

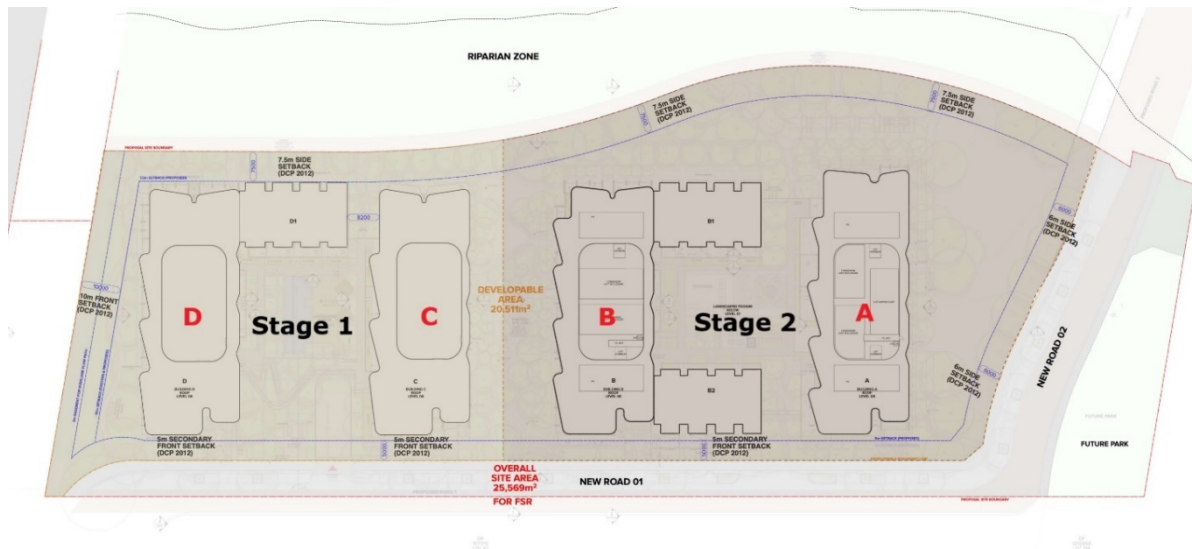
**COUNCIL ASSESSMENT REPORT**  
SYDNEY CENTRAL CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSCC-486 - DA 308/2024/JP
PROPOSAL	A Residential Flat Building Development Containing 224 units
ADDRESS	Lot 1 DP 1237055, 40 Memorial Avenue and Lot 1 DP 1298513, Free Settlers Drive, Bella Vista
APPLICANT	Landen Property Group Pty Ltd
OWNERS	Mrs H L Reardon Sydney Water Corporation
DA LODGEMENT DATE	21 August 2023
APPLICATION TYPE	Development Application – Nominated Integrated
REGIONALLY SIGNIFICANT CRITERIA	Clause 2.19, Schedule 6 of the SRD SEPP (Planning Systems) 2021
ESTIMATED DEVELOPMENT COST	\$99,628,920.00 (excluding GST)
CLAUSE 4.6 REQUESTS	The Hills LEP 2019 8.4 Minimum Building Setbacks
KEY SEPP/LEP	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 (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 The Hills Local Environmental Plan 2019
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	One (1) submission Civil works affecting adjoining land
DOCUMENTS SUBMITTED FOR CONSIDERATION	Statement of Environmental Effects – Orion Consulting Architectural Plans – Turner BCA Assessment – Jensen Hughes

	BASIX - BCA Logic Access Report – Jensen Hughes Acoustic and Engineering – ADP Landscape Plans – Landform Waste Management – Elephant’s Foot Traffic Assessment – TTPA Quantity Surveyor – Mitchell Brandtman Wind Assessment – Windtech CGI – Lunance Flooding / Engineering – Orion Consulting Arborist Report – Hugh the Arborist Biodiversity Assessment Report – Ecological Australia Contamination and Salinity Report – Sydney Environment Group
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Yes
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	Electronic Determination
PREPARED BY	Kate Clinton – Development Assessment Coordinator
CONFLICT OF INTEREST DECLARATION	None Declared
DATE OF REPORT	21 November 2024

## EXECUTIVE SUMMARY

The Development Application seeks consent for the demolition of existing structures, removal of vegetation, dewatering of a dam, subdivision of land to consolidate the subject site, create and dedicate two new roads and land for future open space, and the construction of a residential flat building development consisting of four buildings and 224 units in two stages.



Source: Architectural Plans, Turner

The site is located on the southern side of Memorial Avenue from which it is currently accessed. To the east of the site is Elizabeth Macarthur Creek, and to the west is land which is currently undeveloped but is within the State Significant Development Area (SSDA) for the Kellyville and Bella Vista Station Precincts.

The residential flat building is permissible in the R1 General Residential zone and is located within the Kellyville and Bella Vista Station Precinct under Part 8 of the Hills LEP 2019. The Development Application has been assessed under the relevant provision of 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 (Housing) 2021, The Hills LEP 2019 (LEP 2019) and The Hills Development Control Plan 2012, including site specific DCP section Part D Section 26 – Kellyville and Bella Vista Station Precinct.

The application proposes a variation to Clause 8.4 Setbacks of the LEP 2019 as the private open space courtyard of four units fronting proposed Road No. 1 will encroach two metres within the specified five metre setback. The applicant has addressed this variation with a Clause 4.6 justification. It is considered that the variation is minor and can be supported since it applies only to an open courtyard and a three metre landscaped setback is provided.

The development complies with the maximum height and floor space ratio controls applicable to the site. Pursuant to Clause 8.3 of the LEP, the calculation of floor space ratio has included land that would have been part of the site area had it not been dedicated as public road and future open space which will form part of the Bella Vista District Park planned within the Precinct under the SSDA.

Clause 8.6 of the LEP applying to the Kellyville and Bella Vista Station Precincts requires the application to demonstrate design excellence and be considered by a Design Review Panel. The Panel considered the application twice, and have provided qualified support to the application following the second meeting, subject to Council's Officers being

satisfied with any remaining matters. The assessment of the application by Council staff has concluded that the application is satisfactory with respect to Clause 8.6.

The development proposes a number of variations to The Hills DCP 2012, and one variation of the Apartment Design Guide (ADG) in relation to:

- Depth of ground floor apartments to four units (ADG);
- Deletion of a roundabout which is not required;
- Deletion of a cul-de-sac and local road, and realignment of a road shown on the DCP Structure Plan;
- 1% variation to Site Coverage;
- Upper level building setbacks;
- Setbacks to the riparian corridor and height of podium;
- Direct pedestrian access to and elevation of ground level units;
- Unit size mix.

Despite these variations the development is compatible with the site and surrounding context and will provide a quality built form outcome and amenity for future residents.

The application is Nominated Integrated Development pursuant to s.4.46 of the Environmental Planning and Assessment Act 1979 since the approval of the Department of Planning and Environment – Water and the Department of Planning and Environment (Heritage) are required under the Water Management Act 2000 and National Parks and Wildlife Act 1974 respectively due to works in the vicinity of Elizabeth Macarthur Creek, and impacts on known Aboriginal sites of significance. General Terms have been issued by both.

The proposed development includes works for road construction and tree removal on adjoining land. The consent of Sydney Metro and Sydney Water has been obtained for these works. Transport for NSW have also issued concurrence under section 138 of the Roads Act 1993 in addition to conditions for works required to make the existing road access from Memorial Avenue redundant.

Future access into the development site will be across Elizabeth Macarthur Creek via a roundabout and bridge proposed under Subdivision Development Application 562/2025/ZB for 1Z Free Settlers Drive, 40 Memorial Avenue and Lot 6 DP 1203920 Balmoral Road by the same Applicant. At the time of writing this report this DA is nearing the completion of its assessment and is expected to be determined under delegated authority soon after this application.

The site contains a critically endangered vegetation community known as PCT 849 (Grey Box – Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion) and PCT 835 (Forest Red Gum – Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion) which will be impacted by the proposal. Impacts on the vegetation as a result of the proposed road alignment required under the DCP were largely unavoidable, but have been minimised through design. It was concluded that previous proposed basement construction methods and stormwater pipes would have had a serious and irreversible impact, which could be avoided by amendments to the civil plans. Accordingly, the civil plans were amended in consultation with Council's Engineer and Ecology staff. All civil and proposed landscaping works will be removed from this part of the site as marked up on the Site Plan with reference to the area to be avoided in the Biodiversity Development Assessment Report.



The area will also be subject to a Vegetation Management Plan and managed by the community association of the development (refer Conditions 18, 49, 51, 164, 167). A condition of consent will also require the retiring of certain ecosystem credits (Condition 16).

The application was advertised and notified to adjoining properties for a period of 36 days, attracting one submission from an adjoining landowner, primarily concerning shared roads and works proposed on adjoining land. These matters have been resolved and the consent of the relevant landowner (Sydney Metro) has been received. Conditions of consent are proposed regarding the dedication of open space land in addition to the dedication of open space and roads being noted on the plan of subdivision.

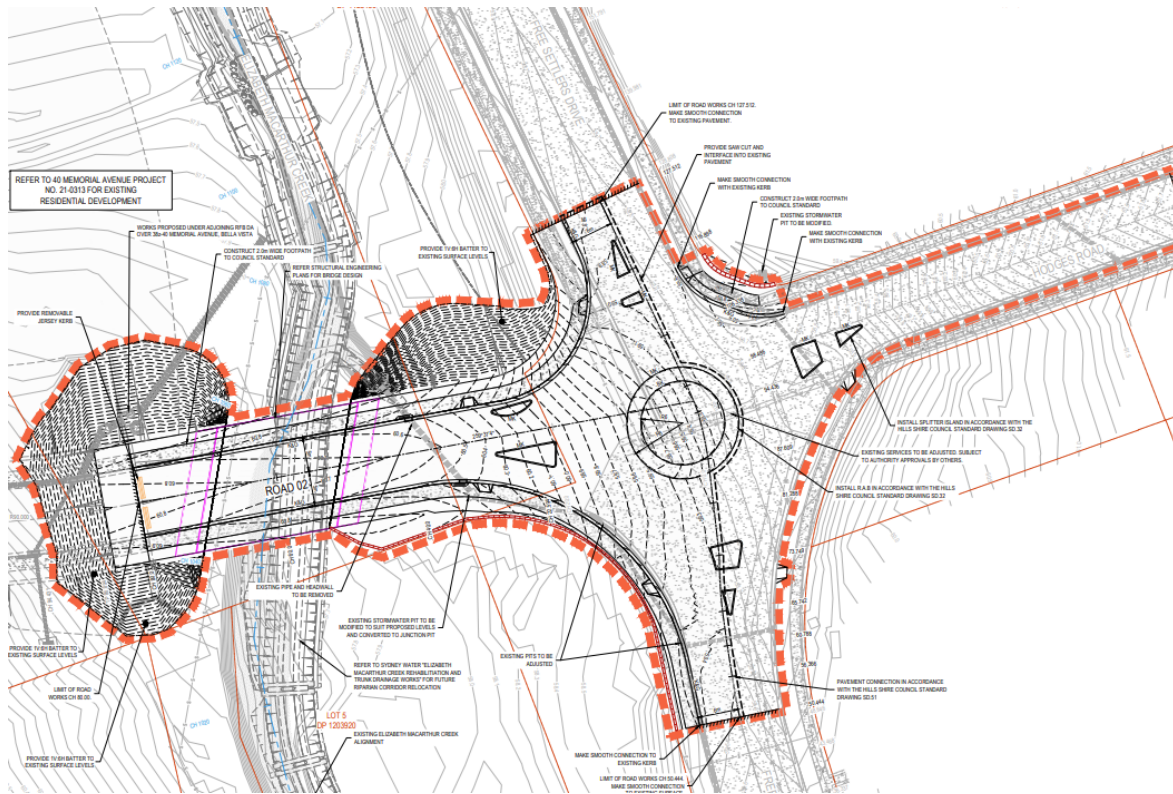
Following a detailed assessment of the proposal, pursuant to Section 4.15(1) and 4.16(1)(b) of the *EP&A Act*, DA 59/2024/JP is recommended for approval (deferred commencement) subject to the conditions of consent contained at **Attachment A** of this report. A deferred commencement consent is required since the site requires the proposed road / bridge to be constructed under Development Application 563/2024/ZB to connect it to Free Settlers Drive to provide access to this development.

## **1. THE SITE AND LOCALITY**

The site has an area of 25,569m<sup>2</sup> and is legally described as Lot 1 DP 1237055, 40 Memorial Avenue, and Lot 1 DP 1298513, 1Z Free Settlers Drive, Bella Vista. Excluding land to be dedicated as roads and future open space, the site has a developable site area of 20,511m<sup>2</sup>.

The site is currently occupied by one single storey detached dwelling house which fronts Memorial Avenue. The site is partly grassland and partly occupied by trees, including Cumberland Plain Woodland, a critically endangered vegetation community. The site has a cross-fall of approximately 5m from the north to the south, and a further 3m fall from the west of the site to Elizabeth Macarthur Creek to the east where the site drains.

Future vehicular access to the site is proposed solely via a new roundabout, bridge and road to be constructed into the site via adjoining land to the east, from Free Settlers Drive / Hodges Road. This is subject to Subdivision Application No. 563/2024/ZB which is currently under assessment. As such, the proposed development is recommended for approval subject to a deferred commencement condition following the provision of access to the site as intended by the subdivision application.



Source: Orion / Landen, Draft Engineering Plan for Hodges Road roundabout and bridge to the east of the site providing access to subject site, Subdivision DA No. 563/2024/ZB

The site is zoned R1 General Residential pursuant to The Hills Local Environmental Plan 2019 and is subject to maximum heights of 21m and 28m and an FSR of 1:1. Additional LEP clauses under Part 8.3 Bella Vista and Kellyville Station Precincts apply to the site, relating to minimum lot size, calculation of FSR and dedication of land, minimum setbacks, the preparation of a site specific development control plan, design excellence, and maximum number of dwellings. The site is subject to a site-specific development control plan, Part D Section 26 – Bella Vista and Kellyville Station Precincts of The Hills DCP 2012 which came in to force on 3 April 2023.

The site is located directly adjacent to and adjoining land within the Bella Vista Station Precinct State Significant Development Area (SSDA) (to the south and west), and is located approximately 800m to the south-east of the Kellyville metro station, and approximately 800m north-east of the Bella Vista metro station. The SSDA was approved on 5 December 2022 by the Department of Planning and includes a concept approval for mixed use development including street hierarchy and layout, urban design guidelines, building heights for 20 development blocks of up to 68 metres, up to 3,804 dwellings, public open spaces, a primary school and community facility. A modification to the SSDA was approved in February 2024 to rectify inconsistencies between approved documents, and to refine building envelopes and road widths. There was no change to yield, heights or setbacks.

Various new connections are proposed to enhance access and permeability in the vicinity of the site, including new roads south of Memorial Avenue (building upon the local road network proposed as part of the SSDA and the site specific DCP (refer Attachments G and H), new and upgraded shared paths along key routes and new cycleway connections adjacent to Elizabeth Macarthur Creek which will connect open spaces and links to the stations.

The subject site is also located within the Bella Vista Transport Oriented Development (TOD) Accelerated Precinct, identified by the Department of Planning. A draft rezoning proposal was publicly exhibited in July and August 2024 with a view for completion in late 2024. A key feature of the TOD for the area (including Kellyville, Glenwood and Stanhope Gardens) is capacity for up to 20,700 additional homes. The subject site is, together with adjoining SSD land between Old Windsor Road and Memorial Avenue, anticipated to accommodate an uplift of an additional 1,556 dwellings. The subject site is shown to have a possible height limit of 73.5 metres but would retain an FSR of 1:1 which currently applies to the site.

## **2. THE PROPOSAL AND BACKGROUND**

### **2.1 The Proposal**

The Development Application seeks approval for the following:

- Demolition of all existing structures and improvements;
- Removal of vegetation and trees with the exception of 11 trees;
- De-watering and filling of existing dam;
- Subdivision including consolidation of Lot 1 DP 1237055 and Lot 1 DP 1298513 and creation of residue lot 11 (1,464m<sup>2</sup>) to be dedicated to Council as open space.
- Construction and dedication of two roads (Road 1 and Road 2) to access the site, including partial width and turning circle within adjoining land (SSD site). Sydney Metro has provided written consent for these works within the adjoining land (refer Attachment N).
- Construction of a residential flat building development containing 224 dwellings (including 12 x 2 storey units), 271 basement parking spaces (including car wash and loading space) and common open space areas within two stages:

Stage 1: 95 residential units and basement car parking, road construction, drainage and utility infrastructure, associated landscaping and communal open space including a pool.

Stage 2: 129 residential units and basement parking, associated landscaping and communal open space, site through link and natural / passive open space subject to revegetation at the southern end of the site.





*Perspective of the proposal (Buildings A and B) from the south west (corner of proposed roads 1 and 2), Source: Turner.*



*Perspective of the proposal from the north east / riparian corridor (easement for pedestrian access, Building B and A), Source: Turner.*

### Development Data

Control	Proposal
Site area	25,569m <sup>2</sup>
Developable site area	20,511m <sup>2</sup>
GFA	25,451m <sup>2</sup>
FSR	0.98:1

Clause 4.6 Requests	Yes – Variation to cl.8.4 Minimum Building Setbacks (courtyards within 5m front setback)
No. of units	224
Max. Height	Building A – 28 metres Building B – 28 metres Building C – 20.5 metres Building D – 20 metres
Landscaped area	48.7% (9,989m <sup>2</sup> )
Car Parking spaces	271

The proposal is defined as Nominated Integrated Development under the provisions of Section 4.46 of the Environmental Planning and Assessment Act, 1979, as approval for controlled water activity is required from the Department of Planning and Environment - Water under the provisions of the Water Management Act, 2000, and integrated development under the provisions of Section 90 of the National Parks and Wildlife Act 1974.

Concurrence of Transport for NSW (TfNSW) was also required under section 138 of the Roads Act 1993 due to works required to Memorial Avenue (existing access point to the site).

## 2.2 Background and Site History

A pre-lodgement meeting was held on 6 May 2022, and a further meeting on 14 October 2022 for a concept development application for a residential flat building development on the subject site. The applicant was advised to comply with the maximum height and floor space ratio controls applicable to the site.

The Development Application was lodged on 12 September 2023. A summarised chronology of the Development Application since lodgement is outlined below including the Panel's involvement with the application:

### Chronology of the DA

Date	Event
<b>12 September 2023</b>	DA lodged
<b>20 September 2023</b>	RFI to applicant seeking clarification on intent of application since it referred to a concept development application. Advised applicant of Design Review Panel Requirements.
<b>19 October 2023</b>	SCCPP Panel briefing. The Panel noted that ecological matters can be time consuming to resolve.
<b>20 October 2023</b>	RFI to applicant seeking clarification on intentions for open space area at the southern end of the site, and dedication of land to the south of proposed Road No. 2 for future open

	space associated with adjoining SSD site, requesting subdivision plan, evidence of avoiding/minimising ecology impacts within a Biodiversity Assessment Report (BDAR), landscaping amendments, salinity and dam dewatering information, update acoustic report, clarification of the need for a roundabout identified under the Contributions Plan, waste management amendments.
<b>23 October 2023 – 28 November 2023</b>	Notification / advertising of the application.
<b>9 November 2023</b>	TfNSW requested further information regarding trip generation, road safety and predicted impacts on road network capacity, stormwater disposal and parking rates.
<b>14 November 2023</b>	Amended plans and information submitted in response to the RFI.
<b>22 November 2023</b>	Design Review Panel meeting
<b>15 December 2023</b>	General Terms of Approval issued by DPE-Water.
<b>20 December 2023</b>	RFI to applicant providing roundabout design (Free Settlers / Hodges Road), requesting relocation of public footpath outside of site since it will be provided within riparian corridor, advising DRP comments and requesting engineering, waste, health, landscaping information and amendments.
<b>21 December 2023</b>	General Terms of Approval issued by Heritage NSW.
<b>28 February 2024</b>	Concurrence under section 138 of the Roads Act 1993 received from TfNSW, subject to conditions.
<b>7 March 2024</b>	RFI sent to applicant providing Planning, Ecology and Waterways comments. Further details of compliance with DCP and ADG controls was requested.
<b>20 March 2024</b>	Meeting held with applicant and Council Waterways and Engineering staff to discuss flooding.
<b>15 April 2024</b>	Amended plans submitted in response to the recommendations of the Design Review Panel.
<b>3 May 2023</b>	Design Review Panel meeting. The Panel gave support to the development as amended subject to remaining matters being to the satisfaction of Council staff.
<b>3 June 2024</b>	Amended plans and information submitted including the applicant's response to DRP issues.
<b>17 June 2024</b>	Acoustic Report submitted.
<b>19 June 2024</b>	Revised General Terms of Approval issued by Department of Environment - Water for part of the proposed development

	requiring a Controlled Activity approval under the Water Management Act, 2000.
<b>26 June 2024</b>	RFI to applicant requesting engineering, waste, landscaping and planning matters to be addressed.
<b>23 July 2024</b>	Amended plans and information received.
<b>1 August 2024</b>	Amended Biodiversity Assessment Report submitted.
<b>13 August 2024</b>	Amended plans and information received.
<b>16 August 2024</b>	Amended Arborist Report submitted
<b>27 August 2024</b>	RFI sent to applicant outlining engineering matters needing to be addressed.
<b>9 September 2024</b>	Amended BASIX stamped plans submitted.
<b>19 September 2024</b>	Amended DCP variation requests submitted.
<b>27 September 2024</b>	Advice to applicant that updated Sydney Metro consent is outstanding, as are civil plans, amended Biodiversity Assessment Report and Arborist Report.
<b>1 October 2024</b>	RFI to applicant with engineering matters.
<b>4 October 2024</b>	Amended civil plans submitted.
<b>9 October 2024</b>	Final Biodiversity Assessment Report, Arborist Report and Stormwater Management Report and drainage design submitted.
<b>14 October 2024</b>	Amended civil plans submitted.
<b>16 October 2024</b>	Amended Subdivision Plan submitted.
<b>22 October 2024</b>	Revised Sydney Metro Consent submitted in relation to works on adjoining land.
<b>23 October 2024</b>	Revised swept paths submitted.

### 3. STATUTORY CONSIDERATIONS

#### 3.1 Biodiversity Conservation Act, 2016

The *Biodiversity Conservation Act, 2016* (BC Act) and *Biodiversity Conservation (BC) Regulation 2017* establishes the requirements for the protection of biodiversity, outlines the requirements for regulating a range of development activities on land and provides mechanisms for the management of impacts resulting from development activities.

The BC Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme (BOS) will be triggered, and thus the necessity for the preparation of a Biodiversity Development Assessment Report (BDAR).

The thresholds are:

1. Whether the impacts occur on an area mapped on the Biodiversity Values (BV) map published by the (then) Chief Executive of the NSW Office of Environment and Heritage; and
2. Whether the amount of native vegetation being cleared exceeds a threshold area, which in the case of the subject site is 0.25 hectares.

The subject property is identified on the BV Map as containing threatened species or communities with potential for serious and irreversible impacts (SAII), as such the proposal triggered entry into the Biodiversity Offset Scheme (BOS).

A Biodiversity Development Assessment Report was prepared (and amended in response to review by Council's Environmental Assessment Officer) for the subject site, and adjoining land affected by related Subdivision Development Application 563/2024/ZB for the roundabout, road and bridge access into the subject site. The final report (Revision 10, 9 October 2024) contained the following findings and recommendation:

*"Native vegetation was mapped within the development site, consisting of the following:*

- *0.27 ha of planted native vegetation.*
- *0.47 ha of PCT 849 Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion.*
- *0.52 ha of PCT 835 Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion.*

*Grey Box - Forest Red Gum was present in one condition state – degraded. The understorey of the patch of Grey Box - Forest Red Gum appeared to be regularly mowed so contained no shrubs and a very short layer of grasses and forbs. Despite this regular disturbance, there was a relatively high cover of native grasses and forbs. Forest Red Gum - Rough-barked Apple was also present in one condition state – degraded. The understorey was dominated by weeds and exotics with very little native cover present.*

*The remaining vegetation within the development site was either gardens containing exotic and planted native species, or cleared land dominated by exotic grasses and weeds. Subsequent to initial assessment, the development site footprint was extended to include both lots to assess the impacts of the proposed bridge that will cross Elizabeth Macarthur Creek. An additional site visit undertaken to assess the riparian vegetation and impacts of the proposed bridge. Measures to avoid and minimise impacts have resulted in retention of 0.28 ha of PCT 849. A summary of credit requirements to offset impacts to, PCT 849, PCT 835 are shown in the table below.*





### Serious and Irreversible Impacts

- Subject Land
- Development Footprint
- Buffer (500 m)
- Threatened Ecological Communities within 500 m of Development Footprint**
- Cumberland Plain Woodland in the Sydney Basin Bioregion
- Sydney Basin Bioregion

### Serious and Irreversible Impacts

- Zone 1 - 849: Grey Box - Forest Red Gum grassy woodland on the flats of the Cumberland Plain Sydney Basin Bioregion

0 50 100 200  
Metres

Datum/Projection:  
GDA2020 MGA Zone 56

Project: 1853-EH Date: 4/10/2024

Source: BDAR, Ecological

### Summary of ecosystem and species credits required to offset residual impacts of the proposed development

Vegetation Zone	PCT ID	PCT Scientific Name	Condition	Direct impact area (ha)	Credits
<b>Ecosystem credits</b>					
1	849	Grey Box – Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion	Degraded	0.19	7
2	835	Forest Red Gum – Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion	Degraded	0.03	1
<b>Total</b>				<b>0.22</b>	<b>8</b>

*Removal of 0.26 ha of planted native vegetation was assessed against Appendix D: Streamlined assessment module – planted native vegetation of the BAM 2020 and does not require offsetting.*

*Cumberland Plain Woodland in the Sydney Basin Bioregion is a candidate for a Serious and Irreversible Impact (SAII) and an assessment has been undertaken to assist the consent authority to decide whether and SAII will result.*

*Foraging habitat for the EPBC Act list species *Pteropus poliocephalus* (Grey-headed Flying-fox) will be affected. An assessment of significance for this species concluded that the proposed development is unlikely to cause a significant impact to Grey-headed Flying-fox. A referral to the Commonwealth DCCEEW is not recommended. A dam dewatering plan is recommended to ensure animal welfare in the event that native fauna (e.g. turtles) are present.*

*The existing dwelling and garden shed on the development site not considered to be suitable microbat habitat because they are in good condition and are used frequently because the dwelling is still occupied. However, a preclearance survey of the dwelling, shed and chicken coop is recommended to ensure no microbat species are present prior to demolition. Sediment and erosion control measures are recommended to prevent stormwater pollution or movement of soils from the development site."*

The updated BDAR was reviewed by Council's Environmental Assessment Officer. A condition has been recommended setting offsets in accordance with these benchmarks to be applied to the development consent.

In accordance with Section 7.16(2) of the NSW Biodiversity Conservation Act, the consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.

Council's Environmental Assessment Officer has reviewed all information and concluded, with consideration to:

- the Department *Guidelines to assist a decision-maker to determine a serious and irreversible impact*, and
- the extent of the residual impacts after measures to avoid or mitigate have been taken, as described in the BDAR,

that the current development will not result in a Serious and Irreversible Impact on the identified species (refer Condition Nos. 16, 17, 19, 30, 49, 51, 173, 223) for Offsetting: Biodiversity offsetting requirements and Mitigation: biodiversity management plan, biodiversity management plan implementation, Vegetation Management Plan and Vegetation management plan implementation).

### **3.2 Nominated Integrated Development (s4.46)**

It is noted that the proposal is considered to be Nominated Integrated Development pursuant to s.4.46 of the EP&A Act:

#### Water Management Act 2000

The application is defined as 'Nominated Integrated Development' under the provisions of Section 4.46 of the Environmental Planning and Assessment Act, 1979. The proposal

requires approval under the provisions of the Water Management Act, 2000. The proposal was referred to the Department of Planning and Environment—Water and General Terms of Approval for the part of the proposed development requiring a Controlled Activity approval under the Water Management Act, 2000 have been provided and included as Attachment A to the draft conditions of consent.

National Parks and Wildlife Act 1974

The application is integrated development since it contains known Aboriginal sites which and requires an Aboriginal Heritage Impact Permit pursuant to s.90 of the National Parks and Wildlife Act 1974. An Aboriginal Cultural Heritage Assessment Report, dated March 2023, prepared by Apex Archaeology, was submitted in support of the application. The report identified that Aboriginal objects known as stone artefact sites 45-5-4262 and duplicate recording 45-5-4841 will be impacted by the proposed development. Mitigation has been proposed in the form of archaeological salvage excavation of these sites. The Department of Planning and Environment (Heritage NSW) has provided General Terms of Approval which are included as Attachment B to the draft conditions of consent.

**3.3 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 (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Sustainable Buildings) 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 the table and considered in more detail below.

EPI	Matters for Consideration	Comply (Y/N)
Planning System SEPP	Section 2.19(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 6.	Y
Resilience and Hazards SEPP	Clause 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	Chapter 2 Vegetation in non-rural areas. Chapter 6 Water Catchments.	Y Y
Transport and Infrastructure SEPP	Clause 2.119 Development with frontage to classified road. Clause 2.122 – Traffic generating development.	Y Y

Housing SEPP	Chapter 4 Design of residential apartment development and Schedule 9 – Design Principles. The proposal is consistent with the design quality principles and the ADG requirements.	Y
Sustainable Buildings SEPP	BASIX Certificate required to accompany development application.	Y
LEP 2019	<ul style="list-style-type: none"> <li>• Clause 4.3 – Height of Buildings</li> <li>• Clause 4.4 – Floor Space Ratio</li> <li>• Clause 4.6 – Exceptions to Development Standards</li> <li>• Clause 5.21 – Flood Planning</li> <li>• Clause 5.10 – Heritage Conservation</li> <li>• Clause 6.3 – Public Utility Infrastructure</li> <li>• Clause 7.2 – Earthworks</li> <li>• Clause 8.2 – Minimum Lot size</li> <li>• Clause 8.3 – Site Area of proposed development includes dedicated land</li> <li>• <b>Clause 8.4 – Building Setbacks</b></li> <li>• Clause 8.6 – Design Excellence</li> <li>• Clause 8.9 – Maximum number of dwellings</li> </ul>	Y Y Y Y Y Y Y Y Y Y <b>N</b> 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 2 of Schedule 6 of the SEPP as the proposal is development that has an estimated development cost of more than \$30 million (\$99,628,920). Accordingly, the Sydney Central City Planning Panel is the determining authority for the application.

#### State Environmental Planning Policy (Resilience and Hazards) 2021

The provisions of State Environmental Planning Policy (Resilience and Hazards) 2021 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 combined Stage 1 Preliminary and Stage 2 Detailed Site Investigation Report was prepared by Sydney Environmental Group for the site. The report concluded that subject to the measures included in the assessment the site is suitable for residential development. Council's Environmental Health Officer has reviewed the report and additional information submitted with the application and has advised that the recommendations made can be supported, including the submission of a Validation Report. Refer conditions 9 and 60.

Subject to the above conditions, it is considered that the site is suitable for the proposed development.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

a) Chapter 6 Water Catchments

This Chapter aims to ensure the impact of urban development on the Hawkesbury Nepean River is minimised by considering catchment management, water quality and quantity, and protection and management of environmentally sensitive areas, flora and fauna and wetland habitats.

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. The application seeks to protect the environment of the Hawkesbury-Nepean River system by developing only land identified for urban development in a manner appropriate and sensitive to its context.

The site includes riparian land which is defined as an environmentally sensitive area. The application is integrated development, requiring referral under the Water Management Act. The Department of Planning and Environment – Water issued General Terms of Approval for the Development on 19 June 2024. Further, Council's Waterways team and Subdivision Engineer have reviewed the flood modelling and stormwater concept plans. Subject to conditions, the proposed development will not have a negative impact on the Catchment and is acceptable with regard to the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

This Policy aims to facilitate the delivery of infrastructure and identify matters to be considered in the assessment of development adjacent to particular types of infrastructure development.

In accordance with Clause 2.122 of the SEPP, developments listed in Schedule 3 must be referred Transport for NSW prior to the determining of a development application and consider any matters raised, the accessibility of the site, traffic safety, road congestion or parking implications of the development. An assessment of the traffic, access, parking and road network is provided in the Traffic and Parking Report.

The proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP. The SEPP requires development to be referred to Transport for NSW where 200 or more allotments are to be created where the subdivision includes the opening of a public road. Furthermore, since the site currently has vehicular access to Memorial Avenue (a classified road) via the individual driveway associated with the residential dwelling, TfNSW requires the crossing to be made redundant with kerb and guttering to match the existing. TfNSW concurrence is therefore required for the works under Section 138 of the Roads Act 1993.

The Development Application was referred to Transport for NSW for review. TfNSW advised that the development will not have a detrimental impact on the surrounding classified road network and raised no objection to the proposal. Concurrence for the proposed works on Memorial Avenue was also provided, subject to conditions (see Condition 6).

The potential for traffic safety and road congestion of the development have been satisfactorily addressed and satisfies Clause 2.122 of SEPP (Transport and Infrastructure) 2021.

### SEPP (Housing) 2021

#### a) Design Guidelines

The required Design Verification Statement was prepared by James McCarthy registration number 10759 of Turner Studio. The Development Application has been assessed against the design quality principles contained within the SEPP as follows:

##### i. Context and neighbourhood character

The project is located within an emerging residential area with a mix of low, medium and high-density buildings. It directly adjoins the State Significant Development Area for the Bella Vista and Kellyville Station Precincts which is yet to be developed. The proposed development will provide a built environment suited to the context that responds to the desired future characteristics of the area, while taking cues from the existing context in terms of landscaping and materials. This will be achieved by well-designed building and public realm offering good amenity for the resident population and the visitors to the site. By integrating and responding to features unique to its locality the development will provide a higher quality of spatial experience. Whilst there is limited existing streetscape character in its immediate vicinity, the proposed development responds to the landscape by assimilating the built form with the landscape and maximising view lines from new road to creek side.

##### ii. Built form and scale

The proposed built form offers housing options to accommodate the market demands of the future community envisioned for the project. The proposed development is a series of 4 buildings stepping from 5-6 storeys to the north up to 7-8 storeys to the south. A series of two storey terrace-style units address the creek side and street side of the development. Architectural articulation looks to refine the massing, establishing clear datums, scale, texture and interest appropriate to the location and context. The topography has been integrated into the ground plane interfaces to create an active, attractive and welcome public and communal realm throughout the site. The building alignments and orientation are designed to integrate with the landscape with publicly accessible open space via the through site link and privately accessible space within the site.

##### iii. Density

Bella Vista is an emerging and growing strategic centre, connected by both existing transit bus line and metro services to the wider city. Within the wider context, this development has the benefit of extensive parklands and walks and cycles ways. The proposed development fits with the prescribed zoning for the site and proposes residential density that supports the future intended population for the area.

The proposed development will:

- comprise a total of 224 apartments

- have a diversity of typologies of 1, 2 and 3 bedroom apartments including 12 x two-storey units.
- accommodate buildings with appropriate setback and orientation to improve amenity.
- include a publicly accessible through-site link connecting to the creek side via a new pedestrian and cycleway to further enhance the area's public amenity.
- provide communal open spaces for residents including a pool.

#### iv. Sustainability

The development is designed to embrace ESD principles and provides greater than the required percentage of cross-ventilated apartments and attains the minimum number of apartments that achieve the required solar access. The massing and orientation have been organised to provide good natural daylighting and solar access into the primary living spaces, external living areas and courtyards and dwellings are to be designed to the provisions of BASIX. Passive strategies are also incorporated including:

- Continuous balconies to provide depth & shading to east, west and north facade glazing.
- Solid brick to south facade elevations with reduced glazing for consideration towards thermal comfort.
- Light colour palettes to reduce heat gain.
- Quality natural finished materials such as brick and avoidance of applied finishes such as paint.
- Provisions for photovoltaics panel.
- Bicycle parking in basement.
- Increasing tree canopy coverage to the site.
- Respecting riparian zone.
- Fostering new links via a pedestrian link through the site and close proximity to metro stations and bus lines.
- Rainwater tank for irrigation of landscaping.

#### v. Landscape

An integrated approach has been adopted for the development where:

- a diversity of open spaces provide amenity and a hierarchy that responds to the need for a variety of different activities to occur within the site.
- communal open space is provided at street level, via a through-site link and on podium.
- the building setbacks establish a landscape zone which acts as a buffer between the public and private domains, particularly on at ground level on the creek side edge where private terraces extend into landscape, providing passive surveillance and street activation.

#### vi. Amenity

The buildings have been oriented and arranged to maximise the potential amenity of the internal spaces by maximising access to light and where possible, to views. Landscaping is central to the proposal and supports the provision of enjoyable and welcoming amenity for residents and visitors. A variety of common areas are provided for the enjoyment of residents including a pool, passive landscaped seating areas, BBQ area and children's play area. In addition to this, the buildings feature a mix of apartment typologies and achieve more than the required cross ventilation percentage for the development.

Apartment layouts have been developed to maximise the number of north, west and east facing living spaces to ensure the ADG solar compliance is met. - 10% of the apartments will be adaptable and all apartments are provided with study or media zone.

vii. Safety

The ground levels have been articulated and arranged to embed CPTED principles and establish a safe, welcoming and enjoyable ground interface. This includes facilitating pedestrian movement, maintaining clear sight lines, providing appropriate lighting and enabling passive surveillance from surrounding residences. Controlled entry points are provided to all lobbies and basements, to create a safe space within. Clear view lines are provided from street to lobby entrances. Awnings are also provided over entry points to signal a key point in the building whilst provided weather protection. A single point of vehicular access is secured by an automatic roller door. Finally, communal spaces are provided in open, whilst the design of the through-site link facilities overlooking of this space by apartments providing passive surveillance.

viii.Housing diversity and social interaction

The scheme provides a range of unit typologies and sizes that appeals to different price points. Further to this, 10% of apartments will be adaptable. A range of external communal amenity spaces are provided to support social interaction and cohesion. The proposal will include new landscaping and open spaces for residents and the wider community. The communal areas have been designed to facilitate a variety of activities from passive to more active.

ix. Aesthetics

The architectural language seeks to be place-specific and as such has been heavily inspired by the natural and historical context of Bella Vista. The architectural language includes generous verandahs & over hangs, regular vertical datums through columns, buildings enveloped in generous landscaping & buildings freestanding & designed 'in the round'. The reinterpretation includes a natural palette, that is not dependant on painted surfaces, but instead uses high quality robust products such as brick and masonry.

b. Apartment Design Guide

A consent authority in determining a Development Application for a residential flat building is to take into consideration the Apartment Design Guide. The following table is an assessment of the proposal against the Design Criteria provided in the Apartment Design Guide (ADG).

**Apartment Design Guide**

Design Criteria	Proposed	Compliance
<b>3D. Communal and Public Open Space</b>		
1. Communal open space has a minimum area equal to 25% of the site.	Total area of 6,306m <sup>2</sup> (30.75%)	Yes
2. Minimum of 50% direct sunlight to the principal usable part of the communal open	Provided	Yes



space for a minimum of 2 hours between 9 am and 3 pm on 21 June (midwinter)				
<b>3E. Deep Soil Zones</b>				
1. Deep soil zones are to meet the following minimum requirements:			5544.75m <sup>2</sup> / 27%	Yes
<b>Site Area</b>	<b>Minimum Dimensions</b>	<b>Deep Soil Zone (% of site area)</b>		
Greater than 1500m <sup>2</sup>	6m	7%		
<b>3F. Visual Privacy</b>				
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:			Required separation distances between the RFB buildings is achieved.	Yes
<b>Building Height</b>	<b>Habitable Rooms and Balconies</b>	<b>Non-habitable rooms</b>		
Up to 12m (4 storeys)	6m	3m		
Up to 25m (5-6 storeys)	9m	4.5m		
Over 25m (9+ storeys)	12m	6m		
<b>3J. Bicycle and Car Parking</b>				
1. For development in the following locations: <ul style="list-style-type: none"><li>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</li><li>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li></ul>			49 x 1 bedroom 116 x 2 bedroom 59 x 3 bedroom	Yes – An excess of residential parking spaces is provided.  Visitor and residential parking is provided in accordance with the Council DCP (Kellyville and Bella Vista Station Precincts).
Metropolitan Sub-Regional Centres:			<b>Required:</b> Residential: 217 spaces Visitor: 49 <i>Total required: 266</i>	
0.6 spaces per 1 bedroom unit. 29.4 0.9 spaces per 2 bedroom unit. 104.4 1.40 spaces per 3 bedroom unit. 82.6 1 space per 5 units (visitor parking). 48.8			<b>Provided:</b> Residential: 224 Visitor: 45 <i>Total provided: 269</i> Plus car wash and loading space.	
The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the				

car parking requirement prescribed by the relevant council, whichever is less.		
The car parking needs for a development must be provided off street.		
4A. Solar and Daylight Access		
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	86.2%	Yes
3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	13.94% of apartments (not including townhouses)	Yes
4B. Natural Ventilation		
1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	65%	Yes
2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	<18m	Yes
4C. Ceiling Heights		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:  <div>Minimum Ceiling Height for apartment and mixed-use buildings Habitable Rooms      2.7m Non-habitable          2.4m</div>	Minimum ceiling heights provided.	Yes
4D. Apartment Size and Layout		
1. Apartments are required to have the following minimum internal areas:  <div>Apartment Type      Minimum Internal Area Studio                    35m<sup>2</sup> 1 bedroom                50m<sup>2</sup> 2 bedroom                70m<sup>2</sup> 3 bedroom                90m<sup>2</sup></div> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.	All units meet or exceed minimum areas.	Yes

2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Satisfactory – all habitable rooms have windows	Yes															
1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Max. 6.75 depth permitted	Yes															
2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Complies	Yes															
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	Satisfactory – bedrooms meet minimum area	Yes															
2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	Satisfactory – bedrooms comply with minimum dimensions	Yes															
3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	Satisfactory – living rooms exceed minimum width	Yes															
4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Satisfactory – min. 4m	Yes															
<b>4E. Private Open Space and Balconies</b>																	
1. All apartments are required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m<sup>2</sup></td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3+ bedroom</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3+ bedroom	12m <sup>2</sup>	2.4m	All primary balconies provided with min areas and depths.	Yes
Dwelling Type	Minimum Area	Minimum Depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3+ bedroom	12m <sup>2</sup>	2.4m															
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m	Satisfactory – all ground floor apartments exceed a minimum POS area of 15m <sup>2</sup> and a depth of 3m.  Except for:	<b>No – Variation, refer discussion below.</b>															

	Unit B1.01 (has 44m <sup>2</sup> wraparound) and min 2.4m)  C1.01 (has 57m <sup>2</sup> wraparound and min 2.5m)  D1.02 (two balconies total 15m <sup>2</sup> ) and min 2.175m.  D1.01 (has wraparound min. 2.42m) and 54m <sup>2</sup> .											
4F. Common Circulation and Spaces												
1. The maximum number of apartments off a circulation core on a single level is eight, where design criteria is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.	Complies	Yes										
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	NA	NA										
4G. Storage												
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage Size Volume</th></tr><tr><td>Studio Apartments</td><td>4m<sup>3</sup></td></tr><tr><td>1 Bedroom Apartments</td><td>6m<sup>3</sup></td></tr><tr><td>2 Bedroom Apartments</td><td>8m<sup>3</sup></td></tr><tr><td>3+ Bedroom Apartments</td><td>10m<sup>3</sup></td></tr></table> At least 50% of the required storage is to be located within the apartment	Dwelling Type	Storage Size Volume	Studio Apartments	4m <sup>3</sup>	1 Bedroom Apartments	6m <sup>3</sup>	2 Bedroom Apartments	8m <sup>3</sup>	3+ Bedroom Apartments	10m <sup>3</sup>	Storage schedule provided demonstrates compliance.	Yes
Dwelling Type	Storage Size Volume											
Studio Apartments	4m <sup>3</sup>											
1 Bedroom Apartments	6m <sup>3</sup>											
2 Bedroom Apartments	8m <sup>3</sup>											
3+ Bedroom Apartments	10m <sup>3</sup>											

i. 4E Private Open Space and Balconies

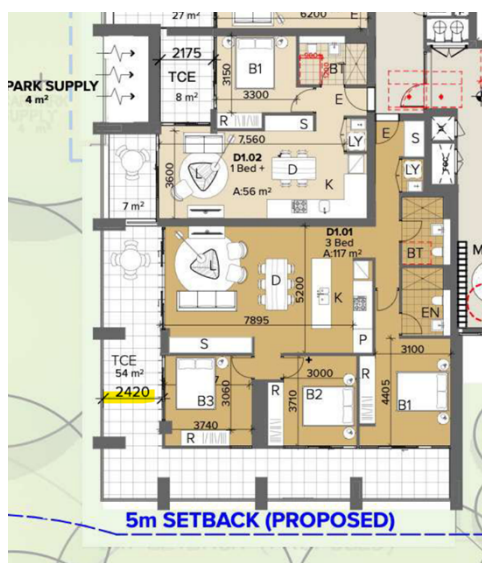
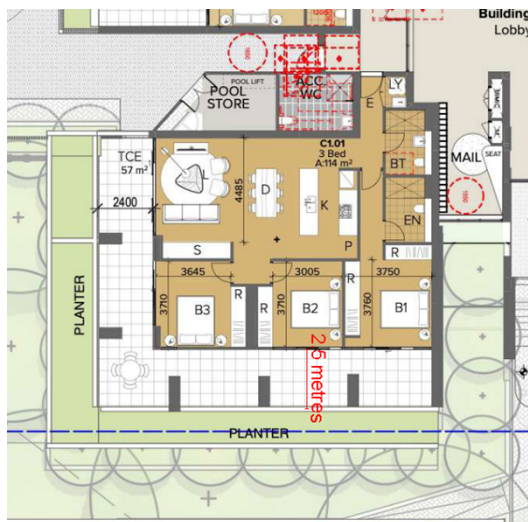
The objective of 4E of the ADG is to provide appropriately sized privacy open space and balconies to enhance residential amenity. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m. All ground floor units comply with the requirement except for the following:

- Unit B1.01 (3 bed), min. depth 2.4m, total area 44m<sup>2</sup>.

- Unit C1.01 (3 bed), min depth 2.5m, total area 57m<sup>2</sup>.
- Unit D1.01 (3 bed), min. depth 2.42, total area 54m<sup>2</sup>.
- Unit D1.02 (1 bed), min. depth 2.175m, two balconies total 15m<sup>2</sup>.



Units B1.01 and C1.01, Source: Turner



Units D1.01 and D1.02, Source: Turner

### Comment:

The units above provide less than the required 3m POS depth, however all either meet or significantly exceed the minimum area of 15m<sup>2</sup>. For units not on the ground floor or podium, the ADG specifies a minimum balcony depth and area of 2m / 8m<sup>2</sup> and 2.4m / 12m<sup>2</sup> for 1 and 3 bedroom units respectively. The ADG states that a balcony with a minimum width of 2m is appropriate for 1 and 2 bedroom units and fits a table and 2-4 chairs. Similarly, for a 3 bedroom unit, a minimum depth of 2.4m is sufficient to fit a table and 4-6 chairs. Each of the units adjoin landscaped areas within the development site and provide sufficient depth and area to ensure they are useable and will enhance residential amenity. The minor variation to the ADG standard is considered reasonable.

### The Hills Local Environmental Plan 2019

The site is zoned R1 General Residential under The Hills LEP 2019. Residential flat buildings are defined in the LEP as follows:

**residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

**Note—**

Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

Residential flat buildings are permitted in the R1 General Residential zone.

#### **a. Objectives of the Zone**

The objectives of the R1 General Residential zone are:

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

The proposal is considered satisfactory in regard to the objectives as the proposal will provide for the housing needs of the community with a variety of 1, 2 and 3 bedroom units.

#### **b. LEP 2019 Development Standards / Local Provisions**

The site is located within the Bella Vista Station Precinct. Site specific controls are provided for the Bella Vista and Kellyville Station Precincts in Part 8 of the LEP. The following addresses the principal development standards of the LEP 2019 relevant to the subject proposal:

LEP STANDARD / PROVISION	REQUIRED	PROPOSED	COMPLIES
Clause 4.3 – Height of Buildings	Building A: 28 metres Building B: 28 metres Building C: 21 metres Building D: 21 metres	Building A: 26m Building B: 27.5m Building C: 19.8m Building D: 20.6 m	Yes Yes Yes Yes
Clause 4.4 – Floor Space Ratio	1:1 (25,569m <sup>2</sup> )	0:98 (25,451m <sup>2</sup> )	Yes
Clause 5.21 – Flood Planning	Compatible development which	The development has demonstrated its compatibility with respect	Yes

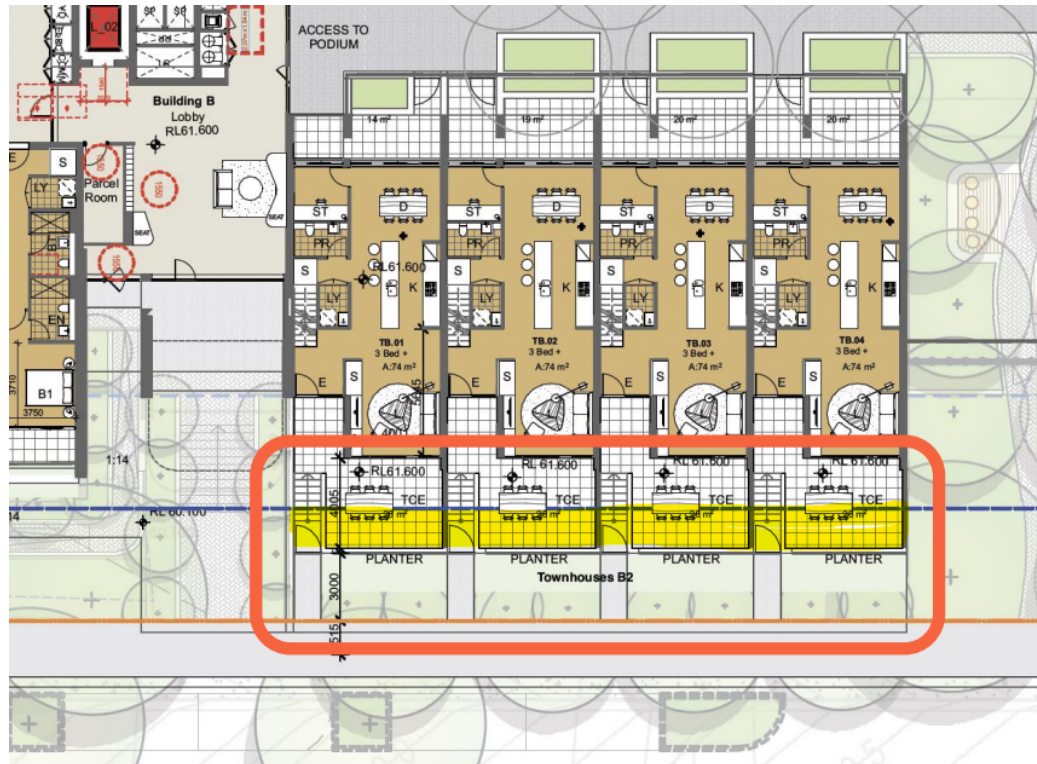
	minimises flood risk to life and property.	to flooding which affects Lot 1 DP 1298513.	
Clause 5.10 – Heritage conservation	Consider the effect on the significance of the place on any Aboriginal object. Notify local Aboriginal communities.	An Aboriginal Cultural Heritage Assessment Report was submitted with the application. Local Aboriginal communities were notified. General Terms of Approval have been issued by Heritage NSW.	Yes
Clause 6.3 – Public Utility infrastructure	Public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available.	An Infrastructure Report was submitted with the application. Sydney Water / Endeavour Energy were consulted and have raised no objections. Plans allow for substations on the site.	Yes
Clause 7.2 – Earthworks	Earthworks will not have a detrimental impact on environmental functions and processes, or on features of the surrounding land.	Earthworks associated with the proposed development have been assessed as satisfactory subject to conditions.	Yes
Clause 7.7 – Design Excellence	Development consent must not be granted unless the development exhibits design excellence.	Proposal referred to Design Excellence Panel. The proposal has addressed concerns raised by the Panel.	Yes, refer to discussion below.
Clause 8.2 – Minimum Lot size	RFB with a building height of 21 metres or more - 3,600m <sup>2</sup>	25,569m <sup>2</sup> (developable area = 20,511m <sup>2</sup> )	Yes
	RFB with a building height of less than 21 metres - 1,500m <sup>2</sup>		Yes
Clause 8.3 – Site Area of proposed development includes dedicated land	For the purposes of applying an FSR, the site area includes land that is dedicated to the Council or a public authority for a public purpose (roads, drainage or open space), and would	The calculation of FSR is based on the original site area (25,569m <sup>2</sup> ) which includes land within the site boundary which will be dedicated as roads and is to be subdivided for future public open space.	Yes

	have been part of the site area if it had not been so dedicated.		
Clause 8.4 – Building Setbacks	5 metre front building setback	Courtyards to four units within Building B are set back 3 metres.	No. Refer to Building Setbacks discussion below.
Clause 8.9 – Maximum number of dwellings	8,400 dwellings on land within the Bella Vista and Kellyville Station Precinct.	224 units proposed.	Yes

Proposed variations to building setbacks, and compliance with design excellence are discussed below.

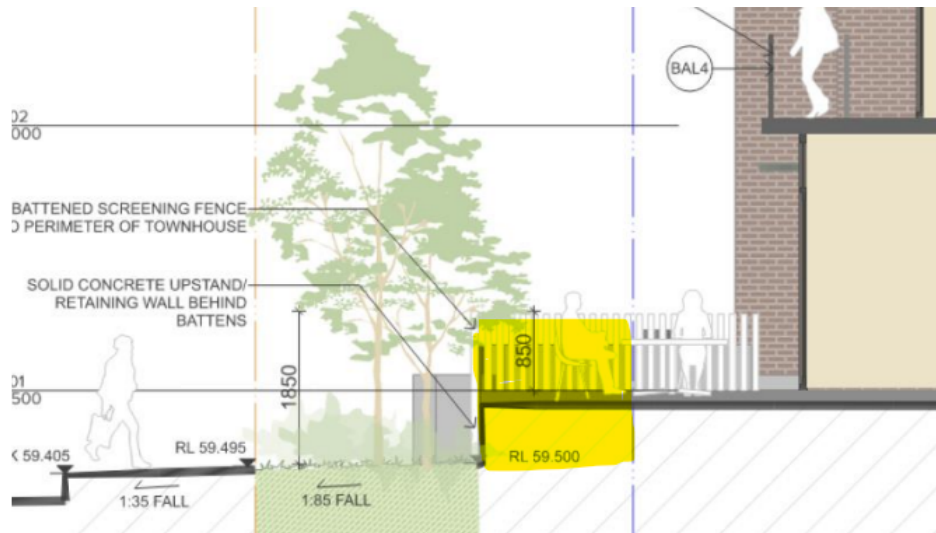
#### i) Compliance with Minimum Building Setbacks (Clause 8.4)

Clause 8.4 Minimum building setbacks of the LEP stipulates a front building set back of equal to or greater than 5 metres. The proposal complies with the required 5 metre minimum setback with the exception of courtyards to four units which are 1m above finished ground level and are set back 3 metres from the site boundary, therefore a variation of 2 metres. The extent of the proposed variation is shown below:



Extent of ground floor POS encroachment (highlighted) within setback, Source: Turner





Section of ground floor encroachment (1m above NGL), Source: Turner



Extent of variation (12.5%) in relation to development frontage, Source: Turners

On 1 November 2023, reforms commenced to Clause 4.6 Exceptions to Development Standards. In accordance with Schedule 6 of the Environmental Planning and Assessment Regulations 2021, the reforms apply only to a Development Application made on or after 1 November 2023. The subject application was lodged on 26 September 2023 and has been determined as if changes had not commenced. The applicant has provided a Clause 4.6 Variation which is provided at Attachment K.

Clause 4.6 allows consent to be granted for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. The minimum building setback control is not expressly excluded under Clause 4.6 of the LEP 2019 and thus the Clause can be applied in this instance.

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

- The encroachment relates solely to the front private open space to four units and not the habitable parts of the building.
  - The building façade wall is set back approximately 7 metres from the street boundary with an additional upper level setback thereby minimising any perceived bulk and scale impacts to the streetscape.
  - The encroachment does not erode the ability to provide landscaping within the setback areas with a sufficient depth of 3 metres provided between the private open space and the front property boundary. The level difference of approximately 1 metre and will be screened with suitable ground and canopy cover as detailed in the Landscape Plans.
  - The unit typology provides a softened interface to the streetscape edge of the development while enabling opportunities for passive surveillance to the street and an active entry.
  - The average setback of buildings fronting Road No. 1 exceeds the development standard of 5 metres.
- *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

In accordance with the NSW LEC findings in the matter of *Wehbe v Pittwater Council*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

Clause 8.4 does not provide objectives specific to the minimum setback standard. Accordingly, the applicant has addressed the R1 General Residential zone objectives.

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

The applicant states *"The proposed development provides for an appropriate density commensurate with the planning framework and provides a diversity of housing types for an appropriate diversity of housing types...supported by generous amenity including communal facilities and communal open space."*

- *That there are sufficient environmental planning grounds to justify contravening the development standard.*

In addition to the earlier stated points, the applicant also comments:

- The Development Application proposes a built form and land use consistent with the established planning framework for Bella Vista.
- The proposal promotes the orderly and economic use of the land in a manner where good design and amenity of the built environment can be achieved.
- The non-compliance is directly attributed to a minor encroachment of the required building setback for a housing form that will create a diversity of housing typologies within the Precinct.
- The non-compliance will not unduly impact upon the landscape curtilage and streetscape.

- The departure from the building setback development standard is both minor and reasonable and in this circumstance results in a comparable development outcome to a scenario if compliance had been achieved.
- The contravention is the result of sensitively managing a significant level difference between Road No. 1 and the Communal Open Space area requiring a deep terrace at the entry way to enable an appropriate level transition. The terrace area encroaches within the 5-metre building setback noting that no part of the habitable areas of the dwellings sit within the setback area. The encroachment is unavoidable without significantly compromising the internal area of the associated dwellings.

It is considered that the applicant's justification for non-compliance satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the minimum setback standard. It is considered that the applicant's written request has satisfactorily addressed the requirements under Clause 4.6(3) of LEP 2019. It is further noted that the proposed variation occupies only approximately 12.5% of the site's frontage to proposed Road No. 1, and is applicable only to four raised (1m above NGL) private courtyards, screened with 3m deep landscaping and with the building façade itself being set back a minimum of 7 metres from the street boundary, exceeding the minimum setback under Clause 8.4. Furthermore, in the Bella Vista Station Precinct Design Guidelines (applicable to SSD land directly adjacent to the site), Section 4.4.8 Ground Level Setback (3), stipulates that all residential frontages will be provided with a minimum setback to lower levels of 2 metres. The proposed variation will therefore not result in a built form outcome that will be inconsistent with the intended future built form in the vicinity.

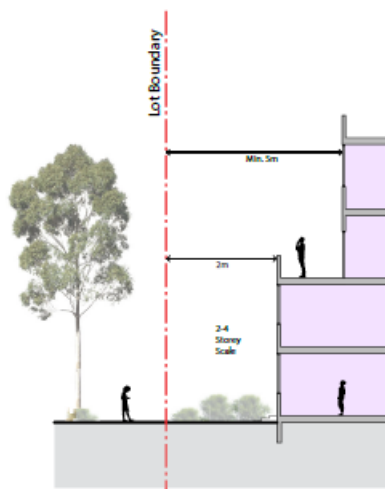


Figure 4.4.9.4  
Residential 2-4 Storey setback on all other neighbourhood roads.

Source: Bella Vista Station Precinct Design Guidelines, Hassell, April 2023, as modified 15 February 2024.

Under the provisions of Clause 4.6(4) of LEP 2019, consent must not be granted to a proposal that contravenes a development standard unless that proposed development will be in the public interest because it is consistent with the objectives of the development standard (not applicable in this instance) and the objectives for development within the zone in which the development is to be carried out. The Clause

4.6 written submission has demonstrated that the objectives of the zone are achieved. It is therefore considered that the variation can be supported as:

- The Applicant's request is well founded;
- The proposed variation results in a development that is consistent with the R1 General Residential zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance and there are sufficient environmental grounds to justify the contravention;
- The proposed development will be in the public interest because it is consistent with the objectives development within the relevant zone and will not result in additional bulk and scale at the street frontage.

Pursuant to Clause 4.6(4)(b) of LEP 2019, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS18-003 (dated 21 February 2018) issued by the NSW Department of Planning, the Secretary's concurrence may be assumed in this instance as the application relates to a development standard within an EPI that adopts Clause 4.6 of the Standard Instrument.

## **ii) Design Excellence (Clause 8.6)**

Clause 8.6 of the LEP specifies an objective to deliver the highest standard of architectural and urban design and applies to development involving the erection of a new building or external alterations to an existing on land within the Bella Vista Station Precinct or Kellyville Station Precinct. The Clause also prescribes that development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters outlined in clause 8.6(4):

- (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) *whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) *whether the development detrimentally impacts on view corridors,*
- (d) *whether the development detrimentally impacts on any land protected by solar access controls established in the development control plan referred to in clause 8.5,*
- (e) *the requirements of the development control plan referred to in clause 8.5,*
- (f) *how the development addresses the following matters—*
  - (i) *the suitability of the land for development,*
  - (ii) *existing and proposed uses and use mix,*
  - (iii) *heritage issues and streetscape constraints,*
  - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
  - (v) *bulk, massing and modulation of buildings,*
  - (vi) *street frontage heights,*
  - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
  - (viii) *the achievement of the principles of ecologically sustainable development,*
  - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
  - (x) *the impact on, and any proposed improvements to, the public domain,*

- (xi) the impact on any special character area,
- (xii) achieving appropriate interfaces at ground level between the building and the public domain,
- (xiii) excellence and integration of landscape design.

In addition, development consent must not be granted to development to which this clause applies unless a design review panel reviews the development, and the consent authority takes into account the findings of the design review panel.

**Comment:**

The design excellence of the proposal was considered at two Design Review Panel meetings held on 22 November 2023 and 8 May 2024. At the end of the last meeting, the Design Advisory Panel concluded that:

*"The Panel offers qualified support for the proposal as presented to the meeting, provided that the matters raised in this Report are addressed to the satisfaction of Council. If Council Officers are satisfied with the revised scheme submitted for consent, the Applicant need not return to the Panel."*

The Panel final meeting minutes are provided in Attachment L. The Applicant's response to the minutes are provided in Attachment M. A number of matters were raised in the second meeting minutes including tree retention and removal, encroachments within the riparian zone setback and proximity of units to a future cycleway adjacent to the site, access to ground floor units, character of the through-site pedestrian link, orientation of the southern building to open up central common open space area, solar access to common open space, landscaping on street frontage, way finding and site navigation, plant species and soil depth and other matters.

The application has been further amended to address the Panel's comments since the meeting in May, and other matters raised during the assessment, to the satisfaction of Council staff.

With regard to Clause 8.6(4)(a), the design has been amended to ensure that the standard of design, building materials, building type and location is consistent with the desired future character of the Bella Vista and Kellyville Station Precinct. The proposal provides a scheme that appropriately responds to the site's distinct topography, its constraints and opportunities.

With regard to Clause 8.6(4)(b), the building height, setbacks and high level of architectural design ensures that the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain and respect views from future adjoining development to the riparian corridor.

With regard to Clause 8.6(4)(c), whilst there is no specifically identified view corridor, the Applicant has adequately demonstrated that through the orientation and placement of the buildings on the site, views to the riparian corridor from adjoining land to the west of the site will be available.

With regard to Clause 8.6(4)(d), the proposal results in minimal impact on adjoining properties in terms of overshadowing due to the orientation of buildings on the site.

With regard to Clause 8.6(4)(e), the proposed development has been assessed in detail and addressed in Section 3.3 below.

With regard to Clause 8.6(4)(f), the development addresses the relevant matters in other sections of this report.

With regard to Clause 8.6(4)(g), the findings of Council’s Design Advisory Panel have been considered and the concerns raised have been satisfactorily addressed as above.

In this regard, the proposal satisfies the provisions of Clause 8.6 of LEP 2019.

**i. Clause 5.10 Heritage Conservation**

Clause 5.10 prescribes that consent is required for development which disturbs an Aboriginal place of heritage significance or object. The consent authority must consider the effect of the proposed development by means of an adequate investigation and assessment, and notify the local Aboriginal communities. As outlined earlier in Section 3 of this report with respect to integrated approval required pursuant to the National Parks and Wildlife Act 1974, the applicant provided the required investigative reports to consider the impacts of the proposal on known sites of significance within the development site. General Terms of Approval have been granted by DPE (Heritage). As part of the notification process, local Aboriginal communities were consulted.

The proposed development is satisfactory with respect to Clause 5.10 of the LEP.

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

**i) Kellyville and Bella Vista state-led rezoning proposal (Transport Oriented Development)**

Kellyville and Bella Vista have been identified as accelerated precincts under the NSW State Government’s Transport Oriented Development (TOD) Program. As part of the TOD program, the Department is reviewing the planning controls in Kellyville and Bella Vista. A draft rezoning has identified areas of these precincts suitable to support up to 20,700 new homes. The draft rezoning was exhibited in July and August 2024. The Department intends to finalise the plans at the end of 2024.

The subject site has previously sat outside the boundary of state-led planning (such as the State Significant Development Precincts) in the vicinity of the Bella Vista and Kellyville stations. The exhibited rezoning proposes to include the subject site and apply the following controls via a SEPP which would amend existing controls:

Control	LEP 2019 (subject site)	Draft TOD provisions
Zoning	R1 General Residential	R1 General Residential
Height of buildings	20 and 28 metres	73.5 metres (22 storeys)
FSR	1:1	1:1

Under the draft TOD provisions (Explanation of Intended Effect, Kellyville and Bella Vista TOD Precincts, Department of Planning, Housing and Infrastructure, July 2024) buildings will be up to 30 storeys in the immediate vicinity of the Bella Vista Metro station, with heights reducing to the east and the north towards Memorial Avenue where a FSR of 1:1 will remain for the subject site. Existing plans to deliver a new primary school north of the Metro station and new open spaces may be enhanced by additional playing fields

east of Elizabeth Macarthur Creek, subject to further investigation. New walking and cycling paths over the creek will connect places of residence, employment and education to green spaces.

If fully developed, the existing planning controls have capacity for 9,250 dwellings. It is anticipated the proposed rezoning will increase capacity by 1,556 in the Bella Vista Precinct (1,007 in Kellyville), bringing the total to approximately 10,805 (and 9,901) potential dwellings.

The proposed development has an FSR of 0.98:1 and complies with the existing maximum building heights of 21 and 28 metres currently applicable to the site under LEP 2019. If the amendments proposed under the TOD come in to force, the proposed development will not be inconsistent with the intended outcomes.

### **3.4 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Sections of The Hills Development Control Plan 2012 are relevant to this application:

- *Part D Section 26 - Bella Vista and Kellyville Station Precincts*
- *Part B Section 5 – Residential Flat Buildings*
- *Part C Section 1 – Parking*
- *Part C Section 3 – Landscaping*
- *Part C Section 6 – Flood Controlled Land*

The proposed development achieves compliance with the relevant requirements of the above DCPs except for the following variations to THSCP 2012 which are addressed below:

#### ***i) Part D Section 26 - Bella Vista and Kellyville Station Precincts (and Contributions Plan No. 18 - Bella Vista and Kellyville Station Precincts)***

##### *Section 3.3 Structure Plans and Key Elements and Section 4.1 Movement Network*

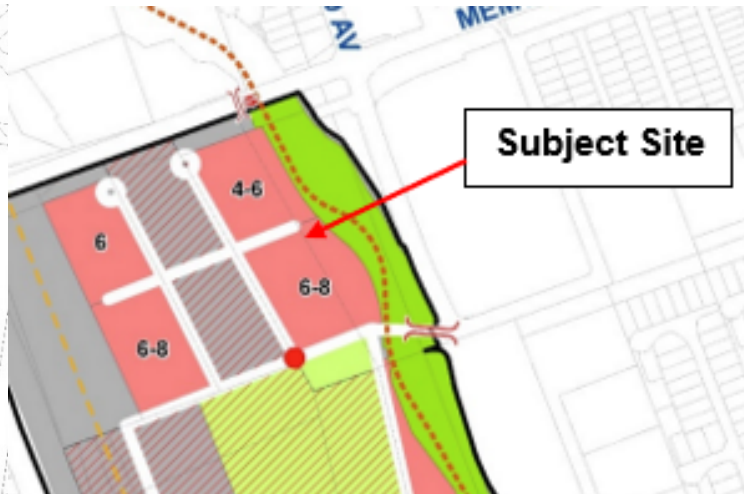
Section 3.3 Structure Plan and Key Elements and Section 4.1 Movement Network and Design of the DCP outline the desired character and street network of the Bella Vista and Kellyville Station Precinct.

The site is shown on the structure plan for the Bella Vista Station Precinct in Figure 12. Related to this is the Contributions Plan No. 18 – Bella Vista and Kellyville Station Precincts and the works proposed in the vicinity of the site, including a roundabout and bridge, which are reflected in the DCP Structure Plan.

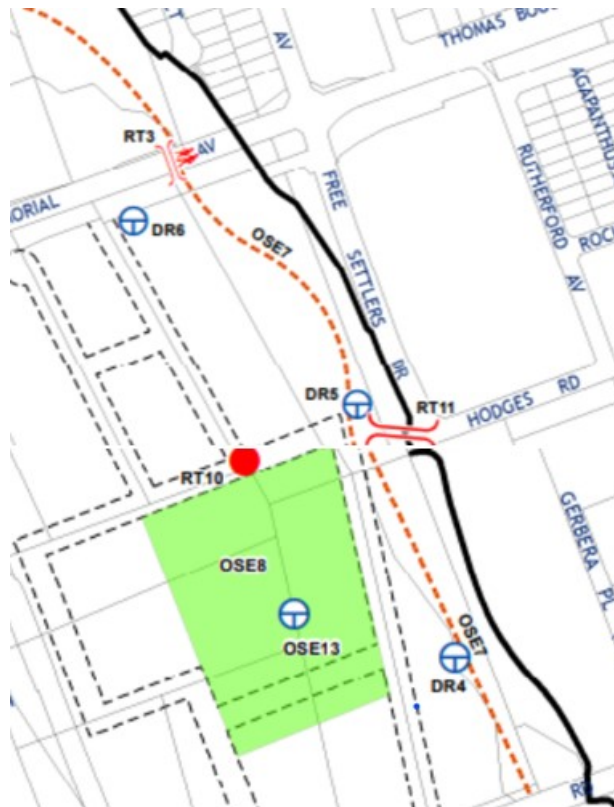


## Legend

-  Intersection
-  Bridge
-  Pedestrian Bridge
-  Roundabout
-  Proposed Cycle
-  SSDA Boundary
-  Residential Area
-  SP2 Zone Land
-  Passive Open Space



Excerpt from Figure 12 – Bella Vista Station Precinct Structure Plan



Excerpt from Contributions Plan No. 18 – Bella Vista and Kellyville station Precincts

Access to the site is shown via a bridge over Elizabeth Macarthur Creek to the east (subject to Subdivision Development Application 563/2024/ZB). Four items on the Structure Plan are proposed to be varied / deleted by the subject application:

- A roundabout was planned in the south-western corner of the site, and is funded in Contributions Plan No. 18 – Bella Vista and Kellyville Station Precincts),
- A cul-de-sac was envisaged at the termination of the new local road in the north near Memorial Avenue,
- A proposed east-west road was shown within the subject site, and
- The alignment of the road at the southern end of the site (connecting to the future bridge) was required to be slightly realigned.



The applicant provided the following justification for the deletion of this roundabout and east/west road:

- *The proposed movement network is largely consistent with the configuration of the plan and will provide vehicle and pedestrian connectivity in the same manner as intended by the street network and hierarchy plan.*
- *The proposed movement network provides for the safe and efficient passage of vehicles and pedestrians to the site and adjoining sites and will not impact the orderly development of adjoining land.*
- *The exclusion of the roundabout in lieu of a t-intersection will facilitate the safe movement of vehicles to and from the site.*
- *The exclusion of the east-west road in lieu of a pedestrian through site link will accommodate pedestrian movements through the site in a safe manner and within a landscaped setting.*
- *The east-west road link is redundant from a traffic and access perspective.*

*Given the above, the variation to the movement network will provide for a better environmental and design outcome and is entirely justified.*

**Comment:**

Section 3.3(2) of the DCP states that where variations are proposed, development is to demonstrate how the vision, development principles, key elements for the Precincts and relevant specific objectives are to be achieved.

The relevant objective of Section 3.3 Structure Plan and Key Elements is:

- b. To ensure that development occurs in a coordinated manner consistent with the vision and principles for the Precincts.*

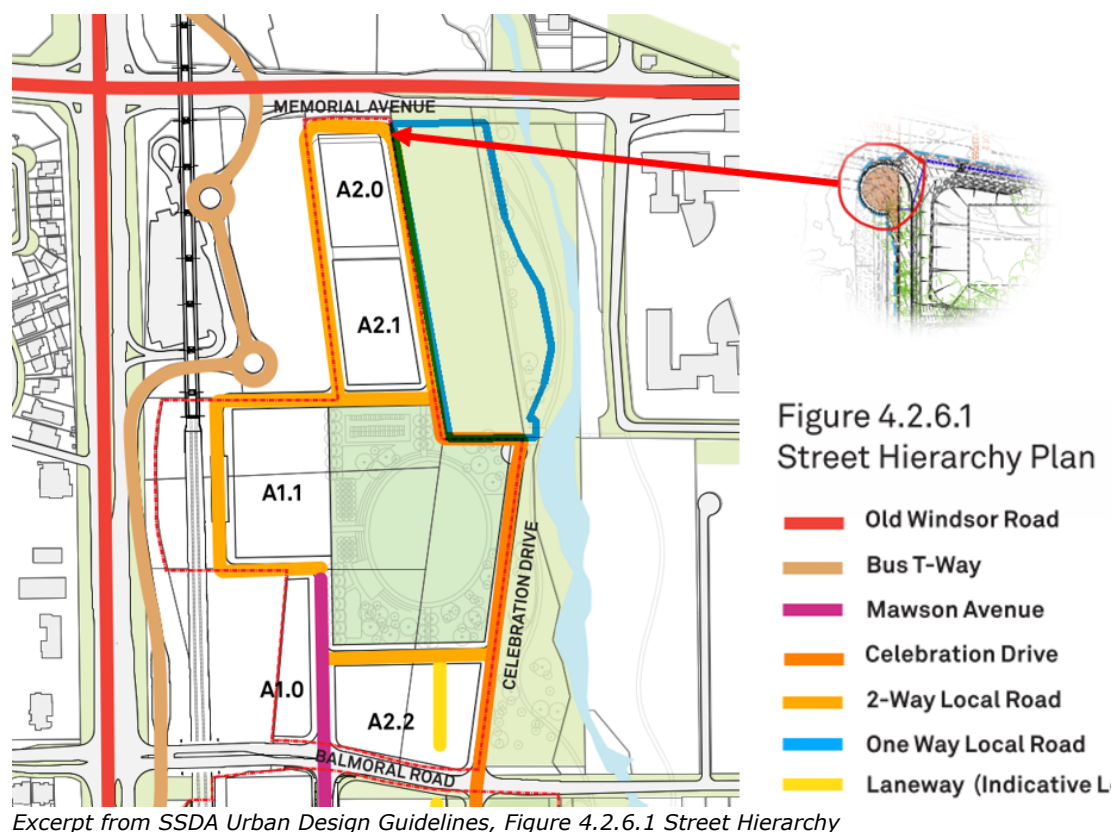
Relevant development principles and key elements as described in the DCP include transit-oriented design whereby the area will be highly walkable and various new connections to enhance access and permeability including new roads south of Memorial Avenue (building upon the road network proposed as part of the SSDA).

The objectives of 4.1 Movement Network and Design are:

- To encourage residents to walk or cycle to shops, the railway station, recreation areas, community and other facilities by providing for safe and direct pedestrian and cycle connections between key locations.*
- A functional and attractive new street network is provided that facilitates access, safety and convenience for all street and road users and minimises the negative impact of traffic.*
- Carriageways and verge widths are consistent with the identified street hierarchy and sections to allow streets to perform their designated functions within the street network, enhance functionality and amenity for users and accommodate public utilities and drainage systems.*
- Improve the capacity and function of the road network to support higher density development.*
- Encourage orderly development that appropriately integrates with planned development in the surrounding areas.*

With respect to the cul-de-sac shown on the DCP Structure Plan, this is no longer required due to modifications approved in February 2024 to the adjoining State Significant Development Structure Plan and Design Guidelines for the Bella Vista Station Precinct. The road layout now shows the continuation of a two-way local road to the

west. Since the adjoining SSD land is not yet being developed, the subject application proposes a temporary turning head at the northern end of the road until such time as the adjoining land is developed and the road can continue to the west as shown below.



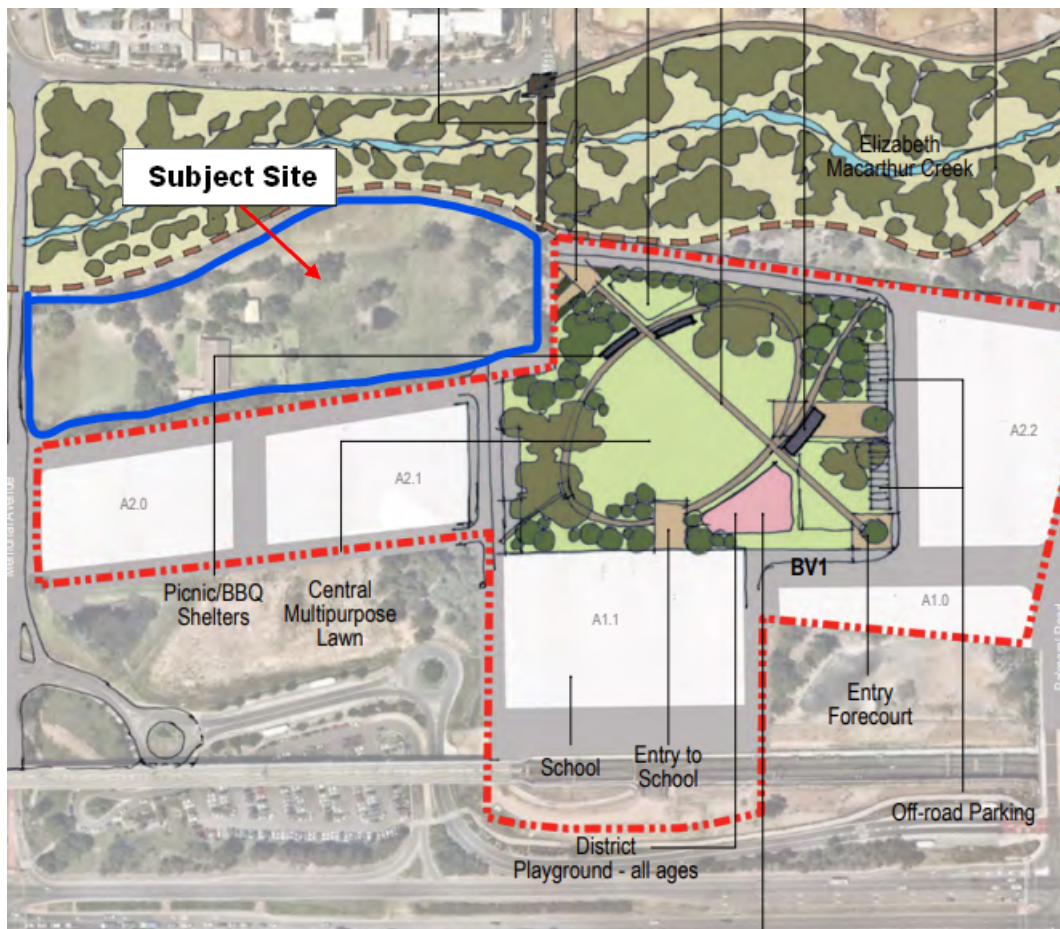
With respect to the east-west road shown within the subject site on the DCP structure plan, this is not required due to the design and building layout proposed on the site. In the interests of maintaining permeability however, the site provides an east-west public pedestrian access through the site from the proposed road to a future cycleway within the riparian corridor via an 18 metre wide easement (refer Subdivision Plan in Attachment J).

The roundabout shown at the south-western corner of the site was intended to manage a possible four-way intersection associated with vehicular access to the future Bella Vista District Park within the SSD land to the south of the site. The park will have an area of approximately 2.74ha, three street frontages and will adjoin a future primary school.

The applicant consulted with Landcom in October 2023 who advised that reference should be made to the stamped Landscape Strategy approved as part of the Concept Masterplan SSD (excerpt below) which showed the indicative location of parking associated with the future park on the southern side, accessible from a future local road. It was advised that the design could be subject to change.

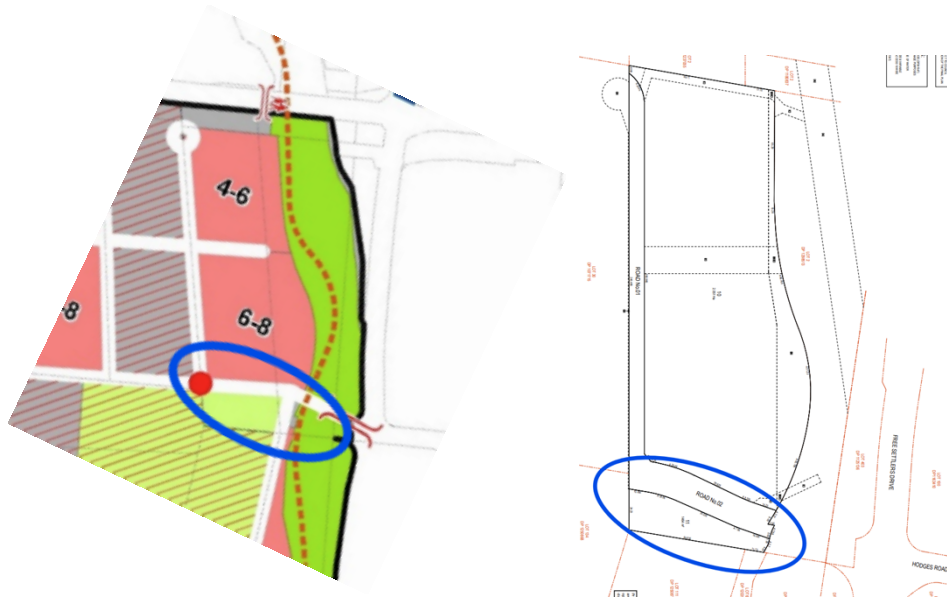
Landcom was consulted as an adjoining landowner during the notification of the Development Application in October/November 2023 and no objection was raised to the proposed development and civil works which included the removal of the roundabout. Council's Traffic staff have confirmed that if no access is proposed to the District Park at the point shown in the DCP and CP, the roundabout is not required to manage a three-

way intersection. Furthermore, since no road is proposed to connect through to Memorial Avenue from within the Precinct, the proposed T-intersection is adequate to cater for the future traffic movements in this area.



*Excerpt from Figure 6.4 Bella Vista Concept Masterplan, Kellyville and Bella Vista Landscape Master Plan and Open Space Strategy, Clouston Associates, 2020.*

Lastly, the alignment of the road between the proposed bridge on adjoining land to the east proposed under Subdivision Application 563/2024/ZB, and the intersection of proposed Road Nos 1 and 2 in the subject site was slightly altered. The difference is demonstrated below in a comparison of the DCP Structure Plan and the applicant's Subdivision Plan:



The realignment of the road was necessary and unavoidable since its starting point was determined by design of the proposed roundabout located at the intersection of Hodges Road and Free Settlers Drive (image provided in Section 1 of this report), in addition to road levels required to satisfy Sydney Water and riparian corridor / flooding matters.

The proposed variations to Section 3.3 and 4.1 of the Bella Vista and Kellyville Precincts DCP, and associated roundabout in Contributions Plan No. 18 – Bella Vista and Kellyville Precincts are considered to be acceptable.

### 5.1 Site Requirements

Section 5.1 Site Requirements, control (4) stipulates a maximum site coverage for a residential flat building development of 50% of the site area. The proposed development has a site coverage of 51%, being a variation of 1%.

The applicant has provided the following justification for this variation.

- *It is prudent to note however that adopting the site coverage definition pursuant to the LEP (which only includes areas of the building footprint) would result in a site coverage of 34% which is compliant.*
- *The variation is considered to be acceptable for the following reasons:*
  - *The proposed development significantly exceeds the requirement for the provision of deep soil and communal open space areas in accordance with the ADG*
  - *The proposal provides for significant public domain areas which will deliver a range of community benefits*
  - *The design provides for an exemplar landscape scheme which will accommodate significant landscaping opportunities and will contribute to the landscape qualities of the Precinct.*
  - *The footprint and siting of buildings is largely in accordance with the DCP and ADG and provides for high quality residential amenity.*
  - *The site will provide for an enhanced curtilage surrounding the buildings for open space, permeability, access and landscaping.*
  - *Compliance with the site coverage control would not result in a better planning outcome beyond that already achieved by the proposal.*



- *In this regard, the variation to site coverage is considered to be acceptable. Furthermore, the proposal will not result in the isolation of lots and will promote the orderly development of land.*

**Comment:**

The relevant objective of Section 5.1 Site Requirements is:

- b. To provide sufficient space for landscaping that will complement the building form and enhance the landscape character of the street.*

The DCP requires a minimum landscaped area of 45% to be provided on the site. The proposed development achieves the required minimum landscaped area. The applicant has provided sufficient justification for the proposed variation of 1% to the permitted site coverage in their statement above. It is considered that the objective of the control is able to be achieved since the landscape concept provided with the application demonstrates adequate landscaping of the street frontage, riparian interface and between the buildings on the site. The 1% variation to site coverage is considered minimal and reasonable.

**5.2 Setbacks (Building and Upper Level)**

Control (1) of 5.2 Setbacks requires a 5m setback to roads. This setback line is shown in blue on the proposed development plan below. Table 5 Setback Controls of the DCP also requires developments with residential ground floor uses to adopt a two-storey terrace house appearance. The 3<sup>rd</sup> and 4<sup>th</sup> storeys for these developments are to be set back 2m behind the building line. Storeys above the 4<sup>th</sup> storey shall be setback a minimum of 5m behind the front building line. In addition, balconies and courtyards shall not protrude into setback areas.

Minor ground level courtyard variations to the required 5 metre setback to the local road have been discussed in this report in relation to LEP Clause 8.4 Minimum Building Setbacks, and addressed by the applicant under Clause 4.6, and therefore will not be revisited in relation to the DCP.

With respect to upper-levels, these controls apply to the four “ends” of the residential flat buildings to Proposed Road No. 1. The proposed buildings do not comply with the stipulated additional 2m and 5m setbacks from the 3<sup>rd</sup> level upwards.

The floor plan excerpts (Level 1 (Ground), Level 3 and level 5) below provide a visual indication of the proposed upper level setbacks, the position and shape of the balconies, façade lines, and articulation, all of which are greater than the minimum 5 metre setback line shown in blue.



Level 1, Source: Architectural Plans, Tanner



Level 3, Source: Tanner



Level 5, Source: Tanner



Western Elevation to local road, Source: Tanner

The western elevation above demonstrates the general presentation of the built form to the local road, noting that articulation and building design is best understood through the floor plans.

The applicant provided the following justification:

*In terms of upper level setbacks, the proposal provides a highly articulated façade treatment which provides the perception of a building base to minimise the perception of building mass. Furthermore, the adoption of upper level building setbacks are considered to be more appropriate to buildings with primary frontages to public roads where residential apartments at the lower levels have a direct interface to the street. In this regard, the buildings are orientated to be internal facing with the side of the buildings and the townhouse typologies having a primary frontage to the street edges. In this regard, a variation to the upper level setback controls is acceptable.*

### **Comment:**

*The objectives of Section 5.2 Setbacks are:*

- a. To provide strong definition to the public domain and create a consistent streetscape.*
- b. To set taller building elements back from the street to reduce building scale and bulk and enable adequate sunlight access to the public domain.*
- c. To provide articulation zones to complement building mass and emphasise key design elements such as entrance points and respond to environmental conditions including solar access, noise, privacy and views.*

- d. To ensure adequate separation between buildings on different sites to alleviate amenity impacts, including privacy, daylight access, acoustic control and natural ventilation.
- e. To facilitate a landscaped streetscape that can accommodate larger trees.

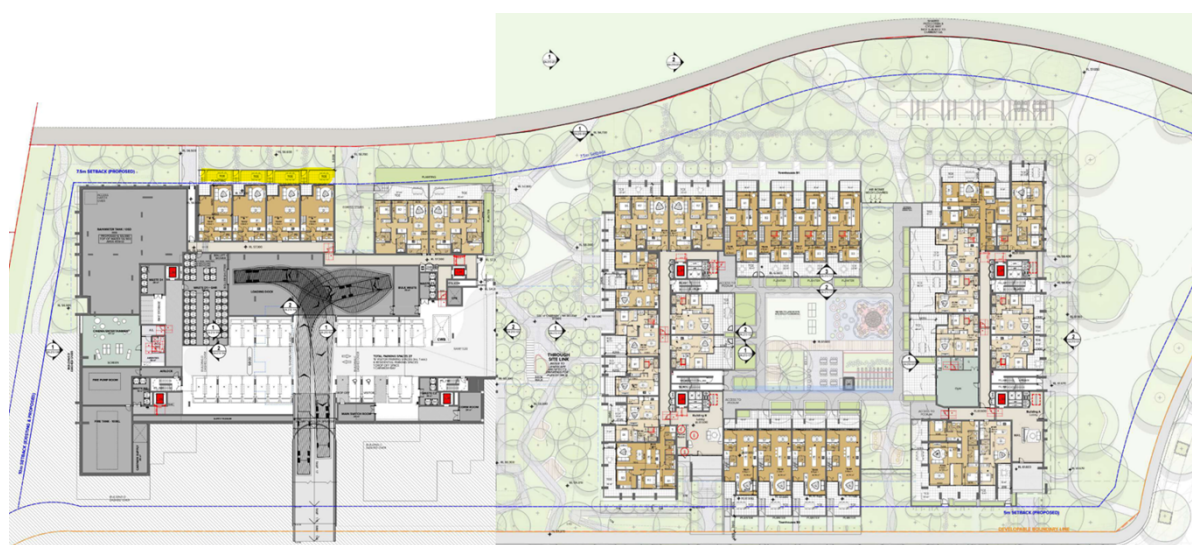
The proposed residential flat buildings are oriented such that only the “ends” of the buildings (with above 3 storeys) present to the proposed road, with significant gaps between each building, a design that is not necessarily anticipated in the DCP controls which seek in part to reduce building scale and bulk at the street level. With the exception of minor courtyard intrusions as discussed previously in this report, the development exceeds the 5 metre building setback provided in the LEP for the Precinct, and upper level facades are set back up to between approximately 8.5m and 12.4m from the front boundary. Balcony styles vary from square edge to rounded balustrades and a variety of building materials and tones will assist in breaking down the overall mass of the buildings. It is considered that the proposed upper levels will not be detrimental to the streetscape or public domain. The vertical elements of the lower two floors provide the development with a strong definition to the public domain and the upper floors will not dominate the built form. The variation to 5.2 Setbacks (Building and Upper Level) is considered reasonable.

### 5.6 Development Adjoining the Elizabeth Macarthur Creek Riparian Corridor

Controls (5), (8), (9) and (10) of Section 5.6 of the DCP provide specific controls for developments fronting the riparian corridor:

- A minimum 7.5m built form setback to the riparian corridor.
- A podium height of 4 storeys shall be provided.
- Levels above the 4th storey shall be setback 5m behind the building line.
- Developments with residential ground floor uses are to adopt a two-storey terrace house appearance to present a fine grain articulation to the riparian corridor frontage. The 3rd and 4th storeys for these developments are to be setback 2m behind the building line.

The proposed development exceeds the required 7.5m riparian corridor with the exception of a 2.5m encroachment to four ground floor units as highlighted below.



Ground Floor, Source: Turner





Eastern / Riparian Elevation, Source: Turner

With respect to the courtyard encroachment within the riparian setback to four units, the applicant provided the following justification:

- *The encroachment relates solely to the terrace and not the habitable parts of the building. The façade wall is compliant with the respective setback requirement thereby minimising any perceived bulk and scale impacts.*
- *The encroachment does not erode the ability to provide landscaping within the setback areas.*
- *The typology provides a softened interface to the edges of the development while enabling more active passive surveillance.*
- *The average setback of buildings fronting both the riparian corridor exceed the respective setback control.*

With respect to controls (8), (9) and (10) relating to podium heights and upper floor setbacks, the applicant provided the following summarised justification:

- *The proposal includes four buildings that range from 5-7 storeys in height, each featuring a two-storey base.*
- *The base of these buildings provides a sympathetic grounding with earthy tones and finishes to the upper elements of the building to minimise the perception of bulk and scale.*
- *The buildings are orientated to maximise the northerly aspect and are orientated east-west as opposed to having a direct frontage to the riparian corridor (therefore) there is minimal utility to adopt upper level setbacks.*
- *Nonetheless, the proposal does adopt upper level setbacks to the sides of Buildings C and D which comply with the 5 metre requirement of the DCP.*
- *Buildings A and B do not comply and provide an upper level setback of approximately 2-3 metres. The variation in this circumstance is acceptable as these buildings are also significantly set back from the riparian corridor in the order of 18-30 metres.*
- *The proposal provides a highly articulated façade treatment that provides a distinct building base to minimise the perception of building mass.*
- *The adoption of upper level building setbacks is more appropriate for buildings with primary frontages to public roads where residential apartments at the lower levels have a direct interface to the street.*
- *It is acknowledged that there is a minor variation from the upper level 2m setback control for the 3rd and 4th storeys for Buildings A, B, C & D.*
- *The facades are highly articulated with diverse balcony and terrace designs (e.g. curved, angled and boxed), sizes, and varying unit layouts, which has resulted in a facade treatment that minimises the perception of building mass.*
- *The integration of two-storey buildings and the distinct break in materials and finishes between the lower and upper storeys further diminishes the overall bulk and scale of the development.*
- *This design provides a visual break, preventing an overpowering built form for future users of the active and passive open spaces along the riparian corridor.*

### **Comment:**

The DCP states that the Riparian Corridor will be fronted by residential land uses and built form which will define the edge, provide passive surveillance and encourage an activated cross link during the day and night. The objectives of Section 5.6 are:

- a. *To enhance, reinstate and manage a unique environmental setting which can enable a continuous pedestrian link within the Bella Vista and Kellyville Precincts.*
- b. *To encourage built form elements and uses that will enable a vibrant interface with the riparian corridor and shared pedestrian cycleway.*
- c. *Future development uses and built form will provide an appropriately scaled and attractive interface with the riparian corridor.*
- d. *The public domain shall provide an attractive setting and desirable location for new development.*

The proposed development does not adopt a traditional style podium and tower format which may be envisaged by the controls, nor does it strictly comply with the specified setbacks. Due to the shape of the site, at least half of the development frontage to the riparian corridor is set back well in excess of the required minimum of 7.5 metres. Where there is a 2.5m encroachment to the courtyards at ground level, there is still a 5 metre landscaped setback to the boundary. Overall, the development provides an articulated and well designed outcome which will contribute to the desired attractive setting and vibrant interface with the riparian corridor. The proposed variations to 5.6. Development Adjoining the Elizabeth Macarthur Creek Riparian Corridor are considered reasonable.

### 5.7 Residential Uses on Ground and First Floors

Section 5.7 Control (2) requires residential ground floor units to have individual gates and entrances accessed directly from the street. All but 3 ground floor (level 1) units have direct pedestrian access to the street as shown below.



Level 1, Source: Tanner

The applicant provided the following summarised justification:

*This design decision is influenced by the site's topography, the levels required for accessible entry to Buildings B, C, and D, and the interface with Memorial Avenue. Providing individual entrances would have conflicted with the location of the accessible ramps, potentially compromising the ability to provide accessible entry. Despite the lack of street access, the units benefit from a northerly aspect resulting in good solar access*

*and offer strong passive surveillance. Additionally, the site's topography and the proposed levels for these units would require further cut, fill and retaining walls to facilitate individual street access, negatively affecting the proposed landscape setting and adding unnecessary bulk to the built form.*

Section 5.7 Control (3) stipulates that ground floor residential apartments are to be elevated from the street level by a minimum of 300mm and a maximum of 600mm. Ground Floor residential units are elevated by no more than 600mm except for TB01, TB02, TB03, TB04 (up to 1.6m), B101 (up to 2.2m) and C101 (up to 2m).



Level 1 / Ground floor, Source: Tanner

The applicant provided the following summarised justification:

*The variations affect only a limited number of ground floor units and are all situated along the western facade of the development. These variations are deemed acceptable due to the extensive landscaping and tree planting incorporated into the private open spaces and front setback areas. Features such as planter boxes, trees (6-20 metres in height), shrubs, and groundcover will soften the building's facade. Combined with the building's varying setbacks from the street, this landscaping treatment will minimise any visual impact, ensuring that the exceedance does not result in adverse effects beyond what would occur with a 600mm elevation. Moreover, the building levels have been influenced by the need to account for the grade changes required for the basement car park and to provide suitable access to the buildings. Two of these ground floor units are located behind the proposed accessible ramps for Buildings B and C. The ramps further reduce the visibility of the elevation of these units above street level. Considering the above, the elevation variations are considered reasonable and justifiable.*

### **Comment:**

The objectives of 5.7 Residential Uses on Ground and First Floors are:

- a. *To provide residential activation to streets.*
- b. *To provide for residential identity and legibility.*
- c. *Encourage the provision of housing for a diversity of dwelling types and users.*
- d. *To introduce a fine grain built form and architectural diversity within a street block and/or building development.*
- e. *To provide for future flexibility in use.*

With respect to the variation to direct pedestrian access to three units on the street frontage, this is considered reasonable since as demonstrated in the plan excerpt, these units are directly adjacent to three primary residential entries on the road frontage. Strict compliance with the provision of a separate pedestrian access would only serve to reduce

soft landscaping in the front setback, and interfere with ramps required for disabled access.

With respect to the units with courtyards more than 600mm above ground level, this is not considered to detract from an activated street frontage where there will be four building entries, a site-through link, and various other pathways into the site. The two storey units and wide balconies on this frontage provide a diversity of housing and architectural design in the streetscape.

The proposed variations to Section 5.7 are considered reasonable.

**ii) THDCP 2012 Part B Section 5 – Residential Flat Buildings**

Section 3.11 Unit Layout and Design

Additional to the controls in the Apartment Design Guide, for residential flat building developments of 30 or more units, Section 3.11 Unit Layout and Design specifies larger minimum floor areas, and the mix required to be provided within a development as detailed in the following table.

Apartment Size Category	Apartment Size
Type 1	
1 bedroom	50m <sup>2</sup>
2 bedroom	70m <sup>2</sup>
3 or more bedrooms	95m <sup>2</sup>
Type 2	
1 bedroom	65m <sup>2</sup>
2 bedroom	90m <sup>2</sup>
3 or more bedrooms	120m <sup>2</sup>
Type 3	
1 bedroom	75m <sup>2</sup>
2 bedroom	110m <sup>2</sup>
3 or more bedrooms	135m <sup>2</sup>

- e) Type 1 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- f) Type 2 apartments shall not exceed 30% of the total number of 1, 2 and 3 bedroom apartments.
- g) All remaining apartments are to comply with the Type 3 apartment sizes.

The proposed development seeks to vary control (e) above, since 59% of the units within the development fit within the Type 1 size category (5% are Type 2, and 36% are Type 3). This exceeds the control by 29%.

The applicant provides the following summarised justification:



*Section 149 of the State Environmental Planning Policy (Housing) 2021 stipulates that the Apartment Design Guide (ADG) prevails over DCPs when a DCP specifies a control related to requirements addressed in the ADG. One of the requirements pertains to apartment size and layout (4D). The proposed apartment sizes and layouts have been designed in accordance with the ADG requirements, satisfying and exceeding these requirements.*

*The development site is within a Metro Station and Tier 1 Transport Oriented Development Precinct earmarked for urban intensification in response to the housing supply and affordability crisis. The current apartment sizes and layouts result in the delivery of 224 dwellings in proximity to Kellyville and Bella Vista Metro Stations and the North West Transitway. Adopting a higher percentage of Type 1 apartments has resulted in a higher number of overall dwellings, thereby making a positive contribution to the delivery of housing in the region. A higher ratio of Type 2 and Type 3 apartments that would result in a lower overall dwelling yield would be considered inconsistent and conflicting with the objectives of the Precinct.*

*The development remains consistent with the objectives of the DCP control, including:*

- No apartments are smaller than the required minimum size, ensuring they are suitable for residents' needs.*
- The apartment sizes and layouts are consistent with the ADG requirements, ensuring residential amenity, including maximising solar access and natural ventilation.*
- The development includes small, medium and large 1 bedroom, 2 bedroom and 3 bedroom apartments of various sizes, providing housing diversity and different household types.*
- The apartment mix responds well to the demand for a range of household types, offering affordable housing options to cater to varying budgets and housing needs.*

*Only 2 of the Type 1 apartments are sized at the minimum size for their respective bedroom category. The smallest 1 bedroom apartment is 51m<sup>2</sup>, while all other Type 1 apartments are significantly larger and close to meeting the Type 2 minimum sizes.*

*A proportionate mix of 1 bedroom, 2 bedroom and 3 bedrooms is achieved, and compliance is achieved with control (a) and (b) under Section 3.11 (unit mix).*

*The proposed development comprises 40% of apartments (1, 2 and 3 bedrooms) that exceed the largest minimum apartment size (90m<sup>2</sup>) prescribed in the ADG, therefore demonstrating the development is prioritising the delivery of larger apartments.*

*To further support the above, it should be noted that there are a number of apartments that only fall short of meeting the Type 2 apartment category by approximately 3m<sup>2</sup>. If these apartments were to be scaled up it would result in the following apartment mix:*

- Type 1: 40%*
- Type 2: 24%*
- Type 3: 36%*

*Therefore, there would only be a variation of 10%.*

**Comment:**

The objectives of Section 3.11 Unit Layout and Design are:

- (i) To ensure that individual units are of a size suitable to meet the needs of residents.*
- (ii) To ensure the layout of units is efficient and units achieve a high level of residential amenity.*
- (iii) To provide a mix of residential flat types and sizes to accommodate a range of household types and to facilitate housing diversity.*
- (iv) Address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.*
- (v) To ensure designs utilise passive solar efficient layouts and maximise natural ventilation.*

The development provides a variety of housing choice including two storey, 3 bedroom units with access to the street or riparian zone, and 1, 2 and 3 bedroom units in a traditional format. The development complies with solar access and ventilation requirements in the Apartment Design Guide, and all balconies exceed the minimum required areas, providing generous outdoor living areas to all units and ensuring adequate residential amenity. It is noted that only two of the Type 1 units are sized according to the minimum permitted area, and that were units that fall slightly short of the Type 2 areas included in that category, the proposed variation would be 10% rather than 29%. The development directly adjoins land subject to State Significant Development controls on one side, a future District Park to the south and a significant riparian corridor to the east which serves to enhance the amenity of the development. The variation to the unit sizes is considered a reasonable balance between the controls within The Hills DCP 2012 for residential flat buildings, and the Apartment Design Guide given the context of the site.

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

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

### **3.6 Section 4.15(1)(a)(iv) - Provisions of Regulations**

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. There are no relevant matters in regard to the subject application.

### **3.7 Section 4.15(1)(b) - Likely Impacts of Development**

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

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

### **3.8 Section 4.15(1)(c) - Suitability of the site**

The proposal is consistent with the intended maximum heights and floor space ratio for the area, provides high density residential development as intended in the R1 General Residential zone in close proximity to public transport and cycleways and provides a suitable built form response to the future streetscape and adjoining riparian corridor.

is a suitable development for the site and is consistent with the zone objectives. The design of the development responds to the site characteristics and provides for sufficient amenity to residential properties as envisaged under the applicable controls. In this regard, the development is considered suitable for the site.

### 3.9 Section 4.15(1)(d) - Public Submissions

A submission is considered in Section 4 of this report.

### 3.10 Section 4.15(1)(e) - Public interest

The development will provide a variety of housing options and contribute to future District Open Space, ensure the ongoing protection of an endangered ecological community, and provide linkages from existing urban areas and the riparian corridor into a targeted metropolitan development precinct. The site is located within an area which is serviced by public transport links including bus services and the Sydney Metro. On balance, the proposal is consistent with the public interest.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

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

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

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Referral/Consultation Agencies</b>			
Transport for NSW	Clause 2.122 - traffic generating development, SEPP (Transport and Infrastructure) 2021 Clause 2.119 Development with frontage to classified road Concurrence under section 138 of the Roads Act 1993	TfNSW supports the proposal subject to conditions (refer Condition 6).	Y
Endeavour Energy	Clause 2.48 Determination of development applications of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal includes a substation. A condition has been recommended. (refer Condition 5)	Y



Sydney Water	Clause 2.161 Development permitted with consent of State Environmental Planning Policy (Transport and Infrastructure) 2021	The proposal requires connection to Sydney Water's sewer and water supply system. Conditions have been recommended. (refer Conditions 98, 220)	Y
Castle Hill Police	Referral undertaken in accordance with the requirements of the "Safer by Design Guidelines" and the Protocol between The Hills Shire Council and Castle Hill Police.	Comments have been provided regarding construction and on-going requirements. (refer Condition 8)	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
Department of Planning and Environment – Heritage NSW	Controlled Activity Approval under the Water Management Act, 2000	General Terms of Approval issued (Condition 63)	Y
Department of Planning and Environment (Water)	Aboriginal Heritage Impact Permit required pursuant to s.90 of the National Parks and Wildlife Act, 1974	General Terms of Approval issued (Condition 64).	Y

## 4.2 Internal Referrals

The Development Application has been referred to various Council officers for technical review as outlined below.

Officer	Comments	Resolved
Ecology	Council's Ecology team sought clarification as to the impact of the development on the critically endangered vegetation community, Cumberland Plain Woodland (CPW) on the site. Several versions of an Arborist Report and Biodiversity Assessment Report were submitted for review. Impacts on the vegetation as a result of the proposed road alignment were unavoidable, however it was determined that impacts resulting from proposed civil works, including construction access / methods for Stage 2 of the development would have a serious and irreversible impact, which could be avoided by amendments to the civil plans. Accordingly, the civil plans were amended to incorporate a retaining wall on the southern boundary of the site adjacent to proposed Road No. 2, and to remove construction access to the basement from this road. All civil and proposed landscaping works	Y

	will be removed from this part of the site as marked up on the Site Plan and as reflected in the Civil Plans which will be conditioned accordingly (Condition 22).	
Waterways	Council's Waterways team reviewed the submitted plans and information including flood modelling to determine the suitability of the subject site in relation to the adjoining riparian corridor. This review determined that the development was satisfactory from a Waterways perspective.	Y
Engineering	Council's Engineering Senior Subdivision Engineer has reviewed submitted plans and information on a number of occasions and has liaised directly with the applicant to resolve multiple issues concerning proposed road alignment, stormwater solutions, vehicular movements, works on adjoining land and solutions to avoid impacts on the endangered ecological community on the site. Conditions have been recommended for the application.	Y
Landscaping	Council's Senior Landscape Assessment Officer has reviewed the application and requested clarification with respect to site levels, planters, plan consistency, calculations of deep soil and landscaped area in accordance with the ADG, planting details etc. These matters were largely resolved however in the interests of progressing to the determination of the application, the Applicant requested that final detailed Landscape Plans be provided prior to the issue of a construction certificate (Condition No. 184), which was agreed to by the Landscape Officer in addition to a number of other standard conditions which are proposed.	Y
Traffic	Council's Traffic staff raised no objection to the proposal and the removal of the roundabout identified in the DCP and CP from a traffic impact perspective.	Y
Health	No objections. Conditions recommended.	Y
Waste	No objections. Conditions recommended.	Y
Land Information	Numbering Plans have been provided to the satisfaction of Council's Land Information staff.	Y
Contributions	A condition of consent has been prepared, providing contributions for Stages 1 and 2 of the development. (Condition 20).	Y

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

### 4.3 Community Consultation

The proposal was advertised and notified from 23 October to 28 November 2023. One submission was received from Landcom, the developer in partnership with Sydney Metro at the adjacent Bella Vista Station Precinct (to the west and south of the site).

Issue	Council Comments
<p>The proposed development will impact Landcom's approved SSDA and subsequent proposed development within the Bella Vista Station Precinct. These impacts consist of a half road to be constructed along the subject site's western boundary as part of DA 308/2024/JP, and the creation of an intersection with the future extension of Celebration Drive along the subject sites' southern boundary as part of DA 563/2024/ZB.</p> <p>Landcom requests that the portion of the road that is part of this development application is consistent with the Bella Vista Urban Design Guidelines (Figure 4.2.7.1, Main Street Section 01, Page 35) which were approved as part of the Bella Vista Station Precinct Concept Proposal SSDA (SSD-10344).</p> <p>The exhibited concept engineering plans lack sufficient details.</p> <p>The applicant intends to amend the exhibited design to adjust the location of the proposed half road along the subject site's western boundary. Landcom requests any updated plans be provided.</p>	<p>Apart from facilitating access to the site, comments in relation to Subdivision DA 563/2024/ZB are not relevant.</p> <p>The following works under DA 308/2024/JP impact the adjoining land:</p> <ul style="list-style-type: none"> <li>- Removal of trees</li> <li>- Bulk earthworks and civil works to facilitate temporary pavement and turning head.</li> <li>- Construction of temporary pavement for turning head at northern end of Road No. 1; and</li> <li>- Installation of temporary fencing / hoarding.</li> </ul> <p>The proposed road shared with the adjoining SSD land to the west has been designed in accordance with the Bella Vista Urban Design Guidelines (Figure 4.2.8.4 Local Street Section 04, Page 35), approved under Modification 01 in February 2024 which changed the road type from Main Street to Local Street.</p> <p>Amended plans have been submitted several times throughout the assessment of the application. The proposed civil works have been clarified and consent from Sydney Metro has been received.</p>

## 5. CONCLUSION

This Development Application has been considered in accordance with the requirements of the EP&A Act 1979 and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in the submission and the key issues identified in this report, it is considered that the application can be supported.

The development has achieved a balanced outcome having regard to the existing and likely future character, roads and development in the surrounding area which makes up the Bella Vista and Kellyville Station Precincts, the significance of the site with respect to Aboriginal sites and endangered ecological communities, riparian interface sensitivities and flood affectation due to the adjoining Elizabeth Macarthur Creek. Variations to ADG, LEP and DCP controls are considered to be reasonable, and access to the site will be assured pending the determination of the subdivision application for road, roundabout and bridge from nearby Free Settlers Drive. The applicant has liaised with the adjoining land developer and had regard to the State Significant Development Area

to ensure the site's compatibility. The application was found to be satisfactory by the Design Review Panel and following amendments to refine the proposal it is now acceptable to recommend for approval subject to deferred development consent and the recommended draft conditions at **Attachment A**.

## 6. RECOMMENDATION

That the Development Application 308/2024/JP at Lot 1 DP 1237055, 40 Memorial Avenue and Lot 1 DP 1298513, Free Settlers Drive, Bella Vista 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**.

The following attachments are provided:

- Attachment A: Draft Conditions of consent with Attachments A, B, C, D
- Attachment B: Locality Plan
- Attachment C: Aerial Photograph
- Attachment D: Zoning Map
- Attachment E: Height of Building Map
- Attachment F: Floor Space Ratio Map
- Attachment G: Bella Vista State Significant Development Plans
- Attachment H: THDCP 2012 Part D Section 26 (Structure Plan)
- Attachment I: Architectural Plans
- Attachment J: Subdivision Plans (Subject site and DA 563/2024/ZB)
- Attachment K: Clause 4.6 written submission
- Attachment L: Design Advisory Panel Comments
- Attachment M: Applicant's response to Design Excellence Panel Report
- Attachment N: Sydney Metro Consent

