

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>PPSSCC-357</b>
<b>DA Number</b>	DA 1799/2022/JP
<b>LGA</b>	The Hills Shire Council
<b>Proposed Development</b>	Demolition of Existing Structures and Construction of a Residential Flat Building Development containing 49 Units (In-fill Affordable Housing) Pursuant to the Provisions of SEPP (Housing) 2021.
<b>Street Address</b>	Lots 13-17 DP 28197, Nos. 11-19 Yattenden Crescent Baulkham Hills
<b>Applicant</b>	Ms Vandana Vandana on behalf of Universal Property Group Pty Ltd
<b>Consultant/s</b>	Think Planners – Town Planner Fortey + Grant Architecture – Architect A Total Concept (ATC) – Landscape Architect Varga Traffic Planning Pty Ltd – Traffic and Parking Assessment Acoustic Logic – Acoustic Report Elephants Foot Consulting Pty Ltd – Waste Management Innovative Surveying Associates – Geodetic Surveyor Sky Engineering & Project Management – Civil Engineer Geotesta – Preliminary Site Investigation BRP Consulting – Construction Management Thomas Lander – Cost Estimator Washington Brown Pty Ltd – Quantity Surveyor 360 Certification (Mosman Certifiers Pty Ltd) – BCA Consultant SLR Consulting Pty Ltd – BASIX & NaTHERS Assessor Monaco Designs Pty Ltd – Arborist Morris Goding Access Consulting – Access Consultant
<b>Date of DA lodgement</b>	16 May 2022
<b>Number of Submissions</b>	Three (3)
<b>Recommendation</b>	Approval
<b>Regional Development Criteria - Schedule 6 of the SEPP (Planning Systems) 2021</b>	Private infrastructure and community facilities with a capital investment value (CIV) of more than \$5 million (affordable housing) – CIV of proposed 28 affordable housing units: \$6,645,718.00
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• List all of the relevant environmental planning instruments: s4.15(1)(a)(i)                             <ul style="list-style-type: none"> <li>• SEPP (Planning Systems) 2021</li> <li>• SEPP (Resilience and Hazards) 2021</li> <li>• SEPP (Housing) 2021</li> <li>• SEPP 65 – Design Quality of Residential Apartment Development and Apartment Design Guide</li> <li>• SEPP (Transport and Infrastructure) 2021</li> <li>• SEPP ((Building Sustainability Index: BASIX) 2004</li> <li>• SEPP (Biodiversity and Conservation) 2021</li> <li>• The Hills LEP 2019</li> </ul> </li> <li>• List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)                             <ul style="list-style-type: none"> <li>• Nil</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>List any relevant development control plan: s4.15(1)(a)(iii) <ul style="list-style-type: none"> <li>DCP 2012 Part B Section 5 – Residential Flat Building</li> <li>DCP 2012 Part C Section 1 – Parking</li> <li>DCP 2012 Part C Section 3 – Landscaping</li> <li>DCP 2012 Appendix A – Waste Management Plan</li> </ul> </li> <li>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iv) <ul style="list-style-type: none"> <li>Nil</li> </ul> </li> <li>List the regulations (to the extent that they prescribe matters for purposes of this paragraph) : s4.15(1)(a)(iv) <ul style="list-style-type: none"> <li>Environmental Planning and Assessment Regulation 2021</li> </ul> </li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>Architectural plans</li> <li>Clause 4.6 variation written request – building height and floor space ratio</li> <li>Copies of residents' submissions</li> </ul>
<b>Clause 4.6 requests</b>	<ul style="list-style-type: none"> <li>Building height variation - clause 4.3 – LEP 2019</li> <li>FSR variation - clause 17(1) – SEPP (Housing) 2021</li> </ul>
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>Development will be an eyesore, if not completed</li> <li>Density</li> <li>Construction noise</li> <li>Deviation from building height standard</li> <li>Impact on views</li> </ul>
<b>Report prepared by</b>	Claro Patag – Specialist Planner
<b>Report date</b>	06 December 2022

#### Summary of s4.15 matters

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

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

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

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### Conditions

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

## EXECUTIVE SUMMARY

The Development Application is for the demolition of existing structures and construction of a 5-storey residential flat building development lodged under the provisions of the State Environmental Planning Policy (Housing) 2021 ("Housing SEPP"). The development comprises 49 dwellings containing a mix of 5 x 1 bedroom, 25 x 2 bedroom and 19 x 3 bedroom units with associated basement car parking containing 67 car parking spaces and 13 bicycle parking spaces accessed via a new entry/exit driveway located at the southern end of the Yattenden Crescent site frontage. Thirty (30) of the forty-nine (49) apartment units with a gross floor area (GFA) of 2,603.8m<sup>2</sup> or 50.41% of the total GFA of the development are proposed to be used for the purposes of affordable housing under the provisions of the Housing SEPP.

The subject site is zoned R4 High Density Residential under the provisions of The Hills Local Environmental Plan 2019. The proposed residential flat development is permitted with consent in the R4 zone.

The proposal is considered as a regionally significant development as it meets the criteria in Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 being for the purpose of affordable housing which is one of the purposes identified in Item 5 (Private infrastructure and community facilities over \$5 million). The development cost of the proposed affordable housing component is estimated at \$6,041,562.

Clause 16(1) of the Housing SEPP provides that in-fill affordable housing applies to residential development if the development is permitted with consent under another environmental planning instrument, and at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing. An additional FSR of 0.5:1 is provided under Clause 17(1) in circumstances where the maximum permissible floor space ratio (FSR) is 2.5:1 or less and if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing. Maximum permissible floor space ratio is defined in the Housing SEPP as "*the maximum floor space ratio permitted on the land under an **environmental planning instrument**, other than this Policy, or a **development control plan**.*" Under Council's LEP 2019, there is no FSR control for the site, however in Council's DCP 2012 there is an FSR control but only for dual occupancy development which is set to a maximum of 0.5:1. The density standard for residential flat development in this precinct is regulated through the person per hectare control in DCP 2012 of up to 175 persons per hectare.

In the absence of an FSR control for residential flat building development on this site, a typical layout plan has been prepared and submitted by the applicant (refer Attachment 13) which demonstrates that a scheme that complies with the persons per hectare control of 175 person per hectare would have an FSR equivalent to 0.98:1. Utilising this conversion and noting that 50.4% of the GFA of the proposed development will be used for the purposes of affordable housing the application proposes an FSR of 1.46:1 that is consistent with the intent of the clause. However, as Council's DCP 2012 contains a singular FSR control of 0.5:1 for dual occupancy development, the site is only afforded a total maximum FSR of 1:1 (i.e. 0.5:1 plus 0.5:1) as prescribed in Clause 17(1). On this basis, a Clause 4.6 written request has been submitted with the Development Application seeking to vary the maximum permissible FSR of 1:1 as outlined in Clause 17(1) and is provided in Attachment 15.

The proposal is consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances of the case. It is considered that there are sufficient environmental planning grounds to justify the departure from the development standard. The development provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality. The impacts on the amenity of adjoining properties are mitigated and the distribution of floor space across the site will not be discernibly different to a built form that is compliant with the FSR control.

The proposal does not fully comply with the 16m building height control for the site with lift overruns and roof of a unit protruding above the height limit by 1.8m (11.25%) and 440mm (2.75%) respectively. The Development Application is accompanied by a Clause 4.6 written request provided in Attachment 16 that seeks to vary the building height control and justify the contravention of the development standard. The extent of the building height variation is illustrated in Attachment 5. The proposed variation is considered satisfactory as it does not cause adverse impacts on properties located on the other side of Yattendon Crescent in terms of privacy and overshadowing. The proposal provides access to the rooftop common open spaces area that add amenity to the complex and allow future residents to enjoy district views whilst socialising with friends or follow residents. It is considered that the proposal is consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances of the case. There are also sufficient environmental planning grounds to justify the departure from this control which include the height limit applying to the immediate adjoining mixed use development to the north. The scale and intensity of the development is consistent with other residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.

Council's Development Control Plan 2012 sets additional development standards and provisions for residential flat building developments such as number of storeys, landscaped area, deep soil zone, solar access, off-street parking and minimum floor area. However, the Housing SEPP applies and Council cannot refuse an application based on certain grounds. These grounds have the effect of overriding some of these provisions of The Hills Development Control Plan.

The Development Application was notified to adjoining and surrounding property owners for a period of 14 days and 3 submissions were received. Issues raised in the submissions which relate to density, construction noise, building height, loss of views and poor visual outcome if not completed have been addressed in the report and do not warrant refusal of the application.

The Development Application is recommended for approval subject to conditions.

## **BACKGROUND**

A pre-lodgement meeting (47/2022/PRE) was held with the applicant on 1 October 2021 for 46 apartment units comprising 32 in-fill affordable housing units and 14 standard apartments) over basement car parking with 62 spaces.

The subject Development Application was lodged on 16 May 2022 for 51 apartment units comprising 28 in-fill affordable housing units and 23 standard apartments over basement car parking with 67 spaces.

Adjoining and surrounding property owners were notified between 17 May 2022 and 7 June 2022. Three submissions were received.

Site inspections were undertaken on 17 May 2022 and 30 June 2022.

Letter sent to the applicant on 18 May 2022 requesting additional information regarding cost summary report and arborist report.

Further letter sent to the applicant on 24 May 2022 forwarding waste management comments and request for additional information.

Transport for New South Wales provided their comments on 3 June 2022.

Revised cost summary and arborist reports were received on 9 June 2022.



A letter was sent to the applicant on 23 June 2022 requesting submission of a supplementary statement addressing variation to the maximum building length, maximum number of storeys and interpretation of the FSR provisions under Section 17(1) in the Housing SEPP. The applicant partially responded clarifying the extent of proposed building length.

A kick-off briefing was held with the Sydney Central City Planning Panel on 30 June 2022 attended by the applicant and Council staff. The following key issues were raised by the Panel:

- *Building length is a significant departure from DCP and an unusual outcome for a residential building (sic).*
- *Affordable housing manager is still to be confirmed. The Panel expressed concern regarding the design of proposed affordable units as well as the concentration on the ground floor.*
- *Communal space does not all appear usable and large areas of the ground floor are south facing.*
- *Interface and access between apartments and the communal open space on the roof is unclear. Landscaping of the communal space is required.*
- *ADG compliance is strongly encouraged. Solar access to be confirmed.*
- *Design of internal layout, particularly the ground floor, split level units is considered to be suboptimal.*

The Development Application has been amended in response to the above issues raised by the Panel which resulted in a reduced total number of apartment units from 51 to 49 apartments. The design has been refined to address the building length issue with the lower two levels of the building still at 82.03m long with a 4.46m wide break being introduced in Levels 3 to 5 of the proposed apartment building complex.

A letter was sent to the applicant on 13 August 2022 forwarding Council's Senior Subdivision Engineer's comments and request for additional information.

An email was received from the applicant's town planning consultant on 14 September 2022 providing a status update of their response to outstanding matters raised by relevant Council officers and key issues raised by the Panel on 30 June 2022.

Amended plans and additional information were submitted by the applicant on 21 September 2022. The amended plans were not re-notified as they are mainly in response to the key issues raised by the Panel and request for additional information by relevant Council officers. The building footprint remains the same as the originally scheme with the total number of apartment units being reduced from 51 to 49 units.

A letter was sent to the applicant on 10 October 2022 regarding discrepancies between the landscape, architectural and engineering plans, and particular concerns were raised regarding location of the underground OSD whether it would allow sufficient soil depth for proposed planting/trees above it.

On 19 October 2022, a letter was sent to the applicant forwarding Council's Senior Subdivision Engineer's comments and request for further additional information as a result of review of the amended plans and submitted additional information. The applicant was also required to submit amended plans showing a 2m road (verge) widening required across the frontage of Yattenden Crescent to align its boundary with the developed Target Site to the north and achieve a 3.5m wide verge.

Additional tree management, landscaping and engineering information was received from the applicant on 21 November 2022.

Updated SEPP 65 report and a revised layout of a fully DCP compliant residential flat built form for purposes of calculating and converting persons per hectare control to floor space ratio received from the applicant on 25 November 2022.

## DETAILS AND SUBMISSIONS

Owner:	Helen Summers, Pejman Nematian, Maria Bernadette Ryan, Vaughan Richard Ryan, Isabelle Jabbour and Lawrence Bit-Merza.
Zoning:	R4 High Density Residential
Area:	3,552.2m <sup>2</sup>
Existing Development:	Dwelling house and ancillary structures on each lot
Section 7.12 Contribution	\$140,250.00
Exhibition:	N/A
Notice Adj Owners:	Yes, 14 days
Number Advised:	300
Submissions Received:	3

## THE SITE

The subject site is zoned R4 High Density Residential under the provisions of The Hills Local Environmental Plan 2019. The proposed residential flat building development is permitted with consent in the R4 zone.

The area is characterised by a mixture of older style single and double storey dwellings, older style villa and townhouse developments, with newly constructed 15 storey shop-top housing development and 4 storey residential flat buildings. The development site is a corner allotment comprising 5 parcels of land each containing a dwelling house and ancillary structures and is situated on the northern side of Charles Street and the eastern side of Yattenden Crescent.

The site has a street frontage of 38.08m to Charles Street and a street frontage of 83.9m to Yattenden Crescent and a depth of 38.08m to 39m with an overall site area of 3,552.2m<sup>2</sup>.

The site is zoned R4 High Density under the provisions of The Hills Local Environmental Plan 2019, with a maximum permitted height of 16m. 'Residential flat buildings' are permissible with consent within the R4 Zone.

Transfer of ownerships of the individual parcels of land comprising the development site has occurred since lodgement of the application except for Lot 17 DP 28197 (11 Yattenden Crescent). Council's records show that Lots 13, 14, 15 & 16 are now owned by the applicant, Universal Property Group 189 Pty Ltd.

## PROPOSAL

The Development Application is for the demolition of existing structures and construction of a 5-storey residential flat building containing 49 apartment units over two levels of basement parking under the 'In-fill Affordable Housing' provisions of the State Environmental Planning Policy (Housing) 2021 ("Housing SEPP"). Thirty (30) of the 49 apartment units with a gross floor area (GFA) of 2,603.8m<sup>2</sup> or 50.41% of the total GFA of the development are proposed to be used for the purposes of affordable housing under the provisions of the Housing SEPP.

The proposal contains the following mix.

- 5 x 1 bedroom apartments;
- 25 x 2 bedroom apartments; and
- 19 x 3 bedroom apartments.

The two basement levels accommodate off-street parking for 67 resident vehicles and 13 bicycle parking spaces. The Housing SEPP requires the following non-discretionary parking standards:

- (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or
- (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or
- (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,

A total of 56 off-street parking spaces are required and the development provides 67 spaces.

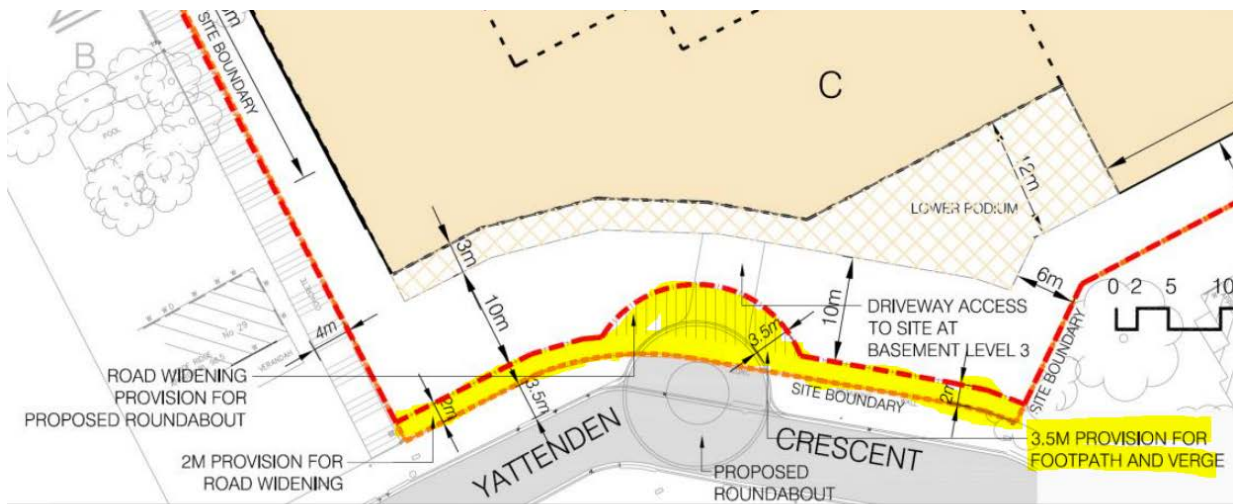
The Development Application is accompanied by a Quantity Surveyor's Report which indicates that the capital investment value (CIV) for the total development is estimated at \$10,984,658 (GST excl) (with the affordable housing component being \$6,041,562). The proposal is considered as a regionally significant development as it meets the criteria in Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 being for the purpose of affordable housing which is one of the purposes identified in Item 5 (Private infrastructure and community facilities over \$5 million).

The Development Application seeks to vary the maximum floor space ratio (FSR) prescribed under Clause 17(1) in the Housing SEPP and maximum building height standard prescribed under Clause 4.3 in The Hills LEP 2019. The application is accompanied by a written requests in accordance with Clause 4.6(3) that seeks to justify the contravention of these development standards. The proposed FSR is 1.46:1 which exceeds the maximum FSR of 1:1. The proposal breaches the 16m building height standard that applies to the site with lift overruns and roof of a unit protruding above the height limit by 1.8m (11.25%) and 440mm (2.75%) respectively (see Attachment 5).

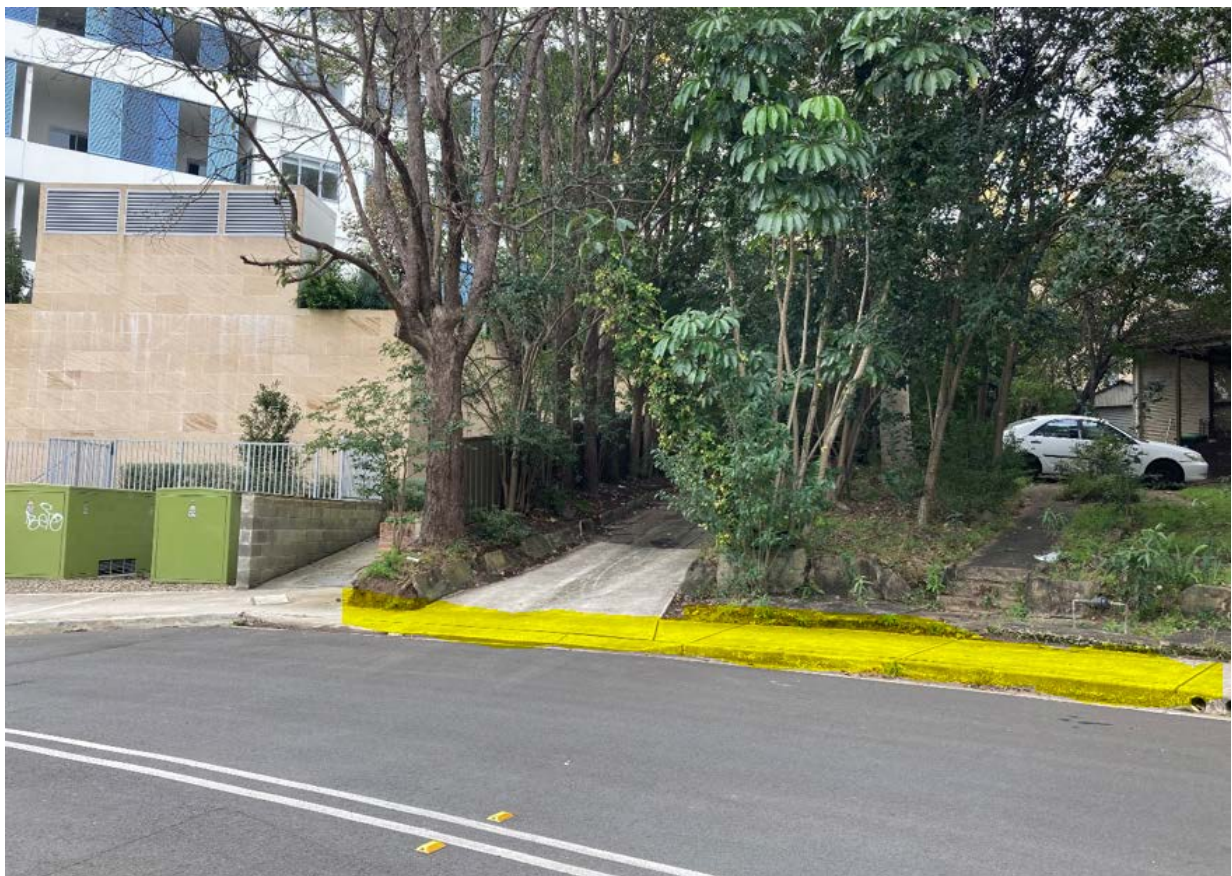
The proposal also seeks a variation to the building separation requirement of 18m between habitable rooms for 5-8 storey buildings as prescribed in the SEPP 65 – Apartment Design Guide and to the maximum density, building length and number of storey controls prescribed in The Hills DCP 2012 Part B Section 5 – Residential Flat Building. The rear north-eastern boundary provides a 9m setback to the boundary except for balconies which marginally encroach into this zone. On the north-western boundary two bedrooms with windows encroach into this zone.

The development exceeds the DCP maximum allowed building length of 50m by approximately 32m.

The proposal is set back 10m from Yattenden Crescent, however this will technically be reduced to 8m should dedication of a 2m wide strip of land along the site's frontage for road widening purposes occur to align with the adjoining Target Site to the north and achieve a minimum verge width of 3.5m. As part of the development approval for the northern Target Site (DA 1278/2012/JP) the developer was required at their expense to widen the carriageway of Yattenden Crescent fronting the Target Site up to and including No. 45 Yattenden Crescent) by 1.7m as outlined under Clause 6.13(a) in DCP 2012 Part D Section 14 - Target Site – Corner of Windsor Road and Seven Hills Road (see diagram below).



The initial plans submitted with the application only showed 1.5m-1.6m verge upon recent carriageway widening (see photo below). Council requires verge widening to achieve a minimum width of 3.5m, and to maintain the boundary alignment of the northern property and this was brought to the applicant's attention. Amended plans have been submitted in response showing the future 2m road widening of the eastern side of Yattenden Crescent.



## STRATEGIC PLANNING FRAMEWORK

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

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

The Plan sets a new strategy and actions to land use and transport patterns. The Plan seeks to integrate land use planning with transport and infrastructure corridors to facilitate a 30-minute city where houses, jobs, goods and services are co-located and supported by public transport (Objective 14). The Plan aims to ensure economic corridors are better connected and more competitive. The site is situated in close proximity to Baulkham Hills Town Centre and is within approximately 230m walking distance east of the site along Windsor Road where there are currently six bus services in operation. Baulkham Hills is part of a future mass transit link between Parramatta and Norwest as identified in Future Transport 2056.

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

## **b) Central City District Plan**

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

- A well-connected city – Planning Priority C7 - Growing a stronger and more competitive Greater Parramatta
- Jobs and skills for the city – Planning Priority C10 - Growing investment, business opportunities and jobs in strategic centres.

The plan seeks to ensure that major projects such as the light rail will deliver faster links between business and improved connections for the workforce and visitors. The plan also acknowledges that strong road links and the ease of parking can reduce impacts on road congestion and improve accessibility for works and visitors, along with walking and cycling links.

The plan also seeks to encourage economic growth through retail expansion in key strategic centres which creates economic and employment growth and also results in places which are community gathering spaces, recreation spaces, cultural and leisure spaces.

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 6: *A Metropolis of Three Cities* requires a well-connected Greater Sydney with new jobs, shops and services in well-located centres with efficient transport connections and safe and convenient walking and cycling routes. This creates a 30-minute city.

A well-connected city will be measured against the outcomes achieved by improved access to metropolitan, strategic and local centres.

Potential indicators: Percentage of dwellings located within 30 minutes by public transport of a metropolitan centre/cluster; Percentage of dwellings located within 30 minutes by public transport of a strategic centre.

Direction 7: Greater Sydney's population growth needs to be supported by economic growth that enhances its productivity, export sectors and global competitiveness.

Jobs and skills for the city will be measured against the outcomes achieved by increased business growth and investment, improved transport connections, economic agglomerations and target sectors.

Potential indicator: Increased jobs in metropolitan and strategic centres.

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

- The proposal will result in increased local employment opportunities during both the construction and operation of the development;
- The proposal has a high level of accessibility given the existing bus stops along Windsor Road and Seven Hills Road.

The proposal is considered satisfactory in regard to the Central City District Plan's Directions for Productivity.

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

- Housing the City – Planning Priority C5 - Providing housing supply, choice and affordability with access to jobs, services and public transport; and
- A City of Great Places – Planning Priority C6 – Creating and renewing great places and local centres, and respecting the District's heritage.

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

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 4: Housing the City: Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. Housing affordability is also a challenge that can affect job and lifestyle choices.

Direction 5: A City of Great Places: The creation and renewal of great places for people, together with better local accessibility through walking and cycling, will achieve local liveability that attracts and retains residents and workers. Great places exhibit design excellence and start with a focus on open spaces and a people-friendly realm.

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

- The proposal will provide a range of unit types which will assist in meeting housing demands;
- The site is within an accessible area serviced by existing public transport and is in close proximity to the Baulkham Hills Town Centre; and
- The proposed will result in an appropriate built form outcome which responds to the desired future modern character of the area;



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

### **c. Local Strategic Planning Statement**

The Hills Future 2036 Local Strategic Planning Statement was endorsed by Council on 22 October 2019 (Minute No. 565) and was formally made on 6 March 2020. The proposal has been considered against the outcomes planned within the Local Planning Strategic Planning Statement and Implementation Plan.

Planning Priorities 7 and 8 give effect to the Central City District Plan providing housing supply, choice and affordability, with access to jobs, services and public transport. It is envisaged that the existing residential areas such as Baulkham Hills will be subject to some new housing to 2036 predominantly as ageing housing stock is renewed. As part of Council's housing strategy it will aim for a supply of apartments for larger households with sufficient space, quality and facilities and encourage affordable housing in areas supported by services and infrastructure. The proposal meets this housing diversity clause by providing an additional 49 dwellings to the precinct comprising a reasonable mix of standard apartment and in-fill affordable housing units.

## **ISSUES FOR CONSIDERATION**

### **1. State Environmental Planning Policy (Planning Systems) 2021**

Clause 2.19(1) of the State Environmental Planning Policy (Planning Systems) 2021 provides that *"Development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act."* The proposal is considered a regionally significant development as it meets the criteria in Schedule 6 of the above SEPP being for the purpose of affordable housing which is one of the purposes identified in Item 5 (Private infrastructure and community facilities over \$5 million). The Development Application is accompanied by a Quantity Surveyor's Report which indicates that the capital investment value (CIV) for the total development has been estimated at \$10,984,658 (GST excl) with the affordable housing component being \$6,041,562.

In accordance with this requirement the Development Application is referred to the Sydney Central City Planning Panel for determination.

### **2. Compliance with the State Environmental Planning Policy (Housing) 2021**

The State Environmental Planning Policy (Housing) 2021 ("Housing SEPP") provides for affordable housing to be developed on land where residential flat buildings are permitted with consent, with at least 20% of the gross floor area of the development to be used for the purposes of affordable housing, and all or part of the development is within an accessible area. The SEPP also provides incentives for the development of affordable housing, including relaxation of development standards and increased floor space ratio provisions.

The Policy also includes the following relevant requirements as per the **"accessible area"** definition that the subject site is within 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 6am and 9pm each day from Monday to Friday and between 8am and 6pm on each Saturday and Sunday. The applicant has provided a survey report demonstrating that the subject site satisfies these requirements.

The Development Application is made under Part 2 Division 1 (In-fill affordable housing) of the Housing SEPP.

The proposal has been assessed against the relevant controls prescribed in the SEPP for in-fill affordable housing and the following table shows the development's performance against the relevant controls of the Policy.

The Development Application is made under Part 2 Division 1 of the SEPP (In-fill Affordable Housing).

The proposal has been assessed against the relevant controls prescribed in the Housing SEPP and the following table shows the development's compliance with the relevant provisions under Division 1 (In-fill affordable housing) Part 2 (Development for affordable housing) under Chapter 2 Affordable Housing of the SEPP.

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
<p><b>Clause 16 Development to which this Division applies</b></p> <p>(1) This Division applies to residential development if—</p> <p>(a) the development is permitted with consent under another environmental planning instrument, and</p>	<p>The site is zoned R4 High Density Residential and residential flat building development is permitted with consent.</p>	<p>Yes</p>
<p>(b) at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and</p>	<p>30 out of the 49 apartment units have a gross floor area of 2,603.8m<sup>2</sup> or 50.41% which will be used for the purposes of affordable housing.</p>	<p>Yes</p>
<p>(c) for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area.</p> <p>Accessible area is defined as land within -</p> <p>(a) 800m walking distance of a public entrance to—</p> <p>(i) a railway station, or</p> <p>(ii) a wharf from which a Sydney Ferries ferry service operates, or</p> <p>(b) 400m walking distance of—</p> <p>(i) a public entrance to a light rail station, or</p> <p>(ii) for a light rail station with no entrance—a platform of the light rail station, or</p>	<p>The development site is within the Greater Sydney Region and is within an accessible area. There are six bus services operating within approximately 230m walking distance east of the site along Windsor Road, and an additional bus service which operates within 450m walking distance north of the site along Seven Hills Road. The existing public transport services available in the vicinity of the site and bus routes and frequencies are illustrated in Attachment 14.</p>	<p>Yes</p>



REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
<p>(c) 400m walking distance of a bus stop used by a regular bus service, within the meaning of the Passenger Transport Act 1990, that has at least 1 bus per hour servicing the bus stop between—</p> <p>(i) 6am and 9pm each day from Monday to Friday, both days inclusive, and</p> <p>(ii) 8am and 6pm on each Saturday and Sunday.</p>		
<p>(d) for development on other land—all or part of the development is within 800m walking distance of land within 1 or more of the following zones or an equivalent land use zone—</p> <p>(i) Zone B1 Neighbourhood Centre,</p> <p>(ii) Zone B2 Local Centre,</p> <p>(iv) Zone B4 Mixed Use</p> <p>(v)</p>	N/A	N/A
<p><b>Clause 17 Floor space ratio</b></p> <p>(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an <b>additional floor space ratio</b> of -</p> <p>(a) if the maximum permissible floor space ratio is 2.5:1 or less—</p> <p>(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or</p> <p>(ii) if less than 50% of the gross floor area of the building will be used for affordable housing—Y:1, where—</p> <p><b>AH</b> is the percentage of the gross floor area of the building that is used for affordable housing.</p>	<p>There is no FSR requirement in The Hills LEP 2019 for the site, however in Council's DCP 2012 there is an FSR control but only for dual occupancy development which is set at a maximum of 0.5:1. The density standard for residential flat development in this precinct is regulated through the person per hectare control in DCP 2012 of up to a maximum of 175 persons per hectare.</p> <p>In the absence of an FSR control for residential flat building development on this site, a typical floor plan has been submitted by the applicant (refer Attachment 13) which demonstrates that a scheme that complies with the persons per hectare control of 175 person per hectare would have an FSR equivalent to 1:1. Utilising this conversion and noting that 50.4% of the GFA of the proposed development will be used for the purposes of affordable housing it would facilitate a FSR of up to</p>	<p>Yes, if population density control for residential flat building is translated or converted into floor space ratio. Refer to FSR variation discussion below.</p>

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
<p><math>Y = AH \div 100</math> or</p> <p>Maximum permissible floor space ratio is defined in the Housing SEPP as “<i>the maximum floor space ratio permitted on the land under an <b>environmental planning instrument</b>, other than this Policy, or a <b>development control plan</b>.</i>”</p>	<p>1.48:1. The application proposes a FSR of 1.46:1 that is consistent with the intent of the clause. However, as Council’s DCP 2012 contains a singular FSR control of 0.5:1 for dual occupancy development, the site is only afforded a total maximum FSR of 1:1 (i.e. including the additional FSR of 0.5:1) as required in Clause 17(1). On this basis, the application was accompanied by a Clause 4.6 written request which seeks to vary the maximum permissible FSR of 1:1 and is provided in Attachment 15.</p>	
<p>(2) The additional floor space ratio must be used for the purposes of affordable housing.</p>	<p>30 of the 49 apartment units with GFA of 2,603.8m<sup>2</sup> or 50.41% which will be used for the purposes of affordable housing.</p>	<p>Yes</p>
<p><b>Clause 18 Non-discretionary development standards – the Act, s 4.15</b></p> <p>1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies –</p> <p>(a) a minimum site area of 450m<sup>2</sup>,</p>	<p>Noted</p> <p>Development site area is 3,552.2m<sup>2</sup>.</p>	<p>Yes</p> <p>Yes</p>
<p>(b) for a development application made by a social housing provider—at least 35m<sup>2</sup> of landscaped area per dwelling,</p>	<p>The application is not made by a social housing provider.</p>	<p>N/A</p>
<p>(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,</p>	<p>The development is required to provide 1,065.7m<sup>2</sup> of landscaping. The proposed landscaped area on the ground floor is 1,361.6m<sup>2</sup> or 38%. Total landscaped area</p>	<p>Yes</p>

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	including Levels 3 and 5 is 1,486.3m <sup>2</sup> or 41.84%.	
<p>(d) a deep soil zone on at least 15% of the site area, where -</p> <p>(i) each deep soil zone has minimum dimensions of 3m, and</p> <p>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p>	<p>Minimum deep soil zone required is 532.83m<sup>2</sup> and the deep soil area proposed is 1,404.1m<sup>2</sup>.</p> <p>Given the extensive front setback required to Yattenden Crescent the development provides the majority of the deep soil within the front setback.</p>	<p>Yes</p> <p>Yes, as it softens the visual impact of the development from the public domain.</p>
(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,	42 of the 49 units or 85.7% will receive at least 3 hours of solar access between 9am and 3pm at mid-winter.	Yes
<p>(f) for a development application made by a social housing provider for development on land in an accessible area –</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or</p> <p>(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,</p>	The development is not made by a social housing provider.	N/A
<p>(g) if paragraph (f) does not apply -</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or</p> <p>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</p>	<p>5 x 1br = 2.5 spaces required</p> <p>25 x 2br = 25 spaces required</p> <p>19 x 3br = 28.5 spaces required</p>	Yes

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
	Total of 56 spaces are required. The development provides 65 parking spaces.	
(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,	The apartments comply with dwelling size specified in the ADG and this is addressed separately below in this report.	Yes, refer to separate discussion below.
(i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	N/A	N/A
(j) if paragraphs (h) and (i) do not apply, the following minimum floor areas -  (i) for each dwelling containing 1 bedroom—65m <sup>2</sup> , or  (ii) for each dwelling containing 2 bedrooms—90m <sup>2</sup> , or  (iii) for each dwelling containing at least 3 bedrooms—115m <sup>2</sup> plus 12m <sup>2</sup> for each bedroom in addition to 3 bedrooms.	N/A	N/A
<b>Clause 19 Design requirements</b>  (1) Development consent must not be granted to development to which this Division applies unless the consent authority has considered the following, to the extent to which they are not inconsistent with this Policy -  (a) the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004,	N/A	N/A

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
<p>(b) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the Low Rise Housing Diversity Design Guide.</p> <p>(2) Subsection (1) does not apply to development to which State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies.</p> <p>(3) Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential development is compatible with-</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for precincts undergoing transition—the desired future character of the precinct.</p>	<p>This is addressed separately below in this report.</p> <p>In accordance with this clause the development is consistent with the emerging character of the precinct including the adjoining 15 storey shop-top housing development and other 4 and 5 storey residential flat buildings in this R4 zoned precinct.</p>	<p>Yes, refer to separate discussion below.</p> <p>Yes</p>
<p><b>Clause 20 Continued application of SEPP 65</b></p> <p>Nothing in this Policy affects the application of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development to residential development to which this Division applies.</p>	<p>This is addressed separately below in this report.</p>	<p>Yes, refer to separate discussion below.</p>
<p><b>21 Must be used for affordable housing for at least 15 years</b></p> <p>(1) Development consent must not be granted under this Division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued -</p>	<p>A condition is recommended requiring the 30 apartments to be managed by a registered Community Housing Provider.</p>	<p>Yes, condition applied – see Condition 4.</p>

REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
<p>(a) the affordable housing component of the residential development will be used for affordable housing, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p> <p>(2) Subsection (1) does not apply to development on land owned by a relevant authority or to a development application made by, or on behalf of, a public authority.</p> <p>(3) In this section— affordable housing component, in relation to development to which this Division applies, means the dwellings used for the purposes of affordable housing in accordance with section 16(1)(b).</p>		
<p>22 Subdivision permitted with consent</p> <p>Land on which development has been carried out under this Division may be subdivided with development consent.</p>	<p>This application does not seek approval for subdivision.</p>	<p>N/A</p>

### **Floor Space Ratio Variation**

As outlined above, the proposal complies with the relevant requirements of the Housing SEPP with the exception of the maximum floor space ratio requirement under Clause 17(1).

Clause 17(1) of the Housing SEPP states in part:

*(1) The **maximum floor space ratio** for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of -*

*(a) if the maximum permissible floor space ratio is 2.5:1 or less -*

*(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1*

Maximum permissible floor space ratio is defined in the SEPP as the maximum floor space ratio permitted on the land under an environmental planning instrument, other than this Policy, or a development control plan (DCP). The site does not have a mapped FSR pursuant to The Hills LEP 2019. The density of apartment buildings in this precinct is effectively regulated through the person per hectare control in The Hills DCP 2012 of up to a maximum of 175 persons per hectare.

A typical layout plan has been prepared by the applicant (refer Attachment 13) that demonstrates that a scheme that complies with the persons per hectare control of 175 persons per hectare would have a FSR equivalent to 0.98:1. Utilising this conversion and noting that 50.4% of the gross floor area comprises affordable housing it could facilitate a FSR of up to 1.48:1. The development proposes a FSR of 1.46:1 that is consistent with the intent of the clause.

However, The Hills DCP 2012 contains a singular control for FSR with the Dual Occupancy chapter of the DCP (Part B Section 3 – Dual Occupancy) in Clause 2.1 Development Control (c) which states:

*“c) The floor space ratio of all dwellings shall not exceed 0.5:1.”*

#### **Clause 4.6 Variation Request**

On this basis the development seeks to vary the DCP control and as a consequence Clause 17(1) of the Housing SEPP.

Given that the 1:1 FSR control (i.e. dual occupancy maximum FSR of 0.5:1 plus additional FSR of 0.5:1) is a development standard, a Clause 4.6 written request is required to seek to vary this standard.

Clause 4.6 of The Hills LEP 2019 provides that development consent may be granted for development even though the development would contravene a development standard, subject to the relevant provisions of the clause are addressed, in particular sub-clauses 3-5 which provide:

*(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.*

The Development Application is accompanied by a written request from the applicant (refer to Attachment 15) that seeks to justify the contravention of the development standard by citing the following relevant case laws:

*“The decision by Chief Judge Preston in a judgement dated 14 August 2018 in the matter of Initial Action Pty Ltd v Woollahra Council which confirmed that the absence of impact was a suitable means of establishing grounds for a departure and also confirmed that there is no requirement for a development that breaches a numerical standard to achieve a ‘better outcome’. It also cited a more recent case law in RebelMH Neutral Bay Pty Limited v North Canterbury Council [2019] NSWCA 130 that have set out to confirm that the approach taken in Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (‘Al Maha’) is also relevant. In simple terms, Al Maha requires that a Clause 4.6 departure will have only adequately addressed Clause 4.6(3) if the consent authority is satisfied the matters have been demonstrated in the Clause 4.6 request itself rather than forming a view by the consent authority itself. This Clause 4.6 request demonstrates the matters of Clause 4.6 (3).*

*The key tests or requirements arising from recent 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 environmental planning grounds that support any variation; and*
- The proposal is required to be in ‘the public interest’.*

*In relation to the current proposal the keys are:*

- Demonstrating that the development remains consistent with the objectives of the maximum floor space ratio standard;*
- Demonstrating consistency with existing streetscape;*
- Demonstrating compliance with objectives of the R4 zone; and*
- Satisfying the relevant provisions of Clause 4.6.”*

This Clause 4.6 variation request deals with the maximum floor space ratio matters and the applicant has addressed each of the provisions under sub-clauses 3-5 as follows:

**“Clause 4.6(3)**

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



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

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

*The judgement goes on to state that:*

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

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

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

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

*Purpose of the standard is not relevant*

*This clause 4.6 is required as The Hills DCP contains a singular control for FSR with the Dual Occupancy chapter of the DCP stating in part:*

*‘The floor space ratio of all dwellings shall not exceed 0.5:1.’*

*In accordance with this principle, it is considered that the purpose of this standard which is to regulate the FSR of dual occupancy developments that are permitted in a range of residential zoned including R2, R3 and R4 zones is not relevant to this development for a residential flat building and on this basis compliance is unnecessary.*

*The density of residential flat buildings is controlled by a density or persons per hectare control in The Hills DCP. This control has been 'translated' into a FSR and this is the appropriate method of considering what the base FSR is for the site.*

*Accordingly in accordance with Wehbe Test two, the DCP standard for dual occupancy development is not relevant to this Residential Flat Development and compliance with this DCP control is unnecessary.*

*Underlying objectives of the standard are achieved.*

*In the alternative it is considered that the underlying objectives of the standard are achieved. The objectives of the standard are to be achieved notwithstanding non-compliance with the standard.*

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

*In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the maximum floor space ratio development standard are stated as:*

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

*(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,*

*(b) to provide for a built form that is compatible with the role of town and major centres.*

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

- The proposal is effectively a technical non compliance and as demonstrated by the submitted architectural plans the planning controls envision a floor space ratio of 1:1 for the site. This development utilises the bonus provisions in the Housing SEPP that facilitates this development having an FSR of up to 1.48:1 and proposes an FSR of 1.46:1. The departure is required to the DCP clause to regulate the bulk and scale of dual occupancy developments that are permissible in zones including R2, R3 and R4;*
- The proposal is located adjacent to the southern boundary of the Baulkham Hills Town Centre and accordingly the FSR departure facilitates higher density development around commercial centres;*
- The recently constructed development to the north of the site benefits from a LEP mapped FSR of 2.7:1. Given this the variation to the FSR control assists with ensuring that the development is compatible with the height of the adjoining development;*
- Given the FSR of the adjoining property to the north being 2.7:1, the variation to the FSR control will not be visually prominent when viewed in the emerging height of buildings in the precinct;*
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality;*

- *The proposal has no unacceptable impact on heritage or other views;*
- *The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct;*
- *The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas;*
- *The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting that greater yield is not achieved over the entire site subject to this development application;*
- *The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors;*
- *The proposal will provide for a number of distinct public benefits:*
  - *Delivery of additional housing within close proximity to the Baulkham Hill Town Centre;*
  - *Creation of jobs during the construction stage;*
  - *Activation of the street level;*
  - *Amenity impacts to adjoining properties are mitigated and the distribution of floor space across the site will not be discernibly different to a built form that is compliant with the FSR control;*
  - *The scale and intensity of the development is consistent with other approved residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.*
- *The proposal has no unacceptable impact on heritage or other views; and*
- *The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct.*

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

#### **Clause 4.6(4)**

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

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.*

*The proposal provides for the housing needs of the community and the resultant apartments are compatible with the existing and likely future character of this high density residential area.*

**Clause 4.6(5)**

*The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18– 003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2021. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.*

*The points contained in Clause 4.6 (5) are a matter for consideration by the consent authority however the following points are made in relation to this clause:*

*a) The contravention of the FSR limit does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and unique site attributes associated with the subject site; and*

*b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the FSR control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality particularly when considering the proposal is consistent with the bulk and scale and building heights of nearby and approved dwellings.”*

**Comment:**

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal will not have any adverse effect on the surrounding locality and is consistent with the future character envisaged for the subject area. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

Clause 4.6(3) of LEP 2019 states:

*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*

**Comment:** The purpose of this standard which is to regulate the FSR of dual occupancy developments that are permitted in a range of residential zoned areas including R4 zone is not relevant to this development for a residential flat building and on this basis compliance is unnecessary. The density of residential flat buildings is controlled by a density or persons per hectare control in The Hills DCP. This control has been ‘translated’ into a FSR and this is the appropriate method of considering what the base FSR is for the site. It is considered that the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances of the case.

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

**Comment:** It is considered that the proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality. The impacts on the amenity of adjoining properties are mitigated and the

distribution of floor space across the site will not be discernibly different to a built form that is compliant with the FSR control.

The scale and intensity of the development is generally consistent with other approved residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.

In view of the above, it is considered that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6 (4) of LEP 2019 states:

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*

Comment: The applicant has adequately addressed the matters required to be addressed by subclause (3).

- (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*

Comment: As detailed above, the proposal is an appropriate development outcome and is consistent with the objectives of the R4 High Density Residential zone.

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

Comment: Council has assumed concurrence under the provisions of Circular PS 08–003 issued by the Department of Planning and Infrastructure.

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

- The applicant's request is well founded.
- The proposed variation results in a development that is consistent with the principles of the Housing SEPP and R4 High Density Residential zone objectives.
- Compliance with the standard is unnecessary or unreasonable in this instance.
- The proposal results in a better planning outcome.
- Sufficient environmental planning grounds exist for the variation to be supported.

In view of the above, it is considered that the variation to the SEPP's maximum floor space ratio standard satisfies Clause 4.6 of LEP 2019.

### **3. Compliance with SEPP 65 – Design Quality of Residential Apartment Development**

As required by Clause 20 in Division 1 Part 2 of the Housing SEPP, the proposal has been assessed against the relevant design quality principles and controls outlined in Schedule 1 of SEPP 65.

The Development Application is accompanied by a design verification statement signed by James Grant (registered architect NSW 6540) of Fortey & Grant Architecture confirming that

the plans prepared for this project achieve the design quality principles set out in Schedule 1 of SEPP 65 for the residential flat development as follows:

**Principle 1: Context and neighbourhood character**

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*

*Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

The site is shaped like a long narrow rhomboid. It is located on the east side of Yattenden Crescent near its intersection with Charles Street. Yattenden Crescent supports low levels of local traffic. The site slopes down from northern back corner to the southern front corner with Charles Street causing a 4m fall across the building's 85m frontage. It also slopes down to the street from the back boundary to the northeast. The design places the main pedestrian entrances in the Yattenden Street frontage and in a position of high visibility.

The existing character of the street is defined by a mixture of old, single dwelling houses. The developments immediately to the north consist of high rise residential flat buildings with ground floor shops. The sites to north and east mark the beginning of the Baulkham Hills retail area. The desired future character of the area is 4 storey residential flat buildings and this is what the site is zoned for. The proposed building fits with the desired future character of the area as such the proposed development type is permissible under current Council's Codes. The proposed development fits into the context of the intended future development of the area.

**Principle 2: Built form and scale**

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

The proposed building is under the allowable height plane for most of its bulk. It is 4 and 5 storeys tall and stepped to accommodate the site's contours. There is no floor area control regulating the scale of the building. The built form and scale is controlled by the height and setbacks. The proposed front and side setbacks comply with both Council's DCP and SEPP 65 requirements. These setbacks control the character of the building in the streetscape. The rear setback is 8m which complies with the 6m setback by SEPP 65 and the 8m setback required by Council's DCP. The rear setback has no impact on the character of the building in the streetscape. The proposed setbacks create a scale of the building that is appropriate for the long-term development prospects of the area.

The objective of clause 3.4 of the DCP is to ensure buildings reflect the existing landform including ridgelines, protect privacy and amenity of the surrounding allotments and minimise overshadowing. The DCP limits the number of storeys for a residential flat building to 4 to meet these objectives. The proposed building is up to 5 storeys tall in places and so does not comply with 3.4(c) of the DCP. It does comply with the objectives of clause 3.4 in that the building form

including the 5 storey part is stepped to fit the landscape and is under the height plane. As the 5<sup>th</sup> storey element is set back from the street the front elevation presents as a 4-storey building and matches the scale or “ridgelines” of allowable development for the area. The concentration of the proposed units on the 5th storey is on the higher northern side where the land slopes upward to northern neighbours reducing the extent of overlooking to a 4 storey or less level. The northern position of the 5th storey eliminates most of the impact on overshadowing – assuming the distance to neighbours on the far side of Yattendon Crescent had not done this already.

For the above reasons the 5-storey part of the proposed design meets all the objectives required in part 3.4 Building Heights.

Care has been taken with all elevations to create interesting and modulated forms which are enhanced by the stepped building form which fits the development to the site. The proposed elevations are strongly articulated, and these articulated forms are emphasised in different colours, materials and fenestration. All elevations are different and demonstrate a response to the site's varying requirements of street frontage address, solar access, views and privacy. The height of the building when viewed from the street is de-emphasised by the building's stepped design which is well under the DCP height control of 16m.

### **Principle 3: Density**

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

Without a floor area control the density of the site's development is controlled by the setback, storey, population density and height controls in council's DCP. The proposed affordable housing unit development complies with all of the requirements as stated in SEPP 65 and all but the maximum number of storey requirements as prescribed in Council's DCP. The proposed design achieves 49 units comprising of 5 x 1 bedroom, 25 x 2 bedroom and 19 x 3 bedroom units which is a good mix of unit types compliant with Council's DCP. A feasibility for a residential flat building that complies with Council's DCP resulted in a design containing a maximum of 30 affordable housing units consisting of 6 x 1 bedroom and 24 x 2 bedroom units. The DCP compliant scheme based on council's population density and unit sizes generates less units of larger sizes. Council's controls result in a development with a low density and large unit sizes matching a more “luxury” style development. This was not the intent of SEPP 65 or the affordable housing scheme and “luxury” housing is clearly not appropriate for the proposed affordable housing design or the development site. The proposed design fully complies with SEPP 65 and delivers a level of density that matches residential flat buildings in the rest of the state.

The site does not have an FSR control. The FSR for a Council compliant scheme was calculated to be 1:1. As such the proposed affordable housing development has been limited to an FSR of 1.5:1 in keeping with the affordable housing floor space ratio bonus. The increase in density allowed to affordable housing projects is meant to encourage the development of these projects. The increase in density proposed by this development is allowable for this reason. The increased proposed density is allowable as the Council's population density requirements are lower than and contrary to the intent and detail of SEPP65 controls.

In addition to restricting unit numbers Council's DCP requires additional car spaces. The proposed affordable housing development is required to provide 56 cars. There are 65 car spaces over two levels of basement car parking proposed. Council's DCP would require 97 car spaces for the complying 30-unit scheme mentioned above. The DCP compliant car park would

need to be accommodated in three levels of basement car parking raising issues of the cost and impact of constructing such a large car park on that site. The larger car park means a denser accommodation of vehicles on site resulting in a greater impact on the local traffic through increased trip numbers. The amount of car spaces required by affordable housing developments is lower than those generated by the DCP compliant scheme. The proposed additional unit numbers generate less cars and trip numbers than the DCP compliant scheme. The DCP compliant scheme would be an expensive over development not suited to the practice or intent of affordable housing development.

#### **Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes.*

*Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.*

65% of units have 2 aspects to encourage cross ventilation. The majority of living area windows are oriented northeast for good solar access. Solar access is controlled with large overhangs to avoid dependence on mechanical ventilation, heating and cooling.

#### **Principle 5: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.*

*Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*

There are a number of large mature trees in the area or on site. The design was developed with the advice of an arborist to minimise the impact of trees that are worth keeping. There is also a landscape plan that details the improvements being made to the site because of this development. Most of the proposed building's boundary setbacks are deep soil allowing for large planting on all sides. The increased rear setback creates a greater opportunity for planting and softening the impact of the street elevation with new trees.

It is proposed to place most the communal open space on the roof. This space is ideal as it is private, secure and receives excellent solar access. It also does not impact on deep soil areas. Paved areas on the roof are softened by planters that line the edges of the building to centralise usable area and screen against overlooking and privacy issues. These planters also contribute to the overall "amount of landscaping provided."

#### **Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*



*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.*

The unit designs are almost 100% SEPP 65 compliant and that in some cases the minimum standards for building amenity have been exceeded. The non-complying areas are 5th floor setback and units per floor. The setback to parts of the 5th floor have not been increased as per SEPP 65 as the site in these areas effectively makes the elevation 4 storeys high and there are no other impacts. The number of units per floor proposed varies from 6 to 18. SEPP 65 recommends 8. This is a minor non-compliance and its impact is softened by the use of two lift cores which half the units per floor to 3 and 9. Units that access a southern aspect enjoy views across Sydney. Ground floor units are well supplied with open space. The plans are efficient and easy to live in. Internal communal spaces receive natural day lighting. The communal open space is generous and well located on the roof.

### **Principle 7: Safety**

*Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.*

31% of the units proposed can perform the role of passive surveillance of the street. The entry to the units is direct and visible.

Private and public space is well defined throughout the development. The level changes at the ground floor helps to separate the private spaces within the development from the public spaces and paths to the street. The pedestrian and vehicular entrances are both clear and un-cluttered and easily surveyed from within the development. The communal open space is secure as it can only be accessed by entering the development first. The two entrances are well defined in the street and are directly accessed from the street.

All building entrances, pathways and driveway will have automatic night lighting. The basement and stairwell will have timer controlled on demand/movement triggered lighting as the case requires. This will optimise safety, security and energy efficiency in those areas.

### **Principle 8: Housing diversity and social interaction**

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.*

*Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.*

The external circulation for the building has been divided into two halves to decrease the number of people directly associating as neighbours and therefore increasing the chances of familiarity with those neighbours. Each half has its own pedestrian entry. The size and style of the proposed apartments should appeal to the local market and will increase the local housing stock in the area thus fulfilling the useful social function of getting people close to services. The affordable housing component increases the diverse nature of the accommodation provided.

The neighbourhood is well supplied with all communal needs. The locality has easy access to a wide range of shops, schools, clubs, parks, restaurants, hospitals and buses within walking distance. The development will allow more people easy access to these services. The design contains a good mix of 1, 2 and 3 bed units. The affordable housing units will be part of the variety of housing types available in the area that already includes, standard units, town houses and individual houses.

### **Principle 9: Aesthetics**

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

*The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

The detailed design of the proposed buildings is of high quality and is likely to appeal to potential occupants. The proposal uses modern forms and a limited materials pallet to pick out major features on the elevation and points of entry. The design of the ground floor open spaces incorporated walls and fences that give the building a base that steps with the site contours and provides detail and texture. The fenestration adds to the level of detail and texture of the proposed building. The external detailing makes an individual statement of the building. Balconies are open and glazed, living rooms and master bedrooms are supplied with large amounts of glazing. Secondary bedrooms are defined by greater wall area with a pattern of finishes and fenestration. In these ways the forms of the building express the function within.

The building elements, materials and colours to be used are consistent with those generally found in quality developments of this type. The Materials schedule demonstrates that the texture of the materials to be used, as well as the materials themselves and their colouring, are consistent with one another and are an improvement on those found in the immediate area. The photomontage also demonstrates this.

The deliberate and consistent manipulation of balconies, finishes and fenestration break up the building into horizontal elements and incorporate and frame the varied colours of the design. This theme emphasises the split levels between the two halves of the building. This avoids the heavy and institutional look of a symmetrical façade and relates to the informal designs of the houses in the area and fits the design to the slope of the land.

### **Comment:**

The proposed design satisfies all the principals of good design and sets a high standard for the desired future development of the area. The design achieves these outcomes with a minimal impact on the existing area.

The following table shows the development's performance against the relevant controls of the Policy.

### **APARTMENT DESIGN GUIDE (ADG) REQUIREMENTS**

<b>Clause</b>	<b>SEPP 65 Requirements – ADG Design Criteria</b>	<b>Proposed Development</b>	<b>Compliance</b>
<b>Part 3 Siting the development</b>			
Communal open space	25% of the site, with a minimum of 50% direct sunlight to the principal usable part of the	The development requires 888m <sup>2</sup> of common open space and provides 1241.5m <sup>2</sup>	Yes

		communal open space for 2 hours at midwinter.	of communal open space (comprising 639.3m <sup>2</sup> at ground level and 602.2m <sup>2</sup> at roof level that equates to 35% of the site area.	
Deep Zone	Soil	<p>7% of site area.</p> <p>On some sites it may be possible to provide a larger deep soil zone, being 10% for sites with an area of 650-1,500m<sup>2</sup> and 15% for sites greater than 1,500m<sup>2</sup>.</p>	<p>The site area is 3,552.2m<sup>2</sup>. The required deep soil generally is 175m<sup>2</sup>. As the site is greater than 1,500m<sup>2</sup>, 15% of the site or 532.8m<sup>2</sup> may be required.</p> <p>The required deep soil for affordable housing is 30% or 1,065.6m<sup>2</sup> with a minimum dimension of 3m. The deep soil provided is 1,404.1m<sup>2</sup> which represents 39.5% of the site.</p> <p>The total deep soil provision exceeds both the Housing SEPP and ADG requirements.</p>	Yes
Separation		<p>Minimum separation distances for buildings:</p> <p>Up to 4 storeys - 6-12m - 12m between habitable rooms (i.e. 6m setback)</p> <p>Up to 8 storeys – 9-18m - 9m between habitable rooms (i.e 9m setback)</p> <p>When applying separation to buildings on adjoining sites, apply half the minimum separation distance measured to the boundary. This distributes the building separation equally between sites.</p>	<p>The proposed development is 4-5 storeys high which requires a 6m setback to the boundary. A minimum 6m setback to the back and side boundaries has been provided.</p> <p>The 5th storey portion of the design has not been set back more than 6m.</p>	No, see comments below.
Visual privacy		Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Visual privacy is provided through reasonable setbacks and window placements. Balconies	Yes

		are positioned to respond to their location on site and on the building. The development has been designed to allow views and passive surveillance of the street while maintaining visual privacy	
Carparking	<p>For development on the following locations:</p> <ul style="list-style-type: none"> <li>• on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• on land zoned, and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>The subject site is not on these identified locations. The parking provision is based on the requirements for in-fill affordable housing under the Housing SEPP.</p> <p>The amount of off-street parking provision exceeds the required number of parking spaces for affordable housing, which is:</p> <p>0.5 space/1 BR dwelling; 1 space per 2 bedroom dwelling; and 1.5 spaces per 3 bedroom dwelling</p> <p>The proposed unit mix and parking requirements are as follows:</p> <p>5 x 1 bedroom = 2.5 spaces 25 x 2 bedroom = 25 spaces 19 x 3 bedroom = 28.5 spaces</p> <p>Total spaces required = 56 spaces</p> <p>Total spaces proposed = 65 spaces</p> <p>The surplus of 9 parking spaces can be allocated for visitors which is</p>	<p>Yes. Clause 18(2)(g) of the Housing SEPP provides development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p>

		technically nor required in the Housing SEPP.	
<b>Designing the Building</b>			
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm mid-winter.	Living rooms and private open spaces of 86% of the apartments receive a minimum of 3 hours direct sunlight between 9am and 3pm at mid-winter. This figure complies with both the SEPP 65 provision and the Housing SEPP requirements.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Satisfactory. No units have a single aspect facing south. All units with a north aspect have living rooms and balconies with a north aspect. All apartments have shallow layouts to maximise natural light and solar access apart from the up-and-over apartments which achieve this requirement by having an aspect at either end of the design.	Yes
Natural ventilation	<p>At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	<p>65% of apartments are naturally cross ventilated. This figure does not include the single aspect units associated with large indents in the façade to encourage natural ventilation.</p> <p>None of the proposed apartments are deeper than 18m.</p>	Yes
Ceiling heights	<p>For habitable rooms – 2.7m. For non-habitable rooms – 2.4m.</p> <p>For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor,</p>	All apartments contain habitable rooms with 2.7m ceiling heights. Non-habitable room ceiling heights are 2.4m. The back of kitchens associated with living and dining spaces is no	Yes

	<p>where its area does not exceed 50% of the apartment area.</p> <p>For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope.</p> <p>If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.</p>	more than 8m from an external window.	
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m<sup>2</sup>  1 bedroom – 50m<sup>2</sup>  2 bedroom – 70m<sup>2</sup>  3 bedroom – 90m<sup>2</sup></p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	<p>There are no studio units proposed. All proposed 1-bedroom unit areas are more than 50m<sup>2</sup>. All proposed 2-bedroom unit areas are more than 70m<sup>2</sup>. All proposed 3-bedroom unit areas are more than 90m<sup>2</sup>.</p> <p>Every habitable room has a window in an external wall greater than 10% of the room's floor area. Kitchens have not been located as part of the main circulation space. All windows are visible from all parts of all habitable rooms.</p>	Yes
Environmental Performance of Apartments	<p>Habitable rooms are limited to a maximum depth of 2.5 x the ceiling height.</p> <p>In open plan layouts the maximum habitable room depth is 8m from a window.</p>	<p>All habitable room depths are less than 2.7 x 2.5 = 6.75m.</p> <p>None of the open plan living layouts are deeper than 8m. Bathrooms and laundries contain external operable windows where possible. Living and bedroom areas are located on the external face of the building. The main living spaces are oriented away from noise sources.</p>	Yes

Apartment Layouts	<p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>All master bedrooms have a minimum area greater than 10m<sup>2</sup>. All other bedrooms have a minimum area of 9m<sup>2</sup>.</p> <p>All bedrooms have a minimum dimension of 3m.</p> <p>All 1-bedroom apartments have a minimum width of 3.6m. All 2 bed, 3 bed and accessible units have a minimum dimension of 4m to living areas.</p> <p>Bedrooms, bathrooms and laundries do not give direct access to living areas. All bedroom robes are more than 1.5m long. All main bedroom robes are greater than 1.8m long in their non-adapted form. The apartment layouts allow for flexible furnishing and contain efficient circulation.</p>	Yes
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m<sup>2</sup> with no minimum depth  1 bedroom – 8m<sup>2</sup> with a minimum depth of 2m  2 bedroom – 10m<sup>2</sup> with a minimum depth of 2m  3 bedroom – 12m<sup>2</sup> with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m<sup>2</sup> with a minimum depth of 3m is required.</p>	<p>All 1-bedroom apartments have balcony areas greater than 8m<sup>2</sup>. All 2-bedroom apartments have balcony areas greater than 10m<sup>2</sup>. All 3-bedroom apartments have balcony areas greater than 12m<sup>2</sup>. All balconies have depths greater than the minimum depth required.</p>	Yes
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m<sup>3</sup>  1 bedroom – 6m<sup>3</sup>  2 bedroom – 8m<sup>3</sup>  3+ bedrooms – 10m<sup>3</sup></p>	<p>50% or more of the minimum storage requirement has been provided within the apartments. Storage is accessible from living and circulation areas.</p>	Yes

	At least 50% of the required storage is to be located within the apartment.	The additional storage required has been provided in the basement and allocated to individual units.	
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment configurations to support diverse household types and stages of life.	<p>A diversity of apartments is proposed as follows:</p> <p>5 x 1 bedroom unit; 25 x 2 bedroom units; and 19 x 3 bedroom units</p> <p>The unit mix will offer a variety of housing choice. The proposal is designed with a mix of units to provide a variety of housing choices that responds to market demand, noting that the bedroom numbers and size of units are varied that will provide for a range of sizes to meet the needs of occupants and also provide different pricing points for the alternative sizes which will contribute to affordability.</p>	Yes

As outlined above, the proposal generally complies with the requirements of SEPP 65 with the exception of building separation.

#### **a) Building Separation**

The separation distance requirement for buildings up to 4 storeys is 6-12m and for buildings up to 8 storeys the required separation distance is 9-18m.

As noted in the table above, the proposed development is 4-5 storeys high which requires a 6m setback to the boundary. A minimum 6m setback to the back and side boundaries has been provided. The 5th storey portion of the design has not been set back more than 6m,

The applicant has provided the following justification addressing this variation:

*"The 5th floor form has no adverse impacts on its surroundings. The existing units to the northeast are set back minimum of 17m to the closest part of the proposed development. Overshadowing from these units are considered by the shadow analysis which shows 86% of the proposed units receiving the 3 hours sun required on the 21st of June between 9am and 3pm.*

*Setbacks on all shared boundaries are consistent with the separation required for a 4-storey building. The northeast setback is 2m more than the 6m required. The access paths are separated from private open spaces. Private open spaces are screened with blade walls and*



*louvers towards views and sunlight and away from the neighbours. Planter boxes have been incorporated into the private open space design to increase privacy and separation from the public domain.”*

**Comment:**

The aims of the building separation requirements in the Apartment Design Guide are as follows:

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

It is considered that the proposal satisfies the aims of the separation distance standard in the ADG as it does not adversely impact upon the amenity of adjoining properties in term of visual and acoustic privacy and will not result in any overshadowing of adjoining properties due to its orientation. The proposed variation is supported in this regard.

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

This SEPP came into effect on 1 March 2022 and incorporated the provisions of three now repealed SEPP's being:

- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
- State Environmental Planning Policy No 55—Remediation of Land.

Chapter 2 of the SEPP contains controls for coastal management and is not applicable to this development.

Chapter 3 of the SEPP contains controls for Hazardous and Offensive Development. This development is not for Hazardous and Offensive development and accordingly this chapter is not applicable to this development.

Chapter 4 of the SEPP contains a state-wide planning framework for the remediation of contaminated land and to minimise the risk of harm.

The following table considers the risk of the site being contaminated:

<b>Matters for Consideration</b>	<b>Yes or No</b>
Does the application involve re-development of the site or a change of land use?	Yes but it will remain as a residential use in a residential zone.
Is the development going to be used for a sensitive land use (e.g. residential, educational, recreational, childcare or hospital)?	Yes, as residential apartments with affordable housing component,
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site?  acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals	No

manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	
Is the site listed on Council's Contaminated land database?	No
Is the site subject to EPA clean-up order or other EPA restrictions?	No
Has the site been the subject of known pollution incidents or illegal dumping?	No
Does the site adjoin any contaminated land/previously contaminated land?	No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	A preliminary site investigation report has been submitted with the application.

A preliminary site investigation report prepared by Geotesta accompanies this Development Application and concludes in part that:

Based on the results of this investigation the following conclusions are drawn:

- The site history, desk study and inspection indicate past activities on the site have a low potential for environmental impacts on the soil and groundwater.
- The results of the lab tests on soil samples show that all the analytes' concentrations are below the site assessment criteria.
- Additional sampling is required after demolition of the existing building and shed to address the data gap due to limited access to the dwelling and shed at time of this investigation.
- In accordance with the Department of Urban Affairs and Planning and Environment Protection Authority Managing Land Contamination: Planning Guidelines, State Environmental Planning Policy No. 55—Remediation of Land 1998, the site is suitable for the proposed land use.

Given the above it is considered that the provisions of the SEPP have been satisfactorily addressed.

## 5. Compliance with The Hills Local Environmental Plan 2019

### i) Permissibility

The subject site is zoned R4 High Density Residential under the Hills LEP 2019. The proposed residential flat building is permitted within the R4 High Density Residential zone under the Hills

LEP 2019. The proposed development satisfies the following objectives of the R4 High Density Residential zone:

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

The proposed development seeks consent to consolidate five lots comprising a total area of 3,552.2m<sup>2</sup> which does not meet the 4,000m<sup>2</sup> minimum lot size development standard for residential flat buildings under Clause 4.1A in LEP 2019. However, as the application is lodged pursuant to the provisions of the State Environmental Planning Policy (Housing) 2021, the site area requirement of 450m<sup>2</sup> prescribed in the SEPP prevails. Clause 18(2)(a) of the SEPP states that development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

## ii) Development Standards

The proposal has been assessed against the LEP 2019 Map Sheets as follows:-

LEP 2019 MAPPING - DEVELOPMENT STANDARDS			
STANDARD	REQUIRED	PROPOSED	COMPLIANCE
Floor Space Ratio	Nil	1.46:1	Not applicable, however it satisfies the Housing SEPP bonus FSR provisions.
Allotment Size	4,000m <sup>2</sup>	3,552.2m <sup>2</sup>	Not applicable, however the proposal exceeds the minimum 450m <sup>2</sup> site area requirement of the Housing SEPP.
Building Height	16m	Max. 17.8m	No. Clause 4.6 variation discussed below.

### a) Building Height

As shown on the above table, the proposal exceeds the maximum height control of 16 metres applicable to the site as shown in the Height of Buildings Map referenced under Clause 4.3 in LEP 2019 by a maximum of 1.8mm and is primarily associated with the lift overrun and elements which are set in from the perimeter of the building (see Attachment 5 for the extent of the variation).

The applicant seeks a variation to the above building height standard pursuant to clause 4.6 of LEP 2019 which allows Council to grant consent 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 of LEP 2019 provides a mechanism to allow a consent authority to consider variations to LEP development standards. Clause 4.6(3) of LEP 2019 reads as follows:

*(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.*

#### **Clause 4.6 Variation Request**

The applicant has submitted a written request (refer Attachment 16) that seeks to justify the contravention of the building height standard as follows:

*“Clause 4.6 of The Hills LEP 2019 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclauses 3-5 which provide:*

*(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.*

*Each of these provisions are addressed in turn.*

**Clause 4.6(3)**

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

*(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*

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

- The proposal is located adjacent to the southern boundary of the Baulkham Hills Town Centre and accordingly the minor height departure facilitates higher density development around commercial centres;*
- The recently constructed development to the north of the site benefits from a LEP mapped height of between 17m and 50m. Given this the slight variation to the height control assists with ensuring that the development is compatible with the height of the adjoining development;*
- The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas given that the development is contained within its own street-block meaning shadows cast by the proposal predominantly fall on the street with the extent of overshadowing is not unreasonable for density envisaged of this scale within this R4 zoned precinct;*
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting the uneven topography is the key driver of the height variation rather than a desire to achieve greater yield on the site;*
- The proposal is predominantly a result of providing access for all to the rooftop common open spaces area that add amenity to the complex and allow future residents to enjoy district views whilst socialising with friends or fellow residents;*
- The portions of the building that exceed the height control are predominantly located towards the centre of the buildings meaning that it will not be highly visible from the street or surrounding residential properties;*
- The proposal provides for a better planning outcome as the same density of apartments could be achieved in a building that is squashed into 4 levels of development with a bigger floor plate that would be less articulated and would be located closer to adjoining properties;*

- *The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors;*
- *The proposal will provide for a number of distinct public benefits:*
  - *Delivery of additional housing within close proximity to the Baulkham Hills Town Centre;*
  - *Creation of jobs during the construction stage;*
  - *Activation of the street level;*
  - *Amenity impacts to adjoining properties are mitigated and the distribution of additional floor space across the site will not be discernibly different to a built form that is compliant with the height control.*
  - *The scale and intensity of the development is consistent with other residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.*
- *The proposal has no impact on heritage or other views; and*
- *The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct.*
- *The variation to the maximum building height control enables delivery of an affordable housing development to expand the availability of affordable rental housing in an accessible area consistent with Objective 3(b) of the Housing SEPP.*
- *The variation to the maximum building height standard enables the 'Objects' of the EP&A Act to be achieved, specifically:*

*(c) to promote the orderly and economic use and development of land, \*

*(d) to promote the delivery and maintenance of affordable housing,*

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

#### **Clause 4.6(4)**

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

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

*The proposal provides for the housing needs of the community and the resultant dwelling is compatible with the existing and likely future character of this high density residential area.*

**Clause 4.6(5)**

*The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18– 003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000.*

*A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.*

*The points contained in Clause 4.6 (5) are a matter for consideration by the consent authority however the following points are made in relation to this clause:*

- a) The contravention of the Height limit does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and unique site attributes associated with the subject site; and*
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality particularly when considering the proposal is consistent with the bulk and scale and building heights of nearby and approved dwellings.*

**Comment:**

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposed building height will not result in any significant adverse impacts on the amenity of the neighbouring buildings in terms of overshadowing, privacy, outlook and amenity. The buildings are appropriately sited, generally observing setbacks and building separation to ensure the privacy of adjoining properties is maintained.

Clause 4.6(3) of LEP 2019 states:

*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*

**Comment:** The height limit currently applied under LEP 2019 is considered to be unreasonable and unnecessary as outlined above. It is considered that the proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality in general.

The proposal provides access to the rooftop common open spaces area that add amenity to the complex and allow future residents to enjoy district views whilst socialising with friends or follow residents.

It is considered that the proposal is consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances of the case.

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

Comment: There are sufficient environmental planning grounds to justify the departure from this control which include the height limit applying to the immediate adjoining mixed use development to the north. The proposal provides for a better planning outcome as the same density of apartments could be achieved in a building that is compressed into 4 levels of development with a bigger floor plate that would be less articulated and would be located closer to adjoining properties. The scale and intensity of the development is consistent with other residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.

Clause 4.6(4) of LEP 2019 states:

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*

Comment: The applicant has adequately addressed the matters required to be addressed by subclause (3).

- (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*

Comment: As detailed above, the proposal is an appropriate development outcome and is consistent with the objectives of the R4 High Density Residential zone.

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

Comment: Council has assumed concurrence under the provisions of Circular PS 08–003 issued by the Department of Planning and Infrastructure.

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

- The applicant's request is well founded.
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the R4 High Density Residential zone objectives.
- Compliance with the standard is unnecessary or unreasonable in this instance.
- The proposal results in a better planning outcome.
- Sufficient environmental planning grounds exist for the variation to be supported.

In view of the above, it is considered that the variation to the building height standard satisfies Clause 4.6 of LEP 2019.

## **6. Compliance with DCP 2012 Part B Section 5 – Residential Flat Building**

The proposed development has been assessed against the relevant development standards and objectives of The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings and is considered satisfactory with the exception of building height (i.e. maximum number of storeys) and building length.



### **a) Building Height – Number of Storeys**

Section 3.4(c) of DCP 2012 Part B Section 5 – Residential Flat Building requires that *“no building shall contain more than 4 storeys above natural ground level”*. The proposal exceeds the four storey limit as it proposes a five storey building. The applicant has provided the following justification in this regard:

*“As illustrated in Attachment 5 portions of the building are five storeys and vary this DCP control. The objectives that relate to this control are as follows:*

*(i) To ensure that buildings reflect the existing landform of the neighbourhood, including ridgelines and drainage depressions.*

*(ii) To protect privacy and amenity of surrounding allotments and residential development in accordance with Council’s ESD objective 7.*

*(iii) To minimise overshadowing of adjoining properties.*

*Despite the numerical departure to the four storey DCP control the revised development is considered to meet the objectives of the clause as:*

- The fifth level within each of the wings is recessed from the street by up to 7m. Given this it will not be highly visible element when viewed from the street in front of the site;*
- Given the orientation of the site and the location of the massing on the fifth level, it will not result in any additional overshadowing;*
- The fifth storey will not result in any unreasonable amenity impacts on surrounding properties;*
- The development seeks approval to provide 30 of the 49 units as affordable housing. In accordance with the Housing SEPP this allows for additional floorspace on the site. This additional floorspace is above that envisioned by the DCP and a portion of it, is appropriately accommodated within the modest fifth floor footprint*
- The development substantially complies with the 16m height control that applies to the site;*
- The building is stepped across the site to respond to the topography of the site;*
- The building adjoins a constructed shop top housing development at 27 Yattenden Crescent that presents as a 6 plus storey building when viewed from Yattenden Crescent. Given this the proposed partial 5 storey building is compatible with the existing bulk and scale in the immediate visual catchment of the site.*

*Given this, it is considered that this issue has been appropriately addressed.*

#### **Comment:**

The predominant height of the residential flat building is generally four storeys when viewed from the public domain with the fifth storey component being a recessive element when viewed from Yattenden Crescent. Given the site’s topography, location and nature of surrounding development, the proposal is unlikely to adversely affect any significant views. The shadow diagrams submitted indicate that adequate solar access at mid-winter would be provided to residential properties across the road and future residential flat buildings on adjoining lots.

The proposed variation to the maximum allowed number of storeys is considered acceptable as the proposal achieves the objectives of the building height standard outlined above. Having regard to the R4 High Density Residential zoning of the site and immediate adjoining properties, it is considered that the proposed development will be consistent in terms of built form and scale.

The variation is considered satisfactory in this regard.

## **b) Building Length**

Clause 3.4A of The Hills residential DCP states: The maximum linear length of any residential flat building is to be 50 metres.

The initial plans submitted with the Development Application had a building length of 82.03m to Yattenden Crescent. In response to the concerns raised both by Council staff and the Panel at the kick-off briefing, the design of the complex has been refined and although the lower two levels of the building are still 82.03m long, a 4.46m wide break has been introduced in Levels 3 to 5 of the apartment complex. As the revised scheme continues to vary this DCP control, the following justification has been provided by the applicant:

*“The objectives of the control are stated as:*

*(i) To reduce the visual bulk and scale of residential flat building developments.*

*(ii) To ensure that developments will enhance and contribute to the streetscape and desired character of the future and existing neighbourhood.*

*Despite the numerical departure at the lower two levels of the building the revised development is considered to meet the objectives of the clause as:*

- The revised development provides a 4.46m wide gap on Levels 3 -5 of the complex. This results in a clear break between the building through which the skyline will be seen. This ensures that the bulk and scale of the building is appropriately broken up;*
- The building is provided with two indents that assist in breaking up the massing of the two wings and this in conjunction with the 4.4m separation provided on level 3 -5 will ensure that the massing is appropriately broken up;*
- The development is located adjacent to the southern boundary of the Baulkham Hills Town centre and adjoins a large Mixed Use Development at 2 Seven Hills Road and 21 Yattenden Crescent within this zone that has a building width well in excess of 50m. Given the visual context of the site and noting that this constructed development visually dominates this portion of Yattenden Crescent, the massing of this building is consistent with the existing built form in the immediate precinct; and*
- The building has been designed to appear as a building in a garden setting which is consistent with the desired future character envisioned by the DCP. Given this, it is considered that this issue has been appropriately addressed.*

### **Comment:**

The introduction of a 4.46m wide gap on Levels 3-5 is considered satisfactory as it assists in breaking up the bulk and scale of the development overall. The development achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding properties. It also achieves an appropriate built form for the site and provides reasonable proportion, articulation and manipulation of building elements which contributes to the streetscape and desired character of the future and existing neighbourhood.

The variation is considered satisfactory in this regard.

## 7. Issues Raised in Submissions

The Development Application was notified to adjoining and surrounding properties and received three submissions. The following issues raised in the submissions are addressed in the table below.

ISSUE/OBJECTION	COMMENT	OUTCOME
With the large apartment building at 21 Yattenden Crescent, not being completed, having many unused apartments, having zero commercial tenants, unfinished elevators and broken glass fencing for many months, it is requested that the builder be carefully vetted to ensure they will complete this building, rather than create another eyesore.	The redevelopment of the site aims to be consistent with the medium to high density character of the locality. It also aims to not only provide an attractive residential flat building that appropriately addresses its frontages to Charles Street and Yattenden Crescent but seeks to utilise the land in accordance with the zoning and take advantage of its proximity to public transport and services. The residential flat building will provide valuable housing opportunities within Baulkham Hills and contribute to housing diversity and affordability.	Issue addressed.
This is unfair to the existing property owners in the building block. It will increase the density of the building block and create noise during construction.	The proposed development will deliver a level of density that is compatible with existing and future residential flat buildings envisaged in the locality especially in the R4 zoned areas.  A condition is recommended to address construction noise.	Issue addressed. Condition applied – see Condition 60.
In regards to the Clause 4.6 Departure - Height, objection is raised to any deviation from the 16m maximum building height rule. This alteration to the 16m building height will have an impact on their views and if allowed it will set a precedent for future developments.	The variation to building height has been addressed in the report and is considered supportable.  The proposal is unlikely to adversely impact on any significant views.	Issue addressed.

## SUBDIVISION ENGINEERING COMMENTS

No objection is raised to the proposal subject to conditions.

## TRAFFIC MANAGEMENT COMMENTS

The application and accompanying traffic impact assessment report has been reviewed by Council's Senior Traffic Engineer and the following comments are provided:

## Traffic Impact

### i) Existing Traffic Environment

- This application proposes to develop 49 apartment units including 67 off-street parking spaces.
- A traffic impact statement has been prepared by Varga Traffic Planning Pty Ltd.
- The site is located on the northeastern corner of Yattenden Crescent and Charles Street.
- Yattenden Crescent and Charles Street are both local roads with a speed limit of 50km/h.
- The intersection of Yattenden Crescent and Charles Street is controlled by Give Way control with Charles Street being the priority.
- One Way northbound restriction applies in Charles Street turning onto Windsor Road.

### ii) Proposed Development - Traffic Generation

Based on the Roads and Traffic Authority Guide to Traffic Generating Developments 2002 and RMS Technical Direction (TDT 2013/04a), the following traffic generation rates which are applicable to the development proposal:

#### **High Density Residential Flat Dwellings**

AM: 0.19 peak hour vehicle trips per unit

PM: 0.15 peak hour vehicle trips per unit

Based on the traffic report provided by the applicant, the total traffic generated from the proposed development will be 10 and 8 vph during the morning and afternoon peak hour respectively.

The report also suggested that the traffic generated from the existing 5 dwellings should be considered in the calculation. Based on the RMS guideline, the traffic generated from the existing properties is listed below:

#### **Low Density Residential Dwellings**

AM: 0.95 peak hour vehicle trips per dwelling

PM: 0.99 peak hour vehicle trips per dwelling

According to the applicant's traffic report, the net increase of traffic generated from the proposed development will be 5 vph and 3 vph during morning and afternoon peak hours respectively.

### iii) Cumulative Impact in Locality

Additional traffic generated from the proposed development is relatively low thus it is unlikely to have a significant impact on the local road network.

### iv) Need for Traffic Improvements in the Locality

Considering traffic improvements have already been implemented in the locality e.g. the widening of Yattenden Crescent and the roundabout facility at the ingress/egress to 27 Yattenden Crescent, no further treatment is considered necessary.

### v) Traffic egress/ingress to arterial/sub-arterial roads

*Access to Windsor Road northbound is primarily via Charles Street and is restricted to left turn only movement. Access to Windsor Road southbound and Seven Hills Road is primarily via Arthur Street which is controlled by traffic signals.*

*As Charles Street is one-way exit only onto Windsor Road, inbound traffic to the site is expected to travel from the traffic signal at the intersection of Seven Hills Road and Arthur Street then turn left at the roundabout at intersection of Arthur Street and Yattenden Crescent.*

vi) *Sight distance and other safety issues*

*The available sight distance for vehicles entering and leaving the site via the proposed driveway access appears to be within acceptable limits for the anticipated traffic speeds.*

*The Applicant has demonstrated that pedestrian sight distance when entering or exiting the property is within acceptable limits of the requirements of AS2890.1-2004 and AS2890.2 - 2018.*

vii) *Access and Circulation*

*It is noted that there is an existing No Stopping (double-arrow) sign located at the proposed driveway location. The applicant will need to relocate the existing No Stopping sign to 1.5m south of the southern wing of the proposed driveway at no cost to Council. The No Stopping sign must be relocated immediately upon or prior to the construction of the driveway.*

*It is also noted that there will be four (4) redundant driveways as a result of the proposed development. All redundant driveways must be reinstated with kerb and gutter in accordance with Council's specifications.*

*Recommendation:*

*There are no objections to the proposal in terms of traffic impact. The following conditions should be included as a condition of consent:*

*1. The applicant must relocate the existing No Stopping (double-arrow) sign on the northeastern corner of the intersection of Yattenden Crescent and Charles Street to 1.5m south of the southern wing of the proposed driveway at no cost to Council. The No Stopping sign must be relocated immediately upon or prior to the construction of the driveway.*

*2. All redundant driveways must be reinstated with kerb and gutter in accordance with Council's specifications.*

**TREE MANAGEMENT & LANDSCAPING COMMENTS**

No objection is raised to the proposal subject to conditions.

**HEALTH & ENVIRONMENTAL PROTECTION COMMENTS**

Council's Environmental Health Officer has assessed the Development Application and reviewed the accompanying acoustic report and contamination report. No objection is raised subject to conditions.

**WASTE MANAGEMENT COMMENTS**

Council's Resource Recovery Assessment Officer has assessed the Development Application and no objection is raised subject to conditions.

## **TRANSPORT FOR NEW SOUTH WALES COMMENTS**

The Development Application has been referred to Transport for New South Wales (TfNSW) for comment in accordance with Clause 3.58 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

TfNSW has reviewed the submitted documents and provided the following comments for Council's consideration in the determination of the application:

1. 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 for approval prior to the issue of a Construction Certificate.

In the preparation of the CPTMP please consider that the five-year reported crash history between 1 July 2016 and 30 June 2021 indicates three (3) rearend related crashes have occurred at the intersection of Windsor Road and Charles Street.

2. Council is to be satisfied that the layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.

3. It is recommended that to support and encourage active transport, bicycle parking facilities are provided within the development or close to it. Bicycle parking should be provided in accordance with AS2890.3.8.

4. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity. Council is to consider whether any pedestrian crossing facilities proposed on the surrounding local roads with the subject development.

## **CONCLUSION**

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, SEPP (Housing 2021), SEPP 65, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered satisfactory.

The Clause 4.6 variations to the FSR and building height standards as prescribed in the Housing SEPP and LEP 2019 respectively are addressed in the report and considered satisfactory. It is considered that the applicant's request is well founded, and the proposed variations result in a development that is consistent with the relevant objectives, and strict compliance with the FSR and building height development standards is unreasonable and unnecessary in this instance as outlined in this report. It is considered that there are sufficient environmental planning grounds to justify the contravention to the FSR and building height standards and the development is in the public interest as it is consistent with the objectives of the standard and R4 high density zone objectives.

The variations to the DCP with respect to the number of storeys and building length have been assessed on merit and are considered satisfactory.

Three submissions were received during the notification period and issues and concerns raised have been addressed in the body of the report and do not warrant refusal of the application.

Accordingly, approval subject to conditions is recommended.

## IMPACTS:

### Financial

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

### The Hills Future - Community Strategic Plan

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

## RECOMMENDATION

The Development Application be approved for the reasons listed below and subject to the following conditions:

- The Clause 4.6 Variation requests to vary the FSR and building height standards as prescribed in the Housing SEPP and LEP 2019 respectively are considered to be well founded, and the proposed variation results in a development that is consistent with the relevant aims and objectives of the standards.
- Compliance with the standards is unreasonable and unnecessary in this instance, and there are sufficient environmental planning grounds to justify the contravention.
- The site is considered suitable for the development.
- The proposal adequately satisfies the relevant state and local planning provisions.
- The proposal will have no unacceptable impacts on the built or natural environments.
- The proposal is in the public interest,

## GENERAL MATTERS

### 1. Development in Accordance with Submitted Plans

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

## REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	SHEET	REVISION	DATE
DA-00	Site Analysis	-	A	30/03/2022
DA-01	Roof and Site Plan	-	D	15/11/2022
DA-02	Basement 2 Plan	-	D	15/11/2022
DA-03	Basement 1 Plan	-	D	15/11/2022
DA-04	Level 1 (Ground) Floor Plan	-	D	15/11/2022
DA-05	Level 2 Floor Plan	-	D	15/11/2022
DA-06	Level 3 Floor Plan	-	D	15/11/2022
DA-07	Level 4 Floor Plan	-	D	15/11/2022
DA-08	Level 5 Floor Plan	-	D	15/11/2022
DA-09	Sections and Height Plane	-	D	15/11/2022
DA-10	Calculations	-	D	15/11/2022
DA-11	South West Elevation (Yattendon Crescent)	-	D	15/11/2022
DA-12	North East Elevation	-	D	15/11/2022
DA-13	South East Elevation (Charles Street)	-	D	15/11/2022
DA-14	North West Elevation	-	D	15/11/2022
DA-15	Long Section	-	D	15/11/2022

DA-16	Entry 1 Section (North)	-	D	15/11/2022
DA-17	Entry 2 Section (South)	-	D	15/11/2022
DA-18	Driveway Section	-	D	15/11/2022
L/01 of 9	Proposed Tree Removal Plan	-	C	25/10/2022
L/02 of 9	Proposed Ground Floor Landscape Plan	-	D	25/11/2022
L/03 of 9	Proposed L3 Landscape Plan	-	B	9/9/2022
L/04 of 9	Proposed L5 Landscape Plan	-	B	9/9/2022
L/05 of 9	Proposed Ground Floor Planting Plan	-	D	25/11/2022
L/06 of 9	Proposed L3 Planting Plan	-	B	9/9/2022
L/07 of 9	Proposed L5 Planting Plan	-	C	25/10/2022
L/08 of 9	Landscape Concept Images	-	B	9/9/2022
L/09 of 9	Landscape Details	-	B	9/9/2022
L/10 of 9	Landscape Specification	-	B	9/9/2022
L/11 of 9	Proposed Landscaped Area Calculation Plan	-	-	25/10/2022
L/12 of 9	Proposed Deep Soil Area Calculation Plan	-	-	25/10/2022
-	Street/Unit Numbering Plans (5 Pages – for numbering purposes only)	-	-	-

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

## **2. External Finishes**

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

## **3. Provision of Parking Spaces**

The development is required to be provided with 65 off-street car parking spaces and 18 bicycle spaces. These parking spaces shall be available for off street parking at all times.

## **4. Compliance with SEPP (Housing) 2021**

The affordable housing component of the approved development (total of 30 apartment units) is required to comply with the following requirements pursuant to SEPP (Housing) 2021 –

- (a) the household:
  - (i) has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW—
    - (A) very low income household—less than 50%,
    - (B) low income household—50—less than 80%,
    - (C) moderate income household—80—120%, and
  - (ii) pays no more than 30% of the gross income in rent, or
- (b) the household—
  - (i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and



- (ii) pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.
- (c) For at least 15 years from the date of the issue of the occupation certificate:
  - (a) the affordable housing component of the residential development (total of 30 apartment units) will be used for affordable housing, and
  - (b) the affordable housing component will be managed by a registered community housing provider.

### **5. Construction Certificate**

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

### **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.

### **7. 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.

### **8. Access and Loading for Waste Collection**

Minimum vehicle access and loading facilities must be designed and provided on site in accordance with Australian Standard 2890.2-2002 for the standard 8.8m long Medium Rigid Vehicle (minimum 3.5m clear vertical clearance exception). The following requirements must also be satisfied.

- All manoeuvring areas for waste collection vehicles must have a minimum clear vertical clearance of 3.5m. Any nearby areas where the clear headroom is less than 3.5m must have flexible striker bars and warning signs as per Australian Standard 2890.1 to warn waste collection contractors of the low headroom area.
- All manoeuvring and loading areas for waste collection vehicles must be prominently and permanently line marked, signposted and maintained to ensure entry and exit to the site is in a forward direction at all times and that loading and traffic circulation is appropriately controlled.
- Pedestrian paths around the areas designated for manoeuvring and loading of waste collection vehicles must be prominently and permanently line marked, signposted and maintained (where applicable) for safety purposes.
- The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three point turn).
- The designated waste service bay must allow additional space servicing of bins (wheeling bulk bins to the back of the waste collection vehicle for rear load collection).
- The loading area must have a sufficient level of lighting and have appropriate signage such as “waste collection loading zone”, “keep clear at all times” and “no parking at any time”.
- Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of medium OR heavy vehicles, remote access or alternative solution which ensures there is no requirement for waste collection

contractors to exit the cab. Copies of scan cards or remotes must be provided to Council upon the commencement of waste services.

### **9. Communal Composting Areas**

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

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

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

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

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

### **11. 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.

### **12. 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.

### **13. Construction of Collection and Temporary Waste Storage Area**

The waste storage area must be designed and constructed in accordance with the following requirements. The collection area must provide minimum storage facility for 6 x 1100 litre garbage and 6 x 1100 litre recycle bins. There must also be available space for the future storage of 240 litre food organic/garden organic (FOGO) bins once the service is implemented by Council. The temporary area must provide minimum storage facility for 3 x 1100 litre garbage and 3 x 1100 litre recycle bins.

- The waste storage area must be of adequate size to comfortably store and manoeuvre the total minimum required number of bins as specified above.
- The layout of the waste storage area must ensure that each bin is easily accessible and manoeuvrable in and out of the areas with no manual handling of other bins. All internal walkways must be at least 1.5m wide.
- The walls of the waste storage area must be constructed of brickwork.
- The floor of the waste storage area must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer. The rooms must not contain ramps and must be roofed (if located external to the building).
- The waste storage area must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors (preferred). The waste servicing door must be supplied with a lock through Council's Waste Management Master Key System 'P3520'. See Condition 72 titled 'Installation of Master Key System to Waste Collection Room' for further details.
- The waste storage area must have a resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors. The resident access door must be separate to the waste servicing door.
- All doors of the waste storage area, when fully opened, must be flush with the outside walls and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened.
- The waste storage area must be adequately ventilated (mechanically if located within the building footprint). Vented waste storage areas should not be connected to the same ventilation system supplying air to the units.
- The waste storage area must be provided with a hose tap (hot and cold mixer), connected to a water supply. If the tap is located inside the waste storage area, it is not to conflict with the space designated for the placement of bins.
- The waste storage area must be provided with internal lighting such as automatic sensor lights.
- The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance is this grade to be exceeded. It is to allow the safe and efficient servicing of bins.
- The waste storage area must have appropriate signage (Council approved designs) mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation
- Finishes and colours of the waste storage area are to complement the design of the development.

#### **Example Bin Measurements (mm)**

240L: 735 (d) 580 (w) 1080 (h) 660L: 850 (d) 1370 (w) 1250 (h) 1100L: 1245 (d) 1370 (w) 1470 (h)

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

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

**The overall property address for this development is: - 25 Yattenden Crescent, Baulkham Hills**

Approved unit numbering is as per plans submitted marked as DWG No DA-04 – DA-08 (inclusive) Rev D dated 15/11/2022 and marked up as 'Numbering Plans' by Council's Land Information Team within consent documentation; and as follows:

<b>Level</b>	<b>Building A</b>	<b>Building B</b>
Ground	G01 – G09	G10 – G18

One	101 – 103	104-106
Two	201 – 203	204 – 206
Three	301 – 307	308 – 316
Four	401 – 402	403

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

Under no circumstances can unit numbering be repeated or skipped throughout the development regardless of the floor level, building name or number.

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

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

#### Mailboxes

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

Cluster mailboxes are to be located as shown on plans submitted marked as DWG No DA-04 Rev D Dated 15/11/2022 and marked up as 'Numbering Plan' by Council's Land Information Team within consent documentation. Cluster mailboxes are to be located within the site on the public footpath boundary within easy reach from a public road for the postal delivery officer.

The number of mailboxes to be provided is to be equal to the number of units plus one (1) for the proprietors of the development and be as per Australia Post size requirements. The proprietors additional mail box is to be located within the cluster located at Building A.

#### Strata Developments

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

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

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

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

#### **15. Existing No Stopping Sign & Redundant Driveways**

The existing No Stopping (double-arrow) sign on the northeastern corner of the intersection of Yattendon Crescent and Charles Street must be relocated to 1.5m south of the southern wing of the proposed driveway at no cost to Council. The No Stopping sign must be relocated immediately upon or prior to the construction of the driveway.

All redundant driveways must be reinstated with kerb and gutter in accordance with Council's specifications.

## **16. Compliance with Transport for New South Wales Requirements**

Compliance with the following relevant requirements outlined in the letter by Transport for New South Wales dated 31 May 2022, as follows:

1. A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control shall be submitted to Council for approval prior to the issue of a Construction Certificate.

In the preparation of the CPTMP please consider that the five-year reported crash history between 1 July 2016 and 30 June 2021 indicates three (3) rear-end related crashes have occurred at the intersection of Windsor Road and Charles Street.

2. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.

3. To support and encourage active transport, bicycle parking facilities are to be provided within the development or close to it. Bicycle parking should be provided in accordance with AS2890.3.8.

## **17. Tree Removal**

Approval is granted for the removal of seventy-five (75) trees numbered and located as 1-4, 7-27 and 29-78 within the Arboricultural Impact Report prepared by Monaco Designs dated 24/05/22.

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.

## **18. Planting Requirements**

All trees planted as part of the approved landscape plan pursuant to Condition 1 of this consent are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m<sup>2</sup>.

The following minimum soil depths must be achieved for all planting over slab:

- a) 1.2m for large trees or 800mm for small trees;
- b) 650mm for shrubs;
- c) 300-450mm for groundcover; and
- d) 200mm for turf.

Note: this is the soil depth alone and not the overall depth of the planter, and that mounding to achieve soil depth is not supported.

## **19. 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 Arborist report prepared by Monaco Designs PL dated 24/05/22 and the following requirements:

- No level changes between the basement extent and the boundary within the TPZ of Tree 28 (*Eucalyptus torelliana*) is permitted.
- No stormwater pipes or pits are
- The basement construction within the TPZ of Tree 28 must be contiguously piled to prevent over excavation within the TPZ of Tree 28.
- Stormwater piping is to be located directly adjacent the basement wall within the TPZ of Tree 28.

## **20. Separate Application for Strata Subdivision**

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

## **21. 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.

## **22. Minor 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.

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. The application form for a minor engineering works approval is available on Council's website and the application and inspection fees payable are included in Council's Schedule of Fees and Charges.

### **a) Driveway Requirements**

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's Driveway Specifications.

The proposed driveway/s must be built to Council's medium duty standard.

The driveway must be minimum 6m wide at the boundary splayed to 8m wide at the kerb.

The driveway must be a minimum of 6m wide for the first 6m into the site, measured from the boundary.

On high level sites a grated drain must be provided on the driveway at the property boundary.

A separate vehicular crossing request fee is payable as per Council's Schedule of Fees and Charges.

### **b) Disused Layback/ Driveway Removal**

All disused laybacks and driveways must be removed and replaced with kerb and gutter together with the restoration and turfing of the adjoining footpath verge area. Specifically, this includes the removal of any existing laybacks, regardless of whether they were in use beforehand or not.

### **c) 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.

### **d) 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.

### **23. 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.

### **24. Street Trees**

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

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

### **25. 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.

### **26. Road Opening Permit**

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

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

### **27. Vehicular Access and Parking**

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

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

Where conflict exists the Australian Standard must be used.

The following must be provided:

- The driveway shown in close vicinity of the existing drainage pit must be realigned to provide a 500mm setback from the edge of the lintel to the layback. Alternatively, the drainage pit shall be relocated as required by this consent under the condition relating to OSD.
- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site. In rural areas, all driveways and car parking areas must provide for a formed all weather finish.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

### **28. Screening of Services**

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

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

### **29. Design Verification**

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

### **30. Section 7.12 Contribution**

Pursuant to section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan, a contribution of **\$140,250.00** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 7.12 Contributions Plan.

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

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

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

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

Prior to a Construction Certificate being issued, a Certified Practising 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 8.8m long medium rigid vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.



### **32. Acoustic requirements**

Prior to the issue of the Construction Certificate, plans and specifications are to stipulate that:

- All external windows and doors are required to be fitted with Q-Ion type acoustic seals.
- The window/door suppliers should provide evidence that the systems proposed have been tested in a registered laboratory and comply with the minimum listed  $R_w$  criteria below:

<b>Façade</b>	<b>Level</b>	<b>Space</b>	<b><math>R_w</math> rating</b>	<b>Acoustic seals</b>
Yattenden Crescent	All	Bedroom	29	Yes
		Living	29	Yes
All other facades	All	Bedroom	31	Yes
		Living	31	Yes

- The external walls are to be comprised of masonry or concrete.
- The external roof is to be constructed of concrete.
- All mechanical plant is to be selected and located to achieve the following criteria:

<b>Time Period</b>	<b>Project Noise Emission Goal dB(A) <math>L_{Aeq}</math>, 15 min</b>
Day	53
Evening	43
Night	38

Day - 7am – 6pm Monday – Saturday; 8am – 6pm Sunday & Public Holidays

Evening - 6pm – 10pm – all days

Night - 10pm – 7am Monday – Saturday, 10pm – 8am Sunday & Public Holidays

### **33. Landscape Plan**

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

The plan must indicate:

- Retaining walls consistent with the location on architectural plans;
- Planting and structures removed from the 2m Yattenden Crescent land dedication setback;
- Proposed street tree planting to Yattenden Crescent in accordance with the Street Trees condition of this consent;
- Fencing and wall locations and materials;
- Top of Wall (TOW) levels for all planter boxes over slab to demonstrate achieved soil depth;
- Wall finish details pursuant to the Landscaping Integration with OSD Condition of this consent; and
- Any amended stormwater details and OSD details pursuant to the Landscaping Integration with OSD Condition of this consent.

### **34. 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.

### **35. Landscaping Integration with OSD**

An amended OSD design is to be submitted to the satisfaction of Council's Manager-Environment and health prior to the issue of Construction Certificate.

The plan must include a long section through the OSD from the east to south which demonstrates that pits within underground section of OSD meet the finished landscape level (N.G.L).

Soil depth over OSD is to be minimum 800mm depth.

The exposed OSD wall facing Yattendon Crescent and Charles Street is to be provided with a high quality landscape finish such as feature cladding/tiling, or a rendered and painted finish in a colour to match the development.

### **36. Stormwater Management – Upper Parramatta River Catchment Area**

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The Stormwater Drainage Works prepared by SKY Engineering and Project Management Ref: SY22-045 Drawings C-0300, C-0302, C-0310 Issue B dated 18/10/2022 and C-0330 Issue D dated 24/11/2022 are for development application purposes only and are not to be used for construction. The detailed design must reflect the stormwater concept plan and the following necessary changes:

- a) Relocate the existing Kerb inlet drainage pit shown on the Basement 1 plan drawing No. DA-03 to provide a minimum 500m setback from the edge of the pit to the edge of the driveway. Alternatively realign the driveway to maintain the setback required above.
- b) Ensure all drainage structures are to be kept clear of the 2m road widening required under this consent.

Water sensitive urban design elements, consisting of Rainwater Tank, PSorb Storm Filters Ocean Guard Baskets 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.

### **37. 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.

### **38. 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 \$164,000.00 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 (184m) 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.

### **39. 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.

### **40. Notice of Requirements**

The submission of documentary evidence to the Certifying Authority, including a Notice of Requirements, from Sydney Water Corporation confirming that satisfactory arrangements have been made for the provision of water and sewerage facilities.

Following an application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water / sewer extensions can be time consuming and may impact on other services and building, driveway and landscape design.

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

### **41. Management of Building Sites**

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

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

#### **42. Consultation with Service Authorities**

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

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

#### **43. Approved Temporary Closet**

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

#### **44. Stabilised Access Point**

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

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

##### **Details**

Prior to work commencing, submit to the Principal Certifier notification in writing of the principal contractor's (builder) name, address, phone number, email address and licence number. Before work commences, details of the Principal Certifier, in accordance with Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, is to be lodged on the NSW Planning portal.

##### **Signage**

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

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

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

#### **46. 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.

#### **47. 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.

#### **48. Discontinuation of Domestic Waste Services**

Council provides a domestic waste service to the property subject to this Development Application. This service must be cancelled prior to demolition of the existing dwelling or where the site ceases to be occupied during works, whichever comes first. You will continue to be charged where this is not done. No bins provided as part of the domestic waste service are to remain on site for use by construction workers, unless previous written approval is obtained from Council. To satisfy this condition, the Principal Certifying Authority must contact Council Customer Service on (02) 9843 0555 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.

#### **49. Construction and/or Demolition Waste Management Plan Required**

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

#### **50. 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.

#### **51. Protection of Existing Trees**

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

Prior to demolition, tree protection fencing for Tree 28 is to be erected in accordance with the Tree Protection Zone Plan within the Arboricultural Impact Report prepared by Monaco Designs dated 24/05/22 and certified to be in accordance with the plan by the Project Arborist. Boundary fencing is to be maintained to protect neighbouring trees 5 and 6.

Fencing is to restrict the following occurring:

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

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

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

The installation of services within the tree protection zone is not to be undertaken without the direct supervision of the Project Arborist.

Tree Protection Fencing must only be removed or relocated under written direct of the Project Arborist. All works when fencing is relocated is to be under the direct supervision of the Project Arborist.

#### **52. 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.

### **53. 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.

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

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

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

### **55. 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.

## **DURING CONSTRUCTION**

### **56. Hours of Work**

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

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

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

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

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

A survey report and site sketch signed and dated (including contact details) by the registered land surveyor may be requested by the Principal Certifier during construction. The survey shall confirm the location of the building/structure in relation to all boundaries and/or levels. As of September 2018 the validity of surveys has been restricted by legislation to 2 years after issue.

### **58. Compliance with BASIX Certificate**

Under Section 75 of the Environmental Planning and Assessment Regulation 2021, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 1289177M\_02 dated 31 March 2022 is to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

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

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

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

### **60. Construction Noise**

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

The following measures are to be taken to mitigate any noise exceedances:

- Internal demolition works are to be conducted where possible while leaving the façade intact to provide noise screening from internal works.
- The use of quieter equipment is to be done where possible.
- Work vehicles, trailers and concrete trucks are to turn off their engines when on site.
- Engine shrouding or industrial silences fitted to exhausts are to be used for work vehicles and concrete trucks when on site.
- Where there are continuous noise exceedances, respite periods are to be provided.

In the event of complaints, attended measurements of noise, or vibration monitoring will be required to be undertaken by the applicant or developer.

### **61. Contamination**

Ground conditions are to be monitored and should evidence such as, but not limited to, imported fill and/or inappropriate waste disposal indicate the likely presence of contamination on site, works are to cease, Council's Manager- Environment and Health is to be notified and a site contamination investigation is to be carried out in accordance with the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

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

### **62. Mechanical Plant**

The specification and location of mechanical plant should be confirmed with an acoustic engineer prior to installation on site.

### **63. 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.

### **64. Project Arborist**

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

All works within the TPZ including the basement construction of tree 28 are to be directly supervised by the Project Arborist.

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

**65. Landscaping Prior to Issue of any Occupation Certificate**

Landscaping of the site shall be carried out prior to issue of an Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan (pursuant to Condition 1 of this consent) by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

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

**66. Design Verification Certificate**

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

**67. Clearance Certificate**

On completion of the asbestos removal works a Clearance Certificate in accordance with Clause 474 of the Work Health and Safety Regulation 2017 shall be provided to the Principal Certifier.

**68. Internal Pavement Construction**

Prior to any Occupation Certificate being issued, a Certified Practicing Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a 8.8m long medium rigid vehicle when fully laden (i.e. 28 tonnes gross vehicle mass).

**69. Final Inspection of Waste Storage Area(s)**

Prior to any Occupation Certificate being issued, a final inspection of the waste storage area(s) and associated management facilities must be undertaken by Council's Resource Recovery Project Officer. This is to ensure compliance with Council's design specifications and that necessary arrangements are in place for domestic waste collection by Council and its Domestic Waste Collection Contractor. The time for the inspection should be arranged at least 48 hours prior to any suggested appointment time.

**70. Provision of Signage for Waste Storage Areas**

Prior to any Occupation Certificate being issued, a complete full set of English and traditional Chinese waste education signage (garbage, recycling and no dumping) must be installed in a visible location on every internal wall of all waste storage areas. The signage must meet the minimum specifications below and must be designed in accordance with Council's approved artwork. Waste signage artwork can be downloaded from Council's website; [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au).

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

**71. Domestic Waste Collection Risk Assessment**

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



## **72. Installation of Master Key System to Waste Collection Room**

Before the issue of an Occupation Certificate, the site project manager must organise with Council's contractor to install a lock box fitted with Council's Waste Management Master Key System 'P3520'. The lock box shall store site specific keys for Council's Contractor to access the waste holding room. The lock box fitted with Council's Master Key system is to be installed through Council's contractor at the cost of developer. Please contact Council's Resource Recovery Assessment Officer to organise the installation.

## **73. Acoustic Requirements Verification**

Prior to the issue of the occupation certificate, an acoustic engineer employed by a firm that is a member of the Association of Australasian Acoustical Consultants shall confirm in writing to the Certifier that the acoustic controls within this consent have been complied with.

## **74. Insect and Odour Control**

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

## **75. Completion of Engineering Works**

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

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

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

## **77. Public Road Widening Dedication - Final Plan and Section 88B Instrument**

An Occupation Certificate must not be issued until the proposed public roads/ road widening have been dedicated in accordance with the undertaking submitted relating to dedication of Yattenden Crescent road widening.

The final plan and Section 88B Instrument prepared using Council's standard recitals for the following must be provided for Council's endorsement.

### **a) Dedication – Road Widening**

The dedication of the proposed road widening must be included on the final plan in accordance with the undertaking submitted relating to dedication of Yattenden Crescent.

## **78. Consolidation of Allotments**

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

## **79. 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.

#### **80. Water Sensitive Urban Design Certification**

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

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

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

#### **81. Creation of Restrictions/ Positive Covenants**

Before an Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via dealing/ request document or Section 88B instrument associated with a plan. Council's standard recitals must be used for the terms:

##### **a) Restriction – Bedroom Numbers and Number of Affordable Housing Units**

The subject site must be burdened with a restriction using the “bedroom numbers” and “number of affordable housing units” terms included in the standard recitals.

##### **b) Restriction/ Positive Covenant – Onsite Stormwater Detention**

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

##### **c) Restriction/ Positive Covenant – Water Sensitive Urban Design**

The subject site must be burdened with a positive covenant that refers to the water sensitive urban design elements referred to earlier in this consent using the “water sensitive urban design elements” terms included in the standard recitals.

##### **d) Positive Covenant – Stormwater Pump**

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

##### **e) Positive Covenant – Onsite Waste Collection**

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

#### **82. 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.

### **83. 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.

### **84. 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).

### **85. Pump System Certification**

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

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

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

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

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

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

### **87. 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.

### **88. 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.

## **THE USE OF THE SITE**

### **89. Restrictions on use of communal open space**

The proposed communal open space is not to be used between the hours of 10pm-7am and no music is allowed in the communal open space at any time.

### **90. Waste and Recycling Management**

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

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Map
3. Zoning Map
4. Building Height Map
5. Building Height Plane Showing Extent of Variation
6. Site Plan
7. Floor Plans (4 pages)
8. Elevations (2 pages)
9. Sections (2 pages)
10. Mid-Winter Shadow Diagrams
11. Perspectives
12. Tree Removal Plan & Landscape Plans
13. Layout of a DCP Compliant Built Form for Purposes of Density Calculations
14. Public Transport Services Available in the Vicinity of the Site and Bus Routes & Frequencies (2 pages)
15. Clause 4.6 Variation Request – Floor Space Ratio (12 pages)
16. Clause 4.6 Variation Request – Building Height (12 pages)

## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSION RECEIVED

ONE SUBMISSION RECEIVED  
OFF THE SCOPE OF THIS MAP

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL


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

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



## ATTACHMENT 2 – AERIAL MAP



 SUBJECT SITE

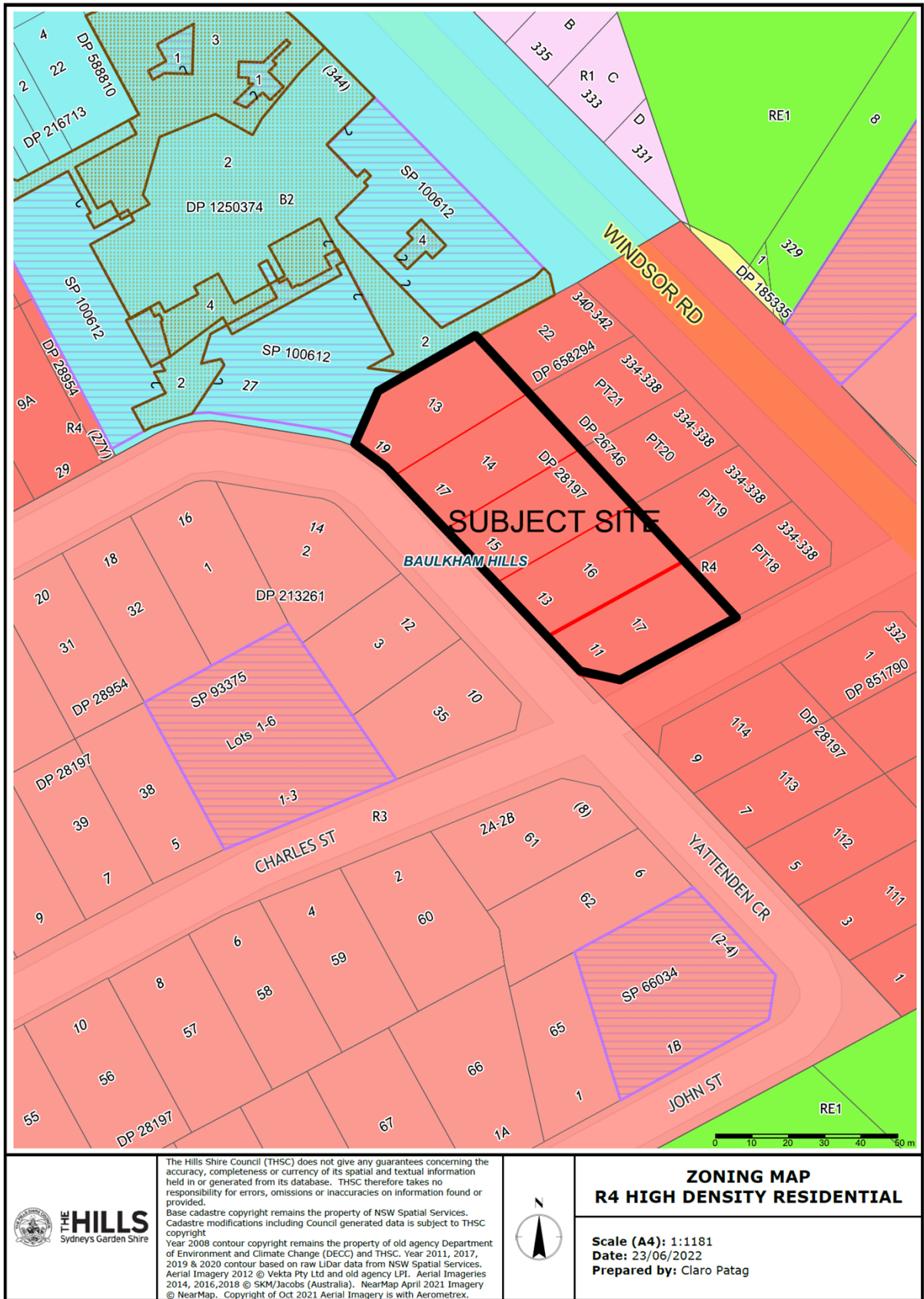
**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

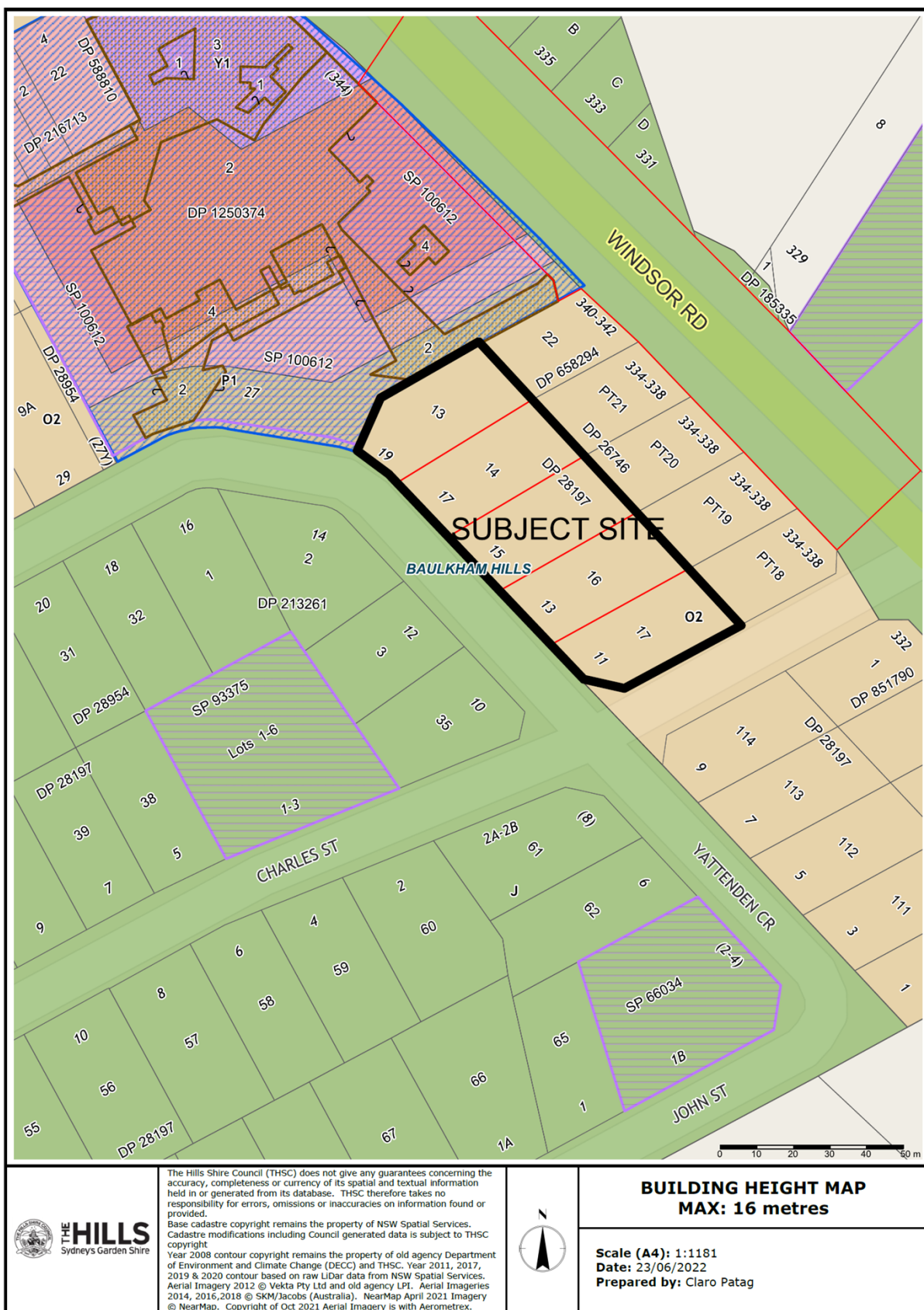
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE  
BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THIS COPYRIGHT.



## ATTACHMENT 3 – ZONING MAP

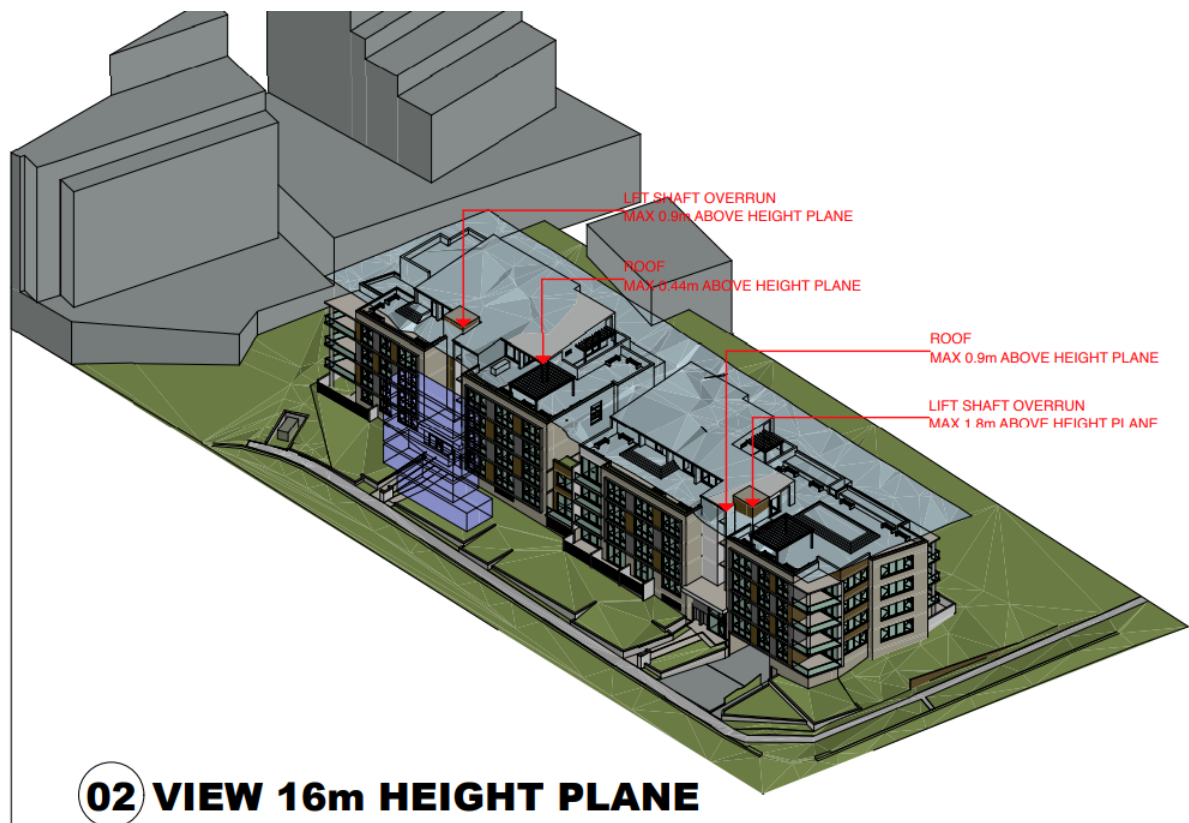
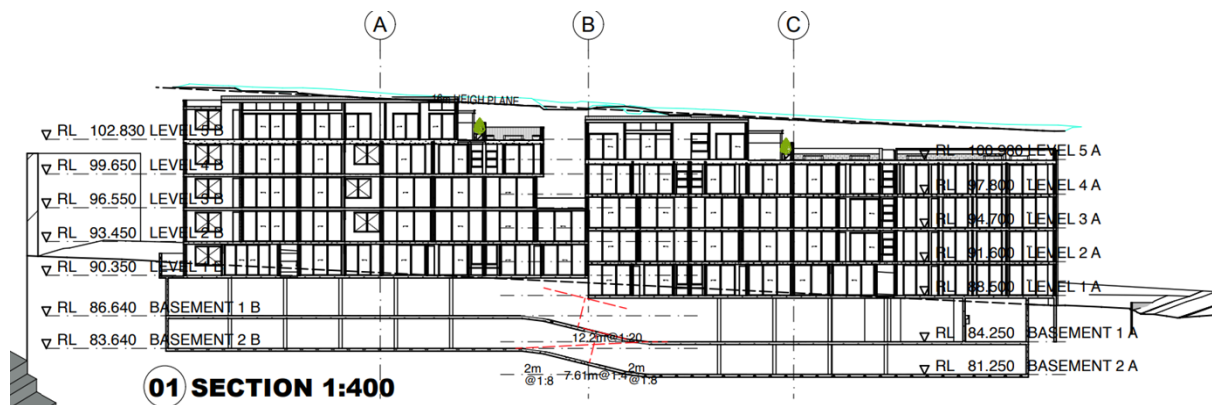


## ATTACHMENT 4 – BUILDING HEIGHT MAP





## ATTACHMENT 5 – BUILDING HEIGHT PLANE SHOWING EXTENT OF VARIATION



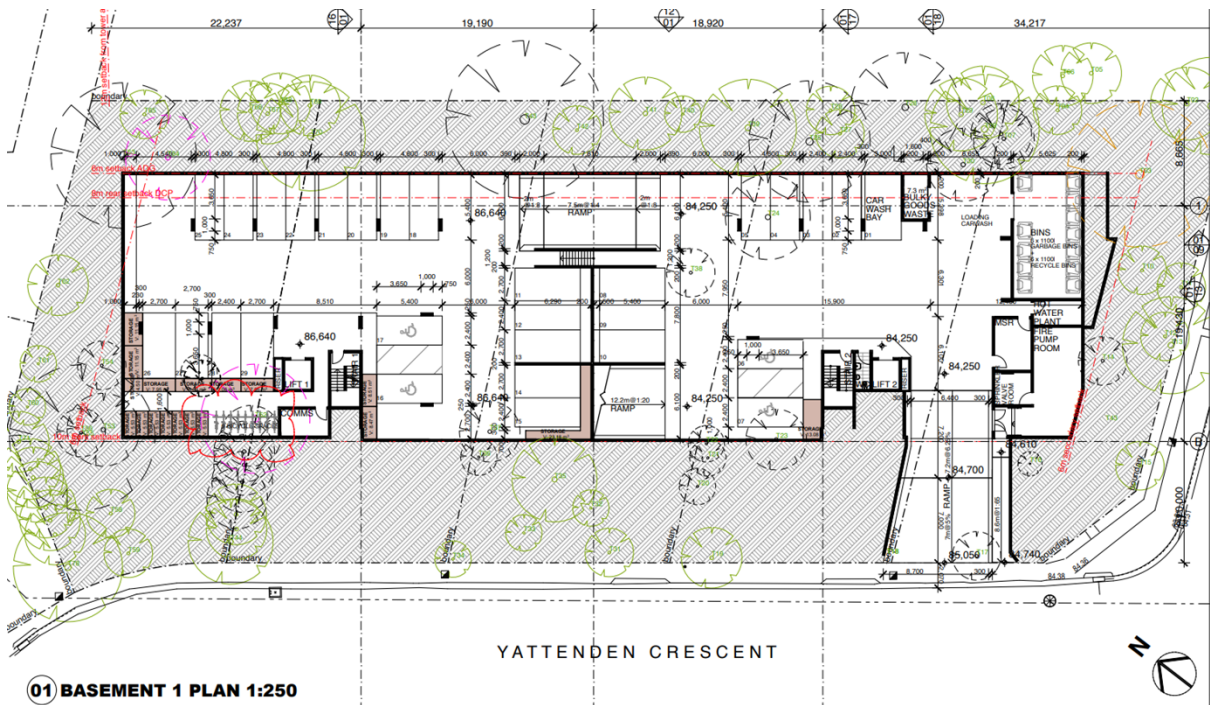
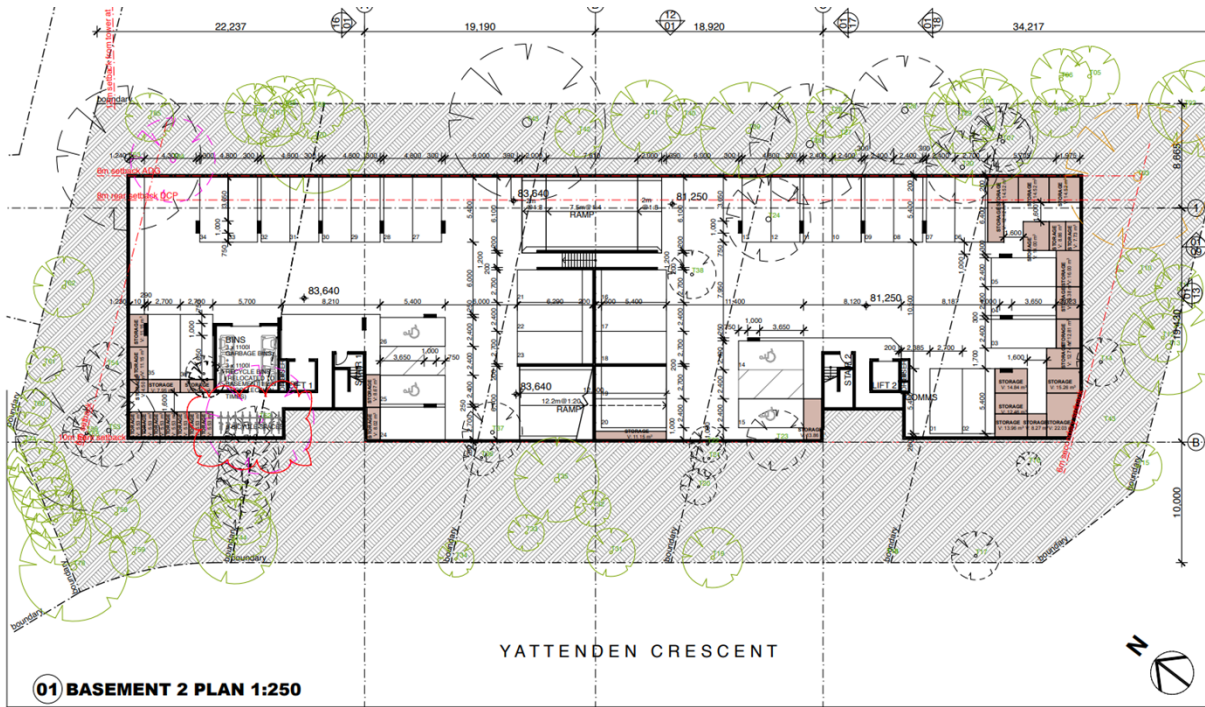
# ATTACHMENT 6 – SITE PLAN



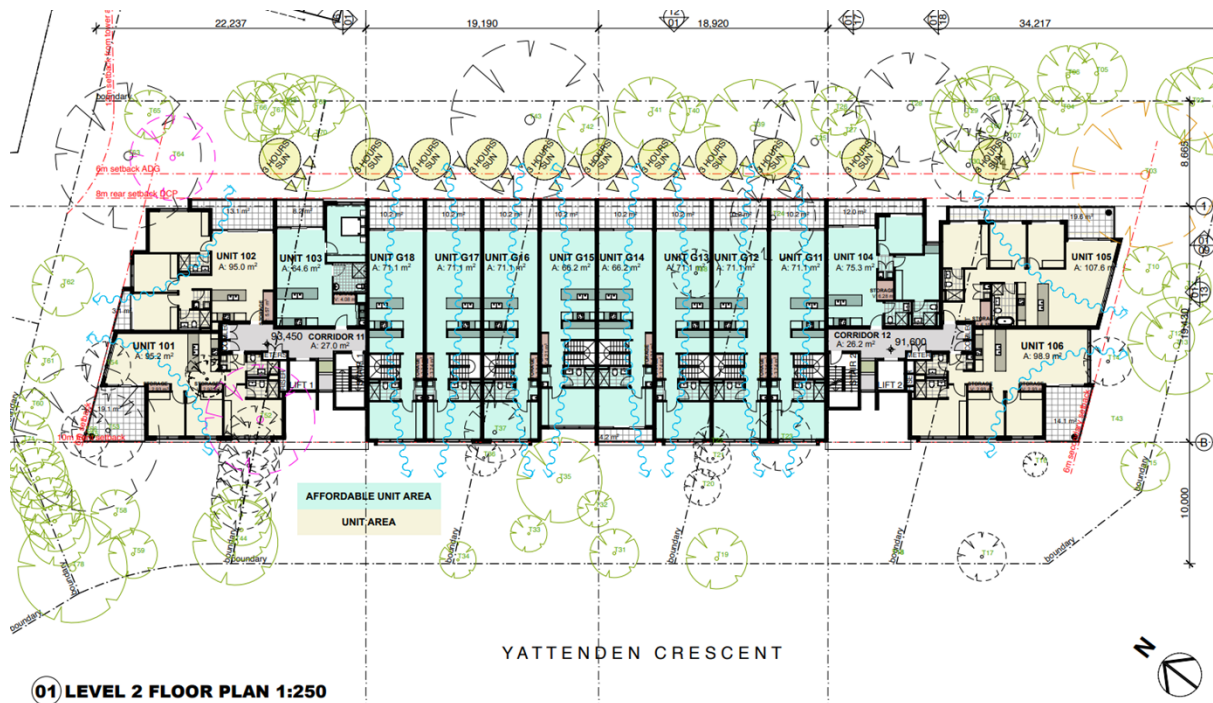
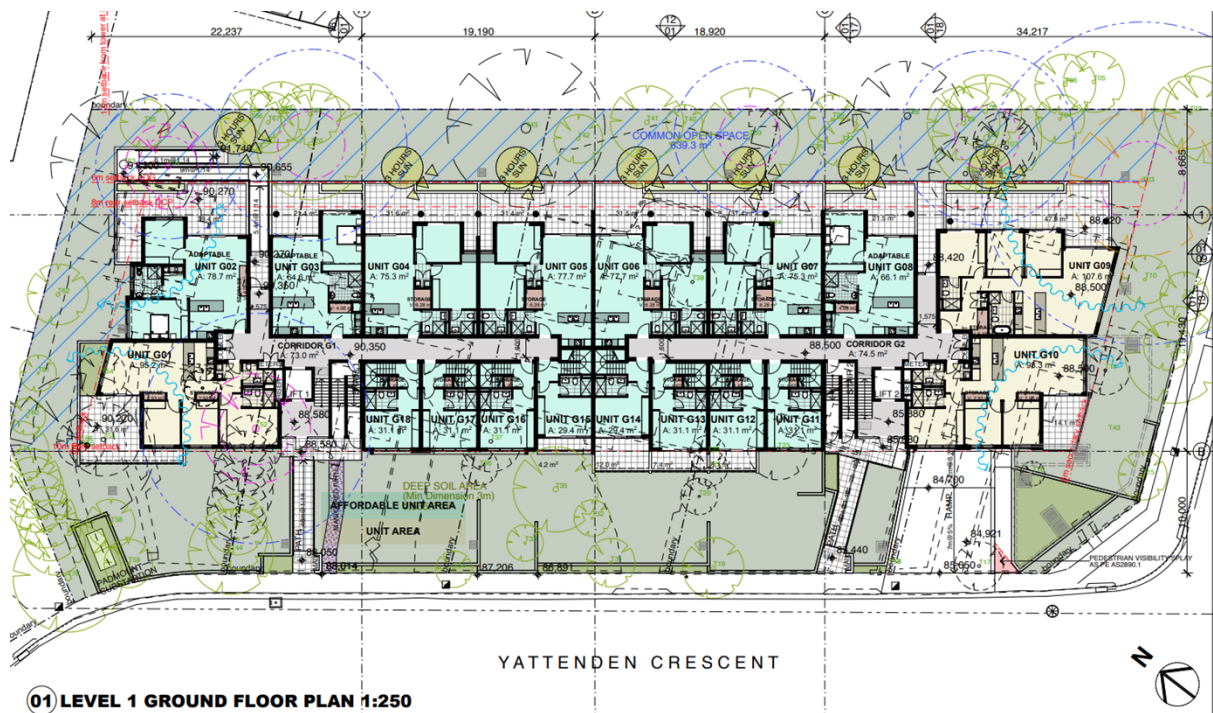
01 ROOF AND SITE PLAN 1:300

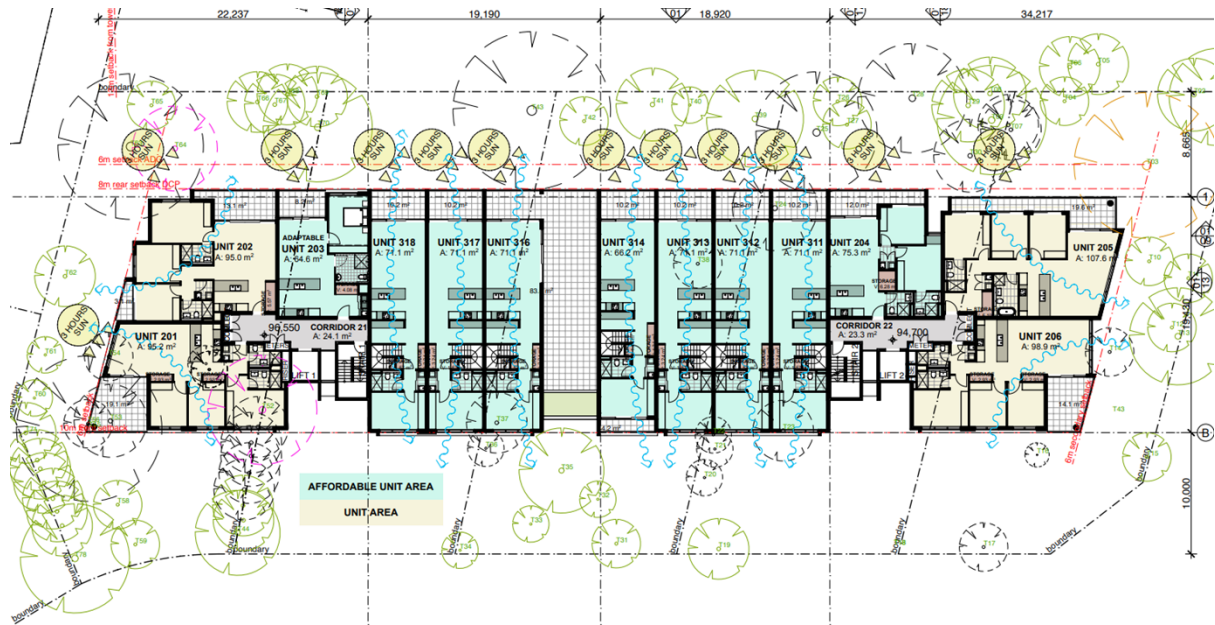


## ATTACHMENT 7 – FLOOR PLANS (4 PAGES)

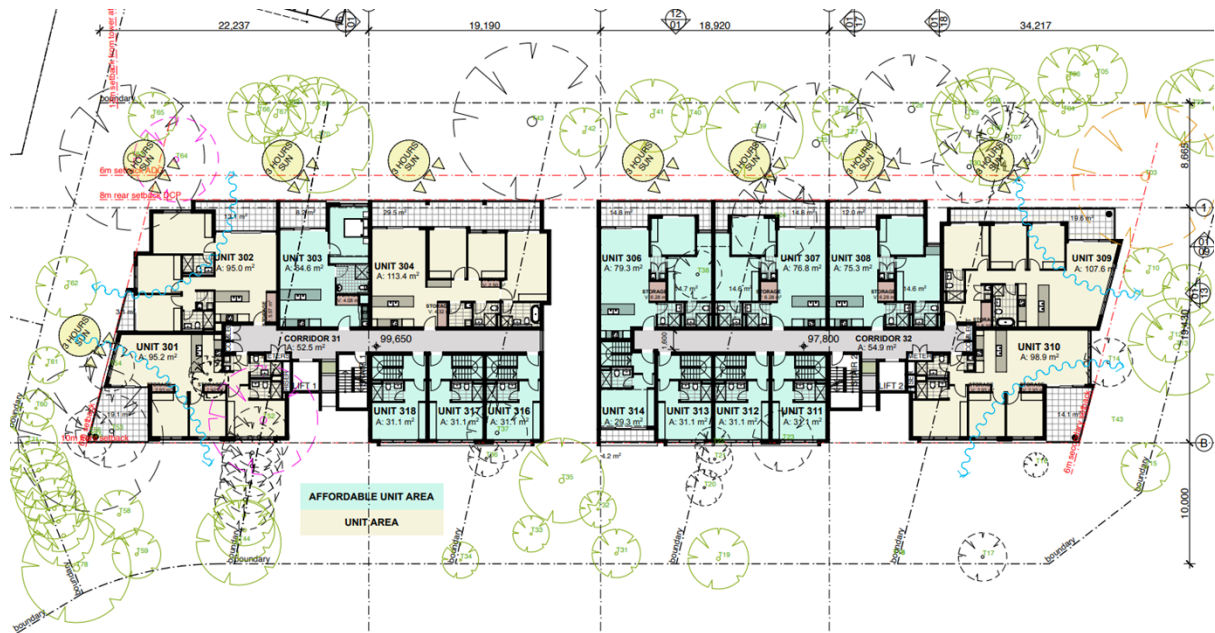








01 LEVEL 3 FLOOR PLAN 1:250



01 LEVEL 4 FLOOR PLAN 1:250





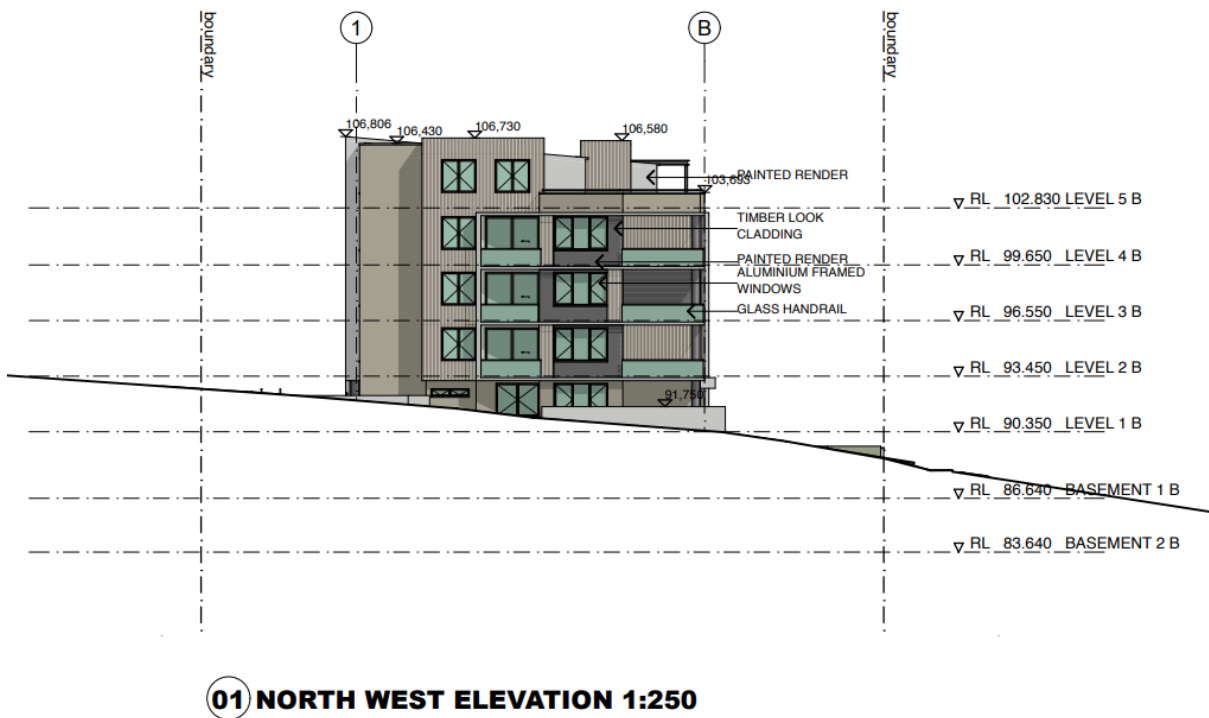
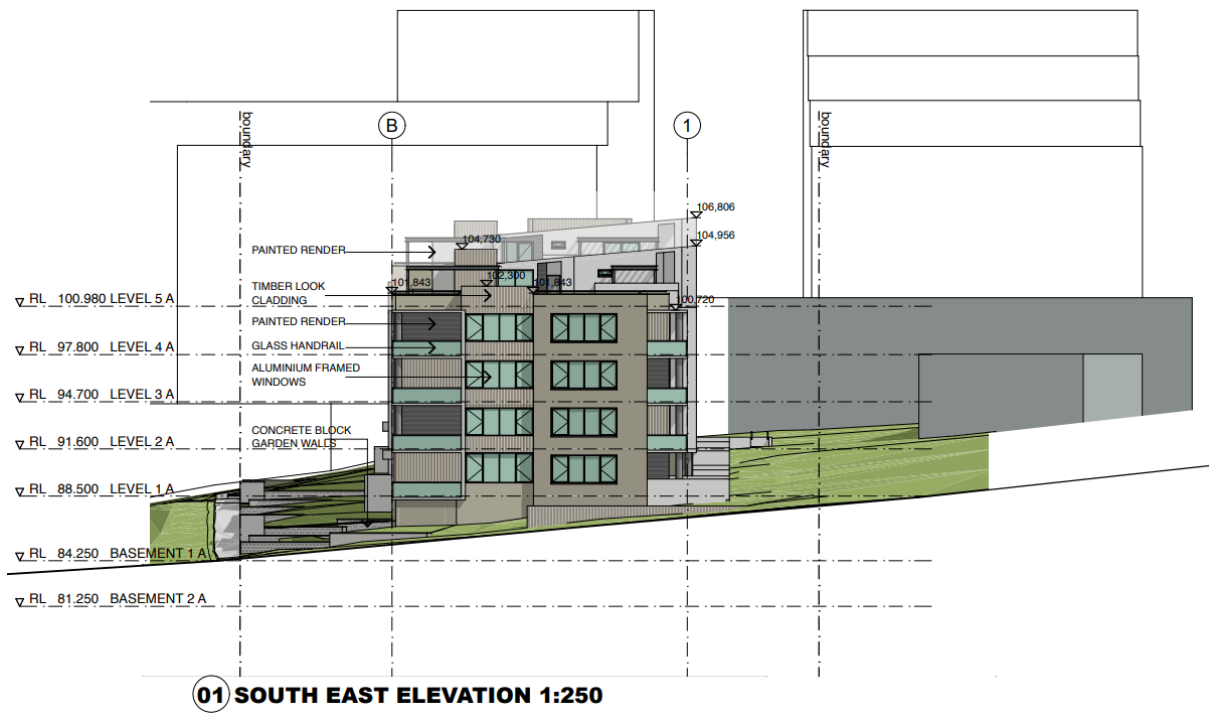
## ATTACHMENT 8 – ELEVATIONS (2 PAGES)



**01 SOUTH WEST ELEVATION 1:250**

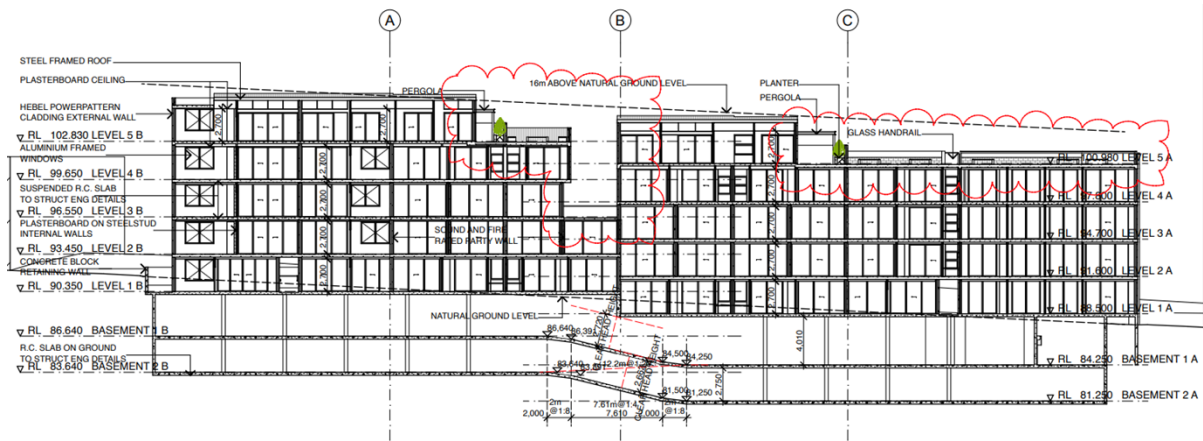


**01 NORTH EAST ELEVATION 1:250**

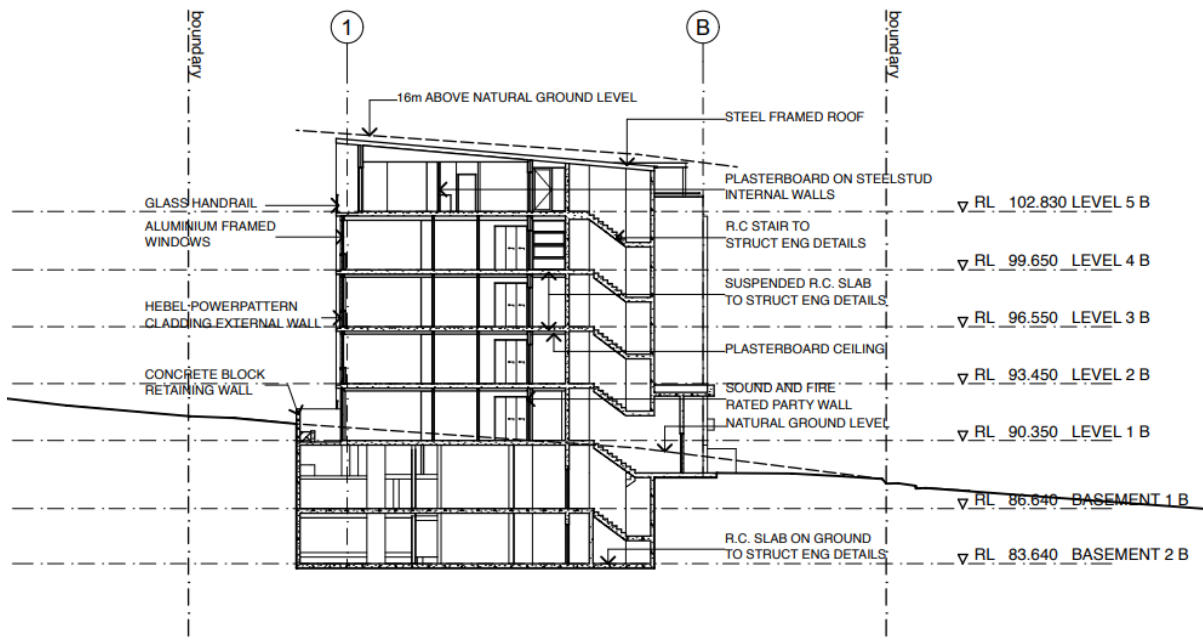


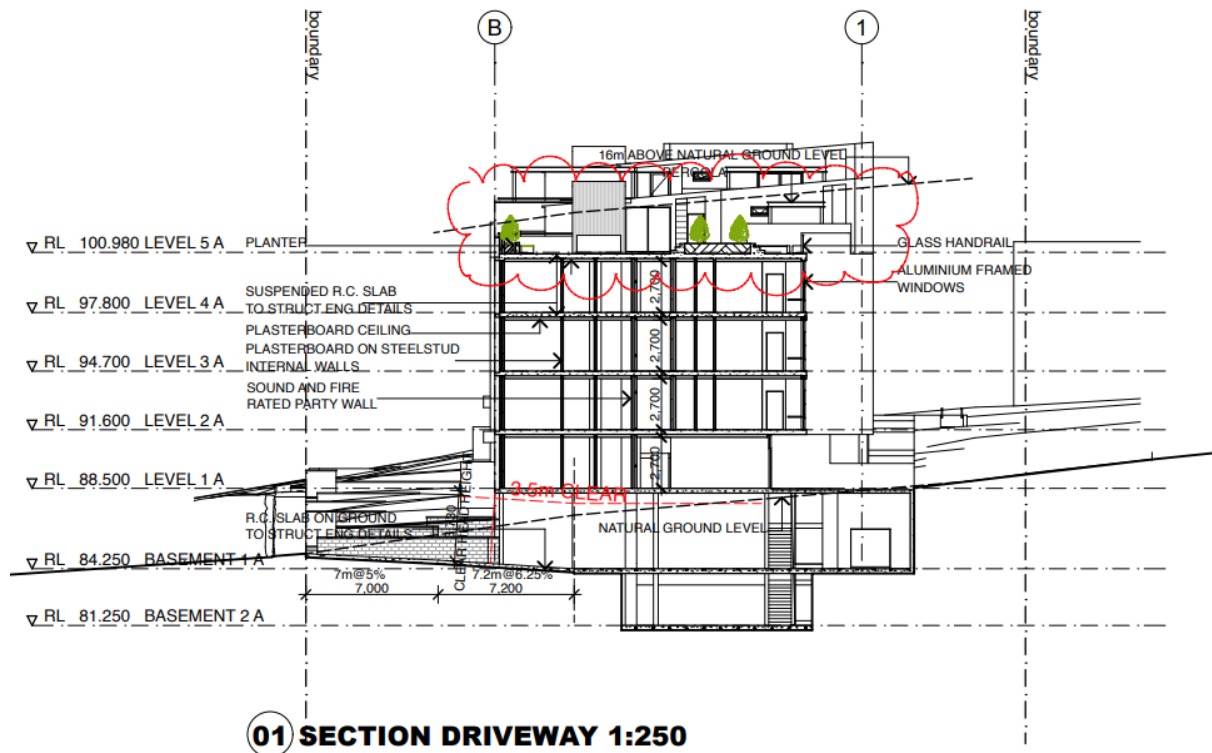
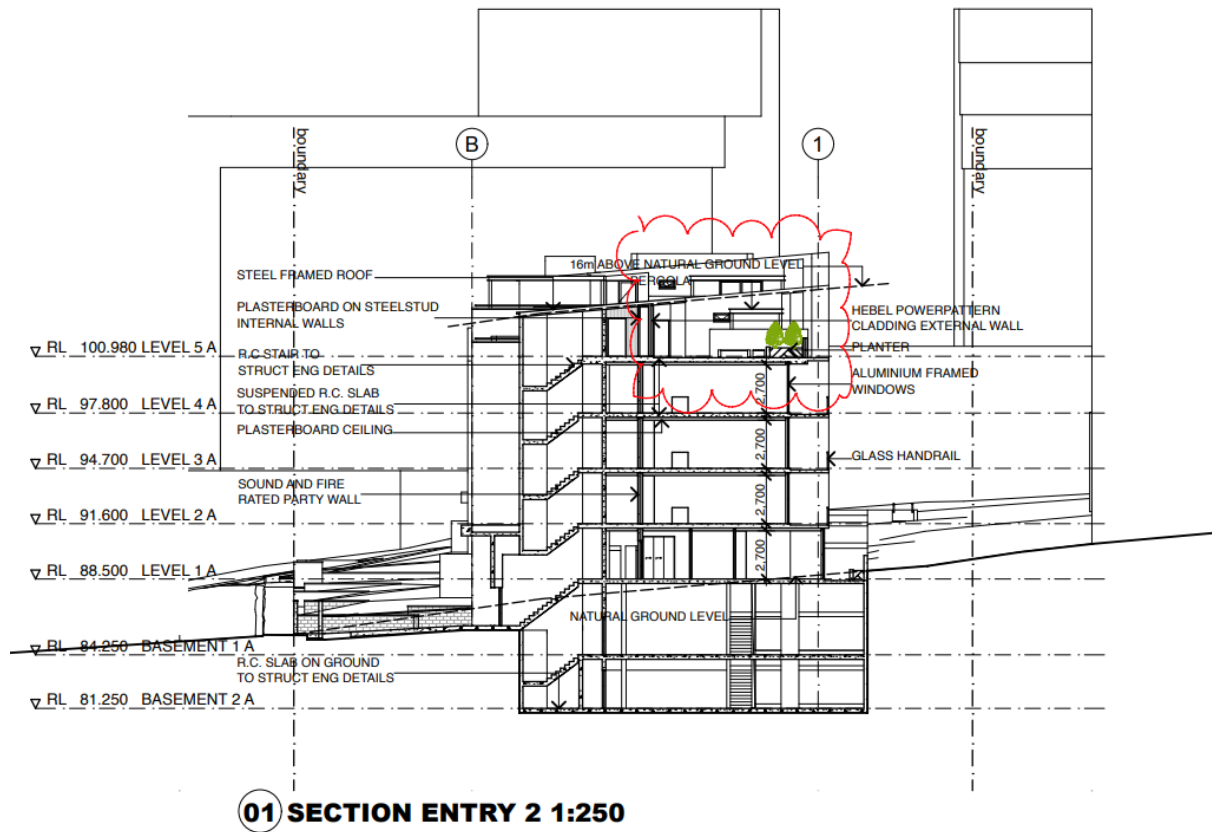


## ATTACHMENT 9 – SECTIONS (2 PAGES)

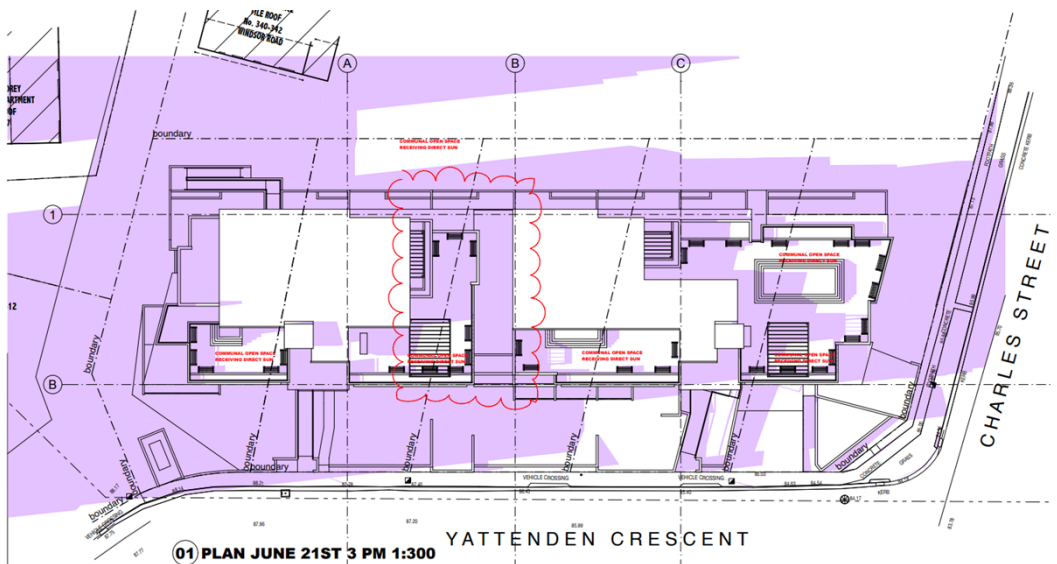
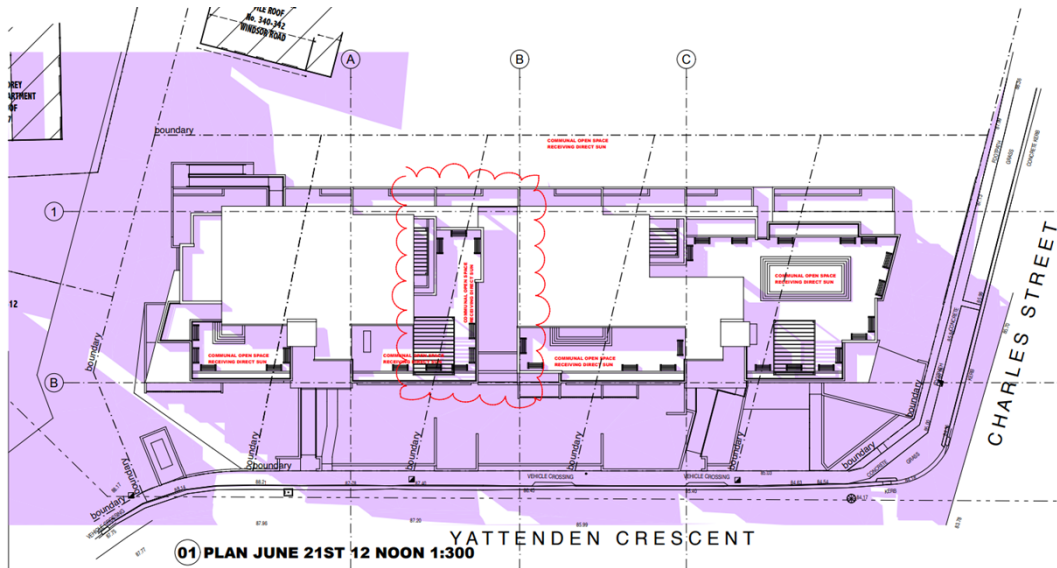
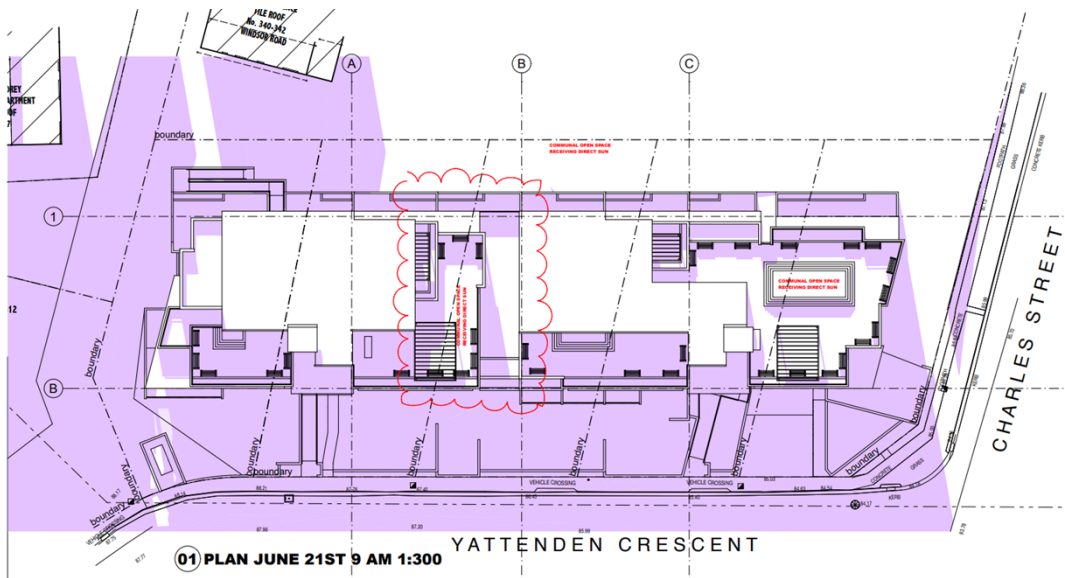


01 LONG SECTION 1:250





## ATTACHMENT 10 – MID-WINTER SHADOW DIAGRAMS



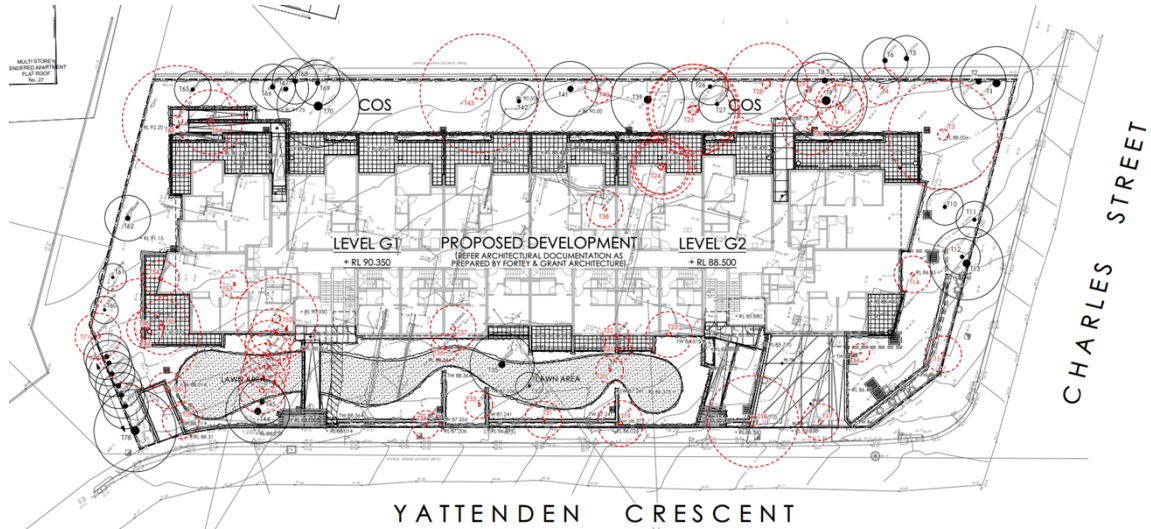
## ATTACHMENT 11 – PERSPECTIVES



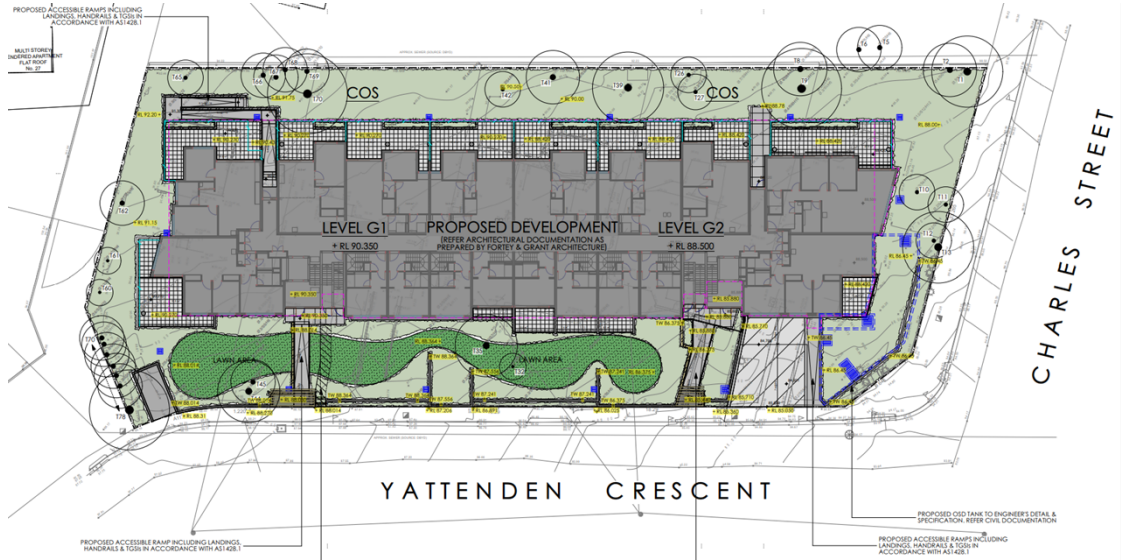


# ATTACHMENT 12 – TREE REMOVAL PLAN & LANDSCAPE PLANS

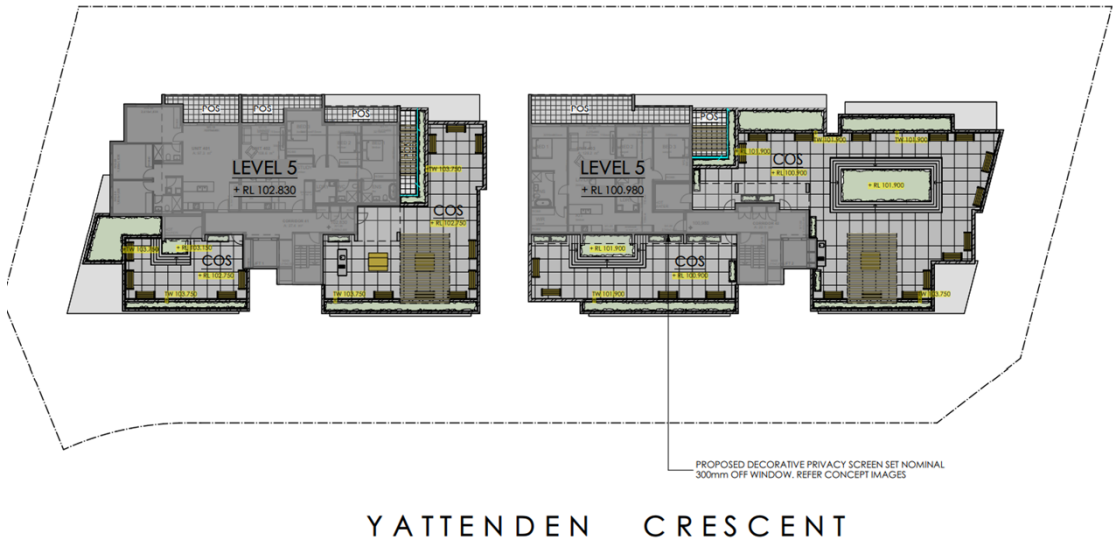
## TREE REMOVAL PLAN:



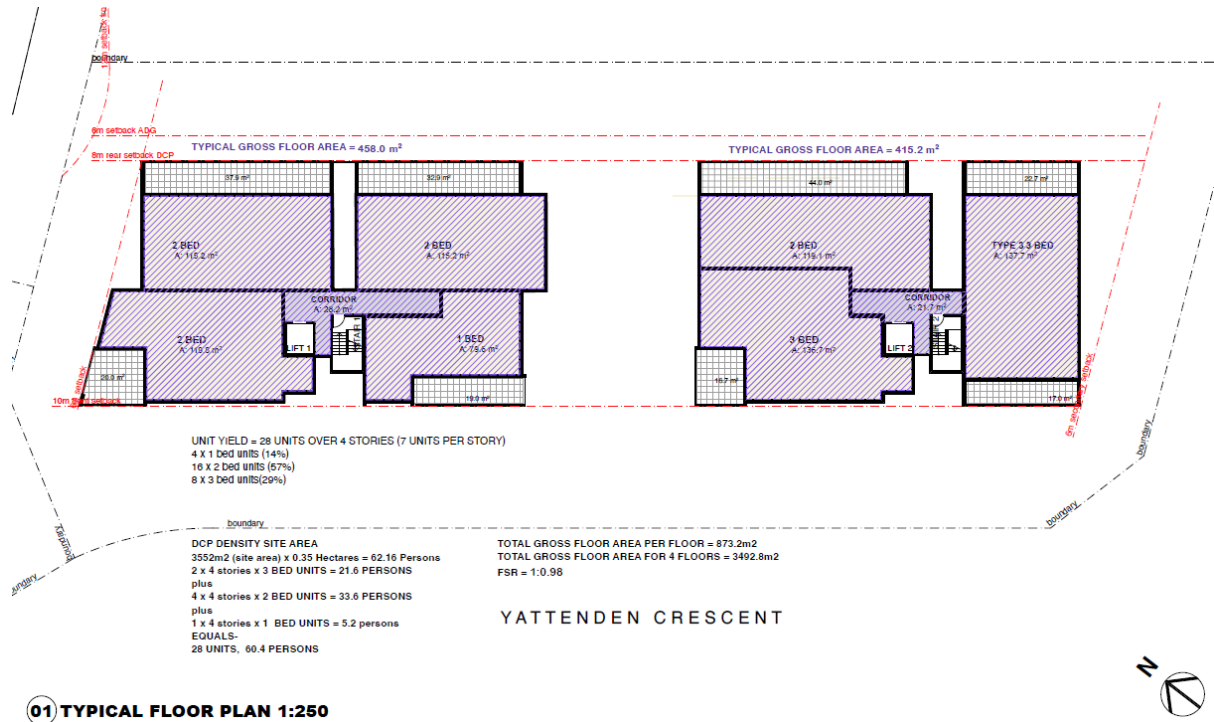
## GROUND FLOOR LANDSCAPE PLAN:



## LEVEL 5 LANDSCAPE PLAN:



# ATTACHMENT 13 – LAYOUT OF A DCP COMPLIANT BUILT FORM FOR PURPOSES OF DENSITY CALCULATIONS



ATTACHMENT 14 – PUBLIC TRANSPORT SERVICES AVAILABLE IN THE VICINITY OF THE SITE AND BUS ROUTES & FREQUENCIES (2 PAGES)



VARGA TRAFFIC PLANNING Pty Ltd  
Traffic and Parking Consultants

PUBLIC TRANSPORT  
FIGURE 5

Bus Routes and Frequencies							
Route No.	Route	Weekday		Saturday		Sunday	
		In	Out	In	Out	In	Out
600	Five Dock to Hurlstone Park	93	88	56	55	57	48
601	Rouse Hill Station to Parramatta via Hills Showground	64	64	29	28	28	27
610X	Castle Hill to City QVB via Lane Cove Tunnel (Express Service)	139	155	75	84	69	77
612X	Castle Hill to North Sydney (Express Service)	23	26	-	-	-	-
615X	North Kellyville to City QVB (Express Service)	23	23	-	-	-	-
619	Castle Hill to Macquarie Park via Baulkham Hills & M2 Mwy	14	15	-	-	-	-
630	Blacktown to Epping	19	22	-	-	-	-
TOTAL		375	393	160	167	154	152



**ATTACHMENT 15 – CLAUSE 4.6 VARIATION REQUEST – FLOOR SPACE RATIO  
(12 PAGES)**



## Clause 4.6 Variation Request Floor Space Ratio

11-19 YATTENDEN CRESCENT,  
BAULKHAM HILLS



QUALITY ASSURANCE	
PROJECT:	Clause 4.6 – Floor Space Ratio
ADDRESS:	11-19 Yattenden Crescent, Baulkham Hill
LOT/DP:	Lots 13,14,15,16 and 17 in DP 28197
COUNCIL:	The Hills Shire Council
AUTHOR:	Think Planners Pty Ltd

Document Management				
Date	Purpose of Issue	Revision	Reviewed	Authorised
28 March 2022	Co-ordination	Draft	BD	BD
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## CLAUSE 4.6 DEPARTURE – FLOOR SPACE RATIO

### BACKGROUND

This Clause 4.6 departure has been prepared in support of a development application that seeks approval for demolition, tree removal and construction of a five storey residential flat building containing 49 apartments over two levels of basement parking pursuant to the Housing SEPP at 11 -19 Yattenden Crescent, Baulkham Hills.

The development is contained in a stepped 5 storey residential flat building that fronts Yattenden Crescent and has the following mix.

The revised complex proposes the following unit mix:

- 5 x 1 bedroom apartments;
- 25 x 2 bedroom apartments; and
- 19 x 3 bedroom apartments.

This clause 4.6 departure has been prepared to address both Clause 4.4 of The Hills LEP 2019 and Clause 17 of the Housing SEPP.

Clause 17(1) of the Housing SEPP states in part:

*(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an **additional floor space ratio** of—*

*(a) if the maximum permissible floor space ratio is 2.5:1 or less—*

*(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1,*

The site does not have a mapped FSR pursuant to The Hills LEP 2019. The density of apartment buildings in this precinct is effectively regulated through the person per hectare control in The Hills DCP 2012 of up to 175 persons per hectare.

A set of architectural plans have been prepared that demonstrate that a scheme that complies with the persons per hectare control of 175 person per hectare would have a FSR equivalent to 0.98:1. Utilising this conversion and noting that 50.04% of the GFA comprises affordable housing the development proposes a floorspace ratio of 1.46:1 that is consistent with the intent of the clause.

However, it is also noted that The Hills DCP contains a singular control for FSR with the Dual Occupancy chapter of the DCP stating in part:

*The floor space ratio of all dwellings shall not exceed 0.5:1.*

On this basis the development seeks to vary the DCP control and as a consequence, clause 17(1) of the Housing SEPP.

Given that the 0.5:1 FSR control is a development standard a clause 4.6 departure is required to seek to vary this standard.

## LAND AND ENVIRONMENT CASE LAW

The decision by Chief Judge Preston in a judgement dated 14 August 2018 in the matter of *Initial Action Pty Ltd v Woollahra Council* confirmed that the absence of impact was a suitable means of establishing grounds for a departure and also confirmed that there is no requirement for a development that breaches a numerical standard to achieve a 'better outcome'. However more recent developments in the law in *RebelMH Neutral Bay Pty Limited v North Canterbury Council* [2019] NSWCA 130 have set out to confirm that the approach taken in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 ('*Al Maha*') is also relevant. In simple terms, *Al Maha* requires that a Clause 4.6 departure will have only adequately addressed Clause 4.6(3) if the consent authority is satisfied the matters have been demonstrated in the Clause 4.6 request itself- rather than forming a view by the consent authority itself. This Clause 4.6 request demonstrates the matters if Clause 4.6 (3).

The key tests or requirements arising from recent 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 environmental planning grounds that support any variation; and
- The proposal is required to be in 'the public interest'.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the maximum floor space ratio standard;

- Demonstrating consistency with existing streetscape;
- Demonstrating compliance with objectives of the R4 zone; and
- Satisfying the relevant provisions of Clause 4.6.

This Clause 4.6 Variation request deals with the maximum floor space ratio matters in turn below.

## CONSIDERATION OF CLAUSE 4.6

Clause 4.6 of The Hills LEP 2019 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

*(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.

Each of these provisions are addressed in turn.

#### Clause 4.6(3)

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

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

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

The judgement goes on to state that:

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

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

- The objectives of the standard are achieved notwithstanding non-compliance with the standard;
- The underlying objectives or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

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

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

Purpose of the standard is not relevant

This clause 4.6 is required as The Hills DCP contains a singular control for FSR with the Dual Occupancy chapter of the DCP stating in part:

*The floor space ratio of all dwellings shall not exceed 0.5:1.*

In accordance with this principal, it is considered that the purpose of this standard which is to regulate the FSR of dual occupancy developments that are permitted in a range of residential zoned including R2, R3 and R4 zones is not relevant to this development for a residential flat building and on this basis compliance is unnecessary.

The density of residential flat buildings is controlled by a density or persons per hectare control in The Hills DCP. This control has been 'translated' into a FSR and this is the appropriate method of considering what the base FSR is for the site.

Accordingly in accordance with Wehbe Test two, the DCP standard for dual occupancy development is not relevant to this Residential Flat Development and compliance with this DCP control is unnecessary.

Underlying objectives of the standard are achieved.

In the alternative it is considered that the underlying objectives of the standard are achieved.

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

This Clause 4.6 variation statement establishes that compliance with the maximum floor space ratio development standard is considered unreasonable or unnecessary in



the circumstances of the proposed development because the underlying objectives of the standard are achieved despite the non-compliance with the numerical standard

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

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

- (a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,*
- (b) to provide for a built form that is compatible with the role of town and major centres.*

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

- The proposal is effectively a technical non compliance and as demonstrated by the submitted architectural plans the planning controls envision a floor space ratio of 0.98:1 for the site. This development utilises the bonus provisions in the Housing SEPP that facilitates this development having an FSR of up to 1.48:1 and proposes an FSR of 1.46:1. The departure is required to the DCP clause to regulate the bulk and scale of dual occupancy developments that are permissible in zones including R2, R3 and R4.
- The proposal is located adjacent to the southern boundary of the Baulkham Hills Town Centre and accordingly the FSR departure facilitates higher density development around commercial centres;
- The recently constructed development to the north of the site benefits from a LEP mapped FSR of 2.7:1. Given this the variation to the FSR control assists with ensuring that the development is compatible with the height of the adjoining development;
- Given the FSR of the adjoining property to the north being 2.7:1, the variation to the FSR control will not be visually prominent when viewed in the emerging height of buildings in the precinct;
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality.
- The proposal has no unacceptable impact on heritage or other views; and
- The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct.

- The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas;
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the zone and locality generally- noting that greater yield is not achieved over the entire site subject to this development application;
- The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors;
- The proposal will provide for a number of distinct public benefits:
  - Delivery of additional housing within close proximity to the Baulkham Hill Town Centre;
  - Creation of jobs during the construction stage;
  - Activation of the street level;
  - Amenity impacts to adjoining properties are mitigated and the distribution of floor space across the site will not be discernibly different to a built form that is compliant with the FSR control.
  - The scale and intensity of the development is consistent with other approved residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.
- The proposal has no unacceptable impact on heritage or other views; and
- The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct.

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

#### **Clause 4.6(4)**

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

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.*

The proposal provides for the housing needs of the community and the resultant apartments are compatible with the existing and likely future character of this high density residential area.

#### **Clause 4.6(5)**

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2021*. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The points contained in Clause 4.6 (5) are a matter for consideration by the consent authority however the following points are made in relation to this clause:

- a) The contravention of the FSR limit does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and unique site attributes associated with the subject site; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the FSR control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality particularly when considering the proposal is consistent with the bulk and scale and building heights of nearby and approved dwellings.

## CONCLUSION

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Strict compliance with the prescriptive maximum FSR requirement is unreasonable and unnecessary in the context of the proposal and its circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development including the departure to the maximum FSR control.

The proposal will not have any adverse effect on the surrounding locality and is consistent with the future characterised envisioned for the subject area. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

**ATTACHMENT 16 – CLAUSE 4.6 VARIATION REQUEST – BUILDING HEIGHT  
(12 PAGES)**



## Clause 4.6 Variation Request Building Height

11 -19 YATTENDEN CRESCENT,  
BAULKHAM HILLS





QUALITY ASSURANCE	
PROJECT:	Clause 4.6 – Height
ADDRESS:	11 -19 Yattenden Crescent, Baulkham Hills
LOT/DP:	Lots 13,14,15,16 and 17 in DP 28197
COUNCIL:	The Hills Council
AUTHOR:	Think Planners Pty Ltd

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28 March 2022	Co-ordination	Draft	BD	BD
31 March 2022	Lodgement Issue	Final	BD	BD

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## CLAUSE 4.6 DEPARTURE – HEIGHT

### BACKGROUND

This Clause 4.6 departure has been prepared in support of a development application that seeks approval for demolition, tree removal and construction of a five storey residential flat building containing 51 apartments over two levels of basement parking pursuant to the Housing SEPP at 11 -19 Yattenden Crescent, Baulkham Hills.

The development is contained in a stepped 5 storey residential flat building that fronts Yattenden Crescent and has the following mix.

- 5 x 1 bedroom apartments;
- 28 x 2 bedroom apartments; and
- 18 x 3 bedroom apartments.

The site is identified by The Hills LEP 2019 as having a mapped height of 16m with the development seeking to vary this control with portions of the roof, one upper level apartment, common open space areas and lift overruns exceeding the 16m height limit. The lift overruns are the highest point of the development and exceed the height control by up to 1.8m.

Given that the 16m height control is a development standard a clause 4.6 departure is required to seek to vary this standard.

A detailed discussion against the relevant provisions of Clause 4.6 are provided below with further discussion against the relevant case law 'tests' set down by the Land and Environment Court. As shown on the sections below, the proposed development varies the height control to a portion of the lift overrun.

Section drawings and a height blanket are provided overleaf to demonstrate the nature of the departure and the portion of the buildings that exceed the height height control.

Figure 1: Section (Source: Fortey and Grant Architecture)

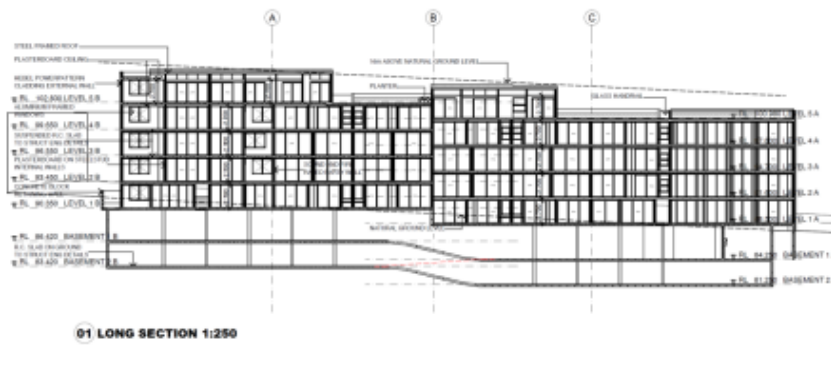
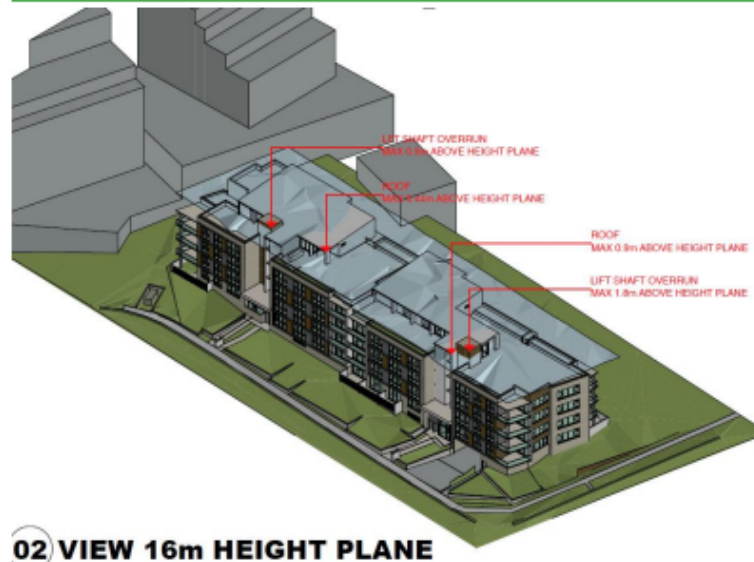


Figure 2: Height Blanket (Source: Fortey and Grant Architecture)



As illustrated above the departure predominantly relates to the roof top common open spacer areas and lift overruns with limited habitable space exceeding the 16m height control.

The proposal presents the following departures to the 16m height control:

Building Element	Maximum Height	% Exceedance
Roof of unit 402	440mm	2.75%
Lift Overrun	1.8m	11.25%

## LAND AND ENVIRONMENT CASE LAW

The decision by Chief Judge Preston in a judgement dated 14 August 2018 in the matter of *Initial Action Pty Ltd v Woollahra Council* confirmed that the absence of impact was a suitable means of establishing grounds for a departure and also confirmed that there is no requirement for a development that breaches a numerical standard to achieve a 'better outcome'. However more recent developments in the law in *RebelMH Neutral Bay Pty Limited v North Canterbury Council* [2019] NSWCA 130 have set out to confirm that the approach taken in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 ('*Al Maha*') is also relevant. In simple terms, *Al Maha* requires that a Clause 4.6 departure will have only adequately addressed Clause 4.6(3) if the consent authority is satisfied the matters have been demonstrated in the Clause 4.6 request itself- rather than forming a view by the consent authority itself. This Clause 4.6 request demonstrates the matters if Clause 4.6 (3).

The key tests or requirements arising from recent 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 environmental planning grounds that support any variation; and
- The proposal is required to be in 'the public interest'.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the maximum building height standard;
- Demonstrating consistency with existing streetscape;
- Demonstrating compliance with objectives of the R4 zone; and
- Satisfying the relevant provisions of Clause 4.6.

This Clause 4.6 Variation request deals with the maximum building height matters in turn below.

## CONSIDERATION OF CLAUSE 4.6

Clause 4.6 of The Hills LEP 2019 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

*(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.*

Each of these provisions are addressed in turn.

**Clause 4.6(3)**

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

- (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*

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

- The proposal is located adjacent to the southern boundary of the Baulkham Hills Town Centre and accordingly the minor height departure facilitates higher density development around commercial centres;
- The recently constructed development to the north of the site benefits from a LEP mapped height of between 17m and 50m. Given this the slight variation to the height control assists with ensuring that the development is compatible with the height of the adjoining development;
- The site is large and the impacts arising from overshadowing, visual impact and loss of privacy are manageable within the site, and have no significant impact on adjoining properties or open space areas given that the development is contained within its own street-block meaning shadows cast by the proposal predominantly fall on the street with the extent of overshadowing is not unreasonable for density envisaged of this scale within this R4 zoned precinct;
- The proposal provides an appropriate building form that is consistent with the desired future character of the locality and is reflective of the objectives for the

zone and locality generally- noting the uneven topography is the key driver of the height variation rather than a desired to achieve greater yield on the site;

- The proposal is predominantly a result of providing access for all to the rooftop common open spaces area that add amenity to the complex and allow future residents to enjoy district views whilst socialising with friends or follow residents;
- The portions of the building that exceed the height control are predominantly located towards the centre of the buildings meaning that it will not be highly visible from the street or surrounding residential properties;
- The proposal provides for a better planning outcome as the same density of apartments could be achieved in a building that is squashed into 4 levels of development with a bigger floor plate that would be less articulated and would be located closer to adjoining properties;
- The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors;
- The proposal will provide for a number of distinct public benefits:
  - Delivery of additional housing within close proximity to the Baulkham Hills Town Centre;
  - Creation of jobs during the construction stage;
  - Activation of the street level;
  - Amenity impacts to adjoining properties are mitigated and the distribution of additional floor space across the site will not be discernibly different to a built form that is compliant with the height control.
  - The scale and intensity of the development is consistent with other residential flat buildings in the wider precinct, which demonstrates an appropriate development outcome.
- The proposal has no impact on heritage or other views; and
- The proposal presents an appropriate height on the site that facilitates a high quality urban form to contribute to building diversity across the Baulkham Hills Precinct.
- The variation to the maximum building height control enables delivery of an affordable housing development to expand the availability of affordable rental housing in an accessible area consistent with Objective 3(b) of the Housing SEPP.
- The variation to the maximum building height standard enables the 'Objects' of the *EP&A Act* to be achieved, specifically:



*(c) to promote the orderly and economic use and development of land,*

*(d) to promote the delivery and maintenance of affordable housing,*

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

#### **Clause 4.6(4)**

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

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

The proposal provides for the housing needs of the community and the resultant dwelling is compatible with the existing and likely future character of this high density residential area.

#### **Clause 4.6(5)**

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The points contained in Clause 4.6 (5) are a matter for consideration by the consent authority however the following points are made in relation to this clause:

- a) The contravention of the Height limit does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and unique site attributes associated with the subject site; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the height control is acceptable in





the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality particularly when considering the proposal is consistent with the bulk and scale and building heights of nearby and approved dwellings.

## CONCLUSION

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Strict compliance with the prescriptive maximum height requirement is unreasonable and unnecessary in the context of the proposal and its circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development including the departure to the maximum height control.

The proposal will not have any adverse effect on the surrounding locality and is consistent with the future characterised envisioned for the subject area. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.