

COUNCIL ASSESSMENT REPORT

SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-482 - DA 103/2024/JP
PROPOSAL	Medical Centre and Centre Based Child Care Facility
ADDRESS	Proposed Lot 62 and Part Proposed Lot 63 in a subdivision of Lot 65 DP 1298923 Fontana Drive, Gables
APPLICANT	Stockland Development Pty Ltd
OWNER	AW Bidco 4 Pty Limited
DA LODGEMENT DATE	27 July 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of the Planning Systems SEPP: Private Infrastructure and Community Facilities with a CIV of more than \$5 million
CIV	\$15,300,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	4.4 Floor Space Ratio
KEY SEPP/LEP	Transport and Infrastructure SEPP Resilience and Hazards SEPP Industry and Employment SEPP Biodiversity and Conservation SEPP The Hills LEP 2019 The Hills DCP 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Nil
DOCUMENTS SUBMITTED FOR CONSIDERATION	Town Planner: GLN Planning Architect: Thomson Adsett Landscape: Ground Ink Traffic: Colston Budd Acoustics: Stantec

SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	The proposal is not subject to the payment of a Special Infrastructure Contribution under Section 7.24 of the Environmental Planning and Assessment Act 1979.
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	Electronic
PLAN VERSION	N/A
PREPARED BY	Robert Buckham – Principal Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	20 February 2024 (Electronic)

EXECUTIVE SUMMARY

The subject Development Application seeks approval for the construction of a two-storey building containing a medical centre on the ground level and a child care centre for 102 children on the first floor level.

The building is located on approved Lot 62 in the subdivision of Lot 65 DP 1298923 approved under Development Consent 1118/2023/JP. The lot is yet to be registered. The application also includes the use of parking approved within approved Lot 63.

The development proposal was foreshadowed under a recently approved Development Application (1118/2023/JP) approved by the Sydney Central City Planning Panel on 1 December 2023 for the overall concept for the construction of a larger town centre site (Lot 20 and 21 in DP 1256674 Fontana Drive and Red Gables Road, Gables (now known as Lot 64 and 65 DP 1298923)) and was subject to the Concept Development Application provisions of Section 4.22 of the Environmental Planning and Assessment Act 1979. That application also included Stage 1 development works including construction and use of the mixed use development made up of a supermarket, function centre, speciality shops and food tenancies and construction of a basement and at-grade car park for 511 vehicles.

The subject development site (Lot 62) was identified as PAD Site 2 and identified a health services facility of approximately 1,800m² and centre-based child care facility of approximately 700m² internal and 700m² external. The proposal is consistent with the concept approval.

This application is accompanied by a request to vary a development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan. The proposal seeks to vary Clause 4.4 Floor Space Ratio. The variation is addressed in detail in this report. It is considered that the applicant's Clause 4.6 written request to vary The Hills LEP 2019 development standards be supported as they adequately justify the contravention of the development standards having regard to the requirements of Clause 4.6.

The variation to floor space ratio (FSR) is considered a technical non-compliance, specifically it was intended to control the amount of floor space for the local centre that has been considered under the preceding concept component of DA 1118/2023/JP. The total site area of the shopping centre is 23,494m² of which approximately 8,900m² has an FSR of 1.9:1 and approximately 14,600m² has an FSR of 1:1. The total allowable FSR for the site is therefore 31,510m². Importantly, the plans submitted with the Concept DA application and floor space allocated to each PAD achieve a maximum FSR of 14,004m², less than half the permissible FSR.

Notwithstanding that the Concept DA allocated 2,500m² to PAD 2, the subdivision approved as part of the DA created a Lot for the childcare centre and medical centre of 2,097m². As the FSR under the LEP is 1:1, this limits the total FSR on approved Lot 62 to 2,097m² and less than the Concept Approval for this land. The proposed childcare and medical centre is proposed to have a total FSR of 2,489m², which equates to 1.19:1. A Clause 4.6 is appropriate as the first stage is yet to be acted on and as the overall centre is well under the maximum FSR and, the minor variation required because of the lot size does not compromise the overall size of the centres as envisaged by the planning controls.

The proposed development includes variations to the DCP relating to the number of parking spaces. The variation to parking is considered satisfactory given the operational characteristics of the site. The report also addresses the DCP setback controls for the area although they apply to residential development and do not technically apply to the subject proposal. The setbacks are considered reasonable given the existing character of the locality and surrounding developments.

The Box Hill North Planning Agreement (VPA) applies to the site. The Planning Agreement was executed by Council and EJ Cooper and Son Pty Ltd and has since been transferred to Stockland. The VPA makes satisfactory arrangements with Council for development contributions over the site and the wider development at the Gables and turns off the application of S7.11 and S7.12 of the EP&A Act.

The application was notified for a period of 14 days. No submissions were received.

The application is referred to the Sydney Central City Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Clause 5 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as the proposal is a private infrastructure and community facility with a Capital Investment Value of more than \$5 million.

The Development Application is recommended for approval.

1. THE SITE AND LOCALITY

The subject site is described as approved Lot 62 and Part Lot 63 under Development Consent 1118/2023/JP in the subdivision of Lot 20 (now Lot 65) in DP Fontana Drive, Gables. The site has an area of approximately 2,097m² (Lot 62) with frontage to Fontana Drive and Lakefront Crescent.

The site is void of any structures and vegetation having been previously cleared under DA1983/2016/ZB and DA1824/2017/ZB (as modified) which also included construction of the lake immediately north of the Centre.

Based on the approved Gables wide Masterplan which applies to the site, Precinct E comprises land designated for a town centre including a range of residential and commercial land uses.

The development site zoned E1 Local Centre pursuant to The Hills Local Environmental Plan 2019. The site is subject to Height of Building (HOB) maximum heights of 16m (O2), (refer Attachment E) and an FSR of 1:1 (N), (Refer Attachment F) for a portion of the site under Local Environmental Plan 2019

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposed development includes:

The construction of a two storey building with a gable roof. The building is irregular in shape with a total gross floor area (GFA) of 2,489m² measuring 10m in height and ranging in depth from 20-40m. The proposed built form has been designed to integrate with the architecture of the approved local centre building.

The proposal is split over two floors. The ground floor will be occupied by the medical centre and the first floor will be occupied by the child care centre. Pedestrian access is provided from the basement carpark, ground floor and first floor via a lift and stairs located at the southeastern entrance.

The proposed medical centre and other associated health uses (such as pharmacy, optometrist, audiologist, paediatric, physiotherapist etc) are proposed to operate up to and between 7am to 10pm, 7 days a week. The medical centre will provide a variety of health care uses to serve the community. The medical centre will be a one-stop-medical location that will provide a range of health care services in one place. The medical uses will not involve any overnight stay and only caters for out-patients only.

The proposed child care centre has been designed to accommodate a maximum of 102 children, 18 child minding staff, 1 centre manager and 1 cook. The centre is proposed to operate between 6:30am to 6:30pm Monday to Friday.

A total of 89 car parking spaces are allocated to the uses however it is expected that dual use of the local centres 511 spaces will occur informally. A condition is recommended to require Proposed Lot 63 be burdened with a restriction benefiting Proposed Lot 62 for the provision of 89 parking spaces for the use of the child care centre and medical centre (refer Condition 36).

Approval for indicative signage zones is sought. The location of proposed signage is shown on the Architectural Plans. The purpose of the signage zones is to identify the tenants and is incorporated into the architecture of the building. The signage zones will support the following future forms of signage on the site:

- building identification signage,
- business signage, including glazing, wall mounted and awning signage,

The individual design, character and dimensions of the signage will be subject to future separate DAs.

2.2 Background

The Development Application was lodged on 27 July 2023. The Regional Planning Panel was briefed on 02 November 2023.

The application was originally lodged on the larger existing site of Lot 20 in DP 1256674 which is in part bushfire prone land, and therefore triggered an integrated development referral to NSW Rural Fire Service as the child care centre is considered a special fire protection purpose. It should be noted that the child care centre and associated parking is not located on any land that is identified as bushfire prone land. The application was subsequently amended to be located on Proposed Lot 62 and use of approved parking spaces within Lot 63 which is not bushfire prone land and therefore the development no longer required the approval of the Rural Fire Service.

Additional information was requested on 14 September 2023 in relation to landscaping, engineering and acoustic matters and on 29 March 2023 in relation to engineering and traffic matters. A response was provided on 18 October 2023.

Further correspondence was sent to the applicant on 10 November 2023 in relation to acoustics. An amended acoustic report was provided on 27 November 2023.

Development Application (1118/2023/JP) for the overall concept for the construction of a larger town centre site (Lot 20 and 21 in DP 1256674 Fontana Drive and Red Gables Road, Gables) and relevantly concept approval of (Lot 62) identified as PAD Site 2 for a health services facility and centre-based child care facility subject to this application was approved by the Sydney Central City Planning Panel on 1 December 2023. Plans are included at Attachment L.

Lot 20 and 21 in DP 1256674 post lodgement have been subject boundary realignment as exempt development under Clause 2.75 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The realignment sought to realign an existing common boundary between the two allotments. The lots are now known as Lot 64 and 65 DP 1298923.

3. STATUTORY CONSIDERATIONS

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

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

These matters are further considered below.

It is noted that the proposal is not considered to be Integrated Development (s4.46).

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *State Environmental Planning Policy (Industry and Employment) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021; and*
- *The Hills Local Environmental Plan 2019.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 1** and considered in more detail below.

Table 1: Summary of Applicable Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	<ul style="list-style-type: none"> Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 5 of Schedule 6. 	Y
Resilience and Hazards SEPP	<ul style="list-style-type: none"> Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
Biodiversity and Conservation SEPP	<ul style="list-style-type: none"> Chapter 2 Vegetation in non-rural areas and Chapter 6 Water Catchments. 	Y
Industry and Employment SEPP	<ul style="list-style-type: none"> Chapter 3 – Advertising and signage 	Y
Transport and Infrastructure SEPP	<ul style="list-style-type: none"> Chapter 3 Education establishments and child care facilities 	Y
The Hills LEP	<ul style="list-style-type: none"> Clause 4.3 – Height of Buildings Clause 4.4 – Floor Space Ratio Clause 6.3 - Servicing Clause 7.2 – Earthworks 	Y N Y Y

State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 2.19(1) of the SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 5 of Schedule 6 of the SEPP as the proposal is development for Private infrastructure and community facilities over \$5 million with a CIV of more than \$5 million. Accordingly, the Sydney Central City Planning Panel is the determining authority for the

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State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP) have been considered in the assessment of the development application. Clause 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

A Detailed Site Investigation (DSI) and Remediation Action Plan (RAP) was prepared and approved for the majority of the Box Hill North release area, including the subject site by JBS&G in 2014 and 2015 respectively. Areas requiring remediation have therefore been identified, with the RAP making appropriate recommendations to ensure that land is suitable for the intended residential and recreational uses. Remediation of the site was carried out under the bulk earthworks application (DA 824/2017/ZB).

Council's Environmental Health Team have raised no objections to the recommendations of the report, subject to conditions. Following satisfactory remediation the site can be made suitable for its intended use and is consistent with the SEPP.

SEPP Biodiversity and Conservation

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River Catchment by ensuring that the impacts of future land uses are considered in a regional context.

Through stormwater mitigation and erosion and sediment measures, the development is unlikely to have detrimental impacts on the health of the environment of the Hawkesbury and Nepean River Catchment.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Compliance with State Environmental Planning Policy (Transport and Infrastructure) 2021

The Policy aims to facilitate the effective delivery of educational establishments and early education and child care facilities across the State. The SEPP determines that a consent authority must take into consideration the Child Care Planning Guidelines and National Quality Framework when assessing a development application for a centre-based child care facility.

The following addresses the principal development standards of SEPP (Transport and Infrastructure) 2021 relevant to the subject proposal:

SEPP (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 3 – EARLY EDUCATION AND CARE FACILITIES – SPECIFIC DEVELOPMENT CONTROLS		
Section 3.22 – Concurrence of the Regulatory Authority		
Requirement	Proposal	Compliance
Is concurrence of the Regulatory Authority (the Secretary of the Department of	The proposal includes an unencumbered indoor play area of 350m ² (331.5m ²	Yes

<p>Education) required under Section 3.22 of the SEPP?</p> <p>Note: concurrence required where the indoor/outdoor space does not meet the requirements of the National Regulations (Clause 107 and 108).</p> <p><u>Clause 107</u></p> <p>The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least <u>3.25 square metres</u> of unencumbered indoor space.</p> <p><u>Clause 108</u></p> <p>The approved provider of an education and care service must ensure that, for each child being educated and cared for by the service, the education and care service premises has at least <u>7 square metres</u> of unencumbered outdoor space.</p>	<p>required) and an unencumbered outdoor space of 716m² (714m² required) which meet the requirements of the National Regulations for 102 children.</p> <p>Complies with indoor and outdoor space.</p> <p>Concurrence is not required.</p>	
If yes, has the proposal been forwarded to the Department of Education within 7 days of receiving the Development Application with the area requiring concurrence stipulated?	Not required	NA
If concurrence of the Regulatory Authority was required, the notice of determination is to be forwarded to them within 7 days.	Not required	NA
Section 3.23 – Matters for consideration by consent authorities		
Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> , in relation to the proposed development.	Assessment undertaken below	Yes
Section 3.24 – Centre-based child care facility in Zone IN1 or IN2		
Is the proposed development compatible with neighbouring land uses, including its proximity to restricted premises, sex services premises or hazardous land uses?	N/A	N/A

Does the proposal have the potential to restrict the operation of existing industrial land uses?	N/A	N/A
Does the location of the proposed development will pose a health or safety risk to children, visitors or staff?	N/A	N/A
Section 3.26 – Non-discretionary development standards		
The proposal cannot be refused on the following grounds (bold) if the standard is met:		
Location —the development may be located at any distance from an existing or proposed early education and care facility,	Noted	Yes
indoor or outdoor space for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies — the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, <u>or</u> for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,	The required amount of unencumbered indoor and outdoor space is provided.	Yes
site area and site dimensions - the development may be located on a site of any size and have any length of street frontage or any allotment depth,	Noted	Yes
colour of building materials or shade structures - the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.	Satisfactory – Building materials are considered satisfactory. Not in the vicinity of a heritage item.	Yes
Section 3.27 – Development Control Plans		
A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages,	Noted	Yes

<p>age ratios, groupings, numbers or the like, of children) <u>does not apply</u> to development for the purpose of a centre-based child care facility:</p> <ul style="list-style-type: none"> • operational or management plans or arrangements (including hours of operation), • demonstrated need or demand for child care services, • proximity of facility to other early childhood education and care facilities; and <p>any matter relating to development for the purpose of a centre-based child care facility contained in:</p> <ul style="list-style-type: none"> • the design principles set out in Part 2 of the Child Care Planning Guideline, or • the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates). 		
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Section 3.23 Compliance with Child Care Planning Guideline

The Child Care Planning Guideline establishes the assessment framework to deliver consistent planning outcomes and design quality for centre-based child facilities in the State.

Consideration of the applicable provisions of the Guideline is addressed below:

Part 2 Design Quality Principles

The Guideline includes seven design quality principles that relate to context, built form, adaptive learning spaces, sustainability, landscape, amenity and safety.

The proposed centre-based child care facility is designed to fit in with the existing and future character of Gables. The contemporary design is consistent in character with the architectural design of emerging development in the locality. The development is to be provided with landscaping which is to the satisfaction of Council's Landscape Assessment Officer.

The outdoor and internal play areas have been designed to provide adaptive and safe learning spaces that offer children a variety of settings and opportunities for interaction. The proposed internal and external play areas exceed the minimum requirements, resulting in a quality outcome for children and staff within the centre.

The proposal is considered to meet the design quality principles in the Guideline.

Part 3 Matters for consideration

The Guideline includes matters for consideration which support the design principles including site selection and location, local character, streetscape and the public domain interface, building orientation, envelope and design, landscaping, visual and acoustic privacy, noise and air pollution, hours of operation, traffic parking and pedestrian circulation. The proposal has been assessed against these matters for consideration and found to achieve compliance with the relevant requirements.

3.1 Site Selection and Location

The location of the child care centre is considered to be satisfactory and is easily accessible from given its location within the Gables town centre. There are no obvious environmental hazards on the site which was created as part of a recent subdivision. It is considered that the development will be compatible with adjoining uses, and the centre will service a growing population which has increased the demand for child care facilities. Acoustic and privacy impacts are managed with acoustic fencing and building setbacks. Appropriate parking is provided for on the site.

3.2 Local Character, Streetscape and Public Domain Interface

The development respects and addresses the streetscape, provides clear delineation between the child care centre and the public domain with fencing and landscaping. The building is an appropriate scale in relation to the size of the site.

3.3 Building Orientation, Envelope and Design

The proposed building is of a form and scale that complements the existing and future character of the Gables urban transition area. The two storey building with a height of 10m is compatible with the character of the area.

3.4 Landscaping

A detailed landscape plan demonstrates that the site will be well landscaped and will incorporate landscaping for play areas.

3.5 Visual and Acoustic Privacy

Visual and acoustic privacy have been adequately considered in the design of the building which incorporates appropriate finished levels, window treatment, acoustic walls and landscaping to the satisfaction of Council's Health and Environment Staff.

3.6 Noise and Air Pollution

The centre does not adjoin a major road. The centre is located on the corner of Fontana Drive and Lakeside Crescent (collector road and local roads). The play areas are on the first floor.

3.7 Hours of Operation

The proposed hours of operation (6.30am to 6.30pm) are consistent with normal hours of child care facilities.

3.8 Traffic, Parking and Pedestrian Circulation

Off-street parking on the site accommodates all parking needs generated by the proposed use of the site. A Traffic and Parking Report submitted with the application has been reviewed by Council's Traffic Engineer and it is considered that the sight distance and traffic movements associated with the development are acceptable. Pedestrian safety is adequately accommodated within the outdoor parking area.

Part 4 Applying the National Regulations to development proposals

The Guideline includes descriptions of specific regulations that apply to the internal and external physical environments, includes a best practice example and a National Quality Framework Assessment Checklist. The proposal has been assessed against Part 4 of the Guideline. Subject to recommended conditions, the proposal achieves compliance with the relevant requirements.

The proposal meets the provisions under the Child Care Planning Guideline with regard to Parts 2, 3 and 4 of the Guideline and therefore complies with Clause 23 of the SEPP.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 Advertising and Signage of State Environmental Planning Policy (Industry and Employment) 2021 applies to the proposal since signage zones are proposed in the form of flush wall signs. Future signage of the site will be subject to future separate approval and will be required to be further assessed against the Industry and Employment SEPP.

Section 3.1 Aims and Objectives of Chapter 3 states:

- (a) to ensure that signage (including advertising)—*
 - (i) is compatible with the desired amenity and visual character of an area, and*
 - (ii) provides effective communication in suitable locations, and*
 - (iii) is of high quality design and finish, and*
- (b) to regulate signage (but not content) under Part 4 of the Act, and*
- (c) to provide time-limited consents for the display of certain advertisements, and*
- (d) to regulate the display of advertisements in transport corridors, and*
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.*

The proposed signage zones have been assessed against the Assessment Criteria outlined in Schedule 5 of the SEPP and is considered satisfactory. The proposed signage zones accord with the objectives of the E1 Local Centre zone in providing identification for the businesses at the site.

The Hills Local Environmental Plan 2019

The proposed development is pursuant to the provisions outlined within the LEP.

The site is located within the E1 Local Centre zone. The proposed uses are permissible forms of development in the zone.

The E1 zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure the scale and type of development is compatible with the character and amenity of the surrounding area.*
- *To allow for residential development that contributes to the economic and social vitality of the centre and does not detract from the primary objective of the zone.*

- *To promote transit oriented development principles and encourage walking and cycling to and from the centre.*

The proposal is considered to be consistent with these zone objectives.

The LEP also contains the following relevant controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 2** below.

Table 2: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Clause 4.3 Height of Buildings	16m (O2)	Max 10m	Yes
Clause 4.4 Floor Space Ratio	1:1 (N)	1.19:1	No – 4.6 Request Submitted

i) Compliance with Clause 4.4 Floor Space Ratio (FSR)

LEP 2019 limits the floor space ratio of the site to 1:1. The proposal has a maximum floor space ratio of 1.19:1.

The applicant has submitted a Clause 4.6 variation request (see Attachment K)

Clause 4.6 Exceptions to Development Standards states:

- 1) *The objectives of this clause are as follows—*
 - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- 4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- 5) *(Repealed)*

- 6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- 7) *(Repealed)*
- 8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - a) *a development standard for complying development,*
 - b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (cab) *(Repealed)*
 - (ca) *clause 6.3,*
 - (cb) *clause 7.11,*
 - (cc) *clause 7.15.*

The applicant has submitted a Clause 4.6 Variation and is summarised as follows:

- *As previously discussed, the proposal is consistent with the concept approval which provides for a maximum GFA of 2,500m². Under Section 4.24 of the EP&A Act, while any consent granted for a Concept Approval remains in force, the determination of any future DAs in respect of the Site cannot be inconsistent with that consent, which would override the LEP.*
- *The proposal is two storeys, which is significantly below the maximum 16 metres height limit under the LEP. The existing FSR standard does not allow for the logical development of the Site, in that a compliant scheme would likely result in a significant decrease in site coverage, and setbacks that are inconsistent with surrounding development approved under the Concept Approval.*
- *The additional floor space will deliver social and economic benefits, being improved employment opportunities, as well as delivering additional childcare spaces and medical centre floor space that are essential services that will benefit the growing Gables community.*
- *The proposal does not result in any detrimental impacts from a streetscape perspective, and non-compliance with the standard delivers a bulk and scale more consistent with adjoining land uses.*
- *The proposal will not generate any additional demand for car parking than has been approved under the Concept Approval, as the car park to the east of the Site has been designed to accommodate both the medical centre and childcare centre uses.*

Comment:

The objectives of Clause 4.4 Floor Space Ratio of The Hills LEP 2019 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 variation to floor space ratio (FSR) is considered a technical non-compliance, specifically it was intended to control the amount of floor space for the local centre that has been considered under the preceding concept component of DA 1118/2023/JP. The total site area of the shopping centre is 23,494m² of which approximately 8,900m² has a FSR of 1.9:1 and approximately 14,600m² has an FSR of 1:1. The total allowable FSR for the site is therefore 31,510m². Importantly, the plans submitted with the Concept DA application and floor space allocated to each PAD achieve a maximum FSR of 14,004m², less than half the permissible FSR.

Notwithstanding that the Concept DA allocated 2,500m² to PAD 2, the subdivision approved as part of the DA created a lot for the childcare centre and medical centre of 2,097m². As the FSR under the LEP is 1:1, this limits the total FSR on approved Lot 62 to 2,097m² and less than the Concept Approval for this land.

The proposed childcare and medical centre is proposed to have a total FSR of 2,489m², which equates to 1.19:1. A Clause 4.6 is appropriate as the first stage is yet to be acted on and as the overall centre is well under the maximum FSR and, the minor variation required because of the lot size does not compromise the overall size of the centres as envisaged by the planning controls.

The proposed variation results in a development that is consistent with the objectives of Clause 4.4 Floor Space Ratio, has demonstrated compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

In view of the above, the proposed building height is considered satisfactory and can be supported in this instance.

ii) Compliance with Clause 6.3 Public Utility Infrastructure

Clause 6.3(1) states the following:

(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

Clause 6.1 of the LEP defines public utility infrastructure as any of the following:

- a) the supply of water,
- b) the supply of electricity,
- c) the disposal and management of sewage.

The applicant has provided advice from Sydney Water in relation to the supply of water, Endeavour Energy in relation to the supply of electricity and Altogether, a private sewage infrastructure provider for the Gables that adequate arrangements have been made.

The proposal is satisfactory with respect to Clause 6.3 of the LEP.

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

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

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

The proposal has been assessed against the following Sections of The Hills DCP 2012 where relevant:

- Part B Section 6 – Business;
- Part C Section 1 – Parking;
- Part C Section 2 – Signage
- Part C Section 3 – Landscaping; and
- Part D Section 17 - Box Hill North

The proposed development is considered to be consistent with the objectives of the DCP as it has been designed to relate to the size, shape and context of the site and to be consistent with the desired future character for development in the locality in accordance with Part D Section 17 Box Hill North which comprises an ILP for the town centre.

Parking

The approval under Development Consent 1118/2023/JP of the shopping centre provides for 511 spaces including parking for the child care centre and medical centre uses. A variation to Council's DCP parking rates was assessed and considered acceptable on the basis of dual-use and varied peak operating times of the various uses. Council's DCP Part C Section 1 - Parking Clause 2.1.3 allows the provision of dual use parking. The DCP states;

"Where the main usage periods of the component uses do not coincide, Council may consider a reduction in the car parking requirements provided that the total car parking is not less than that needed for the component that generates the greatest requirement. The onus will be on the applicant to satisfy Council that the main usage periods do not coincide."

Despite the applicant's and Council's assessment on the specific number of spaces required differing, the rationale and demand for use was consistent, and supported by the DCP.

For the specific uses subject to this consent, Council's DCP Part C Section 1 – Parking requires:

Child Care Centre - 1 parking space per employee is required, along with one space per six children enrolled; and

Medical Centre - 3 spaces per consulting room plus 1 space per support employee.

Council's DCP would require 37 spaces. Given the medical centre is not specifically broken into consulting rooms, at this stage, the rate of 1 space per 25m² would be appropriate. As such 100 paces would be required. 89 spaces are proposed to be allocated to these uses.

The applicant has sought to use the Transport for NSW rates which were foreshadowed and considered in the preceding concept da.

Child Care Centre - 1 space per 4m², the proposed child care centre requires 21 parking spaces and 26 parking spaces are provided.

Medical Centre - 1 space per 25m², the proposed development requires 63 parking spaces and 63 parking spaces are provided.

The applicant considers that the centre has a surplus of 102 car parking spaces for which the proposal will be able to utilise, however the overall assessment on the specific number of spaces required differed, the rationale and demand for use was consistent.

It is considered that both uses located within the approved centre is ideal and as outlined above adequate parking will be available to staff and customers given the expected dual use of spaces on the site. As such this consent will be conditioned to require 89 spaces be allocated to these uses in accordance with the Transport for NSW rates when considering future applications in the site.

A condition is recommended to require Proposed Lot 63 be burdened with a restriction benefiting Proposed Lot 62 for the provision of 89 parking spaces for the use of the child care centre and medical centre (refer Condition 36).

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

The Box Hill North Planning Agreement (VPA) applies to the site. The Planning Agreement was executed by Council and EJ Cooper and Son Pty Ltd and has since been transferred to Stockland.

The VPA makes satisfactory arrangements with Council for development contributions over the site and the wider development at the Gables and turns off the application of S7.11 and S7.12 of the EP&A Act.

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

Clause 61 of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The development application includes minor demolition works (driveway crossings) and as such Australian Standard AS 2601—2001: The Demolition of Structures has been considered.

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

The proposed development is not considered likely to result in any adverse impacts. The development will provide for retail, commercial, food and drink and entertainment development that is not otherwise provided for in the Gables. Conditions of consent have been recommended to address potential amenity impacts.

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

The site has been zoned for the urban purpose and forms part of the Box Hill North Urban Release Area. The proposed development is consistent with the Box Hill North Masterplan approval and Council's previous approvals and is suitable development of the site consistent with the zone objectives.

The proposal will provide for essential uses consistent with the intended town centre outcome for the area, responds to the site characteristics and is considered to be a suitable development.

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

No submissions received.

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

The proposed development will improve the level of amenity provided in the Gables through the provision of a new supermarket, retail precinct and public open space. On these grounds, the proposed development is considered to be in the public interest.

3.10 Section 4.24 Concept Approval

The DA remains consistent with Box Hill Masterplan 1397/2015/JP and recently approved Development Application (1118/2023/JP) approved by the Sydney Central City Planning Panel on 1 December 2023 for the overall concept for the of a larger town centre site (Lot 20 and 21 in DP 1256674 Fontana Drive and Red Gables Road, Gables), as it provides for the development of the land for a town centre retail/mixed use purpose and specifically the uses identified within the recent development consent.

4. COMMUNITY CONSULTATION

The proposal was notified in accordance with the DCP for 14 days. No submissions were received to the application.

5. CONCLUSION

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

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy (Planning Systems) 2021, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Industry and Employment) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, LEP 2019, and The Hills Development Control Plan 2012 and is considered satisfactory.

It is considered that the applicant's Clause 4.6 written request to vary The Hills LEP 2019 development standards at Clause 4.4 be supported as they have adequately justified the contravention of the development standards having regard to the requirements of Clause 4.6(3). It is considered that the variations can be supported as compliance with the standards are unreasonable or unnecessary in these instances and the proposal results in better environmental planning outcomes as outlined in this report.

Approval is recommended subject to conditions, refer Attachment A.

6. RECOMMENDATION

That the Development Application be APPROVED pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 subject to the draft conditions of consent attached to this report at Attachment A.

It is recommended that the applicant's Clause 4.6 written request to vary The Hills LEP 2019 development standards at Clause 4.4 be supported as they have adequately justified the contravention of the development standards having regard to the requirements of Clause

4.6(3). It is considered that the variations can be supported as compliance with the standards are unreasonable or unnecessary in these instances and the proposal results in better environmental planning outcomes as outlined in this report.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Locality Plan
- Attachment C: Aerial Map
- Attachment D: Zoning Map
- Attachment E: Height Map
- Attachment F: FSR Map
- Attachment G: Proposed Site Plan
- Attachment H: Floor Plans
- Attachment I: Elevations
- Attachment J: Landscaping Plans
- Attachment K: Clause 4.6 Request – FSR
- Attachment L: Approved Site Plan and Subdivision Plan DA 1118/2023/JP

ATTACHMENT A – DRAFT CONDITIONS OF CONSENT

ALL DEVELOPMENT TYPES GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Approved plans

Plan number	Revision number	Plan title	Drawn by	Date of plan
A-1.01	1	Site Plan	Thomson Adsett	29 June 2023
A-2.01	1	Basement Plan	Thomson Adsett	29 June 2023
A-2.11	1	Ground Floor Plan	Thomson Adsett	29 June 2023
A-2.21		Level 1 Plan	Thomson Adsett	29 June 2023
A-2.31		Roof Plan	Thomson Adsett	29 June 2023
A-3.01		Elevations	Thomson Adsett	29 June 2023
A-3.02		Elevations	Thomson Adsett	29 June 2023
A-3.51		Sections	Thomson Adsett	29 June 2023
LDA-03	B	Ground Floor Landscape Plan	Ground Ink	29 June 2023
LDA-04	C	Level One Landscape Plan	Ground Ink	17 October 2023
LDA-05	B	Landscape Sections	Ground Ink	29 June 2023
LDA-06	B	Indicative Plant Palette	Ground Ink	29 June 2023
LDA-07	B	Landscape Details	Ground Ink	29 June 2023

Approved documents

Document title	Version number	Prepared by	Date of document
Plan of Management	-	GLN Planning	07 July 2023

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2.	<p>Property Numbering and Cluster Mailboxes for Mixed Use Development</p> <p>The responsibility for property numbering is vested solely in Council under the <i>Local Government Act 1993</i>.</p> <p>The overall property address for this development is: - Lot 20 DP 1256674 Fontana Drive, Gables, NSW, 2765</p> <p>Carparking is available via 2 Lakefront Crescent, Gables, NSW, 2765</p> <p>Approved unit numbering is as per plans submitted marked as DWG No. A-2.11 & A-2.21 Rev 1 and marked up as 'Numbering Plans' by Council's Land Information Team within consent documentation; and as follows:</p> <p>Level</p> <p>Ground G01 – G08</p> <p>One 101</p> <p>These addresses shall be used for all correspondence, legal property transactions and shown on the final registered Deposited Plan/Strata Plan lodged with Land Registry Services NSW as required. Under no circumstances can unit numbering be repeated or skipped throughout the development regardless of the building name or number.</p> <p>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.</p> <p>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.</p> <p><u>Mailboxes</u></p> <p>Australia Post requires cluster mailboxes within a foyer to be as close to the footpath or road as possible.</p> <p>Parking for Postal officer motorcycle/walk buggy is to be provided in a safe location that is viewable from foyer mailboxes to ensure the security of mail located on the vehicle. An intercom or doorbell is to be provided for each unit for the delivery of parcels.</p> <p>Locations as provided on plans DWG No. A-2.11 & A-2.21 Rev 1 are to be approved by Australia Post for mail delivery. Plans are to be provided to Gregory Dimmock at the Seven Hills Delivery Centre via email Gregory.dimmock@auspost.com.au or phone 02 9674 4027. Australia Post approval is required to be provided to Council.</p> <p>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 proprietor's additional mailbox is to be located within the cluster located at Lot 20 DP 1256674 Fontana Drive, Gables.</p> <p>Condition reason: To ensure consistency in addressing as per Council and Geographical Names Board Guidelines. Final development can be located in the event of an emergency and for mail delivery.</p>
3.	<p>Separate Application for Signs</p> <p>A separate application is to be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.</p>

	Condition reason: To ensure approval is sought for additional signage.
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4.	Building Work to be in Accordance with BCA
	During building work, all building work must be carried out in accordance with the provisions of the Building Code of Australia as referenced by Section 69 of the Environmental Planning and Assessment Regulation 2021.
	Condition reason: To ensure compliance with the legislative requirements.

5.	Construction Certificate
	Before building works commence for 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.
	Condition reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation, and to ensure compliance with the legislative requirements.

6.	Provision of Parking Spaces
	Before the issue of an occupation certificate, the development is required to be provided with 89 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times. Unrestricted parking for staff is to be provided on the site.
	Condition reason: To ensure compliance with parking requirements.

7.	Occupation Certificate
	Before occupation and ongoing use of a building resulting from a change of use, the applicant is required to obtain an occupation certificate from Council or Private Certifier.
	Condition reason: To ensure compliance with the legislative requirements.

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8.	Waste Management Plan Requirements
	<p>Before the issue of a construction certificate, a construction waste management plan for the development must be prepared and provided to the principal certifier. The plan must be prepared</p> <ul style="list-style-type: none"> a) in accordance with <ul style="list-style-type: none"> i. the Environment Protection Authority's Waste Classification Guidelines as in force from time to time, and ii. a development control plan that provides for waste management that applies to the land on

	<p>which the work or the clearing of vegetation is carried out, and</p> <p>b) include the following information—</p> <ul style="list-style-type: none"> i. the contact details of the person removing waste, ii. an estimate of the type and quantity of waste, iii. whether waste is expected to be reused, recycled or sent to landfill, iv. the address of the disposal location for waste. <p>A copy of the waste management plan must be kept on-site at all times while work approved under the development consent is being carried out.</p> <p>Condition reason: To ensure resource recovery is promoted and local amenity protected during construction.</p>
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9.	<p>Notice of Requirements</p> <p>Before the issue of a construction certificate, submit 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.</p> <p>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.</p> <p>Condition reason: To ensure compliance with Sydney Water requirements.</p>
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BEFORE WORK COMMENCES

10.	<p>Erosion and Sediment Controls in Place</p> <p>Before any site work commences, the certifying authority must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing manual ‘Managing Urban Stormwater: Soils and Construction Certificate’ (the Blue Book) (as amended from time to time).</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
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11.	<p>Management of Building Sites</p> <p>Before building work commences, 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 is to be provided.</p> <p>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.</p> <p>Condition reason: To protect workers, the public and the environment.</p>
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12.	Builder and Principal Certifier Details
	Before building work commences, the builders name, address, telephone and email information must be submitted to the Principal Certifier. 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.
	Condition reason: To ensure compliance with the legislative requirements.

13.	Consultation with Service Authorities
	Before building work commences, 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.
	In the interest of health and safety, applicants are to contact before you dig Australia www.byda.com.au in order to protect damage to third party assets. It is the individuals responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the dial before you dig service in advance of any construction or planning activities.
	Condition reason: To ensure compliance with relevant service provider's requirements.

DURING WORKS

14.	Waste management
	<p>While site work is being carried out:</p> <ul style="list-style-type: none"> a) all waste management must be undertaken in accordance with the waste management plan, and b) upon disposal of waste, records of the disposal must be compiled and provided to the principal certifier, detailing the following: <ul style="list-style-type: none"> i. The contact details of the person(s) who removed the waste ii. The waste carrier vehicle registration iii. The date and time of waste collection iv. A description of the waste (type of waste and estimated quantity) and whether the waste is to be reused, recycled or go to landfill v. The address of the disposal location(s) where the waste was taken vi. The corresponding tip docket/receipt from the site(s) to which the waste is transferred, noting date and time of delivery, description (type and quantity) of waste.

	c) If waste has been removed from the site under an EPA Resource Recovery Order or Exemption, records in relation to that Order or Exemption must be maintained and provided to the principal certifier and council.
	Condition reason: To require records to be provided, during site work, documenting the lawful disposal of waste.

15.	Soil Management While site work is being carried out, the certifying authority must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements: <ul style="list-style-type: none"> a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the certifying authority b) All fill material imported to the site must be: <ul style="list-style-type: none"> i. Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i>, or ii. a material identified as being subject to a resource recovery exemption by the NSW EPA, or iii. a combination of Virgin Excavated Natural Material as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> and a material identified as being subject to a resource recovery exemption by the NSW EPA.
	Condition reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.

16.	Noise and vibration—an approved document of this consent While site work is being carried out: <ul style="list-style-type: none"> a) the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and b) a copy of these plans must be kept on site at all times and made available to council officers upon request.
	Condition reason: To protect the amenity of the neighbourhood during construction

17.	Hours of Work Site work must only be carried out between the following times – For all works from 7:00am to 5:00pm on Monday to Saturday. No work to be carried out on Sunday or Public Holidays. Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.
	Condition reason: To protect the amenity of the surrounding area.

18.	Stockpiles During site work, stockpiles of topsoil, sand, aggregate or other material capable of being moved by water must be stored clear of any drainage line, easement, natural watercourse, footpath, kerb or roadside.
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	Condition reason: To protect waterways
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19.	Dust Control
	During site works, dust suppression techniques must be used to minimise nuisance to surrounding properties. In the absence of any alternative measures, the following measures must be taken to control the emission of dust:
	<ul style="list-style-type: none"> a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the demolition and construction work; b) All dusty surfaces must be wet down and suppressed by means of a fine water spray. Water used for dust suppression must not cause water pollution; and c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
	Condition reason: To prevent the movement of dust outside the boundaries of the development.

ON COMPLETION OF WORKS

20.	Removal of waste upon completion
	After completion of all site work:
	all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan, and written evidence of the waste removal must be provided to the satisfaction of the principal certifier.
	Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.

BEFORE ISSUE OF OCCUPATION CERTIFICATE

21.	Section 73 Certificate must be Submitted to the Principal Certifier Prior to Issue of Occupation Certificate
	Before the issue of an occupation certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.
	Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.
	Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.
	The Section 73 Certificate must be submitted to the Principal Certifier before occupation of the development/release of the plan of subdivision.
	Condition reason: To ensure the development will be satisfactorily serviced by Sydney Water and that the requirements of Sydney Water have been complied with.

22.	Provision of Electricity Services
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	Before the issue of an occupation certificate, a compliance certificate from the relevant service provider must be submitted confirming satisfactory arrangements have been made for the provision of electricity services. This includes undergrounding of existing and proposed services where directed by Council or the relevant service provider.
	Condition reason: To ensure relevant utility and service providers requirements are provided to the certifier.

23.	Provision of Telecommunications Services
	Before the issue of an occupation certificate, a compliance certificate from the relevant telecommunications provider, authorised under the Telecommunications Act must be submitted confirming satisfactory arrangements have been made for the provision of, or relocation of, telecommunication services including telecommunications cables and associated infrastructure. This includes undergrounding of aerial telecommunications lines and cables where required by the relevant telecommunications carrier.
	Condition reason: To ensure relevant utility and service providers requirements are provided to the certifier.

OCCUPATION AND ONGOING USE

24.	Child and Staff Numbers (Childcare Facility)
	A maximum of 102 enrolled children are permitted to be at the childcare facility. Any change to the number of children will require an application to Council to modify this condition. The breakdown of children is to be as follows: <ul style="list-style-type: none"> • Age 0 to 2 year olds – 12 children • Age 2 to 3 year olds – 30 children • Age 3 to 5+ year olds – 60 children The maximum number of staff at the centre at any one time is to be limited to 20.
	Condition reason: To ensure compliance with the legislative requirements.

BUILDING WORK GENERAL CONDITIONS

25.	External Finishes
	During occupation and ongoing use of the development, the external finishes and colours shall be in accordance with the details submitted with the development application and approved with this consent.
	Condition reason: To ensure quality built form of development.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

26.	Construction of Waste Storage Area(s)
	<p>Before the issue of a construction certificate, construction plans are to be submitted to the certifier that demonstrate the waste storage areas are designed and constructed in accordance with the following requirements:</p> <ul style="list-style-type: none"> a) The area(s) must provide minimum storage facility for 4 x 1100 litre sized bins. b) The layout of the waste storage area(s) must ensure that each bin is easily accessible and manoeuvrable in and out of the areas. All internal walkways must be at least 1.5m wide. c) The walls of the waste storage area(s) must be constructed of brickwork. d) The floor of the waste storage area(s) 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). e) The waste storage area(s) 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. f) All doors of the waste storage area(s), when fully opened, must be flush with the outside wall(s) and must not block or obstruct car park aisles or footways. All doors must be able to be fixed in position when fully opened. g) The waste storage area(s) must be ventilated. Vented waste storage areas must not be connected to the same ventilation system supplying air to the child care or the medical centre. h) The waste storage area(s) 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(s), must not conflict with the space designated for the placement of bins. i) The waste storage area(s) must be provided with internal lighting. j) The maximum grade acceptable for moving bins for collection purposes is 5%. k) The waste storage area(s) must have appropriate signage mounted in a visible location on internal walls and are to be permanently maintained by Owners corporation.
	Condition reason: To ensure all residential developments with a shared bin system provide adequate storage space for all bins allocated to the site and to promote efficient waste management with bins being out of site from public view or neighbour properties.

27.	Access and Loading for Waste Collection
	Before the issue of a construction certificate, construction plans satisfied by the Certifier must demonstrate waste vehicle access and loading facilities designed and provided on site in accordance with AS 2890 for the minimum standard 8.8m long medium rigid vehicle (minimum 3.5m clear vertical clearance exception). The following requirements must also be satisfied:

	<p>a) 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 AS 2890.1.</p> <p>b) All manoeuvring and loading areas for waste collection vehicles must be clearly and permanently line marked, signposted and maintained.</p> <p>c) Pedestrian paths around the designated waste collection areas must be clearly and permanently line marked, signposted and maintained.</p> <p>d) The requirement for reversing on site must be limited to a single reverse entry into the designated waste service bay (typical three point turn).</p> <p>e) The designated waste service bay must allow additional space servicing of bins.</p> <p>f) 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”.</p> <p>g) Access to restricted loading areas (i.e. via roller shutter doors, boom gates or similar) must be via scanning from the cab of a waste collection vehicle, remote access or alternative solution which ensures there is no requirement for waste collection contractors to exit the cab.</p>
	Condition reason: To ensure safe and adequate loading facilities are provided for the waste vehicle to enter the site and service all waste collections.

DURING BUILDING WORKS

28.	Acoustic Requirements
	During the building works the recommendations of the Acoustic Assessment and Report prepared by Stantec Pty Ltd, referenced as AC-RPT-301050509 002-DA dated 29/06/2023 and submitted as part of the development application are to be implemented as part of this approval.
	Condition reason: To protect the amenity of the local area.

29.	Construction Noise
	During building work. the emission of noise from the construction of the development shall comply with the <i>Interim Construction Noise Guideline published by the Department of Environment and Climate Change (July 2009)</i> .
	Condition reason: To protect residential amenity

30.	Notification of New Contamination
	During building work, ground conditions must be monitored and when new evidence including, but not limited to, imported fill, buried building materials, asbestos, odour and/or staining, works are to immediately cease and Council’s Manager- Environment and Health is to be notified. A site contamination investigation is to be carried out in accordance with the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> and submitted to Council’s Manager – Environment and Health for review. Approval from Council’s Manager – Environment and Health must be obtained in writing prior to works recommencing on site.
	Condition reason: To ensure controls are in place for contamination management

31.	Imported ‘Waste Derived’ Fill Material
	During building works only virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); or any other waste-derived material the subject of a resource recovery

	<p>exemption under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 is permitted to be used as fill material.</p> <p>Any waste-derived material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Certifier.</p> <p>Condition reason: To ensure that fill is not contaminated.</p>
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32.	<p>Control of Noise from Trucks</p> <p>During works, the number of trucks waiting in adjacent streets to enter the site for the removal of fill shall not exceed 1 Trucks waiting shall not obstruct driveways and shall have their motors off if expected to wait more than 5 minutes.</p> <p>Condition reason: To protect the acoustic amenity of the local area and of the development.</p>
-----	--

BEFORE ISSUE OF OCCUPATION CERTIFICATE

33.	<p>Completion of Landscape and Tree Works</p> <p>Before the issue of an occupation certificate, the principal certifier must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.</p> <p>Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).</p>
-----	--

34.	<p>Planting Requirements</p> <p>Before the issue of an occupation certificate, the principal certifier must be satisfied that all trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m2. Any species that need substituting requires confirmation from Council.</p> <p>Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s).</p>
-----	---

35.	<p>Acoustic - Compliance Report</p> <p>Before the issue of any Occupation Certificate, the acoustic consultant shall inspect and certify that the required noise attenuation components as recommended the acoustic report prepared by Stantec referenced as AC-RPT-301050509 002-DA and dated 29/06/2023 have been installed. Written certification (including photographs of all attenuation measures) is to be provided to the Principal Certifier for their review and a copy of the report provided to Council's Manager – Environment and Health.</p> <p>Condition reason: To protect the amenity of the locate area</p>
-----	--

36.	<p>Creation of Restriction/Covenant</p> <p>Before the issue of an Occupation Certificate the following restriction/covenant must be registered on the title of the subject site (Lot 63) via a request document, Section 88B instrument associated with a plan or the like. Council's standard recitals must be used.</p>
-----	--

	<p>a) Restriction / Covenant – Parking</p> <p>Proposed Lot 63 shall be burdened with a restriction benefiting Proposed Lot 62 for the provision of 89 parking spaces for the use of the child care centre and medical centre.</p>
	<p>Condition reason: To ensure appropriate restrictions are created and legally binding to address, where relevant, conditions of consent.</p>

OCCUPATION AND ONGOING USE

37.	<p>Commercial Waste and Recycling Collection</p> <p>During the occupation and use of the site, the site owner is to ensure that: all waste and recycling generated on the site is removed on a regular basis;</p> <p>a) Collection must occur during off-peak time periods within the approved operation hours of the site;</p> <p>b) must not be placed on public property without the prior written approval of Council; and</p> <p>c) must not cause a nuisance.</p>
	<p>Condition reason: To protect amenity of locality.</p>

38.	<p>Waste and Recycling Management</p> <p>During the occupation and use, all garbage and recyclable materials must be separated into dedicated waste collection containers and stored in a designated waste storage area(s), which must include provision for the storage of all waste generated on the premises between collections. Arrangements 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 places. Ideally, waste storage containers should be kept inside units and under no circumstances should waste storage containers be stored in locations that restrict access to any of the car parking spaces provided on site. A caretaker must be appointed to manage waste operations onsite including undertaking all instructions issued by Council to enable waste collection. Waste storage areas(s) must be kept clean and tidy, bins must be washed regularly, and contaminants must be removed from bins prior to any collection.</p>
	<p>Condition reason: To ensure responsibility is placed upon the site's occupier or resident to management all waste generated on the site without it affected local amenity of neighbouring properties.</p>

39.	<p>Waste and Recycling Collection Contract</p> <p>During the occupation and use, a private waste contract is to be in place with a licensed contractor for the removal and lawful disposal of all waste generated on site. Written evidence of a valid and current collection and disposal contract must be held on site at all times and produced in a legible form to an authorised officer of Council who asks to see it.</p>
	<p>Condition reason: To ensure a private waste contractor is engaged with by commercial premises to lawfully remove all waste generated onsite.</p>

40.	<p>Final Acoustic Report</p> <p>Within three months from the issue of an Occupation Certificate or when the childcare centre is at 90% capacity (whichever one comes first), an acoustical compliance assessment is to be carried out by an</p>
-----	--

	<p>appropriately qualified person, in accordance with the NSW EPA's - Industrial Noise Policy and submitted to Council's Manager - Environment and Health for consideration.</p> <p>This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the activities does not give rise to "offensive noise" as defined under the <i>Protection of the Environment Operation Act 1997</i> and that the project specific criteria conditioned in this consent can be met.</p>
	Condition reason: To protect the amenity of the local area

41.	<p>Acoustic - Noise Management Measures</p> <p>During the operation hours the following noise management measures must be complied with:</p> <ol style="list-style-type: none"> 1. No music is to be played in any outdoor areas at any time. 2. Toys and the like are not to be attached to any of the acoustic barriers. 3. No play equipment is to exceed the height of the acoustic barrier. 4. Noise management signage is to be installed and maintained in prominent locations within the premises and the carpark advising attendees to please consider neighbours and minimise noise when entering and exiting the premises. 5. All approved and installed acoustic attenuation measures are to be maintained at all times, in a manner that is consistent with the accepted acoustic report/s, the consent and so that the noise attenuation effectiveness is maintained for the life of the development. This includes but is not limited to: Acoustic barriers are to remain solid and gap free. 6. The accepted noise management plan is to be kept on site and made available to Council Officers when requested.
	Condition reason: To protect the amenity of the local area

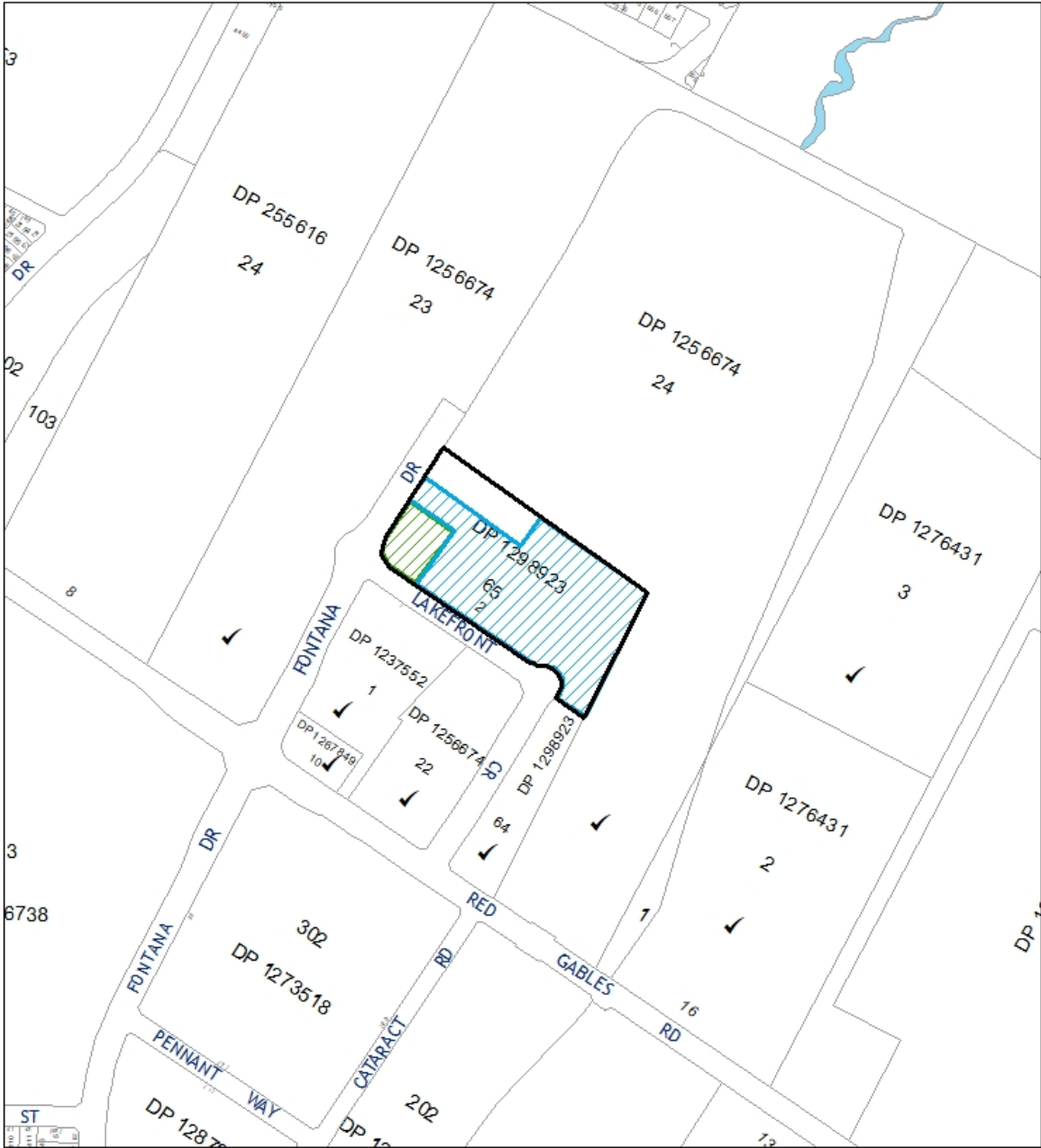
42.	<p>Noise Management Plan to be kept on site</p> <p>During occupation and ongoing use of the premises, the approved noise management plan is to be complied with and kept on site at all times and is to be made available to Council Officers upon request.</p>
	Condition reason: To protect the amenity of the local area

43.	<p>Child Care Centre Noise Management Plan</p> <p>Before the issue of any Occupation Certificate, a noise management plan, written by the operator of the Child Care Centre shall be submitted to the Manager – Environment & Health at the Hills Shire Council. The noise management plan is to incorporate the following items.</p> <ul style="list-style-type: none"> • A clear commitment by the operator to minimise noise from the child care centre to surrounding residential properties. • A commitment that children are to be encouraged to play away from the acoustic barrier and not bang on the acoustic barrier or use the barrier as a toy in any games. • A commitment that toys or the like are not to be attached to the acoustic barrier. • A commitment that music is not to be played in the play area.
-----	---

	<ul style="list-style-type: none"> • Details of the approved Number of children at any one time allowed in the play area, including a roster of use showing how this will be implemented and monitored. • Details of the times of use for the play area. • Staff management guidelines and noise minimisation strategies to be implemented by supervising staff in the outdoor play area to minimise noise from the use of the outdoor play area. • Staff management of crying children including prioritising moving distressed or crying children inside the building. • Details of proposed staff numbers within the outdoor play area for supervision of children. Staff numbers must be high enough to ensure a staff member can take a crying child into the building without impacting staff to child ratios. • Details of the operator's expectations of parents at the centre, in the noise minimisation role. • Details of any performances/functions or the like that will be undertaken at the centre and how these will be managed to ensure that neighbours are not impacted by offensive noise. • Details of the noise management plan review process to be implemented every year. • Provision of information for neighbours including the issuing of the noise management plan to any potentially impacted neighbour, complaints register and contact details of the person responsible for investigating offensive noise complaints. • Any other item or action deemed relevant to minimising noise from the child care centre including the outdoor play area. <p>The noise management plan is to be submitted to Council's Manager – Environment and Health for review and if satisfactory, written acceptance. The approved noise management plan is to be complied with at all times when the premises is in operation.</p>
	Condition reason: To protect the amenity of the local area

44.	Operating Hours
	During ongoing use of the premises, the hours of operation of the <u>childcare facility</u> are restricted to: Monday – Friday: 6.30am to 6.30pm
	During ongoing use of the premises, the hours of operation of the <u>medical centre</u> are restricted to: 7am to 10pm, 7 days a week
	Condition reason: To protect the amenity of the local area.

ATTACHMENT B – LOCALITY PLAN



- ☐ PARENT LOT 65
- ☒ PROPOSED LOT 63 IN BLUE
- ☒ PROPOSED LOT 62 IN GREEN
- ☒ PROPERTIES NOTIFIED

THE HILLS
Sydney's Garden Shire


THE HILLS SHIRE COUNCIL

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

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

ATTACHMENT C – AERIAL MAP



 **SUBJECT SITE**

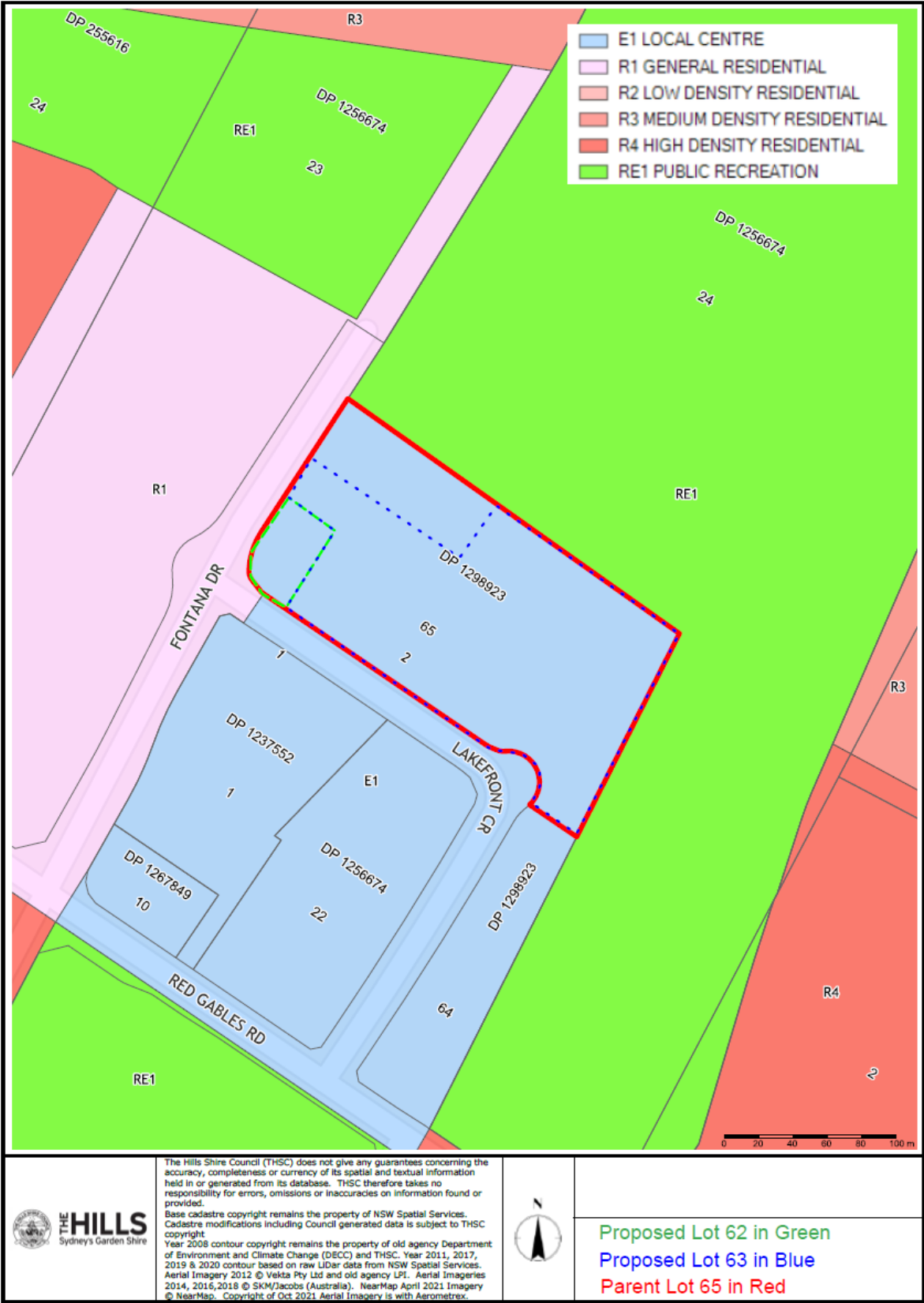
THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

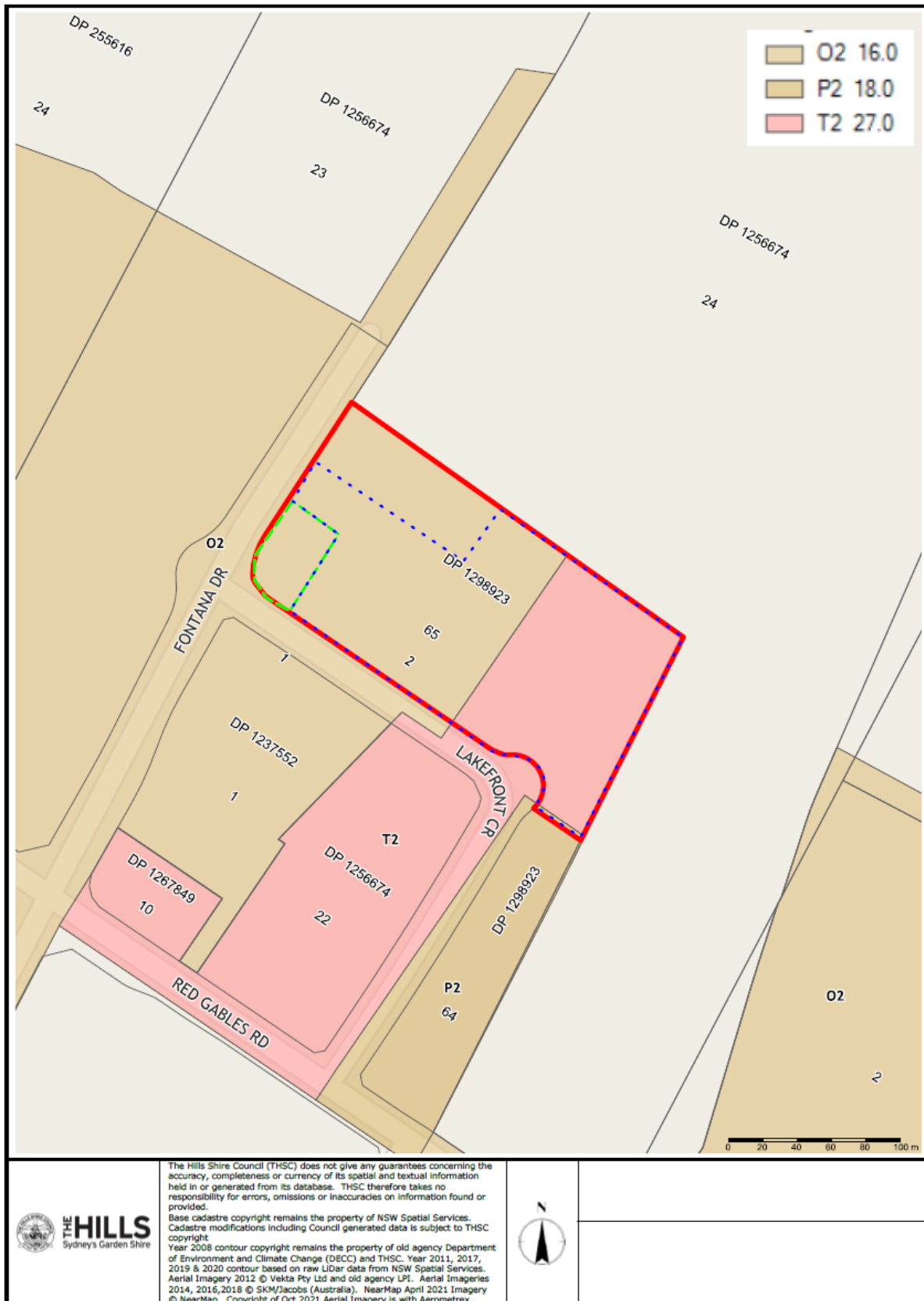
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

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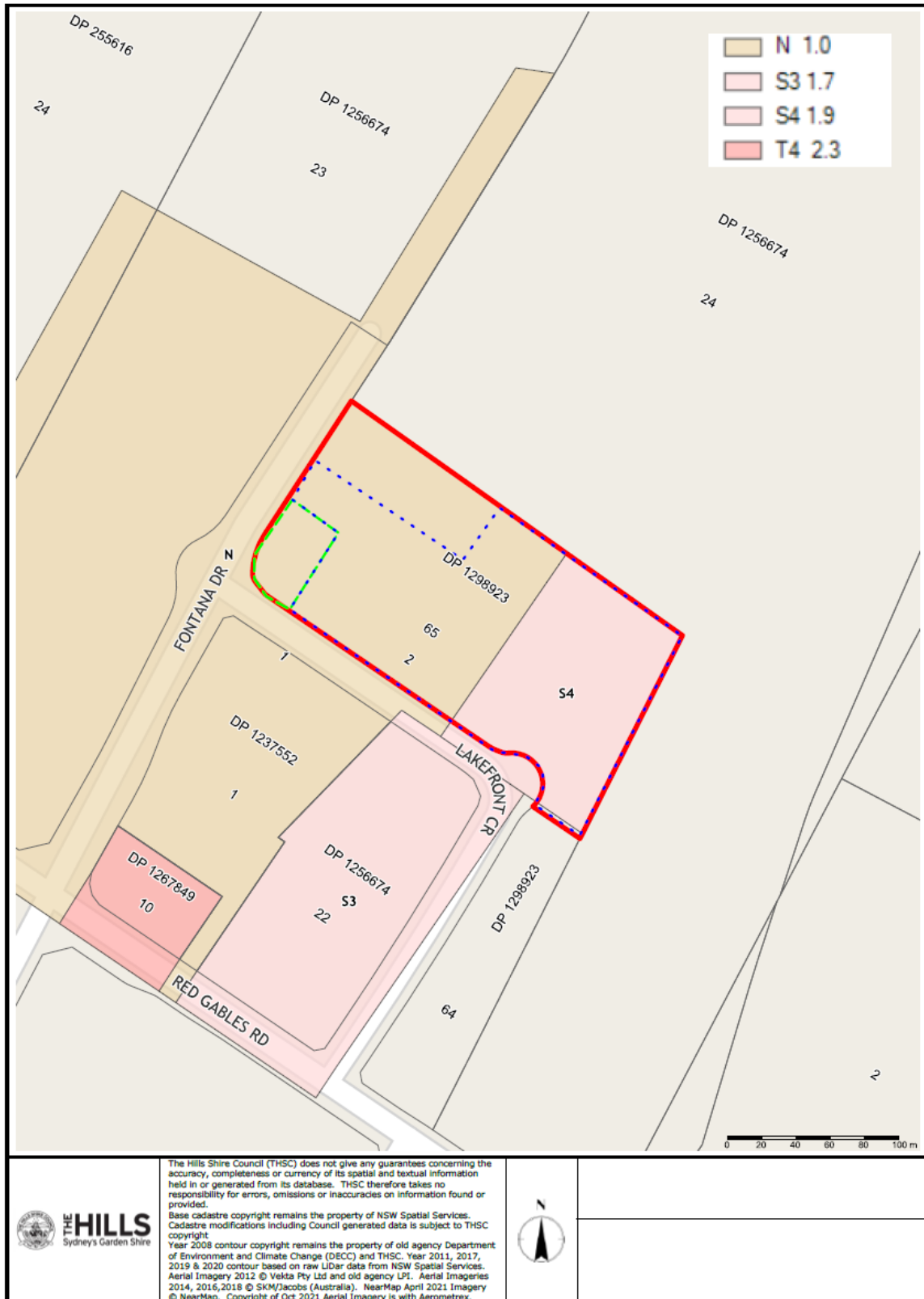
ATTACHMENT D – ZONING MAP



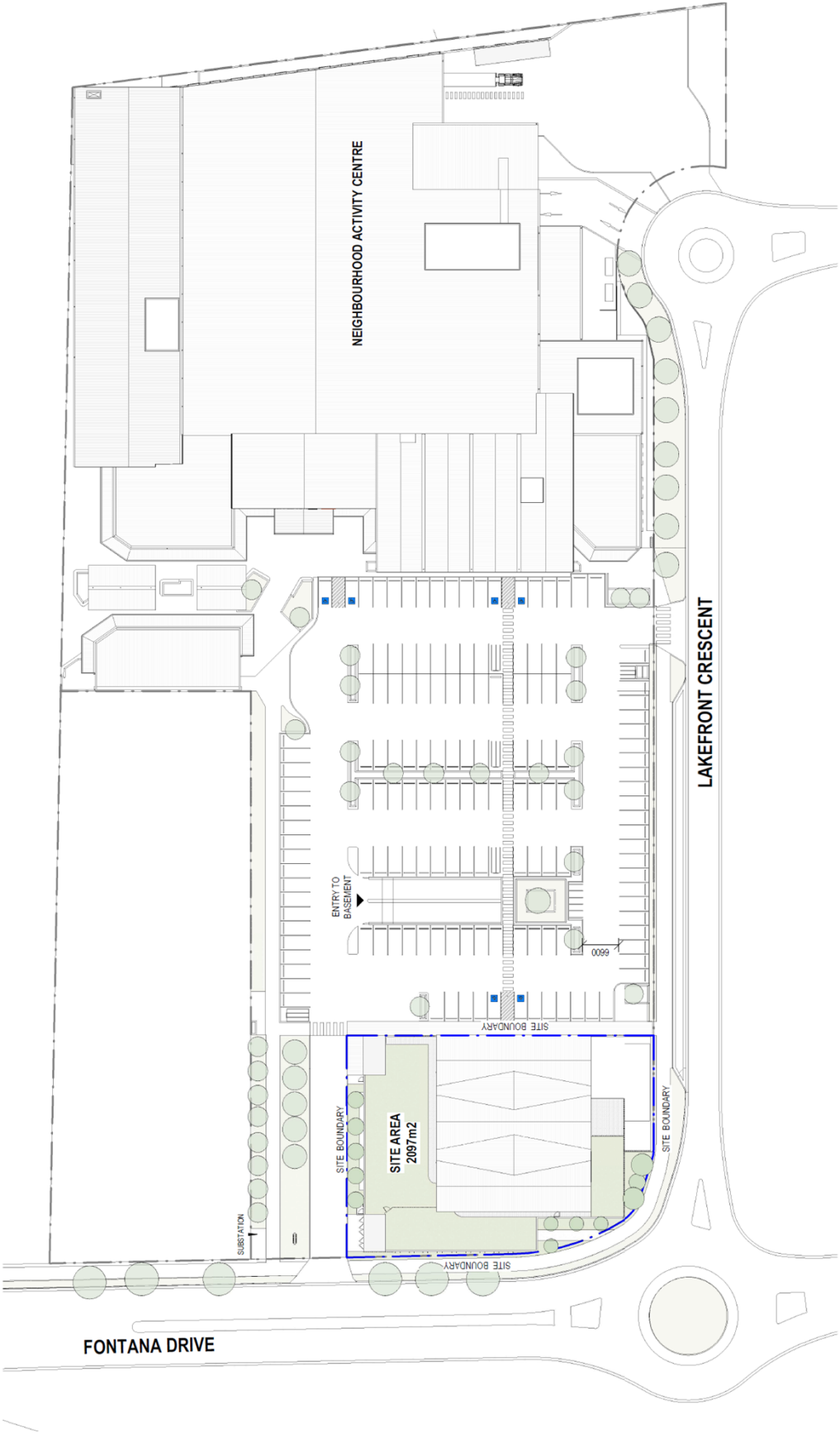
ATTACHMENT E – HEIGHT MAP



ATTACHMENT F – FSR MAP



ATTACHMENT G – PROPOSED SITE PLAN



thomson adsett

Telephone +61 2 9003 9000
 Level 4, Suite 411, 501/502 Street
 Sydney, NSW 2000, Australia
 thomsonadsett.com Robert D. Adsett
 Architect No. NSW 5276 ACT 2726

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**THE GABLES PAD
SITE 2**

BASEMENT PLAN

Fontana Drive, Gables, NSW 2765

for **STOCKLAND**

Stockland

1. 2020/06/02 ISSUE FOR TA

DATE	DESCRIPTION
2020 JUNE	ISSUE FOR TA
2020 JUNE	ISSUE FOR TA
2020 JUNE	ISSUE FOR TA
2020 JUNE	ISSUE FOR TA

Scale: 0 1 2 3 4 5m

North Arrow

1:100 @ A1

22/0002.12

Sheet No. 1

A-2.01

original sheet size: A1 (300mm x 420mm)

thomson
adsett

Tel: 02 9550 4000
www.thomsonadsett.com
Level 4, Suite 411, 50 Hall Street
Sydney NSW 2010 Australia
thomsonadsett.com
thomsonadsett.com.au
Arch. Reg. No. NSW 5276 / ACT 2726

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THE GABLES PAD SITE 2

FONTANA DRIVE GABLES NSW
2765

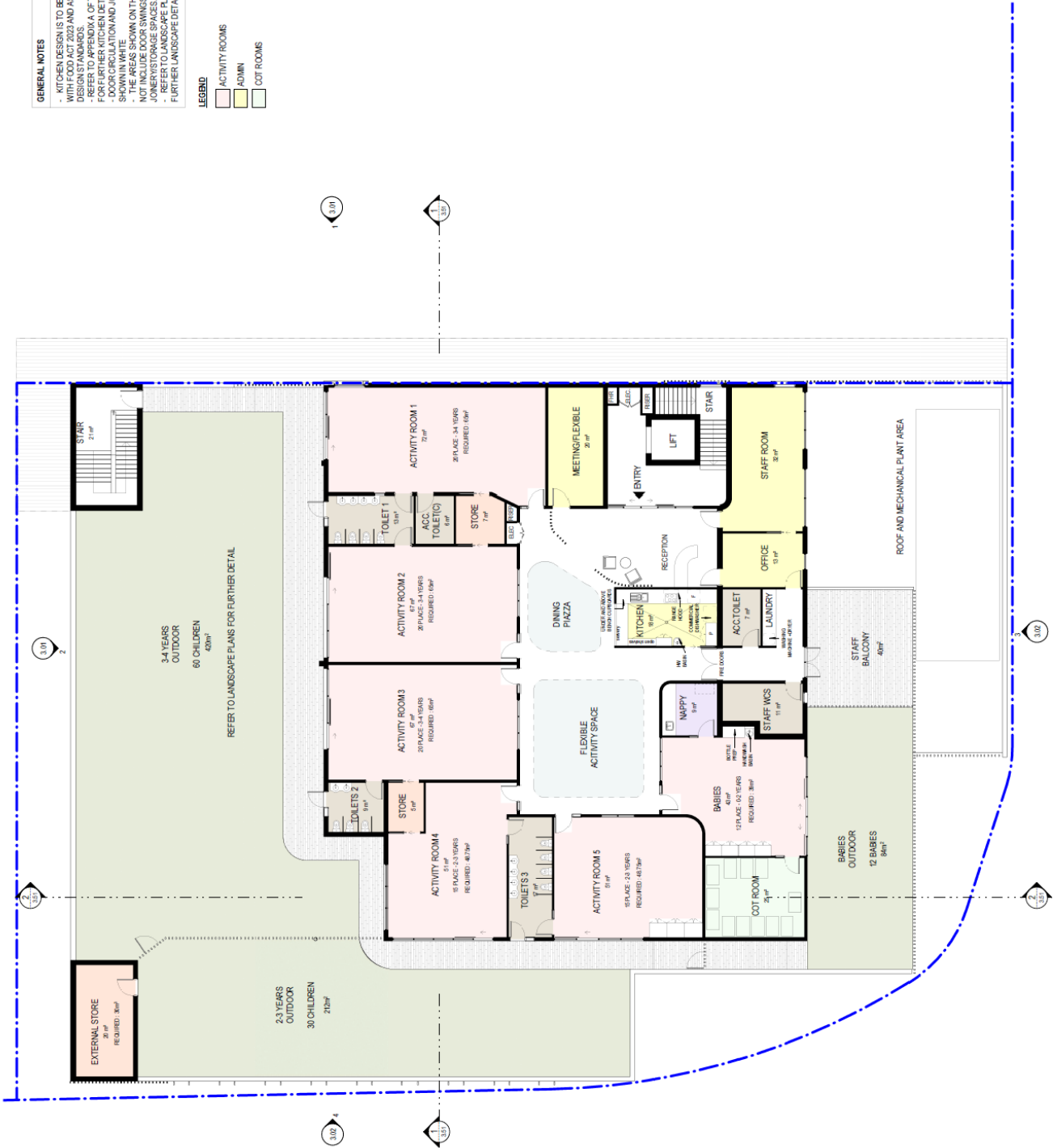
for
STOCKLAND



- GENERAL NOTES**
- KITCHEN DESIGN IS TO BE COMPLIANT WITH FOOD ACT 2023 AND AS4674-2004 DESIGN STANDARDS.
 - REFER TO APPENDIX A OF THIS DOCUMENT FOR FURTHER KITCHEN DETAIL.
 - DOCKING CHAIRS AND JOINERY SPACES SHOWN IN WHITE.
 - THE AREAS SHOWN ON THE DRAWING DO NOT INCLUDE DOOR SWINGS AND JOINERY STORAGE SPACES.
 - REFER TO LANDSCAPE PLAN FOR FURTHER LANDSCAPE DETAIL.

LEGEND

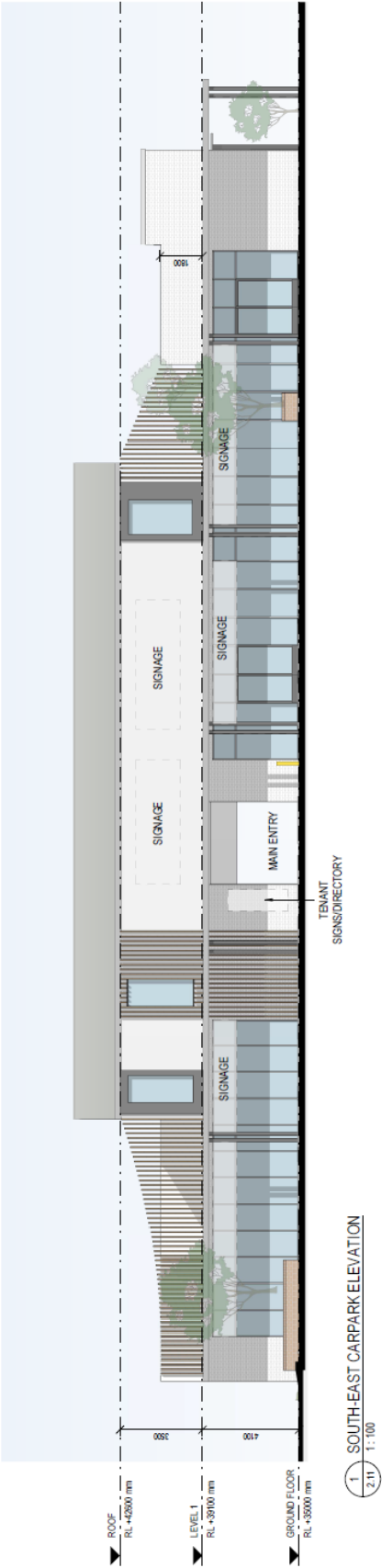
- ACTIVITY ROOMS
- ADMIN
- COT ROOMS
- NAPPY
- STORAGE
- TOILETS

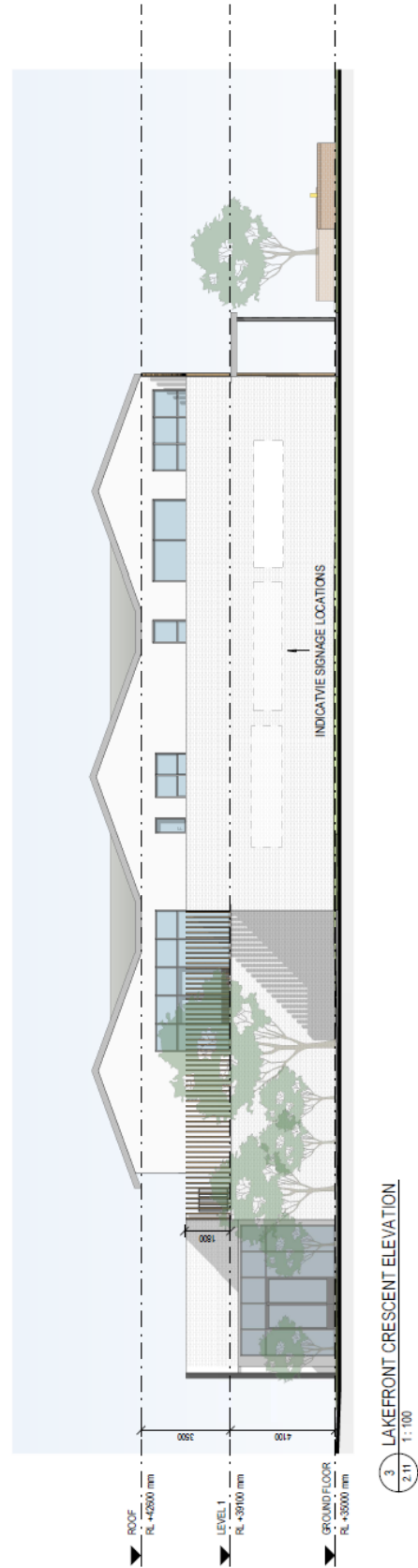
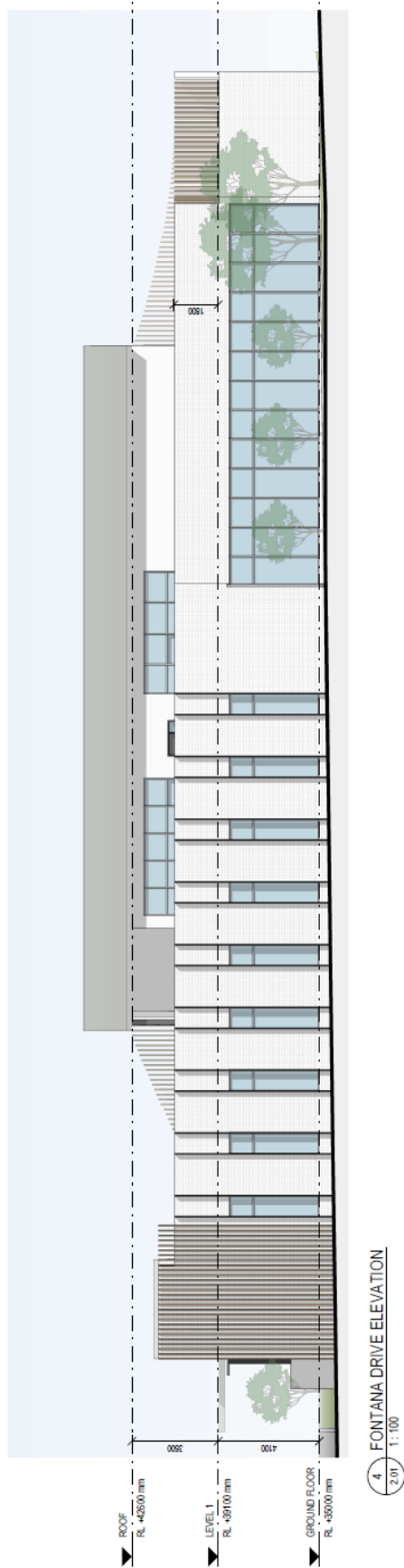


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DATE: 2024 JUNE
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CHECKED: DC
VERIFIED: DC
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LEVEL 1 PLAN
1:100 @ A1
22.0032.12
A221
original sheet size: A1 (841mm x 594mm)

DEVELOPMENT APPLICATION

ATTACHMENT I – ELEVATIONS





REV. B | 29-Jun-2023

Groundlink Pty Ltd | Phone 02 953 02 4006
Registered Landscaping Architects | Rob Loughead # 7913
Suite 201, 75 Anchor Street, Chiswick, NSW 2057
Ph: (02) 94113 279 | www.groundlink.com.au





- LEGEND**
- 1800MM HIGH BALLSTRADE TO ARCHITECT'S DETAILS
 - FINISHED FLOOR LEVEL
 - 1 PROPOSED RAISED SANDPIT WITH SEATING EDGE AND STEP ENTRIES
 - 2 PROPOSED 1200MM HIGH RAISED PLANTER WITH SEATING EDGE PROVIDING NATURAL SHADE AND GREENING AMENITY
 - 3 PROPOSED OPEN SYNTHETIC TURF AREA FOR FLEXIBLE PLAY & RECREATION PURPOSES
 - 4 PROPOSED TABLE SETTINGS PROVIDING REST AND GATHERING AMENITY
 - 5 PROPOSED INTERACTIVE ACTIVE ANIMAL WALK TO BE APPLIED TO CONCRETE WALKWAYS
 - 6 PROPOSED 400MM HIGH TROUGH PLANTER WITH MIXED PLANTING
 - 7 PROPOSED SHADE SAILS PROVIDING SHADE TO PLAY SPACES
 - 8 PROPOSED RAISED VEGETABLE GARDENS

NOTE:
REFER TO LANDSCAPE SECTIONS ON LDA-08 FOR PROPOSED LEVELS & TOP OF WALL HEIGHTS

UNENCUMBERED PLAY SPACE - 719M²

KEY PLANT IMAGES



LEVEL ONE LANDSCAPE PLAN

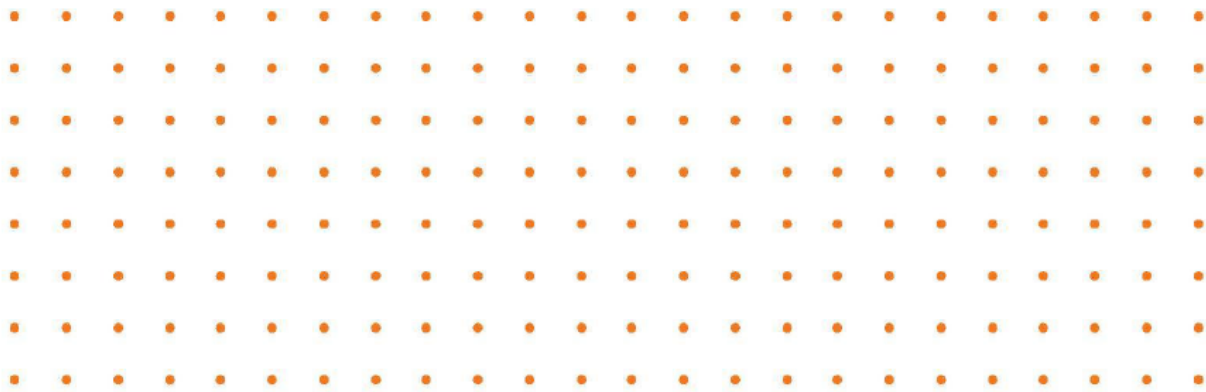
LDA-04

REV C17-Oct-2023

LANDSCAPE DA DOCUMENTATION | THE GABLES (NAC) PAD SITE 2, BOX HILL

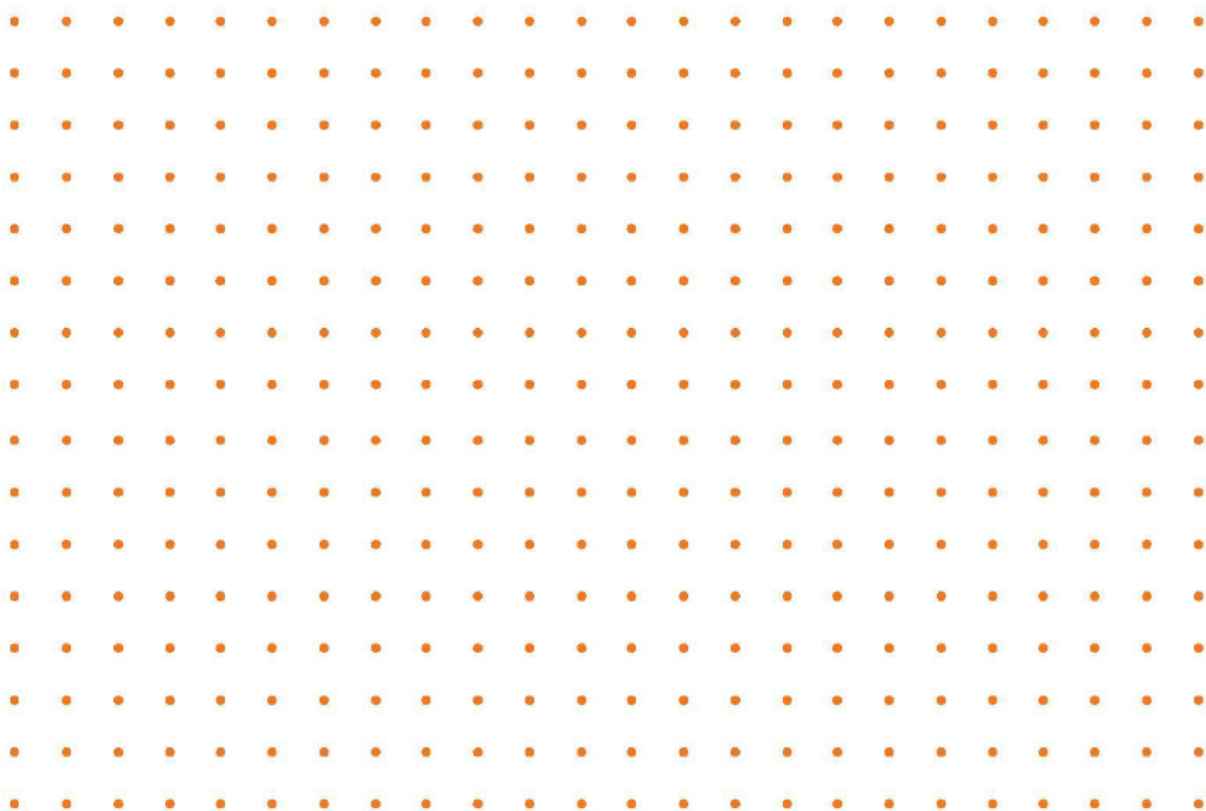
GROUND INK
LANDSCAPE ARCHITECTS

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Project: 21014734 - Landscape Architecture for Gables (NAC) Pad Site 2, Box Hill
P/L 002 11113271 | www.groundink.com.au



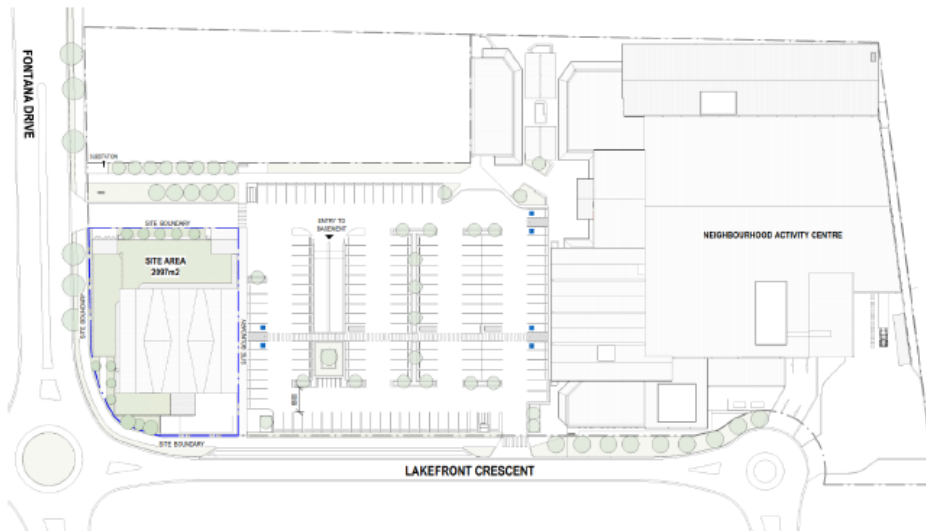
CLAUSE 4.6 VARIATION TO
FLOOR SPACE RATIO
DEVELOPMENT STANDARD

Medical Centre and Child Care Centre
2 Lakefront Crescent, Gables - DA 103/2024/JP



Clause 4.6 Variation to Floor Space Ratio Development Standard
Medical Centre and Child Care Centre

Summary Description	
Property	<p>Lot 62 in approved subdivision granted consent to under Concept Development Application 1118/2023/IP.</p> <p>Site currently registered as part of Lot 65 DP1298923; 2 Lakefront Crescent, Gables NSW.</p>
Development	Proposed two-storey building with a medical centre on the ground floor and centre based childcare centre on the first floor with a total floor space of 2,489m ² .
Development Standard:	Clause 4.4 – Floor Space Ratio under <i>The Hills Shire Local Environmental Plan 2019</i> which would limit the FSR on the site to 1:1 or 2,097m ² .
Development Plans	Architectural Plans – Thomson Adsett – Project No. 22.0032.12 (Rev 1) dated June 2023



Source: Thomson Adsett, 2023

Figure 1. Site Plan showing approved Lot 62 with area of 2,097m²

1 Background and Summary

1.1 Introduction

This Clause 4.6 submission supports the proposal for the development of approved Lot 62 being part of the retail complex at 2 Lakeside Drive, Gables as outlined in the Development Application (DA 103/2024/JP) (**DA**) submitted to The Hills Shire Council and as described below:

- Construction of a two-storey building comprising a medical centre with allied health services and a centre based childcare centre with capacity for up to 102 children,
- Minor civil works including site grading, stormwater and service connections, and
- Landscaping and signage.

This DA is consistent with and represents the next stage of the development approved under Concept DA 1118/2023/JP (the **Concept DA**) which established three separate PADs (areas) for different uses. The CDA allocated 2,500m² for PAD2 for the childcare centre and medical centre. Under Section 4.22 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the future development of the lot cannot be inconsistent with the Concept Approval, in effect confirming a maximum FSR for the site.

The total site area of the shopping centre is 23,494m² of which approximately 8,900m² has a FSR of 1.9:1 and approximately 14,600m² has an FSR of 1:1. The total FSR for the site is therefore 31,510m². Importantly, the plans submitted with the CDA application and floor space allocated to each PAD achieve a maximum FSR of 14,004m², less than half the permissible FSR.

Notwithstanding that the CDA allocated 2,500m² to PAD 2, the subdivision approved as part of the CDA created a Lot for the childcare centre and medical centre of 2,097m². As the FSR under *The Hills Local Environmental Plan 2019 (LEP)* is 1:1, this limits the total FSR on approved Lot 62 to 2,097m² and less than the Concept Approval for this land. The proposed childcare and medical centre is proposed to have a total FSR of 2,489m², which equates to 1.19:1.

Clause 4.6 is the preferred action given that the CDA and first stage is poised to be acted on and the overall centre is well under the maximum FSR and, as such, the minor variation required because of the lot size does not compromise the overall size of the centres as envisaged by the planning controls.

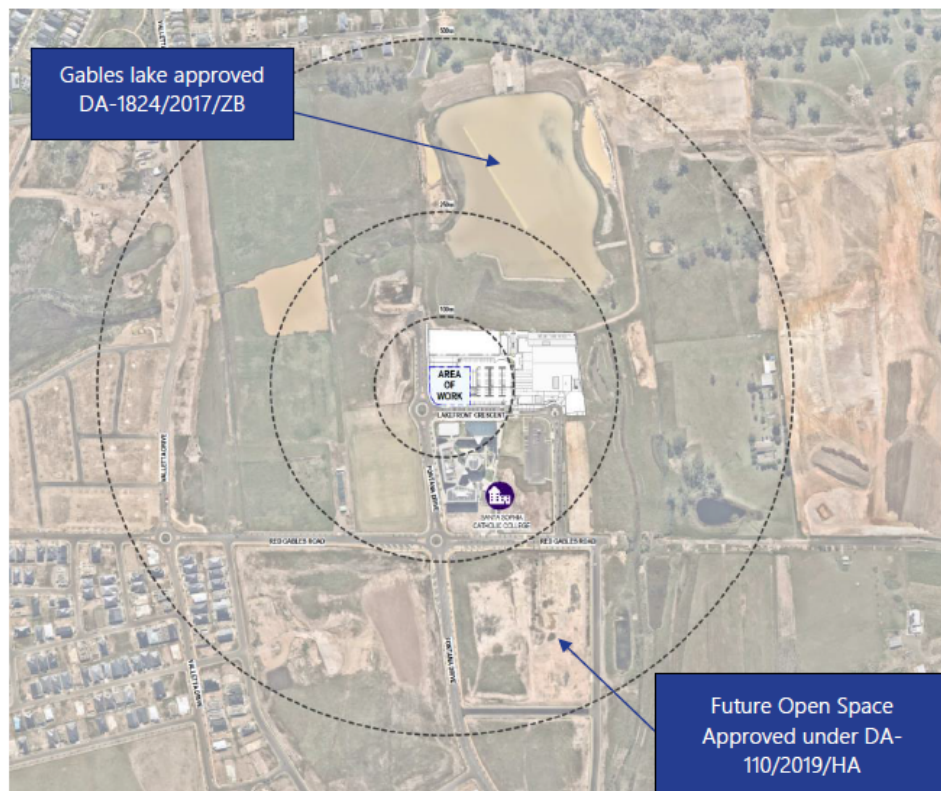
The DA is to be determined as Regionally Significant Development by the Sydney Central City Planning Panel pursuant to Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*.

1.2 Location

The site is located within the Gables which is a new residential community comprising approximately 380 hectares on the urban fringe of Council's local government area and approximately 48 kilometres to the north west of the Sydney central business district, 11 kilometres to the east of Windsor and 10 kilometres to the north of Rouse Hill town centre.

Near the centre of this community is land identified as a Local Centre located within Precinct E of the Applicant's The Gables Estate, which forms part of the Box Hill North Urban Release Area.

As shown in **Figure 2**, the Site is situated to the immediate north of the Santa Sophia Catholic College, and to the south of the Gables Lake approved under DA-1824/2017/ZB. Further south of the Site is approved open space comprising a range of active and passive recreation uses under DA-110/2019/HA. Residential land releases within proximity of the centre have been approved and are commencing to support the ongoing viability of the centre.

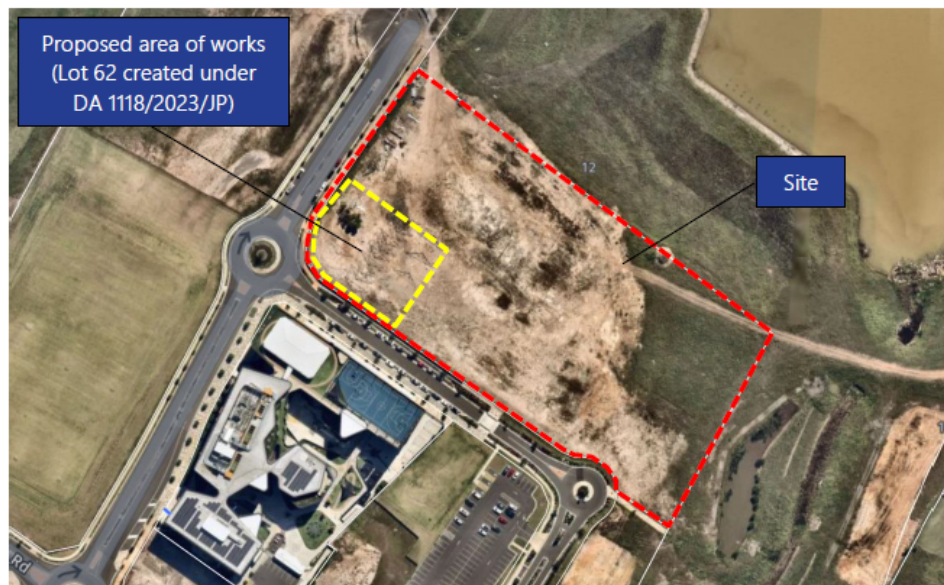


Source: Thomson Adsett, 2023

Figure 2. The Gables context

1.3 The Site

The land on which the shopping centre has been approved is legally described as Lot 65 in DP 1298923; 2 Lakefront Crescent, Gables NSW 2765. This land has an approximate site area of 2.31ha with frontage to Fontana Drive and Lakefront Crescent. Lot 62 has been approved to be created under DA 1118/2023/JF and will have a total area of 2,097m² in the south western portion of Lot 65, which will have frontage to Fontana Drive and Lakefront Crescent. This DA proposes works only within the approved Lot 62, the location of which is illustrated in **Figure 3**.



Source: Nearmap, 2023

Figure 3. Aerial of the Site

1.4 Zoning

The Centre and approved Lot 62 is zoned E1 Local Centre under the LEP as shown in **Figure 4** below.



Figure 4. Land zoning

1.5 Summary of Clause 4.6 Request

This Clause 4.6 request has been prepared in response to a request from The Hills Shire Council, as the proposed development for a childcare centre and medical centre will exceed the maximum Floor Space Ratio (**FSR**) applying to this part of the Site when the subdivision is registered under Clause 4.4 of The Hills LEP of 1:1.

Clause 4.4(2) of the LEP requires the following:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Lot 62, when registered, will have a total site area of 2,097m², which therefore allows for a maximum Gross Floor Area (**GFA**) of 2,097m². The proposed development for a childcare centre and medical centre has a GFA of 2,489m² which equates to an FSR of 1.19:1.

The Site is subject to a Concept Approval which was assessed by Council and determined by the Sydney Central City Planning Panel on 1 December 2023.

The Concept Approval provides for a maximum GFA for Lot 62 (PAD 2) of 2,500m² (i.e. an FSR of 1.19:1). Under Section 4.24 of the *Environmental Planning & Assessment Act 1979* (**EP&A Act**), while any consent granted for a Concept Approval remains in force, the determination of any future Development Applications in respect of the Site cannot be inconsistent with that consent, which would override the LEP. In the decision of *Karimbla Properties (No. 59) Pty Limited v City of*

Clause 4.6 Variation to Floor Space Ratio Development Standard
Medical Centre and Child Care Centre

Parramatta Council [2023] NSWLEC 1365, the Court found [48-50] that a request to vary a development standard was not required for a DA on the basis that it was consistent with a preceding Concept DA consented to for the site. Accordingly, while it can be concluded that a clause 4.6 variation is not required in this case with respect to the non-compliance with the FSR standard, it has nonetheless been included for abundant caution.

This clause 4.6 supports that compliance with the development standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the proposed departure from the standards in this instance.

2 Authority to vary a development standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including The Hills LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument – Principal Local Environmental Plan. The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to ‘consider’ a written request has been changed with an express requirement that the consent authority ‘be satisfied that the applicant has demonstrated’ that compliance with development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in particular circumstances strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exceptions to development standards

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Clause 4.6 Variation to Floor Space Ratio Development Standard
Medical Centre and Child Care Centre

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

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

(7) (Repealed)

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

(a) a development standard for complying development,

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

(c) clause 5.4,

(caa) clause 5.5,

(cab) (Repealed)

(ca) clause 6.3,

(cb) clause 7.11,

(cc) clause 7.15.

3 Development standard to be varied

A variation is sought to clause 4.4 of The Hills LEP.

The objectives of clause 4.4 are outlined below:

(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.

As discussed in Section 1.5, it is considered that the request to vary a development standard is not required on the basis that it is consistent with the Concept DA. However, for abundant caution, a Clause 4.6 variation request has been to address the development standard.

4 Extent of variation

In accordance with clause 4.4(2) of The Hills LEP, the Site is mapped with a maximum FSR of 1:1 for land predominately to the west and 1.9:1 for land to the east (refer to **Figure 5**).

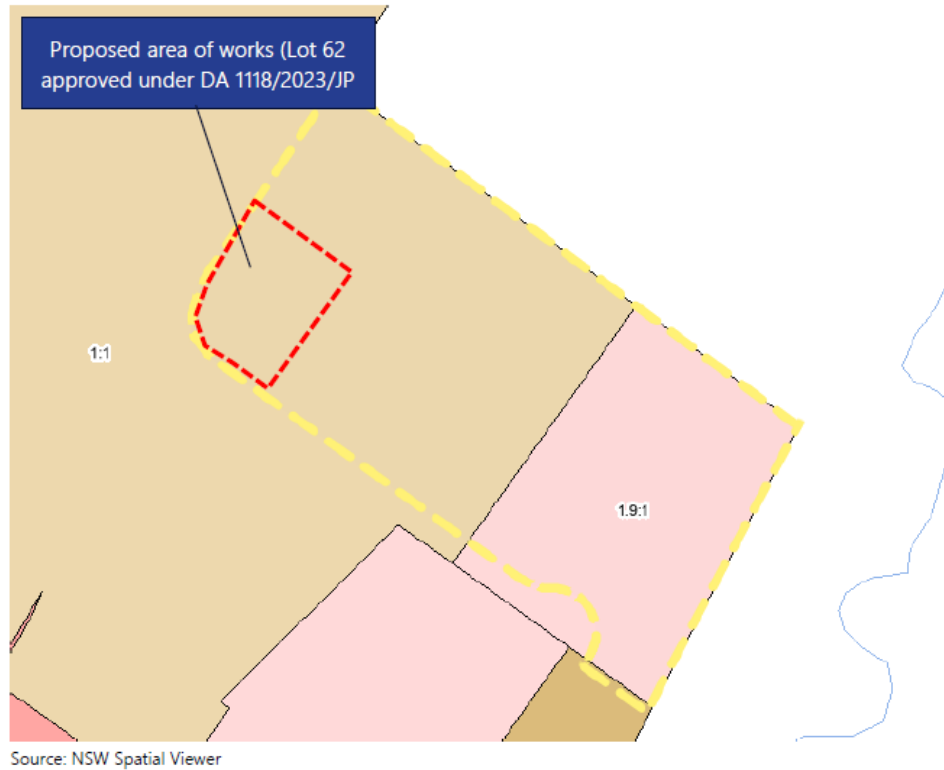


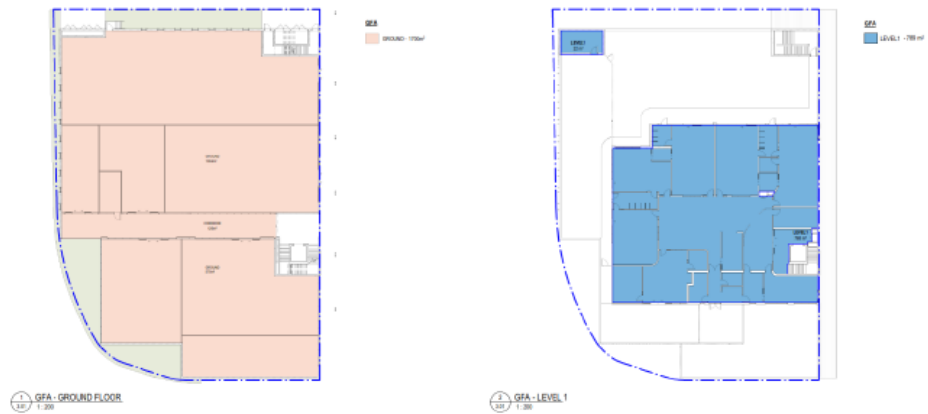
Figure 5. Floor Space Ratio Mapping

Clause 4.5 of The Hills LEP provides the following definition for calculating 'floor space ratio':

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Lot 62, when registered, will have a total site area of 2,097m², which therefore allows for a maximum GFA of 2,097m². As shown in **Figure 6** below, the proposal delivers a GFA of 2,489m² which equates to an FSR of 1.19:1. However, overall the total GFA for the centre would still be well below the maximum FSR set for the site under the LEP.

Clause 4.6 Variation to Floor Space Ratio Development Standard
Medical Centre and Child Care Centre



Source: Thomson Adsett, 2023

Figure 6. Gross Floor Area Diagram

5 Assessment

The following sections discuss the grounds for the variation against the relevant provisions.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.6 (3)(a))

Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the maximum building height requirement is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council (2007) NSWLEC 827*, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. These include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

We note that whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, which elaborated on how these five ways ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways);
- it may be sufficient to establish only one way;
- the written request must be "sufficient" to justify contravening the development standard; and

- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

It is our opinion that the proposal satisfies at least one of the five ways established in Wehbe that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposal satisfies the objectives of the standards, as detailed below:

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

Comment: The bulk and massing of the development has been controlled through the concentration of the majority of the gross floor area at the ground floor, in addition to the provision of a central corridor along the ground floor that splits the ground floor into two sections.

The first floor is provided with open outdoor sections to accommodate the private play areas of the childcare centre, which is in keeping with scale and character of the adjoining local open space to be delivered to the north of the site. The proposal will deliver a modest bulk and scale, being floor space and height in comparison to adjoining land uses being the Santa Sophia Catholic College.

The GFA for the Site is capped under the Concept Approval which approves a maximum GFA of 2,500m². The building is consistent with the Concept Approval and has configured floor space across two storeys that sits much lower than the maximum building height permitted under the LEP. This was purposely designed to limit any overshadowing impacts on the Santa Sophia school to the south.

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

Comment: The proposal is consistent with the role of the Gables town centre as a local centre that is anchored by key services, employment opportunities and educational premises. The proposal is consistent with the Concept Approval in addition to the provisions of the DCP for Box Hill North at Part D, Section 17, Chapter 2.3. Notably the development will contribute to a compact, vibrant, safe and prosperous town centre, with a diversify of mix land uses expected to be delivered as part of the adjacent neighbourhood activity centre. The proposal has been architecturally designed to present a consistent yet recognisable design scheme that achieves a high-quality urban design.

2nd Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

As noted above, Lot 62, when registered, will have a total site area of 2,097m², which therefore allows for a maximum GFA of 2,097m². The proposal delivers a GFA of 2,489m² which equates to an FSR of 1.19:1.

Under Section 4.24 of the EP&A Act, while any consent granted for a Concept Approval remains in force, the determination of any future DAs in respect of the site cannot be inconsistent with that consent, and again as outlined above while this clause 4.6 submission should not be necessary, it is submitted for abundant caution.

3rd Way – The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required

This consideration is not relevant in this case.

4th Way – The development standard has been virtually abandoned or destroyed by the Council's own decisions

This consideration is not relevant in this case.

5th Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard

This consideration is not relevant in this case.

Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

The environmental planning grounds that support the contravention to Clause 4.4 of The Hills LEP are as follows:

- As previously discussed, the proposal is consistent with the concept approval which provides for a maximum GFA of 2,500m². Under Section 4.24 of the EP&A Act, while any consent granted for a Concept Approval remains in force, the determination of any future DAs in respect of the Site cannot be inconsistent with that consent, which would override the LEP.
- The proposal is two storeys, which is significantly below the maximum 16 metres height limit under the LEP. The existing FSR standard does not allow for the logical development of the Site, in that a compliant scheme would likely result in a significant decrease in site coverage, and setbacks that are inconsistent with surrounding development approved under the Concept Approval.
- The additional floor space will deliver social and economic benefits, being improved employment opportunities, as well as delivering additional childcare spaces and medical centre floor space that are essential services that will benefit the growing Gables community.
- The proposal does not result in any detrimental impacts from a streetscape perspective, and non-compliance with the standard delivers a bulk and scale more consistent with adjoining land uses.
- The proposal will not generate any additional demand for car parking than has been approved under the Concept Approval, as the car park to the east of the Site has been designed to accommodate both the medical centre and childcare centre uses.

6 Conclusion

This clause 4.6 variation request adequately addresses the matters in clause 4.6(3) by demonstrating compliance with clause 4.4 of The Hills LEP in relation to FSR is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.

Consequently, the proposed variation under this application is considered to be acceptable in this instance as:

- It facilitates a development that is consistent with the objectives of the standard,
- The development is consistent with the Concept Approval that governs built form outcomes across the Gables town centre precinct, and
- The development will provide for a scale and form of development that is compatible with the existing and planned character of the area.

We consider that the proposal meets the intent and objectives of the development standard and in accordance with clause 4.6, demonstrates that strict compliance with the standard is unreasonable and unnecessary in this case and that the variation is warranted.

thomson
adsett

Telephone +61 7 3640 9699
Email info@thomsonadsett.com.au
Level 11, 470 St Pauls Terrace
South Brisbane QLD 4101 Australia
National Australia Bank, David Maxwell
Building, 100 St Pauls Terrace
South Brisbane QLD 4101 Australia

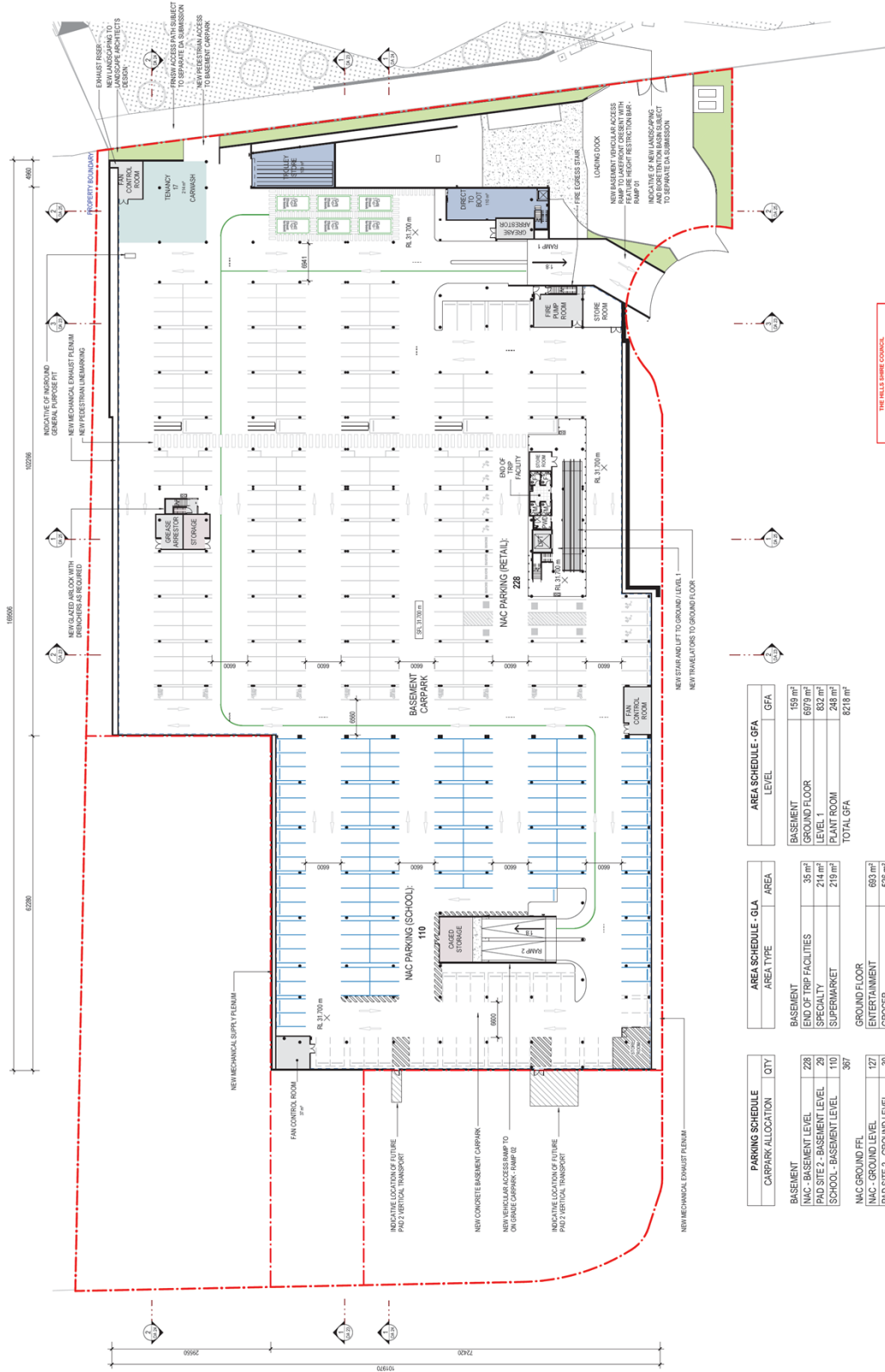
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THE GABLES NEIGHBOURHOOD ACTIVITY CENTRE (NAC)

FONTANA DRIVE, GABLES, NSW 2765
for
STOCKLAND



- LEGEND
- CENTRE MANAGEMENT
 - CIRCULATION
 - SERVICES
 - SPECIALTY
 - SUPERMARKET
 - Calculating...



THE GABLES SHIRE COUNCIL
DEVELOPMENT DOCUMENT
Please refer to conditions of Development Consent
for details of conditions which must be
complied with.

AREA SCHEDULE - GFA	
LEVEL	GFA
BASEMENT	159 m ²
GROUND FLOOR	6679 m ²
LEVEL 1	832 m ²
PLANT ROOM	248 m ²
TOTAL GFA	8218 m ²

AREA SCHEDULE - GLA	
AREA TYPE	AREA
BASEMENT	159 m ²
END OF TRIP FACILITIES	35 m ²
SPECIALTY	214 m ²
SUPERMARKET	219 m ²
GROUND FLOOR	683 m ²
ENTERTAINMENT	526 m ²
GROCCO	204 m ²
LICENSED SEATING AREA	554 m ²
SPECIALTY - FOOD	659 m ²
SUPERMARKET	3716 m ²

LEVEL 1	798 m ²
COMMERCIAL	7615 m ²
TOTAL	

PARKING SCHEDULE	
CARPARK ALLOCATION	QTY
BASEMENT	
NAC - BASEMENT LEVEL	228
PAD SITE 2 - BASEMENT LEVEL	29
SCHOOL - BASEMENT LEVEL	110
TOTAL	367
NAC GROUND FFL	
NAC - GROUND LEVEL	127
PAD SITE 2 - GROUND LEVEL	30
TOTAL	157
TOTAL CARPARK NUMBERS	524

1. 2023.08.16. DEVELOPMENT APPLICATION

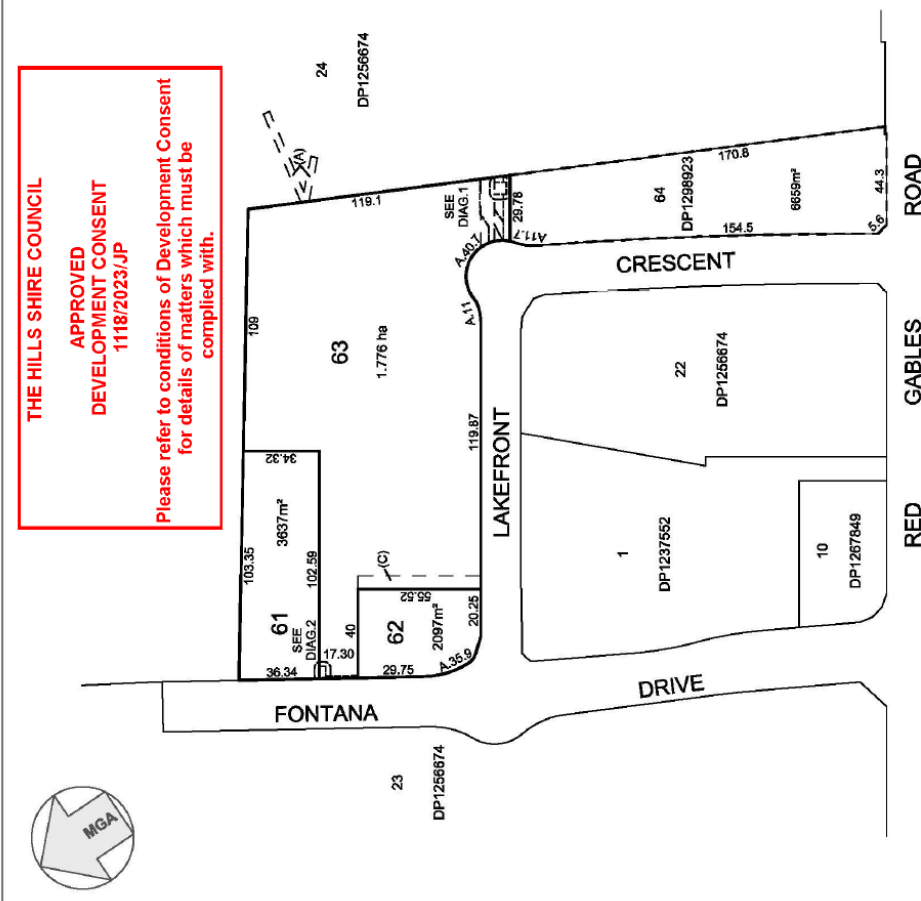
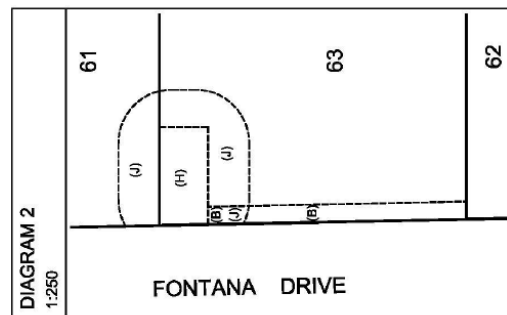
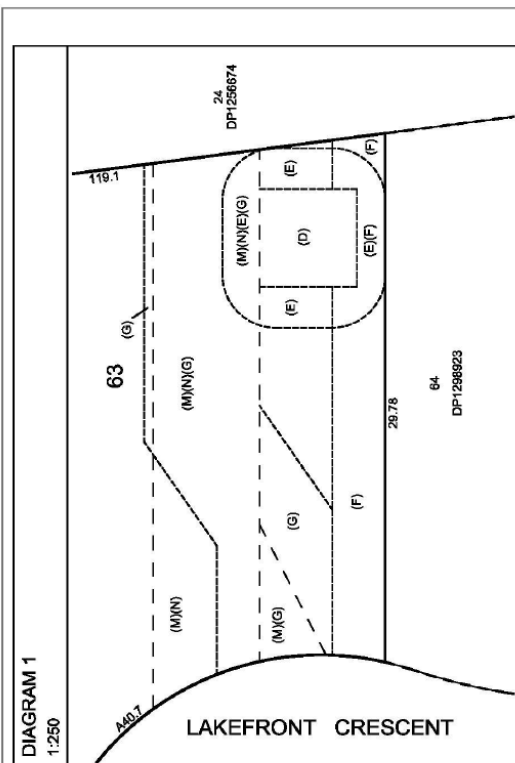
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AUGUST 2023
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scale
0 1 2 3 4 5 6 7 8 9 10m

PROPOSED BASEMENT FLOOR PLAN

scale
1: 250 @ A0
project no.
23.0029.17
sheet no.
1
revision
DA 17

original sheet size - A0 (841mm x 1189mm)



AFFECTING INTEREST SCHEDULE	
No	DESCRIPTION
(A)	EASEMENT TO DRAIN WATER 3' WIDE (IN FAVOUR OF COUNCIL)
(B)	EASEMENT FOR SERVICES 1' WIDE
(C)	RIGHT OF FOOTWAY 6' WIDE
(D)	EASEMENT FOR PADMOUNT SUBSTATION 5.5' WIDE
(E)	RESTRICTION ON THE USE OF LAND
(F)	EASEMENT FOR UNDERGROUND CABLES 3' AND 1.505' WIDE
(G)	RIGHT OF ACCESS 6.5' WIDE
(H)	EASEMENT FOR PADMOUNT SUBSTATION 2.75' WIDE
(I)	RESTRICTION ON THE USE OF LAND
(J)	EASEMENT TO DRAIN WATER 6' WIDE AND VARIABLE (DP/258674)
(N)	RIGHT OF ACCESS 6' WIDE (DP/258674)

NOTES

1. LOT DIMENSIONS AND AREAS ARE APPROXIMATE ONLY

2. THIS PLAN HAS BEEN PREPARED FOR DEVELOPMENT APPLICATION PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.

PROUST & GARDNER
CONSULTING PTY LIMITED
SURVEYORS & PLANNERS

406 Pacific Highway
PO Box 132
Undfield NSW 2070
Tel: 9416 1335
Email: pnu@pnu.com.au

PLAN OF PROPOSED SUBDIVISION
OF LOT 65 DP1298923
AND EASEMENT WITHIN LOT 24 DP1256674
LAKEFRONT CRESCENT, GABLES

Scale : 1:2000 @ A3 Date : 27/10/2023 Plan No. : 23273 - Sub E3

Client : Stockland