) prepared in accordance with the Blue Book and Council's Works Specification Subdivision/ Developments.

A SWMP is required where the overall extent of disturbed area is greater than 2,500 square metres, otherwise an ESCP is required.

An ESCP must include the following standard measures along with notes relating to stabilisation and maintenance:

- Sediment fencing.
- Barrier fencing and no-go zones.
- Stabilised access.
- Waste receptacles.
- Stockpile site/s.

A SWMP requires both drawings and accompanying commentary (including calculations) addressing erosion controls, sediment controls, maintenance notes, stabilisation requirements and standard drawings from the Blue Book.

A SWMP is required for this development.

51. Vegetation Management Plan

A Vegetation Management Plan must be prepared strictly in accordance with Council's *Vegetation Management Plan Guideline* (available on Council's website www.thehills.nsw.gov.au). The Plan must be prepared by a suitably qualified bush regenerator or restoration ecologist with a minimum Certificate IV in Conservation Land Management. The Plan must be submitted to Council's Manager – Environment and Health for approval.

The Vegetation Management Plan must include details relating to:

- The rehabilitation and management of native vegetation within the Community Association Lot/Restricted Development Area.
- The production of an information fact sheet (maximum 1 page double sided) prepared in accordance with Council's *Guidelines for preparing Information Fact Sheet* (available on Council's website).
- The wording and erection of signage at key locations.
- The location and type of fencing required.

52. Restricted Development Area

A scaled plan delineating the Restricted Development Area (RDA) for proposed Lot 1 (located in the northern corner of the subject site) is to be prepared and submitted to the satisfaction of The Hills Shire Council's Manager - Environment and Health. The area within the RDA cannot be built upon in the future and must be managed in accordance with the Council approved Vegetation Management Plan.

53. Biodiversity Offsetting Requirements

To offset the loss of biodiversity within the subject site, from the development, the following ecosystem credits must be retired prior to any clearing of vegetation.

The development must purchase and retire credits which may be satisfied by sourcing credits from the Biodiversity Credit Market or payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator (The amount payable to discharge an offset obligation will be determined at the time of payment).

Table 1: Ecosystem credit required to be retired.

Impacted plant community type	Number of ecosystem credits
Plant Community Type (PCT) 849 <i>Cumberland Plain Woodland in the Sydney Basin Bioregion</i>	7 (seven)

A retirement certificate from the NSW Department of Planning, Industry & Environment and/or Statement confirming payment into the Biodiversity Conservation Trust from the Biodiversity Conservation Trust, to demonstrate compliance with this condition, is to be provided to The Hills Shire Council's Manager – Environment and Health prior to issue of a Construction Certificate or Subdivision Works Certificate.

54. Local Provenance Planting Stock

Prior to clearance of the vegetation in the development area, all collectable floristic material shall be harvested for use in landscaping and rehabilitation works on site. The bush regeneration contractor shall collect all available seed from native species present on site prior to clearing of the site. In the event that insufficient material is collected, the bush regenerator shall order all local provenance plants that are required to be planted as part of the Council approved Vegetation Management Plan and any landscape plan. Invoices detailing the procurement shall be submitted to The Hills Shire Council's Manager – Environment and Health.

55. Irrigation

An automatic watering system is to be installed as a minimum to all common areas. Details including backflow prevention device, location of irrigation lines and sprinklers, and control details are to be communicated to Council or Private Certifier prior to issue of the construction certificate.

56. Works within Easement for Padmount Substation – Design Certification

No construction must occur within the padmount substation easement.

Prior to the issue of a Construction Certificate, a professional fire engineer is to provide a construction detail (including particulars of the materials to be used and any required fixing instructions) and certification for this design with respect to the achievement of the required Fire Resistance Level (FRL) for that part of the building that is to be erected within the

restriction site as detailed in the relevant 88B Instrument for the subject allotment and Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure' Amendment No: 1 Approval Date 06/03/2017 as updated from time to time.

The owner of the land shall provide the easement beneficiary with a copy of the professional fire engineer's certificate (inclusive of the construction detail) for their records.

Definitions:

120/120/120 fire rating and **60/60/60 fire rating** means the fire resistance level of a building expressed as a grading period in minutes for structural adequacy / integrity failure / insulation failure, calculated in accordance with Australian Standard 1530.

Building means a substantial structure with a roof and walls and includes any projections from the external walls.

Erect includes construct, install, build and maintain.

Restriction site means that part of the lot burdened affected by the restriction on the use of land as shown on the deposited plan.

No building shall be erected or permitted to remain within the restriction site unless:

The external surface of the building erected within 1.5 metres from the substation footing has a 120/120/120 fire rating; and

The external surface of the building erected more than 1.5 metres from the substation footing has a 60/60/60 fire rating.

The fire ratings mentioned above must be achieved without the use of fire fighting systems such as automatic sprinklers.

57. Western Sydney Growth Areas – Payment of Special Infrastructure Contribution

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

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

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

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

58. Section 7.11 Contribution

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

Payments comprise of the following:-

Stage 1

N/A

Stage 2

	Purpose: Integrated Housing	Purpose: Credit	No. of Lots: 48	No. of Credits: 1	Total \$7.11
Open Space - Land	\$ 27,374.74	\$ 30,568.46	\$ 1,313,987.57	\$ 30,568.46	\$ 1,283,419.11
Open Space - Capital	\$ 8,675.83	\$ 9,688.01	\$ 416,439.90	\$ 9,688.01	\$ 406,751.89
Transport Facilities - Capital	\$ 9,502.87	\$ 10,611.54	\$ 456,137.67	\$ 10,611.54	\$ 445,526.14
Community Facilities - Land	\$ 272.53	\$ 304.33	\$ 13,081.61	\$ 304.33	\$ 12,777.29
Administration	\$ 24.97	\$ 27.88	\$ 1,198.57	\$ 27.88	\$ 1,170.69
Total	\$ 45,850.94	\$ 51,200.22	\$ 2,200,845.33	\$ 51,200.22	\$ 2,149,645.12

The contributions above are applicable at the time this consent was issued. Please be aware that Section 7.11 contributions are periodically indexed and will be updated at the time of payment, in accordance with the provisions of the applicable plan. A reference to the 'applicable plan' within this condition refers to the Contributions Plan in force at the time this consent was issued.

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

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

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

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

PRIOR TO WORK COMMENCING ON THE SITE

59. Tree Protection Fencing

Prior to any works commencing on site Tree Protection Fencing must be in place around trees or groups of trees nominated for retention. The location of fencing shall be as per the Tree protection Plan dated within the Arboricultural Impact Assessment Report prepared by Axiom Arbor dated Mar/April 2023. Additional fencing is to be provided to protect the Tree Protection Zone and canopy of neighbouring trees 111 and 112.

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

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

Where the provision of the tree protection fencing is impractical due to its proximity to the Windsor Road pedestrian path, tree protection fencing is to be substituted for trunk protection (such as for tree 9, 29, and 140). Trunk protection shall be erected around nominated trees to avoid accidental damage. The trunk protection shall consist of a layer of carpet underfelt (or similar) wrapped around the trunk, followed by 1.8m metre lengths of softwood timbers (90 x 45mm in section) aligned vertically and spaced evenly around the trunk at 150mm centres (i.e. with a 50mm gap) and secured together with galvanised hoop strap. Where practicable all areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

Tree protection fencing, may only be removed, or relocated under the direction of the Project Arborist.

60. Tree Protection Signage

Prior to any works commencing on site a Tree Protection Zone sign must be attached to the Tree Protection Fencing stating "Tree Protection Zone No Access" (The lettering size on the sign shall comply with AS1319). Access to this area can only be authorised by the project arborist or site manager.

61. Mulching within Tree Protection Zone

Prior to any works commencing on site all areas within the Tree Protection Zone are to be mulched with composted leaf mulch to a depth of 100mm.

62. Trenching and Excavation within Tree Protection Zone

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

Certification of supervision by a Project Arborist must be provided to the Certifying Authority (Council) within 14 days of completion of trenching works.

The installation of the stormwater drainage system and/or the construction of any ancillary structures within the TPZ of tree(s) to be retained shall be carried out by adopting sensitive construction methods under the supervision of a Project Arborist.

Demolition or earth works within the Tree Protection Zone of tree(s) identified for retention shall be carried out so as to avoid damage to the tree roots. Manual excavation shall be carried out under the supervision of the Project Arborist.

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

Root pruning should be avoided, however where necessary, all cuts shall be clean cuts made with sharp tools such as secateurs, pruners, handsaws, chainsaws or specialised root pruning equipment. Where possible, the roots to be pruned should be located and exposed using minimally destructive techniques such as hand-digging, compressed air or water-jetting, or non-destructive techniques.

No roots larger than 40mm diameter to be cut without Arborist advice and supervision. All root pruning must be done in accordance with Section 9 of Australia Standard 4373-2007 Pruning of Amenity Trees.

63. Dust Management Plan

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

- Water carts must be used to regularly wet down exposed areas. The number of water carts required on site (at all times, and with additional carts available on demand) must be nominated and justified.
- Additives that can be mixed with the water to aid dust suppression.

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

64. Traffic Control Plan

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

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

65. Separate OSD Detailed Design Approval

No work is to commence until a detailed design for the Onsite Stormwater Detention system has been approved by either Council or an accredited certifier.

66. Transport for NSW Design Approval

The design and construction of the relevant works must be approved by Transport for NSW before any works commence on Windsor Road. A copy of the Transport for NSW stamped approved construction plans must be submitted to Council.

67. Erection of Signage – Supervision of Subdivision Work

In accordance with the Environmental Planning and Assessment Regulations 2021, a sign is to be erected in a prominent position displaying the following information:

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

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

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

68. Contractors Details

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

69. Erosion and Sediment Control/ Soil and Water Management

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

70. Property Condition Report – Public Assets

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

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

71. Property Condition Report – Private Assets

A property condition report must be prepared and submitted by a structural engineer recording the condition of any dwelling or ancillary structures on adjoining sites/lots and within the likely zone of influence from any excavation, dewatering or construction induced vibration.

72. Service Authority Consultation – Subdivision Works

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

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

73. Pavement Design

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

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

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

74. Notification of Asbestos Removal

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

75. Project Ecologist

Prior to any works commencing, a Project Ecologist is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health:

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

If the Project Ecologist is replaced, The Hills Shire Council's Manager – Environment & Health is to be notified in writing of the reason for the change and the details of the new Project Ecologist within 7 days.

76. Bushland Protection Fencing and Signage

Prior to any works commencing on site temporary Bushland Protection Fencing with informational signage, must be in place at the following locations:

- Community Association Lot 1 where the existing Cumberland Plain Woodland and other vegetation are present, which is subject to the Restricted Development Area.

The temporary fence is to be a minimum chain-wire fence or similar and be suitable to restricted unauthorised entry.

The temporary fence is to stop the following occurring:

- Damage to the critically endangered ecological community.
- Damage to threatened plants and their habitat.
- Stockpiling of materials within significant bushland.
- Placement of fill within significant bushland.
- Parking of vehicles within significant bushland.
- Compaction of soil within significant bushland.
- Cement washout and other chemical or fuel contaminants within significant bushland

Informational signage must be installed on the temporary fencing stating that there is to be no entry into the protected area unless under the supervision of an Ecologist and the informational Signage must state that there is a Critically Endangered Ecological Community present in the protected area.

77. Project Bush Regenerator

Prior to any works commencing, a suitably qualified (minimum Certificate III Natural Area Restoration) Bush Regenerator is to be appointed and the following details provided to

Council:

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

d) Email:

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

78. Engagement of a Project Arborist

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

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

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

79. Demolition Works and Asbestos Management

The demolition of any structure is to be carried out in accordance with the Work Health and Safety Act 2011. All vehicles transporting demolition materials offsite are to have covered loads and are not to track any soil or waste materials on the road. Should demolition works obstruct or inconvenience pedestrian or vehicular traffic on adjoining public road or reserve, a separate application is to be made to Council to enclose the public place with a hoard or fence.

All demolition works involving the removal and disposal of asbestos must only be undertaken by a licenced asbestos removalist who is licenced to carry out the work. Asbestos removal must be carried out in accordance with the SafeWork NSW, Environment Protection Authority and Office of Environment and Heritage requirements. Asbestos to be disposed of must only be transported to waste facilities licenced to accept asbestos. No asbestos products are to be reused on the site.

80. Discontinuation of Domestic Waste Services

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

81. Waste Management Details Required

Prior to the commencement of works, the location of waste disposal and recycling for all construction and/ or demolition waste materials (bricks, concrete, timber and so on) must be submitted to and approved by the Principal Certifying Authority. Alternatively, details of an appropriately licensed skip bin hire company or site clean company can be provided where the company is engaged to undertake all works during construction of the development (collection, transportation and disposal).

82. Builder and Principal Certifier Details

The builders name, address, telephone and fax numbers must be submitted to the Principal Certifier before building works commence. Where Council is not the Principal Certifier, Council must be notified of the Principal Certifier in writing two days before building works commence in accordance with the Regulations.

DURING CONSTRUCTION

83. Standard of Works

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

84. Critical Stage Inspections – Subdivision Works

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

85. Subdivision Earthworks – Lot Topsoil

Where earthworks are not shown on the engineering drawings, the topsoil within lots must not be disturbed. Where earthworks are shown, a 150mm deep layer of topsoil must be provided, suitably compacted and stabilised in accordance with Council's Works Specification Subdivisions/ Developments.

86. Aboriginal Archaeological Sites or Relics

If, during activities involving earthworks and soil disturbance, any evidence of an Aboriginal archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage must be notified immediately.

87. Aboriginal Heritage Impact Permit

Should any artefacts be uncovered in the course of any works, all works should cease and comply with Part 6 of the National Parks and Wildlife Act 1974, in particular Section 90 regarding permits to destroy.

88. European Sites or Relics

If, during the earthworks, any evidence of a European archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage must be contacted immediately. All relics are to be retained in situ unless otherwise directed by the Office of Environment and Heritage.

89. Working Hours

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

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

90. Asbestos Removal

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

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

Transporters of asbestos waste (of any load over 100kg of asbestos waste or 10 square metres or more of asbestos sheeting) must provide information to the NSW EPA regarding the movement of waste using their WasteLocate online reporting tool www.wastelocate.epa.nsw.gov.au.

91. Tree Removal & Fauna Protection

Trees with hollows shall be lopped in such a way that the risk of injury or mortality to fauna is minimised, such as top-down lopping, with lopped sections gently lowered to the ground, or by lowering whole trees to the ground with the “grab” attachment of a machine.

Any injured fauna is to be placed into the hands of a wildlife carer (please note only appropriately vaccinated personnel are to handle bats).

92. Site Management – Protection of Vegetation

Within one week prior to any removal of vegetation the applicant is provide a statement and photographic evidence is to be submitted to The Hills Shire Council’s Manager – Environment & Health, confirming that bushland protection fencing has been correctly installed.

93. Dam Decommissioning – Fauna Requirements

The decommissioning of the dam is to be undertaken in accordance with the Council approved dam dewatering plan prepared by EcoLogical Australia dated 20 October 2022.

94. Protection of Existing Vegetation

Vegetation not authorised for removal by this consent shall be protected during construction to ensure that natural vegetation and topography on the subject site is not unnecessarily disturbed.

Any excavated material not used in the construction of the subject works is to be removed from the site to a licensed facility and under no circumstances is to be deposited in bushland areas.

95. Project Arborist

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites. Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the PCA within 14 days of completion of the works.

96. Compliance with BASIX Certificate

Under Section 75 of the Environmental Planning and Assessment Regulation 2021, all commitments listed in the following BASIX Certificates (and any subsequent revisions of the same certificate number) submitted with the application must be complied with:

Lot/ Dwelling No.	BASIX Certificate No.
2	1257246S_02
3	1257333S_03

4	1257355S_02
5	1257362S_02
6	1257368S_03
7	1257377S_02
8	1257385S_02
9	1257389S_02
10	1257399S_02
11	1257405S_02
12	1257425S_02
13	1257495S_02
14	1259530S_02
15	1259555S_02
16	1259573S_02
17	1259579S_02
18	1259585S_02
19	1259595S_02
20	1259651S_02
21	1259654S_02
22	1259657S_02
23	1259731S_02
24	1259782S_02
25	1259819S_02
26	1259822S_02
27	1259823S_02
28	1259824S_02
29	1259825S_02
30	1259826S_02
31	1259866S_02
32	1259880S_02
33	1259886S_02
34	1259911S_02
35	1257329S_03
36	1257327S_02
37	1257313S_02
38	1257303S_02
39	1260000S_02

40	1260002S_02
41	1260009S_02
42	1260010S_02
43	1260015S_02
44	1260016S_02
45	1260001S_02
46	1260005S_02
47	1259988S_02
48	1259986S_02
49	1259978S_02

97. Confirmation of Compliance with Zero Lot Line

Prior to the installation of the external roof tiles or sheeting, written advice from a registered surveyor must be provided to the Principal Certifier confirming that the constructed guttering and fascia to the wall for each property using a zero lot line, is located wholly within the property boundary.

98. Critical Stage Inspections/ Inspections Nominated by the Principal Certifier

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

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

PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION CERTIFICATE

99. Compliance with Transport for NSW Requirements

A letter from Transport for NSW must be submitted confirming that all relevant works have been completed in accordance with their requirements.

100. Works within Easement for Padmount Substation – Construction Certification

No construction must occur within the padmount substation easement.

Prior to the issue of an Occupation Certificate, certification shall be provided from the professional fire engineer to the Principal Certifying Authority (PCA), certifying that the required fire resistance level (FRL) for those parts of the building erected within the easement restriction site have been achieved as detailed in the relevant 88B Instrument for the subject allotment and Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure' Amendment No: 1 Approval Date 06/03/2017 as updated from time to time. The owner of the land shall provide the easement beneficiary with a copy of the professional fire engineer's certification for the completed works for their records.

Definitions:

120/120/120 fire rating and **60/60/60 fire rating** means the fire resistance level of a building expressed as a grading period in minutes for structural adequacy / integrity failure / insulation failure, calculated in accordance with Australian Standard 1530.

Building means a substantial structure with a roof and walls and includes any projections from the external walls.

Erect includes construct, install, build and maintain.

Restriction site means that part of the lot burdened affected by the restriction on the use of land as shown on the deposited plan.

No building shall be erected or permitted to remain within the restriction site unless:

The external surface of the building erected within 1.5 metres from the substation footing has a 120/120/120 fire rating; and

The external surface of the building erected more than 1.5 metres from the substation footing has a 60/60/60 fire rating.

101. Landscaping Prior to Issue of any Occupation Certificate

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

102. Subdivision Certificate Application

When submitted, the Subdivision Certificate application must include:

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

103. Completion of Subdivision Works/ Satisfactory Final Inspection

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

104. Subdivision Works – Submission Requirements

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

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

The works as executed plan must be prepared by a civil engineer or registered surveyor. A copy of the approved detailed design must underlay the works as executed plan so clearly

show any differences between the design and constructed works. The notation/ terminology used must be clear and consistent too. For bonded/ outstanding work the works as executed plan must reflect the actual work completed. Depending on the nature and scope of the bonded/ outstanding work a further works as executed plan may be required later, when that work is completed.

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

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

105. Stormwater Management Certification

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

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

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

106. Performance/ Maintenance Security Bond

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

107. Security Bond – Temporary Turning Head

A security bond must be provided in order to guarantee the maintenance and subsequent removal of the temporary cul-de-sac turning head. The value of the bond is as per Council's Schedule of Fees and Charges. The bond is refundable upon written application to Council and is subject to a final inspection. If Council is required to maintain or remove the temporary cul-de-sac turning head these costs will be deducted from the security bond. If these costs exceed the value of the bond Council will issue an invoice for the recovery of the outstanding amount.

This bond is not required if the temporary cul-de-sac turning head is not required to be constructed.

108. Property Condition Report – Private Assets

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

109. Confirmation of Pipe Locations

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

110. Section 73 Compliance Certificate

A Section 73 Compliance Certificate issued under the Sydney Water Act 1994 must be obtained from Sydney Water confirming satisfactory arrangements have been made for the provision of water and sewer services. Application must be made through an authorised Water Servicing Coordinator. The certificate must refer to this development consent and all of the lots created.

Sydney Water's guidelines provide for assumed concurrence for the strata subdivision of a development approved by an earlier consent covered by a compliance certificate.

The only other exception to this is for services other than potable water supply, in which case the requirements of Flow Systems/ Box Hill Water as a network operator under the Water Industry Competition Act 2006 would apply. A separate certificate of compliance would need to be issued for those works.

111. Provision of Electrical Services

Submission of a notification of arrangement certificate confirming satisfactory arrangements have been made for the provision of electrical services. This must include the under-grounding of the existing electrical services fronting the site and removal of all redundant poles and cables, unless otherwise approved by Council in writing. The certificate must refer to this development consent and all of the lots created.

112. Provision of Telecommunication Services

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

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

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

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

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

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

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

113. Building Adjacent to Proposed Boundary

Where any part of an existing/ partially constructed building is located within 2m of a proposed boundary the location of such must be determined by a registered surveyor and shown on the final plan.

114. Building Services

A letter from a registered surveyor must be submitted certifying that all facilities servicing the existing/ partially constructed buildings are located wholly within their respective lot or are otherwise contained within a suitable easement.

115. Final Plan and Section 88B Instrument

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

a) Dedication – New Road

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

b) Easement – Temporary Public Access

A temporary public access easement must be created within proposed lot 40 within DP 551631 over the temporary cul-de-sac turning head using the "temporary public access easement" terms included in the standard recitals.

c) Easement – Public Stormwater Drainage

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

d) Easement – Private Stormwater Drainage

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

e) Easement – Temporary Public Stormwater Drainage/ Outlet

Temporary drainage easements, minimum 5m wide and 30m long, must be created over all temporary outlets within the property or on adjoining land using the "temporary public stormwater outlet" terms included in the standard recitals.

f) Easement – Right of Access/ Easement for Services

A right of access/ easement for services must be created over the access handle of proposed lot 1.

g) Positive Covenant – Maintenance/ Repair of Shared Driveway

A positive covenant must be placed on the title of proposed lots 1-49 included to ensure the maintenance/ repair of the shared driveway using the "maintenance/ repair of shared access" terms included in the standard recitals.

h) Easement – Repairs/ Zero Lot Line Dwellings

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

i) Restriction – Restricted Access

Lots 1, 13 – 18 included must be burdened with a restriction precluding access to Windsor Road using the "restricted access" terms included in the standard recitals.

j) Restriction – Rainwater Tanks

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

k) Covenant – Waste Collection/ Bin Presentation

Bin presentation for each lot must be in accordance with the approved ground floor plans.

Lot 34 must be burdened with a positive covenant requiring that bins are presented in front of Lot 4 rather than in front of Lot 34 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 35 must be burdened with a positive covenant requiring that bins are presented in front of Lot 5 rather than in front of Lot 35 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 36 must be burdened with a positive covenant requiring that bins are presented in front of Lot 6 rather than in front of Lot 36 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 37 must be burdened with a positive covenant requiring that bins are presented in front of Lot 7 rather than in front of Lot 37 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 38 must be burdened with a positive covenant requiring that bins are presented in front of Lot 8 rather than in front of Lot 38 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 39 must be burdened with a positive covenant requiring that bins are presented in front of Lot 9 rather than in front of Lot 39 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 40 must be burdened with a positive covenant requiring that bins are presented in front of Lot 10 rather than in front of Lot 40 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 41 must be burdened with a positive covenant requiring that bins are presented in front of Lot 11 rather than in front of Lot 41 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 16 must be burdened with a positive covenant requiring that bins are presented in front of Lot 15 rather than in front of Lot 16 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lots 17 and 18 must be burdened with a positive covenant requiring that bins are presented in front of Lot 19 rather than in front of Lots 17 and 18 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 42 must be burdened with a positive covenant requiring that bins are presented in front of Lot 20 rather than in front of Lot 42 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 43 must be burdened with a positive covenant requiring that bins are presented in front of Lot 21 rather than in front of Lot 43 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 44 must be burdened with a positive covenant requiring that bins are presented in front of Lot 22 rather than in front of Lot 44 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 45 must be burdened with a positive covenant requiring that bins are presented in front of Lot 23 rather than in front of Lot 45 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 46 must be burdened with a positive covenant requiring that bins are presented in front of Lot 24 rather than in front of Lot 46 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 47 must be burdened with a positive covenant requiring that bins are presented in front of Lot 25 rather than in front of Lot 47 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 48 must be burdened with a positive covenant requiring that bins are presented in front of Lot 26 rather than in front of Lot 48 using the “waste collection/ bin presentation” terms included in the standard recitals.

Lot 49 must be burdened with a positive covenant requiring that bins are presented in front of Lot 27 rather than in front of Lot 49 using the “waste collection/ bin presentation” terms included in the standard recitals.

All other Lots (2-16 and 19-33) must present bins in front of their own respective lots.

l) Covenant – Onsite Waste Collection

Lots 1 must be burdened with a positive covenant relating to onsite waste collection using the “onsite waste collection” terms included in the standard recitals.

m) Restriction/ Covenant – Onsite Stormwater Detention

Lot 1 must be burdened with a restriction and a positive covenant using the “onsite stormwater detention systems” terms included in the standard recitals.

n) Restriction/ Covenant – Water Sensitive Urban Design

Lot 1 must be burdened with a restriction and a positive covenant that refers to the WSUD elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.

o) Restriction/Positive Covenant – Vegetation Management Plan

Lot 1 must be burdened with a restriction and a positive covenant using the “Vegetation Management Plan/Restricted Development Area” terms included in the standard recitals.

116. Site/ Lot Classification Report

A site/ lot classification report prepared by a geotechnical engineer must be prepared and submitted following the completion of all subdivision works confirming that all residential lots are compliant with AS 2870 and are suitable for development. The report must be accompanied by a table which summarises the classification of all lots created as part of the subdivision.

117. Validation report

A validation report shall be submitted to Council's Manager – Environment and Health and the Certifying Authority (if not Council). The validation report must include the following:

- The degree of contamination originally present;

- The type of remediation that has been completed; and
- A statement which clearly confirms that the land is suitable for the proposed use.

118. Vegetation Management Plan (VMP) Implementation

All performance criteria for the establishment phase of the VMP (5 years) must be complied with prior to the issue of a Subdivision Certificate.

A statement certifying such compliance must be provided by the author of the VMP or an equally qualified and experienced person.

Consideration may be given to early release of a Subdivision Certificate in lieu of this by agreement with Council's Manager – Subdivision and Development Certification, based on alternative arrangements to secure the completion of works.

Such agreement must comply with s6.15(2) of the EP&A Act and will be conditional upon there being no circumstances prohibiting the issuing of a Subdivision Certificate contained within s6.15(1) of the EP&A Act at the time of any such agreement.

119. Biodiversity compliance

Evidence that the following measures have been undertaken shall be submitted to The Hills Shire Council's Manager – Environment & Health:

1. **Dam dewatering** – Details prepared by the project ecologist outlining fauna rescue and relocation undertaken during the dam dewatering.
2. **Tree Removal & Fauna Protection** – Details prepared by the project ecologist demonstrating compliance with the Tree Removal and Fauna Protection condition/s of this consent.
3. **Local Provenance Planting Stock** – Details prepared by the project ecologist demonstrating compliance with the Local Provenance Planting Stock condition/s of this consent.
4. **Evidence of Local Provenance** – Invoices detailing the procurement of local provenance species used in any landscaping/bush regeneration works.

120. Acoustic Compliance Report

The acoustic consultant shall progressively inspect the installation of the required noise suppressant components in particular the acoustic barrier as recommended in report titled Traffic Noise Assessment Report prepared by Day Design Pty Ltd and dated 18 May 2023. Certification that the barrier has been provided and constructed to the required quality and specification is to be provided to the certifying authority.

121. Internal Pavement Construction

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

THE USE OF THE SITE

122. Lighting

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

123. Management of Area Subject to Vegetation Management Plan (VMP)

Any area that is subject to a Vegetation Management Plan (VMP) shall be managed in accordance with the approved VMP in perpetuity by the property owner/s.

124. Waste and Recycling Management

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

ATTACHMENT B: GENERAL TERMS OF APPROVAL FROM TFNSW



Transport
for NSW

5 April 2022

TfNSW Reference: SYD21/00247/02
Council Reference: 1021/2022/JPZ
Planning Portal Reference: A-42497

The General Manager
The Hills Shire Council
PO Box 7064
BAULKHAM HILLS NSW 2153

Attention: Natalie Kastoun

Dear Sir/Madam,

**PROPOSED HOUSING DEVELOPMENT, SUBDIVISION AND CIVIL WORKS AT RMB
65-67 WINDSOR ROAD, NORWEST**

Reference is made to Council's correspondence dated 14 March 2022, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the *Roads Act, 1993*.

TfNSW has reviewed the development application and notes all vehicle access to the development site has been provided from local road network. TfNSW raises no objection to the development and provides concurrence to the removal of the existing vehicular crossings and replacements with kerb and gutter on Windsor Road under Section 138 of the *Roads Act 1993*, subject to the following requirements being included in the development consent:

1. The redundant driveways on the Windsor Road boundary shall be removed and replaced with kerb and gutter to match existing. The design and construction of the kerb and gutter on Windsor Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.

Detailed design plans of the proposed kerb and gutter are to be submitted to TfNSW for approval prior to the issue of a Construction Certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

Transport for NSW
27-31 Argyle Street, Parramatta NSW 2150 | PO Box 973, Parramatta CBD NSW 2124
P 131782 | W transport.nsw.gov.au | ABN 18 804 239 602

2. TfNSW has previously vested a strip of land as road along the Windsor Road frontage of the subject property, as shown by grey colour on the attached Aerial - "X".

The subject property is affected by a road proposal as shown by pink colour on the attached Aerial - "X".

TfNSW has also previously acquired an easement for drainage over the subject property Lot 42 DP662070 which is incorrectly shown by the brown colour on the attached Aerial - "Y", defined by DP 662070 and noted on title (Dealing - Second Schedule Notification 2). The correct dimensions of the easement are shown on cancelled CT Vol 11599 Fol 9.

However, there are no objections to the development proposal on property grounds provided:

- Any new building or structures, together with any improvements integral to the future use of the site, are erected clear of the identified easement, land required for road and Windsor Road boundary (unlimited in height or depth);
 - Access to the TfNSW easement is not to be denied; and
 - The integrity of the TfNSW easement is not to be compromised
3. Detailed design plans and hydraulic calculations of any changes to the TfNSW stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au
- A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
4. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Windsor Road.
 5. The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.
 6. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council and TfNSW for approval prior to the issue of a Construction Certificate.

If construction vehicles are proposed to access the site via Stone Mason Road, a plan demonstrating the turning paths for the largest construction vehicle for access/egress at the intersection of Windsor Road and Stone Mason Drive is to be provided within the CPTMP.

7. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on

Windsor Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

TfNSW also advises that the subject property is within a broad area under investigation for the proposed Windsor Road Upgrade Project.

The investigations have not yet advanced to the stage where options have been defined and accordingly it is not possible at this date to identify if any part of the subject property would be required to accommodate this proposal. If you have any further questions about the project, please don't hesitate to contact Zdenka Kajkut on 0477 975 848 or via Email: Zdenka.Kajkut@transport.nsw.gov.au.

If you have any further inquiries in relation to this development application Mr Simon Turner would be pleased to take your call on 8265 6363 or e: development.sydney@transport.nsw.gov.au. I hope this has been of assistance.

Yours sincerely



Ms Zhaleh Alamouti
Senior Land Use Planner

Attachment – Aerial X



Attachment - Aerial Y



Attachment C: Tables of Compliance

Part B Section 9 – Small Lot Housing

Development Standard	Proposed Development	Compliance
1. Site Planning		
Minimum Site Depth 25 metres	The proposed lots have a depth ranging from 25.05m to 29.8m.	Yes
Front Setback 4.5 metres except where an existing setback is already established	All proposed dwellings have a minimum front setback of 4.5m.	Yes
Secondary Street Setback 2 metres	The proposed dwellings on lots 3, 29, 30, 33, 41 and 42 provide a minimum 2m setback to the secondary street frontage.	Yes
Side Setback (Detached) 1.2 metres 0 metres on zero lot line	All lots comply with the side setback controls. Proposed lots/ dwellings 2, 3, 13, 28-33 and 49 do not contain a zero-lot line and provide a minimum 1.2m setback to side boundaries. All other proposed lots/ dwelling contain a zero lot line and minimum 1.2m setback on one side in accordance with the DCP.	Yes
Rear Boundary 1 storey – 6 metres 2 storey – 8 metres	All lots provide a minimum rear setback of 6m to the ground floor and 8m to the upper floors.	Yes
Zero Lot Line Housing <ul style="list-style-type: none"> - Shall only be permitted for detached housing. - Shall only be permitted on the southern side boundary of east west allotments and either side boundary (not both) of north south allotments. - Zero Lot Line must not be proposed on the end dwelling that adjoins other development. - Must not abut another zero lot line wall. 	Zero lot lines are proposed on the low side of all proposed lots/ dwellings (with the exception of lots 2, 3, 13, 28-33 and 49) on the ground for only for the garages. Where proposed, they do not abut another zero lot line wall and does not have windows. Colours and materials are suitable for the proposed zero lot line portion and a restriction/ easement will be required over the adjoining lot for maintenance.	Yes

<ul style="list-style-type: none"> - Must not have windows along boundary wall. - Must be constructed of maintenance free materials such as face brick or masonry. - Gutters, eaves and fascia's are to be constructed of colorbond steel or similar with no visible downpipes. - A restriction as to user is created for one metre wide maintenance easement over the adjoining property. 		
<p>Private Open Space</p> <ul style="list-style-type: none"> - 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 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. 	<p>All proposed dwellings are provided with a minimum area of 20% of each allotment area of the individual dwellings for principal private open space with a minimum area of 24 square metres.</p> <p>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.</p> <p>Several lots exceed the maximum hardscaped area when including the side setback areas, however comply if the side setback areas are excluded.</p> <p>Solar access complies. All lots achieve a minimum of 2 hours of sunlight for 50% of the POS between 9.00am and 3.00pm on 31 July.</p>	<p>No – variation to hardscape area. See report.</p>
<p>Landscaped Open Space</p> <ul style="list-style-type: none"> - Minimum 40% of the site is to be landscaped. - All landscaped areas are to have a minimum width of 2m. 	<p>All proposed lots/ dwellings provide a minimum 40% landscaped area with respect to site area.</p> <p>All landscaped areas have a minimum width of 2m (noting side setbacks are not considered in this definition).</p>	<p>No – variation to hardscaped area. See report.</p>

<ul style="list-style-type: none"> - 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. 	<p>Several lots exceed the maximum hardscaped area when including the side setback areas, however comply if the side setback areas are excluded. All paved surfaces are of a light or neutral colour.</p> <p>Existing trees are preserved where possible. A Restricted Development Area is to be created over a portion of Cumberland Plain Woodland located in the north-western portion of the site.</p> <p>A minimum of two small trees are provided in front gardens where possible. All dwellings otherwise provide at least two small trees within the front/ rear gardens.</p> <p>Garden beds are provided between driveways and side fences.</p>	
Other Controls <ul style="list-style-type: none"> - Applications for small lot housing should be accompanied by a streetscape plan and typical street elevations. - Larger dwellings are preferable for north-south allotments. 	<p>Streetscape elevation plans have been provided. Considered acceptable.</p>	Yes
Section 2 – Building Design and Streetscape		
Maximum Building Height <ul style="list-style-type: none"> - Two storeys 	<p>The proposed dwellings are two – three storeys in height.</p>	No – variation addressed in report.
Minimum Lot Width <ul style="list-style-type: none"> - Attached: 8m - Detached: 9m 	<p>A minimum lot width of 9.5m is provided.</p>	Yes
Maximum Length of Upper Storey 10m	<p>An upper floor length of 11m to 15.15 metres is proposed.</p>	No – variation addressed in report.
Individual Street Entries Each dwelling is to provide individual access from the main street frontage and be	<p>Each lot is provided with access to the private road or Stone Mason Drive.</p>	Yes

integrated with building façade design.		
Streetscape <ul style="list-style-type: none"> - 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. - The following design elements can be included along street frontages: verandas, gables, vertical elements to reduce the horizontal emphasis of the façade, entry feature or portico, balcony/ window boxes or similar elements; and landscaping/ fencing compatible with the frontage status of elevation. 	<p>The proposed development is considered to be compatible with adjoining development in terms of street elevation, bulk and scale, quality materials and finishes.</p> <p>A mixture of architectural design elements have been included into the proposed dwellings.</p>	Yes
Visual and Acoustic Privacy <p><u>Visual Privacy</u></p> <ul style="list-style-type: none"> - 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. - First floor balconies will not be permitted where they overlook living areas or private open spaces of adjoining properties. <p><u>Acoustic Privacy</u></p> <ul style="list-style-type: none"> - Dwellings shall limit potential for noise transmission to the living and sleeping areas within the development as well as adjacent existing and future development. - Consideration shall be given to the location of air-conditioning systems, swimming pools, entertaining areas and the 	<p>The proposed dwellings have been designed to avoid overlooking issues where possible. Screening devices/ frosted windows have been utilised where necessary.</p> <p>All proposed balconies do not overlook living areas of private open spaces of adjoining properties.</p> <p>Air conditioning locations are to be located to minimise noise impacts on adjoining lots. A condition of consent is recommended to ensure air conditioning locations are appropriate.</p>	Yes

like to minimise the impact on the amenity of adjoining properties.		
Solar Access <ul style="list-style-type: none"> - Dwellings should be sited to allow adequate provision of direct sunlight to the private open space of adjacent properties. - At least 50% of the private open space within the subject property shall receive direct sunlight for a minimum of 2 hours 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 the amount of direct sunlight received. 	<p>All proposed lots/ dwellings achieve the minimum solar access requirements for the principal private open space areas.</p> <p>Collapsible or permanent clothes drying devices are provided within private open space areas.</p>	Yes
Roofs <ul style="list-style-type: none"> - 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. 	<p>Light/ neutral colours are proposed for roofs.</p> <p>Eaves are a minimum of 450mm from external wall except where zero lot lines are proposed.</p>	Yes
Section 3 – Access and Parking		
Vehicular Access <ul style="list-style-type: none"> - 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 	<p>The proposed private road has a minimum trafficable width of 6m.</p> <p>Internal roadways do not adjoin any existing property boundaries.</p>	Yes
Garages <ul style="list-style-type: none"> - Garage doors are not to exceed 2.4m in height - Garages on corner lots to be accessed from the secondary street. - Garages facing a public place are to extend less 	<p>Garage doors do not exceed 2.4m in height.</p> <p>Garages are accessed via the primary frontage.</p> <p>Several lots have a garage extending more than 50% of the property frontage.</p> <p>Double garages proposed.</p>	No – variation addressed in report.

<p>than 50% of the property frontage.</p> <ul style="list-style-type: none"> - Double garages will not be permitted for attached dwellings. - Double garages will only be permitted for detached dwellings where they do not extend more than 50% of the property frontage. - Single-width garages must be setback 1.5m behind building entry. 		
<p>Car Parking Rates</p> <ul style="list-style-type: none"> - To comply with rates in Part C Section 1: 1 parking space per dwelling 	A minimum of two off-street parking spaces are provided per dwelling.	Yes
<p>Visitor Parking</p> <ul style="list-style-type: none"> - Minimum carriageway width of 8.5m where visitor parking is dedicated. 	No visitor parking proposed/required.	Yes

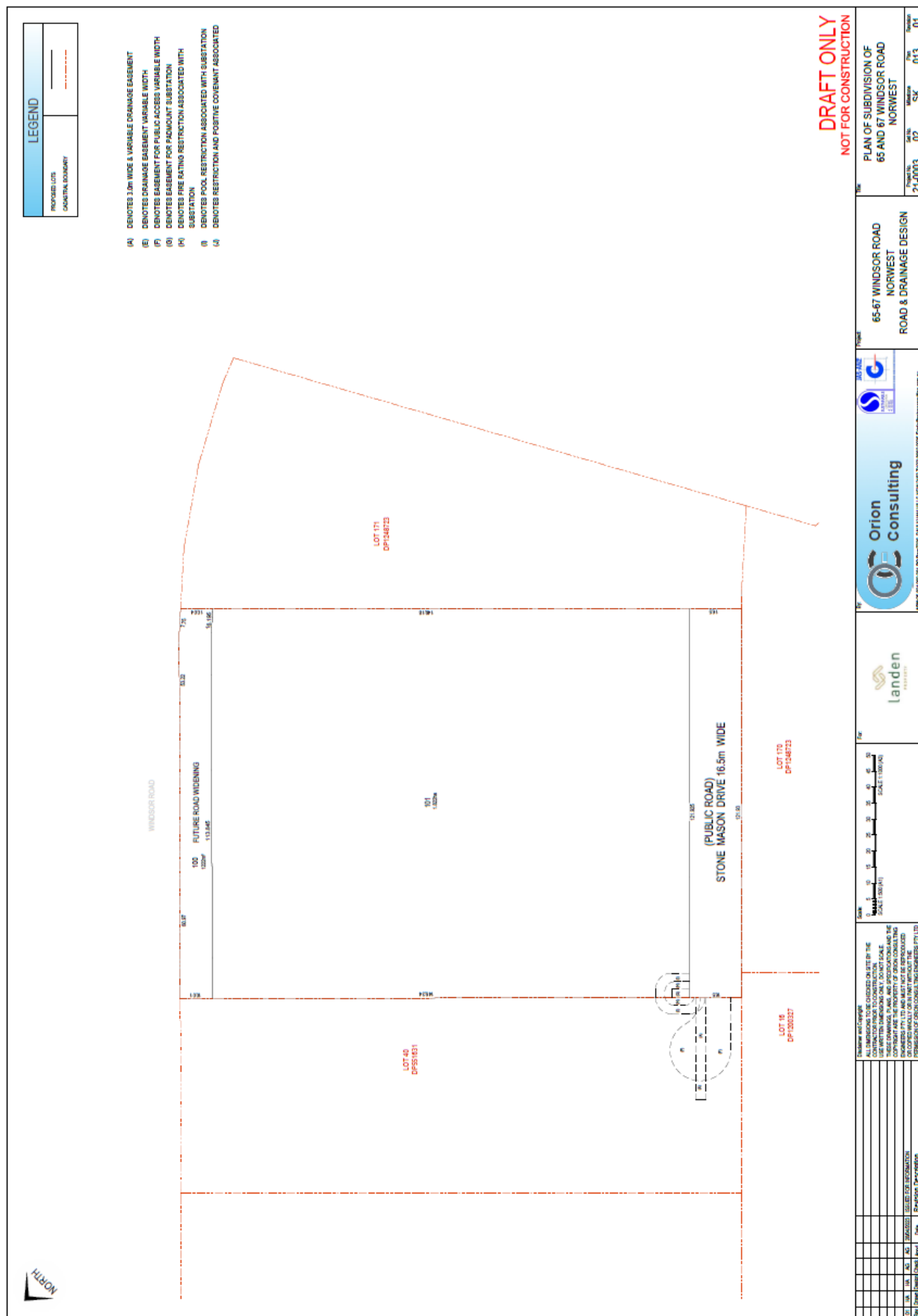
Part D Section 7 Balmoral Release Area

Development Standard	Proposed Development	Compliance
Section 4 – Roads	The extension of Stone Mason Drive is in accordance with the design requirements for the Balmoral Road Release Area.	Yes
Section 5 – Stormwater	Stormwater has been designed in accordance with the DCP. The proposed development includes two onsite detention basins to capture stormwater runoff.	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, there is an existing public recreation	Yes

	area to the south-west of the site.	
Section 8 – Building Design		
8.1.1 Building Setbacks Front setback – 6 metres Rear setback - 4 metres for 1 storey and 6 metres for 2 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 in-ground with a stairway to the dwelling only.	A minimum front setback of 4.5m is provided to each dwelling in accordance with the Small Lot Housing DCP which prevails in this instance. A minimum rear setback of 6m is provided to the ground floor and 8m to the upper floor for each dwelling. Other lots which face the private road propose a 4.5m setback which complies with the Small Lot Housing DCP. Rear setback complies – 6m for ground floor and 8m-8.5m for first floor. Cut and fill across the site exceeds 1m. This is considered acceptable given that the subject site is undulating.	Yes
8.1.4 Cut and Fill Maximum filling above natural ground level: 0.5 metres Maximum cut below natural ground level: 0.5 metres	The proposed controls relate primarily to cut and fill associated with a dwelling, however have been considered with respect to the proposed development. Fill up to 2.5m and cut up to 2.5m is proposed as part of the application.	No – variation addressed in report.
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 The proposed works will not adversely affect the heritage significance of Windsor Road or Castle Hill Country Club and the proposal is	Considered acceptable subject to conditions of development consent.

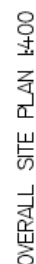
	considered appropriate from a heritage perspective.	
--	---	--

Page 83



31 July 2023

65-67 Windsor Road, Norwest

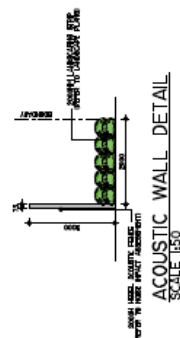
[illegible]

DATA TABLE

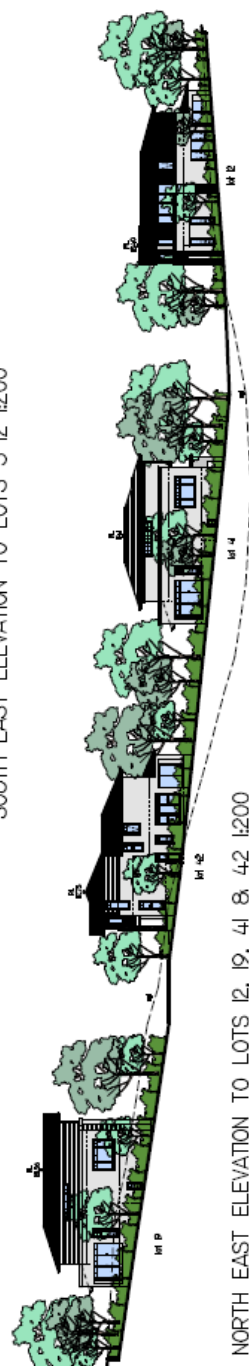
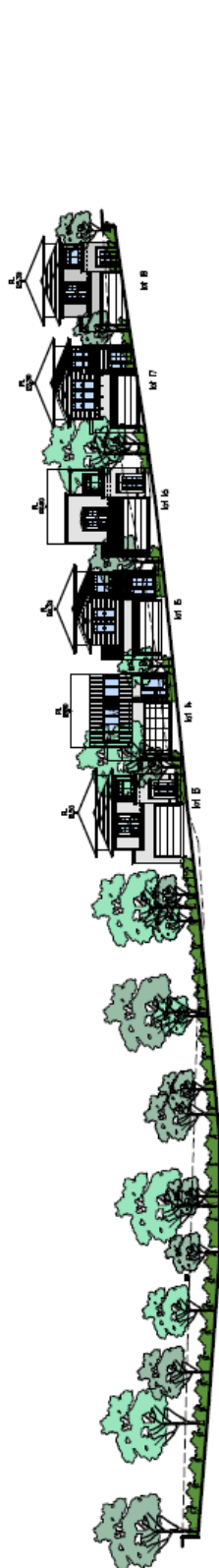
LIFT	RTE AREA	PRIME SPOT BRZE		REARDED SPOT	CROSSING		LIT	RTE AREA	PRIME SPOT BRZE		REARDED SPOT	CROSSING	
		PAID/REQ	PAID/REQ		PAID/REQ	PAID/REQ			PAID/REQ	PAID/REQ		PAID/REQ	PAID/REQ
1	1	547.1	694.1	65.1	53.5	53.5	39	327.5	748.1	61	647	143	143
2	2	547.1	694.1	65.1	53.5	53.5	40	327.5	748.1	61	647	143	143
3	3	547.1	694.1	65.1	53.5	53.5	41	327.5	748.1	61	647	143	143
4	4	547.1	694.1	65.1	53.5	53.5	42	327.5	748.1	61	647	143	143
5	5	547.1	694.1	65.1	53.5	53.5	43	327.5	748.1	61	647	143	143
6	6	547.1	694.1	65.1	53.5	53.5	44	327.5	748.1	61	647	143	143
7	7	547.1	694.1	65.1	53.5	53.5	45	327.5	748.1	61	647	143	143
8	8	547.1	694.1	65.1	53.5	53.5	46	327.5	748.1	61	647	143	143
9	9	547.1	694.1	65.1	53.5	53.5	47	327.5	748.1	61	647	143	143
10	10	547.1	694.1	65.1	53.5	53.5	48	327.5	748.1	61	647	143	143
11	11	547.1	694.1	65.1	53.5	53.5	49	327.5	748.1	61	647	143	143
12	12	547.1	694.1	65.1	53.5	53.5	50	327.5	748.1	61	647	143	143
13	13	547.1	694.1	65.1	53.5	53.5	51	327.5	748.1	61	647	143	143
14	14	547.1	694.1	65.1	53.5	53.5	52	327.5	748.1	61	647	143	143
15	15	547.1	694.1	65.1	53.5	53.5	53	327.5	748.1	61	647	143	143
16	16	547.1	694.1	65.1	53.5	53.5	54	327.5	748.1	61	647	143	143
17	17	547.1	694.1	65.1	53.5	53.5	55	327.5	748.1	61	647	143	143
18	18	547.1	694.1	65.1	53.5	53.5	56	327.5	748.1	61	647	143	143
19	19	547.1	694.1	65.1	53.5	53.5	57	327.5	748.1	61	647	143	143
20	20	547.1	694.1	65.1	53.5	53.5	58	327.5	748.1	61	647	143	143
21	21	547.1	694.1	65.1	53.5	53.5	59	327.5	748.1	61	647	143	143
22	22	547.1	694.1	65.1	53.5	53.5	60	327.5	748.1	61	647	143	143
23	23	547.1	694.1	65.1	53.5	53.5	61	327.5	748.1	61	647	143	143
24	24	547.1	694.1	65.1	53.5	53.5	62	327.5	748.1	61	647	143	143
25	25	547.1	694.1	65.1	53.5	53.5	63	327.5	748.1	61	647	143	143
26	26	547.1	694.1	65.1	53.5	53.5	64	327.5	748.1	61	647	143	143
27	27	547.1	694.1	65.1	53.5	53.5	65	327.5	748.1	61	647	143	143
28	28	547.1	694.1	65.1	53.5	53.5	66	327.5	748.1	61	647	143	143
29	29	547.1	694.1	65.1	53.5	53.5	67	327.5	748.1	61	647	143	143
30	30	547.1	694.1	65.1	53.5	53.5	68	327.5	748.1	61	647	143	143
31	31	547.1	694.1	65.1	53.5	53.5	69	327.5	748.1	61	647	143	143

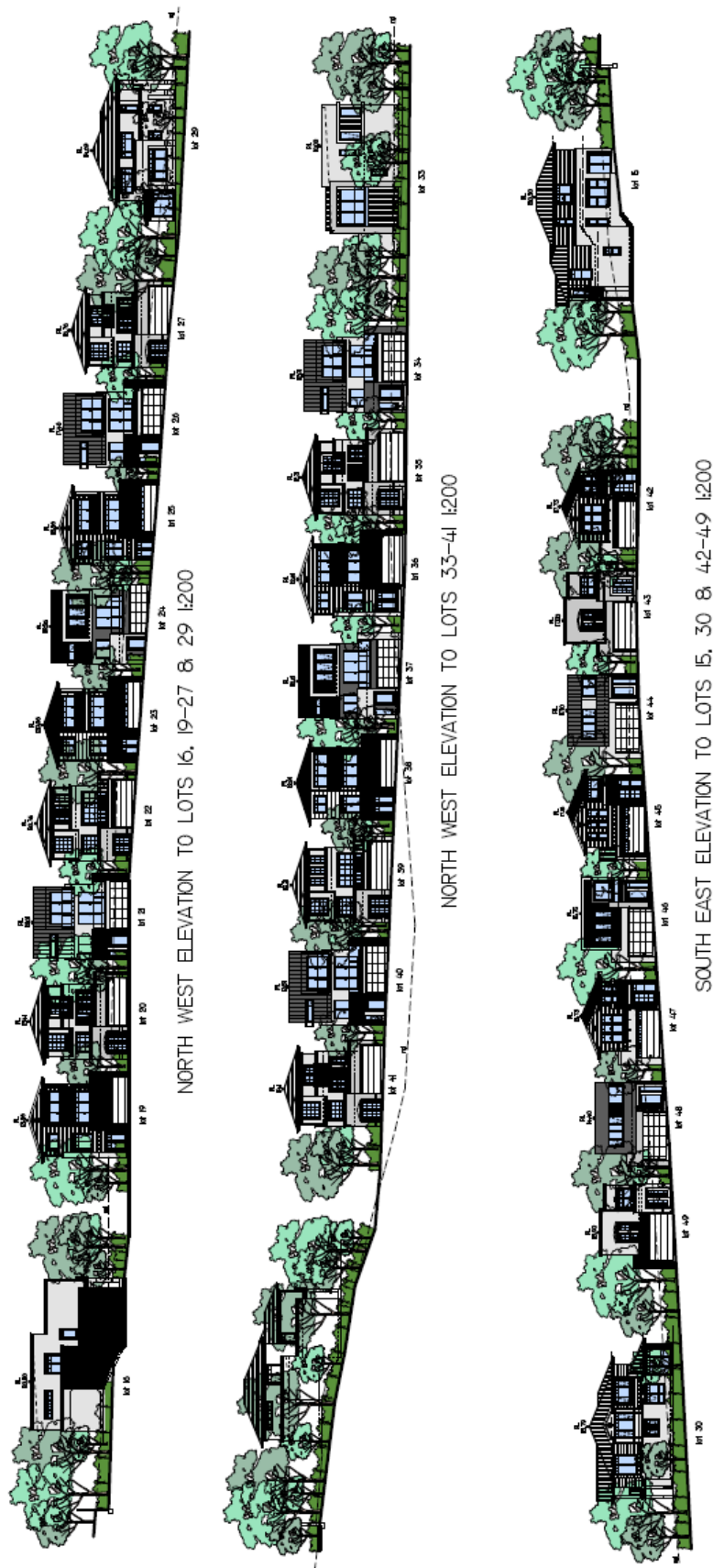
J. PALMER M. SCH

STRENGTHENING HEAVY FABRICS

[illegible][illegible][illegible]

**LEVEL 2 SUITE 216 MACARTHUR POINT
171, 25-27 SOLENT CIRCUIT BAILLIEHILL HILLS
P.O. BOX 6610 BAILLIEHILL HILLS
BUSINESS CENTRE N.S.W. 1513
PHONE: (02) 8624 3533 FAX: (02) 8624 3544
WWW.MANAGEMENTSTORE.COM.AU**





LANDEN PROPERTY

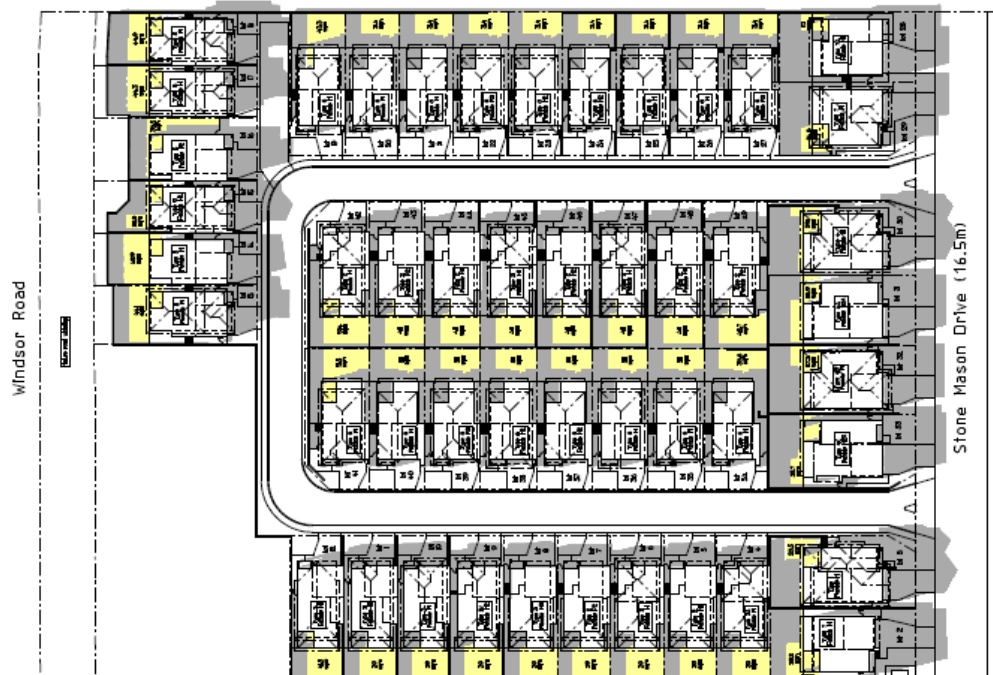
65-67 Windsor Road, Norwest

DATE	BY	FOR	REVISION	NOTES
15/05/22	LD	LD	1	1
15/05/22	LD	LD	2	2
15/05/22	LD	LD	3	3
15/05/22	LD	LD	4	4
15/05/22	LD	LD	5	5
15/05/22	LD	LD	6	6
15/05/22	LD	LD	7	7
15/05/22	LD	LD	8	8
15/05/22	LD	LD	9	9
15/05/22	LD	LD	10	10
15/05/22	LD	LD	11	11
15/05/22	LD	LD	12	12
15/05/22	LD	LD	13	13
15/05/22	LD	LD	14	14
15/05/22	LD	LD	15	15
15/05/22	LD	LD	16	16
15/05/22	LD	LD	17	17
15/05/22	LD	LD	18	18
15/05/22	LD	LD	19	19
15/05/22	LD	LD	20	20
15/05/22	LD	LD	21	21
15/05/22	LD	LD	22	22
15/05/22	LD	LD	23	23
15/05/22	LD	LD	24	24
15/05/22	LD	LD	25	25
15/05/22	LD	LD	26	26
15/05/22	LD	LD	27	27
15/05/22	LD	LD	28	28
15/05/22	LD	LD	29	29
15/05/22	LD	LD	30	30
15/05/22	LD	LD	31	31
15/05/22	LD	LD	32	32
15/05/22	LD	LD	33	33
15/05/22	LD	LD	34	34
15/05/22	LD	LD	35	35
15/05/22	LD	LD	36	36
15/05/22	LD	LD	37	37
15/05/22	LD	LD	38	38
15/05/22	LD	LD	39	39
15/05/22	LD	LD	40	40
15/05/22	LD	LD	41	41
15/05/22	LD	LD	42	42
15/05/22	LD	LD	43	43
15/05/22	LD	LD	44	44
15/05/22	LD	LD	45	45
15/05/22	LD	LD	46	46
15/05/22	LD	LD	47	47
15/05/22	LD	LD	48	48
15/05/22	LD	LD	49	49
15/05/22	LD	LD	50	50
15/05/22	LD	LD	51	51
15/05/22	LD	LD	52	52
15/05/22	LD	LD	53	53
15/05/22	LD	LD	54	54
15/05/22	LD	LD	55	55
15/05/22	LD	LD	56	56
15/05/22	LD	LD	57	57
15/05/22	LD	LD	58	58
15/05/22	LD	LD	59	59
15/05/22	LD	LD	60	60
15/05/22	LD	LD	61	61
15/05/22	LD	LD	62	62
15/05/22	LD	LD	63	63
15/05/22	LD	LD	64	64
15/05/22	LD	LD	65	65
15/05/22	LD	LD	66	66
15/05/22	LD	LD	67	67
15/05/22	LD	LD	68	68
15/05/22	LD	LD	69	69
15/05/22	LD	LD	70	70
15/05/22	LD	LD	71	71
15/05/22	LD	LD	72	72
15/05/22	LD	LD	73	73
15/05/22	LD	LD	74	74
15/05/22	LD	LD	75	75
15/05/22	LD	LD	76	76
15/05/22	LD	LD	77	77
15/05/22	LD	LD	78	78
15/05/22	LD	LD	79	79
15/05/22	LD	LD	80	80
15/05/22	LD	LD	81	81
15/05/22	LD	LD	82	82
15/05/22	LD	LD	83	83
15/05/22	LD	LD	84	84
15/05/22	LD	LD	85	85
15/05/22	LD	LD	86	86
15/05/22	LD	LD	87	87
15/05/22	LD	LD	88	88
15/05/22	LD	LD	89	89
15/05/22	LD	LD	90	90
15/05/22	LD	LD	91	91
15/05/22	LD	LD	92	92
15/05/22	LD	LD	93	93
15/05/22	LD	LD	94	94
15/05/22	LD	LD	95	95
15/05/22	LD	LD	96	96
15/05/22	LD	LD	97	97
15/05/22	LD	LD	98	98
15/05/22	LD	LD	99	99
15/05/22	LD	LD	100	100

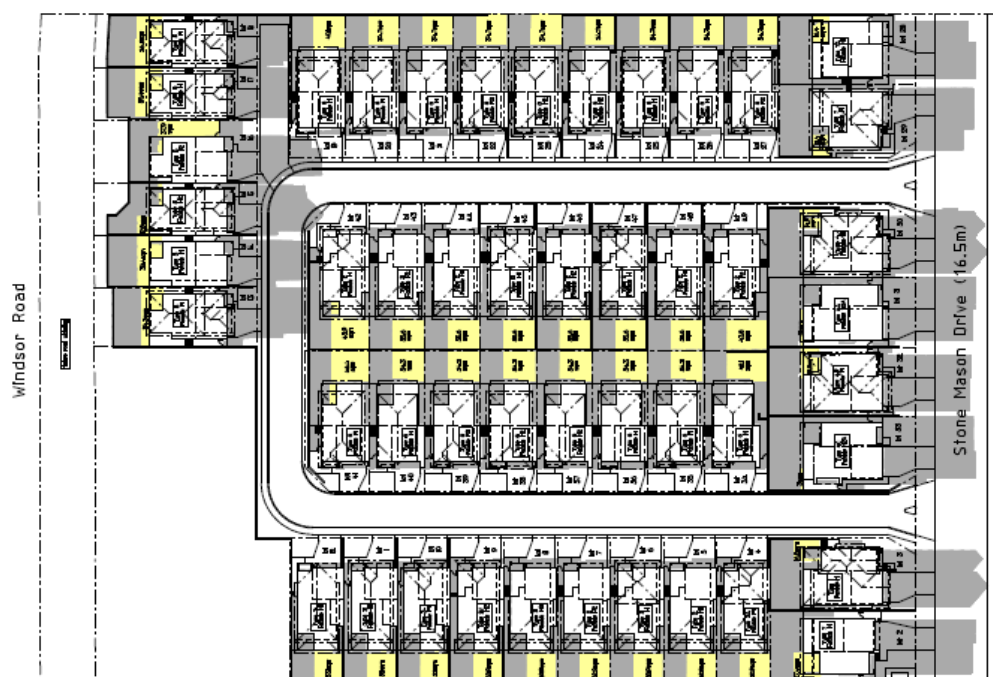
LEVEL 2 SITE 216 MACARTHUR POINT
DA 1021/2022/JPZ
BUSINESS CENTRE 1/51-53 WILSON ST
PHONE: (02) 8821 3544
WWW.LANDENPROPERTY.COM.AU



THIS DRAWING IS THE PROPERTY OF A&N ARCHITECTS. IT IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF A&N ARCHITECTS. ANY REPRODUCTION OR USE OF THIS DRAWING WITHOUT PERMISSION IS STRICTLY PROHIBITED. LOCAL COUNCILS MAY HAVE THEIR OWN REQUIREMENTS THAT MAY HAVE BEEN INCORPORATED INTO THIS DRAWING. APPROVALS



SHADOW DIAGRAMS – JUNE 21ST 10:00
10 am



SHADOW DIAGRAMS – JUNE 21ST 10:00
9 am



LANDEN PROPERTY

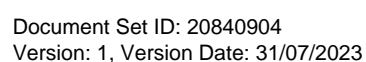
65-67 Windsor Road, Norwest

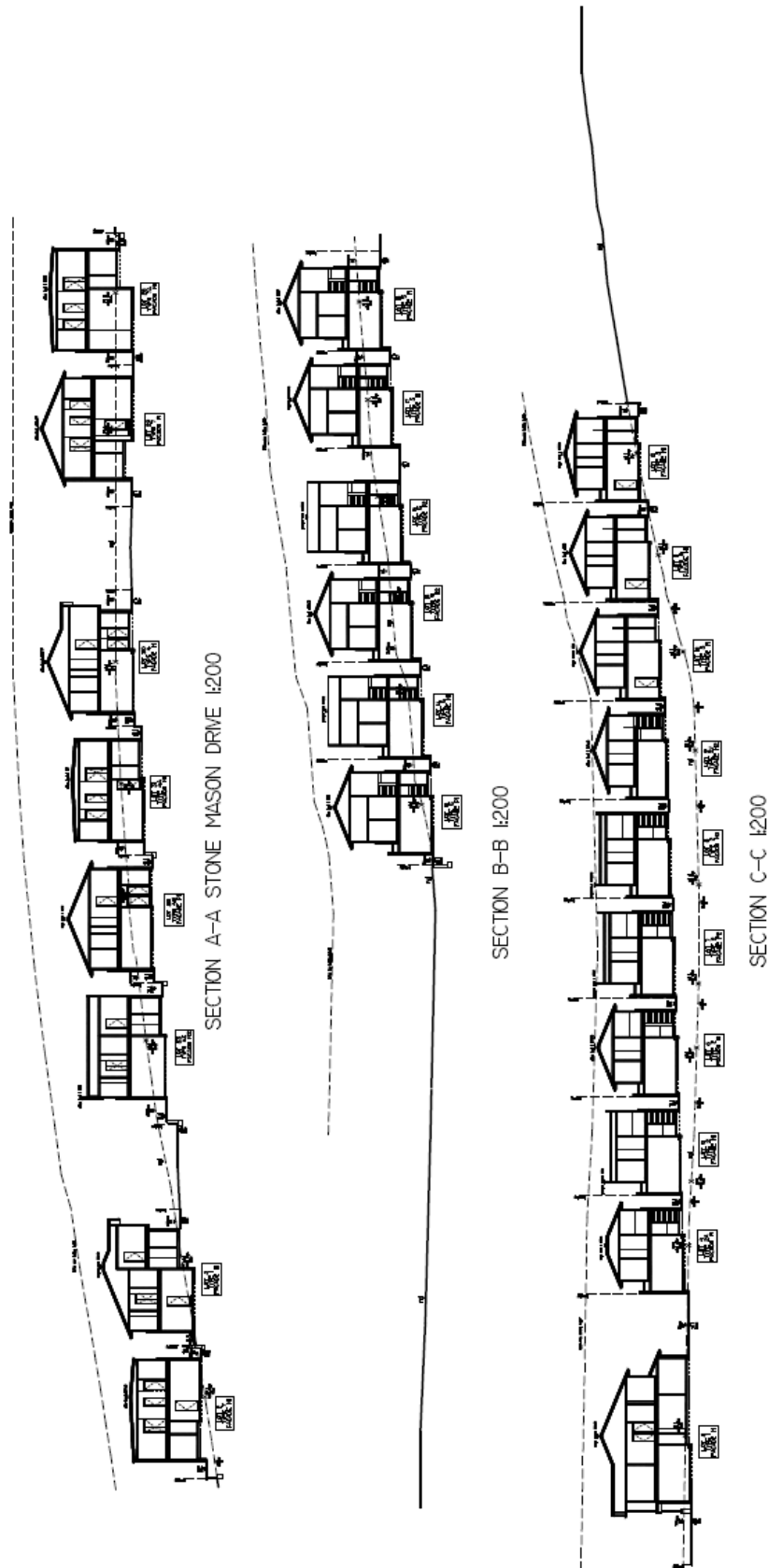
NO.	DATE	BY	REVISION	DATE	BY	REVISION
1	11/05/17	1	11/05/17	1	11/05/17	1
2	11/05/17	2	11/05/17	2	11/05/17	2
3	11/05/17	3	11/05/17	3	11/05/17	3
4	11/05/17	4	11/05/17	4	11/05/17	4
5	11/05/17	5	11/05/17	5	11/05/17	5
6	11/05/17	6	11/05/17	6	11/05/17	6
7	11/05/17	7	11/05/17	7	11/05/17	7
8	11/05/17	8	11/05/17	8	11/05/17	8
9	11/05/17	9	11/05/17	9	11/05/17	9
10	11/05/17	10	11/05/17	10	11/05/17	10
11	11/05/17	11	11/05/17	11	11/05/17	11
12	11/05/17	12	11/05/17	12	11/05/17	12
13	11/05/17	13	11/05/17	13	11/05/17	13
14	11/05/17	14	11/05/17	14	11/05/17	14
15	11/05/17	15	11/05/17	15	11/05/17	15
16	11/05/17	16	11/05/17	16	11/05/17	16
17	11/05/17	17	11/05/17	17	11/05/17	17
18	11/05/17	18	11/05/17	18	11/05/17	18
19	11/05/17	19	11/05/17	19	11/05/17	19
20	11/05/17	20	11/05/17	20	11/05/17	20
21	11/05/17	21	11/05/17	21	11/05/17	21
22	11/05/17	22	11/05/17	22	11/05/17	22
23	11/05/17	23	11/05/17	23	11/05/17	23
24	11/05/17	24	11/05/17	24	11/05/17	24
25	11/05/17	25	11/05/17	25	11/05/17	25
26	11/05/17	26	11/05/17	26	11/05/17	26
27	11/05/17	27	11/05/17	27	11/05/17	27
28	11/05/17	28	11/05/17	28	11/05/17	28
29	11/05/17	29	11/05/17	29	11/05/17	29
30	11/05/17	30	11/05/17	30	11/05/17	30
31	11/05/17	31	11/05/17	31	11/05/17	31
32	11/05/17	32	11/05/17	32	11/05/17	32
33	11/05/17	33	11/05/17	33	11/05/17	33
34	11/05/17	34	11/05/17	34	11/05/17	34
35	11/05/17	35	11/05/17	35	11/05/17	35
36	11/05/17	36	11/05/17	36	11/05/17	36
37	11/05/17	37	11/05/17	37	11/05/17	37
38	11/05/17	38	11/05/17	38	11/05/17	38
39	11/05/17	39	11/05/17	39	11/05/17	39
40	11/05/17	40	11/05/17	40	11/05/17	40
41	11/05/17	41	11/05/17	41	11/05/17	41
42	11/05/17	42	11/05/17	42	11/05/17	42
43	11/05/17	43	11/05/17	43	11/05/17	43
44	11/05/17	44	11/05/17	44	11/05/17	44
45	11/05/17	45	11/05/17	45	11/05/17	45
46	11/05/17	46	11/05/17	46	11/05/17	46
47	11/05/17	47	11/05/17	47	11/05/17	47
48	11/05/17	48	11/05/17	48	11/05/17	48
49	11/05/17	49	11/05/17	49	11/05/17	49
50	11/05/17	50	11/05/17	50	11/05/17	50
51	11/05/17	51	11/05/17	51	11/05/17	51
52	11/05/17	52	11/05/17	52	11/05/17	52
53	11/05/17	53	11/05/17	53	11/05/17	53
54	11/05/17	54	11/05/17	54	11/05/17	54
55	11/05/17	55	11/05/17	55	11/05/17	55
56	11/05/17	56	11/05/17	56	11/05/17	56
57	11/05/17	57	11/05/17	57	11/05/17	57
58	11/05/17	58	11/05/17	58	11/05/17	58
59	11/05/17	59	11/05/17	59	11/05/17	59
60	11/05/17	60	11/05/17	60	11/05/17	60
61	11/05/17	61	11/05/17	61	11/05/17	61
62	11/05/17	62	11/05/17	62	11/05/17	62
63	11/05/17	63	11/05/17	63	11/05/17	63
64	11/05/17	64	11/05/17	64	11/05/17	64
65	11/05/17	65	11/05/17	65	11/05/17	65
66	11/05/17	66	11/05/17	66	11/05/17	66
67	11/05/17	67	11/05/17	67	11/05/17	67
68	11/05/17	68	11/05/17	68	11/05/17	68
69	11/05/17	69	11/05/17	69	11/05/17	69
70	11/05/17	70	11/05/17	70	11/05/17	70
71	11/05/17	71	11/05/17	71	11/05/17	71
72	11/05/17	72	11/05/17	72	11/05/17	72
73	11/05/17	73	11/05/17	73	11/05/17	73
74	11/05/17	74	11/05/17	74	11/05/17	74
75	11/05/17	75	11/05/17	75	11/05/17	75
76	11/05/17	76	11/05/17	76	11/05/17	76
77	11/05/17	77	11/05/17	77	11/05/17	77
78	11/05/17	78	11/05/17	78	11/05/17	78
79	11/05/17	79	11/05/17	79	11/05/17	79
80	11/05/17	80	11/05/17	80	11/05/17	80
81	11/05/17	81	11/05/17	81	11/05/17	81
82	11/05/17	82	11/05/17	82	11/05/17	82
83	11/05/17	83	11/05/17	83	11/05/17	83
84	11/05/17	84	11/05/17	84	11/05/17	84
85	11/05/17	85	11/05/17	85	11/05/17	85
86	11/05/17	86	11/05/17	86	11/05/17	86
87	11/05/17	87	11/05/17	87	11/05/17	87
88	11/05/17	88	11/05/17	88	11/05/17	88
89	11/05/17	89	11/05/17	89	11/05/17	89
90	11/05/17	90	11/05/17	90	11/05/17	90
91	11/05/17	91	11/05/17	91	11/05/17	91
92	11/05/17	92	11/05/17	92	11/05/17	92
93	11/05/17	93	11/05/17	93	11/05/17	93
94	11/05/17	94	11/05/17	94	11/05/17	94
95	11/05/17	95	11/05/17	95	11/05/17	95
96	11/05/17	96	11/05/17	96	11/05/17	96
97	11/05/17	97	11/05/17	97	11/05/17	97
98	11/05/17	98	11/05/17	98	11/05/17	98
99	11/05/17	99	11/05/17	99	11/05/17	99
100	11/05/17	100	11/05/17	100	11/05/17	100

LEVEL 3 QUOTE 24H INQUIRY UNIT
NO. 25-27 SOLITE COURT BALUHHAN HILLS
EPO BOX 600 BALUHHAN HILLS
PHONE (02) 8824 3533 FAX (02) 8824 3544
WWW.ANDREYSTONE.COM.AU



THE DRAWING IS THE PROPERTY OF ANDREYSTONE CONSULTING ENGINEERS. IT IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF ANDREYSTONE CONSULTING ENGINEERS. A&N ENGINEERING P/L HAS BEEN ADVISED THAT THIS DRAWING IS NOT TO BE USED AS A BASIS FOR ANY OTHER PROJECTS. A&N ENGINEERING P/L HAS BEEN ADVISED THAT THIS DRAWING IS NOT TO BE USED AS A BASIS FOR ANY OTHER PROJECTS.





LEVEL 2 SUITE 214 MACARTHUR POINT
NO. 75-77 SAUNDERS CREDIT BUILDING HILLS
BUSINESS CENTRE 'NEW' HILLS
PHONE: 0800 880 3333 FAX: (02) 8824 2544
WWW.ANDNCONSULTING.CO.NZ

DATE	BY	FOR	REVISION	NO.
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17
16 OF 17	16 OF 17	16 OF 17	16 OF 17	16 OF 17

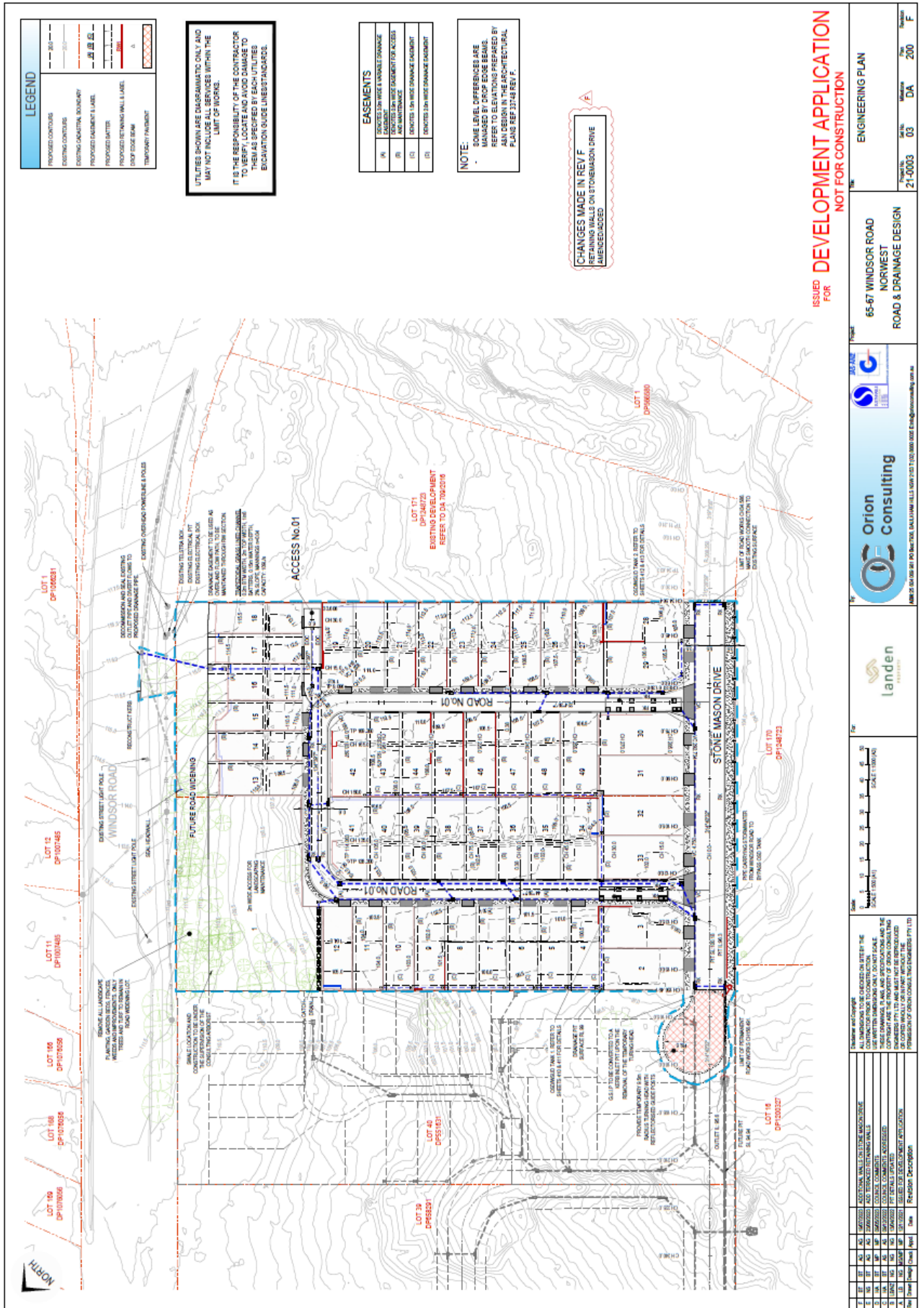
65-67 Windsor Road, Norwest

LANDEN PROPERTY

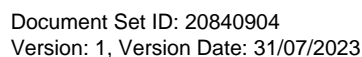


THE DRAWING IS THE PROPERTY OF AND CONSULTING. IT IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF AND CONSULTING. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN PERMISSION OF AND CONSULTING IS STRICTLY PROHIBITED. LANDEN PROPERTY IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS DRAWING. LANDEN PROPERTY IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS DRAWING.

Page 96



Page 98



Attachment H: Clause 4.6 Request



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**



April 2024

Prepared for Landen Property



Commercial in Confidence

All intellectual property rights, including copyright, in documents created by Orion Consulting (Orion) listed below remain the property of Orion. Any use made of such design or document without the prior written approval of Orion will constitute an infringement of the rights of the company which reserves all legal rights and remedies in respect of any such infringement.

The information, including any intellectual property, contained in this report is confidential and proprietary to Orion. It may only be used by the person to whom it is provided for the stated purpose for which it is provided and must not be imparted to any third person without the prior written approval of Orion. Orion reserves all legal rights and remedies in relation to any infringement of its rights in respect of its confidential information.



Document Control

Revision	Prepared	Reviewed	Approved	Date	Description
21-0003 V2	Aaron Gray	Aaron Gray	Aaron Gray	28/04/2023	Clause 4.6 Variation

Table of Contents

Executive Summary	2
1 Introduction.....	3
1.1 Purpose of this Report.....	3
2 Proposed Development.....	4
2.1 Integrated Housing Development.....	4
3 Legislative Framework.....	5
3.1 Development Standard.....	5
3.2 Development Application	6
3.2.1 Variation Proposed	6
3.2.2 Reason for Variation	7
3.3 Exception to the Development Standard.....	7
3.3.1 Objectives of Clause 4.6.....	7
3.3.2 Application of Clause 4.6.....	9
3.3.3 The Development Standard is Unnecessary and Unreasonable	9
3.3.4 Environmental Planning Grounds.....	10
3.3.5 Assessment of the Public Interest.....	11
3.3.6 Exclusions to the Operation of Clause 4.6	13
4 Consent Authority.....	15
4.1 Local Planning Panels	15
4.2 Concurrence of the Secretary.....	15
4.2.1 Is Concurrence Required?.....	15
4.2.2 Concurrence Considerations.....	15
5 Conclusion.....	17
5.1 Recommendation.....	17

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.

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)(iii)*;
- 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.

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 trees and vegetation throughout the Site
- Subdivision of Lot 42 in DP 662070 and Lot 1 in DP 518740 to create 48 residential lots including a new private road, and demolition.
- Construction of 48 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.



Figure 1 – Proposed Site Plan

Reference: A&N Design Architectural Plans

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.

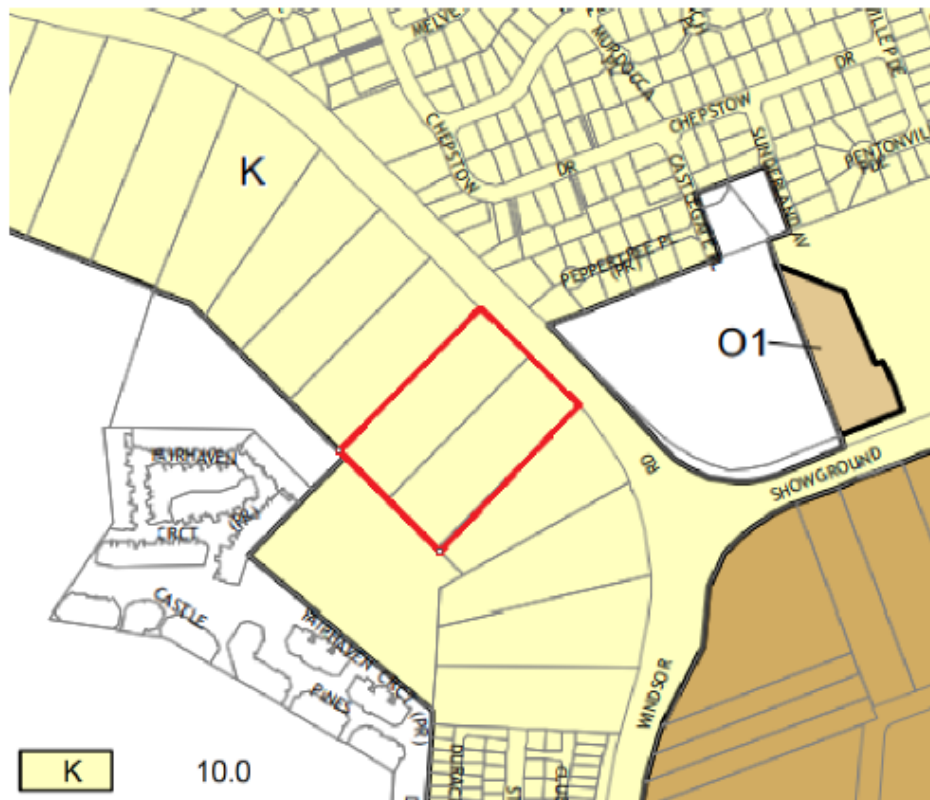


Figure 2 - Maximum Height of Buildings
Reference: NSW Government

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 12.01m which exceeds the maximum height of buildings development standard and represents a departure of 20.1%. 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 in the revised Architectural Plans submitted in April 2024.

RISE HEIGHT TABLE

BUILDING HEIGHT SUMMARY (Based on NGL under highest point)								(Based on FGL)		
LOT	RIDGE HEIGHT	NGL* (UNDER ROOF/ PARAPET)	MAX. HEIGHT	LOT	RIDGE HEIGHT	NGL* (UNDER ROOF/ PARAPET)	MAX. HEIGHT	% OVER	FGL* (UNDER ROOF/ PARAPET)	MAX. HEIGHT TO FGL
2	RL06.30	RL99.00	7.30M	29	RL06.69	RL07.40	7.29M			
3	RL05.78	RL00.60	8.88M	30	RL03.79	RL07.0	6.79M			
4	RL05.75	RL00.00	8.85M	31	RL08.80	RL05.00	5.80M			
5	RL08.00	RL99.80	8.20M	32	RL08.79	RL05.45	6.34M			
6	RL09.03	RL99.20	9.83M	33	RL00.00	RL04.00	6.00M			
7	RL08.90	RL99.40	9.50M	34	RL02.0	RL03.80	8.2M			
8	RL09.0	RL99.0	10.0M	35	RL02.3	RL04.50	7.8M			
9	RL09.48	RL99.5	9.98M	36	RL02.6	RL03.20	9.4M			
10	RL00.80	RL00.80	10.00M	37	RL02.6	RL02.8	9.8M			
11	RL00.00	RL03.00	8.00M	38	RL02.9	RL02.95	9.95M			
12	RL02.40	RL04.00	8.40M	39	RL03.5	RL02.80	8.2M	77%	RL03.5	9.8M
13	RL08.5	RL09.5	8.80M	40	RL03.5	RL04.50	8.0M	207%	RL03.5	9.70M
14	RL08.80	RL00.5	8.3M	41	RL04.8	RL02.30	8.8M	187%	RL04.25	9.85M
15	RL02.30	RL02.70	7.60M	42	RL07.73	RL09.80	7.93M			
16	RL00.80	RL01.6	7.80M	43	RL07.50	RL00.70	6.80M			
17	RL02.30	RL01.90	7.40M	44	RL07.0	RL01.40	5.70M			
18	RL03.30	RL05.90	7.40M	45	RL07.0	RL01.60	5.50M			
19	RL01.65	RL03.00	6.50M	46	RL05.75	RL01.60	4.45M			
20	RL01.40	RL03.50	7.8M	47	RL05.73	RL00.00	5.73M			
21	RL02.0	RL02.80	8.2M	48	RL04.40	RL08.90	5.50M			
22	RL02.75	RL03.05	7.7M	49	RL03.90	RL08.25	5.65M			
23	RL02.00	RL02.40	7.60M							
24	RL09.20	RL01.40	7.80M							
25	RL08.30	RL00.80	7.70M							
26	RL07.45	RL00.90	7.50M							
27	RL06.75	RL00.70	7.56M							
28	RL04.2	RL00.45	7.80M							

* NGL TAKEN AT LOWEST POINT

COMPLIANT NON-COMPLIANT

Figure 3 – Height of Buildings

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 such that the buildings would be compliant with the Height of Buildings control.

This has been represented in figure 3 above. The buildings on Lots 39, 40 and 41 are not compliant with the Height control when the existing ground level is used. However, the buildings are compliant with the Height control when compared to the proposed ground levels. The three additional columns next to the data for Lots 39, 40 and 41 show this.

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.

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 the eastern corner of the Site to the western corner of the Site with a decommissioned dam located to the north-east of the site. As a result, large scale bulk earthworks are required on the site 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. A substantial depression also exists through the Site as indicated in the Figure below. Filling this depression is required and the area with the most fill is where Lots 39, 40 and 41 are proposed.

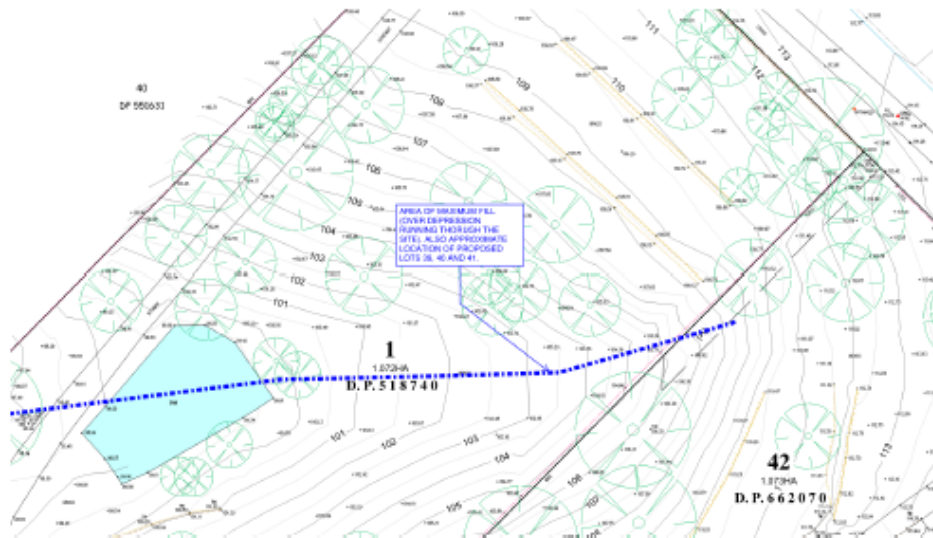


Figure 4 – Excerpt of Survey

Reference: KF Williams Survey Plan.

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 measured 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 3 instances of non-compliance 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, all dwellings will be compliant.

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 other 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 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.

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.
2. 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.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The bulk and scale of the proposed development is 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.

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 non-compliance;

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.

4. 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.

5. 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.

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.

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 in the form of fill is 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, non-compliance with the Height of Building Control occurs over Lots 39, 40 and 41.

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, then compliance with the development standard would be achieved.

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 5 – Streetscape elevations of Lots 39-41 in the context of adjoining Lots.

The development has been designed to ensure a scheme that is substantially 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 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 R3 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 48 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.

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(d) 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

- (d) *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.*

No part 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(d) 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

- (d) *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(d) of the SEPP provides a prohibition on the consent authority granting consent to development that contravenes BASIX commitments:

4.6 Exceptions to development standards

- (d) *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.

3.3.6.4 Miscellaneous Permissible Uses

Clause 4.6(d) 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

- (d) *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.

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.

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.

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.